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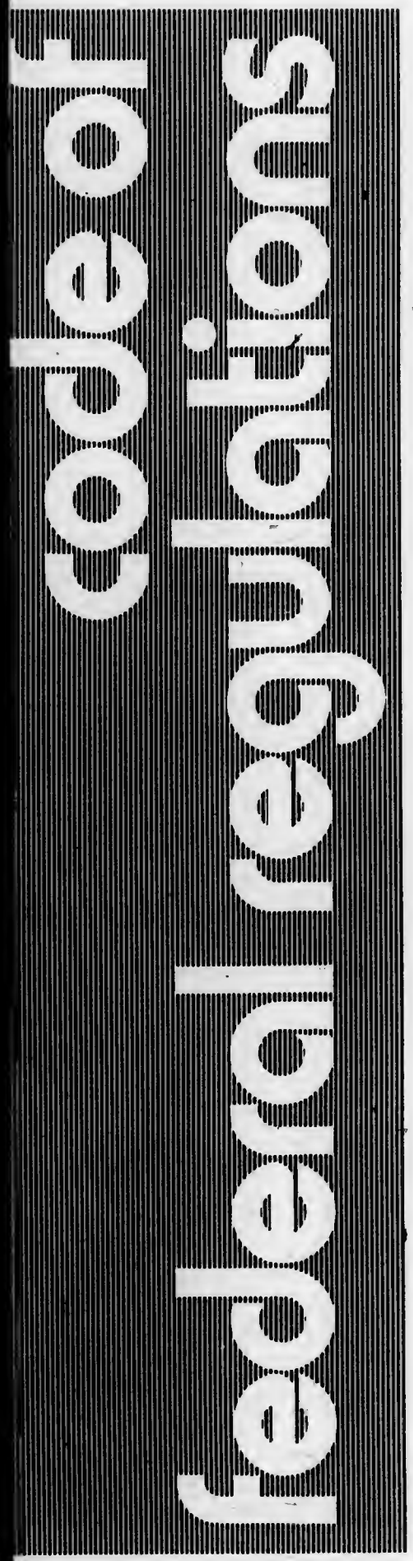
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INQUIRIES AND SUGGESTIONS

This publication was prepared under the editorial direction of Martha B. Girard assisted by Ruth C. Pontius with Loren Myers as Chief Editor. INQUIRIES, telephone 202–523–5227.

SUGGESTIONS concerning this and other publications of the Office will be welcomed by Fred J. Emery, Director, Office of the Federal Register, National Archives and Records Service, Washington, D.C. 20408.

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15	5.75	Jan. 1, 1978
16 (Parts 0–149	5.00	Jan. 1, 1978
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(Part 1000–End)	5.25	Jan. 1, 1978
17	8.25	April 1, 1978
18 (Parts 1–149)	5.00	April 1, 1978
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19	6.00	April 1, 1978
20 (Parts 1–399)	3.50	April 1, 1978
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(Part 500–End)	4.50	April 1, 1978
21 (Parts 1–99)	4.00	April 1, 1978
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24 (Parts 0–499)	8.25	April 1, 1978
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25	5.50	April 1, 1978

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(Comprising a complete CFR set)

Title	Price	Revision Date
26 (Part 1 §§ 1.0–1.169)	$5.75	April 1, 1978
(§§ 1.170–1.300)	4.00	April 1, 1978**
(§§ 1.301–1.400)	4.00	April 1, 1978
(§§ 1.401–1.500)	4.75	April 1, 1978
(§§ 1.501–1.640)	4.75	April 1, 1978
(§§ 1.641–1.850)	4.75	April 1, 1978
(§§ 1.851–1.1200)	5.25	April 1, 1977
(§§ 1.1201–End)	6.50	April 1, 1978
(Parts 2–29)	4.75	April 1, 1978
(Parts 30–39)	5.50	April 1, 1978
(Parts 40–299)	5.50	April 1, 1978
(Parts 300–499)	4.75	April 1, 1978
(Parts 500–599)	3.15	April 1, 1974***
(Part 600–End)	3.00	April 1, 1978
27	7.00	April 1, 1977
28	4.50	July 1, 1978
29 (Parts 0–499)	5.75	July 1, 1977
(Parts 500–1899)	6.00	July 1, 1977
(Parts 1900–1919)	6.00	July 1, 1977
(Part 1920–End)	4.50	July 1, 1977
30	6.00	July 1, 1977
31	5.75	July 1, 1977
32 (Parts 1–39) (V.I)	4.75	July 1, 1976
(V.II)	7.50	July 1, 1976
(V.III)	5.25	July 1, 1976
(Parts 40–399)	6.25	July 1, 1977
(Parts 400–589)	5.00	July 1, 1977
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33 (Parts 1–199)	7.00	July 1, 1977
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35	4.00	July 1, 1977
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37	3.00	July 1, 1977
38	6.00	July 1, 1977
39	3.50	July 1, 1977
40 (Parts 0–49)	4.25	July 1, 1977
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(Part 400–End)	5.75	July 1, 1977
41 (Chapters 1–2)	5.25	July 1, 1977
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(Chapter 9)	5.00	Sep. 26, 1977
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(Chapters 19–100)	4.50	July 1, 1977
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42 (Parts 1–399)	5.50	Oct. 1, 1977
(Part 400–End)	4.75	Dec. 31, 1977
43 (Parts 1–999)	4.00	Oct. 1, 1977
(Part 1000–End), 44 (44 Reserved)	6.00	Oct. 1, 1977

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45 Parts 1–99)	$4.25	Oct. 1, 1977
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(Parts 150–199)	4.75	Oct. 1, 1977
(Parts 200–499)	3.50	Oct. 1, 1977
(Part 500–End)	6.00	Oct. 1, 1977
46 (Parts 1–29)	3.00	Oct. 1, 1977
(Parts 30–40)	3.25	Oct. 1, 1977
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49 (Parts 1–99)	3.00	Oct. 1, 1977
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(Parts 200–999)	8.75	Oct. 1, 1977
(Parts 1000–1199)	4.50	Oct. 1, 1977
(Parts 1200–1299)	8.00	Oct. 1, 1977
(Part 1300–End)	4.25	Oct. 1, 1977
50	5.50	Oct. 1, 1977
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302.6 Redesignated from 302.5 28806
303 Added 28806
305.78–1 Added 27507
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465 Added 30035

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2529 Rescinded by Fish and Wildlife Service rule of June 9, 1978 26024
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4436 Revoke in part by Proc. 4604 45977
4445 Revoked in part by Proc. 4559 14433
4477 *See* Proc. 4559 14433
4492 Superseded by Proc. 4571 21313
4509 Revoked in part by Proc. 4559 14433
4538 *See* Proc. 4547 3251
4539 *See* Proc. 4547 3251
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213.3113 (f)(5) added	6913
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(h)(10) revised	30787
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(h)(11) revised	46287
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(a)(51) added	9782
(a)(1) revised	11689
(a)(28) added	19337
(f) added	22667
(o)(3) added	28429
(a)(47) revised	32735
(f)(2) added	36591
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(q)(2) added	26411
(p)(2) added	30263
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(a)(4) added; (c)(9) removed	50158
(a)(6) added	51381
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(a)(3) revised	4585
(a)(14) added	4585
(a)(20) revised	4963
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(f) added	16305
(a)(20) revised	16967
(a)(28) added	19337
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(x)(2) added	25417
(a)(6) added	27158
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(n)(10) added	25990
(a)(6) revised	27157
(k)(6) added	29763
(h)(7) and (n)(9) added	31307
(a)(3), (9), (10), and (h)(8) added	32115
(h)(9) added	33676
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(k) heading corrected	36043
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(n)(11) added	45549
(c)(21) revised	49526
213.3316 (c)(22) added	51382
213.3318 (b)(8) revised	9781
(a)(7) added	25990
(a)(1) revised	39070
(a)(8) added	45549
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(a)(1) removed; (a)(7) revised	25417
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(a)(6) added	2377
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213.3377 (a) and (l) revised	14637
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2.60 (b)(9) added	39953
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1126.121 (b) amended; eff. 9-1-79	39337
1132.31 (a) (2) and (4) revised; eff. 9-1-79	39337
1132.32 (b) revised; (c) added; eff. 9-1-79	39337
1132.61 Revised; eff. 9-1-79	39337
1132.62 Revised; eff. 9-1-79	39337
1132.71 (a)(2) (i) and (ii) amended; eff. 9-1-79	39337
1132.73 (b) introductory text, (c)(3) and (4)(ii), and (d)(2) revised; eff. 9-1-79	39337
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1132.75 Revised; eff. 9-1-79	39338
1132.76 (a)(4) amended; eff. 9-1-79	39338
1132.90—1132.94 Undesignated center heading added; eff. 9-1-79	39338
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1132.121 (b) amended; eff. 9-1-79	39338
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1138.31 (a) (2) and (4) revised; eff. 9-1-79	39338
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1138.71 (a)(2) (i) and (ii) amended; eff. 9-1-79	39339
1138.73 (b) introductory text, (d)(2), (e)(2), and (f)(1) revised; eff. 9-1-79	39339
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1201 Removed 46289
1201.1—1201.70 Removed 2627
1201.72—1201.401 Removed 2627
1207.407 Added 23558
1207.512 (a) introductory text amended; (a)(8) revised 9133
(a)(8) amended 51001
1270 Added 32125
Appendix I added 32122
Referendum 32127
1280 Added 51605

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1421.72—1421.75 (Subpart) Revised 2822
1421.111—1421.113 (Subpart) Revised 2825
1421.235—1421.237 (Subpart) Revised 2837
1421.270—1421.273 (Subpart) Revised 2830
1421.294 (a) revised 5501
1421.295 Revised 5501
1421.300—1421.313 (Subpart) Revised 36046
1421.325—1421.328 (Subpart) Revised 34757
1421.350—1421.353 (Subpart) Revised 2835
1421.390—1421.392 (Subpart) Revised 2841
1421.420—1421.425 (Subpart) Revised 29267
1421.485—1421.488 (Subpart) Revised 2845
1421.530—1421.544 (Subpart) Added 17461
1421.531 (a) revised 55741
1421.532 Revised 55741
1421.533 Revised 55741
1421.534 (b) revised 55741
1421.540 (b) and (d) revised 55742
1421.543 (a) amended; (b)(1)(ii) revised 55742
1421.558–1421.572 (Subpart) Added 47972
1425.2 (a) revised 4590
1425.3 (a), (e) and (f) revised 4590
1425.14 (a) revised 4590
1427.1—1427.26 (Subpart) Revised 34104

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1427.100—1427.105 (Subpart) Revised 34759
1427.101 Revised 34762
1427.160—1427.181 (Subpart) Revised 19194
1427.173 Revised 30038
1427.1901—1427.1904 (Subpart) Revised 19198
1427.1902 (d) revised 36236
1430.282 (a) (1) and (4) revised 1062
(a)(1) and (b) revised 19204
Revised 51603
1434.40—1434.44 (Subpart) Revised 24263
1435.3 (a) amended 38687
1435.17 (a) amended 21318, 38687
1435.18 Amended 21318
1435.19 (d) revised 21318
1435.22 (a) revised 37420
(a) redesignated as (a)(1); (a)(2) added 50409
1435.23 (a) revised 37420
1435.24 (f) amended 21318
1435.26—1435.33 (Subpart) Added 1477
1435.34—1435.44 (Subpart) Added 24664
1435.36 (a) amended 38687
1435.37 (c) and (d) revised 50411
1435.41 (a) revised 37420
1435.42 (a) revised 37420
(a) corrected 39563
1435.45—1435.54 (Subpart) Added 55743
1438.1636—1438.1645 (Subpart) Revised 18988
1446.1—1446.16 (Subpart) Revised 27160
1446.5 (a) revised 44467
1446.7 (7) removed 5501
1446.8—1446.13 (Subpart) Removed 21428
1446.11 Revised 5502
1446.12 (j) revised; (k) added 5502
1446.13 Revised 5502
1446.30—1446.37 (Subpart) Added 21428
1446.37 Removed 31314
1446.38 Added 35470
1446.39 Added 35470
1446.40 Added 35471
1464.2 (e)(5) added 46833
1464.7 (a) revised 9134, 46834
1464.16 Revised 29766
1464.21 Revised 54218
1468.3 Revised 2
1468.101—1468.126 (Subpart) Added 9456

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1472.1403 Revised 3
1472.1405 (f) added 15320
1472.1421 (f) added 15321
1472.1446 (e) added 15321
1472.1501—1472.1555 (Subpart) Added 9462
1475.50—1475.68 (Subpart) Added 26413
1480 Added 29926
1487 Added 4035
1488.2 (h), (j), and (v) revised 25992
1488.4 (d)(9) revised 25992
1488.5 (b) removed 29933
1488.8 (d) revised; (h) removed 25992
1488.9a Added 25992
1488.12 (a) amended 45551
Authority citation revised 47719
1488.19 Removed 1786

Chapter XVII—Rural Electrification Administration, Department of Agriculture

1701 Appendix A amended 20955, 35648, 41182

Chapter XVIII—Farmers Home Administration, Department of Agriculture

1800.3 Amended 23986
1800.22 (k) removed; (q) revised 7422
1800.23 Revised 7422
1800.26 Added 7422
1804.1—1804.5 (Subpart A) Appendix D revised 3075
Appendix D corrected 7199
Appendix E added 31315
1804.3 (d)(1) revised 3075
(f)(2)(xi) added 31315
1806.2 (b)(7) revised 56013
1806.6 (d) removed 34430
1806.21—1806.27 (Subpart B) Exhibit B revised 18538
1807.2 (f)(8) revised 7967
1811 Removed 19342
1815 Redesignated as Part 2045 (Subchapter S) and revised 3694
1821.81—1821.86 (Subpart C) Removed 20221
1822.1–1822.18 (Subpart A) Exhibit G amended 5503
Exhibit C revised 22671
Exhibit G amended 48619
1822.7 (s) added 55235
1822.11 (b) revised 45980
1822.15 (b)(1) (iii) added; Exhibit E amended 51385
1822.63 Revised 3696

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1822.83 (b) and (e)(1) introductory text revised 26562
(e)(1) correctly designated 31002
1822.85 (o) added; interim 32400
(o) added; final 49527
1822.86 (b) introductory text and (8)(i) revised; (c) introductory text amended; interim 32400
(c)(1) revised 47487
(b) introductory text and (8)(i) revised; (c) introductory text amended; final 49527
1822.88 (a)(8) and (i)(3) added 7968
(a)(8) and (i)(3) added 25790
1822.89 (b) revised; interim 26278
1822.90 (d) and (i) revised; interim 32400
(d) and (i) revised; final 49527
1822.94 (a), (b), and (c) revised; interim 32400
1822.94 (a), (b), and (c) revised; final 49527
1822.81—1822.98 (Subpart D) Exhibits F–5A and J amended; Exhibit J–2 revised 7968
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Exhibit J–2 revised 25791
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Exhibit I added; interim 32402
Exhibit R–2 amended 43017
Exhibits J–2, R–1, R–2, R–3, and R–4 removed; Exhibits J and R amended 44826
Exhibits footnote 1 amended; final 49527
Exhibit I added; final 49527
1822.203 Revised 3696
1822.265 (e) revised 24264
1822.267 (g) revised 24264
1822.271 (b)(3)(v) revised; (a)(11) and (c)(5) added 24264
1822.321—1822.334 (Subpart I) Redesignated as 1933.401—1933.419 (Subpart I) and revised 2853
1823.301—1823.310 (Subpart J) Redesignated as Part 1942 (Subpart I) and revised 28442
1823.321—1823.331 (Subpart K) Redesignated as Part 1942 (Subpart I) and revised 28442
1823.341—1823.360 (Subpart L) Redesignated as Part 1942 (Subpart I) and revised 28442
1823.360 Removed 22671
1823.410 Revised 18161
1823.452 Revised 55236
1823.453 (c) revised 55236
1823.454 Revised 55237

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1823.472 (b)(1), (3)(i), and (e)(1) revised	7200
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(b) introductory text, (1), and (3) revised	39747
(a), (d)(2), and (3) revised	40200
(b)(4) and (5) redesignated as (b)(5) and (6); new (b)(4) added; (b)(1) amended	55237
1841.47 Added	28439
1845.13 (c) revised	48619
1861.1 (b)(5)(v) removed; (b)(5)(vi) redesignated as (b)(5)(v) and revised; (b)(5)(iv) and (d) revised; (e) and (f) added	8786
1861.9 (e) revised	21640
1861.10 (e)(2) revised	21640
1864.14 (a)(1) and (2) revised	47488
1888.13 (c) revised	20957
1888.17 (b) revised; (c) added	20957
1900 Added	52463
1901.158 (f)(1) revised	8787
1901.205 (f)(1) corrected	7977
1901.301—1901.309 (Subpart G) Exhibits C and D amended	28441
1901.301 Revised	28440
1901.302 (c) revised	28440
1901.303 (b) revised	28440
1901.306 (a) revised	28440
1901.307 (a) introductory text and (2), (c)(2), (3), and (5) revised	28440
1901.309 (a)(2), (b), and (c) revised	28441
1901.651—1901.655 (Subpart N) Added	3697
1901.701—1901.719 (Subpart O) Added	26690
1904.101—1904.180 (Subpart C) Exhibit C amended	24265
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1904.101—1904.170 (Subpart C) Exhibits A, B, E, and F removed	55882
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1904.124 (a)(1) revised	5503
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1904.170 (e)(4) revised	5504
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1904.180 (d)(2)(iii) revised	5504
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1921.101—1921.150 (Subpart C) Removed	55883
1921.104 (b) revised	7978
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1924.201—1924.220 (Subpart E) Added	36886
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1933.17 (a)(2)(vii)(A), (13)(ii) and (viii) revised; (a)(2)(vii)(C) redesignated as (a)(2)(vii)(D); new (a)(2)(vii)(C) added	7201
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(a)(1)(i) and (a)(2)(i) added; (f)(1) and (2) revised	1290
1955.103 (e) revised	41373
1955.116 (a)(2)(v)(C) added; (b)(1), (3)(i)(B), (4)(iii) and (iv) revised	3699
1955.117 (a)(1), (b)(1), (d)(4) and (6) introductory text, (d)(6)(i) and (e)(4) revised; (e)(7) removed; (e)(5) and (6) redesignated as (e)(6) and (7); (a)(2)(iii) and new (e)(5) added	3699
1955.118 (c)(3), (e)(2) and (f) revised	3700
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1980.501—1980.593 (Subpart F) Added	35662
2045 (Subchapter S) Added; Part redesignated from 1815 and revised	3694

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2852.38a Added	10540
2852.38b Added	10540
2852.38c Added	10542
2852.42 Revised	46291
2852.52 (c) introductory text, (1), (2), (3), and (6) and (d) introductory text and (1) revised	46291
2852.1846 Revised	51754
2852.2561—2852.2575 (Subpart) Revised	20958
2852.2563 (a) corrected	25417
2852.2564 (a)(1) and (5) corrected	25417
2852.2568 (a)(1) and Tables I and II corrected	25417
2852.2569 (c) and Table III corrected	25417
2852.2570 (a)(1)(vi) and Table IV corrected	25418
2852.3621—2852.3630 (Subpart) Revised	19815
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54.7 (a) and (b) revised 41184
54.8 Revised 41185
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78.27 Introductory text revised 11144
78.28 Revised 11144
91.3 (c) Policy statement 39080
91.14 Amended 27171
91.34 Added 27171
92.2 (l)(2)(iv) added 25418
(l)(2)(v) added 27173
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(f) amended; (g) added; republished 35683
(e) amended; (f) introductory text revised; (f)(7) added 44860
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113.108 Added 25077
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113.135 (a)(4) and (b)(4) added 49528
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201 Footnote 1 added 19351
202 Footnote 2 added 19351
202.39—202.58 Removed 30510
202.101—202.123 Added 30510
203 Footnote 3 added 19351
203.11 Removed 46956

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204.1 Revised 19351

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1.40 (o) and (p) added 28810
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223.2 (a)(4) and (c)(3) amended; (b) (1) and (2) revised; (b) (3) and (4) redesignated as (b) (5) and (6); new (b) (3) and (4) added	29117
224.1 (c) introductory text, and (2) introductory text and (i) amended; (a), (c)(2)(vii), (3), and (4) revised; (c)(2) (ix) and (x), (6) and (7) added	29118
(c) introductory text amended; (c) (3) and (7) removed; (c) (4) through (6) redesignated as (c) (3) through (5); (a) revised	41984
(c)(1) amended	42250

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224.5 Removed; new 224.5 redesignated from 224.6	29119
Redesignated as 224.6; new 224.5 added	41984
224.6 Redesignated as 224.5; new 224.6 redesignated from 224.7 and revised	29119
Redesignated as 224.7; new 224.6 redesignated from 224.5	41984
224.7 Redesignated as 224.6 and revised; new 224.7 redesignated from 224.8	29119
Redesignated as 224.8; new 224.7 redesignated from 224.6	41984
224.8 Redesignated as 224.7; new 224.8 redesignated from 224.9	29119
Redesignated as 224.9; new 224.8 redesignated from 224.7	41984
224.9 Redesignated as 224.8; new 224.9 redesignated from 224.10	29119
Redesignated as 224.10 new 224.9 redesignated from 224.8	41984
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225.5 (a) amended	29119
225.7 (b)(2)(ix) amended	29119
225.10 (b)(8) revised	29119
225.11 Heading and (a) revised; (b) introductory text amended; (b)(7) removed; (b) (8) and (9) redesignated as (b) (7) and (8)	29119
232.6 (n)(3) amended; (o) and (p) redesignated as (p) and (q); (h) revised; new (o) added	38825
257 Revised	53431
257.9 Added	29120
265.6 (d)(4) amended; (d)(5)(iv) added	42250
266.9 (b)(4) revised; (b)(8) added	41391
601—602 (Subchapter H) Heading revised	52250
602 Added	42250
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2.113 (d) amended	39999
2.115 (b) revised	39999
2.116 Amended	40000
2.118 (a)(3) revised	40000
2.120 (d) amended; (e) added	40000
2.202 (a) revised; (c) amended	40000
2.204 (e)(4)(viii) revised	40000
2.209 (a) through (d) revised	40000
2.211 (d) amended	40001
2.213 (b) (6) and (7) and (c) revised; (b)(8) added	40001
2.214 Added	40001
2.215 Added	40001
2.301 (a)(1), (b)(1)(ii) and (iii), (b) (2), (3), and (5), and (g)(2), (3) and (4) amended; (a)(5), (b)(1)(i), (c), and (h)(2) revised; (d) removed	40002
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2.302 Heading, (a)(1), and (c) revised; (d) removed	40003
2.303 (c) revised; (d) removed	40003
2.304 (c) revised; (d) removed	40003
2.305 Revised	40003
2.306 Revised	40003
2.307 (c) revised; (f) removed	40005
2.308 (c) revised; (g) removed	40005
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6.102 (a) amended; (j) removed	49792
6.106 (a)(3) revised	49792
6.400 Amended	49793
6.500—6.514 (Subpart E) Heading revised	49792
6.500 Amended	49793
6.504 (a)(1) removed; (b)(3) amended	49793
6.510 Introductory text amended	49793
6.512 (a)(4)(iv) removed; (a) introductory text, (b), (c), (e), and (g) amended; (f) revised	49793
6.514 Revised	49793
22 Added; interim	34730
33 Interim regulations; effective date extended to 2-1-79	47975
35.400—35.425 (Subpart B) Revised	47134
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35.704 Revised	43425
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35.722 (a)(3) revised; (b) (11) through (13) added	43426
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35.900—35.970 (Subpart E) Revised	44049
35.910-9 Added	56200
35.910-10 Added	56201
35.1000—35.1050 (Subpart F) Revised	42253
50.12 Added	46258
50 Appendix G added	46258
51.1 (k) revised; (n)(11) added	46269
51.12 (e)(3) added	46269
51.17 Heading revised; (d) added	46269
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52.125 (f) added; (h) redesignated as (g)	33247
(e)(3) added	53034
52.126 (c) added	53035
52.130 (e) added	34132
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52.133 (b) and (c) added	33247
(a) revised; (d) added	53035
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(c)(37)(iv)(B) and (C) added	34464
(c)(35)(xii) revised; (c)(37)(iii) added	34466
(c)(41) and (42)(iii) added	34468
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(c)(39)(vii) added	36247
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(c)(42)(iv) added	36625
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(c)(41)(iv) added	41033
(c)(35)(xiii)(B), (c)(41)(v), and (c)(42)(v) and (vi) added	41304
(c)(39)(viii) added	41036
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(c)(39)(ix) added	41038
(c)(39)(x) added	41040
(c)(41)(vii) added	47727
(c)(42)(x) added	51634
(c)(42)xv) added	51767
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(c)(25)(ii)(C) and (42)(xii) added	51772
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(c)(42)(ix) added	51774
(c)(41)(viii) added	51775
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(c)(26)(xiii)(D) and (41)(xiii) added	51778
(c)(25)(i)(C) and (42)(xi) added; (c)(26)(vii)(A) revised	51780
(c)(26)(xi)(B) and (41)(xi) added	51781
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(c)(41)(xii) added	52703
(c)(41)(x) added	53037
52.224 (a)(2)(iii)(B) added	33915
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(a)(2)(iii)(D) added	51770
(a)(2)(ii)(F) added	53037

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52.228 (b) added	35695
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52.229 (b)(2) added	40014
52.231 (b) added	34464
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52.272 (a)(4) added	40014
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(a)(3)(viii) and (b)(2)(iii) added	51780
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52.1570 (c)(17) added	34131
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52.2451 Petitions for review	31232
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60.4 (b)(OO) added	47692
60.14 (e)(2) amended	34347
60.283 (a)(1)(v) added	34785
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60 Appendix A amended	34785
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65 Added	44523
65.171 Table amended	52704
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List of Public Laws

This is a continuing listing of public bills that have become law, the text of which is not published in the FEDERAL REGISTER. Copies of the laws in individual pamphlet form (referred to as "slip laws") may be obtained from the U.S. Government Printing Office.

[Last Listing: Oct. 30, 1978]

H.R. 13481 ..... Pub. L. 95–522
To name the post office and Federal building in Portland, Maine, the "Federick G. Payne Building". (Oct. 27, 1978; 92 Stat. 1886) Price: $.60

H.R. 50 ..... Pub. L. 95–523
Full Employment and Balanced Growth Act of 1978. (Oct. 27, 1978; 92 Stat. 1887) Price: $1.10

S. 2570 ..... Pub. L. 95–524
"Comprehensive Employment and Training Act Amendments of 1978." (Oct. 27, 1978; 92 Stat. 1909) Price: $2.40

H.R. 7296 95–525
To designate the new Terminal Radar Approach Control Federal Building in Hempstead, Long Island, New York, as the "Charles A. Lindbergh Federal Building". (Oct. 27, 1978; 92 Stat. 2022) Price: $.60

H.R. 12116 95–526
To amend the District of Columbia Self-Government and Government Reorganization Act to repeal the authority of the President to sustain vetoes by the Mayor of the District of Columbia of acts passed by the Council of the District of Columbia and repassed by two-thirds of the Council, to change the period during which acts of the Council of the District of Columbia are subject to congressional review, and for other purposes. (Oct. 27, 1978; 92 Stat. 2023) Price: $.60

H.R. 7305 ..... Pub. L. 95–527
To designate a certain Federal building in Champaign, Illinois, the "William L. Springer Building". (Oct. 27, 1978; 92 Stat. 2025) Price: $.60

H.R. 13808 ..... Pub. L. 95–528
To designate the "Omar Burleson Federal Building". (Oct. 27, 1978; 92 Stat. 2026) Price: $.60

H.R. 13809 ..... Pub. L. 95–529
To designate the "George Mahon Federal Building". (Oct. 27, 1978; 92 Stat. 2027) Price: $.60

H.R. 13892 ..... Pub. L. 95–530
To amend title 28 of the United States Code to provide that the requirement that each United States attorney and United States marshal reside in the district for which he is appointed shall not apply to an individual appointed to such a position for the Northern Mariana Islands if such individual is at the same time serving in the same capacity in another district. (Oct. 27, 1978; 92 Stat. 2028) Price: $.60

H.R. 14223 ..... Pub. L. 95–531
To designate a certain Federal building in Bloomington, Illinois, the "Leslie C. Arends Building". (Oct. 27, 1978; 92 Stat. 2029) Price: $.60

H.R. 14295 ..... Pub. L. 95–532
To designate the "Paul G. Rogers Federal Building". (Oct. 27, 1978; 92 Stat. 2030) Price: $.60

H.J. Res. 747 ..... Pub. L. 95–533
To consent to an amendment of the constitution of the State of New Mexico to provide a method for executing leases and other contracts for the development and operation of geothermal steam and waters on lands granted or confirmed to such State. (Oct. 27, 1978; 92 Stat. 2031) Price: $.60

H.J. Res. 816 ..... Pub. L. 95–534
To extend the authority of the Federal Reserve banks to buy and sell certain obligations. (Oct. 27, 1978; 92 Stat. 2032) Price: $.60

S. 2049 ..... Pub. L. 95–535
To establish fees and allow per diem and mileage expenses for witnesses before United States courts. (Oct. 27, 1978; 92 Stat. 2033) Price: $.60

S. 2403 ..... Pub. L. 95–536
To consent to certain amendments to the New Hampshire-Vermont Interstate School Compact, approved by Public Law 91–21. (Oct. 27, 1978; 92 Stat. 2034) Price: $.60

S. 3336 ..... Pub. L. 95–537
Contract Services for "Drug Dependent Federal Offenders Act of 1978". (Oct. 27, 1978; 92 Stat. 2037) Price: $.60

S. 3540 ..... Pub. L. 95–538
To rename the United States Federal building in Yakima, Washington, the "Justice William O. Douglas Federal Building". (Oct. 27, 1978; 92 Stat. 2038) Price: $.60

S. 1315 ..... Pub. L. 95-539
Court Interpreters Act. (Oct. 28, 1978; 92 Stat. 2039) Price: $.70

H.R. 4727 ..... Pub. L. 95-540
To amend the Federal Rules of Evidence to provide for the protection of the privacy of rape victims. (Oct. 28, 1978; 92 Stat. 2045) Price: $.60

H.R. 7749 ..... Pub. L. 95-541
Antarctic Conservation Act of 1978. (Oct. 28, 1978; 92 Stat. 2047) Price: $.80

H.R. 11671 ..... Pub. L. 95-542
To designate a certain Federal building in Big Stone Gap, Virginia, the "C. Bascom Slemp Building". (Oct. 28, 1978; 92 Stat. 2057) Price: $.60

H.R. 12634 ..... Pub. L. 95-543
To designate a building in Pittsburg, Kansas, as the "Joe Skubitz Social Security Administration Center". (Oct. 28, 1978; 92 Stat. 2058) Price: $.60

H.R. 13187 ..... Pub. L. 95-544
To designate the United States Post Office and Federal Building in Griffin, Georgia, the "John J. Flynt, Jr. Federal Building". (Oct. 28, 1978; 92 Stat. 2059) Price: $.60

H.R. 13514 ..... Pub. L. 95-545
To name a certain Federal building in Shreveport, Louisiana, the "Joe Waggonner Federal Building". (Oct. 28, 1978; 92 Stat. 2060) Price: $.60

H.R. 13972 ..... Pub. L. 95-546
To designate the Great Bear Wilderness, Flathead National Forest, and enlarge the Bob Marshall Wilderness, Flathead and Lewis and Clark National Forests, State of Montana. (Oct. 28, 1978; 92 Stat. 2061) Price: $.60

H.R. 13989 ..... Pub. L. 95-547
To amend section 1145(b) of the Food and Agriculture Act of 1977 to modify the formula for distribution of funds authorized thereunder for agricultural research. (Oct. 28, 1978; 92 Stat. 2062) Price: $.60

Documents Relating to Federal Grants Programs

This is a list of documents relating to Federal grants programs which were published in the FEDERAL REGISTER during the previous week.

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EPA—Interim rule for administrative actions under water quality management program; effective 10-25-78; comments by 12-26-78 ..... 49792; 10-25-78

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HEW/NIE—Unsolicited proposals to conduct educational research and development activities; reminder of 10-31-78 closing date for receipt of proposals 50045; 10-26-78

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Clinical Trials Review Committee, Bethesda, Md. (partially open), 11-26 and 11-27-78 ..... 49852; 10-25-78

General Research Support Review Committee, Bethesda, Md. (partially open), 11-16 and 11-17-78 ..... 49852; 10-25-78

Heart, Lung, and Blood Research Review Committee, Bethesda, Md. (partially open), 11-30 through 12-2-78 .. 49853; 10-25-78

Heart, Lung, and Blood Research Review Committee B, Bethesda, Md. (partially open), 11-30 and 12-1-78 ..... 49853; 10-25-78

OE—Adult Education Advisory Council, Tucson, Ariz. (open), 11-15 and 11-16-78 ..... 49851; 10-25-78

NFAH—Architecture, Planning, and Design Advisory Panel; cancellation of 11-2 and 11-3-78 meeting 49860; 10-25-78

Music Advisory Panel, Chicago, Ill. (partially open), 11-10 and 11-11-78 (2 documents) 49592; 10-24-78, 50274; 10-27-78

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Visual Arts (Craftsmen's Fellowships) Advisory Panel, National Council on the Arts, Washington, D.C. (closed), 11-15-78 ..... 50274; 10-27-78

NSF—Physiology, Cellular, and Molecular Biology Advisory Committee, Metabolic Biology Subcommittee, Washington, D.C. (closed), 11-9 and 11-10-78 ..... 49592; 10-24-78

Other Items of Interest:

HEW/Assistant Secretary for Health—Reestablishment of grants related advisory committees 49369; 10-23-78

NIH—Cancer Research Manpower Review Committee, renewal .. 49852; 10-25-78

National Cancer Advisory Board and President's Cancer Panel; renewal 49853; 10-25-78

Table of Effective Dates and Time Periods—November 1978

This table is for use in computing dates certain in connection with documents which are published in the FEDERAL REGISTER subject to advance notice requirements or which impose time limits on public response.

Federal Agencies using this table in calculating time requirements for submissions must allow sufficient extra time for FEDERAL REGISTER scheduling procedures.

In computing dates certain, the day after publication counts as one. All succeeding days are counted except that when a date certain falls on a weekend or holiday, it is moved forward to the next Federal business day. (See 1 CFR 18.17)

A new table will be published monthly in the first issue of each month. All January, February, and March dates are in 1979.

Dates of FR publication	15 days after publication	30 days after publication	45 days after publication	60 days after publication	90 days after publication
November 1	November 16	December 1	December 18	January 2	January 30
November 2	November 17	December 4	December 18	January 2	January 31
November 3	November 20	December 4	December 18	January 2	February 1
November 6	November 21	December 6	December 21	January 5	February 5
November 7	November 22	December 7	December 22	January 8	February 5
November 8	November 24	December 8	December 26	January 8	February 6
November 9	November 24	December 11	December 26	January 8	February 7
November 13	November 28	December 13	December 28	January 12	February 12
November 14	November 29	December 14	December 29	January 15	February 12
November 15	November 30	December 15	January 2	January 15	February 13
November 16	December 1	December 18	January 2	January 15	February 14
November 17	December 4	December 18	January 2	January 16	February 15
November 20	December 5	December 20	January 4	January 19	February 20
November 21	December 6	December 21	January 5	January 22	February 20
November 22	December 7	December 22	January 8	January 22	February 20
November 24	December 11	December 26	January 8	January 23	February 22
November 27	December 12	December 27	January 11	January 26	February 26
November 28	December 13	December 28	January 12	January 29	February 26
November 29	December 14	December 29	January 15	January 29	February 27
November 30	December 15	January 2	January 15	January 29	February 28

AGENCY ABBREVIATIONS USED IN HIGHLIGHTS AND REMINDERS
(This List Will Be Published Monthly In First Issue Of Month.)

USDA—AGRICULTURE DEPARTMENT
AMS—Agricultural Marketing Service
ARS—Agricultural Research Service
ASCS—Agricultural Stabilization and Conservation Service
APHIS—Animal and Plant Health Inspection Service
CCC—Commodity Credit Corporation
CEA—Commodity Exchange Authority
CSRS—Cooperative State Research Service
EMS—Export Marketing Service
ERS—Economic Research Service
FmHA—Farmers Home Administration
FCIC—Federal Crop Insurance Corporation
FAS—Foreign Agricultural Service
FNS—Food and Nutrition Service
FSQS—Food Safety and Quality Service
FS—Forest Service
RDS—Rural Development Service
REA—Rural Electrification Administration
RTB—Rural Telephone Bank
SEA—Science and Education Administration
SCS—Soil Conservation Service

COMMERCE—COMMERCE DEPARTMENT
Census—Census Bureau
EAB—Bureau of Economic Analysis
EDA—Economic Development Administration
FTZB—Foreign-Trade Zones Board
ITA—Industry and Trade Administration
MA—Maritime Administration
MBEO—Minority Business Enterprise Office
NBS—National Bureau of Standards
NFPCA—National Fire Prevention and Control Administration
NOAA—National Oceanic and Atmospheric Administration
NSA—National Shipping Authority
NTIA—National Telecommunications and Information Administration
NTIS—National Technical Information Service
PTO—Patent and Trademark Office
USTS—United States Travel Service

DOD—DEFENSE DEPARTMENT
AF—Air Force Department
Army—Army Department
DCPA—Defense Civil Preparedness Agency
DCAA—Defense Contract Audit Agency
DIA—Defense Intelligence Agency
DIS—Defense Investigative Service
DLA—Defense Logistics Agency
EC—Engineers Corps
Navy—Navy Department

DOE—ENERGY DEPARTMENT
BPA—Bonneville Power Administration
ERA—Economic Regulatory Administration
EIA—Energy Information Administration
ERO—Energy Research Office
ETO—Energy Technology Office
FERC—Federal Energy Regulatory Commission
OHADOE—Hearings and Appeals Office, Energy Department

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SEPA—Southeastern Power Administration
SWPA—Southwestern Power Administration
WAPA—Western Area Power Administration

HEW—HEALTH, EDUCATION, AND WELFARE DEPARTMENT

AC—Aging Federal Council
ADAMHA—Alcohol, Drug Abuse, and Mental Health Administration
CDC—Center for Disease Control
ESNC—Educational Statistics National Center
FDA—Food and Drug Administration
HCFA—Health Care Financing Administration
HDSO—Human Development Services Office
HRA—Health Resources Administration
HSA—Health Services Administration
MSI—Museum Services Institute
NIH—National Institutes of Health
OE—Office of Education
PHS—Public Health Service
RSA—Rehabilitation Services Administration
SSA—Social Security Administration

HUD—HOUSING AND URBAN DEVELOPMENT DEPARTMENT

CARF—Consumer Affairs and Regulatory Functions, Office of Assistant Secretary
CPD—Community Planning and Development, Office of Assistant Secretary
FDAA—Federal Disaster Assistance Administration
FHEO—Fair Housing and Equal Opportunity, Office of Assistant Secretary
FHC—Federal Housing Commissioner, Office of Assistant Secretary for Housing
FIA—Federal Insurance Administration
GNMA—Government National Mortgage Association
ILSRO—Interstate Land Sales Registration Office
NCA—New Communities Administration
NCDC—New Community Development Corporation
NVACP—Neighborhoods Voluntary Associations and Consumer Protection, Office of Assistant Secretary

INTERIOR—INTERIOR DEPARTMENT

BIA—Bureau of Indian Affairs
BLM—Bureau of Land Management
FWS—Fish and Wildlife Service
GS—Geological Survey
HCRS—Heritage Conservation and Recreation Service
Mines—Mines Bureau
NPS—National Park Service
OHA—Office of Hearings and Appeals, Interior Department
RB—Reclamation Bureau
SMRE—Surface Mining Reclamation and Enforcement Office

JUSTICE—JUSTICE DEPARTMENT

DEA—Drug Enforcement Administration
INS—Immigration and Naturalization Service
LEAA—Law Enforcement Assistance Administration
NIC—National Institute of Corrections

LABOR—LABOR DEPARTMENT

BLS—Bureau of Labor Statistics
BRB—Benefits Review Board
ESA—Employment Standards Administration
ETA—Employment and Training Administration
FCCPO—Federal Contract Compliance Programs Office
LMSEO—Labor Management Standards Enforcement Office
MSHA—Mine Safety and Health Administration
OSHA—Occupational Safety and Health Administration
P&WBP—Pension and Welfare Benefit Programs
W&H—Wage and Hour Division

STATE—STATE DEPARTMENT

AID—Agency for International Development
FSGB—Foreign Service Grievance Board

DOT—TRANSPORTATION DEPARTMENT

CG—Coast Guard
FAA—Federal Aviation Administration
FHWA—Federal Highway Administration
FRA—Federal Railroad Administration
MTB—Materials Transportation Bureau
NHTSA—National Highway Traffic Safety Administration
OHMR—Office of Hazardous Materials Regulations
OPSO—Office of Pipeline Safety Operations
SLS—Saint Lawrence Seaway Development Corporation
UMTA—Urban Mass Transportation Administration

TREASURY—TREASURY DEPARTMENT

ATF—Alcohol, Tobacco and Firearms Bureau
Customs—Customs Service
Comptroller—Comptroller of the Currency
ESO—Economic Stabilization Office (temporary)
FS—Fiscal Service
IRS—Internal Revenue Service
Mint—Mint Bureau
PDB—Public Debt Bureau
RSO—Revenue Sharing Office
SS—Secret Service

INDEPENDENT AGENCIES

ATBCB—Architectural and Transportation Barriers Compliance Board
CAB—Civil Aeronautics Board
CASB—Cost Accounting Standards Board
CEQ—Council on Environmental Quality
CFTC—Commodity Futures Trading Commission
CITA—Textile Agreements Implementation Committee
CPSC—Consumer Product Safety Commission
CRC—Civil Rights Commission
CSA—Community Services Administration
CSC—Civil Service Commission
CSC/FPRAC—Federal Prevailing Rate Advisory Committee
EEOC—Equal Employment Opportunity Commission
EXIMBANK—Export-Import Bank of the U.S.
EPA—Environmental Protection Agency
ESSA—Endangered Species Scientific Authority
FCA—Farm Credit Administration
FCC—Federal Communications Commission
FCSC—Foreign Claims Settlement Commission
FDIC—Federal Deposit Insurance Corporation
FEA—Federal Energy Administration
FEC—Federal Election Commission
FHLBB—Federal Home Loan Bank Board
FMC—Federal Maritime Commission
FPC—Federal Power Commission
FRS—Federal Reserve System
FTC—Federal Trade Commission
GSA—General Services Administration
GSA/ADTS—Automated Data and Telecommunications Service
GSA/FPA—Federal Preparedness Agency
GSA/OFR—Office of the Federal Register
GSA/FSS—Federal Supply Service
GSA/NARS—National Archives and Records Service
GSA/OFR—Office of the Federal Register
GSA/PBS—Public Buildings Service
ICA—International Communications Agency
ICC—Interstate Commerce Commission
ICP—Interim Compliance Panel (Coal Mine Health and Safety)
ITC—International Trade Commission
LSC—Legal Services Corporation
MB—Metric Board
MWSC—Minimum Wage Study Commission
MWSC—Minimum Wage Study Commission
NACEO—National Advisory Council on Economic Opportunity
NASA—National Aeronautics and Space Administration
NCUA—National Credit Union Administration
NFAH—National Foundation for the Arts and the Humanities
NLRB—National Labor Relations Board

NRC—Nuclear Regulatory Commission
NSF—National Science Foundation
NTSB—National Transportation Safety Board
OMB—Office of Management and Budget
OMB/FPPO—Federal Procurement Policy Office
OPIC—Overseas Private Investment Corporation
OSTP—Office of Science and Technology Policy
PADC—Pennsylvania Avenue Development Corporation
PRC—Postal Rate Commission
PS—Postal Service
RB—Renegotiation Board
RRB—Railroad Retirement Board
ROAP—Reorganization, Office of Assistant to President
SBA—Small Business Administration
SEC—Securities and Exchange Commission
TVA—Tennessee Valley Authority
USIA—United States Information Agency
VA—Veterans Administration
WRC—Water Resources Council

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IMPROVING GOVERNMENT REGULATIONS

SCHEDULE OF SEMIANNUAL AGENDAS OF REGULATIONS

Executive order 12044, Improving Government Regulations, (43 FR 12661) requires that executive agencies publish semiannual agendas of significant regulations under development. At a minimum each agenda is to describe the regulations being considered by the agency, the need for and legal basis for the action being taken, the name and telephone number of a knowledgeable agency official, and the status of regulations previously published.

The agencies have chosen the following dates to publish their agendas. The Office of the Federal Register compiled this schedule as a public service.

ACTION	Jan. 8, 1979; July 9, 1979.
Administrative Committee of the Federal Register	Jan. 8, 1979; July 9, 1979.
Agency for International Development	Feb. 15, 1979; July 16, 1979.
Agriculture Department	Nov. 15, 1978; May 15, 1979.
American Battle Monuments Commission	Nov. 6, 1978; May 7, 1979.
Civil Service Commission	Dec. 1, 1978; May 1, 1979.
Commerce Department	Feb. 15, 1979; Aug. 15, 1979.
Committee for Purchase from the Blind and Other Severely Handicapped	Dec. 1, 1978; June 1, 1979.
Community Services Administration	Nov. 10, 1978; May 11, 1979.
Defense Department	Nov. 30, 1978; May 30, 1979.
Energy Department	Oct. 31, 1978; Apr. 30, 1979.
Environmental Protection Agency	Nov. 1, 1978; Feb. 1, 1979; May 1, 1979; Aug. 1, 1979.
Environmental Quality Council	Jan. 5, 1979; July 5, 1979.
Equal Employment Opportunity Commission	Jan. 31, 1979; July 31, 1979.
Farm Credit Administration	Oct. 31, 1978; Mar. 30, 1979.
Federal Mediation and Conciliation Service	May 1, 1979; Oct. 1, 1979.
Federal Reserve System	Feb. 2, 1979; Aug. 2, 1979.
General Services Administration	Nov. 17, 1978; May 18, 1979.
Health, Education, and Welfare Department	Dec. 1, 1978; June 1, 1979.
Housing and Urban Development Department	Dec. 15, 1978; June 15, 1979.
Interior Department	Jan. 15, 1979; July 16, 1979.
Justice Department	Mar. 1, 1979; Sept. 1, 1979.
Labor Department	Oct. 31, 1978; Apr. 30, 1979.
Management and Budget Office	Dec. 1, 1978; June 1, 1979.
National Aeronautics and Space Administration	Oct. 2, 1978; April 2, 1979.
National Credit Union Administration	Dec. 15, 1978; June 30, 1979.
National Foundation on the Arts and the Humanities	Nov. 6, 1978; May 7, 1979.
National Science Foundation	Dec. 1, 1978; June 1, 1979.
Pension Benefit Guaranty Corporation	Dec. 22, 1978; June 22, 1979.
Railroad Retirement Board	Jan. 31, 1979; July 31, 1979.
Renegotiation Board	Nov. 20, 1978; May 21, 1979.
Small Business Administration	Jan. 25, 1979; July 25, 1979.
State Department	Mar. 30, 1979; Oct. 30, 1979.
Tennessee Valley Authority	Nov. 6, 1978; Apr. 2, 1979.
Transportation Department	Feb. 26, 1979; Aug. 27, 1979.
Treasury Department:	
Government Financial Operations Bureau	Mar. 31, 1979; Sept. 30, 1979.
Internal Revenue Service	Mar. 31, 1979; Sept. 30, 1979.
Public Debt Bureau	Apr. 15, 1979; Oct. 15, 1979.
All other offices and bureaus	Feb. 1, 1979; Aug. 1, 1979.
Veterans Administration	Dec. 18, 1978; June 18, 1979.
Water Resources Council	Jan. 19, 1979; July 20, 1979.

Note: The National Foundation on the Arts and the Humanities will publish on November 6, 1978 and May 7, 1979 instead of November 1, 1978 and April 2, 1979 as previously announced.

rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

[1505-01-M]

Title 1—General Provisions

CHAPTER I—ADMINISTRATIVE COMMITTEE OF THE FEDERAL REGISTER

CFR CHECKLIST

1977/1978 Issuances

This checklist, prepared by the Office of the Federal Register, is published in the first issue of each month. It is arranged in the order of CFR titles, and shows the revision date and price of the volumes of the Code of Federal Regulations issued to date for 1977 and 1978. New units issued during the month are announced on the back cover of the daily FEDERAL REGISTER as they become available.

For a checklist of current CFR volumes comprising a complete CFR set, see the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription service to all revised volumes is $400 domestic, $100 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

CFR Unit (Rev. as of Jan. 1, 1978):

Title	Price
1	$2.75
2 [Reserved]	
3	4.25
4	4.75
5	5.00
7 Parts:	
0–52	6.00
53–209	4.50
210–699	6.75
700–749	4.25
750–899	2.40
900–944	4.75
945–980	3.50
981–999	3.50
1000–1059	4.75
1060–1119	4.75
1120–1199	4.00
1200–1499	4.75
1500–2799	6.50
2800–2851	5.50
2852	6.00
2853–end	4.00
8	3.50
9	6.00
10 Parts:	
0–199	5.00
200–end	6.25
12 Parts:	
1–299	8.25
300–end	6.75
13	4.75
14 Parts:	
1–59	5.75
60–199	6.75
200–1199	5.75
1200–end	3.75
15	5.75
16 Parts:	
0–149	5.00
150–999	4.75
1000–end	5.25

CFR Unit (Rev. as of Apr. 1, 1978):

20 Parts:	
1–399	$3.50
400–499	5.00
500–end	4.50
21 Parts:	
1–99	4.00
100–169	6.00
200–299	2.75
600–1299	4.25
1300–end	4.50
24 Parts:	
0–499	8.25
26 Parts:	
1 (§§ 1.301–1.400)	4.00
1 (§§ 1.401–1.500)	4.75
1 (§§ 1.501–1.640)	4.75
1 (§§ 1.641–1.850)	4.75
2–29	4.75
300–499	4.75
600–end	3.00

CFR Unit (Rev. as of July 1, 1977):

28	$4.25
29 Parts:	
0–499	5.75
500–1899	6.00
1900–1919	6.00
1920–end	4.50
30	8.00
31	5.75
32 Parts:	
1–39 (V. 1) (Rev. 7/1/76)	4.75
(V. II) (Rev. 7/1/76)	7.50
(V. III) (Rev. 7/1/76)	5.25
40–399	6.25
400–589	5.00
590–699	4.00
700–799	8.25
800–999	5.75
1000–1399	2.75
1400–1599	4.25
1600–end	2.75
32A	3.75
33 Parts:	
1–199	7.00
200–end	5.30
34	1.70
35	4.00
36	4.50
37	3.00
38	6.00
39	3.50
40 Parts:	
0–49	4.25
50–59	5.75
60–99	5.00
100–399	4.75
400–end	5.75
41 Chapters:	
1–2	5.25
3–6	5.50
7	2.75
8	2.30
9 (Rev. 8/26/77)	5.00
10–17	4.25
19–100	4.50
101–end	5.75
CFR INDEX & finding aids	4.75

CFR Unit (Rev. as of Oct. 1, 1977):

42 Parts:	
1–399	$5.50
400–end	4.75
43 Parts:	
1–999	4.00
1000–end	6.00
44 [Reserved]	
45 Parts:	
1–99	4.25
100–149	5.50
150–199	4.75
200–499	3.50
500–end	6.00
46 Parts:	
1–29	3.00
30–40	3.25
41–69	4.50
70–89	3.25
90–109	3.00
110–139	3.00
140–165	4.75
166–199	3.75
200–end	6.00
47 Parts:	
0–19	5.75
20–69	5.25
70–79	*5.00
80–end	6.00
48 [Reserved]	
49 Parts:	
1–99	3.00
100–199	8.25
200–999	8.75
1000–1199	4.50
1200–1299	*8.00
1300–end	4.25
50	5.50

*Previously announced prices of $4.75 and $8.75 for these volumes, listed in the FEDERAL REGISTER of July 1, 1978, were in error.

[3410-16-M]

Title 7—Agriculture

CHAPTER VI—SOIL CONSERVATION SERVICE, DEPARTMENT OF AGRICULTURE

SUBCHAPTER D—LONG-TERM CONTRACTING

PART 634—RURAL CLEAN WATER PROGRAM

AGENCY: Soil Conservation Service (SCS), U.S. Department of Agriculture (USDA) with the concurrence of the U.S. Environmental Protection Agency (EPA).

ACTION: Final rules.

SUMMARY: SCS is publishing regulations to carry out the Rural Clean Water Program (RCWP). The program provides long-term technical and financial assistance to owners and operators having control of rural land.

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The purpose of this assistance is to install and maintain best management practices to control agricultural nonpoint source pollution for improved water quality.

EFFECTIVE DATE: November 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Edward E. Thomas, Assistant Administrator for Land Resources, Soil Conservation Service, USDA, P.O. Box 2890, Washington, D.C. 20013, Telephone 202-447-3587, (8 a.m. to 4:30 p.m).

SUPPLEMENTARY INFORMATION:

The regulations are to implement section 35 of Pub. L. 95-217, 91 Stat. 1579 (33 U.S.C. 1288).

Section 35 of the Clean Water Act of 1977 (Pub. L. 95-217) amends section 208 of the Federal Water Pollution Control Act (Pub. L. 92-500) by adding a new subsection (j) titled "Agricultural Cost Sharing." Section 208(j) authorizes the Secretary of Agriculture, with the concurrence of the Administrator, Environmental Protection Agency, to establish and administer a program to enter into 5- to 10-year contracts with owners or operators having control of rural lands. The purpose of the program is to install and maintain best management practices to control agricultural nonpoint source pollution for improved water quality. This program may be initiated in States or areas for which the appropriate Regional Administrator, Environmental Protection Agency, has approved the agricultural portion of a section 208 water quality management plan.

This program is to be known as the Rural Clean Water Program (RCWP). The Secretary of Agriculture has assigned administrative leadership for RCWP to the Administrator of the Soil Conservation Service through the Assistant Secretary of Agriculture for Conservation, Research and Education (7 CFR 2.19(f)(9), and 7 CFR 2.62(a)(11)).

Funding Status

Pub. L. 95-217 authorized to be appropriated to the Secretary of Agriculture $200 million for fiscal year 1979 and $400 million for fiscal year 1980 for the Rural Clean Water Program.

In the Congressional Conference Report on the Agricultural Appropriations Bill for fiscal year 1979, the conferees deleted all funds for this program from the bill without prejudice and await a supplemental request.

Preamble

These regulations implement the Rural Clean Water Program (RCWP) authorized by section 208(j) of the Federal Water Pollution Control Act (Pub. L. 92-500, as amended). The objective of RCWP is to improve water quality in rural areas. RCWP is to be carried out in the most cost-effective manner possible in keeping with the provision of adequate supplies of food and fiber and a quality environment.

The regulations establish a program for reducing agricultural nonpoint source pollution problems on a project basis. Such projects must be consistent with the approved agricultural portion of a 208 water quality management plan. To be eligible for financial and technical assistance, a proposed RCWP project area must be included in an approved agricultural portion of a 208 water quality management plan, and must have agricultural nonpoint source water quality problems. The Governors of the States may submit applications for assistance, in order of priority. The Administrator, Soil Conservation Service (SCS), with the concurrence of the Environmental Protection Agency (EPA), will determine which projects will be approved for funding. Only the highest priority RCWP project areas, where adequate participation of landowners or operators is assured, will receive consideration for funding.

Where practicable, the Administrator, SCS, will enter into agreements with soil conservation districts, State soil and water conservation agencies, or State water quality agencies to administer all or part of the program for a project area. Where this is not practicable, USDA will administer the program for a project area, and the Administrator, SCS, will enter into agreements with the Agricultural Stabilization and Conservation Service (ASCS) to administer part of the program in such project areas.

RCWP is only applicable to privately owned land. Any owner or operator whose land or activities in an approved project area are contributing to the area's agricultural nonpoint source water quality problems and who has an approved owner or operator water quality plan is eligible to enter into a long-term (5 to 10 years) RCWP contract with the agency designated to administer the program in that project area. The RCWP contract will include best management practices to control agricultural nonpoint source pollution for improved water quality. The basis for the RCWP contracts is a water-quality plan prepared with technical assistance from SCS or its designee and approved by a soil conservation district. Landowner or operator participation in RCWP is on a voluntary basis. The priorities for assistance to individual landowners and operators will be determined jointly by the soil conservation district and the county ASC committee in the project area to assure that the most critical water quality problems are addressed.

Included in these regulations are: (1) The responsibilities of USDA agencies, State and local agencies, landowners or operators, and EPA, (2) requirements for submitting project applications for approval, (3) criteria for selecting, approving, and carrying out projects, (4) requirements for entering into an agreement with the agency which will administer the program in a project area, (5) requirements for individual landowners or operators to enter into and carry out long-term RCWP contracts with financial and technical assistance, (6) provisions for project, grant, and contract termination, (7) requirements for financial management, and (8) plans for program and project monitoring and evaluation.

The Environmental Protection Agency, along with many local, State, and Federal agencies and other interested groups and individuals, has participated in the preparation of these regulations.

General Comments

The Soil Conservation Service, with participation from the Environmental Protection Agency, held 10 public meetings in July 1978 to discuss and solicit public comments on the proposed regulations and draft Environmental Impact Statement. At these public meetings, 611 people attended with 301 participants giving testimony. These field meetings were designed to develop a better understanding of the proposed regulations and provide for public input for the final regulations.

In addition, SCS received more than 450 letters containing more than 1,500 comments on the published proposed regulations. All comments were given full consideration in developing the final regulations. All letters and testimony received are on file and available for public inspection in Room 5115, Agricultural South Building, 14th Street and Independence Avenue, SW., Washington, D.C.

The comments and responses have been categorized by subject matter to facilitate ease of review as follows:

Overall comment. The rules and regulations are unclear, complex, and contain too much procedural detail. Local and State agencies and landowners and operators will have difficulty in understanding the program and this may tend to discourage participation.

Response. This comment is representative of a large number of comments related to editorial problems, excessive length and complexity, etc. The proposed rules were thoroughly reviewed with these comments in mind. To the extent possible in keeping with the public's right to know the policies that will govern RCWP, procedural details were removed and will be included in the program procedural manual. A notice of availability of the manual will be published in the FEDERAL REGISTER and will be available to the public upon request.

Administering Agencies (§634.4)

Comment. The difference between the agencies administering the RCWP project and the agencies implementing the "208" water quality plan needs to be clarified. The 208 plan should be the "controlling" document.

Response. The Governor designates the management agency to implement the agricultural portion of a 208 plan. The RCWP project is based on an approved agricultural portion of the 208 plan. A recommended administering agency for an RCWP project is included in the project application submitted by the Governor and approved by the Administrator, SCS, with the concurrence of the Administrator, EPA. The duties of the designated management agency and the administering agency are outlined in the regulations in §§ 634.4(o) and 634.4(p), respectively. If the designation management agency is one of the agencies eligible under the Act to be an administering agency, it may be the administering agency for the RCWP project.

Comment. The program should be administered by an organization at the county level. Conservation districts should be given leadership for water quality.

Response. The Act identifies the agencies eligible to administer an RCWP project: Soil conservation districts, State soil and water conservation agencies, State water quality agencies, or where none of these agencies is practicable, USDA. The regulations provide the flexibility to permit the best qualified aforementioned State or local agencies to be selected as the administering agency for the RCWP project.

Comment. The administering agency needs to develop a reporting procedure based on owner-operator feedback through conservation districts and Soil Conservation Service representatives.

Response. Progress reports to the soil conservation district will be a part of the technical assistance provided by the Soil Conservation Service. These reports will include such things as numbers of contracts developed, progress in applying BMP's, status and results of monitoring and evaluation activities, etc.

Agency Role (§ 634.4)

Comment. The Science and Education Administration—Federal Research should be specifically identified to continue research on agricultural water quality with their own funds. SEA-Extension Service should provide educational programs for water pollution control that are consistent with those of EPA, State water quality agencies, and those in 208 plans.

Response. The Science and Education Administration—Federal Research is continuing research on agricultural water quality and assembling data and information for use in improving water quality. SEA-Extension Service coordinates its educational programs with those of other agencies and provides technical assistance for appropriate BMP's. SEA participates in both national and State coordinating committees.

Comment. The question of agency leadership for the Rural Clean Water Program was raised by many commenters.

Response. The Secretary of Agriculture, in carrying out the law, assigned program leadership to the Soil Conservation Service. The regulations provide flexibility, at the project level, for administering contracts and making cost-share payments. The law is specific as to which State or local agencies qualify as administering agencies. These agencies are State water quality agencies, State soil and water conservation agencies, and conservation districts. The Secretary has decided that, in those projects where USDA retains these responsibilities, county ASC committees will administer contracts and make cost-share payments.

Average Costs (§ 634.5)

Comment. Conservation districts should develop average costs for an RCWP project area, subject to the approval of the administering agency.

Response. The regulations assign responsibility for determining average costs to the administering agency. The State administering agency may well choose to involve the local conservation district in determining average costs, and such a procedure is permissible. The regulations clarify that average costs are to be based on local cost data.

Comment. Use of average cost data to establish the basis for cost-share payment is inflationary and lenient. Also, it is not clear if average cost computations include practices other than BMP's.

Response. Average cost computations are based on actual costs for applying BMP's or similar practices. The computations are based upon past experience in installing equivalent measures within the local area. They will normally be based on prior year costs. When average cost exceeds actual cost, the administering agency will designate the BMP to be applied at actual cost, not to exceed average cost, and will modify the contract accordingly. The use of average cost data is a means of controlling expenditures and making equitable payments for similar work.

Benefits (§ 634.14)

Comment. Does the provision of adequate supplies of food and fiber refer to the United States or the world?

Response. Provision of adequate supplies includes United States requirements and long-range United States export objectives.

Comment. The potential benefits from these projects will not be major and the public should not expect major improvements in water quality.

Response. The ability of best management practices to reduce nonpoint source pollution is uncertain. The nonpoint water pollution problem, however, is significant. National water quality goals may not be attained unless the nonpoint pollution problem is addressed. In view of the uncertain links between program costs and benefits, care has been taken to insure that assistance is provided only for those practices and measures that can reasonably be expected to reduce or prevent agricultural nonpoint source pollution. Care has also been taken to design the program to direct assistance to areas where nonpoint water pollution problems are the most critical and to minimize the total cost per unit of anticipated water quality benefits. Program assistance will not be made available for water quality improvement for which solutions are not technically and economically feasible.

Best Management Practices (§ 634.5)

Comment. Will application of the best management practices improve water quality sufficiently to meet the standards established?

Response. Water quality standards have not been established for all agricultural nonpoint source pollutants by all States, nor have the relationships between BMP's and increments of water quality improvement been completely documented. The BMP's in an approved 208 plan, upon which an RCWP project is based, should be designed to meet water quality standards, water quality goals, or designated uses of the receiving waters. The best available technology will be used in the implementation of the RCWP. The regulations provide that as new technology is developed, it will be factored into the RCWP project through the 208 continuing planning process. Existing technology, however, does not appear capable of achieving direct, proportionate improvements in water quality per dollar invested in the program. (Also, see previous comment and response.)

Comment. Who decides on and defines BMP's?

Response. BMP's for agricultural nonpoint source pollution control are

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identified in the 208 planning process and contained in the EPA approved 208 plan. Those which are applicable to a specific RCWP project area are shown in the project application. The designated management agency certifies in the project application that the BMP's recommended are consistent with the EPA approved agricultural portion of a 208 plan. When that application is approved, the BMP's are approved. The selection of BMP's to be applied by an individual participant is made when the water quality plan is developed. The plan serves as the basis for the RCWP contract. Only those BMP's in the contract will be cost shared.

Comment. The administering agency should certify that the BMP's to be cost shared are necessary for nonpoint source pollution control instead of just stating that they are consistent with the BMP's in the approved 208 plan.

Response. The RCWP project application identifies those BMP's that in the judgment of the applicant are necessary for agricultural nonpoint source pollution control. The designated 208 management agency certifies that the BMP's are consistent with the 208 plan approved by EPA. Those identified in the approved application will be eligible for inclusion in an RCWP contract and subsequently for cost sharing.

Comment. The rules should clearly define those BMP's that are eligible for cost sharing. USDA should develop a hierarchy of eligible BMP's to serve as a criteria for funding priority. It was further suggested that BMP's be considered as conditional or proposed until research is clearer on the origin of nonpoint pollution sources.

Response. Because of widely varying conditions in agricultural areas, because the effectiveness of BMP's varies for different site conditions and the characteristics of receiving waters, and because of incomplete knowledge on the effectiveness of BMP's, we feel it would be premature for the regulations to specify BMP's or attempt to list a hierarchy of eligible BMP's to serve as a criteria for funding priority. The regulations have been revised to provide local flexibility in defining and selecting BMP's applicable to specific problems. For example, a letter from the designated management agency certifying that BMP's to be cost shared are consistent with the EPA approved 208 plan is to be attached to the application.

Comment. Who will resolve conflicts between SCS and the administering agency or soil conservation districts regarding standards and specifications for BMP's? Who will determine what conservation practices would be included in BMP's?

Response. SCS is responsible for the quality of work performed under RCWP. The Administrator, SCS, is responsible for assuring the adequacy of standards and specifications. In the case of a conflict between SCS and the administering agency, the Administrator's decision will prevail. Conservation practices included in the approved RCWP application as cost-shared BMP's are eligible for cost-sharing. (See previous comment and response.)

Comment. Measures which are not cost shared in the water quality plan should be added as a supplement, and not be a part of the contract.

Response. If noncost-shared BMP's are essential in achieving the objectives of the contract, the contract cannot be fully effective without them. The administering agency needs the force of the contract to assure their application.

Comment. The participant should be credited on substituted BMP's when the originally installed BMP failed through no fault of the participant.

Response. There is no provision in the Act to credit a participant for a BMP that failed through no fault of the participant. The participant, in signing an RCWP contract, assumes part of the risks associated with potential practice failure. BMP's added by contract modification as a result of original BMP failure may be cost shared on the same basis as installation of a new BMP.

CONTRACTS (§ 634.25)

Comment. The participant should be permitted to enter into an RCWP contract to apply BMP's to all or part of the critical areas or sources on his property. Provision should be made to permit adding treatment of additional areas by contract modification.

Response. The participant's water quality plan must identify all critical areas or sources and the BMP's necessary to meet the water quality objectives of the project. The contract must include treatment of all areas or sources which meet the criteria set out in § 634.5(m). The 5 to 10 year contract period provides flexibility for phasing the application of BMP's so as not to place a severe financial burden on the participant in any 1 year. The regulations also provide that variance from the 50 percent cost-share level may be granted based on offsite benefits and financial burden. Therefore, it is reasonable to expect full treatment of critical areas and sources on the participants property necessary for meeting the objectives of the project.

Comment. The language under violations which states "adopting land use or practices during the contract period which tends to defeat the program purposes * * *" is too vague and subjective. Who decides and at what point in time?

Response. The Act states that the landowner, in entering into a contract, shall agree not to adopt practices which would tend to defeat the purposes of the contract. The Secretary of Agriculture, on the advice of EPA, will specify such practices.

Comment. Section 634.28 appears excessively harsh to the participant. No recourse is offered to the participant should the administering agency default. Although the program is to be voluntary, and the participant is expected to pay 50 percent of the costs, he is not assured any tangible benefits in the venture, and apparently is highly suspect should be a problem arise in the contract.

Response. The appeal process is included in the regulations specifically to protect the interests of the participant. The only constraints that are placed on that process are those necessary to protect the Federal investment. The participant is protected from default on the part of the administering agency because his contract would be transferred to another administering agency and he would continue to receive cost-share payments for BMP's which he contracted to install. The Federal share of the costs of the contract may exceed 50 percent if the benefits are primarily offsite and result in a financial burden on the participant which would probably prevent him from participating in the program.

Comment. The appeals process for settling contract disputes should have an informal procedure as well as a formal procedure. Appeals of determinations prior to execution of the contract should include a broader range of terms.

Response. The regulations have been modified to provide for both formal and informal appeals.

Comment. The 3-year establishment or operations and maintenance period should be deleted or reduced.

Response. This period has been reduced to 1 year.

Comment. Contracts that are terminated may cause financial hardship on participants when refunds are required. Set-off should not be made against cost-share payments if a participant has displayed credit stability. Forgiveness of refunds should be addressed in the regulations when burden is involved.

Response. The regulations have been revised to require the administering agency to develop a process for collecting outstanding debts. That process will detail the handling of refunds when financial burden or hardship is involved. State Conservationist, SCS, must concur in payment adjustments and refunds resulting from violations.

Set-offs will only be made when the participant has failed to meet a financial obligation to the United States and is listed in the county indebtedness register maintained by ASCS.

Comment. Is the power-of-attorney signature acceptable for the person who controls land for the proposed contract period?

Response. Power-of-attorney will only be used where extenuating circumstances exist to the extent that the Administrator, SCS, authorizes its use on a case-by-case basis.

Comment. What guarantee does a contractor have that he will be paid by the landowner?

Response. It is the responsibility of the participant to contract or arrange for the installation of BMP's. If he chooses to enter into an installation contract, payment for services provided is a matter between the participant and the contractor. The regulations do provide for direct payment to suppliers of materials when the contract authorizes such payments.

Comment. Contract periods of less than 5 years or more than 10 years should be considered. This would increase program participation.

Response. The Act specifies that the minimum length of the contract shall be 5 years and the maximum length shall be 10 years.

Comment. If the RCPW is designed to achieve its objectives in the most cost effective manner possible, why should substitution of another measure be proposed? If "the state-of-the-art" advances to a degree that replacement of a measure is recommended, who is to pay for removal of the old measure and installation of the replacement?

Response. The regulations must provide flexibility. They permit modification of contracts to substitute BMP's in response to changing circumstances especially improved pollution abatement technology. It would not be cost effective to preclude such changes. It is not anticipated that BMP's previously installed and cost shared will be removed as a result of new technology. If such a situation arises, it will be analyzed and a decision made based on its specific merits.

Comment. The administering agency should issue contract modifications and SCS should concur on all modifications. Districts or others who may be providing technical assistance should be responsible for modification signoff. Also, provision should be made for waiving the requirements of active contracts by the administering agency with concurrence by the SCS State Conservationist when necessary.

Response. The regulations were modified to place the responsibility for issuing contract modifications on the administering agency. SCS is responsible for the technical requirements of the water quality plan and will sign off on changes to the plan. SCS will concur in all contract modifications that affect the technical aspects of the water quality plan. Waiver of contract requirements may only be made through the termination or modification procedures in the regulations.

Comment. The section concerning contract modification should be changed to include as a condition for a modification, deterioration of the BMP beyond the control of the landowner, substitution of BMP's, time, and farm operations and management.

Response. The regulations provide for these considerations. Some editing was done to more clearly provide for changes in time schedules through the contract modification process.

Comment. The participant should not have the burden of applying for payment and financing the BMP's until they are certified. Also, is interest an includable cost?

Response. This section of the regulations has been modified. Application of BMP's must be made prior to payments being made. The Authorizations for Payments to Suppliers section of the regulations provide for advance payments to suppliers of materials or services which will reduce a participant's out-of-pocket expenses. This process must be prescribed in the participant's contract. Application for payment is the sole responsibility of the participant.

Comment. If conservation districts are required to "approve" the water quality plan, the districts may then find themselves in some conflict during the implementation stages. Possibly the districts should "review" rather than approve.

Response. Section 35(j)(1)(i) of the Act is specific in saying, "to effectuate a plan approved by a soil conservation district, where one exists * * *."

Comment. Participant should be permitted to recover property damages associated with Federal, State, and local agency access to property. Also, time of access should be reasonable and limited to technical assistance and work performance needs only.

Response. Damages caused by Federal employees in performance of official duties are covered under the Federal Tort Claims Act, and the participant may seek redress under the Act. Damages caused by non-Federal employees must be recovered under appropriate State or local laws. The regulations have been edited to clarify that access is limited to that necessary for technical assistance and inspection of work performed under contract.

Comment. The regulations should be revised to include a provision to forgive indebtedness in those cases where the signatory party dies and heirs desire to carry on the farm operation (with the RCWP obligation) or when the repayment of cost-share payments would force sale of the estate.

Response. Section 634.26 has been revised to provide greater flexibility in modifying existing contracts and in the repayment of cost-share payments.

Comment. Change "having control over such land" to "having sold such land."

Response. The regulations must treat transfers of property as well as sales since a participant will have violated his contract when he loses control of the land unit.

Comment. Regarding collection of Federal funds when (1) the grant with an administering agency is terminated, or (2) a participant violates his contract: To what extent is the administering agency responsible for repayment of cost-share funds paid to participants when they violate their contract and refuse to refund monies owed to the administering agency of U.S. Government?

Response. The administering agency is responsible for collecting funds from the participant who violates his contract under the conditions of the grant agreement. Failure to make a good faith effort to recover grant funds owed by a participant is a basis for grant suspension or termination. The participant would be placed on the ASCS Debt Register and would not be eligible for further cost-share payments from USDA until the debt is set off.

Comment. Editorial changes requested—strike "negligent" as a contributing cause consideration for violation in § 634.28(d)(1). Add "knowingly" to (d)(2) and (d)(5) to reduce the range of violations.

Response. Experience with long-term contracting in the Great Plains Conservation Program indicates that negligence must be addressed when BMP's are destroyed or rendered inoperative. Adopting a BMP-defeating practice or misusing an authorization must be considered a violation, whether performed knowingly or otherwise.

Comment. A time limit should be placed on maximum length of time for the administering agency to notify the participant of any contract violations. Also, reopening a hearing by the administering agency should not be allowed.

Response. The regulations have been edited to read "The administering agency shall within 30 days make a determination * * *." Provision for reopening of a hearing prior to a final decision by the administering agency is required to protect the interests of both the participants and the administering agency.

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Comment. The regulations should be revised to add "extent of violations of the State water quality management plan" as a factor to be considered in cost-share payment adjustments.

Response. A review of State 208 water quality management plans indicates that those plans may not be sufficiently specific or definitive to permit assessments of the effects of an individual contract violation on the State plan.

Comment. The right of the Administrator, SCS, to revise the contract violations section at any time, except where adverse effects may be experienced and upon proper notice to the participant, should be deleted.

Response. This section is needed to provide for changes in the violations appeals process and to protect the interests of participants if changes are necessary. This reservation in no way negates the appeals process or reduces the rights of participants.

Comment. Hearings for contract violations should be held in the area where the violation occurs.

Response. Selection of the location of the hearing is the responsibility of the administering agency. SCS will, as a part of program administration, encourage the administering agency to hold appeal hearings in the project area.

Comment. The requirements that agreed-to-items of work must be accomplished within 1 year following the year shown in the plan time schedule is not workable. It should allow for completion anytime prior to the last year on the contract.

Response. The regulations clarify that the participant may install BMP's anytime up to the year scheduled in the contract and 1 year beyond the year scheduled without a modification of the contract. This requirement reduces paper work and serves as the basis for the management of funds and the personnel needed to assist the participant. The Act provides that contracts include a schedule for carrying out the participant's plan.

Comment. The contracting period should not be limited to 5 years.

Response. The 5-year contracting period was established as criteria for measuring the progress of the administering agencies in fulfilling the provisions of the grant agreement. The regulations were revised to permit additional contracts to be signed if an adequate level of participation has been achieved and the designated management agency assures a significant increase in participation can be reached in a reasonable time.

Comment. The appeals board should be composed of representatives of the RCWPCC at the project, State, and national level.

Response. The definition has been edited to provide for SCS approval of the appeals board membership. Otherwise, membership is left up to the administering agency. Designation of coordinating committee representation will only reduce the flexibility of administering agencies in selecting the members. The intent of using the grant process for funding RCWP is to allow to the fullest extent practicable, use of State and local authorities for administering the program and not to impose a single national system on the program.

Comment. It is our position that payment to vendors creates unnecessary paperwork and reduces landowner commitment to the practice.

Response. The provision for direct payment to vendors has been retained in the final regulations because it provides necessary flexibility at the project level. It permits more prompt payment to suppliers in cases where it would be necessary for the participant to borrow money or await receipt of the RCWP cost-share funds before he could pay the supplier. USDA considers this provision an incentive to participants that would increase their willingness to carry out their contracts.

Comment. There is a major discrepancy between the State or local administering agency's handling of changes in ownership and the procedure followed by USDA (ASCS).

Response. The regulations apply uniformly to all administering agencies in the event of land ownership changes.

Comment. The regulations should provide for maintenance of cost-shared Best Management Practices. Are cost-share funds applicable to maintaining BMP's? A process should be established to insure that contracted BMP's are maintained after the contract expires.

Response. The regulations require the participant to operate and maintain BMP's during the RCWP contract life. Wording has been clarified to state that cost-share funds are not available for maintaining BMP's. After the contract expires, no contractual relationship exists and, therefore, there is no authority for maintenance of BMP's. Participants will be encouraged through ongoing programs to continue the maintenance of BMP's.

Comment. The administering agency should not duplicate material sampling or inspection when SCS is certifying the completed practice.

Response. The administering agency is responsible for all contract administration, inspections and quality control. However, when authorizations for payments to suppliers are used, SCS reserves the right to inspect materials prior to their use.

Costs (§ 634.5)

Comment. We are concerned about the total overhead costs of administering RCWP at all levels, including monitoring and evaluation costs and technical assistance.

Response. Administrative costs include charges for contract administration, personnel, travel, materials, and supplies. These costs do not include monitoring or evaluation. Technical assistance is considered to be an integral part of applying such BMP's as integrated pest management. Because of this, no specific limit is placed on technical assistance costs.

Comment. Specify the maximum amount of overhead costs allowable. We feel that the 5-percent level of administrative costs will decrease effective program administration. There should be some way to increase this level to allow for the eventual effect of inflation on administrative expenses.

Response. Administrative costs as redefined are limited to 5 percent of the Federal share for the cost of best management practices. We believe this level of funding is adequate for effective contract administration.

Cost Sharing (§ 634.24)

Comment. The local level should have the authority to determine whether a landowner should receive additional funds because of financial burden.

Response. The regulations now provide for the administering agency to make the determination.

Comment. The 50 percent cost-share level is too low to accomplish adequate landowner or operator participation.

Response. The Act specifies that the cost share is not to exceed 50 percent of the total cost of measures included in the contract, but permits increasing the matching cost share where the main benefits are related to improving offsite water quality and would place a burden on the landowner which would probably prevent him from participating in the program.

Comment. Eliminate the $50,000 cost-share limitation and clarify how the limit would apply to pooling agreements.

Response. The $50,000 cost-share limitations is consistent with the language of the Food and Agriculture Act of 1977. The $50,000 limitation applies to the maximum RCWP payment to any one participant, including those in pooling agreements.

Comment. The regulations should provide for more flexibility to modify cost-sharing levels during project implementation. The authority to modify should be delegated to the local coordinating committee. Also, the local level should be involved in determining the initial cost-share level.

Response. The regulations have been amended so that the administering agency in consultation with the county ASC committee, conservation district, and designated management agency may modify cost-share levels for individual BMP's so long as the total amount of cost sharing does not exceed 50 percent of the cost of the contract unless a variance has been granted. The administering agency will set the maximum cost-share levels for each BMP.

Comment. Are annual practices eligible for cost sharing?

Response. The regulations provide for cost sharing on any approved BMP. Annual practices must be approved as a BMP to be eligible for cost sharing.

Comment. In § 634.25(a) of the proposed regulations, it is stated that "Cost-sharing payments cannot be provided for any measure initiated before the contract is approved • • •." The particular language will undoubtedly delay the implementation of water quality plans under section 208, especially in those areas that will attempt to qualify for RCWP funds. No farmer or rancher is going to implement a series of new and costly management practices if he cannot get matching funds for them. Furthermore, many lending institutions with the knowledge that cost-sharing funds could be made available at a future date would not loan a farmer or rancher the additional money still needed until the matching funds were actually there.

Response. In areas selected for RCWP funding, the delay in time between project funding and execution of participant contracts should be minimal. The requirements set out in the definition of adequate level of participation, i.e., 50 percent in 3 years and 100 percent in 5 years, are specifically intended to minimize that delay. In areas with less severe or lower concentrations of agricultural nonpoint source water quality problems, it is anticipated that the approved agricultural portion of the 208 plan will identify other programs and sources of funding that may be used to assist in the application of BMP's.

Comment. Cost sharing and technical assistance should be made available for nonstructural measures, and for education programs.

Response. The regulations have been revised to include a definition for technical assistance cost. This definition is intended to be broad enough to allow technical assistance for any BMP, structural or non-structural, and for appropriate education programs within a project. The regulations provide for cost sharing of non-structural measures which are eligible BMP's.

Comment. Remove the reference to drainage in the rules and regulations to avoid the erroneous impression that drainage should never be a best management practice. The exclusion of measures installed primarily for increasing crop production adequately focuses the program on water quality.

Response. Installation of drainage practices in conjunction with or as a part of an approved BMP may be cost shared. For example, tile outlets installed as a part of a terracing system would be eligible when terracing is an approved BMP. The final regulations could not be finalized without reference to such practices. If the application clearly documents that certain drainage practices are essential for achieving the water quality objectives of the project, such an application may be approved.

Eligible Land (§ 634.20)

Comment. The restriction placed on corporate ownership for program assistance will be detrimental to the RCWP.

Response. Corporations may qualify for cost-share assistance if it can be documented that the installation of BMP's places an inappropriate financial burden on the corporation.

Comment. What lands in a project area are eligible for cost sharing? Shouldn't the entire project area be eligible for cost-share assistance since the sources are not always well definable, and the cause effect relationships of control practices are not a precise science?

Response. The regulations provide that, in a project area, all privately owned lands with critical areas or sources of nonpoint source pollutant problems are eligible for financial and technical assistance. This is based on the Conference Report for Pub. L. 95-217 which stated that use of RCWP funds is to be limited to private lands.

Financial Management (§ 634.40)

Comment. Budgeting, accounting, and reporting requirements duplicate existing State (local) recordkeeping systems. The administering agency should assist in providing standards and specifications for budgeting, accounting, and reporting that is acceptable to SCS.

Response. The regulations provide for the use of OMB Circular A-102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments. All grant programs administered by the government must meet the minimum recordkeeping and accounting requirements of the OMB prescribed requirements. The State or local system must meet the minimum prescribed procedures. A duplicative system is not required.

Funding (§ 634.40)

Comment. Section 634.12 should specify that the State agricultural 208 plan set priorities for funding project areas in the State.

Response. This section was deleted to eliminate redundancy. Section 634.4 specifies that the Governor will establish priorities for RCWP project areas in the State. Section 634.13 further states that applications for project areas are to be consistent with the approved agricultural portion of a 208 plan.

Comment. Program grants to States should be used rather than funding from the national level to RCWP project areas. Alternatively, 50 percent of the funds should be allotted to project areas and 50 percent to statewide use outside of project areas.

Response. Careful consideration was given to use of program or formula grant to States. It was concluded that given the limited funding that can be anticipated and the intent of the legislation to focus on cirtical areas, it is necessary to use the project grant approach. The RCWP Environmental Impact Statement documents that the most critical agricultural nonpoint source water quality problems are concentrated in certain geographic areas of the country.

Comment. Several States questioned whether those States with ongoing cost share programs should receive greater consideration for approval of additional RCWP projects. One of these inquired as to the amount of weight to be given on funding priorities and what guidelines would be given such local cost-share programs. One posed the possibility of fund management regulations for federally funded projects conflicting with State or local fund management. Some opposed special consideration being given to States with ongoing cost-share programs saying that priority shall be based on water quality problems and that otherwise States should be treated equally.

Response. The regulations are designed to provide flexibility in local administration of an RCWP project. States or local governments with their own cost-share programs may receive greater consideration for funding of RCWP projects because it will provide an additional incentive for participation.

Comment. The county ASC committee should make all cost-share payments under RCWP.

Response. Making cost-share payments is defined as a part of administering the project. The Act provides that where practicable, all or part of the program will be administered by a soil conservation district, a State soil and water conservation commission, or a State water quality agency. To ex-

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clude these agencies from making cost-share payments would be inconsistent with the Act. It is anticipated that in many projects, it may not be practicable for State or local agencies to act as the administering agency. The responsibility for making cost-share payments will then fall to ASCS through the county ASC committee system.

Comment. What recourse exists if ASCS fails to administer RCWP funds properly or cannot meet project objectives?

Response. RCWP funds appropriated to SCS may be transferred to ASCS when that agency is designated to be the administering agency for a RCWP project. This transfer will be made under a National Memorandum of Understanding between ASCS and SCS, which will define the responsibilities of each agency. Failure of ASCS to fulfill the terms of the agreement may result in withdrawal of transferred funds and/or projects termination.

Comment. Who decides which of the agencies eligible under the Act shall be the administering agency? Should those responsibilities fall to the soil conservation district, we question the willingness of the directors to accept them.

Response. The application for an RCWP project will include the recommendation of an eligible State or local agency to serve as the administering agency or request USDA to be the administering agency. The Administrator, SCS, upon recommendation of the NRCWCC, will approve applications for funding including the designation of the administering agency. Concurrence of the Administrator, EPA, is necessary before a project may be funded. If conservation district directors are unwilling to accept the necessary administrative responsibilities, they will not be approved.

Comment. The Rural Clean Water Program might better be patterned after the successful ASCS cost-sharing program. Forget the "project area" designation, and encourage individual farmers to enroll and cooperate.

Response. The intent of the Act is to focus limited resources on solving agricultural nonpoint source water quality problems in critical areas. It is important to concentrate the RCWP effort in relatively small areas where significant water quality improvement can be achieved within the time limits established by the Act.

LEVEL OF PARTICIPATION (§ 634.5)

Comment. The required 50 percent participation level within the first 3 years is too restrictive.

Response. The requirement has been retained. We believe that a level of achievement must be scheduled to insure that the objectives of the RCWP are being accomplished. Therefore, it is specified that at least 50 percent of the adequate level of participation be achieved in 3 years or less.

Comment. The assurance of 75 percent participation is unrealistic and can't be guaranteed by the management agency.

Response. Section 634.5(a) indicates that exceptions to the 75 percent level of participation rule can be made for those areas where the approved agricultural portion of the 208 plan provides data and analysis which indicates that a greater or lesser percentage of the critical area or source treated is needed to attain water quality standards or water quality goals. The adequate level of participation is considered to be achieved when participants having control of 75 percent of the identifed critical areas or source (or that percentage allowed in an approved exception) of the pollutant problem in the project area are under contract. The designated management agency is to submit in the project application a strategy for achieving an adequate level of participation in 5 years or less.

MONITORING (§ 634.50)

Comment. The final RCWP regulations should specify that pre and post BMP implementation monitoring are necessary to determine effects on water quality.

Response. Section 634.50 (a)(6) recognized the need for preproject monitoring to evaluate the effectiveness of BMPs in improving water quality. Postproject monitoring will continue according to and to the extent agreed upon in the monitoring and evaluation plan developed under § 634.50(a)(3).

Comment. It is important to develop water quality monitoring programs to assess current conditions and specify areas where water quality limitations exists, ultimately evaluating water quality trends resulting from the RCWP.

Response. We agree that surveys to establish baseline conditions are necessary. The data derived from them will serve as the base for the monitoring and evaluation plan developed under § 634.50(a)(3).

Comment. The policy of preference for areas with long-term baseline data restricts rural States from receiving national priority because of a lack of funds and resources in the past to gather these data.

Response. The preference for long-term baseline as stated in § 634.50(a)(6) does not restrict any State from receiving project authorization. The criteria for the selection of projects in § 673.14 is independent of the criteria for the selection of projects for monitoring. In selecting projects for monitoring, preference will be given to those with good baseline data for measuring project effects on water quality.

Comment. As soon as possible, USDA and EPA should be encouraged to issue criteria they will use in selecting projects to be monitored.

Response. USDA is developing a program procedural manual to aid in implementing the RCWP. This manual will contain guidance for the selection of projects to be evaluated. Such guidance will be flexible. Criteria may vary from year to year, based on program needs. Notice of availability of the manual will be published in the FEDERAL REGISTER.

Comment. A positive testing and monitoring program should be established to evaluate and document RCWP effects on fishery resources.

Response. RCWP monitoring and evaluation activities established in § 634.50 of the regulations will evaluate and document changes in the stream regime that result from program implementation. Where appropriate, biological sampling and evaluation will provide information of effects on fishery resources.

Comment. What is the source of funding for the water quality monitoring and evaluation of selected projects?

Response. Water quality monitoring will be funded from RCWP appropriations and other authorizations.

Comment. The regulations assume that monitoring and evaluation can measure in great detail the water quality improvement resulting from project actions. To do that accurately with scientific quality would probably cost as much money as available in the entire program.

Response. Monitoring and evaluating project effects of improved water quality is a complex and potentially costly process. Therefore, only selected representative projects will be provided funds for comprehensive monitoring and evaluation set forth in § 634.50(a). It is essential that project and BMPs effectiveness in improving water quality be carefully measured and evaluated. A monitoring and evaluation plan, including anticipated funding needs, will serve as the basis for a project area selected for monitoring.

Comment. Results of monitoring studies should be made available in simplified form to program participants so that adjustments in emphasis of BMPs can be made on an ongoing basis.

Response. All data and results from RCWP water quality and monitoring evaluation efforts will be available to the public.

Comment. Section 634.40 should be amended to provide for concurrent authority of the appropriate management agencies in the selection of projects to be monitored,

Response. The selection of projects to be monitored is to be based on national program needs for information on representative agricultural pollutant problems. The regulations provide for the involvement of other Federal, State, and local agencies in developing the plan for water quality monitoring and evaluation.

Comment. EPA and State agencies should monitor water quality related to RCWP projects and SCS should monitor the effectiveness of BMPs.

Response. An adequate project water quality monitoring and evaluation plan must include provisions for collection of chemical, physical, and biological water quality data, climatic data, land use data, and data relative to BMP application. The effectiveness of project BMP's in improving water quality will be addressed through a coordinated land-water evaluation approach. The exact role of each local, State, or Federal agency involved in monitoring project water quality will vary from project to project and will be specified in the plan for water quality evaluation developed by USDA and EPA with assistance from appropriate agencies.

Comment. Will SCS be monitoring the receiving waters?

Response. Section 634.50 of the regulations establishes a joint USDA/EPA monitoring and evaluation program. SCS will not establish independent monitoring capability but will use the expertise of other appropriate Federal, State, and local agencies.

Comment. Section 634.40(a)(7)(i) should be clarified and require that water quality monitoring be conducted upstream and downstream near the drainage outlet of the project area. This section should be further amended to provide for assessment of BOD demands and changes in water quality during and after rainfall.

Response. Because of the site specificness of water quality monitoring and evaluation, reference to specific water quality parameters has been deleted from the final regulations. Parameters for projects selected for monitoring will be detailed in the monitoring plan and be selected to answer specific questions relating to a particular project. The plan must recognize the interdependence of nonpoint source pollutants, rainfall events, and runoff. Hydrographs and pollutant graphs will normally be included in monitoring. Monitoring upstream and downstream near the project area's drainage outlet will in most cases be necessary to adequately evaluate project effectiveness in improving water quality.

Comment. The regulations should require that monitoring data from 208 plans be submitted to assist in overall evaluation.

Response. Useful monitoring data from 208 plans will be used in the development of the plan for water quality monitoring.

NATIONAL RURAL CLEAN WATER COORDINATING COMMITTEE (§ 634.4)

Comment. Nutrient/pesticides task group should be appointed to advise the National Rural Clean Water Coordinating Committee.

Response. Nutrient/Pesticide expertise exists within the agencies that make up the National Rural Clean Water Coordinating Committee. The committee may assemble staff task groups to provide advice on any relevant water quality subject.

PROGRAM OBJECTIVE (§ 634.2)

Comment. The definition of a "RCWP Project Area" and the proposed procedure for approval of projects would result in a regional imbalance of RCWP funds toward agricultural related water quality problems.

Response. The RCWP as defined by the regulations will result in regional imbalance in the distribution of RCWP funds to the extent that critical agricultural nonpoint source water quality problems are not uniformly distributed across the country. The RCWP Environmental Impact Statement documented that the most critical nonpoint source water quality problems in rural areas result from agricultural uses of land. The intent of the Act was to focus on the critical problem areas; therefore, USDA will limit the use of RCWP funds to solving agricultural nonpoint source water quality problems.

Comment. The Agricultural Conservation Program (ACP) has objectives different than the objectives of RCWP. Therefore, the administration of the two programs should be kept separate.

Response. It is essential that Federal and non-Federal programs work together to achieve common objectives with maximum efficiency and a minimum of duplication. Accordingly, RCWP must be coordinated with ACP and similar programs.

Comment. Is the objective of improved water quality in rural areas to be achieved in the most cost effective manner possible for the U.S. Government, for the landowner, or both?

Response. In determining cost effectiveness, the total costs to the Government, the landowner, and others affected by pollution control efforts will be considered. The intent is to help achieve National water quality objectives with a minimum of total private and social costs.

PROJECT APPLICATIONS (§ 634.13)

Comment. Project approval might be political and biased and not based on facts. One commenter suggested that a debriefing process be specified in the rules so as to advise sponsors of non-approved applications as to the objective reasons for non-approval. Other comments requested that the regulations be worded to require citizen participation during the preparation of the application and evidence of farmer support and commitment to the project as a criteria for project approval.

Response. The sections on project applications and review, and approval of project applications have been revised so as to facilitate presentation of objective data and to require public involvement. The SRCWCC is to assure that a process exists for public participation, expecially by potential RCWP participants, and to prepare RCWP project applications. A primary purpose of public participation will be to develop evidence of farmers support and commitment to the project.

Comment. Why can't the Governor submit applications directly to the Administrator, SCS, rather than through the State Conservationist?

Response. The program has been structured to require that the Governor submit applications to the Administrator, SCS, through the State Conservationist, SCS, to facilitate processing of applications. The State Conservationist is responsible to the Administrator, SCS, for RCWP in each State.

Comment. Would conditional approval of a 208 plan qualify for RCWP eligibility agricultural plan?

Response. A proposed RCWP project area must be included in an approved agricultural portion of a 208 water quality management plan to be eligible for assistance so long as any conditions placed on the approval do not make the plan unacceptable as a basis for RCWP. It is possible for the agricultural portion of a 208 water quality management plan to be approved before approval of the entire 208 plan.

Comment. There should be more flexibility and simplicity in the application components. Applicable data from the 208 plan should be used. Resources are not available locally to prepare the project application and SCS should provide additional help to properly prepare project application.

Response. The regulations have been modified to provide more flexibility and to limit detail to that sufficient to permit NRCWCC to evaluate the application. Maximum use of existing data is encouraged. RCWP funds may not be used for preparing project applications, but SCS may provide assistance as a part of its participation in the continuing planning process.

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Comment. There were expressed concerns about the criteria for the NRCWCC review of project applications. They pointed out duplication of items under project application and suggested that the criteria should be a part of that section. Several questioned the feasibility of applying the criteria without more guidance as to how they are to be applied. It was suggested that aesthetic benefits be recognized and stressed flexibility in the review process.

Response. Appropriate sections have been rewritten to remove duplication, reduce complexity provide a cross reference between sections, and to clarify how the criteria will be applied. Section 634.14(a)(2) provides the opportunity to recognize aesthetics as a beneficial water use.

Comment. Much of what is addressed in the administrative portion of the rules and regulations is better addressed by the States' 208 plan. The RCWP should tie directly to the States' 208 plan. As proposed, it may not.

Response. The RCWP will only provide assistance on lands in project areas where there is an approved agricultural portion of a 208 water quality management plan. RCWP projects must be consistent with the approved agricultural 208 plan.

Comment. The proposed rules and regulations do not allow for areawide 208 planning agency involvement.

Response. The regulations state that the preparation and submission of project applications are to be based on the priorities, data, and information in the approved agricultural portion of the State or areawide 208 plan. A representative of the areawide agencies is to be a member of the SWRCC.

Comment. The 45-day period for review of project applications by EPA is too short.

Response. EPA has members on both State and National Rural Clean Water Coordinating Committees, and will have current information necessary for concurring in projects selected for funding. That agency has agreed that concurrence is possible within 45 days after receipt of project applications.

Comment. There should be some form of regional (interstate) input in project selection prior to final selections by the National Rural Clean Water Coordinating Committee.

Response. One of the responsibilities of the SRCWCC is to assure that a process acceptable to the member agencies must be developed for the preparation of RCWP applications. Where a potential application may impact on more than one State, the application must provide evidence that the process, including public participation, involves consultation among those affected in order for the application to be acceptable to the NRCWCC.

PROJECT APPROVAL (§ 634.14)

Comment. The provision that the Governor is the final approving agent for the application is not clear.

Response. The Governor establishes priorities for project applications and coordinates this activity with the SRCWCC. The Governor then submits applications in order of priority to the Administrator of SCS through the State Conservationist, SCS. The Administrator, SCS, selects those projects to be funded based on the recommendation of the NRCWCC and the concurrence of the Administrator, EPA.

Comment. Appropriate sections of the proposed rules and regulations should be modified to reflect increased or decreased eligibility of projects due to their amenability to water quality monitoring.

Response. Section 208(j)(4) directs the Secretary of Agriculture to give priority to those areas and sources that have the most significant effect upon water quality. Consequently, the regulations base project eligibility on the severity of the water quality problem caused by agricultural and silvicultural related pollutions. Criteria used to select those projects to be monitored will reflect the ability of a project to be monitored.

Comment. State and local organizations and units of government should be notified of pending project authorization and funding.

Response. Section 634.13(a) of the regulations require that project applications will be submitted in conformance with OMB Circular A-95. That process is designed to assure that local and State governments are notified of pending RCWP funding and have an opportunity to assess that potential funding relative to their specific programs and interests. Section 634.14(d) requires that upon approval of an RCWP project, the State Conservationist, SCS, through the SRCWCC, will inform other involved Federal, State, and local agencies.

PROJECT AREA (§ 634.12)

Comment. We object to the statement. "Generally, the project area will be less than 200,000 acres." We consider this an arbitrary figure that might prevent approval of many worthwhile projects under the RCWP.

Response. The statement in question has been retained. The term "Rural Clean Water Program Project Area" in § 634.12(c) permits a variance from a hydrologically related unit of land area. The word "generally" precedes the 200,000 acre figure to permit exceptions.

SILVICULTURE (§ 634.5)

Comment. Reference should be made to silviculture within the RCWP since many States will be preparing a plan for controlling nonpoint sources of pollution from silviculture separate from their agricultural plans.

Response. The definition of agricultural nonpoint source pollution includes silviculture nonpoint source pollution. The silvicultural portion of a 208 plan may serve as the basis for the BMP's recommended for assistance in the RCWP application.

STATE PARTICIPATION (§ 634.4)

Comment. The SRCWCC should be co-chaired by the SCS State Conservationist and the Governor or his designee.

Response. The SCS provides the chairmanship of the SRCWCC to assure continuity with the chairmanship of the NRCWCC in administering RCWP.

WILDLIFE HABITAT (§ 634.30)

Comment. Farmers cannot be held liable for deterioration of waterfowl or wildlife habitat resulting from the application of BMP's.

Response. The planning and analysis necessary in developing the 208 plan and preparing an RCWP project application will consider effects on habitat caused by the installation of BMPs. The plan and the application must be consistent, and waterfowl and wildlife habitat should be enhanced by the installation of BMPs and improved water quality.

An environmental impact statement (EIS) for RCWP was filed in the FEDERAL REGISTER on September 6, 1978. Notice of availability of the final EIS was published on September 19, 1978. (43 FR 42036.)

A regulatory impact statement is also available from SCS at the address listed above.

The regulations are believed to be in compliance with the March 24, 1978, Executive Order 12044.

Dated: October 24, 1978.

NORMAN A. BERG,
Associate Administrator,
Soil Conservation Service.

Concurred:

Dated: October 25, 1978.

THOMAS C. JORLING,
Assistant Administrator for Water and Waste Management, Environmental Protection Agency.

7 CFR is amended by adding a new "Part 634—Rural Clean Water Program" to read as follows:

PART 634—RURAL CLEAN WATER PROGRAM

Subpart A—General

Sec.
634.1 Purpose and scope.
634.2 Objective.
634.3 Administration.
634.4 Responsibilities.
634.5 Definitions.

Subpart B—Project Authorization and Funding

634.10 Applicability.
634.11 Availability of funds.
634.12 Eligible project areas.
634.13 Project applications.
634.14 Review and approval of project applications.
634.15 Agreements.
634.16 Suspension of grants.
634.17 Termination of grant agreement.
634.18 Termination of projects.
634.19 Project completion and closeout.

Subpart C—Participant RCWP Contracts

634.20 Eligible land.
634.21 Eligible participants.
634.22 Application for assistance.
634.23 Water quality plan.
634.24 Cost sharing.
634.25 Contracting.
634.26 Contract modifications.
634.27 Cost-share payment.
634.28 Appeals not related to contract violations.
634.29 Violations.
634.30 Appeals in USDA administered projects.
634.31 Appeals of contract violations.

Subpart D—Financial Management

634.40 Financial management.
634.41 [Reserved]

Subpart E—Monitoring and Evaluation

634.50 Program and project monitoring and evaluation.
634.51 [Reserved]

AUTHORITY: Sec. 35, Pub. L. 95-217, 91 Stat. 1579 (33 U.S.C. 1288).

Subpart A—General

§ 634.1 Purpose and scope.

(a) The purpose of this part is for the U.S. Department of Agriculture (USDA), with the concurrence of the U.S. Environmental Protection Agency (EPA), to set forth regulations to carry out a Rural Clean Water Program (RCWP) under section 35, Pub. L. 95-217; 91 Stat. 1579; 33 U.S.C. 1288.

(b) The Rural Clean Water Program provides financial and technical assistance to private landowners and operators (participants) having control of rural land. The assistance is provided through long-term contracts (5 to 10 years) to install best management practices (BMP's) in project areas which have critical water quality problems resulting from agricultural activities. The proposed project area must be within a high priority area in an approved agricultural portion of a 208 water quality management plan. Participation in RCWP is voluntary.

(c) The program is a new USDA program and an extension of existing water-quality management programs of EPA.

§ 634.2 Objective.

The RCWP is designed to reduce agricultural nonpoint source pollutants to improve water quality in rural areas to meet water quality standards or water quality goals. The objective is to be achieved in the most cost-effective manner possible in keeping with the provision of adequate supplies of food and fiber and a quality environment.

§ 634.3 Administration.

At the national level, the Secretary of Agriculture, with the concurrence of the Administrator, EPA, administers RCWP. The Secretary of Agiculture has delegated responsibility for administration of the program (43 FR 8252) to the Administrator, Soil Conservation Service (SCS). SCS will be assisted by other USDA agencies in accordance with existing authorities.

(a) A National Rural Clean Water Coordinating Committee (NRCWCC), chaired by the Administrator, SCS, is to assist in carrying out the Rural Clean Water Program.

(b) At the State level, a State Rural Clean Water Coordinating Committee (SRCWCC) is to assist the State Conservationist, SCS, in administering the program. The State Conservationist will chair the SRCWCC.

(c) To assure coordination at the project level, a local Rural Clean Water Coordinating Committee is to be established at the time the application is developed. An existing local committee may be used, where practicable, to perform the functions of this committee.

(d) The Administrator, SCS, through the State Conservationists, SCS, is to enter into agreements, where practicable, with soil conservation districts, State soil and water conservation agencies, or State water quality agencies to administer all or part of the program for a project area. That portion of program administration to be conducted by these agencies will be defined in the project application and grant agreement. Where this is not practicable, USDA will administer the program in a project area. In those instances where USDA retains administration of the program in a project area, SCS will enter into agreements for the transfer of funds to the Agricultural Stabilization and Conservation Service (ASCS) for the administration of part of the program.

§ 634.4 Responsibilities.

(a) *Environmental Protection Agency (EPA). will.* (1) Approve 208 water quality management plans,

(2) Participate in the National and State Rural Clean Water Coordinating Committees,

(3) Review and concur in project applications approved for funding in accordance with § 634.14,

(4) Advise the Secretary of Agriculture of practices which tend to defeat the purposes of contracts with rural landowners or operators in accordance with section 208(j)(1)(iv) of the Act,

(5) Assist USDA in evaluating the effectiveness of the program in improving water quality, and

(6) Concur in the selection of project areas and the criteria for comprehensive, joint USDA-EPA water quality monitoring, evaluation, and analysis in accordance with § 634.50.

(b) *U.S. Department of Agriculture (USDA) will.* (1) With the concurrence of EPA, administer a program to enter into contracts to install and maintain best management practices to control agricultural nonpoint source pollution for improved water quality,

(2) Act through SCS and such other USDA agencies as the Secretary may designate,

(3) Provide technical assistance and share the cost of carrying out best management practices that are set forth in the contracts,

(4) Where practicable, enter into agreements with soil conservation districts, State soil and water conservation agencies, or State water quality agencies to administer all or part of the program for a project area,

(5) Administer the program where it is not practicable for soil conservation districts, State soil and water conservation agencies, or State water quality agencies to administer all or part of the program for a project area,

(6) Together with local soil conservation districts, determine the priorities for assistance to individual participants to assure that the most critical water quality problems are addressed,

(7) Assist in evaluating the overall effectiveness of the program in improving water quality, and

(8) Within the framework of the 208 planning process, make additional investigations or plans, where necessary, to supplement information contained in the approved agricultural portion of 208 water quality management plans for the purpose of selecting among projects to be funded.

(c) *Soil Conservation Service (SCS) will.* (1) Provide RCWP leadership,

(2) Retain major technical responsibility for RCWP, and provide leadership to assure the adequacy of standards and specifications for use by all administering agencies,

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(3) Manage budgeting, accounting, and reporting,

(4) Chair NRCWCC and assure that RCWP applications are distributed to the NRCWCC, including EPA, for review,

(5) For the Secretary of Agriculture, with the concurrence of the Administrator, EPA, approve RCWP projects for funding,

(6) For the Secretary of Agriculture, select and enter into agreements with either soil conservation districts, State soil and water conservation agencies, or State water quality agencies, where practicable, to adminster all or part of the program,

(7) Enter into fund transfer agreements to transfer funds to ASCS in those instances where the administration of contracts is retained by USDA,

(8) Enter into agreements with other USDA agencies, as appropriate, for support which they are to provide,

(9) Chair SRCWCC,

(10) For the Secretary of Agriculture, in coordination with NRCWCC, determine the maximum Federal contribution to the total cost of the project,

(11) Provide technical assistance through soil conservation districts or arrange for other Federal, State, local agencies, or private individuals or firms to provide technical assistance as appropriate,

(12) Provide technical assistance to soil conservation districts and County Agricultural Stabilization and Conservation (ASC) Committees to assist them in determining priorities of assistance among individual participants,

(13) Develop appropriate technical and administrative training programs,

(14) Provide leadership for USDA for comprehensive joint USDA-EPA water quality monitoring, evaluation, and analysis in selected project areas,

(15) Provide leadership for USDA in evaluating the effectiveness of the program in improving water quality,

(16) Carry out the function of soil conservation districts for approving water quality plans where no soil conservation district exists, and

(17) Through the State Conservationist, after considering recommendations of the SRCWCC, reach agreement with the Governor on the recommended administering agency to be included in the project application.

(d) *The Agricultural Stabilization and Conservation Service (ASCS) will:* (1) Participate on the National, State, and local coordinating committees.

(2) Provide guidance to State and County ASC Committees and coordinate the Agricultural Conservation Program (ACP) and the Forestry Incentives Program (FIP) with RCWP,

(3) Where the administration of contracts is retained by USDA, enter into agreements with SCS for the transfer of funds to be allocated to County ASC Committees,

(4) Consolidate reports of the annual cost-share disbursements made by the State ASC Committee, and report these disbursements to SCS,

(5) Furnish data on land use, crop history, and cost-shared conservation measures,

(6) Review plans and contracts to assure coordination with other farm programs, and

(e) *The Forest Service (FS) will:* (1) Retain technical responsibility for forestry,

(2) Provide technical assistance through the State forestry agency (State Forester as appropriate) for planning, applying, and maintaining forestry best management practices, and

(3) Participate on the National, and as appropriate, State, and local coordinating committees.

(f) *The Science and Education Administration (SEA) will:* (1) Develop, implement, and coordinate educational programs for agricultural nonpoint source water pollution control,

(2) Participate on the National, and as appropriate, State, and local coordinating committees, and

(3) Provide technical assistance for appropriate BMP's.

(g) *The Economics, Statistics, and Cooperatives Service (ESCS) will:* (1) Participate on the National coordinating coomittee and, as appropriate, participate in State, and local coordinating committee activities,

(2) Assist in the economic evaluation of best management practices and RCWP projects,

(3) Make data available from existing and planned ESCS surveys relating to water quality and related matters,

(4) Assist in RCWP evaluation by making available the ESCS land and water resource economic modeling systems, and

(5) Conduct socioeconomic research, within ESCS authorities and funds, on relevant policy and program issues pertinent to RCWP.

(h) *The Farmers Home Administration (FmHA) will:* (1) Participate on the National, and as appropriate, State and local coordinating committees, and

(2) Provide assistance and coordinate their farm loan and grant programs with RCWP.

(i) *The NRCWCC* is chaired by the Administrator, SCS. Other members of the National Committee are the Administrators of ASCS, FmHA, and ESCS; the Chief of FS; the Director of SEA; and the Assistant Administrator for Water and Waste Management, EPA. Non-Federal agencies such as conservation districts, State soil and water conservation agencies, State water quality agencies, and other organizations are invited to attend as observers. The duties of the Committee are to:

(1) Coordinate individual agency programs with the Rural Clean Water Program,

(2) Recommend to the Administrator, SCS, the project applications to be funded,

(3) Advise the Administrator, SCS, on the maximum Federal contribution to the total cost of the project,

(4) Assist the Administrator, SCS, in mediating agency differences at the State level,

(5) Periodically advise the Secretary and Assistant Secretary for Conservation, Research and Education of program and policy issues, and

(6) Recommend project areas and criteria for comprehensive, joint USDA/EPA water quality monitoring, evaluation, and analyses.

(j) The SRCWCC is chaired by the State Conservationist, SCS. Other members of the State committee are the State 208 water quality agency, a designated representative of the areawide agencies, the State soil and water conservation agency, a designated representative of soil and water conservation districts, other State and local agencies or individuals as the Governor deems appropriate, and representatives of the agency members of the NRCWCC. The duties of the committee are to insure that a process exists:

(1) To consult with the Governor or his designee on the Governor's determination of priority project areas,

(2) To assure coordination of activities at the project level by assisting in determining the composition and responsibilities of the local rural clean water coordinating committee,

(3) To prepare the RCWP applications for the Governor to submit to the State Conservationist, SCS, based on priorities established by the Governor,

(4) To incorporate adequate public participation, including public meeting(s), and appropriate environmental assessment in the preparation of RCWP applications,

(5) To monitor and evaluate the RCWP in the State and to assist USDA and EPA in their comprehensive, joint water quality monitoring and evaluation of selected project areas in accordance with § 634.50,

(6) To develop procedures for coordination between conservation districts and county ASC committees and between RCWP and other water quality programs at the local level,

(7) To assist the State Conservationist, SCS, in mediating agency differences at the local level,

(8) To initiate a written agreement setting forth any or all of the above activities when the Governor and the Secretary of Agriculture or his designee deem it appropriate, and

(9) To make recommendations to the State Conservationist, SCS, concerning the selection of the administering agency to be included in the project application.

(k) The State soil and water conservation agency will, as appropriate:

(1) Assist in preparing and submitting applications for RCWP,

(2) Administer all or part of the RCWP for a project area,

(3) Carry out the responsibilities of soil conservation districts for determining priority for assistance among individual participants where no soil conservation district exists, and

(4) Participate on the State and local coordinating committees.

(l) The State 208 water quality agency will, as appropriate:

(1) Assist in preparing and submitting applications for rural clean water project,

(2) Administer all or part of the RCWP for a project area,

(3) Participate on the State and local coordinating committees, and

(4) Assist in monitoring and evaluating the water quality effectiveness of projects.

(m) The soil conservation district will:

(1) As appropriate, assist in the preparation and submission of applications for rural clean water projects,

(2) As appropriate, administer all or part of the RCWP in a project area.

(3) As appropriate, participate on the local coordinating committees,

(4) Approve participants' water quality plans, and

(5) Together with the county ASC Committee, determine the priority for assistance among individual participants to assure that the most critical water quality problems are addressed.

(n) The county ASC committee will:

(1) Together with the soil conservation district, determine the priorty for assistance among individual participants to assure that the most critical water quality problems are addressed,

(2) Receive applications for assistance for individual participants where USDA retains administration of the program,

(3) Make cost-share payments to individual participants where USDA retains administration of the program, and

(4) As appropriate, participate on the local coordinating committees.

(o) The designated management agency(s) for the agricultural portion of a 208 plan for the project area will:

(1) Assist in preparing and submitting an application for a rural clean water project in an area for which they were designated,

(2) Submit a letter, as part of the project application, certifying that the BMP's proposed for cost sharing are consistent with the BMP's in the approved 208 plan,

(3) Submit a letter, including a schedule, giving assurance that an adequate level of participation in the project will be achieved within 5 years, and

(4) As appropriate, serve as the administering agency.

(p) The administering agency will:

(1) As appropriate, enter into a grant agreement or fund transfer agreement with the Soil Conservation Service for:

(i) Receiving funds from the Soil Conservation Service for administrative costs, cost sharing, and technical assistance, as appropriate, associated with carrying out the project,

(ii) Establishing detailed work schedules in accordance with the approved project application,

(iii) Establishing the maximum amount of administrative costs chargeable to the grant,

(iv) Establishing an adequate financial management system,

(v) Preparing a cost allocation plan,

(vi) Monitoring and reporting performance,

(vii) Reviewing applications for assistance from landowners or operators,

(viii) Certifying availability of funds, and

(ix) Complying with OMB Circular A-102 and other appropriate regulations,

(2) Enter into contracts with participants for the installation and maintenance of BMP's based on water quality plans developed by participants,

(3) Make cost-share payments to participants upon receipt of certification by SCS,

(4) Issue modifications to participant RCWP contracts,

(5) Develop average cost rates for each practice applicable in the project area.

(6) Sample and inspect materials used in the installation of BMP's,

(7) Establish a contract violations and appeals and collections process,

(8) Provide for public involvement in the implementation of RCWP in a project area, and maintain a mailing list of interested individuals and organizations for informing the public about the activities contemplated and carried out in the project area, and

(9) Maintain records, provide necessary facilities, personnel, and legal counsel for carrying out these responsibilities.

(q) The Governor of each State will:

(1) In order to qualify for assistance under RCWP:

(i) Establish priorities for RCWP project areas in the State,

(ii) Coordinate the development of RCWP project applications with the SRCWCC and local agencies,

(iii) Submit, in order of priority, RCWP project applications to the Administrator, SCS, through the State Conservationist, SCS, and

(iv) Recommend an eligible State or local agency to serve as the administering agency of the project, or request USDA to be the administering agency.

(2) Where appropriate, with the State Conservationist, SCS, set forth the activities of the SRCWCC in a written agreement,

(3) Assign additional State and local agencies or individuals to membership on the SRCWCC, as appropriate, and

(4) Reach agreement with the State Conservationist, SCS, in selecting the administering agency.

§ 634.5 Definitions.

(a) *Adequate level of participation.* An adequate level of participation is reached when participants, having control of 75 percent of the identified critical area or source of the pollution problem in the project area, are under contract. Exceptions may be made where the approved agricultural portion of the 208 plan provides data and analyses which indicate that a greater or lesser percentage of the critical area or source treated is needed to attain water quality standards or water quality goals. Fifty (50) percent of the adequate level of participation is to be achieved within 3 years; the remainder within 5 years.

(b) *Administering agency.* A soil conservation district, State soil and water conservation agency, or State water quality agency that enters into an agreement with the State Conservationist, SCS, to administer assigned responsibilities for RCWP projects; or ASCS, when USDA retains contract administration.

(c) *Administrative cost.* Grant and fund transfer costs, including allowable costs incurred by the Administering agency in contract administration. These costs, indirect and direct, include charges for personnel, travel, materials, and supplies. The costs are limited to a maximum of 5 percent of the Federal share for BMP cost.

(d) *Agreement.* A legal instrument reflecting the relationship between SCS and the administering agency for performance of RCWP activities.

(e) *Agricultural nonpoint source pollution.* Pollution originating from existing nonpoint sources that are (a) agriculturally related, including runoff from animal waste disposal areas and from land used for livestock and crop production, or (b) silviculturally related pollution.

(f) *Agricultural portion of a 208 plan.* That portion of the 208 plan

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that deals with agriculture and those silvicultural activities related to farming and ranching enterprises.

(g) *Appeals board.* A group of three or more individuals, including a hearing officer, established by the administering agency with the concurrence of the State conservationist, SCS, to review asserted contract violations, hear associated appeals, and report its findings, conclusions, decisions, and recommendations in State or locally administered projects.

(h) *Average cost.* The calculated cost, determined by recent actual local costs and current cost estimates, considered necessary for carrying out BMP's or an identifiable unit thereof.

(i) *Best Management Practice (BMP).* A single practice or a system of practices included in the approved RCWP application that reduces or prevents agricultural nonpoint source pollution to improve water quality.

(j) *BMP cost.* The amount of money actually paid or obligated to be paid by the participant for equipment use, materials, and services for carrying out BMP's or an identifiable unit of a BMP. If the participant uses his or her own resources, the cost includes the computed value of his or her own labor, equipment use, and materials.

(k) *Contract.* The legal document, that includes the water-quality plan and is executed by the participant and the administering agency. It details the agreement between parties for carrying out BMP's on the participant's land.

(l) *Cost-share level.* The percentage of the total cost of installing BMP's included in the participant's contract that is paid by the administering agency.

(m) *Critical areas or sources.* Those finite areas or sources of agricultural nonpoint source pollutants identified as having the most significant impact on the quality of the receiving waters.

(n) *Federal Management Circular FMC 74-4.* "Cost Principles Applicable to Grants and Contracts with State and Local Governments."

(o) *Financal burden.* The participant's contribution to the total cost of BMP's that would be inequitable or probably prevent participation in RCWP.

(p) *Identifiable unit.* A component of a BMP that can be clearly identified in carrying out BMP's in the water quality plan.

(q) *Letter of Credit—Treasury Regional Disbursing Officer System.* The system whereby the letters of credit are maintained and serviced by Treasury disbursing centers and Treasury regional disbursing officers.

(r) *Management agency.* The Federal, State, interstate, regional, or local agency designated by the Governor to carry out the approved agricultural portion of the 208 water-quality management plan.

(s) *OMB Circular A-34.* "Instructions on Budget Execution."

(t) *OMB Circular A-102 (Rev.)* Office of Management and Budget Uniform Administrative Requirements for Grants-in-Aid to State and local governments.

(u) *Offsite benefits.* Those favorable effects of BMP's that occur away from the land of the participant receiving RCWP assistance and accrue to the public as a result of improved water quality.

(v) *Participant.* A landowner or operator who applies for and receives assistance under RCWP.

(w) *Participants water quality plan.* The plan which identifies critical agricultural nonpoint source(s) of water quality problems and sets forth BMP's which contribute to meeting the water quality objectives of the project.

(x) *Privately owned rural land.* Those lands not held by Federal, State, or local governments which include cropland, pastureland, forest land, rangeland, and other associated lands.

(y) *RCWP projects.* The total system of BMP's, institutional arrangements, and technical, cost-sharing, and administrative assistance activities that are authorized in a RCWP project area.

(z) *Standards and specifications.* Requirements that establish the minimum acceptable quality level for planning, designing, installing, and maintaining BMP's.

(aa) *State.* Any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Marianas, and the Trust Territory of the Pacific Islands.

(bb) *Technical assistance cost.* Those direct and indirect costs associated with the preparation and review of participant water quality plans; design, layout and application of BMP's; and investigations associated with monitoring and evaluating progress toward meeting project objectives.

(cc) *Treasury Circular 1075 (Rev.).* Uniform Administrative Requirements for Grants-in-Aid to State and local governments.

Subpart B—Project Authorization and Funding

§ 634.10 Applicability.

RCWP is applicable in project areas that meet the criteria for eligibility contained in § 634.12 and are authorized for funding by the Administrator, SCS.

§ 634.11 Availability of funds.

(a) The provisions of the program are subject to the appropriation of funds by Congress to the U.S. Department of Agriculture.

(b) The allocation of funds to the administering agencies is to be made on the basis of the total funds needed to carry out the project.

(c) The obligation of Federal funds for RCWP contracts with participants is to be made on the basis of the total contract costs.

§ 634.12 Eligible project areas.

(a) Only those project areas which are included in an approved agricultural portion of a 208 water quality management plan, or revised portions thereof, and have identified agricultural nonpoint source water quality problems are eligible for authorization under RCWP. Those critical areas or sources of pollutants significantly contributing to the water quality problems are eligible for financial and technical assistance.

(b) The management agency designated by the Governor under section 208(c)(1) of the Act to implement the agricultural portion of the 208 plan must assure in writing in the project application that there will be an adequate level of participation by land owners or operators with critical areas or sources in a project area.

(c) An RCWP project area is a hydrologically related land area. Exceptions may be made for ease of administration, or to focus on concentrated critical areas. To be designated as an RCWP project area eligibile for authorization, the area's water quality problems must be related to agricultural nonpoint source poliutants, including sediment animal waste, irrigation return flows, runoff, or leachate that contain high concentrations of nitrogen, phosphorus, dissolved solids, toxics (pesticides and heavy metals), or high pathogen levels. Generally, the project areas will be less than 200,000 acres.

§ 634.13 Project applications.

(a) The SRCWCC is to assure that a process exists to prepare the RCWP project applications for submission by the Governor in order of priority to the Administrator, SCS, through the State Conservationst, SCS. This process must include the opportunity for public participation, especially participation by potential RCWP participants. Applications will be submitted in conformance with OMB Circular A-95.

(b) The preparation and submission of applications are to be based on the priorities established by the Governor and data and information in the approved agricultural portion of the State or areawide 208 water quality management plan.

(c) Applications shall contain the following components. Additional material may be added when, in the judgment of the applicant, it is needed to fully support the application and/or would enhance the probability of project authorization. Information provided under each component shall be in sufficient detail to permit the NRCWCC to evaluate the application using priority criteria in § 634.14.

(1) *Description of the project area,*

(2) *Severity of the water quality problem,*

(3) *Objectives and planned action,*

(4) *Schedule for carrying out the plan, and*

(5) *Estimated cost.* This component is to identify and show the basis for those costs associated with completing the project. The project application shall include an estimate of the total cost of the project, the Federal contribution, and the non-Federal contribution. The Federal contribution shall not exceed 50 percent unless the application, based on offsite benefits and financial burden, show that a higher level is appropriate.

(6) *Estimated water quality benefits and effects.*

(7) *Arrangements for project administration.* This component is to set out the applicant's plan for carrying out the program in the project area. The plan should:

(i) Identify the administering agency and document the capability of the agency to carry out the responsibilities described in § 634.4(p). In addition, information should be included to describe the administering agency staff, the location of that staff relative to the project area, and the experience of the agency in administering comparable grant programs.

(ii) Where appropriate, describe the specific arrangements that have been made, or that are anticipated, for local, State, and Federal agency participation such as technical assistance and other cost-sharing programs.

(8) *Attachments.* The following attachments are the minimum required with each application:

(i) A letter from the water-quality management agency designated by the Governor to carry out the approved agricultural portion of the 208 water quality management plan for the area or source certifying that the BMPs to be cost shared are consistent with the BMP's in the 208 plan,

(ii) A letter from the designated management agency which assures and sets out a strategy for reaching an adequate level of participation (§ 634.5(a)),

(iii) As appropriate, the preapplication for Federal assistance (OMB Circular A-102) from the identified administering agency; and

(iv) A listing of the prevailing cost-share levels of other programs in the project area.

§ 634.14 Review and approval of project applications.

(a) In reviewing applications and recommending priorities, the NRCWCC will consider the following:

(1) Severity of the water quality problem caused by agricultural and silvicultural related pollutants, including:

(i) State designated uses of the water affected,

(ii) Kinds, sources, and effects of pollutants, and

(iii) Miles of stream or acres of water bodies affected,

(2) Demonstration of public benefits from the project, including:

(i) Effects on human health,

(ii) Population benefited by improved water quality,

(iii) Effects on the natural environment, and

(iv) Additional beneficial uses of the waters that result from improvement of the water quality,

(3) Economic, and technical feasibility to control water quality problems within the life of the project, including:

(i) Cost effectiveness of BMP's,

(ii) Size of the area and BMP's needed, and

(iii) Cost per participant and cost per acre for solution of problem,

(4) State and local imput in the project area, including:

(i) Funds for cost-sharing, technical, and administrative costs. States or local governments with their own cost-share programs may receive greater consideration for the funding of RCWP projects,

(ii) Commitment of local leadership to promote the program, and

(5) The project area's contribution to meeting the national water quality goals.

(b) Based on the project applications, the NRCWCC is to recommend an upper limit of the Federal contribution to the total cost of the project.

(c) All project applications will be reviewed by EPA. Project applications approval for funding require written EPA concurrence, except that the Administrator, SCS, may assume EPA's concurrence if EPA does not act within 45 days following receipt of the project application. EPA review of project applications will occur concurrently with review by the NRCWCC.

(d) The Administrator, SCS, will approve projects for funding. The NRCWCC acting through the Chairman will announce the approval of the project. The State Conservationist, SCS, through the SRCWCC, will also inform the other involved Federal, State, and local agencies of the approval.

§ 634.15 Agreements.

The State Conservationist, SCS, upon receiving notice of an approved project, is to enter into a grant agreement with the administering agency, except in those cases where USDA is to administer the program. When USDA retains administration, the State Conservationist, SCS, is to enter into a fund transfer agreement with the State Executive Director, ASCS.

(a) *Grant agreements.* Grant agreements detail the working arrangements and applicable operating regulations between SCS and the administering agency. A written grant agreement identifying the parties involved, their responsibilities for carrying out the program, and the amount of program funds to be encumbered by SCS is to be executed by the parties. This agreement is the fund obligating document. It also sets out the necessary working arrangements between parties for determining and allocating the administering agency's costs. All grants to administering agencies are to be in accordance with OMB Circular No. A-102, Department of the Treasury Circular No. 1075, and Federal Management Circular No. 74-4. State or local administering agency grants will be funded under Letter-of-Credit serviced by the U.S. Treasury Regional Disbursing Office, or by SCS approved advance/reimbursement financing arrangements subject to the terms and conditions of the grant agreement.

(1) The grant agreement will provide for payment of cost-sharing for BMP (§ 634.5(j)) and administrative costs (§ 634.5(c)).

(2) The grant agreement may provide for payment of technical assistance costs when the administering agency has the capability, and the SCS designates that agency to provide this assistance to RCWP participants.

(3) The administering agency is to monitor the performance of activities supported by RCWP grant funds to assure that time schedules and participant RCWP contract requirements are being met. Performance goals are to be measured against the terms of the grant agreement and program directives. When SCS determines that onsite technical inspections, certified completion data, and financial status reports do not provide adequate grant evaluation data, the following information may be requested:

(i) A comparision of actual accomplishments with the objectives established for the plan,

(ii) Reasons why established objectives were not met, and

(iii) Objectives established for the next reporting period.

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(4) Grant agreements may be amended by mutural agreement of the parties to the agreement. SCS may unilaterally amend agreements when the sole consideration is a change in the cost and the Administrator, SCS, based on NRCWCC recommendations, determines that such an adjustment is necessary to carry out the program efficiently and effectively.

(b) *Fund transfer agreements.* When it is impractical for SCS to enter into agreements with local soil conservation districts, State soil and water conservation agencies, or State water quality agencies to administer the program in a project area, USDA will retain program administration. In this case, the State Executive Director, ASCS, and the State Conservationist, SCS, are to enter into an agreement for the transfer of funds to ASCS through county ASC committees for activities included in administrative cost (§ 634.5(c)) and BMP cost (§ 634.5(j)). The following general working arrangements are to apply:

(1) Administering contracts, making cost-share payment, and program reporting are to be provided by ASCS as the administering agency.

(2) SCS, or its designee, with appropriate Federal or State agency support, will provide technical assistance to participants in preparing RCWP contracts and in carrying out their water-quality plans.

(c) *Agreements for services.* SCS may enter into an agreement for services with a State or local agency. The designee must meet the requirements of OMB Circular No A-102.

(d) *Contracts for services.* SCS may enter into contracts for services with individuals or firms for providing technical assistance.

§ 634.16 Suspension of grants.

(a) *Suspension orders.* Work on a project or on a portion or phase of a project for which a grant has been awarded, may be suspended by order of the State Conservationist, SCS. Suspension does not affect RCWP contracts existing at the time the suspension order is issued, or the administering agency's responsibility to make payments under such contracts unless specifically provided for in the suspend order. In no event will the participant's right to cost-share payment be diminished by action taken under this section.

(b) *Use of suspension orders.* Suspension may be required for good cause, such as default by the administering agency, failure to comply with the terms and conditions of the grant, realignment of programs, or advancements in the state of the art.

(c) *Contents of suspension orders.* Prior to issuance, suspension orders will be discussed with the administering agency and may be appropriately modified, in the light of such discussions. Suspension orders are to include:

(1) A clear description of the work to be suspended,

(2) Instructions as to the issuance of further orders by the administering agency for materials or services,

(3) Instructions as to the administering agency entering into new RCWP contracts in the project area,

(4) Instructions as to the administering agency servicing existing RCWP contracts in the project area, and

(5) Other instructions to the administering agency for minimizing Federal costs.

(d) *Issuance of suspension order.* Suspension orders are issued by the State Conservationist, SCS, by letter to the administering agency (certified mail, return receipt requested). A suspension order may not exceed forty-five (45) calendar days.

(e) *Effect of suspension order.* (1) Upon receipt of a suspension order, the administering agency shall promptly comply with its terms and take all reasonable steps to minimize costs allocable to the work covered by the order during the period of work suspension. During the suspension period, SCS shall either:

(i) Cancel the suspension order, in full or in part, and authorize resumption of work, or

(ii) Take action to terminate the work covered by such order as provided by § 634.17.

(2) If a suspension order is canceled, or the period of the order expires, the administering agency shall promptly resume the suspended work. An equitable adjustment shall be made in the grant period, the project period, or grant amount, or all of these, and the grant agreement may be amended:

(i) The suspension order results in an increase in the time, or cost properly allocable to, the performance of any part of the project; and

(ii) The administering agency asserts a written claim for such adjustment within thirty (30) days after the end of the period of work suspension. If no written claim is made, SCS may unilaterally make such adjustments.

(iii) Reasonable costs resulting from the suspension order shall be allowed in arriving at any terminations settlement.

(3) Costs incurred by the administering agency after a suspension order is delivered that are not authorized by this section or specifically authorized in writing by the State Conservationist, SCS, shall not be allowable costs.

§ 634.17 Termination of grant agreement.

(a) *Termination agreement or notice.* (1) The State Conservationist, SCS, may, based on evidence of failure to comply with the terms of the grant agreement, issue a notice of intent to terminate the grant agreement. The notice of intent to terminate has the force and effect of extending or modifying the conditions of the suspend order. Any modification of the conditions of the suspend order shall be shown in the notice and discussed with the administering agency. The State Conservationist shall give not less than ten (10) days written notice to the administering agency (certified mail, return receipt requested) of intent to terminate the grant in whole or in part.

(2) After the administering agency has been afforded an opportunity for consultation, the State Conservationist, SCS, may request authorization from the Administrator, SCS, to terminate the grant in whole or in part. If the Administrator, SCS, concurs in the termination action, the proposed termination notice will be forwarded to the Administrator, EPA, for concurrence.

(3) After the Administrators, SCS and EPA, have been informed of any expressed views of the administering agency and concurred in the proposed termination, the State Conservationist, SCS, may, in writing (certified mail, return receipt requested), terminate the grant in whole or in part.

(4) Termination of all or part of the grant agreement may be carried out by either execution of a termination agreement by the State Conservationist, SCS, or issuance of a grant termination notice by the State Conservationist, SCS. The agreement or notice shall establish the effective date of termination of the grant, the basis for settlement of grant termination costs, and the amount and date of payment of any sums due either party.

(b) *Basis for termination.* A grant may be terminated by SCS for good cause subject to negotiation and payment of appropriate termination settlement costs. Cause for termination by SCS includes:

(1) Failure by the administering agency to make satisfactory progress toward achieving an adequate level of participation; or other evidence satisfactory to the NRCWCC, Adminstrator, EPA, and the Administrator, SCS, that the administering agency has failed or is unable to perform in accordance with the provisions of the grant agreement; or

(2) Failure through no fault of the administering agency to achieve an adequate level of participation; or other evidence satisfactory to the NRCWCC, Administrator, EPA, and the Administrator, SCS, that the planned actions approved in the project application cannot be achieved.

(c) *Effect of grant termination.* (1)(i) In those cases where cause for grant termination is based on the administering agency's failure or inability to perform (634.17(b)(1)), upon termination, the administering agency must refund or credit to the United States that portion of the grant funds paid or owed to the administering agency and allocable to the terminated project work. Funds needed to meet unavoidable commitments may be retained. All other funds, including unexpened cost-sharing monies for existing RCWP contracts executed prior to the termination date, shall be refunded to the United States. The administering agency shall not make any new commitments or enter into any new RCWP contracts. The administering agency shall reduce the amount of other outstanding commitments insofar as possible and report to the State Conservationist, SCS, the uncommitted balance of funds awarded under the grant. The allowability of termination costs will be determined in conformance with applicable Federal cost principles.

(ii) Upon termination of a grant agreement, existing RCWP contracts and their related obligations will immediately, and in no case later than 5 calendar days be transferred to the ASCS county office to assure continuity in payments to participants. The State Conservationist, SCS, will immediately initiate action under § 634.15 to establish a new administering agency for completion of the project.

(2) In those cases where cause for grant termination is based on failure to achieve the planned actions through no fault of the administering agency, the termination agreement and amended grant agreement are to permit the administering agency to fulfill the obligations of its existing RCWP contracts. The administering agency shall not make any new commitments or enter into any new RCWP contracts without SCS approval.

§ 634.18 Termination of project.

(a) An RCWP project is terminated by the State Conservationist because an adequate level of participation cannot be achieved. Upon this determination, the State Conservationist shall publish in a newspaper of public record in the project area a notice of intent to terminate all or part of the grant agreement and the project (§ 634.7(c)), and an announcement of the time and place of a public hearing.

(b) No sooner than 15 days from the publication of the notice of intent to terminate all or part of the project and grant agreement, the State Conservationist will conduct a public hearing in the project area.

(c) If, based on the hearing record, the performance record of the administering agency, and the recommendations of the SRCWCC, the State Conservationist determines that the project will be terminated pursuant to § 634.17(c), the State Conservationist will enter into a grant termination agreement or issue a grant termination notice.

(d) The existing RCWP contracts will be transferred to the ASCS county office pursuant to § 634.17(c)(1)(ii).

(e) The State Conservationist will prepare a project close-out report summarizing the actions accomplished.

§ 634.19 Project completion and closeout.

(a) The maximum total life of a project shall be fifteen (15) years or less.

(b) The allowable contracting period may be increased if an adequate level of participation has been achieved and the designated management agency assures a significant increase in participation can be reached in a reasonable time.

(c) The grant or fund transfer agreement with an administering agency shall expire when the administering agency has fulfilled all of its obligations in the long-term RCWP contracts.

(d) When a project is completed, the administering agency is to provide the State Conservationist, SCS, a closcout report which summarizes the actions accomplished.

Subpart C—Participant RCWP Contracts

§ 634.20 Eligible land.

RCWP is only applicable to privately owned land. Land owned by corporations whose ownership is public (i.e., their stock is publicly traded over the market) is eligible for program assistance only if the corporation can document that the installation of BMP's places an inappropriate financial burden on the corporation.

§ 634.21 Eligible participants.

(a) Any landowner or operator whose land or activities in a project area is contributing to the area's agricultural nonpoint source water quality problems and who has an approved water quality plan is eligible to enter into an RCWP contract.

(b) This program will be conducted in compliance with all nondiscrimination requirements as contained in the Civil Rights Act of 1964 and amendments thereto and the Regulations of the Secretary of Agriculture (7 CFR 15.1–15.12).

§ 634.22 Application for assistance.

(a) Landowners or operators must apply for RCWP assistance through the office of the administering agency or its designee(s) by completing the prescribed application form.

(b) The priority for assistance among landowners and operators in developing water quality plans is to be determined jointly, through an agreed-to process, by the county ASC committee and the soil conservation district, with technical assistance from SCS.

(c) Applications that are ineligible or technically infeasible are to be returned to the applicant with a letter stating the reasons for disapproval. Applications that are of a low priority will be retained and the applicant will be sent a notice that the application is being held for a period to be determined locally for future consideration.

§ 634.23 Water quality plan.

(a) The participant's water quality plan, developed with technical assistance by the SCS or its designee, is to include appropriate BMP's identified in the approved agricultural portion of the 208 water quality management plan. Such BMP's must reduce the amount of pollutants that enter a stream or lake by:

(1) Methods, such as reducing the application rates or changing the application methods of potential pollutants, and

(2) Methods, such as practices or combinations of practices which prevent potential pollutants from leaving source areas or reduce the amount of potential pollutants that reach a stream or lake after leaving a source area.

(b) Participant's water quality plans shall as a minimum include BMP's for all critical areas or sources. The plans will include BMP's which are required but not cost-shared. Non-cost-shared BMP's, essential for the performance and maintenance of cost-shared BMP's shall be required as a condition of the RCWP contract.

(c) The participant is responsible for compliance with all other applicable Federal, State, and local laws that deal with the participant's nonpoint source water quality problems, such as the treatment, storage, and disposal of hazardous waste. BMP's required for compliance may be cost shared.

(d) It is recognized that the participants' water-quality plans upon which the RCWP contracts are to be based may include conservation measures other than those related to water quality improvement. These measures are not eligible for cost sharing under this program. The installation of such conservation measures will not be required as a condition of the RCWP contract and will not be shown in the time schedules for implementing BMP's.

(e) Time schedules for implementing BMP's are to be provided in the par-

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ticipant's water quality plan. The time schedule is to establish the length of the contract within the 5 to 10 year period established by law.

(f) The Soil Conservation Service will certify as to the technical adequacy of the water-quality plan.

(g) The soil conservation districts are to review and approve all water-quality plans and modifications.

§ 634.24 Cost sharing.

(a) The portion of BMP cost (including labor) to be cost shared shall be that part which the Secretary determines is necessary and appropriate. The value of land upon which BMP's are applied, or the participant's water rights, cannot be considered a part of the participant's share of the cost.

(b) The administering agency, in consultation with the county ASC committee(s), soil conservation district(s), and designated management agency will annually set maximum individual BMP cost-share levels for the project area. However, the Federal share of the cost of the contract cannot exceed 50 percent unless a variance has been granted.

(c) Recommended variances exceeding the 50 percent level must be in the public interest and based on the following criteria:

(1) The main benefits to be derived from measures are related to improving offsite water quality, and

(2) The matching share requirements would place a burden on the landowner or operator which would probably prevent him or her from participating in the program.

(d) BMP's to be cost shared must have a positive effect on water quality by reducing the amount of agricultural nonpoint source pollutants that enter a stream or lake.

(e) Cost sharing is not to be made available for:

(1) Measures installed primarily for bringing additional land into crop production, including but not limited to land clearing and brush removal;

(2) Measures installed primarily for increasing production on existing cropland, including but not limited to bedding, field ditches, open drains, and tile drains;

(3) Measures having flood protection as the primary purpose, including but not limited to open channels, clearing and snagging, and obstruction removal;

(4) Structural measures authorized for installation under Pub. L. 83-566.

(f) The Federal cost-share level is not to be reduced by the contribution of a State or subdivision thereof. Total payments from Federal, State, and local sources for a BMP may not exceed the total cost of that BMP.

§ 634.25 Contracting.

(a) To participate in RCWP, a landowner or operator must enter into a contract in which he or she agrees to apply his or her water-quality plan. Any person who controls, or shares control, of the farm, ranch, or other land for the proposed contract period (5 to 10 years) must sign the contract.

(b) Cost-sharing payments cannot be provided for any measure that is initiated before the contract is approved by the administering agency.

(c) The participant must furnish satisfactory evidence of his or her control of the farm, ranch, or other land. The administering agency is to determine the acceptability of the evidence and maintain current ownership evidence in the contract file.

(d) RCWP contracts shall include the basic contract document, special provisions as needed, the participant's water-quality plan, schedule of operations, and any other data necessary.

(e) SCS or its designee shall approve the technical adequacy of the RCWP contract and obtain the required signature of the participants. The SCS or its designee will provide the contract to the administering agency for certification of fund availability and for execution.

(f) Participants shall install best management practices according to the specifications that are applicable at the time measures are installed.

(g) SCS will provide technical assistance to participants for installing BMPs. The State Conservationist, SCS, or its designee may enter into contracts with qualified soil conservation districts or others to provide technical assistance.

(h) The RCWP contract is to require BMPs to be operated and maintained by the participant at no cost to that administering agency.

(i) The contract period is to be not less than 5 and not more than 10 years. A contract is to extend for at least 1 year after the application of the last cost-shared BMPs. All contract items are to be accomplished prior to contract expiration.

(j) A land owner or operator may enter into a contract jointly (pooling agreement) with other land owners or operators to solve mutual water quality problems. Each participant must enter into an RCWP contract to treat water quality problems not covered by the joint arrangement.

(k) Participants may use all available sources of assistance to accomplish their water-quality objectives. They are responsible for:

(1) Accomplishing the water-quality plan;

(2) Keeping the administering agency informed of their current mailing address;

(3) Obtaining, having in hand, and maintaining any required permits and landrights necessary to perform the planned work;

(4) Applying or arranging for the application of BMPs, as scheduled in the plan, according to approved standards and specifications;

(5) The operation and maintenance of BMPs installed during the contract period; and

(6) Obtaining the authorities, rights, easements, or other approvals necessary to maintain BMPs in keeping with applicable laws and regulations.

(l) Unless otherwise approved by the Administrator, SCS, and Administrator, EPA, the administering agency shall not enter into any new RCWP contracts after five (5) years of elapsed time from the date when RCWP funds are first made available to begin the project.

(m) Contracts may be terminated due to hardship by mutual agreement if the administering agency and the State Conservationist, SCS, determine that such action would be in the public interest.

§ 634.26 Contract modifications.

(a) The administering agency may modify contracts previously entered into if it is determined to be desirable to carry out the purposes of the program, facilitate the practical administration thereof, or to accomplish equitable treatment with respect to other conservation, land-use, or water-quality programs.

(b) Requirements of active contracts may be waive or modified by the administering agency only if such waiver or modification is specifically provided for in these regulations. SCS concurrence in modifications is necessary when modifications involve a technical aspect of the participant's water-quality plan. A contract may be modified only if it is determined that such modifications are desirable to carry out purposes of the program or to facilitate the program's practical administration.

(c) Contracts may be modified to add, delete, substitute, or reinstall best management practices when:

(1) The installed measure failed to achieve the desired results through no fault of the participant,

(2) The installed measure deteriorated because of conditions beyond the control of the participant, or

(3) Another BMP is substituted that will achieve the desired results.

(d) Contract modifications are not required when items of work are accomplished prior to scheduled completion or within 1 year following the year of scheduled completion.

(e) If, during the contract period, all or part of the right and interest in the land is transferred by sale or other

transfer action, the contract is terminated on the land unit that was transferred and the participant having control over such land:

(1) Forfeits all right to any future cost-share payments on the transferred land unit, and

(2) Must refund with interest all cost-share payments that have been made on the transferred land unit unless the new land owner or operator becomes a party to the contract, except that where it is determined by the administering agency, with the approval of the State conservationist, SCS, that the established BMPs will provide water quality benefits for the design life of the BMP, the payment may be retained.

(f) If the new land owner or operator becomes a party to the contract:

(1) Payment which has been earned, but not made to the participant who applied the BMPs and had control prior to the transfer, can be made,

(2) Such land owner or operator is to assume all obligations of the previous participant on the transferred land unit,

(3) The contract with the new participant is to remain in effect with the original terms and conditions, and

(4) The contract is to be modified in writing to show the changes caused by the transfer. If the modification is not acceptable to the administering agency, the provisions of (e)(1) and (2) of this section apply.

(g) The transfer of all or part of a land unit by a participant does not affect the rights and obligations of other participants who have signed the contract.

§ 634.27 Cost-share payment.

(a) *General.* Participants are to obtain or contract for materials or services as needed to install BMPs. Federal Cost-share payments are to be made by the administering agency upon certification by the District Conservationist, SCS, or its designee, that the BMPs, or an identifiable unit thereof, have been properly carried out and meet the appropriate standards and specifications.

(b) *Payment maximum.* The maximum total Federal cost-share payment to a participant shall be limited to $50,000. Exceptions to this limit may be made by the administering agency with concurrence of the Administrator, SCS, upon recommendation of the NRCWCC, where it determines that the main benefits to be derived are essential for meeting the water quality objectives in the project area.

(c) *Basis for cost-share payment.* (1) Cost-share payments are to be made by the administering agency at the cost-share percentage and by one of the following methods designated by the administering agency and set out in the contract:

(i) Average cost, or

(ii) Actual cost not to exceed average cost.

(2) If the average cost at the time of starting the installation of a BMP or identifiable unit is less than the costs specified in the contract, payment is to be at the lower rate. If the costs at the start of installation are higer, payment may be made at the higher rate. A modification will be necessary if the higher cost results in a significant increase in the total cost-share obligation. Cost-share payment is not to be made until the modification reflecting the increase is approved.

(d) *Average cost development.* Average costs are to be developed by the administering agency for each project using cost data from the local area. These costs should be reviewed by the SRCWCC for consistency with average costs in other USDA programs. The average cost list is to be updated annually by the administering agency.

(e) *Application for payment.* Cost-share payments can be made by the administering agency after a participant has carried out a BMP or an identifiable unit of a BMP. Application for payment must be submitted to the administering agency, be certified by the SCS or its designee, and be supported by such cost receipts as are required by the administering agency. It is the participant's responsibility to apply for payments.

(f) *Authorizations for payments to suppliers.*

(1) The contract may authorize that part or all of the Federal cost share for a BMP or an identifiable unit be made directly to suppliers of materials or services. The materials or services must be delivered or performed before payment is made.

(2) Federal cost shares will not be in excess of the cost share attributable to the material or service used or not in excess of the cost share for all identifiable units as may be requested by the participant.

(g) *Material inspection and analysis.* When authorizations for payments to suppliers are specified, the administering agency, its representatives, or the Government reserve the right to inspect, sample, and analyze materials or services prior to their use.

(h) *Assignments, set-offs, and claims.* (1) A state or local administering agency may allow the assignment of payments to the extent provided by State law. When ASCS is designated as the administering agency, assignments by any participant who may be entitled to cost-share payment under the program are prohibited unless they are made in accordance with the provisions of section 203, Title 31, U.S.C., as amended, and section 15, Title 41, U.S.C., as amended.

(2) If any participant to whom compensation is payable under RCWP is indebted to the United States and such indebtedness is listed on the county register of indebtedness maintained by the County ASC committee, the compensation due the participant must be used (set-off) to reduce that idebtedness. Indebtedness to USDA is to be given first consideration. Deductions for setoffs involving a nonresident alien shall be made as provided by 26 U.S.C. 871. Setoffs made pursuant to this section are not to deprive the participant of any right to contest the justness of the indebtedness involved, either by administrative appeal or by legal action.

(3) Any cost-share payment due any participant shall be allowed without deduction of claims for advances except as provided for above and without regard to any claim or lien against any crop, or proceeds thereof, in favor of the participant or any other creditor.

(i) *Access to land unit and records.* Any authorized administering agency, or SCS employees or agents, shall have the right of access at reasonable times to land under application or contract, and the right to examine any program records to ascertain the accuracy of any representations made in the application or contract. This is limited to the right to furnish technical assistance and to inspect work performed under the contract.

(j) *Suspension of payments.* No cost-share payments will be made pending a decision on whether or not a contract violation has occurred.

(k) *Incligible payments.* The filing of requests for payment for BMP's not carried out, or for BMP's carried out in such a manner that they do not meet contract specifications, constitutes a violation of the contract.

§ 634.28 Appeals not related to contract violations.

(a) The participant may, prior to execution of the contract, request that the administering agency review or reconsider criteria being used in developing his or her contract. Such review or reconsideration may include the eligibility of BMP's which had not been approved for application in the project area, cost-sharing levels for BMP's, priorities for developing water quality plans, and standards and specifications.

(1) If verbal agreement is not reached, the participant may make a written request within 30 days after receiving notice of the decision of his or her verbal request.

(2) The administering agency shall have 30 days in which to make a deci-

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sion and notify the participant in writing.

(3) The decision of the administering agency shall be final.

(b) If, after the contract has been executed, the participant and the administering agency are unable to reach written agreement relative on matters which are not related to contract violations, the participant may request and receive a review by the appeals board. The administering agency will:

(1) Notify the participant, in writing, of the date the appeals board will consider the appeal.

(2) Within 30 days after receiving the administering agency's notice, the participant may file a request to appear and present oral and other evidence. If the participant does not request an appearance, the administering agency appeals board will decide the dispute on the evidence available to them, including statements or briefs of the authorized representatives of the soil conservation district and SCS. The administering agency shall notify the participants of the appeals board's decision in writing. There shall be no further administrative appeal of this decision.

(c) *Filing of documents.* A document is considered filed when it is received in the office of the person or agency concerned.

§ 634.29 Violations.

(a) *Actions causing violations.* The following actions constitute violation of a contract by a participant:

(1) Knowingly or negligently damaging or causing BMP's to become impaired.

(2) Adopting a land use or practice during the contract period which tends to defeat the purposes of the program.

(3) Failing to comply with the terms of the contract.

(4) Filing a false claim.

(5) Misusing authorizations for payment.

(b) *Contract termination as a result of violations.* (1) By signing a contract, the participant agrees to forfeit all rights to further cost-sharing payments under a contract and to refund all cost-share payments received, with interest, if the administering agency, with the concurrence of the State Conservationist, SCS, determines that:

(i) There was a violation of the contract during the time the participant had control of the land; and

(ii) The violation was of such a nature as to warrant termination of the contract.

(2) The participant shall be obligated to refund all cost-share payments and all cost shares paid under authorizations, with interest, at the rates established by the Secretary of the Treasury pursuant to Pub. L. 92-41, 85 Stat. 97.

(c) *Payment adjustments and refunds resulting from violations.* (1) By signing a contract, the participant agrees to refund cost-share payments received under the contract or to accept payment adjustments if the administering agency determines and the State Conservationist, SCS, concurs that:

(i) There was a violation of the contract during the time the participant had control of the land; and

(ii) The nature of the violation does not warrant termination of the contract.

(2) Payment adjustments may include decreasing the rate of cost share, or deleting from the contract a cost-share commitment, or withholding cost-share payments earned but not paid. The participant who signs the contract may be obligated to refund cost-share payments.

§ 634.30 Appeals in USDA-administered projects.

Appeals in USDA administered RCWP projects. The participant in a USDA-administered RCWP project may appeal decisions of the administering agency under the ASCS appeals procedures set out in 7 CFR Part 780.

§ 634.31 Appeals of contract violations.

(a) *Scope.* This section prescribes the regulations dealing with contract violations. The Administrator, SCS, reserves the right to revise or supplement any of the provisions of this section at any time if the action does not adversely affect the participant, or if the participant has been officially notified before this action is taken.

(b) *Determination by administering agency.* Upon notification that a contract violation may have occurred, the administering agency:

(1) Determines that a violation did not occur or that the violation was of such a nature that no further action is to be taken; or

(2) Determines that a violation did occur and the participant agrees to accept a written penalty of forfeiture, refund, payment adjustment, or termination. If no agreement is reached, further action is to be taken.

(c) *Notice of possible violation.* (1) When the administering agency is notified that a contract violation may have occurred and the matter is not resolved under § 634.31(b)(1) it shall notify, in writing, each participant who signed the contract of the alleged violation. This notice setting forth the alleged violation may be personally delivered or sent by certified or registered mail. A participant is considered to have received the notice at the time of personal receipt acknowledged in writing, at the time of delivery of a certified or registered letter, or at the time of the return of a refused certified or registered letter.

(2) The notice shall give the participant an opportunity to appear at a hearing before an appeals board. The participant's request for a hearing shall be submitted in writing, and must be received by the appeals board within 30 days after receipt of the notice. The participant shall be notified in writing by the appeals board of the time, date, and place for the hearing. The participant shall have no right to a hearing if he does not file a written request for a hearing, or if he or his representative does not appear at the appointed time, unless the appeals board, at its discretion, permits an appearance. A request for a hearing filed by a participant shall be considered to be a request by all participants who signed the contract.

(d) *Hearing.* The appeals board shall conduct an open hearing to obtain the facts about the alleged violation. The appeals board shall limit the hearing to relevant facts and evidence, and shall not be bound by the strict rules of evidence. Witnesses may be sworn in at the discretion of the appeals board.

(1) The participant or his or her representative shall be given full opportunity to present oral or documentary evidence about the alleged violation. Likewise, the administering agency may submit statements and evidence. Individuals not otherwise represented at the hearing may, at the discretion of the appeals board, be permitted to give information or evidence. The appeals board, at its discretion, may permit witnesses to be cross-examined.

(2) The appeals board shall make a record of the hearing. A summary of the testimony may be made if both the participant and the appeals board agree. A transcript of the hearing shall be made if requested by either the appeals board or the participant within 10 days prior to the hearing. If a transcript is requested by the participant, the participant may be assessed the cost of a copy of the transcript.

(3) The appeals board shall, after a reasonable period of time, close the hearing if the participant or his or her representative is not present at the scheduled time. The appeals board may, at its discretion, accept information and evidence submitted by others present for the hearing.

(4) The appeals board shall furnish the administering agency and the State Conservationist, SCS, with a written report setting forth their findings, conclusions, and recommendations. The report shall include the summary or testimony or transcript made of the hearing and any other information which would aid the administering agency in reaching a decision.

(e) *Decision by the administering agency.* The administering agency shall make a decision within 30 days on the basis of the appeals board report, recommendations of soil conservation district board, if any, and any other information available, including if applicable, the amount of the forfeiture, refund, or payment adjustment. The decision shall state whether the violation is of such a nature as to warrant termination of the contract. The administering agency shall notify, in writing, each participant who signed the contract of its decision. The administering agency may authorize or require the reopening of any hearing before the appeals board for any reason at any time before their decision. The administering agency's decision shall be final.

(1) If the decision provides for termination of the contract, it shall state that the contract is terminated and that all rights to further cost-share payments under the contract are forfeited and that all cost-share payments received under the contract shall be refunded with interest. The decision is to state the amount of refund and method of payment.

(2) If the decision does not provide for termination of the contract, the participant may be required to make a refund of cost-share payments or to accept payment adjustments. The decision shall state the amount and justification for refunds of cost-share payments or payment adjustments.

Subpart D—Financial Mangement

§ 634.40 Financial Management.

(a)(1) Finance and accounting will be in conformance with Office of Management & Budget Circular A-102, (Rev.); U.S. Department of Health, Education & Welfare Brochure OASC-10, Federal Management Circular FMC 74-4, "Cost Principles Applicable to Grants and Contracts with State and Local Government"; Department of the Treasury, Department Circular No. 1075 (4th Rev.), "Withdrawal of Cash from the Treasury for Advances under Federal Grant and other Programs"; Office of Management & Budget Circular No. A-34, "Instruction on Budget Execution"; U.S. Treasury Requirements Manual for Guidance of Departments and Agencies; and General Accounting Office Policy & Procedures Manual for Guidance of Federal Agencies.

(2) Administering agency RCWP grants will be funded under Letter-of-Credit serviced by the U.S. Treasury Regional Disbursing Office (RCO), subject to the terms and conditions of the grant agreement or by SCS approved advance/reimbursement financing agreements.

(3) The State of local administering agency shall maintain a financial management system which provides accurate and complete disclosure of the financial status of the RCWP grant in accordance with prescribed reporting requirements.

(4) The State or local administering agency shall upon request make its financial management system records available to SCS, USDA Office of Inspector General, and the General Accounting Office.

(5) Participation in comprehensive USDA/EPA joint water quality monitoring, evaluating, and analysis will be funded according to the plan approved in § 634.50(a)(3).

(b)(1) The carrying out of RCWP will require both financial and performance reporting to the Soil Conservation Service by participating USDA and State or local agencies.

(2) USDA participating agencies shall furnish SCS with reports prescribed by the U.S. Treasury Department; Office of Management & Budget; Administrative Regulations of the U.S. Department of Agriculture; and other reports required by law, regulation, or agreement.

(3) State or local administering agencies shall furnish financial status reports to SCS on a quarterly basis as required by the grant agreement. The administering agency is also to provide and audit report upon request. The audit report is to be prepared in sufficient detail to allow SCS to determine that funds have been used in compliance with applicable laws, regulations, and the grant agreement.

§ 634.41 [Reserved]

Subpart E—Monitoring and Evaluation

§ 634.50 Program and project monitoring and evaluation.

(a) *Comprehensive USDA/EPA joint water quality monitoring, evaluation, and analysis.*

(1) Representative RCWP project areas will be selected to evaluate the improvement in water quality in the project area and to make projections on a nationwide basis. Water-quality monitoring, evaluation, and analysis will be conducted to evaluate the overall cost and effectiveness of projects and BMPs to provide information on the impact of the program on improved water quality and for general RCWP program management.

(2) Monitoring, evaluation, and analysis is a joint USDA/EPA responsibility. Subject to appropriation of funds, the Administrator, SCS, and EPA are jointly to select the project areas to be monitored and evaluated based on a list of project areas recommended by the NRCWCC.

(3) The Administrator, SCS, and Administrator, EPA, are jointly to determine the criteria to be used for comprehensive water-quality monitoring, evaluation, and analysis in the selected project areas. A monitoring and evaluation plan is to be developed and agreed to by SCS and EPA prior to initiating a project selected for monitoring and evaluation. The State water-quality agency and other Federal, State, and local agencies will be involved in the development of the plan for water-quality evaluation. The involvement of concerned agencies in implementing the plan will be determined at the time the plan is prepared.

(4) The project areas selected for detailed analysis are to be representative of agricultural and silvicultural nonpoint source pollution problems, categories of agriculture and silvicultural nonpoint source pollutants, agricultural enterprises, and BMPs used in the RCWP.

(5) Preference in the selection of project areas for comprehensive evaluation is to be given to those project areas for which long-term baseline information exists on land use, hydrologic data, and water quality.

(6) Monitoring and evaluation of selected project areas is to begin sufficiently in advance of the installation of BMPs to document, in a statistically satisfactory manner, existing land-use practices and baseline water-quality problems.

(7) The water quality monitoring and evaluation plan will provide sufficient basic information to adequately describe the land use, hydrologic water quality relationship. As a minimum, the plan will contain the following components:

(i) Chemical and physical water quality monitoring,

(ii) Bilogical monitoring,

(iii) Appropriate hydrologic data,

(iv) Soils properties and characteristics, topographic information,

(v) Land use and farm inventory.

(b) *Program and project evaluation.* (1) There will be a continuing evaluation of the Rural Clean Water Program to measure its effectiveness and for each project for which cost-sharing funds are provided.

(2) Program and project evaluations will be conducted under the direction of the Assistant Secretary for Conservation, Research and Education, USDA, the Director of Economics, Policy Analysis, and Budget, USDA; and the Assistant Administrator for Water and Waste Management, EPA; or their representatives working through NRCWCC.

(3) Evaluative reports for the program and each project area will be submitted annually to the Secretary

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of Agriculture and the Administrator, EPA.

(c) *Funding.* (1) Research oriented activities will be from sources other than RCWP.

(2) Funding for program and project monitoring and evaluation will be provided through RCWP and other authorizations.

§ 634.51 [Reserved]

[FR Doc. 78-30685 Filed 10-31-78; 8:45 am]

[3410-02-M]

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

[Orange and Grapefruit Regulation 30]

PART 906—ORANGES AND GRAPEFRUIT GROWN IN TEXAS

Grade and Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation specifies grade and size requirements for oranges and grapefruit grown in Texas for the period November 6-December 11, 1978. This regulation is needed to provide for orderly marketing in the interest of producers and consumers.

EFFECTIVE DATE: November 6, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: Findings. Pursuant to the marketing agreement, as amended, and order No. 906, as amended (7 CFR Part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grands Valley in Texas, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Texas Valley Citrus Committee, established under this marketing order, and upon other information, it is found that the limitation of handling of oranges and grapefruit, as hereafter provided, will tend to effectuate the declared policy of the act.

The following regulation reflects the Department's appraisal of the need for regulation based on the current and prospective crop and market conditions. The grade and size requirements are necessary to prevent the shipment of Texas oranges and grapefruit of lower grades and sizes than specified, and are designed to provide ample supplies of acceptable quality oranges and grapefruit in the interest of producers and consumers pursuant to the declared policy of the act. These requirements would be the same as those currently in effect through November 5, 1978, under § 906.360 Orange and Grapefruit Regulation 29 (42 FR 57299; 43 FR 4033).

The 1978-79 season Texas orange crop is estimated at 6,300,000 boxes (85 pounds net weight), compared with 6,100,000 produced in 1977-78, and 6,900,000 in 1976-77. The crop is of excellent quality, and fruit sizes are comparable to those of the past 2 seasons. The 1978-79 season Texas grapefruit crop is estimated at 11,000,000 boxes (80 pounds net weight), compared with 11,900,000 produced in 1977-78, and 12,400,000 in 1976-77. The crop is of excellent quality, and fruit sizes are much larger than those of the past 2 seasons. Growing conditions have been favorable and soil moisture is adequate. Hence, considering the available supply and the reported quality and size of the fruit ample quantities of both oranges and grapefruit meeting these grade and size requirements will be available to meet the demand for these fruits.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking and postpone the effective date until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulations at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

Accordingly, it is found that the requirements for the handling of Texas oranges and grapefruit should be and are established as follows:

§ 906.361 Orange and Grapefruit Regulation 30.

(a) During the period November 6, 1978, through December 11, 1978, no handler shall handle any variety of oranges or grapefruit grown in the production area unless:

(1) Such oranges grade U.S. Fancy, U.S. No. 1, U.S. No. 1 Bright, U.S. No. 1 Bronze, U.S. Combination (with not less than 60 percent, by count, of the oranges in any lot thereof grading at least U.S. No. 1), or U.S. No. 2;

(2) Such oranges are at least pack size 288, as such size is specified in § 51.691(c) of the U.S. Standards for Oranges (Texas and States other than Florida, California, and Arizona), except that the minimum diameter limit for pack size 288 oranges in any lot shall be 2⁹⁄₁₆ inches;

(3) Such grapefruit grade U.S. Fancy, U.S. No. 1, U.S. No. 1 Bright, U.S. No. 1 Bronze, or U.S. No. 2;

(4) Such grapefruit are at least pack size 96, as such size is specified in § 51.630(c) of the U.S. Standards for Grapefruit (Texas and States other than Florida, California, and Arizona), except that the minimum diameter limit for pack size 96 grapefruit in any lot shall be 3⁹⁄₁₆ inches: *Provided*, That any handler may handle grapefruit smaller than pack size 96, provided such grapefruit grade at least U.S. No. 1 and they are at least pack size 112, as such size is specified in the aforesaid U.S. Standards for Grapefruit, except that the minimum diameter limit for pack size 112 grapefruit in any lot shall be 3⁹⁄₁₆ inches;

(5) An appropriate inspection certificate has been issued for such fruit within 48 hours prior to the time of shipment; and

(6) The fruit meets all the applicable container and pack requirements effective under this marketing agreement and order.

(b) Terms used in this section shall have the same meaning as in the marketing order, and terms relating to grade and diameter shall have the same meaning as in the United States Standards for Oranges (Texas and States other than Florida, California, and Arizona) (7 CFR 51.680-51.714), or in the United States Standards for Grapefruit (Texas and States other than Florida, California, and Arizona) (7 CFR 51.620-51.653).

(Secs. 1-19, 48 Stat. 31, as amended (7 U.S.C. 601-674).)

Dated: October 27, 1978.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 78-30902 Filed 10-31-78; 8:45 am]

[3410-02-M]

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Expenses of the Raisin Administrative Committee, and Rate of Assessment, for the 1978-79 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation authorizes expenses, and a rate of assessment, for the 1978-79 crop year, to be collected from handlers to support activities of the committee which locally administers the Federal marketing order covering raisins produced from grapes grown in California.

DATES: Effective August 1, 1978, through July 31, 1979.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: Findings. Pursuant to Marketing Order No. 989, as amended (7 CFR Part 989), regulating the handling of raisins produced from grapes grown in California, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the committee, established under this marketing order, and upon other information, it is found that the expenses and rate of assessment, as hereinafter provided, will tend to effectuate the declared policy of the act.

§ 989.329 Expenses and rate of assessment.

(a) Expenses that are reasonable and likely to be incurred by the committee during the 1978-79 crop year will amount to $244,000.

(b) The rate of assessment for said period payable by each handler in accordance with § 989.80 is fixed at $3.50 per ton for: (1) Free tonnage raisins acquired by the handler during the crop year, exclusive of such quantity thereof as represents the assessable portions of other handlers' raisins under paragraph (b)(3) of this section; (2) reserve tonnage raisins released or sold to the handler for use as free tonnage during that crop year; and (3) standard raisins (which he does not acquire) recovered by the handler by the reconditioning of off-grade raisins but only to the extent of the aggregate quantity of the free tonnage portions of these standard raisins that are acquired by other handlers during the crop year.

It is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in public rulemaking, and that good cause exists for not postponing the effective time of this action until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553), as the order requires that the rate of assessment for a particular year shall apply to all assessable raisins handled from the beginning of such year which began August 1, 1978. To enable the committee to meet crop year obligations, approval of the expenses and assessment rate is necessary without delay. Handlers and other interested persons were given an opportunity to submit information and views on the expenses and assessment rate at an open meeting of the committee. It is necessary to effectuate the declared purposes of the act to make these provisions effective as specified.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.)

Dated: October 27, 1978.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division.

[FR Doc. 78-30903 Filed 10-31-78; 8:45 am]

[6210-01-M]

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS

Changes in Rates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Change in discount rates.

SUMMARY: The Board of Governors has amended its Regulation A, "Extensions of Credit By Federal Reserve Banks," for the purpose of adjusting discount rates with a view to accommodating commerce and business in accordance with other related rates and the general credit situation of the country.

Pursuant to the authority of 5 U.S.C. 553(b)(B) and (d)(3), these amendments are being published without prior general notice of proposed rulemaking, public participation, or deferred effective date. The Board has for good cause found that economic and financial considerations require that these amendments must be adopted immediately and that delay would be contrary to the public interest.

EFFECTIVE DATE: The changes were effective on the dates specified below.

FOR FURTHER INFORMATION CONTACT:

Theodore E. Allison, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, 202-452-3257.

Pursuant to section 14(d) of the Federal Reserve Act (12 U.S.C. 357), Part 201 is amended as set forth below:

1. Section 201.51 is amended to read as follows:

§ 201.51 Advances and discounts for member banks under sections 13 and 13a.

The rates for all advances and discounts under sections 13 and 13a of the Federal Reserve Act (except advances under the last paragraph of such section 13 to individuals, partnerships, or corporations other than member banks) are:

Federal Reserve Bank of	Rate	Effective
Boston	8½	Oct. 16, 1978.
New York	8½	Do.
Philadelphia	8½	Oct. 20, 1978.
Cleveland	8½	Oct. 16, 1978.
Richmond	8½	Do.
Atlanta	8½	Do.
Chicago	8½	Do.
St. Louis	8½	Do.
Minneapolis	8½	Do.
Kansas City	8½	Do.
Dallas	8½	Do.
San Francisco	8½	Do.

2. Section 201.52 is amended to read as follows:

§ 201.52 Advances to member banks under section 10(b).

(a) The rates for advances to member banks under section 10(b) of the Federal Reserve Act are:

Federal Reserve Bank of	Rate	Effective
Boston	9	Oct. 16, 1978.
New York	9	Do.
Philadelphia	9	Oct. 20, 1978.
Cleveland	9	Oct. 16, 1978.
Richmond	9	Do.
Atlanta	9	Do.
Chicago	9	Do.
St. Louis	9	Do.
Minneapolis	9	Do.
Kansas City	9	Do.
Dallas	9	Do.
San Francisco	9	Do.

(b) The rates for advances to member banks for prolonged periods and significant amounts under section 10(b) of the Federal Reserve Act and § 201.2(e)(2) of Regulation A are:

Federal Reserve Bank of	Rate	Effective
Boston	9¼	Oct. 16, 1978.
New York	9½	Do.
Philadelphia	9½	Oct. 20, 1978.
Cleveland	9½	Oct. 16, 1978.
Richmond	9½	Do.
Atlanta	9½	Do.
Chicago	9½	Do.
St. Louis	9½	Do.
Minneapolis	9½	Do.
Kansas City	9½	Do.
Dallas	9½	Do.
San Francisco	9½	Do.

3. Section 201.53 is amended to read as follows:

§ 201.53 Advances to persons other than member banks.

The rates for advances under the last paragraph of section 13 of the Federal Reserve Act to individuals, partnerships, or corporations other than member banks secured by direct obligations of, or obligations fully guaranteed as to principal and interest by, the United States or any agency thereof are:

Federal Reserve Bank of	Rate	Effective
Boston	11½	Oct. 16, 1978.
New York	11½	Do.
Philadelphia	11½	Oct. 20, 1978.
Cleveland	11½	Oct. 16, 1978.
Richmond	11½	Do.
Atlanta	11½	Do.
Chicago	11½	Do.
St. Louis	11½	Do.
Minneapolis	11½	Do.
Kansas City	11½	Do.
Dallas	11½	Do.
San Francisco	11½	Do.

(12 U.S.C. 248(i). Interprets or applies 12 U.S.C. 357)

By order of the Board of Governors. October 23, 1978.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc. 78-30750 Filed 10-31-78; 8:45 am]

[8010-01-M]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release No. SAB-24]

PART 211—INTERPRETATIVE RELEASES RELATING TO ACCOUNTING MATTERS

Subpart B—Staff Accounting Bulletins

STAFF ACCOUNTING BULLETIN No. 24

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: This interpretation describes a factual situation which, in the view of the staff, rebuts the presumption that a company whose former common shareholders either retain or receive the larger portion of the voting rights in a combined corporation should be treated as the acquirer in a purchase transaction.

DATE: October 24, 1978.

FOR FURTHER INFORMATION CONTACT:

Steven J. Golub, Office of the Chief Accountant, Securities and Exchange Commission, Washington, D.C 20549, 202-472-3782.

SUPPLEMENTARY INFORMATION: The statements in staff accounting bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval; they represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

GEORGE A. FITZSIMMONS,
Secretary.

OCTOBER 24, 1978.

STAFF ACCOUNTING BULLETIN No. 24

The following interpretation describes a factual situation which, in the view of the staff, rebuts the presumption that a company whose former common shareholders either retain or receive the larger portion of the voting rights in a combined corporation should be treated as the acquirer in a purchase transaction.

The staff hereby adds topic 2.A.2. regarding the determination of the acquiring corporation in a purchase transaction.

Topic 2: Business combinations.

* * * * *

A. Purchase method.

* * * * *

2. Determination of the acquiring corporation.

Facts:

Companies X and Y reach an agreement in principle to merge under which the former common shareholders of company X are to receive common stock representing 55 percent of the outstanding voting stock in the combined corporation and the former common shareholders of company Y are to receive both common and preferred stock representing 45 percent of the outstanding voting stock in the combined corporation. The chairman of the board and chief executive officer and the chief operating officer of the combined corporation would be the individuals currently holding these positions in company Y. Substantially all the proposed directors of the combined corporation are directors of company Y. (The board of directors of company Y consists principally of nonmanagement directors whereas the board of directors of company X consists principally of management directors.) The chairman of the executive committee of the combined corporation would be the current chairman of the board and chief executive officer of company X. That individual and his family would hold approximately 18 percent of the outstanding voting stock of the combined corporation; 8¼ percent would be held in a trust, and, with respect to the other 9¾ percent of the shares, he has agreed "not to solicit proxies or to participate in an election contest." (No other shareholder of the combined corporation would hold 5 percent or more of the outstanding common stock.) The assets, revenues, net earnings and current market value of company Y significantly exceed those of company X. In addition, the market value of the securities to be received by the former common shareholders of company Y significantly exceeds the market value of the securities to be received by the former common shareholders of company X. Companies X and Y propose to account for this business combination as a purchase by company X of company Y because the former shareholders of company X will hold a controlling interest (55 percent) in the outstanding voting stock of the combined corporation.

Question:

Given the above facts, is there other evidence indicating that company Y is the acquirer in this business combination which rebuts the presumption that company X is the acquirer since its former common shareholders will receive the larger portion of the voting rights of the combined corporation.

Interpretive Response:

Paragraph 70 of Accounting Principles Board Opinion No. 16 states:

"The Board concludes that presumptive evidence of the acquiring corporation in combinations effected by an exchange of stock is obtained by identifying the former common stockholder interests of a combining company which either retain or receive the larger portion of the voting rights in the combined corporation. That corporation should be treated as the acquirer unless other evidence clearly indicates that another corporation is the acquirer."

Companies X and Y took the position that because the former common shareholders of company X will receive 55 percent of the outstanding voting stock of the combined corporation, it is the acquiring corporation and the other circumstances of the business combination do not rebut that evidence.

The staff took the position that company Y is the acquiring corporation because the other circumstances of this business combination rebut the normal presumption that company X is the acquirer (i.e., that company is the acquirer whose former common shareholders receive the larger portion of the voting stock of the combined corporation.) The facts that: (i) there would be restrictions on the ability of the former chairman of the board of company X to solicit proxies or to participate in an election contest; (ii) top management and the board of directors of the combined corporation would be substantially individuals currently holding such positions in company Y; (iii) the assets, revenues, net earnings and current market value of company Y significantly exceed those of company X; and (iv) the market value of the securities to be received by the former common shareholders of company Y significantly exceeds the market value of the securities to be received by the former common shareholders of company X, all taken together, provide sufficient other evidence to indicate that company Y is the acquirer and that these factors outweigh the fact that the former common shareholders of company X received the larger portion of the voting rights of the combined corporation.

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[8010-01-M]

[Release No. IC-10453]

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

Deposits of Securities in Securities Depositories

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting a new rule that (1) designates the Federal Reserve/Treasury book-entry system as a permitted securities depository for investment company securities and (2) states the conditions under which registered management investment companies or qualified custodians may deposit investment company securities in a securities depository, which for the purpose of the rule is defined as a system for the central handling of securities where all securities of any particular class or series of any issuer deposited within the system are treated as fungible and may be transferred or pledged by bookkeeping entry without physical delivery of the securities. The Commission believes that these conditions are necessary or appropriate for the protection of investment company shareholders. The purpose of this rule is to enable investment companies to participate, with minimum risks, in the potential benefits incident to the deposit of securities in securities depositories.

EFFECTIVE DATE: December 31, 1978.

FOR FURTHER INFORMATION CONTACT:

Stanley B. Judd, 202-755-0213 or Elizabeth T. Tsai, 202-755-0210, Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today adopted a new rule 17f-4 (17 CFR 270.17f-4) under section 17(f) of the Investment Company Act of 1940 (the "Act") (15 U.S.C. 80a-1 et seq., as amended by Pub. L. No. 91-547, effective December 14, 1971). The rule designates the Federal Reserve/Treasury book-entry system for United States and Federal agency securities (book-entry system) as a permitted depository for securities owned by management investment companies that are registered with the Commission (investment companies). The rule also states the conditions under which investment companies or their custodians may deposit all or any part of the securities owned by the investment companies (investment company securities) in clearing agencies registered with the Commission (clearing agencies) that act as securities depositories or the book-entry system. The Commission believes these conditions to be necessary or appropriate for the protection of investment company shareholders in view of the nature of investment companies and the unique legislative provision for their regulation.

BACKGROUND

A. Section 17(f) before the 1970 Amendments Act

At least as early as 1935, Congress recognized that investment companies are affected with a strong public interest and present special features which require attention beyond simply the disclosure philosophy of the Securities Act of 1933 (15 U.S.C. 77a et seq.). (H. Rept. 1382, 91st Cong., 2d Sess. 2 (1970). In 1940, Congress found that investment companies are affected with a national public interest in that, among other things, they are media for the investment in the national economy of a substantial part of the national savings and may have a vital effect upon the flow of savings into the capital markets (15 U.S.C. 80a-1).

As a part of its broad design to protect investors in investment companies, Congress required in section 17(f) of the Act (15 U.S.C. 80a-17(f)) every investment company to place and maintain investment company securities in the custody of:

(1) A bank having the qualifications prescribed in section 26(a)(1) (15 U.S.C. 80a-26(a)(1)) of the Act for the trustees of unit investment trusts (bank custodian);

(2) A company which is a member of a national securities exchange, subject to such rules and regulations as the Commission may from time to time prescribe for the protection of investors (member firm custodian); or

(3) The investment company which owns the securities, but only in accordance with such rules and regulations as the Commission may from time to time prescribe for the protection of investors.

Congress specifically provided also that, in making rules, regulations, and orders that deal with the custody of investment company securities and other investments pursuant to section 17(f), the Commission may, among other things: (1) make appropriate provision with respect to such matters as the earmarking, segregation, and hypothecation of these securities; and (2) provide for or require periodic or other inspections by independent public accountants, employees and agents of the Commission, and such other persons as the Commission may designate. Congress also provided that no member of a national securities exchange which traded in securities for its own account could act as custodian except in accordance with rules and regulations prescribed by the Commission for the protection of investors.

Pursuant to section 17(f) of the Act, the Commission has adopted rule 17f-1 (17 CFR 270.17f-1), which states the conditions under which investment companies may place or maintain investment company securities in the custody of members of national securities exchanges. The Commission also has adopted rule 17f-2 (17 CFR 270.17f-2), which states the conditions under which investment companies may maintain these securities in their own custody. Finally, appendix A to the guidelines for the preparation of the registration statement for an investment company is a sample custody agreement with a bank (model custodian agreement). Investment Company Act Release No. 7221 (June 29, 1972) (37 FR 12790). The Division of Investment Management believes that sections 3, 4, 5, 6, 8, and 12 of the model custodian agreement are essential to any custody agreement with a bank.

B. The 1970 Amendments Act

In 1970, Congress again demonstrated its concern for the safety of investment company assets by amending section 17(f) to require that an investment company which maintains its securities in the custody of banks keep in the custody of those banks (or in accordance with Commission rules) not only the cash proceeds from the sale of these securities but also other cash assets of the investment company.[1]

In addition, Congress amended section 17(f) of the Act to permit, subject to such rules, regulations, and orders as the Commission may adopt as necessary or appropriate for the protection of investors, investment companies or qualified custodians (with the consent of the investment companies for which they act as custodians) to deposit investment company securities in a system, established by a national securities exchange or national securities association registered with the Commission under the Securities Exchange Act of 1934 (Securities Exchange Act) (15 U.S.C. 78a et seq.) or such other person as may be permitted

[1] However, an investment company may maintain checking accounts in a bank or banks having the qualifications prescribed in sec. 26(a)(1) of the Act for trustees of unit investment trusts, provided the total balance of its accounts does not exceed the amount of the fidelity bond required by sec. 17(g) of the Act (15 U.S.C. 80a-17(g)) for officers or employees who can draw on them. For guidelines for opening and maintaining checking accounts, see Investment Company Act Release No. 6863 (Dec. 6, 1971) (37 FR 1474).

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by the Commission, for the central handling of securities under which all securities of any particular class or series of any issuer deposited within the system are treated as fungible and may be transferred or pledged by bookkeeping entry without physical delivery. (Pub. L. 91-547, § 9(a), 84 Stat. 1420, effective Dec. 14, 1971.)

C. *The Securities Acts Amendments of 1975*

In 1975, Congress added section 17A to the Securities Exchange Act (15 U.S.C. 78q-1) which provided for the establishment of a national system for the clearance and settlement of securities transactions having found, in paragraph (a) thereof (15 U.S.C. 78q-1(a)), that:

(A) The prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership and the safeguarding of securities and funds related thereto, are necessary for the protection of investors and persons facilitating transactions by and acting on behalf of investors.

(B) Inefficient procedures for clearance and settlement impose unnecessary costs on investors and persons facilitating transactions by and acting on behalf of investors.

(C) New data processing and communications techniques create the opportunity for more efficient, effective, and safe procedures for clearance and settlement.

(D) The linking of all clearance and settlement facilities and the development of uniform standards and procedures for clearance and settlement will reduce unnecessary costs and increase the protection of investors and persons facilitating transactions by and acting on behalf of investors.

Congress, moreover, directed the Commission to use its authority under the Securities Exchange Act to end the physical movement of securities certificates in connection with the settlement among brokers and dealers of transactions in securities consummated by means of the mails or any means or instrumentalities of interstate commerce. (15 U.S.C. 78q-1(g)). However, the Commission does not believe addition of section 17A to the Securities Exchange Act of 1934 (15 U.S.C. 17q-1) in 1975 was intended by Congress to modify in any respect its rulemaking authority and responsibility in section 17(f) of the Investment Company Act.

D. *History of the proposed rule*

On February 7, 1977, the Commission published proposed rule 17f-4 under the authority granted to the Commission by sections 17(f) and 38(a) of the Act (15 U.S.C. 80a-17(f), 37(a)) Investment Company Act Release No. 9633 (Feb. 7, 1977) (42 FR 8666); comment period extended, Investment Company Act Release No. 9669 (March 9, 1977) (42 FR 14748). The proposed rule would have named the book-entry system as a permitted depository and stated the conditions under which an investment company or its custodian could deposit investment company securities in the book-entry system or in a clearing agency which acts as a securities depository. The Commission considered the public comments received and, in response, substantially revised the proposed rule.

On December 8, 1977, the Commission published revised proposed rule 17f-4. Investment Company Act Release No. 10053 (42 FR 63722). Interested persons responded with written comments, all of which the Commission has considered carefully.

II. DISCUSSION OF RULE 17F-4

In view of the comments received and the reasons indicated in this release, the Commission is adopting rule 17f-4 (the rule). The rule retains some of the provisions of the revised proposed rule, but eliminates others.

A. *Deposit in the book-entry system*

The rule in paragraph (b) designates the book-entry system as a permitted securities depository so that investment companies may continue to invest in marketable securities issued by the Treasury Department and certain Federal agencies. As of February 1978, over 90 percent of these securities were maintained in book-entry form and eventually all these securities may be available only in book-entry form.

B. *Conditions for deposit in depository systems*

The rule in paragraph (c) also states the conditions under which investment company securities may be deposited in the book-entry system or in clearing agencies which act as securities depositories.[2] Whether a deposit is made by an investment company, its custodian, or the latter's agent, the board of directors of the investment company must first approve the depository arrangement, and review it at least annually. The board of directors should carefully consider the terms of any such depository arrangement, the technical capability of the parties to discharge their responsibilities, the costs and risks involved, and other pertinent factors that relate to the safety or cost-effectiveness of the arrangement.

(1) *Deposit by an investment company.* When an investment company itself deposits securities in a clearing agency, subparagraph (c)(1) of the rule requires the investment company to have a system that is reasonably designed to prevent unauthorized officer's instructions. The system should provide, at least, for the form, content, and means of giving, recording, and reviewing these instructions. This condition is necessary for the protection of investment company shareholders because the movement of securities for a participant's account in a depository system is subject to the sole order of the participant through an officer's instruction which, typically, needs only one authorized signature that may be in reproduced form.

Subparagraph (c)(2) of the rule also requires the clearing agency to agree that, when it ceases to act as a depository for an investment company, it shall deliver the securities held by it for the investment company to a successor clearing agency, to a custodian, or, where the investment company has custody of its own securities under rule 17f-2, to a safekeeper of the securities to be named by the investment company. Where the investment company has not named one, the clearing agency shall deliver the investment company's securities to a bank custodian having the qualifications prescribed in section 26(a)(1) of the Act. The clearing agency's obligation to deliver is subject to its rules on contributions to its clearing or participants fund.

This condition is necessary to insure that, upon termination of an investment company's participation in a clearing agency, its securities will be placed with a qualified entity in accordance with section 17(f) and the rules thereunder.[3]

(2) *Deposit by a custodian or its agents.*

Under subparagraph (d)(1) of the rule, and subject to three conditions, a qualified custodian may deposit investment company securities in a securities depository of which it is a participant. Where it is not a participant, it may nevertheless deposit the investment company securities through agents which are banks or members of national securities exchanges qualified to act as investment company custodians.

First, subparagraph (d)(2) requires the custodian or its agents (the participant) to deposit the investment company securities in a nonproprietary account which includes only assets held for customers. This responds to the specific concern of Congress that the Commission, in adopting rules under section 17(f) of the Act dealing with the custodianship of investment company securities, make appropriate provision with respect to

[2] Securities Exchange Act Release No. 14531 (Mar. 6, 1978) (43 FR 10288) proposes that registration as a clearing agency should qualify clearing agencies for participation in or interface with other clearing agencies.

[3] Compare sec. 12 of the model custodian agreement.

such matters as the earmarking, segregation, and hypothecation of these securities. The purpose of this requirement is to separate, on the depository's records, securities held by the participant for its customers from those owned by the participant. The effect of subparagraph (d)(2) should thus be to prevent a participant's creditors from reaching the investment company securities as if they were assets of the participant, and similarly to separate on the records of any agent for the custodian securities held by the custodian for its customers from those owned by the custodian.[4] This condition is analogous to the requirement in section 4 of the model custodian agreement that investment company securities be physically segregated from those of any other persons, and in rule 17f-1 as to the custody of these securities by a member firm. Such segregation of customers' securities in a nonproprietary account also is recognized as appropriate by the uniform operating circulars of the Federal Reserve banks on book-entry securities.[5]

The second condition to the deposit by custodian of investment company securities in subparagraph (d)(3) of the rule is that the custodian shall send the investment company a confirmation of any transfer to or from the account of the investment company with the custodian. Where securities are transferred to that account, the custodian shall also, by book-entry or other appropriate method, identify as belonging to the investment company a quantity of securities, which constitute all or are part of a fungible bulk of securities either registered in the name of the custodian (or its nominee), or shown on the custodian's account on the books of its nominee, agent, or depository. Confirmation by a custodian to an investment company would furnish objective evidence for the investment company of transactions effected on its behalf. The term "confirmation" for this purpose means that notice or advice which is prepared by custodians pursuant to applicable provisions of the Uniform Commercial Code to evidence transactions for the accounts of their customers; it is not intended to require preparation by a custodian of a confirmation required of broker-dealers under rule 10b-10 under the Securities Exchange Act (43 FR 47495 (to be codified in 17 CFR 240.10b-10)). This evidence would be important should questions arise as to the ownership of certain securities of the accuracy of records relating to depository services. Furthermore, confirmation may be necessary to effect transfers of securities which would not be reflected on the books of the depository system, such as transfers between customers of a custodian and (where a custodian is not a participant in the depository system but acts through an agent who is) transfers between the custodian and its customers and between customers of the custodian and customers of the agent.[6]

The third condition to the deposit by a custodian of investment company securities in subparagraph (d)(4) of the rule is that the custodian or, if it is depositing the investment company's securities through an agent, the agent depositing the securities shall promptly send the investment company a copy of reports it receives from the depository on the depository's system of internal accounting control. The custodian and any such agent also shall send the investment company such reports on their own systems of internal accounting control as the investment company may from time to time reasonably request. The purpose of these provisions is to provide the investment company and its auditors access to information that may be necessary for them to evaluate a depository arrangement or to verify the investment company's holdings.

C. *Conditions deleted*

(1) *Definitions.* The revised proposed rule had defined certain terms to explain or restrict their meaning. In view of its new format, rule 17f-4 adopts as modified a few of these definitions, e.g., "book-entry system" and "officer's instruction," and eliminates the rest.

(2) *Restriction on the number of intermediaries that a custodian may use.* Under the revised proposed rule, a custodian would have been able to deposit investment company securities only if it directly participated in a depository or participated indirectly through one intermediary. This limitation was designed to minimize problems that might arise from the deposit of these securities by a custodian through several layers of intermediaries.[7] In view of the responsibility now placed in the rule squarely upon an investment company's directors to resolve problems of this kind by appropriate contractual arrangements which adopt procedures to minimize these potential problems and/or clearly allocate legal responsibility, the rule deletes this limitation.

(3) *System designed to prevent unauthorized officer's instructions.* Under the revised proposed rule, the system for preventing unauthorized officer's instructions would have had to have (a) provided for the form, content, and the means for giving, recording and reviewing officer's instructions and (b) been approved by the board of directors of the investment company after having been examined and reported on by an independent public accountant. These requirements were proposed as substitutes for the original proposal, which would have required hard copy instructions signed by two officers, and were proffered in response to public comment that the Commission should require only that adequate controls, reviewed by independent auditors and approved by directors, be established to prevent misuse of instructions. Subparagraph (c)(1) of the rule

[4] Under the proposed revised U.C.C. § 8-317(4) (1977 draft), the interest of a debtor in a certificated security which is in the possession of or registered in the name of a financial intermediary or in an uncertificated security registered in the name of a financial intermediary may be reached by a creditor by legal process upon the financial intermediary on the books of which the interest of the debtor appears. A nonproprietary account would not appear to be an interest of the custodian or any of its agents which could be reached by their creditors.

[5] See, e.g., item 3 of circular 5 of the Federal Reserve Bank of San Francisco (the Bank) effective Oct. 31, 1977, which provides that, at the request and for the convenience of the member bank depositor, the Bank is prepared to open and maintain, among other things, an "Investment Account" that may be opened and used for the deposit of book-entry securities that are the property of the member bank depositor; and a "General Account" that may be opened and used for the deposit of book-entry securities held by the member bank depositor for account of its customers.

[6] Under the proposed revised U.C.C. § 8-313(1)(d) (1977 draft), transfers of a security to a purchaser in these circumstances occur when the custodian, which is not a clearing corporation, sends a confirmation to the purchaser and makes an appropriate book entry of the purchase. The draft's explanation of changes contrasts this to the proposed revised U.C.C. § 8-313(1)(g) (1977 draft) which requires, when a clearing corporation is effecting the transfer, the appropriate book entry on the books of a clearing corporation only. It states that this difference in documentation results from the fact that clearing corporations will normally control only securities belonging to their customers while other financial intermediaries may themselves be the beneficial owners or pledgees of securities not held in account for the accounts of their customers. It concludes that, in the event of the insolvency of either the financial intermediary or the customer, it appears desirable in addition to an internal book-entry to have some objective evidence of a transfer.

[7] An example of the potential complexities that could arise from using more than one intermediary is in the area of reclamations. Typically, a delivery of securities in a clearing agency is final unless reclaimed within a certain time by the participant whose account has been provisionally debited for the payment. Where the custodian is the participant, it can easily ascertain, by checking its records, whether an investment company has authorized payment for the securities. If there is no instruction to pay the amount debited, the custodian could readily return the securities and have the provisional debit canceled. On the other hand, where the participant is an agent twice or further removed from the custodian, there may not be enough time to ascertain the authority and make reclamation where the transaction has not been authorized.

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now requires only that the investment company have a system reasonably designed to prevent unauthorized officer's instructions which provides, at least, for the form, content, and means of giving, recording, and reviewing the instructions. The rule thus deletes the requirement that the system be approved separately by the board of directors since this particular element of directorial oversight now is subsumed within the broader requirement in subparagraphs (c)(3) and (d)(5) of the rule that the board of directors approve the entire depository arrangement. This approach also responds, in part, to public comment that a special accountant's examination and report on the system would not be cost effective in view of the current requirement in Form N-1R[8] that an annual review of an investment company's system of internal accounting control be conducted by an independent public accountant whose opinion must be included in the investment company's annual report.

(4) *Standing or specific officer's instructions.* Under the revised proposed rule, when directed in a specific or standing officer's instruction the depository could have made payments from any cash received by it (a) to or for the account of an investment company to the investment company's account with its custodian or (b) to the depository for fees or penalties or for deliveries not reclaimed by the investment company. The depository could have made other cash payments to or for an investment company's account with it—or transfer, exchange, or deliver an investment company's securities—only under a specific officer's instruction. These restrictions were proposed to prevent loss of investment company securities and cash through unauthorized transactions. The rule eliminates these restrictions because a system approved by an investment company's board of directors pursuant to subparagraph (c)(1) of the rule which is reasonably designed to prevent unauthorized officer's instruction should provide the necessary protections.

(5) *Valued deliveries.* Under the revised proposed rule, when an investment company sold a security the depository could have delivered it only upon payment or the depository's guarantee of payment, except where the depository delivered it to the custodian of the investment company for the account of the investment company. Conversely, when an investment company bought a security, the depository could have debited the investment company (or the participant for the account of the investment company) for the payment only upon delivery of the security or the depository's guarantee of delivery. Adapted from the model custodian agreement, these provisions were proposed to protect an investment company from defaults of the other party to the transaction or of his agent.

Arguing that the risk of loss to investment companies from defaults in securities depositories is very limited, the commentators made three points about this condition in revised proposed rule 17f-4:

(a) A participant in a typical depository system may not order a security delivered unless it has the security in its account nor may its account be debited for payment without delivery of the security thereto.

(b) Transactions may be reversed because of nonpayment in certain cases, such as when the receiver has not yet himself delivered the security to another.

(c) When delivery cannot be reversed in a clearing agency which acts as a securities depository, participants customarily have recourse to the clearing or participants fund.

In light of these comments and for the following policy reason, these conditions respecting valued deliveries have been eliminated from the rule. Although the Commission has adequate rulemaking authority in section 17(f) to impose all conditions necessary or appropriate for the protection of investors in connection with the use by investment companies of depository systems, insofar as the Commission has jurisdiction over clearing agencies it appears more desirable that any consideration of these issues be made with respect to the widest spectrum of participants in the broader context of the adoption of final registration standards under the Securities Exchange Act for clearing agencies including those which act as securities depositories.

(6) *Lost or stolen certificated securities.* Under the revised proposed rule, clearing agencies would have been required to take all appropriate and necessary steps to obtain replacement of certificated securities that had been lost, apparently destroyed, or wrongfully taken. Without the stock certificate, for example, a stockholder cannot readily transfer his stock and might even lose his interest in it. The rule eliminates this provision because the problem it addresses is not peculiar to investment companies. It appears more appropriate that any consideration of this issue be made with respect to the widest spectrum of participants in the broader context of the adoption of final registration standards under the Securities Exchange Act for clearing agencies including those which act as securities depositories.

(7) *Voting and proxy mechanism.* The revised proposed rule would have required a mechanism to be provided for the exercise by an investment company of the right to vote its securities deposited in clearing agencies and for the transmission to it of all notices, proxies and proxy soliciting material, and other written communications of the issuer to its shareholders. It was proposed to preserve the rights of investment companies to vote and promptly to receive all shareholder materials.[9] The rule eliminates this requirement since:

(1) Clearing agencies customarily assign to the participant the voting right in a security held for a participant. Participants which have deposited the securities for the account of their customers, in turn, typically provide these customers with an opportunity to instruct them how to vote the securities.[10]

(2) Securities Exchange Act rule 14a-3(d) (42 FR 35953 (to be codified in 17 CFR 240.14a-3(d))) and note 1 thereto already provide an adequate mechanism for the transmission of shareholder materials to beneficial owners of securities deposited in clearing agencies.

(8) *Inspection of records.* Under the revised proposed rule, the records of the custodian or intermediary relating to depository services rendered to an investment company would have been open to inspection by representatives of the Commission during the regular business hours of the custodian or intermediary. This was proposed specifically to make available to Commission inspection all the interlinking parts of a depository arrangement used by an investment company. The rule drops this provision because, under section 17(b) of the Securities Exchange Act (15 U.S.C. 78g(b)), the records of member firm custodians are already subject to this examination. With respect to bank custodians, no need for these examinations by the Commission typically would arise in custodianships which follow the model custodian agreement since, under section 11 of the model custodian agreement, the books and records of the custodian pertaining to its actions under the agreement are open to inspection and audit at reasonable times by officers of and auditors employed by the investment company. However, pursuant to rule 31a-3 (17 CFR 270.31a-3) bank custodians and other types of agents maintaining records for an investment company must agree in writing to make available on request such records, and it has been the experience of the Commission in its investment company inspection program that bank custodians have generally responded promptly and fully to visitations by the Commission's staff. Further, the provisions of subparagraphs (d)(4) (respecting the furnishing by custodians of internal accounting control reports) and (d)(5) (respecting directorial approval of custodian arrangements) should provide investment company shareholders sufficient safeguards.

(9) *Liability for losses or damages.* Under the revised proposed rule, a depository arrangement would have provided that (1) the custodian would be liable to the investment company for losses or damages resulting from any negligence or misconduct of the custodian or its employees or agents relating to the use of the depository or its failure to enforce effectively such rights as it may have against the intermediary, and (2) the custodian would have a right of subrogation against the intermediary where the losses or damages resulted from the negligence or misconduct of the intermediary or its employees or agents or its failure to enforce effectively such rights as it may have against the depository.

This provision was proposed to protect investment companies by requiring that these rights and duties be provided by agreement in a situation in which there was any question as to whether they might not be provided at common law or by existing agreements. The rule eliminates this requirement because:

(1) It does not appear that, exclusively in section 17(f) of the Act, Congress is concerned about the standard of liability of custodians.

(2) The Commission believes that, if the rule is silent on the question, the scope of duties of care and standards for imposing civil liability should be determined by a court on principles of applicable law—viz common law, relevant provisions of State statutory law and the Uniform Commercial Code—unless the parties agree to specify duties of care and standards of liability.

(3) On this matter, there appears to be no conflict of interests between an investment company and its directors or officers. Thus it can be expected that the board of directors, in exercising their business judgment in considering depository arrangements, would focus closely on legal responsibility for losses or damages to the investment company related to use of the depository system from the negligence or misconduct of any person acting for the investment company in connection with its use of the depository system.

D. *Monitoring of the rule*

The Commission has instructed its Division of Investment Management (Division) to monitor carefully developments under this rule. In framing its final responses to the issues raised by the proposed and revised proposed rules and the comments received thereon, the Division and the Commission both have placed great emphasis on the representations of commentators that, especially in these circumstances, investment company boards of directors could and should properly resolve many of the issues through appropriate business arrangements. In coordinating, supervising, and executing the Commission's compliance and enforcement program respecting investment companies, the Division and the Commission's regional offices will be especially alert to the securities depository arrangements actually used by individual investment companies and the investment company industry generally. Because sound securities depository arrangements are of central importance to safeguarding the interests of investment company shareholders, the Division is expected to report periodically to the Commission with its evaluation of the current status of securities depository arrangements from the standpoint of the need to provide, by rule amendment or otherwise, greater guidance or assistance by the Commission.

E. *Effective date considerations and transitional period*

The effective date of the rule is December 31, 1978. This would enable investment companies to hold book-entry Treasury bills beginning December 31, 1978, when the authority of Reserve banks to issue definitive Treasury bills to entities required by law to hold securities in definitive form will terminate pursuant to the regulations governing book-entry Treasury bills in 31 CFR 350.17. For those investment companies which have already arranged for the deposit of their Treasury securities in the book-entry system, the early effective date will remove the uncertainty of whether or under what conditions the Commission would designate the book-entry system as a permitted depository. It will also enable their custodians to deposit these securities under fewer conditions than were imposed in no-action letters previously issued by the Division.[11]

Similarly, the early effective date will quickly remove any uncertainty as to the conditions under which the Commission will permit the deposit of investment company securities in clearing agencies which act as securities depositories. As of May 1978, 37 investment companies were known to have securities deposited in The Depository Trust Company (DTC),[12] the largest of the clearing agencies which act as securities depositories. The deposits, except for one investment company,[13] were made on the basis of the May 22, 1975, letter of the Division to DTC.[14]

III. TEXT OF THE RULE

Accordingly, 17 CFR Part 270 is amended by adding:

§ 270.17f-4 **Deposits of securities in securities depositories.**

(a) For the purpose of this rule, a "securities depository" is a system for the central handling of securities where all securities of any particular class or series of any issuer deposited within the system are treated as fungible and may be transferred or pledged by bookkeeping entry without physical delivery of the securities.

(b) A registered management investment company (investment company) or any qualified custodian may deposit all or any part of the securities owned by the investment company in a (1) clearing agency registered with the Commission under Section 17A of the Securities Exchange Act of 1934 (clearing agency), which acts as a securities depository, or (2) the book-entry system as provided in Subpart O of Treasury Circular No. 300, 31 CFR 306, Subpart B of 31 CFR Part 350, and the book-entry regulations of Federal agencies substantially in the form of subpart O, in accordance with the following paragraphs of this rule.

(c) An investment company may deposit the securities in a clearing agency which acts as a securities de-

[8] 4 Fed. Sec. L. Rep. (CCH) ¶51,968.

[9] Compare with sec. 8 of model custodian agreement.

[10] Sec. 8, model custodian agreement; Art. III, Sec. 1, NASD Rules of Fair Practice, as interpreted by the NASD board of governors, NASD Manual, pp. 2032-2039; rules 450 and 452, of the New York Stock Exchange, 2 New York Stock Exchange Guide (CCH) ¶¶ 2450 and 2452; sec. 16, rules 575 and 577 of the American Stock Exchange, 2 American Stock Exchange Guide (CCH) ¶¶ 9527 and 9529.

[11] See, e.g.: (1) State Street Bank and Trust Co. (August 19, 1976) (1976-77 Transfer Binder) FED. SEC. L. REP. (CCH) ¶ 80,848. (2) Provident National Bank (October 26, 1977). (3) Citibank, N.A. (February 10, 1978). (4) Minnesota Mutual Variable Fund D (The First National Bank of St. Paul, Minn.) (February 24, 1978). (5) Harris Trust and Savings Bank (August 18, 1978). (6) Capital Preservation Fund, Inc. (The Bank of California, N.A.) (September 6, 1978).

[12] The Depository Trust Company Newsletter, May 1978, at 9.

[13] State Street deposited securities owned by Massachusetts Financial Development Fund (MFS) in DTC in May 1972, when DTC was known as Central Certificate Service. The deposit was a cooperative pilot project between State Street and MFS. Id. at 8.

[14] Letter to The Depository Trust Company, (1975-76 Transfer Binder) FED. SEC. L. REP. (CCH) ¶ 80,857, which stated that (1) the absence of specific Commission rules on the subject did not in and of itself preclude investment companies from then participating in a securities depository, and (2) an investment company participating in a depository would be required to conform to such rules as the Commission may adopt in the future.

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pository under an arrangement that contains the following elements:

(1) The investment company has a system that is reasonably designed to prevent unauthorized officer's instructions and which provides, at least, for the form, content, and means of giving, recording, and reviewing the instructions. An "officer's instruction" is a request or direction to a clearing agency in the name of the investment company by one or more persons authorized by its board of directors to give it.

(2) Upon ceasing to act for an investment company, and subject to its own rules on contributions to a participants fund, the clearing agency shall deliver all securities held for the investment company to a successor clearing agency, custodian, or safekeeper under rule 17f-2 (17 CFR 270.17f-2), to be named by the investment company. Where the investment company has not named one, the clearing agency shall deliver the investment company securities to a bank having the qualifications prescribed in section 26(a)(1) of the Act for trustees of unit investment trusts, to be held by the bank as custodian for the investment company under terms customary to a custodian agreement between banks and investment companies.

(3) The investment company, by resolution of its board of directors, approved the arrangement, and it is reviewed at least annually.

(d) The custodian may deposit the securities in a clearing agency which acts as a securities depository or the book-entry system, or both, under an arrangement that contains the following elements:

(1) The custodian may deposit the securities directly or through one or more agents which are also qualified to act as custodians for investment companies.

(2) The custodian (or its agent) shall deposit the securities in an account that includes only assets held by it for customers.

(3) The custodian shall send the investment company a confirmation of any transfers to or from the account of the investment company. Where securities are transferred to that account, the custodian shall also, by book-entry or otherwise, identify as belonging to the investment company a quantity of securities in a fungible bulk of securities (i) registered in the name of the custodian (or its nominee) or (ii) shown on the custodian's account on the books of the clearing agency, the book-entry system, or the custodian's agent. for this purpose, the term "confirmation" means advice or notice of a transaction; it is not intended to require preparation by a custodian of the confirmation required of broker-dealers under the Securities Exchange Act of 1934.

(4) The custodian, or its agent which deposits the securities, shall promptly send to the investment company reports it receives from the appropriate Federal Reserve Bank or clearing agency on its respective system of internal accounting control. The custodian and all the agents through which the securities are deposited shall send to the investment company such reports on their own systems of internal accounting control as the investment company may reasonably request from time to time,

(5) The investment company, by resolution of its board of directors, approved the arrangement, and it is reviewed at least annually.

IV. AUTHORITY

The Commission is adopting the rule under its authority in sections 17(f) and 38(a) of the Act (15 U.S.C. 80a-17(f) and 37(a)). It finds that any changes in the rule from the proposal published in Investment Company Act Release No. 10053 have already been generally subject to comment and pertain to matters of form or are less burdensome than those proposed. In addition, any further notice would delay the effective date of the Rule and possibly cause some investment companies to refrain from investing in U.S. Treasury bills on or after December 31, 1978, when the authority of Reserve banks to issue definitive Treasury bills to entities which are required by law to hold or pledge securities in definitive form will terminate. Further notice and rulemaking procedures under the Administrative Procedure Act (5 U.S.C. 553) are, therefore, impractical, unnecessary, and contrary to the public interest.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

OCTOBER 26, 1978.

[FR Doc. 78-30888 Filed 10-31-78; 8:45 am]

[4210-01-M]

Title 24—Housing and Urban Development

CHAPTER X—FEDERAL INSURANCE ADMINISTRATION, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI-4737]

PART 1914—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

Status of Participating Communities

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain flood plain mangement measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The date listed in the fourth column of the table.

ADDRESSES: The addresses where flood insurance policies can be obtained are published at 24 CFR 1912.7.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Flood Disaster Protection Act of 1973 (Pub. L. 93-234), amended, requires the purchase of flood insurance as a condition of Federal financial assistance of insurable property if such assistance is: (1) For acquisition and construction purposes as defined in Part 1909 of Title 24 of the Code of Federal Regulations and (2) For property located in a special flood hazard area identified by the Secretary of Housing and Urban Development.

The requirement applies to all identified special flood hazard areas within the United States, and no such financial assistance can legally be provided for acquisition or contruction except as authorized by section 202(a) of the Act unless the community has entered the program. Accordingly, for communities listed under this Part no such restriction exists, although insurance, if required, must be purchased.

Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurers Association (NFIA) servicing company for the State.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

Section 1914.6 is amended by adding in alphabetical sequence new entries to the table.

§ 1914.6 List of eligible communities.

State	County	Location	Effective date of authorization of sale of flood insurance for area	Hazard area identified	Community No.
Kansas	Rice	Unincorporated areas	Sept. 25, 1978, emergency	May 10, 1977	200290-A
Michigan	Newaygo	White Cloud, city of	do	Apr. 11, 1975	260470
North Dakota	Ward	Sawyer, city of	do	Jan. 31, 1975	380145
Colorado	San Juan	Unincorporated areas	Oct. 25, 1974, emergency	Sept. 1, 1978	080267-A
			Sept. 1, 1978, regular		
			Sept. 1, 1978, suspension		
			Sept. 22, 1978, reinstated		
Kentucky	Jessamine	do	Apr. 16, 1973, emergency	Dec. 6, 1974	210125-A
			Aug. 1, 1978, regular		
			Aug. 1, 1978, suspension		
			Sept. 21, 1978, reinstated		
New York	Wyoming	Castile, village of	Sept. 25, 1978, emergency	Feb. 28, 1975	361563
Do	Cattaraugus	South Dayton, village of	do	May 31, 1974	360099-B
				June 18, 1976	
North Dakota	Traill	Herberg, township of	do		380621-new
Colorado	Delta	Hotchkiss, town of	Sept. 26, 1978, emergency	June 21, 1974	08044-A
				Sept. 17, 1976	
Georgia	Hart	Unincorporated areas	do	Jan. 27, 1978	130467
Ohio	Putnam	Fort Jennings, village of	do	May 31, 1974	390468-A
				Sept. 3, 1976	
Texas	Trinity	Trinity, city of	do	Aug. 13, 1976	481033
Arkansas	Saline	Unincorporated areas	Sept. 22, 1978, emergency	Aug. 9, 1977	050191-A
Washington	Franklin	Connell, town of	Sept. 29, 1978, emergency	July 11, 1975	530280-A
				Oct 12, 1976	
North Carolina	Rowan	East Spencer, town of	Mar. 31, 1975, emergency	June 7, 1974	370211-B
			July 3, 1978, regular	July 9, 1976	
			July 3, 1978, suspended		
			Sept. 28, 1978, reinstated		
Virginia	Patrick	Stuart, town of	Aug. 6, 1974, emergency	May 31, 1974	510111-B
			Sept. 1, 1978, regular	Apr. 23, 1976	
			Sept. 1, 1978, suspended		
			Sept. 28, 1978, reinstated		
Vermont	Franklin	St. Albans, city of	Dec. 28, 1973, emergency	May 17, 1974	500058-B
			June 15, 1978, regular	Aug. 13, 1976	
			June 15, 1978, suspended		
			Sept. 28, 1978, reinstated		
Arkansas	Bradley	Unincorporated areas	Oct. 2, 1978, emergency	Aug. 23, 1977	050420-A
Delaware	Sussex	Millville, town of	do	Oct. 18, 1974	100044-A
Texas	Shackleford	Unincorporated areas	Sept. 27, 1978, emergency		481002
New Hampshire	Rockingham	Auburn, town of	Oct. 3, 1978, emergency	Feb. 28, 1975	330178

State	County	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Hazard area identified
Ohio	Cuyahoga	Cleveland, city of	390104	Oct. 5, 1978, suspension withdrawn	June 7, 1974
					June 18, 1976
Colorado	Mesa	Grand Junction, city of	080117-A	Oct. 13, 1978, emergency	Feb. 1, 1974
					June 28, 1974
Kentucky	Johnson	Unincorporated areas	210339	do	Nov. 11, 1977
South Carolina	Berkeley	do	450029	do	Sept. 16, 1977
California	Nevada	do	060210-A	Oct. 16, 1978, emergency	Sept. 6, 1977
New York	Warren	Johnsburg, town of	360875	do	Aug. 27, 1976
					July 1, 1977
Alabama	Cullman	Hanceville, town of	010059-B	Sept. 15, 1978, suspension withdrawn	Apr. 12, 1974
					Dec. 19, 1975
California	Sacramento	Sacramento, city of	060266-B	do	Jan. 10, 1975
					Dec. 27, 1977
Colorado	Adams	Northgleen, city of	080257-A	do	Aug. 22, 1975
Florida	Orange	Belle Isle, city of	120181-B	do	July 19, 1974
					Jan. 30, 1976
Do	Palm Beach	Lake Park, town of	120212-B	do	Nov. 23, 1973
					Jan. 30, 1976
Georgia	Clark	Athens, city of	130040-B	do	Apr. 12, 1974
					Feb. 13, 1976
Do	Fulton	College Park, city of	130086-B	do	May 31, 1974
					Sept. 12, 1975
Do	Floyd	Rome, city of	130081-B	do	May 17, 1974
					Jan. 30, 1976
Idaho	Bannock	Inkom, city of	160010-B	do	Sept. 13, 1974
					Dec. 19, 1975

State	County	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Hazard area identified
Illinois	Cook	Franklin Park, village of	170094-B	do	Nov. 2, 1973
					Mar. 19, 1976
Do	do	Schiller Park, village of	170159-B	do	Nov. 9, 1973
					Apr. 9, 1976
Do	do	Wheeling, village of	170173-B	do	Aug. 27, 1976
					Dec. 24, 1976
Kansas	Allen	Iola, city of	200003-B	do	Dec. 17, 1973
					Mar. 7, 1975
Do	Harvey	Halstead, city of	200131-B	do	June 7, 1974
					Jan. 23, 1976
Louisiana	St. Mary	Franklin, city of	220195-B	do	Mar. 22, 1974
					Aug. 6, 1976
Maine	Piscataquis	Abbot, town of	230408-A	do	Feb. 14, 1975
Massachusetts	Middlesex	Boxborough, town of	250184-B	do	Sept. 20, 1974
					Dec. 17, 1976
Do	Hampden	East Longmeadow, town of.	250138-B	do	June 14, 1974
					Aug. 20, 1976
Michigan	Wayne	Southgate, city of	260242-B	do	Apr. 12, 1974
					Apr. 18, 1975
Minnesota	Anoka	Circle Pines, city of	270009-A	do	July 30, 1976
Do	Ramsey	North St. Paul, city of	270382-B	do	Mar. 29, 1974
					Oct. 8, 1976
Missouri	Jackson	Blue Springs, city of	290169-B	do	June 28, 1974
					May 21, 1976
Do	do	Raytown, city of	290176-B	do	Dec. 21, 1973
					Sept. 17, 1976
Do	St. Charles	Unincorporated areas	290315-A	do	Sept. 15, 1978
Do	St. Louis	do	290327-A	do	Do.
North Carolina	Rowan	Granite Quarry, town of	370212-B	do	Mar. 8, 1974
					Apr. 2, 1976
North Dakota	Ward	Burlington, city of	380141-A	do	Apr. 16, 1976
New Jersey	Burlington	Moorestown, township of.	340105-A	do	Mar. 18, 1973
Do	Essex	West Orange, town of	340197-A	do	June 21, 1974
New York	Rockland	Spring Valley, village of	365344-B	do	Aug. 31, 1973
Do	Monroe	Wheatland, town of	360438-B	do	Feb. 22, 1974
					Oct. 15, 1976
Oregon	Clatsop	Cannon Beach, city of	410029-B	do	June 21, 1974
					Nov. 28, 1975
Rhode Island	Kent	Coventry, town of	440004-A	do	Sept. 1, 1978
Vermont	Lamoille	Morristown, town of	500064-B	do	May 31, 1974
					Apr. 22, 1977
Virginia	Rockingham	Grottoes, town of	510138-B	do	June 28, 1974
					Apr. 30, 1976
Do	Giles	Narrows, town of	510068-B	do	Feb. 1, 1974
					Feb. 27, 1976
Wisconsin	Manitowac	Unincorporated areas	550236-A	do	Feb. 7, 1975
Do	Waukesha	Menomonee Falls, village of.	550483-B	do	Sept. 13, 1974
					Aug. 27, 1976
Do	Kenosha	Silver Lake, village of	550210-B	do	Dec. 28, 1973
					July 30, 1976
Alabama	Mobile	Satsuma, city of	010172-B	Sept. 29, 1978, suspension withdrawn	May 3, 1974
					Jan. 9, 1976
Colorado	San Miguel	Unincorporated areas	080168-A	do	Sept. 29, 1978
Do	do	Telluride, town of	080168-B	do	June 28, 1974
					Jan. 2, 1976
Connecticut	Fairfield	Milford, city of	090082-B	do	Aug. 2, 1977
Do	do	Shelton, city of	090014-A	do	May. 24, 1974
Do	Hartford	Windsor, town of	090041-B	do	Oct. 5, 1973
					Apr. 15, 1977
Delaware	Kent	Leipsic, town of	100014-C	do	Aug. 9, 1974
					Jan. 9, 1976
Florida	Orange	Apopka, city of	120180-B	do	July 19, 1974
					Mar. 5, 1976
Do	do	Winter Garden, city of	120187-B	do	July 19, 1974
					Mar. 26, 1976
Illinois	De Kalb	De Kalb, city of	170182-A	do	June 28, 1974
Do	Lake	Fox Lake, village of	170362-C	do	June 21, 1974
					Dec. 3, 1976
Do	Jackson	Murphysboro, city of	170302-B	do	Apr. 12, 1975
					Apr. 16, 1976
Do	do	Robbins, village of	170154	do	Apr. 12, 1974
Do	Du Page	Warrenville, city of	170218-B	do	May 24, 1974
					Oct. 24, 1975
Iowa	Johnson	Coralville, city of	190169-B	do	June 14, 1974
					May 14, 1976
Do	Clayton	Elkader, city of	190073-B	do	Feb. 8, 1974
					Jan. 23, 1976
Do	Chickasaw	Nashua, city of	190068-B	do	May 24, 1974
					Apr. 16, 1976
Kansas	Dickinson	Abilene, city of	200074-B	do	Jan. 9, 1974
					Dec. 12, 1975
Do	Thomas	Colby, city of	200350-A	do	Feb. 15, 1974
Do	Geary	Junction City, city of	200112-B	do	Feb. 1, 1974
Do	Pawnee	Larned, city of	200259-B	do	Do.
Do	Harvey and Sedgwick.	Sedgwick, city of	200134-B	do	June 7, 1974
					Nov. 7, 1975
Massachusetts	Bristol	Attleboro, city of	250049-B	do	Aug. 16, 1974
					Dec. 10, 1976

State	County	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Hazard area identified
Massachusetts	Hampden	Chicopee, city of	250137-A	do	Apr. 12, 1974
Do	Norfolk	Sharon, town of	250252-B	do	Oct. 18, 1974
					Nov. 19, 1976
Michigan	Genessee	Davison, city of	260074-B	do	May 17, 1974
Do	do	Goodrich, village of	260397-B	do	July 29, 1977
Minnesota	Le Sueur	Le Sueur, city of	270246-B	do	Nov. 2, 1973
					Apr. 2, 1976
Do	Hennepin	Mound, city of	270176-B	do	June 7, 1974
					May 7, 1976
Do	Scott	Prior Lake, city of	270432-B	do	July 26, 1974
					Aug. 15, 1975
Do	Roseau	Roseau, city of	270414-B	do	Mar. 8, 1974
Do	Scott	Shakopee, city of	270434-C	do	June 7, 1974
					May 28, 1976
Do	Wabasha	Wabasha, city of	270490-B	do	Mar. 8, 1974
					June 11, 1976
Do	Wilkins	Unincorporated areas	270519-A	do	Sept. 29, 1978
Mississippi	Lafayette	Oxford, city of	280094-B	do	June 7, 1974
					Feb. 27, 1976
Missouri	Boone	Columbia, city of	290036-B	do	Aug. 28, 1971
Do	St. Louis	Webster Groves, city of	290394-B	do	Mar. 15, 1974
					Aug. 20, 1976
Nebraska	Custer	Broken Bow, city of	310051-B	do	Jan. 23, 1974
					Sept. 26, 1975
Do	Cass	Cedar Creek, village of	310030-A	do	Sept. 15, 1978
New Jersey	Mercer	Washington, township of.	340255-B	do	May 17, 1974
					July 9, 1976
New York	Westchester	Ardsley, village of	360902-B	do	Apr. 13, 1973
					Mar. 26, 1976
Do	Onodaga	Manlius, village of	360977-B	do	Aug. 2, 1974
Do	Erie	Marilla, town of	360250-B	do	May 17, 1974
					Apr. 23, 1976
Do	Monroe	Pittsford, town of	360439-B	do	Dec. 28, 1973
					Oct. 24, 1975
Do	Orleans	Yates, town of	360645-B	do	June 28, 1974
					July 16, 1976
North Carolina	Transylvania	Brevard, city of	370231-B	do	June 14, 1974
					Aug. 20, 1976
Do	Rowan	China Grove, town of	370210-A	do	Jan. 9, 1974
Do	Rockingham	Reidsville, city of	370209-B	do	Mar. 1, 1975
					July 2, 1976
Do	Rowan	Spencer, town of	370216-B	do	Mar. 1, 1974
					Apr. 23, 1976
Ohio	Meigs	Middleport, village of	390388-B	do	May 31, 1974
					May 21, 1976
Do	Trumbull	Unincorporated areas	390535-A	do	Sept. 29, 1978
Do	Columbiana	Wellsville, city of	390088-C	do	Jan. 16, 1974
Do	Franklin	Westerville, city of	390179-B	do	Nov. 2, 1975
					Aug. 20, 1976
Oregon	Douglas	Glendale, city of	410063-B	do	Dec. 26, 1973
					Apr. 23, 1976
Do	Union	Island City, city of	410220-B	do	Aug. 30, 1974
					Dec. 5, 1975
Do	do	North Powder, city of	410221-B	do	Aug. 30, 1974
Pennsylvania	Westmoreland	Allegheny, township of	420869-B	do	Aug. 2, 1974
					June 18, 1976
Do	Luzerne	Bear Creek, township of	421138-B	do	Dec. 20, 1974
					July 23, 1976
Do	Bucks	Bristol, township of	420984-B	do	July 20, 1973
					Feb. 10, 1978
Do	do	Doylestown, township of	420185-B	do	Oct. 18, 1974
Do	Erie	Fairview, township of	420450-A	do	Nov. 15, 1974
Do	Venago	Franklin, city of	420836-C	do	Sept. 14, 1973
					May 31, 1974
Do	Allegheny	Harrison, township of	420041-B	do	Nov. 2, 1973
					June 4, 1976
Do	Westmoreland	Hempfield, township of	420878-B	do	July 26, 1974
					Aug. 6, 1976
Do	Hurtingdon	Huntingdon, borough of	420436-B	do	Dec. 6, 1974
					Mar. 7, 1976
Do	Elk	Johnsonburg, borough of.	420443-B	do	June 29, 1973
					May 14, 1976
Do	Erie	Lawrence Park, township of.	420451-B	do	May 31, 1974

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State	County	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Hazard area identified
Do	Carbon	Mahoning, township of	421041-B	do	July 26, 1974 Oct. 8, 1976
Do	Westmoreland	New Kensington, city of	420891-B	do	Mar. 1, 1974 May 14, 1976
Do	do	North Huntingdon, township of.	420893-B	do	Sept. 14, 1973 Sept. 24, 1976
Do	Bucks	Plumstead, township of	420199-B	do	Aug. 24, 1973 July 9, 1976
Do	Berks	Reading, city of	420145-B	do	Dec. 28, 1973 July 16, 1976
Do	Elk	Ridgway, township of	420445-A	do	Sept. 12, 1975
Do	Allegheny	Sharpsburg, borough of	420073-B	do	Sept. 29, 1978
Do	Bucks	Warrington, township of	420208-B	do	June 28, 1974 Aug. 13, 1976
Do	do	Warwick, township of	420209-B	do	July 26, 1974 July 30, 1976
Do	Allegheny	West Elizabeth, borough of.	420083-B	do	Nov. 30, 1973 July 23, 1976
Do	do	Wilkins, township of	420090-B	do	May 10, 1974 June 25, 1976
South Carolina	Georgetown	Georgetown, city of	450087-B	do	June 7, 1974 May 28, 1975
Do	Greenville	Simpsonville, town of	450092-B	do	May 17, 1974 Apr. 30, 1976
Texas	McLennan	Bellmead, city of	480457-B	do	Mar. 15, 1974 Mar. 12, 1976
Do	do	Beverly Hills, city of	480925-A	do	Nov. 12, 1976
Do	Dallas	Sachse, city of	480186-B	do	Feb. 22, 1974 July 2, 1976
Utah	Davis	Bountiful, city of	490039-A	do	Oct. 26, 1973
Vermont	Washington	Moretown, town of	500116-B	do	May 31, 1974 Sept. 24, 1976
Do	Rutland	Rutland, town of	500267-B	do	Feb. 7, 1975 Sept. 24, 1976
Virginia	Bedford	Unincorporated areas	510016-A	do	Apr. 25, 1975
Do	Scott	Clinchport, town of	510143-B	do	Mar. 8, 1974 June 25, 1976
Do	Fluvanna	Columbia, town of	510059-B	do	Dec. 28, 1973 May. 14, 1976
Do	Grayson	Galax, city of	510066-B	do	Aug. 2, 1974 Mar. 19, 1976
Do	Greensville	Unincorporated areas	510073-A	do	Dec. 20, 1974
Do	Prince William.	Manassas Park, city of	510123-B	do	May 31, 1974 June 4, 1976
Do	Pulaski	Unincorporated areas	510125-A	do	Aug. 2, 1974 Apr. 9, 1976
Wisconsin	Milwaukee	Oak Creek, city of	550279-B	do	Mar. 22, 1974 Aug. 6, 1976
Do	Vernon	Unincorporated areas	550450-A	do	Jan. 3, 1975
Wyoming	Lincoln	Diamondville, town of	560034-B	do	May 20, 1977

State	County	Location	Effective date of authorization of sale of flood insurance for area	Hazard area identified	Community No.
•	•	•	•	•	•
North Carolina	Lee	Unincorporated areas	October 4, 1978, emergency	June 30, 1978	370331
Oklahoma	Choctaw	Soper, town of	do		400507-new
Texas	Sutton	Unincorporated areas	do		481247
Virginia	Lunenburg, Victoria, and Kenbridge.	do	Oct. 5, 1978, emergency	July 25, 1978	510309

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: October 10, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30403 Filed 10-31-78; 8:45 am]

[4210-01-M]

[Docket No. FI-4738]

PART 1915—IDENTIFICATION AND MAPPING OF SPECIAL HAZARD AREAS

List of Communities With Special Hazard Areas

AGENCY: Federal Insurance Administration.

ACTION: Final rule.

SUMMARY: This rule identifies communities with areas of special flood, mudslide, or erosion hazards as authorized by the National Flood Insurance Program (NFIP). The identification of such areas is to provide guidance to communities on the reduction of property losses, by the adoption of appropriate flood plain management, or other measures to minimize damage. It will enable communities to guide future construction, where practicable, away from locations which are threatened by flood or other hazards.

EFFECTIVE DATE: The date listed in the eighth column of the table or December 1, 1978, whichever is later.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended, requires the purchase of flood insurance as a condition of Federal financial assistance of insurable property if such assistance is:

(1) For acquisition and construction of buildings as defined in Part 1909 of Title 24 of the Code of Federal Regulations, and

(2) For buildings located in a special flood hazard area identified by the Secretary of Housing and Urban Development.

For communities participating in the NFIP (see the fifth column in the table for a community's program status), this requirement applies on the date listed in the eighth column. For communities not participating in the program, section 202 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended, provides that no direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area effective 1 year from the hazard identification date (the date in the eighth column of the table).

This 30-day period before the map action becomes effective does not supersede the statutory requirement that a community, whether or not participating in the program, be given the opportunity for a period of 6 months to establish that it is not seriously flood prone or that such flood hazards as may have existed have been corrected by floodworks or other flood control methods. The 6-month period shall be considered to begin on December 1, 1978, or the effective date of the Flood Hazard Boundary Map, whichever is later. Similarly, the 1-year period a community has to enter the program under section 201(d) of the Flood Disaster Protection Act of 1973 shall be considered to begin 30 days after publication in the FEDERAL REGISTER or the effective date of the Flood Hazard Boundary Map, whichever is later.

This identification is made in accordance with part 1915 of title 24 of the Code of Federal Regulations as authorized by the National Flood Insurance Program (42 U.S.C. 4001-4128).

Section 1915.3 is amended by adding in alphabetical sequence a new entry to the table:

§ 1915.3 List of communities with special hazard areas (FHBM's in effect).

[4210-01-C]

STATE	COUNTY	COMMUNITY NAME AND NO. OF PANELS	COMMUNITY NUMBER & SUFFIX	PROGRAM AND CHANGE CODE	INLAND OR COASTAL	HAZARD F/M/E	IDENTIFICATION DATE (S)	EFFECTIVE DATE OF THIS MAP ACTION	LOCAL MAP REPOSITORY
FL	Union	City of Lake Butler 01	120595A	E-5	I	F	Sept. 22, 1978	Sept. 22, 1978	John Shaw, Mayor P. O. Box 598 Lake Butler, FL 32054 Phone: (904) 496-3401
GA	Laurens	Munici. of Dublin 0001A - 0002A	130217	E-8, 11, 12, 14	1	F	July 11, 1975	Sept. 22, 1978	Robert E. Cochran, Mayor P. O. Box 690 Dublin, GA 31021 Phone: (912) 272-1620
GA	Worth	Munici. of Sumner 0001A	130486	N-5	I	F	Sept. 22, 1978	Sept. 22, 1978	W. D. Whitten, Mayor Sumner, GA 31789 Phone: (912) 776-4945
KY	Montgomery	Montgomery County (Uninc. 0004B - 0006B Areas)	210226	N-10, 11, 12, 14	1	F	Oct. 21, 1977	Sept. 22, 1978	Harry Hofsman, Judge Courthouse Box 540C Mt. Sterling, KY 40353 Phone: (606) 498-1992
MN	Morrison	City of Lastrup 01	270298B	E-12, 14	I	F	Sept. 9, 1974 Sept. 19, 1975	Sept. 22, 1978	Alcuin Welle, Mayor Lastrup, MN 56344 Phone: (612) 468-6061
MN	Winona	City of Stockton 0001B	270532	E-11, 12, 14	1	F	Aug. 23, 1974 Oct. 24, 1975	Sept. 22, 1978	David Kiral, Mayor City Hall Stockton, MN 55988 Phone: (507) 689-2774
NC	Sampson	Sampson County (Uninc. 0001A-0014A Areas)	370220	N-10, 11, 12, 14	1	F	Dec. 20, 1974	Sept. 22, 1978	Paul Butler, Jr., Mgr. Box 313, Rowan Rd. Clinton, NC 28328 Phone: (919) 592-6308
OH	Fairfield	Village of Carroll 01	390817A	N-5	1	F	Sept. 22, 1978	Sept. 22, 1978	Charles E. O'Hare, Mayor 55 Fork Street Carroll, OH 43112 Phone: (614) 469-7427
OH	Adams	Village of Cherry Fork 01	390819A	N-5	1	F	Sept. 22, 1978	Sept. 22, 1978	Wendell Games, Mayor Box 64 Cherry Fork, OH 45618 Phone: (513) 695-0416
OH	Shelby	Village of Fort Loramie 0001A	390830	N-5	I	F	Sept. 22, 1978	Sept. 22, 1978	Lester J. Barlage, Mayor 71 East View Drive Fort Loramie, OH 45845 Phone: (513) 295-3571
OH	Stark	Village of Limaville 01	390836A	N-5	I	F	Sept. 22, 1978	Sept. 22, 1978	Louis L. Wisney, Mayor 160 Church St. Limaville, OH 44640 Phone: (216) 821-2783 (Home
SC	Lexington	Town of Chapin 0001A	450236	N-5	I	F	Sept. 22, 1978	Sept. 22, 1978	C. E. Shealy, Mayor P. O. Box 183 Chapin, SC 29036 Phone: (803) 345-2237
SC	Chesterfield	Town of Chesterfield 0001A	450237	N-5	1	F	Sept. 22, 1978	Sept. 22, 1978	J. C. Willis, Mayor P. O. Box 350 Chesterfield, SC 29709 Phone: (803) 623-2131
SC	Greenwood	Town of Ninety-Six 0001A	450244	N-5	1	F	Sept. 22, 1978	Sept. 22, 1978	Jean S. Belue, Mayor P. O. Box 8 Ninety-Six, SC 29666 Phone: (803) 543-2200
TN	Warren	Town of Centertown 0001A	470374	N-5	1	F	Sept. 22, 1978	Sept. 22, 1978	Woodrow Lorance, Mayor Rt. 1, Box 195 McMinnville, TN 37110 Phone: (615) 939-3681
TN	Jefferson	Town of New Market 0001A	470385	N-5	I	F	Sept. 22, 1978	Sept. 22, 1978	Jack Rader, Mayor Rt. # 2, Box 172 New Market, TN 37820 Phone: (615) 475-5216
WI	Lincoln	Lincoln County (Uninc. 0001A-0012A Areas)	550585	E-5	I	F	Sept. 22, 1978	Sept. 22, 1978	Andrew MacMorran, Zoning Officer, Courthouse Merrill, WI 54452 Phone: (715) 536-8611

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CO	Washington	Town of Otis 0001B	080178 B	N-8,11,12	I	F	24 MAY 74 31 OCT 75	26 SEP 78	Honorable Dennis Rhoades - Mayor- P.O. Box 95 - Otis, CO 80743 (303) 245-3235
CO	Pueblo	Town of Rye 0001A	080150 A	N-8,11,12	I	F	18 JUL 75	26 SEP 78	Honorable Harold C. Petersen - Mayor - P. O. Box 516 - Rye, CO 81069 (303) 489-2221
MT	Uninc. Area	Rosebud County Index Map	300059 B	N-12	I	F	2 AUG 74 22 NOV 77	26 SEP 78	Mr. Eldon Sice - County Planner - County Courthouse - Forsyth, MT 59327 (406) 356-7331
NE	Platte	City of Humphrey 0001B	310381 B	N-11	I	F	11 JUL 75 3 OCT 75	26 SEP 78	Honorable Fritz Engel - Mayor - City Hall - Humphrey, NB 68642 (402) 923-1544
NM	Mora	City of Pleasant Valley 0001A	480661 A	N-8,11,12	I	F	17 DEC 76	26 SEP 78	Honorable M. F. Medlinger - Mayor - Route 2, Box 129 - Iowa Park, TX 76367 (817) 855-3711
NV	Douglas	City of Tahoe 01B-02B	480454 B	E-12	I	F	10 MAY 74 19 MAR 76	26 SEP 78	Mr. Ray Mason - City Administra- tor - Box 300 - Tahoe, TX 79373 (806) 599-4211
AR	Uninc. Area	Washington County 0001B-0011B	050212 B	N-11,12	I	F	10 MAY 77	26 SEP 78	Honorable Vol B. Lester - County Judge - County Courthouse - Fayetteville, AR 72701 (501) 521-4800
AR	Desha	City of Watson 0001B	050372 B	E-8,11,12	I	F	30 AUG 74 17 OCT 75	26 SEP 78	Honorable C. D. Dupree - Mayor - City Hall - Watson, AR 71674 (501) 644-3366
CA	Fresno	City of Coalinga 0001B	060045 B	E-8,11,12	I	F	1 MAR 74 17 OCT 75	26 SEP 78	Mr. Glenn H. Marcussen - City Manager - Sixth & Elm Streets - Coalinga, CA 93210 (209) 935-1533
CA	Del Norte	City of Crescent City 0001B	060059 B	E-8,11,12	C	F	3 MAY 74 13 DEC 74	26 SEP 78	Mr. Michael J. Young - City Manager - 450 H Street - Crescent City, CA 95531 (707) 464-3535
CA	San Mateo	City of Pacifica 0001B-0002B	060323 B	E-8,11,12	C	F	28 JUN 74 5 DEC 75	26 SEP 78	Honorable Janice Fulford - Mayor- 170 Santa Maria Avenue - Pacifica, CA 94044 (415) 355-4151
CA	Tulare	City of Porterville 0001B	060407 B	E-8,11,12	I	F	12 APR 74 5 DEC 75	26 SEP 78	Honorable Theodore Enslin - Mayor - 291 North Main Street - Porterville, CA 93257 (209) 784-1400
CO	Huerfano	Town of La Veta 0001A	080084 A	E-8,11,12	I	F	27 DEC 74	26 SEP 78	Honorable Lewis Kopine - Mayor - P.O. Box 174 - La Veta, CO 81055 (303) 742-3205

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STATE	COUNTY	COMMUNITY NAME AND NO. OF PANELS	COMMUNITY NUMBER & SUFFIX	PROGRAM AND CHANGE CODE	INLAND OR COASTAL	HAZARD F/M/E	IDENTIFICATION DATE (S)	EFFECTIVE DATE OF THIS MAP ACTION	LOCAL MAP REPOSITORY
AL	Blount	Town of Blountsville 0001A	010371	N-S	I	F	Sept. 29, 1978	Sept. 29, 1978	Jack Millwood, Mayor P. O. Box 186 Blountsville, AL 35031 Phone: (205) 429-2406
AL	Tallapoosa	Town of Camp Hill 0001A	010374	N-S	I	F	Sept. 29, 1978	Sept. 29, 1978	Frank George Holley, Mayor P. O. Box 68 Camp Hill, AL 36850 Phone: (205) 896-2291
AL	Barbour	Town of Clayton 0001A	010377	N-S	I	F	Sept. 29, 1978	Sept. 29, 1978	A B. Robertson, Jr., Mayor P. O. Box 193 Clayton, AL 36016 Phone: (205) 775-3542
AL	Lowndes	Town of Fort Deposit 0001A	010384	N-S	I	F	Sept. 29, 1978	Sept. 29, 1978	Bobby A. Davis, Mayor P. O. Drawer S. Fort Deposit, AL 36032 Phone: (205) 227-4331
FL	Union	Town of Raiford 01	120593A	N-S	I	F	Sept. 29, 1978	Sept. 29, 1978	J. D. Griffis, Mayor P. O. Box 98 Raiford, FL 32083 Phone: (904) 431-1373
GA	Coffee	Munici. of Nicholls 0001A	130483	N-S	I	F	Sept. 29, 1978	Sept. 29, 1978	DeWayne Streat P. O. Box 218 Nicholls, GA 31554 Phone: (912) 345-2972
GA	Bartow Polk	Munici. of Taylorsville 0001A	130487	N-S	I	F	Sept. 29, 1978	Sept. 29, 1978	Mel Rhodes, Mayor P. O. Box 28 Taylorsville, GA 30178 Phone: (404) 684-5144
IL	Knox	Village of Altona 01	170941A	N-S	I	F	Sept. 29, 1978	Sept. 29, 1978	Roger Hagerty, V. Pres. Village Hall Altona, IL 61414 Phone: (319) 484-6141
IL	Henderson	Village of Biggsville 01	170945A	N-S	I	F	Sept. 29, 1978	Sept. 29, 1978	Max Lant, V. Pres. Village Hall Biggsville, IL 61418 Phone: (309) 627-2579
IN	Lawrence	Lawrence County (Uninc. 0001A-0006A Areas)	180441	N-S	I	F	Sept. 29, 1978	Sept. 29, 1978	James E. Speer, Co. Auditor Courthouse Bedford, IN 47421 Phone: (812) 275-3111
KY	Trigg	City of Cadiz 0001A	210354	N-S	I	F	Sept. 29, 1978	Sept. 29, 1978	W. J. Hopson, Mayor Marion St. Cadiz, KY 42211 Phone: (502) 522-8244
KY	Pike	City of Cedarville 01	210355A	N-S	I	F	Sept. 29, 1978	Sept. 29, 1978	Judge Wayne T. Rutherford Courthouse Pikeville, KY 41501 Phone: (606) 432-2553
MN	Stearns	City of Richmond 01	270453B	N-8, 11, 14	1	F	March 29, 1974 May 28, 1976	Sept. 29, 1978	Marcus Zumwelee, Mayor City Hall Richmond, MN 56368 Phone: (612) 597-2074
MN	Redwood	City of Walnut Grove 01	270718A	N-S	1	F	Sept. 29, 1978	Sept. 29, 1978	Bruce Thoms, Mayor City Hall Walnut Grove, MN 56180 Phone: (507) 859-2135
MS	Lafayette	Town of Abbeville 0001A	280309	N-S	I	F	Sept. 29, 1978	Sept. 29, 1978	Joe W. Ford, Mayor P. O. Box 9 Abbeville, MS 38601 Phone: (601) 234-6686
NC	Bertie	Bertie County (Uninc. 0001A-0010A Areas)	370290	N-S	1	F	Sept. 29, 1978	Sept. 29, 1978	John Whitehurst, Mgr. P. O. Box 530 Windsor, NC 27983 Phone: (919) 794-2139
OH	Lawrence	Village of Chesapeake 0001A	390608	E-8, 11, 12, 14	I	F	Jan. 10, 1975	Sept. 29, 1978	Howard Brown, Mayor Rockwood Avenue Chesapeake, CH 45619 Phone: (614) 867-5800
OH	Williams	Village of Edgerton 0001A	390826	N-S	1	F	Sept. 29, 1978	Sept. 29, 1978	Max S. Lees, Mayor Town Hall Edgerton, OH 43517 Phone: (419) 298-2722

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OH	Miami	Village of Ludlow Falls 01	390838A	N-S	I	F	Sept. 29, 1978	Sept. 29, 1978	Floyd A. White, Mayor P. O. Box 73 Ludlow Falls, OH 45339 Phone: (513) 698-4097
OH	Fulton	Village of Metamora 01	390840A	N-S	I	F	Sept. 29, 1978	Sept. 29, 1978	George Flack, Mayor 234 Gernsey Avenue Metamora, OH 43540 Phone: (419) 644-2081
OH	Madison	Village of Mount Sterling 0001A	390844	N-S	I	F	Sept. 29, 1978	Sept. 29, 1978	Lowell Anderson, Mayor 2 S. London Street Mt. Sterling, OH 43143 Phone: (614) 869-2040
OH	Guernsey	Village of Quaker City 01	390853A	N-S	I	F	Sept 29, 1978	Sept. 29, 1978	Harry Tarlton, Mayor P. O. Box 141 Quaker City, OH 43773 Phone: (614) 679-2545
OH	Trumbull	Village of West Farmington 01	390864A	N-S	I	F	Sept. 29, 1978	Sept. 29, 1978	James E. Richards, Mayor Box 56 West Farmington, OH 4449 Phone: (216) 889-2628
SC	Newberry	Newberry County (Uninc. 0001A-0009A Areas)	450224	E-S	I	F	Sept. 29, 1978	Sept. 29, 1978	Edward F. Lominack, Jr. Purchasing & Plan. Coord. P. O. Box 156 Newberry, SC 29108 Phone: (803) 276-0681
TN	Obion	City of Woodland Mills 0901A	470381	N-S	I	F	Sept. 29, 1978	Sept. 29, 1978	F. R. Thompson, Mayor P. O. Box 153 Woodland Mills, TN 38271 Phone: (901) 885-1269

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AZ	Unincorporated Area	Cochise County 0001A-0063A	040012 A	E-8,10,11,12	I	F	6 SEP 74	3 OCT 78	Mr. James D. Altenstadter - Planning Director - Cochise County Planning Department - P.O. Drawer AC - Bisbee, AZ 85603 (602) 432-5162
OR	Jefferson	City of Madras 0001B	410103 B	E-11,12	I	F	28 JUN 74 14 NOV 75	3 OCT 78	Honorable Dick Cowden - Mayor - 416 Sixth Street - Madras, OR 97741 (503) 475-2344
VT	Windham	Town of Grafton 02C-14C	500129 C	E-9	I	F	3 OCT 78	3 OCT 78	Ms. Margery M. Heindel - Chairman Board of Selectmen - Town Hall - Grafton, VT 05146 (802) 843-2413

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STATE	COUNTY	COMMUNITY NAME AND NO. OF PANELS	COMMUNITY NUMBER & SUFFIX	PROGRAM AND CHANGE CODE	INLAND OR COASTAL	HAZARD F/M/E	IDENTIFICATION DATE (S)	EFFECTIVE DATE OF THIS MAP ACTION	LOCAL MAP REPOSITORY
AL	St. Clair	Town of Margaret 01	010393A	N-5	I	F	Oct. 6, 1978	Oct. 6, 1978	J. G. Morse, Mayor P. O. Box 127 Margaret, AL 35112 Phone: (205) 629-2702
AL	Tallapoosa	Town of Daviston 0001A	010380	N-5	I	F	Oct. 6, 1978	Oct. 6, 1978	Ray Dunn, Mayor Box 65 Daviston, AL 36256 Phone: (205) 395-2368
AL	Randolph	Town of Wedowee 0001A	010401	N-5	I	F	Oct. 6, 1978	Oct. 6, 1978	George Perry, Mayor P. O. Box 270 Wedowee, AL 36278 Phone: (205) 357-2247
GA	Whitfield	Munici. of Tunnel Hill 0001A	130489	N-5	I	F	Oct. 6, 1978	Oct. 6, 1976	Barbara Vaughn, Mayor P. O. Box 159 Tunnel Hill, GA 30755 Phone: (404) 673-5535
IL	Whiteside	Village of Deer Grove 01	170945A	N-5	I	F	Oct. 6, 1978	Oct. 6, 1978	John Joe Conney, V. Pres. Village Hall Deer Grove, IL 61243 Phone: (815) 438-4232
IL	Henry	Henry County (Uninc. 0001A-0010A Areas) 0012A-0014A	170739	E-10, 11, 12, 14	I	F	March 21, 1975	Oct. 6, 1978	Orville Bartz, Zoning Officer Courthouse Cambridge, IL 61238 Phone: (309) 937-3312
OH	Trumbull	Village of Cortland 0001A	390823	N-5	I	F	Oct. 6, 1978	Oct. 6, 1978	William J. Roush, Mayor 194 Latin Street Cortland, OH 44410 Phone: (216) 637-1572
OH	Pickaway	Village of Darbyville 01	390712A	N-8, 11, 12, 14	I	F	Feb. 7, 1975	Oct. 6, 1978	Naoma Griffith, Mayor R. R. # 1 Williamsport, OH 43164 Phone: (614) 474-4463
OH	Williams	Village of Edon 0001A	390827	N-5	I	F	Oct. 6, 1978	Oct. 6, 1978	James R. Travsch, Mayor P. O. Box 368 Edon, OH 43518 Phone: (419) 272-3345
OH	Lake	Lake County (Uninc. 0001B-0003B Areas)	390771	E-11	I	F	Jan. 6, 1978	Oct. 6, 1978	John F. Platz, Ch. Co. Comm. 105 Main St. Dolan Bldg. Painesville, OH 44077 Phone: (216) 352-6281
OH	Miami	Village of Laura 01	390835A	N-5	I	F	Oct. 6, 1978	Oct. 6, 1978	Robert K. Randall, Jr., Mayor 130 North Main Laura, OH 45337 Phone: (513) 698-4126
OH	Union	Village of Magnetic Springs 01	390839A	N-5	I	F	Oct. 6, 1978	Oct. 6, 1978	Ernest L. Styer, Mayor 28 Rose Street Magnetic Springs, OH 43036 Phone: (513) 348-2886 (home)
OH	Tuscarawas	Village of Mineral City 0001A	390842	N-5	I	F	Oct. 6, 1978	Oct. 6, 1978	June Brunk, Mayor P. O. Box 202 Mineral City, OH 44656 Phone: (216) 859-2222
OH	Auglaize	Village of New Knoxville 01	390846A	N-5	I	F	Oct. 6, 1978	Oct. 6, 1978	Deloris Fischbach, Mayor 511 South Main New Knoxville, OH 45871 Phone: (419) 753-2026
OH	Logan	Village of Quincy 0001A	390854	N-5	I	F	Oct. 6, 1978	Oct. 6, 1978	Foster Evans, Mayor 115 West New Street Quincy, OH 43343 Phone: (513) 585-5314 after 4

STATE	COUNTY	COMMUNITY NAME AND NO. OF PANELS	COMMUNITY NUMBER & SUFFIX	PROGRAM AND CHANGE CODE	INLAND OR COASTAL	HAZARD F/M/E	IDENTIFICATION DATE (S)	EFFECTIVE DATE OF THIS MAP ACTION	LOCAL MAP REPOSITORY
OH	Guernsey	Village of Senecaville 01	390858A	N-5	I	F	Oct. 6, 1978	Oct. 6, 1978	Wendell Frame, Mayor Main Street Senecaville, OH 43780 Phone: (614) 685-5050
OH	Defiance	Village of Sherwood 01	390859A	N-5	I	F	Oct. 6, 1978	Oct. 6, 1978	Virgil H. Horne, Mayor P. O. Box 23 Sherwood, OH 43556 Phone: (419) 899-2145
SC	Florence	City of Florence 0001B - 0002B	450078	E-11, 12, 14	I	F	May 31, 1974 Oct. 31, 1975	Oct. 6, 1978	C. Cooper Tedder, Mayor P. O. Box AA Florence, SC 29501 Phone: (803) 665-3101
VA	Pittsylvania	Pittsylvania County (Uninc. 0001A-0015A Areas)	510113	E-5	I	F	Oct. 6, 1978	Oct. 6, 1978	Theodora Bruning, Co. Admn. Box 246 Chatham, VA 24531 Phone: (804) 432-2041

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AZ	Pinal	City of Eloy 0003A-0006A	040083 A	E-8,11,12	I	F	31 MAY 74	10 OCT 78	Honorable Robert Facio - Mayor - 628 North Main Street - Eloy, AZ 85231 (602) 466-9201
IA	Butler	City of Clarksville 0001A	190336 A	N-8,12	I	F	19 SEP 75	10 OCT 78	Honorable Clarence Schmadeke - Mayor - City Hall - Clarksville, IA 50619 (319) 278-4339
MT	Roosevelt	Town of Bainville 01A	300066 A	N-12	I	F	3 JAN 75	10 OCT 78	Honorable Clarence Roma - Mayor - Town Hall - Bainville, MT 59212 (406) 769-2303
NH	Grafton	Town of Orford 0001B-0004B	330070 B	N-11,12	I	F	26 JUL 77	10 OCT 78	Mr. H. Horton Washburn - Chairman of Selectmen - Town Hall - Orford, NH 03777 (603) 353-4570

STATE	COUNTY	COMMUNITY NAME AND NO. OF PANELS	COMMUNITY NUMBER & SUFFIX	PROGRAM AND CHANGE CODE	INLAND OR COASTAL	HAZARD F/M/E	IDENTIFICATION DATE (S)	EFFECTIVE DATE OF THIS MAP ACTION	LOCAL MAP REPOSITORY
FL	Levy	Town of Bronson 0001A	120582	N-5	I	F	Oct. 13, 1978	Oct. 13, 1978	George Shankle, Mayor P. O. Box 583 Bronson, FL 32621 Phone: (904) 486-2586
FL	Union	Town of Worthington Springs 01	120594A	N-5	I	F	Oct. 13, 1978	Oct. 13, 1978	Garnet L. Dukes, Mayor P. O. Box 16 Worthington, FL 32697 Phone: (904) 496-3363
GA	Madison	Municipality of Carlton 01	130476A	N-5	I	F	Oct. 13, 1978	Oct. 13, 1978	James Bell, Mayor Carlton, GA 30627 Phone: (404) 797-3455
IL	LaSalle	City of Earlville 01	170950A	N-5	I	F	Oct. 13, 1978	Oct. 13, 1978	Francis Yabsley, Mayor 124 West Railroad Street Earlville, IL 60518 Phone: (815) 246-6911
IL	Christian	Village of Palmer 01	170964A	N-5	I	F	Oct. 13, 1978	Oct. 13, 1978	Carl Taylor, VIL Pres. Village Hall Palmer, IL 62566 Phone: (217) 526-3638
IL	Franklin	City of West Frankfort 0001B	170239	E-11, 12, 14	I	F	March 8, 1974 Sept. 19, 1975	Oct. 13, 1978	Jack Woolard, Mayor 108 North Emme West Frankfort, IL 62896 Phone: (618) 932-6562
IN	Montgomery	Montgomery County (Uninc. Areas) 0001A-0006A	180445	N-5	I	F	Oct. 13, 1978	Oct. 13, 1978	Sam Boots, Ch. Co. Comm. Courthouse Crawfordsville, IN 47933 Phone: (317) 362-6302
IN	Tippecanoe	City of West Lafayette 0001B	180254	E-8, 11, 12, 14	I	F	Dec. 7, 1973 Aug. 15, 1975	Oct. 13, 1978	Joseph Dienhart, Mayor City Hall 609 West Navajo West Lafayette, IN 47906 Phone: (317) 463-3571
MN	Houston	City of Caledonia 0001A	270712	N-5	I	F	Oct. 13, 1978	Oct. 13, 1978	H. A. Beth, Mayor 123 North Winnebago Caledonia, MN 55921 Phone: (507) 724-3650
MN	St. Lewis	City of Normantown 0001A-0002A	270708	N-5	I	F	Oct. 13, 1978	Oct. 13, 1978	Helmer Ruth, Mayor 3161 Maple Grove Road Duluth, MN 55811 Phone: (218) 729-6331
NC	Gaston	Town of Lowell 0001A	370323	N-8, 11, 12, 14	I	F	Aug. 15, 1975	Oct. 13, 1978	Dan Blair, Mayor 101 West 1st Street Lowell, NC 28098 Phone: (704) 824-3518
NC	Montgomery	Montgomery County (Uninc. Areas) 0001A-0007A	370336	N-5	I	F	Oct. 13, 1978	Oct. 13, 1978	H. Page McAulay, Ch. Co. Comm. Box 425 Troy, NC 27371 Phone: (919) 974-4602
NC	Moore	Moore County (Uninc. Areas) 0001A-0009A	370164	E-5	I	F	Oct. 13, 1978	Oct. 13, 1978	W. S. Taylor, Co. Admn. Courthouse P. O. Box 905 Carthage, NC 28327 Phone: (919) 947-5800
OH	Licking	Village of Hanover 01	390831A	N-5	I	F	Oct. 13, 1978	Oct. 13, 1978	James H. Fullen, Mayor 243 Rocky Fork Drive NE Newark, OH 43055 Phone: (614) 763-3737
OH	Summit	Village of Munroe Falls 0001A	390843	N-5	I	F	Oct. 13, 1978	Oct. 13, 1978	Gerald L. Hupp, Mayor 43 Munroe Falls Avenue Munroe Falls, OH 44262 Phone: (216) 688-7491
OH	Clinton	Village of Port William 01	390852A	N-5	I	F	Oct. 13, 1978	Oct. 13, 1978	Bob Johnson, Mayor Walnut Street Port William, OH 45164 Phone: (513) 496-4081
SC	Darlington	Town of Society Hill 0001A	450246	N-5	I	F	Oct. 13, 1978	Oct. 13, 1978	B. G. Griggs, Mayor P. O. Box 63 Society Hill, SC 29593 Phone: (803) 378-4601
TN	Tipton	Town of Burlison 0001A	470373	N-5	I	F	Oct. 13, 1978	Oct. 13, 1978	Jimmy Burlison, Mayor Rt. 1, Box 385 Burlison, TN 37029 Phone: (901) 476-6412

STATE	COUNTY	COMMUNITY NAME & NUMBER OF PANELS	COMMUNITY NUMBER & SUFFIX	PROGRAM & CHANGE CODE	INLAND OR COASTAL	HAZARD F/M/E	IDENTIFICATION DATE(S)	EFFECTIVE DATE OF THIS MAP ACTION	LOCAL MAP REPOSITORY
IA	Dubuque	City of Durango 0001A	190119 A	E-5	I	F	17 OCT 78	17 OCT 78	Honorable James Schemmel - Mayor - City Hall - Durango, IA 52039 (319) 552-1613
KS	Marion	City of Florence 0001A	200494 A	N-11,12	I	F	6 AUG 76	17 OCT 78	Honorable Barry Limmons - Mayor - City Hall - 100 East Fourth Street - Florence, KS 66851 (316) 878-4381
MT	Powder River	Town of Broadus 01B	300058 B	E-8,11,12	I	F	23 AUG 74 26 DEC 75	17 OCT 78	Honorable Ronald Talcott - Mayor - Town Hall - Broadus, MT 59317 (406) 436-2409
TX	Uninc. Area	Val Verde County 0001A-0037A	481187 A	E-5	I	F	17 OCT 78	17 OCT 78	Honorable Sergio Gonzalez, Jr. - County Judge - Office of the County Judge - County Courthouse - Del Rio, TX 78840 (512) 775-2014

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FINAL LIST CODES

1. Conversion to regular program with FIRM (elevations determined).
2. Conversion to regular program with FIRM (no elevations determined).
3. Conversion to regular program with no special flood hazard areas—no FIRM.
4. Conversion to regular program with no special flood hazard areas—no FIRM; rescission of FHBM effective on same date as conversion.
5. Initial FHBM.
6. Revision—Change of elevation; revised FIRM.
7. Revision—Change of zone designation; revised FIRM.
8. Revision—Corporate limit changes.
9. Revision—Drafting corrections; printing errors.
10. Revision—Curvilinear.
11. Revision—Add flood hazard area.
12. Revision—Reduce flood hazard area.
13. Revision—FEDERAL REGISTER omission.
14. Revision—Refunds possible.
15. Attention! A previous map (or maps) has been rescinded or withdrawn for this community. This may have affected the sequence of suffixes.

R—Regular Program
E—Emergency Program
N—Not in Program

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 29, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30304 Filed 10-31-78; 8:45 am]

[4210-01-M]

[Docket No. FI-4294]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of Cordova, Alaska

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations listed below for selected locations in the city of Cordova, Alaska. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the city of Cordova, Alaska.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations the city of Cordova, Alaska, are available for review at Cordova City Hall, Railroad Avenue, Cordova, Alaska.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the city of Cordova, Alaska.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Orca Inlet	Entire coastline	18
Eyak Lake	Entire coastline	26

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 29, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30375 Filed 10-31-78; 8:45 am]

[4210-01-M]

[Docket No. FI-4247]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of Hoonah, Alaska

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Hoonah, Alaska. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the city of Hoonah, Alaska.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Hoonah, Alaska, are available for review at the Hoonah City Manager's Office, Front Street, Hoonah, Alaska 99829.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the city of Hoonah, Alaska.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Port Frederick	Entire coastline	20
Spud Creek	Mouth	20
	Garteeni St.	25
	Road crossing approximately 910 ft upstream of Garteeni St.	98

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719).

Issued: September 25, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30376 Filed 10-31-78; 8:45 am]

[4210-01-M]

[Docket No. FI-4249]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the city of Desert Hot Springs, Riverside County, Calif.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Desert Hot Springs, Calif. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the city of Desert Hot Springs, Calif.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Desert Hot Springs, Riverside County, Calif., are available for review at City Hall, 11-711 West Drive, Desert Hot Springs, Calif.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the city of Desert Hot Springs, Calif.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Desert Hot Springs Channel.	Cholla Drive—40 ft*	1,135
	West Drive—25 ft*	1,164
	12th St.—50 ft*	1,242
	Palm Drive—100 ft*	1,323
	Verbena Drive—50 ft*	1,347
Blind Canyon Channel.	16th St.—50 ft**	1,304
	16th St.—50 ft*	1,310
	Avenida Barona Extension—40 ft*	1,375
	Casa Grande Drive—10 ft*.	1,457

* Upstream of centerline.
** Downstream of centerline.

Source of flooding	*Location*	*Depth, feet*
Big Morongo Wash (shallow flooding).	Pierson Blvd	3
	14th Ave	3
Shallow flooding along Ocotillo Rd.	Granada Ave	1
	14th Ave	1
Mission Creek (shallow flooding).	15th Ave	3

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719).

Issued: September 19, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30377 Filed 10-31-78; 8:45 am]

[4210-01-M]

[Docket No. FI-4250]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of Evans, Weld County, Colo.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Evans, Colo. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the city of Evans, Colo.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Evans, Weld County, Colo., are available for review at City Hall, 3700 Golden Street, Evans, Colo.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the city of Evans, Colo.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a

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period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
South Platte River.	Downstream corporate limits.	4,642
	U.S. Highway 85—100 ft downstream of centerline.	4,650

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719).

Issued: September 19, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30378 Filed 10-31-78; 8:45 am]

[4210-01-M]

[Docket No. FI-4299]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of Fort Lupton, Weld County, Colo.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Fort Lupton, Colo. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the city of Fort Lupton, Colo.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations the city of Fort Lupton, Weld County, Colo., are available for review at City Clerk's Office, City Hall, 330 Park Avenue, Fort Lupton, Colo.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the city of Fort Lupton, Colo.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
South Platte River.	Downstream corporate limit.	4,886
	First St.—at centerline	4,896

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719).

Issued: September 19, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30379 Filed 10-31-78; 8:45 am]

[4210-01-M]

[Docket No. FI-4061]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for Larimer County, Colo.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in Larimer County, Colo. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for Larimer County, Colo.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for Larimer County, are available for review at Flood Plain Planner's Office, Larimer County Courthouse, 200 West Oak Street, Fort Collins, Colo.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for Larimer County, Colo.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Big Thompson River.	Confluence with Lake Estes.	7,475
	County Rd. 63[1]	7,427
	do. 63[2]	7,424
	U.S. 34 (5,845 ft downstream of county Rd. 63).	7,368
	Private drive (5,575 ft upstream of confluence with tributary BT-1):	
	Upstream	7,348
	Downstream	7,343
	U.S. 34 (2,125 ft upstream of confluence with tributary BT-1):	
	Upstream	7,313
	Downstream	7,312
	Private drive (940 ft upstream of confluence with tributary BT-1):	
	Upstream	7,304
	Downstream	7,301
	U.S. 34 (650 ft upstream of confluence with tributary BT-3):	
	Upstream	7,109
	Downstream	7,107
	Private drive (550 ft downstream of confluence with tributary BT-4):	
	Upstream	6,997
	Downstream	6,991
	U.S. 35 (1,380 ft upstream of confluence with Rabbit Gulch).	8,957
	U.S. 34 (8,790 ft upstream of confluence with Cedar Creek) (upstream).	5,794
	(downstream)	5,790
	U.S. 34 (8,510 ft upstream of diversion dam at Little Dam).	5,460
	Diversion dam at Little Dam[1].	5,304
	do.[2]	5,290
	do.[1]	5,242
	do.[2]	5,211
	U.S. 34 (5,840 ft downstream of diversion dam below Little Dam) (upstream).	5,153
	(downstream)	5,152
	U.S. 34 (6,660 ft upstream of confluence with Glade Rd. overflow) (upstream).	5,103
	Route 19E[1]	5,005
	do.[2]	5,002
	Wilson Ave.[1]	4,994
	do.[2]	4,987
	Taft Ave.[1]	4,966
	do.[2]	4,964
	1st St.[1]	4,961
	do.[2]	4,958
	Colorado & Southern RR.	4,947
	Railroad Ave.[2]	4,941
	Footbridge (400 ft downstream of Railroad Ave.).	4,940
	U.S. 287[1]	4,932
	do.[2]	4,930
	St. Louis Ave.[1]	4,921
	do.[2]	4,920
	Road 11H[1]	4,908
	do.[2]	4,905
	Road 9E[1]	4,886
	Glade Rd.	5,073
Glade Rd. overflow.	U.S. 34	5,054
Tributary BT-1	Big Thompson River[3]	7,292
Tributary BT-2	do.[3]	7,286
Dark Gulch	do.[3]	7,165
Noel's Draw	do.[3]	7,147
Tributary BT-3	do.[3]	7,093
Tributary BT-4	do.[3]	6,998
Rabbit Gulch	do.[3]	6,942
Long Gulch	do.[3]	8,914
Quillian Gulch	do.[3]	6,487
Cedar Creek	do.[3]	5,592
Dickson Gulch	U.S. 34	5,554
	Big Thompson River[3]	5,547
North Fork Big Thompson River.	Fox Creek	7,247
	Miller Fork[3]	6,890
	Bobcat Gulch[3]	6,209
	Big Thompson River[3]	6,150
Bobcat Gulch	North Fork Big Thompson River[3].	6,209
Miller Fork	do.[3]	6,890
Devil's Gulch	West Creek[3]	7,328
West Creek	Devil's Gulch[3]	7,328
	North Fork Big Thompson River[3].	7,222
Fall River	Corporate limits (at the upstream crossing of the corporate limits of the town of Estes Park).	7,820
	Corporate limits (at the downstream crossing of the corporate limits of the town of Estes Park 14,050 ft above mouth).	7,767
Fox Creek	North Fork Big Thompson River[3].	7,247
Dry Gulch	Big Thompson River[3]	7,432
Fish Creek	Lakeshore Dr	7,620
Dry Creek	Colorado Highway 287	5,008
	Willox Lane	4,983
	East Vine Dr.	4,945
	Valley Airpark Runway	4,933
	Colorado Highway 14	4,919
Cache La Poudre	Overland Trail Rd.	5,059
	Taft Hill Rd.	5,016
	Shields St.	4,988
	Lincoln Ave.	4,950
	Prospect Rd.	4,894
	Colorado & Southern RR.[1]	4,864
	do.[2]	4,858
	County Rd.	4,858
	Interstate 25	4,850
Box Elder Creek	County Rd. 64[1]	5,215
	do.[2]	5,214
	Cleveland Ave.[1]	5,201
	do.[2]	5,199
	Colorado & Southern RR.	5,190
	County Rd. 67[1]	5,184
	do.[2]	5,183
Buckhorn Creek	County Rd. 27[1]	5,303
	do.[2]	5,299
	County Rd. 24H[1]	5,141
	do.[2]	5,138
	County Rd. 24[1]	5,101
	do.[2]	5,097
Redstone Creek	County Rd. 26E[1]	5,367
	do.[2]	5,364
	County Rd.[1]	5,305
	do.[2]	5,301

[1] Upstream.
[2] Downstream.
[3] At the confluence with.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719).

Issued: September 6, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30380 Filed 10-31-78; 8:45 am]

[4210-01-M]

[Docket No. FI-4237]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of Coconut Creek, Broward County, Fla.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Coconut Creek, Broward County, Fla. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the city of Coconut Creek, Broward County, Fla.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Coconut Creek, Broward County, Fla., are available for review at City Hall, 1071 Northwest 45th Ave., Coconut Creek, Fla. 33066.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the city of Coconut Creek, Broward County, Fla.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C

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4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Cypress Creek.....	Just south of Northwest 12th St. (State Rd. 814).	10
	Intersection of Sample Rd. and Lyons Rd.	14

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: October 3, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30381 Filed 10-31-78; 8:45 am]

[4210-01-M]

[Docket No. FI-4236]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of North Lauderdale, Broward County, Fla.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of North Lauderdale, Broward County, Fla. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the city of North Lauderdale Broward County, Fla.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of North Lauderdale, Broward County, Fla., are available for review at City Hall, 6601 Boulevard of Champions, North Lauderdale, Fla. 33068.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the city of North Lauderdale, Broward County, Fla.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
West Perimeter Canal.	Intersection of Southwest 81st Ave. and Southwest 5th St.	11
	Intersection of Southwest 82nd Ter. and Southwest 18th Pl.	11
Cypress Creek Canal.	Intersection of Southgate Blvd. and Southwest 79th Ter.	11
Dogwood Canal.....	Intersection of Kimberly Blvd. and Southwest 67th Ave.	11

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 28, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30382 Filed 10-31-78; 8:45 am]

[4210-01-M]

[Docket No. FI-4302]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of Parkland, Broward County, Fla.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Parkland, Broward County, Fla. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the city of Parkland, Broward County, Fla.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Parkland, Broward County, Fla., are available for review at City Hall, 8383 Holmberg Road, Parkland, Fla. 33067.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the city of Parkland, Broward County, Fla.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Secondary canal system.	South of Holmberg Rd. and west of Northwest 80th Ter.	13
	North of Holmberg Rd. and west of Control Area Divide.	13
	North of Holmberg Rd. and east of Control Area Divide.	14

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 28, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30383 Filed 10-31-78; 8:45 am]

[4210-01-M]

[Docket No. FI-3178]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for Paulding County, Ga.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in Paulding County, Ga. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for Paulding County, Ga.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for Paulding County, Ga., are available for review at Paulding County Courthouse, Dallas, Ga.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for Paulding County, Ga.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Pumpkinvine Creek.	200 ft downstream of confluence with Picketts Mill Creek.	760
	Electric power line approximately 16,450 ft upstream of confluence with West Fork.	795
	State Route 61—approximately 400 ft*.	852
	U.S. Route 278—200 ft*..	879
	Confluence with Little Pumpkinvine Creek.	895
Little Pumpkinvine Creek.	State Route 120—215 ft*	903
	Confluence with Baker Creek.	915
	Unnamed Road—17,300 ft above mouth—170 ft downstream of centerline.	924
West Fork.....	Confluence with Pumpkinvine Creek.	775
Lawrence Creek.....	Old Cartersville Rd.**.....	851
	State Route 92—80 ft*....	891
Sweetwater Creek.	Pine Valley Rd.—200 ft*.	907
	State Route 92**	919
	Dorris Rd.—200 ft*.....	939
	Regan Rd.—200 ft*.....	958
	State Route 61**.....	976
Mill Creek	Downstream side of Pine Valley Dam.	906
	Upstream side of Pine Valley Dam.	907
	Pool Rd—200 ft*	918
	State Route 92**	934
	Jewel Cole Rd.— 180 ft*.	982
	Davis Mill Rd North—80 ft (downstream of centerline).	997
Lick Log Creek	State Route 92**.....	919
	100 ft downstream of Lake Romona Dam outlet.	935
	100 ft upstream of Lake Romona Dam outlet.	941
	Mitchell Rd.—200 ft*	946
	Nebo Rd.—30 ft*	969
Griffin Creek.....	Confluence with Lawrence Creek.	856
	Unnamed Rd.—4060 ft upstream of confluence with Lawrence Creek— 160 ft*.	884
	State Route 92**.....	897
Tributary 1.....	Confluence with Pumpkinvine Creek.	872
	Downstream side of U.S. Soil Conservation Service Flood Control Structure No. 11.	888
	Upstream side of U.S. Soil Conservation Service Flood Control Structure No. 11.	920
Lane Creek.....	State Route 120—140 ft*	864
Raccoon Creek	Jeep trail—25,910 ft above mouth**.	716
	Electric powerline right-of-way—approximately 46,530 ft above mouth—200 ft*.	756
	High Shoals Church Rd.**.	813
	100 ft upstream of confluence with Cochran Branch.	867
	Southern Railway**.....	900
	Seaboard Coastline RR.—70 ft*.	916
Davis Mill Creek ...	Nebo Rd.—25 ft*	944
	Unnamed Rd.—approximately 11,350 ft above mouth**.	968
Powder Springs Creek.	County Line Rd.—200 ft*.	946
	Lake Rd.—90 ft*.....	956
Tributary 5.....	Confluence with Powder Springs Creek.	952
Rakestraw Creek...	County Line Rd.—approximately 140 ft*.	933
	Lake Rd.—approximately 200 ft*.	944
	State Route 92—approximately 64 ft*.	969
Gothards Creek.....	Unnamed road—approximately 19,380 ft above mouth**.	917
	North Flat Rock Rd.—approximately 200 ft*.	933
Tributary 14.....	Gresham Rd.—approximately 25 ft*.	929

*Upstream of centerline.
**At centerline.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

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Issued: September 26, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30384 Filed 10-31-78; 8:45 am]

[4210-01-M]

[Docket No. FI-4410]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of Cascade, Dubuque County, Iowa

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Cascade, Dubuque County, Iowa. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the city of Cascade, Dubuque County, Iowa.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Cascade are available for review at the City Hall, 320 1st Avenue West, Cascade, Iowa.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the city of Cascade, Dubuque County, Iowa.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
North Fork Maquoketa River.	3,050 ft downstream of U.S. Highway 151.	814
	325 ft downstream of U.S. Highway 151.	815
	Northern corporate limits.	822
	1,200 ft upstream of northern corporate limits.	823

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 14, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30385 Filed 10-31-78; 8:45 am]

[4210-01-M]

[Docket No. FI-4266]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of Monticello, Jones County, Iowa

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Monticello, Jones County, Iowa. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the city of Monticello, Jones County, Iowa.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Monticello are available for review at the City Hall, 200 East First Street, Monticello, Iowa.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the city of Monticello, Jones County, Iowa.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Maquoketa River	U.S. Route 151	806
	Northern corporate limit.	805
Kitty Creek	Eastern corporate limit	803
	First St	805
	State Highway 38	810
	Southern corporate limit.	813
Unnamed stream	Southern corporate limit.	819
	60 ft upstream of U.S. Highway 151.	823
	Upstream side of Chicago, Milwaukee, St. Paul & Pacific RR.	824
	2,650 ft upstream of Chicago, Milwaukee, St. Paul & Pacific RR.	827

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 14, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30386 Filed 10-31-78; 8:45 am]

[4210-01-M]

[Docket No. FI-4252]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of DeQuincy, Calcasieu Parish, La.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of DeQuincy, Calcasieu Parish, La. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the city of DeQuincy, Calcasieu Parish, La.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of DeQuincy, Calcasieu Parish, La., are available for review at City Hall, P.O. Box 968, DeQuincy, La. 70633.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the city of DeQuincy, Calcasieu Parish, La.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Administrator has resolved the appeals presented by the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Buxton Creek	Just upstream of Page St.	60
	Just downstream of Oak St.	58
	Just downstream of Missouri Pacific RR.	55
Lower West Fork	South Division St. (extended).	61
Upper East Fork	Anise St. (extended)	59
Upper West Fork	Just upstream of North Perkins St.	64
	Just upstream of North Division St.	62
Upper West Fork tributary.	Approximately 260 ft upstream of confluence with Upper West Fork.	65

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 28, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30387 Filed 10-31-78; 8:45 am]

[4210-01-M]

[Docket No. FI-4272]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of Fraser, Macomb County, Mich.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Fraser, Mich. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the city of Fraser, Mich.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Fraser, Macomb County, Mich., are available for review at City Hall, 33000 Garfield Street, Fraser, Mich.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the city of Fraser, Mich.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Harrington drain	Garfield Rd	607
	Utica Rd	608
	14 Mile Rd	609
Calahan drain	Cambridge Dr	611
Priest drain	Luxemburg Ave	611
	Fruehauf Ave	613
Sweeney drain	15 Mile Rd	604
	Adolph St	606
	Grettel Rd	608
	Josephine Rd	611
	Masonic Rd	613

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's dele-

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gation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 20, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30388 Filed 10-31-78; 8:45 am]

[4210-01-M]

[Docket No. FI-4451]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Town of Allenstown, Merrimack County, N.H.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the town of Allenstown, Merrimack County, N.H. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the town of Allenstown, Merrimack County, N.H.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the town of Allenstown are available for review at the town office, Allenstown, N.H.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the town of Allenstown, Merrimack County, N.H.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Merrimack River...	Along the length of Merrimack River within Allenstown.	198
Suncook River.....	900 ft upstream from the mouth.	200
	50 ft downstream from Sewer St.	202
	100 ft upstream from Sewer St.	206
	Just downstream of China Mill Dam.	214
	Just upstream of China Mill Dam.	237
	Just downstream of dam (downstream from Main St).	239
	420 ft upstream from Main St. bridge.	262
	70 ft downstream from Webster Dam.	270
	Just upstream of Webster Dam.	284
	Upstream of Pembroke St (State Highway 3).	286
	At the confluence with tributary A.	289
	1,150 ft downstream from Confluence with Boat Meadow Brook.	290
	3,060 ft downstream from dam (downstream of abandoned bridge).	294
	Downstream side of dam at abandoned bridge.	295
	Upstream of abandoned bridge.	302
	State road—State Route 28 bridge.	302
	At the corporate limit between Allenstown and Epsom.	305

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 20, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30389 Filed 10-31-78; 8:45 am]

[4210-01-M]

[Docket No. FI-4354]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Town of Hooksett, Merrimack County, N.H.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the town of Hooksett, Merrimack County, N.H. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the town of Hooksett, Merrimack County, N.H.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the town of Hooksett are available for review at the town office, 16 Main Street, Hooksett, N.H.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for town of Hooksett, Merrimack County, N.H.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Merrimack River...	At southern corporate limit.	185
	4,100 ft upstream of confluence of Peters Brook.	190
	Just downstream of Main St.	191
	Just upstream of Hooksett Dam.	194
	At northern corporate limit.	198
Dalton Brook.....	At confluence with Merrimack River.	187
	500 ft upstream of Boston & Maine RR.	188
	1,050 ft upstream of Boston & Maine RR.	218
	2,300 ft upstream of Boston & Maine RR.	236
	3,700 ft upstream of Boston & Maine RR.	249
	1,950 ft downstream of Benton Rd.	264
	300 ft downstream of Benton Rd.	273
	Just upstream of Benton Rd.	295
	Upstream end of U.S. Route 3 culvert.	298
	Downstream end of State Route 28 bypass.	299
	Just upstream of Route 28 bypass culvert.	302
Messer Brook.....	At confluence with Merrimack River.	186
	285 ft downstream of Martins Ferry Rd.	188
	85 ft downstream of Martins Ferry Rd.	189
	50 ft upstream of Martins Ferry Rd.	197
	2,600 ft upstream of Martins Ferry Rd.	221
	850 ft downstream of Trailor Park Rd.	225
	65 ft downstream of Trailor Park Rd.	234
	Just upstream of Trailor Park Rd.	239
	1,225 ft upstream of Trailor Park Rd.	244
	At downstream end of State Route 28 culvert.	265
Peters Brook.....	At confluence with Merrimack River.	189
	Just upstream of Boston & Maine RR.	195
	260 ft upstream of Boston & Maine RR.	195
	Just upstream of Gravel Pit Dam.	212
	80 ft downstream of Construction Products Rd.	214
	80 ft upstream of Construction Products Rd.	223
	1,080 ft upstream of Construction Products Rd.	230
	1,815 ft upstream of Construction Products Rd.	241
	140 ft downstream of Industrial Park Rd. (southernmost crossing).	255
	Just upstream of Industrial Park Rd. (southernmost crossing).	278
	Just upstream of Industrial Park Rd. (northernmost crossing).	282
	60 ft downstream of U.S. Route 3.	289
	Just upstream of U.S. Route 3.	294
	Just upstream of Gravel Pit culvert C (3,350 ft upstream of Industrial Park north crossing).	304

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 12, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30390 Filed 10-31-78; 8:45 am]

[4210-01-M]

[Docket No. FI-4226]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Town of Pembroke, Merrimack County, N.H.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the town of Pembroke, Merrimack County, N.H. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the town of Pembroke, Merrimack County, N.H.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the town of Pembroke are available for review at the Town Office, Pembroke, N.H.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the town of Pembroke, Merrimack County, N.H.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Merrimack River...	Confluence of Suncook River.	198
	.....do.....	203
Suncook River.....	Just downstream of sewer trestle.	202
	Just downstream of China Mill Dam.	214
	Just upstream of China Mill Dam.	237
	700 ft upstream of China Mill Dam.	239
	Just upstream of Main St.	262
	800 ft upstream of Main St.	263
	Just downstream of Webster.	273
	Just upstream of Webster Dam.	284
	Just upstream of Pembroke St.	286
	2,600 ft upstream of Pembroke St.	289
	400 ft downstream of State Route 28.	295
	275 ft downstream of State Route 28.	299
	Just upstream of State Route 28.	302
	Southeast corporate limit.	305
Soucook River.....	1,850 ft upstream of Confluence with Merrimack river.	204
	6,100 ft upstream of Confluence with Merrimack River.	206

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Source of flooding	Location	Elevation in feet, national geodetic vertical datum
	Just upstream of Pembroke St.	230
	6,100 ft upstream of Pembroke St.	239
	9,250 ft upstream of Pembroke St.	241
	2,900 ft downstream of Sheep Davis Rd.	249
	Just upstream of Sheep Davis Rd.	260
	Just upstream of Pembroke Rd.	271
	3,800 ft downstream of Horse Corner Rd.	287
	Just downstream of Horse Corner Rd.	304
	Just upstream of Pittsfield Rd.	305
	North corporate limit.....	317

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 20, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30391 Filed 10-31-78; 8:45 am]

[4210-01-M]

[Docket No. FI-4225]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Borough of Brielle, Monmouth County, N.J.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the borough of Brielle, Monmouth County, N.J. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the borough of Brielle, Monmouth County, N.J.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the borough of Brielle, Monmouth County, N.J., are available for review at the Borough Office, Brielle, N.J.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the borough of Brielle, Monmouth County, N.J.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation, in feet, above mean sea level
Manasquan River..	Entire shoreline.....	8

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 28, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30392 Filed 10-26-78; 8:45 am]

[4210-01-M]

[Docket No. FI-4149]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Village of Andover, Allegany County, N.Y.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the village of Andover, Allegany County, N.Y. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the village of Andover, Allegany County, N.Y.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the village of Andover, Allegany County, N.Y., are available for review at the Office of the Village Clerk, 4 Main Street, Andover, N.Y.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the village of Andover, Allegany County, N.Y.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in

flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Dyke Creek	Western corporate limit.	1,638
	Second St. (upstream)....	1,654
	State Route 21 (upstream).	1,665
	Eastern corporate limit..	1,690
Railroad Brook.....	Confluence with East Valley Creek.	1,664
	Dam at Andover Pond (downstream).	1,666
	Dam at Andover Pond (upstream).	1,669
	Andover Pond	1,669
East Valley Creek .	Western corporate limit.	1,639
	Second St. (extended),...	1,653
	Main St. (downstream)...	1,659
	Main St. (upstream).....	1,660
	Water St. (downstream crossing) (upstream).	1,663
	ConRail crossing approximately 200 ft downstream of State Route 21 crossing (upstream).	1,664
	State Route 21 (upstream).	1,666
	Barney St. (upstream)....	1,674
	Water St. (upstream).....	1,683
	Northern corporate limit.	1,686

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 28, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30393 Filed 10-31-78; 8:45 am]

[4210-01-M]

[Docket No. FI-4223]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Villiage of Hastings-on-Hudson, Weschester County, N.Y.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the village of Hastings-on-Hudson, Westchester County, N.Y. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the village of Hastings-on-Hudson, Westchester County, N.Y.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the village of Hastings-on-Hudson, Westchester County, N.Y., are available for review at the Office of the Village Engineer, Hastings-on-Hudson, N.Y.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the village of Hastings-on-Hudson, Westchester County, N.Y.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, above mean sea level
Saw Mill River.....	Farragut Parkway.....	117
	Farragut Ave.....	118
	Ravensdale Rd.....	119
	ConRail access bridge (abandoned).	120
	Upstream corporate limit.	122

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: October 10, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30394 Filed 10-31-78; 8:45 am]

[4210-01-M]

[Docket No. FI-4050]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of Clyde, Sandusky County, Ohio

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Clyde, Sandusky County, Ohio. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the city of Clyde, Sandusky County, Ohio.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Clyde, Sandusky County, Ohio, are available for review at the Clyde City Hall, 606 South Church Street, Clyde, Ohio.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of Clyde, Sandusky County, Ohio.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An

opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Raccoon Creek	North corporate limits	647
	U.S. Highway 20	656
	Whirlpool Corp. bldg. (north side).	658
	Factory access road (975 ft upstream from U.S. 20).	661
	ConRail	665
	Mulberry St.	667
	Vine St.	670
	Maple St.	672
	ConRail	673
	Buckeye St.	675
	South St.	676
	Limerick Rd.	694
Buck Creek	North corporate limits	655
	State Rd. 101	673
	ConRail (Penn Central RR.) downstream side.	675
	ConRail (Penn Central RR.) upstream side.	680
	766 ft upstream from ConRail to culvert outlet.	690
	East corporate limits	690

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719).

Issued: September 28, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30395 Filed 10-31-78; 8:45 am]

[4210-01-M]

[Docket No. FI-3780]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of Sallisaw, Sequoyah County, Okla.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Sallisaw, Sequoyah County, Okla.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base flood elevations, for the city of Sallisaw, Sequoyah County, Okla.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Sallisaw, Sequoyah County, Oklahoma, are available for review at City Hall, Sallisaw, Oklahoma 74955.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or Toll Free Line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the city of Sallisaw, Sequoyah County, Okla.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Administrator has resolved the appeals presented by the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of Flooding	Location	Elevation in feet, national geodetic vertical datum
Hog Creek	Upstream of Redwood Ave.	499
Shiloh Creek	Adams St. (extended)	550
Tributary No. 1	Upstream of Interstate 40 West.	511
	Upstream of U.S. Highway 64 bridge.	527
	Redwood Ave. bridge	535
Tributary No. 3	Upstream of Cedar St. bridge.	516
West Branch, Tributary No. 3.	Cedar St.	507
Tributary No. 4	Upstream of U.S. Highway 64 (western crossing).	505
	Upstream of U.S. Highway 64 (eastern crossing).	517
	Approximately 400 ft downstream of Redwood Ave.	520
Tributary No. 5	Approximately 100 ft downstream from Dogwood St. bridge.	525
Tributary No. 7	Approximately 100 ft downstream of U.S. Highway 59.	545

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 29, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30396 Filed 10-31-78; 8:45 am]

[4210-01-M]

[Docket No. FI-42391]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of Turner, Marion County, Oreg.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Turner, Marion County, Oreg. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the city of Turner, Oreg.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Turner, Marion County, Oreg., are available for review at City Hall, Turner, Oreg.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the city of Turner, Oreg.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation, in feet, National Geodetic Vertical Datum
Turner bypass	4th St.	285
	Southern Pacific RR.*	286
	3rd St.	286
Mill Creek	Southern Pacific RR (downstream crossing).	286
	Battle Creek Rd.	277
	Southern Pacific RR, (upstream crossing).	280
	Turner-Aumsville Rd.*	287

* Upstream side.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 12, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30397 Filed10-31-78; 8:45 am]

[4210-01-M]

[Docket No. FI-2647]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINED AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Borough of New Britain, Bucks County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations listed below for selected locations in the borough of New Britain, Bucks County, Pa.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the borough of New Britain, Bucks County, Pa.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the borough of New Britain, Bucks County, Pa., are available for review at the Borough Hall, 76 Keeley Avenue, New Britain, Pa.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, room 5270, 451 Seventh Street SW., Washington, D.C. 20410, (202) 755-5581 or Toll-Free Line (800) 424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the borough of New Britain, Bucks County, Pa.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Administrator has resolved the appeals presented by the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with the 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of Flooding	Location	Elevation in feet above mean sea level
Neshaminy Creek	Downstream corporate limits.	232
	South Landis Mill Rd., Extended.	232
	Upstream corporate limits.	233
Cooks Run	Confluence with Neshaminy Creek.	232
	Tamenend Ave. and corporate limits.	244
	Corporate limits and ConRail.	249
	Wooden bridge	259
	Stone bridge	265
	U.S. Route 202 bridge	270
	Corporate limits	277

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 29, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30398 Filed 10-31-78; 8:45 am]

[4210-01-M]

[Docket No. FI-4246]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the borough of New Buffalo, Perry County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations listed below for selected locations in the Borough of New Buffalo, Perry County, Pa. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood

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elevations, for the borough of New Buffalo, Perry County, Pa.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the borough of New Buffalo, Perry County, Pa., are available for review at the office of the borough secretary, New Buffalo, Pa.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8372.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the borough of New Buffalo, Perry County, Pa.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, above mean sea level
Susquehanna River.	Downstream corporate limit of the borough of New Buffalo.	367
	Upstream corporate limit of the borough of New Buffalo.	368

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 28, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30399 Filed 10-31-78; 8:45 am]

[4210-01-M]

[Docket No. FI-4286]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Township of Upper Macungie, Lehigh County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the township of Upper Macungie, Lehigh County, Pa.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the township of Upper Macungie, Lehigh County, Pa.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the township of Upper Macungie, Lehigh County, Pa., are available for review at the Upper Macungie Municipal Building, R.D. No. 1, Breinigsville, Pa. 18031.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the township of Upper Macungie, Lehigh County, Pa.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Schaefer Run	Downstream corporate limits.	380
	Confluence with Iron Run.	382
	Flower Rd	393
	Brookdale Rd	400
	Confluence with Breinig Run.	401
	Butz Rd	404
Iron Run	Confluence with Schaefer Run.	382
	Foot Bridge (1,000 ft upstream of confluence with Schaefer Run).	384
	Route 222 bridge	385
	Private drive (1,170 ft upstream of Route 222 bridge).	391
Breinig Run	Confluence with Schaefer Run.	401
	Old Route 222	405
	New Route 222	412

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 28, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30400 Filed 10-31-78; 8:45 am]

[4210-01-M]

[Docket No. FI-4110]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the town of Hurt, Pittsylvania County, Va.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the town of Hurt, Pittsylvania County, Va. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the town of Hurt, Pittsylvania County, Va.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the town of Hurt, Pittsylvania County, Va., are available for review at the Council Chambers, Hurt, Va.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the town of Hurt, Pittsylvania County, Va.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Roanoke River	Confluence with Reed Creek.	535
	U.S. Route 29	537
	Western corporate limits.	538
Reed Creek	Confluence with Roanoke River.	535
	Upstream corporate limits.	535
Sycamore Creek	Confluence with Roanoke River.	537
	Western corporate limits.	537

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719).

Issued: September 28, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30401 Filed 10-31-78; 8:45 am]

[4210-01-M]

[Docket No. FI-4388]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of Spooner, Washburn County, Wis.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Spooner, Washburn County, Wis. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the city of Spooner are available for review at the City Hall, Spooner, Wis.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Spooner, Washburn County, Wis.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the city of Spooner, Washburn County, Wis.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, (national geodetic vertical datum)
Yellow River	Western corporate limit.	1,049
	1,200 ft upstream from western corporate limit.	1,051
	Just downstream from Fish Hatchery Bridge.	1,053
	50 ft upstream of dam	1,066
	50 ft upstream of U.S. Highway 53.	1,067
	Eastern corporate limits	1,067

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001-4128); and the Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 14, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30402 Filed 10-31-78; 8:45 am]

[4310-31-M]

Title 30—Mineral Resources

CHAPTER II—GEOLOGICAL SURVEY, DEPARTMENT OF THE INTERIOR

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

AGENCY: Department of the Interior, Geological Survey.

ACTION: Temporary suspension of certain rules.

SUMMARY: Enactment of Pub. L. 95-372 necessitates revision of the regulations contained in 30 CFR 250.34. This notice identifies those provisions of 30 CFR 250.34 published in the FEDERAL REGISTER on January 27, 1978 (43 FR 3380) which are temporarily suspended pending full implementation of the provisions of Pub. L. 95-372. The remaining provisions of 30 CFR 250.34

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will remain in effect pending the promulgation of revised regulations.

EFFECTIVE DATE: November 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Hillary A. Oden, Associate Chief, Conservation Division, U.S. Geological Survey, National Center (Mail Stop 600), Reston, Va. 22092, 703-860-7524.

AUTHOR: Gerald D. Rhodes, U.S. Geological Survey, Department of the Interior.

ENVIRONMENTAL IMPACT AND REGULATORY ANALYSIS STATEMENTS: The Department of the Interior has determined that the suspension of the effectiveness of sections of 30 CFR 250.34 in the manner described in this notice will not have a significant impact on the quality of the human environment and, therefore, will not require preparation of an Environmental Impact Statement. The Department has also determined that this notice does not require preparation of a regulatory analysis under Executive Order 12044.

BACKGROUND: Existing regulations (30 CFR 250.34) were published as final rules on January 27, 1978 (43 FR 3880). On September 18, 1978, President Carter signed the Outer Continental Shelf Lands Act Amendments of 1978 into law (Pub. L. 95-372, 92 Stat. 629 (amending 43 U.S.C. 1331 et seq.)). In order to implement Pub. L. 95-372 more expeditiously, portions of the regulations in 30 CFR 250.34 are being suspended temporarily. All other provisions of the regulations remain unchanged pending review and revision in accordance with the requirements of Pub. L. 95-372, the Administrative Procedure Act (5 U.S.C. § 553(d), and Executive Order 12044 (43 FR 12661, March 24, 1978).

NOTICE OF SUSPENSION

Until further notice: (1)(a) Those provisions of 30 CFR 250.34-1, 250.34-2, and 250.34-3 which call for the submission of an Environmental Report are suspended with respect to the submission of such reports to support plans of exploration and plans of development and production for oil and gas leases in mature oil and gas producing areas of the Outer Continental Shelf in the Gulf of Mexico, unless the Area Oil and Gas Supervisor requests the submission of a report to enable the Secretary to make required statutory findings under the Outer Continental Shelf Lands Act, 43 U.S.C. § 1331 et seq., as amended, Pub. L. No. 95-372 and the National Environmental Policy Act of 1969, 42 U.S.C. 4332 et seq. (1970).

(b) The Supervisor shall request a report where an affected State has a coastal zone management program approved under the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 et seq.

(2) Those provisions of 30 CFR 250.34-1 and 250.34-3 which call for the submission of plans of exploration and accompanying Environmental Reports to an affected State for review and comment are suspended. Governors of affected States and the individual Area Oil and Gas Supervisors are encouraged to make mutually acceptable arrangements for State review of plans of exploration where State participation can be accomplished within a time frame that will not impede the Supervisor's ability to take final action on the plan of exploration within the 30-day time limit imposed by Pub. L. 95-372. This suspension of the provisions of § 250.34-1 and § 250.34-3 relating to State review of plans of exploration does not affect the right of any State with an approved coastal zone management program to review plans of exploration under the consistency review provisions of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. § 1456, and 15 CFR § 930.

(3) Those provisions of 30 CFR 250.34-2 and 250.34-3 which call for the submission of plans of development and production and accompanying Environmental Reports to affected States for review and comment are suspended with respect to plans of development and production and accompanying Environmental Reports for oil and gas leases in mature oil and gas producing areas of the Gulf of Mexico. The Governor of an affected State that borders the Gulf of Mexico may nullify the effects of this suspension by advising the Area Oil and Gas Supervisor that he wishes to participate in the review of plans of development and production in accordance with section 19 of the OCS Lands Act, as amended by Pub. L. No. 95-372. This suspension of the provisions of § 250.34-2 and § 250.34-3 regarding State review of plans of development and production does not affect the right of any State with an approved coastal zone management program to review plans of development and production under the consistency review provisions of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1456, and 15 CFR 930.

Dated: October 26, 1978.

JOAN M. DAVENPORT,
Assistant Secretary of the Interior.

(FR Doc. 78-30891 Filed 10-31-78; 8:45 am)

[6560-01-M]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER E—PESTICIDE PROGRAMS

[PP 6E1700 and 7E1894/R174; FRL 998-6]

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Oxytetracycline

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of oxytetracycline on peaches. The regulation was requested by the interregional research project No. 4. This rule establishes a maximum permissible level for residues of oxytetracycline on peaches.

EFFECTIVE DATE: Effective on November 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Mrs. Patricia Critchlow, Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street SW., Washington, D.C. 20460, 202-755-2516.

SUPPLEMENTARY INFORMATION: On August 7, 1978, the EPA published a notice of proposed rulemaking in the FEDERAL REGISTER (43 FR 34804) in response to pesticide petitions (PP 6E1700 and 7E1894) submitted to the Agency by the interregional research project No. 4 (IR-4), New Jersey State Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, N.J. 08903, on behalf of the IR-4 Technical Committee and the Agricultural Experiment Stations of Connecticut, Delaware, Georgia, Illinois, Maryland, Michigan, Missouri, North Carolina, New Jersey, New York, and South Carolina. The petitions proposed that 40 CFR 180.337 be amended by the establishment of a tolerance for residues of the pesticide chemical oxytetracycline in or on the raw agricultural commodity peaches at 0.1 part per million (ppm). No comments or requests for referral to an advisory committee were received in response to this notice of proposed rulemaking.

It has been concluded, therefore, that the proposed amendment to 40 CFR 180.337 should be adopted without change, and it has been determined that this regulation will protect the public health.

Any person adversely affected by this regulation may, on or before December 1, 1978, file written objections with the Hearing Clerk, Environmental Protection Agency, Room M-3708, 401 M Street SW., Washington, D.C. 20460. Such objections should be submitted and should specify both the provisions of the regulation deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Effective on November 1, 1978, part 180, subpart C, section 180.337 is amended by adding a tolerance for residues of oxytetracycline on peaches at 0.1 ppm as set forth below.

(Section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)).)

Dated: October 25, 1978.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

Part 180, subpart C section 180.337 is amended by adding the following new paragraph at the end of the section to read as follows:

§ 180.337 Oxytetracycline; tolerances for residues.

* * * * *

A tolerance of 0.1 part per million is established for residues of the pesticide oxytetracycline in or on the raw agricultural commodity peaches.

[FR Doc. 78-30790 Filed 10-31-78; 8:45 am]

[6560-01-M]

SUBCHAPTER R—TOXIC SUBSTANCES CONTROL ACT

[FRL 998-3]

PART 750—PROCEDURES FOR RULEMAKING UNDER SECTION 6 OF THE TOXIC SUBSTANCES CONTROL ACT

Interim Procedural Rules for Polychlorinated Biphenyls (PCB's) Ban Exemption

AGENCY: Environmental Protection Agency.

ACTION: Procedures for filing and processing certain PCB exemption petitions under section 6(e)(3)(B) of the Toxic Substances Control Act (TSCA).

SUMMARY: Section 6(e)(3)(B) of TSCA authorizes the Administrator to grant, by rule, exemptions to the bans on the manufacturing, processing, and distribution in commerce of PCB's established pursuant to section 6(e)(3)(A) of TSCA. Since the PCB manufacturing ban will become effective by regulation in early 1979, EPA wishes to inform affected parties now of the procedures which will be followed for the filing and processing of petitions for exemptions from the PCB manufacturing ban imposed by section 6(e)(3)(A). As this notice is strictly procedural, notice and public comment are unnecessary, and it is effective November 1, 1978.

DATES: Petitions for exemption from the 1979 PCB manufacturing ban must be received by December 1, 1978. These procedures are effective on November 1, 1978.

ADDRESS: Send petitions for exemptions to Office of Toxic Substances (TS-794), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, attention: Ms. Joni T. Repasch. Comments on these procedures may be sent to the same address.

FOR FURTHER INFORMATION CONTACT:

John W. Lyon, Office of General Counsel (A-132), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, telephone 202-755-0870.

SUPPLEMENTARY INFORMATION: On June 7, 1978, EPA published a proposed regulation (43 FR 24802) to implement the PCB manufacturing, processing, distribution in commerce, and use bans of section 6(e) of TSCA. EPA stated in the proposed rule at page 24807 that:

> The final rule will describe the requirements for filing [exemption] petitions and for the information to be provided in the petitions.

EPA expects to issue its final rule concerning the PCB bans about January 1, 1979. However, if the regulation is promulgated as proposed, certain manufacturing and importing activities will not be able to continue after the effective date of the regulation unless the Agency grants exemptions for them. These activities include, but are not necessarily limited to, the following: Manufacture of PCB small capacitors, manufacture of PCB equipment (including such items as fluorescent light ballasts, television sets, air conditioners, and microwave ovens), manufacture of chemical substances which contain 50 ppm or greater of PCB's (including pigments and precursors), and importation of PCB's. EPA is issuing these procedures at this time to allow individuals who may be affected by the 1979 manufacturing ban to file exemption petitions at once so that the Agency may act on these petitions as early as possible in 1979.

For purposes of determining whether to file a PCB exemption petition, affected parties should assume that the final regulation will be promulgated as proposed. Only persons affected by the 1979 PCB manufacturing ban should file petitions for exemptions at this time. Persons affected by the July 1, 1979, PCB processing and distribution bans should not file petitions for exemptions until issuance of the final PCB ban regulation. The Agency is delaying processing of petitions for exemptions from the July 1, 1979, bans because the scope of the final PCB ban regulation will determine which persons might wish to seek exemptions from those bans.

These procedural rules require individual submission of petitions by manufacturers affected by the 1979 ban. EPA is imposing this requirement because: (1) The number of such manufacturers is small; and (2) the Agency needs the identity and location of each source of PCB's.

All petitions for exemption from the 1979 PCB manufacturing ban imposed by section 6(e)(3)(A) of TSCA must be received by the Agency within 30 days after publication of this notice. This deadline is being imposed to permit consolidation of all rulemaking on 1979 PCB manufacturing exemptions and the holding of one informal hearing on all petitions covered by the consolidation. In the absence of consolidation, the Agency would not be able to complete action on individual petitions in early 1979.

In determining whether to grant a petition for exemption to the PCB ban, EPA will apply the standards enunciated in section 6(e)(3)(B) of TSCA. Section 6(e)(3)(B) reads in pertinent part as follows:

> * * * the Administrator may grant by rule such an exemption if the Administrator finds that—
>
> (I) An unreasonable risk of injury to health or environment would not result, and
>
> (ii) Good faith efforts have been made to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for such polychlorinated biphenyl.

Although EPA is not issuing a form for petitions, petitions should include the information described in § 750.11(d) of the procedural rules.

Due to the need to grant or deny petitions on an expedited basis as early in 1979 as possible, the Administrator is delegating final Agency authority to grant or deny petitions under section 6(e)(3)(B) of TSCA submitted pursuant to these interim procedures to the Assistant Administrator for Toxic Substances. The Assistant Administrator will rule on petitions subsequent to opportunity for an informal hearing.

The procedural rules to be applicable to section 6(e) exemption proceed-

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ings are adapted from the TSCA section 6 procedural rules (40 CFR Part 750, 42 FR 61259, December 2, 1977).

The Agency is aware that many participants at the informal hearing on the proposed PCB ban regulation and at the PCB marking and disposal regulation hearing presented information directly applicable to a PCB exemption rulemaking. In order to expedite Agency action on exemption petitions, participants in the PCB exemption informal hearing are permitted and encouraged to designate testimony from prior Agency informal rulemaking hearings on PCB's under TSCA. The exemption hearing panel is specifically authorized by the procedural rules to reject repetitive testimony submitted earlier to the Agency at a TSCA PCB informal hearing.

These interim procedures may be revised prior to Agency action on PCB exemption petions which concern the July 1, 1979, PCB bans. Comments are therefore invited on any aspect of these exemption procedures.

These rules are issued under authority of section 6(e) of the Toxic Substances Control Act, 15 U.S.C. 2605(e).

Dated: October 25, 1978.

BARBARA BLUM,
Acting Administrator.

Title 40 of the code of Federal Regulations is amended by adding additional sections to part 750 as set forth below:

Sec.
750.10 Applicability.
750.11 Filing of petitions for exemption.
750.12 Consolidation of rulemakings.
750.13 Notice of proposed rulemaking.
750.14 Record.
750.15 Public comments.
750.16 Confidentiality
750.17 Subpenas.
750.18 Participation in informal hearing.
750.19 Conduct of informal hearing.
750.20 Cross-examination.
750.21 Final rule.

AUTHORITY: 15 U.S.C. 2605(e).

§ 750.10 Applicability.

Sections 750.10–750.21 apply to all rulemakings under authority of section 6(e)(3)(B) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2605(e)(3)(B) with respect to petitions filed pursuant to § 750.11(a) of this part.

§ 750.11 Filing of petitions for exemption.

(a) *Who may file.* Any person seeking an exemption from the PCB manufacturing ban imposed by section 6(e)(3)(A) of TSCA may file a petition for exemption. Petitions must be submitted on an individual basis for each manufacturer or individual affected by the 1979 manufacturing ban.

(b) *Petition filing date.* All petitions for exemptions from the 1979 manufacturing ban under section 6(e)(3)(A) must be received by the hearing clerk by December 1, 1978, which is 30 days after publication of this notice.

(c) *Where to file.* All petitions shall be submitted to the following location: Office of Toxic Substances (TS–794), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, attention: Ms. Joni T. Repasch.

(d) *Content of petition.* Each petition shall contain the following:

(1) Name, address and telephone number of petitioner.

(2) Description of PCB ban exemption requested, including items to be manufactured and nature of manufacturing process—such as smelting.

(3) Location(s) of manufacturing sites requiring exemption.

(4) Length of time requested for exemption (maximum length of exemption is 1 year).

(5) Amount of PCB chemical substance or PCB mixture (by pounds and/or volume) to be manufactured or used during requested exemption period and the manner of release of PCB's into the environment associated with such manufacture or use.

(6) The basis for the petitioner's contention that under section 6(e)(3)(B)(i) of TSCA "an unreasonable risk of injury to health or environment would not result" from the granting of his petition for exemption.

(7) The basis for the petitioner's contention that he meets the criterion of section 6(e)(3)(B)(ii) of TSCA concerning substitutes for PCB's.

(8) Quantification of the reasonably ascertainable economic consequences of denial of the petition for exemption from the 1979 manufacturing ban and an explanation of the manner of computation.

The Agency reserves the right to request further information as to each petition prior to or after publication of the notice of proposed rulemaking required by § 750.13 of these rules.

§ 750.12 Consolidation of rulesmakings.

All petitions received pursuant to § 750.11(a) will be consolidated into one rulemaking with one informal hearing held on all petitions.

§ 750.13 Notice of proposed rulemaking.

Rulemaking for PCB exemptions filed pursuant to § 750.11(a) shall begin with the publication of a notice of proposed rulemaking in the FEDERAL REGISTER. The notice shall state in summary form the required information described in § 750.11(d). Due to time constraints, the notice need not indicate what action EPA proposes to take on the exemption petitions. The notice shall also be subject to § 750.2(c) with the exceptions (1) that the clause "in addition to the material required under paragraph (b)" is eliminated; and (2) that § 750.2(c)(3) is changed to read:

The due date for public comments, which shall be (1) thirty days after publication of the notice of proposed rulemaking for main comments and (2) one week after the close of the informal hearing for reply comments.

§ 750.14 Record.

Section 750.3 shall be applicable with the exception that the words "§ 750.11(d)" are substituted for "§ 750.2(b)" in § 750.3(a) (1) and (2).

§ 750.15 Public comments.

Section 750.4 shall be applicable with the exception that the time period in § 750.4(b) is shortened to 1 week.

§ 750.16 Confidentiality.

The Agency encourages the submission of nonconfidential information by petitioners and commenters. The Agency does not wish to have unnecessary restrictions on access to the rulemaking record. However, if a petitioner or commenter believes that he can only state his position through the use of information claimed to be confidential, he may submit it. Such information must be separately submitted for the rulemaking record and marked "confidential" by the submitter. For the information claimed to be confidential, the Agency will list only the date and the name and address of the petitioner or commenter in the public file, noting that the petitioner or commenter has requested confidential treatment. The information claimed to be confidential will be placed in a confidential file. A petitioner must also file a nonconfidential petition with a nonconfidential summary of the confidential information to be placed in the public file. Similarly, a commenter must supply a nonconfidential summary of the information claimed to be confidential to be placed in the public file. Any information not marked as confidential will be placed in the public file. Information marked confidential will be treated in accordance with the procedures in part 2, subpart B of this title.

§ 750.17 Subpoenas.

Section 750.5 shall be applicable.

§ 750.18 Participation in informal hearing.

(a) Each person or organization desiring to participate in the informal hearing required by section 6(c)(2)(C) of TSCA shall file a written request to so participate with the record and Hearing clerk which shall be received no later than 7 days prior to the scheduled start of the hearing. The hearing shall begin 7 days after the close of the 30-day comment period or as soon thereafter as practicable.

(b) With the exception of the first sentence in § 750.6(a), § 750.6 shall be applicable with the further exception that the time period in § 750.6(b) is shortened to no later than 3 days prior to the start of the hearing.

§ 750:19 Conduct of informal hearing.

Section 750.7 shall be applicable with the addition of the following sentence at the end of § 750.7(c):

Participants shall be allowed to designate testimony from prior EPA informal rulemaking hearings concerning PCB's under TSCA. The hearing panel may reject repetative testimony previously presented at such hearings.

§ 750.20 Cross-examination.

Section 750.8 shall be applicable.

§ 750.21 Final rule.

(a) As soon as feasible after the deadline for submittal of reply comments, the Agency shall issue a final rule. The Agency shall also publish at that time:

(1) A list of all material added to the record (other than public comments and material from the hearing record) which has not previously been listed in a FEDERAL REGISTER document, and

(2) The effective date of the rule.

(b) The Administrator hereby delegates final Agency authority to grant or deny petitions under section 6(e)(3)(B) of TSCA submitted pursuant to § 750.11 of these rules to the Assistant Administrator for Toxic Substances. The Assistant Administrator shall act on such petitions subsequent to opportunity for an informal hearing pursuant to these rules.

(c) In determining whether to grant an exemption to the PCB ban, the Agency shall apply the two standards enunciated in section 6(e)(3)(B) of TSCA.

[FR Doc. 78-30788 Filed 10-31-78; 8:45 am]

[6820-23-M]

Title 41—Public Contracts and Property Management

CHAPTER 5B—PUBLIC BUILDINGS SERVICE, GENERAL SERVICES ADMINISTRATION

[PBS P 2800.6A CHGE 2]

PART 5B-3—PROCUREMENT BY NEGOTIATION

Small Purchase Procedures; Correction

AGENCY: General Services Administration.

ACTION. Final rule; correction.

SUMMARY: This document corrects an error in a previously published regulation in the FEDERAL REGISTER regarding dollar limitations for simplified small purchase procedures set forth in Pub. L. 93-356. This regulation is keyed to the earlier document and the error is clearly identified for correction.

EFFECTIVE DATE: November 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Gregory Siracusa, Procurement Policy Review Staff, Office of Program Management, Public Buildings Service, General Services Administration, Washington, D.C. 20405. 202-566-1954.

In FR Doc. 78-23503 appearing at page 37197 in the FEDERAL REGISTER of Tuesday, August 22, 1978, the following changes should be made:

1. On page 37198, § 5B-3.600-70(a), add: (2) Public exigency precludes the use of FSS services.

2. On page 37198, § 5B-3.600-70(b) is corrected in the ninth line to read, "more than $2,000."

3. On page 37198, § 5B-3.603-1(a)(2)(iii)(B) is corrected in the second line to read, "repair over $2,000."

Dated: October 6, 1978.

JAMES B. SHEA, JR.,
Commissioner, PBS.

[FR Doc. 78-30838 Filed 10-31-78; 8:45 am]

[7035-01-M]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Service Order No. 1262, Amdt. No. 4]

PART 1033—CAR SERVICE

North Stratford Railroad Corp. Authorized To Operate Over Certain Tracks Owned by the State of New Hampshire

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order. (Amendment No. 4 to service order No. 1262).

SUMMARY: Service order No. 1262 authorizes the North Stratford Railroad Corp. to operate a line of railroad between North Stratford, N.H. and Beecher Falls, Vt., owned by the State of New Hampshire. Resumption of operation over this line restores rail service to shippers affected by its abandonment by the Maine Central, its former owner. Amendment No. 4 to service order No. 1262 extends for 1 month the emergency authority granted to the North Stratford Railroad for operation of this line. Service order No. 1262 is published in full in volume 42 of the FEDERAL REGISTER at page 16780.

DATES: Effective 11:59 p.m., October 31, 1978. Expires 11:59 p.m., November 30, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C., 20423, Telephone 202-275-7840, Telex 89-2742.

Decided: October 25, 1978.

Upon further consideration of service order No. 1262 (42 FR 16780, 43637, and 57317, and 43 FR 19047) and good cause appearing therefor:

It is ordered, That § 1033.1262 *North Stratford Railroad Corp. authorized to operate over certain tracks owned by the State of New Hampshire,* service order No. 1262 is amended by substituting the following paragraph (f) for paragraph (f) thereof:

(f) Expiration date. The provisions of this order shall expire at 11:59 p.m., November 30, 1978, unless otherwise modified, changed or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., October 31, 1978.

(49 U.S.C. 1(10-17).)

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael.

H. G. HOMME, Jr.
Acting Secretary.

[FR Doc. 78-30904 Filed 10-31-78; 8:45 am]

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[7035-01-M]

SUBCHAPTER B—PRACTICE AND PROCEDURE

[Ex Parte No. 55 (Sub-No. 26)]

PART 1100—RULES OF PRACTICE

Protest Standards in Motor Carrier Application Proceedings; Special Rules

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The rules adopted in this document establish procedures through which interested persons may petition to intervene in motor carrier application proceedings. Two forms of intervention are recognized: (1) Without leave of the Commission; and (2) With leave of the Commission. Intervention without leave of the Commission will be granted to carriers which (a) Hold any authority conflicting with that sought by applicant, (b) Have the necessary equipment and facilities to provide the needed service, and (c) Have performed service within the scope of the application. Intervention with leave will be granted to any other person who can demonstrate, under established guidelines, a sufficient interest in the outcome of the proceeding or otherwise can make a meaningful contribution to the decisionmaking process.

EFFECTIVE DATE: January 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Michael Erenberg, telephone: 202-275-7292.

SUPPLEMENTARY INFORMATION: This is the culmination of a three-part public proceeding which was begun with our notice of intention to institute a rulemaking, 42 FR 59885 (1977). Following receipt of public comments, rules were proposed (43 FR 17008 (1978)) and public comment again was invited. More than 100 individuals and organizations have responded. A list which identifies these participants will be made available upon request.

Although the proposed rules have met with greater acceptance, especially among carriers and carrier associations, than did recommendation No. 2 contained in the staff task force report, few affected interests are satisfied entirely. A substantial number of carriers, carrier representatives, and representative associations still oppose this rulemaking. Many of the more specialized carriers believe that the rules, as proposed, should not be made applicable to their operations. Some shippers, shipper organizations, and Federal agencies suggest that the proposed rules are framed too conservatively and, therefore, cannot be expected to accomplish the desired objectives. Finally, one Federal agency would have the Commission virtually ignore private interests involved in motor carrier application proceedings in favor of public interest licensing.

Important issues raised by the comments of participants are treated below. Significant changes in the rules, as proposed, have been made.

Discussion of Material Issues

A. DISCONTINUANCE OR ORAL ARGUMENT

Participants who are dissatisfied with the rules have urged that the proceeding be discontinued or that oral argument be permitted. We believe that the potential benefits of these rules outweigh any implemental drawbacks to which some participants have drawn our attention. There is certainly sufficient public support to warrant pursuit of the proposal. With respect to requests for oral argument, participants have had ample opportunities to comment on the subject matter of this proceeding. It is doubtful that oral argument would add anything of substance to the comments which have been received. Accordingly, this proceeding will not be discontinued and oral argument will not be permitted.

B. LAWFULNESS

Many participants remain convinced that any restrictive rules which we might adopt in this rulemaking proceeding would be unlawful. The focal point of concern is that part of the rules, as proposed, governing intervention with leave. Admittedly, this part could limit participation in adjudicative proceedings by persons who under the old rules could become parties to proceedings notwithstanding their lack of legitimate economic interest. It has been argued, particularly by carriers, that limiting participation in this manner provides insufficient opportunity in law for licensed carriers to press their claims.[1] We disagree.

Neither the Constitution nor the Administrative Procedure Act requires a trial-type hearing in every conceivable case of government impairment[2] of private interests. Compare *Cafeteria & Restaurant Workers Union, Local 473, AFL-CIO* v. *McElroy*, 367 U.S. 886, 894 (1961) with *Fugazy Travel Bureau, Inc.* v. *C.A.B.*, 350 F.2d 733, 738-39 (D.C. Cir. 1965). Whether a particular form of procedure observes "the rudiments of fair play" depends, not upon abstract legal principles, but upon application of those principles to factors such as "(t)he precise nature of the interest that has been adversely affected, the manner in which this was done, the reasons for doing it, the available alternatives to the procedure that was followed, the protection implicit in the office of the functionary whose conduct is challenged, (and) the balance of hurt complained of and good accomplished * * *" *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123, 163 (1951) (Frankfurter, J., concurring). We believe that the rules adopted in this proceeding comport with due process principles and with the requirements of the Administrative Procedure Act.

No private interest[3] will be ignored under these rules. No one will be denied access to the Commission. The rules merely provide guidelines under which in a particular application proceeding the interests of all concerned persons can be readily identified at the threshold level and an informed judgment with respect to which of those interests may be necessary to the decisionmaking process can be reached. In this manner, the scope of the subsequent inquiry can be narrowed to more manageable proportions and, in the face of an ever-increasing caseload, the response of the Commission to the transportation needs of this Nation can be hastened. Similar intervention rules, in use by other regulatory agencies,[4] have received judicial approval. See e.g., *City of San Antonio* v. *C.A.B.*, 374 F. 2d 326, 332-33 (D.C. Cir. 1967).

Participants, especially carriers, also have argued that the rules as proposed would inhibit submission of information necessary to determination of licensing proceedings under applicable statutory criteria,[5] particularly information concerning the capabilities of existing carriers and the effect which authorization of a proposed service will have upon their operations. We recognize that relevant information is necessary to the decisionmaking process. *Chemical Leaman Tank Lines, Inc.* v. *United States*, 368 F. Supp. 925, 939 (D. Del. 1973). We do not believe, however, that this information must be developed only in the context of an adversary setting.

Carriers petitioning for intervention with leave will have provided no service either for the supporting shipper or within the scope of the application if transportation services are not to be restricted to the facilities of a particular shipper. Information concerning the capabilities of existing carriers and the effect which authorization of a proposed service would have on their operations can be included in the petition under section 247(1)(2) (ii) and (iii). Because this information is peculiarly within their knowledge, seldom, if ever, will it be subject to refutation.

Where, on the basis of information contained in a petition to intervene with leave, determinative criteria are placed in issue, intervention normally will be granted. In this regard, however, we reject the notion, pressed upon us by several carriers, that the mere ability or willingness of existing carriers to provide a service will serve to place in issue any determinative criterion; to do otherwise would be to ignore the benefits of a healthy competitive environment. This departs somewhat from previously established policy.[6] Our departure is prompted, in large part, by the soundness of the motor carrier industry[7] which, we believe, is able to bear increased competition. This competition in turn, should stimulate creative, responsive transportation services for the shipping public without jeopardizing existing carriers.

C. VERIFICATION

Many participants have questioned the requirement that petitions for intervention with or without leave be verified. This requirement, they argue, is unnecessary and would only increase the costs of filing. These participants suggest that the penalties provided in 18 U.S.C. § 1001[8] for fraud and false statements will prevent abuses of the rules.

In Ex Parte No. 55 (Sub-No. 25), Revision of Application Procedures, 42 FR 62486, 62487 (1977), we determined that the fraud and false statements provisions of the Code obviated the need for verification with respect to applicant's threshold submissions. Reliance upon this statutory provision is equally well placed here. Accordingly, the final rules will be modified to eliminate the verification requirement for petitions to intervene.

D. SOLICITATION

The rules, as proposed, would permit, with certain limitations, automatic intervention for any capable carrier which has solicited business controlled by those supporting the application and which would have involved transportation performed within the scope of the application. Participants have alerted us to the numerous circumstances which could attend consideration of this intervention criterion. The proposed rules would not permit a thoroughgoing assessment of a carrier's solicitation efforts.

To avoid needless confusion and to facilitate consideration of all factors which may have a bearing upon a carrier's interest in this regard, we have concluded that solicitation should not be a ground for automatic intervention; rather, it should form a basis for intervention with leave.

Carriers, otherwise capable of providing service, seeking intervention with leave on the basis of solicitation efforts should include in their petitions a synopsis of all such efforts (including expenses incurred, if any) as well as information concerning their size, the predominant nature of services performed, their area of operations, their financial condition, including operating revenues, and any other information which would tend to shed light on the degree of involvement or interest in the affected marketplace. The fact that a carrier has solicited business, however, will not guarantee intervention. Only where it appears after consideration of all relevant factors that a carrier has manifested a real interest in the involved traffic will intervention on the basis of solicitation be permitted.

As a general rule, we believe that interest can be demonstrated in particular traffic or business only where solicitation is direct (through personal contact, by telephone or in person) and recurring. We recognize that with certain types of carriers, direct solicitation is not practical and the industry practice is to employ general advertising. For example, motor bus carriers, household goods carriers, and others similarly situated which hold themselves out to the general public will engage principally in less direct forms of solicitations, such as newspaper advertisements, brochures, yellow pages, television and radio commercials. In evaluating petitions to intervene based on solicitation, this circumstance will be taken into account.

E. DOCUMENTATION

Many participants have expressed concern that we will prescribe the manner in which solicitation efforts or traffic handled must be documented in petitions to intervene. We have been reminded that there are no uniform recordkeeping standards in this regard. Under the circumstances, certain participants argue that imposition of documentation requirements for intervention purposes can only complicate procedures and result in unfairness to some classes of carriers, particularly smaller carriers.

We agree with the suggestion of many participants that persons should be allowed some latitude in the manner in which they document their particular interest. We also believe that documentation need not accompany petitions to intervene. We will require only that petitions seeking intervention on the basis of some form of participatory interest contain a clear concise account of traffic handled or solicitation efforts and that petitioners be prepared to substantiate through documentation (generally records kept in the normal course of business) at hearing if one is held.[9] Sample petitions are attached as appendices to this document.

F. "(i) PERFORMED SERVICE WITHIN THE SCOPE OF THE APPLICATION * * *"

A proposed requirement for automatic intervention is that a carrier must have "performed service within the scope of the application." Several participants seek clarification of the quoted material; others have argued that they could not be sure whether or not they have performed service within the scope of the application

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[1] In this regard, reliance is placed in the Fifth Amendment of the Constitution providing, in part, that no person shall "be deprived of * * * property, without due process of law * * *" and section 5 of the Administrative Procedure Act, 5 U.S.C. § 554(c) providing, in part, that "(t)he agency shall give all interested parties opportunity for—(1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment *when time, the nature of the proceeding, and the public interest permit.*" (emphasis supplied)

[2] Such impairment ostensibly would take the form of diminution in value of operating authorities brought about through increased economic competition.

[3] See note 2, supra. The public interests promoted in this rulemaking generally are those expressed in the National Transportation Policy. 54 Stat. 899 (1940).

[4] See 43 FR 17008, 17010 and n. 11 (1978).

[5] See 49 U.S.C. §§ 307(a) (common carriage) and 309(b) (contract carriage). See also *Pan American Bus Lines Operation*, 1 MCC 190, 203 (1936); and *I.C.C.* v. *J-T Transport Company*, 368 U.S. 81, 87-93 (1961). Other considerations, including competitive factors within an affected marketplace, also enter into motor carrier licensing

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proceedings. See generally *Trans-American Van Service, Inc.* v. *United States*, 421 F. Supp. 308 (N.D. Tex. 1976).

[6] For example, in *C. & D. Oil Co. Contract Carrier Application*, 1 MCC 329, 332 (1936), the Commission determined that "existing motor carriers should normally be accorded the right to transport all traffic which they can handle adequately, efficiently, and economically in the territories served by them." This precept was established, however, *"in order to foster sound economic conditions in the motor carrier industry,"* (*Id.*, emphasis supplied) and we find that it has little, if any, relevancy today.

[7] See 42 FR 59985, 59986 and n. 11 (1977).

[8] 18 U.S.C. § 1001 provides: Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both.

[9] Petitioners seeking intervention without leave automatically will become parties to the proceeding unless, upon motion, it is determined that the requisite interest has not been demonstrated, in which case the petition to invervene without leave will be disallowed.

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unless they know the identity of the supporting shipper.[10]

To have "performed service within the scope of the application," a carrier must have transported any of the commodities named in the application from and to or between any points for which authority is sought. There generally will be no limitations with respect to the amount of traffic handled or the scope or frequency of involvement. This interpretation also would apply to petitions seeking automatic intervention by carriers in competing modes of surface transportation, e.g., rail and water.

The term "performed service within the scope of the application" should be clarified to reflect the distinction between motor common and contract carriage. In recognition of the distinction, no automatic intervention in proceedings involving one type of carriage (common or contract) will be permitted by a carrier not offering the same type of service. Carriers offering a different type of service will be allowed to intervene only with leave of the Commission. This clarification is consistent with the Act and should promote development of useful information at the intervention petition stage.

Current application decisional notices published in the FEDERAL REGISTER generally do not provide the identity of a supporting shipper unless the proposed operation is restricted to shipper's facility or contract carriage is involved. It never was intended, however, that petitioners should have to guess whether or not they have provided service for, or solicited the traffic of, a particular shipper when no supporting shipper is identified in the application as published. The rules will be clarified through the addition of the following qualifying provision: "where the service is not limited to the facilities of particular shippers [petitioner must show that service has been performed] from and to or between any of the involved points." Similar language will be included in the section providing for intervention with leave on the basis of solicitation.

G. FIELDS OF SERVICE

Proposed rule 247(k)(2)(ii) provides in part that "[w]here it reasonably appears from the application and the accompanying notice that the applicant is engaged in a particular field of service (such as the transportation of bulk commodities, household goods, or commodities requiring refrigerated equipment), the documentation accompanying a protest must demonstrate prior service or solicitation in the fields of service covered by the application, whether or not the application contains negative restrictions or other limitations on the service proposed." Participants have expressed concern that this measure may be procedurally deficient. They argue that since caption summaries are not required to contain information relative to fields of service, specialized carriers would be hard pressed to protect their interests. Although we believe that some concerns in this regard have been overstated, we acknowledge that retention of the "fields of service" provision could be counterproductive. Accordingly, that provision will not be included in the final rules.

Petitioners seeking leave to intervene will be expected to show only an apparent ability to perform a proposed operation. Thus, if a proposed operation contemplates expressly (in the published caption summary) a transportation service to be performed in dump vehicles, petitioner would have to show that it operates dump vehicles. If an application contains no acceptable equipment or service restrictions or limitations on the proposed operation, and the operation does not involve transportation services which obviously would require special equipment (e.g., frozen foods), no special showing will have to be made by petitioner.

H. CONTRACT CARRIAGE

Although contract carriage differs from common carriage in terms of the criteria used to evaluate a service proposal, we believe that competing interests, in the context of contract carrier applications, can be shown and fairly evaluated at the threshold level. All information necessary for this evaluation, including the "distinct needs," [11] if any, of a supporting shipper can be presented in the initial submission of applicants and prospective intervenors. Where, on the basis of the information submitted, determinative criteria are placed in issue, intervention normally will be granted. We emphasize again that the mere ability or willingness of existing carriers to provide a service, or even to meet a distinct need, will not place in issue any determinative criterion.

I. EXTRAORDINARY CIRCUMSTANCES

We invited comment on whether special provision should be made for intervention with leave by persons who desire either (1) to protect overhead traffic or (2) to protect their interests through imposition of a restriction normally not accepted by the Commission. The response to this invitation generally has been negative. It has been argued that recognition of extraordinary circumstances would unnecessarily complicate and delay procedures, and that the rules contain a satisfactory solution. See subsection (2)(iv) of rule 247(1) providing for "[t]he availability of other means by which the petitioner's interests might be protected." Accordingly, no special provision will be made in these matters.

J. COMPETITION

Several participants believe that implementation of the rules, as proposed, would impede our ability to assess the competitive impact of an applicant's proposed service in the affected marketplace. They argue that the mere existence of capable carriers in the territory sought to be served by an applicant has a bearing upon competition. To the extent that the rules would preclude participation in application proceedings by any existing carrier capable of providing service, these participants contend that competition within an affected marketplace cannot be evaluated fairly.

Under the rules adopted here, no carrier or other person will be prevented from petitioning to intervene with leave. Information concerning competitive conditions within an affected marketplace can be developed in a petition under subsection (vi) of special rule 247(1)(2). Based upon information contained in a petition, in the application and in any other available material, the need to permit a person to intervene for the purpose of further developing the record with respect to the competitive impact of a proposed service can be evaluated at the threshold level. If it appears, on the basis of information supplied, that competitive conditions within an affected marketplace warrant further examination, intervention may be permitted with respect to that issue.

K. APPEALS

Section 17 of the Interstate Commerce Act, when read together with section 8 of the Administrative Procedure Act, would appear to require opportunity for appeal from an adverse intervention ruling. An accelerated appeal procedure will be included in the rules adopted here. An immediate appeal from an intervention decision may be taken within 10 days of the service date of the decision. Any applicant or prospective intervenor, if it chooses, may file and serve a response to an appeal within 5 days of the date on which the appeal was served. Briefs accompanying appeals or responses should not exceed 10 pages. Deferring applicant's appeal until a decision is made on the merits of the application was considered. However, inasmuch as deferring such action did not obtain the votes of a majority of the Commission, the accelerated appeal procedure will be available to any applicant or prospective intervenor.

L. APPLICABILITY

These rules will apply to carriers, including rail carriers,[12] and all other persons that wish to participate in any application proceeding for permanent motor carrier authority. It has been suggested that the rules be made inapplicable to certain specialized carriers, non-carrier organizations, and carriers which provide interline or intermodal services. We believe that the rules are sufficiently flexible to accommodate any interests, including those mentioned above.

M. ADMINISTRATIVE CONSIDERATIONS

We have received a substantial response to our invitation (1) to comment on the costs and benefits of adopting these protest standards, and (2) to suggest ways in which to minimize the costs of participation in motor carrier application proceedings. Several suggestions for reducing the cost to petition for intervention (e.g., eliminate the verification requirement) have been incorporated into the final rules. The cost to the Commission of implementing the rules cannot be determined but we do not anticipate a significant increase over current costs. We believe that the benefits to be derived from these rules will outweigh any additional costs associated with their implementation. In any event, we intend to monitor the rules and to report our findings publicly.

N. ENVIRONMENTAL CONSIDERATIONS

Few comments addressed our preliminary environmental impact assessment. The quality of the human environment will not be affected significantly by this action. Environmental policy considerations will continue to be a factor in individual motor carrier application proceedings.

O. FINAL RULES

§ 1100.247 [Amended]

1. Special rule 247 of the Commission's rules of practice (49 CFR 1100.247) is amended in paragraph (i) by adding to the end of that paragraph the words: "or paragraph (l) of this section".

2. Section 1100.247 is also amended by adding new paragraphs (e)(9), (k), (l), and (m) to read as follows:

§ 1100.247 Rules governing applications by motor carriers of property or passengers and brokers under sections 206 (except section 206(a)(6) relating to certificates of registration), 209 and 211, by water carriers under sections 302(e), 303, and 309, and by freight forwarders under section 410 of the Act. (Rule 247).

* * * * *

(e) * * *

(9) In motor carrier application proceedings, the provisions of paragraph (k) of this section, to the extent they are inconsistent with this paragraph, shall apply.

* * * * *

(k) *Intervention without leave in motor carrier application proceedings.* Intervention without leave will be allowed in motor carrier application proceedings by persons supporting the application and by a carrier that files, within 30 days of the date of publication of the application in the FEDERAL REGISTER, a petition showing that it

(1) Is authorized to perform any of the service which the applicant seeks authority to perform, and

(2) Has the necessary equipment and facilities for performing that service; and

(3) Has performed a service within the scope of the application either (i) for those supporting the application, or, (ii) where the service is not limited to the facilities of particular shippers, from and to or between any of the involved points.

(4) Except to the extent that they are inconsistent with the provisions of this subsection, the provisions of paragraph (e) of this section apply to protests filed under this section.

(l) *Intervention with leave in motor carrier application proceedings.* (1) Persons unable to intervene in a motor carrier application proceeding under paragraph (k) of this section may file a petition for leave to intervene under this subsection within 30 days of the date of publication of the application in the FEDERAL REGISTER. A party to a proceeding may file a response to a petition to intervene with leave within 15 days after the petition is filed.

(2) In determining whether to permit intervention with leave the Commission will consider, among other factors—

(i) The nature, if any, of the petitioner's right under a statute to be made a party.

(ii) The nature and extent of the property, financial, or other interest of the petitioner, including petitioner's service capabilities and the extent, if any, to which petitioner (A) has solicited the traffic or business of those supporting the application, or, (B) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace.

(iii) The effect of the decision which may be rendered upon the petitioner's interest.

(iv) The availability of other means by which the petitioner's interests might be protected.

(v) The extent to which the petitioner's interest will be represented by other parties.

(vi) The extent to which the petitioner's participation may reasonably be expected to assist in the development of a sound record.

(vii) The extent to which participation by the petitioner would broaden the issues or delay the proceeding.

(3) In granting a petition to intervene with leave, the Commission may limit the scope of the petitioner's participation in the proceeding.

(m) *Appeals.* An immediate administrative appeal of an intervention decision in motor carrier application proceedings may be taken to a division of the Commission or other appropriately designated appellate decisionmaker within 10 days of the service date of the decision. The appeal shall be asserted by the filing with the Commission and serving upon opposing parties a notice of appeal and accompanying supporting brief which should not exceed 10 typewritten pages. Any applicant or prospective intervenor may file and serve a response, which should not exceed 10 typewritten pages, in support of or in opposition to the appeal within 5 days after service of the appeal.

This document is promulgated under the authority contained in 49 U.S.C. 304 and 5 U.S.C. 553 and 559 and was adopted formally at a general session of the Interstate Commerce Commission held at its offices in Washington, D.C., on October 10, 1978.

By the Commission, Chairman O'Neal, Vice Chairman Christian, Commissioners Brown, Stafford, Gresham, and Clapp. (Chairman O'Neal, Commissioners Brown and Stafford would have deferred applicant's right of appeal from an intervention decision until a decision is made on the merits of the application; and Commissioner Stafford voted

[10] The same argument also would apply to petitions seeking intervention on the basis of solicitation.

[11] Information concerning "distinct needs" is included in revised form OP-OR-9.

[12] It has been claimed that, unlike regulated motor carriers, railroads do not operate pursuant to Commission issued certificates and permits and that, read literally, the rules would preclude automatic intervention by rail carriers since none holds "operating authority." Although we believe that only a strained interpretation of the rules, when read as a whole, could lead to such a conclusion, the "operating authority" requirement for automatic intervention will be rephrased to read "(1)(i) Is authorized to perform any of the service which the applicant seeks authority to perform * * *".

against portions of the rules adopted and has filed a separate expression.)

H. G. HOMME, Jr.,
Acting Secretary.

COMMISSIONER STAFFORD (DISSENTING)

This decision represents the most significant step so far in the Commission's current march toward deregulation. The major impact of this new rule is the intentional exclusion from our licensing proceedings of carriers who stand to suffer by our licensing. It is bad enough if these carriers lose out after being allowed to participate; here, the majority is saying these carriers should not even be heard.

I am also disturbed at the much broadened concept of "intervention with leave." If a person has a legitimate interest in a particular case, it should not be left up to some bureaucrat to determine if the person has enough of an interest to warrant intervention.

The rules adopted here have virtually no relation to the reasons why the proceeding was instituted. The purpose of staff task force recommendation No. 2 (from which this proceeding derived) was to eliminate frivolous protests and thus to allow a larger number of cases to proceed as unopposed. A protest is frivolous when it is interposed merely for purposes of delay, when the carrier submitting it has neither the desire nor the ability to perform the service, and when the grant of authority would have no adverse effect on the carrier. A protest that does not fall within these criteria is not frivolous, and a protesting carrier should have the right to participate in a case affecting its interest and have that interest adjudicated on the merits.

The final rules go well beyond the elimination of frivolous protests. They clearly attempt to keep out of the proceeding all potential opposition, except those carriers on whom the impact obviously would be severe.

It is absurd to prohibit protests of contract carrier applications by common carriers or of common carrier applications by contract carriers. To say that common and contract carrier operations are different is to elevate form over substance. For years, there has been tacit recognition that many irregular route common carrier grants of authority were not materially different from grants of contract carrier authority. The majority does not explain what differences between common and contract carriage influenced their view that these two types of services are, in effect, mutally exclusive. They have not done so, in my view, because they are unable to.

The result of this major policy change will be virtually automatic grants of authority in every contract carrier application proceeding. We all know very well that a contract carrier almost never protests the application of another contract carrier.

Discretionary intervention is not enough to protect the legitimate interests of existing carriers who are already serving the shippers or soliciting the traffic.

The final rules say that solicitation of the traffic will not be grounds for automatic intervention. I can think of no clearer way for a carrier to express its interest in the traffic. No carrier that has actively solicited the traffic should be denied the right to participate.

Moreover, when it comes to discretionary intervention, the majority states that direct, recurring personal solicitation shall be the primary consideration in allowing participation. This represents another example of misplaced emphasis. This policy favors the carrier with a large sales staff over the carrier with efficient service and good reputation. I would not place such heavy emphasis on personal visits.

The number of truly frivolous protests is relatively few. Moreover, their impact, in terms of the time and effort involved in disposing of them, is significant only in cases that otherwise would be unopposed. In a proceeding where other legitimate protests are filed, the disposition of frivolous protests is a simple matter that takes little additional time, expense, or effort.

The additional and detailed material that we proposed to ask the parties to submit seems all out of proportion to the problem. Although frivolous protests are not especially prevalent, these proposals envision the submission of detailed, prehearing pleadings in every licensing case that comes before us. The proposed standards will create a mountain of paperwork from which the Office of Proceedings might never emerge. Certainly they will delay, rather than expedite, the majority of cases. The decisional process on interventions and appeals will undoubtedly result in more dilatory pleadings, not less. Instead of reducing the time and expenses for both the Commission and the parties, we are increasing both the workload and the costs of participating. Under existing procedures, the Office of Proceedings has developed the expertise to review protests and resolve them with little difficulty.

Finally, although it is primarily an internal matter, I do feel it is necessary to comment on the impact of this rule on the Section of Operating Rights in the Office of Proceedings. This section will be charged with implementing the new rule, and handling all the pleadings attendant thereto. At the same time its caseload continues to be at or near record levels. No increase in staff is projected for the section. Functionally, it will be impossible to handle all the new procedural matters and still maintain the high output the section has produced in the past few years. I predict a significant increase in backlog and case processing time.

While instituted to achieve a reasonable policy objective, this rulemaking has resulted in a rule that far exceeds its initial purpose. The rule is of questionable legality in the limits it places on participation. Finally, it will cause increased paperwork, costs, delay, and backlog.

APPENDIX I

(SAMPLE)

PETITION TO INTERVENE WITHOUT LEAVE

in the proceeding in

No. MC-000000 (Sub-No. 0)

XYZ HAULERS, INC.

Petitioner's identity: ABC TRANSIT, P.O. Box 0, Anyplace, NC 00000.
Petitioner's representative: John Doe, P.O. Box 0, Anyplace, NC 00000, phone: 000-000-0000.

Petitioner's interest in the title common carrier application proceeding (which involves transportation of frozen foods from the facilities of Freezer, Inc., at Memphis, TN to points in Georgia) is as follows:

(1) Petitioner is authorized to perform (in whole or part) services which applicant seeks authority to perform (a copy of petitioner's conflicting certificate is attached).

(2) Petitioner maintains a full service terminal at Memphis, TN, and operates 100 tractors and 200 vans equipped with mechanical refrigeration.

(3) Petitioner has provided service for Freezer, Inc. from its Memphis facility as follows—

April 1978: 100,000 lbs (30 shipments) to Albany, Macon, and Athens, GA, producing revenues of $7,100.
May 1978: 200,000 lbs (40 shipments to Atlanta, GA, producing revenues of $13,300.

Petitioner's overall operating revenue during April and May 1978 was $59,000.

Based upon the foregoing, petitioner seeks automatic intervention in the title proceeding.

/s/ John Doe
JOHN DOE,
Attorney for petitioner.

A copy of this petition was mailed to applicant's representative by first class mail on the —— day of ————, 1978.

/s/ John Doe
JOHN DOE,
Attorney for petitioner.

APPENDIX II

(SAMPLE)

PETITION TO INTERVENE WITHOUT LEAVE

in the proceeding in

No. MC-000000 (Sub-No. 0)

XYZ HAULERS, INC.

Petitioner's identity: ABC TRANSIT, P.O. Box 0, Anyplace, NC 00000.
Petitioner's representative: John Doe, P.O. Box 0, Anyplace, NC 00000, phone: 000-000-0000.

Petitioner's interest in the title common carrier application proceeding (which involves transportation of frozen foods from Memphis, TN, to points in Georgia) is as follows (note here that shipper has not been identified in the published caption summary):

(1) Petitioner is authorized to perform (in whole or part) services which applicant seeks authority to perform (a copy of petitioner's conflicting certificate is attached).

(2) Petitioner maintains a full service terminal at Memphis, TN, and operates 100 tractors and 200 vans equipped with mechanical refrigeration.

(3) Although petitioner has handled no frozen food traffic originating in the Memphis area for many months, it has extensively solicited such traffic. Examples of solicitation efforts (involving offers to transport frozen foods from Memphis to authorized points of service, including points in Georgia) follow:

(a) Personal meetings with representatives of Quick Freeze, Redi Froze, and Cold Cuts, all Memphis frozen food distributors, on July 1, 1978, and again on July 25, 1978.

(b) Telephone conversations with representatives of the above-named firms on July 15, 1978, and August 8, 1978.

(c) Advertisement (a copy of which is attached) appearing in Memphis Journal of Traffic and Trade in the July 1978 issue. (Cost $195).

During the period January 1, 1978 through August 1978, petitioner estimates that it has invested more than $400 in the solicitation of frozen food traffic from Memphis to authorized points including Georgia.

(4) Other pertinent information:

Petitioner is a small carrier specializing in the transportation of commodities which require refrigeration in transit. It operates throughout the southeastern United States. In 1977, gross operating revenues were $4.2 million of which $400,000 was reported by the Memphis terminal. Petitioner has been trying unsuccessfully to attract business in the Memphis marketplace since January 1978 when the shipper for which it had been performing a service for 6 months became insolvent. If petitioner is unable to attract business in the near future, it will be forced to close its Memphis terminal upon which many small shippers in the area have come to rely.

Based upon the foregoing, petitioner seeks intervention with leave in the title proceeding.

/s/ John Doe
JOHN DOE
Attorney for petitioner.

A copy of this petition was mailed to applicant's representative by first class mail on the —— day of ————, 1978.

/s/ John Doe
JOHN DOE
Attorney for petitioner.

APPENDIX III

(SAMPLE)

PETITION TO INTERVENE WITH LEAVE •

in the proceeding in

No. MC-000000 (Sub-No. 0)

XYZ HAULERS, INC.

Petitioner's identity: ABC TRANSIT, P.O. Box 0, Anyplace, NC 00000.
Petitioner's representative: John Doe, P.O. Box 0, Anyplace, NC 00000, phone: 000-000-0000.

Petitioner's interest in the title contract carrier application proceeding [which involves transportation of frozen foods from Memphis, TN to points in Georgia under continuing contract with Freezer, Inc., of Memphis] is as follows:

(1) Petitioner is authorized to perform (in whole or part) services which applicant seeks authority to perform (a copy of petitioner's conflicting certificate is attached).

(2) Petitioner maintains a full service terminal at Memphis, TN, one block from the shipper's facility, and operates 100 tractors and 200 vans equipped with mechanical refrigeration.

(3) Petitioner believes that it has handled the involved traffic but shipper (then OJ Frozen Foods, Inc.) since has either changed its name or sold the business. Petitioner provided service for OJ Frozen Foods, Inc., from Memphis to points in Georgia as follows:

September 1977: 50,000 lbs (10 shipments) to Albany producing revenues of $1950.
October 1977: 100,000 lbs (15 shipments) to Atlanta producing revenue of $3710.

(4) Petitioner also has solicited shipper's frozen food traffic from Memphis to authorized points of service, including Georgia. Examples of these solicitation efforts include:

(a) Personal meetings with representatives of shipper on June 30, 1978 and July 10 and 11, 1978.

(b) Letters (copies of which are attached) to representatives of shipper alerting them to petitioner's service capabilities.

(5) The proximity of petitioner's terminal coupled with the constant availability of equipment there would enable petitioner to meet shipper's need for a "house carrier."

(6) Other pertinent information:

Petitioner is a small carrier specializing in the transportation of commodities which require refrigeration in transit. It operates throughout the southeastern United States. In 1977, gross operating revenues were $4.2 million of which $400,000 was reported by the Memphis terminal. Many carriers are competing for frozen food traffic in the Memphis area. It is petitioner's belief that there is excess capacity. During the first six months of 1978, petitioner's Memphis terminal grossed only $50,000 in revenues. If petitioner is unable to attract business in the near future, it wil be forced to close its Memphis terminal upon which many small shipper's in the area have come to rely.

Based upon the foregoing, petitioner seeks intervention with leave in the title proceeding.

/s/ John Doe
JOHN DOE,
Attorney for petitioner.

A copy of this petition was mailed to applicant's representative by first class mail on the —— day of ————, 1978.

/s/ John Doe
JOHN DOE,
Attorney for petitioner.

[FR Doc. 78-30905 Filed 10-31-78; 8:45 am]

• This format also could be employed where petitioner is uncertain whether to apply for intervention with or without leave. The petition, in such case, should be entitled "Petition to intervene with or without leave."

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proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

[6210-01-M]

FEDERAL RESERVE SYSTEM

[12 CFR Part 208]

[Docket No. R-0142]

MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM

Recordkeeping and Confirmation Requirements for Certain Securities Transactions Effected by State Member Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Republication of proposed rule.

SUMMARY: On January 31, 1978, the Board of Governors of the Federal Reserve System published for comment proposed amendments ot its regulation H (12 CFR 208) to require that State member banks that effect certain securities transactions for customers provide confirmations of and maintain records with respect to such transactions (43 FR 5006). Commentators were also invited to consider whether and to what extent regulations should be promulgated concerning: (1) Best execution of securities transactions and (2) competency and testing requirements for bank employees. The comment period was extended (43 FR 12720) and ended May 1, 1978. Similar proposals were also published for comment by the Comptroller of the Currency and the Federal Deposit Insurance Corporation.

A substantial number of critical, but useful, comments were received by the Board expressing significant concerns regarding the feasibility of the proposed amendments. As a result, the Board determined to revise the proposed amendments to its regulation H in light of the comments received and to republish the amendments for additional comment. Information setting forth estimated costs of implementation of the proposed amendment is also being requested. The Board has determined to take no further action at this time regarding the promulgation of regulations concerning best execution of securities transactions, and competency and testing requirements of bank employees.

DATE: Comments must be received on or before December 18, 1978.

ADDRESS: Secretary of the Board of Governors of the Federal Reserve System, 20th & Constitution Avenue NW., Washington, D.C. 20551. All material submitted should be in writing and should refer to docket No. R-0142. Such material will be available for public inspection during the regular hours of the Office of the Secretary at the above address.

FOR FURTHER INFORMATION CONTACT:

Robert S. Plotkin, Assistant Director, 202-452-2782, or Robert A. Wallgren, Chief, Trust Activities Program, 202-452-2717, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: The original proposal to amend regulation H has been substantially revised as a result of the numerous comments which were received. The most significant revision of the amendment as originally proposed pertains to the confirmation requirements. However, substantial revisions to the recordkeeping portion of the proposed amendments have also been made. The following is a summary of the significant revisions which are proposed.

With respect to the proposed recordkeeping requirements, the Board has taken into consideration the many comments which have been received expressing the concern that these requirements, as proposed, would be burdensome and costly due to: (1) The length of time for which the required records would be kept; and (2) the variety of records which would be required to be maintained. In order to reduce the volume of records which a State member bank would be required to maintain, the Board has proposed to decrease the number of years required for retention. Although the original proposal was silent with respect to the number of years for which copies of confirmations must be maintained, it is now proposed that the number of years for which all required records, including copies of confirmations, must be maintained be reduced from 6 years to 3 years.

In further response to these concerns, and in consideration of those comments expressing the view that the recordkeeping requirements should be less onerous for smaller banks, the Board has proposed to exempt from certain of the recordkeeping requirements those banks which effect an average of fewer than 200 securities transactions per year. Thus, such banks that effect a nominal number of securities transactions would be required, pursuant to these proposed regulations, to maintain significantly fewer records.

In addition to these revisions to the recordkeeping requirements, several other significant changes have been proposed with respect to recordkeeping. The revised proposal would delete the requirement for maintaining a chronological record of all receipts and deliveries of securities and of receipts and disbursements of cash. However, this information would still be required to be maintained in account records of customers. The regulations as revised would also change the requirement for including on the order ticket the time the order was executed to the time the order was placed with the broker/dealer, where a broker/dealer has been utilized. Where a broker/dealer is not used, the time of execution would still be required. A further proposed revision would permit banks to maintain records of only those broker/dealers for whom the bank has exercised discretion in selecting the broker/dealer to effect a particular securities transaction for its customers, rather than to require that a record be kept of all broker/dealers used by the bank to effect such transactions. In addition, and in connection with this revision, a newly proposed provision would also require that a record be kept of the amount of commissions paid or allocated to each such broker during the calendar year.

With respect to the proposed confirmation requirements there have been two major revisions. The first pertains to the length of time within which a member bank must provide a customer with a confirmation of a securities transaction which has been effected for that customer. As revised, the proposal would require that where a broker/dealer is utilized, the confirmation would be furnished within 5 business days from the date the bank receives the broker/dealer confirmation, rather than 5 business days from the date of the transaction. However, where there is no broker/dealer utilized, the confirmation would be furnished to the customer within 5 business days from the date of the transaction. The second major revision to the confirmation requirements substantially diminishes the number of confirmations which member banks would be required to furnish. The revised proposal reflects the concern, as expressed by many of the commentators, that the customer should have the right to request not to receive the confirmation. Thus, in those cases where the bank does not exercise investment discretion, the bank and the customer can agree to alternative arrangements. In those cases where the bank exercises investment discretion, in other than an agency capacity, no confirmation would be required except upon request. The confirmation requirements have been similarly liberalized for other types of accounts. It should also be noted that as an alternative to furnishing a separate bank confirmation containing certain specified information, the revised proposal provides that the bank may furnish the customer with a copy of the broker/dealer confirmation supplemented by certain additional information.

In addition to the changes which have been made with respect to the recordkeeping and confirmation requirements, a new section has been added to the regulation which contains the exceptions from requirements of this proposal. Two of the exceptions contained in this section are newly proposed by this revised proposal. These new exceptions represent a further significant revision to the original proposal. The exception for banks having an average of fewer than 200 securities transactions per year has previously been discussed. It should be noted that although such banks would be exempt from certain of the recordkeeping requirements, these banks would nevertheless be subject to the confirmation requirements and other provisions of the regulation, wherever applicable. In addition, activities of foreign branches of State member banks would be exempt from the requirements of this regulation.

In connection with its original proposal, the Board also requested comment regarding the need for regulations requiring best execution of securities transactions and imposing competency and testing requirements for bank employees engaged in effecting securities transactions. Based on comments received, the Board has decided to take no further action in this area at this time.

As to the best execution requirement, the Board believes that traditional trust and agency principles already make clear the obligation of banks to use reasonable care in effecting securities transactions to obtain the best terms possible for customers. Because of the numereous and highly subjective considerations involved in meeting this obligation, the Board believes that the term "best execution" cannot be reasonably defined by regulation and that any attempt to do so would limit the flexibility of banks in complying with such principles and would unfairly impose upon all banks a detailed standard of performance that may not be appropriate to, or adequately reflect, their individual circumstances or the needs of their customers. It is further observed that the regulations presently applicable to broker/dealers, through which most securities transactions of banks are effected, contain little more than a simple restatement of the traditional agency principle.

Regarding competency and testing requirements, the Board believes that, even if sufficient statutory authority were deemed to exist to promulgate regulations in this area, it would be inappropriate to establish a costly and elaborate scheme for testing the competence of individuals associated with only one small aspect of total banking activity. The Board recognizes the need for specific training of bank personnel engaged in effecting securities transactions in operation of the securities market and of the requirements of the securities laws. As the SEC final report itself recognizes, however, the level of training and knowledge that is required will vary depending on the volume and size of the transactions effected. The bank examination process has traditional been effectively used to detect and remedy personnel weaknesses and the Board believes that continued reliance on the examination process, augmented by increased examiner training in the requirements of the Federal securities laws, will be more effective in assuring an appropriate level of competence than prescribing a generalized uniform test that may or may not be relevant to a particular situation.

To aid in consideration of this proposal by the Board, interested persons are invited to submit relevant data, views, comments or arguments. The Board is specifically requesting information concerning the projected costs of implementing the proposed amendments. Information should be separately furnished as to projected startup costs and continuing costs and, to the extent feasible, these estimates should be allocated between the recordkeeping and confirmation requirements. Unit transaction costs should be furnished if possible, indicating, if known, variances in such costs, depending on volume of transactions.

1. Pursuant to sections 9 and 11 of the Federal Reserve Act (12 U.S.C. 321, 248(a) and (l)) and section 8(b)(1) et seq. of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)) the Board proposes to amend regulation H (12 CFR 208) by adding a paragraph (k) to § 208.8 as set forth below:

§ 208.8 Banking practices.

. . . . . .

(k) *Recordkeeping and confirmation of certain securities transactions effected by State member banks.* (1) *Definitions.* For purposes of this paragraph (k):

(i) "Customer" shall mean any person or account, including any agency, trust, estate, guardianship, committee or other fiduciary account, for which a State member bank effects or participates in effecting the purchase or sale of securities, but shall not include a broker, dealer, dealer bank or issuer of the securities which are the subject of the transactions;

(ii) "Periodic plan" means any written authorization for a State member bank acting as agent to purchase or sell for a customer a specific security or securities, in specific amounts (calculated in security units or dollars) or to the extent of dividends and funds available, at specitfic time intervals and setting forth the commission or charges to be paid by the customer in connection therewith or the manner of calculating them;

(iii) "Collective investment fund" means funds held by a State member bank as fiduciary and, consistent with local law, invested collectively (A) in a common trust fund maintained by such bank exclusively for the collective investment and reinvestment of monies contributed thereto by the bank in its capacity as trustee, executor, administrator, guardian, or custodian under the Uniform Gifts to Minors Act, or (B) in a fund consisting solely of assets of retirement, pension, profit sharing, stock bonus or similar trusts which are exempt from Federal income taxation under the Internal Revenue Code;

(iv) "Security" means any interest or instrument commonly known as a "security", whether in the nature of debt or equity, including any stock, bond, note, debenture, evidence of indebtedness or any participation in or right to subscribe to or purchase any of the foregoing. The term "security" does not include (A) a deposit or share account in a federally insured depositary institution, (B) a loan participation, (C) a letter of credit or other form of bank indebtedness incurred in the ordinary course of business, (D) currency, (E) any note, draft, bill of exchange, or bankers acceptance which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited, (F) units of a collective

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investment fund, or (G) interests in a variable amount (master) note of a borrower of prime credit;

(v) A bank shall be deemed to exercise "investment discretion" with respect to an account if, directly or indirectly, the bank (A) is authorized to determine what securities or other property shall be purchased or sold by or for the account, or (B) makes purchased or sold by or for the specific account even though some other person may have responsibility for such investment decisions.

(2) *Recordkeeping.* Every State member bank effecting securities transactions for customers shall maintain the following records with respect to such transactions for at least 3 years:

(i) Chronological records of original entry containing an itemized daily record of all purchases and sales of securities. The records of original entry shall show the account for which each such transaction was effected, the description of the securities, the unit and aggregate purchase or sale price (if any), the trade date and the name or other designation of the broker/dealer or other person from whom purchased or to whom sold;

(ii) Account records for each customer which shall reflect all purchases and sales of securities, all receipts and deliveries of securities, and all receipts and disbursements of cash with respect to transactions in securities for such account and all other debits and credits pertaining to transactions in securities.

(iii) A separate memorandum (order ticket) of each order to purchase or sell securities (whether executed or cancelled), which shall include:

(A) The account for which the transaction was effected;

(B) Whether the transaction was a market order, limit order, or subject to special instructions;

(C) The time the order was received by the trader or other bank employee responsible for effecting the transaction;

(D) The time the order was placed with the broker/dealer, or if there was no broker/dealer, the time the order was executed or cancelled;

(E) The price at which the order was executed; and

(F) The broker/dealer utilized;

(iv) A record of all broker/dealers selected by the bank to effect securities transactions and the amount of commissions paid or allocated to each such broker during the calendar year.

(3) *Form of notification.* Every State member bank effecting a securities transaction for a customer shall maintain for at least 3 years and, except as provided in paragraph (k)(4) of this section, shall mail or otherwise furnish to such customer either of the following types of notifications:

(i) (A) a copy of the confirmation of a broker/dealer relating to the securities transaction; and (B) if the bank is to receive remuneration from the customer or any other source in connection with the transaction, and the remuneration is not determined pursuant to a prior written agreement between the bank and the customer, a statement of the source and the amount of any remuneration to be received; or

(ii) A written notification disclosing

(A) The name of the bank;

(B) The name of the customer;

(C) Whether the bank is acting as agent for such customer, as agent for both such customer and some other person, as principal for its own account, or in any other capacity;

(D) The date and time of execution (or the fact that the time of execution will be furnished, within a reasonable time, upon written request of such customer), and the identity, price and number of shares or units (or principal amount in the case of debt securities) of such security purchased or sold by such a customer;

(E) The amount of any remuneration received or to be received, directly or indirectly, by any broker/dealer from such customer in connection with the transaction;

(F) The source and amount of any remuneration received or to be received by the bank from the customer or any other source in connection with the transaction, unless remuneration is determined pursuant to a written agreement between the bank and the customer; and

(G) The name of the broker/dealer utilized; or, where there is no broker/dealer, the name of the person from whom the security was purchased or to whom it was sold, or the fact that such information will be furnished within a reasonable time upon written request.

Provided, however, That the requirements of this paragraph (k)(3) shall not be applicable to transactions in (1) securities issued or guaranteed as to principal or interest by the United States; (2) Federal agency obligations; or (3) municipal securities as defined in section 3(a)(29) of the Securities Exchange Act of 1934.

(4) *Time of notification.* The time for mailing or otherwise furnishing the written notification described in paragraph (k)(3) of this section shall be 5 business days from the date of the transaction, or if a broker/dealer is utilized, within 5 business days from the receipt by the bank of the broker/dealer's confirmation, unless the transaction is effected for:

(i) Accounts (except periodic plans) where the bank does not exercise investment discretion and the bank and the customer agree in writing to a different arrangement; provided, however, that such agreement makes clear the customer's right to receive the written notification within the above prescribed time period at no additional cost to the customer;

(ii) Accounts (except collective investment funds) where the bank exercises investment discretion in other than an agency capacity, in which instance the bank shall, upon request of the person having the power to terminate the account or, if there is no such person, upon the request of any person holding a vested beneficial interest in such account, mail or otherwise furnish to such person the written notification within a reasonable time. The bank may charge a reasonable fee for providing this information.

(iii) Accounts, where the bank exercises investment discretion in an agency capacity, in which instance (A) the bank shall mail or otherwise furnish to each customer not less frequently than once every 3 months an itemized statement which shall specify the funds and securities in the custody or possession of the bank at the end of such period and all debits, credits and transactions in the customer's account during such period, and (B) if requested by the customer, the bank shall mail or otherwise furnish to each such customer within a reasonable time the written notification described in paragraph (k)(3) of this section.

(iv) A collective investment fund, in which instance the bank shall at least annually furnish the customer a copy of a financial report of the fund, or provide notice that a copy of such report is available and will be furnished upon request, to each person to whom a regular periodic accounting would ordinarily be rendered with respect to each participating account. This report shall be based upon an audit made by independent public accountants or internal auditors responsible only to the board of directors of the bank.

(v) A periodic plan, in which instance the bank shall: A mail or otherwise furnish to the customer after the end of each quarterly period in which a transaction was completed, a written statement showing the funds and securities in the custody or possession of the bank at the end of such period and all debits, credits and transactions in the customer's account during such period; or (B) the bank shall mail or otherwise furnish on a per transaction basis within a reasonable time following each transaction the information described in paragraph (k)(3) of this section, except that any such information relating to remuneration paid in connection with transactions in securities need not be provided to the customer when paid by a source other than the customer. The bank may charge a reasonable fee for providing this information. In the event the bank elects (1) above, it shall, upon written request from the customer, supply the information described in (2) above.

(5) *Securities trading policies and procedures.* Every State member bank effecting securities transactions for customers shall establish written policies and procedures providing:

(i) Assignment of responsibility for supervision of all officers or employees who (A) transmit orders to or place orders with broker/dealers, or (B) execute transactions in securities for customers;

(ii) For the fair and equitable allocation of securities and prices to accounts when orders for the same security are received at approximately the same time and are placed for execution either individually or in combination;

(iii) Where applicable, for the crossing of buy and sell orders on a fair and equitable basis to the parties to the transaction; and

(iv) That bank officers or employees whose duties include account management or effecting securities transactions for customers, or who are directly engaged in the management, direction or supervision of such officers or employees, must report to the bank, all securities transactions made by them or on their behalf, either at the bank or elsewhere, in which they have a beneficial interest, except (A) transactions effected in any account over which the bank officer or employee has no direct or indirect influence or control, and (B) transactions in U.S. Government or agency obligations. These reports shall be filed with the bank within 10 days after the end of each quarterly period in which any such security transaction was effected and shall be retained by the bank for 3 years.

(6) *Exceptions.* The following exceptions to this paragraph (k) shall apply:

(i) The requirements of paragraphs (k)(2)(ii) through (k)(2)(iv) shall not apply to banks having an average of less than 200 securities transactions per year for customers over the prior 3-calendar-year period;

(ii) Activities of a State member bank that are subject to regulations promulgated by the Municipal Securities Rulemaking Board shall not be subject to the requirements of this paragraph (k); and

(iii) Activities of foreign branches of a State member bank shall not be subject to the requirements of this paragraph (k).

NO 1 7 8 UMI

Board of Governors of the Federal Reserve System, October 27, 1978.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc. 78-30843 Filed 10-31-78; 8:45 am]

[4810-33-M]

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

[12 CFR Part 12]

RECORDKEEPING AND CONFIRMATION REQUIREMENTS FOR CERTAIN TRANSACTIONS EFFECTED BY NATIONAL BANKS

AGENCY: Comptroller of the Currency.

ACTION: Republication of proposed rule.

SUMMARY: On Tuesday, February 7, 1978, the Comptroller of the Currency ("Comptroller") published for comment in the FEDERAL REGISTER (43 FR 5004) proposed amendments that would require national banks to establish uniform procedures and records relating to the handling of securities transactions for trust department accounts and for customers. The proposed amendments were in part an outgrowth of the recommendations of the Securities and Exchange Commission's Final Report on Bank Securities Activities. Interested persons were also given the opportunity to consider whether and to what extent regulations should be promulgated concerning: (1) Best execution of securities transactions and (2) personnel training and competency requirements. The original comment period ended March 31, 1978, but was extended to May 1, 1978. Similar proposals were also published for comment by the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation.

The Comptroller received over 200 comment letters with a substantial number setting forth significant criticisms of the proposed amendments. As a result of careful consideration and in response to the comment letters the Comptroller has determined to revise the proposed amendments and to republish them for additional comment in a new part, 12 CFR Part 12, entitled, "Recordkeeping and Confirmation Requirements for Certain Transactions Effected by National Banks." The Comptroller at this time is taking no further action regarding the promulgation of regulations concerning the best execution of securities transactions and personnel training and competency requirements. The latter subject is still under consideration however and additional comments are requested from interested parties. Information as to estimated costs of implementation of the proposed amendment is also being requested.

DATE: Written comments must be received on or before December 18, 1978.

ADDRESS: Comments should be addressed to Mr. Dean E. Miller, Deputy Comptroller for Specialized Examinations, Office of the Comptroller of the Currency, 490 L'Enfant Plaza SW., Washington, D.C. 20219.

FOR FURTHER INFORMATION CONTACT:

Mr. Dean E. Miller, Deputy Comptroller for Specialized Examinations, at the above address or telephone at 202-447-1731.

SUPPLEMENTARY INFORMATION: The proposed amendments to 12 CFR 9.11 have been substantially revised as a result of the numerous comments received. A summary of the comments and the Comptroller's response is as follows:

(1) A number of commentators took exception to the Comptroller's issuing the proposed amendments pursuant to 12 U.S.C. 92a and 12 CFR 9.11 which relate to trust department activities. The major criticism was that to the extent the proposed amendments regulate bank securities activities which are outside the scope of 12 U.S.C 92a and 12 CFR Part 9, adequate notice is not provided to national banks engaging in nonrelated trust department transactions. In response, the Comptroller is publishing the proposed amendments pursuant to 12 U.S.C. 1 et seq., 12 U.S.C. 92a and under a new 12 CFR Part 12 entitled, "Recordkeeping and Confirmation Requirements for Certain Securities Transactions Effected by National Banks." Proposed 12 CFR Part 12 would require that national banks that effect certain securities transactions for customers establish uniform procedures and records relating to the handling of securities transactions for trust department accounts and for customers.

(2) The Comptroller, in response to a number of comments, has revised the recordkeeping requirements as originally proposed (see proposed 12 CFR 9.11(h), 43 FR 5005). A number of commentators expressed concern that the requirements, as proposed, would be burdensome and costly due to: (1) The length of time for which the required records would be kept; and (2) the variety of records which would be required to be maintained. The Comptroller, in order to reduce the volume of records which a national bank would be required to maintain, is proposing to decrease the record retention requirement from 6 to 3 years. (See proposed 12 CFR 12.3.) Also, a bank would be required to maintain copies of confirmations sent to cus-

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tomers for a 3 year period. (See proposed 12 CFR 12.4.)

The Comptroller in response to comments received, deleted the requirement for maintaining a chronological record of all receipts and deliveries of securities and of receipts and cash disbursements. However, this information would still be required to be maintained in account records of customers. (See proposed 12 CFR 12.3(b).)

The regulation as originally proposed would have required a bank to include on the order ticket the time the order was executed. In response to a number of comments, the Comptroller is proposing instead to require that a bank include on the order ticket the time the order was placed with the broker/dealer, where a broker/dealer has been utilized. (See proposed 12 CFR 12.3(c)(4).) Where a broker/dealer is not utilized, the time of execution would still be required.

In the February 7, 1978 proposal, the Comptroller would have required that national banks keep a record of all broker/dealers used by the bank to effect securities transactions. In response to comments received, this proposal would be revised to permit national banks to maintain records of only those broker/dealers selected by the bank to effect securities transactions. (See 12 CFR 12.3(a).) However, this provision would be expanded to require that a national bank keep a record of the amount of commissions paid or allocated to each broker during the calendar year.

The Comptroller very seriously considered the comments received from national banks which effect few securities transactions for their customers. In response, the Comptroller is proposing to exempt from certain of the recordkeeping requirements those banks which have an average of less than 50 securities transactions per year for customers over the prior 3 year calendar period. (See proposed 12 CFR 12.7(a).) Thus, such banks that effect a nominal number of securities transactions would have to maintain significantly fewer records. Also, the Comptroller has retained its general exception provision by which a national bank may request waiver of one or more of the requirements of 12 CFR Part 12. (See proposed 12 CFR 12.7(d).)

(3) The Comptroller received a number of comment letters regarding the proposed confirmation requirements (See 12 CFR 9.11(e), 43 FR 5004.) The Comptroller would revise the regulation to require that where a bank utilizes a broker/dealer, the confirmation would be furnished within 5 business days from the date the bank receives the broker/dealer confirmation, rather than 5 business days from the date of the transaction. (See proposed 12 CFR 12.5.) However, where the bank does not utilize a broker/dealer to effect securities transactions, the confirmation would be furnished to the customer within 5 business days from the date of the transaction. (See proposed 12 CFR 12.5.)

A number of commentators indicated that many customers specifically request that confirmations be sent at periodic intervals, such as quarterly, rather than immediately after the transaction is executed. The Comptroller would revise the confirmation requirements to diminish the number of confirmations which a bank must furnish to customers. Where a national bank does not exercise investment discretion, as defined in proposed 12 CFR 12.2(e), the bank and the customer may agree to a different arrangement, provided that such arrangement specifies the customer's right to receive written notification within the prescribed time period at no additional cost. (See proposed 12 CFR 12.5(a).) In the case where a national bank exercises investment discretion in other than an agency capacity, no confirmation would be required except upon request of certain specified persons. (See proposed 12 CFR 12.5(b).) The national bank would be able to charge a reasonable fee. For an account where the national bank exercises investment discretion in an agency capacity, the bank may either mail or furnish to each customer at least every three months an itemized statement or if requested by the customer, the bank may within a reasonable time furnish to each customer the written notice described in proposed 12 CFR 12.4.

(4) A number of commentators suggested that an exception to the requirements should be provided to activities of foreign branches of national banks. (See proposed 12 CFR 12.7(c).)

(5) The Comptroller in the original proposal requested comments regarding the adoption in regulatory form of a requirement that a bank obtain "best execution" of a securities transaction. The overwhelming number of commentators opposed specific regulations because: (1) The term "best execution" cannot be precisely defined; (2) a regulation would at best merely restate the present fiduciary duty and at worse introduce ambiguities which would needlessly confuse banks; and (3) until more detailed best execution rules are provided for broker/dealers, it would not be appropriate for the Comptroller to propose at this time his own rules because in many cases banks engaging in securities transactions use the services of broker/dealers. Based upon these comments, the Comptoller has determined not to propose in regulatory form a requirement or regulation that a bank must obtain best execution of a securities transaction.

(6) National banks were also requested to submit comments regarding possible regulations respecting personnel training and competency requirements. Based upon the comments received and after reviewing the issues involved, the Comptroller believes that it would be extremely difficult and perhaps inappropriate to establish an elaborate scheme for testing the competence of individuals associated with only one small aspect of total banking activities. The Comptroller recognizes the need for specific training of bank personnel engaged in effecting securities transactions, however, a number of the larger banks indicated that they already maintain in-house training staffs for the purpose of upgrading the knowledge and skills of their employees. The bank examination process has traditionally been effectively used to detect and remedy violations of law and personnel weaknesses within a bank. The Comptroller is constantly educating and updating the knowledge of bank examiners as to the requirements of the Federal securities laws and believes that the continued reliance on the examination process may be more effective in assuring an appropriate level of competence of bank personnel than prescribing a generalized uniform test that may or may not be relevant to a particular bank or a particular situation. The views of interested parties as to this subject are requested.

The Comptroller also requests information concerning the projected costs of implementing the proposed amendments. Information is requested as to startup and continuing costs; and, if feasible, these estimates should be allocated between the recordkeeping and confirmation requirements. Unit transaction costs are requested, including possible variances as a result of volume transactions.

DRAFTING INFORMATION: The principal drafter of this document is Mr. Ralph Janvey, Attorney, Securities Disclosure Division, Comptroller of the Currency.

The Comptroller proposes to add a new part 12 to his regulations as set forth below:

PART 12—RECORDKEEPING AND CONFIRMATION REQUIREMENTS FOR SECURITIES TRANSACTIONS

Sec.
12.1 Scope of part.
12.2 Definitions.
12.3 Recordkeeping.
12.4 Form of notification.
12.5 Time of notification.
12.6 Securities trading policies and procedures.
12.7 Exceptions.

AUTHORITY: R. S. 324 et seq., as amended, 12 U.S.C. 1 et seq., 12 U.S.C. 92a.

§ 12.1 Scope of part.

This part is issued by the Comptroller of the Currency under the general authority of the National Banking Laws, R.S. 324 et. seq., as amended; 12 USC 1 et. seq.; 12 seq.; 12 USC 92a, and contains rules applicable to recordkeeping and confirmation requirements for certain transactions effected by national banks.

§ 12.2 Definitions.

For the purposes of this part:

(a) "Customer" means any person or account, including any agency, trust, estate, guardianship, committee or other fiduciary account for which a national bank effects or participates in effecting the purchase or sale of securities, but shall not include a broker, dealer, dealer bank or issuer of the securities which are the subject of the transactions.

(b) "Periodic plan" means any written authorization for a national bank acting as agent to purchase or sell for a customer a specific security or securities, in specific amounts (calculated in security units or dollars) or to the extent of dividends and funds available, at specific time intervals and setting forth the commission or charges to be paid by the customer in connection therewith or the manner of calculating them.

(c) "Collective investment fund" means any fund as defined in 12 CFR 9.18(a).

(d) "Security" means any interest or instrument commonly known as a "security," whether in the nature of debt or equity, including any stock, bond, note, debenture, evidence of indebtedness or any participation in or right to subscribe to or purchase any of the foregoing. The term "security" does not include (1) a deposit or share account in a federally insured depositary institution, (2) a loan participation, (3) a letter of credit or other form of bank indebtedness incurred in the ordinary course of business, (4) currency, (5) any note, draft, bill of exchange, or bankers acceptance which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited, (6) units of collective investment funds, or (7) interests in a variable amount (master) note as defined in 12 CFR 9.18(c)(2)(ii).

(e) A bank shall be deemed to exercise "investment discretion" with respect to an account, if directly or indirectly the bank (1) is authorized to determine what securities or other property shall be purchased or sold by or for the account, or (2) makes recommendations as to what securities or other property shall be purchased or sold by or for the account even though some other person may have responsibility for such investment decisions.

§ 12.3 Recordkeeping.

Every national bank effecting securities transactions for customers shall maintain the following records with respect to such transactions for at least 3 years:

(a) Chronological records of original entry containing an itemized daily record of all purchases and sales of securities. The records of original entry shall show the account for which each such transaction was effected, the description of the securities, the unit and aggregate purchase or sale price (if any), the trade date and the name or other designation of the broker/dealer or other person from whom purchased or to whom sold;

(b) Account records for each customer which shall reflect all purchases and sales of securities, all receipts and deliveries of securities, and all receipts and disbursements of cash with respect to transactions in securities for such account and all other debits and credits pertaining to transactions in securities;

(c) A separate memorandum (order ticket) of each order to purchase or sell securities (whether executed or cancelled), which shall include:

(1) The account for which the transaction was effected;

(2) Whether the transaction was market order, limit or subject to special instructions;

(3) The time the order was received by the trader or other bank employee responsible for effecting the transaction;

(4) The time the order was placed with the broker/dealer, or if there was no broker/dealer, the time the order was executed or cancelled;

(5) The price at which the order was executed; and

(6) The broker/dealer utilized;

(d) A record of all broker/dealers selected by the bank to effect securties transactions and the amount of commissions paid or allocated to each such broker during the calendar year.

§ 12.4 Form of notification.

Every national bank effecting a securities transaction for a customer shall maintain for at least 3 years and mail or otherwise furnish to such customer, except as provided in 12 CFR 12.5, either of the following types of notifications:

(a)(1) A copy of the confirmation of a broker/dealer relating to the securities transactions; and (2) if the bank is to receive remuneration from the customer or any other source in connection with the transaction, and the remuneration is not determined pursuant to a written agreement between the bank and the customer, a statement of the source and amount of any remuneration to be received; or

(b) A written notification disclosing:

(1) The name of the bank;

(2) The name of the customer;

(3) Whether the bank is acting as agent for such customer, as agent for both such customer and some other person, as principal for its own account, or in any other capacity;

(4) The date and time of execution (or the fact that the time of execution will be furnished, within a reasonable time, upon written request of such customer), and the identity, price and number of shares or units (or principal amount in the case of debt securities) of such security purchased or sold by such a customer;

(5) The amount of any remuneration received or to be received, directly or indirectly, by any broker/dealer from such customer in connection with the transaction;

(6) The source and amount of any remuneration received or to be received by the bank from the customer or any other source in connection with the transaction, unless remuneration is determined pursuant to a written agreement between the bank and the customer; and

(7) The name of the broker/dealer utilized; or where there is no broker/dealer, the name of the person from whom the security was purchased or to whom it was sold, or the fact that such information will be furnished within a reasonable time upon written request.

Provided, however, That the requirements of 12 CFR 12.4 shall not be applicable to transactions in (a) securities issued or guaranteed as to principal or interest by the United States; (b) Federal agency obligations; or (c) municipal securities as defined in section 3(a)(29) of the Securities Exchange Act of 1934.

§ 12.5 Time of notification.

The time for mailing or otherwise furnishing the written notification described in 12 CFR 12.4 shall be 5 business days from the date of the transaction, or if a broker/dealer is utilized, within 5 business days from the receipt by the bank of the broker/dealer's confirmation, unless the transaction is effected for:

(a) Accounts (except periodic plans) where the bank does not exercise investment discretion and the bank and the customer agree in writing to a different arrangement; provided, however, that such agreement makes clear the customer's right to receive the written notification within the above prescribed time period at no additional cost to the customer;

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(b) Accounts (except collective investment funds) where the bank exercises investment discretion in other than an agency capacity, in which instance the bank shall, upon request of the person having the power to terminate the account or, if there is no such person, upon the request of any person holding a vested beneficial interest in such account, mail or otherwise furnish to such person the written notification within a reasonable time. The bank may charge a reasonable fee for providing this information;

(c) Accounts where the bank exercises investment discretion in an agency capacity, in which instance: (1) the bank shall mail or otherwise furnish to each customer not less frequently than once every 3 months an itemized statement which shall specify the funds and securities in the custody or possession of the bank at the end of such period and all debits, credits and transactions in the customer's account during such period; and (2) if requested by the customer, the bank shall mail or otherwise furnish to each such customer within a reasonable time the written notification described in 12 CFR 12.4;

(d) A collective investment fund, in which instance the provision of 12 CFR 9.18(b)(5) shall apply;

(e) A periodic plan, in which instance the bank shall: (1) Mail or otherwise furnish to the customer after the end of each quarterly period in which a transaction was completed, a written statement showing the funds and securities in the custody or possession of the bank at the end of such period and all debits, credits and transactions in the customer's account during such period; or (2) the bank shall mail or otherwise furnish on a per transaction basis within a reasonable time following each transaction the information described in 12 CFR 12.4, except that any such information relating to remuneration paid in connection with transactions in securities need not be provided to the customer when paid by a source other than the customer. In the event the bank elects (e)(1), it shall, upon written request from the customer, supply the information described in (e)(2).

§ 12.6 Securities trading policies and procedures.

Every national bank effecting securities transactions for customers shall establish written policies and procedures providing:

(a) Assignment of responsibility for supervision of all officers or employees who: (1) Transmit orders to or place orders with broker/dealers or (2) execute transactions in securities for customers;

(b) For the fair and equitable allocation of securities and prices to accounts when orders for the same security are received at approximately the same time and are placed for execution either individually or in combination;

(c) Where applicable, for the crossing of buy and sell orders on a fair and equitable basis to the parties to the transactions; and

(d) That bank officers or employees whose duties include account management or effecting securities transactions for customers, or who directly supervise such activities, must report to the bank all securities transactions made by them or through their direction or control in their behalf, either at the bank or elsewhere, in which they have a beneficial interest. These reports shall be filed with the bank within 10 days after the end of each quarterly period in which any such security transaction was effected and shall be retained by the bank for 3 years.

§ 12.7 Exceptions.

The following exceptions to this Part shall apply:

(a) The requirements of 12 CFR 12.3(b) through 12 CFR 12.3(d) shall not apply to banks having an average of less than 50 securities transactions per year for customers over the prior 3-calendar-year period;

(b) Activities of national banks that are subject to regulations promulgated by the Municipal Securities Rulemaking Board shall not be subject to the requirements of 12 CFR Part 12;

(c) Activities of foreign branches of a national bank shall not be subject to the requirements of 12 CFR Part 12; and

(d) In appropriate cases the Comptroller of the Currency may waive one or more of the requirements set forth in 12 CFR 12.2, 12 CFR 12.3, 12 CFR 12.4, 12 CFR 12.5 and 12 CFR 12.6, either in whole or in part.

Dated: October 18, 1978.

JOHN G. HEIMANN,
Comptroller of the Currency.

[FR Doc. 78-30842 Filed 10-31-78; 8:45 am]

[4830-01-M]

Internal Revenue Service

[26 CFR Parts 1 and 7]

[LR-199-76]

INCOME TAX

Amortization of Certain Rehabilitation Costs for Certified Historic Structures

AGENCY: Internal Revenue Service, Treasury.

ACTION: Extension of time for comments and requests for a public hearing.

SUMMARY: This document provides notice of an extension of time for submitting comments and requests for a public hearing concerning the notice of proposed rulemaking with respect to amortization of certain rehabilitation costs for certified historic structures. The extended deadline for submission of comments and requests for a public hearing is November 29, 1978.

DATES: Written comments and requests for a public hearing must be delivered or mailed by November 29, 1978.

ADDRESS: Send comments and requests for a public hearing to Commissioner of Internal Revenue, Attention: CC:LR:T (LR-199-76), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

H. Benjamin Hartley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, CC:LR:T, 202-566-3287, not a toll-free call.

SUPPLEMENTARY INFORMATION: By a notice of proposed rulemaking published in the FEDERAL REGISTER for Wednesday, August 30, 1978 (43 FR 38731), comments and requests for a public hearing with respect to the proposed rules were to be delivered or mailed to the Commissioner of Internal Revenue, Attention: CC:LR:T (LR-199-76), Washington, D.C. 20224, by October 30, 1978. The date by which comments or requests must be delivered or mailed is hereby extended to November 29, 1978.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the proposed Treasury Directive appearing in the *Federal Register* for Wednesday, May 24, 1978.

By direction of the Commissioner of Internal Revenue:

DAVID E. DICKINSON,
Assistant Director, Legislation and Regulations Division.

[FR Doc. 78-30784 Filed 10-31-78; 8:45 am]

[4310-10-M]

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[30 CFR Part 715]

SURFACE COAL MINING AND RECLAMATION OPERATIONS

Appendix—Alluvial Valley Floors Technical Guidelines

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Further extension of comment period.

SUMMARY: On Friday, October 27, 1978, a notice was published in the FEDERAL REGISTER (43 FR 50407) extending the period for submission of comments specified in notice published August 25, 1978 (43 FR 38035), proposing technical guidelines for preliminary identification of alluvial valley floors, for period of 9 days, or until November 1, 1978. OSM has determined further extension is necessay to permit the preparation and submission of more detailed comments by interested members of the public.

DATE: Comments must be received on or before November 6, 1978.

ADDRESS: Comments should be sent to the Regional Director, Office of Surface Mining Reclamation and Enforcement, Region V, 1823 Stout Street, Denver, Colo. 80202.

FOR FURTHER INFORMATION CONTACT:

John Hardaway, Office of Surface Mining Reclamation and Enforcement, Region V, 1823 Stout Street, Denver, Colo. 30202, 303-837-5511.

Dated: October 27, 1978.

WALTER N. HEINE,
Director, Office of Surface Mining, Reclamation and Enforcement.

[FR Doc. 78-30889 Filed 10-31-78; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 65]

[FRL; 998-4; Docket No. 9-78-7]

STATE AND FEDERAL ADMINISTRATIVE ORDERS PERMITTING A DELAY IN COMPLIANCE WITH STATE IMPLEMENTATION PLAN REQUIREMENTS

Proposed Delayed Compliance Order for Hawthorne Army Ammunition Plant, Hawthorne, Nev.

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to issue an administrative order to Hawthorne Army Ammunition Plant. The order requires the Army to bring air emissions from its rotary demil furnaces in Hawthorne, Nev. into compliance with certain regulations contained in the federally approved Nevada State implementation plan (SIP). Because the Army is unable to comply with these regulations at this time, the proposed order would establish an expeditious schedule requiring final compliance by June 30, 1979. Source compliance with the order would preclude suits under the Federal enforcement and citizen suit provision of the Clean Air Act for violation of the SIP regulations covered by the order. The purpose of this notice is to invite public comment and to offer an opportunity to request a public hearing on EPD's proposed issuance of the order.

DATES: Written comments must be received on or before December 1, 1978, and requests for a public hearing must be received on or before November 16, 1978. All requests for a public hearing should be accompanied by a statement of why the hearing would be beneficial and a text or summary of any proposed testimony to be offered at the hearing. If there is significant public interest in a hearing, it will be held after 30 days prior notice of the date, time, and place of the hearing has been given in this publication.

ADDRESSES: Comments and requests for a public hearing should be submitted to Director, Enforcement Division, EPA, Region IX, 215 Fremont Street, San Francisco, Calif. 94105. Material supporting the order and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT:

William M. Thurston, Chief, Case Development Section, Air and Hazardous Materials Branch, Enforcement Division, EPA, Region IX, 215 Fremont Street, San Francisco, Calif. 94105, telephone 415-556-6150.

SUPPLEMENTARY INFORMATION: The Army operates a plant for the destruction of ammunition at Hawthorne, Nev. The proposed order addresses emissions from two rotary demil furnaces at this facility, which are subject to article 7, rules 7.2.1. and 7.2.2 of the State of Nevada air quality regulations. The regulations limit the emissions of particulate matter, and are part of the federally approved Nevada State implementation plan. The order requires final compliance with the regulations by June 30, 1979, and the source has consented to its terms.

The proposed order satisfies the applicable requirements of section 113(d) of the Clean Air Act (the Act). If the order is issued, source compliance with its terms would preclude further EPA enforcement action under section 113 of the Act against the source for violations of the regulation covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provisions of the Act (section 304) would be similarly precluded.

Comments received by the date specified above will be considered in determining whether EPA should issue the order. Testimony given at any public hearing concerning the order will also be considered. After the public comment period and any public hearing, the Administrator of EPA will publish in the FEDERAL REGISTER the Agency's final action on the order in 40 CFR Part 65.

(Authority: 42 U.S.C. 7413, 7601.)

Dated: October 20, 1978.

FRANK M. COVINGTON,
Acting Regional Administrator, Environmental Protection Agency, Region IX.

In consideration of the foregoing, it is proposed to amend 40 CFR 1, as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. By amending the table in § 65.330, Federal delayed compliance orders issued under section 113(d) (1), (3), and (4) of the Act, to reflect approval of the following order:

ENVIRONMENTAL PROTECTION AGENCY REGION IX

[Docket No. 9-78-7]

In the matter of Hawthorne Army Ammunition Plant, Hawthorne, Nev., proceeding under section 113(d), Clean Air Act, as amended. Order.

This order is issued pursuant to section 113(d) of the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. "the Act." This order contains a schedule for compliance, interim requirements, monitoring and reporting requirements. Public notice, opportunity for a public hearing and 30 days' notice to the State of Nevada have been provided pursuant to section 13(d)(1) of the Act.

FINDINGS

On April 17, 1978, the U.S. Environmental Protection Agency (EPA) issued a notice of violation, pursuant to section 113(a)(1) of the Act, to Hawthorne Army Ammunition Plant upon a finding that the Hawthorne Army Ammunition Plant's two rotary demil furnaces are in violation of article 7, rules 7.2.1 and 7.2.2. of the State of Nevada air quality regulations, a part of the applicable Nevada implementation plan as defined in section 110(d) of the Act. This finding was based upon a 1974 source test of this type of furnace.

Said violation has extended beyond the 30th day after issuance of the April 17, 1978,

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notice of violation. This finding is based upon statements made by Hawthorne Army Ammunition Plant personnel at a May 11, 1978, conference with EPA that Hawthorne Army Ammunition Plant would continue to use its two rotary demil furnaces to dispose of ammunition until June 1979. Hawthorne Army Ammunition Plant is presently unable to comply with article 7, rules 7.2.1 and 7.2.2 of the State of Nevada air quality regulations.

ORDER

After a thorough investigation of all relevant facts, including public comment, it is determined that the schedule for compliance set forth in this order is expeditious as practicable, and that the terms of this order comply with section 113(d) of the Act. Therefore, it is hereby ordered:

I. That Hawthorne Army Ammunition Plant will comply with the Nevada implementation plan regulations in accordance with the following schedule on or before the dates specified therein.

A. For the construction of the new rotary demil furnaces (a part of the new Western demilitarization facility):

1. Award contracts or issue purchase orders—Completed.

2. Initiate onsite construction and/or installation of equipment—Completed.

B. Achieve compliance by ceasing operation of the two existing rotary demil furnaces—June 30, 1979.

II. That Hawthorne Army Ammunition Plant shall comply with the following reasonable interim requirement which is determined to be the best practicable interim system of emission reduction (taking into account the requirement for which compliance is ordered in section I, above), and is necessary to avoid imminent and substantial endangerment to the health of persons and to assure compliance with article 7, rules 7.2.1 and 7.2.2 of the State of Nevada air quality regulations insofar as Hawthorne Army Ammunition Plant is able to comply during the period this order is in effect:

A. Limit the type of ammunition fed to the two rotary demil furnaces to 20 millimeter rounds.

III. That Hawthorne Army Ammunition Plant is not relieved by this order from compliance with any requirements imposed by the applicable State implementation plan, EPA, and/or the courts pursuant to section 303 during any period of imminent and substantial endangerment to the health of persons.

IV. That Hawthorne Army Ammunition Plant shall comply with the following monitoring and reporting requirements on or before the dates specified below:

A. Monitoring—

1. That Hawthorne Army Ammunition Plant shall keep a record of the amount of ammunition destroyed each week and the total amount of material left to be disposed of.

2. That these records shall be submitted to EPA quarterly until the furnaces cease operation. Reports are due September 30, 1978, December 31, 1978, March 31, 1979, and June 30, 1979.

B. Reporting requirements—

1. No later than 5 days after any date for achievement of an incremental step or final compliance specified in this order, Hawthorne Army Ammunition Plant shall notify EPA in writing of its compliance, or noncompliance and reasons therefor, with the requirement. If delay is anticipated in meeting any requirement of this order, Hawthorne Army Ammunition Plant shall immediately notify EPA in writing of the anticipated delay and reasons therefor. Notification to EPA of any anticipated delay does not excuse the delay.

2. All submittals and notifications to EPA pursuant to this order shall be made to the Director, Enforcement Division, EPA, Region IX, 215 Fremont Street, San Francisco, Calif. 94105.

V. Nothing herein shall affect the responsibility of Hawthorne Army Ammunition Plant to comply with State, local or other Federal regulations.

VI. Hawthorne Army Ammunition Plant is hereby notified that your failure to achieve final compliance by July 1, 1979, may result in a requirement to pay a noncompliance penalty under section 120. In the event of such failure, Hawthorne Army Ammunition Plant will be formally notified, pursuant to section 120(b)(3) and any regulations promulgated thereunder, of its noncompliance.

VII. This order shall be terminated in accordance with section 113(d)(8) of the Act if the Administrator determines on the record, after notice and hearing, that an inability to comply with article 7, rules 7.2.1 and 7.2.2 of the State of Nevada air quality regulations no longer exists.

VIII. Violation of any requirement of this order shall result in one or more of the following actions:

A. Enforcement of such requirements pursuant to sections 113 (a), or (b), or (c) of the Act, including possible judicial action for an injunction and/or penalties and in appropriate cases, criminal prosecution.

B. Revocation of this order, after notice and opportunity for a public hearing, and subsequent enforcement of article 7, rules 7.2.1 and 7.2.2 of the State of Nevada air quality regulations in accordance with the preceding paragraph.

C. If such violation occurs on or after July 1, 1979, notice of noncompliance and subsequent action pursuant to section 120 of the Act.

IX. This order is effective on November 1, 1978.

CONSENT PROVISION

Hawthorne Army Ammunition Plant acknowledges that its Hawthorne, Nev. facility is in violation of article 7, rules 7.2.1 and 7.2.2 of the State of Nevada air quality regulations. Furthermore, Hawthorne Army Ammunition Plant has reviewed this order, believes it to be a reasonable means to attain compliance with article 7, rules 7.2.1 and 7.2.2 of the State of Nevada air quality regulations and consents to the terms of the order.

Dated September 25, 1978.

COL. ROYCE M. POWELL,
Commanding Officer,
Hawthorne Army Ammunition Plant.

[FR Doc. 78-30789 Filed 10-31-78; 8:45 am]

[4110-35-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Care Financing Administration

[42 CFR Part 456]

MEDICAL ASSISTANCE PROGRAM

Medicaid Utilization Control

AGENCY: Health Care Financing Administration (HCFA), HEW.

ACTION: Proposed rule.

SUMMARY: This proposed rule would provide for the reduction of the Federal share of medicaid payments to a State if its medicaid agency does not demonstrate, to the satisfaction of the Administrator of HCFA, that it has an effective program of control over the utilization of inpatient institutional services. The proposed rule specifies: (1) The requirements agencies must meet to avoid a reduction in Federal matching; (2) the content and format of quarterly reports which agencies must make to show that they have met these requirements; (3) a formula for reduction in Federal matching payments which is based on the number of patients in those facilities in which the requirements were not met; and (4) the procedures for making required reductions. It would implement section 20 of the Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977 (Pub. L. 95-142), would incorporate existing policies established by HCFA implementing section 1903(g) of the Social Security Act, and would propose certain new requirements. The proposed rule is intended to lessen the severity of the existing penalty requirement and develop more effective management procedures for the program.

DATE: Closing date for receipt of comments: January 2, 1978.

ADDRESSES: Address comments to: Administrator, Health Care Financing Administration, Department of Health, Education, and Welfare, P.O. Box 2366, Washington, D.C. 20013.

In commenting, please refer to MMB-234-P. Agencies and organizations are requested to submit comments in duplicate. Comments will be available for public inspection beginning two weeks from today in room 5231 of the Department's offices at 330 C Street SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5 p.m., 202-245-0950.

FOR FURTHER INFORMATION, CONTACT:

Phillip Otto, telephone 202-472-6551.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 1903(g) of the Social Security Act requires a reduction in Federal matching payments for the costs of inpatient institutional services under medicaid in every quarter for which a State fails to make a satisfactory showing that it has an effective program of control over the utilization of those services.

Section 1903(g) specifies the four basic requirements of a utilization control (UC) program. With respect to each patient:

1. The need for inpatient services must be certified, and periodically recertified, by a physician;

2. A plan of care must be established and periodically reviewed by a physician;

3. The State must have a continuous program of utilization review under which the admission of each recipient is either reviewed or screened; and

4. The State must have an effective program of medical and independent professional review.

Before the 1977 amendments made by Pub. L. 95-142, the statute required that the Federal medical assistance percentage, with respect to amounts paid for long stay services, be reduced by one-third for each quarter and each category of institution for which UC requirements were not met. Although we announced reductions under these provisions amounting to millions of dollars during 1977, these reductions were postponed by the Congress. (See Pub. L. 95-59; Pub. L. 95-142.)

SUMMARY OF PROPOSED REGULATION

Pub. L. 95-142 made a number of changes to section 1903(g). The legislative history of these changes indicates that they were designed to lessen the severity of the required reductions, to establish a reasonable timetable for the submission of showings to HEW and the subsequent HEW review and validation, and to give adequate notice to the States of any resulting reductions. Specifically, these changes address the (1) timing of annual medical review (MR) and independent professional review (IPR); (2) staffing requirements for MR teams in skilled nursing facilities; (3) exceptions to the requirement that the State perform 100 percent of the required reviews; (4) timing for submission of a State's showing; (5) performance of validation surveys; (6) change in the reduction formula; and (7) timing of the final notice to a State of any reductions.

This proposed regulation supersedes the Notice of Intent (NOI) on quarterly showing requirements, published in the FEDERAL REGISTER on January 18, 1977 (42 FR 3328). That NOI proposed to use a sample of institutions or institutionalized recipients to determine whether or not a showing was satisfactory. That sampling procedure is no longer appropriate, since Pub. L. 95-142 modified the formula for computing a reduction. Other issues raised in the NOI, such as the quarterly showing requirements for MR and IPR, were not resolved by Pub. L. 95-142. Comments received on those issues were considered in the preparation of this Notice of Proposed Rule Making (NPRM).

This proposed regulation would implement the statutory changes made by Pub. L. 95-142, and incorporate comments from the NOI. It would revise the requirements for a satisfactory UC program. It also would specify the content and procedures for submission of quarterly showings; provide for validation of quarterly showings; and specify procedures for the implementation of any required reductions. The proposed regulation attempts to provide specific answers to the following questions:

1. What UC requirements must be met for a State to have an effective UC program?

2. In which facilities must a State insure that UC requirements are met? How must it handle—

a. Services provided in out-of-State facilities?

b. Services provided in facilities without valid provider agreements?

3. With respect to which types of services must UC requirements be met?

4. When is an on-site medical or independent professional review in a facility required?

5. Who is required to conduct reviews in skilled nursing facilities?

6. What are acceptable reasons for not meeting the on-site review requirements?

7. What evidence must the State present, and in what format, to make a satisfactory showing?

8. How will we validate a showing?

9. How will reductions be made if we find that a State's showing is unsatisfactory?

10. What may a State do to request a reconsideration of a reduction?

11. What are State reporting requirements for facilities in which PSROs have assumed review responsibility?

NOTE.—The former penalty regulation 42 CFR 450.20(b) was made obsolete by the passage of Pub. L. 95-142, October 25, 1977; 42 CFR 450.20(b) was vacated by notice in the FEDERAL REGISTER (43 FR 45176) on September 29, 1978.

MAJOR ISSUES

1. *What UC requirements must be met for a State to have an effective UC program?*

As discussed above, section 1903(g) specifies four UC requirements: physician certification and recertification; plan of care; utilization review; and annual medical and independent professional review. The former penalty regulation (42 CFR 450.20(b)) provided that a State must also make a satisfactory showing that its UC program complies with additional requirements, specified in 42 CFR 450.18 (now recodified as 42 CFR part 456), such as discharge planning in skilled nursing facilities and long-stay data collection. These additional requirements are not included in our present quarterly showing format. We are proposing to delete them from the regulation and limit the requirements in this regulation to those four specified in section 1903(g).

2. *In which facilities must a State ensure that UC requirements are met?*

Sections 1902(a) (26) and (31) and section 1903(g) explicitly require that a State meet UC requirements for all facilities located within the State that provide inpatient services under its Medicaid plan. The statute, however, does not clearly deal with the following two situations:

a. *Services provided in out-of-State facilities.* A major issue is whether a State which claims Federal financial participation (FFP) for services provided to its recipients located in facilities outside the State is required to meet UC requirements for those recipients. The statute is ambiguous on this issue, and the legislative history is silent concerning it.

Section 1903(g)(1) refers to services furnished under the plan. It thus seems to require that a State ensure that all UC requirements are met for all recipients receiving inpatient services under its plan, regardless of where the recipients are located. Sections 1903(g)(1) (A) and (B) specify that physician certification and plan of care requirements be met for each recipient receiving services under the plan Section. 1903(g)(1)(C) requires a continuous program of utilization review under section 1902(a)(30), which refers to care and services available under the plan. However, section 1903(g)(1) also specifies that a State must make a satisfactory showing that there is an effective UC program "in operation in the State." Section 1903(g)(1)(D) incorporates the requirements for medical and independent professional reviews set forth in sections 1902(a) (26) and (31) of the Act. Sections 1902(a) (27)(A) and (31)(A) refer to care provided under the State plan, but sections 1902(a) (26)(B) and (31)(B), which contain the on-site review requirement, explicitly limit this requirement to facilities located "within the State."

Although the statute thus appears to require that a State meet all UC requirements, except for MR and IPR,

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for all recipients under its plan, this raises serious questions as to how this requirement could be implemented. We do not presently require that a State make *any* showing for out-of-State recipients. Furthermore, we do not have adequate statistics on the numbers of out-of-State recipients. We, therefore, solicit comments on the kinds of problems States would face if they were required to meet any or all UC requirement for their out-of-State recipients.

We also solicit comments on the best way to administer UC requirements for out-of-State recipients. Possibilities include allowing the paying State to negotiate an agreement with each State in which its recipients are located, or with a PSRO, or requiring the paying State to perform UC requirements directly.

b. *Services provided in facilities without valid medicaid provider agreements.* Another issue is whether a State is responsible for meeting the UC requirements in facilities that do not have valid provider agreements. When this situation arises, it is typically because a provider agreement has expired, or a facility has appealed a denial or cancellation of a medicaid provider agreement, and continues to provide services during the appeal period.

We propose that if a State claims or intends to claim FFP for services provided in a facility without a valid provider agreement, it is responsible for ensuring that UC requirements are met for each recipient during the period that those services are provided.

3. *With respect to which types of services must the UC requirements be met?*

Section 1903(g)(1) specifies that UC requirements be met for inpatient hospital services (including tuberculosis hospitals), skilled nursing facility services, intermediate care facility service, and inpatient mental hospital services.

INPATIENT PSYCHIATRIC SERVICES FOR RECIPIENTS UNDER 21

The issue arises whether inpatient psychiatric services furnished to recipients under 21 should be subject to the provisions of section 1903(g) if they are furnished in non-hospital facilities.

In listing the services which must be covered by the UC program, section 1903(g)(1) uses the terms "inpatient • • • in a hospital for mental diseases" and "inpatient mental hospital" apparently interchangeably. Section 1903(g)(1)(D) similarly requires a State to have an "effective program of medical review of the care of patients in mental hospitals." In addition section 1905(a)(16) lists "inpatient psychiatric hospital services for individuals under 21" as an optional service under Medicaid. However, section 1905(h)(1)(A) defines such services as "inpatient services which are provided in an institution which is accredited as a psychiatric hospital by the Joint Commission on Accreditation of Hospitals" (JCAH). JCAH does not accredit psychiatric hospitals as such, but rather accredits institutions or programs providing inpatient psychiatric services as "psychiatric facilities." Such institutions may or may not be hospitals. Our implementing regulations (42 CFR 441.151(b), previously codified as 42 CFR 449.10(b)(16)(ii)) provide that inpatient psychiatric facility services shall include services provided by any psychiatric facility or program which is accredited by JCAH.

Since we have broadened the meaning of "hospital" in defining what psychiatric services are available under Medicaid, we also propose, for purposes of UC requirements, to interpret the phrase "inpatient mental hospital services" to include all inpatient psychiatric services paid for by Medicaid, whether those services are provided in a hospital or in another type of institution, or a program with a facility. We believe this fulfills the intent of section 1903(g) not to provide full FFP for any long-stay inpatient services unless a State has an effective program of utilizaton control over those services.

4. *When is an annual on-site medical or independent professional review in a facility required?*

a. *The first question is whether the requirement for annual review relates to the facility or to recipients.* Section 1903(g)(1)(D) requires that a State have "an effective program of medical review • • • pursuant to sections 1902(a) (26) and (31) whereby the professional management of *each case* is reviewed and *evaluated at least annually* by independent professional review teams." (Emphasis added.) Sections 1902(a)(26) and (31) require that a Medicaid plan provide for periodic on-site "inspections" to be made in all facilities of the care being provided to recipients. Our current regulations (42 CFR 456.606, previously codified as 450.23(a)(3)(iii) and 450.24(a)(3)(iii)) provide that the patient care review be conducted in a facility "at least annually." These statutory and regulatory provisions do not make the date on which a review in a facility is required dependent on the length of time individual recipients have received services in a facility.

We previously advised the States that, under section 1903(g), a State would meet the medical and independent professional review requirements for a facility if an on-site review of the care of each recipient in the facility was conducted whenever the facility had participated in the Medicaid program as a certified provider for 12 consecutive months without a review. (See action transmittals SRS-AT-76-88 and SRS-AT-76-176.) We did not require an agency to demonstrate that each of the thousands of recipients in its facilities received a review as soon as the recipient had received care for an annual period.

We propose to continue this approach for deciding when reviews must be performed. We recognize that, under this interpretation, there may be some recipients in a facility who are not reviewed, even though they have received care for an annual period, because they either been transferred or were absent from the facility at the time of the on-site review. We also recognize that there will be some recipients who are reviewed before they have been in the facility for a year. We believe, however, that since most receipients do not move in and out of long-term-care facilities, most individual recipients are being reviewed at least annually under our present interpretation. Moreover, we believe that those few cases in which recipients are not reviewed annually are not numerous enough to justify the reporting and administrative requirements that would be necessary to track reviews of each recipient.

b. *Modification of the interpretation of "annual."* We have previously interpreted the annual requirement of section 1903(g)(1)(D) to mean that review was timely if it was conducted during the same calendar month in which the facility either entered the program or received its last review. (See action transmittals SRS-AT-76-88 and SRS-AT-76-176.)

Public Law 95-142 modified our interpretation to permit the State to make the annual review within a 12-month period ending on the last day of the calendar quarter in which the review was required. This means that a medical review or independent professional review will be timely if it is completed by the end of the anniversary quarter of either the facility's entry into the program or its last review. For example, under the previous definition of annual, if a facility entered the program on February 10, 1978, a review would be required in the facility by February 28, 1979, the end of the month in which it entered the program. Under Pub. L. 95-142, a review is now required by March 31, 1979, the end of the anniversary quarter in which it entered the program. If the State fails to conduct a required review by the end of the quarter, it is required to conduct the review by the end of the following quarter.

Another issue is whether the date on which a facility is required to be inspected is postponed if a facility adds

or deletes a level of care. In SRS-AT-76-88, we specified that such a change would not affect a facility's required review date. We propose to continue that interpretation. Since the purpose of the statutory requirement is to ensure that the care of recipients in a facility is reviewed and evaluated at least annually, we believe that a change in the level of care should not affect the timing of that review.

The issue also arises as to whether an on-site review is required if there are no Medicaid recipients in the facility on the day the review is scheduled. In this situation, we propose not to required a review is scheduled. In this situation, we propose not to rqeuire a review until the following quarter.

5. *Who is required to conduct on-site reviews in skilled nursing facilities?*

Existing regulations (42 CFR 456.602(b), previously codified as § 450.23(a)(2)(i)) require that each medical team reviewing the care of recipients in a skilled nursing facility (SNF) include at least one physician. Pub. L. 95-142 relaxed this team composition requirement for SMFs, but not for "mental institutions." The proposed regulation, therefore, permits the State to choose whether to have a physician, in addition to a registered nurse, on the review team in SNF. A physician would still be required on the review team in an institution for mental diseases.

6. *What are acceptable reasons for not meeting requirements?*

The proposed regulation would provide that a State will not be subject to a reduction FFP, even if it fails to meet the requirement for annual medical or independent professional review, if it meets certain conditions specified in section 1902(g)(4)(B), which was added to the statute by Pub. L. 95-142. These conditions are:

(a) That the State has completed on-site reviews in 98 percent of the total number of facilities in which an on-site review was required by the end of the quarter, and in each facility of 200 beds or more in which a review was required in that quarter (we interpret "beds" to mean beds certified for Medicaid); and

(b) That, in the case of any facility in which the required review was not conducted, the agency exercised good faith and due diligence in attempting to conduct the review, or failed to do so for technical reasons. If the State completed less than 98 percent of the required reviews in a quarter, it would be subject to a reduction, regardless of circumstances. (We propose to count dual-certified facilities twice in computing the total number of omitted reviews and the total number of reviews required to be conducted.)

The committee reports accompanying Pub. L. 95-142 make clear that this amendment was not intended to permit agencies to *aim* for less than 100 percent performance of the review requirement. Rather, it was intended to permit a limited exception to the 100 percent requirement in the specified situations. (See 95th Cong., 1st session, House Conference Rept. 95-673, p. 48.)

(1) *The good faith and due diligence exception.* We propose to excuse under the good faith and due diligence exception only those failures to perform reviews which are due to situations clearly beyond the State agency's control. Under this exception, failures to perform reviews due to recurring or predictable weather conditions would not be excused. Furthermore, if a State employee strike or severe blizzard or other situation beyond a State's control resulted in less than 98 percent performance, a State would be subject to a reduction for all missed reviews.

(2) *The technical failings exception.* The proposed regulation also provides that FFP will not be reduced for failure to meet the annual review requirements if the failure was for technical reasons only. The legislative history is silent on what kinds of failings are technical, but specifies that the exception would cover instances in which a State had reviewed patients in most facilities on time, with the remaining facilities reviewed within several weeks after the end of the quarter. (95th Cong., 1st sess. Senate Committee on Finance, S. Rept. No. 95-453, p. 41.) Therefore, we propose to excuse under this exception failure due to circumstances within the State's control, provided that the State completes the reviews within 30 days after the end of the quarter. In view of the fact that missed reviews excused under this provision were due to circumstances within the State's control, we believe that it is reasonable to require States to make up the missed reviews within a 30-day period in order to qualify for the exception. We would not excuse failures to complete reviews in any facility of 200 or more beds or in more than 2 percent of all facilities.

7. *What evidence must the State present, and in what format, to make a satisfactory showing?*

The proposed regulation codifies requirements for the content of quarterly showings, as prescribed by action transmittals SRS-AT-76-83; SRS-AT-76-155; SRS-AT-76-176; HCFA-AT-77-91; and HCFA-AT-77-106. These requirements include: (1) Certification by the head of the State agency that the UC requirements have been met; (2) lists of participating facilities, their beginning and ending provider agreement dates, and the dates of review by the review teams; (3) lists of all facilities in which the required review was not conducted; and (4) the name and qualifications of one member of each review team who is a physician or registered nurse.

The proposed regulation also provides that the showings must be submitted within 30 days of the end of the quarter for which they are made, unless the State demonstrates good cause for later submission. This requirement implements section 1903(g)(4)(A), added by Pub. L. 95-142. Under this exception, we propose to allow an agency an additional 2 weeks to submit its showings if its late submittals result from unanticipated circumstances beyond the agency's control. We do not propose to excuse deliberate failures to submit showings on time.

8. *How will we validate a showing?*

Section 1903(g)(1) requires a reduction in FFP for a quarter if a State does not make a satisfactory showing that it has an effective UC program. Section 1903(g)(2) requires us to "conduct timely sample on-site surveys of private and public institutions" as part of our validation procedures. (The word "timely" was added by section 20(a)(3) of Pub. L. 95-142.)

Prior to the amendments made by Pub. L. 95-142, we had interpreted the statute to require that States make some showing each quarter that UC requirements were met, and to authorize us either to find a showing satisfactory on the basis of the information submitted by the agency, or to validate that information. Thus, we determined whether or not a showing was satisfactory on the basis of our review of the information submitted by the State, together with any validation of the information. We propose to continue this approach, and to alternate comprehensive validation surveys at the State agencies with more limited on-site validation which will focus on UC problem areas.

9. *How will reductions be made if we find a State's showing unsatisfactory?*

a. *What will be the time periods for making reductions?*

The proposed regulation would set out time periods for notifying States of reductions, in accordance with the requirements specified in Pub. L. 95-142. It would also set out time periods for making the reductions. If a State's showing is unsatisfactory on its face, the reduction would be made by adjusting the grant award based on the Quarterly Statement of Expenditures for that quarter, which is ordinarily issued 90 days after the close of the quarter. The regulation would provide that we complete any validation procedures, make a final determination that a State's showing is unsatisfactory, and notify a State that its FFP for a

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quarter must be reduced within 9 months after the end of the quarter for which the showing is made. The reduction would be made by amending the current grant award or adjusting the award for the next quarter. Notice of all reductions would be given at least 30 days before they took effect.

b. *How will reductions be calculated?*

Section 1903(g)(5), added by Pub. L. 95-142, modified the required statutory formula for assessing reductions. Prior to enactment of Pub. L. 95-142, the amount of reduction in FFP for each level of care for which requirements were not met in a quarter was one-third of the Federal medical assistance percentage for long-stay services provided at that level of care in that quarter. (Long-stay services are services provided after a total of 60 days of stay (90 in mental hospitals) in a year beginning July 1, not counting days of stay paid for fully or in part by medicare.)

Pub. L. 95-142 amended this formula by multiplying the reduction described above by a fraction. The numerator of this fraction is the number of recipients at a level of care in those facilities in which utilization control requirements were not met in that quarter. The denominator is the number of recipients at that level of care in all facilities for which the State is required to make a showing in that quarter. States should note that the new formula is based on the total number of patients in all facilities in which UC requirements were not met, and not only on the number of individual patients for whom requirements were not met. Thus, if the Department's validation survey reveals that there are no plans of care for 20 out of 200 medicaid SNF patients in a facility, the fiscal reduction will be based on *all 200* patients.

The proposed regulation would also provide, as does the present regulation, that we will estimate the amount of the reduction if any data required to compute the reduction are unavailable. If data on the number of recipients in individual facilities are not available to us, we will estimate the fraction by using the ratio of facilities at that level of care in which requirements were not met to total facilities at that level of care for which the agency is required to make a showing.

10. *What may a State do to request review of a reduction?*

The proposed regulation provides that the State agency may seek to have a reduction reviewed by the Departmental Grant Appeals Board, in accordance with the procedures specified in 45 CFR Part 16 for reconsideration of disallowances. In those cases in which we estimate the reduction because the data regarding the exact number of recipients were unavailable from the State at the time of the calculation, we propose to allow the State, during reconsideration, to submit whatever data are necessary to calculate exactly the amount of the required reduction.

11. *What are State reporting requirements for facilities in which PSROs have assumed review responsibility?*

In order to monitor the gradual assumption from the State by PSROs of long-term care review responsibilities, we have added a State plan requirement that States continue to report to the Department, on a quarterly basis, those facilities in which PSROs have assumed responsibility, and the date of that assumption. We are proposing this change in order to ensure that both the State and HCFA are clear in which long-term care facilities the State must still meet UC requirements. This reporting requirement should also help to ensure agreement between HCFA and the State concerning the facilities for which the State will again be responsible in the event a grant is ended with a particular PSRO.

42 CFR Part 456 is amended as set forth below:

1. A new § 456.7 is added to read as follows:

§ 456.7 Identification of facilities under PSRO review.

(a) The Medicaid agency must submit each quarter, by level of care and PSRO area, lists of all skilled nursing facilities, intermediate care facilities and mental hospitals in which a PSRO has assumed review responsibility, and the date of that assumption.

(b) Each facility listed must be identified by name, address and provider number. This list must accompany the State's Quarterly Showing required under Subpart J of this part.

2. Section 456.611 is revised by adding a new paragraph (c) to read as follows:

§ 456.611 Reports on inspections.

* * * * *

(c) The report must include the dates of the visit and the names and qualifications of the members of the team.

3. A new Subpart J is added to Part 456 to read as follows:

Subpart J—Penalty for Failure To Make a Satisfactory Showing of An Effective Institutional Utilization Control Program

* * * * *

Sec.

456.650 Basis, purpose, and scope.
456.651 Definitions.
456.652 Requirements for an effective utilization control program.
456.653 Acceptable reasons for not meeting requirements for annual on-site review.
456.654 Requirements for content of showings and procedures for submittal.
456.655 Validation of showings.
456.656 Reductions in FFP.
456.657 Computation of reductions in FFP.

AUTHORITY: Secs. 1102 and 1903(g) of the Social Security Act (42 U.S.C. 1302 and 1396 b(g)).

Subpart J—Penalty for Failure To Make a Satisfactory Showing of an Effective Institutional Utilization Control Program

§ 456.650 Basis, purpose, and scope.

(a) *Basis.* Section 1903(g) of the Social Security Act requires that Federal financial participation (FFP) for long-stay inpatient services at a level of care be reduced, by a specified formula, for any quarter in which a State fails to make a satisfactory showing that it has an effective program of utilization control for that level of care.

(b) *Purpose.* This subpart specifies:

(1) What States must do to make a satifactory showing;

(2) How the Administrator will determine whether reductions will be imposed; and

(3) How the required reductions will be implemented.

(c) *Scope.* The reductions required by this subpart do not apply:

(1) To services provided under a contract with a health maintenance organization; and

(2) To services provided in facilities for which a Professional Standards Review Organization (PSRO) has assumed binding review responsibility. (See § 463.27 of this chapter.)

§ 456.651 Definitions.

For purposes of this subpart—

"Level of care" means one of these four types of inpatient services: hospital, mental hospital, skilled nursing facility, or intermediate care facility.

"Long-stay services" means services provided to a recipient after a total of 60 days of inpatient stay (90 in the case of mental hospital services) during a 12-month period beginning July 1, not counting days of stay paid for wholly or in part by Medicare.

"Mental hospital" includes any inpatient psychiatric services provided to recipients under 21 by a psychiatric facility or program accredited by the Joint Commission on Accreditation of Hospitals.

§ 456.652 Requirements for an effective utilization control program.

(a) *General requirements.* In order to avoid a reduction in FFP, a State must make a satisactory showing to the Administrator, in each quarter, that it has met the following requirements for each recipient:

(1) Physician certification and recertification of the need for inpatient care, as specified in §§ 456.60, 456.160, 456.260 and 456.360.

(2) A plan of care established and periodically reviewed and evaluated by a physician, as specified in §§ 456.80, 456.180, 456.280, and 456.380.

(3) A continuous program of utilization review under which the admission of each recipient is reviewed or screened in accordance with section 1903(g)(1)(C) of the Act; and

(4) A regular program of medical and independent professional reviews, including medical evaluation, and an annual on-site review of the care of each recipient, as specified in §§ 456.170, 456.180, 456.270, and 456.280, and subpart I of this part.

(b) *Annual on-site review requirements.* (1) An agency will meet the quarterly on-site review requirements of paragraph (a)(4) of this section for a quarter if it completes on-site reviews of each recipient in every facility by the end of the quarter in which a review is required under paragraph (b)(2) of this section.

(2) An on-site review is required in a facility by the end of a quarter if the facility entered the Medicaid program during the same calendar quarter 1 year earlier or has not been reviewed since the same calendar quarter 1 year earlier. If there is no Medicaid recipient in the facility on the day a review is scheduled, the review is not required until the following quarter.

(3) If a facility is not reviewed in the quarter in which it was required to be reviewed under this paragraph, it will continue to require a review in each subsequent quarter until the review is performed.

(4) The requirement for an on-site review in a given quarter is not affected by the addition or deletion of a level of care.

§ 456.653 Acceptable reasons for not meeting requirements for annual on-site review.

The Administrator will find a State's showing satisfactory, even if it failed to meet the annual review requirements of § 456.652(a)(4), if—

(a) The State completed reviews in—

(1) At least 98 percent of all facilities in which a review was required by the end of the quarter; and

(2) All facilities with 200 or more certified Medicaid beds in which a review was required by the end of the quarter; and

(b) The State either—

(1) Exercised good faith and due diligence by making attempts to complete the required reviews that would have succeeded but for events beyond the control of the State which could not reasonably have been anticipated; or

(2) Failed to meet the standard in paragraph (a)(1) of this section for technical reasons, but completed all required reviews within 30 days after the end of the quarter in which they were required to be made. Technical reasons are circumstances within a State's control.

§ 456.654 Requirements for content of showings and procedures for submittal.

(a) A State's showing for a quarter must—

(1) Include a certification by the Medicaid agency that the requirements of § 456.652(a) (1) through (4) were met during the quarter for each level of care or, if applicable, a certification of the reasons the annual on-site review requirements of § 456.652(a)(4) were not met in any facilities;

(2) List, by level of care, all mental hospitals, skilled nursing facilities, intermediate care facilities, and any other facilities providing inpatient psychiatric facility services participating in Medicaid any time during the 12-month period ending on the last day of the quarter. Each facility listed should be identified by name, address and provider number.

(3) List the beginning and ending dates for the provider agreement and supply a copy of the provider agreement for each facility entering or leaving the program anytime during the 12-month period ending on the last day of the quarter;

(4) List all dates of on-site reviews completed by review teams anytime during the 12-month period ending on the last day of the quarter;

(5) List all facilities in which an on-site review was required but not conducted, by name, address and provider number;

(6) List for each on-site review in a mental hospital, a skilled nursing facility that is an institution for mental disease, or a facility that provides inpatient psychiatric facility services, the name and qualifications of one team member who is a physician; and

(7) List for each on-site review in a skilled nursing facility that is not an institution for mental disease, or an intermediate care facility, the name and qualifications of one team member who is either a physician or registered nurse.

(b) The quarterly showing must be in the form prescribed by the Administrator.

(c) The quarterly showing must be postmarked or received within 30 days after the close of the quarter for which it is made, unless the State demonstrates good cause for later submittal and the showing is postmarked or received within 45 days after the close of the quarter. Good cause means unanticipated circumstances beyond the State's control.

§ 456.655 Validation of showings.

(a) The Administrator will periodically validate showings submitted under § 456.654. Validation procedures will include on-site sample surveys of institutions and surveys at the State agencies.

(b) The Administrator will not find a State's showing satisfactory if the information obtained through his validation procedures demonstrates that any of the requirements of § 456.652(a) (1) through (4) were not met during the quarter for which the showing was made.

§ 456.656 Reductions in FFP.

(a) If the Administrator determines that a State's showing does not meet any of the requirements of this subpart, he will give the State 30 days notice before making the required reduction.

(b) If the Administrator determines that a showing for any quarter is unsatisfactory on its face, he will make the required reduction in the grant award based on the Quarterly Statement of Expenditures for that quarter. (See 45 CFR 201.5(a)(3).)

(c) The Administrator will complete any validation, make a determination whether a showing is satisfactory, and notify the State agency of any required reduction in FFP within 9 months after the end of the quarter for which the showing was made. Any required reduction will be made by amending the current grant award or by adjusting the grant award for the next quarter.

(d) The State may request reconsideration of a reduction in accordance with the procedures specified in 45 CFR Part 16.

§ 456.657 Computation of reductions in FFP.

(a) For each level of care, and for each quarter for which a satisfactory showing is not made, the amount of the reduction in FFP is computed as follows:

(1) The number of recipients receiving services at that level of care during that quarter in facilities in which the requirements of this subpart were not met is divided by the total number of recipients receiving services at that level of care in facilities for which a showing was required to be made under this subpart. If any of the requirements specified in § 456.652(a)(1)–(4) were not met for any recipient in a facility, the reduction will be computed on the total number of recipients in that facility.

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(2) The fraction obtained in paragraph (a)(1) of this section is multiplied by one-third;

(3) The product obtained in paragraph (a)(2) of this section is multiplied by the Federal Medical Assistance Percentage (FMAP);

(4) The product obtained in paragraph (a)(3) of this section is multiplied by the State payments for long-stay services furnished during the quarter at that level of care.

(b) If any of the data required to compute the amount of the reduction in FFP are unavailable, the Administrator will substitute an estimate. If data on the number of recipients in individual facilities are not available, the fraction specified in paragraph (a)(1) of this section will be estimated by dividing the number of facilities at the level of care in which the requirements were not met by the total number of facilities providing that level of care for which a showing is required to be made under this subpart.

(Secs. 1102 and 1903(g) of the Social Security Act; (42 U.S.C. 1302 and 1396 b(g)))
(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: August 31, 1978.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

Approved: October 18, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary.

[FR Doc. 78-30478 Filed 10-31-78; 8:45 am]

[4310-55-M]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 23]

ENDANGERED SPECIES CONVENTION

Public Discussion of Proposed Rule and Other Positions To Be Advanced by the United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Announcement of public meeting to discuss proposed rule and other U.S. positions regarding Endangered Species Convention.

SUMMARY: The Service is responsible for developing, after consultation with the interested public, the States, and other government and non-governmental organizations, the U.S. position on agenda items to be considered at the second meeting of the conference of the parties to the convention on International Trade in Endangered Species of Wild Fauna and Flora (Endangered Species Convention). The second meeting of the Conference of the parties will take place March 19-30, 1979, in San Jose, Costa Rica. In preparation for the Costa Rica meeting the Service will hold a public meeting on November 28, 1978, to take comments on a proposed rule on the status of native species protected by the Endangered Species Convention; to introduce the individuals recommended to serve as advisors to the U.S. Representative to the Costa Rica meeting; to report on the status of certain agenda items; and to take comments on specific positions being developed for the meeting in Costa Rica.

DATES: The public meeting will be held from 10 a.m. to 12:30 p.m. on November 28, 1978.

ADDRESSES: Meeting location: Room 5160 of the Main Interior Building, 18th and C Streets NW., Washington, D.C. Those planning to attend the meeting are asked to so inform Joan Caton, Chief, Management Operations Branch, Federal Wildlife Permit Office, Washington, D.C. 20240 not later than November 24, 1978.

FOR FURTHER INFORMATION CONTACT:

Please be advised that the Federal Wildlife Permit Office is moved to office space in Arlington, Va., on October 7, 1978. However, the mailing address for the office remains as indicated above. Further information on the meeting planned for November 28 can be obtained by calling Miss Caton at 703-235-2418.

Dated: October 27, 1978.

ROBERT L. HERBST,
Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 78-30846 Filed 10-31-78; 8:45 am]

[3510-22-M]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[50 CFR 611]

Proposed Foreign Fee Surcharge

AGENCY: National Oceanic and Atmospheric Administration/Commerce.

ACTION: Notice of proposed amendment to foreign fee schedule.

SUMMARY: Pub. L. 95-376 amended section 10 of the Fishermen's Protective Act by creating the Fishing Vessel and Gear Damage Compensation Fund. This fund will compensate U.S. fishermen whose vessels are damaged or destroyed by foreign vessels while being used in fisheries in the fishery conservation zone (FCZ). It will also compensate U.S. fishermen whose gear is lost or destroyed by any vessel or by Acts of God while being employed in the FCZ. The Fund is to be created by the imposition of a surcharge of any amount up to 20 percent on all foreign fishing fees. It is estimated that losses covered by the Act may exceed $3 million per year. It is also estimated that the total foreign fees which will be received in 1979 for fishing activities in the FCZ will be approximately $17.5 million. Twenty percent of that sum would be $3.5 million. Thus it is proposed that the initial surcharge for 1979 be fixed at 20 percent.

DATES: Comments on this proposal may be submitted until November 20, 1978.

ADDRESS: Comments may be submitted to Mr. Michael Grable, Chief, Financial Services Division, National Marine Fisheries Service, Washington, D.C. 20235, Telephone: 202-634-7496.

FOR FURTHER INFORMATION CONTACT:

Ms. Kathryn Hensley, Financial Assistance Specialist 202-634-7496.

SUPPLEMENTARY INFORMATION: Pub. L. 95-376 (Act), signed on September 18, 1978, amended section 10 of the Fishermen's Protective Act (22 U.S.C. 1977, et seq.) by establishing the Fishing Vessel and Gear Damage Compensation Fund (Fund). The Fund will compensate U.S. fishermen for loss or damage to fishing vessels, not otherwise covered by insurance, caused by foreign vessels. It will also compensate U.S. fishermen for gear losses caused by other vessels (U.S. or foreign) or by Acts of God. The Act states that "the Secretary [of Commerce] shall impose a surcharge" upon all foreign fishing fees paid under the Fishery Conservation and Management Act of 1976 after 1978. The Act limits the surcharge to 20 percent of foreign fishing fees. In determining the amount of the surcharge, the Secretary has considered the claims expected, and recommends that a 20-percent surcharge be imposed for initial capitalization of the Fund. In order to arrive at the value of claims which might be submitted under the new program, the National Marine Fisheries Service regional offices were requested to provide estimates of what the potential annual loss could be. Their computations predicted a potential annual loss of nearly $6 million. Taking into account depreciation and other factors, the actual compensation to fishermen from the Fund could result in $2.5 to $3.0 million annually. Compensation will be made only after prescribed criteria have been met: e.g. application within 60 days of the incident; payment of an administrative fee; inventory or other proof of ownership of gear; affidavits on location and marking of gear; previous report to the Coast Guard of gear deployment if required by regulation; and other requirements as may be established by regulation. The 20-percent surcharge is imposed solely for the purpose of the Fund. Fees paid as a result of this action by foreign nations are nonrefundable.

The Assistant Administrator for Fisheries has determined that:

1. This action does not require the preparation of an economic impact analysis under Executive Orders 11821 and 11949, and OMB Circular A-107; and

2. This action does not require a regulatory impact analysis.

The Assistant Administrator has approved this document pursuant to delegation of authority from the Secretary.

Signed at Washington, D.C. this 24th day of October, 1978.

WINFRED H. MEIBOHM,
Acting Executive Director, National Marine Fisheries Service.

[FR Doc. 78-30826 Filed 10-31-78; 8:45 am]

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notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

[3410-07-M]

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

LOAN AND GRANT MAKING

Fiscal Year 1979 Allocation

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: The Farmers Home Administration gives notice that following approval of the Appropriation Act for fiscal year 1979, the agency has determined how funds are to be allocated to each State for each program.

SUPPLEMENTARY INFORMATION: The Farmers Home Administration is publishing its "Administrative Notice on Fiscal Year 1979 Allocations" as part of its ongoing attempt to keep the public informed of its actions. This notice provides the amount of funds which the agency has available for rural development in various programs and outlines the methods used in determining how the funds are to be allocated. The agency is attempting to support, within its limited resources, local development efforts and provide the residents of small towns and rural areas an equitable share of the public and private resources. The Farmers Home Administration normally makes minor changes to this notice in the course of a year. Any amendments to the funding levels during the fiscal year may be obtained from any FmHA State Office. The funds available and the formula used for their distribution within the four major program areas of community programs, business and industrial program, housing programs and farmer programs are as prescribed in the following Administrative Notice No. 282(440) dated October 12, 1978.

Dated: October 24, 1978.

JAMES E. THORNTON,
Associate Administrator,
Farmers Home Administration.

[FmHA AN No. 282(440)]

U.S. DEPARTMENT OF AGRICULTURE,
FARMERS HOME ADMINISTRATION,
Washington, D.C., October 12, 1978.

Subject: Fiscal Year 1979 allocation.
To: All State Directors, FmHA.

The Appropriation Act for fiscal year 1979 has been approved. Your programs will be monitored to determine that full consideration is given to the equal opportunity objectives of this agency. FmHA targeting policies are to support local development efforts and provide to the residents of small towns and rural areas an equitable share of public and private resources.

The allocation formulas have been designed to target funds to States in relation to rural population, households in poverty, per capita income, etc. Every effort should be made to target funds to distressed communities and rural areas which have significant populations of poor and disadvantaged persons.

Funds are allocated to States in accordance with the following attachments.

Attachment A—Community programs.
Attachment B—Business and industrial loan program.
Attachment C—Housing programs.
Attachment D—Farmer programs.

GORDON CAVANAUGH,
Administrator.

Expiration Date: September 30, 1979.

COMMUNITY PROGRAMS

The community programs allocation formula has been designed to target funds to States in relation to rural population and households in poverty.

State directors will make every effort to target funds to those communities with the greatest financial need having a large portion of their population with low incomes. Due consideration will be given to State development strategies and plans of substate planning districts in selecting projects for funding.

Attachment A-1 shows allocations of loan and grant authority for fiscal year 1979 for community programs. In order that funds may be obligated as they become available, you should plan to have obligating documents for all projects in the Finance Office as soon as orderly work schedules will permit.

You may submit obligating documents for community facility and water and waste disposal projects in excess of your allocation. However, requests above your allocation will be honored only if they can be absorbed within the total amount of funds available later in the fiscal year.

If the allocations shown on attachment A-1 exceeds the demand in your State, please advise the National Office immediately so that any funds not needed can be transferred to another State with an immediate need. The formula for distribution of funds has not changed for fiscal year 1979. The National Office reserve for all funds is approximately 5 percent for loans and 10 percent for grants. In addition, the National Office has retained control of $25 million in CF loan funds for Community Health Centers (CHC) projects approved under the Memorandum of Understanding between HEW and USDA. These CHC funds will be allocated on a case by case basis upon request by the State director. For additional information on the method of allocation see Attachment A-2.

1979 BUDGET

The budget for fiscal year 1979 is based on the following levels of authority:

Water and waste disposal loans—$900 million.
Community facility loans—$250 million.
Water and waste disposal development grants—$282.5 million.
Industrial development grants—$10 million.
Watershed loans—$25.6 million.
Flood prevention loans—$0.4 million.
Resource conservation and development loans—$4 million.

I. *Water and waste disposal loans and development grants, community facility loans and industrial development grants.* The allocations are shown in Attachment A-1. Written requests which were received for additional fiscal year 1978 funds will not be given further consideration. However, if additional funds are needed in fiscal year 1979 the request should be made in writing.

II. *Watershed.* Funds for watersheds will be allocated on an individual-case basis. Request funds for watershed applications as soon as you determine that a loan may be made. Applicants must be advised that their applications will be processed subject to the availability of funds. Obligating requests may be submitted to the Finance Office when the loan is ready for approval.

III. *Flood prevention loans (Pub. L. 534) and resource conservation and development loans.* States that are authorized to process Public Law 534, flood prevention loans and RC&D loans may submit obligating requests to the Finance Office when the loan is ready to be approved.

IV. *Pooling of unobligated funds.* Tentative Plans for pooling are as follows:

1. On March 30, 1979, all funds from the first half of your fiscal year 1979 allocation that are unobligated will be pooled. You should plan to have obligating documents in the Finance Office for at least one-half (you may send more) of your fiscal year 1979 allocation by March 30, 1979.

You will not lose fiscal year 1979 funds provided you have obligating documents in the Finance Office for *at least* one-half of your annual allocation by the end of the second quarter. Pooled funds will revert to National Office control.

2. On August 10, 1979, all funds remaining unobligated on that date will be pooled. Pooled funds will revert to National Office control.

Allocations for the programs to which Attachment A pertains are on an annual basis; however, FmHA receives its apportionment of loan and grant funds quarterly for community programs. Therefore, funds will continue to be allotted to the Finance Office on a quarterly basis to continue total obligations. Obligations will be made in the order of requests. If States collectively request obligations greater than one-fourth of the National allocations, there may not be sufficient funds to honor all obligating documents submitted in a a particular quarter. In such cases, funds will be obligated when available, ordinarily soon after the start of the next quarter.

[3410-07-C]

COMMUNITY PROGRAMS

Allocations for Fiscal 1979
(in thousands)

STATE	Water and Waste Disposal Loans	Water and Waste Disposal Grants	Community Facility Loans	Industrial Development Grants
ALABAMA	28,635	8,505	7,105	280
ALASKA	1,405	430	360	35
ARIZONA	4,990	1,495	1,250	80
ARKANSAS	21,830	6,485	5,420	210
CALIFORNIA	28,120	8,350	6,975	235
COLORADO	7,220	2,155	1,800	90
DELAWARE	1,965	595	500	35
MARYLAND	9,885	2,945	2,460	95
FLORIDA	26,475	7,865	6,570	210
GEORGIA	31,315	9,300	7,770	320
HAWAII	1,180	365	310	40
GUAM	1,030	320	270	-
PAC. TRUST TERR.	2,960	890	745	-
AM. SAMOA	600	190	165	-
IDAHO	4,725	1,415	1,185	80
ILLINOIS	26,865	7,980	6,665	255
INDIANA	21,375	6,350	5,305	225
IOWA	18,155	5,395	4,510	200
KANSAS	12,075	3,595	3,005	155
KENTUCKY	29,805	8,850	7,395	295
LOUISIANA	25,870	7,685	6,420	255
MAINE	7,210	2,150	1,800	105
MASSACHUSETTS	8,560	2,550	2,135	100
CONNECTICUT	5,620	1,680	1,410	75
RHODE ISLAND	1,205	370	315	30
MICHIGAN	26,450	7,855	6,565	245
MINNESOTA	18,055	5,365	4,485	215
MISSISSIPPI	27,210	8,080	6,750	290
MISSOURI	26,280	7,805	6,520	235
MONTANA	4,630	1,385	1,160	75
NEBRASKA	9,140	2,725	2,280	115
NEW MEXICO	5,460	1,635	1,365	95
NEW JERSEY	7,970	2,375	1,990	80
NEW YORK	29,435	8,740	7,300	260
VIRGIN ISLANDS	960	300	255	25

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COMMUNITY PROGRAMS

Allocations for Fiscal 1979
(in thousands)

STATE	Water and Waste Disposal Loans	Water and Waste Disposal Grants	Community Facility Loans	Industrial Development Grants
NORTH CAROLINA	41,665	12,365	10,330	425
NORTH DAKOTA	4,485	1,345	1,125	80
OHIO	29,310	8,705	7,270	315
OKLAHOMA	18,105	5,380	4,495	175
OREGON	9,455	2,815	2,355	110
PENNSYLVANIA	40,940	12,150	10,150	385
PUERTO RICO	31,580	9,375	7,835	340
SOUTH CAROLINA	23,065	6,855	5,725	250
SOUTH DAKOTA	5,775	1,725	1,445	90
TENNESSEE	29,925	8,885	7,425	300
TEXAS	49,460	14,675	12,260	420
UTAH	2,795	845	710	55
NEVADA	1,120	345	295	30
VERMONT	3,760	1,130	945	65
NEW HAMPSHIRE	3,745	1,125	940	60
VIRGINIA	24,620	7,315	6,110	265
WASHINGTON	11,370	3,385	2,830	120
WEST VIRGINIA	18,165	5,400	4,510	195
WISCONSIN	18,950	5,635	4,710	230
WYOMING	2,045	620	520	50
SUBTOTAL	855,000	254,250	212,500	9,000
RESERVE	45,000	28,250	37,500	1,000
GRAND TOTAL	900,000	282,500	250,000	10,000

EXPLANATION OF ALLOCATION

Loan funds for community facilities and water and waste disposal and funds for water and waste disposal development grants have been allocated among 50 States, Puerto Rico, Guam, American Samoa, Trust Territories of the Pacific and the Virgin Islands. Industrial development grant funds for Guam, American Samoa, and Trust Territories of the Pacific will be allocated as needed on a case basis from the National Office reserve. Funds have been allocated in the following manner:

1. The Administrator has withheld a reserve of the funds appropriated or authorized to allow for subsequent allocations or adjustments, emergencies and otherwise as he may deem appropriate.

2. For each appropriation or authorization, $20,000 has been allocated to each State as a base.

3. The National Office has retained control of $25 million in CF loan funds for projects approved under the Memorandum of Understanding between HEW and USDA.

4. The remainder has been allocated by formula.

a. The formula for allocating industrial development grants considers (1) each State's portion of the Nation's nonmetropolitan population outside cities of 25,000 or more, plus half of the metropolitan population outside urbanized areas, plus half of the population of cities more than 25,000 located outside metropolitan areas, and (2) the rural per capita income of the State as compared to the rural per capita income of the Nation. The two elements, rural population and per capita income, are weighted two to one respectively.

b. Grants for water and waste disposal and loans for water and waste disposal and community facilities have been allocated in accordance with a formula which considers each State's proportion of the U.S. population in open country and towns of less than 10,000 outside urban areas and the number of households in poverty in rural areas and cities located outside rural areas with populations of 2,500 to 10,000 persons. The two elements, rulal population and households in poverty, were weighted one to two respectively.

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[3410-07-C]

FACTORS USED IN ALLOCATING FUNDS - COMMUNITY PROGRAMS

State	Water and Waste Disposal Loans & Grants and Community Facility Loans	Industrial Development Grants
Alabama	.03351	.0327
Alaska	.00162	.0019
Arizona	.00582	.0073
Arkansas	.02554	.0240
California	.03291	.0273
Colorado	.00843	.0084
Delaware	.00228	.0020
Maryland	.01155	.0095
Florida	.03098	.0238
Georgia	.03665	.0377
Hawaii	.00136	.0027
Guam	.00118	-
Pacific Trust Terr.	.00344	-
American Samoa	.00068	-
Idaho	.00551	.0075
Illinois	.03144	.0295
Indiana	.02501	.0258
Iowa	.02124	.0227
Kansas	.01412	.0167
Kentucky	.03488	.0348
Louisiana	.03027	.0297
Maine	.00842	.0105
Massachusetts	.01000	.0099
Connecticut	.00656	.0067
Rhode Island	.00139	.0012
Michigan	.03095	.0285
Minnesota	.02112	.0243
Mississippi	.03184	.0337
Missouri	.03075	.0273
Montana	.00540	.0070
Nebraska	.01068	.0122
New Jersey	.00931	.0077
New Mexico	.00637	.0095
New York	.03445	.0301
Virgin Islands	.00110	.0009
North Carolina	.04877	.0509
North Dakota	.00523	.0074
Ohio	.03430	.0368
Oklahoma	.02118	.0193
Oregon	.01105	.0114
Pennsylvania	.04792	.0458
Puerto Rico	.03696	.0400
South Carolina	.02699	.0290
South Dakota	.00675	.0084
Tennessee	.03502	.0351
Texas	.05790	.0502
Utah	.00325	.0043
Nevada	.00129	.0012
Vermont	.00438	.0055
New Hampshire	.00436	.0052
Virginia	.02881	.0310
Washington	.01329	.0124
West Virginia	.02125	.0222
Wisconsin	.02217	.0266
Wyoming	.00237	.0038
Totals	1.00000	1.0000

BUSINESS AND INDUSTRIAL LOAN ALLOCATIONS

The 1979 fiscal year budget is based on $1,100,000,000 which has been allocated as shown on page 2 of Attachment B. The allocations distributed to the states will be the same as last fiscal year. The National Office Reserve has been increased to $200,000,000 which will allow for subsequent authorizations, emergencies, funding for a backlog of applications, additional reserve of $5,770,000 for Alaska, and funding Guam, American Somoa, Commonwealth of the Northern Mariana Islands, Trust Territories of the Pacific Islands and for other uses as the Administrator may deem appropriate.

Our tentative plans for pooling are:

March 30, 1979—All funds remaining unobligated as of March 30, 1979, from one-half of your total allocation for the year. You should plan to have obligating documents in the Finance Office for at least one-half (you may send more) of you fiscal year allocation prior to March 30, 1979. Pooled funds will revert to National Office control.

You should keep in mind that even though these allocations of guarantee authority are on an annual basis, we receive the apportionment of guarantee authority quarterly If many states obligate more than one-fourth of their annual allocation in a quarter, it follows that there may not be sufficient guarantee authority to honor all obligating documents in that quarter. In this instance, the Finance Office holds the obligating documents until the next quarter's allocation is made.

On *August 10, 1979*, all funds remaining unobligated on that date will be pooled. Pooled funds will revert to National Office control.

You will be advised on FmHA's plans for targeting funds to the maximum extent possible toward disadvantaged people and distressed communities.

Funding authority restricts financing facilities only on a guaranteed basis.

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[3410-07-C]

BUSINESS AND INDUSTRIAL LOAN ALLOCATIONS
FOR FISCAL YEAR 1979

ALABAMA	$29,415,000
ALASKA	1,730,000
ARIZONA	6,580,000
ARKANSAS	21,595,000
CALIFORNIA	24,560,000
COLORADO	7,570,000
DELAWARE	1,820,000
DISTRICT OF COLUMBIA	
MARYLAND	8,560,000
FLORIDA	21,415,000
GEORGIA	33,910,000
HAWAII	2,445,000
*GUAM	
*AMERICAN SAMOA	
*COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS	
*TRUST TERRITORIES OF THE PACIFIC ISLANDS	
IDAHO	6,760,000
ILLINOIS	26,540,000
INDIANA	23,215,000
IOWA	20,425,000
KANSAS	15,030,000
KENTUCKY	31,305,000
LOUISIANA	26,720,000
MAINE	9,460,000
MASSACHUSETTS	8,920,000
CONNECTICUT	6,045,000
RHODE ISLAND	1,100,000
MICHIGAN	25,640,000
MINNESOTA	21,865 000
MISSISSIPPI	30,315,000
MISSOURI	24,560,000
MONTANA	6,310,000
NEBRASKA	10,990,000
NEW JERSEY	6,940,000
NEW MEXICO	8,560,000
NEW YORK	27,080,000
VIRGIN ISLANDS	830,000
NORTH CAROLINA	45,780,000
NORTH DAKOTA	6,670,000
OHIO	33,100,000
OKLAHOMA	17,370,000
OREGON	10,270,000
PENNSYLVANIA	41,190,000
PUERTO RICO	35,980,000
SOUTH CAROLINA	26,090,000
SOUTH DAKOTA	7,570,000
TENNESSEE	31,575,000
TEXAS	45,150,000
UTAH	3,885,000
NEVADA	1,100,000
VERMONT	4,965,000
NEW HAMPSHIRE	4,695,000
VIRGINIA	27,890,000
WASHINGTON	11,165,000
WEST VIRGINIA	19,980,000
WISCONSIN	23,930,000
WYOMING	3,435,000
NATIONAL RESERVE	200,000,000
TOTAL	1,100,000,000

*Funding will be made from the National Reserve.

RURAL HOUSING PROGRAMS

Rural housing loan and grant making will be continued for the fiscal year beginning October 1, 1978, in strict compliance with the following:

I. *General:*

A. The interest rate for all rural housing loan programs for FY 1979 will be the same as in effect at the end of fiscal year 1978. See Exhibit B of FmHA Instruction 440.1 for current rates.

B. Funds are allocated to each State on the basis of housing needs. The criteria considered and the formulas by which allocations were determined are outlined in Attachment C-1 to the AN. Funds available for each program are indicated in the following paragraphs and attachments.

C. Priority will be given to providing assistance to serve areas having the greatest housing needs and to reach lower-income tenants and applicants. We will provide, to each State director, information by county, on population, substandard housing, and income. This information is intended to assist in identifying those areas where increased emphasis must be placed on assisting lower income families.

D. State Directors are to carry out balanced loan making and servicing programs. In some States more emphasis should be placed on borrower records and accounting procedures for RRH and LH loans especially where rent increases, interest credit or rental assistance is involved. Loan servicing of single family housing accounts must be continued following the guidelines set forth in FmHA AN 249(451) dated March 16, 1978.

E. State directors may not switch funds between subsidized and nonsubsidized categories. Also, State directors serving more than one State may not shift allocations between States within their jurisdiction.

F. State directors are responsible for administering the rural housing RH programs within their State in strict compliance with applicable procedures and this AN. Dockets should not be processed for any program unless funds will likely be available for the loan or grant. The National Office will maintain only a small reserve of funds for the section 502, 504 loan and grant and section 515 programs; therefore, the Administrator will consider requests for additional funds only on a hardship case basis. To assure that funds are utilized, all funds available but not obligated during the first half of fiscal year 1979 will be pooled as of COB, March 30, 1979. Furthermore, all second-half funds available but not obligated will be pooled as of COB, August 10, 1979.

G. For section 502 insured RH, section 502 guaranteed RH, and section 504 RH loans and grants, the cumulative amounts to be submitted in each category for obligation each quarter will not exceed the following percentage of the State's annual allocation as shown in attachments C-2 and C-3, as appropriate:

First quarter, 35 percent.
Second quarter, 60 percent.
Third quarter, 85 percent.
Fourth quarter, 100 percent.

For section 515 State directors will not exceed 60 percent of their total year allocation as shown in Attachment C-4, prior to March 31 without prior written approval of the National Office.

State directors will take actions necessary to insure these allocations are not exceeded.

II. *Section 502 Insured RH Loans:*

A. Transfer of existing section 502 loans by assumption (465.1 paragraph XVII) will be used in all practical cases in order to conserve loan funds and assist the greatest number of applicants. Subsequent loans may be made to pay for equity and finance needed repairs or improvements.

B. Conditional commitments will not be issued unless the county office can reasonably expect to approve and fund loans for those conditional commitments within 3 months after the dwellings are completed.

C. Action should be taken to insure that funds will be available for loans for hardship cases and to those participating in self-help projects to prevent delays in the construction of homes. Priority processing will be provided for self-help housing applications.

D. Weatherization loans made by public utilities will be obligated from the National Office reserve established for this purpose.

III. *Section 502 Guaranteed Above Moderate RH Loans:*

A. Upon receipt of revised FmHA Instruction 1980-D, section 502, guaranteed loan authority may be implemented.

B. Action should be taken to insure that lenders are familiarized and encouraged to participate in the guaranteed RH loan program. Training sessions should be held, as appropriate, with lenders. All applicants who appear to be eligible for a guaranteed loan should be referred to lenders willing to participate in the program.

IV. *Section 504 RH Loans and Grants.* Overall use of section 504 loan and grant funds increased significantly last fiscal year. However, some States are still showing only a small amount of activity in this program area. With increased funding for the fiscal year it is very important that all States assist families with 504 needs. FmHA offices should especially strive to cooperate with organizations operating federally financed rehabilitation projects.

V. *Section 515 RRH Loans:*

A. Attachment C-4 of this AN indicates the annual allocation of subsidized and nonsubsidized RRH funds for fiscal year 1979. The level of funding in fiscal year 1979 represents a substantial increase when compared to the past obligation history in the 515 program.

B. The objective of the RRH program is to provide rental housing to persons with low and moderate incomes and for senior citizens. In recent years, a large percentage of RRH projects have been developed to meet the housing needs of senior citizens. In many areas there is also a need for family-type units which is not being met. In the past very little effort has been made to serve the housing needs of large families although market data indicated such a need. Therefore, a priority will be extended to projects providing family-type units, particularly those serving very low income people. State Directors shall see that this policy is implemented.

C. Any RRH project that will receive interest of credit or rental assistance from the FmHA, shall be identified as a subsidized loan. This includes single track and dual track loans involving section 8 rental assistance when an interest reduction is given in accordance with exhibit 0 to FmHA Instruction 444.5. You should be sure that form FmHA 444-5, "Multiple Housing Fund Analysis," is properly completed to assure correct identification of funds by type and, until the form is revised, indicate the approval date on the bottom of the form. Also show the following at the bottom of the form for projects involving section 8:

Number of Section 8 Units _____
From HUD set-aside for fiscal year _____
Single track _____
Dual track _____

VI. *Units for the HUD section 8 set-aside program:*

A. We anticipate receiving a set-aside from HUD of 10,000 section 8 units for use in fiscal year 1979 under the single track processing. Attachment C-5 of this AN is a tentative distribution of section 8 units by Region and State. As of the date of this AN, we have not received written approval of the number or distribution from HUD, therefore, it is subject to change.

B. The National Office is negotiating with HUD to obtain more flexibility in the type of units and location of projects obtaining section 8 assistance. You should, to the extent possible, assist HUD in meeting the objective of utilizing the section 8 program to provide more family units rather than units for the elderly.

VII. *Rental assistance (RA) units for RRH and LH programs:*

A. Requests for the obligation of rental assistance units for existing and new construction which were submitted to the finance office prior to October 1, 1978, shall be obligated from the National reserve and will not be deducted from the respective States' fiscal year 1979 RA allocation.

B. FmHA has been allocated 23,000 units for rental assistance for fiscal year 1979. Attachment C-6 is the distribution of RA units for existing and new construction by State for fiscal year 1979. The distribution of RA units has been made in accordance with the same formula used in allocating section 515 funds to the States. There is no separate allocation for the labor housing program this fiscal year. Units are to be allocated to LH and RRH projects on the same basis in accordance with exhibit R to FmHA Instruction 444.5. However, a National Office reserve of approximately 10,000 units have been maintained for existing units. States that have obligated all of their existing units may request additional existing units from the National Office reserve.

C. All new requests for rental assistance units to the finance office made after October 2, 1978, must be made on form FmHA 444-26, "Request for Obligation of Rental Assistance." Exhibit R-4 to FmHA Instruction 444.5 will no longer be used. Refer to Special Procedure Notice dated September 28, 1978, for additional clarification. In addition, the dollar amount that will be indicated by the finance office in section V of form FmHA 444-26 shall be inserted in section 10 of form FmHA 444-27, "Rental Assistance Agreement." Exhibit R-2 to FmHA Instruction 444.5 shall no longer be used. About 500 copies of each form were sent to each State office on September 28, 1978. Additional copies may be requested from the finance office, St. Louis, Mo.

D. State directors may neither switch RA units between States under their jurisdiction nor switch new and existing units without the written consent of the National Office.

VIII. *Section 514 LH Loans.* A total of $38 million is available. Each State Director should use its labor housing authority to its fullest extent. Funds will not be allocated to

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individual States at this time, and loans within your approval authority may be submitted directly to the finance office for funding.

IX. *Section 516 LH Grants:*

A. Grant making activities may resume in accordance with FmHA Instruction 444.6. A total of $33 million is available for LH grants nationally. State directors are again requested to examine the need for this type of assistance within their States and to inform county supervisors in writing to contact applicants, and prospective applicants. Those organizations wishing to be considered, will be requested to furnish current information to the FmHA. Applicants should be informed that any cost involved in obtaining the information will be at their own expense, without assurance that a project will be funded by FmHA.

B. State directors should review each application and make a preliminary determination as to eligibility. Priority for funding shall be determined by each State director in accordance with FmHA Instruction 444.6, paragraph VII A. Attachment C-7 of this AN should be completed for each loan application determined to be eligible to assist in determining the priority for funding. The completed exhibits should be submitted to the National Office along with a list showing the order in which funding is recommended. This information must be received in the National Office by December 31, 1978, to assure consideration for funding from fiscal year 1979 grant funds. Applications meeting all applicable eligibility requirements contained in paragraph IV of FmHA Instruction 444.6 should be submitted.

X. *Section 523 TA Grants.* You may continue processing and approving section 523 TA Grants in accordance with FmHA Instruction 1933-I.

XI. *Section 524 Insured and Section 523 Direct RHS Loans.* Funds are now available. Loan making operations may continue in accordance with FmHA Instruction 444.8.

ALLOCATION OF RH PROGRAM FUNDS—FISCAL YEAR 1979

The following criteria identifies essential elements that are considered necessary to allocate rural housing funds to various States on the basis of housing needs.

Factor A: State's percentage of national rural population.
Factor B: State's percentage of national rural population living in dwellings which lack complete plumbing and/or are crowded (substandard).
Factor C: State's percentage of national rural population below poverty level.
Factor D: Cost indicator (average cost of new dwelling and site, factored by population).
Factor E: State's percentage of national rural population 62 years of age and over.
Factor F: State's percentage of national rural households with incomes between $15,000 and $20,000.

BASIC FORMULA ALLOCATION

Section 502 rural housing and section 515 rural rental housing.

(A×.30+B×.30+C×.30+D×.10) × funds available = State allocation

Section 504 loans.

(B×.50+C×.50) × funds available = State allocation

Section 504 grants.

(B×.33+C×.33+E×.33) × funds available = State allocation

Section 502 guaranteed above moderate loans.

(A×.30+B×.30+F×.30+D×.10) × funds available = State allocation.

Transition adjustment is necessary to temper large differences between previous program levels and a basic formula allocation. A 3-year transition period is used to allow individual States to adjust programs accordingly.

Fiscal year 1978 funds obligated adjusted to fiscal year 1979 funds available = (a)

Basic formula allocation = (b)

a=(b−a)/3 = adjusted allocation

Minimum allocations have been established for each loan and grant category.

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SECTION 502 RH LOAN AUTHORIZATIONS
(INSURED)
For Fiscal Year 1979
(in millions)

State	Subsidized	Nonsubsidized	Total
Alabama	$ 47	$ 25	$ 72
Alaska	12	8	20
Arizona	18	6	24
Arkansas	57	22	79
California	54	19	73
Colorado	23	12	35
Connecticut	11	4	15
Delaware	8	4	12
Florida	48	16	64
Georgia	49	27	76
Hawaii and American Samoa	12	6	18
Idaho	31	10	41
Illinois	52	22	74
Indiana	56	21	77
Iowa	51	28	79
Kansas	29	21	50
Kentucky	59	26	85
Louisiana	68	23	91
Maine	40	8	48
Maryland	20	9	29
Massachusetts	25	6	31
Michigan	51	29	80
Minnesota	38	21	59
Mississippi	69	26	95
Missouri	55	22	77
Montana	16	6	22
Nebraska	26	10	36
Nevada	8	4	12
New Hampshire	14	6	20
New Jersey	29	9	38
New Mexico	14	7	21
New York	70	28	98
North Carolina	97	53	150
North Dakota	19	7	26
Ohio	33	16	49
Oklahoma	55	22	77
Oregon	45	13	58
Pennsylvania	36	23	59
Rhode Island	8	4	12

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SECTION 502 RH LOAN AUTHORIZATIONS
(INSURED)
For Fiscal Year 1979
(in millions)

State	Subsidized	Nonsubsidized	Total
South Carolina	$ 41	$ 21	$ 62
South Dakota	23	8	31
Tennessee	59	36	95
Texas	60	29	89
Utah	24	7	31
Vermont	24	6	30
Virginia	59	23	82
Washington	21	10	31
West Virginia	29	15	44
Wisconsin	47	17	64
Wyoming	8	5	13
Guam and Trust Territories	12	5	17
Puerto Rico	107	18	125
Virgin Islands	8	4	12
Subtotal	$1,975	$833	$2,808
HUD-USDA Demo.	10		10
Weatherization		10	10
Reserve	22	17	39
TOTAL	$2,007	$860	$2,867

SECTION 502 GUARANTEED RH LOANS, 504 RH LOAN, 504 RH GRANT

Authorizations for FY 1979

State	502 Guaranteed RH Loans (Millions)	504 RH Loans (Thousands)	504 RH Grants (Thousands)
Alabama	$ 11	$ 1,110	$ 490
Alaska	9	100	50
Arizona	5	100	140
Arkansas	8	1,260	710
California	12	300	370
Colorado	5	100	310
Connecticut	5	100	80
Delaware	5	100	90
Florida	11	310	290
Georgia	16	500	580
Hawaii and American Samoa	10	570	110
Idaho	5	100	80
Illinois	14	290	640
Indiana	12	210	230
Iowa	9	390	230
Kansas	6	100	160
Kentucky	13	1,140	620
Louisiana	10	700	560
Maine	5	450	440
Maryland	5	180	280
Massachusetts	5	100	130
Michigan	14	290	320
Minnesota	10	150	250
Mississippi	11	2,030	1,140
Missouri	10	550	650
Montana	5	100	50
Nebraska	5	100	140
Nevada	5	100	50
New Hampshire	5	100	120
New Jersey	8	100	180
New Mexico	5	410	710
New York	14	330	420
North Carolina	20	880	760
North Dakota	5	100	230
Ohio	17	380	430
Oklahoma	6	320	420
Oregon	5	290	320
Pennsylvania	18	550	550
Rhode Island	5	100	50

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SECTION 502 GUARANTEED RH LOANS, 504 RH LOAN, 504 RH GRANT

Authorizations for FY 1979

State	502 Guaranteed RH Loans (Millions)	504 RH Loans (Thousands)	504 RH Grants (Thousands)
South Carolina	$ 10	$ 370	$ 370
South Dakota	5	100	120
Tennessee	13	350	340
Texas	18	1,360	1,040
Utah	5	100	50
Vermont	5	100	120
Virginia	11	260	330
Washington	7	170	170
West Virginia	8	390	280
Wisconsin	10	230	350
Wyoming	5	100	110
Guam and Trust Territories	5	1,300	180
Puerto Rico	12	2,130	1,210
Virgin Islands	5	100	50
Subtotal	$468	$22,150	$18,100
HUD-USDA Demo.		780	337
Reserve	32	1,070	563
TOTAL	$500	$24,000	$19,000

SECTION 515 - RURAL RENTAL HOUSING
FY 79 ALLOCATIONS (in thousands)

STATE	UNSUBSIDIZED	SUBSIDIZED	TOTAL
ALABAMA	1,450	26,950	28,400
ALASKA	250	4,400	4,650
ARIZONA	400	6,550	6,950
ARKANSAS	700	12,300	13,000
CALIFORNIA	1,900	35,300	37,200
COLORADO	300	4,700	5,000
DELAWARE	150	2,150	2,300
MARYLAND	400	7,250	7,650
FLORIDA	1,400	25,400	26,800
GEORGIA	950	17,250	18,200
HAWAII	200	3,600	3,800
GUAM, SAMOA & PAC. TRUST TER.	200	2,950	3,150
IDAHO	500	8,300	8,800
ILLINOIS	1,650	30,100	31,750
INDIANA	1,300	23,500	24,800
IOWA	1,400	25,350	26,750
KANSAS	700	12,400	13,100
KENTUCKY	750	13,900	14,650
LOUISIANA	650	11,800	12,450
MAINE	700	12,350	13,050
MASSACHUSETTS	400	7,400	7,800
CONNECTICUT	250	4,500	4,750
RHODE ISLAND	100	1,400	1,500
MICHIGAN	1,650	30,750	32,400
MINNESOTA	1,200	21,900	23,100
MISSISSIPPI	1,100	20,350	21,450
MISSOURI	1,200	22,200	23,400
MONTANA	300	5,000	5,300
NEBRASKA	500	9,350	9,850
NEW JERSEY	450	8,300	8,750
NEW MEXICO	400	7,050	7,450
NEW YORK	1,500	27,150	28,650
VIRGIN ISLANDS	100	1,400	1,500
NORTH CAROLINA	2,000	36,450	38,450
NORTH DAKOTA	500	9,000	9,500
OHIO	1,350	25,000	26,350
OKLAHOMA	500	9,050	9,550
OREGON	550	10,250	10,800
PENNSYLVANIA	1,450	26,300	27,750
PUERTO RICO	1,400	25,900	27,300
SOUTH CAROLINA	1,000	17,950	18,950
SOUTH DAKOTA	700	12,750	13,450
TENNESSEE	700	13,000	13,700
TEXAS	1,800	33,300	35,100

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SECTION 515 - RURAL RENTAL HOUSING
FY 79 ALLOCATIONS (in thousands)

STATE	UNSUBSIDIZED	SUBSIDIZED	TOTAL
UTAH	160	2,990	3,150
NEVADA	200	3,600	3,800
VERMONT	200	3,500	3,700
NEW HAMPSHIRE	350	6,200	6,550
VIRGINIA	750	13,400	14,150
WASHINGTON	900	16,000	16,900
WEST VIRGINIA	700	12,500	13,200
WISCONSIN	1,350	25,100	26,450
WYOMING	300	5,350	5,650
HUD-FmHA DEMO. SET-ASIDE		7,500	7,500
HEW-FmHA DEMO. SET-ASIDE		6,000	6,000
NAT. OFFICE RESERVE	6,040	45,660	51,700
TOTAL	48,000	820,000	868,000

TENTATIVE SECTION 8/515 ALLOCATIONS
FOR THE FARMERS HOME ADMINISTRATION (FmHA)
FOR FISCAL YEAR 1979

BOSTON REGION		
Connecticut		60
Massachusetts		100
New Hampshire		80
Vermont		50
Maine		160
Rhode Island		20
	Subtotal	470
NEW YORK REGION		
New Jersey		110
New York		360
Puerto Rico		340
Virgin Islands		20
	Subtotal	830
PHILADELPHIA REGION		
Delaware		30
Maryland		100
Pennsylvania		350
Virginia		180
West Virginia		160
	Subtotal	820
ATLANTA REGION		
Alabama		350
Florida		330
Georgia		230
Kentucky		180
Mississippi		270
North Carolina		480
South Carolina		230
Tennessee		170
	Subtotal	2,240
CHICAGO REGION		
Illinois		390
Indiana		310
Michigan		400
Minnesota		290
Ohio		330
Wisconsin		330
	Subtotal	2,050
DALLAS REGION		
Arkansas		160
Louisiana		160
New Mexico		90
Oklahoma		120
Texas		440
	Subtotal	970
KANSAS CITY REGION		
Iowa		330
Kansas		160
Missouri		290
Nebraska		120
	Subtotal	900
DENVER REGION		
Colorado		60
Montana		70
North Dakota		120
South Dakota		170
Utah		40
Wyoming		70
	Subtotal	530
SAN FRANCISCO REGION		
Arizona		90
California		460
Hawaii		50
Guam		30
Nevada		50
	Subtotal	680
SEATTLE REGION		
Idaho		110
Alaska		60
Oregon		130
Washington		210
	Subtotal	510
	TOTAL	10,000

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RENTAL ASSISTANCE (RA) UNIT ALLOCATION FOR FISCAL YEAR 1979

State	New	Existing
ALABAMA	198	262
ALASKA	32	43
ARIZONA	49	64
ARKANSAS	91	120
CALIFORNIA	260	342
COLORADO	35	46
DELAWARE	16	22
MARYLAND	53	71
FLORIDA	185	245
GEORGIA	127	168
HAWAII	26	35
GUAM, SAMOA AND PACIFIC TRUST TER.	22	29
IDAHO	62	81
ILLINOIS	222	292
INDIANA	173	229
IOWA	185	245
KANSAS	91	121
KENTUCKY	102	135
LOUISIANA	89	117
MAINE	91	121
MASSACHUSETTS	54	72
CONNECTICUT	33	44
RHODE ISLAND	11	14
MICHIGAN	226	299
MINNESOTA	161	213
MISSISSIPPI	150	197
MISSOURI	163	215
MONTANA	37	49
NEBRASKA	69	91
NEW JERSEY	61	81
NEW MEXICO	52	69
NEW YORK	200	264
VIRGIN ISLANDS	12	13
NORTH CAROLINA	269	354
NORTH DAKOTA	66	87

State	New	Existing
OHIO	184	242
OKLAHOMA	67	88
OREGON	76	100
PENNSYLVANIA	194	256
PUERTO RICO	191	251
SOUTH CAROLINA	132	175
SOUTH DAKOTA	94	124
TENNESSEE	96	126
TEXAS	244	323
UTAH	22	29
NEVADA	26	35
VERMONT	26	34
NEW HAMPSHIRE	46	61
VIRGINIA	99	130
WASHINGTON	118	156
WEST VIRGINIA	92	121
WISCONSIN	185	243
WYOMING	39	52
NATIONAL OFFICE RESERVE	146	9,854
TOTAL	5,750	17,250

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TO BE COMPLETED FOR ALL
LH APPLICANTS DETERMINED ELIGIBLE

State:_____ Date Application Received:_____

Name of Applicant:_____ Type of Applicant:_____

County or Area to be Served:_____

Amount Loan Requested $_____ % of Total_____

Amount Grant Requested $_____ % of Total_____

Amount Loan Recommended by S/O $_____ % of Total_____

Amount Grant Recommended by S/O $_____ % of Total_____

Total # Units to be Built_____ Cost Per Unit_____

Estimated Rental Rates_____

Comparable Rents in Area_____

Estimated % Annual Occupancy_____ Estimated % Migrants_____

Estimated # Farmworkers in Area_____

Income Level of Farmworkers in Area_____

Comments regarding condition and availability of labor housing in area:

Comments and documentation regarding long-term need for the proposed project:

Comments regarding management experience of the applicant:

Other comments and S/O recommendation:

NOTE: If proposal involves rehabilitation of existing units, provide a general description of the rehabilitation planned along with an estimated cost breakdown.

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FARMER PROGRAMS

Based upon the Appropriation Act for fiscal year 1979, farmer program loan levels are as follows:

[Dollars in thousands]

Program	Total	Quarters			
		First	Second	Third	Fourth
OL	$825,000	$180,000	$390,000	$180,000	$75,000
FO	800,000	300,000	200,000	200,000	100,000
SW-I	51,000	20,000	15,000	10,000	6,000
Recreation	2,200	1,000	700	250	250
Grazing	4,400	4,400	0	0	0
Indian land acquisition	11,000	5,000	3,000	2,000	1,000
Irrigation and drainage	7,000	4,000	3,000	0	0

State allocations for farm ownership and farm operating loans for fiscal year 1979 are attached. State allocations are based on important factors which reflect the needs for credit. These factors include:

Number of farms;
Farm population;
Number of farm tenants;
Net farm income;
Participation credit (considered for FO loan allocations only); and
Historic obligations.

These factors have been given the same consideration for each State and the resulting calculations provide a measure of each State's funding needs in relation to other States.

PRIORITIES ON LOAN FUNDING

Applications for farm ownership and operating loans will be funded in the following order of priority:

1. Applications from low-income owners or operators of small farms who are identified as limited-resource applicants.
2. Applications from operators who qualify for guaranteed loans.
3. Applications from operators who qualify for insured loans at the cost of money interest rate and (for FO) with a portion of loan obtained from a participating lender. OL loan applicants are not required to obtain participation.
4. Applications from FO applicants who qualify for insured loans at the cost of money interest rate who are unable to obtain a participating lender.

State Directors are expected to place strong emphasis on utilizing funds to assist minority farmers, including women, disadvantaged families, low-income farmers and those with limited resources. The state's efforts to assist this group will be strongly considered when allocating additional funds to a state from the National Office reserves for both FO and OL loans.

Each State Director is expected to reserve and use from each quarterly allocation at least 25 percent of the FO and OL funds for loans to limited resource applicants.

While a specific amount is not being allocated to each state for guaranteed FO and OL loans, the making of such loans has second priority. The Appropriations Act mandated at least $50 million of FO funds and $25 million of OL funds for making guaranteed loans. Therefore, each State Director will take immediate steps to implement the guaranteed loan program in his or her state.

We expect to closely monitor each state's obligation of funds to determine progress in making guaranteed loans and loans to limited resource applicants.

At the end of the second quarter, March 31, we expect to review the obligations of FO and OL funds to determine compliance with funding priorities. Pooling of funds and reallocation to states will be considered at the time, if necessary, to accomplish priorities and goals on loans to limited resource applicants and guaranteed loans.

We expect to pool unobligated FO and OL funds by August 15, 1979.

FARM OPERATING LOANS

The operating loan obligation authority at $825 million is unchanged from the previous year. Each State office is expected to closely monitor the use of its OL allocations and administer the OL program consistent with this AN.

A National Office reserve of $50 million has been established to assist States that may have inadequate allocations. Use of OL funds relative to State allocations will be closely monitored by the National Office and, if necessary, some realignment of allocations will be made. The State Director for Hawaii may request OL funds from the reserve on an individual case basis for loans in other authorized areas of the Pacific.

FARM OWNERSHIP LOANS

Farm ownership loan obligations may be made in accordance with the quarterly allocations indicated.

Each State Director is responsible for maintaining a reserve for hardship cases. A National Office reserve of $25 million has been established. This will be available on an individual case basis when a dire need exists for funds in addition to the State's initial allocation. The State Director for Hawaii may request FO funds from the reserve on an individual case basis for loans in other authorized areas of the Pacific. Each State Director will maintain strict control over loan obligations to insure staying within the State's initial allocation for each category. State Directors may have to prohibit loan approval officials from sending loan dockets directly to the Finance Office without prior consent of the State Director or farmer program staff in the State office.

We are continuing our same participation policy as in 1978 fiscal year. Our goal is that each State obtain at least one dollar of other lender funds for each dollar of farm ownership funds.

INDIVIDUAL SOIL AND WATER AND RECREATION LOANS

Individual soil and water and recreation funds are not allocated on a state basis. Obligating documents may be submitted to Finance Office as the loans are approved.

IRRIGATION AND DRAINAGE, GRAZING ASSOCIATION AND INDIAN LAND ACQUISITION LOANS

Funds for irrigation and drainage (group), grazing associations and Indian land acquisition loans are retained by the National Office and will be allocated on an individual case basis. Funds for these loan types may be requested from the National Office when it is determined the loan can be approved.

Priority should be considered for irrigation and drainage loan applications for water conservation projects in water-short areas.

EMERGENCY, EMERGENCY LIVESTOCK, AND ECONOMIC EMERGENCY LOANS

State allocations for EM, EL and EE loans will not be made. Obligations will be handled directly by the Finance Office as in the past.

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FARM OWNERSHIP LOAN FUNDS
1979 FISCAL YEAR QUARTERLY ALLOCATIONS
(000 DOLLARS)

STATE	TOTAL	1st QTR	2nd QTR	3rd QTR	4th QTR
ALABAMA	$16,800	$ 6,300	$4,200	$4,200	$2,100
ALASKA	1,000	375	250	250	125
ARIZONA	6,000	2,250	1,500	1,500	750
ARKANSAS	23,000	8,625	5,750	5,750	2,875
CALIFORNIA	10,300	3,862	2,575	2,575	1,288
COLORADO	11,600	4,350	2,900	2,900	1,450
DELAWARE	2,200	825	550	550	275
MARYLAND	6,000	2,250	1,500	1,500	750
FLORIDA	9,000	3,375	2,250	2,250	1,125
GEORGIA	17,500	6,562	4,375	4,375	2,188
HAWAII	2,000	750	500	500	250
IDAHO	20,000	7,500	5,000	5,000	2,500
ILLINOIS	30,500	11,437	7,625	7,625	3,813
INDIANA	21,000	7,875	5,250	5,250	2,625
IOWA	35,000	13,125	8,750	8,750	4,375
KANSAS	29,200	10,950	7,300	7,300	3,650
KENTUCKY	24,800	9,300	6,200	6,200	3,100
LOUISIANA	13,000	4,875	3,250	3,250	1,625
MAINE	8,500	3,187	2,125	2,125	1,063
MASSACHUSETTS	2,000	750	500	500	250
CONNECTICUT	1,500	562	375	375	188
RHODE ISLAND	1,000	375	250	250	125
MICHIGAN	17,000	6,375	4,250	4,250	2,125
MINNESOTA	30,500	11,437	7,625	7,625	3,813
MISSISSIPPI	22,000	8,250	5,500	5,500	2,750
MISSOURI	35,000	13,125	8,750	8,750	4,375
MONTANA	13,000	4,875	3,250	3,250	1,625
NEBRASKA	29,200	10,950	7,300	7,300	3,650
NEW JERSEY	3,000	1,125	750	750	375
NEW MEXICO	7,500	2,813	1,875	1,875	937
NEW YORK	14,700	5,513	3,675	3,675	1,837
VIRGIN ISLANDS	400	150	100	100	50
NORTH CAROLINA	23,000	8,625	5,750	5,750	2,875
NORTH DAKOTA	27,000	10,125	6,750	6,750	3,375
OHIO	16,000	6,000	4,000	4,000	2,000
OKLAHOMA	31,000	11,625	7,750	7,750	3,875
OREGON	10,000	3,750	2,500	2,500	1,250
PENNSYLVANIA	13,200	4,950	3,300	3,300	1,650
SOUTH CAROLINA	12,500	4,688	3,125	3,125	1,562
SOUTH DAKOTA	28,000	10,500	7,000	7,000	3,500
TENNESSEE	21,800	8,175	5,450	5,450	2,725
TEXAS	36,000	13,500	9,000	9,000	4,500
UTAH	6,200	2,325	1,550	1,550	775
NEVADA	2,000	750	500	500	250
VERMONT	6,600	2,475	1,650	1,650	825
NEW HAMPSHIRE	1,500	563	375	375	187
VIRGINIA	12,000	4,500	3,000	3,000	1,500
WASHINGTON	11,700	4,388	2,925	2,925	1,462
WEST VIRGINIA	7,000	2,625	1,750	1,750	875
WISCONSIN	29,200	10,950	7,300	7,300	3,650
WYOMING	6,600	2,475	1,650	1,650	825
PUERTO RICO	9,500	3,563	2,375	2,375	1,187
RESERVE - N.O.	25,000	9,375	6,250	6,250	3,125
U.S. TOTALS	800,000	300,000	200,000	200,000	100,000

FARM OPERATING FUNDS
1979 FISCAL YEAR QUARTERLY ALLOCATIONS
(000 DOLLARS)

STATE	TOTAL	1st QTR	2nd QTR	3rd QTR	4th QTR
ALABAMA	$18,000	$3,410	$11,581	$1,649	$1,360
ALASKA	100	60	33	7	0
ARIZONA	4,100	836	1,946	852	466
ARKANSAS	21,000	2,920	12,894	3,383	1,803
CALIFORNIA	12,000	2,046	6,709	2,201	1,044
COLORADO	8,500	1,393	4,914	1,886	307
DELAWARE	1,100	146	584	275	95
MARYLAND	5,000	815	1,777	1,809	599
FLORIDA	12,000	4,116	4,776	1,015	2,093
GEORGIA	28,000	11,448	13,917	1,654	981
HAWAII	700	130	291	163	116
IDAHO	17,000	3,702	8,068	3,568	1,662
ILLINOIS	26,000	4,416	13,593	6,178	1,813
INDIANA	20,000	3,085	9,559	5,933	1,423
IOWA	35,000	7,152	20,103	4,380	3,365
KANSAS	22,000	4,319	8,745	6,957	1,979
KENTUCKY	23,000	5,201	8,939	5,490	3,370
LOUISIANA	32,000	5,373	22,664	2,845	1,118
MAINE	11,000	1,383	2,584	6,039	994
MASSACHUSETTS	1,000	156	204	425	215
CONNECTICUT	900	202	215	369	114
RHODE ISLAND	100	27	51	22	0
MICHIGAN	18,000	3,636	5,814	6,735	1,815
MINNESOTA	27,000	5,541	11,587	7,461	2,411
MISSISSIPPI	27,000	4,268	13,783	5,660	3,289
MISSOURI	31,000	5,053	14,123	9,341	2,483
MONTANA	8,500	1,812	4,728	1,642	318
NEBRASKA	20,000	3,038	11,471	4,701	790
NEW JERSEY	3,700	483	1,901	1,029	287
NEW MEXICO	5,000	764	2,816	1,148	272
NEW YORK	17,000	3,647	4,598	6,518	2,237
VIRGIN ISLANDS	100	52	2	46	0
NORTH CAROLINA	44,000	16,052	20,681	5,479	1,788
NORTH DAKOTA	18,000	4,871	6,847	4,612	1,670
OHIO	12,000	1,952	3,702	4,930	1,416
OKLAHOMA	26,000	6,849	9,053	5,251	4,847
OREGON	7,500	1,784	3,731	1,555	430
PENNSYLVANIA	14,000	2,628	3,575	6,214	1,583
PUERTO RICO	6,000	1,418	1,825	2,041	716
SOUTH CAROLINA	17,000	3,545	10,955	1,910	590
SOUTH DAKOTA	22,000	5,024	9,149	5,392	2,435
TENNESSEE	20,000	3,129	10,169	4,437	2,265
TEXAS	67,000	16,159	35,091	9,553	6,197
UTAH	3,500	840	1,248	934	478
NEVADA	1,000	159	438	289	114
VERMONT	3,500	773	583	1,447	697
NEW HAMPSHIRE	700	163	176	238	123
VIRGINIA	14,000	2,889	7,389	2,849	873
WASHINGTON	9,000	1,580	5,133	1,691	596
WEST VIRGINIA	4,000	1,060	1,282	1,055	603
WISCONSIN	26,000	6,333	8,480	7,285	3,902
WYOMING	4,000	1,191	1,977	566	266
STATE TOTALS	775,000	169,029	366,454	169,109	70,408
RESERVE - N.O.	50,000	10,971	23,546	10,891	4,592
U.S. TOTALS	825,000	180,000	390,000	180,000	75,000

[FR Doc. 78-30751 Filed 10-31-78; 8:45 am]

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[3410-02-M]

Federal Grain Inspection Service

GRAIN STANDARDS

Voluntary Cancellation of Designation by Delaware

AGENCY: Federal Grain Inspection Service.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of Agriculture of the State of Delaware has elected not to request official designation under the United States Grain Standards Act, as amended, thereby allowing their current designation to terminate November 20, 1978. The Federal Grain Inspection Service is requesting comments from the grain trade and other interested parties regarding the need for designation of a replacement agency to perform official inspection in the State of Delaware. In addition, interested persons are invited to make application for designation to operate as an official agency in Delaware.

DATE: Comments and/or applications by December 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Edith A. Christensen, Federal Grain Inspection Service, Compliance Division, Delegation and Designation Branch, 201 14th Street SW., Room 2405, Auditors Building, Washington, D.C. 20250, 202-447-8525.

SUPPLEMENTARY INFORMATION: The Department of Agriculture of the State of Delaware, Dover, Del. (State of Delaware), has elected not to request official designation under the terms of the United States Grain Standards Act, as amended (7 U.S.C. 71 et seq.) (hereinafter the "Act") and will allow their current designation to terminate November 20, 1978.

Pub. L. 94-582, enacted in 1976 to amend the Act, provides in section 27 that any interior inspection agency providing service on November 20, 1976, the date on which the amended Act became effective, could continue to do so without a designation under the Act until the expiration of a period as determined by the Administrator, but not to exceed 2 years after the Act's effective date (7 U.S.C. 74 note).

The State of Delaware has notified the Federal Grain Inspection Service (FGIS) that it does not plan to apply for a new designation under the Act and will allow its current designation to terminate November 20, 1978. The reason given by the State of Delaware for not applying for the official designation is because of the limited number of requests received for full inspection service during the last fiscal year. Of the total number of inspections performed by the State during the last fiscal year, less than 3 percent were performed as a full grade service, indicating that nearly 98 percent of all inspections were for one or two grading factors only; i.e., moisture or foreign material, and not for an official U.S. grade. A preliminary survey taken by FGIS of interested parties in the State's grain industry appears to indicate that applicants will be able to secure the factor analysis they require for grain trade in Delaware from sources other than an officially designated agency.

The Administrator, FGIS, is authorized, under the provisions of the Act, to provide official inspection service at locations where the Administrator determines official inspection is needed (7 U.S.C. 79(f)(1)). FGIS requests comments from the grain trade and other interested parties with respect to the need for continuing to provide official grain inspection service in the State of Delaware after November 20, 1978. All comments should be submitted in writing and mailed to the Office of the Director, Compliance Division, Federal Grain Inspection Service, 201 14th Street SW., Room 2405, Auditors Building, Washington, D.C. 20250, not later than December 1, 1978.

Under the provisions of section 7(f)(1), and subject to a final determination by the Administrator as to the need for official grain inspection service in the State of Delaware, interested persons are hereby given opportunity to make application for designation to operate as an official agency in Delaware, pursuant to the requirements in section 7(f)(1)(A) of the amended Act (7 U.S.C. 79(f)(1)(A) and § 26.96 of the regulations (7 CFR 26.96). Persons wishing to apply for designation to operate as an official agency in Delaware should contact the Office of the Director, Compliance Division, at the above mentioned address, for the appropriate forms and mail their applications to that Director's Office not later than December 1, 1978.

NOTE.—Section 7(f)(2) of the Act (7 U.S.C. 79(f)) provides that not more than one official agency shall be operative at one time for any geographic area as determined by the Administrator.

In making a final determination as to the need for a replacement agency in Delaware, consideration will be given to all comments filed and to any applications submitted and to all other information available to the Administrator. All comments submitted pursuant to this notice will be made available for public inspection at the above Office of the Director during regular business hours (7 CFR 1.27(b)).

(Sec. 8, Pub. L. 94-582, 90 Stat. 2870 (7 U.S.C. 79); sec. 27, Pub. L. 94-582, 90 Stat. 2889 (7 U.S.C. 74 note); 7 CFR 1.27(b) and 26.96.)

Done in Washington, D.C., on October 27, 1978.

L. E. MALONE,
Acting Administrator.

[FR Doc. 78-30894 Filed 10-31-78; 8:45 am]

[3410-16-M]

Soil Conservation Service

FISH STREAM WATERSHED AND NEZINSCOT RIVER WATERSHED, MAINE

Intend To Not File an Environmental Impact Statement for Deauthorization of funding of the Fish Stream Watershed and Nezinscot River Watershed

Pursuant of Section 102(2)(C) of the National Enironmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that environmental impact statements are not being prepared for deauthorization of funding of the Fish Stream Watershed, Penobscot County, and the Nezinscot Watershed, Androscoggin and Oxford Counties, Maine.

The environmental assessments of these actions indicate that project deauthorization will not cause significant adverse local, regional or national impacts on the environment. As a result of these findings, Mr. Warwick M. Tinsley, Jr., State Conservationist, has determined that the preparation and review of environmental impact statements are not needed for these actions.

The notices of intent to not prepare an environmental impact statement have been forwarded to the Environmental Protection Agency. The basic data developed during planning and for the environmental assessment of the projects are on file and may be reviewed by interested parties at the Soil Conservation Service, USDA Building, University of Maine, Orono, Maine 04473; 207-866-2132.

No administrative action on implementation of these proposals will be taken until 60 days after the date of this publication.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program, Pub. L. 83-566, 16 USC 1001-1108.)

Dated: October 24, 1978.

NORMAN A. BERG,
Associate Administrator.

[FR Doc. 78-30830 Filed 10-31-78; 8:45 am]

[6820-32-M]

ARMS CONTROL AND DISARMAMENT AGENCY

PRIVACY ACT OF 1974

Annual Notice of the Existence and Character of Systems of Records

AGENCY: U.S. Arms Control and Disarmament Agency.

ACTION: Annual notice of the existence and character of systems of records.

SUMMARY: As required by the Privacy Act of 1974 (5 U.S.C. 552a(e)(4), the U.S. Arms Control and Disarmament Agency gives annual notice of the existence and character of its systems of records.

EFFECTIVE DATE: Effective November 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Charles R. Oleszycki, Office of the General Counsel, U.S. Arms Control and Disarmament Agency, Washington, D.C. 20451, 202-632-0760.

As required by the Privacy Act of 1974, 5 U.S.C. 552a(e)(4), the U.S. Arms Control and Disarmament Agency hereby gives annual notice of the existence and character of its systems of records, without changes, as published in the FEDERAL REGISTER on September 20, 1977 (42 FR 47464-47468), and amended on June 21, 1978 (43 FR 26602-26604).

Dated: October 19, 1978.

JAMES T. HACKETT,
Administrative Director.

[FR Doc. 78-30882 Filed 10-31-78; 8:45 am]

[6335-01-M]

COMMISSION ON CIVIL RIGHTS

MISSOURI ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Missouri Advisory Committee (SAC) of the Commission will convene at 1 p.m. and will end at 2:30 p.m. on November 14, 1978, at 911 Walnut Street, Room 3100, Kansas City, Mo. 64106.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Central States Regional Office of the Commission, 911 Walnut Street, Kansas City, Mo. 64106.

The purpose of this meeting is to continue planning for a desegregation conference.

This meeting will be conducted pursuant to the provisions of rules and regulations of the Commission.

Dated at Washington, D.C., October 30, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-31028 Filed 10-31-78; 8:45 am]

[3510-24-M]

DEPARTMENT OF COMMERCE

Economic Development Administration

ROUNDS I AND II OF THE LOCAL PUBLIC WORKS CAPITAL DEVELOPMENT AND INVESTMENT (LPW) PROGRAM

Destruction of Denied Project Applications

Notice is hereby given to unsuccessful applicants for grants under Rounds I and II of the LPW program that EDA will destroy all denied project applications on file after (30 days after publication), unless an applicant requests the return of its application. All such requests must be in writing and must be directed to the appropriate EDA Regional Office.

The following is a list of the EDA Regional Offices:

Atlantic Regional Office, 10424 Federal Building, 600 Arch Street, Philadelphia, Pa. 19106.
Southeastern Regional Office, Suite 700, 1365 Peachtree Street NE., Atlanta, Ga. 30309.
Rocky Mountain Regional Office, Suite 505, Title Building, 909 17th Street, Denver, Colo. 80202.
Midwestern Regional Office, 175 West Jackson Boulevard, Suite A-1630, Chicago, Ill. 60604.
Western Regional Office, 1700 Westlake Avenue North, Suite 500, Seattle, Wash. 98109.
Southwestern Regional Office, American Bank Tower, Suite 600, 221 West Sixth Street, Austin, Tex. 78701.

Dated: October 26, 1978.

ROBERT T. HALL,
Assistant Secretary for Economic Development.

[FR Doc. 78-30854 Filed 10-31-78; 8:45 am]

[3510-24-M]

THE UNWROUGHT, UNALLOYED COPPER INDUSTRY

Study of Producing Firms

SUMMARY

The Department of Commerce has completed a study of the unwrought, unalloyed copper industry. The study was prepared under section 264 of the Trade Act of 1974 which requires such a study whenever the U.S. International Trade Commission conducts an investigation under section 201. The Commission submitted its final report to the President in August 1978. The Commission determined that unwrought, unalloyed copper was being imported into the United States in such increased quantities as to be a substantial cause of serious injury or threat thereof to the domestic industry.

FIRMS ELIGIBLE FOR ADJUSTMENT ASSISTANCE

Section 264 requires that this study look at "the number of firms in the domestic industry . . . which have been or are likely to be certified as eligible for adjustment assistance." Thus far, no petitions for certification have been filed, and no firms in the industry have been certified. However, 13,883 workers have been certified as eligible for adjustment assistance by the Department of Labor and 13 cases were still pending as of July 30, 1978.

The domestic industry consists of about 110 firms which mine, mill, or otherwise process copper ore, 19 firms operating primary smelters, refineries, and electrowinning plants and about 40 secondary producers. Many of these firms are fully integrated from mine to refinery and some are capable of producing both primary and secondary copper.

Any firm desiring certification must show that increases in imports "contributed importantly" to (a) the separation, or threat thereof, of a significant number or proportion of its workers, *and* (b) an absolute decrease in sales or production. The requirement of increased imports could be satisfied. Most firms probably could also satisfy the requirements for employment and either sales or production declines. A showing that the increased imports "contributed importantly" to these declines probably could be made, but this would not necessarily be true for specific firms.

Despite these probabilities some firms might have no desire or need for financial assistance beyond what private sources can provide. In addition, while some smaller, independent copper producers may find the various Federal assistance programs useful, it is highly unlikely that the amount of Federal financial assistance available would be a significant help to the major copper-producing companies which account for most of the domestic mine, smelter and refinery output. Without specific data on the needs and experience of individual firms, there is no way of determining the number of firms which may be certi-

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fied as eligible for adjustment assistance under the provisions of the Act.

SOURCES OF FEDERAL ASSISTANCE

Three Federal agencies have programs that might facilitate orderly adjustment of firms to import competition. The Economic Development Administration (EDA), in the Department of Commerce, has several relevant programs. One authorizes technical assistance, direct loans, and loan guarantees to firms that have been certified as eligible for adjustment assistance. Another authorizes public works grants, loans, and loan guarantees for communities that have been injured by imports. Still another provides for loans and guarantees for firms in designated "redevelopment areas" and "economic development centers." Such places are also eligible for public works.

The Small Business Administration (SBA), an independent agency, has three programs that might help. The most important is a program of direct, participating, and guaranteed loans to small businesses. In general, SBA handles loans of $350,000 or less, while EDA handles the larger loans.

The Farmers Home Administration (FmHA), in the Department of Agriculture, has two relevant programs. One provides business loan guarantees to firms located in areas other than cities of over 50,000 population.

Additional information about the adjustment assistance program and copies of the report *Prospects for Adjustment Assistance for Firms in the Unwrought, Unalloyed Copper Industry,* are available from the Office of Public Affairs, Economic Development Administration, Room 7019, U.S. Department of Commerce, Washington, D.C. 20230, telephone 202-377-5113.

JACK W. OSBURN, Jr.,
Chief, Trade Act Certification Division, Office of Planning and Program Support.

[FR Doc. 78-30855 Filed 10-31-78; 8:45 am]

[3510-25-M]

Industry and Trade Administration

[Transmittal No. 235; Order No. 44-1 (Amendment 1)]

BUREAU OF DOMESTIC BUSINESS DEVELOPMENT

Organization and Function Order

Effective Date: September 5, 1978.

ITA Organization and Function Order 44-1 of December 4, 1977 (43 FR 10955), is hereby amended as follows to reflect the establishment of the Iron and Steel Division. The functions and the personnel in the Iron and Steel Program of the Materials Division are transferred to the Iron and Steel Division.

1. *SECTION 10. Office of Basic Industries.* Section 10.01 is revised to add the following:

"d. Iron and Steel Division"

2. The attached organization chart [1] supersedes the organization chart dated December 1977.

FRANK A. WEIL,
Assistant Secretary for Industry and Trade.

ROBERT E. SHEPHERD,
Deputy Assistant Secretary for Domestic Business Development.

[FR Doc. 78-30829 Filed 10-31-78; 8:45 am]

[3510-15-M]

Maritime Administration

[Docket No. S-625]

COVE CARRIERS INC., CTS ASSOCIATES

Applications

Notice is hereby given that Cove Carriers Inc. (Carriers) and CTS Associates (CTS), related companies, have each filed application under the Merchant Marine Act, 1936, as amended (the Act), for operating-differential subsidy to engage in bulk cargo carrying service in the U.S. foreign trade, principally between the United States and the U.S.S.R., to expire on December 31, 1978, unless extended. Inasmuch as these applicants, and/or related persons or firms, employ or may employ ships in the domestic intercoastal or coastwise service, written permission of the Maritime Administration under Section 805(a) of the Act will be required if the applications for operating-differential subsidy are to be granted.

CTS is partly owned by Plymouth Tankers Inc. which is related through Transeastern Associates to Seatrain Lines, Inc. An officer and director of Cove Tank Ships Inc., is the Managing Venturer of CTS and owns a pecuniary interest in Seatrain Lines, Inc.

Carriers requests written permission to own the tanker, *Cove Spirit,* and CTS requests permission to own the tankers, *Cove Engineer* and *Cove Ranger.* Both applicants request permission for Cove Shipping Inc., an affiliate, to operate these vessels in worldwide trade including domestic operation under the Military Sealift Command or private charters. Carriers and CTS also request written permission for the right to move these tankers from one domestic trade to another, and/or from a foreign trade to a domestic trade.

It will be necessary to extend to Cove Ventures Inc., Cove Tankers Inc. and Cove Trading Inc., affiliates of the applicants and holders of operating-differential subsidy contracts in bulk trades with the U.S.S.R., the foregoing written permissions requested by Carriers and CTS. Conversely, it will be necessary to extend to Carriers and CTS the section 805(a) written permission previously granted to Cove Ventures Inc., Cove Tankers Inc., and Cove Trading Inc. These permissions are as follows:

1. For Cove Ventures Inc. to own the *Cove Leader* for operation in the domestic trade;

2. For Cove Shipping Inc. to operate the *Cove Leader* in the domestic trade, as well as the right to move the vessel from one domestic trade to another, and/or from a foreign trade to a domestic trade;

3. For Cove Tankers Associates and Cove Communicator Associates, affiliates of Cove Ventures Inc., to own the *Cove Navigator* (formerly *Mount Navigator*) and *Cove Communicator,* respectively;

4. For Seatrain Lines, Inc. to operate vessels in the domestic trade, including the Alaska/Panama trade and certain Military Sealift Command (MSC) operations, as a result of a pecuniary interest in Seatrain Lines, Inc. through a minority stock interest on the part of an officer and director of each of Cove Ventures Inc., Cove Trading Inc. and Cove Tankers Inc.;

5. For Cove Shipping Inc. to operate the USNS's *Susquehanna, Neches, Columbia,* and *Hudson* in domestic service under MSC or private charters;

6. For Cove Tankers Corp.'s owned vessel, *Cove Explorer* (formerly *Mount Explorer*), and its bareboat chartered vessels, *Cove Navigator* and *Cove Communicator,* to engage in the domestic service under MSC or private charter, and for Cove Shipping Inc. to operate these vessels in the domestic trade;

7. For Cove Trading Inc. to own the *Cove Trader* for worldwide operation (including domestic operation), and Cove Shipping Inc. to operate the *Cove Trader* and *Stuyvesant* in the carriage of Alaskan oil in the domestic trade; and

8. For the right to move the foregoing vessels from one domestic trade to another, and/or from a foreign trade to a domestic trade.

The foregoing written permission is required notwithstanding the fact that a grain voyage would not be eligible for subsidy if the vessel engages in the domestic trade on that voyage.

Any person, firm, or corporation having any interest (within the meaning of section 805(a)) in such applications and desiring to be heard on issues pertinent to section 805(a) and desiring to submit comments or views concerning the applications must, by close of business on November 10, 1978, file same with the Secretary, Maritime Administration, in writing, in triplicate, together with petition for leave to intervene which shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief.

If no petitions for leave to intervene are received within the specified time or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing will be held, the purpose of which will be to receive evidence under section 805(a) relative to whether the proposed operations (a) could result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service, or (b) would be prejudicial to the objects and policy of the Act relative to domestic trade operations.

(Catalog of Federal Domestic Assistance Program No. 11.504 Operating-Differential Subsidies (ODS).)

By Order of the Assistant Secretary for Maritime Affairs.

Dated: October 26, 1978.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc. 78-30792 Filed 10-31-78; 8:45 am]

[3510-22-M]

National Oceanic and Atmospheric Administration

SEA WORLD, INC.

Receipt of Application for Permit

Notice is hereby given that an Applicant has applied in due form for a permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407); and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant: Dr. Lanny Cornell, vice president/Research/Veterinary Husbandry, Sea World, Inc., 1720 South Shores Road, Mission Bay, San Diego, Calif. 92109.

2. Type of permit: Scientific Research/Public Display.

3. Name and number of animals: Beluga (*Delphinapterus leucas*), 6; pilot whale (*Globicephala macrorhynchus*), 6; common dolphin (*Delphinus delphis*) and/or Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), 20; spotted dolphin (*Stenella sp.*) or spinner dolphin (*Stenella longirostris*) or striped dolphin (*Stenella coeruleoalba*) or Northern right-whale dolphin (*Lissodelphis borealis*), 15; Atlantic or Pacific bottlenose dolphin (*Tursiops truncatus*), 50.

4. Type of activity: To capture, import, and maintain permanently in Sea World facilities for public display, opportunistic research and captive propagation except 40 bottlenose dolphins which will be held temporarily up to 90 days for tagging and releasing.

5. Location of activity: Worldwide.

6. Period of activity: 5 years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangmeents and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the FEDERAL REGISTER the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices: Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.; Regional Director, National Marine Fisheries Service, Northeast Region, 14 Elm Street, Federal Building, Gloucester, Mass. 01930; Regional Director, National Marine Fisheries Service, Southeast Region, Duval Building, 9450 Koger Boulevard, St. Petersburg, Fla. 33702; Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, Calif. 90731; and Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668, Juneau, Alaska 99802.

Dated: October 27, 1978.

W. P. JENSEN,
Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 78-30912 Filed 10-31-78; 8:45 am]

[3810-70-M]

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

DOD ADVISORY GROUP ON ELECTRON DEVICES

Advisory Committee Meeting

Working Group A (Mainly Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED), will meet in closed session at the Naval Research Laboratory, Building 208, Room 260A, Washington, D.C. 20375, on December 7, 1978.

The purpose of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The microwave area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout. In accordance with section 10(d) of Appendix I, Title 5, United States Code, it is hereby determined that this meeting of the Advisory Group on Electron Devices concerns matters listed in section 552b(c) of Title 5 of the United States Code, specifically Subparagraph (1) thereof, and that accordingly this meeting will be closed to the public.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

OCTOBER 26, 1978.

[FR Doc. 78-30840 Filed 10-31-78; 8:45 am]

[1] Filed as part of the original document.

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[3710-08-M]

Veterans Administration

ARMED FORCES DISCHARGE REVIEW/ CORRECTION BOARDS INDEX

Agreement Between the Department of Defense and the Veterans Administration Regarding Provision of Index of Discharge Review/Correction Board Cases to Selected VA Regional Offices

Notice is hereby given that as a result of the establishment in January 1978 of a Coordinating Committee under the co-chairmanship of the Domestic Policy Council and the Veterans Administration to review the status of Vietnam-Era veterans, the Veterans Administration and the Department of Defense have entered into a cooperative arrangement whereby former service members will be provided access at selected VA Regional Offices to the index of decisions of the discharge review and correction boards of the military departments which may assist them in preparing their cases to be heard by the boards.

As a result of prior agreements between DOD, the military departments and other interested parties, non-personalized copies of case documents are filed in a reading room in the Pentagon for public inspection and copying. Each case contains a statement of findings, conclusions and reasons relative to the appeal and the Board's decision. Case documents are indexed in a form so as to enable those who represent applicants before the Boards to isolate from all those decisions that are indexed, those cases that may be similar to any applicant's case and that indicate the circumstances under and/or reasons for which the Board and/or Secretary have granted or denied relief.

Effective on or about September 15, 1978, the index will be made available at the VA Regional Offices listed below to former service members and those who represent former service members before the boards.

Phoenix, Ariz.; Los Angeles, Calif.; San Francisco, Calif.; Denver, Colo.; St. Petersburg, Fla.; Atlanta, Ga.; Indianapolis, Ind.; Louisville, Ky.; Baltimore, Md.; Boston, Mass.; St. Paul, Minn.; Newark, N.J.; Buffalo, N.Y.; New York, N.Y.; Cleveland, Ohio; Portland, Oreg.; Providence, R.I.; Nashville, Tenn.; Philadelphia, Pa.; and Chicago, Ill.

The index will be made available at the Regional Offices on microfiche and will be updated quarterly. Microfiche reader equipment and written materials explaining procedures for use of the index and for requesting case documents by mail will be located with the index.

Access to the index will be limited to the normal working hours of the VA Regional Offices in which the index is located. Telephonic or written inquiries regarding the cases indexed should be directed to:

LTC James M. Danley, Jr., Office of the Deputy Assistant Secretary of the Army (RB&PS), Room 1E520, The Pentagon, Washington, D.C. 20310, telephone no. 202-695-5704.

The agreement may be terminated by mutual consent of appropriate DOD and VA authorities. The mutual agreement between the DOD and VA or any of its specific provisions may be revised or amended by approval of appropriate DOD and VA authorities.

Dated: October 23, 1978.

DOROTHY L. STARBUCK,
Chief Benefits Director, Veterans Administration.

FRANCIS X. PLANT,
Deputy Assistant Secretary, (DA Review Boards and Personnel Security).

[FR Doc. 78-30860 Filed 10-31-78; 8:45 am]

[6740-02-M]

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AR61-2, *et al.*, and AR69-1]

AREA RATE PROCEEDINGS, ET AL. (SOUTHERN LOUISIANA AREA)

Order Denying Rehearing and Clarifying Prior Order

OCTOBER 18, 1978

On August 31, 1978, United Gas Pipe Line Co. (United) filed application for rehearing of the Commission's July 31, 1978 order in the above-referenced docket. Also on August 31, Tennessee Gas Pipeline Co. (Tennessee) filed a petition for clarification of that same order. At issue is the method of implementing and justifying surcharges to be made by certain natural gas pipelines to account for excessive refunds flowed-through from producers to customers "down-line" as a result of the Commission's orders of June 27, 1978 and July 31, 1978 in this docket.

BACKGROUND

The necessity for pipeline surcharges arose as a result of a United States Court of Appeals decision in *Tenneco Oil Company, et al.* v. *Federal Energy Regulatory Commission*, Case Nos. 76-2960, et al.,——F2d——(1978), wherein the Court set aside that portion of Opinion No. 749[1] which required a waiver by producers of existing refund credits in order to make sales at the new national rates. As a result of this holding, Shell Oil Co. (Shell) determined that it had over-refunded an unknown amount to certain of its pipeline purchasers, and petitioned the Commission to defer any further distribution of those refunds by the pipeline purchasers until such time as Shell could calculate the amount by which it should be reimbursed.

By order dated June 27, 1978, the Commission denied Shell's petition and ordered the flow-through of refunds to customers "down-line", without prejudice to Shell, and other producers,[2] filing for a surcharge to recover those amounts repayable pursuant to *Tenneco, supra.* Upon rehearing, the Commission was persuaded that the producer surcharge procedure might be unworkable in some instances. As a result, the Commission's July 31, 1978 order on rehearing amended its June 27 order by providing that the pipeline purchasers will first pay the producers that amount recognized by the Commission to be properly reimbursable, then the pipelines may apply to the Commission for approval to recover such amounts through a PGA clause or by some other appropriate procedure.

THE APPLICATION FOR REHEARING AND THE PETITION FOR CLARIFICATION

United's application for rehearing first argues that the Commission erred in issuing its July 31 order without affording an opportunity for hearing or comments from all affected parties. United also argues that pipeline companies will suffer an unwarranted financial burden if they are required to immediately return a portion of the refund to their suppliers, but defer recovery of such returned amounts for an extended period. United proposes three alternative procedures which it claims will remedy the situation: (1) The pipeline could recover the erroneous refunds through a special surcharge in its PGA, as proposed in the July 31 order, but pay the amounts to the producer only as they are recovered; (2) alternatively, the pipeline could pay the amounts to the producer in a lump-sum and recover such amounts through immediate lump-sum payments from its customers; or (3) the pipeline could pay the amounts to the producer in a lump-sum and collect them from customers on a deferred basis, but with carrying charges at 9 percent.

The Commission does not find United's arguments persuasive. On October 18, 1978, the Commission issued order No. 13 in docket No. R-406 which permitted pipelines to collect carrying

[1] Docket No R-478, ——FPC——, issued December 31, 1975.

[2] The findings of that order were made applicable to all similar refund situations arising out of the *Tenneco* ruling.

charges at 9 percent per annum on purchased gas costs accrued in the deferred account. This will adequately compensate pipelines for any "unwarranted financial burden" that may occur as a result of the procedure adopted in the July 31, 1978, order. The Commission further notes that recovery of the amounts paid to the producer would be by way of a pipeline's "* * * PGA clause or such other appropriate procedure." Parties will have further opportunity to discuss the method that pipelines will use to recover these costs at the time a detailed procedure is established for giving producers moneys owed them as a result of the *Tenneco* decision. Thus we find no prejudice to United as a result of the July 31, 1978, order and shall therefore deny United's application for rehearing.

Tennessee requests clarification of the Commission's intent with respect to the procedure by which pipelines will recover the reimbursable amounts from their customers. Although Tennessee does not object to collecting such amounts as a normal purchased gas expenditure through its PGA filings, Tennessee contends that the propriety of such PGA adjustments should not be subject to Commission approval in a separate proceeding. Tennessee argues that because of the Court's decision in *Tenneco, supra,* and the Commission's order directing reimbursement to producers, it is ipso facto just and reasonable that Tennessee be permitted to recover such costs from its customers. We agree. To the extent that the Commission has approved the reimbursement claims of producers pursuant to its orders of June 27 and July 31, and pipeline purchasers have in fact reimbursed producers by said amounts, those pipeline purchasers may include such amounts as a normal purchased gas expenditure in a subsequent PGA filing, or other appropriate rate filing which portion of such filing related to those amounts will become effective upon acceptance thereof by the Commission, without necessity for separate Commission approval.

The Commission orders:

(A) United's application for rehearing is denied.

(B) To the extent that the Commission has approved the reimbursement claims of natural gas producers pursuant to its orders of June 27 and July 31, 1978 in this docket, and pipeline purchasers have in fact reimbursed producers by said amounts, those pipeline purchasers may include such amounts as a normal purchased gas expenditure in a subsequent PGA filing, or other appropriate rate filing, which portion of such filing related to those amounts will become effective upon acceptance thereof by the Commission, without necessity for separate Commission approval.

(C) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc. 78-30793 Filed 10-31-78; 8:45 am]

[8740-02-M]

[Docket No. RA78-4]

BAYOU STATE OIL CORP.

Time Extension

OCTOBER 24, 1978

On October 16, 1978, counsel for the Secretary of Energy filed a motion for further extension of time within which to file the administrative record and reply to the petition for review in this proceeding. A previous extension of time for these purposes had been granted by notice issued October 2, 1978. The motion states that additional time is needed by the Office of Hearing and Appeals to compile the record since that office has been recently assigned this responsibility and must also prepare the records for other Commission proceedings and U.S. District Court proceedings. The motion further states that counsel for the Secretary of Energy requires substantial time after preparation of the record to prepare its response to the petition for review because of the nature of the issues presented for review. An answer in opposition to the motion was filed on October 18, 1978, by Bayou State Oil Corp. The answer states, inter alia, that the Secretary of Energy has not shown good cause for the further extension, that it has been harmed by the "inordinate delay" in this matter which commenced in May of 1977, and opposes any further delay.

Upon consideration, notice is hereby given that an extension of time is granted to and including November 22, 1978, for the filing of the administrative record and reply to the petition for review. The time for making these two filings will not be extended further.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30794 Filed 10-31-78; 8:45 am]

[6740-02-M]

[Docket No. CP79-23]

COLUMBIA GAS TRANSMISSION CORP.

Notice of Application

OCTOBER 25, 1978.

Take notice that on October 13, 1978, Columbia Gas Transmission Corp. (Applicant), P.O. Box 1273 Charleston, W. Va. 25325, filed in Docket No. CP79-23 an application pursuant to section 7 of the Natural Gas Act for a certification of public convenience and necessity authorizing the construction, acquisition and operation of certain natural gas facitities and for permission and approval to abandon certain other natural gas facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that the facilities which Applicant proposes to construct and operate are primarily designed to maintain service to Applicant's existing wholesale customers at levels presently authorized by the Commission. Applicant does not request authorization herein for any service or sale not heretofore authorized, it is said. It is stated that the segments of pipelines that Applicant proposes to replace generally consist of bare steel and wrought iron pipe which were originally installed with inadequate protection against corrosion, and that with few exceptions, these facilities were installed in the early 1900's and are becoming increasingly difficult to maintain and operate. It is indicated that Applicant has determined that if it is to continue to provide safe and reliable service to its existing wholesale customers, these pipeline segments must be replaced.

It is asserted that changes in replacement pipe sizes are proposed because of changed in gas availability from local production areas, changed market patterns and changes in supply sources. Applicant has determined for each project the optimum diameter replacement pipe based on present and future anticipated market requirements and the anticipated availability of locally produced and purchased volumes of gas, it is said.

Specially, Applicant proposes the following and gives the following justification for the instant proposal.

1. The construction and operation of approximately 5.1 miles of 36-inch transmission pipeline replacing two paralled 26-inch pipelines (each approximately 5.1 miles in length) located in Pendleton County. W. Va.

Applicant's transmission system between Seneca and Lost River Compressor Station consists of two parallel 26-inch pipelines and one 36-inch pipeline. This system is the major source of supply for the Washington-Balti-

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more Metropolitan Areas. A failure in either of the deteriorating 26-inch pipelines would significantly affect Applicants's ability to maintain deliveries to these areas. The proposed 36-inch pipeline is the smallest practical size which can replace the two 26-inch pipelines without a reduction in capacity. Applicant previously replaced an 11.1 mile segment of the two parallel 26-inch pipelines.

2. The construction and operation of approximately 1.6 miles of the 10-inch transmission pipeline, in four separate sections, replacing a like amount of 16-inch pipeline located in Athens and Hocking Counties, Ohio.

The four sections of deteriorating pipeline transport locally produced gas volumes received from Gas Transport, Inc. to various small markets between the Ohio River at Gravel Bank and Crawford Compressor Station. Applicant's most recent replacement of this pipeline was certificated in docket No. CP78-67.

3. The construction and operation of approximately 0.3 miles of 10-inch transmission pipeline and appurtenant facilities replacing a multiple river crossing consisting of two 8-inch pipelines, each approximately 0.3 mile in length, located in Clarion and Armstrong Counties, Pa.

The multiple line 8-inch river crossing to be replaced constitutes a portion of Applicant's pipeline system which is a major source of supply for the communities of Emlenton, Knox and Rimersburg, Pa. Applicant also proposes to replace and relocate the existion valve settings to more accessible areas.

4. The construction and operation of approximately 2.1 miles of 12-inch transmission pipeline, in four separate sections, replacing a like amount of 18-inch pipeline located in Cabell County, W. Va.

This pipeline segment transports gas produced from Branchland Production Field to Kenova Compressor Station.

5. The construction and operation of approximately 0.4 mile of 6-inch transmission pipeline replacing a like amount of 12-inch pipeline located in Montgomery County Ky.

The segment of 12-inch pipeline to be replaced is a portion of the transmission system which serves part of the market requirements of the city of Winchester, Ky. Applicant's most recent replacement project on this pipeline was certificated at docket No. CP78-67.

6. The construction and operation of approximately 0.3 mile of 4-inch transmission pipeline replacing a like amount of 6-inch pipeline located in Athens County, Ohio.

This 6-inch pipeline transports locally produced and purchased volumes to Meigs Compressor Station.

7. The construction and operation of approximatley 1.2 miles of 24-inch transmission pipeline replacing a like amount of 16-inch pipeline located in Franklin County, Ohio.

The segment of 16-inch pipeline to be replaced is a portion of the pipeline system utilized to serve the city of Columbus, Ohio, and surrounding area. The replacement with larger diameter pipe is consistent with Applicant's past construction of this pipeline, the latest being certificated at docket No. CP78-67.

8. The construction and operation of approximately 1.4 miles of 3-inch transmission pipeline, in three separate sections, replacing a like amount of 8-inch pipeline located in Guernsey County, Ohio.

The sections of pipeline being replaced constitute a portion of the pipeline which is the sole source of supply to the community of Fairdale, Ohio.

The construction and operation of approximately 0.6 mile of 2-inch transmission pipeline replacing a like amount of 12-inch pipeline located in Fayette County, Pa.

The pipeline segment to be replaced constitutes a portion of the pipeline which is the sole source of supply for mainline consumers in Fayette County, Pa.

10. The construction and operation of approximately 0.7 miles of 4-inch transmission pipeline replacing a like amount of 6-inch pipeline located in Licking County, Ohio.

This section proposed for replacement is a portion of the pipeline which is the sole source of supply to various suburbs in the vicinity of Newark, Ohio.

11. The construction and operation of approximately 0.5 mile of 10-inch transmission pipeline replacing a like amount of 12-inch pipeline located in Licking County, Ohio.

The pipeline segment to be replaced transports locally produced and purchased gas volumes and is a portion of the pipeline which is the sole source of supply for the market of Homer, Ohio.

12. The construction and operation of approximately 0.4 mile of 6-inch transmission pipeline replacing a like amount of 10-inch pipeline located in Delaware County, Ohio.

The segment to be replaced constitutes a portion of the pipeline which is the sole source of supply for the market area of Ashley, Ohio.

13. The construction of operation of approximately 1.9 miles of 8-inch transmission pipeline replacing a like amount of 10-inch pipeline located in Hancock County, Ohio.

The section of pipeline to be replaced is a portion of the pipeline which is the sole of supply to Vanlue Gas Co., Arlington Gas Co., Forrest Gas Co., and the market of Wharton, Ohio.

14. The construction and operation of approximately 0.3 mile of 3-inch transmission pipeline replacing a like amount of 8-inch pipeline located in Columbiana County, Ohio.

The section constitutes a portion of Applicant's transmission pipeline serving Negley, Ohio.

15. The construction and operation of approximately 0.9 mile of 3-inch transmission pipeline replacing a like amount of 5-inch pipeline located in Wayne County, Ohio.

The section to be replaced is a portion of the pipeline which is the sole source of supply for the town of Canaan in Wayne County, Ohio.

16. The construction and operation of approximately 2.1 miles of 4-inch transmission pipeline replacing a like amount of 12-inch and 8-inch pipeline located in Wayne County, Ohio.

The segment to be replaced is a portion of the pipeline which is the sole source of supply for the community of New Pittsburgh, Ohio.

17. The construction and operation of approximately 0.6 mile of 4-inch transmission pipeline replacing a like amount of 8-inch pipeline located in Medina County, Ohio.

Applicant's existing transmission pipeline is the sole source of supply for the markets of Spencer, Penfield and Litchfield, Ohio. Segments of this pipeline have previously been replaced. The most recent replacement having received certificate authorization at docket No. CP78-67.

18. The construction and operation of approximately 0.5 mile of 8-inch transmission pipeline replacing a like amount of 10-inch and 12-inch pipeline located in Medina County, Ohio.

The segment to be replaced transports volumes locally produced and purchased gas and is a portion of the pipeline which is the sole source of supply for the market of LaFayette, Ohio.

19. The construction and operation of approximately 0.8 mile of 4-inch transmission pipeline replacing a like amount of 10-inch pipeline located in Wetzel County, W. Va.

The segment of 10-inch line to be replaced constitutes a portion of Applicant's pipeline system which is the sole source of supply for the community of Middlebourne, W. Va.

20. The construction and operation of approximately 1.4 miles of 8-inch tranmission pipeline replacing a like amount of 10-inch pipeline located in Upshur and Barbour Counties, W. Va.

The segment to be replaced transports locally produced and purchased volumes of natural gas and is a portion of the pipeline which is a source of supply for several communities located in Barbour, Randolph, and Tucker

Counties, W. Va. Applicant has previously replaced segments of this transmission pipeline. The most recent replacement having received certificate authorization at docket No. CP78-67.

21. The construction and operation of approximately 0.4 mile of 6-inch transmission pipeline replacing a like amount of 12-inch pipeline located in Lawrence County, Pa.

The segment of 12-inch transmission pipeline to be replaced constitutes a portion of the pipeline system which is the primary source of supply for the market requirements of the communities of West Liberty, Slippery Rock, and Harrisville, Pa. Applicant's most recent replacement of this pipeline was certificated at docket No. CP78-67.

22. The acquisition and operation of 3.7 miles of 6-inch pipeline and the construction and operation of a measuring and regulating facility for two new points of delivery and the abandonment of 3.5 miles of 6-inch pipeline located in Adams County, Pa.

Applicant's existing 6-inch transmission pipeline installed in 1896, is the sole source of supply for the communities of Cashtown, Arendtsville, and Table Rock, Pa. As an alternative to replacing the deteriorating pipeline, Applicant proposes to provide a new source of supply by acquiring 3.7 miles of 6-inch pipeline from Columbia Gas of Pa., an affiliated distribution company. Applicant would acquire the 3.7 miles of 6-inch line for original cost less depreciation.

Due to the configuration of Columbia Gas of Pennsylvania's distribution system in this area, the purchase of said 3.7 miles of 6-inch line would require the establishment of two new points of delivery to Columbia Gas of Pennsylvania. Applicant would install an additional measuring station to determine, by deduction and in conjunction with existing measurement, the total deliveries to the two new points of delivery. The establishment of the two new points of delivery would be utilized only for existing customer requirements.

The acquisition and related construction would permit Applicant to abandon immediately a 3.5 mile portion of deteriorating pipeline. This abandonment would not result in termination of service to any of Applicant's existing customers.

23. The construction and operation of two natural gas interconnecting measuring facilities and appurtenances which establish two (2) new points of delivery and the abandonment of 2.9 miles of 10-inch transmission pipeline located in Ohio and Marshall Counties, W. Va.

The 2.9 miles of 10-inch transmission pipeline which Applicant proposes to abandon was originally utilized to transport volumes of natural gas to the Ohio Valley market area. Due to shifting supply patterns, this segment of pipeline is no longer required to serve present or future anticipated requirements of the Ohio Valley market area. However, in order to maintain flexibility in Applicant's deliveries to Columbia Gas of West Virginia, an affiliated retail distributor, Applicant proposes to install a point of delivery which consists of an interconnecting measuring and regulating facility.

Columbia Gas of West Virginia desires to purchase two segments, totaling 0.6 mile in length, of the 2.9 miles proposed for abandonment. Columbia Gas of West Virginia has indicated that it desires to incorporate the 0.6 mile of 10-inch into its existing distribution system. Applicant would abandon in place the remaining 2.3 miles of 10-inch. The proposed abandonment and sale would not result in termination of service to any existing customer.

In order for Columbia Gas of West Virginia to utilize the purchased pipeline, Applicant has agreed to establish an additional point of delivery. Columbia Gas of West Virginia would reimburse Applicant for the cost of the additional point of delivery. The two new points of delivery would be utilized to serve existing customers only.

Applicant requests permission to abandon certain pipeline facilities which are no longer used or useful in its operations. The proposed abandonments are related to the depletion of local gas supply and changed operational patterns, it is said. Applicant states that it has provided additional information for certain projects as may be required for a full understanding of the project. The proposed abandonments would not result in any loss of gas supply nor the termination of service to any customer, it is stated.

Specifically Applicant requests permission and approval to abandon the following and gives the following justification for the subject abandonment.

1. The abandonment of approximately 11.8 miles of 8-inch transmission pipeline located in Kanawha County, W. Va.

Applicant proposes to abandon approximately 11.8 miles of 8-inch transmission pipeline. Of this 11.8 miles, Columbia Gas of West Virginia has agreed to purchase 6.7 miles for $1 per foot. The remaining section of pipeline, which cannot be utilized by Applicant or Columbia Gas of West Virginia, would be abandoned in place.

2. The abandonment of approximately 0.3 mile of 10-inch transmission pipeline located in Kanawha County, W. Va.

3. The abandonment of approximately 7.4 miles of 10-inch and 12-inch transmission pipeline located in Roane County, W. Va.

4. The abandonment of approximately 2.7 miles of 10-inch transmission pipeline located in Marshall County, W. Va.

5. The abandonment of approximately 0.3 mile of 8-inch transmission pipeline located in Belmont County, Ohio and Ohio County W. Va.

6. The abandonment of approximately 0.2 mile of 6-inch and 12-inch transmission pipeline located in Jefferson County, Ohio.

7. The abandonment of approximately 2.9 miles of 10-inch and 28-inch transmission pipeline located in Brooke County, W. Va.

8. The abandonment of a point of delivery to Columbia Gas of Pennsylvania and related facilities located in Elk County, Pa.

Columbia Gas of Pennsylvania has advised Applicant that it no longer requires the Kane point of delivery located in Elk County, Pa. Total deliveries to Columbia Gas of Pennsylvania would not be affected by the abandonment of the Kane point of delivery.

9. The abandonment of approximately 0.7 mile of 8-inch transmission pipeline located in McKean County, Pa.

10. The abandonment of Greenwood Compressor Station consisting of one-300 horsepower and one-400 horsepower compressor unit and appurtenant facilities located in Steuben County, N.Y.

The 300-horsepower unit was installed in 1949, under authorization, in docket No. G-1117, to pump volumes into Greenwood Storage Field. The 400-horsepower unit was installed in 1957, in docket No. G-10171, to provide additional capacity to pump volumes into Greenwood Storage Field. In 1971 pursuant to authority granted in docket No. CP79-97, Applicant installed the 1,000-horsepower North Greenwood Compressor Station, activated North Greenwood Storage Field and installed connecting pipeline facilities between Greenwood and North Greenwood Storage Fields. In docket No. CP70-97 Applicant stated "The existing Greenwood Compressor Station will be utilized to inject gas available from the Olean delivery point. The proposed Greenwood No. 2 (North) Compressor Station will be utilized to inject gas available from the Port Jervis delivery point."

The loss by storm damage in 1972 and subsequent abandonment in docket No. CP76-77 of the A-line system between Olean and Greenwood, negated the purpose stated in CP70-97 for Greenwood Compressor Station, i.e., "The existing Greenwood Compressor Station will be utilized to inject gas available from the Olean delivery point".

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Since 1972, the Greenwood Station has been utilized solely for the production of locally produced volumes of natural gas. Production has ceased due to excessive salt water, and compression by Greenwood Compressor Station is no longer needed.

11. The abandonment of approximately 11.7 miles of 6-inch and 12-inch transmission pipeline located in Lincoln, Wayne, and Cabell Counties, W. Va.

The segment of 6-inch and 12-inch pipeline to be abandoned and another parallel 12-inch pipeline were originally utilized to transport locally produced volumes of gas discharged by Hubball Compressor Station. Local production has declined to the point that only one of the parallel lines is required to transport the volumes from Hubball Compressor Station.

As Applicant no longer requires the 11.7 miles of 6-inch and 12-inch pipeline for transmission purposes, it is proposed to abandon the pipeline from transmission service. Applicant further proposes to reclassify to production, and utilize as exempt gathering facilities the 11.7 miles of 6-inch and 12-inch pipeline. Said abandonment and reclassification would have no effect on Applicant's ability to maintain deliveries to existing customers and conforms to the proposed utilization of this pipeline. Applicant's most recent replacement and rearrangement on said parallel pipeline system was certificated by the Commission in docket No. CP76-77 wherein the construction and operation of approximately 1.6 miles of 12-inch transmission pipeline replacing a segment of the two parallel 12-inch transmission pipelines was authorized.

It is stated that Applicant estimates that the total cost of its proposed construction program would be $4,549,000, which cost Applicant proposes to be financed from funds generated from internal sources.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 14, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or it the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30795 Filed 10-31-78; 8:45 am]

[6740-02-M]

[Docket No. RP73-65 PGA No. 78-4; AP No. 78-1]

COLUMBIA GAS TRANSMISSION CORP.

Proposed Changes in FERC Gas Tariff

OCTOBER 24, 1978.

Take notice that Columbia Gas Transmission Corp. (Columbia) on October 19, 1978, tendered for filing proposed changes in its FERC Gas Tariff, Original Volume No. 1. Columbia states that this filing amends its filing of September 29, 1978, and proposes an effective date of September 2, 1978. Columbia states that the proposed changes are the result of (i) the revised rates of Texas Eastern Transmission Corp., filed October 12, 1978, to become effective September 1, 1978, occasioned by the Commission's stay of effectiveness of opinion No. 21 rates and (ii) the reduced rates of Transcontinental Gas Pipe Line Corp. at docket No. RP73-3 approved by letter order issued October 16, 1978, to be effective September 1, 1978. As a result of these revisions, Columbia's revised rates herein proposed to become effective September 2, 1978, reflect a purchase gas cost adjustment which is $1,660,340 higher than that filed by Columbia on September 29, 1978, but is $616,710 lower than the purchased gas cost adjustment as originally filed on July 31, 1978.

Copies of the filing were served upon the company's jurisdictional customers and interested State commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before November 13, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30796 Filed 10-31-78; 8:45 am]

[6740-02-M]

[Docket No. G-18671; Docket No. AR64-1, et al.]

DORCHESTER GAS PRODUCING CO.

Area Rate Proceeding, et al. (Hugoton-Anadarko Area)

OCTOBER 24,1978.

Take notice that on October 6, 1978, Dorchester Gas Producing Co. (Dorchester) filed a proposed settlement agreement in this proceeding.

This proceeding was initiated by a petition filed by Dorchester in the captioned dockets on August 10, 1972, for release of a trust fund which had been created to cover possible refund obligations relating to a sale of gas by Dorchester to Northern Natural Gas Company (Northern).* There is involved an amount of approximately $5,200,000, plus interest components, refundable (absent relief to Northern under the terms of the Hugoton-Anadarko area rate proceeding (Opinion No. 586, 44 FPC 761 (1970).) The petition sought to satisfy the refund obligation by use of the trust fund money for an exploration and development program with gas coming therefrom to be sold to Northern at the national rate. This plan was subsequently submitted to the Commission as a settlement proposal and provided that 125 percent of the refund obligation would be paid to Northern out of ¼ of Dorchester's net working interest in income from whatever gas would be brought forth by the E and D program. It further provided that Dorchester could withdraw from the trust fund amounts required to pay any incremental Federal income tax resulting from taking the exploration fund amount into its corporate income, but that it would have to redeposit later tax savings in the trust fund. This settlement proposal was rejected by the Commission on the ground that Dorchester had failed to show that it was entitled to refund forgiveness or a higher rate in accordance with principles enunciated in the *Permian I* area rate proceeding, as the Commission required.

In *Dorchester Gas Producing Company* v. *FERC*, 571d F2d 823 (CA-5, 1978), the Court affirmed the Commission's conclusion that Dorchester's proposal did not best suit the public interest, but remanded the case to the Commission to afford Dorchester an opportunity to amend its settlement agreement and to afford the Commission an opportunity to review a new settlement agreement, if submitted, in light of increasing problems wrought by the natural gas shortage.

Dorchester's October 6, 1978 proposed settlement agreement was submitted as permitted by the Court decision. The principal difference between it and the prior settlement proposal is that Dorchester would put $3 of its own money into the E and D program for every $2 of consumer money and that full execution of the E and D program by Dorchester would be in lieu of any payment by it of the refund monies to Northern. The proposed settlement also contains certain evidentiary material purporting to show that it complies with the *Permian I* requirements.

Comments to the proposed settlement agreement may be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before November 22, 1978. Such comments will be considered by the Commission in determining appropriate action, but will not serve to make commenters parties to the proceeding.

The record in this proceeding, including the proposed settlement agreement, is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30797 Filed 10-31-78; 8:45 am]

*These proceedings were commenced before the FPC. By the joint regulation of October 1, 1977 (10 CFR 1000.1), they were transferred to the FERC. The term "Commission", when used in the context of the action taken prior to October 1, 1977, refers to the FPC; when used otherwise, the reference is to the FERC.

[6740-02-M]

[Docket No. CP79-33]

IOWA POWER AND LIGHT CO.

Application For Exemption

OCTOBER 25, 1978.

Take notice that on October 16, 1978, Iowa Power and Light Co. (Applicant), P.O. Box 657, Des Moines, Iowa 50303, filed in Docket No. CP77-33 an application pursuant to section 1(c) of the Natural Gas Act for an exemption from the provisions of the Natural Gas Act and the rules and regulations thereunder of certain intrastate gas liquefaction, storage and transportation facilities of Applicant, and the natural gas transported, received, stored and distributed from these facilities on behalf of certain Iowa utilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant asserts that it is supplied with natural gas from Northern Natural Gas Co. (Northern) and Natural Gas Pipeline Co. of America (Natural), and that it has propane-air peak shaving facilities with the capacity to produce 35,000 Mcf of natural gas equivalent per day. Applicant further asserts that it has a liquefied natural gas (LNG) plant northeast of Des Moines, which plant commenced operation in 1975 and has the capacity to convert 2,000 Mcf of gas per day into liquid, to store up to 400,000 Mcf and to convert LNG into gas at the rate of 25,000 Mcf per day.

Applicant states that it has, during the past two heating seasons and the approaching one, signed LNG storage agreements with each of two utilities (Utilities), which agreements provide that Applicant would receive liquefy, store, vaporize, and redeliver to Utilities such volumes of natural gas as may be tendered by Utilities to Applicant for storage up to a specified maximum annual volume to be redelivered to Utilities in the winter season (October 27 through March 26). Pursuant to the terms of these agreements, Applicant agrees to accept natural gas for storage, such acceptance to be made a Northern's Des Moines TBS No. 1, it is said. It is stated that these agreements contemplate that most deliveries would take place during the summer season (March 27 through October 26).

Applicant indicates that it is obligated to redeliver to Utilities certain daily volumes of vaporized LNG during the winter season, but such deliveries are not to exceed the total volumes of gas Utilities have in storage. Applicant further indicates that if Utilities' agreement is not extended for an additional winter season, Applicant is obligated so to notify Utilities prior to the expiration of the current winter season. Utilities are then obligated to accept the balance of LNG in storage at a specified daily rate until all LNG in storage is redelivered by the expiration of the winter season (March 27), it is stated.

Applicant indicates that it would charge Utilities for the proposed services a price which consists of an annual demand charge, a commodity charge per Mcf for all of Utilities' volumes of natural gas delivered to Applicant during Northern's billing month, and a charge per Mcf for all volumes of gas redelivered to Utilities during the months that were in excess of Utilities' maximum daily volume. It is stated that such agreements also provide that the minmum annual bill would be the annual demand charge.

Applicant indicates that it would make redeliveries to Utilities by displacement through reduction in the volume of natural gas available to Applicant at Northern's Des Moines TBS No. 1. It it asserted that Northern concurrently increases its deliveries to Utilities at specified delivery points under the terms of its applicable tariff. Applicant states that all gas subject to these agreements would be transported and consumed in the State of Iowa, and that the title to the gas would at all times remain with Utilities.

Accordingly, Applicant requests exemption for these existing agreements with Utilities and for other like contracts which may be entered into with other Utilities for such storage service. Applicant states that such agreements would be for the purpose of receiving, liquefying, storing and redelivering natural gas from Northern at Iowa Power's Des Moines, TBS No. 1. for service only to delivery points, and for ultimate consumption, in the State of Iowa, which agreements are contemplated to be limited to summer season storage and winter season redelivery, and would be extendable for periods of one year, but not to exceed five years. It is stated that Utilities entering into such agreements would certify that the redelivered gas is intended for delivery only to residential, small commercial, or other high priority retail service, which service would be provided for the purpose of allowing other Utilities to cover temporary shortages of peak day gas supply at delivery points solely within the State of Iowa, without the need for large expenditures for permanent facilities or other high cost alternatives.

Applicant asserts that such agreements would be designed to implement transportation agreements between Northern and such Utilities for the delivery of natural gas to Applicant for storage, and the subsequent redelivery by Applicant to Northern for delivery

by displacement to such utilities of the volumes of vaporized LNG previously liquified and stored by Applicant under the terms of the (storage) agreements, all pursuant to certificate(s) of public convenience and necessity which may be granted by the Commission from time to time for such transportation service.

The Iowa State Commerce Commission certified on October 13, 1978, that it has and is exercising jurisdiction over the rates and services rendered by Applicant in connection with sales of gas and facilities of Applicant and the services rendered as described herein.

Wherefore, Applicant is requesting an order exempting from the provisions of the Natural Gas Act the facilities, transportation, delivery, and redelivery of natural gas invloved in the above-described operations of its gas transportation, storage and LNG facilities connected to the facilities of Northern in Polk County, Iowa.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 14, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30798 Filed 10-31-78; 8:45 am]

[6740-02-M]

[Docket No. E-8615]

LOUISIANA POWER & LIGHT CO.

Notice Granting Extension of Time

OCTOBER 20, 1978.

On October 18, 1978, Louisiana Power & Light Co. filed a motion for a further extension of time to make refunds in this proceeding pursuant to Commission opinion No. 813 of July 21, 1977 and opinion No. 813-A of June 5, 1978. By notice issued October 6, 1978, L.P. & L. had been granted an extension to October 19, 1978.

A further extension of time is granted to and including October 25, 1978, for Louisiana Power & Light Co. make the refunds required by opinion No. 813-A.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30799 Filed 10-31-78; 8:45 am]

[6740-02-M]

[Docket No. RA78-1]

LUNDAY-THAGARD OIL CO.

Notice of Extension of Time

OCTOBER 24, 1978.

On October 16, 1978, counsel for the Secretary of Energy filed a motion for extension of time to file the administrative record and to reply to the petition for review in this proceeding. The motion states that the request is made because of counsel's absence from Washington due to a death in her family.

Upon consideration, notice is hereby given that an extension for filing the administrative record and response to the petition for review in this proceeding is granted to and including October 25, 1978.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30800 Filed 10-31-78; 8:45 am]

[6740-02-M]

[Docket No. RP74-97; PGA No. 78-1]

MONTANA-DAKOTA UTILITIES CO.

Notice of Extension of Time

OCTOBER 24, 1978.

On October 18, 1978, Montana-Dakota Utilities Co. filed a motion for an extension of time to file its brief on exceptions to the initial decision of the presiding judge issued September 25, 1978 in this proceeding. The motion states that the extension is requested because of illness of counsel and unexpected conflicting professional commitments. The motion further states that Commission Staff Counsel, the only active party, concurs in the request.

Upon consideration, notice is hereby given that an extension of time is granted to and including October 31, 1978 for the filing of briefs on exception in this proceeding. Briefs opposing exceptions shall be filed on or before November 20, 1978.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30801 Filed 10-31-78; 8:45 am]

[6740-02-M]

[Docket No. RP78-74]

NORTHERN NATURAL GAS CO. (PEOPLES NATURAL GAS DIVISION)

Notice of Extension of time

OCTOBER 24, 1978.

On October 24, 1978, Commission Staff Council filed a motion to extend the time for service of top sheets as required by the Commission's order of July 28, 1978, in this proceeding. The motion states that additional time is needed in order for Staff to review information being submitted by Northern in response to Staff's data requests.

Upon consideration, notice is hereby given that an extension of time is granted to and including December 1, 1978, for the service of top sheets by the Staff in this proceeding.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30802 Filed 10-31-78; 8:45 am]

[6740-02-M]

[Docket No. CP78-15]

NORTHWEST PIPELINE CORP.

Notice of Amendment to Application

OCTOBER 25, 1978.

Take notice that on October 13, 1978, Northwest Pipeline Corp. (Applicant), P.O. Box 1526, Salt Lake City, Utah 84110, filed in docket No. CP78-15 an amendment to its application filed herein on October 11, 1978, pursuant to section 7(c) of the Natural Gas Act so as to provide for the construction and operation of certain natural gas facilities and the reallocation of natural gas service for Northwest Natural Gas Co. (Northwest Natural), an existing customer of applicant, all as more fully set forth in the amendment of file with the Commission and open to public inspection.

Applicant indicates that on October 11, 1977, it filed an application in the instant docket requesting authorization to:

1. Construct and operate a new point of delivery for up to 1,097 Mcfd of natural gas to Northwest Natural for distribution and resale by Northwest Natural in the community of Dallesport, Wash., and environs;

2. Construct and operate new measurement facility to serve the existing The Dalles, Oreg. delivery point and proposed Dallesport delivery point;

3. Reduction of 1,097 Mcf (11,500 therms) in the total maximum daily quantity of ODL-1 service at Camas, Wash., and the Dalles, Oreg. and reallocation between delivery points of 1,432 Mcf (15,000 therms) in the total daily maximum of SGS-1 service to Natural; and

4. Abandon The Dalles, Oreg. meter station, and as a result of abandonment, construct and operate 95 feet of 4-inch pipeline to continue sales to The Dalles service area.

It is indicated that pursuant to the Commission's order of august 14, 1978, Applicant was granted the certificate authorization essentially as requested and permission and approval to abandon the Dalles Meter Station. It is further indicated that such order was conditioned as follows:

(1) Northwest Natural shall reimburse Applicant $49,500 of the total estimated cost of the proposal.

(2) Applicant shall exclude from its rate base those facilities downstream from the proposed Dallesport Meter Station. Applicant states that such conditions were troublesome to it; therefore, Applicant has filed concurrently herewith its notice that it cannot accept the certificate issued herein pursuant to the Commission's order of August 14, 1978.

Consequently, Applicant has filed herewith the instant amendment by which Applicant has restructured the proposal to eliminate the request to abandon the Dalles Meter Station and revise the reallocation of delivery obligations of volumes of natural gas as hereinafter stated. Specifically, Applicant now requests authorization for:

1. The construction and operation of a new point of delivery for the delivery of up to 1,998 Mcf (21,000 therms) of natural gas to Northwest Natural for distribution and resale by Northwest Natural in the community of Dallesport, Wash. and environs;

2. A reduction of 1,998 Mcf (21,000 therms) in the total maximum daily delivery obligation set forth in exhibit A to the ODL-1 service agreement which Applicant in authorized to sell and deliver to Northwest Natural at the Camas, Wash. delivery point.

It is stated that Northwest Natural, in order to make volumes of natural gas available to the Dallesport area without a corresponding increase in its daily contract quantity, has requested that Applicant reduce the maximum daily deliverability obligation (MDDO) for ODL-1 service at the presently authority delivery point of Camas by 1,998 Mcf per day (21,000 therms) and to reallocate the proposed Dallesport delivery point. Applicant indicates that the reallocation of the MDDO of the delivery points, as proposed, is as follows:

MAXIMUM DAILY DELIVERY OBLIGATION ODL-1 SERVICE

Delivery points	Presently effective		Proposed	
	Mcf	Therms	Mcf	Therms
Dallesport, Wash.	0	0	1,998	21,000
Camas, Wash.	28,734	302,000	26,736	281,000
Total	28,734	302,000	28,734	302,000

Applicant states that it does not propose to increase the daily contract quantity of natural gas which it is authorized to sell and deliver to Northwest Natural.

The amendment states that Northwest Natural has requested a new point of delivery to serve primarily two large industrial customers, Dow Chemical Co., and Jarl Construction, and applicant anticipates that there would be several residential customers and commercial accounts in addition to the aforementioned industrial customers.

The facilities for which applicant herein seeks authorization to construct and operate are as follows:

DALLESPORT METER STATION

A 3-inch turbine type meter with a 2-inch bypass, complete with appurtenances, adjacent to the right-of-way of applicant's existing 4-inch lateral in Klickitat County, Wash.

It is stated that the estimated cost of construction of the proposed facilities is $78,800, and that Northwest Natural has agreed to contribute $60,000 toward the construction cost.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before November 14, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules. All persons who have heretofore filed need not file again.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30803 Filed 10-31-78; 8:45 am]

[6740-02-M]

[Docket Nos. G-14562, et al.]

TENNESSEE GAS PIPELINE CO., ET AL.

Time Extension

OCTOBER 24, 1978.

On October 24, 1978, Commission staff counsel filed a motion to extend the time for submitting comments on the settlement proposal as requested by the notice issued September 29, 1978, in this proceeding. Staff states that the extension is requested because of unforeseen scheduling difficulties related to work on the recently enacted national energy legislation. The motion states that all parties have been contracted and none objects to the extension.

Upon consideration, notice is hereby given that an extension of time is granted to and including November 3, 1978, for the filing of comments on the settlement proposal in this proceeding.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30804 Filed 10-31-78; 8:45 am]

[6740-02-M]

[Docket No. RP75-73(AP No. 78-3)]

TEXAS EASTERN TRANSMISSION CORP.

Further Extension of Time

OCTOBER 24, 1978.

On October 6, 1978, Texas Eastern Transmission Corp. filed a motion for further extension of time to file its case-in-chief in this proceeding as required by the Commission order of September 1, 1978 and notice of October 5, 1978, in this proceeding. The motion states that an informal conference has been held in an attempt to limit or eliminate certain issues and that staff has requested and received information which will be used for that purpose. The motion states that staff, as the only active party, does not object to the motion.

Upon consideration, notice is hereby given that an extension of time is granted to and including October 24, 1978, for Texas Eastern to file its case-in-chief in this proceeding. Staff shall

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file its statement of position on or before December 6, 1978.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30805 Filed 10-31-78; 8:45 am]

[6740-02-M]

[Docket No. CP 79-24]

TRANSCONTINENTAL GAS PIPELINE CORP.

Application

OCTOBER 25, 1978.

Take notice that on October 13, 1978, Transcontinental Gas Pipeline Corp. (Applicant), P.O. Box 1396, Houston, Tex. 77001, filed in docket No. CP79-24 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Amoco Production Co. (Amoco), on a firm basis, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, Applicant requests authorization to transport on a firm basis a maximum daily quantity of gas equal to the lesser of the Btu equivalent of 12,000 Mcf of gas or one-half of Amoco's interest in the daily volumes of gas actually produced from Block 246, Ship Shoal Area, offshore Louisiana. Applicant states that it would deliver such gas to Florida Gas Transmission Co. for the account of Amoco at an existing point of connection in Vermilion Parish, La. Applicant further states that pursuant to the subject transportation agreement, when mutually agreed Applicant would defer deliveries of any or all gas to Amoco during the months of November, December, January, February, and March; and upon Amoco's request such cumulative undelivered quantities would be delivered to Amoco on a firm basis during the months of April, May, June, July, August, September, and October.

The purpose of the transportation service, it is stated, is to enable Amoco to supply gas to Florida Power & Light Co. under its existing warranty obligations.

Applicant states that Amoco would pay it 2.1 cents per Mcf of gas it transports and delivers to Florida Gas Transmission Co.

Any person desiring to be heard or to make any protest with reference to said applications should on or before November 14, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to paricipate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in an subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission, or its designee, on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30806 Filed 10-31-78; 8:45 am]

[6740-02-M]

[Docket No. CP79-28]

WESTERN GAS INTERSTATE CO.

Application

OCTOBER 25, 1978.

Take notice that on October 16, 1978, Western Gas Interstate Co. (Applicant), 1800 First International Building, Dallas, Tex. 75270, filed in Docket No. CP79-28 and application pursuant to section 7(c) of the Natural Gas Act as implemented by § 157.7(d) of the Regulations thereunder (18 CFR 157.7(d)), for a certificate of public convenience and necessity authorizing the construction for a 3-year period commencing January 1, 1979, and operation of certain natural gas facilities for the testing and development of underground storage reservoirs, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that the purpose of this budget-type application is to augment Applicant's ability to engage in a continuing program of testing and developing reservoirs for the underground storage of natural gas for the benefit of Applicant's system operations and service to its customers.

Applicant states that the total volume of natural gas to be injected into the prospective underground storage projects would not exceed 10,000,000 Mcf, with no more than 2,000,000 Mcf being injected into any single field and with injections being made only during off-peak periods. Total expenditures for the proposed 3-year project would not exceed $3,000,000 and would not exceed $1,000,000 in any one year. Applicant proposes to finance these costs from funds on hand and, to the extent necessary, with short term borrowings from Applicant's parent company, Southern Union Co.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 14, 1978, file with the Federal Energy Regulatory Commmission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.110). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30807 Filed 10-31-78; 8:45 am]

[6740-02-M]

[Docket No. CP79-30]

WESTERN GAS INTERSTATE CO.

Application

OCTOBER 25, 1978.

Take notice that on October 16, 1978, Western Gas Interstate Co. (Applicant), 1800 First International Building, Dallas, Tex. 75270, filed in docket No. CP79-30 an application pursuant to section 7(c) of the Natural Gas Act and § 157.7(c) of the Regulations thereunder (18 CFR 157.7(c)), for a certificate of public convenience and necessity authorizing the construction, during the 12-month period following the receipt of the requested authorization herein, and operation of facilities to make miscellaneous rearrangements on its system, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The stated purpose of this budget-type applications is to augment Applicant's ability to act with reasonable dispatch in making miscellaneous rearrangements which would not result in any material changes in the service presently rendered by Applicant.

Applicant states that the total cost of the proposed facilities would not exceed $100,000, which cost would be financed from funds on hand and by short-term borrowing from Applicant's parent company, Southern Union Co.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 14, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30808 Filed 10-31-78; 8:45 am]

[3128-01-M]

Office of the Secretary

BRIEFINGS ON DOE COMMERCIALIZATION PROGRAM

Public meetings will be held in the following cities on the indicated dates at which attendees will be briefed on the current status of the Department of Energy Commercialization Program. The focus will be on new initiatives designed to achieve energy market place acceptance of new energy technologies currently being developed.

Date, time, and place

November 15, 1978; 9 a.m.—Washington, D.C., Forrestal Building, Room GE-086 (The Business Community).
November 15, 1978; 11 a.m.—Washington, D.C. 20 Massachusetts Avenue, Room 8222C (The Labor Community).
November 15, 1978; 2 p.m.—Washington, D.C., Forrestal Building, Room GE-086 (The Consumer, Environmental and other Public Interest Groups).
November 15, 1978; 4 p.m.—Washington, D.C. 20 Massachusetts Avenue, Room 8222C (The Education Community and State and Local Government Interests).

The above indicated groups are invited at the time indicated, however all briefings are open to the public.

November 16, 1978; 2 p.m.—Chicago, Ill., Everett McKinley Dirksen Building,, 219 South Dearborn, Room. 2541.
November 20, 1978; 9 a.m.—Atlanta, Ga., Riviera—Hyatt Hotel, 1630 Peachtree Street NW.
November 20, 1978; 2:45 p.m.—Dallas, Tex., Baker Hotel, 1400 Commerce Street, Texas Room.
November 21, 1978; 2 p.m.—New York, N.Y., Federal Building, 26 Federal Plaza, Room. 1-102.

For additional information or a consolidated fact sheet contact:

Washington, Mr. Bruce Robinson, 202-376-4040.
Atlanta, Mr. Roy Pettit, 404-881-2838.
Dallas, Mr. Curtis Carlson, 214-749-7345.
New York, Mr. Robert Low, 212-264-1021.
Chicago, Mr. David Stein, 312-353-8566.

Issued in Washington, D.C., on October 31, 1978.

WILLIAM P. DAVIS,
Deputy Director of Administration.

[FR Doc. 78-31102 Filed 10-31-78; 11:58 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 998-7; OPP-62002]

HERBICIDES: DINITRO TECHNICAL AND ANCRACK HERBICIDE

Intent to Hold Hearing

The Administrator intends to hold a hearing under section 6(b)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA), to determine whether or not the registrations of the herbicides Dinitro Technical, EPA Reg. No. 148-1213, and Ancrack Herbicide, EPA Reg. No. 19713-23, should be canceled.

Any person wishing to become a participant in this proceeding shall file a written response to the accompanying statement of issues with Ms. Sonia G. Anderson, Hearing Clerk, Environmental Protection Agency, Room 3708A, Waterside Mall, Washington, D.C. 20460, on or before December 1, 1978. The response shall state the position and interest of such person with respect to the issues listed below. In addition, if any such person is a registrant or an applicant for registration, his response shall include, if applicable, the registration number of the pesticide, a copy of the currently accepted and/or proposed labeling, and a list of the currently registered uses of said pesticide.

ISSUES TO BE DISCUSSED IN HEARING

Dow Chemical Co., in two petitions dated August 8, 1977, and March 29, 1978, petitioned the Administrator for cancellation of the registrations of the herbicides Dinitro Technical and Ancrack Herbicide, respectively. The registration of Dinitro Technical, which is held by the Thompson-Hayward Chemical Co., was granted by the Administrator on June 9, 1975. The registration for Ancrack Herbicide, which is held by the Drexel Chemical Co., was granted by the Administrator on August 20, 1976.[1]

[1]The Ancrack Herbicide registration originally was held by the Ansul Co. (EPA Registration No. 6308-73). The registration was transferred by the Agency to the Drexel Chemical Co. on April 11, 1977, pursuant to an agreement between the companies in which Ansul assigned to Drexel its right, title, and interest in Ancrack Herbicide. Although Dow omitted reference to this transfer in its petition, the Administrator does not consider omission of such reference fatal to the petition. The issues raised in

Footnotes continued on next page

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In both petitions, Dow states that the Administrator has authority to cancel the registrations under FIFRA § 6(b), which states in pertinent part:

• • • If it appears to the Administrator that a pesticide or its labeling or other material required to be submitted, does not comply with the provisions of this Act • • • the Administrator may issue a notice of his intent either—

(1) To cancel its registration • • • or

(2) To hold a hearing to determine whether or not its registration should be cancelled • • •

Dow alleges that Ansul and Thompson-Hayward each were required to submit with their respective applications, but did not submit, the following materials:

Materials identifying and delineating the data which the applicants wished the Administrator to consider in support of the applications.

Materials evidencing that the applicants had made an offer to pay reasonable compensation to the owner(s) of the data which the Administrator was to consider in support of such application, or else materials evidencing the original data submitter(s) had consented to the Administrator's consideration of such data in support of the application in question.

Materials evidencing the original data submitter(s) had consented to the Administrator's consideration, in support of the applications in question, of data entitled to confidential treatment under FIFRA § 10.

Based upon these allegations, the Administrator desires to have the following issues addressed during the hearing:

1. What materials were required to be submitted by an applicant at the time the registrations in questions were issued?

2. Were the required materials submitted?

3. For § 6(b) purposes, what effect should be given to two recent judicial decisions, *Dow Chemical* Co. v. *Costle*, —— F. Supp. —— (E. D. Mich., Civil Action No. 76-10087, April 4, 1978) and *Mobay Chemical Corp.* v. *Costle*, 447 F. Supp. 811 (1978)?

4. Any other issues relevant to the allegations contained in Dow's petitions which may be raised by any participant or the Administrative Law Judge.

The language of FIFRA § 6(b) cited above states that the Administrator *may* issue a notice of intent to cancel or to hold a hearing. This contrasts with the language of § 6(a)(1), which states that the Administrator *shall* cancel certain registrations under certain circumstances. Nowhere in § 6(b) is there a requirement that the Administrator *must* cancel a registration even if he finds that there are grounds for cancellation, although, of course, a decision not to cancel would be judicially reviewable under FIFRA § 16. The Administrator thus appears to have a certain amount of discretion with respect to cancelling a registration, even if grounds for cancellation exist. Assuming the evidence developed at the hearing shows that the material required to be submitted in connection with the two pesticides does not comply with the provisions of FIFRA, as construed, a remaining issue will be whether the registrations *should* be cancelled. In that regard, there are a number of significant issues which the Administrator must consider before determining whether to grant Dow's requests for cancellation.

The Administrator desires to have such issues addressed during the hearing. The issues are as follows:

1. Whether the Administrator's failure to determine the trade secrecy status of the Dow data used to support the applications for registration of Dinitro Technical and Ancrack Herbicide has had, or will have, any adverse effect on Dow which cancellation of the registrations in question could rectify.

2. Whether the failure of Thompson-Hayward and Ansul to make a direct offer to pay compensation to Dow for such data has had, or will have, any adverse effect on Dow which cancellation of the registrations in question could rectify.

3. Whether cancellation of these registrations would have any significant adverse effects on the current registrants, Thompson-Hayward and the Drexel Co.

4. Whether cancellation of these registrations would cause an impact on production and prices of agricultural commodities, retail food prices, or otherwise on the agricultural economy.

5. Whether cancellation of these registrations would cause an anti-competitive effect by markedly increasing the concentration of herbicide products designed for uses similar to those of Dinitro Technical and Ancrack Herbicide.

6. Any other related issues which may be raised by any participant or the Administrative Law Judge.

Dated: October 23, 1978.

STEVEN D. JELLINEK,
Assistant Administrator for Toxic Substances.

[FR Doc. 78-30787 Filed 10-31-78; 8:45 am]

Footnotes continued from last page
both petitions relate to events which transpired during the initial registration process, and their resolution currently is relevant regardless of the registration transfer.

[6560-01-M]

[FRL 998-5]

RECEIPT OF ENVIRONMENTAL IMPACT STATEMENTS

President Carter's Reorganization Plan No. 1 (see President's Message of July 15, 1977) transferred certain functions from the Council on Environmental Quality (CEQ) to the Environmental Protection Agency (EPA). Some of these functions relate to operational duties associated with the administrative aspects of the environmental impact statement (EIS) process. In Memorandum of Agreement No. 1 entered into between CEQ and EPA, dated March 29, 1978, it was agreed that EPA would be the official recipient of EIS's and would publish the availability of each EIS received on a weekly basis. This is the duty formerly carried out by CEQ pursuant to § 1500.11(c) of the CEQ Guidelines.

Review periods for draft and final EIS will be computed as follows: The 45-day review period for draft EIS's will be computed from the Friday following the week which is being reported; the 30-day wait period for final EIS's will be computed from the date of receipt of the EIS by EPA and commenting parties.

The following is a list of environmental impact statements received by the Environmental Protection Agency from October 13, 1978 through October 20, 1978; the date of submission of comments on draft EIS's computed from October 27, 1978, is December 11, 1978.

Copies of individual statements are available for review from the originating agency. Back copies are also available at 10 cents per page from the Environmental Law Institute, 1346 Connecticut Avenue, Washington, D.C. 20036.

Dated: October 26, 1978.

PETER L. COOK,
Acting Director, Office of Federal Activities.

DEPARTMENT OF AGRICULTURE

Contact: Mr. Barry Flamm, Coordinator, Environmental Quality Activities, U.S. Department of Agriculture, Room 359A, Washington, D.C. 20250, 202-447-3965.

FOREST SERVICE

Draft

Geothermal Leasing & Develop., Gifford Pinchot National Forest Skamania and Cowlitz Counties, Wash., October 20: The proposed action is to determine which of 299,608 acres should be recommended for leasing on national forest lands for developmental geothermal resources authorized by the Geothermal Steam Act of 1970. The proposed leasing areas lie completely within the Gifford Pinchot National Forest, Skamania and Cowlitz Counties, Wash. The lands have been designated by the Geological survey as "areas valuable prospectively" for geothermal resources and would be leased to the non-competitive lease applicants held by the Bureau of Land Management. (USDA-FS-R6DES (ADM) 79-1) (EPA Order No. 81145).

Final

Tahoe National Forest Timber Management Plan, several counties in California, October 20: Proposed is a revision of the existing timber management plan which establishes a timber harvesting level and schedule for the Tahoe National Forest in the Counties of Nevada, Sierra, Placer, Yuba, and Plumas, Calif. Seven alternatives are considered which vary from approximately 2,000 million board feet to 1,000 million board feet per decade of programmed harvest. Comments made by: AHP, COE, USDA, DOI, EPA, State and local agencies, groups, individuals, and businesses (EPA Order No. 81141).

Illinois Wild and Scenic River Proposal, Josephine and Curry Counties, Oreg., October 19: This statement recommends that 50 miles of the Illinois River be considered as an addition to the national wild and scenic rivers system. The recommendation is to classify the river as follws: 3.8 miles from the mouth of the Illinois upstream to Nancy Creek as recreational; 28.7 miles from Nancy Creek upstream to Briggs Creek as wild; and 17.9 miles from Briggs Creek upstream to the Siskiyou National Forest boundary as scenic. The river segments are located in Josephine and Curry Counties, Oreg., all within the Siskiyo National Forest boundary. (USDA-FS-FES-(LEG) 77-03). Comments made by: AHP, EPA, DOI, DOC, NOAA, USDA, FPC, USCG, State agencies, groups, individuals, and businesses (EPA Order No. 81139).

U.S. ARMY CORPS OF ENGINEERS

Contact: Dr. C. Grant Ash, Office of Environmental Policy, Attn: DAEN-CWR-P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 1000 Independence Avenue SW., Washington, D.C. 20314, 202-693-6795.

Final

Aquatic Plant Control Program, Mobile District, Marshall County, Ala., October 17: Proposed is the control and progressive eradication of the water hyacinth, alligator weed, and other noxious aquatic plant growths from the navigable waters, tributary streams, connecting channels and other allied waters in the Corps of Engineers Mobile District, which includes the States of Florida, Alabama, Texas, Louisiana, and Mississippi. Control measures consist of approved chemicals, biological control agents, mechanical methods, and combinations. (Mobile District). Comments made by: EPA, DOC, DOI, USDA, HUD, DOT, USCG, FPC, State and local agencies, groups (EPA Order No. 81131).

Final Supplement

Obion Creek Project (S-1), several counties in Kentucky, October 16: This supplemental EIS updates a final EIS filed with EPA in January 1978. The purpose of this supplement is to take into consideration the deposition of materials in the wetlands along Obion Creek located in Kentucky. The original project would have resulted in excavated fill material being deposited in 304 acres of wetlands, which would have resulted in dry land after construction was completed. The project has been modified to realign channel improvements to avoid the wetlands and to also haul excavated material outside wetland areas. These measures would eliminate permanent disposal in 119 wetland areas. (Memphis District) (EPA Order No. 81129).

DEPARTMENT OF COMMERCE

Contact: Dr. Sidney R. Galler, Assistant Secretary for Environmental Affairs, Environmental Affairs, Department of Commerce, Washington, D.C. 20230, 202-377-4335.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Draft

Halibut off the coast of Alaska, Fishery Management Plan, several counties in Alaska, October 20: The proposed action is the Fishery Management Plan which addresses the hook and line fisheries for halibut off the coast of Alaska. The specific goals for the halibut resource are: (1) To rebuild the halibut resource to a level of abundance which will provide long-term optimal yield, and (2) to provide for a viable halibut setline fishery for U.S. fishermen (EPA Order No. 81150).

ENVIRONMENTAL PROTECTION AGENCY

Contact: Environmental Protection Agency Library (MD-35), Research Triangle Park, N.C. 27711.

Draft

Electric utility steam generating units, National standards, October 20: The proposed action is the issuance of proposed standards of performance which limit emissions of sulfur dioxide, particulate matter, and nitrogen oxides from new, modified, and reconstructed electric utility steam generating units capable of combusting more that 73 megawatts heat input of fossil fuel. A new reference method for determining continuous compliance is also proposed. The intended effect of these standards is to use the best demonstrated systems of continuous emission reduction and to satisfy the Clean Air Act Amendments of 1977. (EPA-450/2-78-007A) (EPA Order No. 81148).

EPA, REGION 1

Contact: Mr Wallace Stickney, Environmental Protection Agency, Region I, John F. Kennedy Federal Building, Room 2203, Boston, Mass. 02203, 617-223-4635.

Final

Androscoggin Valley 208 Plan, Maine, October 20: This statement discusses the technical and management alternatives under consideration to deal with water quality problems of the Androscoggin Valley 208 area from now through the next 20 years. The 208 area consists of the towns of Lisbon, Sabattus, Lewiston, Auburn, Poland, Mechanic Falls, Minot, Oxford, Norway, and Paris. The various alternatives address themselves to the broad range of both point and non-point source water quality problems present in the area (Region 1). Comments made by: DOI, EPA, State and local agencies (EPA Order No. 81143).

EPA, REGION 2

Contact: Environmental Protection Agency, Region II, 26 Federal Plaza, Room 1009, New York, N.Y. 10007, 212-264-8558.

Final

Ocean dumping of sludge in New York Bight, New York and New Jersey, October 16: The statement concerns a proposal to choose an additional site for the ocean dumping of the increasing amount of sewage sludge from the New York-New Jersey industrial area. Recent studies, however, have led EPA to recommend continued use of the existing dump site with a comprehensive monitoring program and designation of an alternate dump site should the monitoring indicate a need for one. Comments made by: USDA, DOC, HEW, HUD, COE, DOI, USCG, EPA, State and local agencies,groups (EPA Order No. 81128).

EPA, REGION 4

Contact: Mr. John Hagan, Environmental Protection Agency, Region IV, 345 Courtland Street NE., Atlanta, Ga. 30308, 404-881-7458.

Final

Trimble County Generating Station permit, Trimble County, Ky., October 20: The proposed project is to construct a new 2,340 megawatt coal-fired steam electric generating station on the Ohio River, in Trimble County, Ky. The facility would replace old units scheduled for retirement over and 8-year period starting in 1979, as well as provide for increasing demand for power. Two ravines adjacent to the generating site totalling 1,440 acres would be used for solid waste disposal. Also proposed is a new 9-mile-long corridor to accommodate two 345-kV transmission lines. The proposed facility would be required to meet all new source performance standards under NPDES permitting authority. (EPA 904/9-78-017). Comments made by: HUD, AHP, DOC, NOAA, USDA, DOI, DOE, HEW, State and local agencies, groups, individuals, and businesses (EPA Order No. 81144).

DEPARTMENT OF HUD

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410, 202-755-6308.

Draft

Gentry-Waipo, Waipo, Honolulu County, Oahu, Hawaii, October 19: Proposed is the issuance of HUD home mortgage insurance for the Gentry-Waipo, Honolulu County, Oahu Island, Hawaii. The project area is 510 acres and will contain an ultimate population of about 11,800. Development consists of 3,700 housing units on 278 acres, 120 acres for light industrial use, a commercial area of 14 acres, Public facilities on 24 acres, and the balance in open space and rights-of-way. (HUD-R09-EIS-78-10D). (EPA Order 81136).

DEPARTMENT OF INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 4256, Interior Building, Department of the Interior, Washington, D.C. 20240, 202-343-3891.

V 4 3 / 2 1 2 N 0 1 7 8 UMI

Draft supplement

Alaska National Interest Lands, several counties, Alaska, October 20: This statement supplements 28 final EIS's filed in December, 1974 and January and February 1975 concerning various alternatives for protecting national interest lands in Alaska through inclusion within the National Park, Wildlife Refuge, National Forest, and Wild and Scenic River Systems. This supplement discusses executive branch actions which include: (1) Presidential proclamation of national monuments under the Antiquities Act, (2) administrative segregation and/or withdrawal of national interest lands under the Federal Land Policy and Management Act, and (3) withdrawal of lands under the Alaskan Native Claims Settlement Act. (DES-78-47) (EPA Order 81149).

The USDI has been granted a waiver of the 45-day review period for the above draft supplement. The approved waiver will allow 25 days for comment. Therefore, the review period will terminate on November 21, 1978.

BUREAU OF RECLAMATION

Final supplement

Frying Pan, Arkansas project, El Paso and Pueblo Counties, Colo., October 18: This statement supplements a final EIS filed in April 1975 concerning the Fountain Valley Conduit in El Paso and Pueblo Counties, Colo. as related to the Frying Pan, Ark. project. The conduit will be 45 miles long and will be used for the conveyance of municipal and industrial waters between Pueblo Dam and the city of Colorado Springs and other Fountain Valley communities. Other features of the plan include: (1) Construction of four pumping plants, and (2) establishment of power supply and substation at each pumping plant. Five alternatives are considered. (FES-78-29) (EPA Order 81133).

GEOLOGICAL SURVEY

Draft

Development of coal resources, central Utah, several counties, Utah, October 20: The proposed action is an analysis of environmental impacts which could result in the central Utah region coal development proposals that require Federal approval. This statement is organized into two parts. Part 1 is an analysis of cumulative impacts of proposed coal developments on Federal lands and associated ancillary facilities. Part 2 is an analysis of the individual proposals. Involved is the Federal approval of nine underground mining and reclamation plans (M&RP's) on existing leases and land use applications associated with the M&RP's. (DES-78-46) (EPA Order 81140).

NATIONAL PARK SERVICE

Draft

Voyageurs National Park, master plan, Koochiching and St. Louis Counties, Minnesota, October 19: Proposed is a master plan for the 138,828-acre Voyageurs National Park in Koochiching and St. Louis Counties, Minn. Features of the plan include, in part: (1) acquiring non-Federal lands within and outside park boundaries; (2) classification of lands and waters; (3) a 217,000 natural zone area; (4) a primitive subzone; (5) outstanding natural, development and natural environment areas; (6) visitor/recreation areas, programs and facilities; and (7) forest fire, natural resource and environmental quality agreements. (DES-78-45) (EPA Order 81135).

Final supplement

Obed Wild and Scenic River, Morgan, Fentress, and Cumberland Counties, Tennessee, October 13: This statement supplements a final EIS filed in October 1976 concerning the establishment of an Obed National Wild and Scenic River in Morgan, Fentress, and Cumberland Counties, Tenn. The statement provides additional information on: (1) The inclusion of 45.2 miles of Obed River, Clear Creek, Daddys Creek, and Emory River, (2) the acquisition of 4,520 acres in the fee and less-than-fee interests of fewer than 2,000 acres in Morgan and Cumberland Counties, (3) the administration by DOI/NPS, and (4) the development of facilities. (FES-78-28) (EPA Order 81138).

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590, 202-426-4357.

FEDERAL HIGHWAY ADMINISTRATION

Draft

I-180, Hoffman Corridor, Albany and Richmond, Alameda and Contra Costa Counties, Calif., October 16: Proposed is the improvement of the 6-mile route I-180 (17) transportation corridor between Route I-80 near Buchanan Street in Albany and the Richmond-San Rafael Bridge in Alameda and Contra Costa Counties, Calif. All build alternatives under consideration are on the same alignment and would upgrade the present 4-lane highway to a 4- or 6-lane freeway, with or without high-occupancy vehicle lanes, connecting to Route 80. These proposals also involve a 2-mile semidepressed section and seven interchanges. (FHWA-CA-EIS-78-01-D) (EPA Order 81127).

ID-64, Nezperce to Kamiah, Lewis County, Idaho, October 17: Proposed is the replacement or improvement of ID-64 between the communities of Nezperce and Kamiah in Lewis County, Idaho, within the boundary of the Nezperce Indian Reservation. The improved facility would be a secondary State highway consisting of two 12-foot travel lanes with 2-foot shoulders within a 120-foot right of way. The approximate length of the project would vary from 11.7 miles to 15.4 miles depending on the alternative selected of the five being considered. (FHWA-IDA-78-02-D). (EPA Order 81130).

Improved access, Brevard to I-26, Transylvania, Henderson, and Buncombe Counties, N.C. October 17: Proposed is the construction of a new four-lane highway facility to improve access between Brevard and I-26 in Transylvania, Henderson, and Buncombe Counties, N.C. The highway is proposed to be as direct a connection as possible, beginning at the intersection of U.S.-64, U.S.-276, and N.C.-280, approximately 3 miles east of Brevard in Transylvania County and terminating after junctioning with I-26 in Henderson County. For corridor alternatives are under consideration. (FHWA-NC-EIS-78-08-D) (EPA order No. 81132).

Kalanianaole Highway (FAP 72) improvement, Honolulu County, Hawaii, October 18: The proposed action is approval of a recommended improvement to upgrade transportation service capabilities of an existing highway corridor, located in the City and County of Honolulu, Oahu, Hawaii. A configuration of 4 and 8 highway lanes with an at-grade, exclusive and reversible express facility for the use of buses, vanpools, and carpools, depending on the final decision of the number of lanes built, is proposed and will cover a distance of approximately 4.2 miles. In the draft EIS a waterborne marine bus system was being considered, but has been deferred and if it is to be implemented in the future a separate EIS will be prepared. (FHWA-HI-EIS-75-05-D(F)). Comments made by: DOT, HEW, AHP, DOC, EPA, USA, NOAA, USDA, HUD, State and local agencies, groups, individuals and businesses. (EPA order No. 81134).

M-24 extension, Caro—M-25 at Unionville, Tuscola County, Mich. October 16: Proposed is the extension of State trunkline M-24 from its existing northern terminus at M-81 in the village of Caro, northwesterly 14.8 miles to M-25 at the village of Unionville, Tuscola County, Mich. The new rural roadway section would be a 2-lane, free access facility constructed to State trunkline standards within a minimum 150-foot right-of-way. Within Caro, a 5-lane section with curb and gutter would be constructed with a 100-foot right-of-way. In Unionville, the new roadway would consist of four lanes, with curb and gutter, constructed within the existing 66-foot right-of-way. Adverse effects include conversion of 20 acres of farmland to highway use. (FHWA-MI-EIS-77-01-F). Comments made by: DOT, DOI, COE, USDA, EPA, EDA, State and local agencies, groups and individuals (EPA order No. 81126).

TN-1, McMinnville to Sparta, Warren, Van Buren, and White Counties, Tenn. October 20: The proposed action consists of the construction of approximately 20 miles of State Route 1 from just east of McMinnville to Sparta, in Warren, White and Van Buren Counties, Tenn. The proposed project extends northeasterly from a point at the end of the newly constructed section of TN-1, just west of the intersection of TN-1 and TN-30, to an eastern terminus at TN-111 near Sparta. The proposed highway is classified as a principal arterial in Tennessee's "1985 Statewide Functional Highway Classification Plan" and is planned as a four-lane facility. (FHWA-TN-EIS-77-09-F). Comments made by: HUD, HEW, DOI EPA, DOT, TVA, USDA, COE, State agencies (EPA order No. 81142).

INFORMATION SUPPLEMENT

The EPA has received the following report which provides supplemental information on proposals which have fulfilled the NEPA process. Copies of the report are available from the originating agency upon request.

INTERSTATE COMMERCE COMMISSION

Contact: Mr. Richard I. Chais, Chief, Section of Energy and Environment, Room 3373, 12th and Constitution Avenue NW. Washington, D.C. 20423, 202-275-7692.

EPA No., date received and title

81147, October 20, 1978, Burlington Northern Inc., control and merger, St. Louis-San Francisco Railway Co.

[FR Doc. 78-30786 Filed 10-31-78; 8:45 am]

[7035-01-M]

[Revised S.O. No. 1252; I.C.C. Order No. 68; Amendment No. 1]

FORT WORTH & DENVER RAILWAY CO.

Rerouting of Traffic

To all railroads: Upon further consideration of I.C.C. Order No. 68 (Fort Worth & Denver Railway Co.), and good cause appearing therefor:

It is ordered, That I.C.C. Order No. 68 is amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., November 30, 1978, unless otherwise modified, changed or suspended.

Effective date: This amendment shall become effective at 11:59 p.m., September 30, 1978.

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of the amendment shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., September 28, 1978.

INTERSTATE COMMERCE COMMISSION,
ROBERT S. TURKINGTON,
Agent.

[FR Doc. 78-30899 Filed 10-31-78; 8:45 am]

[6210-01-M]

FEDERAL RESERVE SYSTEM

ENTERPRISE CAPITAL CORP.

Formation of Bank Holding Company

Enterprise Capital Corp., Enterprise, Ala., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of the Citizens Bank, Enterprise, Ala. The factors that are considered in acting on the application are set forth in section 3(c) of the act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 21, 1978.

Board of Governors of the Federal Reserve System, October 25, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-30856 Filed 10-31-78; 8:45 am]

[6210-01-M]

MID-TEX BANCSHARES, INC.

Formation of Bank Holding Company

Mid-Tex Bancshares, Inc., Brownwood, Tex., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 81.1 percent of the voting shares of the Southwest State Bank, Brownwood, Tex. The factors that are considered in acting on the application are set forth in section 3(c) of the act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 27, 1978.

Board of Governors of the Federal Reserve System, October 25, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-30857 Filed 10-31-78; 8:45 am]

[6210-01-M]

MILES SERVICE CORP.

Acquisition of Bank

Miles Service Corp., Miles, Iowa, has applied for the Board's approval under section 3 (a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)), to acquire 97.7 percent of the voting shares of Miles Savings Bank, Miles, Iowa. The factors that are considered in acting on the application are set forth in section 3(c) of the act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than November 25, 1978.

Board of Governors of the Federal Reserve System, October 25, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-30858 Filed 10-31-78; 8:45 am]

[6750-01-M]

FEDERAL TRADE COMMISSION

PRIVACY ACT OF 1974

Modification of Systems of Records

Pursuant to the delegation of authority published at 40 FR 56983 (December 5, 1975), the General Counsel hereby amends the system notice for FTC-4 and gives notice of the agency's intent to change the equipment configuration of FTC-10. A Report on New Systems for FTC-10 has been transmitted to OMB and the Congress.

The most recent system notices for the two affected systems appear at 43 FR 40111-40112 (September 8, 1978). The following changes are required:

FTC-4

System name: Claimants under Federal Tort Claims Act and Military Personnel and Civilian Employees' Claims Act.

Routine uses of records maintained in the system including categories of users and the purposes of such uses: To determine whether the FTC should honor claims for personal injuries or loss or damage to property in incidents involving FTC employees. Referral to Department of Justice, GSA, or other federal agency when the matter comes within the jurisdiction of such agency. Discussion and correspondence with insurance companies, with other persons or entities that may be liable, with potential witnesses or others having knowledge of the matter.

Record source categories: Information is obtained from claimant, FTC employee involved in incident, other FTC employees or other persons having knowledge of the circumstances, official police report (if any), witnesses, and insurance company representing claimant (if any).

FTC-10

System name: Consumer and Industry Correspondence Files, Division of Credit Practices, Bureau of Consumer Protection.

System location: Division of Credit Practices, 633 Indiana Avenue NW., Washington, D.C. 20580. Comnet, Inc., 5185 MacArthur Blvd., Washington, D.C. 20016.

Storage: Maintained in folders, on credit document coding forms, and on disc.

Retrievability: Folders are indexed by name—usually corporate name. Computer retrievability of the credit document coding form by consumer name, industry name, statute, Equal Credit Opportunity Act categories and statutory violation section will be possible.

V 4 3 / 2 1 2

Dated: October 25, 1978.

MICHAEL N. SOHN,
General Counsel.

[FR Doc. 78-30883 Filed 10-31-78; 8:45 am]

[4110-35-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Care Financing Administration

MEDICARE AND MEDICAID CONTRACTING

A steering group composed of high level Health Care Financing Administration and Department administrators has recently completed a study concerning the administration of the Medicare and Medicaid programs with respect to selection, monitoring and reimbursement of contractors. The study report discusses recommended changes in the administration of the Medicare and Medicaid programs in order to enhance coordination, improve program management, contain administrative and program costs, and promote effective delivery of services to providers and beneficiaries. Some recommendations require legislation such as combining and fully integrating the administration of Medicare Part A and Part B, while others such as conducting experiments on integrating the administration of the Medicare and Medicaid programs can be implemented administratively. The public is invited to comment on the report and provide input prior to any Agency action. Comments should be submitted by November 30, 1978.

Copies of the report may be obtained from the Health Care Financing Administration, Room 5112, Switzer Building, 330 C Street SW., Washington, D.C. 20201.

Dated: October 26, 1978.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc. 78-30811 Filed 10-31-78; 8:45 am]

[4110-08-M]

National Institutes of Health

NATIONAL DIABETES ADVISORY BOARD

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of meetings of the National Diabetes Advisory Board on November 7 and 8, 1978.

The Executive Committee meeting will be held on November 7, 1978, 3 p.m., at the Twin Bridges Marriott, U.S. 1 and I-95, Washington, D.C., Room 470.

The Board meeting will be held on November 8, 1978, 9 a.m., at the Twin Bridges Marriott, U.S. 1 and I-95, Washington, D.C., Commonwealth IV.

The meetings, which will be open to the public, are being held to continue review of the status and implementation of national diabetes programs. Attendance by the public will be limited to space available.

Mr. Raymond M. Kuehne, Executive Director of the Board, P.O. Box 30174, Bethesda, Md. 20014, 301-496-6045, will provide summaries of the meetings and a roster of the committee members.

Dated: October 25,1978.

SUZANNE L. FREMEAU,
Committee Management Officer, National Institutes of Health.

[FR Doc. 78-30833 Filed 10-31-78; 8:45 am]

[4110-08-M]

NATIONAL DIABETES ADVISORY BOARD

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of meetings of the National Diabetes Advisory Board on December 12 and 13, 1978, at the Twin Bridges Marriott, U.S. 1 and I-95, Washington, D.C.

The Executive Committee meeting will be held on December 12, 1978. The Board meeting will be held on December 13, 1978. The time of the meetings may be obtained by contacting Mr. Raymond M. Kuehne, Executive Director of the Board, P.O. Box 30174, Bethesda, Md. 20014, 301-496-6045.

The meetings, which will be open to the public, are being held to continue review of the status and implementation of national diabetes programs. Attendance by the public will be limited to space available.

Mr. Raymond M. Kuehne, Executive Director of the Board, P.O. Box 30174, Bethesda, Md. 20014, 301-496-6045, will provide summaries of the meetings and a roster of the committee members.

Dated: October 25, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer, National Institutes of Health.

[FR Doc. 78-30834 Filed 10-31-78; 8:45 am]

[4110-08-M]

RENEWAL OF THE NATIONAL ADVISORY DENTAL RESEARCH COUNCIL

The Director, National Institutes of Health, announces the renewal of the National Advisory Dental Research Council, under the Authority of section 217 of the Public Health Service Act (42 U.S.C. 218). Such Advisory committees shall be governed by the provisions of the Federal Advisory Committee Act, as amended (Pub. L. 92-463), setting forth standards governing the establishment and use of advisory committees.

Authority for the above committee will expire on May 31, 1980, unless the Secretary formally determines that continuance is in the public interest.

Dated: October 20, 1978.

DONALD S. FREDRICKSON, M.D.,
Director, National Institutes of Health.

[FR Doc. 78-30835 Filed 10-31-78; 8:45 am]

[4110-08-M]

RENEWAL OF THE NATIONAL ADVISORY GENERAL MEDICAL SCIENCES COUNCIL

The Director, National Institutes of Health, announces the renewal of the National Advisory General Medical Sciences Council, under the Authority of section 443 of the Public Health Service Act (42 U.S.C. 289f). Such advisory committees shall be governed by the provisions of the Federal Advisory Committee Act, as amended (Pub. L. 92-463), setting forth standards governing the establishment and use of advisory committees.

Authority for the above committee will expire on May 31, 1980, unless the Secretary formally determines that continuance is in the public interest.

Dated: October 20, 1978.

DONALD S. FREDRICKSON, M.D.,
Director, National Institutes of Health.

[FR Doc. 78-30836 Filed 10-31-78; 8:45 am]

[4110-02-M]

Office of Education

NATIONAL DIRECT STUDENT LOAN, COLLEGE WORK-STUDY, AND SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANTS

Approved List of Need Analysis Systems

AGENCY: Office of Education, HEW.

ACTION: Notice of Approved Need Analysis Systems.

SUMMARY: The Commissioner of Education announces the list of approved need analysis systems that institutions of higher education must use in making awards to students during the academic year 1979-80 under the National Direct Student Loan, College Work-Study, and Supplemental Educational Opportunity Grants Programs.

EFFECTIVE DATE: Date of publication in the FEDERAL REGISTER.

FOR FURTHER INFORMATION CONTACT:

Mr. Hubert S. Shaw, Chief, Campus Based Branch, Division of Policy and Program Development, Bureau of Student Financial Assistant, 400 Maryland Avenue SW., Washington, D.C. 20202, 202-245-9717.

SUPPLEMENTARY INFORMATION:

GENERAL

Section 144.13 of the National Direct Student Loan Program Regulations (45 CFR 144.13), § 175.13 of the College Work-Study Program Regulations (45 CFR 175.13), and § 176.13 of the Supplemental Educational Opportunity Grant Program Regulations (45 CFR 176.13), approve the use of certain need analysis systems and methods of determining expected family contributions for dependent and independent students, and set forth procedures for an annual review and approval by the Commissioner of other need analysis systems for use in those programs. In order to be approved for dependent students the latter systems must generate expected parental contributions for at least 75 percent of the sample cases which are within $50 of the benchmark figures published by the Commissioner for those cases. The benchmark figures for the 1979-80 academic year were published in the FEDERAL REGISTER of August 3, 1978 (43 FR 34145). For independent students, a system that was not specifically included in the regulations must produce expected family contributions which are comparable to those produced by one of the systems specified in subparagraph (c)(1) of each section. An annual review of systems for independent students is not required.

The approved systems are:

1. Dependent students only—

a. The Income Tax System.

2. Dependent and independent students—

a. The method of calculating expected family contributions used in the Basic Educational Opportunity Grant Program (45 CFR 190);

b. The system of need analysis published by the American College Testing Program;

c. The system of need analysis published by Blackhawk College—the David E. Sprenkle System;

d. The system of need analysis published by College Scholarship Service;

e. The system of need analysis published by City University of New York;

f. The system of need analysis published by Financial Analysis Services;

g. The system of need analysis published by Functional Solutions Incorporated;

h. The system of need analysis published by G. E. White Associates;

i. The system of need analysis published by Graduate and Professional School Financial Aid Service;

j. The system of need analysis published by the Illinois State Scholarship Commission;

k. The system of need analysis published by Information & Communications, Inc.—SAFE System;

l. The system of need analysis published by Monroe, the Calculator Co.

m. The system of need analysis published by the Pennsylvania Higher Education Assistance Agency;

n. The system of need analysis published by Student Aid Management, a program of Education Methods, Inc.

(20 U.S.C. 1087dd, 42 U.S.C. 2754, and 20 U.S.C. 1070b—1 and 1070b—2.)

(Catalog of Federal Domestic Assistance No. 13.418, Supplemental Educational Opportunity Grant Program; 13.463 College Work-Study Program; and 13.471, National Direct Student Loan Program.)

Dated: October 24, 1978.

ERNEST L. BOYER,
U.S. Commissioner of Education.

[FR Doc. 78-30887 Filed 10-31-78; 8:45 am]

[4310-84-M]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[DES 78-41]

NEW MEXICO

Additional Public Hearing for Draft Star Lake-Bisti Coal Regional Environmental Statement

At 43 FR 45921 (October 4, 1978), the Department of the Interior, Bureau of Land Management (BLM), announced the availability of the Draft Star Lake-Bisti Regional Coal Environmental Statement (ES) and the holding of public hearings for the proposed rights-of-way of the Star Lake Railroad and the Fruitland Coal Load Transmission Line and the possible development of coal resources in the Star Lake-Bisti Region of northwestern New Mexico.

In addition to the two hearing dates announced in the notice published on October 4, 1978, a public hearing will be held in Crownpoint, N. Mex. The public hearing will convene at 1 p.m. on November 15, 1978, at the Crownpoint Town Hall, Crownpoint, N. Mex.

Oral testimony of 10 minutes maximum length will be accepted from each witness at the hearing in lieu of written comments or in addition to any written comments submitted by each witness. The 10-minute time limitation will be strictly enforced. The complete text of prepared testimony may be filed with the presiding officer at the hearing whether or not the speaker has been able to finish with oral delivery in the alloted 10 minutes.

Speakers will be heard, if present, in their established order on the witness list. After the last listed witness has been heard, the presiding officer will consider the request of any other person present and wishing to testify. Only one witness will be allowed to present the viewpoints of a single organization. However, any witness will be permitted to give germane testimony if offered as the views or opinions of a private citizen.

Written requests to testify orally should be addressed to the BLM District Manager, Albuquerque District Office, 3550 Pan American Freeway NE., P.O. Box 6770, Albuquerque, N. Mex. 87107. Such requests should identify the organization represented and be signed by the prospective witness, and should be received at the above address prior to the close of business on November 9, 1978.

ARNOLD E. PETTY,
Acting Associate Director, Bureau of Land Management.

Approved: October 27, 1978.

GUY R. MARTIN,
Assistant Secretary of the Interior.

[FR Doc. 78-30911 Filed 10-31-78; 8:45 am]

[4310-84-M]

[NM 35056, 35059, and 35078]

NEW MEXICO

Applications

OCTOBER 23, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Co. has applied for three 4½-inch natural gas pipeline rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, N. MEX.

T. 27 N., R. 27 W.,
Sec. 7, N½NE¼.
T. 31 N., R. 7 W.,
Sec. 10, SW¼SW¼;
Sec. 11, NE¼NW¼;
Sec. 15, NW¼NW¼.

These pipelines will convey natural gas across 0.280 of a mile of public lands in Rio Arriba and San Juan Counties, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land

NOV 1 1978 UMI

Management, P.O. Box 6770, Albuquerque, N. Mex. 87107.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-30862 Filed 10-31-78; 8:45 am]

[4310-84-M]

[NM 35055, 35057, 35058, 35081, 35082, and 35083]

NEW MEXICO

Applications

OCTOBER 23, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Co. has applied for six 4½-inch natural gas pipeline rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, N. MEX.

T. 18 S., R. 28 E.,
Sec. 13, NW¼NE¼.
T. 23 S., R. 28 E.,
Sec. 9, SE¼SW¼.
T. 25 S., R. 36 E.,
Sec. 31, SE¼NE¼ and E½SE¼.
T. 26 S., R. 36 E.,
Sec. 6, E½E½;
Sec. 7, NE¼NE¼.

These pipelines will convey natural gas across 2.013 miles of public lands in Eddy and Lea Counties, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, N. Mex. 88201.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-30861 Filed 10-31-78; 8:45 am]

[4310-84-M]

[INT DES 78-44]

WYOMING

Availability of Draft Regional Environmental Statement and Holding of Public Hearings for Proposed Development of Coal Resources in Southcentral Wyoming; Correction

This Notice corrects the notice of availability which appeared on page 48084 of the FEDERAL REGISTER dated October 18, 1978. The location and dates of the hearings, request to testify and acceptance of written comments as shown in the Notice is corrected to read as follows:

Hearings for the Southcentral Coal Environmental Statement are to be held on November 21, 1978 at the Jeffrey Memorial Community Center at 1:30 and 7:30 p.m. in Rawlins, Wyo. 82301.

Written request to testify should be received at the Rawlins District Office prior to close of business on November 20, 1978.

Written comments not submitted at the public hearings will be accepted by the Team Leader until December 6, 1978.

ARNOLD E. PETTY,
Acting Associate Director, Bureau of Land Management.

OCTOBER 25, 1978.

[FR Doc. 78-30863 Filed 10-31-78; 8:45 am]

[4310-84-M]

OCTOBER 23, 1978.

[Wyoming 65056]

WYOMING

Application

Notice is hereby given that pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Colorado Interstate Gas Co. of Colorado Springs, Colo., filed an application for a right-of-way for one 6⅝-inch O.D. pipeline, three 10¾-inch O.D. pipelines, and one 4½-inch O.D. pipeline for the purpose of transporting natural gas across the following described public lands:

SIXTH PRINCIPAL MERIDIAN, WYO.

T. 17 N., R. 94 W.,
Sec. 6, lot 1, SE¼NE¼, W½SE¼ and NE¼SE¼;
Sec. 18, lot 7.
T. 18 N., R. 94 W.,
Sec. 6, lots 10, 13, 18, and 21;
Sec. 18, lots 6, 11, 14, 19, and 30;
Sec. 30, lots 5 and 12;
Sec. 32, W½W½
T. 19 N., R. 94 W.,
Sec. 8, lot 3, SE¼NW¼ and E½SW¼;
Sec. 18, E½W½ and N½NE¼;
Sec. 30, E½W½.

These pipelines are proposed in order to increase the capacity to transport a substantial amount of additional natural gas to the main lines through Colorado Interstate Gas Co.'s Wamsutter Regulator facilities in the N½ of section 31, T. 21 N., R. 94 W., Sweetwater County, Wyo.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 1300 Third Street, P.O. Box 670, Rawlins, Wyo. 82301.

HAROLD G. STINCHCOMB,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-30828 Filed 10-31-78; 8:45 am]

[4310-84-M]

Office of the Secretary

[INT FES 78-31]

NEVADA

Availability of Final Environmental Statement; Proposed 500-MW Coal-Fired Generating Station, North Valmy, Nev.

In accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management has prepared a final environmental statement on a proposed 500-megawatt (MW) coal-fired, steam-electric generating station near Valmy, Nev.

The statement addresses itself to construction of two 250 MW generation units in Humboldt County, Nev., and two transmission lines to deliver power to substations near Reno and Austin, Nev. The proposal by Sierra Pacific Power Co. also calls for construction of a microwave communications system to service the proposed plant.

The final environmental statement incorporates comments received on the draft environmental statement which was made available to the public May 11, 1978. That draft statement was the subject of public hearings in Winnemucca, Nev., on June 13, 1978, and in Reno on June 15, 1978.

Copies on the final environmental statement are available upon request by writing the Nevada State Director (N-921), Bureau of Land Management, Room 3008, Federal Building, 300 Booth Street, Reno, Nev. 89509. Copies may also be obtained by writing the Director (130), Bureau of Land Management, Department of the Interior, Washington, D.C. 20240.

Copies are available for inspection at the following locations:

Nevada State Office, Room 3008, Federal Building, 300 Booth Street, Reno, Nev. 89509.
Carson City District Office, 1050 East Williams Street, Carson City, Nev. 89701.
Ely District Office, Star Route 5, Box 1, Ely, Nev. 89301.
Winnemucca District Office, 705 East Fourth Street, Winnemucca, Nev. 89445.
Battle Mountain District Office, P.O. Box 194, Battle Mountain, Nev. 89820.
Elko District Office, 2002 Idaho Street, Elko, Nev. 89801.

Las Vegas District Office, 4765 West Vegas Drive, Las Vegas, Nev. 89102.

In addition to the above locations, reading copies will be available for the next 45 days at public and university libraries in Battle Mountain, Carson City, Elko, Fallon, Las Vegas, Lovelock, Reno, Wells, and Winnemucca, Nev.

Dated: October 27, 1978.

LARRY E. MEIEROTTE,
Deputy Assistant Secretary.

[FR Doc. 78-30837 Filed 10-31-78; 8:45 am]

[3110-01-M]

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-45]

CERTAIN COMBINATION LOCKS

Notice and Order Concerning Procedure for Commission Determination and Action

Notice is hereby given that—

1. The Commission will hold a hearing beginning at 10 a.m., e.s.t., Friday, December 1, 1978, in the Commission's Hearing Room, 701 E Street NW., Washington, D.C., for the purposes of (1) hearing oral argument on the recommended determination of the presiding officer concerning whether there is a violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337); and (2) receiving oral presentations with respect to the subject matter of § 210.14(a) of the Commission's Rules of Practice and Procedure (19 CFR 210.14(a)) concerning relief, bonding, and the public interest factors set forth in subsections (d) and (f) of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), which factors the Commission is to consider in the event it determines that relief should be granted. The latter proceeding is legislative in character, and therefore the hearing on remedy, bonding, and public interest will not be subject to the requirements of 5 U.S.C. 553, 557. Instead, this phase of the hearing will be conducted in accordance with § 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11). These matters are all being heard on the same day in order that this investigation may be completed within the time limits prescribed by the Statute and to minimize the burden of this hearing upon the parties.

Parties and agencies wishing to make oral argument with respect to the recommended determination shall be limited in each oral argument to not more than 30 minutes, 10 minutes of which may be reserved for rebuttal by the staff and complainant.

For that part of the hearing devoted to relief, bonding, and the public interest, parties, interested persons, and Government agencies will be limited in their presentations to no more than 15 minutes. Participants will be permitted an additional 5 minutes for closing arguments after all presentations have been concluded. The Commission's investigative staff will be allotted the full time available to a party.

Requests for appearances at the hearing should be filed, in writing, with the Secretary of the Commission at his office in Washington no later than close of business, Friday, November 24, 1978. Requests should indicate the part of the hearing (i.e., with respect to the recommended determination, relief, bonding, the public interest factors, or any combination thereof) in which the requesting person desires to participate.

2. Written submission from the parties, other interested persons, Government agencies and departments, governments, or the public with respect to the recommended determination and the subject matter of subsections (a)(1), (a)(2), and (a)(3) of § 210.14 of the Commission's Rules of Practice and Procedure (19 CFR 210.14(a) (1), (2), and (3)) concerning remedy, bonding, and the public interest will be considered if received by the Commission by Monday, December 11, 1978.

Notice of the Commission's institution of the investigation was published in the FEDERAL REGISTER of February 16, 1978 (43 FR 6945).

By order of the Commission.

Issued: October 27, 1978.

KENNETH R. MASON,
Secretary.

[FR Doc. 78-30908 Filed 10-31-78; 8:45 am]

[3110-01-M]

[Investigation No. 337-TA-44]

CERTAIN ROLLER UNITS

Notice and Order Concerning Procedure for Commission Determination and Action

Notice is hereby given that—

1. The Commission will hold a hearing beginning at 10 a.m., e.s.t., Wednesday, November 29, 1978, in the Commission's Hearing Room, 701 E Street NW., Washington, D.C., for the purposes of (1) hearing oral argument on the recommended determination of the presiding officer concerning whether there is a violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337); and (2) receiving oral presentations with respect to the subject matter of § 210.14(a) of the Commission's Rules of Practice and Procedure (19 CFR 210.14(a)) concerning relief, bonding, and the public interest factors set forth in subsections (d) and (f) of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), which factors the Commission is to consider in the event it determines that relief should be granted. The latter proceeding is legislative in character, and therefore the hearing on remedy, bonding, and public interest will not be subject to the requirements of 5 U.S.C. 556, 557. Instead, this phase of the hearing will be conducted in accordance with § 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11). These matters are all being heard on the same day in order that this investigation may be completed within the time limits prescribed by the statute and to minimize the burden of this hearing upon the parties.

Parties and agencies wishing to make oral argument with respect to the recommended determination shall be limited in each oral argument to not more than 30 minutes, 10 minutes of which may be reserved for rebuttal by the staff and complainant.

For that part of the hearing devoted to relief, bonding, and the public interest, parties, interested persons, and Government agencies will be limited in their presentations to no more than 15 minutes. Participants will be permitted an additional 5 minutes for closing arguments after all presentations have been concluded. The Commission's investigative staff will be allotted the full time available to a party.

Requests for appearances at the hearing should be filed, in writing, with the Secretary of the Commission at his office in Washington no later than close of business, Friday, November 24, 1978. Requests should indicate the part of the hearing (i.e., with respect to the recommended determination, relief, bonding, the public interest factors, or any combination thereof) in which the requesting person desires to participate.

2. Written submission from the parties, other interested persons, Government agencies and departments, governments, or the public with respect to the recommended determination and the subject matter of subsections (a)(1), (a)(2), and (a)(3) of § 210.14 of the Commission's Rules of Practice and Procedure (19 CFR 210.14(a) (1), (2), and (3)) concerning remedy, bonding, and the public interest will be considered if received by the Commission by Friday, December 8, 1978.

Notice of the Commission's institution of the investigation was published in the FEDERAL REGISTER of February 14, 1978 (43 FR 6343).

By order of the Commission.

Issued: October 27, 1978.

KENNETH R. MASON,
Secretary.

[FR Doc. 78-30909 Filed 10-31-78; 8:45 am]

V 43/212 NO 178 UMI

[4410-09-M]

DEPARTMENT OF JUSTICE

Drug Enforcement Adminstration

CONTROLLED SUBSTANCES IN SCHEDULES I AND II

Final 1978 Revised Aggregate Production Quotas

Section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826) requires the Attorney General to establish aggregate production quotas for all controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration pursuant to § 0.100 of Title 28 of the Code of Federal Regulations.

On September 18, 1978, a notice of the proposed revised aggregate production quotas for 1978 for Anileridine and Ethylmorphine was published in the FEDERAL REGISTER (43 FR 41440). All interested parties were invited to comment on or object to the proposed aggregate production quotas on or before October 23, 1978. No comments or objections were received.

Therefore, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826), and delegated to the Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of the Code of Federal Regulations, the Administrator of the Drug Enforcement Administration hereby orders that the revised aggregate production quotas for the controlled substances listed below, expressed in grams of anhydrous base, be established as follows:

Basic class	Final 1978 aggregate production quotas
Anileridine	272,000
Ethylmorphine	30,000

This order is effective November 1, 1978.

Dated: October 25, 1978.

PETER B. BENSINGER,
Administrator, Drug Enforcement Administration.

[FR Doc. 78-30845 Filed 10-31-78; 8:45 am]

[4410-01-M]

NATIONAL COMMISSION FOR THE REVIEW OF ANTITRUST LAWS AND PROCEDURES

MEETING

In accordance with Executive Order 12022 and section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 770), notice is hereby given that the National Commission for the Review of Antitrust Laws and Procedures (hereinafter "Commission"), will hold a public meeting on Tuesday, November 14, and Wednesday, November 15, 1978, beginning at 9:30 a.m. on both of the aforesaid days in Room 2141 of the Rayburn House Office Building, Independence and South Capitol Street SW., Washington, D.C.

The purpose of the meeting is to consider matters relating to the Commission's final report to the President and Attorney General. It is anticipated, also, that there will be discussed the work of special study groups that have addressed such subjects as ethical considerations in the litigation of complex antitrust cases and economic implications of existing antitrust immunities and exemptions.

The views of interested persons are solicited in the form of written statements to the Commission. Those who wish their views to be made available to the Commissioners for consideration prior to this meeting should submit 50 copies to the Commission office (Attention: Ms. Deana Harvell), Room 7315, Department of Justice Building, 10th Street and Pennsylvania Avenue NW., Washington, D.C. 20530, to be received no later than November 8, 1978.

Dated: October 27, 1978.

WENDELL B. ALCORN, Jr.,
Special Counsel.

[FR Doc. 78-30832 Filed 10-31-78; 8:45 am]

[7536-01-M]

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

CHANGE IN DATES FOR PUBLICATION OF SEMIANNUAL AGENDA OF SIGNIFICANT REGULATIONS

EDITORIAL NOTE: The National Foundation on the Arts and the Humanities has changed the dates for the publication of the semiannual agenda of significant regulations. It will publish on the first Monday of November (November 6, 1978), and the first Monday of May (May 7, 1979), instead of November 1, 1978 and April 2, 1979, as previously announced.

[7536-01-M]

NATIONAL COUNCIL ON THE HUMANITIES ADVISORY COMMITTEE

Meeting

OCTOBER 27, 1978.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463) notice is hereby given that a meeting of the National Council on the Humanities will be conducted at Washington, D.C., on November 16-17, 1978.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Shoreham Building, 806 15th Street, NW., 1st Floor Conference Room, Washington, D.C. The session of the proposed meeting on November 16, 1978, and the afternoon session on November 17, 1978, will consider financial information and personnel and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy. Pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the committee.

The morning session on November 17, 1978, will convene at 8:30 a.m. and will be open to the public. The agenda for the morning session will be as follows:

MINUTES OF THE PREVIOUS MEETING

REPORTS

A. Chairman's Introductory Remarks and Introduction of Council Nominees and New Staff Members.
B. Summary of Recent Business.
C. Chairman's Grants.
D. Application Report.
E. Gifts and Matching Report.
F. FY 1979 Appropriations.
G. FY 1980 Budget Request to OMB.
H. Ratification of Actions of 48th and 49th Meetings.
I. Evaluation.

The remainder of the proposed meeting will be closed to the public.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street NW., Washington, D.C. 20506, or call area code 202-724-0367.

STEPHEN J. MCCLEARY,
Advisory Committee Management Officer.

FR Doc. 78-30893 Filed 10-31-78; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

ADVISORY COMMITTEE ON THE MEDICAL USES OF ISOTOPES

Public Meeting

The Nuclear Regulatory Commission's (NRC) Advisory Committee on the Medical Uses of Isotopes will hold a public meeting at 9 a.m. on Thursday, December 14, 1978, in Room 150, Willste Building, 7915 Eastern Avenue, Silver Spring, Md.

The following agenda is scheduled:

1. Policy and regulatory changes that affect medical licensees. The changes to be discussed include: NRC's medical policy statement; requirement or calibration of teletherapy units; deletion of clinical procedures from Groups, I, II, III of § 35.100, Part 35, Title 10, Code of Federal Regulations; requirement for radiation survey and source count after temporary brachytherapy implants; change in composition and function of Medical Isotopes Committee; requirement to assay all patient doses prior to administration; deletion from Group IV of the use of iodine-131 to treat cardiac dysfunction.

2. Methods of maintaining occupational exposures at medical institutions as low as reasonably achievable (ALARA). The Committee will consider this matter in light of the current discussions of the effects of exposure to low levels of radiation.

3. NRC and Food and Drug Administration (FDA) regulation of medical devices containing radioactive material. This matter will be discussed in view of the Medical Device Amendments of 1976 (Pub. L. 94-295), that give FDA regulatory authority over medical devices.

Practical considerations may dictate alterations in the above agenda.

Mr. Richard Cunningham, Acting Director, Division of Fuel Cycle and Material Safety, U.S. Nuclear Regulatory Commission, will serve as Chairperson of the Advisory Committee meeting. Mr. Cunningham is empowered to conduct the meeting in a manner that, in his judgment, will facilitate the orderly conduct of business.

The following requirements shall apply to public participation in the agenda items listed above.

1. Persons wishing to submit written statements on agenda items may do so by providing a readily reproducible copy at the beginning of the meeting. Persons wishing to mail written comments may do so by sending at least one readily reproducible copy (preferably 25 copies), to Mr. Cunningham in care of NRC, Washington, D.C. 20555. Comments postmarked no later than December 7, 1978, should be received in time for consideration at the meeting. The minutes of the meeting will be kept open for 30 days for the receipt of written statements for the record.

2. Persons desiring to make oral statements should make a request to do so prior to the beginning of the meeting, identifying the agenda items and describing the need for the oral statement and its usefulness to the Committee. To the extent that the time available for the meeting permits, the Committee will receive oral statements during a period of not more than 60 minutes at a time chosen by the Chairperson. The Chairperson shall rule on requests to make oral statements and shall apportion the available time among those he selects to make oral statements.

3. Questions may be asked only by Committee members, consultants, and staff.

4. Seating for the public will be on a first-come-first-served basis.

5. Rulings on requests to make oral statements and the time allotted may be obtained by prepaid telephone call to Mr. Cunningham at 301-427-4485 between 9 a.m. and 5 p.m. e.s.t. on December 11, 12, or 13, 1978.

6. Other information regarding the meeting may be obtained by prepaid telephone call to Mrs. Patricia Vecca at 301-427-4232 between 9 a.m. and 5 p.m. e.s.t.

7. A copy of the minutes of the meeting will be available for inspection at the NRC Public Document Room, 1717 H Street NW., Washington, D.C. 20555 on or before January 31, 1979. Copies of the minutes may be obtained upon payment of required charges.

The meeting is held in accordance with the Atomic Energy Act of 1954, as amended (primarily section 161a), Pub. L. 92-463 (Federal Advisory Committee Act), Executive Order 11769 and the Commission's regulations in Title 10, Code of Federal Regulations, Part 7.

Dated at Washington, D.C., this 26th day of October 1978.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc. 78-30817 Filed 10-31-78; 8:45 am]

[7590-01-M]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS

Meeting of the Subcommittee on the William H. Zimmer Nuclear Power Station

The ACRS subcommitee on the William H. Zimmer Nuclear Power Station will hold a meeting on November 16-17, 1978, at the Holiday Inn, 8050 Highway 42, Florence, Ky. 41094 to review the application of the Cincinnati Gas and Electric Co. for a permit to operate Unit 1 of this station. Notice of this meeting was published on October 20, 1978 (43 FR 49080).

In accordance with the procedures outlined in the FEDERAL REGISTER on October 4, 1978, (43 FR 45926), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only members of the subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows: *Thursday, November 16 and Friday, November 17, 1978, 3 p.m., November 16, and 8:30 a.m., November 17, until the conclusion of business each day.*

The subcommitee may meet in executive session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting and to formulate a report and recommendations to the full committee.

At the conclusion of the executive session, the subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, the Cincinnati Gas and Electric Co., and their consultants, pertinent to this review. The subcommittee may then caucus to determine whether the matters identified in the initial session have been adequately covered and whether the project is ready for review by the full committee.

In addition, it may be necessary for the subcommittee to hold one or more closed sessions for the purpose of exploring matters involving proprietary information. I have determined, in accordance with subsection 10(d) of Pub. L. 92-463, that, should such sessions be required, it is necessary to close these sessions to protect proprietary information (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Dr. Richard P. Savio, telephone 202-635-3267 between 8:15 a.m. and 5 p.m., e.s.t.

Background information concerning items to be considered at this meeting

can be found in documents on file and available for public inspection at the NRC Public Document Room, 1717 H Street, NW., Washington, D.C. 20555 and at the Clermont County Library, Third and Broadway Streets, Batavia, Ohio 45103.

Dated: October 26, 1978.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc. 78-30818 Filed 10-31-78; 8:45 am]

[7590-01-M]

PETITIONS FOR RULEMAKING

Issuance of Quarterly Report

The Nuclear Regulatory Commission has issued the September 30, 1978, quarterly report on petitions for rulemaking. This report is issued in accordance with 10 CFR 2.802 and is a quarterly summary of petitions for rulemaking that are pending final action.

A copy of this report, designated NRC Petitions for Rulemaking Pending Final Action as of September 30, 1978, is available for inspection and copying at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C.

Requests for single copies of this report, or requesting to be placed on an automatic distribution list for single copies of future reports, should be made in writing to the Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Dated at Bethesda, Md. this 26th day of October 1978.

For the Nuclear Regulatory Commission.

JOSEPH M. FELTON,
Director, Division of Rules and Records, Office of Administration.

[FR Doc. 78-30819 Filed 10-31-78; 8:45 am]

[7590-01-M]

[Docket Nos. 50-338A, 50-404A, 50-405A]

VIRGINIA ELECTRIC AND POWER CO., OLD DOMINION ELECTRIC COOPERATIVE AND NORTH CAROLINA ELECTRIC MEMBERSHIP CORP.

Receipt of Additional Antitrust Information: Time for Submission of Views on Antitrust Matters

Virginia Electric & Power Co., pursuant to section 103 of the Atomic Energy Act of 1954, as amended, filed on September 1, 1978, information requested by the Attorney General for Antitrust Review as required by 10 CFR Part 50, Appendix L. The information concerns two additional ownership participants, Old Dominion Electric Cooperative and North Carolina Electric Membership Corp. for the North Anna Power Station, Units 1, 2, 3 and 4 located on the south shore of Lake Anna in Louisa County, Va.

The information was filed in connection with the Virginia Electic & Power Co.'s applications for construction permits and operating licenses for the North Anna Power Station, Units 1, 2, 3 and 4. Unit 1 of the station is operating and Units 2, 3 and 4 are under constuction. The information submitted by Virginia Electic & Power Co. is the first part of the application for amendments to the North Anna Power Station, Unit 1 operating license and construction permits for Units 2, 3 and 4.

The original "Notice of Application for Construction Permit and Operating License," for the North Anna Power Station, Units 1 and 2 included the antitrust aspects of the application and was published in the FEDERAL REGISTER on December 30, 1970 (35 FR 19805). The original antitrust portion of the application for Units 3 and 4, "Notice of Receipt of Application for Construction Permit and Facility License; Time for Submission of Views on Antitrust Matters," was published in the FEDERAL REGISTER on October 28, 1971 (36 FR 20709).

A copy of the Virginia Electric & Power Co. letter, dated September 1, 1978, and above stated documents are available for public examination and copying for a fee at the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C. 20555 and at the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Va., 22901 and Office of the Board of Supervisors, Louisa County Courthouse, Main Street (P.O. Box 27), Louisa, Va. 23093.

Information in connection with the antitrust review of this application can be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, D.C., ATTN: Antitrust and Indemnity Group, Office of Nuclear Reactor Regulation.

Any person who wishes to have his views on the antitrust matters with respect to Old Dominion Electric Cooperative and North Carolina Electric Membership Corporation presented to the Attorney General for consideration should submit such views to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Chief, Antitrust and Indemnity Group, Office of Nuclear Reactor Regulation on or before January 2, 1979.

Dated at Bethesda, Md, this 23d day of October, 1978.

For the Nuclear Regulatory Commission.

OLAN D. PARR,
Chief, Light Water Reactors Branch No. 3, Division of Project Management.

[FR Doc. 78-30679 Filed 10-31-78; 8:45 am]

[3110-01-M]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on October 24, 1978 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the name of the agency sponsoring the proposed collection of information; the title of each request received; the agency form number(s) if applicable; the frequency with which the information is proposed to be collected; an indication of who will be the respondents to the proposed collection; the estimated number of responses; the estimated burden in reporting hours; and the name of the reviewer or reviewing division or office.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503, 202-395-4529, or from the reviewer listed.

NEW FORMS

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institutes of Health, Baltimore Infant Mortality Study Questionnaire, single-time, mothers of infant deaths and controls, 750 responses; 525 hours, Office of Federal Statistical Policy and Standard, Richard Eisinger, 673-7956.

REVISIONS

DEPARTMENT OF ENERGY

Retail Motor Gasoline Service Station Survey, EIA-79, monthly, selected service stations, 96,000 responses; 24,000 hours, C. Louis Kincannon, 395-3211.

DEPARTMENT OF DEFENSE

Defense Civil Preparedness Agency, DCPA summer shelter survey employment questionnaire, on occasion, engineering and architecture students, 2,000 responses; 500 hours, Marsha Traynham, 395-3773.

DEPARTMENT OF THE INTERIOR

U.S. Fish and Wildlife Service, end-of-the-year banding report 3-540, annually, all holders of Federal bird marking and salvage permits, 2,000 responses; 166 hours, Ellett, C.A., 395-6132.

BRENDA A. MAYBERRY,
Acting Budget and Management Officer.

[FR Doc. 78-30827 Filed 10-31-78; 8:45 am]

[3110-01-M]

[FMC 74-4]

COST PRINCIPLES APPLICABLE TO GRANTS AND CONTRACTS WITH STATE AND LOCAL GOVERNMENTS

This notice amends Federal Management Circular 74-4, "Cost principles applicable to grants and contracts with State and local governments," to expand its coverage to include federally recognized Indian tribal governments, to amend the paragraph dealing with general expenses, and to update the contact point for further information on the Circular. This amendment was recommended by the Department of the Interior and various Indian organizations, and has been concurred in by the major grant-making agencies.

1. Attachment A, paragraph A., is revised as follows:

"A. *Purpose and Scope.*

1. *Objectives.* This attachment sets forth principles for determining the allowable costs of programs administered by State, local, and federally recognized Indian tribal governments. The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal and State or local participation in the financing of a particular grant. They are designed to provide that federally assisted programs bear their fair share of costs recognized under these principles, except where restricted or prohibited by law. No provision for profit or other increment above cost is intended."

2. Attachment B, paragraph D.6., is revised as follows:

"6. *General expenses.* The salaries and expenses of the Office of the Governor of a State, or the chief executive of a political subdivision, are considered a cost of general State or local government and are unallowable. However, for a federally recognized Indian tribal government, only that portion of the salaries and expenses of the office of the chief executive that is a cost of general government is unallowable. The portion of salaries and expenses directly attributable to managing and operating programs is allowable. The allowable portion shall be determined by the Federal cognizant agency and the Indian government representatives."

3. The basic circular, paragraph 6., is revised as follows:

"6. *Inquiries.* Further information concerning this Circular may be obtained by contacting the Financial Management Branch, Budget Review Division, Office of Management and Budget, Washington, D.C. 20503, telephone 202-395-6823."

Effective date: This amendment takes effect on November 1, 1978.

JAMES T. MCINTYRE, JR.,
Director.

[FR Doc. 78-30666 Filed 10-31-78; 8:45 am]

[3110-01-M]

Office of Federal Procurement Policy

LIST OF STAFF TELEPHONE NUMBERS

New telephone numbers for the staff of the Office of Federal Procurement Policy, Office of Management and Budget, are as follows:

Administrator for Federal Procurement Policy, Lester A. Fettig, 212-395-5802.
Executive Assistant to the Administrator, Pauline B. Reeping, 212-395-5802.
Support Staff, Diane May, 212-395-5802.
Assistant for Labor Affairs and Personnel, Michael Martinez, 212-395-6810.
Associate Administrator for Acquisition Law, Thomas F. Williamson, 212-395-3455.
Deputy Associate Administrator (Small and Minority Business), Owen Birnbaum, 212-395-3455.
Special Assistant for Minority Business, Dorothy Dickerson, 212-395-3455.
Support Staff, Regina W. Pruitt, 212-395-3455.
Associate Administrator for Regulations and Procedures, LeRoy J. Haugh, 212-395-6166.
Deputy Associate Administrators, Joseph D. Cohn, Conroy B. Johnson, and Jack A. Nadol, 212-395-6166.
Support Staff, Margaret B. Davis, 212-395-6166.
Associate Administrator for Systems and Technology, Fred H. Dietrich, 212-395-6810.
Deputy Associate Administrator, Herman E. Shipley, 212-395-6810.
Support Staff, Beth E. Strauss, 212-395-6810.
Assistant Administrator for Logistics, James D. Currie, 212-395-7207.
Deputy Assistant Administrators, David F. Baker, William D. Russell, and Joseph F. Zimmer, 212-395-7207.
Support Staff, Barbara F. Bauserman, 212-395-7207.
Assistant Administrator for Regulations, William W. Thybony, 212-395-3300.
Deputy Assistant Administrators, William J. Maraist and Donald J. Vogler, 212-395-3300.
Procurement Systems Analyst, Alexander W. Keema, 212-395-3300.
Project Review Coordinator, Stratos D. Valakis, 212-395-3300.
Support Staff, Brenda F. Harper and Antoinette M. Johnson, 212-395-3300.
Assistant Administrator for Commercial Products, Daniel S. Wilson, 212-395-3254.
Deputy Assistant Administrators, Charles W. Clark and Louis Sorett, 212-395-3254.
Support Staff, Pamela M. Talbot, 212-395-3254.

Dated: Ocotober 24, 1978.

LESTER A. FETTIG,
Administrator.

[FR Doc. 78-30831 Filed 10-31-78; 8:45 am]

[8010-01-M]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 20744; 70-6200]

CONNECTICUT LIGHT & POWER CO.

Proposal to Terminate Lease and Acquire Leased Property

OCTOBER 24, 1978.

Notice is hereby given that the Connecticut Light and Power Co. ("CL&P"), Selden Street, Berlin, Conn. 06037, a public utility subsidiary of Northeast Utilities, a registered holding company, has filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designation sections 9(a) and 10 of the Act as applicable to the proposed transaction. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transaction.

CL&P is successor lessee of certain gas and electric transmission and distribution property and franchises under the provisions of a lease for a term of 999 years, dated December 19, 1906, ("Lease") made by the Connecticut Railway & Lighting Co. ("CR&L"), as lessor, to the Consolidated Railway Co., as amended by an agreement dated December 30, 1943, between CL&P and CR&L. CL&P presently uses the leased properties and franchises in its business as an electric and gas utility. Pursuant to the Agreement Re Transfer of Leased Properties and Termination of Lease, to secure a release from all of its obligations under the Lease, and to acquire the leased properties, all for a total consideration of $2,800,000. CL&P, as owner of the leased properties, will assume all the obligations or liabilities of CR&L with respect thereto. However, CR&L and its principal shareholder have agreed to indemnify and hold CL&P harmless with respect to all liabilities incurred by CL&P as a result of any of the events contemplat-

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ed by section 12(a) of the Agreement. Upon completion of the proposed transaction, CR&L will be dissolved and liquidated pursuant to a plan of complete liquidation which has been approved by its Board of Directors and shareholders. CL&P states that its acquisition of complete title to the leased properties is desirable. As owner of the properties, CL&P will have complete and unfettered discretion with respect to said properties and will not be bound by the lease covenants or by the annual lease payment obligations.

The fees, commissions, and expenses to be incurred in connection with the proposed transaction are estimated at $8,000, including legal fees of $3,000. The proposed termination of the Lease and sale of underlying assets by CR&L is subject to the jurisdiction of the Connecticut Public Utilities Control Authority. It is stated that no other state commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, no later than November 17, 1978, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the Above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or order issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 30813 Filed 10-27-78; 8:45 am]

[8010-01-M]

[Release No. 15279; SR-MSE-78-23]

MIDWEST STOCK EXCHANGE, INC.

Filing of Proposed Rule Change and Order Approving Proposed Rule Change

OCTOBER 24, 1978.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act"), notice is hereby given that on September 25, 1978, the Midwest Stock Exchange, Inc., ("MSE"), 120 South LaSalle Street, Chicago, Ill. 60603, filed with the Commission copies of a proposed rule change which provides that during the pendency of an underwritten distribution of the securities underlying call options trade on the MSE, the MSE shall impose trading restrictions on certain discount opening uncovered writing transactions in such options ("discount option transactions"). If specified conditions are met, the MSE would impose restrictions on discount option transactions commencing at the time the MSE is advised by the issuer or underwriter (or the Secretary of the MSE is otherwise notified) that the underwriters have initiated stabilizing activities in the underlying securities and terminating upon the termination of such stabilizing activities.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of this publication. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-MSE-78-23.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, NW., Washington, D.C.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchange, and in particular, the requirements of Section 6, and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof, in that it is consistent with proposed rule changes, recently approved by the Commission, relating to the imposition of restrictions on discount option transactions by both the Chicago Board Options Exchange, Inc.[1] and The American Stock Exchange, Inc.[2]

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referenced above be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-30814 Filed 10-27-78; 8:45 am]

[8010-01-M]

[Release No. 20746; 70-5678]

NATIONAL FUEL GAS CO., ET AL.

Post-Effective Amendment Regarding Proposed Intrasystem Transfer of Assets and Related Transactions

OCTOBER 24, 1978.

In the matter of National Fuel Gas Co., 30 Rockefeller Plaza, New York, N.Y. 10020; National Fuel Gas Distribution Corp., 10 Lafayette Square, Buffalo, N.Y. 14203; and National Fuel Gas Supply Corp., 308 Seneca Street, Oil City, Pa. 16301.

Notice is hereby given that National Fuel Gas Co. ("National"), a registered holding company, and two of its subsidiary companies, National Fuel Gas Distribution Corp. ("Distribution") and National Fuel Gas Supply Corp. ("Supply"), have filed with this Commission a post-effective amendment to the application-declaration in this proceeding pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6(a), 7, 9(a), 10, and 12 of the Act and rules 43 and 45 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement of the proposed transactions.

By orders in this proceeding dated June 9, 1975, and June 16, 1975 (HCAR Nos. 19031 and 19044), National was authorized to issue and sell, subject to the competitive bidding requirements of rule 50 promulgated under the Act, $21,000,000 principal amount of 9 percent Debentures, Series due June 1984, and Distribution and Supply were authorized to issue and sell corresponding notes to National having a maturity date of June 15, 1984, and aggregating $15,116,600 and $5,883,400, respectively.

By post-effective amendment to the application-declaration in this proceeding, it is now proposed that certain properties of Distribution which actually serve gas supply functions be transferred to Supply and that certain properties of Supply which actually serve gas distribution functions be transferred to Distribution. Because the value of properties to be transferred to Distribution exceeds the value of properties to be transferred to Supply, it is also proposed that Distribution will assume existing indebtedness of Supply to National in a principal amount equal to such excess. The indebtedness to be assumed will be a portion of the indebtedness issued by Supply to National as previously authorized in this proceeding. The proposed transfers of properties are stated to be in furtherance of the 1974 reorganization of National and its subsidiaries approved by this Commission in another proceeding (HCAR Nos. 18484 and 18499 (July 5, 1974, and July 15, 1974)) and are intended to rectify minor oversights in, and reflect changes in use after, the 1974 reorganization.

Distribution proposes to transfer by sale to Supply certain pipeline segments and associated regulator and measuring stations which actually serve supply functions rather than distribution functions. A detailed description and a map indicating the location of each of these facilities are included in the post-effective amendment to the application-declaration. The consideration to be received by Distribution will be equal to the original cost of the assets to be transferred by sale to Supply net of applicable accumulated reserves and deferred taxes at the date of transfer. Such consideration will consist entirely of a portion of the property to be transferred by Supply to Distribution similarly valued at original cost net of applicable accumulated reserves and deferred taxes at the date of transfer. On the basis of September 30, 1977, data, the net book value of the consideration to be received from Supply would be $481,957.25.

Supply proposes to transfer by sale to Distribution certain pipeline segments and associated regulator, measuring, and dispatching stations, a building, and certain land rights, which actually serve distribution functions rather than supply functions. A detailed description and a map indicating the location of each of these facilities are also included in the filing. The consideration to be received by Supply will be equal to the original cost of the assets to be transferred by sale to Distribution net of applicable accumulated reserves and deferred taxes at the date of transfer. Such consideration will consist of (a) the property to be transferred by Distribution to Supply, as noted above, similarly valued at original cost net of applicable accumulated reserves and deferred taxes at the date of transfer, and (b) assumption by Distribution of certain indebtedness of Supply to National. The principal amount of indebtedness to be assumed will equal the net book value of property transferred to Distribution less the net book value of property received by Supply. On the basis of September 30, 1977, data, the net book value of the property to be received from Distribution would be $481,967.25, and the principal amount of indebtedness to be assumed by Distribution would be $2,475,773.37, which amounts together equal the net book value of the property to be transferred by Supply to Distribution.

The indebtedness to be assumed by Distribution will be a portion of the indebtedness issued by Supply to National on June 25, 1975, as part of the National Fuel Gas system's most recent long-term debt financing in which Supply issued long-term notes. As part of that same financing, Distribution issued to National on the same date, a note having similar terms. (As noted above, such transactions were authorized in this proceeding.) The form of note to be issued by Distribution to National will be identical to the form of note already issued by Distribution in conjunction with the 1975 debt financing excepting only the principal amount. The note to be issued will bear interest at the rate of 9.2 percent and will mature on June 15, 1984.

The applicants-declarants request that the time for filing the certificate under rule 24(a) respecting the proposed transactions be extended to 60 days after consummation of such transactions to permit preparation of financial statements and schedules of total fees and expenses.

It is stated that the Federal Energy Regulatory Commission has jurisdiction over the proposed acquisitions and abandonments by Supply to be effected by the proposed transfers of assets; that the New York Public Service Commission has jurisdiction over the proposed transfers of assets and issuance of securities; and that the Pennsylvania Public Utility Commission has jurisdiction over the proposed transfers of assets and issuance of securities. A complete statement of the fees and expenses to be incurred in connection with the proposed transactions is to be filed by amendment.

Notice is further given that any interested person may, not later than November 30, 1978, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the post-effective amendment which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as now amended or as it may be further amended, may be granted and permitted to become effective as provided in rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-30815 Filed 10-31-78; 8:45 am]

[8010-01-M]

[Release No. 34-15281; File No. SR-SCCP-78-5]

STOCK CLEARING CORP. OF PHILADELPHIA

Self Regulatory Organization; Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended ("the Act") by Pub. L. 94-29, 16 (June 4, 1975), notice is hereby given that on October 16, 1978, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

Stock Clearing Corp. of Philadelphia (SCCP) proposes a rule change which will enable it to make the system changes necessary for linkage with the newly formed Philadelphia Depository Trust Co. This proposed change to Rule 5 provides that members may no longer elect trade-for-trade settlement, but will be required to use the Continuous Net Settlement (CNS) system.

[1] Securities Exchange Act Release No. 14842 (June 12, 1978), 43 FR 26647 (June 21, 1978).

[2] Securities Exchange Act Release No. 15032 (August 4, 1978), 43 FR 35775 (August 11, 1978).

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The text of the proposed rule change is attached hereto as Exhibit 1.

STATEMENT OF BASIS AND PURPOSE

The purpose of the foregoing rule change is to provide more efficient clearing through the interface of SCCP with the newly formed Philadelphia Depository Trust Co.

The proposed rule change will enable SCCP to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible in accordance with the purposes set forth in section 17A(b)(3)(F) of the Act.

Formal comments from members have been solicited in accordance with the bulletin attached as Exhibit 4 to SCCP's filing.

SCCP believes that no burden on competition will be imposed by the proposed rule change.

SCCP has requested the Commission to exercise its authority under section 19(b)(2) of the Act to approve the proposed rule change prior to November 13, 1978. Section 19(b)(2) of the Act requires the Commission to find good cause for so doing and to publish its reasons for so finding. SCCP believes that accelerated approval is necessary in order to improve its competitive position with other clearing agencies by providing more efficient services.

Within 35 days of the October 31, 1978, publication of this notice in the FEDERAL REGISTER (December 5, 1978), or within such longer period (i) as the Commission may designate up to 90 days of such date (January 29, 1978), if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549.

Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before November 15, 1978.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 26, 1978.

GEORGE A. FITZSIMMONS,
Secretary.

TEXT OF PROPOSED RULE CHANGE

The text of the proposed rule change is as follows (italics indicate new material and brackets indicate deletions): Rule 5. *In order to enable Stock Clearing Corporation of Philadelphia (SCCP) to make the system changes necessary for linkage with the newly formed Philadelphia Depository Trust Company, members no longer may elect trade-for-trade clearance. Members settling transactions at SCCP are required to use Continuous Net Settlement (CNS).*

[Members may elect trade-for-trade Clearance or Continuous Net Settlement (CNS). For trade-for-trade clearance on settlement day, delivery of securities by the selling clearing member pursuant to each sale shall be due at Stock Clearing Corporation at the exact sale price. Stock Clearing Corporation will prepare a duplicate delivery ticket for each such transaction, listing thereon the date, member's clearing number, number of shares, name of security, and amount of sale. These delivery tickets will be distributed to selling members prior to settlement date. The member shall enter on each delivery ticket the number and number of shares of each certificate delivered and attach ticket to the securities. Upon presentation at Stock Clearing Corporation, the member's copy of the delivery ticket will be receipted and returned to member.]

For CNS clearance members may deliver to Stock Clearing Corporation any portion of securities due on settlement date. Stock Clearing Corporation will provide members with appropriate receipt for securities delivered. Prior to settlement date, member will be notified of securities owed to Stock Clearing Corporation.

[Likewise, for trade-for-trade clearance, on settlement day, delivery of round-lots of securities by Stock Clearing Corporation to buying clearing members shall be due at the exact purchase prices. Stock Clearing Corporation will list as above each delivery of securities made to buying member on duplicate delivery tickets, and shall retain one copy with the member's receipt for the securities.]

[Also, for trade-for-trade clearance, on settlement day, payment in full for the total of all odd-lot purchases due for settlement that day shall be made by each member to Stock Clearing Corporation. Delivery of the securities will be made only upon receipt of instructions for transfer or for delivery of street certificates.]

For [member who elect] CNS settlement, Stock Clearing Corporation may deliver any portion of amount owed to member and obtain appropriate receipt from the member.

The last eight paragraphs of the present Rule 5 remain unchanged.

[FR Doc. 78-30816 Filed 10-31-78; 8:45 am]

[8015-01-M]

SELECTIVE SERVICE SYSTEM

REPORT

Pursuant to Executive Order 12044, Section 5(a)

The draft report was published in the FEDERAL REGISTER on April 11, 1978 at page 15212. No comment was received within 60 days after the publication. The draft report without change is made the report.

Regulations issued by the Selective Service System may be divided into five groups:

Group 1 consists of 32 CFR Part 1700—Reconciliation Service. These regulations were issued by the Director of Selective Service pursuant to Executive Order 11804 to provide a program of reconciliation service in accord with Proclamation 4313. They will be terminated when persons now in the program complete their service which is estimated to be December 1978.

Group 2 consists of 32 CFR Part 1690—Determination of Availability of Members of the Standby Reserve of the Armed Forces for Order to Active Duty. These regulations were issued by the Director pursuant to 10 U.S.C. 672(a), and were issued without opportunity for public comment. They are exempt from the provisions of Executive Order 12044 by section 6(b)(2) thereof.

Group 3 consists of 32 CFR Part 1060—Alternate Service. These regulations are issued by the Director pursuant to section 6(j) of the Military Selective Service Act (50 App. U.S.C. 456(j)). These reglations are issued in accord with procedures prescribed in section 13(b) of the Military Selective Service Act (50 App. U.S.C. 463(b)). Not less than 30 days are allowed for public comment on proposed changes to these regulations.

Group 4 consists of 32 CFR sections 1604.23, .25–28, .53, .55–59, .81; Parts 1608, 1613, 1617, 1619; and sections 1621.2 and .3. These regulations are issued by the Director pursuant to Executive Order 9979 (32 CFR 1604.1) in accord with procedures prescribed in section 13(b) of the Military Selective Service Act (50 App. U.S.C. 463(b)). Not less than 30 days are allowed for public comment on proposed changes to these regulations.

Group 4 consists of 32 CFR Chapter XVI other than sections and parts thereof identified above. These regulations are issued by the Director in accord with procedures prescribed in Executive Order 11623 and section 13(b) of the Military Selective Service Act (50 App. U.S.C. 463(b)). Not less than 30 days are allowed for public comment on proposed changes to these regulations.

All regulations issued by the Director are considered "significant agency regulations" for the purposes of section 2, Executive Order 12044.

The Director only issues regulations necessary to implement the Military Selective Service Act (50 App. U.S.C. 451 *et seq.*), 10 U.S.C. 672(a) and Executive Order 11804.

In accord with Executive Order 12044, at least 60 days will be allowed for comment on proposed regulations in the future.

The Selective Service System currently is neither registering nor otherwise processing persons for induction. Regulations other then 32 CFR Parts 1700 and 1608 are essentially in a standby status that do not require reexamination pending statutory enactment or Presidential Proclamation directing the resumption of registration. 32 CFR Part 1700, Group 1, above, will probably be terminated in December 1978. Prior change is not indicated.

32 CFR Part 1608—Public Information has daily application. It was last amended on October 7, 1976. Experience in the administration of this part does not indicate the desirability of further revision within the foreseeable future.

ROBERT E. SHUCK,
Acting Director.

[FR Doc. 78-30841 Filed 10-31-78; 8:45 am]

[4710-08-M]

DEPARTMENT OF STATE

[Public Notice 638]

LEGAL ADVISER

Delegation of Authority No. 142

By virtue of the authority vested in me by the Act of June 20, 1874 (18 Stat. 90, 22 U.S.C. 2664), by section 4 of the Act of May 26, 1949 (63 Stat. 111, 22 U.S.C. 2658), as amended, and by Executive Order 11517 (35 FR 4937), I hereby delegate to the Legal Adviser all the authority and functions vested in the Secretary of State by Executive Order 11517, which relates to issuance and signature of warrants appointing agents to return fugitives from justice extradited to the United States. Notwithstanding this delegation of authority, the Secretary of State or the Deputy Secretary of State may at any time exercise any authority conferred upon the Secretary of State by Executive Order 11517.

This delegation of authority supersedes Department of State Delegation of Authority No. 130 of July 22, 1974 (Public Notice No. 426, 39 FR 27922).

Dated: October 13, 1978.

CYRUS R. VANCE,
Secretary of State.

[FR Doc. 78-30864 Filed 10-31-78; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

[Corrected S.O. No. 1304; Exception No. 12]

ATCHISON, TOPEKA & SANTA FE RAILWAY CO.

Decision

To the Atchison, Topeka & Santa Fe Railway Co.: The Atchison, Topeka & Santa Fe Railway Co. (ATSF) owns 13,300 jumbo covered hopper cars subject to Corrected Service Order No. 1304. On October 1, 1978, 180 or 0.14 percent of these cars were being used in unit-grain-train services and 13,120 for transporting grain and potash.

On October 6, 1978, the ATSF reported that it had a surplus of jumbo covered hopper cars available for general grain traffic but that because of the provisions of Corrected Service Order No. 1304 limiting to twenty (20) percent of ownership the number of jumbo covered hopper cars it may use in unit-grain-train services, it is unable to furnish an additional 650 cars to assist other lines in transporting grain in unit-grain-trains routed via its line. Use by ATSF of 650 of its cars in unit-grain-train service will not impair its ability to furnish jumbo covered hopper cars to general grain shippers at the present level of orders for these cars.

It is ordered, That pursuant to the authority vested in the Railroad Service Board by section (a)(6) of Corrected Service Order No. 1304, The Atchison, Topeka & Santa Fe Railway Co. (ATSF) is authorized to place an additional 650 jumbo covered hopper cars in unit-grain-train service for five (5) trips regardless of the provisions of section (a)(5) of this order.

By the Railroad Service Board, members Joel E. Burns, Robert S. Turkington, and John R. Michael. Member John R. Michael not participating.

Effective October 10, 1978.

Expires December 31, 1978.

JOEL E. BURNS,
Chairman,
Railroad Service Board.

FR Doc. 78-30899 Filed 10-31-78; 8:45 am]

[7035-01-M]

[Revised S.O. No. 1252; I.C.C. Order No. 69, Amendment No. 1]

CHESAPEAKE & OHIO RAILWAY CO.

Rerouting Traffic

To the Chesapeake & Ohio Railway Co. Upon further consideration of I.C.C. Order No. 69 (The Chesapeake & Ohio Railway Co.), and good cause appearing therefor:

It is ordered, That I.C.C. Order No. 69 is amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., October 31, 1978, unless otherwise modified, changed, or suspended.

Effective date: This amendment shall become effective at 11:59 p.m., September 30, 1978.

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of the amendment shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., September 27, 1978.

INTERSTATE COMMERCE COMMISSION,
ROBERT S. TURKINGTON,
Agent.

[FR Doc. 78-30897 Filed 10-31-78; 8:45 am]

[7035-01-M]

IRREGULAR-ROUTE MOTOR COMMON CARRIERS OF PROPERTY

Elimination of Gateway Letter-Notices

OCTOBER 25, 1978.

The following letter-notices of proposals to eliminate gateways for the purpose of reducing highway congestion, alleviating air and noise pollution, minimizing safety hazards, and conserving fuel have been filed with the Interstate Commerce Commission under the Commission's *Gateway Elimination Rules* (49 CFR 1065), and notice thereof to all interested persons is hereby given as provided in such rules.

An original and two copies of protests against the proposed elimination of any gateway herein described may be filed with the Interstate Commerce Commission on or before November 13, 1978. A copy must also be served upon applicant or its representative. Protests against the elimination of a

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gateway will *not* operate to stay commencement of the proposed operation.

Successively filed letter-notices of the same carrier under these rules will be numbered consecutively for convenience in identification. Protests, if any, must refer to such letter-notices by number.

The following applicants seek to operate as a *common carrier*, by motor vehicles, over irregular routes.

MC 112304 (Sub-E555) (Correction), filed July 11, 1978, published in the FEDERAL REGISTER issue of September 13, 1978, and republished, as corrected, this issue. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Guard rail and component parts*, from those points in KY on and west of a line beginning at the KY-TN State line, and extending north along Interstate Hwy 75 to junction with Green River Parkway, then north along to junction U.S. Hwy 60 BYP, then west along U.S. Hwy 60 BYP to junction U.S. Hwy 431, then north along U.S. Hwy 431 to the IN-KY State line on the Ohio River, to points in VT. "Limitation: The certificate in MC-112304 (Sub-65) shall be of no further force and effect after August 9, 1980." (Gateway eliminated: Evansville, IN.)

NOTE.—The purpose of this republication is to clarify Interstate Hwy 75 which read as Interstate Hwy 65 in FEDERAL REGISTER publication.

MC 117574 (Sub-E160), filed January 20, 1976. Applicant: DAILY EXPRESS, INC., P.O. Box 39, Carlisle, PA 17013. Representative: E. S. Moore, Jr. (same address as above). (1) *Stone crushing equipment and automatic unloading equipment*, the transportation of which because of their size or weight, require the use of special equipment, and *related materials, supplies and parts of such commodities* when their transportation is incidental thereto, and (2) *self-propelled stone crushing equipment and self-propelled automatic loading equipment* weighing 15,000 pounds or more, and *related machinery, tools, parts, and supplies* moving in connection therewith, restricted in (2) to articles transported on trailers, (A) between points in the Counties of Macomb, Oakland, and Wayne, MI, on the one hand, and, on the other, points in AZ, CA, CO, CT, DE, ID, KS, LA, ME, MD, MA, MS, MT, NV, NH, NJ, NY, NM, NC, ND, OK, RI, TN, TX, UT, VT, WA, WY, and DC, and those points in IL on and south of a line beginning at the IL-IN State line on IL Hwy 15, then along IL Hwy 15 to junction IL Hwy 127, then along IL Hwy 127 to junction IL Hwy 140, then along IL Hwy 140 to junction U.S. Hwy 67, then along U.S. Hwy 67 to the IL-MO State line; points in IN on and south of a line beginning at the IN-KY State line on U.S. Hwy 31E, then along U.S. Hwy 31E to junction IN Hwy 62, then along IN Hwy 62 to junction IN Hwy 64, then along IN Hwy 64 to the IL-IN State line, points in MO on and south of a line beginning at the IL-MO State line on U.S. Hwy 67, then along U.S. Hwy 67 to junction MO Hwy 140, then along MO Hwy 140 to junction Interstate Hwy 70, then along Interstate Hwy 70 to junction U.S. Hwy 63, then along U.S. Hwy 63 to junction U.S. Hwy 36, then along U.S. Hwy 36 to junction U.S. Hwy 69, then along U.S. Hwy 69 to junction U.S. Hwy 136, then along U.S. Hwy 136 to the MO-NE State line, points in NE on and north and east of a line beginning at the MO-NE State line on U.S. Hwy 136, then along U.S. Hwy 136 to junction U.S. Hwy 81, then along U.S. Hwy 81 to junction U.S. Hwy 34, then along U.S. Hwy 34 to junction U.S. Hwy 281, then along U.S. Hwy 281 to junction NE Hwy 92, then along NE Hwy 92 to junction NE Hwy 11, then along NE Hwy 11 to junction NE Hwy 91, then along NE Hwy 91 to junction U.S. Hwy 183, then along U.S Hwy 183 to the NE-SD State line, points in PA on and east of U.S. Hwy 15, and points in SD on and west of a line beginning at the NE-SD State line on U.S. Hwy 183, then north along U.S Hwy 183 to junction SD Hwy 44, then along SD Hwy 44 to junction U.S. Hwy 281, then along U.S. Hwy 281 to junction U.S. Hwy 14, then along U.S. Hwy 14 to junction U.S. Hwy 81, then along U.S. Hwy 81 to the ND-SD State line; (B) between Battle Creek, MI, on the one hand, and, on the other, points in AZ, CA, CT, DE, ID, LA, ME, MD, MA, NV, NH, NJ, NM, NY, NC, OR, RI, TX, UT, VT, WA, and DC, points in AR on and south of a line beginning at the AR-MS State line on U.S Hwy 82, then along U.S. Hwy 82 to junction U.S. Hwy 65, then along U.S. Hwy 65 to junction U.S. Hwy 270, then along U.S. Hwy 270 to the AR-OK State line; points in CO on and west of a line beginning at the CO-KS State line on CO Hwy 96, then along CO Hwy 96 to junction U.S. Hwy 50, then along U.S. Hwy 50 to junction U.S. Hwy 285, then along U.S. Hwy 285 to junction U.S. Hwy 24, then along U.S. Hwy 24 to junction CO Hwys 13 and 789, then along CO Hwys 13 and 789 to the CO-WY State line; points in KS on and west of a line beginning at the KS-OK State line on U.S. Hwy 183, then along U.S. Hwy 183 to junction U.S. Hwy 50, then along U.S. Hwy 50 to junction KS Hwy 25, then north along KS Hwy 25 to junction KS Hwy 96, then along KS Hwy 96 to the CO-KS State line; points in MS on and south of a line beginning at the AL-MS State line, on U.S. Hwy 72, then along U.S. Hwy 72 to junction U.S. Hwy 45, then along U.S. Hwy 45 to junction with the Natchez Trace National Parkway, then along the Natchez Trace National Parkway to junction U.S. Hwy 82, then along U.S. Hwy 82 to the AR-MS State line; points in MT on and west of a line beginning at the MT-WY State line on U.S. Hwy 310, then along U.S. Hwy 310 to junction Interstate Hwy 90, then along Interstate Hwy 90 to junction U.S. Hwy 87, then along U.S. Hwy 87 to junction MT Hwy 19, then along MT Hwy 19 to junction U.S. Hwy 191, then along U.S. Hwy 191 to junction U.S. Hwy 2, then along U.S. Hwy 2 to junction MT Hwy 247, then along MT Hwy 247 to the United States-Canadian Border; points in OK on and south of a line beginning at the AR-OK State line on U.S. Hwy 270, then along U.S. Hwy 270 to junction U.S. Hwy 183, then along U.S. Hwy 183 to the KS-OK State line; points in PA on and east of U.S. Hwy 15; points in TN on and east of U.S. Hwy 127, and points in WY on and west of a line beginning at the CO-WY State line on WY Hwy 789, then along WY Hwy 789 to junction Interstate Hwy 80, then along Interstate Hwy 80 to junction U.S. Hwy 187, then along U.S. Hwy 187 to junction WY Hwy 28, then along WY Hwy 28 to junction WY Hwy 789, then along WY Hwy 789 to the MT-WY State line. (Gateway eliminated: Galion, OH.)

MC 117574 (Sub-E161), filed January 20, 1976. Applicant: DAILY EXPRESS, INC., P.O. Box 39, Carlisle, PA 17013, Representative: E. S. Moore, Jr. (same as above). *Tractors* (other than truck tractors), *parts of such tractors and incidental machinery* when moving therewith, and *trailers designed for the transportation of the tractors described above*, the transportation of which because of size or weight, require the use of special equipment, *and/or related materials, supplies and/or parts of such commodities* when their transportation is incidental thereto, *and/or self-propelled tractors* (other than truck tractors) each weighing 15,000 pounds or more, and *related machinery, tools, parts and supplies* moving in connection with such tractors, restricted to self-propelled tractors only when moving on trailers, (1) between Battle Creek, MI, on the one hand, and, on the other, points in AL, AZ, AR, CA, CO, FL, GA, LA, MS, NV, NM, NC, OK, SC, TX, UT, WY, and all points in the following partially described states; points in KS on, south and west of a line beginning at the KS-NE State line on U.S. Hwy 283, then along U.S. Hwy 283 to junction U.S. Hwy 36, then along U.S. Hwy 36 to junction U.S. Hwy 81, then along U.S. Hwy 81 to junction U.S. Hwy 24, then along U.S.

Hwy 24 to junction U.S. Hwy 59, then along U.S. Hwy 59 to junction U.S. Hwy 54, then along U.S. Hwy 54 to the KS-MO State line; points in MO on and south of a line beginning at the KS-MO State line on U.S. Hwy 54, then along U.S. Hwy 54 to junction MO Hwy 13, then along MO Hwy 13 to junction U.S. Hwy 60, then along U.S. Hwy 60 to junction MO Hwy 53, then along MO Hwy 53 to junction MO Hwy 84, then along MO Hwy 84 to the Mississippi River and the MO-TN State line; points in NE on and west of a line beginning at the NE-SD State line on U.S. Hwy 183, then along U.S. Hwy 183 to junction U.S. Hwy 20, then along U.S. Hwy 20 to junction NE Hwy 7, then along NE Hwy 7 to junction NE Hwy 91, then along NE Hwy 91 to junction NE Hwy 2, then along NE Hwy 2 to junction NE Hwy 21, then along NE Hwy 21 to junction U.S. Hwy 283, then along U.S. Hwy 283 to the KS-NE State line; points in SD on and west of a line beginning at the NE-SD State line on U.S. Hwy 183, then along U.S. Hwy 183 to junction U.S. Hwy 18, then along U.S. Hwy 18 to junction SD Hwy 47, then along SD Hwy 47 to junction U.S. Hwy 16, then along U.S. Hwy 16 to junction U.S. Hwy 281, then along U.S. Hwy 281 to the ND-SD State line; points in TN on and south of a line beginning at the MO-TN State line on the Mississippi River on TN Hwy 20, then along TN Hwy 20 to junction TN Hwy 99, then along TN Hwy 99 to junction Alt. U.S. Hwy 41, then along Alt. U.S. Hwy 41 to junction U.S. Hwy 64, then along U.S. Hwy 64 to junction U.S. Hwy 11, then along U.S. Hwy 11, to junction TN Hwy 33, then along TN Hwy 33 to the TN-VA State line; points in VA on and south of a line beginning at the VA-WV State line on U.S. Hwy 60, then along U.S. Hwy 60 to junction U.S. Hwy 15, then along U.S. Hwy 15 to junction U.S. Hwy 460, then along U.S. Hwy 460 to Norfolk, VA, and the Chesapeake Bay and the Atlantic Ocean. (Gateways eliminated: points in an 80-mile circle of Columbus, OH (Ottowa, OH) and points of Churubusco, IN or 5 miles east thereof on U.S. Hwy 33). (2) Between Benton Harbor, MI, on the one hand, and, on the other, points in AZ, CA, FL, NV, SC, UT, and DC, and points in the following described states; points in AL on and south of a line beginning at the AL-GA State line on AL Hwy 26, then along AL Hwy 26 to junction U.S. Hwy 29, then along U.S. Hwy 29 to junction U.S. Hwy 84, then along U.S. Hwy 84 to the AL-MS State line; points in CO on and west of a line beginning at the CO-NM State line on I Hwy 25, then along I Hwy 25 to junction CO Hwy 69, then along CO Hwy 69 to junction U.S. Hwy 50, then along U.S. Hwy 50 to junction CO Hwy 92, then along CO Hwy 92 to junction CO Hwy 65, then along CO Hwy 65 to junction U.S. Hwy 24, then along U.S. Hwy 24 to junction CO Hwy 13, then along CO Hwy 13 to the CO-WY State line; points in GA on and east of a line beginning at the GA-NC State line on U.S. Hwy 441, then along U.S. Hwy 441 to Athens, and junction with U.S. Hwy 78, then along U.S. Hwy 78 to junction GA Hwy 11, then along GA Hwy 11 to junction GA Hwy 83, then along GA Hwy 83 to junction U.S. Hwy 341, then along U.S. Hwy 341 to junction U.S. Hwy 80, then along U.S. Hwy 80 to the AL-GA State line; points in LA on and south of a line beginning at the LA-MS State line on U.S. Hwy 61, then along U.S. Hwy 61 to junction LA Hwy 10, then along LA Hwy 10 to junction U.S. Hwy 171, then along U.S. Hwy 171 to junction LA Hwy 8, then along LA Hwy 8 to the LA-TX State line; points in MS on and south of a line beginning at the AL-MS State line on U.S. Hwy 84, then along U.S. Hwy 84 to junction MS Hwy 27, then along MS Hwy 27 to junction MS Hwy 44, then along MS Hwy 44 to junction MS Hwy 24, then along MS Hwy 24 to junction U.S. Hwy 61, then along U.S. Hwy 61 to the LA-MS State line; points in NM on and west of a line beginning at the NM-TX State line on U.S. Hwy 66, then along U.S. Hwy 66 to junction NM Hwy 39, then along NM Hwy 39 to junction U.S. Hwy 56, then along U.S. Hwy 56 to junction I Hwy 25, then along I Hwy 25 to the CO-NM State line; points in NC on and east of a line beginning at the NC-VA State line on U.S. Hwy 221, then along U.S. Hwy 221 to junction U.S. Hwy 70, then along U.S. Hwy 70 to junction U.S. Hwy 23, then along U.S. Hwy 23 to the GA-NC State line; points in TX on, south and west of a line beginning at the LA-TX State line on TX Hwy 63, then along TX Hwy 63 to junctions U.S. Hwy 190, then along U.S. Hwy 190 to junction U.S. Hwy 183, then along U.S. Hwy 183 to junction U.S. Hwy 84, then along U.S. Hwy 84 to junction U.S. Hwy 385, then along U.S. Hwy 385 to junction U.S. Hwy 66, then along U.S. Hwy 66, to the NM-TX State line; points in VA on, south and east of a line beginning at the Potomac River on U.S. Hwy 301, then along U.S. Hwy 301 to junction VA Route 3, then along VA Route 3 to junction VA Route 20, then along VA Route 20 to junction U.S. Hwy 250, then along U.S. Hwy 250 to junction U.S. Hwy 11, then along U.S. Hwy 11 to junction U.S. Hwy 21, then along U.S. Hwy 21 to the NC-VA State line; and points in WY on and west of a line beginning at the MT-WY State line on U.S. Hwy 89, then along U.S. Hwy 89 to junction U.S. Hwy 187, then along U.S. Hwy 187 to junction WY 430, then along WY 430 to the CO-WY State line. (Gateways eliminated: points in an 80-mile circle of Columbus, OH (Ottowa, OH) and points on U.S. Hwy 33 5 miles east of Churubusco, IN). (3) Between point, in OH on and south of I Hwy 70, on the one hand, and, on the other, points in the states of AZ, CA, CO, NE, NV, NM, SD, UT, WY, and points in the following described states: points in KS on and west of a line beginning at the KS-MO State line on U.S. Hwy 59, then along U.S. Hwy 59 to junction KS Hwy 4, then along KS Hwy 4 to junction U.S. Hwy 24, then along U.S. Hwy 24 to junction U.S. Hwy 75, then along U.S. Hwy 75 to junction I Hwy 35, then along I Hwy 35 to junction U.S. Hwy 77, then along U.S. Hwy 77 to the KS-OK State line; points in OK on and west of a line beginning at the KS-OK State line on U.S. Hwy 77, then along U.S. Hwy 77 to junction U.S. Hwy 177, then along U.S. Hwy 177 to junction OK Hwy 13, then along OK Hwy 13 to junction OK Hwy 3, then along OK Hwy 3 to junction U.S. Hwy 75, then along U.S. Hwy 75 to the OK-TX State line; and, points in TX on and west of a line beginning at the OK-TX State line on U.S. Hwy 75, then along U.S. Hwy 75 to Galveston and the Gulf of Mexico. (Gateways eliminated: point on U.S. Hwy 33, 5 miles east of Churubusco, IN). (4) Between points in that part of OH bounded by a line beginning at I Hwy 70 at the OH-IN State line, extending along I Hwy 70 to the Ohio River, then along the Ohio River to the OH-PA State line, to OH Hwy 5, then along OH Hwy 5 to junction OH Hwy 44, then along OH Hwy 44 to junction U.S. Hwy 224, then along U.S. Hwy 224 to junction OH Hwy 61, then along OH Hwy 61 to junction OH Hwy 98, then along OH Hwy 98 to junction U.S. Hwy 30N, then along U.S. Hwy 30N to junction OH Hwy 67, then along OH Hwy 67 to junction I Hwy 75, then along I Hwy 75 to junction U.S. Hwy 33, then along U.S. Hwy 33 to junction OH Hwy 29, then along OH Hwy 29 to the IN-OH State line, then along the IN-OH State line to the point of origin, on the one hand, and, on the other, points in AZ, AR, CA, CO, KS, LA, NE, NV, NM, OK, SD, UT, TX, WY, and points in the following described states: points in AL on and south of a line beginning at the AL-MS State line on U.S. Hwy 84, then along U.S. Hwy 84 to junction U.S. Hwy 31, then along U.S. Hwy 31 to junction AL Hwy 41, then along AL Hwy 41 to the AL-FL State line; points in FL on and west of a line beginning at the AL-FL State line on FL Hwy 85, then along FL Hwy 85 to the Gulf of Mexico; and points in MS on and west of a line beginning at the AR-MS State line on U.S. Hwy 49, then along U.S. Hwy 49 to junction

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U.S. Hwy 49E, then along U.S. Hwy 49E to junction U.S. Hwy 82, then along U.S. Hwy 82 to junction MS Hwy 35, then along MS Hwy 35 to junction MS Hwy 18, then along MS Hwy 18 to the AL-MS line. (Gateway eliminated: point 5 miles east of Churubusco, IN on U.S. Route 33). (5) Between points in OH on and north of a line beginning at the OH-PA State line on OH Hwy 5, then along OH Hwy 5 to junction OH Hwy 44, then along OH Hwy 44 to junction U.S. Hwy 224, then along U.S. Hwy 224 to junction OH Hwy 61, then along OH Hwy 61 to junction OH Hwy 98, then along OH Hwy 98 to junction U.S. Hwy 30N, then along U.S. Hwy 30N to junction OH Hwy 67, then along OH Hwy 67 to junction I Hwy 75, then along I Hwy 75 to junction U.S. Hwy 33, then along U.S. Hwy 33 to junction OH Hwy 29, then along OH Hwy 29 to the IN-OH State line, on the one hand, and, on the other, all points in AL, AZ, AR, CA, CO, KS, LA, MS, NE, NV, NM, OK, SD, UT, TX, WY, and points in the following described states: points in FL on and west of a line beginning at the FL-GA State line on U.S. Hwy 41, then along U.S. Hwy 41 to junction FL Hwy 100, then along FL Hwy 100 to the Atlantic Ocean; points in GA, on and west of a line beginning at the GA-TN State line on U.S. Hwy 41, then along U.S. Hwy 41 to the FL-GA State line; and points in TN on and west of a line beginning at the KY-TN State line on U.S. Hwy 41, then along U.S. Hwy 41 to the GA-TN State line. (Gateway eliminated: point 5 miles from Churubusco, IN on U.S. Hwy 33 (East)).

MC 117574 (Sub-E162), filed January 20, 1976. Applicant: DAILY EXPRESS, INC., P.O. Box 39, Carlisle, PA 17013. Representative: E. S. Moore, Jr. (same as above). (1) *Such commodities* as by reason of their size or weight require the use of special equipment (except machinery, equipment, materials, and supplies used in or in connection with, the construction, operations, repair, servicing, maintenance, and dismantling of pipelines) and *related materials, supplies and parts* of such commodities when their transportation is incidental thereto, and, (2) *self-propelled articles*, each weighing 15,000 pounds or more, and *related machinery, tools, parts, and supplies* moving in connection therewith, restricted in (2) to the transportation of commodities which are transported on trailers, and further restricted against the transportation of machinery, equipment, materials, and supplies used in or in connection with, the construction, operation, repair, servicing, maintenance, and dismantling of pipelines, between points in CT, ME, MA, NH, and VT, on the one hand, and, on the other, points in IL, IN, IA, KY, MI, MN, MO, and WI. (Gateways eliminated: points in OH (Gallipolis and Norwalk) and points in described area of PA (Bradford and Lewistown, PA).

MC 123407 (Sub-E549), filed July 25, 1978. Applicant: SAWYER TRANSPORT INC., South Haven Square, U.S. Hwy 6, Valparaiso, IN 46383. Representative: Richard L. Loftus (same as above). *Composition board and materials, supplies and accessories* used in the installation thereof (except commodities in bulk, commodities requiring special equipment), in containers or in trailers, having an immediately prior or subsequent movement by water, or by water-rail, or by air, from points in WA, OR, and ID to points in OH, PA, and points in IN on and north of IN Hwy 64. (Gateway eliminated: Superior, WI).

MC 123407 (Sub-E582), filed July 25, 1978. Applicant: SAWYER TRANSPORT INC., South Haven Square, U.S. Hwy 6, Valparaiso, IN 46383. Representative: Richard L. Loftus (same as above). *Windows, doors, building woodwork and materials and accessories* used in the installation thereof (except commodities in bulk and commodities because of size or weight require the use of special equipment or special handling), in containers or in trailers, having an immediately prior or subsequent movement by water, or by water-rail, or by air, from points in WA, to points in MI, IN, OH, PA, NY, VT, NH, MA, ME, MS, CT, RI, NJ, DE, MD, DC, WV, VA, KY, TN, NC, SC, and AL. (Gateway eliminated: Dubuque, IA).

MC 123407 (Sub-E591), filed July 25, 1978. Applicant: SAWYER TRANSPORT INC., South Haven Square, U.S. Hwy 6, Valparaiso, IN 46383. Representative: Richard L. Loftus (same as above). *Windows, doors, building woodwork, and materials and accessories* used in the installation thereof (except commodities in bulk and commodities because of size or weight, require the use of special equipment or special handling), in containers or in trailers, having an immediately prior or subsequent movement by water, or by water-rail, or by air, from Columbus, OH, to points in WA, OR, ID, WY, CA, NV, UT, AZ, CO, and NM. (Gateway eliminated: Dubuque, IA).

MC 123407 (Sub-E634), filed July 25, 1978. Applicant: SAWYER TRANSPORT INC., South Haven Square, U.S. Hwy 6, Valparaiso, IN 46383. Representative: Richard L. Loftus (same as above). *Composition board, materials and accessories* used in the installation of composition board and ceiling tile (except lumber, commodities in bulk and commodities requiring special equipment), in containers or trailers, having an immediately prior or subsequent movement by water, or by water-rail, or by air, from points in TX, to points in ME, NH, VT, MA, RI, CT, NY, NJ. (Gateway eliminated: Dubuque, IA).

MC 124154 (Sub-E9), filed June 5, 1978. Applicant: WINGATE TRUCKING CO., INC., 1004 21st Avenue, Albany, GA 31702. Representative: Thomas F. Panebianco, P.O. Box 1200, Tallahassee, FL 32302. *Agricultural chemicals and agricultural chemical materials*, in containers, between points in AL north of US Hwy 278, on the one hand, and, on the other, points in VA, on and east of a line beginning at the VA-NC State line extending along U.S. Hwy 220 to Roanoke, then along U.S. Hwy 311 to the VA-WV State line. (Gateway eliminated: facilities of Helena Chemical Co. at Gainesville, GA).

MC 124154 (Sub-E11), filed June 5, 1978. Applicant: WINGATE TRUCKING CO., INC., 1004 21st Avenue, Albany, GA 31702. Representative: Thomas F. Panebianco, P.O. Box 1200, Tallahassee, FL 32302. *Agricultural chemicals and agricultural chemical materials*, in containers, between points in AL north of U.S. Hwy 278, on the one hand, and, on the other, points in NC on and east of a line beginning at the NC-SC State line extending along U.S. Hwy 221 to Rutherfordton, then along U.S. Hwy 64 to Morganton, then along NC Hwy 18 to the NC-VA State line. (Gateway eliminated: facilities of Helena Chemical Co. at Gainesville, GA.)

MC 124154 (Sub-E12), filed June 5, 1978. Applicant: WINGATE TRUCKING CO., INC., 1004 21st Avenue, Albany, GA 31702. Representative: Thomas F. Panebianco, P.O. Box 1200, Tallahassee, FL 32302. *Agricultural chemicals and agricultural chemical materials*, in containers, between points in AL, on the one hand, and, on the other, points in SC. (Gateway eliminated: facilities of Helena Chemical Co. at Gainesville, Wrightsville and Cordele, GA.)

By the Commission.

H. G. Homme, Jr.,
Acting Secretary.

[FR Doc. 78-30898 Filed 10-31-78; 8:45 am]

sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409), 5 U.S.C. 552b(e)(3).

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[6320-01-M]

1

[M-175, Oct. 26, 1978]

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 10 a.m., November 2, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

1. Ratification of items adopted by notation.

2. Docket 30356, *Transcontinental Low-Fare Route Proceeding*, (instructions to staff) for information memo dated September 26, 1978.

3. Dockets 33093 and 32318, Domestic Cargo Rules and Revised Air Freight Forwarder Rules (OGC).

4. Notice of proposed rulemaking amending Part 298 of the Board's Economic Regulations to reduce the reporting requirements of air taxi operators and commuter air carriers (Memo 8250 BAS, BPDA, OGC, OCCR, OEA BCP).

5. Docket 32435, Emergency Air Transportation Requirements. Air Line Pilots Association (ALPA) has petitioned to modify the concurring opinion in Order 78-8-199 (Memo 7907-B, BPDA).

6. Docket 32926, Eastern's Application for Temporary Suspension of Service at Chattanooga, Tenn. (Memo 8254, BPDA).

7. Docket 26291, Petition for Immediate Restoration of Adequate Air Service for American Samoa (Memo 7651-C, BPDA, OCCR, BIA, OGC).

8. Docket 33381, Air Wisconsin's Petition for Show-Cause Order for Nonstop Authority for Toledo-Detroit, Toledo-Chicago, and Lincoln-Grand Island, Nebr. (Memo 8262, BPDA).

9. Dockets 32411 and 33091, *Dallas/Ft. Worth-New Orleans-Florida Service Investigation* and *Florida Service Case* (Memo 8258, OGC).

10. Docket 32709, *Tucson-San Diego Nonstop Route Investigation*, (Memo 7657-C, OGC).

11. Docket 31870, *Baltimore/Washington-Houston Low Fare Route Proceeding* (Memo 7641-E, OGC).

12. Docket 25474, Petitions for Reconsideration *Hawaii Fares Investigation* and Proceedings on Remand in *Continental Air Lines, Inc.* v. *CAB* (Memo 6432-F, OGC).

13. Docket 33400, Third-party complaint of Texas International Airlines against Pan American World Airways, Inc., and National Airlines, Inc. (Memo 8114-G, BCP).

14. Dockets 32833 and 32879, Applications of Eastern and American for exemptions to perform nonstop New York-St. Maarten service pending completion of *Caribbean Area Service Investigation* (Memo 8251, BIA, OGC).

15. Dockets 27679 and 33370, Application of Frontier Airlines for renewal of exemption authority to serve Albuquerque/El Paso-Mazatlan/Guadalajara, and application of Continental Airlines for new exemption authority to serve the same markets (BIA).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

[S-2198-78 Filed 10-30-78; 9:34 am]

[6570-06-M]

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: S-2160-78 and S-2199-78.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m. (eastern time), Tuesday, October 31, 1978.

CHANGE IN THE MEETING: The time of the meeting is changed to 9:30 a.m. (eastern time), Friday, November 3, 1978.

CONTACT PERSON FOR MORE INFORMATION:

Marie D. Wilson, Executive Officer, Executive Secretariat, at 202-634-6748.

This notice issued October 30, 1978.

[S-2201-78 Filed 10-30-78; 1:59 pm]

[6570-06-M]

3

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: S-2160-78.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m. (eastern time), Tuesday, October 31, 1978.

CHANGE IN THE MEETING: The following matter is added to the open portion:

Proposed model program for selecting potential litigation from backloged charges.

A majority of the entire membership of the Commission determined by recorded vote that the business of the Commission required this change and that no earlier announcement was possible.

In favor of change: Eleanor Holmes Norton, Chair; Daniel L. Leach, Vice Chair; Ethel Bent Walsh, Commissioner; and J. Clay Smith, Jr., Commissioner.
Opposed: None.

CONTACT PERSON FOR MORE INFORMATION:

Marie D. Wilson, Executive Officer, Executive Secretariat, at 202-634-6748.

This notice issued October 27, 1978.

[S-2199-78 Filed 10-30-78; 9:34 am]

[6750-01-M]

4

FEDERAL TRADE COMMISSION.

TIME AND DATE: 10 a.m., Friday, November 3, 1978.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Monthly Policy Review Session: Discussion of housing policies.

CONTACT PERSON FOR MORE INFORMATION:

Ira J. Furman, Office of Public Information, 202-523-3830. Recorded Message: 202-523-3806.

[S-2202-78 Filed 10-30-78; 1:59 pm]

[7555-01-M]

5

NATIONAL SCIENCE BOARD.

DATE AND TIME: Nov. 16, 1978, 9 to 9:15 a.m., open session; 1 p.m., open

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session (continued). Nov. 17, 1978, 9 a.m., closed session, 1 p.m., open session (continued).

PLACE: Room 540, 1800 G Street NW., Washington, D.C.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED AT THE OPEN SESSION:

1. Introduction to November Planning Meeting.
2. Minutes—Open Session—201st Meeting.
3. Chairman's Report.
4. Director's Report:
a. Report on grant and contract activity—September 20-November 15.
b. Organizational and staff changes.
c. Congressional and legislative matters.
d. NSF budget for fiscal year 1979.
e. Regional Instrumentation Facility Program.
f. Young Investigators Postdoctoral Program.
5. Board Committees—Reports on meetings:
a. Executive Committee.
b. Planning and Policy Committee.
c. Programs Committee.
d. Committee on Eleventh NSB Report.
e. Committee on Minorities and Women in Science.
f. Committee on role of NSF in basic research.
g. Committee on Twelfth NSB FReport.
h. Ad Hoc Committee on big and little science.
6. NSF Advisory Groups and Annual Review:
a. Reports on meetings.
b. Board representation at future events.
7. Grants, contracts, and program.
8. Proposed regulations exempting board members from certain financial conflict of interests.
9. Other business.
10. Next meetings:
a. National Science Board—January 18-19, 1979.
b. NSB Committees.
11. Final reports of working group.

MATTERS TO BE CONSIDERED AT THE CLOSED SESSION:

A. Minutes—Closed Session—201st Meeting.
B. Grants, contracts and programs.
C. NSF budgets for fiscal year 1980 and subsequent years.
D. NSB annual reports.
E. Report on NSB nominees.

CONTACT PERSON FOR MORE INFORMATION:

Miss Vernice Anderson, Executive Secretary, 202-632-5840.

[S-2200-78 Filed 10-30-78; 11:20 am]

[7710-12-M]

6

POSTAL SERVICE (BOARD OF GOVERNORS).

The Board of Governors of the U.S. Postal Service, pursuant to its bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 9 a.m. on Friday, November 10, 1978, in the Benjamin Franklin Room, 11th floor, Postal Service Headquarters, 475 L'Enfant Plaza SW., Washington, D.C. 20260. The meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, Louis A. Cox, at 202-245-4632.

AGENDA

1. Minutes of the previous meeting.
2. Remarks of the Postmaster General. (In keeping with its consistent practice, the Board's agenda provides this opportunity for the Postmaster General to inform the members of miscellaneous current developments concerning the Postal Service. He might report, for example, the appointment or assignment of a key official, or the effect on postal operations of unusual weather or a major strike in the transportation industry. Nothing that requires a decision by the Board is brought up under this item.)
3. Effective date for minimum size standards. (Section 002.1 of the Domestic Mail Classification Schedule currently states that the minimum size standards therein prescribed will become effective not earlier than November 30, 1978. The Board will consider fixing the effective date for these standards, pursuant to 39 U.S.C. 3625(f).)
4. Quarterly Report on Financial Performance. (Mr. Biglin, Senior Assistant Postmaster General (Finance Group) will present the quarterly summary of financial performance.)
5. Quarterly Report on Service Performance. (Mr. Conway, Deputy Postmaster General, will present the quarterly summary of service performance.)
6. Capital Investment Projects:
(a) Royal Oak, Mich. (Mr. C. K. Kernan, Regional Director for Mail Processing of the Central Region, will present a proposed project for a new Sectional Center Annex in the Royal Oak area of Southeastern Michigan.)
(b) Bristol, Tenn./Va. (Mr. Biglin will present a proposed project for a new general mail facility at Bristol.)
7. Report on Employee and Labor Relations. (Members of the Employee and Labor Relations Group staff will present reports on the progress in this area.)
8. Briefing on use of mechanization by European postal administrations. (Mr. Sommerkamp, Senior Assistant Postmaster General for Research and Technology, will present a briefing on use of mechanized equipment by postal administrations in Europe.)
9. Proposed filing with the Postal Rate Commission for local courier mail. (Mr. Ulsaker, Senior Assistant Postmaster General, Administration Group, will present for Board review a proposed filing with the Postal Rate Commission to change the Domestic Mail Classification Schedule under 39 U.S.C. 3623 to include a new local courier mail service.)

LOUIS A. COX,
Secretary.

[S-2203-78 Filed 10-30-78; 2:55 pm]

[8240-01-M]

7

UNITED STATES RAILWAY ASSOCIATION.

TIME AND DATE: 6 p.m., November 1, 1978.

PLACE: Board Room, Room 2-500, fifth floor, 955 L'Enfant Plaza North SW., Washington, D.C. 20595.

STATUS: The meeting will be closed to the public.

MATTERS TO BE CONSIDERED BY THE BOARD OF DIRECTORS:

Portions closed to the public (6 p.m.):

1. Review of ConRail proprietary and financial information for monitoring and investment purposes.

CONTACT PERSON FOR MORE INFORMATION:

Alex Bilanow, 202-426-4250.

[S-2197-78 Filed 10-30-78; 9:34 am]

Federal Register

WEDNESDAY, NOVEMBER 1, 1978
PART II



DEPARTMENT OF AGRICULTURE

Office of the Secretary

IMPROVING GOVERNMENT REGULATIONS

Response to E.O. 12044; Final Report

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[3410-01-M]

DEPARTMENT OF AGRICULTURE

Office of the Secretary

IMPROVING REGULATIONS

Response to Executive Order No. 12044 Improving Government Regulations

AGENCY: Department of Agriculture.

ACTION: Final report.

SUMMARY: The Department of Agriculture is publishing the following report on procedures it has established to implement Executive Order 12044, Improving Government Regulations (43 FR 12661, March 24, 1978). The procedures include: analysis of all impacts of proposed actions; identifying significant actions; encouraging public participation; reviewing existing regulations; establishing calendars listing proposed actions; and assuring clarity of rule-writing.

DATE: These procedures are in effect for all actions initiated after the date of this report.

ADDRESS: Requests for further information should be addressed to: Mr. Linley E. Juers, Office of Budget, Planning and Evaluation, Office of the Secretary, Room 117-A, Administration Building, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-6667.

SUPPLEMENTARY INFORMATION:

I. *New decision and rulemaking procedures.* In Executive Order No. 12044, the President directed all executive agencies to improve regulations. This final report describes the procedures to be used in the Department of Agriculture to achieve the President's objectives. Additional information on any aspect of these actions can be obtained from the contact person listed above.

The Department of Agriculture published its draft report, proposing actions in response to Executive Order 12044 on May 22, 1978, and invited public comment on proposed actions. After receiving and considering public comments, the report has been revised and the procedures described in this report have been implemented.

Requests for information should be addressed to Mr. Linley E. Juers, at the address listed above.

BOB BERGLAND,
Secretary.

OCTOBER 20, 1978.

DISCUSSION OF COMMENTS

A majority of the comments received on the draft report dealt only with the general objective of the report and the President's Executive Order. All of these comments strongly favored taking actions to improve the understanding of regulations and writing regulations in clearer language. Other comments, while dealing with specific aspects of the report, also unanimously favored these objectives.

Several comments were related to the role and coverage of the Decision Calendar. Some expressed concern that the Decision Calendar would not constitute adequate notice of actions, particularly for people who do not normally read the FEDERAL REGISTER.

It is not intended that the Decision Calendar should constitute or substitute for any other means of providing public notice. The Decision Calendar Published in the FEDERAL REGISTER, and available in the Department, will be in addition to other methods of public notice. Moreover, increased use of other types. of notices will be strongly encouraged in connection with improving public participation. Hopefully the Decision Calendar will be used by organizations and publications to alert the public to coming announcements of proposed actions and decisions and thus increase the capacity of groups to publicize notices and actions.

One comment noted that the USDA report goes beyond the Executive Order in requiring agency decision calendars. The Executive Order requires that certain "minimum" procedures be established to improve regulations. The philosophy of the USDA report is to extend these procedures to improve all decisions.

Concern was expressed over the application of the "Significant" classification to certain regulations or actions. The term is used to describe the scope, rather than the importance, of actions and assigns higher oversight to "Significant" actions in view of anticipated larger impact or burden of administration. It is not intended that this classification be used to give publicity to actions. The Department would certainly be receptive to public comment or suggestions on its application of the criteria for determining "significance" either in general or on specific actions.

A number of comments raised questions or admonished the Department with respect to possible implications of the report for increasing administrative complexity, costs or staff requirements and over possible delay in the timeliness of actions.

The Department takes these comments very seriously and recognizes that a dedicated effort will be required to avoid such problems in the implementation of this system. In fact, this report requires very few new procedural steps. In general it makes procedures more standardized and systematic. Constructively used, it will improve efficiency of decisionmaking by establishing a common routine for all decisions; it should reduce the misdirection of actions and increase the assurance of avoiding errors.

A comment on the procedure for reviewing existing regulations suggested that some regulations should be reviewed more frequently. The 5-year cycle is a maximum and more frequent review must be contemplated for many regulations. Some agencies repromulgate their regulations annually. The procedure for selecting regulations for review is designed to be very responsive to public suggestions. The public will be invited to suggest regulations for review; the public will also have the opportunity to comment on the lists of regulations agencies intend to submit for review before the list is finalized.

The largest number of specific comments were directed to the public participation section of the report. All of the commenters favored increased emphasis on and improvements in the quality of public participation. The most pointed comments related to financial aid for costs incurred in presenting views as a means of improving public participation. Comments were evenly divided between favoring and not favoring that method.

Financial aid is one of several means for improving public participation listed in the report for USDA agencies to consider. It is not mandated or prescribed for all agencies or all programs as a necessary means. It is to be considered, along with the other means listed, as a way of achieving improved public participation—broad, meaningful public input for all decisions. The choice of methods for improving participation is best viewed in terms of particular programs. It rests on the question of who the affected public is and how can that public's participation be obtained. Past experience has shown it to be difficult to gain the participation of unorganized private citizens. It is particularly difficult for programs where the affected publics are low-income people. They do not have the advantage of participation costs being tax deductible expenses.

Some comments suggested reducing the expense of participation by the public by holding field hearings closer to peoples' homes. This can be and is done in some programs. But it can be more costly and more limiting to participants than reimbursement.

The Department is aware of the potential problems cited of misusing financial aid for public participation to publicize agency objectives or favor certain groups or organizations.

These same problems can occur with almost any means of participation. Avoiding such problems is partly a matter of having well defined goals for public participation. But the greater assurance comes from having an open process, where the public has access to the record and to the analysis to which it relates in decisionmaking. Identifying the public participation offices in each agency helps to provide a focus for the public and to facilitate its observing and using the process.

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IMPROVING USDA REGULATIONS

PROCEDURES ESTABLISHED IN RESPONSE TO EXECUTIVE ORDER 12044 IMPROVING GOVERNMENT REGULATIONS

The new procedures, described in this report, are intended to make the USDA decisionmaking system perform better. The decisionmaking system must be responsive to the people affected by the actions of the Department. Public understanding of why and how decisions are made will lead to better acceptance and to improved program effectiveness. Public involvement in decisions can make the total process more efficient.

The actions spelled out in this report are: establishing decision calendars, identifying significant actions, encouraging public participation, analysis of impacts, developing new regulations, reviewing existing regulations, and writing clearer regulations.

These actions are specifically designed to bring essential information to bear on decisions and to require that this information be thoroughly analyzed before decisions are made.

The Secretary of Agriculture has specified new USDA procedures in a directive initiating activities and assigning responsibility for each of the proposed actions.

These procedures apply to all informal rulemaking in the Department except for those areas exempted in Executive Order No. 12044 which involve agency management, personnel selection and Federal Government procurement.

Formal rulemaking procedures, which are covered under the Administrative Procedure Act, are also exempted because of the strict rules that already apply to the conduct of hearings and the handling of evidence and information. In USDA, formal rulemaking procedures apply primarily to marketing orders for milk and fruits and vegetables. Nevertheless, agencies using formal rulemaking procedures are required to respond to the spirit of Executive Order No. 12044 in writing decisions and regulations in clear language, providing sufficient public notice and involvement, and preparing impact analyses and statements.

ESTABLISHING DECISION CALENDARS

An important aspect of improving decisions is to assure that all interested people know what is being planned and by whom. This will permit the planning of effective input and directing it to where it will best be used. Decision Calendars will serve this purpose. They will provide:

The title, a broad description of and the authority for the proposed action.

The current stage of development and projected dates for each subsequent step including pre-notice, proposal, public comment and final decision.

The names, addresses and phone numbers of persons to contact for additional information.

The name of the Department's official designated to approve each stage of the rulemaking procedure.

Each agency will maintain a decision calendar covering actions assigned to that agency by statute or by delegation. This calendar will include both regulatory and nonregulatory proposed actions. The agency calendar will be maintained under the direction of the agency head.

The Department will maintain a coordinating calendar covering all agency actions that are determined to be significant. After approval by the Secretary, this Department Calendar will be published at least twice annually in the FEDERAL REGISTER. It will be subject to continual update in the Office of the Secretary and will be available to the public. Periodic amendments will be published in the FEDERAL REGISTER.

IDENTIFYING SIGNIFICANT REGULATIONS

Among the actions on the agency decision calendars there will be some which may affect large numbers of people, involve large economic or resource adjustments, or are controversial due to conflict over questions of fact or impact. All proposed actions determined to require a decision or concurrence by an Assistant Secretary or a higher level official will be definition be "Significant." Proposed "Significant" actions will be listed on the Departmentwide Decision Calandar maintained in the Office of the Secretary. Criteria for designating a regulation "Significant" are:

Will cause a substantial increase or reduction in program coverage that will affect a significant number of people.

Will cause substantial change in total program outlays or in the level of direct, indirect or induced benefits or costs.

Will substantially alter enforcement or compliance requirements.

Will significantly expand or contract public services which might affect any stage of production, processing, distribution, or consumption.

Is likely to raise significant controversy due to conflict over questions of fact or impact.

All proposed actions will be reviewed for "Significance" by the appropriate program Assistant Secretary before being entered on the agency decision calendar. The program Assistant Secretaries and other General officers of the Department will be responsible for final determination of "Significance" and for identifying those actions requiring the approval of the Deputy Secretary, the Secretary, or the President. The Secretary's Program and Budget Review Board will establish criteria for those actions to be reserved for approval by the Deputy Secretary, the Secretary, and the President.

Decision calendars are intended to serve internal management needs and as a source of public information. To serve these purposes, a standardized format will be used for agency and the USDA calendars. The format will include the information specified in Executive Order 12044 and some added information on the procedural status.

National organizations representing general purpose State and local governments have been asked by the President to notify the senior intergovernmental official if they believe that a regulaton included on a regulation agenda would have major intergovernmental significance. The senior intergovernmental official in USDA is the Deputy Director for Intergovernmental Affairs, Office of Governmental and Public Affairs, who will coordinate intergovernmental activities with the Departments' public participation officer.

ENCOURAGING PUBLIC PARTICIPATION

Public participation is an important device for obtaining ideas and information to better serve the public. Therefore, the Secretary of Agriculture has directed all agencies to actively solicit public comment and other inputs. Agencies are encouraged to use several means to obtain broad, meaningful public input. These means may include: financial aid for costs incurred in presenting views, public meetings, soliciting added comment on proposals, organized followup on complaints and training to improve public ability to participate in government procedures.

Each agency is required to have a public participation office reporting directly to the Administrator. A coordinating public participation staff is being created at the Department level. At the initiation of each rulemaking procedure, agencies will be required to have a public participation plan for that action. The Department level staff will review the methods and effectiveness of agency procedures before they are implemented. It will also monitor agency followup on public suggestions and complaints that have been submitted.

Public participation plans should be tailored to the agencies programs and should stimulate the broadest possible range of public input at each signifi-

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cant stage—preproposal analysis, comment on proposals, comment and complaints in post rulemaking evaluation and on the need for review of regulations. Each agency public participation office will coordinate with the Department's public participation officer.

The departmental public participation staff, reporting to the Director of Economics, Policy Analysis and Budget, will advise the Secretary on the performance of public participation in USDA. Their functions will include:

Concurrence in agency public participation plans.
Maintenance of the USDA Decision Calendar (and review of the supporting agency calendars).
Regulatory complaint monitoring and followup.
Assurance that proper procedures are followed in developing "Significant" regulations.

Writing Understandable Regulations

The President's mandate that regulations be "written in plain English" and be "understandable to those who must comply" is the subject of a separate part of the Secretary's directive to USDA agencies.

Agency Administrators are assigned primary responsibility for preparing understandable regulations. They are directed to involve their public information officers in writing regulations to make certain the language is clear and understandable. The USDA Office of Governmental and Public Affairs is directed to guide agencies in developing a better writing process and to review their progress for the Secretary.

Impact Analysis

It is USDA philosophy that all decisions, whether major or minor, can only be made with confidence after an appraisal of the impact of each meaningful alternative course of action for reaching the stated objective. The document that contains this information is the draft Impact Analysis.

The extent of the documentation required for different decisions may vary considerably. In some cases, the course of action and the impacts may be obvious. Thus the documentation may be no more than a simple declaratory statement.

In other cases, several possible courses of action may exist for reaching the primary goal with differences in secondary impacts on environment, inflation, economy, and on compliance burden. Where such alternatives exist, a careful analysis of differences in efficiency and effectiveness with which each alternative action may achieve the primary objective will be required along with spelling out the secondary impacts that mighty detract from the primary objectives.

A draft Impact Analysis provides the analytic base for a proposed action. It, together with public participation and the legal authority for the proposed action, provides the basis for a final decision. Upon arriving at a final decision, a Final Impact Analysis Statement will be prepared. The intent of the single form "Impact Analysis" is to avoid the duplication of effort when separate analyses and statements are prepared to cover the various impacts of a decision.

When an Environmental Impact assessment adequately covers all of the impacts of a proposed action, it will serve the purpose of the draft Impact Analysis. When the final action is taken, the key information from the Environmental Impact Statement will become the Final Impact Statement.

A Draft Impact Analysis and a Final Impact Statement are required for each proposed action. A Draft Impact Analysis, showing the analysis of alternatives, provides support for a proposed action. At the time comments are reviewed and the decision is finalized, a Final Impact Statement will be prepared. It will be a summary of the supporting documentation contained in the "Draft Impact Analysis" and any additional information obtained during the comment period.

With respect to all "Significant" proposed actions, the responsibility for determining that the Draft Impact Analysis and Final Impact Statements provide an adequate analytical base for a decision is assigned to the Director of Economics, Policy Analysis and Budget. The Director must approve all Draft Impact Analysis and Final Impact Statements for "Significant" proposed actions. Agency heads will approve impact analysis on all other actions. But the Director will monitor and provide departmental oversight on the quality of all impact analysis.

Rather than institute a separate regulation analysis procedure for those decisions or actions leading to new rules or regulations, USDA will simply add appropriate specific requirements to the existing Impact Analysis process. Analysis of the compliance burden and notice of the availability of impact statements are required.

Developing New Regulations

When consideration is given to carrying out a program or implementing authority by rulemaking, before any action is undertaken the agency Administrator will review:

The need to take action.
The alternative actions already authorized or available to achieve the desired results.
The need and plans for public comment.
The tentative schedule for completing all stages of developing the regulation.

If this review indicates that a regulation is needed, the Administrator will initiate an entry for the agency Decision Calendar for review by the program Assistant Secretary.

Simultaneously, the Administrator will initiate the development of the draft Impact Analysis, publish a "prenotice" indicating plans and opportunities for public involvement in developing the regulations. (This procedure will also be followed for nonregulation program actions.)

If the proposed action is "Significant," it will be entered on the Department Decision Calendar, placing the oversight responsibility in the Office of the Secretary. When a regulation has not been classified as "Significant," a statement to that effect shall be included with publication of the proposed regulation.

In developing the proposed regulation, the Administrator will make certain:

That a Draft Impact Analysis has been prepared and approved.
That the public participation plan is being followed.
That clear language is used and compliance burdens are reduced to the extent possible.

Prior to publication of the proposed regulation, the Administrator shall obtain the appropriate level of review required for the proposed decision.

In publishing the proposal, a statement shall be included indicating:

The availability of the Draft Impact Analysis.
The input desired from the public.
That at least 60 days will be allowed for public comment on the proposal. If less time is to be allowed, or any other procedure waived due to statutory or judicial deadlines, a specific justification for the abbreviated time or procedure will be spelled out and the statement include the name of the official making that determination.

When an emergency situation requires immediate program action, an agency may promulgate and implement needed regulations or regulation changes without delay. But in publishing the emergency regulations, the agency must state the basis on which the "emergency" determination was made and must immediately schedule the regulations for review. This review must adhere to the procedures described above.

In preparing the final regulation, the Administrator must be prepared to assure (and provide documentation to the Secretary's Office on "Significant" regulations) that all prodecural steps have been followed. These assurances will be submitted to the appropriate Assistant Secretary or Department official before the regulation may be approved and signed.

Review of Existing Regulations

In Executive Order No. 12044, agencies are directed to review their existing regulations applying the procedures developed for new regulations. No USDA regulation should exist for more than 5 years without being reviewed for need, currency, and effectiveness. As regulations are revised in the course of review, a time for the next periodic review or a termination date will be added.

Some categories of regulations are regularly renewed every year or so. These will not require a review schedule, but will be subjected to the new rulemaking procedures.

The selection of regulations proposed for review will be the responsibility of the heads of USDA agencies or independent offices. Their selections will be based on the following criteria:

No review has been conducted within 5 years of issuance.
There is a need to improve function.
Complaints received on operations.
Suggestions received through public participation programs.

The public participation staff will evaluate agencies' proposals for review as a part of the process of approving listings for the department decision calendar.

The process of reviewing USDA regulations will be as follows:

1. Selecting regulations for review. On each 6-month department decision calendar, a section will be reserved for "Review of USDA Regulations." Under this heading, each USDA agency will have a separate listing showing (a) "Regulations Proposed for Review" and (b) "Regulations Scheduled for Review," along with appropriate description and contact points. Notice will be published:

Inviting public participation in the review process; and
Seeking comments on the list of regulations proposed for review in the following 6-month period. The calendar listing and notices will be subject to periodic amendment to advise the public of progress on new stages in the review process.

After considering public comments on "Regulations Proposed for Review," the list will be revised and put in the next calendar under "Regulations Scheduled for Review."

2. Applying the process for reviewing existing regulations. There will be three parts to the review process: The agency will: (a) invite public comment; (b) conduct an impact analysis following the same procedure established for developing a new regulation; and (c) review the language for clarity and understandability.

On the basis of this analysis, the agency head may:

(a) Recommend proposed changes in the regulation to be promulgated as in the case of a new regulation, or

(b) Determine that no change is needed and publish notice finalizing the review, stating the basis for this conclusion and recommending the time for the next review of that regulation.

USDA REGULATIONS SCHEDULED FOR REVIEW

The following USDA regulations are scheduled for review. They are listed by USDA agency along with the name and phone number of the agency contact person. Comments or inquiries should be sent to: (Contact person), USDA (Agency name), Washington, D.C. 20250.

Regulations Designated Significant

Authority or CFR citation	Subject	Description	Contact
		Soil Conservation Service	
7 CFR 624	Emergency watershed protection program (sec. 216).	SCS will expend over $100 million in fiscal year 1978 to restore watersheds impaired by natural disaster to predisaster conditions. These regulations specify eligibility and State and local government responsibilities.	Dave Unger, 202-447-7107.
7 CFR 622	Watershed program	SCS currently expends about $130 million annually to construct local watershed projects. The regulations define eligible participants and prescribe conditions of receiving assistance.	Do.
		Forest Service	
36 CFR 212	Road construction	The FS prescribes for each timber sale proposed on National Forest land the transportation needs for the removal of timber. Road construction standards are dictated by the specific sale operation and are made a part of the timber sale contract.	Dave Unger, 202-447-7107.
		Farmers Home Administration	
7 CFR 1804, Subpart A—Planning and Performing Development Work.	Use of HUD's minimum property standards for FmHA financed housing.	HUD's minimum property standards (MPS) for FmHA financed housing is considered unrealistic and costly for many rural areas. These standards act as barriers for providing housing and often cause local contractors to refuse to deal with individuals or groups financing housing under Federal housing programs. These requirements are viewed as preventing the financing of housing for families whose present housing is inadequate but who cannot afford or do not want housing that meets "urban" minimum standards. HUD's standards would be reviewed to determine to what extent they can be modified to reflect property standards that are appropriate to rural areas and which can result in lower housing costs. Any modification would be discussed with HUD to achieve maximum uniformity in standards for rural areas.	Henrietta McArthur, 202-447-5277.
		Food Safety and Quality Service	
9 CFR 301	Regulations governing the procedures used for inspection of meat and poultry by FSQS.	FSQS is currently reviewing all of its regulations governing the methods employed to inspect livestock, poultry, meat and poultry food products with the aim of identifying more effective and, where possible, less costly methods of inspection. This review, once completed will result in the adoption of new regulations governing inspection methods and certifying that other regulations have been reviewed and found acceptable.	Paul Ragan, 202-447-5593.

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Food Safety and Quality Service—Continued

Authority or CFR citation	Subject	Description	Contact
9 CFR 381.76	Regulations establishing the procedures for poultry post-mortem inspection.	Current FSQS regulations for the post-mortem inspection of poultry require that each bird be examined through a combination of hand motions—coupled with observation to detect—diseased birds. FSQS is reviewing these regulations to determine if diseased birds can be detected just as effectively, and more efficiently, through observation alone. If "hands-off" inspection of each bird can be accomplished just as effectively, and more efficiently, the appropriate regulations will be proposed.	Paul Ragan, 202-447-5593.

Agencies Under the Assistant Secretary for Marketing Services

		Review of the burdens and economic impacts of regulations related to trade in, transportation of, or quarantine of agriculture products or commodities. The initial reviews would relate to the following:.	Ron Hendrickson 202-447-7851.
7 CFR ch. 1, pts. 201 and 202	Regulations and procedures established to carry out responsibilities under the Federal Seed Act (Agricultural Marketing Service).	.....	
9 CFR pts. 50-56, subch. B	Indemnity programs for animal disease control (Animal and Plant Health Inspection Service).	.....	
9 CFR pt. 75, subch. C	The Federal role in the control of the horse disease equine infectious anemia (Animal and Plant Health Inspection Service).	.....	
7 CFR 319.46	The existing quarantine on the importation of avocados from Mexico for the purpose of preventing the introduction of new plant pest and diseases into the United States (Animal and Plant Health Inspection Service).	.....	

REGULATIONS NOT DESIGNATED SIGNIFICANT

Authority or CFR citation	Subject	Description	Contact
Agricultural Marketing Service			
7 CFR ch. IA, pt. 33	Regulations issued under the Export Apple and Pear Act.	The regulations prescribe minimum quality and other requirements for apples and pears shipped to export markets; mandatory inspection and certification for compliance with such requirements; informational and educational activities to inform and promote understanding of the regulations by shippers, exporters, freight forwarders, and export carriers. Periodic examinations of carrier files are made for certificates covering export shipments for apples and pears. Possible violations are investigated to assure compliance with the acts and regulations.	Bob Brown, 202-447-3817.
7 CFR ch. IC, pt. 75	Inspection and certification of quality of agricultural and vegetable seeds under the Agricultural Marketing Act of 1946.	The regulations for the inspection and certification of quality of seeds was formerly contained in the pt. 66 regulations for the inspection of grain and related commodities. On Apr. 15, 1977, there was published a FEDERAL REGISTER notice of transfer of the pt. 68 regulations applicable to inspection of seed to pt. 75 and continuing in effect those regulations administered by the Agricultural Marketing Service. The regulations contain requirements for applying for inspection service and specify the fees and charges for such services.	Do.
9 CFR ch. II, pts. 201.14, 201.15, 201.16.	Licensing provisions for live poultry market agencies and live poultry dealers operating in designated live poultry markets located in large metropolitan areas.	This part of the regulation covers licensing procedures applicable to markets which are no longer in existence.	Do.
7 CFR ch. IE, pt. 102, secs. 102-80 through 102.95.	Grain appeals (grain warehouses)	This regulation provides for an appeal procedure in case a question arises as to the true grade of grain stored or to be stored in a licensed warehouse, for which official grain standards of the United States are in effect and for which a grain inspection certificate has been issued.	Do.
Animal and Plant Health Inspection Service			
7 CFR 301.81	Imported fire ant	Regulation imposes a quarantine on specific articles originating in the imported fire ant quarantine area. Also specifies conditions under which these articles may be moved interstate (i.e., after an acceptable treatment).	Sam Ladd, 202-447-3321.
9 CFR pt. 92	Inspection of certain animal and poultry and certain animal and poultry products; inspection and other requirements for certain means of conveyance and shipping containers thereon.	Because of various animal and poultry diseases, this regulation prohibits the entry of animals, products, or birds into the United States from foreign countries except under the conditions that are stated in the regulation.	Do.

Science and Education Administration

Authority or CFR citation	Subject	Description	Contact
7 CFR 500	Conduct on National Arboretum property	Regulations apply to the buildings and grounds of the National Arboretum, Washington, D.C., and to all persons entering in or on such property.	Charles Totten, General Service Division, room 511, Federal Bldg., Hyattsville, Md. 20782, 301-436-8217.
7 CFR 501	Conduct on U.S. Meat Animal Research Center, Clay Center, Nebr.	Regulations apply to all property of or under the charge or control of the U.S. Meat Animal Research Center, Clay Center, Nebr., and to all persons entering in or on such property.	
7 CFR 502	Conduct on Agricultural Research Center Property, Beltsville, Md.	Regulations apply to the buildings and grounds of the Agricultural Research Center, Beltsville, Md., and to any persons entering in or on such property.	Do.
7 CFR 503	Conduct on Plum Island Animal Disease Center.	Regulations cover the buildings, grounds and vessels of the Plum Island Animal Disease Center, Orient Point, N.Y., and apply to all persons entering in or on such properties both on the mainland, Orient Point, N.Y., and on Plum Island.	Do.
7 CFR 510	Public information	The regulations in this part govern the availability of records of the Agricultural Research Service (now SEA-FR) to the public.	Robert M. Nelson, 202-447-6691.
Forest Service			
36 CFR, sec. 200.1, subpt. A	Central organization	This section describes the central organization of the Forest Service, and defines the major components—the Chief and the Deputy Chiefs for Program and Legislation, National Forest System, Research, State and Private Forestry, and Administration.	Mary Davis, 202-447-4233.
36 CFR, sec. 200.2	Field organization	This section describes the components of the field organization: regions, composed of national forests and ranger districts; experiment stations for forest and range research, including laboratories and field facilities; areas for State and private forestry cooperation. Also includes a list of field addresses.	Do.
36 CFR, sec. 200.3, subpt. B	Forest Service functions	This section describes the work of the Forest Service, its legislative authority, and its major programs.	Do.
36 CFR, sec. 200.4	General procedures	Included in this section is a description of Forest Service regulations and directives and description of their use.	Do.
36 CFR, sec. 200.5	Information available	This describes information available to the public	Do.
36 CFR, sec. 200.6	Indexes	This gives information about availability of reference materials	Do.
36 CFR, sec. 200.7	Office where information is available	This informs the public of the locations of offices where information is available and states that personnel will assist applicants in locating needed materials.	Do.
36 CFR, sec. 200.8	Where information may be copied	This states where information may be copied, and where it may not	Do.
36 CFR, sec. 200.9	Rules governing inspection and copying	This gives hours when offices are open for inspection and copying of materials, and states fee guidelines.	Do.
36 CFR, sec. 200.10	Request for records	This section states which officials can receive and process requests for records, and gives parameters for replies to such requests.	Do.
36 CFR, sec. 200.11	Appeals	This sets forth guidelines for the public to appeal decisions for requests for information.	Do.
Soil Conservation Service			
7 CFR, ch. VI, pt. 611.11C	Resource data	Copies of soil survey field sheets and related data may be reviewed at the local SCS field office, and may be purchased with prior approval from the SCS State office.	Klaus W. Flach, 202-447-5195.
7 CFR, ch. VI, pt. 611.20-21	Cartographic operations	Need for review of cartographic operations because of organizational and distributional changes.	
Rural Electrification Administration			
185-1:465-1	Audit of REA borrowers' accounting records.	REA policy and requirements regarding audits of the accounts and records of REA borrowers including the selection of independent certified public accountants to perform such audits.	Joseph Vellone, 202-447-3863.
5-1:305-1	Joint use of REA borrowers' facilities by electric and telephone systems.	REA policy and procedure for the joint use of REA borrowers' facilities by other electric and telephone systems.	Richard P. Richter, 202-447-6237.
20-14	Supplemental financing for loans considered under sec. 4 of the Rural Electrification Act.	REA policy on supplemental financing for loans considered under sec. 4 of the Rural Electrification Act.	Do.
20-21:320-21	National Environmental Policy Act	REA policy and procedure on the implementation of the National Environmental Policy Act as it relates to the REA program. (Authority: National environmental Act of 1969).	Do.
40-6	Construction methods and purchase of materials and equipment.	The requirements of REA on construction of distribution, transmission, generation, and headquarters facilities, and the purchase of materials and equipment by REA electric borrowers.	Do.
41-1	Engineering services for electric borrowers.	REA policy and procedure for electric borrowers' selection of engineers and arrangements for engineering services.	Do.
60-8	System planning guide for electric distribution systems.	REA guidelines to borrowers for long-range electric distribution system planning.	Do.
62-1	Transmission line manual	REA specifications and other requirements for the design of transmission lines.	Do.
105-5	Financial forecast—electric distribution systems.	Guidelines for the preparation of long-range financial forecasts by electric distribution borrowers.	Do.

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Rural Electrification Administration—Continued

Authority or CFR citation	Subject	Description	Contact
105-7	Long-range system and financial planning—power supply borrowers.	Policy and recommendations of REA for its power supply borrowers with respect to the preparation of long-range system and financial plans.	Do.
107-1:407-1	Data processing systems	REA policy concerning the selection and use of data processing systems by REA borrowers.	Do.
108-2	Operating reports—power-type borrowers and distribution borrowers with generating facilities.	The requirements of REA on the preparation and submission of operating reports by power-type borrowers and distribution borrowers with generating facilities.	Do.
112-3	Area coverage service	The policy of REA concerning the extension of electric service to rural users by borrowers on an area coverage basis.	Do.
344-3:43-9	"Buy American" requirement	REA requirements with respect to the "Buy American" provision of the Rural Electrification Act.	C. R. Ballard, 202-447-4305.
345-18	REA specification for plastic-insulated, plastic-jacketed station wire.	REA requirements on plastic-insulated, plastic-jacketed station wire installed on REA-financed telephone systems.	Do.
345-19	REA specification for fig. 8 1-pair distribution wire.	REA requirements on fig. 8 1-pair distribution wire installed on REA-financed telephone systems.	Do.
345-20	REA specification for fig. 8 multipair distribution wire.	REA requirements on fig. 8 multipair distribution wire installed on REA-financed telephone systems.	Do.
345-21	REA specification for polyethylene raw material.	REA requirements on polyethylene raw material installed on REA-financed telephone systems.	Do.
345-22	REA specification for voice frequency loading coils.	REA requirements on voice frequency loading coils installed on REA-financed telephone systems.	Do.
345-36	REA specification for parallel conductor drop wire.	REA requirements on parallel conductor drop wire installed on REA-financed telephone systems.	Do.
345-39	REA specification for telephone station protectors.	REA requirements on telephone station protectors installed on REA-financed telephone systems.	Do.
345-50	REA specification for trunk carrier multiplex equipment.	REA requirements on trunk carrier multiplex equipment installed on REA-financed telephone systems.	Do.
345-52	REA standard for station installation	Provides details on telephone installations, including mobil home installations, and an emphasis on buried plant.	Do.
345-64	REA specification for ringers	REA requirements and guidelines on ringers installed on REA-financed telephone systems.	Do.
345-66	REA specification for subscriber carrier equipment.	REA requirements on subscriber carrier systems installed on REA-financed telephone systems.	Do.
345-68	REA specification for 2-electrode gas tube protectors.	REA requirements on 2-electrode gas tube protectors installed on REA-financed telephone systems to protect communications circuits and equipment from foreign voltages.	Do.
345-70	REA specification for filled buried wire	REA requirements on filled buried wire installed on REA-financed telephone systems.	Do.
345-71	REA specification for 3-electrode gas tube protectors.	REA requirements on the 3-electrode gas tube protectors installed on REA-financed telephone systems to protect communications circuits and equipment from foreign voltages.	Do.
380-3	Weekly progress report of telephone construction and engineering services.	Report by the borrower's engineer to the telephone borrower and REA on the progress of engineering services and construction activities.	Do.
385-2	Purchasing and installing special electronic equipment.	Procedures required by REA of telephone borrowers in purchasing and installing special electronic equipment with REA loan funds.	Do.
415-1	Sale of property by telephone borrowers	Requirements of REA with respect to the sale, lease, or transfer of property by telephone borrowers.	Do.

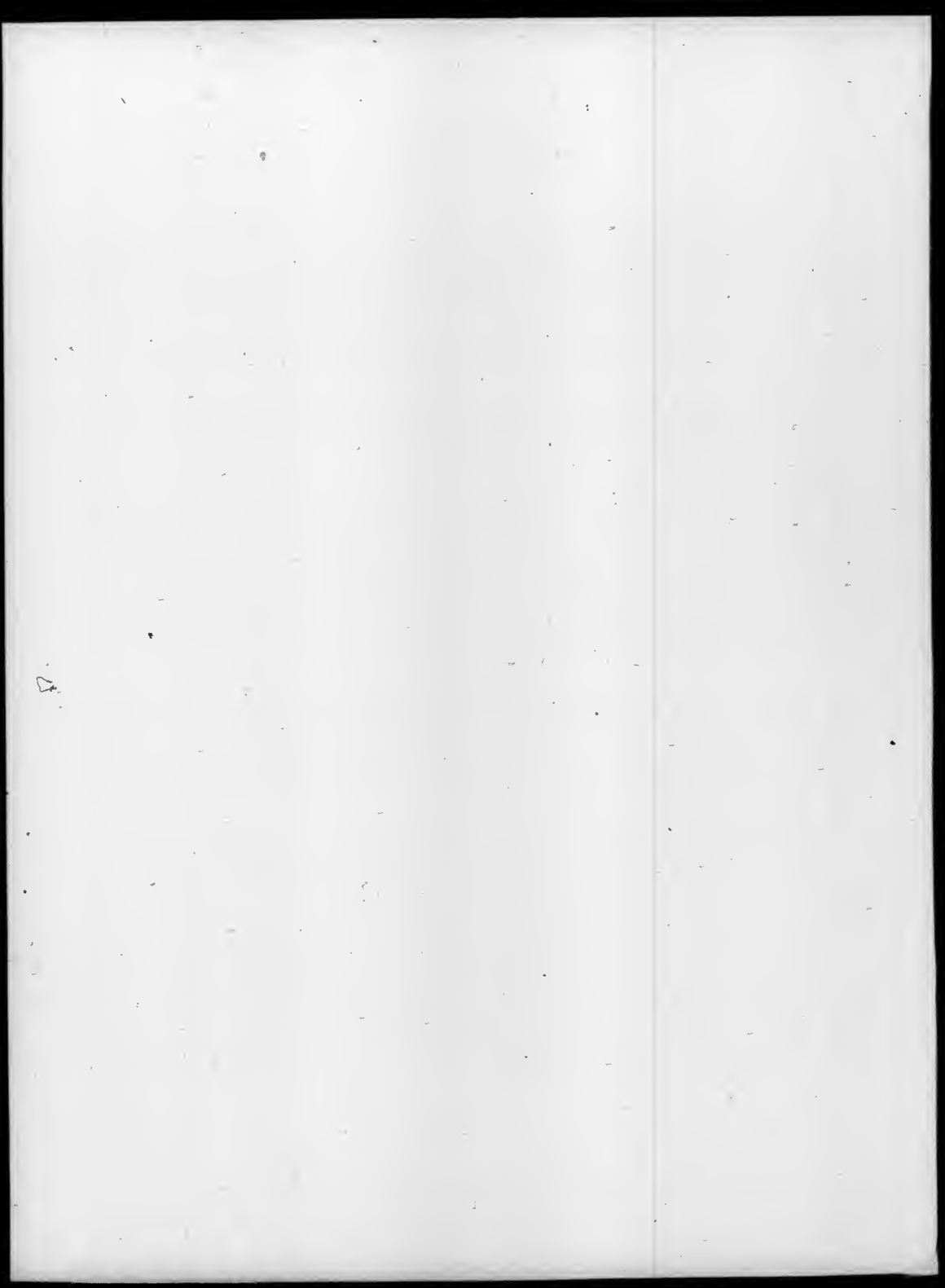
Food Safety and Quality Service

9 CFR 318.11, 9 CFR 381.149	Canning regulations	FSQS regulations governing the control of canned meat and poultry products to insure their safety are currently under review. There is evidence that the current regulations may not be providing sufficient safeguards to insure that meat and poultry canners employ adequate quality controls. The new regulations will provide FSQS inspectors with more objective criteria for evaluating the adequacy of canners' controls.	Paul Regan, 202-447-5593.
9 CFR 335, 9 CFR 381, subpt. W.	Regulations establishing criteria for withdrawal of FSQS inspection and/or grading services.	Enforcement procedures followed by FSQS to encourage compliance with substantive regulations through refusal to provide or withdrawal of FSQS services will be reviewed. Regulations governing such actions will be reviewed with necessary changes incorporated in a subsequent proposed regulation.	Do.
9 CFR 318.7	Regulations governing use of nitrites in red meat products.	FSQS has regulations which govern the use of nitrites and nitrates as additives in red meat products. These regulations are important from a public health standpoint since nitrites and nitrates can, under certain circumstances, combine with compounds in the meat to form carcinogenic nitrosamines. FSQS recently published a final regulation concerning bacon which prohibits the use of nitrates in bacon, lowers the maximum amount of nitrites permitted in bacon, and requires 120 parts per million (ppm) ingoing sodium nitrite (or 148 ppm potassium nitrite) and specified amounts of sodium ascorbate or sodium erythorbate in bacon. This action was taken in order to prevent the presence of nitrosamines in bacon while still preventing toxin formation by Clostridium botulinum. In addition, FSQS recently proposed regulations with regard to further reducing ingoing nitrite levels for bacon, and with regard to the labeling of certain meat products which are cured with no nitrite or less than 120 ppm ingoing nitrite. Comments by the public on these two proposed regulations are invited.	Do.
CFR pt. 250	Donation of food for use in the United States.	This regulation outlines the requirements for Food and Nutrition Service and State distributing agents to follow in acquiring and distributing domestically donated foods for use in Federal food programs administered by USDA. Eligibility criteria, funding procedures, monitoring requirements and planning requirements are stipulated.	Gene P. Dickey, 202-447-5548.

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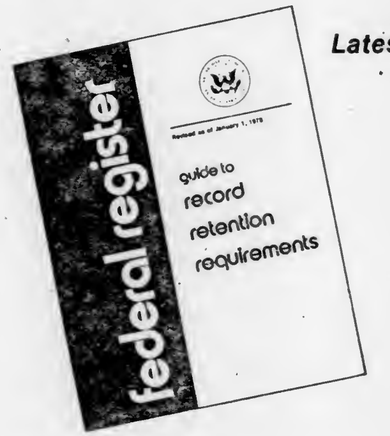
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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR notice 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
DOT/NHTSA	USDA/APHIS		DOT/NHTSA	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/OHMO	USDA/FSQS		DOT/OHMO	USDA/FSQS
DOT/OPSO	USDA/REA		DOT/OPSO	USDA/REA
CSA	CSC		CSA	CSC
	LABOR			LABOR
	HEW/FDA			HEW/FDA

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

NOTE: As of August 14, 1978, Community Services Administration (CSA) documents are being assigned to the Monday/Thursday schedule.

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[3195-01-M]

Title 3—The President

Memorandum of October 30, 1978

Determination Under Section 202(b) of the Trade Act; Bicycle Tires and Tubes

Memorandum for the Special Representative for Trade Negotiations

THE WHITE HOUSE,
Washington, October 30, 1978.

Pursuant to section 202(b)(1) of the Trade Act of 1974 (P. L. 93-618, 88 Stat. 1978), I have determined the action I will take with respect to the report of the United States International Trade Commission (USITC), transmitted to me on September 1, 1978, concerning the results of its investigation of a petition for import relief. This petition was filed by the Carlisle Tire and Rubber Company, the sole domestic producer of pneumatic bicycle tires provided for in item 772.48 of the Tariff Schedules of the United States (TSUS), and tubes for bicycle tires, provided for in TSUS item 772.57.

After considering all relevant aspects of the case, including those considerations set forth in section 202(c) of the Trade Act of 1974, I have determined that import relief is not in the national economic interest for the following reasons:

(1) The imposition of import relief in the form of a tariff increase would not be an effective means to promote the permanent adjustment in the domestic industry. The sole remaining domestic producer has the most modern plant available, and very little can be done to improve current operating efficiency. In addition, corporate profits are high, and the profit margin on bicycle tires and tubes remains respectable in spite of low capacity utilization levels.

(2) At current profit levels, it is unlikely that the remaining domestic manufacturer will cease producing bicycle tires and tubes. Should the corporation eventually decide to terminate production, much of the plant's equipment could be modified to produce other kinds of recreational tires made by the company.

(3) The relative stability in the domestic producer's market share indicates that domestic demand is less price sensitive than is import demand. Consequently, its market for domestically-produced tires and tubes is expected to remain intact.

(4) It is estimated that any loss in employment resulting from a denial of import relief would be small, and that those separated would be eligible for adjustment assistance. The Department of Labor estimates that the reemployment prospects are probably fair for potentially separated workers.

(5) Import relief would be inflationary. It is estimated that the consumer cost of the relief recommendation made by the USITC would be between $4.4 and $7.5 million for the first full year of relief.

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(6) The foreign policy consequences of granting relief measures are adverse. The world trading community would view this as a sign of growing protectionist sentiment. Moreover, because other petitions of the industry are now being investigated under the antidumping and countervailing duty statutes, it would also be seen as an attempt to harass foreign exporters through duplication of remedies.

(7) A duty increase such as recommended by the USITC will not place effective restraints on import competition but may merely accelerate the movement of production facilities out of Korea and Taiwan and into such countries as India, Indonesia, and Thailand.

(8) Provision of import relief would subject U.S. jobs in other industries to possible foreign retaliation against U.S. exports or compensation by the United States in the form of reduced import restrictions on other products.

This determination is to be published in the FEDERAL REGISTER.

Jimmy Carter

[FR Doc. 78-31165 Filed 10-31-78; 4:11 pm]

[3195-01-M]

Executive Order 12090

October 31, 1978

President's Commission on Foreign Language and International Studies

By the authority vested in me as President by the Constitution and statutes of the United States of America, in order to extend for five months the life of the President's Commission on Foreign Language and International Studies, Section 4 of Executive Order No. 12054 of April 21, 1978, is amended to read as follows:

"Sec. 4. *Termination and Final Report.* The Commission shall submit its final report to the President not later than eleven months after its first meeting and shall terminate thirty days thereafter.".

Jimmy Carter

THE WHITE HOUSE,
October 31, 1978.

[FR Doc. 78-31166 Filed 10-31-78; 4:12 pm]

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rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

[3410-01-M]

Title 7—Agriculture

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 6—IMPORT QUOTAS AND FEES

Subpart—Section 22 Import Quotas

PRICE DETERMINATION FOR CERTAIN CHEESE

AGENCY: Foreign Agricultural Service.

ACTION: Final rule.

SUMMARY: The subpart, Section 22 Import Quotas, is amended to change the price, determined by the Secretary of Agriculture, which is used as a basis for establishing import restrictions under section 22 on certain cheese. The change from $1.10 to $1.13 per pound is required since one of the factors used in determining such price (the Commodity Credit Corporation purchase price for Cheddar cheese under the milk support program) has been increased.

EFFECTIVE DATE: November 2, 1978. (See supplementary information.)

FOR FURTHER INFORMATION CONTACT:

Bryant H. Wadsworth, Head, Dairy and Import Group, Dairy, Livestock, and Poultry Division, FCA, Foreign Agricultural Service, Room 6616 South Agricultural Building, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-5270.

SUPPLEMENTARY INFORMATION: Since the action taken herewith involves foreign affairs functions of the United States, it is hereby determined that compliance with the notice of proposed rulemaking, public procedure, and effective date provisions of 5 U.S.C. 553 and E.O. 12044 is not required.

EFFECTIVE DATE

In accordance with headnote 3(a)(v) of part 3 of the appendix to the tariff schedules of the United States, the change in price effected by this amendment would not make the import restrictions contained in items 950.10B through 950.10E of part 3 of the appendix to the tariff schedules of the United States applicable to cheese having a purchase price of $1.10 or more per pound if such cheese had been exported to the United States on a through bill of lading or had been placed in a bonded warehouse on or before November 2, 1978.

The subpart, Section 22 Import Quotas of part 6, subtitle A of title 7, is amended as follows:

1. Section 6.16, under the heading "Price Determination for Certain Quotas," is amended to read as follows:

§ 6.16 Price determination.

The price referred to in items 950.10B through 950.10E of part 3 of the appendix to the tariff schedules, determined by the Secretary of Agriculture in accordance with headnote 3(a)(v) of said part 3, is $1.13 per pound. This price shall continue in effect until changed by amendment of this section.

APPENDIX 1 [AMENDED]

2. Group V of appendix 1, under the heading "Licensing Regulations," is amended by changing the description appearing immediately below group V to read as follows:

Cheese described below, if shipped otherwise than in pursuance to a purchase, or if having a purchase price under $1.13 per pound.

* * * * * *

(Sec. 3, 62 Stat. 1248, as amended (7 U.S.C. 624); part 3 of the appendix to the tariff schedules of the United States, 19 U.S.C. 1202.)

Issued at Washington, D.C., this 30th day of October 1978.

BOB BERGLAND,
Secretary.

[FR Doc. 78-31039 Filed 11-1-78; 8:45 am]

[3410-02-M]

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

[Amendment 19]

PART 906—ORANGES AND GRAPEFRUIT GROWN IN TEXAS

Container, Pack, and Container Marking Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amendment to final rule.

SUMMARY: This amendment revokes the authorization which allows shipment of Texas oranges and grapefruit in 1⅗ bushel wirebound boxes and 8-pound bags, except handlers may deplete their current supply of such containers. This action recognizes that such containers have been largely replaced by more suitable containers, and the reduction in the number of containers authorized should reduce container inventory costs.

EFFECTIVE DATE: December 4, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: On September 27, 1978, notice was published in the FEDERAL REGISTER (43 FR 43721; 46305), inviting written comments not later than October 13, 1978, on a proposal to delete 2 containers from the list of containers authorized to ship Texas oranges and grapefruit, under Marketing Order No. 906, as amended (7 CFR Part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. None were received. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

This action reflects the Department's appraisal of the need for restricting the use of containers to those most suitable for the packing and handling of fruit to promote orderly marketing in the interest of producers and consumers. Under the amendment two currently little-used containers will no

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longer be authorized after handlers' current stocks of such containers are depleted during the 1978-79 season. These containers are the 1⅘ bushel wirebound wooden box and the 8-pound bag, the use of which has declined to an insignificant level in recent years. By rescinding authorization to use these two containers, handlers' inventory requirements and related expenses should be reduced. Those containers remaining for authorized use will be adequate for the shipment of the Texas orange and grapefruit crops.

Specifically, the amendment would in § 906.340 *Container, pack and container marking regulations,* under subpart—Containers and Pack Requirements, delete paragraph (a)(1)(iv) and the language referring to 8-pound bags in paragraphs (a)(1)(v), (a)(1)(vi), and (a)(3); revise paragraph (a)(1)(x) to provide for the use of inventories of the 2 containers to be discontinued; and redesignate paragraphs (a)(1)(v), (a)(1)(vi), (a)(1)(vii), (a)(1)(viii), (a)(1)(ix), and (a)(1)(x), as paragraphs (a)(1)(iv), (a)(1)(v), (a)(1)(vi), (a)(1)(vii), (a)(1)(viii), and (a)(1)(ix).

After consideration of all relevant matters presented, including the proposals in the notice, the recommendation and information submitted by the Texas Valley Citrus Committee, and other available information, it is found that the amendment, as hereinafter set forth, is in accordance with the provisions of this marketing agreement and order and will tend to effectuate the declared policy of the act.

Accordingly, it is found that the provisions of paragraph (a) in § 906.340 should be and are amended to read as follows:

§ 906.340 Container, pack, and container marking regulations.

(a) No handler shall handle any variety of oranges or grapefruit grown in the production area on and after December 4, 1978, unless such fruit is in one of the following containers, and the fruit is packed and the containers are marked as specified in this section.

(i) *Containers.* (i) Closed fiberboard carton with inside dimensions of 13¼ x 10½ x 7¼ inches: *Provided,* That the container has a Mullen or Cady test of at least 200 pounds;

(ii) Closed fully telescopic fiberboard carton with inside dimensions of 16½ x 10¾ x 9½ inches, described in Freight Container Tariff 2G as container No. 6506;

(iii) Closed fully telescopic fiberboard carton with inside dimensions of 19¾ x 13½ x 13 inches: *Provided,* That the cover section and bottom section each has a Mullen or Cady test of at least 250 pounds;

(iv) Closed fiberboard carton with inside dimensions of 20 x 13¼ inches and of a depth from 9¾ to 10¾ inches: *Provided,* That the container has a Mullen or Cady test of at least 250 pounds and the container is used only for the shipment of eight 5-pound bags of fruit;

(v) Bags having a capacity of 5 pounds of fruit: *Provided,* That fruit packed in such bags shall be handled only when packed in the number and container specified in paragraph (a)(1)(iv);

(vi) Bags of the mesh or woven type having a capacity of 18 pounds of fruit;

(vii) Wire crib with inside dimensions of 46½ x 37 x 30 inches: *Provided,* That such cribs be constructed of either 4 x 4 inch mesh wire at least 0 gauge, or 2 x 2 inch mesh wire at least 2 gauge: *Provided further,* That a new liner shall be placed in this container each time it is filled for shipment;

(viii) Such other types and sizes of containers as may be approved by the Texas Valley Citrus Committee for testing in connection with a research project conducted by or in cooperation with the said committee: *Provided,* That the handling of each lot of fruit in such test containers shall be subject to prior approval, and under the supervision, of the Texas Valley Citrus Committee; and

(ix) Those containers for which authorization is deleted effective December 4, 1978 (1⅘ bushel wirebound boxes, and 8-pound bags packed in the container specified in paragraph (a)(1)(iv)), may be used by any handler until July 31, 1979: *Provided,* That such handler had such containers in his inventories on September 1, 1978.

* * * * *

(3) *Container grade markings.* Any container of U.S. No. 2 grade fruit shall be marked to indicate the grade of the fruit in letters and numbers at least three-fourth inch in height: *Provided,* That bags of a capacity of 5 pounds of fruit shall be so marked with letters and number at least one-fourth inch in height prominently displayed on the front panel of the bag.

* * * * *

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.)

Dated, October 30, 1978, to become effective December 4, 1978.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 78-30956 Filed 11-1-78; 8:45 am]

[3410-02-M]

CHAPTER XI—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; MISCELLANEOUS COMMODITIES), DEPARTMENT OF AGRICULTURE

[Amdt. 8]

PART 1207—POTATO RESEARCH AND PROMOTION PLAN

Subpart—Rules and Regulations

AMENDMENT REGARDING DESIGNATED HANDLER

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This amendment clarifies the responsibilities of seed potato producers regarding assessments. The amendment makes the seed potato producer the designated handler and requires him to pay the assessment unless he can show that the first person who obtained potatoes from him disposed of them other than by planting.

EFFECTIVE DATE: November 3, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, Deputy Director, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, Washington, D.C. 20250, telephone 202-447-6393.

SUPPLEMENTARY INFORMATION: The Potato Board is the administrative agency established by the Potato Research and Promotion Plan (7 CFR Part 1207). The plan is effective under the Potato Research and Promotion Act (7 U.S.C. 2611-2627).

Under current regulations it is difficult to determine the designated handler in transactions involving seed potato producers. It would be dependent on how the first person who obtained the potatoes from the seed producer disposed of them, information which is not easily obtainable by the Potato Board. To overcome this difficulty, the amended rule hereinafter set forth makes the seed producer the designated handler unless he can show that the first person who obtained the potatoes from him disposed of them other than by planting. To do this, the producer must furnish evidence of sale such as an invoice or settlement sheet on which it is indicated that the person to whom the potatoes were sold did not plant them but handled and disposed of them by some other means and is therefore responsible for paying the assessment.

Notice was published in the October 4 FEDERAL REGISTER (43 FR 45884) inviting written comment by October 19, 1978. None was received.

Findings. On the basis of all considerations it is believed that this amendment will tend to effectuate the declared policy of the act.

It is hereby further found that good cause exists for not postponing the effective date of this section until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) notice was given of the amendment set forth in this section by publication in the October 4 FEDERAL REGISTER, (2) prompt issuance of this amendment will be beneficial to the Potato Board in administering the Potato Research and Promotion Act and Plan, and (3) no useful purpose will be served by postponing such issuance.

The amendment is as follows:

In § 1207.512 revise paragaraph (a)(8) by adding the following:

§ 1207.512 Designated handler.

* * * * *

(a) * * *

(8) * * * However, the seed producer will be the designated handler responsible for filing reports and making payments, unless he can show that the first person who obtained the potatoes from him disposed of them other than by planting. To show this the seed producer must submit to the Potato Board the name and address of the first person who obtained the potatoes from him and an invoice of sale or settlement sheet on which it is indicated that such person will be the designated handler and therefore will be responsible for the payment of the assessments. Only by showing this is the seed producer no longer considered the designated handler and therefore not liable for the assessments.

* * * * *

(Title III of Pub. L. 91-670; 84 Stat. 2041; 7 U.S.C. 2611-2627.)

Dated: October 30, 1978, to become effective November 3, 1978.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 78-31037 Filed 11-1-78; 8:45 am]

[4910-13-M]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 78-EA-67, Amdt. 39-3334]

PART 39—AIRWORTHINESS DIRECTIVES

AVCO Lycoming

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to certain AVCO Lycoming IO-540 type aircraft engines and requires replacement of the fuel pump to fuel injector tube and elbow so as to prevent fuel leakage and resultant leakage and fire in the engine compartment.

DATE: November 7, 1978. Compliance is required within the next 50 hours in service.

ADDRESS: Service bulletins may be acquired from the manufacturer at AVCO Lycoming Division, Williamsport, Pa.

FOR FURTHER INFORMATION CONTACT:

E. Manzi, Propulsion Section, AEA-214, Engineering and Manufacturing Branch, Federal Building, J.F.K. International Airport, Jamaica, N.Y. 11430, 212-995-2804.

SUPPLEMENTARY INFORMATION: There have been reports of failure of the fuel pump to fuel injector tube and elbow due to insufficient flexibility. Since this is a condition likely to exist or develop in other engines of similar type design, an AD is being issued which will require replacement of the tube and elbow. Since the deficiency affects air safety, notice and public procedure hereon are impractical and good cause exists for making the rule effective in less than 30 days.

ADOPTION OF THE AMENDMENT

Accordingly, and pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by issuing a new airworthiness directive, as follows:

AVCO LYCOMING. Applies to all IO-540-G1B5, -K1F5, -P1A5 and -S1A5 series engines with serial numbers up to and including L-17835-48 or -48A and all IO-540-G1B5, -K1F5, -P1A5, -S1A5 series engines overhauled (also known as remanufactured) by Lycoming prior to March 30, 1978.

Compliance required within the next 50 hours in service after the effective date of this AD, unless already accomplished.

To prevent possible fuel leakage due to failure of the fuel pump to fuel injector tube elbow replace the fuel pump to fuel injector tube part number LW-10445 and the fuel pump to fuel injector tube elbow, part number LW-10446 with flexible hose assembly, part number LW-12877-6-051.

Upon submission of substantiating data through an FAA Maintenance Inspector, the Chief, Engineering and Manufacturing Branch, Federal Aviation Administration (FAA), Eastern Region, may adjust the compliance time specified in this AD.

NOTE: AVCO Lycoming Service Bulletin No. 421 covers this subject.

Effective date: This amendment is effective November 7, 1978.

Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, 49 U.S.C. 1354(a), 1421, and 1423; Sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c); and 14 CFR 11.89.

Issued in Jamaica, N.Y., on October 24, 1978.

WILLIAM E. MORGAN,
Director, Eastern Region.

[FR Doc. 78-30872 Filed 11-1-78; 8:45 am]

[4910-13-M]

[Docket No. 78-EA-43; Amdt. 39-3333]

PART 39—AIRWORTHINESS DIRECTIVES

AVCO Lycoming

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to AVCO Lycoming aircraft engines equipped with certain Bendix fuel injectors and requires replacement of the center body bellows seal assembly and tube bushing. This action is due to reports of failures of the seal and bushing and will prevent in-flight failure.

DATE: November 7, 1978. Compliance is required within the next 10 hours in service.

ADDRESSES: Service bulletins may be acquired from the manufacturer at AVCO Lycoming Division, Williamsport, Pa. 17701.

FOR FURTHER INFORMATION CONTACT:

E. Manzi, Propulsion Section, AEA-214, Engineering and Manufacturing Division, Federal Building, J.F.K. International Airport, Jamaica, N.Y. 11430, 212-995-2894.

SUPPLEMENTARY INFORMATION: Since this is a condition likely to exist or develop in other engines of similar

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type design, an AD is being issued which will require replacement of the seal and bushing. In view of the hazard to air safety, notice and public procedure hereon are impractical and good cause exists for making the rule effective in less than 30 days.

ADOPTION OF THE AMENDMENT

Accordingly, and pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by issuing a new airworthiness directive, as follows:

AVCO LYCOMING. Applies to all fuel injected Lycoming series engines equipped with the following Bendix Fuel Injector Models and Parts List Numbers.

Model No.	*Parts list No.*
RSA-5AB1	2524254-5
	2524712-2
RSA-5AD1	2524054-5
	2524147-7
	2524213-5
	2524291-5
	2524359-4
	2524450-3
	2524550-2
	2524673-2
	2524682-2
	2524742-2
	2524752-1
RSA-7AA1	2524347-4
RSA-10AD1	2524163-8
	2524163-7A
	2524757-1
RSA-10DB1	2524275-9
	2524649-3
RSA-10DB2	2524708-1
RSA-10ED1	2524273-5A
	2524273-6
	2524298-6
	2524491-3
	2524500-2A
	2524500-3
	2524693-2
	2524709-1

Compliance required within the next 10 hours in service after the effective date of this AD, unless previously accomplished.

To prevent an in-flight power loss due to an over rich condition caused by the failure of the center body bellows seal assembly, replace the center body bellows seal assembly and tube bushing in accordance with accomplishment and identification instructions in the applicable Bendix Energy Controls Division Service Bulletin No. RS-52 Rev. 2 revised May 12, 1978, No. RS-53 Rev. 2 revised May 12, 1978, and No. RS-54 Rev. 2 revised May 10, 1978, or FAA approved equivalent.

Equivalent methods of compliance must be approved by the Chief, Engineering & Manufacturing Branch, Federal Aviation Administration (FAA), Eastern Region.

As permitted by FAR's 21.197 and 21.199, aircraft may be flown to a base where the modification required by this Airworthiness Directive can be accomplished.

NOTE.—AVCO Lycoming Service Bulletins No. 428, No. 429, and No. 430 also pertain to this subject.

Effective Date: This amendment is effective November 7, 1978.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, 49 U.S.C. 1354(a), 1421, and 1423; Sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c); and 14 CFR 11.89).

Issued in Jamaica, N.Y., on October 24, 1978.

WILLIAM E. MORGAN,
Director, Eastern Region.

[FR Doc. 78-30873 Filed 11-1-78; 8:45 am]

[4910-13-M]

[Docket No. 78-SO-67; Amdt. No. 39-3331]

PART 39—AIRWORTHINESS DIRECTIVES

Gulfstream American Corporation Model GA-7

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires inspection and safety wiring of the elevator trim control chain on Gulfstream American Model GA-7. The AD is needed to prevent failure of the control chain which would result in loss of elevator trim control.

DATES: Effective November 2, 1978. Compliance within 5 flight hours of the effective date of this AD, unless already accomplished.

ADDRESSES: The applicable GAC Service Bulletin may be obtained from Gulfstream American Corporation, P.O. Box 2206, Savannah, Ga. 31402, telephone 912-964-3000. A copy of the GAC Service Bulletin is located in Room 275, Engineering and Manufacturing Branch, Federal Aviation Administration, 3400 Whipple Street, East Point, Ga.

FOR FURTHER INFORMATION CONTACT:

Curtis Jackson, Aerospace Engineer, Engineering and Manufacturing Branch, FAA, Southern Region, P.O. Box 20636, Atlanta, Ga. 30320, telephone 404-763-7407.

SUPPLEMENTARY INFORMATION: Two failures have occurred of the elevator trim control master chain link on the Model GA-7. Since this situation is likely to occur on other aircraft of the same type design, an Airworthiness Directive (AD) is being issued which requires compliance with the manufacturer's service bulletin.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

GULFSTREAM AMERICAN CORP. (GAC): Applies to GAC Model GA-7 serial numbers GA7-0002 through GA7-0036, GA7-0038 through GA7-0043, GA7-0045, GA7-0046, and GA7-0049, airplanes certificated in all categories. Compliance is required as indicated, unless already accomplished.

To prevent failure of the elevator trim control master chain and loss of elevator trim control, accomplished the following within 5 flight hours of the effective date of this AD:

Inspect and modify the elevator trim control system in accordance with GAC Service Bulletin ME-6 dated October 18, 1978, or later revision approved by the Chief, Engineering and Manufacturing Branch, FAA, Southern Region, or an equivalent manner approved by the Chief, Engineering and Manufacturing Branch, FAA, Southern Region. The inspection and/or alteration required by this AD constitute mainenance and may be performed by persons authorized to perform such maintenance under FAR 43.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89.)

GEORGE R. LA CAILLE,
Acting Director,
Southern Region.

Issued in East Point, Ga., on October 23, 1978.

[FR Doc. 78-30874 Filed 11-1-78; 8:45 am]

[4910-13-M]

[Docket No. 78-SO-66; Amdt. No. 39-3332]

PART 39—AIRWORTHINESS DIRECTIVES

Piper Aircraft Corp. Models PA-32RT-300 and PA-32RT-300T

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: There have been reports of several instances in which the control columns of certain PA-32RT-300 and PA-32RT-300T aircraft contacted the control column travel stops before the aircraft stabilator(s) contacted the stabilator travel stops. This condition would prevent the pilot from being able to make full use of the stabilator control surface travel, and would result in a reduction of controllability in the pitch regime, with a possible reduction of capability to make a proper flare maneuver during landing approach. Since this condition is likely to exist in other airplanes of the same design, an airworthiness directive is being issued to require replacement of the existing control column stop with a new part, and to check control column travel.

DATES: Effective November 15, 1978. Compliance as prescribed in body of AD.

ADDRESSES: The applicable Piper Service Bulletin may be obtained from Piper Aircraft Corp., Lock Haven Division, Lock Haven, Pa. 17745, telephone 717-748-6711. A copy of the Piper service bulletin is located in Room 275, Engineering and Manufacturing Branch, Federal Aviation Administration, 3400 Whipple Street, East Point, Ga.

FOR FURTHER INFORMATION CONTACT:

Steve Flanagan, Aerospace Engineer, Engineering and Manufacturing Branch, FAA, Southern Region, P.O. Box 20636, Atlanta, Ga. 30320, telephone 404-763-7407.

SUPPLEMENTARY INFORMATION: The FAA has received reports of some instances in which the pilots of certain PA-32RT-300/300T type aircraft reported poor airplane responsiveness when attempting to flare the airplane as in a landing approach. Subsequent investigation has determined that on certain PA-32RT-300 and PA-32RT-300T aircraft, under some load conditions there may be insufficient control column travel, thus allowing the control column stops to be contacted before the stabilator contacts its stops. Since a similar condition may exist on other aircraft of the same type design, an Airworthiness Directive is being issued to require replacement of the existing control column stop with a new part, and to require a check of the control column travel.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new Airworthiness Directive:

PIPER AIRCRAFT CORP.: Applies to the following model PA-32RT-300 AND PA-32RT-300T AIRCRAFT, CERTIFICATED IN ALL CATEGORIES:

PA-32RT-300 Lance II—32R-7885001 to 32R-7885216 inclusive; 32R-7885218 to 32R-7885253 inclusive; 32R-7885255; 32R-7885257 to 32R-7885260 inclusive.

PA-32RT-300T Turbo Lance II—32R-7887001 to 32R-7887110 inclusive; 32R-7887112 to 32R-7887173 inclusive; 32R-7887175 to 32R-7887182 inclusive; 32R-7887184 to 32R-7887196 inclusive; 32R-7887198 to 32R-7887201 inclusive; 32R-7887203 to 32R-7887205 inclusive; 32R-7887207, to 32R-7887208, 32R-7887210; 32R-7887212 to 32R-7887215 inclusive; 32R-7887217, 32R-7887218, 32R-7887220; 32R-7887222, 32R-7887224 and 32R-7887226.

Compliance required within the next 10 hours of operation, or at the next regularly scheduled or annual inspection, whichever occurs first.

To insure full travel of the control column, replace the control column stop sleeve and check control column travel and stabilator travel in accordance with the instructions contained in Piper Service Bulletin 619 (and Control Column Stop Modification Kit Number 763 895V) or later revision approved by the Chief, Engineering and Manufacturing Branch, Federal Aviation Administration, Southern Region, or in an equivalent manner approved by the Chief, Engineering and Manufacturing Branch, Federal Aviation Administration, Southern Region.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89).

Issued in East Point, Ga., on October 23, 1978.

GEORGE R. LA CAILLE,
Acting Director,
Southern Region.

[FR Doc. 78-30876 Filed 11-1-78; 8:45 am]

[4910-13-M]

[Docket No. 78-SO-64 Amendment 39-3330]

PART 39—AIRWORTHINESS DIRECTIVES

Piper Models PA-28-235 and PA-32 Series Airplanes

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment requires the replacement of the fuel drain lever cover assembly on certain PA-28-235 airplanes. This amendment also requires an operation and condition check, and replacement if necessary, of the fuel drain lever cover assembly on certain other PA-28-235 and PA-32 airplanes. This amendment is necessary to insure that the fuel drain lever is not exposed and subject to inadvertent operation.

DATES: Effective November 3, 1978. Compliance schedule—as prescribed in body of AD.

ADDRESSES: Copies of Piper Service Letter 856 may be obtained from Piper Aircraft Corp., 820 East Bald Eagle Street, Lockhaven, Pa. 17745. Copies of Piper Service Letter 856 are maintained in the AD Docket File and may be examined in Room 264, Federal Aviation Administration, Southern Region, 3400 Whipple Street, East Point, Ga.

FOR FURTHER INFORMATION CONTACT:

Gil Carter, ASO-214, Propulsion Section, Engineering and Manufacturing Branch, Southern Region, P.O. Box 20636, Atlanta, Ga. 30320, telephone, 404-763-7435.

SUPPLEMENTARY INFORMATION: There have been reports of inadvertent fuel drain lever actuation resulting in unwanted fuel drainage on Piper PA-32 airplanes. This condition may occur when the drain lever is exposed. This amendment is issued to insure that the drain lever is not exposed. Since this condition is likely to exist or develop in other airplanes of the same type design, a situation exists that requires immediate adoption of this regulation. It is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulation (14 CFR 39.13) is amended by adding the following new Airworthiness Directive:

PIPER AIRCRAFT CORP. Applies to Models PA-28-235, PA-32-260, PA-32-300, PA-32S-300, PA-32R-300, PA-32RT-300, and PA-32RT-300T airplanes, certificated in all categories. Compliance is required as indicated.

To prevent inadvertent fuel drain lever actuation, accomplish the following:

(a) On Model PA-28-235 serial numbers 28-10003 through 28-10660, accomplish the following:

(1) Within the next 50 hours time in service after the effective date of this AD, unless already accomplished, remove the fuel drain lever cover assembly Piper Part No. 65198-05, -06, or -07.

(2) Remove snap studs from spar box if installed.

(3) Using existing stud holes in spar box, install new drain cover assembly, Piper Kit 763 883V.

(4) Actuate fuel drain valve handle and insure adequate clearance between the handle and cover assembly.

(5) Make appropriate maintenance record entry.

(b) On Models PA-28-235, PA-32-260, PA-32-300, PA-32S-300, PA-32R-300, PA-32RT-300, and PA-32RT-300T, all serial numbers, accomplish the following:

(1) For airplanes with 300 hours or more time in service, within the next 50 hours time in service from the effective date of this AD, and at intervals not to exceed 100 hours time in service from the last check,

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check the fuel drain lever cover assembly door to determine whether the door freely opens and closes freely without manual assistance and prevents actuation of the lever when the door is in the closed position.

(2) If the door does not open and close freely or if the door does not prevent access to the lever when it is in the closed position, replace the fuel drain lever cover assembly with a serviceable assembly, and make the appropriate maintenance record entry.

(3) If the door opens and closes freely and prevents access to the lever when it is in the closed position, make the appropriate maintenance record entry.

(c) An alternate method of compliance may be approved by the Chief, Engineering and Manufacturing Branch, Federal Aviation Administration, Southern Region.

The checks in this AD may be accomplished by the pilot and appropriate maintenance record entries made in accordance with FAR 91.173. Replacement must be accomplished by a person authorized FAR 43.3.

(Piper Service Letter 856 dated September 15, 1978, pertains to paragraph (a).)

This amendment becomes effective November 3, 1978.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89.)

Issued in East Point, Georgia, October 20, 1978.

PHILLIP M. SWATEK,
Director,
Southern Region.

[FR Doc. 78-30875 Filed 11-1-78; 8:45 am]

[4910-13-M]

[Docket No. 17969; Amdt. 39-3337]

PART 39—AIRWORTHINESS DIRECTIVES

Societe Nationale Industrielle Aerospatiale Model SA 316C and 319 Alouette III Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires repetitive inspections of the flight control bellcrank support upper attachment fittings for cracks on Societe Nationale Industrielle Aerospatiale (SNIAS) Model SA 316C and 319 Alouette III helicopters and their replacement if necessary. The AD is needed to prevent cracking of the flight control bellcrank support upper attachment fittings which could result in the loss of control of the helicopter.

EFFECTIVE DATE: December 4, 1978. Compliance schedule—As prescribed in body of AD.

ADDRESSES: The applicable service bulletin may be obtained from: Societe Nationale Industrielle Aerospatiale, Marignane, France. A copy of the service bulletin is contained in the Rules Docket, Room 916, 800 Independence Avenue SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT:

D. C. Jacobsen, Chief, Aircraft Certification Staff, AEU-100, Europe, Africa, and Middle East Region, Federal Aviation Administration, Brussels, Belgium, telephone 513.38.30.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation regulations to include an AD requiring repetitive inspections of the flight control bellcrank support upper attachment fittings for cracks on SNIAS Model SA 316C and 319 Alouette III helicopters and their replacement, if necessary, was published in the FEDERAL REGISTER at 43 FR 26318 on June 19, 1978. The proposal was prompted by reports of cracks found in the flight control bellcrank support attachment fittings, P/N's 319A.84.10.110 and 319A.84.10.119 on SNIAS Model SA 316C and 319 Alouette III helicopters.

Interested persons have been afforded an opportunity to participate in the making of the amendment. No objections were received. Accordingly, the proposal is adopted without change.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of part 39 of the Federal Aviation regulation (14 CFR 39.13) is amended by adding the following new airworthiness directive:

SOCIETE NATIONALE INDUSTRIAL AEROSPATIALE (SNIAS). Applies to Model SA 316C and 319 Alouette III helicopters, certificated in all categories, that do not incorporate SNIAS Modification AMS 07.2109 (covered in Service Bulletin No. 65.108).

Compliance is required as indicated, unless already accomplished.

To prevent a possible loss of helicopter control, accomplish the following:

(a) Within the next 50 hours' time in service after the effective date of this AD and, thereafter, at intervals not to exceed 50 hours' time in service since the previous inspection, inspect the left-hand and right-hand upper flight control bellcrank support attachment fittings, P/N's 319A.84.10.118 and 319A.84.10.119, in accordance with Alouette SA 316C and 319 Service Bulletin No. 05.57, dated September 29, 1975, or an FAA-approved equivalent (hereinafter referred to as Service Bulletin).

(b) If a crack is found during an inspection required by paragraph (a) of this AD, replace the affected part with a new fitting, P/N 319A.84.10.120 or 319A.84.10.121, as appropriate, in accordance with the Service Bulletin before further flight, except that the helicopter may be flown in accordance with FAR 21.197 and 21.199 to a base where the work can be performed.

(c) The inspections required by paragraph (a) of this AD may be discontinued upon the installation of new fittings, P/N's 319A.84.10.120 and 319A.84.10.121, in accordance with the Service Bulletin.

This amendment becomes effective December 4, 1978.

(Secs. 313(a) 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89.)

Issued in Washington, D.C., on October 25, 1978.

JAMES M. VINES,
Acting Director,
Flight Standards Service.

[FR Doc. 78-30880 Filed 11-1-78; 8:45 am]

[4910-13-M]

[Docket No. 18429; Amdt. 39-3336]

PART 39—AIRWORTHINESS DIRECTIVES

Rolladen Schneider

Model LS1-f and LS3 Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires inspection of the tow release mechanism cable to the CG tow hook and replacement of the tow release cable if there is evidence of corrosion on Rolladen Schneider Model LS1-f and LS3 gliders. This AD is prompted by a report of tow release cable failure due to corrosion which could result in inability to release from tow.

DATES: Effective November 16, 1978. Compliance required within the next 25 hours' time in service after the effective date of this AD, unless already accomplished.

ADDRESSES: The applicable technical bulletin may be obtained from: Rolladen Schneider Flugzeugbau GmbH, Muhlostrasse 10, D-6073 Egelsbach, Germany. A copy of the technical bulletin is contained in the rules docket for this amendment in room 916, 800 Independence Avenue SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT:

Don C. Jacobsen, Chief Aircraft Certification Staff, AEU-100, Europe, Africa, and Middle East Region, Federal Aviation Administration, c/o American Embassy, Brussels, Belgium, telephone 513.38.30.

SUPPLEMENTARY INFORMATION: There has been a report that the tow release mechanism cable on Rolladen Schneider Model LS1-f and LS3 gliders is subject to corrosion and failure due to water entering and collecting in the plastic fairlead (tube) which covers and provides a guide for the release mechanism cable. A hazardous condition would exist if the tow release mechanism cable failed during a tow launch making it impossible to release from the tow line and the tow aircraft.

Since this condition is likely to exist or develop on other gliders of the same type design, an airworthiness directive is being issued which requires inspection of the tow release mechanism cable for evidence of corrosion and cable strand damage and possible replacement of the cable with a new stainless steel cable.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of part 39 of the Federal Aviation regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

ROLLADEN SCHNEIDER. Applies to Model LS1-f and LS3 gliders, all serial numbers, certificated in all categories.

Compliance is required within the next 25 hours' time in service after the effective date of this AD, unless already accomplished, and thereafter at intervals not to exceed 1 year from the last inspection until the tow release mechanism cable is replaced in accordance with the method specified in paragraph (b) of this AD.

To prevent a tow release mechanism cable failure due to corrosion or cable strand damage, accomplish the following:

(a) Remove the seat pan from the aircraft and using care not to damage the CG tow release mechanism cable, cut out approximately four (4) inches of the plastic fairlead (tube) covering the tow release mechanism cable, preferably at a low point in the cable run and just forward of the landing gear box. Move the tow release mechanism cable forwards and backwards through the cutout in the plastic tube and inspect the cable for corrosion or cable strand damage.

(b) If during an inspection required by paragraph (a) of this AD, corrosion or cable strand damage is found, before further flight, replace the tow release mechanism cable with a new stainless steel cable of 2.4 mm diameter, LN 9389 or U.S. equivalent MIL-W-5424B, in accordance with Rolladen Schneider Technical Bulletins No. 35 dated May 12, 1978, or No. 3007 dated May 12, 1978, as applicable or in accordance with criteria provided in Chapter 4 of FAA Advisory Circular 43.13-1A "Acceptable Methods, Techniques, and Practices—Aircraft Inspection and Repair" or equivalent procedure approved by the Chief, Aircraft Certification Staff, FAA, Europe, Africa, and Middle East Region.

NOTE.—Rolladen Schneider Technical Bulletins No. 35 dated May 12, 1978, applicable to the Model LS1-f glider and No. 3007 dated May 12, 1978, applicable to the Model LS3 glider pertain to the same subject as this AD.

This amendment becomes effective November 16, 1978.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89.)

Issued in Washington, D.C., on October 25, 1978.

JAMES M. VINES,
Acting Director,
Flight Standards Service.

[FR Doc. 78-30881 Filed 11-1-78; 8:45 am]

[4910-13-M]

[Airspace Docket No. 78-WA-16]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Federal Airway

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters V-35 airway to exclude the Cudjoe Key, Fla., Restricted Area R-2916 which extends into the edge of the airway. This action permits the simultaneous use of the airway and the restricted area.

EFFECTIVE DATE: December 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Everett L. McKisson, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC. 20591, telephone 202-426-3715.

SUPPLEMENTARY INFORMATION: The purpose of this amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to permit the simultaneous use of the restricted area and the airway by reducing the airway width only to the extent that the restricted area penetrates the outer edge of the airway. This action was proposed in a notice of proposed rulemaking (NPRM) published in the FEDERAL REGISTER on December 13, 1976 (41 FR 54187). Because the public has had an opportunity to participate in making this rule, further notice and public procedure are unnecessary. However, the associated rule which became effective June 16, 1977, unintentionally omitted this part of the proposal.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.123 of part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (43 FR 307) and amended (42 FR 60123) is further amended, effective 0901 G.m.t., December 28, 1978, as follows:

Under V-35, "The airspace within R-2916 is excluded." is added at the end of the text.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69.)

NOTE.—The FAA has determined that this document involves a regulation which is not considered to be significant under the procedures and criteria prescribed by Executive Order 12044 and as implemented by interim Department of Transportation guidelines (43 FR 9582; March 8, 1978).

Issued in Washington, D.C., on October 26, 1978.

WILLIAM E. BROADWATER,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 78-30868 Filed 11-1-78; 8:45 am]

[4910-13-M]

[Airspace Docket No. 78-SO-34]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Federal Airway

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule

SUMMARY: This amendment designates new segments of airways from Shelbyville, to Nashville, Tenn., and from a point on V-52N approximately 31 miles north of Nashville to Bowling Green, Ky., as V-362. Segments of presently designated airways are also numbered or renumbered as V-362 by this amendment. Air traffic flow in the Nashville area will be improved and the time required for flight planning and pilot/controller coordination will be reduced.

EFFECTIVE DATE: December 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Everett L. McKisson, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division,

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Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591, telephone 202-426-3715.

SUPPLEMENTARY INFORMATION:

HISTORY

On August 14, 1978, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR Part 71) to add, number and renumber airway segments between Alma, Ga., and Bowling Green, Ky. (43 FR 35944). Interested persons were invited to participate in the rulemaking proceeding by submitting written comments on the proposal to the FAA. The three comments received expressed no objection. This amendment is the same as that proposed in the notice. Section 71.123 was republished in the FEDERAL REGISTER on January 3, 1978 (43 FR 307).

THE RULE

This amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) designates V-362 from Alma, Ga., via INT Alma 311° T (311° M) and Vienna, Ga., 123° T (122° M) radials; Vienna; Macon, Ga.; INT Macon 349° T (348° M) and Norcross, Ga., 150° T (149° M) radials; Norcross; INT Norcross 336° T (335° M) and Chattanooga, Tenn., 127° T (126° M) radials; Chattanooga; Shelbyville, Tenn.; Nashville, Tenn.; INT Nashville 355° T (353° M) and Bowling Green, Ky., 219° T (217° M) radials; to Bowling Green. Additionally, it also rescinds V-5W from Alma to the NELLO reporting point northwest of Norcross. This action reduces flight planning and communication time required for the use of the route segments that are defined as V-5W. The airway segments in the vicinity of Nashville will help to improve the traffic in that area by defining the vector routes as airways.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (43 FR 307) and amended (43 FR 3553) is further amended, effective 0901 G.m.t., December 28, 1978, as follows:

Under V-5, "Chattanooga, Tenn., 127° radials, including a west alternate from Alma; INT Alma 311° and Vienna, Ga., 123° radials, Vienna; Macon, Ga.; INT Macon 349° and Norcross, Ga., 150° radials; Norcross; Chattanooga;" is deleted and "Chattanooga, Tenn., 127° radials; Chattanooga;" is substituted therefor.

V-362 is added to read as follows:

V-362 from Alma, Ga., via INT Alma 311° and Vienna, Ga., 123° radials; Vienna; Macon, Ga.; INT Macon 349° and Norcross, Ga., 150° radials; Norcross; INT Norcross 336° and Chattanooga, Tenn., 127° radials; Chattanooga; Shelbyville, Tenn.; Nashville, Tenn.; INT Nashville 355° and Bowling Green, Ky., 219° radials; to Bowling Green.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69.)

NOTE.—The FAA has determined that this document involves a regulation which is not significant under the procedures and criteria prescribed by Executive Order 12044 and implemented by interim Department of Transportation guidelines (43 FR 9582; March 8, 1978).

Issued in Washington, D.C., on October 26, 1978.

WILLIAM E. BROADWATER,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 78-30869 Filed 11-1-78; 8:45 am]

[4910-13-M]

[Airspace Docket No. 78-EA-49]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Control Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment changes the text of control 1147 which is presently described as a bearing from the Newark, N.J., radio beacon (RBN). On September 7, 1978, the Newark radio beacon was renamed PROGRESS RBN, identifier G-K-O. This action changes the text of control 1147 to reflect this alteration.

EFFECTIVE DATE: December 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Lewis W. Still, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591, telephone 202-426-8525.

SUPPLEMENTARY INFORMATION: The purpose of this amendment to subpart E of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to alter the text of control area 1147 which is described in part as the 137° bearing from the Newark, N.J., radio beacon (RBN). However, on September 7, 1978, the name of the Newark RBN was changed to PROGRESS RBN; therefore, it is necessary to amend the text of control 1147 to reflect this change. Section 71.163 was republished in the FEDERAL REGISTER on January 3, 1978 (43 FR 348).

Since this amendment is editorial in nature, it is a minor matter on which the public would have no particular desire to comment, notice and public procedure thereon are unnecessary.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.163 of part of the Federal Aviation Regulations (14 CFR Part 71) as republished (43 FR 348) is amended, effective 0901 G.m.t., December 28, 1978, as follows:

UNDER CONTROL 1147

"INT of the 137° bearing from the Newark, N.J., RBN" is deleted and "INT of the 137° bearing from the PROGRESS, N.J., RBN" is substituted therefor.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69.)

NOTE.—The FAA has determined that this document involves a regulation which is not significant under the procedures and criteria prescribed by Executive Order 12044 and implemented by interim Department of Transportation guidelines (43 FR 9582; March 8, 1978).

Issued in Washington, D.C., on October 26, 1978.

WILLIAM E. BROADWATER,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 78-30870 Filed 11-1-78; 8:45 am]

[4910-13-M]

[Airspace Docket No. 78-EA-90]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Control Zone: Dubois, Pa.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the DuBois, Pa., control zone, over Dubois-Jefferson County Airport. This alteration will provide protection for aircraft executing a new RNAV RWY 7 instrument approach which has been developed for the airport. An instrument approach procedure requires the designation of controlled airspace to protect aircraft utilizing the instrument approach.

EFFECTIVE DATE: 0901 G.m.t., December 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Frank Trent, Airspace and Procedures Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Federal Building, J.F.K. International Airport, Jamaica, N.Y. 11430, telephone 212-995-3391.

SUPPLEMENTARY INFORMATION: The purpose of this amendment to subpart F of part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to alter the DuBois, Pa., control zone. The rule resulted from the development of a new instrument approach for the airport which only requires the addition of approximately 1 mile to the southwest extension of the zone. Since this alteration is minimal in nature and does not impose an additional burden on any person, notice and public procedures are unnecessary.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, subpart F of part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 G.m.t., December 28, 1978, as follows:

1. Amend section 71.171 of part 71 of the Federal Aviation Regulations by adding the following to the description of the DuBois, Pa., control zone; "and within 2.5 miles each side of a 242° bearing from a point 41°10'30" N., 78°54'30" W., extending from said point to 5.5 miles southwest of said point."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(c)); Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69.)

Issued in Jamaica, N.Y., on October 16, 1978.

LOUIS J. CARDINALI,
Acting Director, Eastern Region.

[FR Doc. 78-30657 Filed 11-1-78; 8:45 am]

[4910-13-M]

[Airspace Docket No. 78-CE-22]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW POINT ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

Alteration of Control Zone and Transition Area at Scottsbluff, Nebr.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this amendment is to alter the control zone and 700-foot transition area at Scottsbluff, Nebr., to provide additional controlled airspace for aircraft executing a new VOR/DME instrument approach procedure to runway 5 at the Scotts Bluff County Airport, Scottsbluff, Nebr.

EFFECTIVE DATE: December 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Gary W. Tucker, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-538, FAA, Central Region, 601 East 12th Street, Kansas City, Mo. 64106, telephone 816-374-3408.

SUPPLEMENTARY INFORMATION: The purpose of this amendment to subpart F, section 71.171 of the Federal Aviation Regulations (14 CFR 71.171) and subpart G, section 71.181 of the Federal Aviation Regulations (14 CFR 71.181) is to alter the control zone and 700-foot transition area at Scottsbluff, Nebr. To enhance airport usage by providing additional instrument approach capability to the Scotts Bluff County Airport, the city of Scottsbluff, Nebr., has requested a new VOR/DME instrument approach procedure to runway 5. The establishment of this instrument approach procedure entails alteration of the control zone and transition area at Scottsbluff, Nebr., at and above 700 feet above ground level (AGL) within which aircraft are provided additional air traffic control service. The intended effect of this action is to insure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

DISCUSSION OF COMMENTS

On pages 40237 and 40238 of the FEDERAL REGISTER dated September 11, 1978, the Federal Aviation Administration published a notice of proposed rulemaking which would amend sections 71.171 and 71.181 of part 71 of the Federal Aviation Regulations so as to alter the control zone and transition area at Scottsbluff, Nebr. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the notice of proposed rulemaking.

Accordingly, subpart F, section 71.171 of the Federal Aviation Regulations (14 CFR 71.171) as republished on January 3, 1978 (43 FR 355), is amended effective 0901 G.m.t., December 28, 1978, by altering the following control zone:

SCOTTSBLUFF, NEBR.

Within a 5-mile radius of the Scotts Bluff County Airport (latitude 41°52'40" N., longitude 103°35'47" W.); and within 2 miles each side of the Scottsbluff VORTAC 259° radial extending from the 5-mile radius zone to the VORTAC; and within 2 miles each side of the ILS Localizer northwest course extending from the 5-mile radius zone to 7 miles northwest of the airport; and with 4.5 miles each side of the Scottsbluff VORTAC 256° radial extending from the 5-mile radius zone to 15.5 miles west of the VORTAC.

Additionally, subpart G, section 71.181, of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 3, 1978 (43 FR 440), is amended effective 0901 G.m.t., December 28, 1978, by altering the following transition area:

SCOTTSBLUFF, NEBR.

That area extending upward from 700 feet above the surface within a 9.5-mile radius of the Scotts Bluff County Airport (latitude 41°52'40" N., longitude 103°35'47" W.); within 4.5 miles south and 9.5 miles north of the Scottsbluff VORTAC 079° radial extending from the 9.5-mile radius to 13 miles east of the VORTAC; with 4.5 miles southwest and 9.5 miles northeast of the ILS Localizer southeast course extending from the 9.5-mile radius to 13 miles southeast of the outer marker; within 5 miles northeast and 9.5 miles southwest of the ILS Localizer northwest course extending from the 9.5 mile radius to 17.5 miles northwest of the airport; within 4.5 miles south and 4.5 miles north of the Scottsbluff VORTAC 256° radial extending from the 9.5-mile radius to 19.5 miles west of the VORTAC.

(Sec. 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.61 of the Federal Aviation Regulations (14 CFR 11.61).)

NOTE.—The FAA has determined that this document involves a proposed regulation which is not considered to be significant under the procedures and criteria prescribed by Executive Order 12044 and as implemented by interim Department of Transportation guidelines (43 FR 9582; March 8, 1978).

Issued in Kansas City, Mo., on October 20, 1978.

WM. JACK SASSER,
Acting Director, Central Region.

[FR Doc. 78-30663 Filed 11-1-78; 8:45 am]

[4910-13-M]

[Airspace Docket No. 78-CE-19]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW POINT ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

Designation of Control Zone, Olathe, Kan. (Johnson County Industrial Airport)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to designate a control zone at Olathe, Kans. to provide controller

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airspace for aircraft utilizing the Johnson County Industrial Airport.

EFFECTIVE DATE: December 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Gary W. Tucker, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-538, FAA, Central Region, 601 East 12th Street, Kansas City, Mo. 64106, 816-374-3408.

SUPPLEMENTARY INFORMATION: A control zone is being designated at Olathe, Kans. to serve the Johnson County, Kansas Industrial Airport. To enhance airport usage, an instrument landing system has been installed on and a non-Federal Air Traffic Control Tower commissioned at this airport thereby satisfying the requirements for the establishment of a control zone. Control zones are designated around airports that have a sufficient amount of air traffic to warrant IFR controlled airspace protection to the surface within a specified radius of the airport and along the final approach course of the instrument approach procedures. Johnson County Industrial Airport meets this criteria. The intended effect of this action is to insure segregation of aircraft using instrument approach procedures under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

DISCUSSION OF COMMENTS

On page 33257 of the FEDERAL REGISTER dated July 31, 1978, the Federal Aviation Administration published a notice of proposed rulemaking which would amend section 71.171 of part 71 of the Federal Aviation Regulations so as to designate a control zone at Olathe, Kan. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the notice of proposed rulemaking.

Accordingly, subpart F, section 71.171 of the Federal Aviation Regulations (14 CFR 71.171) as republished on January 3, 1978 (43 FR 355), is amended effective 0901 G.m.t., December 28, 1978, by adding the following new control zone:

OLATHE, KANS. (JOHNSON COUNTY INDUSTRIAL AIRPORT)

Within a 5-mile radius of the Johnson County Industrial Airport (latitude 38°49'47" N, longitude 94°53'29" W), excluding that portion which overlies the Olathe, Kans. (Johnson County Executive Airport) control zone, and excluding that portion bounded on the north by latitude 38°49'30" N and on the east by longitude 94°56'30" W. This control zone is effective during the specific dates and times established in advance by a notice to airmen. The effective date and time will thereafter be continuously published in the Airmen's Information Manual.

(Sec. 307'a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.61 of the Federal Aviation Regulations (14 CFR 11.61).)

NOTE.—The FAA has determined that this document involves a proposed regulation which is not considered to be significant under the procedures and criteria prescribed by Executive Order 12044 and as implemented by interim Department of Transportation guidelines (43 FR 9582; March 8, 1978).

Issued in Kansas City, Mo., on October 20, 1978

WM. JACK SASSER,
Acting Director, Central Region.

[FR Doc. 78-30662 Filed 11-1-78; 8:45 am]

[4910-13-M]

[Airspace Docket No. 78-GL-13]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Designation of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to designate controlled airspace near Mason, Mich., to accommodate a new (VOR-A) instrument approach procedure into the Mason-Jewett Airport, Mason, Mich., established on the basis of a request from the Mason-Jewett Airport officials to provide that facility with instrument approach capability. The intended effect of this action is to insure segregation of the aircraft using this approach procedure in instrument weather conditions and other aircraft operating under visual conditions.

EFFECTIVE DATE: December 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Clair M. Billington, Airspace and Procedures Branch, Air Traffic Division, AGL-530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Ill. 60018, telephone 312-694-4500, extension 456.

SUPPLEMENTARY INFORMATION: The floor of the controlled airspace in this area will be lowered from 1,200 above ground level to 700 feet above ground level. The development of the proposed instrument procedures necessitates the Federal Aviation Administration to lower the floor of the controlled airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace. In addition, aeronautical maps and charts will reflect the area of the instrument procedure which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

DISCUSSION OF COMMENTS

On page 42766 of the FEDERAL REGISTER, dated September 21, 1978, the Federal Aviation Administration published a notice of proposed rulemaking which would amend section 71.181 of part 71 of the Federal Aviation regulations so as to designate a transition area at Mason, Mich. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the notice of proposed rulemaking.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, part 71 of the Federal Aviation regulations (14 CFR Part 71) is amended, effective December 28, 1978, as follows:

In section 71.181 (43 FR 440), the following transition area is added:

MASON, MICH.

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the center, latitude 42°33'50" N, longitude 84°25'40" W., of the Mason-Jewett Airport, Mason, Mich.

This amendment is made under the authority of section 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); sec. 11.61 of the Federal Aviation regulations (14 CFR 11.61).

NOTE.—The Federal Aviation Administration has determined that this document involves a proposed regulation which is not considered to be significant under the procedures and criteria prescribed by Executive Order 12044 and as implemented by interim Department of Transportation guidelines (43 FR 9582; Mar. 8, 1978).

Issued in Des Plaines, Ill., on October 25, 1978.

WM. S. DALTON,
Acting Director, Great Lakes Region.

[FR Doc. 78-30877 Filed 11-1-78; 8:45 am]

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[4910-13-M]

[Airspace Docket No. 78-WE-6]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of a Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the San Diego, Calif., 1,200-foot transition area by moving its western boundary approximately 11 miles westward. This action provides sufficient controlled airspace for opposite direction, same altitude, offshore instrument flight rule (IFR) traffic between Los Angeles and San Diego, Calif.

EFFECTIVE DATE: December 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Lewis W. Still, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone 202-426-8525.

SUPPLEMENTARY INFORMATION:

HISTORY

On July 27, 1978, the FAA proposed to amend part 71 of the Federal Aviation regulations (14 CFR Part 71) to alter the San Diego, Calif., 1,200-foot transition area by relocating the western boundary of the transition area westward about 11 miles (43 FR 32435). This action would provide sufficient controlled airspace to permit controllers to radar vector opposite direction traffic at the same altitude between San Diego and Los Angeles, Calif. Interested persons were invited to participate in the rulemaking proceeding by submitting comments on the proposal to the FAA. Two comments were received and neither stated an objection to the proposal. This amendment is the same as that proposed in the notice. Section 71.181 was republished in the FEDERAL REGISTER on January 3, 1978 (43 FR 440).

In addition to the rulemaking action that increases the size of the transition area, nonrulemaking action has been implemented that simultaneously decreases the size of Warning Area W-291 which is located generally west of the transition area. This insures that military training activity would not be conducted in that portion of the transition area where civil traffic will be radar vectored by FAA air traffic controllers.

THE RULE

This amendment to part 71 of the Federal Aviation regulations (14 CFR Part 71) alters the San Diego, Calif., 1,200-foot transition area of moving the western boundary of the transition area westward approximately 11 miles. This action provides additional control airspace for opposite direction, offshore IFR traffic between Los Angeles and San Diego, Calif.

NONRULEMAKING ACTION

Under Warning Area W-291:

The nonrulemaking action that realines Warning Area W-291 simultaneously with the realinement of the San Diego transition area is as follows:

"Beginning at Lat. 33°11'00" N., Long. 117°48'55" W.; to Lat. 32°57'40" N., Long. 117°35'00" W.; to Lat. 32°49'30" N., Long. 117°45'15" W.; to Lat. 32°34'45" N., Long. 117°39'00" W.; to Lat. 32°36'45" N., Long. 117°33'00" W.; to Lat. 32°31'30" N., Long 117°30'00" W." is deleted and

"Beginning at Lat. 33°12'30" N., Long. 117°58'45" W.; to Lat. 32°53'00" N., Long. 117°41'40" W.; to Lat. 32°36'50" N., Long. 117°32'54" W.; to Lat. 32°31'30" N., Long. 117°30'00" W." is substituted therefor.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, subpart G of part 71 of the Federal Aviation regulations (14 CFR Part 71) as republished (43 FR 440) is amended, effective 0901 G.m.t., December 28, 1978, as follows:

In § 71.181 under San Diego, Calif., all text after "thence W. along the United States/Mexican border and Flight Information Region Boundary to Lat. 32°29'40" N., Long. 117°21'00" W.," is deleted and the following is substituted therefor:

"to Lat. 32°31'30" N., Long. 117°30'00" W.; to Lat. 32°36'50" N., Long. 117°32'54" W.; to Lat. 32°34'45" N., Long. 117°39'00" W.; to Lat. 32°49'30" N., Long. 117°45'15" W.; to Lat. 32°53'00" N., Long. 117°41'40" W.; to Lat. 33°12'30" N., Long. 117°58'45" W.; to Lat. 33°15'00" N., Long. 117°30'00" W.; thence north via Long. 117°30'00" W.; to the point of beginning."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69.)

NOTE.—The FAA has determined that this document involves a regulation which is not considered to be significant under the procedures and criteria prescribed by Executive Order 12044 and as implemented by interim Department of Transportation guidelines (43 FR 9582; Mar. 8, 1978).

Issued in Washington, D.C., on October 26, 1978.

WILLIAM E. BROADWATER,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 78-30684 Filed 11-1-78; 8:45 am]

[4910-13-M]

[Airspace Docket No. 78-ASW-29]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Designation of Transition Area: Castroville, Tex.; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action corrects a rule issued on September 22, 1978, and appeared in FR Doc. 78-27869 on page 45984 in the FEDERAL REGISTER of Thursday, October 5, 1978. The rule stated that the transition area "extending from the 5-mile radius to 11.5 miles northwest of the proposed NDB." The direction of the extension should have been to the south. This action is to correct the direction of the extension of the transition area.

EFFECTIVE DATE: December 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Ken Stephenson, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Forth Worth, Tex. 76101; telephone 817-624-4911, extension 302.

SUPPLEMENTARY INFORMATION: FR Doc. 78-27869 was published on October 5, 1978, with an effective date of December 28, 1978 (43 FR 32434) stating that the Federal Aviation Administration proposed to designate a transition area at Castroville, Tex. The direction of the transition area extension was stated as "extending from the 5-mile radius to 11.5 miles northwest of the proposed NDB." The direction of the extension should have been to the south. Action is taken herein to redescribe the transition area and correct the error. Since the change is editorial in nature, notice and public procedure thereon are not considered necessary.

ADOPTION OF THE CORRECTION

Accordingly, pursuant to the authority delegated to me by the Administrator, FR Doc. 78-27869, appearing on page 45984 in the FEDERAL REGISTER of

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October 5, 1978, the Castroville, Tex., transition area is amended by deleting the description and substituting the following:

CASTROVILLE, TEX.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Castroville Municipal Airport (latitude 29°20'32" N., longitude 98°51'03" W.), within 3.5 miles each side of the 170° bearing from the NDB (latitude 29°20'45" N., longitude 98°50'56" W.) extending from the 5-mile radius to 11.5 miles south of the NDB.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a); and sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).)

NOTE.—The FAA has determined that this document involves a proposed regulation which is not considered to be significant under the procedures and criteria prescribed by Executive Order 12044 and as implemented by interim Department of Transportation guidelines (43 FR 9582; Mar. 3, 1978).

Issued in Forth Worth, Tex., on October 24, 1978.

PAUL J. BAKER,
Acting Director,
Southwest Region.

[FR Doc. 78-30878 Filed 11-1-78; 8:45 am]

[4910-13-M]

[Airspace Docket No. 78-WA-6]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

PART 73—SPECIAL USE AIRSPACE

Alteration of Federal Airways, Designation and Alteration of Restricted Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments alter the boundary of R-4501A, establish R-4501C and R-4501D and also amend V-88, V-132, V-239, and V-289 airways to exclude R-4501A, R-4501B, R-4501C, and R-4501D during their time of activation. These actions will permit the Air Force to jointly use the preestablished Army restricted area for training purposes. Joint use of the area by the two military services will contribute to fuel conservation and the safe and efficient use of navigable airspace.

EFFECTIVE DATE: December 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Everett L. McKisson, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone, 202-426-3715.

SUPPLEMENTARY INFORMATION:

HISTORY

On September 7, 1978, the FAA published for comment a proposal to enlarge R-4501A and designate R-4501C and R-4501D (43 FR 39803). This action and an amendment contained herein to eliminate the airspace of R-4501B, R-4501C, and R-4501D from V-88, V-132, V-239, and V-289 airways will enable the Department of the Army to permit the Department of the Air Force to jointly use this location for training. The only comment received expressed no objection. The Commander, U.S. Army Training Center at Fort Leonard Wood, has stated that the requirements of the National Environmental Policy Act have been met.

THE RULE

This amendment to part 71 of the Federal Aviation regulations amends the description of V-88, V-132, V-239, and V-289 airways to exclude the airspace that is within the Fort Leonard Wood restricted areas. This amendment to part 73 of the Federal Aviation regulations amends the boundaries, designated altitude and the time of designation of R-4501A. It also adds two new Fort Leonard Wood restricted areas (R-4501C and R-4501D). This action will provide joint use airspace for a type of military training that is not normally conducted in airways.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator Parts 71 and 73 of the Federal Aviation regulations (14 CFR Parts 71 and 73) as republished (43 FR 703 and 690) is amended, effective 0901 G.m.t., December 28, 1978, as follows:

1. In § 71.123, under V-88, "R-4501A." is deleted and "R-4501A, R-4501B, R-4501C, and R-4501D during their time of activation." is substituted therefor.

2. In § 71.123, under V-132, "R-4501A." is deleted and "R-4501A, R-4501B, R-4501C, and R-4501D during their time of activation." is substituted therefor.

3. In § 71.123, under V-239, "The airspace within R-4501A, R-4501B, R-4501C, and R-4501D is excluded during their time of activation." is added.

4. In § 71.123, under V-289, "The airspace within R-4501A, R-4501B, R-4501C, and R-4501D is excluded during their time of activation." is added.

5. In § 73.45, under R-4501A Fort Leonard Wood, Mo., "Boundaries." is amended to read as follows:

"Beginning at Lat. 37°41'06" N., Long. 92°09'17" W.; to Lat. 37°38'15" N., Long. 92°09'17" W.; to Lat. 37°37'35" N., Long. 92°10'37" W.; to Lat. 37°36'15" N., Long. 92°10'37" W.; to Lat. 37°36'15" N., Long. 92°15'21" W.; to Lat. 37°39'28" N., Long. 92°15'21" W.; to Lat. 37°41'07" N., Long. 92°14'23" W.; to the point of beginning."

"Designated altitudes." is amended to read as follows: "Surface to but not including 2,200 feet MSL."

"Time of designation." is amended to read as follows: "As specified by NOTAM issued at least 24 hours in advance."

6. In § 73.45, R-4501C is added as follows:

"R-4501C Fort Leonard Wood, Mo.

Boundaries. Beginning at Lat. 37°41'00" N., Long. 92°16'10" W.; to Lat. 37°41'26" N., Long. 92°10'15" W.; to Lat. 37°40'16" N., Long. 92°07'05" W.; to Lat. 37°38'20" N., Long. 92°06'55" W.; to Lat. 37°36'07" N., Long. 92°10'27" W.; to Lat. 37°35'22" N., Long. 92°15'31" W.; to the point of beginning.

Designated altitudes. From 2,200 feet MSL to but not including FL 180.

Time of designation. As specified by NOTAM issued at least 24 hours in advance.

Controlling agency. Federal Aviation Administration, Kansas City ARTCC.

Using agency. Commanding General, Fort Leonard Wood, Mo."

7. In § 73.45, R-4501D is added as follows:

"R-4501D Fort Leonard Wood, Mo.

Boundaries. Beginning at Lat. 37°41'06" N., Long. 92°09'17" W.; to Lat. 37°38'15" N., Long. 92°09'17" W.; to Lat. 37°37'35" N., Long. 92°10'37" W.; to Lat. 37°36'15" N., Long. 92°10'37" W.; to Lat. 37°36'15" N., Long. 92°15'21" W.; to Lat. 37°39'28" N., Long. 92°15'21" W.; to Lat. 37°41'07" N., Long. 92°14'23" W.; to the point of beginning.

Designated altitudes. From 2,200 feet MSL to but not including FL 180.

Time of designation. As specified by NOTAM issued at least 24 hours in advance.

Controlling agency. Federal Aviation Administration, Kansas City ARTCC.

Using agency. Commanding General, Fort Leonard Wood, Mo."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69.)

NOTE.—The FAA has determined that this document involves regulations which are not considered to be significant under the procedures and criteria prescribed by Executive Order 12044 and as implemented by interim Department of Transportation guidelines (43 FR 9582; Mar. 8, 1978).

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Issued in Washington, D.C., on October 26, 1978.

WILLIAM E. BROADWATER,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 78-30885 Filed 11-1-78; 8:45 am]

[4910-13-M]

[Airspace Docket No. 78-EA-39]

PART 73—SPECIAL USE AIRSPACE

Alteration of Restricted Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the boundaries of the Fort Indiantown Gap, Pa., restricted area R-5802, and subdivides the restricted area as A and B. This realinement will permit the U.S. Army to meet current and future artillery firing range requirements at Fort Indiantown Gap, Annville, Pa.

EFFECTIVE DATE: December 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Lewis W. Still, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591, 202-426-8525.

SUPPLEMENTARY INFORMATION: On August 14, 1978, the FAA proposed to amend part 73 of the Federal Aviation Regulations (14 CFR Part 73) to alter restricted area R-5802 by enlarging the area and subdividing it as R-5802A and R-5802B (43 FR 35945). The additional area is required so the training involving moving targets and improved ammunition can be accomplished. Interested persons were invited to participate in the rulemaking proceeding by submitting comments on the proposal to the FAA. Two comments were received and none stated an objection to the proposal. This amendment is the same as that proposed in the notice except that a portion of R-5802A overlaps the airspace of V-170 by 1,200 feet. In order to correct that error, coordinates Lat. 40°29'42" N., Long. 76°39'06" W.; has been amended to read: Lat. 40°29'31" N., Long. 76°39'08" W. Section 73.58 was republished in the FEDERAL REGISTER on January 3, 1978 (43 FR 703). The Commander, Fort Indiantown Gap, Annville, Pa., has stated that the requirements of the National Environmental Policy Act have been met.

THE RULE

This amendment to Part 73 of the Federal Aviation Regulations (14 CFR part 73) alters restricted area R-5802 by enlarging the area to the southeast. The additional airspace will permit the entire firing range including buffer zones to lie entirely within the R-5802 area, thereby eliminating mishaps. Currently, boundaries of R-5802 are not easily definable from the air since they do not follow existing terrain features. The new boundaries use definitive and distinctive terrain features that outline R-5802, thereby reducing the probability of error.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, § 73.58 of part 73 of the Federal Aviation Regulations (14 CFR Part 73) as republished (43 FR 703) is amended, effective 0901 G.m.t., December 28, 1978, as follows:

1. R-5802, Fort Indiantown Gap, Pa., is revoked.

2. The following restricted areas are established:

R-5802A Fort Indiantown Gap, Pa.

Boundaries. Beginning at Lat. 40°27'30" N., Long. 76°44'35" W.; to Lat. 40°29'31" N., Long. 76°39'08" W.; to Lat. 40°28'31" N., Long. 76°36'22" W.; to Lat. 40°25'06" N., Long. 76°44'48" W.; to the point of beginning.

Designated altitudes. 200 feet AGL to 5,000 feet MSL.

Time of designation. February 15 through May 10 and September 1 through December 15, 0800-2300 local time on Saturdays and 0800-1200 local time on Sundays; May 11 through August 31, 0800-2400 local time on Saturdays and 0800-2000 local time on all other days; other times by Notice to Airmen (NOTAM) issued at least 48 hours in advance.

Controlling agency. Federal Aviation Administration, New York, ARTCC.

Using agency. Commander, Fort Indiantown Gap, Annville, Pa.

R-5802B Fort Indiantown Gap, Pa.

Boundaries. Beginning at Lat. 40°25'06" N., Long. 76°44'48" W.; to Lat. 40°28'31" N., Long. 76°36'22" W.; to Lat. 40°27'00" N., Long. 76°35'06" W.; to Lat. 40°23'24" N., Long. 76°43'35" W.; to the point of beginning.

Designated altitudes. Surface to 13,000 feet MSL.

Time of designation. February 15 through May 10 and September 1 through December 15, 0800-2300 local time on Saturdays and 0800-1200 local time on Sundays; May 11 through August 31, 0800-2400 local time on Saturdays and 0800-2000 local time on all other days; other times by Notice to Airmen (NOTAM) issued at least 48 hours in advance.

Controlling agency. Federal Aviation Administration, New York, ARTCC.

Using agency. Commander, Fort Indiantown Gap, Annville, Pa.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69.)

NOTE.—The FAA has determined that this document involves a regulation which is not significant under the procedures and criteria prescribed by Executive Order 12044 and implemented by interim Department of Transportation guidelines (43 FR 9582; March 8, 1978).

Issued in Washington, D.C., on October 26, 1978.

WILLIAM E. BROADWATER,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 78-30871 Filed 11-1-78; 8:45 am]

[4910-13-M]

[Airspace Docket No. 78-WE-19]

PART 73—SPECIAL USE AIRSPACE

Using Agency Name Change

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment changes the name of the using agency for restricted area R-2515, located in Muroc Lake, Calif., area. The Department of the Air Force requested the name change and the FAA concurs.

EFFECTIVE DATE: November 2, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Lewis W. Still, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591, telephone 202-426-8525.

SUPPLEMENTARY INFORMATION: The purpose of this amendment to subpart B of part 73 of the Federal Aviation Regulations (14 CFR Part 73) is to amend the name of the using agency of restricted area R-2515 located in the Muroc Lake, Calif., area. The Department of the Air Force requested this amendment and the FAA concurs and such action is taken herein. Subpart B of part 73 of the Federal Aviation Regulations was republished in the FEDERAL REGISTER on January 3, 1978 (43 FR 667). Since this amendment is a minor matter on which the public would have no particular desire to comment, notice and public procedure thereon are unnecessary.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, subpart B of part 73 of the Federal Aviation Regulations (14 CFR Part 73) as republished (43 FR 667) is amended, effective upon publication as follows:

Under § 73.25, R-2515 Muroc Lake, Calif.

Using agency. "Commander, Edwards AFB, Calif." is deleted and "Commander, Air Force Flight Test Center, Edwards AFB, Calif." is substituted therefor.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655 (c)); and 14 CFR 11.69.)

NOTE.—The FAA has determined that this document involves a regulation which is not significant under the procedures and criteria prescribed by Executive Order 12044 and implemented by interim Department of Transportation guidelines 43 FR 9582; March 8, 1978).

Issued in Washington, D.C., on October 25, 1978.

WILLIAM E. BROADWATER,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 78-30659 Filed 11-2-78; 8:45 am]

[4910-13-M]

[Airspace Docket No. 78-EA-45]

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

Alteration of Jet Routes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment realines a segment of jet route No. 34 from Bellaire, Ohio, direct to Martinsburg, W. Va. This realinement improves navigational capabilities and reduces controller coordination.

EFFECTIVE DATE: December 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Lewis W. Still, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591, telephone 202-426-8525.

HISTORY

SUPPLEMENTARY INFORMATION: On August 14, 1978, the FAA proposed to amend part 75 of the Federal Aviation Regulations (14 CFR Part 75) to realine a segment of J-34 between Bellaire, Ohio, direct to Martinsburg, W. Va. (43 FR 35946). Interested persons were invited to participate in the rulemaking proceeding by submitting written comments on the proposal to the FAA. Two comments were received, neither stating an objection to the proposal. This amendment is the same as that proposal in the notice. Section 75.100 was republished in the FEDERAL REGISTER on January 3, 1978 (43 FR 714).

THE RULE

The amendment to part 75 of the Federal Aviation Regulations realines a portion of J-34 between Bellaire, Ohio, and Martinsburg, W. Va. J-34 is alined from Bellaire to its eastern terminus located at the intersection of J-6 and J-34. This intersection is well beyond the normal maximum distance of 130 miles from the Bellaire VORTAC and aircraft frequently drift south of course because of unsatisfactory reception. The use of Martinsburg VORTAC in the structure of J-34 will solve this problem.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, subpart B of part 75 of the Federal Aviation Regulations (14 CFR Part 75) as republished (43 FR 714) and amended (43 FR 19212) is further amended, effected 0901 G.m.t., December 28, 1978, as follows:

Under § 75.100:

Jet route No. 34 "Bellaire, Ohio; to INT of Bellaire 104° and Westminster, Md., 247° radials." is deleted and "Bellaire, Ohio; to Martinsburg, W. Va." is substituted therefor.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65.)

NOTE.—The FAA has determined that this document involves a regulation which is not significant under the procedures and criteria prescribed by Executive Order 12044 and implemented by interim Department of Transportation guidelines (43 FR 9582; March 8, 1978).

Issued in Washington, D.C., on October 25, 1978.

WILLIAM E. BROADWATER,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 78-30660 Filed 11-1-78; 8:45 am]

[4910-13-M]

[Airspace Docket No. 77-AL-11]

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

Designation of Area High Routes; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: In a rule published in the FEDERAL REGISTER of October 2, 1978, Vol. 43, page 45345, the route identification of J886R assigned to area high route from Anchorage, Alaska, to Yakutat, Alaska, is incorrect. The route identification should be J889R and this action corrects that error.

EFFECTIVE DATE: November 2, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. John Watterson, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591, telephone 202-426-8525.

SUPPLEMENTARY INFORMATION: FEDERAL REGISTER Document 78-27690 was published on October 2, 1978 (43 FR 45345) and designated two area high routes over the Gulf of Alaska. The assigned J886R route identification from Anchorage, Alaska, to Yakutat, Alaska, duplicates an assigned route number to a current area high route and is incorrect. The route identification of J886R should be J889R and this action corrects that error.

ADOPTION OF THE CORRECTION

Accordingly, pursuant to the authority delegated to me by the Administrator, FEDERAL REGISTER Document 78-27690, as published in the FEDERAL REGISTER on October 2, 1978, on page 45345, is corrected in the amendatory paragraph under § 75.400 by deleting "J-886R Anchorage, Alaska, to Yakutat, Alaska" and substituting "J889R Anchorage, Alaska, to Yakutat, Alaska" therefor.

(Secs. 307(a), 313(a), and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a), and 1510); Executive Order 10854 (24 FR 9565); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69.)

NOTE.—The FAA has determined that this document involves a regulation which is not significant under the procedures and criteria prescribed by Executive Order 12044 and implemented by interim Department of Transportation guidelines (43 FR 9582; March 8, 1978).

Issued in Washington, D.C., on October 25, 1978.

WILLIAM E. BROADWATER,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 78-30661 Filed 11-1-78; 8:45 am]

[0750-01-M]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

[Docket No. 9035-O]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

Kraftco Corporation et al.

AGENCY: Federal Trade Commission.

ACTION: Final Order (on remand from Court of Appeals, Second Circuit).

SUMMARY: This order requires SCM Corp., a New York City producer of margarine, edible oils and barbecue sauce, among other things, to cease seating on its board of directors any individual who is simultaneously serving on the board of Kraftco Corp., or any other competitor.

DATES: Complaint issued June 17, 1975; final Order (on remand)* issued October 4, 1978.

FOR FURTHER INFORMATION CONTACT:

FTC/C, Alfred F. Dougherty, Jr., Washington, D.C. 20580, 202-523-3601.

SUPPLEMENTARY INFORMATION: On Friday, February 25, 1977, there was published in the FEDERAL REGISTER (42 FR 10979, corrected 42 FR 13820) a final order issued against SCM Corp. The order was appealed to the Court of Appeals for the Second Circuit and was remanded to the Commission for further consideration (565 F. 2d 807 (2d Cir. 1977)). After consideration of the direction of the Court and the terms of the order, the Commission issued its order to cease and desist in disposition of this proceeding. The text of the Commission's order is identical to the order issued January 11, 1977 (42 FR 10979) and the codification under 16 CFR 13, appearing at 42 FR 10979, remains unchanged.

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-31018 Filed 11-1-78; 8:45 am]

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* Copies of the final order (on remand) and the opinion of the Commission filed with the original document.

[4710-06-M]

Title 22—Foreign Relations

CHAPTER I—DEPARTMENT OF STATE

[Departmental Regulation 108.759]

PART 42—DOCUMENTATION OF IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

Numerical Controls

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: On October 5, 1978, Pub. L. 95-412 was signed by the President. Sections 1, 2, and 3 of Pub. L. 95-412 amend the Immigration and Nationality Act to combine the eastern hemisphere numerical limitation of 170,000 and the western hemisphere numerical limitation of 120,000 on immigrants into a worldwide limitation of 290,000. Accordingly, title 22 of the Code of Federal Regulations, chapter I is amended to bring the Department of State regulations into conformance with the provisions of Pub. L. 95-412.

EFFECTIVE DATE: October 5, 1978.

FOR FURTHER INFORMATION CONTACT:

Cornelius D. Scully, Chief, Regulations and Legislation Division; Visa Office, Bureau of Consular Affairs, Department of State, Washington, D.C. 20520, 202-632-1933.

SUPPLEMENTARY INFORMATION: In view of the noncontroversial nature of the revisions and of the necessity for implementing the provisions of Pub. L. 95-412, the Department of State finds that compliance with the provisions of the Administrative Procedure Act (5 U.S.C. 553) as to notice of proposed rulemaking and delayed effective date is unnecessary. The new regulations do not alter the method of allocating visa numbers nor do they alter the worldwide ceiling of 290,000. In light of the foregoing title 22, Code of Federal Regulations, chapter I is amended as set forth below.

Paragraph (a) of § 42.60 is revised to read:

§ 42.60 Control of numerical limitations by the Department.

(a) *Centralized control.* Authorized control of the numerical limitations on immigration specified in sections 201, 202, and 203 of the Act is established in the Department. In order to effectuate this control, the Department shall limit the number of immigrant visas that may be issued and the number of adjustments of status and conditional entries that may be granted to aliens subject to these numerical limitations to a number:

(1) Not to exceed a total of 77,000 in any of the first three quarters of any fiscal year; and

(2) Not to exceed, in any month of a fiscal year, a total of 29,000 plus any balance remaining from authorizations for preceding months in the same fiscal year.

. . . . .

(Sec. 104, 66 Stat. 174; 8 U.S.C. 1104.)

Dated: October 20, 1978.

BARBARA M. WATSON,
Assistant Secretary for Consular Affairs.

[FR Doc. 78-30938 Filed 11-1-78; 8:45 am]

[4210-01-M]

Title 24—Housing and Urban Development

CHAPTER X—FEDERAL INSURANCE ADMINISTRATION, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI 4739]

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

Suspension of Community Eligibility

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: This rule lists communities where the sale of flood insurance, as authorized under the national flood insurance program (NFIP), will be suspended because of noncompliance with the flood plain management requirements of the program.

EFFECTIVE DATES: The third date ("suspended") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The national flood insurance program (NFIP), administered by the Federal Insurance Administration, enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and ad-

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minister local flood plain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the national flood insurance program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate flood plain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (24 CFR Part 1909 et seq.). Accordingly, the communities are suspended on the effective date in the fifth column, so that as of that date subsidized flood insurance is no longer available in the community.

In addition, the Federal Insurance Administration has identified the special flood hazard areas in these communities by publishing a flood hazard boundary map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended, provides that no direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP, with respect to which a year has elapsed since identification of the community as having flood prone areas, as shown on the Federal Insurance Administration's initial flood insurance map of the community. This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

In each entry, a complete chronology of effective dates appears for each listed community.

Section 1914.6 is amended by adding in alphabetical sequence new entries to the table.

§ 1914.6 List of suspended communities.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Hazard area identified	Date[1]
California	Ventura	Ojai, city of	060416-B	June 18, 1975, emergency, Oct. 17, 1978, regular, Nov. 15, 1978, suspended.	May 3, 1974 Nov. 28, 1975	Nov. 15, 1978.
Do	Solano	Vallejo, city of	060374-B	Mar. 19, 1971, emergency, Oct. 17, 1978, regular, Nov. 15, 1978, suspended.	July 19, 1974 Dec. 12, 1975	Do.
Georgia	Coweta	Newnan, city of	130062-B	May 12, 1975, emergency, Nov. 15, 1978, regular, Nov. 15, 1978, suspended.	Nov. 15, 1978	Do.
Illinois	Du Page and Cook	Hanover Park, village of	170099-B	Apr. 19, 1973, emergency, Nov. 15, 1978, regular, Nov. 15, 1978, suspended.	Apr. 12, 1974 Feb. 13, 1976	Do.
Do	Cook	LaGrange Park, village of	170115-B	Jan. 19, 1973, emergency, Nov. 15, 1978, regular, Nov. 15, 1978, suspended.	June 28, 1974 Oct. 10, 1975	Do.
Kansas	Johnson	Olathe, city of	200173-B	Jan. 19, 1973, emergency, Nov. 15, 1978, regular, Nov. 15, 1978, suspended.	Mar. 1, 1974 Feb. 28, 1975	Do.
Do	do	Shawnee, city of	200177-B	Feb. 24, 1975, emergency, Nov. 15, 1978, regular, Nov. 15, 1978, suspended.	June 28, 1974 Nov. 21, 1975	Do.
Massachusetts	Hampden	Hampden, town of	250140-B	Sept. 6, 1974, emergency, Nov. 15, 1978, regular, Nov. 15, 1978, suspended.	June 21, 1974 July 30, 1976	Do.
Michigan	Ottowa	Holland, city of	260492-B	June 21, 1973, emergency, Nov. 15, 1978, regular, Nov. 15, 1978, suspended.	July 9, 1976 Apr. 12, 1974	Do.
Minnesota	Yellow Medicine	Unincorporated areas	270544-A	Jan. 12, 1973, emergency, Nov. 15, 1978, regular, Nov. 15, 1978, suspended.	Aug. 19, 1977	Do.
Missouri	Lawrence	Aurora, city of	290199-B	Dec. 3, 1974, emergency, Sept. 15, 1978, regular, Nov. 15, 1978, suspended.	May 10, 1974 Nov. 28, 1975	Do.
New Jersey	Middlesex	Carteret, borough of	340257-A	Apr. 4, 1973, emergency, Nov. 15, 1978, regular, Nov. 15, 1978, suspended.	Jan. 9, 1974	Do.
New York	Cattaraugus	Allegany, town of	360061-B	Mar. 30, 1973, emergency, regular, Nov. 15, 1978, Nov. 15, 1978, suspended.	Aug. 26, 1974 July 30, 1976	Do.
Do	Suffolk	Southampton, town of	365342-B	July 30, 1971, emergency, Sept. 28, 1973, regular, Nov. 15, 1978, suspended.	Sept. 28, 1973	Do.
Do	do	Westhampton Beach, village of.	365345-C	Feb. 26, 1971, emergency, June 30, 1972, regular, Nov. 15, 1978, suspended.	July 1, 1972	Do.
North Carolina	Wake	Morrisville, town of	370242-B	Dec. 8, 1977, emergency, Nov. 1, 1978, regular, Nov. 15, 1978, suspended.	Oct. 29, 1976	Do.
Do	do	Unincorporated areas	370368-A	Feb. 26, 1975, emergency, Nov. 15, 1978, regular, Nov. 15, 1978, suspended.	Nov. 15, 1978	Do.
Ohio	Franklin	Bexley, city of	390168-B	Nov. 21, 1973, emergency, Nov. 15, 1978, regular, Nov. 15, 1978, suspended.	May 17, 1974 Apr. 23, 1976	Do.
Pennsylvania	Schuylkill	Gordon, borough of	420773-B	Sept. 6, 1974, emergency, Nov. 15, 1978, regular, Nov. 15, 1978, suspended.	Sept. 6, 1974 May 7, 1976	Do.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Hazard area identified	Date[1]
Utah	Utah	Payson, city of	490157-B	Dec. 26, 1974, emergency, Nov. 15, 1978, regular, Nov. 15, 1978, suspended.	June 28, 1974 Dec. 5, 1975	Do.
Vermont	Chittendon	Burlington, city of	500032-B	Apr. 5, 1973, emergency, Nov. 15, 1978, regular, Nov. 15, 1978, suspended.	July 19, 1974 Mar. 4, 1977	Do.
Virginia	Scott	Weber, town of	510146-B	Mar. 15, 1974, emergency, Nov. 15, 1978, regular, Nov. 15, 1978, suspended..	May 10, 1974 June 25, 1976	Do.
Wisconsin	Pierce	Plum City, village of	550328-B	May 12, 1975, emergency, Nov. 15, 1978, suspended.	July 19, 1974 June 4, 1976	Do.
Virginia		Winchester, city of	510173-B	Sept. 6, 1974, emergency, Nov. 15, 1978, regular, Nov. 15, 1978, suspended.	Sept. 6, 1974 Sept. 10, 1976	Do.

[1]Date certain Federal assistance no longer available in special flood hazard area.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: October 25, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30690 Filed 11-1-78; 8:45 am]

[8320-01-M]

Title 38—Pensions, Bonuses, and Veterans' Relief

CHAPTER I—VETERANS ADMINISTRATION

PART 3—ADJUDICATION

Subpart A—Pension, Compensation and Dependency and Indemnity Compensation

RATINGS FOR SPECIAL PURPOSES

AGENCY: Veterans' Administration.

ACTION: Final regulation.

SUMMARY: The Veterans' Administration is amending its regulations concerning payment of compensation on the basis of disability or death resulting from Veterans' Administration hospitalization or medical or surgical care. The need for this change results from a recent opinion of the General Counsel of the Veterans' Administration. The effect of this action is to provide, in certain instances, for payment of compensation for disability or death, resulting from Veterans' Administration hospitalization or medical or surgical care without regard to whether there was fault or negligence on the part of the Veterans' Administration.

EFFECTIVE DATE: October 25, 1978.

FOR FURTHER INFORMATION CONTACT:

T. H. Spindle, Jr., 202-389-3005.

SUPPLEMENTARY INFORMATION: On page 34505 of the FEDERAL REGISTER of August 4, 1978, there was published a notice of proposed regulatory development. After careful study of the legislative history of 38 U.S.C. 351, the General Counsel of the Veterans' Administration has decided that Congress intended to authorize benefits for disability or death deriving from an accident or, in the alternative, from some form of negligence or fault on the part of the Veterans' Administration. We are, therefore, amending § 3.358(c)(3) to make clear that disability compensation or dependency and indemnity compensation may be payable for disability or death due to an accident without regard to whether the accident resulted from negligence or fault on the part of the Veterans' Administration.

Interested persons were given 30 days in which to submit comments, suggestions or objections regarding the proposed regulation. No written comments have been received and the proposed regulation is hereby adopted without change and is set forth below.

Approved: October 25, 1978.

By direction of the Administrator:

RUFUS H. WILSON,
Deputy Administrator.

In § 3.358, paragraph (c)(3) is revised to read as follows:

§ 3.358 Determinations for disability or death from hospitalization, medical or surgical treatment, examinations or vocational rehabilitation training (§ 3.800).

• • • • • •

(c) *Cause.* In determining whether such additional disability resulted from a disease or an injury or an aggravation of an existing disease or injury suffered as a result of training, hospitalization, medical or surgical treatment, or examination, the following considerations will govern:

• • • • • •

(3) Compensation is not payable for either the contemplated or foreseeable after results of approved medical or surgical care properly administered, no matter how remote, in the absence of a showing that additional disability or death proximately resulted through carelessnes, negligence, lack of proper skill, error in judgment, or similar instances of indicated fault on the part of the Veterans' Administration. However, compensation is payable in the event of the occurrence of an "accident" (an unforeseen, untoward event), causing additional disability or death proximately resulting from Veterans' Administration hospitalization or medical or surgical care.

• • • • • •

[FR Doc. 78-31004 Filed 11-1-78; 8:45 am]

[8320-01-M]

PART 36—LOAN GUARANTY

Restrictions on Designated Fee Appraisers; Lien Requirements

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The VA (Veterans' Administration) is amending two of its regulations. One amendment will alter the conflict of interest guidelines with respect to appraisals completed by designated fee appraisers on VA loans used to finance the repair, alteration, or improvement (hereafter referred to as home improvement) of veterans' homes. The other amendment will alter the lien requirements for such VA guaranteed or insured loans. The amendment of these two regulations is

necessary in order to simplify procedures which a lender must follow in making a home improvement loan to a veteran. The two regulatory changes should generate greater lender participation in the field of VA home improvement loans.

EFFECTIVE DATE: October 27, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. George D. Moerman, Assistant Director for Loan Policy (264), Veterans Administration, Washington, D.C. 20420, 202-389-3042.

SUPPLEMENTARY INFORMATION: On page 39150 of the FEDERAL REGISTER of September 1, 1978, there was published a notice of proposed regulatory development to amend §§ 36.4340 and 36.4351 relative to restrictions on designated fee appraisers and lien requirements.

Interested persons were given 30 days in which to submit comments, suggestions, or objections regarding the proposed regulations. No written comments have been received and the proposed regulations are hereby adopted without change and are set forth below.

Approved: October 27, 1978.

By direction of the Administrator.

RUFUS H. WILSON,
Deputy Administrator.

1. In § 36.4340, paragraph (a) is revised to read as follows:

§ 36.4340 Restriction on designated fee appraisers.

(a) A designated fee appraiser shall not make an appraisal, excepting of alterations, improvements, or repairs to real property entailing a cost of not more than $3,500, if such appraiser is an officer, director, trustee, employer, or employee of the lender, contractor, or vendor.

. . . . . .

2. Section 36.4351 is revised to read as follows:

§ 36.4351 Loans, first, second, or unsecured.

Loans for the purchase of real property or a leasehold estate as limited in the regulations concerning guaranty or insurance of loans to veterans, or for the alteration, improvement, or repair thereof, and for more than $1,500 and more than 40 percent of the reasonable value of such property or estate prior thereto shall be secured by a first lien on the property or estate. Loans for such alteration, improvement, or repairs for more than $1,500 but 40 percent or less of the prior reasonable value of the property shall be secured by a lien reasonable and customary in the community for the type of alteration, improvement, or repair financed. Those for $1,500 or less need not be secured, and in lieu of the title examination the lender may accept a statement from the borrower that he or she has an interest in the property not less than that prescribed in § 36.4350(a).

[FR Doc. 78-31003 Filed 11-1-78; 8:45 am]

[7710-12-M]

Title 39—Postal Service

CHAPTER I—U.S. POSTAL SERVICE

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

Clarification of Requirements and Restrictions on the Use of Postal and Post Cards

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: Present postal regulations on the preparation and use of postal and post cards need clarification. It is the intent of this rule to rewrite these regulations without making any substantive changes, with one exception: The new regulations specify the exact minimum dimensions of the address portion of a card. Existing regulations on this point simply provide that in certain circumstances the address portion may be smaller than the remainder of the card.

EFFECTIVE DATE: December 4, 1978.

FOR FURTHER INFORMATION CONTACT:

Skip McGill, 202-245-4749.

SUPPLEMENTARY INFORMATION: On February 13, 1978, the Postal Service published for comment proposed changes in Part 131 of the Postal Service Manual as described above (43 FR 6111).

The Postal Service received three letters of comment in response to the proposal. The commenters made several suggestions for improving the clarity of the rule, many of which we have adopted in the final rule. We have also made certain editorial changes and corrections.

One commenter requested that the word "only" be deleted from the first sentence in proposed section 131.223a(6). The proposed section had provided that the right half of the post card was to be used for "the address only." Because items other than the address can appear on the right-hand side, the Postal Service agrees with the commenter's suggestion and has deleted the word "only" from the section in the final rule. In addition, the Postal Service has revised the sentence to list the items—address, postage, and postal endorsements—which must appear on the right portion of the face of the card, and to refer to a "portion" of the card rather than to a "half," since the card may be divided unevenly.

The commenter also requested that proposed section 131.223a(7) specify that it is permissible to place instructions as well as accounting data on the address portion of the post cards and to allow this information to be shown either surrounded by or adjacent to a shaded area. The commenter pointed out that for companies which utilize post card bills it is often necessary to have not only accounting information but also instructions on the return stub, which is the address portion of the card, in order to respond to inquiries from customers. The Postal Service believes that the commenter has a good point and has revised section 131.223a(7) to permit instructions as well as accounting data to appear on the address portion of post cards. We have also revised this section to require data and instructions to be either on or surrounded by a shaded background. Merely to require accounting data and instructions to be "adjacent" to a shaded area might lead to problems with the optical character reader because of the varying and possibly inconsistent determinations by mailers of what distance from the shaded area would be considered "adjacent."

A second commenter suggested that the requirement in proposed section 131.223a(7) that, with certain exceptions, only accounting information be shown in the "address side" of cards be changed to "address half." The purpose of the suggested change is to avoid an incorrect interpretation that an entire front or back side of a card was to be reserved for the address, so that a message could not appear on that side. We agree that the wording in the proposal may be misleading and have revised it to read "address portion." The suggested language "address half" was not adopted, since more than half of the face of postal and post cards can be used for the message under certain conditions.

The third commenter requested that consideration be given to: (1) The acceptability of a data line above the address, (2) the acceptability of a horizontal perforation, (3) allowance of data to appear to the right of a vertical center line, and (4) requirements for first-class "billing cards" to be returned if undeliverable.

As to the acceptability of a data line above the address and the appearance of data to the right of the vertical center line of post cards, the Postal

Service provided in proposed section 131.223a(7) that accounting data could appear on the address side (changed to "address portion" in the final rule) of the card. In the final rule, we have further expanded the items which may appear on the address portion to include instructions to the addressee as well as accounting information.

As to allowing horizontal perforations (tearing guides) on post cards, this was considered to involve a substantive change, which would be beyond the scope of this revision. Former postal regulations (131.224d of the Postal Service Manual) permitted vertical tearing guides. This provision is being carried forward as new 131.223a(9). However, the Postal Service may consider amending postal regulations in the future to allow horizontal tearing guides if controlled machineability tests can be conducted on the cards and the machineability of them proves to be satisfactory.

The comment asking that requirements for first-class "billing cards" to be returned if undeliverable was not adopted, as existing postal regulations (sec. 159.213(a), Postal Service Manual) already provide that undeliverable first-class postal and post cards can be returned to the sender if endorsed "Return Postage Guaranteed."

In view of the considerations discussed above, the Postal Service hereby adopts, as amended, the following revision of the Postal Service Manual:

PART 131—FIRST CLASS

1. In 131.22 of the Postal Service Manual revise .223 and .224 to read as follows:

131.22 Postal and post cards.

. . . . . .

.223 Restrictions on the use of double and single postal and post cards.

a. The users of double and single postal and post cards must comply with the following rules:

(1) Double cards must be folded before mailing. The first half must be detached when the reply half is mailed for return.

(2) The repy half of a double card must be used for reply purposes only. It must not be used to convey a message to the original addressee of the double card, or to send statements of account.

(3) Double cards must be prepared so that the address on the reply half is on the inside when the double card is mailed.

(4) Plain stickers, or seals, or a single wire stitch may be used to fasten the edges of double cards, provided they are so fixed that the inner folds of the cards can be readily examined.

(5) Enclosures in double cards are prohibited.

(6) The face of a card may be divided by a vertical line, the left portion to be used for the message and the right portion for the address, postage, and postal endorsements. A space of at least 2¼ inches in length, measured from the right edge of the card, must be reserved for the address, postage, and postal endorsements. If more than one-half of the face is used for the message, the cards must be prepared in accordance with 131.223b.

(7) In addition to the address, postage, and postal endorsements, accounting data and instructions to the addressee may be shown in the address portion of cards. Accounting data and instructions to the addressee in the address portion of cards must be shown on or surrounded by a shaded background, and the cards must be prepared in accordance with 131.223b. The area reserved for the address of cards prepared in this manner must be unshaded and at least 2¼ inches long and 1-inch high. Permit imprints, meter stamps or postal endorsements must be shown on an unshaded background.

(8) Cards bearing attachments are not mailable at the rates for postal cards or post cards. Labels affixed by adhesive for the purpose of showing the address and the return address are permitted.

(9) Postal cards and post cards which have holes or vertical tearing guides are mailable only if the holes and tearing guides do not result in the elimination of any letters or numbers in the address and the cards are prepared in accordance with 131.223b.

b. Postal cards and post cards, not mailed under 131.5 as presorted first-class mail, which are required by 131.223a (6), (7) or (9) to be prepared under the provisions of this subsection must meet the following conditions:

(1) The mailings must consist of not less than 200 cards which are identical as to size and weight.

(2) The addresses on the cards must include ZIP code numbers.

(3) Postage must be paid by permit imprints, by meter stamps, or by precanceled stamps.

(4) The mailer must separate the cards to the finest extent possible and sack them in the manner prescribed by 134.43.

2. In 131.22 of the Postal Service Manual redesignate .225 and .226 as .224 and .225 respectively; deleted .227, and strike out in the second sentence of redesignated .224 the words "and 131.224."

A Post Office Services (Domestic) transmittal letter making these changes in the pages of the Postal Service Manual will be transmitted to subscribers automatically. These changes will be published in the FEDERAL REGISTER as provided in 39 CFR 111.3.

(39 U.S.C. 401(2).)

ROGER P. CRAIG,
Deputy General Counsel.

[FR Doc. 78-31010 Filed 11-1-78; 8:45 am]

[7710-12-M]

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

Mail Classification and Rates—Ship Letters

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule repeals postal regulations pertaining to ship letters. The Postal Service has determined that these regulations are obsolete and unnecessary.

EFFECTIVE DATE: December 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Skip McGill, 202-245-4749.

SUPPLEMENTARY INFORMATION: On August 22, 1978, the Postal Service published for comment its proposal to repeal the regulations on ship letters (43 FR 37205). No comments on the proposal were received, and it is being adopted as proposed. We are also making a conforming amendment to Part 146 of the Postal Service Manual, where the ship letter regulations were referenced in 146.11e.

Accordingly, the Postal Serviee hereby adopts, as amended, the following revision of the Postal Service Manual:

PART 131—FIRST CLASS

131.8 [Deleted]

1. Delete 131.8.

PART 146—PREPAYMENT AND POSTAGE DUE

146.11e [Redesignated]

2. Delete 146.11e and redesignate 146.11f as 146.11e.

A Post Office Services (Domestic) transmittal letter making these changes in the pages of the Postal Service Manual will be published and will be transmitted to subscribers automatically. These changes will be published in the FEDERAL REGISTER as provided in 39 CFR 111.3.

(39 U.S.C. 401(2).)

ROGER P. CRAIG,
Deputy General Counsel.

[FR Doc. 78-31011 Filed 11-1-78; 8:45 am]

[6560-01-M]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER E—PESTICIDE PROGRAMS

[FRL 1000-2; PP6E1818/R177]

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

O,O-Dimethyl S-[(4-oxo-1,2,3-Benzotriazin-3(4*H*)-ylmethyl] Phosphorodithioate

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the insecticide *O,O*-dimethyl S-[4-oxo-1,2,3-benzotriazin-3(4*H*-ylmethyl] phosphorodithioate on gooseberries. The regulation was requested by the interregional research project No. 4.

This rule establishes a maximum permissible level for residues of the subject insecticide on gooseberries.

EFFECTIVE DATE: November 2, 1978.

FOR FURTHER INFORMATION CONTACT:

Mrs. Patricia Critchlow, Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street SW., Washington, D.C., 202-755-4851.

SUPPLEMENTARY INFORMATION: On August 9, 1978, the EPA published a notice of proposed rulemaking in the FEDERAL REGISTER (43 FR 35348) in response to a pesticide petition (PP6E1818) submitted to the Agency by the interregional research project No. 4 (IR-4), New Jersey State Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, N.J. 08903, on behalf of the IR-4 Technical Committee and the Agricultural Experiment Station of Colorado.

This petition proposed that 40 CFR 180.154 be amended by the establishment of a tolerance for residues of the insecticide *O,O*-dimethyl S-[4-oxo-1,2,3-benzotriazin-3(4*H*-ylmethyl] phosphorodithioate in or on the raw agricultural commodity gooseberries at 5 parts per million (ppm). No comments or requests for referral to an advisory committee were received in response to this notice of proposed rulemaking.

A recently completed oncogenicity study conducted by the National Cancer Institute indicated that the compound had no oncogenic potential in one rodent species, while, in a second species, the data was inconclusive and insufficient to judge the potential oncogenicity of the subject pesticide. Although the results of the study would warrant a retesting in rats to clarify the remaining uncertainty raised by the present study, the currently available data together with the small increment in human exposure from gooseberries, lead to the conclusion that an unacceptable risk is not associated with the subject pesticide's residues on gooseberries, and that the tolerance of 5 ppm on gooseberries established by amending 40 CFR 180.154 will protect the public health.

It has been concluded, therefore, that the proposed amendment to 40 CFR 180.154 should be adopted without change.

Any person adversely affected by this regulation may, on or before December 4, 1978, file written objections with the Hearing Clerk, Environmental Protection Agency, room M-3708, 401 M Street SW., Washington, D.C. 20460. Such objections should be submitted and should specify both the provisions of the regulation deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Effective on November 2, 1978, part 180, subpart C, section 180.154 is amended by adding a tolerance for residues of the subject insecticide on gooseberries at 5 ppm as set forth below.

Dated: October 27, 1978.

(Section 408(e) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 346a(e)].)

DOUGLAS D. CAMPT,
Deputy Assistant Administrator for Pesticide Programs.

Part 180, subpart C, § 180.154 is amended by alphabetically inserting the tolerance of 5 ppm on gooseberries in the table to read as follows:

§ 108.154 **O,O-Dimethyl S-[(4-oxo-1,2,3-benzotriazin-3(4H)-ylmethyl] phosphorodithioate; tolerances for residues.**

Commodity:	*Parts per million*
Gooseberries	5

[FR Doc. 78-30930 Filed 11-1-78; 8:45 am]

[6712-01-M]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[SS Docket No. 78-27; RM-2957; RM-2698; FCC 78-741]

PART 91—INDUSTRIAL RADIO SERVICES

Frequencies Allocated in the Business Radio Service for Use by Operators of Central Station Commercial Protection Facilities

AGENCY: Federal Communications Commission.

ACTION: Report and order.

SUMMARY: The FCC adopts new rules governing particular frequencies assigned in the Business Radio Service for use by central station commercial protection entities and others. These rules define the degree of protection from radio interference afforded central station commercial protection licensees, in urbanized areas of 200,000, or more, population, according to the 1960 U.S. Census, and expands, for these licensees, permissible communications, on a secondary basis, to include certain types of two-way voice, tone and impulse point-to-point transmissions.

EFFECTIVE DATE: November 29, 1978.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Eugene C. Bowler, Safety and Special Radio Services Bureau, 202-632-6497.

In the matter of amendment of § 91.554 of the Commission's rules to prohibit the operation of base or control stations on the frequencies 460.900/465.900, 460.925/465.925, and 460.950/465.950 MHz by noncentral station commercial protection entities within 75 miles of urbanized areas of 200,000 or more population (1960 U.S. Census), and to permit alarm signalling and other fixed point-to-point operations on a secondary basis for central station commercial protection entities on the frequencies 460.900/465.900, 460.925/465.925, 460.950/465.950, 460.975/465.975, and 461.000/466.000 MHz. Report and order (proceeding terminated) (43 FR 6272).

Adopted: October 19, 1978.

Released: October 30, 1978.

By the Commission:

1. The Commission has before it for consideration its notice of proposed rulemaking, in the above-captioned matter, released February 7, 1978 (FCC 78-54 84161), and the comments on the proposal filed by the Central Station Electrical Protection Association (CSEPA), the original petitioner. No other comments were received.

2. The proposals contained in the notice were intended to minimize conflicts and interference problems between central station electrical protection entities[1] and other Business Radio Service users on three 460/465 MHz frequencies they share, by confining use of those frequencies by noncentral station commerical protection licensees to locations at least 75 miles from the centers of urbanized areas of 200,000 or more population, as defined, by the 1960 U.S. Census of Population. The notice further proposed allowing central station commercial protection entities to use their radio facilities authorized on 460.900/465.900, 460.925/465.925, 460.950/465.950, 460.975/465.975, and 461.000/466.000 MHz, for alarming signalling and for other point-to-point purposes, on a secondary, noninterference basis. This will allow licensees to improve their systems' operating efficiency and will provide a capability for immediate communication with police and fire departments in emergencies.

3. CSEPA's comments favored these proposals, and, as we have indicated, no other comments were filed. Furthermore, the number of noncentral station Business Radio Service licensees is very small and the impact of this change will be minimal. Accordingly, the proposed rules will be adopted. CSEPA, in addition, asked for some language which, although not directly related to the subject matter of this proceeding, in CSEPA's view will resolve some uncertainties and would make the intent of the ruler clearer. Specifically, it asked that the rule name Factory Mutual System as one of the recognized rating agencies for central station commercial protective service, and it would also like the rule to state specifically that a central station operator may use the frequencies involved in this proceeding only in areas where it operates a central station commercial protection service. These provisions are within the intent of the present rule but, since CSEPA believes the proposed language would further clarify the rule, we have incorporated it in § 91.554(b)(32).

4. In view of the foregoing, the Commission concludes that the public interest will be served by amending the rules to establish geographic separation between commercial protection station operations and those of other eligibles in the Business Radio Service in the use of the frequency pairs 460.900/465.900, 460.925/465.925, and 460.950/465.950 MHz[2] and by expanding the scope of permissible secondary communications for central station commercial protection entities as proposed.

5. Accordingly, it is ordered, pursuant to the authority contained in sections 4(i) and 303 of the Communications Act of 1934, as amended, that part 91 of the Commission's rules is amended effective November 29, 1978, as set forth below. *It is further ordered,* That this proceeding is terminated.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.)

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

Part 91 of the Commission's rules is amended as follows:

1. In § 91.554, the table and paragraphs (b)(32), (b)(41) are amended and (b)(55) and (b)(56) are added to read as follows:

§ 91.554 **Frequencies available.**

(a) • • •

Frequency or band	Class of station	General reference	Limitations
•	•	•	•
460.875	Base and mobile	Permanent use	16, 35, 36, 37, 38, 40
460.900	do	do	10, 32, 34, 35, 55, 56
460.925	do	do	10, 32, 34, 35, 55, 56
460.950	do	do	10, 32, 34, 35, 55, 56
460.975	do	do	10, 34, 35, 41, 55, 56
461.000	do	do	10, 34, 35, 41, 55, 56
461.025	do	do	10, 34, 35, 38
•	•	•	•
465.875	Mobile	Permanent use	7, 9, 13, 34, 35, 36, 37, 38, 40, 43
465.900	do	do	7, 9, 10, 32, 34, 35, 55, 56
465.925	do	do	7, 9, 10, 32, 34, 35, 55, 56
465.950	do	do	7, 9, 10, 32, 34, 35, 55, 56
465.975	do	do	7, 9, 10, 34, 35, 41, 55, 56
466.000	do	do	7, 9, 10, 34, 35, 41, 55, 56
466.025	do	do	7, 9, 10, 34, 35, 38
•	•	•	•

(32) Within the boundaries of urbanized areas of 200,000 or more population, defined in the U.S. Census of Population, 1960, Vol. 1, Table 23, page 1-50, this frequency may be used only by persons rendering a central station commercial protection service within the service area of the radio station utilizing the frequency and may be used only for communications pertaining to safety of life and property, and for maintenance or testing of the protection facilities. Central station commercial protection service is defined as an electrical protection and supervisory service rendered to the public from and by a central station accepted and certified by one or more of the recognized rating agencies, or the Underwriters Laboratories' (UL), or Factory Mutual System. Other stations in the Business Radio Service may be licensed on this frequency only when all base, mobile relay and control stations are located at least 75 miles from the city center or centers of the specified urbanized areas of 200,000 or more population. With respect to combination urbanized areas containing more than one city, 75 mile separation shall be maintained from each city center which is included in the urbanized area. The locations of centers of cities are determined from appendix, page 226, of the U.S. Commerce publication "Air Line Distance Between Cities in the United States."

• • • • • •

(41) This frequency may be assigned only to persons rendering a central station commercial protection service, which is defined at 91.554(b)(32), within the service area of the radio station utilizing the frequency.

• • • • • •

(55) Persons who render a central station commercial protection service are authorized to operate fixed stations on this frequency for the trans-

[1] Central station electrical protection companies provide electrical burglar and fire alarm and protection services to customers from central monitoring stations which have been approved by one of the recognized rating agencies, such as the Underwriters' Laboratories, Inc., one involved here.

[2] Existing nonconforming stations will have to change frequencies at the expiration of their current authorizations.

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mission of tone or impulse signals on a secondary, noninterference base to base/mobile operations subject to the following conditions and limitations.

(i) Secondary fixed operations may be used only for the following purposes.

(A) Indication of equipment malfunction.

(B) Actuation of a device to indicate the presence of an intruder, fire, or other hazardous condition on the property under the protection of the licensee.

(C) Indication of an abnormal condition in facilities under the protection of the licensee that, if not promptly reported, would result in danger to human life.

(D) Transmission, as may be necessary, to verify status of equipment; adjust operating conditions; or correct any abnormal condition.

(E) Confirmation of status, or that an operation or correction has been accomplished.

(ii) The maximum duration of any one nonvoice signal may not exceed 2 seconds and shall not be transmitted more than 3 times.

(iii) Systems employing automatic interrogation shall be limited to nonvoice techniques and shall not be activated for this purpose more than 10 seconds out of any 60-second period. This 10-second frame includes both transmit and response times.

(iv) The bandwidth shall not exceed that authorized to the licensee for the primary operation on the frequency concerned.

(v) Frequency loading resulting from the use of secondary signalling will not be considered in whole or in part as a justification for authorizing additional frequencies in the licensee's mobile system.

(vi) A mobile service frequency may not be used exclusively for secondary signalling.

(vii) The output power shall not exceed 30 watts (at the remote site).

(viii) A1, A2, A9, F1, F2, or F9 emission may be authorized.

(ix) The transmitter shall be designed to deactivate automatically after 3 minutes of continuous carrier radiation.

(x) Operational fixed stations authorized under this paragraph are exempt from the requirements of § 91.54(e) (2), 91.107(e), 91.152, 91.154.

(xi) On these frequencies, base, mobile relay or mobile stations may transmit secondary tone or impulse signals to receivers, as provided in this section.

(56) Licensees providing a central station commercial protection service may communicate with police or fire stations, or vehicles, on this frequency, and may install licensed transmitting units which operate on this frequency at police or fire stations, or in police or fire vehicles, if the frequency's primary use is in a base/mobile system for a central station commercial protection service.

* * * * *

[FR Doc. 78-31051 Filed 11-1-78; 8:45 am]

[4910-60-M]

Title 49—Transportation

CHAPTER I—RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION, MATERIALS TRANSPORTATION BUREAU, DEPARTMENT OF TRANSPORTATION

[Docket No. HM-56; Amdt. Nos. 106-2, 107-5, 171-42, 172-46, 173-121, 174-32, 175-6, 177-43, 178-51]

HAZARDOUS MATERIALS REGULATIONS

Miscellaneous Amendments

AGENCY: Materials Transportation Bureau, Research and Special Programs Administration, DOT.

ACTION: Correction of effective date.

SUMMARY: On October 19, 1978, the Materials Transportation Bureau (MTB) published a series of amendments updating official titles and references, and correcting errors in the text of 49 CFR Parts 100-199. Due to the significance of the amendments, the MTB intended that the amendments appear in the October 1, 1978 revision of that volume of 49 CFR so that amendments would be readily available to users during the following year. In order to facilitate this intention, the MTB is now changing the previously announced October 19, 1978 effective date of those amendments to September 30, 1978, to be consistent with the closing date of the next revision to the bound edition of 49 CFR Parts 100-199.

In view of the above, the effective date of the amendments published on October 19, 1978 (43 FR 48641, FR Doc. 78-29330) is amended to read "September 30, 1978."

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53(e).)

Issued in Washington, D.C. on October 26, 1978.

L. D. SANTMAN,
Acting Director, Materials Transportation Bureau.

[FR Doc. 78-31012 Filed 11-1-78; 8:45 am]

[4910-06-M]

CHARTER II—FEDERAL RAILROAD ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. RAR-2; Notice No. 4]

PART 225—RAILROAD ACCIDENTS/INCIDENTS: REPORTS, CLASSIFICATION, AND INVESTIGATIONS

Biannual Adjustment of Reporting Threshold

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The purpose of this rule is to require railroads to report to FRA only those accidents/incidents that result in damages of more than $2,900. The effect of the rule is to increase the reporting threshold from $2,300 to $2,900 for railroad accidents/incidents that occur during the calendar years 1979 and 1980. This action is needed to insure that the reporting requirements reflect increases in the cost of labor and materials since the reporting threshold was last computed in 1976.

EFFECTIVE DATE: This rule becomes effective on January 1, 1979.

FOR FURTHER INFORMATION CONTACT:

PRINCIPAL AUTHORS

Principal Program Person: Rolf Mowatt-Larssen, Office of Standards and Procedures, Federal Railroad Administration, Washington, D.C. 20590, phone 202-426-0924.

Principal Attorney: Danvers E. Long, Office of the Chief Counsel, Federal Railroad Administration, Washington, D.C. 20590, phone 202-426-8836.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On July 15, 1974, FRA published in the FEDERAL REGISTER (39 FR 25956) proposed amendments to part 225 (49 CFR Part 225). Proposed § 225.19 provided that highway grade crossing and rail equipment incidents would have to be reported to FRA if they result in more than $1,750 in damages. That section further proposed a periodic review and possible adjustment to the $1,750 reporting threshold.

FRA issued the amendment based on the NPRM on December 9, 1974 (39 FR 43222). The amendment reflected a number of changes made by FRA in response to comments received. With respect to the proposed $1,750 reporting threshold, FRA stated the following: "As suggested by several commenters, the $1,750 reporting threshold will be adjusted, as necessary, in increments of $100.00 every two years." Section 225.19(c) of the amendment provided that the adjustments would be made in accordance with the procedures outlined in appendix A of part 225.

FRA issued an amendment on November 10, 1976, increasing the reporting threshold from $1,750 to $2,300 (41 FR 50690). This adjustment to the reporting threshold reflected increases in the costs of labor and materials during the preceding 2-year period.

NEW REPORTING THRESHOLD

Because 2 years have passed since the accident/incident reporting threshold was last revised, FRA has recomputed the threshold, as required by § 225.19(c), based on increased costs of labor and materials. As a result of this computation, FRA has determined that the current reporting threshold of $2,300 should be increased to $2,900. Accordingly, § 225.5 and § 225.19 are being amended to require railroads to report rail-highway grade crossing accidents/incidents and rail equipment accidents/incidents resulting in more than $2,900 in damages. In addition, appendix A has been amended to reflect the most recent calculations and the procedure used to determine the reporting threshold.

ECONOMIC IMPACT

FRA has determined that this document does not contain significant regulations. Therefore, a regulatory analysis under Executive Order 12044 is not required (E.O. 12044, 43 FR 12661, Mar. 24, 1978).

In addition, FRA has evaluated the regulations contained in this document in accordance with DOT's existing and proposed policies for the evaluation of regulatory impacts (Policies and Procedures for Simplification, Analysis, and Review of Regulations, 43 FR 9582, Mar. 8, 1978; Proposed Regulatory Policies and Procedures, 43 FR 23925, June 1, 1978). Based on that evaluation, FRA has determined that these regulations merely adjust the accident/incident reporting threshold in accordance with the current provisions of § 225.19(c) (49 CFR 225.19(c)) and do not impose any additional requirements on any person. As a result, FRA concludes that the regulations will have no measurable regulatory impact and that a detailed evaluation is not warranted.

NOTICE AND PUBLIC PROCEDURE

Since this amendment merely adjusts the reporting threshold for accidents/incidents in accordance with 49 CFR 225.19(c) and imposes no additional burden on any person, FRA concludes that notice and public procedure are not necessary.

THE FINAL RULE

Accordingly, part 225 (49 CFR Part 225) is amended effective January 1, 1979, as follows:

1. By amending § 225.5 to read as follows:

§ 225.5 Definitions.

As used in this part—

* * * * *

(b) "Accident/Incident" means:

* * * * *

(2) Any collision, derailment, fire, explosion, act of God, or other event involving operation of railroad on-track equipment (standing or moving) that results in more than $2,900 in damages to railroad on-track equipment, signals, track, track structures, and roadbed;

* * * * *

2. By amending § 225.19 to read as follows:

§ 225.19 Primary groups of accidents/incidents.

* * * * *

(b) *Group I—Rail-highway grade crossing.* * * * In addition, whenever a rail-highway grade crossing accident/incident results in more than $2,900 damages to railroad on-track equipment, signals, track, track structures, or roadbed, that accident/incident must be reported to the FRA on Form FRA F 6180.54. * * *

(c) *Group II—Rail equipment.* Rail equipment accidents/incidents are collisions, derailments, fires, explosions, acts of God, or other events involving the operation of railroad on-track equipment (standing or moving) that result in more than $2,900 in damages to railroad on-track equipment, signals, track, track structures, or roadbed, including labor costs and all other costs for repair or replacement in kind. * * * If the property of more than one railroad is involved in an accident/incident, the $2,900 threshold is calculated by including the damages suffered by all of the railroads involved. * * * The $2,900 reporting threshold will be reviewed periodically and will be adjusted in increments of $100 every 2 years in accordance with the procedures outlined in appendix A of this part.

* * * * *

3. By amending appendix A to read as follows:

APPENDIX A—PROCEDURE FOR DETERMINING REPORTING THRESHOLD

1. Wage figures used for track direct labor rates will be based on the "Average straight time rate" shown in the "Recapitulation by Group of Employees," for group III maintenance of way and structures employees. This information appears in the most recent annual edition (June 1977) of "Statement 300 of the Interstate Commerce Commission, Bureau of Accounts, Wage Statistics of Class 1 Railroads in the United States."

2. Wage figures used for mechanical direct labor rates will be based on the "Average straight time rate" shown in the "Recapitulation by Group of Employees" for group IV maintenance of equipment and stores employees. This information appears in the most recent annual edition (June 1977) of "Statement 300 of the Interstate Commerce Commission, Bureau of Accounts, Wage Statistics of Class 1 Railroads in the United States."

3. Fringe benefit surcharges will be added to the average straight time rates for mechanical and track employees based on an agreement between the Federal Highway Administration and the Association of American Railroads. This agreement is contained in the Federal Highway Administration's Policy and Procedure Memorandum 30-3 entitled "Reimbursement for Railroad Work" (Apr. 28, 1975, as amended on Jan. 19, 1977).

4. To calculate the index number for mechanical labor, divide the present (1978) mechanical wage rate of $10.13 by the previous (1976) mechanical wage rate of $7.69. The result is a mechanical labor index number of 1.32 for 1978.

5. The track laber index number is calculated by dividing the present (1978) track wage rate of $9.29 by the previous (1976) track wage rate of $7.38. The result is a track labor index number of 1.26 for 1978.

6. Calculation of the labor index number is as follows: (track labor index number) 1.26×.20+(mechanical labor index number) 1.32×.80=labor index number of 1.31.

7. The mechanical material index number is calculated by first totaling the present (1978) cost of the following mechanical materials:

Quantity	Description	1976	1978
8	33 in CS wheels	$1,424	$1,624
8	6 by 11 in roller bearings	955	1,000
4	Roller bearing axles	1,214	1,200
4	6 by 11 in roller bearing truck sides (750 lbs)	2,268	2,736
2	6 by 11 in truck bolsters (1,060 lbs)	884	1,978
2	E couplers	332	396
4	Brake beams	266	276
1	AB cylinder	115	96
1	AB reservoir	120	196
1	AB control valve	668	794
500 lbs	Steel bar	81	270
1,000 lbs	Steel sheets	145	540
1,000 lbs	Steel plates	150	540

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Quantity	Description	1976	1978
8	Brake shoes	37	48
8	Roller bearing adapters	133	152
24	Outer coil springs	184	240
800	Board feet hardwood lumber	640	728
1	Traction motor	17,050	19,900
60 ft	1¼ in brake pipe	40	97
1	Hand brake	143	158
	Total mechanical material	26,849	32,969

The mechanical material index number is determined by dividing the present (1978) total cost for these mechanical materials ($32,969) by the previous (1976) total cost for mechanical materials ($26,849). The result is 1.23.

8. The track material index number is calculated by first totaling the present (1978) cost of the following track materials:

Quantity	Description	1976	1978
4,500	Ties, wooden	$58,500	$54,270
250 tons	Rail	67,500	83,322
90 tons	Tie plates	28,440	32,048
27,000	Spikes (5.8 tons)	3,149	2,976
800	Joint bar (25.4 tons)	11,648	12,358
2,000	Track bolts	775	782
1	Frog	3,735	2,848
1	Switch	2,200	2,586
	Total track material	175,947	191,190

The track material index number is determined by dividing the present (1978) total cost for these track materials ($191,190) by the previous (1976) total cost for track materials ($175,947). The result is 1.09.

9. Calculation of the material index number is as follows: (track material index number) 1.09×.20+(mechanical material index number) 1.23×.80=material index number of 1.20.

10. Calculation of the threshold index number is as follows: (labor index number) 1.31×.40+(material index number) 1.20×.60=threshold index number of 1.24.

11. In order to calculate the new reporting threshold, multiply the existing reporting threshold ($2,300) by the threshold index number of 1.24. The result is $2,852. This result, when rounded to the nearest $100.00, is the new accident/incident reporting threshold figure of $2,900.

(Sec. 20, Interstate Commerce Act, as amended (49 U.S.C. 20); Secs. 1 and 6, Accident Reports Act (45 U.S.C. 38 and 42); Secs. 202 and 208, Federal Railroad Safety Act, as amended (45 U.S.C. 431 and 437); Sec. 6 (e) and (f), Department of Transportation Act (49 U.S.C. 1655 (e) and (f)); Sec. 1.49 (h) and (n), Regulations of the Office of the Secretary of Transportation (49 CFR 1.49 (h) and (n)).)

Issued in Washington, D.C. on October 27, 1978.

JOHN M. SULLIVAN,
Administrator.

[FR Doc. 78-30933 Filed 11-1-78; 8:45 am]

[4910-59-M]

CHAPTER V—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

PART 501—ORGANIZATION AND DELEGATIONS OF POWERS AND DUTIES

Regional Administrators

AGENCY: National Highway Traffic Safety Administration, Department of Transportation.

ACTION: Change to final rule.

SUMMARY: This document revises one portion of the regulations concerning the National Highway Traffic Safety Administrator's delegations of powers and duties to reflect new delegations to NHTSA Regional Administrators regarding the new highway safety grant delivery system, the Highway Safety Plan, NHTSA/FHWA Order 960-2/7510.3, dated February 24, 1978. (43 FR 9143, March 6, 1978.)

EFFECTIVE DATE: February 24, 1978.

FOR FURTHER INFORMATION CONTACT:

Lena Gardiner, Office of Management Services, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590, 202-426-4811.

SUPPLEMENTARY INFORMATION: The National Highway Traffic Safety Administration, as part of its mission, is responsible for the administration of the Highway Safety Act (Pub. L. 89-564, as amended; 23 U.S.C. 401-406). Section 402(a) of the Act requires that each State shall have a highway safety program approved by the Secretary. Since inception of the highway safety program, section 402(a) has been interpreted as requiring submission by the States of a general or master plan covering existing and proposed State highway safety activities for a multiyear period. In accordance with 23 U.S.C. 315, the Secretary or his delegate is authorized to promulgate rules and regulations to implement section 402 by prescribing the form, time, manner of submission, and annual updating of the State highway safety plans. Prior to February 24, 1978, this was accomplished through the "Comprehensive Plan" and "Annual Work Program." The "Highway Safety Plan" is the new vehicle for State highway safety program submission and update.

This amendment to part 501, as set forth below, merely delegates authority to the NHTSA Regional Administrators for the approval and disapproval of State Highway Safety Plans. Also, the delegation pertaining to the alcohol safety action projects is deleted. These projects have been completed and the delegation is no longer required. Since this amendment relates solely to the organization and procedure of the National Highway Traffic Safety Administration, it may be made effective without notice and opportunity for comment.

In consideration of the foregoing, part 501 of Title 49, Code of Federal Regulations is amended as follows:

Section 501.8(k) is amended to read as follows:

§ 501.8 Delegations.

• • • • • •

(k) *Regional Administrators.* Each Regional Administrator is delegated authority to:

(1) Approve or disapprove State Highway Safety Plans, including the initial agreement, any changes thereto, and approval of final vouchers, in accordance with the procedural requirements of the Administration (jointly with the delegate of the Federal Highway Administrator, except for highway safety programs administered on Indian Reservations by the Secretary of the Interior under 23 U.S.C. 402(1));

(2) Administer the operational phases as contract technical manager for any projects that have been or may be delegated for regional administration.

Issued on: October 26, 1978.

JOAN CLAYBROOK,
Administrator.

[FR Doc. 78-30901 Filed 11-1-78; 8:45 am]

[7035-01-M]

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Amdt. No. 1 to Service Order No. 1326]

PART 1033—CAR SERVICE

Norfolk & Western Railway Co. Authorized to Operate Over Tracks of Detroit, Toledo & Ironton Railway Co.

AGENCY: Interstate Commerce Commission.

ACTION: Emergency order (amendment No. 1 to service order 1326).

SUMMARY: The Tecumseh, Mich., branch of the Detroit, Toledo & Ironton Railway (DTI) is unserviceable between Malinta, Ohio, and Adrian, Mich., isolating the remainder of the line from other parts of the DTI. A major industry located at Tecumseh requires uninterrupted rail service to continue its operations. Service order No. 1326 authorizes the Norfolk & Western Railway to operate over the serviceable portion of the DTI's Tecumseh branch between Adrian, Mich., and Tecumseh, Mich., in order to provide continued service to shippers served by that line. The order is published in full in volume 43 at page 20235 in the FEDERAL REGISTER. Amendment No. 1 to service order No. 1326 extends the order until January 31, 1979.

DATES: Effective 11:59 p.m., October 31, 1978. Expires 11:59 p.m., January 31, 1979.

FOR FURTHER INFORMATION CONTACT:

Charles C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, telephone 202-275-7840, telex 89-2742.

SUPPLEMENTARY INFORMATION:

Decided October 26, 1978.

Upon further consideration of service order No. 1326 (43 FR 20235), and good cause appearing therefor:

It is ordered, service order No. 1326 is amended by substituting the following paragraph (e) for paragraph (e) thereof:

1033.1326 Service order No. 1326.

(a) Norfolk & Western Railway Co. authorized to operate over tracks of Detroit, Toledo & Ironton Railway Co. • • •

• • • • • •

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., January 31, 1979, unless otherwise modified, changed or suspended by order of this Commission.

• • • • • •

Effective date. This amendment shall become effective at 11:59 p.m., October 31, 1978.

(49 U.S.C. 1(10-17).)

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-31041 Filed 11-1-78; 8:45 am]

[7035-01-M]

[Amdt. No. 2 to Third Revised Service Order No. 1296]

PART 1033—CAR SERVICE

Substitution of Refrigerator Cars for Boxcars

AGENCY: Interstate Commerce Commission.

ACTION: Emergency order (amendment No. 2 to third revised service order No. 1296).

SUMMARY: Third revised service order No. 1296 authorized the Atchison, Topeka & Santa Fe (ATSF) to substitute two refrigerator cars for each boxcar ordered for transporting shipments of cotton from stations on its line to any station on these lines of the Atlanta & West Point Rail Road Co., ATSF, Chicago, Rock Island & Pacific Railroad (RI), Georgia Railroad Co., the Kansas City Southern Railway Co., Louisville & Nashville Railroad Co., Missouri Pacific Railroad Co., St. Louis-San Francisco Railway Co., Seaboard Coast Line Railroad Co., Southern Railway Co. or Western Railway of Alabama because of an acute shortage on the lines of the ATSF. The order is published in full in FEDERAL REGISTER Volume No. 43, dated July 7, 1978, at page 29124. Amendment No. 2 extends the order until February 15, 1979.

DATES: Effective 11:59 p.m., October 31, 1978. Expires 11:59 p.m., February 15, 1979.

FOR FURTHER INFORMATION CONTACT:

C. C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, telephone 202-275-7840, telex 89-2742.

SUPPLEMENTARY INFORMATION:

Decided October 26, 1978.

Upon further consideration of third revised service order No. 1296 (43 FR 29124 and 34476), and good cause appearing therefor:

It is ordered, third revised service order No. 1296 is hereby amended by substituting the following paragraph (e) for paragraph (e) thereof:

§ 1033.1296 Third Revised Service Order No. 1296.

(a) *Substitution of refrigerator cars for boxcars* • • •

• • • • • •

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., February 15, 1979, unless otherwise modified, changed or suspended by order of this Commission.

• • • • • •

Effective date. This amendment shall become effective at 11:59 p.m., October 31, 1978.

(49 U.S.C. 1(10-17).)

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

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By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-31042 Filed 11-1-78; 8:45 am]

[7035-01-M]

[Amdt. No. 1 to Revised Service Order No. 1305]

PART 1033—CAR SERVICE

Distribution of Freight Cars

AGENCY: Interstate Commerce Commission.

ACTION: Emergency order (amendment No. 1 to Revised Service Order No. 1305).

SUMMARY: There is a severe shortage of boxcars on the Union Pacific Railroad Co. That line owns a group of mechanical refrigerator cars which have inoperative refrigeration devices. In all other respects these cars are serviceable. Because of their limited cubical capacity many shipments that could be transported in these cars cannot be loaded with the minimum quantities specified by the applicable tariffs. Revised Service Order No. 1305 authorizes the Union Pacific to substitute two of these refrigerator cars for each boxcar ordered. The minimum weight to be applied to each set of two such cars is the minimum weight applicable to the boxcar ordered. The consent of the shippers is required. The order is published in full in volume 43 of the FEDERAL REGISTER at page 21336. Amendment No. 1 extends the order until January 15, 1979.

DATES: Effective 11:59 p.m., October 31, 1978. Expires 11:59 p.m., January 15, 1979.

FOR FURTHER INFORMATION CONTACT:

Charles C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, telephone 202-275-7840, Telex 89-2742.

SUPPLEMENTARY INFORMATION:

Decided October 26, 1978.

Upon further consideration of Revised Service Order No. 1305 (43 F.R. 21336), and good cause appearing therefor:

It is ordered, Revised Service Order No. 1305 is amended by substituting the following paragraph (j) for paragraph (j) thereof:

§ 1033.1305 Revised Service Order No. 1305.

(a) *Distribution of Freight Cars* • • •

• • • • • •

(j) Expiration date. The provisions of this order shall expire at 11:59 p.m., January 15, 1979, unless otherwise modified, changed, or suspended by order of this Commission.

• • • • • •

Effective date. This amendment shall become effective at 11:59 p.m., October 31, 1978.

(49 U.S.C. 1(10-17).)

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington, and John R. Michael.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-31043 Filed 11-1-78; 8:45 am]

[7035-01-M]

[Amdt. No. 3 to Service Order No. 1316]

PART 1033—CAR SERVICE

Chicago & North Western Transportation Co. Authorized To Operate Over Tracks of Chicago, Milwaukee, St. Paul & Pacific Railroad Co. at Appleton, Wis.

AGENCY: Interstate Commerce Commission.

ACTION: Emergency order (amendment No. 3 to Service Order No. 1316).

SUMMARY: The tracks of the Chicago, Milwaukee, St. Paul & Pacific Railroad Co. (MILW) between Menasha, Wis., and Appleton, Wis., have deteriorated and can no longer be used forcing the termination of rail service to shippers in Appleton served by the MILW. The Chicago & North Western Transportation Co. (CNW) connects with the MILW in Appleton and is able to provide service to those shippers by operations over the tracks of the MILW in Appleton. Service Order No. 1316 authorizes the CNW to operate over tracks of the MILW in Appleton, Wis., for the purpose of providing continued railroad service to shippers served by those tracks. Service Order No. 1316 is published in full in volume 43 of the FEDERAL REGISTER at page 14668. Amendment No. 3 extends this order until January 15, 1979.

DATES: Effective 11:59 p.m., October 31, 1978. Expires 11:59 p.m., January 15, 1979.

FOR FURTHER INFORMATION CONTACT:

Charles C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, telephone 202-275-7840, Telex 89-2742.

SUPPLEMENTARY INFORMATION:

Decided October 26, 1978.

Upon further consideration of Service Order No. 1316 (43 FR 14668, 28497 and 39796), and good cause appearing therefor:

It is ordered, Service Order No. 1316 is amended by substituting the following paragraph (e) for paragraph (e) thereof:

§ 1033.1316 Service Order No. 1316.

(a) *Chicago & North Western Transporation Co. authorized to operate over tracks of Chicago, Milwaukee, St. Paul and Pacific Railroad Co. at Appleton, Wis.* • • •

• • • • • •

(e) Expiration date. The provisions of this order shall expire at 11:59 p.m., January 15, 1979, unless otherwise modified, changed, or suspended by order of this Commission.

• • • • • •

Effective date. This amendment shall become effective at 11:59 p.m., October 31, 1978.

(49 U.S.C. 1(10-17).)

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington, and John R. Michael.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-31044 Filed 11-1-78; 8:45 am]

[7035-01-M]

[Amdt. No. 1 to Revised Service Order No. 1323]

PART 1033—CAR SERVICE

Distribution of Freight Cars

AGENCY: Interstate Commerce Commission.

ACTION: Emergency order (amendment No. 1 to Revised Service Order No. 1323).

SUMMARY: There is a shortage of trilevel auto rack flat cars on the St. Louis-San Francisco Railway Co. (SL-SF) and on the Union Pacific (UP) Railroads for the shipment of automobiles. Bilevel auto rack cars are available to these railroads but cannot be used because of tariff provisions requiring the use of trilevel cars. Revised Service Order No. 1323 authorizes the SL-SF and the UP to substitute three bilevel cars for each two trilevel cars ordered by shippers for transporting automobiles. Revised Service Order No. 1323 is published in full in volume 43 of the FEDERAL REGISTER at page 39794. Amendment No. 1 extends this order until January 15, 1979.

DATES: Effective 11:59 p.m., October 31, 1978. Expires 11:59 p.m., January 15, 1979.

FOR FURTHER INFORMATION CONTACT:

Charles C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, telephone 202-275-7840, Telex 89-2742.

SUPPLEMENTARY INFORMATION: Decided October 25, 1978.

Upon further consideration of Revised Service Order No. 1323 (43 FR 39794), and good cause appearing therefor:

It is ordered, Revised Service Order No. 1323 is amended by subsituting the following paragraph (i) for paragraph (i) thereof:

§ 1033.1323 Revised Service Order No. 1323.

(a) *Distribution of freight cars* • • •

• • • • • •

(i) Expiration date. The provisions of this order shall expire at 11:59 p.m., January 15, 1979, unless otherwise modified, changed, or suspended by order of this Commission.

• • • • • •

Effective date. This amendment shall become effective at 11:59 p.m., October 31, 1978.

(49 U.S.C. 1(10-17).)

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington, and John R. Michael.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-31045 Filed 11-1-78; 8:45 am]

[4310-55-M]

Title 50—Wildlife and Fisheries

CHAPTER I—U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 32—HUNTING

Opening of the Matagorda Island Unit of the Aransas National Wildlife Refuge, Tex.

AGENCY: U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Special regulations.

SUMMARY: The Director has determined that the opening to hunting of the Matagorda Island unit of the Aransas National Wildlife Refuge, Tex., is compatible with the objectives for which this area was established, will utilize a renewable national resource, and will provide additional recreational opportunity to the public. This document establishes special regulations effective for the upcoming hunting season for migratory game birds.

EFFECTIVE DATES: November 4, 1978, to January 21, 1979.

FOR FURTHER INFORMATION CONTACT:

E. Frank Johnson, Refuge Manager, Aransas National Wildlife Refuge, P.O. Box 100, Austwell, Tex. 77950, telephone No. 512-286-3559

SUPPLEMENTARY INFORMATION: Hunting information is available from the refuge manager, Austwell, Tex.

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

DUCKS, GEESE, AND COOTS

Special conditions: (1) Unless otherwise specified, all laws and regulations published by the Texas Parks and Wildlife Department concerning waterfowl hunting will be applicable. (2) Taking of snow geese will not be permitted on the refuge. (3) Hunting hours: one-half (½) hour before sunrise until noon. (4) The area will be open 3 days a week (Saturdays, Sundays, and Wednesdays). Refuge transportation on the island will be provided to the hunt area for a fee of $1 per person (including a dog, if present). This service will include a noon pickup from the hunt areas. Upon arrival at the landing prior to being transported to the hunt areas, hunters will receive a short briefing covering hunter behavior, bird identification, with special emphasis on the peregrine falcon, other endangered species, and refuge management on the island. (5) In the event whooping cranes begin using habitat within the designed hunt area, all of portions of the area will be immediately closed to hunting.

(Sec. 2, 33 Stat. 614, as amended; sec. 5, 43 Stat. 651; sec. 5, 45 Stat. 449; sec. 10, 45 Stat. 1224; sec. 4, 48 Stat. 402, as amended; sec. 4, 48 Stat. 451, as amended; sec. 2, 48 Stat. 1270; sec. 4, 80 Stat. 927; 5 U.S.C. 301, 16 U.S.C. 685, 725, 690d, 715i, 664, 718d, 43 U.S.C. 315a; 16 U.S.C. 460k, 668dd; sec. 2, 80 Stat. 926; 16 U.S.C. 668bb.)

NOTE.—The Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an economic impact statement under Executive Order 11949 and OMB Circular A-107.

JERRY L. STEGMAN,
Acting Regional Director,
Albuquerque, N. Mex.

OCTOBER 27, 1978.

[FR Doc. 78-31027 Filed 11-1-78; 8:45 am]

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proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

[3410-05-M]

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

[7 CR Part 1435]

PRICE SUPPORT LOAN PROGRAM FOR 1977 CROP SUGARBEETS AND SUGARCANE

Proposed Extension of Loan Maturity Dates

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Secretary of Agriculture gives notice that he is considering a proposal to extend the maturity dates of price support loans on 1977 crop sugar to September 30, 1979. It has been indicated to the U.S. Department of Agriculture that about 300,000 tons of 1977 crop raw cane sugar now under loan to the Commodity Credit Corporation (CCC) will be forfeited when loans mature. Maturity begins November 30, 1978, and most 1977 crop loans will mature by March 31, 1979. Those processors having raw sugar under loan report that refiners have essentially satisfied their requirements for the fourth quarter of 1978 and at least part of the first quarter of 1979. The processors will thus be unable to redeem and market their 1977 crop loan sugar before the normal maturity date of loans. An extension beyond the November 30, 1978 through March 31, 1979 period during which most loans would otherwise mature would offer additional opportunity for the sugar under loan to be redeemed and sold in the marketplace. Market opportunities should increase once refiners have depleted current stocks and commitments.

So that the Secretary will have the benefit of the views of sugar producers and processors and other interested persons, comments and recommendations are invited on the proposal to extend the maturity dates for 1977 crop sugar loans.

DATE: Comments must be received on or before November 14, 1977, to be assured of receiving consideration.

ADDRESS: Mail comments to Sugar Branch, Procurement and Sales Division, ASCS-USDA, Room 5741-South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT:

Laurence E. Ackland, 202-447-5647 or 202-447-4647.

SUPPLEMENTARY INFORMATION: Section 902 of the Food and Agriculture Act of 1977 (Pub. L. 95-113, 91 Stat. 949, effective October 1, 1977) amended section 201 of the Agricultural Act of 1949 to provide that the price of the 1977 and 1978 crops of sugarbeets and sugarcane shall be supported through loans or purchases with respect to the processed products thereof.

On November 11, 1977, a final rule was published in the FEDERAL REGISTER (42 FR 58734) implementing a program effective as of November 8, 1977, to support prices in the marketplace for producers of 1977 crop sugarbeets and sugarcane through nonrecourse loans made to sugar processors. The price support loan program for the 1977 crop was amended on May 17, 1977 (43 FR 21317), on August 23, 1978 (43 FR 37419), and on August 30, 1978 (43 FR 38686). An amendment concerning the relocation of 1977 crop loan sugar was approved on October 24, 1978, and is scheduled for publication in the FEDERAL REGISTER on October 30, 1978.

Under the proposed extension of loan maturity dates for 1977 crop sugar, processors would have the option of loan extension to September 30, 1979 or forfeiture at earlier maturity. Once loans were extended, however, processors would continue to be required to comply with maintenance of quantity and quality of loan collateral and to maintain and make available supporting records. Processors would be permitted and encouraged to substitute new crop sugar for extended loan collateral. Extended loan sugar would earn storage payments at a fixed rate from the date of early maturity until redeemed or forfeited.

In accordance with Executive Order 12044, dated March 23, 1978, a draft impact analysis of the proposed action has been prepared. An approved Draft Impact Analysis is available from Laurence E. Ackland, Room 5761-South Building, USDA, Washington, D.C. 20250.

In the interest of obtaining information which will assist the Secretary in establishing the provisions of an extended loan program, it is requested that respondents to this invitation for public comment give careful consideration to the matters discussed above. It is especially requested that interested persons submit their recommendations on the storage rate which would be paid by CCC on extended loan sugar. Data to support such recommendations should also be submitted.

I have determined that it would be impossible to comply with public rulemaking requirements requiring that 60 days be allowed for public comment on proposals since the proposed action, if implemented, must be effective before November 30, 1978, the date sugar loans begin maturing. Therefore, the closing date for comments is November 14, 1978.

Prior to adopting the proposed action, the Department of Agriculture will give consideration to comments submitted in writing within the comment period. All written submissions made pursuant to this notice will be made available for inspection from 8:15 a.m. to 4:45 p.m., Monday through Friday, in Room 5761-South Building, 14th Street and Independence Avenue SW., Washington, D.C. (7 CFR 1.27 (b)).

Signed at Washington, D.C., on October 27, 1978.

STEWART N. SMITH,
Executive Vice President,
Commodity Credit Corporation.

[FR Doc. 78-31040 Filed 11-1-78; 8:45 am]

[4910-13-M]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 78-ASW-49]

CONTROL ZONE AND TRANSITION AREA

Proposed Alterations: Harrison, Ark.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The nature of the action being taken is to propose alteration of the control zone and transition area at Harrison, Ark. The intended effect of the proposed action is to provide additional controlled airspace for aircraft executing proposed instrument approach procedures to the Boone County Airport. The circumstance which created the need for the action is the scheduled installation of an instrument landing system at Boone County Airport. The proposed procedure designated from the new NAVAID will require additional controlled airspace.

DATES: Comments must be received by December 4, 1978.

ADDRESSES: Send comments on the proposal to: Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101.

The official docket may be examined at the following location: Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Tex. An informal docket may be examined at the Office of the Chief, Airspace and Procedures Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT:

David Gonzalez, Airspace and Procedures Branch (ASW-536), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101, telephone 817-624-4911, extension 302.

SUPPLEMENTARY INFORMATION: Subpart F and subpart G of FAR part 71 describe the control zone and transition area reflecting controlled airspace designed to provide protection for aircraft executing existing instrument procedures to the Boone County Airport. Scheduled installation of an instrument landing system on runway 36 will provide instrument approach procedures from the south and require expansion of existing controlled airspace to provide the required protection.

COMMENTS INVITED

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101. All communications received on or before December 4, 1978 will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the rules docket for examination by interested persons.

AVAILABILITY OF NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Chief, Airspace and Procedures Branch, Air Traffic Divison, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101, or by calling 817-624-4911, extension 302. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the office listed above.

THE PROPOSAL

The FAA is considering amendments to subpart F and subpart G of part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the Harrison, Ark., control zone and transition area. The FAA believes this action will enhance IFR operations at the Boone County Airport by providing additional controlled airspace for aircraft executing instrument approach procedures established for the airport. Subpart F and subpart G of part 71 were republished in the FEDERAL REGISTER on January 3, 1978 (43 FR 355) and (43 FR 440) respectively.

THE PROPOSED AMENDMENT

Accordingly, pursuant to the authority delegated to me, the FAA proposes:

1. To amend 71.171 of part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (43 FR 355) by altering the Harrison, Ark., control zone by adding the following:

• • • and within 3 miles each side of the ILS localizer south course extending from the 5-mile radius zone to 8.5 miles south of the LOM (lat. 36°11'28" N., long. 93°09'36" W.),

2. To amend 71.181 (14 FR Part 71) as republished (43 FR 440) by altering the Harrison, Ark., transition area by adding the following:

• • • and within 4 miles each side of the ILS localizer south course extending from the 12.5-mile radius area to 11.5 miles south of the LOM (lat. 36°11'28" N., long. 93°09'36" W.).

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a); and Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).)

NOTE.—The FAA has determined that this document involves a proposed regulation which is not considered to be significant under the procedures and criteria prescribed by Executive Order 12044 and as implemented by interim Department of Transportation guidelines (43 FR 9582; March 3, 1978).

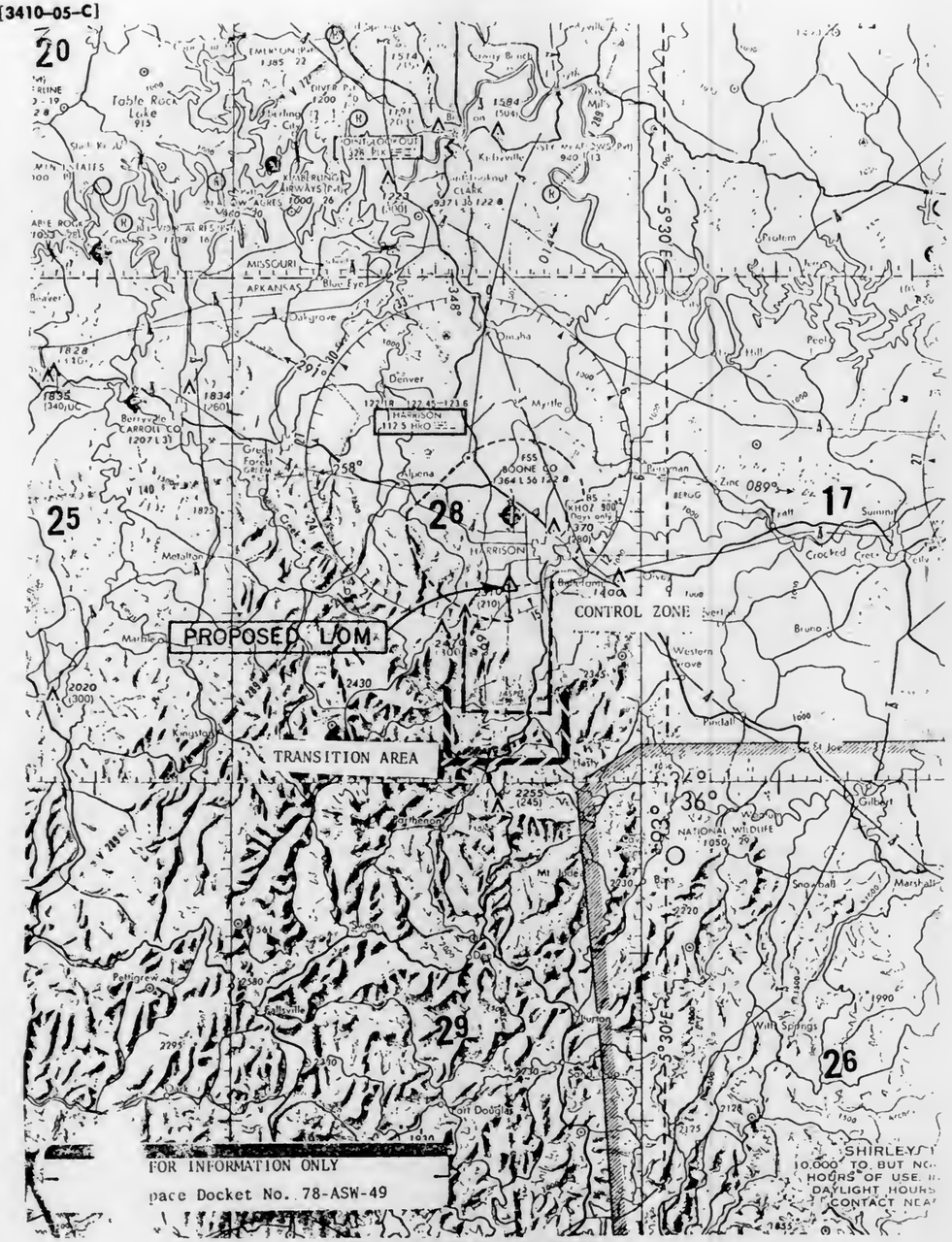
Issued in Fort Worth, Tex., on October 23, 1978.

PAUL J. BAKER,
Acting Director,
Southwest Region.

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[3410-05-C]



[FR Doc. 78-30879 Filed 11-1-78; 8:45 am]

[4910-13-M]

[14 CFR Part 71]

[Airspace Docket No. 78-EA-79]

PROPOSED DESIGNATION OF TRANSITION AREA: ALBION, N.Y.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate an Albion, N.Y., Transition Area, over Pine Hill Airport, Albion, N.Y. This designation will provide protection to aircraft executing the new VOR RWY 28 standard instrument approach which has been developed for the airport. An instrument approach procedure requires the designation of controlled airspace to protect instrument aircraft utilizing the instrument approach.

DATES: Comments must be received on or before December 7, 1978.

ADDRESSES: Send comments on the proposal in triplicate to: Chief, Airspace & Procedures Branch, AEA-530, Eastern Region, Federal Aviation Administration, Federal Building, Jamaica, N.Y. 11430. The docket may be examined at the following location: FAA, Office of Regional Counsel, AEA-7, Federal Building, J.F.K. International Airport, Jamaica, N.Y. 11430.

FOR FURTHER INFORMATION CONTACT:

Frank Trent, Airspace & Procedures Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Federal Building, J.F.K. International Airport, Jamaica, N.Y. 11430, telephone 212-995-3391.

COMMENTS INVITED

Interested parties may participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Eastern Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Federal Building, J.F.K. International Airport, Jamaica, N.Y. 11430. All communications received on or before December 7, 1978, will be considered before action is taken on the proposed amendment. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the rules docket for examination by interested persons.

AVAILABILITY OF NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Chief, Airspace & Procedures Branch, AEA-530, Eastern Region, Federal Aviation Administration, Federal Building, Jamaica, N.Y. 11430, or by calling 212-995-3391.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2, which describes the application procedures.

THE PROPOSED AMENDMENT

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. Amend § 71.181 of Part 71 of the Federal Aviation Regulations by designating an Albion, N.Y., 700-foot floor transition area as follows:

ALBION, N.Y.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the center, 43°10'24" N., 78°16'29" W., of Pine Hill Airport, Albion, N.Y., and within 2.5 miles each side of the Rochester, N.Y., VORTAC 277° radial, extending from the 5-mile radius area to 20 miles west of the VORTAC.

Section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348(a)) and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65.

NOTE.—The FAA has determined that this document involves a proposed regulation which is not considered to be significant under the procedures and criteria prescribed by Executive Order 12044 and as implemented by interim Department of Transportation guidelines (43 FR 9582; March 8, 1978).

Issued in Jamaica, N.Y., on October 16, 1978.

LOUIS J. CARDINALI,
Acting Director,
Eastern Region.

[FR Doc. 78-30658 Filed 11-1-78; 8:45 am]

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[4910-13-M]

[14 CFR Part 75]

[Airspace Docket No. 78-WE-18]

JET ROUTE

Proposed Alteration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to realign Jet Route 72 between Peach Springs, Ariz., and Albuquerque, N. Mex. The realignment would improve air traffic flow control procedures around the Las Vegas, Nev., terminal area.

DATES: Comments must be received on or before December 4, 1978.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA Western Region, Attention: Chief, Air Traffic Division, Docket No. 78-WE-18, Federal Aviation Administration, 15000 Aviation Boulevard, P.O. Box 92007, Worldway Postal Center, Los Angeles, Calif. 90009.

The official docket may be examined at the following location: FAA Office of the Chief Counsel, Rules Docket (AGC-24), Room 916, 800 Independence Avenue SW., Washington, D.C. 20591.

An informal docket may be examined at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT:

Mr. Lewis W. Still, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone: 202-426-8525.

SUPPLEMENTARY INFORMATION:

COMMENTS INVITED

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Western Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 15000 Aviation Boulevard, P.O. Box 92007, Worldway Postal Center, Los Angeles, Calif. 90009. All communications received on or before December 4, 1978 will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

AVAILABILITY OF NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling 202-426-8058. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

THE PROPOSAL

The FAA is considering an amendment to subpart B of part 75 of the Federal Aviation Regulations (14 CFR Part 75) that would realign Jet Route 72, in part, from Peach Springs, Ariz., to Albuquerque, N. Mex., via Gallup, N. Mex. Presently, Jet Route 72 is aligned, in part, from Peach Springs; to Winslow, Ariz.; to Zuni, Ariz.; to Albuquerque. This proposed realignment of J-72 would provide a jet route segment in an area where Las Vegas arrivals/departures are normally vectored off course during the transition phase of flight. The FAA believes the proposed realignment of J-72 would improve flow control procedures in the Las Vegas Terminal Area, reduce controller workload, and minimize air traffic control coordination. Subpart B of part 75 was republished in the FEDERAL REGISTER on January 3, 1978 (43 FR 714).[1]

THE PROPOSED AMENDMENT

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 75.100 of the Federal Aviation Regulations (14 CFR Part 75) as republished (43 FR 714) as follows:

Under Jet Route No. 72, "Winslow, Ariz.; Zuni, Ariz.;" would be deleted and "Gallup, N. Mex.;" would be substituted therefor.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65.)

The FAA has determined that this document involves a regulation which is not significant under the procedures and criteria prescribed by Executive Order 12044 and implemented by interim Department of Transportation guidelines (43 FR 9582; March 8, 1978).

[1] Map filed as part of original document.

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Issued in Washington, D.C., on October 16, 1978.

WILLIAM E. BROADWATER,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 78-30867 Filed 11-1-78; 8:45 am]

[6750-01-M]

FEDERAL TRADE COMMISSION

[16 CFR Part 13]

[File No. 762 3049]

ART INSTRUCTION SCHOOL, ET AL.

Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Provisional consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this provisionally accepted consent agreement, among other things, would require a Minneapolis, Minn., firm engaged in the formulation and sale of home study courses, its subsidiary, Art Instruction Schools, Inc. (AIS), and its New York City advertising agency to cease misrepresenting the need or demand for AIS graduates; and the employment opportunities, potential earnings, and job placement assistance available to graduates. The companies would be further prohibited from misrepresenting student selectivity; the quality of their courses; and the lack of additional costs and cancellation penalties. The order would also require that prospective enrollees be provided with prescribed information relating to the job success of former students; and informed of cancellation and refund rights. Additionally, the order would require that the companies make proper restitution to former eligible students; maintain particular records; and institute a surveillance program designed to insure compliance with the terms of the order.

DATES: Comments must be received on or before January 2, 1979.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, Sixth Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

Paul W. Turley, Director, Cleveland Regional Office, Federal Trade Commission, 1339 Federal Office Building, 1240 East Ninth Street, Cleveland, Ohio 44199, 216-522-4207.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and provisionally accepted by the Commission, has been placed on the public record, together with material submitted to the Commission that is not exempt from public disclosure under the Freedom of Information Act, for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

BUREAU OF ENGRAVING, INC., ART INSTRUCTION SCHOOLS, INC., BOZELL & JACOBS, INC.

[File No. 762 3049]

AGREEMENT CONTAINING CONSENT ORDER TO CEASE AND DESIST

The agreement herein, by and between Bureau of Engraving, Inc., a corporation, Art Instruction Schools, Inc., a corporation, and Bozell & Jacobs, Inc., a corporation, by their duly authorized officers and their attorneys and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's rules governing consent order procedure. In accordance therewith the parties hereby agree that:

1. Proposed respondent Bureau of Engraving, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota with its principal office and place of business located at 500 South Fourth Street, Minneapolis, Minn.

Proposed respondent Art Instruction Schools, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its principal office and place of business located at 500 South Fourth Street, Minneapolis, Minn. This corporation is a wholly owned subsidiary of respondent Bureau of Engraving, Inc.

Proposed respondent Bozell & Jacobs, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at One Dag Hammarskjold Plaza, New York, N.Y.

2. Proposed respondents admit all the jurisdictional facts set forth in said complaint.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contains a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become a part of the official record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released; and such acceptance may be withdrawn by the Commission if comments or views submitted to the Commission disclose facts or considerations which indicate that the order contained in the agreement is inappropriate, improper, or inadequate.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint heretofore served on proposed respondents and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Mailing of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or to contradict the terms of the order.

7. It is agreed that the relief for consumers set forth in Part III of the Order contained herein fully satisfies any claim for consumer redress which the Commission has under sections 5(b) and 19 of the Federal Trade Com-

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mission Act, as amended, arising out of the acts and practices alleged in the complaint. By its final acceptance of this Agreement, with such modifications, if any, which the parties may make prior to said final acceptance, the Commission waives its right to commence a civil action under section 19 of the Federal Trade Commission Act, as amended, with respect to the acts and practices alleged in the Commission's complaint.

8. Proposed respondents have read the proposed complaint and order contemplated hereby, and they understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order, and that a respondent may be liable for a civil penalty in the amount provided by law for each violation of the order by a respondent after it becomes final.

ORDER

I.

It is ordered, That respondents, Bureau of Engraving, Inc., and Art Instruction Schools, Inc., hereinafter sometimes referred to as "AIS", their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of courses of study, training or instruction in the field of art or in any other subject, trade or vocation in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, orally, visually, in writing or in any other manner, directly or by implication that:

(A) A placement service is provided which will or may secure a position in the field of art for graduates of respondent AIS courses of instruction;

(B) Respondent AIS courses of instruction are equivalent to college level art courses in specialized studio art subjects offered by accredited colleges or universities;

(C) Respondent AIS students are not contractually bound, or by the nature of the course not required, to bear any expenses or costs in addition to those set out in the enrollment agreement or is otherwise stated prior to enrollment;

(D) Respondent AIS students will be entitled to withdraw from the courses of instruction without having to adhere to the withdrawal payment schedue contained in the contract or without paying any undisclosed charges in addition thereto;

(E) Respondent AIS prospective students must enroll at the time of the sales representative's visit, or that they will have no other opportunity to enroll.

2. Misrepresenting orally, visually, in writing or in any other manner, directly or by implication:

(A) That enrollees in respondent AIS courses of art instruction will be required to qualify under highly selective procedures, or that enrollment is limited or that other significant limiting criteria are applicable;

(B) (i) That there is a great need or great demand or need or demand of any size for persons completing any of AIS courses of instruction;

(ii) That AIS graduates will experience little or no difficulty in securing employment in positions for which they were trained; or

(iii) The employment or earning prospects of AIS graduates in positions for which they have been trained;

(C) That graduates of respondent AIS will be qualified thereby for full or part time positions in the field of art utilizing their artistic skills without further training or experience;

(D) That respondents will initate legal action against delinquent students.

3. Failing to furnish written notice to the person to be contacted, prior to initial contact by a sales representative, that a sales representative of respondent AIS may contact persons who respond to the free art talent tests or drawing contests.

4. Failing orally to direct each prospective enrollee's attention, at the time he or she signs a contract or agreement for the sale of any course of instruction to the provisions of the contract or agreement which set forth his or her contractual right to cancel.

5. Making any representations of any kind whatsoever, which are not already proscribed by other provisions of this order, in connection with the adverstising, promoting, offering for sale, sale or distribution of courses of study, training or instruction in the field of art, or any other course offered to the public in any field in commerce, for which representation respondent AIS has no reasonable basis prior to the making or dissemination thereof.

6. *It is further ordered*, That respondent Bozell & Jacobs, Inc., a corporation, its successors and assigns and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, franchise or other device on behalf of AIS in connection with the advertising, promoting, offering for sale, sale or distribution of courses of study, training or instruction in the field of art or any other subject, trade or vocation or of any other product or service in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

(A) Misrepresenting orally, visually, in writing or in any other manner, directly or by implication, that:

(i) Enrollees in respondent AIS courses of art instruction will be required to qualify under highly selective procedures, or that enrollment is limited or that other significant limiting criteria are applicable;

(ii) Graduates of respondent AIS will be qualified thereby for full or part time positions in the field of art utilizing their artistic skills without further training or experience;

(iii) There is a great need or great demand or need or demand of any size for persons completing any of AIS courses of instruction;

(iv) AIS graduates will experience little or no difficulty in securing employment in positions for which they are trained; or

(B) Making any representations of any kind whatsoever, which are not already proscribed by other provisions of this order, in connection with the advertising, promoting, or offering for sale of respondent AIS courses of study, training or instruction in the field of art or any other course offered to the public in any field in commerce, for which respondent has no reasonable basis prior to the making or dissemination thereof.

(C) Failing to deliver a copy of this Order to cease and desist to all present and future personnel of respondent Bozell & Jacobs engaged in preparing, creating or reviewing advertisements on behalf of any client engaged in the home study and correspondence school business, and secure from each such person a signed statement acknowledging receipt of said Order.

II.

1. *It is further ordered*, That respondents Bureau of Engraving, Inc., and Art Instruction Schools, Inc.:

(A) Deliver, or cause to be delivered, a copy of this Decision and Order to licensees, employees, sales representatives, agents, solicitors, independent contractors, or to any other person, who promotes, offers for sale, sells or distributes any course of instruction included within the scope of this Order.

(B) Provide each person or entity so described in Paragraph 1(A) of Part II of this Order with a form returnable to the respondents clearly stating his or her intention to be bound by and to conform his or her business practices to the requirements of this Order, retain said statement during the period said person or entity is so engaged, and make said statement available to the Commission's staff for inspection and copying upon request.

(C) Inform each person so described in Paragraph 1(A) above that the respondents will not use or engage or will terminate the use or engagement of any such party, unless such party agrees to and does file notice with the respondents that he or she will be bound by the provisions contained in this Order.

(D) If such party as described in Paragraph 1(A) above will not agree to file the notice set forth in Paragraph 1(B) above with the respondents and be bound by the provisions of this Order, the respondents shall not use or engage or continue to use the engagement of such party to promote, offer for sale, sell or distribute any course of instruction included within the scope of this Order.

(E) Inform the persons or entities in Paragraph 1(A) above that the respondents are obligated by this Order to discontinue dealing with or to terminate the use or engagement of persons or entities who continue on their own the deceptive acts or practices prohibited by this Order.

(F) Institute a program of continuing affirmative compliance review reasonably designed to establish whether the business practices of each said person or entity described in Paragraph 1(A) above conform to the requirements of this Order.

(G) Discontinue dealing with or terminate the use or engagement of any person described in Paragraph 1(A) above as revealed by the aforesaid compliance review programs, who continues on his or her own any act or practice prohibited by this Order.

III.

1. *It is further ordered*, That for the purposes of Part III the following definitions shall apply:

(A) The term "Relevant Period" shall mean the 4-year period commencing January 1, 1972, and continuing through December 31, 1975, in respect to the "Graduate List", and commencing March 1, 1973, and continuing through October 1, 1976, in respect to "Non-Completing Students".

(B) The term "Graduate List" shall mean the list of names and addresses of students, who reside in the United States, of any individual course of instruction offered for sale by respondent AIS in the field of art, who within the "Relevant Period" have completed the number of lessons required by respondent AIS for completion of individual courses, irrespective of the date of such students' enrollment in or commencement of such course, and irrespective of the amount of tuition paid by such students.

(C) The term "Non-Completing Student" shall mean students, who reside in the United States (other than those whose names appear on the "Graduate List"), who have enrolled in a course of instruction of respondent AIS in the field of art on or after March 1, 1973, (1), who, after completing one-half (½) or more of respondent AIS program of art instruction, have during the "Relevant Period" affirmatively notified respondent AIS in writing of his or her intention to terminate or not to complete the program of instruction or have been terminated as a student by respondent AIS, or (2) who, after completing two-thirds (⅔) or more of respondent AIS program of art instruction, have not submitted a lesson during any continuous twelve (12) month period during the "Relevant Period" without the student having requested and been granted an extension of time in which to complete the program. For purposes of this Order, "two-thirds" of the AIS program shall mean completion of 18 lessons in the 27-lesson program or 10 lessons in the 14 lesson-program, as the case may be.

(D) The term "Non-Completion List" shall include each "Non-Completing Student" of any individual course of instruction offered for sale by AIS in the field of art.

2. *It is further ordered*, That respondents Bureau of Engraving, Inc., and Art Instruction Schools, Inc., shall within sixty (60) days from the date of acceptance of this Order by the Federal Trade Commission, compile two (2) separate lists. The first list shall be entitled "Graduate List" and shall contain the last known names and addresses of all students who qualify for inclusion therein pursuant to the criteria set forth in Part III, Paragraph 1(B), and shall also contain the names and addresses of such students' nearest relative(s) whose addresses appear on any document in respondents' files relating to said students. The second list shall be entitled "Non-Completion List" and shall contain the last known names and addresses of all "Non-Completing Students" who qualify for inclusion therein pursuant to the criteria set forth in Part III, Paragraph 1(C) and shall also contain the names and addresses of such students' nearest relative(s) whose addresses appear on any document in respondents' files relating to said student. Respondent shall prepare the "Graduate List" and "Non-Completion List" from respondents' records in their respective possession, custody or control. The "Graduate List" and "Non-Completion List" shall be supplemented by a list of persons in the same respective categories compiled by the Federal Trade Commission and transmitted to said respondents within one hundred five (105) days from the date of acceptance of this Order by the Federal Trade Commission.

3. *It is further ordered*, That respondents Bureau of Engraving, Inc., and Art Instruction Schools, Inc., shall jointly, within sixty (60) days from the effective date of this Order, retain an independent contractor acceptable to the Commission, and give to said independent contractor, within one humdred ten (110) days from the date of acceptance of this Order by the Federal Trade Commission, the "Graduate List", "Non-Completion List" and the list of persons in the same respective categories provided to respondents by the Federal Trade Commission. Said independent contractor shall review the lists, strike out any duplication of names and addresses of students set forth in such lists, and determine the due qualification of each student listed to be included in such lists under the criteria hereinabove referred to. Said independent contractor shall be granted access to respondents' records in order to prepare a final "Graduate List" and a final "Non-Completion List". Students whose names appear on the final lists in each category as compiled by the independent contractor are to receive one or more of the Appendices A, B, C, D and E in accordance with the following provisions of Part III of this Order. No student shall be included or retained on any final list compiled by the independent contractor who, in the good faith judgment of the independent contractor, on the basis of respondents' records, is manifestly not entitled to participate in the restitution contemplated by the Order by reason of not meeting the substantive criteria therefore established in Part III, Paragraphs.6 and 9 below.

GRADUATE LIST

4. (A) *It is further ordered*, That said independent contractor shall make an inquiry in writing on the one hundred thirtieth (130) day after the effective date of this Order to all students whose names and addresses appear on the "Graduate List", in the language, manner and form shown in Appendices A and D, by first class mail and with a self-addressed postage prepaid return envelope. Said inquiry shall be known as the "first mailing". With respect to all students whose "first mailing" is returned unopened on or prior to the two hundredth (200) day after the effective date of this Order, said independent contractor shall within three (3) days after such "first mailing" is returned unopened attempt by reasonable mailed inquiry to establish contact with such students by requesting by mail new addresses from the students' nearest relative(s) whose addresses appear on any document supplied to the independent contractor through which a student may be located. Said independent contractor upon

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securing a new address from the aforementioned source shall initiate the "first mailing" procedure to the new address of the student.

(B) Said independent contractor shall make a second inquiry in writing on the one hundred seventieth (170) day after the effective date of this Order to all students whose names and addresses appear on the "Graduate List" and have not responded to the "first mailing" of the independent contractor by such date. The second inquiry in writing by first class mail and with a self-addressed postage prepaid return envelope shall be known as the "second mailing" and be in the language, manner and form shown in Appendix B.

(C) Said independent contractor shall make a third inquiry in writing on the two hundredth (200) day after the effective date of the Order to all students whose names and addresses appear on the final "Graduate List" and have not responded to the "first mailing" or second mailing" of the independent contractor by such date. The third inquiry in writing by first class mail and with a self-addressed postage prepaid return envelope shall be known as the "third mailing" and shall be in the language, manner and form shown in Appendix C.

It is further ordered, That:

(A) At the expiration of forty-five (45) days after the independent contractor mails the "third mailing", and in any event two hundred forty-five (245) days after the effective date of this Order, said contractor shall transmit to respondents all Appendix D responses it has received by such date; and

(B) Respondents' obligation to make restitution shall extend to these persons whose names appeared on the final "Graduate List" compiled by the independent contractor and whose Appendix D responses have been received by the independent contractor on or before the expiration of said forty-five (45) day period and whose eligibility is certified by the independent contractor pursuant to Paragraph 5(C) of Part III of this order below; and

(C) The independent contractor shall certify to respondents the identity of all students eligible to receive restitution on the basis of their Appendix D responses. The independent contractor shall be the final judge in good faith of such eligibility based upon the criteria set forth in Part III, Paragraphs 1, 5, and 6 of this Order.

6. *It is further ordered,* That on the thirtieth (30) day following the close of the forty-five (45) day period described in Part III, Paragraph 5(A) of this Order, and in any event two hundred seventy-five (275) days after the effective date of this Order, respondents shall refund to those students of AIS courses identified by the independent contractor as eligible therefore an amount equal to twenty-five percent (25%) of an amount equal to the gross tuition paid by each student to respondent AIS for any such course, less any previous refunds. With respect to each such student on the "Graduate List" deemed eligible to receive a refund of tuition, respondents shall forward to each such person together with the refund check a notice in the following language:

This refund check is tendered in satisfaction of all claims by you against Art Instruction Schools, Inc., Bureau of Engraving, Inc., and the officers, directors, employees and agents of either of them. Upon acceptance of the refund check each of the foregoing shall be released from all such claims by you arising out of the payment of tuition for any Art Instruction Schools, Inc., courses of instruction, and you shall be released fom all claims by Art Instruction Schools, Inc., or Bureau of Engraving, Inc., against you.

In addition to the refund of the percentage of gross tuition specified herein, respondents shall also refund to each student on the "Graduate List" who qualifies hereunder for a refund, the amount of tuition payments made by said student to respondents between the effective date of this Order and a date not more than ten (10) days prior to the date the refund check is due to be mailed to said student under the foregoing schedule. In order for any student on the "Graduate List" to be eligible to receive a refund of tuition, such student must satisfy the following criteria, in addition to the procedural requirements of Part III, Paragraph 4 of this Order.

(A) The student enrolled in AIS course of instruction for the purpose of obtaining employment in the field of art utilizing his or her artistic skills or to improve his or her level of employment as an artist by virtue of training received from such course of instruction; and directors, employees and agents of either of them. Upon acceptance of the refund check each of the foregoing shall be released from all such claims by you arising out of the payment of tuition for any Art Instruction Schools, Inc., course of instruction, and you shall be released from all claims by Art Instruction Schools, Inc., or Bureau of Engraving, Inc., against you.

(B) (i) Sought employment in the field of art utilizing his or her artistic skills, or

(ii) For reasons relating to the lack of sufficiency or quality of AIS training, or lack of relevant employment opportunity, elected not to seek such employment; and

(C) Did not obtain employment in the field of art or did not improve his or her level of employment, notwithstanding the training received from AIS.

NON-COMPLETION LIST

7. (A) *It is further ordered,* That the independent contractor shall make an inquiry in writing on the one hundred thirtieth (130) day after the effective date of this Order to all students whose names and addresses appear on the final "Non-Completion List" compiled by the independent contractor, in the language, manner and form shown in Appendices A and E by first class mail and with a self-addressed postage prepaid return envelope. Said inquiry shall be known as the "first mailing". With respect to all students whose "first mailing" is returned unopened on or prior to the two hundredth (200) day after the effective date of this Order said independent contractor shall, within three (3) days after such "first mailing" is returned unopened, attempt by reasonable mailed inquiry to establish contact with such students by requesting by mail new addresses from the students' nearest relative(s) whose addresses appear on any document supplied to the independent contractor through which a student may be located. Said independent contractor upon securing a new address from the aforementioned source shall initiate the "first mailing" procedure to the new address of the student.

(B) Said independent contractor shall make a second inquiry in writing on the one hundred seventieth (170) day after the effective date of this Order to all students whose names and addresses appear on the final "Non-Completion List" and have not responded to the "first mailing" of the independent contractor by such date. The second inquiry in writing by first class mail and with a self-addressed postage prepaid return envelope shall be known as the "second mailing" and be in the language, manner, and form shown in Appendix B.

(C) Said independent contractor shall make a third inquiry in writing on the two hundredth (200) day after the effective date of this Order to all students whose names and addresses appear on the final "Non-Completion List" and have not responded to the "first mailing" or "second mailing" of the independent contractor by such date. The third inquiry in writing by first class mail and with a self-addressed postage prepaid return envelope shall be known as the "third mailing" and be in the language, manner and form shown in Appendix C.

8. *It is further ordered,* That: (A) At the expiration of forty-five (45) days after the independent contractor mails the "third mailing", and in any event two hundred forty-five (245) days after the effective date of this Order, said contractor shall transmit to respondents all Appendix E responses it has received by such date; and

(B) Respondents' obligation to make restitution shall extend to those persons whose names appeared on the final "Non-Completion List" compiled by the independent contractor and whose Appendix E responses have been received by the independent contractor on or before the expiration of said forty-five (45) day period and whose eligibility is certified by the independent contractor pursuant to Paragraph 8(C) of Part III of this Order below; and

(C) The independent contractor shall certify to respondents the identity of all students eligible to receive restitution on the basis of their Appendix E responses. The independent contractor shall be the final judge in good faith of such eligibility based upon the criteria set forth in Part III, Paragraphs 1, 8 and 9 of this Order.

9. *It is further ordered,* That on the thirtieth (30) day following the close of the forty-five (45) day period described in Part III, Paragraph 8(A) of this Order, and in any event two hundred seventy-five (275) days after the effective date of this Order, respondents shall refund to those students of AIS courses identified by the independent contractor as eligible therefore an amount equal to twenty percent (20%) of an amount equal to the gross tuition paid by each student to respondent AIS for any such course, less any previous refunds. With respect to each such student on the "Non-Completion" deemed eligible to receive a refund of tuition, respondents shall forward to each such person together with the refund check a notice in the following language:

This refund check is tendered in satisfaction of all claims by you against Art Instruction Schools, Inc., Bureau of Engraving, Inc., and the officers, directors, employees, and agents of either of them. Upon acceptance of the refund check each of the foregoing shall be released from all such claims by you arising out of the payment of tuition for any Art Instruction Schools, Inc., course of instruction, and you shall be released from all claims by Art Instruction Schools, Inc., or Bureau of Engraving, Inc., against you.

In order for any student on the final "Non-Completion List" to be eligible to receive a refund of tuition such student must satisfy the following criteria, in addition to the procedural requirements of Part III, Paragraph 8 of this Order:

(A) The student enrolled in an AIS course of instruction for the purpose of obtaining, during the conduct of the course of instruction, employment in the field of art utilizing his or her artistic skills, or during the conduct of the course to improve his or her level of employment as an artist by virtue of training received from such course of instruction; and

(B) (i) Sought employment in the field of art utilizing his or her artistic skills, or

(ii) For reasons relating to the lack of sufficiency or quality of AIS training, or lack of relevant employment opportunity, elected not to seek such employment; and

(C) Did not during the conduct of the course or thereafter obtain employment in the field of art or did not during the conduct of the course or thereafter improve his or her level of employment, notwithstanding the training received from AIS.

10. *It is further ordered,* That notwithstanding any provision of Part III, Paragraphs 1 through 9 to the contrary, any amount payable as restitution thereunder shall be remitted to the person appearing on the records of respondents as the person who actually paid the tuition being refunded if such person is different from the qualifying student who enrolled in such course(s).

IV.

It is further ordered, That respondents Bureau of Engraving, Inc., and Art Instruction Schools, Inc., maintain in their respective student files all documents and writings relating to inquiries or complaints from any source relating to acts or practices prohibited by this Order for a period of two (2) years after the effective date of this Order, and that such files be made available for examination by a duly authorized agent of the Federal Trade Commission during the regular hours of the respondents' business for inspection and copying.

V.

It is further ordered, That respondents Bureau of Engraving, Inc., and Art Instruction Schools, Inc., shall forthwith distribute a copy of this Order to each of their operating divisions.

VI.

It is further ordered, That respondents Bureau of Engraving, Inc., Art Instruction Schools, Inc., and Bozell & Jacobs, Inc., shall notify the Commission at least thirty (30) days prior to any proposed change in respondents such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, or any other change in respondents which may affect compliance obligations arising out of this order.

VII.

It is further ordered, That in the event the Federal Trade Commission promulgates a final Trade Regulation Rule on Advertising, Disclosure, Cooling-Off and Refund Requirements Concerning Proprietary, Vocational, and Home-Study Schools, then such Trade Regulation Rule shall completely supercede and replace the provisions of this Order set forth in Part I, Paragraphs 2 through 4 provided, that if no provision of the Trade Regulation Rule relates in whole or in part to any matter covered by provisions of one of the aforesaid paragraphs of this Order, the said provisions of said Paragraph shall remain in full force and effect.

VIII.

It is further ordered, That no provision of this Order shall be construed in any way to annul, invalidate, repeal, terminate, modify, or exempt respondents from complying with agreements, orders or directives of any kind obtained by any other agency or act as a defense to actions instituted by municipal or state regulatory agencies. No provision of this Order shall be construed to imply that any past or future conduct of respondents complies with the rules and regulations of, or the statutes administered by the Federal Trade Commission.

IX.

It is further ordered, That each respondent herein named shall, within sixty (60) days after service upon it of this Order, file with the Commission a report in writing setting forth the manner and form in which each has complied with this Order, and respondents Bureau of Engraving, Inc., and Art Instruction Schools, Inc., shall, within two hundred seventy (270) days after the independent contractor first mails the "first mailings" referred to in Part III above, file with the Commision a report in writing setting forth the manner and form in which they have complied with Part III of this Order.

APPENDIX A

IMPORTANT NOTICE

(Name of Addressee)
(Address of Addressee)
Subject: Your enrollment in Art Instruction Schools, Inc.

DEAR ———: We would like you to help us by filling out the enclosed short questionnaire.

The Federal Trade Commision has directed us to get certain facts and information from you concerning your association and relationship with our school. We have asked (name of independent contractor) to get this information from the questionnaire. Art Instruction Schools, Inc. will use the gathered information to meet important legal obligations to former students such as yourself.

It is very important that you promptly provide the information requested. Please fill out the questionnaire and return it in

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the enclosed return envelope. If you have any questions about this letter or the questionnaire, please contact (name of person, independent contractor, address, and telephone number).

Sincerely yours,

ROY O. STUART,
President,
Art Instruction Schools, Inc.

APPENDIX B

IMPORTANT NOTICES

(Name of Addressees)
(Address of Addressee)
Subject: Your enrollment in Art Instruction Schools, Inc.

DEAR ——: Approximately 1 month ago we asked you to fill out a questionnaire about your association and relationship with Art Instruction Schools, Inc. We have not received your response.

The information requested is *very* important in order to fulfill important legal obligations to our former students such as yourself. Please help us by filling out the questionnaire and returning it in the enclosed envelope.

If you have any questions regarding this letter please contact (name of person, independent contractor, address, and telephone number).

Sincerely yours,

ROY O. STUART,
President,
Art Instruction Schools, Inc.

APPENDIX C

IMPORTANT NOTICE

(Name of Addressees)
(Address of Addressee)
Subject: Your enrollment in Art Instruction Schools, Inc.

DEAR ——: Twice during the past 2 months we asked you to fill out an important questionnaire regarding your association and relationship with Art Instruction Schools, Inc. We have not received your response.

The Federal Trade Commission has directed the School to compile this information to meet important legal obligations to former students such as yourself. The only method to determine the existence and scope of such legal obligations to former students is by you filling out the questionnaire. Please do so as soon as possible and return it in the enclosed envelope. If you have any questions please contact (name of person, independent contractor, address, and telephone number).

Sincerely yours,

ROY O. STUART,
President,
Art Instruction Schools, Inc.

APPENDIX D

Subject: Your enrollment in Art Instruction Schools, Inc. ("AIS") Minneapolis, Minn.

1. Is your current address correctly shown on the envelope? Yes (□) No (□). If not, what is your address?

2. (a) About when did you sign up for the AIS course?

_____
Month and year

(b) About when did you make your first payment to AIS?

_____
Month and year

3. What was the name of the course?

4. (a) Did you finish the course in which you enrolled? Yes (□) No (□).

(b) If you finished the course, about when did you do so?

_____
Month and year

5. What was the total amount of money you paid for your course? (Total amount paid: $———.)

6. People take a correspondence course for various reasons. Which *one* of the reasons listed below best fits your own reason for taking the course? (Read all reasons first before you check *one*.)

		(Check one only)
(a)	To get personal satisfaction from developing my interests in art	( )
(b)	To learn a hobby	( )
(c)	To supplement my high school studies	( )
(d)	To get a job in the field of art using my artistic skills	( )
(e)	To do my current job in the field of art better	( )
(f)	To increase my appreciation or understanding of art	( )
(g)	Other	( )
	(Please describe)	
	.....	
	.....	

7. After you signed up for the AIS course, did you ever make a sincere and good faith effort to get a job using your artistic skills in the field of art? Yes ( ) No ( ).

(If "yes," skip to question 9; if "no," please answer question 8.)

8. (Answer this question *only* if you answered question 7 "no.") Please give the most important reason why you did *not* try to get a job in the field of art. (Read all reasons first before you check *one*.)

		(Check one only)
(a)	I took the course for advancement or improvement in my current job and not to get a new job in the field of art using my artistic skills, and I either:	
	(i) Got improvement or advancement	( )
	(ii) Did not get improvement or advancement	( )
(b)	I took the course mainly for self-improvement or self-fulfillment	( )
(c)	I preferred, already had, or got a job in another field unrelated to art	( )
(d)	I decided I didn't want a job in the field of art	( )
(e)	I decided I wouldn't be able to find a job in the field of art using my artistic skills since I had no on-the-job experience	( )
(f)	I decided I wouldn't be able to find a job in the field of art using my artistic skills since I hadn't enough training	( )
(g)	I decided I wouldn't be able to find a job in the field of art using my artistic skills because there was no demand for my talents	( )
(h)	I married or started a family	( )
(i)	I was drafted or enlisted in the military service	( )
(j)	I was going to high school or went on to college, vocational-technical, or other schooling	( )
(k)	I never wanted a job in the field of art in the first place	( )
(l)	Art is a hobby or recreational activity with me	( )
(m)	Other	( )
	(Please describe)	
	.....	
	.....	

9. (Answer this question *only* if your answer to question 7 is "yes.") Did you ever get a job in the field of art or sell a substantial amount of free lance art work as a result of your training at Art Instruction School? Yes ( ) No ( ).

10. Do you feel that the couse was worthwhile to you? Yes ( ) No ( ).

11. Would you recommend the course you took to a friend? Yes ( ) No ( ).

12. (a) What was your age when you signed up for the Art Instruction School course? ——

(b) What is your age today? ——

13. What was your job or main activity when you signed up for the course (such as "high school student," or "mechanic" or "housewife")?

_____

14. Please attach to this form copies of any documents, if available, that show you paid any amount of money for any course of instruction offered by Art Instruction Schools.

This form must be signed and mailed in the enclosed self-addressed return envelope.

I certify that the above answers are true and correct to the best of my knowledge and belief.

[NOTE.—It is a Federal crime for anyone to knowingly and willfully make a false, fictitious, or fraudulent statement or representation in any matter within the jurisdiction of any department or agency of the United States. 18 U.S.C. Section 1001.]

_____
Date

_____
Student's signature

_____
Social Security No.

_____
Print name here

Home address:

_____
Number Street Apt.

_____
City State ZIP code

Home telephone:

_____

Business address:

_____

_____
Employer's name

_____
Number Street

_____
City State ZIP code

Business telephone:
( )_____

APPENDIX E

Subject: Your enrollment in Art Instruction Schools, Inc. ("AIS"). Minneapolis, Minn.

1. Is your current address correctly shown on the envelope? Yes ( ) No ( ). If not, what is your address?

2. (a) About when did you sign up for the AIS course?

_____
Month and year

(b) About when did you make your first payment to AIS?

_____
Month and year

3. What was the name of the course?

4. (a) Did you finish the course you signed up for? Yes ( ) No ( ).

(b) If you dropped out of the course, about when did you do so?

_____
Month and year

(c) How many lessons of the total course did you finish?

Total lessons finished ——.

Total lessons in course ——.

5. As of today what is the total amount of money you have actually paid to AIS for your course?

Total amount paid: $———.

6. People take a correspondence course for various reasons. Which *one* of the reasons listed best fits your own reasons for taking the art course? (Read all reasons first before you check *one*.)

		(Check one only)
(a)	To get personal satisfaction from developing my interests in art	( )
(b)	To learn a hobby	( )
(c)	To supplement my high school studies	( )
(d)	To get a job during the course in the field of art using my artistic skills	( )
(e)	To do my current job in the field of art better	( )
(f)	To increase my appreciation or understanding of art	( )
(g)	Other	( )
	(Please Describe)	
	.....	
	.....	

7. After you signed up for the AIS course, did you ever make a sincere and good faith effort to get a job using your artistic skills in the field of art? Yes ( ) No ( ).

(If "yes", skip to question 9; if "no", please answer question 8.)

8. (Answer this question *only* if you answered question 7 "no.") Please give the *most important* reason why you did *not* try to get a job in the field of art. (Read all reasons first before you check *one*.)

		(Check one only)
(a)	I took the course for advancement or improvement in my current job and not to get a new job in the field of art using my artistic skills, and I either:	
	(i) Got advancement or improvement; or	( )
	(ii) didn't get advancement or improvement	( )
(b)	I took the course mainly for self-improvement or self-fulfillment	( )
(c)	I preferred, already had, or got a job in another field unrelated to art	( )
(d)	I decided I didn't want a job in the field of art	( )
(e)	I decided I wouldn't be able to find a job in the field of art using my artistic skills since I had no on-the-job experience	( )
(f)	I decided I wouldn't be able to find a job in the field of art using my artistic skills since I hadn't enough training	( )
(g)	I decided I wouldn't be able to find a job in the field of art using my artistic skills because there was no demand for my talents	( )
(h)	I married or started a family	( )
(i)	I was drafted or enlisted in the military service	( )
(j)	I was going to high school or went on to college, vocational-technical, or other schooling	( )
(k)	I never wanted a job in the field of art in the first place	( )
(l)	Art is a hobby or recreational activity with me	( )
(m)	Other	( )
	(Please Describe)	
	.....	
	.....	

9. (Answer this question *only* if your answer to question 7 is "yes".) Did you ever get a job in the field of art or sell a substantial amount of free lance art work as a result of your training at Art Instruction School? Yes( ) No ( ).

10. Do you feel that the course was worthwhile to you? Yes ( ) No ( ).

11. Would you recommend the course you took to a friend? Yes ( ) No ( ).

12. Please give the most important reason why you dropped the AIS course. (Read all reasons first before you check *one*.)

		(Check one only)
(a)	I gained the self-improvement I wanted when I signed up	( )
(b)	I felt I didn't have enough time for my art lessons because of my other activities or studies	( )
(c)	I found the course too difficult	( )
(d)	I didn't feel the course was worthwhile	( )
(e)	I didn't feel the course would help me get a job in the field of art	( )
(f)	I went to college or vacational-technical school	( )
(g)	I simply lost interest in studying art	( )
(h)	I could no longer afford the payments for the course	( )
(i)	Other	( )
	(Please describe)	
	.....	
	.....	

13. (a) What was you age when you signed up for the Art Instruction School course?——

(b) What is your age today?——

14. What was your job or main activity when you signed up for the course (such as "high school student", or "mechanic" or "housewife")?

_____

15. Please attach to this form copies of any documents, if available, that show you paid any amount of money for any course of instruction offered by Art Instruction Schools.

This form must be signed and mailed in the enclosed self-addressed return envelope.

I certify that the above answers are true and correct to the best of my knowledge and belief.

[NOTE.—It is a Federal crime for anyone to knowingly and wilfully make a false, fictitious, or fraudulent statement or representation in any matter within the jurisdiction of any department or agency of the United States. 18 U.S.C. Section 1001.1]

_____
Date

_____
Student's signature

_____
Social security No.

_____
Print name here

Home Address

_____
Number Street Apt.

_____
City State ZIP code

HOME TELEPHONE:
( )_____

Business address:

_____

_____
Employer's name

_____
Number Street

_____
City State ZIP code

Business telephone:
( )_____

[File No. 762-3049]

BUREAU OF ENGRAVING, INC., ART INSTRUCTION SCHOOLS, INC., AND BOZELL & JACOBS, INC.

ANALYSIS OF PROPOSED CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted an agreement to a proposed consent order from Bureau of Engraving, Inc. (BOE), Art Instruction Schools, Inc. (AIS), a wholly owned subsidiary of BOE, and Bozell & Jacobs, Inc. (B&J), the school's advertising agency.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

I. ALLEGATIONS OF THE PROPOSED COMPLAINT

The proposed complaint challenges respondents advertising sales practices and debt collection policies.

The proposed complaint charges that the advertisements were unfair or deceptive in that they have the tendency or capacity to lead prospective purchasers of the home study art course into believing that: (1) AIS is

very selective and only applicants that have artistic talent will be accepted into the school's program of study; (2) there is a substantial need or demand for AIS graduates; (3) AIS graduates will be qualified for and will encounter little difficulty in securing high paying jobs in the field of commercial art without further training or experience; and (4) AIS graduates will secure such jobs through the school's nationwide placement service.

The proposed complaint further charges that respondent AIS through its sales representatives engaged in false and deceptive practices by leading prospective purchasers into believing that: (1) Courses of instruction offered by AIS are equivalent to courses offered by accredited colleges and universities; (2) all costs that students will have to bear for the course are covered in the enrollment fee; (3) students may withdraw from the course without having to pay additional moneys or charges; and (4) students must enroll at the time of the sales representative's visit or they will lose their chance for acceptance.

II. THE PROPOSED ORDER

The proposed order prohibits respondents from engaging in the above listed allegations, and requires respondent AIS to disclose the prospective purchasers specific information, statistical data, and percentages regarding the following: (1) Total number of students enrolled in each course of instruction; (2) the dropout rate of students that have completed sixty-six and two-thirds percent (66⅔%) of the course lessons; (3) the number of students that have not submitted a lesson within a 12-month period; and (4) a printed statement that AIS has no placement service and no information as to job opportunities in the field of art for its students.

The proposed order also requires respondents AIS and BOE to send questionnaires to: (1) Former AIS students who graduated from AIS within the period of January 1, 1972 through December 31, 1975; and (2) former AIs students who were terminated from the program of study after completing fifty percent (50%) or more of the course within the period of March 1, 1973 through October 1, 1976; and (3) current AIS students who have completed sixty-six and two-thirds percent (66⅔%) or more of the course within the same above period of March 1, 1973 through October 1, 1976, and have not submitted a lesson to the school for 12 months.

Responses to the questionnaires will be analyzed by an independent contractor according to the terms set forth in the final order, and students qualifying for restitution will be refunded an amount equal to twenty to twenty-five percent (20-25%) of moneys paid to respondent AIS.

NOTICE

The purpose of this analysis is to facilitate public comment on the proposed order and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-31047 Filed 11-1-78; 8:45 am]

[6750-01-M]

[16 CFR Part 460]

LABELING AND ADVERTISING OF HOME INSULATION

Scheduling of Oral Presentation Before Commission

AGENCY: Federal Trade Commission.

ACTION: Scheduling of oral presentation before Commission.

SUMMARY: The Commission is ready to begin considering final action on its proposed trade regulation rule governing the labeling and advertising of home insulation. To provide interested parties with the fullest possible opportunity to make their views known to the Commission, oral presentations will be made at an open meeting of the Commission on November 15, 1978, at 9 a.m. in Room 432, Federal Trade Commission Building, Sixth Street and Pennsylvania Avenue NW., Washington, D.C. 20580. Invitations to participate in this proceeding have been extended to the nine designated group representatives in the proceeding and to Mr. Ronald Tye of Dynatech R/D Company. These parties have been chosen because of their previous participation in the proceeding and because they represent a variety of industry, consumer, and governmental interests.

DATE: Oral presentations will begin at 9 a.m. on November 15, 1978.

ADDRESS: The presentations will take place at an open Commission meeting in Room 432, Federal Trade Commission Building, Sixth Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

Paul J. Petruccelli, Attorney, Room 7319-A, Star Building, Federal Trade Commission, Washington, D.C. 20580, 202-724-1508.

Issued: October 26, 1978.

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-31048 Filed 11-1-78; 8:45 am]

[6355-01-M]

CONSUMER PRODUCT SAFETY COMMISSION

[16 CFR Part 1205]

POWER LAWNMOWERS

Request for Comment on Brake-Clutch Reliability and Safety

AGENCY: Consumer Product Safety Commission.

ACTION: Request for comment.

SUMMARY: As part of its proceeding to develop a safety standard for power lawnmowers, the Commission seeks comment on data it has received concerning the reliability of brake-clutch mechanisms for power lawnmowers. The Commission also seeks comment on several questions it has concerning the reliability and safety of brake-clutch mechanisms. These comments are sought in order that the Commission's ultimate decision on whether to issue the safety standard will be based on the best available information and because some of the data it has received have not been previously available for comment.

DATES: Written comments limited to the reliability and safety of brake-clutch mechanisms for walk-behind rotary power lawnmowers must be received in the Office of the Secretary no later than November 22, 1978.

ADDRESSES: Comments should be submitted to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, and entitled "Power Mower Brake-clutch Reliability." All material which the Commission has that is revelant to the issue of brake-clutch reliability, including any comments that may be received on this issue, may be seen in, or copies obtained from, the Office of the Secretary, 3d Floor, 1111 18th Street NW., Washington, D.C. 20207, 202-634-7700.

FOR FURTHER INFORMATION CONTACT:

William Kitzes, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207, 303-492-6557.

SUPPLEMENTARY INFORMATION: On May 5, 1977 (42 FR 23052), the Commission proposed a safety Standard for Power Lawnmowers (16 CFR Part 1205). The comment period on the proposal ended on September 6, 1977, and the Commission received over 100 comments on the proposal. One part of the proposed standard (§ 1205.5 (a), (b)) would require all walk-behind mowers to have a blade control system that would (1) prevent operation of the lawnmower blade unless a control is engaged by the operator, (2) require that the operator be in continuous contact with the control in order for the blade to be driven, and (3) cause the blade to stop within a specified time upon release of the control by the operator. The effect of these requirements is that when the mower operator lets go of the handle, the blade will stop before the operator could contact the blade with his or her hands in the process of performing tasks such as clearing a clogged discharge chute or adjusting the height of the mower.

The proposed standard would not require any particular design for meeting the requirement that the blade stop when the blade control is released. However, one method of insuring that the mower blade stops within the required time is to use a blade control system that disengages the mower blade from the engine and stops the blade without stopping the engine. One type of device for accomplishing this is a brake-clutch mechanism.

The Commission received a number of comments on the blade-control requirements included in the proposed standard. A number of these comments concern the reliability and safety of brake-clutch mechanisms. Although a number of interested persons have reviewed and commented on the data available to the Commission concerning brake-clutch devices, the Commission believes that before the Commission reviews these data in its consideration of the final rule, it is appropriate to provide a further opportunity for public comment on these data.

A number of mower manufacturers and a lawnmower trade association have stated their belief that a brake-clutch system would be unreliable and could present an increased safety hazard if it were to fail in such a way that the mower blade continued to turn when it was supposed to have stopped.

A mower manufacturer has provided information indicating that various design brake-clutch systems it has experimentally incorporated into its existing lawnmowers have not met its test criteria, which consist of 250 hours of field (actual use) testing and 20,000 laboratory cycles. On the other hand, manufacturers of brake-clutch systems have expressed their confidence in brake-clutch reliability and have submitted test data showing that their clutch systems are reliable and safe. In actual mowing tests, three units of one manufacturer have completed over 250 hours each without failure and, in an ongoing field test, two units have a total of 5,016 cycles of engaging and disengaging and 256 hours of operation with no failures. In addition, in laboratory tests, this type of clutch assembly has demonstrated a useful life of over 30,000 actuations without failure. These tests appear to have been conducted under generally accepted engineering principles and appear to indicate that the brake-clutch design tested is reliable and safe.

A mower with another clutch design has been subjected to actual field testing by the General Services Administration (GSA). The GSA, under its, Experimental Technology Incentives Program (ETIP), has reported on the field testing of a type of mower which GSA felt incorporated unique safety and low noise characteristics. One of the safety features of this mower is a blade brake-clutch. Fifty units of these mowers were tested at 10 different locations over a period of 4 months. This was an accelerated test with usage varying from less than 1 hour per pay to over 4 hours per day. Fifty percent of the users were subjecting their mowers to over 4 hours per day mowing time. There were no reports of a clutch failure. A report of this test was issued on June 26, 1978.

In order to insure that the Commission's ultimate decision on the power lawnmower safety standard is based on the best available information, the Commission is interested in receiving comment on the blade brake-clutch data it has available. The Commission has assembled the data that are currently available into a package in order to make it easier for interested parties to review the data. This package is available from the Office of the Secretary and has been forwarded to persons who previously submitted comments on blade-clutch reliability. Included in the package are the following comments and documents:

1. Comments by the Toro Co. on blade-clutch safety and reliability and on relevant portions of a 1976 Trendex Survey on Powermowers.

2. Comments by Deere & Co. expressing concern for reliability of brake-clutch mechanisms.

3. Comments by Tecumseh Products Co., Lauson Engine Division, expressing concern for the reliability of brake-clutch mechanisms.

4. Comments by Leroy Coates mentioning a "fail-safe patented fast stop system."

5. Comments by Warner Electric Brake & Clutch Co. stating that it is the world's largest supplier of industrial clutch-brakes and that for many years it has supplied clutch-brakes for blade control to many major manufacturers of riding mowers and riding tractors. Warner provided information on its products, stating that it could "supply the entire lawn and garden equipment industry within 2 years."

6. Comments by Joseph H. Walker, Walker Associates, questioning performance of brake-clutches over periods of up to 10 years and in environments including water, oil, dirt, etc.

7. Letters from Outdoor Power Equipment Institute transmitting manufacturers comments and expressing doubt concerning safety of current clutch-brake designs.

8. Letters from Aircap Manufacturers, Inc., stating that it has tested the "two most commonly offered devices" and found them unsuitable, apparently because the devices required maintenance that Aircap did not believe the users of the equipment would provide.

9. Letter from FMC stating it has tested three clutch-brake assemblies with the following results: One developed problems after 12 hours of testing; another took 7 seconds to engage the clutch; and the other unit failed to declutch after 240 actuations due to contamination during field testing (after cleaning the unit worked "fine," and the clutch-brake manufacturer stated it would supply a redesigned unit for testing).

10. Tecumseh Products Co. submitted a description of tests on blade brake-clutch devices of two different manufacturers. In both, the clutch slipped under cutting conditions.

11. Letter from Gale Products stating that blade-clutches are more dangerous than shutting off the engine.

12. Description of test by Toro Co. on six blade brake-clutch devices.

13. Test report by Aumann, Inc. on three Worthington brake-clutch assemblies, showing no failure after 5,912 to 6,574 engagements.

14. Tests for Toro Co. on blade-clutch which did not meet its cutting requirements because not designed for use with Toro mower.

15. Comment from R. E. Goodwill, Jr., raising concern about malfunctions that would fail to disengage the blade from the running engine.

16. Draft analysis by CPSC staff engineer of comments on brake-clutch reliability.

17. *An Economic Analysis of the Proposed Consumer Union Power Safety Standard*, Standford Research Institute, dated April 1975.

18. Federal Supply Service Final Report ETIP Project 150, *Prototype Purchasing of Lawn Mowers.*

19. Report by Worthington Industries on brake-clutch test showing safety and reliability.

20. Letter from Worthington Industries, Inc. dated September 14, 1978, to the Chairman of the Consumer Product Safety Commission commenting on Toro's test of the Worthington brake-clutch, on the safety and reliability of brake-clutches in general, and on consumer acceptance of clutches for lawn mowers.

21. Final Report of the Ohio State University Engineering Experiment

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Station, "Experimental Life Testing of Worthington Industries Mowsafe Clutch/Brake Device for Rotary Power Lawn Mowers, dated September 1978.

The Commission also solicits comment on the following questions raised by the previous comments:

(1) What is the likelihood of a blade brake-clutch system failing in such a way that, rather than stopping, the mower blade continues to rotate?

(2) Can blade brake-clutch systems be designed so that if they fail, they will fail in such a way that the blade does not turn?

(3) What is the potential for designing a brake-clutch system that is reliable during the operating life of the mower?

(4) Would it be desirable to include a requirement in any final lawn mower standard issued by the Commission requiring that, if a brake-clutch system fails in such a way that the blades continue to turn, there must be an audible or visual warning signal that the blade is still turning? (At least one mower manufacturer has such a feature on one of its production mowers and the Occupational Safety and Health Administration has such a requirement for agricultural tractors, 29 CFR 928.57.)

Whenever possible, commentors should supply data to support their response to these questions or comments on the Commission's blade brake-clutch data. The Commission will consider the responses to this request for comment in determining the requirements of any final standard it issues.

Because commentors have previously submitted comments on the question of brake-clutch reliability and because all data available to the Commission concerning brake-clutch reliability have been publicly available for some time, the Commission is limiting the comment period to 20 days after this notice is published (November 22, 1978). However, the Commission has sent directly to persons, groups, or organizations that previously submitted comments on brake-clutch reliability an advance copy of this notice as well as a copy of the package of the data presently available to the Commission that was mentioned above. In addition, this package also is available in the Commission's Office of the Secretary, 1111 18th Street NW., 3rd Floor, Washington, D.C. 20207.

Therefore, written submissions and any accompanying data or material should be received, in five copies if possible, by the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, no later than November 22, 1978. Comments submitted after that date will be considered if practicable.

Dated: October 27, 1978.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

[FR Doc. 78-30969 Filed 11-1-78; 8:45 am]

[4910-22-M]

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[23 CFR Parts 170, 173, 420, 620]

[FHWA Docket No. 78-17]

ADMINISTRATION OF NEGOTIATED CONTRACTS

Proposed Rulemaking

AGENCY: Federal Highway Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY This proposed rule would consolidate three existing regulations regarding procedures for administering negotiated contracts. "State Contract Administration for Other than Competitively Bid Contracts", Highway Planning and Research Contracts" and "Engagement of Consultants for Engineering Services" would be superseded and replaced by a uniform set of procedures. The proposed rule would conform Federal Highway Administration (FHWA) procedures for the administration of certain federally aided procurement contracts to the procedures of OMB Circular No. A-102, Uniform Administrative Requirements for Grants-in-Aid by State and local Governments, Attachment O, Procurement Standards. It would also minimize requirements and red tape by providing for State highway agencies and local governments to develop a uniform set of procedures for the procurement of services, supplies, and equipment with Federal-aid funds.

DATES: Comments must be received on or before January 2, 1979.

ADDRESS: Submit comments, preferably in triplicate, to FHWA Docket No. 78-17, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street SW., Washington, D.C. 20590. All comments and suggestions received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Dwight Hodgens, Systems and Program Review Branch, Program Management Division, 202-426-0175; or Wilbert Baccus, Attorney, Office of the Chief Counsel, 202-426-0786, Federal Highway Administrtion, 400 Seventh Street SW., Washington, D.C. 20590. The FHWA office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: This emphasis on sound contract administration procedures is consistent with OMB Circular No. A-102, Attachment O and would not represent a substantial change from the existing regulations proposed for replacement.

This proposed regulation would codify the policies and procedures contained in the Federal-Aid Highway Program Manual, Volume 1, Chapter 7, section 2.[1]

NOTE.—The Federal Highway Administration has determined that this document does not contain a major proposal according to the criteria established by the Department of Transportation pursuant to E.O. 12044.

This notice of proposed rulemaking is issued under the authority of 23 U.S.C. §§ 104(f), 114(a), 302(a), and 315; 49 CFR 1.48(b); and Office of Management and Budget (OMB) Circular No. A-102.

Issued on: October 24, 1978.

L. P. LAMM,
Executive Director.

PART 170—STATE CONTRACT ADMINISTRATION FOR OTHER THAN COMPETITIVELY BID CONTRACTS [DELETED]

PART 420—PROGRAM MANAGEMENT AND COORDINATION [AMENDED]

PART 620—ENGINEERING [AMENDED]

It is, therefore, proposed to amend Chapter I of Title 23, Code of Federal Regulations, by deleting Part 170, Subpart B of Part 420, and Subpart C of Part 620 and adding a new Part 173 to Subchapter B, "Payment Procedures," to read as follows:

PART 173—ADMINISTRATION OF NEGOTIATED CONTRACTS

Sec.
173.1 Purpose and application.
173.3 Definitions.
173.5 Procurement standards.
173.7 Contract provisions.
173.9 Approvals.

AUTHORITY: 23 U.S.C. §§ 104(f), 114(a), 302(a), 315, 49 CFR 1.48(b); and OMB Circular No. A-102.

§ 173.1 Purpose and Application.

(a) This regulation sets forth policies and standards to ensure that a qualified contractor is obtained through an equitable selection process and that prescribed work is properly accomplished in a timely manner at a just and reasonable cost.

(b) The policies and standards are to be followed by State highway agencies

[1] The Federal-Aid Highway Program Manual is available for inspection and copying as prescribed in 49 CFR 7, Appendix D.

(SHAs) and local governments in the federally-aided procurement of services, supplies, or equipment other than by competitive bidding, including contracts between SHAs and local governments. They apply to the following kinds of activities:

(1) Planning, research, and development;

(2) Preliminary engineering;

(3) Construction engineering; and

(4) Traffic engineering funded under 23 U.S.C. § 402.

(c)(1) Contract requirements for other activities are contained in applicable regulations for the respective program areas.

(2) The major procurements not covered by this regulation include:

(i) Construction contracts awarded by other than competitive bidding;

(ii) Contracts for utility relocations or railroad-highway projects;

(iii) Supportive services and on-the-job-training contracts; and

(iv) Contracts for right-of-way activities.

(d) Nothing herein shall relieve the SHA of its responsibilities under the Federal-aid laws and regulations for the work to be performed under contracts entered into under the provisions of this regulation.

§ 173.3 Definitions.

The terms used in this regulation are as defined in § 101(a). of Title 23, U.S.C.; 23 CFR 1.2; OMB Circular No. A-102; and 41 CFR Subtitle A, Chapter 1, as supplemented below.

(a) Contracting Agency—The SHA or local government which has responsibility for the procurement.

(b) Local Government—For purposes of this regulation, local governments also include Metropolitan Planning Organizations (MPOs).

(c) Planning, Research, and Development—Activities undertaken utilizing funds made available under 23 U.S.C. §§ 104(f) or 307(c).

(d) Preliminary Engineering—Production of construction plans, specifications, and estimates including locating, surveying, designing, and related work.

(e) Construction Engineering—Surveys and stakeouts, inspections, testing materials, checking shop drawings, revising plans, reporting construction operations, and preparing periodic estimates.

(f) Traffic Engineering—The application of modern engineering principles and uniform standards for the control of traffic.

§ 173.5 Procurement standards.

(a)(1) The contracting agency shall comply with the standards of Attachment O of OMB Circular No. A-102 and this regulation in establishing procedures for the procurement of services, supplies, or equipment with Federal-aid funds.

(2) The SHA procedures shall ensure that procurement actions by or through local governments comply with Attachment O of OMB Circular No. A-102 and this regulation.

(b)(1) Before a contract is awarded the contracting agency shall determine and document in its files that the proposal has been subjected to technical and audit evaluations, as appropriate, and the results of these evaluations were considered in the contract negotiations.

(2) For other than cost reimbursement type contracts an audit evaluation shall be made of the selected contractor's proposal when it exceeds or is expected to exceed $50,000.

(3) On cost reimbursement and cost-plus-a-fixed-fee contracts, all first contract recipients and all recipients of contracts exceeding $50,000 shall be preaudited to assure that they can segregate and accumulate reasonable, allocable, allowable costs for the contract.

(4)(i) Cost principles shall be established by the contracting agency which consider the contract cost principles and procedures of 41 CFR Part 1-15 (Federal Procurement Regulations). Specifically these are:

(A) For contracts between the SHA or local governments and commercial organizations, Subpart 1-15.2 as modified by Subpart 1-15.102.

(B) For contracts between the SHA or local governments and educational institutions, Subpart 1-15.3.

(C) For contracts between the SHA and local governments or between local governments, Subpart 1-15.7 (also Federal Management Circular 74-4).

(ii) Applicable cost principles shall be referenced in each contractual document.

(c) Contract administration procedures shall provide for:

(1) Determining contractor conformance with the terms, conditions, and specifications of the contract and the propriety of claims prior to final settlement of all contracts;

(2) The control, utilization and disposition of property or equipment acquired using Federal-aid highway funds. The procedures shall comply with the property management standards set forth in Attachment N of OMB Circular No. A-102.

§ 173.7 Contract provisions.

The contracting agency shall ensure that all contracts include, to the extent appropriate, provisions required by Attachment O of OMB Circular No. A-102 and the following:

(a) Title VI of the Civil Rights Act of 1964. The provisions of 49 CFR Part 21 and 23 CFR 710.405(b) shall be made applicable by reference in all contracts and subcontracts financed in whole or in part with Federal-aid highway funds.

(b) Records. All contracts exceeding $10,000 in cost shall provide that contractors and any subcontractors are to retain all records and other evidence pertinent to contract cost or performance as set forth in 23 CFR Part 17. In addition, for contracts or amendments negotiated on the basis of cost or pricing data, such data also shall be subject to the same retention requirements.

(c) Reports. Contracts, where appropriate, shall provide that the contractor prepare a final report satisfactory to the contracting agency and the Federal Highway Administration (FHWA) documenting the results of the work.

(d) Patent Rights. Applicable patent rights provisions described in 41 CFR 1-9.1 regarding rights to inventions shall be included in contracts as appropriate.

(e) Copyrights. The contracting agency may permit copyrighting of reports or other contract products. If copyrights are permitted, the contract shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use the work for Government purposes.

(f) Subcontracts. (1) All contracts shall show that the prime contractor is required to perform all work except specialized services or other tasks specifically exempted, except that local recipients of 23 U.S.C. § 104(f) funds may subcontract as necessary to accomplish approved work program activities.

(2) All contracts shall provide that subcontracts exceeding $10,000 in cost shall contain all provisions required to be included in the prime contract.

§ 173.9 Approvals.

(a) The Federal Highway Administration (FHWA) will evaluate the SHA's procurement procedures including procedures for assuring compliance by local governments as necessary to ascertain compliance with Attachment O of OMB Circular No. A-102 and this regulation. In the absence of acceptable procurement procedures the SHA shall submitt individual contracts exceeding $10,000 in cost along with information showing compliance with Attachment O of OMB Circular No. A-102 and this regulation for approval by FHWA prior to execution. Until the SHA procedures for assuring local government compliance have been approved, all such contracts exceeding $10,000 in cost and supporting documentation also shall be submitted for FHWA approval prior to execution.

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(b) For every contract, the proposed work must have received prior FHWA approval and authorization as a project or as part of a program. In addition, modifications in the scope of work which require supplemental agreements shall be submitted for FHWA review and approval before their execution.

[FR Doc. 78-31009 Filed 11-1-78; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 65]

[FRL 999-4]

STATE AND FEDERAL ADMINISTRATIVE ORDERS PERMITTING A DELAY IN COMPLIANCE WITH STATE IMPLEMENTATION PLAN REQUIREMENTS

Proposed Approval of an Administrative Order Issued by the Spokane County Air Pollution Control Authority to Suntex Veneer, Division of Boise Cascade

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve an administrative order issued by the Spokane County Air Pollution Control Authority (SCAPCA) to Suntex Veneer after a 30-day notice and public hearing. The order requires the company to bring air emissions from its plywood plant in Spokane, Wash. into compliance with certain regulations contained in the federally-approved Washington State Implementation Plan (SIP) by July 1, 1979. Because the order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by EPA before it becomes effective as a delayed compliance order under the Clean Air Act (the Act). If approved by EPA, the order will constitute an addition to the SIP. In addition, a source in compliance with an approved order may not be sued under the federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the order. The purpose of this notice is to invite public comment on EPA's proposed approval of the order as a delayed compliance order.

DATE: Written comments must be received on or before December 4, 1978.

ADDRESSEES: Comments should be submitted to Director, Enforcement Division, EPA, Region 10, 1200 Sixth Avenue, Seattle, Wash. 98101. The State order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT:

Mr. Kenneth D. Brooks, Environmental Protection Agency M/S 513, 1200 Sixth Avenue, Seattle, Wash. 98101, telephone: 206-442-1387.

SUPPLEMENTARY INFORMATION: Suntex Veneer operates a plywood plant at Spokane, Wash. The order under consideration addresses emissions from two veneer driers at the facility, which are subject to WAC 18-04-040. The regulation limits the emissions of particulate matter, and is part of the federally approved Washington State Implementation Plan. The order requires final compliance with the regulation by July 1, 1979. The source is unable to comply with the requirements of the Washington State Implementation Plan at this time and has consented to the terms of the order. The source has satisfied the increments due contained in the order.

Because this order has been issued to a major source of particulate emissions and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a delayed compliance order under section 113(d) of the Clean Air Act (the Act). EPA proposes to approve the order because it satisfies the appropriate requirements of this subsection.

The elements of the appropriate paragraphs of subsection 113(d) are met in the following resolution and order and administrative order supplement issued to Suntex Veneer by Spokane County Air Pollution Control Authority, including subsection 113(d)(7): The Regional Administrator has determined that the interim requirements are reasonable and practicable, provide for the use of the best practicable system of emission reduction, are necessary to avoid an imminent and substantial endangerment to the health of persons, and assure compliance with WAC 18-04-040 visual emission requirements, a part of the federally approved Washington Implementation Plan insofar as Suntex Veneer is able to comply during the period this order is in effect.

SPOKANE COUNTY AIR POLLUTION CONTROL AUTHORITY

SEPTEMBER 19, 1978.

Mr. Wallace N. Cory, P.E.,
Environmental Manager, Environmental and Energy Services, Boise Cascade, P.O. Box 8328, Boise, Idaho 83707.

Subject: Administrative Order Supplement to Spokane County Air Pollution Control Authority Resolution 78-05 Regarding Suntex Veneer, Spokane, Wash.

Dear Mr. Cory: This administrative order is in response to your letter of August 24, 1978, requesting that our compliance program for the Suntex Plant at Spokane Industrial Park be submitted to the Environmental Protection Agency so that it can be considered for a Federal Delayed Compliance Order.

In order to qualify for a DCO as delineated in section 113 D, 42 USC 7401, The Federal Clean Air Act as amended August 17, 1977, your firm, Boise Cascade and its subsidiary, Suntex Veneer of Spokane, are notified that the following elements are added to Spokane County Air Pollution Control Authority Resolution 78-05 amended compliance schedule for Suntex Veneer:

1. Pursuant to Spokane County Air Pollution Control Authority Regulation I, section 6.02, the above-noted firm, Suntex Veneer, shall comply with the visual emission requirement of this section no later than July 1, 1979.

2. As directed in Resolution 78-05, Suntex Veneer shall report by letter the completion of each interim step in the compliance schedule. This report is to be submitted to SCAPCA within 15 days after each stage is completed.

3. Failure on the part of Suntex Veneer-Division of Boise Cascade, to achieve final compliance by July 1, 1979, may result in a requirement to pay a non-compliance penalty under section 120 of the Act. In the event of such failure, Suntex Veneer-Division of Boise Cascade, will be formally notified by EPA or its delegate of its non-compliance pursuant to section 210(b)(3) of the Act and to any applicable regulation promulgated thereunder.

4. The monitoring requirements pursuant to section 113D are waived.

Our agency solicits your firm's cooperation for satisfactory completion of the program.

Sincerely,

/S/ FRED A. SHIOSAKI
Director.

SPOKANE COUNTY AIR POLLUTION CONTROL AUTHORITY

In the matter of approving the variance request submitted by Suntex Veneer, Division of Boise Cascade, Spokane Industrial Park, Spokane, Wash.; No. 78—05, resolution and order.

Whereas, on the 6th day of June, 1978, the Spokane County Air Pollution Control Authority Board of directors had a meeting at which time the variance request submitted by Suntex Veneer, Division of Boise Cascade, Spokane Industrial Park, Spokane, Wash., was considered.

It appearing to the Board of Directors that the variance request submitted by Suntex Veneer, Division of Boise Cascade, is valid and timely and its denial would produce serious hardship without equal or greater benefits to the public, the emissions occurring or proposed to occur do not have short term public health or safety effects and will enable them to comply with the Spokane County Air Pollution Control Authority, Regulation I and Regulation II, Now, Therefore,

Be it resolved by the Board of Directors of the Spokane County Air Pollution Control Authority that the Board approve the variance request submitted by Suntex Veneer, Division of Boise Cascade, Spokane Industrial Park, Spokane, Wash., which is attached hereto as Exhibit A and incorporated herein by reference.

1. Submit final control strategy October 1, 1978.
2. Issue purchase order December 1, 1978.
3. Initiate installation/construction May 1, 1979.
4. Complete installation/construction June 1, 1979.
5. Demonstrate compliance July 1, 1979.

It is further ordered that Suntex Veneer, Division of Boise Cascade:

(1) Submit to the Spokane County Air Pollution Control Authority within 30 days following the December 1, 1978, deadline for the issuance of the above-referenced purchase order, a completed Notice of Construction and Application for Approval and Washington State Environmental Policy Act Environmental Checklist;

(2) Specify in the Notice of Construction equipment shipping dates from the factory and delivery dates to Suntex Veneer at the Spokane Industrial Park;

(3) Project in the Notice of Construction based on equipment delivery dates, the time for commencing construction and installation if different from May 1, 1979;

(4) Submit a proposal for source testing prior to the completion of construction/installation of equipment.

And it is further ordered that Suntex Veneer, Division of Boise Cascade, comply with the schedule herein adopted by resolution.

Be it further resolved that the Board of Directors grant a variance to July 1, 1979.

Approved by the Board of directors of the Spokane County Air Pollution Control Authority this 6th day of June, 1978.

D. J. SHERLOCK,
Chairman, Spokane County Air Pollution Control Authority, Board of Directors.

If the order is approved by EPA, source compliance with its terms would preclude federal enforcement action under section 113 of the Act against the source for violations of the regulation covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provision of the Act (section 304) would be similarly precluded. If approved, the order would also constitute an addition to the Washington SIP. All interested persons are invited to submit written comments on the proposed order. Written comments received by the date specified above will be considered in determining whether EPA may approve the order. After the public comment period, the administrator of EPA will publish in the FEDERAL REGISTER the Agency's final action on the order on 40 CFR Part 65.

(42 U.S.C. 7413, 7601.)

Dated: October 20, 1978.

DONALD P. DUBOIS,
Regional Administrator, Region 10.

[FR Doc. 78-30931 Filed 10-31-78; 8:45 am]

[4310-84-M]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[43 CFR Parts 2540, 2740, and 9180]

OMITTED LANDS AND UNSURVEYED ISLANDS

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: Procedures are proposed for the conveyance of unsurveyed islands and lands omitted from original surveys. Section 211 of the Federal Land Policy and Management Act of 1976 authorizes the Secretary to convey unsurveyed islands and omitted lands to State and local governments and to convey omitted lands to occupants under certain conditions.

DATE: Comments by January 31, 1979.

ADDRESS: Send comments to: Director (210), Bureau of Land Management, 1800 C Street NW., Washington, D.C. 20240.

Comments will be available for examination in Room 5555 at the above address during regular business hours (7:45 a.m.-4:15 p.m.).

FOR FURTHER INFORMATION CONTACT:

Louis B. Bellesi, Division of Lands and Realty, Bureau of Land Management, 1800 C Street NW., Washington, D.C. 20240, 202-343-8731.

SUPPLEMENTARY INFORMATION: Section 211 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1721) authorizes the Secretary of the Interior to convey unsurveyed islands and omitted lands to States or their political subdivisions under the provisions of the Recreation and Public Purposes Act. Conveyances of unsurveyed islands may be made with or without survey at the option of the State or political subdivision. If survey is requested, the State or political subdivision must pay for the cost of making the survey either by donating money, services, or a combination thereof. Conveyances of omitted lands may be made only upon completion of a survey and the State or political subdivision must pay for the cost of making the survey either by donating money or services. Conveyances may be made without regard to acreage limitations specified in the Recreation and Public Purposes Act. The Recreation and Public Purposes Act prohibition against disposal of lands for any use authorized under any other public land law does not apply to conveyances made pursuant to this authority.

Section 211 also authorizes the Secretary of the Interior to convey to the occupant thereof any omitted lands which, after survey, are found to have been occupied and developed for a 5-year period prior to January 1, 1975, if the Secretary determines that such conveyance is in the public interest and will serve objectives which outweight all public objectives and values which would be served by retaining such lands in Federal ownership. Conveyances of this type must be made at not less than the fair market value at the time of appraisal of the land, as determined by the Secretary, and upon payment in addition of administrative costs, including the cost of making the survey, the cost of appraisal, and the cost of making the conveyance.

This proposed rulemaking sets forth the rules and procedures under which the Secretary of the Interior will exercise the authority granted him in section 211 of the Federal Land Policy and Management Act of 1976.

The procedure outlined in the proposed rulemaking is an application procedure. For conveyances to States or their political subdivisions, applications under the Recreation and Public Purposes Act may be made only after the lands have been determined to be public lands of the United States and proper for sale under the provisions of the Act. Conveyances to qualified applicants who are occupants of omitted lands and who meet the development and time period requirements may be made upon application and upon a determination that disposal is in the public interest and satisfies the objectives contained in section 211 of the Federal Land Policy and Management Act of 1976.

The land use planning considerations of section 202 of the Federal Land Policy and Management Act of 1976 shall be applied in deciding whether to make a conveyance under these regulations.

Finally, the proposed rulemaking specifies the method for conveying the lands to qualified applicants when all of the requirements of the Act and the regulations have been met.

The principal author of this proposed rulemaking is Keith H. Corrigall of the Division of Lands and Realty, assisted by the staff of the Division of Legislation and Regulatory Management and the Divison of Cadastral Survey, all of the Bureau of Land Management.

The Department of the Interior has determined that this document does not contain a significant regulatory proposal requiring preparation of a regulatory analysis under Executive Order 12044.

It is hereby determined that the publication of this proposed rulemaking is not a major Federal action significantly affecting the quality of the human environment and that no de-

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tailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

Under the authority of sections 211 and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1721 and 1740), it is proposed to amend Subchapters B and I, Chapter II, Title 43 of the Code of Federal Regulations by amending Parts 2540, 2740, and 9180 as set forth below:

1. Part 2540 is amended by changing its title as follows:

PART 2540—COLOR-OF-TITLE AND OMITTED LANDS

2. Part 2540, Subpart 2540, § 2540.0-3 is amended by adding an additional source of authority (paragraph (g)) to read as follows:

§ 2540.0-3 Authority.

* * * * *

(g) The Federal Land Policy and Management Act of 1976.

(1) Section 211 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1721), authorizes the Secretary of the Interior in his discretion to sell at not less than fair market value to the occupant thereof any omitted lands which, after survey, are found to have been occupied and developed for a 5-year period prior to January 1, 1975.

(2) The Act provides that all such conveyances under the Act must be in the public interest and will serve objectives which outweigh all public objectives and values served by retaining such lands in Federal ownership.

(3) Section 208 of the Act (43 U.S.C. 1718) further provides that the Secretary of the Interior shall issue patents subject to such terms, convenants, conditions, and reservations as deemed necessary to insure proper land use and protection of the public interest.

(4) Section 209 of the Act (43 U.S.C. 1719) provides that all patents issued under the Act shall reserve to the United States all minerals in the lands, together with the right to prospect for, mine, and remove the minerals under applicable law and such regulations as the Secretary may prescribe, except as provided by section 209(b) of the Act.

3. Part 2540, Subpart 2541, is amended by changing the title as follows:

Subpart 2541—Color-of-Title Act

4. Part 2540 is further amended by adding Subpart 2547 to read as follows:

Subpart 2547—Omitted Lands—General

Sec.
2547.1 Qualifications of applicants.
2547.2 Procedures; applications.
2547.3 Price of land; payment.
2547.4 Publication and protests.
2547.5 Disposal considerations.
2547.6 Lands not subject to disposal under this subpart.

Subpart 2547—Omitted Lands—General

§ 2547.1 Qualifications of applicants.

(a) Any person authorized to hold title to land in the State may make application under section 211 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1721).

(b) The applicant must be a citizen of the United States, or in the case of corporation, must be organized under the laws of the United States or any State thereof.

(c) The applicant must have occupied and developed the lands for a 5-year period prior to January 1, 1975.

§ 2547.2 Procedures; applications.

(a) The description of the omitted lands applied for shall be sufficiently complete to identify the location, boundary, and area of the land, including, if possible, the legal description of the land by section or fractional section, township, range, meridian and State.

(b) Each application shall be accompanied by a filing fee of $50 that is nonreturnable. The application shall be filed in accordance with the provisions of § 1821.2 of this title.

(c) No special form of application is required. The application shall be typewritten or in legible handwriting and shall contain the following information:

(1) The full name and legal mailing address of the applicant.

(2) The description and acreage of the public lands claimed.

(3) A statement showing that the applicant is qualified or authorized to hold title to land in the State, is a citizen of the United States, and in the case of a corporation, is organized under the laws of the United States or any State thereof.

(4) A statement describing how the applicant has satisfied the requirements of the statute.

(5) A statement describing the nature and extent of any developments made to the lands applied for and describing the period and type of the any occupancy of the land.

(6) The names and legal mailing addresses of any known adverse claimants or occupants of the applied for lands.

(7) A citation of the Act under which the application is being made.

§ 2547.3 Price of land; payment.

(a) The land applied for shall be appraised for fair market value at the time of appraisal. However, in determination of the price payable by the applicant, value resulting from development and occupation by the applicant or his predecessors in interest shall be deducted from the appraised price.

(b) The applicant shall also be required to pay administrative costs, including:

(1) the cost of making the survey,

(2) the cost of appraisal, and

(3) the cost of making the conveyance.

(c) The applicant shall be required to make payment of the sale price and administrative costs within the time stated in the requests for payment or any extensions granted thereto by the authorized officer.

§ 2547.4 Publication and protests.

(a) The applicant shall be required to publish a notice of the application once a week for five consecutive weeks in accordance with § 1824.3 of this chapter, in a designated newspaper and in a designated form. All persons claiming the land adversely may file with the State Office of the Bureau of Land Management in which the lands are located, their objections to issuance of patent under the application. A protestent shall serve on the applicant a copy of the objections and furnish evidence of such service.

(b) The applicant shall file at the appropriate BLM office a statement of the publisher, accompanied by a copy of the notice published, showing that the publication has been made for the required time.

§ 2547.5 Disposal considerations.

(a) Disposal under this provision shall not be made until:

(1) It has been determined by the authorized officer that such conveyance is in the public interest and will serve objectives which outweigh all public objectives and values which would be served by retaining such lands in Federal ownership.

(2) The relevant State government, local government, and areawide planning agency have notified the authorized officer as to the consistency of such conveyance with applicable State and local government land use plans and programs.

(3) The plat of survey has been officially filed.

§ 2547.6 Lands not subject to disposal under this Subpart.

This subpart shall not apply to any lands within the National Forest System, defined in the Act of August 17, 1974 (16 U.S.C. 1601), the National Park System, the National Wildlife Refuge System, and the National Wild and Scenic Rivers System.

§ 2547.7 Coordination with State and Local Governments.

At least 60 days prior to offering land for sale, the authorized officer shall notify the Governor of the State within which the lands are located and the head of the governing body of any political subdivision of the State having zoning or other land use regulatory jurisdiction in the geographical area within which the lands are located that the lands that are being offered for sale. The authorized officer shall also promptly notify appropriate public officials of the issuance of the patent for such lands.

PART 2740—RECREATION AND PUBLIC PURPOSES ACT

5. Part 2740 is amended by adding a new paragraph (c) to § 2740.0-8 to read as follows:

§ 2740.0-8 Lands subject to disposition.

* * * * *

(c) Omitted lands and unsurveyed islands may be conveyed to States or their political subdivisions under the provisions of law added by section 211 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1721).

6. Part 2740 is amended by adding Subpart 2742 to read as follows:

Subpart 2742—Recreation and Public Purposes Act—Omitted Lands and Unsurveyed Islands

Sec.
2742.1 Qualifications of applicants.
2742.2 Survey requirement.
2742.3 Conveyance limitations.
2742.4 Consistency with other laws.

Subpart 2742—Recreation and Public Purposes Act—Omitted Lands and Unsurveyed Islands

§ 2742.1 Qualifications of applicants.

States and their political subdivisions are qualified applicants.

§ 2742.2 Survey requirement.

(a) Islands.

(1) Survey is not necessary. However, unsurveyed islands must be determined by the Secretary to be public lands of the United States.

(2) Islands must be surveyed at the request of the applicant, as provided in part 9185 of this chapter.

(b) Determination as to whether lands, other than islands, are public lands of the United States erroneously or fraudulently omitted from the original suveys shall be by survey. Surveys shall be in accordance with the requirements of Part 9185 of this Title.

§ 2742.3 Conveyance limitations.

(a) No conveyances shall be made under this section until the relevant State government, local government, and areawide planning agency have notified the Secretary as to the consistency of such conveyance with applicable State and local government land use plans and programs.

(b) At least 60 days prior to offering for sale or otherwise conveying public lands under this section, the Secretary shall notify the Governor of the State within which such lands are located and the head of the governing body of any political subdivision of the State having zoning or other land-use regulatory jurisdiction in the geographical area within which such lands are located in order to afford the appropriate body the opportunity to zone or otherwise regulate, change or amend existing zoning or other regulations concerning the use of such lands prior to such conveyance.

(c) Conveyances under this section may be made without regard to acreage limitations contained in the Recreation and Public Purposes Act.

§ 2742.4 Consistency with other laws.

The provision of the Recreation and Public Purposes Act prohibiting disposal for any use authorized under any other law does not apply to conveyances under this section.

PART 9180—CADASTRAL SURVEY

7. Part 9180, section 9185.1-1 is amended by revising paragraph (b) to read as follows:

§ 9185.1-1 Surveys.

(a) * * *

(b) *Lands omitted from original survey.* Application for the survey of an unsurveyed island or other land omitted from the original survey shall be made on Form 9600-2, or its equivalent, and filed in duplicate with the State director for the State in which lands are situated.

8. Section 9185.2-2(a) is revised to read as follows:

§ 9185.2-2 Lands omitted from original survey.

(a) *Notice of intended application.* Notice of intention to apply for survey of an island or other land omitted from the original survey shall be served on the adjacent land owners, and the Attorney General and the Secretary of State for the State in which the land is situated, at least 30 days prior to the date of application for survey. Service may be had by return receipt mail or in person, evidence of which may consist of the return receipt or signed acknowledgment of service. A copy of each notice, with proof of service thereof, shall be filed with the application. Failure to obtain evidence of service may be explained.

9. Subpart 9185 is further amended by adding section 9185.2-3 to read as follows:

§ 9185.2-3 Unsurveyed islands and omitted lands.

(a) Section 211(a) of the Federal Land Policy and Management Act of 1976 (90 Stat. 2758), provides for the conveyance under the Recreation and Public Purposes Act of unsurveyed islands determined by the Secretary to be public lands of the United States. The conveyance of any such island may be made without survey; however, such island may be surveyed at the request of the qualified applicant. If the applicant requests that a survey be executed, the applicant shall be required to:

(1) Furnish a written statement identifying his choice of donation of money, services, or both for the survey.

(2) If the applicant elects to donate money, such donation shall equal the Bureau of Land Management's estimated cost of survey. The donated money shall be credited and expended in accordance with section 307(c) of the Act. A written estimate of such costs shall be furnished to the applicant by the Bureau.

(3) If the applicant elects to donate services, such services shall be conducted and performed pursuant to the criteria established by the Director of the Bureau of Land Management.

(b) Section 211(b) of the Act, provides for conveyance, under the Recreation and Public Purposes Act (43 U.S.C. 869), of lands other than islands determined by the Secretary by survey to be public lands of the United States erroneously or fraudulently omitted from the original surveys. An applicant shall be required to donate money, services, or a combination thereof for such survey. The procedures contained in § 9185.2-3(a) of this title shall be followed.

GUY R. MARTIN,
Assistant Secretary of the Interior.

OCTOBER 26, 1978.

[FR Doc. 78-30998 Filed 11-1-78; 8:45 am]

[3510-15-M]

DEPARTMENT OF COMMERCE

Maritime Administration

[46 CFR Part 276]

CONSTRUCTION-DIFFERENTIAL SUBSIDY REPAYMENT; TOTAL REPAYMENT POLICY

AGENCY: Maritime Administration, Commerce.

ACTION: Proposed rule.

SUMMARY: The maritime Subsidy Board (Board) proposed amending 46 CFR Part 276 to include a new § 276.3, describing its policy in considering all applications for the total repayment of construction-differential subsidy

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(CDS), as authorized under provisions of the Merchant Marine Act, 1936, as amended (Act). The amendment is in response to a court decision urging the Secretary of Commerce to issue guidelines and procedures of general applicability to govern CDS repayment and permanent waivers of domestic trading restrictions. Conforming amendments would be made to the captions of the Part and its existing sections, and the citation of authority would be clarified.

DATE: Written comments by interested persons must be received by the close of business December 4, 1978.

ADDRESS: Send comments to the Secretary, Maritime Subsidy Board/Maritime Administration, Washington, D.C. 20230. All comments will be made available for inspection during normal business hours in Room 3099A, Department of Commerce building.

FOR FURTHER INFORMATION CONTACT:

J. B. Young, Director, Office of Trade Studies, Maritime Administration, Washington, D.C. 20230, telephone 202-377-4758.

SUPPLEMENTARY INFORMATION: Sections 501-507 of the Act (46 U.S.C. 1151-1157) contain the provisions relating to qualifications and conditions for the award of CDS by the Secretary of Commerce, which authority has been delegated to the Board. Essentially, CDS represents the excess of the cost of constructing (including reconstruction or reconditioning in exceptional cases) a vessel in a United States shipyard (excluding the cost of national defense features) over the fair and reasonable estimated cost of its construction in a foreign shipbuilding center considered to be a representative example for the determination of such estimated foreign cost. This excess is paid by the Secretary to the United States shipyard only with respect to a vessel "to be used in the foreign commerce of the United States."

Section 506 of the Act (46 U.S.C. 1156) requires the owner of every vessel for which CDS has been paid to agree that the vessel be operated "exclusively in foreign trade," as defined in section 905 of the Act (46 U.S.C. 1244), or in foreign trade with specified incidental domestic service. It provides that if the vessel is operated in the domestic trade in connection with any of these services, there shall be an annual repayment by the owner determined by applying to one twenty-fifth of the CDS paid, the ratio of the gross revenue derived from the domestic trade to the gross revenue derived from the entire voyages completed during the preceding year. There is an almost identical provision for partial repayment of CDS in section 714 of the Act (46 U.S.C. 1204) relating to operation in the domestic trade of vessels chartered from the Secretary. With respect to any tanker or other liquid bulk carrier, an economic useful life of 20 years is applicable, pursuant to section 9 of Pub. L. 96-518 (74 Stat. 216). Accordingly, the ratio would be applied to one-twentieth of the CDS paid on such vessels. Section 506 also provides for the temporary transfer of such vessel to services other than those covered by the owner's CDS agreement for periods "not exceeding 6 months in any year," with the consent of the Secretary. A condition for consent to such temporary transfer is the agreement by the owner to repay, on conditions that the Secretary may prescribe, an amount which bears the same proportion to CDS paid as such temporary period bears to the entire economic life of the vessel.

The authority of the Secretary of Commerce to accept total repayment of CDS in exchange for the removal of domestic trade restrictions imposed by section 506 of the Act is the principal issue in a case now pending on appeal in the District of Columbia Circuit. *Alaska Bulk Carriers, Inc., et al.* v. *Kreps et al.* and *Shell Oil Co.* v. *Kreps et al.* (D.C. Cir. Nos. 77-2080 and 78-1211 (consolidated)).[1]

On November 22, 1977, the District Court held that the Secretary had this authority, but urged that "the Secretary should, as a matter of sound policy, issue guidelines and procedures of general applicability to govern CDS repayment and permanent waivers of domestic trading restrictions." The court remanded the case for her immediate consideration of various competitive effects resulting from allowing total repayment of CDS (445 F. Supp. 1128). Upon reconsideration, the Board, pursuant to its delegated authority, determined that the competitive effects with respect to two issues was minimal and there was no competitive effect related to a third issue (Docket No. A-124, January 6, 1978).

The Board has decided to proceed with developing proposed uniform regulations prior to the anticipated early disposition of *Alaska Bulk Carriers* by the Court of Appeals, in order to be able to implement an affirmance of the district court decision as expeditiously as possible. Also, a formal petition for rulemaking was received recently from counsel for Seatrain Lines, Inc., and certain of its subsidiaries, and the appellants in the pending lawsuit have urged the Maritime Administration to promulgate regulations as suggested by the District Court.

[1]The lawsuit was originally styled *Shell Oil Co.* v. *Kreps et al.* and *Alaska Bulk Carrier's Inc. and Trinidad Corp.* v. *Kreps et al.*, (D.D.C. Nos. 77-1645 and 77-1647 (Consolidated)).

Comments, of course, are invited on the proposed rules announced below. Particular textual proposals would be welcomed. In addition, comments are invited on the need to adopt any regulations, as opposed to continued processing of requests on an ad hoc basis.

Accordingly, it is proposed that 46 CFR Part 276 be amended as follows:

1. The citation of "Source" is deleted and the table of sections and statement of "Authority" are revised to read as follows:

PART 276—CONSTRUCTION-DIFFERENTIAL SUBSIDY REPAYMENT

Sec.
276.1 Partial repayment—incidental domestic trading.
276.2 Reporting requirement—partial repayment.
276.3 Total repayment.

AUTHORITY: Sections 204(b), 207, 506, and 714, Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b), 1117, 1156, and 1204); Pub. L. 86-518 (74 Stat. 216); Reorganization Plans No. 21 of 1960 (64 Stat. 1273) and No. 7 of 1961 (75 Stat. 840), as amended by Pub. L. 91-469 (84 Stat. 1036); and Department of Commerce Organization Order 10-8 (36 FR 19707, July 23, 1973).

2. The captions of § 276.1 and 276.2 are amended to be identical in content to those in the table of sections.

3. A new § 276.3 is added to read as follows:

§ 276.3 Total repayment.

(a) *Policy.* The Secretary of Commerce (Secretary), under authority delegated to the Maritime Subsidy Board, shall have the discretion to allow the total repayment of CDS and to rescind permanently domestic trading restrictions related to the grant of CDS at any time prior to or after delivery of the vessel, but only upon a determination that all of the exceptional circumstances set forth in paragraph (b) of this section exist. Approval of total repayment shall be irreversible and the vessel owner may not subsequently elect to retain or recover CDS. The existence of a temporary cyclical downturn in the market for the profitable employment of the vessel will not be sufficient to warrant exercise of this discretion. The Secretary shall publish in the FEDERAL REGISTER a notice of any application for the total repayment of CDS, and shall allow all interested parties to submit written comments not later than 10 days after the date of such publication. After considering all comments, the Secretary shall advise the applicant, as well as those submitting comments, of the action taken, with a concise explanation of such action of writing.

(b) *Exceptional circumstances.* The exceptional circumstances necessary to allow a total repayment of CDS shall be as follows:

(1) It is apparent tht no favorable opportunities exist for employment of the vessel in the foreign trade during a protracted period of a duration considerably in excess of that normally associated with cyclical market downturns.

(2) Because of the absence of adequate employment opportunities for the vessel in the foreign trade, the vessel owner or other party responsible for payment of debt guaranteed or insured by the Secretary under Title XI of the Act is or will be unable to make the required periodic principal and interest payments on that debt and faces imminent bankruptcy;

(3) The Secretary will sustain substantial financial loss in the event of the bankruptcy of the debtor because of its responsibility to pay under the Title XI guarantees or insurance; and

(4) Operation of the vessel in the domestic trade is not likely to have any significant adverse competitive effect on other vessels operating in that trade.

(c) *Repayment terms.* The total repayment of CDS shall be made in any manner acceptable to the Secretary, consistent with the purposes of the Act, after consideration of all pertinent factors, including, but not limited to the financial condition of the owner, security for the Government and effect on competition.

(Secs. 204(b), 207, 506, and 714 Merchant Marine Act, 1936, as amended (46 U.S.C. 114(b), 1117 and 1156 and 1204; Pub. L. 86-518 (74 Stat. 216); Reorganization Plans No. 21 of 1950 (64 Stat. 1273), and No. 7 of 1961 (75 Stat. 840), as amended by Pub. L. 91-469 (84 Stat. 1036); and Department of Commerce Organization Order 10-8 (36 FR 19707, July 23, 1973).)

Dated: October 25, 1978.

By order of the Maritime Subsidy Board/Maritime Administration.

JAMES S. DAWSON, Jr.,
Secretary, Maritime Subsidy Board/Maritime Administration.

[FR Doc. 78-30934 Filed 11-1-78; 8:45 am]

[6712-01-M]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Port 81]

[SS Docket No. 78-351; FCC 78-739]

LIMITED COAST STATIONS

Deleting the Provisions Which Provide for the Use of Telegraphy

AGENCY: Federal Communications Commission.

ACTION: Proposed rulemaking.

SUMMARY: This action proposes to delete from the rules the provisions which authorize the use of radiotelegraphy by limited coast stations. In that no limited coast radiotelegraphy station has ever been authorized and none are expected to be authorized in the foreseeable future, this action was initiated by the Commission staff to remove useless provisions from the rules.

DATES: Comments must be received on or before November 29, 1978, and Reply Comments must be received on or before December 11, 1978.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Robert McNamara, Safety and Special Radio Services Bureau, 202-632-7197.

SUPPLEMENTARY INFORMATION: In the matter of amendment of Part 81 of the rules to delete the provisions which provide for the use of telegraphy by limited coast stations.

Adopted: October 19, 1978.

Released: October 30, 1978.

By the Commission:

1. In this Notice we are proposing to delete from the rules the provisions which provide for the use of telegraphy by limited coast stations.

BACKGROUND

2. Since 1951 the Commission's rules have provided for the licensing of limited coast stations which employ telegraphy.[1] However, no authorization for a limited coast radiotelegraph station has ever been granted. This is primarily because of narrow eligibility requirements and the lack of available frequencies for assignments to such stations. Section 81.225(a) of the rules provides that limited coast radiotelegraph stations shall: (1) not be open to public correspondence; (2) not render a common carrier service; (3) not transmit press material or news items not required to serve a governmental purpose; and (4) be used exclusively to serve governmental purposes including the transmission of safety communications. In regard to frequency availability, radiotelegraph frequencies are limited by international allocations. We do not expect that additional radiotelegraph frequencies will be available for assignment to limited coast stations in the foreseeable future.

DISCUSSION

3. Although the frequencies listed in § 81.206 (assignable frequencies) could be assigned to either public[2] or limited coast stations, they have all in practice been assigned to public coast stations due to the scarcity of radiotelegraph frequencies and the need for adequate public correspondence capabilities in the Maritime Mobile Service. Assignment of a number of the scarce radiotelegraph frequencies to limited coast stations could well undermine the economic viability of the existing public coast stations to the detriment of maritime communications capabilities on the high seas. In a Memorandum Opinion and Order in Docket No. 19544 adopted February 22, 1978, 43 FR 10344, — FCC 2d —, we affirmed, after an extensive review of public coast radiotelegraph operations, the view that public coast stations appear to provide the best means for the management of radiotelegraph frequencies on an equitable, disciplined, and reliable basis. Further, as noted above, we have never licensed any limited coast radiotelegraph stations, nor do we have any applications for such stations pending.

PROPOSAL

4. Accordingly, we propose to amend § 81.190 and delete §§ 81.216, 81.217, 81.223(b), 81.224(b), and 81.225 [3] of the Commission's rules in order to remove the provisions authorizing the use of telegraphy by limited coast stations and references thereto.

5. The proposed amendment of the Commission's rules as set forth below is issued pursuant to the authority contained in sections 4(i) and 303 (b), (c) and (r) of the Communications Act of 1934, as amended.

COMMENTS

6. Pursuant to the applicable procedures set forth in § 1.415 of the Commission's rules, interested persons may file comments on or before November 29, 1978, and reply comments on or before December 11, 1978. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision in this proceeding, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this notice.

7. In accordance with the provisions of § 1.419 of the Commission's rules,

[1]Limited coast stations serve the operational and business needs of ships. For example, communications relating to the docking and servicing of a ship may be transmitted by limited coast stations. They are not open to public correspondence and may not charge a fee for their services.

[2]Public coast stations render a communications common carrier service. They transmit messages to and receive messages from ships at sea without discrimination. U.S. public coast stations charge a fee for their communications services in accordance with tariffs on file with the Commission.

[3]Sections 81.216, 81.217, 81.223, 81.224, and 81.225 were formerly numbered as 81.203, 81.204, 81.213, 81.214, and 81.205 respectively. The present designations were adopted in Docket No. 20813, adopted June 2, 1977, 42 FR 31000, 65 FCC 2d 49.

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an original and 5 copies of all statements, briefs, or comments shall be furnished the Commission. All comments received in response to this Notice of Proposed Rulemaking will be available for public inspection in the Docket Reference Room in the Commission's Offices in Washington, D.C.

8. Regarding questions on the matters covered in this document contact Robert McNamara, 202-632-7197.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

Part 81 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 81—STATIONS ON LAND IN THE MARITIME SERVICES AND ALASKA-PUBLIC FIXED STATIONS

1. The parenthetical wording "(public and limited)" in the first sentence of paragraph (a) of § 81.190 is deleted and the heading is amended, so that the sentence and heading read as follows:

§ 81.190 Radiotelegraph watch by public coast stations.

(a) All public coast stations licensed to use telegraphy on frequencies within the band 405-535 kHz shall, during their hours of service, take the necessary measures to insure an efficiency safety watch by a duly licensed radiotelegraph operator on the international distress frequency 500 kHz for 3 minutes twice each hour, beginning at x h. 15 and x h. 45 Greenwich mean time. • • •

• • • • •

2. The heading of Subpart H is amended to read as follows:

Subpart H—Public Coast Stations, Use of Telegraphy

§§ 81.216, 81.217, and 81.225 [Deleted]

3. Sections 81.216, 81.217, and 81.225 are deleted.

§ 81.223 [Amended]

4. Section 81.223(b) is deleted and designated [Reserved].

§ 81.224 [Amended]

5. Section 81.224(b) is deleted.

[FR Doc. 78-31050 Filed 11-1-78; 8:45 am]

[6712-01-M]

[47 CFR Parts 95 and 97]

[SS Docket No. 78-352; RM-2857; FCC 78-743]

RADIO ASTRONOMY OPERATIONS

Establishing Procedures To Minimize Potential Interference

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing to require that each applicant for a station license in the Amateur Radio Service or the General Mobile Radio Service who plans to establish repeater operations near the National Radio Astronomy Observatory notify the Observatory of their proposed operation. The purpose of the proposed rule is to protect radio astronomy operations from radio interference.

DATES: Comments shall be filed by February 1, 1979. Reply comments shall be filed by March 1, 1979.

ADDRESS: Comments shall be filed with: Secretary, FCC, 1919 "M" Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert Cassler, Personal Radio Division, Safety and Special Radio Services Bureau, 202-634-6620.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of the General Mobile Radio Service (Part 95) and Amateur Radio Service (Part 97) Rules to establish procedures to minimize potential interference to Radio Astronomy Operations.

Adopted: October 19, 1978.

Released: October 31, 1978.

By the Commission:

1. The Commission has before it RM-2857, a request for the amendment of the General Mobile and Amateur Radio Service Rules filed jointly by the National Radio Astronomy Observatory (NRAO), Green Bank, W. Va., and the Naval Research Laboratory (NRL), Sugar Grove, W. Va., on March 8, 1977.

2. The National Radio Astronomy Observatory and the Naval Research Laboratory conduct radio astronomy operations in two locations in the eastern part of West Virginia. Their operations include the deployment of highly sensitive radio telescopes capable of receiving radio signals at a power level no greater than a femtowatt (one millionth of a billionth of watt). Since 1958, as part of an effort to provide an area surrounding NRAO and NRL which is relatively free from man-made radio interference, the Commission has maintained a National Radio Quiet Zone, and has required that all applicants for a new or modified fixed station within the boundaries of the quiet zone notify the NRAO of the technical specifications of the proposed operation. NRAO is then given an opportunity to comment on the proposed station and if further steps are necessary to minimize potential interference to radio astronomy operations, the Commission may take any action it deems appropriate. (See Report and Order, Docket No. 11745, 17 RR 1738, 1958). The Executive Branch took parallel action regarding Government stations.[1]

3. The procedures for the protection of the operations of NRAO and NRL from interference may be found in Parts 2, 5, 21, 23, 73, 81, 87, 91, and 93 of the Commission's Rules, but they have never have required of applicants in the General Mobile Radio Service (Part 95, Subpart A) or the Amateur Radio Service, (Part 97). These services were originally exempted from the coordination procedures primarily because of the intermittent and transient nature of operations in the two services. In recent years, however, there has been a growing interest in fixed repeater operation in the Amateur Radio Service and land mobile systems in the General Mobile Radio Services and these two personal radio services have seen large increases in the number of licensees due to the public's recent interest in personal radio. NRAO and NRL state in their petition that the establishment of repeater or mobile relay and base stations in the quiet zone would create interference to their installations, thereby making the need to apply the Commission's protection measures to the General Mobile and Amateur Radio Services acute.

[1] For information, the operators of the NRAO and Navy Facilities employ the following criteria for determining whether to object to the proposed use or assignment of a frequency to a ground based transmitter within the Quiet Zone:

The field strength at the Navy site (38°31'16" N., 79°16'36" W.) should be below these values.

0.1 microvolt per meter—50-1,000 MHz.
1.0 microvolt per meter—1,000 MHz—10 GHz.
10.0 microvolt per meter—10 GHz—100 GHz.

The fields shown above area for all heights up to 2,292 feet above mean sea level (approximately 60 feet above ground at the Navy antenna), and shall be the instantaneous (time domain) value. This criteria is applied to both Government and non-Government transmitting stations. Also, it is pointed out that the above table applies to harmonic and spurious emissions produced by stations using any fundamental frequency, viz, below 50 MHz. The NRAO applies very similar criteria for evaluating interference to its Green Bank facilities.

4. Comments responding to RM-2857 were filed by the American Radio Relay League (ARRL). The ARRL stated that the petitioners failed to set forth what present interference they were receiving from amateur operations or how amateur operation would interfere with the observatories' work. The ARRL concluded that the situation might be better remedied by informal cooperation between NRAO, NRL, and the amateur community than by a rulemaking proceeding.

5. In response, NRAO and NRL argued that their work involves monitoring very weak signals over a long period of time, and that it is extremely difficult to determine the source of man-made radio interference under these conditions. Instead, NRAO and NRL use calculations for the amounts of man-made radio frequency interference it receives based on the technical data submitted by each new radio operation within the quiet zone. Further they argued that their operations are susceptible to interference from amateur radio stations because their monitoring includes the entire spectrum above 100 MHz.[2] Because of this, there is no practical difference between stations at fixed locations in the Business and Public Service Radio Services which are subject to the coordination procedures, and such stations in the Amateur and General Mobile Radio Services, which are not.

6. The FCC has received a letter from the National Telecommunications and Information Administration (formerly the Office of Telecommunications Policy, Executive Office of the President), dated January 10, 1978, giving strong support for petitioner's request. This letter states coordination is necessary to minimize harmful interference to operations of petitioners' facilities and that any deterioration of the National Radio Quiet Zone would be seriously detrimental to the scientific and national defense posture of the United States. (See attached letter, Appendix I).

7. The Commission recently discussed the need for the protection of radio astronomy operations from interference in its Report and Order, Docket 20154, released June 5, 1978. In that proceeding, the Commission stated, "The Commission is cognizant of the important contribution of radio astronomy in scientific investigation and will continue to support radio astronomy through appropriate allocations. In this effort, we will continue to monitor and evaluate opportunities for improving the effectiveness of radio astronomy observations consistent with other communication needs." We therefore find that the arguments presented by NRAO and NRL are consistent with Commission policy to provide adequate protection for radio astronomy operations and we believe the public interest requires that we initiate this rulemaking proceeding.

8. The specific rule amendments we are proposing are set forth below. Authority for this proposal is contained in sections 4(i) and 303 of the Communications Act of 1934, as amended. We invite interested parties to submit comments concerning the proposal on or before February 1, 1979 and reply comments on or before March 1, 1979. An original and five copies of all comments and reply comments shall be furnished the Commission pursuant to § 1.419 of the Rules. Respondents wishing each Commissioner to have a personal copy of the comments may submit an additional six copies. Members of the public wishing to express interest in our proposals but unable to provide the required copies may participate informally by submitting one copy of their comments, without regard to form, provided the correct docket number is specified in the heading of the comments. All comments and reply comments filed in this proceeding should be sent to the Secretary, Federal Communications Commission, Washington, D.C. 20554.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[2] The NRL has informally confirmed that its Quiet Zone activities continue to extend down to 50 MHz. Further, NRL stated that it continues to be concerned with protecting its operations from harmonic and spurious radiations from transmitters in the Zone operating on frequencies below 50 MHz.

Part 95 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. In § 95.17, a new paragraph (e) is added as follows:

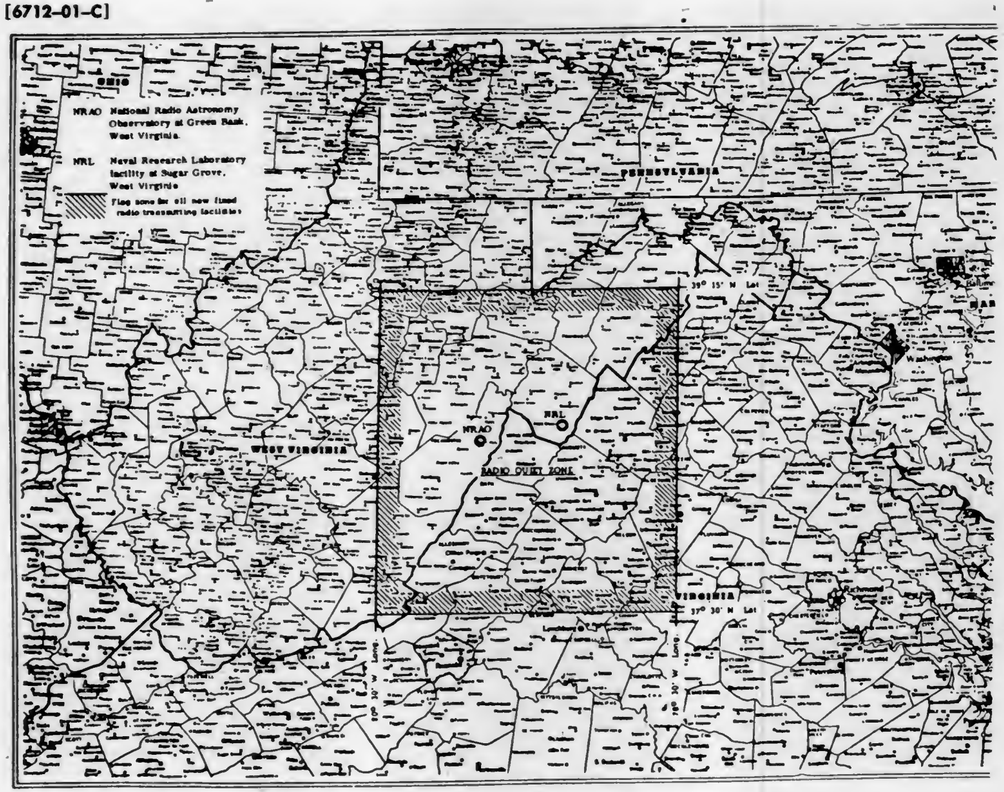
§ 95.17 Filing of applications.

• • • • • •

(e) In order to minimize possible harmful interference at the National Radio Astronomy Observatory site located at Green Bank, Pocahontas County, W. Va., and at the Naval Radio Research Observatory site at Sugar Grove, Pendleton County, W. Va., any applicant for a station authorization other than mobile, temporary base, or temporary fixed seeking a station license for a new station or to modify an existing station license in a manner which would change either the frequency, power, antenna height or directivity, or location of such a station within the area bounded by 39°15' N. on the north, 78°30' W. on the east, 37°30' N. on the south, and 80°30' W. on the west shall, at the time of filing such application with the Commission, simultaneously notify the Director, National Radio Astronomy Observatory, P.O. Box 2, Green Bank, W. Va., 24944, in writing, of the technical particulars of the proposed station. Such notification shall include the geographical coordinates of the antenna, antenna height, antenna directivity if any, proposed frequency, type of emission, and power. In addition, the applicant shall indicate in his application to the Commission the date notification was made to the Observatory. After receipt of such applications, the Commission will allow a period of 20 days for comments or objections in response to the notifications indicated. If an objection to the proposed operation is received during the 20-day period from the National Radio Astronomy Observatory for itself or on behalf of the Naval Radio Research Observatory, the Commission will consider all aspects of the problem and take whatever action is deemed appropriate.

NOTE.—Chart of National Radio Quiet Zone.

[6712-01-C]



Part 97 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

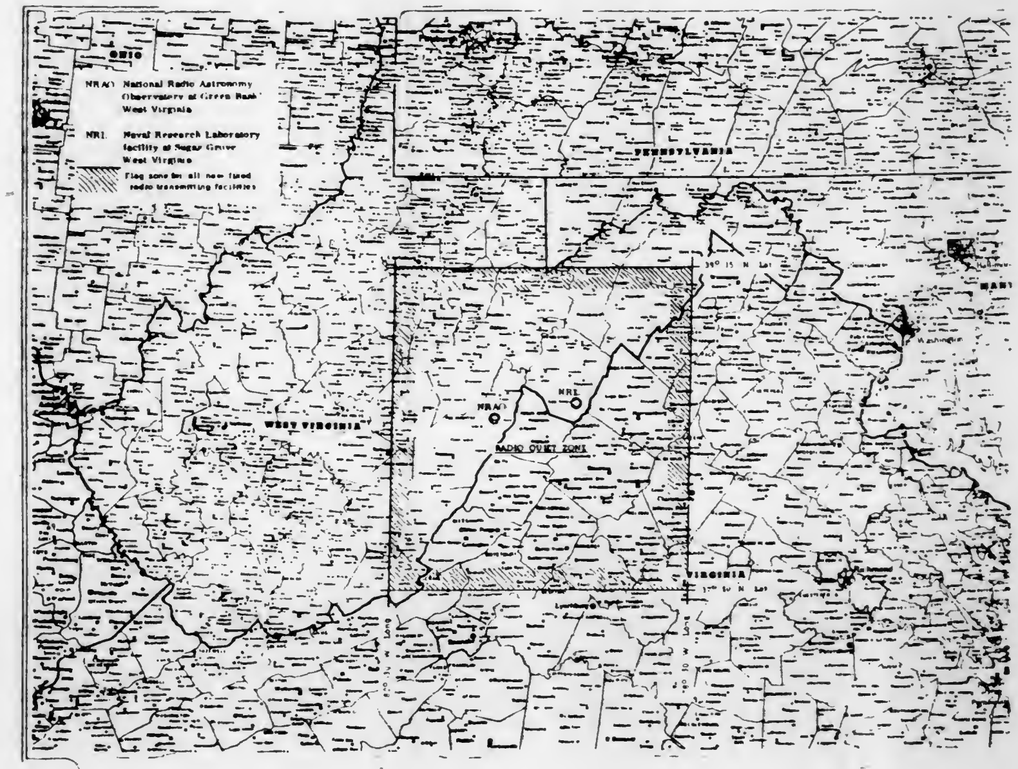
1. In § 97.41, a new paragraph (d) is added as follows:

§ 97.41 Application for station license.

* * * * *

(d) In order to minimize possible harmful interference at the National Radio Astronomy Observatory site located at Green Bank, Pocahontas County, W. Va., and at the Naval Radio Research Observatory site at Sugar Grove, Pendleton County, W. Va., any amateur radio station licensee proposing to install and place a new amateur station in repeater operation or to modify an existing station in repeater operation in a manner which would change either the frequency, power, antenna height or directivity, or location of such a station with the area bounded by 39°15' N. on the north, 78°30' W. on the east, 37°30' N. on the south, and 80°30' W. on the west shall notify the Director, National Radio Observatory, P.O. Box 2, Green Bank, W. Va. 24944, in writing of the technical particulars of the proposed station. Such notification shall include the geographical coordinates of the antenna, antenna height, antenna directivity if any, proposed frequency, type of emission, and power. If an objection to the proposed operation is received by the Commission from the National Radio Astronomy Observatory for itself or on behalf of the Naval Radio Research Observatory within 20 days from the date the licensee notified the National Radio Astronomy Observatory, the Commission will consider all aspects of the problem and take whatever action is deemed appropriate.

NOTE.—Chart of National Radio Quiet Zone.



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APPENDIX I

OFFICE OF TELECOMMUNICATIONS POLICY
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON, D.C., *January 10, 1978.*

Mr. ROBERT L. CUTTS,
Federal Communictions Commission, International & Operations Division, Washington, D.C.

DEAR MR. CUTTS: This is in response to your letter of September 13, 1977, requesting views of the executive branch on the pending request for rulemaking affecting the National Radio Quiet Zone (NRQZ). The Office of Telecommunications Policy (OTP) strongly supports the continung need for the current and requested additional coordination of frequency assignments to base and fixed radio stations in the NRQZ. This coordination is necessary to minimize harmful interference to operations of the National Radio Astronomy Observatory (NRAO) and the Navy facility at Sugar Grove located within the Quiet Zone.

In the almost 20 years since the extensive negotiations between the Interdepartment Radio Advisory Committee (IRAC) and the Federal Communications Commission (FCC) resulted in the establishment of the NRQZ, the Navy and the NRAO have worked under the provisions of the applicable OTP and FCC regulations to insure that the signal strengths from radio transmissions within the zone be kept at acceptably low levels. Observations, which would be far more expensive or difficult to carry out but for the protection afforded by the Zone, are being vigorously pursued in more bands than ever before. Many technical improvements have been made in the receiving equipment. Receivers are now more reliable, have considerably greater sensitivity, and often are inherently wideband. The NRQZ is by now perhaps the only region in the United States where really superb observing in the radio bands between 50 and 500 MHz can still be carried out. It is inconceivable that the unique national resource of the NRQZ now be allowed to deteriorate. This Office therefore concludes that such action would be seriously detrimental to both the scientific and national defense posture of the United States.

The current criteria applied in the coordination of assignments located within the NRQZ are contained in Part 8.4.9 of the OTP Manual. These differ very slightly from the criteria provided to you by Dr. Stewart in his letter of April 12, 1963. The changes involved the heights at which measurements will be made and the specification that the signal measured will be the instantaneous time domain signal from the transmitter.

We are convinced that, in order to continue to provide effective protection of operations in the NRQZ, the coordination procedure should be expanded to include base and fixed stations in the Personal Radio, General Radio Mobile Service (formerly Class A, Citizens Radio Service) and fixed repeater operatons in the Amateur Radio Service.

Sincerely,

LEO BUSS,
Acting Assstant Director for Frequency Management.

[FR Doc. 78-31049 Filed 11-1-78; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

[49 CFR Part 1201]

[Docket No. 36366]

UNIFORM SYSTEM OF ACCOUNTS

Branch Line Accounting System Report

AGENCY: Rail Services Planning Office, Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Rail Services Planning Office (RSPO) is proposing an amendment to the Branch Line Accounting System regulations which would eliminate the Annual Report of Railroad Branch Lines, Form R-6. This report, which is required by Section 930 of these regulations, has been found to be burdensome and costly to prepare while being of little use to the railroads or the State rail planning agencies. Its original purpose was to verify that the data required by the regulations were being collected and maintained in the proper manner. RSPO believes that this purpose can be achieved satisfactorily in a less burdensome manner.

The proposed amendment would replace the Form R-6 report with a certification. The certification, to be filed by the railroad, will attest that the required data for the individual branch lines are being kept in the manner prescribed by the regulations. This certification would include a complete description of the lines for which data are being collected.

DATE: RSPO invites comments on the proposed amendment on or before November 30, 1978.

ADDRESS: An original and six copies of any comments should be mailed to: Rail Services Planning Office, 1900 L Street NW., Suite 500, Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT:

James Wells, Chief, Cost Evaluation Branch, Rail Services Planning Office, 202-254-7552.

SUPPLEMENTARY INFORMATION: The Rail Services Planning Office is proposing to eliminate the Annual Report of Railroad Branch Lines, Form R-6. This report is submitted annually to the Interstate Commerce Commission by each railroad having branch lines for which the data must be maintained. The Form R-6 reflects these data on a consolidated basis. The data reported in the Form R-6 are required for all of the lines of a railroad that are shown on the system diagram map in one of the following categories:

(1) Lines for which a carrier intends to file an abandonment within three years;

(2) Lines which the carrier has under study and are potentially subject to abandonment;

(3) Lines for which an abandonment application is pending before the Commission;

(4) Lines operated under directed service orders; and

(5) Lines operated under a rail service continuation agreement.

This rulemaking affects only the consolidation of the data and the filing of Form R-6. The proposed change eliminates only the process of combining the data for the individual lines into a consolidated format and reporting it to the Commission. The railroads are not being relieved of their responsibility to collect and maintain the data for individual branch lines. The data collected for the individual lines must be in a form that would allow a state to anayize and use it for state planning purposes. The state's access to the data has not been altered by the proposed amendment.

The proposed certification will be submitted to the Bureau of Accounts, Interstate Commerce Commission within 90 days after the end of the calendar year. The certification is to include a detailed description of each branch line for which the carrier is collecting and maintaining the data. The proposed amendment and format for the certification are appended to this notice.

This action does not significantly affect the quality of the human environment.

Issued October 26, 1978 by Richard J. Schiefelbein, Acting Director, Rail Services Planning Office.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

PROPOSED AMENDMENTS

Section 930(a) is amended and (b) is deleted as set forth below:

§ 930 [Amended]

(a) General. The railroad shall file within 90 days after the close of each calender year the certification included in these regulations as Appendix I. The railroad shall include a description of each branch line using the format set forth in Appendix I of these regulations. The description of each branch line requires the same data as that submitted under 49 CFR 1121.21. This section prescribes the branch line information required in conjunction with the system diagram maps specifying the line's designation, states and counties traversed, delineation of mileposts, and location of agency and terminal stations.

(b) [Deleted.]

§ 940 [Amended]

The first sentence of section 940 is amended to read as follows:

This section specifies the format in which the data collected for each branch line shall be maintained. • • •

• • • • • •

§ 950 [Amended]

The first sentence of section 950 is amended to read as follows:

This section defines each account outlined in the format shown under section 940 of these regulations. • • •

• • • • • •

DOCKET 36366

CERTIFICATION OF BRANCH LINE ACCOUNTING SYSTEM RECORDS

Carrier: _____
(Exact legal title or name of the respondent)

Name, title, telephone number and address of the person to be contacted:

Name _____
Title _____

Telephone No.
(Area Code) (Telephone number)

Office address
(Street and No.) (City, State, and ZIP code)

CERTIFICATION

I, the undersigned,

of _____
(Title of officer in charge of accounts) 2
(Full name of reporting company)

certify that during the calendar year 19—— the branch line accounting system data were collected and maintained for each line that met the criteria set forth in 49 CFR 1201, Subpart B, section 920(a), Lines For Which Data Collection Is Required, (Docket No. 36366).

Signature _____
Date _____

The lines covered by this certification are described below: (Describe each branch line separately using the following format as set forth in 49 CFR 1121.21)

(a) Carrier's designation for line (Ex. Zanesville Secondary Track);

(b) State or states in which line is located;

(c) County or counties in which line is located;

(d) Milepost delineating each line or portion or line; and

(e) Agency or terminal station location on line or portion of line with milepost designations.

[FR Doc. 78-31020 Filed 11-1-78; 8:45 am]

[3510-22-M]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[50 CFR Part 611]

FOREIGN FISHING

AGENCY: National Oceanic and Atmospheric Administration/Commerce.

ACTION: Proposed regulations.

SUMMARY: These proposed regulations would govern most foreign fishing activities within the fishery conservation zone (FCZ) which appertains to the United States during 1979, and where appropriate, during subsequent years. These proposed regulations are similar in most respects to regulations which governed foreign fishing activities in the FCZ during 1978. The most significant difference may be found in § 611.9, where some changes in reporting procedures have been made. A new code list for marine mammals has been added. Section 611.60 (Atlantic billfish and sharks) has been modified and is incorporated in the foreign fishing regulations.

DATE: Comments will be received on these regulations until November 27, 1978.

ADDRESS: Comments may be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, D.C. 20235. Please indicate on outside of enevelope "foreign fishing regulations."

FOR FURTHER INFORMATION CONTACT:

Mr. Denton R. Moore, Acting Chief, Regulations, Permits, and Fees Division, National Marine Fisheries Service, Washington, D.C. 20235, telephone 202-634-7454.

SUPPLEMENTARY INFORMATION: Experience gained during 1978 in administering the provisions of the Fishery Conservation and Management Act of 1976, 16 U.S.C. 1801 et seq., as amended, has demonstrated little need for major changes in 1979. There are some changes, however. In Subpart A, § 611.9 (Records and Recordkeeping) has been substantially rewritten to include some new (simplified) reporting procedures and new species codes. Marine mammals have been included.

A new § 611.17 has been included. This subsection makes provision for management-related scientific research by cooperative U.S. foreign efforts.

Subpart B contains a partial list of TALFF for 1979. The proposed TALFF for the Washington, Oregon, and California Trawl Fishery is not included, because that fishery does not begin until midyear. TALFF's for the Gulf of Alaska Groundfish Fishery are also missing because the joint-venture reserve amendment has been published for public comment.

Subpart C (Northwest Atlantic Ocean Fishery) contains a revised "window" for subarea 5, and modified fishing periods. This proposal is somewhat tentative. It may be necessary, depending on comments which may be received, to revert to the conditions and restrictions which were in effect in 1978.

Subpart D (South Atlantic, Caribbean, and Gulf of Mexico) contains the revised fishing regulations for billfishes and sharks in the Atlantic Ocean. These regulations also provide for the nonretention fisheries. One of the more important changes proposed by these regulations is the requirement of a 7-inch minimum hook-size in certain circumstances in a directed shark fishery.

Subpart E is reserved. The Washington, Oregon, and California Trawl Fishery does not begin until June 1, and the data necessary to update the PMP for 1979 have not been analyzed.

Subpart F, the Seamount Roundfish Fishery, does not contain any substantive changes from 1978.

Subpart G does not contain any major or substantive changes from 1978 except that §§ 611.91 (crab fishery) and 611.92 (trawl fishery in the Gulf of Alaska) do not appear here. The preliminary management plans for these fisheries have been superseded by fishery management plans prepared by the North Pacific Fishery Management Council, and both foreign and domestic regulations implementing those fishery management plans have been published as proposed rulemaking (43 FR 21170 and 43 FR 46349 respectively).

Specific changes in the preliminary fishery management plans for these fisheries are as follows:

A. SQUID FISHERIES OF THE NORTHWESTERN ATLANTIC

1. Change appropriate references to optimum yield, U.S. capacity, and total allowable level of foreign fishing (TALFF) from 1978 to 1979.

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2. Change the optimum yield for short-finned squid (*Illex*) from 35,000 mt to 30,000 mt.

3. Change the estimated U.S. capacity for short-finned squid from 6,000 mt to 10,000 mt.

4. Change the total allowable level of foreign fishing for short-finned squid from 29,000 mt to 20,000 mt.

5. Change the estimated U.S. capacity for long-finned squid (*Loligo*) from 25,000 mt to 14,000 mt.

6. Change the total allowable level of foreign fishing for short-finned squid from 19,000 mt to 30,000 mt.

7. Change fishing area No. 5 by eliminating the portion of this area west of 68° W. longitude.

8. Change the seasons as follows:

Area No. 4, pelagic gear, change from June 1–July 15 and September 1–December 31 to August 1–December 31;

Area No. 5, pelagic gear, change from March 1–March 31 and October 1–December 31 to August 1–December 31; and

Area No. 5, all gear, change from April 1–June 30 to January 1–March 31.

B. Mackerel Fishery of the Northwest Atlantic

1. Change appropriate references to optimum yield, U.S. capacity, and total allowable level of foreign fishing (TALFF) from 1978 to 1979.

2. Change fishing area No. 5 by eliminating the portion of this area west of 68° W. longitude.

3. Change the seasons as follows:

Area No. 4, pelagic gear, change from June 1–July 15 and September 1–December 31 to August 1–December 31;

Area No. 5, pelagic gear, change from March 1–March 31 and October 1–December 31 to August 1–December 31; and

Area No. 5, all gear, change from April 1–June 30 to January 1–March 31.

C. Atlantic Herring Fishery of the Northwestern Atlantic

1. Change appropriate references to optimum yield, U.S. capacity, and total allowable level of foreign fishing (TALFF) from 1978 to 1979.

2. Change fishing area No. 5 by eliminating the portion of this area west of 68° W. longitude.

3. Change the seasons as follows:

Area No. 4, pelagic gear, change from June 1–July 15 and September 1–December 31 to August 1–December 31;

Area No. 5, pelagic gear, change from March 1–March 31 and October 1–December 31 to August 1–December 31; and

Area No. 5, all gear, change from April 1–June 30 to January 1–March 31.

D. Foreign Trawl Fisheries of the Northwestern Atlantic

1. Change appropriate references to optimum yield, U.S. capacity, and total allowable level of foreign fishing (TALFF) from 1978 to 1979.

2. Change optimum yield for butter fish brom 18,000 mt to 16,000 mt.

3. Change estimated U.S. capacity from 14,000 mt to 12,000 mt.

4. Change fishing area No. 5 by eliminating the portion of this area west of 68° W. longitude.

5. Change the seasons as follows:

Area No. 4, pelagic gear, change from June 1–July 15 and September 1–December 31 to August 1–December 31;

Area No. 5, pelagic gear, change from March 1–March 31 and October 1–December 31 to August 1–December 31; and

Area No. 5, all gear, change from April 1–June 30 to January 1–March 31.

E. Hake Fisheries of the Northwestern Atlantic

1. Change appropriate references to optimum yield, U.S. capacity, and total allowable level of foreign fishing (TALFF) from 1978 to 1979.

2. Change the optimum yield for the Southern New England/Mid-Alantic silver hake stock from 38,200 mt to 40,000 mt.

3. Change the total allowable level of foreign fishing (TALFF) for the Southern New England/Mid-Atlantic silver hake stock from 17,600 mt to 19,400 mt.

4. Change the estimated U.S. capacity for the Georges Bank red hake stock from 1,500 mt to 1,000 mt.

5. Change the total allowable level of foreign fishing (TALFF) for the Georges Bank red hake stock from 14,500 mt to 15,000 mt.

6. Change the optimum yield for the Southern New England/Mid-Atlantic red hake stock from 20,500 mt to 16,000 mt.

7. Change the total allowable level of foreign fishing (TALFF) for the Southern New England/Mid-Atlantic red hake stock from 12,900 mt to 8,400 mt.

8. Change fishing area No. 5 by elimnating the portion of this area west of 68° W. longitude.

9. Change the seasons as follows:

Area No. 4, pelagic gear, change from June 1–July 15 and September 1–December 31 to August 1–December 31;

Area No. 5, pelagic gear, change from March 1–March 31 and October 1–December 31 to August 1–December 31; and

Area no. 5, all gear, change from April 1–June 30 to January 1–March 31.

F. Atlantic Billfishes and Sharks

1. Section I of the PMP is amended by deletion of the first sentence and substitution of the following: "This document presents a preliminary fishery management plan for Atlantic billfishes and sharks."

2. Section II.A. is amended by deletion of the original text and substitution of the following: "This preliminary fishery management plan describes the fishery, provides a preliminary estimate of the optimum yield, the U.S. capacity, and the total allowable level of foreign fishing. The plan provides gear and area restrictions that will minimize the incidental catch and resultant mortality of prohibited species in directed foreign fisheries for sharks. These restrictions are designed to reduce gear conflicts and to maintain stocks of non-target species of concern to domestic interests. In addition, the plan contains permit requirements for foreign fishing vessels, as well as data reporting procedures that must be met during fishing activities."

3. Section II.B.1. is amended as follows:

a. Delete "and sharks" from the first sentence;

b. Add a second paragraph as follows: "Shark fishing occurs in oceanic waters at depths from 100 to 1,000 meters as well as in coastal waters of the Continental Shelf."

4. Section II.B.2. is amended as follows:

a. Delete the first paragraph and substitute the following: "The open ocean environment is inhabited by predators such as tunas, billfishes, and sharks. Other important commercial and sport fish, however, are found in association with tunas, billfishes, and sharks. These include dolphin-fish (*coryphaena hippurus*), wahoo (*Acanthocybium solanderi*), king mackerel (*Scomberomorus cavalla*), great barracuda (*Sphyraena barracuda*), and reef fishes. The principal species taken by the Atlantic longline fishery are listed below. Marine mammals are rarely associated with billfishes and sharks.";

b. Delete the caption for the species list and substitute the following:

"List of Principal Species Taken by the Atlantic Longline Fisheries"

c. Insert a new line at the bottom of the list under "OTHERS " as follows:

"Reef fishes, e.g. snappers and groupers.";

d. Insert in footnote 1 "and non-shark" after "non-tuna".

5. Section II.B.3 is amended as follows:

a. Delete "pelagic" from the first sentence of the first paragraph;

b. Insert the following at the end of the second paragraph: "Until 1977 there was a directed Cuban commercial longline fishery for sharks in the U.S. FCZ of the Gulf of Mexico. In the early 1960's Norwegian fishermen established fisheries in the western Atlantic and Gulf of Mexico directed at demersal and pelagic sharks. These fisheries lasted a brief period and were discontinued presumably for economic reasons. For about 20 years, Danish fishermen fished New England waters primarily for porbeagle sharks. Apparently there is a market preference for this species in Europe. A general decline of this fishery has occurred since 1958. Until 1977, there were still a few Danish boats from the Faeroe Islands fishing for sharks in the northwest Atlantic."

6. Section II.C.1.a. is amended as follows:

a. Delete "Pelagic sharks" from the first sentence of the sixth paragraph and substitute "Sharks";

b. Insert the following sentence at the end of the seventh paragraph: "In addition to the limited domestic commercial fishery, there have been relatively small commercial fisheries directed for sharks by Cuba, Norway, and Faeroe Islands."

7. Section II.C.1.e.2. is amended by inserting the following text at the end of the section: "Demersal longline is the primary gear used in the directed fishery for sharks by Cuba. A typical piece of gear fished is approximately 8 miles long with 300 hooks that fish the bottom. Pelagic longlines and gillnets were the principal gears used in the directed shark fisheries by Norway and Faeroe Islands."

8. Section II.C.1.f.(3) is amended as follows:

a. Delete the first sentence and substitute the following: "Billfishes and sharks are non-target species in the tuna longline fishery; reef fishes are non-target species in the demersal longline fisheries. These are target species in the U.S. domestic fisheries.";

b. Delete "pelagic" from the last sentence of the section.

9. Section II.C.3. is amended by changing the number of subparagraph "(3)" to "(4)" and inserting a new subparagraph (3) as follows:

"(3) The incidental catch by foreign longliners on non-target species is a potential problem, as it may adversely affect the abundance of these resources."

10. Section II.C.3.a. is amended as follows:

a. Delete "1978" from the first sentence of the second paragraph;

b. Delete "for 1978" from the last sentence of the second paragraph;

c. Delete "in 1978" from the last sentence of the fourth paragraph.

11. Section II.C.4.a.(1) is amended by deleting the text and substituting the following: "While fishing within the FCZ, each foreign fishing vessel will be required to maintain a daily fishing log that records: name and identification number of vessel; name of captain; date; midday fishing location (within 0.1° latitude and longitude); number of hooks set; number of each species of billfish (must separate sailfish and spearfish) caught and other prohibited species caught and released; number of each species of billfish (must separate sailfish and spearfish) and other prohibited species released alive; and total number and weight of sharks retained."

12. Section II.C.4.a.(2) is amended by deleting the text and substituting the following: "Each foreign nation with an allocation must submit a weekly report listing catch and effort by time and area strata to the proper authority. All foreign nations fishing within the U.S. FCZ (with or without an allocation) must submit quarterly reports."

13. Section II.C.4.b. is amended by deleting the text and substituting the following: "Zones and/or periods of limited foreign fishing: (1) Vessel limitations: None; (2) Gear limitations: Foreign vessels participating in a directed fishing for sharks must use a minimum-sized hook of 7 inches shank length and 2.5 inches gap (distance between tip and shank) when fishing inside the 100-fathom contour. (There is no hook-size restriction seaward of the 100-fathom contour); (3) Area limitations: There will be no directed foreign fishing for sharks within the proposed marine sanctuary area designated as Flower Garden Banks."

14. Section II.C.4.c.(1) is amended by deleting "to prohibit the" and substituting "No".

15. Section II.C.4.e. is amended by deleting "Costal" and substituting "Coastal".

16. Section II.C.4.g. is amended as follows:

a. Delete "pelagic" from the first sentence of the first paragraph;

b. Delete the second paragraph and substitute the following:

"In view of these facts, the measures developed in this plan are designed to regulate the taking or harvesting of sharks and to minimize the catching and resultant mortality of billfishes and other prohibited species by foreign vessels within the FCZ. The incidental catch of prohibited species will be monitored, and should it be determined that mortality is excessive, it may be necessary for the Secretary to promulgate emergency regulations.";

c. Delete the third paragraph in its entirety.

17. Table 13 is amended by deletion of "(1978)" from the U.S. capacity column designation.

G. Seamount Groundfish Fishery Resources

1. Change "1978" to "1979" wherever "1978" appears.

2. All references to optimum yield (OY), total allowable level of foreign fishing (TALFF), and U.S. capacity remain unchanged.

H. Snail Fishery of the Eastern Bering Sea.

1. Change "1978" to "1979" wherever "1978" appears.

2. All references to optimum yield (OY), total allowable level of foreign fishing (TALFF), and U.S. capacity remain unchanged.

I. Sablefish Fishery of the Bering Sea and Northeastern Pacific

1. Change "1978" to "1979" wherever "1978" appears.

2. All references to optimum yield (OY), total allowable level of foreign fishing (TALFF), and U.S. capacity remain unchanged.

J. Shrimp Fishery of the Eastern Bering Sea

1. Change "1978" to "1979" wherever "1978" appears.

2. All references to optimum yield (OY), total allowable level of foreign fishing (TALFF), and U.S. capacity remain unchanged.

K. Trawl Fisheries and Herring Gillnet Fishery of the Bering Sea and Northeast Pacific and Aleutian Island Area

1. Change "1978" to "1979" wherever "1978" appears.

2. All references to optimum yield (OY), total allowable level of foreign fishing (TALFF), and U.S. capacity remain unchanged.

The Assistant Administrator for Fisheries, under a delegation of authority from the Secretary of Commerce, has determined that these proposed foreign fishing regulations are consistent with the National Standards and other applicable law, does not constitute a major Federal action requiring the preparation of an environmental impact statement, and does not require a Regulatory Impact Analysis under Executive Order 12044.

Signed at Washington, D.C., this 24th day of October 1978.

Winfred H. Meibohm,
Acting Executive Director,
National Marine Fisheries Service.

(16 U.S.C. 1801 et seq.)

50 CFR Chapter VI is amended by striking part 611 in its entirety and substituting the following Part 611:

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PART 611—FOREIGN FISHING

Subpart A—General

Sec.
611.1 Purpose.
611.2 Definitions.
611.3 Permits for foreign fishing vessels.
611.4 Vessel reporting.
611.5 Vessel and gear identification.
611.6 Facilitation of enforcement.
611.7 Prohibitions.
611.8 Observers.
611.9 Reports and recordkeeping.
611.10 Fishery support operations.
611.11 Gear conflicts.
611.12 Directed fisheries.
611.13 Incidental catch—prohibited species.
611.14 Incidental catch—other species.
611.14 Fishery closure procedures.
611.16 Disposal of fishing gear and other articles.
611.17 Scientific research.

Subpart B—Surpluses

611.20 Total allowable level of foreign fishing.
611.21 Allocations.
611.22 Fee Schedule for foreign fishing permits. (Reserved)

Subpart C—Atlantic Ocean

611.50 Northwest Atlantic Ocean fishery.

Subpart D—Atlantic, Caribbean, and Gulf of Mexico

611.60 Atlantic billfish and sharks.

Subpart E—Northeast Pacific Ocean

611.70 Washington, Oregon, California trawl fishery. (Reserved)

Subpart F—Western Pacific Ocean

611.80 Seamount groundfish fishery.

Subpart G—North Pacific Ocean and Bering Sea

611.90 General provisions.
611.91 Crab fishery. (Reserved)
611.92 Gulf of Alaska groundfish fishery. (Reserved)
611.93 Bering Sea and Aleutian Islands fishery.
611.94 Snail fishery.

AUTHORITY: 16 U.S.C. 1801 *et seq.*

Subpart A—General

§ 611.1 Purpose.

This part governs only *foreign* fishing over which the United States exercises exclusive fishery management authority under the Fishery Conservation and Management Act of 1976, as amended.

§ 611.2 Definitions.

In addition to the definitions contained in the Act, and unless the context requires otherwise, in this Part 611 the terms used shall have the following meaning (some definitions in the Act have been repeated here to aid fishermen in understanding the regulations):

(a) "Act" means the Fishery Conservation and Management Act of 1976. Pub. L. 94-265 (16 U.S.C. 1801 *et seq.*), as amended.

(b) "Agent" means the person appointed and maintained within the United States who is authorized to receive and respond to any legal process issued in the United States with respect to an owner or operator in accordance with section 201(c)(2)(F) of the Act.

(c) "Anadromous species" means species of fish which spawn in fresh or estuarine waters of the United States and which migrate to ocean waters, including but not limited to:

King salmon (*Oncorhynchus tshawytscha*).
Pink salmon (*Oncorhynchus gorbuscha*).
Chum salmon (*Oncorhynchus keta*).
Sockeye salmon (*Oncorhynchus nerka*).
Silver salmon (*Oncorhynchus kisutch*).
Steelhead trout (*Salmo gairdnerii*).
Atlantic salmon (*Salmo salar*).
Striped bass (*Morone saxatilis*).

(d) "Assistant Administrator" means the Assistant Administrator for Fisheries of the National Marine Fisheries Service or a designee.

(e) "Authorized officer" means:

(1) Any commissioned, warrant or petty officer of the Coast Guard;

(2) Any certified enforcement or special agent of the National Marine Fisheries Service;

(3) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary of Commerce of Transportation to enforce the Act; and

(4) Any Coast Guard personnel accompanying and acting under the direction of any person described in subparagraph (1) of this paragraph.

(f) "Billfish" means all speicies of marlin, spearfish, sailfish and swordfish.

(g) "Continental Shelf" means the seabed and subsoil of the submarine areas which appertain to the United States beyond the territorial sea, at any place where the depth of the superjacent waters allows exploitation of the natural resources of such areas.

(h) "Continental Shelf fishery resources" means the following:

COLENTERATA

Bamboo coral (*Acanella* spp.).
Black coral (*Antipathes* spp.).
Gold coral (*Callogorgia* spp.).
Precious red coral (*Corrallium* spp.).
Bamboo coral (*Keratoisis* spp.).
Gold coral (*Parazoanthus* spp.).

CRUSTACEA

Tanner crab (*Chionoecetes tanneri*).
Tanner crab (*Chionoecetes opilio*).
Tanner crab (*Chionoecetes angulatus*).
Tanner crab (*Chionoecetes bairdi*).
King crab (*Paralithodes camtschatica*).
King crab (*Paralithodes platypus*).
King crab (*Paralithodes brevipes*).
Lobster (*Homarus americanus*).
Dungeness crab (*Cancer magister*).
California king crab (*Paralighodes californiensis*).
California king crab (*Paralithodes rathbuni*).
Golden king crab (*Lithodes aequispinus*).
Northern stone crab (*Lithodes maja*).
Stone crab (*Menippe mercenaria*).
Deep-sea red crab (*Geryon quinquedins*).
Red abalone Mollusks (*Haliotis rufescens*).
Pink abalone (*Haliotis corrugata*).
Japanese abalone (*Haliotis Kamtschatkana*).
Queen conch (*Strombus gigas*).
Surf clam (*Spisula solidissima*).
Ocean quahog (*Artica islandica*).

SPONGES

Glove sponge (*Hippiospongia canaliculata*).
Sheepwool sponge (*Hippiospongis lachne*).
Grass sponge (*Spongia graminea*).
Yellow sponge (*Spongia barbera*).

(i) "Designated representative" means the person appointed by a nation and maintained within the United States who is responsible for receiving and submitting reports and other information concerning fishing by vessels from that nation.

(j) "Directed fishery" with respect to any species, means a fishery conducted for the purpose of catching that species.

(k) "Discard" or "discarded" means to release or return to the sea fish whether or not such fish are brought fully aboard a fishing vessel.

(l) "Existing International Fishery Agreement" means any treaty, convention or agreement, to which the United States is a party, which relates to fishing and which was in effect on April 13, 1976, namely:

(1) The International Convention for the High Seas Fisheries of the North Pacific Ocean, with Annex and Protocol of May 9, 1952, as amended; and

(2) The Convention for the Preservation of the Halibut Fishery of the North Pacific Ocean and the Bering Sea of March 2, 1953.

(m) "Fish" means finfish, mollusks, crustaceans, and all other forms of marine animal or plant life other than marine mammals, birds and highly migratory species.

(n) "Fish over which the United States exercises exclusive fishery management authority" means:

(1) All fish within the fishery conservation zone;

(2) All anadromous species beyond the fishery conservation zone, except when they are within any foreign nation's territorial sea or fishery conservation zone (or equivalent), to the extent that such sea or zone is recognized by the United States; and

(3) All Continental Shelf fishery resources beyond the fishery conservation zone.

(o) "Fishery" means:

(1) One or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; or

(2) Any fishing for such stocks.

(For related definitions, see: Directed fishery, paragraph (j) of this section; Incidental catch, paragraph (y) of this section; and Prohibited species, paragraph (bb) of this section.)

(p) "Fishery conservation zone" (FCZ) means the area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal states to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

(q) "Fishery resource" means any fishery, any stock of fish, any species of fish, and any habitat of fish.

(r) "Fishing" means any activity, other than scientific research, which:

(1) Does, is intended to, or can reasonably be expected to result in the catching or removal from the sea of fish over which the United States exercises exclusive fishery management authority;

(2) Consists of scouting or exploring for the presence of such fish by visual, acoustic, or other means which do not involve removal of fish from the sea; or

(3) Consists of any operation at sea in support of or in preparation for, any activity described in subparagraphs (1) and (2) of this paragraph, including, but not limited to:

(i) Processing, including freezing, fish or fish products;

(ii) Transferring or transporting fish or fish products; or

(iii) Supplying a fishing vessel with water, fuel, provisions, fishing equipment, fish processing equipment, or other supplies.

(s) "Fishing vessel" means any boat, ship, or other craft which is used for, equipped to be used for, or of a type normally used for, fishing.

(t) "Foreign fishing" means fishing by a vessel other than a vessel of the United States.

(u) "Foreign fishing vessel" means any fishing vessel other than a vessel of the United States.

(v) "Gear conflict" means any incident at sea involving one or more fishing vessels;

(1) In which one fishing vessel or its gear comes into contact with another vessel or the gear of another vessel, and

(2) Which results in the loss of, or damage to, a fishing vessel, fishing gear, or catch.

(w) "Governing International Fishery Agreement" means an agreement between the United States and a foreign nation under Section 201(c) of the Act.

(x) "Highly migratory species" means the species of tuna which in the course of their life cycle spawn and migrate over great distances of the ocean, including, but not limited to:

Albacore (*Thunnus alalunga*).
Bigeye tuna (*Thunnus obesus*).
Bluefin tuna (*Thunnus thynnus*).
Skipjack tuna (*Euthynnus pelanis*).
Southern bluefin tuna (*Thunnus maccoyii*).
Yellowfin tuna (*Thunnus albacares*).

(y) "Incidental catch" means fish of any species, other than the directed fishery species, which are caught during a directed fishery.

(z) "Operator", with respect to any vessel, means the master or other person in charge of that vessel.

(aa) "Owner", with respect to any vessel means any person who owns that vessel or any charterer, whether bareboat, time, or voyage; or any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function or operation of the vessel.

(bb) "Prohibited species", with respect to any vessel, means any species of fish which that vessel is not specifically authorized to retain.

(cc) "Secretary" means the Secretary of Commerce or a designee.

(dd) "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, the Northern Mariana Islands, and any other Commonwealth, territory, or possession of the United States. It does not include the remaining districts of the Trust Territory of the Pacific Islands.

(ee) "Vessel day" means a unit of fishing effort measured by the presence, for any part of a day, of a vessel rigged for fishing (as defined in paragraph (r)(1) of this section) in a designated fishing area.

(ff) "Vessel of the United States" means:

(1) A vessel documented or numbered by the Coast Guard under United States law; or

(2) A vessel, under five net tons, which is registered under the laws of any State.

§ 611.3 Permits for foreign fishing vessels.

(a) No foreign fishing vessel may engage in fishing unless a permit has been issued to it under this section.

(b) Registration permits for foreign vessels to engage in fishing pursuant to an Existing International Fishery Agreement may be issued annually by the Secretary of State upon application from the foreign nation.

(c) Annual permits for foreign fishing vessels to engage in fishing pursuant to a Governing International Fishery Agreement may be issued by the Assistant Administrator after:

(1) His approval of an application from the foreign nation;

(2) The foreign nation's acceptance of the applicable terms and conditions;

(3) The payment of the fees established by the Secretary; and

(4) The designation of an agent.

(d) Applications for foreign vessel permits shall be submitted on forms available from: Office of Fisheries Affairs, Department of State (OES/OFA), Washington, D.C. 20520. To allow time for review and comments by the public, the involved governmental agencies, and appropriate fishery management councils, and the necessary processing, applications should be submitted to the Secretary of State at least 90 days prior to the date on which the foreign vessel desires to commence fishing under the proposed permit.

(e) The procedures for issuance of permits under paragraph (c) of this section and the commencement of activities thereunder are as follows:

(1) Permit Forms will be distributed to foreign nations in advance of permit issuance in order that they may be readily available for completion when permits are issued. The Permit Form provides spaces for insertion of all pertinent information contained in the permit and instructions for its use.

(2) Permits are issued by the Assistant Administrator, through the Secretary of State, in Washington, D.C., U.S.A. Permits are valid when issued, but not earlier than January 1 of the year for which the permit is issued. Permits are valid only for the specific vessel(s) for which they are issued. However, permits are not issued for small boats used for fishing which are launched from larger vessels. Each such small boat is an extention of its mothership and any enforcement action or permit sanction which might result from the activities of any such small boat would be taken against the mothership. A permit specifies the permit number for each permitted vessel, the fisheries and activities authorized for each permitted vessel, any other activities authorized, any additional conditions and restrictions applicable to a permitted vessel, and the date of issuance and the duration of the permit.

(3) A vessel may engage in fishing activities authorized in its permit only after:

(i) The permitted vessel has received notification of the permit number, the

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fisheries and activities authorized, any additional activities authorized, any applicable additional conditions and restrictions, and the date of issuance of the permit, and

(ii) The vessel has substantiated receipt of such notification by prominently displaying a properly completed Permit Form in the wheelhouse of such permitted vessel.

(4) If a permit is modified by the Assistant Administrator, the fisheries, activites, conditions and restrictions, as modified, must be recorded on the Permit Form and prominently displayed in the wheelhouse.

(5) The burden of accurately transmitting the notification of the contents of the permit (or modification) to the foreign fishing vessel, and the burden of accurately recording the pertinent contents of the permit (or modification) on the Permit Form, shall be upon the foreign nation and the owner or operator of the foreign fishing vessel.

(f) For determination of appropriate permit fees for permits issued under paragraph (c) of this section and for determination of activities authorized by such permit, the following definitions apply:

(1) "Catching" is those activities described in §611.2(r) (1) or (2).

(2) "Processing" is those activities described in § 611.2(r)(3)(i).

(3) "Other Support" is those activities described in § 611.2(r)(3)(ii) or (iii).

(g) If a foreign fishing vessel has been used in the commission of any act prohibited by § 611.7, or if an agent is not maintained within the United States, the Assistant Administrator may take appropriate action with respect to a permit issued under paragraph (c) of this section, under the administrative civil procedures specified in 50 CFR Part 621.

(h) Permits issued under this section do not authorize vessels or persons to engage in the kill, capture, or harassment of marine mammals. The requirements, restrictions and prohibitions applicable to marine mammals and the application procedures for permits to take marine mammals incidental to fishing operations are contained in 50 CFR 216.24.

(i) Permits issued under paragraph (c) of this section may be modified by the Assistant Administrator as follows:

(1) Because compliance with this Part 611 of the regulations is a condition of all foreign fishing permits, such permits may be modified by amendment of these regulations. Any such modification which would adversely affect activities under a permit will be effective no sooner than ten days after publication of the final amended regulation in the FEDERAL REGISTER. Other changes in the regulations may be made effective immediately. Notice of potentially adverse modifications will be sent by the Assistant Administrator to:

(i) Each nation whose fishing vessels are affected (via the Secretary of State); and

(ii) The owner of each affected fishing vessel (via the agent).

(2) The Assistant Administrator may modify any permit for purposes of "conservation and management" (as defined in section 3(2) of the Act) of fishery resources covered by the permit. Except as provided in subparagraph (vii) below, such modifications will be effected as follows:

(i) The Assistant Administrator shall notify the owner of the affected fishing vessel (via the agent) of the proposed modification and shall provide a summary of the reasons underlying the proposal.

(ii) The owner of the affected vessel may:

(A) Submit written comments on the proposed modification within 30 days after receipt of the notice; and

(B) Receive an informal hearing on the proposed modification if his written request for such a hearing is received by the Assistant Administrator within 15 days after receipt of the notice.

(iii) The Assistant Administrator will publish a notice of the proposed modification in the FEDERAL REGISTER providing for a 30-day public comment period. The Assistant Administrator will also notify the appropriate Regional Fishery Management Councils, the Secretary of State, and the Commandant of the Coast Guard asking for their written comments within 30 days of receipt of such notice.

(iv) Not less than 15 days prior to the date of a hearing, the Assistant Administrator shall:

(A) Publish a notice of the hearing in the FEDERAL REGISTER;

(B) Notify the requesting owner of the time and place of the hearing (via the agent).

(v) The Assistant Administrator may allow public participation at the hearing. The requesting owner and other participants may submit all relevant material, data, views, comments, arguments, and exhibits at the hearings. A summary record shall be kept of any such hearing.

(vi) The Assistant Administrator shall make a final decision regarding the proposed modification as soon as practicable after the 30-day comment period and the hearing, if any. Notice of the modification will be published in the FEDERAL REGISTER and will be sent to the nation involved (via the Secretary of State), the owner of the permitted fishing vessel (via the agent), each appropriate Regional Fishery Management Council, the Secretary of State, the Commandant of the Coast Guard, the Committee on Merchant Marine and Fisheries of the House of Representatives, and the Committees on Commerce, Science, and Transportation, and on Foreign Relations of the Senate.

(vii) If necessary to prevent substantial harm to a fishery resource of the United States, the Assistant Administrator may make the proposed modification effective immediately or otherwise earlier than 30 days after the date of notice of proposed modification. In such cases, the Assistant Administrator shall summarize findings of necessity and the reasons therefor in the notices of the proposed modification required by this section. The Assistant Administrator shall expedite the hearing process whenever a modification has been implemented on an interim basis.

(3) A nation may submit a written request for a modification of any permit applicable to a vessel of that nation. The Assistant Administrator may make technical modifications or corrections requested by the nation, such as change in radio call sign, which will be effective immediately. Similarly, a change in information submitted on an application, such as change in ownership of a vessel, processing equipment, or tonnage, will be effective immediately.

(4) If, in the opinion of the Assistant Administrator a permit change requested by a nation could significantly affect the status of any fishery resource, such request will be treated as an application for a new permit and procedures for issuance of the permit will be in accordance with section 204 of the Act.

(5) After modification of a permit under subparagraph (2) or (3) of this paragraph, the Assistant Administrator shall promptly issue a revised permit to the nation involved.

§ 611.4 Vessel reporting.

(a) The operator of each foreign fishing vessel shall notify the Coast Guard, in the manner set forth in paragraph (b) of this section, of:

(1) The time and position at which the vessel will begin fishing (action code B) (see paragraph (d) of this section for use of action codes);

(2) The time and position of a temporary departure from the fishing grounds for the purpose of embarking or debarking an observer or for a call at a U.S. port or, in the Northwest Atlantic Ocean fishery, any other temporary departure from any authorized fishing area which does not include departure from the fishery conservation zone (action code D);

(3) The time and position of return to the fishing grounds following a temporary departure described in subparagraph (2), above (action code R);

(4) The time and position of any shift in its fishing area (as shown in appendix II to §611.9) except when changing areas in the Northwest Atlantic Ocean Fishery (action code S);

(5) The time and position it will cease fishing, intending to leave the fishery conservation zone (action code C).

(b) The notices required by paragraph (a) of this section shall be in English. They should be delivered via private or commercial communications facilities to the appropriate Coast Guard commander who will relay them to the appropriate National Marine Fisheries Service Region (see Table I). If adequate private or commercial communications facilities are not available, the required notice may be delivered via the closest Coast Guard communications station as indicated in the accompanying Table II. Radiotelegraphy must be used if available. Voice reports will be accepted in English only.

(c) The notices required by paragraphs (a)(1) and (a)(5) of this section must be delivered to the appropriate Coast Guard commander at least 24 hours prior to beginning or ceasing fishing. The other notices required by paragraph (a) of this section must be transmitted prior to the event requiring notice and delivered within 72 hours of the event.

(d) The notices required by this section shall contain the following information: the message identifier "VESREP" to indicate it is a required vessel report, vesssel name, international radio call sign (IRCS), date (month and day), time (hour and minute G.m.t.), latitude, longitude, fishing area (use code specified in appendix II to § 611.9), and the appropriate action code (see paragraphs (a) (1)–(5) of this section). Fishing area to be reported shall be the area into which the vessel is proceeding for action codes B, R, and S and the area being departed for action codes D and C.

An illustration of a sample report is as follows: The stern trawler NAVIS, IRCS LTUX, will begin fishing on March 11, 1979, at 1320 G.m.t. at position 55-30-N. latitude, 142-30 W. longitude in the Yakutat fishing area of the Gulf of Alaska. The required message would appear as follows:

FROM: Master, M/V NAVIS, LTUX
TO: 17th Coast Guard District, Juneau, Alaska, Alaska Region, NMFS, Juneau, Alaska
VESREP
NAVIS/LTUX/0311/1320/5530N/14230W/64/B

(e) The notices required by this section may be provided for individual vessels or groups of vessels (on a vessel-by-vessel basis), by fleet commanders or other authorized persons. In these cases, the above format should be modified as appropriate.

TABLE I

Area	National Marine Fisheries Service	Coast Guard
Pacific Ocean off Hawaii and other insular possessions.	Southwest region, Terminal Island, Calif	14th District, Honolulu, Hawaii (Telex: 392401).
Pacific Ocean off California, Oregon, and Washington.	Northwest region, Seattle, Wash	Pacific Area, San Francisco, Calif. (Telex: 330427).
Pacific Ocean and Bering Sea off Alaska	Alaska region, Juneau, Alaska	17th District, Juneau, Alaska.
Atlanta Ocean north of Cape Hatteras	Northeast region, Gloucester, Mass	Atlantic Area, New York, N.Y. (Telex: 126831).
Atlantic Ocean south of Cape Hatteras, the Gulf of Mexico, and the Caribbean Sea.	Southeast region, St. Petersburg, Fla	Do.

TABLE II

Station	Radiotelegraphy: Call sign	Radiotelegraphy: Bands guarded	Voice: Duplex high-frequency single-sideband channels guarded GMT[1]
Boston	NMF	500 kHz; 8, 12 MHz	B (0000-2400).
Portsmouth	NMN	500 kHz; 8, 12, 16 MHz	A (0200-1200); B (0000-2400); C (0000-2400); D (1200-0200); E (on request).
Miami	NMA	500 kHz	None.
San Juan	NMR	500 kHz; 8, 12, 16[2] MHz	Do.
New Orleans[3]	NMG	500 kHz	A (0200-1200); B (0000-2400); C (0000-2400); D (1200-0200); E (on request).
San Francisco[3]	NMC	500 kHz; 8, 12, 16[2] MHz	A (0000-2400); B (0000-2400); C (0000-2400); D and E (on request).
Honolulu[3]	NMO	500 kHz; 8, 12, 16[2] MHz	A (0000-2400); B (0000-2400); C (0000-2400); D and E (on request)
Guam[3]	NRV	500 kHz	B (0100-2100); D (2100-0000).
Kodiak[3]	NOJ	500 kHz	B (0000-2400), A, C, D and E (on request).
Adak	NOX	500 kHz; 3 MHz	None.

[1] Carrier frequencies (kHz): See following table.
[2] 2 hr after sunrise until 2 hr before sunset only.
[3] Also guards 2182 kHz voice.

Letter	Shore transmit	Ship transmit
A	4428.7	4134.3
B	6506.4	6200.0
C	8765.4	8241.5
D	13113.2	12342.4
E	17307.3	16534.4

§ 611.5 Vessel and gear identification.

(a) *Identification.* (1) Each fishing vessel assigned an international radio call sign (IRCS) shall display that call sign amidships on both the port and starboard sides of the deck house or hull, and on an appropriate weather deck.

(2) Each fishing vessel not assigned an IRCS, such as a small trawler associated with a mothership or one of a

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pair of trawlers, shall display the IRCS of the associated vessel followed by a numerical suffix. (For example, JCZM-1, JCZM-2, etc. would be displayed on small trawlers not assigned an IRCS operating with a mothership whose IRCS is JCZM; JANP-1 would be displayed by a pair trawler not assigned an IRCS operating with a trawler whose IRCS is JANP).

(b) The identifying markings shall be permanently affixed to the vessel in contrasting block Roman alphabet letters and arabic numerals at least one meter in height for vessels over 20 meters in length and at least one-half meter in height for all other vessels.

(c) The operator of each vessel shall:

(1) Keep the identifying markings clearly legible and in good repair, and

(2) Insure that no part of the vessel, its rigging or its fishing gear obstructs the view of the markings from an enforcement vessel or aircraft.

(d) Each vessel engaged in fishing shall display the lights and shapes prescribed by the International Regulations for Preventing Collisions at Sea, 1972, for the activity in which the vessel is engaged.

(e) Any fishing gear which, when in use, is not physically and continuously attached to a fishing vessel shall be clearly marked with the IRCS of the vessel to which it belongs. Such marking shall be affixed to at least one element of the fishing gear so as to be visible above the water.

§ 611.6 Facilitation of enforcement.

(a) The operator of each fishing vessel shall immediately comply with instructions issued by authorized officers to facilitate boarding and inspection of the vessel for purposes of enforcing the Act and these regulations.

(b) Upon being approached by a Coast Guard cutter or aircraft or other vessel or aircraft authorized to enforce the Act, a vessel shall be alert for signals conveying enforcement instructions. The following signals extracted from the International Code of Signals are among those which may be used:

(1) "L" meaning "You should stop your vessel instantly";

(2) "SQ3" meaning "You should stop or heave to; I am going to board you"; and

(3) "AA AA AA, etc." which is the call for an unknown station, to which the signaled vessel should respond by identifying itself or by illuminating (or clearing obstructions from) the vessel identification required by § 611.5.

(c) A vessel signaled for boarding shall:

(1) Guard channel 16, VHF-FM, if available;

(2) Stop immediately and lay to or maneuver in such a manner as to facilitate boarding by the authorized officer and party;

(3) Provide a safe ladder for the authorized officer and party;

(4) When necessary to facilitate the boarding, provide a manrope, safety line and illumination for the ladder; and

(5) Take such other actions as necessary to insure the safety of the authorized officer and party and to facilitate the boarding and inspection.

(d) A Coast Guard cutter whose personnel wish to board a fishing vessel for purposes other than law enforcement will display the international code signal "SQ3 RQ" which means "Will you stop or heave to? May I board you?"

(e) Each fishing vessel shall guard 500 kHz or 2182 kHz, if available, each day from 2000 to 2030 G.m.t.

(f) Fishing vessels, through a fleet commander or otherwise, shall provide vessel positions when requested by the National Marine Fisheries Service or the Coast Guard within the time specified in the request.

§ 611.7 Prohibitions.

(a) It is unlawful for any person to:

(1) Violate any provision of the Act or any regulation or permit issued under the Act;(2) Use any fishing vessel to engage in fishing after the revocation, or during the period of suspension, of an applicable permit issued under the Act;

(3) Violate any provision of, or regulation under, an applicable Governing International Fishery Agreement entered into under section 201(c) of the Act;

(4) Refuse to permit an authorized officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Act or any regulation, permit, or agreement referred to in paragraph (a)(1) or (a)(3) of this section;

(5) Forcibly assault, resist, oppose, impede, intimidate, or interfere with any authorized officer in the conduct of any search or inspection described in paragraph (a)(4) of this section;

(6) Resist a lawful arrest for any act prohibited by this section;

(7) Ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of any fish taken or retained in violation of this Act or any regulation, permit, or agreement referred to in paragraph (a)(1) or (a)(3) of this section; or

(8) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this section.

(b) It is unlawful for any vessel other than a vessel of the United States, and for the owner or operator of any vessel other than a vessel of the United States, to engage in fishing:

(1) Within the boundaries of any State; or

(2) Within the fishery conservation zone, or for any anadromous species or Continental Shelf fishery resources beyond such zone, unless such fishing is authorized by, and conducted in accordance with, a valid and applicable permit issued pursuant to § 611.3.

(c) A person is guilty of a criminal offense if any act prohibited by paragraph (a)(4), (a)(5), (a)(6), (a)(8) or (b) of this section is committed.

§ 611.8 Observers.

(a) For the purposes of collection scientific data and carrying out such other management and enforcement activities as may be authorized, the Assistant Administrator may assign an observer to any foreign fishing vessel. The owner and operator of any vessel to which such an observer is assigned shall:

(1) Provide, at no cost to the observer or the United States, accommodations for the observer aboard the vessel which are equivalent to those provided to the officers of that vessel;

(2) Cause the vessel to proceed to such places and at such times as may be designated by the Assistant Administrator for the purpose of embarking and debarking the observer;

(3) Allow the observer to use the vessel's communications equipment and personnel as necessary for the transmission and receipt of messages;

(4) Allow the observer access to an use of the vessel's navigation equipment and personnel as necessary to determine the vessel's position; and

(5) Provide all other reasonable assistance to enable the observer to carry out his duties.

(b) The owner and operator of each fishing vessel to which an observer is assigned shall reimburse the United States for the total costs of placing the observer aboard, including salary, per diem, transportation of observer, and overhead costs. Payment of these costs shall be made upon billing at the end of the calendar year.

(c) It is unlawful for any person to forcibly assault, resist, oppose, impede, intimidate, or interfere with an observer placed aboard a vessel under this section.

§ 611.9 Reports and record keeping.

(a) The operator of each foreign fishing vessel shall maintain an accurate log of catch and effort information in accordance with the regulations for the fishery in which the vessel is engaged.

(b) Upon each transfer of any fish or fishery product, the operators of both

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the transferring and receiving vessels shall record in their respective logs:

(1) The date, time, and location (in geographic coodinates) of the transfer;

(2) The weight or number, by species, of all fish transferred; and

(3) The name, nationality, and permit number of the other vessel involved in the transfer.

(c) The operator of each foreign fishing vessel shall record, in a communications log, the Greewich mean time and content of each notification made under § 611.4.

(d) *Daily cumulative catch log.* (1) All foreign fishing vessels, except as otherwise provided in section 611.90(d)(2) shall maintain a daily cumulative catch log in English. This log shall have recorded on a daily and a cumulative basis the round weight of all catches of all allocated species during the permit period. The log shall be maintained aboard the vessel during the duration of the permit period.

(2) The log shall contain the following information:

(i) Name and call sign of the vessel.

(ii) Permit number.

(iii) Date.

(iv) Species by common name and species code number (see Appendix I).

(v) Fishing area and area code number where caught (see Appendix II).

(vi) Daily catch by species to the nearest hundredth of a metric ton.

(vii) Disposition of the catch: human consumption (including consumed on board), fishmeal, or discarded; and

(viii) Cumulative total catch for each species in each fishing area.

(3) This daily cumulative catch log must be in the format illustrated in Appendix III, which contains the instructions for completing the log. No adjustment shall be made in this log to deduct any catch off-loaded. The log must record this information for each of the species for which the vessel's flag nation has an allocation (see § 611.21).

(4) In the Washington, Oregon, California trawl fishery, record in addition to allocated species, the prohibited species salmon (210) and halibut (722) which are discarded, in terms of the number of fish.

(e) *Weekly catch report.* (1) Each foreign nation shall submit, through the designated representative, a weekly report stating, on a vessel-by-vessel basis except as otherwise provided in § 611.90(d)(2), the catch in round weight of the species allocated to that nation, for the weekly period Sunday through Saturday, Greenwich mean time. In the Washington, Oregon, California trawl fishery in addition to allocated species, catch of salmon and halibut in numbers of fish shall be reported.

(2) This report shall contain the following information:

(i) Name of vessel.

(ii) Permit number.

(iii) Month and day (last day of reporting period).

(iv) Fishing areas by code numbers.

(v) Species caught during the reporting period by species code number (regardless of whether retained or discarded).

(vi) Number of days actually fished in each fishing area during the reporting period.

(vii) Weight of catch by fishing area and species rounded to the nearest tenth of a metric ton.

(3) This weekly report must be in the format illustrated in Appendix IV, which contains instructions for completing the report form, a sample of the form, and a sample of a Telex report.

(4) This report must arrive at the address and time specified in Appendix IV D. The report may be sent by Telex but mail or hand delivery is permitted if it will arrive by the prescribed time. If the report is sent by Telex, a completed copy of the report form must be submitted by mail as a confirmation of the Telex report.

(f) *Weekly report of receipts of U.S. harvested fish.*

(1) Each foreign nation shall submit, through the designated representative, a weekly report stating, on a vessel-by-vessel basis, any receipt of U.S. harvested fish for the weekly period Sunday through Saturday, Greenwich mean time.

(2) This report shall contain the following information:

(i) Name of vessel.

(ii) Permit number.

(iii) Month and day (last day of reporting period).

(iv) Fishing areas by code numbers.

(v) Species received during the week by species code number (regardless of whether retained or discarded).

(vi) Weight of fish received by fishing area and species rounded to the nearest tenth of a metric ton.

(3) This weekly report must be in the format illustrated in Appendix V, which contains instructions for completing the report form, a sample of the form, and a sample of a Telex report.

(4) This report must arrive at the address and time as specified in the submission instructions for the Weekly Catch Report in appendix IV D. The report may be sent by Telex but mail or hand delivery is permitted if it will arrive by the prescribed time. If the report is sent by Telex, a completed copy of the report form must be submitted by mail as a confirmation of the Telex report.

(g) *Weekly report of marine mammal incidental catch.* (1) Each foreign nation shall submit, through the designated representative, a weekly report stating, on a vessel-by-vessel basis, any incidental catch of marine mammals for the weekly period Sunday through Saturday, Greenwich mean time.

(2) This report shall contain the following information:

(i) Name of vessel.

(ii) Permit number.

(iii) For each marine mammal caught:

(A) Date.

(B) Latitude and longitude.

(C) Species by species code number.

(D) Status of mammal by status code number.

(3) This weekly report must be in the format illustrated in appendix VI, which contains instructions for completing the report form, a sample of the form, and a sample of a Telex report.

(4) This report must arrive at the address and time as specified in the submission instructions for the Weekly Catch Report in appendix IV D. The report may be sent by Telex but mail or hand delivery is permitted if it will arrive by the prescribed time. If the report is sent by Telex, a completed copy of the report form must be submitted by mail as a confirmation of the Telex report.

(5) For information regarding the kill, capture, or harassement of marine mammals and the requirements for permits to take marine mammals incidental to fishing operations, see § 611.3(h) of this part and 50 CFR 216.24.

(h) In addition, the owner or operator of each fishing vessel shall provide to the Assistant Administrator, in such form and at such times as the Assistant Administrator may prescribe, such other information as the Assistant Administrator may request to carry out duties under the Act.

(i) The records and logbooks required to be kept by this section shall be:

(1) Accurately and timely maintained in a form satisfactory to the Assistant Administrator; and

(2) Made available for inspection by any authorized officer at any time.

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Appendix I SPECIES CODES

A. Atlantic Ocean Fishes.

CODE	COMMON ENGLISH NAME	SCIENTIFIC NAME
	PRINCIPLE GROUNDFISH	
101	COD, ATLANTIC	GADUS MORHUA
102	HADDOCK	MELANOGRAMMUS AEGLEFINUS
103	REDFISH	SEBASTES MARINUS
104	HAKE, SILVER	MERLUCCIUS BILINEARIS
105	HAKE, RED	UROPHYCIS CHUSS
106	POLLOCK	POLLACHIUS VIRENS
	FLATFISH	
112	PLAICE, AMERICAN	HIPPOGLOSSOIDES PLATESSOIDES
114	FLOUNDER, WITCH	GLYPTOCEPHALUS CYNOGLOSSUS
116	FLOUNDER, YELLOWTAIL	LIMANDA FERRUGINEA
118	GREENLAND HALIBUT (TURBOT)	REINHARDTIUS HIPPOGLOSSOIDES
120	HALIBUT, ATLANTIC	HIPPOGLOSSUS HIPPOGLOSSUS
122	FLOUNDER, WINTER	PSEUDOPLEURONECTES AMERICANUS
124	FLOUNDER, SUMMER	PARALICHTHYS DENTATUS
129	FLATFISHES (NS)	PLEURONECTIFORMES
	OTHER GROUNDFISH	
132	GOOSEFISH	LOPHIUS AMERICANUS
136	SEAROBINS (NS)	TRIGLIDAE
138	TOMCOD, ATLANTIC	MICROGADUS TOMCOD
142	CUNNER	TAUTOGOLABRUS ADSPERSUS
144	CUSK	BROSME BROSME
148	COD, GREENLAND	GADUS OGAC
152	LING	MOLVA MOLVA
154	LUMPFISH	CYCLOPTERUS LUMPUS
158	KINGFISH, NORTHERN	MENTICIRRHUS SAXATILIS
160	PUFFER, NORTHERN	SPHOEROIDES MACULATUS
164	POUT, OCEAN	MACROZOARCES AMERICANUS

A. Atlantic Ocean Fishes.

CODE	COMMON ENGLISH NAME	SCIENTIFIC NAME
168	GRENADIER, ROUNDNOSE	MACROURUS RUPESTRIS
172	LANCES, SAND (NS)	AMMODYTIDAE
176	SCUP	STENOTOMUS CHRYSOPS
180	TAUTOG	TAUTOGA ONITIS
182	TILEFISH	LOPHOLATILUS CHAMAELEONTICEPS
186	HAKE, WHITE	UROPHYCIS TENUIS
188	WOLFFISHES (NS)	ANARHICHADIDAE
199	GROUNDFISH (NS)	
894	SCULPIN (NS)	COTTIDAE
898	SEABASS (NS) (DRUMS)	SCIAENIDAE
	PRINCIPLE PELAGIC	
202	HERRING, ATLANTIC	CLUPEA HARENGUS HARENGUS
204	MACKEREL, ATLANTIC	SCOMBER SCOMBRUS
	OTHER PELAGIC	
210	SALMON (NS)	ONCORHYNCHUS SPP.
212	BUTTERFISH	PEPRILUS TRIACANTHUS
216	MENHADEN, ATLANTIC	BREVOORTIA TYRANNUS
220	SAURY, ATLANTIC	SCOMBERESOX SAURUS
224	ANCHOVY, BAY	ANCHOA MITCHILLI
228	BLUEFISH	POMATOMUS SALTATRIX
232	JACK, CREVALLE	CARANX HIPPOS
240	MACKEREL, KING	SCOMBEREMORUS CAVALLA
244	MACKEREL, SPANISH	SCOMBEREMORUS MACULATUS
252	SAILFISH	ISTIOPHORUS PLATYPTERUS
254	LONGBILL SPEAR FISH	TETRAPTURUS PFLUEGERI
256	MARLIN, WHITE	TETRAPTURUS ALBIDUS
260	MARLIN, BLUE	MAKAIRA NIGRICANS
263	REQUIEM SHARKS (NS)	CARCHARHINIDAE
264	SWORDFISH	XIPHIAS GLADIUS
265	THRESHER SHARKS (NS)	ALOPIIDAE
266	MACKEREL SHARKS (NS)	LAMNIDAE
267	HAMMERHEAD SHARKS (NS)	SPHYRNIDAE
268	TUNA, SKIPJACK (NS)	EUTHYNUS
272	TUNA, ALBACORE	THUNNUS ALALUNGA
274	BONITO, ATLANTIC	SARDA SARDA

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A. Atlantic Ocean Fishes.

CODE	COMMON ENGLISH NAME	SCIENTIFIC NAME
276	TUNNY, LITTLE	EUTHYNNUS ALLETTERATUS
278	TUNA,BIGEYE	THUNNUS OBESUS
280	TUNA,BLUEFIN	THUNNUS THYNNUS
282	TUNA, SKIPJACK	KATSUWONUS PELAMIS
284	TUNA,YELLOWFIN	THUNNUS ALBACARES
289	TUNA (NS)	SCOMBRIDAE
299	PELAGIC FISH(NS)	
400	SMELT, RAINBOW	OSMERUS MORDAX
	OTHER FISH	
302	ALEWIFE	ALOSA PSEUDOHARENGUS
306	EEL, CONGER	CONGER OCEANICUS
308	EEL, AMERICAN	ANGUILLA ROSTRATA
309	HERRING, RIVER (302/334/360)	
310	SHAD, AMERICAN	ALOSA SAPIDISSIMA
312	ARGENTINE, ATLANTIC	ARGENTINA SILUS
314	CROAKER, ATLANTIC	MICROPOGON UNDULATUS
316	NEEDLEFISH, ATLANTIC	STRONGYLURA MARINA
318	SALMON, ATLANTIC	SALMO SALAR
320	SILVERSIDE, ATLANTIC	MENIDIA MENIDIA
322	HERRING, ATLANTIC THREAD	OPISTHONEMA OGLINUM
330	DRUM, BLACK	POGONIAS CROMIS
332	BASS, BLACK SEA	CENTROPRISTIS STRIATA
334	HERRING, BLUEBACK	ALOSA AESTIVALIS
340	CAPELIN	MALLOTUS VILLOSUS
342	CHARS (NS)	SALVELINUS SP.
344	COBIA	RACHYCENTRON CANADUM
346	POMPANO, FLORIDA	TRACHINOTUS CAROLINUS
354	SHAD, GIZZARD	DOROSOMA CEPEDIANUM
356	GRUNTS (NS)	POMADASYIDAE
360	SHAD, HICKORY	ALOSA MEDIOCRIS
370	MULLETS (NS)	MUGILIDAE
380	HARVESTFISH	PEPRILUS ALEPIDOTUS
390	PIGFISH	ORTHOPRISTIS CHRYSOPTERA
402	DRUM, RED	SCIAENOPS OCELLATA
404	PORGY, RED	PAGRUS SEDECIM
406	SCAD, ROUGH (JACK MACKERAL)	TRACHURUS LATHANI
410	PERCH, SAND	DIPLECTRUM FORMOSUM
412	SHEEPSHEAD	ARCHOSARGUS PROBATOCEPHALUS

A. Atlantic Ocean Fishes.

CODE	COMMON ENGLISH NAME	SCIENTIFIC NAME
414	SPOT	LEIOSTOMUS XANTHURUS
416	SEATROUT, SPOTTED	CYNOSCION NEBULOSUS
418	WEAKFISH	CYNOSCION REGALIS
420	BASS, STRIPED	MARONE SAXATALIS
422	STURGEONS (NS)	ACIPENSERIDAE
423	STURGEON, SHORT-NOSED	ACIPENSER BREVIROSTRUM
424	ATLANTIC STURGEON	ACIPENSER OXYRHYNCHUS
430	TARPON	MEGALOPS ATLANTICA
432	TROUTS (NS)	SALMONIDAE
440	PERCH, WHITE	MARONE AMERICANA
459	DOGFISHES (NS)	SQUALIDAE
462	PORBEAGLE	LAMNA NASUS
463	LONGFIN MAKO	ISURUS PAUCUS
464	SHORTFIN MAKO	ISURUS OXYRINCHUS
465	BLUE SHARK	PRIONACE GLAUCA
469	SHARKS (NS)	SQUALIFORMES
479	SKATES (NS)	RAJIFORMES
499	FINFISHES (NS)	OSTEICHTHYES
	INVERTEBRATE	
502	SQUID, LONG-FINNED	LOLIGO PEALEI
504	SQUID, SHORT-FINNED	ILLEX ILLECEBROSUS
509	SQUID (NS)	SEPEIOD AND TEUTHOID SQUIDS
512	CLAM, ATLANTIC RAZOR	ENSIS DIRECTUS
514	CLAM, HARD	MERCENARIA MERCENARIA
516	QUAHOG, OCEAN	ARCTICA ISLANDICA
518	CLAM, SOFT	MYA ARENARIA
520	CLAM, SURF	SPISULA SOLIDISSINA
523	SPONGES (NS)	
529	CLAMS (NS)	
532	SCALLOP, BAY	ARGOPECTEN IRRADIANS
534	SCALLOP, CALICO	ARGOPECTEN GIBBUS
536	SCALLOP, SEA	PLACOPECTEN MAGELLANICUS
539	SCALLOPS (NS)	PECTINIDAE
542	OYSTER, AMERICAN CUPPED (EASTERN)	CRASSOSTREA VIRGINICA
552	MUSSEL, BLUE	MYTILUS EDULIS
559	MUSSELS (NS)	
562	CONCHS (NS)	NEOGASTROPIDAE
564	PERIWINKLES (NS)	MESOGASTROPIDAE
589	MOLLUSCS, MARINE (NS)	

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A. Atlantic Ocean Fishes.

CODE	COMMON ENGLISH NAME	SCIENTIFIC NAME
602	CRAB, ATLANTIC ROCK	CANCER IRRORATUS
604	CRAB, BLUE	CALLINECTES SAPIDUS
606	CRAB, GREEN	CARCINUS MAENAS
608	CRAB, JONAH	CANCER BOREALIS
610	TANNER CRAB (OPILIO, SNOW, QUEEN)	CHIONOECETES OPILIO
612	CRAB, RED	GERYON QUINQUEDENS
619	CRABS, MARINE (NS)	
622	LOBSTER, NORTHERN	HOMARUS AMERICANUS
632	PRAWN, NORTHERN DEEPWATER	PANDALUS BOREALIS
639	SHRIMPS (NS)	PANDALIDAE
649	CRUSTACEANS, MARINE (NS)	
652	SEA-URCHINS (NS)	ECHINOIDIDAE
669	WORMS, MARINE (NS)	POLYCHAETA
672	CRAB, HORSESHOE	LIMULUS POLYPHEMUS
681	CLAMS, MUSSELS, OYSTERS, SCALLOPS (NS)	PELECYPODA
682	CORALS (NS)	
696	OCTOPUS (NS)	OCTOPODA
697	SHRIMP (NS)	
699	INVERTEBRATES, MARINE (NS)	

B. Gulf of Mexico Fishes.

CODE	COMMON ENGLISH NAME	SCIENTIFIC NAME
	PRINCIPLE GROUNDFISH	
705	SOUTHERN KINGFISH	MENTICIRRHUS AMERICANUS
706	GULF KINGFISH	MENTICIRRHUS LITTORALIS
	FLATFISH	
110	PEACOCK FLOUNDER	BOTHUS LUNATUS
111	GULF FLOUNDER	PARALICHTHYS ALBIGUTTA
115	SOUTHERN FLOUNDER	PARALICHTHYS LETHOSTIGMA
117	BROAD FLOUNDER	PARALICHTHYS SQUAMILENTUS
118	GREENLAND HALIBUT (TURBOT)	REINHARDTIUS HIPPOGLOSSOIDES
129	FLATFISHES (NS)	PLEURONECTIFORMES
	ROCKFISH	
130	BLACK SNAPPER	APSILUS DENTATUS
131	QUEEN SNAPPER	ETELIS OCULATUS
133	MUTTON SNAPPER	LUTJANUS ANALIS
134	SCHOOLMASTER	LUTJANUS APODUS
135	BLACKFIN SNAPPER	LUTJANUS BUCCANELLA
137	RED SNAPPER	LUTJANUS CAMPECHANUS
139	CUBERA SNAPPER	LUTJANUS CYANOPTERUS
140	GRAY SNAPPER	LUTJANUS GRISEUS
141	DOG SNAPPER	LUTJANUS JOCU
143	MAHOGANY SNAPPER	LUTJANUS MAHOGONI
145	LANE SNAPPER	LUTJANUS SYNAGRIS
146	SILK SNAPPER	LUTJANUS VIVANUS
147	YELLOWTAIL SNAPPER	OCYURUS CHRYSURUS
149	WENCHMAN	PRISTIPOMOIDES AQUILONARIS
150	VERMILION SNAPPER	RHOMBOPLITES AURORUBENS
151	CARIBBEAN RED SNAPPER	LUTJANUS PURPUREUS
153	VORAZ	PRISTIPOMOIDES MACROPHTHALMUS
155	SNAPPERS (NS)	LUTJANIDAE

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B. Gulf of Mexico Fishes.

CODE	COMMON ENGLISH NAME	SCIENTIFIC NAME
156	TRIPLETAIL	LOBOTES SURINAMENSIS
157	YELLOWFIN MOJARRA	GERRES CINEREUS
159	PORKFISH	ANISOTREMUS VIRGINICUS
161	MARGATE	HAEMULON ALBUM
162	TOMTATE	HAEMULON AUROLINEATUM
163	BLACK GRUNT	HAEMULON BONARIENSE
165	CAESAR GRUNT	HAEMULON CARBONARIUM
166	SMALLMOUTH GRUNT	HAEMULON CHRYSARGYREUM
167	FRENCH GRUNT	HAEMULON FLAVOLINEATUM
169	SPANISH GRUNT	HAEMULON MACROSTOMUM
170	COTTONWICK	HAEMULON MELANURUM
171	SAILORS CHOICE	HAEMULON PARRAI
173	WHITE GRUNT	HAEMULON PLUMIERI
174	BLUESTRIPED GRUNT	HAEMULON SCIURUS
175	STRIPED GRUNT	HAEMULON STRIATUM
179	GRASS PORGY	CALAMUS ARCTIFRONS
181	JOLTHEAD PORGY	CALAMUS BAJONADO
183	SAUCEREYE PORGY	CALAMUS CALAMUS
184	WHITEBONE PORGY	CALAMUS LEUCOSTEUS
185	PLUMA	CALAMUS PENNATULA
187	KNOBBED PORGY	CALAMUS NODOSUS
189	SHEEPSHEAD PORGY	CALAMUS PENNA
190	LITTLEHEAD PORGY	CALAMUS PRORIDENS
191	SPOTTAIL PINFISH	DIPLODUS HOLBROOKI
192	PINFISH	LAGODON RHOMBOIDES
199	PORGIES (NS)	SPARIDAE
437	CONEY	CEPHALOPHOLIS FULVA
439	ROCK HIND	EPINEPHELUS ADSCENSIONIS
441	SPECKLED HIND	EPINEPHELUS DRUMMONDHAYI
442	YELLOWEDGE GROUPER	EPINEPHELUS FLAVOLIMBATUS
443	RED HIND	EPINEPHELUS GUTTATUS
444	JEWFISH	EPINEPHELUS ITAJARA
445	RED GROUPER	EPINEPHELUS MORIO
446	MISTY GROUPER	EPINEPHELUS MYSTACINUS
447	WARSAW GROUPER	EPINEPHELUS NIGRITUS
448	SNOWY GROUPER	EPINEPHELUS NIVEATUS
449	NASSAU GROUPER	EPINEPHELUS STRIATUS
450	BLACK GROUPER	MYCTEROPERCA BONACI
451	YELLOWMOUTH GROUPER	MYCTEROPERCA INTERSTITIALIS

B. Gulf of Mexico Fishes.

CODE	COMMON ENGLISH NAME	SCIENTIFIC NAME
453	GAG	MYCTEROPERCA MICROLEPIS
454	TIGER GROUPER	MYCTEROPERCA TIGRIS
455	YELLOWFIN GROUPER	MYCTEROPERCA VENENOSA
456	GROUPERS (NS)	SERRANIDAE
457	GRAY TILEFISH	CAULOLATILUS MICROPS
458	BLACKLINE TILEFISH	CAULOLATILUS CYANOPS
461	TILEFISH (NS)	BRANCHIOSTEGIDAE
471	YELLOW JACK	CARANX BARTHOLOMAEI
472	BLUE RUNNER	CARANX CRYSOS
474	HORSE-EYE JACK	CARANX LATUS
475	BLACK JACK	CARANX LUGUBRIS
476	BAR JACK	CARANX RUBER
477	LOOKDOWN	SELENE VOMER
478	GREATER AMBERJACK	SERIOLA DUMERILI
480	LESSER AMBERJACK	SERIOLA FASCIATA
481	ALMACO JACK	SERIOLA RIVOLIANA
788	SQUIRRELFISH	HOLOCENTRUS ASCENSIONIS
789	DEEPWATER SQUIRRELFISH	HOLOCENTRUS BULLISI
790	REEF SQUIRRELFISH	HOLOCENTRUS CORUSCUS
791	LONGJAW SQUIRRELFISH	HOLOCENTRUS MARIANUS
792	LONGSPINE SQUIRRELFISH	HOLOCENTRUS RUFUS
793	DUSKY SQUIRRELFISH	HOLOCENTRUS VEXILLARIUS
794	SQUIRRELFISHES (NS)	HOLOCENTRIDAE
795	SILVER PERCH	BAIRDIELLA CHRYSURA
796	YELLOW GOATFISH	MULLOIDICHTHYS MARTINICUS
797	SPOTTED GOATFISH	PSEUDUPENEUS MACULATUS
798	ATLANTIC SPADEFISH	CHAETODIPTERUS FABER
799	BLUE ANGELFISH	HOLACANTHUS BERMUDENSIS
800	QUEEN ANGELFISH	HOLACANTHUS CILIARIS
801	ROCK BEAUTY	HOLACANTHUS TRICOLOR
801	ANGELFISHES (NS)	CHAETODONTIDAE
802	GRAY ANGELFISH	POMACANTHUS ARCUATUS
803	FRENCH ANGELFISH	POMACANTHUS PARU
805	SPANISH HOGFISH	BODIANUS RUFUS
806	HOGFISH	LACHNOLAIMUS MAXIMUS
807	MIDNIGHT PARROTFISH	SCARUS COELESTINUS
808	BLUE PARROTFISH	SCARUS COERULEUS
809	STRIPED PARROTFISH	SCARUS CROICENSIS
810	RAINBOW PARROTFISH	SCARUS GUACAMAIA

B. Gulf of Mexico Fishes.

CODE	COMMON ENGLISH NAME	SCIENTIFIC NAME
811	PRINCESS PARROTFISH	SCARUS TAENIOPTERUS
812	QUEEN PARROTFISH	SCARUS VETULA
813	STOPLIGHT PARROTFISH	SPARISOMA VIRIDE
814	PARROTFISHES (NS)	SCARIDAE
815	GUAGUANCHE	SPHYRAENA GUACHANCHO
816	GRAY TIGGERFISH	BALISTES CAPRISCUS
817	QUEEN TRIGGERFISH	BALISTES VETULA
818	ROUGH TRIGGERFISH	CANTHIDERMIS MACULATUS
819	OCEAN TRIGGERFISH	CANTHIDERMIS SUFFLAMEN
820	BLACK DURGON	MELICHTHYS NIGER
821	SARGASSUM TRIGGERFISH	XANTHICHTHYS RINGENS
822	TRIGGERFISH	CANTHIDERMIS SOBACO
823	SPOTTED TRUNKFISH	LACTOPHRYS BICAUDALIS
824	HONEYCOMB COWFISH	LACTOPHRYS POLYGONIA
825	SCRAWLED COWFISH	LACTOPHRYS QUADRICORNIS
826	TRUNKFISH	LACTOPHRYS TRIGONUS
827	SMOOTH TRUNKFISH	LACTOPHRYS TRIQUETER
828	AQUARIUM FISHES (NS)	
848	REEF FISHES (NS)	
	OTHER GROUNDFISH	
199	GROUNDFISH (NS)	
894	SCULPIN (NS)	COTTIDAE
898	SEABASS (NS) (DRUMS)	SCIAENIDAE
	PRINCIPLE PELAGIC	
205	RAINBOW RUNNER	ELAGATIS BIPINNULATA
206	GREAT BARRACUDA	SPHYRAENA BARRACUDA
	OTHER PELAGIC	
210	SALMON (NS)	ONCORHYNCHUS SPP.
221	FRIGATE MACKEREL	AUXIS THOZARD
223	BULLET MACKEREL	AUXI ROCHEI
234	BIGEYE THRESHER	ALOPIAS SUPERCILIOSUS
235	WHITE SHARK	CARCHARODON CARCHARIAS

B. Gulf of Mexico Fishes.

CODE	COMMON ENGLISH NAME	SCIENTIFIC NAME
236	BASKING SHARK	CETORHINUS MAXIMUS
237	POMPANO DOLPHIN	CORYPHAENA EQUISETIS LINNAEUS
238	DOLPHIN	CORYPHAENA HIPPURUS LINNAEUS
241	BIGNOSE SHARK	CARCHARHINUS ALTIMUS
242	SILKY SHARK	CARCHARHINUS FALCIFORMIS
243	OCEANIC WHITETIP SHARK	CARCHARHINUS LONGIMANUS
245	SPINNER SHARK	CARCHARHINUS MACULIPINNIS
246	NIGHT SHARK	HYPOPRION SIGNATUS
247	GALAPAGOS SHARK	CARCHARHINUS GALAPAGENSIS
248	GULF MENHADEN	BREVOORTIA PATRONUS
249	SCALLOPED HAMMERHEAD	SPHYRNA LEWINI
250	GREAT HAMMERHEAD	SPHYRNA MOKARRAN
251	SMOOTH HAMMERHEAD	SPHYRNA ZYGAENA
255	WAHOO	ACANTHOCYBIUM SOLANDERI
257	CHUB MACKEREL	SCOMBER JAPONICUS
258	CERO	SCOMBEROMORUS REGALIS
259	BLACKFIN TUNA	THUNNUS ATLANTICUS
263	REQUIEM SHARKS (NS)	CARCHARHINIDAE
264	SWORDFISH	XIPHIAS GLADIUS
265	THRESHER SHARKS (NS)	ALOPIIDAE
266	MACKEREL SHARKS (NS)	LAMNIDAE
267	HAMMERHEAD SHARKS (NS)	SPHYRNIDAE
268	TUNA, SKIPJACK (NS)	EUTHYNUS
272	TUNA,ALBACORE	THUNNUS ALALUNGA
278	TUNA,BIGEYE	THUNNUS OBESUS
280	TUNA,BLUEFIN	THUNNUS THYNNUS
282	TUNA, SKIPJACK	KATSUWONUS PELAMIS
284	TUNA,YELLOWFIN	THUNNUS ALBACARES
289	TUNA (NS)	SCOMBRIDAE
299	PELAGIC FISH(NS)	
400	SMELT, RAINBOW	OSMERUS MORDAX
	OTHER FISH	
310	SHAD, AMERICAN	ALOSA SAPIDISSIMA
340	CAPELIN	MALLOTUS VILLOSUS
347	SIXGILL SHARK	HEXANCHUS GRISEUS
348	NURSE SHARK	GINGLYMOSTOMA CIRRATUM

B. Gulf of Mexico Fishes.

CODE	COMMON ENGLISH NAME	SCIENTIFIC NAME
349	WHALE SHARK	RHINCODON TYPUS
350	SAND TIGER SHARK	ODONTASPIS TAURUS
351	FINETOOTH SHARK	APRIONODON ISODON
352	BLACKNOSE SHARK	CARCHARHINUS ACRONOTUS
353	BULL SHARK	CARCHARHINUS LEUCAS
355	BLACKTIP SHARK	CARCHARHINUS LIMBATUS
357	SANDBAR SHARK	CARCHARHINUS MILBERTI
358	DUSKY SHARK	CARCHARHINUS OBSCURUS
359	SMALLTAIL SHARK	CARCHARHINUS POROSUS
361	REEF SHARK	CARCHARHINUS SPRINGERI
362	TIGER SHARK	GALEOCERDO CUVIERI
363	SMOOTH DOGFISH	MUSTELUS CANIS
364	FLORIDA SMOOTHHOUND	MUSTELUS NORRISI
365	LEMON SHARK	NEGAPRION BREVIROSTRIS
366	ATLANTIC SHARPNOSE SHARK	RHIZOPRIONODON TERRAENOVAE
367	BONNETHEAD	SPHYRNA TIBURO
368	SMALLEYE HAMMERHEAD	SPHYRNA TUDES
369	SPINY DOGFISH	SQUALUS ACANTHIAS
371	CUBAN DOGFISH	SQUALUS CUBENSIS
372	STINGRAYS (NS)	DASYATIDAE
373	EAGLE RAYS (NS)	MYLIOBATIDAE
374	LADYFISH	ELOPS SAURUS
376	BONEFISH	ALBULA VULPES
378	EELS (NS)	
379	ROUND HERRING	ETRUMEUS TERES
381	REDEAR SARDINE	HARENGULA HUMERALIS
382	SCALED SARDINE	HARENGULA JAGUANA
383	SPANISH SARDINE	SARDINELLA ANCHOVIA
384	HERRINGS (NS)	CLUPEIDAE
385	STRIPED ANCHOVY	ANCHOA HEPSETUS
386	DUSKY ANCHOVY	ANCHOA LYOLEPIS
388	SILVER ANCHOVY	ENGRAULIS EURYSTOLE
389	ANCHOVIES (NS)	ENGRAULIDAE
391	SEA CATFISH	ARIUS FELIS
392	GAFFTOPSAIL CATFISH	BAGRE MARINUS
393	OFFSHORE HAKE	MERLUCCIUS ALBIDUS
394	ATLANTIC FLYINGFISH	CYPSELURUS HETERURUS
395	FLYING HALFBEAK	EULEPTORHAMPHUS VELOX
396	BALAO	HEMIRAMPHUS BALAO
397	BALIYHOO	HEMIRAMPHUS BRASILIENSIS

B. Gulf of Mexico Fishes.

CODE	COMMON ENGLISH NAME	SCIENTIFIC NAME
398	HALFBEAK	HYPORHAMPHUS UNIFASCIATUS
399	SNOOK	CENTROPOMUS UNDECIMALIS
401	STRIPED BASS	MORONE SAXATILIS
403	SOUTHERN SEA BASS	CENTROPRISTIS MELANA
405	BIGEYE	PRIACANTHUS ARENATUS
408	ATLANTIC BUMPER	CHLOROSCOMBRUS CHRYSURUS
409	ROUND SCAD	DECAPTERUS PUNCTATUS
411	BIGEYE SCAD	SELAR CRUMENOPHTHALMUS
415	PERMIT	TRACHINOTUS FALCATUS
417	SILVER JENNY	EUCINOSTOMUS GULA
422	STURGEONS (NS)	ACIPENSERIDAE
425	SAND SEATROUT	CYNOSCION ARENARIUS
426	STRIPED MULLET	MUGIL CEPHALUS
427	WHITE MULLET	MUGIL CUREMA
428	FANTAIL MULLET	MUGIL TRICHODON
429	ATLANTIC CUTLASSFISH	TRICHIURUS LEPTURUS
431	GULF BUTTERFISH	PEPRILUS BURTI
432	TROUTS (NS)	SALMONIDAE
434	PUFFERS (NS)	TETRAODONTIDAE
465	BLUE SHARK	PRIONACE GLAUCA
469	SHARKS (NS)	SQUALIFORMES
479	SKATES (NS)	RAJIFORMES
482	LONGSPINE PORGY	STENOTOMUS CAPRINUS
499	FINFISHES (NS)	OSTEICHTHYES
	INVERTEBRATE	
509	SQUID (NS)	SEPEIOD AND TEUTHOID SQUIDS
519	WOOL SPONGE	HIPPOSPONGIA LACHNE
521	YELLOW SPONGE	SPONGIA BARBARA
522	GULF GRASS SPONGE	SPONGIA GRAMINEA TAMPA
523	SPONGES (NS)	
525	SEA FANS (NS)	GORGONIA SPP.
526	SEA WHIPS (NS)	ALCYONARIA
527	BLACK CORAL (NS)	ANTIPATHES SPP.
528	QUEEN CONCH	STROMBUS GIGAS
530	WEST INDIAN TOPSHELL	CITTARIUM PICA
533	MANGROVE OYSTER	CRASSOSTREA RHIZOPHORAE
537	SUNRAY VENUS	MACROCALLISTA NIMBOSA

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B. Gulf of Mexico Fishes.

CODE	COMMON ENGLISH NAME	SCIENTIFIC NAME
538	SOUTHERN GUAHOG	MERCENARIA CAMPECHIENSIS
539	SCALLOPS (NS)	PECTINIDAE
540	ARROW SQUID	DORYTEUTHIS PLEI
541	ARROW SQUID	ILLEX COINDETII
543	THUMBSTALL SQUID	LOLLIGUNCULA BREVIS
544	ORANGE-BACK SQUID	OMMASTREPHES PTEROPUS
545	REEF SQUID	SEPIOTEUTHIS SEPIOIDEA
546	REEF OCTOPUS	OCTOPUS BRIAREUS
547	WHITE SPOTTED OCTOPUS	OCTOPUS MACROPUS
548	MEXICAN FOUR-EYED OCTOPUS	OCTOPUS MAYA
549	COMMON OCTOPUS	OCTOPUS VULGARIS
551	STONE CRAB	MENIPPE MERCENARIA
553	SPINY LOBSTER	PANULIRUS ARGUS
554	SLIPPER LOBSTER	PARRIBACUS ANTARCTICUS
555	BROWN SHRIMP	PENAEUS AZTECUS
556	SPOTTED PINK SHRIMP	PENAEUS BRASILIENSIS
557	PINK SHRIMP	PENAEUS DUORARUM
558	WHITE SHRIMP	PENAEUS SETIFERUS
560	SEABOB	XIPHOPENEUS KROYERI
561	SHRIMPS (NS)	PENAEIDAE
563	ROCK SHRIMP	SICYONIA BREVIROSTRIS
565	MEGALOPS SHRIMP	PENAEOPSIS MEGALOPS
566	ROYAL RED SHRIMP	PLEOTICUS ROBUSTUS
567	SCARLET PRAWN	PLESIOPENAEUS EDWARDSIANUS
568	DEEPWATER SHRIMPS (NS)	
569	ORNAMENTAL/AQUARIUM INVERTEBRATES (NS)	
610	TANNER CRAB (OPILIO, SNOW, QUEEN)	CHIONOECETES OPILIO
619	CRABS, MARINE (NS)	
652	SEA-URCHINS (NS)	ECHINOIDIDAE
669	WORMS, MARINE (NS)	POLYCHAETA
681	CLAMS, MUSSELS, OYSTERS, SCALLOPS (NS)	PELECYPODA
682	CORALS (NS)	
696	OCTOPUS (NS)	OCTOPODA
697	SHRIMP (NS)	
699	INVERTEBRATES, MARINE (NS)	

C. Pacific Ocean Fishes.

CODE	COMMON ENGLISH NAME	SCIENTIFIC NAME
	PRINCIPLE GROUNDFISH	
701	POLLOCK (WALLEYE, ALASKA)	THERAGRA CHALCOGRAMMA
702	PACIFIC COD	GADUS MACROCEPHALUS
703	SABLEFISH (BLACK COD)	ANOPLOPOMA FIMBRIA
704	PACIFIC HAKE	MERLUCCIUS PRODUCTUS
	FLATFISH	
118	GREENLAND HALIBUT (TURBOT)	REINHARDTIUS HIPPOGLOSSOIDES
129	FLATFISHES (NS)	PLEURONECTIFORMES
720	YELLOWFIN SOLE	LIMANDA ASPERA
721	ARROWTOOTH FLOUNDER (TURBOT)	ATHERESTHES STOMIAS
722	PACIFIC HALIBUT	HIPPOGLOSSUS STENOLEPIS
723	BUTTER SOLE	ISOPSETTA ISOLEPIS
724	FLATHEAD SOLE	HIPPOGLOSSOIDES ELASSODON
725	ROCK SOLE	LEPIDOPSETTA BILINEATA
726	REX SOLE	GLYPTOCEPHALUS ZACHIRUS
727	ALASKA PLAICE	PLEURONECTES QUADRITUBERCULATUS
728	DOVER SOLE	MICROSTOMUS PACIFICUS
729	ENGLISH SOLE (LEMON SOLE)	PAROPHRYS VETULUS
730	CALIFORNIA TONGUEFISH	SYMPHURUS ATRICAUDA
731	DEEPSEA SOLE	EMBASSICHTHYS BATHYBIUS
732	SLENDER SOLE	LYPOSETTA EXILIS
733	PETRALE SOLE	EOPSETTA JORDANI
734	SANDAB (NS)	BOTHIDAE
735	PACIFIC SANDAB	CITHARICHTHYS SORDIDUS
736	STARRY FLOUNDER	PLATICHTHYS STELLATUS
737	TURBOT (NS)	
738	LONGHEAD DAB	LIMANDA PROBOSCIDEA

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C. Pacific Ocean Fishes.

CODE	COMMON ENGLISH NAME	SCIENTIFIC NAME
739	BERING FLOUNDER	HIPPOGLOSSOIDES ROBUSTUS
	ROCKFISH	
750	CHILIPEPPER ROCKFISH	SEBASTES GOODEI
751	COPPER ROCKFISH	SEBASTES CAURINUS
752	DARK BLOTCHED ROCKFISH	SEBASTES CRAMERI
753	DUSKY ROCKFISH	SEBASTES CILIATUS
754	GRAY ROCKFISH (JAPAN ONLY)	SEBASTES INERMIS
755	GREENSTRIPED ROCKFISH	SEBASTES ELONGATUS
756	HARLEQUIN ROCKFISH	SEBASTES VARIEGATUS
757	LONGSPINE THORNYHEAD ROCKFISH	SEBASTOLOBUS ALTIVELIS
758	NORTHERN ROCKFISH	SEBASTES POLYSPINIS
759	PINK ROSE ROCKFISH	SEBASTES SIMULATOR
760	PYGMY ROCKFISH	SEBASTES WILSONI
761	RED BANDED ROCKFISH	SEBASTES BABCOCKI
762	REDSTRIPE ROCKFISH	SEBASTES PRORIGER
763	ROSETHORN ROCKFISH	SEBASTES HELVOMACULATUS
764	ROSY ROCKFISH	SEBASTES ROSACEUS
765	ROUGHEYE ROCKFISH	SEBASTES ALEUTIANUS
766	SEBASTOLOBUS MACROCHIR	SEBASTOLOBUS MACROCHIR
767	SHARPCHIN ROCKFISH	SEBASTES ZACENTRUS
768	SHORTBELLY ROCKFISH	SEBASTES JORDANI
769	SHORTRAKER ROCKFISH	SEBASTES BOREALIS
770	SHORTSPINE THORNYHEAD ROCKFISH	SEBASTOLOBUS ALASCANUS
771	SILVERGRAY ROCKFISH	SEBASTES BREVISPINIS
772	SPLITNOSE ROCKFISH	SEBASTES DIPLOPROA
773	STRIPETAIL ROCKFISH	SEBASTES SAXICOLA
774	TIGER ROCKFISH	SEBASTES NIGROCINCTUS
775	VERMILION ROCKFISH	SEBASTES MINIATUS
776	WIDOW ROCKFISH	SEBASTES ENTOMELAS
777	YELLOWEYE ROCKFISH	SEBASTES RUBERRIMUS
778	YELLOWMOUTH ROCKFISH	SEBASTES REEDI
779	YELLOWTAIL ROCKFISH	SEBASTES FLAVIDUS
780	PACIFIC OCEAN PERCH	SEBASTES ALUTUS
781	AURORA ROCKFISH	SEBASTES AURORA
782	BLACK ROCKFISH	SEBASTES MELANOPS
783	BLACKGILL ROCKFISH	SEBASTES MELANOSTOMUS

C. Pacific Ocean Fishes.

CODE	COMMON ENGLISH NAME	SCIENTIFIC NAME
784	BLUE ROCKFISH	SEBASTES MYSTINUS
785	BOCACCIO	SEBASTES PAUCISPINIS
786	BROWN ROCKFISH	SEBASTES AURICULATUS
787	CANARY ROCKFISH	SEBASTES PINNIGER
849	ROCKFISH (NS)	SCORPAENIDAE
	OTHER GROUNDFISH	
199	GROUNDFISH (NS)	
850	PROWFISH	ZAPRORA SILENUS
851	SAFFRON COD	ELEGINUS GRACILIS
852	PACIFIC TOMCOD	MICROGADUS PROXIMUS
853	SANDFISH	TRICHODON TRICHODON
854	NORTHERN RONQUIL	RONQUILUS JORDANI
855	SEARCHER	BATHYMASTER SIGNATUS
856	WATTLED EELPOUT	LYCODES PALEARIS
857	POLAR EELPOUT	LYCODES TURNERI
858	TWOLINE EELPOUT	BOTHROCARA BRUNNEUM
859	BASKETWEAVE CUSK-EEL	OTOPHIDIUM SCRIPPSI
860	SPOTTED CUSK-EEL	CHILARA TAYLORI
861	RAGFISH	ICOSTEUS AENIGMATICUS
862	WHITESPOTTED GREENLING	HEXAGRAMMOS STELLERI
863	SPINYHEAD SCULPIN	DASYCOTTUS SETIGER
864	BIGMOUTH SCULPIN	HEMITRIPTERUS BOLINI
865	THREADFIN SCULPIN	ICELINUS FILAMENTOSUS
866	DUSKY SCULPIN	ICELINUS BURCHAMI
867	GREAT SCULPIN	MYOXOCEPHALUS POLYACANTHOCEPHALUS
868	SHORTHORN SCULPIN (WARTY)	MYOXOCEPHALUS SCORPIUS
869	RED IRISH LORD	HEMILEPIDOTUS HEMILEPIDOTUS
870	RIBBED SCULPIN	TRIGLOPS PINGELI
871	CRESTED SCULPIN	BLEPSIAS BILOBUS
872	BROWN IRISH LORD	HEMILEPIDOTUS SPINOSUS
873	BLACKFIN SCULPIN	MALACOCOTTUS KINCAIDI
874	BUFFALO SCULPIN	ENOPHRYS BISON
875	THORNY SCULPIN	ICELUS SPINIGER
876	WARTY POACHER	OCCELLA VERRUCOSA
877	STURGEON POACHER	AGONUS ACIPENSERINUS
878	SAWBACK POACHER	SARRITOR FRENATUS
879	SMOOTH ALLIGATORFISH	ANOPLAGONUS INERMIS

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C. Pacific Ocean Fishes.

CODE	COMMON ENGLISH NAME	SCIENTIFIC NAME
880	BLACKTAIL SNAILFISH	CAREPROCTUS MELANURUS
881	LIPARIS MEGACEPHALUS (SNAILFISH)	LIPARIS MEGACEPHALUS
882	LIPARIS OCHOTENSIS (SNAILFISH)	LIPARIS OCHOTENSIS
883	PACIFIC SPINY LUMPSUCKER	EUMICROTREMUS ORBIS
884	SMOOTH LUMPSUCKER	APTOCYCLUS VENTRICOSUS
885	LINGCOD	OPHIODON ELONGATUS
886	KING-OF-THE-SALMON	TRACHIPTERUS ALTIVELIS
887	SHINING TUBESHOULDER	SAGAMICHTHYS ABEI
888	FROSTFISH	BENTHODESMUS SIMONYI
891	RONQUIL (NS)	BATHYMASTERIDAE
892	EELPOUT (NS)	ZOARCIDEA
893	GREENLING (NS)	HEXAGRAMMIDAE
894	SCULPIN (NS)	COTTIDAE
895	POACHER (NS)	AGONIDAE
896	SNAILFISH (NS)	
897	LUMPFISH (NS)	
898	SEABASS (NS) (DRUMS)	SCIAENIDAE
899	PACIFIC SAND LANCE	AMMODYTES HEXAPTERUS
	PRINCIPLE PELAGIC	
200	PELAGIC ARMORHEAD	PENTACEROS RICHARDSONI
201	ALFONSIN	BERYX SPLENDENS
207	ATKA MACKEREL	PLEUROGRAMMUS MONOPTERYGIUS
208	JACK MACKEREL	TRACHURUS SYMMETRICUS
209	PACIFIC HERRING	CLUPEA HARENGUS PALLASI
	OTHER PELAGIC	
210	SALMON (NS)	ONCORHYNCHUS SPP.
211	STEELHEAD TROUT	SALMO GAIRDNERI
213	CHUM SALMON (DOG)	ONCORHYNCHUS KETA
214	KING SALMON (CHINOOK)	ONCORHYNCHUS TSHAWYTSCHA
215	SILVER (COHO) SALMON	ONCORHYNCHUS KISUTCH
217	RED SALMON (SOCKEYE)	ONCORHYNCHUS NERKA

C. Pacific Ocean Fishes.

CODE	COMMON ENGLISH NAME	SCIENTIFIC NAME
218	PINK SALMON (HUMPBACK)	ONCORHYNCHUS GORBUSCHA
219	EULACHON (CANDLEFISH)	THALEICHTHYS PACIFICUS
222	SAILFISH, MARLIN, SPEARFISH (NS)	ISTIOPHORIDAE
226	PACIFIC SAURY	COLOLABIS SAIRA
227	NORTHERN ANCHOVY	ENGRAULIS MORDAX
229	NIGHT SMELT	SPIRINCHUS STARKSI
230	SURF SMELT	HYPOMESUS PRETIOSUS
231	PACIFIC POMFRET	BRAMA JAPONICA
233	OCEAN SUNFISH	MOLA MOLA
253	BLACK MARLIN	MAKAIRA INDICANS
261	STRIPED MARLIN	TETRAPTURUS AUDIX
262	SHORTBILL SPEARFISH	TETRAPTURUS ANGUSTIROSTRIS
263	REQUIEM SHARKS (NS)	CARCHARHINIDAE
264	SWORDFISH	XIPHIAS GLADIUS
265	THRESHER SHARKS (NS)	ALOPIIDAE
266	MACKEREL SHARKS (NS)	LAMNIDAE
267	HAMMERHEAD SHARKS (NS)	SPHYRNIDAE
268	TUNA, SKIPJACK (NS)	EUTHYNUS
272	TUNA, ALBACORE	THUNNUS ALALUNGA
278	TUNA, BIGEYE	THUNNUS OBESUS
280	TUNA, BLUEFIN	THUNNUS THYNNUS
282	TUNA, SKIPJACK	KATSUWONUS PELAMIS
284	TUNA, YELLOWFIN	THUNNUS ALBACARES
289	TUNA (NS)	SCOMBRIDAE
296	BLENNY (NS)	PHOLIDAE, STICHAEIDAE
297	SMELT (NS)	OSMERIDAE
298	LANTERNFISH (NS)	MYCTOPHIDAE
299	PELAGIC FISH(NS)	
400	SMELT, RAINBOW	OSMERUS MORDAX
	OTHER FISH	
300	THRESHER SHARK	ALOPIAS VULPINUS
301	SOUFFIN SHARK	GALEORHINUS ZYOPTERUS
303	SALMON SHARK	LAMNA DITROPIS
305	BROWN CAT SHARK	APRISTURUS BRUNNEUS
310	SHAD, AMERICAN	ALOSA SAPIDISSIMA
311	HAGFISH (NS)	MYXINIDAE
313	PACIFIC LAMPREY	LAMPETRA TRIDENTATUS
315	RATTAIL (NS)	MACROURIDAE

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C. Pacific Ocean Fishes.

CODE	COMMON ENGLISH NAME	SCIENTIFIC NAME
317	ROUGHSCALE RATTAIL	CORYPHAENOIDES ACROLEPIS
319	PECTORAL RATTAIL	CORYPHAENOIDES PECTORALIS
321	DEEPSEA SKATE	RAJA ABYSSICOLA
323	PACIFIC ELECTRIC RAY	TORPEDO CALIFORNICA
324	BIG SKATE	RAJA BINOCULATA
325	LONGNOSE SKATE	RAJA RHINA
326	STARRY SKATE	RAJA STELLULATA
327	BLACK SKATE (SANDPAPER - M L)	RAJA KINCAIDI
328	RATFISH	HYDROLAGUS COLLIEI
329	PLAINFIN MIDSHIPMAN	PORICHTHYS NOTATUS
331	SNAKE PRICKLEBACK	LUMPENUS SAGITTA
333	ARCTIC SHANNY	STICHAEUS PUNCTATUS
335	DAUBED SHANNY	LUMPENUS MACULATUS
336	GIANT WRYMOUTH	DELOLEPIS GIGANTEA
337	BARRACUDA (NS)	PARALEPIDIDAE
338	MANEFISH	CARISTIUS MACROPUS
339	MEDUSAFISH	ICICHTHYS LOCKINGTONI
340	CAPELIN	MALLOTUS VILLOSUS
341	WOLF-EEL	ANARRHICHTHYS OCELLATUS
343	LONGNOSE LANCETFISH	ALEPISAURUS FEROX
345	LONGFIN DRAGONFISH	TACTOSTOMA MACROPUS
422	STURGEONS (NS)	ACIPENSERIDAE
432	TROUTS (NS)	SALMONIDAE
465	BLUE SHARK	PRIONACE GLAUCA
469	SHARKS (NS)	SQUALIFORMES
479	SKATES (NS)	RAJIFORMES
495	SKATE EGG CASE (NS)	
496	LAMPFISH (NS)	
497	PRICKLEBACK (NS)	STICHAEIDAE
498	VIPERFISH (NS)	CHAULIODONTIDAE
499	FINFISHES (NS)	OSTEICHTHYES
	INVERTEBRATE	
501	TANNER CRAB (BAIRDI, SNOW, QUEEN)	CHIONOECETES BAIRDI
503	BLUE KING CRAB	PARALITHODES PLATYPUS
505	KOREAN HORSEHAIR CRAB	ERIMACRUS ISENBECKII
506	GOLDEN KING CRAB	LITHODES AEQUISPINA
507	LYRE CRAB	HYAS LYRATUS

C. Pacific Ocean Fishes.

CODE	COMMON ENGLISH NAME	SCIENTIFIC NAME
508	KING CRAB	PARALITHODES BREVIPES
509	SQUID (NS)	SEPEIOD AND TEUTHOID SQUIDS
510	BOX CRAB	LOPHOLITHODES FORAMINATUS
511	DUNGENESS CRAB	CANCER MAGISTER
513	RED KING CRAB	PARALITHODES CAMTSCHATICA
515	SEA MOUSE	APHRODITE ACULEATA
517	SPOT SHRIMP	PANDALUS PLATYCEROS
523	SPONGES (NS)	
539	SCALLOPS (NS)	PECTINIDAE
610	TANNER CRAB (OPILIO, SNOW, QUEEN)	CHIONOECETES OPILIO
619	CRABS, MARINE (NS)	
652	SEA-URCHINS (NS)	ECHINOIDIDAE
669	WORMS, MARINE (NS)	POLYCHAETA
673	SNAIL (NS)	GASTROPODA
674	ABALONE (NS)	HALIOTIDAE
675	KING CRAB (NS)	PARALITHODES AND LITHODES SPECIES
675	HERMIT CRAB (NS)	PAGURIDAE
676	TANNER CRAB (NS) (SNOW)	CHIONOCETES SPECIES
677	STARFISH (NS)	ASTEROIDEA
678	BASKET STARFISH (NS)	GORGONOCEPHALUS
679	BRITTLE STARFISH	OPHIUROIDEA
680	SEA SLUG (NS) - (NUDIBRANCH)	NUDIBRANCHIATA
681	CLAMS, MUSSELS, OYSTERS, SCALLOPS (NS)	PELECYPODA
682	CORALS (NS)	
683	ISOPOD (NS)	ISOPODA
685	ASCIDIAN, SEA SQUIRT, TUNICATE	UROCHORDATA
686	BARNACLES (NS)	CIRRIPEDIA
688	JELLYFISH (NS)	SCYPHOZOA
689	SEA CUCUMBER (NS)	HOLOTHURIOIDEA
690	LIMPET (NS)	PATELLA
691	CRINOIDS (NS)	CRINOIDEA
693	SEA ANEMONE (NS)	ACTINIARIA
694	SEA POTATOE (NS)	HALOCYNTHIA, SP.
695	SEA PEN (NS)	PENNATULA
696	OCTOPUS (NS)	OCTOPODA
697	SHRIMP (NS)	
698	SPINEY LOBSTERS (NS)	PALINURIDAE
699	INVERTEBRATES, MARINE (NS)	

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D. Marine Mammals.

CODE	COMMON ENGLISH NAME	SCIENTIFIC NAME
	MARINE MAMMALS	
900	BOWHEAD WHALE	BALAENA MYSTICETUS
901	BLACK RIGHT WHALE	BALAENA GLACIALIS
902	SOUTHERN RIGHT WHALE	BALAENA AUSTRALIS
903	PYGMY RIGHT WHALE	CAPEREA MARGINATA
904	GRAY WHALE	ESCHRICHTIUS ROBUSTUS
905	BLUE WHALE	BALAENOPTERA MUSCULUS
906	FIN WHALE, FINBACK	BALAENOPTERA PHYSALUS
907	SEI WHALE	BALAENOPTERA BOREALIS
908	BRYDE'S WHALE	BALAENOPTERA EDENI
909	MINKE WHALE	BALAENOPTERA ACUTOROSTRATA
910	HUMPBACK WHALE	MEGAPTERA NOVAEANGLIAE
911	SPERM WHALE	PHYSETER CATODON
912	PYGMY SPERM WHALE	KOGIA BREVICEPS
913	DWARF SPERM WHALE	KOGIA SIMUS
914	NARWHAL	MONODON MONOCEROS
915	WHITE WHALE	DELPHINAPTERUS LEUCAS
916	BAIRD'S BEAKED WHALE	BERARDIUS BAIRDII
917	LONGMAN'S BEAKED WHALE	MESOPLODON PACIFICIUS
918	SOWERBY'S BEAKED WHALE	MESOPLODON BIDENS
919	BLAINVILLE'S BEAKED WHALE	MESOPLODON DENSIROSTRIS
920	GERVAIS' BEAKED WHALE	MESOPLODON EUROPAEUS
921	GRAY'S BEAKED WHALE	MESOPLODON GRAYI
922	STEJNEGER'S BEAKED WHALE	MESOPLODON STEJNEGERI
923	TRUE'S BEAKED WHALE	MESOPLODON MIRUS
924	GINKGO-TOOTHED BEAKED WHALE	MESOPLODON GINKGODENS
925	HUBB'S BEAKED WHALE	MESOPLODON CARLHUBBSI
926	CUVIER'S BEAKED WHALE	ZIPHIUS CAVIROSTRIS
927	NORTHERN BOTTLENOSE WHALE	HYPEROODON AMPULLATUS

D. Marine Mammals.

CODE	COMMON ENGLISH NAME	SCIENTIFIC NAME
928	MELON-HEADED WHALE, ELECTRA	PEPONOCEPHALA ELECTRA
929	PYGMY KILLER WHALE	FERESA ATTENUATA
930	FALSE KILLER WHALE	PSEUDORCA CRASSIDENS
931	KILLER WHALE	ORCINUS ORCA
932	LONG-FINNED PILOT WHALE	GLOBICEPHALA MELAENA
933	SHORT-FINNED PILOT WHALE	GLOBICEPHALA MACRORHYNCHUS
934	ROUGH-TOOTHED DOLPHIN	STENO BREDANENSIS
935	WHITE-BEAKED DOLPHIN	LAGENORHYNCHUS ALBIROSTRIS
936	ATLANTIC WHITE-SIDED DOLPHIN	LAGENORHYNCHUS ACUTUS
937	DUSKY DOLPHIN	LAGENORHYNCHUS OBSCURUS
938	PACIFIC WHITE-SIDED DOLPHIN	LAGENORHYNCHUS OBLIQUIDENS
939	FRASER'S (SARAWAK) DOLPHIN	LAGENODELPHIS HOSEI
940	COMMON DOLPHIN	DELPHINUS DELPHIS
941	BOTTLENOSE DOLPHIN	TURSIOPS TRUNCATUS
942	RISSO'S DOLPHIN, GRAMPUS	GRAMPUS GRISEUS
943	SPOTTED DOLPHIN	STENELLA ATTENUATA
944	SPINNER DOLPHIN	STENELLA LONGIROSTRIS
945	STRIPED DOLPHIN, STREAKER	STENELLA COERULEOALBA
946	NORTHERN RIGHT WHALE DOLPHIN	LISSODELPHIS BOREALIS
947	HARBOR PORPOISE	PHOCOENA PHOCOENA
948	VAQUITA, COCHITO	PHOCOENA SINUS
949	DALL'S PORPOISE	PHOCOENOIDES DALLII
950	GANGES SUSU	PLATANISTA GANGETICA
951	INDUS SUSU, INDUS RIVER DOLPHIN	PLATANISTA MINOR
952	BOUTU	INIA GEOFFRENSIS
953	WHITE FLAG PORPOISE	LIPOTES VEXILLIFER
954	FRANCISCANA	PONTOPORIA BLAINVILLEI
955	NORTHERN SEA LION	EUMETOPIAS JUBATUS
956	CALIFORNIA SEA LION	ZALOPHUS CALIFORNIANUS CALIFORNIANUS
957	SOUTH AMERICAN SEA LION	OTARIA FLAVESCENS

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D. Marine Mammals.

CODE	COMMON ENGLISH NAME	SCIENTIFIC NAME
958	NORTHERN FUR SEAL	CALLORHINUS URSINUS
959	GUADALUPE FUR SEAL	ARCTOCEPHALUS TOWNSENDI
960	JUAN FERNANDEZ FUR SEAL	ARCTOCEPHALUS PHILIPPII
961	GALAPAGOS FUR SEAL	ARCTOCEPHALUS GALAPAGOLNSIS
962	SOUTH AMERICAN FUR SEAL	ARCTOCEPHALUS AUSTRALIS
963	SOUTH AFRICAN FUR SEAL	ARCTOCEPHALUS PUSILLUS PUSILLUS
964	NEW ZEALAND FUR SEAL	ARCTOCEPHALUS FORSTERI
965	KERGUELEN FUR SEAL	ARCTOCEPHALUS GAZELLA
966	WALRUS	ODOBENUS ROSMARUS
967	HARBOR SEALS	PHOCA VITULINA
968	LARGHA SEAL, SPOTTED SEAL	PHOCA LARGHA
969	RINGED SEAL	PHOCA HISPIDA
970	BAIKAL SEAL	PHOCA SIBIRICA
971	CASPIAN SEAL	PHOCA CASPICA
972	HARP SEAL, GREENLAND SEAL	PHOCA GROENLANDICA
973	RIBBON SEAL	PHOCA FASCIATA
974	BEARDED SEAL	ERIGNATHUS BARBATUS
975	HOODED SEAL	CYSTOPHORA CRISTATA
976	GRAY SEAL	HALICHOERUS GRYPUS
977	MEDITERRANEAN MONK SEAL	MONACHUS MONACHUS
978	CARIBBEAN MONK SEAL	MONACHUS TROPICALIS
979	HAWAIIAN MONK SEAL	MONACHUS SCHAUINSLANDI
980	SOUTHERN ELEPHANT SEAL	MIROUNGA LEONINA
981	NORTHERN ELEPHANT SEAL	MIROUNGA ANGUSTIROSTRIS
982	CRABEATER SEAL	LOBODON CARCINOPHAGUS
983	ROSS SEAL	OMMATOPHOCA ROSSII
984	LEOPARD SEAL	HYDRURGA LEPTONYX
985	WEDDELL SEAL	LEPTONYCHOTES WEDDELLI
986	SEA OTTER	ENHYDRA LUTRIS
987	POLAR BEAR	URSUS MARITIMUS
988	WEST INDIAN MANATEE	TRICHECHUS MANATUS
992	PILOT WHALES (NS)	GLOBICEPHALA SP.
993	BALEEN WHALES	MYSTICETI
		UNSPECIFIED

D. Marine Mammals.

CODE	COMMON ENGLISH NAME	SCIENTIFIC NAME
994	TOOTHED WHALES (NS)	ODONTOCETI
995	SEALS (NS)	PINNIPEDIA PHOCIDAE
996	SEA LIONS (NS)	PINNIPEDIA OTARRIDAE
997	SEAL, SEA LION, WALRUSES (NS)	PINNIPEDIA
998	PORPOISE (NS)	CETACEA DELPHINIDAE
999	WHALE (NS)	CETACEA

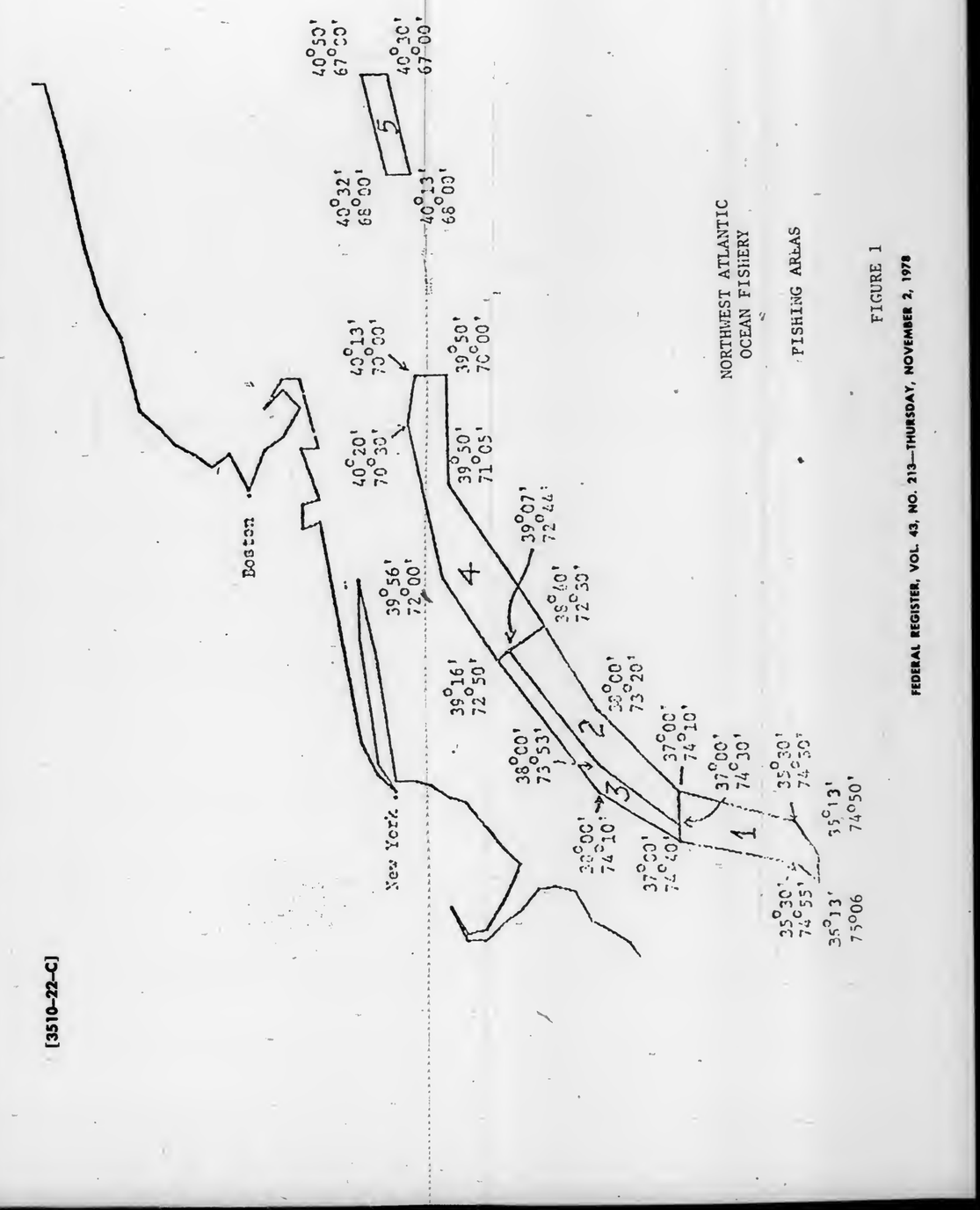
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APPENDIX II—AREA CODES

Code No.		Figure No.
A. Northwest Atlantic Ocean Fishery:		
01	Atlantic Area 1	1
02	Atlantic Area 2	1
03	Atlantic Area 3	1
04	Atlantic Area 4	1
05	Atlantic Area 5	1
B. Pacific:		
51	Bering Sea Area I	2
52	Bering Sea Area II	2
53	Bering Sea Area III	2
54	Bering Sea Area IV	2
61	Shumagin	3
62	Chirikof	3
63	Kodiak	3
64	Yakutat	3
65	Southeastern	3
66	Charlotte	3
67	Vancouver	3
71	Columbia	3
72	Eureka	3
73	Monterey	3
74	Conception	3
81	Hawaiian Islands FCZ*	
82	Guam and Northern Mariana Islands FCZ*	
83	American Samoa FCZ*	
C. Atlantic Billfish and Sharks Fishery:		
11	Caribbean Area 11	4
12	Gulf of Mexico Area 12	4
13	Gulf of Mexico Area 13	4
14	Gulf of Mexico Area 14	4
15	Atlantic Area 15	4
16	Atlantic Area 16	4
17	Atlantic Area 17	4

*FCZ means the U.S. 200-mile fishery conservation zone.



NORTHWEST ATLANTIC OCEAN FISHERY

FISHING AREAS

FIGURE 1

[3510-22-C]

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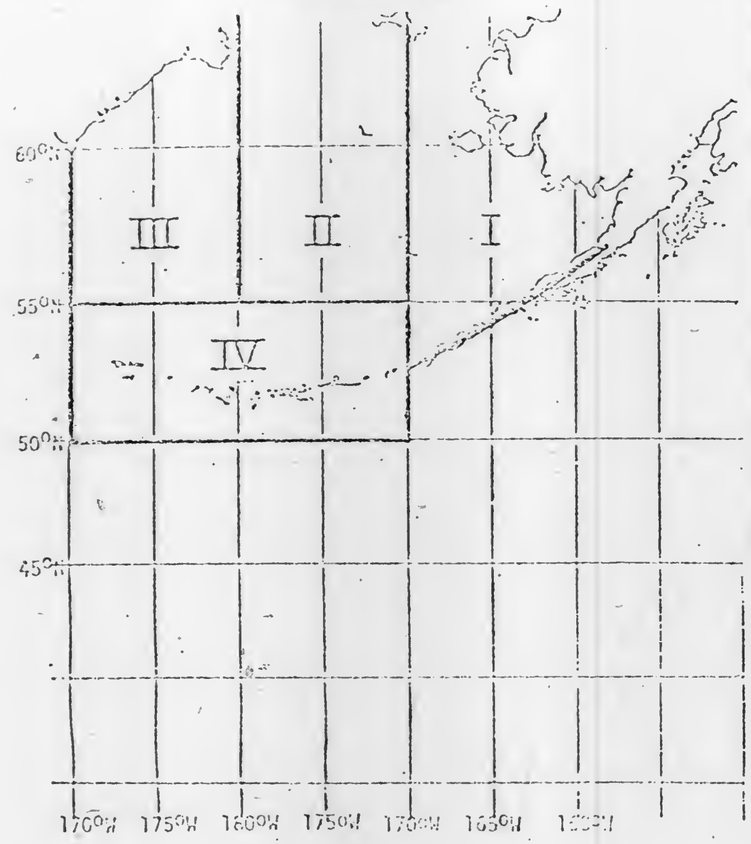


Figure 2. Fishing areas of the Bering Sea and Aleutian Islands.

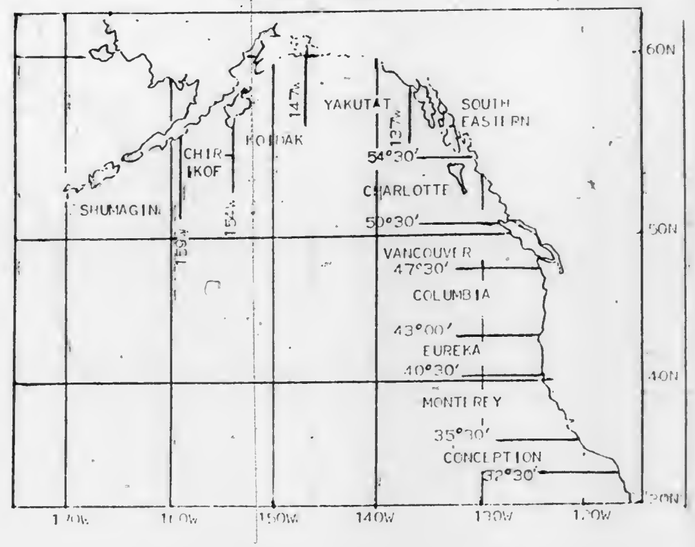


Figure 3. Fishing Areas of the Gulf of Alaska and Northeast Pacific.

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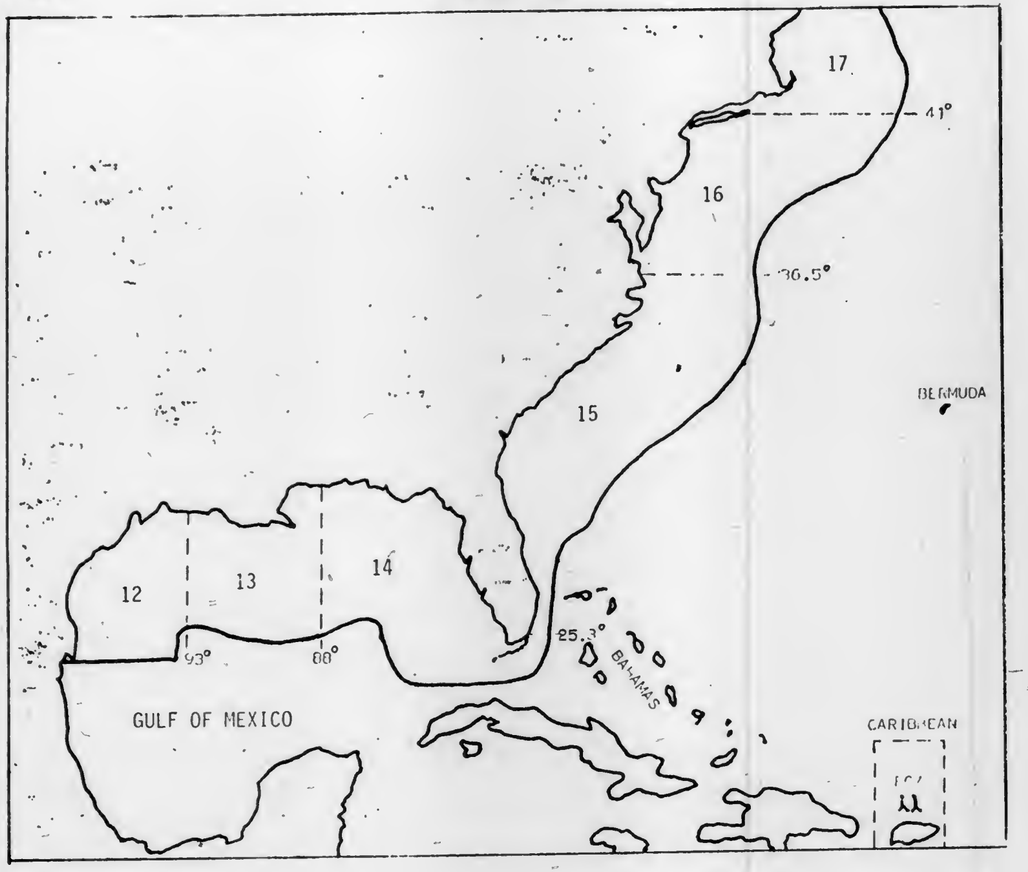


Figure 4. Fishing Areas of the Atlantic Billfish and Sharks Fishery.

APPENDIX III

DAILY CUMULATIVE CATCH LOG

A. *Form entries.* 1. Vessel name and call sign: Enter name and international radio call sign (IRCS) as shown on the permit.

2. Permit number: Enter assigned permit number for the current year.

3. Fishing area and code number: Enter area and code number, from appendix II, in which the fish were caught. The catch from each area shall be maintained on a separate form.

4. Date: Enter the day based on Greenwich mean time, on which the catch was taken.

5. Species: Enter the common name and species code for each species caught for which there is an applicable national allocation. (See § 611.21 for national allocations.) Use appropriate species codes from appendix I.

6. Catch: Enter each day's catch by species, to the nearest hundredth of a metric ton, round weight, by fishing area.

7. Disposition: For each species, specify the disposition as follows: Enter "C" for fish consumed on board and for fish which are frozen or otherwise processed other than for fishmeal; enter "M" for fish which are processed for fishmeal; and enter "D" for fish which are discarded. For individual fish which are in part used for fishmeal with the remainder otherwise processed, enter "C".

8. Cumulative: Enter the cumulative total catch, by species, to the nearest hundredth of a metric ton, round wieght, by fishing area.

B. *Log maintenance.* The cumulative catch log is to be updated within 12 hours following the end of the day of record. Entries as to weights shall be based on the most accurate method available to the vessel including, but not limited to, scale round weights, factory weights converted to round weights, or estimate deck weights.

DAILY CUMULATIVE CATCH LOG

PERMIT NO. _____

VESSEL NAME AND CALL SIGN: _____

FISHING AREA AND CODE NUMBER: _____

DATE			SPECIES:			SPECIES:			SPECIES:		
DAY	MONTH	YEAR	CATCH	DISP.	CUMULATIVE	CATCH	DISP.	CUMULATIVE	CATCH	DISP.	CUMULATIVE

[3510-22-C]

APPENDIX IV

WEEKLY CATCH REPORT

A. *Report form entries.* 1. Page numbering: Sequentially number each page and the total number of pages in each submission. For example, the pages of a submission encompassing the catches of three vessels would be numbered "Page 1 of 3", "Page 2 of 3", and "Page 3 of 3".

2. Vessel name: Enter the vessel name as shown on the permit, flush left, up to 20 characters, in the space provided.

3. Permit number: Enter the current permit number without hyphens.

4. Month/Day: Enter the month and day on which the weekly reporting period ended. A reporting period begins on Sunday at 0001 hours, G.m.t. (except during the first week of each year when it begins on January 1) and ends on Saturday at 2400 hours, G.m.t. (except during the last week of each year when it ends on December 31).

For example, for the report period ending on Saturday, April 7, 1979, enter: 0407.

5. Area Code: Enter the code from Appendix II for each area in which the vessel fished during the reporting period.

6. Species: Enter the code from Appendix I for each allocated species caught during the reporting period. In addition, in the Washington, Oregon, California trawl fishery, enter the species code 210 for salmon and the species code 722 for halibut.

7. Days fished: Enter the number of days during which fishing gear was placed in the water in each fishing area during the reporting period.

8. Catch: Enter the round weight, to the nearest tenth of a metric ton, by species and area, of allocated species caught during the reporting period, regardless of whether retained or discarded. In addition, in the Washington, Oregon, California trawl fishery, for salmon and halibut enter *number of fish* discarded.

9. Designated representative: Enter the name of the designated representative who is responsible for submitting reports for the foreign nation.

10. Date: Enter the date the report is submitted to the National Marine Fisheries Service by the designated representative.

B. *Telex reports.* 1. To ensure receipt of the Weekly Catch Report in a timely manner, Telex reports may be used. If a Telex report is submitted, a completed copy of the report form must be submitted by mail as a confirmation. Designated representatives may include a number of vessel reports in one Telex message providing the information is submitted on a vessel-by-vessel basis.

2. Reports submitted by Telex shall contain the message identifier "CATREP" as the first group of the text to indicate that the information which follows constitutes a Weekly Catch Report. Data shall be submitted as follows:

Vessel name/Permit number//Date//Area//Species/Catch//Species/Catch, etc.//Days fished// Area// Species/Catch, etc.//Days fished//.

C. *Example of a Weekly Catch Report.* 1. The stern trawler *Navis*, permit number LT—79-0001-A, entered the fishery conservation zone on Sunday March 11, 1979, began fishing in the Yakutat area (code 64) of the Gulf of Alaska on March 13, and continued fishing in that area the morning of March 14. The afternoon of March 14, the vessel shifted to the Kodiak area (code 63), commenced fishing that evening, and continued fishing through Saturday, March 17, 1979. (Note that March 14 counts as a day fished in *both* area 64 and area 63.) In the Yakutat area the vessel caught 121.6 tons of pollock (code 701); 17.8 tons of Pacific ocean perch (code 780), and 8.0 tons of Atka mackerel (code 207). In the Kodiak area the vessel caught 23.4 tons of pollock, 23.7 tons of Pacific ocean perch, 86.4 tons of Atka mackerel, and .4 tons of sablefish (code 703).

2. The text of the Telex report would appear as follows:

CATREP

NAVIS/LT790001A//0317//64//701/121.6//780/17.8//207/8.0//2//63//701/23.4//780/
23.7//207/86.4//703//.4//4//

3. The completed form would appear as follows:

D. *Submission instructions.* 1. Weekly reports must be received from designated representatives in the prescribed format by the appropriate Regional/Center Director of the National Marine Fisheries Service by the times indicated below:

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WEEKLY CATCH REPORT

PAGE 1 OF 1

VESSEL NAME: NAVIS

REPORT NUMBER: LT-79-0001-A

MONTH DAY: 06 13

DATE: 3/20/79

SPECIES CAUGHT (METRIC TONS) AND DAYS FISHED BY AREA

AREA CODE	SPECIES CODES 701	780	207	703	DAYS FISHED
64	121.6	17.8	8.0		2
53	23.4	23.7	86.4	.4	4

DESIGNATED REPRESENTATIVE: Smith Shipping Co.

[3510-22-C]

Fishery	Address	Report received by
Northwest Atlantic Ocean.....	Director, Northeast Region, National Marine Fisheries Service, 14 Elm St., Gloucester, Mass. 01930, telex No.: 940007.	Wednesday, 1900 G.m.t., following reporting period.
Washington, Oregon California Trawl.	Director, Northwest Region, National Marine Fisheries Service, 1700 Westlake Ave. North, Seattle, Wash. 98109, telex No.: 9104442786.	Do.
Seamount Groundfish.....	Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry St., Terminal Island, Calif. 90731.	Do.
Atlantic Billfish and Sharks.	Director, Southeast Fisheries Center, National Marine Fisheries Service, 75 Virginia Beach Dr., Miami, Fla. 33149.	Do.
Bering Sea and Aleutian Islands.		
Gulf of Alaska Groundfish ...	Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99801, telex No.: 09945-377.	Second Monday, 1900 G.m.t., following reporting period.
Snails (Bering Sea)		
Crab (Bering Sea)		

2. By agreement with the appropriate Regional/Center Director, weekly reports may be submitted to some other appropriate representative of the National Marine Fisheries Service.

APPENDIX V

WEEKLY REPORT OF RECEIPT OF U.S. HARVESTED FISH

A. *Report form entries:*

1. Page numbering, vessel name, permit number, month/day, area code, designated representative, and date shall be entered in accordance with the instructions for the Weekly Catch Report contained in Appendix IV A 1-5, 9 and 10.

2. Species: Enter the code from Appendix I for each species received during the reporting period, including those which are subsequently discarded.

3. Amounts received: Enter the round weight, to the nearest tenth of a metric ton, by species and area, of species received from vessels of the United States during the reporting period, regardless of whether retained or discarded.

B. *Telex reports:*

1. To ensure receipt of the Weekly Report of Receipts of U.S. Harvested Fish in a timely manner, Telex reports may be used. If a Telex report is submitted, a completed copy of the report form must be submitted by mail as a confirmation. Designated representatives may include a number of vessel reports in one Telex message providing the information is submitted on a vessel-by-vessel basis.

2. Reports submitted by Telex shall contain the message identifier "RECREP" as the first group of the text to indicate that the information which follows constitutes a Weekly Report of Receipt of U.S. Harvested Fish. Data shall be submitted as follows.

Vessel name/Permit number//Date//Area//Species/Amount received//Species/Amount received//Species/Amount received, etc.//Area//Species/Amount received//Species/Amount received, etc.

C. *Example of a Weekly Report of Receipt of U.S. Harvested Fish:*

1. The stern trawler *Navis*, operating under permit number LT-79-0001-A which authorizes the receipt of U.S. harvested Pacific hake and other associated species in the Washington, Oregon, California trawl fishery, receives from U.S. vessels in the Columbia area (code 71) during the week of June 3-9, 1979, the following species and amounts: Pacific hake (code 704), 156.3 tons; rockfishes (code 849), 2 tons; jack mackerel (code 208), 27.0 tons; and other species (code 499), .1 tons.

2. The text of the Telex report would appear as follows:

RECREP
NAVIS/LT790001A//0609//71//704/156.3//849/.2//208/27.0//499/.1//

3. The completed form would appear as follows:

V 4 3 \ 2 1 3 NO 2 7 8 UMI

PAGE 1 OF 1

WEEKLY REPORT OF
RECEIPT OF U.S. HARVESTED FISH

VESSEL NAME: NAVIS

PERMIT NUMBER: LT790001A

MONTH: 06 DAY: 19

DATE: 6/12/79

SPECIES RECEIVED (METRIC TONS) BY AREA

71	704	849	208	499
	1563	.2	27.0	.1

SHIPPING CO

SMITH

DESIGNATED REPRESENTATIVE:

[3510-22-C]

D. *Submission instructions.* The submission instructions for the Weekly Catch Report, as contained in Appendix IV D, are applicable to this report. No report is required, however, for vessels which receive no U.S. harvested fish during the reporting period.

APPENDIX VI

WEEKLY REPORT OF MARINE MAMMAL INCIDENTAL CATCH

A. *Report form entries.* 1. Page numbering, vessel name, permit number, designated representative, and date shall be entered in accordance with the instructions for the Weekly Catch Report contained in Appendix IV A 1-3, 9, and 10.

2. For each mammal caught enter:

a. Date caught. Enter the month and date, e.g., for May 6, 1980, enter: 0506.

b. Latitude and longitude to the nearest degree.

c. Species code from Appendix I.

d. Status code as follows: 1—Killed during capture; 2—Injured during capture; 3—Dead prior to capture; and 4—Uninjured.

B. *Telex reports.* 1. To ensure receipt of the Weekly Report of Marine Mammal Incidental Catch in a timely manner, Telex reports may be used. If a Telex report is submitted, a completed copy of the report form must be submitted by mail as a confirmation. Designated representatives may include a number of vessel reports in one Telex message providing the information is submitted on a vessel-by-vessel basis.

2. Reports submitted by Telex shall contain the message identified "MAMREP" as the first group of the text to indicate that the information which follows constitutes a Weekly Report of Marine Mammal Incidental Catch. Data shall be submitted as follows:

Vessel name/Permit number//Date/Lat./
Long./Species/Status//Date/Lat./
Long./Species/Status//Date, etc.//

C. *Example of a Weekly Report of Marine Mammal Incidental Catch.* 1. The stern trawler *Navis*, permit number LT-79-0001-A, commenced fishing in the Bering Sea Area II on April 27, 1979. No marine mammals were taken incidental to fishing activities until May 15 when two harbor seals (code 967) were taken at 56°10' N., 171°25' W. One was killed during retrieval of the trawl and the other was uninjured. On May 17 at 56°35' N., 171°40' W., a northern sea lion (code 955) was injured during capture.

2. The text of the Telex report would appear as follows:

MAMREP

NAVIS/LT790001A//0515/56N/171W/967/"
1//0515/56N/171W/967/4//0517/57N/
172W/955/2//

3. The completed form would appear as follows:

[3510-22-C]

WEEKLY REPORT OF MARINE MAMMAL INCIDENTIAL CATCh

PAGE 1 OF 1

VESSEL NAME

PERMIT NUMBER

RECORD CATCH OF INDIVIDUAL ANIMALS - ONE ANIMAL PER LINE

STATUS CODES

1. KILLED DURING CAPTURE
2. INJURED DURING CAPTURE
3. DEAD PRIOR TO CAPTURE
4. UNINJURED

DATE (MM/DD)	LATITUDE (Degrees)	LONGITUDE (Degrees)	SPECIES CODE	STATUS CODE
[illegible]	56 N	171 W	76 1	1
05/15	60 N	171 W	76 1	4
05/17	57 N	172 W	75 5	2

DESIGNATED REPRESENTATIVE [illegible] DATE 5/21/75

D. *Submission instructions.* The submission instructions for the Weekly Catch Report, as contained in appendix IV D, are applicable to this report. No report is required, however, for vessels which have no incidental catch of marine mammals during the reporting period.

§ 611.10 Fishery support operations.

(a) Fishery support operations are those activities described in § 611.2(r)(3).

(b) Fishery support operations by foreign fishing vessels within the fishery conservation zone are allowed only in those areas and during those times in which the vessel being supported is authorized to conduct directed fisheries, and under such other circumstances as may be designated in these regulations or the permit.

(c) No foreign fishing vessel may conduct fishery support operations in support of a vessel of the United States except as specifically authorized in the supporting vessel's permit.

§ 611.11 Gear conflicts.

(a) Each fishing vessel shall conduct its operations with due regard for the activities of other fishing vessels. Fishing vessels using mobile fishing gear shall take special care to minimize the possibility of conflict with, and damage to, fixed fishing gear.

(b) Each foreign fishing vessel shall maintain on its bridge a current plot of broadcast fixed-gear locations for the area in which it is fishing.

(c) Each foreign fishing vessel which is involved in a gear conflict, or which retrieves the gear of another fishing vessel in its gear, shall immediately notify the appropriate Coast Guard commander as indicated in § 611.4.

(d) Claims concerning the loss of or damage to the fishing vessel, fishing gear or catch of a U.S. citizen which may have been caused by a foreign fishing vessel fishing pursuant to the act may be resolved as follows:

(1) Claims involving loss or damage of property amounting to $25,000 or less must be submitted to binding arbitration whenever demanded by the U.S. claimant or the owner or operator of the foreign fishing vessel which may have caused the loss or damage. If arbitration is demanded, both the U.S. claimant and the owner or operator of the foreign vessel, or their agents, must appear at the arbitration proceedings and be bound by the decision of the arbitrator.

(2) Claims involving loss or damage of property amounting to over $25,000 must be submitted to binding arbitration whenever demanded by the U.S. claimant. If arbitration is demanded by the U.S. claimant, both the U.S. claimant and the owner or operator of the foreign vessel, or their agents, must appear at the arbitration proceedings and the parties will be bound by the decision of the arbitrator.

(3) A demand for arbitration must be made in writing to the other party. Any arbitration proceeding under this paragraph shall be conducted according to the Commercial Arbitration rules of the American Arbitration Association, and shall be conducted in the United States. The list from which arbitrators are selected will, whenever possible, include individuals with knowledge in fishery matters or admiralty law.

§ 611.12 Directed fisheries.

(a) No foreign fishing vessel may conduct a directed fishery unless such directed fishery is authorized by, and conducted in accordance with, this part 611.

(b) It shall be a rebuttable presumption that any haul that contains more than 50 percent by weight or number of fish (as appropriate for the gear in use) of any species or species group (such as "other species") was conducted for the purpose of catching that species or species group and therefore constitutes a directed fishery for that species or species group.

§ 611.13 Incidental catch—prohibited species.

(a) Each foreign fishing vessel shall minimize its catch of prohibited species.

(b) Each foreign fishing vessel shall sort its catch as soon as possible after retrieval of the catch and, after allowing for sampling by an observer (if any), shall return any catch of prohibited species or parts thereof to the sea immediately with a minimum of injury regardless of its condition.

(c) It shall be a rebuttable presumption that any prohibited species or part thereof found on board a foreign fishing vessel was caught and retained in violation of this part 611.

§ 611.14 Incidental catch—other species.

(a) A fishing vessel may retain its incidental catch of any species for which there is an applicable, unfulfilled national allocation. Regardless of whether or not the catch of such authorized incidental species is retained or discarded it will be counted against the applicable national allocation.

(b) Species of fish which a foreign fishing vessel is not specifically authorized to retain under this part shall be treated as prohibited species in accordance with § 611.13.

§ 611.15 Fishery closure procedures.

(a) A foreign fishing vessel's authorization to engage in fishing shall be canceled when the Assistant Administrator finds that:

(1) The optimum yield for the directed fishery species has been reached;

(2) The optimum yield for any species or species group (such as "other species") caught as an incidental catch in the directed fishery has been reached;

(3) The total allowable level of foreign fishing for the directed fishery species has been reached;

(4) The total allowable level of foreign fishing for any species or species group (such as "other species") caught as an incidental catch in the directed fishery has been reached;

(5) Any applicable vessel-day limitation for the fishery or area has been reached;

(6) The applicable national allocation for the directed fishery species involved has been reached; or

(7) The applicable national allocation for any species or species group (such as "other species") caught as an incidental catch during the directed fishery has been reached.

(b) Vessel check-in/check-out information, United States surveillance observations, observer reports, and foreign catch and effort reports will be used to make the determinations listed in § 611.15(a). If the National Marine Fisheries Service (NMFS) estimates of catch or other values made during the season differ from those reported by the foreign fleets, immediate efforts will be initiated by the NMFS through the appropriate foreign authorities to resolve such differences. If, however, differences still persist after such efforts have been made, NMFS estimates shall be the basis for decisions and shall prevail.

(c) When closing a fishery, the Assistant Administrator will notify: (1) The foreign nation(s) involved; and

(2) The designated representative for any affected fishing vessel. If possible, at least 48 hours prior notice of the closing will be given. Failure of the Assistant Administrator to so notify will not relieve the foreign nation of its responsibilities to terminate fishing by its vessels when applicable allocations are reached.

(d) Any cancellation under this section of a foreign fishing vessel's authorization to engage in a fishery shall remain in effect until an applicable new or increased allocation becomes available unless earlier specified by the Assistant Administrator or by the regulations in this part 611.

§ 611.16 Disposal of fishing gear and other articles.

(a) Except in cases of emergency involving the safety of the ship or crew; or as specifically authorized by communication from the Coast Guard, by an authorized officer, or by an embarked observer, no fishing vessel may

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intentionally place into the fishery conservation zone, any article, including abandoned fishing gear, which may:

(1) Interfere with fishing or obstruct fishing gear or vessels; or

(2) Cause damage to any fishery resource or marine mammal.

(b) If any such article is encountered, or in the event of accidental or emergency placing of such article into the fishery conservation zone, the operator of the vessel shall immediately report the incident to the appropriate Coast Guard Commander (as provided in § 611.4) giving:

(1) The name of the reporting person and vessel;

(2) The nature of the article;

(3) The location of the article; and

(4) The time and date of the incident.

(c) All fishing gear which is set or otherwise deployed in a manner in which it may entrap or otherwise catch fish shall be tended as frequently as necessary to insure its catch remains suitable for the use intended.

§ 611.17 Scientific research.

(a) The appropriate NMFS Center Director may authorize limited "scientific research" as described in paragraph (b) of this section under terms and conditions to be specified by the Center Director.

(b) The term "scientific research" contained in paragraph (r) of § 611.2 and paragraph (a) of this section may include certain fishing activities such as the catching, taking, or harvesting of fish in commercial quantities, or the use of gear capable of catching, taking, or harvesting fish in commercial quantities, or fishing in areas, at times, for species, and with gear, which may not be otherwise authorized, if such activities are carried out in full cooperation with the United States.

Subpart B—Surpluses

§ 611.20 Total allowable level of foreign fishing.

(a) The total allowable level of foreign fishing (TALFF), if any, with respect to any fishery subject to the exclusive fishery management authority of the United States shall be that portion of the optimum yield (OY) of such fishery which will not be harvested by vessels of the United States.

(b) Each assessment of OY and each assessment of the anticipated U.S. harvest will be reviewed during each fishing season. Adjustments to TALFF's will be made based on updated information relating to status of stocks, estimated and actual performance of domestic and foreign fleets, and other relevant factors.

(c) The following table lists the annual TALFF's by species and fisheries. Unless otherwise specified, the annual period corresponds to the calendar year.

TABLE I

Species code	Species	Fishery	TALFF (metric tons)
212	Butterfish	Northwest Atlantic Ocean	4,000
105	Hake, red	do	23,400
104	Hake, silver	do	52,200
309	Herring, river	do	500
204	Mackerel, Atlantic	do	1,200
499	Other finfish	do	46,800
502	Squid, long-finned	do	30,000
504	Squid, short-finned	do	20,000
469	Sharks	Atlantic billfish and sharks	1,150
704	Hake, Pacific	Washington, Oregon, (California, trawl reserved).	
129	Flounders	do	[1]
208	Mackerel, jack	do	
849	Rockfishes, including Pacific Ocean perch.	do	[1]
703	Sablefish	do	[1]
499	Other species	do	[1]
501 and 610	Crab, tanner	Crab	Reserved
200, 201, and 199	Armorhead, alfonsins, and other groundfish.	Seamount groundfish	[2]2,000
702	Cod, Pacific	Gulf of Alaska groundfish	Reserved [3,4]
129	Flounders, including yellowfin sole	do	[3,4]
207	Mackerel, Atka	do	[3,4]
780	Perch, Pacific Ocean	do	[3,4]
701	Pollock	do	[3,4]
849	Rockfishes, other than Pacific Ocean perch.	do	[3,4]
703	Sablefish	do	[3,4]
509	Squid	do	[3,4]
499	Other species	do	[3,4]
702	Cod, Pacific	Bering Sea and Aleutian Islands	[4]56,500
129	Flounders, other than yellowfin sole.	do	139,000
209	Herring, Pacific	do	8,670
207	Mackerel, Atka	do	24,800
780	Perch, Pacific Ocean	do	21,500
701	Pollock	do	950,000
703	Sablefish	do	[4]3,900
720	Sole, yellowfin	do	106,000
509	Squid	do	10,000
499	Other species	do	93,000
673	Snails (meats)		3,000

[1] Incidental catch only.

[2] The TALFF for armorheads, alfonsins, and other groundfish resources is subject to additional restrictions on total effort by foreign fishing vessels: No more than 50 vessel days of trawling and 50 vessel days of bottom longlining will be allowed in this fishery.

[3] TALFF period is from Dec. 1, 1978, through Oct. 31, 1979. Thereafter, annual TALFF period is Nov. 1 to Nov. 1.

[4] Does not include amount held in reserve.

§ 611.21 Allocations.

The Secretary of State, in cooperation with the Secretary, determines the allocation among foreign nations of the TALFF. The Secretary of State officially notifies each foreign nation of its allocation by fishery and species. The burdern of ascertaining and accurately transmitting current allocations and status of harvest of an applicable allocation to fishing vessels shall be upon the foreign nation and the owner or operator of the foreign fishing vessel.

§ 611.22 Fee schedule for foreign fishing permits. [Reserved]

Subpart C—Atlantic Ocean

§ 611.50 Northwest Atlantic Ocean fishery.

(a) *Purpose.* This subpart regulates all foreign fishing conducted under a Governing International Fishery Agreement within the Atlantic Ocean north of 35°00′ N. latitude, except for the longline fishery which is regulated under § 611.60.

(b) *Authorized fishery.* (1) Foreign fishing vessels may engage in fishing

only in the areas specified in Figure 1 during the seasons and with the type of gear specified in Table I, and in accordance with applicable national allocations.

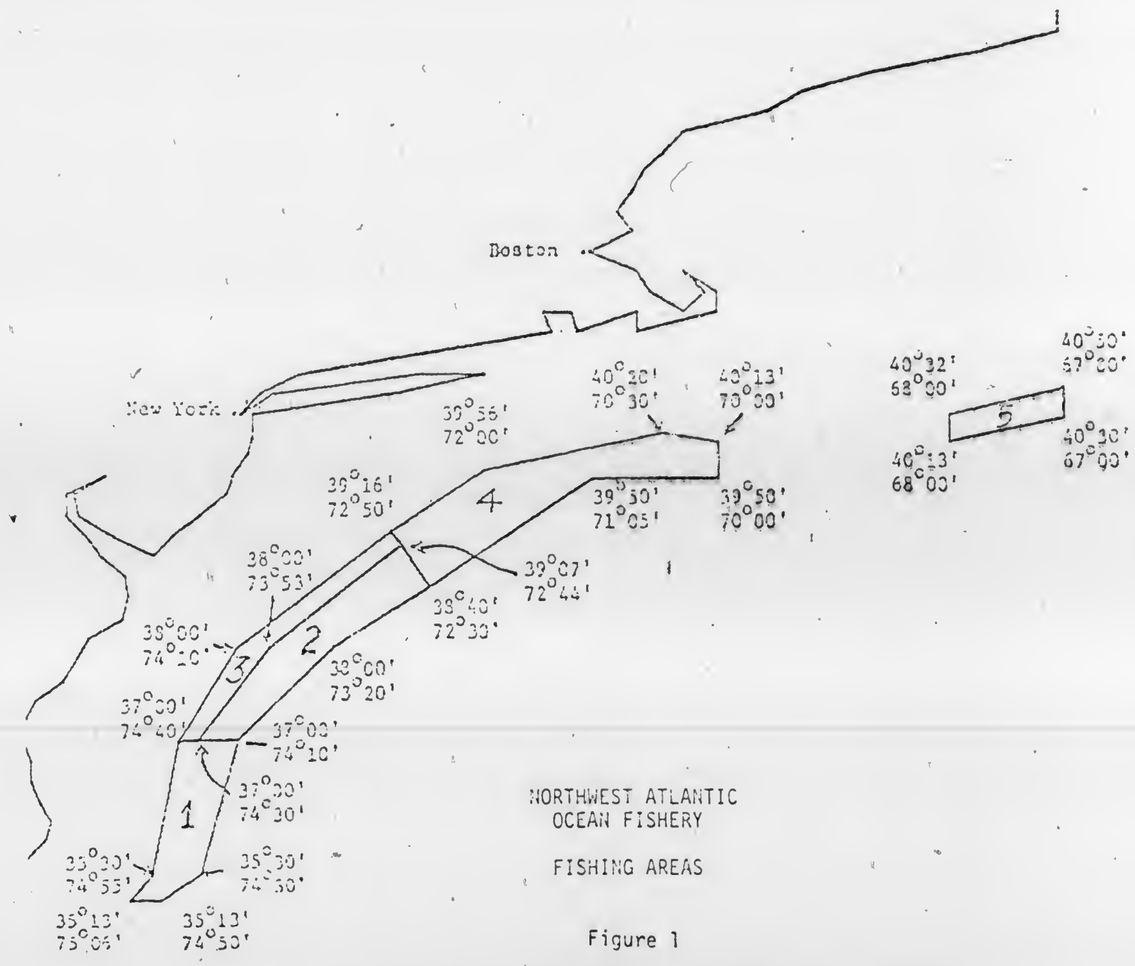
(2) The TALFF's for red hake and silver hake are divided between Area 5 and the other four areas as follows:

	Silver hake	Red hake
Areas 1 through 4	[Reserved]	
Area 5		
Total		

(3) The category "other finfish" used in allocations includes all species except:

(i) The other allocated species, namely: silver hake, red hake, short-finned squid, long-finned squid, Atlantic mackerel, river herring (includes alewife, blueback herring, and hickory shad), and butterfish; and

(ii) American shad, Atlantic cod, Atlantic herring, Atlantic menhaden, Atlantic redfish, Atlantic salmon, all billfish, black sea bass, bluefish, croaker, haddock, pollock, scup, sea turtles, sharks (except dogfish), spot, striped bass, tilefish, yellowtail flounder, weakfish and Continental Shelf fishery resources and other invertebrates (except nonallocated squids).



NORTHWEST ATLANTIC
OCEAN FISHERY

FISHING AREAS

Figure 1

Table I. Fishing gear and season restrictions by fishing area.
Northwest Atlantic Ocean Fishery

Off Bottom Gear Only

Area/1	January	February	March	April	May	June	July	August	September	October	November	Decem
1												
2	//////	//////	//////			//////	//////	//////	2/			
3	//////	//////	//////					//////	//////	//////	//////	//////
4												
5												

Bottom Gear and Off Bottom Gear

Area/2	January	February	March	April	May	June	July	August	September	October	November	Decemb
1												
2												
3												
4	//////	//////	//////									
5												

Unless otherwise noted, seasons open at 0001 hours local time on the first day of the month and terminate at 2400 hours local time on the last day of the month.

1/ Coordinates of the various areas are set forth in Figure 1.

2/ Season begins at 0001 hours local time on June 15, and terminates at 2400 hours local time on September 15.

////// Denotes maximum open fishing season, subject to possible earlier closure for some or all nations in accordance with §611.15

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(4) The taking of any species for which a nation has an allocation is permitted, provided that:

(i) The foreign nation has not caught its allocation of any species. If a foreign nation has caught its allocation of any species, all further fishing (as defined in § 611.2(r)(1)) by that nation must cease, even if other allocations have not been reached. Therefore, it is essential that foreign nations plan their fishing strategy to insure that the reaching of an allocation for one species does not result in the premature closing of a nation's fishery for other allocated species.

(ii) The fishery has not been closed under § 611.15.

(5) Foreign fishing vessels may elect to retain or discard allocated species, but the computation of allocation utilization and fee refunds will be based on the total quantity of that species which was caught. Prohibited species, however, must always be returned to the sea as required under § 611.13.

(c) *Gear restrictions.* (1) No foreign fishing vessel may use on the bottom a trawl net having, in any part of the net, meshes of less than 60 millimeters (inside measure when wet after use).

(2) No foreign fishing vessel may use any trawl net having, in any part of the net, meshes of less than 45 millimeters (inside measure when wet after use).

(3) Meshes are to be measured by a flat, wedge-shaped gauge having a taper of 2 centimeters in 8 centimeters and a thickness of 2.3 millimeters, inserted into meshes under a pressure or pull of 5 kilograms. The mesh size of a net shall be taken to be the average of the measurements of any series of 20 consecutive meshes, at least 10 meshes from the lacings, and when measured in the cod end of the net beginning at the after end and running parallel to the long axis.

(4) No foreign fishing vessel may use any device or method which would have the effect of reducing mesh size except that:

(i) Chafing gear may be attached to the underside of the cod end of bottom trawl nets. Chafing gear may not be attached to trawl nets having a mesh size of less than 60 millimeters.

(ii) Net strengtheners may be attached to the cod end of trawl nets providing such net strengtheners consist of mesh material identical or similar to the material of the cod end and have a minimum mesh size of twice the minimum authorized mesh size.

(5) To qualify as off-bottom gear, a trawl net must:

(i) Be a truly pelagic trawl net, operated with neither the doors nor the net mouth in contact with the bottom; or

(ii) Be rigged so that the net mouth operates not less than 60 centimeters above the bottom. An otherwise standard bottom trawl net will be considered to meet this requirement providing:

(A) It has attached perpendicular to the net mouth "hanging line" chains not shorter than 60 centimeters;

(B) Each chain hangs loose or is attached to steel bobbins; and

(C) No weights or other attachments are directly secured to the "hanging line" other than the chains specified in paragraph (c)(5)(ii)(A) of this section, or flotation devices.

(d) *Collection, maintenance, and reporting of data.* (1) Each foreign nation or foreign fishing vessel shall collect, maintain, or report, on a timely basis, accurate data relating to fishing operations as specified below. All submissions required below shall be sent to the Regional Director, National Marine Fisheries Service, 14 Elm Street, Gloucester, Mass. 01930, Telex number 940007. In addition to the requirements of § 611.9, the following logs or reports are required:

(i) *Fishing log.* Each vessel which engages in fishing, as defined in § 611.2(r)(1), shall maintain a record of all catches during the permit period. While no form is specified, the fishing log shall contain the following information on a set-by-set basis:

(A) Date;

(B) Trawl number (number sets consecutively each day);

(C) Times of commencement and completion of each set;

(D) Vessel's positions in degrees and minutes of latitude and longitude at the times of commencement and completion of each set;

(E) Type of gear used;

(F) Mesh size (inside measure when wet after use);

(G) Quantity of total catch to the nearest hundredth of a metric ton;

(H) Quantity of each species to the nearest hundredth of a metric ton (use species codes from Appendix I to §611.9);

(I) Disposition of the catch, by species (human consumption (including fish consumed on board), fishmeal, or discarded).

(ii) *Quarterly scientific report.* (A) Each nation whose vessels engage in fishing in the Northwest Atlantic Ocean fishery shall submit not later than three months after the close of each quarter a quarterly scientific report of the catch and effort of each such vessel to:

Director,
Northeast Fisheries Center,
National Marine Fisheries Service,
Woods Hole, Mass. 02543.

Quarterly scientific reports shall be submitted for each vessel covering biweekly intervals for each 30 minute square area in which the vessel engaged in fishing and for each gear type used by the vessel in a given 30 minute square area. Effort data must be submitted whether or not any catch was taken. The catch of each species taken, even if discarded, must be shown in kilograms (live round weight). Quarterly scientific reports may be submitted in the format shown in Figure 1 or using magnetic tape, computer cards, or printouts.

(B) Entries on the quarterly scientific report (QSR) form shall be made as follows (item numbers correspond to data fields as shown on the form in Figure 1):

(1) List year and quarter for which report is prepared. For example: 1979/2 designates 1979, second quarter, i.e., April, May, and June.

(2) List vessel name as it appears on vessel permit.

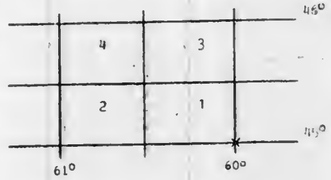
(3) List vessel permit number.

(4) List code number designating vessel tonnage class (GRT) based on the following:

Tonnage class (GRT)	Code No.
0–24.9	1
25–49.9	2
50–149.9	3
150–499.9	4
500–999.9	5
1,000–1,999.9	6
2,000 and over	7

(5) The catch and effort of each fishing vessel during each 2-week period must be reported by 30 minute square area. If, during a given 2-week period, the vessel operated in only one 30 minute square area, only one QSR form need be submitted. If, during a given 2-week period, the vessel operated in more than one 30 minute square area, a separate QSR form must be submitted for each 30 minute square area in which the vessel operated.

Each 30 minute square area must be listed in item (5) according to the following system:



The lower right corner of the 1 degree x 1 degree rectangle is determined by the latitude and longitude (in degrees), and the four 30 x 30 minute unit areas within the 1 degree rectangle should be designated by 5-digit codes as: 45601, 45602, 45603, 45604. The position of the 30 x 30 minute unit areas within the 1 degree x 1 degree rectangle (as indicated by the 5th digit of the code) *must always* be as indicated in the above diagram.

The 5-digit code of the 30 minute square area for which the report is prepared must be listed in item (5).

(6) The standard abbreviation, based on the following list, of the fishing gear used during each 2-week period must be listed in item (6):

Gear category	Standard abbreviation
Bottom otter trawl (side)	OTB-1
Bottom otter trawl (stern)	OTB-2
Off-bottom otter trawl (see § 611.50(c)(5) for definition of this gear	OTB-3
Midwater otter trawl (side)	OTM-1
Midwater otter trawl (stern)	OTM-2
Bottom pair trawl	PTB
Midwater pair trawl	PTM
Purse seine	PS
Gillnets (set)	GNS
Gillnets (drift)	GND
Gillnets (fixed)	GNF
Longlines (set)	LLS
Longlines (drift)	LLD
Traps	FIX
Miscellaneous gears (other than above)	MLS

If only one category of fishing gear was used during a given 2-week period in a given 30 minute square area, only one QSR form need be submitted. If more than one category of fishing gear was used during a given 2-week period in a given 30 minute square area, a separate QSR form must be submitted for each category of fishing gear used.

(7) List main species sought and species code (as listed in Appendix I to § 611.9) of that species.

(8) List the sheet number and the total number of sheets submitted for each vessel for the quarter for which the report is prepared. Thus, if 6 sheets are submitted for the vessel within the quarter, list 1 of 6, 2 of 6, etc.

(9) List the numerical abbreviation for each month included in the quarterly reporting period based on the following:

Month:	*Abbreviation*
January	01
February	02
March	03
April	04
May	05
June	06
July	07
August	08
September	09
October	10
November	11
December	12

(10) The second 2-week reporting period in a given month will vary in length depending on the number of days in the month. For this reason, the last day of the second 2-week reporting period must be listed for each month. For example, the second 2-week reporting period in January will end on day 31, for February either on day 28 or 29, for March on day 31, for April on day 30, etc.

(11) If possible, the specific effort descriptor of the level of effort applied using a given category of fishing gear should be listed according to the following table of effort descriptors:

Fishing gears	Effort measure descriptors	Definitions
Surrounding nets (purse seines).	No. of sets	Number of times the gear has been set or shot, whether or not a catch was made.
Trawls	No. of hours fished	Number of hours during which the trawl was in the water (midwater trawl), or on or off the bottom (bottom trawl and off-bottom trawl), and fishing.
Gillnets (set or drift).	No. of effort units	Length of nets expressed in 100-meter units multiplied by the number of sets made (=accumulated total length, in meters, of nets used in a given time period divided by 100).
Gillnets (fixed).	No. of effort units	Length of net expressed in 100-meter units multiplied by the number of times the net was cleared.
Traps	No. of effort units	Number of days fished times the number of units hauled.
Longlines (set or drift).	Thousands of hooks	Number of hooks fished in a given time period divided by 1000.

If effort cannot be reported using the appropriate descriptor from (11), above, enter for each reporting period:

(12) Number of days the vessel was on the grounds;

(13) Number of days the vessel fished (any portion of a day fished shall be counted as one day fished); and

(14) Hours fished.

(15) In the appropriate column list the catch in kilograms (live round weight) of each species taken in a given 2-week period, whether or not such species was retained or discarded.

(16) The grand total of the catch in each 2-week period must be listed in kilograms (live round weight).

(17) List the species name.

(18) Species code (as listed in Appendix I to § 611.9) of each species taken in a given reporting period, whether or not such species was retained or discarded.

NOTE:—If insufficient space is provided on a single QSR form to list all such species, additional species may be shown on an additional QSR form. That form should be attached to the initial QSR form of which it forms a part.

(19) List the totals of all columns.

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[3510-22-C]

Figure 1 QSR FORM FOR REPORTING NOMINAL CATCHES AND CORRESPONDING FISHING EFFORT

(1) year/ quarter	(2) vessel name	(3) vessel permit number	(4) vessel size
(5) 30 x 30 minute square area	(6) fishing gear	(7) main species sought/species code	(8) sheet #___ of ___ sheets

EFFORT DATA

(9) month	1 - 15	15 -	1 - 15	15 -	(Total)
(10) days (from ___ to ___)					
(11)					
(12) days on ground					
(13) days fished					
(14) hours fished					

(15) CATCH DATA (live round weight in kilograms)

| (16) GRAND TOTAL | | | | |

V 4 3 / 2 1 3

Subpart E—Northeast Pacific Ocean

§ 611.70 Washington, Oregon, California trawl fishery. [Reserved]

Subpart F—Western Pacific Ocean

§ 611.80 Seamount groundfish fishery.

(a) *Purpose.* This subpart regulates all foreign fishing conducted under a Governing International Fishery Agreement in the fishery conservation zone of the western Pacific Ocean.

(b) *Authorized fishery.* (1) Foreign vessels may engage in fishing only in accordance with applicable national allocations. The category "other groundfish" used in allocations includes all species of finfish caught incidental to directed fishing for pelagic armorheads and alfonsins.

(2) *Effort restrictions.* The annual vessel day limit for total foreign fishing effort is 50 vessel days each of trawling and bottom longlining.

(3) *Prohibited species.* All Continental Shelf fishery resources, and all other species of fish except for alfonsins, armorheads and other groundfish, are prohibited species and shall be treated in accordance with § 611.13.

(c) *Open area.* Foreign fishing vessels may engage in fishing for pelagic armorheads, alfonsins, and other groundfish only in those portions of the fishery conservation zone west of the 180° meridian and north of 28° N. latitude.

(d) *Open season.* Foreign fishing authorized under this subpart may begin at 0800 G.m.t. on May 1 and will terminate not later than 0800 G.m.t. on October 1. This fishery also may be closed in accordance with § 611.15.

(e) *Gear restrictions.* No gear other than trawl or bottom longline gear may be used.

(f) *Collection, maintenance, and, reporting of data.* Each foreign nation or foreign fishing vessel shall collect, maintain, or report on a timely basis, accurate data relating to fishing operations as specified below. All submissions required below shall be sent to the Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, Calif. 90731 or, in the case of logbook data, hand delivered to the National Marine Fisheries Service observer on board the vessel upon his request. In addition to the requirements of § 611.9, the following logs and reports are required:

(1) *Fishing log.* (i) Each fishing vessel which conducts trawling operations shall maintain and submit a fishing log which contains data for each haul as follows:

(A) Catch, by individual species, to the nearest one-tenth (0.1) m.t.;

(B) The approximate weight (kilograms), by genus, of the incidental catch of the corals designated in § 611.2(h) of this Part.

(C) The time at the beginning of the haul and the total duration of the haul to the nearest five (5) minutes;

(D) The location at the midpoint of each haul to the nearest one-tenth (0.1) minute of latitude and longitude;

(E) The average depth of the seabottom to the nearest meter;

(F) The average fishing depth of the footrope to the nearest meter;

(G) The average fishing speed of the vessel (towing speed) to the nearest one-tenth (0.1) knot;

(H) The date;

(I) The vessel permit number;

(J) The codend mesh size to the nearest millimeter;

(K) The length of the footrope to the nearest one-tenth (0.1) meter and average distance between footrope and headrope to the nearest one-tenth (0.1) meter.

(11) Each fishing vessel which conducts longlining operations shall maintain and submit a fishing log which contains data for each fishing day as follows:

(A) Midday location of fishing, to the nearest one-tenth (0.1) minute of latitude and longitude;

(B) Number of hooks set and average soak time;

(C) Number of fish caught, by species, for pelagic armorhead, alfonsin, and other goundfish species;

(D) Average depth of hooks set, in meters.

(2) *Annual report.* Each nation whose vessels engage in the seamount groundfish fishery shall submit by February 28 of the following year, annual catch and effort statistics as follows: (i) Catch in metric tons by gear type by month by area to the nearest one-half degree (0.5°) latitude and by one degree (1°) longitude, by the following species groupings: pelagic armorhead, alfonsin, other groundfish; (ii) Catch in kilograms of corals taken incidental to fishing operations by month by area to the nearest one-tenth degree (0.1°) latitude and longitude by the following species groupings: pink coral, gold coral, bamboo coral, other corals; and (iii) Effort, in hours trawled or average number of hooks soaked per 24-hour period, by month by area to the nearest one-half degree (0.5°) latitude and one degree (1°) longitude.

Subpart G—North Pacific Ocean and Bering Sea

§ 611.90 General provisions.

(a) *Purpose.* This Subpart regulates all foreign fishing conducted under a Governing International Fishery Agreement in the fishery conservation zone seaward of the State of Alaska.

(b) *Open Season.* Except as otherwise specified in the following sections, fishing by foreign vessels may be conducted throughout the year. The specific times for opening and closing seasons and areas in this Subpart shall be 0800 G.m.t. on the dates indicated. These fisheries also may be closed in accordance with § 611.15.

(c) *Fishing areas.* (1) *General.* Unless specifically authorized, no foreign vessel may engage in fishing within 12 nautical miles of the baseline used to measure the territorial sea.

(2) *Support operations.* Loading and other support operations are permitted by foreign vessels only in areas where the vessel being supported is authorized to fish, and in the following areas between 3 and 12 nautical miles from the baseline used to measure the territorial sea:

(i) Near Forrester Island, Alaska, bounded on the north by 54°54′ N. latitude, on the east by 133°16′ W. longitude, and on the south by 54°44′ N. latitude;

(ii) On the east side of Kayak Island, Alaska, between 59°48′ N. latitude and 59°56′ N. latitude west of 143°53′ W. longitude and on the west side by Kayak Island between 59°52′ N. latitude and 60°07′ N. latitude east of 145° W. longitude;

(iii) North of Tonki Cape on Afognak Island, Alaska, bounded on the north by 58°35′ N. latitude, on the south by 58°25′ N. latitude, on the west by 152°02′ W. longitude and on the east by 151°52′ W. longitude;

(iv) North and west of Sanak Island, Alaska, bounded on the north by 54°36′ N. latitude, on the south by 54°26′ N. latitude, on the west by 163°05′ W. longitude and on the east by 162°40′ W. longitude;

(v) On the south side of Unalaska Island, Alaska, between 167°18′ W. longitude and 167°40′ W. longitude (from January 1 to October 15, only);

(vi) On the north side of Unalaska Island, Alaska, between 167°15′ W. longitude and 167°35′ W. longitude (from January 1 to October 15, only);

(vii) On the south side of Umnak Island, Alaska, between 168°15′ W. longitude and 168°30′ W. longitude (from October 15 to January 1, only);

(viii) On the north side of Umnak Island, Alaska, between 168°25′ W. longitude and 168°40′ W. longitude and between 168°50′ W. longitude and 169°00′ W. longitude (from October 15 to January 1, only);

(ix) Off St. George Island of the Pribilof Islands, Alaska (from November 1 to May 1, only);

(x) On the north side of St. Matthew Island, Alaska, between 172°29′ W. longitude, and 172°46′ W. longitude, and on the south side of St. Matthew Island, between 172°17′ W. longitude, and 172°35′ W. longitude, and between 172°54′ W. longitude, and 173°04′ W. longitude.

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(d) *Statistical reporting.* (1) In addition to the requirements of § 611.9, the owner or operator of any foreign fishing vessel shall maintain catch and effort statistics as required by this Subpart and shall report the information, through the designated representative, to the Director, Alaska Region, National Marine Fisheries Service, Juneau, Alaska, U.S.A. 99801.

(2) *Cumulative catch log and weekly catch report.* The requirements of § 611.9(d) that each vessel maintain a daily cumulative catch log and of § 611.9(e) that the weekly catch report be on a vessel-by-vessel basis are waived for those fishing vessels that are not equipped with processing facilities and deliver all catches to a factory ship, provided that a consolidated cumulative catch log is maintained by the factory ship which accounts for all such fish received and provided the required data for the fishing vessels are consolidated and reported by the factory ship.

§ 611.91 Crab fishery. [Reserved]

§ 611.92 Gulf of Alaska groundfish fishery. [Reserved]

§ 611.93 Bering Sea and Aleutian Islands fishery.

(a) *Purpose.* This section regulates foreign fishing for all species of fish, except snow (tanner) crab and snails, in the Bering Sea and that portion of the North Pacific Ocean south of the Aleutian Islands chain west of 170° W. longitude.

(b) *Authorized fishery.* (1) Foreign vessels may engage in fishing only in accordance with applicable national allocations.

(2) The category "other species" used in allocations includes all species except:

(i) The other allocated species, namely: pollock, yellowfin sole, other flounders, Pacific Ocean perch, sablefish, Pacific sod, herring, Atka mackerel, and squid; and

(ii) shrimp, scallops, salmon, steelhead, Pacific halibut, and Continental Shelf fishery resources.

(3) The taking of any species for which a nation has an allocation is permitted, provided that:

(i) The foreign nation has not caught its allocation of any species. If a foreign nation has caught its allocation of any species, all further fishing as defined in § 611.2(r) (1) by that nation must cease, even if other allocations have not been reached. Therefore, it is essential that foreign nations plan their fishing strategy to ensure that the reaching of an allocation for one species does not result in the premature closing of a nation's fishery for other allocated species.

(ii) The fishery has not been closed under § 611.15.

(c) *Open areas.* Except for the closed areas set forth in paragraph (d) of this section, the open areas for foreign fishing include:

(1) The entire Bering Sea and that portion of the North Pacific Ocean south of the Aleutian Islands chain west of 170° W. longitude beyond 12 nautical miles from the baseline used to measure the territorial sea:

(2) The area between three and twelve nautical miles from the baseline used to measure the territorial sea north of the Aleutian Islands chain as follows:

(i) Between 169° and 170° W. longitude, trawl fishing from June 1 to December 1, and longline fishing at all times.

(ii) Between 170° and 172° W. longitude, trawl and longline fishing at all times.

(iii) Between 172° and 176° W. longitude, longline fishing from April 1 to November 1.

(iv) West of 176° W. Longitude, trawl fishing from May 1 to January 1, and longline fishing at all times.

(3) The area between three and twelve nautical miles from the baseline used to measure the territorial sea south of the Aleutian Islands chain as follows:

(i) Between 170° and 172° W. longitude, trawl and longline fishing at all times.

(ii) Between 172° and 176° W. longitude, longline fishing from April 1 to November 1.

(iii) Between 176°00′ and 178°30′ W. longitude, longline fishing from April 1 to November 1, and trawl fishing from July 1 to November 1.

(iv) West of 178°30′ W. longitude, trawl fishing from May 1 to January 1, and longline fishing at all times.

(d) *Closed areas.* (1) *Trawling.* Trawling by foreign vessels is prohibited in the areas and during the periods as follows:

(i) At all times in the Bristol Bay "Pot Sanctuary" which is the area enclosed by straight lines from Cape Sarichef to 55°16′ N. lat., 166°10′ W. long.; to 56°20′ N. lat., 163°00′ W. long.; to 57°10′ N. lat.; 163°00′ W. long., to 58°10′ N. lat., 160°00′ W. long.; then due south along 160°00′ W. long. to the Alaska Peninsula.

(ii) From December 1 to June 1, in the following International Pacific Halibut Commission (IPHC) Conservation Areas:

(A) Area B. (From Cape Sarichef Light to 54°00′ N. lat., 170°00′ W. long.; then due south along 170°00′ W. long to the Aleutian Islands).

(B) Area E (from Cape Newenham at 58°39′ N. lat., 162°10′25″ W. long.; to 57°15′ N. lat., 170°00′ W. long.; to Cape Sarichef light) south of 56°30′ N. latitude and east of 166°00′ W. longitude.

(C) Area A (from Cape Sarichef light at 54°36′ N. lat., 164°55′42″ W. long.; to 54°00′ N. lat., 170°00′ W. long.; to 57°15′ N. lat., 170°00′ W. long.; to Cape Sarichef light) south of 55°30′ N. latitude.

(iii) From December 1 to June 1, in the area bounded by straight lines connecting the coordinates in the order listed: 56°18′ N. lat., 170°24′ W. long.; 56°20′ N. lat., 169°03′ W. long.; 56°12′ N. lat.; 168°46′ W. long.; 55°56′ N. lat., 169°10′ W. long.; 55°56′ N. lat., 170°24′ W. long.; 56°18′ N. lat., 170°24′ W. long.

(2) *Herring.* No foreign vessel may fish for herring east of 168° W. longitude.

(e) *Additional statistical report.* Each nation whose vessels engage in this fishery shall report, by May 30, of the following year, annual catch and effort statistics as follows:

(1) *Effort* in hours trawled, number of longline units (300 fathoms of longline or groundline per unit) and number of hooks per unit, number of pots, duration of soaking time for longlines and pots, and number of days fished, by vessel class, by gear type, by month, by 1/2° (lat.) X 1° (long.) statistical areas; and

(2) *Catch* in metric tons, by vessel class, by gear type, by month, by 1/2° (lat.) X 1° (long.) statistical area, by the following species categories: Yellowfin sole; rock sole; flathead sole; arrowtooth flounder; Greenland turbot; other flounder; Pacific ocean perch; Pacific cod; sablefish (blackcod); walleye (Alaska) pollock; Atka mackerel; Pacific herring; any other species taken in excess of 1,000 m.t.; and other fishes.

§ 611.94 Snail fishery.

(a) *Purpose.* This section regulates foreign fishing for snails of the genera *Neptunea, Fusitriton, Buccinum, Beringius, Volutopsius, Clinopegma, Plicifusus,* and *Pyrulofusus,* which is authorized in the Bering Sea.

(b) *Authorized fishery.* Foreign vessels may engage in fishing only in accordance with applicable national allocations.

(c) *Area, gear, and general restrictions.* (1) No foreign fishing vessel may:

(i) Fish for snails east of 164° W. long., or within 12 miles of the baseline used to measure the territorial sea;

(ii) Use gear other than pots; or

(iii) Retain any species other than snails.

(2) This fishery may be closed in accordance with § 611.15.

(d) *Additional statistical report.* Each nation whose vessels engage in this fishery shall report by May 30 of the following year, annual catch and effort statistics as follows: *Effort* in number of pots hauled, hours pots soaked by month, by 1/2° (lat.) X 1° (long.) statistical area; *Catch* in metric tons of edible meat, by month, by 1/2° (lat.) X 1° (long.) statistical area.

[FR Doc. 78-30641 Filed 11-1-78; 8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

[3410-11-M]

DEPARTMENT OF AGRICULTURE

Forest Service

WILD AND SCENIC RIVER PROPOSAL WEST FORK SIPSEY RIVER

Intent To Prepare an Environmental Statement

Pub. L. 93-621 amended the original Wild, and Scenic Rivers Act, Pub. L. 90-542, and designated the West Fork Sipsey River to be studied for potential inclusion into the Wild and Scenic Rivers System. The majority of the affected area lies within the Bankhead National Forest in Lawrence and Winston Counties in northeast Alabama. Consequently, the U.S. Forest Service was assigned the role of lead agency to conduct the study.

An environmental Statement of the study proposal was deemed necessary based on the following criteria listed in Forest Service Manual 1952.22a—Actions requiring environmental statements:

1. Legislation recommended by the U.S. Forest Service that would significantly affect the quality of the human environment.

2. Any action that is discretionary on the part of the Forest Service that will permanently change the character of inventoried roadless areas.

Press releases, presentations and written correspondence relating to the study have raised the following issues on the part of local citizens:

If designated, how will management affect private landowners?

How much timber will be taken out of production?

How much land should be acquired, for what purpose and how?

Methods and quantity of land procurement.

The draft proposal and environmental statement are scheduled for completion in February 1979. Allowing for a 90-day review of the draft proposal, a 30-day review of the final proposal and incorporation of comments, the final proposal and environmental statement are scheduled to be completed in September of 1979.

Jim Bylsma, the recreation staff officer, will serve as study team leader. Comments concerning the "notice of intent" or the study proposal should be sent to: Arthur D. Woody, Forest Supervisor, National Forests in Alabama, P.O. Box 40, Montgomery, Ala. 36101.

Dated: October 12, 1978.

ARTHUR D. WOODY,
Forest Supervisor.

[FR Doc. 78-30941 Filed 11-1-78; 8:45 am]

[3410-11-M]

1979 COOPERATIVE GYPSY MOTH SUPPRESSION AND REGULATORY ACTIVITIES

Intent to Prepare Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service and Animal and Plant Health Inspection Service, U.S. Department of Agriculture, in cooperation with the Division of Parks and Forestry in the Department of Environmental Protection of the State of New Jersey, the Division of Plant Industry in the Department of Agriculture of the State of New Jersey, the Bureau of Forest Resource Management in the Department of Environmental Conservation of the State of New York, the Bureau of Forestry in the Department of Environmental Resources of the Commonwealth of Pennsylvania, and the Department of Forests and Parks in the Agency of Environmental Conservation of the State of Vermont, will prepare an Addenda to the 1978 Environmental Statement that outlines the proposed 1979 Gypsy Moth Cooperative Suppression and Regulatory Activities.

The statement will be based on information and data provided by each cooperating state agency and on comments and responses of the general public as expressed at local township, county or municipal meetings held during the fall of 1978 and winter of 1978-79. Only new information on pesticides, alternatives, philosophies or policies will be discussed. All other information will be included by reference to previously published Environmental Documents.

Pesticides under consideration for treatment of gypsy moth populations are carbaryl, trichlorfon, diflubenzuron, acephate and the biological, *Bacillus thuringiensis*. These pesticides are registered by the Environmental Protection Agency for use against gypsy moth.

The proposed USFS cooperative suppression projects involve aerially treating about 35,000 acres on 14 State-owned forests and parks and 50,000 acres of forested residential and recreational areas in dozens of municipalities of New Jersey; 75,000 acres of State and private timberlands and in forested residential areas of about 50 municipalities of New York; 50,000 acres of forested residential areas in Pennsylvania; and 5,000 acres of forested residential areas in Vermont. The proposed APHIS regulatory program involves eradicating existing infestations in locations removed from the generally infested areas such as in Michigan, Maryland, North Carolina, Wisconsin, Washington, Virginia, and West Virginia, and applying regulatory treatments to infested campsites and other premises in New York, New Jersey, Pennsylvania, and New England States.

The environmental assessment will require about 1 month to complete. The draft environmental statement is due for completion by December 15, 1978, and will be reviewed for 2 months. A final environmental statement is scheduled for filing on March 16, 1979.

The responsible officials are John R. McGuire, Chief, Forest Service, and Frank J. Mulhern, Administrator, Animal and Plant Health Inspection Service.

Comments on this Notice of Intent or on the proposed program should be sent to John R. McGuire, Forest Service, USDA, P.O. Box 2417, Washington, D.C. 20013.

Dated: October 27, 1978.

JOHN R. MCGUIRE,
Acting Chief,
Forest Service.

F. J. MULHERN,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 78-31046 Filed 11-1-78; 8:45 am]

[6320-01-M]

CIVIL AERONAUTICS BOARD

[Order 78-10-88; Docket 33243]

AIR PANAMA INTERNACIONAL, S.A.

Application for Amendment of its Foreign Air Carrier Permit; Statement of Tentative Findings and Conclusions and Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 20th day of October, 1978.

By application filed August 21, 1978, Air Panama Internacional, S.A., requests amendment of its foreign air carrier permit to remove the condition on its Route 2 which prohibits stopover privileges at Mexico City, Mexico, on its services between Los Angeles, Calif. and points in the Republic of Panama.[1] In support of its application the carrier states that it is a citizen of the Republic of Panama; that it is wholly owned by the Government of Panama (49 percent) and its nationals (51 percent); and that it has been formally designated by the Republic of Panama as the Panamanian carrier to operate the route segment.

The carrier also requests a waiver of Part 312 of the Board's Regulations as to environmental impact; stating that it presently operates twice weekly between Los Angeles and Panamas City via Mexico City using B-727 aircraft; that while its plans are not yet definite, the carrier is fairly certain that no more than two additional round trips would be operated and would carry not more than 25 additional passengers per flight; and that the proposed services would cause an increase in the number of departures performed at the Los Angeles International Airport of less than one-tenth of one percent.

On August 30, 1978, the Department of State filed a statement of position supporting the application of Air Panama, and requested that the application be granted as expeditiously as possible, stating that stopover privileges would contribute toward the economic viability of the route for the Panamanian airline; that the United States, in a Memorandum of Consultations dated December 18, 1974, agreed to consider elimination of the restriction on the carriage of local traffic between Los Angeles and Mexico City if the United States obtained local traffic rights between Mexico City and Panama from the Mexican Government; that, although those rights were not fully obtained from the Government of Mexico in the amended U.S.-Mexcio agreement of January 20, 1978, that agreement has provided substantial new route authority for U.S. airlines beyond Mexico; and that, in the interest of maintaining amicable relations with the Republic of Panama, it is reasonable to remove part of the restriction in Panama's operating rights by allowing Air Panama stopover traffic rights at Mexico City.

No other responses to the application have been received.

In view of the foregoing, we have tentatively decided that Air Panama's request is in the public interest, and should be granted. Allowing stopover services at Mexico City by Air Panama would benefit the traveling public and promote amicable relations with the Republic of Panama. Therefore, we tenatively find and conclude that:

1. It is in the public interest to amend the foreign air carrier permit issued to Air Panama Internacional, S.A., in the specimen form attached to permit stopover traffic rights between Los Angeles, Calif. and Mexico City, Mexico;

2. Air Panama Internacional, S.A., is fit, willing, and able properly to perform the transportation described in the specimen permit, and to conform to the provisions of the Federal Aviation Act of 1958, as amended, and the rules, regulations and requirements of the Board;

3. The public interest requires that the exercise of the privileges granted by the amended permit shall be subject to the terms, conditions, and limitations contained in the specimen permit attached to this order, and to such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Board;

4. Air Panamas Internacional, S.A. is wholly under Panamanian ownership;

5. The public interest does not require an oral evidentiary hearing on the application;[2]

6. The amendment of Air Panama's foreign air carrier permit would not constitute a "major Federal action significantly affecting the quality of the human environment" within the meaning of section 102(2)(c) of the National Environment Policy Act of 1969 and will not constitute a "major regulatory action" under the Energy Policy and Conservation Act of 1975 as defined in subsection 313.4(a)(1) of the Board's Regulations;[3]

7. The request of Air Panama Internacional, S.A. for waiver of Part 312 of the Board's Procedural Regulations should be granted; and

8. Except to the extent granted, the application of Air Panama Internacional in Docket 33243 should be denied.

Accordingly, 1. We direct all interested persons to show cause why the Board should not (1) make final its tentative findings and conclusions stated here, and (2) issue an amended foreign air carrier permit to Air Panama Internacional, S.A. in the specimen form attached, subject to approval by the President pursuant to section 801 of the Act;

2. Any interested person having objections to the issuance of an order making final the Board's tentative findings and conclusions and issuing the attached specimen permit shall, no later than November 8, 1978, file with the Board and serve on the persons named in paragraph 5 below, a statement of objections specifying the part or parts of the tentative findings or conclusions objected to, together with a summary of testimony, statistical data, and concrete evidence expected to be relied upon in support of the objections. If an oral evidentiary hearing is requested, the objector should state in detail why such hearing is considered necessary and what relevent and material facts he would expect to establish through such hearing which cannot be established in written pleadings. Any interested person who wishes to answer these objections shall file such answers no later than November 20, 1978;

3. If timely and properly supported objections are filed, we will give further consideration to the matters and issues raised by the objections before we take further action, *Provided*, That we may proceed to enter an order in accordance with our tentative findings and conclusions set forth in this order, if we determine that there are no factual issues presented that warrant the holding of an oral evidentiary hearing;[4]

4. In the event no objections are filed, we will deem all further procedural steps to have been waived and the Secretary shall enter an order which (1) shall make final our tentative findings and conclusions set forth in this order, and (2) subject to the ap-

[1] Route 2 reads:

2. Between a point or points in the Republic of Panama, the intermediate point Mexico City, Mexico, and the terminal point Los Angeles, Calif.

The condition reads:

The authorization granted in Route 2 above to serve Los Angeles, Calif., and Mexico City, Mexico, is subject to the limitation that the holder shall not deplane at one of said points persons, property, or mail enplaned at the other, including stopover, connecting or any other revenue traffic.

[2] Any interested persons having objections to the issuance of an order making final the Board's tentative findings and conclusions, and issuing the attached permit, shall be allowed 15 days in which to respond from the date of service of this order. Answers to objections shall be filed not later than 10 (10) days thereafter.

[3] Our tentative findings are based on the fact that the proposed amendment of Air Panama's permit will not result in a significant increase in aircraft operations at the Los Angeles International Airport, nor will it result in an annual change in aircraft fuel consumption of 10 million gallons.

[4] Since provision is made for the filing of objections to this order, petitions for reconsideration will not be entertained.

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proval of the President, shall issue an amended foreign air carrier permit to the applicant in the specimen form attached; and

5. We are serving this order upon Air Panama Internacional, S.A., Braniff Airways, Inc., Pan American World Airways, Inc., Compania Mexicana de Aviacion, S.A., Aeronaves de Mexico, S.A., the Ambassadors of the Republic of Panama and Mexico, the Governor of California and the U.S. Departments of State and Transportation.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[5]

PHYLLIS T. KAYLOR,
Secretary.

UNITED STATES OF AMERICA CIVIL AERONAUTICS BOARD WASHINGTON, D.C.

PERMIT TO FOREIGN AIR CARRIER (AS AMENDED)

Air Panama Internacional, S.A. is authorized, subject to the provisons set forth, the provisions of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in foreign air transportation with respect to persons, property, and mail, as follows:

1. Between a point or points in the Republic of Panama and the coterminal points Miami, Fla., and New York, N.Y.
2. Between a point or points in the Republic of Panama, the intermediate point Mexico City, Mexico, and the terminal point Los Angeles, Calif.

The holder shall be authorized to engage in charter trips in foreign air transportation subject to the terms, conditions, and limitations prescribed by Part 212 of the Board's economic regulations.

The authorization granted in Route 2 above to serve between Los Angeles, Calif., and Mexico City, Mexico, is subject to the limitation that the holder shall not deplane at one of the points persons, property, or mail enplaned at the other, including connecting traffic: *Provided, however,* That passengers and their accompanied baggage enplaned at Los Angeles and moving under a passenger ticket providing for transportation between Los Angeles and a point or points in the Republic of Panama may be disembarked at Mexico City, if such passengers and accompanying baggage (1) are subsequently re-embarked by the holder in its aircraft on a scheduled flight operated between Mexico City and a point or points in the Republic of Panama, and (2) are transported in accordance with the original routing as specified in the ticket. Re-embarkation shall occur at any time during the validity of the ticket but in no event shall it occur later than one year from the date of disembarkation.

The holder shall conform to the airworthiness and airman competency requirements prescribed by the Government of Panama for Panamanian international air service.

The holder shall not operate any aircraft under the authority granted by this permit, unless the holder complies with the operational safety requirements, at least equivalent to Annex 6 of the Chicago Convention.

The initial tariff filed by the holder shall not set forth rates, fares and charges lower than those that may be in effect for any U.S. air carrier in the same foreign air transportation; However, this limitation shall not apply to a tariff filed after the initial tariff regardless of whether this subsequent tariff is effective before or after the introduction of the authorized service.

This permit shall be subject to all applicable provisions of any treaty, convention, or agreement affecting international air transportation now in effect, or that may become effective during the period this permit remains in effect, to which the United States and Panama shall be parties.

By accepting this permit the holder waives any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the holder in any court or other tribunal in the United States (or its territories or possessions) based upon any claim arising out of operations by the holder under this permit.

The holder shall keep on deposit with the Board a signed counterpart of Agreement CAB 18900, an agreement relating to liability limitations of the Warsaw Convention and the Hague Protocol approved by Board Order E-23680, May 13, 1966, and a signed counterpart of any amendment or amendments to such agreement which may be approved by the Board and to which the holder becomes a party.

The holder (1) shall not provide foreign air transportation under this permit unless there is in effect third-party liability insurance in the amount of $1,000,000 or more to meet potential liability claims which may arise in connection with its operations under this permit, and unless there is on file with the Docket Section of the Board a statement showing the name and address of the insurance carrier and the amounts and liability limits of the third-party liability insurance provided, and (2) shall not provide foreign air transportation with respect to persons unless there is in effect liability insurance sufficient to cover the obligations assumed in Agreement CAB 18900, and unless there is on file with the Docket Section of the Board a statement showing the name and address of the insurance carrier and the amounts and liability limits of the passenger liability insurance provided. Upon request, the Board may authorize the holder to supply the name and address of an insurance syndicate in lieu of the names and addresses of the member insurers.

The exercise of the privileges granted here shall be subject to such reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Board.

This permit shall be effective on ....., and shall continue in effect until June 15, 1981. Prior to its expiration on June 15, 1981, this permit shall terminate (1) upon the effective date of any treaty, convention, or agreement or amendment, which shall have the effect of eliminating the route or routes authorized by this permit from the routes which may be operated by the airlines designated by the Government of Panama (or in the event of the elimination of any part of a route or routes authorized, the authority granted shall terminate to the extent of such elimination); or (2) upon the effective date of any permit granted by the Board to any other carrier designated by the Government of Panama in lieu of the holder, or (3) upon the termination or expiration of the Air Transport Agreement between the Government of the United States of America and the Government of Panama effective April 14, 1949, as amended effective June 3, 1952, June 5, 1967, and March 6, 1975; However, clause (3) of this paragraph shall not apply if, prior to the event specified in clause (3), the operation of the foreign air transportation authorized becomes the subject of any treaty, convention, or agreement to which the United States of Amercia and Panama are or shall become parties.

The Civil Aeronautics Board, through its Secretary, has executed this permit and affixed its seal on ..... .

.....,
Secretary.

(SEAL)

Issuance of this permit to the holder approved by the President of the United States on ....., in ..... .

[FR Doc. 78-30920 Filed 11-1-78; 8:45 am]

[5] All Members concurred.

[6320-01-M]

[Order 78-10-98; Dockets 32594 and 32842]

AMERICAN AIRLINES, INC., AND HUGHES AIR CORP., D.B.A. HUGHES AIRWEST

Applications for Certificate Amendment; Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 20th day of October, 1978.

On May 2, 1978, American Airlines filed an application, accompanied by a motion for hearing, requesting that its certificate for Route 4 be amended to permit nonstop service between Salt Lake City, Utah, and St. Louis, Mo. American currently serves these points via Chicago.

In support of its application, it contends that Frontier, the market's monopoly nonstop-authorized carrier, offers just two daily one-stop round trips and a two-stop eastbound flight with a change of gauge at Denver; that it would provide new or improved single-plane service in the market, as well as improved service to beyond markets [1]; that St. Louis is a logical alternative to Chicago as a transfer point for Salt Lake City-East passengers, and the proposed service will thus benefit crowded O'Hare airport; that it will bring fare options, with their resultant benefits, to both primary and secondary markets; and that it expects to provide direct service benefits to over 90,000 Salt Lake City passengers and will make an operating profit of $1,412,000 on two daily nonstop round trips using B-727 equipment.

American's application is supported by various civic agencies [2] and its

[1] Salt Lake City-Boston/Buffalo/Cincinnati/Cleveland/Columbus/Detroit/New York/Rochester.

[2] The Utah Agencies, consisting of the State of Utah, Salt Lake City Corp., and the Salt Lake City Chamber of Commerce; and

Footnotes continued on next page

motion for hearing is supported by Eastern Airlines. With regard to carrier selection, however, Eastern asserts that it should be chosen to provide the service since it would offer better service than American by providing through service to the Southeast via Atlanta. Eastern currently serves St. Louis but not Salt Lake City.

Hughes Airwest, on June 19, 1978, also filed an application requesting nonstop authority in the Salt Lake City-St. Louis market and a concurrent motion to consolidate its application with that of American. It did not submit data supporting its application.

Frontier, the authorized nonstop carrier in the market, has neither filed an answer to American's motion nor made any other indication that it objects to the award of new authority to American, Airwest, or Eastern.

On the basis of the tentative findings below, we tentatively conclude that the public convenience and necessity require multiple permissive awards in the Salt Lake City-St. Louis market and that American's application should be granted.[3] We further tentatively conclude that we can make such awards through show-cause procedures, since there does not exist any dispute of material, determinative fact that requires an oral evidentiary hearing for its resolution.

We have satisfied ourselves that we possess the legal authority to make permissive awards to all qualified applicants in route cases, and that as a general proposition such awards will not result in the kind of destructive competition Congress feared in 1938 when it adopted the Civil Aeronautics Act, but rather can benefit the traveling public by sharpening competitive incentives for carriers and offering increased choices to consumers.[4,5] Because multiple permissive awards represent such a fundamental change in the route policies the Board has followed with some exceptions for 40 years, we have not yet resolved to make such awards as a general policy throughout the domestic route system, but instead are proceeding on a case-by-case basis to make such awards in markets where they appear likely to produce particular public benefits. To date, we have made or decided to make such awards at two underutilized satellite airports [6] and are considering making them in several dense long-haul markets.[7]

Here we find a situation where we believe multiple permissive awards should be beneficial for somewhat different reasons. The current level of O. & D. traffic in the St. Louis-Salt Lake City market (13,930 O. & D. passengers in 1977, or about 38 a day) is probably too small by itself to sustain nonstop service, but American and Eastern expect to be able to funnel much larger volumes of flow traffic over the segment, American from points on its system in the northeast and Eastern from such points in the southeast.[8] Salt Lake City today enjoys single-plane service to very few points east of the Mississippi; most travelers in these markets move by connections, the greatest number being over Chicago's O'Hare Airport. O'Hare, however, is growing increasingly crowded, and an important objective of our route planning is to seek means of diverting traffic away from O'Hare.

For Chicago's own air travelers, this involves the reactivation of Midway Airport, the object of our current *Midway I* and *Midway II* cases. For travelers now making connections at Chicago, another promising avenue of exploration is the development of alternative midwestern connecting hubs.[9] St. Louis is one of several cities ideally situated for this purpose, but currently it enjoys neither single-plane service to the number or range of points which receive such service from Chicago, nor a comparable number of frequencies to the points to which it does have single-plane service—both critical factors in building up the pool of connecting traffic which alone allows a major connecting hub to function efficiently.

The foregoing suggests that the public interest would be well served by actions that would encourage carriers to increase their schedules at St. Louis and to flow additional traffic over that point—two obviously interconnected ends. We have a number of route proceedings currently under way involving new authority to the east and west of St. Louis; [10] the St. Louis-Salt Lake City applications, however, appear to offer a promising opportunity to strengthen St. Louis as a connecting hub, and to do so without the necessity for an oral evidentiary hearing. Salt Lake City is a major traffic point in the mountain states area which today enjoys little service to St. Louis and, as we have noted, also enjoys little service to its travelers' origin and destination points east of the Mississippi, except to (and via) Chicago. Yet, as American and Eastern have shown, a very substantial volume of flow traffic could be routed over a St. Louis-Salt Lake City segment. A substantial portion of this traffic would be diverted away from overcrowded O'Hare Airport. Moreover, since each of the applicants serves a largely different set of points east of Salt Lake City (or, in the case of Hughes Airwest, west of Salt Lake City), there is even less reason than usual to select from among the applicants in the traditional manner.

The incumbent carrier in the market, Frontier, carries only a modest amount of traffic (13,130 annual passengers, mostly local O. & D. traffic), and even if it lost all of these passengers its ability to fulfill its certificate obligations would obviously not be impaired.[11] Moreover, Frontier can only reap a net benefit in the long run from the development of St. Louis as an alternate connecting hub to Chicago, since it holds far more extensive authority at the former than at the latter. Finally, it has filed no answer in opposition to these applications.

For all these reasons we tentatively conclude that St. Louis-Salt Lake City nonstop authority should be granted to all fit, willing, and able applicants that file illustrative service proposals [12] showing that they are prepared to meet some of the needs of the market.

American's application and motion already encompass such a showing, and we tentatively conclude that it should be awarded the authority it seeks. The other applicants will be given an opportunity to file similar exhibits after which an additional show-cause order or orders will be issued.

We will allow Airwest and Eastern 21 days from the date of service of this order to supply the data necessary for us to consider awards of authority to them. That data is set forth in Attachment A. Following the submission of the data, we will issue a second order

Footnotes continued from last page

the St. Louis Parties, consisting of the St. Louis Airport Authority-City of St. Louis and the St. Louis Regional Commerce and Growth Association.

[3] We also tentatively find that American is fit, willing, and able within the meaning of section 401 of the Act.

[4] *Oakland Service Case*, Orders 78-4-121, served May 30, 1978, and 78-9-96, Sept. 21, 1978; *Las Vegas-Dallas/Ft. Worth Nonstop Service Investigation*, Order 78-7-116, July 21, 1978; *Chicago-Midway Low-Fare Route Proceeding*, Order 78-7-40, July 12, 1978.

[5] Member O'Melia while concurring in the result, does not join in the statement in the text above; see his separate statements in the cases cited in the proceeding footnote.

[6] *Chicago-Midway* and *Oakland*, see footnote 4.

[7] *Las Vegas-Dallas/Ft. Worth*, see footnote 4, and *Transcontinental Low-Fare Route Proceeding*, Docket 30356 (oral argument held Sept. 28, 1978).

[8] Hughes Airwest, in contrast, would be able to funnel flow traffic over the segment from points on its system west of Salt Lake City.

[9] Another avenue, of course, is the development of additional nonstop services between eastern and western points, bypassing the Midwestern connecting hubs altogether; but most points in the east exchange too little O. & D. traffic with Salt Lake City, for example, to be able to support nonstop service now or for many years to come.

[10] Dockets 33115, 33203, 33543, 33524, and 33315.

[11] These passengers represent annual revenues of about $1.47 million, or about 0.7 percent of Frontier's current system passenger revenues of $203 million.

[12] See *Oakland Service Case*, Order 78-4-121, pp. 54-55, 59-60, and Appendix B.

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dealing with their proposals. Eastern should file an application for such authority within this time limit.[13]

Finally, upon review of the environmental evaluation submitted by American in its application, to which no answers have been filed, we tentatively find that our decision to award it authority does not consitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, or a major regulatory action under the Energy Policy and Conservation Act of 1975.

We will give interested persons 30 days following the service date of this order to show cause why the tentative findings and conclusions set forth here should not be made final; replies will be due within 10 days thereafter. We expect such persons to direct their objections, if any, to specific markets, and to support such objections with detailed economic analysis. If an evidentiary hearing is requested, the objector should state, in detail, why such a hearing is necessary and what relevant and material facts he would expect to establish through such a proceeding that cannot be established in written pleadings. We will not entertain general, vague, or unsupported objections.

Accordingly:

1. We direct all interested persons to show cause why we should not issue an order making final the tentative findings and conclusions stated above and amending the certificate of public convenience and necessity of American Airlines for Route 4 so as to authorize the carrier to engage in nonstop operations between Salt Lake City and St. Louis;

2. We direct any interested persons having objections to the issuance of an order making final any of the proposed findings, conclusions, or certificate amendments set forth here, to file with us and serve upon all persons listed in paragraph 7, no later than November 27, 1978, a statement of objection together with a summary of testimony, statistical data, and other material expected to be relied upon to support the stated objections; answers shall be due no later than December 7, 1978;

3. If timely and properly supported objections are filed, we will accord full consideration to the matters and issues raised by the objections before we take further action;[14]

4. In the event no objections are filed, we will deem all further procedural steps to have been waived and we may proceed to enter an order in accordance with the tentative findings and conclusions set forth here;

5. We grant the motion of Hughes Airwest to consolidate its application in Docket 32842 with American's application in 32594;

6. We direct Hughes Airwest and Eastern Airlines to file the data indicated in Appendix A by November 16, 1978;[15]

7. We will serve this order upon American Airlines, Hughes Air Corp., d.b.a. Hughes Airwest, Eastern Air Lines, Inc., the Utah Agencies, and the St. Louis Parties; and

8. We deny the motion of Trans World Airlines to consolidate its application in Docket 33543 into this docket.

We will publish this order in the FEDERAL REGISTER.

By the Civil Aeronautics Board:[16]

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-30925 Filed 11-1-78; 8:45 am]

[6320-01-M]

[Order 78-10-91; Docket 32390; Agreement CAB 27262, 27263, 27311, 27504, and 27505]

CONTINENTAL AIRLINES, INC., ET AL.

Exemption Application and Agreements for Free and Reduced-rate Transportation; Order

Adopted by the Civil Aeronautics Board, at its office in Washington, D.C., on the 20th day of October 1978.

Continental, Aloha, and Braniff have filed with the Board, under section 412(a) of the Act, agreements for free and reduced-rate transportation with certain intrastate carriers.[1] These air carriers may not provide free or reduced-rate transportation to intrastate carriers unless we grant an exemption from section 403(b) of the Act. For policy reasons, we will exempt these air carriers from section 403(b),[2] because the agreements are in the public interest since they will facilitate interlining either now or in the future. Besides facilitating interlining, providing free and reduced-rate transportation to intrastate carriers is consistent with the public interest in that it familiarizes airline employees with the services and facilities of other airlines, thus resulting in more knowledgeable travel advice and information from airline personnel; it promotes air transportation by building good will between the airlines; it bolsters the morale of airline employees; and it comports with our policy of permitting airlines greater flexibility in business decisions.

We have decided to exempt these air carriers from the filing requirements of section 412(a).[3] Part 289 of the Board's Economic Regulations sets out agreements which have been exempted from the filing requirements of section 412, because these agreements have been found not to raise any issues of regulatory concern. Agreements for free and reduced-rate transportation are among those agreements exempted from section 412 by 14 CFR Part 289. Although Part 289, when drafted, did not contemplate agreements for free and reduced-rate transportation between air carriers and intrastate carriers, we do not anticipate that these agreements will raise any issues of regulatory concern. Therefore, we have decided to exempt Continental, Aloha, and Braniff from the filing requirements of section 412. The statutory criteria for an exemption from section 412 have been satisfied because it would be an undue burden on these carriers to require them to treat the present agreements differently; the limited extent of the authority granted by this order is inconsequential to the airline industry; and the public interest is promoted because the Board is relieved from the burden of reviewing agreements which raise no issues of regulatory concern, thus freeing staff for more significant matters. Based on the foregoing, we have decided to grant temporary exemptions from section 412.

Accordingly, under the Federal Aviation Act of 1958 as amended, and particularly section 416(b),

[13] We also note that Western Air Lines and Trans World Airlines, on September 25 and 26, 1978, respectively, filed applications for amendments of their certificates of public convenience and necessity for Route 19 in Docket 33524 (Western) and Route 2 in Docket 33543 (TWA) to provide additional service in a large number of Salt Lake City markets including Salt Lake City-St. Louis. TWA also filed a concurrent motion to consolidate its application with that of American in Docket 32594. We will deal with these and other Salt Lake City applications separately and, therefore, we deny TWA's motion. However, if Western and/or TWA want to receive Salt Lake City-St. Louis authority in this proceeding, each should file, within 21 days of the service date of this order, a separate application for this authority (or move for severance from existing applications) and also file the data set forth in Appendix A. To the extent that this data has already been submitted in Dockets 33524 and 33543, the carriers need only refer to those submissions.

[14] Since provision is made for the filing of objections to this order, we will not entertain petitions for reconsideration.

[15] Eastern should also file an application for the authority in issue here.

[16] All Members concurred.

[1] Agreements CAB 27262, 27263 between Continental and Air California and Continental and Air Florida; Agreement CAB 27311 between Aloha and Air California; Agreements CAB 27504 and 27505 between Braniff and Southwest.

[2] The section 403(b) exemptions will be temporary, contingent upon the results of our proposed rulemaking in Docket 33724.

[3] Since the exemptions from section 403(b) are temporary, contingent upon results of the proposed rulemaking issued concurrently with this order, we have decided to make the exemption from section 412 temporary also.

1. We temporarily exempt Continental Airlines, Aloha Airlines, and Braniff Airways from section 403 of the Act and Part 221 of the Economic Regulations insofar as enforcement of those provisions would prevent them from providing the free and reduced-rate transportation described above;

2. We temporarily exempt Continental, Aloha, and Braniff from section 412 of the Act.

3. We will serve a copy of this order upon Continental, Aloha, Braniff, Southwest, Air California, and Air Florida.

We shall publish this order in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[4]

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-30924 Filed 11-1-78; 8:45 am]

[6320-01-M]

[Order 78-10-102; Dockets 28366 et al.]

DENVER-ALASKA SERVICE INVESTIGATION

Applications; Order on Reconsideration

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 20th day of October, 1978.

In the matter of Applications of Alaska Airlines (Docket 28366); Braniff Airways, Inc. (Docket 32918); Delta Air Lines, Inc. (Docket 32967); Frontier Air Lines, Inc. (Docket 32973); Northwest Airlines, Inc. (Docket 33046); Ozark Air Lines, Inc. (Docket 33087); Texas International Airlines, Inc. (Docket 33040); Western Air Lines, Inc. (Docket 32083); and Wien Air Alaska, Inc. (Docket 32957).

This proceeding was instituted by Order 78-5-125, served on June 12, 1978, to consider whether nonstop authority should be granted in the Denver-Anchorage / Fairbanks / Juneau / Ketchikan markets. The Board also placed in issue the award of new nonstop authority between Denver and Seattle.

1. *Petitions for Intervention.*

Petitions for leave to intervene have been submitted by the Ketchikan Gateway Borough and the "Seattle Parties"—the Port of Seattle Commission, the City of Seattle, the County of King, the Seattle Chamber of Commerce, and the Pudget Sound Traffic Association.[1] The requests will be granted since it is found that the petitions have a sufficient interest in this proceeding to justify their participation.

2. *Petitions for Reconsideration.*

Petitions for reconsideration of Order 78-5-125 have been filed by Alaska Airlines, Continental, Frontier, and Western, all of whom seek to expand the scope of the proceeding. Frontier and Western urge the Board to add Portland and consider Denver-Portland and Seattle-Portland service in addition to Denver-Seattle. Continental asks the Board to include Seattle-Anchorage service. It argues that if the Seattle-Anchorage route is not placed in issue, it and other carriers that do not hold such authority will be unable to offer a flexible pattern of nonstop and one-stop Denver-Alaska service, and that it will also be prevented from effectively responding to new competition over the Seattle-Denver route from Alaskan carriers, which would be free to extend their Anchorage-Seattle service beyond Seattle to Denver. Continental states that while the Anchorage-Seattle nonstop authority is in issue in the *West Coast-Alaska Investigation* (Docket 30170), the Board can avoid duplicative route proceedings by considering the authority only in connection with service to Denver. Alaska urges the Board to include the issue of service between Dallas and Houston, on the one hand, and Denver, Seattle, and the various Alaska points (Fairbanks, Anchorage, Juneau, and Ketchikan), on the other. In effect, Alaska would place in issue routes which are now served by the Alaska/Braniff and Continental/Western interchanges. In support of its request, Alaska argues that single-carrier operations over the Texas-Alaska routes would serve the needs of the public better than interchange operations, and that the future of the interchanges is now in doubt since Braniff and Continental have applied for authority in pending route cases that would permit them to operate Texas-Denver-Alaska. Alaska further argues that the Dallas-Denver/Seattle and Houston-Denver/Seattle markets are large, growing, and require improved service.

Numerous answers have been filed both in support and in opposition to the petitions. The Seattle Parties support the petitions of Continental and Alaska. The Houston Parties urge the Board to grant all of the petitions, emphasizing the need for improved service in the Houston-Pacific Northwest-Alaska markets. Western favors expansion of this case to include Denver-Houston and Denver-Dallas/Ft. Worth service. On the other hand, Braniff, Continental, and Texas International oppose Alaska's petition. They argue, in general, that grant of the request would result in a massive Southwest-Northwest-Alaska service investigation; that this would unduly complicate and delay resolution of the Denver-Alaska service issue; that there is no logical relationship between the Texas-Denver-Pacific Northwest markets and those now in issue; and that Alaska has not demonstrated a need for additional service in the Houston-Dallas-Denver markets.[1] Alaska Airlines and Western object to the inclusion of Anchorage-Seattle authority on the grounds that this issue is currently being tried in the *West Coast-Alaska* case. They emphasize that although Continental is an active participant in that proceeding, it did not seek Anchorage-Seattle nonstop authority, and that the Board has recently refused to relitigate the issue of Anchorage-Seattle nonstop authority in instituting the *Southeast Alaska Service Investigation.*

We have decided to broaden the issues in this case as requested by Continental, Frontier, and Western but not as requested by Alaska Airlines. Since this course of action can result in improved service without unduly delaying or complicating the conduct of this proceeding, we believe that our action will be in the public interest.

We will amend the scope of this proceeding to include Portland along with Seattle and consider granting new authority in the Denver-Portland and Portland-Seattle markets. We will also consider granting new long-haul authority in the Seattle / Portland-Anchorage / Fairbanks / Juneau / Ketchikan markets and redesignate this proceeding as the *Denver-Alaska Service Investigation,* although retaining the same docket number. The right to serve Portland and Seattle on the same flights and to carry local and through traffic between them will be in issue. As both Frontier and Western correctly note, the Board frequently considers Portland as a coterminal point with Seattle because of the cities' community of interest and the possibility that traffic flows from each can be combined for more efficient carrier operations. See, for example, Orders 76-2-44 and 78-5-126. These considerations provide a solid basis for expanding the issues in this case to consider Denver-Portland and Portland-Seattle service.

We have included Portland/Seattle-Alaska authority in view of the small size of the Denver-Alaska markets and the need to enhance the ability of all applicants to offer one or two-stop as well as nonstop service. Denver-Anchorage, for example, generates fewer than 25 daily passengers each way and may not be able to support nonstop service year-round. The Denver-Fairbanks/Juneau/Ketchikan markets are even smaller, having generated only 5, 2, and 1 one-way passengers per day in 1977. The opportunity to serve the Denver-Alaska routes via Seattle and/or Portland should therefore increase

[4] All Members concurred.

[1] Alaska has filed a reply to the petitions opposing its request, accompanied by a motion for leave to submit its reply as an otherwise unauthorized document. Alaska's motion will be granted.

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the prospect for economic service. Indeed, our decision to place new Denver-Seattle authority in issue rested, in part, on these considerations, and we excluded Seattle-Alaska because unrestricted nonstop authority over this route is currently being litigated in the *West Coast-Alaska* and *Southeast Alaska* service investigations (Dockets 30170 and 31570). We now believe that we can avoid a direct overlap between this case and the other Alaska-related proceedings by retaining the focus here on long-haul operations over the Alaska-Denver routes. We have employed this approach in a number of similar instances. See, for example, *Saint Louis-Denver-Las Vegas/Reno Investigation*, Order 78-6-191, and the *San Francisco-Reno-Albuquerque-Texas Service Investigation*, Order 78-5-128. Nonstop authority between Seattle/Portland, on the one hand, and Anchorage, Fairbanks, Juneau, or Ketchikan, on the other, will therefore be in issue to the extent that it is used in connection with flights that serve Denver.

Very different considerations are raised by Alaska Airlines' request to expand this proceeding to investigate alternatives to the existing Texas-Alaska interchange agreements and new authority in the Dallas/Houston/Denver markets. In essence, Alaska seeks a broad area-type investigation involving thirteen new markets: Houston-Dallas / Ft. Worth / Denver / Seattle / Fairbanks / Juneau / Ketchikan / Anchorage and Dallas / Ft. Worth-Denver / Seattle / Fairbanks / Juneau / Ketchikan / Anchorage. Inclusion of these markets would unduly complicate this proceeding and seriously interfere with its basic purpose by shifting attention away from the Denver-Alaska to the Texas-Alaska markets. Examination of the two existing interchange arrangements would add another complicating factor. For these reasons, we believe that this case should not be enlarged beyond its current manageable proportions to include the markets requested in Alaska's petition. On the other hand, our denial of the motion to consolidate is without prejudice to the submission of an application for new or improved Texas-Alaska or Texas-Denver-Pacific Northwest authority in a separate case, if filed in accordance with our Rules of Practice. We point out in this regard that under Rule 908 (14 CFR 302.908), requests to expand a proceeding must be accompanied by the economic data associated with motions for expedited hearing. At a minimum, these must include proposed schedules, financial results as well as other operating information. Since Alaska has not supplied these data for the Texas-Alaska or Texas-Denver Pacific Northwest markets, we are now unable to reach any conclusions on the merits of its request for a hearing on these issues.

3. *Motions to Consolidate.*

In response to Order 78-5-125, applications or amendments together with motions to consolidate have been filed by Alaska Airlines (Docket 28366, as amended), Braniff (Docket 32918), Delta (Docket 32967), Texas International (Docket 33040), Western (Docket 32083, as amended) and Wien (Docket 32957). These applications will be consolidated into Docket 28366 to the extent that they conform to the scope of this investigation; otherwise they will be dismissed without prejudice.[2]

One matter warrants additional comment. Ordering paragraph 8 of our instituting order in this case required all applications and motions to consolidate to be filed "within 20 days from the date of service of this order . . . ", i.e., June 12, 1978. Rule 12(b) of the Board's Rules of Practice (14 CFR 302.12(b)) states that "A motion [to consolidate] which is not filed at or prior to the prehearing conference or within the time prescribed by the Board in a particular proceeding, as the case may be, shall be dismissed unless the movant shall clearly show good cause for his failure to file such motion on time." Alaska Airlines has requested that we dismiss TXI's motion to consolidate because that motion was filed on July 17 and because TXI has failed to justify its very late submission. We regard Alaska's request as serious; indeed, it turns out that two other carriers—Ozark and Northwest—have also submitted motions to consolidate well after June 12 (2 weeks late in the case of Northwest and 3 weeks late in the case of Ozark), and have not provided convincing reasons for their failure to file on time.

After giving this matter considerable thought, we have decided to consolidate the applications of Ozark, Northwest and TXI because this case is still at an early procedural stage and because there has been no showing that consolidation would unduly delay the proceeding or interfere with the procedural rights of the the other parties. Nonetheless, we remind all interested persons of the importance of submitting motions to consolidate within the time prescribed by the Board, and the need to state reasons that justify a departure from normal procedures if those motions are late. The mere fact that a movant states that consolidation of a late filed application is warranted because it will not enlarge the scope of a proceeding or materially prejudice any other party shall not justify grant of the motion unless the "movant shall clearly show good cause for the failure to file such motion on time." We emphasize that it is the applicant's responsibility to submit requests that comply with the Board's directives, and that failure to do so shall lead to the denial or dismissal of such requests in the future.

Accordingly:

1. We grant the petitions of the Ketchikan Gateway Borough and the Seattle Parties for leave to intevene;

2. We grant the petitions of Continental, Frontier, and Western for reconsideration of Order 78-5-125;

3. We amend Order 78-5-125 to provide that the issues in this proceeding shall be (a) whether the public convenience and necessity require the certification of an air carrier or air carriers to engage in air transportation between (i) Denver and the coterminal points Seattle and Portland, and (ii) Denver, on the one hand, and Anchorage, Fairbanks, Juneau or Ketchikan on the other hand, either nonstop or via intermediate points at issue in this case: *Provided, however,* That all flights shall serve Denver.

(b) If the answer to (a) is affirmative, which air carrier or carriers should be authorized and whether the new or existing authority should be subject to any terms, conditions or limitations;

4. We grant the motions to consolidate into Docket 28366 the applications, or amended applications filed by Alaska Airlines (Docket 28366), Braniff Airways (Docket 32918), Delta Air Lines (Docket 32967), Frontier Air Lines (Docket 32973), Northwest Airlines (Docket 33046), Ozark Air Lines (Docket 33087), Texas International Airlines (Docket 33040), Westen Air Lines (Docket 32083) and Wien Air Alaska (Docket 32957) to the extent that they conform to the scope of the issues in this proceeding as expanded by this order;

5. We dismiss without prejudice the applications described in ordering paragraph 4, to the extent not consolidated in Docket 28366;

6. We direct that applications within the expanded scope of the case, and motions to consolidate, shall be filed within 20 days of the service date of this order, and answers to those applications and motions shall be filed 7 days later;[3]

[2] We note in this connection that Braniff has drafted its application in Docket 32918 to place in issue local traffic rights between Ketchikan, Juneau, Anchorage and Fairbanks. The authority to provide intra-Alaska service will be considered in connection with flights which also serve Denver, in view of Alaska's special reliance on air service.

[3] There will be no need for applicants to file amended applications to include the new Denver-Portland/Seattle or Denver-Portland/Seattle-Alaska authority, but we will, consistent with past practice, solicit applications from other interested persons. We delegate to the presiding administrative law judge the authority to consolidate by order

Footnotes continued on next page

7. We grant the motions of Ozark, Northwest, and Western for leave to file untimely documents;

We grant the motions of Alaska and the Seattle Parties for leave to file otherwise unauthorzed documents;

9. Except as otherwise indicated, we deny all petitions, motions and requests.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[4]

PHYLLIS T. KAYLOR,
Secretary.

[6320-01-M]

[Order 78-10-113; Docket 33362]

FORMER LARGE IRREGULAR AIR SERVICE INVESTIGATION, PHASE-2

Order

Issued Under Delegated Authority October 25, 1978.

In Ordering paragraph 11 of Order 78-7-106, the order which instituted the *Former Large Irregular Air Service Investigation*, the Board ordered all environmental evaluations prepared pursuant to Part 312 of the Procedural Regulations to be filed no later than the date set for the exchange of information response exhibits. In the prehearing conference report in Phase 2, Docket 33362, Judge Saunders required the Bureau of Pricing and Domestic Aviation to furnish information responses by November 6, 1978. Following the Board's ordering paragraph, Judge Saunders ordered each applicant to submit its environmental evaluation on or before November 6, 1978.

Two applicants in Docket 33362 have expressed concern about the reasonableness of the deadline fore submission of environmental evalulations. They note that, since the instant investigation is unprecedented and complicated, a significant amount of time is needed to prepare direct exhibits to support operating proposals, and argue that submitting an environmental evaluation before an applicant is sure of its operating proposal is speculative and requires substantial revision once an operating proposal has been solidified.

Under the authority delegated in § 312.8 of the Board's Procedural Regulations, we have decided to postpone the date for filing of environmental evaluations. Since direct evidence in support of an application must be filed on or before January 29, 1979, each applicant must file its environmental evaluation on or before the date it files its direct evidence.

Accordingly,

We change the date for filing environmental evaluations in *Former Large Irregular Air Service Investigation, Phase-2*, Docket 33362, to on or before the date an applicant files its direct evidence in support of its application, but in no event later than January 29, 1979.

We shall serve a copy of this order on all parties in Docket 33362, Phase-2.

We shall publish this order in the FEDERAL REGISTER.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-30921 Filed 11-1-78; 8:45 am]

[6320-01-M]

[Order 78-10-95; Docket 33179]

ALLEGHENY AIRLINES, INC.

Application for Certificate Amendment; Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 20th day of October 1978.

On August 9, 1978, Allegheny Airlines filed an application, accompanied by a petition asking the Board to issue an order to show cause why its certificate for Route 97 should not be amended to remove its one-stop restriction in the Cincinnati-Pittsburgh market. It asks that the authority applied for be permissive and subsidy-ineligible.

In support of its application, the carrier contends that, although both American and TWA hold nonstop authority in the market, American discontinued service altogether two years ago and TWA's three daily nonstop round trips are inconveniently timed, with undesirably high load factors for local traffic passengers.[1] It states that it will offer, with 74-seat BAC-1-11 equipment, four daily nonstop flights on a turn-around basis, timed for early morning and evening departures in both directions, thereby filling gaps in TWA's existing schedule; that it will benefit 26,208 local passengers, and 32,510 passengers by improved single-carrier service; and that it expects profitable operations in the first year of operations, with a projected net profit of $106,000 (after return on investment and tax) computed using Subpart K methodology.[2]

Allegheny's application is supported by the Pittsburgh parties,[3] and the Cincinnati parties.[4] We have received no other responses.

On the basis of the tentative findings below, we have tentatively concluded that the public convenience and necessity require that Allegheny's certificate for Route 97 be amended to remove its Cincinnati-Pittsburgh restriction, and that such authority be awarded on a permissive, subsidy-ineligible basis.[5] We further tentatively conclude that we can confer such authority through show-cause procedures, since there does not exist any dispute as to material determinative facts that requires an oral evidentiary hearing for its resolution.

In the absence of a showing of need for retention of operating restrictions on air carriers, it is our policy to lift them.[6] There has been no attempt to make such a showing here. Grant of nonstop authority to Allegheny will make possible service benefits for the public and more efficient and profitable operations for the carrier. Even should Allegheny not serve or subsequently decide to leave the market, dormant authority benefits the public by helping to keep incumbent, serving carriers responsive to the needs and desires of travelers.

Finally, there has been no showing that diversion of traffic and revenues from TWA, American and other carriers would threaten any carrier's ability to perform its certificate obligations, or would necessarily result in the termination of essential services which would not be replaced by the applicant or by another carrier.[7] According to Allegheny's uncontested estimates derived by the projected-participation method, diversion from TWA and other carriers in this market would not have a significant impact on the carriers' economic health. Allegheny estimates diversion from TWA would be $679,000, or less than 0.1 percent of TWA's gross domestic rev-

Footnotes continued from last page

any new applications which conform to the scope of this proceeding, and to dismiss nonconforming ones.

[4] All Members concurred.

[1] Allegheny is not now serving the market, except for an early morning two-stop flight eastbound.

[2] Before American's withdrawal from the market November 1976, on-line O&D traffic amounted to a record high level of 91,000 passengers in 1976, but declined to 67,000 in 1977. The market generated 73,150 passengers (O&D plus connecting) for the year 1977. After growth and stimulation, Allegheny estimates that it would carry about 58,718 passengers (O&D plus connecting) in the first year of its proposed service.

[3] The County of Allegheny and the Pittsburgh Airport Advisory Committee.

[4] The Greater Cincinnati Chamber of Commerce, the Kenton County Airport Board, and the City of Cincinnati.

[5] We also tentatively find that Allegheny is a citizen of the United States and is fit, willing and able to perform properly the transportation proposed here and to conform to the provisions of the Act and our rules, regulations and requirements.

[6] *Cincinnati-Washington Subpart M Proceedings*, Order 77-10-4, *Buffalo-St. Louis Subpart M Proceeding*, Order 77-4-25, and *Atlanta-Charleston Competitive Nonstop Case*, Order 78-2-114.

[7] See *Piedmont Boston Entry*, Order 78-4-69, April 14, 1978, page 5, made final by Order 78-8-97, August 17, 1978.

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enues.[8] Corresponding diversion figures from other carriers reflect even smaller impacts on revenues.

Finally, upon review of the environmental evaluation submitted by Allegheny in its petition, to which no answers have been filed, we tentatively find that our decision to award it the requested authority does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, or a major regulatory action under the Energy Policy and Conservation Act of 1975.

We will give interested persons 30 days following the service date of this order to show cause why the tentative findings and conclusions set forth here should not be made final; replies will be due within 10 days thereafter. We expect such persons to direct their objections, if any, to specific markets, and to support such objections with detailed economic analysis. If an evidentiary hearing is requested, the objector should state, in detail, why such a hearing is necessary and what relevant and material facts he would expect to establish through such a proceeding that cannot be established in written pleadings. We will not entertain general, vague, or unsupported objections.

Accordingly:

1. We direct all interested persons to show cause why we should not issue an order making final the tentative findings and conclusions stated above and amending the certificate of public convenience and necessity of Allegheny Airlines for Route 97 so as to remove its one-stop restriction in the Cincinnati-Pittsburgh market;

2. We direct any interested persons having objections to the issuance of an order making final any of the proposed findings, conclusions, or certificate amendments set forth here, to file with us and serve upon all persons listed in paragraph 7, no later than November 27, 1978, a statement of objections, together with a summary of testimony, statistical data, and other material expected to be relied upon to support the stated objections; answers shall be due no later than December 7, 1978;

3. If timely and properly supported objections are filed, we will accord full consideration to the matters and issues raised by the objections before we take further actions;[9]

4. In the event no objections are filed, we will deem all further procedural steps to have been waived and we may proceed to enter an order in accordance with the tentative findings and conclusions set forth here.

[8] AL-500.

[9] Since provision is made for the filing of objections to this order, we will not entertain petitions for reconsideration.

We will publish this order in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[10]

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-30923 Filed 11-1-78; 8:45 am]

[10] All Members concurred.

[6320-01-M]

[Order 78-10-104; Docket 32129, et al.]

CALIFORNIA-ARIZONA LOW FARE ROUTE PROCEEDING

Order on Reconsideration

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 20th day of October 1978.

In the matter of applications of Hughes Air Corp. d.b.a. Hughes Airwest, (Docket 32286); Pacific Southwest Airlines, Inc. (Docket 32129); Trans World Airlines, Inc. (Docket 32309); Western Air Lines, Inc. (Docket 32303); Air California (Docket 33372); Braniff Airways, Inc. (Docket 33375); Ozark Air Lines, Inc. (Docket 33373); Allegheny Airlines, Inc. (Docket 33392); American Airlines, Inc. (Docket 33391); Cochise Airlines, Inc. (Docket 33390); Continental Air Lines, Inc. (Docket 33383); Delta Air Lines, Inc. (Docket 33386); Eastern Air Lines, Inc. (Docket 33388); Frontier Air Lines, Inc. (Docket 33385); North Central Airlines, Inc. (Docket 33389); Northwest Airlines, Inc. (Docket 33394); National Airlines, Inc. (Docket 33425); and Texas International Airlines, Inc. (Docket 33432).

By Order 78-8-103, August 18, 1978, the Board instituted the *California-Arizona Low Fare Route Proceeding* in Docket 33237. This action was taken on Pacific Southwest Airlines (PSA) motion for immediate hearing on its application in Docket 32129, which was included and expanded as a basis for this proceeding. The scope of the proceeding was limited to a determination whether new nonstop authority should be granted in the following markets:

Phoenix—Tucson.
Phoenix—Los Angeles, Ontario, Palm Springs, San Francisco, San Jose, and San Diego.
Tucson—Los Angeles, Oakland, Ontario, Palm Springs, Sacramento, San Francisco, and San Jose.

Applications of Hughes Airwest (Docket 32286), Trans World Airlines (Docket 32309), and Western Air Lines (Docket 32303) were consolidated to the extent that they conformed to the scope of the proceeding.

The order provided that applications, motions to consolidate, and petitions for reconsideration were to be filed within 20 days of service of the order and answers within 10 days after that.

New applications to provide services within the defined scope of this proceeding have been filed by Air California (Docket 33372), Braniff Airways, Inc. (Docket 33375), Ozark Air Lines, Inc. (Docket 33373), Allegheny Airlines, Inc. (Docket 33392), American Airlines, Inc. (Docket 33391), Cochise Airlines, Inc. (Docket 33390), Continental Air Lines, Inc. (Docket 33383), Delta Air Lines, Inc. (Docket 33386), Eastern Air Lines, Inc. (Docket 33388), Frontier Air Lines, Inc. (Docket 33385), North Central Airlines, Inc. (Docket 33389), Northwest Airlines, Inc. (Docket 33394), National Air Lines, Inc. (Docket 33425),[1] and Texas International Airlines, Inc. (Docket 33432).[2] Each application was accompanied by a motion to consolidate it into Docket 33237 for hearing and consideration. Since the issues in these applications are the same as those in the *California-Arizona Proceeding*, we find that their consolidation into Docket 33237 will be conducive to the proper dispatch of the Board's business and to the ends of justice and will not unduly delay this proceeding. We shall order their consolidation into this case.

Two carriers which already had applications in the case filed either an amended application (PSA) or an amendment to an application (Hughes Airwest). PSA's amended application conforms to the scope of the proceeding and its accompanying motion to consolidate will be granted for the reasons set forth above.[3] Amendment No. 1 to its application filed by Hughes Airwest was not accompanied by any motion. The matters it deals with are included within this case only if they fall within the scope of the proceeding as defined in Order 78-8-103 and this order.[4]

Petitions for reconsideration of the Board's instituting order have been filed by PSA, Western, and the County of Sacramento.[5] PSA seeks to include within the scope of the proceeding nonstop authority between Burbank, Long Beach, and Orange County, on the one hand, and Tucson and Phoenix, on the other hand. Air-

[1] National's application was filed 3 days late and was accompanied by a motion for leave to file late. The motion will be granted.

[2] TXI's application was filed 4 days late and was accompanied by a motion for leave to file late. The motion will be granted.

[3] The PSA motion also requested contingent relief which we will discuss later.

[4] We note that Condition 9 of Hughes Airwest's certificate as set forth in Amendment 1 is inaccurate.

[5] Sacramento's petition was accompanied by a motion for leave to file the petition late. The motion will be granted.

ports at the first-named points, it asserts, have the potential for developing substantial traffic from the Los Angeles metropolitan area and the Arizona points. Western also seeks to include nonstop authority between Santa Ana,[6] Burbank, and Fresno, on the one hand, and Phoenix and Tucson, on the other, because these are monopoly markets, some of substantial size. Western and Sacramento both seek to include the Phoenix-Sacramento market because the Board's reason for excluding it (that it would be considered in Docket 28981) has not in fact been borne out.

Answers have been filed by the Bureau of Pricing and Domestic Aviation (EBDA) and the city of Newport.[7] BPDA supports all of the petitions for reconsideration, pointing out that all of the newly suggested markets are related closely geographically to the markets already in issue and should not unduly delay the proceeding.[8] Newport, on the other hand, objects to the expansion of the proceeding to include additional service at Orange County Airport because it will produce adverse environmental impacts on Newport. Also, it suggests that such service may not be implemented because of the lack of capacity at the airport, the refusal of the Orange County Board of Supervisors to grant additional terminal facilities to new commercial air carriers at the airport, the operation of the Noise Standards of the State of California, and the Board of Supervisors existing noise abatement procedures at the airport.

We recognize the importance of the considerations raised by Newport. In the *Twin Cities-Las Vegas/Phoenix/San Diego Route Proceeding*, Order 78-1-20, January 6, 1978, we stated (mimeo. p. 5):

> We are also concerned with the substantial civic opposition to the authorization of an additional carrier at the Orange County Airport. It appears that even if a new carrier is authorized at Orange County, it may not be able to operate at least until the county's many environmental problems are resolved. We have therefore decided not to hear this market in this more limited case.

In the present case we decided "to conduct a broad investigation" (Order 78-8-103, p. 3) rather than a "limited" one.[9] We shall therefore include Orange County or Santa Ana in this case.

Our determination does not leave Newport without remedy. The inclusion of Orange County or Santa Ana is simply placing the point in issue at a public hearing. Newport and other parties may adduce evidence of the adverse environmental impact of the proposals advanced by the carriers, or the lack thereof. The carriers themselves will be required to submit environmental evaluations with respect to their proposals. Only after the record is made and briefs are received will the judge and the Board rule on the inclusion of Orange County or Santa Ana in any route award.

We conclude, therefore, that the petitions for reconsideration filed by PSA, Western, and Sacramento should be granted and the scope of the proceeding broadened to include the suggested new markets. For this reason we shall provide for the filing of new applications, amendments to old applications, and motions to consolidate.[10] In this connection, PSA has already filed a motion to consolidate its amended application, including the new markets named in its petition for reconsideration, contingent upon the Board including these markets in the case. Since we have decided to include these markets we shall also grant the contingent portion of PSA's motion to consolidate.[11]

Accordingly:

1. We grant the petitions for reconsideration of Order 78-8-103, filed by Pacific Southwest Airlines, Inc., Western Air Lines, Inc., and the County of Sacramento, to the extent indicated in this order;

2. The scope of this proceeding set forth in paragraph 3 of Order 78-8-103 is expanded to include the following markets:

Phoenix—Burbank, Long Beach, Santa Ana—Orange County, Fresno, and Sacramento.
Tucson—Burbank, Long Beach, Santa Ana—Orange County, and Fresno.

3. We grant the motions to consolidate filed by Air California (Docket 33372), Braniff Airways, Inc., (Docket 33375), Ozark Air Lines, Inc. (Docket 33373), Allegheny Airlines, Inc. (Docket 33392), American Airlines, Inc. (Docket 33391), Cochise Airlines, Inc. (Docket 33390), Continental Air Lines, Inc. (Docket 33383), Delta Air Lines, Inc. (Docket 33386), Eastern Air Lines, Inc. (Docket 33388), Frontier Air Lines, Inc. (Docket 33385), North Central Airlines, Inc. (Docket 33389), Northwest Airlines, Inc. (Docket 33394), National Airlines, Inc. (Docket 33425), Texas International Airlines, Inc. (Docket 33432), and Pacific Southwest Airlines, Inc. (amended application, Docket 32129);

4. We grant the motion for leave to file otherwise unauthorized documents filed by National Airlines, Inc. (motion to consolidate), Texas International Airlines, Inc. (motion to consolidate), and County of Sacramento (petition for reconsideration);

5. We deny the motion of the City of Newport for an extension of time within which to file an answer to the petitions for reconsideration;

6. Applications, amendments to applications, and motions to consolidate shall be filed within 10 days of the date of service of this order;[12]

7. All carriers filing applications or amendments to applications which they seek to have consolidated into this proceeding shall file environmental evaluations under § 312.12 of the Board's Regulations within 30 days of the date of service of this order;

8. Except to the extent granted, we deny all other requests in this proceeding.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[13]

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-30919 Filed 10-31-78; 8:45 am]

[6] For present purposes PSA's "Orange County" and Western's "Santa Ana" are the same. In Hughes Airwest's certificate "Orange County-Santa Ana-Anaheim" describes a single point. See also Order 78-1-120, note 1.

[7] Newport called its paper a motion for extension of time to file an answer or, alternatively, a consolidated answer to the petitions for reconsideration of PSA and Western. We think Newport has made its position clear; we shall treat its paper as an answer, and deny its motion to extend time to answer.

[8] The case has been assigned to Administrative Law Judge Frank M. Whiting. The prehearing conference has been set for November 7, 1978.

[9] The only markets involved in the above-quoted case were Twin Cities-Las Vegas; Twin Cities-Phoenix; and Twin Cities-San Diego.

[10] We shall not entertain further petitions for reconsideration.

[11] We have already indicated our approval of the balance of PSA's motion to consolidate. See note 3, above, and accompanying text.

[12] We delegate to the presiding administrative law judge the authority to consolidate by order any applications or amendments to applications which conform to the scope of the proceeding.

[13] All Members concurred.

[6320-01-M]

[Docket 30699]

OAKLAND SERVICE CASE

Postponement of Prehearing

Notice is hereby given that the prehearing conference in the above-entitled matter now assigned to be held on November 28, 1978, at 10 a.m. in Room 1003, Hearing Room B, 1875 Connecticut Avenue NW., Washington, D.C., before the undersigned is postponed until further notice. (43 FR 49826, October 26, 1978).

Dated at Washington, D.C., October 25, 1978.

ALEXANDER N. ARGERAKIS,
Administrative Law Judge.

[FR Doc. 78-30917 Filed 11-1-78; 8:45 am]

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[6320-01-M]

(Order 78-10-106; Docket 33448, et al.)

PAN AMERICAN WORLD AIRWAYS, INC., ET AL.

Order Granting Suspension and Exemptions, and Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 26th day of October, 1978.

In the matter of application of Pan American World Airways, Inc., for temporary suspension authority on various routes (Docket 33448); Applications of United Airlines, Inc. (Docket 33567), Braniff Airways, Inc. (Docket 33550), Hawaiian Airlines, Inc. (Docket 33558), Aeroamerica, Inc. (Docket 33634) for an emergency exemption pursuant to section 416(b) of the Federal Aviation Act of 1958, as amended.

On September 15, 1978, Pan American World Airways, Inc. filed an application under Part 205 of the Board's Regulations and section 401(j) of the Federal Aviation Act for authority to suspend service for an indefinite period beginning October 29, 1978, to Portland, Oregon; Amsterdam, the Netherlands; Ankara, Turkey; the Azores; Belgrade, Yugoslavia; Bucharest, Romania; Budapest, Hungary; Lisbon, Portugal; Moscow, U.S.S.R.; Paris, France; Prague, Czechoslovakia; and Vienna, Austria; and between Seattle, Washington, and Honolulu, Hawaii.[1] Pan American also requests an appropriate amendment to its Approved Service Plan for the routes in question.

In support of its application, Pan American states that it is currently losing approximately $27 million a year on these routes;[2] that greater losses can be expected in the future because expenses are rising faster than traffic or revenue; that, in the past, service over unprofitable segments extending beyond principal international gateways was justified by the contribution to load factors over the principal segments; that, due to extraordinary traffic growth in 1978, the load factors over principal segments are now sufficiently high that profitability of these extension routes can no longer be determined on a "contributory" basis; that Pan American decided to seek suspension of the routes in question because of either low load factors, low yields, high station costs, lack of access to European Fifth Freedom traffic, or a combination of these factors; that there is sufficient alternative service on other carriers to meet the transportation needs of the public in these markets; and that the Board's recent emphasis on a more competitive air transportation system requires that carriers be allowed to become more efficient by eliminating unprofitable operations.

Answers were filed by Trans International Airlines, Inc. (TIA); jointly by the City of Portland, the Portland Chamber of Commerce, the Portland Freight Traffic Association, and the Port of Portland (the Portland Parties); and jointly by the Massachusetts Port Authority and the Greater Boston Chamber of Commerce (the Boston Parties). TIA does not object to Pan American's request for suspension, but asks that action also be taken on TIA's pending applications for certification and exemption to serve markets that Pan American would suspend; and suggests that the Board institute a United States-Europe route investigation on the pattern of the *Transpacific Low-Fare Route Investigation*, Docket 33068. The Portland Parties object to Pan American's request to withdraw from the Portland-Honolulu and Portland-London markets, stating that the application does not present sufficient evidence of unprofitability, effect on the traveling public, sufficiency of alternative services, or the public interest, to satisfy the requirements of Part 205 of the Board's regulations. The Boston Parties state that they do not oppose Pan American's proposal to withdraw its Boston-Amsterdam service if the Board takes immediate action to grant exemptions to other carriers to serve this market; that Pan American's withdrawal is not an indication of insufficient Boston-Europe traffic potential, but rather is part of Pan American's overall strategy to restructure its trans-oceanic traffic into the fewest possible number of high density, long-haul routes; that Pan American's abandonment of Boston would decrease competition and is therefore contrary to the U.S. international aviation policy; that the public interest requires improved service from Boston to Europe; that Pan American's failure to generate a profit on this route was caused by poor marketing strategy; and that they anticipate discussions with the carriers to develop alternative services, which will be the subject of a forthcoming joint exemption application.[3]

Pan American filed a Reply to the answers at the Portland Parties, the Boston Parties, and TIA, stating that unprofitability of the Portland-Honolulu and Portland-Seattle segments was proven despite the high load factors on the former; that increased competition in international markets caused by the Board's liberal route policies has forced the carrier to cease unprofitable operations; that Boston-Amsterdam operations cannot be sustained with its current lack of domestic back-up traffic; and that this suspension is not the proper forum for awards of U.S.-Europe authority to other carriers.

We have also received a large volume of correspondence from consumers, Congressmen, and Senators, primarily in the Portland/Seattle area, objecting to Pan American's request. They complain that the proposed withdrawal from the Seattle/Portland-Honolulu market just before the peak Christmas travel season would inconvenience many passengers who have made confirmed reservations for Pan American flights (and in almost all cases paid the applicable fares) as far back as March, 1978. Apparently, flights on other carriers during the upcoming peak travel season are booked solid. In an exchange of letters between the Bureau of Consumer Protection and Pan American on this subject, Pan American indicated that it has contacted other carriers on the feasibility of adding extra sections, and it is attempting to find alternative transportation for passengers who hold Pan American reservations. However, continuing response from the public indicates that there is still a service problem in this market, as many of the extra-section flights planned by Northwest and Continental were already filled at the time Pan American announced its plan to suspend. Thus, it is likely that a large number of passengers will either not be able to obtain transportation or that they will be forced to travel by more circuitous routing, and pay higher fares.

We have also received complaints from passengers that hold round-the-world tickets. These tickets provide that, for a fixed price, a passenger may travel to an unlimited number of points in one direction on Pan American's system. These passengers now find that travel on Pan American to many points in Eastern Europe is foreclosed, seriously diminishing the value of the tickets, and disrupting carefully arranged travel plans and reservations.

Upon consideration of the applications, the answers, and all other relevant information, we have decided to grant Pan American's application subject to the condition that all passengers who have paid for confirmed reserved space on Pan American, as of the effective date of this order, over routes that Pan American will no longer serve are entitled to alternate air transportation to their destinations, without stopover, on the same date as their original date of departure, or any other date acceptable to the passenger, with any increase in fare incurred as a result of such rerouting being borne by Pan American; provided, however, that at its discretion, Pan American may instead provide such passengers with the compensation according to the Board's Denied Boarding Compensation Regulations, 14 CFR Part 250.

By including this provision in the suspension order, Pan American will be provided with three different methods of accommodating its passengers. First, it may re-route them through less congested cities and absorb any fare increases. Second, it may seek volunteers to relinquish their seats on alternate transportation and negotiate compensation with them. Third, Pan American can pay compensation in the amount specified in the Regulations for involuntary bumpings to those persons who cannot be otherwise accommodated.

Prior to a recent court decision, passengers holding tickets for cancelled Pan American flights could have booked space on other carriers, by more circuitous routings if necessary, without paying any additional fare. However, in *C.A.B.* v *Frontier Airlines, Inc., et al.*, 78 Civ. 1216 (D.D.C. July 28, 1978), the district court for the District of Columbia decided that airlines that did not write the original ticket need not reroute a passenger at the original fare, but may charge the higher fare applicable to the circuitous routing.[4] Moreover, the law is unsettled as to Pan American's contractual or tariff obligations to passengers who purchased tickets believing in good faith that Pan American would, barring unforeseeable or uncontrollable events, furnish the transportation that it promised. The condition we have decided to impose will protect passengers from incurring higher costs for transportation as a result of the suspension, while providing Pan American with the flexibility to arrange alternative transportation or to provide compensation for the disruption of passengers' travel plans. We have not decided to impose this condition on all requests for temporary suspension under section 401(j), and we will consider each case that arises in the future on its individual circumstances. Here, we find that the public interest requires application of this condition, which will strike a balance between the justified expectations of the passengers and Pan American's need to realign its route structure.

We are aware that some passengers, including those that hold Pan American reservations for the routes in question and those who would have traveled on Pan American, may nonetheless be inconvenienced by our decision to grant the suspension. However, to require Pan American to continue unwanted operations would directly contradict our oft-expressed policy of relying on carrier management to make the fundamental decisions about the price, quality, and type of air services that they will offer. Indeed, we have specifically exhorted Pan American, which for many years was in precarious financial health, to become more efficient by discontinuing unprofitable routes.[5] While we are sensitive to the potential disruption of the travel plans of Pan American's passengers, it would definitely not be in the public interest to require Pan American to continue to carry these passengers at a loss, which ultimately would have to be recouped in the form of higher air fares or decreased service to passengers on other routes. The better solution is to allow substitute transportation by carriers that believe they can operate in these markets at a profit, and to insure that Pan American will retain an obligation to assist these passengers in obtaining transportation. We will therefore utilize our exemption authority in this and subsequent orders to allow other carriers to serve markets where Pan American will withdraw.

Accordingly, pursuant to section 401(j) of the Act, we find that temporary suspension of Pan American's services on the routes named in its application is in the public interest, and that its Approved Service Plan-Foreign Air Transportation for Route 132 should be amended to reflect this authority. The suspension will be effective for two years, or until final decision in a route proceeding affecting Pan American's authority, whichever comes first.

We have also decided to issue an order to show cause why Pan American's authority to serve the Seattle/Portland-Honolulu market over Route 117, segment 1, should not be made permissive under section 401(g). This would allow Pan American to discontinue service at will but, by not deleting or suspending its authority, it would also be able to resume or thereafter cancel service based on its own assessment of the market, without the costly delay otherwise required to obtain our approval. Thus, we tentatively conclude that the public convenience and necessity require the amendment of Pan American's certificate for Route 117, Segment 1, to make its Seattle/Portland-Honolulu authority over the route permissive.[6] We do not propose to take similar action concerning the international routes for foreign policy reasons. Retention of dormant authority by Pan American could impede designation of other U.S. carriers for permanent authority to certain foreign countries, and these issues would be more appropriately resolved in a proceeding to award permanent authority. As indicated below, we will consider institution of route investigations to European points suspended by Pan American, and one of the issues that would be decided in such route investigations would be whether Pan American's authority should be amended, deleted, or made permissive.

Interested persons will be given until 30 days following the date of service of this order to show cause why the above tentative findings and conclusions should not be made final. We expect that objections will be supported by detailed economic or legal arguments. If an oral evidentiary hearing is requested, the objector should state, in detail, why such hearing is necessary and what material facts the objector would expect to establish through such a hearing that cannot be established in written pleadings. General, vague, or unsupported objections will not be entertained.

We have received several applications for temporary exemption authority and for permanent authority to replace Pan American on the suspended routes, in addition to applications already on file with the Board which could be granted to provide substitute service. Applications have been filed for service to Honolulu, Amsterdam, Brussels, London, Paris, Vienna, Munich and Frankfurt.[7] Many of the points in Europe that will be suspended by Pan American have not yet been applied for and as can be seen in Appendix A[8], some of these would be without U.S. flag service after the suspension. We are considering institution of a route proceeding to determine whether permanent authority should be awarded to these points, and we invite any other persons interested in serving Europe to submit service proposals as son as possible.

We intend to issue shortly orders granting exemption authority for several routes which will be left without U.S.-flag service, or with unsatisfactory service. However, the situation in

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[1] Pan American requests suspension of these points on the following routes: Amsterdam, Ankara, Belgrade, Boston, Bucharest, Budapest, Moscow, Paris, Prague, Portland, and Vienna on Route 132 Part II; the Azores on Route 132, Part 1, Segment 3; Boston and Portland on Route 132, Part 1, Segments 1 and 2; Lisbon on Route 132, Part 1, Segment 3; and Portland and Seattle on Route 117, Segment 1.

[2] This is based on actual losses during the year ending June 30, 1978, with losses on the Boston-Amsterdam and New York-Vienna routes, where services commenced June 15, 1978, and April 30, 1978, respectively, projected to a 12 month period.

[3] The Boston Parties subsequently filed a joint application with Braniff Airlines, Inc., for an exemption and a 401 certificate to serve Detroit/Boston-London/Amsterdam/Brussels/Paris/Frankfurt. Dockets 33642 and 33640.

[4] The Board will be appealing this decision.

[5] *See*, e.g., Order 74-9-62.

[6] We also tentatively find that Pan American is fit, willing, and able within the meaning of section 401 of the act.

[7] *See*, e.g., Dockets 33557, 33558, 33566, 33567, 33553, 33550, 33634, 33397, 33602, 32686, 32724, 33642 and 33640.

[8] Appendices A and B filed as part of the original document.

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the Seattle/Portland-Honolulu market is so critical that it requires immediate relief. We understand that from 10,000 to 15,000 passengers held Pan American reservations prior to its announcement to seek suspension. Not all of these passengers have been able to arrange alternative transportations, and the current traffic boom created by the very low discounts that have been introduced by the carriers can only increase the service need.[8] Consequently, there is a compelling need for immediate relief in the form of Board exemptions, which we will grant to all fit, willing, and able applicants in order to maximize the prospects for improved service.

Applications for exemption authority in the Seattle/Portland-Honolulu market have been received from Unites Airlines, Inc., Braniff Airways, Inc., Hawaiian Airlines, Inc., and Aeroamerica, Inc. The applications and answers thereto are summarized in Appendix B. We have decided to grant all of the applications except that of Aeroamerica. While we favor the granting of authority to smaller carriers, Aeroamerica has failed to submit a scheme to protect passengers sufficiently against possible financial loss in the event of a cancellation and assure them of their right to denied boarding compensation. We understand that the Bureau of Pricing and Domestic Aviation is now attempting to work out a plan with the carrier that meets our concern for consumer protection. If a satisfactory plan can be worked out we will reconsider Aeroamerica's request.

In light of the immediate and compelling need for air service to Hawaii, we find it in the public interest of grant exemptions to United, Braniff, and Hawaiian. To require these carriers to await completion of certification proceedings would be an undue burden, and effectively preclude a satisfactory amount of air transportation in the Pacific Northwest-Hawaii market during the coming peak travel season. The services we authorize are limited in extent, as only two long-haul route are involved, and the authority will be effective for only two years, or until completion of a route proceeding concerning these markets. Moreover, the sudden and unexpected withdrawal of Pan American is an unusual circumstance that warrants exercise of the Board's exemption power. Although Hawaiian has never operated a long-haul route before, it can do so in this situation without an irretrievable committment of resources, by leasing aircraft and ground facilities if necessary. While normally we would be reluctant to authorize temporarily large-scale operations by an essentially short-haul carrier, the critical service need in these markets justifies extraordinary measures. Nonetheless, the carriers are on notice that any commitment of resources during the exemption period will not affect any eventual Board decision on certification.

For these reasons, we find that Braniff, United, and Hawaiian should be granted exemptions to operate Seattle/Portland-Honolulu service because of the limited extent and unusual circumstances affecting the carriers' operations, and that it would be in the public interest.[9]

Accordingly, 1. We suspend, subject to the condition described above, under Section 401(j), the authority of Pan American World Airways to serve the following points from October 29, 1978, until November 1, 1980, or until final Board decision amending its certificate, whichever comes first:

Amsterdam, the Netherlands, on Route 132, Part II
Ankara, Turkey on Route 132, Part II
The Azores on Route 132, Part I, Segment 3
Belgrade, Yugoslavia on Route 132, Part II
Boston, Massachusetts on Route 132, Part I, Segments 1 and 2; and Route 132, Part II
Bucharest, Romania on Route 132, Part II
Budapest, Hungary on Route 132, Part II
Lisbon, Portugal on Route 132, Part I, Segment 3
Moscow, U.S.S.R. on Route 132, Part II
Paris, France on Route 132, Part II
Portland, Oregon on Route 117, Segment 1; Route 132, Part I, Segments 1 and 2; and Route 132, Part II
Prague, Czechoslavakia on Route 132, Part II
Seattle, Washington on Route 117, Segment 1
Vienna, Austria on Route 132, Part II.

2. We temporarily exempt United Airlines, Inc., Braniff Airways, Inc., and Hawaiian Airlines, Inc., from Section 401 of the Act and the terms, conditions, and limitations of their certificates to the extent necessary to permit them to provide air transportations between the points Seattle, Wash.; Portland, Oreg.; and Honolulu, Hawaii, until November 1, 1980, or until final Board decision granting permanent authority in these markets;

3. We deny the application of Aeroamerica, Inc., for an exemption to provide service in the Seattle/Portland-Honolulu maket;

4. We direct all interested persons to show cause why the Board should not issue an order making final the tentative findings and conclusions described above and amending Pan America's certificate for Route 117, Segment 1, to make its Seattle/Portland-Honolulu authority over this route permissive;

5. Any interested person having objection to the issuance of an order making final the proposed findings, conclusions, and certificate amendment shall, no later than November 27, 1978, file with the Board and serve upon all persons listed in paragraph 9 a statement of objections together with a summary of testimony, statistical data, and evidence expected to be relied upon to support its objections. Answers to objections shall be filed 10 days later;

6. If timely and properly supported objections are filed, full consideration will be accorded the matters and issues raised before further action is taken by the Board;[10]

7. In the event no objections are filed to any part of this order, we will deem all further procedural steps relating to such part or parts to have been waived, and the case will be submitted to the Board for further action;

8. The authority granted in paragraphs 1 and 2 may be amended or revoked at any time in the discretion of the Board without hearing; and

9. We shall serve a copy of this order on all persons named in the service lists of Dockets 33448, 33558, 33567, a33550, and 33634, and any persons who filed answers to those applications.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeroanautics Board.[11]

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-31053 Filed 11-1-78; 8:45 am]

[8] In correspondence to the Board Pan American states that Northwest Airlines plans to reinstitute service from Seattle to Honolulu with daily B-747 flights, and will add a second daily B-747 on December 14. Also, Continental currently has daily DC-10 service to Portland-Seattle-Honolulu, and will add a second daily round-trip on October 30. However, total scheduled flights will still be lower than last year and, even with a greater number of charter trips than last year, total flights by all carriers will be almost identical to last year. Since charter flights tend to be sold out farther in advance of departure than scheduled flights, the availability of air transportation for the next few months will be inadequate.

[9] Since the proposed services of all three carriers will at most result in four daily roundtrip flights between Seattle/Portland and Honolulu, and will be offset by the reduction in Pan America's services, we find that our grant of the exemptions and the suspension does not constitute a major Federal action significantly affecting the quality of the environment within the meaning of the National Environmental Policy Act of 1969, or a major regulatory action under the Energy Policy and Conservation Act of 1975.

[10] All motions and petitions for reconsideration shall be filed within the period allowed for filing objections and no further motions, requests, or petitions for reconsideration of this order will be entertained.

[11] All members concurred.

[6320-01-M]

[Order 78-10-103; Docket 32710]

SAN FRANCISCO-RENO-ALBUQUERQUE-TEXAS SERVICE INVESTIGATION; RENO SERVICE INVESTIGATION

Order on Reconsideration

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 20th day of October 1978.

INTRODUCTION

This proceeding was set up to consider improved service for Reno, Nev. Specifically at issue is the need for new nonstop authority between Reno, on the one hand, and San Francisco/Oakland, Albuquerque, Dallas/Ft. Worth, and Houston, on the other. See Order 78-5-128 (May 19, 1978). In Order 78-7-126 (July 25, 1978) the presiding administrative law judge consolidated a number of applications to the extent that they conformed with the scope of the case. There are still pending five petitions for reconsideration of Order 78-5-128.

National Airlines and Western Air Lines want to place in issue new authority in the Albuquerque-Houston/Dallas-Ft. Worth and Houston-Dallas/Ft. Worth markets.[1] American Airlines asks for inclusion of the two Albuquerque markets, and Delta Air Lines wants us to add only Houston-Dallas/Ft. Worth. The petitioners generally argue that expansion of the case would enhance the operating flexibility of their Reno services and would not unduly delay the case or burden the evidentiary record. Western requests that we reconsider our decision to include the Reno-San Francisco/Oakland market, because it is in issue in the *California-Nevada Low-Fare Route Proceeding*, Docket 31574.[2] Western argues that the primary purpose of this case is to consider improved service from Reno to the Southwest and that inclusion of the Bay Area is inconsistent with that purpose. Western also observes that the Board has an established policy against instituting new cases to consider authority already in issue in pending cases. Finally, Continental Air Lines seeks to add Reno-Denver.

Answers were filed by Braniff Airways, Continental, Hughes Airwest, Texas International Airlines, and Western. Braniff, Continental, and TXI oppose the inclusion of markets in which they are incumbents[3] but Braniff supports the inclusion of the two Albuquerque-Texas markets. Airwest and Western support all the proposals for expansion of the case.

GENERAL MATTERS

As a general rule, it is most convenient to hear several related markets in the same proceeding and avoid consideration of unrelated ones. See the *Las Vegas-Houston Competitive Service Investigation*, Order 78-5-109, May 19, 1978. See also our decision adding the Houston-Philadelphia route to the *Dallas-Philadelphia* case, Order 78-5-151, May 25, 1978. Inclusion of several nonstop city-pairs involving one or more of the same points permits a reasonably fast trial and, if awards are made, results in carriers holding unrestricted city-pair authority which they can tie into their systems in the most efficient manner. There may be situations where it is convenient for the Board to consider one-stop and nonstop authority in the same market at the same time in order to allow improved service by combining one-stop and nonstop operations. We recently added two intermediate points to the *California-Florida* case where it seemed that the focus of the case would nonetheless remain on transcontinental service and, importantly, the addition of the intermediate points could promote the institution of low-fare service. Order 78-3-2, March 1, 1978. Such an approach, however, necessarily ties any award of authority to the intermediate points to the longer-haul markets unless we are prepared to consider the discrete needs of the intermediate markets for unrestricted authority at the same time we consider the need for terminal-to-terminal service. As a general rule, however, cases designed to examine the need for service at a particular point or in selected markets should not be expanded into major area investigations or transformed into cases whose focus is on service to intermediate markets. Such expansion or transformation is unfair to the applicant or petitioner who initiated the original case. By the same token, it is inefficient to litigate the service needs of the same market in more than one proceeding. See *San Francisco-Reno-Albuquerque-Texas Service Investigation*, Order 78-5-128, May 19, 1978, note 7.

SPECIFIC MATTERS

With these considerations in mind, we have decided to expand this case by adding the Albuquerque-Texas and Dallas/Forth Worth-Houston markets and allowing applicants to propose one-stop Reno-Texas service. All flights will be required to serve Reno. We will deny the request to add Reno-Denver, since unrestricted authority in that market was recently placed in issue in the *St. Louis-Denver-Las Vegas/Reno Route Investigation*, Order 78-6-191, June 28, 1978. Moreover, as the Reno-San Francisco/Oakland market is in issue in the *California-Nevada* case, we will not grant any new San Francisco/Oakland-San Jose turnaround authority in this case.

We shall, as requested by Western, add San Jose to the hyphenated point San Francisco-Oakland.

Accordingly:

1. We designate this case the *Reno Service Investigation*, Docket 32710;

2. This case shall consider (a) whether the public convenience and necessity require new nonstop authority in the following markets: Reno/San Francisco/Oakland/San Jose; Reno-Houston; Reno/Dallas/Forth Worth; Reno-Albuquerque; Albuquerque-Houston; Albuquerque-Dallas/Forth Worth; and Houston-Dallas/Forth Worth, provided that all flights shall serve Reno and shall not operate turnaround service between San Francisco/Oakland/San Jose and Reno; (b) which carrier or carriers should be authorized to provide any service found to be required; and (c) what terms, conditions, or limitations, if any, should be placed on any authority found to be required;

3. Any authority awarded in this investigation shall be ineligible for subsidy; and

4. Except to the extent granted, we deny the petitions of American Airlines, Continental Air Lines, Delta Air Lines, National Airlines, and Western Air Lines for reconsideration of Order 78-5-128.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[4]

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-30922 Filed 10-31-78; 8:45 am]

[1] National suggests that authority in these three markets could be subject to a long-haul restriction requiring all flights to serve Reno.

[2] Briefs to the administrative law judge were filed in the *California-Nevada* case on July 31. If we deny its petition, Western asks that we include San Jose-Reno as consistent with our traditional approach to service to the Bay Area.

[3] Braniff: Dallas/Ft. Worth-Houston; Continental: Albuquerque/Dallas/Ft. Worth/Houston; TXI: all three markets.

[6320-01-M]

[Docket 30697]

CARIBBEAN AREA SERVICE INVESTIGATION

Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding will be held on December 5, 1978, at 9:30 a.m. (local time), in the La Vista Room, Condado Holiday Inn, 999 Ashford Avenue, San Juan, P.R., before the undersigned.

[4] All members concurred.

The hearing will reconvene on December 12, 1978, at 9:30 a.m. (local time) in Room 1003, Hearing Room A, 1875 Connecticut Avenue NW., Washington, D.C.

For information concerning the issues involved and other details in this proceeding, interested persons are referred to the prehearing conference report served on June 14, 1978, and other documents which are in the docket of this proceeding on file in the Docket Section of the Civil Aeronautics Board.

Dated at Washington, D.C., October 27, 1978.

WILLIAM A. KANE, Jr.,
Administrative Law Judge.

[FR Doc. 78-31052 Filed 11-1-78; 8:45 am]

[6335-01-M]

COMMISSION ON CIVIL RIGHTS

ALABAMA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a Planning meeting of the Alabama Advisory Committee (SAC) of the Commission will convene at 7 p.m. and will end at 9:30 p.m. on November 17, 1978, in the Lalaga Inn, 359 Church Street, Mobile, Ala. 36601. (Fiesta Room).

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Southern Regional Office of the Commission, 75 Piedmont Avenue NE., Atlanta, Ga. 30303.

The purpose of this meeting is to plan follow up activities relating to film report on State Government Employment; Assess National Project priorities and projects for fiscal years 1980 and 1981.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., October 27, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-30914 Filed 11-1-78; 8:45 am]

[6335-01-M]

COLORADO ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a Planning meeting of the Colorado Advisory Committee (SAC) of the Commission will convene at 9 a.m. and will end at 1 p.m. on November 18, 1978, in the Howard Johnson Motel, 2211 La Crosse Street, Rapid City, Colo. (Black Hills Room no. 2).

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Rocky Mountain Regional Office of the Commission, 1405 Curtis Street, Denver, Colo. 80202.

The purpose of this meeting is to plan future projects.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., October 27, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-30915 Filed 11-1-78; 8:45 am]

[6335-01-M]

KENTUCKY ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a Planning meeting of the Kentucky Advisory Committee (SAC) of the Commission will convene at 12:30 p.m. and will end at 3:30 p.m. on November 20, 1978, at 101 East Jefferson Street, Turf Club Room, Rodeway Inn, Louisville, Ky. 40207.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Southern Regional Office of the Commission, 75 Piedmont Avenue NE., Atlanta, Ga. 30303.

The purpose of this meeting is to review and discuss follow up proposal to SAC study of employment in the Kentucky Bureau of State Police.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., October 27, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-30916 Filed 11-1-78; 8:45 am]

[6335-01-M]

REGIONAL ADVISORY COMMITTEES

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a Conference of the Pennsylvania, Delaware, Maryland, District of Columbia, Virginia, West Virginia Advisory Committees (SACs) of the Commission will convene at 7 p.m. and will end at 1 p.m. on November 30, 1978 and December 1, 2, 1978, in the Philadelphia Sheraton Hotel, 1725 Kennedy Blvd., Philadelphia, Pa. 19103.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Mid-Atlantic Regional Office of the Commission, 2120 L Street NW., Room 510, Washington, D.C. 20037.

The purpose of this meeting is to discuss program planning.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., October 27, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-30913 Filed 11-1-78; 8:45 am]

[3510-24-M]

DEPARTMENT OF COMMERCE

Economic Development Administration

ACME GARMENT CO., PRINCETON TEXTILE PRINTING CORP., AND DAMSEL MANUFACTURING CO., INC.

Petitions for Determinations of Eligibility To Apply for Trade Adjustment Assistance

Petitions have been accepted for filing from three firms: (1) Acme Garment Co., 5th and Elm Streets, Wentzville, Mo. 63385, a producer of women's blouses, pants and skirts (accepted October 19, 1978); (2) Princeton Textile Printing Corp., 542 West 27th Street, New York, N.Y. 10001, a producer of printed fabrics (accepted October 25, 1978); and (3) Damsel Manufacturing Co., Inc., 112 West 34th Street, New York, N.Y. 10001, a producer of skirts, pants, tops, blazers and other sportswear for children and girls (accepted October 26, 1978). The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (Pub. L. 93-618) and § 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315).

Consequently, the U.S. Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Chief, Trade Act Certification Division, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice (November 13, 1978).

JACK W. OSBURN, Jr.,
Chief, Trade Act Certification Division, Office of Planning and Program Support.

[FR Doc. 78-30935 Filed 11-1-78; 8:45 am]

[3510-25-M]

COMMITTEE FOR IMPLEMENTATION OF TEXTILE AGREEMENTS

CERTAIN EXEMPT APPAREL ITEMS EXPORTED FROM THE REPUBLIC OF CHINA

Amending the Definition

OCTOBER 30, 1978.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Amending the definition for traditional Chinese padded jackets which are exempt, when properly certified by the Government of the Republic of China, from the Bilateral Cotton, Wool, and manmade Fiber Textile Agreement of June 8, 1978, between the Governments of the United States and the Republic of China.

SUMMARY: On April 23, 1976, a letter dated April 19, 1976, from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs was published in the FEDERAL REGISTER (41 FR 17009), which designated three additional items for exemptions from the bilateral textile agreement between the Governments of the United States and the Republic of China. One of those items was traditional Chinese padded jackets. The definition for these jackets has been amended to the following:

Padded jackets—Traditional Chinese wear consisting of a padded jacket with the low mandarin collar. The garment is three-quarter length or shorter. The full front closures of the garment consist of "frogs" (knotted strips of fabric or cords) that are inserted through button holes. The fabric is woven with Chinese figures in the weave, or plain.

EFFECTIVE DATE: November 3, 1978.

FOR FURTHER INFORMATION CONTACT:

Leonard A. Mobley, Director, Trade Analysis Division, Office of Textiles, U.S. Department of Commerce, Washington, D.C. 20230, 202-377-4212.

EDWARD GOTTFRIED,
Acting Chairman, Committee for the Implementation of Textile Agreements.

U.S DEPARTMENT OF COMMERCE,
ASSISTANT SECRETARY FOR INDUSTRY AND TRADE,
Washington, D.C. October 30, 1978.

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20229.

DEAR MR. COMMISSIONER: This directive amends, but does not cancel, the directive of April 19, 1976, which added three exempt items, including traditional Chinese padded jackets, to the previously designated list of exempt items from the Republic of China.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool, and Manmade Fiber Textile Agreement of June 8, 1978, between the Governments of the United States and the Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are hereby directed, effective on November 3, 1978, to amend the definition for traditional Chinese padded jackets in the directive of April 19, 1976 to the following:

Padded Jackets—Traditional Chinese wear consisting of a padded jacket with the low mandarin collar. The garment is three-quarter length or shorter. The full front closures of the garment consist of "frogs" (knotted strips of fabric or cords) that are inserted through button holes. The fabric is woven with Chinese figures in the weave, or plain.

The actions taken with repsect to the Government of the Republic of China and with respect to imports of cotton, wool and manmade fiber textile products from the Republic of China have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States.

Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

EDWARD GOTTFRIED,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 78-30963 Filed 11-1-78; 8:45 am]

[6330-01-M]

THE COMMISSION OF FINE ARTS

MEETING

The Commission of Fine Arts will meet in open session on Tuesday, November 28, 1978, at 10 a.m. in the Commission's offices at 708 Jackson Place NW., Washington, D.C. 20006, to discuss various projects affecting the appearance of Washington, D.C.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address.

This notice confirms notice of December 27, 1977, published at 42 FR 64651.

Dated in Washington, D.C. October 26, 1978.

CHARLES H. ATHERTON,
Secretary.

[FR Doc. 78-30140 Filed 11-1-78; 8:45 am]

[6351-01-M]

COMMODITY FUTURES TRADING COMMISSION

SEMIANNUAL AGENDA OF REGULATIONS

AGENCY: Commodity Futures Trading Commission.

ACTION: Publication of Commission agenda.

SUMMARY: The Commodity Futures Trading Commission is giving public notice of the approved Commission calendar for the first quarter of fiscal year 1979. Major rulemaking activities currently anticipated for the second quarter are also indicated. In an attempt to broaden public participation in the Commission's rulemaking process, supplementary information is included on the major rulemaking efforts planned for the first six months of fiscal year 1979.

FOR FURTHER INFORMATION CONTACT:

Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581.

MAJOR REGULATORY INITIATIVES: OCTOBER, 1978–MARCH, 1979

1. LEVERAGE POLICY

Need/Objective. The Commission plans to meet the requirements of the new section 19 of the Commodity Exchange Act, as amended, by determining whether or not trading of certain leverage contracts should be permitted. In addition the Commission will be taking action on its previous proposal to adopt a rule which establishes a moratorium on the entry into the business of offering and selling standardized contracts commonly known as leverage contracts.

Legislative Authority. Section 19 of the Commodity Exchange Act, as amended, by the Futures Trading Act of 1978, Pub. L. No. 95-405, § 23, 92 Stat. 876-77.

Agency Contact. David Merrill, Office of General Counsel, 2033 K

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Street NW., Washington, D.C. 20581, 202-254-5387.

Outstanding FR Notice. Proposed Rule, 43 FR 23729; June 1, 1978, Moratorium on the Offer and Sale of Leverage Contracts; Offering and Selling Standardized Contracts.

2. COMMODITY OPTIONS PILOT PROGRAM

Need/Objective. The Commission plans to adopt regulations to test, within the context of a limited, rigidly controlled pilot program, the economic benefits provided by commodity option trading and to determine whether or not adequate customer protection can be provided. Several program issues, including criteria for selecting commodities, must be resolved before final regulations are adopted.

Legislative Authority. Sections 2(a)(1), 4c(b) and 8a(5) of the Act, 7 U.S.C. § 2, 9, 6c(b) and 12a(5) (1976).

Agency Contact. Frank Moore, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, 202-632-5110.

Outstanding FR Notice. Proposed Rule Change, 42 FR 55538; October 1977, General Regulations Under the Commodity Exchange Act; Regulation of Commodity Option Transactions.

3. TITLE III/STANDARDS FOR SELF REGULATORY ASSOCIATIONS

Need/Objective. With the objective of strengthening self-regulatory efforts within the futures industry, the CFTC has proposed standards to be applied in determining whether to register any applicant futures association(s) under Section 17 of the Commodity Exchange Act.

Legislative Authority. Section 17 of the Commodity Exchange Act, 7 U.S.C. 21 (1976).

Agency Contact. Mark D. Young, Office of General Counsel, 202-254-5716.

Outstanding FR Notice. Proposed Rulemaking 43 FR 46039; October 5, 1978, Registered Futures Associations; Proposed Standards Governing Commission Review of Applications for Registration as a Futures Association, Form of Registration Statement.

4. SPREAD TRADING

Need/Objective. The Commission's objective is to assess the practice of spread trading as well as the procedures under which it takes place to determine whether or not comprehensive regulations are required to insure the integrity and competitiveness of the market place.

Legislative Authority. Sections 4c(a) and 8a(5) of the Commodity Exchange Act, 7 U.S.C. 6c(a) and 12a(5) (1976).

Agency Contact. Patricia Gillman, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, 202-254-5200.

Outstanding FR Notice. Advance notice of proposed rulemaking; 43 FR 32092; July 24, 1978; Spread Trading.

5. FOREIGN TRADER POLICY/REPORTING REQUIREMENTS

Need/Objective. The Commission's objective in developing a foreign trader policy is to insure that parity of treatment is provided for both foreign and domestic market participants. Further consideration will be given to the issues of foreign government participation, foreign omnibus accounts, the publication of data on foreign participation in U.S. markets, and requiring foreign traders to designate U.S. agents for filing information and service of process.

Legislative Authority. Sections 4g(1), 4g(3), 4g(4), 4i, and 8a(5) of the Commodity Exchange Act, 7 U.S.C., 6g(1), 6g(3), 6g(4), 6i and 12a(5) (1976).

Agency Contact. Lamont L. Reese, Office of the Chief Economist, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, 202-254-7446.

Outstanding FR Notice. Notice of proposed rulemaking, 42 FR 62147; December 9, 1977; General Regulations Under the Commodity Exchange Act; Reports By Futures Commission Merchants and Foreign Brokers; Reports By Traders, Proposed Revision of Forms and Propsed Rulemaking.

COMMODITY FUTURES TRADING COMMISSION CALENDAR

The following calendar represents the current projection of anticipated Commission discussion of specified topics. A final Commission agenda will continue to be published weekly in the FEDERAL REGISTER.

OCTOBER CALENDAR

October 31 and November 1

OGC—Proposed regulations on dealer options.
OGC—White weld petition for exemption from suspension.
T & M—Options pilot program issues.
Staff—Criteria for selection of commodities for the options pilot program.

NOVEMBER CALENDAR

Tuesday, November 7

T & M—Compliance review program—GAO considerations, Policy discussion, and Proposed fiscal year schedule of compliance reviews.
OCE—Discussion of proliferation of financial instruments.

Tuesday, November 14

OGC—Summary procedure to liquidate positions of traders in violation of reporting requirements.

Tuesday, November 21

T & M—Proposed revisions of AP registration scheme—policy discussion.

Tuesday, November 28

OCE—Final regulations—forms 40 and 102.
S & A/T & M—KCBOT—30 industrials designation.

DECEMBER CALENDAR

Tuesday, December 5

OGC—Report on interpretative letters; policy, procedures and priorities.
S & A—Part 16—uniform reporting of prices.
S & A—Proposal for raising reporting levels.

Tuesday, December 12

OGC—Title III development—review of public comments and policy discussion.
OCE—25 percent rule—proposed regulation 1.52—review of public comments and policy discussion.
OCE—Plan to eliminate daily trading limits—final regulations, review of public comments, and policy discussion.

Tuesday, December 19

T & M—Spread trading—review of public comments and policy discussion.

SECOND QUARTER—FISCAL YEAR 1979

The following issues ar major regulatory proposals scheduled for initial discussion during the second quarter of fiscal year 1979. A more complete second quarter calendar will be published prior to January 1979. It will include followup discussions on many of the topics schedule for first quarter consideration as well as discussions on several internal organizational and administrative matters:

Foreign trader policy.
Proposed reporting requirements for foreign traders.
Review of exchange default rules.

Issued in Washington, D.C., on October 27, 1978.

By the Commission.

WILLIAM T. BAGLEY,
Chairman, Commodity Futures Trading Commission.

[FR Doc. 78-30910 Filed 11-1-78; 8:45 am]

[3128-01-M]

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. SEPA 78-1, Supplement No. 3]

LAUREL PROJECT, SOUTHEASTERN POWER ADMINISTRATION

Request for Extension of Short-Term Rates

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice.

SUMMARY: On October 10, 1978, the Assistant Secretary for Resource Applications (Assistant Secretary) requested the Administrator of the Economic Regulatory Administration, (ERA or the Administrator) to extend confirmation and approval of the existing short-term rates of the Laurel Project, Southeastern Power Administration through March 31, 1979. The purpose of this Notice is to advise the public of the Assistant Secretary's request and to invite interested persons to submit written comments. An opportunity for an oral presentation will be afforded upon request.

DATES: Written comments are due on or before December 13, 1978. Requests for an oral presentation are due November 22, 1978. If a public hearing is requested, it will be held on December 6, 1978. Speakers may submit written copies of their oral presentation at the hearing.

ADDRESSES: Requests for an oral presentation and/or 10 copies of written comments shall be submitted to:

Office of Public Hearing Management, Box VZ, Department of Energy, 2000 M Street NW., Room 2313, Washington, D.C. 20461.

The public hearing, if held, will be in:

Room 2105, Department of Energy, 2000 M Street NW., Room 6146, Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Jerry Nicholas, Office of Utility Systems, Economic Regulatory Administration, Department of Energy, 2000 M Street NW., (Vanguard Room 527), Washington, D.C. 20461, phone 202-254-8470.
Richard W. Manning, Office of the General Counsel, 12th Street and Pennsylvania Avenue NW., Washington, D.C. 20461, phone 202-566-9653.

SUPPLEMENTARY INFORMATION: Pursuant to section 301(b) of the Department of Energy Organization Act, 42 U.S.C. 7101 et seq., the function to confirm and approve power rates for the Southeastern Power Administration was transferred to the Secretary of Energy. By Delegation Order No. 0204-4, effective October 1, 1977, the Secretary of Energy delegated confirmation and approval authority to the Administrator of the Economic Regulatory Administration. The Administrator has delegated this authority to the Assistant Administrator for Utility Systems, Economic Regulatory Administration.

The Southeastern Power Administration (SEPA) entered into a contract (Contract No. 89-00-1501-564) for the sale of energy from the Laurel Project to East Kentucky Cooperative, Inc., for a period beginning on November 1, 1977, and ending on January 31, 1978. The schedule of rates and charges in the contract were to cover this interim period during which negotiations for long-term marketing arrangements were to be conducted. However, SEPA was unable to complete an agreement for the transmission of Laurel Project energy to certain potential customers. Therefore, the contract with East Kentucky Cooperative was extended on two occasions through April 30, 1978, and September 30, 1978, respectively. Upon request of the Assistant Secretary and after notice and an opportunity for comment, ERA confirmed and approved the short-term rates through April 30, 1978. 43 FR 17857 (April 26, 1978) and subsequently through September 30, 1978, 43 FR 43547 (September 26, 1978).

The Assistant Secretary is now requesting that ERA extend its confirmation and approval of the short-term rates through March 31, 1979, on the grounds that long-term marketing arrangements for the energy produced at the Laurel Project have not yet been completed. The short-term contract rates requested to be extended are as follows:

$56,000 per calendar months for capacity, plus 10.0 mills per kilowatt-hour for energy declared and made available.

The public is invited to submit comments, as set forth in this Notice, relative to the request for the extension of the short-term rates. All comments received in response to previous requests for confirmation and approval of the short-term rates will be considered by ERA in its disposition of the instant proceeding.

COMMENT PROCEDURES: Interested persons are invited to submit comments with respect to the subject matter set forth in this Notice to:

Public Hearing Management, Box VZ, Department of Energy, 2000 M Street NW., Room 2313, Washington, D.C. 20461.

Such written comments (10 copies) may be mailed or hand delivered and should be received by 4:30 p.m., e.s.t., on December 13, 1978.

Any person who has an interest in this matter or is a representative of a group or class of persons that has an interest in it may make a written request for an opportunity to make an oral presentation at a public hearing. Such a request can be mailed or had delivered to:

Public Hearing Management, Box VZ, Department of Energy, 2000 M Street NW., Room 2313, Washington, D.C. 20461,

and must be received before 4:30 p.m., e.s.t., on November 22, 1978.

The request shall state the name of the person making the request, identify the interest represented and if appropriate, state why he or she is a proper representative of a group or class of persons that has an interest, give a concise summary of the proposed oral presentation, and give a telephone number where the person may be contacted.

DOE reserves the right to select the persons to be heard, to schedule their respective presentations and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited based on the number of persons requesting to be heard.

The public hearing, if any, will not be adjudicative in nature. A DOE official will be designated to preside at the hearing, if one is held. Any further procedural rules needed for the proper conduct of the hearing will be announced by a presiding official.

The hearing, if held, will begin at 9:30 a.m., on December 6, 1978, in Room 2105, Department of Energy, 2000 M Street NW., Washington, D.C.

Public comments, if any, and the hearing record, if any, will be available for inspection at the DOE Freedom of Information Office, Room GA152, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20581, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

Issued in Washington, D.C., on October 30, 1978.

JERRY L. PFEFFER,
Acting Assistant Administrator for Utility Systems, Economic Regulatory Administration, Department of Energy.

[FR Doc. 78-31000 Filed 11-1-78; 8:45 am]

[6740-02-M]

Federal Energy Regulatory Commission

[Docket Nos. G-7270, et al.]

MARATHON OIL COMPANY (OPERATOR), ET AL.

Applications for Certificates, Abandonment of Service and Petitions to Amend Certificates[1]

OCTOBER 23, 1978.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before November 17, 1978, file with the Federal Energy Regulatory Commission,

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

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Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
G-7270, D, Sept. 18, 1978	Marathon Oil Co. (operator), et al., 539 South Main St., Findlay, Ohio 45840.	Arkansas Louisiana Gas Co., Greenwood area, Caddo Parish, La.	Marathon released to the lessors all right, title and interest in certain nonproductive acreage by partial released dated Aug. 15, 1978.	
G-8625, C, Sept. 28, 1978	Continental Oil Co., P.O. Box 2197, Houston, Tex. 77001.	Cities Service Gas Co., Kingfisher Plant located in sec. 9-T15N-R5W, Kingfisher County, Okla.	(1)	14.65
G-13299, C, Oct. 5, 1978	Atlantic Richfield Co., P.O. Box 2819, Dallas, Tex. 75221.	Michigan Wisconsin Pipe Line Co., Everett Whisenhunt consolidated unit, sec. 3, T3N, R28ECM, Beaver County, Okla.	(2)	14.65
G-14475, C, Oct. 5, 1978	Union Oil Co. of California, Union Oil Center, room 901, P.O. Box 7600, Los Angeles, Calif. 90051.	El Paso Natural Gas Co., Levelland Field, Cochran County, Tex.	(3)	14.65
C161-228, C, Aug. 10, 1978	Amoco Production Co., Security Life Building, Denver, Colo. 80202.	Michigan Wisconsin Pipe Line Co., Chabino unit "A" No. 1 well, Harper County, Okla.	(3)	14.65
C161-1162, D, Aug. 18, 1978	Ocean Production Co., P.O. Box 61780, New Orleans, La. 70181.	Transcontinental Gas Pipe Line Corp., Block 6, Vermilion block 16 field, Vermilion Parish, La.	Depletion of reserves and release of lease.	
C161-1327, C, Aug. 29, 1978	Mobil Oil Corp., Three Greenway Plaza East, Suite 800, Houston, Tex. 77046.	Cities Service Gas Co., Bartel A-1 and the Cooper A-1 wells, Guymon-Hugoton (deep) field, Texas County, Okla.	(1)	14.73
C163-548, D June 19, 1978	Phillips Petroleum Co., 5 C4 Phillips Building, Bartlesville, Okla. 74004.	Northern Natural Gas Co., Anadarko Basin Area, Beaver County, Okla., and Ochiltree and Lipscomb Counties, Tex.	(1)	
C163-886, D, Sept. 11, 1978	General American Oil Co. of Texas, Meadows Building, Dallas, Tex. 75206.	Columbia Gas Transmission Corp., North Crowley Field, Acadia Parish, La.	Uneconomical, depleted and leases expired.	
C163-1050, C, Sept. 29, 1978	Northern Natural Gas Producing Co., Nine Greenway Plaza, Suite 2700, Houston, Tex. 77046.	El Paso Natural Gas Co., Southland-Cooper "C" Com, well No. 9 (pictured cliffs), San Juan County, N. Mex.	(3)	14.73
C164-175, C, Oct. 2, 1978	Amoco Production Co., Security Life Building, Denver, Colo. 80202.	El Paso Natural Gas Co., Basin field, San Juan County, N. Mex.	(1)	15.025
C164-990, D, Sept. 11, 1978	Tenneco Oil Co., P.O. Box 2511, Houston, Tex. 77001.	Colorado Interstate Gas Co., Celestine Barby Leases, southeast Mocane field, Beaver County, Okla.	Depleted, plugged and abandoned, and two of the leases released.	
C165-21, D, Sept. 19, 1978	Texaco Inc. (operator), et al., P.O. Box 3109, Midland, Tex. 79702.	Northern Natural Gas Co., East Ozona field, Crockett County, Tex.	Released for non development.	
C165-241, C, Sept. 28, 1978	Atlantic Richfield Co., P.O. Box 2819, Dallas, Tex. 75221.	Northern Natural Gas Co., Allen Estate "A" lease SW/4 sec. 17, block 12, H&GN RR Co. survey, Ochiltree County, Tex.	(5)	14.65
C166-1106, D, Aug. 15, 1978	CRA, Inc., P.O. Box 7305, Kansas City, Mo. 64116.	Northern Natural Gas Co., Mertzon gas products plant, Irion County, Tex.	(4)	
C167-818, D, Oct. 10, 1978	Gulf Oil Corp., P.O. Box 2100, Houston, Tex. 77001.	Transwestern Pipeline Co., Queen formation underlying applicant's leases in sec. 12, block 119, GC&SF RR Co. survey, and secs. 4, 5 and 6, block 114, GC&SF RR Co. survey, both in Pecos County, Tex.	Nonproductive and uneconomical.	
C169-1021, C, Aug. 17, 1978	Mobil Oil Corp., Nine Greenway Plaza, Suite 2700, Houston, Tex. 77046.	Arkansas Louisiana Gas Co., the Thelma Wright unit, well No. 1, Kinta field, Haskell County, Okla.	(1)	14.73
C172-440, C, Oct. 2, 1978	Amoco Production Co.	Panhandle Eastern Pipe Line Co., Certain acreage in Spindle field, Weld County, Colo.	(1)	15.025
C172-589, C, July 14, 1978	HNG Oil Co., P.O. Box 1188, Houston, Tex. 77001.	Kansas-Nebraska Natural Gas Co., Inc., L. L. Jones "36" No. 1 well, sec. 36, block OS-2 Reydon, west area, Hemphill County, Tex.	(1)	14.73
C173-73, D, Sept. 18, 1978	Continental Oil Co., P.O. Box 2197, Houston, Tex. 77001.	Tennessee Gas Pipeline Co., Hagist Ranch Area, Duval County, Tex.	(2)	
C173-296, C, Aug. 7, 1978	Energy Reserves Group, Inc., P.O. Box 1201, Wichita, Kans. 67201.	Mountain Fuel Supply Co., certain acreage in Moffat County, Colo.	(1)	15.025
C174-528, C, Sept. 5, 1978	Exxon Corp., P.O. Box 2180, Houston, Tex. 77001.	El Paso Natural Gas Co., J. B. Tubb wells Nos. 160, 164, and 165, Sand Hills field, Crane County, Tex.	(1)	14.65
C175-38, C, July 24, 1978	Gulf Oil Corp., P.O Box 2100, Houston, Tex. 77001.	El Paso Natural Gas Co., Ellenburger formation gas-well gas from the Langlie deep unit No. 1 well located in the SW/4 of Section 21-22S-36E, Lea County, N. Mex.	(2)	14.73
C175-311, C, Sept. 25, 1978	Panhandle Western Gas Co., P.O. Box 1642, Houston, Tex. 77001.	Panhandle Eastern Pipe Line Co., Certain acreage in Weld County, Colo.	(2)(5)	14.65

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
C175-367, C, Oct. 2, 1978	Pennzoil Co., P.O. Box 2967, Houston, Tex. 77001.	El Paso Natural Gas Co., box canyon unit No. 2 well, south Carlsbad field, Eddy County, N. Mex.	(3)	14.73
C176-323, C, July 14, 1978	HNG Oil Co., P.O. Box 1188, Houston, Tex. 77001.	El Paso Natural Gas Co., Chandler No. 1 well, sec. 35, block OS-2 Viking (Upper Morrow field, Hemphill and Wheeler Counties, Tex.	(3)	14.73
C176-375, C, Sept. 28, 1978	Exxon Corp.	El Paso Natural Gas Co., Cooper Jal field, Lea County, N. Mex.	(3)	14.65
C176-601, C, Sept. 21, 1978	Texaco Inc., P.O. Box 60252, New Orleans, La. 70160.	Tennessee Gas Pipeline Co., south pass block 62 (Viosca Knoll block 900), offshore La.	(3)	14.73
C177-248, C, Oct. 16, 1978	Phillips Petroleum Co., 5 C4 Phillips Building, Bartlesville, Okla. 74004.	El Paso Natural Gas Co., Certain acreage in the San Juan area, Rio Arriba County, N. Mex. (Dakota formation).	(3)	14.73
C177-441, C, Aug. 21, 1978	Anadarko Production Co., et al., P.O. Box 1330, Houston, Tex. 77001.	Panhandle Eastern Pipe Line Co., Loco Hills Federal Comm. unit No. 1 from the Atoka series of the Pennsylvania system only in Eddy County, N. Mex.	(3)	14.65
C177-478, C, Sept. 12, 1978	Tenneco Exploration II, Ltd., P.O. Box 2511, Houston, Tex. 77001.	Tenneco Oil Co. "C" platform, south Timbalier blocks 29 and 38, south Timbalier 37 field, offshore La.	(3)(5)	15.025
C177-479, C, Sept. 12, 1978	Tenneco Exploration, Ltd.	Tenneco Oil Co., "C" platform, south Timbalier blocks 29 and 38 south Timbalier 37 field, offshore La.	(3)(5)	15.025
C177-481, C, Sept. 12, 1978	Tenneco Oil Co., P.O. Box 2511, Houston, Tex. 77001.	Tennessee Gas Pipeline Co., "C" platform, south Timbalier blocks 29 and 38 south Timbalier 37 field, offshore La.	(3)	15.025
C177-520, C, Aug. 23, 1978	Exxon Corp., P.O. Box 2180, Houston, Tex. 77001.	El Paso Natural Gas Co., Turkey Track field, Eddy County, N. Mex.	(3)	14.65
C177-541, C, Sept. 5, 1978	Transco Exploration Co., P.O. Box 1396, Houston, Tex. 77001.	Transcontinental Gas Pipe Line Corp., Bolivar Point field, Plaquemines Parish, La.	(10)	15.025
C177-649, C, Sept. 6, 1978	Shell Oil Co., Two Shell Plaza, P.O. Box 2099, Houston, Tex. 77001.	Natural Gas Pipeline Co. of America, Depco Shell Federal No. 1 well, sec. 6-T21S-R24E, Cemetary field, Eddy County, N. Mex., limited to the Morrow formation.	(3)	14.65
C177-666, D, Sept. 25, 1978	Florida Gas Exploration Co., P.O. Box 44, Winter Park, Fla. 32790.	Florida Gas Transmission Co., Andre Elfer No. 1 well, north St. Rose field area, St. Charles Parish, La.	Depleted, no longer has productive potential and plugged and abandoned.	
C177-685, C, Sept. 11, 1978	Pennzoil Co., P.O. Box 2967, Houston, Tex. 77001.	Montana-Dakota Utilities Co., Pedersen No. 1 well, second creek and north fork fields, Richland County, Mont.	(1)	14.73
C177-711, C, Sept. 11, 1978	Transco Exploration Co.	Transcontinental Gas Pipe Line Corp., a portion of the Mosbacher State tract 163 No. 1 well, Stephenson Point field, Offshore Galveston County, Tex.	(10)	14.65
C177-765, C, Sept. 7, 1978	Union Texas Petroleum, a division of Allied Chemical Corp., P.O. Box 2120, Houston, Tex. 77001.	El Paso Natural Gas Co., V. T. Amacker 76 No. 1 well, Upton County, Tex.	(3)	14.65
C177-818, D, Oct. 10, 1978	Pan Eastern Exploration Co., P.O. Box 1642, Houston, Tex. 77001.	Panhandle Eastern Pipe Line Co., Oswego formation underlying the south half of the SE/4 of sec. 17-T26N-R15W, Woods County, Okla.	Nonproductive and uneconomical.	
C177-844, C, Aug. 9, 1978	Ashland Exploration, Inc., P.O. Box 1503, Houston, Tex. 77001.	Consolidated Gas Supply Corp., Southern Land Co. wells No. 3 and 4 located in Boone County, W. Va.	(3)	14.73
C178-29, C, July 18, 1978	Anadarko Production Co., P.O. Box 1330, Houston, Tex. 77001.	Panhandle Eastern Pipe Line Co., S/2 of sec. 15, limited to the Upper Morrow formation and from the N/2 of sec. 15, limited to the interval from sea level to the base of the Chester formation of the Mississippian system.	(1)	14.65
C178-29, C, Sept. 8, 1978	Anadarko Production Co.	Panhandle Eastern Pipe Line Co., Kennan "B" No. 1 and Cities Service "M" No. 1 wells from the Morrow series of the Pennsylvanian system only in the Unity North and Goff Creek fields, Texas County, Okla.	(1)	14.65
C178-33, C, Aug. 24, 1978	Amoco Production Co., P.O. Box 3092, Houston, Tex. 77001.	El Paso Natural Gas Co., Empire South Morrow and Burton Flat fields, Lea County, N. Mex.	(1)	14.65
C178-33, C, Sept. 24, 1978	Amoco Production Co.	El Paso Natural Gas Co., Empire South Morrow and Burton Flat fields, Lea County, N. Mex.	(1)(9)12514.65	
C178-33, C, Oct. 2, 1978	Amoco Production Co.	El Paso Natural Gas Co., Empire South Morrow and Burton Flat fields, Lea County, N. Mex.	(1)	14.65
C178-52, C, Sept. 22, 1978	Ladd Petroleum Corp., 830 Denver Club Building, Denver, Colo. 80202.	Southwest Gas Corp., three additional wells located in the Blanco Pictured Cliffs field, San Juan County, N. Mex..	(3)	14.65
C178-391, C, Sept. 25, 1978	Tenneco Oil Co., P.O. Box 2511, Houston, Tex. 77001.	El Paso Natural Gas Co., Basin Dakota Field, San Juan County, N. Mex., limited to the Dakota Formation.	(3)	14.73
C178-394, C, Sept. 22, 1978	Amoco Production Co., Security Life Bldg., Denver, Colo. 80202.	El Paso Natural Gas Co., Basin field, Rio Arriba County, N. Mex.	(1)(3)	14.65
C178-398, C, July 27, 1978	Supron Energy Corp., Suite 1700, Campbell Centre, 8350 North Central Expressway, Dallas, Tex. 75206.	Transcontinental Gas Pipe Line Corp., Certain acreage in McMullen County, Tex.	(3)	14.65
C178-401, C, Oct. 2, 1978	Pennzoil Co., P.O. Box 2967, Houston, Tex. 77001.	Natural Gas Pipeline Co. of America, Mills Ranch field, Wheeler County, Tex.	(1)	14.65

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Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
C178-416, C Sept. 5, 1978	Sun Oil Co., P.O. Box 20, Dallas, Tex. 75221.	El Paso Natural Gas Co., Berry unit No. 1 well, sec. 7-T13N-R24W, S.W. Cheyenne field, Roger Mills County, Okla., limited to the Morrow formation.	(1)	14.73
C178-520, C, Aug. 22, 1978	Southland Royalty Co., 1000 Fort Worth Club Tower, Fort Worth, Tex. 76102.	El Paso Natural Gas Co., State "18" com. No. 1 well located in the SW/4 of sec. 18-T19S-R28E, Eddy County, N. Mex., limited to the Morrow formation.	(15)	14.73
C178-523, C, July 24, 1978	Texaco Inc. (operator), et al. P.O. Box 2100, Denver, Colo. 80201.	Montana-Dakota Utilities Co., Silurian unit No. 1, well No. 1 located in the Charlson Field, McKenzie County, N. Dak.	(3)	14.73
C178-573, C, Aug. 10, 1978	Sun Oil Co	El Paso Natural Gas Co., Wolfcamp formation of the Sun McKay Federal No. 1 well, E/2, sec. 10-T19S-R32E, Lea County, N. Mex.	(17)	14.65
C178-588, C, Aug. 22, 1978	Cities Service Co, P.O. Box 300, Tulsa, Okla. 74102.	El Paso Natural Gas Co., Polk "A" com. No. 1, sec. 17-23S-38E, Eddy County, N. Mex., limited to the Morrow and Strawn formations.	(3)	14.65
C178-588, C, Oct. 10, 1978	Cities Service Co	El Paso Natural Gas Co., Government "AE" No. 1 well in sec. 27-21S-27E, Morrow formation and the State "CY" No. 1 well in sec. 28-19S-28E, Wolfcamp formation, both in Eddy County, N. Mex.	(3)	14.65
C178-617, C, Oct. 5, 1978	Atlantic Richfield Co., P.O. Box 2819, Dallas, Tex. 75221.	El Paso Natural Gas Co., Upper Penn formation of the Federal State com. No. 1-10 well, in the west half of sec. 10-T21S-R26E, Eddy County, N. Mex.	(18)	14.65
C178-713, C, Aug. 11, 1978	Champlin Petroleum Co., P.O. Box 1257, Englewood, Colo. 80110.	Colorado Interstate Gas Co., Wamsutter area, Sweetwater and Carbon Counties, Wyo.	(19)	14.73
C178-745, C, Sept. 19, 1978	Southland Royalty Co	El Paso Natural Gas Co., Norris No. 1-29 well located in the SW/4 of sec. 29-T14N-R25W, S.W. Reydon field, Roger Mills County, Okla.	(20)	14.65
C178-823, C, Aug. 24, 1978	Transco Exploration Co., P.O. Box 1396, Houston, Tex. 77001.	Transcontinental Gas Pipe Line Corp., Lake Washington field, Bayou Chaland area, Plaquemines Parish, La.	(21)	15.025
C178-902, C, Oct. 16, 1978	MRT Exploration Co., 9900 Clayton Rd., St. Louis, Mo. 63124.	Mississippi River Transmission Corp., Faulk No. 3 unit, Leatherman Creek field, Claiborne Parish, La.	(3)	15.025
C178-924, C, Aug. 21, 1978	Atlantic Richfield Co., P.O. Box 2819, Dallas, Tex. 75221.	Northwest Pipeline Corp., certain acreage in N/2, sec. 23-33N-10W and N/2, sec. 30-33N-9W, Ignacio-Blanco, and Blanco Mesa Verde fields, La Plata County, Colo.	(3)	14.73
C178-926, C, Sept. 8, 1978	Anadarko Production Co., P.O. Box 1330, Houston, Tex. 77001.	Panhandle Eastern Pipe Line Co., K. U. Endowment "B" No. 1 well from the Council Grove group of the Permian system only in the Panoma Council Grove field, Stevens County, Kans.	(3)	14.65
C178-933, C, Sept. 14, 1978	Gulf Oil Corp., P.O. Box 2100, Houston, Tex. 77001.	El Paso Natural Gas Co., Angell Ranch, Burton Flat, and undesignated fields, Eddy County, N. Mex.	(3)	14.73
C178-1094, C, Sept. 19, 1978	Anadarko Production Co	El Paso Natural Gas Co., Turkey Tract State No. 2 well from the Morrow series of the Pennsylvanian system only in the Turkey Tract Morrow north field, Eddy County, N. Mex.	(3)	14.65

[1] Applicant is filing under residue gas sales agreement, dated Aug. 11, 1978, providing a change of delivery point from Edmond Plant to Kingfisher Plant.
[2] Applicant is filing under gas purchase contract dated Mar. 9, 1957, amended by amendment dated Sept. 12, 1978.
[3] Applicant is willing to accept the applicable national rate pursuant to opinion No. 770, as amended.
[4] Uneconomical, therefore, the Jett B No. 1 well has been plugged and abandoned which will result in the release of the Jett B lease located in sec. 13-1N-27E, Beaver County, Okla. All of sec. 13, except the S/2 S/2 of sec. 13 which is held by production on sec. 14, has been or will be released to the landowners by the end of July 1978.
[5] Applicant is filing under gas purchase contract dated June 1, 1964, amended by amendment dated Dec. 2, 1977.
[6] CRA purchased raw gas from Curtis Hankamer for resale to Northern. On July 18, 1978, the Commission approved Curtis Hankamer's application to abandon his sale of raw gas to CRA. Therefore, CRA hereby seeks abandonment authorization of its sale to Northern of the Hankamer residue gas.
[7] The lease covering 100 acres, produced to depletion in January 1974 and expired for lack of production. The only well thereon was plugged and abandoned Aug. 16, 1974, and Continental released its 45 percent interest in the lease June 7, 1978.
[8] Seller and Purchaser are affiliated.
[9] Applicant is filing under gas purchase agreement dated Jan. 10, 1977, amended by amendment dated Sept. 27, 1978.
[10] Applicant is filing under gas purchase agreement dated Apr. 11, 1978, amended by amendment dated July 10, 1978.
[11] Applicant is filing under gas purchase agreement dated July 29, 1977 amended by agreement dated Aug. 1, 1978.
[12] Applicant is filing under gas purchase agreement dated Sept. 27, 1977, amended by amendment dated June 6, 1978.
[13] Applicant is filing under gas purchase agreement dated Sept. 27, 1977 amended by amendment dated June 27, 1978.
[14] Applicant is filing under gas purchase agreement dated Sept. 27, 1977 amended by amendment dated Aug. 3, 1978.
[15] Applicant is filing under gas purchase agreement dated Jan. 6, 1978, amended by amendment dated July 25, 1978.
[16] Applicant is filing under gas purchase agreement dated Jan. 26, 1978, amended by letter agreement dated July 17, 1978.
[17] Applicant is filing under gas purchase agreement dated Feb. 8, 1978, amended by letter agreement dated May 31 1978.
[18] Applicant is filing under gas purchase agreement dated Mar. 6, 1978, amended by letter agreement dated May 3, 1978.
[19] Applicant is filing under gas purchase agreement dated Mar. 23, 1978, amended by supplement dated Aug. 2, 1978.
[20] Applicant is filing under gas purchase agreement dated Apr. 17, 1978, amended by supplemental gas purchase agreement dated Sept. 1, 1978.
[21] Applicant is filing under gas purchase agreement dated May 4, 1978amended by agreement of July 3, 1978

Filing code: A—Initial service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial Succession.

[FR Doc. 78-30809 Filed 11-1-78; 8:45 am]

[3128-01-M]

Office of Energy Technology

ADVISORY COMMITTEE ON GEOTHERMAL ENERGY

Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given that the Advisory Committee on Geothermal Energy will meet on Monday, November 20 and Tuesday, November 21, 1978, from 9:30 a.m. to 5 p.m., each day, Palos Verdes Room, Los Angeles Bonaventure Hotel, Fifth and Figueroa, Los Angeles, Calif.

The purpose of the committee is to provide advice to the Department of Energy on the status of social, legal, technological, and intitutional problems that inhibit the private sector from exploiting the Nation's vast reserves of geothermal energy. The committee suggests areas of research which will accelerate the private development of geothermal energy into electric and nonelectric power and informs DOE on the status of privately supported geothermal research and development.

The purpose of the meeting is to provide the Department of Energy with recommendations for measures to be included in a geothermal energy omnibus bill being prepared by the Department of Energy. The bill is intended to eliminate or reduce institutional and legal obstacles to development of geothermal resources, and to provide comprehensive positive incentives as well. Among potential matters to be included are tax measures, modifications to the federal leasing and permitting process under the Geothermnal Steam Act, amendments to the geothermal loan guaranty program, simplification and streamlining of regulatory restraints, financial incentives, and clarification of the qualification of geothermal projects for support under such programs as VA and FHA housing loans and guarantees, REA loans, and other Federally supported projects.

The tentative agenda is as follows:

NOVEMBER 20, 1978

9:30 a.m. Opening remarks—Dr. Carel Otte, chairman.
9:45 a.m. Financial incentives.
12:00 noon Lunch.
1:30 p.m. Federal land policy and management.
5:00 p.m. Adjournment.

NOVEMBER 21, 1978

9:30 a.m. Federal regulatory programs.
12:00 noon Lunch.
1:30 p.m. General discussions. Public comment (10-minute rule).
5:00 p.m. Adjournment.

The meeting is open to the public. The chairman of the committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should inform Georgia Hildreth, Director, Advisory Committee Management Office, 202-252-5935, at least 5 days prior to the meeting and reasonable provision will be made to include their presentation on the agenda.

The transcript of the meeting will ba available for public review at the Freedom of Information Public Reading Room, Room GA-152, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Any person may purchase a copy of the transcript from the reporter.

Issued at Washington, D.C., on October 27, 1978.

WILLIAM P. DAVIS,
Deputy Director of Administration.

[FR Doc. 78-30960 Filed 10-27-78; 3:33 am]

[6560-1-M]

ENVIRONMENTAL PROTECTION AGENCY

[FRL-1000-6]

AGENDA OF REGULATIONS

The Environmental Protection Agency will publish its next Agenda of Regulations on November 17, 1978.

HENRY E. BEAL,
Director, Standards and Regulations Evaluation Division.
OCTOBER 30, 1978.

[FR Doc. 78-30958 Filed 11-1-78; 8:45 am]

[6560-01-M]

[PFT-31; FRL 999-7]

PESTICIDE PROGRAMS

Filing of Feed Additive Petition

Nor-Am Agricultural Products, Inc., 1275 Lake Ave., Woodstock, Ill. 60098, has submitted a petition (FAP 9H5198) to the Environmental Protection Agency (EPA) which proposes to amend 21 CFR 561 by establishing a regulation permitting the use of the herbicide *N*-phenyl-*N'*-1,2,3,-thiadiazol-5-ylurea and its aniline-containing metabolites in an experimental program involving the application of said herbicide to growing cotton with a toler-

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ance limitation of 0.4 part per million (ppm) in cottonseed hulls. Notice of this submission is given pursuant to the provisions of section 409(b)(5) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on this petition to the Federal Register Section, Program Support Division (TS-757), Office of Pesticide Programs, EPA, Room 401, East Tower, 401 M Street SW., Washington, D.C. 20460. Inquiries concerning this petition may be directed to Product Manager (PM) 23, Registration Division (TS-767), Office of Pesticide Programs, at the above address, or by telephone at 202-755-1397. Written comment should bear a notation indicating the petition number. Comments may be made at any time while a petition is pending before the Agency. All written comments filed pursuant to this notice will be available for public inspection in the office of the Federal Register Section from 8:30 a.m. to 4 p.m Monday through Friday.

Dated: October 25, 1978.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

[FR Doc. 78-30927 Filed 11-1-78; 8:45 am]

[6550-0-M]

[PF-112 FRL 999-6]

PESTICIDE PROGRAMS

Filing of Pesticide/Food Additive Petitions

Pursuant to sections 408(d)(1) and 409(b)(5) of the Federal Food, Drug, and Cosmetic Act, the Environmental Protection Agency (EPA) gives notice that the following petitions have been submitted to the Agency for consideration.

PP 8F2016. Rohm and Haas Co., Independence Mall West, Philadelphia, Pa. 18105. Proposes that 40 CFR 180.274 be amended by establishing a tolerance for the combined residues of the herbicide propanil (3',4'-dichloropro-pionanilide) and its metabolites (calculated as propanil) in or on the raw agricultural commodities wheat grain at 0.05 part per million (ppm) and wheat straw at 0.5 ppm. The proposed analytical method for determining residues is by gas chromatography using an electron capture detector. PM25. (202-755-7012)

PP 8F2116. Mobay Chemical Corp., Chemagro Agricultural Division, Box 4913, Kansas City, Mo. 64120. Proposes that 40 CFR 180.315 be amended by establishing a tolerance for the residues of the insecticide O,S-dimethyl phosphoramidothioate in or on the raw agricultural commodities peppers at 2.0 ppm; sugar beet (roots) at 0.02 ppm; and sugar beet (tops) at 0.4 ppm. Proposed analytical method for determining residues is by gas chromatographic procedure using a cesium bromide thermionic detector. PM16. (202-755-9315)

FAP 8H5194. Mobay Chemical Corp., Chemagro Agricultural Division. Proposes that 21 CFR 193 be amended by permitting residues of the insecticide O,S-dimethyl phosphoramidothioate in dried peppers (including flakes) at 18.0 ppm. PM16.

Interested persons are invited to submit written comments on these petitions to the Federal Register Section, Program Support Division (TS-757), Office of Pesticide Program, EPA, room 401, East Tower, 401 M Street SW., Washington D.C. 20460. Inquiries concerning these petitions may be directed to the designated Product Manager (PM), Registration Division (TS-767), Office at Pesticide Programs, at the above address, or by telephone at the numbers cited. Written comments should bear a notation indicating the petition number to which the comments pertain. Comments may be made at any time while a petition is pending before the Agency. All written comments filed pursuant to this notice will be available for public inspection in the office of the Federal Register Section from 8:30 a.m. to 4 p.m., Monday through Friday.

Dated: October 25, 1978.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

[FR Doc. 78-30928 Filed 11-1-78; 8:45 am]

[6560-01-M]

[OPP-50391 FRL 999-8]

ISSUANCE OF EXPERIMENTAL USE PERMITS

The Environmental Protection Agency (EPA) has issued experimental use permits to the following applicants. Such permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

No. 476-EUP-95. Stauffer Chemical Co., Richmond, Calif. 94804. This experimental use permit allows the use of 625 pounds of the insecticide 0,0-dimethyl 0-(4-nitro-m-tolyl phosphorothioate on shrubbery and vegetation around stagnant pools, marshy areas, ponds, and shorelines to evaluate control of adult mosquitoes. A total of 5,000 acres is involved; the program is authorized only in the States of Florida, Louisiana, and Pennsylvania. The experimental use permit is effective from September 18, 1978, to September 18, 1979. (PM-16, Room E-229, telephone 202-755-9315.)

No. 27586-EUP-23. Forest Insect and Disease Management Corp., Washington, D.C. 20013. This experimental use permit allows the use of 22 pounds of the insecticide 3-methyl-2-cyclohexen-1-one on windfelled Douglas-fir to evaluate control of Douglas-fir beetles. A total of 100 acres is involved; the program is authorized only in the States of Idaho, Montana, Oregon, and Washington. The experimental use permit is effective from September 27, 1978, to September 27, 1979. (PM-17, Room E-229, telephone 202-426-9425.)

Interested parties wishing to review the experimental use permits are referred to the designated Product Manager (PM), Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street SW., Washington, D.C. 20460. The descriptive paragraph for each permit contains a telephone number and room number for information purposes. It is suggested that interested persons call before visiting the IPA headquarters office, so that the appropriate permit may be made conveniently available for review purposes. The files will be available for inspection from 8:30 a.m. to 4 p.m. Monday through Friday.

(Sec. 5 of the Federal Insecticide, Fungicide, and rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136(a) et seq.).)

Dated: October 25, 1978.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

[FR Doc. 78-30929 Filed 11-1-78; 8:45 am]

[6560-01-M]

[OPP-30000/4B; FRL 1000-4]

OFFICE OF PESTICIDE PROGRAMS

Preliminary Determination Concerning the Rebuttable Presumption Against Registration and Continued Registration of Pesticide Products Contoining Endrin; Availability of Position Document

On July 27, 1976, the Environmental Protection Agency issued a notice of rebuttable presumption against registration and continued registration ("RPAR") of pesticide products containing endrin (41 FR 31316), thereby initiating the Agency's public review of the risks and benefits of the registered uses of endrin, and the uses for which applications for registration are pending. This notice constitutes the Agency's Notice of Determination ("Notice") pursuant to 40 CFR 162.11(a)(5), concerning the endrin RPAR.

In broad summary, the Agency has determined that three risk presumptions announced in the endrin RPAR have not been rebutted. The risks of significant population reductions of nontarget organisms, acute toxicity to wildlife, and teratogenicity posed by endrin are of sufficient concern to require the Agency to consider whether offsetting economic, social, or environmental benefits exist.

The Agency has considered benefits information, including that submitted by registrants, interested persons and the U.S. Department of Agriculture, and has analyzed the economic, social, and environmental benefits of the uses of endrin subject to this RPAR. The Agency has weighed risks and benefits together, in order to determine whether the risks of each use of endrin are warranted by the benefits of the use. In weighing risks and benefits, the Agency considered what risk reductions could be achieved, and how risk reduction measures would affect the benefits of the use.

With respect to the principal uses of endrin, the Agency has determined: (1) that the risks of the use of endrin on cotton in all States east of the Mississippi River and in Arkansas, Louisiana, and some portions of Oklahoma and Texas are greater than the social, economic, and environmental benefits of this use, and the risks of the use of endrin on cotton in other areas are greater than the social, economic, and environmental benefits, unless risk reductions are accomplished by modifications in the terms or conditions of registration, as described below; (2) that the risks of the uses of endrin on small grains to control the army cutworm, pale western cutworm, and grasshoppers are greater than the social, economic, and environmental benefits, unless risk reductions are accomplished by modifications in the terms or conditions of registration, as described below; and (3) that the risks of the use of endrin on orchards to control the pine vole and the western meadow vole are greater than the social, economic, and environmental benefits, unless risk reductions are accomplished by modifications in the terms or conditions of registration, as described below. Accordingly, the Agency is initiating action to cancel or deny registrations for the use of endrin on cotton in all States east of the Mississippi River and in Arkansas, Louisana, and portions of Oklahoma and Texas, as described below, and will initiate action to cancel or deny registrations for the use of endrin on small grains to control pests other than the army cutworm, the pale western cutworm, and grasshoppers and on orchards to control the eastern meadow vole. Further, the Agency is initiating action to cancel or deny registrations for the uses of endrin on cotton in areas other than those delineated for cancellation, on small grains to control the army cutworm, pale western cutworm, and grasshoppers and on orchards to control the pine vole and western meadow vole unless the changes in the terms and conditions of registration are accomplished. The Agency has further determined that these modifications in the terms or conditions of registration accomplish significant risk reductions, and that these risk reductions can be achieved without significant impacts on the benefits of the uses.

The Agency's conclusions with respect to the uses of endrin which account for a small portion of the total endrin used are summarized in section III of this document.

The remainder of this Notice and the accompanying Position Document set forth in detail the Agency's analysis of comments submitted during the rebuttal phase of the endrin RPAR, and the Agency's reasons and factual bases for the regulatory actions it is initiating. The Notice is organized into four sections. Section I is this introduction. Section II sets forth a general discussion of the regulatory framework within which this action is taken. Section III sets forth the Agency's determinations concluding the endrin RPAR and initiating the regulatory actions which flow from these determinations; section III and the accompanying Position Document set forth the bases for these determinations. Section IV provides a brief discussion of the procedures which will be followed in implementing the regulatory actions which the Agency is initiating in this Notice.

II. LEGAL BACKGROUND

In order to obtain a registration for a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended ("FIFRA"), a manufacturer must demonstrate that the pesticide satisfies the statutory standard for registration. That standard required (among other things) that the pesticide perform its intended function without causing "unreasonable adverse effects" on the environment (section 3(c)(5)). "Unreasonable adverse effects on the environment" is defined to mean "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide" (FIFRA, section 2(bb)). In effect, this standard requires a finding that the benefits of each use of the pesticide exceed the risks of use, when the pesticide is used in accordance with the terms and conditions of registration, or in accordance with commonly recognized practice. The burden of proving that a pesticide satisfies the reregistration standard continues as long as the registration remains in effect. Under section 6 of FIFRA, the Administrator is required to cancel the registration of a pesticide or modify the terms and conditions of registration whenever he or she determines that the pesticide no longer satisfies the statutory standard for registration.[1]

The Agency created the RPAR process to facilitate the identification of pesticide uses which may not satisfy the statutory standard for registration and to provide a structure for the gathering and evaluation of information about the risks and benefits of these uses. The structure permits public participation at major points in the evaluation process.

The RPAR process is set forth at 40 CFR 162.11. This section provides that a rebuttable presumption shall arise if a pesticide meets or exceeds any of the risk criteria set out in the regulations. After an RPAR is issued, registrants and other interested persons are invited to review the data upon which the presumption is based and to submit data and information to rebut the presumption. Respondents may rebut the presumption or risk by showing that the Agency's initial determination of risk was in error, or by showing that use of the pesticide is not likely to result in any significant exposure to man or the animal or plant of concern with regard to the adverse effect in question.[2] Further, in addition to submitting evidence to rebut the risk presumption, respondents may submit evidence as to whether the economic, social, and environmental benefits of the use of the pesticide subject to the

[1] Another part of the statutory standard for registration is that the pesticide must satisfy the labeling requirements of FIFRA. These requirements are set out in the statutory definition of "misbranded" [FIFRA section 2(q)]. Among other things, this section provides that a pesticide is misbranded if "the labeling * * * does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any * * * [restrictions] imposed under section 3(d) * * * are adequate to protect health and the environment."

[2] 40 CFR 162.11(a)(4) provides that registrants and applicants may rebut a presumption against registration by sustaining the burden or proving: "(1) in the case of a pesticide which meets or exceeds the criteria for risk set forth in paragraphs (a)(3)(i) or (iii) * * * that when considered with the formulation, packaging, method of use, and proposed restrictions on and directions for use and widespread and commonly recognized practices of use, the anticipated exposure to an applicator or user and to local, regional or national populations of nontarget organisms is not likely to result in any significant acute adverse effects; or (ii) in the case of a pesticide which meets or exceeds the criteria for risk set forth in paragraph (a)(3)(ii) * * * that when considered with proposed restrictions on use and widespread and commonly recognized practices of use, the pesticide will not concentrate, persist, or accure to levels in man or the environment likely to result in any significant chronic adverse effects; or (iii) that the determination by the Agency that the pesticide meets or exceeds any of the criteria for risk was in error." A primary purpose of the RPAR process is to screen for appropriate action those pesticide uses which pose risks which are of sufficient concern to require the Agency to consider whether offsetting benefits justify the risks. Accordingly, the Agency's approach to rebuttal determinations concentrates on whether the risk concerns which are central to each RPAR proceeding have in fact been answered.

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presumption outweigh the risks of use. The regulations require the Agency to conclude an RPAR by issuing a Notice of Determination. In that Notice, the Agency is required to state and explain its position on the question whether the risk presumption has been rebutted. If the Agency determines that the presumption has been rebutted. If the Agency determines that the presumption is not rebutted, it will then consider information relating to the social, economic, and environmental costs and benefits which registrants and other interested persons submitted to the Agency, and any other benefits information known to the Agency. If the Agency determines that the risks of a pesticide use appear to outweigh its benefits, the RPAR process will conclude with a notice of intent to cancel or deny registration, pursuant to FIFRA section 6(b)(1) or section 3(c)(6). If the Agency determines that benefits appear to outweigh the risks, the Agency may issue a notice of intent to hold a hearing as authorized by section 6(b)(2) to determine whether the registration should be canceled or applications for registration denied. The regulations further provide that the Agency may withdraw a notice of intent to hold a hearing on whether registration should be canceled or denied if there is insufficient public interest.

In determining whether the use of a pesticide poses risks which are greater than benefits, the Agency considers modification to the terms and conditions of registration which can reduce risks and the impacts of such modifications in the terms or conditions of registration on the benefits of the use. Among the risk reduction measures short of cancellation which are available to the Agency are requiring changes in the directions for use on the pesticide's labeling.

The statute requires the Agency to submit notices issued pursuant to section 6 to the Secretary of Agriculture for comment and to provide the Secretary of Agriculture with an analysis of the impact of the proposed action on the agricultural economy [Section 6(b)]. The Agency is required to submit these documents to the Secretary of Agriculture at least 60 days before making the notice effective by sending it to registrants or making it public. If the Secretary of Agriculture comments, in writing, within 30 days after receiving the notice, the Agency is required to publish the comments and the Administrator's responses to them along with publication of the notice. FIFRA also requires the Administrator to submit section 6 notices, at the same time and under the same procedures as those described above for review by the Secretary of Agriculture, to a Scientific Advisory Panel for comment on the impact of the proposed action on health and the environment [Section 25(d)].

Although not required to do so under the statute, the Agency has decided that it is consistent with the general theme of the RPAR process and the Agency's overall policy of open decisionmaking to afford registrants and other interested persons an opportunity to comment on the bases for the proposed action during the time that the proposed action is under review by the Secretary of Agriculture and the Scientific Advisory Panel. Accordingly, appropriate steps will be taken to make copies of the Position Document available to registrants and other interested persons at the time the decision documents are transmitted for formal external review, through publication of this notice of availability in the FEDERAL REGISTER, and by other means. Registrants and other interested persons will be allowed the same period of time to comment—30 days—that the statute provides for receipt of comments from the Secretary of Agriculture and the Scientific Advisory Panel.

After complying with these external review requirements and accomplishing any changes in the contemplated action which are deemed appropriate as a result of any comments received, the Agency will proceed to implement the desired regulatory action by sending and making public a notice of intent to cancel under FIFRA section 6(b)(1) or a notice of intent to hold a hearing under FIFRA section 6(b)(2), as appropriate. Registrants and other interested persons have 30 days to request a hearing, in the case of notices of intent to cancel under FIFRA section 6(b)(1). In the event a hearing is not requested and any changes in the terms or conditions of registration directed in the cancellation notice are not accepted, the cancellation action announced in the notice of intent will take effect automatically at the end of the 30-day notice period. If a hearing is requested, it will be governed by the Agency's rules of practice for hearings under FIFRA section 6 [40 CFR Part 164]; the cancellation action will not become effective except pursuant to an order of the Administrator at the conclusion of the hearing. Rules governing participation in, and the conduct of, hearings under FIFRA section 6(b)(2) are also set forth in 40 CFR Part 164. The Agency may withdraw such a notice prior to the commencement of a hearing, upon appropriate findings.

III. DETERMINATIONS AND INITIATION OF REGULATORY ACTION

The Agency has considered information on the risks associated with the uses of endrin, including information submitted by registrants and other interested persons in rebuttal to the endrin RPAR. The Agency has also considered information on the social, economic, and environmental benefits of the uses of endrin subject to the RPAR, including benefits information submitted by registrants and other interested persons in conjunction with their rebuttal submissions, and information submitted by the United States Department of Agriculture. The Agency's assessment of the risks and benefits of the uses of endrin subject to this RPAR, its conclusions and determinations whether any use of endrin poses unreasonable adverse effects on the environment, and its determinations whether modifications in terms or conditions of registration reduce risks sufficiently to eliminate any unreasonable adverse effects, are set forth in detail in the Position Document accompanying this Notice. This Position Document is hereby adopted by the Agency as its statement of reasons for the determinations and actions announced in this Notice, and as its analysis of the impacts of the proposed regulatory actions on the agricultural economy. For the reasons summarized below and developed in detail in the Position Document, the principal determinations of the Agency with respect to endrin are as follows:

A. DETERMINATIONS ON RISKS

The endrin RPAR was based on information indicating that endrin posed the following risks to humans and the environment: (1) oncogenicity; (2) fetotoxic and teratogenic effects; (3) fatalities to endangered species; (4) significant population reductions in nontarget organisms; (5) acute toxicity to wildlife; and (6) acute hazards to humans and domestic animals through dermal exposure. As the Position Document explains, the Agency has determined that information submitted to rebut these risk criteria was insufficient to remove the Agency's concerns that endrin causes significant population reductions in nontarget organisms, poses a risk of acute toxicity to wildlife and poses a risk of teratogenicity to humans; the Agency has concluded that these risks are associated, to differing degrees, with all uses of endrin and are of sufficient magnitude to require the Agency to determine whether the uses of endrin offer offsetting social, economic, or environmental benefits.

The risk of significant population reductions in nontarget organisms is greatest when endrin is used on cotton crops; as a result of this use, heavy rainfall creates runoff from endrin-treated acreage, and the runoff causes fish kills. The risk of teratogenicity is greatest to women who consume large amounts of contaminated fish and who live near cotton-growing areas and female pesticide applicators working in apple orchards. The Agency has determined, however, that the weight of the evidence on oncogenicity indicates that endrin does not pose an oncogenic risk to humans. Moreover, the Agency has determined that the risk presumptions for acute dermal toxicity and fatalities to endangered species have been rebutted.[3]

B. DETERMINATIONS ON BENEFITS

The uses of endrin which are subject to this RPAR fall into four categories: Cotton uses; small grains uses; orchard uses; and other uses.[4]

1. Cotton Uses

Endrin is used on cotton crops, principally for control of the cotton bollworm and the tobacco budworm. For this use, endrin is used almost exclusively in combination with methyl parathion, endrin serving as an adjuvant to methyl parathion. Endrin is a minor cotton insecticide, and its use has declined in recent years as resistance to it has become widespread in some areas.

Numerous alternative pesticides are registered with EPA for control of the cotton bollworm and tobacco budworm, and several of the alternatives are at least as efficacious as, and less hazardous than the endrin-methyl parathion formulation.

The Agency has determined that the use of endrin on cotton provides small benefits to users and no benefits to any other group. Cancellation of this use would cause current endrin users to use alternative pesticides whose cost per acre treatment would not be significantly greater than endrin's and whose use over a growing season might increase growers' production costs by an aggregate of approximately $718,000.

2. Small Grains Uses

Endrin's use to control the army cutworm and the pale western cutworm on wheat provides substantial benefits to growers. No federally registered alternative pesticides are available for control of the pale western cutworm, and the Agency has concluded that, if uncontrolled, the pale western cutworm would damage crops sufficiently to reduce wheat yields by 4.7 million bushels annually. Although this would have a minor impact on total U.S. wheat production, it would reduce the gross revenues of endrin users by approximately $14.9 million annually. Alternative pesticides are available to control the army cutworm, but they are more expensive than endrin. Endrin users' production costs would increase by an aggregate of approximately $1.2 million annually if alternatives were used.

3. Orchard Uses

Endrin is applied as a postharvest ground spray to control voles (mice) in many apple-producing areas. Alternative pesticides are available, but they do not provide the same level of control as endrin for certain pests. The replacement of endrin with zinc phosphide, the only federally-registered pesticide whose efficacy is comparable to endrin's, would result in a 6.7 percent annual loss in apple production on the acreage currently treated with endrin. This loss of production would reduce annual revenues of producers now using endrin by approximately $5.3 million. The replacement of endrin with chlorophacinone and diphacinone, pesticides registered for use in certain apple-producing states, would result in a 3.3 percent annual loss in apple production on the acreage currently treated with endrin. This loss of production would reduce revenues of producers now using endrin by approximately $2.4 million. The Agency has determined that production losses of this magnitude would cause the price of apples to increase.

4. Other Uses

The Agency has determined that virtually no benefits are associated with the uses of endrin on sugarcane and ornamentals. The Agency has determined that some benefits are associated with the following uses of endrin: seed treatments for conifers, watermelons and vegetables; tree paint; and perch treatments for controlling birds. The Agency has determined that some potential benefits are associated with the use of endrin on alfalfa and clover seed crops.

C. DETERMINATIONS ON UNREASONABLE ADVERSE EFFECTS

For the reasons set forth in detail in the Position Document, the Agency has made the following unreasonable adverse effect determinations with respect to the uses of endrin subject to the RPAR:[5]

1. *Determinations on Cotton Uses*

The Agency has determined that the use of endrin on cotton in all states east of the Mississippi River and in Arkansas, Louisiana, and all portions of Oklahoma and Texas east of Interstate Highway 35 poses risks which are greater than the social, economic, and environmental benefits of the use. Accordingly, the Agency has determined that the use of endrin on cotton crops in these areas generally will cause unreasonable adverse effects on the environment, when used in accordance with commonly recognized practice. The Agency has determined that risks of the use of endrin on cotton in areas other than all States east of the Mississippi River, Arkansas, Louisana, and all portions of Oklahoma and Texas east of Interstate Highway 35 are greater than the social, economic, and environmental benefits of these uses, unless risk reductions are accomplished by modifications in the terms or conditions of registration, as described below. The Agency has determined, further, that these modifications in the terms or conditions of registration accomplish significant reductions and that these risk reductions can be achieved without significant impacts on the benefits of the use. Accordingly, the Agency has determined that, unless these changes in the terms or conditions of registration are accomplished, the uses of endrin on cotton in areas other than all states east of the Mississippi River, Arkansas, Louisiana, and all portions of Oklahoma and Texas east of Interstate Highway 35 generally will cause unreasonable adverse effects on the environment, when used in accordance with widespread and commonly recognized practice, and that the labeling of endrin products for cotton uses will not comply with the provisions of FIFRA.

2. *Determinations on Small Grains Uses*

The Agency has determined that the use of endrin on small grains to control pests other than the army cutworm, the pale western cutworm, and grasshoppers poses risks which are greater than the social, economic, and environmental benefits of the use. Accordingly, the Agency has determined that these uses of endrin generally will cause unreasonable adverse effects on the environment, when used in accordance with commonly recognized practice.

The Agency has determined that the risks of small grains uses of endrin to

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[3] In connection with its evaluation of the risk presumption relating to endangered species, pursuant to section 7 of the Endangered Species Act of 1973, 16 U.S.C. 1531, the Agency consulted with the United States Fish and Wildlife Service.

[4] The category of "other uses" comprises sugarcane; seed treatments for conifers, watermelons, and vegetables; alfalfa and clover seed crops; ornamentals; tree paint; perch treatments for controlling birds.

[5] On Jan. 31, 1978, the Administrator of the Agency classified all uses of endrin for restricted use and limited them to use by or under the direct supervision of certified applicators (40 CFR 162.31; 43 FR 5788, Feb. 9, 1978). The uses were classified under the Agency's Optional Procedures for Classification of Pesticide Uses by Regulation (40 CFR 162.30; 42 FR 44170, Sept. 1, 1977). These actions will continue for all uses of endrin until the cancellations to be implemented through the RPAR process have become effective and for uses that have not been canceled.

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control the army cutworm, the pale western cutworm, and grasshoppers are greater than the social, economic, and environmental benefits of these uses, unless risk reductions are accomplished by modifications in the terms or conditions of registration, as described below. The Agency has determined, further, that these modifications in the terms or conditions of registration accomplish significant risk reductions and that these risk reductions can be achieved without significant impacts on the benefits of the uses. Accordingly, the Agency has determined that, unless these changes in the terms or conditions of registration are accomplished, the uses of endrin on small grains to control the army cutworm, the pale western cutworm, and grasshoppers generally will cause unreasonable adverse effects on the environment, when used in accordance with widespread and commonly recognized practice, and that the labeling of endrin products for small grain uses will not comply with the provisions of FIFRA.

3. *Determinations on Orchard Uses*

The Agency has determined that the use of endrin in orchards for control of the eastern meadow vole poses risks which are greater than the social, economic, and environmental benefits of the use. Accordingly, the Agency has determined that this use of endrin generally will cause unreasonable adverse effects on the environment, when used in accordance with commonly recognized practice.

The Agency has determined that the risks of orchard uses of endrin for control of the pine vole and western meadow vole are greater than the social, economic, and environmental benefits of these uses, unless risk reductions are accomplished by modifications in the terms or conditions of registration, as described below. The Agency has determined, further, that these modifications in the terms or conditions of registration accomplish significant risk reductions and that these risk reductions can be achieved without significant impacts on the benefits of the uses. Accordingly, the Agency has determined that, unless these changes in the terms or conditions of registration are accomplished, the uses of endrin in orchards to control the pine vole and the western meadow vole generally will cause unreasonable adverse effects on the environment, when used in accordance with widespread and commonly recognized practice, and that the labeling of endrin products for orchard uses will not comply with the provisions of FIFRA.

4. Determinations on Other Uses

a. Sugarcane

The Agency has determined that the use of endrin on sugarcane to control pests other than the sugarcane beetle poses risks which are greater than the social, economic, and environmental benefits of the use. Accordingly, the Agency has determined that these uses of endrin generally will cause unreasonable adverse effects on the environment, when used in accordance with commonly recognized practice. The Agency has determined that the risks of the use of endrin to control the sugarcane beetle are greater than the social, economic and environmental benefits of these uses, unless risk reductions are accomplished by modifications in the terms or conditions of registration, as described below. The Agency has determined, further, that these modifications in the terms or conditions of registration accomplish significant risk reductions and that these risk reductions can be achieved without significant impacts on the benefits of the uses. Accordingly, the Agency has determined that, unless these changes in the terms or conditions of registration are accomplished, the uses of endrin on sugarcane generally will cause unreasonable adverse effects on the environment, when used in accordance with widespread and commonly recognized practice, and that the labeling of endrin products for sugarcane uses will not comply with the provisions of FIFRA.

b. Ornamentals

The Agency has determined that the use of endrin on ornamentals poses risks which are greater than the social, economic and environmental benefits of the uses. Accordingly, the Agency has determined that these uses of endrin generally will cause unreasonable adverse effects on the environment, when used in accordance with commonly recognized practice.

c. Conifer seeds; alfalfa and clover seed crops; tree paint

The Agency has determined that the risks of the uses of endrin on conifer seeds, alfalfa and clover seed crops, and tree paint are greater than the social, economic and environmental benefits of these uses, unless risk reductions are accomplished by modifications in the terms or conditions of registration, as described below. The Agency has determined, further, that these modifications in the terms or conditions of registration accomplish significant risks reductions and that these risk reductions can be achieved without significant impacts on the benefits of the uses. Accordingly, the Agency has determined that, unless these changes in the terms or conditions of registration are accomplished, these uses of endrin generally will cause unreasonable adverse effects on the environment, when used in accordance with widespread and commonly recognized practice, and that the labeling of endrin products for these uses will not comply with the provisions of FIFRA.

d. Perch treatments

The Agency has determined that the use of endrin in "Sorbikil," an unenclosed bird perch treatment, poses risks which are greater than the social, economic, and environmental benefits of the use. Accordingly, the Agency has determined that this use of endrin generally will cause unreasonable adverse effects on the environment, when used in accordance with commonly recognized practice. The Agency has determined that the risks of the use of endrin in "Rid-A-Bird," an enclosed bird perch treatment, are greater than the social, economic, and environmental benefits of this use, unless risk reductions are accomplished by modifications in the terms or conditions of registration, as described below. The Agency has determined, further, that these modifications in the terms or conditions of registration accomplish significant risk reductions and that these risk reductions can be achieved without significant impacts on the benefits of the uses. Accordingly, the Agency has determined that, unless these changes in the terms or conditions of registration are accomplished, the uses of endrin in Rid-A-Bird perches generally will cause unreasonable adverse effects on the environment, when used in accordance with widespread and commonly recognized practice, and that the labeling of endrin products for this use will not comply with the provisions of FIFRA.

D. INITIATION OF REGULATORY ACTIONS

Based upon the determinations summarized above and developed in detail in the position document, the Agency is initiating the following regulatory actions, and this document shall constitute its notice of intention to initiate these actions:

1. Cancellation and denial of registrations of endrin products for use on cotton in all States east of the Mississippi River and in Arkansas, Louisiana, and all portions of Oklahoma and Texas east of Interstate Highway No. 35.

Cancellation and denial of registration of endrin products for use on cotton in areas other than all States east of the Mississippi River and Arkansas, Louisiana, and all portions of Oklahoma and Texas east of Interstate Highway No. 35 unless registrants or applicants for registration modify the terms or conditions of registration as follows:

Modification of the label of endrin products for the use of endrin on cotton in areas other than all States east of the Mississippi River, Arkansas, Louisiana, and all portions of Oklahoma and Texas east of Interstate Highway No. 35 to add the following:

REQUIRED CLOTHING FOR FEMALE WORKERS

Female ground applicators, mixers and loaders, and flagpersons must wear long-sleeved shirts and long pants made of a closely woven fabric, and wide-brimmed hats. Mixers and loaders must also wear rubber or synthetic rubber boots and aprons.

WARNING TO FEMALE WORKERS

Excessive exposure to endrin may cause birth defects. Female workers must be sure to wear all protective clothing and use all protective equipment specified on this label. In case of accidental spills or other unusual exposure, cease work immediately and follow directions for contact with endrin.

EQUIPMENT

GROUND APPLICATION

For use with boom-nozzle ground equipment. Apply at not less than 5 gallons total mixture, water and chemical, per acre. Do not use nozzle liquid pressure at greater than 40 psi (pounds per square inch). Do not use cone nozzle size smaller than 0.16 gpm at 40 psi such as type D2-25 or TX-10, or no other atomizer or nozzle giving smaller drop size.

AERIAL APPLICATION

Do not apply at less than 2 gallons total mixture of water and chemical per acre. Do not operate nozzle liquid pressure over 40 psi (pounds per square inch) with no fan nozzle smaller than 0.4 gallons per minute (gpm) or fan angle greater than 65 degrees such as type 6504. Do not use any cone type nozzles smaller than 0.4 gpm nor whirl plate smaller than No. 46 such as type D4-46 or any other atomizer or nozzle giving smaller drop size. Do not release this material at greater than 19 foot height above the crop.

APPLICATION RESTRICTIONS

Do not use this product within 150 yards of human habitation.

Do not use this product within ¼ mile of streams, lakes, or ponds. Application may be made within ¼ mile of ponds owned by the user, but application within 200 yards of such ponds may result in fish kills.

Do not apply when rainfall is imminent. Apply only when wind velocity is between 2 mph and 10 mph.

PROCEDURES TO BE FOLLOWED IF FISH KILLS OCCUR

In case of fish kills, fish must be collected promptly and disposed of by burial.

At ponds, post signs stating: "Contaminated: No Fishing." Signs must remain for 1 year after fish kill has occurred.

PROPHYLACTIC USE

Unnecessary use of this product can lead to resistance in pest populations and subsequent lack of efficacy.

2. Cancellation and denial of registration of endrin products for use on small grains to control all pests other than the army cutworm, the pale western cutworm, and grasshoppers.

Cancellation and denial of registration of endrin products for use on small grains for control of the army cutworm, pale western cutworm, and grasshoppers unless registrants or applicants for registration modify the terms or conditions of registration as follows:

Modification of the label of endrin products for the use of endrin on small grains to control the army cutworm, pale western cutworm, and grasshoppers to add the following:

REQUIRED CLOTHING FOR FEMALE WORKERS

Female ground applicators, mixers and loaders, and flagpersons must wear long-sleeved shirts and long pants made of a closely woven fabric, and wide-brimmed hats. Mixers and loaders must also wear rubber or synthetic rubber boots and aprons.

WARNING TO FEMALE WORKERS

Excessive exposure to endrin may cause birth defects. Female workers must be sure to wear all protective clothing and use all protective equipment specified on this label. In case of accidental spills or other unusual exposure, cease work immediately and follow directions for contact with endrin.

EQUIPMENT

GROUND APPLICATION

For use with boom-nozzle ground equipment. Apply at not less than 5 gallons total mixture, water and chemical, per acre. Do not use nozzle liquid pressure at greater than 40 psi (pounds per square inch). Do not use cone nozzle size smaller than 0.16 gpm at 40 psi such as type D2-25 or TX-10, or any other atomizer or nozzle giving smaller drop size.

AERIAL APPLICATION

Do not apply at less than 1 gallon total mixture of water and chemical per acre. Do not operate nozzle liquid pressure over 40 psi (pounds per square inch) with no fan nozzle smaller than 0.4 gallons per minute (gpm) or fan angle greater than 65 degrees such as type 6504. Do not use any cone type nozzles smaller than 0.4 gpm nor whirl plate smaller than No. 46 such as type D4-46 or any other atomizer or nozzle giving smaller drop size. Do not release this material at greater than 10 foot height above the crop.

APPLICATION RESTRICTIONS

Do not use this product within 150 yards of human habitation.

Do not use this product within ¼ mile of streams, lakes, or ponds. Application may be made within ¼ mile of ponds owned by the user, but application within 200 yards of such ponds may result in fish kills.

Do not apply when rainfall is imminent.

Apply only when wind velocity is between 2 mph and 10 mph.

PROCEDURES TO BE FOLLOWED IF FISH KILLS OCCUR

In case of fish kills, fish must be collected promptly and disposed of by burial. At ponds, post signs stating: "Contaminated: No Fishing." Signs must remain for 1 year after fish kill has occurred.

PESTS FOR WHICH THIS PRODUCT MAY BE APPLIED

This product may be applied to control the following pests only: Army cutworm; pale western cutworm; grasshoppers.

3. Cancellation and denial of registration of endrin products for use in orchards to control the eastern meadow vole.

Cancellation and denial of registration of endrin products for use in orchards to control the pine vole and western meadow vole unless registrants or applicants for registration modify the terms or conditions of registration as follows:

Modification of the labeling of endrin products for use in orchards to control the pine vole and the western meadow vole to add the following:

REQUIRED CLOTHING FOR FEMALE WORKERS

Female ground applicators, mixers and loaders, and flagpersons must wear long-sleeved shirts and long pants made of a closely woven fabric, and wide-brimmed hats. Mixers and loaders must also wear rubber or synthetic rubber boots and aprons.

WARNING TO FEMALE WORKERS

Excessive exposure to endrin may cause birth defects. Female workers must be sure to wear all protective clothing and use all protective equipment specified on this label. In case of accidental spills or other unusual exposure, cease work immediately and follow directions for contact with endrin.

APPLICATION RESTRICTIONS

Do not apply this product within 50 feet of lakes, ponds or streams.

Do not apply this product within 50 feet of areas occupied by unprotected humans.

Do not apply when rainfall is imminent.

PROCEDURES TO BE FOLLOWED IF FISH KILLS OCCUR

In case of fish kills, fish must be collected promptly and disposed of by burial. At ponds, post signs stating: "Contaminated: No Fishing." Signs must remain for 1 year after fish kill has occurred.

EQUIPMENT

Use a very coarse spray with minimum pressure necessary to penetrate ground cover. Do not apply as a fine spray. Power air blast equipment must be modified to meet the above application restriction. Consult the State recommendations for acceptable methods of adapting equipment.

PROPHYLACTIC USE

Unnecessary use of this product can lead to resistance in the mouse population and subsequent lack of efficacy.

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PESTS FOR WHICH THIS PRODUCT MAY BE APPLIED

This product may be applied to control the following pests only: Pine vole; western meadow vole.

4. Cancellation and denial of registration of endrin products for use on sugarcane to control the sugarcane borer.

Cancellation and denial of registration of endrin products for use on the sugarcane bettle unless registrants or applicants for registration modify the terms or conditions of registration as follows:

Modification of the labeling of endrin products for use on sugarcane to control the sugarcane bettle to add the following:

REQUIRED CLOTHING FOR FEMALE WORKERS

Female ground applicators, mixers and loaders, and flagpersons must wear longsleeved shirts and long pants made of a closely woven fabric, and wide-brimmed hats. Mixers and loaders must also wear rubber or synthetic rubber boots and aprons.

WARNING TO FEMALE WORKERS

Excessive exposure to endrin may cause birth defects. Female workers must be sure to wear all protective clothing and use all protective equipment specified on this label. In case of accidential spills or other unusual exposure, cease work immediately and follow directions for contact with endrin.

APPLICATION RESTRICTIONS

Apply only with low-pressure ground equipment. Cover furrows with soil promptly after application.

PESTS FOR WHICH THIS PRODUCT MAY BE APPLIED

This product may be applied only to control the sugarcane beetle.

5. Cancellation and denial of registration of endrin products for use on ornamentals.

6. Cancellation and denial of registration of endrin products for use on conifer seed treatments unless registrants or applicants for registration modify the terms or conditions of registration as follows:

Modification of the label of endrin products for the use of endrin on conifer seed treatments to add the following:

APPLICATION RESTRICTIONS

Do not apply when large numbers of migratory birds are expected.

7. Cancellation and denial of registration of endrin products for use on tree paint unless registrants or applicants for registration modify the terms or conditions of registration as follows:

Modification of the label of endrin products for the use of endrin on tree paint to add the following:

REQUIRED CLOTHING FOR FEMALE WORKERS

Female workers handling or applying this product must wear long-sleeved shirts and long pants made of a closely woven fabric, wide-brimmed hat, and wear rubber or synthetic rubber boots and aprons.

WARNING TO FEMALE WORKERS

Excessive exposure to endrin may cause birth defects. Female workers must be sure to wear all protective clothing and use all protective equipment specified on this label. In case of accidental spills or other unusual exposure, cease work immediately and follow directions for contact with endrin.

8. Cancellation and denial of registration of endrin products for use on alfalfa and clover seed crops unless registrants or applicants for registration modify the terms or conditions of registration as follows:

Modification of the label of endrin products for the use of endrin on alfalfa and clover seed crops to add the following:

REQUIRED CLOTHING FOR FEMALE WORKERS

Female ground applicators, mixers and loaders, and flagpersons must wear longsleeved shirts and long pants made of a closely woven fabric, and wide-brimmed hats. Mixers and loaders must also wear rubber of synthetic rubber boots and aprons.

WARNING TO FEMALE WORKERS

Excessive exposure to endrin may cause birth defects. Female workers must be sure to wear all protective clothing and use all protective equipment specified on this label. In case of accidental spills or other unusual exposure, cease work immediately and follow directions for contact with endrin.

EQUIPMENT

GROUND APPLICATION

For use with boom-nozzle ground equipment. Apply at not less than 5 gallons total mixture, water and chemical, per acre. Do not use nozzle liquid pressure at greater than 40 psi (pounds per square inch). Do not use cone nozzle size smaller than 0.16 gpm at 40 psi such as type D2-25 or TX-10, or any other atomizer or nozzle giving smaller drop size.

AERIAL APPLICATION

Do not apply at less than 1 gallon total mixture of water and chemical per acre. Do not operate nozzle liquid pressure over 40 psi (pounds per square inch) nor with any fan nozzle smaller than 0.4 gallons per minute (gpm) or fan angle greater than 65 degrees such as type 6504. Do not use any cone type nozzles smaller than 0.4 gpm nor whirl plate smaller than No. 46 such as type D4-46 or any other atomizer or nozzle giving smaller drop size. Do not release this material at greater than 10 foot height above the crop.

APPLICATION RESTRICTIONS

Do not use this product within 150 yards of human habitation.

Do not use this product within ¼ mile of streams, lakes or ponds. Application may be made within ¼ mile of ponds owned by the user, but application within 200 yards of such ponds may result in fish kills.

Do not apply when rainfall is imminent.

Apply only when wind velocity is between 2 mph and 10 mph.

PROCEDURES TO BE FOLLOWED IF FISH KILLS OCCUR

In case of fish kills, fish must be collected promptly and disposed of by burial. At ponds, post signs stating: "Contaminated: No Fishing." Signs must remain for one year after fish kill has occurred.

9. Denial of applications for Federal registration of "Sorbikil" bird perch treatments containing endrin.

Cancellation and denial of applications for registration of "Rid-A-Bird" bird perch treatments containing endrin unless registrants modify the terms or conditions of registration as follows:

REQUIRED CLOTHING FOR FEMALE WORKERS

Female workers handling this product must wear long-sleeved shirts and long pants made of a closely woven fabric, wide-brimmed hats, and rubber or synthetic rubber aprons.

WARNING TO FEMALE WORKERS

Excessive exposure to endrin may cause birth defects. Female workers must be sure to wear all protective clothing and use all protective equipment specified on this label. In case of accidental spills or other unusual exposure, cease work immediately and follow directions for contact with endrin.

SPECIAL WARNING

Do not use within one mile of roosting sites or within two miles of nesting sites of peregrine falcons, as identified by the United States Fish and Wildlife Service.

V. PROCEDURAL MATTERS

As discussed above in section II of this notice, the Agency's decision to initiate the regulatory actions described in section III must be referred for review by the Secretary of Agriculture and the Scientific Advisory Panel. In accordance with FIFRA, the EPA position document setting forth in detail the reasons and factual bases for the regulatory actions which the Agency proposes and this notice of determination are being transmitted immediately to the Secretary of Agriculture and to the Scientific Advisory Panel for comment. The Agency also is transmitting copies of these documents to endrin registrants. The Agency also is offering registrants and other interested persons an opportunity to comment on the bases for the Agency's action by making copies of the Position Document available upon request. Interested persons may receive copies of the documents by communicating their requests to Kyle Barbehenn, Project Manager, Special Pesticide Review Division (TS-791), EPA, Room 447, East Tower, 401 M Street SW., Washington, D.C. 20460, 202-755-8050. Registrants and other interested persons will be given the same period of time to submit comments—30 days—that the statute provides for comments from the Secretary of Agriculture and the Scientific Advisory Panel.

After completion of these review procedures, the Agency will consider the comments received and publish an analysis of them, together with any changes in the regulatory actions announced in this notice which it determines are appropriate. Until this final review phase is concluded in this manner, it is not necessary for registrants or other interested persons to request a hearing to contest any regulatory actions resulting from the conclusion of this RPAR.

All comments on the proposed actions should be sent to the Federal Register Section, Program Support Division (TS-757), Office of Pesticide Programs, EPA, Room 401, East Tower, 401 M Street SW., Washington, D.C. 20460. In order to facilitate the work of the Agency and of others interested in inspecting the comments, registrants and other interested persons should submit copies of their comments. The comments should bear the identifying notation OPP-30000/4B, and should be submitted on or before December 4, 1978.

Dated: October 20, 1978.

STEVEN D. JELLINEK,
Assistant Administrator for Toxic Substances.

[FR Doc. 78-30926 Filed 11-1-78; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

FM AND TV TRANSLATOR APPLICATIONS READY AND AVAILABLE FOR PROCESSING

Adopted: October 25, 1978.

Released: October 31, 1978.

By the Chief, Broadcast Facilities Division.

Notice is hereby given pursuant to §§ 1.57(c) and 1.573(d) of the Commission's rules, that on December 12, 1978, the TV and FM translator applications listed in the attached appendix will be considered as ready and available for processing. Pursuant to §§ 1.227(b)(1) and 1.519(b) of the Commission's rules, an application, in order to be considered with any application appearing on the attached list or with any other application on file by the close of business on December 11, 1978, which involves a conflict necessitating a hearing with any application on this list, must be substantially complete and submitted for filing at the offices of the Commission in Washington, D.C., by the close of business on December 11, 1978. The attention of prospective applicants is directed to the fact that some contemplated proposals may not be eligible for consideration with an application appearing in the attached appendix by reason of conflicts between the listed applications and applications appearing in previous notices published pursuant to § 1.573(d) of the Commission's rules.

The attention of any party in interest desiring to file pleadings concerning any pending TV and FM translator application, pursuant to section 309(d)(1) of the Communications Act of 1934, as amended, is directed to section 1.580(i) of the Commission's rules for provisions governing the time for filing and other requirements relating to such pleadings.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

FM TRANSLATOR APLICATIONS

BPFT-557—New—Moses Lake and Ephrata, Wash., Hope Community Chapel. Req.: Channel 292, 106.3 MHz, 10 watts—Primary: KIAM-FM, Wenatchee, Wash.

BPFT-558—New—Faith, S. Dak., Sturgis Radio, Inc. Req.: Channel 249, 97.7 MHz, 1 watt—Primary: KRCS-FM, Sturgis, S. Dak.

BPFT-559—New—Yreka, Montague, Calif., State of Oregon acting by and through the State board of higher education. Req.: Channel 220, 91.9 MHz, 10 watts—Primary: KSOR-FM, Ashland, Oreg.

BPFT-780720OID—New—Stevens Point and Plover, Wis., Central Wisconsin Inspirational Radio, Inc. Req.: Channel 261, 100.1 MHz, 1.0 watt—Primary: WWIB-FM, Ladysmith, Wis.

BPFT-7807251C—New—Brownsville, Tex., Media Properties, Inc. Req.: Channel 280, 103 9 MHz, 10 watts—Primary: KDUV-FM, Brownsville, Tex.

BPFT-780828IA—New—Rochester, Minn., Minnesota Public Radio Inc. Req.: Channel 239, 95.7 MHz, 10 watts—Primary: KLSE—FM, Rushford, Minn.

BPFT-780728IC—New—Big Timber, Mont., Christian Enterprises, Inc. Req.: Change frequency to channel 257, 99.3 MHz.

BPFT-780731IV—New—Roseburg, Oreg., State of Oregon acting by and through the State board of higher education. Req.: Channel 211, 90.1 MHz, 10 watts—Primary: KSOR-FM, Ashland, Oreg.

BMPFT-780731IX—K220AA—Sutherlin & Glide, Oreg., State of Oregon acting by and through the State board of higher education. Req.: Change frequency to channel 207, 89.3 MHz.

BPFT-546—New—Cherokee Village and Hidden Valley, Ark., Paul L. Lierman. Req.: Channel 257, 99.3 MHz, 10 watts—Primary: WEZI-FM, Memphis, Tenn.

UHF TV TRANSLATOR APPLICATIONS

BPTT-3634—New—Chinook and Surrounding Rural Areas, Mont., Chinook TV Association, Inc. Req.: Channel 61, 752—758 MHz, 100 watts—Primary: KFBB-TV, Great Falls, Mont.

BPTT-3635—New—Chinook and Surrounding Rural Areas, Mont., Chinook TV Association, Inc. Req.: Channel 65, 776-782 MHz, 100 watts—Primary: CJOC-TV, Lethbrodge Alberta, Alberta, Canada.

BPTT-3636—K63AR—Chinook, Mont., Chinook TV Association, Inc. Req.: Change primary TV station to KRTV, channel 3, Great Falls, Mont.

BPTT-3643—New—Rio Blanco Valley NW and upper Piccance Creek Basin, Colo., Rio Blanco County TV Association. Req.: Channel 44, 650-656 MHz, 100 watts—Primary: KOA-TV, Denver, Colo.

BPTT-3644—New—Jacksonville, Camp Lejeune, Geiger, and New River, N.C., University of North Carolina. Req.: Channel 19, 500-506 MHz, 100 watts—Primary: WUNK-TV, Greenville, N.C.

BPTT-3645—New—Cottonwood, Jerome, and Clarksdale, Ariz., Trinity Broadcasting of Arizona, Inc. Req.: Channel 58, 734 740 MHz, 100 watts—Primary: KPAZ-TV, Phoenix, Ariz.

BPTT-780710IE—New—Hobbs, N. Mex., Hobbs Downtown Lions Club. Req.: Channel 60, 752 758 MHz, 100 watts—Primary: KOAT-TV, Albuquerque, N. Mex.

BPTT-780724IF—New—Lebanon, New Hampshire and White River Junction, Vt., Taft Broadcasting Corp., Req.: Channel 65, 776-782 MHz, 100 watts—Primary: WNNE-TV, Hanover, N.H.

BPTT-780725II—New—Cortez, Colo., Four States Television, Inc. Req.: Channel 69, 800-806 MHz, 100 watts—Primary: KIVA-TV, Farmington, N. Mex.

BPTT-780725IJ—New—Outlying areas of Joshua Tree, 29 Palms, Yucca Valley and Landers, Calif., Morongo Basin TV Club, Inc. Req.: Channel 59, 740-746 MHz, 20 watts—Primary: KABC-TV, Los Angeles, Calif.

BPTT-780725IK—New—Outlying area of Joshua Tree, Twentynine Palms, Yucca Valley, and Landers, Calif., Morongo Basin TV Club, Inc. Req.: Channel 61, 752-758 MHz, 20 watts—Primary: KNBC-TV, Los Angeles, Calif.

BPTT-780726IG—New—Lowry (Counties of Campbell, Edmonds, McPherson, Potter, and Walworth), S. Dak., South Dakota Five County TV Translator District. Req.: Channel 56, 722-728 MHz, 1000 watts—Primary: KPLO-TV, Reliance, S.Dak.

BPTT-780726IH—New—Ipswich, S. Dak., South Dakota Five County Television Translator District. Req.: Channel 59, 740-746 MHz, 100 watts—Primary: KXON-TV, Mitchell, S. Dak.

BPTT-780726II—New—Lowry (Counties of Campbell, Edmonds, McPherson, Potter, and Walworth), S. Dak., South Dakota Five County Television Translator District. Req.: Channel 62, 758-764 MHz, 1,000 watts—Primary: KXON-TV, Mitchell, S. Dak.

BPTT-780726IJ—New—Lowry (Counties of Campbell, Edmonds, McPherson, Potter, and Walworth), S. Dak., South Dakota Five County Television Translator District. Req.: Channel 68, 794-800 MHz, 1,000 watts—Primary: KPRY-TV, Pierre, S. Dak.

BPTT-7807281G—New—Smoky Valley, Nev., Smoky Valley TV District. Req.: Channel 62, 758-764 MHz, 1 watt—Primary: KOLO-TV, Reno, Nev.

BPTT-7807281H—New—Smoky Valley, Nev., Smoky Valley TV District. Req.: Channel 64, 770-776 MHz, 1 watt—Primary: KCRL-TV, Reno, Nev.

V 43/213 NO 2 78 UMI

BPTT-780728II—New—Smoky Valley, Nev., Smoky Valley TV District. Req.: Channel 66, 782-788 MHz, 1 watt—Primary: KTVN-TV, Reno, Nev.

BPTT-780728IJ—New—Round Mountain, Nev., Smoky Valley TV District. Req. Channel 9, 186-192 MHz, 10 watts—Primary: KCRL-TV, Reno, Nev.

BPTT-780728IK—New—Round Mountain, Nev., Smoky Valley TV District. Req. Channel 11, 198-204 MHz, 10 watts—Primary: KTVN-TV, Reno, Nev.

BPTT-780728IL—New—Round Mountain, Nev., Smoky Valley TV District. Req. Channel 13, 210-216 MHz, 10 watts—Primary: KOLO-TV, Reno, Nev.

BPTT-780807IB—New—Kaumakani, Kauai, Hawaii, Channel 13, Club Of Kauai, Inc. Req.: Channel 55, 716-722 MHz, 20 watts—Primary: KIKU-TV, Honolulu, Hawaii.

BPTT-780807IF—New—Lihue, Kauai, Hawaii, Channel 13, Club of Kauai, Inc. Req.: Channel 65, 776-782 MHz, 100 watts—Primary: KIKU-TV, Honolulu, Hawaii.

BPTT-7808111A—New—Palm Springs, Calif., International Ponorama TV, Inc Req.: Channel 66, 782-788 MHz, 100 watts—Primary: KTBN-TV, Fontana, Calif.

BPTT-780911IA—New—Iron Mountain, Mich., U.P. TV Systems, Inc. Req.: Channel 51, 692-698 MHz, 100 watts—Primary: KTBN-TV, Los Angeles, Calif.

BPTT-7809261A—New—Rutland, Vt., Taft Broadcasting Corp. Req.: Channel 58, 734-740 MHz, 100 watts—Primary: WNNE-TV, Hanover, N.H.

VHF TV TRANSLATOR APPLICATIONS

BPTTV-6125—K06JC—Chadron (north) Chadron area housing development (south), Nebraska, Nebraska Educational Television Commission. Req.: Change primary TV station to KRNE/TV, channel 12, Merriman, Nebr.

BPTTV-6139—New—Rural area Heritage Ranch, Calif., Heritage Ranch Owners Association. Req.: Channel 2, 54-60 MHz, 1 watt—Primary: KNTV-TV, San Jose, Calif.

BPTTV-6140—New—Rural area Heritage Ranch, Calif., Heritage Ranch Owner's Association. Req: Channel 4, 66-72 MHz, 1 watt—Primary: KCOY-TV, Santa Maria, Calif.

BPTTV-6146—K08BN—St. George, Utah, Washington County TV Department. Req.: Increase output power to 10 watts, change primary TV station to KSL-TV, channel 5, Salt Lake City, Utah.

BPTTV-6147—K13CA—St. George, Utah, Washington County Television Department. Req.: Increase output power to 10 watts, change primary TV station to KTVX, channel 4, Salt Lake City, Utah.

BPTTV-6148—New—Crane, Oreg., Crane Sagebrush TV, Req.: Channel 10, 192-198 MHz, 1 watt—Primary: KAID-TV, Boise, Idaho.

BPTTV-6149—New—Babb and St. Mary, Mont., Babb TV Booster Club. Req.: Channel 6, 82-88 MHz, 25 watts—Primary: KCFW-TV, Kalispell, Mont.

BPTTV-6150—New—Paisley and Valley Falls, Oreg., Paisley TV, Inc. Req.: Channel 4, 66-72 MHz, 10 watts—Primary: KTVL-TV, Medford, Oreg.

[FR Doc. 78-31033 Filed 11-1-78; 8:45 am]

[6712-01-M]

[SS Docket Nos. 78 346 and 78-347]

JOHN P. LEPLEY

Order to Show Cause and Designation Order

Adopted: October 13, 1978;
Released: October 24, 1978.

In the matter of revocation of license of John P. Lepley, 2166 Figaro Lane, Jacksonville, Fla. 32210 (SS Docket No. 78-346); Licensee of Station KADM-1528 in the Citizens Band Radio Service.

Application of John P. Lepley, 2166 Figaro Lane, Jacksonville, Fla. 32210 (SS Docket No. 78-347) For Amateur Radio Station license and Novice Class Operator's license.

The Chief, Safety and Special Radio Services Bureau, has under consideration the license of John P. Lepley for station KADM-1528 in the Citizens Band Radio Service and an application filed by Lepley for a Novice Class Amateur radio operator's license and station license.

1. Information before the Commission indicates that on September 7, 1977, Citizens Band radio station KADM-1528 was operated on the frequency 27.455 MHz. That frequency was not one of those authorized by § 95.455(a) of the Commission's Rules for use by stations in the Citizens Band Radio Service.[1] The frequency 27.455 MHz is allocated for use in the Business Radio Service.

2. The information further indicates that on September 7, 1977, Citizens Band radio station KADM-1528 transmitted communications in excess of 5 consecutive minutes. Section 95.469(b) of the Commission's Rules limited CB communications to periods of 5 continuous minutes, at the end of which a 1 minute silent period was required.

3. The Commission's information additionally indicates that on September 7, 1977, Citizens Band radio station KADM-1528 was operated without being identified by its assigned call sign. Section 95.471(c) of the Commission's Rules required that transmissions by Citizens Band radio stations be identified by the station's call sign at the beginning and conclusion of each transmission or series of transmissions, but at least at intervals not to exceed 10 minutes.

4. The information further indicates that on September 7, 1977, Lepley used the designation "27 Whiskey 700" for identification of radio transmissions. The use of the designation "27 Whiskey 700" indicates that Lepley apparently participated in "W" or "Whiskey" Clubs, whose members operated radio transmitting equipment on frequencies not authorized by their licenses and used equipment not type-accepted by the Commission for use by CB stations. Members of these clubs apparently employed a system of operator identification numbers in lieu of Commission assigned call signs to enable members to identify each other over the air while concealing their identity and station location from the Commission.

5. This conduct was the subject of an Official Notice of Violation which was mailed to Lepley on September 28, 1977.

6. Section 312(a)(4) of the Communications Act of 1934, as amended, provides that a station license may be revoked for wilful or repeated violation of the Commission's Rules.

7. *Accordingly, it is ordered,* pursuant to sections 312(a)(4) and (c) of the Communications Act of 1934, as amended, and § 0.331 of the Commission's Rules, that John P. Lepley appear at a hearing and give evidence with respect to the matters described above (unless he waives his right to such a hearing) and that he show cause why the license for Citizens Band radio station KADM-1528 should not be revoked.[1]

8. *It is further ordered,* That the hearing, unless waived by the licensee, shall be held before an Administrative Law Judge, at a time and place to be specified by a subsequent Order, upon the following issues:

(a) Whether Citizens Band radio station KADM-1528 was operated in wilful or repeated violation of §§ 95.469(b) and 95.455(a) of the Commission's Rules.

(b) Whether John P. Lepley wilfully or repeatedly violated Section 95.471(c) of the Rules and/or used a "Whiskey" or "W" Club designator for identification.

(c) Whether, in light of the evidence adduced pursuant to Issues (a) and (b), John P. Lepley possesses the requisite qualifications to remain a Commission licensee.

9. The conduct described in this order also raises a substantial and material question of fact as to whether Lepley possesses the requisite qualifications to become a licensee in the Amateur Radio Service. Accordingly, *It is further ordered,* pursuant to section 309(e) of the Communications Act of 1934, as amended, and § 1.973(b) and 0.331 of the Commission's Rules, that Lepley's application for an Amateur radio station license and for a Novice Class Operator license is designated for hearing, at a time and place to be specified by subsequent Order upon the following issue:

(d) Whether, in light of the evidence adduced under Issues (a) and (b) above, the public interest, convenience and necessity would be served by a grant of the Amateur radio station and Novice Class operator application of John P. Lepley.

10. *It is further ordered,* That, in order to obtain a hearing on his application, Lepley, in person or by attorney, shall within 30 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intent to appear on a date fixed for hearing to present evidence on the issues specified in the foregoing paragraph.[1] Failure to file a written appearance within the time specified will result in the dismissal of the application with prejudice.

11. *It is further ordered,* pursuant to the provisions of § 1.227 of the Commission's Rules, that the proceedings on the above-stated issues regarding the Order to Show Cause and the Designation Order are consolidated for hearing.

12. *It is further ordered,* That the burden of proceeding with the introduction of evidence and the burden of proof for revocation of the Citizens Band radio license is on the Bureau, pursuant to section 312(d) of the Communications Act of 1934, as amended; and the burden of introduction of evidence and the burden of proof for grant of the application is on the applicant, pursuant to section 309(c) of the act.

13. *It is further ordered,* That a copy of this Order shall be sent by Certified Mail—Return Receipt Requested and by Regular Mail to Lepley at his address of record as shown in the caption.

GERALD M. ZUCKERMAN,
Chief, Legal, Advisory and Enforcement Division.

ENCLOSURE 1

In the matter of revocation of license of JOHN P. LEPLEY, 2166 Figaro Lane, Jacksonville, Fla. 32210, licensee of station KADM-1528 in the Citizens Band Radio Service, SS Docket 78-346.

The application of JOHN P. LEPLEY, 2166 Figaro Lane, Jacksonville, Fla. 32210, SS Docket 78-347.

For amateur radio station license and novice class operator's license.

RESPONDENT'S REPLY TO ORDER TO SHOW CAUSE WHY CITIZENS BAND RADIO STATION LICENSE KADM-1528 SHOULD NOT BE REVOKED

Respondent takes the following action on the revocation matter:

1. Respondent will appear and present evidence at the hearing.

2. Respondent waives his right to a hearing and does not submit a written statement.

3. Respondent waives his right to a hearing and submits the attached statement.*

Date: ————, 1978.

JOHN P. LEPLEY,
Respondent.

ENCLOSURE 2

In the matter of revocation of license of JOHN P. LEPLEY, 2166 Figaro Lane, Jacksonville, Fla. 32210, licensee of station KADM-1528 in the Citizens Band Radio Service, SS Docket 78-346.

The application of JOHN P. LEPLEY, 2166 Figaro Lane, Jacksonville, Fla. 32210, SS Docket 78-347.

For amateur radio station license and novice class operator's license.

REPLY TO ORDER DESIGNATING NOVICE CLASS AMATEUR RADIO STATION APPLICATION FOR HEARING

Respondent takes the following action in the application matter:

1. Respondent will appear on the date fixed for the hearing and present evidence on the issues specified in the order of designation.

2. Respondent will not present evidence on the issues specified in the order of designation and understands that, as a result, his application will be dismissed with prejudice.

Date: ————, 1978.

JOHN P. LEPLEY,
Applicant.

EXPLANATION OF PROCEDURES

1. *Revocation.* Section 1.91 of the Commission's Rules provides that in order to have a hearing before an Administrative Law Judge, you have 30 days from the Release date of this Order in which to state that you will appear and present evidence on the matters specified in the Order. If you are unable to appear at a hearing in Washington, D.C., you may request that the hearing be near your residence. Such request should be supported by whatever facts you feel necessary.

Your right to a hearing is waived if you (1) fail to file a timely apearance or (2) file within 30 days a statement waiving the right to a hearing. When hearing is waived, you may submit a statement denying or seeking to mitigate or justify the matters alleged in the Order to Show Cause. The Chief Administrative Law Judge will then certify the case to the Commission. The matter will be handled by the Chief, Safety and Special Radio Services Bureau, who will determine whether a revocation order should be issued or the matter should be dismissed. This determination will be made using all information available, including statements you have filed and your past violation record. See Enclosure 1.

2. *Application.* In order to have a hearing on your application, you have 30 days from the Release date of this Order to request it. Section 1.221(c) of the Rules provides that if you do not request a hearing, the application will be dismissed with prejudice. See Enclosure 2.

[FR Doc. 78-31034 Filed 11-1-78; 8:45 am]

[6712-01-M]

[FCC 78-723, BC Docket Nos. 78-333 and 78-334; File Nos. BPH-9773 and File No. BPH-9915]

RADIO GREENBRIER, INC., AND LEWISBURG FM BROADCASTERS

Construction Permit Applications; Memorandum Opinion and Order Designating Applications for Consolidated Hearing on Stated Issues

Adopted: October 5, 1978;
Released: October 26, 1978.

By the Commission:

In the matter of applications of Radio Greenbrier, Inc., Ronceverte, W. Va. (BC Docket No. 78-333, File No. BPH-9773; Req: 105.5 MHz, Channel No. 288; 3 kW (H&V); 300 ft. (H&V)) and Woodrow Taylor and Claude F. Jones d.b.a. Lewisburg FM Broadcasters, Lewisburg, W. Va. (BC Docket No. 78-334, File No. BPH-9915; Req: 105.5 MHz, Channel No. 288; 3 kW (H&V); 300 ft. (H&V)) for construction permit.

1. The Commission has before it for consideration, the above-captioned mutually-exclusive applications of Radio Greenbrier, Inc. ("Greenbrier"), and Woodrow Taylor and Claude F. Jones d.b.a. Lewisburg FM Broadcasters ("Lewisburg") for construction permits, and a petition to deny the Lewisburg application filed by Greenbrier.

2. Turning first to Greenbrier's petition to deny, Lewisburg originally consisted of three equal partners—Woodrow Taylor, Claude F. Jones and Edward Shuey. Subsequently, Mr. Shuey withdrew from the applicant. In its petition, Greenbrier first points out that Taylor, Jones and Shuey own, respectively, 25 percent, 15 percent and 29.5 percent interests in Regional Radio, Inc., licensee of station WSLW-AM, White Sulphur Springs, W. Va. Hence, it argues, the present applicant and Regional Radio, Inc. were initially commonly-owned in that the individuals who controlled all of the applicant controlled 70 percent of the licensee. When Shuey resigned from Lewisburg, Greenbrier continues, this common ownership ended, as the applicant's remaining partners do not have a controlling interest in Regional Radio, holding between them only 40 percent of the licensee. Accordingly, petitioner concludes, Shuey's withdrawal constituted a transfer of control from Regional Radio to Taylor and Jones requiring assignment of a new file number and dismissal of the Lewisburg application.[1] There is one

[1] Effective August 1, 1978, Subpart D of Part 95 of the Commission's Rules was revised. As part of that revision, all Rule sections in that Subpart were renumbered. Rule sections referred to in this Order to Show Cause and Designation Order are those which were in effect on the date of operation.

[1] The form attached to this Order should be detached and used in connection with the procedure set forth on the reverse side thereof and mailed to Federal Communications Commission, Washington, D.C. 20554 in the enclosed addressed envelope, within 30 days.

[1] The 20 day response period specified by Section 1.221(c) is waived.

* If this statement is intended to be in mitigation, it should include information as to (1) the corrective action, if any, that has been taken in connection with each of the related violations; (2) the reasons, if any, why you believe that your radio station license should not be revoked.

[1] See Section 1.573(b) of our Rules.

serious flaw in this argument. Notwithstanding the existence of three common owners, the original Lewisburg application does not indicate that Regional Radio, Inc. could or would have controlled the new station. Thus, the situation before us appears to be one in which a one-third interest has been transferred to two remaining partners, a transaction which does not constitute a transfer of control under our Rules. See e.g., *Gaffney Broadcasting Inc.*, 35 RR 2d 1607 (1976). Since no substantial and material questions of fact have been presented requiring further exploration in hearing, we will, therefore, deny the petition to deny.

3. Greenbrier proposes some duplicated programming. Therefore, evidence regarding program duplication will be admissible under the standard comparative issue. When duplicated programming is proposed, the showing permitted under the standard comparative issue will be limited to evidence concerning the benefits to be derived from the proposed duplication which would offset its inherent inefficiency. *Jones T. Sudbury*, 8 FCC 2d 360, 10 RR 2d 114 (1967).

4. The respective proposals, although for different communities, would serve substantial areas in common. Consequently, in addition to determining, pursuant to section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient and equitable distribution of radio service, a contingent comparative issue will be specified.

5. The applicants are fully qualified to construct and operate as proposed. However, because the proposals are mutually exclusive, they must be designated for a hearing in a consolidated proceeding.

6. Accordingly, *it is ordered*, That the petition to deny filed by Radio Greenbrier, Inc., is denied.

7. *It is further ordered*, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine the areas and populations which would receive FM service of 1 mV/m or greater intensity from the respective proposals together with the availability of other primary aural services in such areas.

2. To determine, in light of section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient and equitable distribution of radio service.

3. To determine, in the event it is concluded that a choice between applications should not be based solely on considerations relating to section 307(b), which of the operations would, on a comparative basis, better serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

8. *It is further ordered*, That, to avail themselves of the opportunity to be heard, the applicants herein, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, shall, within twenty (20) days from the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for a hearing and present evidence on the issues specified in this Order.

9. *It is further ordered*, That, the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's Rules, give notice of the hearing either individually or, if feasible and consistent with the Rules, jointly, within the time and in the manner prescribed in such Rule and shall advise the Commission of the publication of such notice as required by § 1.594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-31032 Filed 11-1-78; 8:45 am]

[6730-01-M]

FEDERAL MARITIME COMMISSION

Notice of Temporary Exemption

COLLECTIVE BARGAINING AGREEMENTS

Notice is hereby given that on October 18, 1978, the Commission determined the following collective bargaining agreements to be temporarily exempt from the filing and approval requirements of section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814), pending FEDERAL REGISTER notice, opportunity for comment, and subsequent determination by the Commission that the agreements (or any specific provision thereof) should be permanently exempt from the filing and approval requirements of section 15 of the Shipping Act, 1916, or should be approved, disapproved or modified under that section. This action was taken in accordance with our *Interim Policy Statement—Collective Bargaining Agreement*, served June 12, 1978. This temporary exemption is effective until January 26, 1979.

Interested parties may inspect the agreements at the Washington Office of the Federal Maritime Commission, 1100 L Street NW., Room 10218; or at the field offices located at New York, N.Y.; New Orleans, La.; San Francisco, Calif.; Chicago, Ill.; and San Juan, Puerto Rico. Comments on the agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before November 22, 1978. Comments should include facts and agruments concerning the exemption, approval, modification or disapproval of the proposed agreements. Comments shall discuss with particularity allegations that the agreements are unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operate to the detriment of the commerce of the United States, or are contrary to the public interest, or are in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

Agreement No.: LM-24, as amended by Agreements Nos. LM-24-1 and LM-24-2.

Filing party: R. Frederic Fisher, Esquire, Lillick McHose & Charles, Two Embarcadero Center, San Francisco, Calif. 94111.

Summary: The following agreements constitute the 1978–1981 collective bargaining agreement between the International Longshoremen's and Warehousemen's Union and the Pacific Maritime Association concerning the Pacific Coast Walking Bosses and Foremen: LM-24: Agreement dated July 1, 1973; LM-24-1: Memorandum of Understanding dated July 1, 1975; and LM-24-2: Memorandum of Understanding dated September 1, 1978.

By Order of the Federal Maritime Commission.

Dated: October 30, 1978.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-31023 Filed 11-1-78; 8:45 am]

[6115-02-M]

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

PRIVACY ACT ISSUANCE

Incorporation by Reference

AGENCY: Harry S. Truman Scholarship Foundation.

ACTION: Incorporation by reference of Privacy Act issuances.

SUMMARY: Federal agencies are required by the Privacy Act of 1974 to give annual notice of certain records they maintain. The notices published last year were compiled by the Office of the Federal Register into "Privacy Act Issuances—1977 Compilation." The purpose of this document is to incorporate by reference the notices

that appear in "Privacy Act Issuance—1977 Compilation" and to publish in full the systems that this agency has amended since publication of the 1977 Compilation.

DATES: This document fulfills the annual notice requirements of the Privacy Act for 1978.

FOR FURTHER INFORMATION CONTACT:

James C. Craten, Administrative Officer, telephone, 202-395-4831.

APPROVAL OF THE DIRECTOR

The notices of systems of records of this agency which appear in "Privacy Act Issuances—1977 Compilation" are incorporated by reference. The Director of the Office of the Federal Register granted approval to incorporate by reference these Privacy Act issuances on August 24, 1978. Published below is the full text of systems of records that this agency has amended since publication of the 1977 Compilation.

TSF-1

System name:

Payroll Records—Harry S. Truman Foundation.

System location:

Advisory Commission on Intergovernmental Relations (ACIR), 1111 20th Street NW., Washington, D.C. 20036; copies held by the Foundation. (ACIR holds records for the Foundation under contract.)

Categories of individuals covered by the system:

Past and present Foundation employees.

Categories of records in the system:

Varied payroll records, including among other documents, time and attendance cards; payment vouchers; comprehensive listing of employees; health benefits records; requests for deductions; tax forms; W-2 forms; overtime requests; leave data; retirement records. Records are used by Foundation and ACIR employees to maintain adequate payroll information for Foundation employees, and otherwise by Foundation and ACIR employees who have a need for the record in the performance of their duties.

Authority for maintenance of the system:

31 U.S.C., generally.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

See appendix. Record also are disclosed to GAO for audits; to the Internal Revenue Service for investigation; and to private attorneys, pursuant to a power of attorney. Records are also disclosed by providing a copy of an employee's Federal Treasury Form W-2, "Wage and Tax Statement" to the State, city, or other local jurisdiction which is authorized to tax the employee's compensation. The record will be provided in accordance with a withholding agreement between the State, city, or other local jurisdiction and the Department of the Treasury pursuant to 5 U.S.C. 5516, 5517, and 5520 or in the absence thereof, in response to a written request for an appropriate official of the taxing jurisdiction to the Executive Secretary, Harry S. Truman Scholarship Foundation, 712 Jackson Place NW., Washington, D.C. 20006. In the latter case, the request must include a copy of the applicable statute or ordinance authorizing the taxation of compensation and the solicitation of the Social Security number, and should indicate whether the authority of the jurisdiction to tax the employee is based on place of residence, place of employment, or both.

Pursuant to a withholding agreement between a city and the Department of the Treasury (5 U.S.C. 5520), copies of executed city tax withholding certificates shall be furnished the city in response to a written request from an appropriate city official to the Executive Secretary, Harry S. Truman Scholarship Foundation, 712 Jackson Place NW., Washington, D.C. 20006.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper.

Retrievability:

Name and social security number.

Safeguards:

Stored in guarded building; released only to authorized personnel.

System manager(s) and address:

Administrative Officer, Harry S. Truman Scholarship Foundation, 712 Jackson Place NW., Washington, D.C. 20006.

Notification procedure:

Refer to Foundation access regulations contained in 45 CFR 1800.

Record access procedures:

Refer to Foundation access regulations contained in 45 CFR 1800.

Contesting record procedures:

Refer to Foundation access regulations contained in 45 CFR 1800.

Record source categories:

The subject individual; the Foundation.

TSF-2

System name:

General Financial Record—Harry S. Truman Scholarship Foundation.

System location:

Advisory Commission On Intergovernmental Relations (ACIR), 1111 20th Street NW., Suite 2000, Washington, D.C. 20026 copies held by the Foundation ACIR holds records for the Foundation under contract.

Categories of individuals covered by the system:

Employees of the Foundation and members of its Board of Trustees.

Categories of records in the system:

SF-1038, Application and account for advance of funds; Vendor register and vendor payment tape. Information is used by accounting technicians to maintain adequate financial information and by other officers and employees of ACIR and the Foundation who have a need for the record in the performance of their duties.

Authority for maintenance of the system:

31 U.S.C., generally; also, the Foundation's authorizing legislation, Pub. L. 93-642 (20 U.S.C. 2001).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

See appendix: Records also are released to GAO for audits; to the IRS for investigation; and to private attorney, pursuant to power of attorney.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper.

Retrievability:

Manual by name and Federal object class number.

Safeguards:

Stored in guarded building; released only to authorized personnel.

System manager(s) and address:

Administrative Officer, Harry S. Truman Scholarship Foundation, 712 Jackson Place NW., Washington, D.C. 20006.

Notification procedure:

Refer to Foundation access regulations contained in 45 CFR 1800.

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Record access procedures:

Refer to Foundation access regulations contained in 45 CFR 1800.

Contesting record procedures:

Refer to Foundation.

AVAILABILITY OF 1977 COMPILATION

"Privacy Act Issuances—1977 Compilation" is available from Regional Depository Libraries at 50 locations around the country and can be examined at these libraries free of charge. The 1977 Compilation is also available at the General Services Administration Federal Information Centers, which are located at 38 central points around the country and may be examined at the central headquarters and all field offices of this agency. It is also available for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Upon request, the Office of the Federal Register will furnish a photocopy of the full text of a particular records system published in the 1977 Compilation for a nominal fee.

LOCATION OF NOTICES IN 1977 COMPILATION

Notices of this agency's systems of records appear in Volume 42 of the 1977 Compilation at 47424 and 47425. The price of this Volume is $6.50.

Dated: October 26, 1978.

JAMES C. CRATEN,
Administrative Officer.

Approved October 26, 1978:

MALCOLM C. MCCORMACK,
Executive Secretary.

[FR Doc. 78-31015 Filed 11-1-78; 8:45 am]

[4110-83-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Resources Administration

GRADUATE MEDICAL EDUCATION NATIONAL ADVISORY COMMITTEE

Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of November 1978:

Name: Graduate Medical Education National Advisory Committee. Date and Time: November 20-21, 1978, 9:00 a.m. Place: Room 727A, Hubert H. Humphrey Building, 200 Independence Avenue, Washington, D.C. 20201. Open for entire meeting.

Purpose: The Graduate Medical Education National Advisory Committee is responsible for advising and making recommendations with respect to: (1) present and future supply and requirements of physicians by specialty and geographic location; (2) ranges and types of numbers of graduate training opportunities needed to approach a more desirable distribution of physician services; and (3) the impact of various activities which influence specialty distribution and the availability of training opportunities including systems of reimbursement and the financing of graduate medical education.

Agenda: The Committee will discuss preliminary text of December Interim Report to the Secretary and review status of specialty modeling groups.

A portion of the meeting will be available for comments and participation by the public. Due to limited seating, attendance by the public will be provided on a first-come, first-serve basis.

Anyone wishing to obtain a roster of members, minutes of meeting, or other relevant information should contact Robert Graham, M.D., Bureau of Health Manpower, Room 10-37, Center Building, 3700 East-West Highway, Hyattsville, Md. 20782, Telephone 301-436-6430.

Agenda items are subject to change as priorities dictate.

Date: October 27, 1978.

JAMES A. WALSH,
Associate Administrator for Operations and Management.

[FR Doc. 78-30999 Filed 11-1-78; 8:45 am]

[4110-89-M]

Institute of Museum Services

NATIONAL MUSEUM SERVICES BOARD

Meeting

The National Museum Services Board will hold an open meeting November 17-18 in Washington, D.C., to discuss the Final Regulation and future policy directions for the Institute of Museum Services.

The Board will meet from 9 to 5 on Friday, November 17, in room 303A, Hubert H. Humphrey Building, 200 Independence Avenue SW., and from 9 to 5 on Saturday, November 18, in the AIA Board Room, American Institute of Architects Building, 1735 New York Avenue NW.

Dated: October 25, 1978.

LEE KIMCHE,
Director,
Institute of Museum Services.

[FR Doc. 78-31013 Filed 11-1-78; 8:45 am]

[4110-39]

National Institute of Education

PANEL FOR THE REVIEW OF LABORATORY AND CENTER OPERATIONS

Meeting

Notice is hereby given that the next meeting of the Panel for the Review of Laboratory and Center Operations will be held on November 17-18, in Room 800-A of the Carnegie Endowment for International Peace, 11 Dupont Circle NW., Washington, D.C. The Panel will meet from 9 a.m. until 5 p.m. on November 18 and from 9 a.m. until approximately 3 p.m. on November 19.

The Panel for the Review of Laboratory and Center Operations is established under section 405 of the General Education Provisions Act as amended by section 403(d) of the Education Amendments Act of 1976, 20 U.S.C. 1221e. Its functions include:

(a) Preparing recommendations on initial long-range funding and program plans submitted by the 17 educational laboratories and research and development centers;

(b) Reviewing and assessing the operations of the laboratories and centers and making recommendations for the improvement and continuation of the individual laboratores and centers and for the support of new laboratories and centers.

The entire meeting will be open to the public. Although the specifics of the agenda are tentative, most of the meeting will revolve around discussion of a draft of the Panel's final report to the Director of the National Institute of Education and the Congress. The final report will be submitted to the NIE Director on December 1, 1978 and to Congress by January 1, 1979. The Panel will also begin to plan the scope of its activity after completion of the report.

Interested persons are invited to attend the session. Written statement relevant to an agenda item or any topic deemed of interest to the Panel may be submitted to the Panel staff at the address below.

Copies of the records of all Panel proceedings may be obtained through the office of the Panel staff. Minutes require approval by the Panel at a subsequent meeting and are available to the public two weeks following their approval.

In order to verify the tentative agenda, or assure adequate seating arrangements, persons likely to attend the Panel meeting may contact the Panel staff office as indicated below:

Panel for the Review of Laboratory and Center Operations, National Institute of Education, Washington, D.C. 20208, 202-254-5830 or 254-5306.

GRADY MCGONAGILL,
Staff Director, Panel for the Review of Laboratory and Center Operations.

NOVEMBER 1, 1978.

[FR Doc. 78-31227 Filed 11-1-78; 11:59 am]

N 0 2 7 8 UMI

[4110-02-M]

Office of Education

ETHNIC HERITAGE STUDIES PROGRAM

Closing Date for Transmittal of Applications for Fiscal Year 1979

Applications are invited for new projects under the Ethnic Heritage Studies Program.

Authority for this program is contained in Title IX of the Elementary and Secondary Education Act of 1965, as amended by section 504 of Pub. L. 92-318 and section 111 of Pub. L. 93-380 (20 U.S.C. 900 to 900a-5).

This program issues awards to public and private nonprofit educational agencies, institutions, and organizations throughout the United States.

The purpose of the awards is to afford students opportunities to learn about the nature of their own cultural heritage and to study the contributions of other ethnic groups to the National heritage.

Closing date for transmittal of applications: Applications for awards must be mailed (postmarked) or hand delivered by January 5, 1979.

Applications delivered by mail: An application sent by mail must be addressed to the U.S. Office of Education, Application Control Center, Attention: 13.549, Washington, D.C. 20202.

Proof of mailing must consist of a legible U.S. Postal Service dated postmark or a legible mail receipt with the date of mailing stamped by the U.S. Postal Service. Private metered postmarks or mail receipts will not be accepted without a legible date stamped by the U.S. Postal Service. (Note: The U.S. Postal Service does not uniformly provide a dated postmark. Applicants should check with their local post office before relying on this method.) Applicants are encouraged to use registered or at least first class mail.

Each late applicant will be notified that late applications will not be considered in the current competition.

Applications delivered by hand: An application that is hand delivered must be taken to the U.S. Office of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8 a.m. and 4 p.m. (Washington, D.C., time) daily, except Saturdays, Sundays, and Federal holidays.

Applications that are hand delivered will not be accepted after 4 p.m. on the closing date.

Program information: The Ethnic Heritage Studies Program seeks to develop intercultural understanding within our culturally pluralistic society. More specifically, the aims of the program are to help students learn more about the nature and role of ethnicity in their own lives and in the lives of others and to promote positive interactions among members of the various ethnic groups in the United States.

Proposals that are most creatively designed to enable people "to learn about the nature of their own cultural heritage, and to study the contributions of the cultural heritages of the other ethnic groups of the Nation" are specifically encouraged and will be given high priority. No project will be approved that fails to take into account "the heterogeneous composition of the Nation", "the differing and unique contributions to the national heritage made by each ethnic group", and "the fact that in a multiethnic society a greater understanding of the contributions of one's own heritage and those of one's fellow citizens can contribute to a more harmonious, patriotic, and committed populace". (See 20 U.S.C. 900).

Any public or private nonprofit educational agency, institution or organization is eligible to submit an application. Eligible organizations indlude ethnic, community and professional associations, local and State educational agencies, and institutions of higher education. Grants may be made to any of these groups, and consortia are encouraged. Awards will be made for self-contained projects for a project period that does not exceed one year.

Projects may be proposed in one or more of the following three areas: (1) development of ethnic heritage curriculum materials, (2) training of persons to use these materials, and (3) dissemination of these materials. Every project, regardless of area of concern, must include plans for cooperative activities with persons and organizations that have similar interests in ethnic studies. Each proposal must be developed with the participation of an advisory council that is representative of the ethnic group or groups with which the project is concerned.

Applications are evaluated according to criteria contained in the Office of Education general provisions regulations (45 CFR 100a.26(b)) and in the Ethnic Heritage Studies Program regulations (45 CFR 184.31(b)). One of these criteria addresses the need for the activities proposed by the applicant in the area to be served. In the absence of information to the contrary, the Office of Education considers needs that have not been addressed by prior Ethnic Heritage Studies projects to be greater than needs which have been addressed by those projects.

Available funds: Although there was no fiscal year 1979 budget request for the Ethnic Heritage Studies Program, Congress has appropriated $2,000,000 for awards under the program. On the basis of the average amount of awards in the past, an appropriation of $2,000,000 would permit approximately 56 awards. The anticipated amount of an award for a major new project is between $40,000 and $60,000. In addition, the Commissioner expects to award small grants of less than $15,000. It is expected that no more than 20 percent of the funds will assist curriculum materials development and that the remaining funds will be allocated among projects that emphasize training or dissemination, or a combination of the two. However, these figures are only estimates and do not bind the Office of Education.

Application forms: Application forms and program information packages are expected to be ready for mailing by October 30, 1978. They may be obtained by writing to the Ethnic Heritage Studies Branch, Division of International Education, U.S. Office of Education (Room 3928, Regional Office Building 3), 400 Maryland Avenue, SW., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages.

Applicable regulations: The regulations applicable to this program are:

(a) The Office of Education general provisions regulations (45 CFR Part 100, 100a; and appendices), and

(b) Regulations relating solely to assistance under the Ethnic Heritage Studies Program (45 CFR Part 184).

Further information: For further information contact Dr. Stanley Wilcox, Acting Chief, Ethnic Heritage Studies Branch, U.S. Office of Education (Room 3928, Regional Office Building 3), 400 Maryland Avenue, SW., Washington, D.C. 20202, Telephone 202-245-9506. (20 U.S.C. 900 to 900a-5).

(Catalog of Federal Domestic Assistance No. 13.549; Ethnic Heritage Studies Program)

Dated: October 30, 1978.

ERNEST L. BOYER,
U.S. Commissioner of Education.

[FR Doc. 78-30950 Filed 11-1-78; 8:45 am]

V 43 / 213 NO 2 78 UMI

[4110-02-M]

NATIONAL ADVISORY COUNCIL ON BILINGUAL EDUCATION

Meeting

AGENCY: Office of Education, Department of Health, Education, and Welfare.

ACTION: Notice.

SUMMARY: This notice sets forth the schedule and proposed agenda of forthcoming meetings of the National Advisory Council on Bilingual Education. Notice of these meetings is required under the Federal Advisory Committee Act (5 U.S.C. Appendix I, 10(a)(2)). This document is intended to notify the general public of their opportunity to attend.

DATES: Committee meetings: November 19, 1978, 1 p.m. to 5 p.m. Full Council Meeting: November 20 and 21, 1978, 8:30 a.m. to 5 p.m.

ADDRESS: November 19, 1978, Committee Meetings will be held at the Channel Inn, 650 Water Street SW., Washington, D.C. November 20 and 21, 1978, Full Council Meeting will be held in Federal Office Building No. 6, Room 3000, 400 Maryland Avenue SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Louis J. Serpa, Office of Bilingual Education, Reporter's Building, Room 421, Office of Education, 400 Maryland Avenue SW., Washington, D.C. 20202, 202-245-2600.

The National Advisory Council on Bilingual Education is established under section 732(a) of the Bilingual Education Act (20 U.S.C. 880b-11) to advise the Secretary of Health, Education, and Welfare and the Commissioner of Education concerning matters arising in the administration of the Bilingual Education Act.

The meetings on November 19, 20, and 21, 1978 will be open to the public from 1 p.m. until 5 p.m. on November 19 and from 8:30 a.m. to 5 p.m. on November 20 and 21, 1978.

November 19, 1978: Committee meetings

November 20, 1978: A meeting of the Full Council on the following subjects is scheduled from 8:30 a.m. until 5 p.m. The proposed agenda includes the following:

(1) Old Business
(2) Committee Reports
(3) Miscellaneous Reports-Staff
(4) New Business

November 21, 1978: The proposed agenda includes the following:

(1) New Business
(2) Coordination with other Programs—Discussion

Records will be kept of all Council proceedings and shall be available for public inspection after approval, by the full Council, of said records has been obtained. These records will be available in Room 421, Reporter's Building, 300 7th Street, SW., Washington, D.C. Written requests for such records should be sent to 400 Maryland Avenue, SW., Reporter's Building, Room 421, Washington, D.C. 20202.

In the event that the proposed agenda is completed prior to the projected date or time, the Council will adjourn the meeting.

Signed at Washington, D.C. on October 30, 1978.

DEAN BISTLINE,
Acting Director,
Office of Bilingual Education.

[FR Doc. 78-31019 Filed 11-1-78; 8:45 am]

[4310-84-M]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

ALASKA

Filing of Plat of Survey

OCTOBER 19, 1978.

1. Plat of survey of the lands described below will be officially filed in the Alaska State Office, Anchorage, Alaska, effective at 10 a.m. December 8, 1978.

COPPER RIVER MERIDIAN

T. 21 S., R. 18 E.
Sec. 19: Lot 1, SE¼SW¼
Sec. 27: Lot 1, N½SW¼, SE¼SW¼, SE¼
Sec. 28: Lots 1,2,3,4, N½, N½S½
Sec. 34: Lots 1,2,3.
Containing 996.18 acres.

2. The area of this survey lies northeast of Cape Yakataga on the northerly shore of the Gulf of Alaska. The area encompassed by this survey is level to gently sloping from the beach to approximately one-half mile northerly from the beach. The mountains then rise abruptly to over 1,000 feet elevation.

The steep slopes of the mountains are densely covered with large spruce and hemlock timber, with very dense salmonberry, devil's club, and alder on the slopes of the ravines. The more level beach area is covered equally by swampy meadows and dense alder patches, with scattered spruce timber. The soil is sand, to sandy loam, to vegetable mold on bedrock on the slopes.

The level area between the base of the mountains and the beach appear to have been covered with silt and sand to a depth of three or four feet. Most of the alder growth in the silted-over area shows a maximum age of 25 years. The beach shows extreme erosion which has been most pronounced in recent years.

3. The public lands affected by this order are open to the operation of the public land laws, subject to any valid existing rights, the provisions of existing withdrawals, including Public Land Order 5418, filed March 28, 1974, and the requirements of applicable law, rules, and regulations.

4. Inquiries concerning the lands should be addressed to the State Director, Alaska State Office, 555 Cordova Street, Pouch 7-512, Anchorage, Alaska 99510.

Dated: October 24, 1978.

IRVING ZIRPEL, Jr.,
Chief,
Division of Cadastral Survey.

[FR Doc. 78-30942 Filed 11-1-78; 8:45 am]

[4310-84-M]

ALASKA

Filing of Plat of Survey

OCTOBER 19, 1978.

1. Plat of survey of the lands described below will be officially filed in the Alaska State Office, Anchorage, Alaska, effective at 10 a.m. December 8, 1978.

COPPER RIVER MERIDIAN, ALASKA

T. 21 S., R. 17 E.
Sec. 14: S½
Sec. 15: Lots 1, 2, 3, N½SE¼, SE¼SE¼
Sec. 23: Lots 1, 2, 3, 4, N½, N½S½
Sec. 24: All
Containing 1701.6 acres.

2. This township is located on the Gulf of Alaska in the Cape Yakataga area. Elevations range from about 100 feet above sea level, to sea level on the coast. The South Channel Yakataga River, the North Channel Yakataga River, and the Duktoth River, flow southerly into the Gulf of Alaska.

Timber consists of spruce, hemlock, and cottonwood. The undergrowth is salmonberry, blueberry, devil's club, alder, and willow. There is a gravel road traversing through the township. The Yakataga Airport is located in sections 22 and 23. There are several buildings near the airport.

No mineral was noted during the course of this survey.

3. The public lands affected by this order are open to the operation of the public land laws, subject to any valid existing rights, the provisions of existing withdrawals, including Public Land Order 5418, filed March 28, 1974, and the requirements of applicable law, rules, and regulations.

4. Inquiries concerning the lands should be addressed to the State Director, Alaska State Office, 555 Cordova Street, Pouch 7-512, Anchorage, Alaska 99510.

Dated: October 24, 1978.

IRVING ZIRPEL, Jr.,
Chief, Division of Cadastral Survey.

[FR Doc. 78-30943 Filed 11-1-78; 8:45 am]

[4310-84-M]

NM 34523, 35077 and 35079]

NEW MEXICO

Applications

OCTOBER 27,1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Company has applied for four 4½-inch natural gas pipeline and related facilities rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 31 N., R. 10 W.,
Sec. 8, lots 2 and 4;
Sec. 29, lot 7.
T. 29 N., R. 11 W.,
Sec. 13, NW¼NE¼.

These pipelines will convey natural gas across 0.332 of a mile of public lands in San Juan County, NM.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, N.M. 87107.

FRED E. PADILLA, *Chief,*
Branch of Lands and
Minerals Operations.

[FR Doc. 78-30949 Filed 11-1-78; 8:45 am]

[4310-84-M]

[Wyoming 65012]

WYOMING

Application

OCTOBER 23, 1978.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Northwest Pipeline Corporation of Salt Lake City, Utah filed an application for a right-of-way to construct a 8⅝-inch O.D. pipeline for the purpose of transporting natural gas across the following described public lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 18 N., R. 112 W.,
Sec. 10, N½S½;
Sec. 11, S½NE¼, NE¼NE¼, SE¼NW¼ and N½SW¼.

The proposed pipeline will transport natural gas from a point located in lot 1, section 7, T. 18 N., R. 111 W., southwesterly through section 12, and westerly to a point in the SE¼SW¼, section 9, T. 18 N., R. 112 W., Uinta-Sweetwater Counties, Wyo.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, Highway 187 N., P.O. Box 1869, Rock Springs, Wyo. 82901.

HAROLD G. STINCHCOMB,
Chief, Branch of Lands and
Minerals Operations.

[FR Doc. 78-30944 Filed 11-1-78; 8:45 am]

[4310-84-M]

[W-65321]

WYOMING

Application

OCTOBER 23, 1978.

Notice is hereby given that pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Northwest Pipeline Corp. of Salt Lake City, Utah filed an application for a right-of-way to construct two 4½ inch, and 8⅝ inch and a 12¾ inch O.D. pipeline as an addition to their Moxa Arch Gathering System for the purpose of transporting natural gas across the following described public lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 18 N., R. 112 W.,
Sec. 20, N½NW¼ and SE¼NW¼;
Sec. 22, S½NW¼.
T. 19 N., R. 112 W.,
Sec. 30, SE¼SE¼;
Sec. 32, W½SW¼ and SE¼SW¼.

The proposed pipelines will transport natural gas from the Bruff No. 5 well located in the NW¼ of section 21, the Bruff No. 7 well located in the NW¼ of section 22, and the Bruff No. 9 well located in the NW¼ of section 20, all within T. 18 N., R. 112 W., Uinta County, Wyo. to a point of connection with an existing pipeline located in the SW¼ of section 29, T. 19 N., R. 112 W., Lincoln County Wyo.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, Highway 187 N., P.O. Box 1869, Rock Springs, Wyo. 82901.

HAROLD G. STINCHCOMB,
Chief, Branch of Lands and
Minerals Operations.

[FR Doc. 78-30945 Filed 11-1-78; 8:45 am]

[4310-84-M]

[W-65319]

WYOMING

Application

OCTOBER 23, 1978.

Notice is hereby given that pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Northwest Pipeline Corp. of Salt Lake City, Utah filed an application for a right-of-way to construct a 4½-inch O.D. pipeline as an addition to their Barrel Springs Gathering System for the purpose of transporting natural gas across the following described public lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 16 N., R. 93 W.,
Sec. 11, N½NE¼.

The proposed pipeline will transport natural gas from the Unit No. 11-3 well located in the NE¼NE¼ of section 11, to a point of connection with an existing pipeline located in the NW¼NW¼ of section 11, T. 16 N., R. 93 W., Carbon County, Wyo.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 1300 Third Street, P.O. Box 670, Rawlins, Wyo. 82301.

HAROLD G. STINCHCOMB,
Chief, Branch of Lands
and Minerals Operations.

[FR Doc. 78-30946 Filed 11-1-78; 8:45 am]

V 43/2/13

[4310-84-M]

[W-65318]

WYOMING

Application

Notice is hereby given that pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Northwest Pipeline Corp. of Salt Lake City, Utah filed an application for a right-of-way to construct a 4½ inch O.D. pipeline as an addition to their Barrel Springs Gathering System for the purpose of transporting natural gas across the following described public lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 16 N., R. 93 W.,
Sec. 14, SE¼NW¼.

The proposed pipeline will transport natural gas from the Unit No. 14-2 well to a point of connection with an existing pipeline all located within the SE¼NW¼ of section 14, T. 16 N., R. 93 W., Carbon County, Wyo.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 1300 Third Street, P.O. Box 670, Rawlins, Wyo. 82301.

HAROLD G. STINCHCOMB,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-30947 Filed 11-1-78; 8:45 am]

[4310-80-M]

MOAB DISTRICT GRAZING ADVISORY BOARD

Meeting

Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Moab District Grazing Advisory Board will be held on December 7, 1978. The meeting will begin at 9 a.m. in the conference room of the Bureau of Land Management District Office at 125 West 2nd South in Moab, Utah. The meeting is open to the public.

Shortly after convening the attendees will travel south of Moab for a discussion of allotment management plans, grazing systems and range improvements. The group will reconvene in the Moab District Office Conference Room for a short discussion between 3:30 and 4 p.m. The agenda for the discussion will be (1) The expenditure of range betterment and advisory board funds for range improvements (2) A review of the grazing and future grazing environmental statement effort resulting in allotment management plan development. Persons desiring to make the tour should furnish their own transportation, food and drink.

Interested persons may then make oral statements to the Board between 4 and 5 p.m. or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532 by December 6, 1978. Depending on the number of persons wishing to make oral statements, a person time limit may be established by the District Manager.

Summary minutes of the board meeting will be maintained in the Moab District Office and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

S. GENE DAY,
District Manager.

OCTOBER 13, 1978.

[FR Doc. 78-31008 Filed 11-1-78; 8:45 am]

[4310-84-M]

[NM 33164]

NEW MEXICO

Designation of Aden Lava Flow Research Natural Area; Correction

OCTOBER 26, 1978.

Notice of Designation of Aden Lava Flow Research Natural Area published in FEDERAL REGISTER of Thursday, May 25, 1978 on page 22455, Vol. 43, No. 188 is hereby corrected to show the lands designated as described below:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 25 S., R. 2 W.,
Sec. 33, E½NE¼, SE¼;
Secs. 34 and 35, All;
Sec. 36, S½.
T. 26 S., R. 2 W.,
Sec. 3, Lots 1 to 4, inclusive; S½N½ and S½;
Sec. 4, Lots 5 to 7 and 9 to 12, inclusive; and S½;
Sec. 5, Lots 11 and 12; and SE¼;
Sec. 8, N½NE¼, SE¼NE¼;
Sec. 9, N½; and
Sec. 10, N½.

The area described aggregates about 4,008 acres of public land.

ARTHUR W. ZIMMERMAN,
State Director.

[FR Doc. 78-31005 Filed 11-1-78; 8:45 am]

[4310-84-M]

[NM 35201]

NEW MEXICO

Application

OCTOBER 27, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Co. has applied for two 4½-inch natural gas pipelines and related facilities right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 19 S., R. 32 E.,
Sec. 12, NW¼SE¼.

This pipeline will convey natural gas across 0.119 of a mile of public land in Lea County, N.Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, N.Mex. 88201.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-31006 Filed 11-1-78; 8:45 am]

[4310-84-M]

[NM 35076]

NEW MEXICO

Application

OCTOBER 25, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the act of November 16, 1973 (87 Stat. 576), Phillips Petroleum Co. has applied for one 4½-inch natural gas pipeline right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 14 S., R. 28 E.,
Sec. 14, E½NW¼ and NE¼SW¼.

This pipeline will convey natural gas across 0.339 of a mile of public land in Chaves County, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, N. Mex. 88201.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-31007 Filed 11-1-78; 8:45 am]

[4310-70-M]

National Park Service

WESTERN REGIONAL ADVISORY COMMITTEE

Cancellation of Meeting

Notice is hereby given that the announcement of a meeting of the National Park Service Western Regional Advisory Committee on November 17 and 18, 1978, in San Francisco, Calif., published in the FEDERAL REGISTER Wednesday, October 11, 1978 (43 FR 46911) is canceled.

Dated: October 25, 1978.

JOHN H. DAVIS,
Acting Regional Director, Western Region.

[FR Doc. 78-30962 Filed 11-1-78; 8:45 am]

[4510-23-M]

MINIMUM WAGE STUDY COMMISSION

Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Commission meeting:

Name: Minimum Wage Study Commission.
Date: November 14, 1978.
Place: Room 550, 2000 K Street, NW., Washington, D.C.
Time: 10 a.m.
Proposed agenda:

I. Review of Contractor's Report on Data Sources.
II. Review of Contractor's Report on Conglomerate Legal. Definition.
III. Commission Funding and Priorities Based Thereon.
IV. Organization Matters.
V. Pending Business.

All communications regarding this Commission should be addressed to Mr. Louis E. McConnell, Executive Director, 1730 K Street, NW., Suite 206, Washington, D.C. 20036, 202-653-5587.

LOUIS E. MCCONNELL,
Executive Director.

OCTOBER 26, 1978.

[FR Doc. 78-30948 Filed 11-1-78; 8:45 am]

[7510-01-M]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 78-54]

LUNAR SAMPLE ANALYSIS ADVISORY COMMITTEE

Establishment

Pursuant to section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), and after consultation with the General Services Administration, NASA has determined that establishment of the Lunar Sample Analysis Advisory Committee is in the public interest in connection with the performance of duties imposed upon NASA by law.

The Committee will bring together key people in a variety of disciplines related to lunar sample analysis and to comparable research in the earth sciences. The Committee will provide scientific expertise to NASA concerning the most desirable and effective mechanisms for the continued support of lunar sample research in fiscal year 1979 and future years, in order to insure that this activity is appropriately integrated with the efforts of the National Science Foundation and other Government agencies.

Because of the need for the Committee to meet and provide recommendations in time for use in developing funding plans for fiscal year 1979 and for consideration of fiscal year 1980 budgets, a waiver for immediate filing of the Charter has been granted by the Committee Management Secretariat at the General Services Administration.

ARNOLD W. FRUTKIN,
Acting Associate Administrator for External Relations.

OCTOBER 9, 1978.

[FR Doc. 78-31001 Filed 11-1-78; 8:45 am]

[4510-23-M]

NATIONAL COMMISSION ON EMPLOYMENT AND UNEMPLOYMENT STATISTICS

PUBLIC MEETING

Notice is hereby given that the National Commission on Employment and Unemployment Statistics will hold a public meeting on November 14, 1978, in Room 6510, 2020 K Street NW., Washington, D.C. 20006.

The National Commission on Employment and Unemployment Statistics was established under section 13 of the Emergency Jobs Program Extension Act of 1975, Pub. L. 94-444. Its purpose is to advise the President and the Congress on reliable and comprehensive measurements of employment and unemployment by examining the procedures, concepts, and methodology involved in employment and unemployment statistics, and suggesting ways and means of improving them.

The meeting will begin at 9:30 a.m. to discuss methods of presentation and analyzing labor force statistics, together with additional data needs. Changes in labor force concepts and definitions will also be discussed. The public is invited to attend. Official records of the meeting will be available for public inspection by contacting: Mr. Wesley H. Lacey, Administrative Officer, National Commission on Employment and Unemployment Statistics, Suite 550, 2000 K Street NW., Washington, D.C.

Signed at Washington, D.C., this 27th day of October, 1978.

SAR A. LEVITAN,
Chairman.

[FR Doc. 78-30961 Filed 11-1-78; 8:45 am]

[3610-05-M]

NATIONAL COMMUNICATIONS SYSTEM

TELECOMMUNICATIONS: CODING AND MODULATION REQUIREMENTS FOR FULL DUPLEX 9600 BIT/SECOND MODEMS

Proposed Federal Standard 1007

The administrator of the General Services Administration (GSA) is responsible under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, for the Federal standardization program. On August 14, 1972, the National Communications System (NCS) was designated by the Administrator, GSA, as the responsible agent for the development of telecommunication standards for NCS interoperability and the computer-communications interface. Further information on the NCS can be found in DOD Directive 5100.41, "Arrangements for Discharge of Executive Agent Responsibilities for the NCS" and in an NCS information brochure available upon request from the National Communications System.

The purpose of this notice is to solicit comment on proposed Federal Standard 1007. This proposed Federal standard has been developed under the Federal Telecommunications Standards Program by the National Communications System's Office of Technology and Standards based primarily upon International Telegraph & Telephone Consultative Committee (CCITT) Recommendation V.29. The latest draft of the standard reflects comments received from modem manufacturers previously contacted by letter during May 1978.

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The primary purpose of proposed Federal Standard 1007 is to facilitate the interoperability of telecommunications systems and networks of the Federal Government. Copies of this standard may be obtained from the Office of Technology and Standards, National Communications System, Washington, D.C. 20305.

Prior to formal coordination and adoption of proposed Federal Standard 1007, it is considered essential that proper consideration be given to the needs and views of industry, the public, and State and local government. Interested parties may submit their comments to the Office of Technology and Standards, National Communications System, Washington, D.C. 20305. All comments should be submitted within 90 days of the date of this Notice. Telephone inquiries should be directed to Mr. Robert M. Fenichel, telephone 202-692-2124.

Dated: October 30, 1978.

JOSEPH ROSE,
Deputy Manager, National Communications Systems.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

[FR Doc. 78-31014 Filed 11-1-78; 8:45 am]

[4910-58-M]

NATIONAL TRANSPORTATION SAFETY BOARD

[N-AR 78-44]

ACCIDENT REPORTS; SAFETY RECOMMENDATIONS AND RESPONSES

Availability

Cates Trucking, Inc., Tractor-Semitrailer/Multiple-Vehicle Collision and Override, I-285, Atlanta, Georgia, June 20, 1977 (NTSB-HAR-78-5).—The National Transportation Safety Board on October 25 released its formal investigation report on the chain reaction crash that killed four persons and injured two others.

Investigation showed that by midafternoon traffic had backed up and stopped in the right lane of I-285, eastbound, just south of Atlanta and west of a construction zone which was located on connecting I-75 southbound. An eastbound Cates Trucking, Inc., tractor-semitrailer combination vehicle approached the standing traffic at between 35 and 45 mph and collided with and overrode the last automobile in the queue. The automobile was pushed into the vehicle ahead, and two other vehicles to its front were subsequently involved.

The Safety Board determined that the probable cause of this accident was the failure of the truckdriver to maintain the proper level of attention to the driving task and perceive the standing vehicles on the roadway and stop his vehicle short. The Board believes that the driver's inattention to the traffic in front of him may have resulted from fatigue. Contributing to the accident was the failure of the Georgia Department of Transportation to implement existing standards and guidelines for controlling traffic through construction zones, which permitted a 3½-mile backup of slow moving and stopping traffic.

As a result of its investigation of this accident, the Safety Board on September 26 addressed the following recommendations to:

Federal Highway Administration—

Increase its oversight function of the Georgia Department of Transportation and, if necessary, help them develop plans for maintenance and construction projects to assure compliance with FHWA's standards and practices. (Class II, Priority Action) (H-78-61)

Implement, as soon as possible, new concepts, methods, and approaches currently being developed through FHWA's Office of Research Project that will provide traffic management systems in construction zones more specifically tailored to urban driver information needs. (Class II, Priority Action) (H-78-62)

Direct its Bureau of Motor Carrier Safety to increase surveillance of motor carrier operations under its jurisdiction and assure that they are in compliance with existing regulations for driver qualifications and hours of service. (Class I, Urgent Action) (H-78-63)

Georgia Department of Transportation—

Incorporate the policies, recommended practices, and standards contained in FHWA's guidelines and the Manual on Uniform Traffic Control Devices related to the control of traffic in maintenance and construction zones. (Class II, Priority Action) (H-78-64)

American Trucking Associations, Inc.—

Emphasize educational programs at the State, regional, and national levels to bring about a better understanding of, and compliance with, the safety regulations and safety practices of truck operators, especially small carriers performing for-hire or private carriage service. (Class I, Urgent Action) (H-78-65)

Conduct a special study to determine if there are other techniques and programs which may be developed and utilized on an industrywide basis to improve driver knowledge and conduct. (Class II, Priority Action) (H-78-66)

Railroad Accident Reports, Brief Format, Issue No. 1—1977.—The first publication of reports of U.S. railroad accidents occurring during the fiscal year period October 1, 1976, to September 30, 1977, was made available by the Safety Board on October 26. The volume of brief-format findings of cause covers 144 railroad cases involving a fatality, substantial property damage, or a passenger train accident. Copies of this publication may be purchased from the National Technical Information Service, U.S. Department of Commerce, Springfield, Va., 22151.

NOTE.—The brief reports of accidents in this publication contain essential information; more detailed data may be obtained from the original factual reports on file in the Washington Office of the Safety Board. Upon request, factual reports will be reproduced commercially at an average cost of 17 cents per page for printed matter, $5 per page for black-and-white photographs, and $4 per page for color photographs, plus postage. Requests should be directed to the Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594.

AVIATION SAFETY RECOMMENDATIONS

Seven new safety recommendations, all directed to the Federal Aviation Administration, have been issued by the Safety Board in the past two weeks as a result of ongoing investigations into two recent midair collisions.

A-78-77 and 78.—On September 25, 1978, a Pacific Southwest Airlines Boeing 727-214 (Flight 182) and a Cessna 172 collided in midair over San Diego, Calif. Flight 182 was on an instrument flight rules flight plan and had been cleared for a visual approach to runway 27 at Lindbergh Airport. The Cessna, which was on a visual flight rules (VFR) flight plan, had completed a practice instrument landing system approach to runway 9 at Lindbergh Airport and was proceeding northeast. When the collision occurred Flight 182 was communicating with Lindbergh tower, while the Cessna was communicating with the Miramar Radar Air Traffic Control Facility (RATCF). The collision left 144 persons dead.

Investigation has revealed that a Terminal Radar Service Area (TRSA) with Stage III service (radar sequencing and separation service for VFR aircraft) had been established at Miramar Naval Air Station, the primary airport in the San Diego, Calif., terminal area. Only Stage II service (radar advisory and sequencing for VFR aircraft) is available at Lindbergh Airport, which is classified as a secondary airport. Because of the mixture of air carrier and general aviation aircraft operating in and out of Lindbergh Airport, the Safety Board believes that a TRSA should be implemented for that airport so that other users can benefit from the same level of air traffic control service as is afforded military flights in the San Diego terminal area.

Although a TRSA may not have prevented the San Diego collision, since visual separation is still being used in all terminal areas, the Board believes that a TRSA would lessen the probability of a midair collision and would be a logical first step toward equalizing the ATC services available to all users of airspace in the San Diego terminal area. Accordingly, the Safety Board on October 18 recommended that FAA—

Implement a TRSA at Lindbergh Airport, San Diego, Calif. (Class I, Urgent Action) (A-78-77)

Review procedures at all airports which are used regularly by air carrier and general aviation aircraft to determine which other areas require either a terminal control area or a terminal radar service area, and establish the appropriate one. (Class II, Priority Action) (A-78-78)

A-78-79 through 81.—Last May 18 a Cessna 150 and a Falcon Fan Jet collided in midair about 3½ miles west of Memphis (Tenn.) International Airport. At the time of the collison, both aircraft were operating under the control jurisdiction of Memphis Tower at an assigned altitude of 2,000 feet m.s.l. and were in radio/radar contact with different facility controllers on separate radio frequencies. Visual meteorological conditions prevailed at the time.

Investigation disclosed that the Cessna was a VFR arrival from the west and was receiving Stage III radar service; the Falcon Fan Jet was operating in a closed traffic pattern on an IFR flight plan and was conducting multiple ILS approaches to runway 17R. Further, investigation revealed that ATC failed to effect the required separation minima applicable to known VFR and IFR traffic operating within the designated TRSA, because controller personnel responsible for the control of the two aircraft did not coordinate the particular operation being conducted with each other. As a result of this lack of coordination, neither of the two controllers controlling the Falcon had any knowledge that the Cessna was inbound traffic, and the third controller, who was providing control service to the Cessna had no knowledge of the Falcon's traffic pattern operation within his airspace at 2,000 feet. Therefore, no one recognized that a conflict existed until the two aircraft were seen on radar about 1 mile apart. At that point, insufficient time was available for corrective action.

The Safety Board is concerned that a single coordination procedural error effectively negated the control capability of an ATC system which utilized modern automated radar equipment and procedural concepts. Therefore, the Board examined facility procedures, automated equipment, and TRSA requirements carefully to determine (1) if additional safeguards are feasible and (2) how such measures would have prevented this accident. Based on analysis of ATC operations, the Board concludes that there are two problem areas worthy of corrective action. The first area involves the local operating procedures used at Memphis for closed traffic pattern IFR operations, and the second involves the current rules for aircraft operations in a TRSA and related transponder requirements.

In the Safety Board's opinion, closed traffic pattern operations at Memphis International Airport should be discontinued within the designated airspace for local control operations. The additional workload imposed on local controllers by the requirement to coordinate and effect Stage III/IFR separation minima between these aircraft compromises their ability to perform their primary duties. The Board believes that ideally any close traffic pattern operation wherein the aircraft will be executing multiple ILS approaches should be conducted at an assigned altitude of 2,500 feet or above. Appropriate radar control personnel in the TRACON are better suited to provide radar separation service than the local controller. Accordingly, control responsibility should be transfered to Memphis TRACON.

Further, the Safety Board is extremely concerned by existing requirements for an aircraft transponder for flight operations in certain designated controlled airspace. Based on its investigation of the Memphis accident, the Board concludes that the transponder requirements for flight operations within a TRSA and a Group II-type terminal control area (TCA) should be revised.

It is evident to the Board that if an operating transponder had been installed aboard the Cessna, identification of that aircraft with altitude data would most likely have been detected by controller personnel and the accident would not have occurred. At locations where the conflict alert system is operational, a Mode "C" transponder would provide another safeguard which could serve to prevent the type of accident that occurred at Memphis.

In view of these findings, the Safety Board on October 26 recommended that FAA—

Evaluate the closed traffic pattern operations conducted at Memphis International Airport and considered establishment of a procedure whereby high performance or turbine jet aircraft conducting multiple approaches for training purposes be assigned an altitude of 2,500 feet or above, which would place responsibility for control of the aircraft with TRACON personnel. (Class II, Priority Action) (A-78-79)

Evaluate operational data for each TRSA location and establish two categories of TRSA's. Those locations handling the largest volume of traffic with automated ATC equipment available should be designated TRSA I locations. The remaining areas would be designated TRSA II locations. (Class II, Priority Action) (A-78-80)

Required Mode "C" transponder equipment for operations within a TRSA I and Group II TCA and require that a pilot of a VFR flight traversing a TRSA I establish radio contact with the appropriate ATC facility before entering the designated airspace. (Class II, Priority Action) (A-78-81)

A-78-82 and 83.—The above-referenced midair collision over San Francisco was again cited by the Safety Board on October 26 as a basis for further recommendations to the FAA. Two other midair collisions were also cited by the Board—one over Denver, Colo., on June 28, 1974, involving a Rocky Mountain Airways deHavilland DHC-6 Twin Otter and a Beech BE-35 Bonanza, and the other involving an Eastern Airlines McDonnell-Douglass DC9-31 and a Cessna 206 collision near Raleigh-Durham Airport, N.C.

The Board noted that although the circumstances surrounding these midair collisions were different, they have one element in common. In each case, controllers were applying visual separation—a means that may be employed by ATC to separate aircraft in terminal areas. Upon instruction from ATC, a pilot who sees another involved aircraft provides his own separation by maneuvering his aircraft, if necessary, to avoid the other aircraft. When ATC instructs a pilot to employ visual separation, he must keep the other aircraft in sight until it is no longer a factor, as should have been the case at San Diego, or he must follow in line behind another aircraft, as should have been the case at Denver and Raleigh-Durham.

As the Board noted in its October 26 recommendation letter to FAA, the visual separation technique is usually effective, but because of the human limitation and other restrictive factors, it can never be considered completely reliable. In the three accidents cited, visual separation could have been supplemented by more positive separation methods if controllers had chosen to use them. The Safety Board concludes that more positive separation methods must be used to the maximum extent possible in terminal control areas and in terminal radar service areas. Accordingly, the Board recommends that FAA—

Use visual separation in terminal control areas and terminal radar service areas only when a pilot requests it, except for sequencing on the final approach with radar monitoring. (Class I, Urgent Action) (A-78-82)

Reevaluate its policy with regard to the use of visual separation in other terminal areas. (Class II, Priority Action) (A-78-83)

RESPONSES TO SAFETY RECOMMENDATIONS

Aviation

A-74-5.—The Federal Aviation Administration on October 12 informed

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the safety Board that a sentence had been omitted from its September 15 letter (43 FR 46089, October 5, 1978) concerning the status of this recommendation. The third paragraph of FAA's response, as corrected, reads:

Airworthiness Review Program Amendment No. 3 covering Proposals 2-91 and 2-213 was published on December 20, 1976. The proposed amendment to § 25.1439(a) was adopted. The proposed amendment to § 25.1439(b) was withdrawn based on comments which stated that the action was premature in view of current testing by the FAA. The proposal to amend § 121.337 was also withdrawn since the proposal (§ 25.1439(b)) to which it refers was withdrawn.

A-78-45 and 46.—FAA, by letter of October 11, rejects the recommendations issued as a result of the Board's investigation of the National Jet Services DC-3 accident at Evansville (Ind.) Dress Airport last December 13. The Board found that firefighting and rescue vehicles may not be able to use the airport's perimeter road when responding to aircraft emergencies. (See 43 FR 32475, July 27, 1978.)

In answer to recommendation A-78-45 FAA states that there is no need to amend the Federal Aviation Act of 1958 to require that fire-fighting and rescue vehicles be capable of traversing airport roads since section 612 of the Act already provides broad authority for FAA in this area. Implementation could be incorporated into 14 CFR Part 139 should this be considered necessary, according to FAA. FAA does not feel the requirement to construct perimeter/access roads is justified; therefore, no amendment to Part 139 is contemplated.

With respect to recommendation A-78-46, FAA submits, whether by legislation or by regulation, it is unable to justify a safety requirement that all airports serving certificated air carriers construct and maintain perimeter/access roads to facilitate movement of fire-fighting and rescue vehicles to the scenes of accidents anywhere within the airport operating areas as recommended by the Board. FAA states, "Furthermore, the cost of such a roadway system, with proper load-bearing capability, to assure considerably more vehicle accessibility than that already provided by existing runways, taxiways, and ramp areas would most certainly be unreasonable for safety benefits that might be derived. Thus, we cannot concur with the establishment of such requirements as part of airport certification."

FAA notes that recently the National Fire Protection Association defined airport fire and rescue access areas as rectangular patterns surrounding each runway 500 feet (150 meters) either side of centerline and 3,330 feet (1,000 meters) beyond each threshold. FAA shares their opinion that an access road should be available where practical, from the end of each runway through the safety area for firefighting and rescue vehicle use. FAA would participate in the development of such roads through the Airport Development Aid Program.

A-78-51 and 52.— Letter of October 12 from FAA responds to recommendations issued following investigation of the accident on June 3, 1977, involving Continental Air Lines, Inc., Flight 63 which struck powerlines and utility poles after takeoff from runway 21 at the Tucson (Ariz.) International Airport. Although the aircraft was damaged substantially, it returned to the airport and landed safely; there were no injuries. The Safety Board's investigation of the accident disclosed that the flightcrew failed to use the 500-foot displaced threshold area which was available for the takeoff. (See 43 FR 36533, August 17, 1978.)

FAA agrees with recommendation A-78-51 and plans to issue an Air Carrier Operations Bulletin requesting all principal operations inspectors to assure that their assigned certificate holders provide their pilots and dispatchers with airport analysis data which clearly identifies runways which have displaced thresholds. FAA expects to issue the bulletin by November 30.

Recommendation A-78-52 asked FAA to require that all operators of certificated airports where runway designs feature a displaced threshold and taxiways enter the runways at points other than the runway's end install an easily visible intersection sign which displays a displaced threshold notation. FAA does not concur with this recommendation. FAA reports that the displaced threshold at Tucson International was marked in accordance with current standards, identifying the pavement as being available for taxiing and takeoff. Further, approach charts, the airport master record (FAA Form 5010-1) and the Airport/Facility Directory all contain advisories on the existence of the displaced threshold. FAA says that these publications may be used by pilots in complying with the requirements of FAR Part 121, Certification and Operations: Domestic, Flag and Supplemental Air Carriers and Commercial Operators of Large Aircraft. Section 121.443(b)(9) of this regulation requires that pilots-in-command be familiar with the physical layout of each regular, provisional, and refueling airport that is provided for a given route. FAA believes that this provides adequate alternatives to recommendation A-78-52 and that the proposed regulatory requirement would impose unnecessary burdens upon airport operators.

A-78-56 through 58.— These recommendations were issued following Board investigation of the two accidents which disclosed an unsafe design characteristic associated with the gondolas on Semco Model T and Challenger AX-7 balloons. One accident occurred near Mosquero, N. Mex., on November 6, 1977, and the other occurred near Death Valley, Calif., January 24, 1976. (See 43 FR 38959, August 31, 1978.) FAA's response is dated October 12.

Recommendation A-78-56 called for FAA to issue an airworthiness directive to require means for securing the canvas dodger to the deck or require other means for eliminating the existing gap between the dodger and the deck on Semco Model T and Challenger AX-7 balloons. FAA's response points out that Semco balloons have been operating since 1965 and states, "To our knowledge these two are the only accidents in which occupants were injured due to sliding off the gondola floor. In view of this service record, we do not believe that issuance of an airworthiness directive is justified at this time."

Recommendation A-78-57 asked FAA amend 14 CFR 31.59 to require that baskets, gondolas, or other enclosures for occupants of manned free balloons be designed to prevent lower extremities from protruding from the enclosure when it is subjected to test conditions under 14 CFR 31.27(c). FAA notes that § 31.27(c) requires that a drop test of the basket, trapeze, etc., be conducted at various angles to the surface, with the stipulation that no structural failure or distortion be allowed which could cause serious injury to the occupants. FAA states, "Service experience does not indicate that a change in regulations with regard to injuries to extremities is justified. We believe that the rule is satisfactory."

In answer to A-78-58, which asked FAA to expedite the adoption of the 14 CFR Part 31 rule changes contained in NPRM 75-31, specifically, in regard to the requirements for a Manual of Instructions for Continued Airworthiness which is proposed in Appendix A of these rule changes, FAA reports that final action on NPRM 75-31 is expected by the end of February 1979.

Highway

H-78-40.— Ryder Truck Rental, Inc., advises by its letter of October 11 that, as recommended, it has amended its maintenance program relative to brake adjustment by requiring an adjustment at least at each preventive maintenance inspection. The recommendation was issued after investigation of the tractor-semitrailer accident near Marion, N.C., last January 25.

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Railroad

R-76-26.— Letter of October 3 from the Federal Railroad Administration is in response to the Safety Board's inquiry of last February 17 (43 FR 18075, April 27, 1978) concerning the recommendation which asked FRA to require that trains are equipped with emergency flagging equipment. The recommendation issued after Board investigation of the October 17, 1975, collision of two Penn Central passenger trains near Wilmington, Del.

The Safety Board noted that FRA's original response indicated that the necessary remedial action was contained in 49 CFR Part 218. However, the Board was concerned that the language of the regulation does not positively require trains to be equipped with flagman's signals.

FRA states that the regulation requires protection of a train at all times and prescribes the instances in which flag protection must be provided and the types of flagman signals to be used. FRA believes this regulation clearly places a responsibility upon the carrier to have flagging equipment available when the need arises. Further, FRA states that the operating rules of the carriers already contain the requirement that "employees whose duties may require them to give signals must provide themselves with the proper appliances, keep them in good order, and ready for immediate use." FRA believes the regulation is adequate in its requirements and does not believe there is a need for amendment.

NOTE: The above notice reports on Safety Board documents recently released and recommendation response letters received. Single copies of accident reports, the Board's recommendation letters and responses thereto in their entirety are available without charge.

All requests to the Board for copies must be in writing, identified by report or recommendation number. Address inquiries to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594.

Multiple copies of accident reports may be purchased by mail from the National Technical Information Service, U.S. Department of Commerce, Springfield, Va. 22151.

(Secs. 304(a)(2) and 307 of the Independent Safety Board Act of 1974 (Pub. L. 93-633, 88 Stat. 2169, 2172 (49 U.S.C. 1903, 1906)).)

MARGARET L. FISHER,
Federal Register Liaison Officer.

OCTOBER 30, 1978.

[FR Doc. 78-31036 Filed 11-1-78; 8:45 am]

[4910-58-M]

[Docket No. SA-466]

AIRCRAFT ACCIDENT—SAN DIEGO, CALIF.

Accident Investigation Hearing

Notice is hereby given that the National Transportation Safety Board will convene an accident investigation hearing at 9 a.m. (local time) on November 27, 1978, in the Sheraton Harbor Island Hotel, San Diego, Calif.

The public hearing will be held in connection with the Safety Board's investigation of an accident involving a Pacific Southwest Airlines, Inc., Boeing 727-200, N533PS, and a Gibbs Flite Center, Inc., Cessna 172, N7711G, which occurred September 25, 1978, at San Diego, Calif.

WILLIAM R. HENDRICKS,
Senior Hearing Officer.

OCTOBER 27, 1978.

[FR Doc. 78-31035 Filed 11-1-78; 8:45 am]

[3110-01-M]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on October 25, 1978 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes—

The name of the agency sponsoring the proposed collection of information;

The title of each request received;

The agency form number(s), if applicable;

The frequency with which the information is proposed to be collected;

An indication of who will be the respondents to the proposed collection;

The estimated number of responses;

The estimated burden in reporting hours; and

The name of the reviewer or reviewing division or office.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget Washington, D.C. 20503, 202-395-429, or from the reviewer listed.

NEW FORMS

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Center for disease control
Influenza Immunization Grant Activity
CDC 1030-5, 6
Single-time
Influenza Immunization grant awardees, 288 responses; 516 hours
Richard Eisinger, 395-3214

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation
Land Tenure Survey
Single-time
Four water user organizations in Federal reclamation projects, 200 responses; 100 hours
Ellett, Charles A., 395-6132

NAVAJO AND HOPI INDIAN RELOCATION COMMISSION

Replacement Housing Benefits Program
On occasion
Heads of households, 10,500 responses; 26,250 hours
Caywood, David P., 395-3443

PENSION BENEFIT GUARANTY CORPORATION

Audit verification questionnaire
Annually
Plan participants, 1,200 responses; 120 hours
Arnold Strasser, 395-6132

REVISIONS

U.S. CIVIL SERVICE COMMISSION

Professional, Administrative, Clerical, and Technical Pay-Lob Spring 1979 Test Survey
Single-time
Private establishments with over 100 employees, 1,500 responses; 3,750 hours
Marsha Traynham, Arnold Strasser, 395-3773

DEPARTMENT OF COMMERCE

Bureau of the Census
Animal and Vegetable Fats and Oils (Warehouse Stocks)
M-20H
Monthly
Warehouses, 1,800 responses; 900 hours
Kincannon, C. Louis, 395-3772

Bureau of the Census
Pumps and Compressors
MA-35P
Annually
Manufacturers of pumps and compressors, 495 responses; 495 hours
Off of Federal Statistical Policy and Standards
Kincannon, C. Louis, 673-7977

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EXTENSIONS

DEPARTMENT OF COMMERCE

Bureau of the Census
Shipments of truck trailers
M-37L
Monthly
Manufacturers of truck trailers, 2,400 responses; 1,200 hours
Kincannon, C. Louis, 395-3772

Bureau of the Census
Inorganic Chemicals (production and stocks)
M-28A.1
Monthly
Manufacturers of inorganic chemicals, 4,800 responses; 1,600 hours
Kincannon, C. Louis, 395-3772

Bureau of the Census
Steel Mill Shapes and Forms (producers' net shipments and inventories)
M-33J
Monthly
Manufacturers of steel mill shapes and forms, 276 responses; 92 hours
Kincannon, C. Louis, 395-3772

DEPARTMENT OF DEFENSE

Department of the Army
Systems Building Manufacturer/Product Data on Occasion
Systems building manufacturers, 400 responses; 134 hours
Marsha Traynham, 395-3773

BRENDA A. MAYBERRY,
Acting Budget and Management Officer

[FR Doc. 78-30957 Filed 11-1-78; 8:45 am]

[8010-01-M]

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-15283 (SR-NASD-78-16)]

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Self Regulatory Organization; Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. 94-29, 16 (June 4, 1975), notice is hereby given that on October 11, 1978, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

TEXT OF PROPOSED RULE CHANGE

The following is the full text of the proposed amendments to Schedule C under Article I, Section 2 of the By-Laws of the National Association of Securities Dealers, Inc. Deletions are bracketed, additions are italicized.

SCHEDULE C

This schedule has been prepared pursuant to the provisions of Section 2(d), of Article I of these By-Laws and contains the requirements of registration with the Corporation of persons associated with a member, including the requirements for qualification examinations to be given. There shall be two categories of registration—registration of principals and registration of representatives.

I

[REGISTRATION OF PRINCIPALS

(1) *Registration Requirements.*—All persons associated with a member who are designated as Principals must be registered and must pass a Qualification Examination for Principals before their registration can become effective:

(a) Persons associated with a member, enumerated in (i)-(v) hereafter, who are actively engaged in the management of the member's investment banking or securities business, including supervision, solicitation, conduct of business or the training of persons associated with a member for any of these functions, are designated as] [Principals. Such persons shall include: (i) Sole Proprietors; (ii) Officers; (iii) Partners; (iv) Managers of Offices of Supervisory Jurisdiction, and (v) Directors of Corporations.

(b) Any person who was registered with the Corporation on or before October 1, 1965, and designated as a Sole Proprietor, Officer, Partner, Manager of Office of Supervisory Jurisdiction or Director is not required to pass a Qualification Examination for Principals, subject to the provisions of paragraph (d) hereof.

(c) Any person associated with a member as a representative whose duties are changed by the same member after October 1, 1965, so as to require his classification as a Principal will be allowed a reasonable period of time following such change to pass a Qualification Examination for Principals.

(d) Any Principal whose most recent registration has been terminated for a period of two years or more immediately preceding the filing of a new application shall be required to pass a Qualification Examination for Principals.

(2) *Registration of Financial Principals.*—

(a) New Members

(i) Effective September 1, 1972 every broker and dealer making application for admission to membership must designate with the Corporation an officer or partner, or himself in the case of a sole proprietorship, as a "Financial] [Principal." The duties of a "Financial Principal" shall include, but not necessarily be limited to, the actual preparation and/or approval of financial statements together with supporting schedules and net capital computations. The designation of a "Financial Principal" shall not relieve other persons of their responsibilities in this area of operation.

(ii) Before a broker or dealer shall be admitted to membership in the Corporation the designated "Financial Principal" must pass or have passed separately Parts I and II of a two-part Qualification Examination for Principals unless he is currently qualified to be registered as a principal pursuant to paragraph (1) hereof in which case he must pass Part II, only.

(iii) After a broker or dealer has been admitted to membership he must continue to have a designated and registered "Financial Principal" who must satisfy the requirements of subparagraph (b) hereof.

(b) Existing Members

(i) Every member of the Corporation must designate with it as a "Financial Principal" any person becoming registered as a principal after September 1, 1972 whose duties will involve the actual preparation and/or approval of financial statements together with supporting schedules and net capital computations as well as any registered principal whose duties with a member are changed after the referred to] [date to involve such matters. If any such designated "Financial Principal" is required to take an examination pursuant to paragraph (1) hereof he must pass separately Parts I and II of a two-part Qualification Examination for Principals. If such "Financial Principal" is qualified pursuant to the provisions of paragraph (1) hereof but satisfied such requirement after the above date he must nevertheless pass Part II of the two-part Qualification Examination for Principals.

(ii) Any designated "Financial Principal" who was registered or qualified to be registered under paragraph (1) hereof on the above date and has been continuously so registered or qualified since then shall not be required to take either Part of the two-part Qualification Examination for Principals unless such person becomes subject to the provisions of subparagraph (a) of this paragraph (2) in which case he shall be required to take Part II.

(3) *Requirement of Two Registered Principals for New Applicants for Membership.*—

(a) An applicant for membership in the Corporation, except a sole proprietorship, shall have at least two officers or partners who are qualified to become registered as principals pursuant to the provisions of paragraph (1) or (2) hereof, whichever is applicable, before it shall be admitted to membership.]

[(b) The President of the Corporation may in situations which indicate conclusively that only one person associated with a member should be required to register as such, and upon a written request for such, waive the provisions of this paragraph (3).

Resolution of the Board of Governors

Qualification as Registered Representative as Prerequisite to Principal Registration

All persons required under Schedule C to pass a qualification examination for principals and who are not qualified to become registered as a registered representative must also pass the Qualification Examination for registered Representatives before their principal registrations can be declared effective. This requirement shall not apply to persons required to register and qualify as "Financial Principals" or whose functions will relate solely and exclusively to: (1) mutual funds and variable annuities or (2) direct participation programs.]

Registration of Principals *

Registration Requirements

(a) All Principals Must Be Registered—All persons associated with a member who are to function as principals shall be registered as such with the Corporation in the category of registration appropriate to the function to be performed as specified in Part I, section (2) hereof. Before their registration can become effective, they shall pass a Qualification Examination for Principals appropriate to the category of registration as specified by the Board of Governors.

(b) Definition of Principal—Persons associated with a member, enumerated in items (i)-(v) hereafter, who are actively engaged in the management of the member's investment banking or securities business, including supervision, solicitation, conduct of business or the training of persons associated with a member for any of these functions are designated as principals. Such persons shall include:

(i) Sole Proprietors
(ii) Officers
(iii) Partners
(iv) Managers of Offices of Supervisory Jurisdiction, and
(v) Directors of Corporations

(c) Requirements for Examination on Lapse of Registration—Any person whose most recent registration as a principal has been terminated for a period of 2 or more years immediately preceding the date of receipt by the Corporation of a new application shall be required to pass a Qualification Examination for Principals appropriate to the category of registration as specified in Part I, section (2) hereof.

(d) Elevation to Principal Status—Any person associated with a member as a registered representative whose duties are changed by the member so as to require registration in any principal classification shall be allowed a period of 90 calendar days following the change in his duties during which to pass the appropriate Qualification Examination for Principals. Upon elevation, the member shall submit to the Corporation an elevation form designated by the Board of Governors and the applicable fees. If the applicant fails the examination, the elevation form and application will be retained for an additional period of 90 calendar days from the date of the last failure. If the applicant fails to take the examination within the initial 90 calendar day period, a new principal elevation form and examination fee shall be required. In no event may such person function as a principal beyond the initial 90 calendar day period following the change in his duties without having successfully passed the appropriate Qualification Examination. In no event may a person previously unregistered in any capacity applying for principal status function as a principal until fully qualified.

(e) Requirement of Two Registered Principals for New Applicants for Membership.—

(i) An applicant for membership in the Corporation, except a sole proprietorship, shall have at least two officers or partners who are qualified to become registered as principals pursuant to the provisions of Part I, sections (2)(a)-(d) inclusive hereof, whichever is applicable, before it shall be admitted to membership.

(ii) The President of the Corporation may in situations which indicate conclusively that only one such person associated with a member should be required to register as such, and upon written request for such, waive the provisions of this Part I, section (1)(e)(i).

(2) Categories of Principal Registration

(a) General Securities Principal

(i) Each person associated with a member who is included within the scope of Part I, section (1) hereof, shall be required to register with the Corporation as a General Securities Principal and shall pass an appropriate Qualification Examination before such registration may become effective unless his activities are so limited as to qualify him for one or more of the limited categories of principal registration specified hereafter. A person whose activities in the investment banking or securities business are so limited is not, however, precluded from attempting to become qualified for registration as a General Securities Principal, and, if qualified, may become so registered. Each person required to register and qualify as a General Securities Principal must, prior to or concurrent with such registration, become registered, pursuant to Part II hereof, as a representative.

(ii) Except as provided in Part I, section (1)(c) hereof, a person who was registered with the Corporation as a Principal or a Financial Principal, shall not be required to pass a Qualification Examination for General Securities Principal and shall be qualified to be registered with the Corporation as a General Securities Principal.

(iii) A person registered solely as a General Securities Principal shall not be qualified to function as a Limited Principal—Financial and Operations unless he is also qualified and registered as such pursuant to the provisions of Part I, section (2)(b) hereof.

(b) Limited Principal—Financial ad Operations—

(i) Every member of the Corporation, unless exempted by Part I, section (2)(b)(iv), shall designate as Limited Principal—Financial and Operations those persons associated with it, at least one of whom shall be its chief financial officer, who performs the duties described in Part I, section (2)(b)(ii) hereof. Each person associated with a member who performs such duties shall be required to register as a Limited Principal—Financial and Operations with the Corporation and shall pass an appropriate Qualification Examination before such registration may become effective.

(ii) The term "Limited Principal—Financial and Operations" shall mean a person associated with a member whose duties include, but are not necessarily limited to:

a. final approval and responsibility for the accuracy of financial reports submitted to any duly established securities industry regulatory body;

b. final preparation of such reports;

c. supervision of individuals who assist in the preparation of such reports;

d. supervision of and responsibility for individuals who are involved in the actual maintenance of the firm's books and records from which such reports are derived;

e. supervision and/or performance of the member's responsibilities under all financial responsibility rules promulgated pursuant to the provisions of the Securities Exchange Act of 1934; or,

f. overall supervision of and responsibility for the individuals who are involved in the administration and maintenance of the firm's back office operations.

(iii) Except as provided in Part I, section (1)(c) hereof, a person designated pursuant to the provisions of Part I, section (2)(b)(i) hereof, shall not be required to take the Limited Principal—Financial and Operations Examination and shall be qualified for registration as a financial and operations principal if:

a. such person had been performing the functions of a Limited Principal—Financial and Operations as defined in Part I, section (2)(b)(ii) hereof on or before September 1, 1972; or

b. such person was registered with the Corporation as a Financial Principal.

(iv) A member, or an applicant for membership in the Corporation, may upon written request, be exempted by the President of the Corporation, or his delegate, from the requirement to have a Limited Principal—Financial and Operations if:

a. it has been expressly exempted by the Securities and Exchange Commission from SEC Rule 15c3-1 pursuant to the provisions of paragraph (b)(2) thereof; or

b. it is subject to the provisions of SEC Rule 15c3-1(a) (2) or (3).

(v) A person registered solely as a Limited Principal—Financial and Operations shall not be qualified to function in a principal capacity with responsibility over any area of business activity not prescribed in Part I, section (2)(b)(ii) hereof.

(c) Limited Principal—Investment Company and Variable Contracts Products—

(i) Each person associated with a member who is included within the scope of Part I, section (1) hereof, may register with the Corportion as a Limited Principal—Investment Company and Variable Contracts Products if:

a. his activities in the investment banking and securities business are limited solely to transactions involving securities of companies registered pursuant to the Investment Company Act of 1940 and variable contracts products and insurance premium funding programs registered pursuant to the Securities Act of 1933; and

b. he passes an appropriate Qualification Examination for Limited Principal—Investment Company and Variable Contracts Products.

(ii) A person registered solely as a Limited Principal—Investment Company and Variable Contracts Products shall not be qualified to function in a principal capacity with responsibility over any area of business activity not prescribed in Part I, section (2)(c)(i) hereof.

(d) Limited Principal—Direct Participation Programs—

(i) Each person associated with a member who is included within the scope of Part I, section (1) hereof, may register with the Corporation as a Limited Principal—Direct Participation Programs if:

a. his activities in the investment banking and securities business are limited solely to Direct Participation Programs as defined in Part I, section (2)(d)(ii) hereof; and

b. he passes an appropriate Qualification Examination for Limited Principal—Direct Participation Programs.

(ii) For purposes of this Schedule C, "direct participation programs" shall mean programs which provide for flowthrough tax consequences regardless of the structure of the legal entity or vehicle for distrubution including, but not limited to oil and gas programs, real estate programs, agricultural programs, cattle programs, condominium securities, Subchapter S corporate offerings and all other programs of a similar nature, regardless of the industry represented by the program, or any combination thereof. Excluded from this definition are real estate investment trusts, tax qualified pension and profit sharing plans pursuant to section 401 and 402(a) of the Internal Revenue Code and individual retirement plans under section 408 of that Code, tax sheltered annuities pursuant to the provisions of section 403(b)

* Part I of schedule C shall expire [2 years after approval by the Commission].

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of the Internal Revenue Code and any company including separate accounts registered pursuant to the Investment Company Act of 1940.

(iii) A person registered solely as a Limited Principal—Direct Participation Programs shall not be qualified to function in a principal capacity with responsibility over any area of business activity not prescribed in Part I, section (2)(d)(i) hereof.

Parts II, III, and IV of Schedule C remain unchanged. Part V of Schedule C is amended as follows.

V

QUALIFICATION EXAMINATIONS AND WAIVER OF REQUIREMENTS

[(1) Qualification Examinations for Principals shall consist of a series of questions based upon topics outlined in the document entitled "Study Outline for Qualification Examinations for Registered Representatives and Registered Principals." Qualification Examinations for Registered Representatives shall consist of a series of questions based upon topics outlined in the document entitled "Study Outline for Qualification Examinations for Registered Representatives and Registered Principals."]

(1) Qualification Examinations specified in this Schedule shall consist of a series of questions based upon topics contained in study outlines provided by the Corporation, a list of which is available from the Qualifications & Examination Department.

(2) Examinations shall be given at such times and places and under such conditions as shall be prescribed by the Board of Governors and shall be graded according to the procedure prescribed by the Board of Governors.

[(3) Examination results shall be reported by one of the following letter grades: A (Excellent), B (Good), C (Fair), or F (Failed). Scores assigned to each letter grade for each examination series shall be determined by the Board of Governors. Each applicant shall certify to the Board of Governors that no assistance was given to or received by him during the examination.]

(3) Examination results shall be reported to member firms on a pass/fail basis only and may be accompanied by an analysis of the candidate's performance on the examination. Passing scores assigned to each examination series shall be determined by the Board of Governors, or its designee.

(4) An applicant cannot receive assistance while taking the examination. Each applicant shall certify to the Board of Governors that no assistance was given to or received by him during the examination.

The succeeding paragraphs of Part V are renumbered accordingly, but are otherwise unchanged. All of Parts VI and VII are unchanged.

NASD'S STATEMENT OF PURPOSE OF PROPOSED RULE CHANGE

The proposed amendments to Schedule C are being filed at this time as part of the Association's pilot program to offer qualification examinations using an automated test administration system. The most notable change is the creation of new categories of limited principal registration. These categories of limited principals will be the subject of the examinations offered in the pilot program and were selected for the pilot because they were considered to be popular enough to adequately support the pilot but, at the same time, to not have so great a demand as to overload the test administration system during the pilot. Other changes are conforming and technical amendments required by the new categories and the pilot program.

The bulk of the amendment is derived from the Association's proposed complete revision of Schedule C, File No. SR-NASD-75-6. The remainder of the amendment is a restatement of existing Schedule C. The amendment is an interim measure designed to permit implementation of the pilot test administration program pending Commission action on the complete revision. As such, the Association is not withdrawing its application in File No. SR-NASD-75-6.

A section by section analysis of the proposed change follows:

New sections (1)(a) and (1)(b) state the requirement that Principals must be registered and define "Principal." These are restatements of present paragraphs (1) and (1)(a). New section (1)(c) restates the requirement now found in paragraph (1)(d) that persons who registration has lapsed for more than two years must requalify by examination prior to again becoming registered. Section (1)(d) replaces the provision found in old paragraph (1)(c) that a registered representative elevated to Principal shall be given a "reasonable time" to qualify by examination for his new position. This "reasonable time" has been limited to 90 days. Furthermore, the new section provides that should a person fail to take the examiniation during that 90-day period, his application shall be voided and a new form and fee shall be required. This requirement is designed to offset administrative expenses associated with persons who never sit for examinations for which they are scheduled. Section (1)(e) shall replace the present paragraph (3) of Part I of Schedule D requiring that a new member have two Principals.

Section 2 defines the categories of new principals. The rule provides for "General Securities Principals," which is a retitling of the present Schedule C "Principals;" "Limited Principal-Financil and Operation," which is a retitling of present Schedule C "Financial Principals;" "Limited Principal-Investment Company and Variable Contracts Products," a new category; and "Limited Principal-Direct Participation Programs," another new category. Limited Principals shall be qualified only to act as Principal in the areas for which they have qualified. A General Securities Principal may act as a Limited Principal—Investment Company and Variable Contracts Products or a Limited Principal—Direct Participation Programs without additional qualification. As a result of this amendment, all existing principals will be registered as General Securities Principals, and all existing Financial Principals will be registered as both General Securities Principals and Limited Principals—Financial and Operations. This will reflect the present pattern of examination requirements for Principals and Financial Principals. The patter of exemptions from registration and examination contained in present Schedule C has been continued, with the addition of an exemption from the requirement for a Limited Principal—Financial and Operations for members under SEC Rules 15c3-1(a)(2), (a)(3) or (b)(2). The Association believes that these firms have such minimal financial reporting requirements that no regulatory purpose whould be served by imposition of this requirement. In addition, the Association notes that this exemption is contained in MSRB Rule G-3(b)(ii)(A), which was already approved by the Commission and is consistent with proposed Rule 15b7-1 which has been published for comment by the Commission.

NASD's STATEMENT OF BASIS UNDER THE ACT FOR PROPOSED RULE CHANGE

It is the responsibility of the Association under Section 15A(g) (3) of the Securities Exchange Act of 1934, as amended, to implement appropriate qualification standards for persons seeking entrance into, or functioning within, the securities industry. Pursuant to this statutory obligation, the Association has developed examination which are administered to establish that entrance levels of competence and knowledge have been achieved by applicants for positions in the securities industry.

NASD's STATEMENT ON COMMENTS RECEIVED FROM MEMBERS, PARTICIPANTS OR OTHERS ON PROPOSED RULE CHANGE

The Commission's attention is directed to File No. SR-NASD-75-6 for a discussion of membership comments on the complete revision of Schedule C. Article I, section 2 of the By-Laws does not require membership approval of changes to Schedule C. Therefore, no additional comments were solicited or received regarding this interim amendment.

NASD's STATEMENT ON BURDEN ON COMPETITION

As noted above, section 15A of the Securities Exchange Act places on the Association the responsibility for determining qualification for persons seeking registration with members of the Association. The Association believes that the creation Limited Principal classifications and the elimination of the Limited Principal—Financial and Operations requirements for certain members will facilitate the entry of new firms and the registration of new principals in the securities industry with a concomitant increase in competition. Thus, it is felt there is no burden on competition imposed by the proposed rule change, and that it is in furtherance of the purposes of the Act.

Within 35 days of the November 2, 1978, publication of this notice in the FEDERAL REGISTER (December 7, 1978), or within such longer period (i) as the Commission may designate up to 90 days of such date (January 31, 1978) if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the abovementioned self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule chage should be disapproved.

Interested persons are invited to submit written data, views and agruments concerning the foregoing. Persons desiring to make written submissions should file six (6) copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization All submission should refer to the file number referenced in the caption above and should be submitted within 15 days of the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

OCTOBER 27, 1978.

[FR Doc. 78-30966 Filed 11-1-78; 8:45 am]

[8010-01-M]

[Rel No. 20739; 70-6063]

OHIO EDISON CO. AND PENNSYLVANIA POWER CO.

Proposed Amendments to Nuclear Fuel Leases

OCTOBER 24, 1978.

Notice is hereby given that Ohio Edison Co. ("Ohio Edison"), 76 South Main Street, Akron, Ohio 44308, an electric utility and a registered holding company, and its electric utility subsidiary Pennsylvania Power Co. ("Penn Power"), 1 East Washington Street, New Castle, Pa. 16103, have filed with this Commission a post-effective amendment to their application previously filed and amended in this matter pursuant to sections 9(a) and 10 of the Public Utility Holding Company Act of 1935 ("Act") concerning the following proposed transaction. All interested persons are referred to the amended application, which is summarized below, for a complete statement of the proposed transaction.

By prior order dated November 11, 1977 (HCAR No. 20555), Ohio Edison and Penn Power were authorized to enter into a revised nuclear lease (the "Lease") between Duquesne Light Co. ("Duquesne"), Ohio Edison and Penn Power as lessees and Prulease, Inc., as lessor concerning nuclear materials for Beaver Valley Unit No. 1, which is owned by Duquesne, Ohio Edison and Penn Power as tenants in common. At present their undivided interests as tenants in common are 35 percent for Ohio Power and 17.5 percent for Penn Power.

By post-effective amendment applicants propose that the maximum amount of nuclear material that may be leased under the lease be increased from $70 million to $80 million. It is stated that this increase reflects more recent studies concerning the probable acquisition cost of nuclear material for Beaver Valley Unit No. 1. It is also proposed that the lease be amended to incorporate a revised method of calculating rental payments for nuclear material that becomes subject to the lease after the effective date of the proposed amendment. It is stated that such revised calculation method should prove more favorable to applicants by approximately 50 to 75 basis points over the old method.

Applicants are also parties to other nuclear fuel leases with Prulease, Inc. (the "Other Leases"), which were authorized by Commission order of July 13, 1976 (HCAR No. 19612). Since the Lease sets a limit on the total amount of unrecovered expenditures by Prulease, Inc., that may be outstanding at any one time under all leases of nuclear material between applicants and Prulease, Inc., it is necessary to amend the other Leases to take into account the increase of the maximum dollar amount specified in the amendment to the lease.

The fees and expenses to be incurred by Ohio Edison and Penn Power in connection with the proposed transaction will be supplied by amendment. No State commission and no Federal commission, other than this commission, has jurisdiction over the proposed transaction, except that the Nuclear Regulatory Commission has jurisdiction over the ownership, possession, storage and handling of nuclear material.

Notice is further given that any interested person may, not later than November 30, 1978, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application, as amended by said post-effective amendment, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as amended by said post-effective amendment or as it may be further amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Division, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-30964 Filed 11-1-78; 8:45 am]

[8010-02-M]

[Rel. No. 20741; 70-6213]

OHIO EDISON CO. AND PENNSYLVANIA POWER CO.

Proposed Pollution Control Facilities Financing

OCTOBER 24, 1978.

Notice Is Hereby Given that Ohio Edison Co. ("Ohio Edison"), 76 South Main Street, Akron, Ohio 44308, an electric utility and a registered holding company, and its electric utility subsidiary Pennsylvania Power Co. ("Penn Power"), 1 East Washington Street, New Castle, Pa. 16103, have filed with this Commission an application-declaration pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6, 7 and 12(b) of the Act and Rules 45 and 50 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to

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the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

Pursuant to applicable legal requirements Ohio Edison has installed, or is in the process of installing, water pollution control facilities at its Gorge, Mad River, Niles, Toronto, Burger, Sammis and Edgewater plants located in Ohio. Ohio Edison proposes to finance the cost of these facilities pursuant to arrangements with the Ohio Water Development Authority ("Authority"), under which arrangements the Authority will issue up to $11,000,000 aggregate principal amount of its bonds ("Bonds"). Penn Power and Duquesne Light Co. ("Duquesne") are also parties to the agreement with the Authority since part of the facilities are being installed at the Sammis plant and are properly allocable to Sammis Unit No. 7, which is owned by Ohio Edison, Penn Power and Duquesne as tenants in common.

The Bonds will be issued under an indenture of trust between the Authority and a bank to be selected as trustee pursuant to a Loan Agreement between the Authority and Ohio Edison. The Loan Agreement will provide for the loan of the proceeds from the sale of the Bonds to Edison to pay the costs of the facilities and certain other costs associated with the financing, including possibly the cost of funding a reserve fund which the Authority's policy indicates may be required to be available to the Authority for the payment of personnel or other costs which the Authority might incur in operating and maintaining the facilities if Ohio Edison does not do so. The size of such a reserve fund, if needed, is to be the subject of future discussions with the Authority. The proceeds from the sale of the Bonds may also be used in part to fund a debt service reserve fund sufficient to pay the maximum annual debt service on the Bonds in any year prior to their maturity. Whether such a debt service reserve fund will be necessary will also depend on the results of future discussions with the Authority.

The Loan Agreement will also provide for the repayment by Ohio Edison to the Authority of amounts sufficient to pay the principal of and interest on the Bonds as the same shall become due, as well as amounts sufficient to pay the expenses of the Authority, the fees and expenses of the trustee and the fees and expenses of any paying agent for the Bonds. Ohio Edison may prepay its obligations under the Loan Agreement at any time and will be required to prepay if the Bonds are called for redemption or become subject to mandatory redemption. It is stated that the Authority's policy regarding this type of financing contemplates that Ohio Edison's obligations under the Loan Agreement will be secured. The extent of such security will depend on the results of future discussions with the Authority. Ohio Edison may find it necessary to secure such obligations by the issuance of its own first mortgage bonds or, possibly, by a lien on certain of its properties which would be subordinate to the lien of its first mortgage indenture.

It is contemplated that the Bonds will be marketed pursuant to arrangements between the Authority and Blyth Eastman Dillon & Co., Inc. Ohio Edison will not be a party to these arrangements. The terms of the Bonds, including rate and sinking fund provisions, will be supplied by amendment.

The exact amount of Bond financing, which will be limited in aggregate principal amount to $11,000,000, will depend on the costs that may be properly financed under applicable rules and regulations, tax and otherwise. Of such amount up to $400,000 will relate to costs at the Sammis plant attributable to Penn Power because of its ownership interest in Sammis Unit No. 7. It is stated that this amount would be too small for Penn Power to finance economically so it is proposed that the Bonds issued on behalf of Ohio Edison include the portion of the cost of facilities involved that are the responsibility of Penn Power. Under these arrangements Ohio Edison's obligations under the Loan Agreement would be based on the full amount of Bonds issued, but Penn Power would agree, as between itself and Ohio Edison, to pay its pro rata share of the costs of the financing, including its pro rata share of each payment made to provide funds to pay the principal of, or interest on, the Bonds. Ohio Edison will not receive any fee or compensation from Penn Power, other than reimbursement for expenses actually incurred, in connection with these arrangements.

The fees and expenses to be incurred in connection with the proposed transactions will be filed by amendment. The Public Utilities Commission of Ohio has jurisdiction over the proposed transaction with respect to Ohio Edison and the Pennsylvania Public Commission has jurisdiction over the proposed transactions with respect to Penn Power. No other State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice Is Further Given that any interested person may, not later than November 20, 1978, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-30965 Filed 11-1-78; 8:45 am]

[8025-01-M]

SMALL BUSINESS ADMINISTRATION

[Proposed License No. 01/01-0294

CROWN VENTURE CAPITAL CORP.

Application for a License To Operate as a Small Business Investment Company

Notice is hereby given that an Application has been filed with the Small Business Administration pursuant to section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1978)) under the name of Crown Venture Capital Corp. (Applicant), for a License to operate as a Small Business Investment Company under the provisions of the Small Business Investment Act of 1958, as amended (ACT), and the Rules and Regulations promulgated thereunder.

The Applicant was incorporated under the laws of the Commonwealth of Massachusetts on August 25, 1978, and it will commence operations with a capitalization of $640,000, which will be obtained through a sale of its Common Stock, $1 Par Value, to the general public pursuant to a registered public offering under the Securities Act of 1933. It is estimated there will be 200 to 500 beneficial owners of the Applicant's common stock at the completion of the initial stock offering, and it is expected that no corporation will beneficially own 10 percent or more of the voting securities of the Applicant. The Applicant will also be registered with the Securities and Exchange Commission under the Investment Company Act of 1940.

The following will be officers and directors of the applicant:

Robert E. Swain 14 Border Street, North. Scituate, Mass. President, Treasurer, and Director.
James M Brown, 35 Norfolk Road, Cohasset, Mass. Executive Vice President (General Manager).
Wilfred E. Gardner, Jr., 76 Garden Road, Wellesley Hill, Mass. Clerk, Secretary and Director.
Harry W. Healey, Jr., 209 Lazell Street, Hingham, Mass. Director.
R. Bruce Cay, 70 Martins Lane, Hingham, Mass. Director.
Stephen Spenlinhauer, 133 Beach Street, Cohasset, Mass. Director.

The applicant will have its principal place of business at 160 Old Derby Street, Hingham, Mass. 02043, and it intends to make investments principally in the Commonwealth of Massachusetts, and in other areas within the United States and its territories and possessions.

Matters involved in SBA's consideration of the Applicant include the general reputation and character of the proposed owners and management, and the probability of successful operations of the Applicant under their management, including adequate profitability and financial soundness in accordance with the Act and Regulations.

Notice is herby given that any person may not later than November 17, 1978, submit written comments on the Applicant to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L St., NW., Washington, D.C. 20416

A copy of this Notice shall be published by the Applicant in a newspaper of grneral circulation in Hingham, Mass.

(Catalogue of Federal Domestic Program N0. 59.011, Small Business Investment Companies)

Dated: October 27, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc.78-31022 Filed 11-1-78; 8:45 am]

[8025-01-M]

[License No. 02/02-0346]

PETER J. SCHMITT SBIC, INC.

Issuance of License To Operate as a Small Business Investment Company

On September 7, 1978, a Notice of Application for a License as a Small Business Investment Company was published in the FEDERAL REGISTER (43 FR 39881) stating that an Application had been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1978)) for a license as a small business investment company by Peter J. Schmitt SBIC, Inc., 678 Bailey Avenue, Buffalo, N.Y. 14206.

Interested parties were given until the close of business September 22, 1978, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information and the facts with regard thereto, SBA on October 25, 1978, issued License No. 02/02-0346 to Peter J. Schmitt SBIC, Inc., to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: October 27, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-31021 Filed 11-1-78; 8:45 am]

[8120-01-M]

TENNESSEE VALLEY AUTHORITY

PRIVACY ACT ISSUANCES

Incorporation by Reference

AGENCY: Tennessee Valley Authority.

ACTION: Incorporation by reference of Privacy Act issuances.

SUMMARY: Federal agencies are required by the Privacy Act of 1974 to give annual notice of certain records they maintain. The notices published last year were compiled by the Office of the Federal Register into "Privacy Act Issuances—1977 Compilation." The purpose of this document is to incorporate by reference the notices that appear in "Privacy Act Issuances—1977 Compilation" and to publish in full the systems that this agency has amended since publication of the 1977 Compilation.

DATES: This document fulfills the annual notice requirements of the Privacy Act for 1978.

FOR FURTHER INFORMATION CONTACT:

Miss Sue E. Wallace, Division of Personnel, Tennessee Valley Authority, Knoxville, Tennessee 37902, 615-632-2817.

APPROVAL OF THE DIRECTOR

The notices of systems of records of this agency which appear in "Privacy Act Issuances—1977 Compilation" are incorporated by reference, The Director of the Office of the Federal Register granted approval to incorporate by reference these Privacy Act issuances on July 13, 1978. Published below is the full text of systems of records that this agency has amended since publication of the 1977 Compilation.

System name:

Apprentice Training Record System—TVA.

System location:

Personnel Correspondence File, MIB, Tennessee Valley Authority, Knoxville, Tenn. 37902; Personnel Management Information System, MIB, Tennessee Valley Authority, Knoxville, Tenn. 37902.

Computing Services Branch, Tennessee Valley Authority, Chattanooga, Tenn. 37401.

All TVA locations where apprentices are employed.

Categories of individuals covered by the system:

Current and former TVA apprentices.

Categories of records in the system:

Employment, qualifications, and evaluation information.

Authority for maintenance of the system:

National Apprenticeship Act of 1937, 50 Stat. 664 (1937).

TVA Act of 1933, 16 USC 831-831dd.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To the Bureau of Apprenticeship and Training, the Veterans Administration, Tennessee Valley Trades and Labor Council, and the State and local government agencies for reporting and evaluation purposes.

To respond to a request from a Member of Congress regarding the status of an apprentice.

To provide information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the reqesting agency's decision on that matter.

To provide the following information to a prospective employer of a TVA or former TVA employee:

Job description, dates of employment, reason for separation.

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To the parties, their representatives, and Commission representatives in Civil Service Commission proceedings to support administrative action by TVA.

To the parties, their representatives, and impartial referees in proceedings under TVA grievance adjustment procedures.

To complainants, their representatives, and complaints examiners in the course of TVA investigation and decision of discrimination complaints under TVA equal employment opportunity procedures.

To request information from a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information and to request information from private individuals if necessary to obtain information relevant to a TVA decision concerning the hiring, retention, or promotion of an employee, the issuance of a security clearance, or other decision within the purposes of this system of records.

For use in litigation including the presentation of evidence and disclosure to opposing counsel in the course of discovery.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records are maintained on magnetic tape, disc, microfiche, and file folder.

Retrievability:

Records are indexed by name, craft, job code, union code, and social security number.

Safeguards:

Access to and use of these records are limited to persons whose official duties require such access. Files are kept in secured facilities.

Retention and disposal:

Records are maintained from two to five years in accordance with established TVA record retention schedules and are then transferred to the Federal Records Center.

System manager(s) and address:

Director of Personnel, Tennessee Valley Authority, Knoxville, Tenn. 37902.

Notification procedure:

Individuals seeking to learn if information on them is maintained in this system of records should address inquiries to the system manager named above. Requests should include the individual's full name, craft, and location of employment.

Record access procedures:

Individuals seeking access to information about them in this system of records should contact the system manager named above. Access will not be granted to investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information, to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. Access will not be granted to testing or examination material used solely to determine individual qualification for appointment or promotion in the Federal service, the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

Contesting record procedures:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

Record source categories:

Individual to whom the record pertains.

General Aptitude Test Battery scores from state employment security office.

References from employers, military and educational institutions.

Evaluations from joint committee on apprenticeship.

Systems exempted from certain provisions of the act:

This system is exempt from subsections (d), (e)(4)(H), (f)(2), (3), and (4) to the extent that disclosure of material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence, and to the extent that disclosure of testimony and examination material would compromise the objectivity of the testing or examination process. This exemption is pursuant to section 3(k) (5) and (6) of the Privacy Act of 1974 (5 USC 552a(k) (5) and (6)) and TVA regulations at 18 CFR 301.24.

System name:

Electricity Use, Rate, and Service Study Records—TVA.

System location:

Division of Power Utilization, Tennessee Valley Authority, Chattanooga, Tenn. 37401.

Categories of individuals covered by the system:

Individuals residing in households which are participating in electricity use, rate, or service studies.

Categories of records in the system:

Information about an individual's income, employment, family size, characteristics of his dwelling including type of heating and cooling systems and number and kind of appliances, and other characteristics of study participants relevant to patterns of residential electrical use.

Authority for maintenance of the system:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831-831dd.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To distributors and contractors assisting TVA in the study.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records are maintained in file folders, magnetic tape, and discs.

Retrievability:

Records are indexed by an identification number assigned to each household.

Safeguards:

Access to and use of these records are limited to those persons whose official duties require such access. All filing systems are locked when unattended.

Retention and disposal:

Survey information will be retained until completion of the program and for two years thereafter.

System manager(s) and address:

Director, Division of Power Utilization, Tennessee Valley Authority, Chattanooga, Tenn. 37401.

Notification procedure:

Individuals about whom information is maintained in this system of records are aware of that fact through participation in the program. However, inquiries may be addressed to the system manager named above. Requests should include the individual's full name and address.

Record access procedures:

Requests for access may be directed to the system manager named above.

Contesting record procedures:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

Record source categories:

The information in this system is solicited from the individual to whom the record pertains.

AVAILABILITY OF 1977 COMPILATION

"Privacy Act Issuances—1977 Compilation" is available from Regional Depository Libraries at 50 locations around the country and can be examined at these libraries free of charge. The 1977 Compilation is also available at the General Services Administration Federal Information Centers, which are located at 38 central points around the country and may be examined at the central headquarters of this agency. It is also available for purchase from the Superintendent of Documents, U.S. Government Printing Office, Wahington, D.C. 20402. Upon request, the Office of the Federal Register will furnish a photocopy of the full text of a particular records system published in the 1977 Compilation for a nominal fee.

LOCATION OF NOTICES IN 1977 COMPILATION

Notices of this agency's systems of records appear in Volume I of the 1977 Compilation at 48230 (42 FR 48230), September 22, 1977. The price of this Volume is six dollars and fifty cents.

Dated: October 23, 1978.

H. N. STROUD, Jr.,
Acting General Manager.

[FR Doc. 78-31016 Filed 11-1-78; 8:45 am]

[4910-14-M]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 78-135]

WAIVERS OF NAVIGATION AND VESSEL INSPECTION LAWS AND REGULATIONS

Suspension of Requirements for Survey, Inspection, and Measurement

AGENCY: Coast Guard, DOT.

ACTION: Notice of order.

SUMMARY: The Coast Guard is suspending the provisions of law requiring survey, inspection, and measurement of the foreign built vessel, M/V *Lionheart*, in order to admit the vessel to American registry. This action is considered necessary due to restraints on the shipping trade between the United States and Ecuador recently imposed by the Ecuadorian government. Suspending the provisions of law requiring survey, inspection, and measurement allows the vessel to be registered under United States laws following its sale to a United States corporation.

FOR FURTHER INFORMATION CONTACT:

Captain J. E. DeCarteret, Chief, Merchant Vessel Inspection Division, U.S. Coast Guard, Room 8302, 400 7th Street SW., Washington, D.C. 20590, 202-426-2178.

SUPPLEMENTARY INFORMATION: In order to obtain, in a rapid manner, additional information on which to base a decision, the Coast Guard published a notice of the proposed order on October 2, 1978, (43 FR 45485), and invited public comment. Over 150 responses were received. All comments were considered before final action was taken.

DRAFTING INFORMATION

The principal persons involved in drafting this action are: Captain J. E. DeCarteret, Project Manager, Office of Merchant Vessel Inspection, and A. F. Bridgman, Jr., Project Attorney, Office of the Chief Counsel.

DISCUSSION

In the interest of meeting the needs of foreign commerce between the United States of America and Ecuador the Coast Guard is suspending the provisions of law requiring survey, inspection, and measurement, by officers of the United States, of foreign built vessels admitted to American registry under 46 U.S.C. 11 for the M/V *Lionheart*. The M/V *Lionheart* is of Norwegian registry, currently under charter to Coordinated Caribbean Transport, Inc. (CCT) an American owned corporation. The vessel has been engaged in roll-on-roll-off shipping between the United States and Ecuador. CCT currently has under construction two U.S. flag vessels scheduled to engage in trade on this route. The completion of the construction of these vessels has been delayed and delivery is not anticipated until March 1979.

The majority of the comments were from persons who used or were affected by the services furnished by the M/V *Lionheart*. They uniformly supported granting the suspension. Strong support was also received from MARAD, the Federal Maritime Commission and Department of State. Objections were received from persons contending that adequate shipping service or alternate U.S. flag vessels were available to CCT. Comments were also received questioning the authority of the Commandant to grant the waiver to the M/V *Lionheart*. Several persons requested extension of the comment period and that a hearing be held.

Comments were received that the M/V *Lionheart* is not safe and that admitting the vessel to U.S. registry will place other U.S. flag vessels that are in full compliance with U.S. law at a disadvantage. The order suspends the requirement of certain U.S. laws concerning survey, inspection, and measurement but does not affect other laws. The vessel is in compliance with the Convention for the Safety of Life at Sea, 1960, to which the United States is a party. In addition the suspension is for a limited period of time, until new vessels currently being built in the United States can be placed in service, and the M/V *Lionheart* will be manned as required by U.S law.

The Coast Guard has considered the objections to granting the suspension and the requests for additional time or a hearing. The circumstances require immediate action. If the suspension is to be effective in restoring the disrupted trade, the M/V *Lionheart* needs to be placed in service as a U.S. flag vessel as soon as possible. The Coast Guard has determined that it does have the authority to grant the order requested.

In consideration of the foregoing, the Commandant, U.S. Coast Guard has issued the following Order:

"It has been determined that the needs of the foreign commerce of the United States between the United States and Ecuador require this action. Therefore, it is ordered that the provisions of law requiring survey, inspection, and measurement by officers of the United States, as contained in 46 U.S.C. 71, 361, 367 and 494, are hereby suspended, through June 30, 1979 for the M/V *Lionheart*, provided the vessel is engaged solely in the United States-Ecuador trade. After that date, these provisions of law shall become effective and compliance by the vessel will be required."

(46 U.S.C. 82; 49 U.S.C. 1655(b)(1); E.O. 10289; and 49 CFR 1.45(a)).

Dated: October 27, 1978.

J. B. HAYES,
Admiral, U.S. Coast Guard.

[FR Doc. 78-30892 Filed 11-1-78; 8:45 am]

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[4910-06-M]

Federal Railroad Administration

[FRA Waiver Petition Docket HS-78-9]

AROOSTOOK VALLEY RAILROAD CO.

Petition for Exemption From the Hours of Service Act

In accordance with 49 CFR §§ 211.41 and 211.9, notice is hereby given that the Aroostook Valley Railroad (AVR) has petitioned the Federal Railroad Administration (FRA) for an exemption from the Hours of Service Act (83 Stat. 464, Pub. L. 91-169, 45 U.S.C. 64a(e)). That petition requests that the AVR be granted authority to permit certain employees to continuously remain on duty for in excess of 12 hours.

The Hours of Service Act currently makes it unlawful for a railroad to require or permit specified employees to continuously remain on duty for a period in excess of 12 hours. However, the Hours of Service Act contains a provision that permits a railroad, which employs no more than 15 employees who are subject to the statute, to seek an exemption from this 12 hour limitation.

The AVR seeks this exemption so that it can permit certain employees to remain continuously on duty for periods not to exceed sixteen hours. The petitioner indicates that granting this exemption is in the public interest and will not adversly affect safety. Additionally, the petitioner asserts that it employs no more than 15 employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in this proceeding by submitting written views or comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. Communications concerning this proceeding should identify the Docket No., Docket No. HS-78-9, and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, Trans Point Building, 2100 Second Street, SW., Washington, D.C. 20590. Communications received before December 15, 1978, will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours in Room 4406, Trans Point Building, 2100 Second Street, SW., Washington, D.C. 20590.

AUTHORITY: Section 5 of the Hours of Service Act of 1969 (45 U.S.C. 64(a)); Sec. 1.49(d) of the regulations of the Office of the Secretary, 49 CFR 1.49(d).

Issued in Washington, D.C. on October 24, 1978.

ROBERT H. WRIGHT,
Acting Chairman,
Railroad Safety Board.

[FR Doc. 78-30936 Filed 11-1-78; 8:45 am]

[4910-06-M]

[FRA Waiver Petition Docket HS-78-10]

BELFAST AND MOOSEHEAD LAKE RAILROAD CO.

Petition for Exemption From the Hours of Service Act

In accordance with 49 CFR §§ 211.41 and 211.9, notice is hereby given that the Belfast and Moosehead Lake Railroad (B&ML) has petitioned the Federal Railroad Administration (FRA) for an exemption from the Hours of Service Act (83 Stat. 464, Pub. L. 91-169, 45 U.S.C. 64a(e)). That petition requests that the B&ML be granted authority to permit certain employees to continuously remain on duty for in excess of 12 hours.

The Hours of Service Act currently makes it unlawful for a railroad to require or permit specified employees to continuously remain on duty for a period in excess of 12 hours. However, the Hours of Service Act contains a provision that permits a railroad, which employs no more than 15 employees who are subject to the statute, to seek an exemption from this 12 hour limitation.

The B&ML seeks this exemption so that it can permit certain employees to remain continuously on duty for periods not to exceed 16 hours. The petitioner indicates that granting this exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs no more than 15 employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in this proceeding by submitting written views or comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. Communications concerning this proceeding should identify the Docket No., Docket No. HS-78-10, and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, Trans Point Building, 2100 Second Street SW., Washington, D.C. 20590.

AUTHORITY: Section 5 of the Hours of Service Act of 1969 (45 U.S.C. 64a); Sec. 1.49(d) of the regulations of the Office of the Secretary, 49 CFR 1.49(d).

Issued in Washington, D.C. on October 24, 1978.

ROBERT H. WRIGHT,
Acting Chairman,
Railroad Safety Board.

[FR Doc. 78-30937 Filed 11-1-78; 8:45 am]

[4910-60-M]

Materials Transportation Bureau

TANK CARS

List of Excepted Thermal Protection Systems

AGENCY: Materials Transportation Bureau, Research and Special Programs Administration, DOT.

ACTION: Announcement of current list of excepted thermal protection systems for DOT Specification 112 and 114 tank cars.

SUMMARY: This notice announces the current list of thermal protection systems which may be used without further test verification on DOT Specification 112 and 114 tank cars to satisfy thermal protection retrofit requirements published under Docket HM-144. The current list includes the four systems previously announced and adds systems 5 through 7.

ADDRESS: The current list of excepted systems and the test results upon which the list is based are available for public viewing during regular business hours in the Dockets Branch, room 6500, Trans Point Building, 2100 Second Street, SW., Washington, D.C. 20590, 202-426-2077.

FOR FURTHER INFORMATION CONTACT:

William F. Black, Office of Safety, Federal Railroad Administration, 202-426-2748.

SUPPLEMENTARY INFORMATION: The thermal protection systems listed herein do not require further test verification under § 179.105-4(d) and (e), Title 49, Code of Federal Regulations (49 CFR), because they have been shown to meet those requirements by tests conducted at the Federal Railroad Administration's Transportation Test Center in Pueblo, Colo. Systems 1 through 4 were listed in the preamble to the final rule which imposed certain retrofit requirements on the use of DOT Specifcation 112 and 114 tank cars (42 FR 46306, September 15, 1977). Editorial changes to systems 1, correcting the manufacturer's name, and 3, correcting the name of a component material, were made early this year (43 FR 2180, January 16, 1978. Systems 5 through 7 are new and have not been previously announced.

The list remains open for additional entries. Systems that may be submitted to the Materials Transportation Bureau in the future and which are shown to meet the test specifications in 49 CFR 179.105-4 will also be excepted from the test verification requirements and added to this list. The current list follows:

LIST OF EXCEPTED THERMAL PROTECTION SYSTEMS FOR DOT SPECIFICATION 112 AND 114 TANK CARS

1. One inch minimum thickness Deltaboard (12 pounds per cubic foot, 15 pounds per cubic foot) encased in an 11-gauge steel jacket. Manufacturer (Deltaboard), Rock Wool Manufacturing Co., Leeds, Ala.

2. The tank car external surface is prepared by sandblasting to remove all existing paint, primer, grease and loose material. Two mils (dry) of Thermolag primer-351 are applied to the clean surface. One hundred sixty-five mils (dry) of Thermolag 330-1 subliming compound is next applied to the primed surface. Five mils (dry) of Thermolag topcoat 350 is applied to the sublining coating. Manufacturer, TSI-Inc., St. Louis, Mo.

3. The tank car external surface is prepared by sandblasting to remove all existing paint, primer, oil, grease, and loose materials. Three mils (dry) of primer (Military Standard MIL-P-52192B) are applied to the clean surface. Chicken wire (1" hexagonal, 22-gauge) is next attached to the primed surface. One hundred eighty mils (dry) of Chartek 59 thermal coating is then applied. Three mils (dry) of a topcoat (AMERCOAT 383) is then applied. Topcoat manufacturer Ameron, Brea, Calif. Manufacturer (Chartek 59), Avco, Lowell, Mass.

4. The tank car external surface is prepared by sandblasting to remove all existing paint, primer, grease and loose material. Seven-tenths mil (dry) of primer (a 2:1 ratio by volume of 513-003 base component and 9110 x 350 activator component) is applied to the clean surface. Two hundred thirty-five mils (dry) of thermal shield coating (a nominal 5:1 ratio by volume of 821 x 359 base component and 9110 x 407 activator component) is next applied to the primed surface. Two mils (dry) of topcoat (a 2:1 ratio by volume of 821 x 317 base component and 9110 x 376 activator component) is applied to the thermal shield material. Manufacturer De Soto, Inc., Des Plaines, Ill.

5. One inch minimum thickness of Kaowool Blanket B (minimum density of 4.5 pounds per cubic foot) encased in an 11-gauge steel jacket. Manufacturer (Kawool Blanket B), Babcock & Wilcox, Augusta, Ga.

6. Sixty-five one hundredths inch minimum thickness Fiberfrax tank car insulation (minimum density of 4.5 pounds per cubic foot) encased in an 11-gauge steel jacket. Manufacturer (Fiberfrax), Carborundum Company, Niagara Falls, N.Y.

7. One inch minimum thickness of HILBLOK 1212 (minimum density of 12.5 pounds per cubic foot) encased in an 11-gauge steel jacket. Manufacturer (HILBLOK 1212) Holmes Insulations Limited, Toronto, Ontario, Canada.

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53(e) and paragraph (a) of App. A to Part 106.)

Issued in Washington, D.C., on October 25, 1978.

ALAN I. ROBERTS,
Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 30734 Filed 11-1-78; 8:45 am]

[4910-60-M]

OFFICE OF HAZARDOUS MATERIALS REGULATION

Grants and Denials of Applications for Exemptions

AGENCY: Materials Transportation Bureau, DOT.

ACTION: Notice of grants and denials of applications for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations 949 CFR part 107, Subpart B), notice is hereby given of the exemptions granted September 1978. The modes of transportation involved are identified by a number in the "Nature of Exemption Thereof" portion of the table below as follows: 1 Motor vehicle, 2 Rail freight, 3 Cargo-vessel, 4 Cargo-only aircraft, 5 Passenger-carrying aircraft.

Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
		RENEWALS		
2981-X	DOT-E 2981	Austin Powder Co., Cleveland, Ohio	49 CFR 173.64(a), 173.93(a)	To ship a certain class A or class B explosives in non-DOT specification polyethylene bag/fiberboard tube packagings. (Modes 1 and 2.)
3004-X	DOT-E 3004	Air Products and Chemical Co., Inc., Allentown, Pa.	49 CFR 173.302,175.3	To ship certain compressed gases in non-DOT-specification cylinders. (Modes 1, 2, 4, 5.)
3768-X	DOT-E 3768	Minerec Corp., Baltimore, Md.; PPG Industries, Inc., Pittsburgh, Pa.	49 CFR 173.119, 173.245,173.288	To ship certain certain flammable and corrosive liquids in DOT specification MC-304, MC-307 and MC-312 cargo tanks. (Mode 1.)
4554-X	DOT-E 4554	B. F. Goodrich Co., Cleveland, Ohio	49 CFR 172.101, 173.315(a) (1)	To ship liquefied ethylene in a non-DOT-specification cargo tank designed and constructed in accordance with section VIII of the ASME Code. (Mode 1.)
5248-P	DOT-E 5248	University of California, Livermore, Calif.	49 CFR 173.389(g), 175.3	To become a party to Exemption 5248. (See Application 5248-X.) (Modes 1, 2, 4, 5.)
5322-X	DOT-E 5322	San Diego Gas and Electric Co., San Diego, Calif.	49 CFR 172.101, 173.315(a)	To ship certain flammable gases in non-DOT specification cargo tanks designed and constructed in accordance with section VIII of the ASME Code. (Mode 1.)
5701-X	DOT-E 5701	E. I. du Pont de Nemours & Co., Inc., Wilmington, Del.	49 CFR 173.268(a)(3)	To ship a certain oxidizer in a non-DOT-specification cargo tank made in compliance with DOT Specification MC-312 with certain exceptions. (Mode 1.)
5736-X	DOT-E 5736	El Paso Products Co., Bartlesville, Okla.	49 CFR 172.101, 173.314(c)	To ship a flammable gas in non-DOT-specification tank car tanks. (Modes 2, 3.)
6111-X	DOT-E 6111	Liquid Carbonic Corp., Chicago, Ill.	49 CFR 173.315(a)	To ship a flammable gas in a non-DOT-specification cargo tank designed and constructed in accordance with section VIII of ASME Code. (Mode 1.)
6234-X	DOT-E 6234	HASA Chemicals, Inc., Saugus, Calif.	49 CFR 173.154(a), 173.217	To become a party to Exemption 6234. (See Application No. 6234-X.) (Modes 1, 3.)
6305-X	DOT-E 6305	Ensign Bickford Co., Simsbury, Conn.	49 CFR 173.113(a)(1)	To ship a certain class C explosive in DOT Specification 23f35 fiberboard boxes. (Modes 1, 2.)

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Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
		RENEWALS—Continued		
6309-X	DOT-E 6309	General Latex and Chemical Corp., Dalton, Ga.	49 CFR 173.315(a)(1)	To ship certain nonpoisonous, nonflammable compressed gases in a non-DOT-specification steel portable tank. (Modes 1, 2)
6536-X	DOT-E 6536	Bay State Gas Co., Canton, Mass.; New Jersey Natural Gas Co., Asbury Park, N.J.; Public Service Electric & Gas Co., Newark, N.J.; Philadelphia Gas Works, Philadelphia, Pa.; SunOlin Chemical Co., Claymont, Del.	49 CFR 172.101, 173.315(a)	To ship certain flammable and nonflammable gases in a non-DOT-specification cargo tank designed and constructed in accordance with section VIII of the ASME Code. (Mode 1.)
6536-P	DOT-E 6563	Southern Connecticut Gas Co., Bridgeport, Conn.; Valley Gas Co., Cumberland, R.I.	49 CFR 172.101, 173.315(a)	To become a party to Exemption 6536. (See Application No. 6536-X.) (Mode 1.)
6563-X	DOT-E 6563	Safety Labortories, Inc., Miami, Fla	49 CFR 173.302(a)(1), 175.3	To ship certain non-liquefied, nonflammable compressed gases in a non-DOT-specification steel cylinder made in compliance with DOT Specification 3E with certain exceptions. (Modes 1, 2, 3, 4, 5.)
6563-P	DOT-E 6563	Fenwal, Inc., Ashland, Mass	49 CFR 173.302(a)(1), 175.3	To become a party to Exemption 6563. (See Application No. 6563-X.) (Modes 1, 2, 3, 4, 5.)
6793-X	DOT-E 6793	Sea Containers, Inc., New York, N.Y	49 CFR Part 173; 46 CFR 90.05-35, 98.35-3.	To ship certain hazardous materials in a non-DOT-specification portable tank. (Modes 1, 2, 3.)
6805-X	DOT-E 6805	Union Carbide Corp., Tarrytown, N.Y.	49 CFR 173.301(d), 173.302(a)(3).	To ship a flammable compressed gas mixture in DOT Specification 3AAX steel cylinders. (Mode 1.)
6820-X	DOT-E 6820	Georgia-Pacific Corp., Montebello, Calif.	49 CFR 172.101, 173.217(a)	To ship a certain oxidizer in DOT Specification 12A and 12B fiberboard boxes. (Mode 1.)
6824-X	DOT-E 6824	Georgia-Pacific Corp., Los Angeles, Calif.	49 CFR 173.217(a)	To ship certain oxidizing materials in non-DOT polyethylene bottles/fiberboard box packaging. (Modes 1, 2, 3.)
6902-X	DOT-E 6902	Halocarbon Products Corp., Hackensack, N.J.	49 CFR 173.314(c), 179.300-15	To ship a certain liquefied non-flammable compressed gas in DOT Specification 110A800W multi-unit tank car tanks. (Modes 1, 2.)
6931-X	DOT-E 6931	Allied Chemical Corp., Morristown, N.J	49 CFR 173.245(a)(32)	To ship a certain corrosive liquid in insulated aluminum tank car tanks built to AAR201A80W, 105A100W or 105A300W specifications. (Mode 1.)
7013-X	DOT-E 7013	ASM Enterprises, Inc., Pine Bluff, Ark	49 CFR 173.315(a)(1)	To ship a certain flammable compressed gas in a non-DOT-specification cargo tank. (Mode 1.)
7015-X	DOT-E 7015	Cities Service Co., Tulsa, Okla	49 CFR 173.315(a)(1), 172.101	To ship a nonflammable gas in a non-DOT-specification portable tank. (Modes 1, 2, 3.)
7052-P	DOT-E 7052	National Aeronautics and Space Administration, Washington, D.C.; Sanyo Electric Inc., Moonachie, N.J.; The Boeing Co., Seattle, Wash.	49 CFR 173.206(c)(1), 175.3	To become a party to Exemption 7052. (See Application No. 7052-X). (Modes 1, 2, 3, 4.)
7070-X	DOT-E 7070	Lea-Ronal, Inc., Freeport, N.Y.; Englehardt Industries, Providence, R.I.; American Chemical and Refining Co., Waterbury, Conn.; Technic, Inc., Cranston, R.I.; Auric Corp., Newark, N.J.; Oxy Metal Industries Corp., Nutley, N.J.	49 CFR 173.365, 175.3, 175.630	To ship a poison B solid in plastic jars overpacked in metal cans comparable to DOT Specification 2N. (Modes 4, 5.)
7503-X	DOT-E 7503	Orval Tank Containers, Paris, France; Lowaco, S.A., Geneva, Switzerland.	46 CFR 90.05-35; 49 CFR 172.101, 173.119, 173.141, 173.245(a), 173.295(a), 173.346(a).	To ship certain hazardous materials in a non-DOT-specification IMCO Type 1 portable tank. (Modes 1, 3.)
7544-X	DOT-E 7544	Eastman Kodak Co., Rochester, N.Y	49 CFR 173.245, 173.249, 173.272.	To ship certain corrosive liquids in a DOT-2U/non-DOT-fiberboard box packaging. (Modes 1, 2, 3.)
7628-X	DOT-E 7628	Chemtech Industries, Inc., St. Louis, Mo.	49 CFR 173.264(a)(11), 173.265(b)(3).	To ship corrosive liquids in DOT Specification 111A100W-5 tank cars. (Mode 2.)
7629-X	DOT-E 7629	Eurotainer, Paris, France	49 CFR 173.119, 173.245, 173.268, 173.289; 46 CFR 90.06-35, 98.35-3.	To ship certain hazardous materials in non-DOT-specification portable tanks. (Modes 1, 3.)
7680-X	DOT-E 7680	Sterling Drug Inc., New York, N.Y	49 CFR 173.206(a)(2)	To ship a certain flammable solid in a non-DOT-specification reusable stainless steel drum. (Mode 1.)
7701-P	DOT-E 7701	Transcontainer Leasing, S.A., Paris, France.	49 CFR 173.119(b), 173.125	To become a party to Exemption No. 7701 (See Application No. 7701-X). (Modes 1, 2, 3.)
7730-X	DOT-E 7730	Western Co. of North America, Fort Worth, Tex.	49 CFR 178.343-5(b)(2)(ii)	To ship certain corrosive materials in a DOT Specification MC-312 cargo tank with certain exceptions. (Mode 1.)
7772-X	DOT-E 7772	Ugine Kuhlmann, Paris, France	49 CFR Part 173, Subpart D	To ship certain flammable liquids in non-DOT-specification portable tanks. (Modes 1, 3.)
7796-X	DOT-E 7796	Dow Chemical Co., Midland, Mich	49 CFR 173.357	To ship chloropicrin in non-DOT-specification metal cans overpacked in a DOT-12B fiberboard box. (Modes 1, 2, 3.)
7811-X	DOT-E 7811	Burdick & Johnson Laboratories, Inc., Muskegon, Mich.	49 CFR 173.119(a)(23), 173.245(a)(18), 175.3, 178.210.	To ship certain corrosive liquids and flammable liquids in a DOT Specification 12A corrugated fiberboard Box. (Modes 1, 2, 3, 4.)
7819-P	DOT-E 7819	Compagnie des Container Reservoirs, Neuilly-sur-Seine, France.	49 CFR Part 173; 46 CFR 90.05-35.	To become a party to Exemption No. 7819. (See Application No. 7819-X). (Modes 1, 2, 3.)
7830-X	DOT-E 7830	Orval-Manutention, Paris, France	49 CFR 173.119, 173.125, 173.245, 173.346, 173.360, 46 CFR 90.05-35.	To ship certain hazardous materials in a non-DOT-specification IMCO Type 2 stainless steel portable tank. (Modes 1, 2, 3.)
7883-P	DOT-E 7883	RMI Co., Ashtabula, Ohio	49 CFR 173.31(c)	To become a party to Exemption No. 7883. (See Application No. 7883-X). (Mode 2.)
7897-P	DOT-E 7897	Trans Container Leasing Co., Paris, France.	49 CFR Part 173; 46 CFR 90.05-35.	To become a party to Exemption No. 7897. (See Application No. 7897-X). (Modes 1, 2, 3.)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
		RENEWALS—Continued		
7925-X	DOT-E 7925	A/S Cheminova, Lemvig, Denmark	49 CFR 173.245	To ship certain hazardous materials in a non-DOT-specification intermodal portable tank. (Modes 1, 2, 3.)
7938-P	DOT-E 7938	Transcontainer Leasing, S.A., Paris, France.	49 CFR Part 173	To become a party to Exemption No. 7938. (See Application No. 7938-N). (Modes 1, 3.)
		NEW EXEMPTIONS		
7869-N	DOT-E 7869	Oxy Metal Industries Corp., Morenci, Mich.	49 CFR 173.245, 178.253	To ship corrosive liquids in DOT Specification 57 portable tanks. (Mode 1.)
7885-N	DOT-E 7885	The Mercoid Corp., Chicago, Ill	49 CFR 173.123, 173.347, 173.1200, 175.3.	To ship certain hazardous materials (consumer commodity) in a non-DOT-specification, non-refillable packaging. (Modes 1, 2, 3, 4, 5.)
7909-N	DOT-E 7909	Dow Chemical Co., Midland, Mich	49 CFR 172.101, 49 CFR Part 173.	To manufacture, mark and sell a non-DOT-specification multi-composite packaging for shipment of poisonous liquids and solids. (Modes 1, 2, 4.)
7931-N	DOT-E 7931	Degussa Central Transport Dept., Frankfurt, West Germany	49 CFR 173.346	To ship a certain Class B poisonous liquids in non-DOT-specification portable tanks. (Modes 1, 2, 3.)
7935-N	DOT-E 7935	Industrial Cylinders Co., West Milwaukee, Wis.	49 CFR 172.203(a), 175.3, 178.37-5(a).	To manufacture, mark and sell DOT Specification 3AA cylinders having silicon content lower than specified for shipment of flammable gases, nonflammable gases and other hazardous materials. (Modes 1, 2, 3, 4, 5.)
7940-N	DOT-E 7940	Centennial Plastics, Inc., Camden, N.J	49 CFR Part 173, Subpart D; 49 CFR Part 173, Subpart F; 178.19.	To manufacture, mark and sell non-DOT-specification polyethylene drums for shipment of corrosive liquids, and flammable liquids. (Modes 1, 2, 3.)
7954-N	DOT-E 7954	Air Products & Chemicals, Inc., Allentown, Pa.	49 CFR 173.301(d)(2), 172.504	To ship a certain nonflammable gas mixture in DOT Specification 3A2400 or 3AA2400 cylinders. (Mode 1.)
7992-N	DOT-E 7992	Stauffer Chemical Co., Westport, Conn	49 CFR 173.225(b)(2), 178.251-1(b).	To ship a certain flammable solid in DOT Specification 56 metal portable tanks. (Modes 1, 2.)
7994-N	DOT-E 7994	Monsanto Co., St Louis, Mo	49 CFR 173.225(b)(2), 178.252-1(b).	To ship a certain flammable solid in DOT Specification 56 metal portable tanks. (Modes 1, 2.)
8001-N	DOT-E 8001	E. I. du Pont de Nemours & Co., Inc., Wilmington, Del.	49 CFR 173.31(a)(4), 173.119(m)(14).	To ship a acrylonitrile in DOT Specification 112A200W tank car. (Mode 2.)
8009-N	DOT-E 8009	Texas Gas Transport, Inc., Austin, Tex	49 CFR 172.101, 173.301(d)(2), 173.302(a)(3).	To ship compressed natural gas in DOT Specification 3AAX2400 cylinders. (Mode 1.)
8012-N	DOT-E 8012	Bignier Schmid-Laurent, Paris, France	49 CFR 173.260	To ship hydrogen peroxide in non-DOT-specification portable tanks. (Modes 1, 3.)
8017-N	DOT-E 8017	Air Products and Chemicals, Inc., Allentown, Pa.	49 CFR 173.302(a)(3), 173.301(d)(2).	To ship a flammable gas in DOT Specification 3AX, 3AAX or 3T cylinders (Mode 1.)
8019-N	DOT-E 8019	Robertshaw Controls Co., Indiana, Pa	49 CFR 173.206, 175.3, 178.205	To ship certain flammable solids in non-DOT-specification fiberboard boxes, (Modes 1, 2, 4.)
8029-N	DOT-E 8029	Weyerhauser Co., Tacoma, Wash	49 CFR 173.346(a)(26), 178.205	To manufacture, mark and sell non-DOT-specification corrugated fiberboard boxes for shipment of certain hazoradous materials. (Modes 1, 2.)
8034-N	DOT-E 8034	National Aeronautics and Space Administration, Washington, D.C.	49 CFR 173.21(b), 173.304, 173.395.	To ship solid methane and solid ammonia and certain radioactive materials in a non-DOT-specification container. (Mode 1.)
8037-N	DOT-E 8037	Mauser Packaging, Ltd., New York, N.Y	49 CFR 173.184, 173.127, 178.224.	To manufacture, mark and sell non-DOT-specification fiber drums for shipment of nitrocellulose, wet. (Modes 1, 2, 3.)
8051-N	DOT-E 8051	Mauser Packaging, Ltd., New York, NY	49 CFR Part 173, Subpart F; 178.19.	To manufacture, mark and sell non-DOT-specification polyethylene containers fur shipment of corrosive liquids. (Modes 1, 2, 3.)
		EMERGENCY EXEMPTIONS *Applications received and granted*		
EE8776-N	DOT-E 8076	Alaska International Air, Inc., Fairbanks, Alaska.	49 CFR 172.101, 175.3	To ship a corrosive material in DOT Specification 34 polyethylene containers. (Mode 4.)

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DENIALS

EE7970-N—Request by Dechert, Price & Rhoads, Washington, D.C.—For reconsideration of denial of an emergency application to ship limited quantities of compressed nitrogen gas in non-DOT-specification packagings, denied September 27, 1978.

7980-N—Request by Applied Equipment Co., Van Nuys, Calif.—To manufacture, mark and sell non-DOT-specification welded cylinders for shipment of nonflammable compressed gases, denied September 26, 1978.

7981-N—Request by Applied Equipment Co., Van Nuys, Calif.—To ship nonflammable gases in non-DOT-specification welded high-pressure cylinders made of PH 15-7 Mo corrosion resistant steel, denied September 29, 1978.

EE8005-P—Request by Intsel Corp., New York, N.Y.—For an emergency exemption to ship hydrogen peroxide solution in a non-DOT-specification portable tank, denied September 12, 1978.

8007-N—Request by Lameyer Corp., Palm Beach, Fla.—To manufacture, mark and sell non-DOT-specification steel cylinders for shipment of compressed air, denied September 8, 1978.

8018-N—Request by R. O. Hull & Co., Cleveland, Ohio—To ship cyanide or cyanide mixtures in the same transport vehicle with acids or corrosive liquids via highway or rail, denied September 18, 1978.

EE8064-N—Request by GTE Sylvania Inc., Needham Heights, Mass.—For an emergency exemption to ship thionyl chloride electrolyte in DOT-5C drums, denied September 29, 1978.

NOTE.—Inadvertently omitted from the 43 FR 165 Notice of Grants and Denials issued during August 1978 is the following:

7413-X—Request by Chilton Metal Products Division, Chilton, Wis.—To amend DOT-E 7413 to authorize a reduction in the cylinder sidewall thickness, denied August 31, 1978.

J. R. GROTHE,
Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 78-30735 Filed 11-1-78; 8:45 am]

[4910-59-M]

National Highway Traffic Safety Administration

PUBLIC MEETING

The National Highway Traffic Safety Administration (NHTSA) will hold a meeting on December 13, 1978, to answer questions from the public and industry regarding the agency's safety, bumper, and consumer information programs. The meeting will be held in the Conference Room of the Environmental Protection Agency's Motor Vehicle Environmental Laboratory Facility, 2565 Plymouth Road, Ann Arbor, Mich. The meeting will begin at 10:30 a.m., run until 1:00 p.m., and reconvene at 2 p.m., if necessary.

This is the second meeting to be held in response to requests that the Agency has received over the last year for periodic public technical meetings modeled after those conducted by the Environmental Protection Agency (EPA) for its motor vehicle emissions program.

Given the differences between the EPA vehicle emissions program and the NHTSA vehicle safety and bumper programs, this agency has some reservations about the utility of its holding periodic public technical meetings. Specifically, EPA's program being geared to certifying industry compliance with statutory emissions standards generates many technical questions. The NHTSA program is geared to the administrative development of safety performance standards and consumer standards with the industry responsible for self-certification. While there are certainly some technical and interpretive questions generated by the NHTSA programs, there are also just as many policy questions raised regarding the justification for NHTSA's standards. The NHTSA believes that the rulemaking process is the appropriate medium through which to address such policy questions. To determine whether such periodic technical meetings can be sufficiently productive and mutually beneficial, the agency scheduled three meetings. The first was held on October 18, 1978. The second will be held on December 13, 1978; and the third on February 21, 1979.

Questions for the meetings must relate to the Agency's vehicle safety, bumper, or consumer information programs and be technical, interpretive or procedural in nature. The questions may relate to the research and development, rulemaking, or enforcement (including defects) phases of these programs. (Questions regarding this agency's fuel economy program will continue to be addressed at the EPA's meetings on vehicle emissions.) Questions for the meetings must be submitted in writing to William Marsh, NHTSA, Executive Secretary, Room 5215, 400 Seventh Street, SW., Washington, D.C. 20590. Only questions submitted in this manner and received not later than November 20 for the December 13 meeting and by January 29, 1979 for the February 21, 1979 meeting will be answered. The individual, group, or company submitting a question does not have to be present at the meeting for the question to be answered. A transcript will be made and will be available for public inspection in the NHTSA Technical Reference Section in Washington, D.C., within three weeks after the meeting.

Certain questions submitted for the October 18 meeting related to data and activities of NHTSA's National Center for Statistics and Analysis. These questions and others related to this subject received no later than November 20 will be answered at the December 13 meeting by a representative from that Center.

An agenda consisting of the questions submitted in a timely and proper fashion will be available at the NHTSA Technical Reference Section several days before the meeting and at the meeting itself.

Issued on October 27, 1978.

WM. H. MARSH,
Executive Secretary.

[FR Doc. 78-30959 Filed 11-1-78; 8:45 am]

[4910-59-M]

SANTA CLARA COUNTY COUNCIL FOR PUBLIC TRANSIT

Denial of Petition To Conduct Defect Proceeding

This notice sets forth the reasons for denial of a petition to commence a proceeding to determine whether a defect related to motor vehicle safety exists in a vehicle. This notice is published in accordance with section 124 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) which provides that the National Highway Traffic Safety Administration must grant or deny such petition within 120 days of receipt, and "If the Secretary denies such petition he shall publish in the FEDERAL REGISTER his reasons for such denial (section 124 (d)).

On April 15, 1978, Mr. M. Cowden, Liaison, Council for Public Transit, Santa Clara County, Calif., wrote the agency alleging problems in the propane fuel systems of Gillig and Twin Coach buses used in public transit. The agency elected to treat the letter as a petition to conduce a defect proceeding. NHTSA discovered that it was the sixth entity in the last year to assess fire hazards in propane-fueled vehicles, previous investigations having been conducted by, among others, the National Transportation Safety Board, DOT's Urban Mass Transit Administration, and the Fire Marshal's Office of Santa Clara County. NHTSA's own investigation, and those of the other agencies, determined that there was no information that any bus fires anywhere in the United States were directly caused by or significantly fueled by propane gas. Where fires had occurred, they appear to have been fueled by nonfuel system components located in the vicinity of the engine compartment, and attributable to inadequate vehicle maintenance or improper operation. In most instances engine oil had leaked from valve covers and air compressors on to overheated exhaust systems. In some

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instances engine overheating was caused by poor cooling because the buses were being operated with passenger loads and at sustained highway speeds beyond their design capabilities. Since there was no reasonable possibility that a notification and remedy order would be issued at the conclusion of the requested investigation Mr. Cowden's petition was denied.

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 318 (15 U.S.C. 1392, 1407); Sec. 106, Pub. L. 93-492, 88 Stat. 1482 (15 U.S.C. 1410, delegations of authority at 49 CFR 1.50 and 501.8).)

Issued on October 24, 1978.

FRANK BERNDT,
Associate Administrator for Enforcement.

[FR Doc. 78-30688 Filed 11-1-78; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

[Decisions Volume No. 42]

DECISION-NOTICE

Decided: October 18, 1978.

The following applications are governed by Special Rule 247 of the Commission's rules of practice (49 CFR § 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date notice of the application is published in the FEDERAL REGISTER. Failure to file a protest on or before December 4, 1978, will be considered as a waiver of opposition to the application. A protest under these rules should comply with Rule 247(e)(3) of the rules of practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding (as specifically noted below), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. A protestant should include a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describe in detail the method--whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named. If the protest includes a request for oral hearing, such request shall meet the requirements of section 247(e)(4) of the special rules and shall include the certification required in that section.

Section 247(f) provides, in part, that an applicant which does not intend timely to prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. Broadening amendments will not be accepted after the date of this publication.

Any authority granted may reflect administratively acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

We find:

With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the national transportation policy. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of the Interstate Commerce Act and the Commission's regulations. This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

It is ordered:

In the absence of legally sufficient protests, filed on or before December 4, 1978 (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, such duplication shall not be construed as conferring more than a single operating right.

By the Commission, Review Board No. 3, Members Parker, Fortier, and Hill.

H. G. HOMME, JR.,
Acting Secretary.

MC 2900 (Sub-340F), filed September 5, 1978. Applicant: RYDER TRUCK LINES, INC., 2050 Kings Road, P.O. Box 2408, Jacksonville, FL 32203. Representative: S. E. Sommers, Jr. (same address as applicant). To operate as a *common carrier*, by motor vehicle, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between junction U.S. Hwys 61 and 70, at Memphis, TN, and junction U.S. Hwys 165 and 80, at Monroe, LA; from junction U.S. Hwys 61 and 70, over U.S. Hwy 61 to junction U.S. Hwy 82, then over U.S. Hwy 82 to junction U.S. Hwy 165, then over U.S. Hwy 165 to junction U.S. Hwy 80, and return over the same route, serving no intermediate points, as an alternate route for operating convenience only, in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Jacksonville, FL, or Washington, DC.)

MC 5470 (Sub-157F), filed September 20, 1978. Applicant: TAJON, INC., a Delaware corporation, R.D. 5, Mercer, PA 16137. Representative: Brian L. Troiano, 918 16th Street NW., Washington, DC 20006. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *scrap metals and waste commodities*, in dump vehicles, between Ellwood City, PA, on the one hand, and, on the other, points in CT, IL, IN, KY, MA, MI, MO, NJ, NY, NC, OH, SC, VA, and WV. (Hearing site: Pittsburgh, PA, or Washington, DC.)

MC 11207 (Sub-445F), filed August 31, 1978. Applicant: DEATON, INC., a Delaware corporation, 317 Avenue W, P.O. Box 938, Birmingham, AL 35201. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Avenue, Washington, DC 20014. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *ground clay*, from Ripley, MS, to points in AL, AR, FL, GA, KY, LA, MO, NC, OK, SC, TN, TX, VA, AND WV. (Hearing site: Jackson, MS, or Birmingham, AL.)

MC 11207 (Sub-446F), filed August 31, 1978. Applicant: DEATON, INC., a Delaware corporation, 317 Avenue W., P.O. Box 938, Birmingham, AL 35201. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Avenue, Washington, DC 20014. To operate as a *common carrier*, by motor vehicles, over irregular routes, transporting *steel catwalk, aluminum catwalk, steel*

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articles, and aluminum articles (except commodities which because of size or weight require the use of special equipment), from Charlotte, NC, to points in AL, AR, FL, GA, KY, LA, MS, OK, TN, and TX. (Hearing site: Nashville, TN, or Charlotte, NC.)

MC 14286 (Sub-2F), filed August 4, 1978. Applicant: MCO TRANSPORT, INC., P.O. Box 611, Wilmington, NC 28401. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting (1) *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, those requiring special equipment, and motor vehicles), and (2) *containers, trailers, and trailer chassis*, between Wilmington, NC, on the one hand, and, on the other, points in Greenville and Spartanburg Counties, SC, restricted in (1) above to traffic having a prior or subsequent movement by water or rail. (Hearing site: Charlotte or Raleigh, NC.)

MC 28088 (Sub-41F), filed September 28, 1978. Applicant: NORTH & SOUTH LINES, INC., 2710 South Main Street, Harrisonburg, VA 22801. Representative: John R. Sims, Jr., 915 Pennsylvania Building, 425 13th Street NW., Washington, DC 20004. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *malt beverages*, from Fulton, NY, and Eden, NC, to points in Roanoke County, VA. (Hearing site: Roanoke, VA, or Washington, DC.)

NOTE.—Dual operations may be at issue in this proceeding.

MC 29886 (Sub-353F), filed August 17, 1978. Applicant: DALLAS & MAVIS FORWARDING CO., INC., 4314 39th Avenue, Kenosha, WI 53142. Representative: Paul F. Sullivan, 711 Washington Building, Washington, DC 20005. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *material handling equipment*, and *parts and accessories* for material handling equipment, from the facilities of K-D Manufacturing Co., at Waco, TX, to those points in the United States in and east of MN, IA, MO, AR, and LA. (Hearing site: Dallas, TX, or Washington, DC.)

MC 41406 (Sub-87F), filed August 16, 1978. Applicant: ARTIM TRANSPORTATION SYSTEM, INC., 7105 Kennedy Avenue, Hammond, IN 46323. Representative: Alki E. Scopelitis, 1301 Merchant Plaza, Indianapolis, IN 46204. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting (1) *building materials and roofing materials*, and (2) *materials and supplies* used in the installation of the commodities named in (1) above (except commodities in bulk), between the facilities of Bird & Son, Inc., at Chicago, IL, on the one hand, and, on the other, points in AZ, KS, KY, IA, MI, MN, MO, NE, ND, OH, OK, SD, and WI. (Hearing site: Indianapolis, IN, or Chicago, IL.)

MC 51146 (Sub-624F), filed August 16, 1978. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: John R. Patterson, 2480 East Commercial Boulevard, Fort Lauderdale, FL 33308. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *such commodities* as are dealt in or used by manufacturers and distributors of household appliances (except commodities in bulk), (1) between Dayton, OH, on the one hand, and, on the other, those points in the United States in and east of ND, SD, NE, KS, OK, and TX, and (2) from the facilities of Whirlpool Corp., at Evansville, IN, to points in AL, AR, GA, IL, IA, KY, MI, MN, MS, MO, NC, OH, SC, TN, and WI. (Hearing site: Chicago, IL.)

MC 52979 (Sub-18F), filed October 2, 1978. Applicant: HUNT TRUCK LINES, INC., West High Street, Rockwell City, IA 50579. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting (1) *grain handling equipment, grain conveying systems, and bucket elevators*, and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1) above, between Rockwell City, IA, on the one hand, and, on the other, points in IL, IN, IA, KS, MI, MN, MO, NE, ND, OH, SD, and WI. (Hearing site: Minneapolis, MN, or Omaha, NE.)

MC 83539 (Sub-508F), filed October 2, 1978. Applicant: C & H TRANSPORTATION CO., INC., P.O. Box 270535, Dallas, TX 75227. Representative: Thomas E. James (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting (1) *aluminum and aluminum products* (except commodities in bulk, in tank vehicles), and (2) *materials, supplies, and equipment* used in the manufacture of aluminum and aluminum products (except commodities in bulk, in tank vehicles), between the facilities of Alumax, Inc., in Berkeley County, SC, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: San Francisco, CA, or Dallas, TX.)

MC 90870(Sub-10F), filed August 28, 1978. Applicant: RIECHMANN ENTERPRISES, INC., a Missouri corporation, Route 2, Box 137, Alhambra, IL 62001. Representative: Cecil L. Goettsch, 1100 Des Moines Building, Des Moines, IA 50309. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting (1) *sheet piling, steel articles, and construction materials, equipment, and supplies* (except commodities in bulk), from the facilities of Mississippi Valley Equipment and Whisler Equipment, at or near St. Louis, MO, New Orleans, LA, Memphis, TN, and Houston, TX, to points in AR, AL, IL, IN, IA, KY, LA, MI, MS, MO, OH, OK, TN, TX, and WI; and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (1) above (except commodities in bulk), in the reverse direction. (Hearing site: St. Louis, MO, or Washington, DC.)

MC 90870 (Sub-12F), filed September 19, 1978. Applicant: RIECHMANN ENTERPRISES, INC., a Missouri corporation, Route 2, Box 137, Alhambra, IL 62001. Representative: Patrick B. Northup, 1100 Des Moines Building, Des Moines, IA 50309. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting (1) *iron and steel articles*, from points in Franklin and St. Francois Counties, MO, to points in AR, IL, IN, IA, KY, MI, OH, OK, TX, and WI; and (2) *materials, equipment, and supplies* used in the manufacture and distribution of iron and steel articles (except commodities in bulk), in the reverse direction. (Hearing site: St. Louis, MO, or Washington, DC.)

MC 93980 (Sub-76F), filed September 26, 1978. Applicant: VANCE TRUCKING CO., INC., P.O. Box 1119, Henderson, NC 27536. Representative: Edward G. Villalon, 1032 Pennsylvania Building, Pennsylvania Avenue & 13th Street NW., Washington, DC 20423. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *asbestos cement pipe, couplings, fittings, and such commodities as are used in the installation of the commodities named above* (except commodities in bulk), from the facilities of CertainTeed Corp., at Ambler PA, to points in AL, CT, DE, IL, IN, ME, MD, MA, MI, MS, NH, NJ, NY, RI, and VT. (Hearing site: Washington, DC.)

MC 94265 (Sub-281F), filed September 6, 1978. Applicant: BONNEY MOTOR EXPRESS, INC., P.O. Box 305, Route 460 West, Windsor, VA 23487. Representative: John J. Capo, Suite 212, 5299 Roswell Road NE., Atlanta, GA 30342. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *foodstuffs* (except in bulk), in vehicles equipped with mechanical refrigeration, from the facilities of J. H. Filbert, Inc., in Fulton, Clayton, DeKalb, Cobb, and Douglas Counties, GA, to

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points in KY, MD, NC, OH, SC, TN, VA, WV, and DC. (Hearing Site: Washington, DC, or Atlanta, GA.)

MC 95136 (Sub-25F), filed August 9, 1978. Applicant: ALLEN S. YEATMAN, INC., Box 383, Montross, VA 22520. Representative: Maxwell A. Howell, 1100 Investment Building, 1511 K Street NW., Washington, DC 20005. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *lumber, poles, piles, fence posts, and pallets* between points in Richmond, Westmoreland, Northumberland, Lancaster, and King George Counties, VA, on the one hand, and, on the other, points in CT, DE, GA, ME, MD, MA, NH, NJ, NY, NC, PA, RI, SC, TN, WV, and VT, (1) restricted against the transportation of wooden pallets from Northumberland and Richmond Counties, VA, to points in CT, DE, MD, MA, NJ, NY, and (2) against the transportation of lumber between points in Richmond and Westmoreland Counties, VA, on the one hand, and, on the other, points in DE, MD, NJ, NC, and PA. (Hearing site: Richmond, VA, or Washington, DC.)

MC 102616 (Sub-958F), filed August 14, 1978. Applicant: COASTAL TANK LINES, INC., 250 North Cleveland-Massillon Road, Akron, OH 44313. Representative: David F. McAllister (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *acids and chemicals*, in bulk, in tank vehicles, from the facilities of Mobay Chemical Corp., at or near Baytown, TX, to points in the United States (except AK and HI). (Hearing site: Houston, TX, or Philadelphia, PA.)

MC 102616 (Sub-959F), filed August 14, 1978. Applicant: COASTAL TANK LINES, INC., 250 North Cleveland-Massillon Road, Akron, OH 44313. Representative: David F. McAllister (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *hydrogen peroxide, in bulk, in tank vehicles, from South Charleston, WV, to points in TN, and Chattooga and Walker Counties, GA. (Hearing site: Philadelphia, PA, or Columbus, OH.)*

MC 103926 (Sub-75F), filed August 11, 1978. Applicant: W. T. MAYFIELD SONS TRUCKING CO., a corporation, P.O. Box 947, Mableton, GA 30059. Representative: K. Edward Wolcott, P.O. Box 872, Atlanta, Ga. 30301. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *commodities*, the transportation of which, because of size or weight, requires the use of special equipment (except building materials), *heavy machinery, and self-propelled articles*, between points in FL, on the one hand, and, on the other, points in AL, GA, KY, NC, SC, TN, and VA. (Hearing site: Tampa or Jacksonville, FL.)

MC 104896 (Sub-52F), filed August 11, 1978. Applicant: WOMELDORF, INC., P.O. Box G, Knox, PA 16232. Representative: James W. Paterson, 1200 Western Savings Bank Building, Philadelphia, PA 19107. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting (1) *glassware, containers, and closures* for containers, (2) *materials, equipment, and supplies* used in the manufacture and distribution of containers and closures, and (3) *such commodities* as are dealt in by retail stores and food business houses, between the facilities of General Warehousing of DuBois, Inc., at DuBois, PA, on the one hand, and, on the other, points in CT, DE, KY, ME, MD, MA, MI, NH, NJ, NY, OH, PA, RI, VT, WV, and DC, restricted to the transportation of traffic originating at and destined to the named points. (Hearing site: Philadelphia, PA, or Washington, DC.)

MC 105566 (Sub-179F), filed August 11, 1978. Applicant: SAM TANKSLEY TRUCKING, INC., P.O. Box 1120, Cape Girardeau, MO 63701. Representative: Thomas F. Kilroy, Suite 406, Executive Building, 6901 Old Keene Mill Road, Springfield, VA 22120. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in or manufactured by manufacturers of glass and glass products, from the facilities of Anchor Hacking Corp. at Lancaster, OH, to points in AZ, CA, ID, MT, NV, NM, OR, UT, WA, and WY. (Hearing site: Columbus, OH.)

MC 106398 (Sub-838F), filed September 29, 1978. Applicant: NATIONAL TRAILER CONVOY, INC., 525 South Main, Tulsa, OK 74103. Representative: Irvin Tull (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Buildings*, complete, knocked-down, or in sections, from the facilities of INRYCO, at or near Cullman, AL, to points in CO, ID, MT, ND, OK, OR, TX, UT, and WY. (Hearing site: Birmingham, AL.)

NOTE.—In view of the findings in MC 106398 (Sub-741) of which official notice is taken, the certificate to be issued in this proceeding will be limited to a period expiring 3 years from its effective date unless, prior to its expiration (but not more than 6 months nor less than 3 months prior to its expiration), applicant files a petition for the extension of said certificate and demonstrates that it has been conducting operations in full compliance with the terms and conditions of its certificate and with the requirements of the Interstate Commerce Act and applicable Commission regulations.

MC 107478 (Sub-37F), filed September 28, 1978. Applicant: OLD DOMINION FREIGHT LINE, INC., P.O. Box 2006, High Point, NC 27261. Representative: C. G. Pusey (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Metal cans*, from Tampa, FL, to Charlotte, NC. (Hearing site: Charlotte, NC, or Washington, DC.)

MC 107515 (Sub-1152F), filed June 2, 1978, and previously noticed in the FEDERAL REGISTER issue of July 25, 1978. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, Fifth Floor, Lenox Towers South, 3390 Peachtree Road, NE., Atlanta, GA 30326. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dairy products* (except in bulk), in vehicles equipped with mechanical refrigeration, from the facilities of Deep South Products, Inc., subsidiary of Winn-Dixie Stores, Inc., at Gainesville, GA, to Albuquerque, NM, Atlanta, GA, Charlotte and Raleigh, NC, Ft. Worth, TX, Greenville, SC, Jacksonville, Miami, Orlando, and Tampa, FL, Louisville, KY, Montgomery, Al, and New Orleans, LA. (Hearing site: Atlanta, GA.)

NOTE.—Dual operations may be at issue in this proceeding. This republication amends the destination territory.

MC 107541 (Sub-51F), filed August 21, 1978. Applicant: WASHINGTON-OREGON LUMBER FREIGHTERS, INC., 12925 Northeast Rockwell Drive, Vancouver, WA 98665. Representative: Edward A. Francom (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Pesticides* and *agricultural chemicals*, (except commodities in bulk), and (2) *applicators* for the commodities in (1) above, from points in Alameda, Contra Costa, and Solano Counties, CA, to those points in the United States in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Washington, DC, or San Francisco, CA.)

MC 108119 (Sub-98F), filed October 2, 1978. Applicant: E. L. MURPHY TRUCKING CO., a corporation, P.O. Box 43010, St. Paul, MN 55164. Representative: Andrew R. Clark, 1000 First National Bank Building, Minneapolis, MN 55402. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Sewage pumping equipment*, and (2) *parts, materials, and accessories* for sewage pumping equipment, from Tomah, WI, to points in AR, IL, IN, IA, KY, MD, MI, MO, NY, ND, OH, PA, SD, TN, VA, and WV. (Hearing site: Madison, WI, or Minneapolis, MN.)

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MC 108119 (Sub-99F), filed October 2, 1978. Applicant: E. L. MURPHY TRUCKING CO., a corporation, P.O. Box 43010, St. Paul, MN 55164. Representative: Andrew R. Clark, 1000 First National Bank Building, Minneapolis, MN 55402. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Cranes and bulk material handling systems*, which because of size or weight require special handling or the use of special equipment, and (2) *parts and accessories* for the commodities named in (1) above, between the facilities of PACECO, Division of Fruehauf Corporation, in Alameda County, CA, on the one hand, and, on the other, points in AL, FL, GA, LA, MS, and TX. (Hearing site: San Francisco, CA.)

MC 108119 (Sub-100F), filed October 2, 1978. Applicant: E. L. MURPHY TRUCKING CO., a corporation, P.O. Box 43010, St. Paul, MN 55164. Representative: Andrew R. Clark, 1000 First National Bank Building, Minneapolis, MN 55402. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Materials and supplies* used in the manufacture of axle assemblies (1) from points in GA, IL, IN, MI, OH, TN, and WI, to Seminole, OK, and (2) from Seminole, OK, to points in CA, GA, IN, OH, OR, and TN. (Hearing site: Oklahoma City or Tulsa, OK.)

MC 108119 (Sub-101F), filed October 2, 1978. Applicant: E. L. MURPHY TRUCKING CO., a corporation, P.O. Box 43010, St. Paul, MN 55164. Representative: Andrew R. Clark, 1000 First National Bank Building, Minneapolis, MN 55402. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Iron or steel fencing material*, and (2) *materials and equipment* used in the manufacture of the commodities in (1) above, (except commodities in bulk), between the facilities of Hurricane Steel Industries Co, at or near LaGrange, TX, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Houston or Dallas, TX.)

MC 108460 (Sub-68F), filed September 26, 1978. Applicant: PETROLEUM CARRIERS CO., a corporation, P.O. Box 762, Sioux Falls, SD 57101. Representative: Gary Mundhenke (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes transporting: *Fertilizer*, in bulk, from the facilities of Land O'Lakes, Agricultural Services Division, at or near Mason City, IA, to points in MN, NE, ND, SD, and WI. (Hearing site: Sioux Falls, SD or Sioux City, IA.)

NOTE.—Operational feasibility may be in issue.

MC 110988 (Sub-373F), filed September 29, 1978. Applicant: SCHNEIDER TANK LINES, INC., 4321 W. College Avenue, Appleton, WI 54911. Representative: Neil A. DuJardin, P.O. Box 2298, Green Bay, WI 54306. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals*, in bulk, and *food conveyor lubricants*, from Sharon, WI, to points in OH, IN, and WI; and (2) *dry animal glue*, from Oak Creek, WI, to Chicago, IL. (Hearing site: Chicago, IL.)

MC 111170 (Sub-250F), filed September 13, 1978. Applicant: WHEELING PIPE LINE, INC., P.O. Box 1718, El Dorado, AR 71730. Representative: Don A. Smith, P.O. Box 43, 510 N. Greenwood, Fort Smith, AR 72902. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Spent catalyst*, in bulk, from El Dorado, AR, to points in IN, LA, MS, NJ, OK, and TX; (2) *fertilizer*, from the facilities of Olin Corp., at North Little Rock, AR, to points in MS; and (3) *petroleum products*, in bulk, in tank vehicles, from El Dorado, AR, to points in Natchitoches County, LA, and points in CO, NY, TX, and WI. (Hearing site: Little rock, AR, or Memphis, TN.)

NOTE.—Operational feasibility may be at issue.

MC 111231 (Sub-246F), filed August 18, 1978. Applicant: JONES TRUCK LINES, INC., 610 East Emma Avenue, Springdale, AR 72764. Representative: Don A. Smith, P.O. Box 43, 510 North Greenwood, Fort Smith, AR 72902. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic articles*, and *materials, equipment, and supplies* used in the distribution of plastic articles, from the facilities of The Borden Chemical Co., Division of Borden, Inc., at Griffin, GA and Dallas, TX, to points in AL, AR, CO, IA, KS, LA, MO, MS, NE, OK, TN, and TX. (Hearing site: Washington, DC.)

MC 113267 (Sub-364F), filed August 28, 1978. Applicant: CENTRAL & SOUTHERN TRUCK LINES, INC., 3215 Tulane Rd., P.O. Box 30130 AMF, Memphis, TN 38130. Representative: Lawrence A. Fischer (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bags, bagging, and wrapping paper*, from New Orleans, LA, to points in IL, KS, NE, and OK. Condition: Pursuant to the Notice to the Parties in MC 113267 (Sub-353), et al., served July 5, 1978, this proceeding is being held open until such time as a determination of applicant's fitness has been made in MC 113267 (Sub-355). (Hearing site: Chicago, IL, or Memphis, TN.)

MC 113475 (Sub-29F), filed September 6, 1978. Applicant: RAWLINGS TRUCK LINE, INC., Emporia, VA 23847. Representative: Harry J. Jordan, 1000 16th Street NW., Washington, DC 20036. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Gypsum and gypsum products*, and (2) *materials and supplies* used in the installation and distribution of the commodities in (1) above, (a) from Milford, VA, to points in NC, (b) from Akron, NY, to points in MI, OH, VA, DE, NJ, MD, and PA, (c) from Wilmington, DE, to points in VA, NC, SC, OH, MI, and DC, and (d) from Buchanan, NY, to points in VA, MD, DE, NJ, PA, OH, MI, and DC. (Hearing site: Washington, DC, or Richmond, VA.)

MC 113855 (Sub-447F), filed September 6, 1978. Applicant: INTERNATIONAL TRANSPORT, INC., a North Dakota corporation, 2450 Marion Road SE., Rochester, MN 55901. Representative: Richard P. Anderson, 502 First National Bank Building, Fargo, ND 58102. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Ski lift components and equipment*, (except commodities in bulk), from Carson City, NV, to points in the United States (except AK and HI). (Hearing site: San Francisco, CA.)

MC 113855 (Sub-448F), filed September 11, 1978. Applicant: INTERNATIONAL TRANSPORT, INC., a North Dakota corporation, 2450 Marion Road SE., Rochester, MN 55901. Representative: James M. Sanden, 502 First National Bank Building, Fargo, ND 58102. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Rotary fans, machinery, and fabricated steel*, and (2) *parts, attachments, and accessories* for the commodities in (1) above, between the facilities of the Green Fan Co., at Beacon, NY, on the one hand, and, on the other, points in the United States (including AK but excluding HI.) (Hearing site: Washington, DC.)

MC 113855 (Sub-450F), filed September 11, 1978. Applicant: INTERNATIONAL TRANSPORT, INC., a North Dakota corporation, 2450 Marion Road SE., Rochester, MN 55901. Representative: Thomas J. Van Osdel, 502 First National Bank Building. Fargo, ND 58102. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Pre-cut log buildings*, and (2) *materials and supplies* used in the construction and installation of the commodities in (1) above, from points in Apache and Navajo Counties, AZ, to points in the Lower Peninsula of MI, OH, IN, KY, IL, IA, WI, and those in MO on and

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east of U.S. Hwy 65. (Hearing site: Phoenix, AZ.)

MC 114457 (Sub-429F), filed August 30, 1978. Applicant: DART TRANSIT CO., a corporation, 2102 University Avenue, St. Paul, MN 55114. Representative: James H. Wills (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from the facilities of Northwestern Steel and Wire Co., at Sterling and Rock Falls, IL, to points in CO, IA, KS, MN, MO, MT, ND, NE, SD, WI, and WY. (Hearing site: Chicago, IL, or St. Paul, MN.)

MC 114569 (Sub-247F), filed October 2, 1978. Applicant: SHAFFER TRUCKING, INC., P.O. Box 418, New Kingstown, PA 17072. Representative: N. L. Cummins (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, from New York, NY, and Secaucus, Port Newark, and Port Elizabeth, NJ, to points in AL, CO, GA, IL, IN, IA, KS, LA, MI, MN, MS, MO, NE, NC, OH, SC, TN, TX, and WI. (Hearing site: New York, NY, or Washington, DC.)

NOTE.—Dual operations may be at issue in this proceeding.

MC 115496 (Sub-99F), filed July 31, 1978. Applicant: LUMBER TRANSPORT, INC., P.O. Box 111, Cochran, GA 31014. Representative: Virgil H. Smith, Suite 12, 1587 Phoenix Boulevard, Atlanta, GA 30349. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Prefabricated buildings, knocked-down, and parts and attachments* for prefabricated buildings, (2) *materials and supplies* used in the installation of prefabricated buildings, from the facilities of Carolina Log Buildings, Inc., at Fletcher, NC, to points in AL, FL, GA, IL, IN, KY, LA, MS, SC, and TN. (Hearing site: Atlanta, GA, or Fletcher, NC.)

MC 115570 (Sub-13F), filed July 25, 1978, previously noticed in the FEDERAL REGISTER issue of September 7, 1978. Applicant: WALTER A. JUNGE, INC., 3818 SW. 84th Street, Tacoma, WA 98444. Representative: George R. LaBissonniere, 1100 Norton Building, Seattle, WA 98104. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Paper, paper articles, polyethlene film, plastics, and ink*, and (2) *equipment, materials, and supplies* used in the manufacture and distribution of the commodities named in (1) above, between points in CA, NV, OR, and WA, under continuing contracts with Portco Corp., of Vancouver, WA, and Western Kraft paper Group of Willamette Industries, Inc., of Beaverton, OR. (Hearing site: Portland, OR.)

NOTE.—This republication adds (1) the commodity of ink, and (2) the contracting shipper Western Kraft Paper Group.

MC 115570 (Sub-16F), filed September 22, 1978. Applicant: WALTER A. JUNGE, INC., 3818 SW. 84th Street, Tacoma, WA 98491. Representative: George R. LaBissonniere, 1100 Norton Building, Seattle, WA 98104. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper articles, and such commodities as are dealt in or use by manufacturers, distributors, and convertors of cellulose materials and products*, between points in CA, ID, NV, OR, and WA, under continuing contracts with Crown Zellerbach Corporation, of San Francisco, CA. (Hearing site: Seattle, WA.)

NOTE.—Dual operations may be at issue in this proceeding.

MC 115651 (Sub-47F), filed August 22, 1978. Applicant: KANEY TRANSPORTATION, INC., 7222 Cunningham Road, Rockford, IL 61102. Representative: E. STEPHEN HEISLEY, 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, DC 20001. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *asphalt*, in bulk, in tank vehicles, from the facilities of Amoco Oil Co., at or near Whiting, IN, to points in IL. (Hearing site: Chicago IL.)

MC 115654 (Sub-103F), filed August 1, 1978. Applicant: TENNESSEE CARTAGE CO., INC., P.O. Box 23193, Nashville, TN 37202. Representative: Henry E. Seaton, 915 Pennsylvania Building, 13th and Pennsylvania Avenue NW., Washington, DC 20004. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Peanuts and peanut products*, (except commodities in bulk), in vehicles equipped with mechanical refrigeration, from the facilities of The Kroger Co. d.b.a. Tara Foods, at Albany, GA, to points in TN, KY, OH, IN, IL, AR, and MO. (Hearing site: Cincinnati, OH.)

NOTE.—The certificate to be issued in this proceeding will be limited to a period expiring 3 years its date unless, prior to its expiration (but not less than 6 months prior to its expiration) applicant files a petition for the extension of said certificate and the commission approves it.

MC 115730 (Sub-56F), filed September 18, 1978. Applicant: THE MICKOW CORP., an Indiana corporation, 531 SW. Sixth Street, Des Moines, IA 50306. Representative: Cecil L. Goettsch, 1100 Des Moines Building, Des Moines, IA 50309. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Iron and steel articles*, from Union, MO, to points in CO, IL, IN, IA, MI, MN, NE, ND, and SD; and (2) *materials, equipment, and supplies* used in the manufacture and distribution of iron and steel articles, in the reverse direction. (Hearing site: Chicago, IL, or St. Louis, MO.)

MC 115730 (Sub-57F), filed September 22, 1978. Applicant: THE MICKOW CORP., an Indiana corporation, 531 SW. Sixth Street, Des Moines, IA 50306. Representative: Cecil L. Goettsch, 1100 Des Moines Building, Des Moines, IA 50309. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Fire hydrants, valves, castings, pipe, and fittings*, and (2) *such commodities as are used in the installation of the commodities named in (1) above*, from Oskaloosa, IA, to those points in the United States in and east of ND, SD, NE, CO, OK, and TX. (Hearing site: Des Moines, IA, or Washington, DC.)

MC 115730 (Sub-58F), filed September 22, 1978. Applicant: THE MICKOW CORP., an Indiana corporation, 531 SW. Sixth Street, Des Moines, IA 50306. Representative: Cecil L. Goettsch, 1100 Des Moines Building, Des Moines, IA 50309. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic pipe, plastic conduit, plastic and iron fittings and connections, valves, hydrants, gaskets, and such commodities as are used in the installation of plastic pipe and plastic conduit*, (except commodities as described in *Mercer Extension—Oil Field Commodities*, 74 M.C.. 459 (1946)), from the facilities of The Clow Corp., at or near Columbia, MO, to those points in the United States in and east of LA, AR, TN, KY, IL, IN, and MI. (Hearing site: St. Louis, MO, or Washington, DC.)

MC 115904 (Sub-117F), filed August 14, 1978. Applicant: GROVER TRUCKING CO., a corporation, 1710 West Broadway, Idaho Falls, ID 83401. Representative: Irene Warr, 430 Judge Building, Salt Lake City, UT 84111. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Masonry articles* (except in bulk), and *materials, equipment, and supplies* used in the manufacture, distribution, and installation of masonry articles (except commodities in bulk), between the facilities of West Con Industries, at or near Tucson, AZ, on the one hand, and, on the other, points in OR, WA, CA, NV, UT, ID, MT, CO, and NM. (Hearing site: Phoenix, AZ, or Washington, DC.)

MC 117355 (Sub-10F), filed September 11, 1978. Applicant: JESSE A. KRONINGER, INC., a Delaware corporation, R.D. No. 1, Box 461, Mertz-

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town, PA 19539. Representative: S. Berne Smith, P.O. Box 1166, 100 Pine Street, Harrisburg, PA 17108. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Agricultural lime*, from the facilities of Eastern Industries, Inc., in Maxatawny Township, Berks County, PA, to points in NY. (Hearing site: Harrisburg, PA, or Washington, DC.)

MC 117786 (Sub-26F), filed July 31, 1978. Applicant: RILEY WHITTLE, INC., P.O. Box 19038, Phoenix, AZ 85009. Representative: Thomas F. Kilroy, Suite 406, Executive Building, 6901 Old Keene Mill Road, Springfield, VA 22150. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in or used by cosmetics manufacturers, from the facilities of Avon Products, Inc., at Springdale, OH, to Atlanta, GA. (Hearing site: Cincinnati, OH, or Washington, DC.)

MC 117940 (Sub-292F), filed September 25, 1978. Applicant: NATIONWIDE CARRIERS, INC., P.O. Box 104, Maple Plain, MN 55359. Representative: Allan L. Timmerman (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), from the facilities of (1) Houston Merchants Shippers Association, and (2) Dal-Worth Shippers Association, Inc., in GA, IL, MA, NJ, NC, and PA, to points in TX, restricted to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. Condition: The certificate issued here will be limited to 3 years from date of issue, unless, prior to its expiration (but not less than 6 months prior to its expiration), applicant files a petition for permanent extension of the certificate and the commission approves it. (Hearing site: Dallas or Houston, TX.)

MC 117940 (Sub-293F), filed September 25, 1978. Applicant: NATIONWIDE CARRIERS, INC., P.O. Box 104, Maple Plain, MN 55359. Representative: Allan L. Timmerman (Same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General Commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), from the facilities of Twin Cities Shippers Association, Inc., at Chicago, IL, to the facilities of Twin Cities Shippers Association, Inc., at or near Minneapolis and St. Paul, MN, restricted to the transportation of traffic (1) originating at the named origin facilities and destined to the named destination facilities, and (2) moving on bills of lading issued by freight forwarders. Condition: The certificate issued here will be limited to 3 years from its date of issue, unless, prior to its expiration (but not less than 6 months prior to its expiration), applicant files a petition for permanent extension of the certificate. (Hearing site: Chicago, IL.)

MC 118159 (Sub-292F), filed October 2, 1978. Applicant: NATIONAL REFRIGERATED TRANSPORT, INC., P.O. Box 51366, Dawson Station, Tulsa, OK 74151. Representative: Warren Troupe, 2480 E. Commercial Boulevard, Fort Lauderdale, FL 33308. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products*, from the facilities of Boise Cascade Corp., at Brownville, Beaver Falls, and Lowville, NY, Brattleboro, VT, West Dudley, MA, and Rumford, ME, to points in CA and those in the United States in and east of MN, IA, MO, AR, and TX. (Hearing site: Atlanta, GA.)

MC 118696 (Sub-18F), filed August 14, 1978. Applicant: FERREE FUNITURE EXPRESS, INC., 252 Wildwood Road, Hammond, IN 46324. Representative: Carl L. Steiner, 39 South La Salle Street, Chicago, IL 60603. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Carpet padding and mattress cores*, from Marion, IN, to points in IA. (Hearing site: Chicago, IL.)

MC 118989 (Sub-204F), filed October 2, 1978. Applicant: CONTAINER TRANSIT, INC., 5223 South 9th Street, Milwaukee, WI 53221. Representative: Albert A. Andrin, 180 North La Salle Street, Chicago, IL 60601. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as dealt in or used by manufacturers and distributors of containers, (except AK and HI). (Hearing site: Chicago, IL, or Washington, DC.)

MC 119441 (Sub-43F), filed August 21, 1978. Applicant: BAKER HI-WAY EXPRESS, INC., Box 506, Dover, OH 44622. Representative: Richard H. Brandon, 220 West Bridge Street, P.O. Box 97, Dublin, OH 43017. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Brick products* and *clay products*, from the facilities of Marion Brick Corp., at or near Clearfield and Bigler, PA, to those points in the United States in and east of MN, IA, KS, OK, and TX; and (2) *materials and supplies* used in the manufacture and distribution of the commodities named in (1) above, (except commodities in bulk), in the reverse direction. (Hearing site: Columbus, OH.)

MC 119656 (Sub-47F), filed August 10, 1978. Applicant: NORTH EXPRESS, INC., 219 Main Street, Winamac, IN 46996. Representative: Donald W. Smith, P.O. Box 40659, Indianapolis, IN 46240. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Canned goods*, from the facilities of Morgan Packing Co., Inc., at Austin and Brownstown, IN, to points in IL, MI, OH, and WI, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of canned goods (except commodities in bulk), in the reverse direction, restricted in (1) and (2) above to the transportation of traffic originating at the named origins and destined to the indicated points. (Hearing site: Indianapolis, IN.)

MC 119741 (Sub-107F), filed August 21, 1978. Applicant: GREEN FIELD TRANSPORT CO., INC., 1515 Third Avenue, NW., P.O. Box 1235, Fort Dodge, IA 50501. Representative: D. L. Robson (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pet foods*, in containers, from the facilities of Kal Kan Foods, Inc., at Columbus, OH, to points in CO, IL, IA, MO, NE, OK, and TX. (Hearing site: Columbus, OH.)

MC 119741 (Sub-108F), filed August 22, 1978. Applicant: GREEN FIELD TRANSPORT CO., INC., an IL corporation, 1515 Third Avenue, NW., P.O. Box 1235, Fort Dodge, IA 50501. Representative: D. L. Robson, P.O. Box 1235, Fort Dodge, IA 50501. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Confectionery*, from the facilities of R. M. Palmer Co., at or near West Reading and Wyomissing, PA, to Chicago, IL, St. Louis and Kansas City, MO, Omaha, NE, Denver, CO, Detroit, MI, Indianapolis, IN, and Minneapolis, MN. (Hearing site: Philadelphia, PA.)

MC 123048 (Sub-414F), filed September 18, 1978. Applicant: DIAMOND TRANSPORTATION SYSTEM, INC., 5021 21st Street, Racine, WI 53406. Representative: John L. Bruemmer, 121 West Doty Street, Madison, WI 53703. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers, rollers, and ramps*, from Arlington and Mansfield, TX, to points in the United States (except AK and HI). (Hearing site: Dallas, TX, or Washington, DC.)

MC 123048 (Sub-415F), filed September 18, 1978. Applicant: DIAMOND TRANSPORTATION SYSTEM, INC., 5021 21st Street, Racine, WI 53406. Representative: John L. Bruemmer, 121 West Doty Street, Madison, WI 53703. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Air handling machinery, air handling equipment, blowers, fans, and housings*, (2) *attachments, accessories, and parts* for the commodities in (1) above, and (3) *materials and supplies* used in the manufacture, assembly, and installation of the commodities in (1) and (2) above, between the facilities of Novenco, Inc., at or near Springfield, IL, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Springfield or Chicago, IL.)

MC 123048 (Sub-416F), filed September 20, 1978. Applicant: DIAMOND TRANSPORTATION SYSTEM, INC., 5021 21st Street, Racine, WI 53406. Representative: John L. Bruemmer, 121 West Doty Street, Madison, WI 53703. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Precast modular crypt systems*, from Oshkosh, WI, and Bluffton, OH, to the ports of entry on the international boundary line between the United States and Canada, at Detroit and Port Huron, MI. Applicant states that shipments in foreign commerce are destined to points in ON and PQ, Canada. Condition: Prior receipt from applicant of an affidavit setting forth its complementary Canadian authority or explaining why no such Canadian authority is necessary. The restriction and conditions contained in the grant of authority in this proceeding are phrased in accordance with the policy statement entitled Notice to Interested Parties of New Requirements Concerning Applications for Operating Authority to Handle Traffic to and from points in Canada published in the FEDERAL REGISTER on December 5, 1974, and supplemented on November 18, 1975. The Commission is presently considering whether the policy statement should be modified, and is in communication with appropriate officials of Canada regarding this issue. If the policy statement is changed, appropriate notice will appear in the FEDERAL REGISTER and the Commission will consider all restrictions and conditions which were imposed pursuant to the prior policy statement, regardless of when the condition or restriction was imposed, as being null and void and having no further force or effect. (Hearing site: Chicago, IL, or Washington, DC.)

MC 123169 (Sub-12F), filed September 21, 1978. Applicant: McKEVITT TRUCKING, LTD., P.O. Box 2567, Thunder Bay, Ontario, Canada P7B 5G1. Representative: Val M. Higgins, 1000 First National Bank Building, Minneapolis, MN 55402. To operate as a *contract carrier*, motor vehicle, over

53703. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Air handling machinery, air handling equipment, blowers, fans, and housings*, (2) *attachments, accessories, and parts* for the commodities in (1) above, and (3) *materials and supplies* used in the manufacture, assembly, and installation of the commodities in (1) and (2) above, between the facilities of Novenco, Inc., at or near Springfield, IL, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Springfield or Chicago, IL.)

MC 123048 (Sub-416F), filed September 20, 1978. Applicant: DIAMOND TRANSPORTATION SYSTEM, INC., 5021 21st Street, Racine, WI 53406. Representative: John L. Bruemmer, 121 West Doty Street, Madison, WI 53703. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Precast modular crypt systems*, from Oshkosh, WI, and Bluffton, OH, to the ports of entry on the international boundary line between the United States and Canada, at Detroit and Port Huron, MI. Applicant states that shipments in foreign commerce are destined to points in ON and PQ, Canada. Condition: Prior receipt from applicant of an affidavit setting forth its complementary Canadian authority or explaining why no such Canadian authority is necessary. The restriction and conditions contained in the grant of authority in this proceeding are phrased in accordance with the policy statement entitled Notice to Interested Parties of New Requirements Concerning Applications for Operating Authority to Handle Traffic to and from points in Canada published in the FEDERAL REGISTER on December 5, 1974, and supplemented on November 18, 1975. The Commission is presently considering whether the policy statement should be modified, and is in communication with appropriate officials of Canada regarding this issue. If the policy statement is changed, appropriate notice will appear in the FEDERAL REGISTER and the Commission will consider all restrictions or conditions which were imposed pursuant to the prior policy statement, regardless of when the condition or restriction was imposed, as being null and void and having no force or effect. (Hearing site: Minneapolis, MN.)

MC 123407 (Sub-492F), filed August 28, 1978. Applicant: SAWYER TRANSPORT, INC., South Haven Square, U.S. Hwy 6, Valparaiso, IN 46383. Representative: H. E. Miller, Jr. (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic sewer pipe, plastic drain pipe, and plastic fittings*, from the facilities of Lapco Industries, Inc., at Columbus, OH, to those points in the United States in and east of MT, WY, CO, and NM. (Hearing site: Washington, DC.)

MC 123476 (Sub-36F), filed August 16, 1978. Applicant: CURTIS TRANSPORT, INC., P.O. Box 388, 23 Grandview Industrial Court, Arnold, MO 63010. Representative: David G. Dimit (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Expanded plastic products* (except commodities in bulk, in tank vehicles), between the facilities of Dow Chemical Co., at or near Allyns Point, CT, and Carteret, NJ, on the one hand, and, on the other, points in GA, FL, NC, and SC. (Hearing site: St. Louis or Jefferson City, MO).

MC 123778 (Sub-41F), filed September 26, 1978. Applicant: JALT CORP., d.b.a. UNITED NEWSPAPER DELIVERY SERVICE, 802 Raritan Center, Edison, NJ 08817. Representative: Morton E. Kiel, Suite 6193, 5 World Trade Center, New York, NY 10048. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Magazines, magazine parts, sections and inserts, and books*, (1) from Strasburg, VA, to Wilmington, DE, points in CT, NJ, those in NY on and east of NY Hwy 14, those in MD and PA on and east of U.S. Hwy 15, and DC, and (2) from Bristol, CT, to Wilmington, DE, points in NJ, those in NY on and east of NY Hwy 14, those in MD and PA on and east of U.S. Hwy 15, and DC, under continuing contracts with Newsweek, Inc., of New York, NY. (Hearing site: New York, NY.)

NOTE.—The restriction and conditions contained in the grant of authority in this proceeding are phrased in accordance with the policy statement entitled Notice to Interested Parties of New Requirements Concerning Applications for Operating Authority to Handle Traffic to and from points in Canada published in the FEDERAL REGISTER on December 5, 1974, and supplemented on November 18, 1975. The Commission is presently considering whether the policy statement should be modified, and is in communication with appropriate Canadian officials regarding the issue. If the policy statement is changed, appropriate notice will appear in the FEDERAL REGISTER and the Commission will consider all restrictions or conditions which were imposed pursuant to the prior policy statement, regardless of when the condition or restriction was imposed, as being null and void and having no force or effect. (Hearing site: Minneapolis, MN.)

MC 124328 (Sub-122F), filed September 29, 1978. Applicant: BRINK'S INC., a Delaware corporation, Thorndal Circle, Darien, CT 06820. Representative: Richard H. Streeter, 1729 H Street NW., Washington, DC 20006. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Currency, coin, articles of value, securities, food stamps, and cash letters*, between Charlotte, NC, on the one hand, and, on the other, points in SC, under continuing contracts with the Federal Reserve Bank of Richmond, of Richmond, VA. (Hearing site: Washington, DC.)

MC 125535 (Sub-7F), filed September 11, 1978. Applicant: JOHN SHARP TRUCKING CO., INC., P.O. Box 834, Cherry Hill, NJ 08003. Representative: Donald S. Helm (same address as applicant). To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Copper and copper products, and insulated tubing*, and (2) *material, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk, in tank vehicles), between the facilities of Cerro Copper Products Co., at or near East St. Louis, IL, on the one hand, and, on the other, points in the United States in and east of ND, SD, NE, KS, OK, and TX, under a continuing contract with Cerro Copper Products Co., of East St. Louis, IL. (Hearing site: St. Louis, MO.)

MC 125777 (Sub-229F), filed August 31, 1978. Applicant: JACK GRAY TRANSPORT, INC., 4600 East 15th Avenue, Gary, IN 46403. Representative: Edward G. Bazelon, 39 South LaSalle Street, Chicago, IL 60603. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Ferro alloys*, in dump vehicles, from Toledo, OH, to points in MI, OH, and PA. (Hearing site: Chicago, IL.)

MC 126118 (Sub-99F), filed September 29, 1978. Applicant: CRETE CARRIER CORP., P.O. Box 81228, Lincoln, NE 68501. Representative: Duane W. Acklie (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes,

transporting: (1) *Aluminum articles and cardboard articles,* and (2) *such commodities as are dealt in and used by manufacturers of antennas,* from Shelbina and Louisiana, MO, to points in NE. (Hearing site: Lincoln or Omaha, NE.).

NOTE.—Dual operations are at issue in this proceeding.

MC 126118 (Sub-100F), filed September 29, 1978. Applicant: CRETE CARRIER CORP., P.O. Box 81228, Lincoln, NE 68501. Representative: Duane W. Acklie (same address as applicant). To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Bread-making compounds, dessert preparations and prepared animal and poultry feed,* and (2) *agricultural commodities* otherwise exempt from economic regulation under section 203(b)(6) of the Interstate Commerce Act, when transported in mixed loads with the commodities in (1) above, from Appleton, WI, to points in CA, CO, CT, MA, MD, NJ, NY, OR, PA, UT, and WA. (Hearing site: San Francisco, CA, or Lincoln, NE.)

NOTE.—Dual operations may be at issue in this proceeding.

MC 126305 (Sub-96F), filed September 7, 1978. Applicant: BOYD BROTHERS TRANSPORTATION CO., INC., R.D. 1, Clayton, AL 36016. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Surplus iron and steel articles, and used equipment,* between Birmingham, AL, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Montgomery or Birmingham, AL.)

MC 126844 (Sub-54F), filed August 16, 1978. Applicant: R.D.S. TRUCKING CO., INC., 1713 North Main Road, Vineland, NJ 08360. Representative: Terrence D. Jones, 2033 K Street NW., Washington, DC 20006. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Foodstuffs,* from the facilities of Standard Brands, Inc., at or near Chattanooga, TN, to points in CO, CT, DE, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MO, NE, NH, NJ, NY, OH, PA, RI, VT, WV, WI, and DC. (Hearing site: Washington, DC.)

MC 127705 (Sub-63F), filed September 11, 1978. Applicant: KREVDA BROS. EXPRESS, INC., P.O. Box 68, Gas City, IN 46933. Representative: Donald W. Smith, P.O. Box 40695, Indianapolis, IN 46240. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Glass containers* (1) from Knox, Marienville, and Parker, PA, to the facilities of General Warehousing in Clearfield County, PA, and (2) from the facilities of General Warehousing in Clearfield County, PA, to points in NY, OH, MI, KY, IN, IL, WV, and WI. (Hearing site: Washington, DC.)

MC 128246 (Sub-30F), filed July 21, 1978. Applicant: SOUTHWEST TRUCK SERVICE, a corporation, P.O. Box A.D. Watsonville, CA 95076. Representative: William F. King, Suite 400, Overlook Building, 6121 Lincolnia Road, Alexandria, VA 22312. To operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: (1) *Cheese, cheese foods, and cheese spreads,* (a) from the facilities of Safeway Stores, Inc., at or near LaCrosse, WI, to the facilities of Safeway Stores, Inc., at or near Tempe, AZ, Little Rock AR, National City, Richmond, Sacramento, and Santa Fe Springs, CA, Denver, CO, Kansas City, MO, Kansas City, KS, Landover, MD, Butte, MT, Omaha, NE, Oklahoma City and Tulsa, OK, Clackamas, OR, El Paso, Garland, and Houston, TX, Salt Lake City, UT, Richmond, VA, and Bellevue and Spokane, WA, and (b) between the facilities of Safeway Stores, Inc., at or near Carthage, MO, and the facilities of Safeway Stores, Inc., at or near LaCrosse, WI, and (2) *Cheese,* from points in IA and MN, to the facilities of Safeway Stores, Inc., at or near LaCrosse, WI, under continuing contracts in (1) and (2) above, with Safeway Stores, Inc., of Oakland, CA. (Hearing site: Washington, DC.)

MC 129809 (Sub-13F), filed October 2, 1978. Applicant: A & H, INC., P.O. Box 346, Footville, WI 53537. Representative: Thomas J. Beener, One World Trade Center Suite 4959, New York, NY 10048. To operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except in bulk), from the facilities of Universal Foods Corp., (1) at or near Franklin Park, IL, and Peru, IN, to points in CT, MD, MA, NJ, NY, PA, and RI, and (2) at Milwaukee, WI to points in MD, under a continuing contract with Universal Foods Corp., of Milwaukee, WI.

NOTE.—Dual operations may be at issue in this proceeding. (Hearing site: Milwaukee, WI, or New York, NY.)

MC 133655 (Sub-121F), filed September 1, 1978. Applicant: TRANS-NATIONAL TRUCK, INC., Amarillo, TX 79120. Representative: Warren L. Troupe, 2480 East Commercial Boulevard, Fort Lauderdale, FL 33308. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Coverings, floor linoleum, cork, and felt-based synthetic plastic composition,* from Salem, NJ, to points in AR, LA, OK, and TX, and (2) *equipment, materials, and supplies* used in the manufacture and distribution of the commodities in (1) above, in the reverse direction. (Hearing site: Chicago, IL.)

MC 134375 (Sub-18F), filed September 8, 1978. Applicant: ELDON GRAVES, d.b.a. ELDON GRAVES TRUCKING, P.O. Box 9156 Yakima, WA 98909. Representative: Philip G. Skofstad, P.O. Box 594, Gresham, OR 97030. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Wood fiber products,* from points in WA to points in CA. (Hearing site: Portland, OR.)

MC 134477 (Sub-270F), filed August 31, 1978. Applicant: SCHANNO TRANSPORTATION, INC., 5 West Mendota Road, West St. Paul, MN 55118. Representative: Robert P. Sack, P.O. Box 6010 West St. Paul, MN 55118. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Meats, meat products and meat by products, and articles distributed by meat-packing houses,* as described in sections A and C of appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities of Dubuque Packing Co., Inc., at LeMars, IA, to points, in AL, GA, KY, NC, SC, and TN. (Hearing site: St. Paul, MN.)

MC 136086 (Sub-12F), filed July 28, 1978. Applicant: GUILEY TRUCKING, INC., 8615 Pecan Avenue, Fontana, CA 92335. Representative: Milton W. Flack, 4311 Wilshire Boulevard, Suite 300, Los Angeles, CA 90010. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Steel roofing, steel siding, and steel floor decking,* (a) from the facilities of Verco Manufacturing, Inc., at Phoenix, AZ, to points in OR, WA, and WY, (b) from the facilities of Verco Manufacturing, Inc., at Fontana, CA, to points in CO, NM, and TX, and (c) from the facilities of Verco Manufacturing, Inc., at Everett, WA, to points in AZ, CA, CD, NM, OR, TX, UT, and WY; (2) *coiled sheet steel,* (a) from points in CA, TX, and WA; to the facilities of Verco Manufacturing, Inc., at (i) Everett, WA, and (ii) Fontana, CA, and (b) from points in TX and WA to the facilities of Verco Manufacturing, Inc., at Phoenix, AZ; and (3) *dunnage,* from points in WA, OR, ID, and UT to the facilities of Verco Manufacturing, Inc., at (a) Phoexnia, AZ, (b) Fontana, CA, and (c) Everett, WA; under continuing contracts in (1), (2), and (3) above, with Verco Manufacturing, Inc., of Phoenix, AZ. (Hearing Site: Los Angeles, CA.)

MC 136315 (Sub-39F), filed September 11, 1978. Applicant: OLEN BURRAGE TRUCKING, INC., Route 9, Box 22-A, Philadelphia, MS 39350. Representative: Fred W. Johnson, Jr., 1500 Deposit Guaranty Plaza, P.O. Box 22628, Jackson, MS 39205. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Iron and steel articles,* from the facilities of Northwestern Steel and Wire Company, at or near Sterling and Rock Falls, IL, to points in AL, FL, GA, KY, LA, MS, and TN. (Hearing site: Jackson, MS, or Chicago, IL.)

NOTE.—Dual operations may be at issue in this proceeding.

MC 138157 (Sub-83F), filed August 30, 1978. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREIGHT, a California corporation, 2931 South Market Street, Chattanooga, TN 37410. Representative: Patrick E. Quinn, P.O. Box 9596, Chattanooga, TN 37412. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Glass containers,* from the facilities of Owens-Illinois, Inc., at or near Clarion, PA, to Tullahoma, TN. (Hearing site: Chicago, IL, or Washington, DC.)

NOTE.—Dual operations are at issue in this proceeding.

MC 138741 (Sub-50F), filed August 23, 1978. Applicant: AMERICAN CENTRAL TRANSPORT, INC., 2005 North Broadway, Joliet, IL 60435. Representative: Tom B. Kretsinger, 20 East Franklin, Liberty, MO 64068. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Lumber, lumber products, particleboard, and particleboard products,* from the facilities of Weyerhaeuser Co., at Adel, GA, to points in IL, IN, KY, MI, and OH. (Hearing site: Chicago, IL.)

MC 138875 (Sub-105F), filed September 12, 1978. Applicant: SHOEMAKER TRUCKING CO., a corporation, 11900 Franklin Road, Boise, ID 83705. Representative: F. L. Sigloh (same address as applicant). To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Frozen foods* (except in bulk), from the facilities of Ore-Ida Foods, Inc., at or near Greenville, MI, to points in AL, FL, GA, LA, and MS. (Hearing site: Boise, ID, or Washington, DC.)

MC 140829 (Sub-144F), filed October 2, 1978. Applicant: CARGO CONTRACT CARRIER CORP., a New Jersey corporation, P.O. Box 206, Sioux City, IA 51102. Representative: William J. Hanlon, 55 Madison Avenue, Morristown, NJ 07960. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except in bulk, in tank vehicles), from the facilities of Little Crow Foods, at or near Warsaw, IN, to Denver, CO, Ridgefield, NJ, and Memphis, TN, and points in AR, MD, and PA. (Hearing site: Washington, DC.)

NOTE.—Dual operations may be at issue in this proceeding.

MC 141136 (Sub-2F), filed July 13, 1978. Applicant: TRIANGLE EXPRESS, LTD., 5051 Still Creek Avenue, Burnaby, B.C., Canada V5C 4H6. Representative: George H. Hart, 1100 IBM Building, Seattle, WA 98101. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Contractors' materials and supplies* (except commodities in bulk), between ports of entry on the international boundary line between the United States and Canada, in WA, on the one hand, and, on the other, points in OR and WA, restricted to the transportation of traffic moving in foreign commerce from or to points in British Columbia, Canada. Condition: Prior receipt from applicant of an affidavit setting forth its complementary Canadian authority or explaining why no such Canadian authority is necessary. (Hearing site: Seattle, WA.)

NOTE.—The restriction and conditions contained in the grant of authority in this proceeding are phrased in accordance with the policy statement entitled Notice to Interested Parties of New Requirements Concerning Applications for Operating Authority to Handle Traffic to and from points in Canada published in the FEDERAL REGISTER on December 5, 1974, and supplemented on November 18, 1975. The Commission is presently considering whether the policy statement should be modified, and is in communication with appropriate Canadian officials regarding this issue. If the policy statement is changed, appropriate notice will appear in the FEDERAL REGISTER and the Commission will consider all restrictions or conditions which were imposed pursuant to the prior policy statement, regardless of when the condition or restriction was imposed, as being null and void and having no force or effect.

MC 141205 (Sub-9F), filed September 11, 1978. Applicant: HUSKY OIL TRANSPORTATION CO., a Delaware corporation, 600 South Cherry Street, Denver, CO 80222. Representative: F. Robert Reeder, P.O. Box 11898, Salt Lake City, UT 84147. To operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Crude oil, scrubber oil, and condensate,* from points in Sherman and Cheyenne Counties, KS, to points in Washington, Weld, and Adams Counties, CO, under a continuing contract with Husky Oil Co., of Denver, CO. (Hearing site: Denver, CO.)

NOTE.—The person or persons it appears may be engaged in common control must either file an application under Section 5(2) of the Interstate Commerce Act, or submit an affidavit indicating why such approval is unnecessary.

MC 141804 (Sub-121F), filed August 9, 1978. Applicant: WESTERN EXPRESS, Division of INTERSTATE RENTAL, INC., a Nevada corporation, P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman, P.O. Box 3488, Ontario, CA 91761. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Pumps, gasoline power measuring computers, compressors, automobile lifts, flow meters, valves, air stations, electrical controllers, service boxes, and machine parts,* from Greensboro, NC, to points in AZ, CA, CO, ID, MT, NV, NM, OR UT, WA, and WY. (Hearing site: Los Angeles or San Francisco, CA.)

MC 141804 (Sub-124F), filed August 14, 1978. Applicant: WESTERN EXPRESS, Division of INTERSTATE RENTAL, INC., a Nevada corporation, P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Electrical appliances, smoke detectors, signals, and electrical tools,* from Allentown, PA, to San Leandro and Garden Grove, CA, Tukwila, WA, Grand Prairie, TX, and Atlanta, GA. (Hearing site: Los Angeles or San Francisco, CA.)

MC 141804 (Sub-125F), filed August 14, 1978. Applicant: WESTERN EXPRESS, Division of INTERSTATE RENTAL, INC., a Nevada corporation, P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Theater chairs,* from Nashville, TN, to those points in the United States in and west of MN, IA, MO, AR, and LA (except AK and HI). (Hearing site: Los Angeles or San Francisco, CA.)

MC 142080 (Sub-3F), filed September 22, 1978. Applicant: LITE TRANSPORT, INC., One Monseigneur Hwy, Cambridge, MA 02138. Representative: Frederick T. O'Sullivan, P.O. Box 2184, Peabody, MA 01960. To operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Such commodities as are dealt in or used by manufacturers of glass* (except commodities in bulk, in tank vehicles), between Webster, MA, on the one hand, and, on the other, those points in the United States in and east of ND, SD, NE, KS, OK, and TX, under a continuing contract with Guardian Industries, Inc., of Webster, MA. (Hearing site: Boston, MA.)

MC 142508 (Sub-31F), filed September 21, 1978. Applicant: NATIONAL TRANSPORTATION, INC., P.O. Box 37465, 10810 South 144th Street, Omaha, NE 68137. Representative: Joseph Winter, Suite 930, 29 South LaSalle Street, Chicago, IL 60603. To operate as *common carrier,* by motor ve-

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hicle, over irregular routes, transporting: (1) *Motor vehicle parts and supplies* (except commodities in bulk), (2) *storage cabinets*, (3) *such commodities* as are dealt in by wholesale and retail hardware stores, department stores, agricultural supply stores, and motor vehicle parts and supplies stores (except commodities in bulk), and (4) *such commodities* as are dealt in by wholesale, retail, and chain grocery and food business houses (except commodities in bulk), from the facilities of the Washoe County Shippers Association, at Reno, NV, to points in AZ, CA, OR, and WA, restricted to the transportation of traffic moving on bills of lading of a shippers' association as defined in section 402 of the Interstate Commerce Act, and further restricted to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. (Hearing site: Washington, DC, or Omaha, NE.)

MC 142508 (Sub-33F), filed September 28, 1978. Applicant: NATIONAL TRANSPORTATION, INC., P.O. Box 37465, 10810 South 144th Street, Omaha, NE 68137. Representative: Joseph Winter, Suite 930, 29 South LaSalle Street, Chicago, IL 60603. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Motor vehicle parts and motor vehicle supplies*, (except commodities in bulk), and *storage cabinets*, from points in CT, NJ, NY, PA, and RI, to the facilities of Standard Motor Products, Inc., at Edwardsville, KS, and Reno, NV; (2) *such commodities* as are dealt in or used by manufacturers of motor vehicle parts and motor vehicle supplies (except commodities in bulk), from points in MI and OH to the facilities of Standard Motor Products, Inc., at New York, NY, and (3) *containers*, from the facilities of Standard Motor Products, Inc., at Edwardsville, KS, restricted in (1), (2), and (3) above to the transportation of traffic originating at the named origins and destined to the named destinations. (Hearing site: New York, NY, or Omaha, NE.)

MC 142508 (Sub-34F), filed September 29, 1978. Applicant: NATIONAL TRANSPORTATION, INC., P.O. Box 37465, 10810 South 144th Street, Omaha, NE 68137. Representative: Joseph Winter, Suite 930, 29 South LaSalle Street, Chicago, IL 60603. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products and meat byproducts, and articles distributed by meat-packing houses*, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities of Hyplains Dressed Beef, Inc., at or near Dodge City, KS to points in the United States (except AK, HI, and KS), restricted to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. (Hearing site: Omaha, NE.)

MC 142508 (Sub-35F), filed September 28, 1978. Applicant: NATIONAL TRANSPORTATION, INC., P.O. Box 37465, 10810 South 144th Street, Omaha, NE 68137. Representative: Lanny N. Fauss, P.O. Box 37096, Omaha, NE 68137. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Table sauces* (except in bulk, in tank vehicles, and frozen), (1) from the facilities of Kikkoman Foods, Inc., at Walworth, WI, to Kansas City, KS, Foxboro, MA, Dallas and Houston, TX, and points in Bronx County, NY, and (2) from Stockton, CA, to Walworth, WI, restricted to the transportation of traffic originating at the named origins and destined to the named destinations. (Hearing site: Milwaukee, WI, or Chicago, IL.)

MC 143436 (Sub-14F), filed August 11, 1978. Applicant: CONTROLLED TEMPERATURE TRANSIT, INC., 9049 Stonegate Road, Indianapolis, IN 46227. Representative: Stephen M. Gentry, 1500 Main Street, Speedway, IN 46224. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Confectionery, edible nuts, and dessert preparations*, in vehicles equipped with mechanical refrigeration, and (2) *toys, games, and paper bags*, from the facilities of Consolidated Products Systems, Inc., at or near Indianapolis, IN, to points in IA, KS, MN, MO, WV, and WI. (Hearing site: Indianapolis, IN, or Chicago, IL.)

MC 143478 (Sub-1F), filed September 28 1978. Applicant: G. P. THOMPSON ENTERPRISES, INC., P.O. Box 146, Midway AL 36053. Representative: Terry P. Wilson, 420 South Lawrence Street, Montgomery, AL 36104. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *meats, meat products and meat byproducts*, and *articles distributed by meat-packing houses*, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, (except hides, and commodities in bulk, in tank vehicles), from the facilities of Dixie Packers, Inc., in Madison County, FL, to the facilities of Winn Dixie Stores, Inc., at Montgomery, AL, Louisville, KY, Atlanta, GA, Raleigh and Charlotte, NC, Greenville, SC, New Orleans, LA, and Fort Worth, TX, under continuing contract(s) with Dixie Packers, Inc., of Madison, FL. (Hearing site: Tallahassee of Jacksonville, FL.)

MC 144239 (Sub-3F), filed October 2, 1978. Applicant: J. L. T. CORP., 233 Green Village Road, Green Village, NJ 07935. Representative: Charles J. Williams, 1815 Front Street, Scotch Plains, NJ 07076. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *cheesecake*, in vehicles equipped with mechanical refrigeration, from the facilities of Mother's Kitchen Inc., at Delran, NJ, to points in the United States (including AK but excluding HI), under a continuing contract with Mother's Kitchen Inc., of Delran, NJ. (Hearing site: New York, NY.)

MC 144359 (Sub-2F), filed October 2, 1978. Applicant: STANLEY G. DUNIGAN, d.b.a. DUNIGAN TRUCKING CO., 5721 Henderson Drive, Delaware, OH 43015. Representative: Danny L. Vogus, P.O. Box 1008, Columbus, OH 43216. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plastic signs and lighting fixtures*, from the facilities of Vacuform Corp., at Columbus, OH, to points in the United States (including AK, but excluding HI), under a continuing contract (Hearing site: Columbus, OH.)

MC 144570 (Sub-1F), filed September 29, 1978. Applicant: DIVERSIFIED CARRIERS, INC., 903 6th Street, NW., Rochester, MN 55901. Representative: Stevens K. Kuhlmann, P.O. Box 82028, Lincoln, NE 68501. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Meats; meat products, meat byproducts, and articles distributed by meat-packing houses*, as described in sections A and C of Appendix 1 to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, (except hides and commodities in bulk), from the facilities of Iowa Beef Processors, Inc., at or near Luverne, MN, and Fort Dodge, IA, to points in MA, NY, and PA, under a continuing contract with Iowa Beef Processors, Inc., of Dakota City, NE, (Hearing site: Omaha, NE, or Kansas City, MO.)

MC 144675 (Sub-1F), filed September 6, 1978. Applicant: LINCOLN FREIGHT FORWARDING CORP., 537 North Long Beach Road, Rockville Centre, NY 11570. Representative: Morton E. Kiel, Suite 6193, 5 World Trade Center, New York, NY 10048. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) from points in CA to points in the United States in and East of ND, SD, NE, CO, OK, and TX, and (2) from points in ME, VT, MA, RI, CT, NY, NJ, PA, DE, MD, VA, WV, OH, MI, IN, IL, KY, and TN, and DC, to points in MT, WY, CO, TX, NM, AZ, NV, UT, ID, WA, OR, and CA restricted to the transportation of traffic moving on freight forwarder bills of lading. (Hearing site: Los Angeles, CA.)

MC 144792 (Sub-2F), filed July 26, 1978. Applicant: CONTRACT TRANSPORTER, INC., P.O. Box 190, Lexington, NC 27292. Representative: Noah H. Huffstetler, III, P.O. Box 2058, Raleigh, NC 27602. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Metal cans*, between points in NC, under a continuing contract with Reynolds Metals Co., of Richmond, VA. (Hearing site: Raleigh or Charlotte, NC.)

MC 144827 (Sub-3F), filed August 30, 1978. Applicant: DELTA MOTOR FREIGHT, INC., 2877 Farrisview, P.O. Box 18423, Memphis, TN 38118. Representative: Billy R. Hallum (same address as applicant.) To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in by *department stores*, from points in CA to Ft. Smith and Little Rock, AR, Springfield, MO, Oklahoma City and Tusa, OK, and Jackson, Memphis, and Nashville, TN. (Hearing site: Nashville, TN.)

MC 144868 (Sub-1F), filed September 21, 1978. Applicant: DON SCOTT CHEVROLET-PONTIAC, INC., 9830 State Route 64, Whitehouse, OH 43571. Representative: Lynn H. Gressley, 14th Floor, National Bank Building, Toledo, OH 43604. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Motor vehicles*, by towing, between points in Lucas County, OH, on the one hand, and, on the other, points in IN and those in the lower peninsula of MI. (Hearing site: Detroit, MI, or Cleveland, OH.)

MC 144992F, filed September 8, 1978. Applicant: TRANSPORT MASKA INC., C.P. 92, Ste-Claire, Dorchester County, Canada, GOR 2VO. Representative: Guy Vaillancourt, 126 St. Pierre, Quebec, Canada, GLK 4A8. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Disc-brakes, pullies, parts* for disc-brakes and pullies, *rotors*, and *cast iron machine finished products*, from points on the International boundary line between the United States and Canada, at points in MI, to Detroit, Romulus, and Ypsilanti, MI, under continuing contracts with Fonderie Maska Inc., and Poulies Maska Enr., of Ste. Claire, Dorchester County in PQ, Canada, restricted to the transportation of traffic originating at or destined to PQ, Canada. Condition: Prior receipt from applicant of an affidavit setting forth its appropriate complementary Canadian authority or explaining why no such Canadian authority is necessary. (Hearing site: Detroit, MI.)

NOTE.—The restriction and conditions contained in the grant of authority in this proceeding are phrased in accordance with the policy statement entitled Notice to Interested Parties of New Requirements Concerning Applications for Operating Authority to Handle Traffic to and from points in Canada published in the FEDERAL REGISTER on December 5, 1974, and supplemented on November 18, 1975. The Commission is presently considering whether the policy statement should be modified, and is in communication with appropriate Canadian officials regarding this issue. If the policy statement is changed, appropriate notice will appear in the FEDERAL REGISTER and the Commission will consider all restrictions or conditions which were imposed pursuant to the prior policy statement, regardless of when the condition or restriction was imposed, as being null and void and having no force or effect.

MC 145018 (Sub-2F), filed September 29, 1978. Applicant: NORTHEAST DELIVERY, INC., P.O. Box 127, Taylor, PA 18517. Representative: Joseph F. Hoary, 121 South Main Street, Taylor, PA 18517. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except in bulk), from Lawton, MI, to points in AR, KS, LA, MS, MO, NM, OK, TN, and TX. (Hearing site: Washington, DC.)

MC 145041 (Sub-2F), filed August 23, 1978. Applicant: INTERMOUNTAIN TRANSPORT, INC., 22030 South Edgar, Carson, CA 90745. Representative: Milton W. Flack, 4311 Wilshire Boulvard, Suite 300, Los Angeles, CA 90010. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lime* (except in bulk), from the facilities of the U.S. Lime Division, The Flintkote Co., in Clark County, NV, to points in CA and AZ, (Hearing site: Los Angeles, CA.)

MC 145106 (Sub-4F), filed August 17, 1978. Applicant: EDINA CARTAGE CO., a corporation, 1000 Taylor Avenue, Flat River, MO 63601. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, DC 20001. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Glass containers*, from Joliet, IL, to points in CT, DE, KY, MA, MD, ME, NH, NJ, NY, OH, PA, RI, VA, VT, and DC, under continuing contracts with National Bottle Co., of Bala Cynwyd, PA. (Hearing site: Washington, DC.)

MC 145108 (Sub-2F), filed September 18, 1978. Applicant: BULLET EXPRESS, INC., 919 Third Avenue, New York, NY 10022. Representative: Jacob P. Billig, 2033 K Street NW., Washington, DC 20006. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Such commodities* as are dealt in or used by manufacturers of cosmetics, toilet preparations, health and grooming alds, and appliances, and (2) *such commodities* as are dealt in by retail drug stores, from Cheshire and Stamford, CT, Saddle Brook and Lakewood, NJ, and Garden City, NY, to Atlanta, GA, Dallas, TX, Chicago, IL, Detroit and Grand Rapids, MI, La Mirada and Camarillo, CA, and Portland, OR, under continuing contracts in (1) and (2) above with Clairol, Inc., of Stamford, CT. (Hearing site: Washington, DC.)

MC 145231F, filed August 21, 1978. Applicant: KROY TRANSPORTATION CO., a corporation, P.O. Box 309, York, NE 68467. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Pipe, pipe fittings*, and *irrigation equipment*, from York, NE, and Garden City, KS, to points in the United States except AK and HI), and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (1) above, from points in the United States (except AK and HI), to York, NE, and Garden City, KS, under a continuing contract with Kroy Metal Products Co., of York, NE, and Peerless Plastics, Inc., of Garden City, KS. (Hearing site: Lincoln, NE.)

MC 145241F, filed August 21, 1978. Applicant: HOWELL ENTERPRISES, INC., Highway 5 North, Box 696, Haleyville, AL 35565. Representative: George M. Boles, 727 Frank Nelson Building, Birmingham, AL 35203. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, particleboard*, and *forest products*, between the facilities of Fullco Lumber Co., in Winston, Lawrence, Franklin, Marian, Fayette, and Walker Counties, AL, on the one hand, and, on the other, those points in the United States in and east of ND, SD, NE, KS, OK, and TX, under a continuing contract with Fullco Lumber Co., Inc., of Haleyville, AL. (Hearing site: Birmingham or Decatur, AL.)

MC 145399 (Sub-2F), filed October 2, 1978. Applicant: SHAY DISTRIBUTING CO., INC., P.O. Box 3557, Orange, CA 92665. Representative: Paul M. Daniell, P.O. Box 872, Atlanta, GA 30301. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from Los Angeles, Riverside, and Santa Ana, CA, to points in the United States (except AK, CA, and HI). (Hearing site: Los Angeles, CA.)

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NOTE.—Dual operations are at issue in this proceeding.

MC 145428F, filed September 28, 1978. Applicant: CLIFF REED, Route 1, 510, Corvallis, MT 59828. Representative: John D. Greef, 210 Pinckney, Hamilton, MT 59840. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Lumber*, (1) between points in MT, ID, WA, and OR, and (2) from points in MT, ID, WA, and OR, to points in UT, WY, and CO, under continuing contracts with Fox Lumber Sales, Inc., of Hamilton, MT. (Hearing site: Missoula or Butte, MT.)

NOTE.—The person or persons who it appears may be engaged in common control must either file an application under section 5(2) of the Interstate Commerce Act, or submit an affidavit indicating why such approval is unnecessary.

MC 141369 (Sub-6F), filed August 21, 1978. Applicant: V.I.P. LIMOUSINE, INC., 11 Brownhouse Road, Stamford, CT 06902. Representative: Alan F. Wohlstetter, 1700 K Street NW., Washington, DC 20006. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage*, in the same vehicle with passengers, in special and charter operations, in nonscheduled, door-to-door service, limited to the transportation of no more than six passengers (not including the driver), in any one vehicle at any one time, between points in NY Fairfield County, CT, and Bergen, Essex, Hudson, Middlesex, Morris, Passaic, Somerset, and Union Counties, NJ. (Hearing site: New York City.)

MC 144266 (Sub-1F), filed July 31, 1978. Applicant: TOURCRAFTER TROLLEY, INC., 3 East Fourth Street, Cincinnati, OH 45202. Representative: Norbert B. Flick, 715 Executive Building, Cincinnati, OH 45202. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage*, in the same vehicle with passengers, in roundtrip sightseeing and pleasure tours, between Cincinnati, OH, on the one hand, and, on the other, points in IN, KY, MI, OH, TN, and WV, under a continuing contract with Cincinnati Convention & Creative Services, Inc., of Cincinnati, OH. (Hearing site: Cincinnati, OH.)

MC 145355F, filed September 11, 1978. Applicant: JOHN MURRAY'S MOTOR TOURS, INC., 111 South Washington Street, Wilkes Barre, PA 18702. Representative: Joseph F. Hoary, 121 South Main Street, Taylor, PA 18517. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage*, in the same vehicle with passengers, in charter or special operations, between points in Luzerne, Lackawanna, and Monroe Counties, PA, on the one hand, and, on the other, points in NJ, NY, MD, CT, FL, and DC, restricted to the transportation of not more than nine (9) passengers in any one vehicle, not including the driver. (Hearing site: Wilkes Barre, PA.)

MC 130529F, filed September 25, 1978. Applicant: THE AUTOMOBILE CLUB OF MARYLAND, a Corporation, 1401 Mount Royal Avenue, Baltimore, MD 21217. Representative: L. C. Major, P.O. Box 11278, Alexandria, VA 22312. To engage in operations, in interstate or foreign commerce, as a *broker*, at Annapolis, Baltimore, Bel Air, Columbia, Frederick, Glen Burnie, Hagerstown, Salisbury, Towson, and Westminister, MD, in arranging for the transportation, by motor vehicle, of *passengers and their baggage*, in special and charter operations, from points in MD (except Prince Georges and Montgomery Counties), to points in the United States (including AK, but excluding HI), and return. Hearing site: Baltimore, MD, or Washington, DC.)

NOTE.—Applicant is cautioned that arrangements for charter parties or groups should be made in conformity with the requirements set forth in *Tauck Tours, Inc., Extension*—New York, NY, 54 MCC 291 (1952).

[FR Doc. 78-30895 Filed 11-1-78; 8:45 am]

[7035-01-M]

[Volume No. 121]

PETITIONS, APPLICATIONS, FINANCE MATTERS (INCLUDING TEMPORARY AUTHORITIES), ALTERNATE ROUTE DEVIATIONS, AND INTRASTATE APPLICATIONS.

OCTOBER 25, 1978.

PETITIONS FOR MODIFICATION, INTERPRETATION OR REINSTATEMENT OF OPERATING RIGHTS AUTHORITY

NOTICE

The following petitions seek modification or interpretation of existing operating rights authority, or reinstatement of terminated operating rights authority.

All pleadings and documents must clearly specify the suffix (e.g. M1 F, M2 F) numbers where the docket is so identified in this notice.

An original and one copy of protests to the granting of the requested authority must be filed with the Commission within 30 days after the date of this notice. Such protests shall comply with Special Rule 247(e) of the Commission's General Rules of Practice (49 CFR 1100.247)* and shall include a concise statement of protestant's interest in the proceeding and copies of its conflicting authorities. Verified statements in opposition should not be tendered at this time. A copy of the protest shall be served concurrently upon petitioner's representative, or petitioner if no representative is named.

MC 720 (M1F) (Notice of Filing of Petition To Modify Certificate), filed September 25, 1978. Petitioner: BIRD TRUCKING CO., INC., Box 227, Waupun, WI 53968. Representative: Michael J. Wyngaard, 150 East Gilman Street, Madison, WI 53703. Petitioner holds a motor *common carrier* certificate in MC 720 issued December 4, 1958, authorizing transportation, over irregular routes, as pertinent, of *Washing and cleaning supplies*, and *paper products*, such as are dealt in by retail or wholesale grocery stores, dog food, and groceries, from Chicago, IL, to specified points and portions of WI, generally. By the instant petition, petitioner seeks to modify the above commodity description to read: Such commodities as are manufactured, processed, sold, distributed, dealt in or used by wholesale, retail and chain grocery stores, food processing houses, variety houses, or manufacturers, converters, distributors and printers of paper and paper products; washing and cleaning compounds and supplies; toilet preparations; and pet food.

MC 1305 (M1F) (Correction) (Notice of Filing of Petition To Modify Certificate) filed May 17, 1978, previously noticed in the FR issue of August 24, 1978. Petitioner: SELECTIVE TRANSPORTATION CORP., 560-60th Street, West New York, NJ 07093. Representative: George Olsen, 69 Tonnele Avenue, Jersey City, NJ 07306. Petitioner holds a motor *common carrier* certificate in MC 1305, issued April 5, 1973, authorizing transportation over irregular routes of General commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment), between points in that part of NY, CT, and NJ within 50 miles of Columbus Circle, New York, NY. By the instant petition, petitioner seeks to modify the authority by expanding the territorial radius to points within 75 miles of New York, NY.

NOTE.—The purpose of this correction is to indicate the requested modification sought as "within 75 miles of New York, NY," in lieu of Columbus Circle as previously published.

MC 30204 (Sub-17) (MF) (Notice of Filing of Petition To Modify Certificate), filed September 18, 1978. Petitioner: HEMINGWAY TRANSPORT INC., 438 Dartmouth Street, New Bedford, MA 02740. Representative: Carroll B. Jackson, 1810 Vincennes Road, Richmond, VA 23229. Petitioner holds a motor *common carrier* Certificate in No. MC-30204 (Sub-No. 17), served September 5, 1978, authorizing transportation over regular and irregular routes, as pertinent of regular routes: (A) *General commodities*, (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk and commodities requiring special equipment), (A)(16) Between Richmond, VA and New York, NY, serving all intermediate points, and the off-route points of Quantico, Occoquan, Lorton, Fort Belvoir, Petersburg, Hopewell, Ampthill, Camp Lee, the United States Reformatory (near Petersburg), and the Richmond Deep Water Terminal, VA, Dover, Bound Brook, Milltown, South River, Matawan, Little Silver, and Red Bank, NJ, Pottstown, PA, Peekskill, NY, points within 30 miles of Columbus Circle, New York, NY, points within 25 miles of Philadelphia, PA and points with 5 miles of Washington, DC.: From Richmond over U.S. Hwy 1 via Baltimore, MD, to New York (also from Baltimore over U.S. Hwy 40 to junction U.S. Hwy 13, then over U.S. Hwy 13 to Philadelphia, PA, and then over U.S. Hwy 1 to New York), (also from Baltimore over U.S. Hwy 40 to junction U.S. Hwy 130, then over U.S. Hwy 130 to junction U.S. Hwy 1, then over U.S. Hwy 1 to New York), and return over the same routes. (A)(20) Between Richmond, VA and Danville, VA, serving all intermediate points: From Richmond over U.S. Hwy 360 to Halifax, VA, then over U.S. Hwy 501 to South Boston, VA, then over U.S. Hwy 58 to Danville, VA, (also from Halifax over U.S. Hwy 360 to Danville). Regular routes: (B) *General commodities*, (except those of unusual value or size, explosives, inflammables, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (B)(1) Between Richmond, VA and Danville, VA, serving Danville, VA and junction U.S. Hwy 360 and Virginia Hwy 304 for purposes of joinder only: From Richmond over U.S. Hwy 360 to Danville, and return over the same route. (B)(2) Between junction U.S. Hwy 360 and VA Hwy 304 and South Boston, VA, serving junction U.S. Hwy 360 and VA Hwy 304 and Danville, VA, for purposes of joinder only. From junction U.S. Hwy 360 and VA Hwy 304 over VA Hwy 304 to South Boston, and return over the same route. (B)(3) Between Richmond, VA, and Norfolk, VA.: From Richmond over U.S. Hwy 60 to Norfolk, and return over the same route. (B)(4) Between Petersburg, VA, and Norfolk, VA, serving Petersburg, VA for purposes of joinder only: From Petersburg over U.S. Hwy 460 to Norfolk, and return over the same route. (B)(5) Between junction U.S. Hwy 60 and VA Hwy 168 and Norfolk, VA.: From junction U.S. Hwy 60 and VA Hwy 168 over VA Hwy 168 to Norfolk, and return over the same route. Irregular routes: (N) *General commodities*, (except articles of unusual size or value, explosives, inflammables, livestock, household goods as defined by the Commission, and commodities in bulk other than fertilizer). Between Richmond, VA, on the one hand, and, on the other, Spartanburg, Greenville, and Charleston, SC and Norfolk, VA. Restriction: The authority granted in (A)(30) through (34), (B), (M) (2) and (3), and (N) herein to transport general commodities with the exceptions as stated herein are restricted against the transportation of shipments originating at or destined to Franklin or Norfolk, VA, or points within 20 miles of Norfolk, and moving to or from New York, NY, Newark, NJ, Philadelphia, PA, or points located within 5 miles of each of said cities, and Baltimore, MD, and its commercial zone as defined by the Commission in 99 MCC 372, and Washington, DC, and its commercial zone as defined by the Commission in 103 MCC 256. By the instant petition, petitioner seeks to amend the restriction to read as follows: Restriction: The authority granted in (A) (30) through (34) and (M) (2) and (3) herein to transport general commodities with the exceptions as stated herein are restricted against the transportation of shipments originating at or destined to Franklin or Norfolk, VA or points within 20 miles of Norfolk, and moving to or from New York, NY, Newark, NJ, Philadelphia, PA, or points located within 5 miles of each of said cities, and Baltimore, MD, and its commercial zone as defined by the Commission in 99 MCC 372, and Washington, DC and its commerical zone as defined by the Commission in 103 MCC 256.

MC 40915 (Sub-49) (MIF) (Notice of Filing of Petition To Modify Certificate), filed September 11, 1978. Petitioner: BOAT TRANSIT, INC., P.O. Box 1403, Newport Beach, CA 92663. Representative: David R. Parker, 2310 Colorado State Bank Building, 1600 Broadway, Denver, CO 80202. Petitioner holds a motor *common carrier* certificate in MC 40915 (Sub-49), issued July 22, 1977, authorizing transportation, over irregular routes, as pertinent, of *motor homes*, in secondary movements, in truckaway service, from the facilities of Chinook International at LaVerne, CA, to points in AZ, CO, ID, MT, NV, NM, OR, UT, WA, and WY, restricted against the transportation of shipments having a prior or subsequent movement by rail. By the instant petition, petitioner seeks to modify the above authority by substituting Fontana, CA or LaVerne, CA in the origin portion of the territorial description.

MC 42125 (Sub-1) (MIF) (Notice of Filing of Petition To Modify Certificate), filed September 22, 1978. Petitioner: OVERLAND WESTERN INTERNATIONAL, INC., 2828 Howard Street, Detroit, MI 48216. Representative: Wilhelmina Boersma, 1600 First Federal Building, 1001 Woodward Avenue, Detroit, MI 48226. Petitioner holds a motor *common carrier* certificate in MC 42125 (Sub-1), issued October 4, 1972, authorizing transportation, over regular routes, of *general commodities*, (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment), between Flint, MI, and the port of entry at Port Huron, MI, on the United States-Canada Boundary line, serving no intermediate points: From Flint over MI Hwy 21 to the port of entry at Port Huron, and return over the same route, restricted to the transportation of traffic moving from or to points in Canada, and further restricted against the transportation of shipments originating at or destined to points in Lambton County, ON. By the instant petition, petitioner seeks to have that portion of the restriction removed which restricts against the transportation of shipments originating at or destined to points in Lambton County, ON.

MC 88594 (MIF) (Notice of Filing of Petition To Modify Certificate), filed September 14, 1978. Petitioner: CARLETON G. WHITAKER, INC., P.O. Box 294, Syracuse, NY 13206. Representative: MICHAEL R. WERNER, P.O. Box 1409, 167 Fairfield Road, Fairfield, NJ 07006. Petitioner holds motor *common carrier* authority in MC 88594, issued June 22, 1976, authorizing, in part, transportation over irregular routes of: (1) *Milk* (except in hermetically sealed containers) and *milk products* (except in hermetically sealed containers) from points in NY (except those in Cattaraugus, Chautauqua, Erie, Genesee, Livingston, Monroe, Niagara, Orleans, and Wyoming Counties), to New York, NY, and points in Nassau, Suffolk, and Westchester Counties, NY and points in CY, MA, NJ, and RI, and (2) *empty containers* used in the transportation of the above-described commodities, from the above-specified destination points to the respective origin points specified above. Restriction: The service authorized above is restricted against the transportation of ice cream mix from Camton, Cochocton, Canisteo, Skaneateles, and Canastota,

*Copies of Special Rule 247 (as amended) can be obtained by writing to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

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NY, to any of the destination points described above, or ice cream mix, in tank trucks, from any of the origin points described above to any point in CT. By the instant petition, petitioner seeks to modify the above authority by substituting "Foodstuffs (except commodities in bulk, in tank vehicles) in vehicles equipped with mechanical refrigeration)" in lieu of the present commodity description in (1) above.

MC 105375 (Sub-70) (M1F) (Notice of Filing of Petition To Modify Certificate), filed September 15, 1978. Petitioner: DAHLEN TRANSPORT, INC., 1680 Fourth Avenue, Newport, MN 55055. Representative: Leonard A. Jaskiewicz, Suite 501, 1730 M Street NW., Washington, DC 20036. Petitioner holds a motor *common carrier* certificate in MC 105375 (Sub-70), issued August 21, 1978, authorizing transportation, over irregular routes, of: (1) *Such commodities* as are dealt in by retail gasoline/general merchandise stores (except commodities in bulk), from the facilities of Ashland Oil, Inc., at St. Paul, MN, to points in IL, IA, MI, MN, MO, MT, ND, OH, SD, and WI, and (2) *such commodities* as are dealt in by retail gasoline/general merchandise stores, and *material, parts and supplies* needed for the conduct of such businesses (except commodities in bulk), from points in IL, IN, IA, MI, MN, MO, MT, NE, ND, OH, SD, and WI, to facilities of Ashland Oil, Inc., located in IL, IA, MN, ND, SD, and WI. By the instant petition, petitioner seeks to modify the above authority by (1) Modifying the first authorizing paragraph to change the origin to read: "from the facilities of Ashland Oil, Inc. located within the Minneapolis-St. Paul Commercial Zone," and (2) to modify the second authorizing paragraph so as to remove the limitation in the distination territory reading "to the facilities of Ashland Oil, Inc. located in."

MC 108006 (Sub-12) (M1F), (Notice of Filing of Petition To Modify Certificate), filed September 18, 1978. Petitioner: MAISLIN TRANSPORT LTD., 7401 Newman Boulevard, LaSalle, PQ, Canada. Representative: Edward L. Nehez, P.O. Box 1409, Fairfield, NJ 07006. Petitioner holds a *motor common carrier* certificate in MC 108006 (Sub-12), issued September 20, 1967, authorizing transportation over irregular routes, in foreign commerce, of *commodities*, the transportation of which because of size or weight require the use of special equipment (except commodities in bulk, and motor vehicles), between ports of entry on the United States-Canada Boundary line at or near Rouses Point, Champlain, and Trout River, NY, on the one hand, and, on the other, points in NY, NJ, PA, ME, NH, VT, MA, CT and RI. By this petition, petitioner seeks to modify the territorial description by substituting ports of entry on the United States-Canada Boundary line in ME, NH, VT and NY in lieu of ports of entry at or near Rouses Point, Champlain, and Trout River, NY. No authority is sought to pickup or deliver traffic at points in the US not presently authorized to be served.

MC 110683 (Sub-95) (M1F) (Notice of Filing of a Petition To Remove Restrictions), filed September 19, 1978. Petitioner: SMITH'S TRANSFER CORP., P.O. Box 1000, Staunton, VA 24401. Representative: Richard A. Mehley, 1000-16th Street, NW., Washington, DC 20036. Petitioner holds a motor *common carrier* certificate in No. MC 110683 (Sub-95), issued June 4, 1975, authorizing transportation over regular routes of *general commodities*, with usual exceptions, serving the facilities of Bendix Home Systems, Inc., Henry M. Carr, Inc., Peter Paul, Inc., Rohn Spaulding, Inc., and The Indiana Brass Co., Inc., at Frankfort, IN, as as off-route point in connection with carrier's authorized regular-route operations. The authority is restricted to the transportation of shipments originating at or destined to the above-named facilities. By the instant petition, petitioner seeks to eliminate the named shipper restrictions, thus permitting it to serve all shippers in serving Frankfort, IN, as an off-route point in connection with carrier's authorized regular route operations.

MC 115162 (Sub-163) (MIF) (Notice of Filing of Petition To Modify Certificate), filed September 26, 1978. Petitioner: POOLE TRUCK LINE, INC., P.O. Drawer 500, Evergreen, AL 36401. Representative: Robert E. Tate (same address as petitioner). Petitioner holds a motor *common carrier* certificate in MC 115162 (Sub-163), issued February 17, 1970, authorizing transportation, over irregular routes, of *conduit, pipe and tubing and fittings therefor* (except oilfield and pipeline commodities as defined by the Commission in *Mercer Extension—Oilfield Commodities* 74 MCC 459), from points in Early County, GA, to points in AR, GA, IL, IA, KS, KY, LA, MN, MS, MO, NE, ND, OK, SD, TN, TX, WI, points in that part of IN south of U.S. Hwy 40, and those in that part of MI north of MI Hwy 21, restricted to the transportation of traffic originating at points in Early County, GA. By the instant petition, petitioner seeks to modify the above authority by adding a second commodity and territorial description as follows: *Materials and supplies* used in the manufacture of conduit, pipe and tubing and fittings therefor (except oilfield and pipleine commodities as defined by the Commission in *Mercer Extenstion—Oilfield Commodities*, 74 MCC 459) from points in AR, GA, IL, IA, KS, KY, LA, MN, MS, MO, NE, ND, OK, SD, TN, TX, WI, points in that part of IN south of U.S. Hwy 40, and those in that part of MI north of MI Hwy 21, to points in Early County, GA, restricted to the transportation of traffic destined to points in Early County, GA.

MC 116325 (Sub-7) (MIF) (Notice of Filing, of Petition To Modify Certificate), filed September 18, 1978. Petitioner: JENNINGS BOND, d.b.a. BOND ENTERPRISES, P.O. Box 8, Lutesville, MO 63762. Representative: Ernest A. Brooks II, 1301 Ambassador Building, St Louis, MO 63101. Petitioner holds motor *common carrier* certificate in MC 116325 (Sub-7), issued January 17, 1964, authorizing transportation, over irregular routes, of: *Brick, concrete blocks, prestressed and pre-cast concrete products, concrete tile and products of concrete* (restricted against the transportation of such commodities which, because of their size or weight, require the use of special equipment), from points in Scott County and Cape Girardeau County, MO, to points in IL south of U.S. Hwy 50 and west of U.S. Hwy 45. By the instant Petition, Petitioner seeks to enlarge the destination territory to include the entire state of IL.

MC 124344 (Subs 1, 7, and 9) (MIF) (Notice of Filing of Petition To Modify Permits) filed May 15, 1978. Petitioner: HINER TRANSPORT, INC., P.O. Box 621, Huntington, IN 46750. Representative: Robert W. Loser, II, 1009 Chamber of Commerce Building, Indianapolis, IN 46204. Petitioner holds motor contract carrier permits in MC 124344 (Subs 1, 7, and 9) issued April 14, 1970, January 24, 1974, and May 18, 1978, respectively. MC 124344 (Sub-1), authorizes transportation, over irregular routes, as pertinent, of: (1) Ice cream mix, in bulk, in tank vehicles, from Huntington,* IN, to Kalamazoo and Detroit, MI, (2) *cream*, in bulk, in tank vehicles, from Mason and Ovid, MI, to Huntington,** IN. (3) *ice cream, ice cream mix, ice milk, sherbert, water ices and vegetable-fat frozen desserts*, in containers, in mechanically refrigerated vehicles, and *ice cream novelties*, including water ice bars, fudge bars, ice cream bars, ice cream cups, ice cream sandwiches, ice cream cake rolls, ice cream pies, and articles of a like nature, in containers, in mechanically refrigerated vehicles, (a) From Huntington,* IN, to Edon, Delphos, Toledo, Cincinnati, Hamilton, and Columbus, OH, and points in that part of OH west of Interstate Hwy 75, Louisville and Lexington, KY, Chicago, Palatine, and Rockford, IL, Milwaukee, WI, Benton Harbor, Detroit, Kalamazoo, New Buffalo, and Pontiac, MI, and Memphis and Nashville, TN. (b) from Chicago, IL, to Benton Harbor, Detroit, Kalamazoo, New Buffalo, and Pontiac, MI, Elkhart, Evansville, Hammond, Huntington,** Indianapolis, Lafayette, South Bend, and Terre Haute, IN, Cincinnati, Columbus, Hamilton, and Toledo, OH, Lexington and Louisville, KY, and Memphis and Nashville, TN. (c) from Milwaukee, WI, to Benton Harbor, Detroit, Kalamazoo, New Buffalo, and Pontiac, MI, Elkhart, Evansville, Hammond, Huntington,** Indianapolis, Lafayette, South Bend, and Terre Haute, IN, Cincinnati, Columbus, Hamilton, and Toledo, OH, Lexington and Louisville, KY, and Memphis and Nashville, TN, and Chicago, Palatine, and Rockford, IL. (4) *Milk products, milk by-products, ice cream, ice cream mix, and frozen confections*, in containers, from Hamilton, OH, to Elkhart, Evansville, Hammond, Huntington,** Indianapolis, Lafayette, South Bend and Terre Haute, IN. Restriction: The operations authorized herein are limited to a transportation service to be performed, under a continuing contract or contracts, with Sealtest Food Division, Kraftco Corp., of New York, NY. MC 124344 Sub 7 authorizes transportation, over irregular routes, of *Ice cream, ice cream mix, ice milk, sherbert, water ices, vegetable-fat frozen desserts, and ice cream novelties*, in containers, in mechanically refrigerated vehicles, (a) From Green Bay, WI, to Huntington,** IN, Cincinnati, OH, and Louisville, KY, and (b) from Huntington,* IN, to Madison, WI, under a continuing contract with Sealtest Foods Division, Kraftco Corp., of New York, NY. MC 124344 (Sub-9), authorizes transportation, over irregular routes, as pertinent, of (1) *Ice cream, ice cream mix, ice milk, sherbert, water ices, vegetable-fat frozen desserts, and ice cream novelties*, in containers, in mechanically refrigerated vehicles, (a) From Huntington,* IN, to points in FL, MO, PA, WV, KY (except Louisville, Lexington, Hazard, and points in their commercial zone), IL (except Chicago, Palatine, Rockford, and points in their commercial zones), MI (except Benton Harbor, Detroit, Kalamazoo, New Buffalo, Pontiac, and points in their commercial zones), and OH (except Toledo, Cincinnati, Columbus, and points in their commercial zones and those in Ohio west of Interstate Hwy 75). (b) From Peoria, IL, Detroit, MI, and Louisville, KY, to Huntington,** IN, (2) Returned articles described in (1) above, from the destination points in (1) above, to the origin points in (1) above, and (3) Fruit and fruit segments, in containers, from Cincinnati, OH, to Huntington,** IN. By the instant petition, petitioner seeks to modify the above authority by adding Fort Wayne, IN as an origin where indicated by a single asterisk*, and as a destination where indicated by a double asterisk**.

NOTE.—Petitioner states that contract carrier which was formerly Sealtest Foods Division, Kraftco Corp. and Kraft Foods Dairy Group is now known as Kraft, Inc., Dairy Group.

MC 124417 (MIF) (Notice of Filing of Petition to Modify Certificate Sought To Be Transferred), filed August 29, 1978. Petitioner: BLOOMINGTON PRODUCE, INC., Box 67, Bloomington, WI 53804. Representative: Michael S. Varda, P.O. Box 2509, Madison, WI 53701. Petitioner holds a motor *common carrier* certificate in MC 124417 issued August 16, 1977, authorizing transportation, over irregular routes, as pertinent, of *Animal and poultry feed* (except liquid commodities) in bulk, and in bulk and in bags in mixed shipments, (a) from Cedar Rapids, Muscatine, and Waterloo, IA, to points in that part of WI on and south of U.S. Hwy 10 and on and west of U.S. Hwy 51, and (b) from Dubuque and Iowa Falls, IA, to points in that part of WI on and south of U.S. Hwy 10 and on and west of U.S. Hwy 51 (except points in Crawford, Grant, IA, and Richland Counties, WI). By the instant petition, petitioner seeks to modify the above authority be deleting the "mixed shipment" restriction.

NOTE.—A related transfer proceeding has been filed and docketed MC FC 77845.

MC 124472 (Sub-3) (MIF) (Notice of Filing of Petition To Add Origin Point to Permit), filed September 13, 1978. Petitioner: HARDING TRANSPORTATION INC., 6875 East Evans, Denver, CO 80222. Representative: Charles J. Kimball, 350 Capitol Life Center, 1600 Sherman Street, Denver, CO 80203. Petitioner holds a motor *contract carrier* permit in MC 124472 (Sub-3) issued July 5, 1968, authorizing (in part) transportation, over irregular routes of: (1) *Polished plate glass* from Crystal City, MO; Toledo, OH; and Nashville and Greenland, TN to Fort Smith and Fayetteville, AR; Colorado Springs, Denver, Pueblo, Longmont, Boulder, Greeley, and Grand Junction, CO; Sioux City, IA; Garden City, Manhattan, Topeka, Salina, and Hays, KS; Kansas City, Joplin, St. Louis, and Springfield, MO; Kearney, Lincoln, Norfolk, Omaha, and Gering, NE; Farmington, NM; and Tulsa, OK, and (2) *Rolled glass, polished wire glass, and glazing units*, from Kingsport, TN; St. Louis, MO; and Toledo, OH; to Fayetteville and Fort Smith, AR; Colorado Springs, Denver, Pueblo, Longmont, Boulder, Greeley, and Grand Junction, CO; Sioux City, IA; Garden City, Manhattan, Topeka, Salina, and Hays, KS; Joplin, Kansas City, St. Louis, and Springfield, MO; Kearney, Lincoln, Norfolk, Omaha, and Gering, NE; Farmington, NM; and Tulsa, OK. Restriction: The authority granted herein is restricted to the performance of a transportation service under continuing contracts with Harding Glass of MO, Harding Glass of KS, Harding Glass of CO, Interstate Glass Co., and Thermoglas, Inc. By this Petition, Petitioner is seeking to add Laurinburg, NC as an origin in Parts (1) and (2) above, because much of the subject traffic which previously moved from Toledo, OH now moves from Laurinburg, NC.

MC 126389 (MIF) (Notice of Filing of Petition To Modify Permit), filed September 14, 1978. Petitioner: KIRKPATRICK TRUCKING CO., a corporation, 11317 Rout 14, North, Harvard, IL 60033. Representative: Donald S. Mullins, 4704 West Irving Park Road, Chicago, IL 60641. Petitioner holds a motor *contract carrier* permit in MC 126389 issued December 23, 1974, authorizing transportation, over irregular routes, as pertinent, of (1) *Mineral wool* and *mineral wool products*, from the facilities of the United States Gypsum Co. in Walworth, WI, to points in AR, IL, IN, IA, KS, KY, MI, MN, MO, NE, ND, OH, PA, SD, TN, and WI, and (b) from the facility of the Unites States Gypsum Co. in Wabash County, IN, to points in IA, MN, ND, SD, WI, and those points in that part of IL on and north of IL Hwy 17 (except points in Cook, Du Page, and Will Counties, IL), (2) *Materials and supplies* used in the manufacture, installation, or distribution of the commodities named in (1) above, from the respective destination points named above, to their respective origin points named above, (3) *Plastic articles*, from the facilites of the United States Gypsum Co, in Dodge, Jefferson, and Waukesha Counties, WI, to points AR, IL, IN, IA, KS, KY, MI, MN, MO, NE, ND, OH, PA, SD, TN, and WI, and (4) *Materials and supplies* used in the manufacture and distribution of the commodities named in (3) above, from the destination points specified immediately above, to the facilities of the United States Gypsum Co. in Dodge, Jefferson, and Waukesha Counties, WI. Restriction: The service authorized in (1), (2), (3), and (4) above, is subject to the following conditions: The operations authorized in (1), (2), (3), and (4) above, are restricted against the transportation of (a) liquid commodities in bulk, and (b) petroleum products, dry, in bulk, in tank vehicles, from points in the Chicago, IL, Commercial Zone as defined by the Commission, to points in Jefferson and Walworth Counties, WI. The operations authority in (1), (2), (3), and (4) above, are limited to a transportation service to be performed, under a continuing contract,

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or contracts, with the United States Gypsum Co., of Chicago, IL By the instant petition, petitioner seeks to modify the second restriction which pertains to the contracting shippers to read as follows: "The operation in (1) and (2) above are limited a to a transportation service to be performed, under a continuing contract, or contracts, with the United States Gypsum Co., and the operations authorized in (3) and (4) above are limited to a transportation service to be performed, under a continuing contract(s) with Fiberesin Industries, Inc., and Kinkead Industries, Inc."

MC 133095 (Sub-178 (MIF) (Notice of Filing of Petition To Modify Certificate), filed September 22, 1978. Petitioner: TEXAS-CONTINENTAL EXPRESS, INC., P.O. Box 434, Euless, TX 76039. Representative: K. Edward Wolcott, 1200 Gas Light Tower, 235 Peachtree Street NE., Atlanta, GA 30303. Petitioner holds a motor *common carrier* certificate in MC 133095 (Sub-178) issued April 18, 1978, authorizing transportation, over irregular routes, of (a) *hair and skin care products and toilet preparations*, and (b) *equipment, materials, and supplies* used in the manufacture and distribution of the commodities described in (a) above (except chemicals and commodities in bulk), between the facilities of Redken Laboratories, Inc., at Los Angeles, Downey, Riverside, San Bernardino, and Irvine, CA, on the one hand, and, on the other, those points in the United states on the east of U.S. Hwy. 85, restricted to the transportation of traffic originating at or destined to the facilities of Redken Laboratories, Inc. By the instant petition, petitioner seeks to modify the above authority be deleting the restriction.

MC 133199 (Sub-89 (MIF), (Notice of Filing of Petition To Modify Certificate), filed September 25, 1978. Petitioner: HEYL TRUCK LINES, INC., P.O. Box 206, Akron, IA 51001. Representative: A. J. Swanson, P.O. Box 81849, Lincoln, NE 68501. Petitioner holds a motor *common carrier* certificate in MC 113119 (Sub-89) authorizing transportation, over irregular routes, of *frozen foods*, from Minneapolis, MN, to points in AL, AR, FL, GA, KY, MS, NC, SC, TN, and points in the part of MO on and east of U.S. Hwy 67, restricted to the transportation of traffic originating at the facilities of the Pillsbury Co., at Minneapolis, MN. By the instant petition, petitioner seeks to modify the above authority by deleting the language "the facilities of the Pillsbury Co., at" from the restriction.

MC 135379 (Sub-7) (MIF) (Correction) (Notice of Filing of Petition To Modify Permit), filed May 8, 1978, previously noticed in the FEDERAL REGISTER issue of August 24, 1978. Petitioner: EASTERN TRANSPORT, INC., 320 Stiles Street, Linden NJ 07036. Representative: George Olsen, 69 Tonnele Avenue, Jersey City, NJ 07306. Petitioner holds a motor *contract carrier* permit in MC 135379 (Sub-7), issued June 24, 1977, authorizing transportation, over irregular routes, of *such merchandise* as is dealt in by wholesale, retail, chain, grocery, department stores, and food business houses (except glass containers and commodities in bulk) and in connection therewith *equipment, materials and supplies* used in the conduct of such business (except glass containers and commodities in bulk), between points in CT, DE, MD, MA, NH, NJ, NY, PA, RI, VA, NC, SC, WV, GA, FL, AL, LA, MS, TN, and DC, under a continuing contract(s) with Food Fair Stores Inc., Ideal Shoe Co., and J. M. Fields, Inc. By the instant petition, petitioner seeks to modify the above authority by adding Filigree Foods, Inc., as an additional contracting shipper.

NOTE.—The purpose of this correction is to indicate that petitioner is a *contract carrier* in lieu of a *common carrier* as previously published.

MC 135482 (Sub-1) (M3F) (Notice of Filing of Petition To Modify Permit), filed September 22, 1978. Petitioner: CEMENT TRANSPORT, LTD., a corporation, P.O. Box 761, Valley City, ND 58072. Representative: Gene P. Johnson, P.O. Box 2471, Fargo, ND 58102. Petitioner holds a motor *contract carrier* permit in MC 135482 (Sub-1) issued May 5, 1978, authorizing transportation, over irregular routes, as pertinent, of (1) *cement, in bags, and lime*, from Duluth, MN, to points in ND, and (2) *cement, in bulk* (except in tank vehicles), from Duluth, MN, to Bismarck and Valley City, ND, under a continuing contract(s) in (1) and (2) above with Beyer's Cement, Inc., of Valley City, ND. By the instant petition, petitioner seeks to modify the above authority to read: (1) *Lime*, from Duluth, MN to points in ND, and (2) *cement*, from Duluth, MN to points in MN and ND, under a continuing contract(s) in (1) and (2) above with Beyer's Cement, Inc., of Valley City, ND.

MC 140487 (Sub-1) (M1F) (Notice of Filing of Petition To Modify Permit), filed September 22, 1978. Petitioner: YELLOWSTONE TRUCKING, INC., North 9 Post Street, Room 425, Peyton Building, Spokane, WA 99210. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609. Petitioner holds a motor *contract carrier* permit in MC 140487 (Sub-1) issued December 30, 1977, authorizing transportation, over irregular routes, of: (1) *Lumber*, from the facilities of the Pack River Co., at or near Bonners Ferry, Coeur d'Alene, and Dover, ID; Plains, Polson, and Thompson Falls, MT; and Ardenvoir, Cashmere, Peshastin, and Spokane, WA, to points in IL, IN, IA, MI, MN, NE, ND, SD, and WI, and (2) *materials, equipment, and supplies* used in the production, sale, and distribution of lumber, from Chicago, IL, Clackamas, OR, and Tracy, CA, to the origins named in (1) above. Restriction: The operations authorized herein are limited to a transportation service to be performed under a continuing contract, or contracts, with the Pack River Co. By the instant petition, petitioner seeks to modify the above authority by changing the origin territory of part (1) to read: From points in ID on and north of U.S. Hwy 95, from Lewiston to junction ID Hwy 13 at Grangeville, then ID Hwy 13 to U.S. Hwy 12 at Kooskia, then U.S. Hwy 12 to the ID-MT State line, points in MT on and west of U.S. Hwy 93 from the ID-MT State line to junction U.S. Hwy 2 at Kalispell, then on, north, and west of U.S. Hwy 2 to junction MT Hwy 49 at East Glacier Park, then MT Hwy 49 to junction U.S. Hwy 89 at Kiowa, then U.S. Hwy 89 to the U.S.-Canadian border, and from Peshastin, WA, and points in WA on and east of U.S. Hwy 97; and to reword the destination territory for part (2) to read to the facilities of the Pack River Co. at or near Bonners Ferry, Coeur d' alene, and Dover, ID; Plains, Polson, and Thompson Falls, MT; and Ardenvoir, Cashmere, Peshastin, and Spokane, WA, so that part (2) of the authority will not be expanded in scope from that which is presently authorized.

MC 140612 (Sub-12) (MIF) (Notice of Filing of Petition To Modify Certificate), filed September 28, 1978. Petitioner: ROBERT F. KAZIMOUR, P.O. Box 2207, Cedar Rapids,. IA 52406. Representative: A. J. Swanson, P.O. Box 81849, Lincoln, NE 68501. Petitioner holds a motor *common carrier* certificate in MC 140612 (Sub-12) issued April 20, 1978, authorizing transportation, over irregular routes, of *cereal preparations* (except in bulk), from Cedar Rapids, IA, to points in AL, AZ, GA, MS, TN, KY, CA, OR, WA, NM, TX, NV, ID, MT, UT, AR, and LA, restricted to traffic originating at the above-named origin and destined to the above-named destinations. By the instant petition, petitioner seeks to modify the above authority by adding icing paste, grain and vegetable products, corn starch, and pet food to the commodity description.

MC 141124 (M2F) (Notice of Filing of Petition To Modify Certificate), filed September 22, 1978. Petitioner: EVANGELIST COMMERCIAL CORP., P.O. Box 1790, Wilmington, DE 19899. Representative: Boyd B. Ferris, 50 West Broad Street, Columbus, OH 43215. Petitioner holds a motor *common carrier* certificate in MC 141124 issued June 29, 1978, authorizing transportation, over irregular routes, as pertinent, of (1) *materials, equipment, and supplies* utilized in the installation of floor coverings and floors; floor mats and runners; adhesives; cove bases; carpet binding accessories; maintenance equipment and products; and materials, equipment and supplies used in or incidental to the manufacture, sale, and distribution of the commodities described (except commodities in bulk), from the facilities of Roberts Consolidated Industries, Inc., located at Piqua, OH,, to points in PA, MD, DE, NJ, NY, CT, MA, RI, NH, VT, ME, and DC; and (2)(a) *returned shipments* of the commodities in (1) above and (b) commodities used in the manufacture, sale, and distribution of the commodities in (1) above (except commodities in bulk), from points in PA, MD, DE, NJ, NY, CT, MA, RI, NH, VT, ME, and DC, to the facilities of Roberts Consolidated Industries, Inc., located at Piqua, OH. By the instant petition, petitioner seeks to modify the above authority by substiuting Dayton, OH, for Piqua, OH, in each of the territorial descriptions.

MC 142130 (MIF) (Notice of Filing of Petition To Modify Certificate), filed September 26, 1978. Petitioner: CRESCENT INDUSTRIES, INC., P.O. Box 18146, Dallas, TX 75218. Representative: D. Paul Stafford, Suite 1125, Exchange Park, P.O. Box 45538, Dallas, TX 75245. Petitioner holds a motor *common carrier* certificate in MC 142130, issued September 8, 1976, authorizing transportation over irregular routes transporting, as pertinent, *uncrated, new or used, unassembled or dismantled aeroplanes, and aeroplane parts when transported along with an aeroplane*, from points in OK, to points in CO, WY, UT, NM, NE, and KS, and between points in CO, WY, UT, NM, NE, TX, and KS (except Wichita and points within 5 miles of Wichita). By the instant petition, petitioner seeks to delete the words "when transported along with an acroplane".

MC 143582 (Sub-2) (M1F) (Correction) (Notice of Filing of Petition To Modify Permit), filed July 28, 1978, previously noticed in the FEDERAL REGISTER issue of September 7, 1978. Petitioner: CHARLES MCCULLOUGH, d.b.a. CHARLIE MCCULLOUGH TRUCKING, Glenfield, ND 58443. Representative: Gene P. Johnson, P.O. Box 2471, Fargo, N.C. 58102. Petitioner holds a motor *contract carrier* permit in MC 143582 (Sub-2) issued June 22, 1978, authorizing transportation, over irregular routes, of: *Knocked down steel storage structures and parts and accessories* for knocked down steel storage structures, from Morton and Taylorville, IL, and Falls City, NE, to points in ND, points in MN on and west of U.S. Hwy 71, and points in SD on and north of U.S. Hwy 212, under continuing contract or contracts with E.E.E., Inc. of Page, ND. By the instant petition, petitioner seeks to add Ireland Lumber Yard as an additional contracting shipper.

NOTE.—The purpose of this correction is to indicate the correct authority held by petitioner.

REPUBLICATIONS OF GRANTS OF OPERATING RIGHTS AUTHORITY PRIOR TO CERTIFICATION

NOTICE

The following grants of operating rights authorities are republished by order of the Commission to indicate a broadened grant of authority over that previously noticed in the FEDERAL REGISTER.

An original and one copy of a petition for leave to intervene in the proceeding must be filed with the Commission within 30 days after the date of this FEDERAL REGISTER notice. Such pleading shall comply with Special Rule 247(e) of the Commission's General Rules of Practice (49 CFR 1100.247) addressing specifically the issue(s) indicated as the purpose for republication, and including copies of intervenor's conflicting authorities and a concise statement of intervenor's interest in the proceeding setting forth in detail the precise manner in which it has been prejudiced by lack of notice of the authority granted. A copy of the pleading shall be served concurrently upon the carrier's representative, or carrier if no representative is named.

MC 109397 (Sub-387F) (Republication), filed December 29, 1977, published in the FEDERAL REGISTER issue of March 23, 1978, and republished this issue. Applicant: TRI-STATE MOTOR TRANSIT CO., a corporation, P.O. Box 113, Joplin, MO 64801. Representative: Max G. Morgan, 223 Ciudad Building, Oklahoma City, OK 73112. A decision of the Commission, Review Board No. 1, decided September 22, 1978, and served October 4, 1978, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier*, by motor vehicle, over irregular routes, in the transportation of *radioactive materials*, from points in Converse County, WY, and Karnes County, TX, to the Sequoyah facility of Kerr McGee, near Gore, OK; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to indicate Karnes County, TX, in lieu of Line Oak County, TX, and Converse County, WY, in lieu of Converse County, NY, as origin points.

MC 118149 (Sub-2) (Republication), filed November 16, 1977, published in the FEDERAL REGISTER issue of March 23, 1978, and republished this issue. Applicant: GLEN A. LEA, Albany, PE, Canada COB IAO. Representative: Glen A. Lea (same address as above). A decision of the Commission, Review Board No. 3, decided September 8, 1978, and served September 28, 1978, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier*, by motor vehicle, over irregular routes, in the transportation of (1) *Fruit juices and bananas;* and (2) *fresh fruit and vegetables* normally exempt from economic regulation under section 203(B)(6) of the Interstate Commerce Act when moving in mixed loads with fruit juices and bananas (in vehicles equipped with mechanical refrigeration, from Boston, MA, to the port of entry on the International Boundary line, between the United States and Canada, or at near Houlton, ME, restricted to the transportation of traffic destined to points in the Provinces of NB, NS, and PE, Canada, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to modify the commodity description and add a restriction.

MC 135221 (Sub-7F), (Republication), filed February 7, 1978, published in the FEDERAL REGISTER issue of March 16, 1978, and republished this issue. Applicant: DICK SIMON TRUCKING, INC., 3700 South 4355 West, Salt Lake City, UT 84120. Representative: Chester Zyblut, 366 Executive Building, 1030 Fifteenth Street NW., Washington, DC 20005. A decision of the Commission, Review Board No. 2, decided September 15, 1978, and served October 5, 1978, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier*, by motor vehicle, over irregular routes, in the transportation of (1) *Cosmetics and toilet preparations;* and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) above, in vehicles equipped with mechanical refrigeration (a) between Des Plaines, IL, Clearfield, UT, and Hawthorne, Gar-

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dena, and Compton, GA, restricted to the transportation of traffic originating at and destined to the facilities of Max Factor & Co., at the named points, (b) from New York, NY, Newark and South Plainfield, NJ, Ashland, OH, Pittsburgh and Philadelphia, PA, Baltimore, MD, Bridgeport, CT, Boston, MA, Kansas City, and St. Louis, MO, Montross, VA, Memphis, TN, Dundee, MI, Milwaukee, WI, and Washington, DC, to Des Plaines, IL, Clearfield, UT, and Hawthorne, Gardena, and Compton, GA, restricted to the transportation of traffic destined to the facilities of the Max Factor & Co., at the named destinations, (c) from Clearfield, UT, to Dallas, TX, Atlanta, GA, Maspeth, NY, Coldwater, MI, Chicago, IL, and Minneapolis, MN, restricted to the transportation of traffic originating at the facilities of Max Factor & Co., at the named origin point, and (d) from LaMirada and Chico, GA, to Clearfield, UT, restricted to the transportation of traffic destined to the facilities of Max Factor & Co., at the named destination point, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to indicate the applicant's actual grant of authority.

MC 144237 (republication), filed January 26, 1978, published in the FEDERAL REGISTER issue of March 23, 1978, and republished this issue. Applicant: EUGENE T. FALBO, d.b.a., MOUNTAIN VIEW TRAILWAYS, R. D. 1, Box 46, Latrobe, PA 15650. Representative: John A. Pillar, 205 Ross Street, Pittsburgh, PA 15219. A decision of the Commission, Review Board No. 1, decided October 2, 1978, and served October 10, 1978, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier*, by motor vehicle, over irregular routes, in the transportation of *passengers and their baggage*, in the same vehicle with passengers, in special and charter operations beginning and ending at points in Unity and Derry Townships, Westmoreland County, PA, and extending to points in the United States (including AK but excluding HI), that applicant is fit, willing and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to indicate the State in which Unity and Derry Townships are located.

MOTOR CARRIER, BROKER, WATER CARRIER, AND FREIGHT FORWARDER OPERATING RIGHTS APPLICATIONS

NOTICE

The following applications are governed by special rule 247 of the Commission's General Rules of Practice (49 CFR 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date of notice of filing of the application is published in the FEDERAL REGISTER. Failure to seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest under these rules should comply with section 247(e)(3) of the rules of practice which requires that it set forth specifically the gounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding (including a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describing in detail the method—whether by joinder, interline, or other means—by which protestant would use a such authority to provide all or part of the service proposed), and shall specify with particularity the facts, matters and things relied upon, but shall not include issues or allegations phrased generally. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or applicant if no representative is named. All pleadings and documents must clearly specify the "F" suffix where the docket is so identified in this notice. If the protest includes a request for oral hearing, such requests shall meet the requirements of section 247(e)(4) of the special rules, and shall include the certification required therein.

Section 247(f) further provides, in part, that an applicant who does not intend timely to prosecute its application shall promptly request dismissal thereof, and that failure to prosecute an application under procedures ordered by the Commission will result in dismissal of the application.

Further processing steps will be by Commission decision which will be served on each party of record. Broadening amendments will not be accepted after the date of this publication except for good cause shown, and restrictive amendments will not be entertained following publication in the FEDERAL REGISTER of a notice that the proceeding has been assigned for oral hearing.

Each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

MC 23618 (Sub-4339F), filed October 24, 1978. Applicant: McALISTER TRUCKING CO., d.b.a. MATCO, a corporation, P.O. Box 2377, Abilene, TX 79604. Representative: E. Larry Wells, Suite 1125, Exchange Park, P.O. Box 45538, Dallas TX 75245. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Equipment, materials, and supplies* used in connection with the discovery, development, production, refining, manufacture, processing, storage, transmission and distribution of natural gas and petroleum and their products and byproducts, (2) *equipment, materials, and supplies* used in, or in connection with the construction, operation, repair, servicing, maintenance and dismantling of pipelines, including the stringing and picking up of pipe, (3) *earth drilling machinery and equipment*, and (4) *equipment, materials, and supplies* used in connection with (a) the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, (b) the completion of holes or wells drilled, (c) the production, storage, and transmission of commodities resulting from drilling operations at well or holes sites; and (d) the injection or removal of commodities into or from holes or wells, between points in AZ, CA, CO, ID, MT, NE, NV, ND, SD, UT, and WY. Hearing: November 28, 1978 (14 days), at 9:30 a.m. local time, at Denver, CO, in a hearing room to be later designated.

MC 43867 (Sub-43F), filed June 26, 1978, and previously noticed in the FEDERAL REGISTER issue of September 28, 1978. Applicant: A. L. McALISTER TRUCKING CO., a corporation, P.O. Box 2214, Wichita Falls, TX 76307. Representative: John T. Wirth, 717 17th Street, Suite 2600, Denver, CO 80202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Equipment, materials, and supplies* used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and byproducts, (2) *equipment, materials, and supplies* used in, or in connection with, the construction, operation, repair, servicing, maintenance, and dismantling of pipelines, including the stringing and picking up of pipe, and (3) *Earth drilling equipment, and* (4) *equipment, materials, and supplies* used in connection with (a) the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling equipment, (b) the completion of holes or wells drilled, (c) the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites and (d) the injection or removal of commodities into or from holes or wells, between points in AZ, CA, CO, KS, LA, MT, NM, NV, OK, TX, UT, and WY. Hearing: November 28, 1978 (3 weeks), 9:30 a.m. local time, at Denver, CO, in hearing room to be later designated.

NOTE.—This republication adds (5) states.

MC 119493 (Sub-220F), filed July 10, 1978, and previously noticed in the FEDERAL REGISTER issue of August 22, 1978. Applicant: MONKEM COMPANY, INC., P.O. Box 1196, Joplin, MO 64801. Representative: Lawrence F. Kloeppel (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Roofing granules* (except in bulk, in tank vehicles), from Annapolis, MO, to Little Rock, AR; (2)(a) *asphalt roofing and building materials*, and (b) *materials and supplies* used in the manufacture or installation of the commodities named in (2)(a) above (except commodities in bulk, in tank vehicles), between Meridian, MS, points in AR, AL, FL, GA, IL, IN, KS, KY, LA, MO, NC, OK, OH, SC, TN, TX, VA, WV, in nonradial movements. (Hearing site: Meridian, MS, or Little Rock, AR.)

NOTE.—This republication clarifies that nonradial movements are requested.

FINANCE APPLICATIONS

NOTICE

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control through ownership of stock, of rail carriers or motor carriers pursuant to sections 5(2) or 210a(b) of the Interstate Commerce Act.

An original and one copy of protests against the granting of the requested authority must be filed with the Commission within 30 days after the date of this FEDERAL REGISTER notice. Such protest shall comply with Special Rules 240(c) or 240(d) of the Commission's *General Rules of Practice* (49 CFR 1100.240) and shall include a concise statement of protestant's interest in the proceeding. A copy of the protest shall be served concurrently upon applicant's representative, or applicant, if no representative is named.

MC-F-13704F. *Transferee:* WTC Sub, 1400 Quail Street, Newport Beach, CA 92660. *Transferor:* A & B Transportation Services, Inc., c/o Nelson Resource Corp., 20 Enterprise Avenue, Secaucus, NJ 07094. A & B Transportation Services is wholly-owned subsidiary of Nelson Resource Corp. *Applicants' representative:* Louis P. Haffer, Haffer & Alterman, 1730 Rhode Island Avenue, NW., Washington, DC 20036. Authority sought for purchase by transferee of all of the operating rights and assets connected therewith of the following companies owned and controlled by transferor and set forth in the following certificates (note: By MC-F-13243, issued December 27, 1977, Garment Carriers, Inc., and A & B Garment Delivery of San Francisco, Inc., were merged into A & B Transportation Services, Inc.): (1) Certificate MC 98571 (Sub-3), issued to A & B Garment Delivery on March 25, 1970 as follows: *Garments, clothing and wearing apparel*, when transported on garment hangers, *matching accessories and other commodities, incidental thereto, including costume or novelty jewelry*, when shipped in van-type trucks in company with garments, clothing and wearing apparel on hangers between points within the Los Angeles Basin Area. (2) Certificate MC 99339 (Sub-6), issued to A & B Garment Delivery of San Francisco on February 4, 1971 as follows: (1) *Wearing apparel materials and supples, accessories, containers, dry goods, clothes, luggage, textiles, and umbrellas* and (2) *general commodities* not named in (1) above when transported: (a) to or from retailers of garments, not including retailers which sell garments to drug stores and grocery stores, (b) between retailers, wholesalers and manufacturers of the commodities specifically named in (1) above and (c) to or from fashion shows between San Francisco, CA and Santa Rosa, CA over U.S. Hwy 101 and to the off-route points of Fairfax, San Anselmo, Two Rocks, Petaluma, Graton, Fort Cronkhite, Fort Barry, Fort Baker, Greenbrae, Daly City, Sebastopol, Fulton, Windsor, Kenwood, Marinwood, Tiburon, Black Point, Ross, Belvedere, Pacifica, Brisbane, Terra Linda, Santa Venetia, Corte Madera, Kentfield, Larkspur, Mill Valley, Hamilton AF Base, Waldo, Strawberry Point and South San Francisco. Also between Ignacio Junction, CA and Napa, CA over CA Hwy 37 and to the off-route points of Ignacio, Novato, Schellville, Sonoma and Black Point; between San Francisco, CA and North Sacramento, CA over U.S. Hwy 40 and to the off-route points of Daly City, Brisbane, Alameda, Piedmont, Crockett, Mare Island, Vallejo, Del Paso, Sulsun City, Davis, Pacifica, Albany, Kensington, El Cerrito, Benicia, Bryte, Rockville, Vacaville, Elmira, Dixon, South San Francisco, El Sobrante, Pinole, Rodeo, Roosevelt Terrace, Sacramento, Broderick, West Sacramento, McClellan AF Base and Allendale. Also between Napa, CA and the junction of CA Hwy 29 over CA Hwy 29 and U.S. Hwy 40 and to the off-route points of Benicia, Mare Island, and Roosevelt Terrace; between San Francisco, CA and Sacramento, CA over U.S. Hwy 50 and to the off-route points of Daly City, Bethnay, Lathrop, French Camp, Franklin, Perkins, Fruit Ridge, Banta, Parks AF Base, Brisbane, Pleasanton, Piedmont, Lodi, Galt, Sheldon, Bryte, Broderick, Dublin, Mt. Eden, South San Francisco, Berkeley, Hayward, Livermore, Herald, Elk Grove, North Sacramento, West Sacramento, Castro Valley, and Russell City. Also between Stockton, CA and the junction of CA Hwy 4 and U.S. Hwy 40 over CA Hwy 4 and to the off-route points of Crockett, Martinez, Avon, Concord, Port Chicago, Pittsburg, West Pittsburg, Antioch, Knightsen, Byron, Pinole, Rodeo, Pacheco, Camp Stonemen, Clayton, Pleasant Hill and Collinsville; between Oakland, CA and Pittsburg, CA over CA Hwy 24 and to the off-route points of Lafayette, Richmond, Moraga, Sparkle, Alameda, El Cerrito, Avon, Orinda, Saranap, Piedmont, Port Chicago, Antioch and Orinda Village. Also between Warm Springs, CA and Martinez, CA over CA Hwy 21 and to the off-route points of Palo Alto, Fremont, Avon, Benicia, Concord, Pleasanton, Vallecitos, and Milpitas; between Stockton, CA and Modesto, CA over U.S. Hwy 99 and to the off-route points of Ceres, Empire Riverbank, Manteca, Lathrop, Simms, French Camp and Collegeville; between the junction of California Hwy 33 and U.S. Hwy 50 over U.S Hwy 50 to the junction of CA Hwy 132 and to the off-route point of Bineta and between Vernalis, CA and Modesto, CA over CA Hwy 132 and to the off-route points of Ceres, Empire, Grayson and Salida. All of the above described authorities are restricted against the transportation of property sold by a retail merchant from said retail merchant's store or warehouse to the purchase thereof. In addition, there is unrestricted authority between San Francisco, CA and San Jose, CA over U.S. Hwy 101, CA Hwy 82 and Interstate Hwy 280. Also between San Jose, CA and Emeryville, CA over CA Hwy 17. (2) *Wearing apparel, materials and supplies, accessories, containers, dry goods, clothes, luggage, textiles and umbrellas* and *general commodities* not named above when transported: (a) to or from retailers of garments which sell garments incidentally, (b) between retailers, wholesalers and manufactures of the commodities specifically mentioned above and (c) to or from fashion shows: (a) Between points within 10 miles of Stockton, CA. (b) Between points within 10 miles of Sacramento, CA. (c) Between points within 5 miles of Santa Rosa, CA. and (d) Between all points within the San

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Francisco Territory and the points of Daly City, Pacifica, Rockaway Beach, San Mateo, Hillsborough, Allenton, El Sobrante, Fort Baker, Thornton Beach, Pinehurst, Menlo Park, Woodside, Palo Alto, Mountain View, Los Altos Hills, Fort Barry, Colina, Canyon, Sunnyville, Monta Vista, Campbell, Cupertino, El Camino Real, Santa Clara, Tiburon, Fort Cronkhite, Baden, San Jose, Milpitas, Fremont, Irvington, Morage, Berkeley, Sausalito, Belvedere, Vallemar, Castro Valley, Orinda, Rheem Valley, Lafayette, Albany, Kensington, Marin City, Waldo, Decoto and San Pablo. (3) Certificate MC 99339 (Sub-7), issued to A & B Garment Delivery of San Francisco on April 21, 1976 as follows: Regular routes; *General commodities* (except household goods as defined by the Commission, classes A and B explosives, automobiles, trucks, and busses, and commodities in bulk). Between San Rafael, CA and San Jose, CA serving all intermediate points and serving the off-route points of Tiberon, Mill Valley, Larkspur, San Anselmo, Fairfax, Los Gatos and Saratoga: From San Rafael over U.S. Hwy 101 to San Jose, and return over the same route. Between San Rafael, CA and San Jose, CA serving all intermediate points and serving the off-route points of Dublin, San Pablo, Castro Valley, Niles, and Mission San Jose: From San Rafael over CA Hwy 17 to San Jose, and return over the same route. Between San Francisco, CA and Oakland, CA serving all intermediate points: From San Francisco over Interstate Hwy 80 to Oakland, and return over the same route. Between junction CA Hwy 17 and Interstate Hwy 680 near Warm Springs, CA and Pleasant Hill, CA, serving all intermediate points: From junction CA Hwy 17 and Interstate Hwy 680 over Interstate Hwy 680 to Pleasant Hill, and return over the same route. Between Oakland, CA and Walnut Creek, CA serving all intermediate points and serving the off-route point of Moraga: From Oakland over CA Hwy 24 to Walnut Creek, and return over the same route. (4) Certificate MC 116877 (Sub-5) issued to Garment Carriers, Inc., on May 15, 1973 as follows: Regular routes: *Hanging or cartoned garments, clothing and wearing apparel* and *component parts* used in the manufacture, thereof, as defined in 61 MCC 288 and 289 (except natural furs and natural fur or fur-trimmed garments), *handbags* and *costume jewelry*, (A) Between North Sacramento, CA, and San Francisco, CA, serving all intermediate from North Sacramento over Interstate Hwy 80 to San Francosco, and return over the same route. (B) Between Sacramento, CA, and Oakland, CA, serving all intermediate points: From Sacramento over U.S. Hwy 50 to Oakland, and return over the same route. (C) Between junction Interstate Hwy 80 and CA Hwy 29, east of Vallejo, CA, and junction CA Hwys 29 and 37, north of Vallejo, CA, serving all intermediate points. From junction Interstate Hwy 80 and CA Hwy 29 over CA Hwy 29 to junction CA Hwy 37, and return over the same route. (D) Between junction CA Hwys 29 and 37, near Vallejo, CA, and junction CA Hwy 37 and U.S. Hwy 101 at Ignacio, CA, serving all intermediate points and the off-route points of Novato, Sonoma, Napa, Ignacio Junction, Waldo and Black Point, CA: From junction CA Hwys 29 and 37 over CA Hwy 37 to juction U.S. Hwy 101, and return over the same route. (E) between Richmond, CA, and San Jose, CA, serving all intermediate points: From Richmond over CA Hwy 17 to San Jose, and return over the same route. (F) between Oakland, CA, and Pittsburg, CA, serving all intermediate points and the off-route point of Moraga, CA: From Oakland over CA Hwy 24 to junction CA Hwy 4, then over CA Hwy 4 to Pittsburg, and return over the same route. (G) Between junction CA Hwy 4 and Interstate Hwy 80, near Rodeo, CA, and Stockton, CA, serving all intermediate Points, and the off-route points of Port Chicago and Byron, CA: From juction CA Hwy 4 and Interstate Hwy 80 over CA Hwy 4 to Stockton, and return over the same route. (H) Between Martinez, CA, and Warm Springs, CA, serving all intermediate points: From Martinez over Interstate Hwy 680 to Warm Springs, and return over the same route. (I) Between Tracy, CA, and Modesto, CA, serving all intermediate points: From Tracy over CA Hwy 33 to junction CA Hwy 132, then over CA Hwy 132 to Modesto, and return over the same route. (J) Between Wheeler Ridge, CA, and San Juan Capistrano, CA, serving all intermediate points between San Fernando and San Juan Capistrano, CA, inclusive, and all points in the Los Angeles "Basin Territory", as described in Appendix A hereafter, as intermediate and off-route points: From Wheeler Ridge over Interstate Hwy 5 to San Juan Capistrano, and return over the same route. (K) Between Santa Monica, CA, and junction Interstate Hwys 405 and 5, serving all intermediate points: From Santa Monica over Interstate Hwy 405 to junction Interstate Hwy 5, and return over the same route. (L) between Ignacio, CA, and Los Angeles, CA, serving (1) all intermediate points between Ignacio and San Jose, CA; (2) Santa Barbara and Ventura, CA, and Oxnard, CA, as on off-route point; (3) Belvedere, Tiburon, Mill Valley, San Anselmo, Fairfax, Fort Berry, Fort Cronkhite, Fort Baker, Sausalito, Marin City, Corte Madera, Larkspur, Kentfield, San Rafael, Terra Linda, San Benetia, Marinwood, and Hamilton Air Force Base, as off-route points; and (4) all points in the San Francisco Territory as described in Appendix B hereafter, as intermediate and off-route points: From Ignacio over U.S. Hwy 101 to Los Angeles, and return over the same route. (M) between Sacramento, CA, and Los Angeles, CA, serving (1) all intermediate points between Sacramento and Modesto; and (2) the intermediate points of Fresno and Bakersfield: From Sacramento over U.S. Hwy 99 to Los Angeles, and return over the same route. (N) Between Santa Monica, CA, and Tucson, AZ, serving (1) all intermediate points between Santa Monica and Redlands, CA, inclusive; (2) all intermediate points between Phoenix and Tucson, AZ, inclusive; and (3) Casa Grande, AZ, as an off-route point: From Santa Monica over Interstate Hwy 10 (U.S. Hwy 60) to Tucson, and return over the same routes. (O) Between Tucson, AZ, and Nogales, AZ, serving all intermediate points: From Tucson over U.S. Hwy 89 (Interstate Hwy 19) to Nogales, and return over the same route. (P) Between Avondale, AZ, and Mesa, AZ, serving all intermediate points, and the off-points of Alhambra, Chandler, Glendale and Scottsdale, AZ: From Avondale over U.S. Hwy 80 to Mesa, and return over the same route. (Q) Between Los Angeles, CA, and Las Vegas, NV, serving (1) all intermediate points between the CA-NV State line and Las Vegas; and (2) all points in Clark County, NV, as off-route points: From Los Angeles over Interstate Hwy 10 to junction Interstate Hwy 15 to Colton, CA, then over Interstate Hwy 15 to Las Vegas, and return over the same route. Restriction: Local service is not authorized (1) between points on and within the highways and territories described herein as points A through I, L(1), (3), and (4), and M(1); or (2) between points on and within the highways and territories described herein as points J, K, and N(1). (5) Certificate MC 116877 (Sub-7), issued to Garment Carriers, Inc., on February 28, 1978 as follows: Clothing and wearing apparel and component parts used in the manufacture thereof as defined in Appendix X to the report in descriptions in Motor Carrier Certificates, 61 MCC 209, 288 (except fur trimmed garments and natural furs), on hangers or in cartons, handbags, and costume jewelry between Sacramento and San Bernadino, CA on the one hand and points in Washoe County, NV, on the other hand, (6) Certificate MC 120700 (Sub-1), issued to A & B Garment Delivery as follows: (1) General commodities between all points and places within the Los Angeles Basin Area. (2) Between the Los Angeles Basin Area

and all points and places within the San Diego Territory. (3) Between the Los Angeles Basin Area or the San Diego Territory, on the one hand, and on the other hand, all points and places on the following named or numbered streets or highways and all points and places within 5 miles laterally thereof: (A) U.S. Hwy Nos. 101 and 101-A from Los Angeles to San Diego. (B) State Hwy No. 76 between Oceanside and Lake Henshaw, including Lake Henshaw. (C) Unnamed county roads from Bonsall to Fallbrook and from Fallbrook East to U.S Hwy No. 395. (D) U.S. Hwy No. 395 between the southern boundary of Riverside County and San Diego. (E) State Hwy No. 78 between its junction with U.S. Hwy 101 and San Pasqual, including San Pasqual. (F) Unnamed county road from Rincon through Valley Center to Escondido. Carrier shall render no service between any two points both of which are in the San Diego Territory. In rendering service pursuant to paragraphs 1, 2, and 3 above, carrier shall not transport any shipments of: (A) Commodities as described in paragraph 1 of item No. 105. (B) New household goods, office and store fixtures and equipment, except that carrier will transport such commodities when shipments of new household goods, office and store fixtures and equipment is securely packed in saleman's hand sample cases, suitcases, overnight or Boston bags, brief cases, hat boxes, valises, traveling bags, trunks, lift vans, barrels, boxes, cartons, crates, cases, baskets, pails, kits, tubs, drums, bags, (jute, cotton, burlap, gunny, fiberboard or straw matting), between the Los Angeles Basin Area and Vista. (4) Between all points and places in the said Los Angeles Basin Area, on the one hand, and on the other hand, San Luis Obispo, Stockton and the San Francisco Territory, as described in note 2, via the following named and numbered streets and highways serving all points and places within 5 miles laterally thereof: (A) U.S. Hwy Nos. 101 and 101-A between Los Angeles and San Luis Obispo; (B) U.S. Hwy No. 99 between Los Angeles and Stockton; (C) U.S. Hwy No. 50 between its junction with U.S. Hwy No. 99 and San Francisco. Restriction: In rendering service pursuant to this paragraph 4, carrier shall not transport any shipments of commodities described in item No. 105 nor logs. Note: Definitions of Los Angeles Basin Area and San Diego Territory are as follows: Note 1: Los Angeles Basin Area includes that area embraced by the following boundary: Beginning at the intersection of Sunset Boulevard and U.S. Hwy No. 101, alternate; thence northeasterly on Sunset Boulevard to State Hwy No. 7; northerly along State Hwy No. 7 to Chatsworth Drive; northeasterly along Chatsworth Drive to the corporate boundary of the city of San Fernando; westerly and northerly along said corporate boundary to McClay Avenue; northeasterly along McClay Avenue and its prolongation to the Angeles National Forest boundary; southeasterly and easterly along the Angeles National Forest and San Bernadino National Forest boundary to the county road known as Mill Creek Road; westerly along Mill Creek Road to the county road 3.8 miles north of Yucaipa; southerly along said county road to and including the unincorporated community of Yucaipa; westerly along Redlands Boulevard to U.S. Hwy No. 99; northwesterly along U.S. Hwy No. 99 to and including the city of Redlands; westerly along U.S. Hwy No. 99 to U.S. Hwy No. 395; southerly along U.S. Hwy No. 18 to U.S. Hwy No. 91; westerly along U.S. Hwy No. 91 to State Hwy No. 55; southerly along State Hwy No. 55 to the Pacific Ocean; westerly and northerly along the shoreline of the Pacific Ocean to a point directly south of the intersection of Sunset Boulevard and U.S. Hwy No. 101-A; then northerly along an imaginary line to point of beginning. Note 2: San Diego Territory includes that area embraced by the following imaginary line starting at the northerly junction of U.S. Hwy 101-E and 101-W (4 miles north of La Jolla); then easterly to Miramar on U.S. Hwy No. 395; then southeasterly to Lakeside on the El Cajon-Ramona Highway; then southerly to Bostonia on U.S. Hwy No. 80; Then southeasterly to Jamul on State Hwy No. 94; then due south to the international boundary line, west to the Pacific Ocean and north along the coast to point of beginning. Note 3: This authority is currently being converted to a certificate of public convenience and necessity (MC-F-12068, MC 120700 Sub-2). Applicant is a wholly-owned subsidiary of WTC, Inc., the holder of various ICC authorities either in its own name of one of its other subsidiaries, WTC Air Freight, Inc., Coast Cartage Co., Westransco Freight Co., or Coast Carloading Co. WTC. Inc., is also the holder of air freight forwarder authority from the Civil Aeronautics Board. Pursuant to these authorities, WTC (and its subsidiaries) operates in all States (including Alaska and Hawaii). These authorities are as follows: (1) WTC Air Freight, Inc., FF-404. (2) WTC Air Freight, Inc., MC 127898 (Sub-1). (3) Coast Cartage Co., MC 38536. (4) Westransco Freight Co., FF-52. (5) Coast Carloading Co., FF-82. Application has not been filed for temporary authority under section 210a(b).

MC-F-13777F. Authority sought for purchase by CRST, INC., 3930 16th Avenue, SW., P.O. Box 68, Cedar Rapids, IA 52403 of a portion of the operating rights of Wm. H. P., Inc., 1342 North Howard Street, Philadelphia, PA 19122, and for acquisition of control of such rights by Harold A. Smith, Jr. and Miriam G. Smith, both of Cedar Rapids, IA 52403, through the purchase. Representatives: Robert E. Konchar, 2720 First Avenue, NE., P.O. Box 1943, Cedar Rapids, IA 52406, and A. David Millner, 167 Fairfield Road, P.O. Box 1409, Fairfield, NJ 07006. Operating rights sought to be purchased: *General commodities*, except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, as a common carrier, over regular routes between Baltimore, MD, and Philadelphia, PA, serving no intermediate points except all points between the junction U.S. Hwy 13, U.S. Hwy 40, and Interstate Hwy 95 approximately 2 miles west of the Delaware Memorial Bridge, and Philadelphia, PA; from Baltimore over U.S. Hwy 40 to junction U.S. Hwy 13, then over U.S. Hwy 13 to junction PA Hwy 291 and then over PA Hwy 291 to Philadelphia, and return over the same route. Vendee is authorized to operate pursuant to Certificate MC 114273 and subs, as a common carrier in the States of CO, CT, DE, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MO, NE, NH, NJ, NY, OH, OK, PA, RI, SD, VA, VT, WV, and WI. No duplicating authority will result from the application. Application has been filed for temporary authority under section 210a(b).

MC-F-13778F. Authority sought for purchase by DICK SIMON TRUCKING, INC., 9541 South 5250 West, West Jordan, UT 84048, of a portion of the operating rights of Payne Motor Lines, Inc., P.O. Box 1937, Elko, NV 89801, and for acquisition by Richard D. Simon and Ada Valene Simon, both of 3700 South 4355 SLC, UT 84120, of control of such rights through the purchase. Transferee's attorney: Irene Warr, 430 Judge Building, Salt Lake City, UT 84111; Transferor's attorney: Scott E. Daniel, P.O. Box 82028, Lincoln, NE 68501. Operating rights sought to be purchased: *Animal and poultry feeds, supplements*, and *additives*, except commodities in bulk in tank or hopper type vehicles, as a *common carrier* over irregular routes, from points in CA, Seattle, WA, Denver, CO, Phoenix AZ, and St. Joseph and Kansas City, MO, to points in UT and ID. Vendee is authorized to operate as a *common carrier* in NJ, UT, NY, WA, CA, OR, CO, NM, MT, and ID. Vendee is also authorized to operate as a *contract carrier* in CA, UT, ID, WY, CO, and AZ. Application has been filed for temporary authority under section 210a(b).

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MC-F-13779F. Authority sought for control by WORLD-WIDE MOVERS, INC., P.O. Box 3126, Anchorage, AK 99501, of Active Moving & Storage Co., Inc., P.O. Box 9217, Seattle, WA 98109, and for acquisition by Vincent E. Halversen, also of Anchorage, AK, of control of Active Moving & Storage Co., Inc., through the transaction. Applicant's attorneys: James M. Stern, Jr., P.O. Box 1672, Anchorage, AK 99510, and J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101. Operating rights sought to be controlled: Irregular-routes, common carrier of: *General commodities*, with the usual exceptions, between points within three miles of Seattle, WA, including Seattle; *household goods*, between points in King County, WA, on the one hand, and, on the other, points in WA on and east of U.S. Hwy 97, and those within 3 miles of Portland, OR, including Portland; *used household goods*, between points in Pierce, Snohomish, King, and Kitsap Counties, WA, restricted to the transportation of traffic having a prior or subsequent movement, in containers, between the points authorized and delivery service in connection with packing, crating and containerization or depacking, uncrating, and decontainerization of such traffic. Applicant holds no authority from the Commission. Vincent E. Halversen also controls Golden North Van Lines, Inc., which operates pursuant to authority granted in Certificate MC 140556 as a common carrier of household goods, between points in AK (except the AK Panhandle). Application has been filed under section 210a(b).

MC-F-13780F. Authority sought for purchase by COMMUNITY TRANSIT LINES, INC., 315 Howe Avenue, Passaic, NJ 07055, of a portion of the operating rights of Decamp Bus Lines, 30 Allwood Road, Clifton, NJ 07014, and for acquisition by John A. Gallagher, Jr., Frank P. Gallagher, Alice M. Gallagher, and Stephen A. Gallagher, also of Passaic, NJ, of control of the rights through the purchase. Transferee's attorney: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101. Transferor's attorney: Robert E. Goldstein, 8 West 40th Street, New York, NY 10018. Operating rights sought to be purchased: *Passengers and their baggage*, as a common carrier, over regular routes, between Morristown and Orange, NJ; between Orange, NJ, and East Orange, NJ; between East Orange, NJ, and the junction of the Garden State Pkwy and NJ Hwy 3; between East Orange and Roseland, NJ; between Livingston Township and Livingston, NJ; between Weat Orange and Orange, NJ; between West Orange and Livingston, NJ; between Livingston and Livingston, NJ; and between Livingston and Morristown, NJ. Reference is made to pertinent portions of Certificate MC 109312 and sub-numbers thereunder for a complete description of these routes. Transferee does not hold operating authority from the Commission; however, it is under common control with Community Coach, Inc., which holds Certificate MC 76022 authorizing the irregular-route transportation of passengers and their baggage, in charter operations, from points in named NJ counties and New York, NY, to points in 11 States and DC, and return. Applicants state that approval of the proposed transaction will not result in significant duplicate services. Application has been filed for temporary authority under section 210a(b). Related emergency and temporary authority applications under section 210a(a) were simultaneously filed seeking regular-route passenger authority between the eastern terminus of the routes being acquired and New York, NY, in order that Transferee can continue the passenger service to and from New York City heretofore performed by Transferor under the involved certificates. A related permanent authority application under section 207 seeking the same operating authority will be filed.

MC-F-13781F. Authority sought for purchase by KEIM TRANSPORTATION, INC., 420 North Sixth, RFD 2, Box 10, Sabetha, KS 66534, of a portion of the operating rights of FARRIS TRUCK LINE, P.O. Box 224, Faucett, MO 64448, and for acquisition by Glen L. Keim, Dee Ann Keim, and Burt H. Keim, also of 420 North Sixth, RFD 2, Box 10, Sabetha, KS 66534, of control of such rights through purchase. Buyer's representative: Clyde N. Christey, Esquire, Kansas Credit Union Building, 1010 Tyler Street, Suite 110-L, Topeka, KS 66612. Seller's representative: Tom B. Kretsinger, Esquire, 20 East Franklin, Liberty, MO 64068. Operating rights to be purchased: *Urea, in dry form, in bulk*, from the site of the plant of W. R. Grace & Co., at or near Woodstock, TN, and from the warehouses of W. R. Grace & Co., at Memphis, TN, to points in AZ, CA, CO, ID, IL, IN, IA, KS, MI, MN, MO, MT, NE, NV, NM, ND, OK, OR, SK, TX, UT, WA, WI, and WY, with no transportation for compensation on return except as otherwise authorized; *urea, in dry form, in bags*, from the site of the plant of W. R. Grace & Co., at or near Woodstock, TN, and from the warehouses of W. R. Grace & Co., at Memphis, TN, to points in CO, IS, IA, MI, MN, MT, NE, NV, ND, OK, OR, SD, UT, WA, and WY, IN (except points in Indiana within the Chicago, IL, commercial zone as defined by the Commission), KS (except Kansas City, KS, and points in KS within the Kansas City, MO-Kansas City, KS, commercial zone as defined by the Commission), MO (except St. Louis, MO-East St. Louis, IL, commercial zone, and those within the Kansas City, MO-Kansas City, KS, commercial zone as defined by the Commission), TX (except Dallas, TX, and points in the commercial zone of Dallas), WI (except Milwaukee and Racine, WI, and points in the commercial zones of Racine and Milwaukee), and IL (except Chicago, IL, and points in IL within the Chicago, IL, commercial zone as defined by the Commission, East St. Louis, IL, and points in IL within the St. Louis, MO-East St. Louis, IL, commercial zone as defined by the Commission, and except points in that part of IL on, south, and east of a line beginning at Alton, IL, and extending along IL Hwy 140 to junction U.S. Hwy 66, then along U.S. Hwy 66 to Springfield, IL, then along IL Hwy 29 through Peoria, IL, to junction U.S. Hwy 51, then along U.S. Hwy 51 to junction U.S. Hwy 34 near Mendota, IL, then along U.S. Hwy 34 to junction IL Hwy 47, then along IL 47 to IL-WI State line), with no transportation for compensation on return except as otherwise authorized; *urea (except agricultural grade urea), in dry form, in bags*, from the site of the plant of W. R. Grace & Co., at or near Woodstock, TN, and from the warehouses of W. R. Grace & Co., at Memphis, TN, to points in AZ, CA, and NM, with no transportation for compensation on return except as otherwise authorized. Restriction: The operations authorized under the three commodity descriptions next above are subject to a transportation service to be performed under a continuing contract, or contracts, with W. R. Grace & Co.; *urea, dry, in bags*, from W. R. Grace & Co., at or near Woodstock, TN, and from the warehouses of W. R. Grace & Co., at Memphis, TN, to Chicago, IL, Kansas City, MO, St. Louis, MO, Dallas, TX, Milwaukee and Racine, WI, points in KY, and those in that part of IL on, south, and east of a line beginning at Alton, IL, and extending along IL Hwy 140 to junction U.S. Hwy 66 to Springfield, IL, then along IL Hwy 29 through Peoria, IL, to junction U.S. Hwy 51, then along U.S. Hwy 51 to junction U.S. Hwy 34 near Mendota, IL, then along U.S. Hwy 34 to junction IL Hwy 47 to the IL-WI State line, with no transportation for compensation on return except as otherwise authorized. Restriction: The operations authorized herein are limited to a transportation service to be performed, under a continuing contract, or contracts, with W. R. Grace & Co., of Memphis, TN. Vendee is authorized to operate as a common carrier in the States of KS, AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA, WY, MO, AL, AR, CO, IL, IA, KY, LA, MS, NE, OK, TN, TX, and

IN. Application has been filed for temporary authority under section 210a(b). MC 2095 (Sub-19F) is a directly related matter.

MC-F-13782F. Authority sought for purchase by WILLIAMS MOTOR TRANSFER, INC., South Vine Street, Barre, VT 05641, of the operating rights of Ray Churchill Trucking Co., Inc., Smith Street, Barre, VT, 05641. Attorney: John P. Monte, Box 568, Barre, VT 05641. Operating rights sought to be purchased: 1. *Granite*, over irregular routes, from points and places in Washington County, VT, to New York, NY., points and places on Long Island, NY, and that part of New York east of a line beginning at the NY-NJ State line and extending north along U.S. Hwy 9W to junction New York Hwy 7, and points and places within 10 miles west of such line, and those south of a line beginning at junction of U.S. Hwy 9W and NY Hwy 7 and extending east along NY Hwy 7 to the NY-VT State line, and that part of NJ north of NJ Hwy 33, including points and places on the indicated portions of the highways specified, and those in PA east of a line beginning at the PA-NY State line and extending south through Elkland, Wellsboro, Jersey Shore, and Gettysburg, PA, to the PA-MD State line, including the points named. 2. *Marble*, over irregular routes, from Proctor and Rutland, VT, to Baltimore MD, Albany and Rochester, NY, and points and places in that part of PA east and south of a line beginning at the PA-MD State line and extending along U.S. Hwy 522 to Lewistown, PA, then along U.S. Hwy 322 to Clarks Ferry, PA, then along U.S. Hwy 15 to Millersburg, PA, and then along U.S. Hwy 209 to the NY-NJ State line, including points and places on the indicated portions of the highways specified, traversing NJ and DE for operating convenience only. 3. *Granite*, over irregular routes, from Barre, VT, and points within 20 miles of Barre, to Bradford, PA, points in MA, NY, and NH, and those in Monmouth, Middlesex, Essex, Hudson, and Bergen Counties, NJ, with no transportation for compensation on return except as otherwise authorized, traversing RI for operating convenience. 4. *Concrete, metal, and wooden silos*, over irregular routes, from Red Creek, NY, to points in VT and NH, with no transportation for compensation on return except as otherwise authorized. 5. *Silos*, over irregular routes, from Netcong, NJ, to points in MA, NH, VT, and CT, with no transportation for compensation on return except as other wise authorized. 6. *Rough, dressed, or carved granite and marble*, over irregular routes, from points in Rutland Township, Rutland County, VT, and Berlin and Barre Townships, Washington County, VT, to Philadelphia, PA, with no transportation for compensation on return except as otherwise authorized. 7. *Rough, dressed, or carved granite*, over irregular routes, from points in Rutland Township, Rutland County, VT, and Berlin and Barre Twonships, Washington County, VT, to Wilmington, DE, with no transportation for compensation on return excpt as otherwise authorized. Vendee is authorized to operate as a common carrier in VT, NH, ME, CT, MA, RI, NY, NJ, OH, PA, VA, DE, MD and Washington, DC. Duplicating authority is involved in that applicant is presently authorized to transport granite from points and places in Vermont within 22 miles of Barre, VT to points and places in the states of NH, MA and NJ. Application has been filed for temporary authority under section 210a(b).

MC-F-13783F. Authority sought for purchase by PHILIPP TRANSIT LINES, INC., 1808 East 5th Street, Washington, MO 63090, of a portion of the operating rights of Midland Truck Lines, Inc., 311 Marion Street, St. Louis, MO 63104, and for acquisition by Paul Philipp, 1808 East 5th Street, Washington, MO 63090, of control of such rights, through the transaction. Attorney: Tom B. Kretsinger, Kretsinger & Kretsinger, 20 East Franklin, Liberty, MO 64068. Operating rights sought to be transferred: Regular routes: *General commodities*, except those of unusual value, class A and class B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, serving points in St. Louis County, MO and points in the St. Louis, MO-East St. Louis IL Commerical Zone, as defined by the Commission, and the site of the Emerson Electric Manufacturing Co. located near Ferguson, MO, as off-route points in connection with carrier's authorized regular-route operations to and from St. Louis, MO. *General commodities*, execept those of unusual value, class A and B explosives, houschold goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, between St. Louis, MO, and Mexico, MO, serving all intermediate points, and the off-route point of Fulton, MO: From St. Louis over Alternate U.S. Hwy 40 to junction bypass U.S. Hwy 40, then over bypass U.S. Hwy 40 to Wentzville, MO, then over U.S. Hwy 40 to Kingdom City, MO, and then over U.S. Hwy 54 to Mexico; and return from Mexico over U.S. Hwy 54 to junction MO Hwy 19, then over MO Hwy 19 to junction U.S. Hwy 40, then over U.S. Hwy 40 to Wentzville, MO, and then as specified immediately above to St. Louis. Between Kingdom City, MO, and Boonville, MO, serving all intermediate points; from Kingdom City over U.S. Hwy 40 to Boonville, and return over the same route. *Fresh meat, cured meat, smoked meat, lard, oleo, and eggs*. Between St. Louis, MO and National Stock Yards, IL, serving all intermediate points: From St. Louis over U.S. Hwy 40 to East St. Louis, IL, then over city streets to National Stock Yards, and return over the same route. Irregular routes: *General commodities*, except, those of unusual value, class A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, between points in the St. Louis, MO-East St. Louis, IL, Commercial Zone, as defined by the Commission. Any repetition in the statement of the authority granted herein shall not be construed as conferring more than one operating right. Sub 11. Regular routes: *General commodities* (except those of unusual value, classes A and B explosives, commodities in bulk, and household goods as defined by the Commission). (1) Between Kingdom City, MO, and Reform, MO, serving the intermediate points of Wainwright, Tebbets, Mokans, and Portland, MO, and the off-route point of the facilities of Union Electric Co. at or near Reform, MO: From Kingdom City over U.S. Hwy 54 to junction MO Hwy 94, then over MO Hwy 94 to junction Callaway County Route D, then over Callaway County Route D to junction County Route O, then over Callaway County Route O to junction Gallaway County Route CC, then over Callaway County Route CC to Reform, MO, and return over the same route. (2) Between junction MO Hwy 94 and Callaway County Route CC and Reform, MO, serving the intermediate point of Steedman, MO, and the off-route points of the facilities of the Union Electric Co. at or near Reform, MO: From junction MO Hwy 94 and Callaway County Route CC over Callaway County Route CC to Reform, MO, and return over the same route. (3) Between junction U.S. Hwy 54 and Callaway County Route O and junction Callaway County Route O and Callaway County Route CC, serving no intermediate points, and serving the termini for the purpose of joinder only: From junction U.S. Hwy 54 and Callaway County Route O over Callaway County Route O to junction Callaway Route CC, and return over the same route. (4) Between junction U.S. Hwy 54 and Callaway County Route C and junction Callaway County Route C and MO Hwy 94, serving no intermediate points and serving the termini for the purpose of joinder only: From junction U.S. Hwy 54 and

Callaway County Route C over Callaway County Route C to junction MO Hwy 94, and return over the same route. (5) Between junction Interstate Hwy 70 and Callaway County Route D and junction Callaway County Route D and Callaway County Route O, serving the intermediate point of Readsville, MO, and the termini for the purpose of joinder only: From junction Interstate Hwy 70 and Callaway County Route D over Callaway County Route D to junction Callaway County Route O, and return over the same route. (6) Between junction Interstate Hwy 70 and MO Hwy 19 and junction MO Hwy 94 and Callaway County Route D, serving the intermediate point of Rhineland, MO, and the termini for the purpose of joinder only: From junction Interstate Hwy 70 and MO Hwy 19 over MO Hwy 19 to junction MO Hwy 94, then over MO. Hwy 94 to junction Callaway County Route D, and return over the same route. (7) Between junction Callaway County Route D and Callaway County Route K and junction Montgomery County Route K and MO Hwy 19, serving no intermediate points and serving the termini for the purpose of joinder only: From junction Callaway County Route D and Callaway County Route K over Callaway County Route K and its continuation as Montgomery County Route K to junction MO Hwy 19, and return over the same route. Vendee is authorized to operate as a common carrier in the States of MO, KS, IL. Application has been filed for temporary authority under section 210a(b) of the Act.

MC-F-13789F. Authority sought for purchase by SCHANNO TRANSPORTATION, INC., 5 West Mendota Road, West St. Paul, MN 55118, of a portion of the operating rights of Glendenning Motorways, Inc., P.O. Box 43947, St. Paul, MN, and for acquisition by Paul Schanno, also of 5 West Mendota Road, West St. Paul, MN 55118, of control of such rights through the transaction. Representative: Anthony C. Vance, 1307 Dolley Madison Boulevard, McLean, VA 22101. Operating rights sought to be transferred: *General commodities*, with the usual exceptions, as a common carrier over regular routes between Chicago, IL and Minneapolis, MN, serving all intermediate points in MN except Owatonna and Austin, MN, as follows: From Chicago over U.S. Hwy 330 to junction U.S. Hwy 30, then over U.S. Hwy 30 to Cedar Rapids, IA, then over U.S. Hwy 218 to Owatonna, MN, then over U.S. Hwy 65 to Farmington, MN, then over MN Hwy 218 to Minneapolis, and return over the same route. Vendee is authorized to operate as a common carrier in all the States in the United States (except AK and HI). (Hearing site: St. Paul, MN.)

OPERATING RIGHTS APPLICATION(S) DIRECTLY RELATED TO FINANCE PROCEEDINGS

NOTICE

The following operating rights application(s) are filed in connection with pending finance applications under section 5(2) of the Interstate Commerce Act, or seek tacking and/or gateway elimination in connection with transfer applications under section 212(b) of the Interstate Commerce Act.

An original and one copy of protests to the granting of the authorities must be filed with the Commission within 30 days after the date of this FEDERAL REGISTER notice. Such protests shall comply with special rule 247(e) of the Commission's general rules of practice (49 CFR 1100.247) and include a concise statement of protestant's interest in the proceeding and copies of its conflicting authorities. Verified statements in opposition should not be tendered at this time. A copy of the protest shall be served concurrently upon applicant's representative or applicant if no representative is named.

Each applicant states that there will be no significant effect on either the quality of the human environment or energy policy and conservation resulting from approval of its application.

MC 1334 (Sub-22F), filed September 15, 1978. Applicant: RITEWAY TRANSPORT, INC., 2131 West Roosevelt, Phoenix, AZ 85005. Representative: William H. Shawn, Suite 501, 1730 M Street NW., Washington, DC 20036. Authority sought to operate as a regular and irregular-route motor *common carrier* transporting: (1) *General commodities* (except liquid acid in bulk, in tank vehicles), over irregular routes: Between all points and within the territory within a line commencing at the junction of CO Hwy 141 and U.S. Hwy 50, then over U.S. Hwy 50 to junction CO Hwy 149, then over CO Hwy 149 to junction U.S. Hwy 160, then over U.S. Hwy 160 to junction U.S. Hwy 666, then over U.S. Hwy 666 to junction CO Hwy 141, then over CO Hwy 141 to junction U.S. Hwy 50. Between all points in the above-described area, on the one hand, and, on the other, points in CO. (2) *General commodities*, with no exceptions, over regular routes: (a) Between Grand Junction, CO, and Rico, CO, serving all intermediate points: From Grand Junction over U.S. Hwy 50 to junction CO Hwy 141, then over CO Hwy 141 to junction U.S. Hwy 666, then over U.S. Hwy 666 to junction U.S. Hwy. 160, then over U.S. Hwy 160 to junction CO Hwy 145, then over CO Hwy 145 to Rico, and return over the same route. (b) Between Delta, CO and Rico, CO serving all intermediate points: From Delta over U.S. Hwy 50 to junction U.S. Hwy 550, then over U.S. Hwy 550 to junction U.S. Hwy 160 (also portion U.S. Hwy 666), then over U.S. Hwy 160 (also portion U.S. Hwy 666) to junction CO Hwy 184, then over CO Hwy 184 to junction CO Hwy 145, then over CO Hwy 145 to Rico, and return over the same route. (c) Between Montrose, CO and Rico, CO: Serving all intermediate points: From Montrose over U.S. Hwy 550 to junction CO Hwy 62, then over CO Hwy 62 to junction CO Hwy 145, then over CO Hwy 145 to Rico, and return over the same route. (d) Between Grand Junction, CO and Telluride, CO serving all intermediate points: From Grand Junction over U.S. Hwy 50 to Montrose, CO, then over U.S. Hwy 550 to Ridgway, CO, then over CO Hwy 62 to Placerville, CO, then over CO Hwy 145 to Telluride, and return over the same route. (Hearing site: Phoenix, AZ, Grand Junction, CO, or Denver, CO.)

NOTE.—The purpose of this application is to convert a certificate of registration to a certificate of public convenience and necessity. By this application, applicant also seeks to remove a restriction against the town-to-town transportation in competition with Rio Grande Motor Way and against the transportation of ore and ore concentrates to or from Pandora, CO. This application is directly related to a finance proceeding docketed MC-F-13545 published in the FEDERAL REGISTER issue of August 17, 1978.

MC 2095 (Sub-19F), filed October 16, 1978. Applicant: KEIM TRANSPORTATION, INC., 420 North Sixth, RFD 2, Box 10, Sabetha, Kansas 66534. Representative: Clyde N. Christey, Kansas Credit Union Building, 1010 Tyler Street, Suite 110-L, Topeka, KS 66612. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *UREA*, in dry form, in bulk, from the facility of W. R. Grace & Co., at or near Woodstock, TN, and from the facility of W. R. Grace & Co., at Memphis, TN, to points in AZ, CA, CO, ID, IL, IN, IA, KS, MI, MN, MO, MT, NE, NV, NM, ND, OK, OR, SD, TX, UT, WA, WI, and WY. *UREA*, in dry form, in bags; from the facility of W. R. Grace & Co., at or near Woodstock, TN, and from the facility of W. R. Grace & Co., at Memphis, TN, to points in CO, ID, IA, MI, MN, MT, NE, NV, ND, OK, OR, SD, UT, WA, and WY, IN (except points in IN within the Chicago, IL, Commercial Zone as defined by the Commission), KS (except Kansas City, KS and points in KS within the Kansas City, MO-Kansas City, KS, Commercial Zone as defined by the Commission), MO (except St. Louis, MO and Kansas City, MO and points in MO within the St. Louis, MO-East St. Louis, IL, Commercial Zone, and those within the Kansas City, MO-Kansas City, KS Commercial Zone as defined by the Commission), TX (except Dallas, TX, and points in the commercial zone of Dallas), WI (except Milwaukee and Racine, WI, and points in the commercial zones of Racine and Milwaukee), and IL (except Chicago, IL and points in IL within the Chicago, IL, Commercial Zone as defined by the Commission, East St. Louis, IL, and points in IL within the St. Louis, MO-East St. Louis, IL, Commercial Zone as defined by the Commission, and except points in that part of IL on, south, and east of a line beginning at Alton, IL, and extending along IL Hwy 140 to Junction U.S. Hwy 66, then along U.S. Hwy 66 to Springfield, IL, then along IL Hwy 29 through Peoria, IL to Junction U.S. Hwy 51, then along U.S. Hwy 51 to Junction U.S. Hwy 34 near Mendota, IL, then along U.S. Hwy 34 to Junction IL Hwy 47, then along IL Hwy 47 to IL-WI State Line). *UREA* (except agricultural grade urea), in dry form, in bags, From the facilities of W. R. Grace & Co., at or near Woodstock, TN, and from the facilities of W. R. Grace & Co., at Memphis, TN, to points in AZ, CA, and NM. *UREA*, dry, in bags from W. R. Grace & Co., at or near Woodstock, TN, and from the facility of W. R. Grace & Co., at Memphis, TN, to Chicago, IL, Kansas City, MO, St Louis, MO, Dallas, TX, Milwaukee and Racine, WI, points in KY, and those in that part of IL, on south, and east of a line beginning at Alton, IL, and extending along IL Hwy 140 to Junction U.S. Hwy 66, then along U.S. Hwy 66 to Springfield, IL, then along IL Hwy 29 through Peoria, IL to junction U.S. Hwy 51, then along U.S. Hwy 51 to Junction U.S. Hwy 34 near Mendota, IL, then along U.S. Hwy 34 to Junction IL Hwy 47, and then along IL Hwy 47 to the IL-WI State Line. (Hearing site: Kansas City, MO.)

NOTE.—This is an application to convert a contract carrier permit to a common carrier permit, directly related to purchase by Keim Transportation, Inc., applicant, of a portion of the operating rights of Farris Truck Line docketed in MC-F-13781F and published in a previous section of this FEDERAL REGISTER issue.

MOTOR CARRIER ALTERNATE ROUTE DEVIATIONS

NOTICE

The following letter-notices to operate over deviation routes for operating convenience only have been filed with the Commission under the Deviation Rules—Motor Carrier of Property (49 CFR 1042.4(c)(11)).

Protests against the use of any proposed deviation route herein described may be filed with the Commission in the manner and form provided in such rules at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of this FEDERAL REGISTER notice.

Each applicant states that there will be no significant effect on either the quality of the human environment or energy policy and conservation.

MOTOR CARRIERS OF PROPERTY

MC 2229 (deviation No. 30), RED BALL MOTOR FREIGHT, INC., 3177 Irving Boulevard, Dallas, TX 75247, filed October 10, 1978. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over deviation routes as follows: (1) From New Orleans, LA over Interstate Hwy 10 to junction Interstate Hwy 59, then over Interstate Hwy 59 to Meridian, MS, then over Interstate Hwy 59 to Birmingham, AL, and (2) From New Orleans, LA over the routes described in (1) above the Meridian, MS, then over U.S. Hwy 11 to Birmingham, AL and return over the same routes for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From New Orleans, LA over U.S. Hwy 61 to Natchez, MS, then over U.S. Hwy 65 to Ferriday, LA, then over LA Hwy 15 to Monroe, LA, then over U.S. Hwy 165 to Bastrop, LA, then over LA Hwy 139 to junction LA Hwy 142, then over LA Hwy 142 to the LA-AR State line, then over AR Hwy 133 to Crossett, AR, then over U.S. Hwy 82 to junction U.S. Hwy 11, then over U.S. Hwy 11 to Birmingham, AL and return over the same route.

MC 14252 (deviation No. 8), COMMERCIAL LOVELACE MOTOR FREIGHT, INC., 3400 Refugee Rd., Columbus, OH 43227, filed October 4, 1978. Carrier proposes to operate as a *common carrier*, by motor vehicle, of general commodities, with certain exceptions, over a deviation route as follows: From Peoria, IL over U.S. Hwy 24 to Kansas City, MO and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Peoria, IL over U.S. Hwy 150 to Bloomington, IL, then over U.S. Hwy 51 to Decatur, IL, then over IL Hwy 48 to junction U.S. Hwy 66, then over U.S. Hwy 66 to St. Louis, MO, then over U.S. Hwy 40 to Kansas City, MO, and return over the same route.

MC 78786 (deviation No. 14), PACIFIC MOTOR TRUCKING CO., 1766 El Camino Real, P.O. Box 990, Burlingame, CA 84010, filed October 17, 1978. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *General commodities*, with certain exceptions, over a deviation route as follows: From Reno, NV over U.S. Hwy 395 to Bishop, CA, then over presently authorized route U.S. Hwy 395 to junction CA Hwy 14 (formerly U.S. Hwy 6), then over CA Hwy 14 to junction Interstate Hwy 5, within the Los Angeles city limits, and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Reno, NV over Interstate Hwy 80 to junction CA Hwy 99 at Sacramento, CA, then over CA Hwy 99 to junction Interstate Hwy 5 near Wheeler Ridge, then over Interstate Hwy 5 to junction CA Hwy 60 at Los Angeles, CA and return over the same route.

MC 89723 (deviation No. 45), MISSOURI PACIFIC TRUCK LINES, INC., 210 North 13th Street, St. Louis, MO 63103, filed October 11, 1978. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From New Boston, TX over TX Hwy 8 to Linden, TX, and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From New Boston, TX over U.S. Hwy 82 to Texarkana, TX/AR, then over U.S. Hwy 59 to Linden, TX and return over the same route.

MC 114818 (deviation No. 1), MOTOR CARGO, P.O. Box 2351, Salt Lake City, UT 84110, filed September 22, 1978. Representative: D. Michael Jorgensen, P.O. Box 2465, Salt Lake City, UT 84110. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Los Angeles, CA over Interstate Hwy 5 to junction Interstate Hwy 10, then over Interstate Hwy 10 to junction Interstate Hwy 15, then over Interstate Hwy 15 to junction U.S. Hwy 93, then over U.S. Hwy 93 to junction U.S. Hwy Alt. 50, then over U.S. Hwy Alt. 50 to Wendover, NV and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Los Angeles, CA over Interstate Hwy 5 to junction CA Hwy 14, then over CA Hwy 14 to junction U.S. Hwy 395, then over U.S. Hwy 395 to junction U.S. Hwy 6, then over U.S. Hwy 6 to junction NV Hwy 8-A, then over NV Hwy 8-A to junction U.S. Hwy 50, then over U.S. Hwy 50 to junction NV Hwy 51, then over NV Hwy 51 to junction In-

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terstate Hwy 80, then over Interstate Hwy 80 to Wendover, NV and return over the same route.

MOTOR CARRIER ALTERNATE ROUTE DEVIATIONS

NOTICE

The following letter-notices to operate over deviation routes for operating convenience only have been filed with the Commission under the Deviation Rules—Motor Carrier of Passengers (49 CFR 1042.2(c)(9)).

Protests against the use of any proposed deviation route herein described may be filed with the Commission in the manner and form provided in such rules at any time but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of this FEDERAL REGISTER notice.

Each applicant states that there will be no significant effect on either the quality of the human environment or energy policy and conservation.

MOTOR CARRIERS OF PASSENGERS

MC 1515 (deviation No. 738), GREYHOUND LINES, INC., Greyhound Tower, Phoenix, AZ 85077, filed October 13, 1978. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage* and *express* and *newspapers*, in the same vehicle with passengers, over a deviation route as follows: From Sunnyvale, CA over Central Expressway to junction Lafayette Street, then over Lafayette Street to junction CA Hwy 82 and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property over a pertinent service route as follows: From Junction CA Hwy 82 and Lafayette Street, over CA Hwy 82 to Sunnyvale, CA, then over unnumbered highway to Palo Alto, CA and return over the same route.

MC 109014 (deviation No. 4), GREAT SOUTHERN COACHES, INC., P.O. Box 849, Jonesboro, AR 72401, filed October 11, 1978. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage* and *express and newspapers*, in the same vehicle with passengers, over a deviation route as follows: From Cape Girardeau, MO over Interstate Hwy 55 to Perryville, MO, and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property over a pertinent service route as follows: From Cape Girardeau, MO over MO Hwy 74 to junction MO Hwy 25, then over MO Hwy 25 to Advance, MO, then over MO Hwy 51 to Perryville, MO and return over the same route.

MOTOR CARRIER INTRASTATE APPLICATION(S)

NOTICE

The following application(s) for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to section 206(a)(6) of the Interstate Commerce Act. These applications are governed by special rule 245 of the Commission's general rules of practice (49 CFR 1100.245), which provides, among other things, that protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, and any other related matters shall be directed to the State Commission with which the application is filed and shall not be addressed to or filed with the Interstate Commerce Commission.

Alaska Docket No. 78-324-MP/P, filed August 3, 1978. Applicant: TRANSPORTATION SERVICES, INC., d.b.a. AMERICAN SIGHTSEEING OF ALASKA, 1135 West 8th Avenue, Suit 3, Anchorage, AK 99501. Representative: Andrew E. Hoge, 3201 "C" Street, Suite 706, Anchorage, AK 99503. Certificate of public convenience and necessity sought to operate a freight service, as follows: Transportation of: (1) *Limousine service*, (a) Between airports, marine and railroad terminals at Anchorage, on the one hand, and, on the other, all points and places of passengers arrival or departure within the confines of the Greater Anchorage Area Borough as its boundaries were defined on January 1, 1973. (b) Between Fairbanks International Airport and the railroad terminal, on the one hand, and, on the other, Fairbanks, with such service being restricted to preticketed tour passengers of Transportation Services, Inc. (c) Between all points within a thirty (30) mile radius of Skagway, including Skagway. (d) Between all points within a ten (10) mile radius of Mt. McKinley Park Hotel. (e) Between Valdez and Gulkana, via Alaska State Hwys 1 and 4 serving all intermediate points in both directions. (f) Between airports and/or marine terminals at Valdez on the one hand, and, on the other, all points and places within a ten (10) mile radius of Valdez, including Valdez. (2) *Metropolitan Service*, between all points and places within the confines of the Greater Anchorage Area Borough as its boundaries were defined on January 1, 1973. (3) *Inter-Urban Service*, (a) Between all points and places within the confines of the Greater Anchorage Area Borough as its boundaries were defined on January 1, 1973. (b) Between Seward or Homer on the one hand, and, on the other, Fairbanks; from Seward via Alaska State Hwy 9 to its junction with Alaska State Hwy 1, and from Homer via Alaska State Hwy 1 then via Alaska State Hwy 1 to its junction with Alaska Stater Hwy 3, then via Alaska State Hwy 3 to Fairbanks; or via Alaska State Hwy 1 to its junction with Alaska State Hwy 4, then via Alaska State Hwys 2 and 4 to Fairbanks and return over the same routes serving all intermediate points in both directions and the off-route points of Kenai, Nikishka, Hope, Palmer, Portage Glacier Lodge, Talkeetna and Petersville on a regular and scheduled basis (except service to the off-route points of Hope, Kenai, Nikishka, Portage Glacier Lodge and Petersville may be served on a nonscheduled basis. (c) Between Anchorage and Valdez via Alaska State Hwys 1 and 4. (d) Between Fairbanks and Valdez via Alaska State Hwys 2 and 4. (e) Between all points and places located on Routes 3 (c) and (d) on the one hand, and, on the other, Chitina via Alaska State Hwy 10. (4) *Sightseeing and/or tour service*, (a) Between Anchorage on the one hand, and, on the other, all points and places within a two hundred (200) mile radius of Anchorage. (b) Between Fairbanks on the one hand, and, on the other, all points and places within a two hundred (200) mile radius of Fairbanks. (c) From Anchorage to Fairbanks via Alaska State Hwy 1 to its junction with Alaska State Hwy 3, then via Alaska State Hwy 3 to Fairbanks and return over the same route serving all intermediate points and all off-route points within fifteen (15) miles laterally along each side of such Hwys, and including Kantishna and Petersville. (d) Between all points and places within a forty (40) mile radius of Seward. (e) Between all points and places within a thirty (30) mile radius of Skagway. Limousine passengers may be carried at the same time within a thirty (30) mile radius of Skagway (except service may not be provided via the Alaska Marine Highway System. (5) *Charter service*, between all points and places in the State of Alaska including service via the Alaska Marine Highway System. (6) *Express service*. Express shipments may be transported only in buses at the same time and in conjunction with inter-urban and/or limousine service as authorized in paragraphs 1 (a), (c), (e), and (f), or in paragraphs 3 (b), (c), (d), and (e) above. Express service may not be provided in such a manner as to cause delays, inconvenience or discomfort to passengers. Express shipments may not be accorded pick-up and/or delivery service at Anchorage, Fairbanks or Valdez. Intrastate, interstate and foreign commerce authority sought. Hearing: Date, time and place not yet fixed. Requests for procedural information should be addressed to Alaska Transportation Commission, 1000 MacKay Building, 338 Denali Street, Anchorage, AK 99501, and should not be directed to the Interstate Commerce Commission.

California Docket No. 58226, filed July 12, 1978. Applicant: THOMPSON TRANSPORT SYSTEMS, INC., 7200 Downing Avenue, Bakersfield, CA 93308. Representative: Earl N. Miles, Jr., 3704 Candlewood Drive, Bakersfield, CA 93306.

NOTE.—The purpose of this partial publication is to amend authority in California Docket No. 58226, by deleting the words "Commodities requiring temperature control to protect from heat or cold", and substituting the words "when required, temperature control service may be accorded"; the rest remains the same. Intrastate, interstate and foreign commerce authority sought. Hearing: Date, time and place not yet fixed. Requests for procedural information should be addressed to California Public Utilities Commission, California State Building, 350 McAllister Street, San Francisco, CA 94102, and should not be directed to the Interstate Commerce Commission.

California Docket No. 58293, filed August 15, 1978. Applicant: SACRAMENTO AUTO TRUCK CO., 525 Galveston Street, West Sacramento, CA 95691. Representative: Armand Karp, 743 San Simeon Drive, Concord, CA 94518. Certificate of Public Convenience and Necessity sought to operate a freight service, as follows: Transportation of: *General commodities*, (1) between all points on or within ten (10) statute miles of the following routes: (a) State Hwy 16 between Madison and Sacramento, inclusive. (b) State Hwy 128, between Winters and Davis, inclusive. (c) U.S. Hwy 505, between its intersection with State Hwy 16 near Madison and its intersection with U.S. Hwy 80 near Vacaville, inclusive. (d) State Hwy 113, between Woodland and its intersection with U.S. Hwy 80 near Davis, inclusive. (e) U.S. Hwy 80, between Fairfield and Sacramento, inclusive. Carrier shall not transport any shipments of trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper. Intrastate, interstate and foreign commerce authority sought. Hearing: Date, time and place not yet fixed. Requests for procedural information should be addressed to California Public Utilities Commission, California State Building, 350 McAllister Street, San Francisco, CA 94102, and should not be directed to the Interstate Commerce Commission.

New York Docket No. T-2153, filed September 15, 1978. Applicant: TACY'S EXPRESS, INC., P.O. Box Drawer 191, Rensselaer, NY 12144. Representative: Martin Werner, 888 Seventh Avenue, New York, NY 10019. Certificate of Public Convenience and Necessity sought to operate a freight service, as follows: Transportation of: *General commodities* (as defined by the New York State Department of Transportation), from all points in Fulton, Montgomery, Rensselaer, Saratoga, and Schenectady Counties, to all points in Albany County. Intrastate, interstate and foreign commerce authority sought. Hearing: Date, time and place not yet fixed. Requests for procedural information should be addressed to New York State Department of Transportation, 1220 Washington Avenue, State Campus, Building No. 4, Room G-21, Albany, NY 12232, and should not be directed to the Interstate Commerce Commission.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-30896 Filed 11-1-78; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

[Notice No. 735]

ASSIGNMENT OF HEARINGS

OCTOBER 30, 1978.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the official docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 119789 (Sub-424), Caravan Refrigerated Cargo, now being assigned for continued hearing on January 15, 1979, at the offices of the Interstate Commerce Commission, Washington, D.C.

MC 116004 (Sub-45), Texas-Oklahoma Express, Inc., now being assigned for continued hearing on November 27, 1978, at the offices of the Interstate Commerce Commission, Washington, D.C.

MC 58923 (Sub-45), Georgia Highway Express, Inc., now assigned for hearing on November 13, 1978, at Nashville, Tenn.; will be held at the Ramada Inn, 709 Spence Lane, instead of Room 651, U.S. Courthouse, 801 Broadway.

MC-C 7287, Aaacon Auto Transport, Inc. investigation and revocation of certificates, now being assigned for continued prehearing conference on January 16, 1979, at the offices of the Interstate Commerce Commission, Washington, D.C.

MC-F 13100, the Cleveland, Columbus & Cincinnati Highway, Inc.—purchase (portion)—Great Lakes Express Co., MC 3419 (Sub-11), the Cleveland Columbus & Cincinnati Highway, Inc.,

MC-F 13102, Maiers Motor Freight Co.—purchase (portion)—Great Lakes Express Co., MC-F 13103, United Trucking Service, Inc.—purchase (portion)—Great Lakes Express Co., MC-F 13233, Arkansas Best Freight—purchase (portion)—Great Lakes Express, and MC-F 13568, Tucker Freight Lines, Inc.—purchase (portion)—Great Lakes Express Co., now being assigned for continued hearing on November 14, 1978 (4 days), at Cincinnati, Ohio, in Room 553, Hamilton County Courthouse, Court and Main Streets.

MC 123872 (Sub-81F), W & L Motor Lines, Inc., now assigned for hearing on December 11, 1978, at Denver, Colo. is postponed indefinitely.

MC 96324 (Sub-25F), General Delivery, Inc., now being assigned for hearing on January 10, 1979, at the offices of the Interstate Commerce Commission, Washington, D.C.

MC 51146 (Sub-595F), Schneider Transport, Inc., now being assigned for prehearing conference on December 18, 1978, at the offices of the Interstate Commerce Commission, Washington, D.C.

MC 125433 (Sub-149F), F-B Truck Line Co., now being assigned, for hearing on December 11, 1978 (1 day), at Los Angeles, Calif., in Room 323, Court House, 312 North Spring Street.

MC 141532 (Sub-23F), Pacific States Transport, Inc., now being assigned for hearing on December 12, 1978 (1 day), at Los Angeles, Calif., in Room 323, Court House, 312 North Spring Street.

MC 117823 (Sub-54F), Dunkley Refrigerated Transport, Inc., now being assigned for hearing on December 13, 1978 (1 day), at Los Angeles, Calif., in Room 323 Court House, 312 North Spring Street

MC 138635 (Sub-50F), Carolina Western Express, Inc., now being assigned for hearing on December 14, 1978 (2 days), at Los Angles, Calif. in Room 323, Court House, 312 North Spring Street.

MC 119988 (Sub-148F), Great Western Trucking Co., Inc., now being assigned for hearing on November 28, 1978 (1 day), at Los Angeles, Calif., in Room 323, Court House, 312 North Spring Street.

MC 114457 (Sub-381F), Dart Transit Co., now being assigned for hearing on January 10, 1979 (1 day), at Chicago, Ill., in a hearing room to be lated designated.

MC 217 (Sub-19), Point Transfer, Inc., and MC 45194 (Sub-17), Lattavo Bros., Inc., now assigned November 21, 1978, at Columbus, Ohio, is postponed to January 10, 1979 (1 day), at Columbus, Ohio, in a hearing room to be later designated.

MC 134286 (Sub-63F), Illini Express, Inc., now being assigned for hearing on January 25, 1979 (1 day), at Omaha, Nebr., in a hearing room to be later designated.

MC 143651 (Sub-4F), Black Hawk Express, Inc., now being assigned for hearing on January 26, 1979 (1 day), at Omaha, Nebr., in a hearing room to be later designated.

MC 1515 (Sub-239), Greyhound, Inc., now

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being assigned continued hearing on November 28, 1978 (4 days), at the Ramada Inn South, Southern Boulevard and I-65, Montgomery, Ala., and continued to December 4, 1978 (1 week), at the Sheraton Inn-Mockingbird West, 1893 West Mockingbird Lane, Dallas, Tex.

MC 140024 (Sub-112F), J. B. Montgomery, Inc., now being assigned for hearing on December 11, 1978, at Philadelphia, Pa. (1 day), in a hearing room to be later designated.

MC 109397 (Sub-412F), Tri-State Motor Transit Co., now being assigned for prehearing conference on January 9, 1979, at the offices of the Interstate Commerce Commission, Washington, D.C.

MC 114632 (Sub-156F), Apple Lines, Inc., now being assigned for hearing on January 23, 1979 (1 day), at Kansas City, Mo., in a hearing room to be later designated.

MC 115703 (Sub-12F), Kreitz Motor Express, Inc., now assigned October 30, 1978, at Washington, D.C., is canceled transferred to modified procedure.

MC 105782 (Sub-9f), Hughes Refrigerated Express, Inc., now assigned for hearing on December 5, 1978, at Orlando, Fla., is postponed to January 9, 1979 (9 days), at Orlando, Fla., in a hearing room to be later designated.

No. 37020, "Increased Minimum Weights with Increased and Reduced Rates on Eastbound Transcontential Lumber and Related Articles," now assigned Novermber 14, 1978, at Washington, is canceled and reassigned to December 12, 1978 (9 days), at San Francisco, Calif., in a hearing room to be later designated.

MC 43716 (Sub-33F), Bigge Drayage Co., now being assigned for hearing on January 22, 1979 (1 day), at San Francisco, Calif., in a hearing room to be later designated.

MC 139807 (Sub-3F), All West Tours, now being assigned for hearing on January 23, 1979 (4 days), at San Francisco, Calif., in a hearing room to be later designated.

MC 134068 (Sub-39F), Kodiak Refrigerated Lines, Inc., now being assigned for hearing on January 29, 1979 (3 days), at San Francisco, Calif., in a hearing room to be later designated.

MC 142012, Bass Transportation Co., Inc., extension—general commodities, now being assigned for hearing on February 1, 1979 (2 days), at San Francisco, Calif., in a hearing room to be later designated.

MC 112989 (Sub-73F), West Coast Truck Lines, Inc., now being assigned for hearing on February 5, 1979 (2 days), at San Francisco, Calif., in a hearing room to be later designated.

MC 14450F, Delta Charter Service, Inc., now being assigned for hearing on February 7, 1979 (3 days), at San Francisco, Calif., in a hearing room to be later designated.

MC 115841 (Sub-630F), Colonial Refrigerated Transportation, now being assigned for hearing on January 9, 1979 (1 day), at Columbus, Ohio, in a hearing room to be later designated.

MC 112595 (Sub-78F), Ford Bros., Inc., now being assigned for hearing on January 10, 1979 (1 day), at Columbus, Ohio, in a hearing room to be later designated.

MC 117786 (Sub-10F), Riley Whittle, Inc., now being assigned for hearing on January 11, 1979 (1 day), at Columbus, Ohio, in a hearing room to be later designated.

MC 128273 (Sub-297), Midwestern Distribution, Inc., now being assigned for hearing on January 12, 1979 (1 day), at Columbus, Ohio, in a hearing room to be later designated.

MC 117416 (Sub-58F), Newman & Pemberton Corp., now being assigned for hearing on January 15, 1979 (2 days), at Columbus, Ohio, in a hearing room to be later designated.

MC 123069, Aller & Sharp, Inc., now being assigned for hearing on January 17, 1979 (3 days), at Columbus, Ohio, in a hearing room to be later designated.

MC-F 13516, Wilson Freight Co.—control and merger—Strickland, Transportation, now being assigned for hearing on January 9, 1979 (9 days), at Cincinnati, Ohio, in a hearing room to be later designated.

MC 144843 (Sub-1F), W. R. Grace & Co., d.b.a. Grace Distribution Service, now being assigned for hearing on January 15, 1979 (1 day), at New York, N.Y., in a hearing room to be later designated.

MC 119619 (Sub-126F), Distributors Service, Co., now being assigned for hearing on January 16, 1979 (2 days), at New York, N.Y., in a hearing room to be later designated.

MC 128460 (Sub-4F), John J. Conahan, d.b.a. Central Air Freight Service, now being assigned for hearing on January 18, 1979, at Philadelphia, Pa. in a hearing room to be later designated.

MC 133937 (Sub-25F), Carlina Cartage Co., Inc., now being assigned for hearing on January 23, 1979 (9 days), at Atlanta, Ga., in a hearing room to be later designated.

MC 103933 (Sub-930F), Morgan Drive-Away, Inc., now being assigned for hearing on January 9, 1979 (1 day), at Los Angeles, Calif., in a hearing room to be later designated.

MC-F 13378, Georgia Highway Express, Inc.—purchase—A. Earley & Associates, d.b.a. Mainline Transportation System, A corporation, now being assigned for hearing on January 10, 1979 (3 days), at Los Angeles, Calif., in a hearing room to be later designated.

MC 138026 (Sub-16F), Logistics Express, Inc., now being assigned for hearing on January 15, 1979 (2 days), at Los Angeles, Calif., in a hearing room to be later designated.

MC 141532 (Sub-17), Pacific States Transport, Inc., now being assigned for hearing on January 17, 1979 (3 days), at Los Angeles, Calif., in a hearing room to be later designated.

H. G. Homme, Jr.,
Acting Secretary.

[FR Doc. 78-31031 Filed 11-1-78; 8:45 am]

[7035-01-M]

[Notice No. 124]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

The following publications include motor carrier, water carrier, broker, and freight forwarder transfer applications filed under section 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act.

Each application (except as otherwise specifically noted) contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application.

Protests against approval of the application, which may include a request for oral hearing, must be filed with the Commission on or before December 4, 1978. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest must be served upon applicants' representative(s), or applicants (if no such representative is named), and the protestant must certify that such service has been made.

Unless otherwise specified, the signed original and six copies of the protest shall be filed with the Commission. All protests must specify with particularity the factual basis, and the section of the Act, or the applicable rule governing the proposed transfer which protestant believes would preclude approval of the application. If the protest contains a request for oral hearing, the request shall be supported by an explanation as to why the evidence sought to be presented cannot reasonably be submitted through the use of affidavits.

The operating rights set forth below are in synopses form, but are deemed sufficient to place interested persons on notice of the proposed transfer.

MC-FC-77688, filed July 24, 1978. Transferee: LaSALLE CARTAGE CO., INC., 2707 Territorial Road, St. Paul, MN 55114. Transferor: Furnell & Webb Co., 2280 Hampden Avenue, St. Paul, MN 55114. Representative: Val M. Higgins, 1000 First National Bank Building, Minneapolis, MN 55402. Authority sought for purchase by transferee of the operating rights of transferor as set forth in Certificate MC-139879 (Sub-2), issued December 31, 1975, as follows: Industrial solvents, in bulk, in tank vehicles, from St. Paul, MN, to points in WI, restricted to the transportation of shipments originating at the facilities of Worum Chemical Co. Transferee presently holds no authority from this Commission. Application has been filed for temporary authority under section 210a(b).

MC-FC-77809, filed August 2, 1978. Transferee: TFC, INC., Box 126, Rural Route 2, Grand Island, NE 68801. Transferor: Delbert W. Dewey, d.b.a. Dewey's Trucking, 714 McDowell, Fairbury, NE 68352. Representative: Gailyn L. Larsen, attorney, Peterson, Bowman, Larsen & Swanson, 521 South 14th Street, P.O. Box 81849, Lincoln, NE 68501. Authority sought for purchase by transferee of the operating rights of transferor as set forth in Permit MC 140255 (Sub-2) issued December 4, 1975, as follows: Brick, from the facilities of Endicott Clay Products Co., at or near Endicott, NE to points in AZ, CA, NV, NM, OR, TX, and UT, restricted to a transportation service to be performed under a continuing contract, or contracts, with Endicott Clay Products Co., of Endicott, NE. Transferee holds contract

carrier authority in MC 141575 (Sub-2) to transport cheese and related commodities to and from Oxford, NE. Application has been filed for temporary authority under section 210a(b).

MC-FC-77867, filed September 28, 1978. Transferee: JOHN L. HAWK TRUCKING, INC., 2908 Pear, St. Joseph, MO 45603. Transferor: Farris Truck Line, P.O. Box 224, Faucett, MO 64448. Representative: Tom B. Kretsinger, Esq., Kretsinger & Kretsinger, 20 East Franklin, Liberty, MO 64068. Authority sought for purchase by transferee of a portion of the operating rights of transferor, as set forth in Permit MC 114239 and (Sub-28), issued October 31, 1973 and May 23, 1973, respectively, as follows: *Feed*, in bulk, in bags, and *flour* in bags, when moving in mixed loads with shipments of feed, from Kansas City, MO to points in KS, CO, WY, NM, ME, SD, and OK, and *damaged shipments* on return. *Feed* from Kansas City, MO to points in TX (except points in Chambers, Montgomery, Harris, Fort Bend, Galveston, Liberty, and Brazoria Counties) and AR, *Feed ingredients*, from points in AR, CO, KS, NE, NM, OK, SD, TX (except points in Chambers, Montgomery, Harris, Fort Bend, Galveston, Liberty, and Brazoria Counties), and WY to Kansas City, MO, under a continuing contract or contracts with Albers Milling Co. Transferee presently holds no authority from this Commission. Application has been filed for temporary authority under section 210a(b).

MC-FC-77872, filed October 3, 1978. Transferee: MASONRY TRANSPORT, INC., 3211 North Roan Street, Johnson City, TN, 37601. Transferor: B & B Transport, Inc., 4609 Chandler Avenue, Chattanooga, TN 37410. Representative: William P. Jackson, Jr., P.O. Box 1240, 3426 North Washington Boulevard, Arlington, VA, 22210. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Permit MC 112254 (Sub-3), MC 112254 (Sub-6), MC 112254 (Sub-7), and MC 112254 (Sub-8), issued February 13, 1968, February 15, 1968, August 21, 1968 and October 5, 1972, respectively as follows: Cinder blocks, clay and clay products, shale and shale products, concrete and concrete products, and mortar mixes, from Kingsport, TN, to points in specified counties in VA; from Kingsport and Johnson City, TN, and Marion and Groseclose, VA, to specified counties in KY and WV; between Kingsport and Johnson City, TN, on the one hand, and, on the other, Richmond, VA; from Kingsport and Johnson City, TN, to Louisville, KY; from Kingsport, TN, to specified counties in NC; Brick, cinder blocks, clay and clay products, shale and shale products, and concrete and concrete products, from Johnson City and Elizabethton, TN, to specified counties in VA and from Elizabethton; TN, to specified counties in WV; between Elizabethton, TN on the one hand, and, on the other, Richmond, VA; from Elizabethton, TN, and Groseclose, VA, to Louisville, KY; between Johnson City and Elizabethton, TN, and Groseclose, VA, on the one hand, and, on the other points in specified counties in NC; From Groseclose, VA, to points in TN; From Richlands, VA, to points in KY, NC, TN, and WV; From Knoxville and Chattanooga, TN, to points in AL, GA, NC, KY, and VA. The operations authorized are limited to a transportation service to be performed, under a continuing contract, or contracts, with General Shale Products Corp. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under section 210a(b).

MC-FC-77782, filed October 5, 1978. Transferee: LA VONNE R. JAHN, South Hokah Street, Caledonia, MN 55947. Transferor: Theodore Ranzenberger, 403 East Madison Street, Caledonia, MN, 55921. Representative: Joseph E. Ludden, P.O. Box 1567, La Crosse, WI, 54601. Authority sought for purchase by transferee of the operating rights of transferor as set forth in Certificates MC 45168 and MC 45168 (Sub-2), issued June 11, 1942, and February 16, 1949, as follows: general commodities, with certain exceptions, over specified regular routes between Spring Grove, MN, and La Crosse, WI; and between Caledonia, MN, and Eitzen, MN. Transferee presently holds no authority from this Commission. Application has been filed for temporary authority under section 210a(b).

MC-FC-77888, filed October 16, 1978. Transferee: MID-CITIES DELIVERY, INC., 324 MICHIGAN, ST. JOSEPH, MO 64505. Transferor: Farris Truck Line, P.O. Box 224, Faucett, MO 64448. Representative: Tom B. Kretsinger, Esq., Kretsinger & Kretsinger, 20 East Franklin, Liberty, MO 64068. Authority sought to purchase by transferee a portion of the operating rights of the transferor, as set forth in Permit MC 114239, issued October 31, 1973, as follows: *Such commodities* as are dealt in by chain retail and mail order department stores, from St. Joseph, MO to points in Brown, Namaha, Doniphan, and Atchison Counties, KS and that part of Jackson County, KS, on and north of KS Hwys 16 and 116; and *used and repossessed shipments* of the above-specified commodities and *trade-in merchandise*, on return. Transferee presently holds no authority from this Commission. Application has been filed for authority under section 210a(b).

MC-FC-77891 filed October 10, 1978. Transferee: ANDY'S EXCAVATING, INC., 45 Morgan Hill Road, Easton, PA 18042. Transferor: Earle C. Helm, Jr. and Kenneth S. Helm, a partnership, d.b.a. As Helm Bros., 1880 Morgan Hill Road, Easton, PA, 18042. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate MC 30107 and MC 30107 (Sub-2), issued December 18, 1956, and May 5, 1971, respectively as follows: Such bulk commodities as are transported in dump trucks, between points in Lehigh, Bucks, and Northampton Counties, PA, on the one hand, and, on the other, points in Warren and Hunterdon Counties, NJ; Aggregate (limestone residue) in bulk, from Newton, NJ, to Mt. Bethel, PA. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under section 210a(b).

H. G. Homme, Jr.,
Acting Secretary.

[FR Doc. 78-31029 Filed 11-1-78; 8:45 am]

[7035-01-M]

[Notice No. 125]

MOTOR CARRIER TRANSFER PROCEEDINGS

November 2, 1978.

Application filed for temporary authority under section 210a(b) in connection with transfer application under section 212(b) and Transfer Rules, 49 CFR Part 1132:

MC-FC 77910. By application filed October 23, 1978, PEBBLE HAULERS, INC., 2630 Delta Avenue, Colorado Springs, CO 80910, seeks temporary authority to transfer the operating rights of Dalby Transfer and Storage, Inc., P.O. Box 7187, 641 Winters Drive, Colorado Springs, CO 80933, under section 210a(b). The transfer to Pebble Haulers, Inc., of the operating rights of Dalby Transfer and Storage, Inc., is presently pending.

MC-FC 77911. By application filed LLOYD M. BRETT & GARY L. BRETT, a partnership, d.b.a. BRETT FREIGHT SERVICE, 764 N. Jennifer Street, East Wenatchee, WA 98801, seeks temporary authority to transfer the operating rights of Waterville Transfer Co., Waterville, WA 98858, under section 210a(b). The transfer to Lloyd M. Brett & Gary L. Brett, a partnership, d.b.a. Brett Freight Service, of the operating rights of Waterville Transfer Co., is presently pending.

By the Commission.

H. G. Homme, Jr.,
Acting Secretary.

[FR Doc. 78-31030 Filed 11-1-78; 8:45 am]

sunshine act meetings

This section of the FEDERAL REGISTER contoins notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409), 5 U.S.C. 552b(e)(3).

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[6320-01-M]

1

CIVIL AERONAUTICS BOARD.

[M-175, Amdt. 1; Oct. 27, 1978]

NOTICE OF DELECTION OF ITEMS FROM THE NOVEMBER 2, 1978, MEETING AGENDA

TIME AND DATE: 10 a.m.—November 2, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT:

6. Docket 32926, Eastern's Application for Temporary Suspension of Service at Chattanooga, Tenn. (Memo 8254, BPDA).

7. Docket 26291, Petition for Immediate Restoration of Adequate Air Service for American Samoa (Memo 7651-C, BPDA, OCCR, BIA, OGC).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, The Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: Items 6 and 7 were inadvertently placed on the calendar for November 2, 1978. Accordingly, the following Members have voted that agency business requires the deletion of these items for the agenda and that no earlier announcement of these deletions was possible:

Chairman Marvin S. Cohen
Member Richard J. O'Melia
Member Elizabeth E. Bailey
Member Gloria Schaffer

[S-2204-78 Filed 10-31-78; 10:49 am]

[6712-01-M]

2

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Thursday, November 2, 1978.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Open Commission meeting.

MATTERS TO BE CONSIDERED:

Agenda, Item No., and Subject

Safety and special radio services—1—Amateur radio applications with affirmative answers to the criminal-conviction question.

Common carrier—1—Reconsideration of Commission authorization of cables between Venezuela-St. Thomas, V.I. and Brazil-St. Thomas, V.I.

Common carrier—3—Western Tele-Communications, Inc. révisions to Tariff FCC No. 11.

Cable television—1—Petition for declaratory ruling filed by Cable TV Systems, Inc., Bethany, Mo.

Cable television—2—Joint petition for reconsideration of Arlington Telecommunications Corp., d.b.a. ARTEC, Arlington County, Va.

Renewal—1—Petition to deny renewal of WHY-TV, Wilmington, Del., filed by the Philadelpia Jewish War Veterans.

Renewal—2—Petition to deny renewal of KLFJ, Springfield, MO.

Assignment and transfer—1—Reconsideration of assignment of WEZE, Boston, Mass., to New England Continental Media, Inc. (BAL-9136).

Aural—1—Request by Chattahoochee Broadcasting WEIZ-FM, Phenix City, Ala., to relocate main studio to Columbus, Ga. (File No. BMLH-573).

Aural—2—Application (File No. BP-20,935) by Hubbard Broadcasting, Albuquerque, N. Mex., proposing nondirectional I-A clear channel operation.

Television—1—Mutually exclusive applications for a new TV station on channel 30, Jacksonville, Fla.

Broadcast—1—Regulation order modifying licensing and authorization procedures.

Complaints and compliance—1—Request for a declaratory ruling concerning the meaning of the phrase "program or any part thereof" in Section 325(a) of the act.

Complaints and compliance—2—Violations by station WTRP, La Grange, Ga.

This meeting may be continued the following workday to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from the FCC Public Information Office, telephone 202-632-7260.

Issued: October 27, 1978.

[S-2205-78 Filed 10-31-78; 10:49 am]

[6712-01-M]

3

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: Thursday, November 2, 1978, following the Open Meeting which is scheduled to commence at 9:30 a.m.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Closed Commission meeting.

MATTER TO BE CONSIDERED:

Agenda, Item No., and Subject

General—1—Supreme Court appeal of the decision in *Community-Service Broadcasting v. FCC.*

This meeting may be continued the following workday to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from the FCC Public Information Office, telephone 202-632-7260.

Issued: October 27, 1978.

[S-2206-78 Filed 10-31-78; 10:49 am]

[6714-01-M]

4

FEDERAL DEPOSIT INSURANCE CORPORATION.

NOTICE OF CHANGE IN SUBJECT MATTER OF AGENCY MEETING

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b (e)(2)), notice is hereby given that at its open meeting held at 10 a.m. on Monday, October 30, 1978, the Corporation's Board of Directors voted, on motion of Acting Chairman John G. Heimann, seconded by Director William M. Isaac (Appointive), that Corporation business required the addition of the following item to the agenda for the meeting, on less than seven days' notice to the public:

Memorandum and resolution proposing the republication for comment of a proposed new Part 344 of the Federal Deposit Insurance Corporation's regulations, to be entitled "Recordkeeping and Confirmation Requirements for Securities Transactions."

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter of the meeting was practicable.

Dated: October 30, 1978.

FEDERAL DEPOSIT INSURANCE CORPORATION,
ALAN R. MILLER,
Executive Secretary.

[S-2212 Filed 10-31-78; 3:46 pm]

[6715-01-M]

5

FEDERAL ELECTION COMMISSION.

[Federal Register No. FR-S-1808]

PREVIOUSLY ANNOUNCED DATE AND TIME: Wednesday, November 1, 1978, at 10 a.m.

CHANGE IN MEETING: The following item has been added to the agenda: House and Senate audit policy and criteria for 1979.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, November 2, 1978, at 10 a.m.

CHANGE IN MEETING: The following item has been added to the agenda: Proposed reply to Representative Ertel's letter of October 3, 1978, (received Oct. 10, 1978).

PERSON TO CONTACT FOR INFORMATION: Mr. David Fiske, Press Officer; telephone 202-523-4065.

MARJORIE W. EMMONS,
Secretary to the Commission.

[S-2207-78 Filed 10-31-78; 11:45 am]

[6730-01-M]

6

FEDERAL MARITIME COMMISSION.

TIME AND DATE: November 8, 1978—10 a.m.

PLACE: Room 12126—1100 L Street NW., Washington, D.C. 20573.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Agreement No. 10044-4: Modification and extension of a pooling agreement in the southbound U.S. Gulf-Peru trade.
2. Agreement No. 10041-6: Modification and extension of a pooling agreement in the southbound U.S. Atlantic-Peru trade.
3. Agreements Nos. T-3453 and T-3453-A: Agreements regarding marine terminal facilities at San Juan, P.R., and Docket No. 76-41: Berthing of Seatrain vessels in San Juan, P.R.—Consideration of petition for stay.
4. Proposed cancellation of refrigerated Christmas tree rates in the Pacific Coast/Hawaiian trade by Matson Navigation Co.
5. Special Docket No. 562: *Schenectady Midland, Ltd.* v. *Gulf/United Kingdom Conference*—Review of initial decision.
6. Docket No. 78-34: Concordia International Forwarding Corp.—Independent ocean freight forwarder application and possible violations of section 44, Shipping Act, 1916—Consideration of the record.

CONTACT PERSON FOR MORE INFORMATION:

Francis C. Hurney, Secretary, 202-523-5725.

[S-2211-78 Filed 10-31-78; 3:46 pm]

[6725-01-M]

7

OCTOBER 31, 1978.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 10 a.m., October 31, 1978.

PLACE: Room 600, 1730 K Street NW., Washington, D.C. 20006.

STATUS: This meeting will be open.

MATTER TO BE CONSIDERED: The Commission will consider and act upon the following additional agenda item: Commission policy and staff briefing on ex parte communications.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Philip Paschall, 202-653-5610.

[S-2208-78 Filed 10-31-78; 2:01 pm]

[7020-02-M]

8

USITC SE-78-55B

INTERNATIONAL TRADE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 F.R. 50283, October 27, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Thursday, November 9, 1978.

CHANGES IN THE MEETING: Additional agenda item:

9. Proposal for section 603 Preliminary Investigation regarding certain replica black powder firearms—See documents LS-B-38 and GC-B-274.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth R. Mason, Secretary, 202-523-0161.

[S-2210-78 Filed 10-31-78; 3:36 pm]

[3810-70-M]

9

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES.

MEETING NOTICE

AGENCY HOLDING MEETING: Uniformed Services University of the Health Sciences.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 38784; August 30, 1978.

PREVIOUSLY ANNOUNCED DATE OF THE MEETING: Monday, November 13, 1978.

CHANGE IN MEETING: Meeting cancelled.

CONTACT PERSON FOR MORE INFORMATION:

F. M. Reynolds, Executive Secretary of the Board, 202-295-2111.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

OCTOBER 31, 1978.

[S-2209-78 Filed 10-31-78; 3:27 pm]

V 43 / 213 NO 2 78 UMI

V 43/213

federal register

THURSDAY, NOVEMBER 2, 1978
PART II



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

STRENGTHENING DEVELOPING INSTITUTIONS PROGRAM

NO 2 78
UMI

V 43 / 213 NO 2 78 UMI

[4110-02-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Part 169]

STRENGTHENING DEVELOPING INSTITUTIONS PROGRAM

AGENCY: Office of Education, HEW.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Comissioner of Education proposes to amend the regulations for the strengthening developing institutions program, title III of the Higher Education Act. The amendments reflect new policy that will improve the administration of the program. The regulations establish the rules under which the Commissioner of Education (1) determines whether an institution of higher education qualifies as a developing institution, and (2) selects those developing institutions that will be awarded title III assistance in a particular fiscal year.

DATES: Comments must be received on or before January 2, 1979. Public hearings will be held in Washington, D.C., on November 27, 1978; Bronx, N.Y., on November 30, 1978; New Orleans, La. on December 4, 1978; El Paso, Tex., on December 6, 1978; Los Angeles, Calif., on December 11, 1978; and St. Louis, Mo., on December 15, 1978; all beginning at 10 a.m.

ADDRESSES: Public hearings will be held in the following locations:

November 27, 1978—Washington, D.C., University of the District of Columbia, Van Ness Campus, Building 9-A05, 4200 Connecticut Avenue NW. Contact: Mrs. Emily Chisley, telephone 202-282-7424.

November 30, 1978—Bronx, N.Y., City University of New York, Hostos Community College, 475 Grand Concourse. Contact: Mr. Wiley Edgecombe, telephone 212-960-1008.

December 4, 1978—New Orleans, La., Xavier University, Student Center, Gold Room, 7325 Palmetto Street. Contact: Mr. Milton Granger, Jr., telephone 504-486-7411, extension 373.

December 6, 1978—El Paso, Tex., El Paso Community College, Gymnasium, 6601 Dyer Street. Contact: Mr. Phillip Welch, telephone 915-594-2180.

December 11, 1978—Los Angeles, Calif., Mount Saint Mary's College, Chalon Campus, 12001 Chalon Road. Contact: Sister Adrian Claire, telephone 213-476-2237, extension 267.

December 15, 1978—St. Louis, Mo., Harris Stowe College, Room 311, 3026 Laclede Street. Contact: Mrs. Mary K. Jones, telephone 314-533-3366.

Comments should be addressed to: Dr. Anita F. Allen, Division of Institutional Development, (Room 3058, Regional Office Building 3), 400 Maryland Avenue SW., Washington, D.C. 20202. Comments received will be available for inspection at this same address between the hours of 8:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Dr. Anita F. Allen, telephone 202-245-9754.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Under title III of the Higher Education Act of 1965, the Commissioner of Education assists developing institutions of higher education to strengthen their academic quality and administrative capacity. The strengthening developing institutions program has been funded since fiscal year 1966.

HIGHLIGHTS

These proposed regulations explain the purpose of the program and describe the characteristics the Commissioner looks for in determining whether an institution of higher education should be classified as developing.

Some of the eligibility characteristics which the Commissioner considers are as follows:

1. Whether an applicant institution has the desire and potential to make a special contribution to the higher educational resources of the Nation and whether it is making a reasonable effort to meet that objective.

2. Whether an applicant has taken steps to ensure its survival. If there is evidence of certain conditions that might be regarded as impediments to an institution's survival, the institution explains what it has done to improve those conditions.

The regulations describe in detail the types of awards that the Commissioner makes: Cooperative arrangement grants, national teaching fellowships, and professors emeritus grants.

There are two types of cooperative arrangements—bilateral and consortium. The regulations describe conditions that participants in a consortium must meet. They explain how the duration of cooperative arrangement grants may vary from 1 to 5 years, depending on the type of activity for which an applicant requests Federal assistance.

The regulations specify: (a) Activities for which an institution may request Federal funds;

(b) Priorities of the program; and

(c) Costs to which the institution may apply title III assistance.

SELECTION

The regulations also describe the methods the Commissioner applies in determining whether a developing institution should receive Federal financial assistance. The fact that an institution is classified as developing does not automatically entitle it to assistance.

The regulations describe how successful applicants are selected for awards by:

Explaining the Commissioner's use of review panels to examine applications and recommend ratings to the Commissioner;

Listing application review criteria and indicating the maximum number of points that may be awarded for each criterion, according to the relative importance of that criterion as determined by the Commissioner;

Describing how certain applicants are selected for further consideration after initial screening procedures;

Listing additional criteria, with respective maximum points, in rating those applicants' relationship to program priorities; and

Describing methods for overall ranking and final selection.

CHANGES

These proposed regulations introduce certain changes from previous regulations governing this program.

In specifying the characteristics the Commissioner looks for to determine whether an institution of higher education should be classified as developing, the proposed regulations include two quantitative criteria on which an applicant institution is ranked:

(a) Average educational and general (E&G) expenditures per full-time-equivalent (FTE) students; and

(b) Average basic education opportunity grant (BEOG) award per FTE undergraduate student.

In another change, the proposed regulations require an institution seeking designation to demonstrate that it is making a constructive effort to strengthen itself.

These proposed regulations established a single program—rather than the previous two separate programs—under title III. The single program concept recognizes the infinite variety to strengths and weaknesses of institutions. Thus, each applicant may request funds based on its respective needs. The focus of the activities for which an applicant seeks Federal financial assistance determines the size and duration of the grant for which the Commissioner may consider that applicant.

The use of weighted selection criteria and specification of how applications will be ranked is new in these regulations. This will permit more objective grantee selection. The proposed regulations identify the factors used in evaluating the quality of each application and establish the maximum number of points that the Commissioner may award each factor. By providing greater weights for higher priority purposes, the proposed regulations will also encourage an applicant institution to focus on the achievement of program goals.

Other than an assisting agency or institution, each institution participating as an applicant in a consortium under this program must be a developing institution as defined in these regulations.

In the section on funding limitations, the proposed regulations address the relationship between title III funding and policies related to the decree in the *Adams* v. *Califano* case, not previously addressed by regulations.

Dated: August 28, 1978.

JOHN ELLIS,
Acting U.S. Commissioner of Education.

Approved: October 18, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary of Health, Education, and Welfare.

(Catalog of Federal Domestic Assistance No. 13.454, Strengthening Developing Institutions.)

Part 169 of title 45 of the Code of Federal Regulations is amended to read as follows:

PART 169—STRENGTHENING DEVELOPING INSTITUTIONS

Subpart A—General Information

Sec.
169.1 Program and regulation purposes.
169.2 Definitions.
169.3 Allocation of funds between 2-year and 4-year institutions.
169.4 Funding limitations.
169.5 General provisions regulations.

Subpart B—Criteria for Designation as a Developing Institution

169.11 General rules.
169.12 Designation as a developing institution.
169.13 Eligible institutions of higher education.
169.14 Legal authorization for education program.
169.15 Accreditation status.
169.16 Five-year requirement.
169.17 Struggling for survival and isolated from the main currents of academic life.
169.18 Desire, potential, and reasonable effort.

Subpart C—Types of Awards

169.21 Introduction.
169.22 Cooperative arrangements.
169.23 National teaching fellowship grant.
169.24 Professors emeritus grant.

Subpart D—Scope and Duration of Grants for Cooperative Arrangements

169.31 Allowable activities.
169.32 Allowable costs.
169.33 Duration of cooperative arrangement grants.

Subpart E—Application Procedures

169.41 Submission of applications.

Subpart F—Grantee Selection

169.51 Introduction.
169.52 Application review criteria and use of review panels.
169.53 Rating for program priorities.
169.54 Overall ranking and selection.

AUTHORITY: Sec. 301-306 of title III of the Higher Education Act of 1965, as amended (20 U.S.C. 1051-1056), unless otherwise noted.

Subpart A—General Information

§ 169.1 Program and regulation purposes.

(a) Under the authority of title III of the Higher Education Act of 1965, the Commissioner assists selected higher education institutions to strengthen their academic quality, administrative capacity, and student services. These institutions are called developing institutions:

(1) They are struggling for survival.

(2) They are isolated from the main currents of academic life.

(3) They possess the desire and potential to make a substantial and distinctive contribution to the higher educational resources of the Nation.

(4) They are distinguished from other institutions of higher education by serving a significant number of economically deprived students.

(5) They are making a reasonable effort to improve the quality of their program.

(b) The purpose of the title III assistance is to further strengthen the capacity of the institutions to make a substantial contribution to American higher education by improving their:

(1) Academic program,

(2) Administrative and management capability,

(3) Student services, and

(4) Fiscal stability.

(c) The purpose of these regulations is to establish the rules under which the Commissioner determines whether an institution of higher education qualifies as an eligible developing institution and selects those developing institutions that will be awarded title III assistance in a particular fiscal year.

(20 U.S.C. 1051, et seq.)

§ 169.2 Definitions.

As used in this regulation:

"Academic year" means the period of the annual instructional session of an institution of higher education, such as two semesters, three quarters, or two trimesters.

"Act" means the Higher Education Act of 1965, as amended.

"Applicant" means an institution of higher education that applies for assistance under title III.

"Commissioner" means the U.S. Commissioner of Education or his designee.

"Institution of higher education" means an educational institution as defined in section 1201(a) of the Act.

"Public," as used to describe an institution of higher education, means under the control of a State or local governmental body.

"State" means any one of the States in the Union, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Government of the Northern Mariana Islands.

(20 U.S.C. 1141(b).)

"Title III" means the strengthening developing institutions program as authorized under title III of the Act.

(20 U.S.C. 1051-1056.)

§ 169.3 Allocation of funds between 2-year and 4-year institutions.

The Commissioner allocates 76 percent of each fiscal year's appropriation for title III to institutions awarding bachelor's degrees and 24 percent to junior and community colleges.

(20 U.S.C. 1051(b).)

§ 169.4 Funding limitations.

(a)(1) No funds may be used under this part for activities that are inconsistent with the purpose of moving the grantee institution into the main currents of academic life.

(2) The Commissioner considers any activity that impedes the elimination of, or establishes segregated attendance patterns at that institution as inconsistent with the purpose stated in subparagraph (1).

(b) No funds may be used for activities, such as curriculum development or faculty improvement, that are inconsistent with a State plan for higher education applicable to that institution.

(c) Each developing institution receiving a title III grant shall assure that any activity funded under title III will not:

(1) Establish, increase, or impede the elimination of segregated attendance patterns at that institution, or

(2) Be inconsistent with a State plan for higher education applicable to that institution.

(20 U.S.C. 1051-1056.)

§ 169.5 General provisions regulations.

Assistance provided under this part is subject to applicable provisions contained in subchapter A of this chapter (relating to fiscal, administrative and other matters, except for the funding criteria).

(20 U.S.C. 1051-1056.)

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Subpart B—Criteria for Designation as a Developing Institution

§ 169.11 General rules.

(a) To be considered for funding under title III an institution of higher education must be designated by the Commissioner as a "developing institution."

(b) An institution that is not designated as a developing institution is not eligible for title III assistance but may reapply for designation as a developing institution in a subsequent year.

(c) An institution shall submit a request for designation as a developing institution prior to submission of an application for funding under title III. Effective with application for fiscal year 1980 funds, the institution shall submit a request at least 8 weeks before the announced deadline date for receipt of applications.

(d) Designation of an institution as developing does not guarantee that the Commissioner funds the institution's application. The Commissioner decides whether to fund a developing institution's application for title III assistance on the basis of procedures set out in Subpart F, "Grantee Selection."

(e) The Commissioner reviews the status of an institution as a developing institution before awarding any title III funds to the institution and notifies the institution of the determination.

If the Commissioner determines that the institution is not a developing institution based on the criteria in this subpart, the Commissioner notifies the institution of the basis for the determination.

(20 U.S.C. 1051, 1052.)

§ 169.12 Designation as a developing institution.

The Commissioner designates an institution as a developing institution if it meets each of the following criteria.

(a) First an institution must:

(1) Be an eligible institution of higher education (§ 169.13);

(2) Provide an educational program authorized by the State in which it is located (§ 169.14);

(3) Have achieved appropriate accreditation status (§ 169.15); and

(4) Have met the requirements of paragraphs (2) and (3) for 5 consecutive years, including the year in which the institution seeks designation as a developing institution, unless the Commissioner has accorded it a waiver in order to increase higher educational opportunities for Indians or Spanish-speaking people. (§ 169.16)

(b) Second, an institution must document that, for financial or other reasons, it is struggling for survival, and it must show that it has taken deliberate and constructive steps over the past 3 years to strengthen its fiscal status. (§ 169.17)

(c) Third, an institution must demonstrate that it is out of the main currents of academic life by reason of serving a student body with a particularly high percentage of students who are economically deprived. (§ 169.17)

(d) Fourth, an institution must have the desire and potential to make a substantial and distinctive contribution to the higher educational resources of the Nation. The institution's mission and goals must clearly reflect that desire. The institution must also be making a resonable effort to meet its mission and accomplish its goals through activities carried out over the past 3 years to improve the quality of: (1) Its instruction, (2) its management and administration, (3) its instructional and administrative staffs, and (4) its student services. (§ 169.18)

(20 U.S.C. 1051, 1052.)

§ 169.13 Eligible institutions of higher education.

(a) To be designated as a developing institution, an institution must be an institution of higher education that:

(1) Awards a bachelor's degree; or

(2) Is a junior or community college, as defined in section 302 of the Act

(b) To be designated as a developing institution, a branch campus of a university or college must be a separate institution of higher education and be independent from the main campus. The branch campus must have accreditation status, budget control, and hiring authority all separate from the main campus.

(20 U.S.C. 1052(a)(1).)

§ 169.14 Legal authorization for education program.

To be designated as a developing institution, the institution must provide an educational program that is legally authorized by the State in which it is located.

(20 U.S.C. 1052(a)(1).)

§ 169.15 Accreditation status.

(a) To be designated as a dveloping institution the institution must be either:

(1) Accredited as a bachelor's degree-granting institution or as a junior or community college by a nationally recognized accrediting agency or association; or (2) Determined by the appropriate accrediting agency or association to be making reasonable progress toward accreditation.

(b) If an institution that is a junior or community college has changed to or merged with a bachelor's degree-granting institution, the institution must be accredited or be making reasonable progress towards accreditation in its new status.

(20 U.S.C. 1052 (a) (1).)

§ 169.16 Five-year requirement

(a) To be designated as a developing institution, an institution must have met the requirements of §§ 169.14 and 169.15, except as provided in paragraph (b), for 5 consecutive academic years, including the academic year in which the institution seeks designation as a developing institution.

(20 U.S.C. 1052(a)(1)(C).)

(b) The Commissioner may waive all or part of the 5-year requirement of paragraph (a) in the following circumstances: (1) If the Commissioner determines that the granting of a waiver for an institution will increase higher educational opportunities for Indians, the Commissioner may waive the 5-year requirement for an institution that is located on or near an Indian reservation or near a substantial population of Indians; and (2) If the Commissioner determines that the granting of a waiver for an institution will sustantially increase higher educational opportunities for Spanish-speaking people, the Commissioner may waive 3 years of the 5-year requirement. (c) To apply for a waiver under either paragraph (b)(1) or (b)(2), an institution shall request and justify the granting of the waiver.

(20 U.S.C. 1052(a)(2).)

§ 169.17 Struggling for survival and isolated from the main currents of academic life.

(a) The Commissioner groups institutions applying for designation as developing institutions as follows: (1) Public bachelor;s degree-granting, (2) public junior or community college, (3) Private bachelor's degree-granting, and (4) private junior or community college.

(b) To be designated as a developing institution, the institution, must be struggling for survival for financial or other reasons and be isolated from the main currents of academic life. In addition, the institution must be making a constructive effort to ensure that it will continue to survive.

(c) To assist in determining whether an institution is, in fact, struggling and isolated, the Commissioner awards points to the institution for its average educational and general (E&G) expenditures per full-time equivalent (FTE) student and for its average basic educational opportunity grant (BEOG) award per FTE undergraduate student.

(1) The Commissioner assigns points to the institution—on a scale of 0-100—on the basis of its average E&G expenditure per FTE student. The points awarded reflect the institution's position on the percentile scale when compared to the student expenditures of all other similar institutions. For example, an institution that is estimated to be in the 98th percentile when compared to other colleges (a high per-student expenditure) receives two points, while an institution estimated to be in the second percentile (a low per student expenditure) receives 98 points. (See the illustrative chart in subparagraph (3).)

(2) The Commissioner also assigns points to the institution on a scale of 0-200—on the basis of the average BEOG award per FTE undergraduate student. The points awarded will be based on the institution's percentile ranking when compared to all other similar institutions. For example, an institution that is estimated to be in the 97th percentile (a large BEOG award per student) percentile receives 194 points, while an institution estimated to be in the third percentile (a small BEOG award per student) receives six points. (See the chart in subparagraph (3)).

(3) The following chart illustrates how the points for these factors are assigned:

POINT SYSTEM FOR INSTITUTIONAL CHARACTERISTICS

Percentile rank	Points: Average E&G expenditures per FTE student	Points: Average BEOG award for FTE undergraduate student
99.5	0	200
99	1	198
98	2	196
.	.	.
.	.	.
.	.	.
2	98	4
1	99	2
0.5	100	0

(4) To determine the percentile rankings in these two categories, the Commissioner uses data from the second year preceding the one in which the institution seeks designation as a developing institution. (For example, an institution seeking designation as a developing institution in fiscal year 1979 would submit data based on the 1976-1977 academic year.) A total of 174 points meets the quantitative requirements of this section—the combined total of the points earned in the per-student expenditure and basic grant calculation. An institution that receives fewer than 175 points may submit a written statement explaining why the indicators do not sufficiently reflect its status as a struggling institution and one isolated from the main currents of academic life. After reviewing the institution's submission, the Commissioner may determine that the institution, in fact, is struggling for survival and is isolated from the main currents of academic life.

(20 U.S.C. 1052.)

(e) In addition to the quantitative factors, each institution shall supply to the Commissioner a written narrative that describes the steps it has taken, over the past 3 years, to insure its survival. On the basis of this narrative the Commissioner determines whether the institution has been making a constructive effort to strengthen itself. If any of the following conditions apply, the institution shall explain why such a condition exists and what has been done to improve the situation:

(1) A decrease in full-time equivalent student enrollment of 5 percent or more for the 3-year period preceding the year in which the institution seeks designation as a developing institution.

(2) A decrease in total current funds revenues during any of the 3 years preceding the year in which the institution seeks designation as a developing institution.

(3) An excess of expenditures plus mandatory transfers over revenues in the unrestricted current funds during any 2 of the 3 years preceding the year in which the institution seeks designation as a developing institution. In this section, the term "current funds" means the funds available for use in meeting current operations.

(20 U.S.C. 1052(a)(1)(D)(ii).)

§ 160.18 Desire, potential, and reasonable effort.

(a) To be designated as a developing institution, an institution must possess the desire and potential to make a substantial and distinctive contribution to the higher educational resources of the Nation. Such a contribution might, for example, be to provide access to a particular group of students who would not otherwise have access to an institution of higher education; or the institution may offer a particular set of academic programs that are not otherwise available to the types of students who comprise its student body.

(b) In addition, the institution must have taken concrete steps to improve its overall academic and administrative capacity over the past 3 years and, specifically, have made a reasonable effort to improve the quality of its administrative and instructional staffs and its student services.

(c) The institution shall submit to the Commissioner, as part of its request for designation as a developing institution, a narrative describing:

(1) The mission and goals of the institution; and

(2) The tangible progress that the institution has made over the past 3 years to reach its specific goals, with special emphasis on activities carried out in the improvement of:

(i) Instructional staff,

(ii) Administrative staff, and

(iii) Student services.

(d) On the basis of the narrative the Commissioner determines whether the institution meets the criteria of having the desire and potential of making a significant contribution to the higher educational resources of the Nation and has been making a reasonable effort to improve its instructional program, its administrative capacity, and its student services.

(20 U.S.C. 1054.)

Subpart C—Types of Awards

§ 169.21 Introduction.

The Commissioner makes three types of awards of title III assistance:

(a) Cooperative arrangement grants;

(b) National teaching fellowships; and

(c) Professors emeritus grants.

Each award is made from a single fiscal year's appropriation for title III.

(20 U.S.C. 1054(b).)

§ 169.22 Cooperative arrangements.

(a) A cooperative arrangements is one or more working relationships between a developing institution and other institutions of higher education, agencies, organizations, or business entities to assist the developing institution in implementing activities under a title III grant.

(b) There are two kinds of cooperative arrangements:

(1) *Bilateral arrangements.* Under a bilateral arrangement the developing institution shall draw upon the assistance and services of another higher education institution, agency, organization, or business entity to strengthen its academic quality, or administrative, management, and financial capacity.

(2) *Consortium arrangements.* (i) Under a consortium arrangement, two or more developing institutions may work with each other to strengthen themselves in the areas indicated or enter into an arrangement with an institution of higher education, agency, organization, or business entity to help a cluster of developing institutions carry out allowable activities.

(ii) One of the developing institutions participating in the consortium arrangement shall serve as the applicant and coordinator.

(iii) The institution coordinating the consortium arrangement is responsible for complying with the terms and conditions of the grant.

(iv) Every participating institution receiving services from a consortium arrangement shall be a developing in-

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stitution and shall receive services in proportion to its share of the grant.

(v) The size of a consortium arrangement is limited to the number of institutions that can be effectively and efficiently served.

(20 U.S.C. 1054.)

§ 169.23 National Teaching Fellowship Grant.

(a) A National Teaching Fellowship grant is the second type of award made by the Commissioner under title III. A developing institution may request a National Teaching Fellowship either:

(1) As part of a cooperative arrangement; or

(2) Independent of any other type of award.

(b) The Commissioner awards a National Teaching Fellowship of one or two years' duration through a developing institution to:

(1) Junior faculty members from institutions other than the applicant institution; and

(2) Graduate students—from institutions other than the applicant institution—who have at least a master's degree or related professional experience.

(c) A developing institution may have a National Teaching Fellow:

(1) Teach in an understaffed or new academic program; or

(2) Substitute for a faculty member released for further training or advanced study.

(d) A National Teaching Fellow shall serve as a full-time faculty member at the developing institution through which the award is made.

(e) Each national teaching fellow receives a stipend of $7,500 plus $400 per dependent for each academic year of teaching. A developing institution at which a national teaching fellow teaches may supplement the stipend with funds from sources other than title III.

(20 U.S.C. 1054.)

§ 169.24 Professors emeritus grant.

(a) A professors emeritus grant is the third type of award made by the Commissioner under title III. A developing institution may request a professor emeritus grant either:

(1) As part of a cooperative arrangement; or

(2) Independent of any other type of award.

(b) The Commissioner awards a professors emeritus grant through a developing institution to a professor who has retired from active service at an institution of higher education other than the grantee institution.

(c) A developing institution may have a professor emeritus:

(1) Teach in an understaffed or new academic program;

(2) Substitute for a faculty member released for further training or advanced study; or

(3) Conduct research to aid the development of the institution.

(d) A professors emeritus grant includes a stipend for each academic year of teaching or research at the developing institution through which the award is made. The stipend may not exceed the salary of a comparable staff member of the developing institution. A developing institution at which a professors emeritus grant recipient serves may supplement the stipend with funds from sources other than title III.

(e) The period of a professors emeritus grant may not exceed 2 academic years. However, one additional 2-year period may be funded to complete the program objectives of the original award, if approved by the Commissioner upon the advance of the title III advisory council.

(20 U.S.C. 1054.)

Subpart D—Scope and Duration of Grants for Cooperative Arrangements

§ 169.31 Allowable activities.

(a) In submitting an application a developing institution shall examine the status of its administrative structure; curriculum, student services, administrative personnel, instructional personnel, and financial position and identify the areas of greatest need.

(b) Further, the institution shall identify the steps it will take to strengthen its capacity to fulfill its unique mission and make a substantial contribution to the higher educational resources of the Nation.

(c) Finally, the institution shall show that it can carry out the planned activities within the context of the proposed title III cooperative arrangement.

(d) Authorized activities are those that:

(1) Clarify institutional goals;

(2) Improve the curriculum;

(3) Strengthen student services;

(4) Promote faculty development;

(5) Improve administrative services and fiscal management; and

(6) Develop innovative academic programs.

(20 U.S.C. 1054.)

§ 169.32 Allowable costs.

(a) The Commissioner pays part of the costs related to the planning, development, and implementation of allowable activities.

(B) In addition to the cost limitations imposed by the Office of Education general provisions for direct project grant and contract programs (45 CFR 100a), the following cost limitations apply:

(1) Indirect costs may not be charged to the grant.

(2) The purchase of equipment is limited to equipment that is necessary to achieve program objectives.

(3) Grant funds may not be used for construction.

(20 U.S.C. 1054.)

§ 169.33 Duration of cooperative arrangement grants

(a) An applicant may receive a grant of 1, 2, 3, 4, or 5 years' duration. The requirements of the cooperative arrangement determine the length of the award.

(b) Grants of one year's duration are awarded to refine institutional mission and goals and to develop long-range plans for achieving an institution's academic goals or strengthening its management or both. The Commissioner may award an institution, during its participation in the program, a maximum of three grants for these purposes.

(c) Grants of up to 3 years' duration are to support the development and short-term implementation of other activities in any allowable areas.

(d) Grants of up to 5 years' duration are to support implementation of long-term programs to improve an institution financially and to strengthen its management.

(20 U.S.C. 1051, 1054.)

Subpart E—Application Procedures

§ 169.41 Submission of Applications

(a) An applicant for a title III grant shall file an application by the closing date established annually by the Commissioner in a notice published in the FEDERAL REGISTER.

(b) An applicant shall include in its application such information as the Commissioner considers necessary to make determinations under title III.

(20 U.S.C. 1051, 1054.)

Subpart F—Grantee Selection

§ 169.51 Introduction.

The Commissioner makes final decisions regarding the funding of all title III applications based on the rules and procedures established in this subpart. In evaluating the applications, the Commissioner may seek and use information from existing public records and from site visits to developing institutions in addition to rating the information submitted in the formal application.

(20 U.S.C. 1051, 1054.)

§ 169.52 Application review criteria and use of review panels.

(a) The Commissioner appoints review panels to provide the Commissioner with comments on and recommended ratings for the applications. The Commissioner appoints separate panels to review applications from bachelor's degree-granting institutions and from junior and community colleges. The panels numerically rate each application assigned to them and provide the Commissioner with comments on each.

(b) A panel judges each application on the following criteria with points assigned to each criterion:

(1) The extent to which the application's mission and goals statement reflects the needs of its constituents. (15 points)

(2) The extent to which the applicant clearly states the objectives of the proposed activities. (5 points)

(3) The extent to which the size, scope, and duration of the proposed activities will contribute to the stated goals. (25 points)

(4) The extent to which any proposed cooperative arrangements will help achieve project objectives. (10 points)

(5) The extent to which the administration of the proposed program is adequate. (15 points)

(6) The extent to which evaluation procedures are adequate. (10 points)

(7) The extent to which a plan has been developed to ensure continuation of the proposed activities after the grant ends. (5 points)

(8) The extent to which the proposed cost of the project is reasonable and realistic. (15 points)

(20 U.S.C. 1051, 1054.)

§ 169.53 Rating for program priorities.

After considering the comments of the review panels and the ratings recommended by them the Commissioner assigns to each application an appropriate number of points for each criterion listed in paragraph (b) of § 169.52. The Commissioner considers further for selection only those applications that receive a rating of 50 or more points. Applications receiving 50 or more points under § 169.52 will be further rated on the extent to which the proposed activities will:

(a) Strengthen the academic program and provide a successful educational experience for low-income or minority students; (25 points)

(b) Contribute to the long term stability of the institution and overcome the circumstances that threaten survival; (25 points)

(c) Increase upward mobility for graduate and professional study; (10 points)

(d) Improve the institution's overall administrative capacity; (10 points) and

(e) Improve the applicant's management of Federal assistance programs, including student financial aid programs. (5 points)

In addition, the Commissioner may award up to 25 points for an application from an institution which has one or more of the following characteristics:

(1) The institution serves a particularly large percentage of low-income students.

(2) The institution provides a unique or particularly productive educational program for its students.

(3) The institution has, at present, particularly strong and effective management and administration of Federal programs and funds including Title III, and student assistance programs such as the Guaranteed Student Loan; the National Direct Student Loan; Basic Educational Opportunity Grants; Supplemental Education Opportunity Grants; College Work Study and State Students Incentive Grants Programs.

(4) The institution, because of its geographic location, provides access to students who otherwise might be unable to attend college.

(20 U.S.C. 1051, 1054.)

§ 169.54 Overall ranking and selection.

(a) The Commissioner totals the points each application received for general quality (§ 169.52) and for addressing program priorities (§ 169.53).

(b) The Commissioner then ranks the application on the basis of the total number of points it received. The Commissioner ranks applications from bachelor's degree-granting institutions separately from those from junior or community colleges.

(c) The Commissioner awards grants on the basis of the descending order in which applications are ranked.

(20 U.S.C. 1051, 1054.)

[FR Doc. 78-30331 Filed 11-1-78; 8:45 am]

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Federal Register

THURSDAY, NOVEMBER 2, 1978
PART III



DEPARTMENT OF AGRICULTURE

Office of the Secretary

PRIVACY ACT OF 1974

Systems of Records; Annual Publication

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DEPARTMENT OF AGRICULTURE
Office of the Secretary
PRIVACY ACT OF 1974
Systems of Records; Annual Publication

Pursuant to 5 U.S.C. sec. 552a(e)(4), the Department of Agriculture hereby republishes its annual notice of the existence and character of the systems of records currently maintained pursuant to the Privacy Act of 1974. The last such annual republication was at 42 FR 53182 (Sept. 30, 1977). Interim system revisions, deletions, and additions were published at: 42 FR 58148 (1977); 43 FR 4080, 7137, 22227, 28019, 28020, 32843, and 35085 (1978).

There are numerous minor revisions in USDA's system notices (e.g., system names, titles and addresses of system managers) necessitated by departmental reorganization. There are no changes in the routine use section of any existing system notice.

The system of records identified in last year's republication as USDA/OF—4, Employees' Personnel Files, is being deleted because it no longer exists as a separate system of records because of the reorganization.

The systems of records identified in last year's republication as USDA/OA—1, Employee Records; and as USDA/OI—1, Employees Records, have been consolidated into a single system, USDA/OIG—1, Employee Records, as a result of the reorganization which combined the Office of Audit and the Office of Investigation into the Office of the Inspector General.

The systems of records maintained by USDA as of September 30, 1978, are accordingly set forth below.

Dated: October 6, 1978.

Bob Bergland,
Secretary.

USDA/AMS—1

System name: Employment History Records for Licensed Nonfederal Employees, USDA/AMS

System location: Agricultural Marketing Service, USDA, 14th and Independence Avenue, Washington, D.C. 20250.

Categories of individuals covered by the system: Commodity Inspectors, Graders, Weighers, Classers, Collaborators, Licensed Plant Employees, Agents, Appointees, Samplers.

Categories of records in the system: This system consists of such information as applications for license, license files, bonding records, biographical data, periods of employment, performance ratings, commodities qualified to inspect, grader's powers of attorney, recommendations for reemployment, factors which affect or might affect desirability as an inspector, supervisory potential, declaration sheets, preference sheets, current, expired, and voided licenses, license examinations and score sheets, license renewal score sheets, miscellaneous notes and memoranda, e.g. transfers, cancellations, corrective action letters, letters of caution or warning, inspection/grading performance/productivity data, letters of suspension, indictment, complaint, proposals to revoke license, etc. Content and extent of these records vary by commodity, program and season.

Authority for maintenance of the system: 7 U.S.C. 51-65, 241-273, 451-469, 471-476, 491, 493-499, 499a-499s, 411-511q, 601 et seq, 1551-1611.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referral to states or other Federal agencies to determine verification of employment or length of service for retirement purposes; referral to Civil Service Commission for required records and reports; to Government Accounting Office for required records and reports to Department of Justice for required records and reports. Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Referral to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: File folders, notebooks, and cardex files.

Retrievability: Records are indexed by name of licensee and/or license number.

Safeguards: Government office buildings, locked and unlocked file cabinets and locked offices.

Retention and disposal: Records maintained indefinitely or until separation or retirement or in accordance with prescribed retention schedule. They are destroyed in conformance with prescribed retention schedules. These records schedules have been implemented by Agricultural Marketing Service Instruction 270-1, Records Management Program.

System manager(s) and address: Each of the following Division Directors:

Cotton Division
Livestock, Poultry, Grain, and Seed Division
Tobacco Division
Transportation and Warehouse Division

Notification procedure: Any individual may request information concerning himself from this system from the Office of the Division Director having custody of his records at the system location.

Record access procedures: Any individual may obtain informtion as to the procedure for gaining access to a record in the system that pertains to him by submitting a request to the appropriate Division Director listed above.

Contesting record procedures: Any individual may obtain information as to the procedure for contesting a record in the system that pertains to him by submitting a request to the appropriate Division Director listed above.

Record source categories: Information in this System comes primarily from licensees, supervisors, with additional data provided by references and investigative personnel.

USDA/AMS—2

System name: Milk Market Administrators (MMA) Producer Payroll System, USDA/AMS.

System location: Milk Market Administrator's Offices at the following locations:

Arizona
Market Administrator
2617 North 24th Street
Phoenix, AZ 85008
Phone: 602 275-7641

Arkansas
Market Administrator
P.O. Box 4225
Asher Avenue Station
Little Rock, AR 72214
Phone: 501 663-6395

Colorado
Market Administrator
7 Parker Pl.
2600 S. Parker Rd.
Aurora, CO 80014
Phone: 303 837-2461

Florida
Market Administrator
P.O. Box 11368
Fort Launderdale, FL 33306
Phone: 305 565-2583

Georgia
Market Administrator
P.O. Box 49025
Atlanta, GA 30359
Phone: 404 455-6323

Illinois.
Market Administrator
800 Roosevelt Road
Building A, Suite 200
Glen Ellya, IL 60137
Phone: 312 858-8400

Indiana
Market Administrator
P.O. Box 55527
Indianapolis, IN 46205
Phone: 317 269-6107

Kansas
Market Administrator
P.O. Box 4606
Overland Park, KS 66204
Phone: 913 648-1050

Kentucky
Market Administrator
P.O. Box 18030
Louisville, KY 40218
Phone: 502 499-0040

Louisiana
Market Administrator
P.O. Box 7250
Metairie, LA 70011
Phone: 504 837-9381

Massachusetts
Market Administrator
230 Congress Street, Room 403
Boston, MA 02110
Phone: 617 542-8636

Michigan
Market Administrator
2684 West Elevan Mile Road
Berkley, MI 48072
Phone: 313 548-1603

Minnesota
Market Administrator
4570 West 77th Street, Suite 210
Minneapolis, MN 55435
Phone: 612 831-5292

Missouri
Market Administrator
P.O. Box 1485
Maryland Heights, MO 63043
Phone: 314 567-4730

New York
Market Administrator
205 East 42nd Street
New York, NY 10017
Phone: 212 557-0343

Ohio
Market Administrator
P.O. Box 30128
Cleveland, OH 44130
Phone: 216 826-3220
Market Administrator
P.O. Box 29226
Columbus, OH 43229
Phone: 614 891-1851

Oklahoma
Market Administrator
P.O. Box 45563
Tulsa, OK 74145
Phone: 918 622-3411

Oregon
Market Administrator
P.O. Box 23606
Portland, OR 97223
Phone: 503 639-8806

Texas
Market Administrator
P.O. Box 29529
Dallas, TX 75229
Phone: 214 243-1504

Virginia
Market Administrator
P.O. Box 710
Alexandria, VA 22313
Phone: 703 549-7000

Categories of individuals covered by the system: Dairy farmers delivering producer milk to regulated handlers.

Categories of records in the system: This system consists of information pertaining to the quantities and value of milk delivered to regulated handlers by individual dairy farmers.

Authority for maintenance of the system: 7 U.S.C. 601 et seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto.

Referral to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Manual card files or automated disk or tape files.

Retrievability: Records are indexed by name of producer and/or by ID number.

Safeguards: Government office building, locked offices, locked files cabinets.

Retention and disposal: Records are maintained and destroyed in accordance with retention schedule number II NNA-1588 approved by the 84th Congress, first session, on July 13, 1955.

System manager(s) and address: Each Market Administrator at the address listed above.

Notification procedure: Any individual may request information about himself from the appropriate Market Administrator at the address listed above. The request should indicate the individual's name, address and type of information being sought.

Record access procedures: Any individual may obtain information as to the procedure for gaining access to a record in the System

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which pertains to him by submitting a written request to the appropriate offices referred to in the preceding paragraph.

Contesting record procedures: Any individual may obtain information as to the procedure for contesting a record in the System which pertains to him by submitting a written request to the appropriate offices referred to in the preceding paragraph.

Record source categories: Information in this system comes primarily from regulated handlers and cooperative associations. Some additional data is provided by health authorities with respect to Grade A quality standards and investigative personnel.

USDA/AMS—3

System name: Perishable Agricultural Commodities Act (PACA)—History Files of Principals.

System location: Regulatory Branch, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, Washington, D.C. 20250.

Categories of individuals covered by the system: Partners of General or limited partnerships, individual proprietors, officers, directors and holders of more than ten percent of outstanding stock of a corporate entity subject to the PACA.

Categories of records in the system: Card files used to identify the partnership, corporate entity in which the principal is or was responsibly connected as defined by the PACA. This system also contains felony and bankruptcy information relating to the principal.

Authority for maintenance of the system: 7 U.S.C. 499a-499s.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto.

Referral to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Unlocked cardex file cabinets.

Retrievability: Alphabetical by name.

Safeguards: Government office building.

Retention and disposal: Records are maintained and destroyed in accordance with retention schedule number NN 165-106 approved by the 89th Congress, first session on April 1, 1965.

System manager(s) and address: Chief, Regulatory Branch at the address listed above.

Notification procedure: Any individual may request information concerning himself from the system manager listed at the address above.

Record access procedures: Any individual may obtain information as to the procedure for gaining access to a record in the system that pertains to him by submitting a request to the system manager at the address above.

Contesting record procedures: Any individual may obtain information as to the procedure for contesting a record in the system that pertains to him by submitting a request to the system manager at the address above.

Record source categories: Individuals, partners, and authorized officers of corporate entities.

USDA/AMS—4

System name: Administrative proceedings brought pursuant to the authority of section 8c(15)(a) of the Agricultural Marketing Agreement Act of 1937, as amended, USDA/AMS.

System location: Agricultural Marketing Service, United States Department of Agriculture; Washington, D.C. 20250 and Milk Market Administrator's Offices at locations listed in USDA/AMS-3.

Categories of individuals covered by the system: Individuals regulated by the subject Act who file a petition with the Secretary of Agriculture pursuant to the authority of the subject Act.

Categories of records in the system: The system consists of investigatory material which may include intra- and interdepartmental recommendations.

Authority for maintenance of the system: 7 U.S.C. 601 et seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation of potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto (2) Presentation or disclosure to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system as evidence in a proceeding, or which is sought in the course of discovery including disclosure to opposing counsel in the course of settlement negotiations. (3) Presentation, as needed, in the course of presenting evidence, to the appropriate Government officials charged with the responsibility of defending the Government before a court, magistrate or administrative tribunal. (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of the individual.

Safeguards: Government office buildings, locked offices, or locked file cabinets.

Retention and disposal: Records are maintained in conformance with appropriate General Services Administration destruction schedules and implemented by AMS Instruction 270-1, Records Management Program.

System manager(s) and address: Fruit and Vegetable Division Director or Dairy Division Director and each Milk Market Administrator at the addresses cited in the System location.

Notification procedure: Any individual may request information concerning himself from this system from Fruit and Vegetable Division Director or from the appropriate Milk Market Administrator's office having custody of his records. A request for information should be addressed to Director, Fruit and Vegetable Division or to the Milk Market Administrator, United States Department of Agriculture, as appropriate, at the address shown under Location and should contain: Name, address, and particular information requested.

Record access procedures: Any individual may obtain information as to the procedures for gaining accesss to a record in the System which pertains to him by submitting a written request to the Director, Fruit and Vegetable Division or to the appropriate Milk Market Administrator's office, as appropriate, referred to in the preceding paragraph.

Contesting record procedures: Any individual may obtain information as to the procedures for contesting a record in the System which pertains to him by submitting a written request to the Director, Fruit and Vegetable Division or to the appropriate Milk Market Administrator's office referred to in the preceding paragraph.

Record source categories: Information in this system comes primarily from witnesses, agency employees, and investigative personnel.

USDA/AMS—5

System name: Court cases brought by the Government pursuant to the following Acts, as amended: Agricultural Marketing Agreement Act of 1937, Agricultural Marketing Act of 1946, Agricultural Fair Practices Act, Cotton Research and Promotion Act of 1966, Egg Research and Consumer Information Act of 1974, or the Potato Research and Promotion Act, USDA/AMS.

System location: Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250 and Milk Market Administrator's Offices at the locations listed in USDA/AMS-3.

Categories of individuals covered by the system: Individuals who are regulated by the subject Acts and who may be investigated for possible violations of the Acts and/or against whom the Department recommends that an enforcement action be brought by the Government.

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Categories of records in the system: The system consists of investigatory material which may include intra- and interdepartmental recommendations pertaining to an alleged violation of the subject Acts.

Authority for maintenance of the system: USC 601 et seq, 2101 et seq, and 2301 et seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, or local or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, law, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto (2) Presentation or disclosure to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system as evidence in a proceeding or which is sought in the course of discovery including disclosure to opposing counsel in the course of settlement negotiations. (3) Presentation, as needed, in the course of presenting evidence, to the appropriate Government officials charged with the responsibility of defending the Government before a court, magistrate, or administrative tribunal. (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in the file folders at the applicable address listed above.

Retrievability: Records are indexed by name of the individual.

Safeguards: Government office buildings, locked offices or locked file cabinets.

Retention and disposal: Records are maintained in conformance with appropriate General Services Administration destruction schedules and implemented by AMS Instruction 270-1, Records Management Program.

System manager(s) and address: Cotton, Dairy, Fruit and Vegetable, and Livestock, Poultry, Grain, and Seed Division Directors and each Milk Market Administrator at the addresses cited in the System location.

Systems exempted from certain provisions of the act: This system has been exempted pursuant to 5 USC 552a(k)(2) from the requirements of 5 USC 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) because it consists of investigatory material compiled for law enforcement purposes. See 7 CFR 1.123. Individual access to these files could impair investigations and alert subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action or escape prosecution. Disclosure of investigative techniques and Procedures and the existence and identity of confidential sources of information would hamper law enforcement activity.

USDA/AMS—6

System name: Court cases brought pursuant to the authority of the Agricultural Marketing Agreement Act of 1937, as amended in which the Government is defendant, USDA/AMS.

System location: Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250 and Milk Marked Administrator's Offices at the locations listed in USDA/AMS-3.

Categories of individuals covered by the system: Individuals regulated or not regulated by the subject Act who bring suit against the Government or a Government official pursuant to, or as a consequence of the Department's administration of, the subject Act.

Categories of records in the system: The system consists of investigatory material which may include intra- and interdepartmental recommendations pertaining to an alleged violation of the subject Act.

Authority for maintenance of the system: 7 USC 601 et seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto. (2) Presentation or disclosure to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system as evidence in a proceeding, or which is sought in the course of discovery including disclosure to opposing counsel in the course of settlement negotiations. (3) Presentation, as needed, in the course of presenting evidence, to the appropriate Government officials charged with the responsibility of defending the Government before a court, magistrate or administrative tribunal. (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of the individual.

Safeguards: Government office buildings, locked offices, or locked file cabinets.

Retention and disposal: Records are maintained in conformance with appropriate General Services Administration destruction schedules and implemented by AMS Instruction 270-1, Records Management Program.

System manager(s) and address: Fruit and Vegetable Division Director or Dairy Division Director and each Milk Market Administrator at the addresses cited in the System location.

Notification procedure: Any individual may request information concerning himself from this system from the Fruit and Vegetable Division Director or from appropriate Milk Market Administrator's office having custody of his records. A request for information should be addressed to the Director, Fruit and Vegetable Division or to the Milk Market Administrator, United States Department of Agriculture, as appropriate, at the address shown under Location and should contain: Name, address, and particular information requested.

Record access procedures: Any individual may obtain information as to the procedure for gaining access to a record in the System which pertains to him by submitting a written request to the Director, Fruit and Vegetable Division, or to the appropriate Milk Market Administrator's office referred to in the preceding paragraph.

Contesting record procedures: Any individual may obtain information as to the procedures for contesting a record in the System which pertains to him by submitting a written request to the Director, Fruit and Vegetable Division or to the approriate Milk Market Administrator's office referred to in the preceding paragraph.

Record source categories: Information in this system comes primarily from witnesses, agency employees, and investigative personnel.

USDA/AMS—7

System name: Subsidiary Personnel and Pay Records, USDA/AMS.

System location: Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250 and Region, Area, and Field Offices at locations listed in the Agricultural Marketing Service Field Office Listing publication.

Categories of individuals covered by the system: Present and former employees and applicants for employment with the Agricultural Marketing Service.

Categories of records in the system: The system consists of copies of materials maintained in Official Personnel Folders, such as personnel action documents, applications for employment, education and training data, performance and appraisal ratings, as well as time and attendance reports, earnings statements, and service record cards.

Authority for maintenance of the system: 5 U.S.C. 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) By agency officials for purposes of review in connection with appointments, promotions, within-grade increases, training, transfers, and determination of qualifications of an individual. (2) to provide information to a prospective employer of a Federal Government employee or former Federal Government employee or to an organization at the request of the individual. (3) Referral to the Civil Service Commission, Department of Labor, and Office of Management and Budget for required records and reports. (4) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general

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statute or particular program statute, or by rule, regulation or order issued pursuant thereto. (5) Referral to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within this system which constitutes evidence in that proceeding, or which is sought in the course of discovery. (6) Presentation, as needed, in the course of presenting evidence to the appropriate Government officials charged with the responsibility of defending the Government before a court, magistrate or administrative tribunal. (7) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders and on file cards at the applicable addresses listed above.

Retrievability: Records are indexed by name of the individual.

Safeguards: Government office buildings, locked offices, or locked file cabinets.

Retention and disposal: Records are maintained in conformance with appropriate General Services Administration disposal schedules and implemented by AMS Instruction 270-1, Records Management Program.

System manager(s) and address: Personnel Division Director.

Notification procedure: Any individual may request information concerning himself from this system from the Personnel Division Director or from the individual's supervisor at the appropriate office having custody of his records. A request for information should be addressed to Director, Personnel Division or to the Officer-in-Charge, as appropriate, at the address shown under Location and should contain: Name, address, and particular information requested

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the System which pertains to him by submitting a written request to the Director, Personnel Division or to the appropriate Officer-in-Charge referred to in the preceding paragraph.

Contesting record procedures: Any individual may obtain information as to the procedures for contesting a record in the System which pertains to him by submitting a written request to the Director, Personnel Division or to the appropriate Officer-in-Charge referred to in the preceding paragraph.

Record source categories: Information in this System comes from the individual to whom it applies or is derived from information the individual supplied except information provided by agency officials on performance, appraisal, pay, leave, and allowance records.

USDA/AMS—8

System name: Packers and Stockyards administrative records, USDA/AMS.

System location: Packers and Stockyards Administrative Office, Rm. 3044 South Building, United States Department of Agriculture, Washington, D.C. and the Regional Supervisors in charge of the following regional offices located at: Route 1, Box 109, Sterling, Virginia 22170. Rm. 635, 1720 Peachtree Street, N.W., Atlanta, Georgia 30309; 208 Livestock Exchange Building, Denver, Colorado 80216; Rm. 8A36, Federal Building, 819 Taylor Street, Fort Worth, Texas 76102; Suite 24, 537 Turtle Creek, South Drive, Indianapolis, Indiana 46227, 828 Livestock Exchange Building, Kansas City, Missouri 64102; Rm. 2W6, Federal Office Building, 15000 Aviation Boulevard, Lawndale, California 90260; Rm. 459, Federal Building, 167 North Main Street, Memphis, Tennessee 38103; 525 Milltown Road, North Brunswick, New Jersey 08902; 909 Livestock Exchange Building, Omaha, Nebraska 68107; 9370 S. W. Greenburg Road, Suite E., Portland, Oregon 97223; 203 Post Office Building, Box 8, South St. Paul, Minnesota 55075; and 975 Durkin Drive, Suite G, Springfield, Illinois 62704.

Categories of individuals covered by the system: Present employees of the Packers and Stockyards/AMS.

Categories of records in the system: The system includes personnel (personnel record cards reflecting the name, date of birth, grade, salary, and employment history of present employees; performance evaluation forms; requests for training authorizations; recommendations for promotion; copies of personnel actions; and correspondence relating to individual employees' conduct), payroll and fiscal data required to meet the needs of P&S personnel and fiscal responsibilities.

Authority for maintenance of the system: 5 U.S.C. 301; 7 CFR 2.54

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: The data contained in the foregoing records is routinely used to answer inquiries from agencies considering the employees identified in the system for employment as well as for credit checks. This information is also used to initiate requests for investigation of Packers and Stockyards employees for purposes of security and conduct. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: With the exception of personnel record cards, all of these records are maintained on paper in file folders at the appropriate addresses cited.

Retrievability: All of the records are indexed and retrievable by name of the individual employees.

Safeguards: The records are maintained in locked files.

Retention and disposal: The personnel record cards are maintained until an individual leaves P&S. The performance evaluation forms for current employees are maintained indefinitely. The Time and Attendance reports are maintained for the current year and three years thereafter for employees currently on the rolls. Final Time and Attendance reports are maintained for ten years after the date of separation of the employees. Travel vouchers, copies of personnel actions, training documents, and recommendations for promotion are maintained for five years from the date of submission. Correspondence with respect to employee conduct is maintained while the employee remains on the rolls. The administrative officer of Packers and Stockyards physically mutilates the records on the scheduled disposal date and they are thrown away with the agency's waste.

System manager(s) and address: Administrative Officer, Packers and Stockyards, Rm. 3044 South Building, United States Department of Agriculture, Washington, D.C. 20250 and Regional Supervisors of regional offices at locations previously specified.

Notification procedure: Any individual may request information regarding this system of records or information as to whether the system contains records pertaining to him from the System Manager. Telephone (202-447-7202) or the appropriate Regional Supervisor. Requests for information pertaining to an individual should contain: Name, location at which the individual worked for P&S, and the approximate dates.

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the appropriate officials previously specified.

Contesting record procedures: Use same procedures as for requesting access.

Record source categories: Information in this system comes primarily from the individuals concerned, personnel, training, travel and payroll records.

USDA/AMS—9

System name: Persons engaged in business as livestock market agencies and dealers under the provisions of the Packers and Stockyards Act. USDA/AMS.

System location: Registrations, Bonds, and Reports Branch, Livestock Marketing Division, Packers and Stockyards Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. Also duplicate files for specific geographical regions maintained in the thirteen (13) Regional Supervisory Offices of P&S.

Categories of individuals covered by the system: Individuals who have applied for registration or are registered as livestock market agencies and dealers under the Packers and Stockyards Act.

Categories of records in the system: The system consists of index cards bearing the names of individuals who are registered under the provisions of the Act. Also cross-reference cards bearing the names of individuals who are owners or officers of registrant firms. From the index cards access may be gained to other systems of records identified as follows: (1) Registration Record Cards, (2) Case Record Cards, (3) Bond Claim Record Cards, (4) Registration Jurisdictional Files and (5) Stockyard Jurisdictional Files.

Authority for maintenance of the system: 7 U.S.C. 181 et. seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: To answer inquiries from Federal and State agencies, livestock trade organizations, and others having a definite and proved interest in such records.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in card file cabinets and file folders at the applicable address listed above.

Retrievability: All index cards are maintained in an alphabetical order by name of registrant and by name of owners or officers of registrant firms.

Safeguards: Records are kept in locked cabinets under the supervision of competent personnel.

Retention and disposal: All files mentioned are maintained during active life of registration. When rendered inactive records are maintained for a period of two years in accordance with an approved records disposition schedule.

System manager(s) and address: Chief, Registrations, Bonds and Reports Branch, Livestock Marketing Division, Packers and Stockyards, Agricultural Marketing Service, USDA, Washington, D.C. 20250.

Notification procedure: Any individual may request information regarding this system of records or information as to whether the system contains records pertaining to him from System Manager, Telephone (202-447-4615 or 16). A request for information pertaining to an individual should contain that individual's full name, and current mailing address.

Record access procedures: Any individual desiring to gain access to a record maintained in the system which pertains to him may do so by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Use same procedures as followed in seeking access.

Record source categories: Information in this system comes primarily from individuals who make application for registration or who are registered under the Packers and Stockyards Act, 1921, as amended. A limited amount of information in the system is obtained from other sources such as corporate surety companies, persons acting as trustee on bonds or bond equivalents and Packers and Stockyards Regional Supervisory personnel.

USDA/ASCS—1

System name: Advisory Committee Files, USDA/ASCS.

System location: USDA/ASCS, Legislation and Committee Management, Room 228W, Administration Building, Washington, D.C. 20250.

Categories of individuals covered by the system: Individuals who are nominated and agree to serve as members of the advisory committees.

Categories of records in the system: Biographical data sheets, clearance letter from Office of Secretary, letter requesting the individual to serve, and his letter of acceptance.

Authority for maintenance of the system: 7 U.S.C. Sec. 1911-1913.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Biographical data used in press releases to announce membership of the committee.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of this individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Maintained in individual file folders.

Retrievability: By individual's name.

Safeguards: Kept in file cabinets in Government office building.

Retention and disposal: Retained in active file as long as individual serves on the committee. Maintained in inactive file indefinitely.

System manager(s) and address: Deputy Administrator, Management, ASCS, USDA, Washington, D.C. 20250.

Notification procedure: An individual may inquire as to whether this system contains records pertaining to him by contacting the Committee Management Officer, USDA/ASCS, Room 228-W. Washington, D.C. 20250. A request for information pertaining to an individual should contain: name address, name of system of records, year of records in question, and any other pertinent information that will help identify the file.

Record access procedures: Same as notification procedure.

Contesting record procedures: Same as notification procedure.

Record source categories: From individual.

USDA/ASCS—2

System name: Biographical Background, USDA/ASCS

System location: Deputy Administrator, Management, USDA/ASCS, 14th & Independence Ave., S.W., Washington, D.C. 20250; Management Field Office, USDA/ASCS, 8930 Ward Parkway, Kansas City, Missouri 64114; Kansas City Commodity Office, Brymar Office Center, 2400 W. 75th Street, Prairie Village, Kansas 66208.

Each State ASCS office at address listed in local telephone directory under the heading "United States Government, Department of Agriculture, Agricultural Stabilization and Conservation Service."

Categories of individuals covered by the system: Individuals who hold key positions in ASCS. Guest speakers and recipients of ASCS awards.

Categories of records in the system: Brief resume of individuals personal history.

Authority for maintenance of the system: 5 U.S.C. 301; 7 CFR 2.65.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: To use in introduction of individual at speaking engagements. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Maintained in file folders.

Retrievability: Indexed by individual name.

Safeguards: Records are kept in locked office.

Retention and disposal: Indefinite.

System manager(s) and address: Deputy Administrator, Management, ASCS, USDA, Washington, D.C. 20250.

Notification procedure: An individual may inquire as to whether this system contains records pertaining to him by contacting the head of the office where the records are located. If the specific location of the records is not known, the individual should address his request to Director, Management Services Division, USDA/ASCS, Room 6959-S, Washington, D.C. 20250, telephone 202-447-2717, who if necessary will refer it to the appropriate office. A request for information pertaining to an individual should contain: name, address, name of system of records, year of records in question, and any other pertinent information to help identify the file.

Record access procedures: Same as notification procedure.

Contesting record procedures: Same as notification procedure.

Record source categories: Directly from the individual.

USDA/ASCS—3

System name: CCC Producer Loan Records, USDA/ASCS

System location: County ASCS office which services particular farm. The address of each county ASCS office can be found in the local telephone directory under the heading "United States Government, Department of Agriculture, Agricultural Stabilization and Conservation Service.

Categories of individuals covered by the system: Individuals who have applied for commodity, storage structure or drying equipment loans. Includes all commodities for which price support loans are available.

Categories of records in the system: Complete files and records pertaining to the loans such as original loan note, collateral, credit ratings, lien searches, financial statements, applications, and disbursement documents.

Authority for maintenance of the system: 15 U.S.C. 714-714p.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referral to (1) the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation of potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (2) referral to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery. (3) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office at the request of the individual.

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Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Maintained in individual folders.

Retrievability: Indexed by individual name or loan number.

Safeguards: Records are kept in locked fireproof file cabinets in Government office building.

Retention and disposal: Upon liquidation, original loan note is returned to producer. All other records destroyed 6 years after liquidation.

System manager(s) and address: Deputy Administrator, Management, ASCS, USDA, Washington, D.C. 20250.

Notification procedure: Any individual may request information regarding a system of records, or information as to whether the system contains records pertaining to him from the head of the office where the records are located. If the specific location of the records is not known, the individual should address his request to Director, Management Services Division, USDA/ASCS, Room 6959-S, Washington, D.C. 20250, telephone 202-447-2717, who if necessary will refer it to the appropriate office. A request for information pertaining to an individual should contain: name, address, name of system of records, year of records in question, and any other pertinent information to help identify the file.

Record access procedures: Same as notification procedure.

Contesting record procedures: Same as notification procedure.

Record source categories: Individuals in system, county court records, audit bureaus and ASCS program documents.

USDA/ASCS—4

System name: Commodity Brokers, USDA/ASCS

System location: Kansas City, Commodity Office, Brymar Office Center, 2400 West 75th Street, Prairie Village, Kansas 66208; Chicago Branch Office, Room 106, 226 W. Jackson Blvd., Chicago, Illinois 60604; Minneapolis Branch Office, Room 310, Grain Exchange Building, Minneapolis, Minneasota 55415; Houston Branch Office, 2320 LaBranch Street, Houston, Texas 77002.

Categories of individuals covered by the system: Individuals who merchandize CCC owned commodities.

Categories of records in the system: Name, address, phone number, volume of CCC business, record of adverse situations, letter of credit.

Authority for maintenance of the system: 15 U.S.C. 714-714p.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaiaing, and disposing of records in the system:

Storage: Documents maintained in file folders. Working list maintained in binders.

Retrievability: By individual name.

Safeguards: Stored in Government office buildings, which are locked after working hours.

Retention and disposal: List updated continuously. Folders maintained 6 years and disposed under normal operations of Federal Records Center.

System manager(s) and address: Deputy Administrator, Management, ASCS, USDA, Washington, D.C. 20250.

Notification procedure: Any individual may request information regarding a system of records, or information as to whether the system contains records pertaining to him from the Director, Kansas City Commodity Office, 2400 West 75th Street, P.O. Box 8377, Shawnee Mission, Kansas 66208, telephone (816) 926-6401, who if necessary will refer it to the appropriate office. A request for information pertaining to an individual should contain: name, address, name of system of records, year of records in question, and any other pertinent information to help identify the file.

Record access procedures: Same as notification procedure.

Contesting record procedures: Same as notification procedure.

Record source categories: From companies, individuals in system, regulatory authorities, and merchandizing records of Kansas City ASCS Commodity Office and branch offices.

USDA/ASCS—5

System name: Consultants File, USDA/ASCS.

System location: Management Services Division, USDA/ASCS, Room 6950-S, 14th and Independence Avenue SW., Washington, D.C. 20250.

Categories of individuals covered by the system: Individuals who perform consultant services for ASCS.

Categories of records in the system: Summary of negotiations, executed contract, work schedule, work performed, and purchase order.

Authority for maintenance of the system: 5 U.S.C. 301; 7 CFR 2.65.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referral to (1) the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued Pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto: (2) Referral to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery. (3) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Maintained in files at office listed above.

Retrievability: Indexed by name and contract number.

Safeguards: Filed in standard file cabinets and stored in Government office building with security guard.

Retention and disposal: 6 years after fiscal year contract is negotiated.

System manager(s) and address: Deputy Administrator, Management, ASCS, USDA, 14th & Independence Avenue SW., Washington, D.C. 20250.

Notification procedure: An individual may inquire as to whether this system contains records pertaining to him by contacting the Director, Management Services Division, USDA/ASCS, Room 6950-South Building, 14th and Independence Avenue SW., Washington, D.C. 20250. A request for information pertaining to an individual should contain: name, address, name of system of records, year of records in question, and any other pertinent information that will help identify the file.

Record access procedures: Same as notification procedure.

Contesting record procedures: Same as notification procedure.

Record source categories: Individual and ASCS employees.

USDA/ASCS—6

System name: Cotton Loan Clerks, USDA/ASCS.

System location: County ASCS office in county where approved clerks will execute loan documents. The address of each county ASCS office can be found in the local telephone directory under the heading "United States Government, Department of Agriculture, Agricultural Stabilization and Conservation Service".

Categories of individuals covered by the system: Individuals who request permission to process loan documents.

Categories of records in the system: Agreement between the clerk and CCC, executed, signed and dated by applicant and the CCC contracting officer.

Authority for maintenance of the system: 7 U.S.C. 1421, 15 U.S.C. 714-714p.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: List furnished to lending agencies that participate in CCC Cotton Loan Program. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Maintained in file folders.

Retrievability: Indexed by name of individual.

Safeguards: Kept in locked Government office building.

Retention and disposal: 6 years after agreement is cancelled or suspended.

System manager(s) and address: Deputy Administrator, Management, ASCS, USDA, Washington, D.C. 20250.

Notification procedure: An individual may inquire as to whether this system contains records pertaining to him by contacting the head of the office where the records are located. If the specific location of the records is not known, the individual should address his request to Director, Management Services Division, USDA/ASCS, Room 6959-S, Washington, D.C. 20250, telephone 202-447-2717, who if necessary will refer it to the appropriate office. A request for information pertaining to an individual should contain: name, address, name of system of records, year of records in question, and any other pertinent information to help identify the file.

Record access procedures: Same as notification procedure.

Contesting record procedures: Same as notification procedure.

Record source categories: Individuals making application.

USDA/ASCS—7

System name: County Office Employees Administrative Expense File, USDA/ASCS.

System location: Management Field Office, USDA/ASCS, 8930 Ward Parkway, Kansas City, Missouri 64114.

Categories of individuals covered by the system: ASCS county and community committeemen, and employees who are employed in county ASCS offices on a full or part-basis.

Categories of records in the system: The system contains the names of all county ASCS committeemen and employees and information such as: identifying number (Social Security Number), race code, sex code, State code, county code, biweekly amount of payroll check including deduction amounts for FICA, Federal, State, and local withholding, FEHBA, FEGLI (Optional), NASCOE dues, and bonds. Also records of the date of birth, CO Grade and step, service computation, date last WGI, health code, cumulative and current retirement deduction, date severence pay ceases.

Authority for maintenance of the system: 16 U.S.C. 590.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referral to (1) Internal Revenue Service for total annual income as required by the Internal Revenue Code; (2) State Revenue Board and local tax authorities for tax withholding or required by Internal Revenue Code; (3) Civil Service Commission for fringe benefits withholdings 5 U.S.C. 8331, 8701, 8901, (4) Social Security Administration for FICA withholdings; (5) General public in annual directories of county committeemen; (6) the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto: of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (7) a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery; (8) Summary data produced on microfilm sent to Federal Civilian Personnel Records Center, St. Louis, Missouri, annually as a permanent record of employee's service with ASCS. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Magnetic tape by the Kansas City Computer Center, 8930 Ward Parkway, Kansas City, Missouri 64114.

Retrievability: Records are indexed by social security number.

Safeguards: Records are kept in a fireproof vault in a secured area of the building.

Retention and disposal: Maintained indefinitely on a currently updated basis.

System manager(s) and address: Director, Management Services Division, USDA/ASCS, P.O. Box 2415, Washington, D.C. 20013.

Notification procedure: Any county office employee, county committeemen, or community committeemen may request information on this system of records or information as to whether the system contains records pertaining to him (her) from the Director, Management Field Office, ASCS/USDA, 8930 Ward Parkway, Kansas City, Missouri 64114, telephone 816-926-6502. A request for information pertaining to an individual should contain his (her) name, address, social security number, and ASCS county office(s) where employee/committeemen is employed.

Record access procedures: Any county office employee, county committeeman, may obtain information as to the procedures for gaining access to and contesting a record in the system which pertains to him (her), by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Same as Records Access Procedure.

Record source categories: Information in this system comes primarily from scannable documents prepared by the ASCS county office where individual is employed.

USDA/ASCS—8

System name: County Personnel Records, USDA/ASCS

System location: County ASCS office by which individual is employed, except that some records concerning county office employees are on file in State ASCS offices, the ASCS Management Institute, Stouffers University Inn, 3025 Olentangy River Road, Columbus, Ohio 43202 and the ASCS Personnel Division, Room 4752-South Building, 14th and Independence Avenue, S.W., Washington, D.C. 20250. The address of each ASCS State and county office can be found in the local telephone directory under the heading "United States Government, Department of Agriculture, Agricultural Stabilization and Conservation Service".

Categories of individuals covered by the system: ASCS county and community committeemen, and employees who are employed in county ASCS offices on a full or part-time basis.

Categories of records in the system: Official record of county ASCS employee. Contains documents such as application, oath of office, personnel actions, job description, performance data, life and health insurance forms, annual pay status record, retirement record card, and any other documents, letters, or records which serve as proof of individual employment from 1933 to date.

Authority for maintenance of the system: 5 U.S.C. 8331, 8701, 8901; 16 U.S.C. 590h.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Verification of employment and salary furnished to lending agencies and credit bureaus; (2) Answers inquiries from prospective employers, both private and Government referrals; (3) State employment bureaus, if applicable, to Bureaus of Employee Compensation to support injury claims; (4) State organizations of National Association State and County Office Employees when employees request dues be withheld from salary, (5) local banks when saving bonds are purchased and local taxing authority when local tax is withheld; (6) referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (7) A court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery; (8) A record from this system may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter; (9) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Maintained in folders.

Retrievability: Indexed by individual name and social security number.

Safeguards: Records in county offices are kept in locked fireproof file in Government office building. Other records are stored in cabinets in locked or secured Government offices.

Retention and disposal: Maintained on site for duration of employment. Transferred to Civilian Personnel Record Center, St. Louis, Missouri, after separation.

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System manager(s) and address: Deputy Administrator, Management, USDA/ASCS, Washington, D.C. 20250.

Notification procedure: Any individual may inquire as to whether this system contains records pertaining to him by contacting the head of the office where the records are located. If the specific location of the records is not known, the individual should address his request to Director, Management Services Division, USDA/ASCS, Room 6959-S, Washington, D.C. 20250, telephone 202-447-2717, who if necessaary will refer it to the appropriate office. A request for information pertaining to an individual should contain: name, address, name of system of records, year of records in question, and any other pertinent information to help identify the file.

Record source categories: Individual employee, agency initiated documents, reference sources.

USDA/ASCS—9

System name: Emergency Livestock Feed Program, USDA/ASCS

System location: County ASCS office where farm is located for administrative purposes. The address of each county ASCS office can be found in the local telephone directory under the heading "United States Government, Department of Agriculture, Agricultural Stabilization and Conservation Service.

Categories of individuals covered by the system: Individual requesting authorization to purchase livestock feed.

Categories of records in the system: Complete description of emergency on which eligibility and quantity determinations and actual deliveries are based.

Authority for maintenance of the system: 7U.S.C. 1427 and 1427 note.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: File Folders.

Retrievability: Indexed by name of individual applicant.

Safeguards: Locked office.

Retention and disposal: Disposed of 6 years after end of program year.

System manager(s) and address: Deputy Administrator, Management, ASCS, USDA, Washington, D.C. 20250.

Notification procedure: An individual may inquire as to whether this system contains records pertaining to him by contacting the head of the office where the records are located. If the specific location of the records is not known, the individual should address his request to Director, Management Services Division, USDA/ASCS, Room 6959-S, Washington, D.C. 20250, telephone 202-447-2717, who if necessary will refer it to the appropriate office. A request for information pertaining to an individual should contain: name, address, name of system of records, year of records in question, and any other pertinent information to help identify the file.

Record access procedures: Same as notification procedure.

Contesting record procedures: Same as notification procedure.

Record source categories: Individual applicant.

USDA/ASCS—10

System name: Employee Resources Master File, USDA/ASCS.

System location: Management Field Office, USDA/ASCS, 8930 Ward Parkway, Kansas City, Missouri 64114.

Categories of individuals covered by the system: Federal employees (career, career conditional, temporary, general schedule, and wage board) who are presently employed in the Data Systems Field Office.

Categories of records in the system: Contains names of all individuals identified in the preceding paragraph and such information as social security number, date of birth, service date (for retirement and annual leave), pay plan, grade, step, occupational series, and annual salary, daily salary rate, hourly salary rate, overtime hourly rate, training course number, course sponsor, course title, hour credit, and completion date.

Authority for maintenance of the system: 5 U.S.C. 301; 7 CFR 2.65.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: None.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Magnetic tape.

Retrievability: Records are indexed by employee name.

Safeguards: Records are kept in a fireproof vault in a secured area of Government office building.

Retention and disposal: Maintained indefinitely on a currently updated basis.

System manager(s) and address: Deputy Administrator, Management, ASCS, USDA, Washington, D.C. 20250.

Notification procedure: An individual may inquire as to whether this system contains records pertaining to him by contacting the Chief, Management Field Office, USDA/ASCS, 8930 Ward Parkway, Kansas City, Missouri 64114. A request for information pertaining to an individual should contain: name, address, name of system of records, year of records in question, and any other pertinent information that will help identify the file.

Record access procedures: Same as notification procedure.

Contesting record procedures: Same as notification procedure.

Record source categories: Summary of data maintained in the Official Personnel Folder.

USDA/ASCS—11

System name: EEO Committee and Counselors, USDA/ASCS.

System location: Office of the Administrator, USDA/ASCS, 14th & Independence Ave., S.W., Washington, D.C. 20250.

Categories of individuals covered by the system: Individuals who have been selected or considered to serve on EEO Committee or to be an EEO counselor.

Categories of records in the system: Resume of individual's qualifications.

Authority for maintenance of the system: 42 U.S.C. 2000d and 2000e; Executive Order 11246, 11375 and 11478.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Maintained in file folders at office listed above. Indexed by individual name.

Safeguards: Kept in locked government office building.

Retention and disposal: Destroyed 2 years after individual ceases to serve as a committeeman or counselor.

System manager(s) and address: Deputy Administrator, Management, ASCS, USDA, Washington, D.C. 20250.

Notification procedure: Any individual may request information regarding a system of records, or information as to whether the system contains records pertaining to him from the Assistant to the Administrator for EEO, USDA/ASCS, Room 251-W, 14th and Independence Avenue, S.W., Washington, D.C. 20250. A request for information pertaining to an individual should contain: name, address, name of system of records, year of records in question, and any other pertinent information that will help to identify the file.

Record access procedures: Same as notification procedure.

Contesting record procedures: Same as notification procedure.

Record source categories: Individual.

USDA/ASCS—12

System name: EEO Complaints and Discrimination Investigation, USDA/ASCS

System location: USDA/ASCS, Office of the Administrator, 14th & Independence, Ave., S.W., Washington, D.C. 20250, and in offices of each EEO counselor at address posted on bulletin boards in Washington, D.C. 20250.

Categories of individuals covered by the system: Individuals who have been investigated for alleged discrimination as the result of a complaint and subsequent audit.

Categories of records in the system: Audit and investigation reports and supporting material. Individual files containing notes on meetings between counselor and employee.

Authority for maintenance of the system: 42 U.S.C. 2000d, 2000e, Executive Order 11246, 11375, and 11748.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referred to the appropriate agency, whether Federal, State, local or foreign, charged with

the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information avaialable indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; referral to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Maintained in file folders.

Retrievability: Indexed by individual name.

Safeguards: Filed in locked files in Government office building.

Retention and disposal: Destroyed when case is closed.

System manager(s) and address: Deputy Administrator, Management, ASCS, USDA, Washington, D.C. 20250.

Notification procedure: Any individual may request information regarding a system of records, or information as to whether the system contains records pertaining to him from the Assistant to the Admininstrator for EEO, Room 251-W, 14th and Independence Avenue, SW., Washington, D.C. 20250, who if necessary will refer it to the appropriate office. A request for information pertaining to an individual should contain: name, address, name of system of records, year of records in question, and any other information to help identify the file.

Record access procedures: Same as notification procedure.

Contesting record procedures: Same as notification procedure.

Record source categories: Individual, audit and investigation reports.

Systems exempted from certain provisions of the act: This system has been exempted pursuant to 5 U.S.C. 552a(k) from the requirements of 5 U.S.C. 552a(c)(3)(d), (e) (1), (e)(4)(G), (H), and (I), and (f) because it consists of investigatory material compiled for law enforcement purposes. See 7 CFR 1.123. Individual access to these files could impair investigations and alert subjects of investigations that their activities are being scrutinzed, and thus allow them time to take measures to prevent detection of illegal action or escape procesution. Disclosure of investigative techniques and procedures, and of the existence and identify confidential sources of information would hamper law enforcement activity.

USDA/ASCS—13

System name: Farm Record File (Automated), USDA/ASCS

System location: Management Field Office, USDA/ASCS, 8930 Ward Parkway, Kansas City, Missouri 64114.

Categories of individuals covered by the system: Farm owners, operators, and other producers..

Categories of records in the system: Contains producer identification number, commodity ID, farm number, State code, county code, disaster identification, CCC draft number, CCC draft amount, refund amount, net amount, allotment acres, yield per acre, silage tonnage, and program year.

Authority for maintenance of the system: 7 U.S.C. 135b, 450k, 1281-1393, 1421-1449, 1781-1787, 15 U.S.C. 714b and c; 16 U.S.C. 590a-590q, 1301-1311; 26 U.S.C. 6109.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Magnetic tape.

Retrievability: Records are indexed by State, county, and farmer identification number.

Safeguards: Tapes are kept in a fireproof vault in a secured part of Government office building.

Retention and disposal: Maintained throughout the program year on a currently updated basis. Prior program year tapes are retained for history purposes.

System manager(s) and address: Director, Management Services Division, USDA/ASCS, P.O. Box 2415 Washington, D.C. 20013.

Notification procedure: Any individual may request information on this system of records or information as to whether the system contains records pertaining to him (her) from Director, Kansas City Management Field Office, ASCS/USDA, 8930 Ward Parkway, Kansas City, Missouri 64114, telephone number 816-926-6502. A request for information pertaining to an indiyidual should contain full name, address and zip code.

Record access procedures: Any individual may obtain information as to the procedures for gaining access to and contesting a record in the system which pertains to him (her), by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Same as Record Access Procedures.

Record source categories: Information in this system comes primarily from documents submitted by the ASCS county office maintaining farm records on the individual producer. Information in these records is obtained directly from the individuals in the system.

USDA/ASCS—14

System name: Farm Records File (Manual), USDA/ASCS

System location: County ASCS office which services particular farm. The address of each county ASCS office can be found in the local telephone directory under the heading "United States Government, Department of Agriculture, Agricultural Stabilization and Conservation Service."

Categories of individuals covered by the system: Farm owners, operators, and other producers.

Categories of records in the system: Contains complete documentation of participation in active programs as well as discontinued programs. Includes but not necessarily limited to farm allotments, bases, and history, compliance data, production and marketing data, appeals, new grower applications, conservation program documents, program participation and payments, appraisals, leases, and data for farm reconstitutions.

Authority for maintenance of the system: 7 U.S.C. 135b, 450k, 1281-1393, 1421-1449, 1781-1787; 15 U.S.C. 714b and c; 16 U.S.C. 590a-590q, 1301-1311; 26 U.S.C. 6109.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referral to (1) the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any records within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (2) a court, magistrate, or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery; (3) Farm allotment and quota data for marketing quota crops is made available for public inspection as required by The Agricultural Act of 1938, as amended (7 U.S.C. 1281-1393); 7 CFR Parts 722-726, and 728-730; (4) Tobacco sales bills referred to appropriate loan associations when tobacco is placed under government loan; (5) Name, address, farm number and pounds of quota designated to Flue Cured Tobacco Stabilization Corporation which uses this data to assist in administering the flue cured tobacco warehouse designation program, labs for making chemical analysis of tobacco. Referral to State Forester for technical service on forestry practices. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Maintain in file folders at applicable location above.

Retrievability: Indexed by individual name or farm identification number.

Safeguards: Records are kept in locked office.

Retention and disposal: 5 years after end of program year, except long term agreement conservation records which are 5 years after program year in which a practice is completed.

System manager(s) and address: Deputy Administrator, Management, ASCS, USDA, Washington, D.C. 20250.

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Notification procedure: An individual may inquire as to whether this system contains records pertaining to him by contacting the head of the office where the records are located. If the specific location of the records is not known, the individual should address his request to Director, Data Systems Division, USDA/ASCS, Room 5741-South Building, 14th and Independence Avenue, S.W., Washington, D.C. 20250, telephone (202) 447-7561, who if necessary will refer it to the appropriate office. A request for information pertaining to an individual should contain: name, address, name of system of records, year of records in question, and any other pertinent information to help identify the file.

Record access procedures: Same as notification procedure.

Contesting record procedures: Same as notification procedure.

Record source categories: Individual farmer, agency executed documents.

USDA/ASCS—15

System name: Farmer's Name and Address Master File (Automated) USDA/ASCS.

System location: Management Field Office, ASCS-USDA, 8930 Ward Parkway, Kansas City, Missouri 64114.

Categories of individuals covered by the system: All known farmers who reside in area served by the local county ASCS office.

Categories of records in the system: Contains names and addresses and zip codes of all farmers and other information, such as, social security or producer identification number, race code, State and county code on farmers who participate.

Authority for maintenance of the system: 7 U.S.C. 135b, 450k, 1281-1393, 1421-1449, 1781-1787; 15 U.S.C. 714b and c; 16 U.S.C. 590a-590q, 1301-1311; 26 U.S.C. 6109.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Furnished to (1) Internal Revenue Service to report total annual payments to each producer; (2) approved Cooperative Marketing Associations for price support loan eligibility; (3) State and county taxing authorities and (4) Commodity Promotion Boards where producer funds are withheld by ASCS. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained on mag-tape by the Kansas City Computer Center at the address shown above.

Retrievability: Records are indexed by the producer identification number of the individual farmer, in State and county sequence.

Safeguards: Records are kept in a fire proof vault in a secured area of Government office building.

Retention and disposal: Records of current producers are maintained indefinitely. Additions, deletions and corrections are made periodically.

System manager(s) and address: Deputy Administrator, Management, ASCS, USDA, Washington, D.C. 20250.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertinent to him, from the Director, Management Field Office, Kansas City, Missouri 64114, telephone 816-926-6502. A request for information pertaining to an individual should contain: name, address, producer identification number(s) and the ASCS county office(s) where the farm records are maintained.

Record access procedures: Any individual may obtain information as to the Procedures for gaining access to a record in the system which pertains to him, by submitting a written request to the official referred to in the preceding paragraph.

Contesting record procedures: Same as Records Access Procedure.

Record source categories: Directly from individual and from documents submitted by the ASCS county office.

USDA/ASCS—16

System name: Farmers' Name and Address Master File (Manual), USDA/ASCS

System location: County ASCS office where the farmers' farm is located for administrative purposes at address listed in the local telephone directory under the heading of "United States Government, Department of Agriculture, Agricultural Stabilization & Conservation Service."

Categories of individuals covered by the system: Farmers who participate in farm programs administered by ASCS, or who are known to the local ASCS office.

Categories of records in the system: Contains names and addresses and ZIP codes of all farmers including such information as social security number and producer identification number, race, State and county code, and farm data.

Authority for maintenance of the system: 7 U.S.C. 135b, 450k, 1281-1393, 1421-1449, 1781-1787; 15 U.S.C. 714b and c; 16 U.S.C. 590a-590q, 1301-1311; 26 U.S.C. 6109.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Used in contacting farmers in carrying on business of ASCS. Appropriate lists are furnished to (1) suppliers of material and services, elegible voters in same county, (2) cotton buyers, and to cotton, rice, and peanut cooperatives. Referral to Commodity Promotion Boards when producer funds are withheld by ASCS. Referral to local taxing authorities and professional appraisal companies or consultants working under contract with such taxing authorities for tax appraisal purposes. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained on addressograph plates and imprinter plates, at applicable locations above.

Retrievability: Records are indexed by name of individual.

Safeguards: Records are kept in locked Government office.

Retention and disposal: Maintained as a current record until superceded by updated address.

System manager(s) and address: Deputy Administrator, Management, ASCS, USDA, Washington, D.C. 20250

Notification procedure: An individual may inquire as to whether this system contains records pertaining to him by contact the head of the office where the records are located. If the specific location of the records is not known, the individual should address his request to Director, Management Services Division, USDA/ASCS, Room 6959-S. Washington, D.C. 20250, 202-447-2717, who if necessary will refer it to the appropriate office. A request for information pertaining to an individual should contain: name, address, name of system of records, year of records in question, and any other pertinent information to help identify the file.

Record access procedures: Same as notification procedure.

Contesting record procedures: Same as notification procedure.

Record source categories: From individuals, postal department, and county courthouse, if necessary to locate absentee owner of farm.

USDA/ASCS—17

System name: Indemnity and Incentive Programs—USDA/ASCS

System location: County ASCS Office which services particular farm. The address of each county ASCS office can be found in the local telephone directory under the heading "United States Government, Department of Agriculture, Agricultural Stabilization & Conservation Service."

Categories of individuals covered by the system: Individual filing application for Wool, Mohair, Incentive payments, Milk and Bee Indemnity program payments.

Categories of records in the system: Contains complete file on which eligility for payment determination are based.

Authority for maintenance of the system: 7 U.S.C. 1781-1787, 135b, 450k.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referral to the appropriate agency, whether Federal State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; Referral to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Storage: Records are maintained in file folders.

Retrievability: Indexed by individual producer's name.

Safeguards: Kept in locked file in Government Office Building.

Retention and disposal: Disposed of 6 years after end of program year.

System manager(s) and address: Deputy Administrator, Management, ASCS, USDA, Washington, D.C. 20013

Notification procedure: An indivdual may inquire as to whether this system contains records pertaining to him by contacting the head of the office where the records are located. If the specific location of the records is not known, the individual should address his request to Director, Management Services Division, USDA/ASCS, Room 6959-S. Washington, D.C. 20250, 202-447-2717, who if necessary will refer it to the appropriate office. A request for information pertaining to an individual should contain: name, address, name of system of records, year of records in question, and any other pertinent information to help identify the file.

Record access procedures: Same as notifications procedure.

Contesting record procedures: Same as notification procedure.

Record source categories: Individual furnishes information when making application for payment.

USDA/ASCS—18

System name: Investigation and Audit Reports—USDA/ASCS

System location: USDA/ASCS, 14th and Independence Ave., S.W., Washington, D.C. 20250. Kansas City Commodity Office, USDA-ASCS, Brymar Office Center, 2400 W. 75th, Prairie Village, Kansas 66208. State ASCS offices at address listed in local telephone directory under United States Government, ASCS/USDA.

Categories of individuals covered by the system: Individuals who are the subject of a formal investigation relative to alleged program or administrative irregularities.

Categories of records in the system: Contains complete files on individual investigations, including program documents, investigation reports, statements of witnesses, accident reports, and agency reports.

Authority for maintenance of the system: 5 U.S.C. 301; 7 CFR 2.65.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, issued pursuant thereto; Referral to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above. Records are indexed by name of individual being investigated and investigation case number.

Safeguards: Kept in locked files in Government office building.

Retention and disposal: Destroyed when case is closed.

System manager(s) and address:

Deputy Administrator, Management, ASCS, USDA, Washington, D.C. 20250.

Systems exempted from certain provisions of the act: This system has been exempted pursuant to 5 U.S.C. 552a(k)(2) from the requirements of 5 U.S.C. 552a (c)(3) (d), (e)(1), (e)(4) (G), (H), and (I), and (f) because it consists of investigatory material compiled for law enforcement purposes. See 7 CFR 1.123. Individual access to these files could impair investigations and alert subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action or escape prosecution. Disclosure of investigative techniques and procedures, and of the existence and identity of confidential sources of information would hamper law inforcement activity.

USDA/ASCS—19

System name: Maximum Payment Limitations, USDA/ASCS

System location: County ASCS Office which services particular farm. The address of each county ASCS office can be found in the local telephone directory under the heading "United States Government, Department of Agriculture, Agricultural Stabilization & Conservation Service."

Categories of individuals covered by the system: Individual subject to Program Payment Limitation.

Categories of records in the system: Financial statement and applicable farm information as well as tax statements, will & trust documents and corporation charters.

Authority for maintenance of the system: 7 U.S.C. 1307.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute, or by rule, regulation or order issued pursuant thereto; Referral to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Maintained in file folders.

Retrievability: Indexed by name of individual.

Safeguards: Kept in locked file in Government office building.

Retention and disposal: Destroyed 5 years after end of Program year.

System manager(s) and address: Deputy Administrator, Management, ASCS/USDA, Washington, D.C. 20250.

Notification procedure: An individual may inquire as to whether this system contains records pertaining to him by contacting the head of the office where the records are located. If the specific location of the records is not known, the individual should address his request to Director, Management Services Division, USDA/ASCS, Room 6959-S, Washington, D.C. 20250, telephone 202-447-2717, who if necessary will refer it to the appropriate office. A request for information pertaining to an individual should contain: name, address, name of system of records, year of records in question, and any other pertinent information to help identify the file.

Record access procedures: Same as notification procedure.

Contesting record procedures: Same as notification procedure.

Record source categories: Information furnished by individual producer.

USDA/ASCS—20

System name: Power of Attorney & Designated Agents, USDA/ASCS

System location: County ASCS Office which services particular farm. The address of each county ASCS office can be found in the local telephone directory under the heading "United States Government, Department of Agriculture, Agricultural Stabilization & Conservation Service."

Categories of individuals covered by the system: Individuals giving powers of attorney and individuals securing the powers to act as agent.

Categories of records in the system: Documents authorizing an individual to act as a representative of a producer or company.

Authority for maintenance of the system: 7 U.S.C. 135b, 450k, 1281-1393, 1421-1449, 1781-1787; 15 U.S.C. 714 b and c; 16 U.S.C. 590a-590q, 1301-1311; 26 U.S.C. 6109.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: In file folders.

Retrievability: Indexed by name of individual.

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Safeguards: Kept in locked file in Government office building.

Retention and disposal: Destroyed 6 years after authority is cancelled or suspended.

System manager(s) and address: Deputy Administrator, Management, ASCS/USDA, Washington, D.C. 20250.

Notification procedure: An individual may inquire as to whether this system contains records pertaining to him by contacting the head of the office where the records are located. If the specific location of the records is not known, the individual should address his request to Director, Management Services Division, USDA/ASCS, Room 6959-S, Washington, D.C. 20250, telephone 202-447-2717, who if necessary will refer it to the appropriate office. A request for information pertaining to an individual should contain: name, address, name of system of records, year of records in question, and any other pertinent information to help identify the file.

Record access procedures: Same as notification procedure.

Contesting record procedures: Same as notification procedure.

Record source categories: Producer or company which authorized the agent to conduct business.

USDA/ASCS—21

System name: Producer Appeals, USDA/ASCS

System location: ASCS, Program Appeals Staff, Room 4723, So., Building, 14th & Independence Avenue, S.W., Washington, D.C. 20250.

Categories of individuals covered by the system: Farm owners, operators or producers who file program appeals on prior determinations made by State ASCS Committees or the Deputy Administrator, Programs.

Categories of records in the system: The system consists of complete files on appeals including farm records, correspondence, investigations and audit reports, statements of witnesses, record and verbatim transcript of hearing.

Authority for maintenance of the system: 7 U.S.C. 135b, 450k, 1281-1393, 1421-1449, 1781-1787; 15 U.S.C. 714 b and c; 16 U.S.C. 590a-590q, 1301-1311; 26 U.S.C. 6109.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referral to the appropriate agency, whether Federal, State, or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute, or by rule, regulation or order issued pursuant thereto; Referral to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which is sought in the course of discovery. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system: Record are maintained in file folders.

Retrievability: Indexed by name of individual.

Safeguards: Kept in office attended by authorized personnel.

Retention and disposal: Maintained 6 years after case is closed.

System manager(s) and address: Deputy Administrator, Management, ASCS, USDA, Washington, D.C. 20250.

Notification procedure: Any individual may request information regarding a system of records, or information as to whether the system contains records pertaining to him from the Director, Program Appeals Staff, USDA/ASCS, Room 4723-South Building, 14th and Independence Avenue, S.W., Washington, D.C. 20250. A request for information pertaining to an individual should contain: name, address, name of system of records, year of records in question, and any other pertinent information to help identify the file.

Record access procedures: Same as notification procedure.

Contesting record procedures: Same as notification procedure.

Record source categories: Individual, witnesses, ASCS county personnel.

Systems exempted from certain provisions of the act: This system has been exempted pursuant to 5 U.S.C. 552a(k) from the requirements of 5 U.S.C. 552a(c)(3)(d), (e)(1), (e)(4)(G), (H), and (I), and (f) because it consists of investigatory material compiled for law enforcement purposes. See 7 CFR 1.123. Individual access to these files could impair investigations and alert subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action or escape prosecution. Disclosure of investigative techniques and procedures, and of the existence and identity of confidential sources of information would hamper law enforcement activity.

USDA/ASCS—22

System name: Producer Payment Reporting File 365 and 368—USDA/ASCS

System location: Management Field Office, USDA/ASCS, 8930 Ward Parkway, Kansas City, Missouri 64114

Categories of individuals covered by the system: Farmers who participate in Programs administered by ASCS.

Categories of records in the system: Contains names and addresses of all participating farmers including ZIP code, concerned with ASCS farm programs, including such information as: social security number or producer identification number, State and County codes, and program payment data.

Authority for maintenance of the system: 26 U.S.C. 6109.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Furnished to (1) Internal Revenue Service for total annual payment to each producer; (2) Farmers for record of payments received by him (her) and reported to IRS. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Magnetic tape.

Retrievability: Indexed by name of individual.

Safeguards: Kept on magnetic tape in a fireproof vault in a secured area of Government office building.

Retention and disposal: Maintained indefinitely on a currently updated basis.

System manager(s) and address: Deputy Administrator, Management, ASCS/USDA, Washington, D.C. 20250.

Notification procedure: Any individual may request information on this system of records or information as to whether the system contains records pertaining to him (her) from Director, Kansas City, Management Field Office, ASCS/USDA, 8930 Ward Parkway, Kansas City, Missouri, 64114, telephone number 816-926-6502. A request for information pertaining to an individual should contain name, address and ASCS county office(s) where farm records are maintained.

Record access procedures: Any individual may obtain information as to the procedures for gaining access to and contesting a record in the system which pertains to him (her), by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Same as Record Access Procedure

Record source categories: Documents submitted by the ASCS county office maintaining farm records on the individual producer and submitted primarily by such producers to the county office.

USDA/ASCS—23

System name: Shorn and Unshorn Wool and Mohair—USDA/ASCS

System location: Management, Field Office, USDA/ASCS, 8930 Ward Parkway, Kansas City, Missouri 64114

Categories of individuals covered by the system: Farmers who participate in the shorn and unshorn wool and mohair incentive programs administered by ASCS.

Categories of records in the system: Contains names and addresses of all farmers participating in the ASCS Wool and Mohair incentive program for the current marketing year, and other data such as Social security number and wool production data.

Authority for maintenance of the system: 7 U.S.C. 1781-1787; 7 CFR 2.65.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Furnished to (A) Idaho Sheep Commission to report number of head shorn. (B) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential

violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; Referral to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery. (C) Navaho Indian Agency, Bureau of Indian Affairs sight drafts and payment statements for individual payments for Navaho program participants. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Magnetic tape.

Retrievability: Indexed by name of individual producer in State and county sequence.

Safeguards: Kept in a fireproof vault in a secured area of Government office building.

Retention and disposal: Retained for three prior marketing years and disposed of by re-using the obsolete magnetic tapes.

System manager(s) and address: Director, Management Services Division, USDA/ASCS, P.O. Box 2415, Washington, D.C. 20013

Notification procedure: Any wool producer may request information on this system of records or information as to whether the system contains records pertaining to him (her) from Director, Kansas City Management Field Office, USDA/ASCS/8930 Ward Parkway, Kansas City, Missouri 64114, telephone 816-926-6502. A request for information pertaining to an individual should contain name, address, social security number, and county where farm is located.

Record access procedures: Any wool producer may obtain information as to the procedures for gaining access to and contesting a record in the system which pertains to him, by submitting a written request to the appropriate offical referred to in the preceeding paragraph.

Contesting record procedures: Same as Records Access Procedure.

Record source categories: Information in this system comes primarily from applications for wool and mohair payments documents submitted by the ASCS county offices maintaining farm records on the individual wool producer who is the primary source of the data.

USDA/ASCS—24

System name: Subsidiary Personnel, Pay, and Travel Records—USDA/ASCS

System location: Any ASCS office where individual is employed at address shown in the local telephone directory under United States Government, USDA/ASCS.

Categories of individuals covered by the system: Individuals employed by ASCS, except county office employees and committeemen.

Categories of records in the system: Agency copies of personnel actions, training records, performance ratings, earnings statements, time and attendance reports, travel authorizations and vouchers, payroll deduction records, service record cards, record of accountable documents charged to employee, appeal cases, and conflict of interest statements.

Authority for maintenance of the system: 5 U.S.C. 301; 7 CFR 2.65.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Answer inquiries from prospective employers when employee gives immediate supervisor or co-worker as reference.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Maintained in file folders at address shown above.

Retrievability: Indexed by name of individual employee.

Safeguards: Kept in file cabinets at address shown above.

Retention and disposal: Maintained in active status during the employee's tenure at the organizational entity. After transfer or separation maintained in inactive status to be used to answer employment inquiries. Conflict of interest statement retained 2 years after employee is separated.

System manager(s) and address: Deputy Administrator, Management, ASCS, USDA, Washington, D.C. 20250.

Notification procedure: An individual may inquire as to whether this system contains records pertaining to him by contacting the head of the office where the records are located. If the specific location of the records is not known, the individual should address his request to Director, Management Services Division, USDA/ASCS, Room 6959-S, Washington, D.C. 20250, telephone 202-447-2727, who if necessary will refer it to the appropriate office. A request for information pertaining to an individual should contain: name, address, name of system of records, year of records in question, and any other pertinent information to help identify the file.

Record access procedures: Same as notification procedure.

Contesting record procedures: Same as notification procedure.

Record source categories: Employee, CSC, agency initiated documents.

USDA/ASCS—25

System name: Tobacco (Flue-cured, Burley) Farm History Master File, USDA/ASCS

System location: Management Field Office, USDA/ASCS, 8930 Ward Parkway, Kansas City, Missouri 64114

Categories of individuals covered by the system: Farmers who participate in the flue-cured or burley tobacco programs.

Categories of records in the system: Contains names and addresses of all participating tobacco farmers and such information as State county, farm number, allotments and quotas, production and marketing data, lease and transfer data.

Authority for maintenance of the system: 16 U.S.C. 590; 7 U.S.C. 1281-1393; 7 U.S.C. 1421-1449; 7 CFR 2.65

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Furnished to Congress upon request from members and Congressional Agencies; Cooperative marketing associations for price support and marketing data; and Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record, within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; Referral to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Magnetic tape.

Retrievability: Indexed by State, county, farm number, community number and producer's name.

Safeguards: Kept in fireproof vault in a secured area of Government office building.

Retention and disposal: Maintained indefinitely on a currently updated basis.

System manager(s) and address: Director, Management Services Division, USDA/ASCS, P.O. Box 2445, Washington, D.C. 20013

Notification procedure: Any individual may request information on this system of records or information as to whether the system contains records pertaining to him from Director, Kansas City Management Field Office, ASCS/USDA, 8930 Ward Parkway, Kansas City, Missouri 64114, telephone 816-926-6502. A request for information pertaining to an individual should contain name, address, and county where tobacco farm is located.

Record access procedures: Any tobacco producer may obtain information as to the procedures for gaining access to a record in the system which pertains to him, by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Same as Record Access Procedure.

Record source categories: Documents submitted by the ASCS county office maintaining farm records on the individual producer and submitted primarily by him (her) to the county office.

USDA/ASCS—26

System name: Tort, Program, and Civilian Employee Claims USDA/ASCS

System location: Any ASCS office having jurisdiction over the claim at the location listed in the local telephone directory under United States Government, USDA/ASCS.

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Categories of individuals covered by the system: Individual by whom or against whom claim involving ASCS or CCC has been filed.

Categories of records in the system: Complete files on individual claims, including claim forms, police reports, investigation and accident reports, statement of witnesses, and agency reports.

Authority for maintenance of the system: P.L. 83-480; P.L. 89-508; 28 U.S.C. 2671-2680; 31 U.S.C. 240; 5 U.S.C. 8101-8150; 7 U.S.C. 135b, 450k, 1281-1393; 1421-1449, 1781-1787; 15 U.S.C. 714 b and c; 16 U.S.C. 590a-590q, 1301-1311.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referral to (1) The appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or enforcing or implementing the statute, rule, regulation or order issued pursuant thereto; of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery; (2) Department of labor for those arising under the Federal Employees Compensation Act; (3) Insurance companies where necessary for resolution of claim; (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual; and (5) Referral of list of producer names on claim record to cotton loan clerks for offsetting.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Individual claim folders.

Retrievability: Indexed by name of claimant number.

Safeguards: Kept in locked file cabinets in Government office building.

Retention and disposal: Retained after settlement for 6 years if CCC and 5 years if appropriated funds involved.

System manager(s) and address: Deputy Administrator, Management, ASCS/USDA, Washington, D.C. 20250.

Notification procedure: An individual may inquire as to whether this system contains records pertaining to him by contacting the head of the office where the records are located. If the specific location of the records is not known, the individual should address his request to Director, Management Services Division, USDA/ASCS, Room 6959-S, Washington, D.C. 20250, telephone, 202-447-2717, who if necessary will refer it to the appropriate office. A request for information pertaining to an individual should contain: name, address, name of system of records, year of records in question, and any other pertinent information to help identify the file.

Record access procedures: Same as notification procedure.

Contesting record procedures: Same as notification procedure.

Record source categories: Information in this system comes primarily from claimants, witnesses, agency employees, and investigative personnel.

USDA/ASCS—27

System name: Peanut Allotment and Quota File, USDA/ASCS.

System location: Management Field Office, USDA/ASCS 8930 Ward Parkway, Kansas City, Mo. 64114.

Categories of individuals covered by the system: All producers who participate in the peanut allotment and quota program as set forth by the Food and Agriculture Act of 1977. (Effective 1978 through 1981 peanut crop year.)

Categories of records in the system: This file contains data such as farm number, producer name, address, State and county in which peanut farming is conducted, acreage allotments, quotas and marketing data.

Authority for maintenance of the system: 7 U.S.C. 1358, 1359, 1373, 1377 and 1441.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Furnished to Cooperative Marketing Associations for price support and marketing data; and referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto. (2) Referral to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery. (3) Referral to the Department of Justice for the defense of suits against the United States or its officers, or for the institution of suits for the recovery of claims by the United States Department of Agriculture. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual. Disclosure may be made to Federal State Inspection Service, Cooperative Peanut Associations and Peanut Board.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Magnetic tapes and disks at the Kansas City Computer Center, 8930 Ward Parkway, Kansas City, Mo. 64114.

Retrievability: Records are indexed by State, county and farm number.

Safeguards: Records maintained on magnetic tapes and disks are kept in a limited access secured Federal Government facility.

Retention and disposal: Maintained on a currently updated basis for the 1978-1981 crop years of peanuts.

System manager(s) and address: Deputy Administrator, Management, USDA/ASCS, Washington, D.C. 20250.

Notification procedure: Any peanut producer may request information on this system of records or information as to whether or not the system contains records pertaining to the named producer from: Director, Management Field Office, USDA/ASCS, 8930 Ward Parkway Kansas City, Mo. 64114, telephone 816-926-6502. However, all data concerning the producer is available in the appropriate county ASCS office, as well as similar peanut allotment and quota information about other peanut producers in the county. Thus the county office would be the most help in servicing a Privacy Act request for personal data from the peanut producer. A request for information pertaining to an individual, as a minimum, must contain name, address and ASCS county office(s) where peanut farm records are maintained.

Record access procedures: Same as notification procedure.

Contesting record procedures: Same as notification procedure.

Record source categories: Information in this system comes primarily from documents origination in county ASCS offices and from information submitted by peanut producers and peanut associations to the county ASCS office(s).

USDA/APHIS—1

System name: Plant Protection and Quarantine Programs—Regulatory Actions, USDA/APHIS

System location: Plant Protection and Quarantine Programs—USDA/APHIS, Room 633, Federal Building, Hyattsville, MD 20782

Categories of individuals covered by the system: Violators and alleged violators of plant protection and plant quarantine laws and regulations.

Categories of records in the system: The system consists of case files on violators and contains copies of violation report forms, compliance agreements, employee or other witness statements, warning notices, Office of the General Counsel (OGC) recommendations to the U.S. Department of Justice and court disposition documents.

Authority for maintenance of the system: 7 U.S.C. 150gg, 163.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto. (2) Referral to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery. (3) Referral to the Department of Justice for the defense of suits against the United States or its officers, or for the institution of suits for the recovery of claims by the United States Department of Agriculture. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders in metal file cabinets.

Retrievability: Records are manually retrieved by alphabetized name of the individual violator.

Safeguards: Records are maintained in locked files with APHIS employees in attendance during working hours.

Retention and disposal: Records are maintained indefinitely.

System manager(s) and address: Deputy Administrator, Plant Protection and Quarantine, USDA/APHIS, 14th & Independence Avenue, S.W., Washington, D.C. 20250

Systems exempted from certain provisions of the act: This system has been exempted pursuant to 5 U.S.C. 552a(k)(2) from the requirements of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f). See 7 CFR 1.23. Individual access to these records would impair investigations and alert subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action to escape prosecution. Any individual who feels, however, that he has been denied any right, privilege or benefit for which he would otherwise be eligible as a result of the maintenance of such material may request access to the material. Such requests should be addressed to: APHIS Privacy Act Coordinator, Administrative Services Division, USDA/APHIS, Fed. Bg., 6505 Belcrest road, Hyattsville, MD 20782.

USDA/APHIS—2

System name: Veterinary Services Programs—Records of Accredited Veterinarians, USDA/APHIS

System location: Room 801, Federal Building, Veterinary Services, USDA/APHIS, Hyattsville, MD 20782

Categories of individuals covered by the system: Private veterinary practitioners who are accredited by the Federal and State governments to issue health certificates for the interstate and international movement of livestock and participate in cooperative State/Federal animal health programs.

Categories of records in the system: (1) Record includes name of accredited veterinarian, State in which accredited, State license number, college and date of graduation, and score on accreditation examination. (2) Record also includes material pertaining to alleged violations of accreditation standards. If allegations are proven true the record includes the disposition of the case which may be revocation of accreditation.

Authority for maintenance of the system: 21 U.S.C. 105, 111-114a-1, 116, 125, 134b, 134f.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to State Animal Health officials to certify that a particular individual is indeed accredited. (2) Referral to State Veterinary Examinating Boards to certify that a particular individual is indeed accredited. (3) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing of implementing the statute rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule regulation or order issued pursuant thereto. (4) Referral to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery. (5) Referral to the Department of Justice for the Defense of suits against the United States or its officers or for the institution of suits for the recovery of claims by the United States Department of Agriculture. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders and on 3x5 cards.

Retrievability: Records are manually retrieved by alphabetized names.

Safeguards: Records are kept locked in files with APHIS employees in attendance during working hours.

Retention and disposal: Records are retained indefinitely.

System manager(s) and address: Deputy Administrator, Veterinary Services, USDA/APHIS, 14th & Independence Avenue, S.W., Washington, D.C. 20250.

Notification procedure: All inquiries should be addressed to: APHIS Privacy Act Coordinator, Administrative Service Division, USDA/APHIS, Fed. Bg., 6505 Belcrest Road, Hyattsville, MD 20782.

Record access procedures: All inquiries should be addressed to the APHIS Privacy Act Coordinator.

Contesting record procedures: All inquiries should be addressed to the APHIS Privacy Act Coordinator.

Record source categories: Material is transcribed from documents submitted by the individual. Material is verified by State and Area Animal Health Officials which sometimes results in additional source material submitted by such officials.

Systems exempted from certain provisions of the act: The portions of this system which consist of investigatory material compiled for law enforcement purposes have been exempted pursuant to 5 U.S.C. 552a(k)(2) from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). See 7 CFR 1.23. Individual access to these records would impair investigations and alert subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action to escape prosecution. Any individual who feels, however, that he has been denied any right, privilege or benefit for which he would otherwise be eligible as a result of the maintenance of such material may request access to the material. Such requests should be addressed to: APHIS Privacy Act Coordinator, Administrative Services Division, USDA/APHIS, Fed. Bg., 6505 Belcrest Road, Hyattsville, MD 20782.

USDA/APHIS—3

System name: Veterinary Services Programs—Animal quarantine Regulatory Actions, USDA/APHIS

System location: Program Services, Veterinary Services Program, USDA/APHIS, Federal Center Building, Hyattsville, MD 20782.

Categories of individuals covered by the system: Veterinarians: Livestock Market Operators; Livestock Haulers; Livestock Dealers, Buyers and Brokers; Livestock Owners and Producers.

Categories of records in the system: Investigatory and case files of alleged violations of quarantine laws contain the alleged violator's name and address, type of infraction, and documentation of the alleged infraction. The file includes closed cases as well as the current status of those cases remaining unresolved.

Authority for maintenance of the system: 21 U.S.C. 101-105, 111-134.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule regulation or order issued pursuant thereto. (2) Referral to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitues evidence in that proceeding, or which is sought in the course of discovery. (3) Referral to the Department of Justice for the defense of suits against the United States or its officers, or for the institution of suits for the recovery of claims by the United States Department of Agriculture. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders in metal file cabinets.

Retrievability: Numbered cases are cross-indexed by alphabetized names. Files are manually retrieved.

Safeguards: Records are maintained in locked files with APHIS employees in attendance during working hours.

Retention and disposal: After three years closed cases are sent to the Federal Records Center where they are retained indefinitely. Open cases are retained indefinitely in the Program Services Office.

System manager(s) and address: Deputy Administrator, Veterinary Services, USDA/APHIS, 14th & Independence Avenue, S.W., Washington, D.C. 20250.

Systems exempted from certain provisions of the act: This system hjas been exempted pursuant to 5 U.S.C. 552a(k)(2) from the requirements of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f). See 7 CFR 1.23. Individual access to these records would impair investigations and alert subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action to escape prosecution. Any individual who feels, however, that he has been denied any right, privilege or benefit for which he would otherwise be eligible as a result of the maintenance of such material may request access to the material. Such requests should be addressed to: APHIS Privacy Act Coordinator, Administrative Services Division, USDA/APHIS, Fed. Bg., 6505 Belcrest Road, Hyattsville MD 20782.

USDA/APHIS—4

System name: Veterinary Services Programs—Animal Welfare and Horse Protection Regulatory Actions, USDA/APHIS

System location: Animal Care Staff, Veterinary Services, USDA/APHIS, Room 700, Federal Building, Hyattsville, MD 20782.

Categories of individuals covered by the system: Dealers, exhibitors, and other individuals required to be licensed or registered under the Federal Laboratory Animal Welfare Act of 1966, as amended. Operators of research facilities and other individuals required to be registered under the Federal Laboratory Animal Welfare Act of 1966, as amended. Horse Trainers, owners, exhibitors, and other individuals subject to the Horse Protection Act of 1970.

Categories of records in the system: Investigatory and case files contain the alleged violators name and address, type of infraction, and documentation of the alleged infraction. The files include closed cases as well as the current status of those cases not resolved.

Authority for maintenance of the system: 7 U.S.C. 2131 et seq.; 15 U.S.C. 1821 et seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto. (2) Referral to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained on index cards and in file folders in metal file cabinets.

Retrievability: Numbered cases are cross indexed by alphabetized names. Files are manually retrieved.

Safeguards: Records are maintained in locked files with APHIS employees in attendance during working hours.

Retention and disposal: Files are retained indefinitely.

System manager(s) and address: Deputy Administrator, Veterinary Services, USDA/APHIS, 14th & Independence Avenue, S.W., Washington, D.C. 20250.

Systems exempted from certain provisions of the act: This system has been exempted pursuant to 5 U.S.C. 522a(k)(2) from the requirements of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f). See 7 CFR 1.23. Individual access to these records would impair investigations and alert subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action to escape prosecution. Any individual who feels, however, that he has been denied any right, privilege or benefit for which he would otherwise be eligible as a result of the maintenance of such material may request access to the material. Such requests should be addressed to: APHIS Privacy Act Coordinator, Administrative Services Division, USDA/APHIS, Fed. Bg., 6505 Belcrest Road, Hyattsville, MD 20782.

USDA/APHIS—5

System name: Veterinary Services Programs—Candidates for Animal Disease Control Positions in Foreign Countries.

System location: International Operations Staff, Emergency Programs, Veterinary Services, USDA/APHIS, Hyattsville, MD 20782.

Categories of individuals covered by the system: Animal health scientists.

Categories of records in the system: Resumes of previous job and educational experience.

Authority for maintenance of the system: 21 U.S.C. 114b.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Advise U.S. scientists in animal health and related field of potential use of their qualifications by international organizations and/or foreign governments. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders in metal file cabinets.

Retrievability: Records are retrieved manually by alphabetized name.

Safeguards: Records are maintained in locked files with APHIS employees in attendance during normal working hours.

Retention and disposal: After 3 years records are sent to the Federal Records Center where they are destroyed after 10 years.

System manager(s) and address: Deputy Administrator, Veterinary Services, USDA/APHIS, 14th & Independence Avenue, S.W., Washington, D.C. 20250.

Notification procedure: All inquiries regarding this system of records should be addressed to: APHIS Privacy Act Coordinator, Administrative Services Division, USDA/APHIS, Fed. Bg., 6505 Belcrest Road, Hyattsville, MD 20782.

Record access procedures: All inquiries should be addressed to the APHIS Privacy Act Coordinator.

Contesting record procedures: All inquiries should be addressed to the APHIS Privacy Act Coordinator.

Record source categories: All information in this system of records is obtained directly from the individual concerned.

USDA/ESCS—1

System name: Administrative Records System, USDA/ESCS

System location: Statistical Offices at the following locations:

Montgomery, AL
Phoenix, AZ
Little Rock, AR
Sacramento, CA
Denver, CO
Washington, DC
Orlando, FL
Athens, GA
Boise, ID
Springfield, IL
West Lafayette, IN
Des Moines, IA
Topeka, KS
Louisville, KY
Alexandria, LA
College Park, MD
Lansing, MI
St. Paul, MN
Jackson, MS
Columbia, MO
Helena, MT
Lincoln, NE
Reno, NV
Concord, NH

Trenton, NJ
Las Cruces, NM
Albany, NY
Raleigh, NC
Fargo, ND
Columbus, OH
Oklahoma, City, OK
Portland, OR
Harrisburg, PA
Columbia, SC
Sioux Falls, SD
Nashville, TN
Austin, TX
Salt Lake City, UT
Richmond, VA
Seattle, WA
Charleston, WV
Madison, WI
Cheyenne, WY

Addresses of each Statistical Office are listed in the telephone directories of the respective cities listed above under the heading "United States Government, Department of Agriculture, Economics, Statistics, and Cooperatives Service, or Crop and Livestock Reporting Service."

Categories of individuals covered by the system: All Federal and State employees who work in ESCS offices.

Categories of records in the system: The system consists of employee's name, home address, telephone number, salary rate, accumulated salary for year, accumulated hours worked, and accumulated travel expenses, which includes per diem, mileage, and total miles travelled.

Authority for maintenance of the system: 5 U.S.C. 301 and 7 U.S.C. 2204.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Information in the system of records for State Department of Agriculture employees is made available to the Head of the State Department of Agriculture or his designee. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Documents (CEF-201's and bi-weekly Time and Attendance reports) are retained in the State Statistical Offices specified above.

Machine readable data are maintained on the INFONET network with each office only able to access its own files.

Retrievability: The master employee data base is indexed by employee number assigned by each office.

Safeguards: Source documents are kept in file cabinets in the offices listed above.

Retention and disposal: The two data bases in this system are handled in the following manner:

1. Bi-weekly Data Base—After initial usage, stored on tape and retained for one year.
2. Master Employee Data Base—Inactive employee records are deleted at the end of each fiscal year.

A copy of this file will be retained for five years.

System manager(s) and address: The Assistant Deputy Administrator for Statistics Washington, D.C. or the Statistician in Charge for each State Statistical Office is responsible for employee's records, at the address specified above.

Notification procedure: Any employee working in an ESCS Statistical Office since 1975 may request information regarding this system of records, or information stating whether the system contains records pertaining to him from the System Manager at the appropriate Statistical Office. A written request for information pertaining to an individual's records should contain name, address, and most recent dates of employment with USDA/ESCS.

Record access procedures: Anyone actively employed by USDA/ESCS—Statistics during the past five years may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the appropriate official referred to in the paragraph entitled "Notification procedure."

Contesting record procedures: Anyone actively employed by USDA/ESCS—Statistics during the past five years may obtain information as to the procedures for contesting a record in the system which pertains to him by submitting a written request to the appropriate official referred to in the paragraph entitled "Notification procedure."

Record source categories: Information in this system comes from enumerator time and mileage forms (CEF-201), time and attendance forms from all other employees, and employment forms (SF-171 and NASDA-171).

USDA/ESCS—2

System name: June Acreage and Livestock Enumerative Survey, USDA/ESCS

System location: Survey questionnaires are located in State Statistical Offices at the following locations:

Montgomery, AL
Phoenix, AZ
Little Rock, AR
Sacramento, CA
Denver, CO
Orlando, FL
Athens, GA
Boise, ID
Springfield, IL
West Lafayette, IN
Des Moines, IA
Topeka, KS
Louisville, KY
Alexandria, LA
College Park, MD
Lansing, MI
St. Paul, MN
Jackson, MS
Columbia, MO
Helena, MT
Lincoln, NE
Reno, NV
Concord, NH
Trenton, NJ
Las Cruces, NM
Albany, NY
Raleigh, NC
Fargo, ND
Columbus, OH
Oklahoma, City, OK
Portland, OR
Harrisburg, PA
Columbia, SC
Sioux Falls, SD
Nashville, TN
Austin, TX
Salt Lake City, UT
Richmond, VA
Seattle, WA
Charleston, WV
Madison, WI
Cheyenne, WY

Addresses of each Statistical Office are listed in the telephone directories of the respective cities listed above under the heading "United States Government, Department of Agriculture, Economics, Statistics, and Cooperatives Service, or Crop and Livestock Reporting Service."

Magnetic tapes are located on the INFONET network, Chicago Center, Chicago, Illinois.

Categories of individuals covered by the system: Farmers and ranchers residing in selected small land areas. Also included are non-farm

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residents living rent free in houses on farms in these same selected small land areas.

Categories of individuals covered by the system: Questionnaires and magnetic tapes containing information on farm population in those households described above.

Authority for maintenance of the system: 7 U.S.C. 2204.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Questionnaires are packed in boxes and stored in State Statistical Offices at the following locations:

Montgomery, AL
Phoenix, AZ
Little Rock, AR
Sacramento, CA
Denver, CO
Orlando, FL
Athens, GA
Boise, ID
Springfield, IL
West Lafayette, IN
Des Moines, IA
Topeka, KS
Louisville, KY
Alexandria, LA
College Park, MD
Lansing, MI
St. Paul, MN
Jackson, MS
Columbia, MO
Helena, MT
Lincoln, NE
Reno, NV
Concord, NH
Trenton, NJ
Las Cruces, NM
Albany, NY
Raleigh, NC
Fargo, ND
Columbus, OH
Oklahoma City, OK
Portland, OR
Harrisburg, PA
Columbia, SC
Sious Falls, SD
Nashville, TN
Austin, TX
Salt Lake City, UT
Richmond, VA
Seattle, WA
Charleston, WV
Madison, WI
Cheyenne, WY

Magnetic tapes stored in tape library of the INFONET network, Chicago, Center, Chicago, Illinois.

Retrievability: Questionnaires are stored in boxes which are identified by location of selected small land areas. Magnetic tapes are indexed by a number assigned to selected small land areas.

Safeguards: Questionnaires are kept in locked storage rooms. Magnetic tapes are stored in an area to which access is limited to authorized personnel of the INFONET network.

Retention and disposal: Questionnaires are kept for a minimum of 30 days after the primary survey is summarized. Magentic tapes are retained for 14 months on the INFONET network and then destroyed after satisfactory completion of survey data summary.

System manager(s) and address: Chairman, Crop Reporting Board, ESCS, USDA, Washington, D.C. 20250, or the appropriate Statistician in Charge, State Statistical Office at the address specified above.

Notification procedure: Any individual may request information as to whether the system contains records pertaining to him from the Chairman, Crop Reporting Board, Statistical Reporting Service, USDA, Washington, D.C. telephone 202-447-4415, or the appropriate Statistician in Charge at the address listed above. If the specific location of the record is not known, the individual should address his request to the Chairman, Crop Reporting Board, who, if necessary, will refer it to the appropriate State Statistical Office. A request for information pertaining to an individual should contain name, address, and date (year) that questionnaire was completed.

Record access procedures: Any individual who was interviewed in the survey may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the appropriate official referred to in the paragraph entitled "Notification procedure."

Contesting record procedures: Any individual who was interviewed in the survey may obtain information as to the procedure for contesting a record in the system which pertains to him by submitting a written request to the appropriate official referred to in the paragraph entitled "Notification procedure."

Record source categories: Information in this system comes solely from farmers and ranchers who were interviewed in this survey, or from non-farm residents who are located in selected small land areas.

USDA/ESCS—3

System name: Personnel Data Base, USDA/ESCS

System location: Computer Records—INFONET network, Chicago Center, Chicago, Illinois. Inputs-coding sheets and punch cards in file cabinet in Room 5868 South Building, Statistical Reporting Service, USDA, Washington, D.C. 20250. Outputs-listings distributed to and retained by each applicable Administrative Officer, Division Director, Assistant Deputy Administrator, Division of Personnel, ESCS, USDA, Washington, D.C. 20250.

Categories of individuals covered by the system: ESCS employees in the following position classification series: 334, 1529, and 1530.

Categories of records in the system: The system consists of information pertaining to Statistical Reporting Service employee's name; job series; grade; age; service computation date; date began in Statistical Reporting Service; work experience; training; and awards.

Authority for maintenance of the system: 5 U.S.C. 301.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Documents are maintained in offices of officials identified previously. Machine readable data are maintained on the INFONET network, Chicago Center, Chicago, Illinois.

Retrievability: Records are indexed by Social Security Number.

Safeguards: Source documents are kept in locking file cabinet in office of Administrative Officer, ESCS Statistics Program, USDA, Washington, D.C.

Retention and disposal: A review is made each quarter. Records which are no longer needed are destroyed.

System manager(s) and address: Administrative Officer, ESCS Statistics Program. USDA, Washington, D.C. 20250.

Notification procedure: Any employee may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the Administrative Officer, Statistical Reporting Service, USDA, Washington, D.C., telephone 202-447-6546.

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the Administrative Officer referred to in paragraph entitled "Notification procedure."

Contesting record procedures: Any individual may obtain information as to the procedures for contesting a record in the system which pertains to him by submitting a written request to the Administrative

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Officer referred to in the paragraph entitled "Notification procedure."

Record source categories: Information in this system comes primarily from form SF-52, Request for Personnel Action; form AD-281, Request and Authorization for Outside Training; and form AD-287-2, Approval and Certification of Cash Award.

USDA/ESCS—4

System name: Quarterly Agricultural Labor Survey, USDA/ESCS.

System location: Survey questionnaires are located in State Statistical Offices at the following locations:

Montgomery, AL
Phoenix, AZ
Little Rock, AR
Sacramento, CA
Denver, CO
Orlando, FL
Athens, GA
Boise, ID
Springfield, IL
West Lafayette, IN
Des Moines, IA
Topeka, KS
Louisville, Ky
Alexandria, LA
College Park, MD
Lansing, MI
St. Paul, MN
Columbia, MO
Helena, MT
Lincoln, NE
Reno, NV
Concord, NH
Trenton, NJ
Las Cruces, NM
Albany, NY
Raleigh, NC
Fargo, ND
Columbus, OH
Oklahoma City, OK
Portland, OR
Harrisburg, PA
Columbia, SC
Sioux Falls, SD
Nashville, TN
Austin, TX
Salt Lake City, UT
Richmond, VA
Seattle, WA
Charleston, WV
Madison, WI
Cheyenne, WY

Addresses of each State Statistical Office are listed in the telephone directories of the respective cities listed above under the heading "United States Government, Department of Agriculture, Economics, Statistics, and Cooperatives Service, or Crop and Livestock Reporting Service."

Magnetic tapes are located on the INFONET network, Chicago Center, Chicago, Illinois.

Categories of individuals covered by the system: Farmers and ranchers who report the following information on the Quarterly Agricultural Labor Survey: (1) number of hours worked in the survey week by the operator, (2) number of unpaid family workers working more than 15 hours in the survey week, (3) number of paid family workers working in the survey week, (4) hours worked by unpaid family workers, and (5) wages paid to paid family workers.

Categories of records in the system: Questionnaires, punch cards and magnetic tapes containing information as listed under "Category of Individuals" reported by farmers and ranchers who are interviewed in the survey.

Authority for maintenance of the system: 7 U.S.C. 2204.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Questionnaires are packed in boxes and stored in State Statistical Offices at the following locations:

Montgomery, AL
Phoenix, AZ
Little Rock, AR
Sacramento, CA
Denver, CO
Orlando, FL
Athens, GA
Boise, ID
Springfield, IL
West Lafayette, IN
Des Moines, IA
Topeka, KS
Louisville, KY
Alexandria, LA
College Park, MD
Lansing, MI
St. Paul, MN
Jackson, MS
Columbia, MO
Helena, MT
Lincoln, NE
Reno, NV
Concord, NH
Trenton, NJ
Las Cruces, NM
Albany, NY
Raleigh, NC
Fargo, ND
Columbus, OH
Oklahoma City, OK
Portland, OR
Harrisburg, PA
Columbia, SC
Sioux Falls, SD
Nashville, TN
Austin, TX
Salt Lake City, UT
Richmond, VA
Seattle, WA
Charleston, WV
Madison, WI
Cheyenne, WY

Magnetic tapes stored in tape library on the INFONET network, Chicago Center, Chicago, Illinois.

Retrievability: Questionnaires are stored in boxes which are identified by Reporter Identification number. Punch cards and magnetic tapes are indexed by Reporter Identification number.

Safeguards: Questionnaires are kept in locked storage rooms. Punch cards are kept in file drawers. Magnetic tapes are stored in an area to which access is limited to authorized personnel of the INFONET network.

Retention and disposal: Questionnaires are kept a minimum of 30 days after primary data is summarized. Magnetic tapes are retained for 5 years on the INFONET network and then destroyed after satisfactory completion of survey data summary.

System manager(s) and address: Chairman, Crop Reporting Board, ESCS, USDA, Washington, D.C. 20250, or the appropriate Statistician in Charge, State Statistical Office at the address specified above.

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Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the Chairman, Crop Reporting Board, ESCS, USDA, Washington, D.C. telephone 202 447-4415, or the appropriate Statistician in Charge at the address listed above. If the specific location of the record is not known, the individual should address his request to the Chairman, Crop Reporting Board, who, if necessary, will refer it to the appropriate State Statistical Office. A request for information pertaining to an individual should contain, name, address, and date (month and year) that questionnaire was completed.

Record access procedures: Any farmer who was interviewed in the survey may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the appropriate official referred to in the paragraph entitled "Notification procedure."

Contesting record procedures: Any farmer or rancher who was interviewed in the survey may obtain information as to the procedures for contesting a record in the system which pertains to him by submitting a written request to the appropriate offical referred to in the paragraph entitled "Notification procedure."

Record source categories: Information in this system comes solely from farmers and ranchers who were interviewed in this survey.

USDA/ESCS—5

System name: State Farm Census, USDA/ESCS.

System location: Illinois Crop and Livestock Reporting Service, ESCS/USDA, 202 U.S. Post Office and Court House Building, Springfield, IL 62705.

Categories of individuals covered by the system: Farmers who report number of persons living in farm household to county assessors or other enumerators.

Categories of records in the system: Reporting forms and magnetic tapes containing data on number of persons living in farm households.

Authority for maintenance of the system: 7 U.S.C. 2204.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Supplied to Illinois State government.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Reporting forms are maintained in files in the office of the Illinois Crop Livestock Reporting Service, and magnetic tapes are maintained in the Computer Center, Management Information Division, State of Illinois, Springfield, IL.

Retrievability: Records are indexed by a unique identification number assigned by the Illinois Crop and Livestock Reporting Service.

Safeguards: Records are kept in a room locked after working hours.

Retention and disposal: Reporting forms are retained for 2 years in the Illinois Crop and Livestock Reporting Service office and then sent to the State Archives where they are retained indefinitely.

System manager(s) and address: Statistician in charge, Illinois Crop and Livestock Reporting Service, ESCS/USDA, 202 U.S. Post Office & Court House Building, Springfield, Illinois 62705.

Notification procedure: Any farmer in Illinois may request information regarding this system of records. He can determine whether the system contains records relating to him from the Statistician in Charge at the address listed above. A request for information pertaining to an individual should contain name, address and year of the report.

Record access procedures: Any farmer may obtain information as to the procedure for gaining access to a record in the system which pertains to him by submitting a written request to the Statistician in Charge referred to in the paragraph entitled "Notification procedure."

Contesting record procedures: Any farmer may obtain information as to the procedure for contesting a record in the system which pertains to him by submitting a written request to the Statistician in Charge referred to in the paragraph entitled "Notification procedure."

Record source categories: Information in this system comes primarily from farmers.

USDA/ESCS—6

System name: Director's Study, USDA/ESCS

System location: Farmer Cooperative Service, Assistant Administrator, USDA, 500 12th St., Washington, D.C. 20250

Categories of individuals covered by the system: Individuals who have voluntarily responded to a mail survey of cooperative directors are included in this system of records.

Categories of records in the system: This system consists of a file of questionnaires completed by individuals covering personal characteristics and their attitudes and opinions toward directorship responsibilities.

Authority for maintenance of the system: 7 U.S.C. 451-457, 1621-1627.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in files at the applicable address listed above.

Retrievability: Records are indexed by name of individual and cooperative membership.

Safeguards: Records are kept in a locked cabinet in official Government office building.

Retention and disposal: Records are summarized, analyzed and disposed of within one year.

System manager(s) and address: Assistant Administrator, FCS USDA, Washington, D.C. 20250

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the System Manager. A request for information pertaining to an individual should contain: Name, address, and Cooperative Represented.

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him, by submitting a written request to the System Manager.

Contesting record procedures: Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, the reasons for contesting it, and the proposed amendment to the information.

Record source categories: Information in this system was voluntarily supplied by directors of a nation-wide sample of farmer cooperatives.

USDA/OBPE—1

System name: Committee Management Records System, USDA/OBPE

System location: USDA, Office of Budget, Planning and Evaluation, Management Division, Washington, D.C. 20250.

Categories of individuals covered by the system: All individuals who are public members of USDA advisory committees are included in this system of records.

Categories of records in the system: The system consists of membership listings by committee name, State, ethnic affiliation, and female members. Keypunch cards are the basis for some of the above listings.

Authority for maintenance of the system: 5 U.S.C. App. 1

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Maintained as a means of responding to Congressional inquiries for names and numbers of citizens serving on committees from a particular State. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in notebooks and on keypunch cards.

Retrievability: Records are indexed by names of individuals and by committee name.

Safeguards: Records contain no sensitive information and are kept in regular office files.

Retention and disposal: Records are retained until committee membership is changed. Obsolete listings are sent to the USDA historian

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System manager(s) and address: Assistant Director, Management, Office of Budget, Planning and Evaluation, USDA, Washington, D.C. 20250, 202-447-6111.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him, from the System Manager. A request for information pertaining to an individual should contain the individual's name, address, and name of the committee on which he is serving.

Record access procedures: Any individual may obtain information as to the procedures for gaining access to records in this system which pertain to him by submitting a written request to the System Manager.

Contesting record procedures: Any individual may obtain information as to the procedures for contesting a record in the system which pertains to him by submitting a request to the System Manager.

Record source categories: Information in this system is collected by USDA agencies from published reference books (Who's Who, etc.), from organizations which make recommendations of possible members, and from the prospective members.

USDA/OEO—1

System name: Discrimination Complaints Under Title VI of the Civil Rights Act of 1964, USDA/OEO

System location: Office of Equal Opportunity, USDA, Compliance and Enforcement Division, Auditor's Building, Rm. 4123, Washington, D.C. 20250.

Categories of individuals covered by the system: Individuals who file complaints alleging discrimination are recipents of USDA benefit programs.

Categories of records in the system: The system consists of complete files (i.e., complaint, agency response to complaint related correspondence, inquiries and investigatory reports) on initial inquiries made by personnel OEO and the agency complained about. The file, where appropriate, may consist of investigatory reports conducted and compiled by the Office of Investigation.

Authority for maintenance of the system: 42 U.S.C. 2000d et. seq., 7 CFR 15, Secy's Memo 1662, Supp. 2 and Secy's Memo 1756.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) To initiate corrective action or possible referral to the Department of Justice if voluntary compliance is not achieved. (2) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto. (3) Referral to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, or any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of complainant, agency and address.

Safeguards: Records are kept in a locked office.

Retention and disposal: Records are maintained for a period of 3 years, after which they are sent to the National Archives and Records Service, Washington, D.C. 20408.

System manager(s) and address: Richard J. Peer, Chief, Compliance and Enforcement Division, Office of Equal Opportunity, USDA, Auditor's Building, Rm. 4123, Washington, D.C. 20250.

Notification procedure: Any individual may request information regarding this system of records from the System Manager as set forth in the preceding paragraph.

Record access procedures: A request for access to a record from the system shall be in writing with the envelope and letter marked "Privacy Access Request." Access requests will be directed to the System Manager listed above.

Contesting record procedures: Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, the reasons for contesting it, and the proposed amendment to the information sought.

Record source categories: Information in this system comes primarily from agency personnel, complainant, witnesses, participants and nonparticipants, investigative personnel and community leaders.

USDA/FmHA—1

System name: Applicant/Borrower or Grantee File, USDA/FmHa.

System location: Each applicant's/borrower's or grantee's file is located in the County Office through which the financial assistance is sought or was obtained, and the Finance Office in St. Louis, Missouri. A State Office version of the County Office file may be located in or be accessible by the State Office responsible for that County Office. Correspondence about borrowers is located in the National and State Office files.

A list of State Offices and any additional States for which an office is responsible follows:

Montgomery, AL
Phoenix, AZ
Little Rock, AR
Woodland, CA—HI
Denver, CO
Newark, DE—MD, NJ
Gainesville, FL
Athens, GA
Boise, ID
Champaign, IL
Indianapolis, IN
Des Moines, IA
Topeka, KS
Lexington, KY
Alexandria, LA
Orono, ME
East Lansing, MI
St. Paul, MN
Jackson, MS
Columbia, MO
Bozeman, MT
Lincoln, NE
Albuquerque, NM
Syracuse, NY—VI
Raleigh, NC
Bismarck, ND
Columbus, OH
Stillwater, OK
Portland, OR—AK
Harrisburg, PA
San Juan, PR
Columbia, SC
Huron, SD
Nashville, TN
Temple, TX
Salt Lake City, UT—NV
Montpelier, VT—CT, MA, NH, RI
Richmond, VA
Wenatchee, WA
Morgantown, WV
Stevens Point, WI
Casper, WY

The addresses of State and County Offices are listed in the telephone directory of the appropriate city or town under the heading "United States Government, Department of Agriculture, Farmers Home Administration." The Finance Office is located at 1520 Market Street, St. Louis, Missouri 63103.

Categories of individuals covered by the system: Present and former FmHA borrowers/grantees and applicants including members of associations.

Categories of records in the system: The system consists of files containing applicant's/borrower's or grantee's characteristics such as gross and net income, sources of income, capital, assets and liabilities, net worth, age, observed race, number of dependents, martial status, credit report, reference material, and operating plans. In addition, a running record of observations concerning the operations of the person being financed is included at the County Office level. A record of deposits in and withdrawals from a person's supervised bank account is also contained in those files where apppropriate or, in some County Offices, maintained in a separate folder containing only information relating to activity within supervised bank accounts. Some items of information are extracted from the person's file and placed in a card file for quick reference.

Authority for maintenance of the system: 7 U.S.C. 1921 et. seq., 42 U.S.C. 1471 et. seq., 42 U.S.C. 2706.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto.

Information contained in borrowers' files may also provide the basis for USDA news releases citing borrowers' progress.

Referral to employers, businesses, landlords, creditors and others to determine repayment ability and eligibility for FmHA programs.

Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the State, County, and National Office. A limited subset of personal, financial, and characteristics data required for effective management of the programs and borrower repayment status is maintained on disc or magnetic tape at the Finance Office, accessible by each appropriate office.

Retrievability: Records are indexed by name, identification number and type of loan or grant. Data may be retrieved from paper records. A limited subset of data is available through telecommunications capability ranging from telephones to intelligent terminals. The telecommunications capability is available to all FmHA offices.

Safeguards: Records are kept in locked offices at the State, County, and National Office. A limited subset of data is also maintained in a properly managed tape and disc library and an online retrieval system at the Finance Office. Access is restricted to authorized FmHA personnel. A system of operator and terminal passwords and code numbers is used to restrict access to the online system. These codewords and numbers are changed as necessary.

Retention and disposal: Records are maintained subject to the Federal Records Disposal Act of 1943 (44 U.S.C. 366-380) and in accordance with FmHA's disposal schedules. Disposal of records at the State, Coounty, and National Office is accomplished through deposit in office waste containers. Records at the Finance Office are disposed of by overprinting.

Applications which are rejected, withdrawn, or otherwise terminated are kept in the County Office one full fiscal year after the fiscal year in which final action was taken on the application.

The records of borrowers who have paid or otherwise satisfied their obligation are retained in the County Office one full fiscal year. In those instances where real estate has been acquired by the FmHA through foreclosure, conveyance of title, etc., and subsequently sold to a borrower not eligible for FmHA programs, the State Office folder for this borrower will be transferred to the National Office after the account has been paid in full. The folder will be retained at the Federal Records Center for 10 years. Correspondence records at the National Office which concern borrowers and applicants are retained for 3 fiscal years after the last year in which there was correspondence.

System manager(s) and address: The County Supervisor at the County level, the State Director at the State Office level, the Director of the Finance Office for Finance Office records, and the Administrator, FmHA, for the National Office file.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the appropriate System Manager. If the specific location of the record is not known, the individual should address his request to the Administrator, (Attention: Freedom of Information Officer), USDA/FmHA, Washington, D.C. 20250, telephone (202) 447-2211. A request for information pertaining to an individual should contain: Name, address, FmHA office where loan/grant was applied for/approved and particulars involved (i.e., date of request/approval, which FmHA program, etc.).

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to one of the System Managers referred to in the preceding paragraph.

Contesting record procedures: Same as access.

Record source categories: Information in this system comes primarily from the applicant/borrower/grantee.

USDA/FmHA—2

System name: Biographical Sketch File, USDA/FmHA

System location: USDA/FmHA 14th & Independence Avenue, S.W. Washington, D.C. 20250.

Categories of individuals covered by the system: All employees and former employees of FmHA at or above the Division Director level and all current and former State Directors.

Categories of records in the system: The system consists of files containing information concerning employee's educational and employment history, awards, marital status, number of children, present employment, place of birth and current residence. The employee knows the file is maintained and has approved the biography

Authority for maintenance of the system: 7 U.S.C. 1921 et seq., 42 U.S.C. 1471 et. seq., and 5 U.S.C. 301.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: This information is furnished to the news media, Congressional committees, organizations to which the employee will be speaking and other interested parties. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the National Office.

Retrievability: Records are indexed by name.

Safeguards: Records are kept in a building with full-time security.

Retention and disposal: Indefinite.

System manager(s) and address: Administrator, USDA/FmHA 14th & Independence Avenue, S.W. Washington, D.C. 20250

Notification procedure: Any individual may request information concerning this system of records, or information as to whether the system contains records pertaining to him from the System Manager. A request for information pertaining to an individual should contain: Name, address, position(s) held in FmHA and dates of employment.

Record access procedures: Any individual may obtain information as to the procedures for gaining access to and contesting a record in the system which pertains to him by submitting a written request to the System Manager.

Contesting record procedures: Same as access.

Record source categories: Information in this system is provided by the employee, or is taken from his record with his concurrence.

USDA/FmHA—3

System name: Credit Report File, USDA/FmHA

System location: Each borrower's/grantee's or applicant's credit report file is located in the County Office through which application for credit was made, the State Office responsible for that county, and the National Office. The addresses of FmHA County Offices are listed in the telephone directories of appropriate municipalities under the heading "United States Government, Department of Agriculture, Farmers Home Administration." A listing of State Offices and any additional States for which an office is responsible is included under the system titled "USDA/FmHA Applicant, Borrower or Grantee File."

The National Office is located at 14th & Independence Avenue, S.W., Washington, D.C. 20250.

Categories of individuals covered by the system: All FmHA borrowers, grantees and recent applicants are included in this system.

Categories of records in the system: This system consists of credit reports and personal references from credit agencies, lenders, and individuals.

Authority for maintenance of the system: 7 U.S.C. 1921 et seq., 42 U.S.C. 1471 et seq., and 5 U.S.C. 301.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto. "Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in the borrower's/grantee's, or applicant's file folders at all levels.

Retrievability: Records are indexed by name and borrower's number.

Safeguards: Records are kept in locked offices and access is limited to authorized FmHA personnel.

Retention and disposal: Records are maintained subject to the Federal Records Disposal Act of 1943 (44 U.S.C. 366-380) and in accordance with FmHA's disposal schedules. Credit reports and references relating to applications which are rejected, withdrawn or otherwise terminated are retained one full fiscal year after the fiscal year in which the action was taken.

Credit reports concerning borrowers who have paid or otherwise satisfied their obligations are retained as above.

System manager(s) and address: The County Supervisor at the County Office level, the State Director at the State Office level, and the Administrator, FmHA, for the National Office file.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the appropriate System Manager. If the specific location of the record is not known, the individual should address his request to the Administrator, (Attention Freedom of Information Officer), USDA/FmHA, Washington, D.C., telephone (202) 447-2211, who, if necessary, will refer it to the appropriate field office. A request for information pertaining to an individual should contain: Name, address, State and county where loan was applied for/approved and particulars involved (i.e., date of request/approval, type of loan, etc.).

Record access procedures: Any individual may obtain information as to the procedures for gaining access to and contesting a record in the system which pertains to him by submitting a written request to one of the System Managers referred to in the preceding paragraph.

Contesting record procedures: Same as access.

Record source categories: Information in this system comes primarily from credit agencies and creditors.

Systems exempted from certain provisions of the act: Information contained in this system which is based on frank statements obtained from sources under express or implied promise that the identity of the source will be held in confidence and is exempt from the provisions of 5 U.S.C. a (d) (1) on the basis of 5 U.S.C. 552 a (k) (5).

USDA/FmHA—4

System name: Designated Attorney and Escrow Agent File, USDA/FmHA

System location: Each designated attorney or escrow agent file is located in the County Office and State Office in the State in which he is designated. In addition, all designated attorneys and escrow agents are listed at the National Office.

A list of State Offices and any additional States for which an office is responsible is included under the system titled "USDA/FmHA Applicant, Borrower, or Grantee File." The addresses of State and County Offices are listed in the telephone directory of the appropriate city or town under the heading "United States Government, Department of Agriculture, Farmers Home Administration."

Categories of individuals covered by the system: All FmHA designated attorneys and escrow agents including those whose designations have expired within the last year.

Categories of records in the system: The system consists of a list of names of designated attorneys and escrow agents, and may include comments as to whether their performance has been satisfactory.

Authority for maintenance of the system: 7 U.S.C. 1921 et. seq., 42 U.S.C. 1471 et. seq., and 5 U.S.C. 301.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto. Information is also provided to FmHA borrowers prior to loan closing and to other interested parties upon request. "Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the appropriate location.

Retrievability: Records are indexed by name.

Safeguards: Records are kept in locked offices at all levels. Access at all levels is restricted to authorized FmHA personnel.

Retention and disposal: Records are maintained subject to the Federal Records Disposal Act of 1943 (44 U.S.C. 366-380) and in accordance with FmHA's disposal schedules. Records are destroyed one year after termination of the designation.

System manager(s) and address: The County Supervisor at the County Office level, the State Director at the State Office level, and the Administrator, FmHA, for the National Office file at the following address: USDA/FmHA, 14th & Independence Avenue, S.W., Washington, D.C. 20250.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the appropriate System Manager. If the specific location of the record is not known, the individual should address his request to the Administrator, USDA/FmHA, 14th & Independence Avenue, S.W., Washington, D.C. 20250, telephone (202) 447-2211, (Attention Freedom of Information Officer). A request for information pertaining to an individual should contain: Name, address, State and county in which the individual was a designated attorney or escrow agent.

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to one of the System Managers referred to in the preceding paragraph.

Contesting record procedures: Same as access.

Record source categories: Information comes primarily from the subject of the file.

USDA/FmHA—5

System name: Graduation File, USDA/FmHA

System location: Each borrower's graduation file is located in the County Office through which the borrower obtained his loan, and in some cases, at the State Office responsible for that County Office.

A list of State Offices and any additional States for which an office is responsible is included under the system titled "USDA/FmHA Applicant, Borrower or Grantee File." The addresses of State and County Offices are listed in the telephone directory of the appropriate city or town under the heading "United States Government, Department of Agriculture, Farmers Home Administration."

Categories of individuals covered by the system: All FmHA borrowers whose loans are eligible for review to determine whether the borrower should obtain credit from other sources. All borrowers who have been in debt for at least two years on an emergency loan, three years on an operating loan, or five years on a real estate loan are considered eligible for review.

Categories of records in the system: The system consists of files containing names of borrowers eligible for review, type of loan, whether graduation is advisable, and any communications with the borrower concerning whether the loan has been paid off or if the borrower is unable to refinance, as well as comments of the County Committee and the County Supervisor.

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Authority for maintenance of the system: 7 U.S.C. 1921 et. seq., 42 U.S.C. 1471 et. seq. and 5 U.S.C. 301.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, or any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto. "Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders.

Retrievability: Records are indexed by name.

Safeguards: Records are kept in locked offices at all levels, and access is restricted to authorized FmHA personnel.

Retention and disposal: Records are retained for three years after the list of borrowers eligible for review was received by the County Supervisor.

System manager(s) and address: The County Supervisor and the State Director at the appropriate levels.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the appropriate System Manager. If the specific location of the record is not known, the individual should address his request to the Administrator, (Attention Freedom of Information Officer), USDA/FmHA, 14th & Independence Avenue, S.W., Washington, D.C. 20250, telephone (202) 447-2211. A request for information pertaining to an individual should contain: Name, address, State and county where loan was applied for or approved and particulars involved (i.e., date of request/approval, type of loan, etc.).

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to one of the System Managers referred to in the preceding paragraph.

Contesting record procedures: Same as access.

Record source categories: Information in this system comes primarily from the borrower.

USDA/FmHA—6

System name: Housing Contractor Complaint File, USDA/FmHA.

System location: Complaints concerning housing contractors may be filed in the County and State Offices in any State or county in which the contractor had conducted business.

A list of State Offices and any additional State for which an office is responsible is included under the system titled "USDA/FmHA Applicant, Borrower or Grantee File." The addresses of State and County Offices are listed in the telephone directory of the appropriate city or town under the heading "United States Government, Department of Agriculture, Farmers Home Administration."

Categories of individuals covered by the system: All housing contractors who have performed work for FmHA borrowers and about whom the borrower has seen fit to file a complaint.

Categories of records in the system: The system consists of files containing borrowers' complaints concerning contractors.

Authority for maintenance of the system: 7 U.S.C. 1921 et. seq., 42 U.S.C. 1471 et. seq., and 5 U.S.C. 301.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto. In addition, prospective FmHA borrowers and other interested parties may obtain information. Further, information contained in this file may be obtained for use in civil or administrative proceedings. "Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders.

Retrievability: Records are indexed by the contractor or name of the construction company.

Safeguards: Records are kept in locked offices at all levels. Access at all levels is restricted to authorized FmHA personnel.

Retention and disposal: Records are maintained subject to the Federal Records Disposal Act of 1943 (44 U.S.C. 366-380) and in accordance with FmHA's disposal schedules. Records are retained for three fiscal years after the fiscal year of the complaint.

System manager(s) and address: The County Supervisor at the County Office level, and the State Director at the State Office level.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the appropriate System Manager. If the specific location of the record is not known, the individual should address his request to the Administrator, (Attention Freedom of Information Officer), USDA/FmHA, 14th & Independence Avenue, S.W., Washington, D.C. 20250, telephone (202) 447-2211. A request for information pertaining to an individual should contain: Name, address, and location where work was performed for FmHA borrowers.

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to one of the System Managers referred to in the preceding paragraph.

Contesting record procedures: Same as access.

Record source categories: Information in this system comes primarily from the complainants.

USDA/FmHA—7

System name: Reserved Mineral Interests, USDA/FmHA

System location: This system is maintained at the National Office at the following address: USDA/FmHA, 14th & Independence Avenue, S.W., Washington, D.C. 20250.

Categories of individuals covered by the system: All FmHA borrowers' who purchased land with a FmHA loan prior to 1951 where FmHA retained mineral interests.

Categories of records in the system: The system consists of files containing borrower's name, county where property is located, fair market value of mineral interest at the time such interests were offered for sale, date of acceptance or rejection of governmental offer for sale of mineral interest, percentage of mineral interest owned by Federal Government, the date on which the borrower made a deposit for the purchase of the mineral interest, and the date on which such a deposit was refunded. Additionally, the file contains remarks generally pertaining to additional names which have been added to the title.

Authority for maintenance of the system: 7 U.S.C. 1921 et. seq., 42 U.S.C. 1471 et. seq., and 5 U.S.C. 301.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto. The information is also available to interested parties. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders.

Retrievability: Records are indexed by name.

Safeguards: Records are kept in locked offices. Access at all levels is restricted to authorized FmHA personnel.

Retention and disposal: Records are maintained subject to the Federal Records Disposal Act of 1943 (U.S.C. 366-380) and in accordance with FmHA's disposal schedules. Records will be retained permanently.

System manager(s) and address: The Administrator, Farmers Home Administration, USDA, 14th and Independence Avenue, S.W., Washington, D.C. 20250.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the System Manager. A request for information pertaining to an individual should contain: Name, address, State and county loan was applied for/approved and particulars involved (i.e., date of request/approval, type of loan, etc.).

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to one of the System Managers referred to in the preceding paragraph.

Contesting record procedures: Same as access.

Record source categories: Information in this system comes primarily from the borrower.

USDA/FmHA—8

System name: Tort Claims File, USDA/FmHA

System location: Each claimant's file is located in the office of the employee against whom the action was filed, the applicable State Office, and the National Office. A list of State Offices and any additional States for which an office is responsible is included under the system titled "USDA/FmHA Applicant, Borrower or Grantee File." The addresses of State and County Offices are listed in the telephone directory of the appropriate city or town under the heading "United States Government, Department of Agriculture, Farmers Home Administration." The National Office is located at the following address: USDA/FmHA, 14th & Independence Avenue, S.W., Washington, D.C. 20250.

Categories of individuals covered by the system: All claimants who have filed civil suits against employees of FmHA, or against the Federal Government including those filed under the Tort Claims Act as a result of circumstances involving the Farmers Home Administration.

Categories of records in the system: The system consists of files containing information as to the circumstances of the loss for which the claimant is seeking relief, opinion of the Office of General Counsel, USDA, and disposition of the case.

Authority for maintenance of the system: 7 U.S.C. 1921 et. seq., 42 U.S.C. 1471 et. seq., and 5 U.S.C. 301.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders.

Retrievability: Records are indexed by claimant's name.

Safeguards: Records are kept in locked offices at all levels. Access at all levels is restricted to authorized FmHA personnel.

Retention and disposal: Records are maintained subject to the Federal Records Disposal Act of 1943 (44 U.S.C. 366-380) and in accordance with FmHA's disposal schedules. Records are retained for five years after the last written report or document was placed in the file.

System manager(s) and address: The County Supervisor at the County Office level, the State Director at the State Office level, and the Administrator, FmHA, for the National Office file.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the appropriate System Manager. If the specific location of the record is not known, the individual should address his request to the Administrator (Attention Freedom of Information Officer), USDA/FmHA, 14th & Independence Avenue, S.W., Washington, D.C. 20250, telephone (202) 447-2211. A request for information pertaining to an individual should contain: Name, address, defendant in the action, and date of the initiation of the action.

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to one of the System Managers referred to in the preceding paragraph.

Contesting record procedures: Same as access.

Record source categories: Information in this file comes primarily from the claimant.

USDA/FmHA—9

System name: Training Files, USDA/FmHA

System location: Training files may be located at the FmHA Training Center, 1408 Asp Avenue, Norman, Oklahoma 73069, or the FmHA National Office, 14th & Independence Avenue, S.W., Washington, D.C. 20250.

Categories of individuals covered by the system: All persons who have received or applied for training at the FmHA Training Center and other locations if such training was to be at FmHA expense.

Categories of records in the system: Name of individual, date(s) of training, and course(s) taken or applied for are included in this record.

Authority for maintenance of the system: 7 U.S.C. 1921 et. seq., 42 U.S.C. 1471 et. seq., and 5 U.S.C. 301.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in a card file at Norman, Oklahoma and in file folders at the National Office.

Retrievability: Records are indexed by the name of the individual receiving/applying for training.

Safeguards: Records are kept in a locked office.

Retention and disposal: Retention is indefinite.

System manager(s) and address: Resident Manager, FmHA Training Center; Administrator, FmHA, Washington, D.C. 20250.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the appropriate System Manager. Requests should include name and address.

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the System Manager.

Contesting record procedures: Same as access.

Record source categories: Information in this system comes from the applicant.

USDA/FmHA—10

System name: Travel Records, USDA/FmHA

Security classification: Each traveler's file is located in the County Office in which he is employed, the State Office responsible for that County Office, or in the National or Finance Office if the traveler is employed at either of those levels.

A list of State Offices and any additional States for which an office is responsible is included under the system titled "USDA/FmHA Applicant, Borrower or Grantee File." The addresses of State and County Offices are listed in the telephone directory of the appropriate city or town under the heading "United States Government, Department of Agriculture, Farmers Home Administration."

Categories of individuals covered by the system: All FmHA employees and former employees whose travel expenses have been paid for by the Farmers Home Administration.

Categories of records in the system: The system consists of files containing employees' itineraries and travel vouchers.

Authority for maintenance of the system: 7 U.S.C. 1921 et seq., 42 U.S.C. 1471 et. seq., and 5 U.S.C. 301.

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Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders.

Retrievability: Records are indexed by name.

Safeguards: Records are kept in locked offices at all levels. Access at all levels is restricted to authorized FmHA personnel.

Retention and disposal: Records are maintained subject to the Federal Records Disposal Act of 1943 (44 U.S.C. 366-380) and in accordance with FmHA's disposal schedules. Records are disposed of two years after the fiscal year in which the travel occurred.

System manager(s) and address: The County Supervisor at the County Office level, the State Director at the State Office level, the Director of the Finance Office for Finance Office records, and the Administrator, FmHA, for the National Office file.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the appropriate system Manager. If the specific location of the record is not known, the individual should address his request to the Administrator (Attention Freedom of Information Officer), USDA/FmHA, 14th & Independence Avenue, SW., Washington, D.C. 20250, telephone (202) 447-2211. A request for information pertaining to an individual should contain: Name, address, and dates and places of employment.

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to one of the System Managers referred to in the preceding paragraph.

Contesting record procedures: Same as access.

Record source categories: Information in this system comes primarily from the employee.

USDA/FCIC—1

System name: Accounts Receivable, USDA/FCIC

System location: National Service Office, Federal Crop Insurance Corporation, 8930 Ward Parkway, Kansas City, Missouri 64114. A copy is also maintained in the applicable Regional Office for the State, and the office for the county of the Federal Crop Insurance Corporation, as well as the ASCS County Offices of the United States Department of Agriculture. Addresses of these field offices may be obtained from the Director, National Service Office, Kansas City, Missouri 64114.

Categories of individuals covered by the system: Individuals who are indebted to the Federal Crop Insurance Corporation.

Categories of records in the system: System consists of a master list of indebtedness by county and individual.

Authority for maintenance of the system: 7 U.S.C. 1501-1520; 7 CFR 2.67.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto.

(2) Referral to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained on computer printouts, magnetic tape, microfiche, and also in a card index in county ASCS offices.

Retrievability: Records are indexed by State, county, and name of individual.

Safeguards: Records are accessible only to authorized personnel and are maintained in offices which are locked during nonduty hours.

Retention and disposal: Records are maintained until the indebtedness is paid. Paper records for disposal are delivered to custodial services for disposal as waste paper. Magnetic tape records are erased.

System manager(s) and address: Manager, Federal Crop Insurance Corporation, USDA, Washington, D.C. 20250.

Notification procedure: An individual may request information regarding this system of records or information as to whether the system contains records pertaining to himself from the office for the county. Addresses of locations where records are maintained may be obtained from the Director, National Service Office, Federal Crop Insurance Corporation, 8930 Ward Parkway, Kansas City, Missouri 64114. The request for information should contain: (1) Individual's name and address, (2) State(s) and county(ies) where he farms, and (3) the individual policy number, if known.

Record access procedures: An individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the Director, National Service Office, at the address in the preceding paragraph.

Contesting record procedures: Same as access procedure.

Record source categories: Information in this system comes from the individual debtor.

USDA/FCIC—2

System name: Inspector's Report (FCIC-26), USDA/FCIC

System location: Field Underwriting Offices and Regional Offices located below:

Federal Building, 200 NW Fifth Street, Oklahoma City, Oklahoma 73102.
2602 First Avenue North, Room 217, Billings, Montana 59101.
Room 239, 401 North Patterson Street, U.S. Post Office and Federal Building, Valdosta, Georgia 31601.
Federal Building and U.S. Courthouse, 600 East Monroe Street, Room 106, Springfield, Illinois 62701.
Room 301, 656 North State Street, Jackson, Mississippi 39201.
Room 121, Federal Building, Post Office Century Station, 300 Fayetteville Street Mall, Raleigh, North Carolina 27601.
Room 827, U.S. Postal Service Building, 180 East Kellog Boulevard, St. Paul, Minnesota 55101.
Room 310, Federal Office Building & Courthouse, 444 Southeast Quiney, Topeka, Kansas 66603.
Regional Offices:
Fresno, California
Indianapolis, Indiana
Springfield, Illinois
Des Moines, Iowa
Manhattan, Kansas
St. Paul, Minnesota
Jackson, Mississippi
Billings, Montana
Lincoln, Nebraska
Raleigh, North Carolina
Bismarck, North Dakota
Columbia, South Carolina
Huron, South Dakota
Nashville, Tennessee
College Station, Texas
Spokane, Washington

Addresses of each Regional Office are listed in the telephone directories of the respective cities listed above under the heading "United States Government, Department of Agriculture, Federal Crop Insurance Corporation."

Categories of individuals covered by the system: Policyholders whose land productivity and/or farming practices are found to warrant a change in their acturial classification or individuals who have filed applications for insurance with the total anticipated liability which substantially exceeds the average for the area.

Authority for maintenance of the system: 7 U.S.C. 1501-1520; 7 CFR 2.67.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto.

(2) Referral to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery.

(3) Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders.

Retrievability: Records are indexed by State, county, and policy number.

Safeguards: Records are accessible only to authorized personnel and are maintained in offices which are locked during nonduty hours.

Retention and disposal: Records are normally retained for two years following the crop year in which the reports were prepared. Records for disposal are delivered to custodial services for disposal as waste paper.

System manager(s) and address: Manager, Federal Crop Insurance Corporation, USDA, Washington, D.C. 20250.

Notification procedure: An individual may request information regarding this system of records, or information as to whether the system contains records pertaining to himself from the Director, Acturial Division, Federal Crop Insurance Corporation, USDA, 8930 Ward Parkway, Kansas City, Missouri 64114, or the Field Underwriting Director at the appropriate address previously furnished. A request for information pertaining to an individual should contain (1) individual's name and address, (2) states(s) and county(ies) where farm(s) is located, and (3) the individual's policy number(s), if known.

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Same as access procedure.

Record source categories: Information in this system comes sometimes from the applicant for insurance, the FCIC employee inspecting the farming operation, and in some cases, acreage and yield data obtained from the Agricultural Stabilization and Conservation Service.

USDA/FCIC—3

System name: Crop Insurance Actuarial Listing, USDA/FCIC

System location: Field Underwriting Offices, Valdosta, Georgia; Springfield, Illinois; Oklahoma City, Oklahoma; Billings, Montana; Jackson, Mississippi; Raleigh, North Carolina; St. Paul, Minnesota; Topeka, Kansas; Regional Offices located in

Fresno, California
Springfield, Illinois
Indianapolis, Indiana
Des Moines, Iowa
Manhattan, Kansas
St. Paul, Minnesota
Jackson, Mississippi
Billings, Montana
Lincoln, Nebraska
Raleigh, North Carolina
Bismarck, North Dakota
Columbia, South Carolina
Huron, South Dakota
Nashville, Tennessee
College Station, Texas
Spokane, Washington

Also individual offices for the county of the Federal Crop Insurance Corporation.

Addresses of each field office may be obtained from the telephone directories under United States Government, Department of Agriculture, Federal Crop Insurance Corporation.

Categories of individuals covered by the system: Individuals who produce specific crop(s) in the county.

Categories of records in the system: The system contains the name and address of the owner or operator of a farm, ASCS farm serial number, allotment or planted acres of the crop, and the actuarial classification for the crop(s).

Authority for maintenance of the system: 7 U.S.C. 1501-1520; 7 CFR 2.67.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statue, or by rule, regulation or order issued pursuant thereto.

(2) Referral to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery.

(3) Information in the system of records is on file and available to the public for inspection in the office for the county.

"(4) Disclosure may be made to a Congressional office from record of an individual in response to an inquiry from the Congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders.

Retrievability: Records are indexed by state, county, crop, and name of operator/owner of ASCS farm serial number.

Safeguards: Records are available for public inspection in offices for the county. These offices are locked during nonduty hours.

Retention and disposal: Indefinite.

System manager(s) and address: Manager, Federal Crop Insurance Corporation, USDA, Washington, D.C. 20250.

Notification procedure: An individual may request information regarding this system of records or information as to whether the system contains records pertaining to himself from the office for the county. The addresses of the individual office for the county may be obtained from the Director, National Service Office, Federal Crop Insurance Corporation, 8930 Ward Parkway, Kansas City, Missouri 64114. A request for information pertaining to an individual should contain (1) Individual's name and address, (2) state(s) and county(ies) where farm(s) is located, (3) whether owner or operator, and (4) ASCS farm serial number.

Record access procedures: An individual may obtain information as to procedures for gaining access to a record in this system which pertains to him by submitting a written request to the Director, Actuarial Division, Federal Crop Insurance Corporation, 8930 Ward Parkway, Kansas City, Missouri 64114.

Contesting record procedures: Same as access procedure.

Record source categories: Information in this system comes from county ASCS offices, data obtained from producers and from Corporation records of producers' insurance experience.

USDA/FCIC—4

System name: Contact Report File—USDA/FCIC

System location: Federal Crop Insurance Corporation County offices throughout the United States. To obtain addresses of field offices contact: Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250.

Categories of individuals covered by the system: Prospective policyholders.

Categories of records in the system: This system of records is comprised solely of the Contact Report (Form FCI-18) prepared by FCIC representatives during the sales presentation.

Authority for maintenance of the system: 7 U.S.C. 1501-1520; 7 CFR 2.67.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regula-

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tion or order issued pursuant thereto. (2) Referral to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery. (3) Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in the office for the county in separate files or in the contract files.

Retrievability: Records are indexed by state, county, and individuals' names.

Safeguards: Records are accessible only to authorized personnel and are maintained in offices which are locked during nonduty hours.

Retention and disposal: These forms are retained for 3 years. Records for disposal are delivered to custodial services for disposal as waste paper.

System manager(s) and address: Manager, Federal Crop Insurance Corporation, USDA, Washington, D.C. 20250.

Notification procedure: An individual may request information regarding this system of records, or information as to whether the system contains records pertaining to himself from the Director, National Service Office, Federal Crop Insurance Corporation, 8930 Ward Parkway, Kansas City, Missouri 64114 or the office representative at the appropriate office for the county. Addresses of locations where records are maintained may be obtained from the above office. A request for information pertaining to an individual should contain: (1) An individual's name and address, and (2) state(s) and county(ies) where farm(s) is located.

Record access procedures: An individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Same as access procedure.

Record source categories: Information in this system comes from prospective insureds and representatives of the Federal Crop Insurance Corporation.

USDA/FCIC—5

System name: Rejected Applications, USDA/FCIC

System location: Regional Offices located in: Fresno,, California; Springfield, Illinois; Indianapolis, Indiana; Des Moines, Iowa; Manhattan, Kansas; St. Paul, Minnesota; Jackson, Mississippi; Billings, Montana; Lincoln, Nebraska; Raleigh, North Carolina; Bismarck, North Dakota; Columbia, South Carolina; Huron, South Dakota; Nashville, Tennessee; College Station, Texas; and Spokane, Washington. Also individual offices for the county of the Federal Crop Insurance Corporation. The address of each field office may be obtained from the local telephone directory under the "United States Government, Department of Agriculture, Federal Crop Insurance Corporation."

Categories of individuals covered by the system: Producers whose applications for insurance have been rejected.

Categories of records in the system: System consists of the rejected application, related materials and correspondence received between the applicant and Federal Crop Insurance Corporation offices.

Authority for maintenance of the system: 7 U.S.C. 1501-1520; 7 CFR 2.67.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto.

(2) Referral to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery.

(3) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders in the county and regional offices involved.

Retrievability: Records are indexed by individual names and crop years.

Safeguards: Records are accessible only to authorized personnel and are maintained in offices which are locked during non-duty hours.

Retention and disposal: Records are normally retained for 3 years following the crop year in which the file was prepared. Records for disposal are delivered to custodial services for disposal as waste paper.

System manager(s) and address: Manager, Federal Crop Insurance Corporation, USDA, Washington, D.C. 20250.

Notification procedure: An individual may request information regarding this system of records, or information as to whether the system contains records pertaining to himself from the office for the county. The addresses of the individual office for the county may be obtained from the Director, National Service Office, Federal Crop Insurance Corporation, 8930 Ward Parkway, Kansas City, Missouri 64114. A request for information pertaining to an individual should contain (1) individual's name and address, (2) state(s), and county(ies) where farm(s) is located and (3) crop year in which application for insurance was rejected.

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in this system which pertains to him by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Same as access procedure.

Record source categories: Information in this system comes from prospective insureds and employees of the Federal Crop Insurance Corporation.

USDA/FCIC—6

System name: Insurance Contract Analysis, USDA/FCIC

System location: National Service Office, Federal Crop Insurance Corporation, 8930 Ward Parkway, Kansas City, Missouri 64114; Field Underwriting Offices in Valdosta, Georgia; Springfield, Illinois; Oklahoma City, Oklahoma; Billings, Montana; Jackson, Mississippi; Raleigh, North Carolina; St. Paul, Minnesota; Topeka, Kansas; Regional offices at 16 different locations, and individual offices for the county of the Federal Crop Insurance Corporation. Addresses of each field office may be obtained from the Director, National Service Office, Federal Crop Insurance Corporation, USDA, Kansas City, Missouri 64114.

Categories of individuals covered by the system: Individuals who have, or have had in the past, insurance with the Federal Crop Insurance Corporation.

Categories of records in the system: The system contains the name, crops insured by crop years, the amount of premium paid by the insured, the amount of indemnity paid to the insured, the cause of loss, loss ratio of each crop insured under the policy, the number of years no loss, the wheat bushel balance for premium discount purposes, the total number of years a premium was earned, and the number of years an indemnity was paid.

Authority for maintenance of the system: 7 U.S.C. 1501-1520; 7 CFR 2.67.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto.

(2) Referral to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery.

(3) Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in bound books and on magnetic tape.

Retrievability: Records are indexed by state, county, and policy number.

Safeguards: Records are accessible only to authorized personnel and are maintained in offices which are locked during nonduty hours.

Retention and disposal: Records are maintained for 3 years after a policy is cancelled, except indefinite retention applies where the loss ratio for an individual crop was 1.20 or greater. Paper records for disposal are delivered to custodial services for disposal as waste paper. Magnetic tape records are erased.

System manager(s) and address: Manager, Federal Crop Insurance Corporation, USDA, Washington, D.C. 20250.

Notification procedure: An individual may request information regarding this system of records or information as to whether the system contains records pertaining to himself from the office for the county. Addresses of locations where records are maintained may be obtained from the Director, National Service Office, Federal Crop Insurance Corporation, Kansas City, Missouri 64114. A request for information should contain: (1) Individual's name, (2) state(s) and county(ies) where farm(s) is located, and (3) the individual policy number(s), if known.

Record access procedures: An individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Same as access procedure.

Record source categories: Information in this system is a summary of data obtained from insured producers.

USDA/FCIC—7

System name: Insurance Contract Files, USDA/FCIC

System location: National Service Office, Federal Crop Insurance Corporation, 8930 Ward Parkway, Kansas City, Missouri 64114, and/or various offices for the county throughout the United States. To obtain addresses of the field offices, contact: Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250.

Categories of individuals covered by the system: Individual farmers who participate in the Federal Crop Insurance program are included in this system of records.

Categories of records in the system: This system consists of a complete file containing all basic insurance documents; i.e., the application for insurance, the annual acreage report, inspection reports, claim forms, miscellaneous correspondence, etc. Selected data obtained from the basic insurance documents is also maintained on magnetic tape.

Authority for maintenance of the system: 7 U.S.C. 1501-1520; 7 CFR 2.67.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto.

(2) Referral to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery.

(3) Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in individual file folders and on magnetic tape.

Retrievability: Records are indexed by state, county, and policy number.

Safeguards: Records are accessible only to authorized personnel and are maintained in offices which are locked during nonduty hours.

Retention and disposal: Records are maintained for 3 years following cancellation of the policy, except where there is an outstanding debt the file is retained 5 years following the year of the debt. Paper records for disposal are delivered to custodial services for disposal as waste paper. Magnetic tape records are erased.

System manager(s) and address: Manager, Federal Crop Insurance Corporation, USDA, Washington, D.C. 20250

Notification procedure: An individual may request information regarding this system of records, or information as to whether the system contains records pertaining to himself from the Director, National Service Office, Federal Crop Insurance Corporation, USDA, 8930 Ward Parkway, Kansas City, Missouri 64114.

Addresses of locations where records are maintained may be obtained from the above office or Manager, Federal Crop Insurance Corporation, USDA, Washington, D.C. 20250.

A request for information pertaining to an individual should contain: (1) Individual's name and address, (2) state(s) and county(ies) where farm(s) is located, and (3) the individual policy number(s), if known.

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Same as access procedure.

Record source categories: Information in this system comes primarily from individual insureds, Federal Crop Insurance Corporation employees and investigative personnel.

USDA/FCIC—8

System name: List of Ineligible Producers, USDA/FCIC

System location: National Service Office, Federal Crop Insurance Corporation, 8930 Ward Parkway, Kansas City, Missouri 64114; Field Underwriting Offices; Offices of Regional Directors; and each office for the county of the Federal Crop Insurance Corporation. Addresses of each field office may be obtained from the Director, National Service Office, Federal Crop Insurance Corporation, USDA, Kansas City, Missouri 64114.

Categories of individuals covered by the system: Individuals who have been determined as not eligible for Federal Crop Insurance on specific crop(s) due to excessive losses, questionable farming practices, or who have had contracts voided due to suspected or apparent fraud.

Categories of records in the system: Record contains only lists of names of producers and prior policy numbers, if any, for a specific state and country.

Authority for maintenance of the system: 7 U.S.C. 1501-1520; 7 CFR 2.67

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto.

(2) Referral to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery.

"(3) Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders by county, and on magnetic tape.

Retrievability: Records are indexed by state, county, and name of individual.

Safeguards: Records are accessible only to authorized personnel and are maintained in offices which are locked during nonduty hours.

Retention and disposal: Records are maintained indefinitely.

System manager(s) and address: Manager, Federal Crop Insurance Corporation, USDA, Washington, D.C. 20250.

Notification procedure: An individual may request information regarding this system of records, or information as to whether the system contains records pertaining to himself from the Director,

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National Service Office, Federal Crop Insurance Corporation, USDA, 8930 Ward Parkway, Kansas City, Missouri 64114.

Addresses of locations where records are maintained may be obtained from the above office or Manager, Federal Crop Insurance Corporation, USDA, Washington, D.C. 20250.

A request for information pertaining to an individual should contain: (1) Individual's name and address, (2) state(s) and county(ies) where farm(s) is located, and (3) the individual policy number(s), if known.

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Same as access procedure.

Record source categories: Information in this system comes from reports of inspections made by FCIC personnel of producers' operations and from records of previous insurance experience.

USDA/FCIC—9

System name: Listing of Indemnities Paid, USDA/FCIC

System location: National Service Office, Federal Crop Insurance Corporation, 8930 Ward Parkway, Kansas City, Missouri 64114. A copy is also sent to the applicable County Courthouse and ASCS County Office of the United States Department of Agriculture. Addresses of these offices may be obtained from the Director, National Service Office, Kansas City, Missouri.

Categories of individuals covered by the system: Persons who were paid an indemnity by the Federal Crop Insurance Corporation for the crop year.

Categories of records in the system: Record contains name of policyholder who was paid an indemnity, policy number, and total amount of indemnity(ies) paid for the crop year.

Authority for maintenance of the system: 7 U.S.C. 1501-1520; 7 CFR 2.67.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referral to county courthouses for posting on public bulletin boards. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained on bulletin boards.

Retrievability: Records are indexed by policy number and name of insured.

Safeguards: None.

Retention and disposal: County courthouse retention is at the discretion of county judge. Records in ASCS office are maintained for one year.

System manager(s) and address: Manager, Federal Crop Insurance Corporation, USDA, Washington, D.C. 20250.

Notification procedure: An individual may determine whether or not there is information pertaining to him on the list by inspecting the posted list in the county courthouse or county ASCS office.

Record access procedures: An individual may gain access to records pertaining to him as specified above.

Contesting record procedures: He may contest the record by contacting the Manager, Federal Crop Insurance Corporation, at the address above.

Record source categories: Information in this system comes from data supplies by insured producers.

USDA/FGIS—1

System name: Employment History Records for Licensed Non-federal Employees, USDA/FGIS.

System location: Federal Grain Inspection Service, USDA, 14th and Independence Avenue SW., Washington, D.C. 20250.

Categories of individuals covered by the system: Commodity Inspectors, Graders, Weighers, Samplers, Technicians.

Categories of records in the system: This system consists of such information as applications for license, license files, biographical data, periods of employment, performance ratings, commodities qualified to inspect, grader's powers of attorney, recommendations for reemployment, factors which affect or might affect desirability as an inspector supervisory potential, declaration sheets, preference sheets, current, expired, and voided licenses, license examination and score sheets, license renewal score sheets, miscellaneous notes and memoranda, e.g., transfers, cancellations, corrective action letters, letters of caution or warning, inspection/grading performance/productivity data, letters of suspension, indictment, complaint, proposals to revoke license, etc. Content and extent of these records vary by commodity, program and season.

Authority for maintenance of the system: 7 U.S.C. 71 et seq. 1621, et seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referral to: (1) States or other Federal agencies to determine verification of employment or length of service for retirement purposes; (2) The Civil Service Commission for required records and reports, (3) The Government Accounting Office for required records and reports; (4) The Department of Justice for required records and reports; (5) The appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto: (6) A court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: File folders, notebooks, and cardex files.

Retrievability: Records are indexed by name of licensee, and/or license number.

Safeguards: Government office buildings, locked and unlocked file cabinets and locked offices.

Retention and disposal: Records maintained indefinitely or until separation or retirement or in accordance with prescribed retention schedule. They are destroyed in conformance with prescribed retention schedules. These records schedules have been implemented by Agricultural Marketing Service Instruction 270-1, Records Management Program.

System manager(s) and address: Division Director, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250

Notification procedure: Any individual may request information concerning himself from this system from the System Manager.

Record access procedures: Any individual may obtain information as to the procedure for gaining access to a record in the system that pertains to him by submitting a request to the System Manager.

Contesting record procedures: Any individual may obtain information as to the procedure for contesting a record in the system that pertains to him by submitting a request to the System Manager.

Record source categories: Information in this System comes primarily from licensees, supervisors, with additional data provided by references and investigative personnel.

USDA/FGIS—2

System name: Investigations undertaken by the Government pursuant to the United States Grain Standards Act of 1976, or the Agricultural Marketing Act of 1946, USDA/FGIS.

System location: Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250.

Categories of individuals covered by the system: Individuals who are regulated by the subject Acts and who have been investigated for possible violations of the Acts and/or against whom the Department recommends that an enforcement action be brought by the Government.

Categories of records in the system: The system consists of investigatory material which may include intra and interdepartmental recommendations pertaining to an alleged violation of the subject Acts.

Authority for maintenance of the system: 7 U.S.C. 71 et seq. 1621 et seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, or local or foreign charged with the responsibility of investigating or prosecuting a violation of

law, or of enforcing or implementing a statute, law, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute, or particular program statute, or by rule, regulation or order issued pursuant thereto. (2) Presentation or disclosure to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above of any record within the system as evidence in a proceeding, or which is sought in the course of discovery including disclosure to opposing counsel in the course of settlement negotiations. (3) Presentation, as needed, in the course of presenting evidence, to the appropriate Government officials charged with the responsibility of defending the Government before a court, magistrate, or administrative tribunal. (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in the file folders at the applicable address listed above.

Retrievability: Records are indexed by name of the individual.

Safeguards: Government office buildings, locked offices or locked file cabinets.

Retention and disposal: Records are maintained in conformance with appropriate General Services Administration disposal schedules, as implemented by AMS Instruction 270-1, Records Management Program.

System manager(s) and address: Compliance Division Director at the address cited in the System location.

Systems exempted from certain provisions of the act: the system has been exempted pursuant to 5 U.S.C. 552a(k)(2) from the requirement of 5 U.S.C. 552a(c)(3), (d), (e)(4)(G), (H), and (I), and (f) because it consists of investigatory material compiled for law enforcement purposes. See 7 CFR 1.123. Individual access to these files could impair investigations and alert subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action or escape prosecution. Disclosure of investigative techniques and procedures and the existence and identity of confidential sources of information would hamper law enforcement activity.

USDA/FGIS—3

System name: Subsidiary Personnel and Pay Records, USDA/FGIS.

System location: Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250, and Region, and Field Offices at locations listed in the Federal Grain Inspection Service Field Office Listing publication.

Categories of individuals covered by the system: Present and former employees and applicants for reemployment with the Federal Grain Inspection Service.

Categories of records in the system: The system consists of copies of materials maintained in Official Personnel Folders, such as personnel action documents, applications for employment, education and training data, performance and appraisal ratings, as well as time and attendance reports, earnings statements, and service record cards.

Authority for maintenance of the system: 5 U.S.C. 301.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) By agency officials for purposes of review in connection with appointments, promotions, within-grade increases, training, transfers, and determination of qualification of an individual. (2) To provide information to a prospective employer of a Federal Government employee or former Federal Government employee or to an organization at the request of the individual. (3) Referral to the Civil Service Commission, Department of Labor, and Office of Management and Budget for required records and reports. (4) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto. (5) Referral to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within this system which constitutes evidence in that proceeding, or which is sought in the course of discovery. (6) Presentation, as needed, in the course of presenting evidence to the appropriate Government officials charged with the responsibility of defending the Government before a court, magistrate or administrative tribunal. (7) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders and on file cards at the applicable addresses listed above.

Retrievability: Records are indexed by name of the individual.

Safeguards: Government office buildings, locked offices, or locked file cabinets.

Retention and disposal: Records are maintained in conformance with appropriate General Services Administration disposal schedules and implemented by AMS Instruction 270-1, Records Management Program.

System manager(s) and address: Director, Personnel Division, AMS, USDA, 14th and Independence Avenue, SW., Washington, D.C. 20250.

Notification procedure: Any individual may request information concerning himself from this system from the Personnel Division Director or from the individual's supervisor at the appropriate office having custody of his records. A request for information should be addressed to Director, Personnel Division or to the Officer-in-Charge, as appropriate, at the address shown under Location and should contain: Name, address, and particular information requested.

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the System which pertains to him by submitting a written request to the Director, Personnel Division or to the appropriate Officer-in-Charge referred to in the preceding paragraph.

Contesting record procedures: Any individual may obtain information as to the procedures for contesting a record in the System which pertains to him be submitting a written request to the Director, Personnel Division or to the appropriate Officer-in-Charge referred to in the preceding paragraph.

Record source categories: Information in this System comes from the individual to whom it applies or is derived from information the individual supplied except information provided by agency officials on performance, appraisal, pay, leave, and allowance records.

USDA/FNS—1

System name: Civil Rights Complaints and Investigations—USDA/FNS

System location: Office of Civil Rights and Equal Employment Opportunity, Food and Nutrition Service, United States Department of Agriculture, 500 12th St., SW., Room 750, Washington, D.C. 20250, and FNS Regional Offices located in: Atlanta, Georgia which covers the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee; Burlington, Massachusetts which covers the States of Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, and Vermont; Chicago, Illinois which covers the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin; Dallas, Texas which covers the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas; Denver, Colorado which covers the States of Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming; Robbinsville, New Jersey which covers the States of Delaware, District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia; and San Francisco, California which covers the States of Alaska, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, American Samoa, Trust Territories of the Pacific, and Washington.

The address of each Regional Office is listed in the telephone directory of the respective cities listed above under the heading "United States Government, Department of Agriculture, Food and Nutrition Service."

Categories of individuals covered by the system: Included in this system are (1) files of persons who have alleged discrimination of the type prohibited by Title VI of the Civil Rights Act of 1964 and subsequent regulations; (2) files, names and case numbers, and case file information regarding State or local agency compliance with Title VI (includes names and case numbers referencing individuals who have been contacted or whose case files have been reviewed to ascertain a State's compliance).

Categories of records in the system: The system consists of records on individual complaints alleging discrimination and includes: (1) Evidentiary information to disprove or substantiate the allegations; (2) Sources of information; (3) Statements from witnesses; and (4) Statistical data supplied by the State or local agency.

Authority for maintenance of the system: 42 U.S.C. 2000 d-1.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or order issued pursuant thereto; (2) Referral to a court, magistrate, or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery; and (3) Staff evaluations of the availability of FNS food assistance programs without regard to race, color, national origin, religious belief, or political affiliation. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable addresses listed above.

Retrievability: Civil Rights complaints are indexed by State and complainant's name. Office of Investigation reports are indexed by complainant's name and investigation number.

Safeguards: Records are kept in either locked filing cabinets or in locked offices.

Retention and disposal: Closed cases are retained for one fiscal year following the end of the fiscal year in which they are closed. Thereafter, they are transferred to Federal Records Centers and maintained for three additional fiscal years before disposal.

System manager(s) and address: Director, Office of Civil Rights and Equal Employment Opportunity, Food and Nutrition Service, United States Department of Agriculture, Washington, D.C. 20250 (202-447-8410), or the appropriate Regional Administrator at the address listed above.

Notification procedure: An individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the appropriate manager as set forth in the preceding paragraph.

A request for information pertaining to an individual should contain the name and address of the individual, and whether the records were compiled as a result of a complaint or an FNS compliance review.

Record access procedures: An individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the appropriate system manager listed above. The envelope and the letter should be marked "Privacy Act Request."

Contesting record procedures: Individuals desiring to contest or amend information maintained in the system should direct their request to the system manager listed above, the reasons for contesting it, and the proposed amendment to the information.

Record source categories: Information in this system comes primarily from complainants, witnesses, agency employees, and investigative personnel.

Systems exempted from certain provisions of the act: This material has been exempted in 7 C.F.R. 1.23 pursuant to 5 U.S.C. 552 a(k)(2) from the requirements of subsections (c)(3), (d), (G), and (H). The above system contains information received under an express or implied promise of confidentiality, or investigative techniques, processes, or procedures, the disclosure of which could be detrimental to legitimate agency functions.

USDA/FNS—2

System name: Food Stamp Program Inquiries and Complaints—USDA/FNS

System location: FNS Regional Offices located in: Atlanta, Georgia which covers the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee; Burlington, Massachusetts which covers the States of Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, and Vermont; Chicago, Illinois which covers the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin; Dallas, Texas which covers the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas; Denver, Colorado which covers the States of Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming; Robbinsville, New Jersey which covers the States of Delaware, District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia; and San Francisco, California which covers the States of Alaska, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, American Samoa, Trust Territories of the Pacific, and Washington.

The address of each Regional Office is listed in the telephone directory of the respective cities listed above under the heading "United States Government, Department of Agriculture, Food and Nutrition Service."

Categories of individuals covered by the system: Recipients and other persons dissatisfied with or seeking information about local Food Stamp Program policy and procedures:

Categories of records in the system: The system consists of copies of each complaint or inquiry and the resulting documentation gathered in responding to it.

Authority for maintenance of the system: 78 STAT. 703 as amended; 7 U.S.C. 2011-2025; and 7 CFR 270, 271.

Routine uses of records maintained in the system, including categories of nsers and the purposes of such uses: (1) Serves as a record of action taken and as resource information to determine trends and patterns; (2) Referral to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or order issued pursuant thereto; and (3) Referral to a court, magistrate, or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery; "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the addresses listed above.

Retrievability: Records are indexed by State, name of individual, and food stamp project area.

Safeguards: Records are kept either in locked file cabinets or locked offices.

Retention and disposal: Cases remain in the agency's files until the end of the fiscal year following the fiscal year in which they are closed; thereafter they are transferred to Federal Record Centers and maintained for three additional years before disposal.

System manager(s) and address: Regional Food Stamp Program Directors at the addresses listed above.

Notification procedure: Any individual may request information regarding this system of records or information as to whether the system contains records pertaining to him from the appropriate system managers as set forth in the preceding paragraph. A request for information should contain name, address, and particulars involved (i.e., the date of action giving rise to the inquiry, complaint, etc.)

Record access procedures: An individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the appropriate system manager as set forth in the preceding paragraph. The envelope and the letter should be marked "Privacy Act Request".

Contesting record procedures: Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, the reasons for contesting it, and the proposed amendment to the information.

Record source categories: Information in this system comes primarily from recipient and non-recipient inquiries and complaints, case file review, collateral contacts, and investigative reports.

USDA/FNS—3

System name: Claims Against Food Stamp Recipients—USDA/FNS.

System location: Claims Branch, Central Accounting Division, Food and Nutrition Service, United States Department of Agriculture, Room 105, West Auditors Building, Washington, D.C. 20250, and FNS Regional Offices located in: Atlanta, Georgia which covers the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee; Burlington, Massachusetts which covers the States of Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, and Vermont; Chicago, Illinois which covers the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin; Dallas, Texas which covers the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas; Denver, Colorado which covers the States of Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming; Robbinsville, New Jersey which covers the States of Delaware, District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia; San Francisco, California which covers the States of Alaska, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, American Samoa, Trust Territories of the Pacific, and Washington.

The address of each Regional Office is listed in the telephone directory of the respective cities listed above under the heading "United States Government, Department of Agriculture, Food and Nutrition Service."

Categories of individuals covered by the system: Individuals who have received food stamps to which they are not entitled due to excess income, excess resources, household size reported incorrectly, etc.

Categories of records in the system: The system consists of Claim Determinations and supporting documents prepared by the State showing amounts due FNS and the basis for the claim. An individual file is maintained on each recipient showing amount of claim and a running balance of amounts paid until claim is paid in full.

Authority for maintenance of the system: 78 STAT. 703 as amended; 7 U.S.C. 2011-2025; 7 CFR 271.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Establish accounts receivable for money due FNS; (2) Referral to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or order issued pursuant thereto; and (3) Referral to a court magistrate, or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the addresses listed above.

Retrievability: Records are filed by name of recipient, County, and State.

Safeguards: Records are kept either in locked file cabinets or in locked offices.

Retention and disposal: Cases remain in the active files until the end of the fiscal year following the fiscal year in which they are closed. Thereafter they are transferred to Federal Records Centers and maintained for three additional fiscal years before disposal.

System manager(s) and address: Director, Central Accounting Division, Food and Nutrition Service, United States Department of Agriculture, Washington, D.C. 20250 (202-447-6990), or the appropriate Regional Food Stamp Program Director at the addresses listed above.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the appropriate system manager as set forth in the preceding paragraph. A request for information pertaining to an individual should contain: Name, address, and particulars involved (i.e., the date of action giving rise to claim, date claim was filed, correspondence, etc.)

Record access procedures: An individual may obtain information as to the procedure for gaining access to a record in the system which pertains to him, by submitting a written request to the appropriate system manager listed above. The envelope and letter should be marked "Privacy Act Request."

Contesting record procedures: Individuals desiring to contest or amend information maintained in the system should direct their request to the system manager listed above, the reasons for contesting it, and the proposed amendment to the information.

Record source categories: Information in this system comes primarily from investigations made by Office of Investigation, audits conducted by Office of Audit, food stamp application and participation records, collateral contacts, and State agency personnel.

Systems exempted from certain provisions of the act: This material has been exempted in 7 C.F.R. 1.23 pursuant to 5 U.S.C. 552a(k)(2) from the requirements of subsections (c)(3), (d), (G), and (H). The above system contains information recieved under an express or implied promise of confidentiality, or investigative techniques, processes, or procedures, the disclosure of which could be detrimental to legitimate agency functions.

USDA/FNS—4

System name: Food Stamp Recipient Refunds—USDA/FNS

System location: Fiscal Branch, Central Accounting Division, Food and Nutrition Service, United States Department of Agriculture, Room 105 West Auditors Building, Washington, D.C. 20250, and FNS Regional Offices located in: Atlanta, Georgia which covers the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee; Burlington, Massachusetts which covers the States of Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, and Vermont; Chicago, Illinois which covers the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin; Dallas, Texas which covers the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas; Denver, Colorado which covers the States of Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming; Robbinsville, New Jersey which covers the States of Delaware, District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia; San Francisco, California which covers the States of Alaska, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, American Samoa, Trust Territories of the Pacific, and Washington.

The address of each Regional Office is listed in the telephone directory of the respective cities listed above under the heading "United States Government, Department of Agriculture, Food and Nutrition Service."

Categories of individuals covered by the system: Individuals who request refunds from FNS of: (1) The proportionate purchase price paid for food stamps purchased but not used; or (2) The amount they have been inadvertently overcharged for their food stamps.

Categories of records in the system: (1) Form FNS-288, Request for Reimbursement for Unused Food Coupons, required documentation and signatures, as applicable, to the specific reason for the request; and issuance, required documentation and signatures, as applicable to the refund.

Authority for maintenance of the system: 78 STAT. 703 as amended; 7 U.S.C. 2011-2025; 7 CFR 271.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Establish eligibility for reimbursement to recipient or agent; (2) Referral to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting a violation of law or of enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or order issued pursuant thereto; and (3) Referral to a court, magistrate, or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders and file cabinets at the address listed above.

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Retrievability: Records are filed by date and month of payment and by name of recipient or his agent.

Safeguards: Records are kept either in locked cabinets or locked offices.

Retention and disposal: Closed cases are retained for one fiscal year following the end of the fiscal year in which they are closed. Thereafter, they are transferred to Federal Records Centers and maintained for three additional fiscal years before disposal.

System manager(s) and address: Director, Central Accounting Division, Food and Nutrition Service, United States Department of Agriculture, Washington, D.C. 20250 (202-447-6990), or the appropriate Regional Food Stamp Program Director at the addresses listed above.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the appropriate system manager as set forth in the preceding paragraph. A request for information pertaining to an individual should contain: Name, address, and particulars involved (i.e., the date of action giving rise to claim, date claim was filed, correspondence, etc.)

Record access procedures: An individual may obtain information as to the procedure for gaining access to a record in the system which pertains to him, by submitting a written request to the appropriate system manager. The envelope and letter should be marked "Privacy Act Request."

Contesting record procedures: Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, the reasons for contesting it, and the proposed amendment to the information.

Record source categories: Information in this system comes primarily from State agency records and collateral contacts by claims reviewers.

USDA/FNS—5

System name: Investigations of Fraud, Theft, or Other Unlawful Activities of Individuals Involving Food Stamps—USDA/FNS

System location: Office of the Deputy Administrator for Family Nutrition Programs, Food and Nutrition Service, United States Department of Agriculture, 500 12th St., S.W., Room 758, Washington, D.C. 20250, and FNS Regional Offices located in: Atlanta, Georgia which covers the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee; Burlington, Massachusetts which covers the States of Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, and Vermont; Chicago, Illinois which covers the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin; Dallas, Texas which covers the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas; Denver, Colorado which covers the States of Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming; Robbinsville, New Jersey which covers the States of Delaware, District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia; San Francisco, California which covers the States of Alaska, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, American Samoa, Trust Territories of the Pacific, and Washington.

The address of each Regional Office is listed in the telephone directory of the respective cities listed above under the heading "United States Government, Department of Agriculture, Food and Nutrition Service."

Categories of individuals covered by the system: Individuals who have been investigated for fraudulently obtaining food stamps, stealing food stamps or engaged in other unlawful activities in involving food stamps are included in this system of records.

Categories of records in the system: The system consists of files on individuals, including investigation reports, police reports, court records, agency reports, and claim determinations as appropriate.

Authority for maintenance of the system: 78 STAT. 703 as amended; 7 U.S.C. 2011-2025; and 7 CFR 271-273.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecutng a violation of law, or of enforcing or implementing the statue, rule, regulation, or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or order issued pursuant thereto; (2) Referral to a court, magistrate, or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery; (3) Referral to Finance and Program Accounting Division, FNS for appropriate fiscal action; and (4) Analysis of patterns, trends, and problem areas. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the locations previously named.

Retrievability: Records are indexed by name, State, and fiscal year of receipt.

Safeguards: Records are kept in either locked file cabinets or in locked offices. Only persons who have specific responsibility in their use have access to them.

Retention and disposal: Cases remain in the active files until the end of the fiscal year following the fiscal year in which they are closed. Thereafter, they are transferred to Federal Records Centers and maintained for three additional fiscal years before disposal.

System manager(s) and address: Deputy Administrator for Family Nutrition Programs, Food and Nutrition Service, United States Department of Agriculture, Washington, D.C. 20250 (202-447-8982), or the appropriate Regional Food Stamp Program Director at the addresses listed above.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the system manager as set forth in the preceding paragraph, or the appropriate Regional Food Stamp Program Director at the addresses listed above. A request for information pertaining to an individual should contain the name and address of the individual and whether it involved a complaint or has reference to a compliance review which may have been conducted.

Record access procedures: An individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him, by submitting a written request to the appropriate system manager listed above. The envelope and letter should be marked "Privacy Act Request."

Contesting record procedures: Individuals desiring to contest or amend information maintained in the system should direct their request to the system manager listed above, the reasons for contesting it, and the proposed amendment to the information.

Record source categories: Information in this system comes primarily from complainants, witnesses, agency employees, and investigative personnel.

Systems exempted from certain provisions of the act: This material has been exempted in 7 CFR 1.23 pursuant to 5 U.S.C. 552 a (k)(2) from the requirements subsection (c)(3), (d), (G), and (H). The above system contains information received under an express or implied promise of confidentiality, or investigative techniques, processes, or procedures, the disclosure of which could be detrimental to legitimate agency functions.

USDA/FNS—6

System name: Quality Control Subsample of Nonassistance Households Participating in the Food Stamp Program—USDA/FNS

System location: Quality Control and Evaluation Branch, Family Nutrition Programs, Food and Nutrition Service, United States Department of Agriculture, 500 12th St., S.W., Room 678, Washington, D.C. 20250 and FNS Regional Offices located in: Atlanta, Georgia which covers the States of Alabama, Florida, Georgia, kentucky, Mississipi, North Carolina, South Carolina, and Tennessee; Burlington, Massachusetts which covers the States of Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, and Vermont; Chicago, Illinois which covers the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin; Dallas, Texas which covers the States Arkansas, Louisiana, New Mexico, Oklahoma, and Texas; Denver, Colorado which covers the States of Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming; Robbinsville, New Jersey which covers the States of Delaware, District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia; San Francisco, California which covers the States of Alaska, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, American Samoa, Trust Territories of the Pacific, and Washington.

The address of each Regional Office is listed in the telephone directory of the respective cities listed above under the heading "United States Government, Department of Agriculture, Food and Nutrition Service."

Categories of individuals covered by the system: Nonassistance households (those in which not all members are receiving public assistance) which are participating in the Food Stamp Program or those households which have been terminated from the program or denied benefits.

Categories of records in the system: The system consists of subsamples of records containing personal household circumstances and financial information originally obtained from selected samples of individual households by each State's food stamp quality control staff and validated by FNS quality control personnel.

Authority for maintenance of the system: 78 STAT. 703 as amended; 7 U.S.C. 2011-2025; 7 CFR 271.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Assessing the operation of State food stamp quality control system as a basis for improvement; (2) Testing the validity of State quality control findings; (3) Projecting national error rates; (4) Identifying trends toward potential system problems and high error areas; (5) Referral to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or order issued pursuant thereto; and (6) Referral to a court, magistrate, or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in the proceeding, or which is sought in the course of discovery. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable addresses listed above.

Retrievability: Records are indexed by State and household name.

Safeguards: Records are kept in either locked filing cabinets or in locked offices.

Retention and disposal: Records are retained for one fiscal year following the end of the fiscal year in which the reviews are completed. Thereafter, they are transferred to Federal Records Centers and maintained for three additional fiscal years before disposal.

System manager(s) and address: Deputy Administrator for Family Nutrition Programs, Food and Nutrition Service, United States Department of Agriculture, Washington, D.C. 20250 (202-447-8982) or the appropriate Regional Food Stamp Program Director at the addresses listed above.

Notification procedure: An individual may request information regarding this system or records, or information as to whether the system contains records pertaining to him from the system manager as set forth in the preceding paragraph, or the appropriate Regional Food Stamp Program Director at the address listed above. A request for information pertaining to an individual should contain name, address, dates of participation in the Food Stamp Program, and date of contact by the Federal reviewer, if available.

Record access procedures: An individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the appropriate system manager listed above. The envelope and letter should be marked "Privacy Act Request."

Contesting record procedures: Individuals desiring to contest or amend information maintained in the system should direct their request to the system manager listed above, the reasons for contesting it, and the proposed amendment to the information.

Record source categories: Information in this system comes primarily from participants in the Food Stamp Program and through collateral contacts by quality control reviewers to verify financial and other circumstances as they relate to the houshold's application for, or participation in, the Food Stamp Program.

USDA/FNS—7

System name: Food Service Management Company Registration System for the Summer Food Service Program for Children—USDA/FNS.

System location: Special Feeding Programs Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 201 14th Street SW., Room 3300-B, Washington, D.C. 20250.

Categories of individuals covered by the system: Included in this system are, for food service management companies applying for registration in the Summer Food Service Program for Children, past (within 3 years) and present (1) company owners, directors, officers, and (2) local officials responsible for the operation of the food preparation facilities and (3) any of the persons listed in (1) or (2) who have any relationship to any Summer Food Service Program for Children sponsor or any food service management company which participated in the Program in the last 3 years. For the purposes of this Program, relationship shall be defined as: to his knowledge he or his immediate family, partners or organization in which his immediate family or partner has a financial or other interest, or with whom he is negotiating or has any arrangements concerning prospective employment, with or without payment.

Categories of records in the system: The system consists of name and social security number (when provided) of (1) and (2) of the preceding paragraph, and name, company or sponsor name of relation, name of relations and relationship of (3) of the preceding paragraph.

Authority for maintenance of the system: 42 U.S.C. 1771

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to State agencies and Food and Nutrition Service Regional Offices, upon request, charged with the responsibility of determining registration or nonregistration of food service management companies; (2) Referral to the appropriate agency, whether Federal, State or local, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulations, or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or order issued pursuant thereto; (3) Referral to a court, magistrate, or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery; and (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: File folders and magnetic tapes.

Retrievability: Records can be retrieved by food service management company name, by number assigned to the food service management company, by an individual's social security number, and by an individual's name.

Safeguards: Records are kept in either locked filing cabinets or in locked offices. The computer tapes will have a password master file access, and the tapes will be kept in locked filing cabinets or in locked offices.

Retention and disposal: Records are maintained for two years following the year of application for registration. Therafter, they are transferred to Federal Archives and Records Centers and maintained for three additional fiscal years before disposal.

System manager(s) and address: Manager, Child Nutrition Programs, Food and Nutrition Service, United States Department of Agriculture, Washington, D.C. 20250 (202-447-8130).

Notification procedure: An individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the appropriate manager as set forth in the preceding paragraph. A request for information pertaining to an individual should contain the individual's name, and if known the name of the food service management company(s) which supplied the information pertaining to him.

Record access procedures: An individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the appropriate system manager listed above. The envelope and the letter should be marked "Privacy Act Request."

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Contesting record procedures: Individuals desiring to contest or amend information maintained in the system should direct their request to the system manager listed above, the reasons for contesting it, and the proposed amendment to the information.

Record source categories: Information in this system is provided by food service management companies which apply for registration in the Program and the applicable State agencies or Food and Nutrition Service Regional Offices.

USDAS/FSQS—1

System name: Meat and Poultry Inspection Program—Slaughter, Processing and Allied Industries Compliance Records System, USDA/FSQS.

System location: Food Safety and Quality Service, USDA,, 14th and Independence Avenue, SW., Washington, D.C. 20250.

Categories of individuals covered by the system: Individuals engaged in the slaughter of meat or poultry animals; or the preparation, transportation, storage, or distribution of meat or poultry products, or similar activities are included in this system of records.

Categories of records in the system: The system consists of: investigatory files concerning alleged violations of the Federal Meat and Poultry Inspection Acts and related laws; investigatory files compiled for enforcement of provisions of the Federal Meat and Poultry Inspection Acts concerning detention or seizure of alleged violative product; correspondence, allegations, inquiries, reports of actions taken, complaints and similar records concerning alleged violations of enforcement actions; records compiled to carry out provisions of 21 U.S.C. 671 and 21 U.S.C. 467 concerning the refusal to provide or withdrawal of inspection service from unfit applicants as defined by law; includes application forms, notations of past violations, court records, and other documentation; files microfilm and computer records concerning systematic reviews conducted at the places of business of individuals covered by the records system.

Authority for maintenance of the system: 21 U.S.C. 451 et seq., and 601 et seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto. (2) Referral to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery. (3) Referral to the Department of Justice for the defense of suits against the United States or its officers, or for the institution of suits for the recovery of claims by the United States Department of Agriculture. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders, cards, microfilm, magnetic tape and computer printouts.

Retrievability: All categories of records concerning enforcement actions are cross referenced through an alphabetical name index system. Files on violations and other enforcement actions are indexed alphabetically by name and by year of violation. Printouts and microfilm records are alphabetically arranged with unique number identifiers assigned as well.

Safeguards: Records are maintained in locked file cabinets with attendants on duty during normal operating hours.

Retention and disposal: Active records are maintained indefinitely. Closed cases are retired to records storage centers after 3 years unless reopened. Microfilm and computer records are maintained indefinitely. Computer printouts are destroyed after 6 months.

System manager(s) and address: Privacy Act Coordinator, USDA/FSQS, 14th and Independence Avenue, SW., Washington, D.C. 20250.

Systems exempted from certain provisions of the act: This system has been exempted pursuant to 5 U.S.C. 552a(k)(2) from the requirements of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f). See 7 CFR 1.23. Individual access to these records would impair investigations and alert subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action to escape prosecution. Any individual who feels, however, that he has been denied any right, privilege or benefit for which he would otherwise be eligible as a result of the maintenance of such material may request access to the material. Such requests should be addressed to: Privacy Act Coordinator, Legislative and Special Assignments Staff, USDA/FSQS, 14th and Independence Avenue, SW., Washington, D.C. 20250.

USDA/FSQS—2

System name: Employment History Records for Licensed Non-Federal Employees.

System location: Food Safety and Quality Service, USDA, 14th and Independence Avenue, SW., Washington, D.C. 20250.

Categories of individuals covered by the system: Commodity Inspectors, Graders, Weighers, Classers, Collaborators, Licensed Plant Employees, Agents, Appointees, Samplers.

Categories of records in the system: This system consists of such information as applications for license, license files, bonding records, biographical data, periods of employment, performance ratings, commodities qualified to inspect, grader's powers of attorney, recommendations for reemployment, factors which affect or might affect desirability as an inspector, supervisory potential, declaration sheets, preference sheets, current, expired, and voided score sheets, miscellaneous notes and memoranda, e.g., transfers, cancellations, corrective action letters, letters of caution or warning, inspection/grading performance/productivity data, letters of suspension, indictment, complaint, proposals to revoke license, etc. Content and extent of these records vary by commodity, program and season.

Authority for maintenance of the system: 7 U.S.C. 1621-1627.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to States or other Federal agencies to determine verification of employment or length of service for retirement purposes; referral to Civil Service Commission for required records and reports; to Government Accounting Office for required records and reports; to Department of Justice for required records and reports. Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual. Referral to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: File folder, notebooks, and cardex files.

Retrievability: Records are indexed by name of licensee and/or license and/or license number.

Safeguards: Government office buildings, locked and unlocked file cabinets and locked offices.

Retention and disposal: Records maintained indefinitely or until separation or retirement or in accordance with prescribed retention schedules.

System manager(s) and address: Privacy Act Coordinator, USDA/FSQS, 14th and Independence Avenue, SW., Washington, D.C. 20250.

Notification procedure: Any individual may request information concerning himself from this system from: Privacy Act Coordinator, USDA/FSQM, 14th and Independence Avenue, SW., Washington, D.C. 20250.

Record access procedures: Any individual may obtain information as to the procedure for gaining access to a record in the system that pertains to him by submitting a request to: Privacy Act Coordinator, USDA/FSQS, 14th and Independence Avenue, SW., Washington, D.C. 20250.

Record source categories: Information in this System comes primarily from licensees, supervisors, with additional data provided by references and investigative personnel.

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USDA/FSQS—3

System name: Court cases brought by the Government pursuant to the following Acts: Agricultural Marketing Act of 1946, Egg Products Inspection Act.

System location: Food Safety and Quality Service, USDA, 14th and Independence Avenue, SW., Washington, D.C. 20250.

Categories of individuals covered by the system: Individuals who are regulated by the subject Acts and who may be investigated for possible violations of the Acts and/or against whom the Department recommends that an enforcement action be brought by the Government.

Categories of records in the system: The system consists of investigatory material which may include intra- and interdepartmental recommendations pertaining to an alleged violation of the subject Acts.

Authority for maintenance of the system: 7 U.S.C. 1621 et seq., and 1031 et seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation law, or of enforcing or implementing a statute, law, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto. (2) Presentation or disclosure to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system as evidence in a proceeding or which is sought in the course of discovery including disclosure to opposing counsel in the course of settlement negotiations. (3) Presentation, as needed, in the course of presenting evidence, to the appropriate Government officials charged with the responsibility of defending the Government before a court, magistrate, or administrative tribunal. (4) Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in the file folders at the applicable address listed above.

Retrievability: Records are indexed by name of the individual.

Safeguards: Government office buildings, locked offices or locked file cabinets.

Retention and disposal: Records are maintained in conformance with appropriate General Services Administration destruction schedules.

System manager(s) and address: Privacy Act Coordinator, USDA/FSQS, 14th and Independence Avenue, SW., Washington, D.C. 20250.

Notification procedure: This system has been exempted pursuant to 5 U.S.C. 552a(k)(2) from the requirements of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(g), (h), and (f) because it consists of investigatory material compiled for law enforcement purposes. See 7 CFR 1123. Individual access to these files could impair investigations and alert subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action to escape prosecution. Disclosure of investigative techniques and procedures and the existence and identity of confidential sources of information would hamper law enforcement activity.

USDA/FAS—1

System name: Applicant Files for Employment with International Organizations, USDA/FAS.

System location: International Organization Affairs, Foreign Agriculture Service, United States Department of Agriculture, 14th and Independence Avenue, Washington, D.C. 20250.

Categories of individuals covered by the system: U.S. Citizens who have applied for specific post or indicated an interest in employment with international organizations. Occasionally includes person who has been only suggested as a possible candidate by someone else.

Categories of records in the system: Resumes and/or employment application forms solicited and unsolicited letters of recommendation, reference checks, interview notes, and correspondence with candidates; communications to and from U.S. Missions and International organizations concerning applicant's candidacy; letters of referral to and from Federal Agencies and other recruitment sources and users.

Authority for maintenance of the system: 5 U.S.C. 301; 7 CFR 2.68.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Resume or application referred to international organizations and other Federal Agencies involved in the recruitment of candidates for international organizations. Referral in rare instances made when private foundations or other Federal Agencies request assistance in locating specialized candidates. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the address listed above.

Retrievability: Records are indexed by name of individual.

Safeguards: Records are kept in file cabinet in official Government office building with security guards.

Retention and disposal: Records are maintained indefinitely.

System manager(s) and address: Personnel Staffing Specialist, International Organization Affairs, Foreign Agricultural Service, United States Department of Agriculture, 14th and Independence Avenue, Washington, D.C. 20250.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him by contacting the System Manager.

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him, by submitting a written request to the System Manager.

Contesting record procedures: Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, the reasons for contesting it, and the proposed amendment to the information sought.

Record source categories: Information in this system comes primarily from candidates themselves, educational institutions, previous employers, Federal Agencies, non-Governmental organizations private foundations, and professional associations.

USDA/FAS—2

System name: Cooperator Employee Data, USDA/FAS.

System location: Program Services Branch, Planning and Evaluation Division, Foreign Agricultural Service, U.S. Department of Agriculture, 14th and Independence Avenue, Washington, D.C. 20250.

Categories of individuals covered by the system: U.S. citizens stationed overseas who supervise the operation of U.S. Cooperator foreign offices.

Categories of records in the system: The system consists of files on individual employment contracts, overseas assignment letters which include authorized salary allowances, various correspondence on individual personnel actions, position descriptions, employment applications, etc.

Authority for maintenance of the system: 7 U.S.C. 1704 (b) (1), 7 U.S.C. 1761, and 7 CFR 2.68.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: It is essential that FAS maintain this data since Government funds are used to pay a portion of the salaries. The data is provided to the U.S. Cooperator who is employing the individual. Personal data is also required on U.S. citizens in order to determine allowances, such as housing allowances and post allowances which are paid with funds made available by the U.S. Government. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the address listed above.

Retrievability: Records are indexed by name of individual and Cooperator.

Safeguards: Records are kept in a locked file cabinet in official Government office building with security guards.

Retention and disposal: Records are maintained indefinitely.

System manager(s) and address: Chief, Program Services Branch, Planning and Evaluation Division, Foreign Agricultural Service, U.S.

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Department of Agriculture, 14th and Independence Avenue, Washington, D.C. 20250.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him by contacting the System Manager.

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him, by submitting a written request to the System Manager.

Contesting record procedures: Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, the reasons for contesting it, and the proposed amendment to the information sought.

Record source categories: Information in this system comes primarily from Cooperator officials, agricultural attaches, agency employees and trade officials.

USDA/FAS—3

System name: Visa and Passport Clearance Information Data, USDA/FAS.

System location: Foreign Travel Section, Management Services Division, Foreign Agricultural Service, USDA, 14th and Independence Avenue, S.W., Washington, D.C. 20250.

Categories of individuals covered by the system: The System consists of a card index containing information required by foreign countries to grant visas.

Authority for maintenance of the system: 22 U.S.C. 213; AR 557j.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Maintenance of this data expedites issuance of passports and visas. The information is transferred from the card to visa forms required by various foreign countries to issue entrance visas. The visa forms are sent to the respective foreign country's embassy located in Washington, D.C.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Maintained in file boxes in file cabinet at above address.

Retrievability: Records are filed by name of individual applying for Official and Diplomatic passports.

Safeguards: Records are kept in file cabinet in locked office in Government building with security guards.

Retention and disposal: Records are maintained indefinitely as long as valid passport is maintained.

System manager(s) and address: Head, Foreign Travel Section, MSD, Foreign Agricultural Service, USDA, 14th and Independence Avenue, S.W., Washington, D.C. 20250.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him by contacting the System Manager.

Contesting record procedures: Amended, corrected or new cards can be submitted at any time to System Manager listed above. Old card will be destroyed and new one inserted in its place.

Record source categories: Information in this system is provided by the individual applying for Official and Diplomatic passports.

USDA/FS—1

System name: Appeals and Administrative Reviews, USDA/FS

System location: Forest Service Headquarters in Washington, D.C., the 9 Regional Offices, 121 Forest Supervisor Offices, 673 District Ranger Offices, 10 Experiment Station Offices and Two State and Private Area Offices. The address for the Headquarters is: Forest Service, U.S. Department of Agriculture, 12th and Independence Avenue SW., Washington, D.C., 20250. The addresses of all other Forest Service offices may be found in 36 CFR 200.2, Subpart A, or in the telephone directory of the applicable locality under the heading, United States Government, Department of Agriculture, Forest Service.

Categories of individuals covered by the system: Any person who has appealed or formally requested review or reconsideration of a decision or action by a Forest Service officer in any contract involving the Forest Service. Does not include personnel matters which are excluded. The appeal, administrative review, or reconsideration request may have been submitted directly to an officer of the Forest Service or through the Board of Forest Appeals.

Categories of records in the system: The record includes information regarding the circumstances of the matter under appeal. This may involve information of the appellant, his use of National Forest lands, effects of the decision being appealed on his activities, and other information supplied by appellant on is behalf. Information is also provided by the Forest Service Officer whose decision is under appeal, review, or reconsideration.

Authority for maintenance of the system: 5 U.S.C. 22 and 301; 7 U.S.C. 1011(f); 15 U.S.C. 714(b)(g) and (h); 16 U.S.C. 551; 40 U.S.C. 486(c); 7 CFR 24; 36 CFR 211.20 thru 211.37

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Vertical file folders.

Retrievability: Records are maintained under file designation 1570, identified by the appellant's name, date of appeal, review, or reconsideration request, and/or Forest Service Docket Number (if case docketed by the Board of Forest Appeals).

Safeguards: Normal security for routine file material. Locked office of file room.

Retention and disposal: Upon final decision case is closed. Transferred to closed files at end of fiscal year. Cases reaching National level are retained 25 years, Regional level is 5 years, and other levels maintained 3 years. Transfer to Federal Records Center after 3 years.

System manager(s) and address: Chief, Forest Service, U.S. Department of Agriculture, Washington, D.C. 20250 or the appropriate Regional Forester, Forest Supervisor, or District Ranger at the address listed above.

Notification procedure: Address inquiries to the office at which the individual filed his original notice of appeal or request for review or reconsideration. Identifying information should include name, date of appeal or request, Forest Service Docket (if applicable), and date of decision and by whom issued (if applicable).

Record access procedures: Use same procedures as for requesting Notification.

Contesting record procedures: Use same procedures as for requesting Notification.

Record source categories: Information obtained from appellant. On his behalf, witnesses or experts solicited by appellant, Forest Service Officers, and witnesses and technical experts solicited by Forest Service.

USDA/FS—2

System name: Blaster's Certification Program, USDA/FS

System location: Forest Service Regional Headquarters and/or Forest Supervisor Headquaters where individual is or was employed. The addresses for these office are listed in 36 CFR 200., Subpart A.

Categories of individuals covered by the system: Forest Service employees who have applied for a Forest Service Blaster's certificate are included in this system of records.

Categories of records in the system: This system consists of complete files on individual applications for the Forest Service Blaster's certificate including examination results, application form (FS 6100-24), and certificate issued or revoked.

Authority for maintenance of the system: 5 U.S.C. 301; 7 CFR 2.60 and 29 CFR 1926.901

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Standard Forest Service Form 6100-24 and supporting documents.

Retrievability: System is indexed by name and organizational location.

Safeguards: Records are maintained in standard filing sytem and are available only to autorized Forest Service personnel. Offices are locked during non-working hours.

Retention and disposal: Records are maintained for the duration of individual's employment and thereafter filed in the Federal Records

Center and disposed of in accordance with the Agency's approved retension schedule.

System manager(s) and address: Regional Forester and/or Forest Supervisor in charge of the unit where the individual is or was employed.

Notification procedure: Any employee (past or present) may request information as to whether or not the system contains records pertaining to him from the appropriate Regional Forester or Forest Supervisor. A request for information should be in writing and should include the individual's full name and address; approximate date of application and place of employment at that time.

Record access procedures: Use same procedures as for requesting Notification.

Contesting record procedures: Use same procedures as for requesting Notification.

Record source categories: Information in this system comes primarily from written, oral, and applied examinations.

USDA/FS—4

System name: Certification of Engineering Personnel, USDA/FS

System location: At the Forest Service Headquarters Offices of the Chief, Regional Foresters, and Forest Supervisors as listed in 36 CFR 200.2, Subpart A, where individual is or was employed, and at the Ft. Collins Computer Center, 3825 East Mulbery St., Fort Collins, CO, 80521.

Categories of individuals covered by the system: Forest Service employees who are professionals or para-professionals working in activities normally assigned to Engineering Staff units.

Categories of records in the system: Consists of a skills inventory for all employees defined in the preceding paragraph and written and oral examination results, certificates issued, and training requirements for each Forest Service employee defined in the preceding paragraph and who has participated in the Certification Program.

Authority for maintenance of the system: 5 U.S.C. 301; 7 CFR 2.60.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Forest Service Skills Inventory form, examination results, and supporting documents. Skills data also on magnetic tape.

Retrievability: Manual system is indexed by name and location. ADP System is indexed by individual Social Security numbers.

Safeguards: Records are maintained in standard file folders and on magnetic tape. The records are located in offices that are locked during non-office hours. They are available only to authorized personnel.

Retention and disposal: Records are maintained for the duration of individual's employment and thereafter filed in the Federal Records Center in accordance with standard procedures. Entries on magnetic tape are eliminated when employee leaves the organization.

System manager(s) and address: Director of Engineering, Forest Service, U.S. Department of Agriculture, Washington, DC, 20250 or the appropriate Regional Forester, Forest Supervisor in charge of the unit where the individual is or was employed.

Notification procedure: Any employee (past or present) may request information as to whether or not the system contains records pertaining to him from the appropriate system manager listed in the preceding paragraph. A request for information should be in writing and should include the individual's full name, address, and social security number; approximate date of last skills inventory record and place of employment at that time.

Record access procedures: Use same procedures as for requesting Notification.

Contesting record procedures: Use same procedures as for requesting Notification.

Record source categories: Information in this system comes primarily from written, oral, and applied examinations and a skills inventory form.

USDA/FS—5

System name: Certified cost Collectors, USDA/FS

System location: Office of the Regional Forester, Forest Service, 630 Sansome St., San Francisco, CA, 94111.

Categories of individuals covered by the system: Forest Service employees who have completed the necessary training to qualify as Cost Collectors.

Categories of records in the system: Name and date of individual's certification.

Authority for maintenance of the system: 16 U.S.C. 476.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by organization and name of individual certified.

Safeguards: Records are kept in a locked office.

Retention and disposal: Records are maintained until superseded.

System manager(s) and address: Director of Timber Management, Forest Service, 630 Sansome St., San Francisco, CA, 94111.

Notification procedure: Any employee may request information regarding the system of records or information as to whether the system contains records pertaining to him from the System Manager. A request for information should contain name and date of certification.

Record access procedures: Use same procedures as for requesting Notification.

Contesting record procedures: Use same procedures as for requesting Notification.

Record source categories: Forest Service records of accounting experience and training obtained from information in the employee's personnel file.

USDA/FS—6

System name: Certified Scalers, USDA/FS

System location: Headquarters of 9 Regional Offices and 121 Forest Supervisor Offices. The addresses are listed in 36 CFR 200.2, Subpart A.

Categories of individuals covered by the system: Forest Service employees who have completed the necessary training to qualify.

Categories of records in the system: Name, grade, date of certification, and organization. Includes record of certification action.

Authority for maintenance of the system: 16 U.S.C. 476

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: None

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by organization and name of individual certified.

Safeguards: Records are kept in a locked office.

Retention and disposal: Records are maintained until superseded.

System manager(s) and address: Director of Timber Management in each of the 9 Regional Offices and 121 Forest Supervisor Offices.

Notification procedure: Any employee may request information regarding the system of records or information as to whether the system contains records pertaining to him from the System Manager. A request for information should contain the name, grade, date of certification, and organization.

Record access procedures: Use same procedures as for requesting Notification.

Contesting record procedures: Use same procedures as for requesting Notification.

Record source categories: Forest Service records of scaling experience and training obtained from information in the employee's personnel file and check scale records filed in the office.

USDA/FS—7

System name: Certified Silviculturists, USDA/FS

System location: At headquaters of nine Regional Offices as listed in 36 CFR 200.2, Subpart A.

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Categories of individuals covered by the system: Forest Service employees who have completed the necessary training to qualify.

Categories of records in the system: Name, grade, date of certification, and organization. Includes record of certification action.

Authority for maintenance of the system: 16 U.S.C. 476.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by organization and name of individual certified.

Safeguards: Records are kept in a locked office.

Retention and disposal: Records are maintained until superseded.

System manager(s) and address: Director of Timber Management in each of the nine Regional Offices referred to above.

Notification procedure: Any employee may request information regarding the system of records or information as to whether the system contains records pertaining to him from the System Manager. A request for information should contain the name, grade, and date of certification, and organization.

Record access procedures: Use same procedures as for requesting Notification.

Contesting record procedures: Use same procedures as for requesting Notification.

Record source categories: Forest Service records of silviculture experience and training obtained from information in employee's personnel file.

USDA/FS—8

System name: Check-Before-Using Pilot List, USDA/FS.

System location: Records in this system are presently maintained at the Forest Service headquarters of the 9 Regional Offices as listed in 36 C.F.R. 200.2, Subpart A. The record is coordinated by the Director of Aviation Management, Forest Service, U.S. Department of Agriculture, 12th and Independence Ave., S.W., Washington, D.C., 20250, and disseminated to all Regional Air Officers at above mentioned locations.

Categories of individuals covered by the system: Pilots who have performed unsatisfactorily, while working under a contract for services.

Categories of records in the system: The record contains the pilot's name, FAA pilot's license number and the Region or area which reported the unsatisfactory performance.

Authority for maintenance of the system: 5 U.S.C. 301; 7 C.F.R. 2.60.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: None.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: The records are maintained in file folders.

Retrievability: Records are indexed by the name of the individual.

Safeguards: Records are kept in the general files in a locked office.

Retention and disposal: Records are updated currently as needed and then filed in the National Archives in accordance with standard procedures. Names may be added or deleted from the list, as appropriate.

System manager(s) and address: The Director of Aviation Management, Forest Service, U.S. Department of Agriculture, 12th and Independence Ave., S.W., Washington, D.C. 20250, and the Regional Air Officers at Regional Offices as listed in 36 C.F.R. 200.2, Subpart A.

Notification procedure: Any individual may request information as to whether he is on the list by writing the appropriate System Manager. He will be furnished information as to who he may contact at the Regional Offices to obtain additional information as to why his name appears on the list. A request for information pertaining to an individual should contain name, FAA pilot license number, and information as to previous employers while performing services for the agency.

Record access procedures: Use same procedures as for requesting Notification.

Contesting record procedures: Use same procedures as for requesting Notification.

Record source categories: Information in this system comes from Regional Aviation Officers, Contracting Officers, and pilot inspectors.

USDA/FS—9

System name: Employee Assistance Program CONCERN, USDA/FS.

System location: The records in this system are maintained in the Forest Service Headquarters in Washington, D.C. and in nine Regional Offices, ten Experiment Station Offices, and the Forest Products Laboratory. The addresses of these offices are listed in 36 CFR 200.2, Subpart A.

Categories of individuals covered by the system: Any employee with problems affecting their job performance.

Categories of records in the system: Documentation of referral; notes supervisory or employee discussions; therapy progress records.

Authority for maintenance of the system: 5 U.S.C. 7901 and 42 U.S.C. 4551.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Information in the system is referred to the professional counselor working with the employee. Information is used only as a background for counseling or advising the employee and/or work supervisor. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: File folders.

Retrievability: Records are indexed by name of employee and/or program number.

Safeguards: Folders are maintained in locked file cabinet or drawers. Only Program Advisor has access to information.

Retention and disposal: Record is maintained through any treatment and/or rehabilitation therapy, and destroyed upon completion of treatment by tearing up or shredding devices, if available.

System manager(s) and address: CONCERN Program Administrator, Forest Service, U.S. Department of Agriculture, 12th and Independence, S.W., Washington, D.C. 20250.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the CONCERN Program Coordinator for the appropriate Region or Station, the Forest Products Laboratory, or the Washington Office. If the specific location of the record is not known, the individual should address his request to the System Manager, who, if necessary, will refer it to the appropriate field office. A request for information pertaining to an individual should contain the employee's name, address and the unit of which he/she works.

Record access procedures: To gain information on procedures of gaining access, employee may call CONCERN telephone numbers shown in published brochure or posters.

Contesting record procedures: Use same procedures as for requesting Notification.

Record source categories: Information in the system comes from confidential discussions with employee and/or supervisor, discussions with the professional counselor on his report on employee progress.

USDA/FS—10

System name: Employee Development Record, USDA/FS.

System location: Records are maintained at all official duty stations of Forest Service (FS) employees. Addresses of the individual offices are listed in the telephone directories for the city or town in which they are located under the heading United States Government, Department of Agriculture, Forest Service.

Categories of individuals covered by the system: All Forest Service employees with a permanent appointment.

Categories of records in the system: A Biographical Section referring to the education, experience, physical capacity and career desires of the employee. Summary sheets or forms such as SF-171, Employee Performance Appraisals, etc., and an ADP printout, if available. A Special Qualification Section containing information on

specialized qualifications of the employee. Examples of such material are driver-qualification records, blasting or other skill certificates, letters of commendation, employee suggestions, special requests from the employee, and records of special assignments on committees, boards, etc. A Development Section containing the current individual Employee Development Plan and other records of training such as copies of AD-281's reports of training meetings attended, copies of previous individual development plans and records of details and other training assignments, and copies of accident and injury reports.

Authority for maintenance of the system: 5 U.S.C. 301; 7 CFR 2.60.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Responding to reference checks by potential employers of supervisors, and referral to selection groups considering candidates for special training.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Folders are kept by the immediate supervisor usually in his desk or immediate office.

Retrievability: By name.

Safeguards: Records are kept in a locked room or a locked file cabinet.

Retention and disposal: Maintained as long as an employee is under permanent appointment. Folder is sent through channels to the appointing office when an employee is transferring to another location in the Forest Service. When an employee is separated, the material in the Employee Development Record is mutilated and destroyed.

System manager(s) and address: Director, Personnel Management Staff; Forest Service, U.S. Department of Agriculture, 12th and Independence Avenue, S.W., Washington, D.C. 20250.

Notification procedure: Any individual may request information concerning himself from his present or former immediate supervisor at the official duty station shown on his latest employment action.

Record access procedures: Immediate supervisor, or unit head or Personnel Officer of a District, Forest, Region, Research Project, Research Station, Area, or Washington Office.

Contesting record procedures: Same as for requesting Access.

Record source categories: Information in this folder comes from the employee and his supervisor.

USDA/FS—11

System name: Employee Emergency Information, USDA/FS.

System location: Records are maintained at all official duty stations of Forest Service (FS) employees. Addresses of the individual offices are listed in the telephone directories for the city or town in which they are located under the heading United States Government, Department of Agriculture, Forest Service.

Categories of individuals covered by the system: All Forest Service employees.

Categories of records in the system: This is an optional system which some offices may choose not to use. The record contains the employee's home address and phone, and the name, address and phone of the person designated by the employee to be contacted in case of emergency. Some offices also include the name and phone of the employee's physician and special health information such as blood type, allergy or disease which may affect the kind of emergency treatment given.

Authority for maintenance of the system: 5 U.S.C. 301, 7 CFR 2.60.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in work supervisor's office.

Retrievability: Records are indexed alphabetically by name of employee.

Safeguards: Records are kept in a locked office.

Retention and disposal: Card record is updated at least semi- annually or more often when there is a change in information. Record is destroyed when employee transfers, retires, or is separated.

System manager(s) and address: Head of the Operating Office at the employee's duty station.

Notification procedure: Individual employee initally prepares and makes revision to the record. Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to her/him from the System Manager at the address listed above.

Record access procedures: Use same procedures as for requesting Notification.

Contesting record procedures: Use same procedures as for requesting Notification.

Record source categories: Information in this system comes exclusively from the employee.

USDA/FS—12

System name: Fire Qualification and Experience Records, USDA/FS

System location: Records are presently kept by the respective Regional Office and Forest Supervisor's Office where the individual is presently employed. The records are currently being entered into an automatic data processing system at the Fort Collins Computer Center, Fort Collins, CO, 80521.

Categories of individuals covered by the system: Forest Service employees with sufficient fire experience to qualify for supervisory positions or non-supervisory crews.

Categories of records in the system: The system contains a record of the actual fire experience, fire related training received, age, physical condition, training needed and an evaluation of fire overhead positions in which he has been deemed qualified to perform. An evaluation of his performance may also be included.

Authority for maintenance of the system: 5 U.S.C. 301; 7 CFR 2.60; 16 U.S.C. 551.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Disseminated to Federal, State and local agencies involved in wildland fire protection activities, including but not limited to the Forest Service, Bureau of Land Management, Bureau of Indian Affairs, National Park Service, State Forestry Organizations, and Rural Fire Departments, so that the individuals and their assigned fire crews can be called upon for emergency duty.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: The records are currently stored on file cards at each respective Regional Office and Forest Supervisor's Office. An ADP system is being devised and all records will be placed on magnetic tape at Fort Collins Computer Center.

Retrievability: The system is currently indexed by the individual's last name, but it will also be cross-referenced by social security number when it is placed in the ADP system.

Safeguards: The records do not contain any information considered to be of a confidential or personal nature, therefore, they are kept in a general file and in an ADP storage system without access restrictions.

Retention and disposal: The records are kept for the entire employment period of the individual, which could be up to 35 years, or until he is unable to perform fire related work due to health or lack of current experience or training.

System manager(s) and address: The Regional Forester, Forest Supervisor, or his designated representative, at appropriate office where the individual is employed.

Notification procedure: An employee can obtain the information from the Supervisor's Office or Regional Office under which he is or had been employed. If the specific location of the record is not known, the individual should direct his request to the Director of Fire Management, in the Regional Office of the respective geographic area where he was employed. A request for information pertaining to an individual should contain name, social security number, place and period of employment, and position held.

Record access procedures: Use same procedures as for requesting Notification.

Contesting record procedures: Use same procedures as for requesting Notification.

Record source categories: The information in this system comes primarily from the individual, from other in-service documents, or from supervisory personnel.

USDA/FS—13

System name: Geometronics Skills Inventory, USDA/FS.

System location: This system of records is maintained by the Director of Engineering, Forest Service, U.S. Department of Agriculture, Washington, D.C. 20250, the Fort Collins Computer Center, 3525 East Mulberry St., Fort Collins, CO 80521, the Geometronics Service

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Center and Regional offices. The addresses for the Regional Headquarters offices are listed in 36 CFR 200.2, Subpart A.

Categories of individuals covered by the system: Forest Service employees who are professional or para-professional and are assigned to Geometronics activities.

Categories of records in the system: This system contains the series, grade, and skills of each Forest Service employee who is identified by the preceding paragraph.

Authority for maintenance of the system: 5 U.S.C. 301; 7 CFR 2.60.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Skill data is stored on the FCC computer on magnetic tape and Section X of the Geometronics annual reports.

Retrievability: The system is indexed by organizational unit, name, grade, series, or key word for a particular skill.

Safeguards: Records are maintained in standard filing systems and on mag-tape. They are available only to authorized personnel. The buildings are locked when unoccupied.

Retention and disposal: Records are maintained for the duration of the individual's employment and purged from the system.

System manager(s) and address: Director of Engineering, Forest Service, U.S. Department of Agriculture, Washington, D.C. 20250, the Director of Geometronics Service Center, and the appropriate Regional Forester, at the addresses specified above.

Notification procedure: Any Forest Service employee (past or present) may request information as to whether or not the system contains records pertaining to him from the appropriate system manager listed in the preceeding paragraph. Request for information should be in writing. The request should include the individual's name, address, and his organizational unit.

Record access procedures: Use same procedures as for requesting Notification

Contesting record procedures: Use same procedures as for requesting Notification.

Record source categories: Information in this system comes primarily from Section X of the Geometronics Annual Report and Supervisory evaluation of the indivudual as recorded in the employee's personnel folder.

USDA/FS—14

System name: Grazing Permittees, Individual, National Forest System, USDA/FS.

System location: The records in this system are maintained in the Regional Forester's office as pertains to special limits of some grazing permittees, in the headquarters offices of the Forest Supervisors for all permittee records, and offices of District Rangers for duplicate records of those kept by Forest Supervisors. Records are also stored on magnetic tape at the Fort Collins Computer Center. The addresses for Regional Foresters and Forest Supervisors are listed in 36 CFR 200.2, Subpart A, and addresses for District Rangers are in the telephone directory of the applicable locality under the heading, U.S. Government, Department of Agriculture, Forest Service.

Categories of individuals covered by the system: Parties who hold permits to graze livestock on Forest Service administered lands are included in this system of records.

Categories of records in the system: The system contains information on names and post office addresses of permittees; number, kind, and brands of livestock owned; acres, by kind, of land owned which is declared as base property; number and kinds of livestock permitted; race and sex of permittee; type of permits, periods of use, grazing allotments (areas) involved, and whether or not an escrow waiver of term permit privileges exists. Also included are acres of land owned or leased in addition to base property, tons of dry feed produced or purchased, Bureau of Land Management permits held by Forest Service permittees (number and kind of livestock, periods of use), names of other parties who own an interest in permitted livestock, identification of other grazing permits on National Forest System lands in which the permittee holds an interest. For private land permits, system identifies owned or leased property offered as a basis for grazing permits, specifying legal subdivision, section, township, range, and number of acres.

Authority for maintenance of the system: 5 U.S.C. 301; 36 CFR 222.3.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: None.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders and on magnetic tape.

Retrievability: Records in file folders are indexed by name of permittee; records on magnetic tape are retrievable by name, by identification number assigned by Forest Supervisor, characteristics of permittee, or type of grazing use.

Safeguards: Records are kept in locked government offices. Magnetic tape files are available only to persons having authorized access codes.

Retention and disposal: Records are maintained in current file while permit is active, transferred to closed files for 3-year period following cancellation, and then sent to Federal Records Center for permanent retention.

System manager(s) and address: Director of Range Management, USDA-Forest Service, P.O. Box 2417, Washington, D.C. 20013; and/or the appropriate Regional Forester or Forest Supervisor.

Notification procedure: Any party may request information as to what the system contains pertaining to himself/herself from the appropriate System Manager. If specific locations are known, requests should be made to the Forest Supervisor involved.

Record access procedures: Use the same procedure as for requesting Notification.

Contesting record procedures: Use the same procedure as for requesting Notification.

Record source categories: Information in the system comes from individual grazing permittees, or grazing associations, and from Forest Service records concerning grazing allotments and permitted livestock. Race and sex of permittee is included by District Ranger based on observation.

USDA/FS—15

System name: Manpower Programs, USDA/FS

System location: The records for this system are located in Forest Service offices out of which enrollees worked. The addresses of these offices are the same as listed for the Appeals and Administrative Review system described above.

Categories of individuals covered by the system: Persons performing work for the Forest Service but not employed by the agency. Includes volunteers on the National Forests, persons sponsored by other organizations under the Comprehensive Employment and Training Act, and persons under employment and/or training programs, such as College Work Study, who are assigned to the Forest Service.

Categories of records in the system: File may contain any of a variety of documents relating to the enrollee, such as correspondence about the individual, application form, timekeeping records, emergency notification data, driver qualification record, receipt for property issued, compensation for injury forms, performance evaluation, and other materials.

Authority for maintenance of the system: 5 U.S.C. 301; 7 CFR 260

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Used by Forest Service officials for all necessary purposes pertaining to the individual's work for the Forest Service. This may include reporting time worked and other information to the sponsoring organization, providing employment confirmation and recommendations to other organizations, and data to the Office of Worker's Compensation Programs in the event of a compensation for injury claim. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Documents are maintained in regular file folders.

Retrievability: Stored alphabetically by name of person.

Safeguards: Kept in locked cabinets or locked offices.

Retention and disposal: Files are destroyed 2 years after the person has ceased to perform work for the Forest Service unless they become part of another system (such as Official Personnel Folder or

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Compensation for Injury Claim) which is governed by other authorities.

System manager(s) and address: Director, Division of Manpower and Youth Conservation Programs, U.S. Department of Agriculture, Forest Service, Washington, DC, 20250.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him, from the organizational unit for which he performed work. A request for information pertaining to an individual should contain the name, address, dates when work was performed, program under which enrolled, and location where work was performed.

Record access procedures: Use same procedures as for requesting Notification.

Contesting record procedures: Use same procedures as for requesting Notification.

Record source categories: Information in this system comes primarily from the individual himself, the sponsoring organization, work supervisors, and other Forest Service officials.

USDA/FS—16

System name: Mineral Lessees and Permittees, USDA/FS

System location: At the Forest Service headquarters offices of the Chief, Regional Foresters, and Forest Supervisors as listed in 36 CFR 200.2, Subpart A.

Categories of individuals covered by the system: Parties who have applied for or hold mineral leases or permits issued by the Bureau of Land Management or the Forest Service covering National Forest System lands.

Categories of records in the system: The system consists of inter- and intra-agency, Secretarial, Presidential and Congressional correspondence, leases, permits, sale contracts, environmental reports, mineral evaluations, operating plans, reclamation plans. and pleadings.

Authority for maintenance of the system: 16 U.S.C. 520, and 30 U.S.C. 181, 351 and 601.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law or enforcing or implementing the statue, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute, or by rule, regulation or order issued thereto. Referral to a court, magistrate, or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding or which is sought in the course of discovery. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Storage: Records are maintained in file folders.

Retrievability: Records are indexed by the name of the individual lessee, permittee, or purchaser.

Safeguards: Records are kept in a locked office.

Retention and disposal: Records are maintained indefinitely.

System manager(s) and address: Director, Watershed and Minerals Area Management, Forest Service, U.S. Department of Agriculture, Washington, DC 20250.

Notification procedure: Any individual may request information regarding this system of records or information as to whether the system contains records pertaining to him from the System Manager. A request for information pertaining to an individual should contain name, address, State in which the lease, permit, or sale exists, and identification number, if any.

Record access procedures: Use same procedures as for requesting Notification.

Contesting record procedures: Use same procedures as for requesting Notification.

Record source categories: Information in this system comes from the records developed during the processing of applications, evaluations made course of lease or permit, and from data furnished by the individual.

USDA/FS—17

System name: Mineral Operators, USDA/FS

System location: At the Forest Service headquarters offices of the Chief, Regional Foresters, and Forest Supervisors as listed in 36 CFR 200.2, Subpart A.

Systems exempted from certain provisions of the act: Parties who have filed operating plans or notices of intention to operate under authority of the 1872 mining law or who intends to exercise mineral rights pursuant to mineral reservations on National Forest System lands.

Categories of records in the system: The system consists of inter- and the intra-agency, Secretarial, Presidential and Congressional correspondence, notices of intention to operate, operating plans, reclamation plans, mineral evaluations, environmental reports and pleadings.

Authority for maintenance of the system: 16 U.S.C. 478, 486, 518, 551; 36 CFR 252.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law or enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general rule, regulation or order issued pursuant thereto. Referral to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which sought in the course of discovery. "Disclosure may be made to a congressional office from the record of any individual in response to an inquiry from the congressional office made at the request of that individual."

Storage: Records are maintained in file folders.

Retrievability: Records are indexed by the name of the individual operator.

Safeguards: Records are kept in a locked office.

Retention and disposal: Records are maintained indefinitely.

System manager(s) and address: Director. Watershed and Minerals Area Management, Forest Service, U.S. Department of Agriculture, Washington, DC 20250.

Notification procedure: Any individual may request information regarding this system of records or information as to whether the system contains records pertaining to him from the System Manager listed above. A request for information pertaining to an individual should contain name, address, and State in which mineral operations are located.

Record access procedures: Use same procedures as for requesting Notification.

Contesting record procedures: Use same procedures as for requesting Notification.

Record source categories: Information in this system is provided by the individual, agency staff personnel, and other organizations.

USDA/FS—18

System name: Mining Claimants, USDA/FS

System location: At the Forest Service headquarters offices of the Chief, Regional Foresters, and Forest Supervisors as listed in 36 CFR 200.2, Subpart A.

Categories of individuals covered by the system: Parties who have filed or hold mining claims on public domain National Forest System lands.

Categories of records in the system: The system consists of inter- and intra-agency, Secretarial, Presidential, and Congressional correspondence, reports of mineral examination, and pleadings.

Authority for maintenance of the system: 30 U.S.C. 22.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referral to the appropriate agency, whether Federal State local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statue, rule, regulation, or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute, or by rule, regulation or order issued pursuant thereto. Referral to a court, magistrate, or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery. "Disclosure may

be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders.

Retrievability: Records are indexed by the name of the individual claimant.

Safeguards: Records are kept in a locked office.

Retention and disposal: Records are maintained indefinitely.

System manager(s) and address: Director, Watershed and Minerals Area Management, Forest Service, U.S. Department of Agriculture, Washington, DC 20250.

Notification procedure: Any individual may request information regarding this system of records or informaion as to whether the system contains records pertaining to him from the System Manager. A request for information pertaining to an individual should contain name, address, and State in which mining claims are located.

Record access procedures: Use same procedures as for requesting Notification.

Contesting record procedures: Use same procedures as for requesting Notification.

Record source categories: Information in this system is provided by the individual, agency staff personnel, and other organization.

USDA/FS—19

System name: Person Interested in Forestry and Related Programs, USDA/FS

System location: All Forest Service field locations. Addresses of Forest Service offices are listed in the telephone directories of the respective cities under the heading United States Government, Department of Agriculture Forest Service.

Categories of individuals covered by the system: Persons in communications, industry, conservation, elected office, and communities who are known (or expressed) to have an interest in obtaining up to date information about Forest Service activities in forestry or natural resource related matters.

Categories of records in the system: Record includes name, address, and kind of Forest Service activities and programs, i.e., wood, forage, water, recreation, wildlife, land use planning, wilderness, etc., in which the individual has demonstrated a special interest.

Authority for maintenance of the system: 5 U.S.C. 301; 7 CFR 2.60

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Keep interested persons informed concerning current forestry or natural resource elated activities. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: File cards, folders, computer.

Retrievability: Indexed by name of individual for whom address is written.

Safeguards: File cabinets.

Retention and disposal: Retained as long as there is a current address or evidence of continuing interest in forestry and natural resource related matters.

System manager(s) and address: Chief, Forest Service, U.S. Department of Agriculture, 12th and Independence, S.W., Washington, DC 20250 or responsible line officer at each field unit.

Notification procedure: An individual may request information regarding this system of records or information as to whether the system contains records pertaining to him from any Forest Service office, with the one in proximity to requester's home address most likely.

Record access procedures: Use same procedures as for requesting Notification.

Contesting record procedures: Use same procedures as for requesting Notification.

Record source categories: Respondents on public involvement issues, meetings, hearings, conversations, correspondence, telephone, and published directories.

USDA/FS—20

System name: Public Correspondence Concerning Timber Management, USDA/FS

System location: Records in this system are maintained by the Director of Timber Management, Forest Service, U.S. Department of Agriculture, 12th and Independence Ave., SW., Washington, D.C., 20250.

Categories of individuals covered by the system: Individuals who correspond with the Washington Office of the Forest Service regarding timber management affairs.

Categories of records in the system: Contains the writer's name, who the original letter was addressed to, subject matter, record of final disposal of letter, including author of response and date of response.

Authority for maintenance of the system: 7 U.S.C. 1010-1031a, 16 U.S.C. 460, 471-594, 616, 694, and 1131-1136; and 33 U.S.C. 701.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in a data terminal in a locked room.

Retrievability: Records are indexed by name of individual correspondent.

Safeguards: Records are kept in a data terminal in a locked room.

Retention and disposal: Records are retained in the data base for 1 year. An annual printout is then prepared and stored in a file.

System manager(s) and address: Director of Timber Management, Forest Service, U.S. Department of Agriculture, Washington, D.C. 20250.

Notification procedure: Any individual may request information from this system, or information as to whether the system contains records pertaining to himself from the System Manager.

Record access procedures: Use same procedures as for requesting Notification.

Contesting record procedures: Use same procedures as for requesting Notification.

Record source categories: Information is obtained from letters addressed directly to the Forest Service, Division of Timber Management or referred to it by others for reply.

USDA/FS—21

System name: Public Involvement Respondents on Forest Service Activities, USDA/FS

System location: Records in this system are maintained at Forest Service Headquarters in Washington, DC, the 9 Regional Offices, 123 Forest Supervisor Offices, and 673 District Ranger Offices. The address for the Headquarters is Forest Service, U.S. Department of Agriculture, 12th and Independence Avenue, S.W., WAshington, DC, 20250; the address for Regional Foresters and Forest Supervisors are listed in 36 CFR 200.2, Subpart A; and addresses for District Rangers are in the telephone directory of the applicable locality under the heading, United States Government, Department of Agriculture, Forest Service.

Categories of individuals covered by the system: Volunteer respondents in public involvement efforts related to natural resource management issues.

Categories of records in the system: May include one or more elements of: Correspondence, news clippings, questionnaires, response forms, summary address lists.

Authority for maintenance of the system: Executive Order No. 11514, March 5, 1970, and 42 U.S.C. 4321.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: By issue on published documents; key-sort cards, magnetic tape; punched cards; original correspondence.

Retrievability: By Issue.

Safeguards: File cabinets.

Retention and disposal: Records are retained for 2 years after the decision is made and then destroyed.

System manager(s) and address: Director of the Office of Information, Forest Service, U.S. Department of Agriculture, Washington, D.C. 20250, or the appropriate Regional Forester, Forest Supervisor, or District Ranger at the addresses specified under Location above.

Notification procedure: Any Forest Service field office or the WO, where the respondent gave or mailed comment or any Forest Service office to which such comments might have been sent for review or analysis. Identifying information should be by public involvement issue and approximate year.

Record access procedures: Use same procedures as for requesting Notification.

Contesting record procedures: Use same procedures as for requesting Notification.

Record source categories: Respondents voluntarily give the information to agency in meetings, hearings, and by correspondence.

USDA/FS—22

System name: Sawtooth National Recreation Area Certifications, USDA/FS

System location: Headquarters, Sawtooth National Recreation Area, Ketchum, ID, 83340

Categories of individuals covered by the system: Any person who has requested a certification from the Area Ranger concerning use of private lands within the Sawtooth National Recreation Area.

Categories of records in the system: Includes an application for Certification form and supplemental information provided by the appellant. Information obtained by the Area Ranger and staff may also be included. The data will describe the applicant's privately owned land, his plans for the land, and other information relating to the effect of the applicant's request on NRA resource values and objectives.

Authority for maintenance of the system: 5 U.S.C. 301; 36 CFR 292.14-292.16

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Vertical file folders.

Retrievability: Files are maintained under 5400 designation, identified by the applicant's name, date of application, and sequential application number.

Safeguards: Normal security for routine file material. Locked office or file room.

Retention and disposal: Permanent.

System manager(s) and address: Area Ranger, Sawtooth National Recreation Area, Ketchum, ID, 83340.

Notification procedure: Any individual may request information regarding this system of records or information as to whether this system contains records by writing to the Area Ranger, Sawtooth NRA. Identifying information should include the individual's name, date of certification application, and application number.

Record access procedures: Use same procedures as for requesting Notification.

Contesting record procedures: Use same procedures as for requesting Notification.

Record source categories: Information obtained from applicant, experts or consultants acting on behalf of applicant, Area Ranger and Staff through field investigation, county records, and experts and consultants solicited by Forest Service.

USDA/FS—23

System name: Skill Needs Inventory Program (R-6), USDA/FS

System location: This system of records is maintained by the Forest Service Headquarters Office of Region 6 at 319 S.W. Pine St., Portland, OR, 97208, the Fort Collins Computer Center, 3825 East Mulberry St., Fort Collins, CO, 80521, and the Region 6 Forest Supervisor offices. The addresses for Forest Supervisors Offices are listed in 36 CFR 200.2, Subpart A.

Categories of individuals covered by the system: System involves Region 6 Forest Service employees who have permanent full time or when-actually-employed appointments.

Categories of records in the system: The system consists of a skills inventory written and oral examination results, certificates issued, and training requirements for each Forest Service employee defined under category of individuals.

Authority for maintenance of the system: 5 U.S.C. 301; 7 CFR 2.60

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Data is stored on magnetic tapes and on FS-6100-2 (Employee Career Development Plan) and AD-281 (Request, Authorization and Record of Training) forms.

Retrievability: Data on individual is indexed by Social Security Number. Existing skills and skill needs are indexed by a numeric series code which converges for an alpha readout. Data is retrieved by computer terminals.

Safeguards: When an employee leaves the Forest Service, data concerning him is erased from the tape, or transferred to another Government Agency upon written request by the individual stating his name, Social Security Number, address, and last Agency location. Access to data on the computer is limited to those authorized and having an assigned access code for data only within their unit. The buildings are locked when not occupied.

Retention and disposal: Records are maintained for the duration of the individual's employment and thereafter filed in the Federal Record Center in accordance with approved retention schedules. Entries on magnetic tape are eliminated when the employee leaves the organization.

System manager(s) and address: Region 6 Regional Forester, 319 S.W. Pine St., Portland, OR 97208 or the appropriate Region 6 Forest Supervisor.

Notification procedure: An employee (past or present) may request information as to whether or not the system contains records pertaining to him from the appropriate Regional Forester or Forest Supervisor. A request for information should be in writing and should include the name, address, Social Security Number, approximate date of last skill needs inventory record, and place of employment at that time.

Record access procedures: Use same procedures as for requesting Notification.

Contesting record procedures: Use same procedures as for requesting Notification.

Record source categories: Information stored in the system comes from direct input by the employee and his work supervisor and is based on development plans, certification exams, observed training needs, and needs identified through the development of the program of work.

USDA/FS—24

System name: Special Use Permits, Easements, and Licenses, USDA/FS

System location: Records in this system are maintained at Forest Service Headquarters in Washington, D.C., the 9 Regional Offices, 123 Forest Supervisor Offices, and 673 District Ranger Offices. The address for the Headquarters is Forest Service, U.S. Department of Agriculture, 12th and Independence Avenue, S.W., Washington, D.C., 20250; the addresses for Regional Foresters and Forest Supervisors are listed in 36 CFR 200.2, Subpart A; and addresses for District Rangers are in the telephone directory of the applicable locality under the heading, United States Government, Department of Agriculture, Forest Service.

Categories of individuals covered by the system: any persons holding a special use permit, easement or license authorizing use or occupancy of National Forest land or land administered for National Forest purposes.

Categories of records in the system: The records includes information on the specific use or activity which the individual is authorized to conduct as reflected in inspections of the use or activity, qualifications and competence to perform the use or activity, and financial resources such as liability insurance and performance bonds. Other

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circumstances reflecting the conduct of the activity or use, negotiations on tenure and performance, etc., may be included.

Authority for maintenance of the system: 16 U.S.C. 472 and 551; 36 CFR 251.1 thru 251.65.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Primarily vertical file folders. Some case files or parts of files may be maintained on microfilm, aperture cards, etc.

Retrievability: Files are maintained under various sub-parts of 2700, identified by the kind of case (special use permit, easement, license, etc.), permittee's name, and date of permit (etc.) issuance. Applications and pending permits are maintained in the same manner except are designated Pending or Application.

Safeguards: Normal security for routine file material. Locked office or file room.

Retention and disposal: Upon termination of use or activity, case is closed. Transferral to closed files at end of fiscal year. Majority of cases are retained permanently although some issued under Ranger District or Forest Supervisor authority are specified for disposal from 5 to 50 years depending upon type of use (etc.).

System manager(s) and address: Director of Recreation, Forest Service, U.S. Department of Agriculture, 12th and Independence Avenue, S.W., Washington, D.C., 20250, and the appropriate Regional Forester, Forest Supervisor, or District Ranger.

Notification procedure: Any individual may request information regarding the system of records, or information as to whether it contains records about him by writing to the office at which the individual's special use permit, easement, or license was issued. Identifying information should include the kind of case (special use permit, easement, or license), permittee's name, date of issuance, and location of permitted use or activity.

Record access procedures: Use same procedures as for requesting Notification.

Contesting record procedures: Use same procedures as for requesting Notification.

Record source categories: Information obtained from individual, consultants contracted by the individual, Forest Service personnel in course of inspection and administration of activity or use, and Forest Service consultants and technical experts.

USDA/FS—25

System name: Temporary Employee Performance and Training Record, USDA/FS

System location: Records in this system are maintained at Forest Service Headquarters in Washington, D.C., the 9 Regional Offices, 8 Forest and Range Experiment Stations, the Forest Products Laboratory, the Institute of Tropical Forestry, 123 Forest Supervisor Offices, and 673 District Ranger Offices. The address for the Headquarters is Forest Service, U.S. Department of Agriculture, 12th and Independence Avenue, S.W., Washington, D.C., 20250; the addresses for Regional Foresters, Forest and Range Experiment Stations, Forest Products Laboratory, Institute of Tropical Forestry, and Forest Supervisors are listed in 36 CFR 200.2, Subpart A; and addresses for District Rangers are in the telephone directory of the applicable locality under the heading, United States Government, Department of Agriculture, Forest Service.

Categories of individuals covered by the system: Forest Service Employees with temporary appointment.

Categories of records in the system: Performance evaluations; training planned and completed on a crew or group basis as well as individually; may also include an employment history and a copy of the latest hiring action. The system is similar to the Employee Development Record but less formal.

Authority for maintenance of the system: 5 U.S.C. 301; 7 CFR 2.60

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Respond to reference checks from potential employers or supervisors, and referral of performance records to schools or colleges when the individual was recruited through a special student employment program. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Folders in files of the unit where individual worked.

Retrievability: By name.

Safeguards: Kept in locked files in locked offices.

Retention and disposal: Upon termination of employment, record is transferred to closed files where it is retained for 3 years and then destroyed.

System manager(s) and address: Director, Personnel Management Staff; USDA Forest Service; 1621 N. Kent St., Arlington, Virginia 22209. (Mailing address—USDA Forest Service, Washington, D.C. 20250.)

Notification procedure: Any individual may request information concerning himself from this system from the unit where he worked.

Record access procedures: Use same procedures as for requesting Notification.

Contesting record procedures: Use same procedures as for requesting Notification.

Record source categories: Information in this system comes from the temporary employee and his supervisors.

USDA/FS—26

System name: Trespass and Claims, USDA/FS

System location: At the Forest Service headquarters offices of the Chief and the Regional Foresters. The addresses of these offices are listed in 36 CFR 200.2, Subpart A.

Categories of individuals covered by the system: Individuals who file claims against Forest Service pursuant to the Federal Tort Claims Act, the Military Personnel and Civilian Claims Act and the various Forest Service Claims Act; also individuals against whom the Forest Service has filed claims pursuant to the Federal Claims Collection Act; and individuals who claim title to National Forest System lands pursuant to the Adjustment of Land Titles Act, Quit Claim Act, Color of Title Act, Wisconsin Land Title Act or the Real Property—Quiet Title Act.

Categories of records in the system: The system consists of complete files on individual claims, including claim forms, police reports, investigation and accident reports, statement of witnesses, agency reports, and financial data of individuals subject to a claim of the Forest Service.

Authority for maintenance of the system: 7 U.S.C. 2253; 16 U.S.C. 502, 556c and 574; 28 U.S.C. 2409a and 2671-2680; 31 U.S.C. 240-243 and 951-953; and 43 U.S.C. 872, 1068 and 1221.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referral to Office of the General Counsel for advice, settlement; referral to Department of Justice for defense of a land suit brought against the United States or its officers, or the filing of suit for the recovery of claims by USDA. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders.

Retrievability: Records are indexed by name of individual claimant or trespasser.

Safeguards: Records are kept in a locked office.

Retention and disposal: Records are retained until the statutory limitations for the filing of such claim or suit arising therefrom has expired; then they are destroyed.

System manager(s) and address: Director, Fiscal and Accounting Management, Forest Service, U.S. Department of Agriculture, Washington, D.C. 20250, or the appropriate Regional Director of Fiscal and Accounting Management at the address specified above.

Notification procedure: Any individual may request information regarding this system of record or information as to whether the system contains record pertaining to him from the Director, Fiscal and Accounting Management, Forest Service, U.S. Department of Agriculture, Washington, D.C., telephone 202-447-6697, or the appropriate Regional Director of Fiscal and Accounting Management at the address listed above. If the specific location of the record is not known, the individual should address his request to the Director of Fiscal and Accounting Management, who, if necessary, will refer it to the appropriate field office. A request for information pertaining to an individual should contain name, address, and particulars involved

(i.e., the date of the action giving use to the claim or trespass, date claim or trespass was filed, correspondence, etc.)

Record access procedures: Use same procedures as for requesting Notification.

Contesting record procedures: Use same procedures as for requesting Notification.

Record source categories: Information in this system comes primarily from claimant's witnesses, agency employees, and investigative personnel.

USDA/FS—27

System name: Youth Conservation Corps (YCC) Enrollee Medical Records, USDA/FS

System location: Forest Service Office responsible for administration of the YCC camp. Addresses of these offices are the same as listed under 36 CFR 200.2 Subpart A.

Categories of individuals covered by the system: Current and former YCC enrollees.

Categories of records in the system: Medical History Forms, Accident Injury and Medical Treatment Forms, and Parental Permission portion of the application forms.

Authority for maintenance of the system: 16 U.S.C. 1703

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Disclosure to a Federal, State or local agency maintaining Civil, Criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefits. (2) Disclosure to a Federal agency, in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Maintained in file folders.

Retrievability: Indexed by name of enrollee.

Safeguards: Stored in metal filing cabinets in locked office.

Retention and disposal: Manual records are maintained for 3 years. Everything is then destroyed, except accident forms and medical treatment forms. These are retained permanently or until such time as enrollee may submit a claim.

System manager(s) and address: Director, Staff of Manpower and Youth Conservation Programs, U.S. Department of Agriculture, Forest Service, Washington, D.C. 20250.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the Forest Service organizational unit where the YCC camp was located. The addresses for these offices are in 36 CFR 200.2, Subpart A. A request for information pertaining to an individual should contain name, address, dates when work was performed, program under which enrolled, and location where work was performed.

Record access procedures: Use same procedures as for requesting Notification.

Contesting record procedures: Use same procedures as for requesting Notification.

Record source categories: Information in this system comes primarily from the individual himself, medical doctor, and camp official compiling accident or injury information.

USDA/FS—28

System name: Youth Conservation Corps (YCC) Enrollee Payroll Records, USDA/FS

System location: YCC Adminstrative Services Center, Bureau of Reclamation, P.O. Box 11568, Salt Lake City, UT, 84147.

Categories of individuals covered by the system: Current and former YCC Enrollees.

Categories of records in the system: UC-507, Pay Notification Form information on magnetic tapes.

Authority for maintenance of the system: 16 U.S.C. 1703.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Payroll purposes for current enrollees. (2) Disclosure to a Federal, State or local agency maintaining Civil, Criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to any agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit. (3) Disclosure to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Current and past UC-507 Forms information on magnetic tape and printouts.

Retrievability: Tapes heels are coded by number.

Safeguards: Tapes are stored in a tape file and vault while printouts are stored in locked metal filing cabinets.

Retention and disposal: Current payroll information is purged from magnetic tapes at the termination of the program after being transferred to a single magnetic tape which is retained permanently. Printouts are destroyed after 5 years.

System manager(s) and address: Director, Staff of Manpower and Youth Conservation Programs, U.S. Department of Agriculture, Forest Service, Washington, D.C. 20250; Director, Office of Manpower Training and Youth Activities, Department of the Interior, Office of the Secretary, Washington, D.C. 20240.

Notification procedure: Any individual may obtain information about the system of records, or whether it contains records about him by writing to the appropriate System Manager listed above. Inquiries should state name, address, and camp in which enrolled.

Record access procedures: Use same procedures as for requesting Notification.

Contesting record procedures: Use same procedures as for requesting Notification.

Record source categories: The records in this system originated from the individual on whom the record is maintained and from camp staff.

USDA/FS—29

System name: Youth Conservation Corps (YCC) Enrollee Records, USDA/FS

System location: Forest Service Office responsible for administration of the YCC Camp. Addresses of these offices are the same as listed under 36 CFR 200.2, Subpart A.

Categories of individuals covered by the system: Current and former YCC Enrollees.

Categories of records in the system: Current enrollees: Application Forms, Medical History Forms; copies of UC-507 Forms; Evaluation of enrollee's performance by camp staff; Accident and Injury Forms. Past enrollees: list of names and addresses. Current alternates: Application Forms.

Authority for maintenance of the system: 16 U.S.C. 1702

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Enrollee participation record for school credit. (2) Disclosure to a Federal, State or local agency maintaining Civil, Criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit. (3) Disclosure to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter. "Disclosure may be made to a congressional office from the record of an individual in response to

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an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Maintained in file folders.

Retrievability: Indexed by name of enrollee

Safeguards: Stored in metal filing cabinets in locked office.

Retention and disposal: Records are maintained until the end of the current program. At termination, a list of the names and addresses of enrollees is retained, while the parental permission portion of the Application Form, Medical History Form and any Accident Forms are retained. All other information in the system of records is destroyed. The list of enrollee names and addresses is retained for 5 years and then destroyed. The application forms of current alternates are destroyed at the termination of the current program.

System manager(s) and address: Director, Staff of Manpower and Youth Conservation Programs, U.S. Department of Agriculture, Forest Service, Washington, D.C. 20250.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him, from the organizational unit for which he performed work. A request for information pertaining to an individual should contain: name, address, dates when work was performed, program under which enrolled, and location where work was performed.

Record access procedures: Use same procedures as for requesting Notification.

Contesting record procedures: Use same procedures as for requesting Notification.

Record source categories: Information in this system comes primarily from the individual himself, the sponsoring organization, work supervisors, and other Forest Service officials.

USDA/FS—30

System name: Youth Conservation Corps (YCC) Recruitment System, USDA/FS

System location: Office of the YCC recruiter in each State. Address of the State recruiters may be obtained each year by writing to the System Managers as listed below.

Categories of individuals covered by the system: Youth between the ages of 15 and 18 who file an application to attend a Forest Service, Department of the Interior, or State grant YCC camp with one of the named recruiters.

Categories of records in the system: The system consists of application forms submitted by eligible youth.

Authority for maintenance of the system: 16 U.S.C. 1703

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Selection is made from among applications of all eligible applicants. Persons selected are either offered employment in a YCC camp or placed on a substitute list to be used in case of declinations. Applications of those selected are sent to camps operated by the Forest Service, Department of the Interior, States, Counties, Cities, and other sub-grantees for use in the YCC Enrollee File subsystem.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Medium of storage is the applications themselves.

Retrievability: Applications are filed alphabetically by name of individual applicant.

Safeguards: Records are kept in office files available to responsible officials only.

Retention and disposal: Records on non-selected applicants are disposed of by September 31 of each year.

System manager(s) and address: Director, Division of Manpower and Youth Conservation Programs, U.S. Department of Agriculture, Forest Service, Washington, D.C. 20250; and Director, Office of Manpower Training and Youth Activities, Department of the Interior, Office of the Secretary, Washington, D.C. 20240.

Notification procedure: Any individual may request information regarding the system of records, or information as to whether it contains records about him by writing to the appropriate System Managers listed above.

Record access procedures: Use same procedures as for requesting Notification.

Contesting record procedures: Use same procedures as for requesting Notification.

Record source categories: The YCC application form prepared by the applicant and any additions or corrections thereto, also prepared by the applicant, and additional information as may be added to the file by the State recruiter concerning the applicant's selection, nonselection, or declination.

USDA/FS—31

System name: Youth Conservation Corps (YCC) Research Files USDA/FS

System location: Institute for Social Research, University of Michigan, Ann Arbor, MI, 48106

Categories of individuals covered by the system: A random sample of 600 1973 YCC enrollees.

Categories of records in the system: The file contains questionnaire responses, environmental education scores, and verbal skills test data.

Authority for maintenance of the system: 16 U.S.C. 1705

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: None

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: File is on a magnetic tape.

Retrievability: Data on each person is identified by a case number. It can be retrieved by matching the case number with a mailing list containing case numbers, name and address.

Safeguards: Kept in locked files and only the System Manager and other research staff have access to the mailing list.

Retention and disposal: Files are being retained indefinitely for possible future longitudinal studies of long range benefit.

System manager(s) and address: Donna A. Lingwood, Institute for Social Research, The University of Michigan, Ann Arbor, MI, 48106.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from: Director, Division of Manpower and Youth Conservation Programs, U.S. Department of Agriculture, Forest Service, Washington, D.C., 20250; Director, Office of Manpower Training and Youth Activities, Department of the Interior, Office of the Secretary, Washington, D.C., 20240. A request for information pertaining to an individual should contain name, address, dates when work was performed, program under which enrolled, and location where work was performed.

Record access procedures: Use same procedures as for requesting Notification.

Contesting record procedures: Use same procedures as for requesting Notification.

Record source categories: Information in this system comes primarily from the individual himself, the sponsoring organization, work supervisors, and other Forest Service officials.

USDA/FS—32

System name: Professional Registration and Professional Society Affiliation, Engineering—Related Personnel—Eastern Region—USDA/FS

System location: Office of the Regional Forester, Headquarters, Eastern Region, USDA Forest Service, 633 West Wisconsin Avenue, Milwaukee, Wisconsin, and at National Forest Headquarters at the following location: Allegheny National Forest, Warren, PA; Chequamegon National Forest, Park Falls, WI; Chippewa National Forest, Cass Lake, MN; Green Mountain National Forest, Rutland, VT; Hiawatha National Forest, Escanaba, MI; Huron-Manistee National Forest, Cadillac, MI; Monongahela National Forest, Elkins, WV; National Forests in Missouri, Rolla, MO; Nicolet National Forest, Rhinelander, WI; Ottawa National Forest, Ironwood, MI; Shawnee National Forest, Harrisburg, IL; Superior National Forest, Duluth, MN; Wayne-Hoosier National Forest, Bedford, IN; White Mountain National Forest, Laconia, NH.

Addresses at each field office are listed in the telephone directories of the respective cities listed above under the heading, "United States Government, Department of Agriculture, Forest Service, National Forest Supervisor."

Categories of individuals covered by the system: Forest Service employees of the Eastern Region who presently are Registered Professional Engineers, Engineers-in-Training, Registered Land Surveyors, Engineers and/or Technicians presently affiliated with an Engineering-related professional or technical society or organization are included in this system of records.

Categories of records in the system: The system consists of a directory listing Registered Professional Engineers, Engineers-in-Training,

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Registered Land Surveyors, including the name of the State(s) and the Year(s) acquired. The directory also lists the "Professional Society Affiliations" of Land Surveyors and Engineering employees, including society name, category of membership and responsibility.

Authority for maintenance of the system: 5 U.S.C. 0301; 7 CFR 02.60.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Promoting Professional Registration and involvement in Professional and/or Technical societies; and (2) Providing assistance (through the directory listing) to employees currently seeking professional registration; and (3) Providing recognition of employees' efforts in these endeavors.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: The directory (records) in the form of a spiral-bound booklet is maintained at the applicable address(s) listed above. Also, each individual whose name appears in the directory receives a copy for his personal use.

Retrievability: The directory (records) is indexed by organizational unit within the Region and by name of individual listed therein.

Safeguards: Since a copy of this directory is sent to all the individuals listed in it, no identifiable safeguards exist. Employees are instructed to treat the directory as an Official Forest Service document for in-service only.

Retention and disposal: The directory (record) is maintained for the duration of an employee's registration or society affiliation. All information is deleted when (1) The employee is no longer employed within the region; (2) Is no longer registered and/or is no longer affiliated with a professional society

System manager(s) and address: Director, Engineering Staff Group, USDA—Forest Service, Eastern Region, 633 West Wisconsin Avenue, Milwaukee, Wisconsin 53203.

Notification procedure: Any Eastern Region employee, past or present, may request information regarding this directory system, or information as to whether the system contains records pertaining to him from the Director, Engineering Staff Group, at the address above, Telephone 414-224-3602, or the appropriate Forest Supervisor at the address previously listed. A request for information pertaining to an individual should contain: Name and address, Unit Headquarters and Particulars involved, i.e., Registered Surveyor, Registered Engineer, etc.

Record access procedures: Any individual may obtain information as to the procedure for gaining access to a record in the system which pertains to him, by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Any individual may contest a record in the system by using the same procedures as those for requesting access.

Record source categories: Information in this system comes primarily from individual employees, the employee's supervisor, and line and staff officers.

USDA/FS—33

System name: Law enforcement Investigation Records, USDA/FS

System location: Records in this system are maintained at Forest Service Headquarters in Washington, D.C., the nine Regional Offices and 123 Forest Supervisor Offices. The address for the Headquarters is Forest Service, U.S. Department of Agriculture, 12th and Independence Avenue, SW., Washington, D.C., 20250; the addresses for Regional Foresters and Forest Supervisors are listed in 36 CFR 200.2, Subpart A.

Categories of individuals covered by the system: Subjects: Individuals against whom allegations of wrongdoing have been made. Principals: Individuals not named as subjects, but yet may be responsible for alleged violations. Complainants: Those who allege wrongdoing. Others: Those closely connected with the matter of investigation.

Categories of records in the system: Files containing investigative and other reports, correspondence, informal notes, statements of witnesses, names, addresses, social security records and dates of birth.

Authority for maintenance of the system: 16 U.S.C. 559.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating or prosecuting a violation of law, rule, regulation, or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or order issued pursuant thereto; (2) Referral to a court, magistrate, or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery; (3) Referral to the Department of Justice for the defense of suits against the United States or its officers, or for the institution of suits for the recovery of claims by the United States Department of Agriculture. (4) Referral to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Data is stored on magnetic media and vertical file folders.

Retrievability: Files are maintained under 5340 designation, identified by the individual's name.

Safeguards: Staff are instructed to allow access to authorized persons only. The files are kept in locked file cabinets.

Retention and disposal: Files are retained indefinitely.

System manager(s) and address: Director, Fiscal and Accounting Management Staff, USDA—Forest Service, Washington, D.C., 20250 or the appropriate Regional Forester or Forest Supervisor at the address specified above.

Systems exempted from certain provisions of the act: This system has been exempted pursuant to 5 U.S.C. 552a(k)(2) from the requirements of 5 U.S.C. 552a(c)(3), (d), (e)(1), (3)(4)(G), (H), (I), and (f). See 7 CFR 1.23. This exemption will only be used to maintain the efficacy and integrity of lawful investigations, and to prevent access to certain law enforcement files which would alert subjects of investigations that their activities are being scrutinized and thus allow them time to take measures to prevent detection of illegal action or escape prosecution. Any individual who feels, however, that he has been denied any right, privilege or benefit for which he would otherwise be eligible as a result of the maintenance of such material may request access to the material. Such requests should be addressed to the appropriate system manager.

USDA/FS—34

System name: Land Adjustments (Purchase, Donation, Exchange) USDA/FS

System location: Records in this system are maintained at Forest Service Headquarters in Washington, D.C., the nine Regional Offices, the ten Experiment Station Offices, Forest Supervisor Offices, and District Ranger Offices. The address for the Headquarters is Forest Service, U.S. Department of Agriculture, 12th and Independence Avenue, SW., Washington, D.C., 20250; the addresses for Regional Foresters, Station Directors and Forest Supervisors are listed in 36 CFR 202.2, Subpart A; and addresses for District Rangers are in the telephone directory of the applicable locality under the heading, United States Government, Department of Agriculture, Forest Service.

Categories of individuals covered by the system: Individuals who sell, donate, or exchange lands or interests in lands to or with the United States through the Forest Service, USDA.

Categories of records in the system: The system consists of complete files on individual land adjustment cases, including appraisal reports and justification statements for the land adjustment action being taken.

Authority for maintenance of the system: 40 U.S.C. 257, 16 U.S.C. 515-517, 16 U.S.C. 485-486; 16 U.S.C. 569, 16 U.S.C. 555, 40 U.S.C. 258a, 7 U.S.C. 1010, 1011(c), 7 U.S.C. 428a(a), 43 U.S.C. 315g-1, 16 U.S.C. 555a, 16 U.S.C. 1131-1136, 16 U.S.C. 4601-9, 16 U.S.C. 484a, 42 U.S.C. 4601(6) 4601(8), 4621, 4622, 4651, 4653, National Trails 16 U.S.C. 1241-1249, Wild and Scenic Rivers 16 U.S.C. 1271-1287, National Recreation Areas 16 U.S.C. 460p et seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referred to (1) Department of Justice for (a) filing condemnation in court and (b) for information in suits filed against the Government, (2) Bureau of Land Management for review of cases involving exchange of public domain lands, (3) Bureau of Outdoor Recreation for review in authorizing use of land and water conservation funds, (4) Treasury Department for tax purposes, (5) Federal Power Commission for licensing of Federal Power Commission projects, (6) Environmental Protection Agency for preparation of environmental statements, (7) Corps of Engineers for information on joint land acquisition projects, (8) General Accounting Office for review of specific cases, (9) Congressional

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Committees and members of congress for (a) National Forest Reservation Commission for approval of Weeks Law purchases or exchanges, and (b) to appropriation committees for budget purposes, (10) State and local governments for (a) compliance with OMB Circular A-95 and (b), for compliance with the Rare and Endangered Species Act and the Historic and Cultural Preservation Act.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable field offices and the Washington Office.

Retrievability: Records are indexed by name of individual involved in land adjustment case.

Safeguards: Records are kept in a locked official government office.

Retention and disposal: Records are retained at the applicable office until the cases are closed, at which time one combined record is retained by the applicable Regional Office for a period of twenty-five years, except for deeds and title papers which are retained permanently at the applicable Field Offices.

System manager(s) and address: Director, Lands, Forest Service, USDA, Washington, D.C., 20250 and designees at Region, Station, Forest, Ranger, Research Work Units and Project Headquarters Offices when applicable.

Notification procedure: Any individual may request information regarding this system of record or information as to whether the system contains a record pertaining to him from the Director, Lands, Forest Service, USDA, Washington, D.C., telephone 703-235-8212. He will advise the individual of the locations of any records and the local designated individual responsible for those records at the appropriate Field Offices. A request for information pertaining to an individual should contain:

Name, address, and any available particulars involved in the specific case, i.e., name of owner of properties, location of property and dates of any correspondence, if available, etc.

Record access procedures: Use same procedures as for requesting notifications.

Contesting record procedures: Use same procedures as for requesting notification.

Record source categories: Information in this system comes primarily from individual landowners, employees of the agency or agencies to which cases are referred and contract real property appraisers or consultants which they hire.

USDA/FS—35

System name: Congressional Correspondence Records, USDA/FS.

System location: Records in this system are maintained at Forest Service Headquarters in Washington, D.C., the 9 Regional Offices, the 10 Experiment Station Offices, Area Offices, Forest Supervisor Offices, and District Ranger Offices. The address for the Headquarters is: Forest Service, U.S. Department of Agriculture, 12th and Independence Avenue, SW., Washington, D.C. 20250; the addresses for Regional Foresters, Station Directors, Area Offices, and Forest Supervisors are listed in 36 C.F.R. 200.2, subpart A; and addresses for District Rangers are in the telephone directory of the applicable locality under the heading, U.S. Government, Department of Agriculture, Forest Service.

Categories of individuals covered by the system: Current Members of the House of Representatives and U.S. Senate.

Categories of records in the system: Files containing congressional letters with attached congressional constituent correspondence; copies of FS responses to written correspondence from congressional members; Congressional Record and newspaper clipping of statements made by Members of Congress on forestry, forestry legislation or the Forest Service; statistical data on Forest Service activities in the congressional district or State, that is, payments to States and counties from national forest receipts, by congressional district, county, State, and national forest acreage by congressional district, county and State; copies of letters to the record by Forest Service officials summarizing meetings with Congressmen and/or visits to Forest Service offices and National Forest System land by Members and Committees of Congress and their staffs, and biographies of Members of Congress.

Authority for maintenance of the system: 5 U.S.C. 201; 16 U.S.C. 582a—582a-7; U.S.C. 1601-1610.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: To Members of Congress to enable them to (1) respond to constituents, (2) judge the agency's response to the constituent, (3) obtain factual information on National Forest acreage, Forest Service projects, receipts to States and local governments by district or State, (4) to prepare statements on forestry legislation and issues.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are stored in individual file folders.

Retrievability: Material is filed alphabetically by name.

Safeguards: All information in this file is a matter of public record and subject to the Freedom of Information Act. Special safeguards are not required.

Retention and disposal: Files are retained until a Member leaves Congress. Within the files, copies of correspondence are retained for 12 months. Factual material on Forest Service activities in the District or State are updated annually and previous material destroyed. Statements made in the Congressional Record are retained in the file until the entire file is destroyed.

System manager(s) and address: Director, Legislative Affairs, Forest Service, U.S. Department of Agriculture, 12th and Independence Avenue, SW., Washington, D.C. 20250; appropriate Regional Information Officer; appropriate National Forest Administrative Officer.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him by contacting the appropriate system manager.

Record access procedures: A request for information pertaining to an individual should contain: Name, address, and any available particulars involved in the specific case, that is, dates of correspondence, subject matter, et cetera.

Contesting record procedures: Use same procedures as for notification.

Record source categories: Records in this system come from U.S. Congressmen and replies from within the agency; attachments to congressional correspondence from constituents, newspapers, the Congressional Record, and Forest Service records.

USDA/FS—36

System name: Certified Timber Sale Administrators, USDA/FS.

System location: Forest Service Regional Headquarters and/or Forest Supervisor Headquarters. The addresses for these offices are listed in 36 C.F.R. 200.2, subpart A.

Categories of individuals covered by the system: Employees certified as administrators of timber sale contracts.

Categories of records in the system: Name; grade, and date of individual's certification. Includes record of certification action.

Authority for maintenance of the system: 16 U.S.C. 476.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: None.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders.

Retrievability: Records are indexed by organization and name of individual certified.

Safeguards: Records are kept in a locked office.

Retention and disposal: Records are maintained until superseded.

System manager(s) and address: Director of Timber Management at addresses listed above.

Notification procedure: Requests should be directed to the system manager.

Record access procedures: Same as above.

Contesting record procedures: Same as above.

Record source categories: Forest Service records of administration experience and training.

USDA/FS—37

System name: Certified Timber Appraisers, USDA/FS.

System location: Office of the Regional Foresters, Forest Supervisors, and the Forest Manager, Savannah River Plant, Aiken, S.C. 29801; the addresses for these offices are listed in 36 C.F.R. 200.2 subpart A.

Categories of individuals covered by the system: Employees certified to appraise timber for sale.

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Categories of records in the system: Name, grade, and date of individual's certification. Includes record of certification action.

Authority for maintenance of the system: 16 U.S.C. 476.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: None.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders.

Retrievability: Records are indexed by organization and name of individual certified.

Safeguards: Records are kept in a locked office.

Retention and disposal: Records are maintained until superseded.

System manager(s) and address: Director of Timber Management at addresses listed above.

Notification procedure: Send requests for information to the system manager.

Record access procedures: Same as above.

Contesting record procedures: Same as above.

Record source categories: Forest Service records of appraisal experience, training, and written, oral or applied examinations.

USDA/FA—38

System name: Certified Check Scaler, USDA/FS.

System location: Records in this system are maintained at the Southern Regional Office, 15 Forest Supervisor Offices and 1 Forest Manager Office. The address of the Southern Regional Office is: Forest Service, USDA, 1720 Peachtree Road, NW., Atlanta, Ga. 30309. The Forest Supervisor Offices are listed in 36 C.F.R. 200.2, subpart A, under Region 8, Southern Region. The address for the Forest Manager is: Forest Manager, Savannah River Plant, P.O. Box A, Aiken, S.C. 29801.

Categories of individuals covered by the system: Employees qualified and authorized to check work of timber workers.

Categories of records in the system: Name, grade, and date of employees certification. Includes record of certification.

Authority for maintenance of the system: 16 U.S.C. 476.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: None

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders.

Retrievability: Records are indexed by organization and name of individual certified.

Safeguards: Records are kept in a locked office.

Retention and disposal: Records are maintained until superseded.

System manager(s) and address: Director of Timber Management at addresses listed above.

Notification procedure: Send requests for information to the appropriate system manager.

Record access procedures: Same as above.

Contesting record procedures: Same as above.

Record source categories: Forest Service records of administration experience, training, oral, and applied examination.

USDA/FS—39

System name: Certified Timber Marker, USDA/FS.

System location: At headquarters of 15 Forest Supervisor Offices in Region 8, Southern Region, as listed in 36 C.F.R. 200.2 subpart A, and one Forest Manager Office. The address for the Forest Manager is: Forest Manager, Savannah River Plant, P.O. Box A, Aiken, S.C. 29801.

Categories of individuals covered by the system: Employees qualified to mark and make volume estimates of trees for sale.

Categories of records in the system: Name, grade, and date of individual's certification. Includes record of certification action.

Authority for maintenance of the system: 16 U.S.C. 476.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: None.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by organization and name of individual certified.

Safeguards: Records are kept in a locked office.

Retention and disposal: Records are maintained until superseded.

System manager(s) and address: Director of Timber Management at addresses listed above.

Notification procedure: Send requests to the appropriate system manager.

Record access procedures: Same as above.

Contesting record procedures: Same as above.

Record source categories: Forest Service Records of administration experience and training.

USDA/FS—40

System name: Certified Power Saw Operator, USDA/FS.

System location: At headquarters of 15 Forest Supervisor Offices in Region 8, Southern Region, as listed in 36 C.F.R. 200.2 subpart A, and one Forest Manager Office. The address for the Forest Manager is: Forest Manager, Savannah River Plant, P.O. Box A, Aiken, S.C. 29801.

Categories of individuals covered by the system: Employees who qualify as saw operators.

Categories of records in the system: Name, grade, and date of individual's certification. Includes record of certification action.

Authority for maintenance of the system: 16 U.S.C. 476.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: None

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders.

Retrievability: Records are indexed by organization and name of individual certified.

Safeguards: Records are kept in a locked office.

Retention and disposal: Records are maintained until superseded.

System manager(s) and address: Director of Timber Management at addresses listed above.

Notification procedure: Send requests to the appropriate system manager.

Record access procedures: Same as above.

Contesting record procedures: Same as above.

Record source categories: Forest Service records of administration experience, training. Information may also come from written, oral, and applied examination.

USDA/FS—41

System name: Certified Pesticide Applicators, USDA/FS.

System location: Records in this system are maintained at the Southern Regional Office and 15 Forest Supervisor Offices and one Forest Manager Office. The address of the southern Regional Office is: Forest Service, USDA, 1720 Peachtree Road, NW., Atlanta, Ga. 30309. The Forest Supervisor Offices are listed in 36 C.F.R. 200.2 subpart A, under Region 8, Southern Region. The address for the Forest Manager is: Forest Manager, Savannah River Plant, P.O. Box A, Aiken, S.C. 29801.

Categories of individuals covered by the system: Forest Service employees who have completed the necessary training to qualify as pesticide applicators.

Categories of records in the system: Name, grade, and date of certification and organization. Includes record of certification action.

Authority for maintenance of the system: 16 U.S.C. 476.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: None.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by organization and name of individual certified.

Safeguards: Records are kept in a locked office.

Retention and disposal: Records are maintained until superseded.

System manager(s) and address: Director of Range, Timber, and Wildlife, Forest Service, USDA, 1720 Peachtree Road, NW., Atlan-

ta, Ga. 30309, and the appropriate Forest Supervisor or Forest Manager at the address specified above.

Notification procedure: Any employee may request information regarding the system of records, or information as to whether the system contains records pertaining to him from the system manager. A request for information should contain the name, grade, date of certification, and organization.

Record access procedures: Use same Procedures as for requesting notification.

Contesting record procedures: Use same procedures as for requesting notification.

Record source categories: Forest Service Records of Pesticide Application experience and training obtained from information in employee's personnel file information in this system may also come from written, oral and applied examinations.

USDA/FS—42

System name: Certified Prescriptionists, USDA-FS.

System location: At appropriate Regional headquarters and appropriate Forest Supervisor Offices and one Forest Manager Office. The addresses are listed in 36 C.F.R. 200.2 subpart A. The address for the Forest Manager is: Forest Manager, Savannah River Plant, P.O. Box A, Aiken, S.C. 29801.

Categories of individuals covered by the system: Forest Service employees who have completed the necessary training to qualify as Prescriptionists.

Categories of records in the system: Name, grade, and date of certification and organization. Includes record of certification action.

Authority for maintenance of the system: 16 U.S.C. 476.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: None

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by organization and name of individual certified.

Safeguards: Records are kept in a locked office.

Retention and disposal: Records are maintained until superseded.

System manager(s) and address: Forest Supervisors and Forest Manager at the address specified above.

Notification procedure: Any employee may request information regarding the system of records or information as to whether the system contains records pertaining to him from the system manager. A request for information should contain name and date of certification.

Record access procedures: Use same procedures as for requesting notification.

Contesting record procedures: Use same procedures as for requesting notification.

Record source categories: Forest Service records of prescription experience and training obtained from information in the employee's personnel file. Information in the system may also come from written, oral, and applied examinations.

USDA/FS—43

System name: Emergency Fire Mobilization Plan Directory, USDA/FS.

System location: Records are kept by the Fire Management staff, Forest Service, U.S. Department of Agriculture, Washington, D.C. 20250, and by the respective Regional Office, Forest Supervisor's Office, and Ranger District Office where the individual is employed.

Categories of individuals covered by the system: Employees and cooperators who are involved in wildland fire suppression.

Categories of records in the system: The system may include names, working titles, fire-job qualifications, home addresses and telephone numbers of these individuals.

Authority for maintenance of the system: 16 U.S.C. 551, 5 U.S.C. 301; 7 CFR 2.60

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Disclosed to Federal, State, and local agencies involved in wildland fire protection activities, including but not limited to the Forest Service, Bureau of Land Management, Bureau of Indian Affairs, National Park Service, State Forestry Organizations, and Rural Fire Departments, so that the individuals and their assigned fire crews can be called upon for emergency duty.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Information may be kept on file cards, loose-leaf or bound fire mobilization plans, pocket-sized directories, and may be placed on magnetic trap, drums, or disks at Forest Service computer facilities.

Retrievability: System may be indexed by organization, geographic area of residence, fire/job qualifications, or by last name.

Safeguards: Records do not contain information that is considered highly confidential so they may be kept in a general file and in ADP storage systems.

Retention and disposal: The information in this ystem will be maintained currently. Out of date information will be kept in the general files for 10 years and then destroyed.

System manager(s) and address: Directors of Fire Management in the Washington Office and Regional Offices, Forest Fire Management Staff Officers, and District Rangers.

Notification procedure: An employee can obtain the information from the Washington Office, Regional Office, Forest Supervisor's Office, or Ranger District Office under which he is or had been employed. If the specific location of the record is not known the individual may direct his request to the Director of Fire Management in Washington or in the Regional Office of the geographic area where he was employed. A request for information from this system should include name, address, place, period of employment, and position held.

Record access procedures: Use same procedures as for requesting notification.

Contesting record procedures: Use same procedures as for requesting notification.

Record source categories: The information in this system comes primarily from the individual, from other in-service documents, or from supervisory personnel.

USDA/FS—44

System name: Pilot Qualification Record, USDA/FS.

System location: Records in this system are maintained at the Forest Service headquarters of the nine Regional Offices. Addresses are listed in 36 CFR 200.2 subpart A.

Categories of individuals covered by the system: Pilots employed by contractors, aircraft equipment rental vendors, and self-employed pilots providing aviation services to the USDA/FS.

Categories of records in the system: Form 5700-2, Pilot Qualification Record, which includes pilot licenses, ratings, medical examination, flying experience and training, accident records, any records of unsatisfactory performance, and evaluation checkflights and any other data bearing upon the suitability of a pilot.

Authority for maintenance of the system: 5 U.S.C. 301; 7 CFR 2.60.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referred to Bureau of Land Management and Office of Aircraft Services who contract for similar services.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Vertical file folders.

Retrievability: Indexed by the name of the individual.

Safeguards: Records are in the general files in a locked office.

Retention and disposal: Records are updated currently as needed and then filed in the National Archives in accordance with standard procedures. Names may be added or deleted from the list, as appropriate.

System manager(s) and address: Regional Aviation Officers located at the addresses listed above.

Notification procedure: Any individual may request information as to whether he is on the list by writing the system manager. A request for information pertaining to an individual should contain name, FAA pilot license number, and information as to previous employers while performing services for the agency.

Record access procedures: Use same procedures as for requesting notification.

Contesting record procedures: Use same procedures as for requesting notification.

Record source categories: Information in this system comes from Regional Aviation Officers, Contracting Officers, and pilot inspectors.

USDA/FS—45

System name: Accident Notification System, USDA/FS.

System location: The records in this system are maintained in the Forest Service Headquarters Office in Washington, D.C., Regional Offices, Forest Supervisor's Offices, and District Ranger Offices. Addresses of Forest Service offices are listed in the telephone directories of the respective cities under the heading: U.S. Government, Department of Agriculture, Forest Service.

Categories of individuals covered by the system: Forest Service personnel involved in accident investigations.

Categories of records in the system: The system includes names, working titles, office and home telephone numbers.

Authority for maintenance of the system: 29 CFR 1900, Section 19, Occupational Safety and Health Act.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual. Home telephone numbers are published in Forest Service Manuals.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders or loose-leaf binders.

Retrievability: Records are indexed by last name.

Safeguards: Records do not contain information that is considered highly confidential, so they may be kept in a general file.

Retention and disposal: The information in this system will be maintained currently; out-of-date information will be destroyed.

System manager(s) and address: Director of Personnel Management, Forest Service, U.S. Department of Agriculture, Room 910 RP/E, P.O. Box 2417, Washington, D.C. 20013.

Notification procedure: Any individual may request information regarding this system of records from the Washington Office Safety and Health Group, Regional Office, Forest Supervisor's Office, or District Ranger's Office.

Record access procedures: Use same procedures as for requesting notification.

Contesting record procedures: Use same procedures as for requesting notification.

Record source categories: The information in this system comes primarily from the individual and from other In-Service documents.

USDA/FS—46

System name: Independent Appraisers, USDA/FS.

System location: Office of the Director of Lands, Forest Service, USDA, Washington, D.C. and those of the Director's designees located in each Regional Forester's office and offices of Forest Supervisors, District Ranger's offices, and Project Headquarters of the Forest Service, USDA. Addresses of the field offices are listed in the telephone directory in the various communities where the headquarters are located under the heading: U.S. Government, Department of Agriculture, Forest Service.

Categories of individuals covered by the system: Appraisers who desire to contract their services with the Forest Service, USDA.

Categories of records in the system: Individual qualifications for appraisal assignments: educational background, appraisal courses taken, professional designations, qualifications as expert witness, clients and list of types of property appraised, years of appraisal experience, sample of work, and any other information the appraiser might provide to reflect his qualifications.

Authority for maintenance of the system: 40 U.S.C. 257, 16 U.S.C. 515-517, 7 U.S.C. 428a (a), 42 U.S.C. 4601 (6), (8), 4621, 4622, 4651, 4653, and other applicable purchase and exchange laws.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable field offices and the Washington Office.

Retrievability: Records are indexed by name of individual.

Safeguards: Records are kept in a locked office.

Retention and disposal: Records are maintained and updated as long as there is a sufficient contracting need for the information. When there is no further need for contracting appraisal services or the period between contracting is such that there is no need is to maintain information on available appraisers, the file is destroyed.

System manager(s) and address: Director of Lands, Forest Service, USDA, Washington, D.C., or his designee at the Regional Forester's offices, offices of Forest Supervisors, Ranger Districts, or Project Headquarters.

Notification procedure: Any individual may request information regarding this system of records or information as to whether the system contains a record pertaining to him from the Director of Lands, Forest Service, USDA, Washington, D.C. Telephone 703-235-8212. The individual will be advised of the location of any records and the local designated individual responsible for those records. A request for information pertaining to an individual should contain: name, address, and any available particulars involved in the specific case.

Record access procedures: Use same procedure described under notification procedures.

Contesting record procedures: Use same procedure described under notification procedures.

Record source categories: Information in this system is provided voluntarily by the independent appraisers, and may include information extracted from previous contracts.

USDA/OGC—1

System name: Cases against the Department under the Federal Meat Inspection Act, the Poultry Products Inspection Act, the voluntary inspection, meat and poultry grading, and certification provisions of the Agricultural Marketing Act of 1946, and related laws, USDA/OGC.

System location: Office of the General Counsel, Regulatory Division, USDA, Washington, D.C.

Categories of individuals covered by the system: Individuals regulated or not regulated by the subject Acts who bring suit against the Government or a Government official pursuant to, or as a consequence of the Department's administration of, the subject Acts.

Categories of records in the system: The system consists of investigatory material which may include intradepartmental recommendations, and interdepartmental recommendations pertaining to the subject Acts.

Authority for maintenance of the system: 21 U.S.C. 601 et seq., 21 U.S.C. 451 et seq., 7 U.S.C. 1621 et seq., and 7 U.S.C. 450.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (2) Presentation or disclosure to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system as evidence in a proceeding, or which is sought in the course of discovery including disclosure to opposing counsel in the course of settlement negotiations; (3) Presentation, as needed, in the course of presenting evidence to the appropriate Government officials charged with the responsibility of defending the Government before a court, magistrate or administration tribunal; (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of the individual.

Safeguards: Records are kept in a locked office or file cabinet.

Retention and disposal: Records are maintained until file is closed or no longer needed or as otherwise provided in agency directives

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and disposed of or sent to appropriate records centers in accordance with such directives.

System manager(s) and address: Director, Regulatory Division, OGC, USDA, Washington, D.C. 20250.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the Director, Regulatory Division, OGC, USDA, Washington, D.C., telephone 202-447-5550. A request for information pertaining to an individual should contain: Name, address, and particulars involved (i.e., the name of action filed, Act filed under, etc.)

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him, by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Same as Record Access Procedures.

Record source categories: Information in this system comes primarily from witnesses, agency employees, and investigative personnel.

USDA/OGC—2

System name: Cases against the Department under the Humane Methods of Livestock Slaughter law (i.e., the Act of August 27, 1958), USDA/OGC.

System location: Office of the General Counsel, Regulatory Division, USDA, Washington, D.C.

Categories of individuals covered by the system: Individuals regulated or not regulated by the subject Act who bring suit against the Government or a Government official pursuant to, or as a consequence of the Department's administration, the subject Act.

Categories of records in the system: The system consits of investigatory material which may include intradepartmental recommendations, and interdepartmental recommendations pertaining to the subject Act

Authority for maintenance of the system: 7 U.S.C. 1901-1906.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (2) Presentation or disclosure to a court magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system as evidence in a proceeding, or which is sought in the course of discovery including disclosure to opposing counsel in the course of settlement negotiations: (3) Presentation, as needed, in the course of presenting evidence to the appropriate Government officials charged with the responsibility of defending the Government before a court, magistrate or administrative tribunal; (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of the individual.

Safeguards: Records are kept in a locked office or file cabinet.

Retention and disposal: Records are maintained until file is closed or no longer needed or as otherwise provided in agency directives and disposed of or sent to appropriate records centers in accordance with such directives.

System manager(s) and address: Director, Regulatory Division, OGC, USDA, Washington, D.C. 20250.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the Director, Regulatory Division, OGC, USDA, Washington, D.C., telephone 202-447-5550. A request for information pertaining to an individual should contain: Name, address, and particulars involved (i.e., the name of action filed, Act filed under, etc.)

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him, by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Same as Record Access Procedures.

Record source categories: Information in this system comes primarily from witnesses, agency employees, and investigative personnel.

USDA/OGC—3

System name: Cases against the Department under the 28 Hour Law, as amended, USDA/OGC.

System location: Office of the General Counsel, Regulatory Division, USDA, Washington, D.C.

Categories of individuals covered by the system: Individuals regulated or not regulated by the subject Act who bring suit against the Government or a Governmental official pursuant to, or as a consequence of the Department's administration of, the subject Act.

Categories of records in the system: The system consists of investigatory material which may include intradepartmental recommendations, and interdepartmental recommendations pertaining to the subject Act.

Authority for maintenance of the system: 45 U.S.C. 71-74.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulafory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (2) Presentation or disclosure to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system as evidence in a proceeding, or which is sought in the course of discovery including disclosure to opposing counsel in the course of settlement negotiations; (3) Presentation, as needed, in the course of presenting evidence to the appropriate Government officials charged with the responsibility of defending the Government before a court, magistrate or administrative tribunal; (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of the individual.

Safeguards: Records are kept in a locked office or file cabinet.

Retention and disposal: Records are maintained until file is closed or no longer needed or as otherwise provided in agency directives and disposed of or sent to appropriate records centers in accordance with such directives.

System manager(s) and address: Director, Regulatory Division, OGC, USDA, Washington, D.C. 20250.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the Director, Regulatory Division, OGC, USDA, Washington, D.C., telephone 202-447-5550. A request for information pertaining to an individual should contain: Name, address, and particulars involved (i.e., the name of action filed, Act filed under, etc.)

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him, by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Same as Record Access Procedures.

Record source categories: Information in this system comes primarily from witnesses, agency employees, and investigative personnel.

USDA/OGC—4

System name: Cases against the Department under the various Animal Quarantine and related laws, USDA/OGC,

System location: Office of the General Counsel, Regulatory Division, USDA, Washington, D.C.

Categories of individuals covered by the system: Individuals regulated or not regulated by the subject Act who bring suit against the Government or a Governmental official pursuant to, or as a consequence of the Department's administration of, the subject Act.

Categories of records in the system: The system consists of investigatory material which may include intradepartmental recommendations, and interdepartmental recommendations pertaining to the subject Acts.

Authority for maintenance of the system: 21 U.S.C. 101-135b, 19 U.S.C. 1306, 1202, 46 U.S.C. 466a-466b, and 7 U.S.C. 450.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (2) Presentation or disclosure to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system as evidence in a proceeding, or which is sought in the course of discovery including disclosure to opposing counsel in the course of settlement negotiations; (3) Presentation, as needed, in the course of presenting evidence to the appropriate Government officials charged with the responsibility of defending the Government before a court, magistrate or administrative tribunal; (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of the individual.

Safeguards: Records are kept in a locked office or file cabinet.

Retention and disposal: Records are maintained until file is closed or no longer needed or as otherwise provided in agency directives and disposed of or sent to appropriate records centers in accordance with such directives.

System manager(s) and address: Director, Regulatory Division, OGC, USDA, Washington, D.C. 20250.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the Director, Regulatory Division, OGC, USDA, Washington, D.C., telephone 202-447-5550. A request for information pertaining to an individual should contain: Name, address, and particulars involved (i.e., the name of action filed, Act filed under, etc.)

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him, by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Same as Record Access Procedures.

Record source categories: Information in this system comes primarily from witnesses, agency employees, and investigative personnel.

USDA/OGC—5

System name: Cases against the Department under the various Plant Protection and Quarantine and related laws, USDA/OGC.

System location: Office of the General Counsel, Regulatory Division, USDA, Washington, D.C.

Categories of individuals covered by the system: Individuals regulated or not regulated by the subject Acts who bring suit against the Government or a Governmental official pursuant to, or as a consequence of the Department's administration of, the subject Acts.

Categories of records in the system: The system consists of investigatory material which may include intradepartmental recommendations, and interdepartmental recommendations pertaining to the subject Acts.

Authority for maintenance of the system: 7 U.S.C. 145, 147a, 148-148e, 149, 150-150g, 150aa-150jj, 151-165, 167, 166, 281-282, 450, 1651-1656, 2801-2813.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (2) Presentation or disclosure to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system as evidence in a proceeding, or which is sought in the course of discovery including disclosure to opposing counsel in the course of settlement negotiations; (3) Presentation, as needed, in the course of presenting evidence to the appropriate Government officials charged with the responsibility of defending the Government before a court, magistrate or administrative tribunal; (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of the individual.

Safeguards: Records are kept in a locked office or file cabinet.

Retention and disposal: Records are maintained until file is closed or no longer needed or as otherwise provided in agency directives and disposed of or sent to appropriate records centers in accordance with such directives.

System manager(s) and address: Director, Regulatory Division, OGC, USDA, Washington, D.C. 20250.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the Director, Regulatory Division, OGC, USDA, Washington, D.C., telephone 202-447-5550. A request for information pertaining to an individual should contain: Name, address, and particulars involved (i.e., the name of action filed, Act filed under, etc.)

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him, by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Same as Record Access Procedures.

Record source categories: Information in this system comes primarily from witnesses, agency employees, and investigative personnel.

USDA/OGC—6

System name: Cases by the Department under the Federal Meat Inspection Act, the Poultry Products Inspection Act, and the voluntary inspection, meat and poultry grading, and certification provisions of the Agricultural Marketing Act of 1946, USDA/OGC.

System location: Office of the General Counsel, Regulatory Division, USDA, Washington, D.C.

Categories of individuals covered by the system: Individuals who are regulated by the subject Acts and against whom the Department recommends that an enforcement action be brought by the Government.

Categories of records in the system: The system consists of investigatory material which may include intradepartmental recommendations, and interdepartmental recommendations pertaining to an alleged violation of the subject Acts.

Authority for maintenance of the system: 21 U.S.C. 601 et seq., 21 U.S.C. 451 et seq., and 7 U.S.C. 1621 et seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (2) Presentation or disclosure to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system as evidence in a proceeding, or which is sought in the course of discovery including disclosure to opposing counsel in the course of settlement negotiations; (3) Presentation, as needed, in the course of presenting evidence to the appropriate Government officials charged with the reponsibility of defending the Government before a court, magistrate or administrative tribunal; (4) Disclosure

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may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of the individual.

Safeguards: Records are kept in a locked office or file cabinet.

Retention and disposal: Records are maintained until file is closed or no longer needed or as otherwise provided in agency directives and disposed of or sent to appropriate records centers in accordance with such directives.

System manager(s) and address: Director, Regulatory Division, OGC, USDA, Washington, D.C. 20250.

Systems exempted from certain provisions of the act: This system has been exempted pursuant to 5 U.S.C. 552a (k)(2) from the requirements of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) because it consists of investigatory material compiled for law enforcement purposes. See 7 CFR 1.123. Individual access to these files could impair investigations and alert subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action or escape prosecution. Disclosure of investigative techniques and procedures and the existence and identity of confidential sources of information would hamper law enforcement activity.

USDA/OGC—7

System name: Cases by the Department under the Humane Methods of Livestock Slaughter law (i.e., the Act of August 27, 1958), USDA/OGC.

System location: Office of the General Counsel, Regulatory Division, USDA, Washington, D.C.

Categories of individuals covered by the system: Individuals who are regulated by the subject Act and against whom the Department recommends that an enforcement action be brought by the Government.

Categories of records in the system: The system consists of investigatory material which may include intradepartmental recommendations, and interdepartmental recommendations pertaining to an alleged violation of the subject Act.

Authority for maintenance of the system: 7 U.S.C. 1901-1906.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation, or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (2) Presentation or disclosure to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system as evidence in a proceeding, or which is sought in the course of discovery including disclosure to opposing counsel in the course of settlement negotiations; (3) Presentation, as needed, in the course of presenting evidence to the appropriate Government officials charged with the responsibility of defending the Government before a court, magistrate or administrative tribunal; (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of the individual.

Safeguards: Records are kept in a locked office or file cabinet.

Retention and disposal: Records are maintained until file is closed or no longer needed or as otherwise provided in agency directives and disposed of or sent to appropriate records centers in accordance with such directives.

System manager(s) and address: Director, Regulatory Division, OGC, USDA, Washington, D.C. 20250.

Systems exempted from certain provisions of the act: This system has been exempted pursuant to 5 U.S.C. 552a (k)(2) from the requirements of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f) because it consists of investigatory material compiled for law enforcement purposes. See 7 CFR 1.123. Individual access to these files could impair investigations and alert subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action or escape prosecution. Disclosure of investigative techniques and procedures and the existence and identity of confidential sources of information would hamper law enforcement activity.

USDA/OGC—8

System name: Cases by the Department under the 28 Hour Law, as amended, USDA/OGC.

System location: Office of the General Counsel, Regulatory Division, USDA, Washington, D.C.

Categories of individuals covered by the system: Individuals who are regulated by the subject Act and against whom the Department recommends that an enforcement action be brought by the Government.

Categories of records in the system: The system consists of investigatory material which may include intradepartmental recommendations, and interdepartmental recommendations pertaining to an alleged violation of the subject Act.

Authority for maintenance of the system: 45 U.S.C. 71-74.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (2) Presentation or disclosure to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system as evidence in a proceeding, or which is sought in the course of discovery inclusing disclosure to opposing counsel in the course of settlement negotiations; (3) Presentation, as needed, in the course of presenting evidence to the appropriate Government officials charged with the responsibility of defending the Government before a court, magistrate or administrative tribunal; (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of the individual.

Safeguards: Records are kept in a locked office of file cabinet.

Retention and disposal: Records are maintained until file is closed or no longer needed or as otherwise provided in agency directives and disposed of or sent to appropriate records centers in accordance with such directives.

System manager(s) and address: Director Regulatory Division, OGC, USDA, Washington, D.C. 20250.

Systems exempted from certain provisions of the act: This system has been exempted pursuant to 5 U.S.C. 552a (k)(2) from the requirements of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f) because it consists of investigatory material compiled for law enforcement purposes. See 7 CFR 1.123. Individual access to these files could impair investigations and alert subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action or escape prosecution. Disclosure of investigative techniques and procedures and the existence and identity of confidential sources of information would hamper law enforcement activity.

USDA/OGC—9

System name: Cases by the Department under the various Animal Quarantine and related laws, USDA/OGC.

System location: Office of the General Counsel, Regulatory Division, USDA, Washington, D.C.

Categories of individuals covered by the system: Individuals who are regulated by the subject Acts and against whom the Department

recommends that an enforcement action be brought by the Government.

Categories of records in the system: The system consists of investigatory material which may include intradepartmental recommendations, and interdepartmental recommendations pertaining to an alleged violation of the subject Acts.

Authority for maintenance of the system: 21 U.S.C. 101-135b, 19 U.S.C. 1306, 1202, and 46 U.S.C. 466a-466b.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (2) Presentation or disclosure to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system as evidence in a proceeding, or which is sought in the course of discovery including disclosure to opposing counsel in the course of settlement negotiations; (3) Presentation, as needed, in the course of presenting evidence to the appropriate Government officials charged with the responsibility of defending the Government before a court, magistrate or administrative tribunal; (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of the individual.

Safeguards: Records are kept in a locked office or file cabinet.

Retention and disposal: Records are maintained until file is closed or no longer needed or as otherwise provided in agency directives and disposed of or sent to appropriate records centers in accordance with such directives.

System manager(s) and address: Director of Regulatory Division, OGC, USDA, Washington, D.C. 20250.

Systems exempted from certain provisions of the act: This system has been exempted pursuant to 5 U.S.C. 552a (k)(2) from the requirements of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f) because it consists of investigatory material compiled for law enforcement purposes. See 7 CFR 1.123. Individual access to these files could impair investigations and alert subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures totection of illegal action or escape prosecution. Disclosure of investigative techniques and procedures and the existence and identity of confidential sources of information would hamper law enforcement activity.

USDA/OGC—10

System name: Cases by the Department under the various Plant Protection and Quarantine and related laws, USDA/OGC.

System location: Office of the General Counsel, Regulatory Division, USDA, Washington, D.C.

Categories of individuals covered by the system: Individuals who are regulated by the subject Acts and against whom the Department recommends that an enforcement action be brought by the Government.

Categories of records in the system: The system consists of investigatory material which may include intradepartmental recommendations, and interdepartmental recommendations pertaining to an alleged violation of the subject Acts.

Authority for maintenance of the system: 7 U.S.C. 145, 147a, 148-148e, 149, 150-150g, 150aa-150jj, 151-165, 167, 166, 281-282, 1651-1656, 2801-2813.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (2) Presentation or disclosure to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, or any record within the system as evidence in a proceeding, or which is sought in the course of discovery including disclosure to opposing counsel in the course of settlement negotiations; (3) Presentation, as needed, in the course of presenting evidence to the appropriate Government officials charged with the responsibility of defending the Government before a court, magistrate or administrative tribunal; (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of individual.

Safeguards: Records are kept in a locked office or file cabinet.

Retention and disposal: Records are maintained until file is closed or no longer needed or as otherwise provided in agency directives and disposed of or sent to appropriate records centers in accordance with such directives.

System manager(s) and address: Director of Regulatory Division, OGC, USDA, Washington, D.C. 20250.

Systems exempted from certain provisions of the act: This system has been exempted pursuant to 5 U.S.C. 552a (k)(2) from the requirements of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f) because it consists of investigatory material compiled for law enforcement purposes. See 7 CFR 1.123. Individual access to these files could impair investigations and alert subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action or escape prosecution. Disclosure of investigative techniques and procedures and the existence and identity of confidential sources of information would hamper law enforcement activity.

USDA/OGC—11

System name: Community Development Division Litigation, USDA/OGC

System location: Office of the General Counsel, USDA 14th and Independence Ave., S.W., Washington, D.C. 20250, and offices of Regional Attorneys and Attorneys-in-Charge, OGC, USDA, at the following locations: Albuquerque, New Mexico; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; Harrisburg, Pennsylvania; Little Rock, Arkansas; Milwaukee, Wisconsin; Missoula, Montana; Ogden, Utah; Portland, Oregon; San Francisco, California; Santurce, Puerto Rico; Shawnee Mission, Kansas; Stillwater, Oklahoma; Temple, Texas. Addresses of each field office are listed in the telephone directories of the respective cities listed above under the heading "United States Government, Department of Agriculture, Office of the General Counsel."

Categories of individuals covered by the system: Past and present parties to litigation involving FmHA program participants and parties against whom litigation was proposed but not commenced.

Categories of records in the system: The system consists of records on individual litigation cases, sometimes including FmHA loan dockets, copies of documents filed with State and Federal agencies, court records, legal opinions, correspondence, investigation reports, contracts, and related documents.

Authority for maintenance of the system: 5 U.S.C. 201, 42 U.S.C. 1471-1490; 4401-19; 4453-55 and 7 U.S.C. 1021-29.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (2) Presentation or disclosure to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, or any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery. (3) Referral to Department of Justice for suits against the United States or its officers or instrumentalities concerning USDA activities. (4) Disclosure may be made to a congressional

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office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders in file cabinets.

Retrievability: Records are indexed by name; sometimes cross-indexed.

Safeguards: Files stored in Attorney's office.

Retention and disposal: Files sent to Federal Records Center when cases are closed, some retained indefinitely for research purposes.

System manager(s) and address: Director, Community Development Division, OGC, USDA, Washington, D.C. 20250, or the appropriate Regional Attorney or Attorney-in-Charge at the address specified above.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the System Manager, or the appropriate Regional Attorney or Attorney-in-Charge. A request should indicate the name, address and particulars involved.

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the System Manager or appropriate Regional Attorney or Attorney-in-Charge.

Contesting record procedures: Same as Record Access Procedures.

Record source categories: Records in this system come from Federal and State courts, witnesses, agency employees, attorney, title companies, Farmers Home Administration loan, grant, and applicant dockets, and the Department of Justice.

Systems exempted from certain provisions of the act: Those records in this system which consist of investigatory material compiled for law enforcement purposes have been exempted pursuant to 5 U.S.C. 552a(k)(2) from the requirements of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G). (H) and (I), and (f). See 7 CFR 1.123. Individual access to these files could impair investigations and alert subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action or escape prosecution. Disclosure of investigative techniques and procedures and the existence and identity of confidential sources of information would hamper law enforcement activity.

USDA/OGC—12

System name: Farmers Home Administration (FmHA) General Case Files, USDA/OGC.

System location: Offices of Regional Attorneys and Attorney-in-Charge, OGC, USDA, at the following locations: Albuquerque, New Mexico; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; Harrisburg, Pennsylvania; Little Rock, Arkansas; Milwaukee, Wisconsin; Missoula, Montana; Ogden, Utah; Portland, Oregon; San Francisco, California; Santurce, Puerto Rico; Shawnee Mission, Kansas; Stillwater, Oklahoma; Temple, Texas.

Addresses of each field office are listed in the telephone directories of the respective cities listed above under the heading "United States Government Department of Agriculture, Office of the General Counsel."

Categories of individuals covered by the system: Primarily applicants for FmHA financial assistance and FmHA borrowers and grantees; in some regional offices also parties to litigation, purchasers of FmHA security property, vendors to FmHA borrowers, contractors and builders of FmHA financed projects, packagers of FmHA loan dockets, real estate salesmen and brokers dealing with FmHA property applicants or having a security interest in property owned or financed or to be financed by FmHA or to whom FmHA notes are assigned, present and former owners and holders of an interest in real property serving as security for FmHA loans, third party converters, and individuals who file claims against FmHA.

Categories of records in the system: Records on individual applicant, borrower or grantee cases, sometimes including FmHA loan dockets, copies of promissory notes and security instruments, title evidence, legal opinions, correspondence, investigation reports, contracts, pleadings, legal documents covering foreclosures and loan or grant making or servicing, title opinions, contracts, closing instructions, notices, and related documents.

Authority for maintenance of the system: 5 U.S.C. 301, 42 U.S.C 1471-1490, 4401-19; 4453-55 and 7 U.S.C 1921-92.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral of certain records to trustees for reconveyance or foreclosure of deeds of trust, or correction of errors, to appropriate State and County officials for recording or filing of legal documents, to title companies or Bureau of Indian Affairs for title clearance, to appropriate agencies and individuals for institution of nonjudicial foreclosure and other loan servicing and liquidation actions, and to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto. (2) Referral to a court, magistrate, or administrative tribunal, or to opposing counsel in a proceeding before any of the above, or any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery. (3) Referral to Department of Justice for suits against the United States or its officers or instrumentalities concerning USDA activities. (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the addresses listed above.

Retrievability: Records are usually indexed by the name of the individual on whom the file is maintained. In some instances records are maintained in numerical order corresponding to the FmHA account number. In some instances they are also cross-indexed by the names of individuals mentioned in the files.

Safeguards: Records are kept in locked offices. Secretive materials such as Office of Investigation reports are kept in locked drawers or file cabinets.

Retention and disposal: Records are usually retained for 12 to 18 months after the case is closed. In some Regional Offices certain records are maintained indefinitely, primarily for research value.

System manager(s) and address: Appropriate Regional Attorney or Attorney-in-Charge.

Notification procedure: Any individual may request information regarding this system of records, or information whether the system contains records pertaining to him from the appropriate System Manager. A request should contain the name and address of the individual involved and as much other identifying information as possible.

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request for same to the appropriate System Manager at the above address.

Contesting record procedures: Same as Records Access Procedures.

Record source categories: Information in this system comes primarily from applicants, borrowers, grantees, FmHA or other USDA employees, attorneys, credit reporting agencies, title companies, and State and Federal government agencies.

Systems exempted from certain provisions of the act: Those records in this system which consist of investigatory material compiled for law enforcement purposes have been exempted pursuant to 5 U.S.C. 552a(k)(2) from the requirements of 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H) and (I), and (f). See 7 CFR 1.123. Individual access to these files could impair investigations and alert subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action or escape prosecution. Disclosure of investigative techniques and procedures and the existence and identity of confidential sources of information would hamper law enforcement activity.

USDA/OGC—13

System name: Claims by and Against USDA under the Food Assistance Legislation, USDA/OGC.

System location: Office of the General Counsel, Food and Nutrition Division, USDA, Washington, D.C. and Offices of Regional Attorneys and Attorneys-in-Charge, OGC, USDA, at the following locations: Albuquerque, New Mexico; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; Harrisburg, Pennsylvania; Little Rock, Arkansas; Milwaukee, Wisconsin; Missoula, Montana; Ogden, Utah; Portland, Oregon; Raleigh, North Carolina; San Francisco, California; Santurce, Puerto Rico; Stillwater, Oklahoma; Temple, Texas.

Addresses of each field office are listed in the telephone directories of the respective cities listed above under the heading "United States

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Government, Department of Agriculture, Office of the General Counsel".

Categories of individuals covered by the system: Individuals who seek to participate in the Food Stamp Act of 1964; National School Lunch Act, or Child Nutrition Act of 1966, and individuals reported to be in violation of one or more of these acts.

Categories of records in the system: The system consists of files on all individual cases, including investigation reports, pleadings, transcripts, legal correspondence, statements of witnesses, and related documents.

Authority for maintenance of the system: 7 U.S.C. 2011-2026; 42 U.S.C. 1751-1763; 42 U.S.C. 1771-1786.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to a court, magistrate, or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery. (2) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto. (3) Referral to the Department of Justice for defense of suits brought against the United States or its officers, and for institution of suit for recovery of claims by USDA. (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable locations listed above.

Retrievability: Records are indexed by the name of the individual involved.

Safeguards: Records are kept in a locked office file cabinet.

Retention and disposal: Records are maintained for a length of time left to the discretion of the Director of the Food and Nutrition Division or Regional Attorney or Attorney-in-Charge, after legal action has been concluded.

System manager(s) and address: Director, Food and Nutrition Division, OGC, USDA, Washington, D.C. 20250. Each Regional Attorney or Attorney-in-Charge at the locations specified above.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the Director, Food and Nutrition Division, OGC, USDA, Washington, D.C., telephone 202-447-4631, or the appropriate Regional Attorney or Attorney-in-Charge at the locations specified above. A request for information pertaining to an individual should contain his name, address, and the particulars involved (i.e. the date of any action complained of, date a claim was filed, correspondence, etc.).

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him, by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Any individual may obtain information concerning the process for contesting a record in the system that pertains to him by following the procedures referred to directly above.

Record source categories: Information in this system comes primarily from claimants, witnesses, agency employees, and investigative personnel.

Systems exempted from certain provisions of the act: The portions of the system consisting of investigatory material that has been compiled for law enforcement purposes have been exempted pursuant to 5 U.S.C. 552a(k)(2), from the requirements of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f). Individual access to these files could impair investigations and alert the subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action. Disclosure of investigative technique and procedures, and of the identity of confidential sources of information, would hamper law enforcement activity.

USDA/OGC—14

System name: Perishable Agricultural Commodities Act, USDA/OGC—disciplinary proceedings to deny issuance of a license to an applicant thereunder or to suspend or revoke a license already issued, or to publish the facts and circumstances of violations of the Act.

System location: Office of the General Counsel, Food and Nutrition Division, USDA, Washington, D.C., and offices of Regional Attorneys and Attorneys-in-Charge, OGC, USDA, at the following locations: Albuquerque, New Mexico; Missoula, Montana; Atlanta, Georgia; Ogden, Utah; Chicago, Illinois; Portland, Oregon; Denver, Colorado; Harrisburg, Pennsylvania; San Francisco, California; Santurce, Puerto Rico; Little Rock, Arkansas; Shawnee Mission, Kansas; Milwaukee, Wisconsin; Stillwater, Oklahoma; Temple, Texas.

Addresses of each field office are listed in the telephone directories of the respective cities listed above under the heading "United States Government, Department of Agriculture, Office of the General Counsel."

Categories of individuals covered by the system: Individuals who apply for or who hold licenses to do business in the perishable agricultural commodities industry in their individual capacities; partners of partnerships which apply for or which hold licenses to do business in the perishable agricultural commodities industry; officers, directors and holders of 10 percent or more of the stock of corporations which apply for or hold licenses to do business in the perishable agricultural commodities industry under the Perishable Agricultural Commodities Act of 1930, as amended, are included in this system of records.

Categories of records in the system: The system consists of reports of investigation, statements of witnesses, agency reports.

Authority for maintenance of the system: 7 U.S.C. 499a et seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Use by the Office of the General counsel for (1) administrative proceedings pursuant to the Administrative Procedure Act to deny the issuance of a license to an applicant therefor to do business in the perishable agricultural commodities industry; (2) administrative proceedings pursuant to the Administrative Procedure Act to suspend or revoke an already existent license, or alternatively to have the facts and circumstances of violations published for violations thereof by the holder of such license; (3) disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the addresses listed above.

Retrievability: Records are indexed by name of individual license applicant or holder.

Safeguards: Records are kept in a locked office or file cabinet.

Retention and disposal: Records are maintained indefinitely.

System manager(s) and address: Director, Food and Nutrition Division, OGC, USDA, Washington, D.C. 20250, or the appropriate Regional Attorney or Attorney-in-Charge at the addresses specified above.

Systems exempted from certain provisions of the act: This system has been exempted pursuant to 5 U.S.C. 552a(k)(2) from the requirements of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f) because it consists of investigatory material compiled for law enforcement purposes. See 7 CFR 1.123. Individual access to these files could impair investigations and alert subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action or to escape administrative procedures to deny to them the issuance of a license or to suspend or revoke such license, or to have published the facts and circumstance of the violations. Disclosure of investigative techniques and procedures and the existence and identity of confidential sources of information would hamper law enforcement activity.

USDA/OGC—15

System name: Agricultural Stabilization and Conservation Service (ASCS), Foreign Agricultural Service (FAS), Office of the General Sales Manager (OGSM) and Commodity Credit Corporation (CCC) cases, USDA/OGC.

System location: Office of the General Counsel, Washington, D.C., and/or Offices of Regional Attorneys and Attorneys-in-Charge, OGC, USDA, at the following locations: Albuquerque, New Mexico;

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Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; Harrisburg, Pennsylvania; Little Rock, Arkansas; Missoula, Montana; Ogden, Utah; Portland, Oregon; San Francisco, California: Santurce, Puerto Rico; Shawnee Mission, Kansas; Milwaukee, Wisconsin; Stillwater, Oklahoma; Temple, Texas.

Addresses of each field office are listed in the telephone directories of the respective cities listed above under the heading "United States Government, Department of Agriculture, Office of the General Counsel."

Categories of individuals covered by the system: Individuals who apply for and/or receive marketing quotas or acreage allotments from ASCS, or loans, payments, credits or indemnities from ASCS, FAS, OGSM or CCC; or who apply for and/or enter into contracts or agreements with ASCS, FAS, OGSM or CCC or participate in programs financed or administered by ASCS, FAS, OGSM or CCC, or who violate or may have violated ASCS, FAS, OGSM or CCC regulations, federal or state laws, or who may otherwise be involved in litigation with ASCS, FAS, OGSM or CCC.

Categories of records in the system: Contains files on individual cases, including but not limited to the original or copies of loan applications, program forms, security agreements, mortgages, notes, program participation agreements, repayment records, financial status reports, statements of account, collector's contact report, agency recommendations for making, servicing or liquidating loans, collection of civil penalties, readjustment of allotments and quotas, contracts, closing instructions, legal opinions, title evidence, investigation reports, agency recommendation for the institution of respondence and material, intradepartmental memos and interdepartmental letters, pleadings, transcripts of hearings, and other legal documents.

Authority for maintenance of the system: 7 U.S.C. 135b note, 442-449, 612c-3, 624, 1110-1162, 1282-1292, 1301-1393, 1421-1449, 1692, 1701-1710, 1721-1725, 1731-1736e, 1707a, 1781-1787, 1851-1857; 15 U.S.C. 713a, 714-714p; 16 U.S.C. 590g-590q, 1501-1510; 18 U.S.C. 286-287, 371, 1001; 19 U.S.C. 1202 Note, 31 U.S.C. 231-235; 7 C.F.R. 2.31, Part 6, Part 16, Part 17, Part 20, Part 700-896, Chap. XIV, 22 C.F.R. Part 211.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the U.S. Department of Justice for defense of suits brought against the United States, its agencies or its officers, and for institution of suits for recovery of claims by USDA or CCC; (2) referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (3) referral to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery. (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable addresses listed above.

Retrievability: Records are indexed by name of individual on whom the file is primarily maintained. In some instances, they are also cross indexed by the names of other individuals mentioned in the files.

Safeguards: Records are kept in a locked office, locked file cabinet or locked drawers.

Retention and disposal: Records are maintained until case is closed or no longer needed or as otherwise provided in agency directives and disposed of or sent to appropriate records centers in accordance with such directives.

System manager(s) and address: Director, Foreign Agriculture and Commodity Stabilization Division, OGC, USDA, Washington, D.C., 20250, or the appropriate Regional Attorney or Attorney-in-Charge at the address specified above.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the Director, Foreign Agriculture and Commodity Stabilization Division, OGC, USDA, Washington, D.C., 20250, telephone 202-447-2562, or the appropriate Regional Attorney or Attorney-in-Charge at the address listed above. If the specific location of the record is not known, the individual should address his request to the Director, Foreign Agriculture and Commodity Stabilization Division, OGC, USDA, who, if necessary, will refer it to the appropriate field office. A request for information pertaining to an individual should contain his name, address, and particulars involved.

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request for same to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Same as record access procedures.

Record source categories: From individuals categorized above, referring agency, employees, farmers, warehousemen, borrowers, loan applicants, title companies, title and lien searches, investigative personnel, attorneys, and from others.

Systems exempted from certain provisions of the act: The portion of this system which consist of investigatory material compiled for law enforcement purposes, has been exempted pursuant to 5 U.S.C. 552a(k)(2) from the requirements of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I) and (f). See 7 CFR 1.123. Individual access to these files could (1) impair investigations and alert subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action or escape prosecution; and (2) disclose investigative techniques and procedures and the existence and identity of confidential sources.

USDA/OGC—16

System name: Federal Crop Insurance Corporation (FCIC) Cases, USDA/OGC.

System location: Office of the General Counsel, Washington, D.C. and/or Offices of Regional Attorneys and Attorneys-in-Charge, OGC, USDA, at the following locations: Albuquerque, New Mexico; Atlanta, Georgia; Portland, Oregon; Chicago, Illinois; San Francisco, California; Denver, Colorado; Shawnee Mission, Kansas; Harrisburg, Pennsylvania; Stillwater, Oklahoma; Little Rock, Arkansas; Temple, Texas.

Addresses of each field office are listed in the telephone directories of the respective cities listed above under the heading "United States Government, Department of Agriculture, Office of the General Counsel."

Categories of individuals covered by the system: Individuals who apply for and/or have insurance contracts with the FCIC; who have dilinquent premiums or are otherwise indebted to FCIC; who have indemnity claims against FCIC; who are suspected of fraudulent dealings with FCIC; who violate or may have violated FCIC regulations, federal or state laws; or who may otherwise be involved in litigation with FCIC.

Categories of records in the system: Contains files on individual cases, including but not limited to the originals or copies of insurance contracts (application, policy and endorsements), reports of FCIC personnel with respect to the application, claims for indemnities or other matters pertaining to the contract, program forms, acreage reports, production records, statements of account, financial report, collector's contact report, agency recommendation for services, agency recommendation for the institution of criminal and civil action, investigation reports, correspondence, legal opinions, various correspondence and material, intra- and inter-departmental memos and letters, transcripts of hearings, pleadings and other legal documents.

Authority for maintenance of the system: 7 U.S.C. 1501-1520; 18 U.S.C. 657-658, 1001, 1006, 1014, 1903; 31 U.S.C. 231; 7 CFR 2.31, 401-413.25

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the U.S. Department of Justice for defense of suits brought against the United States, its agencies, or its officers, and for institution of suits for recovery of claims by USDA; (2) referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (3) referral to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery. (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of individual on whom the file is primarily maintained. In some instances, they are also cross indexed by the names of other individuals mentioned in the files.

Safeguards: Records are kept in a locked office, locked cabinets or locked drawers.

Retention and disposal: Records are maintained until case is closed or no longer needed or as otherwise provided in agency directives and disposed of or sent to appropriate records centers in accordance with such directives.

System manager(s) and address: Director, Foreign Agricultural and Commodity Stabilization Division, OGC, USDA, Washington, D.C. 20250, or the appropriate regional Attorney or Attorney-in-Charge at the address specified above.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the Director, Foreign Agriculture and Commodity Stabilization Division, OGC, USDA, Washington, D.C., telephone 202-447-2562, or the appropriate Regional Attorney or Attorney-in-Charge at the address listed above. If the specified location of the record is not known, the individual should address his request to the Director, Foreign Agricultural and Commodity Stabilization Division, OGC, USDA, who, if necessary, will refer it to the appropriate field office. A request for information pertaining to an individual should contain his name, address, and particulars involved.

Record access procedures: Any individual may obtain information as to the procedure for gaining access to a record in the system which pertains to him by submitting a written request for same to the appropriate official referred in the preceding paragraph.

Contesting record procedures: Same as for record access procedures.

Record source categories: From individuals categorized above, referring agency employees, farmers, investigative personnel, attorneys and from others.

Systems exempted from certain provisions of the act: The portion of this system which consist of investigatory material compiled for law enforcement purpose has been exempted pursuant to 5 U.S.C. 552a(k)(2) from the requirements of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I) and (f). See 7 CFR 1.123. Individual access to these files could (1) impair investigations and alert subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action or escape prosecution; and (2) disclose investigative techniques and procedures and the existence and identity of confidential sources.

USDA/OGC—17

System name: Administrative proceedings brought by individuals pursuant to the Plant Variety Protection Act or the Egg Products Inspection Act, as amended, USDA/OGC.

System location: Office of the General Counsel, Marketing Division, USDA, Washington, D.C.

Categories of individuals covered by the system: Individuals regulated by the subject Act who file a petition with the Secretary pursuant to the authority of the subject Act.

Categories of records in the system: The system consists of investigatory material which may include intradepartmental recommendations, and interdepartmental recommendations pertaining to an alleged violation of the subject Act.

Authority for maintenance of the system: 7 U.S.C. 2321 et seq. or 21 U.S.C. 1044 et seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (2) Presentation or disclosure to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system as evidence in a proceeding, or which is sought in the course of discovery including disclosure to opposing counsel in the course of settlement negotiations; (3) Presentation, as needed, in the course of presenting evidence, to the appropriate Government officials charged with the responsibility of defending the Government before a court, magistrate or administrative tribunal; (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of the individual.

Safeguards: Records are kept in a locked office or file cabinet.

Retention and disposal: Records are maintained until file is closed or no longer needed or as otherwise provided in agency directives and disposed of or sent to appropriate records centers in accordance with such directives.

System manager(s) and address: Director, Marketing Division, OGC, USDA, Washington, D.C. 20250.

Notification procedure: Any individual may request information regarding this system of records or information as to whether the system contains records pertaining to him from the Director, Marketing Division, OGC, USDA, Washington, D.C., telephone 202-447-5935.

Record access procedures: Any individual may obtain information as to the procedures for gaining access to and contesting a record in the system which pertains to him, by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Same as Record Access Procedures.

Record source categories: Information in this system comes primarily from witnesses, agency employees, and investigative personnel.

USDA/OGC—18

System name: Administrative proceedings brought by the Department pursuant to the Plant Variety Protection Act, the Federal Seed Act, or the Agricultural Marketing Act of 1946, USDA/OGC.

System location: Office of the General Counsel, Marketing Division, USDA, Washington, D.C.

Categories of individuals covered by the system: Individuals who are regulated by the subject Act and against whom the Department recommends that an enforcement action be brought by the Government.

Categories of records in the system: The system consists of investigatory material which may include intradepartmental recommendations, and interdepartmental recommendations pertaining to an alleged violation of the subject Act.

Authority for maintenance of the system: 7 U.S.C. 2321 et seq., 7 U.S.C. 1561 et seq. or 7 U.S.C. 1621 et seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (2) Presentation or disclosure to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system as evidence in a proceeding, or which is sought in the course of discovery including disclosure to opposing counsel in the course of settlement negotiations; (3) Presentation, as needed, in the course of presenting evidence, to the appropriate Government officials charged with the responsibility of defending the Government before a court, magistrate or administrative tribunal; (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

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Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of the individual.

Safeguards: Records are kept in a locked office or file cabinet.

Retention and disposal: Records are maintained until file is closed or no longer needed or as otherwise provided in agency directives and disposed of or sent to appropriate records centers in accordance with such directives.

System manager(s) and address: Director, Marketing Division, OGC, USDA, Washington, D.C. 20250.

Systems exempted from certain provisions of the act: This system has been exempted pursuant to 5 U.S.C. 552a(k)(2) from the requirements of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) because it consists of investigatory material compiled for law enforcement purposes. See 7 CFR 1.123. Individual access to these files could impair investigations and alert subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action or escape prosecution. Disclosure of investigative techniques and procedures and the existence and identity of confidential sources of information would hamper law enforcement activity.

USDA/OGC—19

System name: Administrative proceedings brought pursuant to the authority of section 8c(15)(a) of the Agricultural Marketing Agreement Act of 1937, as amended, or the Anti-Hog-Cholera Serum and Hog Cholera Virus Act, USDA/OGC.

System location: Office of the General Counsel, Marketing Division, USDA, Washington, D.C.

Categories of individuals covered by the system: Individuals regulated by the subject Act who file a petition with the Secretary of Agriculture pursuant to the authority of the subject Act.

Categories of records in the system: The system consists of investigatory material which may include intradepartmental recommendations, and interdepartmental recommendations.

Authority for maintenance of the system: 7 U.S.C. 601 et seq. or 7 U.S.C. 851 et seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (2) Presentation or disclosure to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system as evidence in a proceeding, or which is sought in the course of discovery including disclosure to opposing counsel in the course of settlement negotiations; (3) Presentation, as needed, in the course of presenting evidence, to the appropriate Government officials charged with the responsibility of defending the Government before a court, magistrate or administrative tribunal; (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of the individual.

Safeguards: Records are kept in a locked office or file cabinet.

Retention and disposal: Records are maintained until file is closed or no longer needed or as otherwise provided in agency directives and disposed of or sent to appropriate records centers in accordance with such directives.

System manager(s) and address: Director, Marketing Division, OGC, USDA, Washington, D.C. 20250.

Notification procedure: Any individual may request information regarding this system of records or information as to whether the system contains records pertaining to him from the Director, Marketing Division, OGC, USDA, Washington, D.C., telephone 202-447-5935. A request for information pertaining to an individual should contain: Name, address, and particulars involved (i.e., the name of action filed, Act filed under, etc.)

Record access procedures: Any individual may obtain information as to the procedures for gaining access to and contesting a record in the system which pertains to him, by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Same as Record Access Procedures.

Record source categories: Information in this system comes primarily from witnesses, agency employees, and investigative personnel.

USDA/OGC—20

System name: Administrative proceedings brought pursuant to the authority of the Cotton Research and Promotion Act, the Potato Research and Promotion Act or the Egg Research and Consumer Information Act, USDA/OGC.

System location: Office of the General Counsel, Marketing Division, USDA, Washington, D.C.

Categories of individuals covered by the system: Individuals regulated by the subject Act who file a petition with the Secretary of Agriculture pursuant to the authority of the subject Act.

Categories of records in the system: The system consists of investigatory material which may include intradepartmental recommendations, and interdepartmental recommendations pertaining to an alleged violation of the subject Act.

Authority for maintenance of the system: 7 U.S.C. 2101 et seq., 7 U.S.C. 2611 et seq. or 7 U.S.C. 2701 et seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (2) Presentation or disclosure to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system as evidence in a proceeding, or which is sought in the course of discovery including disclosure to opposing counsel in the course of settlement negotiations; (3) Presentation, as needed, in the course of presenting evidence, to the appropriate Government officials charged with the responsibility of defending the Government before a court, magistrate or administrative tribunal; (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of the individual.

Safeguards: Records are kept in a locked office or file cabinet.

Retention and disposal: Records are maintained until file is closed or no longer needed or as otherwise provided in agency directives and disposed of or sent to appropriate records centers in accordance with such directives.

System manager(s) and address: Director, Marketing Division, OGC, USDA, Washington, D.C. 20250.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the Director, Marketing Division, OGC, USDA, Washington, D.C., telephone 202-447-5935. A request for information pertaining to an individual should contain: Name, address, and particulars involved (i.e., the name of action filed, Act filed under, etc.)

Record access procedures: Any individual may obtain information as to the procedures for gaining access to and contesting a record in the system which pertains to him, by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Same as Record Access Procedures.

Record source categories: Information in this system comes primarily from witnesses, agency employees, and investigative personnel.

USDA/OGC—21

System name: Administrative proceedings brought pursuant to the Tobacco Inspection Act or the United States Grain Standards Act, USDA/OGC.

System location: Office of the General Counsel, Marketing Division, USDA, Washington, D.C.

Categories of individuals covered by the system: Individuals who file a petition pursuant to the authority of the subject Act.

Categories of records in the system: The system consists of investigatory material which may include intradepartmental recommendations, and interdepartmental recommendations pertaining to an alleged violation of the subject Act.

Authority for maintenance of the system: 7 U.S.C. 511 et seq., 7 U.S.C. 71 et seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (2) Presentation or disclosure to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system as evidence in a proceeding, or which is sought in the course of discovery including disclosure to opposing counsel in the course of settlement negotiations; (3) Presentation, as needed, in the course of presenting evidence to the appropriate Government officials charged with the responsibility of defending the Government before a court, magistrate or administrative tribunal; (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of individual.

Safeguards: Records are kept in a locked office or file cabinet.

Retention and disposal: Records are maintained until file is closed or no longer needed or as otherwise provided in agency directives and disposed of or sent to appropriate records centers in accordance with such directives.

System manager(s) and address: Director of Marketing Division, OGC, USDA, Washington, D.C. 20250.

Systems exempted from certain provisions of the act: This system has been exempted pursuant to 5 U.S.C. 552a (k)(2) from the requirements of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f) because it consists of investigatory material compiled for law enforcement purposes. See 7 CFR 1.123. Individual access to these files could impair investigations and alert subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action or escape prosecution. Disclosure of investigative techniques and procedures and the existence and identity of confidential sources of information would hamper law enforcement activity.

USDA/OGC—23

System name: Cases brought pursuant to the United States Grain Standards Act or the Federal Seed Act in which the Government is defendant, USDA/OGC.

System location: Office of the General Counsel, Marketing Division, USDA, Washington, D.C.

Categories of individuals covered by the system: Individuals who are regulated or not regulated by the subject Act who bring suit against the Government or a Government official pursuant to, or as a consequence of the Department's administration of the subject Act.

Categories of records in the system: The system consists of investigatory material which may include intradepartmental recommendations, and interdepartmental recommendations pertaining to an alleged violation of the subject Act.

Authority for maintenance of the system: 7 U.S.C. 71 et seq. or 7 U.S.C. 1561 et seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (2) Presentation or disclosure to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system as evidence in a proceeding, or which is sought in the course of discovery including disclosure to opposing counsel in the course of settlement negotiations; (3) Presentation, as needed, in the course of presenting evidence to the appropriate Government officials charged with the responsibility of defending the Government before a court, magistrate or administrative tribunal; (4) Disclosure may be made to a congressional office from the record of an individ-

USDA/OGC—22

System name: Cases brought by the Government pursuant to the Cotton Futures provisions of the Internal Revenue Code of 1954, USDA/OGC.

System location: Office of the General Counsel, Marketing Division, USDA, Washington, D.C.

Categories of individuals covered by the system: Individuals who are regulated by the subject Acts and against whom the Department recommends that an enforcement action be brought by the Government.

Categories of records in the system: The system consists of investigatory material which may include intradepartmental recommendations, and interdepartmental recommendations pertaining to an alleged violation of the subject Act.

Authority for maintenance of the system: 26 U.S.C. 4851-54, 61-65, 71-73, 75-77, 6001, 6804, 7233, 7263, 7493, 7701(a)(1), (11), (12).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appro-

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ual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of the individual.

Safeguards: Records are kept in a locked office or file cabinet.

Retention and disposal: Records are maintained until file is closed or no longer needed or as otherwise provided in agency directives and disposed of or sent to appropriate records centers in accordance with such directives.

System manager(s) and address: Director of Marketing Division, OGC, USDA, Washington, D.C. 20250.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the Director, Marketing Division, OGC, USDA, Washington, D.C., telephone 202-447-5935. A request for information pertaining to an individual should contain: Name, address, and particulars involved (i.e., the name of action filed, Act filed under, etc.)

Record access procedures: Any individual may obtain information as to the procedures for gaining access to and contesting a record in the system which pertains to him, by submitting a written request to the appropriate official referred to in the proceeding paragraph.

Contesting record procedures: Same as Record Access Procedures.

Record source categories: Information in this system comes primarily from witnesses, agency employees, and investigative personnel.

USDA/OGC—24

System name: Court cases brought by the Government pursuant to either the Agricultural Marketing Act of 1946 or the Tobacco Inspection Act, USDA/OGC.

System location: Office of the General Counsel, Marketing Division, USDA, Washington, D.C.

Categories of individuals covered by the system: Individuals who are regulated by the subject Act and against whom the Department recommends that an enforcement action be brought by the Government.

Categories of records in the system: The system consists of investigatory material which may include intradepartmental recommendations, and interdepartmental recommendations pertaining to an alleged violation of the subject Act.

Authority for maintenance of the system: 7 U.S.C. 1621 et seq. or 7 U.S.C. 511 et seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising in general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (2) Presentation or disclosure to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system as evidence in a proceeding, or which is sought in the course of discovery including disclosure to opposing counsel in the course of settlement negotiations; (3) Presentation, as needed, in the course of presenting evidence, to the appropriate Government officials charged with the responsibility of defending the Government before a court, magistrate or administrative tribunal. (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of the individual.

Safeguards: Records are kept in a locked office or file cabinet.

Retention and disposal: Records are maintained until file is closed or no longer needed or as otherwise provided in agency directives and disposed of or sent to appropriate records centers in accordance with such directives.

System manager(s) and address: Director, Marketing Division, OGC, USDA, Washington, D.C. 20250.

Systems exempted from certain provisions of the act: This system has been exempted pursuant to 5 U.S.C. 552a(k)(2) from the requirements of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f) because it consists of investigatory material compiled for law enforcement purposes. See 7 CFR 1.123. Individual access to these files could impair investigations and alert subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action or escape prosecution. Disclosure of investigative techniques and procedures and the existence and identity of confidential sources of information would hamper law enforcement activity.

USDA/OGC—25

System name: Court cases brought by the Government pursuant to either the Agricultural Marketing Agreement Act of 1937, as amended or the Anti-Hog-Cholera Serum and Hog Cholera Virus Act, USDA/OGC.

System location: Office of the General Counsel, Marketing Division, USDA, Washington, D.C., and Offices of Regional Attorneys, OGC, USDA, at the following locations: Atlanta, Georgia; Portland, Oregon; San Francisco, California; Temole, Texas. Addresses of each field office are listed in the telephone directories of the respective cities listed above under the heading "United States Government, Department of Agriculture, Office of the General Counsel."

Categories of individuals covered by the system: Individuals who are regulated by the subject Act and against whom the Department recommends that an enforcement action be brought by the Government.

Categories of records in the system: The system consists of investigatory material which may include intradepartmental recommendations, and interdepartmental recommendations pertaining to an alleged violation of the subject Act.

Authority for maintenance of the system: 7 U.S.C. 601 et seq. or 7 U.S.C. 851 et seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising in general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (2) Presentation or disclosure to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system as evidence in a proceeding, or which is sought in the course of discovery including disclosure to opposing counsel in the course of settlement negotiations; (3) Presentation, as needed, in the course of presenting evidence, to the appropriate Government officials charged with the responsibility of defending the Government before a court, magistrate or administrative tribunal. (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of the individual.

Safeguards: Records are kept in a locked office or file cabinet.

Retention and disposal: Records are maintained until file is closed or no longer needed or as otherwise provided in agency directives and disposed of or sent to appropriate records centers in accordance with such directives.

System manager(s) and address: Director, Marketing Division, OGC, USDA, Washington, D.C. 20250.

Systems exempted from certain provisions of the act: This system has been exempted pursuant to 5 U.S.C. 552a(k)(2) from the requirements of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f) because it consists of investigatory material compiled for law enforcement purposes. See 7 CFR 1.123. Individual access to these files could impair investigations and alert subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action or escape prosecution. Disclosure of investigative techniques and procedures and

the existence and identity of confidential sources of information would hamper law enforcement activity.

USDA/OGC—26

System name: Court cases brought by the Government pursuant to either the Cotton Research and Promotion Act, Potato Research and Promotion Act or the Egg Research and Consumer Information Act, USDA/OGC.

System location: Office of the General Counsel, Marketing Division, USDA, Washington, D.C.

Categories of individuals covered by the system: Individuals who are regarded by the subject Act and against whom the Department recommends that an enforcement action be brought by the Government.

Categories of records in the system: The system consists of investigatory material which may include intradepartmental recommendations, and interdepartmental recommendatidons pertaining to an alleged violation of the subject Act.

Authority for maintenance of the system: 7 U.S.C. 2101 et seq., 7 U.S.C. 2611 et seq. or 7 U.S.C. 2701 et seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising in general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (2) Presentation or disclosure to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system as evidence in a proceeding, or which is sought in the course of discovery including disclosure to opposing counsel in the course of settlement negotiations; (3) Presentation, as needed, in the course of presenting evidence, to the appropriate Government officials charged with the responsibility of defending the Government before a court, magistrate or administrative tribunal; (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of the individual.

Safeguards: Records are kept in a locked office or file cabinet.

Retention and disposal: Records are maintained until file is closed or no longer needed or as otherwise provided in agency directives and disposed of or sent to appropriate records centers in accordance with such directives.

System manager(s) and address: Director, Marketing Division, OGC, USDA, Washington, D.C. 20250.

Systems exempted from certain provisions of the act: This system has been exempted pursuant to 5 U.S.C. 552a(k)(2) from the requirements of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f) because it consists of investigatory material compiled for law enforcement purposes. See 7 CFR 1.123. Individual access to these files could impair investigations and alert subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action or escape prosecution. Disclosure of investigative techniques and procedures and the existence and identity of confidential sources of information would hamper law enforcement activity.

USDA/OGC—27

System name: Court cases brought by the Government pursuant to either the Export Apple and Pear Act or the Export Grape and Plum Act, USDA/OGC.

System location: Office of the General Counsel, Marketing Division, USDA, Washington, D.C.

Categories of individuals covered by the system: Individuals who are regarded by the subject Act and against whom the Department recommends that an enforcement action be brought by the Government.

Categories of records in the system: The system consists of investigatory material which may include intradepartmental recommendations, and interdepartmental recommendations pertaining to an alleged violation of the subject Act.

Authority for maintenance of the system: 7 U.S.C. 581 et seq., or 7 U.S.C. 591 et seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising in general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (2) Presentation or disclosure to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system as evidence in a proceeding, or which is sought in the course of discovery including disclosure to opposing counsel in the course of settlement negotiations; (3) Presentation, as needed, in the course of presenting evidence, to the appropriate Government officials charged with the responsibility of defending the Government before a court, magistrate or administrative tribunal. (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of the individual.

Safeguards: Records are kept in a locked office or file cabinet.

Retention and disposal: Records are maintained until file is closed or no longer needed or as otherwise provided in agency directives and disposed of or sent to appropriate records centers in accordance with such directives.

System manager(s) and address: Director, Marketing Division, OGC, USDA, Washington, D.C. 20250.

Systems exempted from certain provisions of the act: This system has been exempted pursuant to 5 U.S.C. 552a(k)(2) from the requirements of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f) because it consists of investigatory material compiled for law enforcement purposes. See 7 CFR 1.123. Individual access to these files could impair investigations and alert subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action or escape prosecution. Disclosure of investigative techniques and procedures and the existence and identity of confidential sources of information would hamper law enforcement activity.

USDA/OGC—28

System name: Court cases brought by the Government pursuant to either the Cotton Statistics and Estimates Act of 1927 or the United States Cotton Standards Act, USDA/OGC.

System location: Office of the General Counsel, Marketing Division, USDA, Washington, D.C.

Categories of individuals covered by the system: Individuals who are regarded by the subject Act and against whom the Department recommends that an action be brought by the Government.

Categories of records in the system: The system consists of investigatory material which may include intradepartmental recommendations, and interdepartmental recommendations pertaining to an alleged violation of the subject Act.

Authority for maintenance of the system: 7 U.S.C. 471 et seq., or 7 U.S.C. 51 et seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising in general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (2) Presentation or disclosure to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system as evidence in a proceeding, or which is sought in the course of discovery including disclosure to opposing counsel in the course

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of settlement negotiations; (3) Presentation, as needed, in the course of presenting evidence, to the appropriate Government officials charged with the responsibility of defending the Government before a court, magistrate or administrative tribunal. (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of the individual.

Safeguards: Records are kept in a locked office or file cabinet.

Retention and disposal: Records are maintained until file is closed or no longer needed or as otherwise provided in agency directives and disposed of or sent to appropriate records centers in accordance with such directives.

System manager(s) and address: Director, Marketing Division, OGC, USDA, Washington, D.C. 20250.

USDA/OGC—29

System name: Court cases brought by the Government pursuant to either the Naval Stores Act, or the Tobacco Seed and Plant Exportation Act, USDA/OGC.

System location: Office of the General Counsel, Marketing Division, USDA, Washington, D.C.

Categories of individuals covered by the system: Individuals who are regulated by the subject Act and against whom the Department recommends that an enforcement action be brought by the Government.

Categories of records in the system: The system consists of investigatory material which may include intradepartmental recommendations, and interdepartmental recommendations pertaining to an alleged violation of the subject Act.

Authority for maintenance of the system: 7 U.S.C. 91 et seq., or 7 U.S.C. 516 et seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (2) Presentation or disclosure to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system as evidence in a proceeding, or which is sought in the course of discovery including disclosure to opposing counsel in the course of settlement negotiations; (3) Presentation, as needed, in the course of presenting evidence to the appropriate Government officials charged with the responsibility of defending the Government before a court, magistrate or administrative tribunal; (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of individual.

Safeguards: Records are kept in a locked office or file cabinet.

Retention and disposal: Records are maintained until file is closed or no longer needed or as otherwise provided in agency directives and disposed of or sent to appropriate records centers in accordance with such directives.

System manager(s) and address: Director of Marketing Division, OGC, USDA, Washington, D.C. 20250.

Systems exempted from certain provisions of the act: This system has been exempted pursuant to 5 U.S.C. 552a (k)(2) from the requirements of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f) because it consists of investigatory material compiled for law enforcement purposes. See 7 CFR 1.123. Individual access to these files could impair investigations and alert subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action or escape prosecution. Disclosure of investigative techniques and procedures and the existence and identity of confidential sources of information would hamper law enforcement activity.

USDA/OGC—30

System name: Court cases brought by the Government pursuant to either the Peanut Statistics Act or the Tobacco Statistics Act, USDA/OGC.

System location: Office of the General Counsel, Marketing Division, USDA, Washington, D.C.

Categories of individuals covered by the system: Individuals who are regulated by the subject Act and against whom the Department recommends that an enforcement action be brought by the Government.

Categories of records in the system: The system consists of investigatory material which may include intradepartmental recommendations, and interdepartmental recommendations pertaining to an alleged violation of the subject Act.

Authority for maintenance of the system: 7 U.S.C. 951 et seq. or 7 U.S.C. 501 et seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (2) Presentation or disclosure to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system as evidence in a proceeding, or which is sought in the course of discovery including disclosure to opposing counsel in the course of settlement negotiations; (3) Presentation, as needed, in the course of presenting evidence to the appropriate Government officials charged with the responsibility of defending the Government before a court, magistrate or administrative tribunal; (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of the individual.

Safeguards: Records are kept in a locked office or file cabinet.

Retention and disposal: Records are maintained until file is closed or no longer needed or as otherwise provided in agency directives and disposed of or sent to appropriate records centers in accordance with such directives.

System manager(s) and address: Director, Marketing Division, OGC, USDA, Washington, D.C. 20250.

Systems exempted from certain provisions of the act: This system has been exempted pursuant to 5 U.S.C. 552a(k)(2) from the requirements of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f) because it consists of investigatory material compiled for law enforcement purposes. See 7 CFR 1.123. Individual access to these files could impair investigations and alert subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action or escape prosecution. Disclosure of investigative techniques and procedures and the existence and identity of confidential sources of information would hamper law enforcement activity.

USDA/OGC—31

System name: Court cases brought by the Government pursuant to either the Plant Variety Protection Act or the Egg Products Inspection Act, USDA/OGC.

System location: Office of the General Counsel, Marketing Division, USDA, Washington, D.C.

Categories of individuals covered by the system: Individuals who are regulated by the subject Act and against whom the Department recommends that an enforcement action be brought by the Government.

Categories of records in the system: The system consists of investigatory material which may include intradepartmental recommenda-

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tions; and interdepartmental recommendations pertaining to an alleged violation of the subject Act.

Authority for maintenance of the system: 7 U.S.C. 2321 et seq. or 21 U.S.C. 1031 et seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (2) Presentation or disclosure to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system as evidence in a proceeding, or which is sought in the course of discovery including disclosure to opposing counsel in the course of settlement negotiations; (3) Presentation, as needed, in the course of presenting evidence to the appropriate Government officials charged with the responsibility of defending the Government before a court, magistrate or administrative tribunal; (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of the individual.

Safeguards: Records are kept in a locked office or file cabinet.

Retention and disposal: Records are maintained until file is closed or no longer needed or as otherwise provided in agency directives and disposed of or sent to appropriate records centers in accordance with such directives.

System manager(s) and address: Director, Marketing Division, OGC, USDA, Washington, D.C. 20250.

Systems exempted from certain provisions of the act: This system has been exempted pursuant to 5 U.S.C. 552a(k)(2) from the requirements of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f) because it consists of investigatory material compiled for law enforcement purposes. See 7 CFR 1.123. Individual access to these files could impair investigations and alert subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action or escape prosecution. Disclosure of investigative techniques and procedures and the existence and identity of confidential sources of information would hamper law enforcement activity.

USDA/OGC—32

System name: Court cases brought by the Government pursuant to either the Produce Agency Act, or the Process or Renovated Butter Provisions of the Internal Revenue Code of 1954, USDA/OGC.

System location: Office of the General Counsel, Marketing Division, USDA, Washington, D.C.

Categories of individuals covered by the system: Individuals who are regulated by the subject Act and against whom the Department recommends that an enforcement action be brought by the Government.

Categories of records in the system: The system consists of investigatory material which may include intradepartmental recommendations, and interdepartmental recommendations pertaining to an alleged violation of the subject Act.

Authority for maintenance of the system: 7 U.S.C. 491 et seq. or 26 U.S.C. 4817, 4826 and 7235(c).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (2) Presentation or disclosure to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system as evidence in a proceeding, or which is sought in the course of discovery including disclosure to opposing counsel in the course of settlement negotiations; (3) Presentation, as needed, in the course of presenting evidence to the appropriate Government officials charged with the responsibility of defending the Government before a court, magistrate or administrative tribunal; (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of the individual.

Safeguards: Records are kept in a locked office or file cabinet.

Retention and disposal: Records are maintained until file is closed or no longer needed or as otherwise provided in agency directives and disposed of or sent to appropriate records centers in accordance with such directives.

System manager(s) and address: Director, Marketing Division, OGC, USDA, Washington, D.C. 20250.

Systems exempted from certain provisions of the act: This system has been exempted pursuant to 5 U.S.C. 552a(k)(2) from the requirements of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f) because it consists of investigatory material compiled for law enforcement purposes. See 7 CFR 1.123. Individual access to these files could impair investigations and alert subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action or escape prosecution. Disclosure of investigative techniques and procedures and the existence and identity of confidential sources of information would hamper law enforcement activity.

USDA/OGC—33

System name: Court cases brought by the Government pursuant to either the United States Grain Standards Act or the Federal Seed Act, USDA/OGC.

System location: Office of the General Counsel, Marketing Division, USDA, Washington, D.C.

Categories of individuals covered by the system: Individuals who are regulated by the subject Act and against whom the Department recommends that an enforcement action be brought by the Government.

Categories of records in the system: The system consists of investigatory material which may include intradepartmental recommendations, and interdepartmental recommendations pertaining to an alleged violation of the subject Act.

Authority for maintenance of the system: 7 U.S.C. 71 et seq. or 7 U.S.C. 1551, et seq..

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (2) Presentation or disclosure to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system as evidence in a proceeding, or which is sought in the course of discovery including disclosure to opposing counsel in the course of settlement negotiations; (3) Presentation, as needed, in the course of presenting evidence, to the appropriate Government officials charged with the responsibility of defending the Government before a court, magistrate or administrative tribunal; (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of the individual.

Safeguards: Records are kept in a locked office or file cabinet.

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Retention and disposal: Records are maintained until file is closed or no longer needed or as otherwise provided in agency directives and disposed of or sent to appropriate records centers in accordance with such directives.

System manager(s) and address: Director, Marketing Division, OGC, USDA, Washington, D.C. 20250.

Systems exempted from certain provisions of the act: This system has been exempted pursuant to 5 U.S.C. 552a(k)(2) from the requirements of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f) because it consists of investigatory material compiled for law enforcement purposes. See 7 CFR 1.123. Individual access to these files could impair investigations and alert subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action or excape prosecution. Disclosure of investigative techniques and procedures and the existence and identity of confidential sources of information would hamper law enforcement activity.

USDA/OGC—34

System name: Court cases brought by the Government pursuant to the Agricultural Fair Practices Act, USDA/OGC.

System location: Office of the General Counsel, Marketing Division, USDA, Washington, D.C.

Categories of individuals covered by the system: Individuals against whom the Department recommends that an enforcement action be brought by the Government.

Categories of records in the system: The system consists of investigatory material which may include intradepartmental recommendations, and interdepartmental recommendations pertaining to an alleged violation of the subject Act.

Authority for maintenance of the system: 7 U.S.C. 2301 et seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (2) Presentation or disclosure to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system as evidence in a proceeding, or which is sought in the course of discovery including disclosure to opposing counsel in the course of settlement negotiations; (3) Presentation, as needed, in the course of presenting evidence, to the appropriate Government officials charged with the responsibility of defending the Government before a court, magistrate or administrative tribunal; (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of the indiviual.

Safeguards: Records are kept in a locked office or file cabinet.

Retention and disposal: Records are maintained until file is closed or no longer needed or as otherwise provided in agency directives and disposed of or sent to appropriate records centers in accordance with such directives.

System manager(s) and address: Director, Marketing Division, OGC, USDA, Washington, D.C. 20250.

Systems exempted from certain provisions of the act: This system has been exempted pursuant to 5 U.S.C. 552a(k)(2) from the requirements of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f) because it consists of investigatory material compiled for law enforcement purposes. See 7 CFR 1.123. Individual access to these files could impair investigations and alert subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action or escape prosecution. Disclosure of investigative techniques and procedures and the existence and identity of confidential sources of information would hamper law enforcement activity.

USDA/OGC—35

System name: Court cases brought pursuant to either the Cotton Research and Promotion Act, Potato Research and Promotion Act or the Egg Research and Consumer Information Act in which the Government is defendant, USDA/OGC.

System location: Office of the General Counsel, Marketing division, USDA, Washington, D.C.

Categories of individuals covered by the system: Individuals regulated or not regulated by the subject Act who bring suit against the Government or a Governmental official pusuant to, or as a consequence of the Department's administration of, the subject Act.

Categories of records in the system: The system consists of investigatory material which may include intradepartmental recommendations, and interdepartmental recommendations pertaining to an alleged violation of the subject Act.

Authority for maintenance of the system: 7 U.S.C. 2101 et seq., 7 U.S.C. 2611 et seq. or 7 U.S.C. 270 et seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (2) Presentation or disclosure to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system as evidence in a proceeding, or which is sought in the course of discovery including disclosure to opposing counsel in the course of settlement negotiations; (3) Presentation, as needed, in the course of presenting evidence, to the appropriate Government officials charged with the responsibility of defending the Government before a court, magistrate or administrative tribunal; (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of the individual.

Safeguards: Records are kept in a locked office or file Cabinet.

Retention and disposal: Records are maintained until file is closed or no longer needed or as otherwise provided in agency directives and disposed of or sent to appropriate records centers in accordance with such directives.

System manager(s) and address: Director, Marketing Division, OGC, USDA, Washington, D.C. 20250.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the Director, Marketing Division, OGC, USDA, Washington, D.C., telephone 202-447-5935. A request for information pertaining to an individual should contain: Name, address, and particulars involved (i.e., the name of action filed, Act filed under, etc.)

Record access procedures: Any individual may obtain information as to the procedures for gaining access to and contesting a record in the system which pertains to him, by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Same as Record Access Procedures.

Record source categories: Information in this system comes primarily from witnesses, agency employees, and investigative personnel.

USDA/OGC—36

System name: Court cases brought pursuant to the Agricultural Marketing Act of 1946 or the Tobacco Inspection Act in which the Government is defendant, USDA/OGC.

System location: Office of the General Counsel, Marketing Division, USDA, Washington, D.C.

Categories of individuals covered by the system: Individuals regulated or not regulated by the subject Act who bring suit against the Government or a Governmental official pursuant to, or as a consequence of the Department's administration of, the subject Act.

Categories of records in the system: The system consists of investigatory material which may include intradepartmental recommendations, and interdepartmental recommendations pertaining to an alleged violation of the subject Act.

Authority for maintenance of the system: 7 U.S.C. 1621 et seq. or 7 U.S.C. 511 et seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (2) Presentation or disclosure to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system as evidence in a proceeding, or which is sought in the course of discovery including disclosure to opposing counsel in the course of settlement negotiations; (3) Presentation, as needed, in the course of presenting evidence, to the appropriate Government officials charged with the responsibility of defending the Government before a court, magistrate or administrative tribunal; (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of the individual.

Safeguards: Records are kept in a locked office or file cabinet.

Retention and disposal: Records are maintained until file is closed or no longer needed or as otherwise provided in agency directives and disposed of or sent to appropriate records centers in accordance with such directives.

System manager(s) and address: Director, Marketing Division, OGC, USDA, Washington, D.C. 20250.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the Director, Marketing Division, OGC, USDA, Washington, D.C., telephone 202-447-5935. A request for information pertaining to an individual should contain: Name, address, and particulars involved (i.e., the name of action filed, Act filed under, etc.).

Record access procedures: Any individual may obtain information as to the procedures for gaining access to and contesting a record in the system which pertains to him, by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Same as Record Access Procedures.

Record source categories: Information in this system comes primarily from witnesses, agency employees, and investigative personnel.

USDA/OGC—37

System name: Court cases brought pursuant to the authority of the Agricultural Marketing Agreement Act of 1937, as amended or the Anti-Hog-Cholera Serum and Hog Cholera Virus Act in which the Government is defendant, USDA/OGC.

System location: Office of the General Counsel, Marketing Division, USDA, Washington, D.C., and Offices of Regional Attorneys, OGC, USDA, at the following locations: Atlanta, Georgia; Portland, Oregon; San Francisco, California; Temple, Texas.

Addresses of each field office are listed in the telephone directories of the respective cities listed above under the heading "United States Government, Department of Agriculture, Office of the General Counsel."

Categories of individuals covered by the system: Individuals regulated or not regulated by the subject Act who bring suit against the Government or a Governmental official pursuant to, or as a consequence of the Department's administration of, the subject Act.

Categories of records in the system: The system consists of investigatory material which may include intradepartmental recommendations, and interdepartmental recommendations pertaining to an alleged violation of the subject Act.

Authority for maintenance of the system: 7 U.S.C. 601 et seq. or 7 U.S.C. 851 et seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (2) Presentation or disclosure to a court, Magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system as evidence in a proceeding, or which is sought in the course of discovery including disclosure to opposing counsel in the course of settlement negotiations; (3) Presentation, as needed, in the course of presenting evidence, to the appropriate Government officials charged with the responsibility of defending the Government before a court, magistrate or administrative tribunal; (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of the individual.

Safeguards: Records are kept in a locked office or file cabinet.

Retention and disposal: Records are maintained until file is closed or no longer needed or as otherwise provided in agency directives and disposed of or sent to appropriate records centers in accordance with such directives.

System manager(s) and address: Director, Marketing Division, OGC, USDA, Washington, D.C. 20250, or the appropriate Regional Attorney at the address specified above.

Notification procedure: Any individual may request information regarding this system or records, or information as to whether the system contains records pertaining to him from the Director, Marketing Division, OGC, USDA, Washington, D.C., telephone 202-447-5935, or the appropriate Regional Attorney at the address listed above. If the specific location of the record is not known, the individual should address his request to the Director, Marketing Division, who, if necessary, will refer it to the appropriate field office. A request for information pertaining to an individual should contain: Name, address, and particulars involved (i.e., the name of action filed, Act filed under, etc.).

Record access procedures: Any individual may obtain information as to the procedures for gaining access to and contesting a record in the system which pertains to him, by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Same as Record Access Procedures.

Record source categories: Information in this system comes primarily from witnesses, agency employees, and investigative personnel.

USDA/OGC—38

System name: Court cases brought pursuant to the Plant Variety Protection Act or the Egg Products Inspection Act in which the Government is defendant, USDA/OGC.

System location: Office of the General Counsel, Marketing Division, USDA, Washington, D.C.

Categories of individuals covered by the system: Individuals regulated or not regulated by the subject Act who bring suit against the Government or a Governmental official pursuant to, or as a consequence of the Department's administration of, the subject Act.

Categories of records in the system: The system consists of investigatory material which may include intradepartmental recommendations, and interdepartmental recommendations pertaining to an alleged violation of the subject Act.

Authority for maintenance of the system: 7 U.S.C. 2321 et seq. or 21 U.S.C. 1031 et seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising

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by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (2) Presentation or disclosure to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system as evidence in a proceeding, or which is sought in the course of discovery including disclosure to opposing counsel in the course of settlement negotiations; (3) Presentation, as needed, in the course of presenting evidence, to the appropriate Government officials charged with the responsibility of defending the Government before a court, magistrate or administrative tribunal; (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of the individual.

Safeguards: Records are kept in a locked office or file cabinet.

Retention and disposal: Records are maintained until file is closed or no longer needed or as otherwise provided in agency directives and disposed of or sent to appropriate records centers in accordance with such directives.

System manager(s) and address: Director, Marketing Division, OGC, USDA, Washington, D.C. 20250.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the Director, Marketing Division, OGC, USDA, Washington, D.C., telephone 202-447-5935. A request for information pertaining to an individual should contain: Name, address, and particulars involved (i.e., the name of action filed, Act filed under, etc.)

Record access procedures: Any individual may obtain information as to the procedures for gaining access to and contesting a record in the system which pertains to him, by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Same as Record Access Procedures.

Record source categories: Information in this system comes primarily from witnesses, agency employees, and investigative personnel.

USDA/OGC—39

System name: Cases against the Department under the Horse Protection Act of 1970, as amended, USDA/OGC.

System location: Office of the General Counsel, Marketing Division, USDA, Washington, D.C.

Categories of individuals covered by the system: Individuals regulated or not regulated by the subject Act who bring suit against the Government or a Governmental official pursuant to, or as a consequence of the Department's administration of, the subject Act.

Categories of records in the system: The system consists of investigatory material which may include intradepartmental recommendations, and interdepartmental recommendations pertaining to the subject Act.

Authority for maintenance of the system: 15 U.S.C. 1821 et seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (2) Presentation or disclosure to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system as evidence in a proceeding, or which is sought in the course of discovery including disclosure to opposing counsel in the course of settlement negotiations; (3) Presentation, as needed, in the course of presenting evidence, to the appropriate Government officials charged with the responsibility of defending the Government before a court, magistrate or administrative tribunal; (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of the individual.

Safeguards: Records are kept in a locked office or file cabinet.

Retention and disposal: Records are maintained until file is closed or no longer needed or as otherwise provided in agency directives and disposed of or sent to appropriate records centers in accordance with such directives.

System manager(s) and address: Director, Marketing Division, OGC, USDA, Washington, D.C. 20250.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the Director, Marketing Division, OGC, USDA, Washington, D.C., telephone 202-447-5935. A request for information pertaining to an individual should contain: Name, address, and particulars involved (i.e., the name of action filed, Act filed under, etc.)

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him, by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Same as Record Access Procedures.

Record source categories: Information in this system comes primarily from witnesses, agency employees, and investigative personnel.

USDA/OGC—40

System name: Cases against the Department under the Laboratory Animal Welfare Act, as amended, USDA/OGC.

System location: Office of the General Counsel, Marketing Division, USDA, Washington, D.C.

Categories of individuals covered by the system: Individuals regulated or not regulated by the subject Act who bring suit against the Government of a Governmental official pursuant to, or as a consequence of the Department's administration of, the subject Act.

Categories of records in the system: The system consists of investigatory material which may include intradepartmental recommendations, and interdepartmental recommendations pertaining to an alleged violation of the subject Act.

Authority for maintenance of the system: 7 U.S.C. 2131 et seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (2) Presentation or disclosure to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system as evidence in a proceeding, or which is sought in the course of discovery including disclosure to opposing counsel in the course of settlement negotiations; (3) Presentation, as needed, in the course of presenting evidence, to the appropriate Government officials charged with the responsibility of defending the Government before a court, magistrate or administrative tribunal; (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of the individual.

Safeguards: Records are kept in a locked office or file cabinet.

Retention and disposal: Records are maintained until file is closed or no longer needed or as otherwise provided in agency directives and disposed of or sent to appropriate records centers in accordance with such directives.

System manager(s) and address: Director, Marketing Division, OGC, USDA, Washington, D.C. 20250.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the Director, Marketing Division, OGC, USDA, Washington, D.C., telephone 202-447-

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5935. A request for information pertaining to an individual should contain: Name, address, and particulars involved (i.e., the name of action filed, Act filed under, etc.)

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him, by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Same as Record Access Procedures.

Record source categories: Information in this system comes primarily from witnesses, agency employees, and investigative personnel.

USDA/OGC—41

System name: Cases by the Department under the Horse Protection Act of 1970, as amended, USDA/OGC.

System location: Office of the General Counsel, Marketing Division, USDA, Washington, D.C.

Categories of individuals covered by the system: Individuals who are regulated or not regulated by the subject Act and against whom the Department recommends that an enforcement action be brought by the Government.

Categories of records in the system: The system consists of investigatory material which may include intradepartmental recommendations, and interdepartmental recommendations pertaining to an alleged violation of the subject Act.

Authority for maintenance of the system: 15 U.S.C. 1821 et seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (2) Presentation or disclosure to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system as evidence in a proceeding, or which is sought in the course of discovery including disclosure to opposing counsel in the course of settlement negotiations; (3) Presentation, as needed, in the course of presenting evidence, to the appropriate Government officials charged with the responsibility of defending the Government before a court, magistrate or administrative tribunal; (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of the individual.

Safeguards: Records are kept in a locked office or file cabinet.

Retention and disposal: Records are maintained until file is closed or no longer needed or as otherwise provided in agency directives and disposed of or sent to appropriate records centers in accordance with such directives.

System manager(s) and address: Director, Marketing Division, OGC, USDA, Washington, D.C. 20250.

Systems exempted from certain provisions of the act: This sytem has been exempted pursuant to 5 U.S.C. 552a (k)(2) from the requirements of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f) because it consists of investigatory material compiled for law enforcement purposes. See 7 CFR 1.123. Individual access to these files could impair investigations and alert subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action or escape prosecution. Disclosure of investigative techniques and procedures and the existence and identity of confidential sources of information would hamper law enforcement activity.

USDA/OGC—42

System name: Cases by the Department under the Laboratory Animal Welfare Act, as amended, USDA/OGC.

System location: Office of the General Counsel, Marketing Division, USDA, Washington, D.C.

Categories of individuals covered by the system: Individuals who are regulated by the subject Act and against whom the Department recommends that an enforcement action be brought by the Government.

Categories of records in the system: The system consists of investigatory material which may include intradepartmental recommendations, and interdepartmental recommendations pertaining to an alleged violation of the subject Act.

Authority for maintenance of the system: 7 U.S.C. 2131 et seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (2) Presentation or disclosure to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system as evidence in a proceeding, or which is sought in the course of discovery including disclosure to opposing counsel in the course of settlement negotiations; (3) Presentation, as needed, in the course of presenting evidence, to the appropriate Government officials charged with the responsibility of defending the Government before a court, magistrate or administrative tribunal; (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of the individual.

Safeguards: Records are kept in a locked office or file cabinet.

Retention and disposal: Records are maintained until file is closed or no longer needed or as otherwise provided in agency directives and disposed of or sent to appropriate records centers in accordance with such directives.

System manager(s) and address: Director, Marketing Division, OGC, USDA, Washington, D.C. 20250.

Systems exempted from certain provisions of the act: This system has been exempted pursuant to 5 U.S.C. 552a(k)(2 from the requirements of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f) because it consists of investigatory material compiled for law enforcement purposes. See 7 CFR 1.123. Individual access to these files could impair investigations and alert subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action or escape prosecution. Disclosure of investigative techniques and procedures and the existence and identity of confidential sources of information would hamper law enforcement activity.

USDA/OGC—43

System name: Administrative proceedings brought by the Department, court cases in which the Government is plaintiff and court cases in which the Government is a defendant brought pursuant to the United States Warehouse Act, USDA/OGS.

Security classification:

System location: Office of the General Counsel, Marketing Division, USDA, Washington, D.C.

Categories of individuals covered by the system: Individuals who are regulated by the subject Act and against whom the Department recommends that an enforcement action be brought by the Government or individuals regulated or not regulated by the subject Act who brings suit against the Government or a Governmental official pursuant to, or as a consequence of the Department's administration of, the subject Act.

Categories of records in the system: The system consists of investigatory material which may include intradepartmental recommendations and interdepartmental recommendations pertaining to an alleged violation of the subject Act.

Authority for maintenance of the system: 7 U.S.C. 241-273.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation or

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order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (2) Presentation or disclosure to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system as evidence in a proceeding, or which is sought in the course of discovery including disclosure to opposing counsel in the course of settlement negotiations; (3) Presentation, as needed, in the course of presenting evidence, to the appropriate Government officials charged with the responsibility of defending the Government before a court, magistrate or administrative tribunal; (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of the individual.

Safeguards: Records are kept in a locked office of file cabinet.

Retention and disposal: Records are maintained until file is closed or no longer needed or as otherwise provided in agency directives and disposed of or sent to appropriate record centers in accordance with such directives.

System manager(s) and address: Director Marketing Division, OGC, USDA, Washington, D.C. 20250.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the Marketing Division, OGC, USDA, Washington, D.C., telephone 202-447-5935. A request for information pertaining to an individual should contain: Name, address, and particulars involved (i.e., the name of action filed, Act filed under, etc.).

Record access procedures: Any individual may obtain information as to the procedures for gaining access to and contesting a record in the system which pertains to him, by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Same as Record Access Procedures.

Record source categories: Information in this system comes primarily from witness, agency employees, and investigative personnel.

Systems exempted from certain provisions of the act: The portions of this system which involves records pertaining to administrative proceeding brought by the Department or court cases in which the Government is plaintiff has been exempted pursuant to 5 U.S.C. 552a(k)(2) from the requirements of 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (g), (h), (i) and (f) because they consist of investigatory material compiled for law enforcement purposes. See 7 CFR 1.123. Individual access to these files could impair investigations and alert subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action or escape prosecution. Disclosure of investigative techniques and procedures and the existence and identity of confidential sources of information would hamper law enforcement activity.

USDA/OGC—44

System name: Cases by and against the Department under the Virus-Serum Toxin Act, USDA/OGC.

System location: Office of the General Counsel, Marketing Division, USDA, Washington, D.C.

Categories of individuals covered by the system: Individuals who are regulated by the subject Act and against whom the Department recommends that an enforcement action be brought by the Government, and individuals regulated or not regulated by the subject Act who bring suit against the Government or a Governmental official pursuant to, or as a consequence of the Department's administration of, the subject Act.

Categories of records in the system: The system consists of investigatory material which may include intradepartmental recommendations, and interdepartmental recommendations, pertaining to the subject Act and are an alleged violation of the subject Act.

Authority for maintenance of the system: 21 U.S.C. 151-158.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (2) Presentation or disclosure to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system as evidence in a proceeding, or which is sought in the course of discovery including disclosure to opposing counsel in the course of settlement negotiations; (3) Presentation, as needed, in the course of presenting evidence to the appropriate Government officials charged with the responsibility of defending the Government before a court, magistrate or administrative tribunal; (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of the individual.

Safeguards: Records are kept in a locked office or file cabinet.

Retention and disposal: Records are maintained until file is closed or no longer needed or as otherwise provided in agency directives and disposed of or sent to appropriate records centers in accordance with such directives.

System manager(s) and address: Director, Marketing Division, OGC, USDA, Washington, D.C. 20250.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the Director, Marketing Division, OGC, USDA, Washington, D.C. telephone 202-447-5935. A request for information pertaining to an individual should contain: Name, address, and particulars involved (i.e., the name of action filed, Act filed under, etc.).

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Same as Record Access Procedures.

Record source categories: Information in this system come primarily from witnesses, agency employees, and investigative personnel.

Systems exempted from certain provisions of the act: The portions of this system which involve cases by the Department under the Virus-Serum Toxin Act have been exempted pursuant to 5 U.S.C. 552a(k)(2) from the requirements of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), (I) and (f) because they consist of investigatory material compiled for law enforcement purposes. See 7 CFR 1.123. Individual access to these files could impair investigations and alert subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action or escape prosecution. Disclosure of investigative techniques and procedures and the existence and identity of confidential sources of information would hamper law enforcement activity.

USDA/OGC—45

System name: Acquisitions—Forest Service—USDA/OGC

System location: Office of the General Counsel, Natural Resources Division, USDA, Washington, D.C. 20250. Offices of Regional Attorneys and Attorneys in Charge, Office of the General Counsel, USDA: Albuquerque, New Mexico; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; Harrisburg, Pennsylvania; Little Rock, Arkansas; Milwaukee, Wisconsin; Temple, Texas; Missoula, Montana; Ogden, Utah; Portland, Oregon; San Francisco, California; Santurce, Puerto Rico; Shawnee Mission, Kansas; Stillwater, Oklahoma.

Addresses of each field office are listed in the telephone directories of the respective cities listed above under the heading "United States Government, Department of Agriculture, Office of the General Counsel".

Categories of individuals covered by the system: Persons having or believed to have an interest in lands which are expected to be or have been acquired by the United States by condemnation, direct purchase, or donation, for the use of USDA agencies.

Categories of records in the system: Partial or complete records on individual cases, sometimes including legal opinions, correspondence,

title evidence, deeds, affidavits, certificates of use and possession, pleadings, transcripts, and related documents.

Authority for maintenance of the system: 16 U.S.C. 460 1-4 through 460 1-11; 16 U.S.C. 473-482, 535, 551 and 555; 23 U.S.C. 205; 7 CFR 2.31.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referral to (1) Department of Justice for institution of condemnation proceedings, (2) title companies for title evidence, (3) notaries public for acknowledgement, and (4) appropriate State and County officials for filing or recording as required by law. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of the individual on whom the file is primarily maintained.

Safeguards: All records are kept in locked offices. Investigation reports, personnel files, and other sensitive materials are also kept in locked drawers.

Retention and disposal: Records are retained up to five years after file is closed, then are destroyed unless retained for research value.

System manager(s) and address: Director, Natural Resources Division, OGC, USDA, Washington, D.C. 20250, or the appropriate Regional Attorney or Attorney in Charge at the applicable address specified in the foregoing.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the System Manager, or from the appropriate Regional Attorney or Attorney in Charge at the applicable address listed above. If the specific location of the record is not known, the individual should address his request to the Director, Natural Resources Division, who, if necessary, will refer it to the appropriate field office. A request for information pertaining to an individual should contain: Name, address, and particulars involved (i.e., the date of action giving rise to the claim, date claim was filed, correspondence, etc.).

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Any individual may contest a record in the system by using the same procedures as those for requesting access.

Record source categories: Primarily the individuals in the system, agency employees and title companies.

USDA/OGC—46

System name: Claims, other than Tort claims, by or against the Forest Service—USDA/OGC

System location: Office of the General Counsel, Natural Resources Division, USDA, Washington, D.C. 20250. Offices of Regional Attorneys and Attorneys in Charge, Office of the General Counsel, USDA: Albuquerque, New Mexico; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; Harrisburg, Pennsylvania; Little Rock, Arkansas; Milwaukee, Wisconsin; Temple, Texas; Missoula, Montana; Ogden, Utah; Portland, Oregon; San Francisco, California; Santurce, Puerto Rico; Shawnee Mission, Kansas; Stillwater, Oklahoma.

Addresses of each field office are listed in the telephone directories of the respective cities listed above under the heading "United States Government, Department of Agriculture, Office of the General Counsel".

Categories of individuals covered by the system: Individuals who have filed appeals relating to the breach of terms or provisions of a contract with the United States Forest Service.

Categories of records in the system: The system consists of files on individual appeals, including pleadings, agency reports, and correspondence.

Authority for maintenance of the system: 16 U.S.C. 471-2, 16 U.S.C. 551, 7 C.F.R. Part 24, 36 C.F.R. Part 211.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: The system is used by attorneys in all phases of preparing and conducting hearings before the United States Department of Agriculture Board of Contract Appeals. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by the name of the individual on whom the file is primarily maintained.

Safeguards: All records are kept in locked offices. Investigation reports, personnel files, and other sensitive materials are also kept in locked drawers.

Retention and disposal: Records are retained up to five years after file is closed, then are destroyed unless retained for research value.

System manager(s) and address: Director, Natural Resources Division, OGC, USDA, Washington, D.C. 20250, or the appropriate Regional Attorney or Attorney in Charge at the applicable address specified in the foregoing.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the System Manager, or from the appropriate Regional Attorney or Attorney in Charge at the applicable address listed above. If the specific location of the record is not known, the individual should address his request to the Director, Natural Resources Division, who, if necessary, will refer it to the appropriate field office. A request for information pertaining to an individual should contain: Name, address, and particulars involved (i.e., the date of action giving rise to the claim, date claim was filed, correspondence, etc.).

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Any individual may contest a record in the system by using the same procedures as those for requesting access.

Record source categories: The information in this system, comes primarily from claimants, witnesses, agency employees, and investigative personnel.

USDA/OGC—47

System name: Contract Appeals—Forest Service—USDA/OGC

System location: Office of the General Counsel, natural Resources Division, USDA, Washington, D.C. 20250. Offices of Regional Attorneys and Attorneys in Charge, Office of the General Counsel, USDA: Albuquerque, New Mexico; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; Harrisburg, Pennsylvania; Little Rock, Arkansas; Milwaukee, Wisconsin; Temple, Texas; Missoula, Montana; Ogden, Utah; Portland, Oregon; San Francisco, California; Santurce, Puerto Rico; Shawnee Mission, Kansas; Stillwater, Oklahoma.

Addresses of each field office are listed in the telephone directories of the respective cities listed above under the heading "United States Government, Department of Agriculture, Office of the General Counsel."

Categories of individuals covered by the system: Individuals who have filed appeals relating to the breach of terms or provisions of a contract with the United States Forest Service.

Categories of records in the system: The system consists of files on individual appeals, including pleadings, agency reports, and correspondence.

Authority for maintenance of the system: 16 U.S.C. 471-2, 16 U.S.C. 551, 7 CFR Part 24, 36 CFR Part 211.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: The system is used by attorneys in all phases of preparing and conducting hearings before the United States Department of Agriculture Board of contract Appeals. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by the name of the individual on whom the file is primarily maintained.

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Safeguards: All records are kept in locked offices. Investigation reports, personnel files, and other sensitive materials are also kept in locked drawers.

Retention and disposal: Records are retained up to five years after file is closed, then are destroyed unless retained for research value.

System manager(s) and address: Director, Natural Resources Division; OGC, USDA, Washington, D.C. 20250, or the appropriate Regional Attorney or Attorney in Charge at the applicable address specified in the foregoing.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the System Manager, or from the appropriate Regional Attorney or Attorney in Charge at the applicable address listed above. If the specific location of the record is not known, the individual should address his request to the Director, Natural Resources Division, who, if necessary, will refer it to the appropriate field office. A request for information pertaining to an individual should contain: Name, address, and particulars involved (i.e., the date of action giving rise to the claim, date claim was filed, correspondence, etc.).

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Any individual may contest a record in the system by using the same procedures as those for requesting access.

Record source categories: The information in this system, comes primarily from the appellant, witnesses, agency employees, and private experts.

USDA/OGC—48

System name: Conveyances—Forest Service—USDA/OGC

System location: Office of the General Counsel, Natural Resources Division, USDA, Washington, D.C. 20250. Offices of Regional Attorneys and Attorneys in Charge, Office of the General Counsel, USDA: Albuquerque, New Mexico; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; Harrisburg, Pennsylvania; Little Rock, Arkansas; Milwaukee, Wisconsin; Temple, Texas; Missoula, Montana; Ogden, Utah; Portland, Oregon; San Francisco, California; Santurce, Puerto Rico; Shawnee Mission, Kansas; Stillwater, Oklahoma.

Addresses of each field office are listed in the telephone directories of the respective cities listed above under the heading "United States Government, Department of Agriculture, Office of the General Counsel."

Categories of individuals covered by the system: Parties or potential parties (1) to transactions involving the conveyance, reconveyance, exchange, quitclaim or other disposal of lands or interests therein owned or claimed by the United States in behalf of USDA agencies, (2) having boundary disputes with USDA agencies, and (3) claiming title to lands also claimed by the United States for the use of USDA agencies.

Categories of records in the system: Partial or complete records on individual cases, sometimes including legal opinions, correspondence, title evidence, deeds, affidavits, certificates of use and possession, pleadings, transcripts, and related documents.

Authority for maintenance of the system: 7 U.S.C. 1011(c); 7 U.S.C. 2253; 16 U.S.C. 460 1-8 and 460 q; 16 U.S.C. 485-486, 516, 519, 533, 555a, 565b, 567b; 40 U.S.C. 471, 484(c); 7 CFR 2.31.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: The referral to (1) Department of Justice or United States Attorney for institution of ejectment or similar actions or to bring or defend quiet title actions, (2) title companies for title evidence, (3) notaries public for acknowledgment, and (4) appropriate State and County officials for filing or recording as required by law. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individuals."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by the name of the individual on whom the file is primarily maintained.

Safeguards: All records are kept in locked offices. Investigation reports, personnel files, and other sensitive materials are also kept in locked drawers.

Retention and disposal: Records are retained up to five years after file is closed, then are destroyed unless retained for research value.

System manager(s) and address: Director, Natural Resources Division, OGC, USDA, Washington, D.C. 20250, or the appropriate Regional Attorney or Attorney in Charge at the applicable address specified in the foregoing.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the System Manager, or from the appropriate Regional Attorney or Attorney in Charge at the applicable address listed above. If the specific location of the record is not known, the individual should address his request to the Director, Natural Resources Division, who, if necessary, will refer it to the appropriate field office. A request for information pertaining to an individual should contain: Name, address, and particulars involved (i.e., the date of action giving rise to the claim, date claim was filed, correspondence, etc.).

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the appropriate official referred to in the preceding paragraph.

System manager(s) and address: Any individual may contest a record in the system by using the same procedures as those for requesting access.

Record source categories: Primarily the individuals in the system, agency employees and title companies.

USDA/OGC—49

System name: Easements—Forest Service—USDA/OGC

System location: Office of the General Counsel, natural Resources Division, USDA, Washington, D.C. 20250. Offices of Regional Attorneys and Attorneys in Charge, Office of the General Counsel, USDA: Albuquerque, New Mexico; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; Harrisburg, Pennsylvania; Little Rock, Arkansas; Milwaukee, Wisconsin; Temple, Texas; Missoula, Montana; Ogden, Utah; Portland, Oregon; San Francisco, California; Santurce, Puerto Rico; Shawnee Mission, Kansas; Stillwater, Oklahoma.

Addresses of each field office are listed in the telephone directories of the respective cities listed above under the heading "United States Government, Department of Agriculture, Office of the General Counsel."

Categories of individuals covered by the system: Persons having or believed to have an interest in lands across which the United States has acquired or expects to acquire an easement by direct purchase or donation, for the use of USDA agencies.

Categories of records in the system: Partial or complete records on individual cases, sometimes including legal opinions, correspondence, title evidence, deeds, affidavits, certificates of use and possession, pleadings transcripts, and related documents.

Authority for maintenance of the system: 16 U.S.C. 532-538 and 551; 23 U.S.C. 205; 7 CFR 2.31.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referral to (1) title companies for title evidence, (2) notaries public for acknowledgment, and (3) appropriate State and County officials for filing or recording as required by law. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by the name of the individual on whom the file is primarily maintained.

Safeguards: All records are kept in locked offices. Investigation reports, personnel files, and other sensitive materials are also kept in locked drawers.

Retention and disposal: Records are retained up to five years after file is closed, then are destroyed unless retained for research value.

System manager(s) and address: Director, Natural Resources Division, OGC, USDA, Washington, D.C. 20250, or the appropriate Regional Attorney or Attorney in Charge at the applicable address specified in the foregoing.

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Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the System Manager, or from the appropriate Regional Attorney or Attorney in Charge at the applicable address listed above. If the specific location of the record is not known, the individual should address his request to the Director, Natural Resources Division, who, if necessary, will refer it to the appropriate field office. A request for information pertaining to an individual should contain: Name, address, and particulars involved (i.e., the date of action giving rise to the claim, date claim was filed, correspondence, etc.).

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Any individual may contest a record in the system by using the same procedures as those for requesting access.

Record source categories: Primarily the individuals in the system, agency employees and title companies.

USDA/OGC—50

System name: Forest Appeals—Forest Service—USDA/OGC

System location: Office of the General Counsel, natural Resources Division, USDA, Washington, D.C. 20250. Offices of Regional Attorneys and Attorneys in Charge, Office of the General Counsel, USDA: Albuquerque, New Mexico; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; Harrisburg, Pennsylvania; Little Rock, Arkansas; Milwaukee, Wisconsin; Temple, Texas; Missoula, Montana; Ogden, Utah; Portland, Oregon; San Francisco, California; Santurce, Puerto Rico; Shawnee Mission, Kansas; Stillwater, Oklahoma.

Addresses of each field office are listed in the telephone directories of the respective cities listed above under the heading "United States Government, Department of Agriculture, Office of the General Counsel."

Categories of individuals covered by the system: Individuals who have filed appeals with the United States Department of Agriculture Board of Forest Appeals.

Categories of records in the system: The system consists of files on individual appeals, including pleadings, agency reports, and correspondence.

Authority for maintenance of the system: 16 U.S.C. 471-2, 16 U.S.C. 551, 36 CFR Subpart B.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: The system is used by attorneys in all phases of preparing and conducting the hearings before the United States Department of Agriculture Board of Forest Appeals. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by the name of the individual on whom the file is primarily maintained.

Safeguards: All records are kept in locked offices. Investigation reports, personnel files, and other sensitive materials are also kept in locked drawers.

Retention and disposal: Records are retained up to five years after file is closed, then are destroyed unless retained for research value.

System manager(s) and address: Director, Natural Resources Division, OGC, USDA, Washington, D.C. 20250, or the appropriate Regional Attorney or Attorney in Charge at the applicable address specified in the foregoing.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the System Manager, or from the appropriate Regional Attorney or Attorney in Charge at the applicable address listed above. If the specific location of the record is not known, the individual should address his request to the Director, Natural Resources Division, who, if necessary, will refer it to the appropriate field office. A request for information pertaining to an individual should contain: Name, address, and particulars involved (i.e., the date of action giving rise to the claim, date claim was filed, correspondence, etc.).

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Any individual may contest a record in the system by using the same procedures as those for requesting access.

Record source categories: The information in this system, comes primarily from the appellant, witnesses, agency employees, and private experts.

USDA/OGC—51

System name: General Case Files—Forest Service—USDA/OGC

System location: Office of the General Counsel, Natural Resources Division, USDA, Washington, D.C. 20250. Offices of Regional Attorneys and Attorneys in Charge, Office of the General Counsel, USDA: Albuquerque, New Mexico; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; Harrisburg, Pennsylvania; Little Rock, Arkansas; Milwaukee, Wisconsin; Temple, Texas; Missoula, Montana; Ogden, Utah; Portland, Oregon; San Francisco, California; Santurce, Puerto Rico; Shawnee Mission, Kansas; Stillwater, Oklahoma.

Addresses of each field office are listed in the telephone directories of the respective cities listed above under the heading "United States Government, Department of Agriculture, Office of the General Counsel."

Categories of individuals covered by the system: Parties involved or expected to be involved in negotiations, administrative appeals, litigation, or other attempts to resolve legal issues or disputes pertaining to those aspects of the organization, administration, regulations and other activities relating to the forestry and lands of the USDA not provided for under another system of OGC records. This includes but is not limited to land use planning, wilderness, forest practice, weather modification, and other environmental issues.

Categories of records in the system: Partial or complete records on individual cases sometimes including investigation reports, copies of contracts or permits, legal opinions, pleadings, transcripts, correspondence, notices of appeal, decisions of forest officers, witness statements, and related documents.

Authority for maintenance of the system: 16 U.S.C. 471-583, 661-63, 668aa-bb, 683, 1601-09, 1131-32 and 1271-75; 42 U.S.C. 4321-74; 7 CFR 2.31.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referral to Department of Justice and United States Attorneys to defend suits brought against the Government or its officers. Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute or by rule, regulation or order issued pursuant thereto. Referral to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by the name of the individual on whom the file is primarily maintained.

Safeguards: All records are kept in locked offices. Investigation reports, personnel files, and other sensitive materials are also kept in locked drawers.

Retention and disposal: Records are retained up to five years after file is closed, then are destroyed unless retained for research value.

System manager(s) and address: Director, Natural Resources Division, OGC, USDA, Washington, D.C. 20250, or the appropriate Regional Attorney or Attorney in Charge at the applicable address specified in the foregoing.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the System Manager,

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or from the appropriate Regional Attorney or Attorney in Charge at the applicable address listed above. If the specific location of the record is not known, the individual should address his request to the Director, Natural Resources Division, who, if necessary, will refer it to the appropriate field office. A request for information pertaining to an individual should contain: Name, address, and particulars involved (i.e., the date of action giving rise to the claim, date claim was filed, correspondence, etc.).

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Any individual may contest a record in the system by using the same procedures as those for requesting access.

Record source categories: Primarily the individuals in the system, agency employees, witnesses, attorneys and investigative personnel.

USDA/OGC—52

System name: Grazing—Forest Service—USDA/OGC

System location: Office of the General Counsel, Natural Resources Division, USDA, Washington, D.C. 20250. Offices of Regional Attorneys and Attorneys in Charge, Office of the General Counsel, USDA: Albuquerque, New Mexico; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; Harrisburg, Pennsylvania; Little Rock, Arkansas; Milwaukee, Wisconsin; Temple, Texas; Missoula, Montana; Ogden, Utah; Portland, Oregon; San Francisco, California; Santurce, Puerto Rico; Shawnee Mission, Kansas; Stillwater, Oklahoma.

Addresses of each field office are listed in the telephone directories of the respective cities listed above under the heading "United States Government, Department of Agriculture, Office of the General Counsel."

Categories of individuals covered by the system: Persons grazing, who have grazed, or who are expected to graze livestock on land owned by the United States and administered by USDA agencies.

Categories of records in the system: Partial or complete records on individual cases sometimes including investigation reports, copies of contracts or permits, legal opinions, pleadings, transcripts, correspondence, notices of appeal, decisions of the Board of Forest Appeals or Agriculture Board of Contract Appeals, and related documents.

Authority for maintenance of the system: 7 U.S.C. 1011; 16 U.S.C. 472 and 551; 7 CFR 2.31.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referral to United States Attorney or Department of Justice to defend suits brought against the Government or its officers. Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute or by rule, regulation or order issued pursuant thereto. Referral to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by the name of the individual on whom the file is primarily maintained.

Safeguards: All records are kept in locked offices. Investigation reports, personnel files, and other sensitive materials are also kept in locked drawers.

Retention and disposal: Records are retained up to five years after file is closed, then are destroyed unless retained for research value.

System manager(s) and address: Director, Natural Resources Division, OGC, USDA, Washington, D.C. 20250, or the appropriate Regional Attorney or Attorney in Charge at the applicable address specified in the foregoing.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the System Manager, or from the appropriate Regional Attorney or Attorney in Charge at the applicable address listed above. If the specific location of the record is not known, the individual should address his request to the Director, Natural Resources Division, who, if necessary, will refer it to the appropriate field office. A request for information pertaining to an individual should contain: Name, address, and particulars involved (i.e., the date of action giving rise to the claim, date claim was filed, correspondence, etc.).

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Any individual may contest a record in the system by using the same procedures as those for requesting access.

Record source categories: Primarily the individuals in the system, agency employees, witnesses, attorneys and investigative personnel.

USDA/OGC—53

System name: Insecticide, Fungicide, Herbicide, and Rodenticide Cases—Soil Conservation Service—USDA/OGC

System location: Office of the General Counsel, Natural Resources Division, USDA, Washington, D.C. 20250. Offices of Regional Attorneys and Attorneys in Charge, Office of the General Counsel, USDA: Albuquerque, New Mexico; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; Harrisburg, Pennsylvania; Little Rock, Arkansas; Milwaukee, Wisconsin; Missoula, Montana; Ogden, Utah; Portland, Oregon; San Francisco, California; Santurce, Puerto Rico; Shawnee Mission, Kansas; Stillwater, Oklahoma; Temple, Texas.

Addresses of each field office are listed in the telephone directories of the respective cities listed above under the heading "United States Government, Department of Agriculture, Office of the General Counsel."

Categories of individuals covered by the system: Persons claiming that certain existing or proposed United States Department of Agriculture activities involving the application of insecticides, pesticides, fungicides, rodenticides, herbicides, nematocides, defoliants, desiccants or plant regulators may be unlawful, and parties or potential parties to litigation or administrative hearings involving such activities.

Categories of records in the system: Partial or complete records files on individual cases, sometimes including investigation reports, copies of contracts or permits, pleadings, transcripts, correspondence, witness statements, legal opinions, and related documents.

Authority for maintenance of the system: 7 U.S.C. 135-36y; 42 U.S.C. 4321-74; 5 U.S.C. 301; 44 U.S.C. 3101; 7 CFR 2.31.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referral to (1) Department of Justice to defend suits brought against the Government or its officers and (2) Environmental Protection Agency (EPA) for administrative handling under the above-cited authority. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by the name of the individual on whom the file is primarily maintained or, in some instances, cross-indexed by the names of other individuals mentioned in the files.

Safeguards: Records are kept in locked offices, with pending case files and investigation reports being kept in locked drawers.

Retention and disposal: Records are retained up to 5 years after case is closed, then are destroyed unless retained for research value.

System manager(s) and address: Director, Natural Resources Division, OGC, USDA, Washington, D.C. 20250, or the appropriate Regional Attorney or Attorney in Charge at the applicable address listed above.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the System Manager, or from the appropriate Regional Attorney or Attorney in Charge at the applicable address listed above. If the specific location of the record is not known, the individual should address his request to the Director, Natural Resources Division, who, if necessary, will refer it to the appropriate field office. A request for information pertaining to an individual should contain: Name, address, and particulars involved (i.e., the date of action giving rise to the claim, date claim was filed, correspondence, etc.).

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Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Any individual may contest a record in the system by using the same procedures as those for requesting access.

Record source categories: The individuals in the system, agency and EPA employees, witnesses, attorneys, and investigative personnel.

USDA/OGC—54

System name: Land Acquisitions—Forest Service—USDA/OGC

System location: Office of the General Counsel, Natural Resources Division, USDA, Washington, D.C. 20250. Offices of Regional Attorneys and Attorneys in Charge, Office of the General Counsel, USDA: Albuquerque, New Mexico; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; Harrisburg, Pennsylvania; Little Rock, Arkansas; Milwaukee, Wisconsin; Temple, Texas; Missoula, Montana; Ogden, Utah; Portland, Oregon; San Francisco, California; Santurce, Puerto Rico; Shawnee Mission, Kansas; Stillwater, Oklahoma.

Addresses of each field office are listed in the telephone directories of the respective cities listed above under the heading "United States Government, Department of Agriculture, Office of the General Counsel."

Categories of individuals covered by the system: Individuals from whom the Forest Service purchases a fee interest in real estate.

Categories of records in the system: The system consists of files on individual sellers of land, including options and title information.

Authority for maintenance of the system: 16 U.S.C. 515-517, 555, 4601-4609, and 7 U.S.C. 428a.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: The system is used by attorneys in title clearance and acquisition closings. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by the name of the individual on whom the file is primarily maintained.

Safeguards: All records are kept in locked offices. Investigation reports, personnel files, and other sensitive materials are also kept in locked drawers.

Retention and disposal: Records are retained up to five years after file is closed, then are destroyed unless retained for research value.

System manager(s) and address: Director, Natural Resources Division, OGC, USDA, Washington, D.C. 20250, or the appropriate Regional Attorney or Attorney in Charge at the applicable address specified in the foregoing.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the System Manager, or from the appropriate Regional Attorney or Attorney in Charge at the applicable address listed above. If the specific location of the record is not known, the individual should address his request to the Director, Natural Resources Division, who, if necessary, will refer it to the appropriate field office. A request for information pertaining to an individual should contain: Name, address, and particulars involved (i.e., the date of action giving rise to the claim, date claim was filed, correspondence, etc.).

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Any individual may contest a record in the system by using the same procedures as those for requesting access.

Record source categories: The information in this system comes primarily from the individuals from whom the land is being purchased, abstract and title companies, and agency employees.

USDA/OGC—55

System name: Land Exchanges, General Exchange Act—Forest Service—USDA/OGC

System location: Office of the General Counsel, Natural Resources Division, USDA, Washington, D.C. 20250. Offices of Regional Attorneys and Attorneys in Charge, Office of the General Counsel, USDA; Albuquerque, New Mexico; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; Harrisburg, Pennsylvania; Little Rock, Arkansas; Milwaukee, Wisconsin; Temple, Texas; Missoula, Montana; Ogden, Utah; Portland, Oregon; San Francisco, California; Santurce, Puerto Rico; Shawnee Mission, Kansas; Stillwater, Oklahoma.

Addresses of each field office are listed in the telephone directories of the respective cities listed above under the heading "United States Government, Department of Agriculture, Office of the General Counsel."

Categories of individuals covered by the system: Individuals who have offered to exchange private lands for National Forest lands or National Grasslands.

Categories of records in the system: The system consists of files on individual exchanges, including offers, title information, and correspondence.

Authority for maintenance of the system: 16 U.S.C. 485, 486.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: The system is used by attorneys in title evaluation and exchange closings. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by the name of the individual on whom the file is primarily maintained.

Safeguards: All records are kept in locked offices. Investigation reports, personnel files, and other sensitive materials are also kept in locked drawers.

Retention and disposal: Records are retained up to five years after file is closed, then are destroyed unless retained for research value.

System manager(s) and address: Director, Natural Resources Division, OGC, USDA, Washington, D.C. 20250, or the appropriate Regional Attorney or Attorney in Charge at the applicable address specified in the foregoing.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the System Manager, or from the appropriate Regional Attorney or Attorney in Charge at the applicable address listed above. If the specific location of the record is not known, the individual should address his request to the Director, Natural Resources Division, who, if necessary, will refer it to the appropriate field office. A request for information pertaining to an individual should contain: Name, address, and particulars involved (i.e., the date of action giving rise to the claim, date claim was filed, correspondence, etc.).

Record access procedures: Any individual may obtain information as to the procedures for gaining accesss to a record in the system which pertains to him by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Any individual may contest a record in the system by using the same procedures as those for requesting access.

Record source categories: The information in the system comes primarily from the exchange proponent, title and abstract companies, and agency employees.

USDA/OGC—56

System name: Land Exchanges, other than Exchange Act—Forest Service—USDA/OGC

System location: Office of the General Counsel, Natural Resources Division, USDA, Washington, D.C. 20250. Offices of Regional Attorneys and Attorneys in Charge, Office of the General Counsel, USDA: Albuquerque, New Mexico; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; Harrisburg, Pennsylvania; Little Rock, Arkansas; Milwaukee, Wisconsin; Temple, Texas; Missoula, Montana; Ogden, Utah; Portland, Oregon; San Francisco, California; Santurce, Puerto Rico; Shawnee Mission, Kansas; Stillwater, Oklahoma.

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Addresses of each field office are listed in the telephone directories of the respective cities listed above under the heading "United States Government, Department of Agriculture, Office of the General Counsel."

Categories of individuals covered by the system: Individuals who have offered to exchange private lands for National Forest lands or National Grasslands.

Categories of records in the system: The system consists of files on individual land exchanges, including title information and agency reports.

Authority for maintenance of the system: 16 U.S.C. 516, 555a and 484a, and many other general and specific acts authorizing land exchanges.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: The system is used by attorneys in title examination and exchange closings. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by the name of the individual on whom the file is primarily maintained.

Safeguards: All records are kept in locked offices. Investigation reports, personnel files, and other sensitive materials are also kept in locked drawers.

Retention and disposal: Records are retained up to five years after file is closed, then are destroyed unless retained for research value.

System manager(s) and address: Director, Natural Resources Division, OGC, USDA, Washington, D.C. 20250, or the appropriate Regional Attorney or Attorney in Charge at the applicable address specified in the foregoing.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the System Manager, or from the appropriate Regional Attorney or Attorney in Charge at the applicable address listed above. If the specific location of the record is not known, the individual should address his request to the Director, Natural Resources Division, who, if necessary, will refer it to the appropriate field office. A request for information pertaining to an individual should contain: Name, address, and particulars involved (i.e., the date of action giving rise to the claim, date claim was filed, correspondence, etc.).

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Any individual may contest a record in the system by using the same procedures as those for requesting access.

Record source categories: The information in this system comes primarily from the land exchange proponent, title and abstract companies, and agency employees.

USDA/OGC—57

System name: Leases—Forest Service—USDA/OGC

System location: Office of the General Counsel, Natural Resources Division, USDA, Washington, D.C. 20250. Offices of Regional Attorneys and Attorneys in Charge, Office of the General Counsel, USDA: Albuquerque, New Mexico; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; Harrisburg, Pennsylvania; Little Rock, Arkansas; Milwaukee, Wisconsin; Temple, Texas; Missoula, Montana; Ogden, Utah; Portland, Oregon; San Francisco, California; Santurce, Puerto Rico; Shawnee Mission, Kansas; Stillwater, Oklahoma.

Addresses of each field office are listed in the telephone directories of the respective cities listed above under the heading "United States Government, Department of Agriculture, Office of the General Counsel."

Categories of individuals covered by the system: Persons leasing or intending to lease property to or from USDA agencies; persons occupying property subject to or under such leases or proposed leases, and persons having or claiming an interest in land covered by such leases or proposed leases.

Categories of records in the system: Partial or complete records on individual cases sometimes including investigation reports, copies of contracts, leases or permits, legal opinions, pleadings, transcripts, correspondence, and related documents.

Authority for maintenance of the system: 7 U.S.C. 1011(c); 16 U.S.C. 460d-2 and 580g; 43 U.S.C. 931c-d; 7 CFR 2.31.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referral to Department of Justice and United States Attorneys to defend suits brought against the Government or its officers. Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or order issued pursuant thereto. Referral to a court, magistrate, or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by the name of the individual on whom the file is primarily maintained.

Safeguards: All records are kept in locked offices. Investigation reports, personnel files, and other sensitive materials are also kept in locked drawers.

Retention and disposal: Records are retained up to five years after file is closed, then are destroyed unless retained for research value.

System manager(s) and address: Director, Natural Resources Division, OGC, USDA, Washington, D.C. 20250, or the appropriate Regional Attorney or Attorney in Charge at the applicable address specified in the foregoing.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the System Manager, or from the appropriate Regional Attorney or Attorney in Charge at the applicable address listed above. If the specific location of the record is not known, the individual should address his request to the Director, Natural Resources Division, who, if necessary, will refer it to the appropriate field office. A request for information pertaining to an individual should contain: Name, address, and particulars involved (i.e., the date of action giving rise to the claim, date claim was filed, correspondence, etc.).

Record access procedures: Any individual may obtain information as to the procedures for gaining accesss to a record in the system which pertains to him by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Any individual may contest a record in the system by using the same procedures as those for requesting access.

Record source categories: Primarily the individuals in the system, agency employees, witnesses, attorneys and investigative personnel.

USDA/OGC—58

System name: Legislation—Forest Service—USDA/OGC

System location: Office of the General Counsel, Natural Resources Division, USDA, Washington, D.C. 20250. Offices of Regional Attorneys and Attorneys in Charge, Office of the General Counsel, USDA: Albuquerque, New Mexico; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; Harrisburg, Pennsylvania; Little Rock, Arkansas; Milwaukee, Wisconsin; Temple, Texas; Missoula, Montana; Ogden, Utah; Portland, Oregon; San Francisco, California; Santurce, Puerto Rico; Shawnee Mission, Kansas; Stillwater, Oklahoma.

Addresses of each field office are listed in the telephone directories of the respective cities listed above under the heading "United States Government, Department of Agriculture, Office of the General Counsel."

Categories of individuals covered by the system: Persons occupying USDA lands who are involved or expected to be involved in disputes concerning the applicability of Federal, State, or local civil or criminal legislation or administrative regulations to their activities or possessory interests.

Categories of records in the system: Partial or complete records on individual cases sometimes including investigation reports, copies of contracts or permits, legal opinions, pleadings, transcripts, correspondence, notices of appeals, decisions of forest officers, witnesses statements, and related documents.

Authority for maintenance of the system: 16 U.S.C. 471-583, 661-63, 668aa-bb, 683, 1001-09, 1131-32 and 1271-75; 42 U.S.C. 4321-74; 7 CFR 2.31.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referral to Department of Justice and United States Attorneys to defend suits brought against the Government or its officers.

Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule regulation, or order issued pursuant thereto. Referral to a court, magistrate, or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by the name of the individual on whom the file is primarily maintained.

Safeguards: All records are kept in locked offices. Investigation reports, personnel files, and other sensitive materials are also kept in locked drawers.

Retention and disposal: Records are retained up to five years after file is closed, then are destroyed unless retained for research value.

System manager(s) and address: Director, Natural Resources Division, OGC, USDA, Washington, D.C. 20250, or the appropriate Regional Attorney or Attorney in Charge at the applicable address specified in the foregoing.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the System Manager, or from the appropriate Regional Attorney or Attorney in Charge at the applicable address listed above. If the specific location of the record is not known, the individual should address his request to the Director, Natural Resources Division, who, if necessary, will refer it to the appropriate field office. A request for information pertaining to an individual should contain: Name, address, and particulars involved (i.e., the date of action giving rise to the claim, date claim was filed, correspondence, etc.).

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Any individual may contest a record in the system by using the same procedures as those for requesting access.

Record source categories: Primarily the individuals in the system, agency employees, witnesses, attorneys and investigative personnel.

USDA/OGC—59

System name: Minerals and Mining Claims—Forest Service—USDA/OGC

System location: Office of the General Counsel, Natural Resources Division, USDA, Washington, D.C. 20250. Offices of Regional Attorneys and Attorneys in Charge, Office of the General Counsel, USDA: Albuquerque, New Mexico; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; Harrisburg, Pennsylvania; Little Rock, Arkansas; Milwaukee, Wisconsin; Temple, Texas; Missoula, Montana, Ogden, Utah; Portland, Oregon; San Francisco, California; Santurce, Puerto Rico; Shawnee Mission, Kansas; Stillwater, Oklahoma.

Addresses of each field office are listed in the telephone directories of the respective cities listed above under the heading "United States Government, Department of Agriculture, Office of the General Counsel."

Categories of individuals covered by the system: Persons claiming mining or mineral rights on lands owned or claimed by the United States in behalf of USDA agencies; persons occupying or claiming an interest in such lands pursuant to such claims or under color thereof; persons having an interest in land in which the United States has reserved, or claims, minerals or mineral rights from the United States.

Categories of records in the system: Partial or complete records on individual cases, sometimes including notices of claim and related documents; copies of leases, contracts or permits; title evidence; investigation reports; pleadings; transcripts; legal opinions; correspondence; etc.

Authority for maintenance of the system: 16 U.S.C. 478, 482, 495, and 520; 30 U.S.C. 22-47, 141-42, 181, 351-59, 601-02, 611-15, 621, 701-08; 7 CFR 2.31.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referral to (1) Department of Justice or United States Attorney for institution of ejectment or similar actions or to bring or defend quiet title actions or other litigation pertaining to actual or claimed mineral rights, uses, or reservations; (2) Department of the Interior for performance of its functions under the foregoing-cited authority and related laws and for administrative determinations regarding the validity of mining claims; (3) Evaluation and preparation of proposed mineral contests. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by the name of the individual on whom the file is primarily maintained.

Safeguards: All records are kept in locked offices. Investigation reports, personnel files, and other sensitive materials are also kept in locked drawers.

Retention and disposal: Records are retained up to five years after file is closed, then are destroyed unless retained for research value.

System manager(s) and address: Director, Natural Resources Division, OGC, USDA, Washington, D.C. 20250, or the appropriate Regional Attorney or Attorney in Charge at the applicable address specified in the foregoing.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the System Manager, or from the appropriate Regional Attorney or Attorney in Charge at the applicable address listed above. If the specific location of the record is not known, the individual should address his request to the Director, Natural Resources Division, who, if necessary, will refer it to the appropriate field office. A request for information pertaining to an individual should contain: Name, address, and particulars involved (i.e., the date of action giving rise to the claim, date claim was filed, correspondence, etc.).

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Any individual may contest a record in the system by using the same procedures as those for requesting access.

Record source categories: Primarily the individuals in the system, agency employees, witnesses, attorneys, Department of the Interior employees and Administrative Law Judges, and investigative personnel.

USDA/OGC—60

System name: Program Cooperators—Soil Conservation Service—USDA/OGC.

System location: Office of the General Counsel, Natural Resources Division, USDA, Washington, D.C. 20250. Offices of Regional Attorneys and Attorneys in Charge, Office of the General Counsel, USDA: Albuquerque, New Mexico; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; Harrisbury, Pennsylvania; Little Rock, Arkansas; Milwaukee, Wsiconsin; Missoula, Montana; Ogden, Utah;

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Portland, Oregon; San Francisco, California; Santurce, Puerto Rico; Shawnee Mission, Kansas; Stillwater, Oklahoma; Temple, Texas.

Addresses of each field office are listed in the telephone directories of the respective cities listed above under the heading "United States Government, Department of Agriculture, Office of the General Counsel."

Categories of individuals covered by the system: Persons applying for or receiving financial aid, engineering services, advice or assistance under Soil Conservation Service (SCS) - sponsored or financed programs; parties or potential parties to litigation or administrative hearings involving SCS-sponsored or financed programs; and parties contracting with soil conservation districts and similar organizations formed pursuant to state laws to pursue programs of watershed protection, flood prevention or soil conservation with the assistance of SCS.

Categories of records in the system: Partial or complete records, files on individual cases, sometimes including legal opinions, deeds, contracts, permits, title evidence, investigation reports, legal opinions, affidavits, pleadings, correspondence, transcripts and related documents.

Authority for maintenance of the system: 16 U.S.C. 590a-590f, 1001-1011; 5 U.S.C. 301; 44 U.S.C. 3101; 7 CFR 2.31.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referral to (1) the United States Attorney or Department of Justice for the investigation or prosecution of a violation of law, or for the enforcement or implementation of statutes, rules, regulations or orders issued pursuant thereto, or for the defense of suits brought against the Department of Agriculture, the Soil Conservation Service, cooperating local organization or officers thereof; (2) a court, magistrate or administrative tribunal, or to assigning or opposing counsel in a proceeding before any of the above; (3) title companies for title evidence; and (4) appropriate state and local officials for filing or recording. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by the name of the individual on whom the file is primarily maintained or, in some instances, cross-indexed by the names of other individuals mentioned in the files.

Safeguards: Records are kept in locked offices, with pending case files and investigation reports being kept in locked drawers.

Retention and disposal: Records are retained up to 5 years after case is closed, then are destroyed unless retained for research value.

System manager(s) and address: Director, Natural Resources Division, OGC, USDA, Washington, D.C. 20250, or the appropriate Regional Attorney or Attorney in Charge at the applicable address listed above.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the System Manager, or from the appropriate Regional Attorney or Attorney in Charge at the applicable address listed above. If the specific location of the record is not known, the individual should address his request to the Director, Natural Resources Division, who, if necessary, will refer it to the appropriate field office. A request for information pertaining to an individual should contain: Name, address, and particulars involved (i.e., the date of acting giving rise to the claim, date claim was filed, correspondence, etc.).

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Any individual may contest a record in the system by using the same procedures as those for requesting access.

Record source categories: The individuals in the system, agency employees, State and local officials, attorneys, witnesses, title companies, credit bureaus, and investigative personnel.

USDA/OGC—61

System name: Rights-of-Way—Acquisition—Forest Service—USDA/OGC.

System location: Office of the General Counsel, Natural Resources Division, USDA, Washington, D.C. 20250. Offices of Regional Attorneys and Attorneys in Charge, Office of the General Counsel, USDA: Albuquerque, New Mexico; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; Harrisburg, Pennsylvania; Little Rock, Arkansas; Milwaukee, Wisconsin; Temple, Texas; Missoula, Montana; Ogden, Utah; Portland, Oregon; San Francisco, California; Santurce, Puerto Rico; Shawnee Mission, Kansas; Stillwater, Oklahoma.

Addresses of each field office are listed in the telephone directories of the respective cities listed above under the heading "United States Government, Department of Agriculture, Office of the General Counsel."

Categories of individuals covered by the system: Individuals from whom the Forest Service purchases easements or rights-of-way for the forest roads and trails system.

Categories of records in the system: The system consists of options, title information and correspondence.

Authority for maintenance of the system: 16 U.S.C. 471.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Information is used by attorneys in preparing and evaluating acquisition documents and title to the land on which the right-of-way lies. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by the name of the individual on whom the file is primarily maintained.

Safeguards: All records are kept in locked offices. Investigation reports, personnel files, and other sensitive materials are also kept in locked drawers.

Retention and disposal: Records are retained up to five years after file is closed, then are destroyed unless retained for research value.

System manager(s) and address: Director, Natural Resources Division, OGC, USDA, Washington, D.C. 20250, or the appropriate Regional Attorney or Attorney in Charge at the applicable address specified in the foregoing.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the System Manager, or from the appropriate Regional Attorney or Attorney in Charge at the applicable address listed above. If the specific location of the record is not known, the individual should address his request to the Director, Natural Resources Division, who, if necessary, will refer it to the appropriate field office. A request for information pertaining to an individual should contain: Name, address, and particulars involved (i.e., the date of action giving rise to the claim, date claim was filed, correspondence, etc.).

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Any individual may contest a record in the system by using the same procedures as those for requesting access.

Record source categories: Information in this system comes primarily from abstract and title companies, individual sellers and agency personnel.

USDA/OGC—62

System name: Special Uses—Forest Service—USDA/OGC.

System location: Office of the General Counsel, Natural Resources Division, USDA, Washington, D.C. 20250. Offices of Regional Attorneys and Attorneys in Charge, Office of the General Counsel, USDA: Albuquerque, New Mexico; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; Harrisburg, Pennsylvania; Little Rock, Arkansas; Milwaukee, Wisconsin; Temple, Texas; Missoula, Montana; Ogden, Utah; Portland, Oregon, San Francisco, California; Santurce, Puerto Rico; Shawnee Mission, Kansas; Stillwater, Oklahoma.

Addresses of each field office are listed in the telephone directories of the respective cities listed above under the heading "United States Government, Department of Agriculture, Office of the General Counsel."

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Categories of individuals covered by the system: Applicants for Forest Service special use permits, persons occupying land owned by the United States pursuant to such permits, and persons claiming under those persons.

Categories of records in the system: Partial or complete records on individual cases, sometimes including investigation reports, copies of contracts or permits, legal opinions, pleadings, transcripts, correspondence, notices of appeal, decisions of forest officers, witness statements, decisions of the Board of Forest Appeals or Agriculture Board of Contract Appeals, and related documents.

Authority for maintenance of the system: 16 U.S.C. 432, 497, 522, 551 and 580d; 43 U.S.C. 931c-d; 7 CFR 2.31.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referral to United States Attorney or Department of Justice to defend suits brought against the Government or its officers. Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or order issued pursuant thereto. Referral to a court, magistrate, or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by the name of the individual on whom the file is primarily maintained.

Safeguards: All records are kept in locked offices. Investigation reports, personnel files, and other sensitive materials are also kept in locked drawers.

Retention and disposal: Records are retained up to five years after file is closed, then are destroyed unless retained for research value.

System manager(s) and address: Director, Natural Resources Division, OGC, USDA, Washington, D.C. 20250, or the appropriate Regional Attorney or Attorney in Charge at the applicable address specified in the foregoing.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the System Manager, or from the appropriate Regional Attorney or Attorney in Charge at the applicable address listed above. If the specific location of the record is not known, the individual should address his request to the Director, Natural Resources Division, who, if necessary, will refer it to the appropriate field office. A request for information pertaining to an individual should contain: Name, address, and particulars involved (i.e., the date of action giving rise to the claim, date claim was filed, correspondence, etc.).

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Any individual may contest a record in the system by using the same procedures as those for requesting access.

Record source categories: Primarily the individuals in the system, agency employees, witnesses, attorneys and investigative personnel.

USDA/OGC—63

System name: Timber Sales—Forest Service—USDA/OGC

System location: Office of the General Counsel, Natural Resources Division, USDA, Washington, D.C. 20250. Offices of Regional Attorneys and Attorneys in Charge, Office of the General Counsel, USDA: Albuquerque, New Mexico; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; Harrisburg, Pennsylvania; Little Rock, Arkansas; Milwaukee, Wisconsin; Temple, Texas; Missoula, Montana; Ogden, Utah; Portland, Oregon; San Francisco, California; Santurce, Puerto Rico; Shawnee Mission, Kansas; Stillwater, Oklahoma.

Addresses of each field office are listed in the telephone directories of the respective cities listed above under the heading "United States Government, Department of Agriculture, Office of the General Counsel."

Categories of individuals covered by the system: Persons contracting to purchase timber from the Forest Service and persons which the Forest Service seeks to debar from such contracting; Unsuccessful bidders at such sales and persons protesting awards or proposed awards of same; Individuals who have breached a provision of a timber contract or who have otherwise engaged in conduct which raises a legal question concerning timber sale administration.

Categories of records in the system: Partial or complete records on individual cases, sometimes including legal opinions, copies of timber sale agreements, notices of appeal, investigation reports, pleadings, decisions of the Board of Forest Appeals or Agriculture Board of Contract Appeals, transcripts, correspondence, and related documents.

Authority for maintenance of the system: 16 U.S.C. 476-77, 491 and 616; 7 CFR 2.31.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referral to the Department of Justice or United States Attorney to defend suits brought against the Government or its officers. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or order issued pursuant thereto. Referral to a court, magistrate, or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by the name of the individual on whom the file is primarily maintained.

Safeguards: All records are kept in locked offices. Investigation reports, personnel files, and other sensitive materials are also kept in locked drawers.

Retention and disposal: Records are retained up to five years after file is closed, then are destroyed unless retained for research value.

System manager(s) and address: Director, Natural Resources Division, OGC, USDA, Washington, D.C., 20250, or the appropriate Regional Attorney or Attorney in Charge at the applicable address specified in the foregoing.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the System Manager, or from the appropriate Regional Attorney or Attorney in Charge at the applicable address listed above. If the specific location of the record is not known, the individual should address his request to the Director, Natural Resources Division, who, if necessary, will refer it to the appropriate field office. A request for information pertaining to an individual should contain: Name, address, and particulars involved (i.e., the date of action giving rise to the claim, date claim was filed, correspondence, etc.).

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Any individual may contest a record in the system by using the same procedures as those for requesting access.

Record source categories: Primarily the individuals in the system, forest officers, agency employees, witnesses, attorneys, and investigative personnel.

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USDA/OGC—64

System name: Title Claims and Occupancy and Use Cases—Forest Service—USDA/OGC

System location: Office of the General Counsel, Research and Operations Division, USDA, Washington, D.C. 20250. Offices of Regional Attorneys and Attorneys in Charge, Office of the General Counsel, USDA: Albuquerque, New Mexico; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; Harrisburg, Pennsylvania; Little Rock, Arkansas; Milwaukee, Wisconsin; Temple, Texas; Missoula, Montana; Ogden, Utah; Portland, Oregon; San Francisco, California; Santurce, Puerto Rico; Shawnee Mission, Kansas; Stillwater, Oklahoma.

Addresses of each field office are listed in the telephone directories of the respective cities listed above under the heading "United States Government, Department of Agriculture, Office of the General Counsel."

Categories of individuals covered by the system: Individuals who file claims against USDA arising out of Forest Service land acquisitions under the Treaty of Paris, the Weeks Law and the Uniform Relocation Assistance and Real Property Acquisition Policies Act; and cases arising out of the occupancy and use of properties administered by the Forest Service in the Caribbean National Forest.

Categories of records in the system: The system consists of complete files on individual claims, including correspondence, claim forms, deeds, land surveys, aerial photographs, disclaimers, abstract of title reports, maps, statements of witnesses, agency reports.

Authority for maintenance of the system: 30 Stat. at Large, page 1754, Revised Stat. 1911, section 6503-6610, 36 Stat. 961, as amended, 16 U.S.C. 515-517, 5231, 46 Stat. 1516, 43 Stat. 1133, as amended, 16 U.S.C. 555, 70 Stat. 1034, 7 U.S.C. 428(a), 78 Stat. 903, as amended, 16 U.S.C. 4601-9, 42 U.S.C. 4601(6), 4601(8), 4621, 4622, 4651, 4653, 16 U.S.C. 476, 16 U.S.C. 478, 16 U.S.C. 529-531, 16 U.S.C. 477, 16 U.S.C. 491, 16 U.S.C. 481, 38 Stat. 1101, as amended.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referral to (1) internal; (2) Department of Justice and United States Attorneys for defense of suits that may be brought against the United States. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by the name of the individual on whom the file is primarily maintained.

Safeguards: All records are kept in locked offices. Investigation reports, personnel files, and other sensitive materials are also kept in locked drawers.

Retention and disposal: Records are retained up to five years after file is closed, then are destroyed unless retained for research value.

System manager(s) and address: Director, Natural Resources Division, OGC, USDA, Washington, D.C., 20250, or the appropriate Regional Attorney or Attorney in Charge at the applicable address specified in the foregoing.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the System Manager, or from the appropriate Regional Attorney or Attorney in Charge at the applicable address listed above. If the specific location of the record is not known, the individual should address his request to the Director, Natural Resources Division, who, if necessary, will refer it to the appropriate field office. A request for information pertaining to an individual should contain: Name, address, and particulars involved (i.e., the date of action giving rise to the claim, date claim was filed, correspondence, etc.).

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Any individual may contest a record in the system by using the same procedures as those for requesting access.

Record source categories: Information in this system comes primarily from claimants, witnesses, agency employees, and investigative personnel.

USDA/OGC—65

System name: Trespass and Claims Cases—Forest Service—USDA/OGC

System location: Office of the General Counsel, Natural Resources Division, USDA, Washington, D.C. 20250. Offices of Regional Attorneys and Attorneys in Charge, Office of the General Counsel, USDA: Albuquerque, New Mexico; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; Harrisburg, Pennsylvania; Little Rock, Arkansas; Milwaukee, Wisconsin; Temple, Texas; Missoula, Montana; Ogden, Utah; Portland, Oregon; San Francisco, California; Santurce, Puerto Rico; Shawnee Mission, Kansas; Stillwater, Oklahoma.

Addresses of each field office are listed in the telephone directories of the respective cities listed above under the heading "United States Government, Department of Agriculture, Office of the General Counsel."

Categories of individuals covered by the system: Persons who have or are suspected of having committed trespasses, other torts, and breaches of contract on USDA lands involving unauthorized cutting of timber, occupancy and use, grazing, or removal of minerals; the negligent or willful setting of fires, and fire suppression costs; breaches of timber sales agreements and similar actions.

Categories of records in the system: Partial or complete files on individual cases, sometimes including copies of contracts or permits, investigation reports, statements of witnesses, pleadings, transcripts, legal opinions, correspondence, and related documents.

Authority for maintenance of the system: 16 U.S.C. 471-583, 661-63, 668aa-bb, 683, 1001-09, 1131-32 and 1271-75; 42 U.S.C. 4321-74; 7 CFR 2.31.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referral to the Department of Justice and United States Attorney to defend suits brought against the Government or its officers. Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or order issued pursuant thereto. Referral to a court, magistrate, or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by the name of the individual on whom the file is primarily maintained.

Safeguards: All records are kept in locked offices. Investigation reports, personnel files, and other sensitive materials are also kept in locked drawers.

Retention and disposal: Records are retained up to five years after file is closed, then are destroyed unless retained for research value.

System manager(s) and address: Director, Natural Resources Division, OGC, USDA, Washington, D.C., 20250, or the appropriate Regional Attorney or Attorney in Charge at the applicable address specified in the foregoing.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the System Manager, or from the appropriate Regional Attorney or Attorney in Charge at the applicable address listed above. If the specific location of the record is not known, the individual should address his request to the Director, Natural Resources Division, who, if necessary, will refer it to the appropriate field office. A request for information pertaining to an individual should contain: Name, address, and particulars involved (i.e., the date of action giving rise to the claim, date claim was filed, correspondence, etc.).

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the appropriate official referred to in the preceding paragraph.

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Contesting record procedures: Any individual may contest a record in the system by using the same procedures as those for requesting access.

Record source categories: Primarily the individuals in the system, agency employees, witnesses, attorneys, and investigative personnel.

USDA/OGC—66

System name: United States Magistrates—Forest Service—USDA/OGC

System location: Office of the General Counsel, Natural Resources Division, USDA, Washington, D.C. 20250. Offices of Regional Attorneys and Attorneys in Charge, Office of the General Counsel, USDA: Albuquerque, New Mexico; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; Harrisburg, Pennsylvania; Little Rock, Arkansas; Milwaukee, Wisconsin; Temple, Texas; Missoula, Montana; Ogden, Utah; Portland, Oregon; San Francisco, California; Santurce, Puerto Rico; Shawnee Mission, Kansas; Stillwater, Oklahoma.

Addresses of each field office are listed in the telephone directories of the respective cities listed above under the heading "United States Government, Department of Agriculture, Office of the General Counsel."

Categories of individuals covered by the system: Alleged and convicted violators of Forest Service petty offense regulations (36 CFR, Parts 211-95) and other minor offenses.

Categories of records in the system: Partial or complete records on individual cases, sometimes including copies of citations, pleadings, correspondence, and related documents.

Authority for maintenance of the system: 16 U.S.C. 472, 528-31 and 551; 18 U.S.C. 711 and 3401; 36 CFR, Parts 211-95; 7 CFR 2.31.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referral to United States Attorneys for consideration of criminal action by the Government and to Magistrates for trial. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by the name of the individual on whom the file is primarily maintained.

Safeguards: All records are kept in locked offices. Investigation reports, personnel files, and other sensitive materials are also kept in locked drawers.

Retention and disposal: Records are retained up to five years after file is closed, then are destroyed unless retained for research value.

System manager(s) and address: Director, Natural Resources Division, OGC, USDA, Washington, D.C. 20250, or the appropriate Regional Attorney or Attorney in Charge at the applicable address specified in the foregoing.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the System Manager, or from the appropriate Regional Attorney or Attorney in Charge at the applicable address listed above. If the specific location of the record is not known, the individual should address his request to the Director, Natural Resources Division, who, if necessary, will refer it to the appropriate field office. A request for information pertaining to an individual should contain: Name, address, and particulars involved (i.e., the date of action giving rise to the claim, date claim was filed, correspondence, etc.).

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Any individual may contest a record in the system by using the same procedures as those for requesting access.

Record source categories: Primarily Forest officers, witnesses, attorneys, State and local law enforcement officers, and investigative personnel.

USDA/OGC—67

System name: Water Cases—Forest Service—USDA/OGC

System location: Office of the General Counsel, Natural Resources Division, USDA, Washington, D.C. 20250. Offices of Regional Attorneys and Attorneys in Charge, Office of the General Counsel, USDA: Albuquerque, New Mexico; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; Harrisburg, Pennsylvania; Little Rock, Arkansas; Milwaukee, Wisconsin; Temple, Texas; Missoula, Montana; Ogden, Utah; Portland, Oregon; San Francisco, California; Santurce, Puerto Rico; Shawnee Mission, Kansas; Stillwater, Oklahoma.

Addresses of each field office are listed in the telephone directories of the respective cities listed above under the heading "United States Government, Department of Agriculture, Office of the General Counsel."

Categories of individuals covered by the system: Persons claiming or believed to be claiming water rights, water use privileges, or rights-of-way to transport water (1) on land owned or leased by the United States and administered by USDA agencies, (2) in conflict with or from the same sources as water rights claimed or reserved by the United States for the benefit of USDA agencies, or (3) by reason of a permit from or agreement with USDA agencies.

Categories of records in the system: Partial or complete files on individual cases, sometimes including investigation reports, notices of claims, copies of contracts or permits, legal opinions, pleadings, transcripts, correspondence and related documents.

Authority for maintenance of the system: 16 U.S.C. 481, 524, 552a-552d, and 460 1-12; 33 U.S.C. 701b-1; 42 U.S.C. 1962-1962b; 43 U.S.C. 946-49 and 951.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referral to appropriate State agencies for administrative hearings and to the Department of Justice and United States Attorneys to defend suits brought against the Government or its officers.

Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or order issued pursuant thereto. Referral to a court, magistrate, or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by the name of the individual on whom the file is primarily maintained.

Safeguards: All records are kept in locked offices. Investigation reports, personnel files, and other sensitive materials are also kept in locked drawers.

Retention and disposal: Records are retained up to five years after file is closed, then are destroyed unless retained for research value.

System manager(s) and address: Director, Natural Resources Division, OGC, USDA, Washington, D.C. 20250, or the appropriate Regional Attorney or Attorney in Charge at the applicable address specified in the foregoing.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the System Manager, or from the appropriate Regional Attorney or Attorney in Charge at the applicable address listed above. If the specific location of the record is not known, the individual should address his request to the Director, Natural Resources Division, who, if necessary, will refer it to the appropriate field office. A request for information pertaining to an individual should contain: Name, address, and particulars involved (i.e., the date of action giving rise to the claim, date claim was filed, correspondence, etc.).

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Any individual may contest a record in the system by using the same procedures as those for requesting access.

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Record source categories: Primarily the individuals in the system, agency employees, witnesses, State officials, attorneys, and investigative personnel.

USDA/OGC—68

System name: Court cases brought pursuant to the Packers and Stockyards Act, as amended, in which the Government is defendant, USDA/OGC.

System location: Office of the General Counsel, Packers and Stockyards Division, USDA, Washington, D.C.

Categories of individuals covered by the system: Individuals who bring suit against the Government or a Governmental official pursuant to, or as a consequence of the Department's administration of, the subject Act.

Categories of records in the system: The system consists of investigatory material which may include intradepartmental recommendations, and interdepartmental recommendations pertaining to an alleged violation of the subject Act.

Authority for maintenance of the system: 7 U.S.C. 181 et seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (2) Presentation or disclosure to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system as evidence in a proceeding, or which is sought in the course of discovery including disclosure to opposing counsel in the course of settlement negotiations; (3) Presentation, as needed, in the course of presenting evidence, to the appropriate Government officials charged with the responsibility of defending the Government before a court, magistrate or administritive tribunal; (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of the individual.

Safeguards: Records are kept in a locked office or file cabinet.

Retention and disposal: Records are maintained until file is closed or no longer needed or as otherwise provided in agency directives and disposed of or sent to appropriate records centers in accordance with such directives.

System manager(s) and address: Director, Packers and Stockyards Division, OGC, USDA, Washington, D.C. 20250.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the Director, Packers and Stockyards Division, OGC, USDA, Washington, D.C., telephone 202-447-5935. A request for information pertaining to an individual should contain: Name, address, and particulars involved (i.e., the name of action filed, Act filed under, etc.).

Record access procedures: Any individual may obtain information as to the procedures for gaining access to and contesting a record in the system which pertains to him, by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Same as Record Access Procedures.

Record source categories: Information in this system comes primarily from witnesses, agency employees, and investigative personnel.

USDA/OGC—69

System name: Packers and Stockyards Act—Administrative Cases—USDA/OGC

System location: Office of the General Counsel, Packers and Stockyards Division, USDA, Washington, D.C., and Offices of Regional Attorneys and Attorneys-in-Charge, OGC, USDA, at the following locations: Albuquerque, New Mexico; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; Harrisburg, Pennsylvania; Juneau, Alaska; Little Rock, Arkansas; Milwaukee, Wisconsin; Temple, Texas; Missoula, Montana; Ogden, Utah; Portland, Oregon; St. Paul, Minnesota; San Francisco, California; Santurce, Puerto Rico; Shawnee Mission, Kansas; Stillwater, Oklahoma.

Addresses of each field office are listed in the telephone directories of the respective cities listed above under the heading "United States Government, Department of Agriculture, Office of the General Counsel."

Categories of individuals covered by the system: Individuals who are regulated by the subject Act and against whom the Department recommends that an enforcement action be brought by the Government.

Categories of records in the system: The system consists of investigatory material which may include intradepartmental recommendations, and interdepartmental recommendations pertaining to an alleged violation of the subject Act.

Authority for maintenance of the system: 7 U.S.C. 181 et seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, or rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (2) Presentation or disclosure to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system as evidence in a proceeding, or which is sought in the course of discovery including disclosure to opposing counsel in the course of settlement negotiations; (3) Presentation, as needed, in the course of presenting evidence, to the appropriate Government officials charged with the responsibility of defending the Government before a court, magistrate or administrative tribunal; (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of the individual.

Safeguards: Records are kept in a locked office or file cabinet.

Retention and disposal: Records are maintained until file is closed or no longer needed or as otherwise provided in agency directives and disposed of or sent to appropriate records centers in accordance with such directives.

System manager(s) and address: Director, Packers and Stockyards Division, OGC, USDA, Washington, D.C. 20250, or the appropriate Regional Attorney or Attorney in Charge at the address specified above.

Systems exempted from certain provisions of the act: This system has been exempted pursuant to 5 U.S.C. 552a(k)(2) from the requirements of 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f) because it consists of investigatory material compiled for law enforcement purposes. See 7 CFR 1.123. Individual access to these files could impair investigations and alert subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action or escape prosecution. Disclosure of investigative techniques and procedures and the existence and identity of confidential sources of information would hamper law enforcement activity.

USDA/OGC—70

System name: Packers and Stockyards Act—Civil and Criminal Cases—USDA/OGC

System location: Office of the General Counsel, Packers and Stockyards Division, USDA, Washington, D.C., and Offices of Regional Attorneys and Attorneys-in-Charge, OGC, USDA, at the following locations: Albuquerque, New Mexico; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; Harrisburg, Pennsylvania; Juneau, Alaska; Little Rock, Arkansas; Milwaukee, Wisconsin; Temple, Texas; Missoula, Montana; Ogden, Utah; Portland, Oregon; St. Paul, Minnesota; San Francisco, California; Santurce, Puerto Rico; Shawnee Mission, Kansas; Stillwater, Oklahoma.

Addresses of each field office are listed in the telephone directories of the respective cities listed above under the heading "United States Government, Department of Agriculture, Office of the General Counsel."

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Categories of individuals covered by the system: Individuals who are regulated by the subject Act and against whom the Department recommends that an enforcement action be brought by the Government.

Categories of records in the system: The system consists of investigatory material which may include intradepartmental recommendations, and interdepartmental recommendations pertaining to an alleged violation of the subject Act.

Authority for maintenance of the system: 7 U.S.C. 181 et seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the appropriate agency, whether Federal, State, local or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, or rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (2) Presentation or disclosure to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system as evidence in a proceeding, or which is sought in the course of discovery including disclosure to opposing counsel in the course of settlement negotiations; (3) Presentation, as needed, in the course of presenting evidence, to the appropriate Government officials charged with the responsibility of defending the Government before a court, magistrate or administrative tribunal; (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of the individual.

Safeguards: Records are kept in a locked office of file cabinet.

Retention and disposal: Records are maintained until file is closed or no longer needed or as otherwise provided in agency directives and disposed of or sent to appropriate records centers in accordance with such directives.

System manager(s) and address: Director, Packers and Stockyards Division, OGC, USDA, Washington, D.C. 20250, or the appropriate Regional Attorney or Attorney in Charge at the address specified above.

Systems exempted from certain provisions of the act: This system has been exempted pursuant to 5 U.S.C. 552a(k)(2) from the requirements of 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (H), (I), and (f) because it consists of investigatory material compiled for law enforcement purposes. See 7 CFR 1.123. Individual access to these files could impair investigations and alert subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action or escape prosecution. Disclosure of investigative techniques and procedures and the existence and identity of confidential sources of information would hamper law enforcement activity.

USCA/OGC—71

System name: Civil Rights, administrative and judicial actions—USDA/OGC

System location: Office of the General Counsel, Research and Operations Division, USDA, Washington, D.C., 20250, and Offices of Regional Attorneys and Attorneys-in-charge, OGC, USDA, at the following locations: Albuquerque, New Mexico; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; Harrisburg, Pennsylvania; Little Rock, Arkansas; Milwaukee, Wisconsin; Temple, Texas; Missoula, Montana; Ogden, Utah; Portland, Oregon; San Francisco, California; Santurce, Puerto Rico; Shawnee Mission, Kansas; Stillwater, Oklahoma.

Addresses of each field office are listed in the telephone directories of the respective cities listed above under the heading "United States Government, Department of Agriculture, Office of the General Counsel."

Categories of individuals covered by the system: Individuals who have brought suit or filed administrative complaints against USDA or USDA employees or recipients of USDA assistance alleging discrimination on the basis of race, color, or national origin by USDA, its employees or recipients of assistance from USDA.

Categories of records in the system: The system consists of complete files on individual suits or administrative actions, including investigation reports, administrative determinations, statements of witnesses, and agency reports.

Authority for maintenance of the system: 42 U.S.C. 2000(d); 5 U.S.C. 301; 7 CFR 2.31.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referral to (1) Department of Justice for defense or prosecution of suits brought involving USDA, an officer or employee of USDA, or the United States; (2) the appropriate agency, whether Federal, State, local or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (3) a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery; (4) the Civil Rights Commission in response to its request for information; (5) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional ofice made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of individual.

Safeguards: Records are kept in a locked office.

Retention and disposal: Records are maintained until case is closed or no longer needed or as otherwise provided in agency directives and disposed of or sent to appropriate records center in accordance with such directives.

System manager(s) and address: Director, Research and Operations Division, OGC, USDA, Washington, D.C., 20250, or the appropriate Regional Attorney or Attorney-in-Charge at the address specified above.

Notification procedure: Any individual may request information regarding this system or records, or information as to whether the system contains records pertaining to him from the Director, Research and Operations Division, OGC, USDA, Washington, D.C., 20250, or the appropriate Regional Attorney or Attorney-in-Charge at the address listed above. If the specific location of the record is not known, the individual should address his request to the Director, Research and Operations Division, who, if necessary, will refer it to the appropriate field office. A request for information pertaining to an individual should contain: Name, address, and particulars involved.

Record access procedures: any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him, by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Same as Record Access Procedures.

Record source categories: Information in this system comes primarily from litigants, witnesses, agency employees, and investigative personnel.

USDA/OGC—72

System name: Claims By and Against USDA, USDA/OGC

System location: Office of the General Counsel, Research and Operations Division, USDA, Washington, D.C. 20250, and Offices of Regional Attorneys and Attorneys-in-Charge, OGC, USDA, at the following locations: Albuquerque, New Mexico; Atlanta, Georgia; Chicago, Illinois; Harrisburg, Pennsylvania; Little Rock, Arkansas; Milwaukee, Wisconsin; Missoula, Montana; Ogden, Utah; Portland, Oregon; San Francisco, California; Santurce, Puerto Rico; Shawnee Mission, Kansas; Stillwater, Oklahoma; Temple, Texas.

Addresses of each field office are listed in the telephone directories of the respective cities listed above under the heading "United States Government, Department of Agriculture, Office of the General Counsel."

Categories of individuals covered by the system: Individuals who file or may file (1) claims against USDA pursuant to the Federal Tort Claims Act and the Military Personnel and Civilian Employees

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Claims Act, (2) claims against the Forest Service pursuant to 16 USC 502, 556c, or 574, and (3) tort suits against the United States or its officers or instrumentalities concerning USDA activities; individuals against whom the Department has a monetary claim arising out of USDA-provided services, their employment by USDA, or damages to USDA property.

Categories of records in the system: The system consists of files on individual claims, including claim forms, police reports, investigation and accident reports, statements of witnesses, agency reports, correspondence, legal opinions, pleadings, transcripts, and related documents, and other information pertaining to matters referred by USDA agencies requesting legal assistance in settlement of claims against individuals arising out of USDA-provided services, their employment by USDA, or damages to USDA property.

Authority for maintenance of the system: 16 U.S.C. 502, 556c, 574; 28 U.S.C. 1345, 1346, 2671-2680; 31 U.S.C. 240-243; 7 CFR 2.31.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referral to (1) Department of Justice for concurrence of allowance of tort claims over 25,000, for defense of tort suits brought against the United States or its officers, and for institution of suit for recovery of claims by USDA; (2) Department of Labor in cases involving Job Corpsmen or arising under the Federal Employees Compensation Act (5 USC Chapter 81); (3) insurance companies for handling of claims; (4) the appropriate agency, whether Federal, State, local or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (5) a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery; (6) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of individual. In some instances, they are also cross-indexed by the names of other individuals mentioned in the files.

Safeguards: Records are kept in a locked office. Some sensitive materials are kept in locked drawers.

Retention and disposal: Records are maintained until case is closed or no longer needed or as otherwise provided in agency directives and disposed of or sent to appropriate records center in accordance with such directives.

System manager(s) and address: Director, Research and Operations division, OGC, USDA, Washington, D.C., 20250, or the appropriate Regional Attorney or Attorney-in-Charge at the address specified above.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the Director, Research and Operations Division, OGC, USDA, Washington, D.C. 20250, or the appropriate Regional Attorney or Attorney-in-Charge at the address listed above. If the specific location of the record is not known, the individual should address his request to the Director, Research and Operations Division, who, if necessary, will refer it to the appropriate field office. A request for information pertaining to an individual should contain: Name, address, and particulars involved.

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him, by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Same as Record Access Procedures.

Record source categories: Information in this system comes primarily from claimants, witnesses, agency employees, and investigative personnel.

USDA/OGC—73

System name: Contract Cases, USDA/OGC.

System location: Office of the General Counsel, Research and Operations Division, USDA, Washington, D.C., 20250, and Offices of Regional Attorneys and Attorneys-in-Charge, OGC, USDA, at the following locations: Albuquerque, New Mexico; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; Harrisburg, Pennsylvania; Little Rock, Arkansas; Milwaukee, Wisconsin; Missoula, Montana; Ogden, Utah; Portland, Oregon; San Francisco, California; Santurce, Puerto Rico; Shawnee Mission, Kansas; Stillwater, Oklahoma; Temple, Texas.

Addresses of each filed office are listed in the telephone directories of the respective cities listed above under the heading "United States Government, Department of Agriculture, Office of the General Counsel."

Categories of individuals covered by the system: Persons who submit offers or bids to solicitations of agencies of USDA or who contract with agencies of USDA.

Categories of records in the system: The system consists of partial and/or complete files relating to legal issues that arise out of the procurement activities of USDA; it includes copies of contracts, contract claims, investigation reports, contracting officer's decisions, correspondence, and pleadings, transcripts, and related documents in contract appeal cases before the USDA Board of Contract Appeals.

Authority for maintenance of the system: 41 U.S.C. 251 et seq; 7 CFR 2.31; 41 CFR Chapters 1 and 4.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referral to (1) the appropriate agency, whether Federal, State, local or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (2) a court, magistrate, or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discover; (3) the General Accounting Office for determination of bid protests, and questions on information, rescission, mistake in bid, and remission of liquidated damages; (4) Department of Justice for defense of suits filed against Government or for institution of suit for recovery of claims arising under the contract; (5) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of individual bidder, offeror, or contractor.

Safeguards: Records are kept in a locked office.

Retention and disposal: Records are maintained until case is closed or no longer needed or as otherwise provided in agency directives and disposed of or sent to appropriate records center in accordance with such directives.

System manager(s) and address: Director, Research and Operations Division, OGC, USDA, Washington, D.C., or the appropriate Regional Attorney or Attorney-in-Charge at the address specified above.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the Director, Research and Operations Division, OGC, USDA, Washington, D.C., or the appropriate Regional Attorney or Attorney-in-charge at the address listed above. If the specific location of the record is not known, the individual should address his request to the director, Research and Operations Division, who, if necessary, will refer it to the appropriate field office. A request for information pertaining to an individual should contain: Name, address, and particulars involved.

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him, by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Same as Record Access Procedures.

Record source categories: Information in this system comes primarily from bidders, offerors, contractors, witnesses, agency employees, and investigation personnel.

USDA/OGC—74

System name: Patents and Inventions of Department Employees, USDA/OGC.

System location: Office of the General Counsel, Research and Operations Division, USDA, Washington, D.C. 20250.

Categories of individuals covered by the system: Individuals who make inventions pursuant to their employment by USDA.

Categories of records in the system: The system consists of files on descriptions of the individual's invention, and all papers and forms in connection with matters pending before the U.S. Patent and Trademark office.

Authority for maintenance of the system: 5 U.S.C. 301; 35 U.S.C. 1-293; 37 CFR 100-100.11; 7 CFR 2.31.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Copies of all papers and forms sent to the U.S. Patent and Trademark Office are simultaneously placed in said files. Referral to the Department of Justice in the event of appeal from action by the Patent and Trademark Office. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of the individual inventor.

Safeguards: Records are maintained in Government building with security guards.

Retention and disposal: Records are maintained for 20 years.

System manager(s) and address: Director, Research and Operations Division, OGC, USDA, Washington, D.C., 20250.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the System Manager. A request for information pertaining to an individual should contain: Name and address of the inventor, and other particulars (i.e., the date of the papers filed with the U.S. Patent and Trademark Office, etc.).

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him, by submitting a written request to the System Manager. This request should contain the information specified in the preceding paragraph.

Contesting record procedures: Same are Record Access Procedures.

Record source categories: Information in this system comes primarily from agency employee-inventors, agency patent personnel and employees of the U.S. Patent and Trademark Office.

USDA/OGC—75

System name: Personnel Irregularities, USDA/OGC

System location: Office of the General Counsel, Research and Operations Division, USDA, Washington, D.C. 20250, and offices of Regional Attorneys and Attorneys-in-Charge, OGC, USDA, at the following locations: Albuquerque, New Mexico; Atlanta, Georgia; Denver, Colorado; Harrisburg, Pennsylvania; Little Rock, Arkansas; Milwaukee, Wisconsin; Missoula, Montana; Ogden, Utah; Portland, Oregon; San Francisco, California; Santurce, Puerto Rico; Shawnee Mission, Kansas; Stillwater, Oklahoma; Temple, Texas.

Addresses of each field office are listed in the telephone directories of the respective cities listed above under the heading "United States Government, Department of Agriculture, Office of the General Counsel."

Categories of individuals covered by the system: Employees and former employees of USDA, members of local and county committees established pursuant to 16 U.S.C. 590h(b), employees of such county committees, and extension service agents performing duty pursuant to 7 U.S.C. 341-349.

Categories of records in the system: The system consists of investigation reports and other relevant documents pertaining to violations of criminal statutes.

Authority for maintenance of the system: Titles 5, 18 U.S.C.; 7 CFR 2.31.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referral to (1) the appropriate agency, whether Federal, State, local or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (2) a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, or any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery; (3) Department of Justice for institution of suits to recover claims by USDA arising out of irregularities; (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of individual employee.

Safeguards: Records are kept in a locked office.

Retention and disposal: Records are maintained until case is closed or no longer needed or as otherwise provided in agency directives and disposed of or sent to appropriate records centers in accordance with such directives.

System manager(s) and address: Director, Research and Operations Division, OGC, USDA, Washington, D.C., 20250, or the appropriate Regional Attorney or Attorney-in-Charge at the address specified above.

Systems exempted from certain provisions of the act: This system has been exempted pursuant to 5 U.S.C. 552a(k)(2) from the requirements of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4) (G), (H), and (I) and (f) because it consists of investigatory material compiled for law enforcement purposes. Individual access to these files could impair investigations and alert subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action or escape prosecution. Disclosure of investigative techniques and procedures and the existence and identity of confidential sources of information would hamper law enforcement activity.

USDA/OGC—76

System name: Personnel Suits, USDA/OGC

System location: Office of the General Counsel, Research and Operations Division, USDA, Washington, D.C. 20250, and offices of Regional Attorneys and Attorneys-in-Charge, OGC, USDA, at the following locations: Albuquerque, New Mexico; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; Harrisburg, Pennsylvania; Little Rock, Arkansas; Milwaukee, Wisconsin; Missoula, Montana; Ogden, Utah; Portland, Oregon; San Francisco, California; Santurce, Puerto Rico; Shawnee Mission, Kansas; Stillwater, Oklahoma; Temple, Texas.

Addresses of each field office are listed in the telephone directories of the respective cities listed above under the heading "United States Government, Department of Agriculture, Office of the General Counsel."

Categories of individuals covered by the system: Employees and former employees of USDA, and applicants for employment with USDA who institute suits against USDA, an officer or employee thereof, or the United States, alleging a wrongful personnel action taken against them.

Categories of records in the system: The system consists of complete files on individual suits, including personnel records, investigation reports, administrative determinations, statements of witnesses, and agency reports.

Authority for maintenance of the system: 5 U.S.C. 301, 5596, 7501, 7511-7512; 42 U.S.C. 2000e-16; 7 CFR 2.31.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referral to (1) Department of Justice for defense of personnel suits brought against USDA, an officer or employee of USDA, or the United States; (2) the appropriate agency, whether Federal, State, local or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order

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issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (3) a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery; (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above.

Retrievability: Records are indexed by name of individual litigant.

Safeguards: Records are kept in a locked office.

Retention and disposal: Records are maintained until case is closed or no longer needed or as otherwise provided in agency directives and disposed of or sent to appropriate records center in accordance with such directives.

System manager(s) and address: Director, Research and Operations Division, OGC, USDA, Washington, D.C., 20250, or the appropriate Regional Attorney or Attorney-in-Charge at the address specified above.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the Director, Research and Operations Division, OGC, USDA, Washington, D.C., 20250, or the appropriate Regional Attorney or Attorney-in-Charge at the address listed above. If the specific location of the record is not known, the individual should address his request to the Director, Research and Operations Division, who, if necessary, will refer it to the appropriate field office. A request for information pertaining to an individual should contain: Name, address, and particulars involved.

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him, by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Same as Record Access Procedures.

Record source categories: Information in this system comes primarily from litigants, witnesses, agency employees, and investigative personnel.

USDA/OIG—1

System name: Employee Records, USDA/OIG

System location: In the Headquarters Office in the Agriculture Administration Building, 14th and Independence Avenue S.W., Washington, D.C. 20250, and in the following U.S. Department of Agriculture, Office of Inspector General, Regional Offices and suboffices:

OIG Regional Offices

26 Federal Plaza, Room 1707
New York, New York 10007
8930 Ward Parkway
P.O. Box 205
Kansas City, Missourl 64141
555 Battery Street, Room 522
San Francisco, California 94111
101 South Main, Room 324
Temple, Texas 76501
422 Federal Center Building
Hyattsville, Maryland 20782
1 North Wacker Drive, Room 800
Chicago, Illinois 60606
1447 Peachtree Street, N.W., Room 901
Atlanta, Georgia 30309

OIG/Office of Audit Suboffices

Federal Building
Harrisburg, Pennsylvania 17108
Federal Building
Marlboro, Massachusetts 01752
Federal Building
Syracuse, New York 13260
Federal Office Bldg.
Hato Rey, Puerto Rico 00917
Federal Building
Little Rock, Arkansas 72201
P.O. Box 29383
New Orleans, Louisiana 70189
P.O. Box 16393
Jackson, Mississippi 39206
P.O. Box 15067
Nashville, Tennessee 37215
310 New Bern Avenue
Raleigh, North Carolina 27601
333 Waller Avenue
Lexington, Kentucky 40504
Box 14153 Main Post Office
St. Louis, Missouri 63178
167 Federal Building
Des Moines, Iowa 50309
276 Federal Building
Lincoln, Nebraska 68508
571 Federal Building
St. Paul, Minnesota 55101
200 North High Street
Columbus, Ohio 43215
5610 Crawfordsville Road
Indianapolis, Indiana 46224
2490 West 26th Avenue
Denver, Colorado 80211
1711 Federal Building
Portland, Oregon 97204
P.O. Box 1363
Huron, South Dakota 57350
135 South State Street
Salt Lake City, Utah 84111
24,000 Avila Road
Laguna Niguel, California 92677

OIG/OFFICE OF INVESTIGATION SUBOFFICES

U.S. Court House
Hato Rey, Puerto Rico 00918
600 Dekalb Pike
King of Prussia, Pennsylvania 19406
310 New Bern Avenue
Raleigh, North Carolina 27611
5305 Executive Place
Jackson, Mississippi 39206
200 North High Street
Columbus, Ohio 43215
2460 West 26th Avenue
Denver, Colorado 80211
24,000 Avial Road
Laguna Niguel, California 92677
333 Waller Avenue
Lexington, Kentucky 40504

Categories of individuals covered by the system: OIG temporary and permanent employees, former employees of OIG and predecessor offices, and applicants for employment.

Categories of records in the system: These records show personnel management and work-related information, including position, title, grade, pay rate, pay, temporary and permanent address, phone number, performance evaluations, promotions, travel information, accident reports and related information, activity reports, participation in savings and contribution programs, availability for employment, for assignment, or for transfer, qualifications, awards, hours worked, issuance of credentials, passports, and other identification, assignment and accountability of property and other things of value, parking

space assignments, training and development, and special assignments.

Authority for maintenance of the system: 5 U.S.C. 301, 7 CFR 2.33.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: To other agencies in the Department and Executive Branch agencies, such as the Civil Service Commission, as necessary, for proper personnel actions.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained on computer and in file folders, notebooks, and card file boxes.

Retrievability: By name of individual employee.

Safeguards: Available on official need-to-know basis. Kept in locked offices after office hours.

Retention and disposal: Records are retained as long as needed and then discarded. Personal information that might be considered derogatory or embarrassing is burned when no longer needed.

System manager(s) and address: Director, Personnel Management Staff, OIG, U.S. Department of Agriculture, Washington, D.C. 20250.

Notification procedure: Inquiries should be addressed to Director, Policy Liaison and Information Staff, OIG, U.S. Department of Agriculture, Washington, D.C. 20250.

Record access procedures: To gain access to information in this system, send request to Director, Policy, Liaison and Information Staff, OIG, USDA, Washington, D.C. 20250.

Contesting record procedures: To contest information in this system, send request to Director, Policy, Liaison and Information Staff, OIG, USDA, Washington, D.C. 20250.

Record source categories: The primary information is from the individual employee. Additional information is provided by supervisors, coworkers, and references.

USDA/OIG—2

System name: Intelligence Records, USDA/OIG

System location: In the Headquarters Office in the Agriculture Administration Building, 14th and Independence Avenue, S.W., Washington, D.C. 20250, and in the OIG offices listed in the system of records designated USDA/OIG—1.

Categories of individuals covered by the system: Suspects and unpaid informants.

Categories of records in the system: Allegations against suspects and types of information previously furnished by or to be expected from informants.

Authority for maintenance of the system: 5 U.S.C. 301, 7 CFR 2.33

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Routine uses for law enforcement purposes will include referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or order issued pursuant thereto.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Stored on sheets of paper and index cards.

Retrievability: Retrievable by name of individual subject.

Safeguards: Available on an official need-to-know basis and kept in locked storage when not in use.

Retention and disposal: Kept indefinitely and continually updated; out-of-date material is burned.

System manager(s) and address: Director, Security and Special Investigations Division, Office of the Inspector General, Washington, D.C. 20250. Inquiries and requests should be addressed to: Director, Policy, Liaison and Information Staff, USDA/OIG, Washington, D.C. 20250.

Systems exempted from certain provisions of the act: This system has been exempted from the provisions of sections (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I) and (f) pursuant to 5 U.S.C. 552a(k)(2) as investigatory material compiled for law enforcement purposes. This exemption is contained in 7 CFR 1.123, 40 Fed. Reg. 45103 (1975).

USDA/OIG—3

System name: Investigative Files and Subject/Title Index, USDA/OIG

System location: In the Headquarters Office in the Agriculture Administrative Building, 14th and Independence Ave., SW., Washington, D.C. 20250, and in the OIG offices set forth in the system of records designated USDA/OIG.

Except for inadvertent errors, all entries in regional office indexes are duplicated in the Headquarters index. Thus the Headquarters index is the only complete index in OIG. The Headquarters files also contain a copy of every investigative report, but not the correspondence in all cases. Older investigative files of each OIG office may have to be retrieved from Federal Records Centers when needed.

Categories of individuals covered by the system: The individual names in the OIG index fall into one or more of the following categories:

Subjects. These are applicants for OIG employment or individuals against whom allegations of wrongdoing have been made. In some instances, these individuals have been the subjects of investigations conducted to establish whether allegations were true. In other instances, the allegations were deemed too frivolous or indefinite to warrant inquiry.

Principals. These are individuals who are not named subjects of investigative inquiries, but may be responsible for alleged violations. For example, the president of a firm alleged to have violated laws or regulations would likely be individually listed in the OIG index.

Complainants. These are individuals who allege wrongdoing, mismanagement, or unfair treatment relating to USDA employees and/or programs.

Others. These are all other individuals closely connected with a matter of investigative interest or whose names have been checked through the index to determine whether they were of record. Among these names are those of people who are connected with a matter only in that they have shown unusual interest in having allegations investigated or in learning the results of investigation. Also included in the index are the names of persons on the Department of Justice crime list.

Categories of records in the system: The OIG Subject/Title Index and Investigative Files consist of:

1. Index cards and/or a microfiche index filed alphabetically by the names of individuals, organizations, and firms with a separate card or line items for each; dates of entries made into the index or dates of materials containing information about the named subjects; and identification of the OIG file or files containing information on that subject.

2. Files containing bound sheets of paper or microfiche of such sheets from investigative and other reports, correspondence, and informal notes and notations concerning (a) one investigative matter or (b) a number of incidents of the same sort of alleged violation or irregularity.

If such information was available when an index card or line item was made, the card or microfiche on an individual will include the individual's address, date of birth, and Social Security number.

3. Where investigation is being or will be conducted, but has not been completed, various case management records, investigator's notes, statements of witnesses, and copies of records. These are contained on index slips or cards and sheets of paper located in an OIG office or in the possession of the OIG investigator. Certain management records are retained after the investigation report is released as a means of following action taken on the basis of the OIG investigative report.

Authority for maintenance of the system: 5 U.S.C. 301, 7 CFR 2.33.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Routine use for law enforcement purposes will include referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility for investigating or prosecuting a violation of law or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: The OIG Subject/Title Index Consists of 3 inch by 5 inch cards or microfiche line items stored in steel cabinets. The investigative files are stored in steel lektriever cabinets.

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Retrievability: The cards or line items are arranged alphabetically, and each card or line item identifies one or more OIG investigative case files or administrative files arranged numerically by file number, but not individually identifiable.

Safeguards: These records are available within USDA and to other in the Executive Branch only upon proper identification and a need-to-know and are kept in a limited-access area during normal duty hours and in a locked office after duty hours.

Retention and disposal: The cards or line items are kept indefinitely and investigative case files are maintained for 30 years. Certain investigative case files of unusual significance are also kept indefinitely. Administrative files are kept for five years.

System manager(s) and address: Director, Budget and Management Staff, Office of the Inspector General, U.S. Department of Agriculture, Washington, D.C. 20250.

Systems exempted from certain provisions of the act: This system has been exempted from the provisions of sections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) pursuant to 5 U.S.C. 552a (k)(2) and (k)(5) as investigatory material compiled for law enforcement purposes or compiled solely for determining suitability, eligibility or qualifications for Federal civilian employment. This exemption is contained in 7 CFR 1.123, 40 Fed. Reg. 45103 (1975).

USDA/OIG—4

System name: Liaison Records, USDA/OIG

System location: Headquarters Office in the Agriculture Administration Building, 14th and Independence Avenue, S.W., Washington, D.C. 20250, and in the OIG offices set forth in the system of records designated USDA/OIG—1.

Categories of individuals covered by the system: Employees or officials of Federal, State, and local governmental agencies

Categories of records in the system: Such information as name, title, address, phone number, and type of assistance previously given or interest previously shown or expected

Authority for maintenance of the system: 5 U.S.C. 301, 7 CFR 2.33

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Disclosed to other investigative agencies (e.g., FBI, Secret Service, IRS) to coordinate investigative efforts or for those agencies to use in their independent investigations and to facilitate referral of OIG investigative information to other Executive Agencies that have an official interest.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Index cards and sheets of paper

Retrievability: By name of person and Agency

Safeguards: Information usually obtained from public records and available to OIG employees and to others on request

Retention and disposal: Information is kept indefinitely and disposed of when updated. Out-of-date information is discarded.

System manager(s) and address: Director, Budget and Management Staff, Office of the Inspector General, U.S. Department of Agriculture, Washington, D.C. 20250

Notification procedure: Inquiries and requests should be addressed to Director, Policy, Liaison and Information Staff, Office of the Inspector General, U.S. Department of Agriculture, Washington, D.C. 20250

Record access procedures: To gain access to information in this system, send request to Director, Policy, Liaison and Information Staff.

Contesting record procedures: To contest information in this system, send request to Director, Policy, Liaison and Information Staff.

Record source categories: Public documents and directories and previous contacts with individuals listed.

USDA/OIG—5

System name: Management Information and Data Analysis System, USDA/OIG

System location: Computer files are maintained on the Computer Sciences Infonet System with main offices at 650 North Sepulveda, El Segundo, California. Source documents and printouts are kept in the Headquarters Office, Office of Audit, Administration Building, 14th and Independence Avenue, S.W., Washington, D.C. 20250 and in the OIG regional offices listed in the system of records designated as USDA/OIG—1 (with the exception of that in New York).

Categories of individuals covered by the system: OA professional employees.

Categories of records in the system: USDA/OA Management Information and Data Analysis System provides OA Management with a wide range of information on OA operations including data that can be used to evaluate the job performance of all OA professional employees. The system identifies individual audit assignments of employees and provides information on their use of direct and indirect time; significant dates relating to the audit such as starting date, exit conference date, and report release date; the number and significance of audit findings and the identity of all the professionals who participated in the assignment.

Authority for maintenance of the system: 5 U.S.C. 301; 7 CFR 2.81

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Provided upon request to the General Accounting Office for reviewing OA operations. Disclosure may also be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Computer discs and/or magnetic tape.

Retrievability: Information in the system can be retrieved by OA Headquarters and by the applicable inputting region listed above. Retrieval can be audit, report number, employee social security number, and geographic location.

Safeguards: Normal computer security is maintained over access to discs and magnetic tapes. Print-outs are available within USDA as necessary and are kept under lock when not in use. Source documents are kept in file cabinets in the offices listed above.

Retention and disposal: Discs and/or magnetic tapes are cleared, retired or destroyed when no longer useful in accordance with General Services Administration and USDA retirement and/or destruction schedules.

System manager(s) and address: Director, Office of Audit, Office of the Inspector General, U.S. Department of Agriculture, Washington, D.C. 20250.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him, from the Director, Policy, Liaison and Information Staff, USDA/OIG, Washington, D.C. 20250. A request for information pertaining to an individual should contain: Name, address, and particular information requested.

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the Director, Policy, Liaison and Information Staff.

Contesting record procedures: Same as access procedures described above.

Record source categories: Information in the system comes entirely from OA employees.

USDA/OIG—6

System name: Audit Information System, USDA/OIG

System location: Records included in this system may be located at audit sites throughout the United States or at any of the Departmental Computer Centers. The Departmental Computer Centers are: (1) Washington Computer Center, 12th and Independence Avenue, S.W., Washington, D.C. 20250; (2) New Orleans Computer Center, P.O. Box 60900, New Orleans, Louisiana 70160; (3) Kansas City Computer Center, P.O. Box 205, Kansas City, Missouri 64141; (4) St. Louis Computer Center, 1520 Market Street, Room 3441, St. Louis, Missouri 63103; (5) Fort Collins Computer Center, 3825 East Mulberry Street, Fort Collins, Colorado 80521.

Categories of individuals covered by the system: This system employs temporary data sets, computer printouts and other audit records obtained from USDA agencies, non-Federal sources and Federal agencies other than USDA. Individuals covered by these records are participants in programs administered and/or funded by the Department of Agriculture, or USDA employees.

Categories of records in the system: The system may contain, for short periods of time, various categories of records relating to administration of, or individual participation in, USDA programs. For example, the categories of records may relate to the Department's farm, food, loan and research programs, and to payroll records of USDA employees.

Authority for maintenance of the system: 5 U.S.C. 301, 7 CFR 2.81.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Records are routinely used for analysis during the course of audits conducted by the USDA Office of Audit. As a result of this analysis, information may be provided to the Agriculture agency having program responsibility, the USDA Office of Investigation, the non-Federal entity responsible for operating the program, other Executive Branch audit agencies, the General Accounting Office, the Department of Justice, other law enforcement agencies, and the Congress.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Information is stored electronically on computer direct access storage devices or magnetic tape, and in computer printouts and other audit records.

Retrievability: Electronically stored information may be retrieved using standard audit software analysis and retrieval packages and is limited only by the data elements maintained in the data set. This information may be transmitted and received using standard teleprocessing procedures. Data elements may include such information as an individual's name, address, social security, employee identification, case or farm number, and specific information about the individual's program participation or employment. Information located in computer printouts and other audit records may be retrieved manually while audits are in process.

Safeguards: Normal computer security is maintained over access to electronically encoded data. Computer printouts and other audit records are protected in accordance with the sensitivity of data contained therein.

Retention and disposal: Electronically encoded data is seldom retained for more than six months. It is then destroyed either by degaussing or overwriting the computer media. Computer printouts and manually prepared audit records may be incorporated into audit files where they are retrievable only by audit number or report title. Audit files are retained in accordance with General Services Administration retirement and/or destruction schedules. Computer printouts not incorporated into audit files are destroyed.

System manager(s) and address: The system managers are the USDA Office of Audit Regional Directors in whose geographical areas the audit sites and Departmental Computer Centers are located. These are as follows: (1) Regional Director, Northeast Region, Office of Audit, U.S. Department of Agriculture, Room 422, Federal Building, Hyattsville, Maryland 20782 (Washington Computer Center); (2) Regional Director, Southeast Region, Office of Audit, U.S. Department of Agriculture, 1447 Peachtree Street, N.E., Room 900, Atlanta, Georgia 30309; (3) Regional Director, Midwest Region, Office of Audit, U.S. Department of Agriculture, 1 North Wacker Drive, Chicago, Illinois 60606; (4) Regional Director, Southwest Region, Office of Audit, U.S. Department of Agriculture, Federal Office Building—Room 324, 101 South Main Street, Temple, Texas 76501 (New Orleans Computer Center); (5) Regional Director, Great Plains Region, Office of Audit, U.S. Department of Agriculture, 8930 Ward Parkway, P.O. Box 205, Kansas City, Missouri 64141 (Kansas City and St. Louis Computer Centers); (6) Regional Director, Western Region, Office of Audit, U.S. Department of Agriculture, Room 522 Customs House, 555 Battery Street, San Francisco, California 94111 (Fort Collins Computer Center).

Notification procedure: Any individual may request information contained in this system of records or information as to whether the system contains records pertaining to that individual by contacting the system manager. The individual is reminded that this system of records is temporary and usually is accessible only while an audit of a particular program or activity is in process. The period of accessibility normally ranges from one month to approximately six months, depending on the type of audit and the use made of the information. Any request for information pertaining to an individual should contain that person's name, address, the USDA program the individual is participating in, any pertinent identification number such as a case number, and the particular information requested. Proof of identity and/or authorization to access will be required.

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to that person by submitting a written request to the system manager. If the specific location of a record is unknown, the request should be sent to the Director, Policy, Liaison and Information Staff, USDA/OIG, Washington, D.C. 20250.

Contesting record procedures: These inquiries also should be sent to the system manager.

Record source categories: Information contained in this system of records is obtained mainly from USDA agencies and State and local governments that administer USDA programs on a cooperative basis, and may be obtained from other grantees and program participants, and other Federal agencies.

Information generally relates to a USDA program or activity which is being audited. Upon conclusion of the audit, the information is either destroyed, returned to the originator, or stored in an audit file from which information about individuals cannot be retrieved without manual search.

USDA/O&F—1

System name: Administrative Billings and Collections, USDA/O&F

System location: USDA, Office of Operations and Finance, National Finance Center, New Orleans, Lousiana 70160

Categories of individuals covered by the system: Individuals (USDA, former USDA or non-USDA employees) who are indebted to the Department for any reason. Some examples of indebtedness are: lost or damaged property, salary overpayments, outstanding travel advances, violations of transfer-of-station agreements, and misuse of Federal facilities.

Categories of records in the system: The automated system establishes a master file containing debtors name, address, social security number, or assigned vendor number, amount of indebtedness, amount of current collection and amount of total billing. After a short while these records are transferred to a history file for inquiry use.

Authority for maintenance of the system: 5 U.S.C. 301; 7 CFR 2.75

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Forwarded to another agency when a USDA employee accepts employment with such agency; (2) Referred to the General Accounting Office for review in cases involving possible fraud. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained on magnetic tape files and in file folders at the National Finance Center addressed above.

Retrievability: Records are indexed by social security number or equivalent identifying number in case of non-USDA employees.

Safeguards: File folders are kept in locked cabinets. Magnetic tape files are in locked computer room and library which can be accessed by authorized personnel only.

Retention and disposal: Master history magnetic tape files are retained indefinitely. Manual records are transferred for storage and disposition by the Federal Records Center in accordance with General Services Administration regulations.

System manager(s) and address: Director, National Finance Center, Office of Operations and Finance, USDA, New Orleans, Louisiana 70160

Notification procedure: Any individual may request information regarding this sytem of records, or information as to whether the system contains records pertaining to him from the System Manager. A request for information pertaining to an individual should be in writing and should contain: name, address, social security number and particulars involved (i.e., dates of claims, copies of correspondence, etc.).

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him, by submitting a written request to the System Manager.

Contesting record procedures: Any individual may obtain information as to the procedures for contesting a record in the system which pertains to him, by submitting a written request to the System Manager.

Record source categories: Information in this system comes primarily from USDA employees, former USDA employees, non-USDA employees, agency claimants, and USDA or other investigation personnel.

USDA/O&F—2

System name: Employee Travel and Transportation System, USDA/O&F

System location: USDA, Office of Operations and Finance, National Finance Center, New Orleans, Louisiana 70160

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Categories of individuals covered by the system: Individuals who have funds advanced to them for official travel use, individuals who have U.S. Government Transportation Requests assigned to them for use in purchasing tickets to be used for official travel and individuals who perform official USDA Travel and are reimbursed with Government Funds are included in this system.

Categories of records in the system: This system consists of complete files on advances to and repayments by individuals, assignment and use of Government Transportation Requests by individuals, and payments for official travel to individuals.

Authority for maintenance of the system: 5 U.S.C. 301; 7 CFR 2.75

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained on computer tapes and disks at the National Finance Center addressed above.

Retrievability: Records are indexed by Social Security Number and by name of individual.

Safeguards: Limited access by authorized personnel with the information needed to gain access into the system.

Retention and disposal: Master history magnetic tapes are retained indefinitely. Manual records are transferred for storage and disposition by the Federal Records Center in accordance with General Services Administration regulations.

System manager(s) and address: Director, National Finance Center, Office of Operations and Finance, USDA, P.O. Box 60,000, New Orleans, Louisiana 70160

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the System Manager.

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him, by submitting a written request to the System Manager.

Contesting record procedures: Any individual may obtain information as to the procedures for contesting a record in the system which pertains to him, by submitting a written request to the System Manager.

Record source categories: Information in this system comes primarily from individuals that request advances prior to travel, submit Travel Vouchers for reimbursement after travel is performed or request Government Transportation Requests for use in purchasing passenger tickets. Some of the information is obtained from the payroll and personnel systems maintained by the National Finance Center.

USDA/O&F—3

System name: Imprest Fund Payment System, USDA/O&F

System location: USDA, Office of Operations and Finance, National Finance Center, New Orleans, Louisiana 70160

Categories of individuals covered by the system: All USDA imprest cashiers and alternates and USDA employees designated as chiefs of field party.

Categories of records in the system: The automated system establishes master files containing the name, social security number, employment address and telephone, and amount of advance for each cashier, alternate cashier and chief of field party. It also includes records of disbursements, reimbursements, accountability reports and verification and audit of funds.

Authority for maintenance of the system: 5 U.S.C. 301; 7 CFR 2.75

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referral to the Treasury Disbursing Office, Kansas City, Kansas, for approval and/or payment and internal. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.".

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained on microfilm cartridges, magnetic disks, magnetic tape, microfiche, and to a limited degree, in file folders.

Retrievability: Records are indexed primarily by social security number of the individual cashier, alternate cashier, or chief of field party; and secondarily by imprest fund number.

Safeguards: Records are kept in a locked room, to be accessed by authorized personnel only.

Retention and disposal: Records will be retained indefinitely.

System manager(s) and address: Director, National Finance Center, Office of Operations and Finance, USDA, P.O. Box 60,000, New Orleans, Louisiana 70160

Notification procedure: Any individual may request information regarding this system of records, or ascertain whether the system contains records pertaining to him from the System Manager. The request should be in writing and should contain: name, address, social security number and particulars involved (i.e., date and type of document in question, etc.).

Record access procedures: Any individual may obtain information on procedures for gaining access to a record in the system that pertains to him by submitting a written request to the System Manager.

Contesting record procedures: Any individual may obtain information on procedures for contesting a record in the system that pertains to him by submitting a written request to the System Manager.

Record source categories: Information in this system is derived from documents submitted by USDA agencies and the Treasury Disbursing Office, Kansas City, Kansas.

USDA/O&F—4

System name: Uniform Allowance System, USDA/O&F.

System location: USDA, Office of Operations and Finance, National Finance Center, New Orleans, Louisiana.

Categories of individuals covered by the system: All USDA employees entitled to and receiving allowances for uniforms required in their work.

Categories of records in the system: This system consists of complete files on advances, accruals and payments, to individuals within the Department, for uniform allowances.

Authority for maintenance of the system: 5 U.S.C. 301; 7 CFR 2.75.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: None.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records and maintained on computer tapes and disks at the National Finance Center addressed above.

Retrievability: Records are indexed by Social Security Number and by name of individual.

Safeguards: Limited access by authorized personnel and passwords on the Data Base.

Retention and disposal: Master history magnetic tapes are retained indefinitely. Manual records are transferred for storage and disposition by the Federal Records Center in accordance with General Services Administration regulations.

System manager(s) and address: Director, National Finance Center, Office of Operations and Finance, USDA, New Orleans, Louisiana 70160.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the Director, National Finance Center, Office of Operations and Finance, USDA, P.O. Box 60,000, New Orleans, Louisiana 70160.

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a request to the System Manager.

Contesting record procedures: Any individual may obtain information as to the procedures for contesting a record in the system which pertains to him by submitting a request to the System Manager.

Record source categories: Information in this system comes primarily from individuals that request payments of uniform allowances.

USDA/O&F—5

System name: Debarred, Ineligible and Suspended Bidders, USDA/O&F

System location: Office of Operations and Finance, Administrative Services, Procurement Division, USDA, Washington, D.C. 20250.

Categories of individuals covered by the system: Individuals who, as principles or responsible employees of companies contracting with USDA or other Federal agencies, have committed or are suspected of having committed illegal or irresponsible acts in connection with the performance of those contracts.

Categories of records in the system: The system consists of files on companies and their principle owners, officers or responsible employees. The files contain correspondence relating to the performance of individuals and their companies under government contracts.

Authority for maintenance of the system: 41 CFR 1-1.602 and 4-1.602.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Publication of the Debarred. Ineligible and Suspended List for distribution to USDA and other Federal purchasing officers. 2. Referral to the appropriate agency, whether Federal, state, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto. 3. Referral to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual." Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the address above.

Retrievability: Records are indexed by date and company or individual name.

Safeguards: Records are maintained in metal filing cabinets with access limited to those requiring the information for official purposes.

Retention and disposal: Records are sent to Federal Records Centers approximately 3 years after the close of a case and are destroyed approximately 2 years thereafter.

System manager(s) and address: Director, Office of Operations and Finance, United States Department of Agriculture, Washington, D.C. 20250

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from the Chief, Procurement Division, Administrative Services, Office of Operations and Finance, United States Department of Agriculture, Washington, D.C. 20250, Telephone 202-447-7527. A request for information pertaining to an individual should contain: Name; address; company name; date of debarment; ineligibility or suspension date or date of last correspondence.

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the Director, Office of Operations and Finance.

Contesting record procedures: Any individual may obtain information as to the procedures for contesting a record in the system which pertains to him by submitting a written request to the Director, Office of Operations and Finance.

Record source categories: Information in this system comes primarily from agency employees, other Federal agencies, law enforcement officials or judicial officers.

USDA/O&F—6

System name: Parking applications, USDA/O&F

System location: Office of Operations and Finance, Room 1566-S, Administrative Services, Facilities Management Division, USDA, Washington, D.C. 20250.

Categories of individuals covered by the system: Individuals who have applied for parking privileges.

Categories of records in the system: The system consists of parking applicant's names, agencies, social security numbers and home addresses.

Authority for maintenance of the system: FPMR 101-20.117.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: No disclosures outside USDA.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Files in unlocked file drawer.

Retrievability: Records are retrievable by name.

Safeguards: Stored in Government office building with security guards.

Retention and disposal: Retain for twelve months after submission of application and then dispose.

System manager(s) and address: Chief, Facilities Management Division, Administrative Services, Office of Operations and Finance, USDA, Room 1566-S, Washington, D.C. 20250.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him from persons listed under system manager(s), Office of Operations and Finance, USDA, Washington, D.C. 20250, telephone (202) 447-5225.

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the system manager.

Contesting record procedures: Any individual may contest a record in the system by using the same procedures as those for requesting access.

Record source categories: Employees who file applications.

USDA/O&F—7

System name: Secretary's Controlled Correspondence, USDA/O&F.

System location: Executive Correspondence and Records Unit, Budget and Executive Services, Office of Operations and Finance, Room 123-W, USDA, Washington, D.C. 20250.

Categories of individuals covered by the system: Cabinet Members, USDA officials and members of the public.

Categories of records in the system: Answers to request for policy statements, complaints, thank you notes, request for assistance, etc.

Authority for maintenance of the system: 5 U.S.C. 301.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Records are disclosed to the General Accounting Office for the purpose of investigation.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Filed in rotary files.

Retrievability: Records are retrieved by name of individual who responded to requests.

Safeguards: Records are kept in rooms locked in non-work hours. During work hours the records are under visual control of Secretary's Records employees.

Retention and disposal: Records are retained indefinitely.

System manager(s) and address: Head, Executive Correspondence and Records Unit, Budget and Executive Services, Office of Operations and Finance, Room 123-W, USDA, Washington, D.C. 20250.

Notification procedure: Any individual may request information regarding the system of records, or information as to whether the system contains records pertaining to him from persons listed under system manager(s). Office of Operations and Finance, USDA, Washington, D.C. 20250, telephone (202) 447-3337.

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the system manager.

Contesting record procedures: Any individual may contest a record in the system by using the same procedures as those for requesting access.

Record source categories: Members of the public, Cabinet Members and USDA officials.

USDA/OP—1

System name: Personnel and Payroll System for USDA employees, USDA/OP.

System location: Office of Personnel, USDA, Washington, D.C.; the National Finance Center, P.O. Box 60,000, New Orleans, Louisiana; and the personnel Offices at the following locations:

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ALABAMA Soil Conservation Service State Office, Soil Conservation Bldg., P.O. Box 311, Auburn, AL 36830; Farmers Home Administration State Office, Aronov Bldg., Rm. 717, 474 South Court St., Montgomery, AL 36104; Forest Service National Forest, National Forests in Alabama, 1765 Highland Ave., P.O. Box 40, Montgomery, AL 36101.

ALASKA Forest Service Regional Office, Federal Office Bldg., P.O. Box 1628, Juneau, AK 99801.

ARIZONA Forest Service National Forest, Coconino National Forest, P.O. Box 1268, Flagstaff, AZ 86002; Forest Service, RM Forest and Range Experiment Station, Forestry Sciences Laboratory, Northern Arizona University, Flagstaff, AZ 86001; Agricultural Marketing Service Milk Market Office, 2617 North 24th St., Phoenix, AZ 85008; Farmers Home Administration State Office, Federal Bldg., Rm. 6095, 230 North First Ave., Phoenix, AZ 85025, Soil Conservation Service State Office, 230 North First Avenue, 6029 Federal Bldg., Phoenix, AZ 85025; Forest Service National Forest, Tonto National Forest, 102 So. 28th St., Phoenix AZ 85034; Forest Service National Forest, Prescott National Forest, P.O. Box 2549, Prescott, AZ 86301; Forest Service National Forest, Apache-Sitgreaves National Forests, Federal Bldg., P.O. Box 640, Springerville, AZ 85938; Forest Service, RM Forest and Range Experiment Station, Forest Hydrology Laboratory, Arizona State University, Tempe, AZ 85281; Forest Service National Forest, Coronado National Forest, P.O. Box 551, Tucson, AZ 85702, Forest Service, RM Forest and Range Experiment Station, Tumamoc Hill, University of Arizona, P.O. Box 4460, Tucson, AZ 85717; Forest Service National Forest, Kaibab National Forest, P.O. Box 817, Williams, AZ 86046.

ARKANSAS Forest Service National Forest, Ouachita National Forest, Reserve and Broadway Street, Federal Bldg., P.O. Box 1270, Hot Springs National Park, AR 71901; Agricultural Marketing Service Milk Market Office, 3518 W. Roosevelt Rd., Little Rock, AR 72204. Farmers Home Administration State Office, 5529 Federal Office Bldg., 700 W. Capitol, Little Rock, AR 72203; Forest Service National Forest, Ozark-St. Francis National Forest, W. Main and Fargo, P.O. Box 1008, Russellville, AR 72801.

CALIFORNIA Forest Service National Forest, Modoc National Forest, P.O. Box 611; Alturas, CA 96101; Agricultural Research Service Western Regional Administrative Office, 2850 Telegraph Ave., Berkeley, CA 94705; Forest Service Pacific Southwest Forest and Range Experiment Station, 1960 Addison St., P.O. Box 245, Berkeley, CA 94704; Forest Service National Forest, Inyo National Forest, 2957 Birch St., Bishop, CA 93514; Soil Conservation Service State Office, 2828 Chiles Rd., P.O. Box 1019, Davis, CA 95616; Forest Service National Forest, Six Rivers National Forest, 710 E. Street, Eureka, CA 95501; Forest Service National Forest, Sierra National Forest, Federal Bldg., Rm. 3304, 1130 O Street, Fresno, CA 93721; Forest Service National Forest, Los Padres National Forest, 42 Aero Camino, Goleta, CA 93017; Forest Service National Forest, Tahoe National Forest, Highway 49 and Coyote St., Nevada City, CA 95959; Forest Service National Forest, Angeles National Forest, 150 South Robles, Pasadena, CA 91101; Forest Service National Forest, Eldorado National Forest, 100 Forni Rd., Placerville, CA 95667; Forest Service National Forest, Sequoia National Forest, 900 W. Grand Ave., Porterville, CA 93257; Forest Service National Forest, Plumas National Forest, 159 Lawrence St., Quincy, CA 95971; Forest Service National Forest, Shasta-Trinity National Forest, 1615 Continental St., Redding, CA 96001; Forest Service National Forest, San Bernardino National Forest, 144 N. Mountain View Ave., San Bernardino, CA 92408; Forest Service National Forest, Cleveland National Forest, 3211 Fifth Ave., San Diego, CA 92103; Food and Nutrition Service Western Regional Office, 550 Kearny St., Rm. 400, San Francisco, CA 94111; Forest Service National Forest, Stanislaus National Forest, 175 S. Fairview Ln., Sonora, CA 95370; Forest Service National Forest, Lassen National Forest, 707 Nevada St., Susanville, CA 96130; Forest Service National Forest, Mendocino National Forest, 420 E. Laurel St., Willows, CA 95988; Farmers Home Administration State Office, 459 Cleveland St., Woodlawn, CA 95695; Forest Service National Forest, Klamath National Forest, 1215 S. Main, Yreka, CA 90697.

COLORADO Forest Service National Forest, Grand Mesa-Uncompahgre Gunnison National Forests, 11th and Main, P.O. Box 138, Delta, CO 81416; Agricultural Marketing Service Milk Market Office, 4411 E. Kentucky Ave., Denver, CO 80222; Farmers Home Administration State Office, 1 Diamond Plaza, RM. 231, 2490 W. 26th Ave., Denver, CO 80211; Forest Service Regional Office, Federal Center, Bldg. 85, Denver, CO 80225; Soil Conservation Service State Office, 1 Diamond Plaza, Rm. 313, 2490 W. 26th Ave., Denver, CO 80211; Forest Service National Forest, San Juan National Forest, Oliger Bldg., P.O. Box 341, Durango, CO 81301; Forest Service Rocky Mountain Forest and Range Experiment Station, 240 W. Prospect St., Ft. Collins, CO 80521; Forest Service National Forest, Arapaho-Roosevelt National Forests, Rocky Mountain Bank and Trust Bldg., 211 Canyon St., Ft. Collins, CO 80521; Forest Service National Forest, White River National Forest, P.O. Bldg., Box 948, Glenwood Springs, CO 81601; Forest Service National Forest, Rio Grande National Forest, Rt. 2, Monte Vista, CO 81144; Forest Service National Forest, Pike-San Isabel National Forests, P.O. Bldg., Box 753, Pueblo, CO 81002; Forest Service National Forest, Routt National Forest, Hunt Bldg., P.O. Box 1198, Steamboat Springs, CO 80477;

CONNECTICUT Soil Conservation Service State Office; Mansfield Professional Park, Rt. 44A, Storrs, CT 06268;

DELAWARE Farmers Home Administration State Office, 153 Chestnut Hill Rd., Newark, DE 19711;

FLORIDA Agricultural Marketing Service Milk Market Office, Sunrise Center, Professional Bldg., P.O. Box 4886, Ft. Lauderdale, FL 33304; Farmers Home Administration State Office, Federal Bldg., Rm. 212, 401 SE., First Ave., Gainesville, FL 32601; Soil Conservation Service State Office, Federal Bldg., P.O. Box 1208, Gainesville, FL 32601; Forest Service National Forest, National Forests in Florida, 214 S. Bronough St., P.O. Box 1050, Tallahassee, FL 32302;

GEORGIA Agricultural Marketing Service Milk Market Office, 11 Corporate Square, Rm. 200, P.O. Box 49025, Atlanta, GA 30329; Forest Service Regional Office, Suite 800, 1720 Peachtree Rd., NW., Atlanta, GA 30309; Forest Service Southeastern Area, State and Private Forestry, Suite 700, 1720 Peachtree Rd., NW, Atlanta, GA 30309; Agricultural Research Service Richard B. Russell Agricultural Research Center, College Station Rd., P.O. Box 5677, Athens, GA 30604; Farmers Home Administration State Office, 355 E. Hancock, P.O. Box 1848, Athens, GA 30601; Soil Conservation Service State Office, Federal Bldg., 355 E. Hancock Ave., P.O. Box 832, Athens, GA 30601; Forest Service National Forest, Chattahoochee-Oconee National Forest, 601 Broad St., Gainesville, GA 30501;

HAWAII Soil Conservation Service State Office, Alexander Young Bldg., Rm. 440, Honolulu, HI 96813;

IDAHO Farmers Home Administration State Office, Federal Bldg., Rm. 402, 304 N. 8th St., Boise, ID 83702; Forest Service National Forest, Boise National Forest, 1075 Park Blvd., Boise, ID 83706; Soil Conservation Service State Office, 304 N. 8th St., P.O. Box 38, Boise, ID 83702; Forest Service National Forest, Challis National Forest, Forest Service Bldg., P.O. Box 247, Challis, ID 83226; Forest Service National Forest, Idaho Panhandle National Forest, 218 N. 23rd., Coeur d'Alene, ID 83814; Forest Service National Forest, Nezperce National Forest, 319 E. Main St., Grangeville, ID 83530; Forest Service National Forest, Payette National Forest, Forest Service Bldg., P.O. Box 1026 McCall, ID 83638; Forest Service National Forest, Clearwater National Forest, P.O. Box 752, Orofino, ID 83544; Forest Service National Forest, Caribou National Forest, 427 N. Sixth Ave., P.O. Box 4189, Pocatello, ID 83201; Forest Service National Forest, Targhee National Forest, 420 N. Bridge St., St. Anthony, ID 83445; Forest Service National Forest, Salmon National Forest, Forest Service Bldg., P.O. Box 729, Salmon, ID 83467; Forest Service National Forest, Sawtooth National Forest, 1525 Addison Ave., E., Twin Falls, ID 83301;

ILLINOIS Farmers Home Administration State Office, 2106 W. Springfield Ave., Champaign, IL 61820; Soil Conservation Service State Office, Federal Bldg., 200 W. Church St., P.O. Box 678, Champaign, IL 61820; Agricultural Marketing Service Milk Market Office, 72 W. Adams St., Rm. 814, Chicago, IL 60603; Food and Nutrition Service Midwest Regional Office, 536 S. Clark St., Chicago, Il 60605; Forest Service National Forest, Shawnee National Forest, 317 E. Poplar, Harrisburg, IL 62946; Agricultural Research Service Northcentral Regional Administrative Office, 200 W. Pioneer Pkwy, Peoria, IL 61614;

INDIANA Forest Service National Forest, Wayne-Hoosier National Forest, 1615 J St., Bedford, IN 47421; Agricultural Marketing Service Milk Market Office, 5130 N. Brouse Ave., P.O. Box 55527, Indianapolis, IN 46205; Farmers Home Administration State Office, Suite 1700, Atkinson Square-w 5610 Crawfordsville Rd., Indianapolis, In 46224;

IOWA Farmers Home Administration State Office, Federal Building, Rm. 873, 210 Walnut St., Des Moines, IA 50309; Soil Conservation Service State Office, Federal Bldg., Rm 823, 210 Walnut St., Des Moines, IA 50309;

KANSAS Agricultural Service Milk Market Office, 7939 Floyd Ave., P.O. Box 4606, Overland Park, KS 66204; Soil Conservation Service State Office, 760 S. Broadway, P.O. Box 600, Salina, KS 67401; Farmers Home Administration State Office, New England Bldg., Rm. 630, 5th and Kansas, Topeka, KS 66603;

KENTUCKY Farmers Home Administration State Office, 333 Waller Ave., Lexington, KY 40504; Soil Conservation Service State Office, 333 Waller Ave., Lexington, KY 40504; Agricultural Marketing Service Milk Market Office, 3920 Bardstown Rd., P.O. Box 18030, Louisville, KY 40218, Forest Service National Forest, Daniel Boone National Forest, 100 Vaught Rd., Winchester, KY 40391;

LOUISIANA Farmers Home Administration State Office, 3727 Government St., Alexandria, LA 71301; Soil Conservation Service State Office, 3737 Government St., P.O. Box 1630, Alexandria, LA 71301; Agricultural Marketing Service Milk Market Office, 3001 Ridgelake Dr., P.O. Box 456, Metairie, LA 70004; Agricultural Research Service Southern Regional Administrative Office, 701 Loyola Ave., P.O. Box 53326, New Orleans, LA 70153; Forest Service Southern Experiment Station, T-10210 Federal Bldg., 701 Loyola Ave., New Orleans, LA 70113; Forest Service National Forest, Kisatchie National Forest, 2500 Shreveport Hwy., Pineville, LA 71360; Forest Service, SA, State and Private Forestry, Alexandria Field Office, 2500 Shreveport Hwy., Pineville, LA 71360;

MAINE Farmers Home Administration State Office, USDA Office Bldg., Orono, ME 04473; Soil Conservation Service State Office, USDA Bldg., University of Maine, Orono, ME 04473;

MARYLAND Agricultural Research Service Northeastern Regional Administrative Office, Administration Bldg., Beltsville Agricultural Research Center-West, Beltsville, MD 20705; Soil Conservation Service State Office, Hartwick Bldg., Rm 522, 4321 Hartwick Rd., College Park, MD 20740; Soil Conservation Service Cartographic Division, Federal Center Bldg., Hyattsville, MD 20782;

MASSACHUSETTS Soil Conservation Service State Office, 27-29 Cottage St., Amerst, MA 01002; Agricultural Marketing Service Milk Market Office, 230 Congress St., Rm 403, Boston, MA 02110;

MICHIGAN Agricultural Marketing Service Milk Market Office, 2684 W. 11 Mile Rd., Berkley, MI 48072; Forest Service National Forest, Huron-Manistee National Forest, 421 S. Mitchell St., Cadillac, MI 49601; Farmers Home Administration State Office 1405 S. Harrison Rd., Rm 209, E. Lansing, MI 48823; Soil Conservation Service State Office, 1405 S. Harrison Rd., E. Lansing, MI 48823; Forest Service National Forest, Hiawatha National Forest, P.O. Bldg., Escanaba, MI 49829; Forest Service National Forest, Ottawa National Forest, Ironwood, MI 49938;

MINNESOTA Forest Service National Forest, Chippewa National Forest, Cass Lake, MN 56633; Agricultural Marketing Service Milk Market Office, 508 Providence Bldg., P.O. Box 62, Duluth, MN 55801; Forest Service National Forest, Superior National Forest, Duluth, MN 55801; Agricultural Marketing Service Milk Market Office, 7703 Normandale Rd., Rm. 100, Minneapolis, MN 55435; Animal and Plant Health Inspection Service Minneapolis Commodity Office, 6400 France Ave., S. Minneapolis, MN 55435; Agricultural Marketing Service Milk Market Office, 909 6th St., NW., Rochester, MN 55901; Farmers Home Administration State Office, 252 Federal Office Bldg. and U.S. Court House, St. Paul, MN 55101; Forest Service Northcentral Forest Experiment Station, Folwell Ave., St. Paul, MN 55101, Soil Conservation Service State Office, 200 Federal Bldg. and U.S. Courthouse, 316 N. Roberts St., St. Paul, MN 55101;

MISSISSIPPI Farmers Home Administration State Office, Milner Bldg., Rm. 528, Jackson, MS 39201; Soil Conservation Service State Office, Milner Bldg., P.O. Box 610, Jackson, MS 39205; Forest Service National Forest, National Forests in Mississippi, 350 Milner Bldg., Jackson, MS 39205; Forest Service, SA, State and Private Forestry, Project Manager, Y-LT, Adams Bldg., P.O. Box 69, Oxford, MS 38655;

MISSOURI Farmers Home Administration State Office. Parkade Plaza, Terrace Level, Columbia, MO 65201; Soil Conservation Service State Office, Parkade Plaza, Terrace Level, P.O. Box 459, Columbia, MO 65201; Agricultural Stabilization and Conservation Service Personnel Field Office, 8930 Ward Pky., Kansas City, MO 64114; Forest Service National Forest, National Forests in Missouri, Rolla, MO 65401; Agricultural Marketing Service Milk Market Office, 2550 Schuetz Rd., P.O. Box 1485, Maryland Heights, St. Louis, MO 63042; Farmers Home Administration Finance Office, 1520 Market St., St. Louis, MO 63103;

MONTANA Forest Service National Forest, Custer National Forest, P.O. Box 2556, Billings, MT 59103; Farmers Home Administration State Office, Federal Bldg., P.O. Box 850, Bozeman, MT 59715; Forest Service National Forest, Gallatin National Forest, Federal Bldg., Bozeman, MT 59715; Soil Conservation Service State Office, Federal Bldg., P.O. Box 970, Bozeman, MT 59715; Forest Service National Forest, Deerlodge National Forest, 107 E. Granite, Butte, MT 59701; Forest Service National Forest, Beaverhead National Forest, State H'wy. 41 and Skihi St., Dillon, MT 59725; Forest Service National Forest, Lewis and Clark National Forest, Federal Bldg., Great Falls, MT 59401; Forest Service National Forest, Helena National Forest, Steamboat Block Bldg., 616-618 Helena Ave., Helena, MT 59601; Forest Service National Forest Flathead National Forest, 290 N. Main, Kalispell, MT 59901; Forest Service National Forest, Kootenai National Forest, 418 Mineral Ave., Libby, MT 59923; Forest Service Regional Office, Federal Bldg., Missoula, MT 59801; Forest Service National Forest, Lolo National Forest, 2801 Russell, Missoula, MT 59801; Forest Service, Intermountain Forest and Range Experiment Station, Forestry Sciences and Northern Forest Fire Laboratories, University of Montana, Drawer G, Missoula, MT 59801;

NEBRASKA Forest Service National Forest, Nebraska National Forest, P.O. Box 999, Chadron, NB 69337; Farmers Home Administration State Office, Federal Bldg. and Courthouse, Rm. 430, 129 N. 10th St., Lincoln, NB 68508; Forest Service, RM Forest and Range Experiment Station, University of Nebraska, 205 Miller Hall, E. Campus, Lincoln, NB 68503; Soil Conservation Service State Office, 134 S. 12th St., Lincoln, NB 68508;

NEVADA Forest Service National Forest, Humboldt National Forest, 976 Mountain City Hwy., Elko, NV 89801; Soil Conservation Service State Office, U.S. Post Office Bldg., Rm. 234, P.O. Box 4850, Reno, NV 89505; Forest Service National Forest, Toiyabe National Forest, 111 N. Virginia, Rm 601, Reno, NV 89501;

NEW HAMPSHIRE Soil Conservation Service State Office, Federal Bldg., Durham, NH 03824;

NEW JERSEY Food and Nutrition Service Northeast Regional Office, 707 Alexander Rd., Princeton, NJ 08540; Soil Conservation Service State Office, 1370 Hamilton St., P.O. Box 219, Somerset, NJ 08873;

NEW MEXICO Forest Service National Forest, Lincoln National Forest, Federal Bldg., 11th and New York, Alamagordo, NM 88310; Farmers Home Administration State Office, Federal Bldg., Rm. 3414, 517 Gold Ave., SW, Albuquerque, NM 87102, Forest Service Regional Office, 517 Gold Ave., SW, Albuquerque, NM 87102; Forest Service National Forest, Cibola National Forest, 10308 Candelaria, NE, Albuquerque, NM 87112; Forest Service Rocky Mountain Forest and Range Experiment Station, New Federal Bldg., Rm 5423, 517 Gold Ave., SW, Albuquerque, NM 87101, Soil Conservation Service State office, 517 Gold Ave., SW, P.O. Box 2007, Albuquerque, NM 87103; Forest Service National Forest, Santa Fe National Forest, P.O. Box 1689, Santa Fe, NM 87501; Forest Service National Forest, Gila National Forest, 301 W. College Ave., Silver City, NM 88061; Forest Service National Forest, Carson National Forest, Forest Service Bldg., P.O. Box 558, Taos, NM 87571;

NEW YORK Agricultural Research Service Plum Island Animal Disease Center, P.O. Box 848, Greenport, Long Island, NY 11944, Agricultural Marketing Service Milk Market Office, 205 E 42nd St., New York, NY 10017; Farmers Home Administration State Office, Midtown Plaza, Rm. 214, 700 E. Water St., Syracuse, NY 13210; Soil Conservation Service State Office; Midtown Plaza, Rm 400, 700 E. Water St., Syracuse, NY 13210;

NORTH CAROLINA Forest Service Southeastern Experiment Station, P.O. Box 2570, Asheville, NC 28802; Forest Service National Forest, National Forests in North Carolina, 50 S. French Broad Ave., P.O. Box 2750, Asheville, NC 28802; Farmers Home Administration State Office, Federal Bldg., Rm. 514, 310 New Bern Ave., Raleigh, NC 27601; Soil Conservation Service State Office, Federal Office Bldg., 310 New Bern Ave., P.O. Box 27307, Raleigh, NC 27611;

NORTH DAKOTA Farmers Home Administration State Office, Federal Bldg., Rm. 208, 3rd and Rosser Ave., Bismarck, ND 58501; Soil Conservation Service State Office, Federal Bldg., P.O. Box 1458, Bismarck, ND 58501; Forest Service, RM Forest and Range Experiment Station, Shelterbelt Laboratory, P.O. Box 25, Bottineau, ND 58318;

OHIO Agricultural Marketing Service Milk Market Office, 7503 Brookpark Rd., P.O. Box 29066, Cleveland, OH 44129; Agricultural Marketing Service Milk Market Office; 4560 Heaton Rd., P.O. Box 29226, Columbus, OH 43229; Farmers Home Administration State Office, Old Post Office Bldg., Rm. 316, 121 E. State St., Columbus, OH 43215; Soil Conservation Service State Office, 311 Old Federal Bldg., 3rd and State Sts., Columbus, OH 43215;

OKLAHOMA Farmers Home Administration State Office, Agricultural Center Office Bldg., Stillwater, OK 74074; Soil Conservation Service State Office, Agricultural Center Bldg., Farm Rd. and Brumley St., Stillwater, OK 74074; Agricultural Marketing Service Milk Market Office, 4325 E. 51st St., P.O. Box 45563 Tulsa, OK 74145;

OREGON Forest Service National Forest; Wallowa-Whitman National Forest, Main and Auburn, Baker, OR 97814; Forest Service National Forest, Deschutes National Forest, 211 E. Revere Ave., Bend, OR 97701; Forest Service National Forest, Siuslaw National Forest, 545 S. 2nd St., Corvallis, OR 97330; Forest Service Pacific Northwest Forest and Range Experiment Station, Forestry Sciences Laboratory, 3200 Jefferson Way, Corvallis, OR 97331; Forest Service

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National Forest, Williamette National Forest, 210 E. 11th St., Eugene, OR 97401; Forest Service National Forest, Siskiyou National Forest, 1504 NW 6th St., Grants Pass, OR 97526, Forest Service National Forest, Malheur National Forest, 139 NE Dayton St., John Day, OR 97845; Forest Service National Forest, Winema National Forest, P.O. Bldg., Klamath Falls, OR 97601; Forest Service National Forest, Fremont National Forest, 34 D St., N., Lakeview, OR 97630; Forest Service National Forest, Rogue River National Forest, P.O. and Federal Bldg., Medford, OR 97501, Forest Service National Forest, Umatilla National Forest, 2517 SW Hailey Ave., Pendleton, OR 97801; Farmers Home Administration State Office, 1218 SW Washington St., Portland, OR 97205, Forest Service Pacific Northwest Forest and Range Experiment Station, P.O. Box 3141, Portland, OR 97208; Forest Service Regional Office, P.O. Box 3623, Portland, OR 97208; Forest Service National Forest, Mt. Hood National Forest, 2440 SE 195th Ave., Portland, OR 97223; Soil Conservation Service State Office, Washington Bldg., 1218 SW Washington St., Portland, OR 97205; Soil Conservation Service Technical Center, 511 NW Broadway, Portland, OR 97209; Agricultural Marketing Service Milk Market Office, Farmers Center Bldg., 6700 SW Varns St., P.O. Box 23354, Portland, OR 97223; Forest Service National Forest, Ochoco National Forest, Federal Bldg., Prineville, OR 97754; Forest Service National Forest, Umpqua National Forest, Federal Office Bldg., Roseburg, OR 97470;

PENNSYLVANIA Farmers Home Administration State Office, Federal Bldg., Rm. 728, 228 Walnut St., P.O. Box 905, Harrisburg, PA 17108; Soil Conservation Service State Office, Federal Bldg. and Court House, P.O. Box 985 (Fed. Square Station), Harrisburg,PA 17108; Agricultural Research Service Eastern Regional Research Center, 600 E. Mermaid Ln., Philadelphia, PA 19118; Forest Service Northeastern Area, State and Private Forestry, 6816 Market St., Upper Darby, PA 19082; Forest Service Northeastern Experiment Station, 6816 Market St., Upper Darby, PA 19082; Soil Conservation Service Technical Service Center, 7700 W. Chester Pike, Upper Darby, PA 19082; Forestry Service National Forest, Allegheny National Forest, P.O. Bldg., Warren, PA 16365;

SOUTH CAROLINA Forest Service, Forest Manager, Savannah River Project, AEC, P.O. Box A, Aiken, SC 29802; Farmers Home Administration State Office, Federal Bldg., Rm. 604, 901 Sumter St., Columbia, SC 29201; Forest Service National Forest, Francis Marion-Sumter National Forest, 1801 Assembly St., 2nd Floor, Columbia, SC 29201;

SOUTH DAKOTA Forest Service National Forest, Black Hills National Forest, Forest Service Office Bldg., P.O. Box 792, Custer, SD 57730; Farmers Home Administration State Office, Christen and Hohm Bldg., 239 Wisconsin Ave., SW, Huron, SD 57350; Soil Conservation Service State Office, 239 Wisconsin Ave., SW, P.O. Box 1357, Huron, SD 57350; Forest Service, RM Forest and Range Experiment Station, Forest Research Laboratory, South Dakota School of Mines and Technology, Rapid City, SD 57701;

TENNESSEE Agricultural Marketing Service Milk Market Office, 119 Belmont Dr., P.O. Box 3007, Bristol, TN 37620; Forest Service National Forest, Cherokee National Forest, 2321 Ocoee St., NW, P.O. Box 400, Cleveland, TN 37311; Farmers Home Administration State Office, 538 U.S. Court House Bldg., 801 Broadway, Nashville, TN 37203; Soil Conservation Service State Office, 561 U.S. Court House, Nashville, TN 37203;

TEXAS Agricultural Marketing Service Milk Market Office, 11061 Shady Trail, P.O. Box 34689, Dallas, TX 75234; Food and Nutrition Service West-Central Regional Office, 1100 Commerce St., Rm. 5-D-22, Dallas, TX 75202; Forest Service National Forest, National Forests in Texas, 3rd and Lufkin Ave., P.O. Box 969, Lufkin, TX 75901; Farmers Home Administration State Office, 3920 S. General Bruce Dr., Temple, TX 76501; Soil Conservation Service State Office, 16-20 S. Main St., P.O. Box 648, Temple, TX 76501; Soil Conservation Service Technical Service Center, Ft. Worth Federal Center, P.O. Box 11222, Fort Worth, TX 76110;

UTAH Forest Service National Forest; Dixie National Forest, 500 S. Main St., Cedar City, UT 84720; Forest Service Intermountain Experiment Station, Federal Bldg., 507-25th St., Ogden, UT 84401; Forest Service Regional Office, Federal Office Bldg., 324-25th St., Ogden, UT 84401; Forest Service National Forest, Manti LaSal National Forest, 350 E. Main St., Price, UT 84501; Forest Service National Forest, Unita National Forest, Federal Bldg., P.O. Box 1428, Provo, UT 84601; Forest Service National Forest, Fishlake National Forest, 170 N. Main St., Richfield, UT 84701; Farmers Home Administration State Office, Federal Bldg., Rm. 5311, 125 S. State St., Salt Lake City, UT 84138; Forest Service National Forest, Wasatch National Forest, 4438 Federal Bldg., 125 S. State St., Salt Lake City, UT 84111; Soil Conservation Service State Office, 4012 Federal Bldg., 125 S. State St., Salt Lake City, UT 84138; Forest Service National Forest, Ashley National Forest, 437 E. Main St., Vernal, UT 84078;

VERMONT Soil Conservation Service State Office, 1 Burlington Square, Burlington, VT 05401; Farmers Home Administration State Office, 141 W. Main St., P.O. Box 588, Montepelier, VT 05602; Forest Service National Forest, Green Mountain National Forest, Federal Bldg., Rutland, VT 05701;

VIRGINIA Agricultural Marketing Service Milk Market Office, 300 N. Lee St., Rm. 320, Alexandria, VA 22314; Forest Service National Forest, George Washington National Forest, 210 Federal Bldg., P.O. Box 233, Harrisonburg, VA 22801; Farmers Home Administration State Office, Federal Bldg., Rm. 8213, 400 N. Eighth St., Richmond VA 23240; Soil Conservation Service State Office, 400 N. Eighth St., P.O. Box 10026, Richmond, Va 23240; Forest Service National Forest, Jefferson National Forest, 3517 Brandon Ave., SW, P.O. Box 4009, Roanoke, VA 24015;

WASHINGTON Forest Service National Forest, Colville National Forest, Colville, WA 99114; Forest Service National Forest, Okanogan National Forest, 219 2nd Ave., S., Okanogan, WA 98840; Forest Service National Forest, Olympic National Forest, Federal Bldg., Olympia, WA 98501; Agricultural Marketing Service Milk Market Office, 16 W. Harrison St., Seattle, WA 98119; Forest Service National Forest, Mt. Baker-Snoqualmie National Forests, 1601 Second Ave., Bldg., Seattle, WA 98101; Soil Conservation Service State Office, 360 U.S. Courthouse, W. 920 Riverside Ave., Spokane, WA 99201; Forest Service National Forest, Gifford Pinchot National Forest, 500 W. 12th St., Vancouver, WA 98660; Farmers Home Administration State Office, Federal Office Bldg., Rm. 319, 301 Yakima St., Wenatchee, WA 98801; Forest Service National Forest, Wenatchee National Forest, 301 Yakima St., Wenatchee, WA 98801;

WEST VIRGINIA Forest Service National Forest, Monongahela National Forest USDA Bldg., Sycamore St., Elkins, WV 26241; Farmers Home Administration State Office, Federal Bldg., Rm 320, 75 High St., Morgantown, WV 26505; Soil Conservation Service State Office, 75 High St., P.O. Box 865, Morgantown, WV 26505;

WISCONSIN Forest Service Forest Products Laboratory, N. Walnut St., P.O. Box 5130, Madison, WI 53705; Soil Conservation Service State Office, 4601 Hammersley Rd., P.O. Box 4248, Madison, WI 53711; Forest Service Regional Office, 633 W. Wisconsin Ave., Milwaukee, WI 53203; Forest Service National Forest, Chequamegon National Forest, Federal Bldg., Park Falls, WI 54552; Forest Service National Forest, Nicolet National Forest, Federal Bldg., Rhielander, WI 54501; Farmers Home Administration State Office, First Financial Plaza, Suite 209, 1305 Main St., Stevens Point, WI 54481;

WYOMING Farmers Home Administration State Office, Federal Bldg., Rm. 3213, 100 E. B. St., Casper, WY 82601; Soil Conservation Service State Office, Federal Office Bldg., P.O. Box 2440, Casper, WY 82601; Forest Service National Forest, Shoshone Bighorn National Forests, Blair Bldg. No. 1, Cody, WY 82414; Forest Service National Forest, Bridger-Teton National Forest, Forest Service Bldg., P.O. Box 1888, Jackson, WY 83001; Forest Service National Forest, Medicine Bow National Forest, Box 3355, University Station, Laramie, WY 82070; Forest Service, RM Forest and Range Experiment Station, Forest Range and Watershed Laboratory, University of Wyoming, Laramie, WY 82070;

PUERTO RICO Farmers Home Administration State Office, Segarra Bldg., Fifth Floor, 1409 Ponce deLeon Ave., STOP 20, Santurce, Puerto Rico 00907; Soil Conservation Service, Caribbean Office, 1409 Ponce deLeon Ave., STOP 20, Santurce, Puerto Rico, 00908;

HEADQUARTERS Science and Education Administration, Personnel Division, Federal Center Bldg., Rm. 557, Hyattsville, MD 20782; Agricultural Marketing Service, Personnel Division, Rm. 1709-S, Washington, D.C. 20250; Agricultural Stabilization and Conservation Service, Personnel Division, Rm. 4752-S, Washington, D.C. 20250; Animal and Plant Health Inspection Service, Personnel Division, Rm. 3911-S, Washington, D.C. 20250; Economics, Statistics, and Cooperatives Service, Division of Personnel, Rm. 1441-S, Washington, D.C. 20250; Farmers Home Administration, Personnel Division, Rm. 6319-S, Washington, D.C. 20250; Federal Crop Insurance Corporation, Personnel, Management, and Administrative Service Division, Rm. 4622-S, Washington, D.C. 20250; Foreign Agricultural Service, Personnel Division, Rm. 5649-S, Washington, D.C. 20250; Forest Service, Division of Personnel Management, Rm. 910, Rosslyn Plaza E, Arlington, VA 22209; Food and Nutrition Service, Personnel Division, Rm. 712-B, 500 12th St., SW, Washington, D.C. 20250; Office of Personnel, Personnel Operations Division, Rm. 347-W, Washington, D.C. 20250; Soil Conservation Service, Personnel Division, Rm. 6212-S, Washington, D.C. 20250; Rural Electrification Administration, Personnel Management Division, Rm. 4078-S, Washington, D.C. 20250;

Categories of individuals covered by the system: Current and prior employees of USDA and applicants who were not hired, as well as, its permittees, cooperators, and contractor.

Categories of records in the system: The System consists of personnel (Official Personnel Folders, Applicant Supply Files, performance files, retention lists, appeals, grievances, complaints, disciplinary, conflict of interest, health, suggestion and incentive awards, accident, training, time and attendance, travel voucher, and classification files) and payroll data needed to conform to all applicable laws, Government Regulations and procedures, and the needs of the Department and agencies in carrying out their personnel management responsibilities.

Authority for maintenance of the system: 5 U.S.C. 301.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referral to (1) Civil Service Commission for required action, records, and reports; (2) Department of Treasury for issuance of checks and bonds; (3) Department of Labor for Office of Workers Compensation Program and Office of Safety and Health Administration; (4) Department of Commerce for distribution of Federal payrolls; (5) Congress for special reports; (6) White House for special reports; (7) Office of Management and Budget for special reports; (8) General Accounting Office for special reports; (9) Department of Justice; (10) General Services Administration for records retirement and/or destruction; (11) State Department for passport and foreign assignments; (12) Department of Transportation, Environmental Protection Agency, and cooperating state and local agencies for accident and safety records; (13) Internal Revenue Service and State and local governments for matters in connection with payment of income taxes; (14) Social Security Administration for social security payment information; (15) United funds for reports and records; (16) Department of Health, Education, and Welfare for scheduling physical examinations; (17) All Government agencies and potential employers concerning employment inquiries; (18) Equal Employment Opportunity Commission for handling complaints; (19) Appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this System when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; and (20) A court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders at the applicable address listed above, except for the National Finance Center where it is maintained on computer tape and disk storage.

Retrievability: Records are indexed by name of employee and/or identification number.

Safeguards: Records are kept in locked file, locked offices, and/or in secured computer tape storage rooms.

Retention and disposal: Records are maintained indefinitely until employees are separated from the Department and are then retired or transferred to a new employing agency or destroyed in conformance with appropriate General Services Administration retirement and/or destruction schedules.

System manager(s) and address: Director, Office of Personnel, USDA, Washington, D.C. 20250.

Notification procedure: Employees may request information from this System from the appropriate personnel office having custody of his records. A request for information should be addressed to the Director, Personnel Division, (name of appropriate agency), USDA, at the address shown under LOCATION and should contain:

Name of requestor, employing agency in USDA or agency to which information was furnished, address of agency, and particular information requested.

Record access procedures: Any individual may obtain information as to the procedures for gaining access to and contesting a record in the System which pertains to him by submitting a written request to the appropriate offices referred to in the preceding paragraph.

Contesting record procedures: Same as RECORD ACCESS PROCEDURES.

Record source categories: Information in this System comes from the employee, applicants, permittees, cooperators, contractors, employee's personnel offices, supervisors, references, investigative personnel, colleges and universities, and former employers.

USDA/OP—2

System name: Security Records for USDA employees, USDA/OP.

System location: Security and Employee Relations Division, Office of Personnel, USDA, Room 16-W, Administration Building, 14th Street and Independence Avenue, SW, Washington, D.C. 20250.

Categories of individuals covered by the system: All USDA applicants and/or employees investigated under the the authority of Executive Order 10450.

Categories of records in the system: The System consists of investigative files maintained by the Department Security Officer in fulfilling his responsibilities in granting security clearances under the Personal Security Program of the Department.

Authority for maintenance of the system: 5 U.S.C. 22-1; 22-3; Executive Order 10450.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Referral to the Civil Service Commission and/or the Federal Bureau of Investigation for appropriate investigation; (2) referral to the agency which conducted the investigation upon the retirement or transfer of the employee; (3) referral to the General Services Administration for retirement and/or destruction purposes; (4) certification of Security Clearances to other Government agencies; (5) referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, of any record within this System when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto; (6) referral to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in locked Lektriever 100's which are contained in a locked room.

Retrievability: Records are indexed by name of the employee or applicant.

Safeguards: As stated above under STORAGE.

Retention and disposal: Records are maintained until employee has retired, or transferred to another Government agency. They are then returned to the agency that conducted the investigation, or retired to the General Services Administration for destruction under the appropriate destruction schedule.

System manager(s) and address: Department Security Officer, U.S. Department of Agriculture, Washington, D.C. 20250.

Notification procedure: Employees may request information, other than that exempted, from this System from the Department Security Officer, U.S. Department of Agriculture, under the address shown above in LOCATION. All requests should include the name of the requestor, employing agency or agency to where application was made, address of requestor, location of employing agency, and particular information requested.

Record access procedures: Any individual may obtain information as to the procedures for gaining access to and contesting a record in the System which pertains to him by submitting a written request to the office mentioned above.

Contesting record procedures: Same as RECORD ACCESS PROCEDURES

Record source categories: Information in this System comes from the employee, his references, present and former supervisors, educational institutions, the Civil Service Commission, the Federal Bureau of Investigation, the investigative arms of the various agencies of the Department of Defense, the investigative arms of other Executive Departments and Agencies, and various local and state law enforcement agencies.

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USDA/SEA—1

System name: Biographical material and nominating statements on SEA employees proposed for major awards, USDA/SEA

System location: Office of the Chief, Information Staff, Science and Education Administration, USDA, Washington, D.C. 20250.

Categories of individuals covered by the system: SEA employees who have been proposed, or actually nominated, by SEA for major national or international awards in science, administration, and public service.

Categories of records in the system: The system consists of biographical information, material on the nature and significance of the individual's achievements, and file copies of nominating statements prepared for the Director of SEA.

Authority for maintenance of the system: 5 USC 301.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Preparation of nominating statements on SEA employees for major national and international awards, and references to nominations previously prepared, for submission to the U.S. Civil Service Commission, the Executive Office of the President, the National Civil Service League, the Junior Chamber of Commerce, and various educational or public service foundations which administer national or international awards. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders.

Retrievability: Records are indexed alphabetically by name of employee.

Safeguards: Stored in offices within Government office building protected by security guards.

Retention and disposal: Records are maintained indefinitely.

System manager(s) and address: Chief, Information Staff, Science and Education Administration, USDA, Washington, D.C. 20250. (202-447-6168).

Notification procedure: Any individual may request information about this system of records, or information as to whether the system contains records pertaining to him, from the System Manager.

Record access procedures: Any individual may obtain a copy of information pertaining to him by submitting a written request to the System Manager.

Contesting record procedures: Any individual may contest information in the system which pertains to him by submitting pertinent written information to the System Manager.

Record source categories: Information in this system comes primarily from supervisors and colleagues of the employees, scientific publications and other material provided by the individuals themselves, and nominations and articles related to previous awards.

USDA/SEA—2

System name: Biographical material on persons related to science or agriculture, USDA/SEA.

System location: Office of Chief, Information Staff, Science and Education Administration, USDA, Washington, D.C. 20250, and Regional Information Office, USDA/SEA, Northeastern Region, Room 251, Building 003, Beltsville Agricultural Research Center-West, Beltsville, Maryland 20705.

Categories of individuals covered by the system: Persons whose training, position, or achievements make them prominent in either science or agriculture, or both.

Categories of records in the system: The system consists of clippings, press releases, newsletters, articles, editorials, biographical sketches, speeches, letters of commendation, award citations, and other simnilar materials.

Authority for maintenance of the system: 5 USC 301.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Background and illustrations for speeches, introductions, articles, press releases, scripts, and slide presentations, which may be presented to the general public, news media, and professional, fraternal, and social organizations and Government agencies. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders.

Retrievability: Records are indexed by first letter of person's name.

Safeguards: Stored in offices within Government office building protected by security guards.

Retention and disposal: Records are maintained indefinitely.

System manager(s) and address: Chief, Information Staff, Science and Education Administration, USDA, Washington, D.C. 20250 (telephone 202-447-6785), and Regional Information Officer, USDA-ARS-Northeastern Region, Room 251, Building 003, Beltsville Agricultural Research Center-West, Beltsville, Maryland 20705 (telephone 301-344-2050).

Notification procedure: Any individual may request information about this system of records, or information as to whether the system contains records pertaining to him, from the System Manager.

Record access procedures: Any individual may obtain a copy of information pertaining to him by submitting a written request to the System Manager.

Contesting record procedures: Any individual may contest information in the system which pertains to him by submitting pertinent written information to the System Manager.

Record source categories: Information in this system comes primarily from newspapers, magazines, standard reference sources, correspondence circulated in the agency, information materials prepared for public release, and material provided by the individuals themselves.

USDA/SEA—3

System name: USDA/SEA Manpower File.

System location: Personnel Division, Science and Education Administration Federal Building, Hyattsville, Maryland 20782.

Categories of individuals covered by the system: All employees of the Agricultural Research Service.

Categories of records in the system: The system consists of a skeletal personnel record of each employee for organizational, grade analysis, strength accounting, and statistical purposes.

Authority for maintenance of the system: 5 USC 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Numerical, statistical, and other special reports, to Civil Service Commission, Office of Management and Budget, General Services Administration, and General Accounting Office; preparation of SEA telephone directory. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: The records are maintained on computer disks and tapes at the USDA Computer Centers in Washington, D.C., and New Orleans, Louisiana.

Retrievability: Records are indexed by the employee's social security numbers.

Safeguards: Records are kept in secured computer tape or disk storage rooms and information requests are accepted only from specifically authorized personnel or high level SEA management officials.

Retention and disposal: Records are maintained in current files for as long as an employee remains on SEA rolls, and statistical information since July 1972 is retained indefinitely.

System manager(s) and address: Director, Personnel Division, SEA, USDA, Hyattsville, Maryland 20782 (telephone 301-436-8100).

Notification procedure: Any individual may request information concerning himself from this system from the System Manager by submitting a request which should include: Name, Agency, address, and particular information request.

Record access procedures: Any individual may obtain information about the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the System Manager.

Contesting record procedures: Any individual may contest information in the system which pertains to him by submitting pertinent written information to the System Manager.

Record source categories: Information in this system comes primarily from the employees' personnel office, but may also come from the employees or their supervisors.

USDA/SEA—4

System name: Solicitation of bids or proposals for procurement contracts, USDA/SEA.

System location: Office of the Director, General Services Division, USDA/SEA, Hyattsville, Maryland 20782, and Regional Administrative Offices, SEA, at the following locations:

Regional Administrative Officer
USDA-SEA-Northeastern Region
Room 329, Bldg. 003, BARC-W
Beltsville, Maryland 20705
(301) 344-3646

Regional Administrative Officer
USDA-SEA-Western Region
2850 Telegraph Avenue
Berkeley, California 94705
(415) 486-3367; FTS 449-3367

Regional Administrative Officer
USDA-SEA-Southern Region
P.O Box 53326
New Orleans, Louisiana 70153
(504) 589-2584; FTS 682-2584

Regional Administrative Officer
USDA-SEA-North Central Region
2000 W. Pioneer Parkway
Peoria, Illinois 61614
(309) 671-7162; FTS 360-7162

Categories of individuals covered by the system: Individuals who submit bids or proposals to furnish supplies or perform services under contract with USDA/SEA.

Categories of records in the system: The system consists of files of all bids or offers received and awards made in regard to solicitations issued by USDA/SEA, including copies of actual bids or offers and modifications thereto, and reports or statements by bidders or offerors about their financial and professional or technical capabilities of furnishing the supplies or rendering the services described in the solicitation.

Authority for maintenance of the system: 5 USC 301

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: This information is also sometimes used in deciding courses of action in the event of contractor default and in handling protests made by other competing bidders or offerors when the capabilities of the successful bidder or offeror is the basis of the protest. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders.

Retrievability: Records are indexed by solicitation number, by contract number, and by name of contractor.

Safeguards: Records are kept in a locked office when not in custody of procurement officers of their subordinates.

Retention and disposal: Records are maintained until 6 years after contract termination or final contract payment is made.

System manager(s) and address: The Director, General Services Division, USDA/SEA, Hyattsville, Maryland 20782, or the Regional Administrative Officers at the address given herein.

Notification procedure: Any individual may request information regarding this system of records or information as to whether the system contains records pertaining to him from the appropriate System Manager. If the specific location of the record is not known, the individual should address his request to the Director, General Services Division, who, if necessary, will refer it to the appropriate field office. A request for information pertaining to an individual should contain: Name, address, and particulars involved (i.e., the date of the solicitation giving rise to the records, date bid or offer was filed, correspondence, etc.).

Record access procedures: Any individual may obtain information about the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the appropriate System Manager.

Contesting record procedures: Any individual may contest a record in the system which pertains to him by submitting pertinent written information to the appropriate System Manager.

Record source categories: Information in this system comes from the business firm or individual concerned or the Small Business Administration in the case of small business set-aside procurements, and previous USDA/SEA records of procurement contracts in which the business firm or individual was the principal party to the contract.

USDA/SEA—5

System name: Training file, USDA/SEA.

System location: Personnel Division, Science and Education Administration, Federal Building, Hyattsville, Maryland 20782.

Categories of individuals covered by the system: All employees of the Agricultural Research Service, and any State or local Government employee or other Federal agency employee who receives supervisory training through SEA.

Categories of records in the system: The system consists of a skeletal record of each SEA employee and each non-SEA employee who receives supervisory training, for training analysis and statistical purposes.

Authority for maintenance of the system: 5 USC 301.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Identification of employees who have received, or who must receive, mandatory training courses such as Supervisory Training and Specific Labor Management Relations Training; numerical, statistical, and other special training reports to Civil Service Commission, Office of Management and Budget, and General Accounting Office. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: The records are maintained on computer disks and tapes at the USDA Computer Centers in Washington, D.C. and New Orleans, Louisiana.

Retrievability: Records are indexed by the employee's social security numbers.

Safeguards: Records are kept in secured computer tape or disk storage rooms and information requests are accepted only from specifically authorized personnel or high level SEA management officials.

Retention and disposal: Records are maintained in current files for as long as an employee remains on SEA rolls, and statistical information since July 1972 is retained indefinitely.

System manager(s) and address: Director, Personnel Division, SEA, USDA, Hyattsville, Maryland 20782 (telephone 301-436-8100).

Notification procedure: Any individual may request information concerning himself from this system from the System Manager by submitting a request which should include: Name, Agency, address, and particular information requested.

Record access procedures: Any individual may obtain information about procedures for gaining access to a record in the system which pertains to him by submitting a written request to the System Manager.

Contesting record procedures: Any individual may contest information in the system which pertains to him by submitting pertinent written information to the System Manager.

Record source categories: Information in this system comes primarily from the employees' personnel office, but may also come from the employees or their supervisors.

USDA/SEA—6

System name: Research Medical Records System on Patients and Human Volunteers Participating in Research at the USDA-SEA Human Nutrition Laboratory, USDA/SEA.

System location: U.S. Department of Agriculture, Science and Education Administration, Human Nutrition Laboratory, North Central Region, 2420 Second Avenue North, Grand Forks, North Dakota 58201.

Categories of individuals covered by the system: Individuals participating in human research carried out by the staff of the Human Nutrition Laboratory.

Categories of records in the system: Medical and nutritional histories, medical and nutritional examinations, diagnostic and treatment

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data, information of social and economic data, laboratory data, statistical summaries, correspondence.

Authority for maintenance of the system: 5 USC 301.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Analysis of research findings and report of research findings. The identification of individuals who participate in the research is not revealed in the report of research findings. (2) To provide information to a congressional office from the record of an individual in response to an inquiry from a congressional office made at the request of the individual. (3) Referral to an appropriate Agency, whether Federal, State, or Local, charged with the responsibility for investigating or prosecuting a violation of law, rule, regulation, or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto. (4) Referral to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery. (5) Referral to the Department of Justice for the defense of suits against the United States or its officers, or for the institution of suits for the recovery of claims by the United States Department of Agriculture.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: File folders, magnetic tapes, punch cards, punch paper tape.

Retrievability: Individuals are identified by identification number and name.

Safeguards: Locked storage area, personnel training and instruction. USDA-SEA, policy on release of information, job description responsibility.

Retention and disposal: Scientific records are maintained indefinitely.

System manager(s) and address: Director, USDA, SEA, Human Nutrition Laboratory, North Central Region, 2420 Second Avenue North, Grand Forks, North Dakota 58201.

Notification procedure: Any individual may request information about this system of records, or information as to whether the system contains records pertaining to him, from the System Manager.

Record access procedures: Any individual may obtain a copy of information pertaining to him by submitting a written request to the System Manager.

Contesting record procedures: Any individual may contest information in the system which pertains to him by submitting pertinent information to the System Manager.

Record source categories: Individual, health care personnel, other hospitals and physicians, employers, social agencies.

USDA/SEA—7

System name: Dosimetry Report on Individuals in USDA Required by Radiological Safety Committee to Wear Radiation Exposure Measuring Film Badges When Appropriate, USDA/SEA.

System location: Radiological Safety Staff, Science and Education Administration, USDA, Room 226, Building 001, BARC-West, Beltsville, Maryland 20705.

Categories of individuals covered by the system: All individuals who use radioactive material and/or radiation equipment which emit strong beta particles, neutrons, gamma rays or X-rays.

Categories of records in the system: The system indicates individual's name, date of birth and social security number, issue date, monthly beta, gamma, neutron and X-ray dosages, classification of dosages as penetrating or non-penetrating, and cumulative totals for the calendar quarter and calendar year.

Authority for maintenance of the system: 42 USC 2111 and 42 USC 2201(b).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: The system permits the maintenance of a monthly and cumulative record of each film badge wearer's radiation exposure. This information may be:

1. Disclosed to the Nuclear Regulatory Commission for review, compliance, and investigation purposes.
2. Disclosed to a doctor, hospital, or other competent medical authority in event of a medical emergency involving radiation exposure.
3. Disclosed to the Department of Labor; Vererans Administration; Social Security Administration; U.S. Civil Service Commission; Department of Defense; Federal agencies which may have special civilian employee retirement programs; national, State, county, municipal, or other publicly recognized charitable or social security administration agency to adjudicate a claim for benefits under the Bureau of Retirement, Insurance, and Occupational Health or the recipient's benefit program(s), or to conduct an analytical study of benefits being paid under such programs.
4. Disclosed to health insurance carriers or plans participating in Federal Employees' Health Benefits Program in support of a claim for health insurance benefits involving radiation exposure.
5. Disclosed to Federal Employees' Group Life Insurance Program in support of a claim for life insurance benefits involving radiation exposure.
6. Disclosed to an organization to which the individual is transferred, upon written request of that organization.
7. Used to provide information to a congressional office from the record of an individual in response to an inquiry from a congressional office made at the request of the individual.
8. Referred to an appropriate Agency, whether Federal, State, or local, charged with the responsibility for investigating or prosecuting a violation of law, rule, regulation, or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto.
9. Referred to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery.
10. Referred to the Department of Justice for the defense of suits against the United States or its officers, or for the institution of suits for the recovery of claims by the United States Department of Agriculture.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Current system is maintained in file drawers in Radiological Safety Staff office. Past reports maintained in Federal Records Center (FRC). Microfilms of past reports maintained in FRC and in file cabinet in Radiological Safety Staff office.

Retrievability: By assigned individual Code Number, City, and State.

Safeguards: Stored in metal file cabinets within Government building protected by security guards.

Retention and disposal: U.S. Nuclear Regulatory Commission requires retention of records until such time the Commission authorizes their disposition.

System manager(s) and address: Radiological Safety Officer, USDA, Science and Education Administration, Radiological Safety Staff, Room 226, Building 001, BARC-West, Beltsville, Maryland 20705.

Notification procedure: Any individual may request information concerning himself from this system, or information as to whether the system contains records pertaining to him, by writing to the System Manager.

Record access procedures: Any individual may obtain a copy of the information pertaining to him by submitting a written request to the System Manager.

Contesting record procedures: Any individual may contest information in the system which pertains to him by submitting pertinent written information to the Chairman, Radiological Safety Committee, USDA, Science and Education Administration, Room 307A, Building 005, BARC-West, Beltsville, Maryland 20705.

Record source categories: Personal information about each individual is provided by the individual. Dosimetry information is provided by a commercial film badge supplier under contract with USDA who routinely receives, processes, and evaluates the film packets and furnishes the System Manager the appropriate information.

USDA/SEA—8

System name: Education and Radiation Training and Experience Report on Persons in USDA Using Radioactive Materials and/or Equipment Which Emits Ionizing Radiation, USDA/SEA.

System location: Radiological Safety Staff, Science and Education Administration, USDA, Room 226, Building 001, BARC-West, Beltsville, Maryland 20705.

Categories of individuals covered by the system: All persons in USDA who are responsible for, or independent users of, radioactive materials and/or equipment which emits ionizing radiation.

Categories of records in the system: The system consists of information on a person's educational background including formal courses and on-the-job training in radiation; experience in actual use of radioactive materials and/or equipment which emits ionizing radiation; experience in the use of radiation detection and measuring instrumentation; and additional information such as pertinent publications, speeches, etc., which will assist in the evaluation of a person's qualifications to safely use radioactive materials and/or equipment which emits ionizing radiation to protect his health and to minimize danger to life or property.

Authority for maintenance of the system: 42 U.S.C. 2111 and 42 USC 2201(b).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: The system is used by the Department's Radiological Safety Committee and Radiological Safety Staff in its determination to approve or deny a person's procurement and use of potentially hazardous radioactive materials and/or equipment which emits ionizing radiation. When applicable, the system supplies information for maintenance of required radiation exposure records on persons who are required to wear personnel monitoring devices while using radioactive materials and/or equipment which emits ionizing radiation. The information may be:

1. Disclosed to the Nuclear Regulatory Commission for review, compliance, and investigation purposes.
2. Disclosed to the Department of Labor; Veterans Administration; Social Security Administration; U.S. Civil Service Commission; Department of Defense; Federal agencies which may have special civilian employee retirement programs; national, State, county, municipal, or other publicly recognized charitable or social security administration agency to adjudicate a claim for benefits under the Bureau of Retirement, Insurance, and Occupational Health, or the recipient's benefit program(s), or to conduct an analytical study of benefits being paid under such programs.
3. Disclosed to health insurance carriers or plans participating in Federal Employees' Health Benefits Program in support of a claim for health insurance benefits involving radiation exposure.
4. Disclosed to Federal Employees' Group Life Insurance Program in support of a claim for life insurance benefits involving radiation exposure.
5. Disclosed to an organization to which the individual is transferred, upon written request of that organization.
6. Used to provide information to a congressional office from the record of an individual in response to an inquiry from a congressional office made at the request of the individual.
7. Referred to an appropriate Agency, whether Federal, State, or Local, charged with the responsibility for investigating or prosecuting a violation of law, rule, regulation, or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto.
8. Referred to a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, or any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery.
9. Referred to the Department of Justice for the defense of suits against the United States or its officers, or for the institution of suits for the recovery of claims by the United States Department of Agriculture.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: System is maintained in files in Radiological Safety Staff office.

Retrievability: Alphabetically by name.

Safeguards: Stored in the Radiological Safety Staff office within Government building protected by security guards.

Retention and disposal: Records are maintained until the Radiological Safety Staff knows that the individual is no longer using radioactive materials and/or equipment which emits ionizing radiation, has retired, or is deceased. Records are disposed of by shredding.

System manager(s) and address: Radiological Safety Officer, USDA, Science and Education Administration, Radiological Safety Staff, Room 226, Building 001, BARC-WEST, Beltsville, Maryland 20705.

Notification procedure: Any individual may request information about this system of records, or information as to whether the system contains records pertaining to him, from the System Manager.

Record access procedures: Any individual may obtain a copy of the information pertaining to him by submitting a written request to the System Manager.

Contesting record procedures: Any individual may contest information in the system which pertains to him by submitting pertinent information to the Chairman, Radiological Safety Committee, USDA, Science and Education Administration, Room 307A, Building 005, BARC-West, Beltsville, Maryland 20705.

Record source categories: Information for system is supplied directly by the individual applying to the Radiological Safety Committee for authority to procure and use radioactive materials and/or equipment which emits ionizing radiation. The individual signs and dates the form.

USDA/SEA—9

System name: Biographical Information—Office of Information, USDA/SEA

System location: Science and Education Administration—CR, USDA, Washington, D.C. 20250

Categories of individuals covered by the system: Individuals who are associated with the U.S. Department of Agriculture, State Agricultural Experiment Stations, Cooperating Schools of Forestry, Colleges of 1890 and Tuskegee Institute, and individuals who are associated with the Land-Grant universities.

Categories of records in the system: This system consists of all information that has been collected on individuals as it relates to significant accomplishments, positions held, and honors received.

Authority for maintenance of the system: 7 U.S.C. 361a-i, 450i; 16 U.S.C. 582a582a-7; 7 CFR 2.7 and 2.58

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: For resource material in preparing news items for the experiment stations' weekly newsletters and for responding to requests for biographic information about an individual. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in a file cabinet in the office of the SEA Deputy Director for Cooperative Research at the address listed above.

Retrievability: Majority of records are indexed by name of individual. Some are filed by institution.

Safeguards: Official government office building with security guards.

Retention and disposal: Biographic information is retained as long as it is deemed necessary to carry out responsibilities of the agency. Disposal of outdated material in the file is at the discretion of the Director responsible for maintaining the file.

System manager(s) and address: Deputy Director for Cooperative Research, Science and Education Administration, USDA, Washington, D.C. 20250.

Notification procedure: Any individual may request information regarding this system of records or information as to whether the system contains records pertaining to him from the System Manager listed above. A request of information pertaining to an individual should contain: name, address, and particulars involved.

Record access procedures: Any individual may obtain information as to the procedure for gaining access to the system which pertains to him by submitting a written request to the official referred to in the preceding paragraph.

Contesting record procedures: Same as procedures for access described above.

Record source categories: Information for this system comes from published articles or correspondence with the individual or from any individual or institutional source that wishes to bring the special achievements of an individual to the attention of SEA.

USDA/SEA—10

System name: Biographical Information on McIntire-Stennis Advisory Board and Advisory Committee Members, USDA/SEA

System location: Office of the Deputy Director for Cooperative Research, Science and Education Administration, USDA, Washington, D.C. 20250.

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Categories of individuals covered by the system: Individuals serving as members of the McIntire-Stennis Cooperative Forestry Act Advisory Board or Advisory Committee.

Categories of records in the system: This system consists of biographic information on the members on the McIntire-Stennis Advisory Board and members on the McIntire-Stennis Advisory Committee.

Authority for maintenance of the system: 16 U.S.C. 582a-7, 7 CFR 2.7 and 2.58

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Press releases or response to requests from public. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in a folder in a file cabinet at the above listed address.

Retrievability: Biographichal information on each individual is contained in a folder entitled "Biographical Sketches on Advisory Board and Advisory Committee Members." Information is retrieved by name of the individual.

Safeguards: Official government office building with security guards.

Retention and disposal: Records are maintained as long as needed to carry out agency responsibilities. Disposal of out-of-date material is at the discretion of the Deputy Director responsible for the file.

System manager(s) and address: Deputy Director for Cooperative Research, Science and Education Administration, USDA, Washington, D.C. 20250.

Notification procedure: Any individual may request information regarding this system of records or information as to whether the system contains records pertaining to him from the System Manager. A request for information pertaining to an individual should contain: name, address, and particulars involved.

Record access procedures: Any individual may obtain information as to the procedures for gaining access to the system which pertains to him by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Same as procedures for access described above.

Record source categories: Information on this system comes primarily from the individuals themselves or the institutions they are associated with.

USDA/SEA—11

System name: Current Research Information System, USDA/SEA

System location: Science and Education Administration, 14th Street and Independence Avenue, Washington, D.C. 20250

Categories of individuals covered by the system: Scientists listed on research projects entered into the Current Research Information System (CRIS).

Categories of records in the system: Research projects of USDA agencies and research projects of those State institutions receiving SEA administered funds in support of research.

Authority for maintenance of the system: 5 U.S.C. 301; 7 CFR 2.7, 2.58

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: (1) Documentation and reporting of research activities conducted by USDA agencies and documentation and reporting of research activities conducted by State institutions receiving SEA administered funds for research. (2) Referral to contractors for preparation in a form that can be entered into the computer. (3) Referral to the Smithsonian Science Information Exchange, Inc. (4) Referral to research scientists and Administrators of all Government agencies and affiliated institutions in connection with information retrieval requests in special subject areas. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressioonal office made at the request of that individual."

Storage: Records are maintained on computer tape at the USDA Washington Computer Center.

Retrievability: By name of project leader.

Safeguards: Access to tape storage area limited to Washington Computer Center personnel.

Retention and disposal: Records are maintained indefinitely.

System manager(s) and address: Director SEA Technical Information Systems, CRIS, National Agricultural Library, Beltsville, Maryland 20705 (telephone 301-344-3846).

Notification procedure: Any individual may request information regarding this system of records or information as to whether the system contains records pertaining to him from the System Manager. A request for information pertaining to an individual should contain: name, address, and agency or institution.

Record access procedures: Any individual may obtain information as to the procedure for gaining access to the system which pertains to him, by submitting a written request to the Director, Current Research Information System.

Contesting record procedures: Same as procedures for access described above.

Record source categories: Information in this system primarily comes from USDA research agencies and State institutions receiving SEA administered funds for research.

USDA/SEA—12

System name: Cooperative Extension Personnel Records System, USDA/SEA.

System location: Personnel Staff, Extension Service, SEA, Room 6438, South Building, 14th & Independence Ave., SW, Washington, D.C. 20250.

Categories of individuals covered by the system: All employees of State Extension Services who hold an Excepted Federal Appointment without compensation.

Categories of records in the system: Microfiche copies of personnel actions taken by individual states under delegated personnel authority to support entitlement of employees to the benefit areas of retirement, life and health insurance, workman's and unemployment compensation.

Authority for maintenance of the system: 5 U.S.C. 301; 7 U.S.C. 341, et seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Civil Service Commission and Department of Labor are supplied supporting documentation for benefit claims of employees and Cooperative Extension Service Personnel Offices are supplied specific assistance upon request. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained on microfiche at the address listed.

Retrievability: Records are indexed by name of employee.

Safeguards: In authorized locked cabinet.

Retention and disposal: Records are disposed of in accordance with General Services Administration retirement and/or destruction schedules.

System manager(s) and address: Chief, Personnel Staff, SEA-ES, U.S. Department of Agriculture, Washington, D.C. 20250.

Notification procedure: Any individual may request information concerning himself from this system. A request for information should be addressed to the System Manager and should contain: Name, address and particular information requested.

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the System which pertains to him by submitting a written request to the System Manager.

Contesting record procedures: Use same procedures as for requesting access.

Record source categories: Information in this System comes primarily from the employee with additional data provided by the employee's personnel office.

USDA/SEA—13

System name: State Cooperative Extension Service Employees, USDA/SEA

System location: Reports and Analysis Branch, Management Operations Staff, Science and Education Administration, Extension Service, USDA, Room 6020, South Building, 14th and Independence Ave., SW, Washington, D.C. 20250.

Categories of individuals covered by the system: All professional employees of the State Cooperative Extension Services from 1968 to present.

Categories of records in the system: Magnetic tapes are made from punch cards on information from the personnel records taken and submitted by State Cooperative Extension Services.

Authority for maintenance of the system: 5 U.S.C. 301; 7 U.S.C. 341, et seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained on magnetic tape at the address listed.

Retrievability: Records are entered by social security number or other unique State identifying number.

Safeguards: Authorization must be obtained from the Deputy Director, SEA/ES, USDA or Chief of Personnel, SEA/ES, USDA, before information is released. All printed matter is kept in locked rooms.

Retention and disposal: Records are retained indefinitely.

System manager(s) and address: Chief, Reports and Analysis Branch, Management Operations Staff, SEA/ES, USDA, Washington, D.C. 20250.

Notification procedure: Any individual may request information concerning himself from this system. A request for information should be addressed to the System Manager, and should contain: Name, address, social security number, and the particular information requested.

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the System which pertains to him by submitting a written request to the System Manager.

Contesting record procedures: Use same procedures as for requesting access.

Record source categories: Information in this System comes primarily from the employee with additional data provided by the employee's personnel office.

USDA/SEC—1

System name: Non-Career Applicant File, USDA/SEC

System location: Office of the Secretary, 14th and Independence Avenue, SW., Room 202A, Administration Building, Washington, D.C. 20250

Categories of individuals covered by the system: Individuals who have applied or have been referred to the Department for non-career appointments.

Categories of records in the system: Consists of resumes and correspondence regarding individuals who are generally interested in non-career appointments, who are candidates for specific appointments and those who have been appointed.

Authority for maintenance of the system: 5 U.S.C. 3301-3302; 5 CFR Part 9.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Referred to agency heads in anticipation of or in the case of specific non-career vacancies. "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records maintained in file folders in the Office of the Deputy Under Secretary, United States Department of Agriculture, Washington, D.C. 20250.

Retrievability: Records indexed by name of individual.

Safeguards: Records kept in locked files with a pad locked security bar.

Retention and disposal: Records more than a year old are usually disposed of or if an applicant has accepted employment elsewhere, the files are discarded.

System manager(s) and address: Deputy Under Secretary, Office of the Secretary, United States Department of Agriculture, Room 202-E, Administration Building, Washington, D.C. 20250.

Notification procedure: Any person may request information regarding this system of records, or information as to whether the system contains records pertaining to him, from the System Manager. Such requests should include the name and address of the requester and a statement of his reasons for believing the system may contain records about him.

Record access procedures: Use same procedures as for requesting Notification.

Contesting record procedures: Use same procedures as for requesting Notification.

Record source categories: Information on this system comes from the individuals themselves, various federal, state and local governmental agencies, and persons having knowledge of the individual's character and capabilities.

Systems exempted from certain provisions of the act: This system has been exempted pursuant to 5 U.S.C. 552a(k)(5) from the requirements of 5 USC 552a(c)(3), (d), (e)(l), (e)(4) (G), (H) and (I) and (f), but only to the extent that disclosure of records contained in the system would reveal the identity of a source who had furnished information to the Government under an express promise that the identity of the source would be held in confidence (or, prior to September 27, 1975, under an implied promise the identity of the source would be held in confidence). See 7 CFR 1.123. If such promise of confidentiality could not be made, the Department's ability to obtain candid evaluations of persons being considered for appointment to non-career positions would be greatly impaired. This exemption enables the Department to obtain needed information when the source will not provide it unless he has promised that his identity will be kept confidential.

USDA/SCS—1

System name: Program Cooperators—Soil Conservation Service, USDA/SCS

System location: All field offices of the Soil Conservation Service, usually located in county seats of government. Addresses of each field office are listed in the telephone directories of the field office locations under the heading, "United States Government, Department of Agriculture, Soil Conservation Service."

Categories of individuals covered by the system: Cooperators with SCS Programs including Soil and Water District Cooperators, Great Plains Conservation Program Cooperators, Water Bank Cooperators, Irrigation District Cooperators, and Welton-Mohawk Project Cooperators.

Categories of records in the system: The System consists of file folders on individual cooperators recording the planning, development and accomplishments of the plan on his land. These files contain personal and economic data.

Authority for maintenance of the system: P.L. 46, 74th Congress, as amended, (16 U.S.C. 590 a-f, i-l, q, q-l;) and related laws 42 U.S.C. 3271-3274; 7 U.S.C. 2201); and implementing regulations.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: "Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders in field offices.

Retrievability: Records are indexed by name of cooperator and maintained alphabetically.

Safeguards: Records are maintained in standard files and offices are locked during off hours.

Retention and disposal: Records are maintained until plans are cancelled, at which time basic resource data is retained, as appropriate, and other data is destroyed.

System manager(s) and address: District Conservationists or other designees in charge of field offices.

Notification procedure: Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him by contacting the respective district conservationist or other designee. If the specific location of the record is not known, the individual should address his request to the Chief, Records and Communications Management Branch, USDA-Soil Conservation Service, Washington, D.C. 20250, who will

refer it to the appropriate field office. A request for information pertaining to an individual should contain: Name, address, and particulars involved (i.e., name or nature of program, name of cooperating body; etc.).

Record access procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the District Conservationist or his designated representative or to Chief, Records and Communications Management Branch, USDA-SCS, Washington, D.C.

Contesting record procedures: Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the District Conservationist or his designated representative or to Chief, Records and Communications Management Branch, USDA-SCS, Washington, D.C.

Record source categories: Information in this system comes from landowners and occupiers (cooperators) and SCS technicians who develop and manage plans with them.

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Monday	Tuesday	Wednesday	Thursday	Friday
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DOT/OPSO	USDA/REA		DOT/OPSO	USDA/REA
CSA	CSC		CSA	CSC
	LABOR			LABOR
	HEW/FDA			HEW/FDA

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

NOTE: As of August 14, 1978, Community Services Administration (CSA) documents are being assigned to the Monday/Thursday schedule.

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H.R. 12509 ..... Pub. L. 95-549
To amend the Immigration and Nationality Act to exclude from admission into, and to deport from, the United States all aliens who persecuted any person on the basis of race, religion, national origin, or political opinion, under the direction of the Nazi government of Germany, and for other purposes. (Oct. 30, 1978; 92 Stat. 2065) Price: $.60

S. 1403 ..... Pub. L. 95-550
To provide for conveyance of certain lands near Dixon, New Mexico, to the University of New Mexico. (Oct. 30, 1978; 92 Stat. 2067) Price: $.60

H.R. 13416 ..... Pub. L. 95-551
To amend title 10, United States Code, to modernize the permanent faculty structure at the United States Military Academy, and for other purposes. (Oct. 30, 1978; 92 Stat. 2069) Price: $.60

H.R. 13372 ..... Pub. L. 95-552
To increase the price of migratory-bird hunting and conservation stamps and to provide for consultation by the Secretary of the Interior with State and local authorities before migratory bird areas are recommended for purchase or rental, and for other purposes. (Oct. 30, 1978; 92 Stat. 2071) Price: $.60

S. 3551 ..... Pub. L. 95-553
To make technical corrections in the North Pacific Fisheries Act of 1954. (Oct. 30, 1978; 92 Stat. 2072) Price: $.60

S. 3189 ..... Pub. L. 95-554
To further amend the Mineral Leasing Act of 1920 (30 U.S.C. 201(a)), to authorize the Secretary of the Interior to exchange Federal coal leases and to encourage recovery of certain coal deposits, and for other purposes. (Oct. 30, 1978; 92 Stat. 2073) Price: $.60

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To amend title VII of the Civil Rights Act of 1964 to prohibit sex discrimination on the basis of pregnancy. (Oct. 31, 1978; 92 Stat. 2076) Price: $.60

H.R. 13702 ..... Pub. L. 95-556
To provide that the Territory of American Samoa be represented by a nonvoting Delegate to the United States House of Representatives, and for other purposes. (Oct. 31, 1978; 92 Stat. 2078) Price: $.60

S. 3084 ..... Pub. L. 95-557
Housing and Community Development Amendments of 1978 (Oct. 31, 1978; 92 Stat. 2080) Price: $1.80

S. 3595 ..... Pub. L. 95-558
To amend section 202(d) of the Magnuson-Moss Warranty Federal Trade Commission Improvement Act to extend the deadline for filing a report of rulemaking procedures (Nov. 1, 1978; 92 Stat. 2130) Price: $.60

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[3195-01-M]

Title 3—The President

Executive Order 12091 • **November 1, 1978**

Small Business Conference Commission

By the authority vested in me as President by the Constitution of the United States of America, and in order to increase the membership and alter the functions of the Small Business Conference Commission, it is hereby ordered that Sections 1-101, 1-201, 1-204 and 1-402 of Executive Order No. 12061 of May 18, 1978, are amended to read as follows:

"1-101. There is established a Small Business Conference Commission. The Commission shall be composed of eleven members.",

"1-201. The Commission shall provide advice with respect to the holding of a White House Conference on Small Business to be held in early 1980.",

"1-204. Prior to the White House Conference on Small Business, the Administrator of the Small Business Administration shall hold open regional and local meetings or conferences. These open meetings shall seek to identify the specific issues which should be addressed at the Conference and shall solicit candidates for Conference delegates. The Commission shall review the issues addressed at these regional and local meetings.", and

"1-402. The Commission shall terminate on April 30, 1980, or 60 days after the conclusion of the White House Conference on Small Business, whichever is sooner.".

Jimmy Carter

THE WHITE HOUSE,
November 1, 1978.

[FR Doc. 78-31326 Filed 11-1-78; 4:43 pm]

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[3195-01-M]

Executive Order 12092 • **November 1, 1978**

Prohibition Against Inflationary Procurement Practices

By the authority vested in me as President and as Commander in Chief of the Armed Forces by the Constitution and statutes of the United States of America, including Sections 2(c) and 3(a) of the Council on Wage and Price Stability Act, as amended (12 U.S.C. 1904 note) and Section 205(a) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(a)), and in order to encourage noninflationary pay and price behavior by private industry and labor, and to provide for the procurement by Executive agencies and Military Departments of personal property and services at prices and wage rates which are noninflationary, it is hereby ordered as follows:

1-101. The Chairman of the Council on Wage and Price Stability shall:

(a) Monitor company pay and price practices in order to determine compliance with the standards set forth in Section 1-102 of this Order;

(b) Promulgate regulations and guidance to further define these standards, and provide for appropriate exemptions and exceptions;

(c) Publish, or cause to be published, in accordance with procedures designed to ensure fairness and due process, the names of individuals or companies which are not in compliance with the standards;

(d) Promulgate procedures to be used in proceedings before the Council on matters pertaining to the standards, and take such other action as may be necessary and consistent with the purposes of this Section.

1-102. Noninflationary wage and price behavior shall be measured by the following standards:

(a) For prices, noninflationary price behavior is the deceleration by companies of their current rate of average price increase by at least 0.5 percentage points from their historical rate of annual price increase during 1976-1977 except where profits have not increased.

(b) For pay, noninflationary pay behavior is the holding of pay increases to not more than 7 percent annually above their recent historical levels.

(c) These standards, which shall be further defined by the Chairman of the Council on Wage and Price Stability, shall be subject to certain limitations and exemptions as determined by the Chairman.

1-103. In order to ensure economy and efficiency in government procurement, the head of each Executive agency and Military Department shall ensure that their contracts incorporate, on and after January 1, 1979, a clause which requires compliance by the contractor, and by his subcontractors and suppliers, with the standards set forth in Section 1-102 of this Order.

1-104. Each Executive agency and each Military Department shall comply with the directions of the Administrator for Federal Procurement Policy, who, in accord with Section 6 of the Office of Federal Procurement Policy Act (41 U.S.C. 405), shall be responsible for the overall direction of the implementa-

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tion of Section 1-103 including the issuance of regulations and procedures for determining exceptions and granting exemptions.

Jimmy Carter

THE WHITE HOUSE,
November 1, 1978.

[FR Doc. 78-31327 Filed 11-1-78; 4:49 pm]

[3195-01-M]

Executive Order 12093 • **November 1, 1978**

President's Commission on the Holocaust

By virtue of the authority vested in me as President by the Constitution of the United States of America, and in order to create, in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), an advisory committee on the establishment of a memorial to the victims of the Holocaust, it is hereby ordered as follows:

1-1. *Establishment and Membership.*

1-101. There is established the President's Commission on the Holocaust.

1-102. The Commission shall consist of not more than thirty-four members as follows:

(a) The President shall appoint twenty-four members of the Commission and shall designate one of these members to chair the Commission.

(b) The Speaker of the House of Representatives and the President of the Senate are each invited to designate five members of their respective Houses to serve as members of the Commission.

1-2. *Functions of the Commission.*

1-201. The Commission shall submit a report to the President and the Secretary of the Interior containing its recommendations with respect to the establishment and maintenance of an appropriate memorial to those who perished in the Holocaust.

1-202. The Commission's report shall examine the feasibility of obtaining funds for creation and maintenance of the Memorial through contributions by the American people.

1-203. The Commission shall recommend appropriate ways for the nation to commemorate April 28 and 29, 1979, which the Congress has resolved shall be "Days of Remembrance of Victims of the Holocaust."

1-3. *Administrative Provisions.*

1-301. To the extent permitted by law, the Secretary of the Interior shall provide all necessary administrative services, facilities, support, and funds necessary for the performance of the Commission's functions.

1-302. Each member of the Commission who is not otherwise employed in the Government may receive compensation for each day such member is engaged in the work of the Commission at a daily rate to be determined by the Secretary of the Interior. Such rate shall not exceed that payable pursuant to the Federal Advisory Committee Act.

1-303. Members of the Commission shall be entitled to travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5702 and 5703) for persons in the Government service employed intermittently.

1-304. The functions of the President under the Federal Advisory Committee Act which are applicable to the Commission, except that of reporting to the Congress, shall be performed by the Secretary of the Interior in accordance with guidelines and procedures prescribed by the Administrator of General Services.

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1-4. *Final Report and Termination.*

1-401. The Commission shall submit its final report to the President and the Secretary of the Interior not later than six months from the date of its first meeting.

1-402. The Commission shall terminate not later than thirty days after submitting its final report.

Jimmy Carter

THE WHITE HOUSE,
November 1, 1978.

[FR Doc. 78-31328 Filed 11-1-78; 4:50 pm]

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[3195-01-M]

Executive Order 12094 • **November 1, 1978**

Special Pay for Sea Duty

By the authority vested in me as President and as Commander in Chief of the Armed Forces of the United States of America by sections 305, 305a and 403 of title 37 of the United States Code and in order to implement increased rates of special pay for enlisted personnel serving on sea duty, it is hereby ordered as follows:

1-101. Executive Order No. 11157, as amended, is further amended by revising Part II thereof to read as follows:

"PART II—SPECIAL PAY FOR SEA DUTY AND DUTY AT CERTAIN PLACES

"Sec. 201. Provided they have over three cumulative years of sea duty, enlisted members of a uniformed service who are in pay grade E-4 or above and who are entitled to receive basic pay shall be entitled to receive, additionally, career sea pay while on sea duty. The period of sea duty shall include the date of reporting and the date of detachment as stated in orders. Career sea pay shall be at the rates prescribed in section 305a of title 37, United States Code.

"Sec. 202. (a) For the purpose of entitlement to career sea pay, the term "sea duty" shall mean duty performed by enlisted members:

"(1) while permanently assigned for duty to a vessel, ship-based staff, or ship-based aviation unit pursuant to orders issued by competent authority and serving in a ship whose primary mission is accomplished underway, including—

"i. periods not to exceed the first 30 consecutive days of temporary additional duty ashore; and

"ii. periods not to exceed the first 90 days during which messing or berthing facilities, or both, are temporarily out of service in order to permit alterations or repairs.

"(2) while temporarily assigned for duty to a vessel, ship-based staff, or ship-based aviation unit pursuant to orders issued by competent authority and serving in a ship whose primary mission is accomplished underway. The period of service shall include periods not to exceed the first 30 consecutive days of further temporary additional duty ashore from the ship.

"(3) while permanently or temporarily assigned for duty to a vessel or ship-based staff pursuant to orders issued by competent authority and serving in a ship whose primary mission is accomplished in port, but only during periods while the ship is away from its home port for at least 30 consecutive days.

"(b) For the purpose of this section, the word "vessel" or "ship" shall mean a self-propelled vessel that is in an active status, in commission or in service and is equipped with berthing and messing facilities.

"Sec. 203. The Secretaries concerned (within the meaning of section 101(5) of title 37, United States Code) with respect to personnel of the uniformed service within their respective departments, are hereby authorized

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they may deem necessary or desirable for carrying out the provisions of sections 305 and 305a of title 37 and this Executive Order. Such regulations shall be uniform for all the services to the fullest extent possible.

"Sec. 204. Enlisted members entitled to receive basic pay shall be entitled to receive, additionally, pay at the rates prescribed by section 305(a) of title 37 of the United States Code while on duty at places that are outside the 48 contiguous States and the District of Columbia and that are designated for this purpose by the Secretary of Defense or, in the case of enlisted members of the Coast Guard when it is not operating as a service in the Navy, by the Secretary of Transportation. Subject to provisions of section 305 of title 37 of the United States Code, an enlisted member who is permanently assigned to duty at a place so designated is entitled to receive that pay during a period of authorized leave, temporary additional duty, temporary duty, or hospitalization or while on an operational aircraft flight, but not more than 30 days while he is away from that place. Enlisted members shall be entitled to special pay under this section when attached to ships undergoing repair and overhaul in designated foreign-duty areas for extended periods when entitlement to special pay for sea duty has been terminated. Such enlisted members shall be entitled to special pay for sea duty under the same conditions as an enlisted member on temporary additional duty or temporary duty in that designated foreign-duty area.

"Sec. 205. Unless otherwise entitled to special pay in accord with the second sentence of section 204 hereof, during periods spent on temporary additional duty or temporary duty or on operational aircraft flights, pay in accord with section 204 shall accrue to enlisted members only for periods of eight continuous days or more in duration at one or more places designated, including the dates of arrival at and the dates of departure from those places.

"Sec. 206. (a) No enlisted member shall be entitled under this order to receive both career sea pay and pay for duty prescribed in sections 204 and 205 hereof for the same period of time.

"(b) No enlisted member shall be entitled to receive career sea pay while in receipt of monetary allowance in lieu of rations, except during a period when messing facilities are temporarily out of operation to permit alterations or repairs not to exceed 90 days, provided such member is not authorized leave during such period."

1-102. Executive Order No. 11157, as amended, is further amended by revising section 401(c) thereof to read as follows:

"(c) The term "sea duty" shall mean service performed by either an officer or enlisted member in a self-propelled vessel that is in an active status, in commission or in service and is equipped with berthing and messing facilities."

Jimmy Carter

THE WHITE HOUSE,
November 1, 1978.

rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

[6325-01-M]

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

ACTION; Correction

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: In the schedule C document for ACTION on page 39952 of the FEDERAL REGISTER of September 8, 1978, the effective date of the amendments was incorrectly given as July 7, 1978; it should be September 13, 1978.

EFFECTIVE DATE: September 13, 1978.

FOR FURTHER INFORMATION CONTACT:

James R. Edman, 202-632-4533.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954-1958 Comp., p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-30847 Filed 11-2-78; 8:45 am]

[6325-01-M]

PART 213—EXCEPTED SERVICE

Department of Agriculture

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment excepts under schedule C a position at the Department of Agriculture because it is confidential in nature. Appointments may be made to this position without examination by the Civil Service Commission.

EFFECTIVE DATE: August 25, 1978.

FOR FURTHER INFORMATION CONTACT:

James R. Edman, 202-632-4533.

Accordingly, 5 CFR 213.3313(a)(6) is added:

§ 213.3313 Department of Agriculture.

(a) *Office of the Secretary.* • • •

(6) One Coordinator, Human Nutrition Activities to the Secretary.

• • • • • •

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954-1958 Comp., p. 218.)

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-30952 Filed 11-2-78; 8:45 am]

[6325-01-M]

PART 213—EXCEPTED SERVICE

Department of Commerce, Department of Energy National Transportation Safety Board

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment excepts under schedule C certain positions at the Department of Commerce, Department of Energy, and National Transportation Safety Board because they are confidential in nature. Appointments to these positions may be made without examination by the Civil Service Commission.

EFFECTIVE DATES: Department of Commerce—August 14, 1978; Department of Energy—September 6, 1978; National Transportation Safety Board—August 31, 1978.

FOR FURTHER INFORMATION CONTACT:

James R. Edman, 202-632-4533.

Accordingly, 5 CFR 213.3314(r)(10) is amended and 213.3331(o)(5) and 213.3396(b)(1) are added as set out below:

§ 213.3314 Department of Commerce.

• • • • • •

(r) *National Oceanic and Atmospheric Administration.* • • •

(10) One Private Secretary and two Confidential Assistants to the Associate Administrator.

• • • • • •

§ 213.3331 Department of Energy.

• • • • • •

(o) *Office of the Assistant Secretary for Policy and Evaluation.* • • •

(5) One Confidential Assistant (Secretary) to the Deputy Assistant Secretary for Policy and Evaluation.

• • • • • •

§ 213.3396 National Transportation Safety Board.

• • • • • •

(b) *Office of the Managing Director.*

(1) One Secretary (Steno) to the Managing Director.

• • • • • •

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954-1958 Comp., p. 218.)

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-30848 Filed 11-2-78; 8:45 am]

[6325-01-M]

PART 213—EXCEPTED SERVICE

Department of Defense

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment increases the number of positions to 20 and the period of employment to 5 years under schedule B for positions of professor in the National Defense University. These positions are excepted under schedule B because competitive examination for them is impracticable. This amendment also transfers the authority for these positions from Department of the Army to Department of Defense to reflect the correct organizational location of NDU.

EFFECTIVE DATE: October 4, 1978.

FOR FURTHER INFORMATION CONTACT:

James R. Edman, 202-632-4533.

Accordingly, 5 CFR 213.3206(c) is added and 5 CFR 213.3207(b) is revoked, as follows:

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§ 213.3206 Department of Defense.

. . . . . .

(c) *National Defense University.*

(1) Twenty positions of professor, GS-13/15, for employment of any individual not to exceed 5 years.

. . . . . .

§ 213.3207 Department of the Army.

. . . . . .

(b) [Revoked].

(5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954-1958 Comp., p. 218.)

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-30849 Filed 11-2-78; 8:45 am]

[6325-01-M]

PART 213—EXCEPTED SERVICE

Department of Defense, Veterans Administration

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment excepts under schedule C certain positions at the Department of Defense and the Veterans Administration because they are confidential in nature. Appointments may be made to these positions without examination by the Civil Service Commission.

EFFECTIVE DATE: September 26, 1978.

FOR FURTHER INFORMATION CONTACT:

James R. Edman, 202-632-4533.

Accordingly, 5 CFR 213.3306(a)(98) and 213.3327(a)(7) are amended as set out below:

§ 213.3306 Department of Defense.

(a) *Office of the Secretary.* • • •

(98) Three Special Assistants to the Deputy Assistant Secretary (Policy Plans and NSC Affairs), Office of the Assistant Secretary of Defense for International Security Affairs.

. . . . . .

§ 213.3327 Veterans Administration.

(a) *Office of the Administrator.* • • •

(7) Seven Confidential Assistants to the Executive Assistant to the Administrator.

. . . . . .

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954-1958 Comp., p. 218.)

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-30953 Filed 11-2-78; 8:45 am]

[6325-01-M]

PART 213—EXCEPTED SERVICE

Export-Import Bank of the U.S., National Foundation on the Arts and the Humanities

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment excepts under schedule C certain positions at the Export-Import Bank of the United States and National Foundation on the Arts and the Humanities because they are confidential in nature. Appointments may be made to these positions without examination by the Civil Service Commission.

EFFECTIVE DATES: Export-Import Bank of the United States—September 21, 1978; National Foundation on the Arts and the Humanities—September 28, 1978.

FOR FURTHER INFORMATION CONTACT:

James R. Edman, 202-632-4533.

Accordingly, 5 CFR 213.3342(j) and 213.3382(y) are added as set out below:

§ 213.3342 Export-Import Bank of the U.S.

. . . . . .

(j) One Secretary (Steno) to the Personal and Confidential Assistant to the President and Chairman.

. . . . . .

§ 213.3382 National Foundation on the Arts and the Humanities.

. . . . .

(y) One Intergovernmental Activities Specialist to the Deputy Chairman for Intergovernmental Activities, National Endowment for the Arts.

(5 U.S.C. 3301, 3302, EO 10577, 3 CFR 1954-1958 Comp., p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-30954 Filed 11-2-78; 8:45 am]

[6325-01-M]

PART 213—EXCEPTED SERVICE

Federal Mine Safety and Health Review Commission, Department of Health, Education and Welfare

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment excepts under schedule C certain positions at the Federal Mine Safety and Health Review Commission, and the Department of Health, Education, and Welfare because they are confidential in nature. Appointments may be made to these positions without examination by the Civil Service Commission.

EFFECTIVE DATE: September 29, 1978.

FOR FURTHER INFORMATION CONTACT:

James R. Edman, 202-632-4533.

Accordingly, 5 CFR 213.3351(b) and 213.3316(c)(22) are added as set out below:

§ 213.3351 Federal Mine Safety and Health Review Commission.

. . . . . .

(b) One Confidential Secretary to the Chairman and one Confidential Secretary to each of four Commissioners.

. . . . . .

§ 213.3316 Department of Health, Education, and Welfare.

. . . . . .

(c) *Office of Education.* • • •

(22) One Assistant Commissioner for Private Education Services.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954-1958 Comp., p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-30851 Filed 11-2-78; 8:45 am]

[6325-01-M]

PART 213—EXCEPTED SERVICE

General Services Administration, Federal Mine Safety and Health Review Commission

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment excepts under schedule C certain positions at the General Services Administration and the Federal Mine Safety and Health Review Commission because they are confidential in nature. Appointments may be made without examination by the Civil Service Commission.

EFFECTIVE DATES: General Services Administration—October 11, 1978; Federal Mine Safety and Health Review Commission—October 5, 1978.

FOR FURTHER INFORMATION CONTACT:

James R. Edman, 202-632-4533.

Accordingly, 5 CFR 213.3337(a)(9) and 213.3351 are added as set out below:

§ 213.3337 General Service Administration.

(a) *Office of the Administrator.* • • •

(9) One Confidential Assistant to each of ten Regional Administrators.

. . . . . .

§ 213.3351 Federal Mine Safety and Health Review Commission.

(a) Five Attorney-Advisors (General) to the Commission.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954-1958 Comp., p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-30850 Filed 11-2-78; 8:45 am]

[6325-01-M]

PART 213—EXCEPTED SERVICE

International Communications Agency

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment excepts under schedule C one position of International Athletic Exchange Officer, International Communications Agency. Appointment may be made to this position without examination by the Civil Service Commission.

EFFECTIVE DATE: August 14, 1978.

FOR FURTHER INFORMATION CONTACT:

James R. Edman, 202-632-4533.

Accordingly, 5 CFR 213.3328(f) is added as set out below:

§ 213.3328 International Communication Agency.

. . . . . .

(f) One International Athletic Exchange Officer.

. . . . . .

(5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954-1958 Comp., p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-30955 Filed 11-2-78; 8:45 am]

[6325-01-M]

PART 213—EXCEPTED SERVICE

National Foundation on the Arts and the Humanities

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment excepts under schedule B until September 30, 1980, one position of Humanist Administrator in the Publications Program, Division of Research Grants, National Endowment for the Humanities because competitive examination for this position is impracticable.

EFFECTIVE DATE: October 5, 1978.

FOR FURTHER INFORMATION CONTACT:

James Edman, 202-632-4533.

Accordingly 5 CFR 213.3282(b)(23) is added as follows:

§ 213.3282 National Foundation on the Arts and the Humanities.

. . . . . .

(b) *National Endowment for the Humanities.* • • •

(23) Until September 30, 1980, one position of Humanist Administrator, Publications Program, Division of Research Grants.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954-1958 Comp., p. 218.)

UNITED STATES CIVIL SERVICE COMMISSION.
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-30852 Filed 11-2-78; 8:45 am]

[6325-01-M]

PART 213—EXCEPTED SERVICE

Department of Transportation

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment changes the title of the excepted schedule C position of Associate Administrator for Policy Development and Review, Federal Aviation Administration, Department of Transportation to Associate Administrator for Policy and International Aviation Affairs, Policy and International Aviation Affairs, Federal Aviation Administration, Department of Transportation.

EFFECTIVE DATE: October 19, 1978.

FOR FURTHER INFORMATION:

On position authority contact: Dean Bollman, Civil Service Commission, 202-632-7676.

On position content contact: Thomas M. McKenna, Chief, Executive Staffing Branch, Department of Transportation, 202-426-4122.

Accordingly, 5 CFR 213.3394(h)(9) is amended as set out below:

§ 213.3394 Department of Transportation.

. . . . . .

(h) *Federal Aviation Administration.* • • •

(9) Associate Administrator for Policy and International Aviation Affairs.

. . . . . .

(5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954-1958 Comp., p. 218.)

For the United States Civil Service Commission.

JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-30886 Filed 11-2-78; 8:45 am]

[3410-02-M]

Title 7—Agriculture

CHAPTER X—AGRICULTURAL MARKETING SERVICE

PART 1030—MILK IN THE CHICAGO REGIONAL MARKETING AREA

Notice of Temporary Revision of Shipping Percentage

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Temporary revision of rules.

SUMMARY: This action temporarily relaxes the shipping requirement for supply plants during October and November 1978 for the Chicago Regional marketing area as a means of maintaining the pool status of producers who regularly supply the market and of preventing uneconomic shipments of milk. The revisions are made in response to requests of cooperative associations of producers supplying the market.

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EFFECTIVE DATE: November 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Martin J. Dunn, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-7311.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Proposed Temporary Revision of shipping percentage, issued October 18, 1978; published October 23, 1978 (43 FR 49310).

This temporary revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the provisions of § 1030.7(b)(5) of the Chicago Regional milk order.

Notice of proposed rulemaking was published in the FEDERAL REGISTER (43 FR 49310) concerning a proposed decrease in the shipping requirement for supply plants for the months of October and November 1978. Interested parties were afforded an opportunity to comment on the proposal at a meeting called by the market administrator of the Chicago Regional order at the request of the Director of the Dairy Division and held at Madison, Wisconsin, on October 20, 1978. Also, parties were afforded an opportunity to file written data, views and arguments thereon.

After consideration of all relevant material, including the proposal set forth in the aforesaid notice, data, views and arguments filed thereon, and other available information, it is hereby found and determined that for the months of October and November 1978 the supply plant shipping percentage of 35 percent set forth in § 1030.7(b) should be decreased to 30 percent.

Pursuant to the provisions of § 1030.7(b)(5) the supply plant shipping percentages set forth in § 1030.7(b) may be increased or decreased by the Director of the Dairy Division by up to 10 percentage points during the months of August-March, if necessary to obtain needed shipments or to prevent uneconomic shipments.

Central Milk Sales Agency (CMSA), a group of seven cooperatives that supply about half of the producer milk associated with the Chicago Regional market requested that the Director of the Dairy Division reduce the supply plant shipping percentage for the months of October and November 1978. CMSA states that a reduction of 5 percentage points in the supply plant shipping percentage is necessary to prevent uneconomic shipments of milk during those months. Also, the prospect is that without the proposed reduction, a substantial volume of milk of producers who have regularly supplied the market could not qualify for pooling under the order.

Collectively, 44 supply plants are qualified for pooling under the Chicago Regional order each month by shipments dispatched by CMSA. Thirty-one of the plants are operated by the members of CMSA and are qualified for pooling under the unit pooling provisions of the order. The remaining 13 plants are operated by individual proprietors and are qualified individually.

Producer milk receipts of CMSA were 384.9 million pounds in September 1978. It is estimated that producer milk receipts for October will increase by 5 million pounds. Normally, CMSA would ship to pool distributing plants the 1.75 million pounds needed to qualify the additional quantity for pooling. However, unforeseen conditions developed during the month of October that provided the basis for requesting that the supply plant shipping percentages be lowered.

Out-of-area sales which have contributed to supply plant qualification were down substantially in October and are expected to remain relatively low during November. Also, certain changes in the operations of some Order 30 pool distributing plants have resulted in a substantial reduction in normal qualifying shipments to the plants from CMSA supply plants.

Total qualifying sales in September were 133 million pounds. As a result of projected sales that have not materialized, it is estimated that qualifying sales for October will be about 127 million pounds. The maximum volume that may be qualified with this volume of sales under the 35 percent shipping requirement for October is 362.8 million pounds. Yet, it is expected that CMSA will have about 389 million pounds of producer milk for the month. To meet the qualifying percentage, about 27 million pounds of producer milk would have to be depooled.

There is no prospect for improvement in these marketing conditions for November. The combined effect of increased producer receipts and decreased sales for November would require CMSA to depool about 24 million pounds, or subject it to energy-wasting and uneconomic movements during the month to keep it pooled.

Other cooperative associations and certain proprietary handlers in the market expressed support for a relaxation of the supply plant shipping percentage for October and November 1978 to prevent uneconomic shipments and to maintain pool status for producers who have regularly supplied milk to the market.

A cooperative opposed the reduction in the shipping percentages primarily on the grounds that Class I sales in September 1978 were 1.2 percent higher than in September 1977. The opponent claimed that CMSA had provided no explanation as to why Class I sales might suddenly be expected to decline. We cannot agree with this view. Information provided by the market administrator indicates that pooled Class I milk for September 1978 was 2.57 million pounds less than for September 1977. Also, proponents indicated that a combination of higher milk production and lower Class I sales through CMSA supply plants would cause the depooling of 27 million pounds of milk for October 1978 unless the shipping percentages are reduced.

Also, we cannot agree with the opposing cooperative's claim that the temporary revision for October will create disorderly marketing. This claim was based on the possibility that the temporary revision might be made effective earlier in October. As it is, the revision for October will prevent the depooling of milk and should have no other impact on marketing conditions for October.

A proprietary supply plant and a trade association of proprietary plants opposed the reduction for October on the grounds that some supply plants have already met the 35 percent shipping requirement for the month. While this may be the case, the chief consideration in this proceeding is whether a relatively large volume of producer milk should be depooled for October as a result of sales conditions that were not foreseen at the beginning of the month.

Some proprietary handlers oppose any relaxation of the supply plant shipping requirements, but the reasons given are not persuasive. Primarily, the opposition was directed against the pooling provisions that are provided in the order. However, this proceeding does not deal with an amendment of the provisions. It involves only a two-month revision of them.

The comments of some proprietary handlers were directed against Federal milk regulation generally, and certain marketing practices of cooperatives that are not related to the order. These comments do not have a direct bearing on the proposed temporary revision of the supply plant shipping percentages.

Another handler, who claimed that a relaxation of the shipping percentage would jeopardize a supply of milk for his firm, actually has a number of supply plants under the control of the firm from which substantial quantities of milk can be drawn. The stated preference of the handler is to obtain a supply of milk from other supply plants. Apparently, the retention of the higher shipping percentage, as desired by the handler, would accommodate this practice.

The potential depooling of a substantial quantity of milk for October and the uneconomic movement of it in November to maintain pooling is an overriding consideration in this proceeding. It is concluded that it is necessary to reduce the pool supply plant shipping percentage for the months of October and November 1978.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) This temporary revision is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area for the months of October and November 1978;

(b) This temporary revision does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this temporary revision.

Therefore, good cause exists for making this temporary revision effective for the months of October and November 1978.

It is therefore ordered, That the aforesaid provisions of the order are hereby revised for October and November 1978.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-874.)

Effective date: November 1, 1978.

Signed at Washington D.C., on October 31, 1978.

HERBERT L. FOREST,
Director, Dairy Division.

[FR Doc. 78-31175 Filed 10-31-78; 8:45 am]

[3410-07-M]

CHAPTER XVIII—FARMERS HOME ADMINISTRATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—LOANS AND GRANTS PRIMARILY FOR REAL ESTATE PURPOSES

PART 1822—RURAL HOUSING LOANS AND GRANTS

[FmHA Instruction 444.1]

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

AMENDMENT

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: FmHA amends its regulations to provide for securing the recapture of any interest credit(s) or subsidy(ies) to be granted borrower(s) by the Government. This action is taken as a result of, and is intended to comply with the Housing and Community Development Amendments of 1978.

DATES: This amendment is effective October 31, 1978. Although this is a final rule, the Agency will accept comments on or before January 2, 1979.

ADDRESS: Submit written comments to the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6316, Washington, D.C. 20250. All written comments made pursuant to this notice will be available for public inspection at the address given above.

FOR FURTHER INFORMATION CONTACT:

Mathias J. Felber, 202-447-4295.

SUPPLEMENTARY INFORMATION: A new paragraph (iii) is added to § 1822.15(b)(1) and a new paragraph 12 is added to Exhibit E of Subpart A of Part 1822, Chapter XVIII, Title 7, Code of Federal Regulations to provide for securing the recapture of any interest credit(s) granted borrower(s) by the Government on initial and subsequent loans approved after the enactment of the law. These amendments are necessary in order to comply with the Housing and Community Development Amendments of 1978. More detailed regulations pertaining to the method of recapture will be published in the near future. The amendment is not published for prior rulemaking since it implements a mandatory statutory provision and is not a matter of administrative discretion. We do, however, welcome comments and any justified changes will be made, based upon the comments received. Accordingly, § 1822.15(b)(1)(iii) and paragraph 12 of Exhibit E are added as follows:

§ 1822.15 Loan closing actions.

* * * * * *

(b) *Preparation of note, mortgage and loan closing procedure.* * * *

(1) *Real estate mortgage.* * * *

(iii) For all initial and subsequent sction 502 RH loans, until the mortgages are revised, the following additional covenant will be inserted above the signature line on the mortgage and be initialed at loan closing by all parties signing the mortgage:

This instrument also secures the recapture of any interest credit or subsidy which may be granted to the borrower(s) by the Government pursuant to 42 U.S.C. 1490a.

* * * * * *

EXHIBIT E—INTEREST CREDITS

* * * * * *

12. *Subsidy Recapture.* At the applicant interview, the County Supervisor will advise all section 502 RH applicants that interest credits are subject to recapture. Applicants who receive interest credits will be required to sign, at the time the interest credit agreement is signed, a statement as follows:

"It has been explained to me that one of the conditions for receiving interest credits on my loan is that all such credits are subject to recapture by the Government when the loan account is satisfied by payment in full, is assumed by another person(s), when the property is sold, or when it is no longer occupied by the borrower(s)."

The signed original statement will be placed in position three of the borrower's county office case folder and a copy will be given to the borrower(s).

* * * * * *

(42 U.S.C. 1480; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70.)

Dated: October 30, 1978.

JAMES E. THORNTON,
Associate Administrator, Farmers Home Administration.

[FR Doc. 78-31201 Filed 11-2-78; 8:45 am]

[3410-37-M]

Title 9—Animals and Animal Products

CHAPTER III—FOOD SAFETY AND QUALITY SERVICE (MEAT AND POULTRY PRODUCTS INSPECTION) DEPARTMENT OF AGRICULTURE

RATE INCREASE FOR INSPECTION SERVICE

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Final rule.

SUMMARY: The rates for overtime inspection, identification, certification, or laboratory service are changed to reflect the recent Federal pay raise.

EFFECTIVE DATE: November 5, 1978.

FOR FURTHER INFORMATION CONTACT:

June P. Blair, Acting Director, Finance Division, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C., 202-447-6653.

Pursuant to the statutory authorities cited below, the fees relating to

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overtime and holiday inspection, identification, certification, or laboratory service rendered to operators of official meat or poultry establishments, importers, or exporters by the Food Safety and Quality Service, Meat and Poultry Inspection program, are hereby amended to reflect increase in Federal employees' salaries authorized by the Federal Pay Comparability Act of 1970, and Executive Order 12087 dated October 7, 1978, to a level that will more adequately cover the cost of the service provided.

Accordingly, the meat and poultry inspection regulations are amended as set forth below:

§ 307.5 [Amended]

§ 381.38 [Amended]

1. The rate for overtime or holiday inspection, identification, or certification service rendered, as the case may be in accordance with the provisions of this chapter, is changed from $14.12 per hour to $14.72 per hour in §§ 307.5(a) and 381.38(a).

2. Section 350.7(c) is amended to read as follows:

§ 350.7 Fees and charges.

• • • • •

(c) The fees to be charged and collected for service under the regulations in this part shall be at the rate of $12.60 per hour for base time, $14.72 per hour for overtime including Saturdays, Sundays, and holidays, and $22.48 per hour for laboratory service, to cover the costs of the service and shall be charged for the time required to render such service. Where appropriate, this time will include but will not be limited to the time required for the travel of the inspector or inspectors in connection therewith during the regularly scheduled administrative workweek.

• • • • •

3. Section 351.8 is amended to read as follows:

§ 351.8 Charges for surveys of plants.

Applicants for the certification service shall pay the Department for salary costs at the rate of $12.60 per hour for base time, $14.72 per hour for overtime, travel and per diem allowances at rates currently allowed by the Government travel regulations, and other expenses incidental to the initial survey of the rendering plants or storage facilities for which certification service is requested.

4. Section 351.9(a) is amended to read as follows:

§ 351.9 Charges for examinations.

(a) The fees to be charged and collected by the Administrator for examinations shall be $12.60 per hour for base time and $14.72 per hour for overtime including Saturdays, Sundays, and holidays, as provided for in § 351.14, and $22.48 per hour for any laboratory service required to determine the eligibility of any technical animal fat for certification under the regulations in this part. Such fees shall be charged for the time required to render such service, including, but not limited to, the time required for the travel of the inspector or inspectors in connection therewith.

5. Section 354.101 (b) and (c) are amended to read as follows:

§ 354.101 On a fee basis.

• • • • •

(b) The charges for inspection service will be based on the time required to perform such services. The hourly rate shall be $12.60 for base time and $14.72 for overtime or holiday work.

(c) Charges for any laboratory analysis or laboratory examination of rabbits under this part related to the inspection service shall be $22.48 per hour.

6. Section 355.12 is amended to read as follows:

§ 355.12 Charge for service.

The fees to be charged and collected by the Administrator shall be $12.60 per hour for base time, $14.72 per hour for overtime, including Saturdays, Sundays, and holidays, and $22.48 per hour for laboratory service to reimburse the Service for the cost of the inspection service furnished.

7. Section 362.5(c) is amended to read as follows:

§ 362.5 Fees and charges.

• • • • •

(c) The fees to be charged and collected for service under the regulations in this part shall be at the rate of $12.60 per hour for base time, $14.72 per hour for overtime including Saturdays, Sundays, and holidays, and $22.48 per hour for laboratory service to cover the costs of the service and shall be charged for the time required to render such service, including, but not limited to, the time required for the travel of the inspector or inspectors in connection therewith during the regularly scheduled administrative workweek.

It has been determined that in order to cover these increased costs of the services, the hourly fees charged in connection as soon as practicable as provided herein. The need for the increase and the amount thereof are dependent upon facts within the knowledge of the Food Safety and Quality Service. Therefore, under 5 U.S.C. 553, it is found that notice and other public procedure with respect to these amendments are impracticable and unnecessary and good cause is found for making these amendments effective sooner than December 4, 1978.

The Department of Agriculture has determined that these regulations do not have major economic consequences requiring preparation of a Regulatory Analysis in accordance with Section 3 of Executive Order 12044 (March 24, 1978).

Done at Washington, D.C., on October 26, 1978.

JOSEPH A. POWERS,
Acting Administrator,
Food Safety and Quality Service.

[FR Doc. 78-31038 Filed 11-2-78; 8:45 am]

[4210-01-M]]

Title 24—Housing and Urban Development

CHAPTER X—FEDERAL INSURANCE ADMINISTRATION

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI-4284]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Village of Pelham, Westchester County, N.Y.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the village of Pelham, Westchester County, N.Y. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the village of Pelham, Westchester County, N.Y.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the village of Pelham, Westchester County, N.Y. are available for review at the village hall, Pelham, N.Y.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the village of Pelham, Westchester County, N.Y.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Hutchinson River.	Downstream corporate limits.	14
	ConRail	19
	Hutchinson River Parkway, approximately 700 ft downstream of Lincoln Ave.	25
	Lincoln Ave	30
	Hutchinson River Parkway, approximately 950 ft upstream of Lincoln Ave.	33
	Cross County Parkway (downstream).	37
	Cross County Parkway (upstream).	45
	Upstream corporate limits.	62
Branch 1, Hutchinson River.	Highbrook Ave	49
	Approximately 380 ft upstream of Highbrook Ave.	60
	Approximately 540 ft upstream of Highbrook Ave.	70
	Approximately 650 ft upstream of Highbrook Ave.	75
	Approximately 960 ft upstream of Highbrook Ave.	79

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1963), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 43 FR 7719).

Issued: October 24, 1978.

GLORIA M. JIMENEZ
Federal Insurance Administrator.

[FR Doc. 78-31025 Filed 11-2-78; 8:45 am]

[4830-01-M]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7569]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Gain From Sale or Exchange of Depreciable Property Between Related Taxpayers

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to the treatment of gain from the sale or exchange of depreciable property between certain related taxpayers. Changes to the applicable tax law were made by the Tax Reform Act of 1976. The regulations provide the public with the guidance needed to comply with that Act and affects certain transferors of depreciable property in sales or exchanges between related taxpayers.

DATES: The regulations are effective for sales or exchanges after October 4, 1976.

FOR FURTHER INFORMATION CONTACT:

Leonard T. Marcinko of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224 (Attention: CC:LR:T), 202-556-3459.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On May 31, 1978, the FEDERAL REGISTER published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 1239 of the Internal Revenue Code of 1954 (43 FR 23608). These amendments were proposed to conform the regulations to section 2129 of the Tax Reform Act of 1976 (90 Stat. 1922). Only one comment was received with respect to the proposed amendments, and no public hearing was requested or held. The proposed amendments are adopted by this Treasury decision subject to one technical change.

EXPLANATION

Section 1239, as amended by the Tax Reform Act of 1976, provides that in the sale or exchange of depreciable property between related persons after October 4, 1976, any gain recognized shall be treated as ordinary income. For purposes of section 1239, "related persons" include a husband and wife, an individual and a corporation at least 80 percent of which is owned by that individual, and two or more corporations 80 percent or more of each of which is owned by the same individual. In addition to conforming the regulations to the changes made by the Tax Reform Act of 1976, the regulations adopted by this Treasury decision provide several rules of construction for applying the general rule of section 1239. In response to a point made in the single comment received with respect to the notice of proposed rulemaking, this Treasury decision makes a technical change to example (2) in § 1.1239-1(c)(3) of the proposed regulations.

The regulations adopted by this Treasury decision impose no new reporting burdens or recordkeeping requirements. The principal effect of the final regulations is to conform existing regulations under section 1239 of the Code to changes made by the Tax Reform Act of 1976. Evaluation of the effectiveness of these regulations after issuance will be based upon comments received from offices within Treasury and the Internal Revenue Service, other governmental agencies, and the public.

DRAFTING INFORMATION

The principal author of these regulations is Leonard T. Marcinko of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Intenal Revenue Service and the Treasury Department participated in developing the regulations, both on matters of substance and style.

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ADOPTION OF AMENDMENTS TO THE REGULATIONS

Accordingly, the amendments to 26 CFR Part 1 published as a notice of proposed rulemaking in the FEDERAL REGISTER for May 31, 1978 (43 FR 23608), are hereby adopted as proposed subject to the following change: The first sentence of example (2) in § 1.1239-1(c)(3) is amended by deleting "80" and inserting in lieu thereof "100".

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

JEROME KURTZ,
Commissioner of Internal Revenue.

Approved: October 20, 1978.

DONALD C. LUBICK,
Assistant Secretary of the Treasury.

§ 1.1239 [Deleted]

PARAGRAPH 1. Section 1.1239 and the historical note are deleted.

PAR. 2. Section 1.1239-1 is redesignated as § 1.1239-2 and is amended by revising the heading and first two sentences thereof to read as follows:

§ 1.1239-2 Gain from sale or exchange of depreciable property between certain related taxpayers on or before October 4, 1976.

Section 1239 provides in general that any gain from the sale or exchange of depreciable property between a husband and wife or between an individual and a controlled corporation on or before October 4, 1976 (and in the case of a sale or exchange occurring after that date if made under a binding contract entered into on or before that date), shall be treated as ordinary income. Thus, any gain recognized to the transferor from a sale or exchange after May 3, 1951, and on or before October 4, 1976 (or thereafter if pursuant to a binding contract entered into on or before that date), directly or indirectly, between a husband and wife or between an individual and a controlled corporation, of property which, in the hands of the transferee, is property of a character subject to an allowance for depreciation provided in section 167 (including such property on which a deduction for amortization is allowable under sections 168 and 169) shall be considered as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231.

* * *

PAR. 3. A new § 1.1239-1 is added, to read as follows:

§ 1.1239-1 Gain from sale or exchange of depreciable property between certain related taxpayers after October 4, 1976.

(a) *In general.* In the case of a sale or exchange of property, directly or indirectly, between related persons after October 4, 1976 (other than a sale or exchange made under a binding contract entered into on or before that date), any gain recognized by the transferor shall be treated as ordinary income if such property is, in the hands of the transferee, subject to the allowance for depreciation provided in section 167. This rule also applies to property which would be subject to the allowance for depreciation provided in section 167 except that the purchaser has elected a different form of deduction, such as those allowed under sections 169, 188, and 191.

(b) *Related persons.* For purposes of paragraph (a), the term "related persons" means—

(1) A husband and wife,

(2) An individual and a corporation 80 percent or more in value of the outstanding stock of which is owned, directly or indirectly, by or for such individual, or

(3) Two or more corporations 80 percent or more in value of the outstanding stock of each of which is owned, directly or indirectly, by or for the same individual.

(c) *Rules of construction*—(1) *Husband and wife.* For purposes of paragraph (b)(1), if on the date of the sale or exchange a taxpayer is legally separated from his spouse under an interlocutory decree of divorce, the taxpayer and his spouse shall not be treated as husband and wife, provided the sale or exchange is made pursuant to the decree and the decree subsequently becomes final. Thus, if pursuant to an interlocutory decree of divorce, an individual transfers depreciable property to his spouse and, because of this section, the gain recognized on the transfer of the property is treated as ordinary income, the individual may, if the interlocutory decree becomes final after his tax return has been filed, file a claim for a refund.

(2) *Sales between commonly controlled corporations.* In general, in the case of a sale or exchange of depreciable property between related corporations (within the meaning of paragraph (b)(3) of this section), gain which is treated as ordinary income by reason of this section shall be taxable to the transferor corporation rather than to a controlling shareholder. However, such gain shall be treated as ordinary income taxable to a controlling shareholder rather than the transferor corporation if the transferor corporation is used by a controlling shareholder as a mere conduit to make a sale to another controlled corporation, or the entity of the corporate transferor is otherwise properly disregarded for tax purposes. Sales between two or more corporations that are related within the meaning of paragraph (b)(3) of this section may also be subject to the rules of section 482 (relating to allocation of income between or among organizations, trades, or businesses which are commonly owned or controlled), and to rules requiring constructive dividend treatment to the controlling shareholder in appropriate circumstances.

(3) *Ownership of stock.* For purposes of determining the ownership of stock under this section, the constructive ownership rules of section 318 shall be applied, except that section 318(a)(2)(C) (relating to attribution of stock ownership from a corporation) and section 318(a)(3)(C) (relating to attribution of stock ownership to a corporation) shall be applied without regard to the 50-percent limitation contained therein. The application of the constructive ownership rules of section 318 to section 1239 is illustrated by the following examples:

Example (1). A, an individual, owns 79 percent of the stock (by value) of Corporation X, and a trust for A's children owns the remaining 21 percent of the stock. A's children are deemed to own the stock owned for their benefit by the trust in proportion to their actuarial interests in the trust (section 318(a)(2)(B)). A, in turn, constructively owns the stock so deemed to be owned by his children (section 318(a)(1)(A)(ii)). Thus, A is treated as owning all the stock of Corporation X, and any gain A recognizes from the sale of depreciable property to Corporation X is treated under section 1239 as ordinary income.

Example (2). Y Corporation owns 100 percent in value of the stock of Z Corporation. Y Corporation sells depreciable property at a gain to Z Corporation. P and his daughter, D, own 80 percent in value of the Y Corporation stock. Under the constructive ownership rules of section 318, as applied to section 1239, P and D are each considered to own the stock in Z Corporation owned by Y Corporation. Also, P and D are each considered to own the stock in Y Corporation owned by the other. As a result, both P and D constructively own 80 percent or more in value of the stock of both Y and Z Corporations. Thus, the sale between Y and Z is governed by section 1239 and produces ordinary income to Y.

[FR Doc. 78-31069 Filed 11-2-78; 8:45 am]

[4510-26-M]

Title 29—Labor

CHAPTER XVII—OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR

PART 1956—APPROVED STATE PLANS FOR ENFORCEMENT OF STATE STANDARDS

Notice of Approval of the Connecticut State Plan for Public Employees Only

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: The Connecticut plan covering public sector employees only is approved as a developmental plan under section 18 of the Occupational Safety and Health Act and 29 CFR Part 1956. Under the approved plan, the Connecticut Department of Labor is designated as the State agency responsible for the development and enforcement of occupational safety and health standards, throughout the State. Approval of the Connecticut State plan which covered both public and private sector employees is withdrawn.

EFFECTIVE DATE: October 2, 1978.

FOR FURTHER INFORMATION CONTACT:

Rrencie V. McGlown, Project Officer, U.S. Department of Labor, Occupational Safety and Health Administration, 2100 M Street NW., Room 149, Washington, D.C. 20210, 202-653-5377.

SUPPLEMENTARY INFORMATION:

AUTHORITY

Section 18 of the Act provides that a State which desires to assume responsibility for the development and enforcement of standards relating to any occupational safety and health issue with respect to which a Federal standard has been promulgated may submit a plan to the Assistant Secretary of Labor for Occupational Safety and Health (Assistant Secretary) describing in detail the proposed program. Part 1956 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Act whereby States may submit for approval under the requirements of that section, plans to assume responsibility for the development and enforcement of occupational safety and health standards applicable only to employees of the State and its political subdivisions (public employees).

Under these regulations the Assistant Secretary may approve a State plan for public employees if in her judgment the plan provides for the development and enforcement of standards relating to hazards in employment covered by the plan which are or will be at least as effective in providing safe and healthful employment and places of employment for public employees as standards promulgated and enforced by Federal OSHA in the private sector under section 6 of the Federal Act. In making this determination the Assistant Secretary will consider, among other things, the criteria and indices of effectiveness set forth in 29 CFR Part 1956, Subpart B.

BACKGROUND

A State plan for the enforcement of occupational safety and health standards in Connecticut was approved by the Assistant Secretary on December 28, 1973 (39 FR 1013; 29 CFR 1952.300 et seq.). This plan included coverage of private workplaces as well as a program for public employees. By an act of the Connecticut General Assembly, effective July 1, 1978 (P.A. 77-610), the Connecticut Occupational Safety and Health Act was amended to exclude coverage of private sector employees. This change in the scope of State safety and health coverage necessitates withdrawal of the prior 18(b) plan and submission for the Assistant Secretary's approval of a State plan covering public employees only. On January 30, 1978, the State of Connecticut submitted such a plan to the Boston regional office of the Occupational Safety and Health Administration. In a letter from Gov. Ella Grasso to the Assistant Secretary dated September 18, 1978, the State has agreed to withdraw its 18(b) plan covering both private and public employees upon approval of the State public employee only plan. On July 28, 1978, notice was published in the FEDERAL REGISTER (43 FR 32824) of the submission of Connecticut public employees only plan and its availability for public comment. No public comments were received. However, the national office review of the plan identified several areas where appropriate revisions or additions would be needed in order to clarify the State's coverage of public employees only. These problem areas were communicated to the State. The State responded satisfactorily in the form of assurances to each of the national office comments. These assurances are contained in a letter dated September 19, 1978, from Peter A. Reilly, Commissioner, Connecticut Department of Labor to Eula Bingham, Assistant Secretary, Occupational Safety and Health. The assurances are discussed below:

1. The Connecticut Occupational Safety and Health Act has undergone numerous amendments since its inception in 1973. In order to have a single document which reflects all amendments the State has assured that it will submit a reprint of the State's Act as amended.

2. Section 31-396 of the Connecticut Act provides that owners, lessees, agents, or managers of buildings in which public employees work shall comply with all standards, rules and orders issued under the Connecticut Act. The plan contains no implementing regulations or statements of policy describing the manner in which this owner compliance provision will be enforced. After careful consideration, it has been determined that the owner compliance provision should not prevent the Connecticut plan from meeting the approval criteria under 29 CFR Part 1956. However, since the full scope and effect of this provision are not yet known, the Assistant Secretary's continued approval of this provision is subject to the results of specific monitoring of actual operations.

3. The State has provided assurances that it will revise its State poster to reflect coverage of public sector employees only.

4. The State has provided assurance that it will respond to changes in the Federal program which could have an adverse impact on the State's public employee only program by timely submission of Federal program change supplements.

5. Connecticut has adopted all Federal standards promulgated through September 16, 1977. The State has provided assurance that it will continue to adopt all Federal permanent standards or develop alternative State standards within 6 months of Federal promulgation and emergency temporary standards within 30 days. The State further assured that in those situations where public employees are exposed to unique hazards for which existing standards do not provide adequate protection, effective State standards will be adopted.

6. The State has provided assurance that it will revise State regulations and procedures comparable to 29 CFR Part 1903 (Inspections, Citations and Proposed Penalties); 29 CFR Part 1904 (Recording and Reporting Occupational Injuries and Illnesses); 29 CFR Part 1905 (Variance Rules); 29 CFR Part 2200 (Occupational Safety and Health Review Commission); Field Operations Manual and IH Manual. These revisions will reflect Connecticut coverage of public employees only and otherwise update the regulations, etc.

7. The State has provided assurance that it will revise its discrimination procedures in order to fully implement the provisions of the State's Act. Procedures will be adopted by the State providing for: (1) Filing of a complaint within 30 days; (2) notification to the complainant and employer, within 90

days of complaint receipt, of the Commissioner's determination; and (3) the ability of the State department of labor to initiate compensatory actions, including backpay and reinstatement of the employee. In addition, Connecticut assures that it will update its procedures to include the provisions for employee walkaround pay and employer retention of exposure records and employee access to the log.

8. To clarify the scope of Connecticut's enforcement responsibility under the plan a comprehensive survey of workplaces and working conditions in the public sector will be made. The State has provided assurance that it will submit a list identifying each government entity whose workers are covered under the plan, giving the number of employees for each entity listed, and describing the type of work performed. A standard industrial classification (SIC) code will be determined for each entity.

9. In order to insure that public employee only plans submitted by States under 29 CFR Part 1956 are complete, and to insure consistency of content and format from State to State, Federal OSHA has developed a public employee only plan outline. All public employee only plans are required to meet the format and content requirements of the outline; however, because the Connecticut plan was submitted prior to development of this outline, the plan does not meet the outline's format requirements. The State has provided assurance that the plan will be resubmitted in the required format as a developmental step.

DECISION

After careful consideration of the Connecticut State plan for the development and enforcement of State standards applicable to State and local government employees, the plan is hereby approved as a developmental plan under section 18 of the Act and 29 CFR Part 1956. This decision incorporates the requirements of the Act and of regulations applicable to State plans generally. Approval of Connecticut's comprehensive 18(b) plan is withdrawn pursuant to 29 CFR 1955.3(b).

Accordingly, subpart X of 29 CFR Part 1952 is hereby revoked and revised to read:

Subpart X [Reserved]

In addition, 29 CFR Part 1956 is revised by deleting the existing subpart E and adding a new subpart E as follows:

Subpart E—Connecticut

§ 1956.40 Description of the plan.

(a) The plan designates the Connecticut Department of Labor as the State agency responsible for administering the plan throughout the State. The State has adopted all Federal standards promulgated as of September 1977 and has given assurances that it will continue to adopt all Federal standards, revisions, and amendments. The State further assured that in those situations where public employees are exposed to unique hazards for which existing standards do not provide adequate protection, effective State standards will be adopted. The plan includes legislation, Public Act 73-379, passed by the Connecticut Legislature in 1973 and amended as follows: P.A. 74-176, P.A. 75-285, P.A. 77-107, and P.A. 77-610. Under the legislation the Connecticut Department of Labor, Occupational Safety and Health Division has full authority to enforce and administer all laws and rules protecting the safety and health of employees of the State and its political subdivisions. The plan is accompanied by a statement of the Governor's support and a legal opinion that the Connecticut legislation meets the requirements of the Occupational Safety and Health Act of 1970 and is in accord with the constitution of the State.

(b) The plan establishes procedures for variances and the protection of employees from hazards under a variance; insures inspection in response to complaints; provides employer and employee representatives an opportunity to accompany inspectors and to call attention to possible violations before, during, and after inspections; notification to employees or their representatives when no compliance action is taken as a result of alleged violations, including informal review; notification of employees of their protection; protection of employees against discharge or discrimination in terms and conditions of employment; provision for prompt notices to employers and employees of violations of standards and abatement requirements; sanctions against employers for violation of standards and orders; employer's right to appeal citations for violations, abatement periods and proposed penalties; employee's right to appeal abatement periods; and employee participation in review proceedings. Also included are provisions for right of entry for inspection, "prohibition" of advance notice of inspection and the requirement for both employers and employees to comply with the applicable rules, standards, and orders, and employer obligations to maintain records and provide reports as required. Further, the plan provides assurances of a fully trained adequate staff and sufficient funding.

(c) The plan includes the following documents as of the date of approval:

(1) The plan document and appendixes submitted January 30, 1978.

(2) Letter from the Commissioner, Connecticut Department of Labor, dated September 19, 1978, providing supplemental assurances.

§ 1956.41 Where the plan may be inspected.

A copy of the plan may be inspected and copied during normal business hours at the following locations: Office of State programs, 2100 M Street NW, Room 149, Washington, D.C. 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, Room 1804, John F. Kennedy Federal Building, Boston, Mass. 02203; Connecticut Department of Labor, 200 Folly Brook Boulevard, Wethersfield, Conn. 06109.

§ 1956.43 Developmental schedule.

The Connecticut plan is developmental. The following is a schedule of major developmental steps as provided by the plan:

(a) A new State poster will be printed, by December 15, 1978, in order to reflect coverage of the public sector only.

(b) Standards identical to or at least as effective as all existing Federal standards will be adopted by February 1, 1979.

(c) Connecticut regulations equivalent to the following Federal provisions will be revised by April 1, 1979, to show coverage of the public sector only and to accurately reflect the current program: 29 CFR Part 1903 (Inspections, citations, and proposed penalties); 29 CFR Part 1904 (Recording and Reporting Occupational Injuries and Illnesses); 29 CFR Part 1905 (Variance Rules); 29 CFR Part 2200 (Review Commission); and the Field Operations Manual.

(d) The State will submit revised and updated provisions dealing with employee discrimination by May 1, 1979.

(e) The State will prepare by June 1, 1979, a comprehensive list of government entities whose employees are covered by the plan, giving the number of employees for each entity, describing the work performed, and assigning for each entity a standard industrial classification (SIC) code.

(f) The State will resubmit its plan in the required outline format by October 1, 1979.

(Secs. 8(g)(2), 18 (c), Pub. L. 91-596, 84 Stat. 1600, 1608 (29 U.S.C. 657(g)(2), 667(c)).)

Signed at Washington, D.C., this 2d day of October 1978.

EULA BINGHAM,
Assistant Secretary of Labor.

[FR Doc. 31186 Filed 11-2-78; 8:45 am]

[3810-70-M]

Title 32—National Defense

CHAPTER I—OFFICE OF THE SECRETARY OF DEFENSE

Armed Services Procurement Regulation

AGENCY: Department of Defense.

ACTION: Amendment of 1976 Edition of the Armed Services Procurement Regulation.

SUMMARY: In this document, the Department of Defense gives notice that it is amending the 1976 Code of Federal Regulations (CFR) edition of the Armed Services Procurement Regulation by incorporating changes made by Defense Procurement Circulars 76-1 through 76-10. The Department of Defense takes this action to bring the 1976 edition up to date. The Department of Defense also gives notice that these Defense Procurement Circulars are on file with the Office of the Federal Register, and will be published as a supplement to 32 CFR Parts 1-39, Volumes I, II, and III. Prior to that time, copies will be available for inspection and purchase.

EFFECTIVE DATE: November 3, 1978.

FOR FURTHER INFORMATION CONTACT:

T. G. Cassidy, Acting Director, Defense Acquisition Regulatory Council, Room 3D1080, Pentagon, Washington, D.C. 20301, telephone: AC 202-697-6710.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The basic Armed Services Procurement Regulation (ASPR), July 1976 edition, was adopted into the CFR on August 3, 1977 (42 FR 39213). This regulation is available to the public in two publications. The Department of Defense publishes and distributes through the Government Printing Office a looseleaf edition of the ASPR. Subscribers to this looseleaf edition periodically receive amendments through Defense Procurement Circular replacement pages. Subscribers can then substitute these pages in the looseleaf ASPR for the ones they are intended to replace.

In the Code of Federal Regulations the ASPR is codified in 32 CFR Parts 1-39. The Office of the Federal Register (OFR) last published a bound edition of the ASPR in three volumes, revised as of July 1, 1976. This edition was prepared by photographing the Department of Defense looseleaf ASPR, so the contents of the two publications are identical.

The OFR has again approved the amendment of the ASPR in the Code of Federal Regulations in this manner largely because the Department of Defense and the General Services Administration, through the Office of Federal Procurement Policy, are drafting the Federal Acquisition Regulations (FAR) to replace existing systems of procurement regulations. The FAR will be a simple, uniform, acquisition regulation for use by all Federal executive agencies in the acquisition of supplies and services with appropriate funds. For this reason, the approval of the OFR to amend the ASPR in this manner is effective only until July 1, 1979, when it will be reviewed in light of progress made on the new Federal Acquisition Regulation.

AMENDMENTS TO 32 CFR PARTS 1-39, REVISED AS OF JULY 1, 1976

For the purpose of updating the 1976 CFR edition of the ASPR, the Department of Defense has filed with the Office of the Federal Register copies of Defense Procurement Circulars 76-1 through 76-10. The replacement pages appearing in Circulars 76-1 through 76-10 will be issued by the OFR as a supplement to the basic CFR volumes, bringing them up to date as of September 26, 1977. The Defense Procurement Circulars can also be inspected at the Office of the Federal Register, 1100 L Street NW., Washington, D.C., and are available from the Department of Defense.

The Department of Defense gives notice that the 1976 edition of the ASPR (32 CFR Parts 1-39, revised as of July 1, 1976) is amended by Defense Procurement Circulars 76-1 through 76-10 (5 U.S.C. 301, 10 U.S.C. 202, DOD Directive No. 5126.22 and ASPR 1-106).

Any amendments made to the looseleaf editions of ASPR through Defense Procurement Circular replacement pages that are subsequent to DPC 76-10, will be published in the FEDERAL REGISTER as amendments to the ASPR that appears in the CFR. The two publications of the ASPR will thus be kept identical.

The following is a list of those ASPR sections affected by DPCs 76-1 through 76-10.

76-1

1-335 (add)	2-205.5 (add)
1-338 (add)	3-501 (add)
1-701.1 (amend)	4-105 (add)
1-2102 (add)	
Appendix O (rev)	

76-2

3-808 (rev)	E-509.5 (add)
3-1300 (add)	DD Form 1547 (rev)
15-205.50 (add)	DD Form 1861 (rev)

76-3

1-102 (add)	1-507 (rev)
1-330 (amend)	1-1504 (add)
1-506.1 (add)	1-1505 (amend)

76-4—Continued

6-705 (rev)	6-705.6 (delete)
6-705.1 (delete)	6-1300 (add)
6-705.2 (delete)	7-104.27 (add)
6-705.3 (delete)	7-2003.73 (add)
6-705.4 (delete)	7-2003.74 (add)
6-705.5 (delete)	7-2003.75 (add)

76-5

1-302.2 (add)	7-608.21 (amend)
1-304.2 (amend)	7-608.22 (amend)
1-312 (amend)	7-702.12 (amend)
1-314 (add)	7-702.18 (amend)
1-329.2 (amend)	7-705.8 (amend)
1-332.1 (rev)	7-1702.4 (amend)
1-332.2 (rev)	7-2003.73 (add)
1-332.3 (rev)	7-2003.74 (add)
1-332.4 (rev)	7-21 (add)
1-332.5 (rev)	8-203 (add)
1-604.3 (add)	8-705.2 (add)
1-605.3 (add)	9-107.1 (add)
1-705.5 (add & amend)	9-107.2 (add)
1-1003.9 (amend)	9-107.3 (amend)
1-1005.1 (amend)	9-107.9 (amend)
1-1105 (amend)	9-109.4 (amend)
1-1202 (amend)	9-109.6 (amend)
1-1204 (amend)	10-202.2 (amend)
2-201 (add & amend)	10-604 (amend)
3-501 (add & amend)	11-000 (amend)
3-506 (amend)	11-401.4 (amend)
3-608.2 (add)	12-101.3 (amend)
3-608.8 (add)	12-801 (add)
3-609.3 (amend)	12-808.1 (amend)
4-116.1 (amend)	12-1102.4 (amend)
4-500 (add)	16-101.2 (amend)
4-501 (add)	16-102.1 (add)
4-502 (add)	16-303 (add)
4-503 (add)	16-401.1 (amend)
4-504 (add)	16-401.2 (amend)
4-505 (add)	16-401.3 (amend)
5-102.2 (amend)	16-402.2 (amend)
5-102.3 (amend)	16-403.2 (amend)
5-108 (amend)	16-404 (delete)
6-805.2 (amend)	16-404.1 (delete)
7-001 (add & amend)	16-404.2 (delete)
7-101 (amend)	16-501.2 (amend)
7-104.34 (amend)	16-502 (add)
7-104.67 (delete)	16-810.2 (add)
7-104.68 (delete)	16-812 (amend)
7-105.1 (amend & add)	17-201 (add)
7-105.5 (delete)	17-207.1 (add)
7-203.22 (add & amend)	17-208.5 (add)
7-302.23 (amend)	18-108.1 (amend)
7-402.22 (delete)	18-116 (amend)
7-402.26 (add)	18-305.1 (add)
7-600 (delete)	18-306.3 (amend)
7-601 (amend)	18-704.5 (amend)
7-602.7 (amend)	18-704.13 (amend)
7-602.8 (amend)	20-101 (amend)
7-602.11 (amend)	20-204.3 (add)
7-602.12 (amend)	20-204.4 (add)
7-602.17 (amend)	20-401 (add)
7-602.19 (amend)	21-1 (add)
7-602.23 (amend)	21-103 (amend)
7-602.26 (amend)	21-104 (delete)
7-602.29 (amend)	21-105 (amend)
7-602.39 (amend)	21-111 (delete)
7-602.53 (add)	21-111.1 (add)
7-602.54 (add)	21-113 (add & amend)
7-603.24 (amend)	21-116 (amend)
7-603.51 (delete)	21-119 (add)
7-604.1 (amend)	21-120 (add)
7-607.6 (amend)	21-123 (amend)
7-607.8 (amend)	21-124 (add)
7-607.13 (amend)	21-130 (amend)
7-607.14 (amend)	21-134 (add)
7-607.26 (amend)	21-2 (add)
7-607.27 (amend)	21-202 (amend)
7-608.4 (amend)	21-204 (delete)
	21-205 (amend & add)

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76-5—Continued

21-207 (amend)
21-208 (amend)
21-209 (add)
21-301 (amend)
21-303 (amend)
21-401 (amend)
21-402 (amend)
23-202 (add)
26-702 (amend)
Appendix E-602.3 (amend)
Appendix F-100.253 (rev)
200.1155 (rev)
Appendix I-401 (amend)
Appendix N (amend)

76-6

1-321 (add)
1-332.1 (add)
1-332.6 (add)
1-701.1 (amend)
1-706.6 (amend & add)
1-706.7 (amend & add)
1-803 (amend)
1-804.2 (amend & add)
1-1003.9 (amend)
1-1204 (add)
1-1500 (amend)
1-1501 (amend)
1-1502 (amend)
1-1503 (amend)
1-1504 (amend)
1-1505 (amend)
1-1905 (add)
2-201 (amend & add)
3-201.2 (add)
3-501 (add & amend)
3-608.8 (add & amend)
3-1204 (amend)
4-118.5 (delete)
5-103 (delete)
6-805.2 (amend)
6-1309 (amend)
6-1311 (add)
7-103.10 (amend)
7-104.65 (amend)
7-106.4 (amend & delete)
7-108.1 (amend & add)
7-108.2 (amend & add)
7-303.62 (amend & delete)
7-602.27 (amend)
7-603.10 (amend)
7-603.48 (amend)
7-704.40 (add)
7-705.33 (add)
7-1002.7 (amend)
7-1501.4 (amend)
7-2003.5 (amend)
7-2003.8 (amend)
7-2003.11 (amend)
7-2003.13 (amend)
8-202 (add)
8-206.1 (add)
8-209.8 (add)
9-503 (delete)
10-201.1 (amend)
10-405 (amend)
10-501 (add)
10-501.2 (amend)
10-501.3 (amend)
10-501.4 (amend)
11-000 (add)
11-302 (amend)
11-403.1 (amend)
11-403.2 (amend)
13-404 (delete)
13-405 (amend & delete)
13-406 (amend & add)
13-601.1 (add)
15-201.6 (add)
16-104.2 (add)
16-104.3 (add & amend)
16-104.4 (add & amend)
18-106.1 (amend)
18-402.2 (add)
18-704.13 (amend)
19-204 (amend)
21-102 (add)
18-704.13 (amend)
19-204 (amend)
21-102 (add)
24-205.4 (amend)
24-302.3 (add)
24-302.5 (add)
24-302.8 (amend)
Appendix B-306.1 (amend)
Appendix C-306.1 (delete)
Appendix F-200.1057 (rev)
200.1140-1 (rev)
200.1547 (rev)
200.1662 (rev)
200.2025 (add)
Appendix I-301 (amend & add)
401 (amend)
Appendix Q (add)

76-7

1-108 (delete)
1-201.41 (add)
1-339 (add)
1-701.1 (delete)
1-707.4 (amend)
1-905.1 (amend)
1-1103 (amend)
2-201 (amend & add)
2-205.1 (add)
3-501 (add)
3-507.2 (amend)
3-608.2 (amend & add)
3-805.1 (delete)
3-805.5 (add)
3-811 (add)
3-902.1 (amend)
3-902.3 (amend & add)
3-902.4 (amend)
4-204 (amend)
5-704 (amend)
5-704.1 (amend)
5-704.2 (amend)
5-903.1 (delete)
5-903.3 (delete)
5-904.2 (delete)
5-905 (amend)
5-906 (amend)
5-1107.1 (amend)
5-1108 (amend)
5-1109.3 (amend)
5-1201.2 (amend)
6-302 (amend)
6-303 (amend & delete)
6-304.1 (amend)
6-504.2 (amend)
6-505 (amend)
6-603.4 (amend)
6-605.4 (amend)
6-1312 (add)
7-104.9 (amend & add)
7-104.23 (amend & add)
7-104.32 (amend)
7-104.97 (add)
7-203.8 (add)
7-204.64 (add)
7-303.66 (add)
7-402.8 (amend)
7-403.62 (add)
7-504.18 (add)
7-602.50 (amend)
7-603.58 (add)
7-606.30 (add)
7-608.23 (add)
7-901.10 (add)
7-902.43 (add)
7-1601.1 (amend)
7-1601.9 (amend)
7-1601.13 (amend)
7-1601.14 (amend & add)
7-1601.15 (amend)
7-1601.18 (amend)
7-1601.20 (add)
7-1702.21 (add)
7-1903.2 (amend)
7-1903.22 (add)
7-1903.56 (add)
7-1910.40 (add)
7-2002.2 (amend)
7-2002.3 (amend)
7-2002.4 (amend)
7-2003.59 (amend)
7-2003.73 (amend)
7-2003.76 (add)
7-2003.77 (add)
8-216 (amend)
9-603 (add)
9-605 (amend)
10-505 (amend)
10-603 (amend)
12-101.2 (add)
12-101.3 (amend)
12-103.2 (amend)
12-602 (amend)
12-803 (amend)
12-804 (amend)
12-805 (amend)
12-808.1 (amend)
12-809 (amend)
12-812 (amend)
12-813 (amend)
12-1102.4 (amend)
15-205.31 (amend)
15-205.37 (amend)
16-401.1 (amend)
16-403.2 (delete)
16-505 (amend)
18-108.1 (amend)
18-305.1 (amend)
18-702.2 (amend)
18-704.12 (amend)
19-208.4 (amend)
20-704 (add)
22-601.1 (amend)
22-601.3 (amend)
22-602.1 (amend)
22-700 (add)
23-000 (amend)
23-100 (amend)
23-101 (amend)
23-102 (add)
23-103 (amend & add)
23-104 (amend & add)
23-105 (amend & add)
23-106.1 (amend)
23-106.2 (amend)
23-107 (amend)
23-108 (amend & add)
23-201.1 (amend)
23-201.2 (amend)
23-202 (add)
23-204 (amend)
24-205.4 (amend)
Appendix E-212 (amend)
406.1 (amend)
524.5 (add)
626 (amend)
Appendix F-100.19-B (rev)
200.1140-1 (rev)
200.1155 (rev)
Appendix K-202 (add)
203.1 (add)
Appendix N (rev)

76-8

1-201.14 (amend)
1-331 (amend)
1-702 (add)
1-706.3 (amend & add)
1-905.4 (add)
1-1203.2 (amend)
1-1203.3 (amend)
1-1701 (add)
1-1701.1 (delete)
1-1701.2 (add)
1-1702 (delete)
1-1702.1 (amend)
1-1702.2 (add)
1-1702.3 (amend)
1-1703 (add)
1-1703.1 (amend & add)
1-1704.1 (amend)
1-1704.2 (amend)
1-1704.3 (amend)
1-1704.4 (amend)
1-1705 (amend)
1-1708 (amend)
7-104.44 (amend & add)
7-602.42 (amend)
7-602.50 (amend)
7-2003.8 (amend)
7-2003.9 (amend)
7-2003.71 (amend)
9-600 (amend)
15-205.6 (add & delete)
16-827.2 (amend)
16-827.3 (amend)
18-106.2 (amend)
E-524.5 (add)
Appendix N (amend)
Appendix O (amend)

76-9

S3-701 (amend)
1-1003.1 (amend)
1-1003.2 (amend)
1-1703.1 (amend)
1-1708 (delete)
2-202.4 (amend)
2-202.5 (add)
3-410.2 (amend)
3-507.1 (amend)
3-608.2 (amend)
4-101 (amend)
4-107 (delete)
4-109 (amend)
4-900 (add)
4-902 (add)
4-903 (add)
4-904 (add)
4-905 (add)
4-906 (add)
4-907 (add)
4-908 (add)
4-909 (add)
4-910 (add)
4-911 (add)
4-912 (add)
4-913 (add)
5-900 (amend)
5-901 (amend)
5-902 (amend)
5-903 (add)
5-903.1 (delete)
5-903.2 (delete)
5-904 (amend)
5-904.1 (delete)
5-904.2 (delete)
5-905 (amend)
5-906 (amend)
5-907 (rev)
5-908 (add)
5-909 (add)
7-404.34 (amend)
7-104.44 (amend)
7-204.28 (amend)
7-302.23 (amend)
7-602.50 (amend)
7-702.12 (add)
9-107.3 (add)
9-202.3 (amend)
10-105.3 (amend)
13-406 (amend)
15-203 (amend)
15-205.1 (amend)
15-205.6 (add)
15-205.17 (amend)
15-205.23 (add)
15-205.35 (add)
15-205.41 (amend)
15-504 (delete)
16-001 (add)
20-203.1 (amend & add)
Appendix B-603.1 (amend)
Appendix E-509.10 (add)
512.2 (add)
512.3 (add)
529 (add)
529.1 (add)
529.2 (add)
529.3 (add)
529.4 (add)
529.5 (add)
529.6 (add)
608 (amend)
611 (amend)
626 (amend)
Appendix O (add)

76-10

1-201.14 (amend)
1-338 (add)
1-1702.1 (amend)
1-1704.1 (amend)
1-1704.4 (delete)
1-1704.5 (add)
1-1707 (amend)
3-605.3 (amend)
3-1204.1 (add)
3-1204.2 (add)
5-1108.1 (add)
6-302 (amend)
6-401 (rev)
6-402 (delete)
6-403 (rev)
6-404 (delete)
6-1313 (add)
7-001 (amend)
7-103.5 (add)
7-103.15 (amend)
7-104.44 (amend, delete, & add)
7-104.83 (amend & add)
16-104.4 (delete)
18-402.2 (add)
18-402.3 (add)
19-217.1 (add)
21-300 (rev)
21-301 (rev)
21-302 (amend)
21-303 (amend)
21-304 (amend)
Appendix E-403 (amend)
404 (amend)
408 (amend)
410 (amend)
415 (amend)
418 (amend)
419 (add)
Appendix F-200.1499 (rev)
Appendix M-301 (add)
302 (add)
303 (add)

Dated: October 31, 1978.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

[FR Doc. 78-31143 Filed 11-2-78; 8:45 am]

[1505-01-M]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

[FRL 984]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Wyoming Plan Revisions

Correction

In FR Doc. 78-29433 appearing at page 48637 in the issue for Thursday, October 19, 1978; in the second column of page 48638, in the second line of § 52.2620(c)(10), the word "capacity" should have read "opacity".

[6560-01-M]

[FRL 1001-2]

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

Procedural Framework

AGENCY: Environmental Protection Agency

ACTION: Final rulemaking.

SUMMARY: This notice establishes a new part 62, "Approval and Promulgation of State Plans for Designated Facilities and Pollutants." Part 62 provides for procedural framework in which EPA will approve or disapprove plans submitted by the State, and promulgate Federal plans if necessary, under section 111(d) of the Clean Air Act. Section 111(d) of the Act requires States to submit plans to control emissions of designated pollutants from designated facilities; EPA must designate the facilities and pollutants for which States must develop plans.

This action is needed because EPA's actions in approval, disapproval, and promulgation of State plans must be made public. The intended effect of this action is to establish the framework for publicizing these actions. The first plans will be those for the control of fluoride emissions from phosphate fertilizer plants; States were required to submit those plans to EPA by December 1, 1977.

Several States have written EPA letters indicating that they have no phosphate fertilizer facilities. We call these letters "negative declarations" and are approving them below in subparts B-DDD. The remainder of the State submissions have been or will be proposed and then approved, disapproved, or promulgated as necessary when appropriate information is received from the States.

EFFECTIVE DATE: Immediately.

ADDRESS: U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Control Programs Development Division (MD-15), Research Triangle Park, North Carolina 27711.

FOR FURTHER INFORMATION CONTACT:

Joseph Sableski, Chief, Plans Guidelines Section, at 919-541-5437 or at the above address.

SUPPLEMENTARY INFORMATION: On July 10, 1978 (43 FR 29585), EPA proposed to establish a new part 62, "Approval and Promulgation of State Plans for Designated Facilities and Pollutants." The preamble to that FEDERAL REGISTER notice provided background on the nature of the action; interested persons may consult that notice for further information.

EPA received no significant comments on the proposal and is, therefore, promulgating the regulation as proposed without change as set forth below.

Dated: October 26, 1978.

DOUGLAS M. COSTLE,
Administrator.

Part 62 is added to 40 CFR Ch. I to read as follows:

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

Subpart A—General Provisions

Sec.
62.01 Definitions.
62.02 Introduction.
62.03 Extensions.
62.04 Approval status.
62.05 Legal authority.
62.06 Negative declarations.
62.07 Emissions standards, compliance schedules.
62.08 Emission inventories and source surveillance.
62.09 Revision of plans by Administrator.
62.10 Submission to Administrator.
62.11 Severability.
62.12 Availability of applicable plans.

Subparts B-O [Reserved]

Subpart P—Indiana

FLUORIDE EMISSIONS FROM PHOSPHATE FERTILIZER PLANTS

62.3600 Identification of plan—Negative declaration.

Subparts Q-W [Reserved]

Subpart X—Michigan

FLUORIDE EMISSIONS FROM PHOSPHATE FERTILIZER PLANTS

62.5600 Identification of plan—Negative declaration.

Subpart Y—Minnesota

FLUORIDE EMISSIONS FROM PHOSPHATE FERTILIZER PLANTS

62.5850 Identification of plan—Negative declaration

Subparts Z-FF [Reserved]

Subpart GG—New Mexico

FLUORIDE EMISSIONS FROM PHOSPHATE FERTILIZER PLANTS

62.7850 Identification of plan—Negative declaration.

Subparts HH-KK [Reserved]

Subpart LL—Oklahoma

FLUORIDE EMISSIONS FROM PHOSPHATE FERTILIZER PLANTS

62.9100 Identification of plan—Negative declaration.

Subparts MM-XX [Reserved]

Subpart YY—Wisconsin

FLUORIDE EMISSIONS FROM PHOSPHATE FERTILIZER PLANTS

62.12350 Identification of plan—Negative declaration.

Subparts ZZ-DDD [Reserved]

AUTHORITY: Secs. 111 and 301(a), Clean Air Act, as amended (42 U.S.C. 7413 and 7601).

Subpart A—General Provisions

§ 62.01 Definitions.

As used in this part, all terms not defined herein shall have the meaning given to them in the Clean Air Act and in Part 60 of this chapter.

§ 62.02 Introduction.

(a) This part sets forth the Administrator's approval and disapproval of State plans for control of designated pollutants and facilities, and the Administrator's promulgation of such plans or portions thereof. Approval of a plan or any portion of a plan is based on a determination by the Administrator that it meets the requirements of section 111(d) of the act and

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the provisions of Part 60 of this chapter.

(b) If a State does not submit a complete, approvable plan, the Administrator may then promulgate a substitute plan or part of a plan. The promulgated provision, plus the approved parts of the State plan, constitute the applicable plan for purposes of the act.

(c) The Administrator will promulgate substitute provisions for the disapproved regulatory provisions only. If a nonregulatory provision is disapproved, however, it will be noted in this part and a detailed explanation will be sent to the State.

(d) All approved regulatory provisions of each plan are incorporated by reference in this part. Section 62.12 provides information on availability of applicable plans. The Administrator and State and local agencies shall enforce (1) regulatory provisions of a plan approved or promulgated by the Administrator, and (2) all permit conditions or denials issued in carrying out the approved or promulgated regulations for the review of designated facilities.

(e) Each State's plan is dealt with in a separate subpart, with separate headings for different pollutants and facilities. The plans shall include an introductory section identifying the plan by name and the date of its submittal. Additional sections are included as necessary to specifically identify disapproved provisions, to set forth reasons for disapproval, and to set forth provisions of the plan promulgated by the Administrator. Except as otherwise specified, all supplemental information submitted to the Administrator with respect to any plan has been submitted by the Governor of the State.

(f) Revisions to applicable plans will be included in this part when approved or promulgated by the Administrator.

§ 62.03 Extensions.

The Administrator may, whenever he determines necessary, extend the period for submission of any plan or plan revision or portion thereof.

§ 62.04 Approval status.

The approval status of each State's plan or portions thereof, are set forth in each subpart. All plans are approved unless specifically disapproved in the appropriate subpart.

§62.05 Legal authority.

(a) The Administrator's determination of the absence or inadequacy of legal authority required to be included in the plan is set forth in each subpart. This includes the legal authority of local agencies and State governmental agencies other than an air pollution control agency if such other agencies are assigned responsibility for carrying out a plan or portion thereof.

(b) No legal authority as such is promulgated by the Administrator. Where required regulatory provisions are not included in the plan by the State because of inadequate authority, substitute provisions are promulgated by the Administrator.

§62.06 Negative declarations.

A State may submit to the Administrator a letter certifying that no designated facilities exist in the State if such is the case. The negative declaration will be in lieu of a plan.

§62.07 Emission standards, compliance schedules.

(a) In each subpart, emission standards and compliance schedules which have been disapproved by the Administrator are identified, and those promulgated by the Administrator are set forth.

(b) The Administrator's approval or promulgation of any compliance schedule shall not affect the responsibility of the owner or operator to comply with any applicable emission limitation on or after the date for final compliance specified in the applicable schedule.

§62.08 Emission inventories and source surveillance.

(a) Each subpart identifies the plan provisions for source surveillance which are disapproved, and sets forth the Administrator's promulgation of necessary provisions for requiring designated sources to maintain records, make reports, and submit information.

(b) The Administrator will not promulgate provisions for disapproved State or local agency procedures for testing, inspection, investigation, or detection. However, detailed critiques of such portions will be provided to the State.

§62.09 Revision of plans by Administrator.

After notice and opportunity for public hearing in each affected State, the Administrator may revise any provision of an applicable plan if:

(a) The provision was promulgated by the Administrator and

(b) The plan, as revised, will be consistent with the Act and with the requirements of Part 60, Subpart B of this chapter.

§ 62.10 Submission to Administrator.

Except as otherwise provided in § 60.23 of this chapter, all requests, reports, applications, submittals, and other communications to the Administrator pursuant to this part shall be submitted in duplicate and addressed to the appropriate Regional Office of the Environmental Protection Agency, to the attention of the Director, Air and Hazardous Materials Division (Environmental Programs Division in Region II). The Regional Offices are as follows:

Region and jurisdiction covered	Address
I—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.	JFK Federal Building, Boston, Mass. 02203.
II—New York, New Jersey, Puerto Rico, Virgin Islands.	Federal Office Building, 26 Federal Plaza, New York, N.Y. 10007.
III—Delaware, District of Columbia, Pennsylvania, Maryland, Virginia, West Virginia.	Curtis Building, 6th and Walnut Sts., Philadelphia, Pa. 19106.
IV—Alabama, Florida, Georgia, Mississippi, Kentucky, North Carolina, South Carolina, Tennessee.	345 Courtland NE., Atlanta, Ga. 30308.
V—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.	Federal Building, 230 South Dearborn St., Chicago, Ill. 60606.
VI—Arkansas, Louisiana, New Mexico, Oklahoma, Texas.	1st International Building, 1201 Elm St., Dallas, Tex. 75270.
VII—Iowa, Kansas, Missouri, Nebraska.	1735 Baltimore St., Kansas City, Mo. 64108.
VIII—Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.	916 Lincoln Towers, 1860 Lincoln St., Denver, Colo. 80203.
IX—Arizona, California, Hawaii, Nevada, Guam, American Samoa.	215 Fremont St., San Francisco, Calif. 94105.
X—Washington, Idaho, Alaska.	Oregon, 1200 6th Ave., Seattle, Wash. 98101.

§ 62.11 Severability.

The provisions promulgated in this part and the various applications thereof are distinct and severable. If any provision of this part or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of such provision to other persons or circumstances which can be given effect without the invalid provision or application.

§ 62.12 Availability of applicable plans.

Copies of the applicable plans will be available for public inspection at the following locations:

(a) The offices of the Directors, Air and Hazardous Materials Divisions at EPA Regional Offices I, III–X, and the Director, Environmental Programs Division at EPA Regional Office II. The addresses and jurisdictions covered by these appear in § 62.10.

(b) Public Information Reference Unit, Library Systems Branch, EPA (PM 213), 401 M Street SW., Washington, D.C. 20460.

Subparts B–O [Reserved]

Subpart P—Indiana

FLUORIDE EMISSIONS FROM PHOSPHATE FERTILIZER PLANTS

§ 62.3600 Identification of plan—Negative declaration.

The State Board of Health submitted on April 18, 1977, a letter certifying that there are no existing phosphate fertilizer plants in the State subject to Part 60, Subpart B of this Chapter.

Subparts Q–W [Reserved]

Subpart X—Michigan

FLUORIDE EMISSIONS FROM PHOSPHATE FERTILIZER PLANTS

§ 62.5600 Identification of plan—Negative declaration.

The State Department of Resources submitted on April 18, 1977, a letter certifying that there are no existing phosphate fertilizer plants in the State subject to Part 60, Subpart B of this Chapter.

Subpart Y—Minnesota

FLUORIDE EMISSIONS FROM PHOSPHATE FERTILIZER PLANTS

§ 62.5850 Identification of plan—Negative declaration.

The State Pollution Control Agency submitted on April 7, 1977, a letter certifying that there are no existing phosphate fertilizer plants in the State subject to Part 60, Subpart B of this Chapter.

Subparts Z–FF [Reserved]

Subpart GG—New Mexico

FLUORIDE EMISSIONS FROM PHOSPHATE FERTILIZER PLANTS

§ 62.7850 Identification of plan—Negative declaration.

The State Department of Health and Social Services submitted on October 31, 1977, a letter certifying that there are no existing phosphate fertilizer plants in the State subject to Part 60, Subpart B of this Chapter.

Subparts HH–KK [Reserved]

Subpart LL—Oklahoma

FLUORIDE EMISSIONS FROM PHOSPHATE FERTILIZER PLANTS

§ 62.9100 Identification of plan—Negative declaration.

The State Department of Health submitted on October 25, 1977, a letter certifying that there are no existing phosphate fertilizer plants in the State subject to Part 60, Subpart B of this Chapter.

Subparts MM–XX [Reserved]

Subpart YY—Wisconsin

FLUORIDE EMISSIONS FROM PHOSPHATE FERTILIZER PLANTS

§ 62.12350 Identification of plan—Negative declaration.

The State Department of Natural Resources submitted on May 24, 1977, a letter certifying that there are no existing phosphate fertilizer plants in the State subject to Part 60, Subpart B of this Chapter.

Subparts ZZ–DDD [Reserved]

[FR Doc. 78-31058 Filed 11-2-78; 8:45 am]

[6820-24-M]

Title 41—Public Contracts and Property Management

CHAPTER 5A—FEDERAL SUPPLY SERVICE, GENERAL SERVICES ADMINISTRATION

[FSS P 2800.8B CHGES 27-34]

MISCELLANEOUS AMENDMENTS

AGENCY: Federal Supply Service, General Services Administration

ACTION: Final rule.

SUMMARY: This amendment to the General Services Administration Procurement Regulations (GSPR 5A) adds instructions and contract clauses applicable to the procurement of stainless steel flatware, provides guidelines to contracting officers regarding the receipt and safeguarding of bid samples, revises instructional material to update and supplement existing procedures, deletes obsolete instructions, adds or revises miscellaneous contract clauses, and updates procurement forms and exhibits. The purpose of these regulations is to improve Federal Supply Service procurement procedures and contract clauses.

EFFECTIVE DATE: November 3, 1978.

FOR FURTHER INFORMATION CONTACT:

Einar Windingland, Director, Policy and Procedures Division, Office of Procurement, Federal Supply Service, General Services Administration, Washington, D.C. 20406, 703-557-8344.

PART 5A-1—GENERAL

The table of contents for part 5A-1 is amended to delete § 5A-1.304.

Subpart 5A-1.3—General Policies

§ 5A-1.304 [Deleted]

Section 5A-1.304 is deleted.

Subpart 5A-1.7—Small Business Concerns

Sections 5A-1.703-2 (b) and (c)(1) are revised as follows:

§ 5A-1.703-2 Protest regarding small business status.

• • • • • •

(b) When the solicitation provides for a total or partial small business set-aside, or a labor surplus area set-aside, it is essential that the applicable small business size standard be set forth clearly in the schedule (see §§ 1-1.706-5(c) and 1-1.706-6(c)). In addition, the following notice shall be included in all solicitations:

NOTICE CONCERNING SIZE STATUS

The small business representation appearing on page 2 of the solicitation is a material representation of fact upon which the Government relies when making award. If it is later determined that the small business representation was erroneous, and the Contractor was not a small business concern on the date of award of this contract, the contract may be canceled by the Government and the Contractor charged with any damages sustained by the Government as a result of such cancellation. Any bidder who has a question as to whether he is or is not a small business concern shall contact the nearest office of the Small Business Administration for guidance and assistance. In case of conflict between standards set forth in the solicitation and those of the SBA, the SBA regulations as of the time of bid opening shall control.

(c) • • •

(1) When submitting GSA form 894, Financial Responsibility—Inquiry and Reply (see § 5A-1.1205-2(b)), a notation shall be entered in the "Remarks" block requesting the appropriate GSA finance activity to furnish any available information such as corporate affiliation, franchise arrangements, number of employees, volume of sales, and other information which may have a bearing on the small business status of the prospective contractor. A copy of the SF 33, Solicitation, Offer, and Award, executed by the bidder (or

an appropriate extract of the bid) shall be attached to the GSA form 894 in order to provide the finance activity with the necessary information.

. . . . .

Subpart 5A-1.50—Reports

1. Section 5A1.5083-1 is revised as follows:

§ 5A-1.5083-1 Submission.

Each Central Office and regional procuring activity executing national and/or regional term contracts for stock items shall report those items which have, as of September 30 each year, unordered balances of guaranteed minimum quantities. Reports prepared for national term contracts shall be submitted to the Program Coordination and Support Division (FPC), so as to be received no later than October 13 of each year, for transmittal to the Office of Finance, Central Control Division (BCC), by October 20 of each year. Reports prepared for regional term contracts shall be submitted to the regional Finance Division no later than October 15 of each year.

2. Section 5A-1.5083-4(a) is revised as follows:

§ 5A-1.5083-4 Instructions.

(a) The required data shall be obtained from available records in the Central Office and/or regional procuring activities, including any cumulative tabulations from GSA form 1678, Contract Delivery Status Record (see § 5A-72.209).

. . . . .

PART 5A-2—PROCUREMENT BY FORMAL ADVERTISING

The table of contents for part 5A-2 is amended to add § 5A-2.401-50 and delete §§ 5A-2.407-73, 5A-2.407-74, 5A-2.407-75, 5A-2.407-76, and 5A-2.407-77, as follows:

Sec.
5A-2.401-50 Receipt and safeguarding of bid samples.

Subpart 5A-2.2—Solicitation of Bids

1. Section 5A-2.201-70 is amended as follows:

§ 5A-2.201-70 Forms to be used.

When soliciting offers for advertised supply and service contracts, the following forms shall be used:

(a) Standard form 33, Solicitation, Offer, and Award, March 1977 edition. (See § 1-16.901-33 for illustration of form, and (i), below, for additional instructions.)

(b) Standard form 33-A, Solicitation Instructions and Conditions, July 1977 edition, shall be incorporated by reference in each solicitation for offers.

. . . . .

§ 5A-2.202-4 [Amended]

2. In § 5A-2.202-4(g), the first sentence is amended by deleting the reference "§ 5A-1.1205-3" and substituting therefor "§ 5A-1.1205-4."

3. Section 5A-2.202-4(j) is amended by deleting the reference "§ 5A-2.407-76" and substituting therefor "§ 5A-2.401-50."

Subpart 5A-2.4—Opening of Bids and Award of Contract

1. Section 5A-2.401-50 is added as follows:

§ 5A-2.401-50 Receipt and safeguarding of bid samples.

(a) Bid samples shall be received and safeguarded in accordance with FPR 1-2.401 and this section in either a sample room or the Business Service Center. The term "sample custodian" as used herein refers to both Business Service Center personnel or sample room personnel, as appropriate. The following procedures concern the receipt, custody, inspection, and disposition of samples.

(b) Bid samples submitted in response to a solicitation requirement must be received before bid opening to be considered for award. Samples are to be promptly time-stamped upon receipt by the sample custodian indicating the date and hour received. The sample custodian shall record whether the samples were sent by regular, registered, or certified mail, or by other delivery methods. Each sample container is to be accompanied by GSA form 434, Sample Record Sheet, included as part of the solicitation (see § 5A-16.950-434). The regulations concerning late bids (§ 1-2.303 also apply to samples received after the time set for receipt of bids.

(c) Bid samples shall be carefully protected against loss, damage, or pilferage. Each sample shall be recorded and tagged showing the firm's name and address, solicitation number, noun name, national stock number (NSN), and date of receipt. If samples or their containers arrive damaged, the sample custodian shall annotate the condition of the container upon receipt and request a quality assurance specialist (QAS) to verify the actual condition of the samples involved.

(d) Bid samples will not normally be inspected unless and until the bidder is being considered for award on the item(s) represented by the sample. Samples shall be evaluated for the characteristics listed in the solicitation. A written record of the evaluation findings shall be made. Bid samples received by the National Tools Center shall be evaluated in the Central Office by a team consisting of representatives from the procurement, quality control, and specification management activities. When laboratory support is required, the QAS will arrange for the testing and the samples shall be hand-carried or sent by an appropriate means of transportation.

(e) *Approved samples.* (1) Upon award of contract, the contracting officer shall forward a copy of GSA form 6419, Transmittal of Contract Award Data, to the sample custodian who shall tag the approved samples showing the contract number and the contract period. When there is only one sample, it shall be hand-carried or sent by an appropriate means of transportation to the manufacturing plant marked to the attention of the QAS. Where there are two samples, one of the identical samples shall be retained in the bid sample room until performance is completed and the other shall be forwarded as stated above. The sample sent shall have the tag secured by wire with a lead seal. The sample custodian shall notify the Quality Control Division of sample shipment by furnishing a copy of GSA form 6334.

(2) Upon completion of all deliveries/shipments and inspections under the contract, the samples shall be returned to the supplier at his expense if so indicated on GSA form 434, Sample Record Sheet. Other samples are to be treated as Government property for utilization or disposal, except in those instances where the contracting officer has indicated that they may be reapplied to a succeeding solicitation, the sample shall be retained in the bid sample room.

(f) *Disposition of other samples.* (1) Bid samples rejected or untested shall be returned to the supplier at his expense, if so indicated on GSA form 434, Sample Record Sheet. The others will be treated as Government property for utilization or disposal.

(2) Bid samples consumed or destroyed by tests will be disposed of as scrap unless the supplier has requested their return.

(3) Bid samples determined to be received late in accordance with FPR 1-2.303 shall be held until awards are made and returned to the offeror, freight collect, unless other disposition is requested or agreed to by the bidder.

2. Section 5A-2.402(b) is revised as follows:

§ 5A-2.402 Opening of bids.

. . . . .

(b) All bids shall be opened by the contracting officer or his designee responsible for the procurement. The designee shall be a fully qualified employee of the contracting office. However, upon authorization by the Head of the Service or Staff Office involved, and the Director of Public Services (AVS), bids may be opened by selected Business Service Center personnel. Normally, this authorization will be requested only when the geographic distance separating the Business Service Center where bids are to be delivered and the contracting office makes it impracticable for the contracting officer or his designee to be present to open bids.

. . . . .

§§ 5A-2.407-73 through §§ 5A.4077-77 [Deleted]

3. Sections 5A-2.407-73, 5A-2.407-74, 5A-2.407-75, 5A-2.407-76, and 5A-2.407-77 are deleted.

4. Section 5A-2.407-84 is amended as follows:

§ 5A-2.407-84 Notification of proposed substantial awards and awards involving congressional interest.

. . . . .

(d) *Notification procedure.* (1) The Director (or his equivalent) of the procurement activity (Central Office or regional office) shall be responsible for submitting directly to the Director of Congressional Affairs (AK) complete and factual data pertinent to any proposed award of the type described in (a), above.

(2) Regional offices (except Region 3) and the Office Supplies and Paper Products Division (FPO) (New York) shall prepare GSA form 2932 and transmit the notification directly to the Director of Congressional Affairs (AK) by facsimile machine except as shown in (4), below.

(i) Telephone numbers for transmittal of facsimile messages of the notifications are as follows (area code 202): 472-1217; 632-3626; 632-7934; 632-7944; and 632-7945.

(ii) Messages should be directed to the attention of AK, GS Building, Room 6114.

(3) Central Office (except FPO) and Region 3 procurement activities shall prepare GSA form 2932 and transmit the notification (original only) directly to the Director of Congressional Affairs (AK). The notification(s) shall be placed in a messenger envelope and addressed as follows: "Please Hand-Carry Attention: AK, GS Bldg. Room 6114".

(4) Notifications covering regional and FPO proposed awards which require Central Office concurrence or approval pursuant to the GSA Delegations of Authority Manual (ADM P 5450.39A) shall be submitted as part of the case file to the Central Office. The notification shall be transmitted to the Director of Congressional Affairs (AK) by the office rendering concurrence in the proposed award.

. . . . .

(e) *Release of awards.* (1) Unless notified to the contrary, commodity centers and regional and Central Office procurement activities may release awards of the type described in (d) (2) through (4), above, or information pertinent thereto, upon the expiration of 2 full workdays (48 hours) after the time and date of transmittal of the GSA form 2932 or the facsimile message to the Director of Congressional Affairs (AK).

(2) The procurement activities shall be responsible for submission of a copy of GSA form 2932, marked COPY, to the Value Management and Experimental Techniques Division (FCV) after release of the award. The notification copy shall indicate the date of award and include the contract number assigned.

(3) Preaward release inquiries from offerors shall be processed in accordance with § 5A-2.407-1(c).

(f) Proposed exigency or emergency awards and cases where the acceptance time in an offer is about to expire.

(1) The procurement activities shall transmit notifications as determined by their director (or his equivalent) directly to the Director of Congressional Affairs (AK) by telephone (566-1250), followed by a completed GSA form 2932 to confirm the oral notification.

(2) Release of notifications which require priority processing by the Director of Congressional Affairs (AK) shall be completed at the time and date specified by AK.

PART 5A-3—PROCUREMENT BY NEGOTIATION

Subpart 5A-3.2—Circumstances Permitting Negotiation

1. Section 5A-3.202(b) is revised as follows:

§ 5A-3.202 Public exigency.

. . . . .

(b) Military purchase requests citing an issue priority designator 01 through 06 inclusive, assigned in accordance with DOD Uniform Materiel Movement and Issue Priority System (UMMIPS) as prescribed by DOD Directive 4410.6, and civilian agency purchase requests citing a priority designator 03 or 06, prescribed by the FEDSTRIP Operating Guide, ch. 2-15, shall be considered as identifying a circumstance within the purview of § 1-3.202 and as constituting the required statement of justification to support the findings and determination to be made by the contracting officer. These issue priority designators are to be generated and provided only by the requisitioning activity to a requestor and cannot be generated by anyone else for the purpose of conforming or upgrading the priority designator to a requested delivery date. While circumstances may justify public exigency negotiation of requirements on a military purchase request citing an issue priority designator 07 through 15, or on a civilian executive agency purchase request citing an issue priority designator 08 or 15, the specific circumstances justifying use of this authority must be set forth in the required determination and findings.

. . . . .

2. Section 5A-3.203 is revised as follows:

§ 5A-3.203 Purchases not in excess of $10,000.

When determining whether the amount in a transaction does not exceed $10,000, the full purchase price is the controlling factor. Any prompt payment discount or trade-in value of an article to be offered in exchange is not to be deducted when making this determination.

Subpart 5A-3.4—Types of Contracts

Section 5A-3.408 is revised as follows:

§ 5A-3.408 Letter contract.

Letter contracts shall not be used unless it is determined that no other type of contract is suitable, and prior approval has been obtained from the head of the procuring activity, as defined in § 5A-1.206, to enter into such a contract. In addition, the requirements of § 1-3.408 are applicable to letter contracts.

Subpart 5A-3.12—Cost Accounting Standards

Section 5A-3.1210 is revised as follows:

§ 5A-3.1210 Cost Accounting Standards Board report.

(a) All FSS activities having procurement responsibility shall, within 60 days after the close of each calendar year, submit a report to the Assistant Commissioner for Procurement, Attn: FPP, in accordance with the requirements of § 1-3.1210. Negative reports are required.

(b) The Policy and Procedures Division (FPP) is responsible for consolidating this report within FSS and submitting it to the Office of Acquisition Policy, Federal Procurement Regulations Division, within 90 calendar days

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after the close of each calendar year for transmittal to CASB.

PART 5A–6—FOREIGN PURCHASES

The table of contents for Part 5A-6 is amended to add the following new entry:

Sec.
5A-6.104-51 Evaluating bids for stainless steel flatware (for other than the Department of Defense).

Subpart 5A-6.1—Buy American Act—Supply and Service Contracts

§ 5A-6.104-50 [Amended]

1. In § 5A-6.104-50(a), the first sentence is amended by deleting the words "P.L. 94-91" and substituting therefor "Public Law 95-81."

2. Section 5A-6.104-50(b) is amended by changing "Defense Supply Agency" to "Defense Logistics Agency (DLA)."

3. Section 5A-6.104-51 is added as follows:

§ 5A-6.104-51 Evaluating bids for stainless steel flatware (for other than the Department of Defense).

(a) *Appropriation Act restrictions.* Title V, section 506 of Pub. L. 95-81 provides the following:

Sec. 506. No part of any appropriation contained in this Act shall be available for the procurement of, or for the payment of, the salary of any person engaged in the procurement of stainless steel flatware not produced in the United States or its possessions, except to the extent that the Administrator of General Services or his designee shall determine that a satisfactory quality and sufficient quantity of stainless steel flatware produced in the United States or its possessions, cannot be procured as and when needed from sources in the United States and its possessions, or except in accordance with procedures provided by section 6-104.4(b) of Armed Services Procurement Regulation, dated January 1, 1969. This section shall be applicable to all solicitations for bids issued after its enactment.

(b) *Definition.* For purposes of this instruction, "stainless steel flatware" means stainless steel knives, forks, and spoons as listed in Federal Supply Class 7340.

(c) *Solicitation provision.* Except for solicitations issued pursuant to § 5A-72.307, all solicitations for stainless steel flatware shall include the following special provision:

BUY AMERICAN ACT—STAINLESS STEEL FLATWARE

Article 14 of Standard form 32, General Provisions, is amended by including the following at the end of that provision:

Congressional policy requires that GSA purchases of stainless steel flatware must be from domestic sources except in accordance with procedures prescribed by § 6-104.4(b) of Armed Services Procurement Regulation, dated January 1, 1969. Accordingly, bids under this solicitation offering domestic source end products normally will be evaluated against bids offering other end products by adding a factor of 50 percent to the latter, exclusive of import duties. Details of the evaluation procedure are set forth in § 5A-6.104-50 of the General Services Administration Procurement Regulations.

Each bid offering a foreign source end product must state below or on an attachment to the bid the amount of duty included in each bid price. Failure to furnish duty information will result in use of the entire item bid price (inclusive of any unspecified duty) when adding the "Buy American" differential.

Item No.	Unit	Amount of duty (in dollars and cents)

(End of provision)

(d) *Bid evaluation procedures.* The procedures set forth in § 5A-6.104-50 shall apply in the evaluation of bids for foreign source stainless steel flatware, except for purchases restricted to domestic source end products that are made pursuant to § 5A-72.307.

PART 5A–7 CONTRACT CLAUSES

The table of contents for Part 5A-7 is amended to add the following new entry:

Sec.
5A-7.103-61 Documentation and marking.

Subpart 5A-7.1 Fixed-Price Supply Contracts

1. Section 5A-7.102-4(c) is revised as follows:

§ 5A-7.102-4 Variation in quantity.

• • • • •

(c) When other than a 3 percent variation is to be specified, the following clause shall be used:

VARIATION IN QUANTITY (ENTER ITEM DESCRIPTION)

Article 4, Variation in Quantity, of GSA Form 1424, GSA Supplemental Provisions, is hereby deleted in its entirety and the following substituted: A variation in quantity, when caused by the conditions specified in Article 4 of Standard Form 32, will be accepted, provided that (1) such variation is not in excess of * percent of the quantity ordered, or (2) the variation results in a full pallet quantity. If one-half pallet or less, ship to the next low pallet quantity. If over one-half pallet, ship to the next higher pallet quantity.

(End of clause)

*Enter appropriate percentage.

• • • • •

§ 5A-7.102-75 [Amended]

2. Paragraph (c) of the clause in § 5A-7.102-75 is amended by deleting the dollar amounts "$11" and "$6" and substituting therefor "$16" and "$10", respectively.

3. Section 5A-7.103-61 is added as follows:

§ 5A-7.103-61 Documentation and marking.

A clause substantially as follows shall be used in solicitations where bid prices are requested for other than the unit of issue prescribed by the item purchase description.

SPECIAL MARKING

(a) *Marking.* Shipping containers shall be marked with the unit of purchase and the unit of issue as prescribed by Federal Standard No. 123.

(b) *Invoices.* The Contractor shall show on the invoice the unit of purchase and the unit of issue, in parentheses, as indicated in the schedule of items.

(End of clause)

PART 5A–16 PROCUREMENT FORMS

The table of contents for part 5A-16 is amended to add the following new entry:

Sec.
5A-16.950-434 GSA Form 434, Sample Record Sheet.

Subpart 5A-16.9 Illustrations of Forms

1. Section 5A-16.950-434 is added to illustrate GSA Form 434, Sample Record Sheet.

§ 5A-16.950-1790 [Amended]

2. Section 5A-16.950-1790 is revised to illustrate the June 1978 edition of GSA Form 1790, Subcontracting Programs.

§ 5A-16.950-2166 [Amended]

3. Section 5A-16.950-2166 is revised to illustrate the December 1977 edition of GSA Form 2166, Service Contract Act of 1965 (As Amended).

PART 5A–19 TRANSPORTATION

The table of contents for Part 5A-19 is amended to add the following new entry:

Sec.
5A-19.181 Distribution of transportation contracts.

Subpart 5A-19.1 General

Section 5A-19.181 is added as follows:

§ 5A-19.181 Distribution of transportation contracts.

Specific instructions for distribution of transportation contracts are contained in § 5A-76.201-6.

PART 5A–72 PROCUREMENT OF STOCK ITEMS

The table of contents for part 5A-72 is amended to add the following new entry:

Sec.
5A-72.307 Procurement of stainless steel flatware for Department of Defense.

Subpart 5A-72.2—Requirements Contracts For Stock Replenishment

1. Section 5A-72.202 is amended by revising paragraph (d) and adding paragraph (g), as follows:

§ 5A-72.202 Specifications.

• • • • •

(d) Directors of procuring activities may authorize exceptions from the requirement for use of item purchase descriptions when the purchase value is $5,000 or less, provided the product to be purchased is known to meet the applicable specifications or, if not known, is a good quality off-the-shelf product.

• • • • •

(g) Every effort shall be made to obtain bid prices based on the unit of issue as shown on the item purchase description (IPD). When bid prices are requested for other than the unit of issue available from stock, the contracting officer shall indicate the unit of purchase and the unit of issue, in parentheses, immediately below the unit of purchase on solicitations and resultant contractual documents as shown in the following example. Contract provisions shall require that the contractor show the unit of purchase and the unit of issue on all invoices and that shipping containers be marked with the unit of purchase and unit of issue, as required by Federal Standard No. 123 (see § 5A-7.103-61).

Example:

Item No.	Supplies/services	Quantity	Unit	Unit Price
1	4020-00-174-1229 Twine, cotton, wrapping (½ lb balls).	5,000	Pound (ba)	$
2	4020-00-782-5573 Twine, cotton, wrapping (5-6 ½ lb cones).	60,000	Pound (ce.)	$

§ 5A-72.218 [Amended]

2. Section 5A-72.218 is amended by deleting and reserving paragraphs (c) and (d).

Subpart 5A-72.3—Special Instructions Regarding Selected Commodities

Section 5A-72.307 is added as follows:

§ 5A-72.307 Procurement of stainless steel flatware for Department of Defense.

(a) Since the following stock items are issued almost exclusively to DOD, only domestic source end products of these stainless steel flatware items shall be procured for the following national stock numbers (NSN's). Also, nonstock items of stainless steel flatware purchased for DOD shall be domestic source end products.

7340-00-060-6057—7340-00-241-8171.
7340-00-205-3340—7340-00-559-8357.
7340-00-205-3341—7340-00-688-1055.
7340-00-241-8169—7340-00-721-6316.
7340-00-241-8170—7340-00-721-6971.

(b) The following provision shall be included in solicitations (both requirements type and definite quantity) for the above items:

OFFERS MUST BE FOR DOMETIC SOURCE END PRODUCTS

In accordance with section 823 of Pub. L. 95-111, award will be made for domestic source end products only. Bids offering foreign source end products will be rejected as nonresponsive.

(End of provision)

(c) Supply support for the above items will continue to be through the GSA supply distribution facilities. In addition, when requirements contracts are utilized, the scope of contract provisions set forth in § 5A-7.103-82 shall be modified to indicate "the normal supply requirements of the Department of Defense" in lieu of "the General Services Administration normal supply requirements."

(d) The restriction prescribed for the procurement of stainless steel flatware items for DOD does not by itself justify negotiation. Such procurements shall be made in accordance with the rules for formal advertising unless one of the circumstances permitting negotiation exists.

PART 5A–73—FEDERAL SUPPLY SCHEDULE PROGRAM

Subpart 5A-73.2 Preparation and Issuance of Solicitations

§ 5A-73.217-4 [Amended]

The parenthetical phrase in paragraph (a)(3) of the "Catalogs and/or Pricelists" clause in § 5A-73.217-4(a) is revised to read "(See par. 1 under 'Certifications,' page 2 of SF 33)."

PART 5A–76—EXHIBITS

Subpart 5A-76.2—Distribution of Documents

§ 5A-76.201-7 [Amended]

Section 5A-76.201-7 is revised to update instructions regarding the distribution of purchase orders applicable to stock replenishment contracts.

Subpart 5A-76.3—Miscellaneous Exhibits

§ 5A-76.320 [Amended]

Section 5A-76.320 is amended to add a purchase order code applicable to the procurement of vehicles for GSA motor pools.

Subpart 5A-76.4—Procurement Assignments

§§ 5A-76.402, 5A-76.403, 5A-76.404, and 5A-76.405 [Amended]

Sections 5A-76.402, 5A-76.403, 5A-76.404, and 5A-76.405 are revised to reflect current procurement assignments.

NOTE.—Copies of the new and revised forms illustrated in Part 5A-16 and copies of the revised exhibits shown in Part 5A-76 are filed with the original document.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).)

Dated: September 29, 1978.

ROBERT P. GRAHAM,
Commissioner, Federal Supply Service.

[FR Doc. 78-31075 Filed 11-2-78; 8:45 am]

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Title 41—Public Contract and Property Management

CHAPTER 60—OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS, EQUAL EMPLOYMENT OPPORTUNITY, DEPARTMENT OF LABOR

COMPLIANCE RESPONSIBILITY FOR EQUAL EMPLOYMENT OPPORTUNITY

Final Rule; Correction

AGENCY: Office of Federal Contract Compliance Programs, Department of Labor.

ACTION: Final rule, correction.

SUMMARY: On October 20, 1978, the Department of Labor published a final rule (43 FR 49240) which amended 41 CFR chapter 60 to reflect the consolidated functions of the Office of Federal Contract Compliance Programs authorized under Executive Order 12086. This notice makes corrections to the regulations published on October 20, 1978.

EFFECTIVE DATE: November 3, 1978.

FOR FURTHER INFORMATION CONTACT:

Edward E. Mitchell, Director, Division of Program Policy, Office of Federal Contract Compliance Programs, Room C-3324, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210, telephone 202-523-9426.

SUPPLEMENTARY INFORMATION: On October 5, 1978, President Carter signed Executive Order 12086 which consolidates the contract compliance program under Executive Order 11246, as amended, into the Department of Labor. On October 20, 1978, the Department of Labor published in the FEDERAL REGISTER (43 FR 49240) amendments to 41 CFR chapter 60 to reflect the consolidation. The regulations published on October 20, 1978, were not substantive in nature. Rather, they were designed simply to eliminate confusion which could result if the public was not informed of new procedures and places resulting from the consolidation. Upon review of the October 20, 1978, publication, the Department of Labor has discovered certain typographical errors which must be corrected and additional changes which should be made to the regulations in order to reflect the consolidation. Those corrections and changes are contained in this correction notice.

RAY MARSHALL,
Secretary of Labor.
CHARLES E. PUGH,
Acting Deputy Assistant Secretary, Employment Standards Administration.
RICHARD J. DEVINE,
Deputy Director, OFCCP.

OCTOBER 31, 1978.

PART 60-1—OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS

§ 60-1.5 [Amended]

1. In § 60-1.5(a)(2) the ninth line is corrected by adding ")" between the phrase "ments" and the comma.

§ 60-1.8 [Amended]

2. In § 60-1.8(b) on the fourth line "of" is corrected to "or".

§ 60-1.20 [Amended]

3. a. In § 60-1.20(b) on the fourteenth line "of the commitment" is inserted after "approval" and before the comma.

b. In § 60-1.20(d) the seventeenth and eighteenth lines are corrected by deleting the words "by the compliance agency".

§ 60-1.21 [Amended]

4. In § 60-1.21 the fourth line is corrected by deleting the words "agency or the".

§ 60-1.26 [Amended]

5. In § 60-1.26(a)(2) on the nineteenth and twentieth lines "compliance agency" is corrected to "OFCCP".

§ 60-1.40 [Amended]

6. In § 60-1.40(a) on the thirteenth line "and each prime" is deleted and "shall develop a written affirmative action compliance program for each of its establishments. Each" is inserted after the comma and before "contractor".

PART 60-2—AFFIRMATIVE ACTION PROGRAMS

§ 60-2.2 [Amended]

7. a. In § 60-2.2(a) on the fourth line "his" is corrected to "its", and on the thirteenth line the word "equal" is inserted immediately after the word "the".

b. In § 60-2.2(b) on the ninth line "his" is corrected to "its", on the seventeenth, twenty-third, twenty-eighth, and thirty-second lines the hyphen between "contractor" and "bidder" is corrected to "/", on the eighteenth line the comma after "contractor" is corrected to "and", on the nineteenth line the words "and the compliance agency" are deleted, on the thirty-ninth line "§ 601.26" is corrected to "§ 60-1.26", and on the fifty-second line the word "his" is corrected to "its".

c. In § 60-2.2(b) on the fifty-fifth line the period is corrected to a colon and the following is inserted after the colon: "*Provided further,* That a contractor/bidder may not be declared nonresponsible more than twice due to past noncompliance with the equal opportunity clause at a particular establishment or facility without receiving prior notice and an opportunity for a hearing.".

d. In § 60-2.2(c)(1)(i) on the second line "order" is corrected to "Order".

e. In § 60-2.2(c)(1)(iv) on the first line "dated" is corrected to "date".

§ 60-2.10 [Amended]

8. In § 60-2.10 on the fourth line "himself" is corrected to "itself", and on the twenty-first line "has" is corrected to "its".

§ 60-2.11 [Amended]

9. In § 60-2.11 on the third line "order programs" is corrected to "Order program", on the ninth line the semicolon is corrected to a colon, on the ninth line "officials" is corrected to "Officials", and on the twenty-second line "his" is corrected to "its".

§ 60-2.12 [Amended]

10. a. In § 60-2.12(a) on the fourth, sixth, seventh, tenth and eleventh lines "his" is corrected to "its".

b. In § 60-2.12(k) on the second and fifth lines "his" is corrected to "its".

c. In § 60-2.12(l) on the second line the words "the compliance agency or" are deleted.

d. In § 60-2.12(n) on the fifth line the word "upon" is added after the phrase "grams,".

§ 60-2.14 [Amended]

11. In § 60-2.14 on the third line "he" is corrected to "it", and on the third, seventh, eighth, and ninth lines "his" is corrected to "its".

§ 60-2.20 [Amended]

12. In § 60-2.20(a) on the third line "officers' " is corrected to "officer's".

§ 60-2.21 [Amended]

13. a. In § 60-2.21(a)(11) on the second line "contractors" is corrected to "contractor's" and on the fourth line "his" is corrected to "its".

b. In § 60-22.21(b) on the second line "his" is corrected to "its".

c. In § 60-2.21(b)(4) on the fourth line "his" is corrected to "its".

§ 60-2.22 [Amended]

14. a. In § 60-2.22(a) on the fifth line "alinement" is corrected to "alignment" and on the ninth line "executive" is corrected to "execute".

b. In § 60-2.22(b)(7) on the second line "area" is corrected to "areas".

c. In § 60-2.22(b)(7)(ii) on the third line "his" is corrected to "its".

§ 60-2.24 [Amended]

15. a. In § 60-2.24(e)(1) on the thirty-second line "individuas" is corrected to "individuals".

b. In § 60-2.24(e)(7)(ii) on the third line "females" is corrected to "female".

§ 60-2.26 [Amended]

16. In § 60-2.26(f) on the sixth line "minority" is corrected to "minorities".

§ 60-2.30 [Amended]

17. In § 60-2.30 on the third line "he" is corrected to "it" and on the third line "his" is corrected to "its".

PART 60-4—CONSTRUCTION CONTRACTORS—AFFIRMATIVE ACTION REQUIREMENTS

§ 60-4.1 [Amended]

18. In § 60-4.1 on the twelfth line "established" is corrected to "establishes".

§ 60-4.2 [Amended]

19. In § 60-4.2(a) on the nineteenth line a comma is inserted after the word "loan".

§ 60-4.3 [Amended]

20. a. In § 60-4.3(a) on the twenty-seventh line "order" is corrected to "Order".

§ 60-4.3 [Amended]

b. In § 60-4.3 in the Standard Federal Equal Employment Opportunity Construction Contract Specifications in paragraph 3 on the fourth line "are" is corrected to "area".

§ 60-4.5 [Amended]

21. In § 60-4.5(a)(6) on the third line "labor a" is corrected to "a labor".

§ 60-4.6 [Amended]

22. In § 60-4.6 on the first line "director" is corrected to "Director".

§ 60-4.8 [Amended]

23. In § 60-4.8 on the eighth line "director" is corrected to "Director".

PART 60-30—RULES OF PRACTICE FOR ADMINISTRATIVE PROCEEDINGS TO ENFORCE EQUAL OPPORTUNITY UNDER EXECUTIVE ORDER 11246

§ 60-30.2 [Amended]

24. In § 60-30.2 in the heading a comma is inserted between "waiver" and "modification".

§ 60-30.1 [Amended]

25. a. In § 60-30.11(c) on the eighth line "shall be permitted" is inserted after "party".

b. In § 60-30.11(e)(3) on the fourth line "hearing examiner" is corrected to "administrative law judge" and on the eleventh line "subpena" is corrected to "subpoena".

§ 60-30.13 [Amended]

26. a. In § 60-30.13(c)(1) on the third and fourth lines "or that agreement cannot be reached" is deleted.

b. In § 60-30.13(c)(2) on the second line "agreement cannot be reached." is added after "that".

§ 60-30.14 [Amended]

27. In § 60-30.14 on the ninth line "paper" is corrected to "papers".

§ 60-30.15 [Amended]

28. a. In § 60-30.15 on the second and third lines "to the compliance agency or" is deleted.

b. In § 60-30.15(a) on the first line "confernces" is corrected to "conferences".

c. In § 60-30.15(m) on the first line "subpenas" is corrected to "subpoenas".

§ 60-30.17 [Amended]

29. In § 60-30.17(a) on the seventh line "subpena" is corrected to "subpoena".

§ 60-30.19 [Amended]

30. In § 60-30.19(b) on the sixth and seventh lines "compliance agency or the" is deleted.

§ 60-30.23 [Amended]

31. In § 60-30.23(c) on the second line "proceedings" is corrected to "proceeding".

§ 60-30.24 [Amended]

32. a. In § 60-30.24(a)(3) on the third line "paragraph" is corrected to "section".

b. In § 60-30.24(b)(1) on the nineteenth line "paragraph" is corrected to "section".

PART 60-40—EXAMINATION AND COPYING OF OFCCP DOCUMENTS

33. The "Authority" section is corrected to read as follows: "AUTHORITY: Executive Order 11246, as amended by Executive Order 11375, and as amended by Executive Order 12086; 5 U.S.C. 552.".

§ 60-40.1 [Amended]

34. In § 60-40.1 on the ninth line "labor" is corrected to "Labor".

§ 60-40.5 [Amended]

35. In § 60-40.5 on the first line "copy" is corrected to "copying".

PART 60-50—GUIDELINES ON DISCRIMINATION BECAUSE OF RELIGION OR NATIONAL ORIGIN

36. In the "Authority" section the second line is corrected by deleting the period after 32 F.R. 14303 and adding ", as amended by E.O. 12086.".

37. The "Source" section preceding section 60-50.1 is deleted.

§ 60-50.1 [Amended]

38. In § 60-50.1 the source material at the end of the section is deleted.

PART 60-60—CONTRACTOR EVALUATION PROCEDURES FOR CONTRACTORS FOR SUPPLIES AND SERVICES

39. In the heading for Part 60-60 "60-60.9 Attachments." is deleted.

§ 60-60.2 [Amended]

40. In § 60-60.2 on the twelfth line "OFCC" is corrected to "OFCCP".

§ 60-60.3 [Amended]

41. In § 60-60.3 on the seventeenth through twentieth lines "(The standard compliance review report will be published on or before the effective date of this part.)" is deleted.

§ 60-60.4 [Amended]

42. In § 60-60.4(d) on the first line "in-" is corrected to "In- ", on the thirteenth line "contractors" is corrected to "contractor's", and on the twentieth and twenty-first lines "OFCC" is corrected to "OFCCP".

§ 60-60.7 [Amended]

43. In § 60-60.7(a) on the third line "OFCC" is corrected to "OFCCP".

§ 60-60.9 [Deleted]

44. All of § 60-60.9 is deleted.

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PART 60-250—AFFIRMATIVE ACTION OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA

45. In the heading for Part 60-250 a period is inserted after the word "Definitions".

46. In the "Authority" section of the heading for Part 60-250 on the fourth line the comma after "U.S.C. 2012)" is corrected to a period and "as amended by E.O. 12086." is deleted.

§ 60-250.2 [Amended]

47. In § 60-250.2:

a. In the definition of "Government contract" on the eighteenth line a hyphen is inserted between "ally" and "assisted".

b. In the definition of "Person" on the second line the comma after "partnership" is deleted.

c. In the definition of "Prime contractor" on the fifth line "act" is corrected to "Act".

d. In the definition of "Rules, regulations, and relevant orders of the Secretary of Labor" on the seventh line "act" is corrected to "Act".

e. In the definition of "Subcontractor" on the fifth line "act" is corrected to "Act".

f. In the definition of "Veteran of the Vietnam era" on the fifteenth and seventeenth lines "act" is corrected to "Act".

§ 60-250.3 [Amended]

48. a. In § 60-250.3(a)(2) on the fifth line the hyphen between "open" and "end" is deleted.

b. In § 60-250.3(a)(5) on the thirteenth line "act" is corrected to "Act".

c. In § 60-250.3(b)(1) on the nineteenth line "act" is corrected to "Act".

d. In § 60-250.3(b)(2) on the eighth line "it" is corrected to "its".

e. In § 60-250.3(c) on the twelfth line "act" is corrected to "Act".

§ 60-250.4 [Amended]

49. a. In § 60-250.4(b) on the eleventh line "corporated" is corrected to "corporate".

b. In § 60-250.4(i) on the fourth line "act" is corrected to "Act".

c. In § 60-250.4(j) on the sixth line "act" is corrected to "Act".

d. In § 60-250.4(l) on the tenth line "Era" is corrected to "era."

§ 60-250.5 [Amended]

50. In § 60-250.5(d) on the twenty-seventh line "act" is corrected to "Act".

§ 60-250.6 [Amended]

51. a. In § 60-250.6(c)(2) on the sixth line "tran-" is corrected to "train-".

b. In § 60-250.6(c)(3)(iii) on the second line "act" is corrected to "Act".

c. In § 60-250.6(f)(4)(i) on the eighth line "(ii)" begins a new paragraph.

d. In § 60-250.6(f)(5) on the thirteenth line "providng" is corrected to "providing".

e. In § 60-250.6(h)(3)(v) on the first line "Insure" is corrected to "Ensure".

§ 60-250.25 [Amended]

52. In § 60-250.25 on the seventh line "Era" is added between "Vietnam" and "Veteran's", and "Readadjust-" is corrected to "Readjust-".

§ 60-250.26 [Amended]

53. In § 60-250.26(g)(3) on the sixth line "opportuinty" is corrected to "opportunity".

§ 60-250.29 [Amended]

54. a. In § 60-250.29(b)(1) on the third line "Vieterans' " is corrected to "Vietnam", and on the third and fourth lines "Veternas' " is corrected to "Veterans' ".

b. In § 60-250.29(b)(2) on the sixth line "Equal" is corrected to "equal".

PART 60-741—AFFIRMATIVE ACTION OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS FOR HANDICAPPED WORKERS

55. In the heading of Part 60-741 a period is added after "Definitions".

56. In the "Authority" section of the heading for Part 60-741 on the first line the period after the word "Authority" is corrected to a colon, and on the fourth and fifth lines a period is inserted after "11758" and "as amended by E.O. 12086" is deleted.

§ 60-741.3 [Amended]

57. In § 60-741.3(a)(2) on the fifth line the hyphen between "open" and "end" is deleted.

§ 60-741.6 [Amended]

58. a. In § 60-741.6(f) on the eighth line "based" is corrected to "Based".

b. In § 60-741.6(h)(3)(iv) on the fourth line a comma is added after "educational".

§ 60-741.7 [Amended]

59. In § 60-741.7(d) on the sixth line "guides" is corrected to "Guides".

§ 60-741.26 [Amended]

60. a. In § 60-741.26(b) on the second line "if" is corrected to "is".

b. In § 60-741.26(f) on the first line a period is inserted after "Reserved".

§ 60-741.54 [Amended]

61. a. In § 60-741.54, Appendix C, paragraph (1), on the sixth line "by the agency," is deleted.

b. In § 60-741.54, Appendix C, paragraph 3, on the eighth line "persons" is corrected to "person(s)".

[FR Doc. 78-31179 Filed 11-2-78; 8:45 am]

[7035-01-M]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Service Order No. 1345]

PART 1033—CAR SERVICE

Appointment of Embargo Agents

AGENCY: Interstate Commerce Commission.

ACTION: Appointment of Embargo Agents (Service Order No. 1345).

SUMMARY: Service Order No. 1345 appoints Joel E. Burns and Robert S. Turkington as agents of the Commission with authority to issue embargoes against railroad freight traffic movements when car accumulations, congestion, or other interference of a temporary nature require such action.

DATES: Effective 11:59 p.m., October 31, 1978. Expires 11:59 p.m., October 31, 1979.

FOR FURTHER INFORMATION CONTACT:

Charles C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, Telephone 202-275-7840, Telex 89-2742.

SUPPLEMENTARY INFORMATION: The Order is printed in full below.

Decided October 31, 1978.

Whenever any carrier by railroad, subject to Part I. of the Interstate Commerce Act, is unable to control freight traffic movements, because of car accumulations, threatened congestions, or other interferences of a temporary nature compel restrictions against car movements, car service will be promoted in the interest of the public and the commerce of the people by the appointment of agents with authority to direct the placement of embargoes; that notice and public procedure are impracticable and contrary to the public interest, and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

§ 1033.1345 Car Service Order No. 1345.

(a) *Appointment of Embargo Agents.* Joel E. Burns, Director, and Robert S. Turkington, Assistant Director, Bureau of Operations, Interstate Commerce Commission, Washington, D.C., are hereby appointed Agents of the Interstate Commerce Commission and vested with authority to direct the placement of embargoes by railroads at such points where freight cars are being unduly delayed due to accumulations, congestions, or emergency situations.

(b) Embargoes placed under this order shall be at the direction of the Agents of the Commission and shall be published through the Association of American Railroads, Car Service Division, and in conformity with Rule 16 of the "Code of Car Hire Rules and Interpretations—Freight" of the Association of American Railroads and of Circular CSD-87, Sixth Revision, both published in the Official Railway Equipment Register, ICC-R.E.R. No. 409, issued by W. J. Trezise, or successive issues or reissues thereof.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign traffic.

(d) *Rules, Regulations, and Practices Suspended.* The operation of all rules, regulations, and practices insofar as they conflict with the provisions of this order, is hereby suspended.

(e) *Effective date.* This order shall become effective at 11:59 p.m., October 31, 1978.

(f) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., October 31, 1979, unless otherwise modified, changed or suspended by order of this Commission.

(49 U.S.C. 1(10-17).)

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the FEDERAL REGISTER.

By the Commission (Chairman O'Neal, Commissioners Brown, Stafford, Gresham and Clapp; Vice Chairman Christian did not participate).

H. G. HOMME, JR.,
Acting Secretary.

[FR Doc. 31178 Filed 11-2-78; 8:45 am]

[7035-01-M]

[Service Order No. 1346]

PART 1033—CAR SERVICE

Mercersburg Railway Authorized To Operate Over USRA No. 206, Former Mercersburg Secondary Track of Consolidated Rail Corp.

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order (Service Order No. 1346).

SUMMARY: The Mercersburg Railway is authorized by Service Order No. 1346 to operate USRA Line No. 206 between Marion, Pa., and Mercersburg, Pa. The operation of this line by the Mercersburg Railway has been authorized by the Commonwealth of Pennsylvania, which is replacing Consolidated Rail Corp. as the designated operator.

DATES: Effective 12:01 a.m., November 1, 1978. Expires 11:59 p.m., January 31, 1979.

FOR FURTHER INFORMATION CONTACT:

Charles C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, Telephone 202-275-7840, Telex 89-2742.

SUPPLEMENTARY INFORMATION: The Order is printed in full below.

Decided October 31, 1978.

Railroad service on the former Mercersburg Secondary Track of Consolidated Rail Corp. (CR) identified in the Final System Plan of the Reorganization of the Northeastern Railroads as USRA Line No. 206 between former CR milepost 59.1 at Marion (South Penn Jct.), Pa., and former CR milepost 72.7 at Mercersburg, Pa., will be discontinued. The operation of this line by the Mercersburg Railway has been authorized by the Commonwealth of Pennsylvania which is replacing CR as the designated operator. An application seeking authority to operate as the designated operator of this line will be filed by the Mercersburg Railway. If service over this line is not continued, numerous shippers on the line will be left without essential rail service.

It is the opinion of the Commission that an emergency exists requiring the operation by Mercersburg Railway over tracks formerly operated by CR in the interest of the public; that notice and public procedure are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

§ 1033.1346 Car Service Order No. 1346.

(a) *Mercersburg Railway authorized to operate Over USRA Line No. 206, former Mercersburg Secondary Track of Consolidated Rail Corp.* The Mercersburg Railway is authorized to operate over tracks of USRA Line No. 206, formerly known as Mercersburg Secondary Track of the Consolidated Rail Corp. (CR) between former CR milepost 59.1 at Marion (South Penn Jct.), Pa., and former CR milepost 72.7 at Mercersburg, Pa., a distance of approximately 13.6 miles.

(b) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign traffic.

(c) Nothing herein shall be considered as a prejudgment of the application of the Mercersburg Railway seeking authority to operate over these tracks.

(d) *Rates applicable.* Inasmuch as this operation by the Mercersburg Railway over tracks previously operated by the CR is deemed to be due to carrier's disability, the rates applicable to traffic moved over these lines shall be the rates applicable to traffic routed to, from, or via these lines which were formerly in effect on such traffic when routed via CR, until tariffs naming rates and routes specifically applicable via the Mercersburg Railway become effective.

(e) In transporting traffic over these lines, the Mercersburg Railway and all other common carriers involved shall proceed even though no contracts, agreements, or arrangements now exists between them with reference to the divisions of the rates of transportation applicable to that traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by an between the carriers; or upon failure of the carriers to so agree, the divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 12:01 a.m., November 1, 1978.

(g) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., January 31, 1979, unless otherwise modified, changed or suspended by order of this Commission.

(49 U.S.C. 1(10-17).)

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washing-

ton, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-31177 Filed 11-2-78; 8:45 am]

[7035-01-M]

[Service Order No. 1344]

PART 1034—ROUTING OF TRAFFIC

Rerouting of Traffic; Appointment of Agents

AGENCY: Interstate Commerce Commission.

ACTION: Appointment of Rerouting Agents (Service Order No. 1344).

SUMMARY: Service Order No. 1344 appoints Joel E. Burns, and Robert S. Turkington as agents of the Commission with authority to issue orders authorizing railroads to reroute traffic whenever a railroad is unable to operate over its normal routes.

DATES: Effective 11:59 p.m. October 31, 1978. Expires 11:59 p.m., October 31, 1979.

FOR FURTHER INFORMATION CONTACT:

Charles C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, telephone 202-275-7840, Telex 89-2742.

SUPPLEMENTARY INFORMATION: The Order is printed in full below.

Decided: October 30, 1978.

Whenever any carrier by railroad subject to Part I of the Interstate Commerce Act, is, for any reason, unable to transport traffic offered, car service will be promoted in the interest of the public and the commerce of the people by the appointment of agents with authority to reroute and divert such traffic; that notice and public procedure are impracticable and contrary to the public interest, and that good cause exists for making this order effective upon less than 30 days' notice.

It is ordered,

§ 1034.1344 Car Service Order No. 1344.

(a) *Rerouting of traffic—appointment of agents.* Joel E. Burns, Director, and Robert S. Turkington, Assistant Director, Bureau of Operations, Interstate Commerce Commission, Washington, D.C., are hereby appointed Agents of the Interstate Commerce Commission and vested with authority to authorized diversion and rerouting of loaded and empty freight cars from and to any point in the United States whenever, in their opinion, an emergency exists whereby any railroad is unable to move traffic currently over its lines.

(b) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign commerce.

(c) *Effective date.* This order shall become effective at 11:59 p.m., October 31, 1978.

(d) *Expiration date.* This order shall expire at 11:59 p.m., October 31, 1979, unless otherwise modified, changed, or suspended by order of this Commission.

(49 U.S.C 1(10-17).)

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission (Chairman O'Neal, Commissioners Brown, Stafford, Gresham and Clapp; Vice Chairman Christian did not participate).

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-31176 Filed 11-2-78; 8:45 am]

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

[3410-02-M]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 981]

HANDLING OF ALMONDS GROWN IN CALIFORNIA

Administrative Rules and Regualtions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would reduce the weight obligation of almond material that handlers—those regulated by the marketing order for California almonds—must deliver to nonhuman consumption outlets for quality control. This rule applies only to the 1978-79 crop year, and is intended to augment the very short existing supplies of California almonds.

DATES: Written comments to this proposal must be received by November 13, 1978.

ADDRESSES: Written comments should be submitted in duplicate to the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250. All written submissions will be available for public inspection at the office of the Hearing Clerk during business hours.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: Notice is given to amend Subpart—Administrative Rules and Regulations (7 CFR 981.441-981.474), by revising § 981.442. The subpart is issued under the marketing agreement, as amended, and Order No. 981, as amended (7 CFR 981), regulating the handling of almonds grown in California. The marketing agreement and order are collectively referred to as the "order". The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action is based on a recommendation of the Almond Board of California.

Section 981.42 provides for each handler to cause to be determined, through the inspection agency, and at the handler's expense, the percent of inedible kernels in each variety of almonds received by him, and report this determination to the Board. The quantity of inedible kerenels in each variety in excess of 2 percent of the kernel weight received, constitutes a weight obligation to be accumulated in the course of processing and shall be delivered to the Board, or Board accepted crushers, feed manufacturers, or feeders. Section 981.42 also authorizes the Board, with the approval of the Secretary, to change this percentage for any crop year, and to establish rules and regulations necessary and incidental to the administration of this provision, including, among other things, that the Board for good cause may waive portions of obligations for those handlers not generating inedible material from such sources as blanching or manufacturing.

Section 981.442 specifies the procedures for implementing § 981.42. Section 981.442(a)(4) currently provides that the quantity of inedible kernels in each variety in excess of 1½ percent of the kernel weight received, constitutes a handler's weight obligation to be delivered to the Board, or Board accepted crushers, feed manufacturers, or feeders. The proposal is to revise § 981.442(a)(4) for the 1978-79 crop year so that the quantity of inedible kernels in each variety in excess of 3 percent, instead of the current 1½ percent, would constitute a handler's weight obligation.

In its October 13, 1978, meeting, the Almond Board of California said that the change was needed primarily to allow more almonds to be shipped to the trade. The Board believes the 1978 almond crop will be less than the previous forecast of 205,000,000 pounds (kernel weight basis). When compared with last year's crop of 313,000,000 pounds, the current estimate of 1978 production represents a severe shortage of almonds. The Board also noted that with a tolerance of 3 percent there would be no significant reduction in the quality of almonds offered to the public as a result of its proposed change.

Almost all 1978 crop almonds have been received and are currently being processed, and handlers need to know as soon as possible what the disposition obligation tolerance will be for this crop year. Therefore, only a period of 10 days after publication in the FEDERAL REGISTER will be given for interested persons to comment.

The proposal is to revise § 981.442(a)(4) to read as follows:

§ 981.442 Quality control.

* * * * *

(4) *Disposition obligation.* The weight of inedible kernels in excess of 1½ percent of the kernel weight reported to the Board of any variety received by a handler shall constitute his disposition obligation, except that for the 1978-79 crop year ending June 30, 1979, this percentage shall be 3 percent. If a variety other than Peerless is used as bleaching stock, the weight so used may be reported to the Board and the disposition obligation for that variety reduced proportionately.

* * * * *

Dated: October 31, 1978.

CHARLES R. BRADER,
Deputy Director,
Fruit and Vegetable Division.

[FR Doc. 78-31187 Filed 11-2-78; 8:45 am]

[3410-02-M]

[7 CFR Part 1099]

MILK IN THE PADUCAH, KY., MARKETING AREA

Proposed Suspension of o Certain Provision of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to suspend for November 1978 through March 1979, an order provision that limits the quantity of producer milk that may be diverted to a plant for manufacturing uses to 15 percent of a handler's receipts at milk bottling plants. The proposed suspension would result in a 25-percent limit on such diversions during those months. The action was requested by a cooperative association to assure the efficient disposition of milk that is not needed for fluid use, and to maintain pool status for dairy farmers regularly associated with the Paducah market.

DATE: Comments are due on or before November 9, 1978.

ADDRESS: Comments (four copies) should be filed with the Hearing

Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT:

Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-4829.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), the suspension of the following provision of the order regulating the handling of milk in the Paducah, Ky., marketing area is being considered for the period November 1978 through March 1979:

In § 1099.13(c) (2) and (3), the words "in any of the months of April through August and 15 percent in other months."

All persons who want to send written data, views, or arguments about the proposed suspension should send four copies of them to the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, on or before November 9, 1978.

The period for filing comments is limited because a longer period would not provide the time needed to complete the required procedures and include November 1978 in the suspension period.

The documents that are sent will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

STATEMENT OF CONSIDERATION

The proposed suspension would make inoperative for the period November 1978 through March 1979, the provisions that limit diversions of milk to nonpool plants to 15 percent of the milk physically received at pool plants. A 25-percent limit that is applicable during the months of April through August would apply during the suspension period. Dairymen, Inc., requested that the 15 percent limit on diversions to nonpool plants during September through March be permanently suspended or terminated effective November 1, 1978, or that a hearing be called to amend the order. However, this proposed suspension is limited to the months of November 1978 through March 1979.

Dairymen, Inc., indicates that under current marketing conditions the 15-percent limitation on diversions to nonpool plants does not facilitate the economic disposition of reserve milk supplies. The cooperative states that the proposed action would retain a 25-percent limit on such diversions, and that such limit would prevent the association of additional milk supplies with the market.

The cooperative points out that there are only two distributing plants fully regulated under the Paducah order, and that they process mostly Class I milk. According to the cooperative, the volumes of milk required by these plants vary widely on a day-to-day basis, which in turn requires a relatively large reserve supply of milk. Dairymen, Inc., maintains that the diversion of milk from farms to nonpool plants is the most efficient means of handling the reserve supplies when not needed by the distributing plants. The cooperative claims that the present 15-percent limit on such diversions during November through March does not facilitate the efficient disposition of reserve supplies of milk that are associated with the market. Accordingly, Dairymen, Inc., has to receive some milk at a pool plant, and then reload and ship it to a nonpool plant to maintain the benefits of pooling for some of its producers who have long been associated with the Paducah order. The cooperative indicates that such handling of the milk is costly and represents an inefficient method of maintaining pool status for the producers involved.

Signed at Washington D.C., on October 31, 1978.

WILLIAM T. MANLEY,
Deputy Administrator,
Marketing Program Operations.

[FR Doc. 78-31174 Filed 11-2-78; 8:45 am]

[3410-05-M]

Commodity Credit Corporation

[7 CFR Part 1496]

PROCUREMENT AND SHIPMENT OF PROCESSED AGRICULTURAL COMMODITIES FOR DONATION UNDER TITLE II, PUB. L. 480

AGENCY: Commodity Credit Corporation.

ACTION: Proposed rule.

SUMMARY: This notice is to inform the public that the Secretary of Agriculture is proposing regulations governing procurement and shipment of processed agricultural commodities for donation under Title II, Pub. L. 480. In addition to the retention of the basic formula of lowest landed cost, and other factors regarding procurement and shipment, it is proposed that additional factors will be considered which could override the lowest landed cost in effect under the current system. This notice invites written comments on the proposed rule.

DATES: Comments must be received on or before January 2, 1979 to be assured of consideration.

ADDRESSES: Assistant Deputy Administrator, Commodity Operations, ASCS, USDA, Room 212-W, Administration Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT:

Felton Overby, (ASCS), 713-226-5871, Jonnie Carpenter, (ASCS), 202-447-3995.

SUPPLEMENTARY INFORMATION: The Kansas City Agricultural Stabilization and Conservation Service Commodity Office, (KCCO) is responsible for the procurement of processed agricultural commodities donated to foreign recipients under Title II, Pub. L. 480. Such procurement is administered in accordance with requirements specified in the Code of Federal Regulations, "Public Contracts and Property Management, Chapter I," in USDA-1, as amended, "General Terms and Conditions for the Procurement of Agricultural Commodities or Services," and CMO-1, as amended, "Specifications for Packaging and Packing of Dairy Products, Processed Grains, Salad Oil and Shortening."

Purchases are made against a general formula, which is the price of the commodity delivered to a port free alongside ship (f.a.s.), plus the cost of ocean transportation. Commodity requests are received in the Procurement and Sales Division, Donations Branch, Washington, D.C. from the Agency for International Development, (AID) or from American Voluntary Agencies, engaged in overseas relief and development, and are registered with the Advisory Committee on Voluntary Foreign Aid.

Commodity requests are forwarded to the KCCO for procurement. Periodically KCCO issues invitations to bid in order to fill requests. Offers requested from commodity vendors are on an f.a.s. vessel basis to a named port or range of ports. In addition to prices and quantities, vendors are urged to name as many ranges and ports as possible in their offer. Usually 10 days are given vendors to make offers.

During the 10 days the invitation is open, basic background information is obtained for use in bid analysis. Information includes ocean service and rates from U.S. ports to destination countries, minimum revenue or tonnage for vessel call to a port, port congestion, labor disputes, rail embargoes, and specific delivery requirements. Trade journals and published tariffs are used to determine service and rates from all coastal ranges for each commodity and foreign destination. Changes in ocean rates and services are accepted until 4 p.m. on the Friday preceding the Monday offers are due.

In accordance with the invitation to bid, offers must be received by 4 p.m. Monday for opening and evaluation. Data are entered into an automated system for the simultaneous analysis of offers, service, ocean rates, and quantities. Offers resulting in lowest landed cost to destinations requested are considered for acceptance. Price reviews of the f.a.s. offer are conducted before final awards are made. Successful offerors are notified by C.O.B. the day following opening of bids, and such information is subsequently furnished to the public via information releases.

Where contract awards list multiple ports at the same price, assignment of tonnage is made to one or more ports based on the previous 3 calendar year average of CCC processed commodity allocations.

Port allocations are subsequently furnished to the public via information releases. All commodities are offered to designated booking agents to secure ocean transportation.

Upon receipt of confirmation of ocean bookings, shipping instructions are issued to vendors by KCCO. Through contract administration and freight forwarding responsibilities, KCCO monitors shipments for all commodities.

In accordance with section 201 of the Agricultural Trade Development and Assistance Act of 1954, as amended, agricultural commodities are furnished on behalf of the people of the United States of America to meet famine or other urgent or extraordinary relief requirements; to combat malnutrition, especially in children; to promote economic and community development in friendly developing areas; and, for needy persons and nonprofit school lunch and preschool feeding programs outside the United States. The most critical factor in the purchase and shipment of agricultural food commodities is timely delivery to the destination port in recipient countries.

PROPOSED RULE

Therefore, to meet the legislative requirements and objectives of the Title II, Pub. L. 480 program as mandated, considerations other than costs will be evaluated, which may override the lowest landed cost determinations under the current system, as stated above. For example, a slightly higher price would be justified if it resulted in a significantly shorter ocean transit time, reduced risk and on-time delivery. If a delivery delay is imminent via the lowest landed cost coastal range due to a strike, labor dispute, railcar shortages, congestion at U.S. port, or lack of timely ocean service, then an alternative coastal range may be selected which is next lowest in cost. when railcars are in short supply or not available from vendor's plant to timely position the commodity free alongside ship (f.a.s.), an alternative mode of inland transportation, such as the utilization of trucks will be considered.

Historical delivery outturn data which has definitively established unsatisfactory steamship and stevedore performance will be considered. This data will include loss and/or damage of commodities at destination port; performance of the steamship company in meeting the established delivery schedule requested by the consignee; and for timely delivery of commodities.

Prior to the final selection of a coastal range or U.S. port from which commodities will be shipped, the contracting officer will determine the adequacy of the port to receive, accumulate, warehouse, handle, store, and protect the cargo.

Other factors which will be considered in this determination, will include, but are not limited to, the adequacy of the building structure, proper ventilation, freedom from insects and rodents, cleanliness and overall good housekeeping and warehousing practices.

When it is determined that the U.S. port is congested, facilities are overloaded, and a vessel would not be able to dock and pickup cargo without delay, or where labor disputes or lack of labor would not be available or prohibit the loading of the cargo onboard a vessel in a timely manner, another coastal range or port will be considered.

When any of the above proposed considerations become relevant factors in the bid analysis, additional time may be required before contract awards are made. Therefore, it is proposed that the Department have up to, but not to exceed 72 hours after bids are opened to analyze such bids and notify successful offerors.

However, notification of successful bids will be awarded as expeditously as possible so that the full 72-hour period may not have to transpire.

In the interest of obtaining information which will assist the Secretary in establishing a procedure for the purchase and shipment of processed agricultural commodities for donation under Title II, Pub. L. 480, it is requested that respondents to this invitation for comments give careful consideration to the issues discussed above. It is especially requested that interested persons address the following issues:

A. *Timely delivery of commodities to ultimate destination.* 1. Alternative coastal ranges.

2. Alternative modes of inland transportation.

3. Alternative ocean service.

B. *Availability of rail cars.* (i.e., availability of rail cars to one or more coastal ranges for effective utilization of energy and rail equipment.)

C. *Delivery outturn history.* 1. Steamship and stevedore performance.

2. Commodity loss and damage.

D. *U.S. port facilities and conditions.* 1. Warehousing practices.

2. Ability to handle, store, and protect cargo.

E. *U.S. port congestion.* 1. Facilities overloaded.

2. Availability of labor.

Prior to establishing a procedure for the purchase and shipment of agricultural commodities donated under Title II, Pub. L. 480, the Department of Agriculture will give consideration to comments submitted in writing. All written submissions made pursuant to this notice will be made available for inspection from 8:15 a.m. to 4:45 p.m., Monday through Friday, in Room 5754, South Building, 14th and Independence Avenue SW., Washington, D.C. (7 CFR 1-27(b)).

NOTE.—An approved Draft Impact Analysis is available from Ray Voelkel (ASCS) 202-447-7421.

NOTE.—Based on an assessment of the environmental impacts of the proposed action, it has been determined that an Environmental Impact Statement need not be prepared since the proposals will have no significant effect on the quality of the human environment.

Signed at Washington, D.C. on October 30, 1978.

BOB BERGLAND,
Secretary.

[FR Doc. 78-31133 Filed 11-2-78; 8:45 am]

[7535-01-M]

NATIONAL CREDIT UNION ADMINISTRATION

[12 CFR Part 701]

ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

Credit Union Service Corporation

AGENCY: National Credit Union Administration.

ACTION: Proposed rule.

SUMMARY: The purpose of this proposed rule is to implement the provisions of the April 19, 1977, amendments to the Federal Credit Union Act (Act) (Pub. L. 95-22, 91 Stat. 49) which authorize Federal credit unions to invest in, to make loans to, or extend lines of credit to, organizations providing services associated with the routine operations of credit unions. This proposed rule will amend existing 12 CFR 701.27-2, Participation in Accounting Service Center.

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DATES: Comment must be received on or before January 2, 1979.

ADDRESS: Send comments to Robert S. Monheit, Senior Attorney, Office of General Counsel, National Credit Union Administration, Room 4202, 2025 M Street NW., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT:

Either Layne L. Bumgardner, Office of Examination and Insurance or Todd A. Okun, Office of General Counsel, at the above address. Telephone: 202-254-8760 (Mr. Bumgardner) or 202-632-4870 (Mr. Okun).

SUPPLEMENTAL INFORMATION: In proposing this rule, the Administration has relied heavily on the specific guidance provided in the House Committee Report (H.R. Rep. No. 95-23) pertaining to the authority for a Federal credit union to invest in and loan to organizations associated with the routine operation of credit unions.

The defined purpose of a credit union service corporation is not intended to provide Federal credit unions with the ability to enter into profit making ventures. Rather, a credit union service corporation is envisioned as a "venture in cooperation" which is designed to provide each of its owner credit unions with efficient, equitable, and fairly priced services. The purposed regulation is designed to allow both small and large credit unions to more fully achieve their goals by allowing them to work together in capitalizing and operating a credit union service facility. This cooperation and control over the source of credit union services will give credit unions owning stock in a credit union service corporation an alternative to the services which are provided, priced and controlled by private capital interests and which are profit motivated in nature. The purposes of a "credit union service corporation" are taken directly from H.R. Rep. No. 95-23 and are included in paragraph (b) of the proposed regulation. The only additions to the congressionally approved purposes are activities related to mortgage lending, credit card services and automated teller machine services, which have been approved by the Administration as acceptable services associated with the routine operation of credit unions. Additional purposes will be added to the listing as they are approved.

LIMITS ON INVESTMENTS IN AND LOANS TO CREDIT UNION SERVICE CORPORATIONS

(1) A Federal credit union may invest, in total, in stock or shares of a credit union service corporation in an amount not to exceed 1 percent of the investing Federal credit union's paid-in and unimpaired captial and surplus. ((Members Shares + Undivided Earnings – Losses which may have been incurred for which there is no reserve or which have not been charged to Undivided Earnings) × .01 = Maximum amount which may be invested in shares or stocks of credit union service corporations.) No other limits have been proposed regarding the capital structure of a credit union service corporation in order to give maximum flexibility in organizing the corporation. However, the Administration encourages the equitable and fair treatment of all owner credit unions participating in the corporation, regardless of the amount of their equity interest or representation on the corporation's board of directors.

(2) A Federal credit union may lend, in total, an additional 1 percent of its paid-in and unimpaired capital and surplus to those credit union service corporations in which it has invested. Lending refers to all purchases of bonds or debentures issued by credit union service corporations and all loans or lines of credit extended to credit union service corporations. (Refer to the formula in item (1) to determine the maximum amount which may be loaned by a Federal credit union to all credit union service corporations.)

(3) A Federal credit union must receive services from the credit union service corporations in which it invests. This requirement is essential to assure that a Federal credit union's investment in a credit union service corporation is used only to capitalize the providing of goods or services to itself and the other co-investors.

(4) Paragraph (e) of the proposed regulation prohibits the use of a Federal credit union from investing in, or lending to, an insurance company, trade association, liquidity facility, other financial institution, or similar organization unless the Act expressly permits the activity.

CONTRACTING WITH A CREDIT UNION SERVICE CORPORATION

The Administration envisions that credit union service corporations will enter into service contracts with their owner credit unions in the same manner as other service vendors. To assure compliance with the Act and rules and regulations it is recommended that contracts between credit unions and credit service corporations include provisions:

(1) Insuring the confidentiality of information about a given member and his transactions with the member's credit union;

(2) Assuring compliance with the Federal Credit Union Act and National Credit Union Administration Rules and Regulations pertaining to all services being provided;

(3) Establishing liability, accountability, prompt recording and settlement for all transactions, handled by the vendor under the contract;

(4) Establishing appropriate surety and insurance coverage for all persons involved in processing transactions;

(5) Describing the services to be provided and establishing the costs of these services subject to periodic review and negotiation;

(6) Terminating, assigning and mediating the contract;

(7) Making the Federal credit union's books and records of member transactions immediately available to the Administrator or his authorized representative for examination and to the Federal credit union's supervisory committee for audit;

(8) Maintaining the individual identity of the Federal credit union for all services provided to its members; and

(9) Limiting any payments made in advance to an amount not exceeding the actual or estimated charges for a 3 month period, with amortization of any advance payments occurring within the period for which the advance was made.

APPLICATION PROCEDURES FOR CREDIT UNION SERVICE CORPORATIONS

Paragraph (c) of the proposed regulation states the application requirements for obtaining approval of the Administrator for establishing a credit union service corporation. Proposals will be submitted to the appropriate Regional Director for consideration.

Paragraph (f) outlines the requirements imposed on the Administration for promptly dealing with applications submitted for consideration. Where the submitting party is not informed of the Administrator's action on a proposal within the time frame indicated, the application will be deemed to be approved. This provision also applies to modification submitted for the Administrator's consideration after a credit union service corporation has already been formed.

EXISTING SERVICE CORPORATIONS DESIRING TO BE APPROVED AS A CREDIT UNION SERVICE CORPORATION

This proposed rule will replace the existing § 701.27-2 of the National Credit Union Administration Rules and Regulations. Therefore, all existing accounting service centers operating under the current provisions of § 701.27-2 must apply for approval as a credit union service corporation. The Administration proposes that a period of 1 year is sufficient time to effect the changes required and to process the applications of the existing accounting service centers.

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The proposed rules will also replace and amend any previously approved "leeway" organizations approved by the Administration. These Corporations will also be required to apply to the Administration under the provisions of the proposed rule and comply within a 1 year time period from its effective date.

It is expected that certain service corporations owned and operated exclusively by State chartered credit unions may desire to service and receive investments from Federal credit unions. If so, these organizations will also need to file applications with the Administration for consideration and must modify their operations to comply with the proposed rule.

LAWRENCE CONNELL,
Administrator.

OCTOBER 31, 1978.

(Sec. 120, 73 Stat. 635 (12 U.S.C. 1766) and sec. 209, 84 Stat. 1104 (12 U.S.C. 1789).)

Accordingly, it is proposed that 12 CFR 701.27-2 be revised to read as follows:

§ 701.27-2 Credit Union Service Corporation.

(a) For purposes of this section:

(1) A "credit union service corporation," an organization described at section 107(7)(I) of the Federal Credit Union Act, and a "credit union organization," as described at section 107(5)(D) of the Federal Credit Union Act, are identical entities. They are organizations incorporated under State law which are wholly-owned and controlled by credit unions. Designation as a "credit union service corporation" is contingent on Administration approval.

(2) A "Federal credit union" means a credit union chartered pursuant to section 109 of the Federal Credit Union Act, its officers, directors, employees, agents or representatives.

(b) The purpose of a credit union service corporation is to provide only those goods and services and perform only those functions that are associated with routine credit union operations. It may provide any or all of the following to its stockholder credit unions:

(1) Data processing services;

(2) Promotion, marketing and general management support services;

(3) Access to sophisticated accounting systems;

(4) Non-profit debt counseling services;

(5) Management training and education to credit union personnel;

(6) Services related to processing, selling or servicing mortgage loans;

(7) Credit card services;

(8) Automated teller machine services; and

(9) Other services, as determined by the Administrator, that are commonly associated with the routine operations of credit unions.

(c) A Federal credit union, group of Federal credit unions, or a group of Federal and State credit unions may submit an application to the Administrator for approval to form a credit union service corporation. The application shall include:

(1) The articles of incorporation and bylaws of the proposed credit union service corporation which explicitly state that the credit union service corporation shall:

(i) Comply with the Federal Credit Union Act and the National Credit Union Administration Rules and Regulations;

(ii) Provide services to each of its credit union stockholders and only to those stockholders on a fair and equitable basis;

(iii) Provide the following statement prior to any party lending funds to or investing funds in the corporation:

"THE DESIGNATION OF ——— AS A 'CREDIT UNION SERVICE CORPORATION', BY THE NATIONAL CREDIT UNION ADMINISTRATION DOES NOT INDICATE APPROVAL OF THE FINANCIAL CONDITION OF THE CORPORATION OR THE MERITS OF ANY LOAN TO OR INVESTMENT IN THE CORPORATION";

(iv) Be subject to examination by the Administrator or his authorized representative;

(v) Pay examination fees assessed by the Administrator;

(vi) Submit call reports upon request by the Administrator;

(2) Written acknowledgement that the officers, directors, and employees of a Federal credit union with an equity interest in a credit union service corporation have no pecuniary interest in the corporation and shall receive no salary or compensation other than reimbursement for necessary expenses incurred in operating the credit union service corporation; and

(3) Any other information requested by the Administrator.

(d) The Administrator may terminate the designation of any corporation as a credit union service corporation if it operates in an unsafe and unsound manner, violates the conditions of its approval as a credit union service corporation, or violates any provision of the Federal Credit Union Act or National Credit Union Administration Rules and Regulations.

(e) A Federal credit union may invest, in total, up to 1 per centum of its paid-in and unimpaired capital and surplus in stock of credit union service corporations. A Federal credit union may lend, in total, an additional 1 percent of its paid-in and unimpaired capital and surplus only to credit union service corporations in which it has invested. Such investment authority does not include authority to invest in shares, stocks or obligations of an insurance company, trade association, liquidity facility, financial institution or any other similar organization, corporation, association, or to lend funds to these entities, except as otherwise expressly provided in the Federal Credit Union Act.

(f) The following procedures apply to applications made under the provisions of this section:

(1) Application for approval as a credit union service corporation shall be submitted to the appropriate Regional Office and shall contain the information described in paragraph (c) of this section;

(2) Applications for approval to form a credit union service corporation that will engage in any of the activities described in paragraph (b) of this section shall be acted upon by the Administration within a 45 day period, not including week-ends and holidays, that begins on the date of receipt by the Regional Office of the complete written record on the applications. In the event of the failure of the Administration to act on such an application within 45 days, the application shall be deemed to be approved. Action on any application shall be deemed to have been taken when notice, either oral or written, is received by the applicant;

(3) Applications for approval to form a credit union service corporation that will not perform any of the activities described in paragraph (b) of this section shall be acted upon in the same manner as applications described in paragraph (f)(2) of this section except, that action on these applications must be taken within 90 days of receipt of a complete record on the application; and

(4) Any additions to or modifications of the functions performed or the goods and services provided by an approved credit union service corporation must be approved prior to implementation. Applications for additions or modifications shall be acted upon in either 45 or 90 days from the receipt of all information concerning such additions or modifications as may be requested by the Administration. Additions or modifications involving engaging de novo in activities described in paragraph (b) of this section shall be acted upon within 45 days, pursuant to paragraph (f)(2) of this section. Additions or modifications involving engaging de novo in activities not described in paragraph (b) of this section shall be acted upon within 90 days, pursuant to paragraph (f)(3) of this section.

[FR Doc. 78-31135 Filed 11-2-78; 8:45 am]

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[4110-07-M]

SOCIAL SECURITY ADMINISTRATION

[20 CFR Parts 404 and 416]

DISABILITY INSURANCE AND SUPPLEMENTAL SECURITY INCOME PROGRAMS

Substantial Gainful Activity Guidelines for 1978 and 1979

AGENCY: Social Security Administration.

ACTION: Notice of decision to develop regulations.

SUMMARY: The Social Security Administration is planning to publish proposed regulations which would increase the amount people disabled by impairments other than blindness can earn and still be considered disabled for purposes of receiving social security and supplemental security income disability benefits.

Under the law, a person who is able to engage in substantial gainful activity (SGA) is not disabled. The proposed regulation would raise the amount of average earnings ordinarily considered as demonstrating ability to engage in SGA from $240 to $260 a month beginning for the calendar year 1978, and to $280 a month beginning for the calendar year 1979. The amount of average earnings which is ordinarily presumed to represent work that does not demonstrate ability to engage in SGA would be raised from $160 to $170 a month beginning for the calendar year 1978, and to $180 beginning for the calendar year 1979.

The proposed regulations would require revision of §§ 404.1534 and 416.934 of title 20 CFR Parts 404 and 416. The Department has classified the proposed regulations changes as policy significant.

FOR FURTHER INFORMATION CONTACT:

Mike Seledee, Social Security Administration, 4G6 Security Boulevard, Baltimore, Md. 21235, telephone 301-594-2083.

Dated: September 15, 1978.

DON WORTMAN,
Acting Commissioner of Social Security.

[FR Doc. 78-31142 Filed 11-2-78; 8:45 am]

[4710-06-M]

DEPARTMENT OF STATE

Office of the Secretary

[22 CFR Part 51]

[Docket No. SD-139]

PASSPORTS

Waiver of Personal Appearance for Certain Applicants Abroad

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: This notice invites comments from the public on the Department of State's proposal to amend the regulation to extend to certain Foreign Service Posts abroad authority to accept passport applications in certain cases without requiring the personal appearance of applicants before consular officers. The proposal also includes provisions revising the requirements for passport photographs.

DATE: Comments must be received on or before December 29, 1978.

ADDRESS: Send comments to Deputy Assistant Secretary for Passport Services, Department of State, 2201 C Street NW., Washington, D.C. 20520.

FOR FURTHER INFORMATION CONTACT:

A. R. Mackay, 202-632-6455.

SUPPLEMENTARY INFORMATION: The amendment of Section 51.21, Execution of Passport Application, is designed to enhance and increase service to the American citizen traveler abroad, by allowing the Secretary to designate certain American consular districts abroad to accept certain passport applications which have not been executed before diplomatic or consular officers. This service will be a modified extension of the service in the United States known as "Passports by Mail". However, the mail-in procedures will be used only in those areas where the mail service is considered efficient and secure. In other areas secure couriers will be used, such as missionaries, members of American business organizations, authorized family members, etc.; to transmit the passport applications and passports.

These new procedures will be implemented initially in a 1-year test period in a limited number of consular districts around the world which have indicated that its use is necessary and workable. New application forms will be used which are designed specifically for this purpose.

The amendment of section 51.25, Photographs, is designed to ease the restrictions on photographs by emphasizing the likeness of the photograph to the individual applicant rather than to an arbitrary period of time within which the picture must have been taken.

Accordingly, it is proposed to amend §§ 51.21 and 51.25 of Title 22, Code of Federal Regulations, to read as set forth below.

1. In § 51.21, paragraphs (a), (b), and (c) are revised; a new paragraph (d) is added; and former paragraphs (d) and (e) are renumbered as (e) and (f).

§ 51.21 Execution of passport application.

(a) *First-time applicants or persons who have not been issued a passport within 8 years of the date of a new application.* A person who has never been issued a passport in his or her own name, or who has not been issued a passport in his or her own name within 8 years of the date of a new application, shall appear in person, verify the application by oath or affirmation before a person authorized by the Secretary to give oaths, and pay the established fees.

(b) *Persons authorized by the Secretary to give oaths.* The following persons are authorized by the Secretary to give oaths for passport purposes:

(1) A passport agent;

(2) A clerk of any Federal court;

(3) A clerk of any State court of record or a judge or clerk of any probate court;

(4) A postal employee designated by the postmaster at a post office which has been selected to accept passport applications;

(5) A diplomatic or consular officer abroad; or

(6) Any other persons specifically designated by the Secretary.

(c) *Persons in the United States who have been issued a passport within 8 years of the date of a new application.* A person in the United States who has been issued a passport in his or her own name within 8 years of the date of a new application may obtain a new passport by filling out and mailing a specially prescribed application together with his or her previous passport, two signed recent photographs and the established fee to the nearest U.S. Passport Agency or to the Passport Office in Washington, D.C., provided:

(1) The previous passport was issued when the applicant was 18 years of age or older;

(2) No one else is to be included in the new passport; and

(3) The previous passport is submitted with the new application.

If the applicant is unable to meet any of the requirements of paragraph (c) he or she must follow the procedures set forth in paragraph (a) of this section.

d) *Persons outside of the United States who have been issued a passport within 8 years of the date of the application.* In a foreign country in which a U.S. consular district has been designated by the Secretary to receive such passport applications, a person who has been issued a passport in his or her own name within 8 years of the date of the new application may obtain a new passport by filling out a specially prescribed application and sending it (by mail or another person as prescribed by the Secretary), together with his or her previous passport, two signed recent photographs and the established fee to the consular office in the consular district in which he or she is present (if that consular district is designated for this purpose by the Secretary), provided he or she meets the following requirements:

(1) The previous passport must have been issued when the applicant was 18 years of age or older;

(2) No one else is to be included in the new passport; and

(3) The previous passport must be submitted with the new application.

If the applicant is unable to meet the above requirements he or she must follow the procedures set forth in paragraph (a) of this section.

(e) *Inclusion.* • • •

(f) *Diplomatic and official passport applications.* • • •

2. In § 51.25, paragraph (a) is revised to read as follows:

§ 51.25 Photographs.

(a) *Photographs of bearer.* The applicant shall submit with his application duplicate photographs of the size specified in the application. The photographs should be sufficiently recent to be a good likeness of and satisfactorily identify the applicant. The photographs shall be signed in the same manner and form as required in the application. No joint photographs of the bearer and included person(s) will be acceptable.

• • • • •

(Sec. 1, 44 Stat. 887, sec. 4, 63 Stat. 111, as amended (22 U.S.C. 211a, 2658); E.O. 11295, 36 FR 10603; 3 CFR 166—70 comp., p. 507.)

Dated: October 30, 1978.

HUME A. HORAN,
Acting Assistant Secretary for Consular Affairs.

[FR Doc. 78-31017 Filed 11-2-78; 8:45 am]

[4210-01]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

(24 CFR Part 1917)

[Docket No. FI-4403]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for the Town of Brookfield, Fairfield County, Conn., Correction

AGENCY: Federal Insurance Administration, HUD.

ACTION: Correction of proposed rule.

SUMMARY: This document corrects a proposed rule on base (100-year) flood elevations that appeared on page 43 FR 38421 of the FEDERAL REGISTER of August 28, 1978.

EFFECTIVE DATE: August 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

The following location:

Source of Flooding	Location	Elevation in feet, national geodetic vertical datum
East Brook	100 ft upstream from private drive (460 ft upstream from U.S. 208).	288

Should be corrected to read:

Source of Flooding	Location	Elevation in feet, national geodetic vertical datum
East Brook	100 ft upstream from private drive (460 ft upstream from U.S. 202).	288

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and the Secretary's delegation of authority to Federal Insurance Administrator 43 FR 7719.)

Issued October 19, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30968 Filed 11-2-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4405]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for the Town of Newtown, Fairfield County, Conn.; Correction

AGENCY: Federal Insurance Administration, HUD.

ACTION: Correction of proposed rule.

SUMMARY: This document corrects a proposed rule on base (100-year) flood elevations that appeared on page 43 FR 38424 of the FEDERAL REGISTER of August 28, 1978.

EFFECTIVE DATE: August 28, 1978.

FOR FURTHER INFORMATION:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

The following location :

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Deep Brook	150 ft. upstream of Mile Hill Rd.	368

Should be corrected to read:

Source of flooding	Location	Elevation in feet national geodetic vertical datum
Deep Brook	125 ft upstream of Mile Hill Rd.	366

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended (42 U.S.C 4001-4128); and the Secretary's delegation of authority to Federal Insurance Administrator 43 FR 7719.)

Issued: October 24, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30967 Filed 11-2-78; 8:45 am]

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[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4740]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of Coachella, Riverside County, Calif.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Coachella, Riverside County, Calif. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, 1515 Sixth Street, Coachella, Calif. Send comments to: Mr. Ben McMakin, City Manager, City of Coachella, City Hall, 1515 Sixth Street, Coachella, Calif. 92236.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Coachella, Calif., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Depth in feet, above ground
Whitewater River.	West of Grapefruit Blvd. between Avenue 49 and Avenue 50.	2
	Intersection of Cates Lane and Avenue 50.	2
	Intersection of West Dike Rd. and Avenue 52.	2
	Intersection of Tyler St. and Avenue 53.	2
	Intersection of West Dike Road and Avenue 54.	2

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: October 24, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30970 Filed 11-2-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4741]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of Indio, Riverside County, Calif.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Indio, Riverside County, Calif. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, Indio, Calif. Send comments to: Mr. William Phillip Hawes, City Manager, City of Indio, P.O. Drawer 1788, Indio, Calif. 92201.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Indio, Calif., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Ponding along All American Canal.	Between 45th Ave. and 46th Ave. and west of Madison St.	29

Source of flooding	Location	Depth in feet above ground
East of Oasis St*...	Intersection of Oasis St. and 46th Ave.	1
	Intersection of Calhoun St. and 47th Ave.	2

Source of flooding	Location	Depth in feet above ground
	Intersection of Cabazon Rd. and Dillon Rd.	2
West of Oasis St. and east of All American Canal*.	Intersection of Hjorth St. and Highway 111.	1
	Intersection of 4th St. and Stables Rd.	1
East of Whitewater River and west of All American Canal*.	Adjacent to Whitewater River between 45th and 46th Ave.	3

*Shallow flooding.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: October 24, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30971 Filed 11-2-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4742]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of La Habra, Orange County, Calif.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of La Habra, Orange County, Calif. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Civic Center, La Habra, Calif. Send comments to: Mr. Lee Risner, City Manager, City of La Habra, Civic Center, P.O. Box 337, La Habra, Calif. 90631.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of La Habra, Calif., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Coyote Creek Channel.	Imperial Highway and Beach Blvd—40 ft*.	211
	Idaho St.—50 ft*	231
	Lambert Rd	238
	La Habra Blvd.—20 ft*	377
	Hodson Ave.—20 ft*	385
	Walling Ave.—20 ft*	400
La Mirada Creek ...	Intersection of Oakland Dr. and Dexford Dr.**.	1
	Between Rizsby St	1
	Intersection of Whittier Blvd and Chantry Dr.	1

*Upstream from Centerline.
**Shallow flooding.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: October 24, 1978.

GLORIA M. JIMENEZ
Federal Insurance Administrator.

[FR Doc. 78-30972 Filed 11-2-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4743]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of Laguna Beach, Orange County, Calif.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Laguna Beach, Orange County, Calif. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, 505 Forest Avenue, Laguna Beach, Calif. Send comments to: Mr. Fred Solomon, city manager, city of Laguna Beach, City Hall, 505 Forest Avenue, Laguna Beach, Calif. 92651.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Laguna Beach, Calif., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change

any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Laguna Canyon.....	Forest St.—50 ft.*.....	33
	Loma Terrace—20 ft.*....	37
	Laguna Canyon Rd.—30 ft.*.	52
	Woodland Dr.—50 ft.*....	70
	Milligan Dr.—50 ft.*.....	75
	Canyon Acres Dr.—30 ft.*.	78
	El Toro Rd.—30 ft.*.....	234
	Laguna Frontage Rd.—50 ft.*.	238
Bluebird Canyon...	Glenneyre St.—20 ft.*....	56
	Catalina St.—40 ft.*.....	59
	Carmelita St.—30 ft.*....	66
	Santa Cruz St.—40 ft.**..	80
	Santa Cruz St.—40 ft.*...	108
	Bluebird Canyon St.-30 ft.*.	122

Source of flooding	Location	Depth in feet above ground
Laguna Canyon.....	Area along Laguna Canyon Rd. approximately 4,300 ft. upstream of the intersection of Laguna Canyon Rd. and El Toro Rd.	2

*Upstream from centerline.
**Downstream from centerline.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued October 24, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30973 Filed 11-2-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4744]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the town of Los Altos Hills, Santa Clara County, Calif.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the town of Los Altos Hills, Santa Clara County, Calif. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at town hall, 26379 Fremont Road, Los Altos Hills, Calif. Send comments to: Mr. Robert Crowe, Town Administrator, Town of Los Altos Hills, Town Hall, 26379 Fremont Road, Los Altos Hills, Calif. 94022.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the town of Los Altos Hills, Calif., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Adobe Creek.....	Edith Rd.....	174
	Burke Rd.....	192
	O'keefe Lane.....	264
	Foothill College Rd.....	307
	El Monte Ave.....	328
	Rhus Ridge Dr.....	379
	Francemont Dr.....	421
Barron Creek.....	Fremont Rd. (downstream crossing).	145
	Ortega Dr.....	172
	Fremont Rd (upstream crossing).	205
	La Paloma Rd.....	220
	Todd Lane—20 ft upstream from centerline.	245
Purissima Creek....	Purissima Rd (downstream crossing).	252
	Viscaina Rd.....	303
	Purissima Rd (upstream crossing).	332
Matadero Creek....	Old Page Mill Rd.....	193
	Interstate 280.....	212
	Page Mill Rd.....	244
	Moon Lane.....	270
	Lupine Rd-20 ft upstream from centerline.	286
Arastradero Creek	Page Mill Rd.....	254
Hale Creek.....	Magdelena Ave.....	221
	Dawnridge Dr.....	270
Concepcion Drainage.	Fremont Rd.....	207
	Alto Verde Lane.....	225
	Roble Veneno Lane.....	247

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: October 19, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30974 Filed 11-2-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4745]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of Rancho Mirage, Riverside County, Calif.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Rancho Mirage, Riverside County, Calif. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, 69-825 Highway 111, Rancho Mirage, Calif. Send comments to: Mr. Richard Smith, City Manager, City of Rancho Mirage, 69-825 Highway 111, Rancho Mirage, Calif. 92270.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Rancho Mirage, Calif., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Depth in feet, above ground
East Rancho Mirage Storm Channel.	Intersection of Gardess Rd. and Magnesia Falls Dr.	1
	Intersection of San Gorgonio Rd. and Magnesia Falls Dr.	1
Magnesia Spring Channel.	Intersection of Indian Trail Rd. and Halgar Rd.	2
	Intersection of Mirage Rd. and Sahara Rd.	1
	Intersection of Indian Trail Rd. and San Gorgonio Rd.	1
	Intersection of Dunes View Rd. and Estellita Dr.	2
	Intersection of San Jacinto Dr. and Indian Trail Rd.	1

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: October 24, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30975 Filed 11-2-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4746]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of Santa Ana, Orange County, Calif.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Santa Ana, Orange County, Calif. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, 20 Civic Center Plaza, 8th Floor, Santa Ana, Calif. Send comments to: Mr. Keith Gow, Acting City Manager, City of Santa Ana, City Hall, 20 Civic Center Plaza, 8th Floor, Santa Ana, Calif. 92701.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Santa Ana, Calif., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Santiago Creek.....	Confluence with Santa Ana River.	108
	Bristol St.....	119

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Source of flooding	Location	Elevation in feet, national geodetic vertical datum
	Flower St.—50 ft. upstream from centerline.	133
	Santa Ana Freeway	142
	Main St.	147
	Santiago Ave	157
	Atchison, Topeka & Santa Fe RR.	163
	Corporate limits	616

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: October 24, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30976 Filed 11-2-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4747]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of Tustin, Orange County, Calif.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Tustin, Orange County, Calif. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, 300 Centennial Way, Tustin, Calif. Send comments to: Mr. Dan Blankenship, City Administrator, City of Tustin, City Hall, 300 Centennial Way, Tustin, Calif. 92680.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Tustin, Calif., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Santa Ana-Santa Fe Channel.	Atchison, Topeka & Santa Fe Ry. (downstream crossing)—75 ft*.	58
	Atchinson, Topeka & Santa Fe Ry. (upstream crossing)—10 ft*.	68
El Modena-Irvine Channel.	Intersection of El Modena-Irvine Channel and Santa Ana Freeway—200 ft north.	81
	Atchison, Topeka & Santa Fe Ry.—20 ft*.	99

*Upstream of centerline.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: October 19, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30977 Filed 11-2-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4748]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of Lake Station, Lake County, Ind.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Lake Station, Lake County, Ind. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Lake Station City Hall, 3625 Central Avenue, Lake Station, Ind. Send comments to: Hon. Carl Jacobs, Mayor of Lake Station, 3625 Central Avenue, Lake Station, Ind. 46405.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Lake Station, Lake County, Ind., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Deep River	Upstream corporate limits.	603
	State Route 51 (approximately 5,800 ft downstream of corporate limits).	602
	State Route 51 (approximately 12,800 ft downstream of corporate limits).	601
	26th Ave	600
	Grand Blvd	599
	ConRail	598
	Liverpool Rd	598
Burns Ditch	Interstate 80-94	597
	Clay St.	596
	State Route 51	596
	Toll road exit 4	596
	Indiana toll road	596

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: October 24, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30978 Filed 11-2-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4749]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Town of Mooresville, Morgan County, Ind.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the town of Mooresville, Morgan County, Ind. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Town Hall, South Indiana Street, Mooresville, Ind. Send comments to: The Honorable Roland Summerlot, Town Board President, Town of Mooresville, Town Hall, South Indiana Street, Mooresville, Ind. 46158.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the town of Mooresville, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
White Lick Creek	Approximately 100 ft upstream of ConRail bridge.	667
	Just upstream of 1300 North Rd.	672
	Approximately 0.5 mi upstream of 1300 North Rd.	674
East Fork White Lick Creek.	Just upstream of State Route 67.	665
	Just upstream of Bridge Rd.	670
	Just upstream of ConRail bridge.	676
	Approximately 0.4 mi upstream of ConRail bridge.	677

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: October 19, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30979 Filed 11-2-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4750]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of Humboldt, Humboldt County, Iowa

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Humboldt, Humboldt County, Iowa. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the City Hall, Humboldt, Iowa. Send comments to: The Honorable LeRoy Jorgensen,

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Mayor, City of Humboldt, 29 South 5th Street, Humboldt, Iowa 50548.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Humboldt, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
West Des Moines River.	Southern corporate limits.	1,062
	3,900 ft. downstream from Lewis St.	1,066
	Upstream side of Lewis St.	1,071
	Upstream side of Sumner Ave.	1,073
	500 ft upstream of U.S. Highway 169.	1,076
	Upstream side of dam 2,250 ft above U.S. Highway 169.	1,082
	Western corporate limits.	1,083
Tributary A	At confluence with West Des Moines River.	1,064
	Downstreet side of 5th St.	1,066
	Upstream side of 5th St.	1,068
	Downstream side of 3d Ave. South.	1,070

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: October 19, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30980 Filed 11-2-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4751]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Town of Avon, Norfolk County, Mass.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the town of Avon, Norfolk County, Mass. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Town Hall, Buckley Center, Avon, Mass. Send comments to: Mr. William E. Enright, Chairman, Board of Selectmen, Town of Avon, Town Hall, Buckley Center, Avon, Mass. 02322.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the town of Avon, Mass., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Beaver Brook	Brockton Reservoir at Gravel path—50 ft *.	209
	Pond St.—50 ft *	210
	State Highway 24 exit ramp—50 ft *.	210
	Harrison Blvd.—ft *	211
	State Highway 24 entrance ramp—50 ft *.	212
	State Highway 24—50 ft *.	213
	Old Railroad grade—50 ft *.	226
Tributary A to Beaver Brook.	Strafello Dr.—100 ft **	213
	Strafello Dr.—200	219
	Ledin Ave.—50 ft *	221
	Old Railroad grade—50 ft *.	227
Trout Brook	Connelly Rd—200 ft *	116
	Ladge Dr.—100 ft **	123

*Upstream from centerline.
**Downstream from centerline.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: October 24, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30981 Filed 11-2-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4752]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Town of Foxborough, Norfolk County, Mass.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the town of Foxborough, Norfolk County, Mass. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Town Hall, 40 South Street, Foxborough, Mass. Send comments to: Mr. Peter Stanton, Chairman, Board of Selectmen, Town of Foxborough, Town Hall, 40 South Street, Foxborough, Mass. 02035.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the town of Foxborough, Mass., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Canoe River	East St.—50 ft*	171
	East St.—25 ft**	175
	Willow St.—50 ft**	201
Robinson Brook	Commercial St (downstream crossing)—25 ft**.	186
	Interstate 95—100 ft**	211
	Walnut St.—25 ft**	225
	Central St.—200 ft*	243
	Central St.—at centerline.	250
Rumford River	Belcher Rd.—at centerline.	174
	Private Rd. (at downstream end of glue factory pond)—100 ft*.	174
	Private road (at downstream end of glue factory pond)—at centerline.	182
	Cocasset St.—75 ft*	196

*Downstream of centerline.
**Upstream of centerline.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: October 24, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30982 Filed 11-2-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4753]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Town of South Hadley, Hampshire County, Mass.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the town of South Hadley, Hampshire County, Mass. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at town clerk's office, Town Hall, 116 Main Street, South Hadley, Mass. Send comments to: Mr. Joseph W. Long, Chairman, Board of Selectmen, town of South Hadley, Town Hall, 116 Main Street, South Hadley, Mass. 01075.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the town of South Hadley, Mass., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Connecticut River.	State Highway 116 bridge.	74
	Holyoke Dam—160 ft*	78
	Holyoke Dam—80 ft**	112
	Confluence with Bachelor Brook—160 ft**.	122
Bachelor Brook	State Highway 47 bridge	122
	Woodbridge Road Bridge—at centerline.	125
	State Highway 116 bridge—70 ft*.	176
	State Highway 116 bridge—160**.	181
Stony Brook	Morgan Street Bridge—at centerline.	162
	Lower pond dam and pedestrian bridge—40 ft**.	177
	Stone archbridge	186
	Wood bridge—40 ft**	202
	Morgan St. culvert—at centerline.	213
Buttery Brook	State Highway 116	74
	Gaylord St	74

* Downstream of centerline.
** Upstream of centerline.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: October 24, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30983 Filed 11-2-78; 8:45 am]

[4210-01—M]

[24 CFR Part 1917]

[Docket No. FI-4754]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Town of Whately, Franklin County, Mass.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the town of Whately, Franklin County, Mass. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Town Hall, Whately, Mass. Send comments to: Mr. Byron Canney, Chairman, Board of Selectmen, town of Whately, Town Hall, Whately, Mass. 01093.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the town of Whately, Mass., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Connecticut River.	Downstream corporate limits.	129
	Confluence with Sugarloaf Brook.	132
Sugarloaf Brook	Driveway box culvert (approximately 0.61 mi upstream from mouth)—50 ft*.	135
	River Road Bridge (most downstream crossing)—50 ft*.	140
	River Road Bridge (most upstream crossing)—25 ft*.	147
	Upstream corporate limits.	158
Mill River	Claveric Road Bridge—75 ft*.	166
	Christian Lane Bridge—at centerline.	173
	North St.—downstream face.	185
Great Swamp Brook.	U.S. Highway 5-40 ft**	171
	U.S. Highway 5-50 ft*	174
Bloody Brook	Driveway culvert (approximately 0.09 mi upstream from mouth)—at centerline.	185
West Brook	Downstream corporate limits.	178
	West Brook Road Bridge—at centerline.	313

* Upstream from centerline.
** Downstream from centerline.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: October 24, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30984 Filed 11-2-78; 8:45 am]

[4210-01—M]

[24 CFR Part 1917]

[Docket No. FI-4755]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Unincorporated Areas of Sunflower County, Miss.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the unincorporated areas of Sunflower County, Miss. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Sunflower County Courthouse, Indianola, Miss. 38751. Send comments to: Mr. James W. Corder, President, Sunflower County Board of Supervisors, or Mr. Jack Harper, Chancery Clerk, Sunflower County Courthouse, Indianola, Miss. 38751.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the unincorporated areas of Sunflower County, Miss., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Powell Bayou	Upstream corporate limits of Drew.	134
Tributary Z	At the confluence with Powell Bayou.	134
Sunflower Diversion Channel.	Just upstream of highway 49W.	121
Tributary Y	Approximately 100 ft upstream of County Rd.	119
Tributary X	Approximately 100 ft downstream of highway 3 bridge.	115
Moorhead Bayou	At U.S. 82 bridge	115

posed base (100-year) flood elevations are available for review at the Sunflower County Courthouse, Indianola, Miss. 38751. Send comments to: Mr. James W. Corder, President, Sunflower County Board of Supervisors, or Mr. Jack Harper, Chancery Clerk, Sunflower County Courthouse, Indianola, Miss. 38751.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the unincorporated areas of Sunflower County, Miss., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Big Timber Creek	New Broadway*	10
Little Timber Creek.	South Broadway*	10
	U.S. Highway 130 (Crescent Blvd.)*.	10

*At centerline

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: October 24, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30985 Filed 11-2-78; 8:45 am]

[4210-01—M]

[24 CFR Part 1917]

[Docket No. FI-4756]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Borough of Brooklawn, Camden County, N.J.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Borough of Brooklawn, Camden County, N.J. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Borough Hall, 213 Pennsylvania Avenue, Brooklawn, N.J. Send comments to: Hon. Edward H. Murphy, Mayor, Borough of Brooklawn, Borough Hall, 213 Pennsylvania Avenue, Brooklawn, N.J. 08030.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Borough of Brooklawn, N.J., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

[4210-01—M]

[24 CFR Part 1917]

[Docket No. FI-4757]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of Newark, Essex County, N.J.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Newark, Essex County, N.J. These base (100-year) flood elevations

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are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at city hall, 920 Broad Street, Newark, N.J. Send comments to: Hon. Kenneth Gibson, Mayor, City of Newark, City Hall, 920 Broad Street, Newark, N.J. 07102.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Newark, N.J., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Newark Bay	Intersection of Terminal St. and Tyler St.	10
	Intersection of Marsh St. and Import St.	10
	Intersection of Marlin St. and Transit St.	10
Passaic River	Intersection of Albert Ave. and Catherine St.	10
	Bridge Street-at centerline.	10
Second River	McCarter Hwy—100 ft*	12
	Washington Ave.—20 ft*	24
	Summer Ave.—50 ft*	34
	Union St.—25 ft*	42
	ConRail (upstream crossing)—10 ft*.	67

*Upstream from centerline.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4123); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: October 19, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30987 Filed 11-2-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI- 4758]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Township of Stafford, Ocean County, N.J.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the township of Stafford, Ocean County, N.J. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Township Hall, 775 East Bay Avenue, Manahawkin, N.J. Send comments to: Hon. Charles E. Knight, Mayor, township of Stafford, 775 East Bay Avenue, Manahawkin, N.J.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the township of Stafford, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Manahawkin Bay	At intersection of Mill Creek Rd and Benjamin Blvd.	8
	At intersection of Morton Dr. and Charles Blvd.	8
	At crossing of Beach Ave. over Cider Mill Creek.	8

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: October 24, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78- 30988 Filed 11-2 -78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4759]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Town of Grand Island, Erie County, N.Y.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the town of Grand Island, Erie County, N.Y. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Grand Island Town Hall, 2255 Baseline Road, Grand Island, N.Y. Send comments to: Mr. Robert P. Griffin, Town Manager of Grand Island, Grand Island Town Hall, Grand Island, N.Y. 14072.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the town of Grand Island, Erie County, N.Y. in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Niagara River Tonawanda Channel.	Confluence of Gun Creek.	570
	Confluence of Spicer Creek.	571
	Interstate 190	571
Woods Creek	At boundary of Buckhorn Island State Park.	568
	Baseline Rd. upstream	568
	Confluence of Woods Creek Tributary No. 2.	570
	Confluence of Woods Creek Tributary No. 3.	572
	Stony Point Rd. upstream.	576
	Ranson Rd. upstream	577
Woods Creek Tributary No. 1.	Confluence with Woods Creek.	568
	At limit of detailed study (6,500 ft upstream of confluence).	574
Woods Creek Tributary No. 3.	Confluence of Woods Creek.	572
	Stony Point Rd. upstream.	572
Gun Creek	Confluence with Niagara River—Tonawanda Channel.	570
	Ranson Rd. upstream	574
Spicer Creek	Confluence with Niagara River—Tonawanda Channel.	571
	Whitehaven Rd. upstream.	576
	Harvey Rd. upstream	581
Tributary No. 1	Confluence with Niagara River—Tonawanda Channel.	574
	East River Rd. upstream	574
	Upstream limit of detailed study (2,000 ft upstream of East River Rd.).	578

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued October 24, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30989 Filed 11—2-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4760]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Village of Waterford, Saratoga County, N.Y.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the village of Waterford, Saratoga County, N.Y. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Village Hall, 65 Broad Street, Waterford, N.Y. Send comments to: Hon. Anthony Catallo, Mayor, village of Waterford, Village Hall, 65 Broad Street, Waterford, N.Y. 12188.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the village of Waterford, N.Y., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

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These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Hudson River.....	U.S. Highway 4—20 ft*...	34
	Delaware & Hudson RR.*.	34

*Upstream from centerline.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: October 19, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30990 Filed 11-2-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4761]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of Bottineau, Bottineau County, N. Dak.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Bottineau, Bottineau County, N. Dak. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, 115 West Sixth, Bottineau, N. Dak. Send comments to: Hon. Richard Sandness, mayor, city of Bottineau, City Hall, 115 West Sixth, Bottineau, N. Dak. 58318.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Bottineau, N. Dak., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Oak Creek	Downstream extraterritorial limits.	1,588
	13th St.*	1,610
	10th St.*	1,620
	5th St.*	1,634
	Lake Rd.-80 ft.**	1,653
	Upstream extraterritorial limits.	1,676

* At centerline.
** Upstream from centerline.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: October 19, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30991 Filed 11-2-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4762]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of Willow City, Bottineau County, N. Dak.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Willow City, Bottineau County, N. Dak. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, Willow City, N. Dak. Send comments to: Hon. Art Schoenborn, Mayor, City of Willow City, P.O. Box 224, Willow City, N. Dak., 58384

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Willow City, N. Dak., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Willow Creek	Downstream extraterritorial limits.	1,464
	State highway 60-at centerline.	1,465
	Upstream extraterritorial limits.	1,467

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: October 19, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30993 Filed 11-2-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4763]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of North Olmsted, Cuyahoga County, Ohio

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of North Olmsted, Cuyahoga County, Ohio. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Engineer's Office, City Hall, North Olmsted, Ohio. Send comments to: Hon. R. W. Swietyniowski, Mayor, City of North Olmsted, 5206 Dover Center Road, North Olmsted, Ohio 44070.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of North Olmsted, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Roots Ditch.....	100 ft downstream of Canterbury Rd.	757
	Downstream of Canterbury Rd.	758
	Upstream of Canterbury Rd.	761
	290 ft upstream of Canterbury Rd.	762
	310 ft upstream of Canterbury Rd.	763
	500 ft upstream of Canterbury Rd.	763
	560 ft upstream of Canterbury Rd.	764
	Just downstream of golf course bridge 800 ft upstream from Canterbury Rd.	765
	Just upstream of golf course bridge 800 ft upstream from Canterbury Rd.	766
	At 1st private bridge	768
	40 ft downstream of Revere Rd.	770
	At Burns Rd. culvert.....	771
	Downstream side of Decker Rd. culvert.	772
	Upstream side of Decker Rd. culvert.	774
	Outlet of culvert about 300 ft downstream of McKenzie Rd.	774
	Upstream side of McKenzie Rd.	777
	About 850 ft upstream of Stearns Rd.	778
Rocky River.....	Downstream of Lewis Rd.	669
	70 ft upstream of Lewis Rd.	671
	1,360 ft upstream of Lewis Rd.	672
	Upstream corporate limit.	673

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: October 24, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30994 Filed 11-2-78; 8:45 am]

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[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4764]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Borough of Clearfield, Clearfield County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the borough of Clearfield, Clearfield County, Pa. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Borough Office, 221 East Market Street, Clearfield, Pa. Send comments to: Mr. William E. Coxy, President of the Borough Council of Clearfield, 1010 Turnpike Avenue, Clearfield Pa. 16308

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the borough of Clearfield, Clearfield County, Pa., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
West Branch Susquehanna River.	Corporate limits (west) ..	1,106
	Timber Dam (downstream).	1,102
	Corporate limits (east) ...	1,097

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: October 19, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30995 Filed 11-2-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4765]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Borough of Millersburg, Dauphin County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the borough of Millersburg, Dauphin County, Pa. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the City Manager's Office, Municipal Building, Millersburg, Pa. Send comments to: Mr. Raymond Baer, President of the Council of Millersburg, 739 Church Street, Millersburg, Pa. 17061

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the borough of Millersburg, Dauphin County, Pa., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Susquehanna River.	Downstream corporate limits.	353
	Confluence of Shippens Run.	385
Wiconisco Creek....	Confluence with Susquehanna River.	384
	ConRail	388
	State Route 47 (Market St.).	392
Tributary No. 1, to Wiconisco Creek.	Downstream corporate limits.	405
	Downstream culvert opening 175 ft downstream of Plum St.	417
	Upstream culvert opening 175 ft downstream of Plum St.	425
	State St	432
	Union St	448
	Downstream Center St. culvert.	448
	Upstream Center St. culvert.	456
	Manor Dr	464
Little Wiconisco Creek.	Downstream corporate limits (Wiconisco St.).	398
	Downstream Pennsylvania Route 209.	412
	Upstream Pennsylvania Route 209.	420
	Upstream corporate limits.	424
	.....do.....	508

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: October 19, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30996 Filed 11-2-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4766]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of Parker, Collin County, Tex.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Parker, Collin County, Tex. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the City Offices, Route 1, Box 36, Allen, Tex. 75002. Send comments to: Mayor R. T. Lantrip, Route 1, Box 36, Allen, Tex. 75002.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Parker, Collin County, Tex., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Maxwell Creek	Approximately 100 ft upstream of Gray Lane.	592
	Approximately 100 ft downstream of Parker Rd.	601
	Approximately 100 ft downstream of Gregory Rd.	611
	Just upstream of Elisa Lane.	625
Cottonwood Creek	Approximately 200 ft downstream of Betsy Lane.	536
	Approximately 100 ft upstream of Parker Rd.	560
Dublin Creek	Just upstream of Dublin Rd.	545

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: October 19, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30997 Filed 11-2-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4768]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of Linton, Emmons County, N. Dak.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Linton, Emmons County, N. Dak. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, Linton, N. Dak. Send comments to: Hon. Joe Vetter, Mayor, City of Linton, P.O. Box 57, Linton, N. Dak. 58552.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Linton, N. Dak., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Devel-

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opment Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Beaver Creek	Gravel road—100 ft*	1,699
	County club crossing—100 ft*.	1,703
	Field Rd.—50 ft*	1,707
	U.S. Highway 83—100 ft*.	1,709
	Burlington Northern RR.—80 ft*.	1,712
Spring Creek	Sampson Ave.—50 ft*	1,704
	Private bridge—40 ft*	1,706
	Schley Ave.—70 ft*	1,707
	Gravel road—100 ft*	1,719
	U.S. Highway 83—100 ft*.	1,724
	Burlington Northern RR.—100 ft*.	1,732
Spring Creek overflow.	U.S. Highway 83—30 ft*.	1,719
	Burlington Northern RR.—70 ft*.	1,720
	East West Highway—40 ft*.	1,724

*Upstream of centerline.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: October 24, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30992 Filed 11-2-78; 8:45 am]

[4830-01-M]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

[LR-258-76]

REVISION OF MILEAGE TEST AND DOLLAR LIMITS FOR DEDUCTION OF MOVING EXPENSES

Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the revision of the mileage test and dollar limits with respect to the deduction of moving expenses. Changes to the applicable tax law were made by the Tax Reform Act of 1976. The regulations would provide the public with the guidance needed to comply with that Act. The regulations would directly affect individuals who pay or incur moving expenses.

DATES: Written comments and requests for a public hearing must be delivered or mailed by January 2, 1979. The amendments are proposed to be effective for taxable years beginning after December 31, 1976.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-258-76), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

Barbara Bitler Coughlin of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-6618).

SUPPLEMENTARY INFORMATION:

BACKGROUND

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 217 (b)(3) and (c)(1) of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to section 506 (a), (b), and (d) of the Tax Reform Act of 1976 (90 Stat. 1568). The amendments are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

MILEAGE TEST

The proposed regulations amend paragraphs (a)(3)(i) and (c)(2) of § 1.217-2 to reflect the change in the mileage test with respect to the deduction of moving expenses. Prior to December 31, 1976, otherwise qualifying moving expenses generally were allowable as a deduction only if the distance from the taxpayer's new principal place of work to the taxpayer's former residence was at least 50 miles greater than the distance from the taxpayer's former principal place of work to the taxpayer's former residence. The proposed regulations provide that, with respect to moving expenses paid or incurred in taxable years beginning after December 31, 1976, the mileage test is changed to 35 miles.

DOLLAR LIMITS

The proposed regulations also amend paragraph (b)(9) of § 1.217-2 to reflect the changes in the dollar limits with respect to the deduction of moving expenses. Prior to December 31, 1976, the amount of the deduction attributable to premove househunting costs and temporary meals and lodging expenses was limited to $1,000. The aggregate of the amount attributable to those two items and to qualified residence sale, purchase, or lease expenses was limited to $2,500. The proposed regulations increase these limits to $1,500 and $3,000, respectively, with respect to commencements of work in taxable years beginning after December 31, 1976.

COMMENTS AND REQUESTS FOR A PUBLIC HEARING

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the FEDERAL REGISTER.

DRAFTING INFORMATION

The principal author of these proposed regulations is John M. Coulter, Jr., of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

The approach chosen in the proposed amendments does not appear burdensome; it imposes no new reporting burdens or recordkeeping requirements. Evaluation of the effectiveness of these regulations after issuance will be based upon comments received from offices within Treasury and the Internal Revenue Service, other governmental agencies, and the public.

PROPOSED AMENDMENTS TO THE REGULATIONS

The proposed amendments to 26 CFR Part 1 are as follows:

§ 1.217 [Deleted]

PARAGRAPH 1. Section 1.217 and the historical note are deleted.

§ 1.217-2 [Amended]

PAR. 2. Section 1.217-2 is amended as follows:

1. Paragraph (a)(3)(i) is amended by inserting the phrase "that in 1977" in the 11th sentence between the words "assume" and "A is" and by deleting the term "50 miles" in the 11th sentence and inserting in its place the term "35 miles".

2. Paragraph (b)(9) is amended as follows:

a. The first sentence of (ii) is amended by deleting the term "$2,500" and inserting in its place the phrase "$3,000 ($2,500 in the case of a commencement of work in a taxable year beginning before January 1, 1977)", and by deleting the term "$1,000" and inserting in its place the phrase "$1,500 ($1,000 in the case of a commencement of work in a taxable year beginning before January 1, 1977)".

b. The third sentence of (ii) is amended by deleting the term "1971" both places it occurs and inserting in its place the term "1977", by deleting the term "1972" both places it occurs and inserting in its place the term "1978", and by deleting the term "$500" and inserting in its place the term "$1,000".

c. The second sentence of (iii) is amended by deleting the term "$1,000" and inserting in its place the phrase "$1,500 ($1,000 in the case of a commencement of work in a taxable year beginning before January 1, 1977)", and by deleting the term "$2,500" and inserting in its place the phrase "$3,000 ($2,500 in the case of a commencement of work in a taxable year beginning before January 1, 1977)".

d. The first sentence of (v) is amended by deleting the term "$2,500" and inserting in its place the phrase "$3,000 ($2,500 in the case of a commencement of work in a taxable year beginning before January 1, 1977)", and by deleting the term "$1,000" and inserting in its place the phrase "$1,500 ($1,000 in the case of a commencement of work in a taxable year beginning before January 1, 1977)".

e. The second sentence of (v) is amended by deleting the term "$1,250" and inserting in its place the phrase "$1,500 ($1,250 in the case of a commencement of work in a taxable year beginning before January 1, 1977)", and by deleting the term "$500" and inserting in its place the phrase "$750 ($500 in the case of a commencement of work in a taxable year beginning before January 1, 1977)".

f. The third sentence of (v) is amended by deleting the phrase "$2,500 and $1,000 limitation" and inserting in its place the phrase "$3,000 and $1,500 limitation ($2,500 and $1,000, respectively, in the case of a commencement of work in a taxable year beginning before January 1, 1977)", and by deleting the phrase "$1,250 and $500 limitation" and inserting in its place the phrase "$1,500 and $750 limitation ($1,250 and $500, respectively, in the case of a commencement of work in a taxable year beginning before January 1, 1977)".

g. Example (1) of (vi) is amended by deleting the term "1971" each place it appears and inserting in its place the term "1977", by deleting the term "$2,500" and inserting in its place the term "$3,000", and by deleting the term "$1,000" and inserting in its place the term "$1,500".

h. Example (2) of (vi) is amended by deleting the term "1971" and inserting in its place the term "1977", by deleting the term "$1,250" both places it appears and inserting in its place the term "$1,500", and by deleting the term "$500" both places it appears and inserting in its place the term "$750".

i. Example (3) of (vi) is amended by deleting the term "1971" both places it appears and inserting in its place the term "1977", by deleting the term "$5,000" and inserting in its place the term "$6,000", by deleting the term "$2,000" and inserting in its place the term "$3,000", by deleting the term "$2,500" both places it appears and inserting in its place the term "$3,000", and by deleting the term "$1,000" both places it appears and inserting in its place the term "$1,500".

3. Paragraph (c)(2) is amended by deleting the term "50 miles" both places it appears and inserting in its place the phrase "35 miles (50 miles in the case of expenses paid or incurred in taxable years beginning before January 1, 1977)".

WILLIAM E. WILLIAMS,
Acting Commissioner of Internal Revenue.

[FR Doc. 78-31070 Filed 11-2-78; 8:45 am]

[6820-24-M]

GENERAL SERVICES ADMINISTRATION

Federal Supply Service

[41 CFR Parts 101-26 and 101-38]

U.S. GOVERNMENT NATIONAL CREDIT CARD

AGENCY: General Services Administration.

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) proposes to amend the Federal Property Management Regulations covering the preparation and control of Standard Form 149, U.S. Government National Credit Card, to provide tighter management controls over the issuance, accountability, and disposition of the credit card.

DATE: Comments are due on or before January 15, 1979.

ADDRESS: Written comments should be sent to: General Services Administration (FAF), Washington, D.C. 20406.

FOR FURTHER INFORMATION CONTACT:

Mr. John I. Tait, Director, Regulations and Management Control Division, Office of the Executive Director, Federal Supply Service, General Services Administration, Washington, D.C. 20406, 703-557-1914.

SUPPLEMENTARY INFORMATION: Under the provisions of GSA's implementation of Executive Order 12044, Improving Governmental Regulations, each GSA Commissioner is required to insure that each regulation relating to his or her area of responsibility is reviewed at least once every 5 years. The criteria for review are set forth in that implementation, which was published in the FEDERAL REGISTER on May 25, 1978 (43 FR 22612).

A further provision of the implementation of the Executive order is a list of regulations required to be considered for the first review. The regulations concerning the preparation and control of Standard Form 149, U.S. Government National Credit card, are included in this list.

It is proposed to amend Subchapters E and G as follows:

SUBCHAPTER E—SUPPLY AND PROCUREMENT

PART 101-26—PROCUREMENT SOURCES AND PROGRAMS

Subpart 101-26.4—Purchase of Items From Federal Supply Schedule Contracts

1. Section 101-26.406-1 is amended to read as follows:

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101-26.406-1 General.

(a) Standard Form 149, U.S. Government National Credit Card (illustrated at § 101-26.4901-149), is authorized for use by Federal agencies to obtain authorized services and delivery of items at service stations dispensing items provided by the contractors listed in the Defense Fuel Supply Center publication "Your Guide to Service Stations for Gasoline, Oil and Lubrication" (DFSC H 4280.1). Activities requiring copies of the publication should submit requests to: Commander, Defense Fuel Supply Center, Attention: DFSC: P, Cameron Station, Alexandria, Va. 22314.

(b) Standard Form 149 is the only Government-wide credit card approved for use by Federal agencies for the procurement of gasoline and services at service stations dispensing items provided by the contractors listed in the Defense Fuel Supply Center publication referenced in subpar. (a) of this section. However, agencies that operate motor vehicles for purposes in which identification as Government vehicles would interfere with the performance of the functions for which the vehicles were acquired and are used (see § 101-38.602) need not use Standard Form 149 for those specific vehicles.

. . . . .

2. Section 101-26.406-5 is revised to read as follows:

§ 101-26.406-5 Methods of obtaining Standard Form 149, U.S. Government National Credit Card.

(a) All agency purchase orders for embossed Standard Forms 149 shall be addressed to the appropriate contractor but shall be forwarded through the General Services Administration (FZM), Washington, D.C. 20406, for verification of the billing code and address. GSA (FZM) will forward the purchase orders to the contractor for embossing of the Standard Form 149.

(b) The embossing contractor will bill the ordering agencies directly.

(c) The type font used when embossing Standard For 149 shall conform with the requirements of the Federal Supply Schedule contract.

(d) Each agency shall furnish the billing code, billing address, and, if appropriate, the vehicle tag or registration number for each Standard Form 149 requisitioned. This information shall accompany the purchase order and shall be limited to five lines with a maximum of 22 characters (including spaces) per line. Each agency shall furnish an expiration date (month and year, not to exceed 2 years) for the credit card and, if appropriate, the agency series mark.

SUBCHAPTER G—TRANSPORTATION AND MOTOR VEHICLES

PART 101-38—MOTOR EQUIPMENT MANAGEMENT

Subpart 101-38.12—Preparation and Control of Standard Form 149, U.S. Government National Credit Card

Sections 101-38.1200 through 101-38.1203 are revised to read as follows:

§ 101-38.1200 General.

(a) Standard Form 149, U.S. Government National Credit Card, is authorized for use by Federal agencies to obtain services and delivery of supplies at service stations dispensing supplies provided by contractors listed in the Defense Fuel Supply Center publication "Your Guide to Service Stations for Gasoline, Oil, and Lubrication" (DFSC H 4280.1). Activities requiring copies of the publication should submit requests to: Commander, Defense Fuel Supply Center, Attention: DFSC:P, Cameron Station, Alexandria, Va. 22314.

(b) Procedures for obtaining Standard Form 149, U.S. Government National Credit Card, are in § 101-26.406-5.

§ 101-38.1201 Billing code.

The billing code is a 10-digit number and is the first embossed line on the Standard Form 149.

(a) The first nine digits shall be assigned by the agency in accordance with the following instructions:

(1) The first three digits of the billing code shall always be 000 for all Federal agencies other than the General Services Administration, Department of Agriculture, and the Department of Defense. The Department of Defense shall use 002, and the Department of Agriculture shall use 003 as will the General Services Administration.

(2) The fourth digit may be used by the agency to designate the vehicle class or for other purposes to meet the agency's requirements. If not used for any designation, the fourth digit will be zero.

(3) The fifth and sixth digits shall be the agency code unless otherwise authorized by GSA. Agency codes are shown in the Department of the Treasury booklet "Federal Account Symbols and Titles."

(4) The seventh, eighth, and ninth digits indicate the agency billing address code number, unless otherwise authorized by GSA. Each agency shall assign its own billing address code numbers when the seventh, eighth, and ninth digits are used for that purpose.

(b) The tenth digit is the validation number for use in automatic billing operations of the contractors. This number is not assigned by the agency but will be determined by the embossing contractor listed in Federal Supply Schedule FSC 75 Part VII. The validation number will be computed in accordance with American National Standard X4.13-1971.

§ 101-38.1201-1 Billing address.

The billing address is the name of the agency and the address to which contractors should send statements covering the purchase of supplies and services by the user of the Standard Form 149, U.S. Government National Credit Card. The billing address shall be limited to three lines and shall be shown on the second, third, and fourth embossed lines.

§ 101-38.1202 Administrative control of credit cards.

(a) It is essential that Federal agencies ensure that supplies and services procured with Standard Form 149, U.S. Government National Credit Card, are for the offical use of the agency involved, and that administrative control is maintained to prevent unauthorized use of credit cards. Administrative control shall include (1) and (2), below, as a minimum:

(1) A two-digit number will be embossed on the first embossed line (billing code) of the credit card in the 16th and 17th positions. This number will be the expiration year of the credit card.

(2) A replacement series mark will be embossed on the extreme right side of the fifth embossed line, to indicate the number of times a credit card has been replaced as a result of being reported lost or stolen (e.g., R-1). All requests for replacement of lost or stolen Standard Forms 149 shall be sent to the General Services Administration (FZM), Washington, DC 20406.

(3) The license tag number or registration number of a vehicle may be embossed on the fifth line of the credit card, in which case the card is to be used to procure supplies and services for that vehicle only. If no number is shown, the credit card may be used to obtain supplies and services for any properly identified U.S. Government vehicle, boat, small aircraft, nonvehicular equipment, or motor vehicle that is leased or rented for 60 continuous days or more and is officially identified in accordance with FPMR 101-38.305.

(b) Agencies shall establish procedures to provide for the:

(1) Prompt notification to the General Services Administration (FZM), Wahington, D.C. 20406, of lost or stolen credit cards;

(2) Issuance of a request for replacement in the event a credit card is lost, stolen, or damaged;

(3) Return to General Services Adminstration (FZM) by return receipt requested, certified, or registered mail of damaged credit cards that have been replaced and of lost or stolen credit cards recovered after being reported or replaced; and

(4) Destruction of credit cards bearing an expiration date that has passed or bearing an invalid license tag number; e.g., when the tag has expired or is destroyed.

§ 101-38.1202-1 Expiration date.

(a) When the billing code and billing address are embossed, an expiration date (month and year), not to exceed 2 years, will also be embossed on the extreme right side of the fouth line of the credit card.

(b) The 16th and 17th positions on the first embossed line will be used to indicate the year of expiration.

§ 101-38.1203 Centralized administrative control of credit cards.

(a) GSA will provide centralized management and control of the Standard Form 149, U.S. Government National Credit Card program. Inquiries concerning the policy and administration of this program shall be directed to GSA.

(b) Agencies shall forward proposed assignment of billing codes and billing addresses conforming to the requirements of this Subpart 101-38.12 to the General Services Administration (FZM), Washington, D.C. 20406, for approval. Changes in billing codes and addresses shall also be furnished to GSA for approval so that there will be proper control of billing procedures. Information concerning billing codes, billing addresses, and the vehicle tag or registration number shall be limited to 5 lines with no more than 22 characters (including spaces) per line.

(c) After the determination has been made that the billing code(s) and billing address(es) submitted are correct and are not duplicates, the requests will be forwarded by GSA to the contractor for embossing.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).)

Dated: October 10, 1978.

ROBERT GRAHAM,
Commissioner, FSS.

[FR Doc. 78-31073 Filed 11-2-78; 8:45 am]

[4110-02-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Part 114]

ASSISTANCE FOR SCHOOL CONSTRUCTION IN AREAS AFFECTED BY FEDERAL ACTIVITIES

AGENCY: Office of Education, HEW.

ACTION: Notice of decision to amend regulations.

SUMMARY: The Commissioner of Education proposes to amend those parts of the school construction regulations which require the U.S. Commissioner of Education to make arrangements for constructing or otherwise providing minimum school facilities for the education of children residing on Federal property. These arrangements are necessary when State law precludes the expenditure of funds for such purposes or where local educational agencies are unable to provide suitable free public education. The effect will be to permit the funding of major renovations and new construction required to make the school facilities life safe and accessible to the handicapped on eligible Federal installations where present facilities do not provide such environments. The Commissioner also proposes to define the criteria by which he can determine whether a school district is able to provide a suitable free public education for federally connected children. These regulations have been determined policy significant.

The Commissioner is proposing these amendments prior to the full recodification of Pub. L. 81-815 scheduled for spring of 1979 in order to allow for targeting of fiscal year 1979 funding.

FOR FURTHER INFORMATION CONTACT:

Dr. William W. Chase, Room 2067, FOB-6, 400 Maryland Avenue SW., Washington, D.C. 20202, telephone 202-245-8412.

(Catalog of Federal Domestic Assistance No. 13.477, School Assistance in Federally Affected Areas—Construction.)

Dated: October 11, 1978.

ERNEST L. BOYER,
Commissioner of Education.

[FR Doc. 78-31140 Filed 11-2-78; 8:45 am]

[4110-02-M]

[45 CFR Part 115]

ASSISTANCE FOR MAINTENANCE AND OPERATION AND SCHOOL CONSTRUCTION IN AREAS AFFECTED BY FEDERAL ACTIVITIES

AGENCY: Office of Education, HEW.

ACTION: Notice of decision to amend regulations.

SUMMARY: The Commissioner of Education proposes to amend and add to the regulation of school assistance in federally affected areas with respect to maintenance and operation, construction, and disaster assistance. The education amendments of 1978 make the changes and additions necessary. The proposed regulation governs these matters:

(1) The definition of an application for preliminary payment, making the present application also the final report, and eliminating the present final report;

(2) The conversion of membership to average daily attendance;

(3) The employment conditions of school personnel in cases of education arranged by the Commissioner;

(4) The nonpublic education of a handicapped child of a parent in a uniformed service;

(5) The conversion of average daily attendance to average daily membership for the purposes of construction payments;

(6) Payments in States that equalize expenditures among local educational agencies;

(7) The participation of children who live on Indian lands, and their parents, in development of educational programs, complaint procedures with respect to them, and relations with tribal councils and relations with the Bureau of Indian Affairs; and

(8) The insuring of an elective school board and empowering of a school board to oversee school expenditures with respect to education arranged by the Commissioner.

This regulation is policy significant.

FOR FURTHER INFORMATION CONTACT:

Clarke L. Herbert, U.S. Office of Education, Room 2065, 400 Maryland Avenue SW., Washington, D.C. 20202, telephone 202-245-8427.

(Catalog of Federal Domestic Assistance No. 13.477, School Construction, and 13.478, Maintenance and Operation—School Assistance in Federally Affected Areas.)

Dated: September 28, 1978.

ERNEST L. BOYER,
Commissioner of Education.

[FR Doc. 78-31141 Filed 11-2-78; 8:45 am]

[4110-02-M]

[45 CFR Part 160b]

PROGRAM FOR THE GIFTED AND TALENTED

AGENCY: Office of Education, HEW.

ACTION: Notice of decision to develop regulations.

SUMMARY: The Commissioner of Education proposes to make technical changes in the regulations which govern the program for the gifted and talented. The purposes are to revise the present regulations to correspond with anticipated changes in the legislations; and to rewrite the existing regulations in simple English in order to give potential applicants and other interested parties, including parents of gifted and talented children, a better

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understanding of the program. The Commissioner has determined that these proposed regulations are a technical amendment.

FOR FURTHER INFORMATION CONTACT:

Dorothy Sisk, Office of Gifted and Talented, Office of Education, 400 Maryland Avenue SW. (Room 3835 Donohoe), Washington, D.C. 20202.

(Catalog of Federal Domestic Assistance No. 13. 562, Program for the Gifted and Talented)

Dated: September 12, 1978.

ERNEST L. BOYER,
Commissioner of Education.

[FR Doc. 78-31138 Filed 11-2-78; 8:45 am]

[4110-02-M]

[45 CFR Part 160i]

PRESCHOOL PARTNERSHIP PROGRAM

AGENCY: Office of Education, HEW.

ACTION: Notice of decision to develop regulations.

SUMMARY: The Commissioner of Education proposes to publish a notice of proposed rulemaking for the preschool partnership program under the education amendments of 1978. The regulations affect the selection of recipients of grants to local educational agencies (LEA's) and other organizations for the establishment of combined home-school based preschool programs in cooperative pilot projects with Project Head Start. The regulations also govern the funding of other early childhood education projects for low-income families with children under 6 years of age. These regulations are policy significant.

FOR FURTHER INFORMATION CONTACT:

Dr. Ernest A. Crider, 400 Maryland Avenue SW., Room 2083, Washington, D.C. 20202, telephone 202-245-8118.

(Catalog of Federal Domestic Assistance Number, Preschool Partnership)

Dated: September 28, 1978.

ERNEST L. BOYER,
Commissioner of Education.

[FR Doc. 78-31139 Filed 11-2-78; 8:45 am]

[4110-02-M]

[45 CFR Parts 186, 187, 188]

INDIAN EDUCATION PROGRAM

AGENCY: Office of Education, HEW.

ACTION: Notice of Decision to develop regulations.

SUMMARY: The Commissioner of Education proposes to develop regulations for the Indian Education program to:

1. Clarify existing regulations, and
2. Meet the requirements of the proposed education amendments of 1978. Among other things, these amendments:

(a) Broaden the scope of Part A to provide assistance to meet culturally related academic needs;

(b) Authorize a grant demonstration program for local educational agencies;

(c) Grant Indian controlled schools LEA status for the purpose of receiving Part A entitlement funds;

(d) Clarify parent committee eligibility, require committee input into hiring, and the adoption of committee bylaws;

(e) Authorize a contract or grant program to evaluate, conduct research, provide technical assistance, and disseminate information: and

(f) Authorize an education service program under Part C.

The proposed regulations have been determined to be policy significant.

FOR FURTHER INFORMATION CONTACT:

Dr. John Tippeconnic, U.S. Office of Education, Room 2177, Federal Office Building 6, 400 Maryland Avenue SW.; Washington, D.C., 20202, phone 202-245-8020.

(CFPA No. 13.534 Indian Education 13.535 Indian Education—Special Programs and Projects 13.536 Indian Education—Adult Education 13.551 Indian Education—Non-LEA 13.569 Indian Education—Fellowships).

Dated: September 12, 1978.

ERNEST L. BAYER,
Commissioner of Education.

[FR Doc. 78-31137 Filed 11-2-78; 8:45 am]

[3110-01-M]

OFFICE OF MANAGEMENT AND BUDGET

[48 CFR Part 28]

FEDERAL ACQUISITION REGULATION PROJECT

Availability and Request for Comment on Draft Regulation

AGENCY: Office of Federal Procurement Policy, Office of Management and Budget.

ACTION: Notice of availability and request for comment on draft regulation.

SUMMARY: The Office of Federal Procurement Policy is making available for public and Government agency review and comment a segment of the draft Federal Acquisition Regulation (FAR).[1] Additional segments will be announced for availability and comment on later dates. The regulation is being developed to replace the current system of procurement regulations. It will be a single uniform acquistion regulation for use by all Federal executive agencies in the acquisition of supplies and services with appropriated funds.

DATE: Comments must be received on or before January 3, 1979.

ADDRESS: Obtain copies of the draft regulation from and submit comments to William W. Thybony, Assistant Administrator for Regulations, Office of Federal Procurement Policy, 726 Jackson Place NW., Room 9025, Washington, D.C. 20503. Government personnel may obtain copies from contact points established in each agency.

FOR FURTHER INFORMATION CONTACT:

William Maraist, or Strat Valakis, 202-395-3300.

SUPPLEMENTARY INFORMATION: The fundamental purpose of the FAR is to reduce the proliferation of regulations; to eliminate conflicts and redundancies; and to provide an acquisition regulation that is simple, clear, and understandable. The intent is not to create new policy. However, because new policies may arise concurrently with the FAR project, the notice of availability of draft regulations will summarize the section or part available for review and describe any new policies therein.

The following segment of the Federal Acquisition Regulation is available for public and Government agency review and comment.

PART 28—BONDS AND INSURANCE

28.3 Insurance—General Policy.

This subpart states the general policy that the Government does not insure its own property and risks and provides exceptions thereto. It contains a requirement for a notice of cancellation or change when insurance is required and a discussion of insurance against loss of or damage to Government property, and risk-pooling arrangements.

28.4 Insurance—Contract Requirements.

This subpart contains the requirements for overseas workmen's compensation and war-hazard insurance. It also contains insurance requirements under fixed-price and cost-reimbursement contracts including workmen's compensation and employer's liability, automobile, aircraft and vessel liability and insurance requirements for work on a Goverment installation.

Insurance clauses are provided here for review. They will be published in Part 52 of the completed FAR.

[1] Filed as part of the original document.

Changes contained in this proposed FAR subpart are summarized as follows:

1. The minimum liability insurance requirements have been made uniform for all agencies.
2. The following subject material has not been included in the FAR for the reasons noted:

(a) The cross-references to Government Furnished Property appearing in both DAR and FPR were deleted as unnecessary.

(b) DAR 10-404, "Aircraft—Ground and Flight Risk," was deleted. Agency needs and practices are so different that use of the DOD clause and coverage is inappropriate.

(c) DAR 10-406, "Capture and Detention," and DAR Clause 7-104.2(c), "Reimbursement for War Hazard Losses," have been deleted as being too specialized and limited in use to require FAR coverage.

3. The coverage pertaining to special casualty insurance in DAR section X, Part 6, has been recognized in the FAR, and a requirement has been made that, when used, agencies should designate a single manager or single point of contact.

4. The coverage in secion X, Part 7, pertaining to Indemnification of Contractors, is based on two laws, 10 U.S.C. 2354 and 50 U.S.C. 1431-1435. DAR section X, Part 7, will not be covered in the FAR under insurance. DAR 10-701 is based on statute applicable only to military departments and should be carried in the DAR, if needed. DAR 10-702 will be relocated to FAR Part 50, "Extraordinary Contractual Actions." DAR 10-703 is based on cases with mixed justification; the citation of both authorities could be accomplished by military departments only and should be carried in the DAR, if needed.

5. The two clauses, 7-104.65 and 7-603.10 regarding work on Government installations have been combined, providing for flow-down to all subcontractors. It is logical to require insurance for any subcontractor coming on a Government installation regardless of the "tier."

Dated: October 27, 1978.

WILLIAM J. MARAIST, JR.,
Deputy Assistant Administrator for Regulations.

[FR Doc. 78-31122 Filed 11-2-78; 8:45 am]

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

[3410-02-M]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[P&S Docket No. 5151]

C. E. MILLS AND E. E. MILLS, D.B.A. MILLS AUCTION MARKET, OCALA, FLA.

Petition To Vacate Report and Decision

Notice is hereby given that on October 23, 1978, a petition to vacate the report and decision issued by Administrative Law Judge John C. Liebert, was certified to the Judicial Officer of the U.S. Department of Agriculture.

This is a rate proceeding under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.).

Respondent believes that the recent statutory amendment (Pub. L. 95-409), the issuance of § 203.17 of the statements of general policy (43 FR 46494), and the revocation of § 203.11 of the statements of general policy (43 FR 46955) by the Department of Agriculture support such a vacating of regulatory control over their rates and charges.

All interested persons who desire to be heard in this matter shall notify the hearing clerk, U.S. Department of Agriculture, Washington, D.C. 20250, on or before November 20, 1978.

Done at Washington, D.C., this 31st day of October 1978.

CHAS. B. JENNINGS,
Deputy Administrator,
Packers and Stockyards—AMS.

[FR Doc. 78-31103 Filed 11-2-78; 8:45 am]

[3410-01-M]

Office of the Secretary

PERFORMANCE OF FUNCTIONS OF ASSISTANT SECRETARY OF AGRICULTURE FOR INTERNATIONAL AFFAIRS AND COMMODITY PROGRAMS

AGENCY: Department of Agriculture.

ACTION: Notice.

SUMMARY: The purpose of this document is to authorize Assistant Secretary of Agriculture Dale E. Hathaway to perform all of the functions formerly performed by the Assistant Secretary of Agriculture for International Affairs and Commodity Programs. Such action will result in the effective leadership of the foreign agriculture and agricultural stabilization and conservation functions of the Department.

EFFECTIVE DATE: October 21, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert L. Siegler, Office of the General Counsel, USDA, Washington, D.C., 202-447-6035.

SUPPLEMENTAL INFORMATION: Section 501(a) of the agricultural Trade Act of 1978, Pub. L. 95-501, enacted October 21, 1978, established the position of Under Secretary of Agriculture for International Affairs and Commodity Programs. Section 503(c) of that Act provided that the designation of "Assistant Secretary of Agriculture for International Affairs and Commodity Programs" shall not be used after the date of the enactment of the Act. In the Conference Report on the Agricultural Trade Act of 1978, H. Rept. No. 95-1755, the conferees stated "[u]ntil the appointment of and qualification of the Under Secretary, the Assistant Secretary exercising the functions and performing the duties related to foreign agriculture and agricultural stablization and conservation may continue to exercise and perform such functions and duties." Accordingly, Assistant Secretary of Agriculture Dale E. Hathaway, is hereby authorized to perform all the duties and functions assigned to the Assistant Secretary of Agriculture for International Affairs and Commodity Programs, including those functions delegated in 7 CFR 2.21. In exercising such functions the Assistant Secretary shall use the title "Assistant Secretary of Agriculture."

The delegations of authority from the Secretary to the Assistant Secretary of Agriculture for International affairs and Commodity Programs and redelegation from the Assistant Secretary will be revised upon the appointment of the Under Secretary of Agriculture for International Affairs and Commodity Programs. All redelegations from the assistant Secretary shall remain in full force and effect until revoked, revised, or amended.

Dated: October 30, 1978.

BOB BERGLAND,
Secretary of Agriculture.

[FR Doc 78-31134 Filed 11-2-78; 8:45 am]

[3410-02-M]

[P&S Docket No. 5157]

ROBERTSDALE LIVESTOCK AUCTION, INC., ROBERTSDALE, ALA.

Petition To Vacate Order and Dismiss Proceedings

Notice is hereby given that on October 17, 1978, the respondent filed a petition requesting that the rate order issued August 30, 1978, to be effective 60 days after service, later modified to 90 days, be vacated and the proceeding dismissed.

This is a rate proceeding under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.).

The respondent believes that the October 2, 1978, signing of Pub. L. 95-409, which amended the Packers and Stockyards Act, 1921, as amended, to provide that a market agency subject to the act could utilize a value-based tariff, such as respondent's tariff No. 3, and the issuance of the Department's policy statement 203.17 (9 CFR 203.17) support such a vacating of regulatory control over its rates and charges.

All interested persons who desire to be heard in this matter shall notify the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, on or before November 20, 1978.

Done at Washington, D.C., this 31st day of October 1978.

CHAS. B. JENNINGS,
Deputy Administrator,
Packers and Stockyards—AMS.

[FR Doc. 78-31103 Filed 11-2-78; 8:45 am]

[3410-01-M]

Office of the Secretary

PERFORMANCE OF FUNCTIONS OF ASSISTANT SECRETARY OF AGRICULTURE FOR INTERNATIONAL AFFAIRS AND COMMODITY PROGRAMS

AGENCY: Department of Agriculture.

ACTION: Notice.

SUMMARY: The purpose of this document is to authorize Assistant Secretary of Agriculture Dale E. Hathaway to perform all of the functions formerly performed by the Assistant Secretary of Agriculture for International Affairs and Commodity Programs. Such action will result in the effective leadership of the foreign agriculture and agricultural stabilization and conservation functions of the Department.

EFFECTIVE DATE: October 21, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert L. Siegler, Office of the General Counsel, USDA, Washington, D.C., 202-447-6035.

SUPPLEMENTAL INFORMATION: Section 501(a) of the agricultural Trade Act of 1978, Pub. L. 95-501, enacted October 21, 1978, established the position of Under Secretary of Agriculture for International Affairs and Commodity Programs. Section 503(c) of that Act provided that the designation of "Assistant Secretary of Agriculture for International Affairs and Commodity Programs" shall not be used after the date of the enactment of the Act. In the Conference Report on the Agricultural Trade Act of 1978, H. Rept. No. 95-1755, the conferees stated "[u]ntil the appointment of and qualification of the Under Secretary, the Assistant Secretary exercising the functions and performing the duties related to foreign agriculture and agricultural stablization and conservation may continue to exercise and perform such functions and duties." Accordingly, Assistant Secretary of Agriculture Dale E. Hathaway, is hereby authorized to perform all the duties and functions assigned to the Assistant Secretary of Agriculture for International Affairs and Commodity Programs, including those functions delegated in 7 CFR 2.21. In exercising such functions the Assistant Secretary shall use the title "Assistant Secretary of Agriculture."

The delegations of authority from the Secretary to the Assistant Secretary of Agriculture for International affairs and Commodity Programs and redelegation from the Assistant Secretary will be revised upon the appointment of the Under Secretary of Agriculture for International Affairs and Commodity Programs. All redelegations from the assistant Secretary shall remain in full force and effect until revoked, revised, or amended.

Dated: October 30, 1978.

BOB BERGLAND,
Secretary of Agriculture.

[FR Doc 78-31134 Filed 11-2-78; 8:45 am]

[3410-16-M]

Soil Conservation Service

AUTHORIZATION OF FEDERAL ASSISTANCE IN THE INSTALLATION OF WORKS OF IMPROVEMENT

Federal assistance in the installation of works of improvement under the authority of the Watershed Protection and Flood Prevention Act (16 U.S.C. 1001-1008) has been authorized for the following watersheds:

Deposit Creek, N.Y.
Wet Walnut Creek No. 1, Kans.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program—Pub. L. 83-566, 16 U.S.C. 1001-1008.)

Dated: October 26, 1978.

VICTOR H. BARRY, JR.,
Deputy Administrator
for Programs.

[FR Doc. 78-31106 Filed 11-2-78; 8:45 am]

[6320-01-M]

CIVIL AERONAUTICS BOARD

[Dockets 28293, et al.[1]]

TRANS WORLD AIRLINES, INC.

Enforcement Proceeding; Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that the hearing in the above-entitled matter will be held on December 6 and 7, 1978, at 9:30 a.m., local time, in Room 1003, Hearing Room C, 1875 Connecticut Avenue NW., Washington, D.C., before the undersigned judge.

Dated at Washington, D.C., October 31, 1978.

JOHN J. MATHIAS,
Administrative Law Judge.

[FR Doc. 78-31195 Filed 11-2-78; 8:45 am]

[6335-01-M]

COMMISSION ON CIVIL RIGHTS

HEARING

Amended Notice

Pursuant to the notice of public hearing of the U.S. Commission on Civil Rights published at page 47224 of the FEDERAL REGISTER of Friday, October 13, 1978, amendment of that notice is hereby made, stating the exact location of the hearing. The complete text of that notice, as amended, shall read as follows:

Notice is hereby given pursuant to the provisions of the Civil Rights Act of 1957, 71 Stat. 634, as amended, that a public hearing of the U.S. Commission on Civil Rights will commence on November 14, 1978, at the Rayburn House Office Building, Judiciary Committee Hearing Room 2226, Independence Avenue and South Capitol Street SW., Washington, D.C. An executive session, if appropriate, may be convened at any time before or during the hearing.

The purpose of the hearing is to collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice, particularly concerning the administration and enforcement of the immigration and nationality laws of the United States; to appraise the laws and policies of the Federal Government with respect to denials of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice, particularly concerning the administration and enforcement of the immigration and nationality laws of the United States; and to disseminate information with respect to denials of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice, particularly concerning the administration and enforcement of the immigration and nationality laws of the United States.

Dated at Washington, D.C., October 30, 1978.

ARTHUR S. FLEMMING,
Chairman.

[FR Doc. 78-31172 Filed 11-2-78; 8:45 am]

[1] Dockets 28298, 28593, 29039, 29219, 29288, 29386, 30041, 30042, 30044, 30497, 30743, 31621, 31624, 31628, 31629, 31630, 32100, and 32569.

[3510-24-M]

DEPARTMENT OF COMMERCE

Economic Development Administration

BUSINESS DEVELOPMENT PROGRAM

Application for Assistance Under the Economic Development Administration (EDA) Special Program to Guarantee Loans to Firms in the Basic Steel Industry

Notice is hereby given that the following application for assistance under the EDA special program to guarantee loans to firms in the basic steel industry has been received by EDA.

Firm	Amount of loan.	Percent guaranteed	Products
McLouth Steel Corp	$70,000,000	90	Hot and cold rolled carbon sheet and strip; stainless sheet and strip; and pig iron.

Dated: October 25, 1978.

ROBERT T. HALL,
Assistant Secretary
for Economic Development.

[FR Doc. 78-30853 Filed 11-2-78; 8:45 am]

[3510-24-M]

L. & R. SPORTSWEAR COMPANY, INC., ET AL.

Determinations of Eligibility To Apply for Trade Adjustment Assistance

Petitions have been accepted for filing from three firm: (1) L. & R. Sportswear Co., Inc., 401 East 40th Street, Paterson, N.J. 07504, a producer of women's slacks, jackets, skirts, and shorts, and boys' and girls' pants (accepted October 26, 1978); (2) the L. N. Gross Co., 701 Beta Drive, Mayfield Village, Ohio 44143, a producer of women's sweaters, dresses, and sportswear (accepted October 27, 1978); and (3) Tack's Greenhouses, 1765 Scott Boulevard, Suite 107, Santa Clara, Calif. 95050, a grower of carnations (accepted October 27, 1978). The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (Pub. L. 93-618) and section 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315).

Consequently, the U.S. Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Chief, Trade Act Certification Division, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the 10th calendar day following the publication of this notice.

JACK W. OSBURN, JR.,
Chief, Trade Act Certification
Division, Office of Planning
and Program Support.

[FR Doc. 78-31110 Filed 11-2-78; 8:45 am]

NO 3 78 UMI

V 4 3 / 2 1 4

[3510-22-M]

National Oceanic and Atmospheric Administration

STONE CRABS

Draft Environmental Impact Statement/Draft Fishery Management Plan

AGENCY: National Oceanic and Atmospheric Administration/Commerce.

ACTION: Notice of public hearings.

SUMMARY: A draft environmental impact statement/fishery management plan for the stone crab fishery of the Gulf of Mexico has been prepared by the Gulf of Mexico Fishery Managment Council in consultation with the National Marine Fisheries Service, National Oceanic and Atmospheric Admninistration, U.S. Department of Commerce. It has been prepared under the authority of and pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 and title III, section 303 of the Fishery Conservation and Management Act of 1976 and is available for public review and comment.

DATES AND ADDRESSES: The Gulf of Mexico Fishery Management Council will hold its public hearings at the following dates and locations at 7:30 p.m. and adjourning at 10 p.m. The South Atlantic Fishery Management Council will chair those public hearings in its jurisdiction.

November 27, Texas A. & M. Research and Extension Center Auditorium, Highway 44 (3 miles west of Corpus Christi), Corpus Christi, Tex.

November 28, South Carolina Department of Wildlife and Marine Resources Auditorium, Fort Johnson Road, Charleston, South Carolina; and Marine Center, Point Cadet, Biloxi, Miss.

November 29, City Hall Courtroom 33 South Coden Avenue, Bayou La Batre, Ala.

November 30, Village Inn, I-95 and Georgia Highway 99 (Eulonia-Townsend Exit), Townsend, Ga.; and Franklin County Courthouse, County Commissioner's Room, Market Street (U.S. 19), Apalachicola, Fla.

December 5, Holiday Inn, North Lumina Avenue, Wrightsville Beach, N.C.

December 7, Sheraton-Anastasia, Pope Road and Highway A1A, St. Augustine Beach, Fla.

December 11, Marathon High School Cafeteria, Sombrero Beach Road, Marathon, Fla.; and City Hall, Second Street, Cedar Key, Fla.

December 12, St. Petersburg, Junior College (Tarpon Springs Campus), 600 Klosterman Road, Tarpon Springs, Fla.; and Key West High School Auditorium, 2100 Flagler Avenue, Key West, Fla.

December 13, Fort Myers Exhibition Hall (Patio Room), Corner Henry Street and Edwards Drive, Fort Myers, Fla.

December 14, City Hall (City Commission Room), off State Road 29 on circle, Everglades City, Fla.

The hearings will be tape recorded, and the tapes will be filed as an official transcript of proceedings. A written summary will be prepared on each hearing.

Submit written comments to the contact person listed below by December 18, 1978, for the stone crab plan to receive full consideration in the plan development and amendment process.

FOR FURTHER INFORMATION CONTACT:

Mr. Wayne Swingle, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, Fla. 33609.

SUPPLEMENTARY INFORMATION: The hearings will deal with a proposal to implement a stone crab fishery management plan in the Gulf of Mexico under authority of the Fishery Conservation and Management Act of 1976 (FCMA). The FCMA extends U.S. jurisdiction over marine fishery resources in a fishery conservation zone to 200 miles from the coastline. This plan is being developed by the Gulf of Mexico Fishery Management Council.

The environmental impact statement is a review of the plan and a statement of its expected impacts. A fishery management plan constitutes a major Federal action significantly affecting the human environment and requires the approval of the U.S. Secretary of Commerce, prior to implementation.

The draft plan for stone crabs, when approved will serve to manage the stone crab fishery for optimum yield and, therefore, contains regulatory measures applicable to domestic fishing. The management area is the west coast of Florida in the fishery conservation zone (FCZ) (Florida-Alabama State line southward to and including the Florida Keys).

The draft plan seeks to accomplish the following objectives: (1) Provide for orderly conduct of the fishery to reduce conflict between stone crab fishermen and other fishermen in the area; (2) establish an effective statistical reporting system for monitoring the fishery; (3) attain full utilization of the resource; and (4) promote uniformity of regulations.

Optimum yield for the stone crab harvest in 1979 has been set at 2.4 million pounds with no foreign allocation.

The draft plan contains several proposed management measures. It would establish a boundary line offshore of Monroe and Collier counties of Florida and prevent most shrimping inshore of the line from February 15 to April 15. This measure is intended to protect stone crab traps from damage and loss to shrimp trawlers. Other management measures proposed involve harvesting practices, the harvesting season, gear restrictions, and data collecting and reporting. Proposed measures are, mostly, compatible with those now in effect in the territorial waters of Florida.

Signed in Washington, D.C., this 27th day of October 1978.

WINFRED H. MEIBOHM,
Acting Executive Director, National Marine Fisheries Services.

[FR Doc. 78-31054 Filed 11-2-78; 8:45 am]

[3510-04-M]

National Technical Information Service

GOVERNMENT-OWNED INVENTIONS

Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for domestic and possibly foreign licensing in accordance with the licensing policies of the agency-sponsors.

Copies of the patents cited are available from the Commissioner of Patents and Trademarks, Washington, D.C. 20231, for $0.50 each. Requests for copies of patents must include the patent number.

Copies of the patent applications can be purchased from the National Technical Information service (NTIS), Springfield, Va. 22161 for $4 ($8 outside North American Continent). Requests for copies of patent applications must include the PAT-APPL number. Claims are deleted from patent application copies sold to the public to avoid premature disclosure in the event of an interference before the Patent and Trademark Office. Claims and other technical data will usually be made available to serious prospective licensees by the agency which filed the case.

Requests for licensing information on a particular invention should be directed to the address cited for the agency-sponsor.

DOUGLAS J. CAMPION,
Patent Program Coordinator, National Technical Information Service.

U.S. DEPARTMENT OF THE AIR FORCE, AF/JACP, 1900 Half Street SW., Washington, D.C. 20324.

Patent application 900,621: Flutter Prevention Means for Aircraft Primary Flight Control Surfaces, filed April 27, 1978.

Patent application 900,948: Real Time Digital Recording System for Thermovision Data, filed April 28, 1978.

U.S. DEPARTMENT OF ENERGY, Assistant General Counsel for Patents, Washington, D.C. 20545.

Patent 4,035,156: Filter Type Rotor for Multistation Photometer, filed January 21, 1977, patented July 12, 1977. Not available NTIS.

U.S. DEPARTMENT OF THE NAVY, Assistant Chief for Patents, Office of Naval Research, Code 302, Arlington, Va. 22217.

Patent application 842,840: Magnetometer Calibration Method and Apparatus, filed October 17, 1977.

Patent application 852,120: Diver's Composite Umbilical, filed November 16, 1977.

Patent application 861,236: Telephone System for Diver Communication, filed December 16, 1977.

Patent application 873,027: Temperature Measuring System, filed January 27, 1978.

Patent application 876,953: Laser Pile Cutter, filed February 13, 1978.

Patent application 882,040: Pneumatic Valve, filed February 28, 1978.

Patent application 882,849: Quick Response Humidity Chamber, filed March 3, 1978.

Patent application 888,266: Adaptive Line Enhancer, filed March 20, 1978.

Patent application 899,945: Releasable Electrical Connector, filed April 25, 1978.

Patent application 901,553: Weak Link Superconducting Switching Apparatus and Method, filed May 1, 1978.

Patent application 908,487: System for Measuring In-situ Acoustic Energy Properties of Ocean Floor Soils, filed May 22, 1978.

Patent application 965,323: Power Line Transient Suppressors, filed May 12, 1978.

Patent 4,084,255: Positional, Rotational and Scale Invariant Optical Correlation Method and Apparatus, filed November 2, 1976, patented April 11, 1978. Not available NTIS.

Patent 4,084,511: Electrolytic Timing Element, filed June 7, 1960, patented April 18, 1978. Not available NTIS.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, Assistant general Counsel for Patent Matters, NASA Code GP-2, Washington, D.C. 20546.

N78 27180 6: Intumescent-Ablator Coatings Using Endothermic Fillers, filed December 23, 1976, patented May 9, 1978. Not available NTIS.

Patent application 710,798: Flame Retardant Formulations and Products Produced Therefrom, filed May 30, 1978.

Patent application 912,276: Method of Manufacture of Bonded Fiber Flywheel, filed June 5, 1978.

Patent application 916,655: Self-Reconfiguring Solar Cell System, filed June 19, 1978.

Patent application 918,535: Viscosity Measuring Instrument, filed June 23, 1978.

Patent application 918,537: A Method of Prepurifying Metallurgical Grade Silicon Employing Reduced Pressure Atmospheric Control, filed June 23, 1978.

Patent application 918,867: A Transparent Photovaltaic Module, filed June 26, 1978.

Patent application 920,878: Low Density Bismaleimide-Carbon Microballoon Composites, filed June 30, 1978.

Patent application 920,879: An Improved Solar Cell and Method of Forming the Same, filed June 30, 1978.

Patent application 920,947: On-Site Ammonia Plant, filed June 30, 1978.

Patent application 921,626: Chelate-Modified Polymers for Atmospheric Gas Chromatography, filed June 30, 1978.

Patent application 921,627: Method for Analyzing Radiation Sensitivity of Integrated Circuits, filed June 30, 1978.

Patent 4,087,902: Field Effect Transistor and Method of Construction Thereof, filed June 23, 1976, patented May 9, 1978. Not available NTIS.

Patent 4,088,312: Variable Contour Securing System, filed September 27, 1977, patented May 9, 1978. Not available NTIS.

Patent 4,088,408: Device for Measuring the Contour of a Surface, filed November 8, 1976, patented May 9, 1978. Not available NTIS.

Patent 4,088,532: Targets for Producing High Purity 1-123, filed September 4, 1973, patented May 9, 1978. Not available NTIS.

Patent 4,088,926: Plasma Cleaning Device, filed May 10, 1976, patented May 9, 1978. Not available NTIS.

Patent 4,088,965: Charge Transfer Reaction Laser with Preionization Means, filed July 12, 1976, patented May 9, 1978. Not available NTIS.

Patent 4,089,209: Remote Water Monitoring Systm, filed August 4, 1977, patented May 16, 1978. Not available NTIS

Patent 4,089,705: Hexagon Solar Power Panel, filed July 28, 1976, patented May 16, 1978. Not available NTIS.

[FR Doc. 78-3106 Filed 11-2-78; 8:45 am]

[3510-04-M]

GOVERNMENT-OWNED INVENTIONS

Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for domestic and possibly foreign licensing in accordance with the licensing policies of the agency-sponsors.

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Copies of the patent applications can be purchased from the National Technical Information Service (NTIS), Springfield Va. 22161 for $4 ($8 outside North American Continent). Requests for copies of patent applications must include the Pat.-Appl. number. Claims are deleted from patent application copies sold to the public to avoid premature disclosure in the event of an interference before the Patent and Trademark Office. Claims and other technical data will usually be made available to serious prospective licensees by the agency which filed the case.

Requests for licensing information on a particular invention should be directed to the address cited for the agency-sponsor.

DOUGLAS J. CAMPION,
Patent Program Coordinator, National Technical Information Service.

U.S. DEPARTMENT OF THE AIR FORCE, AF/JACP, 1900 Half Street SW., Washington, D.C. 20324

Patent 4,077,857: Method for the Preparation of Perfluoroethers; filed Feburary 23, 1977, patented March 7, 1978; not available NTIS.

Patent 4,078,417: Test Panel for Evaluating Inspection Penetrants; filed March 24, 1977, patented March 14, 1978; not available NTIS.

Patent 4,080,203: Silver Base Brazing Alloy; filed December 29, 1976, patented March 21, 1978; not available NTIS.

Patent 4,081,473: Fluoroalkyleneether Difunctional Compounds; filed October 29, 1976, patented March 28, 1978; not available NTIS.

Patent 4,086,232: Bis-Ethynyl Heterocyclic Compositions and Method of Synthesis; filed December 23, 1976, patented April 25, 1978; not available NTIS.

Patent 4,086,248: Ethynyl-Substituted Aromatic Anhydrides; filed December 15, 1976, patented April 25, 1978; not available NTIS.

U.S. DEPARTMENT OF ENERGY, Assistant General Counsel for Patents, Washington, D.C. 20545

Patent 3,988,429: Kit for the Rapid Preparation of /Sup 99 M/Tc Red Blood Cells; filed April 16, 1975, patented October 26, 1976; not available NTIS.

Patent 3,993,754: Liposome-Encapsulated Actinomycin for Cancer Chemotherapy; filed October 9, 1974, patented November 23, 1976; not available NTIS.

Patent 4,021,669: Nuclear Fuel Microsphere Gamma Analyzer; filed March 15, 1976, patented May 3, 1977; not available NTIS.

Patent 4,055,199: Nozzle Seal; filed June 3, 1975, patented October 25, 1977; not available NTIS.

Patent 4,073,624: Method for Fluorinating Coal; filed December 21, 1976, patented Feburary 14, 1978; not available NTIS.

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, National Institutes of Health, Chief, Patent Branch, Westwood Building, Bethesda, Md. 20014

Patent Application 860,086: Carbocyclic Analogs of Cytosine Nucleofides; filed December 13, 1977.

U.S. DEPARTMENT OF THE INTERIOR, Branch of Patents, 18th and C Streets NW., Washington, D.C. 20240

Patent application 895,694: Rotary Jaw Crusher; filed April 12, 1978.

Patent 4,055,830: Sonic Measuring System; filed July 14, 1976, patented October 25, 1977; not available NTIS.

U.S. DEPARTMENT OF THE NAVY, Assistant Chief for Patents, Office of Naval Research, Code 302, Arlington, Va. 22217

Patent 4,082,583: Solventless Double Base Propellants and Method for Plasticizing MTN Nitrocellulose Propellants Without Use of Solvents; filed January 14, 1974, patented April 4, 1978; not available NTIS.

Patent 4,082,709: Low Leaching Antifouling Organometallic Polyesters; filed June 24, 1976, patented April 4, 1978; not available NTIS.

Patent 4,082,793: Aromatic Phosphinic Acids Containing Sulfone Linkage; filed February 9, 1977, patented April 4, 1978; not available NTIS.

Patent 4,083,031: Acoustic Presence Detection Method and Apparatus; filed July 23, 1970, patented April 4, 1978; not available NTIS.

Patent 4,083,235: Compressor Stall Warning System; filed May 25, 1977, patented April 11, 1978; not available NTIS.

Patent 4,084,047: Stable Alkaline Zinc Electrode; filed November 29, 1976, patented April 11, 1978; not available NTIS.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, Assistant General Counsel for

N 0 3 7 8 UMI

Patent Matters, NASA CODE GP-2, Washington, D.C. 20546

Patent application 910,992: Urine Collection Device; filed May 30, 1978.
Patent application 923,758: Passive Propellant System; filed July 11, 1978.
Patent 4,087,962: Direct Heating Surface Combustor; filed July 26, 1976, patented May 9, 1978; not available NTIS.
Patent 4,088,018: Magnetic Suspension and Pointing System; filed June 17, 1977, patented May 9, 1978; not available NTIS.
Patent 4,088,094: Tread Drum for Animals; filed March 31, 1976, patented May 9, 1978; not available NTIS.
Patent 4,088,270: Two Dimensional Wedge/Translating Shroud Nozzle, filed March 31, 1976, patented May 9, 1978; not available NTIS.

[FR Doc. 78-31063 Filed 11-2-78; 8:45 am]

[3510-17-M]

Office of the Secretary

[Department Organization Order 25-5B; Transmittal—416]

DEPARTMENT ORGANIZATION ORDER SERIES

National Oceanic and Atmospheric Administration

This order effective October 16, 1978, supercedes the material appearing at 43 FR 6128 of February 13, 1978.

SECTION 1. *Purpose.* .01 This order prescribes the internal organization, management structure, and assignment of functions within the National Oceanic and Atmospheric Administration (NOAA). The scope of authority and functions of NOAA are set forth in Department Organization Order 25-5A.

.02 The purpose of this revision is to: (1) establish the NOAA Executive Secretariat (Section 3.) and the Office for Civil Rights (Section 4.); (2) establish the Office of Marine Mammals and Endangered Species and the Office of Habitat Protection within the National Marine Fisheries Service (Section 9.); (3) include the Office of State Programs and the Office of Coastal Energy Impact Programs under the Assistant Administrator for Coastal Zone Management (Section 10.); (4) redesignate the organizations reporting to the Assistant Administrator for Administration as offices in accord with their current organizational placement (Section 11.); and (5) establish the Office of Oceanography within the National Ocean Survey, and rename the Environmental Data Service as the Environmental Data and Information Service, and establish the Center for Environmental Assessment Services under it (Section 13.).

SEC. 2. *Organization structure.* The organization structure of NOAA shall be as depicted in the attached organization chart (Exhibit 1). A copy of the organization chart is on file with the original of this document in the Office of the Federal Register.

SEC. 3. *Office of the Administrator.* .01 The Administrator of NOAA formulates policies and programs for achieving the objectives of NOAA and directs the execution of these programs.

.02 The Deputy Administrator assists the Administrator in formulating policies and programs and in managing NOAA.

.03 The Associate Administrator assists the Administrator and the Deputy Administrator in formulating policies and programs and in managing NOAA.

.04 The Executive Secretariat shall provide management and control of all correspondence addressed to or from the Administrator, Deputy Administrator and Associate Administrator; follow-up on action items assigned by the Administrator; advise NOAA officials regarding the Administrator's position on issues and on actions or decisions affecting their areas of responsibility; serve as the primary contact and coordination point for General Accounting Office and Department of Commerce audits; maintain the schedule for and coordinate the NOAA weekend duty officer system; and provide administrative and logistic support to the Office of the Administrator, the special staff offices, and such other offices as may be assigned.

SEC. 4. *Special staff offices.* .01 The Office of Congressional Liaison shall coordinate contacts with the Congress, except for contacts with the Congressional Appropriations Committees on matters relating to appropriation requests and related budget matters. The activities of this Office shall be carried out in coordination with and in recognition of the responsibilities of the Departmental Office of Congressional Affairs, and of the Departmental and NOAA General Counsels with respect to legislation.

.02 The Office of Public Affairs shall recommend objectives and policies relating to public affairs; plan and conduct an information and education program to insure that the public, Congress, user groups, and employees are properly informed on NOAA's activities; and provide direction to all public affairs activities within NOAA. These activities shall be carried out in collaboration with the Departmental Office of Public Affairs.

.03 The Office of Naval Deputy shall insure coordination and joint planning with the Navy on programs of mutual organizational interest.

.04 The Office of NOAA Corps shall develop plans for the efficient utilization of the NOAA commissioned officers corps; develop and implement policies and procedures for the recruitment, commissioning, training, and assignment of commissioned officers; and represent NOAA in interdepartmental activities having to do with the uniformed services.

.05 The Office for Civil Rights shall develop, direct and coordinate programs, policies and activities throughout NOAA to insure the effective fulfillment of NOAA's responsibilities in the areas of equal employment opportunity (EEO), including affirmative action, for employees and job applicants, and non-discrimination in activities and projects sponsored by NOAA Programs. The Office shall develop program policy recommendations; advise and assist NOAA elements in the performance of their EEO and civil rights responsibilities; monitor and evaluate the implementation of approved recommendations, affirmative action plans, and the effectiveness of NOAA in the areas of EEO and civil rights; monitor and evaluate compliance with civil rights or EEO statutes, executive orders or regulations; and administer NOAA's internal and external discrimination complaint systems, Race Relations Training Program, and Special Emphasis Programs. It shall work in close cooperation with the Office of Administration with respect to EEO and affirmative action within NOAA, so that policy direction and guidance may be provided to the personnel offices on EEO and affirmative action matters. The activities of this Office shall be carried out in cooperation with the Departmental Office of Civil Rights and the departmental and NOAA General Counsels.

SEC. 5. *General Counsel.* The General Counsel shall provide legal services for all components of NOAA, shall review and process claims against NOAA, and shall be responsible for the preparation or review of all legislative proposals emanating from any component of NOAA, for the expression of NOAA's views as to the merits of proposed or pending legislation, and for statements concerning pending legislation to be made before committees of Congress. These activities shall be carried out subject to the overall authority of the Department's General Counsel as provided in Department Organization Order 10-6. Legislative activities shall also be carried out in cooperation with the NOAA Office of Congressional Liaison.

SEC. 6. *Assistant Administrator for Policy and Planning.* The Assistant administrator for Policy and Planning shall provide staff advice on NOAA's objectives on program planning and on the development of policies of NOAA. The Assistant Administrator shall develop and recommend long-range policies and plans, including new program initiatives and modifications of policies and plans; conduct economic studies and operational analysis activities

in support of the policy and planning functions; identify and make recommendations concerning major national and international issues and problems affecting NOAA's programs, and conduct or direct and coordinate studies and analyses to provide solutions thereto; and serve as the special problem solving and conceptual office on policy development matters of a direct concern to the Administrator. In addition, the Assistant Administrator shall develop policy and provide management and coordination for NOAA's marine minerals programs; and act as NOAA's focal point in developing and coordinating these programs in relation to programs and requirements of other agencies, industry and other elements of the private sector.

SEC. 7. *Office of Ocean Management.* The Office of Ocean Management shall evaluate the impact of alternative uses for intensely used ocean and adjacent areas, and develop and recommend overall proposals that will result in optimum benefit for society. The Office shall direct and coordinate the assessment of the potential impacts of proposed human activities such as deepwater ports, offshore oil and gas development, power generation, ocean dumping, and recreation; administer the Marine Sanctuaries program; and make use, on a selective basis in coordination with the responsible offices, of other available mechanisms for expressing NOAA's views on proposals for the use of ocean and adjacent areas.

SEC. 8. *Office of Program Evaluation and Budget.* The Office of Program Evaluation and Budget shall provide the Administrator with means of management control over program and budget operations and program evaluations, and shall coordinate Management by Objectives activities. This Office shall be the focal point for contacts with the Department and the Office of Management and Budget in these areas. The Office shall specifically be responsible for the planning and management of the annual NOAA program review; the consolidation and integration of program guidance developed by the Assistant Administrators; the coordination and development of issue studies, Zero Based Budget material, and other supporting documentation required in the program-budget cycle; the development of the NOAA budget; the allocation and budgetary control of funds; the review and monitoring of fiscal plan execution; the design and implementation of program impact and efficiency evaluations; and the coordination of Departmental and OMB requirements and reporting activities necessary to the operation of the Office.

SEC. 9. *Assistant Administrator for Fisheries.* The Assistant Administrator for Fisheries shall administer an integrated program of management, research, and services for the protection and rational use of living marine resources for their aesthetic, economic, and recreational value by the American people. The Assistant Administrator shall administer programs to determine the consequences of the naturally varying environment and human activities on living marine resources; to provide knowledge and services to foster their efficient and judicious use; and to achieve domestic and international management, use and conservation of living marine resources. To carry out these responsibilities, the Assistant Administrator shall have and direct the following units:

.01 The Office of the Assistant Administrator shall formulate, recommend, and execute basic policies relative to living marine resources and manage the National Marine Fisheries Service (NMFS). The Assistant Administrator shall be immediately assisted by a Deputy Assistant Administrator and an Executive Director. The Assistant Administrator, Deputy Assistant Administrator, and the Executive Director shall function as the Director, NMFS, Deputy Director, NMFS, and Associate Director, NMFS, respectively.

02. The Office of Utilization and Development shall provide oversight for, and serve as the Assistant Administrator's principal source of advice on, all NMFS programs designed to improve the quality and safety of fish and seafoods, to assist the U.S. fishing industry, and to enhance the production, marketing, consumer awareness and acceptability of fishery products. The Office shall advise the Assistant Administrator and the Office of Science and Environment on the need for utilization technology research related to the harvesting, processing and marketing of fishery products and their use as human food; shall review and advise the Assistant Administrator on the utilization technology research plans of the Fisheries Centers; shall ensure coordination between such plans and other fishery development programs of the Office; shall manage a voluntary inspection and grading program for improving the quality and safety of seafoods; shall manage a tax deferred capital construction fund; and shall coordinate NMFS activities related to commercial aquaculture. The Office shall also develop policies, guidelines and procedures for, and provide national coordination of, the fishery development and industry assistance programs carried out by the Regional Offices, including programs of: (1) financial assistance in the form of loans, loan guarantees, and loan insurance; (2) consumer education and marketing to facilitate fishery development and stability in the marketing chain; (3) fishery market news, including the preparation of market research reports and the provision of information on foreign trade and other matters which may affect the commercial fishing industry; and (4) regional fisheries development efforts designed to increase to market share of domestically produced seafoods.

.03 The Office of Resource Conservation and Management shall provide oversight for, and serve as the Assistant Administrator's principal source of advice on, all matters related to NMFS' fisheries management and marine recreational fisheries responsibilities. The Office shall develop national standards and operational guidelines for fisheries management programs, including the State-Federal Fisheries Management Program; shall review and recommend action on fisheries management plans; shall prepare implementing regulations as necessary; shall process applications and issue fishing permits; shall coordinate programs involving the enforcement of laws and regulations promulgated to protect fisheries resources, marine mammals and endangered species; and shall coordinate the provision of funding and such other administrative and technical support as may be required by the Regional Fisheries Management Councils. The Office shall also coordinate the planning and development of multidisciplinary programs in marine recreational fisheries.

.04 The Office of International Fisheries Affairs shall serve as the Assistant Administrator's principal source of advice on all matters related to international fisheries. The Office shall develop policy positions on international fisheries issues; shall acquire data and provide analyses regarding the status and impact of present and projected foreign fishing, industry activity and government attitudes and policies regarding fishing; shall participate in negotiations within, and the operations of, international forums, commissions and agreements, as requested; shall manage NOAA's international fisheries training program; and shall monitor and coordinate activities with regard to the U.S. Fisheries Attache Program.

.05 The Office of Science and Environment shall provide oversight for, and serve as the Assistant Administrator's principal source of advice on, all aspects of the NMFS research program. The Office shall develop policy and guidelines and provide national coordination for the planning and development of a multidisciplinary program of biological and socio-economic research necessary to provide information on fisheries management options to the appropriate Regional Fisheries Management Councils, to support na-

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tional and regional programs including those related to utilization technology, marine mammals and endangered species and habitat protection, and to respond to the needs of various user groups; shall review and advise the Assistant Administrator on the research plans of the Regional Centers; and shall advise the Assistant Administrator on the needs for oceanic research and services which should be undertaken by the Offices of Research and Development and Oceanic and Atmospheric Services to meet the special needs of the fisheries industry. As the principal headquarters focus for scientific expertise, the Office shall serve as the primary liaison with other government agencies and the scientific community on the national level regarding scientific and technical matters.

.06 The Office of Marine Mammals and Endangered Species shall serve as the Assistant Administrator's principal source of advice on all matters related to the conservation and protection of those marine mammals and endangered species under the jurisdiction of the Secretary of Commerce. The Office shall advise the Assistant Administrator and the Office of Science and Environment on the need for research related to marine mammals and endangered species; shall review and advise the Assistant Administrator on the marine mammals and endangered species research plans of the Fisheries Centers; and shall ensure coordination between such plans and other conservation and protection programs of the Office. The Office shall prepare regulations and other public notices; shall conduct public hearings and meeting; shall prepare and review management plans; shall issue permits to take marine mammals or endangered species; shall assist the Office of Resource Conservation and Management in coordinating enforcement programs related to marine mammals and endangered species; and shall provide technical support for international negotiations and the Marine Mammal Commission. In cooperation with the Northwest Regional Office, the Office shall also manage the Pribilof Islands Program which includes the administration of the Pribilof Islands and related fur seal harvest.

.07 The Office of Habitat Protection shall serve as the Assistant Administrator's principal source of advice on all matters related to the environmental impact of human activities on the Nation's commercial fisheries and living marine resources and their habitats. The Office shall advise the Assistant Administrator and the Office of Science and Environment on the need for research related to habitat protection; shall review and advise the Assistant Administrator on the habitat protection research plans of the Fisheries Centers; and shall coordinate such plans with other habitat protection programs of the Office. The Office shall advise the Assistant Administrator on the effect that energy production efforts, outer continental shelf development activities, coastal zone planning and development programs and other similar activities have on commercial fishery and living marine resources and their habitats; shall coordinate the preparation of NMFS comments on construction and waste discharge permits, Federal water projects and other agencies' Environmental Impact Statements; shall determine the degree to which such activities comply with national policies; and shall be the NMFS focus for NOAA and interagency liaison on all matters related to habitat protection.

.08 The *Field Structure* shall consist of the following organizational elements: A copy of Exhibit 2 is on file with the original of this document in the Office of the Federal Register.

a. Five *Regional Offices* as shown in Exhibit 2. Regional Offices shall serve as the regional representative of the Assistant Administrator with State conservation agencies, recreational interests, the fishing industry, other constituencies, and the general public. In cooperation with appropriate headquarters offices and in accordance with the policies, guidelines and procedures provided by the Assistant Administrator, the Regional Offices shall plan, organize and manage regional programs: In fishery management, including the administration of grant programs, the provision of administrative and technical support to the Regional Fisheries Management Councils within the geographic area of responsibility, and initial review of fishery management plans; in fisheries development and industry assistance, including the administration of financial assistance programs; in recreational fisheries; and in other service areas throughout the program range of NMFS. The Regional Offices shall coordinate the planning and implementation of these programs with the Regional Fisheries Centers and with other nations and agencies as appropriate. They shall provide administrative support to other NMFS components within their geographic boundaries. The Director of each Regional Office shall report and be responsibile to the Assistant Administrator.

b. In cooperation with appropriate headquarters offices and in accordance with the policies and guidelines provided by the Assistant Administrator, the Northeast, Southeast, Northwest, Southwest, and Alaska *Fisherics Centers* shall plan, develop and manage multidisciplinary biological and socioeconomic research programs necessary to provide fisheries management information and management options to the Regional Fisheries Management Councils, to support national and regional programs of the NMFS, and to respond to the needs of various user groups. The Centers shall develop the scientific base for status of stocks, status of fisheries including both socioeconomic and biological aspects, environmental assessment and enviromental impact statements; shall collect, document and interpret scientific and economic data as technical support for management plans, international negotiations, fishery development and food engineering programs; shall provide technical review and monitoring of fisheries plans and grant programs; shall pursue fundamental and applied research on specified topics such as marine mammals, endangered species, food science, fishing, oceanography, and aquaculture; and shall maintain liaison with the scientific community at the regional level. The Director of each Fisheries Center shall report and be responsible to the Assistant Administrator.

SEC. 10. ASSISTANT ADMINISTRATOR FOR COASTAL ZONE MANAGEMENT

The *Assistant Administrator for Coastal Zone Management* shall administer and establish policy for NOAA's coastal zone management activity which includes the following programs: State programs of coastal zone management; estuarine sanctuary program; coastal energy impact program; and other closely related programs. The Assistant Administrator for Coastal zone management shall serve as the primary program policy officer with authority and responsibility for implementing the programs authorized in the Coastal Zone Management Act of 1972, as amended in 1976. To carry out these responsibilites, the Assistant Administrator shall have and direct the following units:

.01 The *Office of the Assistant Administrator* shall manage and direct the Office of Coastal Zone Management; formulate, recommend, and execute basic policies relative to coastal zone management; and provide advice to the Administrator on NOAA's coastal zone management effort. The Office shall develop NOAA policy, promulgate regulations, and implement procedures necessary for Federal review and approval of State coastal management programs and the execution of Federal consistency provisions which then come into force. It shall serve as the focal point for Federal interagency coordination and Federal-State consulation efforts on all matters relating to the management of the Nation's coastal areas. The Office shall serve as the Federal Government focal point regarding the operation of the Federal

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programs affecting the Nation's coastal zones and the consistency of these programs with the policies contained in the Coastal Zones Acts of 1972 and 1976. The Office shall develop policies and guidelines, and administer the estuarine sanctuary and shorefront access programs, and shall administer and monitor grants to States in support of these programs.

.02 The *Office of State Programs* shall develop policies and guidelines on a continuing basis to assist State and local governments in the effective management and, where possible, the restoration and enhancement of the land and water resources of the coastal zone of the Nation. The Office shall administer and monitor grants to States in support of the development and administration of coastal zone management programs.

.03 The *Office of Coastal Energy Impact Programs* shall develop policies and guidelines on a continuing basis to assist State and local governments in planning for the consequences of, and impacts on, the Nation's coastal zones due to accelerated energy development activities. The Office shall administer and monitor an energy impact financial assistance program consisting of loans, bond guarantees, planning grants, environmental grants, and formula grants, each subject to specified conditions, for the purpose of meeting needs of States and local governments resulting from new or expanded energy activity in, or affecting, the coastal zone.

SEC. 11. ASSISTANT ADMINISTRATOR FOR ADMINISTRATION

The *Assistant Administrator for Administration* shall provide administrative management and support services for all components of NOAA except for elements of such services that appropriate components are directed to provide for themselves, exercise functional supervision over such decentralized services, and provide advice and guidance to the Administrator on the utilization of NOAA resources. To carry out these responsibilities, the Assistant Administrator shall have and direct the following units.

.01 The *Office of the Assistant Administrator* shall formulate and execute the basic policies and manage the Office of Administration.

.02 The *Office of Administrative Operations* shall administer programs in procurement and grants management; property and supply management; forms, correspondence, records, and files management; space and facilities management; travel and traffic management; mail, messenger, and related office services; graphic services; safety; and security.

.03 The *Office of Management and Computer Systems* shall conduct studies and provide analytical assistance to develop or improve the organization and staffing structure and other management systems within NOAA; provide management staff services in the application of advanced management principles and techniques; carry out the NOAA committee, reports and directives management functions; develop and maintain a central system for collecting, analyzing, presenting, and disseminating information on program status and performance; provide guidance and develop systems for measuring productivity and performance; exercise overall management, planning and coordination of NOAA's automatic data processing and telecommunications needs and facilities including serving as the focal point within NOAA for intra- and inter-agency matters, and the review and evaluation of proposals for automatic data processing and telecommunications requirements and systems; coordinate the Federal planning program for environmental telecommunications systems; and engage in research into advanced system concepts and apply or provide guidance in the application of these concepts. The Office shall provide systems analysis and programing support to NOAA's executive and administrative management functions and to other NOAA functions as requested, and shall operate and provide automatic data processing facilities and systems and special software support for all NOAA components except where separate facilities are approved.

.04 The *Office of Personnel* shall administer a program of personnel management services including conducting recruitment, employment, classification, and compensation, employee relations and assistance, labor relations, incentive awards, and career development activities for civilian personnel. This shall include, in coordination with the Office of Civil Rights on EEO and civil rights matters, upward mobility and cooperative education student programs, equal employment opportunity programs, and affirmative action plans.

.05 The *Office of Finance* shall provide centralized financial accounting and payroll for all components of NOAA, determine needs of managers for accounting data, and maintain a financial reporting system that will facilitate effective management of NOAA's financial resources.

.06 The *Office of Radio Frequency management* shall, as a Departmentwide responsibility, coordinate the requirements and the management and use of radio frequencies by all organizations of the Department of Commerce.

.07 The *Northwest Administrative Service Office* shall provide administrative services responsive to the requirements of the NMFS Northwest, Southwest, and Alaska Regions, the NMFS Northwest and Alaska Fisheries Center and Southwest Fisheries Center, the NOS Pacific Marine Center, and such other NOAA organizational units which can be accommodated. These services shall include personnel administration, finance, procurement and contracting, property management, motor vehicle pool operation, and offices services.

SEC. 12. ASSISTANT ADMINISTRATOR FOR RESEARCH AND DEVELOPMENT

The *Assistant Administrator for Research and Development* shall administer an integrated program of research, technology and advanced engineering development and transfer relating to the oceans, the Great Lakes, the United States coastal waters, the lower and upper atmosphere and the space environment, so as to increase understanding of the environment and human impact thereon, and thus provide the scientific basis for improved services. The Assistant Administrator for Research and Development shall serve as the principal adviser to the Administrator on all research, technology and engineering matters. To carry out these responsibilities the Assistant Administrator shall have and direct the following units:

.01 The *Office of the Assistant Administrator* shall formulate, recommend, and execute basic policies and manage the Office of Research and Development; provide advice to the Administrator on NOAA's total research and technology development effort; and advise the National Marine Fisheries Service and the Offices of Coastal Zone Management, and Ocean and Atmospheric Services on the research and technology development undertaken within their organizations to meet their special needs. It shall serve as NOAA's focal point for coordination with the Office of Science and Technology Policy; the Federal Coordinating Council for Science, Engineering, and Technology; National Science Foundation; National Academy of Sciences; National Academy of Engineering; universities; interagency groups; and international scientific bodies on matters affecting research and technology programs. The Office shall discharge those coordinating and management functions for research and technology development which are assigned to NOAA for the global atmospheric research program, and others, as may be assigned by the Administrator; provide a focal point for NOAA's research activities in support of international environmental programs such as the United Nations Environment Program (UNEP), United Nations Inter-governmental Oceanographic Commission, bilateral agree-

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ments with other nations, and such others as the Administrator may assign; and promote the transfer of research information and new technology to other components of NOAA and to other scientific organizations outside of NOAA.

.02 The *Office of Sea Grant* (SG) shall develop policy and plans for NOAA's association with the academic community and administer a program of grants and contracts for research, education, and advisory services aimed at the development, utilization, and mangement of the seas and the Great Lakes of the United States, including their resources.

.03a. The *Office of Ocean Engineering* (OOE) shall develop policy and plans for NOAA's ocean engineering and instrumentation program and promote the development of technology to meet future needs of the marine community; conduct an integrated program of research, technology development, and services related to ocean engineering instrumentation and measurement standards, ocean buoy systems, and undersea operations; manage the NOAA diver program; and serve as a national focal point for transfer of knowledge related to civilian ocean engineering, a catalyst for industrial ocean engineering development, and a mechanism for technology transfer from military and space field.

b. The OOE organization shall consist of the following:

Office of the Director;
NOAA Data Buoy Office;
Ocean Instrumentation Engineering Office; and
Manned Undersea Science and Technology Office.

.04a. The *Environmental Research Laboratories* (ERL) shall conduct research to describe, understand and improve the prediction of oceanic processes and phenomena, ocean-atmosphere interactions, and the environmental processes of coastal areas; conduct research on the physics and chemistry of the atmosphere; conduct research on the dynamics and physics of geophysical fluids systems to describe, understand and improve predictions of the State of atmosphere and oceans, and their processes; develop techniques and maintain facilities to support the conduct of research and monitoring activities; measure and monitor the atmospheric composition for use in predicting and validating trends in atmospheric conditions; and conduct research to describe, understand and improve prediction of environmental processes in the Great Lakes and their watershed. The Office shall also conduct research in the field of solarterrestrial physics; provide monitoring and forecasting of the space environment; and improve techniques for forecasting of solar disturbances and their effects on the earth's environment. It shall plan, conduct and coordinate comprehensive programs of basic and applied research directed toward the solution of resource-use problems which involve the functioning, health, and restoration of selected near-coastal marine ecosystems; and plan and direct assessments of the primary environmental effects of energy development along broad areas of the Outer Continental Shelf of the United States.

b. The ERL organization shall consist of the following:

Office of the Director;
Office of Programs;
Office of Research Support Services;
Weather Modification Program Office;
Marine Ecosystems Analysis Program Office;
Outer Continental Shelf Environmental Assessment Program Office;
Atlantic Oceanpgraphic and Meteorology Laboratories;
Pacific Marine Environmental Laboratory;
Great Lakes Environmental Research Laboratory;
Aeronomy Laboratory;
Air Resources Laboratory;
Atmospheric Physics and Chemistry Laboratory;
Geophysical Fluid Dynamics Laboratory;
National Hurricane and Experimental Meterorology Laboratory;
National Severe Storms Laboratory;
Research Facilities Center;
Space Environment Laboratory; and
Wave Propagation Laboratory.

SEC. 13. ASSISTANT ADMINISTRATOR FOR OCEANIC AND ATMOSPHERIC SERVICES

The *Assistant Administrator for Oceanic and Atmospheric Services* shall administer programs which entail monitoring and predicting the state of the physical environment, to provide a wide variety of meteorologic, hydrologic, climatologic, map and chart, geodetic, and oceanographic data and services to government, industry, the scientific and engineering communities, and the general public. To carry out these responsibilities, the Assistant Administrator shall have and direct the following units.

.01 The *Office of the Assistant Administrator* shall formuiate, recommend, and execute basic policies and programs; with appropriate support of other offices, act as the NOAA focal point for participation in international meteorological, hydrologic, oceanic, and climatological activities, including the international exchange of data, service, products and forecasts, of the World Meteorological Organization, the International Civil Aviation Organization, and other bodies as may be designated by the Administrator; be responsible for and administer programs for NOAA support in time of civil emergencies, the conduct of post-disaster surveys designed to evaluate the effectiveness of NOAA's warning services, and the cooperation between NOAA and the Department of Defense in time of a declared national emergency; and discharge the Federal coordinating functions assigned to NOAA for meteorology, marine prediction services, geodetic surveys, operational satellite systems, and others that may be assigned by the Administrator. In consultation with National Marine Fisheries Service and the Offices of Coastal Zone management and Research and Development, the Office shall design and execute service programs intended to meet the needs of these other elements of NOAA and their constituencies. In consultation with the Office of Research and Development, it shall design and execute research and technology development programs; conduct systems, equipment, and techniques development programs; and carry out related activities designed to improve the efficiency of service programs and the responsiveness of these programs to user needs. The Office also shall determine and validate requirements for oceanic and atmospheric services; evaluate the efficiency and economy with which the service programs meet these needs; and take such steps as are feasible to improve services to meet new or changing needs.

.02a. The *National Ocean Survey* (NOS) shall provide charts for the safety of marine and air navigation; provide a basic network of geodetic control; provide basic geodetic, gravimetric, bathymetric, hydrologic, circulatory current, and tidal data for engineering, scientific, commercial, industrial, and defense needs; monitor the marine environment to assess human impacts, including those from ocean dumping; and undertake a program of marine technology development to observe, measure, and chart oceanic phenomena and resources. In performance of these functions, it shall conduct surveys, investigations, analyses, and research and technology development; and shall disseminate data in the fields of geodesy, gravity, astronomy, aeronautical charting, hydrography and nautical charting, oceanography, and marine technology.

b. The NOS organization shall consist of the following:

Office of the Director;
Office of National Geodetic Survey;
Office of Fleet Operations;
Office of Marine Surveys and Maps;
Office of Oceanography;
Office of Aeronautical Charting and Carthography;
Office of Marine Technology;
Office of Program Development and Management;
Atlantic Marine Center; and
Pacific Marine Center.

.03a. The *National Weather Service* (NWS) shall observe and report the meteorological, hydrological, and ocean conditions of the United States, its possessions, and adjacent waters; issue forecasts and warnings of weather and climate, flood, and physical ocean conditions that affect the Nation's safety, welfare, and economy; develop the National Meteorological, Hydrologic and Oceanic Service Systems; provide forecasts for domestic and international aviation and for coastal areas and shipping on the high seas; and operate a tsunami warning system.

b. The NWS headquarters organization shall consist of the following:

Office of the Director;
Office of Meteorology and Oceanography;
Office of Hydrology;
Office of Technical Services;
Systems Development Office; and
National Meteorological Center.

c. The *Field Structure* shall consist of six regions, as shown in Exhibit 3, with field stations and the National Weather Service Training Center. (A copy of Exhibit 3 is on file with the original of this document in the Office of the Federal Register.)

.04a. The *National Environmental Satellite Service* (NESS) shall provide observations of the environment by operating the National Environmental Satellite System, develop and improve satellite techniques, increase the utilization of sateilite data in environmental services, and manage and coordinate all operational satellite programs within NOAA and certain research-oriented satellite activities with the National Aeronautics and Space Administration and the Department of Defense.

b. The NESS headquarters organization shall consist of the following:

Office of the Director;
Office of Operations;
Office of Systems Engineering;
Office of Research; and
Office of Systems Integration.

c. The *Field Structure* shall consist of Satellite Field Service Stations and Data Acquisition Stations which shall report to the Office of Operations.

.05a. The *Environmental Data and Information Service* (EDIS) shall acquire and disseminate global environmental data (marine, atmospheric, solid earth, and solar-terrestrial) and information tailored to meet the needs of users in commerce, industry, agriculture, the scientific and engineering communities, the general public, and Federal, State, and local governments; provide experiment design, data management, and analysis support to national and international environmental programs; assess the impact of environmental fluctuations on food and energy, environmental quality, and telecommunications; manage and/or provide functional guidance for NOAA's scientific and technical publication and library activities; operate a network of specialized service centers, a field liaison service, and a comprehensive data and information referral service; and operate related World Data Center A facilities and participate in other international data and information exchange programs.

b. The EDIS organization shall consist of the following:

Office of the Director;
Environmental Science Information Center;
National Oceanographic Data Center;
Center for Environmental Assessment Services;
National Climatic Center; and
National Geophysical and Solar-Terrestrial Data Center.

GUY W. CHAMBERLIN, JR.,
Acting Assistant Secretary for Administration.

[FR Doc. 78-31077 Filed 11-2-78; 8:45 am]

[3510-17-M]

[Department Organization Order 21-5; Transmittal 415]

OFFICE OF POLICY PLANNING AND PROGRAMS

Organization Order

This order is effective September 19, 1978

Section 1. *Purpose.* This Order establishes the Office of Policy Planning and Programs and prescribes its functions.

Section 2. *Establishment.* Pursuant to the authority vested in the Assistant Secretary for Policy by Department Organization Order 10-2 of November 18, 1977, the Office of Policy Planning and Programs is established as a Departmental office.

Section 3. *Status and line of authority.* The Office of Policy Planning and Programs, a Departmental office, shall be headed by a Director who shall report and be responsible to the Assistant Secretary for Policy.

Section 4. *Functions.* The Office of Policy Planning and Programs shall function as a liaison, review, and coordination group on budget, policy studies, and administrative matters of direct concern to the Assistant Secretary for Policy. In this capacity, the Office shall:

a. Provide liaison between the Assistant Secretary for Policy and the Assistant Secretary for Administration on Departmentwide budget, program evaluation, personnel, organization, management and other administrative matters, and coordinate the input and activities of other offices reporting to the Assistant Secretary for Policy that are related to these matters;

b. Coordinate participation by the offices reporting to the Assistant Secretary for Policy in the preparation of the Department's annual legislative program and, as assigned, coordinate policy input to the development and review of other legislative proposals having a major impact on Commerce mission, objectives, and programs;

c. Coordinate the development of an annual policy studies program by the offices reporting to the Assistant Secretary for Policy; provide administrative support in the initiation, monitoring, review, and publication of policy studies; review and monitor the study programs of other Departmental offices and operating units to determine their policy content and implications; when necessary or desirable, arrange for participation in these other study efforts by offices reporting to the Assistant Secretary for Policy, and coordinate the study program of the Assistant Secretary for Policy with those of other Departmental offices and operating units;

d. Provide assistance, coordination, and staff support to the Assistant Secretary for Policy as Co-Executive Director of the Commerce Council, coordinate the preparation of the Secretary's cabinet briefing book, and provide other information coordination services;

e. As assigned, provide staff support to the Assistant Secretary for Policy in the identification, analysis, and monitoring of special policy issues and other short-term staff activities and special projects; and

f. Coordinate internal budget, administrative, and personnel management matters for all offices reporting to the Assistant Secretary for Policy.

GUY W. CHAMBERLIN, JR.,
Acting Assistant Secretary for Administration.

[FR Doc. 78-31076 Filed 11-2-78; 8:45 am]

[3510-25-M]

Amending Import Levels for Certain Cotton and Man-Made Fiber Products

HAITI

Committee for the Implementation of Textile Agreement

OCTOBER 30, 1978.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Amending the levels of restraint established for certain cotton and man-made fiber apparel products

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in Categories 348, 359, 632, 636, 637, 650, 651, and 652 from Haiti under the terms of an amendment to the bilateral textile agreement.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on January 4, 1978 (43 FR 884), as amended on January 25, 1978 (43 FR 3421), March 3, 1978 (43 FR 8828), June 22, 1978 (43 FR 26773), and September 5, 1978 (43 FR 39408)).

SUMMARY: On October 13, 1978, the Governments of the United States and Haiti exchanged letters further amending the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of March 22 and 23, 1976, as amended, to increase the levels of restraint for cotton and man-made fiber textile products in Categories 348, 359, 632, 636, 637, 650, 651, and 652, produced or manufactured in Haiti and exported to the United States during the 12-month period which began on January 1, 1978.

EFFECTIVE DATE: November 6, 1978.

FOR FURTHER INFORMATION CONTACT:

Shirley Hargrove, Trade Assistant, Office of Textiles, U.S. Department of Commerce, Washington, D.C. 20230, 202-377-5423.

SUPPLEMENTARY INFORMATION: On December 29, 1977, there was published in the FEDERAL REGISTER (42 FR 64919) a letter dated December 23, 1977 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, establishing specific levels of restraint for certain cotton and man-made fiber textile products from Haiti, during the 12-month period which began on January 1, 1978, pursuant to the terms of the bilateral agreement. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the previously established levels of restraint for Categories 348, 359, 632, 636, 637, 650, 651, and 652 to the designated amounts for the agreement year which began on January 1, 1978 in accordance with the amended bilateral agreement.

EDWARD GOTTFRIED,
Acting Chairman, Committee for the Implementation of Textile Agreements.

U.S. DEPARTMENT OF COMMERCE,
THE ASSISTANT SECRETARY
FOR INDUSTRY AND TRADE,
Washington, D.C., October 30, 1978.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

DEAR MR. COMMISSIONER: Under the terms of the Arrangements Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of March 22 and 23, 1976, as amended, between the Governments of the United States and Haiti; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to amend, effective on November 6, 1978, the levels of restraint established for Categories 348, 359, 632, 636, 637, 650, 651 and 652 to the following:

Category and Amended 12-Month Level of Restraint[1]

348—112,360 dozen.
359—543,478 pounds.
632—1,521,739 dozen pairs.
636—99,338 dozen.
637—281,690 dozen.
650—58,824 dozen.
651—61,538 dozen.
652—456,250 dozen.

The actions taken with respect to the Government of Haiti and with respect to imports of cotton and man-made fiber textile products from Haiti have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

EDWARD GOTTFRIED,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 78-31078 Filed 11-2-78; 8:45 am]

[3510-25-M]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

ROMANIA

Adjusting Import Restraint Level for Certain Man-Made Fiber Textile Suits From the Socialist Republic of Romania

NOVEMBER 1, 1978.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Grtanting an increase for carryover and carryforward in part of Category 643/644 (men's and boys', women's, girls', and infants' suits of man-made fibers, not knit) during the agreement year which began on January 1, 1978.

(A detailed description of the categories in terms of T.S.U.S.A numbers was published in the FEDERAL REGISTER on January 4, 1978 (43 FR 884), as amended on January 25, 1978 (43 FR 342), March 3, 1978 (43 FR 8828), June 22, 1978 (43 FR 26773), and September 5, 1978 (43 FR 39408)).

SUMMARY: Paragraph 6 of the Bilateral Wool and Man-Made Fiber Textile Agreement of June 17, 1977, as amended, between the Governments of the United States and the Socialist Republic of Romania provides for the carryover of shortfalls in certain category cellings from the previous agreement year and for the borrowing of yardage from the succeeding year's levels, such amounts to be deducted from the affected category limits in the succeeding year. Pursuant to the foregoing paragraph of the bilateral agreement, the import restraint level established for Category 643/644 (pt.) is being increased to 20,857 dozen for the 12-month period which began on January 1, 1978 and extends through December 31, 1978, at the request of the Government of the Socialist Republic of Romania.

EFFECTIVE DATE: November 3, 1978.

FOR FURTHER INFORMATION CONTACT:

Jane C. Bonds, International Trade Specialist, Office of Textiles, U.S. Department of Commerce, Washington, D.C. 20230, 202-377-5423.

SUPPLEMENTARY INFORMATION: On May 24, 1978, there was published in the FEDERAL REGISTER (43 FR 22232) a letter dated May 19, 1978 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, establishing import restraint levels for certain wool and man-made fiber textile products under the new textile category system for the agreement year which began on January 1, 1978. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the previously established level of restraint for Category 643/644 (pt.) to 20,857 dozen.

EDWARD GOTTFRIED,
Acting Chairman, Committee for the Implementation of Textile Agreements.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS,
November 1, 1978.

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20229

DEAR MR. COMMISSIONER: Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 15, 1977; pursuant to the Bilateral Wool and Man-Made Fiber Textile Agreement of June 17, 1977, as amended, between the Governments of the United States and the Socialist Republic of Romania; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to increase, effective on November 3, 1978, the 12-month level of restraint established in the directive of May 19, 1978 for Category 643/644 (pt.) to the following:

Category and Amended 12-Month Level of Restraint[1]

643/644 [2]—20,857 dozen.

The actions taken with repect to the Government of the Socialist Republic of Romania and with respect to imports of man-made fiber textile products from Romania have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

EDWARD GOTTFRIED,
Acting Chairman, Committee for the Implementation of Textile Agreements

[FR Doc. 78-31231 Filed 11-2-78; 8:45 am]

[1] The levels of restraint have not been adjusted to account for any imports after December 31, 1977.

[2] The amended level of restraint has not been adjusted to account for any entries after Dec. 31, 1977.

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

PROCUREMENT LIST 1978

Proposed Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed deletions from procurement list.

SUMMARY: The Committee has received proposals to delete from Procurement List 1978 commodities produced by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 6, 1978.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Va. 22201.

FOR FURTHER INFORMATION CONTACT:

C. W. Fletcher, 703-557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77.

It is proposed to delete the following commodities from Procurement List 1978, November 14, 1977 (42 FR 59015):

Class 7510

Eraser, Mechanical
7510-00-865-5292
7510-00-082-2665

Class 6530

Wrappers, Sterilization
6530-00-719-0000
6530-00-299-9602
6530-00-719-0030
6530-00-299-9601
6530-00-719-0035
6530-00-299-9600
6530-00-719-0040
6530-00-299-9599
6530-00-719-0045
6530-00-850-8613

Class 7920

Sponge, Cellulose
7920-00-559-8462—Coral
7920-00-559-8463—Green
7920-00-559-8464—Yellow

C. W. FLETCHER,
Executive Director.

[FR Doc. 78-31108 Filed 11-2-78; 8:45 am]

[6820-33-M]

PROCUREMENT LIST 1978

Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to Procurement List 1978 a commodity to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: November 3, 1978.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Va. 22201.

FOR FURTHER INFORMATION CONTACT:

C. W. Fletcher (703) 557-1145.

SUPPLEMENTARY INFORMATION: On August 4, 1978 the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (43 FR 34520) of proposed addition to Procurement List 1978, November 14, 1977 (42 FR 59015).

After consideration of the relevant matter presented, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77.

Accordingly, the following commodity is hereby added to Procurement List 1978:

Class 8440. Neckerchief (polyester, black) 8440-LL-L07-7000

C. W. FLETCHER,
Executive Director.

[FR Doc. 78-31109 Filed 11-2-78; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1001-3; OPP 180240]

FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Issuance of a Specific Exemption To Use Permethrin to Control Vegetable Leafminers

The Environmental Protection Agency (EPA) has granted a specific exemption to the Florida Department of Agriculture and Consumer Services (hereafter referred to as the "Applicant") to use permethrin on 750 acres of chrysanthemums to control vegetable leafminers in seven counties in Florida. This exemption was granted in accordance with, and is subject to, provisions of 40 CFR Part 166, which prescribes requirements for exemption of Federal and State agencies for use of pesticides under emergency conditions.

This notice contains a summary of certain information required by regulation to be included in the notice. For more detailed information, interested parties are referred to the application on file with the Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street SW., Room E-315, Washington, D.C. 20460.

The vegetable leafminer, *Liriomyza sativae*, Blanchard, has periodically plagued various Florida crops, including flowers, since the late 1960's, reaching epidemic proportions in 1977. The leafminers damage flowers by depositing eggs directly into the leaf so that developing larvae tunnel through the leaf, removing much of its photosynthetic mesophyll layer. In flowers, damage occurs either directly to the petals, or to the photosynthetic leaf tissues, decreasing the plant's vigor. Leaves, and in many cases, whole branches of the plants, die. The mines left by these pests are also excellent points of entry for bacterial and fungal pathogens. In vegetable crops, this damaged foliage can be trimmed, but in the flower market, the Applicant stated, value is largely dependent on the quality of the foliage, so that damage can be quite detrimental to the crop's value.

According to the Applicant, none of the many registered pesticides for leafminer control on chrysanthemums is effective due to the leafminer's developed resistance. Various attempts at integrated pest management have been made by University of Florida

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personnel as well as by growers. According to the Applicant, however, chemical control is the only means available to reverse the epidemic populations of the pest.

The Applicant proposed to use Ambush, a product manufactured by ICI Americas, Inc., which contains the active ingredient (a.i.) permethrin. State-certified applicators would make ground applications in Broward, Dade, Glades, Lee, Martin, Palm Beach, and St. Lucie Counties.

Chrysanthemums grown for cut flowers are valued at $25,000 per acre, the Applicant reported, and it is estimated that there are 750 acres of mums grown in the State. The Applicant claimed that losses of cut flowers already exceed $1 million, and will become much greater without this use of permethrin. Additionally, mum plant cuttings, sold to other growers throughout North America and Europe, are not marketable if they contain leafminers, and the European Common Market is considering a total ban on Florida cuttings to avoid importing *L. sativae* to Europe, the Applicant stated.

After reviewing the application and other available information, EPA has determined that (a) a pest outbreak of vegetable leafminers on chrysanthemums has occurred; (b) resistance has developed to the pesticides presently registered and available for use to control this pest in Florida; (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic problems may result if the leafminer is not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until December 31, 1978, to the extent and in the manner set forth in the application, subject to the following modifications and conditions:

1. The product Ambush, manufactured by ICI Americas, Inc., is authorized;

2. Ambush will be applied at a rate of 0.05 to 0.10 pound a.i. per acre;

3. A maximum of 15 applications may be applied on 550 acres grown for cuttings. A maximum of 22 applications may be made on 200 acres grown as propagative material. A maximum of 1,150 pounds a.i. is authorized;

4. All applications will be made with broadcast ground equipment;

5. Applications will be made at intervals of no less than 5 days;

6. All applications will be made by State-certified commercial applicators;

7. All applicable directions, restrictions, and precautions on the product label must be followed;

8. This product is highly toxic to bees exposed to direct treatment or to residues on crops or weeds. It may not be applied or allowed to drift to weeds in bloom on which an economically significant number of bees is actively foraging. Protective information may be obtained from the State Cooperative Agricultural Extension Service;

9. Permethrin is extremely toxic to fish and aquatic invertebrates. It must be kept out of lakes, streams, ponds, tidal marshes, and estuaries. Care must be taken to prevent contamination of water by cleaning of equipment or disposing of waste;

10. All personnel involved in the preparation and application of Ambush must wear protective clothing (long-sleeve shirts, full trousers, and nonpermeable boots) and a respirator. During the mixing and loading operations, gloves and an apron must also be worn;

11. A 60-day crop rotation restriction shall be observed for food crops;

12. The Applicant shall be responsible for assuring that all of the provisions of this specific exemption are met and must submit a report summarizing the results of this program by January 31, 1979; and

13. The EPA shall be immediately informed of any adverse effects resulting from use of permethrin in connection with this exemption.

STATUTORY AUTHORITY: Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136 et seq.).

Dated: October 27, 1978.

DOUGLAS D. CAMPT,
Acting Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 78-31059 Filed 11-2-78; 8:45 am]

[6560-01-M]

[FRL 1001-4; OPP-180241]

NORTH CAROLINA DEPARTMENT OF AGRICULTURE

Issuance of a Specific Exemption To Use Methomyl To Control Fall Armyworm on Forage Grasses

The Environmental Protection Agency (EPA) has granted a specific exemption to the North Carolina Department of Agriculture (hereafter referred to as the "Applicant") to use methomyl for control of the fall armyworm on 131,000 to 262,000 acres of tall fescue, orchard grass, Italian ryegrass and small grains. This exemption was granted in accordance with, and is subject to, the provisions of 40 CFR Part 166, which prescribes requirements for exemption of Federal and State agencies for use of pesticides under emergency conditions.

This notice contains a summary of certain information required by regulation to be included in the notice. For more detailed information, interested parties are referred to the application on file with the Registration Division (TS-767), Office of Pesticide Programs, EPA, Room E-315, 401 M Street SW., Washington, D.C. 20460.

Tall fescue (*Festuca arundinacea*), orchard grass (*Dactylis glomerata*), Italian ryegrass (*Lolium multiflorum*) and small grains (several species) comprise a major portion of cool season forage grown in North Carolina. Total acreage for each of these grasses used for grazing is about 720,000 for tall fescue, 360,000 for orchard grass, 80,000 for Italian ryegrass, and 150,000 for small grains. Many growers depend on these crops as the primary source of cattle feed. According to the Applicant, North Carolina growers cannot afford additional losses due to armyworm damage. Damages equal to or greater than those encountered in previous years are expected if an effective pesticide is not used. Fields where infestations are heavy may be stripped, eliminating grazing in the late fall months in a year when such grazing will be essential for maintenance of productive herds. According to the Applicant, growers may be forced to sell off their herds if forage or hay is not available at a price they can afford.

The fall armyworm overwinters in the Gulf Coast region and migrates northward each summer. They fluctuate greatly in abundance north of their overwinter sites and undergo cycles which reach destructive peaks. According to the Applicant, there is usually only one generation in each locality in North Carolina each season; however, several overlapping generations are known to occur. Like the true armyworm, the caterpillars often move from field to field in large numbers devouring the foliage and tender stems of field and vegetable crops. Although they feed on a variety of crops, plants of the grass family are probably the preferred food.

The following pesticides are registered for use on forage grasses: carbaryl, methoxychlor, methyl parathion, parathion, and trichlorphon. However, under field conditions in North Carolina in 1975, 1976, and 1977, none of these gave adequate control. Methomyl was reported effective for fall armyworm control when used in several States in 1977 as authorized by specific exemptions granted by EPA.

The specific exemption allows treatment of forage grasses with applications of methomyl at the rate of one-quarter to one-half pound active ingredient per acre per application on 131,000 to 262,000 acres throughout North Carolina. A maximum of three applications may be applied; application will be by ground or aerial equipment.

After reviewing the application and other available information, EPA has determined that (a) a fall armyworm outbreak has occurred on forage grasses; (b) there is no pesticide presently registered and available for use that gives effective control of the fall armyworm in North Carolina; (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic problems may result if the fall armyworm is not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until November 30, 1978, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. Insecticidal products containing the active ingredient methomyl (S-methyl N-[(methylcarbamoyl)oxy]-thioacetimidate) may be used at a dosage rate of one-quarter to one-half pound of active ingredient per acre;

2. A maximum of three applications may be made;

3. A maximum of 65,500 pounds of active methomyl may be applied;

4. Applications may be made by either State-licensed commercial applicators or State-certified private applicators using air or ground equipment;

5. There must be a waiting period of seven days before grazing, feeding, or cutting for hay or for dehydration and processing into meal and pellets;

6. Green grass with residue levels of methomyl not exceeding 5.0 ppm, and cured hay and ground or pelletized meal with residues of methomyl not exceeding 10.0 ppm may enter interstate commerce. The Food and Drug Administration of the U.S. Department of Health, Education, and Welfare has been advised of this action;

7. Methomyl is toxic to fish and wildlife. All precautions must be taken to avoid spray drift to nontarget areas;

8. All applicable directions, restrictions and precautions on the product label must be followed;

9. The Applicant is responsible for insuring that all of the provisions of this specific exemption are met and must submit a report summarizing the results of this program by September 1, 1979;

10. The EPA shall be immediately informed of any adverse effects resulting from the use of methomyl in connection with this exemption; and

11. The State of North Carolina and concerned growers must pursue permanent tolerances for methomyl through regular channels if the fall armyworm is likely to continue to be a pest of forage grasses in North Carolina.

STATUTORY AUTHORITY: Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136 et seq.).

Dated: October 27, 1978.

DOUGLAS D. CAMPT,
Acting Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 78-31060 Filed 11-2-78; 8:45 am]

[6730-01-M]

FEDERAL MARITIME COMMISSION

[Docket No. 78-43]

ALLIED CHEMICAL INTERNATIONAL CORP. V. FARRELL LINES, INC.

Filing of Complaint

Notice is hereby given that a complaint filed by Allied Chemical International Corp. against Farrell Lines, Inc. was served October 30, 1978. The complaint alleges that respondent overcharged complainant for ocean freight in violation of section 18 of the Shipping Act, 1916.

Hearing in this matter, if any is held, shall commence on or before April 30, 1979. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-31127 Filed 11-2-78; 8:45 am]

[6730-01-M]

[Docket No. 78-42]

ALLIED CHEMICAL INTERNATIONAL CORP. V. PACIFIC AMERICA CONTAINER EXPRESS A.K.A. PACE LINE

Filing of Complaint

Notice is hereby given that a complaint filed by Allied Chemical International Corporation against Pacific America Container Express a.k.a. Pace Line was served October 30, 1978. The complaint alleges that respondent overcharged complainant for ocean freight in violation of section 18 of the Shipping Act, 1916.

Hearing in this matter, if any is held, shall commence on or before April 30, 1979. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-31128 Filed 11-2-78; 8:45 am]

[6730-01-M]

[Independent Ocean Freight Forwarder License No. 1948]

CATHAY FORWARDING CO., ORVIS NELSON, D.B.A.

Order of Revocation

On October 23, 1978, Cathay Forwarding Co., Orvis Nelson, d.b.a., 127 East San Juan, San Clemente, Calif. 92672, voluntarily surrendered its Independent Ocean Freight Forwarder License No. 1948 for revocation.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 201.1 (Revised), § 5.01(c), dated August 8, 1977;

It is ordered, That Independent Ocean Freight Forwarder License No. 1948 issued to Cathay Forwarding Co., Orvis Nelson, d.b.a., be and is hereby revoked effective October 23, 1978, without prejudice to reapplication for a license in the future.

It is further ordered, That a copy of this Order be published in the FEDERAL REGISTER and served upon Cathay Forwarding Co., Orvis Nelson, d.b.a.

ROBERT G. DREW,
Director, Bureau of Certification and Licensing.

[FR Doc. 78-31131 Filed 11-2-78; 8:45 am]

[6730-01-M]

IDENTIFICATION OF CONTROLLED CARRIERS

Section 21 Order

On October 18, 1978, the President of the United States signed the Ocean Shipping Act of 1978 (hereinafter "Act") which becomes effective on November 17, 1978. This Act amends the Shipping Act, 1916 by providing for the regulation of rates, charges, classifications or rules by certain state-owned or controlled carriers in the foreign commerce of the United States. A

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copy of this legislation is attached as Appendix A.[1]

The Federal Maritime Commission is charged with the responsibility of administering this Act. To execute this mandate timely and accurately, the Commission must obtain certain information regarding the ownership and control of common carriers by water in the U.S. foreign commerce whose vessels are not registered in the United States.

Therefore, it is ordered, That pursuant to section 21 of the Shipping Act, 1916, (46 U.S.C. 820), each carrier listed in Appendix B to this order furnish to the Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, on or before November 17, 1978, the following information submitted under oath and, if not in English, accompanied by a certified English translation.

1. What United States foreign commerce trades do you serve, offer to serve, or propose to serve? Explain if necessary.

2. List the name and flag of registry of each vessel you operate or propose to operate in the United States foreign trades which vessel carries cargo pursuant to a tariff required to be filed at the Federal Maritime Commission.

3(a). Are your operating assets directly or indirectly owned or controlled by a government under whose registry any of your vessels operate? If so, what government? For purposes of this question, ownership or control is deemed to exist if a government directly or indirectly owns or controls at least 50 percent of the financial interest in the assets.

3(b). Does a government, under whose registry any of your vessels operate, have the right to appoint or disapprove the appointment of a majority of the directors or the chief operating or executive officer of your company? If so, what government?

4. If your answers to questions Nos. 3(a) and 3(b) are no, respond to the following:

a. List every person, corporation, and entity having a 5 percent or more interest in your company and state the percent of ownership of each.

b. If any person, corporation or entity listed in response to question 4a holds such interest for the benefit of another party, i.e., acts as trustee, indicate the names of such person, corporation, or entity which holds such interest and every party to whose benefit the interest is held.

c. Are any names listed in answer to questions 4(a) or 4(b) associated with any government or governmental organization, agency, or institution? If so, who and in what manner?

5. If it is determined that you are a controlled carrier, do you believe you are exempt from regulation under the Act? If so, state the specific provision under which you believe you are excluded and explain in detail, i.e.:

(6) The provisions of this subsection shall not apply to: (i) any controlled carrier of a state whose vessels are entitled by a treaty of the United States to receive national or most-favored-nation treatment; (ii) any controlled carrier of a state which, on the effective date of this subsection, has subscribed to the statement of shipping policy contained in note 1 to annex A of the Code of Liberalization of Current Invisible Operations, adopted by the Council of the Organization for Economic Cooperation and Development; (iii) rates, charges, classifications, rules, or regulations of any controlled carrier in any particular trade which are covered by an agreement approved under section 15 of this Act, other than an agreement in which all of the members are controlled carriers not otherwise excluded from the provisions of this subsection, and an agreement in which a controlled carrier exercises the right of independent action; (iv) rates, charges, classifications, rules, or regulations governing the transportation of cargo by a controlled carrier between the country by whose government it is owned or controlled, as defined herein, and the United States, or any of its districts, territories, or possessions; or (v) a trade served exclusively by controlled carriers.

This order is of a continuing nature. Any changes in ownership, control, or other conditions that affect your responses to this order shall be promptly reported to this Commission.

The information required by this order is essential so that the Commission can satisfy its statutory mandate. Failure to comply with the requirements of the order could result in the presumption by the Commission that "controlled carrier" status exists.

By the Commission.

FRANCIS C. HURNEY,
Secretary.

APPENDIX B

Alexandria Shipping & Navigation Co., 557 El-Horra Avenue, Alexandria, Arab Republic of Egypt.
Alexandria Shipping & Navigation Co., c/o Tilston Roberts Corp., 17 Battery Place, New York, N.Y. 10004.
Arctic Line, Murmansk Steamship Co., 15, Kominterna, Murmansk, U.S.S.R.
Arctic Line, c/o Morflot America Shipping, Inc., 67 Walnut Avenue, Clark, N.J. 07066.
Allanca Line, 19th Floor, Avenida Venezuela, 3, Rio De Janeiro, Brazil.
Argentine Lines, Five World Trade Center, Suite 6167, New York, N.Y. 10048.
Arya National Shipping Lines, c/o Norton, Lilly & Co., Inc., 90 West Street, New York, N.Y. 10006.
Atlantic Lines and Navigation, 33, Brouwersvliet, B-2000, Antwerp, Belgium.
Bahama Freight Services, Ltd., P.O. Box N8932, Nassau, Bahamas.
Baltic Shipping Co., 5 Mezhevoi Canal, Leningrad L-35 U.S.S.R.
Baltic Shipping Co., c/o Morflot America Shipping, Inc., 67 Walnut Avenue, Clark, N.J. 07066.
Bangladesh Shipping Corp., 2811, Toyenbee Circular Road, Motijheel Commercial Area, Dacca, Bangladesh.
Black Sea Shipping Co., 90 West Street, New York, N.Y. 10004.
Black Sea Shipping Co., UL, Lastochkina, 1, Odessa 26, U.S.S.R.
Black Star Line, c/o F. W. Hartman & Co., Inc., 17 Battery Place, New York, N.Y. 10004.
Bottacchi, A., Empresa, Naviegacion CFIEI, Maipu 509 Piso 2, Buenos Aires, Argentina.
Cerra Hogullori Line, Posta Katusa 411, Taksin, Istanbul, Turkey.
Chilean Line, One World Trade Center, New York, N.Y. 10048.
Compania Chilena de Navegacion Interoceanica S.A., Ahumada II, Piso II, Santiago, Chile.
Companhia Nacional De Navegacao, S.A.R.L., Rua Do Comercio 85, Lisbon, Portugal.
Compagnie Nationale Algerienne De Navigation, Botte 280, Algiers, Algeria.
Compagnie Nationale Algerienne De Navigation, c/o TTT Ship Agencies, Inc., 22nd Floor, International Trade Mart, New Orleans, La. 70130.
Companhia De Navegacas Loide Brasileiro, Rua Do Rosario 1-17, Rio De Janiero, Brazil.
Companhia De Navegacao Loide Brasileiro, 17 Battery Place, New York, N.Y. 10004.
Cunard Steamship Co., 1 Berkeley Street, London, W.I., England.
Dafra Lines, Sankt Anna Plads 30, Copenhagen, Denmark.
D.B. Turkish Cargo Lines, 93-95-97 Meclisi, Mebusan, Caddesi, Findekli, Istanbul, Turkey.
D.B. Turkish Cargo Lines, 1776 K Street NW., Suite 601, Washington, D.C. 20006.
D'Amico Line, Carso d'Italia 35/B, 00198 Roma, Italy.
Djakarta Lloyd, P.T., c/o Tilston Roberts Corp., 17 Battery Place, New York, N.Y. 10004.
Djakarta Lloyd, P.T., 28 Jalan Hadji Agus Salim, Jakarta, Indonesia.
Ecuadorian Line, 19 Rector Street, New York, N.Y. 10006.
Egyptian National Line, 2 Elnars Street, Alexandria, Egypt.
Far Eastern Shipping Co. (Fesco Pacific Lines), 15 TwentyFifth, October Street, Vladivostok, U.S.S.R.
Far Eastern Shipping Co., Moram Agencies, Inc., 67 Walnut Avenue, Clark, N.J. 07066.
Flota Mercante, Grancolombiana, S.A., Grancolombiana New York, Inc., One World Trade Center, Suite 1667, New York, N.Y. 10048.
Flota Mercante Gran Centro, Americana SA, Flomerca Line, 1A Calle 7-21, Zona 9, Guatemala City, Guatemala.
Flota Mercante Gran Centro Flomerca Line, Guatemala City Americana S.A., Guatemala.
Frota Amazonica, S.A., AV Presidente Vargas 112, Belem, Para, Brazil.
Galapagos Line SA, Sucre 205Y P1, P.O. Box 6579, Guayaguil, Ecuador.
Galapagos Line SA, Norton, Lilly & Co., Inc., 1121 Walker Street, Suite 510, Houston, Tex. 77002.
Galleon Shipping Corp., Alco Building, Ground Floor, 391 Buendia Ave. Extension, Makati, Metro Manila, Philippine.
Great Eastern Lines, c/o Great Eastern Shipping Co., 60 Mahatma Gandhi Road, Bombay 1, India.

[1] Appendix A is filed as part of the original document.

Gulf Ocean Lines, P.O. Box 1179, Reid House, Church Street, Hamilton, Bermuda.
Gulf West Africa Line, Mecantile & Marine, Inc., 767 Fifth Avenue, New York, N.Y. 10022.
Honduran Line, Apartado Postale's 1022, Tegucigalpa, Honduras C.A.
Honduran Line, c/o United Brands Co., 33 Rector Street, New York, N.Y. 10006.
Imparca Lines, (Intersiones Naviaras Imparaca, C.A.), Avienda Urdaneta Pelotas Ibarras, Edifico Caoma, Oficina 310, Caracas, Venezuela.
Iran Express Lines, 130 Avenue Soraya, P.O. Box 1224, Tehran, Iran.
Koctug Line, Bankalar Caddesi Bozkurt General, Han Kat: 5 Post Office Box 884, Karakoy, Istanbul, Turkey.
Koctug Line, c/o Biehl & Co., Inc., 416 Common Street, New Orleans, La. 70130.
Linea Manure, C.A., Naviera Venezolana, c/o International Tariff Services, 815 15th Street NW., Washington, D.C.
Selmadura La Guaira, S.A., P.O. Box 98, La Guaira, Venezuela.
Lineas Maritimas De Guatemala, S.A., Apartado Postal 577, Guatemala City, Guatemala.
Lineas Maritimas De Guatemala, S.A., c/o Marine Chartering Co., Inc., 680 Beach Street, San Francisco, Calif. 94109.
Mamenic Line, P.O. Box 3523, Managua, Nicaragua.
Maritime Co. of the Philippines, 205 Juan Luna, Manila, Philippines.
Mexican Line, Transportation Maritima, Mexicana, S.A., Avenida De Los Insurgentes No. 432, Mexico 7 D.F.
Mogul Line, c/o Norton, Lilly & Co., 90 West Street, 23rd Floor, New York, N.Y. 10006.
Muhammadi Steamship Co., Ltd., c/o Crossocean Shipping Co., One World Trade Center, Suite 2045, New York, N.Y. 10048.
Nacional Line, Av. Rio Brando, 25-10 Andor, Rio De Janeiro, Brasil.
National Shipping Corp. of Pakistan, P.O. Box 5350, Karachi 2, Pakistan.
Naviera Amazonica Peruana S.A., Peurvian Amazon Line, Av. Inca Garcilaso De La Vega, 911, 10 Piso, Lima, Peru.
Peruvian Amazon Line, c/o Smith & Johnson (Shipping) Inc., 904 First National Bank of Commerce Building, New Orleans, La. 70112.
Naviera "Neptuno" S.A., Sr. Rufino Torrice 862-2nd Floor, Lima 1, Peru.
Navimex, S.A., Paseo De La Reforma 107, Piso 13, Mexico City 4, D.F., Mexico.
Neptune Orient Lines Ltd., 13 Trafalgar Street, Singapore 2.
Neptune Orient Lines Ltd., 300 Montgomery Street, San Francisco, Calif. 94104.
Netumar Line, c/o Netumar International Inc., 67 Broad Street, New York, N.Y. 10004.
P & O Strath Services, London, England.
Pakistan Line J/S, Kane, Thomas J., Esq., Cichanowicz & Callan, 80 Broad Street, New York, N.Y. 10004.
Pakistan Shipping Corp., People's Foundation Building, Beaumont Road, Karachi, Pakistan.
Pakistan Line, c/o Crossocean Shipping Co., One World Trade Center, New York, N.Y. 10048.
Pan-Arab Shipping Co., One World Trade Center, New York, N.Y. 10048.
Pan-Arab Shipping Co., 13, Salah Salem Street, Alexandria, Egypt.
Pan-Islamic Steamship Co., Ltd., Writers Chamber, Dunolly Road, P.O. Box 4855, Karachi, Pakistan.
Paxicon, (Pacific Mexico Container Line, Inc.), 781 Beach Street, San Francisco, Calif. 94109.
Pensinsular & Oriental Steamship Co., Beaufort House, St. Botolph Street, London EC3A 7DX, England.
Peruvian State Line, Compania Peruana De Vapores S.A., Gamarra 676, Apartado 208, Callao, Peru.
Peruvian State Line, c/o Tilston Roberts Corp., 17 Battery Place, New York, N.Y. 10004.
Philippines President Lines, c/o Balfour Guitrie & Co., Inc., One Maritime Plaza, San Francisco, Calif. 94111.
Pol-Arctic (J/S), Polish Ocean Lines, 22, Korzeniowskiego Str., Gdynia, Poland.
Polish Ocean Lines, c/o Gdynia America Line, One World Trade Center, Suite 3557, New York, N.Y. 10048.
Polish Ocean Lines, UL Slaska 49A, Gdynia, Poland.
R.C.D. Shipping Services, 61 Saint-Joseph Street, Mobile, Ala. 36606.
Saudi National Lines, P.O. Box 66, Jeddah, Saudi Arabia.
Scindia Steamship Navigation Co., Ltd., Scindia House, Dougall Road, Ballard Estate, Bombay 1, India.
Shipping Corp. of India, Shipping House, 229/232 Madame Cama Road, Bombay 400-021, India.
Sidarma Line, Rialto Campo Della Faua, 5527, 30100 Venice, Italy.
South American Marine Corp., Ltd., BP Centre, Thibault Square, P.O. Box 27 & 2171, Capetown, South Africa.
South African Marine Corp., Ltd., One Bankers Trust Plaza, New York, N.Y. 10006.
Southeast & Caribbean Shipping Co., 750 NE 7th Avenue, Dania, Fla. 33004.
Star Shipping A/S, Bergen, Norway.
Transnave-Transportes Navieros Ecuatorianos, Capt. (R) Rafael Cevallos, Gen. Mang., Malecon 905 Y Junin, Guayaquil, Ecuador.
Transytur Line, 1015 North American Way, Miami, Fla. 33132.
United Arab Shipping Co. (S.A.G.), Safat 3336, Kuwait.
United Arab Shipping Co. (S.A.G.), 90 Washington Street, New York, N.Y. 10006.
Uruguayan Line, c/o Hansen & Tidemann, Inc., One World Trade Center—1623, New York, N.Y. 10048.
Venebuques, C.A., Post Office Box 6237, Caracas, Venezuela.
Venebuques, C.A., c/o International Tariff Services, 815 15th Street NW., Suite 538, Washington, D.C. 20005.
Venezuelan Line, Prins Hendrikkade 108, P.O. Box 209, Amsterdam, Holland.
Westwind Africa Line, c/o Southern Star Shipping Co., 29 Broadway, New York, N.Y. 10004.

[FR Doc. 78-31129 Filed 11-2-78; 8:45 am]

[6730-01-M]

[Independent Ocean Freight Forwarder License No. 326]

VALLE FORWARDING CO., RENE P. VALLE AND ANNA M. VALLE, D.B.A.

Order of Revocation

On October 20, 1978, Valle Forwarding Co., Rene P. Valle and Anna M. Valle, d.b.a., 228 Poydras Street, Second Floor, New Orleans, La. 70130, voluntarily surrendered its Independent Ocean Freight Forwarder License No. 326 for revocation.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 201.1 (Revised), § 5.01(c), dated August 8, 1977;

It is ordered, That Independent Ocean Freight Forwarder License No. 326 issued to Valle Forwarding Co., Rene P. Valle and Anna M. Valle, d.b.a., be and is hereby revoked effective October 20, 1978 without prejudice to reapplication for a license in the future.

It is further ordered, That a copy of this Order be published in the FEDERAL REGISTER and served upon Valle Forwarding Co., Rene P. Valle and Anna M. Valle, d.b.a.

ROBERT G. DREW,
Director, Bureau of Certification and Licensing.

[FR Doc. 78-31130 Filed 11-2-78; 8:45 am]

[1610-01-M]

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Receipt of Report Proposal

The following request for clearance of a report intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on October 30, 1978. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the FEDERAL REGISTER is to inform the public of such receipt.

The notice includes the title of the request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed FCC request are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed request, comments (in triplicate) must be received on or before November 21, 1978, and should be addressed to Mr. John M. Lovelady, Assistant Director,

Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street NW., Washington, D.C. 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

FEDERAL COMMUNICATIONS COMMISSION

The FCC requests clearance of a new reporting requirement under § 21.501(1)(10) of the FCC Rules and Regulations. The new reporting requirement will require certain mobile telephone common carriers who share frequencies in thirteen urban areas to report quarterly to the Commission so a determination can be made that the authorized number of mobile units reflect optimum channel usage. The FCC estimates respondents will number approximately 35 and that reporting burden will average approximately two hours per quarterly response.

NORMAN F. HEYL,
Regulatory Reports Review Officer.

[FR Doc. 78-31181 Filed 11-2-78; 8:45 am]

[4110-03-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. 78N-0179]

KAHLE TURKEY FARMS AND HATCHERY

Withdrawal of Applications for Animal Feeds Bearing or Containing New Animal Drugs

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice withdraws approval of applications for animal feeds bearing or containing a new animal drug (Form FD-1800) held by Kahle Turkey Farms and Hatchery, RFD No. 1, Fort Jennings, Ohio 45844. This action is being taken because the firm failed to respond to a notice of opportunity for hearing proposing to withdraw the applications.

EFFECTIVE DATE: November 3, 1978.

FOR FURTHER INFORMATION CONTACT:

Frank Pugliese,
Bureau of Veterinary Medicine (HFV-234),
Food and Drug Administration,
Department of Health, Education, and Welfare,
5600 Fishers Lane,
Rockville, Md. 20857,
301-443-3460.

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of July 28, 1978 (43 FR 32866), a notice of opportunity for hearing was published proposing to withdraw approval of the following applications for the manufacture of medicated feeds bearing or containing a new animal drug held by KAHLE Turkey Farms and Hatchery:

1. F 39-529V for animal feeds containing 0.0375 percent carbarsone (not U.S.P.); approved August 1, 1968.

2. F 43-568V for animal feeds containing 0.0375 percent carbarsone (not U.S.P.) and 0.01875 percent zoalene; approved March 9, 1970.

3. C 49-338V for animal feeds containing 0.0375 percent carbarsone (not U.S.P.) and 0.0011 percent bacitracin (as bacitracin methylene disalicylate); approved March 15, 1972.

The notice stated that the Director of the Bureau of Veterinary Medicine was proposing to issue an order under section 512(m)(4)(B)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(m)(4)(B)(ii)), withdrawing approval of the listed applications and all amendments and supplements thereto because new informatin showed that the methods used in, and the controls used for, the manufacture and processing of animal feeds bearing or containing new animal drugs were inadequate to assure and preserve the identity, strength, quality, and purity of the new animal drugs contained therein, and that they were not made adequate within a reasonable time after receipt of written notice specifying the deficiencies. The firm was provided until August 28, 1978 to file a written appearance requesting a hearing.

Kahle Turkey Farms and Hatchery has failed to respond to the notice within the 30-day period provided, as required by § 514.200 *Contents of notice of opportunity for a hearing* (21 CFR 514.200). Such failure is construed as an election by the firm not to avail itself of the opportunity for hearing and is grounds for entering a final order without further notice.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(m), 82 Stat. 343-351 (21 U.S.C. 360b(m)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 51), and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.84), applications for animal feeds bearing or containing new animal drugs F 39-529V, F 43-568V, and C 49-338V held by Kahle Turkey Farms and Hatchery are hereby withdrawn.

Dated: October 26, 1978.

TERENCE HARVEY,
Acting Director,
Bureau of Veterinary Medicine.

[FR Doc. 78-30932 Filed 11-2-78; 8:45 am]

[4110-03-M]

[Docket No. 77N-0239]

MODEL RETAIL FOOD STORE SANITATION ORDINANCE

Availability of Revised Proposed Ordinance

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This document announces the availability of the revised proposed Model Retail Food Store Sanitation Ordinance. The purpose of the ordinance is to provide the retail food industry with sanitary standards and State and local governments with a comprehensive model law with recommended enforcement procedures for the regulation of retail food stores.

DATE: Comments by January 31, 1979.

ADDRESS: Written comments to the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

A. Sidney Davis, Bureau of Foods (HFF-220), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-245-1511.

SUPPLEMENTARY INFORMATION: In 1973, the Food and Drug Administration (FDA) began development of a model retail food store sanitation ordinance in response to numerous requests, primarily from State and local regulatory agencies. The retail food store industry and food equipment manufacturers simultaneously expressed a need for a uniform set of requirements to replace the variety of State and local sanitation standards in effect in the United States. There has never been a uniform set of national sanitation guidelines or regulations developed specifically for retail food stores.

A proposed model retail food store ordinance was approved October 18, 1977, and notice of its availability for comment was published in the FEDERAL REGISTER of October 25, 1977 (42 FR 56367). The comment period was extended from 90 days to 120 days by notice in the FEDERAL REGISTER of January 31, 1978 (43 FR 4117). During the comment period, 85 letters were received containing about 1,000 comments. The proposal has been revised significantly based on these comments.

Considering the number and significance of changes made to the original proposal, the Commissioner of Food and Drugs concluded that there is a need to obtain comments on the revised proposal. Copies of the revision are being distributed to interested government and industry groups and to all who commented on the original proposal to provide an opportunity for their comments.

Other persons interested in obtaining copies of the revised proposal should write to the Bureau of Foods (HFF-220), Food and Drug Administration, 200 C Street SW., Washington, D.C. 20204. A copy of the revised proposal is also on display in the office of the FDA Hearing Clerk.

Written comments on the revised proposed ordinance should be sent on or before January 31, 1979 to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

Dated: October 19, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 78-30820 Filed 11-2-78; 8:45 am]

[4110-08-M]

National Institutes of Health

REPORT ON BIOASSAY OF 1,5-NAPHTHALENEDIAMINE FOR POSSIBLE CARCINOGENICITY

Availability

1,5-Naphthalenediamine (CAS 2243-62-1) has been tested for cancer-causing activity with rats and mice in the Bioassay Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary: A bioassay of 1,5-naphtha<lenediamine for possible carcinogenicity was conducted using Fischer 344 rats and B6C3F1 mice. Applications of the chemical incude use as an intermediate in the manufacture of dyes. 1,5-Naphthalenediamine was administered in the feed, at either of two concentrations, to groups of 50 male and 50 female animals of each species.

Under the conditions of this bioassay, 1,5-naphthalenediamine was carcinogenic in female Fischer 344 rats, causing clitoral and uterine neoplasms. 1,5-Naphthalenediamine was also carcinogenic for B6C3F1 mice, producing thyroid neoplasms in males and neoplasms of the thyroid, liver, and lung in females. Insufficient evidence was provided for the carcinogenicity of the compound in male Fischer 344 rats.

Single copies of the report are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Md. 20014.

(Catalogue of Federal Domestic Assistance Program Number 13.393, Cancer Cause and Prevention Research).

Dated: October 24, 1978.

DONALD S. FREDRICKSON,
Director,
National Institutes of Health.

[FR Doc. 78-30647 Filed 11-2-78; 8:45 am]

[4110-08-M]

REPORT ON BIOASSAY OF 2-AMINOANTHRAQUINONE FOR POSSIBLE CARCINOGENICITY

Availability

2-Aminoanthraquinone (CAS 117-79-3) has been tested for cancer-causing activity with rats and mice in the Bioassay Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary: A bioassay of 2-aminoanthraquinone for possible carcinogenicity was conducted using Fischer 344 rats and B6C3F1 mice. Applications of chemical include use as an intermediate in the manufacture of dyes. 2-Aminoanthraquinone was administered in the feed, at either of two concentrations (except for female rats), to groups of 50 male and 50 female animals of each species.

Under the conditions of this bioassay, dietary administration of 2-aminoanthraquinone was carcinogenic in male Fischer 344 rats, causing a combination of hepatocellular carcinomas and neoplastic nodules of the liver. The compound was also carcinogenic in B6C3F1 mice, causing hepatocellular carcinomas in both sexes and malignant hematopoietic lymphomas in females.

Single copies of the report are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Md. 20014.

(Catalog of Federal Domestic Assistance Program No. 13.393, Cancer Cause and Prevention Research.)

Dated: October 24, 1978.

DONALD S. FREDERICKSON,
Director,
National Institutes of Health.

[FR Doc. 78-30648 Filed 11-2-78; 8:45 am]

[4110-12-M]

Office of the Secretary

[Contract No. HEW-100-78-0059]

GARY INCOME MAINTENANCE EXPERIMENT

Contract Award

Pursuant to section 606 of the Community Services Act of 1974, (Pub. L. 93-644) 42 USC 2946, this agency announces the award of Contract No. HEW-100-78-0059 to Mathematica Policy Research, Inc., P.O. Box 2393, Princeton, N.J. 08540 for a research project entitled "Gary Income Maintenance Experiment." The purpose of this project is to complete the data development and research analysis of the Gary Income Maintenance Experiment that were previously initiated. The estimated cost of this contract is $490,000 and the intended completion date is June 21, 1979.

Dated: October 30, 1978.

HENRY AARON,
Assistant Secretary for Planning and Evaluation.

[FR Doc. 78-31126 Filed 11-2-78; 8:45 am]

[4110-12-M]

[Contract No. HEW-100-78-0118]

MONTHLY RETROSPECTIVE REPORTING STUDIES

Contract Award

Pursuant to section 606 of the Community Services Act of 1974, (Pub. L. 93-644) 42 U.S.C. 2946, this agency announces the award of Contract No. HEW-100-78-0118 to Abt Associates, Inc., 55 Wheeler Street, Cambridge, Mass. 02138 for a research project entitled "Monthly Retrospective Reporting Studies." The purpose of this project is to collect and analyze data on a series of experiments which compare two kinds of AFDC administrative approaches, the approach currently in use in a set of test sites, and a new approach, which involves monthly recipient reporting, retrospective accounting, and automated data processing. The estimated cost of this project is $1,553,011 and the intended completion date is March 18, 1981.

Dated: October 30, 1978.

HENRY AARON,
Assistant Secretary for Planning and Evaluation.

[FR Doc. 78-31125 Filed 11-2-78; 8:45 am]

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[4110-12-M]

[Contract No. HEW-100-78-0099]

PENSION EQUITY MEASUREMENT

Contract Award

Pursuant to section 606 of the Community Services Act of 1974 (Pub. L. 93-644), 42 U.S.C. 2946, this agency announces the award of Contract No. HEW-100-78-0099 to Survey Research Laboratory, University of Illinois, Urbana, Ill. 61801, for project entitled, "Pension Equity Measurement". The purpose of this project is to design a typology of pension plan characteristics and develop questions to be used on a sample of pension plan members. The contractor will draw the sample, collect the data and analyze the accuracy and problems in reporting pension equity in a personal interview. The estimated cost of this contract is $149,604 and the intended completion date is March 30, 1979.

Dated: October 30, 1978.

HENRY AARON,
Assistant Secretary for Planning and Evaluation.

[FR Doc. 78-31132 Filed 11-2-78; 8:45 am]

[4110-12-M]

[Contract No. HEW-100-78-0073]

PROJECT SHARE

Contract Award

Pursuant to section 606 of the Community Services Act of 1974 (Pub. L. 93-644) 42 U.S.C. 2946, this agency announces the award of Contract No. HEW-100-78-0073 to Aspen Systems Corp., 20010 Century Boulevard, Germantown, Md. 20767, for a research project entitled, "Project Share." The purpose of this project is to disseminate relevant information and significant findings of human services policy research projects funded under section 232 of the Community Services Act for 1974. This contract is part of a larger contract to disseminate information and findings of Federal, State and local evaluation and research studies in the area of human services. The estimated cost of the portion of the project to disseminate information from human services policy research projects funded under section 232 of the Community Services Act of 1974 is $100,000. The contract award includes an option to extend the contract for two additional years, and the intended completion date is September 30, 1981.

Dated: October 30, 1978.

HENRY AARON,
Assistant Secretary for Planning and Evaluation.

[FR Doc. 78-31124 Filed 11-2-78; 8:45 am]

[4110-85-M]

Public Health Service

HEALTH MAINTENANCE ORGANIZATIONS

Delegations of Authority

Notice is hereby given that the following delegations and ratification have been made regarding the Health Maintenance Organizations program authorities under Title XIII of the Public Health Service Act, as amended; section 1876(b)(2)(A) of the Social Security Act, as amended; and sections 1903(m)(1)(B) and 1903(m)(2)(C) of the Social Security Act, as added by Pub. L. 94-460.

(1) Delegation, effective May 1, 1978, by the Secretary of Health, Education, and Welfare to the Assistant Secretary for Health:

a. With authority to redelegate, of authority to perform all of the functions vested in the Secretary under Title XIII of the Public Health Service Act (42 U.S.C. 300e et seq.), as amended, concerning health maintenance organizations, excluding the authorities to promulgate regulations and submit reports to Congress;

b. With authority to redelegate, of authority to perform the functions vested in the Secretary under section 1876(b)(2)(A) of the Social Security Act (42 U.S.C. 1395mm), as amended, to make determinations as to whether an organization is a health maintenance organization; and

c. Of authority to ratify all actions from October 1, 1976, through May 1, 1978, taken on behalf of the Secretary of Health, Education, and Welfare under Title XIII of the Public Health Service Act, as amended.

(2) Delegation, effective October 23, 1978, by the Acting Assistant Secretary for Health to the Director, Office of Health Maintenance Organizations, Office of the Assistant Secretary for Health, with authority to redelegate, of the authorities delegated to the Assistant Secretary for Health under:

a. Title XIII of the Public Health Service Act (42 U.S.C. 300e et seq.), as amended;

b. Section 1876(b)(2)(A) of the Social Security Act (42 U.S.C. 1395mm), as amended, providing for making determinations as to whether an organization is a health maintenance organization; and

c. Section 1903(m)(1)(B) and section 1903(m)(2)(C) of the Social Security Act (42 U.S.C. 1396b), as added by Pub. L. 94-460. (A notice of the January 19, 1977 delegation by the Acting Secretary of Health, Education, and Welfare to the Assistant Secretary for Health of authorities under sections 1903(m)(1)(B) and 1903(m)(2)(C) of the Social Security Act was published in 42 FR 30435.)

All prior delegations to PHS officials of authority under Title XIII of the Public Health Service Act have been superseded

(3) Delegation, effective October 23, 1978, by the Director, Office of Health Maintenance Organizations, Office of the Assistant Secretary for Health, to the Regional Health Administrators, with authority to redelegate, of authority under:

a. Section 1303 of the Public Health Service Act (42 U.S.C. 300e-2), to award approved grants for feasibility surveys; and

b. Section 1304 of the Public Health Service Act (42 U.S.C. 300e-3), to award approved grants for planning and for initial development costs.

(4) Ratification, effective October 23, 1978, by the Acting Assistant Secretary for Health of all actions from October 1, 1976 through May 1, 1978, taken on behalf of the Secretary of Health, Education, and Welfare under Title XIII of the Public Health Service Act, as amended.

Dated: October 23, 1978.

CHARLES MILLER,
Acting Assistant Secretary for Health.

[FR Doc. 78-31064 Filed 11-2-78; 8:45 am]

[4310-84-M]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

JOINT FEDERAL-STATE BEAUFORT SEA OCS SALE

Hearing on Waiver of Ban on Joint Bidding

AGENCY: Bureau of Land Management.

ACTION: Notice of public hearing.

SUMMARY: The Bureau of Land Management gives notice of public hearings to be held on whether an exemption to the ban on joint bidding for the Outer Continental Shelf oil and gas lease sale scheduled for the Beaufort Sea will be granted. The sale is proposed to be held jointly by the Federal Government and the State of Alaska in December 1979 and to cover areas in the Beaufort Sea of Alaska.

SUPPLEMENTARY INFORMATION: On July 26, 1978, Chevron, U.S.A. wrote to the Secretary of the Interior requesting an exemption to the ban on joint bidding by major oil companies in compliance with applicable law. On September 18, 1978, the President signed into law the OCS Land Act Amendments of 1978 (OCSLA Amendments). Section 205 of the OCSLA Amendments changed the law regarding when the Secretary of the Interior could grant a waiver of the joint bidding ban. Section 105(c) of the Energy Policy and Conservation Act (42 U.S.C. 6213(c)), as changed by the OCSLA Amendments, allows the Secretary to exempt bidding for such leases only when he finds that: (1) such lands have extremely high cost exploration or development problems and (2) exploration and development will not occur on such lands unless such exemption is granted.

The request of Chevron, U.S.A. and supplementary information, if any, are available for inspection at the Branch of Marine Mineral Leasing, BLM, 18th & C Streets NW., Washington, D.C. 20240, phone number 202-343-8537 between the hours of 7:45 a.m. and 4:15 p.m. and the Alaska OCS Office of the BLM, 800 A Street, P.O. Box 1159, Anchorage, Alaska 99510, phone number 907-276-2955 during the same hours.

The request for waiver from Chevron encompasses all tracts proposed for the Beaufort Sea OCS Lease Sale. The request from Chevron for a waiver is to allow any two companies which are restricted joint bidders (see 43 CFR 3302.3) to bid jointly with each other at this particular sale. After the hearing, the Secretary's decision on this request may involve any number of possibilities, including an exemption broader than the specific request. These options encompass are but not limited to:

1. Granting the waiver for all companies in any combination of bidding.

2. Granting the waiver but limiting the number of companies that may combine or identifying which companies may combine.

3. Denying the waiver.

4. Requesting additional information.

Comments are requested to deal specifically with the two findings the Secretary must make. Since companies other than Chevron, including companies which are not restricted joint bidders, may be affected by the Secretary's decision, they are also invited, along with the general public to submit appropriate information and data. This material may be submitted in advance.

Two hearings will be held. On December 5, 1978, a hearing will be held in Anchorage, Alaska, at the Captain Cook Hotel (Afterdeck Room), 5th & K Streets, beginning at 9 a.m. Requests to present comments at the hearing can be filed with OCS Manager, Bureau of Land Management, 800 A Street, Anchorage, Alaska 99510, at any time prior to that date. All scheduled speakers and anyone else will be allowed to speak at the hearing. The hearing will begin at 9 a.m. and continue until 4 p.m., or until all speakers have been heard. The BLM reserves the option of extending the hearing an additional day for sufficient and compelling reasons.

On December 8, 1978, a hearing will be held at Interior Department Auditorium, 18th & C Streets NW., Washington, D.C., beginning at 9 a.m. Requests to present comments at the hearing can be filed with the Assistant Director, Minerals Management (700), BLM, Room 5640, 18th & C Streets NW., Washington, D.C. 20240, at any time prior to that date. All scheduled speakers and anyone else will be allowed to speak at the hearing. The hearing will begin at 9 a.m., and continue until 4 p.m., or until all speakers have been heard. The BLM reserves the option of extending the hearing an additional day for sufficient and compelling reasons.

Time limitations make it necessary to restrict the length of oral presentations to twenty (20) minutes. At the option of the hearing officer, this time may be changed.

The hearing panel at both sites will consist members of the Department of the Interior and the State of Alaska. The hearings will be formal and a complete record will be made of the proceedings. The hearings will be chaired by an Administrative Law Judge. Based on the record, a decision will be made on whether the exemption will be granted.

Any written comments submitted to the Assistant Director (700), BLM, within 10 days after the hearing will be considered.

FOR FURTHER INFORMATION CONTACT:

Chris Oynes or Anne Bennett, Branch of Marine Mineral Leasing, Bureau of Land Management, Room 3547, 18th & C Streets NW., Washington, D.C. 202-343-2718 or 343-8537.

ARNOLD E. PETTY,
Acting Associate Director.
LARRY E. MEIEROTTO,
Deputy Assistant Secretary.

OCTOBER 30, 1978.

[FR Doc. 78-31067 Filed 11-2-78; 8:45 am]

[4310-84-M]

[Wyoming 65368]

WYOMING

Application

OCTOBER 25, 1978.

Notice is hereby given that pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Northwest Pipeline Corp. of Salt Lake City, Utah filed an application for a right-of-way to construct a 8⅝-inch o.d. pipeline for the purpose of transporting natural gas across the following described public lands:

SIXTH PRINCIPAL MERIDIAN, WYO.

T. 18 N., R. 112 W.,
Sec. 20, W½NW¼.

The proposed pipeline designated as Trunk "B" extension will transport natural gas from a point in the NW¼SE¼ of sec. 19 to a point of connection with Northwest Pipeline Corp.'s Moxa Arch Gathering System in the NW¼NW¼ of sec. 20, T. 18 N., R. 112 W., in Uinta County, Wyo.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, Highway 187 North, P.O. Box 1869, Rock Springs, Wyo. 82901.

HAROLD G. STINCHCOMB,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-31067 Filed 11-2-78; 8:45 am]

[4310-70-M]

National Park Service

GOLDEN GATE NATIONAL RECREATION AREA ADVISORY COMMISSION

Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of Golden Gate National Recreation Area Advisory Commission will be held at 9:30 a.m. (P.s.t.) on November 18, 1978, at Tamalpais High School Student Center, Miller Avenue and Camino Alto Street, Mill Valley, Calif.

The Advisory Commission was established by Pub. L. 92-589, to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park system in Marin and San Francisco Counties.

Members of the Commission are as follows: Mr. Frank Boerger, Chairman; Ms. Amy Meyer, Secretary; Mr. Ernest Ayala, Mr. Richard Bartke, Mr. Fred Blumberg, Ms. Daphne Greene, Mr. Peter Haas, Sr., Mr. John Jacobs, Ms. Gimmy Park Li, Mr. Joseph Mendoza, Mr. John Mitchell, Mr. Merritt Robinson, Mr. Jack Spring, Dr. Edgar Wayburn, and Mr. Joseph Williams.

The major agenda items will be discussion of the Golden Gate National Recreation Area pet policy, discussion on an artist-in-residence prospectus for the Marin Headlands area, and a presentation by the General Superin-

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tendent on those portions of the Omnibus Bill (S791), that pertain to GGNRA and Point Reyes National Seashore.

This meeting is open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed.

Persons wishing to receive further information on this meeting or who wish to submit written statements may contact Lynn H. Thompson, General Superintendent, Golden Gate National Recreation Area, Fort Mason, San Francisco, Calif. 94123, telephone 415-556-2920.

Minutes of the meeting will be available for public inspection by December 18, 1978, in the Office of the General Superintendent, Golden Gate National Recreation Area, Fort Mason, San Francisco, Calif.

Dated: October 26, 1978.

BRUCE M. KILGORE,
Acting Regional Director, Western Region.

[FR Doc. 78-31061 Filed 11-2-78; 8:45 am]

[7020-02-M]

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-52]

CERTAIN APPARATUS FOR THE CONTINUOUS PRODUCTION OF COPPER ROD

Commission Determination, Order, and Memorandum Opinion; Procedural History

On September 26, 1978, respondents American Telephone & Telegraph, Western Electric Co., and Nassau Recycle Corp. (collectively Bell respondents), filed a motion (motion docket No. 52-41), pursuant to §§ 210.24 and 210.51 of the Commission's Rules of Practice and Procedure (hereinafter CRPP; 19 CFR §§ 210.24 and 210.51), to terminate this investigation as to issues of infringement of three of the patents involved in this investigation, namely, U.S. Letters Patent 3,317,994, 3,672,430, and 3,716,423, and to terminate the investigation as to the Bell respondents and the Krupp International and Krupp GmbH (collectively Krupp respondents), with respect to the continuous copper casting and rolling system at Gaston, S.C., and any future parts to be used in the maintenance and operation thereof as concerns the three patents cited above. This motion is based on the assertion that Bell respondents possess nonexclusive royalty-free licenses under the cited patents pursuant to a development contract between Western Electric Co. and complainant Southwire Co., dated August 22, 1962, and a license agreement between Western Electric Co. and complainant effective September 1, 1963. Respondents assert that respondent Nassau Recycle Corp.'s continuous copper and casting rolling system installed at Gaston, S.C., is a licensed system pursuant to such development contract and license agreement, and accordingly that the manufacture, importation, sale, and use of such system and spare parts for the maintenance and operation thereof, and the production and sale of products connected therewith, are not unfair acts of competition pursuant to 19 U.S.C. 1337 because of infringement of the cited patents. The Bell and Krupp respondents therefore move that the investigation be dismissed with respect to the system at Gaston, S.C., and any future parts to be used in the maintenance and operation of the system.

Under CRPP 210.53, a motion filed pursuant to CRPP 210.51, must be certified to the Commission by the presiding officer with her recommended determination within 30 days from the date of filing a motion under CRPP 210.51, unless the motion is denied. Thus, in this case, the recommended determination should be certified to the Commission by October 26, 1978. Under CRPP 210.53, however, the Commission may, by order, allow a longer time.

The presiding officer has requested, by a recommendation of October 23, 1978, that the time for filing her recommended determination on this motion be extended 30 days, until November 27, 1978. This recommendation is justified by the presiding officer because of the complex issues involved, because of the substantial impact action the motion will have on this investigation, because all pleadings relating to the motion were not received until October 17, 1978, and because of administrative difficulties in meeting the 30-day time limit, thus requiring additional time to act on the motion. The presiding officer states also that she will assume that her recommended determination must be filed no later than November 27, 1978, if the motion is granted; that is, she will proceed as if the recommendation for the 30-day extension had been granted.

OPINION

The presiding officer, in her recommendation of October 23, 1978, stated that, if it is recommended that respondents' motion be granted, CRPP 210.53 requires that such recommendation be certified to the Commission by October 26, 1978, unless the Commission allows greater time. Her recommendation also states that, if the motion is denied, there is no deadline, since a denial of the motion does not require certification to the Commission (CRPP 210.51(c) and 210.53(a)).

Inasmuch as the Commission has not received the presiding officer's recommended determination on the motion, and since the presiding officer has given good and sufficient reason why her recommended determination cannot be made within the 30-day period required by CRPP 210.53 if the motion to terminate were granted, the Commission believes that it would be proper to extend the period for certifying the recommended determination for an additional 30 days, until November 27, 1978. At that time, the Commission will be better able to determine, in light of the presiding officer's recommended determination on the motion then available, whether to grant or not grant the motion. If the presiding officer refuses, however, to grant the motion, it will not be certified to the Commission.

DETERMINATION AND ORDER

Having considered (1) the respondents' motion to terminate (motion docket No. 52-41), and (2) the presiding officer's recommendation of October 23, 1978, to grant an additional 30 days within which to file her recommended determination with respect to the motion, the Commission determines that the presiding officer's recommendation is properly filed and justified, and orders, pursuant to CRPP 210.53(a), that the 30-day period within which the presiding officer may file her recommended determination be extended for an additional 30 days. Therefore, the recommended determination of the presiding officer is now due to be certified to the Commission no later than November 27, 1978.

By order of the Commission.

Issued: October 31, 1978.

KENNETH R. MASON,
Secretary, U.S. International Trade Commission.

[FR Doc. 78-31194 Filed 11-2-78; 8:45 am]

[4410-01-M]

DEPARTMENT OF JUSTICE

Antitrust Division

UNITED STATES V. BRISTOL-MYERS CO. ET AL.

Proposed Consent Judgment and Competitive Impact Statement Thereon

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b) through (h), that a Proposed Consent Judgment and Competitive Impact Statement as set out below have been filed with the U.S. District Court for the District of Columbia in Civil No. 822-70 (M.D.L. Docket No. 50), *United States of America* v. *Bristol-Myers Co. et al.* (Mar. 19, 1970). The proposed settlement would terminate, against two of the three defendants, the Department of Justice's civil antitrust suit involving the broad spectrum antibiotic, ampicillin, and other semisynthetic penicillins. The British defendant, Beecham Group, Ltd., and its wholly owned American subsidiary, Beecham, Inc., consent to the proposed judgment. The third defendant, Bristol-Myers Co. is not a party to the proposed settlement and will therefore remain an active defendant in the lawsuit.

The complaint alleged that the defendants violated the Sherman Act by conspiring to restrain and monopolize trade and commerce in semisynthetic penicillins, restrictively licensing patents relating to ampicillin and other semisynthetic penicillins, and fraudulently procuring and enforcing a patent on ampicillin. That patent, as well as another one claiming a different form of ampicillin, were both alleged in the complaint to be invalid on statutory grounds.

The complaint also sought damages, as a result of the alleged conspiracy and foregoing violations, for overcharges on government purchases of ampicillin. The Beecham defendants will pay to the United States $1 million in settlement of the Government's claims against Beecham.

The injunctive provisions of the proposed judgment would prevent the Beecham defendants from restraining sales of any prescription drug in specified ways. The Beecham defendants would be prohibited for 10 years from making or maintaining any agreement that prevents or restrains any other party from selling any prescription drug to any person, in any manner or form, or under any trademark, trade name, label, or generic or official name. These injunctive provisions would also extend to any agreement that contains royalty of other fee provisions having the purpose or effect of similarly restraining another party. Excluded from these prohibitions would be: (1) Exclusive license of distributorship agreements that do not otherwise so restrain another party; and (2) agreements settling any trademark infringement dispute.

The proposed judgment would also require the Beecham defendants: (1) To sell in bulk form under some circumstances certain semisynthetic penicillins and 6-APA, a chemical used in the production of these drugs, until the patents claiming them expire; (2) to grant covenants not to sue, on any patent, for infringement or royalties in connection with sales of ampicillin, and to furnish and license related know-how for use with ampicillin, such covenants and licenses to be made at no profit to them; (3) to grant, at no profit to them, covenants not to sue for infringement of certain semisynthetic penicillin patents subject to agreements between Beecham and defendant Bristol-Myers, so long as this action continues against Bristol-Myers; (4) to license certain other semisynthetic pencillin patents and related know-how at a reasonable royalty rate; and (5) to assign certain semisynthetic penicillin trademarks to the persons by whom the trademarks were exclusively used in the United States (or authorize such persons to use such trademarks).

The competitive impact statement described the key provisions of the proposed judgment and its anticipated effects on competition, and evaluates alternative relief proposals actually considered by the United States.

Public comment is invited within the statutory 60-day time period. Such comments and responses thereto will be published in the FEDERAL REGISTER and filed with the Court. Comments should be directed to Robert V. Allen, Chief, Intellectual Property Section, Antitrust Division, SAFE 704, U.S. Department of Justice, Washington, D.C. 20530.

Dated: October 26, 1978.

CHARLES F. B. MCALEER
Special Assistant for Judgment Negotiations.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States of America, Plaintiff, v. *Bristol-Myers Company, Beecham Group Limited, and Beecham, Inc., Defendants.*
M.D.L. Docket No. 50
Civ. No. 822-70

STIPULATION

Filed: October 25, 1978
Entered:

It is stipulated by and between the plaintiff, United States of America, and the defendants, Beecham Group Limited and Beecham Inc., by their respective attorneys, that:

1. A Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of either party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to either party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this stipulation, this stipulation shall be of no effect whatsoever, and the making of this stipulation shall be without prejudice to plaintiff and Beecham Group Limited and Beecham Inc. in this and any other proceeding.

Dated: October 20, 1978.

For the plaintiff: John H. Shenefield, Assistant Attorney General, William E. Swope, Robert V. Allen, Thomas H. Liddle III, Robert S. Schwartz, Leo J. Keller, Attorneys, Antitrust Division, U.S. Department of Justice.

For the defendants: Shearman & Sterling, By: Arnold Bauman, R. Bruce MacWhorter, Robert F. Dobbin, Attorneys for Defendants, Beecham Group Ltd. and Beecham, Inc.

Stipulation approved for filing.

Dated: October 25, 1978.

CHARLES R. RICHEY,
U.S. District Judge.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States of America, Plaintiff, v. *Bristol-Myers Company, Beecham Group Limited, and Beecham Inc., Defendants.*
Civil No. 822-70
Filed: October 25, 1978

FINAL JUDGMENT

The plaintiff, United States of America, having filed its complaint herein on March 19, 1970, and defendant Beecham Group Limited having been served pursuant to 35 U.S.C. section 293 and having consented to the personal jurisdiction of the Court for purposes of this action only, the defendants Beecham Group Limited and Beecham Inc. having appeared by their attorneys and having each filed and answer to such complaint, and the plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment:

Now, Therefore, before the taking of any testimony, without trial or adjudication of any issue of fact or law herein, without this Final Judgment constituting any evidence against or admission by any party or estoppel in any other action with respect to any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I

This Court has jurisdiction of the subject matter of this action and of all parties hereto. The complaint states a claim for relief against Beecham Group Ltd. and Beecham Inc. under sections 1 and 2 of the Sherman Act, as amended.

II

As used in this Final Judgment:

(A) "Beecham" means defendant Beecham Group Ltd., with its principal office at Beecham House, Great West Road, Brentford, Middlesex, England; and defendant Beecham Inc., with its principal office at 65 Industrial South, Clifton, N.J. 07012.

(B) "Bristol" means defendant Bristol-Myers Co., with its principal office at 345 Park Avenue, New York, N.Y. 10022.

(C) "Ethical pharmaceutical" means any product containing or consisting of any drug (as that term is defined in 21 U.S.C. 321(g)(1)) which, on the effective date of this Final Judgment or when marketed commercially, may be dispensed or sold at retail to an individual consumer only if prescribed by a doctor.

(D) "Dosage form" means any form in which ethical pharmaceuticals are packaged or formulated for use by or administration to their ultimate individual human or animal consumer, and includes, among other things, pills, tablets, capsules, elixirs, syrups, vials, and ampules.

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(E) "Bulk form" means the form in which ethical pharmaceuticals are manufactured, prior to their formulation or packaging into dosage form.

(F) "Sterile bulk form" means the bulk form which is suitable for the manufacture of parenteral products.

(G) "Ampicillin" means D-(-)alpha-aminobenzylpenicillin in any form (including the anhydrous forms and trihydrate form), and its salts and esters.

(H) "Semisynthetic penicillin" means any penicillin that is produced from 6-aminopenicillanic acid ("6-APA") by acylating the 6-amino group or that is produced other than entirely by fermentation processes (with or without precursors), and includes, among other things, ampicillin, ancillin, azidocillin, carbenicillin, cloxacillin, dicloxacillin, flucloxacillin, hetacillin, methicillin, nafcillin, oxacillin, phenbenicillin, phenethicillin, propicillin and talampicillin, and salts thereof.

(I) "Technical data" means know-how, trade secrets, technology, production manuals, drawings, and other information that relates to the manufacture, use, processing, or securing of FDA approval for the marketing of any product, including (but not limited to) the best mode, method, procedure, and technique thereof known to or used by a defendant.

(J) "Patent" means U.S. patent, and includes any reissue and any correction of such patent.

(K) "Date of this Final Judgment" means the date of entry of this Final Judgment.

(L) "Semisynthetic penicillin patent" means:

(1) any patent or application for a patent

(a) that claims any one or more of the following: (i) a semisynthetic penicillin, (ii) a process or method of making a semisynthetic penicillin (or pharmaceutical composition containing it in combination with any other products), (iii) an intermediate (such as 6-APA) or any starting material from which a semisynthetic penicillin is made, (iv) a process or method for making an intermediate (or a starting material) from which a semisynthetic penicillin is made, (v) a method of use for (or treatment employing) a semisynthetic penicillin, or (vi) a pharmaceutical composition containing a semisynthetic penicillin in combination with any other product; and

(b) that prior to the date of this Final Judgment Beecham assigned or licensed to Bristol, or Bristol assigned or licensed to Beecham, including (but not limited to) each patent and application for a patent that a defendant assigned or licensed to another defendant pursuant to their agreements of April 2, 1959, August 1, 1960, or January 1, 1967; and

(2) any other patent

(a) that as of September 26, 1978, was owned by or assigned or licensed to Beecham; and

(b) that claims any one or more of the things enumerated in paragraph (L)(1)(a)(i)–(vi) of this section II.

The term "semisynthetic penicillin patent" does not include:

(1) U.S. Patents Nos. 3,192,198, 3,674,776, and Re. 28,744 (all relating to amoxicillin), unless it is agreed by Beecham and Bristol, or finally established in any suit or other proceeding (whether or not Bristol is a party thereto), that such patents are licensed by Beecham to Bristol under their agreement of April 2, 1959, in which case such patents shall be treated in all respects under this Final Judgment as if they were included in the definition of a "semisynthetic penicillin patent" under this paragraph II(L); or

(2) U.S. Patents Nos. 3,282,926 and 3,881,013 (both relating to ticarcillin) and U.S. Patent No. 3,853,849 (relating to carfecillin), unless one or more of such patents is assigned or licensed by Beecham to Bristol at any time during a period of ten (10) years after the date of this Final Judgment; in which case each patent so licensed or assigned shall be treated in all respects under this Final Judgment as if it were included in the definition of "semisynthetic penicillin patent" under this paragraph II(L).

(M) "Semisynthetic penicillin technical data" means technical data in the possession, custody, or control of Beecham that it has the right to license at the time of any request therefor made pursuant to this Final Judgment, and that is reasonably necessary or commercially requisite to make, use, process, or secure FDA approval to market any semisynthetic penicillin (or any product containing a semisynthetic penicillin in combination with any other product). The term "semisynthetic penicillin technical data" includes (but is not limited to):

(1) all such technical data that was submitted to the FDA (including, but not limited to, that which relates to securing FDA approval to market any semisynthetic penicillin) by or on behalf of Beecham at or before the time of any request for such data; and

(2) all such technical data that relates to using or processing any semisynthetic penicillin, and was known to or used by Beecham at or before the time of any request for such data.

Such term does not include any technical data that relates to—

(1) the manufacture of semisynthetic penicillins (and that was first known to or discovered or developed by Beecham after the date of this Final Judgment);

(2) the fermentation of penicillin;

(3) the manufacture of 6-APA; or

(4) the manufacture of any other starting material or starting chemical that (at the time of the request) is reasonably available commercially from a source other than Beecham or Bristol.

(N) "Persons" means any individual, corporation, association, partnership, or other business or legal entity. Business or legal entities under common ownership or control, or related as parent or subsidiary, shall be treated as a single person.

(O) "U.S. sale" means any sale or resale made in the United States.

(P) "Designation" means any U.S. trademark, trade name, or label, except a trademark, trade name, or label owned by Beecham. The term includes generic labels and established or official names (as those terms are used in 21 U.S.C. sections 352(e)(2) and 358).

III

(A) The provisions of this Final Judgment shall apply to Beecham; to each of its subsidiaries, successors, and assignees; to their directors, officers, agents, and employees; and to all persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

(B) This Final Judgment shall not apply to activities that occur outside the United States and do not affect the interstate or foreign commerce of the United States. Nothing in this Final Judgment shall constitute or require a grant of any right or rights by Beecham in any foreign jurisdiction or under any foreign patent or trademark or prohibit the enforcement or implementation of any such foreign right or rights.

IV

(A) Beecham is enjoined and restrained from entering into, adhering to, maintaining, or claiming any rights under any agreement or understanding, whether or not in the form of a license, that:

(1) restricts, limits, prevents, or prohibits any other party to such agreement or understanding from making any U.S. sale of an ethical pharmaceutical in any manner or form, under any designation, or to any person of the party's free choice;

(2) authorizes any other party to such agreement or understanding to make any U.S. sale of an ethical pharmaceutical in some particular manner or form, under some particular designation, or to some particular person, unless it also permits such party to make such sale in any other manner or form, under any and all other designations, or to any other person of the party's free choice; or

(3) contains royalty or other fee provisions having the purpose or effect of restricting or limiting any other party to such agreement or understanding from making any U.S. sale of an ethical pharmaceutical in any matter or form, under any designation, or to any person of the party's free choice.

(B)(1) The injunctions contained in section IV(A) shall not be construed to prevent Beecham from complying with 21 U.S.C., Ch. 13, and regulations issued pursuant thereto relating to "controlled substances."

(2) Nothing in section IV(A) shall prevent Beecham from entering into or maintaining any agreement in settlement of a bona fide trademark infringement (or other similar) dispute relating to confusion as to the source or orgin of an ethical pharmaceutical product, pursuant to which agreement any party thereto (a) agrees not to use, or agrees to limit the use of, any U.S. trademark involved in the dispute, or (b) agrees to refrain from the practices allegedly giving rise to such confusion. The United States is free to challenge and Beecham is free to defend the lawfulness of any such agreement under the antitrust laws.

(3) Nothing in section IV(A) shall prevent Beecham from granting or receiving an exclusive distributorship or an exclusive license under any patent, trademark, trade name, or technical data, unless such distributorship or license has the purpose or effect of otherwise restricting or limiting the other party thereto in any way prohibited by section IV(A) of this Final Judgment.

(C) Beecham shall have 120 days from the date of this Final Judgment within which to bring all existing agreements, understandings, and licenses into compliance with this section IV. Beecham shall within 30 days thereafter file with this Court an affidavit of such compliance.

V

(A) Beecham is ordered to sell in bulk form to each person, other than Bristol or a person who is a semisynthetic penicillin bulk customer or licensee of Beecham or Bristol as of the date of this final Judgment, making a written request therefor for delivery in (or to) the United States, on nondiscriminatory terms and prices, in quantities sufficient to meet such person's bona fide stated requirements for his sale in the United States:

(1) Ampicillin, if Beecham is selling it in the United States at the time of such request and if Beecham has, at the time of such request, the right to sell it in bulk form in the United States; and

(2) Any other semisynthetic penicillin—

(a) That, at the time of such request, Beecham is selling in the United States;

(b) That is claimed in any unexpired semisynthetic penicillin patent; and

(c) That, at the time of such request, Beecham has the right to sell in bulk form in the United States.

(B) Beecham is required to make such sales of semisynthetic penicillins pursuant to this section V:

(1) Only in the chemical form in which Beecham is selling such semisynthetic penicillin in the United States at the time of the request; and

(2) In bulk form, and in sterile bulk form, only to the extent that the amount of such required sales of such form of such semisynthetic penicillin in any year does not exceed 15 percent of the amount (measured by weight) of such semisynthetic penicillin (for nonparenteral or parenteral use, respectively) that Beecham sold in the United States to any person other than its own subsidiary (which amount was manufactured by Beecham, or for Beecham pursuant to a manufacturing agreement, anywhere in the world) during the calendar year prior to the year in which the request is made.

(C) Beecham shall not be obligated to sell any semisynthetic penicillin in bulk form pursuant to section V of this Final Judgment to any person who does not:

(1) Meet reasonable credit requirements;

(2) Give Beecham reasonable advance notification of the quantities it wishes to purchase and the delivery dates it requires.

(D) For each semisynthetic penicillin to be sold in bulk form pursuant to this section V, Beecham shall total all requests therefor made during the first month of each year by all persons, other than Bristol or a person who is a semisynthetic penicillin bulk customer or licensee of Beecham or Bristol as of the date of this Final Judgment; and, if the total of such requests for any semisynthetic penicillin exceeds the amount Beecham is required to sell pursuant to this section V, then Beecham shall meet such requests (unless it meets them fully) on a reasonable pro rata allocation basis. Beecham shall fill all requests made after the first month of each year pursuant to this section V in the order in which they are received until the limits provided by this section V are reached (unless it meets such requests fully).

(E) Beecham may take reasonable steps consistent with the purposes of this Final Judgment to protect itself from any risk of product liability (or other similar liability) suits or violation of Federal or State statutes or regulations.

(F) If for any period 6-APA is temporarily not reasonably available commercially from a source other than Beecham or Bristol, during that time Beecham is ordered to sell 6-APA in bulk form to each person, other than Bristol or a person who is a 6-APA or semisynthetic penicillin bulk customer or licensee or Beecham or Bristol as of the date of this Final Judgment, making a written request therefor for delivery in the United States and practicing under a license granted pursuant to section VI hereof, on nondiscriminatory terms and prices, and in quantities sufficient to meet such person's bona fide stated requirements for his manufacture and sale of semisynthetic penicillin(s) in the United States. The provisions of paragraphs (B), (C), and (E) of this section V, applicable to sales of semisynthetic penicillins in bulk form, shall be applicable to sales of 6-APA in bulk form made pursuant to this paragraph (F), except that the amount of such require sales in any year shall not exceed 15 percent of the amount (measured by weight) of 6-APA that Beecham used in making semisynthetic penicillin(s) that it sold in the Untied States to any person other than its own subsidiary (which amount of 6-APA was manufactured by Beecham, or for Beecham pursuant to a manufacturing agreement, anywhere in the world) during the calendar year prior to the period in which 6-APA was not so available.

(G) Beecham is ordered to file a statement with this Court, on the date of this Final Judgment, listing each semisynthetic penicillin:

(1) That is claimed in any unexpired semisynthetic penicillin patent,

(2) That Beecham sold in the United States prior to such date, and

(3) That Beecham has the right to sell in bulk form in the United States on the date of this Final Judgment.

VI

(A) Beecham is ordered to grant, without charge, to each person (other than Bristol), who makes a written request therefor, an irrevocable covenant not to sue (on behalf or for the account of Beecham or anyone else) for any alleged infringement of:

(1) Any patent in connection with the manufacture, use, or sale of ampicillin at any time (whether prior or subsequent to the date of this Final Judgment); or

(2) Any semisynthetic penicillin patent (including, but not limited to, each patent that issued on any application for a patent) that Beecham assigned or licensed to Bristol pursuant to their agreements of April 2, 1959, and August 1, 1960, in connection with the manufacture, use, or sale of any other semisynthetic penicillin at any time (whether prior of subsequent to the date of this Final Judgment), provided, however, that the obligation of Beecham to grant the covenant, and the duration of any covenant so granted, pursuant to this section VI(A)(2) shall only run for that period of time in which there shall remain pending the action brought by the United States against Bristol herein. Beecham may charge for such covenant an amount equal to that which it is legally obligated to pay (as of the date of this Final Judgment) and in fact pays any person, other than Bristol, by reason of the grant of such covenant.

(B) Nothing in section VI(A) shall prevent Beecham from being joined by any person as an involuntary party in or, pursuant to such joinder and to the extent required by it, participating in any such infringement suit instituted by Bristol, so long as such participation does not result in any recovery for Beecham's account.

(C) Beecham is ordered to grant, to each person (other than Bristol) who makes a written request therefor, an irrevocable license, at a reasonable royalty rate and on reasonable and nondiscriminatory terms, under any, some, or all semisynthetic penicillin patents (as the person making such request may wish) that Beecham has the right to license as of the date of any such request.

(D) Nothing herein shall prevent any applicant from attacking the validity or scope of any patent or patents to be licensed by Beecham pursuant to this section VI of this Final Judgment; nor shall this Final Judgment be construed as imputing any validity or invalidity to any of such patents.

(E) Beecham is ordered to file with this Court, on the date of this Final Judgment, a statment listing each semisynthetic penicillin patent that is owned by or assigned or licensed to Beecham and that Beecham has the right to license of sublicense.

VII

(A) Beecham is ordered to furnish to each person, other than Bristol, making a bona fide written request therefor, and to license such person to use, in connection with the manufacture, use, or sale of semisynthetic penicillins in the United States, or with the practice of semisynthetic penicillin patents in the United States, any, some, or all semisynthetic penicillin technical data (as to the person making such request may wish) that relates to:

(1) Ampicillin;

(2) The commercial exploitation of only the semisynthetic penicillin patents licensed to such person pursuant to section VI of this Final Judgment;

(3) Using, bulk processing (inciuding the conversion of semisyntheticpenicillins from bulk form to dosage form), or securing of FDA approval to market any semisynthetic penicillin claimed in a semisynthetic penicillin patent; (a) That such person makes or had made under a license granted pursuant to section VI of this Final Judgment; (b) That such person purchases from Beecham pursuant to section V of this Final Judgment, from a licensee of Beecham or Bristol for such semisynthetic penicillin, or from a person practicing under a license for such semisynthetic penicillin granted pursuant to section VI hereof. There shall be no upper limit on the number of requests made under this Section VII.

(B) The charge for such semisynthetic penicillin technical data shall be as follows:

(1) For semisynthetic penicillin technical data in the public domain and for semisynthetic penicillin technical data (whether or not in the public domain) used for manufacturing, bulk processing, using, or securing FDA approval to market ampicillin;

(a) The actual out-of-pocket cost to Beecham of reproducing the data supplied; and

(b) A royalty or fee equal to that which Beecham is legally obligated to pay (as of the date of this Final Judgment) and in fact pays to any person other than Bristol, by reason of the grant of a license thereof;

(2) For other semisynthetic penicillin technical data not in the public domain; a reasonable royalty for its use other than in connection with ampicillin, such royalty to terminate with respect to any such technical data that falls into the public domain for any reason other than the wrongful act of a licensee.

(c) In furnishing and licensing semisynthetic penicillin technical data pursuant to this section VII, Beecham may:

(1) require the person receiving such technical data to execute an appropriate agree-

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ment forbidding its disclosure to any third party without Beecham's consent, so long as such technical data is not otherwise in the public domain; but such person may disclose such technical data to any third party who agrees to be bound by such agreement, and who manufactures or processes any semisynthetic penicillin solely for a licensee or bulk purchaser under this Final Judgment; and

(2) apply legends to such technical data indicating its proprietary nature.

VIII

(A) Beecham is ordered to assign at a time specified in paragraph D of this section VIII, upon written request and without charge, each trademark identified in paragraph (B) of this section VIII, together with the good will associated with it, to the person who marketed a semisynthetic penicillin under such trademark, as described in paragraph (C) of this section VIII.

(B) The trademarks to be assigned pursuant to this section VIII are those (other than "Penbritin" or "Penbritin S") that Beecham prior to the date of this Final Judgment (1) registered in the U.S. Patent and Trademark Office, and (2) allowed another person to use in connection with the U.S. sale of a semisynthetic penicillin that Beecham suplied to such person, as described in paragraph (C) of this section VIII.

(C) The persons to whom Beecham is required to assign a trademark pursuant to this section VIII are those who, at any time prior to the date of this Final Judgment:

(1) were supplied by Beecham with a semisynthetic penicillin for U.S. sale only under such trademark;

(2) were authorized to use such trademark only for the U.S. sale of such semisynthetic penicillin supplied by Beecham, unless Beecham was itself unable to supply it; and

(3) agreed with Beecham that, while such persons were so marketing such semisynthetic penicillin, Beecham would neither sell nor authorize anyone else to sell such semisynthetic penicillin in the United States under such trademark.

(D) Beecham shall make the assignments of trademarks pursuant to this article VIII at such time as (1) Beecham acquires the right, under the appropriate Beecham-Bristol Agreements of April 2, 1959, August 1, 1960, and January 1, 1967, to sell the semisynthetic penicillin involved under a trademark other than one owned by Beecham; (2) there is a final judgment determining that such agreements are unenforceable insofar as they limit Beecham's rights thereunder to sales by Beecham under trademarks owned by it; or (3) there is a settlement of this action against Bristol and, in connection with such settlement, Bristol complies with a provision corresponding to section IV(C) of this Final Judgment. In the meantime, Beecham is ordered to authorize, within 120 days from the date of this Final Judgment, each person described in paragraph (C) of the section VIII to use the trademark (to be assigned to such person pursuant to this section VIII and described in paragraph (B) thereof) for the U.S. sale of the semisynthetic penicillin involved that such person may procure from any source of his free choice. Beecham may take reasonable steps consistent with the purposes of this Final Judgment to insure that such semisynthetic penicillin procured from a source other than Beecham meets the standards of quality under which Beecham previously permitted such person to procure such semisynthetic penicillin elsewhere when Beecham was itself unable to supply it, as described in paragraph (C) of this section VIII.

IX

(A) Upon receipt of a written application for a license under section VI or section VII above, Beecham shall within 30 days advise the applicant in writing of the royalties which it deems reasonable for a license of patent(s) or technical data requested and the conditions and terms thereof, if any. If the applicant rejects the royalties, conditions, or terms proposed by Beecham, and if Beecham and the applicant are unable to agree upon reasonable conditions, terms, or royalties, or upon a method of determining reasonable royalties (including arbitration), within 60 days from the date such rejection is communicated in writing to Beecham, the applicant or Beecham may, upon notice to plaintiff and to the other party to the dispute, apply to the Court for (1) the determination of reasonable conditions, terms, and royalties and (2) a preliminary determination of such reasonable interim royalties on patents as the Court may deem appropriate pending the completion of such proceeding. In any such proceeding, the burden of proof shall be upon Beecham to establish that the conditions, terms, and royalties which it proposes are reasonable. Pending the completion of negotiations or any such proceedings, the applicant shall have a provisional license of the scope provided in his application for a license to practice the patent(s) to which his application pertains, subject to the payment to Beecham of reasonable interim royalties on such patent(s): *Provided, however,* That no provisional license shall contravene any of the provisions of this Final Judgment. A final determination of reasonable royalties or that no royalties are to be charged, for practicing the patent(s) shall be applicable from the date upon which the applicant requested a license. Such determination shall, unless otherwise ordered by the Court in proceedings instituted under this section IX, be applicable thereafter to any other licensee then having or thereafter obtaining the same rights under the same patent(s) or technical data. If the applicant fails to accept a patent license after final determination by the Court of the amount of reasonable royalties with respect thereto in a proceeding under this section IX, such applicant shall pay only the interim royalties that may be found by the Court to be due to Beecham with respect thereto and such costs as may be determined by the Court to be just and reasonable.

(B) The licenses granted by Beecham pursuant to sections VI and VII of this Final Judgment shall be without any condition or limitation, except as provided herein, and shall, with respect to patent(s), be granted for a term equal to the life of the licensed patent(s). Such licenses may be cancelled by the licensee upon thirty (30) days' written notice to Beecham.

(C) Beecham is enjoined from conditioning the grant of any license under either section VI of VII of this Final Judgment, or the furnishing of semisynthetic penicillin technical data, upon the grant or acceptance by the licensee of a license under any other United States or foreign patent, or of rights relating to any other technical data.

(D) Reasonable provisions may be made, in the licenses granted by Beecham pursuant to section VI or VII of this Final Judgment, for periodic royalty reports by the licensee, including such reports as may be necessary to allow Beecham to fulfill its obligations, if any, to third parties, and for inspection of the relevant books and records of the licensee by an independent auditor or other person acceptable to both licensor and licensee (or, in the absence of agreement, a person selected by this Court), who shall report to Beecham only the amount of the royalty of other charge due and payable.

X

(A) Beecham is enjoined and restrained from making any sale or other disposition of any right, patent, trademark (where applicable), technical data, or license which deprives it of the power or authority to sell semisynthetic penicillins in bulk form, to grant licenses to practice patents, or to use trademarks or technical data in accordance with the provisions of this Final Judgment, unless the purchaser, transferee, licensee, or assignee of such right, patent, trademark, technical data, or license shall file with this Court, prior to the consummation of any such sale or other disposition, and undertaking to be bound by the provisions of, and to assume the obligations of Beecham under, this Final Judgment with respect to such right, patent, trademark, technical data, or license sold or disposed of thereto.

(B) Beecham is enjoined and restrained from:

(1) Transferring any assets subject to this Final Judgment, other than goods sold or otherwise transferred in the ordinary course of business, to any third party that, according to Beecham's knowledge, proposes to make or has extant any tender offer or takeover bid in respect to the stock and assets of Beecham; has acquired such stock or assets; or has entered into any merger with Beecham or agreement therefor;

(2) Failing or declining to engage in any activity subject to this Final Judgment in order that a third party (as referred to in paragraph (B)(1) of this section) may engage in such activity in lieu of Beecham, unless such third party shall first have submitted to the jurisdiction of this Court and consented to be bound by this Final Judgment to the extent provided by law: *Provided, however,* That Beecham shall be free to take any action prohibited by this section X, if after 30 days' prior notice to plaintiff of Beecham's intent to take any such action plaintiff has not filed any objection thereto with this Court: *And provided further,* That, if plaintiff has filed any such objection, Beecham shall not take such action until (a) such third party has submitted to the jurisdiction of the Court and has consented to be bound by this Final Judgment to the extent provided by law, or (b) the Court shall have ruled that Beecham may take such action without such submission.

XI

Within ninety (90) days of the date of this Final Judgment:

(A) Beecham is ordered and directed to publish notice of the availability of (1) semisynthetic penicillins for purchase in bulk form pursuant to section V of this Final Judgment, and (2) licenses under semisynthetic penicillin patents and technical data pursuant to sections VI and VII of this Final Judgment, in one issue of Chemical & Engineering News (published by American Chemical Society) and Chemical Week (published by McGraw-Hill, Inc.), and to publish notice of the availability of such licenses in one issue of the Official Gazette of the U.S. Patent and Trademark Office; and

(B) Beecham is ordered and directed to give notice in writing of such availability to each person who since January 1, 1965, has indicated in writing to Beecham an interest in purchasing any semisynthetic penicillin in bulk form in the United States or obtaining a license under any semisynthetic penicillin patent.

XII

(A) For the purpose of securing compliance or determining whether there has been compliance with this Final Judgment, and subject to any legally recognized privilege, any duly authorized representative of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Beecham made to its principal office, be permitted:

(1) access, during regular office hours of Beecham, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or custody or under the control of Beecham relating to any of the subject matter contained in this Final Judgment (including all patent, trademark, trade name, or technical data licenses relating to ethical pharmaceuticals, whether or not containing provisions prohibited by this Final Judgment); and

(2) subject to the reasonable convenience of Beecham, and without restraint or interference from it, to interview officers, directors, agents, partners, or employees of Beecham, who may have counsel present, regarding any such matters: *Provided, however,* That Beecham shall not be obligated to bring to the United States any records or documents or to bring to the United States for the purpose of interview any officer, director, agent, partner, or employee, except on order of this Court specifically so providing.

(B) Upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, made for the purpose of securing compliance or determining whether there has been compliance with this Final Judgment, Beecham shall submit such reports in writing with respect to matters contained in this Final Judgment as may be requested.

(C) No information obtained by the means provided in this section XII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance or determining whether there has been compliance with this Final Judgment, or for Federal law enforcement purposes by the United States, or as otherwise required by law.

(D) If, at the time information or documents are furnished by Beecham to plaintiff, Beecham represents and identifies in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Beecham marks the appropriate portion of each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days' notice shall be given by plaintiff to Beecham prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which Beecham is not a party.

XIII

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or modification of any of the provisions thereof, for the enforcement of compliance therewith, or for the punishment of violations thereof.

XIV

(A) Except as provided in paragraph (B) of this section XIV, this Final Judgment shall terminate ten (10) years after the date of its entry, and shall thereafter have no force or effect.

(B) (1) The provisions of section VI shall continue in effect until the expiration of the patents required to be licensed thereunder.

(2) The obligation to grant licenses to use semisynthetic penicillin technical data pursuant to the provisions of section VII shall continue in effect until the expiration of Beecham's obligation to license the patents or to sell the semisynthetic penicillins in bulk form to which the licensed semisynthetic penicillin technical data relates.

(2) The compulsory bulk selling provisions of section V shall continue in effect, as to 6-APA and each semisynthetic penicillin (other than ampicillin) required to be sold in bulk form thereunder, until the expiration of the last of the patents owned by or assigned or licensed to Beecham which claims 6-APA or that semisynthetic penicillin, or ten (10) years after the date of this Final Judgment, whichever is sooner.

(4) The compulsory bulk selling provisions of section V, as to ampicillin, shall continue in effect for ten (10) years after the date of this Final Judgment.

XV

Within 60 days of entry of this Final Judgment, Beecham shall pay the sum of $1 million to the order of the Treasurer of the United States in consideration for a covenant by the United States not to sue Beecham on any claim set forth in the complaint herein, including (1) any claim in respect of damages which may have been sustained by the United States, by reason of its direct and indirect purchases of ampicillin, and (2) any claim based upon the violations alleged in the complaint in respect of damages which may have been sustained by the United States, by reason of its direct and indirect purchases of other semisynthetic penicillins, including expenditures of money under any domestic or foreign aid or welfare program made during the period beginning four years preceding the date of filing the complaint in this action and ending on the date of entry of this Final Judgment.

XVI

If a final judgment in this matter against Bristol is consented to by the United States of America which omits any injunctive provision applicable to beecham herein, or which contains any such provision that differs from any provision herein (other than Article VIII herein), in that it is more favorable to Bristol than the corresponding provision of this Final Judgment in respect of Beecham, then the United States of America agrees that Beecham shall have the right to apply to this court to have any provision of this Final Judgment modified to the extent necessary to conform such provision in this Final Judgment with the corresponding provision of any such final judgment against Bristol. The United States of America may join in, oppose or take no position with respect to any such application.

XVII

For the purpose of continued discovery against Beecham, Beecham and the United States of America have entered into an agreement providing therefor; that agreement is attached as Exhibit A hereto and made a part of this Final Judgment.

XVIII

Entry of this Final Judgment is in the public interest. There is no just reason for delay of entry of this Final Judgment against Beecham, and the entry of this Final Judgment is now expressly directed.

Dated: _____

_____,

U.S. District Judge.

EXHIBIT A

1. The United States recognizes that there has been some substantial prior interrogatory and document discovery from Beecham and that a principal consideration on Beecham's part in entering into this settlement is to avoid unreasonable intrusion into and disruption of its normal business affairs and diversion of Beecham personnel from Beecham's business affairs. Accordingly, the United States will exert its best efforts to minimize the burden of the requests it will make of Beecham pursuant to this paragraph, to coordinate its discovery hereunder with that of attorneys for the CCS Plaintiffs in this action, to avoid unnecessarily repetitious discovery, and to conduct expeditiously interviews and depositions of Beecham personnel. Accordingly, the United States agrees that any further discovery from Beecham shall be conducted in accordance with the terms stated below. So long as the U.S. action continues against Bristol, and solely for the purpose of the continuation of said actions against Bristol, Beecham—

(a) Will make available to CCS Plaintiffs' attorneys and attorneys for the United States (hereinafter the "Governmental Entity Attorneys"), a reasonable number of Beecham's officers, directors, managing agents and employees ("Beecham Personnel")* as said attorneys may identify for informal interviews respecting the subject matter of the CCS or United States Actions. As to Beecham Personnel who reside in and whose principal place of business is in the United Kingdom, such interviews shall take place in the United Kingdom at, to the extent possible, one central, convenient location in metropolitan London, England (such as the London offices of Shearman &

* A reasonable number means those Beecham Personnel previously specified by the United States and a reasonable number of Beecham Personnel in addition thereto.

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Sterling, Beecham House, or such other places) and at such times as may be mutually agreed upon, except that as to Beecham Personnel who have their place of business or residence outside the United States, such interviews may also be held in the United States on those occasions when such Beecham Personnel are in the United States on business, at such times as may be mutually agreed upon. As to Beecham Personnel who reside in and whose principal place of business is in the United States, or as to such personnel who reside outside or whose principal place of business is outside the United States and who are to be interviewed in the United States on occasions when they are in the United States on business, such interviews shall take place in New York City at the law offices of Shearman & Sterling at such times as may be mutually agreed upon;

(b) Will use its best efforts to assist the Governmental Entity Attorneys in obtaining written statements from such Beecham Personnel;

(c) Will use its best efforts to assist the Governmental Entity Attorneys in locating, obtaining interviews with, obtaining written statments from, deposing and securing the presence at trial of retired or former Beecham Personnel;

(d) Will use its best efforts to comply with Governmental Entity Attorneys' requests for inspection and copying of further documents relating to the subject matter of the CCS or United States Actions and for further information relating thereto provided that such requests are not unduly burdensome and the United States will pay the costs of copying such documents;

(e) Will produce at any trial of the CCS or United States actions against Bristol before a judge or jury at the place of trial or, in the alternative (if the Governmental Entity Attorneys so elect), at depositions for the purpose of giving testimony, such Beecham Personnel who have been interviewed (except those persons who have been deposed in these CCS or U.S. actions at the instance of the CCS Plaintiffs or the United States) as Governmental Entity Attorneys may request, provided, however, that if Governmental Entity Attorneys believe in good faith, in rare and exceptional cases, that it will be essential to the successful prosecution of their actions against Bristol to produce a witness at trial whose deposition has been previously taken at such attorneys' instance in accordance with this procedure, then Beecham will produce such Beecham Personnel at trial; in making the good faith judgment that the production of a witness at trial who has already been deposed in accordance with this procedure is "essential" as aforesaid, Governmental Entity Attorneys will take into account Beecham's considerations and objectives as stated in paragraph I above. The situs and times of any depositions shall be determined in accordance with paragraph I(a) above, except that depositions of Beecham Personnel who reside in the United States or which are taken in the United States when such persons are in the United States on business in accordance with paragraph I(a), shall be taken in Washington, D.C.

Each party shall bear its own costs and expenses respecting performance under this paragraph except that as to any Beecham Personnel requested to appear at trial, CCS Plaintiffs and the United States shall advance and pay for the reasonable costs of transportation (limited to economy class fares in regularly scheduled airlines), for such personnel to and from the place of trial and for the reasonable costs of meals and lodging for such times as their attendance at trial is required.

2. To facilitate the continued prosecution of the CCS and U.S. actions, Beecham agrees that the procedures described in paragraph 1 above may begin as soon as this Final Judgment is filed by the United States with the United States District Court for the District of Columbia in accordance with the requirements of 15 USC 16. The parties will cooperate in resolving any dispute as to objections Beecham may raise during the taking of discovery pursuant to paragraph 1 including promptly raising any such questions by telephone or otherwise with the Court for a prompt resolution thereof.

3. Beecham will withdraw its motion, filed June 1, 1978, seeking leave to reargue, and upon reargument, allowance of its claims of privilege for patent agents' communications and, pursuant to the Court's order filed March 20, 1978, will produce to Governmental Entity Attorneys those documents, or portions thereof, as to which the Court, in said order, overruled its claims of privilege. Beecham specifically does not waive either its claim that said documents and portions thereof, under the law properly interpreted and applied, are privileged or its claim that the Court's memorandum opinion, also filed March 20, 1978 accompanying said order, improperly interprets and applies the law of privilege as respects patent agents.

U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States of America, Plaintiff, v. *Bristol-Myers Co., Beecham Group Ltd., and Beecham, Inc.*, Defendants. M.D.L. Docket No. 50; Civ. No. 822-70. Filed: October 25, 1978.

COMPETITIVE IMPACT STATEMENT

Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)), the United States of America hereby files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry against Beecham Group Ltd., and Beecham, Inc., in this civil antitrust action.

I. NATURE AND PURPOSE OF THE PROCEEDING

A. THE COMPLAINT

The Government filed this civil antitrust suit on March 19, 1970, alleging that defendants Beecham Group Ltd., ("Beecham"), Beecham, Inc. (Beecham's American subsidiary), and Bristol-Myers Co. ("Bristol") violated sections 1 and 2 of the Sherman Act by: (1) Combining and conspiring to monopolize and restrain trade and commerce in "semisynthetic penicillins," a class of penicillins produced by the defendants; (2) actually monopolizing trade and commerce in a particular semisynthetic penicillin called "ampicillin"; (3) fraudulently procuring and enforcing a U.S. patent on ampicillin; [1] (4) restrictively licensing and granting rights under that and other patents relating to semisynthetic penicillins; and (5) restraining and preventing the sale of semisynthetic penicillins in bulk form, generically, or under any trademark or trade name other than a licensee's own trademark or trade name. The complaint also alleges that the ampicillin patent and another U.S. patent claiming a different from of ampicillin [2] are both invalid on statutory grounds (viz, 35 U.S.C. 102, 103, and 112). Finally, the complaint alleges tht, as a result of the foregoing violations, the Government was overcharged on its direct and indirect purchases of ampicillin (including expenditures of money under various welfare programs).

The prayer for relief sought: (1) Cancellation of Beecham's ampicillin patent; (2) declarations that Beecham's ampicillin and Bristol's ampicillin trihydrate patents were invalid and an injunction against asserting any rights under either of those patents; (3) compulsory, royalty-free licensing of all technical data relating to ampicillin; (4) compulsory, reasonable-royalty licensing of: (a) All U.S. patents (not declared invalid) relating to semisynthetic penicillins, and (b) all other semisynthetic penicillin technology not relating to ampicillin; (5) an injunction against defendants' maintaining or entering into new agreements having the restrictive effects challenged in the complaint; (6) compulsory bulk sales of ampicillin and other semisynthetic penicillins; and (7) damages in an unspecified amount.

B. THE PRODUCTS INVOLVED

Semisynthetic penicillins are antibiotics made, at least in part, by chemical synthesis from 6-aminopenicilanic acid ("6-APA"). Ampicillin is a broad-spectrum antibiotic and the most widely used semisynthetic penicillin; most other semisynthetic penicillins are prescribed only for specific types of bacterial infection. In 1974, Beecham introduced amoxicillin, a semisynthetic penicillin claimed to be a preferable substitute for ampicillin. Amoxicillin is now being sold in the United States by Beecham, Bristol, Hoffmann-LaRoche (which buys from Beecham), Biocraft Laboratories (one of the private plaintiffs in this litigation), American Home Products ("AMHO," the Wyeth Division of which buys from Mylan), Parke-Davis, and E. R. Squibb, A. H. Robbins, and several other companies (which all buy from Biocraft). Currently, the dollar volume of sales of amoxicillin is said to exceed that of ampicillin. While a number os semisynthetic penicillins (besides ampicillin and amoxicillin) are being sold in the United States, certain other semisynthetic penicillins are being marketed only outside the United States or are the subject of pending applications for FDA approval and certification for future sale in the United States.

[1] Ampicillin is claimed in U.S. Pat. No. 2,985,648, which issued to Beecham on May 23, 1961 ("the ampicillin patent"). That patent expired on May 23, 1978.

[2] Ampicillin trihydrate (a form of ampicillin in which each ampicillin molecule is chemically bound to three molecules of water) is claimed in U.S. Pat. No. 3,157,640, which issued to Bristol on November 17, 1964 ("the ampicillin trihydrate patent"); however, that patent is dominated by Beecham's ampicillin patent. There are also anhydrous forms of ampicillin (i.e., substantially free of chemically bound water); these forms are covered by: Bristol's U.S. Pat. No. 3,472,841 (issued October 14, 1969); Bristol's pending U.S. patent application (Serial No. 408,191, filed November 2, 1964); and American Home Products' U.S. Pat. No. 3,144,445 (issued August 11, 1964).

II. THE PRACTICES AND EVENTS GIVING RISE TO ALLEGED VIOLATIONS OF THE SHERMAN ACT

A. THE 1959 AGREEMENT

Beginning at least as early as 1959, Beecham and Bristol entered into a series of complex commercial arrangements and agreements relating to semisynthetic penicillins. The most important of these agreements was one dated April 2, 1959, and amended August 1, 1960 ("the 1959 agreement"). Pursuant to that agreement the defendants exchanged patent rights and know-how relating to semisynthetic penicillins. Beecham received informative and active assistance concerning penicillin production. Among the rights received by Bristol was an exclusive license, with the right to sublicense, under Beecham's ampicillin patent and other patents relating to semisynthetic penicillins. Bristol agreed to pay on its sales of licensed products in bulk form (or on those of its sublicensees) royalties that are two times the royalties for such sales in dosage form. Beecham ended up with the right to sell the licensed semisynthetic penicillins in the United States *only* in dosage form and *only* under its own trademarks.

B. THE AGREEMENT TO PROSECUTE PATENT APPLICATIONS JOINTLY

Pursuant to a separate agreement of April 14, 1959, Beecham and Bristol jointly prosecuted several Beecham patent applications licensed to Bristol under the 1959 agreement, including those relating to ampicillin. As noted above, the complaint alleges that Beecham and Bristol procrured the ampicillin patent by fraudulent and/or inequitable conduct before the U.S. Patent and Trademark Office ("the Patent Office").

This alleged joint conduct involves: (1) Failing to advise the Patent Office of a prior art reference that, together with another prior art reference actually cited by the patent examiner, would have supported a rejection under 35 U.S.C. 103 of all claims in the ampicillin patent; (2) delaying publication of an article relating to the allegedly withheld prior art reference; and (3) failing to advise the Patent Office as to the exact nature of certain experiments reported in affidavits that defendants filed with the Patent Office in order to overcome its rejection of all claims in one of the ampicillin patent applications.

Additional allegedly improper conduct discovered by the Government includes: (1) Defendants' failing to make of record in the Patent Office certain other affidavits allegedly shown to and discussed orally with the patent examiner during an interview; (2) defendants' tendentiously describing certain reports underlying a second prior art reference upon which the patent examiner relied in rejecting the claims in one of the applications leading to the ampicillin patent, but failing to submit such reports to or make them of record in the Patent Office; and (3) Bristol's inconsistency in taking one position (i.e., that the reports underlying the second cited reference did not disclose the "concept" of the invention claimed in one of the ampicillin patent applications) before the U.S. Patent Office in *ex parte* prosecution of Beecham's U.S. ampicillin patent, and Bristol's taking a directly contrary position (i.e., that ampicillin was obvious in view of the disclosure of that concept in such reports) before a British court in attacking the validity of Beecham's corresponding British ampicillin patent (while defending a charge that its sales of hetacillin, a combination of ampicillin and acetone, infringed that patent).

C. THE 1967 AGREEMENTS

Beecham and Bristol entered into several agreements dated January 1, 1967. Pursuant to those agreements, the defendants cross-licensed one another to practice certain U.S. semisynthetic penicillin patents issued since 1961,[3] with the mutual restriction that each would sell the licensed products *only* in dosage form and *only* under its own trademarks; defendants also licensed others under the same patents, imposing the same restrictions on these licensees and sublicensees.

D. SUBLICENSE AGREEMENTS AND OTHER MARKETING ARRANGEMENTS

1. Involving Bristol

Pursuant to the exclusive rights granted to it under the 1959 agreement, Bristol granted nonexclusive sublicenses to Squibb on December 1, 1959, and to the Wycth Division of AMHO on January 15, 1960; each got the right to sell ampicillin and other licensed semisynthetic penicillins, but only in dosage form and only under its own trademarks or trade names. Bristol amended its sublicense agrcements with Squibb and Wyeth in March, 1969 (about the time the Government began its investigation of defendants' semisynthetic penicillin activities). In amending those agreements, Bristol removed from them the provisions for sales only in dosage form and only under the licensee's own trademarks or trade names; instead, Bristol added provisions that impose a higher royalty rate on sales in bulk form than on sales in dosage form. Subsequently, Bristol agreed in writing to supply ampicillin in bulk or dosage form (and has supplied it in dosage form) to Parke-Davis and Upjohn, and to supply it in dosage form to Smith Kline & French.

2. Involving Beecham

Since about November 1962, Beecham and the Ayerst Division of AMHO have entered into various marketing arrangements, trademark licenses, and purchase agreements, pursuant to which Beecham has supplied Ayerst with ampicillin for Ayerst's sale under Beecham's "Penbritin" trademark and has also supplied Ayerst with other semisynthetic penicillins for Ayerst's sale under trademarks that Beecham registered in the United States. more recently, Beecham also began supplying ampicillin to Lederle for Lederle's sale under the trademark "Alpen" and to Pfizer for Pfizer's sale under the trademark "Pen A", both of which trademarks were registered in the United States by Beecham.

[3] These patents included Bristol's ampicillin trihydrate patent, Beecham's dicloxacillin/flucloxacillin patent (No. 3,239,507), Bristol dicloxacillin patent (No. 3,317,389), a patent (No. 3,159,617) assigned to Bristol and relating to the acylation of 6-APA (a crucial step in commercial production of all semisynthetic penicillins), and other U.S. patents relating to semisynthetic penicillins that were assigned or licensed (along with the right to sublicense) to Beecham or Bristol by a third party.

E. ENFORCEMENT OF THE AMPICILLIN PATENTS

On May 7, 1969, Beecham brought suit in the District of New Jersey charging Zenith Laboratories with infringement of Beecham's ampicillin patent. Zenith counterclaimed charging Beecham with antitrust violations and also naming Bristol and AMHO as defendants. Bristol counter-counterclaimed charging Zenith with infringing Bristol's ampicillin trihydrate patent and also naming Ankerfarm, Zenith's Italian supplier, as a defendant on the counter-counterclaim. This suit is still pending and has been consolidated for discovery with the government's and other plaintiffs' suits.

In 1970, Beecham also instituted a proceeding before the International Trade (formerly the Tariff) Commission seeking to prevent Zenith from importing ampicillin. Beecham withdrew its complaint in October 1973.

III. EXPLANATION OF THE PROPOSED JUDGMENT AND ITS ANTICIPATED EFFECT ON COMPETITION

The United States and Beecham have stipulated that the proposed consent judgment, in the form negotiated by and between the parties, may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act. The proposed judgment provides that there has been no admission by any party with respect to any issue of fact or law. Under the provision of section 2(e) of the Antitrust procedures and Penalties Act, entry of the proposed judgment is conditioned upon a determination by the Court that the proposed judgment is in the public interest.

The proposed judgment would, with certain exceptions, eliminate from all existing prescription-drug licenses, and prohibit the introduction into all future such licenses, Beecham's challenged restrictions against: (1) sales in bulk form; (2) sales under any trademark or trade name other than a licensee's own trademark or trade name; and (3) sales outside the so-called "drug trade" (i.e., retailers and wholesalers of drugs, and hospitals, doctors, dentists, veterinarians, and governmental agencies or entities purchasing drugs, whether for their own use or for resale). It would also be expected to bring new competition into the semisynthetic pencillin market. In order to do this, the proposed judgment would provide for: (1) compulsory licensing of patents relating to certain semisynthetic penicillins and of related know-how; (2) granting of covenants not to sue on patents relating to certain other semisynthetic penicillins; (3) compulsory bulk sales of such semisynthetic penicillins; and (4) assignment of (or authorization to use) certain semisynthetic penicillin trademarks. The major provisions of the proposed judgment are discussed below.

A. PARTIES COVERED BY THE PROPOSED JUDGMENT

Only two of the three defendants (Beecham Group Ltd. and Beecham Inc.) are to be parties to this proposed consent judgment; therefore, the government will have to proceed with preparation for trial and with trial of this case against the remaining defendant, Bristol, even if this proposed judgment is entered. Nevertheless, the United States proposes to consent to entry of this judgment primarily because (1) elimination of Beecham as a party should simplify preparation for trial and trial of this case against Bristol, and (2) it provides

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for most of the specific equitable relief that the complaint seeks from Beecham and that Beecham is now in a position to provide.

That relief, however, is limited because of the several agreements between Beecham and Bristol that are challenged in this case. As for compulsory patent licensing, for example, Beecham does not have the right to license any of the patents covered by its 1959 agreement with Bristol, having already given up to Bristol under that agreement the right to sublicense those patents. And as for compulsory bulk sales, Beecham is contractually barred (by its 1959 and 1967 agreements with Bristol) from selling certain semisynthetic penicillins (including ampicillin) in bulk form,. under a trademark other than a Beecham trademark, or outside the drug trade. Similarly, the injunctive provisons of the proposed judgment also provide for limited relief, in part, because of the same challenged agreements (see Part VII(G)(1), pp. 36-37, infra).

We will, of course, continue to challenge the 1959 and 1967 Beecham-Bristol agreements in prosecuting this case against Bristol, and, if successful, we would expect to get from Bristol whatever relief we did not get from Beecham. In any event, the proposed judgment would require Beecham to license the patents and to sell in bulk form the semisynthetic penicillins covered by its 1959 and 1967 agreements with Bristol if those agreements are amended so as to allow Beecham to do so, or if there is a determination that such agreements are unenforceable.

B. SECTION IV: INJUNCTIVE RELIEF

The injunctive provisions of the proposed judgment would prohibit Beecham for 10 years from maintaining or entering into any agreement or understanding (whether or not in the form of a patent, trademark, trade name, or know-how license) that restrains any other party to such agreement or understanding from selling any prescription drug: (1) in any manner or form; (2) under any designation (i.e., trademark, trade name, label, or generic, established, or official name); or (3) to any person of the party's free choice. In addition, such provisions would similarly prohibit any agreement or understanding that authorizes any other party thereto to sell any prescription drug in some manner or form, under some designation, or to some person(s), unless it also permits such party to sell such drug in any and all other manners or forms, under any and all other designations, or to any and all other persons of the party's free choice. Finally, any agreement or understanding that contains royalty or other fee provisions having the purpose or effect of so restraining or limiting any other party thereto would also be prohibited.

The following agreements are excluded from the injunctive provisions of the proposed judgment: (1) exclusive licenses, or exclusive distributorship agreements, that do not otherwise restrain the other party in any prohibited way; or (2) agreements that constitute settlement of a bona fide trademark infringement (or similar) dispute.

C. SECTION V: COMPULSORY BULK SALES

Section V would require Beecham to sell ampicillin in bulk form for 10 years and to sell all other semisynthetic penicillins (claimed in a "semisynthetic penicillin patent," as defined in Section II) in bulk form for 10 years or until the last of such patents claiming them expires (whichever is sooner). Beecham must sell to anyone, other than Bristol or a current semisynthetic penicillin bulk-customer or licensee of Beecham or Bristol, who makes a written request.

Section V would call for compulsory bulk sales of semisynthetic penicillins (including ampicillin) only if, at the time of such request, Beecham (1) is selling the requested semisynthetic penicillin in the United States, and (2) has the right to sell it in bulk form in the United States. In that event, Beecham would be required to make such sales only in the chemical form (i.e., the anhydrous, trihydrate, salt, or ester form of ampicillin, for example) in which it is then selling the requested semisynthetic penicillin in the United States.

Section V would also require that Beecham make available for such compulsory bulk sales 15 percent of the amount (by weight) of each requested semisynthetic penicillin that Beecham sold in any form in the United States to anyone other than its own subsidiary (which amount was made by or for Beecham anywhere in the world) in the previous calendar year.[4] If compulsory bulk-sales requests received in January of each year exceed this 15 percent limit, then such requests will be met on a reasonable pro rata allocation basis. All requests received after January will be filled in the order in which they are received.

Because of the importance of 6-APA in making all semisynthetic penicillins, Beecham is also required to sell 6-APA in bulk form in the event that it becomes temporarily unavailable commercially from a source other than Beecham or Bristol. In that event, Beecham must make available for such compulsory sales 15 percent of the amount of 6-APA that Beecham made or had made anywhere in the world and used in making semisynthetic penicillins that it sold in the United States to anyone other than its own subsidiary in the previous calendar year.

Compulsory bulk sales are necessary in order to insure at least some domestic source of ampicillin and other semisynthetic penicillins. Such a source is important for generic sellers of drugs and other drug companies that may not have their own manufacturing capacity and for whom, therefore, a manufacturing license would be of no use. In addition, a domestic bulk source may be important for those semisynthetic penicillins for which the U.S. dollar volume (while not insignificant) may not be large enough to induce foreign manufacturers to bear the cost of FDA approval and certification. Moreover, the duty on imported drugs (based upon a so-called "American Selling Price" that is often far greater than any actual domestic price) can be a significant competitive disadvantage.

In addition, this relief is important because it may provide the only relief available for certain semisynthetic penicillins—e.g., those claimed in a U.S. patent owned by someone other than Beecham. Carbenicillin is one such semisynthetic penicillin, which Beecham has the right to sell (pursuant to an agreement with Charles Pfizer Inc.) but which it has no right to sublicense. (Bristol has no right either to sell or license that semisynthetic penicillin.) Thus, without compulsory bulk sales of carbenicillin, as provided for in the proposed judgment, Beecham could not offer any relief at all concerning this important semisynthetic penicillin.

D. SECTIONS VI AND VII: COMPULSORY PATENT AND KNOW-HOW LICENSING

1. Ampicillin

Paragraph (A)(1) of section VI would require Beecham to grant to all applicants (other than Bristol) irrevocable covenants not to sue for any past, present, or future infringement of any U.S. patent, and not to sue for royalties on any such patent, in connection with making, using, or selling any form of ampicillin, such a covenant would extend to: (a) any Beecham patent claiming a form of ampicillin; (b) any other semisynthetic penicillin patent that is subject to compulsory licensing under this judgment (see note 7, p. 16, infra); and (c) any other U.S. patent (whenever issued and whether or not subject to compulsory licensing under this judgment) that may be practiced in connection with making, using, or selling ampicillin in any form.

Beecham may not charge for such a covenant, unless it is legally obligated to pay (as of the date of the proposed judgment) any person, other than Bristol, by reason of the grant of such covenant; in which case, Beecham may charge no more than what it is so obligated to pay and in fact pays such person.[5] Beecham is thereby prevented from profiting further from the alleged conspiracy to monopolize and restrain trade and commerce in ampicillin and to procure the ampicillin patent by alleged fraudulent or inequitable behavior.

2. Amoxicillin

With respect to the patents relating to amoxicillin ("the amoxicillin patents"), the proposed judgment would not require Beecham to grant any rights under those patents.[6] Moreover, the judgment expressly excludes the amoxicillin patents from those patents (i.e., "semisynthetic penicillin patents", as defined in Paragraph II(L)) that are subject to compulsory licensing under the judgment, unless it is agreed by Beecham and Bristol or established in any proceeding that such patents are licensed by Beecham to Bristol under their 1959 agreement (in which case, such patents would be subject to compulsory licensing under the proposed judgment).

3. Other semisynthetic penicillins

Paragraph (A)(2) of section VI would require Beecham to grant to all applicants (other than Bristol) irrevocable covenants not to sue for any past, present, or future infringement of any U.S. patent (other than those claiming ampicillin) that Beecham licensed or assigned to Bristol pursuant to the 1959 agreement. As with the ampicillin covenants referred to above (Part III(D)(1), pp. 13-14, *supra*), Beecham may charge for these covenants no more than what Beecham must pay and in fact pays someone other than Bristol by reason of the grant of such covenants. Beecham's obligation to grant covenants pursuant to paragraph (A)(2), and Beecham's obligation under any such covenant so granted, will run only for so long as this action is still pending against Bristol.

Without this relief, Beecham could, under the 1959 agreement, still sue to enforce the patents covered by that agreement, even though Beecham could not license those patents in settlement of an enforcement suit or otherwise (having given up that right to Bristol). Any such enforcement of those patents by Beecham would, therefore, primarily benefit Bristol, the exclusive licensee under them. In this lawsuit the Government has challenged (and will continue to challenge) as unlawful Bristol's enforcement of any right it may have acquired under the 1959 agreement that has the purpose or effect of excluding competition. Accordingly, it is the Government's position that Beecham should not be able to do for Bristol's benefit what Bristol has been (and will be) challenged in doing for its own benefit.

Paragraph (C) of section VI would require licensing of all "semisynthetic penicillin patents"[7] (other that those claiming ampicillin) that Beecham has the right to license as of the date of a request therfor, at a reasonable royalty rate, except when such patents are used in connection with ampicillin (see Part III(D)(1), pp. 13-14, *supra*). The patents so licensed may be used for any purpose (as the applicant therefor may wish), including (but not limited to) making, using, or selling; (a) 6-APA; (b) any semisynthetic penicillin (whether patented or not); and (c) any starting material or intermediate from which a semisynthetic penicillin is made. Thus, patent subject to compulsory licensing under the proposed judgment may be used in connection with a semisynthetic penicillin not covered by a patent or covered by a patent that is not subject to such licensing, or a patent that is owned by someone other than Beecham.

4. Technical data and know-how

Section VII would require Beecham to furnish and license the use of certain technical data or know-how relating to semisynthetic penicillins and/or to the patents subject to compulsory licensing. It would include all such know-how and data that: (a) Was submitted by Beecham to the FDA prior to any request for it under this section; (b) relates to using or processing semisynthetic penicillins and was known to Beecham prior to any requestr for it; and (c) relates to manufacturing semisynthetic penicillins and was known to Beecham prior to the date of the judgment. However, the know-how or technical data to be furnished and licensed under the proposed judgment would not include any such information that relates to: (a) Making semisynthetic penicillins if it were first known to or developed by defendant after the date of the judgment; (b) penicillin fermentation; or (c) making 6-APA or any other starting chemical or material, unless such other chemical or material is commercially unavailable (at the time of any request) from a source other than Beecham or Bristol.

For furnishing and licensing the use of semisynthetic penicillin know-how that is in the public domain (and therefore not a trade secret), and for furnishing and licensing the use of that which is used in connection with ampicillin (whether or not in the public domain), Beecham may charge the actual out-of-pocket cost to it of reproducing such know-how, and an amount not to exceed that which it is legally obligated to pay (as of the date of the proposed judgment) and in fact pays anyone, other than Bristol, by reason of furnishing and licensing such know-how. For other semisynthetic penicillin know-how not in the public domain and not used in connection with ampicillin, Beecham may charge a reasonable royalty for its use.

E. SECTION VIII: ASSIGNMENT OF AND AUTHORIZATION TO USE TRADEMARKS

Section VII would require Beecham to assign, without charge, certain trademarks (together with the goodwill associated with them) to the persons by whom the trademarks were exclusively used in the United States, in marketing a semisynthetic penicillin that Beecham supplied to them. Paragraph D of section VII would require Beecham to make such assignments at such time as (1) Beecham acquires the right to sell the semisynthetic penicillins involved under a trademark other than one owned by it, or (2) there is a determination that agreements restricting Beecham's rights thereunder to sales under trademarks owned by it are unenforceable. In the meantime, however, paragraph VII(D) also requires Beecham to authorize the persons by whom the subject trademarks were previously so used to use such trademarks for the sale of the same semisynthetic penicillin that they purchase from someone other than Beecham.

Assignment of (and authorization to use) such trademarks is essential, even with compulsory, patent-licensing relief, in order to dissipate the anticompetitive effect of a marketing scheme employed by Beecham to avoid the trademark restriction imposed on it by its 1959 agreement with Bristol. That agreement permitted Beecham to sell semisynthetic penicillins *only* under its own trademarks. This meant Beecham could not "privately label" manufacture for another or supply a customer with ampicillin (or other semisynthetic penicillin) in a dosage form or package bearing that customer's own trademark for that customer's resale under such trademark. Instead, Beecham could supply its U.S. customers with dosage form semisynthetic penicillins only under a Beecham trademark.

In an effort to get around this trademark restriction, Beecham allowed its customers to select, from a number of unused names or Beecham's ideas for possible trademarks, a name under which each customer would like to resell the dosage form semisynthetic penicillin that Beecham supplied to it. Beecham then registered as a trademark in the Patent Office the name selected by its customer; each customer then promoted and marketed the product supplied by Beecham under that name. As a result of this promotional effort, Beecham's customers, rather than Beecham, developed whatever goodwill is associated with, and provided whatever value there is in, these trademarks in the United States. And the fact that Beecham's customers made an investment in a trademark registered by Beecham, rather than in a trademark registered by them in their own name, was attributable directly to the trademark restriction in the 1959 agreement and the way in which Beecham sought to avoid it. Finally, Beecham authorized its customers to use the trademarks that Beecham registered *only* for the sale of a semisynthetic penicillin that Beecham supplied to them.

The effect of this practice has been to insulate Beecham from competition from other suppliers in sales to its customers of ampicillin and other semisynthetic penicillins. This effect will continue unless each of beecham's customers is free to use, with a semisynthetic penicillin puchased from a source other than Beecham, the trademark that Beecham registered (but only the customer used) in the United States and in which such customer has already made a substantial investment. For after having once made such an investment in a trademark registered by Becham, these customers have been (and will likely contine to be)

[4] Beecham submitted data and other information concerning its production capacity for review by government counsel. The 15 percent limitation on the proportion of that capacity to be made available for compulsory bulk sales seemed to be a reasonable compromise between the public interest to be served by that relief (see pp. 12-13, infra) and Beecham's need to meet its own requirements and to fill its current contractual obligations.

[5] According to its counsel, Beecham's only such obligation is to pay Farbenfabriken-Bayer a certain fee based on the amount of 6-APA produced by any sublicensee of Beecham under U.S. patents Nos. 3,116,218 and 3,260,653 (both relating to an enzymatic process for making 6-APA from penicillin G), and then used in making semisynthetic penicillins.

[6] There is a dispute between Beecham and Bristol over which of them has the exclusive rights to the amoxicillin patents. During settlement negotiations in February 1975, counsel for defendant Bristol informed Government counsel of Bristol's contract dispute with Beecham and of Bristol's contention that it received the exclusive rights to those patents pursuant to the 1959 agreement. Beechman disputes that contention.

At the same time, Bristol's counsel asserted that there was considerable doubt as to the validity of the amoxicillin patents. Beecham has disputed that assertion too.

In August 1977, Beecham sued Bristol for infringement of the amoxicillin patents (C.A. No. 77-274, D. Del.). Bristol has de-

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fended on the grounds that it has an exclusive license under the amoxicillin patents, and that, in any event, those patents are invalid. Beecham's amoxicillin infringement suit against Bristol has been transferred to the District of Columbia and consolidated with several other similar suits, which are all now part of *In re Amoxicillin Patent and Antitrust Litigation* (M.D.L. Dkt. No. 328). The validity of the amoxicillin patents has been challenged on a number of grounds in that litigation.

[7] As defined in para. II(L), these patents include:(a) Those covering 6-APA (U.S. Pat. No. 3,164,604), its manufacture by enzymatic process (U.S. Pat. No. 3,298,924), its recovery (U.S. Pat. No. 2,941,995), isolation (U.S. Pat. No. 3,047,467), and acylation (U.S. Pats. Nos. 3,159,617 and 3,576,797); (b) the patents referred to in note 3, p. 5, and note 5, p. 14; (c) all U.S. patents and applications for U.S. patents that Beecham and Bristol assigned or licensed to one another pursuant to their agreements arrangements of Apr. 2, 1959, Aug. 1, 1960, or Jan. 1, 1967; (d) all other U.S. patents and patent applications relating to semisynthetic penicillins that prior to the date of the judgment Beecham and Bristol assigned or licensed to one another; and (e) any other U.S. patent relating to semisynthetic penicillins that prior to Sept. 26, 1978, was owned by, or assigned or licensed to, Beecham, except: The two patents relating to amoxicillin and three other patents relating to other semisynthetic penicillins (ticarcillin and carfecillin) not yet marketed in the United States.

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unwilling to make the requisite additional investment in another trademark under which to promote and market the same product purchased from another source. Thus, requiring assignment of (or authorization to use) such trademarks should, the Government believes, furthr open up the semisynthetic penicillin market to effective competition.

Beecham's worldwide trademarks, "Penbritin" and "Penbritin S," are specifically excluded from the application of section VIII of the proposed judgment. They are so excluded even though the "Penbritin" trademark is the subject of an arrangement (with the Ayerst Division of AMHO) similar to the arrangements that Beecham has with other customers involving trademarks that Beecham is required to assign under the proposed judgment. The reason for this exclusion is that, unlike the trademarks to be assigned under section VIII, Beecham used its "Penbritin" trademarks itself extensively in the United States (and elsewhere) well before entering into its present arrangement with Ayerst. They appear therefore to be fona fide Beecham trademarks.

F. SECTION XV: DAMAGES

As noted above, the prayer for relief sought damages, in an unspecified amount, for overcharges paid on the Government's own direct purchases of ampicillin and on various Federal domestic welfare and foreign aid programs (pursuant to which the Government provided all or part of the funds for the purchase of ampicillin). In settlement of all such damage claims against it, Beecham has agreed to pay to the Treasurer of the United States the sum of $1 million within 60 days of the entry of the proposed judgment.

G. SECTION XVII: BEECHAM'S FURTHER PARTICIPATION IN DISCOVERY AND TRIAL

Beecham and the United States have entered into an agreement (attached as exhibit A to the proposed Final Judgment and made a part thereof) providing for further discovery from Beecham, so long as the United States action continues against Bristol, and for Beecham's participation in any trial of that action.

H. OTHER PROVISIONS

Section IX provides a mechanism by which application may be made to the Court, in the absence of agreement by the parties, for a determination of a reasonable royalty rate to be charged for the patents and related know-how to be licensed pursuant to the proposed judgment, and for a determination of reasonable terms and conditions thereof. Additional provisions of the proposed judgment are that Beecham must publish notice of the availability of semisynthetic penicillin patent and know-how licenses in two trade journals and in the Official Gazette of the U.S. Patent and Trademark Office; that Beecham is prohibited from making any sale or other disposition of the patents, trademarks, or know-how to be licensed under the proposed judgment unless the purchaser assumes the obligations of the judgment with respect thereto; and that Beecham may not condition the granting of any license required of it upon the grant or acceptance by the applicant of a license under any other United States or foreign patent or of any other know-how. This latter provision is intended to prevent any possible "funneling effect" by which Beecham could, if permitted to require cross-licensing, end up being the only one having a license from everyone in the industry under all semisynthetic penicillin patents.

The combined effect of all of these provisions is to give any applicant access to the patents, know-how, and technical information necessary to manufacture and sell existing semisynthetic penicillins.

IV. Remedies Available To Private Plaintiffs

Any potential or actual private plaintiffs who have or might have been damaged by the alleged violations (including those plaintiffs who have already filed similar actions) will retain the same right to sue for monetary damages, and any other legal or equitable relief to which they would have been entitled, as if the proposed judgment were not entered. This judgment may not be used as a *prima facie* evidence in private litigation, however, pursuant to section 5(a) of the Clayton Act, as amended, 15 U.S.C. § 16(a).

V. Procedures Available for Modification of the Proposed Judgment

The proposed Final Judgment is subject to a stipulation by and between the United States and Beecham, which provides that the United States may withdraw its consent to the proposed Final Judgment at any time before the Court finds that entry of the judgment is in the public interest. Under the proposed judgment, the Court would retain jurisdiction of this action in order, among other things, to permit any necessary or appropriate modification of the judgment or construction of its provisions, to enforce compliance with the judgment, and to punish any judgment violation.

As provided by the Antitrust Procedures and Penalties Act, any person wishing to do so may, during the 60-day period prior to the effective date of the proposed judgment, submit written comments on the judgment to the U.S. Department of Justice, Robert V. Allen, Chief, Intellectual Property Section, Antitrust Division, Washington, D.C. 20530, which will file with the Court and publish in the Federal Register such comments and the Department's response to them. The Department of Justice will thereafter evaluate any and all such comments and determine whether there is any reason for withdrawal of its consent to the proposed judgment.

VI. Determinative Documents

There are no materials or documents which the Government considered determinative in formulating the proposal for a consent judgment. Therefore, the United States is submitting none with this competitive impact statement, pursuant to section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b).

VII. Description and Evaluation of Alternatives to the Proposed Judgment Actually Considered by the United States

As noted above (Part III(A), pp. 8–10), the proposed judgment does not provide for all the specific relief that the complaint seeks from Beecham, because Bristol is not also a party the this judgment, and because Beecham has given up certain patent and other rights to Bristol. Otherwise, the proposed judgment does provide for substantially all such relief, except (1) cancellation of Beecham's ampicillin patent, and (2) declarations of invalidity of that patent and Bristol's ampicillin trihydrate patent.

In addition, the proposed judgment provides for the following relief that was not specifically requested in the complaint: (1) granting, essentially without charge, covenants not to sue for any past, present, or future infringement of any U.S. patent (including certain unchallenged, related semisynthetic penicillin patents—such as the process patents referred to above (see note 5, p. 14, *supra*)) when practiced in connection with making, using, or selling ampicillin in any form; and (2) assignment (or authorizing the use), without charge, of certain trademarks registered in the United States by Beecham, but used only by others in connection with the sale of semisynthetic penicillins that Beecham supplied to them.

A full trial on the merits against Beecham was considered as an alternative to settlement, in connection with certain relief (discussed below) that was sought by the Government during negotiations but was not agreed to by Beecham. However, the alternative of a trial on the merits against Beecham was rejected because: (1) the relief in the proposed judgment would be substantially equivalent to that sought in the complaint from Beecham (except that which would result in the breach of any challenged agreement between Beecham and Bristol), (2) such relief would become effective upon entry of the judgment, (3) there are considerable risks and there would be additional costs (in money, manpower, and other resources) in litigating against Beecham as well as Bristol, and (4) appeals following trial could delay obtaining even the limited relief provided for by the proposed settlement for several years (assuming the outcome was ultimately favorable to the Government). In addition to considering provisions substantially similar to those contained in the proposed judgment, the Government actually considered, and then rejected for the additional reasons indicated below, the following specific alternative proposals.

A. THE AMPICILLIN PATENT ITSELF

The nature of the relief concerning the challenged ampicillin patent was an important issue during negotiations. As noted above (note 1, p. 1, *supra*), the ampicillin patent has already expired; therefore, the proposed judgment requires Beecham to grant, free of charge, only covenants not to sue (which Beecham retained the right to do under the 1959 agreement) for any infringement of the ampicillin patent that may have occurred before that patent expired. No other relief (such as compulsory licensing) is necessary since that patent can no longer be enforced by Beecham or Bristol to prevent anyone from entering the ampicillin market.

There are several alternatives to this relief—(1) collection of so-called reasonable royalties for any past infringement of the ampicillin patent, (2) dedication of that patent to the public, or (3) a full trial on the merits for cancellation and/or declaration of invalidity of that patent. The first alternative was rejected because permitting Beecham to negotiate reasonable royalties for past infringement of the ampicillin patent would allow it to profit from a patent which the United States has asserted was invalid and fraudulently or inequitably procured. As for the second alternative, the proposed relief is the practical and economic equivalent of dedication of the ampicillin patent. Such relief does not allow Beecham to profit further from that patent by suing or collecting royalties for any past infringement of it, and dedication of an expired patent is simply unnecessary. Finally, as for cancellation and a declaration of invalidity of the ampicillin patent, those matters will be pursued in this litigation against Bristol, the exclusive licensee under that patent.

B. RELATED PATENTS PRACTICED IN CONNECTION WITH AMPICILLIN

As also noted above, the proposed relief (i.e., covenants not to sue for infringement) extends to any other U.S. patent—including Beecham's related semisynthetic penicillin patents (none of which have been challenged in this case as either invalid or fraudulently or inequitably procured)—that an applicant may wish to practice in connection with making, using, or selling ampicillin; such relief also extends to present and future (as well as past) infringement of such related patents.[8] The proposed judgment allows Beecham to charge for such a covenant an amount not to exceed that which it is legally obligated to pay and in fact pays anyone, other than Bristol, by reason of having granted such covenant.

There are two alternatives to this upper limit on the amount charged for these related patents when practiced in connection with ampicillin—no charge at all for covenants not to sue on them (i.e., royalty-free licensing), or else so-called reasonable-royalty licensing without any specified upper limit. Requiring Beecham to give covenants not to sue free of any charge at all (or to give royalty-free licenses) under unchallenged, related patents, on which Beecham may be liable to a third party for a royalty, would penalize it in direct proportion to its sublicensee's sales of ampicillin. On the other hand, permitting Beecham to negotiate a so-called reasonable royalty at rates in excess of that owed to a third party, for a license under such patents when practiced in connection with ampicillin, would still allow Beecham to profit from a sublicensee's sales of ampicillin on which Beecham and Bristol allegedly procured a patent by fraud. An upper limit—on the amount to be charged for a covenant not to sue—of the royalty or fee, if any, that Beecham would owe to a third party (as provided for in the proposed judgment) would prevent Beecham from profiting further from the alleged conspiracy in connection with sales of ampicillin; at the same time, it would avoid an undue penalty having potentially undesirable effects on competition.

[8] As in the case of the ampicillin patent itself, the proposed judgment does not require that Beecham grant such covenants to Bristol; thus, it leaves Beecham free to pursue, against its co-defendant and alleged co-conspirator, whatever claim Beecham may have for royalties accruing on Bristol's sales of ampicillin under certain patents covered by the 1959 agreement. The proposed judgment does so primarily because Bristol collects royalties from Beecham under Bristol's ampicillin trihydrate patent (which the United States has also asserted is invalid), and presumably will continue to do so as long as this action is pending against Bristol (or until that patent expires).

C. COMPULSORY LICENSING OF PATENTS RELATING TO CERTAIN OTHR SEMISYNTHETIC PENICILLINS

The scope of the compulsory patent licensing relief was a substantial issue during negotiations. Originally, the government considered a provision that would have required licensing of all U.S. patents (besides those covered by a Beecham-Bristol agreement) that are owned by (or assigned or licensed to) Beecham as of the date of the judgment and that relate to semisynthetic penicillins. Beecham's counsel argued that (besides patents covered by such agreements) the patents subject to compulsory licensing under the judgment should include only those that relate to semisynthetic penicillins on which all research and development work had been completed as of some date certain. Otherwise, counsel said, compulsory licensing of existing, unlicensed patents relating only to developmental products may tend to discourage Beecham from initiating or completing their development. As a result, such products might never be developed by anyone, with potentially undesirable effects. A compromise was reached, establishing a cut-off for the additional patents to be included under the judgment (as those owned by or assigned or licensed to Beecham as of September 26, 1978, the date Beecham signed the stipulation—see Part V, p. 22),[9] and excluding three of Beecham's semisynthetic penicillin patents from the definition of "semisynthetic penicillin patent" in section II (but only so long as such patents are not assigned or licensed by Beecham to Bristol during a 10-year period). According to Beecham's counsel, these patents all relate to semisynthetic penicillins (ticarcillin and carfecillin) that are merely developmental products and have not yet been sold in the United States.

D. COMPULSORY LICENSING OF SO-CALLED "FUTURE" SEMISYNTHETIC PENICILLIN PATENTS

Similarly, the Government also considered, in connection with the scope of the patent relief, compulsory licensing of so-called "future" patents—i.e., those patents, relating to semisynthetic penicillins, that may issue on applications pending as of the date of the proposed judgment. However, the government subsequently rejected that alternative. It did so primarily because: (1) the effects of the alleged combination and conspiracy should be completely dissipated within the time that the semisynthetic penicillin patents to be licensed under the proposed judgment expire; and (2) as noted above, requiring Beecham to license such "future" patents may tend to discourage or reduce Beecham's research and development efforts in those semisynthetic penicillins covered by such patents, with potentially undesirable effects. Together the foregoing factors appear to outweigh the possible benefits to the public in this case of including "future" semisynthetic penicillins in the obligation to license.

E. COMPULSORY LICENSING OF THE AMOXICILLIN PATENTS

1. The alternative proposals considered

The nature of the relief concerning amoxicillin was also a substantial issue during negotiations. Amoxicillin is potentially an eventual replacement for ampicillin because: (1) it has almost the same chemical structure as ampicillin;[10] (2) it is, like ampicillin, a broad-spectrum penicillin; and (3) it has virtually the same therapeutic activity as ampicillin (as well as alleged higher blood levels).

Originally, the government considered a provision requiring Beecham to license its amoxicillin patents at a reasonable royalty rate. Subsequently, the government considered, as an alternative to licensing by Beecham, a provision that was designed to prevent a so-called "sweetheart" deal between Beecham and Bristol in which they would settle their dispute over the ownership of the amoxicillin patents without ever resolving the question of whether those patents are licensed to Bristol under the defendants' 1959 agreement (see note 6, p. 14, *supra*). That provision would have, in effect, required Beecham to treat all alleged infringers (or potential infringers) of the amoxicillin patents alike. For example, if Beecham gave Bristol a nonexclusive license under those patents in exchange for Bristol's giving up its claim to them (or if Beecham did so in settlement of its lawsuit against Bristol alleging infringement of those patents), then Beecham would have had to license everyone else (including all other infringement defendants in the Amoxicillin Patent and Antitrust Litigation).

Beecham's counsel objected to this provision. They pointed out that Beecham would not agree to compulsory licensing of the amoxicillin patents under the proposed judgment. Thus, they argued, requiring Beecham to license everyone under such patents anyway, if it licensed Bristol under them, was tantamount to preventing Beecham from settling its dispute and lawsuit with Bristol (which seems unlikely to get out of the amoxicillin business voluntarily).

Partly on the basis of this reasoning, the government ultimately determined that such a "no-sweetheart-deal" provision (which would impose economic sanctions on Beecham for settling its amoxicillin-patent infringement suit against Bristol by way of a license) might be inappropriate in certain circumstances. For example, it might be inappropriate where Beecham unilaterally decided whether to license or sue (or whether to settle a suit already brought against) other alleged infringers.[11] Nevertheless, the

[9] Initially, Beecham signed the stipulation on September 26, 1978. Because of subsequent changes in sections XVI and XVIII of the proposed Final Judgment, however Beecham reexecuted the stipulation on October 20, 1978. Nevertheless, the previous date of September 26 was retained in the proposed judgment.

[10] Ampicillin is the generic name for the chemical D-(-)-alpha-aminobenzylpenicillin. Amoxicillin is the generic name for D-(-)-alpha-amino-*para-hydroxybenzy*penicillin. Amoxicillin differs in chemical structure from ampicillin only in having a single hydroxy group ("OH") in the "para" position on the phenyl group of its molecule (as represented by the underlined portion of the name), which hydroxy group is not present anywhere in the ampicillin molecule.

[11] However, in certain other circumstances such a provision would be unnecessary anyway: If there is a "sweetheart" deal between Beecham and Bristol, and if Bristol gives up its claim to the amoxicillin patents in exchange for Beecham's agreeing not to license, or as part of an understanding that Beecham will not license (in settlement of a lawsuit or otherwise), any other infringer of such patents except Bristol, the government could then bring a subsequent suit against Beecham and Bristol for any antitrust viola-

Footnotes continued on next page

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United States is concerned about the competitive consequences of Beecham's possibly settling only its lawsuit against Bristol, with the result that Bristol would remain in the amoxicillin market while other competitors of Beecham and Bristol (particularly those without Bristol's financial resources for defending a patent infringement and antitrust suit or for paying the price of settling one) may be ultimately forced from that market. Such a result could have at least the appearance and effect of continuing the same "shared" monopoly (or "shared" exclusivity) between Beecham and Bristol on amoxicillin that previously existed (and to some extent at least still exists) on ampicillin, an arrangement that largely prompted this lawsuit in the first place.

2. REASONS FOR REJECTING THE ALTERNATIVE (OF A TRIAL) TO SETTLEMENT WITHOUT COMPULSORY LICENSING

Obtaining compulsory licensing of the amoxicillin patents (whether or not conditioned on Beecham's licensing Bristol) would have required at least a full trial against Beecham in this case. In addition to the reasons cited above (p. 24, *supra*), the government took into account the following factors in rejecting the alternative of a trial against Beecham and in concluding that the additional amoxicillin relief that might be obtained at trial is, perhaps, unnecessary, but in any event, just not worth the risks involved.

a. Even if, after a full trial on the merits in this case, the government were successful on a number of its major allegations (*e.g.*, patent fraud and invalidity and contracts in unreasonable restraint of trade), it might still not be entitled to any relief directed to amoxicillin. Beecham claims that the amoxicillin patents are not the subject of any patent license or other agreement with its alleged co-conspirator, Bristol, and have not been licensed to anyone else. The validity of those patents is not specifically challenged in the complaint in this case. And the patents thenselves are neither covered by the explicit terms of the complaint nor referred to in the complaints of any other party to the Ampicillin Antitrust Litigation. Indeeed, the second (reissued) amoxicillin patent, the one claiming the amoxicillin compound specifically, did not issue originally until more than two years after the complaint was filed, and amoxicillin itself was not sold by anyone in the United States until nearly four years thereafter. It seems likely, therefore, that in order for the United States to seek cancellation of these patents, or otherwise to attack their validity, it would require (1) an investigation by the government, and (2) either amending the complaint in this case or bringing a new case. In any event, whether compulsory licensing of the amoxicillin patents would be part of the relief that might be obtained at trial of this case against Beecham would probably depend upon success in proving the combination and conspiracy allegations with respect to semisynthetic penicillins other than ampicillin.

b. There is some question about the scope of the coverage of the amoxicillin patents, and it may be that amoxicillin in some forms would not infringe the claims of those patents. There are two U.S. patents relating to amoxicillin. One is U.S. Pat . No. 3,192,198, which issued on June 29, 1965, and will expire on June 28, 1982. There may be an argument that this patent claims only a mixture containing amoxicillin,[12] and that therefore amoxicillin by itself would not infringe the claims of that patent. The other patent relating to amoxicillin is U.S. Pat. No. 3,674,776, which issued on July 4, 1972. It claimed amoxicillin specifically, and further claimed (1) both crystalline and amorphous (or noncrystalline) forms of amoxicillin, and (2) both anhydrous (free of water) and hydrated (combined with water) forms of it. However, on March 23, 1976, the second patent reissued as and was replaced by Reissue Pat. No. 28,744, with substantially narrower claims than those of the patent it replaced. The reissue patent claims only the crystalline and trihydrate forms of amoxicillin. Thus, the narrower claims of the reissue patent might be avoided by making and selling amoxicillin in either the amorphous (*i.e.*, noncrystalline) or anhydrous forms.

c. As noted elsewhere (see note 6, p. 14, *supra*), the patents relating to amoxicillin have been alleged to be invalid. In addition, several firms—Bristol (under color of its claimed right), Biocraft, A. H. Robbins, and Parke-Davis, Squibb, and Wyeth Division of AMHO (all sublicensees of Bristol under the ampicillin and other semisynthetic penicillin patents)—are now selling amoxicillin in the United States, without an express, uncontested license from Beecham under the patents covering it. (Except for Wyeth, Beecham has sued all of them for infringement of those patents.) Therefore, if the Government were to litigate this case primarily over compulsory licensing of the two amoxicillin patents, the benefits of the additional amoxicillin relief that might be obtained at rtial could turn out to be illusory. Everyone may end up challenging these patents anyway (as Bristol and other are now doing), or simply ignoring them, even if infringed, because of the alleged infirmities in them. Accordingly, the Government concluded that it might just be wasting its time in litigating this case against Beecham in the hope of obtaining some additional relief concerning those patents.

d. Even if the United States were successful in challenging and securing invalidation, or in securing compulsory licensing, of the amoxicillin patents in potentially further protracted, complicated, and costly litigation against Beecham, that too might end up being wholly unnecessary. If it turns out that Bristol is right about having acquired (under its 1959 agreement with Beecham) the exclusive rights to the amoxicillin patents (see note 6, p. 14, *supra*), then those patents would be covered by the proposed judgment anyway since it expressly requires Beecham to grant covenants not to sue for infringement of any of the patents covered by that agreement free of charge. (Those patents would also clearly be within the subject matter of this lawsuit against Bristol and be subject to the same relief, if any is ultimately obtained, as would the other patents covered by the 1959 agreement.) In that event, moreover, it is doubtful that the amoxicillin patents could be enforced against anyone, because Bristol (which would then have the right to sublicense or enforce those patents) contends that they are both invalid and otherwise unenforceable (see Bristol's Answer and Counterclaims, *In re Amoxicillin Patent and Antitrust Litigation*), and, as noted, Beecham has agreed not to enforce any patent covered by the 1959 agreement (see part III(D)(3), p. 15, *supra*).

e. The claim that higher blood levels are achieved with amoxicillin than with ampicillin means that, to achieve substantially the same therapeutic effect, more ampicillin must be given then would be required of amoxicillin. But since both are nontoxic (so that the dosage level of either could be increased without harmful effect), and since ampicillin is now considerably cheaper than amoxicillin (as well as a virtual substitute for it), there may be little, if any, economic or therapeutic benefit from this alleged superiority. Thus, aside from any potential market factors that it may not now be possible to evaluate, ampicillin may be expected to offer considerable price competition for amoxicillin in a competitive market, and compulsory licensing of the amoxicillin patents may, therefore, not be necessary.

F. LICENSING OF OTHER KNOW-HOW

Section VII of the proposed judgment provides for licensing technical data and know-how relating only to semisynthetic penicillins. The United States also considered compulsory licensing of all technology and know-how relating to penicillin fermentation and the manufacture of 6-APA. The proposed judgment provides for a more limited disclosure because the entire range of technology applicable to penicillin fermentation and the manufacture of 6-APA is not essential to practice the inventions claimed in the semisynthetic penicillin patents to be licensed pursuant to the proposed judgment or to support the relief requested in the complaint. Nevertheless, certain patents relating to 6-APA are subject to compulsory licensing under the proposed judgment, and Beecham must sell 6-APA in bulk form whenever there is a temporary shortage of it.

G. INJUNCTIVE RELIEF

1. The scope of such relief

The injunctions of section IV apply only when the prohibited restrictions have been or would be imposed by Beecham on a third party. The government considered, but subsequently rejected, provisions that would have enjoined Beecham from maintaining or entering into agreements in which the same restrictions are imposed by a third party on Beecham (such as its 1959 and 1967 agreements with Bristol). Such provisions were rejected in order to avoid making Beecham vulnerable to breach of contract claims by the other parties to existing such agreements. Moreover, while Beecham has agreed to unilaterial removal of prohibited restrictions imposed by it, obtaining removal of a prohibited restriction imposed on it (thereby possibly expanding its own rights under an agreement with a third party) may, according to Beecham's counsel, require Beecham to renegotiate such agreement or to give up some additional consideration in exchange for the expanded rights.

Nevertheless, the United States believes the law is clear that it is a violation of the antitrust laws to accede to an unlawful restraint of trade, just as it is to impose one. Accordingly, a compromise was reached, and a provision was included in Paragraph XIII(A)(1) which, the government believes, would adequately serve the public interest in this case. That provision gives the government access to all of Beecham's prescription-drug licenses, regardless of whether restrictions are imposed on or by Beecham. Thus, the government will be in a position to deal with either situation.

2. Ratio of bulk to dosage form royalty rates.

The government considered a provision that would have prohibited Beecham from maintaining or entering into any prescription-drug license in which the ratio of the royalty on the sale of such a drug in bulk form to the royalty on such sale in dosage form exceeded a specific numerical limitation. This provision was intended to prevent a licensee from being charged a royalty on bulk-form sales that was so high in relation to the royalty on dosage-form sales as to constitute an economic restraint on sales in bulk form. However, the government rejected such a provision because it was determined that: (a) no single numerical ratio would be appropriate for all prescription drugs in all circumstances; and (b) the language of Paragraph IV(A)(3)—prohibiting "royalty or other fee provisions having the purpose or effect of restriction or limiting any other party" in any prohibited way—would adequately serve the same purpose as the alternative considered.

Dated: October 24, 1978.

THOMAS H. LIDDLE,
ROBERT S. SCHWARTZ,
LEE J. KELLER,
Attorneys, Antitrust Division, U.S. Department of Justice, Washington, D.C. 20530, 202-376-8603.
ROBERT V. ALLEN,
Chief, Intellectual Property Section, Antitrust Division, U.S. Department of Justice.

[FR Doc. 78-31173 Filed 11-2-78; 8:45 am]

[4410-18-M]

Low Enforcement Assistance Administration

FINAL FISCAL YEAR 1979 GUIDE FOR DISCRETIONARY GRANT PROGRAMS

Response to Public Comment and Notice of Issuance

AGENCY: Law Enforcement Assistance Administration, Justice.

ACTION: Response to public comment and notice of issuance.

SUMMARY: The Law Enforcement Assistance Administration (LEAA) published in the FEDERAL REGISTER on July 27, 1978, (43 FR 32612-32707) the DRAFT 1979 Guide for Discretionary Grant Programs for public review and comment. This notice summarizes the comments received and LEAA's response and indicates the issuance, distribution, and availability of the final 1979 Guide for Discretionary Grant Programs.

FOR FURTHER INFORMATION, CONTACT:

David L. Dougherty, Office of Planning and Management, Law Enforcement Assistance Administration, U.S. Department of Justice, 633 Indiana Avenue NW., Washington, D.C. 20531, 202-376-3930.

A. ISSUANCE AND DISTRIBUTION

The Guide for Discretionary Grant Programs provides information about major categorical programs of the Law Enforcement Assistance Administration, authorized by the Omnibus Crime Control and Safe Streets Act of 1968, as amended, and the Juvenile Justice and Delinquency Prevention Act of 1974, as amended. The Guide includes information about discretionary grant programs, selected program field tests, technical assistance, and training. Information about how to apply for assistance and who to contact for additional information is also provided.

The fiscal year 1979 guide was signed and issued by the Acting Administrator of LEAA on September 30, 1978.

Single copies of the guide may be obtained at no cost from: National Criminal Justice Reference Service, Box 6000, Rockville, Md. 20850.

Copies of the guide have been sent to the following organizations: Twenty-five copies to each State Law Enforcement and Criminal Justice Planning Agency (SPA), ten copies to each Criminal Justice Coordinating Council (CJCC) and Regional Planning Unit (RPU), and one copy to each of 184 national organizations with an interest in criminal justice and law enforcement.

Also, one copy each to mayors of large cities, county executives and council chairmen of large counties, coordinators of Federal-State relations, and directors of State offices of community affairs.

Also, one copy each to police departments serving jurisdictions of 25,000 population and over, State police directors, sheriffs, district attorneys, State chief justices, court administrators, public defenders, State correctional agencies, and directors of correctional institutions.

B. NATURE OF COMMENTS AND LEAA'S RESPONSE

LEAA received comments about 7 specific programs and 13 general issues. The comments and LEAA's response are summarized below. A list of the names of the individuals and organizations that commented follows the summaries of the comments. A copy of the final guideline manual has been sent to each individual and organizaton that submitted comments.

1. *Community anti-crime program.* Four comments were received about the community anti-crime program. The comments primarily concerned (a) subobjectives of the program; (b) types of activities expected to be conducted by grantees; (c) criteria for selection of grantees; and (d) roles of State Law Enforcement and Criminal Justice Planning Agencies (SPA's) in reviewing applications. Modifications were made revising subobjectives and types of activities to be conducted. Other suggested revisions regarding subobjectives, types of activities, and criteria for selection were not made in the guideline manual but will be considered in the implementation and management of the program. The role of SPA's in application review has been considered on several occasions since the beginning of the community anti-crime program; no new information was offered by the comments which would lead to revisions at this time.

2. *Comprehensive crime prevention program.* One comment was received suggesting that the urban emphasis of the program eliminated from consideration projects in rural areas bordering metropolitan areas and projects in recreational locations. The population related eligibility requirements of the program have been made clearer to eliminate the impression that only large urban areas are eligible; a minimum population requirement is retained.

3. *Family violence program.* Four comments about this program were received. Comments addressed, primarily, the size of grants to be awarded, eligibility requirements, and criteria for selection. Revisions were made to the program description modifying some of the eligibility requirements and criteria for selection. The other suggestions about requirements and criteria and about size of grants were carefully considered but program experience and budget limitations did not permit revisions at this time. All comments will be considered further as the program is further developed.

4. *Fundamental court improvement.* LEAA received one comment about this program recommending that eligibility be extended to include local court jurisdictions over 200,000. After careful consideration, that suggestion was not adopted; such a change would redirect the program from a few major statewide reforms to possibly many reforms of lesser impact.

5. *Corrections programs.* One comment was received about corrections programs generally, recommending that the intent and assumptions

[12] U.S. Patent No. 3,192,198 claims, among other things, the compound alpha-amino-para-hydroxybenzylpenicillin. That compound exists in two optically active isomeric forms—designated the D- and L- forms. Amoxicillin is the D- form of the compound. Thus, when reference is made to the compound (alpha-amino-para-hydroxybenzyl<penicillin) generally, without indicating which of the isomeric forms of it is intended, it may be argued (on the basis of positions taken by defendants in this lawsuit) that reference is being made to a mixture of the D- and L- forms.

Footnotes continued from last page
tion arising out of such an agreement or understanding.

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behind the corrections programs should be re-examined. LEAA is considering the assumptions and intent of corrections programs and will continue to do so in a variety of ways. While, at this time, revision of the corrections program descriptions for 1979 is not feasible, further activity and policy development in corrections will be reflected in program implementation and management and in future program development.

6. *Inmate legal services.* Four comments on inmate legal services were received, all suggesting that additional funding be made available for that program. Budgetary restrictions and progress to date in program development, testing, and evaluation do not permit increased funding at this time although LEAA will consider these comments further as those circumstances change.

7. *Indian criminal justice programs.* Two comments were received about the Indian criminal justice program suggesting an expansion of the types of grants to be awarded. Revisions were not made due to budgetary restrictions and the development of a new policy regarding LEAA supported Indian programs.

8. Three letters were received which were not specific to individual programs in the draft guideline manual but suggested program development and research opportunities regarding (a) the role of family violence in juvenile delinquency; (b) emphasis on misdemeanor courts; (c) the impact of alcohol abuse on the criminal justice system; and (d) victimization of the elderly and the response of the criminal justice system to that victimization. No modifications were made to the guideline manual in response to these comments; the comments were referred to LEAA program and research offices for consideration in future research and program development.

9. Ten general issues of a management or administrative nature were raised by one organization. In addition, 32 suggestions or comments specific to individual program descriptions and requirements that had been raised by members of the organization were forwarded to LEAA.

Modifications or clarifications were made in response to the specific suggestions and comments where feasible. Revisions were not made to the guideline manual at this time in response to all of the general issues but all will be considered by LEAA in future program development and revisions. The general issues concerned:

a. Deadlines for submitting applications;

b. Match provision;

c. Period of LEAA support of projects;

d. Total funding for programs;

e. Unannounced or unsolicited grant opportunities;

f. Project periods;

g. Information provided in program descriptions;

h. State Planning Agency administration of projects;

i. Responsibilities of LEAA and State Planning Agencies for project monitoring; and

j. Program evaluation.

C. Individuals and groups that commented:

1. Irvin S. Bails, Esq., Pennsylvania.
2. Curtis Bridges, Colorado.
3. Constance R. Caplan, Maryland.
4. Peg Collins, Vermont.
5. Hon. John Conyers, Jr., Chairman, Subcommittee on Crime, Committee on the Judiciary, U.S. House of Representatives.
6. S. Bobo Dean, Washington, D.C.
7. Valerie Emerson, Virginia.
8. Fred Farber, Esq., Pennsylvania.
9. Paul H. Glasser, Texas.
10. Rev. Joseph M. Kakalec, S. J., Pennsylvania.
11. Richard A. Katz, Esq., Pennsylvania.
12. Dennis L. Metrick, Ph. D., Pennsylvania.
13. Herbert S. Patchell, Massachusetts.
14. F. Charles Petrillo, Esq., Pennsylvania.
15. Gary J. Scrimgeour, Ph. D., Indiana.
16. Tom "Bearhead" Swaney, Montana.
17. National Association of Counties.
18. National Conference of State Criminal Justice Planning Administrators.

JAMES M. H. GREGG,
Assistant Adminstrator,
Office of Planning and Management.

[FR Doc. 78-31107 Filed 11-2-78; 8:45 am]

[4510-24-M]

DEPARTMENT OF LABOR

Bureau of Labor Statistics

BUSINESS RESEARCH ADVISORY COUNCIL'S COMMITTEE ON MANPOWER AND EMPLOYMENT

Meeting

The BRAC Committee on Manpower and Employment will meet on Tuesday, November 21, 1978, at 9:30 a.m. in Room 4454 A & B of the General Accounting Office Building, 441 G Street NW., Washington, D.C. The agenda for the meeting is as follows:

1. Review of major recommendations contained in staff report drafted for the National Commission on Employment and Unemployment Statistics.
2. Other business.

This meeting is open to the public. It is suggested that persons planning to attend this meeting as observers contact Kenneth G. Van Auken, Executive Secretary, Business Research Advisory Council on Area Code 202-523-1559.

Signed at Washington, D.C., this 27th day of October 1978.

JANET L. NORWOOD,
Acting Commissioner of
Labor Statistics.

[FR Doc. 78-31148 Filed 11-2-78; 8:45 am]

[4510-30-M]

Employment and Training Administration

EMPLOYMENT TRANSFER AND BUSINESS COMPETITION DETERMINATIONS UNDER THE RURAL DEVELOPMENT ACT

Applications

The organizations listed in the attachment have applied to the Secretary of Agriculture for financial assistance in the form of grants, loans, or loan guarantees in order to establish or improve facilities at the locations listed for the purposes given in the attached list. The financial assistance would be authorized by the Consolidated Farm and Rural Development act, as amended, 7 U.S.C. 1924(b), 1932, or 1942(b).

The Act requires the Secretary of Labor to detemine whether such Federal assistance is calculated to or is likely to result in the transfer from one area to another of any employment or business activity provided by operations of the applicant. It is permissible to assist the establishment of a new branch, affiliate, or subsidiary, only if this will not result in increased unemployment in the place of present operations and there is no reason to believe the new facility is being established with the intention of closing down an operating facility.

The Act also prohibits such assistance if the Secretary of Labor determines that it is calculated to or is likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

The Secretary of Labor's review and certification procedures are set forth at 29 CFR Part 75. In determining whether the applications should be approved or denied, the Secretary will take into consideration the following factors:

1. The overall employment and unemployment situation in the local area in which the proposed facility will be located.

2. Employment trends in the same industry in the local area.

3. The potential effect of the new facility upon the local labor market, with particular emphasis upon its potential impact upon competitive enterprises in the same area.

4. The competitive effect upon other facilities in the same industry located in other areas (where such competition is a factor).

5. In the case of applications involving the establishment of branch plants or facilities, the potential effect of such new facilities on other existing plants or facilities operated by the applicant.

All persons wishing to bring to the attention of the Secretary of Labor any information pertinent to the determinations which must be made regarding these applications are invited to submit such information in writing within two weeks of publication of this notice to: Deputy Assistant Secretary for Employment and Training, 601 D Street NW., Washington, D.C. 20213.

Signed at Washington, D.C., this 27th day of October, 1978.

ERNEST G. GREEN,
Assistant Secretary for
Employment and Training.

APPLICATIONS RECEIVED DURING THE WEEK ENDING OCTOBER 27, 1978

Name of Applicant and Location of Enterprise and Principal Product or Activity

Bradley Construction Corp., Freehold, N.J.—Indoor recreational and sports complex.

Bodolay Packaging Machinery Inc., Lakeland, Fla.—Production of packaging machinery.

Walters and Lyon, Salyersville, KY.—Shopping center complex.

Walters and Lyon, Paintsville, KY.—Shopping center complex.

[FR Doc. 78-31002 Filed 11-2-78; 8:45 am]

[4510-43-M]

Mine Safety and Health Administraton

[Docket No. M-78-110-C]

M & M COAL CO.

Petition for Modification of Application of Mandatory Safety Standard

M & M Coal Co., Drawer P, Northfork, W. Va., 24868, has filed a petition to modify applicaton of 30 CFR 75.1710 (canopies) to its Mine No. 2B in McDowell County, W. Va. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of the petition is as follows:

(1) The petition pertains to the use of canopies on the following face equipment: three Model 84 S&S scoops, and one Model 74 S&S scoop.

(2) The average height of the coal seam is 38 inches in the locations where miners use equipment subject to cab and canopy regulation.

(3) The face areas have no adverse roof conditions nor any history of roof falls. A full roof bolting plan is used in the mine.

(4) Because of a near-fatal accident, involving a canopy hitting the roof of the mine, the West Virginia Bureau of Mines has instructed the petitioner to remove the canopies, that had been installed on the scoops.

(5) The battery-powered scoops are recharged outside the mine presently. Scoop canopies and roof clearances would necessitate maintaining the battery charging stations in "holes" blasted near the face area. This type of operation would create additional safety problems related to potential roof falls and to electrical and toxic fume problems.

(6) For these reasons, the petitioner states that application of the standard to the mine will lessen the safety of the miners in the mine.

REQUEST FOR COMMENTS

Persons interested in this petition may furnish written comments on or before December 4, 1978. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Va. 22203. Copies of the petition are available for inspection at that address.

Dated: October 25, 1978.

E. MUESSIG,
Deputy Assistant Secretary
for Mine Safety and Health.

[FR Doc 78-31147 Filed 11-2-78; 8:45 am]

[4510-43-M]

[Docket No. M-78-44-M]

UNITED STATES STEEL CORP.

Petition for Modification of Application of Mandatory Safety Standard

The United States Steel Corp., 600 Grant Street, Pittsburgh, Pa. 15230, has filed a petition to modify application of 30 CFR 55.12-16 (power switches) to its Rockland Mine in Ft. Meade, Fla., and its Bartow Mine, in Bartow, Fla. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977, Public Law 95-164.

The substance of the petiton is as follows:

(1) The standard states in part that a warning notice signed by the individuals working on electrically powered equipment must be posted at the power switch of that equipment.

(2) As an alternative, the petitioner outlines procedures for the following method:

(a) The petitioner will assign numbered locks to employees.

(b) Employees will place their own numbered lock on the power switch of equipment they are working on.

(c) An authorized employee will place an operation lock on the power switch.

(3) The petitioner states that the alternative method will not lessen protection for the employees.

REQUEST FOR COMMENTS

Persons interested in this petition may furnish written comments on or before December 4, 1978. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Va. 22203. Copies of the petition are available for inspection at that address.

Dated: October 25, 1978.

E. MUESSIG,
Acting Assistant Secretary
for Mine Safety and Health.

[FR Doc. 78-31146 Filed 11-2-78; 8:45 am]

[4510-27-M]

Office of the Assistant Secretary for Employment Standards

[Employment Standards Order No. 78-1]

REDELEGATION OF AUTHORITY AND REASSIGNMENT OF RESPONSIBILITY

Assistant Secretary for Employment Standards

1. *Purpose.* This order redelegates authority and reassigns responsibility (a) within the Office of the Assistant Secretary; and (b) the Wage-Hour Administrator; (c) the Director of the Office of Workers Compensation Programs; (d) the Director of the Office of Federal Contract Compliance Programs.

2. *Background.* A. Secretary's Orders No. 16-75 (FR 55913) and 23-76 delegated authority and assigned responsibility for certain functions to the Assistant Secretary for Employment Standards with the authority to redelegate. Department of Labor Manual, series two, chapter 800, designates the Assistant Secretary for Employment Standards as a contracting officer and assigns him/her with certain procurement responsibilities.

B. Secretary's Order No. 18-67, 32 FR 12979, formerly identified as General Order No. 46 (revised), delegated and assigned to the Director of the Bureau of Employees Compensation authority and responsibility for performance of the functions of the Secretary of Labor under the Federal Employees Compensation Act, 5 U.S.C.

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8101 et seq., as amended and extended (except 8149 as it applied to the Employees Compensation Appeals Board), and under the Longshoremen's and Harbor Workers Compensation Act, 33 U.S.C., 901 *et seq.*, as amended and extended, to be performed under the general direction and control of the Assistant Secretary for Labor-Management Relations. The overall responsibility for the authority delegated to the Director of the Bureau by Secretary's Order No. 18-67 was subsequently assigned successively to the Assistant Secretary for Wage and Labor Standards (see U.S. Government Organization Manual, 1970/1971, p. 320) and to the Assistant Secretary for Workplace Standards (Secretary's Order No. 19-70, 36 FR 304) without change in the operational responsibilities of the Bureau of Employees Compensation (Workplace Standards Administration, Description of Organization, 36 FR 307).

C. Secretary's Order 13-71, 36 FR 8755, established the Employment Standards Administration to perform the functions of the Department with respect to employment standards programs. The Assistant Secretary for Employment Standards was therein delegated the authority and assigned responsibility for carrying out such programs. That order further provided that the Employment Standards Administration was to be headed by a Deputy Assistant Secretary/Administrator who was to report to the Assistant Secretary for Employment Standards and was to act for the Assistant Secretary in his/her absence. Among the employment standards programs for which the responsibility was thus delegated were:

1. The Federal Employees Compensation Act, as amended and extended (5 U.S.C. 8101 *et seq.*, except 8149 as it applied to the Employees Compensation Appeals Board).

2. The Longshoremen's and Harbor Workers Compensation Act as amended and extended.

3. Part C of Title IV (Black Lung Benefits) of the Federal Coal Mine Health and Safety Act of 1969.

D. Secretary's Order 15-71, 36 FR 8755, set forth in detail the redelegation of authority to the Deputy Assistant Secretary for Employment Standards Administration.

E. Secretary Order 38-72, 38 FR 90, made provisions for the Benefits Review Board established by Pub. L. 92-576, 86 Stat. 1251, as a quasijudicial body of the first appeal under the Longshoremen's and Harbor Workers Compensation Act, as amended, 33 U.S.C. 901 *et seq.*; the Defense Base Act, 42 U.S.C. 1651 *et seq.*; the District of Columbia Workmen's Compensation Act, 36 D.C. Code 501 *et seq.*; the Outer Continental Shelf Lands Act, 43 U.S.C. 1331; the Nonappropriated Fund Instrumentalities Act, 5 U.S.C. 8171 *et seq.*; and Title IV, Section 415 and Part C, of the Federal Coal Mine Health and Safety Act of 1969, as amended by the Black Lung Benefits Act of 1972, 30 U.S.C. 901 *et seq.*

F. Secretary's Order 16-73, 38 FR 19130, delegated authority to the Assistant Secretary for Employment Standards for the performance of the functions assigned to the Secretary of Labor pursuant to Parts B and C of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, with the exception of the functions vested with the Benefits Review Board by Secretary's Order 38-72.

G. Employment Standards Order 2-74 redelegated to the Director, Office of Workers Compensation Programs, the authority and reassigned the responsibility vested in the Assistant Secretary for Employment Standards regarding workers compensation programs and the performance of functions assigned to the Assistant Secretary pursuant to Title IV, Section 415 and Part C, of the Federal Coal Mine Health and Safety Act of 1969, as amended.

H. Secretary's Order dated September 23, 1974 (39 FR 34723) revoked Secretary's Order 18-67, and the last sentence of paragraph 3 of Secretary's Order 13-71.

I. Secretary's Order 16-75 (40 FR 55913) canceled and replaced Secretary's Order 13-71 and incorporated the delegation contained in the Secretary's Order 16-73 and canceled that Order.

J. Employment Standards Order 2-75 (40 FR 56743) updated and consolidated most of ESA's delegations into one document.

K. Employment Standards Order 2-76 added a delegation to the Director, Office of Information and replaced Employment Standards Order 2-75.

L. Secretary's Order 11-77 canceled paragraph 4a(12) and 4a(17) of Secretary's Order 16-75 (as pertains to the Women's Bureau).

M. This order updates Employment Standards Order 2-76.

3. *Redelegation of authority and reassignment of responsibility.* The authority and responsibility assigned by the Secretary of Labor to the Assistant Secretary for Employment Standards for carrying out Employment Standards programs and activities is redelegated and reassigned, except as hereinafter provided, as follows:

A. The Office of the Assistant Secretary of Employment Standards.

1. *The Deputy Assistant Secretary for Employment Standards* shall report to the Assistant Secretary and is hereby redelegated authority to act on all matters within the Assistant Secretary's delegation.

2. *The Director of the Office of Program Development and Accountability* shall report to the Assistant Secretary and is responsible for all program development and accountability activities, including developing plans, policies, and procedures for the functions of the program planning, policy analysis, and review, budgeting and financial management, accountability review, legislative analysis, research, evaluation, allocation of resources, and information and analysis of State employment standards.

3. *The Director of the Office of Administrative Management* shall report to the Assistant Secretary and is responsible for all administrative and management activities, including developing plans, policies, and procedures, for the functions of employee development, personnel and employee management relations, employee safety and health, position management, manpower utilization, management information systems, and mobilization planning activities delegated to Employment Standards Administration in Secretary's Order 23-76, and general services such as procurement and supply management.

4. *The Director, Office of Information and Consumer Affairs* shall report to the Assistant Secretary and is responsible for developing, administering, and monitoring a comprehensive public information program designed to promote voluntary compliance with the laws and executive orders administered by ESA; for providing a central point at the National Office for dissemination of news and information concerning ESA activities, both internally and externally; and for advising ESA National and Regional executives on public affairs matters.

5. *The ESA Equal Opportunity Coordinator* shall report to the Assistant Secretary and is responsible for developing, administrating, and monitoring the implementation of Equal Opportunity policies and procedures, coordinating and reviewing EEO plans and advising the Assistant Secretary and other ESA managers on ESA's EEO status and necessary corrective actions, where appropriate.

6. *Regional Administrators for Employment Standards* are responsible for administering the Assistant Secretary's responsibilities for all employment standards programs within their geographic jurisdiction. Regional Administrators report directly to the Assistant Secretary, represent the Assistant Secretary and serve as general managers of field operations within their jurisdiction. As regional general managers, Regional Administrators are responsible for regional policy development, program planning, administration and management, resource management, maintaining effective liaison with other DOL agencies and State/local government agencies and officials; conducting a regional accountability review program, providing administrative and management direction and supervision to Assistant Regional Administrators and providing direct program assistance on matters and issues as requested by the Assistant Secretary. Regional Administrators are responsible for carrying out within their region plans for administering the wage and salary stabilization and labor disputes program as delegated to them in Secretary's Order 23-76. Regional Administrators are contracting officers within their areas of assigned responsibility and are enpowered to act under the Department of Labor Manual, series two, Part 814C(2) to enter into agreements with States to enhance Federal/State cooperative agreements for administering compatible employment standards programs.

7. The above redelegations made within the Office of the Assistant Secretary shall be carried out consistent with the redelegations made to the Wage-Hour Administrator; the Director, Office of Federal Contract Compliance Programs; the Director, Office of Workers Compensation Programs, and within the Office of the Assistant Secretary.

B. The Office of the Wage-Hour Administrator.

The Wage-Hour Administrator shall report to the Assistant Secretary and is hereby delegated authority, except as hereinafter provided, for carrying out the programs and activities delegated to the Assistant Secretary under:

a. Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 201 *et seq.*, including the issuance of child labor hazardous occupation orders and other regulations concerning child labor standards.

b. The Walsh-Healey Public Contracts Act of 1936, as amended, 41 U.S.C. 35 *et seq.*;

c. The Service Contract Act of 1965, as amended, 41 U.S.C. 351, *et seq.*;

d. The Davis-Bacon Act, as amended, 40 U.S.C. 276a and any laws now existing, or subsequently enacted, providing for prevailing wage findings by the Secretary of Labor in accordance with or pursuant to the Davis-Bacon Act; the Copeland Act, 40 U.S.C. 276c, Reorganization Plan No. 14 of 1950; and the Tennessee Valley Authority Act, 16 U.S.C. 831;

e. The Contract Work Hours and Safety Act, as amended 40 U.S.C. 327 *et seq.*;

f. Title III of the Consumer Credit Protection Act, 15 U.S.C. 1671 *et seq.*;

g. The Arts and Humanities Act of 1965, 20 U.S.C. 953, except those provisions relating to safety and health delegated to the Assistant Secretary for Occupational Safety and Health;

h. The Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 621, *et seq.*, except those provisions relating to studies and research delegated to the Assistant Secretary for Employment and Training;

i. The Farm Labor Contractor Registration Act of 1963, as amended, 7 U.S.C. 2041 *et seq.*;

j. Section 1450(i) of the Safe Drinking Water Act (Pub. L. 93-523), 42 U.S.C. 300 j-9(i);

k. Section 507 of the Federal Water Pollution Control Act (Pub. L. 87-88 as amended by 89-234), 33 U.S.C. 1367;

l. Such additional Federal Acts as may from time to time confer upon the Secretary of Labor duties and responsibilities similar to the Fair Labor Standards Act or the Davis-Bacon Act and Related Acts.

C. The Office of the Director of Workers Compensation Programs.

1. *The Director of the Office of Workers Compensation Programs* shall report to the Assistant Secretary and is hereby redelegated authority, except as hereinafter provided, for carrying out the programs and activities delegated to the Assistant Secretary under:

a. The Federal Employees Compensation Act, as amended and extended (5 U.S.C. 8101 *et seq.*), except 8149 as it applies to the Employees Compensation Appeals Board.

b. The Longshoremen's and Harbor Workers Compensation Act, as amended and extended, (33 U.S.C. 901, *et seq.*) except 33 U.S.C. 921(b) as it pertains to the Benefits Review Board.

c. Title IV, Section 415 and Part C of the Federal Mine Safety and Health Act of 1977, as amended, (30 U.S.C. 901, *et seq.*).

d. Department of Labor Manual, series two, chapter 800, to act as contracting officer with the area of his/her assigned responsibility and under Part 814c(1) to procure medical supplies under the Federal Mine Safety and Health Act of 1977 as amended.

D. The Office of the Director of Federal Contract Compliance Programs.

The Director of The Office of Federal Contract Compliance Programs shall report to the Assistant Secretary and is hereby delegated authority, except as hereinafter provided, for carrying out the programs and activities delegated to the Assistant Secretary under:

a. The Executive Order 11246, as amended—Federal Contract Compliance.

b. Section 503 of the Rehabilitation Act of 1973, as amended, and Executive Order 11758.

c. The affirmative action requirements under Title V of the Vietnam Era Veterans Readjustment Assistance Act of 1972, as amended, 38 U.S.C. section 2012.

E. The redelegation of authority contained in paragraphs 3 (B) through (D) above are to be performed consistent with the redelegations made within the Office of the Assistant Secretary in paragraph 3(A) above, except that the quasijudicial line of adjudicatory authority and responsibility between the Director of the Office of Workers Compensation Programs and the Deputy Commissioners or their subordinates in the OWCP District Offices in individual case actions under the laws enumerated in 3(C)(1)(a) and (c), shall not be affected. In addition to the redelegation of authority contained in paragraphs 3 (B) through (D) above, the Wage-Hour Administrator, the Director of the Office of Workers Compensation Programs, and the Director of the Office of Federal Contract Compliance Programs are responsible for providing policy and technical guidance (including case processing) and supervision to the Assistant Regional Administrators related to program matters for their respective programs and for conducting and participation in National Office accountability reviews of regional program operations.

4. *Redelegation of authority.* The authority delegated and the responsibilities assigned by this order may be redelegated and reassigned.

5. *Reservation of authority.* The submission of reports and recommendations to the department concerning the administration of employment Standards programs shall be reserved to the Assistant Secretary for Employment Standards.

6. *Directives affected.* Employment Standards Order No. 2-76 is hereby canceled.

7. *Effective date.* This Order is effective immediately.

Signed at Washington, D.C., this 28th day of September 1978.

DONALD ELISBURG,
Assistant Secretary.

[FR Doc. 78-31180 Filed 11-2-78; 8:45 am]

[4510-28-M]

Office of the Secretary

[TA-W-3116]

THE ANACONDA CO. RARITAN COPPER WORKS, PERTH AMBOY, N.J.

Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 13, 1978, in response to a worker petition received on Janu-

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ary 24, 1978, which was filed on behalf of workers and former workers engaged in the production of refined copper at the Anaconda Co., Raritan Copper Works, Perth Amboy, N.J.

The Notice of Investigation was published in the FEDERAL REGISTER on February 28, 1978 (43 FR 8207). No public hearing was requested and none was held.

The petitioning worker in this case is covered under certification TA-W-19 issued on June 27, 1975. Since the worker separated, totally or partially, from employment at the Anaconda Co., Raritan Copper Works, Perth Amboy, N.J., on or after December 27, 1974 (impact date) and before June 27, 1977 (expiration date of the certification) was covered by the previous certification, a new investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C., this 27th day of October 1978.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 78-31149 Filed 11-2-78; 8:45 am]

[4510-28-M]

[TA-W-3853]

APEX DISTRIBUTING CO., NORTHEAST HOPKINS, MINN.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3853: investigation regarding certification of elibigility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on June 19, 1978 in response to a worker petition received on June 15, 1978 which was filed by the Amalgamated Meat Cutters and Butcher Workmen of North America on behalf of workers and former workers producing boneless beef at the Apex Distributing Co., N. E. Hopkins, Minn.

The Notice of Investigation was published in the FEDERAL REGISTER on June 30, 1978 (43 FR 28581). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Apex Distributing Co., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met. Without regard to whether any of the other criteria have been met the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Apex Distributing Co. began operations in March 1977. Apex produces meat for manufacturing primarily for one customer. The customer increased purchases from Apex and at the same time increased purchases of imports from March 1978 through June 1978 when compared to the same period of the previous year.

CONCLUSION

After careful review, I determine that workers of the Apex Distributing Co., N. E. Hopkins, Minn. are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 12th day of October, 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-31150 Filed 11-2-78; 8:45 am]

[4510-28-M]

[TA-W-3572]

AUTO VILLAGE, INC., YOUNGSTOWN, OHIO

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3572: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on May 4, 1978 in response to a worker petition received on April 27, 1978 which was filed on behalf of former workers engaged in the sales and servicing of automobiles at Auto Village, Inc., Youngstown, Ohio.

The Notice of Investigation was published in the FEDERAL REGISTER on May 23, 1978 (43 FR 22087). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Auto Village, Inc. and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the act must be met. The Department has determined that services are not "articles" within the meaning of section 222(3) of the act.

Auto Village operated as an independently owned automobile dealership engaged in sales and servicing of new and used American executive passenger cars until it closed in February 1978. Auto Village was not a franchise dealer. It purchased new and used automobiles from franchise dealers, private owners and at auctions for resale to consumers.

The petition alleges that increased imports of automobiles adversely affected employment at Auto Village. However, Auto Village does not produce automobiles. Employees of Auto Village are engaged in the sale and servicing of new and used automobiles and do not produce an article within the meaning of section 222 (3) of the Trade Act of 1974.

CONCLUSION

After careful review, I determine that all workers of Auto Village Inc., Youngstown, Ohio are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 26th day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-31151 Filed 11-2-78; 8:45 am]

[4510-28-M]

[TA-W-3574]

BROWN SHOE CO., CARUTHERSVILLE, MO.

Affirmative Determination Regarding Applicotion for Reconsideration

On September 28, 1978, one of the petitioning workers of Brown Shoe Co., requested administrative reconsideration of the Department of Labor's negative determination regarding eligibility to apply for worker adjustment assistance. This determination was published in the FEDERAL REGISTER on September 15, 1978 (43 FR 41308).

The petitioning worker raises one basic issue in the application; namely, that the appropriate subdivision should be redefined from the total plant at Caruthersville, Mo., to the cutting department at Caruthersville, Mo., which reportedly suffered a decline in work in 1978 because of company imports of unfinished shoes which did not require the cutting operations performed at Caruthersville, Mo., plant.

CONCLUSION

After review of the application, I conclude that this claim of the petitioning worker is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C., this 30th day of October, 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-31152 Filed 11-2-78; 8:45 am]

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[4510-30-M]

CERTIFICATION OF STATE UNEMPLOYMENT LAWS TO THE SECRETARY OF THE TREASURY

In accordance with the provisions of paragraph (1) of section 3303(b) of the Internal Revenue Code of 1954 (26 U.S.C. 3303(b)(1)), I hereby certify the unemployment compensation laws of the following named States, which heretofore have been certified pursuant to paragraph (3) of section 3303(b) of the Code, to the Secretary of the Treasury for the 12-month period ending October 31, 1978.

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Washington
West Virginia
Wisconsin
Wyoming

The unemployment compensation law of the State of New Hampshire is not included in the foregoing list of certified State laws, because under section 3303(b) of the Internal Revenue Code of 1954 (26 U.S.C. 3303(b)) the unemployment compensation law of a State may not be certified pursuant to that section unless the State is certified pursuant to section 8304(c) of the Internal Revenue Code of 1954 (26 U.S.C. 3304(c)). Because of my action today with respect to the certification of the State of New Hampshire pursuant to section 3304(c) of the Internal Revenue Code of 1954 and the effect thereon of section 3310(d) of the Code, this document does not constitute at the present a withholding of certification for 1978 in the case of the unemployment compensation law of the State of New Hampshire.

Signed at Washington, D.C., this 31st day of October, 1978.

RAY MARSHALL,
Secretary of Labor.

[FR Doc. 78-31145 Filed 11-2-78; 8:45 am]

[4510-30-M]

CERTIFICATION OF STATES TO THE SECRETARY OF THE TREASURY

In accordance with the provisions of section 3304(c) of the Internal Revenue Code of 1954 (26 U.S.C. 3304(c)), I hereby certify the following named States to the Secretary of the Treasury for the 12-month period ending October 31, 1978, in regard to the unemployment compensation laws of those States which heretofore have been approved under the Federal Unemployment Tax Act.

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Puerto Rico
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Virgin Islands
Washington
West Virginia
Wisconsin
Wyoming

The State of New Hampshire is not included in the foregoing list of certified States, because of my findings made pursuant to section 3304(c) of the Internal Revenue Code of 1954, that the unemployment compensation law of the State of New Hampshire does not contain each of the provisions required of State unemployment compensation laws by section 3304(a) of the Internal Revenue Code of 1954 (26 U.S.C. 3304(a)). This does not constitute a present withholding of the certification of the State of New Hampshire, however, solely because of the provisions of section 3310(d) of the Internal Revenue Code of 1954 (26 U.S.C. 3310(d)), pursuant to which a certification may not be withheld until 60 days after the Governor of the State is notified of my findings or until the State has filed a petition for review of such action, whichever is earlier. In addition, if a petition for review is filed by the State, my action is stayed for a period of 30 days thereafter, and the court may grant a further stay or other interim relief to preserve status or rights, pursuant to section 3310(d).

Signed at Washington, D.C. this 31st day of October, 1978.

RAY MARSHALL,
Secretary of Labor.

[FR Doc. 78-31144 Filed 11-2-78; 8:45 am]

[4510-28-M]

[TA-W-3522, et al.]

G&G FOOD CORP, INC., ET AL.

Determinotions Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3522, 3525, and 3527: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on April 18, 1978, in response to a worker petition received on April 10, 1978 which was filed on behalf of workers and former workers processing beef products at G&G Food Corp., Inc. (TA-W-3522), and Newark Boneless Meat Products, Inc., Newark, New Jersey (TA-W-3525), and Penn Meat Fabricators, Inc., Pittston, Pa. (TA-W-3527).

The Notice of Investigation was published in the FEDERAL REGISTER on May 2, 1978 (43 FR 18789-18790). No public hearing was requested and none was held.

The determinations were based upon information obtained principally from officials of Newark Boneless Meat Products, Inc., and its subsidiary firms, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, the American Meat Institute, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met for workers of Newark Boneless Meat Products, Inc, and Penn Meat Fabricators, Inc., but that the following criterion has not been met for workers at G&G Food Corp.

That increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such decline in sales or production.

U.S. imports of meat for manufacturing (beef trimmings and ground beef) increased from 1,262 million pounds in 1976 to 1,269 million pounds

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in 1977 and increased from 293 million pounds during January-March 1977 to 327 million pounds during January-March 1978. The ratio of imports to domestic production amounted to 24.0 percent in 1976 and 26.8 percent in 1977.

Newark Boneless Meat Products, Inc., operates a production facility and corporate headquarters in Newark, N.J. Two subsidiaries of the firm, G&G Food Corp., Inc., and Penn Meat Fabricators, Inc., operate production facilities in Newark, N.J., and Pittston, Pa., respectively.

The Newark, N.J., facility of G&G Food Corp., Inc., processes no beef trimmings. Although a substantial proportion of all beef processed by the facility was received from Newark Boneless Meat Products and Penn Meat Fabricators, the products it produced, for example corned beef, are subject to negligible import competition. Over the past several years, the ratio of imports of table beef and veal to domestic production has been well below 1 percent.

A survey conducted by the Department indicated that some customers surveyed who decreased purchases from Newark Boneless Meat Products, Inc., and Penn Meat Fabricators, Inc., increased purchases of imported beef trimmings and ground beef.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with beef trimmings processed by Newark Boneless Meat Products, Inc., Newark, N.J., and by Penn Meat Fabricators, Inc., Pittston, Pa., contributed importantly to the decline in sales and production and to the total or partial separation of workers of those firms. In accordance with the provisions of the Act, I make the following certification:

All workers of Newark Boneless Meat Products, Inc., Newark, N.J., and Penn Meat Fabricators Inc., Pittston, Pa., who became totally or partially separated from employment on or after March 17, 1977, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

I further determine that all workers of G&G Food Corp., Inc., Newark, N.J., are denied eligibility to apply for adjustment assistance.

Signed at Washington, D.C., this 26th day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-31153 Filed 11-2-78; 8:45 am]

[4510-28-M]

[TA-W-2906]

M. HOFFMAN CO., INC., BOSTON, MASS.

Revised Certification of Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a certification of eligibility to apply for adjustment assistance on September 28, 1978, applicable to workers and former workers producing sailor pants and jeans at the Boston, Mass., plant of M. Hoffman Co., Inc. The Notice of Certification was published in the FEDERAL REGISTER on October 13, 1978 (43 FR 47306).

At the request of a petitioner, a further investigation was instituted by the Director of the Office of Trade Adjustment Assistance. A review of the case revealed that some layoffs of workers occurred in May 1977. These layoffs were not covered by the original impact date of December 2, 1977.

The intent of the certification is to cover all workers at the Boston, Mass., plant of M. Hoffman Co., Inc., who were affected by the decline in production of sailor pants and jeans related to import competition. The certification, therefore, is revised providing a new impact date of May 12, 1977.

The revised certification applicable to TA-W-2906 is hereby issued as follows:

All workers at the Boston, Mass., plant of M. Hoffman Co., Inc., who became totally or partially separated from employment on or after May 12, 1977, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 30th day of October 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-31154 Filed 11-2-78; 8:45 am]

[4510-28-M]

[TA-W-3307]

IMPERIAL PANTS CO., BROOKLYN, N.Y.

Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 7, 1978, in response to a worker petition received on February 6, 1978, which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers and former workers producing men's and boys' tailored clothing at Imperial Pants Co., Brooklyn, N.Y.

The Notice of Investigation was published in the FEDERAL REGISTER on March 17, 1976 (43 FR 11277). No public hearing was requested and none was held.

On January 27, 1976, the Department issued a certification of eligibility to apply for adjustment assistance for all workers at the Brooklyn, N.Y., plant of the Imperial Pants Co. All workers separated from employment at Imperial Pants on or after October 14, 1974 (impact date) and before January 27, 1978 (expiration date of the certification) would have been covered under TA-W-286.

Since Imperial Pants Co. ceased operations in October 1977 during the existence of an active certification; a new investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C., this 26th day of October 1978.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 78-31155 Filed 11-2-78; 8:45 am]

[4510-28-M]

[TA-W-3450]

INTERLAKE, INC., CHICAGO, ILL.

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3450: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on March 30, 1978, in response to a worker petition received on March 10, 1978, which was filed by the United Steelworkers of America on behalf of workers and former workers producing molten iron at the Chicago, Ill., plant of Interlake, Inc.

The Notice of Investigation was published in the FEDERAL REGISTER on April 25, 1978 (43 FR 17551). No public hearing was requested and none was held.

On May 20, 1977, the Department denied the workers of Interlake's Chicago, Ill., plant eligibility to apply for adjustment assistance (TA-W-1477).

The determination was based upon information obtained principally from officials of Interlake, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated.

The Department's investigation revealed that the average number of production workers employed at Interlake's Chicago, Ill., plant increased in each quarter compared to the same quarter of the previous year during the period from January 1976 through June 1978. The average weekly hours worked per employee did not change significantly during this period. There is no immediate threat of separation to workers at the Chicago plant.

CONCLUSION

After careful review, I determine that all workers of the Chicago, Ill., plant of Interlake, Inc., are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 26th day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-31171 Filed 11-2-78; 8:45 am]

[4510-28-M]

INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B or 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 17, 1978.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 17, 1978.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 25th day of October 1978.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Asarco, Inc. (USWA)	Hayden, Ariz	Oct. 19, 1978	Oct. 16, 1978	TA-W-4,289	Smeltering of copper concentrates.
Dan River, Inc. (workers)	Clanton, Ala	Oct. 17, 1978	Oct. 11, 1978	TA-W-4,290	Corduroy material.
Fairfield Mills of Connecticut, Inc. (workers).	Stamford, Conn	Oct. 23, 1978	Oct. 19, 1978	TA-W-4,291	Men's and boys' sweaters.
Fitchburg Yarn Co. (ACTWU)	Fitchburg, Mass	Oct. 24, 1978	Oct. 23, 1978	TA-W-4,292	Acrylic and other manmade fiber yarns.
Freeland Manufacturing Co. (ACTWU).	Freeland, Pa	do	do	TA-W-4,293	Down jackets and jeans for men, women and children.
International Hat Co. (workers)	Lutesville, Mo	Oct. 23, 1978	Oct. 19, 1978	TA-W-4,294	Men's wool, cotton and polyester hats and caps for winter and summer.
Jacoby-Bender, Inc., Bronx Leather Factor (company).	Bronx, N.Y	do	Oct. 17, 1978	TA-W-4,295	Leather watch straps.
Rockwell International Corp., Admiral Group (workers).	Long Island City, N.Y	do	Oct. 20, 1978	TA-W-4,296	Sell and distribute parts and also serves as an electronic service center.
Uniroyal, Inc. (Labor Council)	Eau Claire, Wis	do	Oct. 11, 1978	TA-W-4,297	Passenger car tires, truck tires, off the road tires, etc.

[FR Doc. 78-31167 Filed 11-2-78; 8:45 am]

[4510-28-M]

INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Sub-

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part B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 17, 1978.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 17, 1978.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C., this 26th day of October 1978.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Brockway Glass Co., Inc. (workers)	Clarksburg, W. Va	Oct. 26, 1978	Oct. 26, 1978	TA-W-4, 298	Glass tableware.
Louis Goldsmith, Inc., (ACTWU)	Philadelphia, Pa	Oct. 24, 1978	Oct. 23, 1978	TA-W-4, 299	Men's tailored clothing.
Rockwell International Corp., Admiral Group (workers).	San Antonio, Tex	Oct. 25, 1978	do	TA-W-4, 300	Warehouse, office, service department and distribution of TV's and stereos.
Do	Houston, Tex	do	do	TA-W-4, 301	Sales office and service repair for TV's and appliances.
Rotary Machine Co. (company)	Nashville, Tenn	do	Oct. 3, 1978	TA-W-4, 302	French cord binding and vinyl binding for shoes.
J. P. Stevens Co., Rock Hill Industrial Plant (workers).	Rock Hill, S.C	do	Oct. 23, 1978	TA-W-4, 303	Denim fabrics.

[FR Doc. 78-31168 Filed 11-2-78; 8:45 am]

[4510-28-M]

INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 17, 1978.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 17, 1978.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 2000 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 24th day of October 1978.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Lenoir/Hickory Knitting Mills, Inc. (company).	Lenoir, N.C	Oct. 19, 1978	Oct. 13, 1978	TA-W-4,283	Ladies' knit nylon polyester & orlon acrylic sweaters.
Lenoir/Hickory Knitting Mills, Inc. (company).	New York, NY	do	do	TA-W-4,284	Corporate headquarters.
Novelty Footwear, Inc. (Retail Clerk International Union).	Port Jervis, N.Y	Oct. 20, 1978	Oct. 17, 1978	TA-W-4,285	Women's non-rubber footwear.
Rockwell International, Admiral Group, San Francisco Sales & Service (company).	Brisbane, Calif	do	Oct. 18, 1978	TA-W-4,286	Serves as a distributor service repair for televisions.
Salvatori Corporation (International Leather Goods, Plastics & Novelty Workers Union).	Atlanta, Ga	do	Oct. 13, 1978	TA-W-4,287	Men's belts, wallets, key chains, etc.
Teletype Corporation (IBEW)	Little Rock, Ark	do	Oct. 16, 1978	TA-W-4,288	Teletype machines for data processing.

[FR Doc. 78-31169 Filed 11-2-78; 8:45 am]

[4510-28-M]

[TA-W-3970]

JEAN FASHIONS, INC., PATERSON, N.J.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3970: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on July 13, 1978, in response to a worker petition received on July 10, 1978, which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' dresses at Jean Fashions, Inc., Paterson, N.J.

The Notice of Investigation was published in the FEDERAL REGISTER on July 28, 1978 (43 FR 32885-86). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Jean Fashions, Inc., its customers (manufacturers), the U.S. Department of Commerce, the U.S. International Trade Commission, the National Cotton Council of America, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

> That increases of imports of articles like or directly competitive with articles produced by the firm or subdivision have contributed importantly to the total or partial separation, or threat thereof, and to the absolute decline in sales or production.

A survey of Jean Fashions' major manufacturers in 1976 and 1977 indicated that none of the manufacturers decreased purchases from the subject firm while increasing purchases of imports. Although Jean Fashions' sales declined in 1977 as compared to 1976, the manufacturers who decreased purchases from the subject firm reported that they did not purchase any imports or use foreign contractors. Sales by Jean Fashions then increased in the first 6 months of 1978 compared to the like period of 1977.

CONCLUSION

After careful review, I determine that all workers of Jean Fashions, Inc., Paterson, N.J., are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 26th day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-31156 Filed 11-2-78; 8:45 am]

[4510-28-M]

[TA-W-3920]

KENNECOTT COPPER CO. CORP., TINTIC DIVISION, EUREKA, UTAH

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3920: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on June 29, 1978, in response to a worker petition received on June 29, 1978, which was filed by the United Steelworkers of America on behalf of workers and former workers producing zinc ore and concentrate at the Tintic Division of Kennecott Copper Co. Corp., Eureka, Utah. During the course of the investigation, it was established that only the Bergin mine and concentrator of the Tintic Division produced zinc and that lead was also mined at the Bergin mine and concentrator.

The notice of investigation was published in the FEDERAL REGISTER on July 11, 1978 (43 FR 29851). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Kennecott Copper Co. Corp., the U.S. Department of Commerce, the U.S. International Trade Commission, the U.S. Department of the Interior, *The American Metal Market, Metal Bulletin, Metals Week,* industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of slab zinc increased from 380,437 short tons in 1975 to 714,489 short tons in 1976 before declining to 555,147 short tons in 1977. Imports increased from 121,120 short tons in the first quarter of 1977 to 155,998 short tons for the same period in 1978. The import to domestic production ratio increased from 76.7 percent in 1975 to 127.0 percent in 1976 and then to 127.9 percent in 1977. The import to domestic production ratio increased from 94.0 percent in the first quarter of 1977 to 152.1 percent for the same period in 1978.

Imports of zinc are affected by the differential between the domestic price of zinc established by U.S. producers and the price established by the LME (London Metal Exchange). When the LME price drops more than the estimated transportation cost of 5 cents per pound below the producers' price, the demand for imported zinc increases. Except for brief periods in the spring of 1976 and in March 1977, the price differential between U.S. producers and the LME has exceeded 5 cents per pound. The average U.S. producer price for zinc was 7.6 cents higher than the average LME zinc price in 1977 and 7.1 cents higher in the first quarter of 1978. This is well above the 5-cent limit at which domestic suppliers can remain competitive. Consequently, in the first quarter of 1978 when many domestic zinc producers curtailed production because of the depressed market price of zinc, imports of slab zinc increased 28.8 percent when compared to the same period in 1977.

The price which Tintic Division received for the zinc concentrates it sold was tied to the U.S. producers' price for refined zinc by a long term contract with Tintic's only customer. When the price fell below Tintic's unit production cost, the company decided to close the Bergin mine rather than continue to incur losses.

U.S. imports of refined and recovered lead increased from 101 thousand short tons in 1975 to 147 thousand short tons in 1976 and then increased to 264 thousand short tons in 1977. Imports increased from 47 thousand short tons in the first quarter of 1977 to 66 thousand short tons for the same period in 1978. The import to domestic

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production ratio increased from 7.8 percent in 1975 to 10.7 percent in 1976 and then to 19.7 percent in 1977. The import to domestic production ratio increased from 14.1 percent in the first quarter of 1977 to 19.5 percent for the same period in 1978.

Imports of lead are affected by the differential between the domestic producers' price and the price of lead on the London Metal Exchange (LME). Generally, prices charged by domestic producers range from 2 to 4 cents per pound above LME prices. When the LME price drops more than the 2 to 4 cents per pound below the domestic producer's price, there is increased demand for imported lead. In August 1977 there was a 6-cent difference in lead prices (31 cents by U.S. producers versus 25 cents by the LME), which may have prompted some U.S. customers to purchase abroad. Also from February-April 1978 lead prices on the LME have ranged from 6.5 to 7.0 cents per pound lower than those charged by U.S. producers. Consequently, imports of refined and recovered lead increased 79.6 percent from 1976 to 1977 and 40.4 percent in the first quarter of 1978 when compared to the same period in 1977, while domestic production of lead has remained fairly constant in 1977 and in the first quarter of 1978.

Lead and zinc were mined together, since both were extracted from the same ore. The price which Tintic Division received for the lead concentrates it sold was tied to the U.S. producers' price for refined lead. The company decided that price was too low to offset the losses it was incurring from zinc sales, and the Bergin mine was closed.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with the lead and zinc mined and processed at the Bergin mine and concentrator of the Tintic Division of Kennecott Copper Co. Corp., Eureka, Utah, contributed importantly to the decline in sales and production and to the total or partial separation of workers at those facilities. In accordance with the provisions of the Act, I make the following certification:

All workers at the Bergin mine and concentrator of the Tintic Division of Kennecott Copper Corp., Eureka, Utah, who became totally or partially separated from employment on or after March 1, 1978, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 26th day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-31157 Filed 11-2-78; 8:45]

[4510-28-M]

[TA-W-3666]

NATALIE ANN FASHIONS, INC., UNION CITY, N.J.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3666: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 8, 1978 in response to a worker petition received on April 28, 1978, which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' winter coats at Natalie Ann Fashions, Inc., Union City, N.J. The investigation revealed that ladies' spring coats and winter coats are produced.

The Notice of Investigation was published in the FEDERAL REGISTER on May 28, 1978 (43 FR 22793). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Natalie Ann Fashions, Inc., its customers (manufacturers), the U.S. Department of Commerce, the U.S. International Trade Commission, the National Cotton Council of America, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the criteria have been met.

U.S. imports of women's, misses', and children's coats and jackets increased from 2252 thousand dozen in 1976 to 2723 thousand dozen in 1977. Imports declined from 590 thousand dozen in the first quarter of 1977 to 572 thousand dozen in the first quarter of 1978. The ratio of imports to domestic production increased from 48.3 percent in 1976 to 54.9 percent in 1977.

The Department conducted a survey of the principal manufacturers for which Natalie Ann Fashions, Inc. worked in 1976 and 1977. A manufacturer that accounted for a majority at Natalie Ann's sales in 1976 and 1977 reduced purchases of women's coats from Natalie Ann Fashions, Inc., and began purchasing imported women's coats in the period June 1, 1977 through May 31, 1978.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increased imports of articles like or directly competitive with the ladies' coats produced at Natalie Ann Fashions, Inc., Union City, N.J., contributed importantly to the decline in sales and to the separation of workers at that plant. In accordance with the provisions of the Act, I make the following certification:

All workers of Natalie Ann Fashions, Inc., Union City, N.J., who became totally or partially separated from employment on or after November 8, 1977, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 30th day of October 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-31158 Filed 11-2-78; 8:45 am]

[4510-28-M]

[TA-W-3238]

NEWMONT EXPLORATION, LTD., SPOKANE, WASH.

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3238: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on February 23, 1978, in response to a worker petition received on February 14, 1978, which was filed on behalf of workers and former workers performing mineral exploration work at Newmont Exploration, Ltd., in Spokane, Wash. During the course of the investigation it was revealed that workers at the Spokane, Wash., facility were engaged in exploration for uranium.

The Notice of Investigation was published in the FEDERAL REGISTER on March 14, 1978 (42 FR 10650). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Newmont Mining Corp., Newmont Exploration Ltd., the U.S. Department of Interior, the U.S. Department of Commerce, the U.S. International Trade Commission, the American Bureau of Metal Statistics, *Metals Week, Metal Bulletin*, industry analysts, and Department files.

Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

U.S. imports of uranium increased from 1,100 short tons in 1975 to 2,900 short tons in 1976 and increased to 4,000 short tons in 1977. The ratio of imports to domestic production increased from 9.5 percent in 1975 to 22.8 percent in 1976 and to 28.6 percent in 1977.

Although imports of uranium increased from 1975 to 1976 and from 1976 to 1977, U.S. production also increased during the same period. U.S. production is expected to continue increasing, in response to demand which, it is anticipated, will rise at an annual rate of 15 percent through 1985. Exploration for uranium reached an all-time high in 1977, according to the U.S. Department of the Interior. This is partly due to rapidly escalating prices for uranium in the last 4 years. However, there has been a noticeable absence of major discoveries in new districts. Deposits tend to be at greater depths and of lower grades than existing reserves. Deeper drilling has required larger and heavier rigs. These heavier rigs are in short supply due to the upsurge in drilling by the oil and gas industry.

Exploration expenses have increased due to the need for deeper drilling, and higher labor and equipment costs. These factors combined with the lack of new discoveries have acted to restrict the extent of uranium exploration activity in the United States.

The Spokane, Wash., facility of Newmont exploration was a temporary site established to conduct an 18-24 month uranium exploration project for the Dawn Mining Co., a subsidiary of Newmont Mining Corp. The project was disbanded in December 1977 after no uranium had been discovered.

CONCLUSION

After careful review, I determine that all workers of the spokane, Wash., facility of Newmont Exploration, Ltd., be denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 30th day of October 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-31170 Filed 11-2-78; 8:45 am]

[4510-28-M]

[TA-W-3236 and 3237]

NEWMONT EXPLORATION, LTD., TUCSON, ARIZ. AND ELKO, NEV.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3236 and 3237: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on February 23, 1978, in response to a worker petition received on February 14, 1978, which was filed on behalf of workers and former workers performing mineral exploration work at the Tucson, Ariz., and Elko, Nev., facilities of Newmont Exploration, Ltd. During the course of the investigation, it was revealed that Tucson and Elko facilities are engaged in exploration for copper, zinc, and other metals.

The Notice of investigation was published in the FEDERAL REGISTER on March 14, 1978 (42 FR 10650). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Newmont Mining Corp., Newmont Exploration, Ltd., the U.S. Department of Interior, the U.S. Department of Commerce, the U.S. International Trade Commission, the American Bureau of Metal Statistics, *Metals Week, Metal Bulletin*, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

Copper and zinc combined constitute a substantial proportion of the domestic revenues of Newmont's parent firm, Newmont Mining Corp., with copper being the single most important mineral affecting the operations of Newmont Exploration.

United States imports of refined copper increased 161.2 percent from 147 thousand short tons in 1975 to 384 thousand short tons in 1976 before increasing 1.8 percent to 391 thousand short tons in 1977. The ratio of imported refined copper to domestic production increased from 8.6 percent in 1975 to 21.0 percent in 1976, then increased to 22.2 percent in 1977.

U.S. imports of slab zinc increased from 380,437 short tons in 1975 to 714,489 short tons in 1976 and then declined to 555,147 short tons in 1977. The ratio of imports to domestic production increased from 76.7 percent in 1975 to 127.0 percent in 1976 and to 127.9 percent in 1977.

Imports of both zinc and copper are affected by the differential between the domestic producers price for those commodities and their respective prices on the London Metals Exchange (LME). Domestic suppliers of zinc can remain competitive with foreign suppliers as long as the domestic producers price is within 5 cents of the LME price.

In the fourth quarter of 1976, the LME price for zinc was 8.6 cents lower than the domestic producers' price for zinc. The average LME price for zinc in 1977 was 7.6 cents lower than the average domestic producers' price for zinc in 1977. During several months of 1977, the price differential was closer to 10 cents.

With respect to copper, when the LME price drops more than the estimated transportation costs of 5-8 cents per pound below the domestic producers' price, the demand for imported copper increases. The yearly average LME price for copper in 1977 was 10 cents below the yearly average domestic producers' price in 1977. In July and August 1977, the LME price was almost 12 cents below the domestic producers' price.

Another factor affecting the price for both zinc and copper are high inventory levels: An oversupply of zinc in 1975 and 1976, coupled with the slack demand for zinc-based products in those years, contributed to record inventory levels for this commodity. Inventories of domestic and imported zinc on consignment at smelters increased from 42,897 short tons in December 1974 to 67,449 short tons in 1975 and to 88,807 short tons in 1976.

While imports of refined copper had increased by 161 percent in 1976 compared to 1975 and increased 2 percent in 1977 compared to 1976, domestic demand increased at only a fraction of that rate. Inventory levels of domestic and imported copper at domestic refineries in December 1976 were 31.4 percent above December 1975 levels and were 143.2 percent above December 1974 levels. In each month during the January-November 1977 period, inventories were above respective levels in 1976.

Abundant supplies of both zinc and copper in the foreseeable future provide no reason for domestic consumers of zinc and/or copper to maintain ties with domestic producers for purposes of a guarantee against zinc and/or copper shortages.

Newmont Mining and other producers of both zinc and copper lost sales in 1977 because of the excessive inventories of domestic and imported zinc and copper.

Price pressure from imported zinc and copper has reduced the ability to

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profitably mine domestic ore and convert it to zinc concentrate and copper concentrate.

With respect to copper, industry sources state that the weighted average production costs of the lowest cost domestic copper mines are 63 cents per pound, while the weighted average costs for the highest cost domestic copper mines are $1.05 per pound. Thus, with a current market price of 60 cents per pound domestic producers lose, on the average, 3 to 45 cents on each pound of copper they chose to sell.

The majority of copper revenues realized by the parent firm, Newmont Mining Corp., are derived from Newmont's wholly owned subsidiary, Magma Copper Co., with mines and processing facilities at San Manuel and Superior, Ariz. Some copper and zinc revenues are derived from Newmont's 80-percent-owned subsidiary, Idarado Mining Co., Ouray, Colo.

Workers at the San Manuel and Superior, Ariz., facilities of Magma Copper Co. engaged in the production of copper were certified eligible to apply for adjustment assistance by the Department on December 21, 1977 (TA-W-2414 and 2415, respectively). Workers at the Ouray, Colo., facility of Idarado Mining Co. engaged in the production of zinc and copper were certified eligible to apply for adjustment assistance by the Department on May 8, 1978 (TA-W-2701).

The decision to lay off workers and curtail mining operations at both Arizona locations of Magma Copper Co., Newmont Mining Corp.'s largest domestic copper producing subsidiary and at Idarado Mining Co. in 1977 and 1978, was based principally on an attempt by the parent corporation to minimize losses which the company could not avoid were it to operate at normal production levels at current market prices for copper and zinc.

The function of Newmont Exploration, Ltd., is to search for and identify new and existing properties in the United States which promise exploitable deposits of copper, zinc, and other hard minerals to replace those which have been mined in previous years. In those years when copper and zinc prices are depressed to the point where Newmont Mining Corp.'s major copper producing operations, Magma Copper Co. in San Manuel, Ariz., and Superior, Ariz., and Idarado copper and zinc operations are operating at best at a break-even position, Newmont cannot justify expenditures to replace the depletable minerals which are the cause of the company losing money. As sales decreased in 1977 compared with 1976 in reaction to the depressed price of copper and zinc, Newmont Mining Corp. has attempted to reduce operational and overhead expenditures. Because all domestic exploration activity conducted by Newmont Exploration, Ltd., is financed by revenues generated from the sale of copper and zinc as well as quantities of other minerals, a decision was made to layoff employees at Newmont Exploration, Ltd.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with copper and zinc produced by Newmont Mining Corp. contributed importantly to the total or partial separation of workers at the Tuscon, Ariz., and Elko, Nev., facilities of Newmont Exploration, Ltd. In accordance with the provisions of the Act, I make the following certification:

All workers at the Tucson, Ariz., and Elko, Nev., facilities of Newmont Exploration, Ltd., who became totally or partially separated from employment on or after September 1, 1977, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 30th day of October 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-31159 Filed 11-2-78; 8:45 am]

[4510-28-M]

[TA-W-3528]

PORI, INC., SPARROWS POINT, MD.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3528: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on April 18, 1978, in response to a worker petition received on April 10, 1978, which was filed by the United Steelworkers of America on behalf of workers and former workers reclaiming rolling oils at PORI, Inc., Baltimore, Md. The investigation revealed that the petitioners' plant was the Sparrows Point, Md., facility of Pori, Inc. Besides reclaiming rolling oils, the workers at this facility produce a variety of specialized rolling mill lubricants and fatty acids.

The Notice of Investigation was published in the FEDERAL REGISTER on May 2, 1978 (43 FR 18789). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of PORI, Inc., industry sources, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

With respect to workers producing rolling and reclaimed oils, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threats thereof, and to the absolute decline in sales or production.

The petitioner alleges that imports of steel have contributed to the separations of workers at PORI, Inc. Imported steel cannot be considered to be like or directly competitive with rolling and reclaimed oils. Imports of rolling and reclaimed oils must be considered in determining import injury to workers reclaiming and producing rolling oils at PORI, Inc.

The investigation revealed that U.S. imports of rolling and reclaimed oils are negligible and not significant in terms of trade according to industry and government sources.

With respect to workers producing fatty acids, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That sales or production, or both, of the firm or subdivision have decreased absolutely.

The investigation further revealed that both sales and production of fatty acids in terms of both quantity and value increased absolutely in 1977 compared to 1976 and in the first half of 1978 compared to the first half of 1977.

Conclusion

After careful review I determine that all workers of the Sparrows Point, Md., facility of PORI, Inc., are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed in Washington, D.C., this 30th day of October 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-31160 Filed 11-2-78; 8:45 am]

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[4510-28-M]

[TA-W-3387]

QUALITY GLASS CO., MORGANTOWN, W. VA.

Affirmative Determination Regarding Application for Reconsideration

On October 4, 1978, one of the petitioners for workers and former workers of Quality Glass Co. requested administrative reconsideration of the Department of Labor's negative determination regarding eligibility to apply for worker adjustment assistance. This determination was published in the FEDERAL REGISTER on September 8, 1978, (43 FR 40080).

The petitioner cites new evidence that imports of glass lamp products especially from Mexico and Poland have resulted in lower sales of Quality Glass Co. products and implies that the Department's survey of Quality Glass Co.'s customers as part of the original investigation was inadequate.

Conclusion

After review of the application, I conclude that the claims of the petitioner are of sufficient weight to justify reconsideration of the Department of Labor's prior decision.

The application is, therefore, granted.

Signed at Washington, D.C., this 30th day of October 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-31161 Filed 11-2-78; 8:45 am]

[4510-28-M]

[TA-W-3604]

REGAL FASHIONS CO., PATERSON, N.J.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3604: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on May 8, 1978, in response to a worker petition received on April 28, 1978, which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' jackets and spring coats at Regal Fashions Co., Paterson, N.J.

The Notice of Investigation was published in the FEDERAL REGISTER on May 26, 1978 (43 FR 22793). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Regal Fashions, its customers (manufacturers), customers of the manufacturers, the U.S. Department of Commerce, the U.S. International Trade Commission, the National Cotton Council of America, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met.

That increases of imports of articles like or directly competitive with articles produced by the firm or subdivision have contributed importantly to the total or partial separation, or threat thereof, and to the absolute decline in sales or production.

The Department conducted a survey of principal manufacturers who contracted work with Regal in 1976 and 1977. Manufacturers that accounted for 100 percent of sales in 1976 did not purchase any imported ladies' jackets and spring coats or use foreign contractors in 1977. One manufacturer's annual sales of ladies' jackets and spring coats declined in 1977 compared to 1976. A sample of that manufacturer's customers were also surveyed and they reduced purchases of imported ladies' jackets and spring coats and reduced purchases from the manufacturer in 1977 compared to 1976.

Conclusion

After careful review, I determine that all workers of Regal Fashions Co., Paterson, N.J., are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 26th day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-31162 Filed 11-2-78; 8:45 am]

[4510-28-M]

[TA-W-4245]

ROCKWELL INTERNATIONAL CORP., ADMIRAL GROUP, CHICAGO, ILL.

Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 4, 1978, in response to a worker petition received on October 2, 1978, which was filed on behalf of workers and former workers providing engineering functions related to the production of color televisions at the Chicago, Ill., plant of Rockwell International Corp., Admiral Group.

The Notice of Investigation was published in the FEDERAL REGISTER on October 20, 1978 (43 FR 49060). No public hearing was requested and none was held.

The petitioning group of workers in this case is covered under certification TA-W-1571 issued on May 16, 1977. Since all workers separated, totally or partially, from the Chicago, Ill., plant of Rockwell International Corp., Admiral Group, on or after November 25, 1975 (impact date) and before May 16, 1979 (expiration date of the certification) are covered, a new investigation would serve no purpose.

Consequently, the investigation has been terminated.

Signed at Washington, D.C., this 27th day of October 1978.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 78-31163 Filed 11-2-78; 8:45 am]

[4510-28-M]

[TA-W-3676]

SNAPPY GARMENTS MFG. CO., INC., EAST NEWARK, N.J.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3676: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 8, 1978, in response to a worker petition received on April 28, 1978, which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' raincoats at Snappy Garments Manufacturing Co., Inc., East Newark, N.J. The investigation revealed that ladies' coats and raincoats are produced.

The Notice of Investigation was published in the FEDERAL REGISTER on May 26, 1978 (43 FR 22793). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Snappy Garments Manufacturing Co., Inc., its customers (manufacturers), the U.S. Department of Commerce, the U.S. International Trade Commission, the National Cotton Council of America, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of

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eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the act must be met. It is concluded that all of the requirements have been met.

U.S. imports of women's, misses', and children's coats and jackets increased from 2,252 thousand dozen in 1976 to 2,723 thousand dozen in 1977. Imports declined from 590 thousand dozen in the first quarter of 1977 to 572 thousand dozen in the first quarter of 1978. The ratio of imports to domestic production increased from 48.3 percent in 1976 to 54.9 percent in 1977.

U.S. imports of women's, misses', and children's raincoats decreased from 261 thousand dozen in 1976 to 242 thousand dozen in 1977. Imports increased from 84 thousand dozen in the first quarter of 1977 to 129 thousand dozen in the first quarter of 1978. The ratio of imports to domestic production decreased from 45.0 percent in 1976 to 40.3 percent in 1977.

The Department conducted a survey of the principal manufacturers for which Snappy Garments Manufacturing Co., Inc. worked in 1976 and 1977. Manufacturers that accounted for a majority of sales in 1976 reduced purchases from Snappy Garments and increased purchases of imported ladies' coats and raincoats in 1977 compared to 1976.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increased imports of articles like or directly competitive with the ladies' coats and raincoats produced at Snappy Garments Manufacturing Co., Inc., East Newark, N.J. contributed importantly to the decline in sales and to the separation of workers at that firm. In accordance with the provisions of the act, I make the following certification:

All workers of Snappy Garments Manufacturing Co., Inc., East Newark, N.J. who became totally or partially separated from employment on or after June 1, 1977 and before May 1, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974. All workers separated on or after May 1, 1978 are denied eligibility to apply for adjustment assistance.

Signed at Washington, D.C. this 26th day of October 1978.

James F. Taylor,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-31164 Filed 11-2-78; 8:45 am]

[3510-12-M]

NATIONAL ADVISORY COMMITTEE ON OCEANS AND ATMOSPHERE

MEETING

Pursuant to section 10(a)(2), of the Federal Advisory Committee Act, 5 U.S.C. (App. 1976), notice is hereby given that the National Advisory Committee on Oceans and Atmosphere (NACOA) will hold a 2-day meeting on Monday and Tuesday, November 20-21, 1978. The sessions will be open to the public and will be held in Room 416 of Page Building Number 1, 2001 Wisconsin Avenue NW., Washington, D.C. The Monday session will begin at 9 a.m.; the session on Tuesday at 8 a.m.

The Committee, consisting of 18 non-Federal members, appointed by the President from State and local government, industry, science, and other appropriate areas, was established by the Congress by Public Law 95-63, on July 5, 1977. Its duties are to: (1) undertake a continuing review, on a selective basis, of national ocean policy, coastal zone management, and the status of the marine and atmospheric science and service programs of the United States; (2) advise the Secretary of Commerce with respect to the carrying out of the programs of the National Oceanic and Atmospheric Administration; and (3) submit an annual report to the President and to the Congress setting forth an assessment on a selective basis, of the status of the Nation's marine and atmospheric activities, and submit such other reports as may from time to time be requested by the President or the Congress.

The tentative meeting schedule follows:

November 20, 1978

9 a.m.—Plenary Session (Room 416, Page Bldg. 1):
Plans for meeting.

9:15 a.m.—Working Group Sessions:
Ocean Use Panel (Room 416, Page Bldg. 1), Dr. Evelyn Murphy, Chairman.
Coastal Zone Management Legislation.
Research and Development Panel (Room 401, Page Bldg. 2), Dr. John Knauss, Chairman.
Weather and Climate Panel (Room 438, Page Bldg. 1), Dr. Werner Baum, Chairman.

12 noon—Lunch.

1:30 p.m.—Plenary Session (continued) (Room 416, Page Bldg. 1):
The role of government in meeting national needs for an ocean technology base, Dr. George Mechlin, Vice President for Research, Westinghouse Electric Co.

3 p.m.—Working Group Sessions (continued):
Ocean Use Panel (Room 416, Page Bldg. 1), Dr. Evelyn Murphy, Chairman.
Research and Development Panel (Room 438, Page Bldg. 1), Dr. John Knauss, Chairman.
Federal Reorganization Panel (Room 401, Page Bldg. 2), Mr. Marne Dubs, Chairman.

5 p.m.—Adjourn.

November 21, 1978

8 a.m.—Plenary Session (Room 416, Page Bldg. 1):
Reports of working group chairman on future plans, Working Group Chairmen.
Discussion of NACOA position on Coastal Zone Management Legislation, Dr. Evelyn Murphy.

10 a.m.—Discussion of NACOA report draft material on Federal reorganization, Mr. Marne Dubs.

3 p.m.—Adjourn.

Persons desiring to attend will be admitted to the extent seating is available. Persons wishing to make formal statements should notify the Chairman in advance of the meeting. The Chairman retains the perogative to impose limits on the duration of oral statements and discussions. Written statements may be submitted before or after each session.

Additional information concerning this meeting may be obtained through the Committee's Executive Director, Douglas L. Brooks, whose mailing address is: National Advisory Committee on Oceans and Atmosphere, 3300 Whitehaven Street, NW. (Room 434, Page Building No. 1), Washington, D.C. 20235. The telephone number is 254-8412.

Dated: October 31, 1978.

Douglas L. Brooks,
Executive Director.

Samuel H. Walinsky,
Staff Assistant for Administration.

[FR Doc. 78-31192 Filed 11-2-78; 8:45 am]

[3110-01-M]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on October 27, 1978 (44 U.S.C. 3509). The purpose of publishing this list in the Federal Register is to inform the public.

The list includes:

The name of the agency sponsoring the proposed collection of information;

The title of each request received;

The agency form number(s), if applicable;

The frequency with which the information is proposed to be collected;

An indication of who will be the respondents to the proposed collection;

The estimated number of responses;

The estimated burden in reporting hours; and

The name of the reviewer or reviewing division or office.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the clearance office, Office of Management and Budget, Washington, D.C. 20503, 202-395-4529, or from the reviewer listed.

New Forms

NATIONAL TRANSPORTATION SAFETY BOARD

Injury information form NTSB-6120.23 on occasion
Physicians; 300 responses; 300 hours
Strasser, A., 395-6132

OFFICE OF MANAGEMENT AND BUDGET

State and local cost analysis Single-time
State and local governments
Richard Eisinger, 395-3214

NATIONAL TRANSPORTATION SAFETY BOARD

Medical information waiver
NTSB-6120.24
On occasion
Survivors of general aviation aircraft accidents; 200 responses; 200 hours
Strasser, A., 395-6132

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institutes of Health
Clinical, laboratory, and epidemiologic characterization of patients and families at high risk of cancer
Single-time
Members of high risk families or groups; 300 responses; 150 hours
Office of Federal statistical policy and standard
Richard Eisinger, 673-7956

Center for Disease Control
Telephone survey of health hazard evaluation
Requestors and employers
Single-time
Employers and employees who requested health hazard evaluation; 350 responses; 117 hours
Richard Eisinger, 395-3214

Alcohol, Drug Abuse and Mental Health Administration
Role of pediatricians in the delivery of mental health services to children
Single-time
Pediatricians/pediatric practice; 24,000 responses; 900 hours
Richard Eisinger, 395-3214

National Institutes of Health
Evaluation of cancer care coordinating teams, comprehensive cancer care project
On occasion
Cancer patients, their physicians, nurses, significant others; 980 responses; 327 hours
Richard Eisinger, 395-3214

Office of the Secretary
Questionnaire for personal interview with AFDC recipient
OS-11-78
Single-time
AFDC recipients; 750 responses; 750 hours
Reese B. F., 395-3211

Revisions

NATIONAL CREDIT UNION ADMINISTRATION

Financial and statistical report (federally insured State credit unions)
NCUA-5304
Annually
State credit unions; 4,200 responses; 2,100 hours
C. Louis Kincannon, 395-3211

NATIONAL CREDIT UNION ADMINISTRATION

Financial and statistical report
NCUA-5300
Annually
Federal credit unions; 12,700 responses; 6,350 hours
C. Louis Kincannon, 395-3211

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service
Summer food service program study of cost and meal quality
Single-time
Summer program sponsors in the 50 States, D.C. and Puerto Rico; 906 responses; 254 hours
Ellett, C. A., 395-6132

Economics, Statistics, and Cooperatives Service
Quarterly agricultural labor survey
Sample of farmers; 45,400 responses; 15,580 hours
Ellett, C. A., 395-6132

Farm and Rural Development Administration
Long-time farm and home plan
FMHA 431-1
On occasion
Farm and Home Plan; 15,000 responses; 5,000 hours
Ellett, C. A., 395-6132

DEPARTMENT OF DEFENSE

Departmental and other industrial security inspection report
DD-696
On occasion
contractor facility; 20,007 responses; 80,028 hours
Marsha Traynham, 395-3773

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Community planning and development CDBG housing assistance plan (entitlement and SC comprehensive)
Annually
Units of general local government; 2,000 responses; 20,000 hours
Budget review division
Caywood, D. P., 395-4775

DEPARTMENT OF TRANSPORTATION

federal aviation administration
Certification and Operations: Air Travel Clubs Using Large Airplanes (FAR 123)
Annually
Air travel clubs; 480 responses; 1,682 hours
Strasser, A., 395-6132

Extensions

ENVIRONMENTAL PROTECTION AGENCY

Application to discharge wastewater—short form
EPA 7550-6, 8, and 9
On occasion
Any other current and potential dischargers; 30,000 responses; 30,000 hours
Ellett, C. A., 395-6132

NATIONAL SCIENCE FOUNDATION

Report to the President and Congress: Federal support to universities, colleges, and selected nonprofit institutions, fiscal year 1975
NSF 818
Annually
Federal agencies supporting R. & D.; 98 responses; 980 hours
Laverne V. Collins, 395-3214

DEPARTMENT OF AGRICULTURE

Science and Education Administration
Wisconsin forest products price survey forms
Semiannually
Selected Wisconsin primary forest industry and public agencies; 2,862 responses; 716 hours
Ellett, C. A., 395-6132

Office of General Sales Manager
Request for vessel approval (Public Law 480 program)—cotton
CCC—105
On occasion
Shipping agents; representatives of foreign governments; 1,565 responses; 4,695 hours
Ellett, C. A., 395-6132

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Housing Production and Mortgage Credit
Application for section 8 housing assistance payments program—existing housing

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HUD-52515
On occasion
PHAS desiring to administer the section 8 existing housing program; 2,000 responses; 1,000 hours
Budget review division
Caywood, D. P., 395-4775

Housing management
Nonoccupancy assignments under section 235
HUD-9828, 9828A, and 9828B
Monthly
Lender's holding HUD-insured mortgages; 18,000 responses; 16,200 hours
Strasser, A., 395-6132

DAVID R. LEUTHOLD,
Budget and Management Officer.

[FR Doc. 78-3107 Filed 11-2-78; 8:45 am]

[8010-01-M]

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 10450; 811-2499]

AMERICAN MONEY INSTRUMENTS, INC.

Filing of an Application

OCTOBER 25, 1978.

Notice is hereby given that American Money Instruments, Inc. ("Applicant"), One Continental Drive, Valley Forge, Pa. 19482, registered as an open-end, diversified, management investment company under the Investment Company Act of 1940 (the "Act"), filed an application on November 15, 1977, pursuant to section 8(f) of the Act, for an order of the Commission declaring that the Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The Applicant registered under the Act on June 26, 1974, as an open-end, diversified, management company. It states that, as of the date the application was filed, it was an existing Maryland corporation in good standing.

According to the application, Applicant entered into an Agreement and Plan of Reorganization (the "Agreement") dated September 29, 1977, under which substantially all of Applicant's assets would be sold to Merrill Lynch Ready Assets Trust (the "Trust") in exchange for an equivalent value of shares of the Trust, on the basis of relative net asset values on the closing date. The shareholders of Applicant, at a special meeting held on October 27, 1977, approved resolutions, previously adopted by the Applicant's Board of Directors, which, in essence, provided for the execution of the Agreement and certain other events necessary for the winding up of Applicant's affairs. Applicant states that on November 1, 1977, pursuant to the Agreement, substantially all of the assets of Applicant were transferred to the Trust in exchange for shares of beneficial interest in the Trust, and that those shares were contemporaneously distributed to Applicant's shareholders. Applicant states further that, immediately prior to the transfer of assets to the Trust, there were 503,443.025 shares of Applicant's common stock outstanding. The net asset value, in the aggregate, of such shares was $5,034,430.25.

Applicant represents that no brokerage commission was paid on the transfer of assets to the Trust. Applicant states that there are no existing shareholders of Applicant to whom distributions in complete liquidation of their interests have not been made, and that at the time of the filing of this application, Applicant had no shareholders.

Applicant states that it retained $21,046.00 in cash, and that these assets will not be invested in any securities; rather, they will be used to discharge Applicant's remaining liabilities. Applicant states that Articles of Transfer, as required by the Annotated Code of Maryland, were executed on November 1, 1977, by Applicant and the Trust, and were filed and accepted on November 2, 1977.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and that, upon the taking effect of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than November 20, 1978, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-31112 Filed 11-2-78; 8:45 am]

[8010-01-M]

[Rel. No. 20748; 70-6153]

CONSOLIDATED NATURAL GAS CO., ET AL.

Post-Effective Amendment Regarding Open Account Advances to and Acquisition of Long-Term Notes of Subsidiary Company

OCTOBER 27, 1978.

In the matter of Consolidated Natural Gas Company, 30 Rockefeller Plaza, New York, New York 10020; CNG Coal Company; CNG Development Company Ltd.; CNG Producing Company; CNG Research Company; Consolidated Gas Supply Corporation; Consolidated Natural Gas Service Company, Inc.; Consolidated System LNG Company; The East Ohio Gas Company; The Peoples Natural Gas Company; The River Gas Company; West Ohio Gas Company.

Notice is hereby given that Consolidated Natural Gas Company ("Consolidated"), a registered holding company, and its above-named subsidiary companies have filed with this Commission a post-effective amendment to the application-declaration in this proceeding pursuant to sections 6(a), 7, 9(a), 10, and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder regarding certain proposed transactions. All interested persons are referred to the post-effective amendment to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

By orders in this proceeding dated June 5, 1978, and August 15, 1978 (HCAR Nos. 20578 and 20674), Consolidated was authorized to issue and sell short-term notes to banks and commercial paper and to provide financing for certain of its subsidiary companies. Pursuant to the post-effective amendment, Consolidated now proposes to make, from time to time up to May 31, 1979, additional open account advances aggregating up to $10,000,000 to CNG Producing Company in excess of the $4,000,000 of advances authorized in the Commission's order of June 5, 1978, for working capital requirements. Such advances may be made, repaid, and remade as requested by the treasurer of such subsidiary company, upon letter agreement that such open account advances will be repaid on or before a date not more than 1 year from the date of the first advance, with interest at substantially the same effective rate of interest as the related commercial paper or bank borrowings by Consolidated.

Consolidated further intends to make long term loans, aggregating $9,500,000 in excess of the $27,000,000 authorized in the aforesaid order of June 5, 1978, to CNG Producing Company for the purpose of partially financing its 1978 capital expenditures for exploration and development of Gulf offshore leases as called for from time to time in 1978 by the treasurer of such subsidiary company. Consolidated will finance these loans from its own internal cash generation. Accordingly, CNG Producing Company proposes to issue to Consolidated and Consolidated proposes to acquire $9,500,000 principal amount of nonnegotiable, long term notes bearing interest at the rate of 8.25 percent per annum, which rate is predicated on and substantially equal to the effective cost of money to Consolidated through the issuance and sale by Consolidated of its 8¼ percent debentures due June 1, 1997, issued in 1977, such interest to be paid semiannually. The notes will mature as follows: $600,000 in each year 1983 to 1997, inclusive, and $500,000 in 1998.

It is stated that no State or Federal commission, other than this Commission, has jurisdiction over the proposed transactions. The fees and expenses to be incurred in connection with the proposed transactions are estimated not to exceed $350, including $300 for the system service company charges, at cost. All of such fees and expenses are to paid by Consolidated. It is also proposed that the Rule 24 certificates of notification regarding the proposed transactions be filed on a quarterly basis.

Notice is further given that any interested person may, not later than November 21, 1978, request in writing that a hearing be held in respect of such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said post-effective amendment to the application-declaration which he desires to controvert; or he may request that he be notified should the Commission order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date the application-declaration, as now amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-31113 Filed 11-2-78; 8:45 am]

[8010-01-M]

[Rel. No. 10451; 812-4217, et al.]

DAILY INCOME FUND INC., ET AL.

Hearing Cancelled; Order Granting Amended Applications for Exemptions

OCTOBER 26, 1978.

In the matters of Daily Income Fund, Inc., 230 Park Avenue, New York, New York 10017, 812-4217; Dreyfus Money Market Instruments, Inc., 767 Fifth Avenue, New York, New York 10022, 812-4229; Institutional Liquid Assets, Inc., 8700 Sears Tower, Chicago, Illinois 60606, 812-4208; InterCaptial Liquid Asset Fund, Inc., 130 Liberty Street, New York, New York 10006, 812-4230; Merrill Lynch Government Fund, Inc., and Merrill Lynch Institutional Fund, Inc., 100 Federal Street, Boston, Massachusetts 02110, 812-4213; Scudder Cash Investment Trust, 175 Federal Street, Boston, Massachusetts 02110, 812-4200 and Temporary Investment Fund, Inc., and Trust for Short-Term Federal Securities, Suite 204-Webster Building, Concord Plaza, 3411 Silverside Road, Wilmington, Delaware 19810, 812-4173.

Notice of and order cancelling hearing and granting amended applications for exemptions from Rules 2a-4 and 22c-1 under the Act.

In Investment Company Act Release Nos. 9998 (November 8, 1977), 10161 (March 17, 1978), 10000 (November 8, 1977), 10201 (April 12, 1978), 9999 (November 8, 1977), 9992 (November 4, 1977), and 9983 (November 1, 1977), notices were issued of the filing of applications by: (1) Daily Income Fund, Inc.; (2) Dreyfus Money Market Instruments, Inc.; (3) Institutional Liquid Assets, Inc. ("ILA"); (4) InterCapital Liquid Asset Fund, Inc.; (5) Merrill Lynch Government Fund, Inc. (formerly, White Weld Government Fund, Inc.) and Merrill Lynch Institutional Fund, Inc. (formerly, White Weld Money Market Fund, Inc.); (6) Scudder Cash Investment Trust; and (7) Temporary Investment Fund, Inc. ("Temp Fund") and Trust for Short-Term Federal Securities ("Fed Fund") (these nine companies are hereinafter referred to collectively as "Applicants"), respectively.[1] Each of the Applicants, with the exception of Dreyfus Money Market Instruments, Temp Fund and Fed Fund, had requested orders pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act") exempting Applicants from the provisions of section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to permit, generally, the valuation of their portfolio instruments on an amortized cost basis. ILA requested, in addition, that its principal underwriter, Salomon Brothers, be exempted from the provisions of Rule 22c-1, to the extent necessary to permit ILA to value its assets at amortized cost. Dreyfus Money Market Instruments, Inc., requested an order pursuant to section 6(c) of the Act granting an exemption from Rule 22c-1 to permit it to calculate its price per share to the nearest 1 cent on a share value of $1. Temp Fund and Fed Fund requested an order pursuant to section 6(c) of the Act granting an exemption from Rule 2a-4 to permit them to calculate their net asset values per share to the nearest one cent on share values of $1.[2]

The aforementioned notices gave interested persons an opportunity to request a hearing on the respective matters and stated, in each case, that an order disposing of that application would be issued as of course (following the expiration of the various periods specified in the notices) unless the Commission should thereafter order a hearing thereon, either upon request or upon the Commission's own motion. The Dreyfus Corporation and Reserve Management Corporation, registered investment advisers, filed requests for such hearings.

Each of the Applicants describes itself as a "money market" fund. Applicants, as well as certain other "money market" funds, requested ex-

[1] ILA states in its application, as amended, that it is in the process of effecting a reorganization into a new business entity ("Successor"), and requests that the order it seeks be applicable to such Successor. Therefore, for purposes of the orders hereby issued, the term "Applicants," as defined herein, includes ILA and its Successor.

[2] The Commission granted temporary exemptions to each of the Applicants except InterCapital Liquid Asset Fund, Inc. Investment Company Act Release Nos. 10027 (November 28, 1977) and 10161 (March 17, 1978).

emptions in the nature of those described above, to the extent those orders might be necessary, either to permit them to value their assets or to calculate their prices per share in a manner inconsistent with the views of the Commission expressed in Investment Company Act Release No. 9786 (May 31, 1977) ("Release No. 9786"). Release No. 9786, among other things, stated the Commission's views that: (1) it is inconsistent generally with the provisions of Rule 2a-4 under the Act for "money market" funds to value their assets on an amortized cost basis, ignoring market factors, and (2) it is inconsistent with the provisions of Rule 2a-4 under the Act for such funds to "round off" calculations of their net asset values per share to the nearest 1 cent on a share value of $1.

On April 12, 1978, having determined that it was appropriate in the public interest and consistent with the protection of investors to hold a hearing with respect to the applications of the Applicants and those of other "money market" funds requesting similar relief, the Commission, pursuant to section 40(a) of the Act, ordered hearings on such applications, and, pursuant to Rule 10 of the Commission's Rules of Practice, ordered that the applications be joined for hearing, and that such proceedings be consolidated (Investment Company Act Release No. 10201, April 12, 1978).[3]

The Applicants and The Reserve Fund, Inc., Dreyfus Liquid Assets, Inc., and the Dreyfus Corporation (the latter three companies being nonparty participants in the aforementioned hearing, and who are hereinafter referred to as the "Participants") have entered into a joint agreement ("Joint Agreement") whereby Applicants, *inter alia*, agreed to amend their applications in certain respects, and the Participants, *Inter alia*, agreed to withdraw any objections, and to waive any right to object, to the granting of the applications of the Applicants if amended in accordance with the terms of the Joint Agreement.[4]

Notice is hereby given that the Applicants have, in accordance with the provisions of the Joint Agreement, amended their applications to request, pursuant to section 6(c) of the Act, exemptions from the provisions of Rule 2a-4 and Rule 22c-1 under the Act, to permit them to calculate their net asset values or prices, for the purpose of sales, redemptions and repurchases of their shares, to the nearest 1 cent on a share value of $1. In addition, ILA has requested that its principal underwriter, Salomon Brothers, be exempted from the provisions of Rule 22c-1 to the extent necessary to permit ILA's net asset value to be calculated to the nearest 1 cent on a share value of $1.

As summarized in the above-cited prior notices of the applications, Applicants state that investors who purchase their shares desire stable net asset values per share, and a relatively constant return on their investments. Each of the Applicants seeks exemptions which would, in its view, enable it largely to achieve these objectives.

Applicants propose to value their portfolio securities in accordance with the views of the Commission set forth in Release No. 9786. As noted above, in part, Release No. 9786 expressed the view that amortized cost valuation should not be utilized, except with respect to portfolio securities with remaining maturities of 60 days or less and provided that such valuation is determined by the boards of directors to be appropriate.

Rule 22c-1 adopted under the Act provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem, or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. Rule 2a-4 adopted under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution and redemption shall be an amount which reflects calculations made substantially in accordance with the provisions of that Rule, with estimates used where necessary or appropriate. Applicants have requested exemptions from Rule 2a-4 and Rule 22c-1 to enable them to price their shares in the manner described above.

Section 6(c) of the Act provides, in part, that the Commission may, upon application, exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act or the rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants assert that many of their investors require an investment vehicle that offers a constant net asset value per share and a relatively smooth stream of investment income. They state that many of their shareholders would seek other investment alternatives if such investors could not expect ordinarily that shares of Applicants could be purchased and redeemed at constant net asset values per share. Applicants submit that the exemptions they request are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants have amended their applications to eliminate many of the conditions previously contained in their applications. These conditions are summarized in the above-cited notices of the applications. Applicants, in recognition of the fact that, unlike traditional investment companies with equity securities portfolios, they seek to provide investment vehicles having stable prices per share, have amended their applications to provide the following alternative conditions, which conditions were specified in the Joint Agreement, and have agreed that such conditions may be imposed in any order granting the exemptions they have requested:

(1) Each Applicant states that its Board of Directors [Trustees, in the case of a trust], in supervising Applicants' respective operations and delegating special responsibilities involving portfolio management to Applicants' respective investment advisers, undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to assure to the extent reasonably practicable, taking into account current market conditions affecting Applicants' investment objectives, that Applicants' respective prices per share as computed for the purpose of distribution, redemption and repurchase, rounded to the nearest 1 cent, will not deviate from $1;

(2) Each Applicant states that it will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable price per share, and that it will not (i) purchase an instrument with a remaining maturity of greater than 1 year, or (ii) maintain a dollar-weighted average portfolio maturity in excess of 120 days; and

(3) Each Applicant states that its purchases of portfolio instruments, including repurchase agreements, will be limited to specified instruments of specified qualities in the case of all instruments other than U.S. Government issues and U.S. Government agency issues.[5]

[3] That hearing is now scheduled to commence on Nov. 6, 1978.

[4] Applicants filed motions with the Administrative Law Judge assigned to the hearing requesting, *inter alia*, that their applications be severed from the consolidated proceeding. The Administrative Law Judge ordered such severances on Oct. 6, 1978.

[5] With respect to the condition relating to portfolio quality, each Applicant has specified particular quality limitations. These limitations are set forth in the respective applications, as amended. Certain Applicants have agreed to quality limitations which differ in some respects from those set forth in the prior notices of their applica-

Footnotes continued on next page

As stated at note 2 above, all of the Applicants, with the exception of InterCapital Liquid Asset Fund, Inc., were granted temporary exemptions to enable them to utilize amortized cost valuation, or calculate their net asset values per share to the nearest 1 cent on share values of $1, in each case under certain conditions to which they agreed. Those temporary orders were to remain in effect until final disposition of the applications by the Commission, including any subsequent judicial review. Certain Applicants have indicated that, if the Commission grants their applications as amended, a transition period will be necessary to permit Applicants to modify their operations to accommodate the procedures proposed in the applications. Accordingly, certain Applicants have requested that they be permitted to operate pursuant to their temporary orders for various periods of time subsequent to any order granting their applications.[6]

In view of the foregoing, particularly (1) on the basis of the applications as amended in the manner described above, and (2) the agreement of the Participants to withdraw their objections to the granting of the applications without a hearing and to waive any right to object thereto, the Commission finds that a hearing on the Applicants' applications is no longer necessary in the public interest or for the protection of investors, and that the granting of the requested exemptions is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

It is ordered, pursuant to section 38(a) of the Act, and the hearing on the applications of Applicants is hereby canceled, and that the order for a hearing on these applications is hereby rescinded, effective forthwith.

It is further ordered, pursuant to section 6(c) of the Act, that the requested exemptions from the provisions of Rule 22c-1 and Rule 2a-4 promulgated under the Act be, and hereby are, granted, effective forthwith, each subject to the conditions set forth in the respective amended applications and described above.

It is further ordered, pursuant to sections 38(a) and 6(c) of the Act, that the orders temporarily granting Applicants' (other than InterCapital Liquid Asset Fund, Inc.) applications as previously noticed be, and hereby are, extended (to the extent they otherwise will have expired by their terms) for such times as may be necessary for those Applicants affected to modify their operations to implement the pricing procedures set forth in their applications as amended: provided, however, that any such extension shall terminate on February 28, 1979.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-31114 Filed 11-2-78; 8:45 am]

[6] The Division of Investment Management has advised the Commission that no Applicant has asked that the temporary orders be extended beyond Feb. 28, 1979. None of the Applicants objects to such extension of the temporary orders.

Footnotes continued from last page

tions. However, these modifications do not establish quality limitations lower than those to which other Applicants have agreed and which were set forth in the notices of the applications of those other Applicants.

[8010-01]

[Rel. No. 20750; 70-6217]

EASTERN UTILITIES ASSOCIATES, ET AL.

Proposed Issue and Sale of Common Stock at Competitive Bidding by Holding Company, Issue and Sale of Common Stock by One Subsidiary to Holding Company and Purchase of Debenture Bonds by One Subsidiary From a Second Subsidiary

OCTOBER 27, 1978.

In the matter of Eastern Utilities Associates, P.O. Box 2333, Boston, Massachusetts 02107; Brockton Edison Company, 36 Main Street, Brockton, Massachusetts 02403; Montaup Electric Company, P.O. Box 391, Fall River, Massachusetts 02722.

Notice is hereby given that Eastern Utilities Associates ("EUA"), a registered holding company, and two of its electric utility subsidiary companies, Brockton Edison Company ("Brockton") and Montaup Electric Company ("Montaup"), have filed an application-declaration and an amendment thereto with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating sections 6, 7, 9(a), 10, 12(c), 12(d), and 12(f) of the Act and Rules 42(b)(2), 43(a), 44(a) and 50 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

EUA proposes to issue and sell up to 600,000 shares of its common stock (par value $5) by competitive bidding. EUA proposes to apply the net proceeds from such sale to the purchase at the par value of $25 per share of the maximum number of shares of Brockton common stock ("Brockton Stock") so purchasable, rounded to the next higher integral multiple of 1,000 up to a maximum of 468,000 shares or a maximum aggregate par value of $11,700,000.

To the extent that the net proceeds to EUA are less than the amount required for the purchase of the Brockton Stock, the deficiency will be supplied from EUA's treasury. EUA proposes to pledge the Brockton Stock to the First National Bank of Boston as Trustee under EUA's Indenture and Deed of Trust dated as of October 1, 1953, as supplemented securing EUA's Collateral Trust Bonds.

Brockton proposes to apply the proceeds to the purchase of a principal amount of Montaup Debenture Bonds due 2008 (the "Debenture Bonds") equal to the amount of such proceeds. The price to paid by Brockton to Montaup for the Debenture Bonds will be their face value plus accrued interest. The Debenture Bonds will be pledged by Brockton to State Street Bank and Trust Company under Brockton's Indenture of First Mortgage and Deed of Trust dated as of September 1, 1948, as supplemented and modified, securing Brockton's First Mortgage and Collateral Trust Bonds.

Montaup proposes to apply the proceeds to reduce its outstanding short-term debt to banks. At the time of the sale of the Montaup Stock it is expected that Montaup will have approximately $32,000,000 in outstanding short-term debt to banks.

It is stated that the Department of Public Utilities of the Commonwealth of Massachusetts has jurisdiction over various aspects of the proposed transactions, that the Public Utilities Control Authority of the State of Connecticut will be asked to waive any jurisdiction it might have over the proposed transactions and that no other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

The fees and expenses to be incurred in connection with the proposed transactions are $227,930, including $38,600 for legal fees. Fees of counsel for the underwriter to be paid by the successful bidder, are $27,500.

Notice is further given that any interested person may, not later than November 20, 1978, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration, as amended, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should

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be filed with the request. At any time after said date, the application-declaration, as amended, or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-31115 Filed 11-2-78; 8:45 am]

[8010-01-M]

[Rel. No. 10455; 812-4226]

INSURED MUNICIPALS-INCOME TRUST, ET AL.

Filing of Application

OCTOBER 27, 1978.

Notice is hereby given that Insured Municipals-Income Trust (the "Municipal Fund"), Investors' Corporate-Income Trust (the "Corporate Fund"), and Investors' Governmental Securities-Income Trust (the "Government Fund"), registered under the Investment Company Act of 1940 ("Act") as unit investment trusts (collectively referred to herein as the "Funds"), their sponsor, Van Kampen Sauerman, Inc., 208 South La Salle Street, Chicago, Illinois 60604, and a co-sponsor of the Corporate Fund, Dain, Kalman & Quail, Inc. (collectively referred to as the "Applicants"), filed an application on September 22, 1978, and an amendment thereto on October 26, 1978, requesting an order of the Commission amending in the manner described below an earlier order of the Commission dated October 17, 1978 (Investment Company Act Release No. 10442), which earlier order amended an order of the Commission dated January 31, 1978 (Investment Company Act Release No. 10109). These orders pursuant to section 6(c) of the Act exempted from the provisions of section 22(d) of the Act the offer and sale of units of the Funds pursuant to a conversion option (the "Plan"), and pursuant to section 11 of the Act permitted the Funds to offer their units at net asset value plus a fixed dollar sales charge pursuant to the Plan. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Under the Plan, as currently administered, a certificateholder in one of the Funds wishing to dispose of his units in a series of that Fund for which a secondary market is being maintained has the option to convert his units into units of another Fund (e.g., Corporate into Municipal, or Municipal into Government) or the Investors' Municipal-Yield Trust (the "Municipal Yield Fund") of any series for which units are available for sale. Applicants state that the purpose of the Plan is to provide investors in each of the Funds a convenient and less costly means of transferring interests as their investment requirements change. Applicants state that the respective sponsors have indicated that they intend to maintain a market for the units of each series of the respective Funds; however, there is no obligation to maintain such a market. Consequently, the respective sponsors reserve the right to modify, suspend or terminate the Plan at any time without further notice to certificateholders.

Assuming a secondary market exists and units of another Fund or the Municipal Yield Fund are available, a certificateholder who notifies the sponsors of his desire to exercise his conversion option will be mailed a current prospectus for each series in which the certificateholder indicates interest. The certificateholder may then select the series into which he desires his investment to be converted. The conversion transaction will operate in a manner essentially identical to any secondary market transaction, except that the Applicants allow a reduced sales charge for all transactions effected under the Plan. Traditionally, units of the Municipal Fund, the Corporate Fund and the Municipal Yield Fund are repurchased by the sponsors and other underwriters of those Funds at the aggregate offering price per unit of the underlying bonds in the respective Fund Series, and are resold at that price per unit plus a sales charge of 4½ percent of such offering price. Traditionally, units of the Government Fund are repurchased by the sponsor and other underwriters of that Fund at the aggregate offering price per unit of the underlying bonds in the respective Series of that Fund, and are resold at that price per unit plus a sales charge of 3½ percent of such offering price. Except for certain conversions by certificateholders in the Government Fund of their Government Fund units into units of another Fund or the Municipal Yield Fund all resale of units by Applicants under the Plan are effected at the unit offering price of the underlying bonds of the other Fund or the Municipal Yield Fund plus a fixed charge of $15 per unit (or about 1½ percent of such offering price at current market values). The certificateholder receives payment for any excess funds remaining in his account after his investment in one Fund is converted into full units in another Fund or the Municipal Yield Fund.

Applicants hereby seek to extend the Plan to certificateholders of Series 1 and subsequent series (as such series may from time to time be created) of the Municipal Yield Fund, a newly established unit investment trust which is sponsored by Van Kampen Sauerman, Inc. The Municipal Yield Fund is comprised primarily of tax-free municipal bonds. Applicants propose to allow Municipal Yield Fund certificateholders to use the proceeds from the sale of any Municipal Yield Fund units to acquire units in any series or group of series of the Funds, and to have such acquisitions be based on the same terms and be subject to the same conditions as those presented in the original application, as amended. Under the Plan, as it is proposed to apply to conversions by Municipal Yield Fund certificateholders of their units into units of any of the Funds, Municipal Yield Fund certificateholders will be allowed to convert their units into units of any of the Funds at the aggregate offering price per unit of the underlying securities of the Funds plus a fixed charge of $15 per Unit (or about 1½ percent of such offering price at current market values).

Applicants assert that the rationale for allowing certificateholders of the Funds to participate in the Plan and effect Fund transactions at a reduced sales charge is equally applicable to certificateholders of the Municipal Yield Fund. Thus, Applicants argue that certificateholders of the Municipal Yield Fund should be allowed to participate in the Plan and convert their units into units of any of the Funds at a reduced sales charge.

Section 11(c) of the Act provides, among other things, that exchange offers involving registered unit investment trusts are subject to the provisions of section 11(a) of the Act irrespective of the basis of exchange. Section 11(a) of the Act provides, in pertinent part, that it shall be unlawful for any registered open-end company or any principal underwriter for such a company to make, or cause to be made, an offer to the holder of a security of such company or any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of

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the offer have first been submitted to and approved by the Commission.

Section 22(d) of the Act provides, in pertinent part, that no registered investment company or principal underwriter thereof shall sell any redeemable security issued by such company to any person except at a current offering price described in the prospectus. The sales charge described in the prospectus of the Municipal Yield Fund and each of the Funds for effecting regular secondary market purchase and sale transactions is greater than the sales charge which will be applicable to transactions under the Plan. Rule 22d-1 under the Act permits certain variations in sales charges, none of which it is alleged will be applicable to transactions under the Plan.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provision of the Act or of any rule or regulation under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than November 21, 1978, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Applicants at the address stated above. Proof of such service (by affidavit, or in the case of an attorney-at-law by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons, who request a hearing or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-31116 Filed 11-2-78; 8:45 am]

[8010-01-M]

[Rel. No. 20751; 70-6198]

KENTUCKY POWER CO. AND INDIANA & MICHIGAN ELECTRIC CO.

Proposed Acquisition of Power Plant by Holding Company Subsidiary and the Proposed Financing for Such Acquisition

OCTOBER 27, 1978.

Notice is hereby given that Kentucky Power Co. ("KPCo"), 15th and Carter Avenue, Ashland, Ky. 41101; and Indiana and Michigan Electric Co. ("I&M"), 2101 Spy Run Avenue, Fort Wayne, Ind. 46801; electric utility subsidiaries of American Electric Power Co., Inc. ("AEP"), a registered holding company have filed an application-declaration and an amendment thereto with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6(a), 7, 9(a)(1), 10 and 12 of the Act and Rules 43, 45 and 50(a)(2) promulgated thereunder regarding the proposed transaction. All interested persons are referred to the application-declaration, which is summarized below for a complete statement of the proposed transaction.

KPCo is one of the operating companies of the AEP system. It presently owns and operates two generating units with a net capability of 800,000 kilowatts. Presently KPCo serves approximately 132,000 customers in a 5,700 square mile area in the eastern section of Kentucky with an estimated population of 407,000.

KPCo's internal winter peak demand has increased steadily since the completion of its Big Sandy Plant in 1969. It is presently projected that KPCo's winter peak demand will increase so that by the winter of 1981-1982 KPCo will be in a deficient generating position unless it acquires new generating capacity. This deficiency is expected to widen to approximately negative 14 percent by the winter of 1983-1984.

The following table shows KPCo's analysis of future power reserve requirements.

KENTUCKY POWER CO. WINTER PEAK DEMAND, GENERATING CAPABILITY AND RESERVES, 1977-78—1983-84

Year	Winter peak Demand (MW)	GENERATING CAPABILITY (MW) Without KPCo ownership in Rockport plant [1]	GENERATING CAPABILITY (MW) With KPCo ownership in Rockport plant
1977-78.	[2]777	1,060	1,060
1978-79.	852	1,060	1,060
1979-80.	937	1,060	1,060
1980-81.	1,005	1,060	1,060
1981-82.	1,077	1,060	1,255
1982-83.	1,155	1,060	1,450
1983-84.	1,238	1,060	1,450

RESERVE			
Without KPCo ownership		With KPCo ownership	
MW	Percent	MW	Percent
283	36.4	.....	.....
208	24.4	.....	.....
123	13.1	.....	.....
55	5.5	.....	.....
−17	−1.6	178	16.5
−95	−8.2	295	25.5
−178	−14.4	212	17.1

[1] Based on completion of Rockport Unit No. 1 (1300 MW) by winter of 1981-82 and of Rockport Unit No. 2 (1300 MW) by winter of 1982-83, and Kentucky Power Co.'s participation in ownership of Rockport plant to the extent of 15 percent..

[2] Actual.

The Rockport Plant located near the town of Rockport, Indiana is presently under construction by I&M and will consist of two coal-fired generating units, each of 1,300,000 kilowatt capacity. The construction cost of these two units are estimated to total approximately $1,250,000,000, of which approximately $41,000,000, had been incurred by December 31, 1977. Unit No. 1 is presently projected for commercial operation, in the winter of 1981-82 and Unit No. 2 in the winter of 1982-83.

I&M projects that it will need a substantial portion of the Rockport Plant to satisfy its future load requirements. However, I&M projections indicate that a proposed 15 percent participation by KPCo would be acceptable, and would help to reduce the amount of additional capital which I&M would need to raise during the construction period.

It is therefore proposed that KPCo acquire from I&M and that I&M transfer to KPCo, a 15 percent undivided interest as tenant in common in the two Rockport Plant generating units in their present state of construction for an amount equal to 15 percent of I&M's total investment in such units at the time of transfer.

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After KPCo has acquired such 15 percent interest, it will be obliged to pay 15 percent of the subsequent costs incurred to complete the two units.

In order to acquire its initial interest in the Rockport Plant for the period through December 31, 1978, KPCo will either pay approximately $27,000,000 to I&M, or deposit such amount to be used for the payment of the first $27,000,000 of unpaid invoices for materials, supplies or labor in the construction. Thereafter, both KPCo and I&M will furnish funds for the completion of the Rockport Plant in proportion to their respective undivided interests.

KPCo expects to finance its proposed acquisition partially through cash generated through internal sources, partially through common equity investments in it by its parent, AEP, and partially through long-term bank loans.

KPCo proposes to enter into a bank loan agreement ("Agreement") pursuant to which it would borrow up to $100,000,000 to be repayable on or before July 31, 1986, from a group of 16 banks. Such borrowings are to be evidenced by notes of KPCo maturing July 31, 1986 and such notes shall bear interest until the principal shall become due and payable at a rate *per annum* equal to 109 percent of the current prime lending rate in effect from time to time at Manufacturers Hanover Trust Co. with 90 day maturities. KPCo may prepay any and all outstanding notes without penalty.

KPCo will pay to each of the sixteen banks a quarterly commitment fee compiled at the rate of one-half of 1 percent per annum on the daily average unused amount of the commitment of each bank, if any, during the quarterly period. KPCo will not be required to pay any other fees or charges to the banks in connection with the borrowings under the Agreement. No compensatory balances are required in connection with any borrowings proposed under the Agreement.

The Proceeds from the notes are proposed to be used to acquire the 15 percent interest in the Rockport Plant and in connection with KPCo's construction program.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $10,500, including an estimated $5,000 in legal fees.

It is stated that the Kentucky Public Service Commission has jurisdiction over the proposed transactions and that no other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given, That any interested person may, not later than November 20, 1978, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact of law raised by said application-declaration, as amended, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended, or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other actions as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-31111 Filed 11-2-78; 8:45 am]

[8010-01-M]

[Rel. No. 15454; 811-493]

THE MEDIA INVESTMENT CO.

Filing of Application

OCTOBER 27, 1978.

Notice is hereby given that the E. W. Scripps Co. ("Applicant"), the survivor through statutory merger of the Media Investment Co. ("Media"), 1100 Central Trust Tower, Cincinnati, Ohio 45202, has filed an application on August 14, 1978, and an amendment thereto on September 26, 1978, pursuant to section 8(f) of the Investment Company Act of 1940 ("Act") for an order of the Commission declaring that Media has ceased to be an investment company as defined by the Act. Media, formerly an Ohio corporation, is registered under the Act as a closed-end, nondiversified investment management company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The Applicant states that Media registered under the Act on March 7, 1945, and has issued only common stock, such stock having been traded in the over the counter market. The Applicant further states that, prior to its statutory merger with Media (described below), Media had 583,268 of such shares, $1 par value per share, outstanding, and that those shares were held of record by approximately 1,750 shareholders.

According to the application, Media's board of directors recommended to its shareholders that it be merged with and into Applicant (also an Ohio corporation). The shareholders of Media approved the merger transaction at their annual meeting on July 18, 1978; the merger was effected, according to Applicant, on July 27, 1978, and in accordance with an order of the Commission which, inter alia, exempted the merger from the provisions of section 17(a) of the Act (Investment Company Act Rel. No. 10300, June 30, 1978). According to Ohio law, (§ 1701.82, Ohio revised code) Media's separate existence ceased at the time of the effectiveness of the merger.

Applicant states that, according to the terms of the Agreement of Merger ("Agreement"), upon effectiveness of the merger each share of Media's stock was converted into the right to receive $58 in cash in exchange for tender of each such share to the Liquidating Trustee, The First National Bank of Cincinnati, and that Applicant deposited funds to the Liquidating Trust ("Trust") in accordance with the terms of the Agreement. Applicant asserts that, as of September 8, 1978, $3,441,140 remained on deposit with the Liquidating Trustee, and that said sum was in respect of 59,330 common shares of Media stock owned by 327 former Media shareholders. The application further states that among those shareholders are 13 former Media shareholders who have become dissenting shareholders to the merger in accordance with § 1701.85 of the Ohio Revised Code and have demanded "fair cash value" for their shares. Applicant also asserts that an additional seven former Media shareholders dissented to the merger as of the close of business on July 27, 1978, the effective date of the merger, and that Applicant currently holds, in accordance with the terms of the Agreement, $396,430 in respect of the 6,835 common Media shares held by those seven dissenting Media shareholders. That sum, together with the funds held by the Liquidating Trustee as described above, is in the aggregate less than 12 percent of the merger proceeds. According to the application, should any funds in the hands of Liquidating Trustee remain undistributed and unclaimed after a perod of five years from the commencement of the Trust, then those funds shall escheat to the State of Ohio pursuant Ohio law. The application further states that in no instance shall any of the funds in said Trust ever revert to the Applicant. If, one year following the date of the shareholders' approval of the merger, the dissenting shareholders have not been satisfied, the application states that Applicant will transfer to The First National Bank of Cincinnati, as escrow agent, such amount as is necessary to pay any outstanding dissenters' claims, such amount to be no less than $58 per dissenting share. Applicant further states that it will be obligated to pay any dissenting shareholder the amount by which his claim exceeds the $58 per share, should a court of competent jurisdiction find the fair cash value to exceed $58 per share.

The application states that the Liquidating Trust agreement required the Liquidating Trustee to make an initial mailing to each former Media shareholder consisting of forms to instruct such shareholders how to surrender their certificates representing Media shares, together with all necessary transmittal forms. According to the application, the Liquidating Trustee has advised Applicant that it anticipates a second mailing to the former shareholders of Media who have not surrendered their shares for cash, and Applicant has arranged with the Liquidating Trustee to receive monthly lists of former Media shareholders who have not tendered their shares. Applicant states that it will attempt to discover the present whereabouts of such former shareholders, if other than record addresses, for the purpose of enabling the Liquidating Trustee to send duplicate stock transmittal documents to their current addresses.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and that, upon the effectiveness of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than November 21, 1978, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-31117 Filed 11-2-78; 8:45 am]

[8010-01-M]

[Rel. No. 15243A; SR-MSRB-78-10]

MUNICIPAL SECURITIES RULEMAKING BOARD

Correction of Order Approving Amended Proposed Rule Change

OCTOBER 26, 1978.

In FR Doc. 78-30172 appearing at page 49870 in the FEDERAL REGISTER of October 25, 1978, the Commission approved an amended proposed rule change filed by the Municipal Securities Rulemaking Board (the "MSRB"), Suite 507, 1150 Connecticut Avenue NW., Washington, D.C. 20036. The amended proposed rule change altered the MSRB's interdealer uniform practice rule, MSRB rule G-12, to provide that delivery of municipal securities for which a notice of call has been published for less than the entire issue on or prior to the delivery date, as opposed to trade date, does not constitute good delivery unless the securities are identified as "called" at the time of trade. In announcing that approval, Securities Exchange Act Release No. 15243 [Oct. 19, 1978] failed to indicate that the amended proposed rule change is effective with respect to transactions occurring on or after October 26, 1978. The order should read "It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved effective with respect to transactions occurring on or after October 26, 1978."

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-31118 Filed 11-2-78; 8:45 am]

[8010-01-M]

[Rel. No. 15282; SR-NASD-78-7]

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Order Approving Proposed Rule Change

OCTOBER 26, 1978.

On June 23, 1978, the National Association of Securities Dealers, Inc. ("NASD"), 1735 K Street NW., Washington, D.C. 20006, filed with the Commission, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), and Rule 19b-4 thereunder, copies of a proposed rule change to amend section 5 of the NASD Uniform Practice Code (i) to establish the ex-dividend date for stock dividends or stock splits of 25 percent or greater as the first business day after the payable date and (ii) to provide that the ex-dividend date shall be designated by the NASD Uniform Practice Committee for stock dividends or stock splits relating to American Depositary Receipts and foreign securities. The proposed rule change would make the treatment of over-the-counter securities subject to large stock dividends or stock splits consistent with the manner in which the principal national securities exchanges treat listed securities in similar circumstances. The proposed rule Change would also make clear that customers' margin accounts that include a marginable over-the-counter security subject to a large stock dividend or stock split between the record date and payable date will not become deficient solely by reason of such stock dividend or stock split. According to the NASD, the rule provides that the ex-dividend date for American Depositary Receipts and foreign securities is to be established by the NASD Uniform Practice Committee because these issues are subject to foreign regulation and require special coordination of dates.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-14953, July 12, 1978) and by publication in the FEDERAL REGISTER (43 FR 30950, July 18, 1978). Public comments on the proposed rule change were solicited but none were received.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations there under applicable to registered national securities associations, and in particular, the requirements of section 15A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the

V 43 / 214

above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-31119 Filed 11-2-78; 8:45 am]

[8010-01-M]

Rel. No. 10456, 812-4009]

NUVEEN TAX-EXEMPT BOND FUND MEDIUM-TERM (SERIES 1 AND SUBSEQUENT SERIES) AND JOHN NUVEEN & CO., INC.

Filing of Application

OCTOBER 27, 1978.

Notice is hereby given that Nuveen Tax-Exempt Bond Fund-Medium Term (Series 1 and Subsequent Series). (the "Fund"), a unit investment trust registered under the Investment Company Act of 1940 ("Act"), and its sponsor, John Nuveen & Co., Inc. ("Sponsor"), 209 South La Salle Street, Chicago, Ill. 60604, (hereinafter the Fund and the Sponsor are collectively referred to as "Applicants"), filed an application on October 17, 1978, requesting an order of the Commission amending in the manner described below an earlier order of the Commission dated September 14, 1976 (Investment Company Act Release No. 9437, which earlier order pursuant to section 6(c) of the Act exempted Applicants from the provisions of section 14(a) of the Act and exempted the frequency of the distributions of capital gains by the Fund from the provisions of Rule 19b-1 under the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants state that nine separate series of the Fund have been created as of the date of the filing of this application. Each series is governed by the provisions of a trust indenture and agreement ("Indenture") entered into by the Sponsor and a corporation organized and doing business under the laws of the United States or a state thereof, which is authorized under such laws to exercise corporate trust powers and having at all times an aggregate capital, surplus, and undivided profits of not less than $5,000,000 ("Trustee"). Each time a separate series is created and activated a separate Indenture is entered into, and the bonds which comprise its portfolio (or delivery statements relating to contracts for the purchase of such bonds together with funds represented by an irrevocable letter of credit issued by a major commercial bank in the amount required for their purchase) are deposited with the Trustee. Except as to size, number of units and the individual bonds in the portfolio, each series is substantially identical. The Indenture relating to each series provides for the termination of such series no later than December 31 preceding the twentieth anniversary of the execution of such Indenture.

Applicants propose to amend the procedures and objectives of the Fund to allow the creation of either one or two separate trusts in each future series of the Fund. The portfolios of each such trust will be identical to those described in the original application except that one trust may be comprised entirely of federally tax-exempt interest-bearing obligations which will mature by their respective terms between 5 and 15 years from the date of creation of such series (which has been the practice with the first nine "Medium-Term" series portfolios), while the second trust may be comprised of federally tax exempt interest-bearing obligations which will mature by their respective terms from 1 to 8 years from the date of creation of such series (the "Short-Term" portfolio).

Applicants propose that each future series of the Fund will be comprised of a Short-Term portfolio alone, a Medium-Term portfolio alone, or two trusts one of which will have a Short-Term portfolio and the other a Medium-Term portfolio. Applicants state that, in essence, they propose that the current Fund be maintained by that they be permitted to create a Short-Term trust in lieu of a Medium-Term trust or in addition to a Medium-Term trust in future series. If a Short-Term trust is created in a future series, Applicants propose that the Indenture will provide that such Short-Term trust will terminate no later than December 31, preceding the tenth anniversary of the execution of such Indenture.

Applicants contend that since the Short-Term trusts and the combination of Short-Term and Medium-Term trsuts will follow the same operational procedures outlined in the original application for the Medium-Term trusts alone, the statements made in connection with the exemptive request contained in the original application are equally applicable to this request. Furthermore, Applicants state that they believe the proposed changes in the procedures for organization of separate series of the Fund will have no adverse effect in connection with the exemptive order granted on the original application, particularly with regard to the exemption of the frequency of distributions by the Fund of capital gains from the provisions of Rule 19b-1 under the Act.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provisions of the Act or of any rule or regulation under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than November 20, 1978 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Applicants at the address stated above. Proof of such service (by affidavit, or in the case of an attorney-at-law by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-31120 Filed 11-2-78; 8:45 am]

[8010-01-M]

[Release No. 15280; SR-PHLX-78-13]

PHILADELPHIA STOCK EXCHANGE, INC.

Order Approving Proposed Rule Change

OCTOBER 26, 1978.

On June 26, 1978, the Philadelphia Stock Exchange, Inc. ("PHLX") 17th Street and Stock Exchange Place, Philadelphia, Pa. 19103, filed with the Commission, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which would add PHLX bylaw section 12-1(f) to establish a nonparticipating status for regular memberships. As proposed, for each regular membership held, a member would be allowed to acquire from any other member, but not from the PHLX, one additional regular membership which he could elect, at the time of acquisition only, to hold in a nonparticipating status ("NPS"). The proposed rule change also specifies the privileges and obligations of NPS memberships and provisions for their transfer.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-14937, July 6, 1978) and by publication in the FEDERAL REGISTER (43 FR 30154, July 13, 1978). All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552) were made available to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered national securities exchanges, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-31121 Filed 11-2-78; 8:45 am]

[4710-07-M]

DEPARTMENT OF STATE

[Public Notice CM-8/123]

ADVISORY COMMITTEE ON TRANSNATIONAL ENTERPRISES

Meeting

The Department of State Advisory Committee on Transnational Enterprises will hold its eleventh meeting on Tuesday, November 14 from 9:30 a.m. until 4 p.m. in room C of the Pan American Health Organization, 525 23rd Street NW., Washington, D.C. The meeting will be open to the public.

The purpose of the meeting will be to discuss the ongoing work in international fora to include questionable payments, codes of conduct relating to transfer of technology and transnational enterprises, the OECD investment package and transborder data flows. There will be discussion of the work of the United Nations Conference on Science and Technology, and consideration of a proposed U.S. bilateral investment treaty. There will also be discussion of the work of the IMF/IBRD Development Committee. In addition, the Advisory Committee will review the activities of its working groups since last spring.

Requests for further information on the meeting should be directed to Richard Kauzlarich, Office of Investment Affairs, Bureau of Economic and Business Affairs, Department of State, Washington, D.C. 20520. He may be reached by telephone on area code 202-632-2728.

Members of the public wishing to attend the meeting must contact Mr. Kauzlarich's office in order to arrange entrance to the Pan American Health Organization.

The Chairman will, as time permits, entertain oral comments from members of the public attending the meeting.

Dated: October 24, 1978.

DANIEL V. GRANT,
Acting Executive Secretary.

[FR Doc. 78-31065 Filed 11-2-78; 8:45 am]

[4710-07-M]

[Public Notice CM-8/124]

SHIPPING COORDINATING COMMITTEE, SUBCOMMITTEE ON SAFETY OF LIFE AT SEA

Meeting

The working group on international multimodal transport and containers of the Subcommittee on Safety of Life at Sea, a subcommittee of the Shipping Coordinating Committee, will hold an open meeting at 9:30 a.m. on November 15, 1978 in Room 8334 of the Department of Transportation Building, 400 Seventh Street SW., Washington, D.C. 20590.

The purpose of the meeting is to discuss matters germane to multimodal transport and containers. The following specific issues will be addressed:

Debriefing of the meeting of the 21st Session of the Group of Rapporteure on Container Transport (GRCT) (BCE) held in Geneva, September 18-22, 1978;

Debriefing of the meeting of the 5th UNCTAD Intergovernmental Preparatory Group on International Multimodal Transport held in Geneva, September 18-October 6, 1978;

Briefing and update of the U.S. position regarding the 2nd Session of the UNCTAD ad hoc Intergovernmental Group on Container Standards for International Multimodal Transport, to be held November 20-December 1, 1978, in Geneva.

For further information concerning this meeting contact either Mr. John Lloyd, Department of State, 202-632-0703 or Mr. Charles Hochman, U.S. Coast Guard, 202-426-1577.

The Chairman will entertain comments from the public as time permits.

ROBIN R. MCKEON,
Acting Chairman,
Shipping Coordinating Committee.

OCTOBER 24, 1978.

[FR Doc. 78-31066 Filed 11-2-78; 8:45 am]

[4710-02-M]

Agency for International Development

BOARD FOR INTERNATIONAL FOOD AND AGRICULTURAL DEVELOPMENT

Meeting

Pursuant to Executive Order 11769 and the provisions of section 10 (a), (2), Pub. L. 92-463, Federal Advisory Committee Act, notice is hereby given of the twenty-fourth meeting of the Board for International Food and Agricultural Development (BIFAD) on November 20, 1978.

The purpose of this meeting is to receive and discuss the progress reports of the Joint Research Committee and the Joint Committee for Agricultural Development; to discuss BIFAD's recommendations on the Foundation for International Technological Cooperation; to discuss Title XII and BIFAD's role; to discuss the briefing paper on the Overseas Private Investment Corp.; to discuss A.I.D.'s response to selected BIFAD recommendations on fiscal year 1980 Program and Budget; to discuss baseline studies; and to hear various other reports and activities.

The meeting will begin at 10 a.m., adjourn at 4 p.m., and will be held in Room 1107, State Department Building, 22d and C Streets NW., Washington, D.C. The meeting is open to the public. Any interested person may attend, may file written statements with the Board before or after the meeting, or may present oral statements in accordance with procedures established by the Board, and to the extent the time available for the meeting permits. An escort from the "C" Street Information Desk (Diplomatic Entrance) will conduct you to the meeting room.

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Dr. Erven J. Long, Director, Office of Title XII Coordination and University Relations, Development Support Bureau, A.I.D., is designated as A.I.D. Advisory Committee Representative at the meeting. It is suggested that those desiring further information write to him in care of the Agency for International Developement, State Department, Washington, D.C. 20523, or telephone him at 703-235-2243.

Dated: October 30, 1978.

ERVEN J. LONG,
A.I.D. Advisory Committee Representative, Board for International Food and Agricultural Development.

[FR Doc. 78-31105 Filed 11-2-78; 8:45 am]

[4910-06-M]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Economic Docket No. 78-1]

REPORT OF THE DEPARTMENT OF TRANSPORTATION ON THE STATE OF THE RAILROAD INDUSTRY

Public Hearing

AGENCY: Federal Railroad Administration ("FRA"), Department of Transportation.

ACTION: Notice of public hearing.

SUMMARY: The FRA will conduct hearings to solicit public comments regarding the Department's preliminary draft report to Congress on the state of the railroad industry entitled "A Prospectus for Change in the Freight Railroad Industry" ("Report"). Comments will be considered in the preparation of the final report. The public is invited to submit written comments on the subject matter and to attend and participate in the hearing.

DATES: (1) The public hearings will be held beginning November 28, 1978.

(2) Prepared written statements should be submitted to the docket clerk by December 30, 1978.

(3) Persons desiring to participate in the hearing should notify the docket clerk by November 20, 1978, of the meeting in which they wish to participate and indicate the amount of time they will need to present their views.

ADDRESS: (1) Hearing location:

1. Logan Airport Hilton Hotel, Logan International Airport, East Boston, Mass.—Tuesday, November 28.

2. William J. Green Federal Building, Room 6306-10, 600 Arch Street, Philadelphia, Pa.—Thursday, November 30.

3. State Highway Building, Room 401, No. 2 Capital Square, Atlanta, Ga.—Thursday, November 30.

4. City Council Chambers, 1000 Throckmorton Street, Fort Worth, Tex. 76102.—Tuesday, December 5.

5. Federal Building, 915 Second Avenue, Seattle, Wash. 98174.—Tuesday, December 5.

6. Pick Congress Hotel, 520 South Michigan Street, Chicago, Ill.—Thursday, December 7.

7. State Building Annex, Room 1194, 350 McAllister, San Francisco, Calif.—Friday, December 8.

8. Federal Aviation Administration Building, Auditorium, 800 Independence Avenue SW, Washington, D.C. 20591.—Monday, December 11.

Each meeting will commence at 9 a.m.

(2) Written comments should be submitted to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street SW., Washington, D.C. 20590, telephone 202-426-7737.

FOR FURTHER INFORMATION CONTACT:

Thomas A. Till, Director, Office of Rail Industry Structure, Federal Railroad Administration, 400 Seventh Street SW., Washington, D.C. 20590, telephone 202-426-0382.

SUPPLEMENTARY INFORMATION: Sections 504 and 901 of the Railroad Revitalization and Regulatory Reform Act of 1976 ("4R Act"), require the Secretary of Transportation to develop, publish, and transmit to Congress a comprehensive study of the Nation's rail system and the capital needs of the railroad industry and the Secretary's recommendations based on the study.

On October 10, 1978, the Secretary transmitted to Congress the preliminary report and recommendations to improve the national railroad system through changes in Federal policies. The proposed changes will affect the physical structure and economic regulation of the railroad industry, funding for the construction and operation of rights of way of other modes of transportation and future financial assistance to the railroad industry.

The FRA will conduct hearings to afford all interested persons an opportunity to comment on the report. All comments and statements received will be considered in the preparation of the final report to Congress.

Commentators are strongly urged to address their comments to key policy areas addressed in the report Comments should discuss but need not be limited to the following matters within the context of the report:

1. *Physical restructuring of the national rail system* (Chapter 4);

2. *Changes in regulation of the railroad industry* (Chapter 6);

3. *Government policies toward competing transportation modes* (Chapter 5);

4. *Government financial assistance programs* (Chapter 7).

In addition to the four areas of major policy recommendations addressed above, the report identifies various aspects of industry management practices as well as the complex structure of labor—management relations as significant problems of the industry. The public is also invited to comment on these topics in person at the public hearings or by letter.

Copies of the report are being widely distributed to the public. Anyone wishing a copy should send a self-addressed, gummed mailing label to: 504 Report, Federal Railroad Administration (RPD-10), Washington, D.C., 20590

Issued in Washington, D.C., on October 31, 1978.

JOHN M. SULLIVAN,
Federal Railroad Administrator.

[FR Doc. 78-31123 Filed 11-2-78; 8:45 am]

[4830-01-M]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 172]

ASSISTANT COMMISSIONER (EMPLOYEE PLANS AND EXEMPT ORGANIZATIONS) AND DIRECTOR, ACTUARIAL DIVISION

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: At the present time, there is no delegation of authority to grant a waiver of the 100 percent tax imposed under section 497(b) of the Internal Revenue Code in accordance with section 3002(b) of the Employee Retirement Income Security Act. This Delegation Order has been drafted to delegate authority on these matters to the Assistant Commissioner (Employee Plans and Exempt Organizations) and the Director, Actuarial Division.

EFFECTIVE DATE: October 25, 1978.

FOR FURTHER INFORMATION CONTACT:

Winfield C. Burley, 1111 Constitution Avenue NW., Room 2557, Washington, D.C. 20224, 202-566-4346 (not toll free).

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the proposed Treasury Directive appearing in the

FEDERAL REGISTER for Wednesday, May 24, 1978.

S. A. WINBORNE,
Assistant Commissioner (Employee Plans and Exempt Organizations).

Subject: Authority to Waive the 100 percent Excise Tax imposed Under Section 4971(b) of the Internal Revenue Code.

Issued: October 25, 1978.

Effective: October 25, 1978.

Pursuant to the authority vested in the Commissioner of Internal Revenue by Treasury Department Order 150-37 dated March 17, 1955, there is hereby delegated to the Assistant Commissioner (Employee Plans and Exempt Organizations) and the Director, Actuarial Division, the authority to waive all or part of the additional tax imposed under IRC 4971(b) in accordance with subsection (b) of section 3002 of the Employee Retirement Income Security Act of 1974 (ERISA).

The authority delegated herein may not be redelegated.

WILLIAM E. WILLIAMS,
Acting Commissioner.

[FR Doc. 78-31071 Filed 11-2-78; 8:45 am]

[4810-40-M]

Office of the Secretary

NOVEMBER 1, 1978.

[Public Debt Series—No.26-78]

TREASURY NOTES OF NOVEMBER 15, 1988

Series B-1988; Amendment to Department Circular

Department of the Treasury Circular, Public Debt Series—No. 26-78, dated October 26, 1978, is hereby amended by deleting Paragraph 3.1., and in lieu thereof inserting the following: "Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of Public Dept, Washington, D.C. 20226, up to 1:30 p.m., Eastern Standard time, Thursday, November 2, 1978. Noncompetitive tenders will be considered timely if postmarked no later than Wednesday, November 1, 1978."

PAUL H. TAYLOR,
Fiscal Assistant Secretary.

In the matter of Treasury securities—Treasury announces amendments to auction of 10-year notes and 30-year bonds:

SUPPLEMENTARY STATEMENT

The announcement set forth above does not meet the Department's criteria for significant regulations and, accordingly, may be published without compliance with the Departmental procedures applicable to such regulations.

[FR Doc. 78-31355 Filed 11-2-78; 11:04 am]

[4810-40-M]

[Public Debt Series—No. 27-78]

TREASURY BONDS OF 2003-2008

Amendment to Department Circular

NOVEMBER 1, 1978.

Department of the Treasury Circular, Public Debt Series—No. 27-78, dated October 26, 1978, is hereby amended by deleting Paragraph 3.1, and in lieu thereof inserting the following: "Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Standard time, Friday, November 3, 1978. Noncompetitive tenders will be considered timely if postmarked no later than Thursday, November 2, 1978."

PAUL H. TAYLOR,
Fiscal Assistant Secretary.

In the matter of Treasury securities—Treasury announces amendments to auction of 10-year notes and 30-year bonds:

SUPPLEMENTARY STATEMENT

The announcement set forth above does not meet the Department's criteria for significant regulations and, accordingly, may be published without compliance with the Departmental procedures applicable to such regulations.

[FR Doc. 78-31356 Filed 11-2-78; 11:04 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

[Notice No. 736]

ASSIGNMENT OF HEARINGS

OCTOBER 31, 1978.

Cases assigned for hearing, postponement, cancellation, or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 115826 (Sub-293F), W. J. Digby, Inc., now assigned October 31, 1978 at Dallas, TX (1 day), is canceled and application dismissed.

MC 109397 (Sub-398F), Tri-State Motor Transit Co., now assigned October 30, 1978 at Dallas, is canceled and transferred to Modified Procedure.

MC 125996 (Sub-56F), Road Runner Trucking, Inc., now assigned November 28, 1978 at Los Angeles, CA, is canceled and transferred to Modified Procedure.

MC 112520 (Sub-346), McKenzie Tank Lines, Inc., now assigned October 30, 1978 at Birmingham, AL, is canceled and transferred to Modified Procedure.

MC 111302 (Sub-123F), Highway Transport, Inc., now assigned November 28, 1978 at Nashville, TN, is canceled and transferred to Modified Procedure.

MC 103051 (Sub-429F), Fleet Transport Co., Inc., now assigned November 28, 1978 at Nashville, TN, is canceled and transferred to Modified Procedure.

MC-C 10167, Akers Motor Lines, Inc., and Akers-Central Motor Lines, Inc., Investigation and Revocation of Certificated now assigned October 31, 1978 for pre-hearing conference at the Offices of the Interstate Commerce Commission at Washington, DC.

MC 61231 (Sub-122F), Easter Enterprises, Inc., d.b.a. Ace Lines, Inc., now assigned December 13, 1978 at Denver, CO (3 days), will be held in Division 2, U.S. Courthouse, 1929 Stout Street, instead of Room C-503 U.S. Courthouse, 1929 Stout Street.

MC 118159 (Sub-277F), National Refrigerated Transport, Inc., now assigned December 12, 1978 at Denver, CO (1 day), in Room C-503, U.S. Courthouse, 1929 Stout Street.

MC 114569 (Sub-221F), Shaffer Trucking, Inc., now assigned December 4, 1978 (5 days), at Denver, CO in OSHRC, Suite 1718, 1050 17th Street.

AB 7 (Sub-62), Stanley E. G. Hillman, Trustee of the Property of Chicago, Milwaukee, St. Paul and Pacific Railroad Co., Debtor Abandonment Near Faribault and Zumbrota, in Rice and Goodhue Counties, MN, now assigned November 27, 1978 at Zumbrota, MN, is postponed to November 28, 1978 (4 days), at Zumbrota, MN, in City Hall, 55 East Third Street.

MC 135797 (Sub-132F), J. B. Hunt Transport, Inc., now being assigned for hearing on December 5, 1978 (1 day), at Chicago, IL, in a hearing room to be later designated.

MC 110563 (Sub-232F), Coldway Food Express, Inc., now assigned November 29, 1978 at Denver, CO (2 days), in Room C-503, U.S. Courthouse, 1929 Stout Street.

MC 136008 (Sub-94F), Joe Brown Co., Inc., is assigned for hearing November 1, 1978 at Dallas, TX, in Room 5A15-17, Federal Building, 1100 Commerce Street.

MC 134922 (Sub-249), B. J. McAdams, Inc., is assigned for hearing November 6, 1978 at Dallas, and will be held in Room 5A15-17, Federal Building, 1100 Commerce Street.

MC 2202 (Sub-551), Roadway Express, Inc., is assigned for hearing November 7, 1978 at Dallas, TX, and will be held at Room 5A15-17 Federal Building, 1100 Commerce Street.

MC 115826 (Sub-327F), W. J. Digby, Inc., now assigned December 11, 1978 at Denver, CO (1 day), in Room C-503 U.S. Courthouse, 1929 Stout Street.

MC 143227 (Sub-2), Garland L. Enox Contract Application, is assigned for hearing November 2, 1978 at Dallas, TX, and will be held in Room 5A15-17 Federal Building, 1100 Commerce Street.

MC 139482 (Sub-57F), New Ulm Freight Lines, Inc., is assigned for hearing November 27, 1978 at New York, NY, and will be held at U.S. Court of Claims, Courtroom A-238, 26 Federal Plaza.

V 43/214 NO 3 78 UMI

MC 69454 (Sub-5), Ditto Freight Lines, now assigned December 11, 1978 at San Francisco, CA (1 week), in Room 503, 555 Battery Street.
MC-F 13554, Central Transport, Inc. Purchase (Portion), Eastern Express, Inc., and MC 118831 (Sub-161F), Central Transport, Inc., now assigned November 6, 1978 at Washington, DC, is postponed to January 22, 1979 at the Offices of the Interstate Commerce Commission.
MC 119226 (Sub-103F), Liquid Transport Corp., is assigned November 28, 1978 at Nashville, TN, and will be held at Room 651, U.S. Courthouse, 801 Broadway.
MC 124078 (Sub-791F), Schwerman Trucking Co., is assigned for hearing November 28, 1978 at Nashville, TN, and will be held at Room 651, U.S. Courthouse, 801 Broadway.
MC 103051 (Sub-426F), Fleet Transport Co., Inc., is assigned for hearing November 28, 1978 at Nashville, TN, and will be held at Room 651, U.S. Courthouse, 801 Broadway.
MC 119789 (Sub-435F), Caravan Refrigerated Cargo, Inc., is assigned for hearing December 6, 1978 at San Francisco, CA, and will be held at Room 13216-C, 450 Golden Gate.
MC 113678 (Sub-733F), Curtis, Inc., is assigned for hearing December 4, 1978 at San Francisco, CA, and will be held at Room 503, 555 Battery Street.
MC 106644 (Sub-256F), Superior Trucking Co., Inc., is assigned for hearing November 28, 1978 at San Francisco, CA, and will be held at Room 503, 555 Battery Street.
MC 116260 (Sub-9), Pasha Truckaway, is assigned for hearing November 29, 1978 at San Francisco, CA, and will be held at Room 503, 555 Battery Street.
MC 124947 (Sub-97), Machinery Transports, Inc., MC 113855 (Sub-433F), International Transport, now being assigned for hearing on December 4, 1978 (1 day), at Albuquerque, NM, in a hearing room to be later designated.
MC 124947 (Sub-86), Machinery Transports, Inc., MC 113855 (Sub-434F), International Transport, Inc., now being assigned for hearing on December 5, 1978 (1 day), at Albuquerque, NM, in a hearing room to be later designated.
MC 109780 (Sub-76F), Trailways, Inc., now being assigned for hearing on December 13, 1978 (3 days), at Fresno, CA, in a hearing room to be later designated.
MC 143249 (Sub-2), Mid Eastern Transportation, Inc., Common Carrier Application is assigned for hearing November 29, 1978 at Nashville, TN, and will be held at Room 651, U.S. Courthouse, 801 Broadway.
MC-F 13546, Harper Truck Service, Inc., Purchase (Portion F & W Express, Inc., is assigned for hearing December 4, 1978 at Puducah, KY, and will be held at Commissioner's Chambers, City Hall, Smith and Washington Streets.
MC 144409 (Sub-1F), F. C. Auto Sales, Inc., is assigned for hearing November 13, 1978 at Denver, CO, and will be held at Room 1319, E. M. Dirksen Building, 219 South Dearborn Street.
MC 114211 (Sub-344F), Warren Transport, Inc., is assigned for hearing November 13, 1978 at Chicago, IL, and will be held at Room No. 834 E. M. Dirksen Building, 219 South Dearborn Street.
MC 114457 (Sub-400F), Dart Transit Co., is assigned for hearing November 30, 1978 at New York, NY, and will be held at U.S. Court of Claims, Courtroom A-238, 26 Federal Plaza.
MC 144464F, United States Student Travel Service, Inc., d.b.a. Travelon Tours, is assigned for hearing November 28, 1978 at New York, NY, and will be held at U.S. Court of Claims, Courtroom A-238, 26 Federal Plaza.
MC-F 13434, Central Transfer Co., Purchase (Portion), Robert Emanuel and Margaret Emanuel d.b.a. Emanuel's Express and MC 1403 (Sub-4), Central Transfer Co., is assigned for hearing November 7, 1978 at New York, NY, and will be held at Room D-2206, Federal Building, 26 Federal Plaza.
MC 144741 (Sub-1F), Nettleton Enterprise Co., Inc., d.b.a. Norwood Transport, is assigned for hearing November 20, 1978 at Chicago, IL, and will be held at Room 834, E. M. Dirksen Building, 219 South Dearborn Street.
No. 36963, Chicago & North Western Transportation Co. versus the Chicago, Rock Island & Pacific Railroad Co., William M. Gibbons, Trustee, is assigned for hearing November 20, 1978 at Chicago, IL, and will be held in Room 1319, E. M. Dirksen Building, 219 South Dearborn Street.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-31182 Filed 11-2-78; 8:45 am]

[1505-01-M]

[Decisions Volume No. 28]

DECISION-NOTICE

Correction

In FR Doc. 78-25769, appearing at page 41128 in the issue for Thursday, September 14, 1978, make the following changes:

1. On page 41131, second column, second line of MC 108340 (Sub-32F), "HANLEY" should read "HANEY".

2. On page 41132, first column, 20th line of MC 114274 (Sub-50F), "ME" should read "NE".

[1505-01-M]

[Decisions Volume No. 33]

DECISION-NOTICE

Corrections

In FR Doc. 78-27191, appearing at page 44586 in the issue for Thursday, September 28, 1978, make the following changes:

1. On page 44588, second column, "MC 95876 (Sub-24F)" should read "MC 95876 (Sub-248F)".

2. On page 44589, second column, ninth line of MC 114273 (Sub-439F), delete the word "to".

[7035-01-M]

FOURTH SECTION APPLICATIONS FOR RELIEF

OCTOBER 31, 1978.

This application for long-and-short-haul relief has been filed with the ICC.

Protests are due at the ICC within 15 days from the date of publications of this notice.

FSA No. 43619, Southwestern Freight Bureau, Agent's No. B-779, rates on rice and rice combined with vegetables, from Bayport, Baytown, and Houston, TX, to Foxboro, MA, in Supp. 113 to its Tariff 326-C, ICC 5155, to become effective December 5, 1978. Grounds for relief—market competition.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-31183 Filed 11-2-78; 8:45 am]

[7035-01-M]

INTERNATIONAL JOINT RATES AND THROUGH ROUTES

Petition To Depart From Tariff Publishing Rules Governing the Filing of Joint Intermodal Tariffs To Publish Separate Tariff Containing Rail Carriers' Division of Revenue and Other Provisions

Tariffs naming through routes and joint rates on international traffic are subject to various tariff publishing rules under Title 49, Code of Federal Regulations, Part 1300 to end (49 CFR 1300). The tariffs are issued to cover the transportation of property between any place in the United States and any place in a foreign country, via the lines of common carries by railroad, water, and motor vehicle subject to the Interstate Commerce Act, on the one hand, and vessel operating common carriers by water engaged in the foreign commerce of the United States as defined by the Shipping Act 1916, on the other.

The tariff publishing rules relating to publication of joint international rates and routes prescirbed in 49 CFR 1300 are the result of proceedings instituted in Ex Parte No. 261, *In The Matter of Tariffs Containing Joint Rates and Through Routes for the Transportation of Property Between Points in the United States and Points in Foreign Countries.*

Every tariff naming such through routes and joint rates must be filed with this Commission, and may be filed in the name of the ocean carrier, a conference of ocean carriers, the domestic carrier or its tariff publishing agent. The tariff shall include a description of the services to be performed by each participating carrier, contain a statement of the joint rate, and a clear and definite statement of the division, rate, or charge received by the domestic carrier for its share of the revenue covering a through shipment or aggregate of shipments under the tariff.

Sea Land Service, Inc. (Sea-Land), has petitioned the Commission for authority to depart from the foregoing regulations to issue a separate tariff which would govern each of 14 independent international tariffs. Some information, such as motor and rail service descriptions, divisions of revenue, terminal locations, routings, and rail freight station locations, is repeated in each of the 14 tariffs. The purpose of the proposed publication is to combine the repetitive matter into one tariff, which will govern each of the other tariffs.

Comments are requested from interested parties concerning the proposal with particular emphasis on any problems or benefits which may arise from implementation of Sea-Land's proposal.

Written comments should be filed with the Commission within 30 days of publication herein. Send comments to Special Permission Board, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT:

William P. Geisenkotter, 202-275-7739.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-31184 Filed 11-2-78; 8:45 am]

[1505-01-M]

[Volume No. 102]

PETITIONS, APPLICATIONS, FINANCE MATTERS (INCLUDING TEMPORARY AUTHORITIES), RAILROAD ABANDONMENTS, ALTHERNATE ROUTE DEVIATIONS, AND INTRASTRATE APPLICATIONS

PETITIONS FOR MODIFICATION, INTERPRETATION OR REINSTATEMENT OF OPERATING RIGHTS AUTHORITY

NOTICE

Correction

In FR Doc. 78-18661, appearing at page 29215 in the issue for Thursday, July 6, 1978; on page 29218, third column, 16th line of MC 105461 (Sub-No. 99F), "NJ" should read "NY".

[7035-01-M]

[Finance Docket No. 28842]

WISCONSIN BARGE LINE, INC.—PURCHASE—MIDWEST TOWING CO., INC.; CORRECTION [1]

Wisconsin Barge Line, Inc., Cassville, Wis. 53806 represented by Leonard R. Kofkin, 39 South LaSalle Street, Chicago, Ill. 60606 hereby gives notice that on the 28th day of August 1978, it filed with the Interstate Commerce Commission at Washington, D.C. an application under section 5 of the Interstate Commerce Act for a decision approving and authorizing Wisconsin Barge Line, Inc., to purchase the operating authority of Midwest Towing Co., Inc.; pursuant to authority granted in Docket No. W-764, a common carrier by towing vessels in the performance of general towage, and by self-propelled vessels and non-self-propelled vessels with the use of separate towing vessels in the transportation of commodities generally, between points on the St. Croix River and the Mississippi River from Minneapolis, Minn., to Cairo, Ill., both inclusive.

No application for temporary authority has been filed under section 311(b).

In the opinion of the applicant, the granting of the authority sought will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. In accordance with the Commission's regulations (49 CFR 1108.8) in Ex Parte 55 (Sub-4), *Implementation—National Environmental Policy Act*, 1969, 352 ICC 451(1976), any protests may include a statement indicating the presence or absence of any effect of the requested Commission action on the quality of the human environment. If any such effect is alleged to be present, the statement shall indicate with specific data the exact nature and degree of the anticipated impact. See *Implementation—National Environmental Policy Act, 1969, supra*, at p. 487.

Interested persons may participate formally in a proceeding by submitting written comments regarding the application. Such submissions shall indicate the proceeding designation Finance Docket No. 28842 and the original and two copies thereof shall be filed with the Secretary, Interstate Commerce Commission, Washington, D.C. 20423, not later than 45 days after the date notice of the filing of the application is published in the FEDERAL REGISTER. Such written comments shall include the following: The person's position, e.g., party protestant or party in support, regarding the proposed transaction; specific reasons why approval would or would not be in the public interest; and a request for oral hearing if one is desired. Additionally, interested persons who do not intend to formally participate in a proceeding but who desire to comment thereon, may file such statements and information as they may desire, subject to the filing and service requirements specified herein. Persons submitting written comments to the Commission shall, at the same time, serve copies of such written comments upon the applicant, the Secretary of Transportation and the Attorney General.

H. G. HOMME, Jr.,
Acting Secretary.

FR Doc. 78-31185 Filed 11-2-78; 8:45 am]

[1] Notice corrected to show correct name of river.

[3128-01-M]

DEPARTMENT OF ENERGY

Energy Information Administration

CERTAIN DEPARTMENT OF ENERGY FORMS

Requirements Review of Data Currently Collected

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of a requirements review of thirteen data collection forms.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy (DOE) hereby gives notice of a requirements review of the data currently being gathered on thirteen (13) DOE forms from natural gas producers and pipelines, electric utilities, and electric power producers, and solicits comments thereto. These data collection forms were previously used by the Federal Power Commission and are now being used by the Federal Energy Regulatory Commission (FERC) and/or EIA. This action is consistent with efforts of the DOE's Regulatory Reform Task Force and the President's Reporting Burden Reduction Program, for which one of the primary goals is to reduce the reporting burden on the public.

DATE: Written comments by December 4, 1978.

ADDRESS: Submit written comments to: Director, Regulatory Systems, Development Division, 825 North Capitol Street, Room 3104D, Department of Energy, Energy Information Administration, Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:

Regulatory Systems Development Division, Energy Information Administration, Department of Energy, 825 North Capitol Street, Room 3104D, Washington, D.C. 20426, 202-275-4910.

V 4 3 / 2 1 4

SUPPLEMENTARY INFORMATION: The forms (and the resultant publications) currently undergoing a requirements review are as follows:

FPC-1M, *Annual Report for Municipal Electric Utilities.* Publications: "Gas Turbine Plant Construction for New Electric Generating Units", "Hydroelectric Plant Construction", "Steam-Electric Plant Construction Cost and Annual Production Expenses", "List of Publicly Owned Electric Utilities", "Sales of Firm Electric Power for Resale", "Statistics of Publicly Owned Electric Utilities".

FPC-2, *Annual Report of Natural Gas Companies (Class A and Class B).* Publications: "Average Wholesale Gas Prices for 14 Large Metro Areas", "Gas Prepayments of Pipeline Companies", "Unauthorized Overrun Penalties Paid to Pipeline Companies", "Underground Storage of Natural Gas by Interstate Pipeline", "Depreciation Practices of Natural Gas Companies", "Sales by Producers of Natural Gas to Interstate Pipeline Companies", "Statistics of Interstate Natural Gas Pipeline Companies", "List of Natural Gas Pipeline Companies".

FPC-3, *Typical Net Monthly Bills for Electrical Service.* Publication: "Typical Electric Bills".

FPC-3A, *All Electric Homes Data Sheet.* Publication: "All Electric Homes in the United States".

FPC-4, *Monthly Power Plant Report.* Publications: "Electric Power Statistics", "Electric Fuel Consumed, Produced and Fuel Stocks", "National Trends in Electric Resource Use".

FPC-5, *Monthly Statement of Electric Operating Revenue and Income.* Publications: "Electric Power Statistics", "Power Production, Generation Capacity, Sales and Revenues", "Sales, Revenues and Income of Sales of Electric Energy to Ultimate Customers", "National Trends in Electric Resource Use".

FPC-8, *Undergound Gas Storage Report.* Publication: "Unauthorized Overrun Penalties Paid to Pipeline Companies".

FPC-11, *Natural Gas Pipeline Company Monthly Statement.* Publication: "Average Prices Received and Paid by Major Pipelines for Gas Sold for Resale".

FPC-12C, *Industrial Electrical Generating Capacity, Smaller Industrial Plants.* Publications: "Electric Power Statistics".

FPC-14, *Annual Report for Importers and Exporters of Natural Gas.* Publication: "Imports and Exports of Natural Gas".

FPC-80, *Licensed Projects Recreation Report.* Publication: "Recreation Opportunities at Hydro Electric Projects".

FPC-314B, *Annual Statement to Support Small Producer Exemptions.* Publication: None.

FPC-423, *Monthly Report of Cost and Quality of Fuels for Electric Plants.* Publication: "Report of Cost and Quality of Fuels", "National Trends in Electric Resource Use", "Status of Coal Supply Contracts for New Electric Generating Units".

COMMENT PROCEDURES

Written Comments: Consideration will be given to any relevant comments submitted in writing with respect to this notice. Accordingly, comments are requested to be submitted no later than 30 days following publication of this notice. Any person that wishes to do so may submit written views or comments with respect to this requirements review. All comments should be addressed to Director, Regulatory Systems Development Division at the address indicated above and should be identified on the outside envelope and on the document with the designation "EIA Requirements Review." Two copies should be submitted.

Any information or data submitted which a person considers to be confidential must be so identified. Two copies of the confidential material should be provided. We reserve the right to determine the confidential status of such information or data and to treat it according to our determination.

Issued at Washington, D.C. October 23, 1978.

LINCOLN E. MOSES,
Administrator, Energy Information Administration.

[FR Doc. 78-31024 Filed 11-2-78; 8:45 am]

[3128-01-M]

Economic Regulatory Administration

INTERCONNECTION, WHEELING, AND POOLING IN THE SOUTHWEST

Public Meeting

A public meeting will be held in Oklahoma City on November 29 and 30 to discuss interconnections, wheeling, and pooling in the Southwest. The focus of this meeting will be system coordination in the States of Arkansas, Kansas, Louisiana, Missouri, New Mexico, Oklahoma, and Texas. The meeting, to be held at the Sheraton Century Center Hotel, will begin at 8:30 a.m. on November 29 and will adjourn at 5 p.m. on November 30.

The purpose of the meeting is to entertain discussion and establish a broader understanding of the extent of present utility coordination of planning and operations, and opportunities for increased savings of scarce fuels and reduction of operating costs through greater coordination in the region. Discussions will involve Federal and State regulators, representatives of public, private and cooperative utility systems, and other interested persons.

The agenda for the meeting is as follows:

First Day

8:30 a.m.—Introduction.
8:40 a.m.—Keynote Address.
9:00 a.m.—Meeting Objectives.
9:15 a.m.—Current Operating and Planning.
10:15 a.m.—Practices of Regional Utilities.
11:00 a.m.—Discussion.
12 Noon-1:15 p.m.—Lunch.
1:30 p.m.—Concerns of State Regulators and State Energy Offices (Panel—4 speakers).
3:30 p.m.—Coffee Break.
4:15 p.m.—Discussion.
5:00 p.m.—Adjourn.
Evening Session if needed.

Second Day

8:30 a.m.—Alternative Approaches to Planning and Operations (3 to 4 speakers).
10:40 a.m.—Coffee Break.
11:00 a.m.—Discussion.
12 noon-1:15 p.m.—Lunch.
1:30 p.m.—Related Department of Energy Activities (3 speakers).
3:00 p.m.—Coffee Break.
3:15 p.m.—Panel Session: Future trends in Interconnection and Pooling in the Southwest Panel, 4 panel members.
5:00 p.m.—Adjourn.

All interested parties are invited to express their views during the discussion periods and in dialogue with the panel members. Additional information may be obtained from Mr. James V. Barker, Jr., telephone 202-634-5626.

Minutes of the meeting will be made available for public inspection at the Department of Energy, Room B120, 2000 M Street NW., Washington, D.C. and 2626 West Mockingbird Lane, Dallas, Tex.

Issued at Washington, D.C., on October 26, 1978.

JERRY L. PFEFFER,
Acting Assistant Administrator for Utility Systems, Economic Regulatory Administration, Department of Energy.

[FR Doc. 78-31101 Filed 11-2-78; 8:45 am]

N 0 3 7 8 UMI

[3128-01-M]

Office of Assistant Secretary for International Affairs

PEACEFUL USES OF ATOMIC ENERGY

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "Subsequent Arrangement" under the Agreement for Cooperation Between the United States and Japan: Atomic Energy for Civil Uses and the Additional Agreement for Cooperation Between the United States and the European Atomic Energy Community (EURATOM) Concerning the Peaceful Uses of Atomic Energy.

The subsequent arrangement to be carried out under the above mentioned agreements involves the transfer of mixed oxide fuel pins containing 390 g of uranium enriched to 60 percent U-235 and plutonium of U.K. origin from Japan to France for use in an irradiation experiment at the CEA's Rapsodie Reactor.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than 15 days after the date of publication of this notice.

For the Department of Energy.

Dated: October 30, 1978.

HAROLD D. BENGELSDORF,
Director for Nuclear Affairs, International Programs.

[FR Doc. 78-31099 Filed 11-2-78; 8:45 am]

[3128-01-M]

Office of Hearings and Appeals

ISSUANCE OF PROPOSED DECISIONS AND ORDERS

October 10 Through October 13, 1978

Notice is hereby given that during the period October 10 through October 13, 1978, the Proposed Decisions and Orders which are summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to Applications for Exception which had been filed with that Office.

Amendments to the DOE's procedural regulations, 10 CFR Part 205, were issued in proposed form on September 14, 1977 (42 FR 47210 (September 20, 1977)), and are currently being implemented on an interim basis. Under the new procedures any person who will be aggrieved by the issuance of the Proposed Decision and Order in final form may file a written Notice of Objection within 10 days of service. For purposes of the new procedures, the date of service of notice shall be deemed to be the date of publication of this notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. The new procedures also specify that if a Notice of Objection is not received from any aggrieved party within the time period specified in the regulations, the party will be deemed to consent to the issuance of the Proposed Decision and Order in final form.

Any aggrieved party that wishes to contest any finding or conclusion contained in a Proposed Decision and Order must also file a detailed Statement of Objections within 30 days of the date of service of the Proposed Decision and Order. In that Statement of Objections an aggrieved party must specify each issue of fact or law contained in the Proposed Decision and Order which it intends to contest in any further proceeding involving the exception matter.

Copies of the full text to these Proposed Decisions and Orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1 p.m. and 5 p.m., e.d.t., except Federal holidays.

Dated: October 27, 1978.

MELVIN GOLDSTEIN,
Director, Office of Hearings and Appeals.

Estates of Inez and Loyce Phillips, Gladewater, Tex., DEE-0319, natural gas liquids

The Estates of Inez and Loyce Phillips filed an Application for Exception from the provisions of 10 CFR 212.165. The exception request, if granted, would permit the firm to retroactively charge prices for natural gas liquids produced at its Nan-Su-Gail natural gas processing plant in excess of the maximum price levels specified in 10 CFR Part 212, Subpart K. On October 10, 1978, the DOE issued a Proposed Decision and Order to the Estates of Inez and Loyce Phillips granting partial exception relief of $81,962.76.

Herbell Oil Exploration Co., Corona, Calif., DEE-0497, crude oil

Herbell Oil Exploration Co, filed an Application for Exception from the provisions of 10 CFR Part 212, Subpart D. The exception request, if granted, would permit Herbell to receive upper tier ceiling prices for the crude oil which the firm will produce and sell from the Recreation Park No. 2 Well. On October 13, 1978, the DOE issued a Proposed Decision and Order which determined that the exception request be granted.

Knob Noster Oil Co., Inc., Knob Noster, Mo., DEE-1290, propane

The Knob Noster Oil Co., Inc. filed an Application for Exception from the provisions of 10 CFR 211.9. The exception request, if granted, would result in the assignment to Knob Noster of a new supplier of propane to replace its base period supplier. On October 13, 1978, the DOE issued a Proposed Decision and Order which determined that the exception request be granted in part.

Sentry Refining, Inc., Corpus Christi, Tex., DEE-1459, crude oil

Sentry Refining, Inc., filed an Application for Exception in which it requested that exception relief be approved which would provide it with an economic incentive to process California crude oil in its Corpus Christi, Tex., refinery. On October 13, 1978, the DOE issued a Proposed Decision and Order which determined that the Sentry request should be granted and that the firm should be permitted to sell additional entitlements worth $4.59 for each barrel of California crude oil processed by the firm.

[FR Doc. 78-31100 Filed 11-2-78; 8:45 am]

[3128-01-M]

Office of Policy and Evaluation

ALCOHOL FUELS* (ECONOMICS, SUPPLY, PRODUCTION AND END USE)

Public Hearings

AGENCY: Office of Policy and Evaluation, U.S. Department of Energy.

ACTION: Notice of public hearings and opportunity for submission of written comments.

SUMMARY: The Alcohol Fuels Policy Review of the Department of Energy (DOE) announced that it will hold public hearings and receive written comments regarding the economics, supply, production, environmental impact, and end use of alcohol fuels (methanol and ethanol). These hearings will be held under the auspices of the Assistant Secretary for Policy and Evaluation of the Department of Energy.

DATES: Requests to speak due on or before November 20, 1978, 4:30 p.m. Public Hearings: November 30, 1978 (and December 1, 1978, if necessary) 9:30 a.m., in Chicago, Ill.; and December 5, 1978 (and December 6, 1978, if necessary), 9:30 a.m., in Washington, D.C.

ADDRESS: Send comments and requests to speak to: At Chicago, U.S. Department of Energy, Region V, 175 West Jackson Boulevard, Chicago, Ill. 60604, Attention: Charles Swank. At Washington, D.C., Public Hearing Management, ERA, Room 2313, Box VY, 2000 M Street NW., Washington, D.C. 20461. Hearing locations: At Chicago, Everett McKinley Dirksen Building, Room 2502, 219 South Dearborn,

* Gasohol and other alcohol fuels (ethanol and methanol).

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Chicago, Ill. 60604. At Washington, The Federal Building, 12th and Pennsylvania Avenue NW., Room 3000 A, Washington, D.C. 20461.

FUR FURTHER INFORMATION CONTACT:

Donna Stein (Staff Assistant, Alcohol Fuels Hearings), Department of Energy, 12th and Pennsylvania Avenue NW., Washington, D.C., phone 202-566-9102.

Robert C. Gillette (Hearing Procedures), Economic Regulatory Administration, 2000 M Street NW., Room 2214-B, Washington, D.C. 20461, phone 202-254-5201.

Lloyd Costley (Office of Regulations and Emergency Planning), Economic Regulatory Administration, 2000 M Street NW., Room 2310, Washington, D.C. 20461, phone 202-254-8034.

Marilyn Herman (Chairperson, Alcohol Fuels Policy Review), Policy and Evaluation, Department of Energy, 12th and Pennsylvania Avenue NW., Room 4146, Washington, D.C., 20461, phone 202-566-9464.

SUPPLEMENTARY INFORMATION:

I. Background
II. Specific Comments Requested
III. Public Hearing and Comment Procedures:
A. Written Comments
B. Public Hearing

I. Background

A viable long-term, national energy policy that will reduce dependence on foreign oil in the short term and develop renewable and essentially inexhaustible sources of energy in the long term will depend in part on the development of alternative sources of liquid fuels. In this regard, the Department of Energy (DOE) has already made considerable progress in evaluating the potential of alcohol fuels. Last December a special Department-wide task force was created to address the potential of alcohol fuels. In April of 1978, that task force concluded its work and released its findings in a position paper and a more detailed report entitled the "Alcohol Fuels Program Plan."

The major findings of the task force were:

- The high costs of alcohol fuels relative to conventional sources of petroleum appear to be the major obstacle to widespread commercialization;
- Alcohol fuels are suitable fuels for the internal combustion engine, as well as gas turbine peaking units, utility boilers, industrial heating, and fuel cells. The technological problems that do remain can be overcome in a reasonable time;
- Alcohol fuels technology has progressed to the point where a broader assessment of its commercialization potential is warranted;
- On a technical basis, ethanol is considered to have advantages over methanol because of its higher energy content, and better phase stability and volatility in gasoline blends. Ethanol, on the other hand, is a more expensive fuel than methanol.

Since the findings of the task force represented a preliminary assessment rather than a final judgment on the potential of alcohol fuels, the DOE is moving ahead to resolve the obstacles to their development and to determine what role the Federal Government should play. In this regard, the Department is currently conducting an intensive near-term review of alcohol fuels.

This near-term review is being undertaken by a Department-wide Alcohol Fuels Policy Review group, which has primary responsibility for directing a series of key policy studies affecting alcohol fuels decisions, and for preparing policy recommendations and initiatives on alcohol fuels to be integrated with the National Strategy Study. The National Energy Strategy Study is the Department's principal mechanism for evaluating alternative liquid fuel options.

The Alcohol Fuels Policy Review is addressing economics, supply, production, environmental impact, and end-use aspects of alcohol fuels. Special emphasis will be placed on acquiring information on state gasohol programs and efforts to market gasohol, the utilization of a diverse number of feedstocks for alcohol production, prospects for improving economics and improving energy balance, potential of oil import savings, and impact on the economy of reducing price supports for agricultural set-aside programs.

II. Specific Comments Requested

This notice is issued in order to obtain input for future Department decisions reached on alcohol fuels. The information received will plan a valuable role in assisting the Department of Energy and the Alcohol Fuels Policy Review in its efforts to formulate a responsible and viable National policy on alcohol fuels. Accordingly, it is requested that you submit any comments, views, or arguments that you may have concerning alcohol fuels. In addition, we would like to receive, insofar as possible, specific empirical data regarding the factors currently affecting economics, supply, production, environmental impact, and end use aspects of alcohol fuels.

In particular, but without limiting the scope of the information requested, we solicit your views on the following questions:

ALCOHOL FUELS: SPECIFIC QUESTIONS TO BE ADDRESSED

1. What are the benefits of using gasohol/alcohol fuels?
2. What are the preferred feedstocks for producing alcohol fuels, and what are the available quantities?
3. What would the impacts be of utilizing set-aside acreage for the production of ethanol?
4. What technologies are available or under development for producing alcohol fuels from renewable resources and coal?
5. What are the economics of producing alcohol? What are the means for reducing production costs?
6. What is the energy balance associated with alcohol fuels production, and how can it be improved?
7. What are the preferred end uses for gasohol and other alcohol fuels?
8. Can gasohol be used in existing vehicles without modification?
9. What are the environmental impacts of utilizing gasohol and other alcohol fuels?
10. What State programs are underway or planned for producing and marketing gasohol? What State subsidies exist or are planned for encouraging gasohol use?
11. What is the current excess alcohol plant capacity? What is the lead-time associated with construction of new alcohol plants?
12. What is the feasibility of attaining a 10 percent nationwide gasohol program of 90 percent gasoline/10 percent alcohol blends by 1990?
13. What are the constraints to the commercialization of alcohol fuels? How can these be overcome?
14. What is the projected impact of the recently enacted exemption for gasohol from the 4-cent Federal excise tax on gasoline?
15. What is the most appropriate role for the Federal Government to take with respect to gasohol and other alcohol fuels? Should the Department of Energy take steps to encourage the commercialization of such fuels?

III. Public Hearing and Comment Procedures

A. Written Comments

You are invited to participate in these proceedings by submitting written views, data, or arguments with respect to the matters discussed in this Notice. Comments should be submitted to the address indicated in the "Addresses" section of this Notice and should be identified on the outside envelope with the designation "Alcohol Fuels Policy Review." We request 10 copies which will be available for public inspection in the DOE Reading Room, Room 2107, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C., between the hours of 8 a.m., and 4:30 p.m., Monday through Friday.

Specific identification should be made of any information you consider to be confidential and submit it in writing, one copy only. We reserve the right to determine the confidential status of the information and treat it according to our determination.

B. Public Hearing

1. *Procedures for Requesting Participation*

The time and place of the public hearings are indicated in the "Dates," and "Addresses" section of this notice. If necessary, the hearings will be continued to 9:30 a.m. of the first business day following the date of the hearing.

You may make a written request for an opportunity to make an oral presentation at the hearing. The request should contain a phone number where you may be contacted through the day before the hearing. Since it may be necessary to limit the number of persons making such presentations, please describe your interest in this proceeding; and if appropriate, whether you represent a group or class of persons; and, to give a concise summary of your proposed oral presentation.

The Department of Energy will notify each person selected to be heard before November 24, 1978, 4:30 p.m. Persons selected to be heard should bring 100 copies (if possible) of their statement to the hearing address indicated in the "Addresses" section of this notice on the day of the hearing.

2. *Conduct of the Hearing*

The hearing will be conducted by a DOE official and will be legislative rather than adjudictory in nature. Formal discovery, subpena of witnesses, cross-examination of participants, testimony under oath and similar formal procedures appropriate to a trial-type hearing will not be provided.

In addition to controlling the course of the hearing, the presiding DOE offical may question participants in order to elicit further information, probe sensitive issues and discover the bases and sources of views.

A transcript of the hearings will be available for inspection as soon as possible after the close of the hearing at the Freedom of Information Office, Room 2107, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

Issued in Washington, D.C. on November 1, 1978.

William P. Davis,
Deputy Director of Administration.

[FR Doc. 78-31378 Filed 11-2-78; 11:14 am]

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sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409), 5 U.S.C. 552b(e)(3).

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[6320-01-M]

1

[M-172, Amdt. 5; Oct. 30, 1978]

CIVIL AERONAUTICS BOARD.

Notice of deletion of item from the October 26, 1978, agenda.

TIME AND DATE: 10:30 a.m., October 26, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 7. Docket 25474, Petitions for reconsideration, *Hawaii Fares Investigation* and Proceedings on remand in *Continental Air Lines, Inc. v. CAB* (Memo 6432-F, OGC).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: Chairman Alfred E. Kahn was not prepared to discuss this item at the October 26, 1978, meeting which only left two Members and a quorum is needed. This item will be on the November 2, 1978, agenda as item 12. Accordingly, the following Members have voted that agency business requires the deletion of this item from the October 26, 1978, agenda and that no earlier announcement of this change was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-2214-78 Filed 11-1-78; 10:43 am]

[6320-01-M]

2

[M-174, Amdt. 1; Oct. 31, 1978]

CIVIL AERONAUTICS BOARD.

Notice of time change for oral argument.

TIME AND DATE: 9 o'clock, November 1, 1978.,

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: Oral argument—Docket 21670, Frontier Airlines, Inc., subsidy mail rates.

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

[S-2224-78 Filed 11-1-78; 3:41 pm]

[6320-01-M]

3

[M-175, Amdt. 2; Oct. 30, 1978]

CIVIL AERONAUTICS BOARD.

Notice of addition and deletion of items to the November 2, 1978, agenda.

TIME AND DATE: 10 a.m., November 2, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

Addition: 9a. Dockets 33022, 33032, 33321, and 33387, Applications of National, Delta, Northwest and American for exemptions (Chicago/Miami-San Juan/Virgin Islands).

Deletion: 3. Docket 32318—Revised Air Freight Forwarder Rules (OGC).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: Dr. Alfred E. Kahn assured several Congressmen that the Board would vote on these applications no later than the first week of November. In addition, one of the applicants has requested action by then so that it can plan its winter schedule pattern. To meet its public commitment, item 9a is being added to the November 2, 1978, agenda. Item 3, Docket 32318—Revised Air Freight Forwarder Rules is being deleted in order to allow the staff additional time to prepare their material. Accordingly, the following Members have voted that agency business requires the addition of 9a and the deletion of 3 to the November 2 agenda and that no earlier announcement of these changes was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-2225-78 Filed 11-1-78; 3:41 pm]

[6320-01-M]

4

[M-175, Amdt. 3; Oct. 30, 1978]

CIVIL AERONAUTICS BOARD.

Notice of addition and deletion of items to the November 2, 1978, meeting agenda.

TIME AND DATE: 10 a.m., November 2, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

Addition: 14a. Application of Loftleidir H.F. Icelandic Airlines for amendment of its foreign air carrier permit (BAS).

Deletion: 2. docket 30356, Transcontinental Low-Fare Route Proceeding (instructions to staff) for information memo dated September 26, 1978.

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: Loftleidir (Icelantic) has filed an application for permit amendment to authorize service to Baltimore. The Board's order to show cause was issued October 16, 1978, and no objections have been filed. Since issuance of the final permit requires action by the President and may take as long as 60 days, consideration will be given by the Board to granting an exemption to Icelandic to authorize the operation pending issuance of the final permit. The Board meeting scheduled for Thursday, November 2, 1978, is the last remaining public meeting prior to

the desired commencement date. Item 2 is being deleted from the November 2, 1978, agenda so that the staff may have additional time for coordination. Accordingly, the following Members have voted that agency business requires the addition of item 14a and the deletion of item 2 from the November 2, 1978, agenda and that no earlier announcement of these changes was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-2226-78 Filed 11-1-78; 3:41 pm]

[6351-01-M]

5

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10 a.m., November 7, 1978.

PLACE: 2033 K Street NW., Washington, D.C., 5th floor hearing room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Proliferation of Interest-Rate Futures Contract.

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254-6314.

[S-2222-78 Filed 11-1-78; 3:41 pm]

[6351-01-M]

6

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10:30 a.m., November 7, 1978.

PLACE: 2033 K Street NW., Washington, D.C., 5th floor hearing room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement matters/applications for registration as associated persons of futures commission merchants.

Policy discussion of compliance reviews and schedule of compliance reviews through the first quarter of calendar 1980.

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254-6314.

[S-2223-78 Filed 11-1-78; 3:41 pm]

[1410-01-M]

7

COPYRIGHT ROYALTY TRIBUNAL.

Notice of change of place.

TIME AND DATE: 10 a.m., Thursday, November 9, 1978.

PLACE: The location of the meeting has been changed to Room 1318, Dirksen Senate Office Building.

STATUS: Open.

SUBJECT: Agenda as published in 43 FR 50279, October 27, 1978.

CONTACT PERSON FOR MORE INFORMATION:

Thomas C. Brennan, Chairman, Copyright Royalty Tribunal, 202-653-5175.

THOMAS C. BRENNAN,
Chairman.

[S-2218-78 Filed 11-1-78; 3:41 pm]

[6712-01-M]

8

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 and 11 a.m., Tuesday, November 7, 1978.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Oral arguments and closed instructions following oral arguments.

MATTERS TO BE CONSIDERED:

SUBJECT

Applications of WMUR-TV, Manchester N.H. and KECC-TV, El Centro Calif., Docket Nos. 19336 and 19338.

Renewal application of KAIT-TV, Jonesboro, Ark., Docket No. 19292.

CONTACT PERSON FOR MORE INFORMATION:

Public Information Office, telephone 202-632-7260.

Issued: October 31, 1978.

[S-2217-78 Filed 11-1-78; 3:41 pm]

[6714-01-M]

9

FEDERAL DEPOSIT INSURANCE CORPORATION.

TIME AND DATE: 10 a.m., November 8, 1978.

PLACE: Board Room, 6th floor, FDIC Building, 550 17th Street NW., Washington, D.C.

MATTERS TO BE CONSIDERED:

Disposition of minutes of previous meetings.

Request by the Comptroller of the Currency for a report on the competitive factors involved in the proposed merger of National Central Bank, Lancaster, Pa., with Farmers' Bank of Kutztown, Kutztown, Pa.

Recommendations with respect to payment for legal services rendered and expenses incurred in connection with receivership and liquidation activities:

Schall, Boudreau & Gore, San Diego, Calif., in connection with the receivership of United States National Bank, San Diego, Calif.

Bronson, Bronson & McKinnon, San Francisco, Calif., in connection with the liquidation of First State Bank of Northern California, San Leandro, Calif.

Kaye, Scholer, Fierman, Hays & Handler, New York, N.Y., in connection with the liquidation of the Bank of Bloomfield, Bloomfield, N.J.

Kaye, Scholer, Fierman, Hays & Handler, New York, N.Y., in connection with the receivership of American Bank & Trust Co., New York, N.Y.

Hughes, Hubbard & Reed, New York, N.Y., in connection with the liquidation of Franklin National Bank, New York, N.Y.

Kaye, Scholer, Fierman, Hays & Handler, New York, N.Y., in connection with the liquidation of Franklin National Bank, New York, N.Y.

Taback & Hyams, Jericho, N.Y., in connection with the liquidation of Franklin National Bank, New York, N.Y.

Squire, Sanders and Dempsey, Cleveland, Ohio, in connection with the liquidation of Northern Ohio Bank, Cleveland, Ohio.

Bass, Berry & Sims, Nashville, Tenn., in connection with the liquidation of the Hamilton National Bank of Chattanooga, Chattanooga, Tenn.

Foley & Lardner, Milwaukee, Wis., in connection with the liquidation of American City Bank & Trust Co., National Association, Milwaukee, Wis.

Memorandum and resolution proposing the publication for comment of a revision of Part 302 of the Corporation's rules and regulations, to be entitled "Development and Review of FDIC Rules and Regulations."

Memorandum proposing that the Board of Directors dismiss the Department of Justice's petition for the amendment of Part 326 of the Corporation's rules and regulations, entitled "Minimum Security Devices and Procedures for Insured Nonmember Banks."

Memorandum and resolution authorizing the appointment of new officers to the subsidiaries, Avenida Ponce de Leon 402 Corp. and Presidential Tower Development Corp., of the closed Banco de Ahorro de Puerto Rico, San Juan, P.R.

Memorandum proposing the payment of a fifth dividend of $182,716.92 in connection with the receivership of Elm Creek State Bank, Elm Creek, Nebr.

Memorandum proposing the approval of an "Additional Space Agreement" in connection with the Corporation's lease of space for the San Francisco, Calif., regional office.

Reports of committees and officers:

Minutes of the actions approved by the Committee on Liquidations, Loans and Purchases of Assets pursuant to authority delegated by the Board of Directors.

Report of the Executive Secretary regarding his transmittal of "no significant effect" competitive factor reports.

Reports of the Director of the Division of Bank Supervision with respect to applications or requests approved by him and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Report of the Director of the Division of Liquidation detailing all disbursements in

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excess of $10,000 and all sales of real estate properties, during the period August 16-October 16, 1978, in connection with the liquidation of the Hamilton National Bank of Chattanooga, Chattanooga, Tenn.

Reports of security transactions authorized by the Acting Chairman.

CONTACT PERSON FOR MORE INFORMATION:

Alan R. Miller, Executive Secretary, 202-389-4446.

[S-2219-78 Filed 11-1-78; 3:41 pm]

[6714-01-M]

10

FEDERAL DEPOSIT INSURANCE CORPORATION.

TIME AND DATE: 10:30 a.m., November 8, 1978.

PLACE: Board Room, 6th floor, FDIC Building, 550 17th Street NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Applications for Federal deposit insurance:

Montrose State Bank, a proposed new bank to be located at 900 South Townsend, Montrose, Colo., for Federal deposit insurance.

Bank of the South, a proposed new bank to be located at the intersection of Airline Highway and Commonwealth Boulevard, Baton Rouge, La., for Federal deposit insurance.

Citizens' Bank of Madras, a proposed new bank to be located at 810 4th Street, Madras, Oreg., for Federal deposit insurance.

Application for consent to establish a branch:

First Enterprise Bank, Oakland, Calif., for consent to establish a branch at 1369 Henry Street, Berkeley, Calif.

Application for consent to move a branch:

Onondaga Savings Bank, Syracuse, N.Y., for consent to move its branch office from 1227 South Salina Street to 725 Irving Avenue, both addresses within Syracuse, N.Y.

Application for consent to add subordinated capital notes to capital structure:

Bank of Mansfield, Mansfield, Ga., for consent to add $100,000 subordinated capital notes to its capital structure.

Application for consent to the early retirement of a subordinated capital note:

Farmers Bank of the State of Delaware, Dover, Del.

Request for waiver of the qualification examination requirements of the municipal securities representative examination pursuant to Municipal Securities Rulemaking Board Rule G-3(e)(v):

United Bank of Arizona, Phoenix, Ariz.

Requests pursuant to section 19 of the Federal Deposit Insurance Act for consent to service of persons convicted of offenses involving dishonesty or a breach of trust as directors, officers, or employees of insured banks:

Names of persons and of banks authorized to be exempt from disclosure pursuant to the provisions of subsection (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6)).

Applications for consent to merge and establish branches:

Vevay Deposit Bank, Vevay, Ind., an insured State nonmember bank, for consent to merge under its charter and title with East Enterprise State Bank, East Enterprise, Ind., and for consent to establish the sole office of East Enterprise State Bank as a branch of the resultant bank.

Gardiner Savings Institution, Gardiner, Maine, and insured mutual savings bank, for consent to merge under its charter and title with Hallowell Savings & Loan Association, Hallowell, Maine, a federally insured savings and loan association, and for consent to establish the sole office of Hallowell Savings & Loan Association as a branch of the resultant bank.

American Bank of Maryland, Silver Spring, Md., an insured State nonmember bank, for consent to merge under its charter, and with the title of "First American Bank of Maryland," with Chesapeake National Bank, Towson, Md., and for consent to establish the four existing offices of Chesapeake National Bank as branches of the resultant bank.

Application for consent to merge, to establish branches, and to redeem convertible preferred stock:

Western Bank, Coos Bay, Oreg., an insured State nonmember bank, for consent to merge under its charter and title with Crater National Bank, Medford, Oreg.; for consent to establish the nine offices of Crater National Bank as branches of the resultant bank; and for advance consent to the redemption provisions of the convertible preferred stock to be issued as part of the transaction.

Application for consent to consolidate and to establish a branch:

Frankenmuth Bank & Trust, Frankenmuth, Mich., an insured State nonmember bank, for consent to consolidate under its charter and title with the Farmers & Merchants State Bank of Merrill, Merrill, Mich., and for consent to establish the sole office of the Farmers & Merchants State Bank of Merrill as a branch of the resultant bank.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 43,688-L—Franklin National Bank, New York, N.Y.

Case No. 43,689-L—First National Bank of Eldora, Eldora, Iowa.

Case No. 43,690-L—Banco Credito y Ahorro Ponceno, Ponce, P.R.

Case No. 43,701-L—American Bank & Trust, Orangeburg, S.C.

Case No. 43,703-L—Banco Credito y Ahorro Ponceno, Ponce, P.R.

Memorandum re the Drovers' National Bank of Chicago, Chicago, Ill.

Memorandum re Franklin National Bank, New York, N.Y.

Memorandum re Banco Economias, San German, P.R.

Recommendations with respect to the initiation or termination of cease-and-desist proceedings, termination-of-insurance proceedings, or suspension or removal proceedings against certain insured banks or officers or directors thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

CONTACT PERSON FOR MORE INFORMATION:

Alan R. Miller, Executive Secretary, 202-389-4446.

[S-2220-78 Filed 11-1-78; 3:41 pm]

[6740-02-M]

11

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 48813, October 19, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: November 6, 1978, 9 a.m. to 12 noon.

CHANGE IN THE MEETING: The meeting scheduled for November 6, 1978, at 9 a.m. has been changed to December 8, 1978, at 9 a.m.

KENNETH F. PLUMB,
Secretary.

[S-2228-78 Filed 11-1-78; 3:57 pm]

[6735-01-M]

12

NOVEMBER 1, 1978.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 10 a.m., November 8, 1978.

PLACE: Room 600, 1730 K Street NW., Washington, D.C. 20006.

STATUS: This meeting will be open.

MATTERS TO BE CONSIDERED: The following will be considered and acted upon by the Commission. If necessary, they will be carried over to the regularly scheduled meeting on the following day.

1. Helen Mining Co., Docket No. IBMA 77-31 (Motion To Dismiss).
2. Eastern Associated Coal Corp., Docket No. IBMA 75-25, 76-24 (Petition for Limited Intervention).
3. Staff briefing on remand in *United Mine Workers of America* v. *Cecil D. Andrus, Carbon Fuel Co.* No. 76-1208, D.C. Cir. May 9, 1978.
4. Staff briefing on status of transferred cases and current docket.
5. Draft of Proposed Rules implementing the Government in the Sunshine Act.
6. Proposed Rules of Procedure.

CONTACT PERSON FOR MORE INFORMATION:

Philip Paschall, 202-653-5610.

[S-2227-78 Filed 11-1-78; 3:41 pm]

[6210-01-M]

13

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

TIME AND DATE: 10 a.m., Wednesday, November 8, 1978.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

SUMMARY AGENDA

Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board requests that an item be moved to the discussion agenda.

1. Proposed purchase of computer equipment by the Federal Reserve Bank of Kansas City.
2. Further consideration of the proposed report to the Comptroller of the Currency regarding the competitive factors involved in the proposed merger of First National Bank of South Jersey, Egg Harbor Township, N.J., with First National State Bank of Central Jersey, Trenton, N.J.

DISCUSSION AGENDA

1. Board's regulatory improvement program: review of Regulations E (Purchase of Warrants), V (Guarantee of Loans for National Defense Work), and C (Home Mortgage Disclosure).
2. Any agenda items carried forward from a previously announced meeting.

NOTE.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling 202-452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board, 202-452-3204.

Dated: October 31, 1978.

THEODORE E. ALLISON.

[S-2213-78 Filed 11-1-78; 10:43 am]

[7020-02-M]

14

[USITC SE-78-56]

UNITED STATES INTERNATIONAL TRADE COMMISSION.

TIME AND DATE: 10 a.m., Thursday, November 16, 1978.

PLACE: Room 117, 701 E Street NW., Washington, D.C. 20436.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions open to the public:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints (if necessary).
5. Wire Strand from Japan (Inv. AA1921-188)—Briefing and vote.
6. Clothespins (Inv. TA-201-36)—Vote on remedy, if necessary.
8. Any items left over from previous agenda.

Portions closed to the public:

7. Status report on Investigation 332-101 (MTN Study), if necessary.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth R. Mason, Secretary, 202-523-0161.

[S-2221-78 Filed 11-1-78; 3:41 pm]

[7035-01-M]

15

INTERSTATE COMMERCE COMMISSION.

TIME AND DATE: 9:30 a.m., Tuesday, November 7, 1978.

PLACE: Hearing Room "C", Interstate Commerce Commission Building, 12th and Constitution Avenue NW., Washington, D.C. 20423.

STATUS: Open Regular Conference.

MATTERS TO BE CONSIDERED:

1. Discussion on Motor Carrier Policy.
2. Briefing on Field Office Consolidations.

CONTACT PERSON FOR MORE INFORMATION:

Douglas Baldwin, Director, Office of Communications, telephone 202-275-7252.

The Commission's professional staff will be available to brief news media representatives on conference issues at the conclusion of the meeting.

[S-2229-78 Filed 11-1-78; 3:57 pm]

[7590-01-M]

16

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: During the week of November 6, 1978.

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

MONDAY, NOVEMBER 6; 1:30 P.M.

1. Discussion of reducing procedural cost burdens (approximately 1 hour, public meeting).
2. Discussion of licensing bill (approximately 1 hour, public meeting).
3. Discussion of proposed NRC statement in response to the Risk Assessment Review Group Report (if required, approximately 1 hour, public meeting).

TUESDAY, NOVEMBER 7; 9:30 A.M.

Briefing on report of the Interagency Review Group on Waste Management (approximately 2 hours, public meeting).

WEDNESDAY, NOVEMBER 8; 10 A.M.

Discussion of export-import licensing review procedures/general administrative meeting (approximately 1 hour, public meeting).

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee, 202-634-1410.

ROGER M. TWEED,
Office of the Secretary.

[S-2216-78 Filed 11-1-78; 10:43 am]

[8010-01-M]

17

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 50540, October 30, 1978.

STATUS: Open meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Wednesday, November 1, 1978.

CHANGES IN THE MEETING: Additional item to be considered.

The following additional item will be considered by the Commission at the open meeting scheduled for Wednesday, November 1, 1978, at 10 a.m.:

Consideration of a release announcing: (1) The extension of the Lost and Stolen Securities Program's pilot period from December 31, 1978, to June 30, 1979, (b) the redesignation of Securities Information Center, Inc. ("SIC") as the Commission's designee to maintain and operate the data base of missing, lost, counterfeit or stolen securities, and (3) the reregistration of certain institutions subject to Rule 17f-1 (17 CFR 240.17f-1) with SIC. For further information, please contact Gregory C. Yadley at 202-376-8129.

Chairman Williams and Commissioners Loomis, Evans, Pollack, and Karmel determined that Commission business required consideration of these matters and that no earlier notice thereof was possible.

OCTOBER 31, 1978.

[S-2215-78 Filed 11-1-78; 10:43 am]

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FRIDAY, NOVEMBER 3, 1978
PART II



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

GRANTS FOR EMERGENCY MEDICAL SERVICES SYSTEMS

[4110-84-M]

Title 42—Public Health

CHAPTER I—PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 56a—GRANTS FOR EMERGENCY MEDICAL SERVICES SYSTEMS

Grants for Emergency Medical Services Systems

AGENCY: Health Services Administration, PHS, HEW.

ACTION: Final rules.

SUMMARY: These rules amend the regulations governing the program of grant assistance for emergency medical services systems authorized by title XII of the Public Health Service Act. They are being adopted in order to implement recent, largely technical, amendments to title XII.

EFFECTIVE DATE: November 3, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. John Reardon, Deputy Director, Division of Emergency Medical Services, Health Services Administration, Department of Health, Education, and Welfare, 6525 Belcrest Road, Hyattsville, Md. 20782, telephone 301-436-6284.

SUPPLEMENTARY INFORMATION: Pub. L. 94-573 made a series of amendments to title XII of the Public Health Service Act, 42 U.S.C. 300d et seq., the program of grant assistance for projects for emergency medical services systems. These amendments are primarily technical in nature, although section 3(a) of Pub. L. 94-573 also expanded the grant program authorized by section 1202 of the Act by adding two types of planning grants. The amendments to part 56a of Title 42, Code of Federal Regulations, set forth below implement these statutory amendments. The salient features of the amendments are summarized below.

SUBPART A

1. Pub. L. 94-573 added several new requirements for emergency medical services systems. For example, such systems are now required to have the capability to communicate with persons with auditory handicaps and persons of limited ability to speak English. These new program requirements are implemented by the changes to § 56a.103(c).

2. New definitions have been added to implement the provisions of the new section 1202(b). The definitions of "advance life support services" and "basic life support services" in § 56a.102 accord, we believe, with common usage of those terms among such systems, while the definition of "medically underserved population" in § 56a.102 conforms to the definition of that term in other programs administered by the Public Health Service.

3. Several program requirements and definitions have been clarified or updated based on experience with the program and changing technical standards. See § 56a.102, definitions of "Appropriate training and experience", "Ground vehicles," and § 56a.103 (a) and (d).

4. In addition, a number of changes were made reflecting the technical amendments made by Pub. L. 94-573. See § 56a.102 with respect to definitions of "Section 1521 health planning and development agency", "Section 1515 health systems agency", and "Section 1513 health systems plan", and §§ 56a.103 (d), (k), 56a.106(f)(1).

SUBPART B

1. Pub. L. 94-573 revised the existing authority under section 1202 for feasibility and planning grants. Previously such grants were made for both studying the feasibility of and planning for the establishment and operation of emergency medical services systems "through expansion and improvement or otherwise." In practice, this has been interpreted to mean that a study and planning grant will be made for a project to establish and operate a system under section 1203 or expand and improve a system under section 1204. Section 1202(a) has been revised to clarify this (in sec. 1202(a)(1) (A) and (B) and in addition to provide for projects to study and plan for projects under sec. 1203 and sec. 1204 (sec. 1202(a)(1)(C)). The regulations reflect this statutory clarification, although the substantive program requirements remain essentially unchanged.

2. Pub. L. 94-573 added authority for projects to study the feasibility of or plan for advanced life support services for an emergency medical services system (sec. 1202(b)(1)(A)). As with grants made under section 1202(a), grantees are to produce a feasibility study or plan, as applicable, the requirements for which are similar to the analogous requirements under section 1202(a), except for the focus on advanced life support services. See § 56a.206(b).

3. Pub. L. 94-573 also added authority for grants to States to enable them to update the plans for a State emergency medical services system to improve the delivery of such services in rural areas and to medically underserved populations of the State. The regulations clarify the congressional intent, apparent in the legislative history (see S. Rep. No. 94-889 at 46), that such grants are to be made for statewide plans. They also spell out that the planning undertaken pursuant to the grant may, where appropriate, encompass other than rural areas and medically underserved populations. As with grants under section 1202(a) and 1202(b)(1)(A), the State grantees are required to submit comprehensive plans, similar to those required of the other grantees, at the close of the grant.

SUBPARTS C AND D

1. The major revisions to subparts C and D implement statutory amendments that require additional assurances of grantees. The assurances are designed to insure that grants will be made for projects with substantial financial community support in order to maximize project viability after grant support ends. The documentation and degree of governmental and community support which these regulations require grant applicants to show is responsive to this congressional concern. See, e.g., §§ 56a.303 (i), (j), and (k); §§ 56a.404 (k), (l), and (m).

2. Pub. L. 94-573 added authority to support certain basic and short-term training of certain emergency medical personnel under sections 1203 and 1204. The training which may be supported under these sections is defined at §§ 56a.305(b)(4) and 56a.406(b)(4).

3. New reporting requirements have been added to both subpart C and subpart D in response to the amendments reflected in sections 1203(f) and 1204(e) of the Act. The legislative history of these sections indicates that Congress enacted them because it was impressed with the usefulness of the information provided by grantees under section 1202 in the reports required by that section. Consequently, the new §§ 56a.306 and 56a.408 require grantees to provide a reasonably detailed picture of their operations under the grant.

In light of the essentially technical nature of these regulations and the need for them in order to implement section 1202(b), the Secretary has determined that public comment on them and delay in their effective date are unnecessary and would be contrary to the public interest and that good cause exists for their omission.

Dated: June 28, 1978.

JULIUS B. RICHMOND,
Assistant Secretary for Health.

Approved: October 19, 1978.

HALE CHAMPION,
Acting Secretary.

Part 56a of Title 42, Code of Federal Regulations, is revised to read as follows:

Subpart A—General

Sec.
56a.101 Applicability.
56a.102 Definitions.
56a.103 Project requirements.
56a.104 Eligible applicants.
56a.105 Priority.
56a.106 Application.
56a.107 Grant payments.
56a.108 Inventions or discoveries.
56a.109 Publications and copyright.
56a.110 Royalties.
56a.111 Grantee accountability.
56a.112 Additional requirements.

Subpart B—Grants for Feasibility Studies and Planning

56a.201 Applicability.
56a.202 Eligibility.
56a.203 Content of application-supporting information.
56a.204 Grant evaluation and award.
56a.205 Use of project funds.
56a.206 Reports.

Subpart C—Grants for Establishment and Initial Operation

56a.301 Applicability.
56a.302 Project requirements.
56a.303 Content of application-supporting information.
56a.304 Grant evaluation and award.
56a.305 Use of project funds.
56a.306 Reports.

Subpart D—Grants for Expansion and Improvement

56a.401 Applicability.
56a.402 Purpose.
56a.403 Project requirements.
56a.404 Content of application-supporting information.
56a.405 Grant evaluation and award.
56a.406 Use of project funds.
56a.407 Acquisition of facilities.
56a.408 Reports.

AUTHORITY: Secs. 1202, 1203, and 1204 of the Public Health Service Act (42 U.S.C. 300d-1, 300d-2, and 300d-3).

Subpart A—General Provisions

§ 56a.101 Applicability.

The regulations of this subpart apply to grants (a) under section 1202 of the Public Health Service Act (42 U.S.C. 300d-1) for projects which include both studying the feasibility of and planning for (1) the establishment and operation of emergency medical services systems, (2) the expansion and improvement of these systems, or (3) both; (b) for the establishment and initial operation of these systems under section 1203 of the Public Health Service Act (42 U.S.C. 300d-2); and (c) for projects for the expansion and improvement of these systems under section 1204 of the Public Health Service Act (42 U.S.C. 300d-3).

§ 56a.102 Definitions.

As used in this part:

"Act" means the Public Health Service Act.

"Adequate number of easily accessible emergency medical services facilities" means that in 95 percent of the cases, at least one facility which has the minimum capabilities required by the applicable method of categorization, as described in § 56a.103(e)(1), is within 60 minutes travel time from the scene of the emergency.

"Adequate number of health professions, allied health professions, and other health personnel" means sufficient numbers of health personnel to provide emergency medical services on a 24-hour basis within the service area of the emergency medical services system.

"Adequate number of necessary ground, air, and water vehicles and other transportation facilities" means sufficent vehicles to respond to 95 percent of requests for assistance in the emergency medical services system area within 30 minutes.

"Advanced life support services" or "ALS" means implementation of the requirements of § 56a.103 throughout the emergency medical services system to a level of capability which provides both noninvasive and invasive emergency patient care designed to optimize the patient's chances of surviving the emergency situation, such as sophisticated transportation vehicles with advanced equipment, a communications capability (two-way voice and/or telemetry) and staffed by Emergency Medical Technician-Paramedics (EMT-P) providing onsite, prehospital and interhospital mobile intensive care.

"Appropriate public safety personnel" includes police, firemen, communications and dispatch specialists, park rangers, lifeguards, and other public employees charged with maintaining public safety.

"Appropriate training and experience" means at a minimum:

(1) As applied to physicians (doctors of medicine and doctors of osteopathy), possession of appropriate State qualifications to practice medicine in the State in which they provide emergency medical services.

(2) As applied to nursing and allied health professions, licensure, certification, or registration as required by their respective professions and the State in which they provide emergency medical services.

(3) As applied to ambulance personnel, completion of training appropriate to the level or emergency medical care being provided in the system's service area, as follows:

(i) In an area where the level of emergency medical care being provided is at the Basic Life Support (BLS) level, training as an Emergency Medical Technician-Ambulance (EMT-A) in accordance with standards prescribed by the Department of Transportation (Basic Training Course/Emergency Medical Technician (2d Edition) Course Guide 1977 (DOT Pub. No. HS 802 534 through 536)); or an equivalent training program. A program will be recognized as "equivalent," only if the Secretary finds that at least 75 percent of the graduates of that program either pass the National Registry of Emergency Medical Technicians examination for Basic EMT-A within 6 months after graduation or meet applicable State requirements which are determined by the Secretary to equal or exceed Department of Transportation requirements.

(ii) In an area where emergency medical care is provided at the ALS level, training as an Emergency Medical Technician-Paramedic in accordance with a curriculum covering competencies outlined in the Course Guide, National Training Course, Emergency Medical Technician-Paramedic 1977 (DOT Pub. No. HS 802 437 through 452).

"Appropriate transportation" means a vehicle equipped to enable the emergency medical technician or more highly trained personnel to administer to the patient's needs at the scene and in transit.

"Basic life support services" or "BLS" means the implementation of the requirements of § 56a.103 throughout the emergency medical services system to a level of capability which provides noninvasive emergency patient care designed to optimize the patient's chances of surviving the emergency situation, such as universal access to and dispatch of national standard ambulances, with appropriate medical and communication equipment, operated by Emergency Medical Technicians-Ambulance, and availability of a hospital as described in § 56a.103(e)(2).

"Budget period" means one of the intervals of time (usually 12 months) into which the grant period is divided for budgetary and reporting purposes.

"Built-in equipment" means equipment which is permanently attached to the wall, floor, or ceiling or similarly restricted, including items which require (1) the modification of a facility for installation or removal, and (2) connection to utility services such as water, gas, steam, or the building ventilation system.

"Capability to communicate in the language of the predominant population groups of limited English-speaking ability" means that the system has immediate access to persons who are able to communicate in the primary languages of these population groups.

"Capability to communicate with individuals having auditory handicaps" means a system which has the sending and receiving capability of a device such as a teletypewriter through

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which persons with hearing difficulties can gain access to the emergency medical services system.

"Continuing education" means courses which improve job-specific skills and knowledge, to which personnel devote more than 24 hours per year, whether or not a degree is awarded.

"Emergency medical services" or "EMS" means the services used in responding to a person's perceived need for immediate medical care in order to prevent loss of life or aggravation of physiological or psychological illness or injury.

"Emergency medical services system" means a system which provides for the arrangement of personnel, facilities, and equipment for the effective and coordinated delivery of health care services in an appropriate geographical area under emergency conditions (occurring either as a result of the patient's condition or of natural disasters or similar situations) and which is administered by a public or nonprofit private entity which has the authority and the resources to provide effective administration of the system. An "appropriate geographical area" means an area which the Secretary determines, on the basis of information contained in an application for a grant under this part and other information as he requires for purposes of this determination, to be of sufficent size, population, and economic diversity so that an efficient and economically feasible EMS system can be established, taking into consideration existing medical service areas and health service areas established under section 1511 of the Act.

"Emergency medical telephonic screening" means that the communications system is capable, under the direction of personnel with training and experience in the provision of emergency medical services, of (1) redirecting requests for assistance that appear to be non-emergent in nature; (2) directing patients to the emergency services that are most appropriate for their medical needs; and (3) dispatching the appropriate emergency resources as necessary.

"Equipment" means items which are necessary for the functioning of the EMS system, but does not include items of current operating expense or items consumed in use such as glassware, chemicals, food, fuel, drugs, paper, printed forms, books, pamphlets, periodicals, and disposable housekeeping items.

"Followup care and rehabilitation" includes physical and psychiatric care and vocational rehabilitation.

"Grant period" means any period with respect to which assistance is granted under the Act for a particular project.

"Ground vehicles" means (1) ambulances which meet the requirements in the proposed Federal specifications for emergency medical care vehicles (Federal Specification, Ambulance, Emergency Care Vehicle, General Services Administration, KKK-A-1822, June 25, 1975); and (2) vehicles suitably equipped to transfer both ambulatory and nonambulatory patients who do not need emergency care to appropriate destinations including health care, extended care, and rehabilitation facilities.

"Major repair" means those repairs to an existing building, excluding routine maintenance, which restore the building to a sound state and the cost of which is at least $100,000.

"Medically underserved population" means the population of an urban or rural area designated by the Secretary as an area with a shortage of personal health services or a population group designated by the Secretary as having a shortage of these services. Medically underserved areas will be designated by the Secretary through publication in the FEDERAL REGISTER from time to time, taking into consideration the following factors, among others:

(1) Available health resources in relation to size of the area and its population, including appropriate ratios of primary care physicians in general or family practice, internal medicine, pediatrics, or obstetrics and gynecology to population;

(2) Health indices for the population of the area, such as infant mortality rate;

(3) Economic factors affecting the population's access to health services, such as the percentage of the population with incomes below the poverty level; and

(4) Demographic factors affecting the population's need and demand for health services, such as percentage of the population age 65 and over.

"Modernization" means the alteration, major repair, remodeling, or renovation of existing buildings (including initial equipment of those buildings), or replacement of obsolete built-in equipment of existing buildings.

"Nonprofit," as applied to a private entity, means that no part of the net earnings of that entity benefits or may lawfully benefit any private shareholder or individual.

"Other appropriate emergency medical services systems" are those EMS systems in neighboring areas which might be involved in common disasters, those EMS systems which are contiguous with the system, and those EMS systems which have entered into agreements with the system.

"Predominant population group with limited English-speaking ability" means a group which is the majority population in one or more neighborhoods, districts, or other indentifiable portions of the system's area and which is primarily composed of persons whose limited English-speaking capability under stress or emergency conditions would impede their access to the system.

"Rural area" means any area not classified as an urbanized area by the Bureau of the Census (1970 Census of Population, Number of Inhabitants, Bureau of the Census, U.S. Department of Commerce, Dec. 1971).

"Secretary" means the Secretary of Health, Education, and Welfare or any other officer or employee of the Department of Health, Education, and Welfare to whom the authority involved has been delegated.

"Section 1521 State health planning and development agency" means the agency of a State designated under section 1521(b)(3) of the Act.

"Section 1515 health systems agency" means a health systems agency designated under section 1515 of the Act.

"Section 1513 health systems plan" means a health systems plan referred to in section 1513(b)(2) of the Act.

"Specialized critical medical care units" means facilities and services specifically designed for the care of critical patients (e.g., victims of trauma, including burns and spinal cord injury; acute cardiac conditions; poisoning; acute behavioral problems, such as acute alcohol intoxication, drug overdose and psychiatric emergencies; and high risk infants).

"State" means one of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

"Unit of general local government" means (1) a city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State; or (2) an Indian tribe.

§ 56a.103 Project requirements.

An EMS system must:

(a) Include an adequate number of health professions, allied health professions, and other health personnel, including ambulance personnel, with appropriate training and experience.

(b) Provide for its personnel appropriate training (including clinical training) and continuing education programs which are coordinated with other programs in the system's service area which provide similar training and education, and emphasize recruitment and necessary training of veterans of the Armed Forces with military training and experience in health care fields and of appropriate public safety personnel in the service area. The EMS system must use the "Military Experience Directed Into Health Careers" agency of the State or States in which it is located and the Veterans Employment Representative and the VA Hospital for the region in which it is located to recruit veterans of the Armed Forces with military training and experience in health care fields.

(c) Join the personnel, facilities, and equipment of the system by a central communications system so that requests for emergency health care services will be handled by a communications facility which uses emergency medical telephonic screening; uses (or, within the period required by the Secretary, will use) the universal emergency telephone number 911; will have direct communication connections and interconnections with the personnel, facilities, and equipment of the system and with other appropriate EMS systems; will have the capability to communicate with individuals having auditory handicaps and to communicate in the language of the predominant population groups with limited English-speaking ability in the system's service area; and makes maximum use of communications equipment and systems acquired under any highway safety program approved under chapter 4 of title 23, United States Code and of the equipment and system acquired under title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3701, et seq.). For the purposes of this paragraph:

(1) a "central communications system" means a system command and control center which is responsible for establishing those communication channels and providing those public resources essential to the most effective and efficient emergency medical services management of the immediate problem, and which has the necessary equipment and facilities to permit immediate interchange of information essential for the system's resource management and control. The essentials of a central communications center are that (i) all requests for system response are directed to the center; (ii) all system resource response is directed from the center; and (iii) all system liaison with other public safety and emergency response systems is coordinated from the center. Except to the extent provided in this section with respect to "emergency medical telephonic screening", the center need not direct or control medical care or treatment; and

(2) "maximum use" means that the applicant can show that it has acquired funds for the equipment and systems under the acts referred to in this paragraph.

(d) Include, making maximum use of vehicles acquired under any highway safety program approved under chapter 4 of 23 U.S.C., an adequate number of necessary ground, air, and water vehicles and other transportation facilities to meet the individual characteristics of the system's service area. These vehicles and facilities must meet appropriate standards relating to location, design, performance, and equipment; and the operators and other personnel for these vehicles and facilities must meet appropriate training and experience requirements.

(1) The personnel of these vehicles and transportation facilities must include during patient transport at least two attendants trained to the emergency medical technician level, one of whom may be the vehicle operator meeting State and local requirements for operating that type of vehicle.

(2) For the purposes of this paragraph, "maximum use" means that the applicant can show that it has acquired funds for this equipment under any highway safety program approved under chapter 4 of 23 U.S.C.

(e) Include an adequate number of easily accessible emergency medical services facilities within the EMS system's service area which are collectively capable of providing services on a continuous basis, which have appropriate nonduplicative and categorized capabilities, which meet appropriate standards relating to capacity, location, personnel, and equipment, and which are coordinated with other health care facilities of the system.

(1) The capabilities of accessible emergency medical services facilities must be categorized in accordance with a formulated method of classifying hospital emergency capabilities which is found by the Secretary to be acceptable for purposes of these regulations. Examples of acceptable methods of categorization are the guidelines developed by the American Medical Association (Recommendations of the Conference on the Guidelines for the Categorization of Hospital Emergency Capabilities, AMA, 1971) and systems of categorization having a similar purpose developed under applicable State law.

(2) The system's service area must contain at least one hospital which has a physician on duty in the emergency department 24 hours a day and which has a written working agreement with other hospitals offering greater emergency capabilities.

(f) Provide access (including appropriate transportation) to specialized critical medical care units in the EMS system's service area, or, if there are none of these units or an inadequate number of them in the service area, provide access to specialized critical medical care units in neighboring areas if access to those units is feasible in terms of time and distance.

(g) Provide for the effective use of the appropriate personnel, facilities, and equipment of each public safety agency providing emergency services in the EMS system's service area. For the purposes of this paragraph, "effective use" of personnel, facilities, and equipment of public safety agencies means the integration of public safety agencies into standard and disaster operating procedures of the areawide system, including the shared use of personnel and equipment particularly suited to use in medical emergencies, such as helicopters and rescue boats.

(h) Be organized in a manner that provides persons who reside in the EMS system's service area and who have no professional training or financial interest in the provision of health care with an adequate opportunity to participate in the making of policy for the system.

(i) Provide, without prior inquiry as to ability to pay, necessary emergency medical services to all patients requiring these services.

(j) Provide for transfer of patients to facilities and programs which offer followup care and rehabilitation as is necessary to bring about maximum recovery by the patient.

(1) The EMS system must provide a method for assuring that these transfers are consistent with accepted medical practice to serve the best interests of the patient and are not based on financial considerations alone.

(2) The vehicle used in the transfer of patients to these facilities and programs must be suitably equipped to meet the patient's intransit needs.

(k) Provide for a coordinated patient recordkeeping system. Patient records must cover the treatment of the patient from initial entry into the EMS system through his discharge from it, and must be consistent with patient records used in followup care and rehabilitation of the patient. For the purposes of this paragraph, a "coordinated patient recordkeeping system" means compatible records and forms throughout the EMS system's service area which facilitate the collection, organization, and storage of identified data elements. The forms must provide the data which the Secretary may require in guidelines, in the manner which the Secretary may require, for the purpose of obtaining comparable national data upon which to evaluate the impact of the Emergency Medical Services Systems Act (Pub. L. 93-154, as amended).

(l) Provide programs of public education and information in the system's service area (taking into account the needs of visitors to, as well as residents of, that area to know or be able to learn immediately the means of obtaining emergency medical services). These programs must stress the gener-

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al dissemination of information regarding appropriate methods of medical self-help and first-aid and information regarding the availability of first-aid training programs in the area.

(m) Provide information as the Secretary may require to conduct periodic, comprehensive, and independent reviews and evaluations of the extent and quality of the emergency health care services provided in the EMS system's service area, and submit to the Secretary the results of any review or evaluation which may be conducted by the system of the extent and quality of these services in the service area.

(n) Have a plan to assure that the EMS system will be capable of providing emergency medical services in the system's service area during mass casualties, natural disasters, or national emergencies. The system disaster plan must be tested at least once before completion of each budget period of a grant under sections 1203 or 1204 of the Act.

(o) Provide for the establishment of appropriate arrangements with EMS systems or similar entities serving neighboring areas for the provision of emergency medical services on a reciprocal basis where access to these services would be more appropriate and effective in terms of the services available, time and distance. Any such arrangements among EMS systems or similar entities serving neighboring areas must be written agreements, signed by individuals authorized to act for the respective parties with respect to these agreements, and must be reviewed and reevaluated at least once a year.

§ 56a.104 Eligible applicants.

The following are eligible to apply for a grant under this part:

(a) A State;

(b) A unit of general local government;

(c) A public entity administering a compact or other regional arrangement or consortium; or

(d) Any other public entity and any nonprofit private entity.

§ 56a.105 Priority.

In considering applications submitted under this part, the Secretary will give priority to applications submitted by the eligible applicants described in paragraphs (a), (b), and (c) of § 56a.104.

§ 56a.106 Application.

(a) An application for a grant under this part must be submitted to the Secretary at the time and in the form required by the Secretary.

(b) The application must be made by an individual authorized to act for the applicant and to assume for the applicant the obligations imposed by the statute, the applicable regulations of this part, and any additional conditions of the grant.

(c) The application must contain a budget and narrative plan of the manner in which the applicant intends to conduct the project and carry out the requirements of this part. The application must describe the project in sufficient detail to identify clearly the nature, need, specific objectives, plan and methods of the project.

(d) The application must contain a description of the manner in which funds available under other Federal programs are being used to develop particular components of the EMS system and the manner in which these funds will continue to be used for that purpose.

(e) The application must contain a description of applicable provisions of law or regulations which restrict the full use of the training and skills of health personnel in the provision of emergency medical services.

(f) The application must contain or be supported by a written statement from the applicant that it agrees to maintain the records and make the reports to the Secretary and the Interagency Committee on Emergency Medical Services which are required by the Secretary in guidelines.

(g) The application must contain or be supported by assurances satisfactory to the Secretary that the applicant will conduct the project in cooperation with (1) each section 1515 health systems agency whose section 1513 health systems plan covers or will cover (in whole or in part) the service area of the project, and (2) any EMS council or other entity responsible for review and evaluation of the provision of emergency medical services in the service area of the project. For the purposes of this section, an Emergency Medical Services (EMS) council must be (i) a public agency, or (ii) a formally established or recognized advisory body of an eligible entity.

(h) The application must indicate that (1) the section 1521 State health planning and development agency, organization responsible for administration of the State EMS program, and State EMS Council of each State in which the service area of the EMS system for which the application is submitted will be located, (2) each section 1515 health systems agency whose section 1513 health systems plan covers or will cover (in whole or in part) the service area of the system, (3) any regional EMS or other entity responsible for review and evaluation of the provision of emergency medical services in the service area of the project, and (4) the appropriate clearinghouses under OMB Circular No. A-95, have had a reasonable opportunity of not less than 60 days (measured from the date a copy of the application was submitted to the agency or council by the applicant), to review and comment on the application. In addition, the section 1521 and 1515 agencies must be provided with a copy of the final application at the time the application is submitted to the Secretary. These agencies may submit comments concerning the application to the Secretary, with a copy of these comments to the applicant.

(i) In the case of an application submitted by a public entity administering a compact or other regional arrangement or consortium, the application must contain or be supported by assurances satisfactory to the Secretary that the compact or other regional arrangement or consortium includes each unit of general local government of each standard metropolitan statistical area (as determined by the Office of Management and Budget) located (in whole or in part) in the service area of the EMS system for which the application is submitted.

(j) In the case of an application submitted by an entity described in paragraph (d) of § 56a.104, the application must contain or be supported by assurances satisfactory to the Secretary that the entity:

(1) Has provided a copy of its application to each entity described in paragraphs (a), (b), and (c) of § 56a.104 which is located (in whole or in part) in the service area of the EMS system for which the application is submitted; and

(2) Has provided each of these entities a reasonable opportunity of at least 30 days (measured from the date a copy of the application was submitted to the entity by the applicant) to submit to the Secretary comments concerning the application.

(k) The application must contain or be supported by written statements which demonstrate to the satisfaction of the Secretary that there is broadly based community support for carrying out the project, including support from both providers and consumers of emergency medical services and from public safety agencies, health education institutions, appropriate private groups or other organizations in the service area of the project.

§ 56a.107 Grant payments.

The Secretary will from time to time make payments to a grantee of all or a portion of any grant award, either by advance or by way of reimbursement for expenses incurred or to be incurred to the extent the Secretary determines that these payments are necessary to promote prompt initiation and advancement of the approved project.

§ 56a.108 Inventions or discoveries.

A grant award is subject to the regulations of the Department of Health, Education, and Welfare as set forth in 45 CFR Parts 6 and 8, as amended. These regulations apply to any activity for which grant funds are in fact used whether within the scope of the project as approved or otherwise. Appropriate measures must be taken by the grantee and by the Secretary to assure that no contracts, assignments or other arrangements inconsistent with the grant obligation are continued or entered into and that all personnel involved in the support activity are aware of and comply with grant obligations. Laboratory notes, related technical data, and information pertaining to inventions and discoveries must be maintained for the periods, and filed with or otherwise made available to the Secretary at the times and in the manner as he may determine necessary to carry out these Department regulations.

§ 56a.109 Publications and copyright.

Where the grantee is not a State or local government as defined in 45 CFR 74.3, except as may otherwise be provided under the terms and conditions of the award, the grantee may copyright, without prior approval, any publications, films, or similar materials developed or resulting from a project supported by a grant under this part, subject, however, to a royalty-free, nonexclusive, and irrevocable license or right in the Goverment to reproduce, translate, publish, use, disseminate, and dispose of these materials and to authorize others to do so.

§ 56a.110 Royalties.

Royalties received by grantees from copyrights on publications or other works developed under the grant, must be accounted for as follows:

(a) Royalties received during the period of grant support may be retained by the grantee and, in accordance with the terms and conditions of grant, used in either or both of the following ways:

(1) Used by the grantee for any purposes that further the objectives of the Act.

(2) Deducted from the total project costs for the purpose of determining the net costs on which the Federal share of costs will be based.

(b) Royalties received after the completion or termination of grant support may be retained by the grantee, unless the terms and conditions of the grant or a specific agreement negotiated between the Secretary and the grantee provide otherwise except that any grantee that is a State or local government, as defined in 45 CFR § 74.3 which receives royalties in excess of $200 a year, must return the Federal share of the excess amount (computed by applying the percentage of Federal participation in the cost of the grant supported project to the excess amount) to the Federal Government, unless a specific agreement provides otherwise.

§ 56a.111 Grantee accountability.

(a) *Accounting for grant award payments.* All payments made by the Secretary must be recorded by the grantee in accounting records separate from the records of all other grant funds, including funds derived from other grant awards. With respect to each approved project, the grantee must account for the sum total of all amounts paid by presenting or otherwise making available evidence satisfactory to the Secretary of expenditures for direct and indirect costs meeting the requirements of this part. However, when the amount awarded for indirect costs was based on a predetermined fixed percentage of estimated direct costs, the amount allowed for indirect costs will be computed on the basis of the predetermined fixed-percentage rates applied to the total, or a selected element of the total, of the reimbursable direct costs incurred.

(b) *Accounting for interest earned on grant funds.* In accordance with section 203 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4213), a State will not be held accountable for interest earned on grant funds, pending their disbursement for grant purposes. A State, as defined in section 102 of the Intergovernmental Cooperation Act, means any one of the several States, the District of Columbia, Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State, but does not include the governments of the political subdivisions of the State. All grantees other than a State, as defined in section 102, must return all interest earned on grant funds to the Federal Government.

(c) *Grant closeout—(1) Date of final accounting.* A grantee must render, with respect to each approved project, a full account, as described in paragraph (a) of this section, as of the date of the termination of grant support. The Secretary may require other special and periodic accounting.

(2) *Final settlement.* A grantee must pay to the Federal Government as final settlement with respect to each approved project the total sum of:

(i) Any amount not accounted for under paragraph (a) of this section;

(ii) Any credits for earned interest under paragraph (b) of this section; and

(iii) Any other amounts due under subparts F, M, and O of 45 CFR Part 74.

This total sum constitutes a debt owed by the grantee to the Federal Government and must be recovered from the grantee or its successors or assignees by setoff or other action as provided by law.

§ 56a.112 Additional requirements.

(a) *Applicability of 45 CFR Part 74.* The provisions of 45 CFR Part 74, establishing uniform administrative requirements and cost principles, apply to all grants under this part to States and local governments as those terms are defined in subpart A of 45 CFR Part 74. The relevant provisions of the following subparts of part 74 also apply to grants to all other grantee organizations under this part: 45 CFR Part 74

Subpart
A General.
B Cash Depositories.
C Bonding and Insurance.
D Retention and Custodial Requirements for Records.
F Grant-related Income.
G Matching and Cost Sharing.
K Grant Payment Requirements.
L Budget Revision Procedures.
M Grant Closeout, Suspension, and Termination.
O Property.
Q Cost Principles.

(b) *Confidentiality.* All information as to personal facts and circumstances obtained by the project staff must be held confidential, and must not be disclosed without the individual's consent except as may be required by law or as may be necessary to provide service to the individual. Information may be disclosed in summary, statistical, or other form which does not identify particular individuals.

(c) *Nondiscrimination.* Recipients of grants under this part are advised that, in addition to complying with the terms and conditions of these regulations, the following laws and regulations are applicable:

(1) Section 845 of the Act (42 U.S.C. 298b-2) and its implementing regulation, 45 CFR Part 83 (prohibiting discrimination on the basis of sex in the admission of individuals to training programs).

(2) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and its implementing regulation, 45 CFR Part 80 (prohibiting discrimination in federally assisted programs on the ground of race, color, or national origin).

(3) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and its implementing regulation, 45 CFR Part 84 (prohibiting discrimination in federally assisted programs on the basis of handicap).

(d) *Additional conditions.* The Secretary may with respect to any grant award impose additional conditions prior to or at the time of any award

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when in his judgment additional conditions are necessary to assure or protect advancement of the approved project, the interests of public health, or the conservation of grant funds.

Subpart B—Grants for Feasibility Studies and Planning

§ 56a.201 Applicability

The regulations of this subpart, in addition to the regulations of subpart A of this part, are applicable to—

(a) Grants awarded under section 1202(a) of the Act for projects to study the feasibility of and plan for—

(1) The establishment and operation of an emergency medical services system;

(2) The expansion and improvement of such a system; or

(3) Both (1) and (2).

(b) Grants awarded under section 1202(b)(1)(A) of the Act for projects to study the feasibility of, or plan for, the expansion and improvement of such a system to provide for the use of ALS techniques therein.

(c) Grants awarded under section 1202(b)(1)(B) of the Act for projects to update the plan of a State emergency medical services system to improve the delivery of emergency medical services in rural areas and to medically underserved populations of the State.

§ 56a.202 Eligibility

(a) *Section 1202(a) grants.* A grant under section 1202(a) of the Act may be made to an entity described in section 1206(a) of the Act.

(b) *Section 1202(b) grants.* (1) A grant under section 1202(b)(1)(A) of the Act may be made to an entity described in section 1206(a) of the Act.

(2) A grant under section 1202(b)(1)(B) of the Act may be made only to a State for a statewide emergency medical services system for which a grant under section 1202(a) of the Act has already been made.

(c) *Limitations on succeeding grants.* (1) If the Secretary makes a grant under section 1202(a) of the Act or section 1202(b)(1)(A) of the Act for a particular geographic area, he may not make another grant under such section for a system for such area or for an area which includes such area in whole or substantial part.

(2) If the Secretary makes a grant under section 1202(b)(1)(B) of the Act for an emergency medical services system of a State, he may not make another grant under such section for a system which includes all or a substantial part of such State.

(3) For the purpose of this paragraph, a "substantial part" of any geographic area means more than 40 percent of such area.

§ 56a.203 Content of application—supporting information.

(a) *All grants.* In addition to meeting the applicable requirements of § 56a.106, an approvable application for a grant under section 1202 of the Act must contain the following:

(1) A narrative and graphic description of the area involved in the project, including geographical features, population, distribution of medical personnel, medical facilities (including critical care units and emergency departments), climate, epidemiological characteristics, socio-economic conditions, and any other relevant factors;

(2) A description of the staff of the project, including their qualifications, authority, functions, numbers, assignments, and the manner in which they are organized to carry out the proposed project;

(3) A description, appropriate to the type of grant applied for and in such detail as the Secretary may require, of the specific study and/or planning objectives which the project intends to accomplish, including specifically the development of an emergency medical services system which will meet each of the requirements of § 56a.103 of subpart A of this part;

(4) Information as to how the project plans to attain its study or planning objectives, including a description of the methods, personnel, facilities, budget, responsible operational unit, and work schedule which will be utilized in order to accomplish each stated objective;

(5) The following budget and staffing information:

(i) Identification of all actual and potential staff positions and the estimated compensation for such positions;

(ii) Identification of those costs for which Federal assistance under this subpart is requested and the amount thereof; and

(iii) The percentage of the budget which will be devoted to the needs of rural areas;

(6) Information which satisfies the Secretary that adequate facilities, equipment, and financial resources in addition to the grant requested will be available at the time of the grant award; and

(7) Any other statistical information which the Secretary may prescribe in guidelines, and in such form as the Secretary may so prescribe.

(b) *Section 1202(a) grants.* In addition to the requirements of paragraph (a), an application for a grant under section 1202(a) of the Act must contain information as to the existence and extent of the need for an emergency medical services system in the project area. The need of the area should be described in detail with particular reference to the requirements for an emergency medical services system as described in section 1206(b)(4)(C) of the Act and § 56a.103 of subpart A of this part.

(c) *Section 1202(b)(1)(A) grants.* In addition to the requirements of paragraph (a), an application for a grant under section 1202(b)(1)(A) of the Act must contain:

(1) Information, in such detail as the Secretary may require, as to the existence and extent of development of the emergency medical services system in the project area and the need for advanced life support services.

(2) A planning approach for development of data and analysis of the need to expand or improve emergency medical services in the project area to provide for advanced life support.

(d) *Section 1202(b)(1)(B) grants.* In addition to the requirements of paragraph (a), an application for a grant under section 1202(b)(1)(B) of the Act must contain a planning approach, in such detail as the Secretary may prescribe, utilizing emergency medical services within and outside of the rural areas and medically underserved populations to be served by the planned emergency medical services system.

§ 56a.204 Grant evaluation and award.

(a) Within the limits of funds determined by the Secretary to be available for such purpose, the Secretary may award grants under this subpart to those applicants whose projects will, in his judgment, best promote the purposes of section 1202 of the Act and the regulations of this subpart, taking into account:

(1) The extent of the need for emergency medical services in the service area of the proposed project;

(2) The capability of the applicant to carry out the proposed project;

(3) The reasonableness of the budget and the soundness of the fiscal plan for assuring effective utilization of grant funds;

(4) The extent of coordination with existing health planning agencies and groups in the service area of the proposed project;

(5) The potential of the project for accomplishing its objectives and fulfilling the purposes of the emergency medical services systems grant program; and

(6) The degree to which the proposed project addresses the needs of rural areas.

(b) The amount of any award under this part will be determined by the Secretary on the basis of his estimate of the sum necessary for a designated portion of direct project costs plus an additional amount for indirect costs, if any, which will be calculated by the Secretary either:

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(1) On the basis of the estimate of the actual indirect costs reasonably related to the project; or

(2) On the basis of a percentage of all, or a portion of, the estimated direct costs of the project when there are reasonable assurances that the use of such percentage will not exceed the approximate actual indirect costs. Such award may include an estimated provisional amount for indirect costs or for designated direct costs (such as fringe benefit rates) subject to upward (within the limits of available funds) as well as downward adjustments to actual costs when the amount properly expended by the grantee for provisional items has been determined by the Secretary: *Provided, however,* That no grant will be made for an amount which exceeds:

(i) In the case of a grant under section 1202(a), $60,000;

(ii) In the case of a grant under section 1202(b), $30,000; except where the Secretary determines that a larger amount is necessary to support a project of special regional or national significance which would not be accomplished without a grant under this subpart in such larger amount.

(c) All grant awards shall be in writing, shall set forth the amount of funds granted, and the period for which support is recommended.

(d) Neither the approval of any project nor any grant award shall commit or obligate the United States in any way to make additional, supplemental, continuation, or other award with respect to any approved project or portion thereof.

§ 56a.205 Use of project funds.

Any funds granted pursuant to this subpart shall be expended solely for carrying out the approved project in accordance with section 1202 of the Act, the regulations of this part, the terms and conditions of the award, and the applicable cost principles prescribed in Subpart Q of 45 CFR Part 74.

§ 56a.206 Reports.

Each grant awarded pursuant to section 1202 of the Act shall be subject to the condition that the grantee shall file with the Secretary and the Interagency Committee on Emergency Medical Services such progress and other reports as the Secretary may require, including the following:

(a) Section 1202(a) grants.

(1) Report of feasibility study.

(i) At a time specified by the Secretary which shall be not later than three months after the award of the grant, the grantee shall submit to the Secretary a report of the feasibility study shall contain:

(A) A detailed statement indicating whether, in the judgment of the grantee, it is feasible to establish, expand, or improve, as applicable, an emergency medical services system in the service area of the project.

(B) Information derived from studies as to the organizational structure, current resources, geographical area, and existing and contemplated standards of the proposed emergency medical services system.

(ii) If the Secretary determines, on the basis of the report of the feasibility study and other information relevant to such determination, that it is not feasible to establish, expand, or improve, as applicable, an emergency medical services system for the project area, the Secretary may, after reasonable notice to the grantee, terminate the grant.

(2) *Final report.* Should the grantee determine that it is feasible to establish, expand, or improve (as applicable) an emergency medical services system for the service area of the project, the grantee shall, within 12 months from the date of the grant award, submit to the Secretary a final report, in the form of a planning outline, which contains the following information:

(i) A comprehensive description of the organizational structure which will manage the emergency medical services system;

(ii) a detailed description of current emergency medical services, resources and capability;

(iii) a narrative and graphic description of the project area, including geographic, demographic, climatological, epidemiological, and socioeconomic characteristics;

(iv) a description of actual and potential standards for emergency medical services, including methods and levels of performance;

(v) a description of the objectives of the project, identifying problems and needs and establishing priorities for achieving such objectives;

(vi) A description of the projected medical services capability that will exist at the completion of the plan, including types of services, status of subsystems, and nature of community involvement;

(vii) A detailed description of the methodology which will be employed in order to achieve each of the objectives of the project;

(viii) A schedule for the implementation of the plan;

(ix) A fiscal schedule containing estimated expenditures and justification therefor; and

(x) A description of the methods which will be used to evaluate the operation of the planned emergency medical services system and the effect of such system on the patients involved.

(b) Section 1202(b)(1)(A) grants.

(1) *Feasibility study grants.* The grantee shall submit within 12 months from the date of grant award a final report of the feasibility study which shall contain, in such detail as the Secretary may require, an assessment of whether it is feasible to expand or improve an emergency medical services system in the service area of the project.

(2) *Planning grants.* The grantee shall submit within 12 months of the date of grant award a final report, which shall include:

(i) A comprehensive plan, in such detail as the Secretary may require, to improve and expand the existing emergency medical services system to provide advanced life support services.

(ii) A cost effectiveness study projecting utilization of the improved advanced life support services and the sources of revenue available to support such services after the completion of Federal funding under this part.

(iii) A budget schedule for completion of the plan.

(iv) A time schedule for implementation of the plan.

(v) Approval of the plan by the regional emergency medical services system entity or entities, as appropriate, and each of the major public, private, and volunteer organizations to be involved in the implementation of the plan.

(c) *Section 1202(b)(1)(B) grants.* The grantee shall submit within 12 months of the date of grant award a final report, which shall include:

(1) A comprehensive plan, in such detail as the Secretary may require, to improve the delivery of emergency medical services in rural areas and to medically underserved populations of the State.

(2) A statement of assignment of responsibilities under the plan to governmental and other units within the State.

(3) A budget schedule for completion of the plan, including a statement of funding sources to be used to continue operation of the improved services after cessation of Federal funding under this Part.

(4) A time schedule for implementation of the plan.

(5) Concurrence in the plan of the major governmental units to be affected by the plan. For purposes of this subparagraph, "major governmental units" means counties, portions of a county with 50 percent or more of the county's population, and municipalities with populations of or over 50,000.

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Subpart C—Grants For Establishment and Initial Operation

§ 56a.301 Applicability.

The regulations of this subpart, in addition to the regulations of subpart A of this part, are applicable to grants awarded pursuant to section 1203 of the Act for the establishment and initial operation of emergency medical services systems.

§ 56a.302 Project requirements.

(a) An application under this subpart will not be approved by the Secretary unless (1) the applicant demonstrates to the satisfaction of the Secretary that the emergency medical services system for which the application is submitted will meet each of the requirements specified in section 1206(b)(4)(C) of the Act and § 56a.103 of subpart A of this part within the total period of eligibility for assistance under this subpart; except that if the applicant demonstrates to the satisfaction of the Secretary the inability of the applicant's emergency medical services system to meet one or more of such requirements within such period, the period (or periods) within which the system must meet such requirement (or requirements) is such period (or periods) as the Secretary may require; and

(2) The applicant provides in the application a plan satisfactory to the Secretary for the system to meet each of the requirements specified in section 1206(b)(4)(C) of the Act and § 56a.103 of subpart A of this part within the period described in subparagraph (1) of this paragraph.

(b) *Provided,* That if an applicant submits an application for a grant under this subpart and demonstrates to the satisfaction of the Secretary the inability of the system for which the application is submitted to meet one or more of the requirements specified in section 1206(b)(4)(C) of the Act and § 56a.103 of subpart A of this part within any specific period of time, the prerequisites prescribed in paragraph (a) of this section shall not apply with respect to such requirement (or requirements), and the applicant shall provide in the application a plan, satisfactory to the Secretary, for achieving appropriate alternatives to such requirement (or requirements).

(c) In the approval of applications involving (1) the inability of an emergency medical services system to meet one or more of the requirements specified in section 1206(b)(4)(C) of the Act and § 56a.103 of subpart A of this part within the total period of eligibility for assistance under this subpart, or (2) the inability of such a system to meet one or more of such requirements within any specific period of time, the Secretary will take into consideration the effects such inability will have on the capacity of the system to provide effective emergency medical services.

§ 6a.303 Content of application—supporting information.

An approvable application for a grant under section 1203 of the Act shall contain the following information:

(a) A comprehensive description of the organizational structure which will manage the emergency medical services system;

(b) A detailed description of current emergency medical services resources and capability;

(c) A narrative and graphic description of the project area, including geographic, demographic, climatological, epidemiological, and socioeconomic characteristics;

(d) A description of actual and planned standards for emergency medical services, including methods and levels of performance;

(e) A description of the objectives of the project, identifying problems and needs and establishing priorities for achieving such objectives;

(f) A description of the projected emergency medical services capability that will exist at the completion of the project, including types of services, status of subsystems, and nature of community involvement;

(g) A detailed description of the methodology which will be employed in order to achieve each of the objectives of the project;

(h) A schedule for the implementation of the project;

(i) Assurances of the participation in and support of the system by the public, private, and volunteer organizations and entities which are associated with and involved in activities essential to the effective provision of emergency medical services in the system's service area.

(1) For the purposes of this section, an assurance shall consist of a document, signed by an official with full authority to act on behalf of the public, private, or volunteer organization and entity, committing resources to the operation of the emergency medical services system.

(2) For the purposes of this section, "public, private, and volunteer organizations and entities essential to the effective provision of emergency medical services in the system's service area" include, but are not limited to, providers of emergency medical services, such as emergency departments, critical care units, ambulance services, and public safety agencies.

(j) *First grants.* Applications for a first grant under this section must be accompanied by assurances from the executive or legislative governmental bodies of political subdivisions located in the system's service area which govern a substantial proportion of the population residing in such area, of each such bodies' support of and cooperation with the system.

(1) For the purposes of this paragraph, an assurance shall consist of a document, such as a formal resolution, proclamation, or other act of such governmental body, stating the body's intention to cooperate with and support the system.

(2) For the purposes of this paragraph, "political subdivisions located in the system's service area which govern a substantial portion of the population residing in such area" means political subdivisions which collectively govern a majority of the population within the EMS area; except that if the applicant demonstrates to the satisfaction of the Secretary that the support and cooperation of political subdivisions which serve less than a majority of the population within the EMS area will not adversely affect the future viability of the system, the Secretary may deem the requirement of this paragraph satisfied.

(k) *Second grants.* A second grant may be made under this subpart for an emergency medical services system if—

(1) The Secretary determines, after a review of at least its first 9 months' activities under the first grant, that the applicant is satisfactorily progressing in the establishment and operation of the system in accordance with the plan under section 1206(b)(4) of the Act; and

(2) The application for the second grant includes:

(i) A specific plan for the step-by-step achievement of compliance with each of the requirements of section 1206(b)(4)(C) within the period specified in section 1206(b)(4)(B)(i); and

(ii) Assurances, evidenced by copies of formal resolutions, proclamations, or other acts of the executive or legislative governmental bodies of political subdivisions located in the system's service area which govern a substantial proportion of the population residing in such area, of such bodies' continued support and cooperation with the system, and financial support of the system, in the year after the conclusion of the period of support under the grant, sufficient to maintain the system at the level at which such system is to be maintained during the period of the grant.

(A) For the purposes of this paragraph, "financial support of the system" means adequate funds for operation and maintenance of the State or regional entity responsible for the coordination, management, or operation of emergency medical services in the system's service area, and operation and maintenance of the operational and support components in both the prehospital and in-hospital phases of a total EMS system.

(B) For the purposes of this paragraph, "political subdivisions located in the system's service area which govern a substantial proportion of the population residing in such area" shall have the meaning given it in paragraph (j)(2) of this section.

(l) A fiscal schedule containing estimated expenditures and justification therefor;

(m) A description of the methods which will be used to evaluate the operation of the planned emergency medical services system and effect of such system on the patients involved; and

(n) Any other statistical information which the Secretary may prescribe in guidelines and in such form as the Secretary may so prescribe.

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§ 56a.304 Grant evaluation and award.

(a) Within the limits of funds determined by the Secretary to be available for such purpose, the Secretary may award grants under this subpart to those applicants whose projects will, in his judgment, best promote the purposes of section 1203 of the Act and the regulations of this subpart, taking into account:

(1) The extent of coordination with statewide emergency medical services systems;

(2) The extent of the need for emergency medical services in the service area of the proposed project;

(3) The capability of the applicant to carry out the proposed project;

(4) The reasonableness of the budget and the soundness of the fiscal plan for assuring effective utilization of grant funds;

(5) The extent of coordination with existing health planning agencies and groups in the service area of the proposed project;

(6) The potential of the project for accomplishing its objectives and fulfilling the purposes of the emergency medical services systems grant program;

(7) The potential of the project for becoming a self-supporting emergency medical services system; and

(8) The degree to which the proposed project addresses the needs of rural areas.

(b)(1) The amount of any award under this part will be determined by the Secretary on the basis of his estimate of the sum necessary for a designated portion of direct project costs plus an additional amount for indirect costs, if any, which will be calculated by the Secretary either:

(i) On the basis of the estimate of the actual indirect costs reasonably related to the project; or

(ii) On the basis of a percentage of all, or a portion of, the estimated direct costs of the project when there are reasonable assurances that the use of such percentage will not exceed the approximate actual indirect costs. Such award may include an estimated provisional amount for indirect costs or for designated direct costs (such as fringe benefit rates) subject to upward (within the limits of available funds) as well as downward adjustments to actual costs when the amount properly expended by the grantee, for provisional items has been determined by the Secretary.

Provided, however, That such amount shall not represent a percentage of the total cost of the project as determined by the Secretary pursuant to these regulations which exceeds the applicable maximum percentage of Federal participation specified in section 1203(c)(4) of the Act. In determining the grantee's share of project costs, costs borne by Federal funds, or costs used to match other Federal grants may not be included except as otherwise provided by law.

(2) In determining the amount of any grant under this subpart, the Secretary will evaluate the availability of funds under Federal programs authorized by laws other than the Act to support any particular component of an emergency medical services system. Such Federal programs shall include programs under legislative authorities administered by other Federal agencies, such as the Highway Safety Act and the Omnibus Crime Control and Safe Streets Act. On the basis of such evaluation, the Secretary will provide assistance under this subpart only to the extent that assistance under such other legislative authorities is insufficient to enable the applicant to meet the qualitative and quantitative requirements for an emergency medical services system as described in section 1206(b)(4)(C) of the Act and § 56a.103 of subpart A of this part.

(c) All grant awards shall be in writing, shall set forth the amount of funds granted, and the period for which support is recommended.

(d) Neither the approval or any project nor any grant award shall commit or obligate the United States in any way to make additional, supplemental, continuation, or other award with respect to any approved project or portion thereof.

§ 56a.305 Use of project funds.

(a) Any funds granted pursuant to this subpart, as well as other funds to be used in performance of the approved project, shall be expended solely for carrying out the approved project in accordance with section 1203 of the Act, the regulations of this part, the terms and conditions of the award, and the applicable cost principles set forth in 45 CFR Part 74.

(b) Project funds may not be used for the following:

(1) Construction of new facilities.

(2) Acquisition of facilities.

(3) Purchasing built-in hospital equipment which will be used more than 25 percent of the time for nonemergency department purposes.

(4) Establishment, operation, or improvement of services or facilities involved in the care of patients in the normal hospital environs or in any other care facility, except for those which are customarily associated with the emergency department.

(5) Financial assistance to students for stipends, tuition and fees, per diem, or other reimbursement for food, lodging, etc. Domestic travel of trainees may be supported at the rate of eight cents per mile when justified as a necessary and integral part of an approved training program.

(6) Hospitalization costs normally borne by the patient.

(7) Acquisition of receiving and sending devices for particular individuals with auditory handicaps.

§ 56a.306 Reports.

Each grant awarded under section 1203 of the Act is subject to the condition that the grantee shall file with the Secretary and the Interagency Committee on Emergency Medical Services such progress and other reports as the Secretary may require, including the following:

(a) *Quarterly performance reports.* Within 30 days following the end of each calendar quarter (except when an annual performance report is required pursuant to paragraph (b) of this section), a quarterly performance report, which shall contain:

(1) A concise summary of the most significant achievements and problems during the grant report period.

(2) A comparison of progress with goals established for the quarter, using the grantee's implementation schedule; and where such goals were not met, a statement of why they were not met.

(3) Other pertinent information, such as changes in management organization, progress made in implementing the requirements of § 56a.103 of subpart A, regionalization of emergency medical services, relevant legislation, and appropriation of State and local funds for emergency medical services activities.

(b) *Annual performance report.* Within 60 days following the end of the budget period, an annual performance report, which shall contain:

(1) A summary of the major activities supported under the grant and the major accomplishments resulting from

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activities to improve emergency medical services in the region.

(2) A narrative description of the system's status at the conclusion of the grant, including organizational, management and operational aspects of the prehospital and in-hospital activities.

(3) A description of the specific objectives included in the grant application and the accomplishments and failures resulting from the activities during the grant period.

(4) A review of the system's resources for basic and advanced life support services including levels of training, transportation vehicles, communications capability, emergency departments, and critical care units.

(5) A review of the basic process measures and changes in these measures associated with the operation of emergency medical services systems.

(6) A narrative statement describing compliance of the grantee's operations with the plans set forth in the application.

(7) A review and evaluation of the changes in patient care categories in terms of impact and outcome activities as appropriate to the grant support of activities.

(8) A review of how grant funds were used.

(c) *Final report.* No later than 1 year after the completion of the final grant under section 1203 of the Act, a final report, which shall contain a more substantive examination of the material required in paragraph (b)(1)-(8) of this section.

Subpart D—Grants for Expansion and Improvement

§ 56a.401 Applicability.

The regulations of this subpart, in addition to the regulations of subpart A of this part, are applicable to grants awarded pursuant to section 1204 of the Act for the expansion and improvement of emergency medical services systems.

§ 56a.402 Purpose.

The purpose of a project for which a grant is made pursuant to section 1204 of the Act shall be (a) the expansion and improvement of an existing emergency medical services system's capabilities to meet the requirements of section 1206(b)(4)(C) of the Act and § 56a.103 of subpart A of this part, or (2) the expansion of an existing system to cover geographical areas or population groups not previously served by such system.

§ 56a.403 Project requirements.

(a) An application under this subpart will not be approved by the Secretary unless (1) the applicant demonstrates to the satisfaction of the Secretary that the emergency medical services system for which the application is submitted will meet each of the requirements specified in section 1206(b)(4)(C) of the Act and § 56a.103 of subpart A of this part within the total period of eligibility for assistance under this subpart; except that if the applicant demonstrates to the satisfaction of the Secretary the inability of the applicant's emergency medical services system to meet one or more of such requirements within such period, the period (or periods) within which the system must meet such requirement (or requirements) is such period (or periods) as the Secretary may require; and

(2) The applicant provides in the application a plan satisfactory to the Secretary for the system to meet each of the requirements specified in section 1206(b)(4)(C) of the Act, and § 56a.103 of subpart A of this part within the period described in subparagraph (1) of this paragraph:

(b) *Provided,* That if an applicant submits an application for a grant under this subpart and demonstrates to the satisfaction of the Secretary the inability of the system for which the application is submitted to meet one or more of the requirements specified in section 1206(b)(4)(C) of the Act and § 56a.103 of subpart A of this part within any specific period of time, the prerequisites prescribed in paragraph (a) of this section shall not apply with respect to such requirement (or requirements), and the applicant shall provide in the application a plan, satisfactory to the Secretary, for achieving appropriate alternatives to such requirement (or requirements).

(c) In the approval of applications involving (1) the inability of an emergency medical services system to meet one or more of the requirements specified in section 1206(b)(4)(C) of the Act and § 56a.103 of subpart A of this part within the total period of eligibility for assistance under this subpart, or (2) the inability of such a system to meet one or more of such requirements within any specific period of time, the Secretary will take into consideration the effects such inability will have on the capacity of the system to provide effective emergency medical services.

§ 56a.404 Content of application—supporting information.

An approvable application for a grant under section 1204 of the Act shall contain the following information:

(a) A comprehensive description of the organizational structure which will manage the improved and expanded emergency medical services system;

(b) A detailed description of current emergency medical services system and capability;

(c) A short narrative and graphic description of the project area, including geographic, demographic, climatological, epidemiological, and socio-economic characteristics;

(d) A description of the existing standards for emergency medical services, including methods and levels of performance;

(e) A description of the objectives of the project, describing specifically which aspects of the emergency medical services system must be improved and expanded in order for the system to meet each of the requirements of section 1206(b)(4)(C) of the Act and § 56a.103 of subpart A of this part;

(f) A description of the projected emergency medical services capability that will exist after improvement and expansion of the system, including types of services, status of subsystems, and nature of community involvement;

(g) A detailed description of the methodology which will be employed in order to achieve each of the objectives of the project;

(h) A schedule for the implementation of the project;

(i) A fiscal schedule containing estimated expenditures and justification therefor;

(j) A description of the methods which will be used to evaluate the operation of the improved and expanded emergency medical services system and the effect of such system on the patients involved; and

(k) Assurances of the participation in and support of the system by the public, private, and volunteer organizations and entities which are associated with and involved in activities essential to the effective provision of emergency medical services in the system's service area.

(1) For the purposes of this paragraph, an assurance shall consist of a document, signed by an official with full authority to act on behalf of the public, private, or volunteer organization and entity, committing resources to the operation of the emergency medical services system.

(2) For the purposes of this paragraph, "public, private, and volunteer organizations and entities essential to the effective provision of emergency medical services in the system's service area", include providers of emergency medical services, such as emergency departments, critical care units, ambulance services, and public safety agencies.

(l) *First grants.* Applications for a first grant under this section must be accompanied by—

(1) A specific plan for the step-by-step achievement of compliance with each of the requirements of section 1206(b)(4)(C) within the period specified in section 1206(b)(4)(B)(i); and

(2) Assurances, evidenced by copies of formal resolutions, proclamations or other acts of the executive or legislative governmental bodies of political subdivisions located in the system's service area which govern a substantial proportion of the population residing in such area, of their support and cooperation with the system and endorsement and support of a specific financial plan which provides for the maintenance of the financial support of the system, after the conclusion of the grant, at the level of expanded or improved activity to be achieved during the period of the grant.

(i) For the purposes of this paragraph "political subdivisions located in the system's service area which govern a substantial portion of the population residing in such area" means political subdivisions which collectively govern a majority of the population within the EMS area; except that if the applicant demonstrates to the satisfaction of the Secretary that the support and cooperation of political subdivisions which serve less than a majority of the population within the EMS area will not adversely affect the future viability of the system, the Secretary may deem the requirement of this paragraph satisfied.

(ii) For the purposes of this paragraph, the financial plan shall include—

(A) A budget, with a breakdown of grant funds by system component and State or regional entity responsible for the coordination, management, or provision of emergency medical services in the system's service area;

(B) A summary, by source, of financial support for the system after grant support is ended; and

(C) Written endorsements of the plan from each projected source of financial support identified under subparagraph (ii)(B), signed by an official with full authority to act on behalf of such source.

(m) *Second grants.* A second grant may be made under this subpart for an emergency medical services system if—

(1) The Secretary determines, after a review of at least its first 9 months' activities under the first grant, that the applicant is satisfactorily progressing in the establishment and operation of the system in accordance with the plan under section 1206(b)(4) of the Act.

(2) The application for the second grant includes assurances, evidenced by copies of formal resolutions, proclamations, or other acts, of the executive or legislative governmental bodies of political subdivisions located in the system's service area which govern a substantial proportion of the population residing in such area, that substantial progress is being made toward achieving the financial plan described in paragraph (1)(2) of this section. For purposes of this subparagraph, "political subdivisions located in the system's service area which govern a substantial proportion of the population residing in such area" shall have the meaning given it in subparagraph (1)(2)(i) of this section.

(n) Any other statistical information which the Secretary may prescribe in guidelines, and in such form as the Secretary may so prescribe.

§ 56a.405 Grant evaluation and award.

(a) Within the limits of funds determined by the Secretary to be available for such purpose, the Secretary may award grants under this subpart to those applicants whose projects will, in his judgment, best promote the purposes of section 1204 of the Act and the regulations of this subpart, taking into account:

(1) The extent of the need for improved and expanded emergency medical services in the service area of the system;

(2) The capability of the applicant to carry out the proposed project;

(3) The reasonableness of the budget and the soundness of the fiscal plan for assuring effective utilization of grant funds;

(4) The extent of coordination with existing health planning agencies and emergency medical services providers, in the service area of the system;

(5) The potential of the project for accomplishing its objectives and fulfilling the purposes of the emergency medical services grant program;

(6) The potential of the project for becoming self-supporting; and

(7) The degree to which the proposed project addresses the needs of rural areas.

(b)(1) The amount of any award under this part will be determined by the Secretary on the basis of his estimate of the sum necessary for a designated portion of direct project costs plus an additional amount for indirect costs, if any, which will be calculated by the Secretary either:

(i) On the basis of the estimate of the actual indirect costs reasonably related to the project; or

(ii) On the basis of a percentage of all, or a portion of, the estimated direct costs of the project when there are reasonable assurances that the use of such percentage will not exceed the approximate actual indirect costs. Such award may include an estimated provisional amount for indirect costs or for designated direct costs (such as fringe benefit rates) subject to upward (within the limits of available funds) as well as downward adjustments to actual costs when the amount properly expended by the grantee for provisional items has been determined by the Secretary.

Provided, however, That such amount shall not represent a percentage of the total cost of the project as determined by the Secretary pursuant to these regulations which exceeds the applicable maximum percentage of Federal participation specified in section 1204(b)(2) of the Act. In determining the grantee's share of project costs, costs borne by Federal funds, or costs used to match other Federal grants may not be included except as otherwise provided by law.

(2) In determining the amount of any grant under this subpart, the Secretary will evaluate the availability of funds under Federal programs authorized by laws other than the Act to support any particular component of an emergency medical services system. Such Federal programs shall include programs under legislative authorities administered by other Federal agencies, such as the Highway Safety Act and the Omnibus Crime Control and Safe Streets Act. On the basis of such evaluation, the secretary will provide assistance under this subpart only to the extent that assistance under such other legislative authorities is insufficient to enable the applicant to meet the qualitative and quantitative requirements for an emergency medical services system as described in section 1206(b)(4)(C) of the Act and § 56a.103 of subpart A of this part.

(c) All grant awards shall be in writing, shall set forth the amount of funds granted, and the period for which support is recommended.

(d) Neither the approval of any project nor any grant award shall commit or obligate the United States in any way to make additional, supplemental, continuation, or other award with respect to any approved project or portion thereof.

§ 56a.406 Use of project funds.

(a) Any funds granted pursuant to this subpart, as well as other funds to be used in performance of the approved project, shall be expended solely for carrying out the approved project in accordance with section 1204 of the Act, the regulations of this part, the terms and conditions of the award, and the applicable cost principles set forth in 45 CFR Part 74.

(b) Project funds may not be used for the following:

(1) Construction of new facilities.

(2) Purchasing built-in hospital equipment which will be used more than 25 percent of the time for non-emergency department purposes.

(3) Establishment, operation, or improvement of services or facilities involved in the care of patients in the normal hospital environs or in any

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other care facility, except for those which are customarily associated with the emergency department.

(4) Financial assistance to trainees for stipends, tuition and fees, per diem, or other reimbursement for food, lodging, etc. Domestic travel of trainees may be supported at the lesser of 10 cents per mile or the grantee's formal travel policy when justified as a necessary and integral part of an approved training program.

(5) Hospitalization costs normally borne by the patient.

(6) Acquisition of receiving and sending devices for particular individuals with auditory handicaps.

§ 56a.407 Acquisition of facilities.

The following provisions are applicable to the acquisition of existing facilities:

(a) Estimated costs of acquisition and remodeling: Suitability of facility. Each application for a project involving the acquisition of existing facilities shall include in the detailed estimates of the cost of the project the cost of acquiring such facilities to serve the purposes for which they are acquired. Such application shall demonstrate to the satisfaction of the Secretary that the architectural, structural, and other pertinent features of the facility, as modified by any proposed expansion, remodeling, renovation, or alteration, will be clearly suitable for the purposes of the program, and, to the extent of the costs in which Federal participation is requested, are not in excess of what is necessary for the services proposed to be provided in such facilities.

(b) Determination of necessary cost. The necessary cost of aquisition of existing facilities shall be determined on the basis of such documentation submitted by the applicant as the Secretary may prescribe (including the reports of such real estate appraisers as the Secretary may approve) and other relevant factors.

(c) Bona fide sale. Federal participation in the acquisition of existing facilities is on condition that such acquisition constitutes a bona fide sale involving an actual cost to the applicant and will result in additional or improved facilities for purposes of the program.

(d) Facility which has previously received Federal grant. No grant for the acquisition of a facility which has previously received a Federal grant for construction, acquisition, or equipment shall serve either to reduce or restrict the liability of the applicant or any other transferor or transferee from any obligation of accountability imposed by the Federal Government by reason of such prior grant.

§ 56a.408 Reports.

Each grant awarded under section 1204 of the Act is subject to the condition that the grantee shall file with the Secretary and the Interagency Committee on Emergency Medical Services such progress and other reports as the Secretary may require, including the following:

(a) *Quarterly performance reports.* Within 30 days following the end of each calendar quarter (except when an annual performance report is required pursuant to paragraph (b) of this section), a quarterly performance report, which shall contain:

(1) A concise summary of the most significant achievements and problems during the grant report period.

(2) A comparison of progress with goals established for the quarter, using the grantee's implementation schedule; and where such goals were not met, a statement of why they were not met.

(3) Other pertinent information, such as changes in management organization, progress made in implementing the requirements of § 56.103 of subpart A, regionalization of emergency medical services, relevant legislation, and appropriation of State and local funds for emergency medical services activities.

(b) *Annual performance report.* Within 60 days following the end of the budget period, an annual performance report, which shall contain:

(1) A summary of the major activities supported under the grant and the major accomplishments resulting from activities to improve emergency medical services in the region.

(2) A narrative description of the system's status at the conclusion of the grant, including organizational management and operational aspects of the prehospital and in-hospital activities.

(3) A description of the specific objectives included in the grant application and the accomplishments and failures resulting from the activities during the grant period.

(4) A review of the system's resources for basic and advanced life support services including levels of training, transportation vehicles, communications capability, emergency departments, and critical care units.

(5) A review of the basic process measures and changes in these measures associated with the operation of emergency medical service system.

(6) A narrative statement describing compliance of the grantee's operation with the plans set forth in the application.

(7) A review and evaluation of the changes in patient care categories in terms of impact and outcome activities as appropriate to the grant support of activities.

(8) A review of how grant funds were used.

(9) A review of the status of implementation of the financial plan described in § 56a.404(1)(2).

(c) *Final report.* No later than 1 year after the completion of the final grant under section 1204 of the Act, the grantee shall submit a final report, which shall contain a more substantive examination of the material required in paragraph (b)(1)–(9) above.

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Federal Register

FRIDAY, NOVEMBER 3, 1978
PART III



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

SKIN BLEACHING PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Establishment of a Monograph

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[4110-03-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 358]

[Docket No. 78N-0065]

SKIN BLEACHING DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Establishment of a Monograph; Notice of Proposed Rulemaking

AGENCY: Food and Drug Admnistration.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish conditions under which over-the counter (OTC) skin bleaching drug products are generally recognized as safe and effective and not misbranded. The proposed rule, based on the recommendations of the Advisory Review Panel on OTC Miscellaneous External Drug Products, is part of the Food and Drug Administration's ongoing review of OTC drug products.

DATES: Comments by February 1, 1979, and reply comments by March 5, 1979.

ADDRESS: Written comments to the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

William E. Gilbertson, Bureau of Drugs (HFD-510), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fisher Lane, Rockville, Md. 20857, 301-443-4960.

SUPPLEMENTARY INFORMATION: Pursuant to part 330 (21 CFR Part 330), the Commissioner of Food and Drugs received on December 12, 1977 a report of the Advisory Review Panel on OTC Miscellaneous External Drug Products. On April 17, 1978, the Panel made a technical change which is discussed later in this document. (See part II. paragraph A.1. below—Introduction.) In accordance with § 330.10(a)(6) (21 CFR 330.10(a)(6)), the Commissioner is issuing (1) a proposed regulation containing the monograph recommended by the Panel, which establishes conditions under which OTC skin bleaching drugs are generally recognized as safe and effective and not misbranded; (2) a statement of the conditions excluded from the monograph on the basis of a determination by the Panel that they would result in the drugs not being generally recognized as safe and effective or would result in misbranding; and (3) the conclusions and recommendations of the Panel to the Commissioner. The minutes of the Panel meetings are on public display in the office of the Hearing Clerk (HFA-305), Food and Drug Administration (address given above).

This report is the first of several to be issued by this Panel. This report pertains to products claimed to lighten dark pigment in the skin. Future reports by this Panel will cover other drug product categories described and published in the FEDERAL REGISTER notices of November 16, 1973 (38 FR 31677) and August 27, 1975 (40 FR 38179).

The purpose of issuing the unaltered conclusions and recommendations of the Panel is to stimulate discussion, evaluation, and comment on the full sweep of the Panel's deliberations. The Commissioner has not yet fully evaluated the report; the Panel's findings are being issued as a formal proposal to obtain public comment before the agency reaches any decision on the Panel's recommendations. The report has been prepared independently of the Food and Drug Administration (FDA). It represents the best scientific judgment of the members but does not necessarily reflect the agency position on any particular matter contained in it. After careful review of all comments submitted in response to this proposal, the Commissioner will issue a tentative final regulation in the FEDERAL REGISTER to established a monograph for OTC skin bleaching drug products.

In accordance with § 330.10(a)(2) (21 CFR 330.10(a)(2)), all data and information concerning OTC skin bleaching drug products submitted for consideration by the Advisory Review Panel have been handled as confidential by the Panel and FDA. All such data and information shall be put on public display at the office of the Hearing Clerk, Food and Drug Administration, after December 4, 1978, except to the extent that the person submitting it demonstrates that it still falls within the confidentiality provisions of 18 U.S.C. 1905 or section 301(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(j)). Requests of confidentiality should be submitted to William E. Gilbertson, Bureau of Drugs (HFD-510), (address given above).

Based upon the conclusions and recommendations of the Panel, the Commissioner proposes the following:

1. That the conditions included in the monograph, under which the drug products would be generally recognized as safe and effective and not misbranded (category I), be effective 30 days after the date of publication of the final monograph in the FEDERAL REGISTER.

2. That the conditions excluded from the monograph because they would cause the drug to be not generally recognized as safe and effective or to be misbranded (category II), be eliminated from OTC drug products effective 6 months after the date of publication of the final monograph in the FEDERAL REGISTER, regardless of whether further testing is undertaken to justify their future use.

In the FEDERAL REGISTER of January 5, 1972 (37 FR 85), the Commissioner announced a proposed review of the safety, effectiveness, and labeling of all OTC drugs by independent advisory review panels. In the FEDERAL REGISTER of May 11, 1972 (37 FR 9464), the Commissioner published the final regulations providing for the OTC drug review under § 330.10 which were made effective immediately. Pursuant to these regulations, the Commissioner issued in the FEDERAL REGISTER of November 16, 1973 (38 FR 31697) and August 27, 1975 (40 FR 38179) requests for data and information on all active ingredients utilized in OTC miscellaneous external drug products.

The Commissioner appointed the following Panel to review the data and information submitted and to prepare a report pursuant to § 330.10(a)(1) on the safety, effectiveness, and labeling of those products:

William E. Lotterhos, M.D., Chairman
Rose Dagirmanjian, Ph. D.
Vincent J. Derbes, M.D. (resigned July 1976)
George C. Cypress, M.D.
Yelva L. Lynfield, M.D. (appointed October 1977)
Harry E. Morton, Sc. D.
Marianne N. O'Donoghue, M.D.
Chester L. Rossi, D.P.M.

The Panel was first convened on January 13, 1975 in an organizational meeting. Working meetings were held on February 23 and 24, April 20 and 21, June 27 and 28, August 15 and 16, September 28 and 29, November 9 and 10, 1975; January 18 and 19, February 20 and 21, April 2 and 3, May 16 and 17, July 11 and 12, October 8 and 9, November 12 and 13, 1976; January 14 and 15, February 27 and 28, April 3 and 4, June 5 and 6, June 25, August 5 and 6, September 30, October 1, and December 11 and 12, 1977.

Two nonvoting consultants, Albert A. Belmonte, Ph. D. and Jon J. Tanja, M.S., R. Ph., served on the Panel beginning in February 1977.

Four nonvoting liaison representatives served on the Panel. Marvin M. Lipman, M.D., nominated by an ad hoc group of consumer organizations, served as the consumer liaison. Gavin Hildick-Smith, Ph. D., who served as industry liaison from January until August 1975, and Bruce Semple, M.D., who served as industry liaison from August, 1975 until June, 1978, were nominated by the Proprietary Association. Saul A. Bell, Pharm. D., nominated by the Cosmetic, Toiletry, and Fragrance Association, also served as an industry liaison.

The following FDA employees served: John M. Davitt, served as Executive Secretary until August 1977, followed by Arthur Auer. Thomas D. DeCillis, R. Ph., served as Panel Administrator until April 1976, followed by Michael D. Kennedy. Joseph Hussion, R. Ph., served as Drug Information Analyst until April 1976, followed by Victor H. Lindmark, Pharm. D.

The following individuals were given an opportunity to appear before the Panel to express their views either at their own or the Panel's request on all drug categories under review:

Phillip R. Brachman, D.P.M.
Billy C. Coats, R. Ph.
David L. Cram, M.D.
Stanley I. Cullen, M.D.
R. Sherman Detrick
Chester DeZeih
Frank E. Dunlap, M.D.
Eugene M. Farber, M.D.
Beverly W. Foster
Dietrich Hoffman, Ph. D.
M. Kaminsky
Adam Kara, D.P.M.
Renate Kimbrough, M.D.
Leslie M. Lueck, Ph. D.
Robert Menzer, Ph. D.
William Mueller
Sigfrid A. Muller, M.D.
M. W. Rosenthal
Robert Scheuplein
Frederick Urbach, M.D.
Peyton E. Weary, M.D.

No person who so requested was denied an opportunity to appear before the Panel.

The Panel has thoroughly reviewed the literature and the various data submissions, has listened to additional testimony from interested persons, and has considered all pertinent data and information submitted through December 12, 1977, in arriving at its conclusions and recommendations.

In accordance with the OTC drug review regulations (21 CFR 330.10), the Panel's findings with respect to OTC skin bleaching drug products are set out in three categories:

Category I. Conditions under which OTC skin bleaching drug products are generally recognized as safe and effective and are not misbranded.

Categroy II. Conditions under which OTC skin bleaching drug products are not generally recognized as safe and effective or are misbranded.

Category III. Conditions for which the available data are insufficient to permit final classification at this time.

The Panel did not classify any conditions for OTC skin bleaching drug products in category III.

I. SUBMISSION OF DATA AND INFORMATION

The agency, in a attempt to make this review as extensive as possible and to aid manufacturers and other interested persons, complied a list of ingredients found in OTC skin bleaching drug products through either historical use or from currently marketed products. Seven ingredients were identified as follows: Ammoniated mercury, ginseng, glycerylparaminobenzoic acid, hexachlorophene, hydroquinone, iodochlorhydroxyquin, and oxyquinoline sulfate. Notices were subsequently published in the FEDERAL REGISTER of November 16, 1973 (38 FR 31697) and August 27, 1975 (40 FR 38179) requesting the submission of data and information on these ingredients as used in OTC skin bleaching drug products.

A. SUBMISSIONS BY FIRMS

Pursuant to the above notices, the following firms made submissions related to the indicated products:

Firms and Marketed Products

Chattem Drug & Chemical Co., Chattanooga, Tenn. 37409, Ultra Nadinola Cream, Deluxe Nadinola Complexion Cream, Derma Blanch, Nadinola Double Care Lotion.
Nicholas Products Ltd., Slough Bucks, England SLI 4AU, Ambi Skin Cream.
Plough Inc., Memphis, Tenn. 38151, Atra Skin Tone Cream.
USV Pharmaceutical Corp., Tuckahoe, N.Y. 10707, Esoterica Regular, Esoterica Facial, Esoterica Fortified, Esoterica Lotion, Esoterica Special, Golden Peacock Bleach Cream.

B. LABELED INGREDIENTS CONTAINED IN MARKETED PRODUCTS SUBMITTED TO THE PANEL

Amyl dimethyl-PABA
Glycery-PABA
Hydroquinone

C. ADDITIONAL INGREDIENTS CONSIDERED BY THE PANEL FOR WHICH NO DATA WERE SUBMITTED

Ammoniated mercury
Ginseng
Hexachlorophene
Iodochlorhydroxyquin
Oxyquinoline sulfate

D. CLASSIFICATION OF INGREDIENTS

1. *Active ingredients:*

Ammoniated mercury
Hydroquinone

2. *Inactive ingredients:*

Ginseng
Hexachlorophene
Iodochlorhydroxyquin
Oxyquinoline sulfate

3. *Ingredients deferred to other OTC advisory review panels or other experts:*

Amyl dimethyl-PABA
Glyceryl-PABA

E. OTC VOLUME SUBMISSIONS

All "OTC volumes" refer to the submissions made by interested persons pursuant to the call for data notices published in the FEDERAL REGISTER of November 16, 1973 (38 FR 31697) and August 27, 1975 (40 FR 38179). The volumes will be put on public display after December 4, 1978, in the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

II. SKIN BLEACHING DRUG PRODUCTS

A. GENERAL DISCUSSION

1. *Introduction.* As part of its review, the Panel was charged to evaluate data and information on the safety, effectiveness, and labeling of OTC skin bleaching drug products. The Panel reviewed submissions from four pharmaceutical companies.

The Panel has evaluated the only claimed active ingredient that was contained in all the products submitted for review. That single active ingredient was hydroquinone. The call for data by FDA listed seven active ingredients, one of which was hydroquinone. The remaining six ingredients were not present in any product submitted for review.

The Panel finds that these products are designed to bleach or otherwise lighten limited areas of hyperpigmented skin through a direct effect on the structure and function of the body, i.e., by the suppression of melanin pigment formation within skin cells. The Panel has classified all products of this type as drugs because the skin can be bleached or lightened, a desirable effect in many circumstances and conditions, only by a direct effect on the melanin pigment within skin cells, and because this effect is generally accomplished by the suppression of specific enzyme activity within the cell.

One company's line of products contained hydroquinone combined with sunscreen agents. These sunscreen agents were deferred to the Advisory Review Panel on OTC Topical Analgesic Drug Products, including Antirheumatic, Otic, Burn, Sunburn Prevention and Treatment Drug Products.

Skin bleaching drug products are intended to bleach or otherwise lighten limited areas of hyperpigmented skin. This effect should be noticeable in the majority of users within 2 months. The substance should not permanently injure the skin or produce systemic toxicity to the user. The Panel found hydroquinone to be safe and effective ingredient when used under the conditions specified. (See part II. paragraph B.1. below—category I labeling.)

Hyperpigmentation may result from a variety of causes. Endocrine imbalances such as Addison's disease, Cushing's disease, hyperthyroidism, pregnancy, or estrogen therapy will affect skin pigmentation. Metabolic alterations affecting the liver such as hemochromatosis, biliary cirrhosis, certain glycogen storage diseases, and

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porphyria cutanea tardea are often associated with a diffuse melanosis. Rheumatoid arthritis has also been associated with alterations in pigmentation. Certain antineoplastic drugs such as busulfan, cyclophosphamide, and procarbazine have been known to produce a melanosis. Chlorpromazine in chronic high dosage and some antimalarials, such as chloroquine and hydroxychloroquine, have also been implicated. These drugs are known to have an affinity for melanin. Nutritional deficiencies such as kwashiorkor and sprue as well as vitamin deficiencies of niacin and cyanocobalamin may occasionally produce melanosis. Physical trauma to the skin such as friction, heat, various actinic radiations, allergic, sensitizers, photosensitizers, infectious agents, and many other factors which contribute to an inflammatory dermatitis may also contribute to a postinflammatory pigmentation (Ref. 1).

OTC skin bleaching drug products are useful in certain hyperpigmentation conditions that are benign and amenable to self-medication, such as melasma (the mask of pregnancy), freckles, and senile lentigines ("liver spots" and "age spots"). These conditions are troublesome or cosmetically unappealing to the patient, but are not symptoms of an underlying pathological condition requiring initial diagnosis and subsequent monitoring by a physician. For example, melasma, also known as chloasma, is a condition in which blotchy patches occur on the face, due to a hormonal imbalance caused by pregnancy or oral contraceptives. These blotches occasionally coalesce to form the "mask of pregnancy" (Ref. 2). Senile lentigines appear on sun-exposed areas of the skin at the menopause or male climacteric, but are not indicative of any hormonal disorder.

Because there is no literature to support use of skin bleaching drug products in children, the Panel concludes that they should not be recommended for use on children under 12 years of age.

The Panel concludes that several weeks of treatment are required for depigmentation. The Panel further concludes that sun exposure is to be avoided by the use of a sunscreen agent, a sun blocking agent, or protective clothing if pigmentation is not to reoccur (Refs. 3 and 4). Thus, the Panel recommended including the following warning in the labeling for skin bleaching drug products, "Use of a sunscreen on treated areas of the skin should be continued indefinitely in order to prevent darkening from reoccurring." During their April 17, 1978, meeting, the Panel was asked by the agency to clarify this warning. After considerable discussion the Panel voted to amend the warning to read as follows: "WARNING: Sun exposure should be avoided indefinitely by using a sunscreen agent, a sun blocking agent, or protective clothing to cover bleached skin in order to prevent darkening from reoccurring."

The Panel concluded that this warning was the most important warning for skin bleaching drug products and recommended that it appear as the first warning on package labeling and that it be conspicuously boxed and in red letters. The discussion of this change was recorded in the minutes of that meeting (Ref. 5).

2. *Ingredients reviewed in addition to sumitted data.* The Panel, in addition to reviewing the submitted ingredients, reviewed all other ingredients listed in the agency's notice published in the FEDERAL REGISTER of August 27, 1975, calling for data and information on ingredients used in skin bleaching drug products for potential skin bleaching activity.

Hexachlorophene is listed in the current "United States Pharmacopeia" as a topical anti-infective (Ref. 6). The Panel has been unable to locate data and information on the the use of hexachlorophene as a skin bleaching agent.

Iodochlorhydroxyquin was listed in the "United States Pharmacopeia XVIII" (Ref. 7) and the "National Formulary XIII" (Ref. 8). The "Merck Index IX" and "Remington's Pharmaceutical Sciences XV" also list iodochlorhydroxyquin as a topical anit-infective (Refs. 9 and 10). Again, no mention is made of its use as a skin depigmenting agent.

Oxyquinoline sulfate, also known as 8-quinolol sulfate, oxine sulfate, 8-hydroxyquinoline sulfuric acid salt, quinosol, and chinosol, is listed in the "Merck Index" and "Remington's Pharmaceutical Sciences" as a topical anti-infective. It has been used as an antiseptic, antiperspirant, and deodorant, but no mention is made of skin bleaching properties (Refs. 11 and 12).

The Panel concludes that these ingredients have been incorporated in various skin bleaching preparations as pharmaceutical aids, i.e., preservatives.

Ginseng is not listed in any of the current compendia and the Panel has been unable to locate data and information relevant to its use in OTC skin bleaching drug products.

3. *Advertising.* The Panel's approval of an active ingredient or combination of active ingredients for a particular indication should not be interpreted as unique to the active ingredient or to the combination. Labeling, package inserts, or advertising should not refer to such approval either directly or by inference as a unique or an exclusive endorsement of such an ingredient or combination of ingredients.

The Panel is aware that the FDA does not regulate the advertising of OTC drug products. However, the Panel recommends that advertising for these drugs in any medium be consistent with the labeling claims in the proposed monograph. It follows that labeling and advertisements should, therefore, be closely monitored by the proper authority to ensure that advertisements do not go beyond the limitations of the monograph and/or negate restrictions and warnings recommended by the Panel.

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B. CATEGORIZATION OF DATA

1. *Category I conditions under which skin bleaching active ingredients are generally recognized as safe and effective and are not misbranded.* The Panel recommends that the category I conditions be effective 30 days after the date of publication of the final monograph in the FEDERAL REGISTER.

Category I Active Ingredient

The Panel has classified the following skin bleaching active ingredient as safe and effective and not misbranded:

Hydroquinone. The Panel concludes that hydroquinone is safe and effective for OTC use as a skin bleaching drug product as specified in the dosage and labeling sections below.

Hydroquinone is one of a group of three isometric dihydroxybenzenes, in which the two hydroxyl groups are para to each other, that is in the 1, 4 positions (Ref. 1). The traditional method of manufacture involves the oxidization of aniline to quinone with manganese dioxide, followed by reduction of the quinone to hydroquinone with metallic iron and water. Commercial variations have been used in which alkaline permanganate was used as the oxidant, and several variations of the reduction step have been reported. A radically new route has been attributed to a United States petroleum refiner, involving a direct parallel to the now well-proven cumene hydroperoxide route to phenol. In this instance the intermediate is 1,4-diisopropylbenzene, which is subjected to peroxidation and cleavage, yielding the desired hydroquinone product and acetone (Ref. 1).

Hydroquinone is extensively used as a photographic developer and in various processes which require an antioxidant. The derived antioxidants are particularly effective in preventing rancidity in fats and, therefore, find widespread use in foodstuffs. Miscellaneous applications in medicinals and dyestuffs account for about 20 percent of the total production of hydroquinone. Various derivatives of hydroquinone, mostly ethers, such as hydroquinone monomethyl ether, dimethyl ether, aminohydroquinone, dibutyl ether, and di(betahydroxyethyl) ether are articles of commerce. Other hydroquinone derivatives include such compounds as ditert-butyl hydroquinone. In general, the hydroquinone derivatives find utility through the oxidation-reduction reactions involving the reversible shift from the hydroquinone to the quinone configuration. In aqueous solutions this reaction is both rapid and quantitative, comparable to the reactions between ferrous and ferric ions (Ref. 1).

The raw materials from which hydroquinone is manufactured are processed by gravity under heat and pressure through various mixing and distilling vats, filter presses, and weighing machines, and the pure compound emerges in the packing room. Although ventilation is provided and the system is enclosed, fumes and dust particles escape into the atmosphere of the plant and produce lesions (Ref. 2). These lesions are described below. (See pt. II. par. B.1.(1) below—Safety.)

(1) *Safety.* In chronic toxicity studies, Stern, Lang, Brewer, and Carlson (Ref. 3) reported the effects of hydroquinone in "3 groups of 40 rats each of which were fed varying amounts of hydroquinone with citric acid and compared with a control group. After 2 years on test, 7 control rats, 10 rats fed 0.1 percent hydroquinone plus 0.01 percent citric acid, 11 rats fed 0.5 percent hydroquinone 0.01 percent citric acid, and 20 rats fed 1 percent hydroquinone plus 0.01 percent citric acid were still alive" (Ref. 3). The data on body weight, tibial length, WBC, RBC, and differential count revealed no significant differences among the groups, indicating no toxicity at these levels.

Lang, Brewer, and Carlson (Ref. 4) studied 19 adult human volunteers. Two men ingested 500 milligrams (mg) of hydroquinone daily for 5 months, 11 men and women ingested 300 mg daily for 5 months, and an additional 3 subjects ingested 300 mg daily for 3 months. Periodic blood and urine analyses were made throughout the duration of the experiments. None of the subjects showed any toxicity during the course of the experiments, and in no case did the analyzed data deviate significantly from accepted human norms.

In December 1975, Findlay, Morrison, and Simson in South Africa (Ref. 5) reported the development of ochronosis and pigmented colloid milium from hydroquinone bleaching creams. Hydroquinone creams are reportedly much sought after by South African black women. The effectiveness of hydroquinone creams was tested on South African black women seeking to bleach their skin. The author took pictures and compared the bleached face with the untreated natural dark brown of the neck or dorsal surface of the hand.

In this study, the authors noted that the facial epidermis overcame the bleaching effect during treatment and might grow darker than normal, particularly over sun-irradiated areas. The darkening tended to be most intense over those parts where the cream had been rubbed in well. Thereafter, novel changes developed in the papillary dermis. The dermal layer became ochronotic, with colloid degeneration and colloid milia production. These alterations could be observed in treated skin, parts of which retained a bleached appearance, though as a rule the initial bleaching effect of the cream was lost. Some manufacturers have included a sunscreen in the cream, but for those patients who were in the sun much the incorporation of the sunscreen did not prevent the deeper changes in the papillary dermis.

The striking development of the pigmented colloid milia in which the face has spots the size and color of caviar was first recognized by Alan Menter as cited by Findlay, Morrison, and Simson (Ref. 5). Analyses of the bleaching creams involved revealed that they contained approximately 5 percent and more of hydroquinone. In 6 of 35 patients, a blue tint was observed in the cavity of the external ear, due to ochronosis.

In patients reexamined after a year or more, the dermatosis was not significantly altered. Some improvement may have resulted from termination of treatment with the products, or from the use of a sunscreen by day and a steroid cream at night, but in general the changes were not strikingly reversed. In one case followed for 5 years, the milia were successfully removed with a skin graft knife, leaving a mildly hyperpigmented skin.

Forty-eight skin specimens were studied histologically. The main lesions occurred in the papillary layer of the dermis which showed foci containing ochronosis, elastosis, abnormal collagen with colloid degeneration, colloid milia pigmentary changes, telangiectasia with stretched plexus vessels around the tissue expansions, and sundry interstitial changes. Between the abnormal foci and below them there was no pathology, and epidermal changes were unspectacular (Ref. 5).

Ochronosis was common to all specimens in the study. The most striking ochronotic elements were broad stumpy fibers, parallel sided, curled or banana shaped, tending to transverse fracture, with jagged or pointed ends. Solar elastosis was often seen associated with ochronosis.

The interpretation was that the melanocytes had probably overcome the damaging influence of hydroquinone and were overactive. Prolonged application of the drug under conditions of sun exposure appears to lead in this result. Since changes in the dermis were not seen during the normal bleaching action of hydroquinone, the appearance of changes after melanocyte recovery suggested that the selective and damaging uptake of hydroquinone by melanocytes had ceased, and that the drug, with any of its chemical and metabolic derivatives, was then absorbed into the dermis (Ref. 5).

The Panel concludes that prolonged use of high concentrations (5 percent or more) of hydroquinone with exposure to the sun may produce disfiguring effects. These effects have not been reported at lower concentrations.

Arndt and Fitzpatrick (Ref. 6) reported that depigmentation from hydroquinone is limited and transient, while complete and progressive loss of pigmentation may occur from monobenzone (hydroquinone monobenzyl ether). In concentrations of 2 and 3 percent hydroquinone, no sensitivity reactions developed. An inflammatory reaction may develop after the first few weeks of treatment, but is often so mild that it may go unrecognized in heavily pigmented skin. The occurrence of inflammation makes subsequent lightening more likely. The re-

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action is similar clinically to that which occurs during monobenzone treatment, but differs from the monobenzone reaction in that it has never been followed by a progressive loss of pigmentation due to destruction of the melanocytes. This study did not include the treatment of postinflammatory hyperpigmentation by following, for example, photosensitization reactions, lichen planus, or dermatitis caused by reaction to drugs. The use of hydroquinone for depigmenting the above conditions should never be considered without a cautious therapeutic trial on a limited, inconspicuous area. The earlier the treatment is begun with hydroquinone for depigmentation of minor skin blemishes, the more likelihood there is of a satisfactory cosmetic result. Repigmentation always occurred after treatment had been stopped. Darker lesions repigmented more rapidly than lighter lesions.

The Meirowsky effect (long wavelengths of ultraviolet light darkening melanin already present in the skin) may be a significant factor in reducing the effectiveness of hydroquinone depigmentation. Because of this, in practice it is recommended that the patient be advised to use a sunscreen cream or protective clothing during the day and hydroquinone ointment at night.

Arndt and Fitzpatrick (Ref. 6) prepared hydroquinone as a 2 or 5 percent cream which subjects applied twice daily. In most instances, only limited areas of a lesion were treated, i.e., half the face or one extremity. Only in this fashion could results be accurately documented for the patients served as their own control. Patients were examined at approximately monthly intervals. If no effect was discernible after 3 months, treatment was discontinued.

The use of 5 percent hydroquinone cream was accompanied by a high incidence of primary irritant reactions. At the lower concentration (2 percent cream), the drug appeared to be as effective; however, there were fewer side effects at the 2 percent than at the 5 percent concentration.

Decrease in skin color usually became noticeable after 4 weeks of treatment, but the rate of depigmentation was so variable that the time of onset of changes ranged from 3 weeks to 3 months.

Approximately four out of every five patients showed a skin lightening response to hydroquinone cream. Twelve percent of the patients were blacks; no difference was noted between their skin reaction and that of whites. Normal skin surrounding areas of vitiligo and abnormally pigmented skin such as that of melasma responded equally well. Before treatment, the lesions were bilaterally symmetrical. The patient's right cheek remained untreated throughout, while the cream was applied to the left cheek twice daily for 1 month. Subsequent exposure to ultraviolet light resulted in a return of normal pigmentation to the pretreatment level.

Few side effects were noted. Occasionally, patients complained of burning or stinging after applying the cream, and in some instances lesions became slightly darker before they faded. Three patients noted that their fingernails became temporarily discolored. In one instance, confetti-like depigmentation appeared over areas of melasma during treatment with hydroquinone. This patient had previously used hydroquinone monobenzyl ether. Thirty-two percent of the patients using 5-percent hydroquinone cream noted erythema and tingling at the site of application. Eight percent of those using 2 percent cream had similar reactions, but in none was the reaction severe enough to necessitate discontinuing the drug. In only one instance did the possibility of allergic sensitization arise. This patient's skin, which had previously reacted to 5-percent hydroquinone, was patch tested with both the 2 percent and the 5 percent cream. After 48 hours, the patch tests were positive and a generalized eczematous eruption had appeared.

Arndt and Fitzpatrick (Ref. 6) found that hydroquinone was a moderately effective depigmenting agent in 44 of the 56 cases they studied. When it was used in 2 percent concentration, the incidence of side effects was negligible. In one patient, a questionable leukoderma developed. The effectiveness of hydroquinone appeared to depend on the type of hypermelanosis and the cooperation of the patient. Patients were instructed to avoid sunlight, and during the summer months to use 15 percent para-aminobenzoic acid in a cream base to block the tanning of the skin. A major problem in preventing solar pigmentation remains, however, even after the usual sunscreens have been applied because the wavelengths that produce tanning and pigment-darkening extend into the visible spectrum. To block this spectrum, one would have to use a broad spectrum sunscreen such as an opaque sunscreen.

Hydroquinone cream did not lead to complete disappearance of the pathological hypermelanosis; evidence of the orignial pigmentary disturbance could ordinarily be discerned after its use. Results were satisfactory enough, however, to help most patients become less self-conscious about their abnormalities of melanin pigmentation.

In spite of the known pharmacological action of hydroquinone, workers exposed to large amounts do not become depigmented. Depending on the length of exposure, workers may show a reddish discoloration of hair and exposed skin, especially of the palms and soles (Ref. 6).

Velhagen (Ref. 7) found hydroquinone factory workers with lesions of the conjunctiva and cornea of varying degrees. He observed that if he placed a crystal of hydroquinone on filter paper previously saturated with alkaline tear drops, a brownish stain developed rapidly. He reasoned that small crystals of hydroquinone came in contact with the cornea and were there changed to paraquinone, which has the dark brown color. He also noted that paraquinone increased the pain threshold, permitting a greater exposure to the harmful agent without discomfort, thus setting up a vicious cycle.

In 1947, Anderson (Ref. 2) reported his observations on 41 workers in a hydroquinone plant. He and his coworkers found, in confirmation of Velhagen's observations, that the degree of loss of sensation is proportionate to the degree of staining of the cornea.

The changes seen in the eyes of the hydroquinone factory workers mentioned above would appear to be of two types, i.e., deposition of pigment in the conjunctiva and cornea, and opacification of the superficial portion of the cornea.

The deposit of pigment occurs in the form of spherules of various sizes. It is most prominent in the eyes of older patients and is to be observed in regions which normally contain fat, for example, in the palpebral portion of the episclera and in the arcus senilis of the cornea.

Development of the lesions as reconstructed from observations over a 2-year period would seem to be as follows (Ref. 2):

(i) The person comes into the plant and is trained to work in rotation in any of a half dozen stations. After a 2-year interval, a brownish tinge against the normally white sclera in the interpalpebral portions is noticeable. When examined with the slit lamp, the conjunctiva in these areas may appear slightly dried with a white, frothy, foamlike deposit attached irregularly and rather firmly to the surface. The deeper portions of the conjunctiva in the same interval assume the light brownish sepia stain. No true microscopic deposition of pigment in definite granules or globules is visible. The cornea remains clear.

(ii) After another 2- or 3-year interval, the conjunctiva appears more thickened and drier, and, in addition to the superficially placed white flecks and sepia stain, small, discrete, dark brown granules or globular precipitates are observed in the deeper structures, Some migration of pigment,

from the limbus into the cornea, can now be observed as well.

(iii) After 5 or more years of exposure, a definite increase is noted in the size, number, and spread of both the granules and the extent of staining. The cornea has now become gravely involved.

(iv) In the next stage, vision has become seriously reduced. The patient has been removed from contact with the chemical. The conjunctival staining has cleared, as it apparently does in time. The corneal staining decreases, but permanent damage is done to the cornea, resulting in increased opacity, increase in astigmatism, possibly corneal thinning, and keratoconus.

(v) The fifth stage may be the development of an opacity extensive enough to require a corneal transplant.

Two of Anderson's (Ref. 2) patients were hospitalized and subjected to exhaustive tests. Urinalysis and studies of the blood were performed repeatedly on all persons employed at the plant. The drug appears to be relatively harmless systemically; no systemic toxicity was observed in this study. As a matter of record, 12 grams (g) were ingested in one instance without fatality (Ref. 8). In this case, the urine gave a positive reaction for phenol for only 3 days after absorption of the drug, so that a positive reaction for phenol in Anderson's cases was hardly to be expected.

The Panel concludes that, although there are no reports of eye injury following the use of hydroquinone bleaching creams, contact with the eyes should be avoided.

In summary, the Panel concludes that 2 percent hydroquinone bleaching creams are safe over limited areas of the body. Their use has not been shown to produce significant systemic or local toxicity, and neither the eye damage reported with industrial exposure nor the skin damage reported with prolonged use of 5 percent creams has ever been reported with concentrations below 5 percent.

(2) *Effectiveness.* The search for an effective and safe agent that would cause depigmentation of human skin has long interested physicians and laymen. Abnormal variation in skin color not only constitutes a cosmetic liability, but in many instances produces formidable emotional and social problems (Ref. 6).

Hydroquinone was first reported to have depigmenting ability by Oettel (Ref. 9), who fed the drug to black-haired cats and noted that after 6 to 8 weeks their coats turned gray. Repigmentation of the hair occurred after the chemical had been withdrawn for a similar length of time. Martin and Ansbacher (Ref. 10) confirmed this work by feeding hydroquinone to young mice which developed achromotrichia within a period of 4 to 20 weeks.

Occupational leucoderma was reported in 1939 in black tannery workers. The responsible agent was found to be the hydroquinone monobenzyl ether, a rubber antioxidant present in gloves the workers had been wearing. These findings stimulated the investigation by Lerner and Fitzpatrick (Ref. 11) of the hydroquinone monobenzyl ether and similar compounds applied topically as depigmenting agents. It soon became apparent that the clinical use of this agent was associated with several serious difficulties. Its depigmenting ability was unpredictable, and irritation, sensitization, and leucomelanoderma at both treated and untreated sites became frequent problems. In the patients studied by Lerner and Fitzpatrick, leucoderma developed in 31 of 42 patients treated. Unfortunately, cessation of the agent's use did not necessarily stop the spread of depigmentation.

Hydroquinone itself has been shown to inhibit melanogenesis in vitro and in vivo (Refs. 12, 13, and 14). Topical application of hydroquinone produces a reversible depigmentation of skin and hair in humans, mice, and guinea pigs (Refs. 6, 12, and 15). It also produces a reversible regression of melanotic tumors in fish and mice (Refs. 15 and 16).

The mechanism by which melanin formation is inhibited by *p*-hydroxy phenyl drivatives was studied by Denton, Lerner, and Fitzpatrick (Ref. 12). They found that hydroquinone could completely inhibit the enzymatic oxidation of tyrosine to 3, 4-dihydroxyphenylalanine (dopa). They suggested that the hydroquinone monobenzyl ether may be converted in the skin to hydroquinone, which would then inhibit the reaction. It was also suggested that both hydroquinone and the hydroquinone monobenzyl ether could act topically by reducing melanin to a lighter colored substance.

Studies by Spencer (Ref. 15) and by Becker and Spencer (Ref. 17) show that when hydroquinone depigmentation has occurred, the microscopic findings indicate that melanin production is reduced by about one-half. These findings support the clinical observation that depigmentation of the lighter lesions is more apparent than depigmentation of the darker ones.

More precise anatomical studies were performed by Jimbow, Obata, Pathak, and Fitzpatrick (Ref. 18). Black guinea pigs were used in this study. The backs were epilated, and applications were made of creams containing 2 and 5 percent hydroquinone for 6 days of each week. Biopsy specimens were obtained at intervals of 1, 2, and 3 weeks. These creams induced not only depigmentation but also inflammatory changes and thickening of the epidermis. Depigmentation was visible within 8 to 10 days and was maximum within 14 to 20 days. Rarely could total depigmentation of the skin be observed. Examination of epidermal sheets after incubation in methyl dopa showed a marked decrease in the number of dopa positive melanocytes proportional to the duration of the applications. There was not only a reduction in the number of melanized melanosomes and the number of actively functioning melanocytes, but most of the dendritic cells were devoid of any melanized melanosomes. Moreover, some of them showed poorly developed intracytoplasmic organelles. Ultrastructural changes indicative of some sort of cellular degeneration were also seen. The authors felt that some of the melanocytes were destroyed and discharged from the skin with the exfoliating scales. The melanosomes which had been transferred into the keratinocytes by the melanocytes also showed definite evidence of degradation. The inflammation consisted of histiocytes primarily, but there were also lymphocytes and polymorphonuclear leucocytes. The epidermis was thickened, particularly the granular layers. Desquamation was prominent and was often seen within 1 week after hydroquinone application. In contrast to the extensive melanocytic changes, the keratinocytes did not show any cellular degeneration. An earlier study, referred to by the authors (Ref. 18), suggested that the primary action of hydroquinone is directed at tyrosinase in the melanocytes. This selective inhibition of the enzyme affects melanogenesis in the melanocytes resulting in subsequent cessation of melanin formation and depigmentation, i.e., enzyme-mediated depigmentation. Additional studies, referred to by the authors (Ref. 18), revealed that the primary action of hydroquinone is on some essential subcellular components of vital metabolic processes of melanocytes with resultant cytolysis, i.e., nonenzyme-mediated depigmentation.

In order to study the role of hormones and certain chemicals (among them hydroquinone) on mammalian pigment cells, Hu (Ref. 19) employed mammalian pigment cell strains grown in tissue cultures. He employed, in this study, pigmented (HFH-14 and HFH-18) and nonpigmented (HFH-18NP) cell strains derived from B16 transplantable mouse melanomas.

The melanoma cells were grown on coverglasses in Yerganian culture tubes. Controls and test cultures were fixed and stained at the end of 5 to 7 days of incubation and examined microscopically for extent of growth, rel-

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ative numbers of pigmented and nonpigmented cells, and other cellular changes.

Other melanoma cells were grown in 2-ounce prescription bottles; 300,000 cells were inoculated into each culture bottle. In 7 to 9 days, compact sheets of cells were formed on the glass bottom, at which time the cultures were ready for subculture.

For subcultures, 0.01 percent trypsin in Hank's balanced salt solution was used to disperse the cells. When a cell suspension was obtained, a cell count was done to determine the extent of growth; 300,000 cells were then inoculated to another 2-ounce bottle to start the subculture.

For this study, at least three subcultures or more were done for each test agent. For each subculture, cytological examinations of stained as well as unstained slides were made.

At the end of 5 to 7 days of incubation, aggregates of pigmented cells were present overlying the nonpigmented cells in sheet formation on the glass surface. At this time, the coverglasses with the cells in monolayers were transferred and mounted in a perfusion chamber designed to accommodate the rectangular coverglasses. Motion picture sequences of these cells prior to treatment were made as controls, followed by sequences made immediately following treatment and overnight after treatment. In some, the medium containing the test agent was removed and replaced by normal growth medium. Sequences were made following this change of medium to see whether the cells could recover from the effect of the treatment.

All cultures were fixed at the end of the motion picture sequences, mounted on glass slides, and examined for evidence of cellular damage. The results were analyzed, and comparison was made between the treated and untreated cultures.

In general, it appeared that the pigmented cells were more susceptible to the effect of hydroquinone than the nonpigmented cells in the same culture. Following trypsinization, most of the pigment-containing cells disappeared. Only a few cells were seen in the fresh subculture in the first few days.

Hydroquinone inhibited growth of cells in vitro, particularly the pigmented cells, at a concentration of 0.625 micrograms per milliliter (μg/ml). When compared with control cultures, the hydroquinone-treated cultures grew much slower, less extensively, and with only a few pigment-containing cells, in contrast to the controls, which had many aggregates of pigmented cells. "When these treated cells were ready for subculture, the subcultures were also slow in growing and with a definite loss of pigmented cells. At concentrations of 1.25 and 2.5 μg/ml, hydroquinone inhibited growth completely when it was incorporated in the culture at the beginning of cultivation" (Ref. 19).

When the culture was well established in a normal medium, such as that used in the motion picture study, hydroquinone had no effect on the granule movement of the cells at 1 μg/ml, but it induced cessation of granule movement at 2.5 μg/ml. This effect was found to be reversible on certain occasions. In addition to its effect on the granule movement, hydroquinone also induced vacuolization of the cytoplasm and clumping of melanin granules. At 20 to 40 μg/ml, hydroquinone abruptly stopped granule movement in all cells in the same manner as a fixative affects cells.

Thus this study shows hydroquinone, in appropriate concentrations, exerts a skin-bleaching activity due to its injurious effect on the melanotic cells. A similar effect on goldfish pigment cells has been reported by Chavin and Schlesinger (Ref. 20).

Spencer (Ref. 14) appears to have been the first to use hydroquinone as a bleach, when he studied the chemical in 1961. The original study, although impressive, was felt to be limited because of the ease of oxidation of the hydroquinone in the ointment used. Once hydroquinone has oxidized, its effectiveness as a depigmenting agent is negligible. Oxidation was so pronounced when a 10 percent hydroquinone ointment was used that dark particles of oxidized hydroquinone in the ointment adhered to the skin. When lower concentrations, 1.5 and 2 percent hydroquinone, were used, depigmentation occurred even though yellowing of the freshly prepared white ointment developed within a few weeks. This discoloration of the 1.5 and 2 percent ointments would continue to increase until a dark gray color had developed. This color change was thought to be the result of oxidation of the available hydroquinone, making it worthless for therapy. After a more stable hydroquinone ointment was completed, reevaluation of hydroquinone in different concentrations was done.

Spencer (Ref. 15) reported observations of treatment with 2, 3, and 5 percent stabilized hydroquinone ointment for depigmentation of a variety of pigmentary changes. These included mainly freckles and lentigines occurring on the hands of middle-aged and older white men. Observations were also made on treatment of several black men in the same age group with normal skin.

The hydroquinone ointment being evaluated was applied to the back of one hand. The ointment base was applied to a similar area on the other hand. The treatment was continued twice daily for 3 months.

Depigmentation of lentigines with hydroquinone requires several weeks of treatment. In this clinical study, a plateau of depigmentation seemed to be reached at about the end of 2 months. Little or no change in color was observed during the final month of treatment. Whether or not further depigmentation would occur with prolonged therapy was not determined in this study. However, the number of patients in whom depigmentation developed from treatment with the stabilized hydroquinone was greater when compared with unstabilized hydroquinone preparations.

Depigmentation with hydroquinone may occur with or without a preceding inflammatory reaction. A transient inflammatory reaction developed in the majority of the patients in this study and lasted a week or so before any significant depigmentation occurred. Although inflammation may occur without depigmentation developing, its appearance during the course of treatment should not be considered an indication to stop therapy. The exception is the patient who develops an inflammatory reaction that increases in intensity. Here the possibility of sensitization should be considered. In the study, no patient being treated with 2 or 3 percent hydroquinone became sensitized. Two patients became sensitized while being treated with the 5 percent hydroquinone. Violent local reactions developed in these two patients and dissemination necessitated discontinuation of treatment. Patch tests with the original 5 percent hydroquinone ointment and another 5 percent hydroquinone ointment made after the reaction had cleared were strongly positive. The dermatopathologist who prepared and studied the biopsies reported that changes varied from acrokeratosis verruciformis to a lesion with long rete ridges that appeared almost anaplastic.

In blacks the response to hydroquinone treatment for depigmentation of normal skin is dependent upon the amount of pigment present. Only in the lighter skin was it possible to observe any contrast between the hydroquinone-treated hand and the control. No depigmentation was observed when darker skin was treated. Even when a clinical response was observed, the microscopic study failed to reveal any difference between the hydroquinone-treated and the untreated hand (Ref. 15).

The Panel concludes that there is ample clinical and laboratory evidence that hydroquinone in a concentration of 1.5 to 2 percent produces skin lightening effects in a majority of users.

The ease of oxidation of hydroquinone is an important factor in reducing its effectiveness as a skin-lightening agent. With lower concentrations of hydroquinone, oxidation will not produce the pronounced discoloration of the ointment as with higher concentrations. Any darkening of the freshly prepared white ointment should be considered an indication of deterioration of the available hydroquinone.

One method of reducing oxidation has been to package hydroquinone ointment in small tubes. This minimizes the exposure of the ointment surface to air and limits the useable time of the opened package. Another method has been the use of a stabilizing agent such as sodium bisulfite.

(3) *Dosage.* Adult topical dosage is the thin application of a 1.5 to 2.0 percent preparation to the affected area twice daily. There is no recommended dosage for children under 12 years of age except under the advice and supervision of a physician.

(4) *Labeling.* The Panel recommends the category I labeling for skin bleaching active ingredients. (See pt. II. para. B.1. below—Category I Labeling.

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Category I Labeling

The Panel recommends the following category I labeling for skin bleaching drug products to be generally recognized as safe and effective and not misbranded.

a. *Indications:* (1) "For the gradual fading of 'age spots', 'liver spots', freckles and melasma (the mask of pregnancy, a condition of the skin that may also result from the use of oral contraceptives)."

(2) "Lightens dark pigment in the skin."

b. *Warnings:* (1) "WARNING: Sun exposure should be avoided indefinitely by using a sunscreen agent, a sun blocking agent, or protective clothing to cover bleached skin in order to prevent darkening from reoccurring." This warning should be conspicuously boxed and in red letters.

(2) "Avoid contact with eyes."

(3) "If skin irritation develops, use of this product should be discontinued or a physician should be consulted."

(4) "If no improvement is seen after 2 months of treatment, use of this product should be discontinued."

(5) "Not recommended for use in children under 12 years of age."

(6) "Depigmentation (lightening) effect of this product may not be noticeable when used on very dark skin."

(7) *For products containing a combination of hydroquinone and a sunscreen:* "This product will bleach skin and is not for use for the prevention of sunburn."

2. *Category II conditions under which skin bleaching ingredients are not generally recognized as safe and effective or are misbranded.* The Panel recommends that the category II conditions be eliminated from OTC skin bleaching drug products effective 6 months after the date of publication of the final monograph in the FEDERAL REGISTER.

Category II Active Ingredient

The Panel has classified the following skin bleaching active ingredient as not generally recognized as safe and effective or as misbranded:

Ammoniated mercury. The Panel concludes that ammoniated mercury is not safe and not effective for OTC use as a skin-bleaching drug product.

Ammoniated mercury, also known as ammoniated mercuric chloride, white precipitate, white mercuric precipitate, and aminomercuric chloride, is a water-insoluble substance, which was used in ointment form as a skin bleaching ingredient.

(1) *Safety.* Ammoniated mercury was used for many years as a skin bleaching ingredient until the hydroquinone monobenzyl ether became available.

Mercury can pass through the skin, especially in an ointment base, and chronic application can cause systemic mercury intoxication (Ref. 1). Sensitization is a common occurrence with these preparations according to Goodman and Gilman (Ref. 1) and Fisher (Ref. 2). For these reasons, the Panel feels that ammoniated mercury is not safe for OTC use as a skin bleaching agent.

(2) *Effectiveness.* The Panel has been unable to locate data relevant to the efficacy of ammoniated mercury in OTC skin bleaching drug products. The Panel concludes that ammoniated mercury cannot be generally recognized as effective.

(3) *Evaluation.* The Panel concludes that ammoniated mercury is not generally recognized as safe or effective. Moreover, the presence of a safe and effective ingredient (hydroquinone) renders the use of ammoniated mercury obsolete as a skin bleaching ingredient. The Panel consequently classifies ammoniated mercury as category II.

REFERENCES

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Category II Labeling

The Panel has examined the submitted labeling for skin bleaching drug products and has classified the following claims as Category II:

a. *Certain labeling claims that are unsupported by scientific data and beyond the known pharmacologic*

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properties of hydroquinone. These include all claims implying that the use of a skin bleaching agent results in healthier, younger, or rejuvenated skin. Examples of such claims include: "Helps skin look fairer, clearer, and younger"; "Helps fade the brown spots that tend to make your skin look older"; "Works in the pigment-forming cells of your skin to help fade those weathered brown spots on your neck and face—obvious blemishes which can make your skin look older than it should"; "Brightens, smooths, and softens skin"; "Gives a more even-tone wholesome looking coloring"; "Helps the aging changes in complexion to feel and look much younger."

b. *Claims which are not clinically defined or which would imply use of the product on injured skin or burns.* An example of such claims is "For stubborn cases where skin has become discolored, spotted, or darkened from bad weather or natural aging."

c. *Claims which use poorly defined terms that would confuse the consumer because the words have a different significance for different people.* Examples of such terms are "skin discolorations," "hand spots," "blotches," and "blotchy skin."

d. *Claims which imply an immediate rather than a gradual skin bleaching effect through use of certain terms.* Examples of such terms are "fast-acting," "quick," and "prompt."

e. *Claims which in any way negate, detract, or deemphasize the warning statements in Category I labeling.* (See part II. paragraph B.1. above—Category I Labeling.)

3. *Category III conditions for which the available data are insufficient to permit final classification at this time.* None.

C. DATA REQUIRED FOR EVALUATION

None of the skin bleaching active ingredients reviewed in this document for OTC use has been classified by the Panel as Category III. Therefore, studies to bring Category III skin bleaching active ingredients into Category I have not been developed by the Panel.

D. COMBINATION POLICY.

1. *General statement.* The Panel concurs with the OTC drug review regulation (21 CFR 330.10(a)(4)(iv)) which states:

> An OTC drug may combine two or more safe and effective active ingredients and may be generally recognized as safe and effective when each active ingredient makes a contribution to the claimed effect(s); when combining of the active ingredients does not decrease the safety or effectiveness of any of the individual active ingredients; and when the combination, when used under adequate directions for use and warnings against unsafe use, provides rational concurrent therapy for a significant proportion of the target population.

2. *Combinations of skin bleaching active ingredients.* The Panel has not developed a specific combination policy with respect to the use of more than one skin bleaching active ingredient in a formulation since only one safe and effective ingredient is known at this time, and the Panel sees little likelihood of any additional ingredients achieving general recognition of safety and effectiveness for this use in the immediate future.

3. *Combinations of hydroquinone with a sunscreen.* The Panel is aware of, and has had submitted to it, only one type of combination product, hydroquinone used with a sunscreen. The Panel concludes that this is a rational combination, since the depigmentation effect of hydroquinone is rapidly reversed by exposure to the sun. The Panel concludes that hydroquinone when used as a skin bleaching agent under the conditions set forth for category I ingredients may be combined with any category I sunscreen agent. However, the Panel feels that such a combination product must not bear indications for the prevention of sunburn and, in addition, must bear the following warning on its label: "This product will bleach skin and is not for the prevention of sunburn."

The Commissioner has carefully considered the environmental effects of this action and, because it will not significantly affect the quality of the human environment, has concluded that an environmental impact statement is not required. A copy of the environmental impact assessment is on file with the Hearing Clerk, Food and Drug Administration.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 502, 505, 701, 52 Stat. 1040–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321, 352, 355, 371)) and the Administrative Procedure Act (secs. 4, 5, and 10, 60 Stat. 238 and 243 as amended (5 U.S.C. 553, 554, 702, 703, 704)) and under authority delegated to him (21 CFR 5.1), the Commissioner proposes that subchapter D of chapter I of title 21 of the Code of Federal Regulations be amended by adding new part 358, subpart A, to read as follows:

PART 358—MISCELLANEOUS EXTERNAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Subpart A—Skin Bleaching Drug Products

GENERAL PROVISIONS

Sec.
358.1 Scope.
358.3 Definition.

ACTIVE INGREDIENT

358.10 Skin bleaching active ingredient.
358.20 Permitted combinations of active ingredients.

LABELING

358.50 Labeling of skin bleaching drug products.

AUTHORITY: Secs. 201, 502, 505, 701, 52 Stat. 1040–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321, 352, 355, 371) (5 U.S.C. 553, 554, 702, 703, 704).

Subpart A—Skin Bleaching Drug Products

GENERAL PROVISIONS

§ 358.1 Scope.

An over-the-counter skin bleaching drug product in a form suitable for topical administration is generally recognized as safe and effective and is not misbranded if it meets each of the conditions in this part 358, subpart A, in addition to each of the general conditions established in § 330.1 of this chapter.

§ 358.3 Definition.

Skin bleaching active ingredient. An agent designed to bleach or otherwise lighten limited areas of hyperpigmented skin through the suppression of melanin pigment formation within skin cells.

ACTIVE INGREDIENT

§ 358.10 Skin bleaching active ingredient.

The active ingredient of the product consists of the following when used within the dosage limits established: *Hydroquinone 1.5 to 2.0 percent.*

§ 358.20 Permitted combinations of active ingredients.

Hydroquinone identified in § 358.10 may be combined with any generally recognized safe and effective sunscreen active ingredient identified in § 352.10 of this chapter provided that the product is labeled only as identified in § 358.50.

LABELING

§ 358.50 Labeling of skin bleaching drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as a "skin bleaching agent."

(b) *Indications.* The labeling of the product contains a statement of the indications under the heading "Indications" that is limited to one or more of the following phrases:

(1) *For products containing the ingredient identified in § 358.10 or any combination identified in § 358.20.* (i) "For the gradual fading of 'age spots,' 'liver spots,' freckles and melasma (the mask of pregnancy, a condition of the skin that may also result from the use of oral contraceptives)."

(2) "Lightens dark pigment in the skin."

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) *For products containing the ingredient identified in § 358.10 or any combination identified in § 358.20.* (i) "WARNING: Sun exposure should be avoided indefinitely by using a sunscreen agent, a sun blocking agent, or protective clothing to cover bleached skin in order to prevent darkening from reoccurring." This warning should be conspicuously boxed and in red letters.

(ii) "Avoid contact with eyes."

(iii) "If skin irritation develops, use of this product should be discontinued or a physician should be consulted."

(iv) "If no improvement is seen after 2 months of treatment, use of this product should be discontinued."

(v) "Not recommended for use in children under 12 years of age."

(vi) "Depigmentation (lightening) effect of this product may not be noticeable when used on very dark skin."

(2) *For combination products identified in § 358.20.* "This product will bleach skin and is not for use for the prevention of sunburn."

(d) *Directions.* The labeling of the product contains the following statements under the heading "Directions" followed by "or as directed by a physician":

(1) *For products containing the ingredient identified in § 358.10 or any combination identified in § 358.20.* Adult topical dosage is the thin application of a 1.5 to 2.0 percent preparation to the affected area twice daily. There is no recommended dosage for children under 12 years of age except under the advice and supervision of a physician.

(2) [Reserved]

Interested persons are invited to submit their comments in writing (preferably in quadruplicate and identified with the hearing clerk docket number found in brackets in the heading of this document) regarding this proposal on or before February 1, 1979. Such comments should be addressed to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, and may be accompanied by a memorandum or brief. Comments replying to comments may also be submitted on or before March 5, 1979. Comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Hearing Clerk, Food and Drug Administration.

Dated: October 17,1978.

SHERWIN GARDNER,
Acting Commissioner of Food and Drugs.

[FR Doc. 78-30825 Filed 11-2-78; 8:45 am]

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FRIDAY, NOVEMBER 3, 1978
PART IV



federal register

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

PROTECTION OF HUMAN SUBJECTS

Informed Consent; Definition Amended To Include Advice on Compensation

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[4110-08-M]

Title 45—Public Welfare

SUBTITLE A—DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, GENERAL ADMINISTRATION

PART 46—PROTECTION OF HUMAN SUBJECTS

Informed Consent — Definition Amended To Include Advice on Compensation

AGENCY: Department of Health, Education, and Welfare.

ACTION: Interim final regulation.

SUMMARY: The Department of Health, Education, and Welfare hereby amends the definition of informed consent in its regulations on protection of human subjects, by requiring that prospective subjects be advised as to the availability or nonavailability of medical treatment or compensation for physical injuries incurred as the result of participating in biomedical or behavioral research.

EFFECTIVE DATE: January 2, 1979.

ADDRESS: Comments and requests for information and requests for additional copies of this notice to: Robert Backus, Ph. D., Acting Director, Office for Protection From Research Risks, National Institutes of Health, 9000 Rockville Pike, Bethesda, Md. 20014, 301-496-4705.

SUPPLEMENTARY INFORMATION: On May 30, 1974, the Department of Health, Education, and Welfare published in the FEDERAL REGISTER regulations for the protection of human subjects (39 FR 18914). These regulations (codified at 45 CFR Part 46) include a requirement that no subject may be involved in activities covered by the regulations, which would place the subject at risk, unless legally effective informed consent is first obtained from the subject or the subject's legally authorized representative. Section 46.103(c) of the regulations sets forth a detailed definition of "informed consent" including six basic elements of information necessary to such consent.

Shortly thereafter, a Department task force was formed to develop a mechanism to compensate persons injured as a result of their participation in research. The task force issued a report in January 1977 making a number of recommendations for compensating injured subjects (DHEW Publication No. OS-77-003). This report was sent to the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research for comment. The Commission's reply, received in June 1977, was generally favorable to the task force's recommendations. However, the Commission urged that the existence or absence of a compensation mechanism be disclosed as part of the informed consent process.

More recently, in its own Report and Recommendations on Institutional Review Boards (IRBs) dated September 1, 1978, the Commission recommended that subjects should be informed "whether treatment or compensation is available if harm occurs" (HEW Publication No. OS-78-008, at page 21). The Department will be publishing the Commission's recommendations on IRBs in the FEDERAL REGISTER for public comment.

The Department believes, however, that, at least where research presents risk of physical harm, subjects should be advised at the outset whether there will be any financial protection for them in the event they are injured. The public interest would therefore be served by adding this element of information to the Department's informed consent requirements as soon as possible. I therefore find that good cause exists for issuing this as an interim final regulation, subject to possible future changes after consideration of public comment.

Consequently, pending consideration of, and response to the Commission's overall recommendations on IRBs, the Department is hereby amending the definition of informed consent along lines suggested by the Commission. Since the amendment is being adopted prior to public comment, its scope will be limited to treatment and compensation for physical injury, and only to those physical injuries arising from biomedical or behavioral research. Also, it will be extended to research conducted in collaboration with foreign governments or international organization, absent the explicit nonconcurrence of those governments or organizations.

The amendment to the regulations will be effective on a prospective basis, on January 2, 1979. After that date, IRBs, in carrying out their normal responsibilities for review of new research proposals and ongoing projects, under 45 CFR Part 46, shall utilize the definition of informed consent in section 46.103(c), as amended.

Although the amendment is being adopted as an interim final regulation, public comment is requested both on the basic issue of advising subjects regarding the availability or nonavailability of compensation and medical treatment for injuries and the specific amendment itself, including the limitations on its scope. The Department recognizes that limiting the amendment to the regulations to physical injury and to biomedical and behavioral research may be artificial and unduly restraining. At the same time, however, the Department is reviewing the issue of the applicability of the affected regulations and the scope and substance of this amendment will be examined in light of the outcome of that review.

Dated: September 5, 1978.

CHARLES MILLER,
Acting Assistant Secretary for Health.

Approved: October 21, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary.

Accordingly, Part 46 of 45 CFR, Subtitle A, is amended by:

1. Deleting the word "and" at the end of § 46.103(c)(5).

2. Changing the period at the end of § 46.103(c)(6) to a semicolon, and adding the word "and" after the semicolon.

3. Adding the following new § 46.103(c)(7):

§ 46.103 Definitions.

. . . . . .

(c) . . .

(7) With respect to biomedical or behavioral research which may result in physical injury, an explanation as to whether compensation and medical treatment is available if physical injury occurs and, if so, what it consists of or where further information may be obtained. This subparagraph will apply to research conducted abroad in collaboration with foreign governments or international organizations absent the explicit nonconcurrence of those governments or organizations.

. . . . . .

[FR Doc. 78-30752 Filed 11-2-78; 8:45 am]

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FRIDAY, NOVEMBER 3, 1978
PART V



DEPARTMENT OF LABOR

Employment Standards Administration

MINIMUM WAGES FOR FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION

General Wage Determination Decisions

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[4510-27-M]

DEPARTMENT OF LABOR

Employment Standards Administration

MINIMUM WAGES FOR FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION

General Wage Determination Decisions

General Wage Determination Decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed in construction activity of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1,1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138), and of Secretary of Labor's Orders 12-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General Wage Determination Decisions are effective from their date of publication in the FEDERAL REGISTER without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

MODIFICATIONS AND SUPERSEDEAS DECISIONS TO GENERAL WAGE DETERMINATION DECISIONS

Modifications and Supersedeas decisions to General Wage Determination Decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the Modifications and Supersedeas Decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 13-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing General Wage Determination Decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and Supersedeas Decisions are effective from their date of publication in the FEDERAL REGISTER without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Office of Special Wage Standards, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rule-making procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Wage Determination Decision.

MODIFICATIONS TO GENERAL WAGE DETERMINATION DECISIONS

The numbers of the decisions being modified and their dates of publication in the FEDERAL REGISTER are listed with each State.

Arkansas:	
AR78-4071	July 21, 1978.
Louisiana:	
LA78-4099	Oct. 6, 1978.
LA78-4113	Oct. 13, 1978.
Maryland:	
MD77-3086	Aug. 5, 1977.
MD78-3008	Mar. 3, 1978.
Texas:	
TX78-4017	Mar. 10, 1978.
TX78-4038	Apr. 14, 1978.
TX78-4078; TX78-4079	Aug. 11, 1978.
TX78-4088	Aug. 25, 1978.
TX78-4090	Sept. 15, 1978.
TX78-4096	Sept. 22, 1978.
TX78-4114	Oct. 20, 1978.
Wisconsin:	
WI78-2110	Do.

SUPERSEDEAS DECISIONS TO GENERAL WAGE DETERMINATION DECISIONS

The numbers of the decisions being modified and their dates of publication in the FEDERAL REGISTER are listed with each State.

Supersedeas Decision numbers are in parentheses following the numbers of the decisions being superseded.

Delaware:	
DE77-3134 (DE78-3080)	Sept. 30, 1977.
Illinois:	
IL78-2043 (IL78-2139)	Mar. 24, 1978.
Massachusetts:	
MA78-2080, MA78-2083, MA78-2084, MA78-2085 (MA78-2155).	Sept. 22, 1978.
Puerto Rico:	
PR77-3097 (PR78-3093); PR77-3098 (PR78-3092).	July 8, 1977.
Virginia:	
VA78-3041 (VA78-3076)	May 5, 1978.
VA78-3039 (VA78-3074); VA78-3042 (VA78-3075).	May 12, 1978.

CANCELLATION OF GENERAL WAGE DETERMINATION DECISIONS

None.

Signed at Washington, D.C. this 27th day of October 1978.

DOROTHY P. COME,
Assistant Administrator,
Wage and Hour Division.

MODIFICATIONS P. 2

Decision # AR78-4099 (Mod. #1)	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Electricians:	$12.00	.35	3%+.30		.03
Zone 5 - Electricians	12.00	.35	3%+.30		.03
Cable splicers					
Ironworkers (Building, Const.):					
Zone 1	11.06	.63	.35		.04
Zone 2	11.14	.45	.75		.04
Zone 3	11.05	.45	.90		.06
Zone 4	11.00	.45	1.15		.06
Zone 6	11.10	.35	.60		.03
Laborers (Building, Const.):					
Zone 2 - Group 1	6.47	.25	.15		.05
Group 2	6.67	.25	.15		.05
Zone 3 - Group 1	7.95	.25	.15		.05
Group 2	8.05	.25	.15		.05
Group 3	8.10	.25	.15		.05
Group 4	8.91	.25	.15		.05
Group 5	8.47	.25	.15		.05
Group 6	8.31	.25	.15		.05
Group 7	8.00	.25	.15		.05
Zone 4 - Group 1	7.22	.25	.27		.05
Group 2	7.32	.25	.27		.05
Group 3	7.37	.25	.27		.05
Zone 5 - Group 1	6.82	.25	.27		.05
Group 2	6.92	.25	.27		.05
Group 3	6.97	.25	.27		.05
Zone 6 - Group 1	7.90	.25	.27		.05
Group 2	8.00	.25	.27		.05
Group 3	8.15	.25	.27		.05
Group 4	8.06	.25	.27		.05
Group 5	8.116	.25	.27		.05
Zone 7 - Group 1	7.575	.25	.27		.05
Group 2	7.725	.25	.27		.05
Group 3	7.775	.25	.27		.05
Zone 8 - Group 1	6.96	.25	.15		.05
Group 2	6.26	.25	.15		.05
Group 3	6.31	.25	.15		.05
Group 4	6.36	.25	.15		.05
Group 5	6.71	.25	.15		.05
Zone 9 - Group 1	6.65	.25	.15		.05
Group 2	6.75	.25	.15		.05
Group 3	6.80	.25	.15		.05
Group 4	6.85	.25	.15		.05

[4510-27-C]

MODIFICATIONS P. 1

DECISION NO. AR78-4071 - Mod. #3
(43 FR 31550 - July 21, 1978)
Union & Ouachita Counties, Arkansas

CHANGE:
DECISION NUMBER for modification number one published in 43 FR 41339 on September 15, 1978 and modification number two published in 43 FR 49149 on October 20, 1978 to read "AR78-4071."

Decision # AR78-4090 - Mod. #1 (43 FR 46849 - October 6, 1978) Statewide Louisiana	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education Appr. Tr.
Change:					
Asbestos workers - Zone 2	$10.93	.40	.76		.03
Bricklayers & stonemasons:					
Zone 1	11.05	.80	.75		.31
Zone 3	11.45	.53	.60		.05
Zone 4	11.00	.50	.35		.035
Zone 6	10.25	.40	.45		
Zone 8	10.85		.25		
Zone 9	11.00				
Carpenters (Building Const.):					
Zone 2:					
Carpenters, piledrivermen & soft floor layers	10.35	.60	.33		.07
Millwrights	12.05				.07
Zone 4:					
Carpenters & piledrivermen	11.00	.50	.60		.05
Millwrights	12.425				.08
Zone 5:					
Carpenters & soft floor layer	10.62	.55	.40		.04
Millwrights	11.01	.55	.40		.04
Piledriverman	10.72	.55	.40		.04
Zone 6:					
Carpenters & soft floor layer	10.455	.55	.40		.04
Millwrights	11.01	.55	.40		.04
Piledriverman	10.72	.55	.40		.04
Zone 8:					
Carpenters & soft floor layer	9.85	.45	.35		.04
Millwrights	10.60	.45	.35		.04
Piledriverman	10.10	.45	.35		.04
Cement masons (Building Const.):					
Zone 1	10.11				
Zone 3	9.25	.50	.50		.05
Zone 4	10.445	.45	.40		.04
Zone 6	7.25				
Zone 7	9.30	.55	.25		
Zone 8	9.57				
Cement masons (Highway Const.):					
Zone 7 - on concrete lined ditches	9.25	.50	.50		.05
Zone 8 - on concrete lined ditches	9.25	.50	.50		.05

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MODIFICATIONS P. 3

DECISION #LA78-4099 (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Laborers (Bldg. Const.)(Cont'd):					
Zone 10 - Group 1	$ 6.40	.25	.15		.05
Group 2	6.50	.25	.15		.05
Group 3	6.65	.25	.15		.05
Lathers - Zone 1	9.68	.20	.30		.05
Zone 2	9.83	.20	.30		.05
Zone 3	10.08	.20	.30		.05
Zone 4	10.43	.20	.30		.05
Zone 5	10.57				.01
Line Construction:					
Zone 1 - Group 1	12.00	.35	3%+.30		.03
Marble, tile & terrazzo workers & finishers:					
Zone 1 - Marble setters	11.00	.50	.35		.035
Tile & terrazzo worker	11.00	.50	.35		.035
Zone 2 - Marble & terrazzo workers	11.45	.53	.60		.05
Zone 3 - Marble setters	11.00				
Zone 4 - Marble, tile & terrazzo workers	9.82		.25		
Zone 5 - Marble, tile & terrazzo workers	9.15	.30			
Plasterers - Zone 4	10.36				.01
Zone 6	7.25				.01
Zone 8	10.85		.25		
Plumbers & pipefitters - Zone 1	11.25	.50	.75		.08
Zone 2	11.00	.64	.675		.06
Power Equipment Ops. (Bldg. Const.):					
Zones 2, 3 & 4 - Group 1	7.97	.65	.48		.05
Group 2	8.34	.65	.48		.05
Group 3	8.73	.65	.48		.05
Group 4	8.79	.65	.48		.05
Group 5	9.16	.65	.48		.05
Group 6	10.77	.65	.48		.05
Zone 7 - Group 1	10.53	.65	.75		.05
Group 2	10.78	.65	.75		.05
Group 3	7.65	.65	.75		.05
Group 4	8.04	.65	.75		.05
Group 5	8.85	.65	.75		.05
Group 6	10.28	.65	.75		.05
Roofers - Zone 1 - Roofers	10.38		.20		
Truck drivers (Bldg. Const.):					
Zone 4 - Group 1	8.00				
Group 2	8.30				
Group 3	8.45				
Group 4	8.65				
Group 5	8.80				
Group 6	8.60				

MODIFICATIONS P. 4

DECISION #LA78-4113 - Mod. #1 (43 FR 47429 - October 13, 1978) Bossier, Caddo & Calcasieu Parishes, Louisiana	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Asbestos workers:					
Bossier & Caddo Parishes	$10.93	.40	.76		.03
Bricklayers & stonemasons:					
Bossier & Caddo Parishes	10.25	.40	.45		
Calcasieu Parish	11.45	.53	.60		.05
Carpenters:					
Bossier & Caddo Parishes:					
Carpenters	9.85	.45	.35		.04
Millwrights	10.60	.45	.35		.04
Piledrivermen	10.10	.45	.35		.04
Calcasieu Parish:					
Carpenters & piledrivermen	10.35	.60	.33		.07
Millwrights	12.05				.07
Cement masons:					
Bossier & Caddo Parishes	9.30	.35			
Ironworkers:					
Bossier & Caddo Parishes	11.05	.45	.90		.06
Calcasieu Parish	11.10	.35	.60		.05
Laborers:					
Bossier & Caddo Pars.-Group 1	6.65	.25	.15		.05
Group 2	6.75	.25	.15		.05
Group 3	6.80	.25	.15		.05
Group 4	6.85	.25	.15		.05
Calcasieu Parish - Group 1	7.95	.25	.15		.05
Group 2	8.05	.25	.15		.05
Group 3	8.10	.25	.15		.05
Group 4	8.20	.25	.15		.05
Group 5	8.91	.25	.15		.05
Group 6	8.47	.25	.15		.05
Group 7	8.31	.25	.15		.05
Group 8	8.00	.25	.15		.05
Marble setters:					
Bossier & Caddo Parishes	9.15	.30			
Calcasieu Parish	11.45	.53	.60		.05
Roofers:					
Calcasieu Parish - Roofers	10.38		.20		
Soft floor layers:					
Bossier & Caddo Parishes	9.85	.45	.35		.04
Calcasieu Parish	10.35	.60	.33		.07
Terrazzo workers:					
Bossier & Caddo Parishes	9.15	.30			
Calcasieu Parish	11.45	.53	.60		.05
Tile setters:					
Bossier & Caddo Parishes	9.15	.30			

MODIFICATIONS P. 5

DECISION #MD77-3086 - Mod. #9 (42 FR - 39880 - August 5, 1977) Allegany & Garrett Counties, Maryland	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Laborers					
Group I	8.39	.80	1.00		
Group II	8.42	.80	1.00		
Group III	8.53	.80	1.00		
Group IV	8.59	.80	1.00		
Group V	8.64	.80	1.00		
Group VI	8.73	.80	1.00		
Group VII	9.22	.80	1.00		
Group VIII	8.84	.80	1.00		
Group IX	8.84	.80	1.00		
Plumbers & Steamfitters	9.90	.50	.70	1.00	.05
DECISION #MD78-3002 - Mod. #3 (42 FR 9076 - March 3, 1978) Allegany & Garrett Counties, Maryland					
Change:					
Bricklayers	10.54	.65	.40		
Laborers:					
Group I	8.27	.80	1.00		
Group II	8.39	.80	1.00		
Group III	8.46	.80	1.00		
Group IV	8.06	.80	1.00		
Group V	8.57	.80	1.00		
Group VI	8.53	.80	1.00		
Group VII	8.49	.80	1.00		
Group VIII	9.09	.80	1.00		
Group IX	8.73	.80	1.00		
Truck Drivers:					
Group I	8.26	.80	1.05		
Group II	8.41	.80	1.05		
Group III	8.61	.80	1.05		
Group IV	8.81	.80	1.05		
Group V	9.04	.80	1.05		

MODIFICATIONS P. 6

DECISION #TX78-4017 - Mod. #4 (43 FR 10272 - March 10, 1978) Taylor County, Texas	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Asbestos workers	$10.93	.40	.76		.03
DECISION #TX78-4038 - Mod. #5 (43 FR 16129 - April 14, 1978) Harrison County, Texas					
Change:					
Asbestos workers	10.93	.40	.76		.03
Power Equipment Operators:					
Group 1	8.065	.40	1.00		.10
Group 2	9.40	.40	1.00		.10
Group 3	9.80	.40	1.00		.10
DECISION #TX78-4078 - Mod. #5 (43 FR 35881 - August 11, 1978) Collin, Dallas, Denton, Ellis, Grayson, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Cos., Texas					
Change:					
Asbestos workers	10.93	.40	.76		.03
Bricklayers & stonemasons:					
Zone 2	10.20	.45	.50		.04
Carpenters:					
Zone 2 - Carpenters	10.40	.55	.40		.04
Ironworkers - Zone 1	9.65	.55	1.15		.07
Marble, tile & terrazzo workers:					
Collin, Dallas, Denton, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Cos.	9.70		.30		
Power Equipment Operators:					
Zone 1 - Group 1	8.265	.40	.90		
Group 2	9.60	.40	.90		
Group 3	10.00	.40	.90		
Zone 2 - Group 1	8.065	.40	1.00		.10
Group 2	9.40	.40	1.00		.10
Group 3	9.80	.40	1.00		.10

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #TX78-4079 - Mod. #5 (43 FR 35884 - August 11, 1978) Bee, Kleberg & Nueces Cos., Texas					
Change:					
Bricklayers:					
Kleberg & Nueces Cos.	$ 9.31	.28	.30		.05
Marble, tile & terrazzo workers	8.68				.02
Plasterers	10.45				.01
DECISION #TX78-4087 - Mod. #2 (43 FR 39285 - August 25, 1978) Armstrong, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher & Wheeler Cos., Texas					
Change:					
Bricklayers & stonemasons	10.70		.40		
Carpenters:					
Zone 1 - Carpenters	10.30		.40		.01
Millwrights	10.65		.40		.01
DECISION #TX78-4088 - Mod. #4 (43 FR 36207 - August 25, 1978) Wichita County, Texas					
Change:					
Asbestos workers	10.93	.40	.76		.03
Power Equipment Operators:					
Group 1	7.875	.40	.625		.10
Group 2	8.775	.40	.625		.10
Group 3	9.175	.40	.625		.10
DECISION: #TX78-4090 - Mod. #1 (43 FR 31354 - September 15, 1978) Bowie County, Texas					
Change:					
Asbestos workers	10.93	.40	.76		.03
Power Equipment Operators:					
Group 1	8.065	.40	1.00		.10
Group 2	9.40	.40	1.00		.10
Group 3	9.80	.40	1.00		.10

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #TX78-4096 - Mod. #3 (43 FR 43242 - September 22, 1978) Bell, Bosque, Coryell, Falls, Hill & McLennan Cos., Texas					
Change:					
Building Construction:					
Asbestos workers - Zone 2	$10.93	.40	.76		.03
DECISION #TX78-4114 - Mod. #1 (43 FR 49208 - October 20, 1978) Lubbock County, Texas					
Change:					
Power Equipment Operators:					
Group 1	7.875	.40	.625		.10
Group 2	8.775	.40	.625		.10
Group 3	9.175	.40	.625		.10
DECISION #WI78-2110 - MOD. #1 (43 FR 49222 October 20, 1978) Ashland, Bayfield and Douglas Counties, Wisconsin					
ADD:					
Laborers: Ashland County only					
General Laborer	$ 8.18	.45	.40		.02
Concrete Work and carrying reinforcing or any steel	8.23	.45	.40		.02
Mason Tenders, Bricklayers' Helpers, Sewer Diggers, Pipelayers, Operating small mixers or mixing by hand, Operating power tools such as jackhammers, vibrator, air spade and forklift	8.33	.45	.40		.02
All work on towers or scaffolds 40 feet or more above the ground.					
Blocking, digging, raising and shoring work in basements under houses	8.28	.45	.40		.02

SUPERSEDEAS DECISION

STATE: Delaware COUNTY: State of Delaware
DECISION NO.: DE78-3080 DATE: Date of Publication
Supersedes Decision No. DE77- 3134dated September 30, 1977 in 42 FR 52990
DESCRIPTION OF WORK: Building Construction (excluding single family houses and garden type apartments up to and including 4 stories), Heavy & Highway Construction

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$12.14	1.10	1.25		.03
BOILERMAKERS:					
New Castle County	13.775	1.075	1.00		.02
Kent & Sussex Counties	12.025	1.075	1.00		.02
BRICKLAYERS	10.60	.95	.85		
CARPENTERS - BUILDING & HEAVY					
New Castle & Kent Counties	10.70	1.29	1.00		.02
Sussex County	10.12		.82		.01
CARPENTERS - HIGHWAY CONSTRUCTION					
New Castle & Kent Counties	9.20	1.29	1.00		.02
CEMENT MASONS:					
BUILDING CONSTRUCTION	9.05	1.28	.82		
HEAVY & HIGHWAY CONSTRUCTION	8.75	1.28	.82		
DIVERS	11.12	2.33	1.35	i	.12
ELECTRICIANS	11.40	9%	9%		
ELEVATOR CONSTRUCTORS:					
Mechanics	12.09	.545	.35	4%+a+b	.02
Elevator Constructors' Helpers	8.46	.545	.35	4%+a+b	.02
Elevator Constructors' Helpers (Probationary)	6.045				
GLAZIERS	10.53	.50	.30		.01
IRONWORKERS:					
Structural, Ornamental, Reinforcing, Riggers, & Machinery Movers	11.95	.84	1.36		.05
LABORERS - BUILDING CONSTRUCTION:					
New Castle County:					
Group 1: General construction, dumpmen, & truck spotters	8.10	.90	.50		
Group 2: Caulkers, operators of pneumatic & electric tools, vibrating machines, concrete saws, pumps, pot tenders, sewer pipelayers, demolition (use of hand tools), driller (except core, diamond, or multiple wagon), mason & plasterers tenders, cement workers,					

Decision No. DE78-3080 Page 2

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS - BUILDING CONSTRUCTION:					
Group 2: (Cont'd) mobile buggy operators, portable power saw operators, scaffold builders, hook-up men, signal men, stripping of flat arch & form work (also cleaning & oiling thereof), tool room attendant, gunite material & rebound workers, and shoring workers	8.35	.90	.50		
Group 3: Burners & welders, Caisson workers, top men (when excavations for caissons are dug eight feet or more below the natural grade level adjacent to the starting point of the caisson hole, the rate shall apply at the ground level), driller (core, diamond or multiple wagon), gunite industrial fume stack, nozzle, & rod workers, sandblaster (nozzlemen), tunnelling, underpinning excavation (when an underpinning excavation is dug eight feet or more below the natural grade, or when an excavation for a pier hole of five feet square or less and eight feet or more deep is dug, the rate shall apply only when a depth of eight feet is reached), working under compressed air	8.60	.90	.50		
Group 4: Blasters, laborers engaged in unloading, placing, and assis-					

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS - BUILDING CONSTRUCTION:					
Group 4: (Cont'd) ting in the installation of well point systems or deep well systems as long as needed on the job for such work	9.35	.90	.50		
Group 5: Caisson workers (bottom men)	8.70	.90	.50		
LABORERS - BUILDING CONSTRUCTION:					
Kent & Sussex Counties:					
Group 1	8.50	.90	.60		
Group 2	8.75	.90	.60		
Group 3	9.00	.90	.60		
Group 4	9.10	.90	.60		
Group 5	9.75	.90	.60		

CLASSIFICATION DEFINITIONS
LABORERS - BUILDING CONSTRUCTION
Kent and Sussex Couties

Group 1 - General laborers, dummen & truck spotters

Group 2 - Caulkers; operators of pneumatic and electric tools; vibrating machines; concrete saws and pumps (which shall include the hook up of hose and/or pipe); sandblasters; pot tenders; and sewer pipe, clay, terri-cotta, concrete and non-metallic pipe layers, demolition (where walls are required to be ridden down by hand tools); driller (except core, diamond, or multiple wagon); gunite material and rebound workers; mason and plasterer tenders, and cement workers; mobile buggy operators; operators of power saws (portable); power and sewing machines; scaffold builders; shoring, lagging and cribbing, including bolting and bracing; signal, hookup and grading on all work; stripping of flat arch and form work, the cleaning and oiling thereof; and the handling, moving and carrying to the next point of erection by any method; tool room attendant water pumps and generators

Group 3 - Burners and welders; caisson workers, top men (when excavations for caissons are dug eight feet or more below the natural grade level adjacent to the starting point of the caisson hole, the rate shall apply at the ground level); driller (core, diamond or multiple wagon); Gunite industrial fume stack, nozzle and rod workers; sandblaster (nozzleman); tunnelling; underpinning excavation (when an underpinning excavation is dug eight feet or more below the natural grade, or when an excavation for a pier hole of five feet square or less and eight feet or more deep is dug, the rate shall apply only when a depth of eight feet is reached); working under compressed air

Group 4 - Caisson workers (bottom men)

Group 5 - Blasters, laborers engaged in the placing, installation and cleaning of well point systems or deep well systems as long as needed on the job for such work

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS - HEAVY CONSTRUCTION:					
New Castle County:					
Common laborers, landscapers, planters, seeders, aborists, asphalt tampers, rakers, concrete pitmen, puddlers, rubber magazine tenders, railroad trackmen, signal men	6.10	.90	.50		
Pipelayers	6.25	.90	.50		
Wagon drill, diamond point drill, gunite nozzlemen, form setters, blasters, caisson & coffer dams (open-air, below 8')	6.40	.90	.50		
LABORERS - HEAVY CONSTRUCTION:					
Kent & Sussex Counties:					
Common laborers, landscapers, planters, seeders, aborists, asphalt tampers, rakers, concrete pitman, puddlers, rubber magazine tenders, railroad trackmen, signal men	5.25	.90	.60		
Pipelayers	5.40	.90	.60		
Wagon drill, diamond point drill, gunite nozzlemen, form setters, blasters, caissons & coffer dams (open-air, below 8')	5.55	.90	.60		
LABORERS - HIGHWAY CONSTRUCTION:					
New Castle County	5.90				
Kent & Sussex Counties	5.45				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LATHERS	9.15	.50	.15		.01
LINE CONSTRUCTION:					
Linemen, cable splicers	12.40	.45	3%		3/4of 1%
Winch truck operators	8.70	.45	3%		3/4of 1%
Truck drivers	8.08	.45	3%		3/4of 1%
Groundmen	7.46	.45	3%		3/4of 1%
MARBLE SETTERS	10.33	.95	.85		
MILLWRIGHTS:					
Kent & New Castle Counties	11.05	.83	2.00		
Sussex County	10.22		.82		.01
PAINTERS:					
Base rate	8.97	.95	.55		.01
Structural steel & suspended scaffolding (swing, chair, & window belts)	9.19	.95	.55		.01
Machine taping	9.27	.95	.55		.01
Bridges (if surface to be painted is 50' or more above ground or water), and/or cabled scaffolding	11.45	.95	.55		.01

DECISION NO. DP78-3080

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS: (CONT'D)					
Tanks (if exposed to the weather and is used for storage or processing purposes with a capacity of 5,000 gallons or more using exterior dimensions and/or interior work on all tanks), sandblasting, and spray	$ 9.52	.95	.55		.01
Height pay - work 75' or more from surface an additional 55c shall be paid above the applicable rate.					
PILEDRIVERMEN, WHARF & DOCK BUILDERS	10.77	2.13	1.30	c	.12
PLASTERERS	10.62	.90			.01
PLUMBERS & STEAMFITTERS:					
New Castle & Kent (north of the southern boundary of Dover City) Counties:					
Plumbers	11.50	1.15	1.00	.04 + d	.10
Steamfitters	12.35	.785	.965	e	.05
Sussex & Kent (remainder of county) Counties	10.30	1.00	1.00	f	.05
POWER EQUIPMENT OPERATORS - BUILDING & HEAVY CONSTRUCTION:					
Group 1	12.44	7%	10.3%	g	1.8%
Group 2	12.15	7%	10.3%	g	1.8%
Group 3	11.28	7%	10.3%	g	1.8%
Group 4	10.51	7%	10.3%	g	1.8%
Group 5	10.04	7%	10.3%	g	1.8%
Group 6	9.13	7%	10.3%	g	
Group 7					
100' & over	12.69	7%	10.3%	g	1.8%
150' & over	12.94	7%	10.3%	g	1.8%
200' & over	13.18	7%	10.3%	g	1.8%

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CLASSIFICATIONS

Group 1 - Machines with booms doing hoist work, any machine handling machinery, cable spinning machine, helicopter and similar machines

Group 2 - All types of cranes, all types of backhoes, cableways, draglines, keystones, all types of shovels, derricks, trench shovels, trenching machines, hoists with 2 towers, pavers 21E and over, all types overhead cranes, building hoists (double drum), gradalls, mucking machines, in tunnel, all front end loaders 3-5 c.y., and over, tandem scrapers, Pippin type backhoes, boat captains, batch plant operators (concrete), drills, self contained rotary drill, fork lifts (20' lift & over), and similar machines

Group 3 - Conveyors, building hoist (single drum), scrapers, toutnapulls, spreaders (asphalt), high or low pressure boilers, concrete pumps, well drillers, bulldozers, tractors, asphalt plant engineers, rollers (hot grade finishing), ditch witch type trenchers, all loaders under 5 c.y., mechanic-welders, motorpatrols, core drill operator, forklift trucks under 20' lift, similar machines

Group 4 - Welding machines, well points, compressors, pumps, heaters, farm tractors, form line graders, fine grade machines, road finishing machines, concrete breaking machines, rollers, seamer pulverizing mixer, power boom, seeding spreader, fireman (for power equipment), and similar machines

Group 5 - Fireman, grease trucks

Group 6 - Oilers and deck hands (personnel boats), core drill helper

Group 7 - All machines with booms (including jibs, masts and leads)

DECISION NO. DP78-3080

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
POWER EQUIPMENT OPERATORS - HIGHWAY CONSTRUCTION					
Group 1	12.15	7%	10.3%	g	1.8%
Group 2	11.28	7%	10.3%	g	1.8%
Group 3	10.51	7%	10.3%	g	1.8%
Group 4	9.13	7%	10.3%	g	1.85

CLASSIFICATIONS

Group 1 - Pippin type backhoe, euclid loader, all types of cranes, all types of backhoes, draglines, all types of shovels, keystones, paver 21E and over, trenching machines, cableways, all loaders 2 cu. yds. and over and similar machines

Group 2 - Carryalls, tournapulls, asphalt spreaders, motor patrols, concrete pumps, asphalt plant engineers, well drillers, all bulldozers, tractors, maintenance engineer, welders, conveyor loader, all loaders under 2 cu. yds., and similar machines

Group 3 - Form line grader, farm tractor, road finishing machine, concrete spreader, fine grade machines, compressors, pumps (4" or over), pumps (2 pr mpre any size), well point pumps, concrete breaking machines, rollers (grade fill and stone base), firemen, and similar machines

Group 4 - Oilers

ROOFERS:					
Composition, damp and waterproofing	11.36	1.30	.82	h	
Mechanic II (re-roofing)	5.50	1.30	.82	h	
SHEET METAL WORKERS	10.55	1.25	.81		.07
SOFT FLOOR LAYERS:					
New Castle & Kent Cos.	10.46	1.29	1.00		.02
Sussex Co.	10.12		.82		.01
SPRINKLER FITTERS	12.31	.75	1.05		.08
STONE MASONS	10.60	.95	.85		
TERRAZZO WORKERS & TILE SETTERS	10.33	.95	.85		
TILE SETTERS' HELPERS	7.25				

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
TRUCK DRIVERS - BUILDING CONSTRUCTION:					
Group 1	$ 7.96	.7175	.70	f	
Group 2	7.86	.7175	.70	f	
Group 3	7.71	.7175	.70	f	

CLASSIFICATION DEFINITIONS
TRUCK DRIVERS

Group 1 - Euclid type or similar off highway equipment (where not self-loaded), off highway tandem back-dump, specialized earth moving equipment, truck mechanic (first class), twin engine equipment & double-hitched equipment (where not self-loaded).

Group 2 - A-frames, agitators or mixers, asphalt distributors, dispatchers, low-boys, semi-trailers, tandems, batch trucks & truck mechanics (second class).

Group 3 - Dumps (single axle), dumpsters, escort & pilot vehicles, flat body material trucks (straight job), fork lifts, form trucks, greasers, material checkers & receivers, panel trucks, pick-ups rubber-tired (towing & pushing vehicles), tiremen & truck mechanic helpers, truck helpers.

TRUCK DRIVERS - HEAVY HIGHWAY CONSTRUCTION:					
Group 1	7.11	.7175	.70	f	
Group 2	7.01	.7175	.70	f	
Group 3	6.86	.7175	.70	f	

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CLASSIFICATION DEFINITIONS
TRUCK DRIVERS
HEAVY & HIGHWAY CONSTRUCTION

Group 1 - Euclid type or similar off highway equipment (where not self loaded), specialized earth moving equipment, truck mechanics (first class), twin engine equipment & double-hitched equipment (where not self-loaded.

Group 2 - A-frames, agitators or mixers, asphalt distributors, dispatchers, low-boys, semi-trailers, tandems, batch trucks, truck mechanics (second class).

Group 3 - Dump trucks (single axle), dumpsters, escort & pilot vehicles, flat body material trucks (straight jobs), greasers, material checkers & receivers, panel trucks, pick-ups, rubber-tired (towing or pushing flat body vehicles), tiremen, truck mechanic helpers, truck helpers.

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E- Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

a. Employer contribution of 4% of the basic hourly rate for 5 years or more of service and 2% of the basic hourly rate for 6 months to 5 years of service for Vacation Pay Credit

b. Paid Holidays: A through F

c. Paid Holidays: Washington's Birthday, Good Friday, Memorial Day, Independence Day, Labor Day, Presidential Election Day, Veterans Day or Thanksgiving Day.

d. Paid Holidays: A through F; provided the employee is actively and currently employed by the employer at the time the holiday occurs; provided the employee would otherwise be scheduled to work and would work on such day if it was not observed as a holiday; and provided the employee has worked under current working conditions the last regularly scheduled workday before, and the first regularly scheduled workday after the holiday.

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FOOTNOTES: (Cont'd)

e. Paid Holiday: Labor Day provided the employee is currently on the payroll and would be scheduled to work the holiday also employee must work the day prior to and after the holiday.

f. Paid Holidays: A through F; provided the employee worked the scheduled work day preceeding and following the holiday.

g. Paid Holidays: A through F; plus Election Day provided the employee works the scheduled work day before and after the holiday.

h. Paid Holiday: Election Day.

i. Paid Holidays: Good Friday, Memorial Day, Washington's Birthday, Labor Day, Presidential Election Day, Veteran's Day, Thanksgiving Day, Christmas Day.

SUPERSEDEAS DECISION

STATE: Illinois

COUNTIES: Bureau, Carroll, Henry, Lee, JoDaviess, Ogle, Rock Island, Stephenson, Whiteside and Winnebago

DECISION NUMBER: IL78-2139

DATE: Date of Publication

Supersedes Decision No. IL78-2043 dated March 24, 1978 in 43 FR 12542

DESCRIPTION OF WORK: Heavy and Highway Construction

ILL-HH-2

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS:					
Bureau County	$11.75	.75	.70		.03
Carroll, Stephenson and JoDaviess Counties	9.685	.30	.35		
Lee County	9.885	.45			
Whiteside County	9.635	.35	.35		
Rock Island and Henry Counties: Oregon and south thereof in Ogle County	13.00	.60	.90		.04
Winnebago County; North of Oregon in Ogle County	10.33	.40	1.25		
CEMENT MASONS:					
Bureau County	11.85		1.00		
Carroll, JoDaviess, Lee, Ogle and Stephenson Counties; Whiteside County excluding Erie and S.W. thereof	10.70	.55	1.00		
Rock Island County; Western half of Henry County and Erie and S.W. thereof in Whiteside County	10.87	.70	.60		
Eastern half of Henry County	11.99		.20		
Winnebago County	10.98	.55	.80		
ELECTRICIANS:					
Winnebago, Ogle, Lee and Stephenson Counties; Townships of Warren, Rush, Nora, Stockton, Wards Grove, Pleasant Valley and Berrenman in JoDaviess County; Townships of Cherry Grove, Shannon, Rock Creek, Lima, Wysox and Elkhorn Grove in Carroll County, Townships of Genesee, Jordan, Hopkins, Sterling. Whiteside County; Townships of Hune, Montgomery and Tampico and Hahnaman	12.28	.50	3%+.60		½%
Remainder of JoDaviess County	11.50	.65	3%+.35		3/4%

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS: (Cont'd)					
Bureau County; Townships of Walnut, Ohio, Lamoille, Clarion, Bureau, Dover, Berlin and Westfield	$13.93	.80	3%+.70		.2 of 1%
Henry County; Townships of Annawan, Burns, Cambridge, Galva, Kawanee, Weller and Whethersfield; Bureau County; Townships of Arispe, Concord, Fairfield, Gold, Greenville, Hall, Indianatown, Leepertown, Macon, Manilus, Milo, Mineral, Neponset, Princeton, Shelby, Wheatland and Wyanet	11.80	.50	3%+.30		.25%
Rock Island and Whiteside Counties; Cities of Chadwick, Mt. Carroll Savanna and Thompson in Carroll County, Savanna Ord. Plant in JoDaviess County, and remainder of Henry County	12.09	.55	7.5%		.03
IRONWORKERS:					
Bureau County	13.19	.65	.375		.02
Henry and Rock Island Counties; Thompson and Savanna and Vicinity in Carroll County; E. Dubugue, Galena and Hanover and Vicinities in JoDaviess County, and the western half of Whiteside County	12.97	.65	.375		.11
Lee, Ogle, Stephenson and Winnegago Counties; Eastern half of Whiteside County, and Remainder of Carroll and JoDaviess Counties	12.50	.75	.375		.10
LABORERS:					
Henry County:					
Unskilled	10.03	.45	.60		.035
Semi-skilled	11.13	.45	.60		.035
Skilled	10.43	.45	.60		.035
LINEMEN:					
Bureau County					
Linemen	12.39	.45	3%		.5%
Groundman Equipment Operator - Class I	11.56	.45	3%		.5%
Groundman Truck Driver:					
W/winch	8.65	.45	3%		.5%
WO.winch	8.24	.45	3%		.5%

DECISION NO. 1L78-2139

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINEMEN: (Cont'd)					
Bureau County: (Cont'd)					
Groundman Class "A"	$ 7.86	.45	3%		.5%
Eastern Part of Carroll Co; (incl. cities of Lanark, Milledgeville & Shannon) JoDaviess Co; (that portion E. of Apple River) Whiteside Co.; (that portion east of Clyde, Lyndon, Mt. Pleasant & Prophetstown), Ogle, Lee, Stephenson, and Winnebago Counties					
Linemen - Diggers Operator - Crane Operator (15 tons or over)	12.83	.45	3%		.50%
Equipment Operator	10.92	.45	3%		.50%
Truck Drivers	8.70	.45	3%		.50%
Groundman	8.41	.45	3%		.50%
Rock Island, Henry, Remainder of Carroll, JoDaviess and Whiteside Co.:					
Linemen	11.64	.45	3%		½ of 1%
Cable Splicers	11.72	.45	3%		½ of 1%
Dynamiter	9.91	.45	3%		½ of 1%
Groundman Truck Drivers:					
W/ Winch	8.32				
W/O Winch & Groundmen over six months	8.05				
Groundman less than six months	6.12				
PAINTERS:					
Winnebago and Stephenson Counties:					
Brush and Roller	10.95	.55			
Open Structural	11.20	.55			
Spray	11.50	.55			
Rock Island, Bureau, JoDaviess and Henry Counties:					
Brush and Roller	10.62	.55	.85		.18
Structural Steel and Spray	11.12	.55	.85		.18
Bridges	11.87	.55	.85		.18
Lee, Carroll, Ogle and Whiteside Counties:					
Brush	9.00				
Structural Steel and Spray	9.35				

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PILEDRIVERMEN:					
Bureau County	$11.68	.75	.70		.03
Lee County	12.80	.45			
Whiteside County	10.70	.45	.70		.04
Rock Island and Henry Counties; Oregon and South thereof in Ogle County	10.71	.45	.70		.04
TRUCK DRIVERS:					
Stephenson and Winnebago Counties; JoDaviess County (W. of Rt. #28) and Carroll County, (S. to Rt. #72 and W. of Rt. #78):					
2-3 Axle Trucks	10.50	.55	1.00		
4 Axle Trucks	10.65	.55	1.00		
5 Axle Trucks	10.85	.55	1.00		
6 Axle Trucks	11.05	.55	1.00		
Lee County; Ogle County, (east of Rt. #51)					
2-3 Axle Trucks	10.65	a29.00	a33.00		
4 Axle Trucks	10.80	a29.00	a33.00		
5 Axle Trucks	11.00	a29.00	a33.00		
6 Axle Trucks	11.20	a29.00	a33.00		

FOOTNOTES:
a. Per week per employee

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ILL-50-LAB-1-2-3

LABORERS: BUREAU COUNTY

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
UNSKILLED	$10.07	.45	.60		.035
SEMI-SKILLED	10.27	.45	.60		.035
SKILLED	10.47	.45	.60		.035

LABORERS:

UNSKILLED: Common Laborers; Carpenter tenders; tool cribmen; firemen or salamander tenders; flagmen, gravel box men; dumpmen & spotters; form handlers; material handlers; fencing laborers; cleaning lumber; pit men; material checkers; dispatchers; landscapers; unloading explosives; laying of sod; planting of trees; asphalt plant laborers; wrecking laborers; writer of scale tickets; fire shop laborers; fireproofing laborers; janitors; wrecking-dismantling buildings; wallmen & housemovers; driving of stakes; stringlines for all machinery

SEMI-SKILLED: Handling of materials treated with oil, creosote, asphalt or any other foreign material, track laborers; cement handlers; chloride handlers; the unloading and laborers w/steel workers & rebars; concrete tenders & material wheelers; kettlemen & tarmen; tnak cleaners; plastic inatallers; scaffold workers; motorized buggies or motorized unite used for wet concrete or handling of building materials; laborers w/dewatering systems; all sewer workers plus depth; rod & chairmen with land surveyors; vibrator operators; mortar mixer operator; cement silica, clay, fly ash, lime & pasters; handlers (bulk or bag); cofferdam workers plus depth; (on concrete paving) placing, cutting & trying or reinforcing; deck hand; dredge hand & shore laborers; bankmen on floating plant; asphalt workers w/machine; asphalt raker; grade checker

SKILLED: Dynamit man or blasters; caisson workers puls depth; gunnite nozzle men; leadman on sewer work; welders; cutters; burners; torchmen; Chain saw operator; jackhammer & drill operators; layout man; steel form setters (street & hithgway); air tamping hammerman; signal man on crane, concrete saw operator; screenman on asphalt pavers; laborers tending masons w/hot materials are used; multiple concrete duct-leadmen; lutemen; curb asphalt machine operator; ready-mex scalemen; portable or temporary plant; laborers handling masterplate or similar materials; laser beam operator; coring machine operator

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ILL-81-LAB-1-2-3

LABORERS: ROCK ISLAND COUNTY

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
UNSKILLED	$ 9.72	.40	1.00		.035
SEMI-SKILLED	9.97	.40	1.00		.035
SKILLED	10.22	.40	1.00		.035

LABORERS:

UNSKILLED Common Laborer; Carpenter Tender; Rod & Chain Man; Flagman; Gravel Box Men; Dumpmen & Spotters; Form Handlers; Material Handlers; Fencing Laborers; Cleaning Lumber; Material Checkers; Dispatchers; Landscapers; Unloading Explosives; Laying of Sod; Planting of Trees, Removal of Trees, Asphalt Plant Laborers; Wrecking Laborers; Writers of Scale Ticket, Scaleman (Permanent-Portable or Temporary Plant); Deck Hand

SEMI-SKILLED Laying & Jointing of Telephone Conduit; Darco & Jackhammer Operator; Operator on Power Tools used under the jurisdiction of Laborers; Cement Jumper; Puddler; Form setter Helper; Power & Hand Saw (when clearing timber); Center Strip; Reinforcing in Concrete ; Wire Mesh; Concrete Saw; Mortar Mixer; Prime Mover or any mechanical devise taking the place of concrete buggy or wheelbarrow; Sand Point Setter; Asphalt Kettleman; Mastic Asphalt Mixerman or other preparations used on joints; Sheeting hammer Drivers (2-Men) Backup Man or Joint Man with Pipelayer; Laborer in ditch or tunnel on sewer and water main & telephone conduit Gas Distribution Men; Pipe Setter on Laterals, Drain Tiles, Culvert Pipe, & Storm Sewer Connections to Catch Bacins, Manholes or Maine Line; Handling of Materials treated with oil, creosote, asphalt and/or any foreign material harmfull to skin or clothing Chloride Handlers; the Unloading & Laborers w/steel Workers and Re-Bars; Tunnel Helpers in Free Air; Batch Dumpers; Tank Cleaners; Cofferdam Workers; Bankmen on Floating Plant

SKILLED String or Wireline (1 man); Head Form Setter; Dynamite Man; Asphalt Raker; Tunnel Miner; Pipelayer on Sewer & Water Main; Gunnite Nozzle Man; Welders; Cutters; Burners and Torchman; Screedman on Asphalt Pavers; Luteman; Curb Asphalt Machine Operator; Laser Beam Operator; Concrete Burning Machine Oprator; Coring Machine Operator; Head Grade Man

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ILL-101-LAB-1-2-3

Basic Hourly Rates	Fringe Benefits Payments			
	H & W	Pensions	Vacation	App. Tr.
LABORERS:				
REMAINDER OF COUNTIES				
CLASS I	$ 9.80	.55	.60	.035
CLASS II	10.75	.55	.60	.035
CLASS III	11.70	.55	.60	.035

LABORERS:

CLASS I Common Laborers, Carpenter Tenders, Tool Cribmen, Fireman or Salamander Tenders, Flagmen, Gravel Box Man, Dumpmen & Spotters, Form Handlers, Material Handlers, Fencing Laborers, Cleaning Lumber, Pit men, Material Checkers, Dispatchers, Landscapers, Unloading Explosives, Laying of Sod, Planting of Trees, Removal of Trees, Asphalt Plant Laborers, Wrecking Laborers, Writer of Scale Tickets, Fire Shop Laborers, Fireproofing Laborers, Janitors, Driving of Stakes, Stringlines for all machinery, Rod & Chainmen with Technical Engineers, with Land Surveyors, Asphalt Workers with Machine & Layers, Grade Checker, Singal Man on Crane, Coring Machine Operator, Concrete Workers (Wet), On Concrete Paving, Placing, Cutting and Tying or Reinforcing Steel Form Setters-Street & Highway

CLASS II Scaffold Workers, Handling of materials treated with any foreign matter harmful to skil or loothing, Bulk Cement Handlers, Unloading of Re-bars, Tunnel Helpers in Free Air, Batch Dumpers, Mason Tenders, Kettle and Tar Men, Tank Cleaners, Plastic Installers, Motorized Buggies or Motorized Unit used for wet concrete or handling of Building Materials, Vibrator Operators, Mortar Mixer Operators, Cement Silica, Clay Fly Ash, Line & Plasters, Handlers (Bulk or Bag) Deck Hand, Dredge Hand & Shore Laborers, Bankmen on Floating Plant, Power Tools, Material Selector (Firebrick or Castable Material) Chain saw Operators, Air Tamping Hammerman, Concrete Saw Operator, Front End Man on Chip Spreader, Luteman, Asphalt Raker

CLASS III Jackhammer and Drill Operators, Laborers with De-Watering Systems, Bottom Sewer Workers Plus Depth, Cofferdam Workers plus depth, Caisson Workers pu plus depth, Gunnite Nozzle Man, Loadman on Sewer Work, Welders, Cutters, Burners and Torchmen, Layout Man and/or Tile Layer, Screenman on Asphalt Pavers, Laborers Tending Masons with Hot Material, Multiple Concrete Duct-Loadman, Curb Asphalt Machine Operator, Ready-Mix Scaleman, Permanant, Portable or Temporary Plant, Laser Beam Operator, Concrete Burning Machine Operator, Underpinning and Shoring of Building, Pump Man

DECISION NO. IL78-2139

ILL-15-PEO-1-2-3

Basic Hourly Rates	Fringe Benefits Payments			
	H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:				
ROCK ISLAND CO., & THE WESTERN ½ OF HENRY COUNTY				
CLASS 1	$11.80	.65	.70	.08
CLASS 2	11.80	.65	.70	.08
CLASS 3	10.40	.65	.70	.08
CLASS 4	10.40	.65	.70	.08
CLASS 5	9.35	.65	.70	.08

CLASS 1 - Crane, shovel, clamshell, dragline, backhoe, derrick, tower crane, cableway, concrete spreader (servicing two pavers), asphalt spreader, asphalt mixer plant engineer, dipper operator, dipper dredge craneman, dual purpose truck (boom or winch), leverman or engineman (Hydraulic dredge), mechanic, paving mixer with tower attached (two operators required), pile driver, boom tractor, stationary, portable or floating mixing plant, trenching machine, cleaning and priming machine, endloader (one half cubic yard or over, on basement excavation work), backfiller (throw bucket), locomotive engineer, Qualified welder, tow or push boat concrete paver, seaman Trav-L- Plant or similar machines, CMI autograder or similar machine, slip form paver, caisson augering machine, mucking, asphalt heater-planer unit hydraulic cranes, Mine hoists

CLASS 2 - Athey, Barber-Green, euclid or hasis loader, asphalt rug mill, fireman and drier, concrete pump, concrete spreader (servicing one paver), bulldozer, endloader (other than mentioned above), forklift, elevating grader, group equipment greaser, letourneapull and similar machine, EM-10, straddle carrier, hyster winch and similar machines, motor patrol, power blade push cat, tractor pulling elevating grader or power blade, tractor operating scoop or scraper, tractor with power attachment, roller on asphalt or blacktop, single drum hoist, Jaeger mix and place machine, pipe bending machine, welding machines (jork), fuller kenyon cement pump or similar machines, automatic cement and gravel batch plants (one stop set-up), Seaman pulvi-mixer or similar machines, propelled sheep foot roller or compactor (used in conjunction with a grading spread), asphalt spreader screed operator apsco spreader or similar machine, slusher, forklift (over 6,000 lb. cap. or working at heights above 28 ft.) conveyors

DECISION NO. IL78-2139

POWER EQUIPMENT OPERATORS: (CONT'D)

CLASS 3 - Asphalt booster, fireman and pump operator at asphalt plant, compressor (500 cu. ft. and over), concrete finishing machine, form grader with roller on earth, mixers (3 bag to 16S), power operated bull float, tractor without power attachment, Dope pot (agitating motor), Dope chop machine, distributor (back end), Flexplane or similar machines, portable machine fireman, Hydrohammer, power winch on paving work, self-propelled roller or compactor (other than provided for above), pump operator crusher operator, trench machine (40 H. P. and under), power sub grader (on forms), or similar machines, Forklift (6000 or less cap.) Gypsum pump, conveyor over 20 H. P.

CLASS 4 - Air compressor (275 c.f.m. or over) driver on truck crane or similar machines, light plant, mixers (1 or 2 bags), power batching machine (cement auger or conveyor), boiler (engineer or fireman), water pumps, welding machine, mechanical broom, automatic cement and gravel batch plants (two or three stop set-up), small backhoes or endloaders0 self-propelled curing machine

CLASS 5 - Oiler, mechanic's helper, water pump (pumping water to pavor), mechanical heater (other than steam boiler) belt machine, small putboard motor boat

DECISION NO. IL78-2139

ILL-20-PEO-2-3

Basic Hourly Rates	Fringe Benefits Payments			
	H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:				
EASTERN ½ OF HENRY COUNTY & REMAINDER OF BUREAU COUNTY				
GROUP 1	$12.22	.45	.80	.05
GROUP 2	12.02	.45	.80	.05
GROUP 3	11.645	.45	.80	.05
GROUP 4	11.37	.45	.80	.05
GROUP 5	10.76	.45	.80	.05

POWER EQUIPMENT OPERATORS:

Group 1: Crane, hydro crane, shovels, crane type backfiller, tower cranes-mobile and crawler and stationary derricks and hoist (3-drum); Dragline, Dragline, Drott Yumbo and similar types considered as cranes, backhoe, derrick boats, pile driver and skid rigs, clam shells, locomotive cranes, road pavers - single drum, dual drum and tri batcher, motor patrols and power blades - Dumore, elevating similar types, mechanics central concrete mixing plant operator, blacktop plant operators and plant engineers, grad-all, caisson rigs - requires oiler, skimmerscoopkerhing scooper, dredges (all types) hop-toe-crane type (require oiler), Escalated rate on crane and derricks booms, $.01 per hour, per ft., over 80' including jib all cherry pickers, cherry pickers (over 15 tons require oiler), work boat, Ross carrier, helicopter, dozen and tournadozer

Group 2: Asphalt heater and planter combination (used to plant streets), trench machines, pump crete - belt crete - seqeeze crete - screw type pumps and gysum, bulker and pump, dinkeys, tournapulls-all, and similar types, multiple unit earth movers, $.25 per hour for each scoop over one scoops (all sizes), pushcats, endloaders (all types), side booms, P-H one-pass soil cement machines and similar types, wheel tractors (industrial or farm-type with dozer hoe - end loader or other attachments, backfillers, asphalt surfacing machines euclid loader, fork lifts, formless finishings, jeep w/ditching machine or other attachments, tunelugr. rock crusher, automatic cement and gravel batching mobile drills (soil testing) and similar types, pugmill with pump, flaherty spreader or similar types (require oiler), heavy equipment greaser (top greaser on spread), power launches, boring machine, C.M.I. and similar types (require oiler), all (1) and (2) drum hoists, dewatering system, straw blower, hydro-seeder, boring machine, hydro-boom, starting engineer on pipeline, F.W.D. and similar types

DECISION NO. IL78-2139

POWER EQUIPMENT OPERATORS: (CONT'D)

Group 3: Apsco spreader or similar types, tractors (track-type) without power units pulling rollers, rollers on asphalt - breck or macadam, concrete breakers, concrete spreaders, center stripper, cement finishing machines, vibro tampers (all similar types) self-propelled, mechanical bull floats, mixers over three bag to 27E, winch and boom trucks, tractor pulling power blade or elevating grader, Porter Rex rail, Clary screed, mule pulling rollers, pugmill without pump, Barber Greene or similar loaders, track-type tractors with power unit attached (minimum fireman, screed man on laydown machine, and spray machine on paving

Group 4: Power subgrader, oil distributor, straight tractor, tract-air (without attachments), curb machines, paver ditch machines, truck crane oiler, and truck type hoptoe oilers

Group 5: Herman Nelson Heater, Dravo, Warner, Silent glo and similar types, one engineer will operate 1-5 and after 5, two operators will be required, self-propelled concrete saws, assistant heavy equipment greaser crawler crane and skid oilers, rollers 5 ton and under on earth and gravel, form graders, pump (1) or (2), light plant (1) or (2), generator (1) or (2), conveyor (1) or (2), welding machine (1) or (2) mixer 3 bags and under, and bulk cement plant

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DECISION NO IL78-2139

POWER EQUIPMENT OPERATORS:
REMAINDER OF COUNTIES

ILL-10-PEO-2-3

Basic Hourly Rates	Fringe Benefits Payments			
	H & W	Pensions	Vacation	App Tr
CLASS I $12.20	1.00	1.00	.50	.05
CLASS II 11.65	1.00	1.00	.50	.05
CLASS III 10.90	1.00	1.00	.50	.05
CLASS IV 9.80	1.00	1.00	.50	.05
CLASS V 8.80	1.00	1.00	.50	.05

POWER EQUIPMENT OPERATORS:

CLASS I Asphalt plant, asphalt heater & planer combination, asphalt spreader, autograde, belt loader, caisson rigs, central redimix plant, concrete breaker (truck mounted), concrete conveyor, concrete paver over 27E cu. ft., concrete placer, concrete tube float, cranes, all attachments, cranes, Linden, Peco & machines of a like nature, derricks, traveling, dredges, euclid loader, elevating type, gradall, & machines of a like nature, derricks, all, derrick boats, derricks, travelling, dredges, euclid loader, elevating type, gradall, and machines of a like nature, grader, elevating hoists, 1,2 & 3 drum, locomotives, all, mucking machine, 1 cu. yd. & over, mucking machine, under 1 cu. yd., piledrivers & skid rig, pre-stress machine, pump cretes dual ram (requiring frequent lubrication & water), rock drill crane type, slip form paver, straddle buggies, tractor w/boom, tractaire w/ attachments, trenching machine, underground boring &/or mining machine under 5 ft., wheel exactor widener (Apsco)

CLASS II Mechanic-welder, batch plant, bituminous mixer, bulldozer, combination backhoe front endloader machine, concrete breaker or hydro-hammer, concrete grinding machine, concrete mixer or paver 7S Series to & including 27 cu. ft., concrete spreader, concrete curing machine, burlap machine, belting machine & scaling machine, finishing machine, concrete grader, motor patrol auto patrol, form grader, pull grader, subgrader, highlift shovels or front endloader, hydraulic boom trucks (all attachments), locomotives, dinky, pump cretes; Squeeze cretes; screw type pumps Gypsum bulker & pump, rock drill (self-propelled), roto-tiller, seaman, etc. self-propelled scoops; tractor drawn, self-propelled compactor, spreader, chipstone, etc., scraper, tank car heater, tractor, push, pulling sheeps foot, disc., compactor, etc. tug boats

NOTICES

DECISION NO IL78-2139

POWER EQUIPMENT OPERATORS (CONT'D)

CLASS III Boilers, boiler & throttle valve, brooms, all power propelled, cement supply tendor, compressor & throttle valve, concrete mixer (2 bags & over) conveyor, portable, fireman on boiler, forklift trucks, greaser engineer, grouting machine hoists, automatic, hoists, all elevators, hoists, tugger, single drum, jeep diggers, pipe power saw, concrete, power-driven, pug mills, rollers, all, steam generators, stone crushers, stump machine, winch trucks with "A" frame, work boats, tamper, form motor driven

CLASS IV Air Compressors, all, generators, heaters, mechanical, light plants, all (1 through 5), pumps, all, pumps well points, tractaire, welding machines (2 through 6)

CLASS V Oilers

DECISION NO IL78-2139

ILL-82-TD-1-2-3

TRUCK DRIVERS
REMAINDER OF COUNTIES

Basic Hourly Rates	Fringe Benefits Payments			
	H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I $10.125	.65	a31.00		
GROUP II 10.525	.65	a31.00		
GROUP III 10.725	.65	a31.00		

TRUCK DRIVERS

GROUP I: - Drivers on 2 axle trucks hauling less than 9 tons, air compressor and welding machine including those pulled by separate units, truck driver helpers, warehouseman, mechanic helpers, greasers & tiremen, pick-up trucks when hauling materials, tools, or men to and from and on the jobs site; Fork lifts up to 6,000 lbs., capacity.

GROUP II: - 2 or 3 axle trucks hauling more than 9 ton, but hauling less than 16 tons; A-frame winch trucks, hydrolifts trucks, or similar equipment when used for transportation purposes; Fork lifts over 6,000 lb. capacity; winch trucks; 4-axle combination units; ticket writers

GROUP III: - 2,3 or 4 axle trucks hauling 16 ton or more, drivers on oil distributores, water pulls, mechanics & working foreman; 5-axle or more combination units; dispatchers

FOOTNOTES

a. Per week Per Employee

NOTICES

51579

SUPERSEDEAS DECISION

STATE: Massachusetts
COUNTIES: See Below*
DECISION NUMBER: MA78-2155
DATE: Date of Publication
Supersedes Decision No. MA78-2080 dated September 22, 1978, in 43 FR 43159; MA78-2083 dated September 22, 1978, in 43 FR 43175; MA78-2084 dated September 22, 1978, in 43 FR 43184; MA78-2085 dated September 22, 1978, in 43 FR 43180;
DESCRIPTION OF WORK: Building Construction (excluding single family homes and garden type apartments up to and including 4 stories), heavy and highway construction
*Berkshire, Franklin, Hampden and Hampshire Counties

BUILDING, HEAVY and HIGHWAY CONSTRUCTION BERKSHIRE COUNTY	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	10.65	.94	$ 1.25		.01
BOILERMAKERS	11.80	1.05	10%		.02
BRICKLAYERS, CEMENT MASONS, MARBLE MASONS, PLASTERERS, STONE MASONS, TERRAZZO WORKERS and TILE SETTERS:					
Twps. of Adams, North Adams, Cheshire, Florida, Savoy, Clarksbury and Williamstown	11.85				
Twps. of Becket, Otis and Sandisfield	10.05	.70	.95		.06
Remainder of County	11.58	.70	.55		
CARPENTERS & SOFT FLOOR LAYERS	9.84	.60	1.00		.04
ELECTRICIANS	10.59	.55	3%+.94		.02
ELEVATOR CONSTRUCTORS	10.45	.745	.29	a+b	.02
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.745	.29	a+b	.02
ELEVATOR CONSTRUCTORS' HELPERS (RPOB.)	50%JR				
GLAZIERS	9.45	.47	.45		
IRONWORKERS:					
Structural, ornamental and reinforcing:					
Otis and North and East Otis	9.43	.70	1.50		.05
Remainder of County	9.49	.60	.85		.04
LABORERS (BUILDING):					
Laborers, Carpenter tenders and Wrecking laborers	8.25	.60	.75		.10
Jackhammer operator, Pavement breakers, Wagon drills, Asphalt rakers, Carbide core drilling machine, Chain saw operators, Pipelayers, Barco type jumping tampers, Leaser beam operators, Concrete pump operators, Mason tenders, Mortar mixers, Ride-on motorized buggy and Plasterers tenders	8.50	.60	.75		.10

DECISION NO. MA78-2155

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS: (Cont'd)					
Air track; Block pavers; Rammers curb setters	$ 8.75	.60	.75		.10
Blasterers, Powdermen	9.00	.60	.75		.10
LATHERS:	9.40	.45	.25		.01
Drywall	8.30	.45	.15		
LEAD BURNERS	9.25	.35		c	.01
LINE CONSTRUCTION:					
Linemen	10.92	.70	3%	d	
Equipment Operator	10.19	.70	3%	d	
Driver Groundmen	7.87	.70	3%	d	
MARBLE SETTERS' & TILE SETTERS' HELPERS	8.95				
MILLWRIGHTS	10.90	.90	1.00		.10
PAINTERS:					
Brush and Tapers	9.17	.88	.55		.05
Spray-epoxys & interior dry fogs & materials thinned with anything other than water &/or mineral spirits	12.2267	1.1733	.7333		.0667
Spray-materials thinned with water &/or mineral spirits, excluding epoxys & interior dry fogs	12.7567	1.1733	.7333		.0667
Swing Stage under 40' Steel	9.357	.88	.55		.05
Swing Stage over 40' Steel	9.67	.88	.55		.05
Sign Painters	8.80	.84	.35	.32	.04
PILEDRIVERMEN	10.90	.85	1.00		
PLUMBERS and STEAMFITTERS:					
Adams, Clarksburg, Florida, North Adams, Savoy, Williamstown and Northern half of Cheshire, and New Ashford	9.97	.90	.75		.02
Becket, Otis, Sandisfield (Plumbers ONLY)	10.30	1.01	1.10	e	.10
Becket, Otis, Sandisfield and New Boston (Steamfitters)	10.68	.57	1.45	.08	.02
Remainder of County	10.30	.83	.50		.05
ROOFERS:					
Composition, damp & waterproof	9.215	1.00	2.03		
Slate, tile and precast concrete	9.87	1.00	2.03		
SHEET METAL WORKERS	10.10	1.09	1.46		.06
SPRINKLER FITTERS	11.75	.75	1.05		.08
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental					

DECISION NO. MA78-2155

BUILDING, HEAVY and HIGHWAY CONSTRUCTION FRANKLIN COUNTY	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$ 10.65	.94	$ 1.25		.01
BOILERMAKERS	11.80	1.05	10%		.02
BRICKLAYERS, CEMENT MASONS, PLASTERERS, STONE MASONS, MARBLE, TILE, TERRAZZO WORKERS, CAULKER, And CLEANER, POINTER	10.05	.70	.95		.06
CARPENTERS & SOFT FLOOR LAYERS:					
Irving, Warwick, Orange and North Orange	10.70	.60	1.00		.07
Remainder of County	10.10	.45	1.00		.02
Monroe and Monroe Bridge	9.84	.60	1.00		.04
ELECTRICIANS:	10.59				
Hawley, Monroe and Rowe		.55	3%+.94		.02
Remainder of County:					
Electrical contracts $75,000.00 and over	10.76	.85	3%+.40		.02
Electrical contracts under $75,000.00	8.60	.85	3%+.40		.02
Shaft and tunnel work	11.26	.85	3%+.40		.02
ELEVATOR CONSTRUCTORS	10.45	.745	.29	7%+a+b	.02
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.745	.29	3%+a+b	.02
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	50%JR				
GLAZIERS	9.45	.47	.45		
IRONWORKERS:					
Structural, Ornamental and Reinforcing	10.50	1.10	1.85		.09
LABORERS: BUILDING					
Laborers, Carpenter tenders, Wrecking laborer	8.25	.60	.75		.10
Asphalt rakers, Carbide core drillers, Chain saw operator, Pipelayers, Jackhammer and paving breakers operators, Barco-type jumping tampers, Laser beam operators, Concrete pump operators, Mason tenders, Mortar mixers, and Ride-on motorized buggy operator and plasterers tenders	8.50	.60	.75		.10

DECISION NO. MA78-2155

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS: (Cont'd)					
Air track operators, Block pavers, Rammers and curb setters	8.50	.60	.75		.10
Powdermen and blasterers	8.75	.60	.75		.10
Open air caisson, underpinning work and test boring crew:					
Bottom Man	8.75	.60	.75		.10
Top Man	8.00	.60	.75		.10
Driller	8.87	.60	.75		.10
Helper	8.12	.45	.25		.10
LATHERS:	9.40	.45	.25		.01
Drywall	8.30	.45	.25		.01
LINE CONSTRUCTION:					
Linemen	10.92	.70	3%	d	
Equipment Operators	10.19	.70	3%	d	
Driver Groundmen	7.87	.70	3%	d	
MILLWRIGHTS	10.90	.90	1.00		.10
PAINTERS:					
Brush and Tapers	9.17	.88	.55		.05
Spray-epoxys & interior dry fogs & materials thinned with anything other than water &/or mineral spirits	12.2267	1.1733	.7333		.0667
Spray-materials thinned with water &/or mineral spirits, excluding epoxys & interior dry fogs	12.7567	1.1733	.7333		.0667
Swing Stage under 40' Steel	9.357	.88	.55		.05
Swing Stage over 40' Steel	9.67	.88	.55		.05
PILEDRIVERMEN	10.90	.85	1.00		
PLUMBERS AND STEAMFITTERS:					
Monroe, Towe and Western part of Charlemont	9.97	.90	.75		.02
Orange	10.02	.60	.65	.40	.02
Remainder of County	10.95	.85	.85		.02
ROOFERS:					
Composition, damp wagerproof	9.215	1.00	2.03		
Slate, tile, precast concrete	9.87	1.00	2.03		
SHEET METAL WORKERS	10.10	1.09	1.46		.06
SPRINKLER FITTERS	11.75	.75	1.05		
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.					

DECISION NO. MA78-2155

BUILDING, HEAVY and HIGHWAY CONSTRUCTION HAMPDEN COUNTY	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vocation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$ 10.65	.94	1.25		.01
BOILERMAKERS	11.80	1.05	10%		.02
BRICKLAYERS:					
Cement masons, Marble masons, Plasterers, Stone masons, Terrazzo workers, and Tile setters	10.05	.70	.95		.06
CARPENTERS & SOFT FLOOR LAYERS:					
Holyoke	10.10	.45	1.00		.02
Remainder of County	10.00	.60	.65		.02
ELECTRICIANS:					
Chester, Holyoke & that portion of Chicopee Township north of the following line: Mckinstry Avenue from the Connecticut River to Grattan Street, South on Gratten to Lafayette Street, east on Lafayette to York Street, North on York to Mckinstry, east on McKinstry to Grady Road & projects to the West-over Air Force fence & that arear north of Westover field:					
Contracts 75,000 & over	10.76	.85	3%+.40		.02
Contracts under $75,000	8.60	.85	3%+.40		.02
Shaft & tunnel work	11.26	.85	3%+.40		.02
Remainder of County	10.88	.75	3%+.30		.03
ELEVATOR CONSTRUCTORS	10.45	.745	.29	a+b	.02
ELEVATOR CONSTRUCTORS' Helpers	70%JR	.745	.29	a+b	.02
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	50%JR				
GLAZIERS	9.45	.47	.45		
IRONWORKERS:					
Ornamental, Reinforcing and Structural	10.50	1.10	1.85		.09
LABORERS (Building)					
Laborers, Wrecking, laborers and carpenter tenders	8.25	.60	.75		.10
Asphalt rakers, Carbide Cor. Driller Ops., Saw Ops., Pipe-layers, Jackhammer & Paving Breaker Op., Barco-type jumping tampers, Laser Beams op., concrete pump ops.					

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LABORERS (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vocation	Education and/or Appr. Tr.
Asphalt rakers, carbide core driller operators, Saw Operators, Pipelayers, Jackhammer and Paving breaker operator, Barcotype jumping tampers, Laser beams operators and Wagon drill operators, Mason Tenders, Mortar mixers and ride-on motorized buggy operators and plasterers tenders	8.50	.60	.75		.10
Air track operator, Block pavers, Rammers and Curb setters	8.75	.60	.75		.10
Blasterers and Powdermen	9.00	.60	.75		.10
Open air caisson, Cylindarical work and boring crew:					
Bottom Man	9.00	.60	.75		.10
Top Man	8.25	.60	.75		.10
Testing Boring:					
Driller	9.12	.60	.75		.10
Helper	8.37	.60	.75		.10
LATHERS:	9.40	.45	.25		.01
Drywall	8.30	.45	.25		.01
LEADBURNERS	9.25	.35		c	.01
LINE CONSTRUCTION:					
Linemen	10.92	.40	1%	d	3/8 of 1%
Groundmen, Driver Equipment Operator	7.87	.40	1%	d	3/8 of 1%
	10.19	.40	1%	d	3/8 of 1%
MARBLE, MOSAIC & TERRAZZO WORKERS' HELPERS	8.95				
MILLWRIGHTS	10.90	.90	1.00		.10
PAINTERS:					
Brush and Tapers	9.17	.88	.55		.05
Spray-epoxys & interior dry fogs & materials thinned with anything other than water &/or mineral spirits	12.2267	1.1733	.7333		.0667
Spray-materials thinned with water &/or mineral spirits, excluding epoxys & interior dry fogs	12.7567	1.1733	.7333		.0667
Swing Stage under 40' Steel	9.357	.88	.55		.05
Swing Stage over 40' Steel	9.67	.88	.55		.05
PILEDRIVERMEN	10.90	.85	1.00		
PLUMBERS	10.30	1.01	1.10	e	.10
ROOFERS: Composition, damp and waterproofing	9.215	1.00	2.03		
Slate, Tile, Precast Concrete	9.87	1.00	2.03		
SHEET METAL WORKERS	10.10	1.09	1.46		.06
SPRINKLER FITTERS	11.75	.75	1.05		.08
STEAMFITTERS	10.68	.57	1.45	.08	.03

DECISION NO. MA78-2155

BUILDING, HEAVY and HIGHWAY CONSTRUCTION HAMPSHIRE COUNTY	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vocation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$ 10.65	.94	$ 1.25		.01
BOILERMAKERS	11.80	1.05	10%		.02
BRICKLAYERS, PLASTERERS, CEMENT MASON, STONE MASONS, MARBLE TILE and TERRAZZO WORKERS, CAULKER, CLEANER, POINTERS	10.05	.70	.95		.06
CARPENTERS:					
Amherst, Belchertown, Granby, South Hadley, and Pleham	10.10	.45	1.00		.02
Remainder of County	10.00	.60	1.00		.02
ELECTRICIANS:					
Bechertown, Ware	10.88	.75	3%+.30		.03
Middlefield, Cummington and Plainfield	10.59	.55	3%+.94		.02
Remainder of County:					
Electrical contracts under $75,000.00	8.60	.85	3%+.40		.02
Electrical contracts $75,000.00 and over	10.76	.85	3%+.40		.02
Shaft and Tunnel Work	11.26	.85	3%+.40		.02
ELEVATOR CONSTRUCTORS	10.45	.745	.29	a+b	.02
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.745	.29	a+b	.02
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	50%JR				
GLAZIERS	9.45	.47	.45		
IRONWORKERS:					
Structural, Ornamental and Reinforcing	10.50	1.10	1.85		.09
LABORERS: (BUILDING					
Laborers, Wrecking laborers, Carpenter and Cement finishers tenders	8.25	.60	.75		.10
Asphalt rakers, Carbide core driller operators, Chain saw operators, Pipelayers, Jack-hammer and Paving breaker operator, Barco-type jumping tampers, Laser beam operators, Concrete pumps operators and Wagon drill operators, Mason tenders, Mortar mixers and Ride-on motorized buggy operators and plasterer tenders	8.50	.60	.75		.10

DECISION NO. MA78-2155

LABORERS: (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vocation	Education and/or Appr. Tr.
Air track operators, Block pavers, Rammers and Curb setters	$ 8.75	.60	.75		.10
Powdermen and Blasters	9.00	.60	.75		.10
Open air caisson, Underpinning work and boring crew: (ENTIRE COUNTY)					
Bottom Man	9.00	.60	.75		.10
Top Man	8.25	.60	.75		.10
Test Boring:					
Driller	9.12	.60	.75		.10
Helper	8.37	.60	.75		.10
LATHERS:	9.40	.45	.25		.01
Drywall	8.30	.45	.25		.01
LINE CONSTRUCTION:					
Linemen	10.92	.70	3%	d	
Equipment Operator	10.19	.70	3%	d	
Driver Groundman	7.87	.70	3%	d	
MARBLE & TILE SRTTERS HELPERS AND TERRAZZO WORKERS' HELPERS	8.95				
MILLWRIGHTS	10.90	.90	1.00		.10
PAINTERS:					
Brush and Tapers	9.17	.88	.55		.05
Spray-epoxys & interior dry fogs & materials thinned with anything water &/or mineral spirits	12.2267	1.1733	.7333		.0667
Spray-materials thinned with water &/or mineral spirits, excluding epoxys & interior dry fogs	12.7567	1.1733	.7333		.0667
Swing Stage under 40' Steel	9.357	.88	.55		.05
Swing Stage over 40' Steel	9.67	.88	.55		.05
Sign Painters	8.80	.84	.35	.32	.04
PILEDRIVERMEN	10.90	.84	1.00		
PLUMBERS and STEAMFITTERS:					
Belchertown, Granby, Huntington, Middlefield, South Hadley, Ware:					
Plumbers	10.30	1.01	1.10	e	.10
Steamfitters	10.68	.56	1.45	f	.03
Remainder of County:					
Plumbers and Steamfitters	10.95	.85	.85		.02
ROOFERS:					
Composition, damp, waterproof	9.215	1.00	2.03		
Slate, tile, precast concrete	9.87	1.00	2.03		
SHEET METAL WORKERS	10.10	1.09	1.46		.05
SPRINKLER FITTERS	11.75	.75	1.05		.08

DECISION NO. MA78-2155

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

a. Employer contributes 8% basic hourly rate for 5 years or more of service or 6% basic hourly rate for 6 months to 5 years of service as vacation pay credit.

b. Holidays: A through F, and the day after Thanksgiving

c. Holidays: A through F, Washington's Birthday, Good Friday & Christmas Eve provided the employee has worked 45 full days during the 120 calendar days prior to the holiday and the regular scheduled work days immediately preceding and following the holiday.

d. Holidays: A through F, provided the employee hwe been employed for at least 5 days prior to the holiday and is available for work the day before and after the holiday, plus on floating holiday, Washington's Birthday and Patriots Day.

e. Holidays: Independence Day & Labor Day provided the employee has been employed 7 days prior to the holiday for the same employer.

f. July 4th and Labor Day - $.08 per hour employer contribution to make two paid holidays.

BUILDING CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:					
Class I	$10.18	.95	1.00	a	.07
Class II	9.98	.95	1.00	a	.07
Class II	9.78	.95	1.00	a	.07
Class IV	9.41	.95	1.00	a	.07
Class V	8.58	.95	1.00	a	.07
Class VI	8.09	.95	1.00	a	.07
Class VII	7.29	.95	1.00	a	.07

CLASSIFICATIONS

Class I: Shovels, Cranes, Hydraulic Cranes 10 ton capacity or over, Draglines, Derricks, Elevators with Chicago Boom, Backhoes, Gradalls, Elevating Graders, Piledriving Rigs, Concrete Road Pavers, three drum hoisting and Trenching Machines, Belt-type Loaders, Front End Loader-5¼ yds. or over, Dual Drum Paver, Automatic Grader (i.e. C.M.I.) Combination Back Hoe-loader-3/4 yd. hoe or over

Class II: Rotary Drill (with mounted compressor), Compressor house (3 to 6 compressors), Rock and Earth Boring Mahines (excluding McCarthy and similar drills), Grades, Front End Loaders - 4 yds. to 5¼ yds., two drum hoists, High Fork Lifts with capacity of 15 feet and over, Scrapers - 21 yds. and over (struck load), Sonic Hammer Console

Class III: Combination Backhoe - Loader - up to 3/4 hoe, Bulldozers, Push Cats, Scraper - up to 21 yds. (struck load) - Self-propelled or tractor drawn, Tireman, Front End Loaders - up to 4 yds., Asphalt Paver, Asphalt Roller - 10 ton or over, Well Drillers, Mechanics, Welders, Pumpcrete Machines, Concrete Pumps and similar type pumps, Engineer or Fireman on High Pressure Boiler (on job), Self-loading Batch Plant, Well Point, Electric pumps used in Well point system, Pumps - 12 inches and over (total discharge), Compressor (one or two) 900 cu. ft. and over, Powered Grease Truck, Automatic Elevators (manually or remote controls), Grout pumps, Boom Truck, Hydraulic Cranes - under 10 ton

Class IV: Asphalt Roller - under 10 ton

DECISION NO. MA78-2155

CLASSIFICATIONS CONT'D

CLASS V Single Drum Hoist, Self-Propelled Roller, Self-Propelled Compactors Power Pavement Breakers, Concrete Pavement FInishing Machines, Two Bag Mixors with Skip, McCarthy and similar drills, Batch Plants (not self-loading) Bulk Cement Plants, Self-Propelled Material Spreaders, A Frame Trucks, Fork Lifts up to 15 feet

CLASS VI Compressors (one or two) 315 cu. ft. to 900 cu. ft.. Pumps-4 inches to 12 inches (total discharge), Tractor (without blade or bucket) Drawing Rollers Rubber, Tire Roller, Compactors or other machines used for pulverizing, Grading or Seeding

CLASS VII Compressors (up to 315 cu. ft.), Small Mixers, Pumps (up to 4 inches), Power Heaters, Welding Machines, Conveyors, Oiler, Helpers on Grease Truck, and Grease Trucks with hand greasing equipment

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTES:
a. Holidays: A through F, Veterans' Day and Columbus Day

DECISION NO. MA78-2155

HEAVY AND HIGHWAY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:					
CLASS I	$10.18	.95	1.00	a	.07
CLASS II	9.98	.95	1.00	a	.07
CLASS III	9.78	.95	1.00	a	.07
CLASS IV	9.41	.95	1.00	a	.07
CLASS V	8.58	.95	1.00	a	.07
CLASS VI	8.09	.95	1.00	a	.07
CLASS VII	7.29	.95	1.00	a	.07
CLASS VIII	10.68	.95	1.00	a	.07

CLASSIFICATIONS

CLASS I Shovels, Crawler and Truck Cranes, Derricks, Backhoes, Trenching Machines, Elevating Graders, Belt-type Loaders, Gradalls, Pile Drivers, Concrete Pavers, on site Processin Plant (Engineer in charge), Dragline, Clam Shell, Cableways, Shaft Hoists, Mucking Machines, Front End Loader-5¼ yards and over Tower Cranes, Self-propelled Hydraulic Cranes-10 tons and over, Dual Paver, Automatic Graders-Excavator (C.M.I. or equal), Scrapers towing pan or wagon, Tandem Dozers or Push Cats (2 units in tandem), Welder using semi automatic Welding Machine, Shotcrete Machine, Tunnel Boring Machine

CLASS II Rotary Drill (with mounted Compressor), Compressor House 3 to 6 Compressors), Rock and Earth Boring Machines (excluding McCarthy and similar drills), Grader, Front End Loaders-4 yards to 5¼ yards, Scraper-21 yards and over (struck Load), Forklifts-7 ft. lift and over or 3 ton capacity and over, Sonic Hammer Console

CLASS III Bulldozer, Push Cats, Scrapers-up to 21 yards (struck load) self-propelled or Tractor Drawn, Self-powered Asphalt Paver, Front End Loaders-up to 4 yards, Mechanics, Welders, Well Driller, Pumpcrete Machine, Engineer or Fireman on High Pressure Boiler (on job), Self-loading Batch Plant (on job), Well point Operators, Electric Pumps used in well Point system, Tiremen, Pumps-16 inches or over total discharge, Compressors (1 or 2) cu. ft. and over Powered Grease Truck, Asphalt Roller-10 ton and over, Tunnel Locomotives and Dinkys, Grout Pumps, Hydraulic Jacks (jacking pipe, slip forms, etc.), Boom Truck Self-Propelled Hydraulic Cranes up to 10 ton

CLASS IV Asphalt Roller-up to 10 ton

DECISION NO. MA78-2155

CLASS V Hoists, Conveyors, Self-powered Rollers and Compactors, Power Pavement Breaker, Self-propelled Material Spreader, Self-powered Concrete Finishing Machine, Two Bag Mixer with skip, McCarthy and similar Drills, Batch Plant (not self-loading), Bulk Cement Plant

CLASS VI Compressor (315 cu. ft. to 900 cu. ft., 1 or 2), Pumps 4" to 16" total discharge, Tractor without blade drawing sheeps-foot toller, Rubber tired roller or other type of compactors including machines for pulverizing and aerating soil

CLASS VII Compressor (up to 315 cu. ft.), Small Mixers with skip, Oiler, Pumps up to 4", Grease Truck, Helper on powered Crease Truck, Power Heaters, Welding Machines, A-Frame Trucks, Forklifts-up to 7 ft. lift and up to 3 ton capacity, Hydro Broom, Parts Man (in repair shop), Power Safety Boat

FOOTNOTES:

a. Holidays: New Year's Day; Washington's Birthday; Memorial Day; Independence Day; Labor Day; Columbus Day; Veteran's Day; Thanksgiving Day and Christmas Day

HEAVY & HIGHWAY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS:					
CLASS I	$ 8.25	.60	.75		.10
CLASS II	8.50	.60	.75		.10
CLASS III	8.75	.60	.75		.10
CLASS IV	9.00	.60	.75		.10

CLASSIFICATIONS

CLASS I
Carpenter tenders, cement finisher tenders, laborers, wrecking laborers

CLASS II
Asphalt rakers, fence and guard rail erectors, laser beam op., mason tender, pipelayer, pneumatic drill op., pneumatic tool op., wagon drill op.

CLASS III
Air track op., block pavers, rammers, curb setters

CLASS IV
Blasters, powdermen

DECISION NO. MA78-2155

BUILDING, HEAVY AND HIGHWAY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS					
CLASS I	$ 8.515	.75	.80	a+b	
CLASS II	8.665	.75	.80	a+b	
CLASS III	8.715	.75	.80	a+b	
CLASS IV	8.815	.75	.80	a+b	
CLASS V	8.915	.75	.80	a+b	
CLASS VI	9.165	.75	.80	a+b	
CLASS VII	9.415	.75	.80	a+b	

CLASS I - Station wagons, Panel trucks and pickup truck

CLASS II - Two axle equipment; Helpers on low bed when assigned at the discretion of the employer , warehousemen, Forklift operators

CLASS III - Three axle equipment and Tiremen

CLASS IV - Four and five axle equipment

CLASS V - Specialized earth moving equipment under 35 tons other than convential type trucks, Low bed, Vachual, Machanics, Paving restoration equipment, Mechanics

CLASS VI - Specialized earth moving equipment over 35 tons

CLASS VII - Trailers for earth moving equipment (double hookup)

FOOTNOTES:

a. One half day's pay each month in which an employee has worked 15 days provided he has been employed for 4 months.

b. Holidays: A through F, Washington's Birthday, Columbus Day, Veteran's Day and Patriots' Day provided an employee works two days of the calendar week in which the holiday falls.

SUPERSEDEAS DECISION

STATE: PUERTO RICO COUNTY: ISLAND WIDE
DECISION NO.: PR78-3093 DATE: DATE OF PUBLICATION
Supersedes Decision No. PR77-3097 dated July 8, 1977 in 42 FR 35601
DESCRIPTION OF WORK: Building Construction, (does not include single family homes and garden type apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Carpenters	3.65				
Cement Masons	3.50				
Electricians	3.60	.16			
Glaziers	3.90				
Ironworkers, Reinforcing	2.90				
Laborers:					
Laborers	2.50				
Air Tool Operator	2.75				
Pipelayers, Concrete & Clay	3.25				
Painters	2.75				
Plumbers	3.29				
Tile setters	2.50				
Truck Drivers	3.55	.17			
Power Equipment Operators:					
Bulldozer	4.31				
Cranes	4.50				
Diggers	3.80				
Mechanic-Diesel	3.95				
Mixers	4.25				
Motor Graders	4.40	.17		.85	
Oilers	3.45	.17		.85	
Riggers	3.70	.23			
Rollers	3.55	.17		.85	
Shovels	4.40				
Tractors	4.40	.17		.85	
Transcavator	4.00				
Trenching Machine	4.35	.17		.85	
Welders-receive rate prescribed for craft performing operation to which welding is incidental.					

SUPERSEDEAS DECISION

STATE: PUERTO RICO COUNTY: ISLAND WIDE
DECISION NO.: PR78-3092 DATE: DATE OF PUBLICATION
Supersedes Decision No. PR77-3098 dated July 8, 1977 in 42 FR 35602
DESCRIPTION OF WORK: Heavy and Highway Construction.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and or Appr. Tr.
Carpenters	3.32				
Cement Masons	3.00				
Ironworkers, Reinforcing	2.90				
Laborers:					
Laborers	2.50				
Asphalt Rakers	3.06				
Mortar Mixers	2.75				
Pipelayers	3.50				
Plumbers & Pipefitters	3.83				
Truck Drivers:					
3/4 ton to 3 tons	3.15				
Heavy, over 3 tons	3.25				
Power Equipment Operators:					
Backhoe	4.34				
Bulldozer	4.05				
Cranes, Derricks	4.20				
Diggers	4.00				
Drillers	3.00				
Elevating Grader	4.18				
Excavator Operator	3.50				
Form Grader	4.28				
Front End Loader	3.98				
Gradall	4.00				
Gradall Driver	2.90				
Grader	4.00				
Mechanic	4.29				
Oiler, Greaser	3.33				
Paver	3.61				
Riggers	3.25				
Roller Base	3.23				
Roller Finish	3.25				
Scrapers	4.07				
Screedman	3.17				
Shovel	4.35				
Transcavator	4.00				
Travelift	4.00				
Trenching Machine	3.70				
Welders-receive rate prescribed for craft performing operation to which welding is incidental.					

SUPERSEDEAS DECISION

STATE: VIRGINIA

COUNTIES: HENRICO AND THE INDEPENDENT CITY OF RICHMOND

DECISION NO.: VA78-3074

DATE: DATE OF PUBLICATION:

Supersedes Decision No. VA78-3019 dated May 12, 1978 in 43 FR 20719

DESCRIPTION OF WORK: Building Construction (does not include single family homes and garden type apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$ 9.78	.80	.75		.01
BOILERMAKERS	10.70	1.00	1.10		.02
BRICKLAYERS AND STONEMASONS	9.90	.65	.30		.02
CARPENTERS AND SOFT FLOOR LAYERS	9.10	.45	.45		.02
CEMENT MASONS	8.60				
CEMENT MASONS MACHINE MAN	8.70				
ELECTRICIANS:					
ZONE I-within a 12 air mile radius of Staples Mills Road and Broad Street in the City of Richmond	10.91	5%	3%		4%
ZONE II-remainder of city of Richmond and Henrico County	11.66	5%	3%		4%
ELEVATOR CONSTRUCTORS	9.66	.745	.56	a+b	.025
ELEVATOR CONSTRUCTORS HELPERS	6.76	.745	.56	a+b	.025
ELEVATOR CONSTRUCTORS HELPERS PROBATIONARY	4.83				
GLAZIERS	5.95	.30	.10		.01
IRONWORKERS-STRUCTURAL, REINFORCING AND ORNAMENTAL:					
ZONE 1-up to 10 miles from Capital Square	10.25	.55	.50		.05
ZONE II-from 10 miles to 30 miles radius	10.625	.55	.50		.05
ZONE III-from 30 miles and beyond	10.875	.55	.50		.05
LABORERS:					
Unskilled Tenders, Motorized Georgia Buggy Operators, Nozzlemen (gunite or sandblasting), Concrete Saw Operators, Air Tool and Vibrator Operators	5.80	.20	.20		.05
Mortar Mixers, Hod Carriers, Pipelayers, Caulkers, Marble and Tile and Terrazzo Workers Helpers	5.90	.20	.20		.05
Burners (wrecking)	6.05	.20	.20		.05
Floor, Base and Terrazzo Grinders	6.15	.20	.20		.05
	6.20	.20	.20		.05

DECISION No. VA78-3074

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS (CONT'D)					
Wagon Drill, Air Trac and Similar Drills	6.30	.20	.20		.05
Powdermon	6.55	.20	.20		.05
LATHERS:					
Plasterer and Drywall Finish	9.74		.20		.01
Sheet Rock Applicator	8.04		.20		.01
LEADBURNERS	10.75	.40	.25	c	.01
LINEMEN AND CABLE SPLICERS:					
ZONE I-within a 12 mile air radius of Staples Mill Road and Broad Street in the City of Richmond	10.91	5%	3%		4%
ZONE II-remainder of City of Richmond and Henrico COunty	11.66	5%	3%		4%
MARBLE, TILE AND TERRAZZO WORKERS	8.45				
MILLWRIGHTS	10.40	.45	.45		.01
PAINTERS:					
Brush, Paperhangers, Tapers and Finishers	8.30				
Structural Steel, Swing Stage and Bosun Chair	8.55				
Scaffold or Other Hazard Work Over 50 Feet	8.55				
Spray	8.80				
Sandblasting, Elevated Tanks, Smoke Stacks and All Towers	8.95				
PILEDRIVERMEN AND DOCKBUILDERS	8.30	.45	.45		
PLASTERERS	9.95				
PLUMBERS AND STEAMFITTERS	11.05	.45	.60		.05
ROOFERS COMPOSITION	6.20				
ROOFERS HELPERS	4.35				
SHEET METAL WORKERS:					
City of Richmond	10.82	.45	.35		.01
Remainder of County	11.07	.45	.35		.01
SPRINKLER FITTERS	9.93	.75	1.05		.08
WELDERS-receive rate prescribed for craft performing operation to which welding is incidental.					

NOTICES

DECISION NO. VA78-3074

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; F-Christmas Day

FOOTNOTES:

a. Employer contributes 8% of basic hourly rate for 5 years or more of service or 2% of basic hourly rate for 6 months to 5 years of service as vacation pay credit.

b. Paid Holidays: A through F, Day after Thanksgiving.

c. Paid Holidays: A through F; Washington's Birthday; Good Friday and Christmas Eve, provided the employee has worked 30 full days during the 90 calendar days prior to the holiday and the regular scheduled work days immediately preceeding and following the holiday.

DECISION NO. VA78-3074

POWER EQUIPMENT OPERATORS - BUILDING CONSTRUCTION:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	9.90	.525	.45		.08
GROUP 2	7.80	.525	.45		.08
GROUP 3	6.35	.525	.45		.08
GROUP 4	6.15	.525	.45		.08
GROUP 5	5.96	.525	.45		.08

CLASSIFICATIONS:

GROUP 1
Tunnel machine, cranes, derricks, pile drivers, pavers, two or more drum hoist, finish motor grader, mechanic, batch plant, gradall, quad

GROUP 2
Cableways, tractors with attachments, combination front end loader and backhoe, front end loader, rubber tired scraper and pans, rough motor grader, 20-ton locomotive, bulldozers, pump crete, trenching machine, mixer larger than 16 S, fork lift

GROUP 3
Compressor over 125 cu. ft., bottom and end dumps, tractors without attachments, 1 drum hoist, rollers, welding machines (gas or diesel), locomotive under 20-tons, power plant, generator (1200 KW or larger), pumps (over 2 inches, including well-points), A-frame trucks, mechanic's helper

GROUP 4
Firemen

GROUP 5
Oilers

NOTICES

SUPERSEDE DECISION

STATE: VIRGINIA

COUNTIES: YORK AND THE CITIES OF HAMPTON AND NEWPORT NEWS (including Langley AFB, Fort Eustis and Fort Monroe)

DECISION NO.: VA78-3075

DATE: DATE OF PUBLICATION

Supersedes Decision No. VA78-3042 dated May 12, 1978 in 43 FR 20721

DESCRIPTION OF WORK: BUILDING CONSTRUCTION (does not include single family homes and garden type apartments up to and including 4 stories), Sewer and Water Line Construction.

BUILDING CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	9.75	.60	.60		
BOILERMAKERS	10.70	1.00	1.10		.02
BRICKLAYERS AND STONE MASONS	9.50				
CARPENTERS AND SOFT FLOOR LAYERS	9.10	.45	.45		.02
CEMENT MASONS:					
CEMENT MASONS	8.60				
MACHINE AND SCAFFOLD MEN	8.70				
ELECTRICIANS:					
ZONE I-within a 16 air mile radius of 7812 Warwick Blvd., Newport News:					
WIREMEN	9.85	6%	8%		1%
CABLE SPLICERS	10.10	6%	8%		1%
ZONE II-beyond a 16 air mile radius of 7812 Warwick Blvd., Newport News:					
WIREMEN	10.85	6%	8%		1%
CABLE SPLICER	11.10	6%	8%		1%
ELEVATOR CONSTRUCTORS	8.80	.745	.56	a+b	.025
ELEVATOR CONSTRUCTORS HELPERS	6.16	.745	.56	a+b	.025
ELEVATOR CONSTRUCTORS HELPERS PROBATIONARY	4.40				
GLAZIERS	5.95	.30	.10		.01
IRONWORKERS:					
STRUCTURAL, ORNAMENTAL, RIGGERS, REINFORCING, FENCE ERECTORS, AND MACHINERY MOVERS	9.90	.65	1.00		.08
LABORERS:					
UNSKILLED	5.80	.20	.20		.05
TENDERS, MOTORIZED GEORGIA BUGGY OPERATORS, NOZZLEMEN (gunite or sandblasting), CONCRETE SAW OPERATORS, AIR TOOL AND VIBRATOR OPERATORS	5.90	.20	.20		.05
MORTAR MIXERS, HOD CARRIERS, PIPELAYERS, CAULKERS, MARBLE, TILE AND TERRAZZO WORKER HELPERS	6.05	.20	.20		.05
BURNERS (wrecking)	6.15	.20	.20		.05
FLOOR, BASE, AND TERRAZZO GRINDER	6.20	.20	.20		.05

DECISION NO. VA78-3075

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS (CONT'D)					
WAGON DRILL AND AIR TRAC	6.30	.20	.20		.05
POWDERMEN	6.55	.20	.20		.05
LATHERS	10.25		.25		
LINE CONSTRUCTION:					
ZONE I-within a 16 air mile radius of 7812 Warwick Blvd., Newport News:					
LINEMEN	9.85	6%	8%		1%
CABLE SPLICER	10.10	6%	8%		1%
ZONE II-beyond a 16 air mile radius of 7812 Warwick Blvd., Newport News:					
LINEMEN	10.85	6%	8%		1%
CABLE SPLICER	11.10	6%	8%		1%
MARBLE SETTERS	9.15				
MILLWRIGHTS	10.40	.45	.45		.01
PAINTERS:					
(York County from a point on the north shore of Queens Creek at the intersection of York River due west to a point on the eastern shore of James River including all cities therein the cities of Hampton and Newport News:)					
BRUSH AND ROLLER	7.80		.20		
PAPERHANGER, TAPER, SPRAY, ROLLER WITH A 6' HANDLE OR OVER, STRUCTURAL STEEL TO 74' FROM THE GROUND UP, SWING STAGE UNDER 40', SANDBLASTING	8.15		.20		
SWING STAGE OVER 40', SPRAY EPOXY	8.40		.20		
EPOXY BRUSHED OR ROLLED	8.05		.20		
ALL WORK OVER 74' FROM THE GROUND	8.30		.20		
BITUMINOUS COATINGS, HOT CREOSITE	9.20		.20		

DECISION NO. VA78-3075

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS: REMAINDER OF COUNTY OF YORK					
BRUSH AND ROLLER	8.40		.30		
PAPERHANGING, TAPER, SPRAY, ROLLER WITH A HANDLE 6' OR OVER, STRUCTURAL STEEL 74' FROM THE GROUND UP, SWING STAGE UNDER 40', SANDBLASTING	8.75		.30		
SWING STAGE OVER 40', EPOXY SPRAYED	9.00		.30		
EPOXY BRUSHED OR ROLLED	8.65		.30		
ALL WORK OVER 74' FROM THE GROUND	8.90		.30		
BITUMINOUS COATINGS, HOT CREOSITE	9.80		.30		
PILEDRIVERMEN AND DOCKBUILDERS	8.30	.45	.45		
PLASTERERS	10.76				
PLUMBERS AND STEAMFITTERS	10.20	.45	.45		.02
ROOFERS COMPOSITION	6.20				
ROOFERS HELPERS	4.35				
SHEET METAL WORKERS:					
NEWPORT NEWS AND HAMPTON	9.80	.45	.55		.005
YORK COUNTY	10.05	.45	.55		.005
SPRINKLER FITTERS	9.93	.75	1.05		.08
TERRAZZO WORKERS AND TILE SETTERS	9.15				
WELDERS-receive rate prescribed for craft performing operation to which welding is incidental.					

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:
a. Holidays: A through F, Day after Thanksgiving.
b. Employer contributes 8% of basic hourly rate for 5 years or more of service or 6% of basic hourly rate for 6 months to 5 years of service as vacation pay credit

DECISION NO. VA78-3075

POWER EQUIPMENT OPERATORS - BUILDING CONSTRUCTION:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	9.80	.525	.45		.08
GROUP 2	7.80	.525	.45		.08
GROUP 3	6.35	.525	.45		.08
GROUP 4	6.15	.525	.45		.08
GROUP 5	5.96	.525	.45		.08

CLASSIFICATIONS:

GROUP 1
Tunnel machine, cranes, derricks, pile drivers, pavers, two or more drum hoist, finish motor grader, mechanic, batch plant, gradall, quad

GROUP 2
Cableways, tractors with attachments, combination front end loader and backhoe, front end loader, rubber tired scraper and pans, rough motor grader, 20-ton locomotive, bulldozers, pump crete, trenching machine, mixer larger than 16 S, fork lift

GROUP 3
Compressor over 125 cu. ft., bottom and end dumps, tractors without attachments, 1 drum hoist, rollers, welding machines (gas or diesel), locomotive under 20-tons, power plant, generator (1200 KW or larger), pumps (over 2 inches, including well-points), A-frame trucks, mechanic's helper

GROUP 4
Firemen

GROUP 5
Oilers

DECISION NO. VA78-3077

SEWER AND WATER CONSTRUCTION

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS	$5.30				
CEMENT MASONS	4.50				
LABORERS:					
LABORER	3.00				
PIPELAYERS	3.24				
TRUCK DRIVERS	3.30				
POWER EQUIPMENT OPERATORS:					
BACKHOE	5.25				
BULLDOZER	4.70				
CRANE	7.30	.325	.30		.03
FORK LIFT OPERATOR	4.20				
FRONT END LOADER	3.75				
LOADER OPERATOR	4.00				
MOTOR GRADER	3.50				
OILER	4.15				
ROLLER	3.00				
SCRAPER	3.63				

SUPERSEDAS DECISION

STATE: VIRGINIA

LOCATION: THE CITIES OF CHESAPEAKE, PORTSMOUTH AND VIRGINIA BEACH

DECISION NO.: VA78-3076

DATE: DATE OF PUBLICATION

Supersedes Decision No. VA78-3041 dated May 5, 1978 in 43 FR 19570

DESCRIPTION OF WORK: Building Construction (does not include single family homes and garden type apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$ 9.70	.60	.60		
BOILERMAKERS	10.70	1.00	1.10		.02
BRICKLAYERS AND STONE MASONS	9.33	.60	.20		.03
CARPENTERS AND SOFT FLOOR LAYERS	9.10	.45	.45		.02
CEMENT MASONS:					
Cement Masons	8.60				
Machine and Scaffold Men	8.70				
ELECTRICIANS AND CABLE SPLICERS	9.75	5%	8%	a	1%
ELEVATOR CONSTRUCTORS	8.80	.745	.56	b+c	.025
ELEVATOR CONSTRUCTORS HELPERS	6.16	.745	.56	b+c	.025
ELEVATOR CONSTRUCTORS HELPERS PROBATIONARY	4.40				
GLAZIERS	5.95	.30	.10		.01
IRONWORKERS:					
Reinforcing, Ornamental, Structural, Riggers, Fence Erectors, Machinery Movers	9.90	.65	1.00		.08
LABORERS:					
Unskilled	5.80	.20	.20		.05
Tenders, Motorized Georgia Buggy Operators, Nozzlemen (gunite or sandblasting), Concrete Saw Operators, Air Tool and Vibrator Operators	6.00	.20	.20		.05
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LINE CONSTRUCTION:					
Linemen and Cable Splicers	9.75	5%	8%		

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
MARBLE SETTERS	8.20	.60	.20		
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Brush and Roller	8.25		.40		
Structural Steel from Ground to 74 feet	8.75		.40		
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ROOFERS HELPERS	4.35				
SHEET METAL WORKERS	9.55	.45	.55		.005
SPRINKLER FITTERS	9.93	.75	1.05		.08
TERRAZZO AND TILE WORKERS	8.20	.60	.20		
WELDERS-receive rate prescribed for craft performing operation to which welding is incidental.					

DECISION NO. VA78-3076

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

a. Workmen shall be allowed 2 hours with pay at the start or at the end of the work day on State and National Election days; Tuesday following the first Monday in November, provided they are qualified to and Vote.

b. Employer contributes 8% basic hourly rate for 5 years or more of service or 6% basic hourly rate for 6 months to 5 years service as vacation pay credit.

c. Holidays: A through F, Day after Thanksgiving.

d. Holidays: A through F; Washington's Birthday, Good Friday and Christmas Eve provided the employee has worked 30 full days during the 90 calendar days prior to the holiday and the regular scheduled work days immediately preceeding and following the holiday.

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and or Appr. Tr.
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GROUP 1	$9.60	.525	.45		.08
GROUP 2	7.80	.525	.45		.08
GROUP 3	6.35	.525	.45		.08
GROUP 4	6.15	.525	.45		.08
GROUP 5	5.90	.525	.45		.08

CLASSIFICATIONS

GROUP 1
Tunnel machine, cranes, derricks, pile drivers, pavers, two or more drum hoist, finish motor grader, mechanic, batch plant, gradall, quad

GROUP 2
Cableways, tractors with attachments, combination front end loader and backhoe, front end loader, rubber tired scraper and pans, rough motor grader, 20-ton locomotive, bulldozers, pump crete, trenching machine, mixer larger than 16 S, fork lift

GROUP 3
Compressor over 125 cu. ft., bottom and end dumps, tractors without attachments, 1 drum hoist, rollers, welding machines (gas or diesel), locomotive under 20-tons, power plant, generator (1200 KW or larger), pumps (over 2 inches, including wellpoints), A-frame trucks, mechanic's helper

GROUP 4
Firemen

GROUP 5
Oilers

[FR Doc. 78-30890 Filed 11-2-78; 8:45 am]

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The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR notice 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
DOT/NHTSA	USDA/APHIS		DOT/NHTSA	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/OHMO	USDA/FSQS		DOT/OHMO	USDA/FSQS
DOT/OPSO	USDA/REA		DOT/OPSO	USDA/REA
CSA	CSC		CSA	CSC
	LABOR			LABOR
	HEW/FDA			HEW/FDA

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

NOTE: As of August 14, 1978, Community Services Administration (CSA) documents are being assigned to the Monday/Thursday schedule.

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[3195-01-M]

Title 3—The President

Executive Order 12095 • **November 2, 1978**

Creating an Emergency Board To Investigate a Dispute Between Wien Air Alaska, Inc. and Certain Individuals

A dispute exists between Wien Air Alaska, Inc., and certain individuals represented by the Air Line Pilots Association, a labor organization.

Section 44 of the Airline Deregulation Act of 1978 (Public Law 95-504) directed that the provisions of Section 10 of the Railway Labor Act, as amended, be invoked despite the fact that the National Mediation Board has failed to find that the dispute in its judgment substantially threatens to interrupt interstate commerce to a degree such as to deprive a section of the country of essential transportation service.

NOW, THEREFORE, by the authority vested in me by Section 44 of the Airline Deregulation Act of 1978 (Public Law 95-504) it is hereby ordered as follows:

1-101. *Establishment of Board.* There is established a board of three members to be appointed by the President to investigate this dispute. No member of the board shall be pecuniarily or otherwise interested in any organization of airline employees or any carrier.

1-102. *Report.* The board shall report its findings to the President with respect to the dispute within 30 days from the date of this Order.

Jimmy Carter

THE WHITE HOUSE,
November 2, 1978.

[FR Doc. 78-31514 Filed 11-3-78; 10:28 am]

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[3195-01-M]

Executive Order 12096 November 2, 1978

Compensation of Certain Officials in the Industry and Trade Administration Department of Commerce

By the authority vested in me as President of the United States of America by Section 703(a) of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2153(a)), it is hereby ordered as follows:

1-101. The compensation for the position of Senior Deputy Assistant Secretary for Industry and Trade, Industry and Trade Administration, Department of Commerce, is fixed at the rate now or hereafter prescribed by law for level V of the Executive Schedule (5 U.S.C. 5316).

1-102. The compensation for the position of Deputy Assistant Secretary for Trade Regulation, Bureau of Trade Regulation, Industry and Trade Administration, Department of Commerce, is fixed at the highest rate now or hereafter prescribed by law for grade 18 of the General Schedule (5 U.S.C. 5332).

1-103. The compensation for the positions of Deputy Director, Bureau of Trade Regulation, and Director, Office of Industrial Mobilization, Bureau of Trade Regulation, Industry and Trade Administration, Department of Commerce, are fixed at the highest rate now or hereafter prescribed by law for grade 17 of the General Schedule (5 U.S.C. 5332).

1-104. This order supersedes Executive Order No. 11759 of January 15, 1974.

Jimmy Carter

THE WHITE HOUSE,
November 2, 1978.

[FR Doc. 78-31515 Filed 11-3-78; 10:29 am]

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[3195-01-M]

Memorandum of November 2, 1978

Determination Under Section 202(a) of the Trade Act; High Carbon Ferrochromium

Memorandum for the Special Representative for Trade Negotiations

THE WHITE HOUSE,
Washington, November 2, 1978.

Pursuant to Section 202(b)(1) of the Trade Act of 1974 (P.L. 93-618, 88 Stat. 1978), I have determined the action I will take with respect to the report of the United States International Trade Commission (USITC) dated September 6, 1978, concerning the results of its investigation, as requested by the House Ways and Means Committee, of the domestic industry producing ferrochromium, containing over 3% by weight of carbon, provided for in Item 607.31 of the Tariff Schedules of the United States.

After considering all relevant aspects of the case, including those set forth in Section 202(c) of the Trade Act of 1974, I have determined to provide import relief for the domestic industry. Relief should be granted in the form of an increased tariff of 4¢ on any high carbon ferrochromium entering the United States at less than a value of 38¢ per pound for the following reasons:

1. The domestic industry is currently operating at unprofitable levels. Even the most competitive domestic firm (which supplies over half of all domestic production) is operating with substantial losses due to the price and volume of import competition this year.

2. Other importing countries have protected their producers. The European Community has established minimum prices for high carbon ferrochromium imports. The Japanese market does not appear to be fully open. The U.S. industry thus bears virtually all of the burden of adjustment during the current period of world overcapacity (the U.S., Japan, and EC constitute 90 percent of the free world high carbon ferrochrome market.

3. The additional duty on HCF would raise sufficiently the U.S. import price, minimizing the likelihood that the EC minimum import price and Japan's duty paid import price would divert HCF exports to the United States. This would provide the principal domestic producer with the opportunity to operate at a reasonable rate of return.

4. The recommended relief would not be inflationary. Market prices would be restored to levels assuring a fair return after imports have unduly depressed prices.

This determination is to be published in the FEDERAL REGISTER.

Jimmy Carter

[FR Doc. 78-31531 Filed 11-3-78; 11:51 am]

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rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

[3410-02-M]

Title 7—Agriculture

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

[Lemon Reg. 171]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market during the period November 5-11, 1978. Such action is needed to provide for orderly marketing of fresh lemons for this period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: November 5, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: *Findings.* Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, and upon other information, it is found that the limitation of handling of lemons, as hereafter provided, will tend to effectuate the declared policy of the act.

The committee met on October 31, 1978, to consider supply and market conditions and other factors affecting the need for regulation and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons is good on larger sizes, easier on smaller sizes.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

§ 910.471 Lemon Regulation 171.

Order. (a) The quantity of lemons grown in California and Arizona which may be handled during the period November 5, 1978, through November 11, 1978, is established at 175,000 cartons.

(b) As used in this section, "handled" and "carton(s)" mean the same as defined in the marketing order.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.)

Dated: November 2, 1978.

CHARLES R. BRADER,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 78-31385 Filed 11-2-78; 11:30 am]

[3410-05-M]

CHAPTER XIV—COMMODITY CREDIT CORPORATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

PART 1430—DAIRY PRODUCTS

Subpart—Price Support Program for Milk

1978-1979 PRICE SUPPORT

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule announces the level of price support for milk for the 1978-79 marketing year, and the prices and terms of purchase by CCC of butter, cheese and nonfat dry milk. This rule announces an increase from $9.21 to $9.64 per hundredweight in the support price for manufacturing milk. This price is for milk containing 3.5 percent milkfat. This price is equivalent to $9.87 for milk containing 3.67 percent milkfat, and is 80 percent of the parity equivalent price as of October 1, 1978, the beginning of the marketing year. This support price is applicable as of October 1, 1978.

EFFECTIVE Date: October 1, 1978.

ADDRESSES: Procurement and Sales Division, ASCS, USDA, 5741 South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT:

Donald E. Friedly, Agricultural Economist, Dairy Branch, Procurement and Sales Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, 5741 South Building, P.O. Box 2415, Washington, D.C. 20013, 202-447-3571.

SUPPLEMENTARY INFORMATION: Prior to the enactment of the Food and Agriculture Act of 1977, section 201 of the Agricultural Act of 1949, required that the price of milk be supported at such level from 75 to 90 percent of parity as the Secretary determines necessary to assure an adequate supply of pure and wholesome milk to meet current needs, reflect changes in the cost of production, and assure a level of farm income adequate to maintain productive capacity sufficient to meet anticipated future needs. The food and Agriculture Act of 1977 amended this section to add the requirement that the level of support be not less than 80 percent of its parity price, effective through March 31, 1979. The Food and Agriculture Act of 1977 also amended section 201 to add the requirement, effective through March 31, 1981, that the support price of milk be adjusted semiannually to reflect any estimated change in the parity index during the first 6 months of the marketing year.

On June 9, 1978, a notice was published in the FEDERAL REGISTER (43 FR

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25137) inviting comments concerning the 1978-79 price support program for milk. On August 4, 1978, another notice was published in the FEDERAL REGISTER (43 FR 34488) extending the comment period. Similar notices were also issued in USDA press releases.

DISCUSSION OF COMMENTS

The Department received 37 written comments from dairy farmers, dairy cooperatives and associations, farm organizations, dairy product dealers, consumers, other farm-interested persons and organizations. Twenty-six comments included recommendations to increase the support price. Of these, 13 commenters recommended a level of support at 80 percent of parity, 2 at 83 percent of parity, 1 at 85 percent of parity, 4 at 90 percent of parity, and 1 at 100 percent of parity. Five commenters recommended an increase without specifying the amount. Two commenters were against a support price increase. The recommendations of the 15 dairy farmer cooperatives and associations which responded, are summarized as follows: Eight recommended announcing the support price on a 3.5 percent milkfat basis, seven recommended increasing the manufacturing margins used in calculating Commodity Credit Corporation's (CCC's) purchase prices, two recommended increasing CCC's sales prices of dairy products for unrestricted use, six recommended maintaining CCC's sales prices at no less than 110 percent of their current purchase prices, four recommended purchasing process cheese at an announced price, five recommended that CCC offer nonfat dry milk for animal feed at an announced sales price rather than on a competitive bid basis, seven recommended that purchase prices to butter-nonfat dry milk manufacturers and cheese manufacturers be increased by equal amounts per hundredweight of milk, seven recommended dividing the support price increase for milk equally between the purchase prices for butter and nonfat ~~dry~~ milk, and four recommended that CCC include a value for whey in calculating the purchase price for cheese. Recommendations were received from four consumers concerning the level of support: Two were against increasing the support price and two were in favor of eliminating the program.

LEVEL OF SUPPORT

After considering the comments received and reviewing the supply-demand situation, it was determined that the support price for manufacturing milk would be established at 80 percent of the parity equivalent price for manufacturing milk as reported in the September 29, 1978, issue of USDA's "Agricultural Prices". The decision to set the support at the minimum level required by law resulted from a review of the dairy situation up to and including September 8, 1978. It was determined that support at 80 percent of parity would assure an adequate supply of pure and wholesome milk and dairy products to meet current needs, reflect changes in the cost of production, and assure an adequate level of farm income to maintain productive capacity sufficient to meet anticipated future needs. The latest available statistics of the Federal Government were used in making determinations under this rule. The price support program for the 1978-79 marketing year was described in USDA press releases issued September 8 and 29.

Until mid-July, market supplies of milk and dairy products were in excess of commercial demand as CCC continued to purchase surplus butter, nonfat dry milk, and cheese. Since March, milk production has been below year earlier levels and since June, has been declining seasonally. Sales of butter and cheese to CCC stopped in July and nonfat dry milk (except in the West) in mid-September as market prices rose above CCC's purchase prices. CCC price support purchases during marketing year 1977-78 totaled 147 million pounds of butter, 338 million pounds of nonfat dry milk and 46 million pounds of cheese. CCC sales for unrestricted use at 110 percent of current purchase prices were made of 12 million pounds of butter and 5 million pounds of cheese, thus supplementing commercial supplies. It is expected that commercial supplies of butter and cheese will again exceed consumer demand by the end of 1978 and sales of these products to CCC under the price support program will be resumed at that time.

In accordance with the Food and Agriculture Act of 1977, the support price will be adjusted April 1, 1979, to reflect any estimated change in the parity index during the first half of the marketing year.

ANNOUNCE THE SUPPORT PRICE ON 3.5 PERCENT MILKFAT BASIS

There have been many requests that the new support price be announced on a 3.5 percent milkfat basis, and the support price announcements on September 8 and 29 acceded to these requests. This will aid the farmer's understanding of the support price because the price of nearly all raw milk purchased from farmers is quoted on a milkfat content of 3.5 percent, with actual prices received by individual farmers adjusted by a milkfat differential for milk with milkfat content above or below 3.5 percent. Although the support price for milk will continue to be determined on the basis of the U.S. annual average milkfat content (since the parity price is on that basis), the support price will be announced on the basis of milk of 3.5 percent milkfat.

MANUFACTURING MARGINS USED IN CALCULATING CCC PURCHASE PRICES

Costs of certain items to manufacturers have increased slightly since the manufacturing margins used in calculating CCC's purchase prices were increased on April 1, 1978. Meanwhile, technological advances continue to be made, tending to reduce unit costs. On balance, the purchase prices, as calculated, are expected to provide sufficient revenue to manufacturers as a group to enable them to pay the announced support price to producers. After a substantial increase in the support, it normally takes a few months for the average prices received by farmers to equal the support price. Since market prices were at or near support in June and producers received only 3 cents less than the support price, it was determined that a further increase in the manufacturing margins was not necessary at this time. It is expected that the average prices received by producers during the marketing year will be at least equal to the support price.

RELATIVE INCREASES IN CCC PURCHASE PRICES FOR BUTTER AND NONFAT DRY MILK

Since butter and nonfat dry milk can be made from the same whole milk, manufacturers must receive enough revenue from the sale of both products to be able to pay a given price for milk to producers. The most recent price support increases, in April 1, 1977, and April 1, 1978, were divided equally per hundredweight of milk between the two products. During the year ending September 30, 1977, CCC purchased quantities of milkfat and nonfat solids roughly in proportion to their respective production. This indicated that the purchase prices were in about the proper relationship to each other.

Since October 1, 1977, CCC's nonfat dry milk purchases have increased relative to those of butter. However, the increase in support was divided equally between two products because a sharp increase in the purchase price for butter would have been reflected in wholesale and retail prices, which in turn, could result in a sharp decline in butter consumption and a sharp increase in butter purchases by CCC.

WHEY VALUE

In the 1974-75 marketing year, a value for whey solids-not-fat was used in calculating CCC's purchase price for cheese. In most other years, whey disposal or processing involved a cost for cheese manufacturers, since the cost of processing was more than the market return for it. It is expected that the strong demand and increased market prices for whey in 1978-79 will result in a return over costs equal to about 1.5 cents for each pound of cheese manufactured. Therefore, the 1978-79 CCC purchase price for cheese is 1.5 cents per pound less than it otherwise would be. To disregard the whey solids-not-fat value would have had the effect of providing a larger support increase to the cheese manufacturers than to butter-nonfat dry milk manufacturers.

SELL NONFAT DRY MILK FOR ANIMAL FEED AND PURCHASE PROCESS CHEESE AT ANNOUNCED PRICES

Currently these sales and purchases are made on a competitive bid basis. This procedure has been continued mainly because it is more reflective of commercial supply and demand and it enables CCC to better manage its inventory. Competitive bids have proven to be most advantageous to the Government since they provide the flexibility of being responsive to changing prices, particularly in the animal feed market. Such a procedure also is more equitable to industry when only a given quantity of sales or purchases by CCC are to be made.

SALES PRICES

Products acquired through support purchases will be offered for sale when available for unrestricted use at prices which will be 110 percent of CCC's purchase prices in effect at time of sale (allowing for rounding) but not less than market prices. Any markup of less than 10 percent would not adequately cover costs associated with storage and therefore would discourage industry from maintaining adequate inventories. Any higher sellback prices would tend to be inflationary if wholesale prices of dairy products increased more than 10 percent during the season of low production.

FINAL RULE

Based on the $9.64 support price for milk containing 3.5 percent milkfat, 7 CFR § 1430.282 is revised to read as follows:

§ 1430.282 Price support program for milk.

(a) (1) The general level of prices to producers for milk will be supported from October 1, 1978, through September 30, 1978, at $9.64 per hundredweight for manufacturing milk containing 3.5 percent milkfat, subject to adjustment as provided for by law. This is equivalent to $9.87 per hundredweight for milk with the U.S. annual average milkfat test of 3.67 percent.

(2) Price support for milk will be through purchases by Commodity Credit Corporation of butter, nonfat dry milk, and cheddar cheese, offered subject to the terms and conditions of purchase announcements issued by the Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

(3) Commodity Credit Corporation may, by special announcements, offer to purchase other dairy products to support the price of milk.

(4) Purchase announcements setting forth terms and conditions of purchase may be obtained upon request from the U.S. Department of Agriculture, Agricultural Stabilization and Conservation Service, Procurement and Sales Division, P.O. Box 2415, Washington, D.C. 20013, or the U.S. Department of Agriculture, Agricultural Stabilization and Conservation Service, Kansas City ASCS Commodity Office, P.O. Box 8377, Shawnee Mission, Kans. 66208.

(b)(1) Commodity Credit Corporation will consider offers of butter, cheddar cheese, and nonfat dry milk in bulk containers meeting specifications in the announcements at the following prices:

[In dollars per pound]

Commodity and location	Produced before Oct. 1, 1978	Produced on or after Oct. 1, 1978
Cheddar Cheese: Standard moisture, 37.8–39.0 percent:[1]		
40-lb blocks, U.S. Grade A or higher	1.0325	1.06
500 lb in fiber barrels, U.S. Extra Grade[2]	1.0025	1.03
Nonfat dry milk, spray process, U.S. Extra Grade:[3]		
Unfortified	.7100	.7375
Fortified (vitamins A and D)	.7250	.7525
Butter: U.S. Grade A or higher: New York, N.Y., and Jersey City, Newark, and Secaucus, N.J.	1.0875	1.135

[1] The price per pound for cheese which contains less than 37.8 pct moisture shall be as specified in form ASCS-150. Copies are available in offices listed in (a)(4).

[2] Also includes granular cheese.

[3] If upon inspection bags do not fully comply with specifications, the price paid will be subject a discount of .50 cent (½ cent) per pound of nonfat dry milk.

(2) Offers to sell butter at any location for which a price is not specifically provided for in this section will be considered at the price set forth in this section for New York City, less 80 percent of the lowest published domestic railroad through freight rate for frozen butter per pound gross weight for a 60,000 pound carlot, in effect at the beginning of each marketing year (October 1), from such other point to New York City. The minimum price at any location shall be the price at New York City minus 2.5 cents per pound. Bulk butter offered in the area consisting of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, and Virginia, must have been produced in such States. Butter produced elsewhere is ineligible for offering to CCC in such States.

(c) (1) The block cheese shall be U.S. Grade A or higher; the barrel cheese shall be U.S. Extra Grade.

(2) The nonfat dry milk shall be U.S. Extra Grade, except moisture content shall not exceed 3.5 percent.

(3) The butter shall be U.S. Grade A or higher.

(d) The products shall be manufactured in the United States from milk produced in the United States and shall not have been previously owned by CCC.

(e) Purchases will be made in carlot weights specified in the announcements. Grade and weights shall be evidenced by inspection certificates issued by the U.S. Department of Agriculture.

(Sec. 201, 401, Pub. L. 439, 81st Cong., 63 Stat. 1052, 1054, as amended (7 U.S.C. 1446, 1421); Secs. 4 and 5, Pub. L. 806, 80th Cong., 62 Stat. 1070, 1072, as amended (15 U.S.C. 714 b and c).

NOTE.—An approved final impact analysis is available from Donald E. Friedly, Agricultural Economist, Dairy Branch, Procurement and Sales Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, 5741 South Building, P.O. Box 2415, Washington, D.C. 20013, 202-447-3571.

Signed at Washington, D.C. on: October 27, 1978.

RAY FITZGERALD,
Executive Vice President,
Commodity Credit Corporation.

[FR Doc. 78-31291 Filed 11-3-78; 8:45 am]

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CHAPTER XI—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS: MISCELLANEOUS COMMODITIES) DEPARTMENT OF AGRICULTURE

PART 1280—WHEAT AND WHEAT FOODS RESEARCH AND NUTRITION EDUCATION

Subpart—Rules of Practice and Procedure Governing Proceedings to Formulate an Order Under the Wheat and Wheat Foods Research and Nutrition Education Act

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service establishes rules of practice and procedure governing proceedings to formulate an order under the Wheat and Wheat Foods Research and Nutrition Education Act. The Act provides that a program be effectuated through the promulgation of a Wheat and Wheat Foods Research and Nutrition Education Order, which must be approved by wheat end product users in a referendum. This subpart establishes the procedures which will be followed in developing the order.

EFFECTIVE DATE: November 6, 1978.

FOR FURTHER INFORMATION CONTACT:

Ralph L. Tapp, Livestock, Poultry, Grain, and Seed Division, AMS, USDA, Washington, D.C. 20250, phone 202-447-3970.

SUPPLEMENTARY INFORMATION: The Wheat and Wheat Foods Research and Nutrition Education Act is enabling legislation which provides for a nationally coordinated program of research and nutrition education for wheat, processed wheat, and wheat end products. Such a program would be financed by assessments of up to 5 cents per hundredweight, to be paid by end product users on their purchases of processed wheat. Certain end product users, including retail bakers, would be exempt from assessments. Other end product users not wishing to fund the program could receive refunds of assessments paid. The program would be administered by a 20-member Council composed equally of representatives of wheat producers, processors, end product users, and consumers. Council members would be appointed by the Secretary from nominations submitted by organizations certified by the Secretary as representing a substantial number of those engaged in the respective segment of the wheat industry or a substantial number of consumers. The program is effectuated through the promulgation of a Wheat and Wheat Foods Research and Nutrition Education Order, which must be approved by wheat end product users in a referendum. This subpart establishes the procedures which will be followed in developing the order.

It has been determined that under the administrative procedure provisions in 5 U.S.C. 553, it is impractical and unnecessary to allow opportunity for public comment or to delay the effectiveness of these rules of practice until 30 days after publication in the FEDERAL REGISTER for the reasons that: (1) No substantive rule or change of rule is involved, and (2) these procedures are patterned directly after existing procedures that have been effectively used in similar programs.

Accordingly, the following new subpart will initiate a new part 1280 of chapter XI of title 7 of the Code of Federal Regulations:

PART 1280—WHEAT AND WHEAT FOODS RESEARCH AND NUTRITION EDUCATION

Subpart—Rules of Practice and Procedure Governing Proceedings to Formulate an Order Under the Wheat and Wheat Foods Research and Nutrition Education Act

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1280.15 Decision by the Secretary.
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1280.17 Filing.
1280.18 Ex parte communications.
1280.19 Additional documents to be filed with hearing clerk.
1280.20 Hearing before Secretary.

AUTHORITY: Wheat and Wheat Foods Research and Nutrition Education Act, Pub. L. 95-113, 95th Cong., approved September 29, 1977, 7 U.S.C. 3401-3417.

§ 1280.1 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 1280.2 Definitions.

As used in this subpart, the terms as defined in the Act shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) The term "Act" means the Wheat and Wheat Foods Research and Nutrition Education Act, Pub. L. 95-113, 95th Cong., approved September 29, 1977, 7 U.S.C. 3401-3417.

(b) The term "Department" means the U.S. Department of Agriculture.

(c) The term "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

(d) The term "administrative law judge" or "judge" means any administrative law judge appointed pursuant to 5 U.S.C. 3105 and assigned to conduct the hearing.

(e) The term "Administrator" means the Administrator of the Agricultrual Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(f) The term "FEDERAL REGISTER" means the publication provided for by the Federal Register Act, approved July 26, 1935 (49 Stat. 500), and acts supplementary thereto and amendatory thereof.

(g) The term "hearing" means that part of the proceeding which involves the submission of evidence.

(h) The term "order" means any order or any amendment thereto which may be issued pursuant to the Act.

(i) The term "proceeding" means a proceeding forming the basis on which an order may be issued.

(j) The term "hearing clerk" means the hearing clerk, U.S. Department of Agriculture, Washington, D.C.

§ 1280.3 Proposals.

(a) An order may be proposed by any organization certified pursuant to section 1714 of the Act or any interested person affected by the Act, including the Secretary. Any person or organization other than the Secretary proposing an order shall file with the Administrator a written application, together with a copy of the proposal, requesting the Secretary to hold a hearing upon the proposal. Upon receipt of such proposal, the Administrator shall cause such investigation to be made and such consideration thereto to be given as, in the Administrator's opinion, are warranted. If the investigation and consideration lead the Administrator to conclude that the proposed order will not tend to effectuate the declared policy of the Act, or that for other proper reasons a hearing should not be held on the proposal, the Administrator shall deny the application, and promptly notify the applicant of such denial, which notice shall be accompanied by a brief statement of the grounds for the denial.

(b) If the investigation and consideration lead the Administrator to conclude that the proposed order will tend to effectuate the declared policy of the Act, or if the Secretary desires to propose an order, the Administrator shall sign and cause to be served a notice of hearing, as provided herein.

§ 1280.4 Reimbursement of expenses by the Council.

The Council established by the order shall reimburse the Secretary, from assessments, for all the expenses and expenditures, including salaries, which the Secretary determines were incurred by the Government in the preparation of the order or any amendments thereto and for the conduct of any referendum, including a referendum for termination of the order.

§ 1280.5 Institution of proceedings.

(a) *Filing and contents of the notice of hearing.* The proceeding shall be instituted by filing the notice of hearing with the hearing clerk. The notice of hearing shall contain a reference to the authority under which the order is proposed; shall define the scope of the hearing as specifically as may be practicable; shall contain either the terms or substance of the proposed order or a description of the subjects and issues involved; and shall state the time and place of such hearing, and the place where copies of such proposed order may be obtained or examined. The time of the hearing shall not be less than 15 days after the date of publication of the notice in the FEDERAL REGISTER, as provided herein, unless the Administrator shall determine that an emergency exists which requires a shorter period of notice, in which case the period of notice shall be that which the Administrator may determine to be reasonable, in the circumstances: *Provided,* That in the case of hearings on amendments to an order, the time of the hearing may be less than 15 days but shall not be less than 3 days after the date of publication in the FEDERAL REGISTER.

(b) *Giving notice of hearing and supplemental publicity.* (1) The Administrator shall give or cause to be given notice of hearing in the following manner:

(i) By publication of the notice of hearing in the FEDERAL REGISTER;

(ii) By mailing a copy of the notice of hearing to each organization known to the Administrator to be interested therein;

(iii) By issuing a press release containing the complete text or a summary of the contents of the notice of hearing and making the same available to such newspapers as, in the Administrator's discretion, are best calculated to bring the notice to the attention of the persons interested therein; and

(iv) By forwarding copies of the notice of hearing addressed to the Governors of the 50 States of the United States and the mayor of the District of Columbia.

(2) Legal notice of the hearing shall be deemed to be given if notice is given in the manner provided by subparagraph (1)(i) of this paragraph; failure to give notice in the manner provided in paragraphs (b), (ii), (iii), and (iv) of this section shall not affect the legality of the notice.

(c) *Record of notice and supplemental publicity.* There shall be filed with the hearing clerk or submitted to the administrative law judge at the hearing an affidavit or certificate of the person giving the notice provided in paragraphs (b)(1) (iii) and (iv) of this section. In regard to the provisions relating to mailing in paragraph (b)(1)(ii) of this section, determination by the Administrator that such provisions have been complied with shall be filed with the hearing clerk or submitted to the administrative law judge at the hearing. In the alternative, if notice is not given in the manner provided in paragraphs (b)(1) (ii), (iii), and (iv) of this section there shall be filed with the hearing clerk or submitted to the administrative law judge at the hearing a determination by the Administrator that such notice is impracticable, unnecessary, or contrary to the public interest with a brief statement of the reasons for such determination. Determinations by the Administrator as herein provided shall be final.

§ 1280.6 Docket number.

Each proceeding, immediately following its institution, shall be assigned a docket number by the hearing clerk and thereafter the proceeding may be referred to by such number.

§ 1280.7 Judge.

(a) *Assignment.* No judge who has any pecuniary interest in the outcome of a proceeding shall serve as judge in such proceeding.

(b) *Power of judge.* Subject to review by the Secretary, as provided elsewhere in this subpart, the judge in any proceeding shall have power to:

(1) Rule upon motions and requests;

(2) Change the time and place of hearings, and adjourn the hearing from time to time or from place to place;

(3) Administer oaths and affirmations and take affidavits;

(4) Examine and cross-examine witnesses and receive evidence;

(5) Admit or exclude evidence;

(6) Hear oral argument on facts or law; and

(7) Do all acts and take all measures necessary for the maintenance of order at the hearings and the efficient conduct of the proceeding.

(c) *Who may act in absence of judge.* In case of the absence of the judge or the judge's inability to act, the powers and duties to be performed by the judge under this part in connection with a proceeding may, without abatement of the proceeding unless otherwise ordered by the Secretary, be assigned to any other judge.

(d) *Disqualification of judge.* The judge may at any time withdraw as judge in a proceeding if such judge deems himself or herself to be disqualified. Upon the filing by an interested person in good faith of a timely and sufficient affidavit of personal bias or disqualification of a judge, the Secretary shall determine the matter as a part of the record and decision in the proceeding, after making such investigation or holding such hearings, or both, as the Secretary may deem appropriate in the circumstances.

§ 1280.8 Motions and requests.

(a) *General.* (1) All motions and requests shall be filed with the hearing clerk, except that those made during the course of the hearing may be filed with the judge or may be stated orally and made a part of the transcript.

(2) Except as provided in § 1280.17(b) such motions and requests shall be addressed to, and ruled on by, the judge if made prior to certification of the transcript pursuant to § 1280.11 or by the Secretary if made thereafter.

(b) *Certification to Secretary.* The judge may, in his or her discretion, submit or certify to the Secretary for decision any motion, request, objection, or other question addressed to the judge.

§ 1280.9 Conduct of the hearing.

(a) *Time and place.* The hearing shall be held at the time and place fixed in the notice of hearing, unless the judge shall have changed the time or place, in which event the judge shall file with the hearing clerk a notice of such change, which notice shall be given in the same manner as provided in § 1280.5 (relating to the giving of notice of the hearing): *Provided,* That if the change in time or place of hearing is made less than 5 days prior to the date previously fixed

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for the hearing, the judge, either in addition to or in lieu of causing the notice of the change to be given, shall announce, or cause to be announced, the change at the time and place previously fixed for the hearing.

(b) *Appearances.* (1) *Right to appear.* At the hearing, any interested person shall be given an opportunity to appear, either in person or through authorized counsel or representative, and to be heard with respect to matters relevant and material to the proceeding. Any interested person who desires to be heard in person at any hearing under these rules shall, before proceeding to testify, state his or her name, address, and occupation. If any such person is appearing through a counsel or representative, such person or such counsel or representative shall, before proceeding to testify or otherwise to participate in the hearing, state for the record the authority to act as such counsel or representative, and the names, addresses, and occupations of such person and such counsel or representative. Any such person or such counsel or representative shall give such other information respecting such appearance as the judge may request.

(2) *Debarment of counsel or representative.* (i) Whenever, while a proceeding is pending before the judge, such judge finds that a person, acting as counsel or representative for any person participating in the proceeding, is guilty of unethical or unprofessional conduct, the judge may order that such person be precluded from further acting as counsel or representative in such proceeding. An appeal to the Secretary may be taken from any such order, but the proceeding shall not be delayed or suspended pending disposition of the appeal: *Provided*, That the judge may suspend the proceeding for a reasonable time for the purpose of enabling the client to obtain other counsel or representative.

(ii) In case the judge has ordered that a person be precluded from further action as counsel or representative in the proceeding, the judge within a reasonable time thereafter shall submit to the Secretary a report of the facts and circumstances surrounding such order and shall recommend what action the Secretary should take respecting the appearance of such counsel or representative in other proceedings before the Secretary. Thereafter the Secretary may, after notice and an opportunity for hearing, issue such order respecting the appearance of such person as counsel or representative in proceedings before the Secretary as the Secretary finds to be appropriate.

(3) *Failure to appear.* If any interested person fails to appear at the hearing, that person shall be deemed to have waived the right to be heard in the proceeding.

(c) *Order of procedure.* (1) The judge shall, at the opening of the hearing prior to the taking of testimony, have noted as part of the record the notice of hearing as filed with the Office of the Federal Register and the affidavit or certificate of the giving of notice or the determination provided for in § 1280.5(c).

(2) Evidence shall then be received with respect to the matters specified in the notice of the hearing in such order as the judge shall announce.

(d) *Evidence.* (1) *General.* The hearing shall be publicly conducted, and the testimony given at the hearing shall be reported verbatim.

(i) Every witness shall, before proceeding to testify, be sworn or make affirmation. Cross-examination shall be permitted to the extent required for a full and true disclosure of the facts.

(ii) When necessary, in order to prevent undue prolongation of the hearing, the judge may limit the number of times any witness may testify to the same matter or the amount of corroborative or cumulative evidence.

(iii) The judge shall, insofar as practicable, exclude evidence which is immaterial, irrelevant, or unduly repetitious, or which is not of the sort upon which responsible persons are accustomed to reply.

(2) *Objections.* If a party objects to the admission or rejection of any evidence or to any other ruling of the judge during the hearing, such party shall state briefly the grounds of such objection, whereupon an automatic exception will follow if the objection is overruled by the judge. The transcript shall not include argument or debate thereon except as ordered by the judge. The ruling of the judge on any objection shall be a part of the transcript. Only objections made before the judge may subsequently be relied upon in the proceeding.

(3) *Proof and authentication of official records or documents.* An official record or document, when admissible for any purpose, shall be admissible as evidence without the production of the person who made or prepared the same. Such record or document shall, in the discretion of the judge, be evidenced by an official publication thereof or by a copy attested to by the person having legal custody thereof and accompanied by a certificate that such person has the custody.

(4) *Exhibits.* All written statements, charts, tabulations, or similar data offered in evidence at the hearing shall, after identification by the proponent and upon satisfactory showing of the authenticity, relevancy, and materiality of the contents thereof, be numbered as exhibits and received in evidence and made a part of the record. Such exhibits shall be submitted in quintuplicate and in documentary form. In case the required number of copies is not made available, the judge shall exercise discretion as to whether said exhibits shall, when practicable, be read in evidence or whether additional copies shall be required to be submitted within a time to be specified by the judge. If the testimony of a witness refers to a statute, or to a report or document (including the record of any previous hearing), the judge, after inquiry relating to the identification of such statute, report, or document, shall determine whether the same shall be produced at the hearing and physically be made a part of the evidence as an exhibit, or whether it shall be incorporated into the evidence by reference. If relevant and material matter offered in evidence is embraced in a report or document (including the record of any previous hearing) containing immaterial or irrelevant matter, such immaterial or irrelevant matter shall be excluded and shall be segregated insofar as practicable, subject to the direction of the judge.

(5) *Official notice.* Official notice may be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical, scientific, or commercial fact of established character: *Provided*, That interested persons shall be given adequate notice, at the hearing or subsequent thereto, of matters so noticed and shall be given adequate opportunity to show that such facts are inaccurate or are erroneously noticed.

(6) *Offer of proof.* Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the transcript. The offer of proof shall consist of a brief statement describing the evidence to be offered. If the evidence consists of a brief oral statement or of an exhibit, it shall be inserted into the transcript in toto. In such event, it shall be considered a part of the transcript if the Secretary decides that the judge's ruling in excluding the evidence was erroneous. The judge shall not allow the insertion of such evidence in toto if the taking of such evidence will consume a considerable length of time at the hearing. In the latter event, if the Secretary decides that the judge erred in excluding the evidence, and that such error was substantial, the hearing shall be reopened to permit the taking of such evidence.

§ 1280.10 Oral and written arguments.

(a) *Oral argument before the judge.* Oral argument before the judge shall be in the discretion of the judge. Such argument, when permitted, may be limited by the judge to any extent that the judge finds necessary for the expeditious disposition of the proceeding and shall be reduced to writing and made part of the transcript.

(b) *Briefs, proposed findings, and conclusions.* The judge shall announce at the hearing a reasonable period of time within which interested persons may file with the hearing clerk proposed findings and conclusions, and written arguments or briefs, based upon the evidence received at the hearing, citing, where practicable, the page or pages of the testimony where such evidence appears. Factual material other than that adduced at the hearing or subject to official notice shall not be alluded to therein, and, in any case, shall not be considered in the formulation of the order. If the person filing a brief desires the Secretary to consider any objection made by such person to a ruling of the judge, as provided in § 1280.9(d), that person shall include in the brief a concise statement concerning each such objection, referring, where practicable, to the pertinent pages of the transcript.

§ 1280.11 Certification of the transcript.

The judge shall notify the hearing clerk of the close of a hearing as soon as possible thereafter and of the time for filing written arguments, briefs, proposed findings, and proposed conclusions and shall furnish the hearing clerk with such other information as may be necessary. As soon as possible after the hearing, the judge shall transmit to the hearing clerk an original and four copies of the transcript of the testimony and the original and all copies of the exhibits not already on file in the office of the hearing clerk. The judge shall attach to the original transcript of the testimony a certificate stating that, to the best of the judge's knowledge and belief, the transcript is a true transcript of the testimony given at the hearing, except in such particulars as the judge shall specify, and that the exhibits transmitted are all the exhibits as introduced at the hearing with such exceptions as the judge shall specify. A copy of such certificate shall be attached to each of the copies of the transcript of testimony. In accordance with such certificate the hearing clerk shall note upon the official record copy, and cause to be noted on other copies of the transcript, each correction detailed therein by adding or crossing out (but without obscuring the text as originally transcribed) at the appropriate place any words necessary to make to same conform to the correct meaning, as certified by the judge. The hearing clerk shall obtain and file certifications to the effect that such corrections have been effectuated in copies other than the official record copy.

§ 1280.12 Copies of the transcript.

(a) During the period in which the proceeding has an active status in the Department, a copy of the transcript and exhibits shall be kept on file in the office of the hearing clerk where it shall be available for examination during official hours of business. Thereafter said transcript and exhibits shall be made available by the hearing clerk for examination during official hours of business after prior request and reasonable notice to the hearing clerk.

(b) If a personal copy of the transcript is desired, such copy may be obtained upon written application filed with the reported and upon payment of fees at a rate that may be agreed upon with the reporter.

§ 1280.13 Administrator's recommended decision.

(a) *Preparation.* As soon as practicable following the termination of the period allowed for the filing of written arguments or briefs and proposed findings and conclusions the Administrator shall file with the hearing clerk a recommended decision.

(b) *Contents.* The Administrator's recommended decision shall include: (1) A preliminary statement containing a description of the history of the proceedings, a brief explanation of the material issues of fact, law, or discretion presented on the record, and proposed findings and conclusions with respect to such issues as well as the reasons or basis therefore; (2) a ruling upon each proposed finding or conclusion submitted by interested persons; and (3) an appropriate proposed order effectuating the Administrator's recommendations.

(c) *Exceptions to recommended decision.* Immediately following the filing of the recommended decision, the Administrator shall give notice thereof and opportunity to file exceptions thereto by publication in the FEDERAL REGISTER. Within a period of time specified in such notice any interested person may file with the hearing clerk exceptions to the Administrator's proposed order and a brief in support of such exceptions. Such exceptions shall be in writing, shall refer, where practicable, to the related pages of the transcript, and may suggest appropriate changes in the proposed order.

(d) *Omission of recommended decision.* The procedure provided in this section may be omitted only if the Secretary finds on the basis of the record that due and timely execution of the Secretary's functions imperatively and unavoidably requires such omission.

§ 1280.14 Submission to Secretary.

Upon the expiration of the period allowed for filing exceptions or upon request of the Secretary, the hearing clerk shall transmit to the Secretary the record of the proceeding. Such record shall include: All motions and requests filed with the hearing clerk and rulings thereon; the certified transcript; any proposed findings or conclusions or written arguments or briefs that may have been filed; the Administrator's recommended decision, if any; and such exceptions as may have been filed.

§ 1280.15 Decision by the Secretary.

After due consideration of the record, the Secretary shall render a decision. Such decision shall become a part of the record and shall include: (a) A statement of findings and conclusions, as well as the reasons or basis therefore, upon all the material issues of fact, law, or discretion presented on the record; (b) a ruling upon each proposed finding and proposed conclusion not previously ruled upon in the record; (c) a ruling upon each exception filed by interested persons, and (d) either (1) denial of the proposal to issue an order, or (2) if the findings upon the record so warrant, an order, the provisions of which shall be set forth and such order shall be complete except for its effective date and any determinations to be made under § 1280.16: *Provided*, That such order shall not be executed, issued, or made effective until and unless the Secretary determines that the requirements of § 1280.16 have been met.

§ 1280.16 Execution of the order.

(a) *Issuance of the order.* The Secretary shall, if the Secretary finds that it will tend to effectuate the purposes of the Act, issue and make effective the order which was filed as part of his decision pursuant to § 1280.15: *Provided*, That the issuance of such order shall have been approved or favored by end product manufacturers as required by section 1708 of the Act.

(b) *Effective date of order.* No order shall become effective in less than 30 days after its publication in the FEDERAL REGISTER, unless the Secretary, upon good cause found and published with the order, fixes an earlier effective date thereof.

(c) *Notice of issuance.* After issuance of the order, such order shall be filed with the hearing clerk, and notice thereof, together with notice of the effective date, shall be given by publication in the FEDERAL REGISTER.

§ 1280.17 Filing.

(a) *Number of copies.* Except as provided otherwise herein, all documents or papers required or authorized by the foregoing provisions hereof to be

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filed with the hearing clerk shall be filed in quintuplicate. Any documents or papers so required or authorized to be filed with the hearing clerk shall be filed with the judge during the course of an oral hearing.

(b) *Extension of time.* The time for filing of any document or paper required or authorized by the foregoing provisions to be filed may be extended by the judge (before the record is certified by the judge) or by the Administrator (after the record is so certified by the judge but before it is transmitted to the Secretary) upon request filed, and if, in the judgment of the judge, Administrator, or the Secretary, as the case may be, there is good reason for the extension. All rulings made pursuant to this paragraph shall be filed with the hearing clerk.

(c) *Effective date of filing.* Any document or paper required or authorized by the foregoing provisions to be filed shall be deemed to be filed when it is postmarked or, if otherwise delivered, when it is received by the hearing clerk.

(d) *Computation of time.* Sundays and Federal holidays shall be included in computing the time allowed for the filing of any document or paper: *Provided,* That when such time expires on a Sunday or a Federal holiday, such period shall be extended to include the next following business day.

§ 1280.18 Ex parte communications.

(a) At no stage of the proceeding following the issuance of a notice of hearing and prior to the issuance of the Secretary's decision therein shall an employee of the Department who is or may reasonably be expected to be involved in the decision process of the proceeding discuss ex parte the merits of the proceeding with any person having an interest in the proceeding or with any representative of such person: *Provided,* That procedural matters and status reports shall not be included within this limitation: *And provided further,* That an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding may discuss the merits of the proceeding with such a person if all parties known to be interested in the proceeding have been given notice and an opportunity to participate. A memorandum of any such discussion shall be included in the record of the proceeding.

(b) No person interested in the proceeding shall make or knowingly cause to be made to an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding an ex parte communication relevant to the merits of the proceeding except as provided in paragraph (a) of this section.

(c) If an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding receives or makes a communication prohibited by this section, the Department shall place on the public record of the proceeding:

(1) All such written communications;

(2) Memoranda stating the substance of all such oral communications; and

(3) All written responses, and memoranda, stating the substance of all oral responses thereto.

(d) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this section, the Department may, to the extent consistent with the interest of justice and the policy of the underlying statute, take whatever steps are deemed necessary to nullify the effect of such communication.

(e) For the purposes of this section, "ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all interested parties is not given, but which shall not include requests for status reports (including requests on procedural matters) on a proceeding.

§ 1280.19 Additional documents to be filed with hearing clerk.

In addition to the documents or papers required or authorized by the foregoing provisions of this subpart to be filed with the hearing clerk, the hearing clerk shall receive for filing and shall have custody of all papers, reports, records, orders, and other documents which relate to the administration of any order and which the Secretary is required to issue or to approve.

§ 1280.20 Hearing before Secretary.

The Secretary may act in the place and stead of a judge in any proceeding herein. When the Secretary so acts, the hearing clerk shall transmit the record to the Secretary at the expiration of the period provided for the filing of proposed findings of fact, conclusions, and orders, and the Secretary shall thereupon, after due consideration of the record, issue the final decision in the proceeding: *Provided,* That the Secretary may issue a tentative decision in which event the parties shall be afforded an opportunity to file exceptions before the issuance of the final decision.

Effective date: This subpart shall become effective on November 6, 1978.

Dated: October 30, 1978.

P. R. "BOBBY" SMITH,
Assistant Secretary for Marketing Services.

[FR Doc. 78-31284 Filed 11-3-78; 8:45 am]

[7535-01-M]

Title 12—Banks and Banking

CHAPTER VII—NATIONAL CREDIT UNION ADMINISTRATION

PART 701—ORGANIZATIONS AND OPERATIONS OF FEDERAL CREDIT UNIONS

Loan Participations

AGENCY: National Credit Union Administration.

ACTION: Final Rule.

SUMMARY: This rule implements the provisions of Pub. L. 95-22 authorizing Federal credit unions to participate with other lenders in making loans to credit union members. The intent of the rule is to provide Federal credit unions, particularly those of small or medium asset size, the flexibility to better meet member demands and to spread the risk of those demands across a broader base. Additionally, participation arrangements should enhance a credit union's ability to react quickly and efficiently to meet liquidity needs.

EFFECTIVE DATE: This rule will be effective December 1, 1978.

ADDRESS: National Credit Union Administration, 2025 M Street, NW., Washington, D.C. 20456

FOR FURTHER INFORMATION CONTACT:

Stephen Raver, Director, Division of Examination, Office of Examination and Insurance, or John L. Culhane, Jr., Attorney-Advisor, Office of General Counsel, at the address shown above. Telephone numbers: 202-254-8760 (Mr. Raver), 202-632-4870 (Mr. Culhane).

SUPPLEMENTARY INFORMATION: Before Pub. L. 95-22 was passed Federal credit unions could not participate in making loans with other lenders. Pub. L. 95-22 granted this power.

On August 2, 1978, the National Credit Union Administration (the Administration) published a proposed rule governing the participation of Federal credit unions with other lenders in making loans to credit union members. 43 FR 33929 (1978).

The major issue raised by the comments on the proposed rule concerned the scope of the new power granted to Federal credit unions. After reviewing the comments, the Administration reexamined the legislative history of Pub. L. 95-22 and the relationship between subsections 107(5), 107(5)(E), 107(13), and 107(14) of the Federal Credit Union Act (12 U.S.C. 1757(5), 1757(5)(E), 1757(13), and 1757(14) respectively), the portions of the Federal Credit Union Act (the Act) upon which the proposed rule had been based.

The Administration has determined that 107(5) and 107(5)(E) only authorize Federal credit unions to enter into participation agreements at the time the loan is originated, and that 107(13), which authorizes the sale and purchase in whole or in part of eligible obligations, is independent of 107(5) and 107(5)(E). Thus the restrictions on participants imposed by 107(5) do not apply to the sale of eligible obligations. Subsection 107(14), which authorizes the sale and purchase of credit unions assets, is independent of these previous subsections, but applies only when the selling credit union is suffering a bona bide liquidity crisis.

The final rule is based solely on 107(5) and 107(5)(E). As a result, the portions of the proposed rule dealing with deferred participations have been deleted from the final rule. As discussed below, changes have been made in response to the comments submitted. In addition, some minor changes have been made to resolve ambiguities detected by the Administration. A proposed rule governing the sale and purchase of eligible obligations, based on 107(13) and 107(14), will be published shortly.

Analysis of comments:

1. IMMEDIATE VERSUS DEFERRED PARTICIPATIONS

The proposed rule distinguished between immediate and deferred participations, which were based on different sections of the act. Immediate participations were based on 107(5) and 107(5)(E); deferred participations were based on 107(13) and 107(14). Immediate participations involved arrangements made at the time of origination. Deferred participations involved arrangements made subsequent to origination.

Most commenters argued that the distinction was unfounded. After reviewing the language and legislative history of the act and studying the general body of commercial law and practice with respect to participation loans, the Administration has reached the following conclusions. The term "participation" is not a precise term in commercial law and practice. It is used at different times to refer to arrangements made prior to or at the time of origination, to refer to arrangements made subsequent to origination, and to refer to arrangements made without regard to the time of origination. In granting Federal credit unions the power to participate in making loans to members, Congress was using the term "participation" to mean arrangements made prior to or at the time of origination and carried out within a reasonable time thereafter. Thus, 107(13) was adopted to allow Federal credit unions to sell certain loans subsequent to origination and 107(14) was adopted to provide additional latitude to a credit union suffering a bona fide liquidity crisis.

Since the final rule is based solely on 107(5) and 107(5)(E) of the act, all references to "deferred participation loans" have been deleted and "immediate participation loans" have been redesignated as "participation loans".

2. DEFINITIONS

Comments were received concerning each of the definitions in proposed 701.21-7(a).

A. PARTICIPATION LOAN

Several commenters requested that line of credit loans be included in the definition. Because of the Administration's continued concerns regarding operational problems that it believes would result if participation arrangements in line of credit loans were permitted, and since there has been no demonstrated need expressed to the Administration which would justify inclusion of line of credit loans in the definition, the exclusion has been retained.

One commenter requested clarification of the term "commitment." A "commitment" has been made if the participant agrees in writing to participate to a specified dollar amount or percentage of an identifiable loan or group of loans prior to final disbursement.

Various commenters suggested that the proposed "60 day" rule (requiring a commitment within 60 days of disbursement of the loan) be deleted. Alternatively, it was suggested that a greater period of time be allowed. The Administration concurs and has deleted the 60 day rule. The Administration will require only that a written commitment and a written agreement be executed prior to final disbursement. It is recognized that in many cases the commitment and agreement will be the same document.

A Federal credit union may comply with these requirements by entering into a master agreement with a participant. The master agreement need only contain the basic provisions enumerated in subsections 701.21-7(b)(2)(ii)-(vii). The agreement may incorporate the commitment by reference to comply with the requirement of subsection 701.21-7(b)(2)(i) that the participation loan or loans be identified.

B. ELIGIBLE ORGANIZATIONS

Subsection 107(5) specifically limits the organizations with which Federal credit unions may participate in making loans to other credit unions, credit union organizations, and financial organizations.

The term "credit union" has been defined to mean all Federal and State chartered credit unions. There is no indication in the legislative history of Pub. L. 95-22 that a more restrictive definition was intended by Congress.

The Term "credit union organization" is specifically defined in House Report No. 95-23. See H.R. Rep. No. 23, 95th Cong., 1st Sess. 10 (1975). The definition from the House Report is the one used in the regulation. One commenter requested further clarification of this term. At present, determinations are being made on a case-by-case basis. Lists of such organizations will appear periodically in official publications of the Administration and are available upon request.

The term "financial organization" is defined in the House Report to mean any federally chartered or federally insured financial institution. See H.R. Rep. No. 23, 95th Cong., 1st Sess. 12 (1975). The Administration believes, however, that this term is not limited to National banks or to federally insured savings and loan associations, but is broad enough to encompass the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and the Government National Mortgage Association, since all three organizations are federally chartered insititutions. The term is not broad enough to include, as proposed by various commenters, State and local housing authorities, insurance companies, pension funds, or agencies or instrumentalities of State and local governments because they are not federally chartered. (This definition does not alter the Administration's determination the Federal credit unions may sell "eligible obligations" to non-federal entities under the authority of 107(13) once a purchase and sale of eligible obligations regulation is finalized.)

C. ORIGINATING LENDER

The term "originating lender" has been redefined to mean the participant with which the member contracts, rather than the participant which prepares the necessary documentation. As pointed out by one commenter, this change allows a large credit union to assist a smaller credit union in preparing the necessary documentation without becoming subject to the restrictions imposed by 701.21-7(c) on originating lenders.

D. PARTICIPATION ACCOUNT

The proposed rule used the term "custodial account" to refer to the special payable account established for the accumulation of loan payments pending distribution to participants. The account has been renamed, al-

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though the definition has not been changed, because the term "custodial account" already has a specific meaning in the credit union industry different from the meaning given in the proposed rule.

3. MINIMUM TERMS

Several commenters objected that 701.21-7(b)(2) (iv) and (v) would, as proposed, prevent the originating lender and the participants from sharing servicing costs and costs associated with collections. The Administration does not believe these sections prohibit costs from being shared. The parties may, in providing for the collection of service charges under 701.21-7(b)(2)(ii) and in disclosing the responsibilities of each participant in the event the loan becomes subject to collection, loss, or foreclosure under 701.21-7(b)(2)(iii), agree on the sharing of any costs.

Proposed 701.21-7(b)(2)(v) has been amended to resolve a problem raised by one of the commenters. The commenter was concerned that 701.21-7(b)(2)(v), as proposed, would prohibit the originating lender from supplementing a participant's yield by pledging the interest due on its portion of the loan, thereby severely restricting the participation agreements which might be made. Similarly the commenter was concerned that 701.21-7(b)(2)(v), as proposed, would result in a windfall to a participant whose required yield was less than the interest rate on the loan, since the originating lender would apparently have to distribute interest payments to each party in proportion to its interest in the participation loan.

Subsection 701.21-7(b)(2)(v), as amended, requires only that payments of principal be distributed to each party in proportion to its interest in the participation loan. Under 701.21-7(b)(2)(ii) the agreement must contain a provision providing for the distribution of payments of interest.

4. REPURCHASE PROVISIONS

Subsection 701.21-7(b)(3) has been amended to allow the originating lender to repurchase at its discretion. As several commenters pointed out, this option will allow the Federal credit union originating the loan to hold the entire obligation when the member is in default. In such a situation, it should be advantageous to the member to be dealing with an institution whose officials are more likely both to know him personally and to be sympathetic to his problems. However, the originating lender may not exercise this option if upon repurchase the member's total indebtedness to the Federal credit union will exceed 10 percent of the Federal credit union's unimpaired capital and surplus or if, in the case of a long term real estate loan, repurchase would cause the Federal credit union's total outstanding real estate loans to exceed 25 percent of the Federal credit union's assets.

For similar reasons, subsection 701.21-7(b)(3) has also been amended to allow the originating lender to substitute one participation loan for another.

5. REAL ESTATE LOANS

Several commenters objected to 701.21-7(b)(4) of the proposed regulation, which required a Federal credit union to include its acquired interest in long- term-participation real estate loans in determining the amount of real estate loans allowed under 701.21-6(b)(4) of the National Credit Union Administration Rules and Regulations. The requirement has been clarified and retained in the final rule. The Administration believes that the requirement is necessary both to assure that the consumer credit needs of members are not overshadowed by real estate lending and to prevent the limitation in 701.21-6(b)(4) from being evaded under the guise of reciprocal participation lending agreements. In determining whether or not to waive the requirement consideration will be given to those factors which would justify a waiver under 701.21-6(b)(4). *See* 42 FR 59981 (1977).

6. PARTICIPANT FEDERAL CREDIT UNION

One commenter suggested that there was no need to require a participant Federal credit union to retain the original or copies of the loan documents, as proposed in 701.21-7(d)(4). The Administration concurs, and will require only that the written participation loan agreement and a schedule of loans covered by the participation agreement be retained. A participant may insist on additional documentation if it chooses to do so.

(Sec. 107(5), 91 Stat. 49 (12 U.S.C. 1757(5)); Sec. 107(5)(E), 91 Stat. 50 (12 U.S.C. 1757(5)(E); Sec. 120, 73 Stat. 635 (12 U.S.C. 1766) and Sec. 209, 84 Stat. 1104 (12 U.S.C. 1789).)

LAWRENCE CONNELL,
Administrator.

OCTOBER 31, 1978.

Part 701 is amended by adding § 701.21-7 as follows:

§ 701.21-7 Loan Participation.

(a) For the purpose of this section:

(1) "Participation loan" means a loan, other than a line of credit loan, made in participation with one or more eligible organizations, where the written commitment to participate the loan precedes final disbursement.

(2) "Eligible organizations" means a credit union, credit union organization, or financial organization.

(3) "Credit union" means any Federal or State chartered credit union.

(4) "Credit union organization" means any organization as determined by the Administrator, established primarily to serve the daily operational needs of its member credit unions. The term does not include trade associations, membership organizations principally composed of credit unions, or corporations or other businesses which principally provide services to credit union members as opposed to corporations or businesses whose business relates to the daily in-house operation of credit unions.

(5) "Financial organization" means any federally chartered or federally insured financial institution, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or the Government National Mortgage Association.

(6) "Originating lender" means the participant with which the member contracts.

(7) "Participation account" means a special payable account established for the accumulation of loan payments awaiting distribution to participants.

(b) Subject to the provisions of this section any Federal credit union may participate in making loans with eligible organizations within the limitations of the board of director's written participation loan policies, provided:

(1) No Federal credit union shall obtain an interest in a participation loan if the sum of that interest and any (other) indebtedness owing to the Federal credit union by the borrower exceeds 10 per centum of the Federal credit union's unimpaired capital and surplus;

(2) Prior to final disbursement, a written participation agreement shall be properly executed, acted upon by the Federal credit union's board of directors or the investment committee and retained in the Federal credit union's office. At a minimum, the agreement shall include provisions which:

(i) Identify the participation loan or loans;

(ii) Provide for the collection, processing, and/or remittance of payments of principal and interest, late charges, service charges, escrow accounts (if required), and participation accounts;

(iii) Disclose the responsibilities of each participant in the event the loan becomes subject to collection, loss, or foreclosure;

(iv) Provide that in the event of a loss each participant shall share in the loss equal to its interest in the participation loan;

(v) Provide for the distribution of payments of principal to each participant proportionate to its interest in the participation loan;

(vi) Provide for loan status reports to each participant; and

(vii) State the terms and conditions under which the agreement may be terminated or modified.

(3) A participation loan shall not be subject to recourse or contain repurchase provisions. However, the following are permitted:

(i) An agreement which requires the originating lender to repurchase a participating interest because of any breach of warranty or misrepresentation;

(ii) An agreement which allows the originating lender to repurchase at its discretion; and

(iii) An agreement which allows the originating lender to substitute for the loan another participation loan.

(4) A Federal credit union's acquired interest and its retained interest in participation real estate loans with maturies in excess of 12 years shall be included in the aggregate dollar amount of real estate loans allowed under part 701.21-6(b)(4) of this chapter.

(5) A Federal credit union may sell to or purchase from any participant the servicing of any loan in which it owns a participation interest.

(c) An originating lender which is a Federal credit union shall:

(1) Originate loans only to its members;

(2) Retain an interest of at least 10 per centum of the face amount of each loan;

(3) Retain the original or copies of the loan documents; and

(4) Obtain approval of the loan from the credit committee or loan officer.

(d) A participant Federal credit union that is not an originating lender shall:

(1) Participate only in loans it is empowered to grant;

(2) Participate in participation loans only if made to its own members or members of another participating credit union;

(3) Retain the original or a copy of the written participation loan agreement and a schedule of the loans covered by the agreement; and

(4) Obtain the approval of the board of directors or investment committee of the disbursement of proceeds to the originating lender.

[FR Doc. 78-31228 Filed 11-3-78; 8:45 am]

[4910-13-M]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 78-WE-19-AD; Amdt. 39-3335]

PART 39—AIRWORTHINESS DIRECTIVES

AiResearch Model TFE 731 Series Engines

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: An emergency airworthiness directive (AD) was issued on September 22, 1978, and sent by priority mail to all owners and operators of the AiResearch Model TFE 731 Series Engines. This airworthiness directive was required because a limited number of low pressure rotor thrust ball bearings have been found to be improperly manufactured, which can result in bearing failure and inflight shutdown of the engine.

DATE: Effective November 13, 1978.

Initial compliance.—Before further flight after receipt of the priority mail letter.

ADDRESSES: The applicable service information may be obtained from: AiResearch Manufacturing Co. of Arizona, P.O. Box 5217, Phoenix, Ariz. 85010.

Also, a copy of the service information may be reviewed at, or a copy obtained from: Rules Docket in Room 916, FAA, 800 Independence Avenue SW., Washington, D.C. 20591, or Rules Docket in Room 6W14, FAA Western Region, 15000 Aviation Boulevard, Hawthorne, Calif. 90261.

FOR FURTHER INFORMATION CONTACT:

Jerry Presba, Executive Secretary, Airworthiness Directive Review Board, Federal Aviation Administration, Western Region, P.O. Box 92007, Worldway Postal Center, Los Angeles, Calif. 90009, telephone 213-536-6351.

SUPPLEMENTARY INFORMATION: The FAA has determined that because a limited number of low pressure rotor thrust ball bearings, Part No. 358736-2, have been identified as improperly manufactured, an airworthiness directive was necessary. An airworthiness directive was issued on September 22, 1978, and sent to all owners and operators of AiResearch Model TFE 731 Series Engines. Oil lubrication of this bearing is provided through six radial grooves machined into the inner face halves of the split inner race. Three raceway oil slots may be machined into each inner face of both halves of the split inner race or six raceway oil slots may be machined into the inner face of the forward inner race. Both options are acceptable. The AD is being amended to include both acceptable options, rather than just the option with three slots in each half of the split inner race. The improperly manufactured bearings do not have these radial grooves. This condition prevents sufficient oil cooling and lubrication of the bearing which can result in a low time bearing failure and necessitate an inflight shutdown of the engine. Further, it is suspected that some aircraft may have the improperly manufactured bearings in all engines of the typical multi-engine installation in which the TFE 731 -2, -3 and -3R are installed.

Subsequent to the issue of the emergency AD letter on September 22, 1978, the FAA determined that five additional engine serial numbered engines had the improperly manufactured number three bearings installed. Four of these engines were not installed on aircraft and were under the control of the engine manufacture. One engine, Serial No. P-73209, was found installed on a Falcon-10 aircraft, Registration No. YV-70CP, in Fort Lauderdale, Fla. Separate action was taken by the FAA to advise the operator of this aircraft and prevent further flight until the improperly manufactured bearing was removed and replaced. The five additional serial numbered engines have been added to this AD.

Since it was found that immediate corrective action was required, notice and public procedure thereon was impractical and contrary to the public interest and good cause existed for making the airworthiness directive effective immediately to all known operators of the AiResearch TFE 731 Series Engines by individual priority mail letters dated September 22, 1978. These conditions still exist and the airworthiness directive is hereby published in the FEDERAL REGISTER as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective to all persons.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by adding the following new airworthiness directive:

AIRESEARCH MANUFACTURING CO. OF ARIZONA applies to AiResearch Model TFE 731-2, -3 and -3R engines of the serial numbers listed certificated in all categories, equipped with low pressure rotor thrust ball bearings (number three bearings).

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Part No. 358736-2, manufactured by SNFA Bearing Corp.

This AD applies to the following listed engine serial numbers:

ENGINE SERIAL NUMBERS

74606	77239	73431	73430	73433
74600	77240	80193	84121	74614
74604	74590	74615	74618	78227
74588	74610	75283	74613	78228
77238	77241	73432	75294	77245
74591	74602	84123	84122	77243
84111	74587	76113	84120	78229
74605	75282	74616	75286	78228
74603	75279	74617	76112	77247
74589	75281	75285	77244	74620
75191	74419	77246	74101C	73299
74619	78151	73215	74624	73221
75175	74623	78129	75178	73111
74224	74508	75280	73209	

Compliance required as indicated.

To prevent failure of the low pressure rotor thrust ball bearing which could result in an immediate inflight shutdown of the engine, accomplish the following unless already accomplished:

(a) Before further flight after receipt of this AD, remove from the engine and visually inspect the inner face of both halves of the split inner race of the low pressure rotor thrust ball bearing (number three bearing), Part No. 358736-2, to determine the presence of the six radial oil lubrication grooves.

(1) If the inner face halves of the bearing inner race do not have a total of six radial oil lubrication grooves, the bearing should be removed and replaced with a conforming part which does have the six oil lubrication grooves in the inner face halves of the split inner race.

Note: There is an optional method of manufacturing raceway oil slots in low pressure rotar thrust ball bearing, Part No. 358736-2. Three raceway oil slots may be machined into each inner face of both halves of the split inner race or six raceway oil slots may be machined into the inner face of the forward inner race. Both options are acceptable.

Note: Bearings found to be improperly manufactured should be returned to the AiResearch Manufacturing Co. of Arizona.

(2) If the bearing inner race halves do have the six radial oil lubrication grooves, the bearing may be reassembled, reinstalled and returned to service provided it is found to be otherwise serviceable.

(b) Special flight permits may be issued per FAR 21.197 and 21.199 to authorize operation of aircraft to a base where this inspection required by this AD may be performed provided that there is not more than one affected serial numbered engine listed in this AD installed on the aircraft.

(c) Equivalent inspection procedures and repairs may be used when approved by the Chief, Aircraft Engineering Division, FAA Western Region.

This amendment is effective November 13, 1978 and was effective upon receipt for all all recipients of the priority mail letter dated September 22, 1978, which contained this amendment.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89).

Issued in Los Angeles, Calif. on October 25, 1978.

LEON C. DAUGHERTY,
Acting Director,
FAA Western Region.

[FR Doc. 78-31190 Filed 11-3-78; 8:45 am]

[4910-13-M]

[Airspace Docket No. 78-AL-3]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Colored Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment realigns a segment of Green Airway G-8 between King Salmon, Alaska, and Kachemak, Alaska, and realigns a segment of Red Airway R-99 between Iliamna, Alaska, and Kachemak. Realignment is necessary because the navigational aid (Iliamna NDB) bearing currently used in the airway structure does not perform satisfactorily to support the airways as currently aligned.

EFFECTIVE DATE: December 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Lewis W. Still, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591, telephone 202-426-8525.

SUPPLEMENTARY INFORMATION:

HISTORY

On September 7, 1978, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to realign a segment of Red Airway R-99 between Iliamna, Alaska, and Kachemak, Alaska, and realign a segment of Green Airway G-8 between King Salmon, Alaska, and Kachemak (43 FR 39803). Interested persons were invited to participate in the rulemaking proceeding by submitting comments on the proposal to the FAA. Two comments were received, neither stating an objection to the proposal. This amendment is the same as that proposed in the notice. Sections 71.103 and 71.107 were republished in the FEDERAL REGISTER on January 3, 1978 (43 FR 305, 306).

THE RULE

This amendment to Part 71 of the Federal Aviation realigns a segment of Green Airway G-8 between King Salmon, Alaska, and Kachemak, Alaska, and realigns a segment of Red Airway R-99 between Iliamna, Alaska, and Kachemak. After the Iliamna nondirectional beacon (NDB) was relocated, R-99 was realigned, in part, from Iliamna direct to Kachemak. That alignment does not flight check satisfactorily. The realignment established herein provides adequate signal coverage to support the airway structure.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, Subpart B of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (43 FR 305, 306) is amended, effective 0901 G.m.t., December 28, 1978, as follows:

Under § 71.103, Green Federal Airways, G-8, "King Salmon, Alaska, NDB; INT King Salmon NDB 055° and Kachemak, Alaska, NDB 263° bearings; Kachemak NDB;" is deleted and "King Salmon, Alaska, NDB; INT King Salmon NDB 055°T (034°M) and Kachemak, Alaska, NDB 269°T (245°M) bearings; Kachemak NDB;" is substituted therefor.

Under § 71.107, Red Federal Airways, R-99 is amended to read as follows: "From King Salmon, Alaska, NDB via Iliamna, Alaska, NDB; INT Iliamna NDB 124°T (102°M) and Kachemak, Alaska, NDB 269°T (245°M) bearings; to Kachemak."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69.)

NOTE.—The FAA has determined that this document involves a regulation which is not significant under the procedures and criteria prescribed by Executive Order 12044 and implemented by interim Department of Transportation guidelines (43 FR 9582; March 8, 1978).

Issued in Washington, D.C., on October 26, 1978.

WILLIAM E. BROADWATER,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 78-31188 Filed 11-3-78; 8:45 am]

[4910-13-M]

[Airspace Docket No. 76-NW-13]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTED POINTS

Alteration of Controlled Airspace, Control Zone; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: In a rule published in the FEDERAL REGISTER of September 18, 1978, volume 43, page 41381, the longitude of the Tri-Cities Airport was incorrectly printed as 119°16'53"W, rather than 119°06'53"W. Additionally, the effective hours of the Control Zone was in error. This action corrects these errors.

EFFECTIVE DATE: November 6, 1978.

FOR FURTHER INFORMATION CONTACT:

Dale C. Jepsen, Airspace Specialist (ANW-533), Operations, Procedures and Airspace Branch, Air Traffic Division, Federal Aviation Administration, Northwest Region, FAA Building, Boeing Field, Seattle, Wash., 98108; telephone: 206-767-2610.

SUPPLEMENTARY INFORMATION:

HISTORY

FR Doc. 78-25991 was published on September 18, 1978, (43 FR 41381), and described the new Richland, Wash., Control Zone. A typographical error was made in the description of the coordinates for the Tri-Cities Airport. Further, the effective hours for the control zone was indicated as continuous. This action makes the necessary corrections.

ADOPTION OF THE CORRECTION

Accordingly, pursuant to the authority delegated to me by the Administrator, FR Doc. 78-25991, page 41381, as published in the FEDERAL REGISTER on September 18, 1978, is amended as follows:

RICHLAND, WASHINGTON

That airspace bounded by a line beginning at latitude 46°15'46" N., longitude 119°13'06" W., thence clockwise along an arc of a 5-mile-radius circle centered on the Richland Airport (latitude 46°18'30" N., longitude 119°18'00" W.) to latitude 46°18'27" N., longitude 119°11'43" W., thence counterclockwise via an arc of a 5-mile radius centered on the Tri-Cities Airport (latitude 46°15'50" N., longitude 119°06'53" W.) to point of beginning. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen which thereafter will be continuously published in the Airport/Facility Directory.

(Section 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a); section 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69.)

NOTE.—The FAA has determined that this document involves a proposed regulation which is not considered to be significant under the procedures and criteria prescribed by Executive Order 12044 and as implemented by Interim Department of Transportation guidelines (43 FR 9582; March 8, 1978).

Issued in Seattle, Wash., on October 27, 1978.

C. B. WALK, JR.,
Director, Northwest Region.

[FR Doc. 78-31191 Filed 11-3-78; 8:45 am]

[4910-13-M]

[Docket No. 18428; Amdt. No. 1123]

SUBCHAPTER F—AIR TRAFFIC AND GENERAL OPERATING RULES

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, D.C. 20591;

2. The FAA Regional Office of the region in which the affected airport is located: or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Information Center (APA-430), FAA Headquarters Building, 800 Independence Avenue SW., Washington, D.C. 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By subscription—

Copies of all SIAPs, mailed once every 2 weeks, may be ordered from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The annual subscription price is $135.

FOR FURTHER INFORMATION CONTACT:

William L. Bersch, Flight procedures and Airspace Branch (AFS-730), Aircraft Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone 202-426-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 97.20 of the Federal Aviation Regulations (FARs). The application FAA forms are identified as FAA Forms 8260-3, 8260-4 and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the FEDERAL REGISTER expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on November 6, 1978, and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. for the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria

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contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, or contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The principal authors of this document are Rudolph L. Fioretti, Flight Standards Service, and Richard W. Danforth, Office of the Chief Counsel.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective on the dates specified, as follows:

1. By amending § 97.23 VOR-VOR/DME SIAPs identified as follows:

* * * *Effective December 28, 1978:*

Warrensburg, MO—Skyhaven, VOR Rwy 13, Original
Greensboro, NC—Greensboro-High Point-Winston Salem Regional, VOR/DME Rwy 32, Amdt. 1

* * * *Effective December 14, 1978:*

Fort Smith, AR—Fort Smith Muni., VOR/DME Rwy 7, Amdt. 5
Dover/Cheswold, DE—Delaware Airpark, VOR Rwy 27, Amdt. 4
Elgin, IL—Elgin, VOR Rwy 36, Amdt. 4
Greenwood/Wonderlake, IL—Galt Field, VOR-A, Amdt. 5
Goshen, IN—Goshen Municipal, VOR Rwy 9, Amdt. 8
Goshen, IN—Goshen Municipal, VOR Rwy 27, Amdt. 2
Pocahontas, IA—Pocahontas Muni., VOR/DME 29, Amdt. 1
Liberal, KS—Liberal Muni., VOR Rwy 17, Amdt. 4
Liberal, KS—Liberal Muni., VOR Rwy 35, Amdt. 8
Liberal, KS—Liberal Muni., VOR/DME Rwy 17, Original
Liberal, KS—Liberal Muni., VOR/DME Rwy 35, Original
Ely, MN—Ely Municipal, VOR Rwy 12, Amdt. 2
Ely, MN—Ely Municipal, VOR Rwy 30, Amdt. 2
Ely, MN—Ely Municipal, VOR/DME Rwy 12, Original
Ely, MN—Ely Municipal, VOR/DME Rwy 30, Original
Eveleth, MN—Eveleth-Virginia Municipal, VOR Rwy 27, Amdt. 7
Cut Bank, MT—Cut Bank Muni., VOR Rwy 31, Amdt. 10
Concord, NH—Concord Muni., VOR/DME Rwy 12, Original
Teterboro, NJ—Teterboro, VOR/DME-A, Amdt. 7
Hobbs, NM—Lea County (Hobbs), VOR Rwy 3 (TAC) Amdt. 17
Hobbs, NM—Lea County (Hobbs), VOR/DME Rwy 21 (TAC) Amdt. 4
Saranac Lake, NY—Adirondack, VOR Rwy 5 & 9, Amdt. 9
Lexington, NC—Lexington Municipal, VOR-A, Amdt. 1
Sand Springs, OK—William R. Pogue Muni., VOR-A, Original
Clearfield, PA—Clearfield-Lawrence, VOR Rwy 30, Amdt. 1

2. By amending § 97.25 SDF-LOC-LDA SIAPs identified as follows:

* * * *Effective December 28, 1978:*

Juneau, AK—Juneau International, LDA-1, Rwy 8, Amdt. 4
Greensboro, NC—Greensboro-High Point-Winston-Salem Regional, LOC BC Rwy 5, Amdt. 2

* * * *Effective December 14, 1978:*

San Diego (El Cajon), CA—Gillespie Field, LOC-D Amdt. 5
Hobbs, NM—Lea County (Hobbs), LOC/DME BC Rwy 21, Amdt. 2

* * * *Effective November 16, 1978:*

Baton Rouge, LA—Ryan, LOC BC Rwy 31, Amdt. 12

The FAA published an amendment in Docket No. 18304, Amdt. No. 1120 to Part 97 of the Federal Aviation Regulations (Vol. 43, FR No. 184, Page 42735; dated September 21, 1978) under § 97.25 effective November 2, 1978, which is hereby amended as follows: Madison, WI, Dane County Regional/Truax Field, LOC BC Rwy 18 Amdt. 7 remains in effect; disregard cancellation.

3. By amending § 97.27 NDB/ADF SIAPs identified as follows:

* * * *Effective December 28, 1978:*

Juneau, AK—Juneau International, NDB-1 Rwy 8, Amdt. 6
Corning, IA—Corning Muni., NDB Rwy 17, Amdt. 3
Knoxville, IA—Knoxville Muni., NDB, Rwy 15, Amdt. 3
Knoxville, IA—Knoxville Muni., NDB Rwy 33, Amdt. 2
Monticello, IA—Monticello Municipal, NDB Rwy 31, Amdt. 2, cancelled
Monticello, IA—Monticello Municipal, NDB-A, Original
Webster City, IA—Webster City Muni., NDB Rwy 32, Amdt. 4
Larned, KS—Larned-Pawnee County, NDB Rwy 17, Original
Larned, KS—Larned-Pawnee County, NDB-A, Amdt. 1
Lansing, MI—Capital City, NDB Rwy 27, Amdt. 16
Columbia, MO—Columbia Regional, NDB Rwy 2, Amdt. 4
Holdrege, NE—Brewster Field, NDB Rwy 18, Amdt. 2
Wilkesboro, NC—Wilkes County, NDB Rwy 24, Amdt. 3

* * * *Effective December 14, 1978:*

Angola, IN—Tri-State Steuben County, NDB Rwy 5, Amdt. 3
Columbus, IN—Columbus Bakalar Municipal, NDB Rwy 22, Amdt. 6
Frankfort, IN—Frankfort Municipal, NDB Rwy 3, Amdt. 1
Tell City, IN—Perry County Municipal, NDB Rwy 31, Amdt. 2
Clarion, IA—Clarion Muni., NDB Rwy 14, Amdt. 1
Pocahontas, IA—Pocahontas Muni., NDB Rwy 11, Amdt. 1
Vivian, IA—Vivian, NDB Rwy 9, Amdt. 1
Baltimore, MD—Glenn L. Martin State, NDB Rwy 14, Amdt. 2
Baltimore, MD—Glenn L. Martin State, NDB Rwy 32, Amdt. 2
Shelby, MT—Shelby, NDB Rwy 23, Amdt. 3
Saranac Lake, NY—Adirondack, NDB Rwy 23, Amdt. 1
Wilmington, OH—Wilmington Industrial Airpark, NDB Rwy 22, Amdt. 2
Mooreland, OK—Mooreland Muni., NDB Rwy 17, Original
Troutdale, OR—Portland-Troutdale, NDB-A Amdt. 5
Philadelphia, PA—Wings Field, NDB Rwy 6, Amdt. 6

* * * *Effective November 30, 1978:*

Port Huron, MI—St. Clair Co. International, NDB-A, Amdt. 5, cancelled

4. By amending § 97.29 ILS-MLS SIAPs identified as follows:

* * * *Effective December 28, 1978:*

Lansing, MI—Capital City, ILS Rwy 27, Amdt. 17
Columbia, MO—Columbia Regional, ILS Rwy 2, Amdt. 5
Greensboro, NC—Greensboro-High Point-Winston-Salem Regional, ILS Rwy 23, Amdt. 3
Hillsboro, OR—Portland-Hillsboro, ILS Rwy 12, Amdt. 3

* * * *Effective December 14, 1978:*

Columbus, IN—Columbus Bakalar Municipal, ILS Rwy 22, Amdt. 3
Hobbs, NM—Lea County (Hobbs), ILS Rwy 3, Amdt. 2
Saranac Lake, NY—Adirondack, ILS Rwy 23, Amdt. 3

* * * *Effective November 16, 1978:*

State College, PA—University Park, ILS Rwy 24, Original

The FAA published an amendment in Docket No. 18304, Amdt. No. 1120 to Part 97 of the Federal Aviation Regulations (Vol. 43 FR No. 184 Page 42736; Dated Sept. 21, 1978) under 97.29 effective November 2, 1978, which is hereby amended as follows: Madison, WI, Dane County Regional/Truax Field ILS Rwy 18, original is rescinded.

5. By amending § 97.31 RADAR SIAPs identified as follows:

* * * *Effective December 14, 1978:*

Sarasota (Bradenton), FL—Sarasota-Bradenton, RADAR-1, Amdt. 1
Augusta, GA—Bush Field, RADAR-1, Amdt. 4

6. By amending § 97.33 RNAV SIAPs identified as follows:

* * * *Effective December 28, 1978:*

Hillsboro, OR—Portland-Hillsboro, RNAV Rwy 12, Amdt. 2
Hillsboro, OR—Portland-Hillsboro, RNAV Rwy 20, Amdt. 2
DuBois, PA—DuBois-Jefferson County, RNAV Rwy 7, Original

* * * *Effective December 14, 1978:*

Atlanta, GA—DeKalb-Peachtree, RNAV Rwy 20L, Amdt. 8
Elgin, IL—Elgin, RNAV Rwy 18, Amdt. 5
Columbus, IN—Columbus Bakalar Municipal, RNAV Rwy 22, Amdt. 4
Liberal, KS—Liberal Muni., RNAV Rwy 12, Amdt. 1
Hobbs, NM—Lea County (Hobbs) RNAV Rwy 12, Amdt. 2
Philadelphia, PA—Wings Field, RNAV Rwy 6, Amdt. 2

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. §§ 1348, 1354(a), 1421, and 1510); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Delegation: 25 FR 6489 and Paragraph 802 of Order FSP 1100.1, as amended March 9, 1973.)

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued at Washington, D.C., on October 27, 1978.

JAMES M. VINES,
Chief,
Aircraft Programs Division.

NOTE.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on May 12, 1969.

[FR Doc. 78-31189 Filed 11-3-78; 8:45 am]

[3510-18-M]

Title 15—Commerce and Foreign Trade

SUBTITLE A—OFFICE OF THE SECRETARY OF COMMERCE

PART 16—PROCEDURES FOR A VOLUNTARY CONSUMER PRODUCT INFORMATION LABELING PROGRAM

Amendment To Permit CPILP Labels To Include Information About a Performance Characteristic When Another Federal Agency Requires Labeled Information About That Characteristic; Clarification

AGENCY: Assistant Secretary for Science and Technology, U.S. Department of Commerce.

ACTION: Rule.

SUMMARY: This document clarifies a Notice of Rulemaking which appeared at pp. 8254-8255 of the FEDERAL REGISTER for March 1, 1978. That notice amended the procedures for the Voluntary Consumer Product Information Labeling Program (CPILP). This notice clarifies the notice of March 1, 1978, by adding, at the end thereof, an appropriate citation of authority.

EFFECTIVE DATE: This notice is retroactively effective to March 31, 1978.

FOR FURTHER INFORMATION CONTACT:

Dr. Howard I. Forman, Deputy Assistant Secretary for Product Standards, Room 3876, U.S. Department of Commerce, Washington, D.C. 20203, 202-377-3221.

SUPPLEMENTARY INFORMATION: Supplementary information concerning the rule issued on March 31, 1978, accompanies the rule in the FEDERAL REGISTER for that date, at pp. 8254-8255. The authority citation appearing below has been used previously for these procedures. See, e.g., 41 FR 21392 (May 25, 1976).

CLARIFICATION OF PRIOR NOTICE: The Notice of Rulemaking appearing in volume 43 of the FEDERAL REGISTER at pp. 8254-8255 is hereby amended by adding as a new final paragraph, the following:

(Sec. 2, 31 Stat. 1449, as amended by sec. 1, 64 Stat. 371 (15 U.S.C. 272); Reorganization Plan No. 3 of 1946, Part IV.)

Dated: October 31, 1978.

JORDAN J. BARUCH,
Assistant Secretary for Science and Technology.

[FR Doc. 78-31210 Filed 11-3-78; 8:45 am]

[4210-01-M]

Title 24—Housing and Urban Development

CHAPTER X—FEDERAL INSURANCE ADMINISTRATION DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI 4767]

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

Suspension of Community Eligibility

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: This rule lists communities where the sale of flood insurance, as authorized under the national flood insurance program (NFIP), will be suspended because of noncompliance with the flood plain management requirements of the program.

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington D.C. 20410 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The national flood insurance program (NFIP), administered by the Federal Insurance Administration, enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the national flood insurance program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate flood plain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (24 CFR Part 1909 et seq.). Accordingly, the communities are suspended on the effective date in the fifth column, so that as of that date subsidized flood insurance is no longer available in the community.

In addition, the Federal Insurance Administration has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended, provides that no direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP, with respect to which a year has elasped since identification of the community as having flood prone areas, as shown on the Federal Insurance Administration's initial flood insurance map of the community. This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

In each entry, a complete chronology of effective dates appears for each listed community.

Section 1914.6 is amended by adding in alphabetical sequence new entries to the table.

N 0 6 7 8 UMI

State	County	Location	Effective date of authorization of sale of flood insurance for area	Hazard area identified	Community No.
Kansas	Chase	Unincorporated areas	Oct. 19, 1978, emergency	Sept. 13, 1977	200040
Do	Harvey	do	do	Mar. 7, 1978	200585
Do	Franklin	do	do	Aug. 16, 1977	200565–A
Tennessee	Hawkins	Bull Gap, town of	do	May 28, 1976	470297

State	County	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified
California	Riverside	Hemet, city of	060253–A	Oct. 17, 1978, suspension withdrawn.	May 24, 1974.
Do	San Bernardino	Unincorporated areas	060270–A	do	Sept. 29, 1978.
Do	Ventura	Thousand Oaks, city of	060422–A	do	June 7, 1974.
Illinois	St. Claire	Cahokia, village of	170620–B	do	Mar. 29, 1974.
Do	DuPage	Lombard, village of	170212–B	do	July 19, 1974 and Aug. 29, 1975.
Do	Winnebago	Loves Park, city of	170722–B	do	June 28, 1974 and Apr. 2, 1976.
Do	Cook	Rolling Meadows, city of	170155–B	do	Feb. 1, 1974 and May 28, 1976.
Massachusetts	Middlesex	Wakefield, town of	250221–A	do	Aug. 2, 1974.
North Carolina	Cumberland	Fayetteville, city of	370077–B	do	Nov. 2, 1973 and Oct. 24, 1975.
New Mexico	San Juan	Farmington, city of	350067	do	May 24, 1974 and Dec. 19, 1975.
New York	Westchester	Irvington, village of	360914–B	do	June 28, 1974 and Jan. 16, 1976.
Do	do	Mount Vernon, city of	360920–B	do	June 28, 1974 and Nov. 28, 1975.
Do	Wayne	Williamson, town of	360900–C	do	June 28, 1974 and Feb. 27, 1976.
Do	Monroe	Perinton, town of	360428–B	do	Apr. 5, 1974 and Sept. 24, 1976.
Ohio	Sandusky and Huron	Bellevue, city of	390487–B	do	Mar. 15, 1974 and Apr. 30, 1976.
Do	Ottawa	Unincorporated areas	390432–A	do	Oct. 17, 1978.
Pennsylvania	Northampton	Easton, city of	425383	do	Feb. 9, 1973.
Do	Westmoreland	Greensburg, city of	420877–B	do	Dec. 28, 1973 and June 18, 1976.
Do	Mercer	Sharon, city of	420678–B	do	Aug. 2, 1974 and July 30, 1976.
South Dakota	Brookings	Brookings, city of	460004–B	do	Mar. 22, 1974 and Oct. 8, 1976.
Tennessee	Coffee	Manchester, city of	470035–A	do	May 24, 1974.
Virginia	Campbell	Unincorporated areas	510028–A	do	Nov. 22, 1974.
Do	Montgomery	do	510099–A	do	Apr. 18, 1975.
Do	Roanoke	do	510190–A	do	Sept. 13, 1974.
Do	Wythe	do	510180–A	do	Aug. 15, 1975.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: October 25, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-31026 Filed 11-3-78; 8:45 am]

[4210-01-M]

[Docket No. FI-3681]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for Sacramento County, Calif.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in Sacramento County, Calif. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for Sacramento County, Calif.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for Sacramento County, Calif., are available for review at County Administration Building, 827 Seventh Street, Sacramento County, Calif.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for Sacramento County, Calif.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location*	Elevation in feet, National geodetic vertical datum
Whitehouse Creek	Elk Grove-Florin Rd	39
	Southern Pacific RR	37
	Highway 99 and Alternate 5.	28
Verde Cruz Creek	Crestview Dr	115
	Schuyler Dr	112
	Manzanita Ave	101
Unionhouse Creek	Elk Grove-Florin Rd	38
	Southern Pacific RR	34
	Cottonwood Lane	31
	Iona Way	28
	Stockton Blvd	26
Strong Ranch Slough.	Walnut Ave	86
	Melvin Dr	78
	Eastern Ave	68
	Iona St	65
	Winding Creek Rd	54
	Cottage Way (downstream crossing).	47
	Armstrong Dr	42
	Wittkop Way	37
	Howe Ave	35
Strawberry Creek	Southern Pacific RR	35
	Calvine Rd	30
	Frontage Rd	25
Sierra Creek	32d St. (projected)	74
	28th St	67
San Juan Creek	Sunrise Blvd	162
	Greenback Lane	155
	San Pablo Ave	148
	Mariposa Ave	145
	Sylvan Rd	138
	Woodside Rd	134
Robla Creek	Larehmont Dr	99
	Stoneman Dr	93
	Thomas Dr	86
	32d St	75
	AFB Patrol Rd. (upstream crossing).	70
	I St	65
	24th St	60
	22d St	57
	20th St	54
	16th St	48
	Dry Creek Rd	43
	Elkhorn Blvd	19
Natomas west drainage canal.	I-5	13
	Del Paso Rd	12
	San Juan Rd	9
Natomas north drainage canal.	Access Rd	23
Natomas main drainage canal.	I-880	9
	West El Camino Ave	8
Natomas east main drainage canal—tributary 3.	U St	56
	Sacaramento Northern RR.	54
	Rio Linda Blvd	45
	West 2d St	39
	West 4th St	35
	Western Pacific RR	33
Natomas east main drainage canal—tributary 2.	Elverta Rd	52
	El Medena Rd	47
	Rio Linda Blvd	41
	Western Pacific RR	33
	El Medena Ave	50
Natomas east main drainage canal—tributary 1.	Elwyn Ave	40
	Sorento Rd	33
	Eleverta R	33
Natomas east main drainage canal.	Sorento Rd	33
	Elverta Rd	14
Natomas east drainage canal.	Elkhorn Blvd	12
Morrison Creek	Kiefer Blvd	75
	Jackson Rd	59
	Mayhew Rd	52
	Elk Grove-Florin Rd	47
	Steiner Dr	21
	Center Parkway	17
	I-5	12
Mariposa Creek	Old Auburn Rd	155
	Mariposa Rd	150
	Antelope Rd	146
	Watson Way	141
Magpie Creek	Brett Rd	112
	Walerga Rd	109
	Sewer Plant Rd	98
	Harrison foot bridge	91
	Madison Ave	82
	AFB foot bridge (downstream most).	76
	45th St. and railroad spur.	71
	Air Freight Terminal taxiway (upstream side).	63
	AFB Patrol Rd	59
Linda Creek	Cherry Ave	231
	Granite Ave	225
	Hazel Ave	195
Laguna Creek	Excelsior Rd	79
	Vineyard Rd	66
	Bradshaw Rd	60
	Calvine Rd	56
	Sheldon Rd	53
	Bond-Waterman Rd	47
	Southern Pacific RR	42
	Bond Rd	37
	Frontage Rd	29
	Elk Grove Creek	27
	Sheldon Rd	22
	Franklin Blvd	18
	Western Pacific RR	13
Gerber Creek	Vineyard Rd	67
	Gerber Rd. (upstream crossing).	61
	Gerber Rd. (downstream crossing).	55
	Central California Traction RR.	51
Florin Creek	McComber St	35
	Florin Rd	31
	Palmer House Dr	27
	Orange Ave	24
	Persimmon Ave	19
Elk Grove Creek	Waterman Rd	48
	Elk Grove-Florin Rd	39
	Frontage Rd	34
Elder Creek	Elder Creek Rd	75
	Irrigation Rd	62
	Florin Rd	51
	McCoy Ave	45
	French Rd	37
	Southern Pacific RR	34
	Reese Rd	30
	Power Inn Rd	27
	Stockton Blvd	22
	Highway 99 and Alternate 5.	20
Dry Creek (north branch).	U St. (extended)	64
	Q St	58
	Dry Creek Rd	51
	Elk Horn Blvd	47
	Rio Linda Blvd	41
Dry Creek	Elverta Rd	70
	Q St	59
	Dry Creek Rd	52
	Elkhorn Blvd	49
	Sacramento Northern RR (abandoned).	45
	Rio Linda Blvd	41
Cripple Creek	Hickory Ave	219
	Almond Ave	205
	Oak Ave	200
	Big Oak Dr. No. 2	184
	Big Oak Dr. No. 1	181
	Old Auburn Ave	176
	Twin Oaks Ave	163
	Glentree Dr	157
	Sunrise Blvd	154
	Fair Lane	150
	Mariposa Ave	145

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Source of flooding	Location*	Elevation in feet, National geodetic vertical datum
	Holly Dr	139
	Auburn Blvd	136
	Antelope Rd	131
	Calvin Dr	121
	Van Maren Lane	119
	Sewer Plant Rd	109
Coyle Creek	Madison Ave	153
	Link Dr	137
	Dewey Dr	129
	Parkoaks Dr	116
Chicken Ranch Slough.	Walnut Ave	91
	Mission Ave	85
	Eastern Ave	76
	Norris Ave	73
	Montclaire St	66
	Watt Ave	62
	Marconi Ave	58
	Fulton Ave	50
	Hernando Rd	45
	Cottage Way	38
	Hurely Way	35
Carmichael Creek	Fair Oaks Blvd	108
	Casaloma Way	99
	Landis Ave	87
	Palm Dr	78
	Tarshes Dr	70
Brooktree Creek	San Juan Dr	149
	Sperry Way	144
	Brooktree Dr	133
	Dewey Dr	122
	Peak Oaks Dr	117
	Coyle Creek	111
	Auburn Blvd	108
Arcade Creek (south branch).	Illinois Ave	212
	Kenneth Ave	199
	Hoffman Lane (east)	185
	Hoffman Lane (west)	180
	Fairoaks Blvd	168
Arcade Creek	Birks Lane	216
	Gaines Ave	210
	Kenneth Ave	207
	Trajan Dr	191
	Fairoaks Blvd	164
	Sunrise Blvd	153
	Sayonara Dr	147
	Mariposa Ave	140
	Sylvan Rd	135
	Crosswoods Circle	122
	Auburn Blvd	115
	Matheney Way	109
	Greenback Lane	106
	Auburn Blvd	97
	Madison Ave	90
	Garfield Ave	86
	College Oak Dr	76
	Watt Ave	62
American River	Greenback Lane	138
	Hazel Ave	104
	Bridge St	92
	Watt Ave	46

* Unless noted otherwise; refers to upstream side of structure.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719).

Issued: September 6, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-31079 Filed 11-3-78; 8:45 am]

[4210-01-M]

[Docket No. FI-4235]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the city of Sunrise, Broward County, Fla.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Sunrise, Broward County, Fla. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the city of Sunrise, Broward County, Fla.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Sunrise, Broward County, Fla., are available for review at the City Clerk's Office, City Hall, 1277 Sunset Strip, Sunrise, Fla. 33313.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the city of Sunrise, Broward County, Fla.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, National geodetic vertical datum
North of Middle River Canal.	Intersection of Oakland Park Blvd. and Nob Hill Rd.	9
	Intersection of Oakland Park Blvd. and University Dr.	9
	Intersection of Northwest 9th Ave. and Spring Tree Lake Dr.	9
South of Middle River Canal.	Intersection of Northwest 63d Ave. and Northwest 24th St.	8
	Intersection of Sunset Strip Blvd. and Northwest 72d Ave.	8
	Intersection of Pine Island Rd. and Northwest 25th Court.	8
West of Holloway Lateral Canal.	Intersection of Flamingo Rd. and Northwest 29th Manor.	9
	Intersection of Northwest 145th Ave. and Northwest 3d St.	8

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 5, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-31080 Filed 11-3-78; 8:45 am]

[4210-01-M]

[Docket No. FI-2597]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Village of Addison, Du Page County, Ill.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the village of Addison, Du Page County, Ill. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the village of Addison, Du Page County, Ill.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the village of Addison, Du Page County, Ill., are available for review at the Bulletin Board in the front entrance at the Village Hall, 130 West Army Trail Road, Addison, Ill.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final terminations of flood elevations for the village of Addison, Du Page County, Ill.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Administrator has resolved the appeals presented by the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, National geodetic vertical datum
Salt Creek	North of Armitage Ave	674
	South of Fullerton Ave	675
	Interstate Route 20	675
	Army Trail Rd. (extended).	676
	Confluence with Westwood Creek.	676
	Addison Ave	676
	Rozanne Dr	676
	Lincoln St	677
	Highview Ave	679
	Lake St	680
	Mill Rd	684
	Country Club Dr.	689

Source of flooding	Location	Elevation in feet, National geodetic vertical datum
	North of Rose Ave. near Addison's northern corporate limits.	692

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 14, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-31081 Filed 11-3-78; 8:45 am]

[4210-01-M]

[Docket No. FI-4230]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of Lecompton, Douglas County, Kans.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Lecompton, Douglas County, Kans. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the city of Cecompton, Douglas County, Kans.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Lecompton are available for review at the city hall, Lecompton, Kans.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the city of Lecompton, Douglas County, Kans.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Kansas River	2,100 ft downstream of County Highway No. 215.	847
	4,500 ft upstream of County Highway No. 215.	849

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 5, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-31082 Filed 11-3-78; 8:45 am]

[4210-01-M]

[Docket No. FI-4208]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the borough of Allenhurst, Monmouth County, N.J.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the borough of Al-

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lenhurst, Monmouth County, N.J. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the borough of Allenhurst, Monmouth County, N.J.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the borough of Allenhurst, Monmouth County, N.J., are available for review at the bulletin board in the Borough Hall, Allenhurst, N.J.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Borough of Allenhurst, Monmouth County, N.J.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, National geodetic vertical datum
Atlantic Ocean	Entire shoreline	9
Deal Lake	do	11

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 13, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-31083 Filed 11-3-78; 8:45 am]

[4210-01-M]

[Docket No. FI- 4210]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Borough of Avon-by-the-Sea, Monmouth County, N.J.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the borough of Avon-by-the-Sea, Monmouth County, N.J. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the borough of Avon-by-the-Sea, Monmouth County, N.J.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the borough of Avon-by-the-Sea, Monmouth County, N.J., are available for review at the lobby of the Municipal Building, Avon-by-the-Sea, N.J.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the borough of Avon-by-the-Sea, Monmouth County, N.J.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Atlantic Ocean	Entire shoreline	9

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 13, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-31084 Filed 11—3-78; 8:45 am]

[4210-01-M]

[Docket No. FI-3915]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the village of Irvington, Westchester County, N.Y.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the village of Irvington, Westchester County, N.Y. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the village of Irvington, Westchester County, N.Y.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the village of Irvington, Westchester County, N.Y., are available for review at the Irvington Village Clerk's Office, 85 Main Street, Irvington, N.Y.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the village of Irvington, Westchester County, N.Y.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Administrator has resolved the appeals presented by the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, National geodetic vertical datum
Sawmill River	Woodlands Lake Dam	156
	Footbridge	158
	ConRail	163
	Corporate limits	163
Barney Brook	Footbridge off Woodbine Rd.	62
	Station Rd. (upstream side of Woodbine Rd.).	78
	Private way (upstream side of Station Rd.).	81
	Private way (downstream side of Croton aqueduct).	89
	Station Rd. (downstream side of Croton aqueduct).	90
	Croton aqueduct (upstream side).	95
	Private way (upstream side of Croton aqueduct).	99
	U.S. Route 9	114
	Private way (upstream side of U.S. Route 9).	145
	Harriman Rd. (downstream side of Victor Dr.).	154
	Footbridge (upstream side of Victor Dr.).	162
	Sycamore Lane	177
	Private way (upstream side of Sycamore Lane).	200
	Parkside Way (upstream side).	227
	Harriman Rd. (upstream side of Parkside Way).	229
	Park Rd	239
	Footbridge (upstream side of Park Rd.).	240
	Footbridge (upstream side of Hillside Ter.).	241
	Harriman Rd. (upstream side of Hillside Ter.).	241
	Meadow Way	242
	Private way (downstream side of Dunham Pl.).	245
	Private way (upstream side of Dunham Pl.).	245
	Daisy Lane (upstream side).	264
	Private way (upstream side of Daisy Lane).	267
	Footbridge (280 ft upstream of Daisy Lane).	272
	Footbridge (340 ft upstream of Daisy Lane).	273
	Footbridge (398 ft upstream of Daisy Lane).	273
	Private way (downstream side of Irvington Reservoir).	287
	Private way (north side of Irvington Reservoir).	293
	Upstream limit of detailed study (9,413 ft above Buckhout St.).	392
Barney Brook tributary.	Confluence with Barney Brook.	100
	Station Road	104
	Footbridge (290 ft upstream of Station Rd.).	119
	Footbridge (450 ft upstream of Station Rd.).	127
	Dows Lane	155
	U.S. Route 9	157
	Abbott Mews Rd	162
	East Clinton Ave	166
	Footbridge (1,200 ft upstream of East Clinton Ave.).	212
	Footbridge (1,500 ft upstream of East Clinton Ave.).	224
	Upstream limit of detailed study (3,948 ft above confluence with Barney Brook).	260
Sunnyside Brook	ConRail	8
	Footbridge (414 ft upstream of ConRail).	11
	Private road (690 ft upstream of ConRail).	41
	Private road (1,030 ft upstream of ConRail).	59
	Private road (1,160 ft upstream of ConRail).	70
	Sunnyside Lane (downstream side of Old Croton aqueduct).	91
	Footbridge (592 ft upstream of Sunnyside Lane).	119
	Footbridge (652 ft upstream of Sunnyside Lane).	121
	Old Croton aqueduct (upstream side).	151
	Footbridge (upstream side of Old Croton aqueduct).	151
	Sunnyside Lane (upstream side of Old Croton aqueduct).	193
	U.S. Route 9	209
	Private road (328 ft upstream of U.S. Route 9).	220
	Private road (770 ft upstream of U.S. Route 9).	252
	Private driveway (92 ft downstream of Hudson View Ave.).	260
	Private driveway (20 ft downstream of Hudson View Ave.).	262
	Hudson View Ave	265
	Footbridge (upstream of Hudson View Ave.).	282
	Upstream limit of detailed study (6,587 ft above beginning of detailed study).	284

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 43 FR 7719.)

Issued: September 13, 1978.

GLORIA M. JIMENEZ,
Federal Administrator.

[FR Doc. 78-31085 Filed 11-3-78; 8:45 am]

[4210-01-M]

[Docket No. FI-4211]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Village of Loch Arbour, Monmouth County, N.J.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the village of Loch Arbour, Monmouth County, N.J. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified

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for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the village of Loch Arbour, Monmouth County, N.J.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the village of Loch Arbour, Monmouth County, N.J., are available for review at the Village Office Building, Loch Arbour, N.J.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the village of Loch Arbour, Monmouth County, N.J.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, National geodetic vertical datum
Atlantic Ocean	Entire shoreline	9
Deal Lake	Entire shoreline	11

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719).

Issued: September 13, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-31086 Filed 11-3-78; 8:45 am]

[4210-01-M]

[Docket No. FI-4258]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of Fairfield, Butler County, Ohio

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Fairfield, Butler County, Ohio. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the city of Fairfield, Butler County, Ohio.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Fairfield, Butler County, Ohio, are available for review at City Hall, 5350 Pleasant Avenue, Fairfield, Ohio 45014.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the city of Fairfield, Butler County, Ohio.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Great Miami River.	Forest Lake Lane (extended).	570
	Confluence of Pleasant Run.	565
Pleasant Run	Just downstream of Happy Valley Dr. Bridge.	644
	Just upstream of Nilles Rd. Bridge.	598
	Just upstream of East River Rd. Bridge.	587
Pleasant Run Branch No. 1.	Just upstream of Sacred Heart Elementary School drive bridge.	587
Pleasant Run Branch No. 3.	Just upstream of Symmes Rd. culvert.	606
	Just upstream of Doris Jane Ave. culvert.	598
Pleasant Run Branch No. 4.	Just upstream of Chesapeake Way Bridge.	613

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 6, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-31087 Filed 11-3-78; 8:45 am]

[4210-01-M]

[Docket No. FI- 4259]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of Lebanon, Warren County, Ohio.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Lebanon, Warren County, Ohio. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the city of Lebanon, Warren County, Ohio.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Lebanon, Warren County, Ohio,are available for review at the Department of Engineering, City Building, Lebanon, Ohio 45036.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the city of Lebanon, Warren County, Ohio.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Turtle Creek	Just upstream of West St. Bridge.	691
	Just upstream of South Broadway Ave. culverts.	700
	Just downstream of East St. Bridge.	708
North Fork Turtle Creek.	Just downstream of Main St. Bridge.	701
	Just upstream of Silver Ave. Bridge.	705
	Just downstream of North Broadway Ave. (State Route No. 48 culvert).	710
Mad Creek	Just upstream of Silver Ave. culvert.	705
	Just upstream of Water St. culvert.	711

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 6, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-31088 Filed 11-3-78; 8:45 am]

[4210-01-M]

[Docket No. FI-4215]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of Mason, Warren County, Ohio

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Mason, Warren County, Ohio. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the city of Mason, Warren County, Ohio.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Mason are available for review at the City Hall, Mason, Ohio.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for city of Mason, Warren County, Ohio.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, (National geodetic vertical datum)
Muddy Creek	100 ft upstream of Hanover Dr.	739
	60 ft upstream of Mason Montgomery Rd.	772
	Just upstream of U.S. Rt. 42.	807
	Just upstream of Donna Jean Rd.	853
	Just upstream of Broadview Ct.	863
	Western corporate limit.	869
Pine Run	Just upstream of Kings Mills Rd.	764
	0.26 mi upstream of Kings Mills Rd.	773
	Just upstream of dam	808
	0.38 mi upstream of dam	810
	Southern corporate limit.	826
Davis Run	400 ft upstream of confluence with Muddy Creek.	802
	0.58 mi upstream of confluence with Muddy Creek.	820
Muddy Creek Branch No. 1.	50 ft upstream of U.S. Rt. 42.	745
	0.27 mi upstream of U.S. Rt. 42 at box culvert.	759
	50 ft upstream of Mason Montgomery Rd.	780
	Western corporate limit.	817
Muddy Creek Branch No. 2.	Just upstream of U.S. Rt. 42.	801
	50 ft upstream of ConRail.	808
	Western corporate limits.	827

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's dele-

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gation of authority to Federal Insurance Administrator, 43 FR 7719)).

Issued: September 8, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-31089 Filed 11-3-78; 8:45 am]

[4210-01-M]

[Docket No. FI-2621]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final Flood Elevation Determinations for the City of Enid, Garfield County, Okla.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Enid, Garfield County, Okla. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the city of Enid, Okla.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Enid, Garfield County, Okla., are available for review at City Hall, Enid, Okla.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the city of Enid, Okla.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, National geodetic vertical datum
Skelton Creek	Market St	1,150
	U.S. Hwy. 64	1,160
	Chestnut Ave	1,164
	Willow RR	1,182
	St. Louis-San Francisco Rd.	1,191
	30th St. (downstream side).	1,196
	30th St. (75 ft upstream).	1,203
	16th St	1,234
Boggy Creek	42nd St	1,159
	30th St	1,177
	16th St	1,198
	10th St	1,206
	South Enid Blvd	1,216
	Chicago, Rock Island & Pacific RR.	1,225
	U.S. Hwy. 81	1,234
	Rupe Ave	1,249
	Cleveland St	1,255
	Oklahoma Ave	1,261
	Randolph Ave	1,266
	Chestnut Ave	1,276
	Willow Rd	1,298
	Oakwood Rd	1,307
North Boggy Creek.	Market St	1,213
	Cherokee St	1,220
	Broadway Ave	1,223
	Maple Ave	1,227
	Pine Ave	1,233
	Walnut Ave	1,234
	Ash Ave	1,238
	2d St. (downstream crossing).	1,240
	Poplar Ave	1,242
	3d St	1,244
	Cherry Ave	1,245
	Independence Ave	1,249
	Spruce St	1,252
	Mulberry Ave	1,257
	Palm St	1,257
	Princeton Ave	1,262
	Oxford Ave	1,266
	Van Buren bypass	1,268
Boggy Creek tributary above Chestnut St.	Eisenhower St	1,275
	Oakwood Rd	1,281
West branch Boggy Creek tributary above Chestnut.	Cleveland St	1,254
Phillips University tributary.	Maine St	1,205
	Broadway Ave	1,205
	Randolph Ave	1,207
	Elm Ave	1,210
	Pine Ave	1,216
	Walnut Ave	1,224
Old Channel Boggy Creek.	4th St	1,223
	3d St	1,224
	2d St	1,226
	Independence Ave	1,232
	Washington St	1,234
	Jefferson St	1,236
	Jackson St	1,239
	Polk St	1,242
	Johnson St	1,246

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: August 18, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-31090 Filed 11-3-78; 8:45 am]

[4210-01-M]

[Docket No. FI-4240]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final Flood Elevation Determinations for the City of Waldport, Lincoln County, Oreg.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Waldport, Lincoln County, Oreg. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the city of Waldport, Oreg.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Waldport, Lincoln County, Oreg., are available for review at City Hall, 452 Hemlock Street, Waldport, Oreg.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the city of Waldport, Oreg.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, National Geodetic Vertical Datum
Alsea Bay	Along U.S. Hwy. 101 south of the intersection of Star and Maple Sts.	13
	Along Port St	11
	At the intersection of East Pine and Mill Sts.	10
Red River	At the intersection of West Willow and Cedar Sts.	10

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 6, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-31091 Filed 11-3-78; 8:45 am]

[4210-01-M]

[Docket No. FI-4106]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Township of Buckingham, Bucks County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the township of Buckingham, Bucks County, Pa. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the township of Buckingham, Bucks County, Pa.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the township of Buckingham, Bucks County, Pa., are available for review at the bulletin board in the lobby of the Township Office, 4613 York Road, Buckingham, Pa.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the township of Buckingham, Bucks County, Pa.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Administrator has resolved the appeals presented by the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, National geodetic vertical datum
Neshaminy Creek	Downstream corporate limits.	140
	Dark Hollow Rd	151
	Mill Rd	174
Mill Creek	Forest Grove Rd	181
	Smith Rd	186
	New Hope Rd	193
	Lower Mountain Rd	207
	Upper Mountain Rd	211
Watson Creek	Confluence with Mill Creek.	214
	Pa. Rte. 263	231
	Mill Rd	259
	Spring Valley Rd	266
	U.S. Rte. 202	278
	Mill Rd	281
Lahaska Creek	Confluence with Mill Creek.	214
	Pa. Rte. 413	220
	Quarry Rd	227
	Bycot Rd	235
	U.S. Rte. 202 & Pa. Rte. 263.	254
Tributary No. 1 to Lahaska Creek.	Confluence with Lahaska Creek.	221
	U.S. Rte. 202 and Pa. Rte. 263.	232
Tributary No. 2 to Lahaska Creek.	Confluence with Lahaska Creek.	233
	Bycott Rd	235
	U.S. Rte. 202 and Pa. Rte. 263.	239
Robin Run	Corporate limits (downstream).	172
	Smith Rd	183
	Dark Hollow Rd	215
	Creamery Rd	253
	Lower Mountain Rd	273
Pidcock Creek	Street Rd	140
	Lahaska Rd	165

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 14, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-31092 Filed 11-3-78; 8:45 am]

[4210-01-M]

[Docket No. FI- 3237]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Borough of Shippensburg, Cumberland County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the borough of Shippensburg, Cumberland County, Pa. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the borough of Shippensburg, Cumberland County, Pa.

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ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the borough of Shippensburg, Cumberland County, Pa., are available for review at the Shippensburg Borough Office, 60 West Burd Street, Shippensburg, Pa.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the borough of Shippensburg, Cumberland County, Pa.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Administrator has resolved the appeals presented by the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation feet above mean sea level
Burd Run	U.S. Route 11	651
	Orange St.	654
Middle Spring Creek.	North corporate limit	640
	Spring House Rd	642
	West Burd Rd	645
	West King St.	652
	West Orange St	652
	Garfield St.	655
	South corporate limit	661
Middle Spring Creek tributary.	Dykeman Rd	564
	ConRail	560

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 13, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-31093 Filed 11-3-78; 8:45 am]

[4210-01-M]

[Docket No. FI-4132]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Township of Upper Tyrone, Fayette County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the township of Upper Tyrone, Fayette County, Pa. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the township of Upper Tyrone, Fayette County, Pa.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the township of Upper Tyrone, Fayette County, Pa., are available for review at the Owensdale School, Connellsville Road 2, Upper Tyrone, Pa.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the township of Upper Tyrone, Fayette County, Pa.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Youghiogheny River.	Downstream Corporate Limits of the township of Upper Tyrone.	859
	Confluence of Galley Run.	863
	Upstream Corporate Limits of the township of Upper Tyrone.	864
Jacobs Creek	State Route 819	1,022
	Chessie System Railroad.	1,027
	State Route 110	1,028
	Conrail Bridge	1,029
	Bridge Street	1,033
	Confluence of Stauffer Run.	1,034
	Dexter Road	1,035
	U.S. Route 119	1,036
	State Route 26151	1,038
	Upstream Corporate Limits of the township of Upper Tyrone.	1,039
Galley Run	Confluence with Youghiogheny River.	863
	State Route 26088	864
	Chessie System Railroad Bridge (680 feet Upstream of State Route 26088).	870

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 14, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-31094 Filed 11-3-78; 8:45 am]

[4210-01-M]

[Docket No. FI-4123]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of Red Bank, Hamilton County, Tenn.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Red Bank, Hamilton County, Tenn. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the city of Red Bank, Hamilton County, Tenn.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Red Bank, Hamilton County, Tenn., are available for review at City Hall, Red Bank, Tenn.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the city of Red Bank, Hamilton County, Tenn.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, above mean sea level
	Dayton Boulevard (U. S. Highway 27).	666
	Merriman Avenue	669
	Midvale Street	674
	Kildare Street	680
	Memorial Drive	687
	Hawkins Street	693
	Dayton Boulevard (U.S. Highway 27).	699
	Laurel Street	704
	Lancaster Street	706
	Newberry Street	712
	Fair Street	714
	Dayton Boulevard (U. S. Highway 27).	716
	Euclid Avenue	725
	Leawood Street Bridge	738

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 14, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-31095 Filed 11-3-78; 8:45 am]

[4210-01-M]

[Docket No. FI-4135]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Town of Gate City, Scott County, Va.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the town of Gate City, Scott County, Va. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the town of Gate City, Scott County, Va.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the town of Gate City, Scott County, Va., are available for review at the Town Hall, Gate City, Va.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of flood elevations for the town of Gate City, Scott County, Va.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Big Moccasin Creek.	Downstream Corporate Limits.	1,260
	Gate City Water Supply Plant.	1,268
	Upstream Corporate Limits.	1,275
Little Moccasin Creek.	Confluence w/Big Moccasin Creek.	1,266
	Upstream side of U.S. Highways 23, 58, and 42.	1,281
	Upstream side of Moccasin Street.	1,297
	Upstream side of Horton Street.	1,312
	Upstream side of Ruth Subdivision Road.	1,338
	Upstream Corporate Limits.	1,347

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 13, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-31096 Filed 11-3-78; 8:45 am]

Source of flooding	Location	Elevation in feet, above mean sea level
Stringers Branch	Corporate Limits	654
	U.S. Highway 127 and State Highway 8.	654
	Spur State Highway 27	663
	Strawberry Lane	664

[4210-01-M]

[Docket No. FI-3905]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Town of Glen Lyn, Giles County, Va.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the town of Glen Lyn, Giles County, Va. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the town of Glen Lyn, Giles County, Va.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the town of Glen Lyn, Giles County, Va., are available for review at the Mayor's Office, Glen Lyn, Va.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the town of Glen Lyn, Giles County, Va.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
New River	Confluence with East River.	1,525
	U.S. Highway 460	1,526
	Confluence of Unnamed Tributary.	1,527
	Glen Lyn Town Limits	1,527
East River	Confluence with New River.	1,525
	U.S. Highway 460	1,525
	Private Bridge	1,525
Unnamed Tributary of New River.	Abandoned R. R. Fill	1,586
	Glen Lyn Town Limits	1,614

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 13, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-31097 Filed 11-3-78; 8:45 am]

[4210-01-M]

[Docket No. FI-3911]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for Okanogan County, Wash.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in Okanogan County, Wash. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for Okanogan County, Wash.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for Okanogan County, Wash., are available for review at the Okanogan County Courthouse, Okanogan, Wash.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for Okanogan County, Wash.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Okanogan River	Bando Rd	808
	Truck Valley Rd. (at river mile 25.0).	821
	Oak St. (upstream)	830
	Central Ave	840
	U.S. Rte. 97	842
	Truck Valley Rd. (at river mile 40.6).	859
	Fourth St. (upstream)	899
	Confluence of Siwash Creek.	903
	Burlington Northern Railroad.	918
	Oroville-Toroda Creek Rd.	918
Similkameen River.	Twelfth Ave	925
	Nighthawk Bridge	1,159
Bonaparte Creek	Railroad St. (upstream)	904
	Third St. (upstream)	946
Methow River	Carlton Bridge	1,396
	Confluence of Chewack River.	1,748
	Confluence of Wolf Creek.	1,802
	Weeman Bridge	1,954
	Mazama Rd	2,103
Twisp River	River mile 1.0	1,824
	Twisp River Rd	1,656
	River mile 2.0	1,668

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Chewack River	Bridge St. (upstream)	1,752
	Diversion Dam (near river mile 1.0).	1,777
	Chewack River Bridge	1,990
	Diversion Dam (near river mile 8.4).	2,000

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 13, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-31098 Filed 11-3-78; 8:45 am]

Title 31—Money and Finance: Treasury

CHAPTER I—MONETARY OFFICES, DEPARTMENT OF THE TREASURY

PART 129—PORTFOLIO INVESTMENT SURVEY REGULATIONS

Notice of Final Rulemaking

AGENCY: Department of the Treasury.

ACTION: Final rules.

SUMMARY: This notice promulgates final regulations for portfolio investment surveys to implement the President's responsibilities under the International Investment Survey Act of 1976 (22 U.S.C. 3101, et seq.), as amended, regarding studies, analyses, and mandatory surveys of foreign portfolio investment in the United States and U.S. portfolio investment abroad. The President's responsibilities concerning portfolio investment were delegated to the Secretary of the Treasury pursuant to Executive Order 11961, 42 FR 4321, January 24, 1977, as amended. In addition, the existing Part 129 of 31 CFR is simultaneously revoked, as it pertains to a 1974 foreign portfolio investment survey which has been completed.

DATES: These regulations become effective November 6, 1978.

FOR FURTHER INFORMATION CONTACT:

Leo Maley, Foreign Portfolio Investment Project, Office of the Assistant Secretary (Economic Policy), U.S. Department of the Treasury, c/o Main Treasury Mail Room, Room 640, Thomas Edison Building, Washington, D.C. 20220, 202-634-2271.

SUPPLEMENTARY INFORMATION: On June 13, 1978, the Department of the Treasury published proposed regulations (43 FR 25635) giving notice that the Assistant Secretary of the Treasury (Economic Policy) was considering promulgating new regulations concerning portfolio investment surveys as a new Part 129 of 31 CFR, and revoking the existing Part 129, as the existing Part 129 pertained to a 1974 foreign portfolio investment survey which had been completed.

On October 11, 1976 the President signed into law the International Investment Survey Act of 1976 (Pub. L. 94-472; 90 Stat. 2059; 22 U.S.C. 3101, et seq, as amended, [the "Act"]) which requires the collection and analysis of data relating to international investment and its effect upon the national security, commerce, employment, inflation, general welfare, and foreign policy of the United States.

In section 2 of Executive Order 11961, 42 FR 4321, January 24, 1977, as amended, the President designated the Secretary of the Treasury as the Federal executive responsible for collecting the required data on portfolio investment. The Secretary of the Treasury has delegated this responsibility to the Assistant Secretary for Economic Policy.

These final regulations supersede the existing Part 129 of 31 CFR which is revoked. The existing Part 129 applies to a 1974 foreign portfolio investment survey. The 1974 survey has been completed and the existing Part 129 is now obsolete.

The public was given thirty days, June 13, 1978 through July 14, 1978, to submit written comments, views, or suggestions pertaining to the proposed regulations to the Department of the Treasury prior to their publication in final form. A number of public comments were received in response to the notice. In addition, a public hearing on the proposed regulations was held at the Department of the Treasury on July 10, 1978. Suggestions and comments have been carefully considered and taken into account in the revision of the regulations which is herewith published in final form.

Most of the comments received pertained to simplifying and clarifying the instructions and report forms for conducting the 1978 survey of foreign portfolio investment in U.S. securities, as provided for in 31 CFR Part 129, Subpart B. As a result, the forms and instructions to be used in conducting this survey have been revised to take into account some of these comments.

Comments were also received regarding the proposed regulations. Several comments requested changes in the statutory definitions contained in the act and, of course, could not be considered. However, all other comments pertaining to the proposed regulations were given careful consideration and resulted in several changes. The following substantive changes to the proposed regulations were made:

1. Section 129.3. Several comments indicated that failure to impose a definite time for retention of records required under this section would impose a burden on respondents. Therefore, this section has been changed to require retention of the information cited for a period of three years from the date of submission of the reports required in 31 CFR Part 129, Subparts B and C.

2. Section 129.10(e). Comments indicated that the proposed term "foreign direct investor" was confusing and misleading. This term has been replaced with "foreign parent," and the definition has been expanded to cover a 10 percent or more ownership interest in an unincorporated United States business enterprise. The later change brings the definition in line with the term "parent" as defined in the Act.

3. Section 129.11(a)(2). A report on Form FPI-1 is required from every United States issuer who falls below the large issuer asset test, but whose assets exceed $2 million and who has *knowledge* of foreign ownership of its securities or *who is informed by Treasury that there is foreign ownership of its securities.* (Changes to proposed regulations are in italics.)

4. Section 129.14. Most comments indicated respondents would have problems meeting the proposed March 1, 1979 filing date. The due date for filing reports has been changed to March 31, 1979.

Pursuant to section 5(a) of the Act, which authorizes the promulgation of such rules and regulations as may be necessary to carry out the purpose of the Act, the Department of the Treasury herewith promulgates final regulations pertaining to portfolio investment surveys.

Dated: October 25, 1978.

DANIEL H. BRILL,
Assistant Secretary for Economic Policy.

PART 129—PORTFOLIO INVESTMENT SURVEY REGULATIONS

Subpart A—Basic Requirements

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129.11 Form TD F 90-19.1—Report for U.S. issuers of securities (FPI-1).
129.12 Form TD F 90-19.2—Report for U.S. holders of record (FPI-2).
129.13 Special reports.
129.14 Due date.

Subpart C—Rules and Regulations for Survey of U.S. Portfolio Investment Abroad [Reserved]

AUTHORITY: The provisions of this Part 129 are issued under Pub. L. 94-472, 90 Stat. 2059 (22 U.S.C. 3101, et seq.), as amended; EO 11961, 42 FR 4321, January 24, 1977, as amended.

Subpart A—Basic Requirements

§ 129.1 Purpose.

The purpose of this Part is to set forth the rules and regulations necessary to implement the data collection programs and analyses with respect to portfolio investment provided for by the International Investment Survey Act of 1976 (Pub. L. 94-472, 90 Stat. 2059, 22 U.S.C. 3101, et seq., as amended (the "Act")). The overall purpose of the Act is to provide comprehensive and reliable information concerning international investment, including portfolio investment, while minimizing the reporting burden on respondents.

§ 129.2 General definitions.

(a) "United States," when used in a geographic sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, and all territories and possessions of the United States.

(b) "Foreign," when used in a geographic sense, means that which is situated outside the United States or which belongs to or is characteristic of a country other than the United States.

(c) "Person," means any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the U.S. Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency).

(d) "United States person" means any person resident in the United States or subject to the jurisdiction of the United States.

(e) "Foreign person" means any person resident outside the United States or subject to the jurisdiction of a country other than the United States.

(f) "Business enterprise" means any organization, association, branch, or venture which exists for profitmaking purposes or to otherwise secure economic advantage, and any ownership of any real estate.

(g) "International investment" means (1) the ownership or control, directly or indirectly, by contractual commitment or otherwise, by foreign persons of any interest in property in the United States, or of stock, other securities, or short- and long-term debt obligations of a U.S. person, and (2) the ownership or control, directly or indirectly, by contractual commitment or otherwise, by U.S. persons of any interest in property outside the United States, or of stock, other securities, or short- and long-term debt obligations of a foreign person.

(h) "Direct investment" means the ownership or control, directly or indirectly, by one person of 10 percent or more of the voting securities of an incorporated business enterprise or an equivalent interest in an unincorporated business enterprise.

(i) "Portfolio investment" means any international investment which is not direct investment.

(j) "Foreign official institution" means central governments of foreign countries and their possessions, including recognized central banks of issue, including the following:

(1) The treasuries, including ministries of finance, or corresponding departments of national governments; central banks, including all departments thereof; stabilization funds, including official exchange stabilization funds, exchange control offices, or other governmental exchange authorities; and fiscal agents of the national governments which have as an important part of their functions, activities similar to those of a treasury, central bank or stabilization fund—provided, that branches or agencies of foreign official banking institutions which are located in the United States shall *not* be considered foreign official institutions for purposes of data collection programs set forth in this Part.

(2) Diplomatic and consular establishments and other departments and agencies of national governments, such as military departments, purchasing commissions and state trading organizations.

(3) Any international or regional organization, or subordinate or affiliated agency thereof, created by treaty or convention between sovereign states. Provided, that the term "foreign official institution" shall *not* include the following:

(a) Nationalized or other government-owned banks or corporations unless such banks or corporations fall within one of the descriptive categories set forth in subsection (j)(1) above.

(b) Personal accounts of foreign diplomatic and other official respresentatives of foreign countries.

§ 129.3 Recordkeeping requirements.

(a) Persons subject to the jurisdiction of the United States shall maintain all information (including journals or other books of original entry, minute books, stock transfer records, lists of shareholders, or financial statements) which is necessary for carrying out the surveys and studies provided for by the Act.

(b) The information cited in subsection (a) above, and the reports required under this Part, shall be retained for 3 years from the date of submission of the reports required in Subparts B and C.

§ 129.4 Reporting requirements.

Persons subject to the jurisdiction of the United States shall furnish under oath, any report containing information which is determined to be necessary to carry out the surveys and studies provided for by the Act.

Such reports may be required from, among others, U.S. persons in which foreign persons hold portfolio investment; U.S. holders of record which hold, on behalf of foreign persons, portfolio investment in U.S. persons; U.S. persons which hold portfolio investment abroad; U.S. holders of record which hold, on behalf of U.S. persons, portfolio investment abroad; and U.S. intermediaries which assist or intervene in the purchase or sale of interests in portfolio investment.

§ 129.5 Response required.

Reports, as specified in Subparts B and C of this Part, are required from all persons subject to the reporting requirements, whether or not they are contacted by Treasury. In addition, any person Treasury contacts, either by sending report forms or by inquiring in writing whether the person is subject to the reporting requirements of a survey conducted pursuant to this Part, must reply in writing. The response must be made either by filing the properly completed report form or else by filing a written certified claim for exemption from filing a report. A claim for exemption must be filed within 30 days after the end of the calendar year being surveyed or within 30 days after receiving the forms, whichever is later.

§ 129.6 Confidentiality.

Information collected pursuant to this Part will be kept in confidence.

(a) Access to this information shall be available only to officials and employees (including consultants and contractors and their employees) designated by the President to perform functions under the Act.

(b) Subject to § 129.6(d), the President may authorize the exchange between agencies or officials designated by him of this information as he deems necessary to carry out the purposes of the Act.

(c) Nothing in this Part shall be construed to require any Federal Agency to disclose information otherwise protected by law.

(d) This information shall be used solely for analytical or statistical purposes within the U.S. Government or for enforcement proceedings as provided for in the Act.

(e) No official or employee (including consultants and contractors and their employees) may publish or make available to any other person any information collected pursuant to this Part in a manner that the person who furnished the information can be specifically identified except as provided for in this section.

(f) No person can compel the submission or disclosure of reports or constituent parts thereof, or copies of such reports or constituent parts thereof, prepared pursuant to this Part without the prior written consent of the person who maintained or furnished the report and also of the customer of the person who maintained or furnished the report where the information supplied is identifiable as being derived from the records of the customer.

§ 129.7 Penalties.

(a) Whoever fails to furnish any information required by the Act or by any other rule, regulation, order, or instruction promulgated under the Act may be subject to a civil penalty not exceeding $10,000 in a proceeding brought in an appropriate U.S. district court or to injunctive relief commanding such person to comply, or both.

(b) Whoever willfully fails to submit any information required by the Act or willfully violates any other rule, regulation, order or instruction promulgated under the Act, upon conviction, shall be fined not more than $10,000 and, if an individual, maybe imprisoned for not more than 1 year, or both. Any officer, director, employee, or agent of any corporation who knowingly participates in such violation, upon conviction, may be punished by a like fine, imprisonment, or both.

(c) Any person who willfully violates § 129.6 shall, upon conviction, be fined not more than $10,000, in addition to any other penalty imposed by law.

§ 129.8 Miscellaneous.

(a) *Required information not available.* All reasonable efforts should be made to obtain information required for reporting. Every question on the appropriate report form must be answered, except where specifically exempted.

(b) *Estimates.* When actual information cannot be obtained estimates will be accepted but should be labeled as such.

(c) *Space on form insufficient.* When space on a form is insufficient to permit a full answer to any question, the required information should be submitted on supplementary sheets appropriately labeled and referenced to the item number and the form. All supplementary sheets should be attached to the form to which they pertain.

(d) *Number of copies.* A single original copy of each report shall be filed with the Department of the Treasury. In addition, each person reporting shall retain a copy of his report.

(e) *Extension of reporting deadline.* Written requests for extensions will be considered provided they are received at least fifteen (15) days prior to the due date of the report and that they enumerate substantive reasons necessitating the extension.

(f) *Other.* Instructions concerning filing dates, mailing and information addresses, and specific instructions for completing the forms are contained in each report. General inquiries should be directed to:

Foreign Portfolio Investment Project, Office of the Assistant Secretary (Economic Policy), U.S. Department of the Treasury, Washington, D.C. 20220, 202-634-2271.

Subpart B—Rules and Regulations for Survey of Foreign Portfolio Investment in U.S. Securities

§ 129.9 Basic requirement.

A survey of foreign portfolio investment in U.S. securities will be conducted covering foreign ownership as of December 31, 1978. In addition to the requirements contained in Subpart A herein, specific additional rules and regulations are given below.

§ 129.10 Specific definitions.

(a) "Securities," for purposes of this survey, means long-term marketable U.S. public and private issues of debt and equity. Long-term securities have no contractual maturity (stocks) or an original maturity of more than 1 year from date of issue. Marketable securities include both bearer and registered securities that are publicly traded or privately placed in United States and/or foreign markets. The term "securities" includes common and preferred stocks or investment company shares, including rights, warrants, and scrip; bonds, debentures, equipment trust certificates, and similar long-term corporate debt instruments; marketable long-term debt obligations of the U.S. Treasury, Federal financing institutions, U.S. Government corporations, and federally sponsored agencies; and long-term debt obligations of State and local governments, including any agencies, corporations, financing institutions, or other instrumentalities thereof.

(b) "U.S. issuer" means any U.S. person who issues, through public or private distribution, any security.

(c) "United States holder of record" means any U.S. person who is carried on stock transfer records or other ownership records as having title to any security of a U.S. issuer which he is holding on behalf of another person. "U.S. holder of record" includes such persons as nominees, custodians, agents, trustees, other fiduciaries, banks, brokers, or other intermediaries, who hold title to investments on behalf of another person. The term also extends to any U.S. person acting as a custodian for bearer securities, even though such person is not carried on ownership records as holding title to such securities.

(d) "Reporter" means the U.S. person required to file a report, or for which the report is required to be filed, pursuant to this Subpart.

(e) "Foreign parent," for purposes of this survey, means any foreign person who, directly or indirectly, owns or controls, ten (10) percent or more of the voting securities of an incorporated U.S. business enterprise, or an equivalent ownership interest in an unincorporated United States enterprise.

(f) "Employer's identification number (EI)" means the unique taxpayer's identification number assigned to an employer by the Internal Revenue Service.

§ 129.11 Form TD F 90-19.1—Report for U.S. Issuers of Securities (hereinafter referred to as "Form FPI-1")

(a) Who must report. The reporting obligations of U.S. issuers are governed by the following classifications:

(1) Routine large issuer reporter—asset test. A report on Form FPI-1 is required from every U.S. issuer irrespective of whether it has evidence of foreign investment, which, as of the latest available closing date of its accounting records had:

(i) Total consolidated assets of more than $50 million, if it is a nonbanking business enterprise.

(ii) Total consolidated assets of more than $100 million, if it is a banking business enterprise.

(2) Selected small issuer reporters—foreign ownership test. Except as otherwise provided in § 129.11(c) below, a report on Form FPI-1 is required from every U.S. issuer who is not a routine reporter under § 129.11(a)(1) above, and who has knowledge of foreign ownership of its securities or who is informed by Treasury that there is foreign ownership of its securities. This requirement applies without regard to

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size of the issuer's assets determined under §§ 129.11(a)(1) (i) and (ii) above.

(b) Consolidated reports. Where several U.S. corporations are affiliated with or under the control of a single U.S. parent corporation, the parent corporation shall file a consolidated Form FPI-1 following generally accepted U.S. accounting principles as required for reports to shareholders. United States affiliates or subsidiaries which are not normally consolidated in the parent corporation's report to shareholders, must file their own Form FPI-1 if they meet the requirements in § 129.11(a) above.

(c) Total exemption—asset test. A report on Form FPI-1 is not required from any U.S. issuer, irrespective of whether it has knowledge of foreign ownership of its securities, who, as of the latest available closing date of its books, had total consolidated assets of less than $2 million.

(d) Information reported. On Form FPI-1, private U.S. issuers of securities are required to report foreign ownership, by country and issue, of securities issued by them which are held by foreign persons as of December 31, 1978 and to supply certain information relating to ownership distribution (domestic and foreign) of outstanding issues, type of foreign owner, industry of U.S. issuer and other information. Specific instructions as to information to be reported are contained in the instructions to Form FPI-1.

§ 129.12 Form TD F 90-19.2—Report for U.S. Holders of Record (hereinafter referred to as "Form FPI-2").

(a) Who must report. Except as otherwise provided in § 129.12(c) below, a report is required to be filed on Form FPI-2 by any U.S. person who acts on behalf of a foreign person as a holder of record of any security of a U.S. issuer. Included are U.S. trustees who hold securities in U.S. trusts created by foreign insurance companies and other foreign companies or foreign governments.

(b) Combined report. Where several nominees, trustees, or other holders of record are affiliated with or under the common control of a single bank, broker, or other institution, the U.S. parent institution shall file a combined Form FPI-2 on behalf of all such holders of record.

(c) Exempted holders of record. A report on Form FPI-2 is not required from any holder of record who held for all its foreign customers, combined investments in securities of U.S. issuers aggregating $50,000 or less based on fair market value as of December 31, 1978. This exemption does not apply to holders of record under common management or control as described in § 129.12(b) above, except where aggregate holdings of all holders of record under a single parent institution total $50,000 or less.

(d) Information reported. On Form FPI-2, U.S. holders of record are required to report foreign ownership, by country and issue, of all securities which they held on behalf of foreign persons as of December 31, 1978. Specific instructions as to information to be reported are contained in the instructions to Form FPI-2.

§ 129.13 Special reports.

Any person subject to the provisions of this subpart may be required to submit a special report which the Secretary of the Treasury deems necessary to supplement information supplied on Forms FPI-1 and FPI-2 or which may otherwise be necessary to enable the Secretary of the Treasury to carry out his function under the Act.

§ 129.14 Due date.

Reports on Forms FPI-1 and FPI-2 are due on March 31, 1979.

Subpart C—Rules and Regulations for Survey of U.S. Portfolio Investment Abroad [Reserved]

[FR Doc. 78-31200 Filed 11-3-78; 8:45 am]

[6560-01-M]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

[FRL 1001-6]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

California Plan Revision: El Dorado County Air Pollution Control District

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to approve and, where appropriate, disapprove or take no action on revisions to the El Dorado County Air Pollution Control District (APCD) portion of the California State Implementation Plan (SIP) submitted by the Governor's designee. The intended effect of this action is to update rules and regulations, and to correct certain deficiencies in the SIP.

DATES: Final rulemaking actions taken in this notice will be effective on December 6, 1978. Comments on rule 213 should be submitted no later than December 6, 1978. See Supplementary Information section for details.

ADDRESS: Comments on rule 213 should be sent to: Regional Administrator, attention: Air and Hazardous Materials Division, Air Programs Branch, California SIP Section (A-4), U.S. Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, Calif. 94105.

FOR FURTHER INFORMATION CONTACT:

Allyn M. Davis, Director, Air and Hazardous Materials Division, U.S. Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, Calif. 94105, attention: Wallace A. Woo, telephone 415-556-7288.

SUPPLEMENTARY INFORMATION: On February 1, 1978, EPA published a Notice of Proposed Rulemaking (43 FR 4268) for revisions to the rules of the El Dorado County APCD submitted to EPA on November 4, 1977, by the California Air Resources Board (CARB) as an amendment to the California SIP.

The changes contained in the November 4, 1977, submittal that are acted on in this notice include the following:

(a) The Lake Tahoe air basin portion of the district is excluded from being subject to the existing air pollution control rules.

(b) Some definitions are amended.

(c) The list of exceptions to the visible emission control rule is amended.

(d) New rules are added to control pathological incineration and abrasive blasting.

(e) The language of the California Health and Safety Code is incorporated into a number of rules.

(f) The sections of the California Health and Safety Code cited in a number of rules are renumbered to conform with the recodification of the Code.

(g) Some of the rules for controlling open burning, including agricultural burning, are amended.

(h) New rules are adopted to implement the continuous monitoring program and to provide for public availability of emission data.

(i) Some procedures before the hearing board are modified.

(j) Minor wording changes that do not affect the degree of control are made to a number of rules.

(k) A number of rules are renumbered.

A list of the rules considered in this notice was published as part of the February 1, 1978, Notice of Proposed Rulemaking. The proposed rulemaking provided 30 days for public comments. No comments have been received.

Under section 110 of the Clean Air Act, as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove the submitted rules as SIP revisions. It is the purpose of this notice to approve all of the revisions contained in the November 4, 1977, submittal, and incorporate them into the California SIP, with the exception of those rules not being acted upon and those rules being disapproved as discussed below.

Rule 201, *Coverage*, revises the analogous rule 49, *Districtwide coverage*, previously approved in the June 30, 1972 submittal, by excluding the portion of the District contained within the Lake Tahoe Air Basin from being subject to the existing air pollution control regulations of the El Dorado County APCD. Since the District did not set forth substitute rules for the exempted area, this revision is disapproved. The previously approved rule 49 in the June 30, 1972, submittal is retained and shall remain in effect for Federal enforcement purposes.

Rule 203(D), *Exceptions*, is disapproved because it provides one more exemption, namely, the use of experimental devices, to the visible emission limitations imposed by rule 202, *Visible emissions*. Without any demonstration that this additional exemption will not cause any interference with the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS), this new exemption should not be allowed. Therefore rule 203(D) is disapproved.

No action is being taken on rule 203(G), *Exceptions;* rule 217-51(E), *Exceptions to rule 217-50;* rule 314, *Exceptions to rule 313;* and rule 603, *Hearing Board fees*, as these rules will be addressed in a future FEDERAL REGISTER notice.

Also, no action is being taken on rule 205, *Nuisance;* rule 210(B), *Total reduced sulfur;* and rule 217-52, *Nuisance*, because these rules are not specifically directed at the attainment and maintenance of the NAAQS, and thus are not appropriate for inclusion in the SIP.

In addition, no action is being taken on rule 213, *Storage of petroleum products*, because EPA is now in the process of reevaluating the appropriateness of applying the vapor recovery programs specified in 40 CFR 52.255 and 40 CFR 52.256 to the districts within the area presently known as the Mountain Counties Air Basin. Preliminary information supplied by the Mountain Counties Air Basin Control Council indicates that existing ambient air quality standard excursions for ozone in the Mountain Counties Air Basin are due to transport from the Sacramento Valley and the San Joaquin Valley rather than to the emissions of hydrocarbons within the area. Thus, EPA, by this notice, is inviting public comments on this thesis for the purpose of promulgating final approval or disapproval of rule 213. Comments should be sent to the EPA Region IX Office at the address given above. Comments received on or before December 6, 1978, will be considered, and made available for public inspection at the EPA Region IX Office and the EPA Public Information Reference Unit. In addition, copies of the proposed rule and the preliminary analysis are available for public inspection during normal business hours at the EPA Region IX Office and at the following locations:

El Dorado County Air Pollution Control District, 2850 Cold Springs Road, Placerville, Calif. 95667.
California Air Resources Board, 1709 11th Street, Sacramento, Calif. 95814.
Public Information Reference Unit, Room 2922 (EPA Library), 401 M Street SW., Washington, D.C. 20460.

Rule 302(C), *Exceptions to rule 301*, allows for the first time open burning of unsalable wood waste from property being developed for commercial or residential use, subject to requirements imposed by rule 319, *Open burning of wood waste on property where grown*. Without any showing that this relaxation in control of open burning will not interfere with the attainment and maintenance of the NAAQS, this relaxation should not be allowed. Therefore, both rule 302(C) and rule 319 are disapproved.

Rule 304, *Exceptions to Rule 303*, is disapproved because it exempts open burning of agricultural waste at altitudes above 3,000 feet mean sea level (m.s.l.) and agricultural burning in areas above 6,000 feet (m.s.l.) from permit requirements without an adequate demonstration that these exemptions will not interfere with the attainment and maintenance of the NAAQS.

Rule 307, *Exceptions to Rule 306*, is disapproved because it grants five exceptions to the general rule that specifies no burning on days designated by the CARB as "no-burn days". The most significant exception is set forth in 307(A)(1) which permits the Air Pollution Control Officer (APCO) to grant a special burning permit upon a showing of threatened economic loss. Economic factors are an impermissible basis upon which to condition the granting of an exception from emission limitations absent a showing that all other requirements of section 110 of the Clean Air Act as well as the NAAQS will be met. In addition, 307(A)(2) exempts the burning of empty pesticide sacks and containers, 307(B) exempts range burning between January and May, 307(C) exempts open burning of agricultural waste at altitudes above 3,000 feet (m.s.l.) and 307(D) exempts agricultural burning in areas above 6,000 feet (m.s.l.) from the "no-burn day" requirements. All are disapproved because no analysis has been submitted by the District to demonstrate that these exemptions will not interfere with the attainment and maintenance of the NAAQS. 307(E) is also disapproved because it concerns the procedures for issuing permits for the above mentioned types of open burning.

Rule 322, *Mechanized Burners*, is disapproved because it exempts open outdoor fires in mechanized burners from "no-burn day" requirements. Although a visible emission limitation of Ringelmann No. 1 is set, there is no demonstration that this new exemption will not interfere with the attainment and maintenance of the NAAQS.

Rule 409, *Public Records*, is a new rule adopted to provide for public availability of emission data furnished by source operators and owners. The rule is approved because it partially satisfies the requirements of 40 CFR 51.10(e). However, since the rule does not provide for the correlation of emission data with applicable emission limitations as required by § 51.10(e), paragraph (b)(4) of the federally promulgated regulation in 40 CFR 52.224, *General Requirements*, is retained and shall remain in effect for the District.

Rule 507, *Provision of Sampling and Testing Facilities*, is approved since it requires continuous monitoring for specified sources, and thereby partially fulfills the requirements of 40 CFR 51.19(e). It is noted, however, that Rule 507 does not meet all of the requirements of 40 CFR 51.19(e) and Appendix P of Part 51.

Regulation VII revisions (which include Rules 700, 703, and 710) are approved as part of a procedure for the granting of variances. Each variance, however, must satisfy the requirements of section 110 of the Clean Air Act and 40 CFR Part 51 in order to be approved by EPA as a revision to the SIP.

Certification has been received from the CARB that the public hearing requirements of 40 CFR 51.4 have been satisfied.

(Sections 110 and 301(a) of the Clean Air Act as amended (42 U.S.C. §§ 7410 and 7601(a).)

Dated: October 30, 1978.

DOUGLAS M. COSTLE,
Administrator.

Subpart F of Part 52 of Chapter I, Title 40, of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. Section 52.220, paragraph (c)(42)(x) is added as follows:

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§ 52.220 Identification of plan.

* * * * *

(c) * * *

(42) * * *

(x) El Dorado County APCD.

(A) New or amended Rules 102, 201, 203 [with the exception of (G)], 206(B), 207, 208, 215, 216, 217, 217-49 to 217-50, 217-51(A to D), 217-53 to 217-56, 217-1 to 217-3, 302, 303, 304, 307, 308, 319, 320, 321, 322, 324, 402, 407, 409, 507, 700, 703 and 710.

* * * * *

2. Section 52.224, paragraph (a)(2)(ii)(E) is added as follows:

§ 52.224 General requirements.

(a) * * *

(2) * * *

(ii) * * *

(E) El Dorado County APCD.

* * * * *

3. Section 52.234, paragraph (e)(3)(iv) is added as follows:

§ 52.234 Source surveillance.

* * * * *

(e) * * *

(3) * * *

(iv) El Dorado County APCD.

* * * * *

4. Section 52.236, paragraph (f) is added as follows:

§ 52.236 Rules and regulations.

* * * * *

(f) The following APCD rules are disapproved because they exempt some portions of the districts from the existing air pollution control regulations without setting forth substitute rules for the exempted areas.

(1) Sacramento Valley Intrastate Region:

(i) El Dorado County APCD.

(A) Rule 201, *Coverage*, submitted on November 4, 1977, is disapproved; and the previously approved Rule 49, *District-Wide Coverage*, in the June 30, 1972, submittal is retained for Federal enforcement purposes.

* * * * *

5. Section 52.272, paragraph (a)(1)(ii) is added as follows:

§ 52.272 Research operation exemptions.

(a) * * *

(1) * * *

(ii) El Dorado County APCD.

(A) Rule 203(D), *Exceptions*, submitted on November 4, 1977.

* * * * *

6. Section 52.273, paragraph (a)(1)(vi) is added as follows:

§ 52.273 Open burning.

(a) * * *

(1) * * *

(vi) El Dorado County APCD.

(A) Rule 302(C), *Exceptions to Rule 301;* Rule 304, *Exceptions to Rule 303;* Rule 307, *Exceptions to Rule 306;* Rule 319, *Open Burning of Wood Waste on Property Where Grown;* and Rule 322, *Mechanized Burners*, submitted on November 4, 1977.

* * * * *

[FR Doc. 78-31196 Filed 11-3-78; 8:45 am]

[8320-01-M]

Title 41—Public Contracts and Property Management

CHAPTER 8—VETERANS ADMINISTRATION

PART 8-3—PROCUREMENT BY NEGOTIATION

Miscellaneous Changes

AGENCY: Veterans' Administration.

ACTION: Final regulation.

SUMMARY: The amendments are intended to eliminate an inference that contracting officers determinations and findings are routinely provided contractors; to eliminate the requirement that only the Director, VA Marketing Center, can negotiate Veterans' Administration multiple-award decentralized contracts; to authorize an additional contracting officer to negotiate contracts in excess of $10,000 when designated by the Chief, Marketing Division for Drugs and Chemicals; and to eliminate an implied sanction of sole source procurement. The amendments will increase administrative and technical efficiency.

EFFECTIVE DATE: October 30, 1978.

FOR FURTHER INFORMATION CONTACT:

Chris A. Figg, Policy and Interagency Staff, Supply Service, Veterans' Administration, Washington, D.C. 20420, 202-389-2334.

SUPPLEMENTARY INFORMATION: Section 8-3.207 was recently revised to specify that no contracting officer subordinate to the Director, VA Marketing Center, could award negotiated multiple-award decentralized contracts. This restriction is now deemed to be unduly cumbersome. Instead, such contracts will be authorized for award by the contracting officers specified in § 8-3.207 with the prior approval of the Director, VA Marketing Center; and one additional contracting officer has been authorized to negotiate contracts pursuant to § 8-3.207 when so designated by the Chief, Marketing Division for Drugs and Chemicals.

There is a minor grammatical change in § 8-3.207(a)(2) which eliminates an erroneous inference that contracting officers determinations and findings are routinely provided to contractors.

Section 8-3.210(d) is revoked in order to eliminate an implied sanction of sole source procurement deemed inconsistent with the small business set-aside policy. The change would incorporate this revocation.

Since the proposed changes revise internal administrative procedures and make editorial modifications, compliance with the provisions of 38 CFR 1.12 relating to regulatory development is considered unnecessary.

Approved: October 30, 1978.

By direction of the Administrators.

RUFUS H. WILSON,
Deputy Administrator.

1. In § 8-3.207, paragraphs (a)(2) and (b) are revised and paragraph (c) is revoked. The revised material reads as follows:

§ 8-3.207 Medicines or medical supplies.

(a) * * *

(2) When an individual is designated to act in the capacity of one of the positions specified in this § 8-3.207, that individual is authorized to consummate contracts in excess of $10,000 in the same manner as the incumbent of the position. The contracting officer's title will be indicated on the contract documents and official correspondence with the contractor. This will verify to the contractor that the contracting officer possesses the necessary contracting authority. Additionally, the contracting officer's title will appear on the applicable determinations and findings.

(b) The following contracting officers are authorized to award negotiated contracts in excess of $10,000 for medicines or medical items:

(1) Director, Supply Service.

(2) Chief, Procurement Division.

(3) Director, Veterans' Administration Marketing Center.

(4) Chief of each of the following Marketing Decision:

(i) Medical-Dental-Scientific Supplies;

(ii) Medical Equipment;

(iii) Administrative Medical Supplies and Equipment (limited to prosthetic appliances defined as wheelchairs, hearing aids and batteries, artificial limbs, canes and stump socks);

(iv) Drugs and Chemicals;

(v) Radiological and Nuclear Equipment and Supplies.

(5) One senior contracting officer for each Marketing Division when so designated by the Marketing Division Chief.

(6) One contracting officer, Marketing Division for Drugs and Chemicals, when so designated by the Chief, Marketing Division for Drugs and Chemicals.

(c) [Revoked]

2. In § 8-3.210, paragraph (d) is revoked.

§ 8-3.210 Impracticable to secure competition by formal advertising.

* * * * *

(d) [Revoked]

[FR Doc. 78-31264 Filed 11-3-78; 8:45 am]

[4310-10-M]

CHAPTER 14—DEPARTMENT OF THE INTERIOR

PART 14-19—TRANSPORTATION

Ocean Transportation on Privately Owned United States Flag Vessels

AGENCY: Department of the Interior.

ACTION: Final rule.

SUMMARY: This rule makes changes to the Interior Procurement Regulations. Pub. L. 664, the Cargo Preference Act (46 U.S.C. 1241(b)), requires the appropriate agency to take such steps as may be necessary to assure that at least 50 percent of equipment, materials or commodities contracted for requiring ocean transportation shall be carried on privately owned U.S.-flag vessels. The rule amends Part 14-19 by adding implementing regulations.

FOR FURTHER INFORMATION CONTACT:

William Opdyke, 202-343-5914.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The rule prescribes procedures to be added to the Interior Procurement Regulations to implement the Cargo Preference Act (Pub. L. 664; 46 U.S.C. 1241(b)). The rule requires contracting officers to send contractors specific notice of the U.S.-flag vessel preference provisions; effect compliance through liaison with the Maritime Commission, Department of Commerce; and use of the contracting officer's discretionary right of responsibility determination. These changes were requested by the Maritime Administration. This responds to that request.

PRIMARY AUTHOR

The primary author of this rule is William Opdyke, Division of Procurment and Grants, Office of Administrative and Management Policy, Department of the Interior, 18th and C Streets NW., Washington, D.C. 20240, telephone 202-343-5914.

WAIVER

It is the general policy of the Department of the Interior to allow time for interested parties to participate in the rulemaking process. However, the amendments contained herein are entirely administrative in nature and public participation would be meaningless. Therefore, the public rulemaking process is waived in this instance in accordance with 5 U.S.C. 553.

IMPACT

NOTE.—The Department of the Interior has determined that this document does not contain a major rule requiring preparation of an Inflation Impact Statement under Executive Order 11821 or OMB Circular A-107.

Accordingly, pursuant to the authority of the Secretary of the Interior contained in 5 U.S.C. 301, 41 CFR Chapter 14 is amended as stated below.

RICHARD R. HITE,
Deputy Assistant Secretary of the Interior.

Dated: October 25, 1978.

1. The Table of Contents is amended by adding a new Part 14-19, Subpart 14-19.1, and § 14-19.108-50 as follows:

PART 14-19—TRANSPORTATION

Subpart 14-19.1—General

Sec.
14-19.108-50 Contractor compliance.

AUTHORITY: 5 U.S.C. 301.

Subpart 14-19.1—General

§ 14-19.108-50 Contractor compliance.

(a) Immediately upon award of any contract which may generate shipment by ocean vessel from or to a foreign country, the contracting officer will send the contractor a letter or other written communication, separate from the contract documents, calling the contractor's attention to the specific contract provisions requiring shipment by U.S.-flag vessel. This notice may be included as part of the post award letter prescribed in § 1-1.806 of this title, or similar post award documents. The notice shall include a statement to the effect that failure to comply with the provisions for use of U.S.-flag vessels may result in a determination of nonresponsibility.

(b) One copy of the notice sent to the contractor under paragraph (a) of this section together with one copy of the notice of award, or other document, which shows the date of contract award and the contract delivery dates, shall be mailed to: Chief, Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Commerce, Washington, D.C. 20230.

(c) The contracting officer will maintain such further liaison with the Chief, Division of National Cargo, Office of Market Development, Maritime Administration, as may be necessary to effect contractor compliance with the U.S.-flag vessel preference provisions set forth in the contract.

[FR Doc. 78-31336 Filed 11-3-78; 8:45 am]

[1505-01-M]

CHAPTER 101—FEDERAL PROPERTY MANAGEMENT REGULATIONS

SUBCHAPTER G—TRANSPORTATION AND MOTOR VEHICLES

[FPMR Temp. Reg. G-37]

APPENDIX—TEMPORARY REGULATIONS

Changes in Requirements for Reporting Motor Vehicle Data

Correction

In FR Doc. 78-29858, appearing at page 49538 in the issue of Tuesday, October 24, 1978, make the following change:

In the "Summary" paragraph, column one, page 49538, the first sentence should read, "This regulation deletes the requirement for agencies to report motor vehicle data on standard form 82-D Agency Report of Sedan Data and requires agencies to submit supplemental motor vehicle data to GSA with the standard form 82, Agency Report of Motor Vehicle Data." * * *

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[6315-01-M]

Title 45—Public Welfare

CHAPTER X—COMMUNITY SERVICES ADMINISTRATION

PART 1015—STANDARDS OF CONDUCT FOR EMPLOYEES

Subpart C—Reports; Distribution; Supplemental Regulations

AGENCY: Community Services Administration.

ACTION: Final rule.

SUMMARY: This action amends the CSA regulations as they pertain to the reporting requirements of certain employees of their non-CSA financial and employment interests. These amendments are being made to reflect changes in the names of organizational units and titles of officials which result from the reorganization of CSA. These amendments will have no substantive impact on the existing standards of conduct regulations, but must be made prior to the annual reporting date.

EFFECTIVE DATE: November 6, 1978.

FOR FURTHER INFORMATION CONTACT:

Beatrice Valdez, Office of Legal Affairs and General Counsel, Community Services Administration, Washington, D.C. 20506, telephone 202-254-5423.

SUPPLEMENTARY INFORMATION: Since these amendments are administrative in nature, it is determined that notice of proposed rulemaking is unnecessary to the public interest. These amendments have been approved by the Civil Service Commission and become effective November 6, 1978.

(Sec. 602, 78 Stat. 428; 42 U.S.C. 2942, 18 U.S.C. 208; and E.O. 11222 of May 8, 1965, 3 CFR, 1965, Supp.; 5 CFR 735.104.)

WILLIAM W. ALLISON,
Acting Director.

45 CFR 1015 is amended by revising 1015.735-31 (j)(2) as follows:

. . . . . .

§ 1015.735-31 Reports of non-OEO interests.

(j) * * *

(2) Occupants of the following positions if classified at GS-13 or above:

(i) In the Office of Community Action: Director, Program Development Office; Director, Regional Operations Office; Chief, Policy Development and Review Staff.

(ii) In the Office of Policy, Planning and Evaluation: Chief, Evaluation Research Division; Chief, Policy Analysis Division.

(iii) In the Office of Management: Chief, Administrative Services Division; Chief, Procurement and Property Management Branch; Controller; Deputy Controller; Contracting Officers.

(iv) In the Office of Legal Affairs and General Counsel: Deputy General counsel; Chief, General Law Division; Associate Director for Human Rights; Chief, External Audit Division; Auditors; Attorney-Advisors in the General Law Division authorized to sign procurement requests.

(v) In the Office of Economic Development: Associate Director for Economic Development; Deputy Associate Director for Economic Development; Chief, Administrative Services Division; Chief, Program Development and Demonstration Division; Chief, Program Monitoring and Review Division; Chief, Program Assistance and Support Division.

(vi) In the Office of Interagency and External Affairs: Associate Director for Interagency and External Affairs; Deputy Associate Director for Interagency and External Affairs.

(vii) In each CSA Regional Office: Regional Director; Deputy Regional Director; Regional Counsel; Chief, Administrative Management Division; Chief, Field Operations Division; Contracting Officers.

. . . . . .

[FR Doc. 78-31074 Filed 11-3-78; 8:45 am]

[3510-03-M]

Title 46—Shipping

CHAPTER II—MARITIME ADMINISTRATION, DEPARTMENT OF COMMERCE

SUBCHAPTER K—REGULATIONS UNDER PUBLIC LAW 91-469

PART 390—CAPITAL CONSTRUCTION FUND

Permissible Investments and Repurchase Agreements

AGENCY: Maritime Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends a regulation relating to the Capital Construction Fund (CCF), 46 CFR Part 390, to add repurchase agreements to the list of permissible investments in which a fundholder may invest CCF assets. This amendment broadens the scope of permissible investments and the addition of repurchase agreements allows fundholders to make investments on a short-term basis with cash that would otherwise lay idle.

EFFECTIVE DATE: November 6, 1978.

FOR FURTHER INFORMATION CONTACT:

John P. Johnson, Maritime Administration, Division of Capital Construction Funds, Washington, D.C. 20230, 202-377-4400.

SUPPLEMENTARY INFORMATION: This final rule broadens the scope of permissible investments allowed fundholders under 46 CFR 390.8(b)(2)(ii), which specifies certain high-quality, short-term securities which are consistent with the investment philosophy of the CCF program. In general, assets on deposit in a CCF should be invested in such a manner that would provide for a diversified portfolio of readily marketable securities that earn the highest yield for the approved class of securities. The addition of repurchase agreements to the list of permissible investments allows the fundholder to make investments on a short-term basis with cash that would otherwise lay idle. The duration of a repurchase agreement is usually overnight, but not more than a few days. Repurchase agreements are transactions between the issuing bank and the purchaser wherein a stated face amount of U.S. Treasury obligations of a specific description (or other securities) are "purchased". In a simultaneous transaction, the purchaser agrees to "resell" these obligations back to the bank on the agreed upon date at the purchase price plus interest. Since this transaction is for such a short duration, the "purchase" and "resale" usually consists of a set of simultaneously issued confirmation tickets. None of the underlying securities are transferred and no formal written agreement of sale and purchase is executed. As a result of the investment the purchaser receives its principal back plus the agreed upon amount of interest. The purchaser neither receives a benefit from any appreciation in the market value of the underlying securities nor incurs any loss if the market value of the underlying securities drops. This amendment has been determined not to be a significant regulation within the scope of EO 12044, "Improving Government Regulations" (43 FR 12661, March 24, 1978), as implemented by criteria in Appendix F of a Notice in the FEDERAL REGISTER of May 30, 1978, (43 FR 23184), as amended. Accordingly, 46 CFR Part 390 is amended by revising § 390.8(b)(2)(ii) to read as follows:

§ 390.8 Investments of the fund.

. . . . . .

(b) *Permissible investments.* (1) * * *

(2) *Interest bearing securities* * * *

(ii) Bankers' acceptances, certificates of deposit, repurchase agreements, and short-term commercial obligations, provided that the latter must be readily marketable and rated in the highest grade by Moody's Commercial Paper Service or in one of the two highest grades by Standard & Poor's Corp.

. . . . . .

(Sec. 204(b), and 607(c), Merchant Marine Act, 1936, as amended (46 USC 1114(b) and 1177(b)); Reorganization Plans No. 21 of 1950 (64 Stat. 1273) and No. 7 of 1961 (75 Stat. 840), as amended by Pub. L. 91-469 (84 Stat. 1036), and Department of Commerce Organization Order 10-8, (36 FR 19707, July 23, 1973)).

Dated: October 27, 1978.

By Order of the Assistant Secretary for Maritime Affairs.

JAMES S. DAWSON, Jr.,
Secretary, Maritime Administration.

[FR Doc. 78-31203 Filed 11-3-78; 8:45 am]

[3510-22-M]

Title 50—Wildlife and Fisheries

CHAPTER II—NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 611—FOREIGN FISHING

Incremental Apportionment of Total Allowable Level of Foreign Fishing

AGENCY: National Oceanic and Atmospheric Administration/Commerce.

ACTION: Amendment to regulations.

SUMMARY: This document amends the Trawl Fishery of the Gulf of Alaska preliminary fishery management plan (PMP) by releasing to foreign fishermen a portion of the reserves of certain species. Accordingly, the foreign fishing regulations are amended to increase the total allowable level of foreign fishing (TALFF) for those species.

EFFECTIVE DATE: November 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Harry L. Rietze, Regional Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99801, Telephone: 907-586-7221.

SUPPLEMENTARY INFORMATION: The Trawl Fishery of the Gulf of Alaska PMP (42 FR 8782), as amended by the supplement to the final environmental impact statement/preliminary fishery management plan, noticed in the FEDERAL REGISTER (42 FR 60945) on November 30, 1977, provided for a distribution of the optimum yield (OY) of groundfish species among three categories. The first category was a provision for domestic fishermen based on the best available estimate of the probable U.S. harvest (U.S. capacity). The second category was a reserve established to provide for increased U.S. harvest. The third category was an allocation to foreign fishermen of the surplus remaining after the U.S. capacity and the reserve were subtracted from the OY for the species. The reserves were to be released to foreign fishermen if the National Marine Fisheries Service (NMFS) determined that domestic fishermen would not harvest those amounts of the species.

There has been less U.S. fishing effort for groundfish in the Gulf of Alaska in 1978 than had been expected. The NMFS has reestimated U.S. harvest to November 1, 1978, and has concluded that part of the reserve can be released. Consequently, Table II of the Trawl Fishery of the Gulf of Alaska PMP which was originally published February 11, 1977 (42 FR 8800), and was amended on November 30, 1977 (42 FR 60945) by creating reserves for groundfish species is further amended. This amendment releases certain of those reserves to increase TALFF's as follows:

Species	*Reserve release (metric tons)*
Pollock	33,760
Pacific ocean perch	5,000
Other rockfish	1,520
Other species	2,740

The Assistant Administrator for Fisheries finds and determines that the Administrative Procedure Act requirements may be waived since advance public notice and opportunity to comment upon this release of reserves is unnecessary, impractical, and contrary to the public interest. This action is not a major Federal action significantly affecting the quality of the human environment.

Signed at Washington, D.C., this the 1st day of November 1978.

WINFRED H. MEIBOHM,
Acting Executive Director, National Marine Fisheries Service.

(16 U.S.C. 1801 *et seq.*)

Amend 50 CFR 611.20(c) by revising Table 1 as follows:

§ 611.20 [Amended]

1. In line 18, under Code 011, "Perch, Pacific ocean," strike "[3]18,900," substitute "23,900."

2. In line 19, under Code 005, "Pollock," strike "[3]117,340," substitute "151,100."

3. In line 20, under Code 012, "Rockfishes, other than Pacific ocean perch," strike "[3]4,080," substitute "5,600."

4. In line 23, under "Other species," strike "[3]12,960," substitute "15,700."

Amend 50 CFR 611.92(b) by revising Table 1 as follows:

§ 611.92 [Amended].

1. In species column one, under "Pollock," strike "117,340," substitute "151,100."

2. In species column two, under "Pacific Ocean Perch," strike "18,900," substitute "23,900."

3. In species column three, under "Other Rockfishes," strike "4,080," substitute "5,600."

4. In species column nine, under "other Species," strike "12,960," substitute "15,700."

[FR Doc. 78-31329 Filed 11-3-78; 8:45 am]

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proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

[6714-01-M]

FEDERAL DEPOSIT INSURANCE CORPORATION

[12 CFR Part 344]

RECORDKEEPING AND CONFIRMATION REQUIREMENTS FOR SECURITIES TRANSACTIONS

Advance Notice of Proposed Rulemaking

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Republication of proposed rule.

SUMMARY: On February 23, 1978 (43 FR 7441), the Federal Deposit Insurance Corporation ("FDIC") published for comment a proposed new Part 344 (12 CFR) to require that insured State nonmember banks who effect certain securities transactions for customers provide confirmations of and maintain records with respect to such transactions. Commentators were also invited to consider whether and to what extent regulations should be promulgated which would (1) expressly recognize the duty of State nonmember banks to obtain the best execution of securities transactions which they effect for customers, (2) establish competency and testing requirements for bank employees engaged in effecting securities transactions for customers. Similar proposals were published for comment by the Comptroller of the Currency and the Board of Governors of the Federal Reserve System. The comment period, as extended, ended on May 1, 1978.

A substantial number of comments were received by the FDIC expressing several concerns regarding these proposed amendments. As a result, the FDIC has determined to revise the proposed Part 344 incorporating many of the suggestions which were made by the commentators. Information setting forth estimated costs of implementation of the proposed amendment is also being requested. The FDIC has determined to take no further action at this time regarding the promulgation of regulations concerning best execution of securities transactions, and competency and testing requirements of bank employees.

DATE: Comments must be received on or before December 18, 1978.

ADDRESS: Interested persons are invited to submit written data, views, or arguments regarding the proposed regulations to the Office of the Executive Secretary, Federal Depoit Insurance Corporation, 550 17th Street NW., Washington, D.C. 20429. All written comments will be made available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT:

Gerald J. Gervino, Attorney, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, D.C. 20429, 202-389-4422.

SUPPLEMENTARY INFORMATION: The original proposal to adopt a new Part 344 has been substantially revised as a result of the numerous comments which were received. The most significant revision of the amendment as originally proposed pertains to the notification requirements. However, substantial revisions to the recordkeeping portion of the proposed part have also been made. The following is a summary of the significant revisions which are proposed.

With respect to the proposed recordkeeping requirements, the FDIC has taken into consideration the many comments which have been received expressing the concern that these requirements, as proposed, would be burdensome and costly due to (1) the length of time for which the required records would be kept; and (2) the variety of records which would be required to be maintained. In order to reduce the volume of records which an insured State nonmember bank would be required to maintain, the FDIC has proposed to decrease the number of years required for retention. Although the original proposal was silent with respect to the number of years for which copies of confirmations must be maintained, it is now proposed that the number of years for which all required records, including copies of confirmations, must be maintained be reduced from 6 years to 3 years. It appears that a longer retention period is unnecessary in the absence of some evidenced need for such longer period of time.

In further response to these concerns, and in consideration of those comments expressing the view that the recordkeeping requirements should be less onerous for smaller banks, the FDIC has proposed to exempt from certain of the recordkeeping requirements those banks which effect fewer than fifty (50) securities transactions per year. Thus, such banks that effect a nominal number of securities transactions would be required, pursuant to these proposed regulations, to maintain significantly fewer records.

In addition to these somewhat major revisions to the recordkeeping requirements, several other significant changes have been proposed with respect to recordkeeping. The revised proposal would delete the requirement for maintaining a chronological record of all receipts and deliveries of securities and of receipts and disbursements of cash. However, this information would still be required to be maintained in account records of customers. The part, as revised, would also change the requirement for including on the order ticket the time the order was executed to the time the order was placed with the broker/dealer, where a broker/dealer has been utilized. Where a broker/dealer is not used, the time of execution would remain the required information. A further proposed revision would permit banks to maintain records of only those broker/dealers for whom the bank has exercised discretion in selecting the broker/dealer to effect securities transactions for its customers, rather than to require that a record be kept of all broker/dealers used by the bank to effect such transactions. In addition, and in connection with this revision, a newly proposed provision would also require that a record be kept of the amount of commissions paid or allocated to each such broker during the calendar year.

With respect to the proposed confirmation requirements there have been two major revisions. The first pertains to the length of time within which an insured State nonmember bank must provide a customer with a confirmation of a securities transaction which has been effected for that customer. As revised, the proposal would require that where a broker/dealer is utilized, the confirmation would be furnished within 5 business days from the date the bank receives the broker/dealer confirmation, rather than 5 business days from the date of the transaction. However, where there is no broker/dealer utilized, the confirmation would be furnished to the customer within 5 business days from the date of the transaction. The second major revision

to the confirmation requirements substantially diminishes the number of confirmations which insured State nonmember banks would be required to furnish. The revised proposal reflects the concern, as expressed by many of the commentators, that the customer should have the right to request not to receive the confirmation. Thus, in those cases where the bank exercises investment discretion, in other than an agency capacity, no confirmation would be required except upon request. The confirmation requirements have been similarly liberalized for other types of accounts. It should also be noted that as an alternative to furnishing a separate bank confirmation containing the information as originally proposed, the bank may furnish the customer with a copy of the broker/dealer confirmation supplemented by the additional information as required by the revised proposal.

In addition to the changes which have been made with respect to the recordkeeping and confirmation requirements, a new section has been added to the part which contains the exceptions from requirements of this proposal. Two of the exceptions contained in this section are newly proposed by this revised proposal. These new exceptions represent a further significant revision to the original proposal. The exception for banks having an average of fewer than 50 securities transactions per year has previously been discussed. It should be noted that although such banks would be exempt from certain of the recordkeeping requirements, these banks would nevertheless be subject to the confirmation requirements and other provisions of the regulation, wherever applicable. In addition, activities of foreign branches of insured State nonmeber banks would be exempt from the requirements of this part.

To aid in consideration of this proposal by the FDIC, interested persons are invited to submit relevant data, views, comments or arguments. The FDIC is specifically requesting information concerning the projected costs of implementing the proposed amendments. Information should be separately furnished as to projected startup costs and continuing costs and, to the extent feasible, these estimates should be allocated between the recordkeeping and confirmation requirements. Unit transaction costs should be furnished if possible, indicating, if known, variances in such costs, depending on volume of transactions.

The FDIC proposes to add a new Part 344 to its regulations as set forth below:

PART 344—RECORDKEEPING AND CONFIRMATION REQUIREMENTS FOR SECURITIES TRANSACTIONS

Sec.

344.1 Scope of Part.
344.2 Definitions.
334.3 Recordkeeping.
344.4 Form of notification.
344.5 Time of notification.
344.6 Securities trading policies and procedures.
344.7 Exceptions.

Authority: U.S.C. 1817, 1818, 1819.

§ 344.1 Scope of part.

This part is issued by the Federal Deposit Insurance Corporation ("FDIC") and applies to banks which are organized under State law, are insured by the FDIC and are not members of the Federal Reserve System ("bank").

§ 344.2 Definitions.

For purposes of this part:

(a) "Customer" shall mean any person or account, including any agency, trust, estate, guardianship, committee, or other fiduciary account, for which a bank effects or participates in effecting the purchase or sale of securities, but shall not include a broker, dealer, dealer bank, or issuer of the securities which are the subject of the transactions;

(b) "Periodic plan" means any written authorization for a bank acting as agent to purchase or sell for a customer a specific security or securities, in specific amounts (calculated in security units or dollars) or to the extent of dividends and funds available, at specific time intervals and setting forth the commission or charges to be paid by the customer in connection therewith, or the manner of calculating them;

(c) "Collective investment fund" means funds held by a bank as fiduciary and, consistent with local law, invested collectively (1) in a common trust fund maintained by such bank exclusively for the collective investment and reinvestment of monies contributed thereto by the bank in its capacity as trustee, executor, administrator, guardian, or custodian under the Uniform Gifts to Minors Act, or (2) in a fund consisting solely of assets of retirement, pension, profit sharing, stock bonus, or similar trusts which are exempt from Federal income taxation under the Internal Revenue Code;

(d) "Security" means any interest or instrument commonly known as a "security," whether in the nature of debt or equity, including any stock, bond, note, debenture, evidence of indebtedness, or any particiption in or right to subsrcribe to or purchase any of the foregoing. The term "security" does not include (1) a deposit or share account in a federally insured depository institution, (2) a loan participation, (3) a letter of credit or other form of bank indebtedness incurred in the ordinary course of business, (4) currency, (5) any note, draft, bill of exchange, or bankers acceptance which has a maturity at the time of issuance of not exceeding 9 months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited, (6) units of a collective investment fund, or (7) interests in a variable amount (master) note of a borrower of prime credit;

(e) A bank shall be deemed to exercise "investment discretion" with respect to an account if, directly or indirectly, the bank (1) is authorized to determine what securities or other property shall be purchased or sold by or for the account, or (2) makes recommendations as to what securities or other property shall be purchased or sold by or for the account even though some other person may have responsibility for such investment decisions.

§ 344.3 Recordkeeping.

Every bank effecting securities transactions for customers shall maintain the following records of those transactions for at least 3 years:

(a) Chronological records of original entry containing an itemized daily record of all purchases and sales of securities which shall include the account for which each such transaction was effected, the description of the securities, the unit and aggregate purchase or sale price (if any), the trade date, and the name or other designation of the broker/dealer or other person from whom purchased or to whom sold;

(b) Account records for each customer, which shall reflect all purchases and sales of securities, all receipts and deliveries of securities, and all other debits and credits pertaining to each account, including all receipts and disbursements of cash;

(c) A separate memorandum (order ticket) of each order to purchase or sell securities (whether executed or cancelled), which shall include:

(1) The account for which the transaction was effected;

(2) Whether the transaction was a market order, limit order, or subject to special instructions;

(3) The time the order was received by the trader or other bank employee responsible for effecting the transaction;

(4) The time the order was placed with the broker/dealer, or if there was no broker/dealer, the time the order was executed or cancelled;

(5) The price at which the order was executed; and

(6) The broker/dealer utilized;

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(d) A record of all broker/dealers selected by the bank to effect securities transactions and the amount of commissions paid or allocated to each broker during the calendar year.

§ 344.4 Form of notification.

Every bank effecting a securities transaction for a customer shall maintain for at least 3 years and, except as provided in § 344.5, furnish to such customer either of the following types of notifications:

(a)(1) A copy of the confirmation of a broker/dealer relating to the securities transaction; and (2) if the bank is to receive remuneration from the customer or any other source in connection with the transaction, and the remuneration is not determined pursuant to a prior written agreement between the bank and the customer, a statement of the source and the amount of any remuneration to be received; or

(b) A written notification disclosing—

(1) The name of the bank;

(2) The name of the customer;

(3) Whether the bank is acting as agent for the customer, as agent for both the customer and some other person, as principal for its own account, or in any other capacity;

(4) The date and time of execution (or the fact that the time of execution will be furnished, within a reasonable time, upon written request of the customer), and the identify, price, and number of shares or units (or principal amount in the case of debt securities) of the security purchased or sold by the customer;

(5) The amount of any remuneration received or to be received, directly or indirectly, by any broker/dealer from the customer in connection with the transaction;

(6) The source and amount of any remuneration received or to be received by the bank from the customer or any other source in connection with the transaction, unless remuneration is determined pursuant to a written agreement between the bank and the customer; and

(7)(i) The name of the broker/dealer utilized; or (ii) where no broker/dealer is utilized, the name of the person from whom the security was purchased or to whom it was sold, or the fact that such information will be furnished within a reasonable time upon written request.

Provided, however, That the requirements of this § 344.4 shall not applicable to transactions in (i) securities issued or guaranteed as to principal or interest by the United States; (ii) Federal agency obligations; or (iii) municipal securities as defined in section 3(a)(29) of the Securities Exchange Act of 1934.

§ 344.5 Time of notification.

Except as provided in §§ 344.5(a)-(e), every bank effecting securities transactions for a customer shall furnish to the customer the written notification described in § 344.4 within 5 business days from the date of the transaction or, if a broker/dealer is utilized, within 5 business days from the date of receipt by the bank of the broker/dealer's confirmation.

(a) With respect to those accounts over which the bank exercises no investment discretion, the bank and the customer may agree in writing to a different arrangement, if the agreement makes clear the customer's right to receive the written notification described in § 344.4 within the time prescribed at no additional cost to the customer. This exception does not apply to periodic plans.

(b) With respect to accounts over which the bank exercises investment discretion other than in an agency capacity, if (1) the person with power to terminate the account, or (2) in the event there is no such person, the person holding a beneficial interest in the account requests the bank shall furnish the written notification described in § 344.4 to the requestor within a reasonable time. The bank may charge a reasonable fee for providing this information. This subdivision does not apply to collective investment funds.

(c) With respect to accounts over which the bank exercises investment discretion in an agency capacity, the bank shall (1) furnish to each customer, not less than once every 3 months, an itemized statement specifying the funds and securities in the bank's custody or possession at the end of the period as well as all debits, credits and transactions applicable to the customer's account during that period, and (2) if requested by the customer, furnish to each customer within a reasonable time the written notification described in § 344.4.

(d) With respect to any collective investment fund, the bank shall at least once in each calendar year furnish to the customer a copy of the financial report of the fund or provide notice that a copy of the report is available and will be furnished upon request to each person to whom a regular periodic accounting would ordinarily be rendered for each participating account. This report shall be based upon an audit.

(e) With respect to any periodic plan, the bank shall: (1) after the end of each quarter of a year in which a transaction was completed, furnish to the customer a written statement showing the funds and securities in the custody or possession of the bank at the end of that period and all debits, credits and transactions applicable to the customer's account during that period; or (2) within a reasonable time following each transaction, furnish on a per transaction basis the information described in § 344.4, except that any information relating to remuneration paid in connection with transactions in securities need not be furnished to the customer when paid by a source other than the customer. The bank may charge a reasonable fee for providing this information. If the bank elects (1) above, it shall, upon written request from the customer, supply the information described in (2) above.

§ 344.6 Securities trading policies and procedures.

Every bank effecting securities transactions for customers shall establish written policies and procedures providing:

(a) Assignment of responsibility for supervision of all officers or employees who (1) transmit orders to or place orders with broker/dealers or (2) execute transactions in securities for customers;

(b) For the fair and equitable allocation of securities and prices to accounts when orders for the same security are received at approximately the same time and are placed for execution either individually or in combination;

(c) Where applicable, for the crossing of buy and sell orders on a fair and equitable basis to the parties to the transaction; and

(d) That bank officers or employees whose duties include account management or effecting securities transactions for customers, or who are directly engaged in the management, direction or supervision of such officers or employees, must report to the bank, all securities transactions made by them or on their behalf, either at the bank or elsewhere, in which they have a beneficial interest, except (1) transaction effected in any account over which the bank officer or employee has no direct or indirect influence or control, and (2) transactions in U.S. Government or agency obligations. These reports shall be filed with the bank within 10 days after the end of each quarterly period in which any such security transaction was effected and shall be retained by the bank for 3 years.

§ 344.7 Exceptions.

(a) The requirements of §§ 344.3(b) through 344.3(d) shall not apply to banks having an average of less than 50 securities transactions per calendar year for customers over the prior 3-calendar-year period;

(b) Activities of a bank that are subject to regulations promulgated by the Municipal Securities Rulemaking Board shall not be subject to the requirements of this Part; and

(c) Acitivities of foreign branches of a bank shall not be subject to the requirements of this Part.

By order of the Board of Directors, October 30, 1978.

FEDERAL DEPOSIT INSURANCE CORPORATION,
ALAN R. MILLER,
Executive Secretary.

[FR Doc. 78-31266 Filed 11-3-78; 8:45 am]

[6320-01-M]

CIVIL AERONAUTICS BOARD

[14 CFR Parts 221, 302, and 399]

[EDR-366; PDR-58; PSDR-52; Docket 33836, Dated: October 26, 1978]

U.S. MAINLAND-PUERTO RICO/VIRGIN ISLANDS RATEMAKING ENTITY

Change In Tariff Justification; Revision of Complaint Procedures; Statements of General Policy

AGENCY: Civil Aeronautics Board.

ACTION: Proposed rule.

SUMMARY: The Board is proposing to extend the policies developed for the Domestic Passenger Fare Rulemaking to the U.S. mainland-Puerto Rico/Virgin Islands ratemaking entity. The policies allow carriers to experiment with price/quality of service options tailored to their individual costs and the requirements of individual markets. Under the new policies, ceiling fares are established as a base from which carriers are permitted to set fares upward and downward within specified zones. Fares within the zones ordinarily would not be suspended on grounds that they might be unreasonable. The zones would permit fare competition, while the maximums would protect against unwarranted fares where competition is an insufficient check.

DATES: Comments due by: December 18, 1978. Reply comments due by: January 2, 1979.

Comments and other relevant information received after these dates will be considered by the Board only to the extent practicable. All filed comments must include a full presentation of all evidence and arguments upon which the commenter wishes to rely in support of his position, or in rebuttal of facts relied upon by the Board.[1]

ADDRESSES: Twenty copies of comments should be sent to Docket 33836, Docket Section, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., as soon as they are received.

FOR FURTHER INFORMATION CONTACT:

Steven McKinney, Trial Attorney, Bureau of Pricing and Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, 202-673-5273.

SUPPLEMENTARY INFORMATION:

I. BACKGROUND

The Board has adopted new policies that provide a framework for competitive fare flexibility in the domestic 48-State ratemaking entity and a foundation for reevaluation of our policies for other ratemaking entities. By Final Rule adopted August 25, 1978, Regulation PS-80,[2] (Domestic Passenger-Fare Rulemaking), we published our findings and conclusions concerning the modification of policies previously developed in the Domestic Passenger-Fare Investigation, Docket 21866. The new policies reflect our conclusion that a different regulatory climate is needed to provide an environment within which carriers can engage in greater price competition, particularly in normal fares, in keeping with our statutory mandate to encourage more efficient carrier operations, lower fares, and economical service. The changes in policy (1) permit carriers to set fares within broad zones of reasonableness with a limited risk of suspension;[3] (2) replace uniform normal fares for all carriers and markets of equal distance with ceilings; (3) provide downward fare filing flexibility of 50 percent[4] from the ceiling and upward flexibility of 5 and 10 percent, depending upon the number of carriers authorized to serve a market;[5] and (4) eliminate the prescribed relationship between first-class and coach fares.[6] In conjunction with these policies, we have also modified the method by which the fare ceiling will be adjusted for changes in costs.

The public benefits from price competition recognized in these policies are not limited to the 48 States, and we intend to extend the principle of fare flexibility to other so-called ratemaking entities. As a first step, we intend to extend the policies to the U.S. mainland-Puerto Rico/Virgin Islands entity. The current fare policies and standards for that entity were established in the Board's investigation of Mainland U.S.-Puerto Rico/Virgin Islands Fares, Docket 24353, Orders 74-10-78 and 76-8-100 (Mainland-PR/VI Fares). In contrast to our preexisting standards for domestic passenger fares, we have not prescribed uniform normal fares for equidistant markets in the Mainland-Puerto Rico/Virgin Islands entity. The standard fares in that entity resulting from our decision in the Mainland-PR/VI Fares case are only maxima, derived from a factoring of specified peak/off-peak fare differentials. We have thus already recognized the advantages of ceiling fares and peak/off-peak differentials for that entity by incorporating day-of-week and seasonal differentials into the fare structure,[7] although the differentials are prescribed rather than permitted.[8]

With maximum rather than prescribed fares already in place and with

[1] We have decided that all relevant issues can be determined on the basis of written comments, and that oral evidentiary procedures will not be required. We will not entertain arguments to the contrary in the absence of a detailed specification of the disputed facts which the commenter considers cannot be resolved by written submissions, detailed evidence supporting his position with respect to such facts, a detailed specification of the manner in which he believes his version of these facts differs from the facts that may be relied upon by the Board, and a detailed explanation of why he believes the dispute cannot be resolved by written submission.

[2] Amends Part 399—Statements of General Policy on Domestic Passenger-Fare Level, Structure, and Discount Fares, 43 FR 39522, September 5, 1978.

[3] Fares within a zone would not be subject to suspension on grounds of reasonableness unless a complainant could demonstrate that the injury to competition was greater than the injury to the traveling public from being deprived of lower fares during the period of suspension.

[4] Carriers have a downward fare filing flexibility of up to 70 percent on 40 percent of their weekly available seat miles.

[5] Specifically:
(1) in markets where four or more interstate and intrastate carriers are authorized to provide nonstop service either on an unrestricted or restricted basis, each carrier should have the opportunity to set fares in a zone ranging up to 10 percent above the fare ceiling;
(2) in markets where two or three interstate or intrastate carriers are authorized to provide nonstop service either on an unrestricted or restricted basis, each carrier should have the opportunity to establish fares in a zone ranging up to 5 percent above the ceiling on 110 days throughout the year; and
(3) in monopoly markets, the carriers should have the opportunity to establish fares in a zone ranging up to five percent above the ceiling on 58 days throughout the year.

[6] In addition to these policy changes, the Board modified its policies on the level and division of joint fares.

[7] A coach weekend surcharge of $6 for day services and $5 for night services applies in Boston/Hartford/New York/Philadelphia/Baltimore/Washington/Miami-San Juan and the New York-Virgin Islands markets. A coach seasonal surcharge of $6 for day services and $5 for night services applies during the peak seasons in all markets.

[8] The Commonwealth of Puerto Rico has stated its support for extending fare flexibility to Mainland-Puerto Rico markets. *See* Comments in the Domestic Passenger-Fare Rulemaking, PS-80.

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the principle of peak/off-peak pricing already recognized, our objective in this rulemaking will be to simplify the existing standard maximum or ceiling fares by reducing their number and to implement zones for fare filings where suspension on grounds of unreasonableness will be limited.

II. The Board's Proposal

A. Introduction

In our investigation of Mainland-PR/VI Fares, the Board established these standards and policies: (1) load factor standards of 68 percent for the New York-San Juan market and 60 percent for all other markets in the entity; (2) seating configuration standards comparable to those adopted in the Domestic Passenger-Fare Investigation; (3) a coach weekend surcharge of $6 for day services and $5 for night services, with the weekend defined as Friday through Sunday southbound and Saturday through Monday northbound; [8] (4) a seasonal surcharge on basic coach fares of $6 for day services and $5 for night services, with the peak season for Puerto Rico markets defined as June 25–September 10, December 15–December 27, southbound, and December 26–January 6, northbound, and for Virgin Islands markets, December through April; [9] (5) first-class fares based on a fully allocated cost ratio of coach fares; (6) uniform maximum hours for night service. We derive formulas that produce maximum normal fares reflecting the different standards by factoring average carrier costs with the fare differentials weighted by traffic volumes.[10] We also determined that normal fares should not be burdened by revenue dilution from discount fares, i.e., discount fares are computed on a hypothetical normal fare basis.

The standards and policies we established in the Mainland-PR/VI Fares investigation were the Board's first definitive approach to fare policies and standards for that entity. Airline costs, at that time, were escalating at an abnormal rate; the markets involved were essentially either monopoly or duopoly markets with little or no threat of new entry; the islands depended (as they still do) on air transportation; and travellers were mainly discretionary or ethnic passengers accustomed to low-priced, high load factor service. Several factors combine to prompt this reevaluation of our policies for these markets. We have learned from first hand experience with domestic air transportation that policies encouraging new entry or the threat of new entry coupled with policies encouraging carrier initiated competitive fares produce benefits for travellers, the airlines, and ultimately the economy as a whole; [11] and there is no reason to minimize our conviction that we can now trust competition to force the carriers to set reasonable fares, rather than prescribing them ourselves, provided that we insure, where possible, that markets are competitive in structure and we regulate to limit the risks of economic harm as we increase reliance on the marketplace. The policies we adopted in the Domestic Passenger-Fare Rulemaking embrace a precept that we cannot confine to the 48 States:

> "Our primary objective in this proceeding is the development of a regulatory climate in which carriers will be able to compete in normal fares relatively free from government intervention. While "the possible benefits of (price) competition do not lend themselves to detailed forecast," [12] it cannot be disputed that price competition is the most effective way to encourage efficient operations and provide for the needs of consumers.
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> [12] *FCC v. RCA Communications, Inc.*, 346 U.S. 86, 96 (1953)." [13]

The policies we adopt here are designed to encourage this competition by placing the pricing decisions and the consequences of those decisions back where they belong—in the marketplace and hands of carrier management. The Board will no longer dictate the exact normal fare level for all markets; we will, however, prevent excessive fares in those markets where competition is an insufficient check and insure that the new pricing freedom does not lead to inadequate service or predatory behavior.

Those policies represent a new charter for air transportation within our jurisdiction, and the principles are broad enough not only to warrant but to require their extension to other entities.[13] Moreover, we believe that articulation and publication of a competitive fare policy will have an immeasurable, yet profound, influence on those whom it affects: extension of the competitive-fare policies to another entity will lead airline management to compete in price there. In addition, there has been a surge of applications for new authority [14] to serve the Mainland-Puerto Rico/Virgin Islands markets. Only by providing carriers the flexibility to compete over a wide range of price/quality of service options can we realize the full economic benefits of entry or the threat of it. Likewise, incumbents in these markets have begun to experiment with new types of low fares.[15] Although our existing policies do not prevent carriers from offering normal fares below the ceilings, there is now more incentive for them to consider doing so, and a corresponding reason for us to reconsider the fare suspension guidelines and rules we have applied to this entity in the past.

We tentatively conclude that passenger fare policies similar to those adopted in the Domestic Passenger-Fare Rulemaking should apply to the U.S. mainland-Puerto Rico/Virgin Islands entity. The fare level and structure standards already in effect there permit normal fares below a maximum and recognize the important function of peak/offpeak pricing; therefore, the prescribed uniformity in normal fares that prevailed in the domestic entity before we adopted PS–80 does not exist here. However, the prescribed uniformity in differentials which does prevail is, in our view, almost as rigid as complete uniformity and just as undesirable. We intend to move the fare structure toward the more flexible standards, both downward and upward, now applicable to the domestic entity. In order to do so, we are proposing to replace the three levels of fares [16] derivable from the differentials prescribed in Mainland-PR/VI Fares with a ceiling computable for each market.[17] We discuss a method for making this computation in the next section.

Using the ceiling fares as a point of reference, we propose greater downward and upward flexibility than is allowed under the existing standards. We will elaborate on this below. We also propose to compute periodic adjustments in fare level using a simplified methodology.

[8] Weekend surcharges apply only in specified markets. See note 6, supra.

[9] We permit waivers from the prescribed dates upon a showing that they are necessitated by calendar variations. Order 76–8–100.

[10] Order 76–12–96.

[11] See discussion of passenger traffic growth and airline operating results in PS-80.

[12] PS–80, p. 20.

[13] See Continental Air Lines, Inc. v. CAB, 551 F.2d 1293 (D.C. Cir. 1977) where the Court of Appeals remanded to the Board for reconciliation two apparently inconsistent principles which the Board had adopted, respectively, for two different ratemaking entities. Cf., the Board's discussion in the *Mainland-PR/VI Fares* case of load factor standards, Order 74–10–78, p. 31, and hypothetical normal fare treatment of promotional fares, Order 76–8–100, p. 26.

[14] We are considering these applications in the *Caribbean Area Service Investigation*, Docket 30697, and the expedited *Northeast Points-Puerto Rico/Virgin Islands Service Investigation*, Docket 32293. At issue are both low-fare proposals and multiple-permissive authority.

[15] For example, the Board has permitted Delta to offer a new, lower coach fare between the west coast and Puerto Rico and reduced first-class fares in all of its Mainland-Puerto Rico markets (Order 78–5–152); and American has filed one-way advance purchase coach fares for the New York/Washington-San Juan markets with discounts from normal day and night coach fares ranging from 11 to 39 percent.

[16] In markets where day-of-week as well as seasonal fare differentials were specified, the three levels of fares are the offpeak midweek, offpeak weekend or peak midweek ($6 above the offpeak midweek fare), and the peak weekend ($12 above the offpeak midweek

[17] The ceiling fare for the New York-San Juan market would still reflect the higher load factor standard applicable there.

We intend to proceed by notice and written comment rulemaking. We discussed extensively our authority to do so generally in the Domestic Passenger-Fare Rulemaking (PS–80, pp. 10–19), and the procedures employed here will satisfy the tests of legality. As a matter of fairness to interested persons, we are providing an opportunity to commenters to show why written submissions cannot resolve any disputed facts.

B. Ceiling Fares

We propose to replace the prescribed fare relationships in a market with ceilings. This modification, coupled with our proposal on fare flexibility, would permit the carriers to leave in place existing fares and maintain their opportunity to earn a 12-percent return on investment. The specified differentials [18] produce a rigidity in the fares, ignore differences in costs among individual carriers and between peak and offpeak markets, and permit management no discretion about what the right fare may be. Although our fare standards do not require carriers to file a prescribed normal fare, the prescribed relationships among normal fares, in effect, limit carrier discretion because a decision by management to set one fare at any given level automatically fixes the level of any other. For example, if a carrier decided that the peak season midweek fare between New York and San Juan should be $100,[19] the peak weekend day fare would have to be $106, the offpeak midweek day fare $94, and the offpeak weekend day fare $100, or the same as the peak season midweek fare. These step-like uniform relationships restrict airline management's ability to respond to market and cost of service differences. They also prevent fare differentials from varying among markets. For example, the peak/offpeak fare differentials in the New York-San Juan market are identical to those in the Miami-San Juan market, despite differences in costs related to distance, differences in market demand characteristics, and differences in individual carrier costs.

This system is incompatible with a flexible competitive market, and we tentatively conclude that we should eliminate the fixed relationships between the fares and the consequent fixing of related fares. As a replacement, we prefer a method that would not require adjustments to the existing fares but would permit retention of fares based on entity average costs, including the recognized rate of return and tax allowances, adjusted for the ratemaking standards adopted in Mainland-PR/VI Fares. Specifically, we propose that the ceilings be (a) the peak season midweek fares (or the offpeak weekend fares, which should be identical) in markets where day-of-week differentials are now specified and (b) the offpeak season fare in markets where only seasonal differentials are specified. The upward and downward flexibility we also propose will generally permit carriers who choose to do so to leave in place other fares set in relationship to these ceilings.[20] [20a] We expect comments on this proposal, and we encourage them. Other alternatives are open, of course. At one extreme, we could remove the ceilings, and at the other, we could merely set the existing fares, including their relationships, as the ceilings. In between these extremes, we could compute a new traffic-weighted average ceiling fare, as one alternative. Each alternative is not perfect, but we believe that, on balance, our proposed solution is reasonable and that, by comparison, the others are not satisfactory. Removal of the ceilings would not protect consumers from unreasonably high fares, at least during this transition from a period of limited entry to one of freer entry and exit, at which time we believe that competition will provide its own restraints. On the other hand, requiring all fares now in place to be the ceiling in effect freezes existing rigidities into the base for upward and downward flexibility and leaves and unacceptable starting point for flexibility, because the fares already have differentials built into them. Recomputing ceiling fares on the basis of entity average costs, adjusted for ratemaking standards and traffic mix, is a more appealing solution than either of the foregoing. However, this would unduly delay implementation of the fare flexibility we are proposing to extend to this entity, and we do not favor it. The domestic ceiling fares based on the DPFI fare formula are another alternative. We intend in the future to give thorough consideration to a policy of applying the same fare standards to other entities; however, this is not the proceeding in which to examine that possibility.[21] If we adopt our tentative solution for ceiling fares, i.e., peak midweek or offpeak weekend fares in markets where day-of-week differentials exist and offpeak fares in other markets, we would permit those carriers who wished to do so to leave fares at present levels without refiling.[22] The proposed ceiling fares at the present time are the maximum fares in markets on more days of the year than any of the other; thus, they are in a sense the "normal fares." Moreover, in the primary markets where day-of-week as well as seasonal differentials exist, the proposed ceilings represent the unweighted average of the fares charged and are thus a reasonable proxy for ceilings computed on the basis of average costs weighted for traffic mix. For these reasons, we tentatively prefer them.

C. Fare Flexibility Above the Ceiling

We next propose to adopt a policy for fare flexibility above the ceiling fares. The prevalence of peak/offpeak pricing in the Mainland-Puerto Rico/Virgin Islands markets over the years, the existence of such differentials in the fare structure today, the logic of permitting some upward fare flexibility along with downward flexibility, and the longrun economic benefits of peak/offpeak pricing differentials warrant the adoption of such a policy. Although we have already recognized a need for peak/offpeak fares in those markets, the current differences are largely the product of Board prescription, not market forces. Carriers should have the opportunity to adjust fares up and down, within reasonable limits, and the degree and timing of

[18] The peak/offpeak day-of-week differential is defined as follows in Order 74–10–78:
(a) the coach weekend differential is $6 for day services and $5 for night services (there is no weekend differential for first-class);
(b) the definition of weekend is Friday through Sunday, southbound, and Saturday through Monday, northbound;
(c) the weekend differential applies to the New York/Boston/Hartford/Philadelphia/Baltimore/Washington/Miami-San Juan and New York-Virgin Islands markets.
For seasonal peak/offpeak fare differentials, these standards were prescribed:
(a) the coach seasonal surcharge is $6 for day services and $5 for night services;
(b) the definition of the peak seasons are, for Puerto Rico markets, the peak season is June 25–September 10, December 15 December 27, southbound, and December 26–January 6, northbound, for Virgin Islands The carriers may seek a waiver to depart from these dates in order to accommodate calendar variations. Order 76–8–100, amending Order 74–10–78.

[19] For purposes of this illustration, we are assuming that the aggregate revenues produced by these fares would not exceed the allowable regulatory maximum.

[20] See comparison in Appendix A. In those markets where we now require weekend differentials, our proposed ceiling would permit, but not require, carriers to raise offpeak midweek fares.

[20a] Appendices A through D filed as part of original document.

[21] If the DPFI formula fare ceilings were applied in the Mainland-Puerto Rico/Virgin Islands markets, the permissible maximum fares would be increased substantially. This is simply unnecessary since the ceilings we propose to use establish fares high enough to enable carriers to provide adequate service and earn an adequate return. Also, we are not prescribing a rigid ceiling since carriers will have the flexibility to charge fares above it where they can demonstrate higher costs, and they will have limited flexibility to price their services above it without first obtaining Board approval. Finally, reliance on a DPFI formula appears to be at odds with the Airline Deregulation Bill of 1978 recently passed by Congress.

[22] According to our calculations, the upward and downward fare flexibility we are now proposing would not require refiling of existing fares now set above or below the proposed ceilings, except in the very short-haul markets such as Miami/San Juan, under an upward 5-percent zone.

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such adjustments should be left up to carrier managements. In sum, the fare differentials required by the Board's previous investigation of Mainland-PR/VI Fares are inflexible and thus incompatible with our current views, and we intend to modify the requirement.

We tentatively conclude that policies similar to those we adopted for upward fare flexibility in the Domestic Passenger-Fare rulemaking should be extended to the Mainland-Puerto Rico/Virgin Islands entity. We propose two alternatives: (a) adapt the 5 and 10 percent upward zones set forth below to this entity or (b) replace the 5 percent upward flexibility with 10 percent. Either would entail replacing the prescribed day-of-week and seasonal fare differentials with zones permitting fare differentials, but not requiring them. We would also permit upward fare flexibility in all markets, and on any day, consistent with the maxima permitted by the zones and the limitations on days and directionality discussed below. The policies for upward fare flexibility adopted in the Domestic Passenger-Fare Rulemaking are as follows:

(1) In markets where four or more carriers are authorized to provide nonstop service either on an unrestricted or restricted basis,[23] each carrier should have the opportunity to set fares in a zone ranging up to 10 percent above the fare ceiling;

(2) In markets where two or three carriers are authorized to provide nonstop service either on an unrestricted or restricted basis,[24] each carrier should have the opportunity to establish fares in a zone ranging up to five percent above the ceiling on 110 days throughout the year; and

(3) In monopoly markets, the carriers should have the opportunity to establish fares in a zone ranging up to five percent above the ceiling on 58 days throughout the year.

We would not suspend fares within these zones on account of the reasonableness of their level, absent a showing of unusual or extraordinary circumstances. These policies do not preclude peak fare differentials beyond those in the upward "no-suspend" zones,[25] but the proponent would have to justify them.

The upward fare flexibility policies adopted in the Domestic Passenger-Fare Rulemaking are obviously a judgmental determination and do not precisely reflect fare characteristics unique only to the 48 States. In particular, the percentage zones may lend themselves to other entities, and the existing peak fares in Mainland-Puerto Rico/Virgin Islands markets generally fit within those zones. We believe that the additional flexibility afforded by the zones is reasonable. We are concerned, however, that the definitions the Board established for peak days of the week and seasons (and related restrictions on directionality and markets) in the Mainland-Puerto Rico/Virgin Islands Fares case [26] may not fully coincide with the Board's policies regarding peak days in the Domestic Passenger-Fare Rulemaking. We are inclined to let the existing broader definitions control, if need be, for this particular entity because we are reluctant to take away flexibility the carriers already have which may exceed that afforded by our domestic policies and, in the process, deprive the travelling public or price/quality of service options they now enjoy. For example, in one-carrier markets having prescribed seasonal fare differentials, such as Chicago-Virgin Islands, the aggregate number of days on which the peak fares are now required (151) exceeds the number allowed under our policies in the domestic case (58). In our opinion, instances such as this warrant an exception to our domestic policies. Besides the fact that our current upward fare flexibility policies for this entity permit peak fares on more days in some markets than do our domestic policies, certain peak fares in existence would exceed the upward fare zones adopted for the domestic entity. For example, in short-haul markets such as Miami-San Juan, the effective $6 peak season weekend fare differential exceeds the upward five percent zone in the domestic policies. We are reluctant to disturb this upward fare flexibility already in effect by mechanically transplanting each and every detail of our domestic policies without recognizing that differences do exist between the entities.[27] As an alternative to the 5 and 10 percent zones applicable to domestic markets, we could instead adopt here an upward zone of 10 percent for all markets applicable on days as determined by the policies. Unlike domestic markets, where our experience with peak/offpeak fare pricing differentials has been limited mostly to night fares, there is reason to believe that we could go beyond the upward fare flexibility standards for domestic markets and allow somewhat more in the Mainland-Puerto Rico/Virgin Islands entity. This alternative recognizes that upward fare flexibility has existed, in the form of day-of-week and seasonal fares, in that entity for some time under standards found reasonable by the Board.

We expect comments on the foregoing alternatives, and we will judiciously weigh the commenters' suggestions.

D. FARE FLEXIBILITY BELOW THE CEILING

Implicit in the ceiling fares is the opportunity for carriers to set fares below them, but that opportunity will be frustrated unless we check our exercise of suspension powers that may interfere with this normal, healthy process of price competition. We explained at length in the Domestic Passenger-Fare Rulemaking why a zone was needed within which carriers may file fares with relative assurance that we would not suspend, either upon our own initiative or upon complaint. We propose a policy of greater downward fare flexibility for the Mainland-Puerto Rico/Virgin Islands entity. We have incorporated two alternatives in our proposal: (a) the same zones as are provided in the domestic policy or (b) downward flexibility without a floor. In the domestic rulemaking, we adopted a policy that fares set within a 50 percent zone below the ceiling would not be suspended on grounds of reasonableness [28] unless a complainant could demonstrate that the injury to competition from allowing them to be effective during investigation would be greater than the injury to the travelling public from depriving them of the benefit of the reduced fares.[29] We gave carriers the additional opportunity to set fares, on 40 percent of their weekly available seat miles, down to a 70 percent level below the ceiling, subject to the same test for suspension as fares within the other zones. Here is how we described the policy:

(f) Each carrier should have the opportunity to set fares in each market within a zone ranging to 50 percent below the ceiling fares. Also, on 40 percent of their weekly available seat miles, carriers should have the opportunity to set fares in each market down to a 70 percent level below the ceiling. Fares within these zones will not be suspended by the Board on account of the reasonableness of the level of the fare absent the following extraordinary circumstances:

(1) The high probability that the fare would be found to be unlawful after investigation;

(2) The substantial likelihood that the fare is predatory so that there would be an immediate and irreparable harm to competition if it were allowed to go into effect;

[23] Carriers in a market having only fill-up authority or who cannot carry local traffic will not be counted.

[24] Carriers in a market having only fill-up authority or who cannot carry local traffic will not be counted.

[25] *See* § 399.33(a) and discussion on pp. 30-31 in PS-80 regarding justification of such fares.

[26] See discussion in preceding section.

[27] We would not require that existing fares be refiled even if they exceed the upward zones adopted; however, flexibility to adjust fares subsequently would be more limited under the flexibility afforded by the domestic zone.

[28] Fares that may be unjustly discriminatroy or unduly preferential or prejudicial would still be subject to suspension on those grounds.

[29] If this demonstration were not made, the Board would nevertheless consider whether the fares should be investigated, either on the basis of the complaint or on its own initiative.

(3) The harm to competition would be greater than the injury to the travelling public if the proposed fare were unavailable; and

(4) The suspension is in the public interest;

(g) Carriers should be free to set market fares below these minima on the basis of such factors as their individual costs or specialized marketing needs, unless the level of the proposed fare reductions will result in an inability of the carriers in the market to provide adequate service to the public or the fares are otherwise unlawful * * *. (PS-80, p. 55)

A policy restraining our suspension powers will reduce barriers to competition and bring the air transportation markets affected closer to unregulated markets, which function without the threat of price suspensions.

There is an obvious need for broad fare flexibility in the Mainland-Puerto Rico/Virgin Islands entity, and the size of a downward zone for the Mainland-Puerto Rico/Virgin Islands markets is, like the upward zones, very much a matter of judgment. In our opinion, the threshold question here is whether to establish a floor at all. It can plausibly be argued the answer to that question is no. There is little evidence of destructive competition or service deterioration in these markets. Average load factors have remained near or below the standards applied for ratemaking purposes; thus, the overall level of capacity has not deteriorated. At the same time, we have not yet found a need for introducing a test for screening discount fares and automatically terminating their availability like the standards we previously applied in domestic markets.[30] Most importantly, the carriers have had downward fare flexibility in the Mainland-Puerto Rico/Virgin Islands markets, even for normal fares, but we are not aware of recent instances where they have abused it. The question of whether to have a floor also confronted us in the domestic rulemaking. There, in response to comments from American, we said:

American, on the other hand, recommends that the Board not establish a floor at all. It points out that a lower limit on fares creates a natural impetus for carriers to set fares at that level, whether they are justified or not.

As we discussed in the Notice, a "suspend-free" zone should go as low as possible, since there are wide differences in the costs of different flights and in the nature of demand in different markets. A zone of flexibility gives the carriers the ability to fine-tune their prices accordingly. Thus, American's suggestion has some appeal. Nevertheless, we believe a floor is necessary as we introduce our new policies, so that we can be satisfied that the movement toward competitive pricing does not result in a deterioration in service. We, of course, do not expect it to occur; and, once we are assured by experience that fares below the floor will not lead to inadequate service, we should be able to eliminate the floor completely. (PS-80, p. 43, footnotes omitted)

That reasoning applies with less force here, since carriers in these markets, in contrast with the Mainland, have already had the right to set normal fares without a floor; and yet there has been no evidence of this greater freedom resulting in inadequate service levels. It may, of course, be argued, on the other hand, that the absence of destructive competition in a regime of restricted entry justifies no such inference about what will happen as we move to permit more competitive entry. But, since our basic conviction, expressed also in our decision on domestic fares, is that there is no reason to regulate price competition in air transportation differently from industry generally, it seems anomalous to modify our policies in the Mainland-Puerto Rico/Virgin Islands markets by making them more restrictive than they have been in the past. It would seem more logical, instead, to retain the present degree of pricing freedom, while of course reserving the right to impose floors such as we have retained in the domestic market, when and as they appear, on the basis of experience, to be necessary.

We could, however, adopt the zones of downward fare flexibility adopted in the domestic case, for the same reasons we gave there. Incumbents already offer fares in a range 30 to 40 percent below normal fares,[31] and applicants in pending route cases are promising new low-fare services, the precise limits of which are yet undetermined. Although we would not expect harmful consequences for competition and service to result from a "no-suspend" zone without a floor, the broad but more limited fare flexibility of our policies for the domestic entity could stand as an interim solution for the Mainland-Puerto Rico/Virgin Islands markets. As those markets move towards less restricted entry and experience provides more data, we would review our conclusions and make adjustments to accommodate change. Commenters should evaulate these alternatives.

In the Domestic Passenger-Fare Rulemaking, we also amended [32] our economic and procedural regulations in order to relieve the proponent of a fare within the zones from having to justify the fare initially and to provide complainants an opportunity to reply to a justification filed in answer to a complaint. Those modifications should also apply to the Mainland-Puerto Rico/Virgin Islands entity. We propose to modify § 221.165 of the Board's Economic Regulations so that the requirement of economic data with fare filings no longer applies to fares within the proposed zones. We also propose to amend section 302.505 of our Rules of Procedure in order to give complainants an opportunity to reply to answers filed in justification of fares filed within the zones.

E. FIRST-CLASS FARES

At the present time, we require first-class fares in Mainland-Puerto Rico/Virgin Islands markets to bear minimum percentage relationships to coach fares.[33] This policy is based on our conclusion in *Mainland-PR/VI Fares* that first-class fares should be treated essentially the same as in Phase 9 of the DPFI: i.e., the differentials should reflect differentials in fully distributed costs. We propose to give carriers the freedom to set first-class fares. This change in policy logically parallels our views on fare flexibility and the new policy on first-class fare levels articulated in the Domestic Passenger-Fare Rulemaking. There, in our notice of rulemaking (PSDR-51, 43 FR 16503, April 19, 1978), we stated:

The same logic as recommends we permit pricing flexibility for coach fares, recommends we do the same for first-class. The prescription of minimum first-class fares may prevent the carriers from maximizing net-revenues from this class of customers and far from protecting coach passengers from being burdened by first-class traffic may deny the former benefit of a larger net revenue contribution and impose unnecessary fares on the latter as well. The ideal first-class fare premium depends upon the elasticity of demand for first-class service and also upon the number of seats that would otherwise be empty. If carriers were free to vary the first-class fare markup, and if they felt demand for that service were fairly price elastic, they could lower the premium, sell more seats, get the added net contribution to revenues that our present rule prevents, and in the process confer benefits on travellers willing to pay somewhat more for first-class comfort. The flexibility provided by our proposed rule will allow this kind of market-by-market variation of first-class premiums to reflect these differing demand characteristics and market opportunities. (Footnotes omitted)

We are aware of no reason that advises against adopting this approach for another entity like the Mainland-Puerto Rico/Virgin Islands. The issue whether first-class fares should be based on fully distributed costs or allowed to float to revenue maximization levels has been overtaken, at least for the time being, by a decided preference on our part to let carrier management decide for itself what the levels of first-class fares should be.[34]

[30] Under the *DPFI-Phase 5* policies and standards, all discount fares were subject to a profit-impact test and, once effective, an 18-month expiry date.

[31] *See* Appendix B.

[32] Regulation ER-1072 and Regulation PR-177.

[33] Order 74-10-78, as modified by Orders 76-8-100 and 78-5-152.

[34] We have already permitted Delta to reduce first-class fares in Mainland-Puerto Rico markets. Order 78-5-152.

V 4 3 / 2 1 5

We will, of course, consider comments submitted on this proposal before we decide whether to confirm that tentative conclusion.

F. ADJUSTMENT OF THE FARE CEILING

Whenever carriers file for general changes in the level of fares, we determine the reasonableness of the proposed changes (usually increases) by comparing projected revenues (adjusted to remove discount fare dilution) with expenses (adjusted to reflect load factor, seating and depreciation standards). This comparison enables us to estimate whether the proposed changes would or would not allow the proponents to earn more than the allowed return on investment for ratemaking purposes. When revenues are not sufficient to cover expenses, we permit an increase in the level of fares up to but not exceeding the allowed rate of return for the entity as a whole.

We propose to adopt a method for updating Mainland-Puerto Rico/Virgin Islands entity fares similar to the one we adopted in the Domestic Passenger-Fare Rulemaking. The problems confronting us for the domestic entity, as far as fare level adjustments are concerned, also confront us here. Under our proposed policies for fare flexibility, normal fares are not required to bear a fixed relationship either to a formula fare or to each other. We expect fares ultimately to reflect individual carrier costs, which are significantly influenced by experienced load factors. The interplay of actual load factors, standard load factors, and revenue need as they affect the computation of changes in fare level was discussed in our notice for the Domestic Passenger-Fare Rulemaking (PSDR-51):

> This system does not appear to be workable for adjusting the ceiling fares when flexibility in normal fares is permitted. For example, while lower fares may be fully profitable because they permit or are accompanied by higher than standard load factors, under the present method of applying our load-factor standard, the carriers' reported expenses would be adjusted upward to give them credit for the higher-than-standard load factors they had achieved; at the same time, actual revenues would not have gone up correspondingly, because the higher load factor would have been achieved with reduced fares. The upward adjustment of costs and less than proportionate increase in revenues would disclose an apparent need for an increase in the ceiling fares where none in fact existed. The present methodology could be adapted to this new kind of regulation—which would not set actual normal fares but only ceilings—only by computing hypothetical normal revenues in each market where the carriers' fares are below the ceiling or by making ad hoc adjustments to the load factor standard to reflect the higher load factors in reduced-fare markets. Those refinements would greatly complicate the process of adjusting the ceiling • • •.

The approach we propose for the Mainland-Puerto Rico/Virgin Islands entity would adjust ceiling fares on the basis of changes in costs alone, recognizing ratemaking standards. Costs per passenger-mile for the carriers would be computed by adding: (1) the average capacity cost per passenger mile, adjusted for standard load factor, seating utilization, and depreciation standards; (2) the average noncapacity cost per passenger-mile; and (3) an allowance for taxes and return on investment. Since the relationship between normal fares and a fare ceiling varies under the policies established in this rule, this methodology would insulate the ceiling from the distortions attributable to implicit load factors but would continue to keep the ceiling high enough to protect normal service in the average market. We do not anticipate that the existence of two load factor standards (68 percent for New York-San Juan and 60 percent for all other markets) will unduly complicate the proposed cost update methodology. Nor do we believe that the possibility carriers may have to provide some data to assist us in making cost allocations for this entity should deter implementation of the proposed methodology. We emphasize, however, that this is an interim solution and that we intend ultimately to explore the question whether to consolidate the separate one-entity cost update into an industry method which would combine domestic and overseas entities.

III. ENVIRONMENT

We find and conclude that our proposal is not a major federal action significantly affecting the environment. The environmental analysis set forth in Appendix D shows the number of additional flights which could be added in Mainland-Puerto Rico/Virgin Islands markets before the air quality and noise pollution thresholds in Part 312 of the Board's Procedural Regulations are reached. Changes in levels of service, types of equipment, etc., which may result from the fare policies proposed cannot be demonstrated with certainty. However, these policies should not lead to increases in levels of service exceeding those shown in Appendix D. Carriers in the markets involved already have considerable upward and downward opportunity to set fares, and peak/off-peak fares with their implicit traffic-levelling tendencies are also part of the entity fare structure. Our proposal in this rulemaking merely recognizes the fare flexibility already exercisable by the incumbent carriers [25] but permits finer adjustments as markets dictate without the delays and uncertainties caused by regulatory suspension powers.

Accordingly, we tentatively find and conclude that we should adopt the following:

1. Under authority of Order 76-8-100, we revoke paragraphs 2 through 6 and 8 through 10 of Order 74-10-78 as amended or modified by Orders 76-10-151, 77-3-82, 78-4-81, and 78-5-152; provided that the fare differentials specified in Order 74-10-78 for day-of-week and seasonal peak/off-peak fares will be used to compute ceiling fares to implement the Board's fare flexibility policies.

PROPOSED RULES

The Board proposes to amend Part 221 of its Economic Regulations (14 CFR Part 221); Part 302 of its Procedural Regulations (14 CFR Part 302); and Part 399 of the Policy Statements (14 CFR Part 399) as set forth below.

PART 221—CONSTRUCTION, PUBLICATION, FILING AND POSTING OF TARIFFS OF AIR CARRIERS AND FOREIGN AIR CARRIERS

Amend § 221.165 by revising paragraph (d)(4) to read as follows:

§ 221.165 Explanations and data supporting tariff changes and new matter in tariff publications.

• • • • •

(d) Exceptions:

• • • • •

(4) The requirement for data and/or information in paragraph (b) of this section shall not apply to fares for scheduled passenger service within the 48-contiguous States and the District of Columbia or between the 48-contiguous States and the District of Columbia, on the one hand, and Puerto Rico and the Virgin Islands, on the other, which are within the zones set forth under § 339.31 and § 399.34 of this Title.

PART 302—RULES OF PRACTICE IN ECONOMIC PROCEEDINGS

Amend § 302.505 by revising paragraphs (b)(2) and (f) as follows:

§ 302.505 Complaints requesting suspension of tariffs—answers to such complaints; replies to such answers.

• • • • •

(b)(2) A complaint requesting suspension pursuant to 1002(g) of the Act of a fare for the scheduled air transportation of persons within the 48-contiguous States and the District of Columbia or between the 48-contiguous States and the District of Columbia, on the one hand, and Puerto Rico and the Virgin Islands, on the other, which is within the zones set forth in § 339.31 and § 339.34 of this Title, will not be considered unless made in conformity with this section and filed at least thirty-nine (39) days before the effective date of the tariff or, in the event a posting date is printed on the tariff, unless a complaint is filed six (6) days after said posting date.

• • • • •

(f) Answers to complaints shall be filed within six (6) days after the complaint is filed: *Provided, however,* That answer to complaints seeking suspension of a tariff pursuant to section 1002(j) of the Act shall be filed within five (5) calendar days after the complaint is filed: *Provided, further,* That answers to complaints requesting suspension of a fare for scheduled air transportation of persons within the 48-contiguous States and the District of Columbia or between the 48-contiguous States and the District of Columbia, on the one hand, and Puerto Rico and the Virgin Islands, on the other, which is within the zones set forth in § 339.31 and § 339.34 of this Title, shall be filed within seven (7) calendar days after the complaint is filed.

[Material in brackets highlight proposed alternatives.]

PART 399—STATEMENTS OF GENERAL POLICY

1. Add section 399.34 to read as follows:

§ 399.34 Passenger-fare policies for other entities.

It is the policy of the Board to extend the principles of fare flexibility established for domestic fares to other entities as follows:

(a) Ceiling fares for the U.S. mainland-Puerto Rico/Virgin Islands ratemaking entity should be based upon the seasonal off-peak weekend fares in those markets where the Board has specified day-of-week fare differentials and the seasonal off-peak fare in those markets where the Board has specified only seasonal fare differentials as adjusted by the Board's fare level standards and for cost increases; coach fare proposals priced above this ceiling or the upper limits specified under § 399.34(d) should be suspended unless otherwise justified; [1] carriers may propose fares lower than the ceiling in individual markets;

(b) Carriers should be free to set the level of first-class fares;

(c) The basic test of the reasonableness of the maximum level of passenger fares for scheduled services in markets between the 48-contiguous states and the District of Columbia, on the one hand, and Puerto Rico and the Virgin Islands, on the other, is that it produces revenues sufficient to meet the costs, including a fair return on investment, of the operations of the carriers as a whole (as long as the bulk of the carriers fall within a reasonable range of the standard rate of return and industry data are not distorted by the results of unrepresentative carriers). The revenues, costs, and investment used to determine the reasonableness of the maximum fare level shall reflect the following policies and standards:

(1) The appropriate ratemaking unit is all the Mainland-Puerto Rico/Virgin Islands markets;

(2) Load factor standards are established at 68 percent for the New York-San Juan market and 60 percent for all other markets;

(3) Seating configuration standards are those adopted in the Domestic Passenger-Fare Investigation; and

(4) Allocation of costs between passenger and cargo service shall be based on the revenue-offset or by-product method;

(d) Each carrier should have the opportunity to set fares in each market [within a zone ranging to 50 percent] below the ceiling fares. [Also, on 40 percent of their weekly available seat miles, carriers should have the opportunity to set fares in each market down to a 70 percent level below the ceiling.] Fares within these zones will not be suspended by the Board on account of the reasonableness of the level of the fare absent the following extraordinary circumstances:

(1) The high probability that the fare would be found to be unlawful after investigation;

(2) The substantial likelihood that the fare is predatory so that there would be an immediate and irreparable harm to competition if it were allowed to go into effect;

(3) The harm to competition would be greater than the injury to the travelling public if the proposed fare were unavailable; and

(4) The suspension is in the public interest;

(e) Carriers should be free to set market fares below these minima on the basis of such factors as their individual costs or specialized marketing needs, unless the level of the proposed fare reductions will result in an inability of the carriers in the market to provide adequate service to the public or the fares are otherwise unlawful; and

(f) Each carrier should have the opportunity to set fares above the ceiling fares as follows: [2]

(1) In markets where four or more carriers are authorized to provide nonstop service either on an unrestricted or restricted basis,[3] each carrier should have the opportunity to set fares in a zone ranging up to 10 percent above the fare ceiling;

(2) In markets where two or three carriers are authorized to provide nonstop service either on an unrestricted or restricted basis,[4] each carrier should have the opportunity to establish fares in a zone ranging up to 5 [10] percent above the ceiling on 110 days throughout the year; and

(3) In monopoly markets, the carriers should have the opportunity to establish fares in a zone ranging up to 5 [10] percent above the ceiling on 58 days throughout the year;

Fares within these zones will not be suspended by the Board on account of the reasonableness of the level of the fare absent a showing of unusual or extraordinary circumstances.

We are directing that this notice of Proposed Rulemaking be served on all parties to Dockets 24353, 30697, and 32293.

(Sections 204, 403, 404 and 1002 of the Federal Aviation Act of 1958, as amended; 72 Stat. 743, 758, 760 and 788, as amended; 49 U.S.C. 1324, 1373, 1374, 1482; and 5 U.S.C. 553.)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-31230 Filed 11-3-78; 8:45 am]

[25] The record in pending route proceedings where new authority is in issue will contribute to a basis for environmental evaluations in those cases.

[1] For peak fares above any of these levels, the justification should include a showing that off-peak fares are available in the market.

[2] As of the date of policy effectiveness, fares already in effect above these zones do not have to be refiled. In addition, where definitions of peak/off-peak days under standards already in effect exceed the number of days permitted in (f)(2) and (f)(3), the greater number of days will determine the maximum.

[3] Carriers in a market having only fill-up authority or who cannot carry local traffic will not be counted.

[4] Carriers in a market having only fill-up authority or who cannot carry local traffic will not be counted.

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[1505-01-M]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

[24 CFR Part 1917]

[Docket No. FI-4531]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Unincorporated Areas of Warren County, Miss.

Correction

In FR Doc. 78-26614 appearing on page 43323 in the issue of Monday, September 25, 1978, on page 43324, in the middle column, the 2nd entry should read as follows:

Hatcher Bayou Tributary No. 4A.	At confluence with Hatcher Bayou tributary No. 4.	185
	530 ft upstream of confluence with Hatcher Bayou tributary No. 4.	185
	160 ft downstream of State Highway 27.	198
	50 ft upstream of State Highway 27.	206

[4830-01-M]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

[LR-106-75]

INCOME TAX

Income of Foreign Governments; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to taxation of income of foreign governments.

DATES: The public hearing will be held on January 23, 1979, beginning at 10 a.m. Outlines of oral comments must be delivered or mailed by January 10, 1979.

ADDRESS: The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, D.C. The outlines should be submitted to the Commissioner of Internal Revenue, Attention: CC:LR:T (LR-106-75), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

George Bradley or Charles Hayden of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, 202-566-3935, not a toll-free call.

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 892 of the Internal Revenue Code of 1954. The proposed regulations appeared in the FEDERAL REGISTER for Tuesday, August 15, 1978, at page 36111 (43 FR 36111).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and also desire to present oral comments at the hearing on the proposed regulations should submit an outline of the comments to be presented at the hearing and the time they wish to devote to each subject by January 10, 1979. Each speaker will be limited to 10 minutes for an oral presentation exclusive of time consumed by questions from the panel for the Government and answers to these questions.

Because of controlled access restriction, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the proposed Treasury directive appearing in the FEDERAL REGISTER for Wednesday, May 24, 1978.

By direction of the Commissioner of Internal Revenue.

ROBERT A. BLEY,
Director, Legislation and Regulations Division.

[FR Doc. 78-31198 Filed 11-3-78; 8:45 am]

[4910-14-M]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Part 117]

[CGD 78-129]

THUNDER BAY RIVER, MICH.

Drawbridge Operation Regulations

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the city of Alpena, Mich., the Coast Guard is considering changing the regulations governing the operation of the Second Avenue bridge across the Thunder Bay River to provide that the draw need not open. This proposal is being made because no requests have been made to open the draw since at least 1971. This action will relieve the bridge owner of the burden of maintaining the machinery and of having a person available to open the draw.

DATE: Comments must be received on or before December 8, 1978.

ADDRESS: Comments should be submitted to and are available for examination at the office of the Commander (obr), Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, Ohio 44199.

FOR FURTHER INFORMATION CONTACT:

Frank L. Teuton, Jr., Chief, Drawbridge Regulations Branch (G-WBR/73), Room 7300, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590, 202-426-0942.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rule making by submitting written views, comments, data or arguments. Persons submitting comments should include their name and address, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal.

The Commander, Ninth Coast Guard District, will forward any comments received with his recommendations to the Chief, Office of Marine Environment and Systems, U.S. Coast Guard Headquarters, Washington, D.C., who will evaluate all communications received and recommend a course of final action to the Commandant on this proposal. The proposed regulations may be changed in the light of comments received.

DRAFTING INFORMATION: The principal persons involved in drafting this proposal are: Frank L. Teuton, Jr., Project Manager, Office of Marine Environment and Systems, and Mary Ann McCabe, Project Attorney, Office of the Chief Counsel.

DISCUSSION OF THE PROPOSED REGULATIONS

Records of the openings of the draw of the Second Avenue bridge have not been kept for at least 3 years; however, no openings have been recorded since June 1971. The draw in the closed position provides 5 feet vertical clearance at high water and 9 feet at low water. The Coast Guard, therefore, feels that this proposed change should be presented to the public for their comment.

In consideration of the foregoing, it is proposed that Part 117 of Title 33 of the Code of Federal Regulations be amended by revising § 117.697 to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.697 Thunder Bay River, Second Avenue Bridge, Alpena, Mich.

(a) The draw need not open for the passage of vessels. However, the draw shall be returned to an operable condition within 6 months after notification from the Commandant, U.S. Coast Guard, to take such action.

(b) The owner of or agency controlling the bridge shall conspicuously post notices containing the substance of this regulation, both upstream and downstream, on the bridge or elsewhere, in such a manner that it may easily be read at all times from an approaching vessel.

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5)).

NOTE.—The Coast Guard has determined that this document does not contain a major proposal requiring preparation of an economic impact statement under Executive Order 11821, as amended, and OMB Circular A-107.

Dated: October 27, 1978.

J. B. HAYES,
Admiral, U.S. Coast Guard Commandant.

[FR Doc. 78-31332 Filed 11-3-78; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 1000-3]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Alabama: Proposed Plan Revision

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is today giving notice of its intention to approve regulations adopted by the Alabama Air Pollution Control Commission for particulate emissions from xylene oxidation processes. These regulations relax the current limit on particulate emissions from the process without impacting the area where secondary standards are now being violated.

DATE: To be considered, comments must be received on or before December 6, 1978.

ADDRESSES: Comments should be addressed to Eliot Cooper of EPA Region IV's Air Programs Branch at the Atlanta address given below (telephone 404/881-3286; FTS 257-3286). Copies of the materials submitted by the State of Alabama are available for public inspection during normal business hours at the following locations: Alabama Air Pollution Control Commission, 645 South McDonough Street, Montgomery, Ala. 36130; Air Programs Branch, Air and Hazardous Materials Division, Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Ga. 30308; or Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Eliot Cooper of EPA Region IV's Air Programs Branch (see address and phone number above).

SUPPLEMENTARY INFORMATION: The xylene oxidation process produces large amounts of liquid waste which are reduced in thermal oxidizers. Due to the composition of these wastes, they are extremely difficult to control in terms of particulate emissions. The thermal oxidizers are presently regulated under chapter 5.2 of the Morgan County Air Pollution Control Rules and Regulations, but attempts to meet the emission limit of 0.2 pound of allowable particulate per 100 pounds of waste charged have been unsuccessful. However, investigations have shown that these control attempts represent best available control technology.

The particular company to which this regulation would apply in Alabama is Amoco Chemical Corp. Since 1974, Amoco has attempted to meet the presently applied regulation and is presently under a variance (not federally approved). Because of the reductions in allowable and actual emissions from the xylene oxidation process due to this regulation change, and since there is no impact from these emissions on the secondary nonattainment area in Decatur, Ala., we find this revision approvable.

On September 12, 1978, following notice and public hearing in conformity with 40 CFR 51.4 and 51.6, the Alabama Air Pollution Control Commission adopted changes in its regulation for particulate emissions from xylene oxidation processes. This revised regulation was submitted for EPA's approval on September 13, 1978. This revision consists of a change in chapter 4 of the Alabama Air Pollution Control Rules and Regulations; to this chapter is added part 4.12, which limits particulate emissions from any xylene oxidation process to the amount calculated by the equations:

$E = 2.75\ P^{0.62}$ (if $P < 30$ tons/hour).
$E = 13.15\ P^{0.16}$ (if $P > 30$ tons/hour).

Where:

E=Emissions in pounds per hour.

P=process weight per hour in tons per hour.

Where a thermal oxidizer is used for reduction of process waste from a xylene oxidation process, and no other waste streams added, this thermal oxidizer shall be considered a part of the process system. The public is invited to participate in this rulemaking by submitting written comments on the proposed xylene oxidation process regulation. After considering all relevant comments received together with other information available to him, the Administrator will take approval/disapproval action on this change in the Alabama plan.

(Sec. 110(a) of the Clean Air Act (42 U.S.C. 7410(a)).)

Dated: October 25, 1978.

JOHN C. WHITE,
Regional Administrator.

[FR Doc. 78-31057 Filed 11-3-78; 8:45 am]

[6712-01-M]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Parts 2 and 87]

[Gen. Docket No. 78-231; RM-3095]

ESTABLISHMENT OF A JOINT TACTICAL INFORMATION DISTRIBUTION SYSTEM IN THE 960-1215 MHz AERONAUTICAL RADIONAVIGATION BAND

Order Extending Time for Filing Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This order extends the comment period on the above captioned item until November 27, 1978. The Commission has received a joint request from Aeronautical Radio, Inc., and the Air Transport Association of America stating that they need additional time for their avionics engineers to study and evaluate the information received in the comments. Inasmuch as these two parties are involved in aeronautical radionavigation their comments are considered pertinent.

DATE: Reply comments should be filed on or before November 27, 1978.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

John E. Jacobs, Safety and Special Radio Services Bureau, 202-632-7197.

SUPPLEMENTARY INFORMATION: In the matter of amendment of Parts 2 and 87 of the Commission's rules to

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provide for the establishment of a Joint Tactical Information Distribution System in the 960-1215 MHz aeronautical radionavigation band (Gen. Docket No. 78-231, RM-3095; See 43 FR 35350).

Adopted: October 27, 1978.

Released: October 31, 1978.

1. Aeronautical Radio, Inc. (ARINC) and the Air Transport Association of America (ATA) have jointly requested that the time for filing reply comments in this Docket be extended from October 27, 1978, to November 27, 1978.

2. ARINC and ATA have filed joint comments in this matter and they intend to file reply comments. They state they require additional time to study comments filed by other parties in the proceeding. Although not extensive, the comments filed involve highly complex technical questions of system compatibility. ARINC and ATA have requested additional time for avionics engineers to study these questions.

3. The ARINC and ATA joint request is procedurally defective in that it was not filed at least 7 days before the filing date of October 27, 1978, nor did it establish an emergency situation which pursuant to Section 1.46 would justify a late filing. However, it has come to the attention of the staff that since the release of the Notice technical complications may exist which require further consideration. Accordingly, an extension of time will have no adverse effect on the rulemaking and it will afford interested parties additional time to study this complex matter as it affects civil aviation.

4. Accordingly, under the authority contained in Section 0.331 of the Commission's rules, the date for filing reply comments in this proceeding is extended to November 27, 1978.

CARLOS V. ROBERTS,
Chief, Safety and Special Radio Services Bureau.

[FR Doc. 78-31258 Filed 11-3-78; 8:45 am]

[6712-01-M]

[47 CFR Part 15]

[Gen. Docket No. 78-348; FCC 78-737]

MEASUREMENT TECHNIQUES OF TELEVISION RECEIVER NOISE FIGURES

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: The FCC is soliciting public participation in the development of a new measurement standard for UHF television noise figures. The development of this FCC standard, to be completed before October 1, 1979, includes a call for submission of technical papers, a two day conference to be held at the FCC Laboratory (Laurel, MD), the formation of two working committee's and the preparation of reports on various proposed standards or techniques developed.

DATES: Parties wishing to be identified as technical experts must submit a summary of their qualifications and interests by December 1, 1979; Technical papers must be received for the Conference by January 1, 1979; the Conference will be held February 1 & 2, 1979; Comments on questions in the Inquiry must be received by April 15, 1979. Reply comments on the technical papers, the minutes of the Conference and the committee meetings, the committee reports, or on the comments of others must be received by May 15, 1979.

ADDRESSES: Secretary, Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Lawrence Middlekamp, 301-725-1585, FCC Laboratory Division, Office of Chief Engineer, P.O. Box 40, Laurel, Md. 20810.

In the matter of measurement techniques of television receiver noise figures (Gen. Docket No. 78-348).

NOTICE OF INQUIRY

Adopted: October 19, 1978.
Released: November 1, 1978.
By the Commission:

INTRODUCTION

1. The Federal Communications Commission (FCC) is initiating this Inquiry to investigate measurement techniques of television receiver noise figures. The Inquiry deals with narrow technical subjects, however, the general public is invited to participate in this procedure. This Inquiry follows from an earlier rulemaking in which we require lower values of the maximum UHF noise figures of television receiver.[1] During the panel discussion conducted in Docket No. 21010,[2] several parties expressed concern about existing techniques for measuring the noise figures of a television receiver. The parties were concerned about the desirability, accuracy, and repeatability of the measurement technique specified by IEEE Standard 190 (and accepted by the FCC). Questions regarding the accuracy of noise figure measurement equipment and variations due to receiver effects such as twin lead connections were also raised. This Inquiry will attempt to resolve these and related technical questions.

2. In Docket No. 21010 we changed the rules to require that new television models certified after October 1, 1979 have UHF noise figures 14 dB or less. The order states that at least 97.5% of the manufactured receivers of any particular model must satisfy this requirement,[3] and that this requirement be met on all UHF channels, not merely on the best or average.

3. The FCC desires that any change in the standard for measurement of noise figures be made prior to October 1, 1979, when the 14 dB noise figure requirement goes into effect. It could be disruptive to manufacturers to meet certification requirements with one set of measurement techniques, and then be required to change to another. Also the comments noted above indicate that the present techniques may be inadequate.

4. The comments submitted in response to this Inquiry will be the basis of a Notice of Proposed Rule Making or Report and Order. To help meet the October 1, 1979 objective, we have expanded the normal Inquiry procedure to include the following elements:

A. Identification of technical experts;

B. Distribution of papers and memoranda among technical experts;

C. A Technical Conference; and,

D. Working committees.[4]

[1] The FCC is taking several interrelated actions which we anticipate will improve television reception by the general public, and possibly have other benefits as well. Briefly, these actions are:

Report and order in Docket No. 21010, UHF Television Noise Figure, FCC 78-582, 43 FR 36096, (Aug. 15, 1978). This order will change the Noise Figure standard to 12 dB by 1982.

Notice of Inquiry in BC Docket No. 78-307, Television Receiver Equipment Grading, FCC 78-665, Released October 20, 1979. This Inquiry will explore ways to improve reception by increasing the amount of information available to consumers.

[2] Notice of Panel Presentation, 43 F.R. 15744 (Apr. 14, 1978); Procedure for Panel Presentation, 43 F.R. 19893 (May 9, 1978).

[3] The rules allow manufacturers to verify that the requirement is met by statistically sampling production models. For example, if the distribution of maximum noise figures is shown to be normal, then sampling techniques can verify that at a given confidence level, 97.5% of all sets of a model type meet the requirement. This would be done by showing that the mean noise figure is 2 standard deviations below 14 dB (to meet the October 1, 1979 requirement).

[4] At this time we envision the establishment of two committees: one to develop a procedure for measuring noise figure; and one to determine the optimum accuracy and tolerance of the procedure to be adopted. Because it is important that the measurement procedure be developed in time for the 1979 change in our noise figure standard, the Commission is seeking the advice of private industry. These committees will complete work which, although it could eventually be completed in-house, would not be accomplished quickly enough without this outside assistance. The Commission does not now have an advisory committee with

Footnotes continued on next page

5. The Laboratory, both in its research studies and test sampling of FCC certified TV receivers, will continue to use procedures which will be detailed in OCE Bulletin 50 on "Measurement of the Noise Figures of TV Receivers." Data obtained by these procedures will be acceptable for Type Certification requirements.

PROCEDURE

6. Comments on all the subjects addressed in this Inquiry will be accepted until the working committees have submitted their final reports (April 1, 1979). By this date, the official record of this proceeding will include all papers submitted for consideration at the Conference, the reports of the working committees, and any other comments filed in a timely manner. The FCC will then accept reply comments (comments regarding information in the official record) for one additional month.[5]

7. Parties who wish to be identified as technical experts, participate in the exchange of papers, attend the technical conference, or be on a working committee, should observe the following schedule:

A. Parties who wish to be identified as technical experts will submit a summary of their qualifications and interests by December 1, 1978, and will indicate at which of the following levels they want to participate:

1. Preparation and distribution of papers and memoranda to other technical experts prior to the Technical Conference;

2. Participation in the Technical Conference; and,

3. Participation in one or more working committees.

B. The Technical Conference to be sponsored by the FCC will follow this schedule:

1. The FCC will distribute a list of technical experts and their interests shortly after December 1, 1978. Parties should use this list to distribute papers to other participants prior to the conference, as appropriate.

2. Technical papers for the Conference must be received by January 1, 1979. These papers should be submitted following the same procedure as specified for other comments.

3. The Conference will be held on Thursday and Friday, February 1, 1979. The FCC will release an agenda prior to this meeting. The minutes of the Conference will become part of the Record.

4. The working committees will be set up at the Conference. The final report of each working committee must be received by April 1, 1979.

Conference participants, as well as all other parties, will then have one month to file reply comments.

TECHNICAL SUBJECTS

8. In posing the following subjects, the FCC is attempting to: 1) develop a method or methods for measuring television receiver noise figures which will have wide acceptance; and 2) estimate the magnitudes of errors in present and proposed methods of measurement of television receiver noise figures. The FCC invites comments on:

Subject 1. *The procedure for measuring television receiver noise figures on UHF channels.* Give your evaluation of:

1-A. IEEE standard No. 190;

1-B. Pre-detection noise figure measurements at the tuner output or at the intermediate frequency amplifiers; and,

1-C. Other procedures for the measurement of noise figure.

Subject 2. *Television receivers as devices under test.* Evaluate how the following would affect noise figure measurement:

2-A. Receiver layout, input impedance, and tracking variability;

2-B. Receiver operating conditions such as bias and supply voltages;

2-C. Internal synchronizing signals; and,

2-D. Kinescope deflection signals.

Subject 3. *Advantages and disadvantages of various noise figure meter apparatus.* Evaluate the use of:

3-A. Pulsed or non-pulsed noise diode;

3-B. Hot and cold resistor; and,

3-C. Other noise measuring systems.

Subject 4. *Accuracy and precision of noise figure measurement.* Evaluate the:

4-A. Deterministic and random errors in noise figure measurement which may result from sources such as baluns, detector linearization, drifts in bias supplies, spurious signals, and the noise figure meter itself; and,

4-B. Feasibility of making television receiver noise figure measures with accuracy of ±1.0 dB, repeatability of within ±0.5 dB, and readability to the nearest 0.1 dB.[6]

9. In posing the following subjects the FCC is attempting to determine practices which will insure compliance with noise figure certification requirements. The FCC invites comments on:

Subject 5. *The practices of TV manufacturers used to insure compliance with the current noise figure certification standards;*

Subject 6. *Changes in manufacturers practices necessary to insure compliance with Docket 21010.* For example, manufacturers may have to introduce new practices to comply with the statistically determined worst case requirements;

Subject 7. *The data format to show compliance with the requirements for receiver certification.* The requirements will include searching all UHF channels for the worst measure of noise figure, and for example, providing the data for that and ten other distributed channels;

Subject 8. *Requiring manufacturers to use the measurement procedures, if any, that are adopted by the FCC as a result of this proceeding;* and,

Subject 9. *Requiring relatively minor changes in receiver design to aid in the measurement of noise figure.* For example, configuration changes, the use of co-axial lead-ins from the antenna terminals, or adding test points may improve the measurement of noise figure or other receiver performance parameter.

INFORMATION ON COMMENTS

10. *Who should file comments?* We urge television and test equipment manufacturers, engineering groups and all other interested parties to participate in the investigation. You may

Footnotes continued from last page

competence in the areas in which we are seeking assistance. It is therefore in the public interest that these committees be formed. As advisory committees, they will be run in conformity with the Federal Advisory Committee Act, 5 U.S.C. Appendix I, Sections 1-15 (1978 Supp.). Lawrence Middlekamp will be the official charged with the oversight of these committees. FCC representatives will be present each time a committee meets. All agenda, minutes, reports and other committee documents will be placed in the docket file in the proceeding and will be available for public viewing and comment. To insure a balanced composition, any technically qualified individual interested in serving on a committee and making the necessary contribution will be encouraged to serve. Those parties interested but not technically qualified will be encouraged to participate through the comment and reply comment process available to the general public.

[5] Members of the general public wishing to comment on the discussions during committee meetings, wishing to have comments appended to committee reports, or wishing to comment on the reports generated by the committees, may do so by submitting such comments in writing, to the Secretary of the FCC. Comments of this nature should indicate the purpose to which they are addressed. In addition, a public notice will be issued listing the names and addresses of the technical experts selected for the committees. Duplicates of comments can be sent directly to all or any committee member if the commentor so wishes. One note of caution: comments sent to committee members but not also filed with the Secretary's Office will not become part of the record of this proceeding. Such comments will not be available for the Commission to consider as part of its final decision making process.

[6] We are using the following definitions in this Inquiry: *accuracy*—how close to the true or actual value; *repeatability*—how close the measurements will be for repeated tests; and *readability*—how fine a reading can be taken from the test equipment. *See: Statistics (Probability Interference and Decisions)*, R. L. Winkler and W. L. Hays; Holt Rinehart and Winston, N.Y. (1975) at 435.

participate by sending information and opinions that are relevant to the subjects of this Inquiry. In addition, you may wish to be identified as a technical expert, participate in the exchange of technical information, attend the technical conference, or be on a working committee.

11. *How will this information be used?* These comments will be used to evaluate the issues we have discussed above. We expect that the comments, minutes of the Technical Conference, and working committee reports, may lead us to propose specific rule changes. The schedule for this Inquiry is designed to permit adoption of rule changes (if any are found to be necessary) early enough for their use in implementing the new requirements adopted in Docket No. 21010.

12. *How should comments be prepared?* Your comments must clearly show this docket number "GEN Docket No. 78-348" on the first page. Please label your responses so that it will be clear which subject is being addressed. If you have general comments which are not on a specific technical subject listed above, simply label these comments with the Docket number. Please state the issue being addressed.

13. *How many copies should be sent?* Section 1.419 of the Rules requires that you file the original and five copies of your comments. If you want each Commissioner to receive a personal copy of your comments, you should include 6 additional copies. The FCC will fully consider all comments, even if only the original is filed.

14. *Where to sent comments.* Send your comments to: Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments must be received April 15, 1979.

15. *How to see the comments of other parties.* All comments will be available for public inspection in the FCC Dockets Reference Room, Room 239, 1919 M Street, NW., Washington, D.C. The FCC is open weekdays between 8:00 a.m. and 5:30 p.m. You can reply to these comments by following the same procedure for preparing and sending comments. Replies to comments must be received by May 15, 1979.

16. *The source of our legal authority.* Sections 4(i), 302, 303 (f), (g), (r), and (s), 330, and 403 of the Communications Act of 1934 as amended gives the FCC the authority to conduct this Inquiry. Accordingly, the FCC ORDERS that this Inquiry is INSTITUTED.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-31263 Filed 11-3-78; 8:45 am]

[6712-01-M]

[47 CFR Part 15]

[Gen. Docket No. 78-307]

TELEVISION RECEIVER EQUIPMENT GRADING

Correction

AGENCY: Federal Communications Commission.

ACTION: Correction.

SUMMARY: This Action corrects the "Docket No." listed in the Notice of Inquiry, as well as the Preamble to the Inquiry, FCC 78-665, [43 FR 49550, pub. 10-24-78].

DATES: Comments must be received on or befoe February 1, 1979 and Reply comments must be received on or before March 1, 1979.

ADDRESSES: Send Comments to: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Rebecca A. Brown, Office of Executive Director, Secretary's Office, Minutes and Rules Branch, telephone 632-7024.

In the matter of television receiver equipment grading (Gen. Docket No. 78-307; See 43 FR 49550).

Released: October 27, 1978.

In the Notice of Inquiry released October 20, 1978, FCC 78-665 (Mimeo No. 4132), the "Docket No. BC 78-307" and the Notation "BC" in the caption should be corrected to read "GEN Docket No. 78-307" and "G-3".

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-31255 Filed 11-3-78; 8:45 am]

[6712-01-M]

[47 CFR Part 73]

[Docket No. 20576; RM-2467; RM-2468; RM-2578]

FM BROADCAST STATIONS IN FRANKLIN AND KEENE, N.H., BENNINGTON AND BRATTLEBORO, VT., CONWAY, LITTLETON, MEREDITH, PLYMOUTH, ROCHESTER AND WOLFEBORO, N.H., AND SKOWHEGAN, MAINE

Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Further Notice of Proposed Rule Making and Orders to Show Cause.

SUMMARY: This action proposes to consider three alternative plans for providing additional FM service to various communities in New Hampshire. The choice of plans is dependent on the action taken regarding retention of or substitution for the present Class C channel at Plymouth, New Hampshire, which has been applied for at Meredith, New Hampshire.

DATES: Comments must be filed on or before December 27, 1978, and reply comments must be filed on or before January 16, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Mark N. Lipp, Broadcast Bureau, 202-632-7792.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Franklin and Keene, N.H. and Bennington and Brattleboro, VT. Also Conway Littleton, Meredith, Plymouth, Rochester, and Wolfeboro, N.H., and Skowhegan, Maine.[1] (Docket No. 20576, RM-2467, RM-2468, RM-2578; See 40 FR 45850)

Adopted: October 27, 1978
Released: November 2, 1978
By the Chief, Broadcast Bureau:

1. The Commission has under consideration its *Notice of Proposed Rule Making and Order to Show Cause* adopted August 8, 1975, 40 Fed. Reg. 34393, and an *Order to Show Cause*, adopted July 9, 1976, mimeo no. 67461, involving various communities in New Hampshire and Vermont. A separate petition for rule making, filed by Radio Wolfeboro on July 31, 1975, was not submitted in time to be included as part of the *Notice*. It was later joined in this proceeding in the *Order to Show Cause* concerning Wolfeboro and Conway, N.H. The Wolfeboro petition requests the deletion of Channel 287 from Plymouth N.H. (presently unoccupied but with one application pending. [2] This deletion would permit Class A channel assignments to Franklin, Keene, Wolfeboro, and Littleton, all in N.H. In the alternative, the petition suggests the assignment of a Class A channel to Wolfeboro, N.H., and the substitution of Class A channels at Conway, N.H. [3] Comments have been

[1] The latter group of communities has been added to the caption.

[2] Although an application has been submitted by Lakes Region Broadcasting Corp., Inc., for use of the channel, it proposes to use it at Meredith, New Hampshire, under the 15-mile rule [section 73.203(b)] rather than at Plymouth. A competing application filed by Camelot, Inc., for use of the channel at Plymouth, was previously returned as late filed. See *Camelot, Inc.*, 61 F.C.C. 2d 15 (1976).

[3] Previously this petitioner alternatively proposed that Channel 287, if deleted from Plymouth, should be reassigned to Wolfeboro or Ossipee, N.H. However, this request was later withdrawn.

received from interested persons for each of the affected communities.

2. The *Notice* proposed to assign Channel 232A to Franklin as a first FM assignment and Channel 224A to Keene as a second FM assignment. In order to accomplish these assignments, the Commission proposed that Channel 285A be substituted for Channel 224A at Brattleboro, Vt.[4] The Commission stated that the Brattleboro licensee would be entitled to reimbursement for the change in channels. Since both Franklin and Keene would be accomodated with assignments by this substitution, we stated that reimbursement to the Brattleboro licensee should come from the ultimate permittees at both communities.

3. The radio Wolfeboro petition argues that by deleting Channel 287 from Plymouth (pop. 4,225), a more equitable distribution of available frequencies could be made and Class A channels could be assigned to four communities—Franklin (pop. 7,292), Keene (pop. 20,467), Wolfeboro (pop. 3,036) and Littleton (pop. 5,290) without the need for substitutions elsewhere. It contends, in effect, that the Plymouth Class C assignment is inappropriate since other nearby communities of comparable size have, or will have, by this proceeding, only Class A channels. Furthermore, Radio Wolfeboro asserts that each community's individual needs could be better served by Class A stations concentrating on the needs of individual communities rather than by a dominating Class C channel designed to cover a large area without focusing on any particular community.

4. In opposition, Lakes Region Broadcasting Corp., Inc., the applicant for the use of this Class C assignment at Meredith, N.H. (pop. 2,904), under the Commission's 15-mile rule, urges its retention asserting that other channels are available for the communities mentioned by Wolfeboro. It also points to the previous rejection by the Commission of arguments regarding the economic impact of Lakes Region's proposed station and it argues that the request to delete the Plymouth channel is, in effect, a late attempt to reconsider the assignment of Channel 287 to Plymouth and should be rejected as undermining the finality of that action.

5. Although various other parties have filed comments in response to the *Notice*, those comments have not focused directly on the proposal to delete Channel 287 from Plymouth. We believe an opportunity should be given to address this question before we take final action. Thus, we are issuing this *Further Notice* to obtain comments and data on the alternate proposals set forth herein. We regret that further delay in this already lengthy proceeding will result. However, this proceeding may well represent the last opportunity for an overall review of assignments in this area.

6. For purposes of eliciting comments, a brief background of the Plymouth channel assignment will be related. Originally, acting in response to a request filed in 1969, the Commission denied a Class C assignment in favor of a competing request from Skowhegan, Maine. Instead, a Class A channel was assigned to Plymouth. See *Skowhegan, Maine*, 32 F.C.C. 2d 549 (1971) and 34 F.C.C. 2d 338 (1972). Later, in a different proceeding, Plymouth was assigned a different Class C channel in response to a petition from Lakes Region Broadcasting.[5] See *Winchendon, Mass.*, 46 F.C.C. 2d 221 (1974). The Commission decision to make the Class C assignment was supported by the existence of a small second FM service area containing approximately 600 persons.[6]

7. The Plymouth channel was assigned based on information concerning the need for an FM station to serve that community. Yet, on September 11, 1975, Lakes Region submitted its application for use of the Plymouth channel at Meredith.[7] The channel was assigned based on arguments advanced in support of the need at Plymouth. The data on which the Commission relied had no relation to the needs of Meredith, and only after assessing Meredith's needs can a proper balancing take place between the relative merits of a Meredith Class C channel versus the conflicting Class A channel assignment proposals for Keene, Franklin, Wolfeboro and Littleton. What we now seek are comments which would address this issue. In weighing these proposals, consideration should also be given to the possible assignment of a Class A channel to Meredith as a replacement for Channel 287. As set forth in paragraph 10, infra, a Class A channel can be assigned to Meredith.

8. There are some other points to bear in mind. Still outstanding in another proceeding [8] are *Orders* that would require the eventual permittee on Plymouth Channel 287 to reimburse WTOS-FM, Skowhegan, Maine, and Station WCNL-FM, Newport, N.H., for channel changes. The Skowhegan station never did change frequencies and therefore could continue to operate on its present frequency if Channel 287 were deleted from Plymouth. However, the Newport station did change frequencies and expects to be reimbursed for reasonable costs incurred in that changeover. If the Plymouth channel were deleted, no further changes would be required of the Newport station. As for the reimbursement for the previous changeover, the costs are generally provided by the benefitting party. Earlier it was ordered that the reimbursement would come from the eventual permittees of Plymouth Channel 287. If that channel is retained then the reimbursement order will stand. However, if the Plymouth channel is deleted, then the benefitting parties would become the eventual Franklin, Keene, Wolfeboro and Littleton permittees.

9. In suggesting a Class A channel for Meredith as a replacement for the Plymouth channel, we note that Channel 244A is available at Meredith if Channel 288A were substituted for Channel 244A at Rochester, N.H. Since a construction permit was granted to Strafford Broadcasting Corp. in an Initial Decision, Docket 20619, released May 19, 1978, an *Order to Show Cause* needs to be issued to permit a substitution of channels there.[9] Reimbursement order will stand. However, if the Plymouth channel is deleted, then the benefitting parties would become the eventual Franklin, Keene, Wolfeboro and Littleton permittees.

[4] An *Order to Show Cause* was issued to Station WKVT-FM, Radio Brattleboro, Inc., Brattleboro, Vt. on August 14, 1975, for that purpose.

[5] The Class A channel was to be deleted in that proceeding to avoid intermixture. However, one party, responding to Commission inquiry, stated that it was interested in pursuing the filing of an application for the channel despite the proposed assignment of a Class C channel and on that basis the channel was retained.

[6] The importance of this point has been reduced because Station WECM(FM), Claremont, N.H., has increased its facilities and now covers almost half of this underserved area. The proposed Class A station for Franklin would also cover most of the underserved area.

[7] Although the tendering of an application indicates interest in retaining the channel assignment, it does not necessarily constitute an impediment to consideration of a conflicting rule making petition, particularly where, as in this case, the petition to delete the Plymouth channel was filed before the application for its use. Even more important is the absence of an application to use the channel at Plymouth, but even without this factor, the Commission has found it appropriate on occasion to delete an applied for channel in response to a petition showing the greater need for its use elsewhere. See e.g. *Waverly, Tenn.*, 17 F.C.C. 2d 493 (1969), recon. den., 20 F.C.C. 2d 487 (1969). In that case, a channel was reassigned from Centerville, Tenn., to Waverly despite an application for its use at Centerville. The decision was based on slightly larger first and second FM service which would be provided. In such cases, a balancing approach has been used to determine whether a suggested new use of the frequency in question will better serve the public interest with due regard to the finality of the channel assignment proceeding.

[8] See *Winchendon, Massachusetts, supra.*

[9] The permit of Strafford Broadcasting Corp. may be modified to specify Channel 288A without a change in the proposed transmitter site. Issuance of this *Order to Show Cause* is intended to put the permittee on notice that any construction which does not take into account the pendency of this proceeding is done at the permittee's own expense.

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bursement for this substitution would come from the eventual Meredith permittee. As noted before, under this plan the additional assignments of Class A channels at Keene, Franklin, Wolfeboro and Littleton [10] could be accomplished without substitution elsewhere. As for the Skowhegan station, although it was previously ordered to switch to Channel 294 to accomodate the Plymouth Channel 287 assignment, it would not have to change from its present frequency if the Plymouth channel were deleted, as proposed in the 1st Alternative, para. 11 infra. Accordingly, the Table of Assignments would revert to specify Channel 286 at Skowhegan, Maine, in lieu of Channel 294 previously listed there and the previous *Order* modifying the Skowhegan license would have no effect. No *Order to Show Cause* would be necessary to continue Station WTOS(FM)'s operation on Channel 286.

10. Alternative 2 set forth below would retain Channel 287 at Plymouth. In such case, the only possibility for Class A assignments at Wolfeboro, Keene and Franklin, would, as noted before, involve the substitution of Class A channels at Conway, N.H. [11] and Brattleboro, Vt., respectively, with reimbursement.

11. Accordingly, the Commission proposes to amend the FM Table of Assignments, with respect to the communities listed below, as follows:

First Alternative (replaces Class C at Plymouth with Class A at Meredith. [12]

City	Channel No.	
	Present	Proposed
Keene, N.H.	279 [4]	279, 285A
Littleton, N.H.	.....	288A
Meredith, N.H.	.....	244A
Plymouth, N.H.	261A, 287	261A
Rochester, N.H.	244A	288A
Wolfeboro, N.H.	.....	[3] 285A

Second Alternative (does not delete Class C at Plymouth)

City	Channel No.	
	Present	Proposed
Conway, N.H.	288A	296A
Franklin, N.H.	.....	232A
Keene, N.H.	279	[2] 224A, 279
Wolfeboro, N.H.	.....	228A
Brattleboro, N.H.	224A, 244A	244A, 285A

Third Alternative (deletes Class C at Plymouth without replacement).

City	Channel No.	
	Present	Proposed
Skowhegan, Maine	294	286
Franklin, N.H.	.....	[1] 232A
Keene, N.H.	279	[4] 279, 285A
Littleton, N.H.	.....	288A
Plymouth, N.H.	261A, 287	261A
Wolfeboro, N.H.	.....	[3] 285A

[1] A site restriction of approximately 10 kilometers (6.5 miles) southwest of the community required.
[2] A site restriction of 8 kilometers (5 miles) west of the community is required.
[3] A site restriction of 3 kilometers (2 miles) north of the community is required.
[4] A site restriction of 11 kilometers (7 miles) northwest of the community is required.

12. Canadian concurrence on the above proposals has been obtained pursuant to the Canada-U.S. Working Agreement of 1947. [13]

13. It is further ordered, That pursuant to section 316 of the Communications Act of 1934, as amended, Strafford Broadcasting Corp. Shall show cause why its permit for channel 244A should not be modified to specify operation on Channel 288A at Rochester, New Hampshire. Pursuant to § 1.87 of the Commission's Rules and Regulations, Strafford Broadcasting Corp., may not later than January 16, 1979, request that a hearing be held on the proposed modification. Pursuant to § 1.87(f) if the right to request a hearing is waived, Strafford Broadcasting Corp. may not later than January 16, 1979, file a written statement showing with particularity why its permit should not be modified or not so modified as proposed in the *Order to Show Cause*. In this case, the Commission may call on Strafford Broadcasting Corp. to furnish additional information, designate the matter for hearing, or issue without further proceedings an *Order* modifying the permit as provided. If the right to request a hearing is waived and no written statement is filed by the date referred to above, Strafford Broadcasting Corp. is deemed to consent to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission if the channel changes referred to in paragraph 11, the 1st Alternative, is found to be in the public interest.

14. It is further ordered, That pursuant section 316 of the Communications Act of 1934, as amended, North Country Communications, Inc., shall show cause why its license for Channel 244A should not be modified to specify operation on Channel 276A at Montpelier, Vt. Pursuant to § 1.87 of the Commission's Rules and Regulations, the licensee, North Country Communications, Inc. may not later than January 16, 1979, request that a hearing be held on the proposed modification. Pursuant to § 1.87(f) of the Commission's Rules and Regulations, if the right to request a hearing is waived, North Country Communications, Inc., may not later than January 16, 1979, file a written statement showing with particularity why its license should not be modified as proposed in the *Order to Show Cause*. In this case, the Commission may call on North Country communications, Inc., to furnish information, designate the matter for hearing, or issue without further proceeding an *Order* modifying the license as provided. If the right to request a hearing is waived and no written statement is filed by the date referred to above, North Country Communications, Inc., is deemed to consent to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission.

15. The Commission's authority to institute rulemaking proceedings, showings required, cut-off procedures, and filing requirements are contained below and are incorporated by reference herein.

16. Interested parties may file comments on or before December 27, 1978, and reply comments on or before January 16, 1979.

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rulemaking* above.

2. *Showing required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rulemaking above. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulation, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rulemaking* above. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission Rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

[FR Doc. 78-31260 Filed 11-3-78; 8:45 am]

[10] The Littleton proposal cannot be adopted unless the Plymouth Channel 287 assignment is deleted. Although an interest has been expressed in the Littleton proposal, no proponent has, up to now, made a commitment to apply for the channel, if assigned. An appropriate expression of such interest should be made by some person in comments. See attached Appendix—No. 2, Showings required.

[11] An *Order to Show Cause* to substitute a Class A channel at Conway, N.H., was issued to Station WBNC-FM, North Country Radio, on July 9, 1976.

[12] Thus far we have no expression of interest in the use of a Class A channel at Plymouth. If there is such an interest, it should be expressed in comments. In such case we could assign Channel 244A to Plymouth rather then Meredith. In order to accommodate the assignment of Channel 244A to Plymouth it would be necessary to substitute channels at Rochester, as in the Meredith proposal. In addition, the deletion of Channel 244A at Montpelier, Vt., would be necessary. Another vacant channel (276A) is available to accommodate the licensee of the station on Channel 244A. An *Order to Show Cause* is being issued to this licensee to provide for the consideration of that modification. Reimbursement for this change would also be necessary.

[13] In order to accommodate the 1st and 3d Alternatives, Canada has agreed to substitute Channel 287A for Channel 243A at Drummondville, Quebec and to assign Channel 243A to Victoriaville, Quebec instead of the previously proposed Channel 286A there.

[6712-01-M]

[47 CFR Part 73]

[BC Docket No. 78-363; RM-3158]

FM BROADCAST STATIONS IN GOUVERNEUR AND OGDENSBURG, N.Y.

Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rulemaking and Order to Show Cause.

SUMMARY: Action taken herein proposes the assignment of a Class A FM channel to Ogdensburg, N.Y., and the substitution of one Class A channel for another at Gouverneur, N.Y. An Order to Show Cause is directed to the Class A station licensee in Gouverneur to show why its license should not be modified to operate on the substitute Class A channel. The proposed channel to Ogdensburg would provide that community with its first FM assignment.

DATES: Comments must be received on or before December 27, 1978. Reply comments must be received on or before January 16, 1979.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Mildred B. Nesterak, Broadcast Bureau, 202-632-7792.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Gouverneur and Ogdensburg, N.Y.) BC Docket No. 78-363, RM-3158).

Adopted: October 27, 1978.
Released: October 30, 1978.

By the chief, Broadcast Bureau:

1. The Commission has before it a petition for rulemaking,[1] filed by Wireless Works, Inc. ("petitioner"), licensee of full-time AM Station WSLB, Ogdensburg, N.Y., proposing the assignment of FM Channel 224A to Ogdensburg, N.Y., and the substitution of Channel 237A for occupied Channel 224A at Gouverneur, N.Y. DeHart Broadcasting Corp. is the licensee of FM Station WLUF which operates on Channel 224A at Gouverneur. The proposed change in the assignment at Gouverneur and the proposed assignment of a channel to Ogdensburg comply with the domestic minimum distance separation requirements.[2] No responses to the proposal were received.

2. Ogdensburg (pop. 14,554), in St. Lawrence county (pop. 11,991),[3] is located in northeastern New York along the Canadian border, approximately 193 kilometers (120 miles) north of Syracuse, N.Y. It has one full-time AM station (WSLB) licensed to petitioner.

3. Petitioner states the principal industries in Ogdensburg are dairy and other farming, tourism, manufacturing of paper products, office supplies and drapery hardware. We are told that a principal employer in Ogdensburg is the St. Lawrence Psychiatric Center. Petitioner notes that the proposed assignment would provide service to the communities and rural areas around Ogdensburg whose residents are oriented to Ogdensburg for shopping, culture and other activities. Sufficient demographic data has been submitted by petitioner to demonstrate the need for a first FM assignment to that community.

4. Petitioner states that in the event the proposed channel is assigned to Ogdensburg, it will file an application for such channel and construct and operate a station. However, petitioner has not stated its willingness to reimburse DeHart Broadcasting Corp. for expenses incurred in the changeover of its station to a new channel. Petitioner is thus requested to state whether it agrees to reimburse DeHart Broadcasting Corp. if it ultimately becomes the licensee of Channel 224A.

5. Although the proposed Ogdensburg assignment is for a Class A FM channel and preclusoin studies are not normally required, petitioner has shown that no new preclusion would occur as a result of the proposed assignment.

6. Since Ogdensburg and Gouverneur are located within 402 kilometers (250 miles) of the United States-Canada border, the proposed assignments require coordination with the Canadian Government.

7. After careful consideration of the petitioner's proposal, we believe it would be in the public interest to explore the possibility of making a first FM assignment to Ogdensburg, N.Y. Accordingly, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules, with regard to the communities listed below, as follows:

[1] Public Notice of the petition was given on August 2, 1978, Report No. 1135.

[2] The substitution of Channel 237A for 224A at Gouverneur would be short-spaced to an existing Canadian assignment of Channel 238C1 at Belleville, Ontario. No interference would occur within the protected contour of either station, however, and the Canadian Government has given preliminary concurrence to the Gouverneur swap.

[3] Population figures are taken from the 1970 U.S. Census.

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City	Channel No.	
	Present	Proposed
Gouverneur, N.Y.	224A	237A
Ogdensburg, N.Y.		224A

8. It is ordered, that pursuant to section 316(a) of the Communications Act of 1934, as amended, the licensee of Station WLUF(FM), Gouverneur, N.Y., shall show cause why its license should not be modified to specify operation on Channel 237A if the Commission determines that the public interest would best be served by adopting the proposed assignments.

9. Pursuant to § 1.87 of the Commission's Rules and Regulations, the licensee of Station WLUF (FM), Gouverneur, N.Y., may not later than January 16, 1979, request that a hearing be held on the proposed modification. Pursuant to § 1.87(f), if the right to request a hearing is waived, WLUF (FM) may, not later than 1978, file a written statement showing with particularity why its license should not be modified as proposed in the *Order to Show Cause*. In this case, the Commission may call on WLUF (FM) to furnish additional information, designate the matter for hearing, or issue, without further proceedings, an Order modifying the license as provided in the *Order to Show Cause*. If the right to request a hearing is waived an no written statement is filed by the date referred to above, WLUF (FM) will be deemed to consent to modification as proposed in the *Order to Show Cause* and a final Order will be issued by the Commission, if the channel changes mentioned above are found to be in the public interest.

10. The Commission authority to institute rulemaking proceedings, showings required, cut-off procedures, and filing requirements are contained below and are incorporated by reference herein.

NOTE: A showing of continuing interest is required by paragraph 2 below before a channel will be assigned.

11. Interested parties may file comments on or before December 27, 1978, and reply comments on or before January 16, 1979.

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rulemaking* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rulemaking above. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rulemaking which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rulemaking* above. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission Rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

[FR Doc. 78-31257 Filed 11-3-78; 8:45 am]

[6712-01-M]

[47 CFR Part 97]

[Docket No. 20092; FCC 78-740]

MAKING SPECIAL CALL SIGNS AVAILABLE TO STATIONS LICENSES TO AMATEUR EXTRA CLASS OPERATORS

AGENCY: Federal Communications Commission.

ACTION: Second Report and Order.

SUMMARY: The Commission is terminating its proposal to allow Amateur Extra Class licensees to request certain types of specific call signs.

EFFECTIVE DATE: Nonapplicable.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION:

Contact Mr. Joseph Johnson, FCC 1919 "M" Street NW., Washington, D.C. 20554, 202-632-7175.

SUPPLEMENTARY INFORMATION: See attached document.

In the matter of amendment of part 97 to make special call signs available to stations licensed to Amateur Extra Class operators. (Docket 20092; See 41 FR 17734).

Adopted: October 19, 1978.
Released: October 26, 1978.
By the Commission:

1. A Notice of Proposed Rule Making in the above captioned matter was released on July 2, 1974. In that Notice, the Commission proposed to amend Part 97 of the rules to permit Amateur Extra Class licensees to request any available specific unassigned call signs for their primary and/or secondary stations. It was also proposed to discontinue the availability of "in memoriam" call signs, i.e., call signs requested by Amateur club stations for the purpose of honoring a deceased member.

2. On April 22, 1976 the Commission adopted a First Report and Order in this proceeding which adopted in part the proposals made in the Notice. Specifically, Amateur Extra Class licensees were permitted to request specific "two-letter" all signs, (call signs consisting of a single or double letter prefix, a digit, and a two letter suffix); action was deferred on permitting licensees to request specific "three-letter" call signs, (call signs consisting of a single or double letter prefix, a degit, and a three letter suffix). On March 11, 1977, the Commission released a Notice of Proposed Rule Making in Docket 21135 which, among other things, proposed to delete from the rules the provisions adopted under Docket 20092 which permitted Amateur Extra Class licensees to obtain specific call signs of their choice. On February 23, 1978, a First Report and Order in Docket 21135 was released which adopted this proposal. This action was taken because of the additional workload imposed by the call sign program. In amending its rules, the Commission provided that, henceforth, all call signs would be assigned systematically, with the details of the system to be announced.

3. In light of our experience with the call sign provisions adopted under Docket 20092, we see not further usefulness in continuing that proceeding. Therefore, It is ordered that Docket 20092 is terminated effective immediately.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARCIO,
Secretary.

[FR Doc. 78-31256 Filed 11-3-78; 8:45 am]

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[4910-59-M]

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[49 CFR Part 571]

[Docket No. 71-3a; Notice 4]

MOTOR VEHICLE SAFETY STANDARDS

Rearview Mirror Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking and invitation for applications for financial assistance in the preparation of comments.

SUMMARY: Research indicates that a traffic safety problem exists as a result of shortcomings in rearview visibility provided by existing rearview mirror systems. This notice proposes to amend Federal Motor Vehicle Safety Standard No. 111, 49 CFR § 571.111, to specify requirements for rearview mirror systems on motor vehicles for field of view performance (driver view of roadway and objects to sides and rear of a vehicle), reflectance, adjustment, location, mounting, breakaway characteristics, shatter resistance, distortion, reference framing, and image orientation. These requirements would result in reducing motor vehicle deaths and injuries by providing drivers with an improved view of the areas to the rear and sides of all vehicles and in front of school buses and by protecting occupants, cyclists, and pedestrians from injuries caused by rigid mirror mountings.

DATES: Comments must be received on or before March 6, 1979. Proposed effective date is September 1, 1981.

ADDRESS: Comments should refer to the docket number and must be submitted in writing to: Docket Section, National Highway Traffic Safety Administration, Room 5108, 400 Seventh Street SW., Washington, D.C. 20590. Applications for financial assistance should be submitted in writing to: Ms. Jeanette Feldman, Public Affairs and Consumer Participation, National Highway Traffic Safety Administration, Room 5232, 400 Seventh Street SW., Washington, D.C. 20590, 202-426-0670.

FOR FURTHER INFORMATION CONTACT:

Charles Kaehn, Office of Crash Avoidance, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION:

APPLICATIONS FOR FINANCIAL ASSISTANCE

NHTSA invites all qualified individuals and organizations financially unable to participate in this proceeding to apply for financial assistance. All applications submitted before the deadline specified at the beginning of this notice will be examined by an evaluation board, composed of NHTSA and other Department of Transportation officials, to determine whether each applicant is eligible to receive funding. Consideration of late applications is at the discretion of the evaluation board.

In general, an applicant is eligible if: (1) It represents an interest whose representation can reasonably be expected to contribute to a full and fair determination of the issues in the proceeding, (2) its participation is reasonably necessary to represent that interest, (3) it can competently represent that interest, and (4) it lacks sufficient resources to participate in the absence of such assistance. If more than one applicant representing the same or similar interest is deemed eligible, the board will either select the applicant which can make the strongest presentation or select more than one applicant if the eligible applicants seek to represent significantly different points of view or proposals. Compensation is available only for reasonable out-of-pocket expenses necessary to the applicant's participation, to the extent the agency's budget for this purpose will permit. Payment is made as soon as possible after the selected applicant has completed its work and submitted a claim.

Each applicant should specify in its application which rulemaking actions and issues it proposes to address if its application for funding is approved, and the nature of its proposed work product. Applicants must submit as part of their application all information required by section 5 of the financial assistance regulations which governed the operation of last year's public participation demonstration programs. (42 FR 2864; Jan. 13, 1977.) Failure to submit the required information may result in delays in evaluation and possible disqualification of the application.

BACKGROUND

This notice proposes amendments to Federal Motor Vehicle Safety Standard No. 111 that would upgrade the mirror systems on all motor vehicles, i.e., cars, trucks, buses, motorcycles, and multipurpose passenger vehicles. The proposed rule would reduce blind spots by increasing the mirror field of view, upgrade occupant cyclist, and pedestrian protection by requiring mirrors to have breakaway characteristics and inside mirrors to be shatter resistant, reduce headlight glare by specifying day and night reflectance requirements for inside mirrors, minimize obstruction of the forward field of view by specifying mirror location, and insure uniform mirror images by specifying quality and use of convex mirrors.

In February 1967, the NHTSA issued a rule (32 FR 2413) establishing Federal Motor Vehicle Safety Standard No. 111 (49 CFR § 571.111), which became effective January 1, 1968. In January 1971, the NHTSA issued a notice of proposed rulemaking (36 FR 1156) proposing requirements for "indirect visibility." The manufacturers agreed that indirect visibility should be defined and regulated, however, they disagreed with NHTSA's proposed method of doing so. Further, they did not agree among themselves about how that objective should be accomplished. On the basis of comments received, the NHTSA decided to conduct further research before issuing a rule. Comparison studies, available for examination in the public docket, were funded by the NHTSA to determine the merits of the various proposals, i.e., those suggested by NHTSA and manufacturers. This NPRM reflects that research.

The purpose of this proposed rule is to reduce motor vehicle deaths and injuries by providing drivers with an increased rearward field of view. By increasing the view of the rearward area, less head and eye movement will be required to view the road to the rear and sides of the vehicle. Thus, more time will be available for looking forward where the safety need to watch the motoring environment is generally greater. While it is difficult to deter-

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mine from accident records that shortcomings in the indirect field of view can be described as the sole cause of an accident, we know that such shortcomings have contributed to the occurrence of accidents. For example, accidents between vehicles changing lanes or passing contain the type of movement in which rearward visibility plays an important role. A NHTSA analysis of the National Safety Council statistics show that during the period 1974–76, approximately 8.5 percent of all accidents involved lane changing and passing and approximately 3.3 percent of the fatal accidents during that period involved these maneuvers. Mortimer and Vander Mey identified "faulty rear vision" or "faulty judgment based on rear vision" as the "probable cause" in 45 percent of lane changing and passing accidents. The NHTSA estimated that 50 percent of these accidents were related to indirect view.

The National Traffic and Motor Vehicle Safety Act is a precautionary statute that directs the agency to issue vehicle safety standards to protect the public against unreasonable risk of vehicle accidents and of death or injury occurring as a result of such accidents.

In carrying out the congressional mandate to reduce the risk of vehicle accidents through issuing accident avoidance standards, the agency is confronted with special inherent problems that limit the degree of certainty and precision achievable in estimating the effectiveness and therefore benefits of proposed standards. The agency believes it is clear that certain vehicle improvements will facilitate the performance of the driver's task and thereby improve safety.

Predicting the precise level of improvement is complicated, however, since analysis of accident causation requires consideration of the contributions by multiple interrelated driver, vehicle, highway, and environmental factors. Isolating individual factors and determining their relative importance is extremely difficult and often impossible. Similar difficulties are encountered in trying to predict the effectiveness particular remedies will have in reducing accidents.

As a result, there are areas of greater uncertainty in issuing accident avoidance standards than in issuing crashworthiness standards, i.e., standards to reduce the risk of death or injury when accidents occur. There the collision of vehicles with other vehicles or with fixed objects and the collision of vehicle occupants with the vehicle interior leave physical evidence that makes possible greater precision and certainty about cause and effect and the level of benefits.

Given the duty to act notwithstanding the inherently greater measure of imprecision and uncertainty, the agency has proceeded to develop and issue accident avoidance standards while attempting within its capabilities to quantify the benefits of the standards and limit the uncertainty. Because of the inevitable residual uncertainty, the decisionmaking regarding accident avoidance standards necessarily rests in part on policy judgment. The agency's reasonable assessment of the benefits of this proposal are contained in an impact assessment which has been placed in the public docket.

The rule is based upon a unique measuring system having as its foundation a thoroughly investigated vehicle geometric system. It has been coordinated with the field of direct view proposal, also appearing in today's issue of the FEDERAL REGISTER, so that the combined effect of the two proposals is that drivers would be provided with a better view of the road and traffic around them.

Research shows that all motor vehicles require a minimum mirror field of view. Accordingly, this standard would apply to all passenger cars, multipurpose passenger vehicles, trucks, buses, and motorcycles.

ORTHOGONAL REFERENCE SYSTEM

The geometric reference system used in this proposal is defined by axes, planes, zones, and points that constitute an orthogonal reference system. These planes form a three-dimensional reference grid on which points approximating the driver's eyes, torso, and neck pivot points are located. this reference system is further explained in the preamble to the proposed fields of direct view standard. While that standard would use angles to specify the minimum unobstructed horizontal and vertical fields of direct view from points that simulate the driver's eyes, this proposal expresses its requirements in terms of the visibility in the rearview mirror system of certain test targets outside the vehicle when the system is viewed from points that simulate the driver's eyes. The reference points that simulate the driver's torso and eyes are identical to those in the proposed forward fields of view standard except that the neck pivot points, around which the eye points rotate, are located further back for the rearview mirror proposal than for the direct field of view proposal. This difference occurs because the direct field of view proposal evaluates obstructions in the driver's forward field of view. The closer the driver's eyes are to a portion of the vehicle structure the greater the obstruction of the driver's view. Therefore, in order to insure an improved field of direct view, the neck pivot points, which determine eye points, must be close to the vehicle structure to take into account the worst possible viewing situations. This proposal, on the other hand, evaluates rearward field of view. The farther the driver's eyes are from the mirror, the smaller his field of view. Consequently, to insure a large rear viewing area, the neck pivot points must be farther back to take into account the worst possible situations for using a mirror. These reference point locations are consistent with industry practice.

INDIRECT FIELD OF VIEW

A study by Kelley and Prosin of Dunlap and Associates, Inc., in which that firm surveyed professionals in the fields of human factors and visibility research, automotive safety research, and mirror specialists, reported that "experts agree that present standard rear view mirrors are not adequate because of blind spots and insufficient fields of view." The current standard calls for approximately 33° width of field, while Kelly and Prosin indicate that 90–100° width of field is necessary. They also felt that improved rear vision could greatly improve automotive safety at a minimal cost. Minor changes in the size and location of mirrors could decrease the number of accidents by increasing the driver's ability to see exactly what surrounds his vehicle at any particular time.

Shortcomings in rearward visibility is a causative factor in accidents, especially when passing or lane changing movements are required. Several researchers have attempted to quantify the safety hazard caused by inadequate rearward fields of view. Based upon the information gathered by such researchers as Mortimer and Vander Mey, Riess of Cutler-Hammer, and the U.S. Postal Service, the NHTSA has concluded that 8.7 percent represents a conservative estimate of the percentage of all acccidents in which inadequate rearward vision was a causal element.

This proposed standard would insure that blind spots would be limited by increasing mirror field of view. This would be accomplished by insuring that a given percentage of the target area outside the vehicle could be seen by a hypothetical driver. The hypothetical driver has ambinocular vision (i.e., vision provided by both the left and right eye) and the driver's eyes approximate the range of the Society of Automotive Engineers (SAE) eyelipse. The eyepiece is located by following an exact set of geometrical directions which mathematically approximate human dimensions. The specifications for the use of targets areas to be seen in the rearview system are based on comments to the docket as well as research conducted for the NHTSA. The percentages of the target

areas that must be viewed are based on studies by Dunlap and Associates, Inc., and represent realistic percentages based on the various vehicle designs.

Passenger cars would have three vertical target areas, located to the center rear, the right rear, and the left rear of the vehicle. Not less than 95 percent of the center target and not less than 75 percent of each of the other targets would have to be viewable in the rearview system from the driver's position when there are not test occupants in the vehicle. The inside rearview mirror alone would be required to provide a view of not less than 75 percent of the center target. When there are test occupants in all vehicle seating positions, except in the driver's seat, not less than 65 percent of each of the three targets would have to be viewable. A test occupant is defined as a 50th percentile anthropomorphic test dummy.

Multipurpose passenger vehicles, trucks and buses would have two vertical target areas, one to the left and the other to the right rear of the vehicle, and two horizontal target areas on the ground surface, one to the left side and the other to the right side of the vehicle. Visibility of the ground targets would be required to reduce the blind spot which causes side-swipe accidents as trucks change lanes. No solution has yet been found for the area directly behind the truck. Not less than 95 percent of each ground target, not less than 95 percent of the vertical target on the driver's side, and not less than 65 percent of the vertical target on the passenger's side would have to be viewable from the driver's position when there are not passengers in the vehicle. Not less than 80 percent of the vertical target on the left side and 80 percent of each of the two ground targets and 55 percent of the vertical target on the right side, would be required to be viewable when there are passengers in all vehicle seating positions, except in the driver's seat.

Small trucks, whose R point (i.e., a point designated by the manufacturer and located vertically at the base of the driver's torso) is less than 45 inches above the ground have approximately the same visibility requirements and driving patterns as passengers cars. Consequently, their manufacturers would have the option of meeting either the target requirements specified for trucks or modified passenger car target requirements. If they choose the latter, not less than 80 percent of the center target and not less than 75 percent of each adjacent vertical target would have to be viewable from the driver's position when there are not test occupants. The inside rearview mirror alone would be required to provide a view of not less than 60 percent of the center target area. When there are test occupants in all vehicle seating positions, except in the driver's seat, not less than 50 percent of the area of the center target and not less than 70 percent of the area of each side target would have to be viewable.

To ensure that school bus drivers have an adequate close-in view in front of buses to enable drivers to see small children around the front wheel area, school buses with conventional hood lines would be required to provide a cross view mirror that provides the driver with a view of at least 85 percent of the ground area located 3 feet directly in front of the school bus. Forward control vehicles would be excepted from the crossview mirror requirement since those vheicles provide a direct view of the target area. In addition, school buses would have to provide their drivers with a view of the lower half of the sides of the bus that are adjacent to the ground targets. Currently, blind spots exist in front of and near the sides of buses where small children may be hidden from the drivers' view. Of the 220 fatalities occurring in 1976 in accidents involving school buses, 50 fatalities were pedestrians.

Motorcycles would be required to have both a left and right side mirror.

One of the least expensive ways to widen the indirect field of view is to use convex mirrors (i.e. mirrors whose reflective surface is in the shape of the exterior surface of a section of a sphere.). Rowland and Co., in a study funded by the NHTSA, compared plane (i.e., flat) mirrors and convex mirrors. That research concluded that convex mirrors would improve the visibility of other automobiles on the roadway and that mirrors with approximately a 40-inch radius were best. Most European and Japanses convex mirrors presently have a 48.5 inch radius. To keep the range of convexities (the curvature of convex mirrors) to a minimum so as to not confuse people when they switch vehicles, the NHTSA proposes that the passenger side viewing requirements for cars and small trucks may be met by using convex mirrors with an average radius of curvature of not less than 40 and not more than 60 inches. Wider convexities (20 to 60 inches) would be permitted on multipurpose passenger vehicles, large trucks, buses, and motorcycles because drivers of these vehicles have been using convex mirrors with a wider range of radii for years and they are used to this wider range. Many commercial vehicle drivers currently use convex mirrors with an average radius of curvature of 20 to 30 inches. The number of truck and multipurpose vehicle configurations is substantially greater than the number of automobile configurations, consequently, a greater number of mirror configurations is desirable. In addition, many trucks also have both plain and convex mirrors whereas cars generally use plane mirrors alone. The 20 to 60 inch radius for motorcycles is based on the current SAE practice. Convexity limits are measured by a prescribed method to insure uniform mirror manufacturing. The agency is seeking comments on the range of convexities proposed by this notice and would also like the commenters' suggestions as to what they believe to be the proper range of convexities.

Another method of increasing the rearward field of view is to use the periscope viewing system. Field tests showed that this method not only increases the viewing area, but also avoids the problem of indirect view being partially blocked by back seat or center front seat passengers. In addition, the large rearward field of indirect view does not distract or disorient the driver from the forward field of view as some observers thought might happen. The periscope has, however, the disadvantage of higher cost.

REFLECTANCE, ADJUSTMENT, LOCATION, AND MOUNTING

Numbers and tyes of mirrors would be limited so that drivers would not be confused when transferring from one vehicle to another. Reflectance requirements are specified as well as day and night provisions which would require a dimming selector on inside mirrors to reduce headlight glare. Reflectance percentage (i.e., the ratio of the brightness of the object viewed in a mirror as compared to the brightness of the object viewed directly) of both plane and convex mirrors would be determined by accepted laboratory procedure as set forth in the proposed standard. Mirrors would have to be positioned to provide adequate adjustability and not obscure the direct field of view. In addition, each mirror must have a stable mounting (i.e., the mirror must be securely affixed to the vehicle and should be mounted so as to minimize vibration of the mirror). Comments are solicited on specific performance requirements to insure stable mountings and limit mirror vibration.

BREAKWAY CHARACTERISTICS AND SHATTER RESISTANCE

Occupant, cyclist and pedestrian protection would be upgraded by proposed specifications which require breakway characteristics and shatter resistance. Outside mirrors that are located low enough to strike pedestrians and cylists and inside mirrors that can be struck by occupants during a crash, would be required to breakway or foldaway so as to minimize the chance

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of injury. The agency specifically solicits comments on the amount of deflection or collapse of the mirror that should be required by the standard. No mirror would be allowed to have sharp points or edges and all mirrors would have to have the edge of their glass enclosed in a housing or protective cover.

DISTORTION, REFERENCE FRAME, AND IMAGE ORIENTATION

Distortion of convex mirror images would be limited by prohibiting convex mirrors from having a single radius of curvature reading (i.e., the distance from the center of the mirror to its circumference) that deviates from the average radius of curvature by more than plus or minus 12.5 percent. This figure was derived from data submitted by domestic and foreign mirror manufacturers and represents a realistic level of performance. Convex mirrors would also be required to have a bright orange frame to remind drivers that the mirrors are convex and thus objects will appear smaller and farther away than they will appear on a plane (i.e., flat) mirror. The agency invites comments on other methods, such as a written warning on the mirror and in the owner's manual, to alert drivers that they are using a convex instead of a flat mirror.

While providing the required views of the targets, most mirrors would also have to enable the drivers to see some part of the back window, side of the vehicle, or other rearward vehicle structure so that the driver has a frame of reference with which to compare the image being viewed in the mirror. This would enable the driver to determine the location and size of the object being viewed in the mirror.

Costs of the proposal would vary according to how the manufacturers choose to meet the standard. If a combination of periscope, 3-mirror systems, and larger mirrors is utilized, cost could be as low as $28 million to manufacturers and with a markup, including overhead, profit and advertising, $55 million to purchasers. The standard would increase the price of a passenger car by $2 and the price of other vehicles by $4 to $7. This proposal would have a minor effect on fuel consumption because of the added weight and the increase in aerodynamic drag. All studies and reports relied upon in specifying the requirements in this proposal are available from the Technical Reference Section, NHTSA, 400 Seventh Street SW., Washington, D.C. 20590.

As is the case with all proposals, all provisions of this proposal are tentative. Provisions in the final rule may vary with those in the proposal consistent with the purposes of this rulemaking. Comment is particularly solicited on such subjects as the mirror breakway performance requirements and test procedures; the references points to designate the eye location for a standing driver the minimum radius requirements for edges of mirrors and mountings; the type, number, size, and radius of curvature of convex mirrors; and the type, shape, size, and viewable percentage of the targets. Options may be added or deleted. Provisions which are optional in the proposal may be made mandatory in the final rule.

Interested persons are invited to submit comments on the proposal. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5108, 400 Seventh Street, SW., Washington, D.C. 20590. It is requested but not required that 10 copies be submitted.

All comments must be limited to not more than 15 pages in length. Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a succinct and concise fashion.

If a commenter wishes to submit certain information under a claim of confientiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. Any claim of confidentiality must be supported by a statement demonstrating that the information falls within 5 U.S.C. section 552(b)(4), and that disclosure of the information is likely to result in substantial competitive damage; specifying the period during which the information must be withheld to avoid that damage; and showing that earlier disclosure would result in that damage. In addition, the commenter or, in the case of a corporation, a responsible corporate official authorized to speak for the corporation must certify in writing that each item for which confidential treatment is requested is in fact confidential within the meaning of section 552(b)(4) and that a diligent search has been conducted by the commenter or its employees to assure that none of the specified items has previously been released to the public.

All comments received before the close of business on the comment closing date indicated will be considered, and will be available for examination in the public docket at the address above both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becames available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

The principal authors of this notice are Mr. Charles Kaehn, Office of Crash Avoidance, and Mr. Steve Oesch, Office of the Chief Counsel.

In consideration of the foregoing, it is proposed that Standard No. 111, Rearview Mirrors (49 CFR 571.111), would be revised as follows:

§ 571.111 Standard No. 111, Rearview Mirror Systems.

S1. *Scope.* This standard specifies requirements for rearview mirror systems on motor vehicles for field of view performance, reflectance, adjustment, location, mounting, breakaway characteristics, shatter resistance, distortion, reference framing, and image orientation.

S2. *Purpose.* The purpose of this standard is to reduce motor vehicle injuries and deaths by providing drivers with an adequate view of the motoring environment to the rear and sides of their vehicles.

S3. *Application.* The standard applies to passenger cars, multipurpose passenger vehicles, trucks, buses, and motorcycles.

S4. *Definitions.*

"Ambinocular field of view" means the total field of view provided from both the left and right eye reference points when a rearview device is tested in accordance with the procedures specified in S6.1.

"Convex mirror" means a mirror having a curved reflective surface whose shape is the same as that of the exterior surface of a section of a sphere.

"Design attitude" means the position and angle designated for a vehicle by its manufacturer when the vehicle is at its curb weight, is on a horizontal surface, has one 165-pound occupant in the driver's seat, and has its tires inflated to the manufacturer's recommended operating pressure. The design attitude is ascertainable by determining the relationship of at least three accessible permanent marks or points on the vehicle structure to a horizontal surface.

"Image display" means the visible reflective surface of a mirror or other rearview device, that displays the motoring environment to the driver.

"Image luminance" means the ratio, expressed as a percentage, of the photometric brightness of the image of an object reflected in a rearview device compared to the photometric brightness of the object viewed directly from the rearview device in the same line of sight without glazing or reflecting surfaces in that line of sight.

"Indirect field of view" means a view of the motoring environment provided a vehicle driver by a rearview device.

"Luminous transmittance" means the ratio, expressed as a percentage, of the photometric brightness of a source of light that reaches a designated viewing point after passing through the material whose transmittance is being measured compared to the photometric brightness of the light that reaches that viewing point when the material is absent.

"Longitudinal seat adjustment range" means the longitudinal horizontal distance between the forwardmost and rearwardmost adjustment positions of the driver's designated seating position, excluding positions intended solely to permit non-driving activities.

"Obstruction" means any portion of the vehicle glazing or structure that does not meet the applicable light transmittance requirements of Standard No. 128. In the case of trucks and multipurpose passenger vehicles, any snow plow, winch, construction crane, ladder, or similar work equipment and necessary supports for such work performing equipment are not considered obstructions.

"Rearview mirror system" means any combination of rearward mirrors or other devices used to provide the driver a view toward the rear and sides of the vehicle, excluding cylindrical mirrors or any rearview devices, other than convex mirrors, that present nonuniform image displays.

"Recommended seat back angle" means the seat back angle used by the manufacturer to establish the seating reference point.

"Single image dislay" means an image display with one continuous and homogenous surface, such as that on a plane mirror.

"Test occupant" means the 50th percentile male anthropomorphic test dummy specified in Part 572 of this chapter.

"Unit magnification mirror" means a plane mirror or other rearview device, with a image display in which the angular height and width of the image of an object is equal to the angular height and width of the same object when viewed directly at the same distance, except for variances that do not exceed normal manufacturing tolerances. A prismatic day-night adjustment rearview mirror which has a position providing unit magnification is considered a unit magnification mirror.

S4.1 *Terms of orientation.* When used in this standard with regard to requirements, procedures, conditions, or descriptions, terms of orientation such as "forward" and "above" are descriptive of designed or simulated orientation in relation to a motor vehicle.

S4.2 *Terms of reference.* To simulate the location of the driver's torso, neck pivot point, and eyes (represented by a single point for some requirements and two paired points for ambinocular based requirements), the standard refers to "R" (base of torso measured vertically), "P" (neck pivot point), "V" (single eye location), and "E" (paired eye locations) points that are described as part of the orthogonal reference system in S8.

S5. *Requirements.* Each vehicle shall, under the conditions of S7, meet the requirements of S5.1 through S5.5 when tested in accordance with the procedures of S6, using the orthogonal reference system specified in S8.

S5.1 *Indirect field of view.*

S5.1.1 *Passenger cars.* Each passenger car shall be equipped with a rearview mirror system that, when tested in accordance with the procedures of S6.1, provides an indirect field of view of test targets Q, SL, and SR (described in S8.7) as set forth in S5.1.1.1 and S5.1.1.2.

S5.1.1.1 When there are no test occupants in the vehicle, the rearview mirror system shall provide an indirect field of view of:

(a) Not less than 95 percent of the area of Target Q and, by means of a single inside image display of unit magnification, not less than 75 percent of the area of Target Q.

(b) Not less than 75 percent of the area of Target SL by means of a single image display of unit magnification.

(c) Not less than 75 percent of the area of Target SR by means of an image display other than a convex mirror or by means of a convex mirror that has an average radius of curvature of not less than 40 inches and not greater than 60 inches when tested in accordance with the procedures specified in S6.2.

S5.1.1.2 When test occupants are placed in the vehicle in all designated seating positions, except in the driver's seat, with their heads erect and buttocks and backs against the seat backs, the rearview mirror system shall provide an indirect field of view of not less than 65 percent of the area of Target Q, 65 percent of the area of Target SL, and 65 percent of the area of Target SR.

S5.1.2 *Multipurpose passenger vehicles, trucks, and buses.*

(a) Each multipurpose passenger vehicle, truck, and bus with an R-point that is less than 45 inches vertically above the ground shall be equipped with a rearview mirror system that, when tested in accordance with the procedures of S6.1, conforms to the requirements of S5.1.2.1 or the requirements of S5.1.2.2.

(b) Each multipurpose passenger vehicle, truck, and bus with an R-point that is 45 inches or more vertically above the ground shall be equipped with a rear view mirror system that, when tested in accordance with the procedures of S6.1, conforms to the requirements of S5.1.2.2.

(c) Each school bus shall conform to the requirements of S5.1.2.3.

S5.1.2.1 Each rearview mirror system shall provide an indirect field of view of test targetrs Q, SL, and SR (described in S8.7) as set forth in S5.1.2.1.1 and S5.1.2.1.2.

S5.1.2.1.1 When there are no test occupants in the vehicle, the rearview mirror system shall provide an indirect field of view of:

(a) Not less than 80 percent of the area of Target Q and, by means of a single inside image display of unit magnification, not less than 60 percent of the area of Target Q.

(b) Not less than 75 percent of the area of Target SL by means of a single image display of unit magnification.

(c) Not less than 75 percent of the area of Target SR by means of an image display other than a convex mirror or by means of a convex mirror that has an average radius of curvature of not less than 40 inches and not greater than 60 inches, when tested in accordance with the procedures specified in S6.2.

S5.1.2.1.2 When test occupants are placed in the vehicle in all designated seating positions, except in the driver's seat, with their heads erect and buttocks and backs against the seat backs, the rearview mirror system shall provide an indirect field of view of not less than 50 percent of the area of Target Q and not less than 70 percent of the area of Target SL and of Target SR.

S5.1.2.2 Each rearview mirror system shall provide an indirect field of view of test targets YL, YR, XL, and XR (described in S8.7) as set forth in S5.1.2.2.1 and S5.1.2.2.2.

S5.1.2.2.1 When there are no test occupants in the vehicle, the rearview mirror system shall provide an indirect field of view of:

(a) Not less than 95 percent of the area of Target YL by means of a single image display other than a convex mirror or by means of a convex mirror that has an average radius of curvature of not less than 20 inches and not more than 60 inches, when tested in accordance with the procedures specified in S6.2, and that its equal to the average radius of curvature of any convex mirror used to comply with S5.1.2.2.1(b).

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(b) Not less than 95 percent of the area of Target YR by means of a single image display other than a convex mirror or by means of a convex mirror that has an average radius of curvature of not less than 20 inches and not more than 60 inches, when tested in accordance with the procedures specified in S6.2.

(c) Not less than 95 percent of the area of Target XL by means of a single image display of unit magnification.

(d) Not less than 65 percent of the area of Target XR by means of a single image display of unit magnification.

S5.1.2.2.2 When test occupants are placed in the vehicle in all designated seating positions, except in the driver's seat, with their heads erect and buttocks and backs against the seat backs, the rearview mirror system shall provide an indirect field of view of not less than 80 percent of the area of Target YL, of Target YR, and of Target XL, and 55 percent of Target XR.

S5.1.2.3 Each school bus shall be equipped with a rearview mirror system that conforms to the requirements of S5.1.2.3.1 and S5.1.2.3.2.

S5.1.2.3.1 Each school bus, except those which are forward control, shall have an outside crossview convex mirror with an average radius of curvature not less than 12 inches and not greater than 25 inches that provides a view of at least 85 percent of the ground surface area bounded a transverse vertical plane tangent to the forwardmost point on the front bumper and a transverse line located on the ground 3 feet forward of the bumper and bounded on each side by longitudinal vertical planes tangent to the outboardmost part of the right and left front fenders.

S5.1.2.3.2 The rearview mirror system of each school bus shall provide a view of the entire lower half of the sides of the bus to the rear of a transverse vertical plane passing through lines marking the front boundaries of the YL and YR Targets.

S5.1.3. *Motorcycles.* Each motorcycle shall be equipped with a rearview mirror system that conforms to the requirements of S5.1.3.1 or S5.1.3.2.

S5.1.3.1 Each rearview mirror system shall be comprised of two mirrors of unit magnification, each having not less than 12.5 square inches of image display.

S5.1.3.2 Each rearview mirror system shall be comprised of two convex mirrors, each having the same average radius of curvature and each having not less than 10 square inches of image display. The average radius of curvature of the two mirrors shall be not less than 20 inches and not greater than 60 inches.

S5.2 *Reflectance.* Each rearview mirror system specified in S5.1 shall meet the requirements set forth in S5.2.1 and S5.2.2.

S5.2.1 The image display of each inside rearview mirror shall provide an average image luminance of not less than 50 percent when viewed from E_s and E_n and shall have a dimming selector that upon operation lowers the average image luminance to an average of not less than 2.5 percent and not greater than 15 percent.

S5.2.2

(a) The image display of each outside rearview mirror shall provide an average reflective value of not less than 35 percent when tested in accordance with the procedures of S6.3.

(b) If any outside review mirror is viewable by the driver through glazing material, that glazing material shall have a luminous transmittance of not less than 70 percent when tested in accordance with the procedures set forth in § 571.205.

S5.3 *Adjustment, location, and mounting.*

S5.3.1 *Passenger cars.* Each passenger car shall be equipped with a rearview mirror system having not more than 3 rearview device locations, 1 inside the vehicle, not more than 1 outside the vehicle in Zone I (described in S8.6), and not more than 1 outside the vehicle in Zone II (described in S8.6). In addition, the system shall conform to the requirements of S5.3.1.1 through S5.3.1.6.

S5.3.1.1 Each rearview mirror shall have stable support mountings.

S5.3.1.2 Each rearview mirror shall provide for image display adjustment in both the horizontal and vertical directions.

S5.3.1.3 Each image display shall be located so that all of it is:

(a) Forward of a vertical transverse plane that is 12 inches forward of P_4; and

(b) Between a vertical plane that passes through P_4 and makes a 60 degree angle to the left with the X—Z plane and a vertical plane that passes through P_3 and makes a 60 degree angle to the right with the X-Z plane.

S5.3.1.4 No rearview mirror or its mounting shall be located within, or be adjustable to be located within, viewing area A as described in § 571.128.

S5.3.1.5 Each inside image display shall—

(a) Be adjustable from the driver's seated position when the driver is using occupant restraints complying with § 571.208.

(b) Be mounted or adjustable to a position so that all of it is above a horizontally plane 0.75 inches above V_1 and, when so positioned, provides a view from V_1 of not less than the uppermost 6 feet of Target Q measured horizontally.

S5.3.1.6 Each outside image display shall—

(a) If located in Zone I, be adjustable from the driver's seated position when the driver is using occupant restraints complying with § 571.208.

(b) If located in Zone II.

(1) Be adjustable from the driver's seated position when the driver is using occupant restraints complying with § 571.208, or

(2) Provide an indirect field of view of not less than 95 percent of the area of Target SR when tested in accordance with the procedures of S6, using the orthogonal reference system specified in S8, or

(3) Have a locking mechanism that holds the image display in position after adjustment by the driver.

(c) If viewed from the driver's seated position through the windshield, be located so that all of it is viewed through the area wiped by the windshield wiper system.

(d) Not be mounted, nor shall any part be adjustable to a position either—

(1) Below a horizontal plane 0.75 inches above V_1, or

(2) Above a horizontal plane 0.75 inches below V_2.

S5.3.2 *Multipurpose passenger vehicles, trucks, and buses.* Excluding front-mounted crossview mirrors on school buses that meet the requirements of S5.1.2.3., each multipurpose passenger vehicle, truck, and bus shall be equipped with a rearview mirror system having not more than 4 rearview mirror locations to meet the target area requirements set forth in S5.1. In addition, each multipurpose passenger vehicle, truck, and bus shall have a rearview mirror system that conforms to the requirements of S5.3.1. for passenger cars or to the requirements of § 5.3.2.1 through S5.3.2.6.

S5.3.2.1. Each rearview mirror shall have stable support mountings.

S5.3.2. Each rearview mirror shall provide for image display adjustment in both the horizontal and vertical directions.

S5.3.2.3. Each image display shall be located so that all of it is—

(a) Forward of a vertical transverse plane that is 12 inches forward of V_1, and

(b) Between a vertical plane that passes through P_4 and makes a 65 degree angle to the left with the X-Z plane and a vertical plane that passes through P_3 and makes a 75 degree angle to the right with the X-Z plane.

S5.3.2.4 No rearview mirror or its mounting shall be located within, or be adjustable to be located within, viewing area A as described in § 571.128.

S5.3.2.5 Each inside image display shall—

(a) Be adjustable from the driver's seated position when the driver is using occupant restraints complying with § 571.208.

(b) Be mounted or adjustable to a position so that all of it is above a horizontal plane 0.75 inches above V_1 and, when so positioned, provides a view from V_1 of not less than the uppermost 6 feet of Target Q measured horizontally.

S5.3.2.6 Each outside image display shall—

(a) If located in Zone I, not be mounted nor shall any part be adjustable to a position either—

(1) Below a horizontal plane 0.75 inches above V_1, or

(2) Above a horizontal plane 0.75 inches below V_2.

(b) If located in Zone II, be located so as to minimize obstruction of the driver's direct field of view in Zone II between the planes defined in (a).

(c) If viewed through the windshield, be located so that all of it is viewed from the driver's seated position through the area wiped by the windshield wiper system.

S5.3.3 *Motorcycles.* Each motorcycle shall be equipped with a rearview mirror system having two rearview mirror locations, one on the right side and one on the left side. In addition, the system shall conform to the requirements of S5.3.3.1 through S5.3.3.4.

S5.3.3.1 Each rearview mirror shall have stable support mountings.

S5.3.3.2 Each rearview mirror shall provide for image display adjustment in both the horizontal and vertical directions.

S5.3.3.3 Each rearview mirror shall be adjustable from the driver's seated position.

S5.3.3.4 Each rearview mirror shall be mounted so that—

(a) The horizontal center of the image display is not less than 11 inches outboard of the longitudinal centerline of the motorcycle, and

(b) The vertical center of the image display is not less than 9 inches vertically above the top of the driver's seat in its lowest adjusted position.

S5.4 *Breakaway characteristics and shatter resistance.* Each rearview mirror system, when adjusted to meet the field of view requirements specified in S5.1 shall meet the requirements set forth in S5.4.1 through S5.4.6.

S5.4.1 Each inside rearview mirror and its mountings shall not have any points or edges that have a minimum radius of less than 0.125 inches that can be contacted by a 15 pound, 16.5 inch headform applied in the forward direction in any plane 45 degrees above or below a horizontal plane and in any plane 45 degrees to the left or right of a vertical longitudinal plane.

S5.4.2 Each inside rearview mirror and its mountings, if located in the head impact area defined in § 571.201, shall deflect, collapse, or breakaway without leaving any edges which have a minimum radius of less than 0.125 inches when the image display is subjected to a force of 90 pounds when applied in the forward direction in any plane 45 degrees above or below a horizontal plane and in any plane 45 degrees to the left or right of a vertical longitudinal plane.

S5.4.3 Each motorcycle mirror and its mounting shall deflect, collapse, or breakaway without leaving any edges which have a minimum radius of less than 0.125 inches when the image display is subjected to a force of 90 pounds applied in a forward direction parallel to the vehicle longitudinal centerline at any point on the reflective surface.

S5.4.4 Each outside mirror and its mounting, except for motorcycle mirrors, that is less than 6 feet vertically above the ground and that extends three or more inches horizontally outboard of a longitudinal vertical plane tangent to the outboardmost surface (excluding mirrors and their mountings) of the vehicle shall deflect, collapse, or breakaway without leaving any edges which have a minimum radius of less than 0.125 inches when the mirror housing or its mounting bracket is subjected to a horizontal rearward force of 90 pounds applied parallel to the vehicle longitudinal center line at any point on the mirror housing or its mounting bracket that is three inches or more outboard of such plane.

S5.4.5 Each outside mirror and its mountings shall not have any points or edges that have a radius of less than 0.125 inches that can be contacted by a 15 pound, 16.5 inch headform applied in a horizontal rearward direction that is parallel to the vehicle's longitudinal centerline.

S5.4.6 Each image display shall have—

(a) Its entire perimeter enclosed within a housing, or

(b) The edge of its glazing material encapsulated within a protective cover of energy-absorbing material that has a thickness of not less than 0.125 inches.

S5.4.7 Each inside rearview mirror that is totally or partially located in the head impact area defined in § 571.201, and each motorcycle mirror shall be—

(a) Constructed of glazing material complying with § 571.205 and shall have an image display that retains not less than 90 percent of its glazing material when impacted with the head form at 90 degrees to the image display surface when using the demonstration procedures defined in § 571.201, or

(b) Constructed of tempered glass complying with § 571.205.

S5.5 *Distortion, reference frame, and image orientation.* Each rearview mirror system specified in S5.1 shall meet the requirements set forth in S5.5.1 through S5.5.9.

S5.5.1 Each convex mirror, when tested in accordance with the procedures of S6.2, shall not have a single radius of curvature reading that deviates from the average radius of curvature by more than plus or minus 12.5 percent.

S5.5.2 The owners manual of each vehicle with a GVWR of 10,000 or less pounds equipped with one or more convex mirrors other than the crossview mirror provided for school buses, shall explain—

(a) Where the convex mirrors are located.

(b) That the convex mirrors have a bright orange colored reference frame to alert the driver that he is looking at a convex mirror instead of a plane mirror.

S5.5.3 Except for front-mounted mirrors on school buses that meet the requirements of S5.1.2.3 and except for motorcycle mirrors, each outside image display shall include a view of some part of the rear half of the vehicle as a frame of reference when meeting the requirements of S5.1.

S5.5.4 The view on each inside image display shall include a position of the rear window frame or other rearward vehicle structure as a frame of reference when the rearview mirror system of which the display is a part is adjusted to meet the requirements of S5.1.

S5.5.5 Each convex mirror shall have a reference frame that —

(a) Is colored bright orange.

(b) Is within 0.25 inches of the edge of the rearview mirror.

(c) Is not less than 0.125 inches wide.

(d) Extends around the entire periphery of the image display.

S5.5.6 Each image display shall project an image which is oriented in the same way as the image presented by a single plane mirror so that the image is upright and has left and right reversed.

S5.5.7 No image display shall, when tested in accordance with S6.1, have a viewing position so small that the image disappears from view when the viewing position is moved from one E point to its paired E point appropriate for testing the device.

S5.5.8 There shall be no obstruction, other than antenna and heating wires allowed in § 571.128, between applicable E points and any image display, when tested in accordance with the procedures of S6.1.

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S5.5.9 The image display of a convex mirror shall be not less than 30 inches from the nearest applicable E point.

S6. *Test procedures.* Each vehicle shall be capable of meeting the requirements of S5 when tested in accordance with the appropriate procedures set forth in this section.

S6.1 *Determination of ambinocular field of view.*

S6.1.1 *Zone I.* To determine the field of view provided by rearview mirrors located in Zone I, such as an outside mirror on the driver's door, use the procedures set forth in S6.1.1.1 through S6.1.1.6.

S6.1.1.1 Use the paired E points E_7 and E_8 and the pivot point P_4.

S6.1.1.2 Adjust the rearview mirror to provide the maximum view of the appropriate target.

S6.1.1.3 Rotate the paired E points, E_7 and E_8, around P_4 to the left (counterclockwise) from a straight ahead viewing position in a horizontal plane through P, until the projection in this horizontal plane of a sight line from E_8 to the vertical mid-point on the left side of the image display makes a 30-degree angle with the extension of a line from P_4 through the mid-point, M, of E_7 and E_8. If the sight line projection from E_8 makes less than a 30-degree angle with the extended line from P_4 when this extended line is parallel to the X-axis, then there is no need to rotate the E points and they shall remain in a vertical transverse plane parallel to the Y-Z plane.

S6.1.1.4 Maintaining the position prescribed in S6.1.1.3, make a sight line from E_7 to the vertical mid-point of the right side of the image display.

S6.1.1.5 Place a camera with its lens at E_8 and aim it along the sight line in S6.1.1.3. Focus the camera and photograph the target image. Repeat for the sight line from E_7 specified in S6.1.1.4.

S6.1.1.6 The field of view of the image display is the sum of the target images recorded on the two photographs excluding any overlap of the target image on one of the photographs.

S6.1.2 *Zone II.* To determine the field of view provided by rearview mirrors located in Zone II, such as the inside rearview mirror or an outside mirror on the right side of the vehicle, use the procedures set forth in S6.1.2.1 through S6.1.2.6. (See Figure 10).

S6.1.2.1 Use the paired E points, E_8 and E_9, and the pivot point P_3.

S6.1.2.2 Adjust the rearview mirror to provide the maximum view of the appropriate target.

S6.1.2.3 Rotate the paired E points, E_8 and E_9, around P_3 to the right (clockwise) from a straight ahead viewing position in a horizontal plane through P_3 until the projection in this horizontal plane of a sight line from E_8 to the vertical mid-point of the right side of the image display makes a 30-degree angle with the extension of a line from P_3 through the mid-point, M, of E_8 and E_9. If the sight line projected from E_8 makes less than a 30-degree angle with the extended line from P_3 when this extended line is parallel to the X-axis, then there is no need to rotate the E points and they shall remain in a vertical transverse plane parallel to the Y-Z plane.

S6.1.2.4 Maintaining the position prescribed in S6.1.2.3, make a sight line from E_8 to the vertical mid-point of the left side of the image display.

S6.1.2.5 Place a camera with its lens at E_8 and aim it along the sight line in S6.1.2.3. Focus the camera and photograph the target image. Repeat for the sight line from E_8 specified in S6.1.2.4.

S6.1.2.6 The field of view of the image display is the sum of the target images recorded on the two photographs excluding any overlap of the target image on one of the photographs.

S6.1.3 *Zones I and II.* If an image display is located in both Zones I and II, use the procedure described in S6.1.1 if most of the image display is in Zone I, or the procedure described in S6.1.2 if most of image display is in Zone II. If the image display area is equally divided, use the procedure described in S6.1.1.

S6.2 *Determination of average radius of curvature.*

S6.2.1 To determine the average radius of curvature of a convex mirror, use a 3-point spherometer, which meets the requirements of S6.2.2, at the 10 test positions shown in Figure 1 and record the readings for each position.

S6.2.2 The 3-point spherometer has three legs in a line, with two outer fixed legs 1.5 inches apart and one inner movable leg at the mid-point. The spherometer has a dial indicator with a scale that can be read accurately to 0.0001 inches, with the zero reading being a flat surface.

S6.2.3 The 10 test positions on the image display consist of two positions at right angles to each other at each of five locations as shown in Figure 1. The locations are at the center of the mirror, at the left and right ends of a horizontal line that bisects the mirror and at the top and bottom ends of a vertical line that bisects the mirror. None of the readings are within a 0.25-inch border on the edge of the image display.

S6.2.4 At each test position, the 3-point spherometer is held vertical and perpendicular to the convex mirror surface and a record is made of the reading on the dial indicator to the nearest 0.0001 inch.

S6.2.5 Convert the dial reading data for each of the 10 test positions to radius of curvature calculations using Table I. Consider the change as linear for dial readings that fall between two numbers in Table I.

S6.2.6 Calculate the average radius of curvature by adding all 10 radius of curvature calculations and divide by ten.

S6.2.7 Determine the numerical difference between the average radius of curvature and each of the 10 individual radius of curvature caluclations determined in S6.2.5.

S6.2.8 Calculate the greatest percentage deviation by dividing each of the numerical differences determined in S6.2.7 by the average radius of curvature and multiply by 100.

S6.3 *Reflectance of plane and convex mirrors.*

S6.3.1 The test equipment consists of a light source, a photodetector, an indicating meter, and a mirror sample holder. To measure reflectance of a plane mirror, use the test equipment set-up shown in Figure 2. To measure reflectance of a convex mirror, use the test equipment set-up shown in Figure 3.

S6.3.2 The light source is an incandescent tungsten filament lamp operating at a nominal color temperature of 2854 Kelvin. It has optics to provide a nearly collimated light beam. A voltage stabilizer is used to maintain a fixed lamp voltage during operation.

S6.3.3 The photodetector is equipped with a filter to correct its spectral response to approximate the 1931 CIE photopic luminous efficiency function as specified in the Illumination Engineering Systems Handbook. The photodetector output is read on an indicating meter. This output is a linear function of the light intensity on the photosensitive area. Electrical and/or optical means are provided to facilitate zeroing and calibration adjustments, but these means do not affect the linearity or the spectral characteristics of the instrument. The accuracy of the photodetector and indicating meter combination is within plus or minus 2 percent of full scale, or plus or minus 10 percent of the magnitude of the reading, whichever is smaller.

S6.3.4 Tests are run in darkened, not to exceed 5/100 foot candles, facility. The angle of the incident beam, A, is not less than 20 degrees or more than 30 degrees where A is the angle that the collimated light beam makes with a line perpendicular to the surface of the mirror being tested. The incident beam has a diameter on the test mirror of not less than 0.75 inches.

S6.3.5 To determine the reflectance of plane mirrors, follow the test procedure set forth in S6.3.5.1 through S6.3.5.5.

S6.3.5.1 Calibrate the meter and photodetector combination to 100 percent with the photodetector positioned in a straight line from the light source as shown in Figure 2 directly on the axis of the light source.

S6.3.5.2 Install the mirror test sample in the sample holder and move the photodetector to its measurement position as shown in Figure 2 where angle A equals angle B and the line common to the 2 angles is perpendicular to the mirror surface. The distance between the photodetector and the light source is equal to the distance between those two devices when the calibrations required by S6.3.5.1 were made.

S6.3.5.3 The reflected beam is not larger than the photosensitive area of the photodetector and does not cover less than 50 percent of the photosensitive area.

S6.3.5.4 The reflected beam shall cover approximately the same portion of the photosensitive area as used in S6.3.5.1.

S6.3.5.5 Read the reflectance value directly from the meter.

S6.3.6 To determine the reflectance of convex mirrors, follow the test procedure set forth in S6.3.6.1 through S6.3.6.6.

S6.3.6.1 The integrating sphere shown in Figure 3 has a minimum diameter of not less than 5 inches with its interior surface coated with a sufficient number of layers of matte or spectrally nonselective white finish to make the walls highly diffusing.

S6.3.6.2 The incident beam aperture on the sphere admits the entire incident beam.

S6.3.6.3 Locate the photodetector so that its photosensitive area does not directly receive the incident beam from the light source or the reflected light from the convex mirror test sample.

S6.3.6.4 Calibrate the photodetector and meter combination using a plane mirror whose reflectance was established using the test procedure set forth in S6.3.5 and whose reflectance is within plus or minus 10 percent of the reflectance of the convex mirror being tested.

S6.3.6.5 Insert the convex mirror sample after calibration.

S6.3.6.6 Read the reflectance value directly from the meter.

S7 *Test conditions.* The vehicle shall meet the requirements of S5 under the following conditions.

S7.1 The vehicle is in its design attitude.

S7.2 All vehicle openings are closed, including doors, tailgates, windows, hoods, and movable or convertible tops.

S7.3 All adjustable head restraints are placed in their fully extended design position.

S7.4 The sun visors are adjusted to their stored position.

S7.5 All inside rearview mirrors are adjusted so that they are above a horizontal plane that is 1.0 inches above P_3.

S7.6 The steering wheel is positioned so that the front wheels are straight ahead. An adjustable steering wheel is positioned in its mid-driving position.

S7.7 Each adjustable seat is in the rearmost position of its longitudinal seat adjustment range and in its lowest vertical position in the rearmost adjustment. Each adjustable seat back is at the seat back angle recommended by the vehicle manufacturer.

S8. *Orthogonal reference system.* The requirements of S5 are expressed in relation to axes, planes, zones, and points that together constitute an orthogonal reference system which originates at the vehicle's R-point (Figure 4) and is described in S8.1 through S8.7.

S8.1 *R-Point.* The R-point is a point within the occupant compartment that is designated by the vehicle manufacturer in accordance with S8.1.1 or S8.1.2, as appropriate for the type of vehicle being tested.

S8.1.1 In the case of a vehicle which is designated for a seated driver, the R-point coincides with the two-dimensional coordinates of the seating reference point and the vertical plane that bisects the driver's designated seating position in the fore and aft direction with respect to the seating position or, at the option of the manufacturer, a point not more than 3 inches outboard of this plane on the horizontal transverse line that passes through the seating reference point.

S8.1.2. In the case of a vehicle which is designed for a standing driver, the R-point is one point in space located so that V_3 is not lower than 58 inches and not higher than 62 inches above the floorboard and not more than 2 inches left or right of a vertical longitudinal plane through the midpoint of the steering wheel hub.

S8.2 *Reference axes and planes.* Three orthogonal reference planes are established to determine the dimensional relationship between the R-point and V, E, and P-points. The X-axis is the horizontal line passing through the R-point that is parallel to the vehicle's longitudinal center line. It is negative forward of the R-point and positive to the rear. The Y-axis is the horizontal line perpendicular to the X-axis that passes through the R-point. It is negative to the left of the R-point and positive to the right. The Z-axis is the vertical line passing through the R-point that is perpendicular to both the X- and Y-axes. It is negative below the R-point and positive above it (Figure 4). The vertical longitudinal plane passing through the X- and Z-axes is denoted as the X-Z plane; the horizontal plane passing through the X- and Y-axes is denoted the X-Y plane; and the vertical transverse plane passing through the Y- and Z-axes is denoted the Y-Z plane.

S8.3 *Test zones.* The vehicle is divided into four zones. These zones are bounded by two vertical planes, a vertical longitudinal one through , parallel to the X-Z plane, the other a vertical transverse one through V_1 parallel to the Y-Z plane. The forward left quadrant, the rearward left quadrant, and the rearward right quadrant are designated Zone II, Zone III, and Zone IV, respectively (Figure 7).

S8.4 *V-points.* Two reference points, V_1 and V_3, are used to define viewing areas on the windshield and represent a range of driver eye positions.

S8.4.1 *V_1-point.* When the recommended driver's seat back angle is 25°, V_1 is located 26.18 inches vertically above the X-Y plane, 2.67 inches horizontally to the rear of the Y-Z plane, and 0.20 inches horizontally to the left of the X-Z plane. For a recommended seat back angle other than 25°, the X and Z coordinates for the V points are adjusted as set forth in Table II.

S8.4.2 *V_3-point.* V_3 is located 3.00 inches directly below V_1.

S8.5 *P-points.* Two reference points, P_3 and P_4, are used to define the neck pivot points around which the eye points (E-points) rotate.

S8.5.1 *P_3-point.* When the recommended driver's seat back angle is 25°, P_3 is located 25 inches vertically above the X-Y plane, 6.07 inches horizontally to the rear of the Y-Z plane, and 1.60 inches horizontally to the left of the X-Z plane. For a recommended seat back angle other than 25°, the X and Z coordinates are adjusted as set forth in Table II.

S8.5.2 *P_4-point.* When the recommended driver's seat back angle is 25°, P_4 is located 25 inches vertically above the X-Y plane, 6.07 inches horizontally to the rear of the Y-Z plane, and 1.20 inches horizontally to the right of the X-Z plane. For a recommended seat back angle other than 25°, the X and Z coordinates are adjusted as set forth in Table II.

S8.6 *E-points.* Four reference points, E_5, E_6, E_7, and E_8, are used to evaluate the ambinocular field of view provided by a rearview mirror system. E_5 and E_6 are paired and used with P_3 to measure mirror field of view in Zone II, while E_7 and E_8 are paired and used with P_4 to measure mirror field of view in Zone I (Figure 5). The spatial relationship of the E points to the ve-

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hicle is determined only by reference to the P-points and the test procedure set out in S6.1. The E-points lie in the same horizontal plane as the P-points and are 2.54 inches apart. The distance from the P-point to the midpoint (M) of the line between the paired E points is 3.88 inches (Figure 6).

S8.7 *Target areas.* To meet the requirements of S5, the following target areas are specified as appropriate.

S8.7.1 *Passenger car target areas.* Three rectangular vertical target areas, Q, SL, and SR, are used for passenger cars (Figure 8). Target area Q is bisected by a vertical longitudinal plane passing through the vehicle centerline and is 12 feet wide. Target areas SL and SR are each 12 feet wide and are tangent to target area Q. These target areas are located on a vertical plane, perpendicular to the vehicle centerline, and 30 feet horizontally to the rear of the R-point. The bottom edge of each target is 2 feet vertically above the ground surface. The top of each target is defined by the horizon, as viewed in the image display when tested in accordance with S6.1, or 54 inches from the ground surface, whichever is greater. If more than one image display is used to view any one target area, then the height of that target area shall be based on that image display in which most of the target area is viewed.

S8.7.2 *Multipurpose passenger vehicle, truck, and bus target areas.* Two vertical target areas, XR and XL, and two horizontal ground surface target areas, YR and YL, are used for multipurpose passenger vehicles, trucks and buses. (Figure 9.)

S8.7.2.1 *Target areas XR and XL.* These target areas are rectangular areas located on the left and right sides of the vehicle in a vertical plane perpendicular to the vehicle longitudinal centerline and 50 feet horizontally to the rear of the R-point. Each of these target areas is 9 feet wide, with its bottom edge 2 feet vertically above the ground surface. The top of each target is defined by the horizon, as viewed in the image display when tested in accordance with S6.1 or is 5 feet vertically above the ground surface, whichever is greater. The inboard edges of target areas XL and XR are bounded by vertical planes parallel to the vehicle longitudinal centerline and tangent to the outboardmost point on the left and right sides, respectively, of the vehicle.

S8.7.2.2 *Target areas YR and YL.* These target areas are trapezoidal areas located on the ground surface on the left and right sides of the vehicle. The inside edge of each target area is at the intersection of the ground surface and a vertical longitudinal plane tangent to the outboardmost point on each side of the vehicle. The front and rear boundaries of each target area are lines parallel to each other and perpendicular to the vehicle longitudinal centerline. The front boundary is 8 feet wide and located 10 feet behind the R-point. The rear boundary is 22 feet wide and located 50 feet behind the R-point.

(Sec. 103, 112, and 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1401, 1407); delegations of authority at 49 CFR 1.50 and 501.8.)

Issued on October 31, 1978.

A. C. MALLIARIS,
Acting Associate Administrator for Rulemaking.

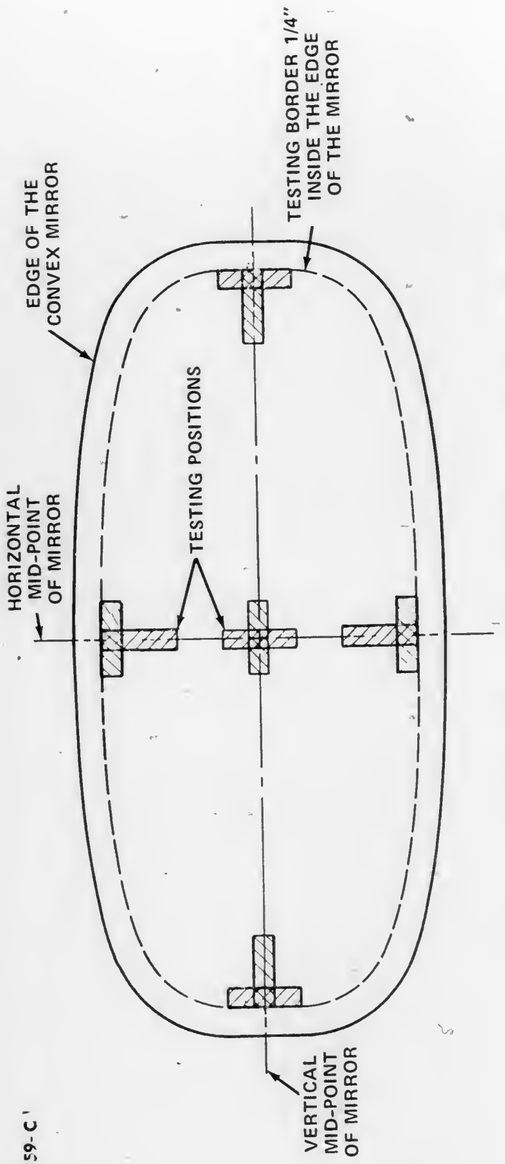


Figure 1 LOCATION OF TEN CONVEX MIRROR TESTING POSITIONS

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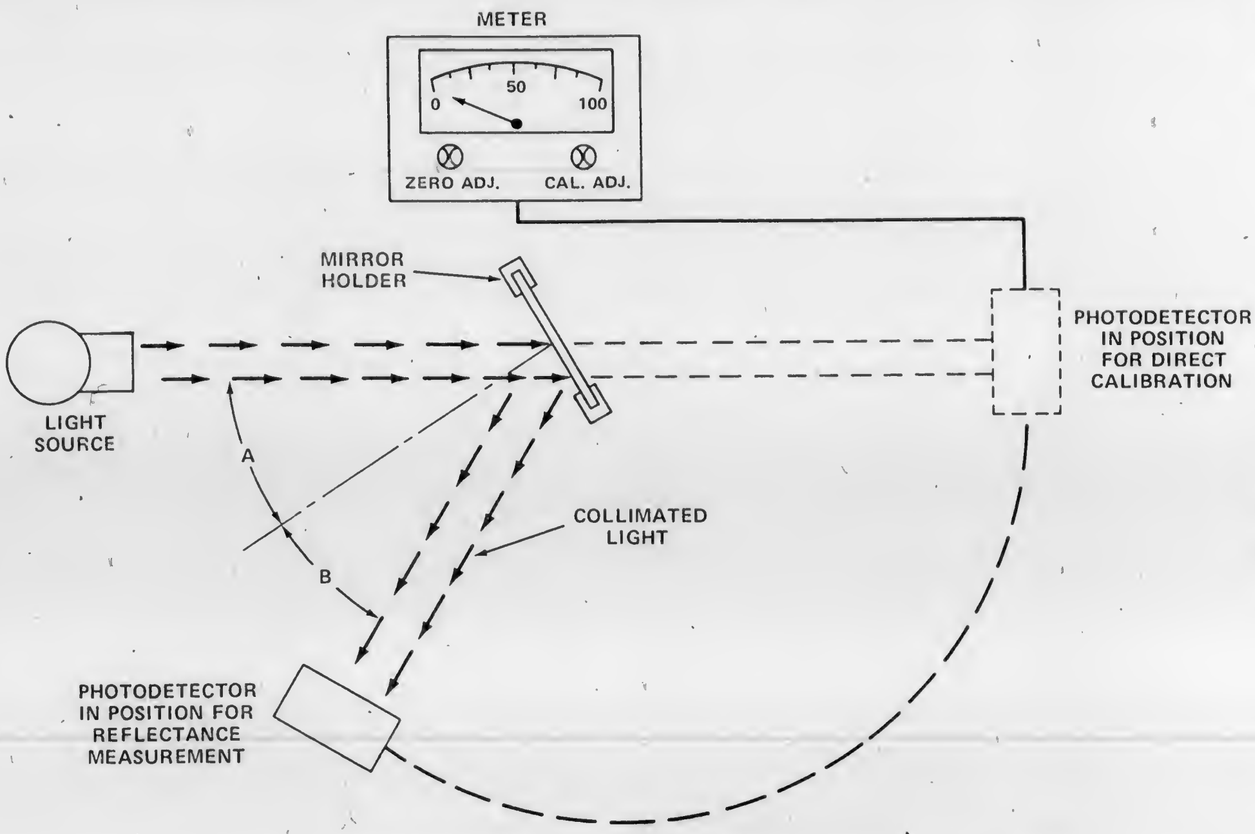


Figure 2 TEST EQUIPMENT SET-UP FOR MEASURING PLANE MIRRORS

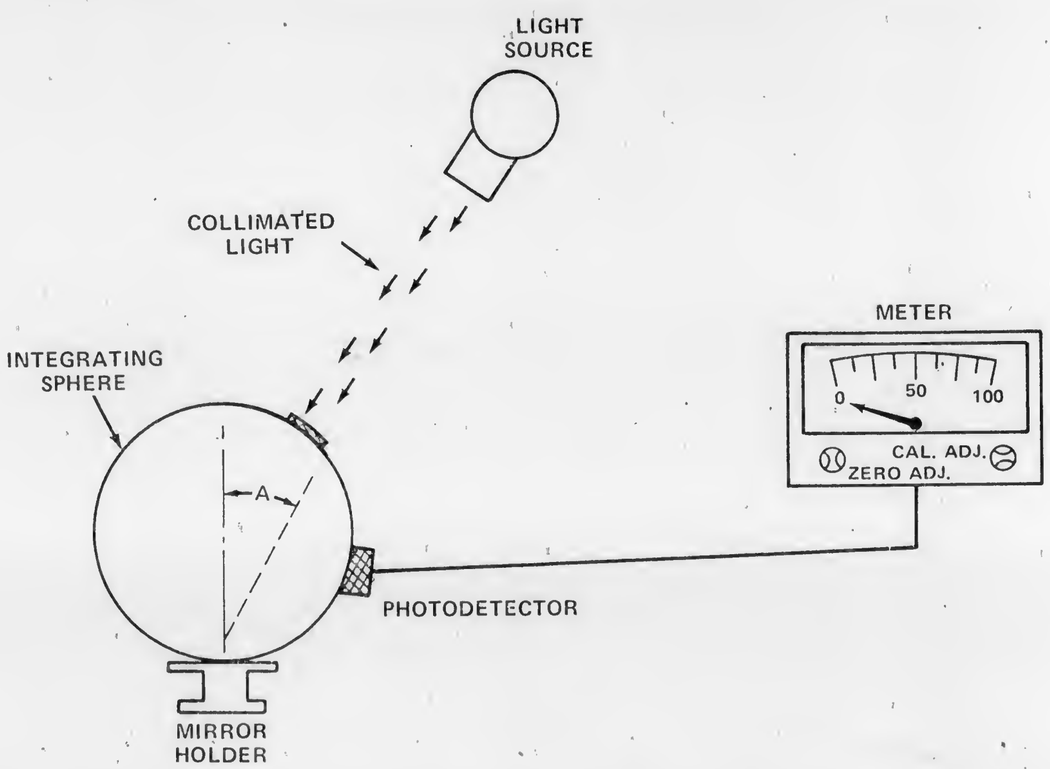


Figure 3 TEST EQUIPMENT FOR MEASURING CONVEX MIRRORS

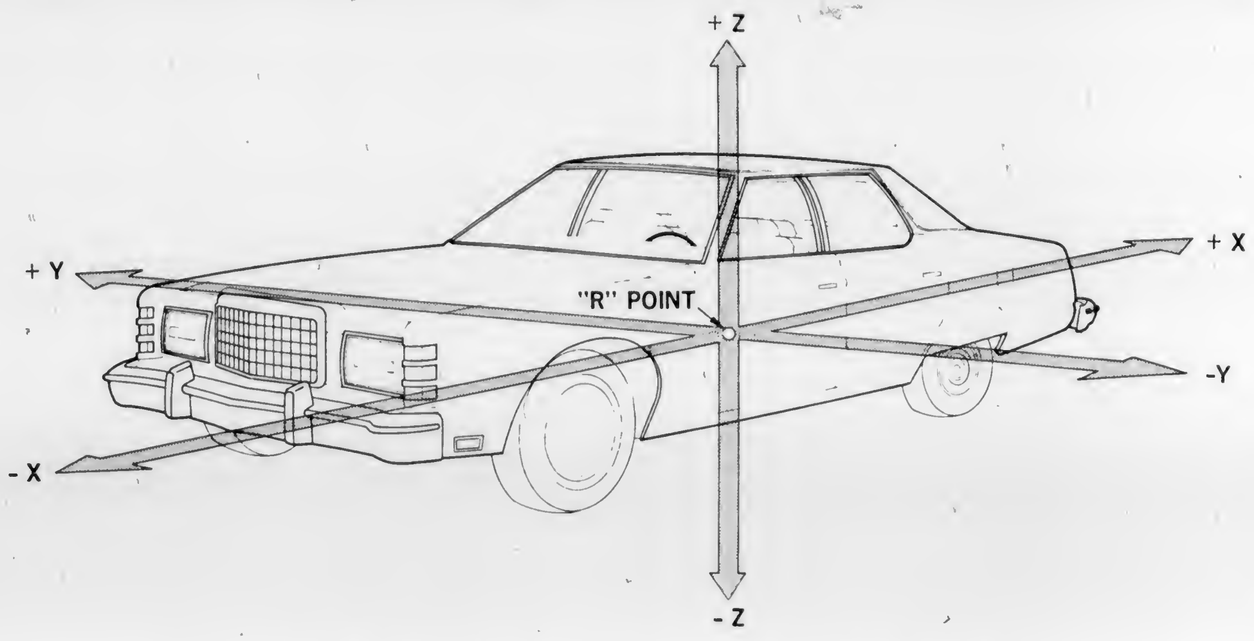


FIGURE 4 THREE ORTHOGONAL REFERENCE AXES

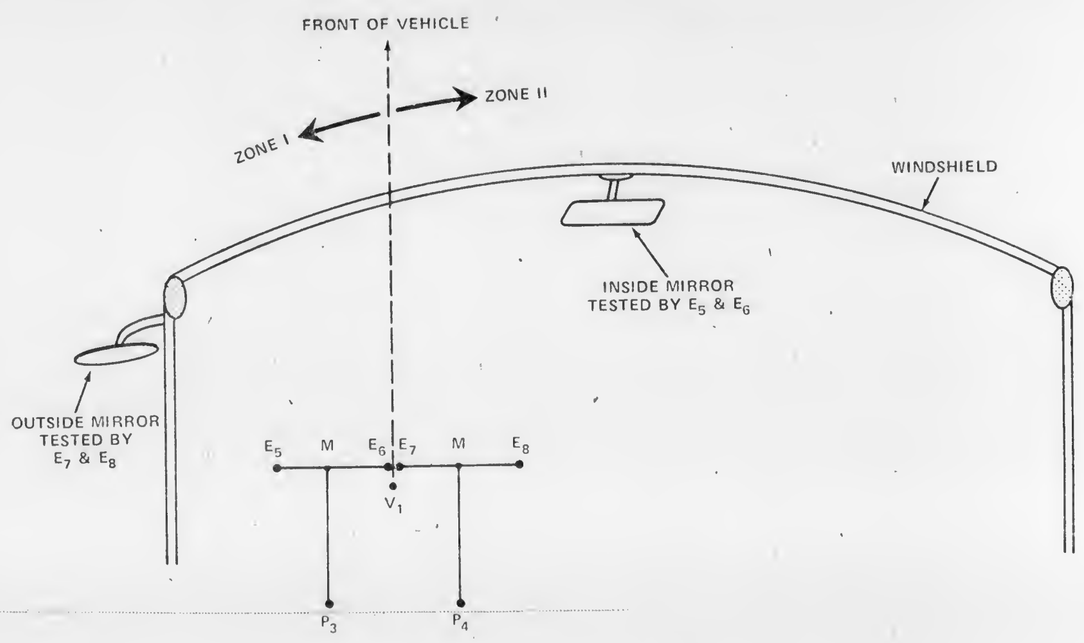


Figure 5 TOP VIEW OF V, E & P POINTS

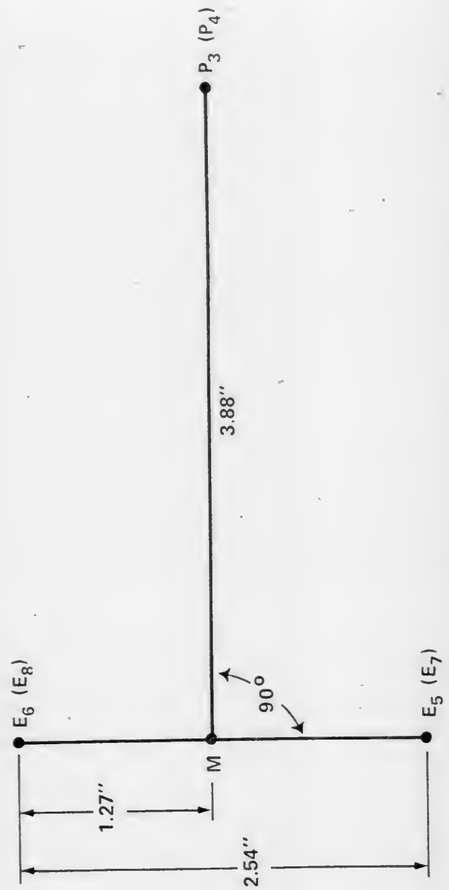


Figure 6 RELATIONSHIP BETWEEN PAIRED E POINTS & THEIR PIVOT POINTS

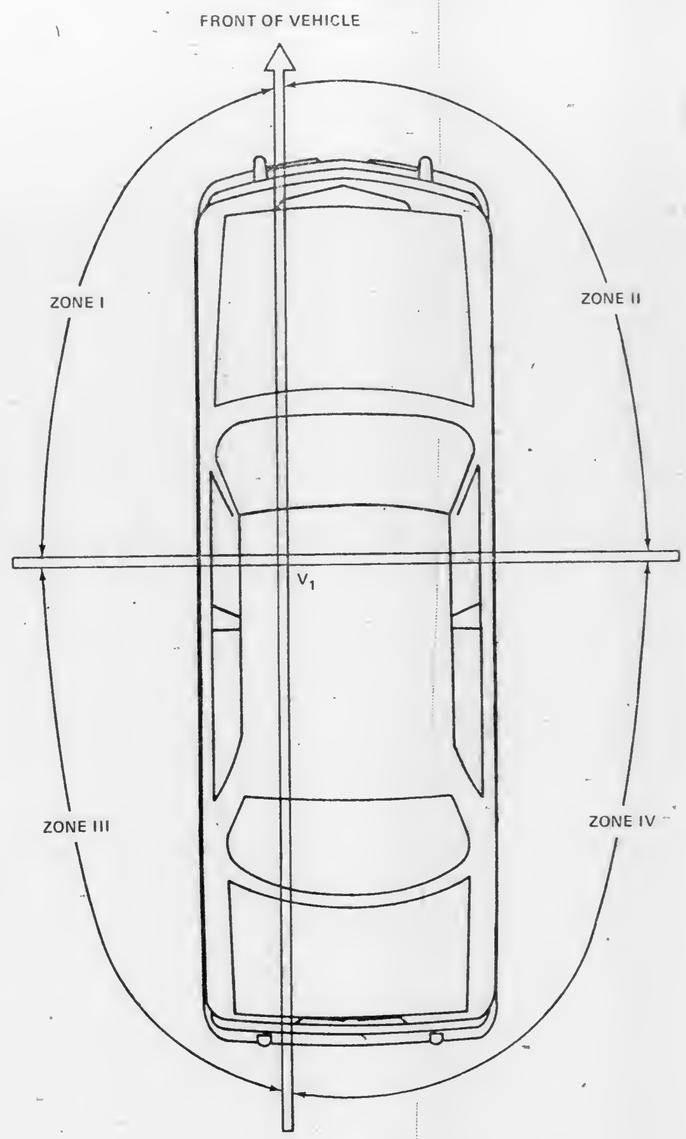


Figure 7 TEST ZONES

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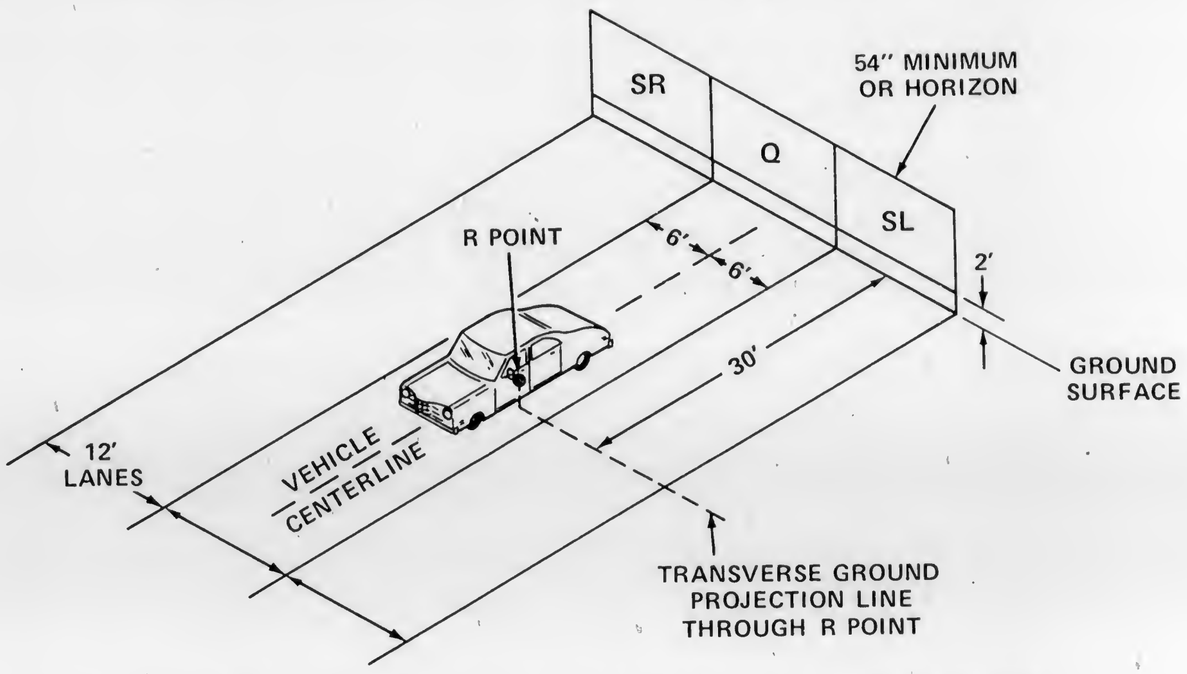


Figure 8 PASSENGER CAR REARWARD VISIBILITY TARGETS

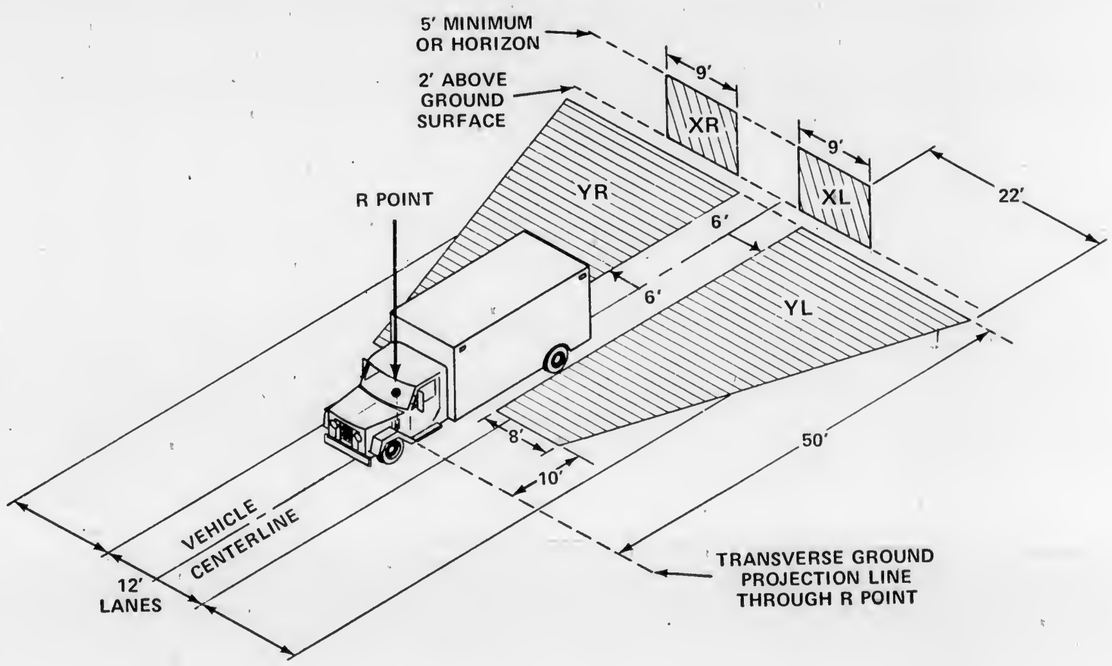


Figure 9 BUS, TRUCK & MPV SIDE & REARWARD VISIBILITY TARGETS

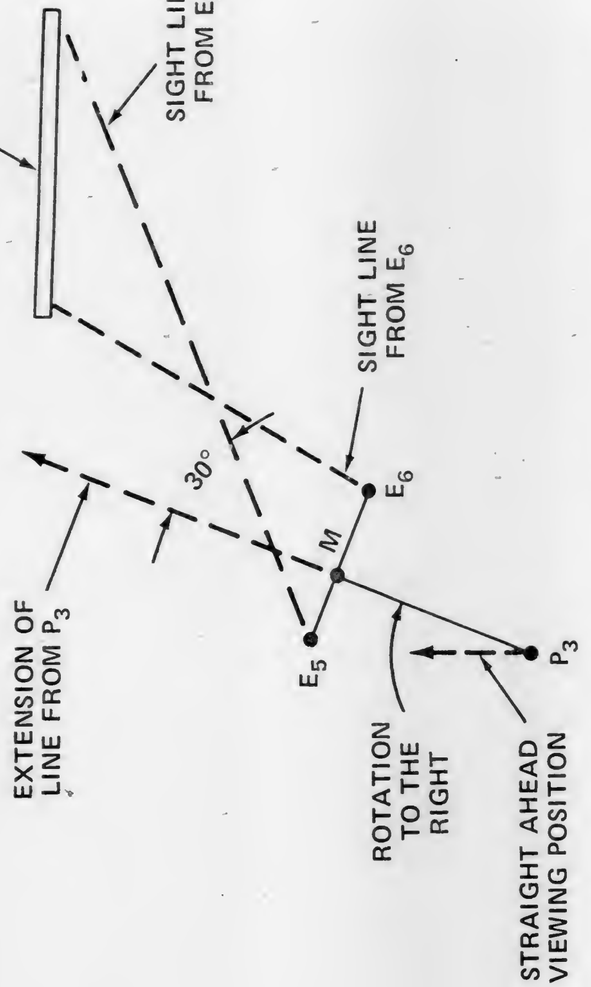


Figure 10 AMBINOCULAR FIELD OF VIEW PROCEDURE

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TABLE I.—*Conversion Table From Spherometer Dial Reading To Radius of Curvature*

Dial reading	Radius of curvature (in inches)
.00330	65.2
.00350	80.4
.00374	75.2
.00402	70.0
.00416	67.6
.00432	65.1
.00450	62.5
.00468	60.1
.00476	59.1
.00484	58.1
.00492	57.2
.00502	56.0
.00512	54.9
.00522	53.9
.00536	52.5
.00544	51.7
.00554	50.8
.00566	49.7
.00580	48.5
.00592	47.5
.00606	46.4
.00622	45.2
.00636	44.2
.00654	43.0
.00668	42.1
.00686	41.0
.00694	40.5
.00720	39.1
.00740	38.0
.00760	37.0
.00780	36.1
.00802	35.1
.00822	34.2
.00850	33.1
.00878	32.0
.00906	31.0
.00922	30.5
.00938	30.0
.00960	29.3
.00980	28.7
.01004	28.0
.01022	27.5
.01042	27.0
.01060	26.5
.01080	26.0
.01110	25.3
.01130	24.9
.01170	24.0
.01200	23.4
.01240	22.7
.01280	22.0
.01310	21.5
.01360	20.7
.01400	20.1
.01430	19.7
.01480	19.0
.01540	18.3
.01570	17.9
.01610	17.5
.01650	17.1
.01700	16.6
.01750	16.1
.01800	15.6
.01860	15.1
.01910	14.7
.01980	14.2
.02040	13.8
.02100	13.4
.02160	13.0
.02250	12.5
.02340	12.0
.02450	11.5
.02560	11.0
.02680	10.5
.02810	10.0
.02960	9.5
.03130	9.0
.03310	8.5

TABLE II.—*Corrections to the X and Z Coordinates for the V and P Points When the Recommended Seat Back Angle Is Not 25°*

Recommended seat back angle (in degrees)		X Coordinates [1] (in inches)	Z Coordinates [2] (in inches)
At least	But less than		
	5.5	−7.34	1.09
5.5	6.5	−6.95	1.06
6.5	7.5	−6.56	1.06
7.5	8.5	−6.17	1.04
8.5	9.5	−5.79	1.02
9.5	10.5	−5.41	0.99
10.5	11.5	−5.03	0.96
11.5	12.5	−4.65	0.92
12.5	13.5	−4.28	0.88
13.5	14.5	−3.91	0.83
14.5	15.5	−3.54	0.78
15.5	16.5	−3.18	0.72
16.5	17.5	−2.81	0.66
17.5	18.5	−2.45	0.59
18.5	19.5	−2.10	0.52
19.5	20.5	−1.74	0.45
20.5	21.5	−1.39	0.37
21.5	22.5	−1.04	0.28
22.5	23.5	−0.69	0.19
23.5	24.5	−0.34	0.10
24.5	25.5	0.00	0.00
25.5	26.5	0.34	−0.10
26.5	27.5	0.68	−0.21
27.5	28.5	1.01	−0.32
28.5	29.5	1.35	−0.44
29.5	30.5	1.68	−0.56
30.5	31.5	2.01	−0.69
31.5	32.5	2.33	−0.82
32.5	33.5	2.65	−0.96
33.5	34.5	2.97	−1.10
34.5	35.5	3.29	−1.24
35.5	36.5	3.61	−1.39
36.5	37.5	3.92	−1.55
37.5	38.5	4.23	−1.71
38.5	39.5	4.54	−1.87
39.5		4.84	−2.04

[1] Negative symbol means a correction to the X coordinate in the forward direction.
[2] Negative symbol means a correction to the Z coordinate in the downward.

[FR Doc. 78-31261 Filed 11-1-78; 2:53 pm]

[4910-59-M]

[49 CFR Part 571]

[Docket No. 70-7; Notice 05]

MOTOR VEHICLE SAFETY STANDARDS

Fields of Direct View

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking and invitation for applications for financial assistance in the preparation of comments.

SUMMARY: This notice proposes a new Federal motor vehicle safety standard that would establish requirements for a minimum field of view through the windshield, the luminous transmittance of glazing materials, the location and functional characteristics of sun visors, the maximum allowable size of obstructions in the field of view of drivers of motor vehicles, and the minimum view of pedestrians from buses. The proposed rule would be applicable to passenger cars, trucks, multipurpose passenger vehicles and buses. This proposal is being issued simultaneously with a proposed rule that would upgrade the current indirect visibility requirements (Docket 71-3a, Rearview Mirror Systems). The purpose of the two proposals is to establish a comprehensive approach for achieving a safe level of driving visibility, in order to reduce traffic fatalities and injuries.

DATES: Comment closing date: March 6, 1979. Proposed effective date: September 1, 1981.

ADDRESS: Comments should refer to the docket number and notice number and be submitted to: Docket Section, Room 5108, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590. Applications for financial assistance should be submitted in writing to: Ms. Jeanette Feldman, Public Affairs and Consumer Participation, National Highway Traffic Safety Administration, Room 5232, 400 Seventh Street SW., Washington, D.C. 20590, 202-426-0670.

FOR FURTHER INFORMATION CONTACT:

Chuck Kaehn, Office of Vehicle

V 4 3 / 2 1 5

Safety Standards, National Highway Traffic Safety Administration, Washington, D.C. 20590, 202-426-1351.

SUPPLEMENTARY INFORMATION:

APPLICATIONS FOR FINANCIAL ASSISTANCE

NHTSA invites all qualified individuals and organizations financially unable to participate in this proceeding to apply for financial assistance. All applications submitted before the deadline specified at the beginning of this notice will be examined by an evaluation board, composed of NHTSA and other Department of Transportation officials, to determine whether each applicant is eligible to receive funding. Consideration of late applications is at the discretion of the evaluation board.

In general, an applicant is eligible if (1) it represents an interest whose representation can reasonably be expected to contribute to a full and fair determination of the issues in the proceeding, (2) its participation is reasonably necessary to represent that interest, (3) it can competently represent that interest, and (4) it lacks sufficient resources to participate in the absence of such assistance. if more than one applicant representing the same or similar interest is deemed eligible, the board will either select the applicant which can make the strongest presentation or select more than one applicant if the eligible applicants seek to represent significantly different points of view or proposals. Compensation is available only for reasonable out-of-pocket expenses necessary to the applicant's participation, to the extent the agency's budget for this purpose will permit. Payment is made as soon as possible after the selected applicant has completed its work and submitted a claim.

Each applicant should specify in its application which rulemaking actions and issues it proposes to address if its application for funding is approved, and the nature of its proposed work product. Applicants must submit as part of their application all information required by section 5 of the financial assistance regulations which governed the operation of last year's public participation demonstration programs (42 FR 2864, January 13, 1977). Failure to submit the required information may result in delays in evaluation and possible disqualification of the application.

BACKGROUND

On March 7, 1970 (35 FR 4266), the NHTSA published an advance notice of proposed rulemaking requesting comments on a new standard that would establish requirements for vehicle glazing, tinting, unobstructed fields of view, and shade band boundaries. With the benefit of comments from this notice, the NHTSA issued a proposal concerning fields of direct view (i.e., driver's visibility unaided by mirrors) on April 12, 1972 (37 FR 7210). That notice proposed requirements for the maximum allowable obstructions to view, the field of view through the windshield, the light transmittance levels for glazing, visibility of vehicle corners, visibility of close-in ground test targets for trucks, multipurpose passenger vehicles (MPV's) and buses, and sun visor and shade band requirements. Comments on the 1972 proposal raised questions in response to which the further research was conducted. Based on the data from additional research, the NHTSA has decided that this new proposal should be issued prior to issuance of any final rule concerning fields of direct view.

The purpose of this proposed rule is to reduce motor vehicle deaths and injuries by providing drivers with an adequate field of view of their motoring environment. The driver's field of direct view includes the view directly in front of the vehicle, on either side of the vehicle, and to the rear of the vehicle. It is clearly evident that the driver's ability to control his vehicle depends to a large extent on his ability to see exactly what surrounds his vehicle at any particular time. This is confirmed by studies of the driver's field of view.

The research indicates that direct field of view requirements are needed for all powered motor vehicles other than motorcycles. Accordingly, the standard would apply to all passenger cars, multipurpose passenger vehicles, trucks, and buses.

The proposed rule would reduce impairment of the driver's field of direct view caused by physical obstructions relating to vehicle design, low light transmittance through vehicle glazing, poor sun visor and shade band designs, and inadequate windshield viewing areas. The proposed rule specifies minimum standards of performance to ensure that vehicle designs provide the driver with an adequate field of direct view.

The proposed requirements are expressed in terms of angles that describe the available field of view from points that simulate the driver's eyes. The angular method of describing the field of view conforms to the method used in the draft regulation covering fields of direct view issued by the Economic Commission for Europe (ECE) ("Uniform Provisions Concerning the Approval of Vehicles With Regard to the Driver's Field of View," W/TRANS/WP29/431/Rev. 2) (hereinafter referred to as ECE Draft Regulation).

The use of the angular method for defining fields of direct view, in lieu of external test target methods suggested by Ford, was chosen by the NHTSA because of the desire to harmonize the standard with the international ECE Draft Regulation to the extent possible. The use of the angular approach was also supported by the Motor Vehicle Manufacturers Association (MVMA) in its comments on the earlier NHTSA proposal.

More recently the MVMA and other interested parties have voiced the opinion that any NHTSA proposal on fields of direct view should be technically identical to the ECE Draft Regulaion proposal for the purpose of furthering harmonization of international standards and because the NHTSA participated in supplying the technical information and ideas which led to the ECE Draft Regulation.

As noted, the NHTSA has correlated this proposal with the international proposal where such harmonization is feasible. However, the United States must respond to the need for motor vehicle safety in the United States in the context of the statute with its statutory criteria that authorizes the motor vehicle safety standards. (The National Traffic and Motor Vehicle Safety Act, 15 U.S.C. 1381, et seq.). Meeting the criteria for a standard that is practicable, meets the need for motor vehicle safety, and is stated in objective terms, may result in a proposal that is not identical to the ECE Draft Regulation. This notice proposes a standard that is more comprehensive than the ECE proposal and that, in some respects, imposes more stringent requirements.

ORTHOGONAL REFERENCE SYSTEM

The ECE proposal, and international standards promulgated by SAE and ISO, were utilized to a large extent in the formulation of the geometric reference system used in his proposal. The ECE's method of locating the eyepoints and defining angular fields of view were adopted. The requirements are expressed in relation to axes, planes, zones, and points that together constitute an orthogonal reference system. The orthogonal reference system emanates from the "R-point," which is the reference point, specified by the manufacturer, whose X and Z coordinates correspond to the base of the driver's torso. The R-point is the reference point upon which the rest of the orthogonal reference system is based, and would be located by reference to at least three accessible permanent marks on the vehicle. It coincides with the two-dimensional coordinates of the seating reference point, as that term is defined in 49 CFR Part 571.3, and with the vertical plane that bisects the driver's designated seating

position in the fore and aft direction with respect to the seating position, or any point not more than 3 inches outboard of this plane on the horizontal transverse line through the seating reference point.

The R-point is the point of intersection of three axes (X, Y, and Z) that are used to define three orthogonal reference planes (X-Y, X-Z, and Y-Z). These planes form a three-dimensional reference grid that is used to establish the dimensional relationship between the R-point and the V-, E-, and points P-points, described below.

Two reference points, VC_1 and V_2, are specified to approximate the eye location of tall and short drivers, as the basis for veiwing area requirements, sun visor and shade band requirements, the evaluation of monocular obstructions, and tests for luminous transmittance of glazing materials.

Two points, P_1 and P_2, are specified that correspond to points about which the driver's head rotates when he views objects to the left or right. For each P-point, paired E-points are specified to represent the driver's eyes. The P and E points are used to evaluate binocular obstructions in the driver's forward field of view.

The vehicle is divided into four test zones by two vertical reference planes that pass through the V_1-point and that are perpendicular to each other. These test zones define the areas in which the binocular and monocular viewing requirements of S5 must be met.

LIMITS ON OBSTRUCTION TO FIELD OF VIEW

Obstruction of the driver's field of direct view is related to vehicle design and caused by such vehicle components as large "A" pillars, low inside mirror mountings, and external air cleaners on trucks. A NHTSA-sponsored research program by the Digitek Co. ranked measured obstructions in 13 passengers cars and developed a technique for ranking the visibility characteristics of these vehicles. Based on this and other data, the proposed standard would reduce unnecessarily large "A" pillars and other structural components that reduce driving visibility which, in turn, contributes to the occurrence of accidents.

The proposed standard sets forth detailed procedures for measuring obstructions and specifies requirements which limit their maximum size. The proposal limits obstructions to those which are within angular limits measured by means of a binocular test and a monocular test. The ECE Draft Regulation specifies only a binocular obstruction test, and only in the 180-degree forward view of the driver. While NHSTA considers that the ECE binocular test for obstructions is useful, analysis of data in research by Digitek, Tracor Jitco, Artec, GTL, and Dynamic Science indicates the need for additional requirements to insure that the driver is provided with the visibility he needs for safe operation of his vehicle. This research has been placed in the public docket.

Therefore the NHTSA proposal would require that passenger cars meet monocular obstruction requirements throughout the 360 degrees of the field of view, while larger vehicles would meet monocular obstruction requirements only in the forward 180 degrees field of view.

The monocular obstruction requirements are intended to keep "blind spots" to a minimum. Research by Digitek also demonstrates that two small monocular obstructions can, in certain relationships, present a binocular obstruction. The proposed monocular obstruction requirements are intended to reduce this possibility. In addition, the monocular tests check for obstructions for the tall and short drivers, while the binocular test simulates only the medium-sized driver.

The proposed standard specifies that the sum of monocular obstruction angles in Zones I and II shall not, for each zone, exceed 11 degrees in the case of passenger cars (with different limitations specified for other types of vehicles). The sum of monocular obstruction angles in Zone IV for passenger cars is limited to 24 degrees, and no single monocular obstruction angle could exceed 15 degrees. The proposed standard specifies that the actual width of obstructions in Zone III not exceed the actual width of obstructions in Zone IV by more than 5 percent. The requirement for Zone III is specified in these terms, because it is impracticable at present to measure monocular obstruction angles in this zone by existing test procedures.

The proposed standard would prmit only one "binocular obstruction" (i.e., an obstruction measured by means that simulate the ability of the eyes to "look around" narrow objects) in each half of the forward field of view. No binocular obstruction would have a binocular obstruction angle greater than 6 to 8 degrees, depending on the vehicle type. These values (and those specified for monocular requirements) are based on analysis of the research conducted by Digitek, GTL, Artec, Dynamic Science and Tracor Jitco for the NHTSA. The test procedure for determining the binocular angle of obstruction is specified in section S6 of the proposed standard. This procedure was synthesized from the methods advanced by the Ford Motor Co. and the ECE.

Outside rearview mirrors and their supporting brackets are excepted from the binocular obstruction requirements and from the monocular obstruction requirements for Zones I and II. (Docket 71-3a, *Rearview Mirror Systems*, limits mirror location so as to minimize obstruction of the forward field of view.) Certain antenna wires and electrical conductors are also excepted from the monocular obstruction requirements for Zones I and II (left and right halves, respectively, of the forward field of view), and head restraints and shoulder belts are excepted from the requirements for Zones III and IV (left and right halves, respectively, of the rearward field of view).

The proposed standard also specifies a Viewing Area A on the windshield that must be free of obstructions, except for certain antenna wires, electrical conductors, and that part of the steering wheel rim that is below a specified level. Viewing Area A is a six-sided figure on the windshield that is directly in front of the driver and is defined by six planes that pass through the V-points and intersect with the windshield. This area of the windshield is the most critical in terms of driver visibility, and it is, therefore, important that the driver's field of view be virtually unobstructed through this area. The size and shape of Viewing Area A are derived from research conducted by Ford Motor Co., which suggested an area based on braking distances and target types (such as pedestrians, intersecting vehicles, and road signals.)

The proposed standard provides that the luminous transmittance of the vehicle's glazing shall be 70 percent or greater when measured in accordance with the specified test procedures in S6. Low light transmittance through vehicle glazing makes it difficult to ascertain hazards on the road that blend with the background of the surrounding environment—particularly at dusk or night when the ambient light level is low. Reduction in light transmittance is caused by a combination of the amount of tinting in the glazing, the thickness of the glaze, and the angle of installation and curvature of the windshield. Some domestic passenger cars with heavily tinted windshields installed at a high rake angle have a luminous transmittance as low as 62 percent. On the other hand, many models in recent years have introduced moderate levels of tinting in windshields installed at less severe angles. This method provides transmittances of 75 percent or greater. This improvement in light transmittance is particularly important to older drivers who have difficulty seeing at night. A NHTSA study by Teledyne Brown Engineering showed a loss of driver seeing distance at night when heavily tinted windshields were

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evaluated. Since driver seeing distance relates to safe operation of the vehicle, NHTSA would require better visibility as is already provided in some vehicles being manufactured today.

Safety Standard No. 205, *Glazing Materials*, currently provides that glazing for use in motor vehicles in areas requisite for driving visibility shall have a luminous transmittance of at least 70 percent. The standard specifies that flat specimens be tested for luminous transmittance at normal incidence. Glazing that has a luminous transmittance value of 70 percent measured in this manner could have a much lower effective luminous transmittance value when installed in the vehicle, depending on the curvature of the glazing and the angle at which the windshield is installed.

The proposed standard establishes a new in-vehicle procedure for determining the effective luminous transmittance of glazing used on the windshield and left and right front side windows. The percentage of light transmittance is obtained from a horizontal beam of light measured as it passes through the glass at the angle the glass is installed in the vehicle. This test procedure was developed by the National Bureau of Standards in cooperation with the NHTSA, and is designed to minimize problems of misalignment, stray light, and voltage variations in the test equipment. The combined effects of tinting, glazing curvature, glass thickness, and installation angle are measured by the specified test procedure.

The proposed requirements for light transmittance will permit only moderately tinted glass if manufacturers continue to angle the windshield at current design angles. A greater degree of tinting will be permitted if the angle of installation is decreased. The proposed requirement would preserve flexibility in design, consistent with requirements for adequate light transmittance to insure safe driving visibility.

The luminous transmittance through any shade band on the windshield and side and rear windows of a passenger car is required by the proposed standard to be at least 6 percent. For other vehicles, this 6-percent requirement only applies to the windshield and the side windows at the front of the vehicle.

It is important that shade bands have a luminous transmittance of at least 6 percent so that the driver can still see traffic lights and signs through this area of the windshield. The proposed standard also specifies that a shade band on any to or roof glazing surface which has a luminous transmittance of less than 15 percent, shall have an equal or lower total radiant transmittance in the spectral region from 0.9 to 1.7 micrometers. The purpose of this requirement is to protect the eyes of vehicle occupants from damage caused by infra-red rays. Occupants might not be cognizant of the danger from infra-red radiation in glazing with less than 15 percent luminous transmittance.

The proposal also limits the location of shade bands to insure that this low-transmittance glazing does not obscure viewing areas critical to the driver's field of view. In Viewing Area A, a shade band is not permitted to externd as low as is permitted outside of Area A on the windshield. The proposed standard specifies that, if shade bands are placed on glazing other than the windshield, they cannot be located below the horizontal plane 1.24 inches above the V_1-point, nor can they be on movable glass that would permit them to be repositioned beneath this plane.

This notice also proposes that all vehicles be equipped with a sun visor system that meets specified requirements. Safety Standard No. 201, *Occupant Protection in Interior Impact*, currently includes a requirement for two sun visors that are constructed of energy-absorbing materials and whose mountings present no rigid material edge radius of less than 0.125 inch. Those requirements are included for purposes of occupant crash protection rather than to establish minimum visibility performance requirements for visor systems, as is done in this proposal. The agency intends, therefore, to amend Standard No. 201 to delete the requirement that each passenger car be provided with two padded sun visors, since they have not been an effective means of reducing head injury. The requirement for a sun visor system is included in this proposed standard instead, and is applicable to all vehicles except motorcycles.

The proposed standard requires vehicles to be equipped with a visor system to protect the driver's eyes from direct sun light and sky glare. The location and functional characteristics of the visor system are specified to obtain the optimal balance, in safety terms, between a visor system that will adequately protect the driver from sun glare and one that will not obstruct the driver's forward field of direct view to an extent that is unsafe.

The proposal requires sun visors to be continuously adjustable between their positions of minimum and maximum view obstruction, and to be adjustable to a position in which at least 95 percent of the top portion of Viewing Area A is blocked when viewed from the highest eye point, V_1. However, an opaque sun visor would not be adjustable any lower than the horizontal plane that is located 2.5 inches below V_1.

The proposal specifies that a sun visor may not have a luminous transmittance greater than 15 percent. If it is not opaque, the visor may not have a total radiant transmittance in the infra-red spectral region than that in the visible range.

The luminous transmittance of both shade bands and sun visors is based on testing in accordance with the procedures specified in "ANS Z26," Test No. 2, which is incorporated by reference in Standard No. 205, *Glazing Materials* (49 CFR § 571.205). The NHTSA has concluded that an in-vehicle test procedure, such as that specified for determination of the luminous transmittance of the vehicle windshield, is presently not practical for determining the transmittance of shade band glazing and sun visors. Instead, the requirement is stated in terms that permit a manufacturer to install glazing with shade bands or nonopaque sun visors only if he specifies materials that meet stated luminous transmittance levels in accordance with the procedures used in ANS Z26, Test 2. An in-vehicle test for determining the transmittance of sun visors and shade band glazing could be incorporated into the standard at a later date, after further research has been conducted.

In addition to the general requirements of S5, the proposed standard specifies that buses provide a field of direct view of at least 10 percent of the total surface area (not just the side visible to the driver) of a cylindrical test target that is located in front of the bus on the boundary lines of a rectangular test site. The purpose of this additional requirement for buses is to insure that bus drivers have an adequate close-in view along the front sides and in front of the bus to permit the driver to see pedestrians.

The proposed standard requires that certain reference information be ascertainable by marks or other identification on the vehicle. This information is designated by the manufacturer of the vehicle, and establishes the reference points from which the vehicle is tested for compliance with the field of view requirements.

The proposal provides that the vehicle's design attitude, the position the vehicle adopts at curb weight and under other specified conditions, shall be established by reference to at least three accessible permanent marks or points on the vehicle structure. The location of the R-point must also be established by reference to the same three fiducial marks. Finally, the longitudinal seat adjustment range and the recommended seat back angle for each designated seating position must be provided.

This proposed rule is issued simultaneously with a proposed rule concerning indirect visibility (Docket 71-3a).

The two proposals are intended to coordinate mirror placement with the direct field of view requirements, in an effort to provide the maximum indirect visibility that is possible without obstructing the forward field of view. The two proposals, taken together, represent the NHTSA's present approach to achieving a safe level of driving visibility.

The National Traffic and Motor Vehicle Safety Act is a precautionary statute that directs the agency to issue vehicle safety standards to protect the public against unreasonable risk of vehicle accidents and of death or injury occurring as a result of such accidents.

In carrying out the congressional mandate to reduce the risk of vehicle accidents through issuing accident avoidance standards, the agency is confronted with special inherent problems that limit the degree of certainty and precision achievable in estimating the effectiveness and therefore benefits of proposed standards. The agency believes it is clear that certain vehicle improvements will facilitate the performance of the driver's task and thereby improve safety. Predicting the precise level of improvement is complicated, however, since analysis of accident causation requires consideration of the contributions by multiple interrelated driver, vehicle, highway and environmental factors. Isolating individual factors and determining their relative importance is extremely difficult and often impossible. Similar difficulties are encountered in trying to predict the effectiveness particular remedies will have in reducing accidents.

As a result, there are areas of greater uncertainty in issuing accident avoidance standards than in issuing crash-worthiness standards, i.e., standards to reduce the risk of death or injury when accidents occur. There the collision of vehicles with other vehicles or with fixed objects and the collision of vehicle occupants with the vehicle interior leave physical evidence that makes possible greater precision and certainty about cause and effect and the level of benefits.

Given the duty to act notwithstanding the inherently greater measure of imprecision and uncertainty, the agency has proceeded to develop and issue accident avoidance standards while attempting within its capabilities to quantify the benefits of the standards and limit the uncertainty. Because of the inevitable residual uncertainty, the decisionmaking regarding accident avoidance standards necessarily rests in part on policy judgment. The agency's reasonable assessment of the benfits of this proposal are contained in an impact assessment which has been placed in the public docket.

The standard does not require any additional equipment, so there would be no recurring costs. The standard could necessitate design changes that would result in retooling costs. However, most current production vehicles would require little, if any, modification since most vehicles presently meet the proposed visibility requirements. In December 1975 the NHTSA requested cost and lead-time information from both foreign and domestic vehicle manufacturers to obtain data that could be used in estimating the economic impact of this proposed standard. Responses to this inquiry indicated that the retooling costs could be considerably less than expected if sufficient lead-time were given. The NHTSA considered these comments in formulating the proposed effective date of the standard.

From the data provided by the domestic manufacturers, it is estimated that the retooling costs of the proposed standard could be substantial for those few models affected, depending upon the structural part that would have to be changed and the method of amortization. The agency did not receive sufficient information from the foreign vehicle manufacturers to develop a meaningful retooling cost estimate for foreign vehicles. The comments to this notice should provide additional information which can be used in developing revised cost estimates. Comment is particularly solicited on such subjects as the reference points used to designate the eye locations for a standing driver, the visibility requirements for a right hand drive vehicle, the performance requirements of sun visor systems, and the monocular test procedure. Options may be added or deleted. Provisions which are optional in the proposal may be made mandatory in the final rule. The agency is considering subjecting restraint systems (i.e., head restraints and passive and active seat belts) to the obstruction limits in the standard and requests comments on any difficulty which might be encountered by the manufacturers. The agency notes that some of the designs it has seen for passive seat belts appear to create obstructions conflicting with the requirements of this proposal. It also notes that some head restraints, such as those from Volvo and Saab, appear to already meet the requirements of this proposal. It has been determined that the proposed rule would not qualify as a "significant regulation" within the meaning of Executive Order 12044.

The engineer and lawyer primarily responsible for the development of this notice are Chuck Kachn and Hugh Oates, respectively.

In consideration of the foregoing, it is proposed that a new motor vehicle safety standard be added to 49 CFR Part 571 as set forth below.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a succinct and concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. Any claim of confidentiality must be supported by a statement demonstrating that the information falls within 5 U.S.C. section 552(b)(4), and that disclosure of the information is likely to result in substantial competitive damage; specifying the period during which the information must be withheld to avoid that damage; and showing that earlier disclosure would result in that damage. In addition, the commenter or, in the case of a corporation, a responsible corporate official authorized to speak for the corporation must certify in writing that each item for which confidential treatment is requested is in fact confidential within the meaning of section 552(b)(4) and that a diligent search has been conducted by the commenter or its employees to assure that none of the specified items has previously been released to the public.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

(Sec. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.)

Issued on October 31, 1978.

A. C. MALLIARIS,
Acting Associate Administrator for Rulemaking.

Section 571.128 is added to read as follows:

§ 571.128 Standard No. 128; fields of direct view

S1. *Scope.* This standard specifies requirements for the maximum allowable size of obstructions in the field of view of drivers of motor vehicles and for a minimum field of view through the windshield. It also specifies requirements for the luminous transmittance of glazing, the location of shade bands, the functional characteristics of sun visors, and the view of pedestrians from buses.

S2. *Purpose.* The purpose of this standard is to reduce motor vehicle deaths and injuries by providing drivers with an adequate field of view of the motoring environment.

S3. *Application.* This standard applies to passenger care, multipurpose passenger vehicles, trucks, and buses.

S4. *Definitions.*

"Design attitude" means the position and angle designated for a vehicle by its manufacturer when the vehicle is at its curb weight, is on a horizontal surface, has one 165-pound occupant in the driver's seat, and has its tires inflated to the manufacturer's recommended operating pressures. The design attitude is ascertainable by determining the relationship of at least three accessible permanent marks or points on the vehicle structure to a horizontal surface.

"Longitudinal seat adjustment range" means the longitudinal horizontal distance between the forwardmost and rearwardmost adjustment positions of the driver's designated seating position, excluding positions intended solely to permit nondriving activities.

"Luminous transmittance" means the ratio, expressed as a percentage, of the photometric brightness of a source of light that reaches a designated viewing point after passing through the material whose transmittance is being measured compared to the photometric brightness of the light that reaches that viewing point when the material is absent.

"Obstruction" means any portion of the vehicle structure, including glazing, that does not meet the appropriate light transmittance requirements of this standard, other than any outside rearview mirror and its support structure. In the case of trucks and multipurpose passenger vehicles, any snow plow, winch, construction crane, ladder, or similar work devices and necessary supports are not considered obstructions. When an obstruction spans two zones (specified in S8.4), the portion of an obstruction that falls within a particular zone is evaluated as a separate obstruction within that zone, except that both portions of such an obstruction are considered a single obstruction in the zone in which the greater portion of the obstruction lies for purposes of S5.1.

"Binocular obstruction angle" means that part of the horizontal angular width of an obstruction that is determined in accordance with the test procedures in S6.1 (fig. 3).

"Monocular obstruction angle" means the angle formed by the two lines in a horizontal plane, one that is tangent to the left edge and one that is tangent to the right edge of an obstruction, that intersect at any point on the vertical line from V_1 to V_2.

"Shade band" means an area of the vehicle glazing through which the luminous transmittance is less than 70 percent when tested in accordance with the test procedure specified in S5.1.1 of § 571.205 of this Part (Standard No. 205, *Glazing Materials*, incorporating by reference "ANS Z26" Test No. 2).

"Recommended seat back angle" means the seat back angle used by the manufacturer to establish the seating reference point.

S4.1. *Terms of orientation.* When used in this standard with regard to requirements, procedures, conditions, or descriptions, terms of orientation such as "forward" and "above" are descriptive of designed or simulated orientation in relation to a motor vehicle.

S4.2 *Terms of reference.* To simulate the location of the driver's torso, neck pivot point, and eyes (represented by a single point for some requirements and two paried points for binocular-based requirements), the standard refers to "R" (base of torso measured vertically), "P" (neck pivot point), "V" (single eye location), and "E" (paired eye locations) points that are described as part of the orthogonal reference system in S8.1, S8.4, S8.5, and S8.6.

S5. *Requirements.* Each vehicle shall, under the conditions of S7, meet the requirements of S5.1 through S5.8 when tested in accordance with the procedures of S6, using the orthogonal reference system specified in S8.

S5.1 *Limits on binocular obstruction.* When measured in accordance with the procedures specified in S6.1, each vehicle shall provide a field of direct view in zones I and II that contains, in each zone, not more than one obstruction whose binocular obstruction angle exceeds zero degrees. The binocular obstruction angle of this obstruction shall not exceed the number of degrees specified for the type of vehicle being tested in column (1) of Table I.

S5.2 *Limits on monocular obstruction.* Each vehicle shall meet the requirements of S5.2.1 through S5.2.3 in any horizontal plane that is not higher than V_1 and not lower than V_2.

S5.2.1 *Obstructions in zones I and II.* Each vehicle shall provide a field of direct view in zones I and II that is unobstructed except, in each zone, by one or more obstructions the total of whose monocular obstruction angles does not exceed the number of degrees specified for the type of vehicle being tested in column (2) of Table I. Any dark, low-reflectance antenna wire with a cross sectional width of not more than 0.015 inch that is located within 2 inches of the edge of the daylight opening of the windshield, and any dark, low-reflectance electrical conductor with a cross sectional width of not more than 0.001 inch that is no closer than 0.05 inch to another such conductor, is not considered to be an obstruction for purposes of this requirement.

TABLE I—*Maximum allowable obstruction angles in zones I and II*

Vehicle type	(I) Binocular obstruction angle (degrees)	(II) Monocular obstruction angle (degrees)
Passenger cars	6.0	11.0
School buses	6.0	11.0
Buses other than school buses	6.5	11.5
Trucks and multipurpose passenger vehicles with GVWR of 10,000 lb or less	7.0	12.0
Trucks and multipurpose passenger vehicles with GVWR of more than 10,000 and less than 25,000 lb	7.5	13.0
Trucks and multipurpose passenger vehicles with GVWR of 25,000 or more	8.0	14.0

S5.2.2 *Obstructions in zone IV.* Each passenger car shall provide a field of direct view in zone IV that is unobstructed, except by one or more obstructions, none of which has a monocular obstruction angle greater than 15 degrees, and the total of whose monocular obstruction angles does not exceed 24 degrees in any horizontal plane. Any shoulder belt or head restraint, or any dark, low-reflectance electrical conductor with a cross-sectional width of not more than 0.001 inch that is no closer than 0.05 inch to another such conductor or of not more than 0.032 inch that is no closer than 0.5 inch to another such conductor, is not considered to be an obstruction for purposes of this requirement.

S5.2.3 *Obstructions in zone III.* The total longitudinal linear width of obstructions in zone III of a passenger car shall not exceed the total longitudinal linear width of the obstructions in zone IV of that vehicle by more than 5 percent.

S5.3 *Unobstructed forward field of direct view.* Each vehicle shall provide a forward field of direct view from V_1 and from V_2 that is unobstructed within viewing area A of the windshield (described in S8.7), except for any dark, low-reflectance electrical conductor not more than 0.001 inch in width that is not closer than 0.05 inch to another such conductor, that part of the steering wheel rim that is below the horizontal plane that passes through point V_2, and any dark, low-reflectance antenna wire that has a maximum cross-sectional width of not more than 0.015 inch and that is located within 2 inches of the edge of the daylight opening of the windshield.

S5.4 *Limitations on shade bands.* In vehicles in which one or more shade bands are provided, each shade band shall conform to the requirements of S5.4.1 through S 5.4.4, as appropriate for its location on the vehicle's glazing.

S5.4.1 A shade band on the windshield shall not extend below the intersection, with the windshield, of the plane described in S8.8, except that the portion of the shade band that lies outside viewing area A (described in S8.7) may extend as low as the intersection, with the windshield, of the horizontal plane that lies 1.24 inches above V_1.

S5.4.2 Any shade band on the windshield, side windows directly to the left or right of the driver, and, in the case of passenger cars, any side or rear window, shall be constructed from glazing that is specified by the vehicle manufacturer to have a luminous transmittance of at least 6 percent, when tested in accordance with the test procedure specified in S5.1.1 of § 571.205 of this Part (Standard No. 205, *Glazing Materials*, incorporating by reference "ANS Z26" Test No. 2).

S5.4.3 With the glazing being tested in any position to which it is capable of being adjusted, any shade band on side or rear glazing of a passenger car, and any shade band on a front side window of vehicles other than a passenger car, shall not extend below the horizontal plane that lies 1.24 inches above V_1.

S5.4.4 A shade band on any glazing in the vehicle roof which has a luminous transmittance of less than 15 percent when tested in accordance with the procedures in S5.1.1 of § 571.205 of this Part, shall have a total radiant transmittance in the spectral region from 0.9 to 1.7 micrometers that does not exceed the luminous transmittance.

S5.5 *Sun visors.* Each vehicle shall be equipped with a sun visor system that meets the requirements of S5.5.1 through S5.5.4.

S5.5.1 The sun visor system shall be adjustable to a position in which, as viewed from V_1, it obstructs not less than 95 percent of that portion of viewing area A that lies above the intersection, with the windshield, of the horizontal plane passing through V_1.

S5.5.2 The sun visor system shall be adjustable to any position that lies between its positions of minimum and maximum view obstruction. An opaque sunvisor system shall not be adjustable to a position in which any portion lies in the horizontal plane that is located 2.5 inches below point V_1.

S5.5.3 The sun visor system may not have a luminous transmittance greater than 15 percent when tested in accordance with the test procedure specified in S5.1.1 of § 571.205 of this Part.

S5.5.4 The total radiant transmittance of the sun visor system in the spectral region from 0.9 to 1.7 micrometers shall not be greater than the luminous transmittance in the visual range.

S5.6 *Forward field of direct view—buses.* In addition to meeting the other requirements of S5, each bus shall provide a view of at least 10 percent of the total surface area of a cylindrical test target (described in S7.11) when the target's vertical axis is located at any point along the lines of the rectangular ground test site described in S7.10, viewed from the E points as specified in S5.6.1 through S5.6.3.

S5.6.1 For target positions located in zone I, the target is viewed from E_1 and E_2 when a vertical plane through P_1 and the midpoint, M, (Figure 4) passes through the vertical axis of the target.

S5.6.2 For target positions located in zone II, the target is viewed from E_3 and E_4 when a vertical plane through P_2 and the midpoint, M, (Figure 4) passes through the vertical axis of the target.

S5.6.3 If portions of the target are located in both zones, the target is considered to be located in zone I for the purposes of this requirement.

S5.7 *Vehicle reference information requirements.* The following vehicle reference information shall be ascertainable by reference to the vehicle being tested:

(1) The vehicle's design attitude, established by reference to at least three accessible permanent marks or points on the vehicle structure in relation to a horizontal surface;

(2) The location of the R-point, as that point is defined in S8.1, established by reference to the same three accessible permanent marks or points on the vehicle structure utilized in (1) above;

(3) The longitudinal seat adjustment range for each designated seating position; and

(4) The recommended seat back angle for each designated seating position.

S5.8 *Luminous transmittance of glazing materials.* The luminous transmittance of glazing in the vehicle, measured in the areas specified in the procedures of S6.2, shall be not less than 70 percent.

S6. *Test procedures.* Each vehicle shall be capable of meeting the requirements of S5 when tested in accordance with the procedures set forth under this heading that are appropriate for the particular requirement.

S6.1 *Determination of binocular obstruction angle.* Using lines that fall in the same horizontal plane, determine binocular obstruction angles as set forth in S6.1.1 and S6.1.2.

S6.1.1 *Zone I.*

S6.1.1.1 Rotate the paired E points about P_1 in the horizontal plane that coincides with P_1, so that the E_1–E_2 line is parallel to the Y axis.

S6.1.1.2 If an angle greater than 120° exists between line E_1–E_2 and the line that originates at E_1 and is tangent to the left edge of the obstruction being measured, rotate the paired E points about P_1 until the angle is reduced to 120° (Figure 3).

S6.1.1.3 Project a line from E_2 that is parallel to the line that originates at E_1 and is tangent to the left edge of the obstruction being measured.

S6.1.1.4 To determine the binocular obstruction angle, measure the angle between the line from E_2 described in paragraph S6.1.1.3 of this section and the line that originates at E_2 and is tangent to the right edge of the obstruction (fig. 3).

S6.1.2 *Zone II.* Use the procedure specified in section S6.1.1, substituting P_2 for P_1, and substituting E_3 and E_4 for E_1 and E_2 respectively. For calculation of the binocular obstruction angle in Zone II, the line described in S6.1.1.2 originates from the E_4 point and is tangent to the right edge of the obstruction, the line described in S6.1.1.3 originates from point E_3, and the line described in S6.1.1.4 originates at E_3 and is tangent to the left edge of the obstruction (fig. 3).

S6.2 *Determination of luminous transmittance of glazing materials.*

S6.2.1 Place the vehicle in the test facility under the conditions specified in S7. Clean the windshield and the front side windows. Determine the location of V_1.

S6.2.2 Place the photometer in the vehicle with its lens located at V_1 and align the axis of the photometer horizontal and 90 degrees to the left of the X–Z plane. Position the light source at

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the same height as the photometer, centered and normal to the projected axis of the photometer, and at a distance of 10 feet. Focus the photometer for infinity. Allow the light source and the photometer to stabilize before beginning the test. Roll the window down on the driver's side of the vehicle so that there is no glazing between the light source and the photometer and adjust the photometer sensitivity to achieve a full-scale reading.

S6.2.3 With the equipment aligned as specified in S6.2.2, record the photometric value through the glazing in the window on the driver's side of the vehicle.

S6.2.4 Reposition the photometer so that its axis is horizontal and parallel to the X-Z plane, with the light source moved to be in the same relationship to the lens as specified in S6.2.2. Record the photometric value through the windshield glazing.

S6.2.5 Reposition the photometer so that its axis is horizontal and 90 degrees to the right of the X-Z plane, with the light source moved to be in the same relationship to the lens as specified in S6.2.2. Record the photometric value through the glazing in the window on the passenger's side of the vehicle.

S6.2.6 With the equipment alined as specified in S6.2.5, roll down the window on the passenger's side of the vehicle so that there is no glazing between the light source and the photometer and record the photometric value. For the photometer to have remained in calibration, the reading must be within 1 percent of the original full-scale reading obtained in S6.2.2. If the reading exceeds 1 percent, repeat the foregoing procedure.

S7. *Test conditions.* The vehicle shall meet the requirements of S5 under the following conditions.

S7.1 The vehicle is in its design attitude.

S7.2 All vehicle openings are closed, including doors, tailgates, windows, hoods, and movable or convertible tops, except as specified in S6.2.

S7.3 Each rearview mirror is adjusted to the normal driving position for a driver whose eyes (E points) are 1.18 inches below V_1. For purposes of this paragraph, the E points are those specified in Safety Standard No. 111, *Rearview Mirror Systems.*

S7.4 The sun visor system is adjusted to its stored position.

S7.5 The steering wheel is positioned so that the front wheels are straight ahead. An adjustable steering wheel is positioned in its mid driving position.

S7.6 Each adjustable seat is in the rearmost position of its longitudinal seat adjustment range and in its lowest vertical position in that rearmost adjustment. Each adjustable seat back is at the recommended seat back angle.

S7.7 The light source for luminous transmittance testing has a color temperature of 2,856° Kelvin and is equally luminous across the field.

S7.8 The photometer used in luminous transmittance testing is designed as described in S7.8.1 through S7.8.3.

S7.8.1 The photodetector is equipped with a filter to correct its spectral response to the 1931 CIE photopic luminous efficiency function as specified in the Illumination Engineering Systems Handbook (published by the Illuminating Engineering Society, 345 East 47th Street, New York, N.Y. 10017). Drift characteristics due to warm-up and ambient brightness changes are determined to permit corrections to observed readings.

S7.8.2 The photometer is capable of measuring luminous transmittance within 1 percent accuracy. The optical system of the photometer is designed to minimize polarization effects.

S7.8.3 The photometer samples an area of the windshield no smaller than 0.06 square inch in size.

S7.9 Luminous transmittance tests are conducted in a facility in which background light is less than 1 percent, with background light defined as the ratio of the luminance of the unlighted source, as installed for testing, to the luminance of the lighted source, times 100.

S7.10 The ground test site specified in S5.6 is composed of the following lines: the transverse line located 3 feet forward of the front bumper and the longitudinal lines 3 feet outboard on either side of the bus as far rearward as the transverse plane that is located 12 inches in front of V_1 (fig. 6).

S7.11 The cylindrical test target specified in paragraph S5.6 is 48 inches in height and 12 inches in diameter.

S8. *Orthogonal reference system.* The requirements of S5 are expressed in relation to axes, planes, zones, and points that together constitute an orthogonal reference system which originates at the vehicle's R point (fig. 1) and is described in S8.1 through S8.8.

S8.1 *R-point.* The R-point is a point within the occupant compartment that is designated by the vehicle manufacturer in accordance with S8.1.1 or S8.1.2, as appropriate for the type vehicle being tested.

S8.1.1 In the case of a vehicle which is designed for a seated driver, the R-point coincides with the two-dimensional coordinates of the seating reference point and the vertical plane that bisects the driver's designated seating position in the fore and aft direction with respect to the seating position or, at the option of the manufacturer, a point not more than 3 inches outboard of this plane on the horizontal transverse line that passes through the seating reference point.

S8.1.2 In the case of a vehicle which is designed for a standing driver, the R point is one point in space located so that V_3 is no lower than 58 inches and no higher than 62 inches above the floorboard and within 2 inches left or right of a vertical longitudinal plane through the midpoint of the steering wheel hub.

S8.2 *Reference axes and planes.* Three orthogonal reference planes are established to determine the dimensional relationship between the R point and the V, E, and P points. The X-axis is the horizontal line passing through the R point that is parallel to the vertical plane that coincides with the vehicle's longitudinal center line. It is negative forward of the R-point and positive to the rear. The Y-axis is the horizontal line perpendicular to the X-axis that passes through the R Point. It is negative to the left of the R point and positive to the right. The Z-axis is the vertical line passing through the R-point that is perpendicular to both the X- and Y-axes. It is negative below the R point and positive above it (fig. I). The vertical longitudinal plane passing through the X- and Z-axes is denoted as the X-Z plane, the horizontal plane passing through the X- and Y-axes is denoted the X-Y plane and the vertical transverse plane passing through the Y- and Z-axes is denoted the Y-Z plane.

S8.3 *Test zones.* The vehicle is divided into four zones for purposes of applying the monocular and binocular viewing requirements specified in S5. These zones are bounded by two vertical planes, a vertical longitudinal one through V_1 parallel to the X-Z plane, the other a vertical transverse one through V_1 parallel to the Y-Z plane. The forward left quadrant is designated Zone I, while the forward right quadrant, the rearward left quadrant, and the rearward right quadrant are designated Zone II, Zone III, and Zone IV, respectively (fig. 2).

S8.4 *V-points.* Two reference points, V_1 and V_3, are used to define viewing areas on the windshield, establish sun visor and shade band requirements, evaluate monocular obstructions, and test for luminous transmittance.

S8.4.1 *V_1-point.* When the driver's recommended seat back angle is 25°, V_1 is located 26.18 inches above the X-Y plane, 2.67 inches to the rear of the Y-Z plane and 0.20 inch to the left of the X-Z plane. For a recommended seat back angle other than 25°, the X and Z coordinates for the V points are corrected as set forth in Table III.

S8.4.2 *V_3-point.* V_3 is located 3.00 inches directly below V_1.

S8.5 *P-point.* When the driver's recommended seat back angle is 25° and the longitudinal seat adjustment range is less than 4.25 inches, P_1 is 24.66 inches above the X-Y plane, 1.40 inches to the rear of the Y-Z plane, and 0.80 inch to the left of the X-Z plane, and P_3 is 24.66 inches above the X-Y plane, 2.50 inches to the rear of the Y-Z plane, and 1.85 inches to the right of the X-Z plane. These point locations are adjusted in the X and Z coordinates for a driver's seat with a recommended seat back angle other than 25° as set forth in Table III, and in the X-coordinate for a driver's seat which has a longitudinal adjustment range of 4.25 inches or more as shown in Table II.

S8.6 *E-points.* Four reference points, E_1 through E_4, are used to evaluate binocular obstructions in the forward field of view for all vehicles and visibility of the cylindrical test target for buses. E_1 and E_3 are paired and used with P_1 in Zone I, while E_2 and E_4 are paired and used with P_3 in Zone II. Their spatial relationship to the vehicle is determined only by reference to the P points and the test procedure set out in S6.1 or the specification of S5.6, as appropriate. the paired E points lie in the same horizontal plane as the P points and are 2.54 inches apart. The distance from the P point to the midpoint (M) of the line between the paired E points is 3.88 inches (fig. 4).

S8.7 *Viewing area A.* Viewing area A is the six-sided area on the windshield that is bounded, as indicated in Figure 5, by the intersections of each of the following six planes with the windshield:

(a) The vertical plane passing through V_1 that intersects the X-Z plane at an angle of 17 degrees, as measured counterclockwise from the X-Z plane viewed from above (shown as side "a" in fig. 5);

(b) The plane that is perpendicular to the X-Z plane, that passes through V_1, and that intersects the X-Y plane at the angle specified in column (3) of Table IV for the vehicle's R-point height, as measured clockwise from the X-Y plane, viewed from the left side of the vehicle (shown as side (b) in fig. 5);

(c) The vertical plane passing through V_1 that intersects the X-Z plane at an angle of 13 degrees, as measured counterclockwise from the X-Z plane viewed from above (shown as side "c" in fig. 5);

(d) The plane that is perpendicular to the X-Z plane, that passes through V_1, and that intersects the X-Y plane at the angle specified in column (1) of Table IV for the vehicle's R-point height, as measured clockwise from the X-Y plane viewed from the left side of the vehicle (shown as side (d) in fig. 5);

(e) The vertical plane passing through V_1 that intersects the X-Z plane at an angle of 22 degrees, as measured clockwise from the X-Z plane viewed from above (shown as side "e" in fig. 5); and

(f) The plane that is perpendicular to the X-Z plane, that passes through V_3, and that intersects the X-Y plane at the angle specified in column (2) of Table IV for the vehicle's R-point height, as measured counterclockwise from the X-Y plane viewed from the left side of the vehicle (shown as side "f" in fig. 5).

NOTE.—For vehicles with right hand drive, the A area is the mirror image of that stated above for left hand drive vehicles.

S8.8 *Shade band plane.* The plane specified in S5.4.1 as the lower limit for shade bands (within viewing area A) is the plane that is perpendicular to the X-Z plane, that passes through V_1, and that intersects the X-Y plane at the angle specified in column (4) of Table IV for the vehicle's R-point height, as measured clockwise from the X-Y plane viewed from the left side of the vehicle.

TABLE II.—*Correction to the X Coordinate for the P_1 and P_3 points when the longitudinal seat adjustment range is 4.25 in. or more.*

Longitudinal seat adjust range (in inches)		X coordinate (in inches)
At least—	But less than—	
4.25	4.75	−*0.50
4.75	5.25	−0.88
5.25	5.75	−1.26
5.75	6.25	−1.64
6.25		−1.89

*Negative symbol means a correction to the X coordinate in the forward direction.

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TABLE III.—*Corrections to the X and Z Coordinates for the V and P Points When the Recommended Seat Back Angle Is Not 25°*

Recommended seat back angle (in degrees)		X Coordinates [1] (in inches)	Z Coordinates [2] (in inches)
At least	But less than		
	5.5	−7.34	1.09
5.5	6.5	−6.95	1.08
6.5	7.5	−6.56	1.06
7.5	8.5	−6.17	1.04
8.5	9.5	−5.79	1.02
9.5	10.5	−5.41	0.99
10.5	11.5	−5.03	0.96
11.5	12.5	−4.65	0.92
12.5	13.5	−4.28	0.88
13.5	14.5	−3.91	0.83
14.5	15.5	−3.54	0.78
15.5	16.5	−3.18	0.72
16.5	17.5	−2.81	0.66
17.5	18.5	−2.45	0.59
18.5	19.5	−2.10	0.52
19.5	20.5	−1.74	0.45
20.5	21.5	−1.39	0.37
21.5	22.5	−1.04	0.28
22.5	23.5	−0.69	0.19
23.5	24.5	−0.34	0.10
24.5	25.5	0.00	0.00
25.5	26.5	0.34	−0.10
26.5	27.5	0.68	−0.21
27.5	28.5	1.01	−0.32
28.5	29.5	1.35	−0.44
29.5	30.5	1.68	−0.56
30.5	31.5	2.01	−0.69
31.5	32.5	2.33	−0.82
32.5	33.5	2.65	−0.96
33.5	34.5	2.97	−1.10
34.5	35.5	3.29	−1.24
35.5	36.5	3.61	−1.39
36.5	37.5	3.92	−1.55
37.5	38.5	4.23	−1.71
38.5	39.5	4.54	−1.87
39.5		4.84	−2.04

[1] Negative symbol means a correction to the X coordinate in the forward direction.
[2] Negative symbol means a correction to the Z coordinate in the downward direction.

TABLE IV.—*Determination of Angles for Use in Establishing Planes of Viewing Area A and Shade Band Limit*

R point height above the ground (in inches)		Up angle from V, to side "d" (in degrees)	Down angle from V, to side "f" (in degrees)	Up angle from V, to side "b" (in degrees)	Up angle from V, to shade band (in degrees)
At least	But less than	(1)	(2)	(3)	(4)
	20	12.0	3.0	9.0	7.0
20	30	11.0	3.5	8.5	6.5
30	40	10.0	4.5	8.0	6.0
40	50	9.0	5.5	7.5	6.0
50	60	8.5	6.5	7.0	5.5
60	70	8.0	7.5	6.5	5.5
70		7.5	8.0	8.0	5.0

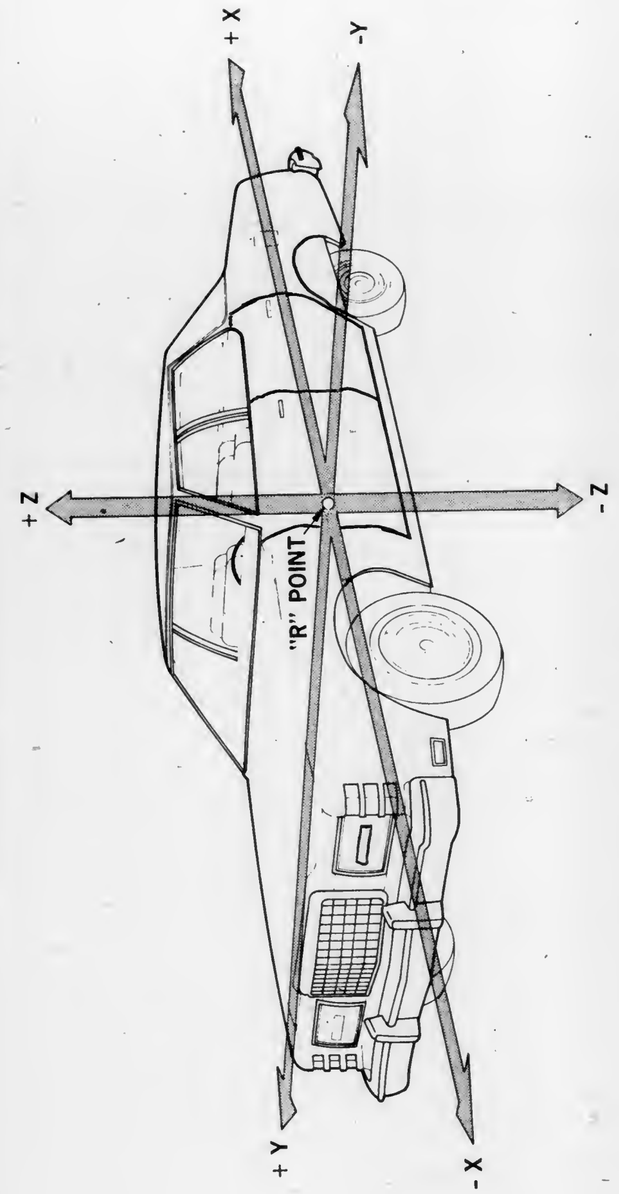


FIGURE 1 THREE ORTHOGONAL REFERENCE AXES

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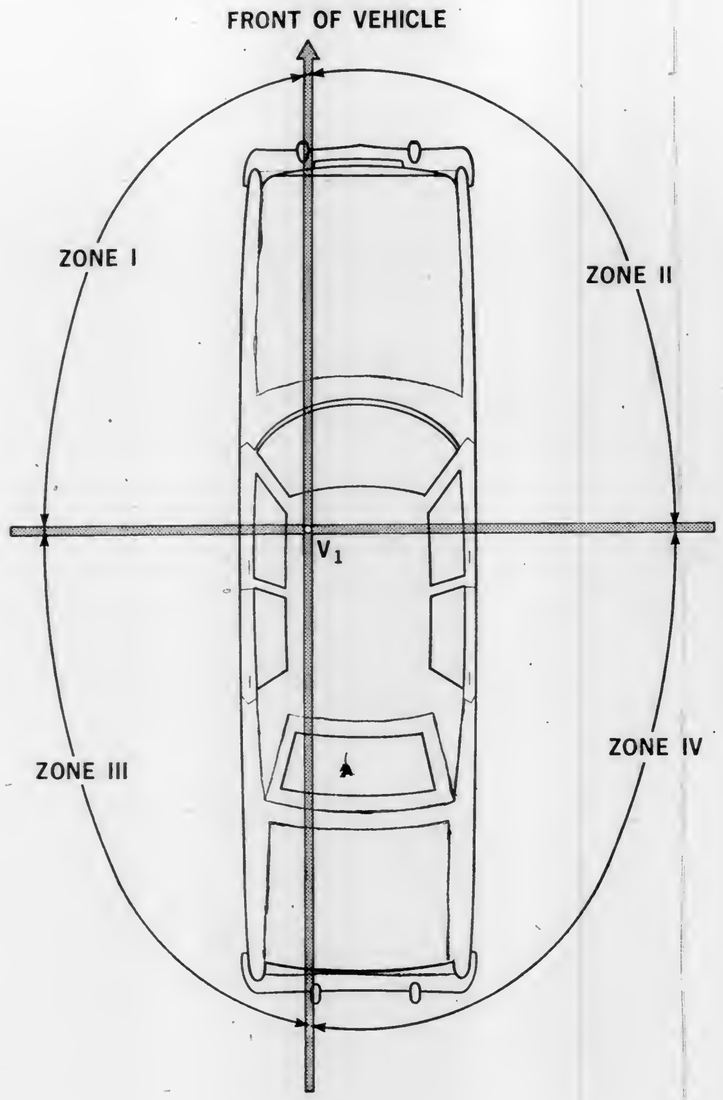


FIGURE 2 TEST ZONES

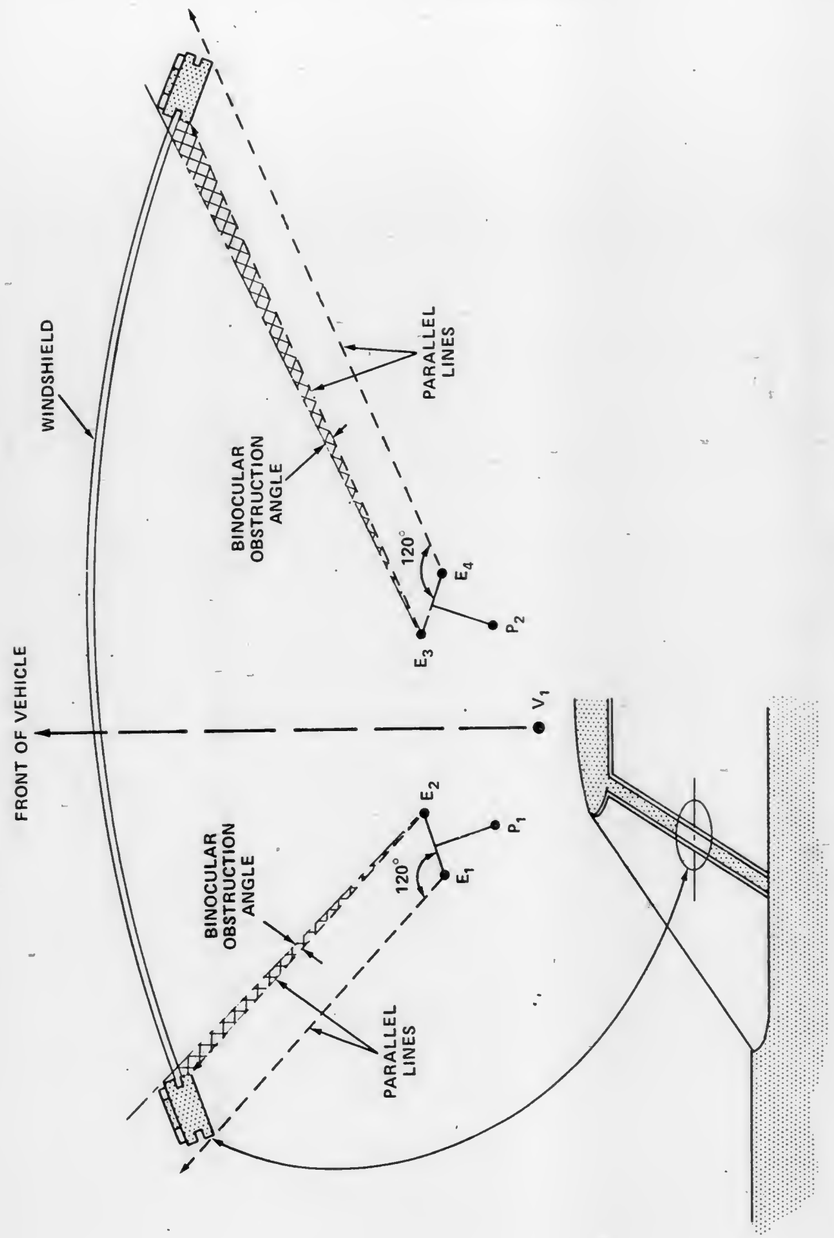


Figure 3 BINOCULAR OBSTRUCTION TEST PROCEDURES

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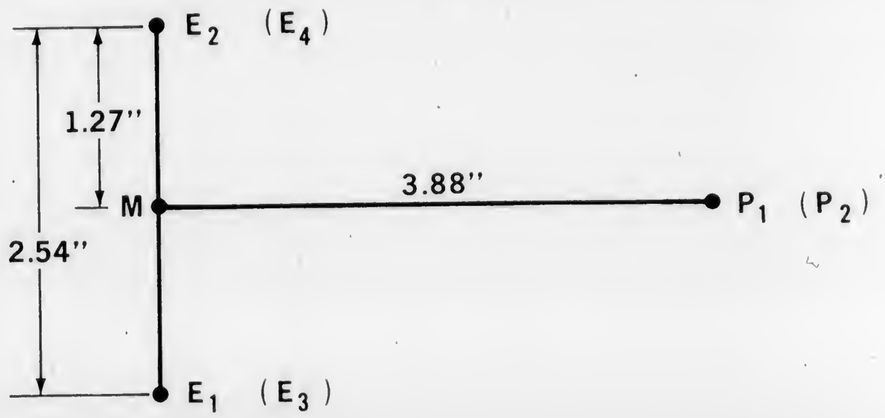


FIGURE 4 RELATIONSHIP BETWEEN PAIRED E POINTS & THEIR PIVOT POINT, P

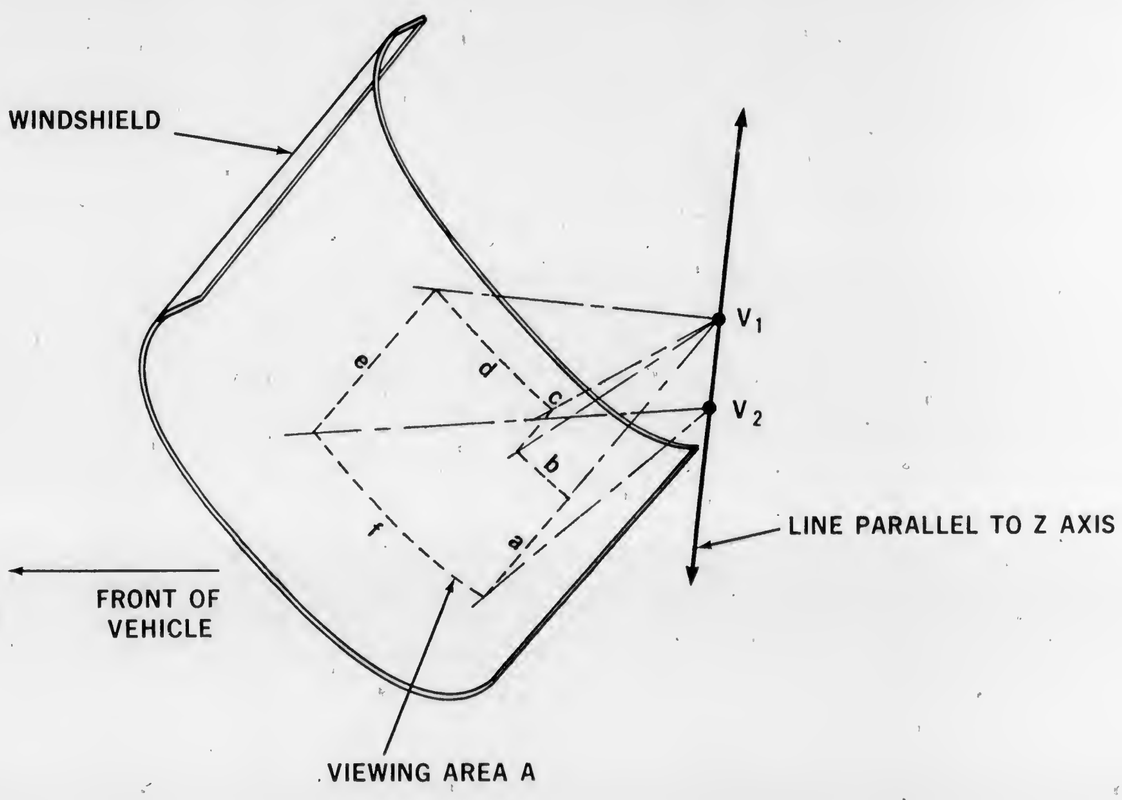


FIGURE 5 WINDSHIELD VIEWING AREA A

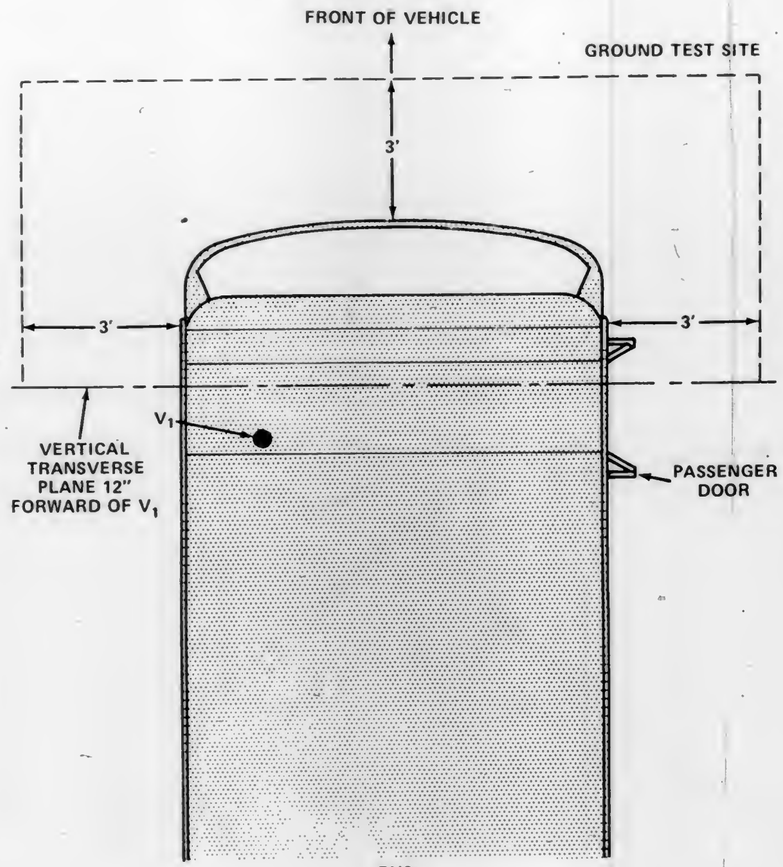


Figure 6 RECTANGULAR GROUND TEST SITE FOR BUSES

[FR Doc. 78-31262 Filed 11-1-78; 2:53 pm]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

[3410-02-M]

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

[Amdt. 3]

SALES OF CERTAIN COMMODITIES

Monthly Sales List (Period June 1, 1978, Through May 31, 1979): Rice, Dairy Products

The CCC Monthly Sales List for the period June 1, 1978, through May 31, 1979, published at FR 29819 (July 11, 1978), as amended at 43 FR 35737 (Aug. 11, 1978) and at 43 FR 46354 (Oct. 6, 1978) is further amended as follows:

1. The last sentence of section 1(b) entitled "General" is revised to read as follows: Interest at 12 percent will be charged for delinquent payments on all sales.

2. Section 25 entitled "Rice, Rough—Unrestricted Use Sales (f.o.b. Warehouse)" is revised to read as follows: The minimum price is the market price but not less than 165 percent of the 1978 loan rate.

3. The first sentence of section 27 entitled "Nonfat Dry Milk—Unrestricted Use Sales (Instore-Carlot Quantities)" is revised to read as follows: Market price, but not less than 80.5 cents per pound for U.S. Extra Grade spray process in 50 pound bags.

4. Section 28 entitled "Butter—Unrestricted Use Sales (Instore-Carlot Quantities)" is revised to read as follows: Market price, but not less than 11.25 cents per pound over CCC's purchase price at each location for U.S. Grade A or higher in 60- to 68-pound blocks. Sales are made under Announcement PV-DS-2.

(Sec. 4, 62 Stat. 1070, as amended (15 U.S.C. 714b); sec. 407, 63 Stat. 1055, as amended (7 U.S.C. 1427).)

Effective Date: September 29, 1978, 4 p.m. (e.d.t.).

Signed at Washington, D.C., on October 26, 1978.

RAY FITZGERALD,
Executive Vice President,
Commodity Credit Corporation.

[FR Doc. 78-31321 Filed 11-3-78; 8:45 am]

[3410-11-M]

Forest Service

CORONADO NATIONAL FOREST GRAZING ADVISORY BOARD

Meeting

The Coronado National Forest Grazing Advisory Board will meet at 10 a.m., January 15, 1979, at the Forest Supervisor's Office, 301 West Congress, Tucson, Ariz. 85701. The purpose of this meeting is to select officers and establish bylaws.

The meeting will be open to the public. Persons who wish to attend should notify Larry Allen, Coronado Supervisor's Office, telephone 602-792-6625. Written statements will be filed with the board before or after the meeting.

The board has established the following rule for public participation: Nonmembers are asked to withold comments until the close of business.

K. R. WEISSENBORN,
Forest Supervisor.

OCTOBER 30, 1978.

[FR Doc. 78-31268 Filed 11-3-78; 8:45 am]

[3410-11-M]

Forest Service

HUMBOLDT NATIONAL FOREST GRAZING ADVISORY BOARD

Meeting

The Humboldt National Forest Grazing Advisory Board will meet on December 15, 1978 at 10 a.m. P.s.t., at the Supervisor's Office, 976 Mountain City Highway, Elko, Nev.

The meeting is open to the public.

The purpose of the meeting is to discuss: 1. allotment management planning; 2. utilization of Range Betterment Fund.

Dated: October 25, 1978.

JOE L. FRAZIER,
Acting Forest Supervisor.

[FR Doc. 78-31205 Filed 11-3-78; 8:45 am]

[6120-01-M]

AMERICAN BATTLE MONUMENTS COMMISSION

IMPROVING GOVERNMENT REGULATIONS

Final Report Pursuant to Section 5 of Executive Order 12044

Executive Order 12044 of March 24, 1978 directs Federal agencies to adopt procedures to improve existing and future regulations. Section 5 of the Executive order directs each Federal agency to prepare and publish in the FEDERAL REGISTER a draft report outlining (1) a brief description of its process for developing regulations and the changes that have been made to comply with this order; (2) its proposed criteria for defining significant agency regulations; (3) its proposed criteria for identifying which regulations require regulatory analysis; and (4) its proposed criteria for selecting existing regulations that the agency will consider for its initial review. The draft report prepared by this agency was published on page 22602 in the FEDERAL REGISTER on Thursday, May 25, 1978, (43 FR 22602); citizen comments on the draft report were requested by July 21, 1978. No comments were received in response to this request and the procedures for processing Government regulations under the proponency of this agency will be as they appeared in 43 FR 22602.

The public will be given a minimum of 60 days to comment on any proposed significant regulation or change to an existing significant regulation by means of publication of an advance notice of proposed rulemaking. Any comments that might arise regarding regulations proposed by this agency should be addressed to: The Secretary, American Battle Monuments Commission, Washington, D.C. 20314, telephone 202-693-6067.

FRED D. CLARKE, JR.,
Assistant Secretary

SEPTEMBER 26, 1978.

[FR Doc. 78-30865 Filed 11-3-78; 8:45 am]

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[6320-01-M]

CIVIL AERONAUTICS BOARD

[Docket 33411]

ATLANTA-MEMPHIS SERVICE INVESTIGATION

Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on November 28, 1978, at 10 a.m. (local time), in Room 1003, Hearing Room B, Universal North Building, 1875 Connecticut Avenue NW., Washington, D.C., before the undersigned Administrative Law Judge.

In order to facilitate the conduct of the conference, parties are instructed to submit one copy to each party and four copies to the Judge of (1) proposed statements of issues, (2) proposed stipulations, (3) proposed requests for information and evidence, and (4) time required by each party to comply with requests for information and evidence addressed to it. The Bureau of Pricing and Domestic Aviation will circulate its material on or before November 10, 1978, and the other parties on or before November 17, 1978.

Dated at Washington, D.C., October 31, 1978.

KATHERINE A. KENT,
Administrative Law Judge.

[FR Doc. 78-31279 Filed 11-3-78; 8:45 am]

[6320-01-M]

[Order 78-10-120; Docket 33201]

HUGHES AIR CORP.

Application for Amendment of Certificate of Public Convenience and Necessity; Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 26th day of October 1978.

In the matter of application of Hughes Air Corp., d.b.a. Hughes Airwest, for amendment of its certificate of public convenience and necessity for Route 76 (modification of San Francisco-Los Angeles long-haul restriction) (Docket 33201).

By application dated August 14, 1978, Hughes Airwest requests an amendment to its certificate for Route 76 to modify the language in subparagraph (i) of the proviso to Condition (4). This proviso states that it may operate nonstop service

between San Francisco and Los Angeles-Ontario, Calif. (when served through the Los Angeles International Airport) (1) on flights which also serve Chico, Calif., or a point north thereof. *Provided, further:* That if said flights serve Eugene or Medford, Oreg., they shall also serve Portland or a point north thereof, or (2) on flights which also serve a point south of Los Angeles other than Orange County-Santa Ana-Anaheim, Indio-Palm Springs or San Diego, Calif. • • •

The proposed language would permit the carrier to operate nonstop service

between San Francisco and Los Angeles-Ontario, Calif. (when served through the Los Angeles International Airport) on flights which also serve either a point beyond San Francisco or a point beyond Los Angeles-Ontario;

It has petitioned for issuance of an order to show cause why its certificate application should not be approved.

In support of its application, it asserts that the long-haul restriction was imposed to preclude turnaround service between Los Angeles and San Francisco; that the north-south definition of the closest acceptable beyond-points was adopted only because it described Airwest's route system at the time the language was proposed; and that the objective of the restriction would be met equally well by a general long-haul restriction. It proposes to operate flights from newly awarded points, Nashville and Louisville, through Los Angeles to San Francisco. Literal interpretation of the existing restriction would require that flights continue to Chico or another point north of San Francisco.[1] It contends that it does not plan to increase frequencies over the San Francisco-Los Angeles segment by more than two flights per day and that a certificate modification would not have a significant impact on the market since it is a relatively minor participant.[2]

We have received no answers to Airwest's pleadings.

We tentatively conclude, on the basis of the tentative findings below, that the public convenience and necessity require approval of Airwest's application for substitution of a more general long-haul restriction on nonstop San Francisco-Los Angeles authority for the current language.[3]

Our established policy is to remove operating restrictions unless a convincing showing can be made for their retention. In this case the applicant has requested the relaxation of a long-haul restriction which will make possible more flexible and efficient operations. Further, San Francisco-Los Angeles is a very large market [4] served by at least 10 carriers (including intrastate carriers); it is unlikely that relaxation of Airwest's restriction will in any way impair the ability of any carrier to meet its certificate obligations or result in the termination of essential service which cannot be replaced by another carrier.[5]

Interested persons will be given 30 days following date of service of this order to show cause why the tentative findings and conclusions set forth here should not be made final. We will accept answers within 10 days thereafter. If an oral evidentiary hearing is requested, the objector should state, in detail, why such a hearing is necessary and what relevant and material facts he would expect to establish through such a hearing that cannot be established in written pleadings. We will not entertain general, vague, or unsupported objections.

Accordingly: 1. We direct all interested persons to show cause why we should not issue an order making final the tentative findings and conclusions stated here and amending the certificate of public convenience and necessity of Hughes Airwest to specify a general long-haul restriction on nonstop San Francisco-Los Angeles service instead of the current language of Subparagraph (i) of Condition (4).

2. We direct any interested person having objections to the issuance of an order making final any of the proposed findings and conclusions, or the certificate amendment set forth here, to file with us, no later than November 29, 1978, and serve upon all persons listed in paragraph 5, a statement of objections together with a summary of testimony, statistical data and other evidence expected to be relied upon to support the stated objections; answers to objections shall be filed no later than December 11, 1978;

3. If timely and properly supported objections are filed, we will accord full consideration to the matters and issues raised by the objections before taking further action; [6]

[1] The proposed general long-haul restriction would also eliminate the necessity of Los Angeles-San Francisco-Eureka/Medford flights continuing to Portland or points north.

[2] We tentatively conclude that Airwest is a citizen of the United States and fit, willing, and able to operate the air service proposed and to comply with the Act and our rules and regulations.

[3] Airwest's market share, according to the Dec. 31, 1977 *O&D Survey*, Table 10, was 2 percent.

[4] Total O&D passengers (true O&D plus interline connecting, Tables 8 and 10, of C.A.B. *O&D Surveys*) were 1,219,430 for the year ended December 1977.

[5] We tentatively conclude that grant of Airwest's request will not result in a major Federal action significantly affecting the environment within the meaning of the National Environmental Policy Act of 1969, and will not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975 (EPCA). Airwest submitted a complete environmental evaluation in the *Louisville Service Case* on December 6, 1976; the Bureau of Operating Rights published a Notice of Environmental Rejection (dated Apr. 25, 1977); and the Board subsequently found that such an award to Airwest did not constitute a major Federal action within the meaning of the National Environmental Policy Act of 1969. See Initial Decision of Administrative Law Judge William H. Dapper at 79 (Feb. 9, 1978), adopted in Order 78-6-21.

[6] Since provision is made for the filing of objections to this order, we will not entertain petitions for reconsideration.

4. In the event no objections are filed, we will deem all further procedural steps to have been waived and we may proceed to enter an order in accordance with the tentative findings and conclusions set forth here; and

5. We will serve a copy of this order on Hughes Airwest, Braniff, Delta, Northwest, Pan American, TWA, United, and Western.

We will publish this order in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[7]

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-31283 Filed 11-3-78; 8:45 am]

[6320-01-M]

[Order 78-10-142; Dockets 33283 and 33112]

PAN AMERICAN-NATIONAL AND TEXAS INTERNATIONAL-NATIONAL ACQUISITION CASES AND ENFORCEMENT INVESTIGATION

Order Denying Motions

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 30th day of October 1978.

In the matter of Pan American-National Acquisition Case (Docket 33283), Texas International-National Acquisition Case and enforcement investigation (Docket 33112).

We are disposing of two separate motions filed by Pan American and Texas International to withhold certain documents from public disclosure. For the reasons set out in this order, we have determined to deny the motions but to withhold all documents for which confidential treatment was requested from automatic public disclosure, establish a procedure for their in camera use in this proceeding, and provide for Freedom of Information Act (FOIA) [1] requests for them. Any of the documents which is publicly released by its use in this proceeding without in camera treatment, by unconditional release pursuant to an FOIA request, or by becoming publicly available in some other place will be released by the Board to the public.

I. INTRODUCTION

The hearing in these cases is scheduled to begin October 31, 1978. In his September 25, 1978 prehearing conference report, the presiding administrative law judge adopted an order permitting the parties to the proceeding to designate prehearing material as "confidential business information." The order provided that all parties who agreed to be bound by its conditions could have access to such "confidential business information." In summary form, the conditions were that only those representatives and employees of nonsuppliers directly working on the case could have access to it, that disclosure to nonsignatories was prohibited, and that the suppliers of the information be notified of an FOIA or other request for the material.

Finally, the order provided that "all confidential business information submitted • • • shall be deemed to lose its confidential status and to be considered public information on the first day of hearing in this proceeding; unless, the supplier shall have filed a motion for confidential treatment pursuant to Rule 39(d). • • •" [2]

On October 16, 1978, Pan American filed a Rule 39 motion for 14 of its documents and on October 17, 1978 Texas International also filed a Rule 39 motion for 4 of its documents. The Board's Bureau of Pricing and Domestic Aviation (BPDA) and its Bureau of Consumer Protection (BCP) filed answers in opposition to both motions. BPDA states the strong presumption in favor of openness in government, alleges that neither Pan American nor TXI has made the necessary FOIA showings, and notes the administrative burdens which granting confidentiality would place on this expedited and complex proceeding. BCP alleges that neither Pan American or TXI provide analyses sufficient to support the respective motions' claims of competitive disadvantage and that neither movant explains why public disclosure is not required in the interests of the public.

On October 19, 1978, the presiding administrative law judge notified the Office of General Counsel by telephone that he did not plan to rule on the motions and that in his view both Rule 39 motions were before the Board for its action.

II. THE MOTIONS TO WITHHOLD

The Board's rules require that Rule 39 motions

shall include; (i) a description of the information sought to be withheld, sufficient for identification of the same; (ii) a statement explaining how and why the information falls within the exemptions from the Freedom of Information Act, 5 U.S.C. 552(b)(1)-(9); and (iii) a statement explaining how and why public disclosure of the information would adversely affect the interests of the objecting person(s) and is not required in the interests of the public.

Pan American's motion contains a narrative description of each of the 14 documents for which confidential treatment is requested. A complete list of the Pan American documents is attached as Appendix A to this order. The Pan American documents deal with two groups of forecasts and plans, one for flight equipment and other capital assets and the other for rates, routes, and scheduling. In essence, Pan American alleges that a general release of these documents to its competitors would provide those competitors with detailed information enabling them to respond to and counteract Pan American's market and financial strategy. Pan American does not state which, if any of the Freedom of Information Act (FOIA) exemptions, it relies on nor does it make any showing as to why disclosure is "not required in the interests of the public."

Texas International's Rule 39 motions has a list of four documents for which confidential treatment is requested. A complete list of the TXI documents is attached as Appendix B of this order. TXI states that the documents include "projections by TXI of its capital expenditures, aircraft requirements and traffic for 1978 and 1979." TXI alleges that "(o)bviously, if Texas International's competitors are given access to this kinds of projections, they will be able to use them to gain competitive advantage over Texas International." TXI's Rule 39 motion does claim that these documents are within Exemption 4 of the FOIA, but does not make any showing as to why disclosure is "not required in the interests of the public."

Both Pan American's and TXI's documents were submitted in the prehearing stage as information responses. None were submitted by their originators as a direct exhibit, and neither motion discusses whether either of the originators intends to introduce the documents or testimony concerning them into evidence as a part of its own presentation. Nor do the Rule 39 motions state whether the originators have any reason to believe that another party may introduce the documents or testimony concerning item into evidence as a part of a direct or rebuttal presentation.

III. ANALYSIS

A. Withholding from public disclosure. There are really two questions now before us for decision. The first is whether these documents should be withheld, under any and all circumstances, from public disclosure.

Unless a statute, Board order, or rule requires a public filing, there is no absolute requirement that all records filed with or created by the Board be made automatically available for public inspection. For the reasons discussed below, we have determined to deny Pan Am's and TXI's Rule 39 re-

[7] All Members concurred.

[1] 5 U.S.C. 552.

[2] On October 19, 1978, National Airlines, which had submitted "confidential business information" sent a letter to the presiding administrative law judge stating that it had no intention of filing a Rule 39 motion. The letter states "(a)fter giving the matter careful thought, National has concluded that the public interest in a complete record and an open hearing outweighs narrow concerns of confidentiality. • • •"

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quests but to withhold these documents from automatic public disclosure and deal instead with any FOIA requests for them which might be made. The FOIA only requires that nonexempt records be made available *upon request* (emphasis added). There are no outstanding FOIA requests for these documents. If and when and FOIA request is received, an analysis will have to be made at that time.

In this context, Pan Am and TXI have in effect asked for something the Board cannot give—a permanent grant of confidentiality. Any document kept within the custody and control of the Government is an "agency record" which can be requested under the FOIA. The FOIA requires that all agency records be made available for public inspection and copying unless they are within one or more of the FOIA exemptions. Of the exemptions available to the Board, only Exemption 3 (statutes authorizing withholding) could protect information on a permanent basis. The pre-1978 amendment section 1104 of the Federal Aviation Act qualifies as an Exemption 3 statute until March of 1977. At that time, Exemption 3 of the FOIA was amended so as to specifically exclude the old section 1104 as an Exemption 3 statute.[3] Section 39 of the Airline Deregulation Act of 1978[4] substitutes a new provision which restores section 1104 as an authority for withholding, but only for material whose disclosure "would prejudice the formulation and presentation of positions of the United States in international negotiations and adversely affect the competitive position of any air carrier in foreign air transportation." Absent an Exemption 3 statute which would protect whole classes of information, the only thing which would prevent release of agency records in the event of an FOIA request is one of the other FOIA exemptions.

In its motion, TXI claims that the documents for which it seeks confidential treatment are within Exemption 4 of the FOIA, "trade secrets and commercial or financial information obtained from a person and privileged or confidential." Pan American does not explicity claim that the documents it seeks to withhold are within Exemption 4. Nonetheless, its discussion of the alleged harm to its competitive position which would result from unconditional release suggests that, had its counsel complied with the requirements of the Rule 39 motions, Exemption 4 would have been asserted.

For information to qualify under Exemption 4, the person advocating withholding must show that "substantial competitive injury would likely result from disclosure."[5] This showing is obviously time-dependent. For example, what is today and Exemption 4 document of XYZ company may not be one tomorrow if that company decided to make it public. Today's confidential business information may not be Exemption 4 material in 3 months if it is the kind that quickly becomes stale or must be reported publicly to the SEC on a quarterly basis. Today's Exemption 4 document is very unlikely to be one at all in 2 or 3 years because the amount and kind of competitive damage resulting from release of dated or perhaps historic information is likely to be minimal.

Even if we were to assume that both TXI and Pan American had shown that, as of any given time, these documents were within Exemption 4, our analysis would not be over.

In his May 5, 1977 memorandum to heads of agencies, the Attorney General states that even FOIA-exempt material must be released unless "there is a sufficient prospect of actual harm to legitimate public or private interests." In other words, all FOIA analyses, including these Rule 39 motions, must have two parts: the first is to determine whether an FOIA exemption applies; the second is to balance whether or not the public interest requires that even exempt material be released.[6] This comports with the Rule 39 requirement to show that "disclosure is not required in the interests of the public."

Because the FOIA analysis is time-dependent and because there are no outstanding FOIA requests for these records, we have not basis upon which to find that Exemption 4 or any other exemption does or does not apply. Nor can we predict what public interest factors might at the time of an FOIA request and analysis outweigh the protection ordinarily afforded exempt material.

We must deny both motions, in part because the relief sought—permanent confidentiality—is beyond our present power to grant. We must also deny these motions because the necessary FOIA analysis of the information cannot be made in the abstract.

We are directing, however, that these documents be withheld from automatic public disclosure by the Board's Secretary. Any person may, of course, make an FIOA request for them. If and when such an FOIA request is received, the Secretary shall first determine whether the requested document has been made public in the context of the Pan Am-National-TXI proceeding or in some other fashion. If it has not been made public, the Secretary will notify the document's supplier of the FOIA request and give it an opportunity to provide any then-current FOIA justification for withholding.

B. The use of these documents in the pending case. As already noted, these documents were submitted in the prehearing stage of this proceeding. Neither Pan Am or TXI has made any representation as to the likelihood of the documents' use in the hearing.

While Pan American and TXI did not choose to offer these documents in support of their applications, the presiding administrative law judge has determined that their production in at least the prehearing stage of the proceeding was necessary to proceed with the disposition of those applications. If these Rule 39 documents contain material and relevant information to this proceeding some party may well introduce them and the presiding judge will accept them into evidence.

There are strong public policy reasons why all of the record in this proceeding—including any of these documents admitted into evidence—should be public. As a first principle, there is the policy of the Government and of the Board of the fullest possible public observation of the public's business. Equally important is the fact that this particular proceeding involves a possible grant of antitrust immunity. More than the due process rights of the parties to be heard is at stake. A Board grant of antitrust immunity by defination affects the individual interests of every person who would otherwise be protected by those antitrust laws—i.e. the public at large.

On the other hand, this section 408 proceeding has been mandated by statute, giving the applicants only the Hobson's choice of withdrawing their applications or potentially exposing what may be extremely sensitive business information.

The situation is further complicated by the fact that there are two distinct situations in which the documents might be used: First, the offer of introduction of the document(s) as evidence, any disputes concerning relevance and materiality, and the judge's ruling accepting or rejecting the offered evidence; and, second, if any of these documents are accepted into evidence, the testimony concerning the document(s) and the information contained in the document(s) will be used as part of the record.

At best, we can do no more than speculate whether any of these events will actually occur. Another factor is that we have already expressed our strong commitment to an expedited handling of these cases. We have instructed the administrative law judge to complete his work by February 1, 1979, and announced a target date of March 24, 1979 for our own decision.[7]

On balance, we think it best to set out a procedure which can be used if the need arises and which leans toward keeping the hearing moving on an expedited basis. We are therefore ordering that any discussion, testimony or use of the documents listed in Appendices A and B of this order be subject to in camera proceedings. The in Camera procedures are set out in Appendix C of this order. The originator of any Appendix A and B document which any party wishes to introduce into evidence will have the option of requesting the judge to hold an in camera proceeding for the necessary discussion, use, or testimony. The request for in camera proceeding shall include a showing that the material is exempt from disclosure under the FOIA and, if exempt, a showing why the interests of the public do not nevertheless require disclosure. The judge will rule on such a request, and if the material is shown to be exempt from FOIA disclosure *and* if good cause is shown why the exempt material should be withheld, then the Judge may grant the request. If the ruling is to deny in camera proceeding, the originator of the document shall have the right to a pendente lite in camera proceeding pending an appeal to the Board. A transcript of all in camera proceedings will be kept, and if the judge's detemination to deny in camera treatment is upheld by the Board, the transcript will be released. Whether or not there has been a pendente lite appeal, all in camera material will be reviewed by us when we make our final determination in the spring.

The in camera mechanism we are establishing, of course, does not affect any person's right to make an FOIA request for the Appendix A and B documents or any in camera material concerning them which may come into existence. The fact of a judge or Board ruling on the use of the in camera mechanism will be considered during a subsequent FOIA analysis, but will not be dispositive. The Secretary will still notify the originator of the document or information of an FOIA request and provide an opportunity for any updated FOIA justification.

As an additional precaution against any possibly unwarranted disclosure, we are also directing that a decision by the Secretary to release to an FOIA request any document listed in Appendix A or B of this order or any document subject to the in camera procedure outlined in Appendix C of this order may be appealed by the information's originator to the Managing Director.

IV. Conclusion

We believe the decisions we make here serve the best interests of all concerned—the parties, the public, and the Board.

All FOIA rights remain intact and any FOIA determination will be individually made at a specific time when all relevant time-dependent considerations can be known. An additional benefit is that the FOIA channel has an independent course of judicial review which can be followed by either an FOIA requester or the originator of the information without interruption or prejudice to the ongoing case. Any final FOIA determination to release material will automatically prevail over any inconsistent judge or Board order concerning in camera proceedings.

As a final matter, we will impose some restrictions on disclosure of Appendix A and B documents. The September 25, 1978 prehearing conference report and order of the presiding administrative law judge provided that all "confidential business information" submitted pursuant to the order would be considered public information on the first day of the hearing unless the supplier filed a Rule 39 motions." Parties who signed the order and agreed to abide by its conditions have had access to all such material, including the Pan American documents and the TXI documents covered by Rule 39 motions now before us.

Except for the 14 Pan American documents in Appendix A to this order and the 4 TXI documents listed in Appendix B to this order, all of the conditions and penalties prescribed for other "confidential business information" documents in the judge's order will cease by the terms of the order on October 31, 1978, the first day of the hearing. The September 25 order does not address what, if any, restrictions should continue to apply regarding documents for which a Rule 39 motion was filed.

Since we have decided to deny the Rule 39 motions but not automatically release those documents, only a minimal restriction on persons who have had access to them is necessary. Those restrictions will, of course, cease with respect to any of the documents which are made public, denied in camera treatment by both the judge and the Board, or released unconditionally in response to a Freedom of Information Act request. Until either of those events occurs, however, we believe it best to preserve what Exemption 4 or other claim there might be for these documents by continuing to restrict disclosure within the competitors of the objecting person and by any of the parties to the public at large.

Accordingly,

1. The motions of Pan American and Texas International to withhold documents from public disclosure are denied.

2. We here adopt for use in this case the "In Camera Proceedings" procedure set out in Appendix C of this order. Such in camera procedure shall be available only to the originators of the documents in Appendices A and B of this order and only for the documents and information concerning them listed in Appendices A and B of this order.

3. An unconditional release of any document or record accorded in camera treatment by the judge of the Board in response to a Freedom of Information Act request by an authorized Board official shall supercede the in camera treatment and terminate all conditions of such in camera treatment.

4. We direct that all documents listed in Appendix A and Appendix B of this order be withheld from automatic public disclosure. Any such document, or information, testimony, pleadings or other records concerning it shall be available for inspection and copying if it has been unconditionally released by an authorized Board official in response to a Freedom of Information Act request, admitted into the record of this case without the in camera treatment authorized by Appendix C of this order, or if the Board has affirmed the administrative law judge's denial of in camera treatment and released the information.

5. We further direct that all documents listed in Appendices A and B of this order may be offered in evidence in this proceeding by their originators or other parties. Such offers shall be handled by the presiding adminstrative law judge in accordance with our Rules of Practice, except that the presiding judge shall follow the in camera procedures set out in Appendix C of this order on request of the originators for the use of Appendices A and B documents.

6. Nothing in this order shall limit or be construed to limit any person's rights under the Freedom of Informa-

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[3] Section 5 of the Government in the Sunshine Act, Pub. L. 94-409. See also the Government in the Sunshine Conf. Rep., p. 14 (H. Rep. 94-1441).

[4] Pub. L. 95-504.

[5] *National Parks and Conservation Association v. Kleppe*, 547 F.2d 673, 678. (D.C. Cir. 1976.)

[6] The issue of whether an agency has discretion under the FOIA to release data which it determines to be within Exemption 4, however, is currently being reviewed by the Supreme Court. With oral argument is scheduled for the week of November 6, 1978. *Chrysler v. Brown*, (Docket 77922, cert. granted March 6, 1978, 46 LW 3555, lower court decision, *Chrysler v. Schlesinger*, 565 F.2d 1172, 3rd Cir. 1977). *One of the issues in Chrysler*, on which the circuits are split, is the question of whether finding that information is within Exemption 4 automatically invokes the sanction of the criminal "trade secrets act," 18 U.S.C. 1905, which, it is argued, is an Exemption 3 statute prohibiting release and providing no discretion on the matter. Unless the Court decides this issue to the contrary, the Board will be guided by Attorney General's memorandum.

[7] See Order 78-9-24, Sept. 7, 1978.

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tion Act regarding documents listed in Appendix A or B of this order any documents, information accorded in camera treatment, or for any other agency record.

7. If the Secretary of the Board receives a Freedom of Information Act request for any document listed in Appendix A or B of this order, we direct that the following procedure shall be followed: (1) the Secretary shall first determine whether the requested document is publicly available in the record of this case or in some other place, (2) if the requested document is publicly available, the Secretary shall make it promptly available for inspection and copying; (3) if the requested document is not publicly available, the Secretary shall ascertain whether such documents or information concerning them has been accorded in camera treatment pursuant to Appendix C of this order; (4) the Secretary shall notify the originator of the document of the fact of the FOIA request and provide an opportunity for the originator to submit any then-current FOIA justification for withholding. Any determination by the Secretary to release such a document or information (including portions of any in camera record concerning it may be appealed to the Managing Director who is here delegated the authority to review the Secretary's determination *de novo* before access is granted.

8. For each document listed in Appendix A and Appendix B of this order which has not been made publicly available, admitted into the public record of this case, or unconditionally released in response to a Freedom of Information Act request, including all copies of such matter which may have been made, but not including copies containing notes or other attorney's work product that may have been placed thereon by counsel for the receiving party. All copies containing notes or other attorney's work product shall be destroyed and their destruction certified to the originator. Receipt of material returned to the originator shall be acknowledged in writing. If there are no outstanding Freedom of Information Act requests for any such document, this paragraph shall apply to the Board, the presiding administrative law judge, and the Board's staff. If there is an outstanding Freedom of Information Act request for any such document, copies of such document shall be kept by the Board's Secretary until the Freedom of Information Act request is finally disposed of by the agency.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board. [8]

NOTE.—Appendices A through C filed as part of the original document.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-31282 Filed 11-3-78; 8:45 am]

[6320-01-M]

[Docket 32710]

SAN FRANCISCO-RENO-ALBUQUERQUE-TEXAS SERVICE INVESTIGATION

Hearing, Including Prehearing Conference

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding will be held beginning on November 29, 1978, at 9:30 a.m. (local time) in the Pioneer Theater Auditorium, 100 Sourth Virginia Street, Reno, Nev., before the undersigned Administrative Law Judge. Said hearing shall continue from day to day as necessary through December 1, 1978, to be resumed at 9:30 a.m. (local time) on December 12, 1978, in Suite 1003, Hearing Room D, North Universal Building, 1875 Connecticut Avenue NW., Washington, D.C. 20428.

For information concerning the issues involved and other details in this proceeding, interested persons are referred to the Prehearing Conference Report, served on August 17, 1978, and other documents which are in the docket of this proceeding on file in the docket section of the Civil Aeronautics Board. Moreover, it is contemplated that at the outset of the hearing a prehearing conference will be held, as may be appropriate, in light of CAB Order 78-10-103, limited to issues raised by virtue of that order and not reasonably anticipated and dealt with at the prehearing conference or report thereof.

Dated at Washington, D.C., October 31, 1978.

MARVIN H. MORSE,
Administrative Law Judge.

[FR Doc. 78-31278 Filed 11-3-78; 8:45 am]

[8] All Members concurred.

[6320-01-M]

[Order 78-10-143; Docket 33720]

TRANS WORLD AIRLINES, INC. ET AL.

Order of Suspension and Investigation

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 20th day of October 1978.

In the matter of transatlantic fare revisions proposed by Trans World Airlines, Inc., National Airlines, Inc., Compagnie Nationale Air France, Deutsche Lufthansa Aktiengesellschaft, Societe Anonyme Belge d'Exploitation de la Navigation Aerienne, and Scandinavian Airlines System

Trans World Airlines, Inc. (TWA), National Airlines, Inc. (National), Compagnie Nationale Air France (Air France), Deutsche Lufthansa Aktiengesellschaft (Lufthansa), Societe Anonyme Belge d'Exploitation de la Navigation Aerienne (Sabena), and Scandinavian Airlines System (SAS) have recently filed revisions to their transatlantic fares.[1] The revisions generally consist of increases in basic-season fares and, without exception, increases in normal economy fares. Appendix A outlines the revisions in detail.

We find that the proposed increases in normal economy fares may be unlawful, and so we will suspend them pending investigation.[2] We will take no action against the revisions to first-class and promotional fares.

We previously suspended other proposed increases in normal economy fares by Orders 78-38, August 23, 1978, and 78-10-61, October 5, 1978. In those orders, we discussed our reasons for suspension at great length. The factors which then led to our decisions—chiefly, the virtual absence of price competition in normal economy fares,

[1] TWA's revisions are contained in Traffic C.A.B. No. 37, issued by Trans World Airlines, Inc.; all others are contained in Tariff C.A.B. No. 71, issued by Air Tariffs Corporation, Agent.

[2] Our suspension will not extend to TWA's U.S.-Israel normal economy fares, however, since under the current U.S.-Israel air transport agreement suspension must be made bilaterally. El Al Israel Airlines, Ltd., also filed revised U.S.-Israel fares which included a $8 increase to roundtrip normal economy fares, plus a new "Holiday Class" economy fare entailing fewer on-board amenities, at considerably lower levels.

and the fact that these fares contain generous allowances for facilities unrelated to direct, point-to-point service and the lack of alternative "on-demand" fares—apply equally in these case. There has been no change in market conditions or the carriers' pricing strategies, and none of the carriers has proposed on-demand alternatives as we had suggested. Consequently, we will suspend the proposed increases in these fares, in keeping with our earlier actions.

As in those earlier orders, we will take no action against either the first-class fares, where we generally allow carriers discretion in pricing this service, or the promotional fares, where the forces of price competition seem to be healthy and operating.

Accordingly, under the Federal Aviation Act of 1958, as amended, particularly sections 102, 204(a), 403, 801 and 1002(j) thereof,

1. We shall institute an investigation to determine whether the fares and provisions set forth in Appendices B and C hereof, and rules and regulations or practices affecting such fares and provisions, are or will be discriminatory, unduly preferred, unduly prejudicial or otherwise unlawful, and if we find them to be unlawful, to act appropriately to prevent the use of such fares, provisions or rules, regulations, or practices;

2. Pending hearing and decision by the Board, we hereby suspend the tariff provisions specified in the attached Appendix B and defer their use from November 1, 1978, to and including October 31, 1979, and suspend the tariff provisions specified in the attached Appendix C and defer their use from November 5, 1978, to and including November 4, 1979, unless otherwise ordered by the Board, and shall permit no changes to be made therein during the period of suspension except by order or special permission of the Board;

3. We shall submit this order to the President [3] and it shall become effective on November 1, 1978;

4. We shall file copies of this order in the aforesaid tariffs and serve them upon Compagnie Nationale Air France, Deutsche Lufthansa Aktiengeselischaft, National Airlines, Inc., Scandinavian Airlines System, Societe Anonyme Belge d'Exploitation de la Navigation Aerienne and Trans World Airlines, Inc.

We shall publish this order in the FEDERAL REGISTER.[4]

[3] We submitted this order to the President on October 20, 1978.

[4] Appendices A through C filed as part of the original document.

By the Civil Aeronautics Board.[5]

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-31281 Filed 11-3-78; 8:45 am]

[5] All Members concurred.

[3510-25-M]

DEPARTMENT OF COMMERCE

Industry and Trade Administration

IMPORTERS' TEXTILE ADVISORY COMMITTEE

Public Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the Importers' Textile Advisory Committee will be held on November 21, 1978 at 10 a.m. in room 770, No. 6 World Trade Center, New York, N.Y. 10048.

The Committee was established by the Secretary of Commerce on August 13, 1963 to advise U.S. Government officials of the effects on import market of cotton, wool, and man-made fiber textile agreements.

The agenda for the meeting will be as follows:

1. Review of import trends.
2. Implementation of textile agreements.
3. Report on conditions in the domestic market.
4. Other business.

A limited number of seats will be available to the public on a first-come basis. The public may file written statements with the Committee before or after each meeting. Oral statements may be presented at the end of the meeting to the extent time is available.

Copies of the minutes of the meeting will be made available on written request addressed to the ITA Freedom of Information Officer, Freedom of Information Control Desk, Room 3012, U.S. Department of Commerce, Washington, D.C. 20230.

Telephone requests for the minutes of the meetings and requests for further information concerning the Committee may be directed to Arthur Garel, Director, Office of Textiles, U.S. Department of Commerce, Washington, D.C. 20230, telephone 202-377-5078.

Dated: November 1, 1978.

EDWARD GOTTFRIED,
Acting Director,
Office of Textiles.

[FR Doc. 78-31232 Filed 11-3-78; 8:45 am]

[3910-01-M]

DEPARTMENT OF DEFENSE

Department of the Air Force

AIR FORCE ACADEMY BOARD OF VISITORS

Meeting

OCTOBER 23, 1978.

The Air Force Academy Board of Visitors is scheduled to meet at the Air Force Academy, Colorado Springs, Colo., during the period November 17-18, 1978. This meeting is pursuant to the Board's statutory charge (10 U.S.C. 9355) to meet at the Academy and to inquire into matters of morale, discipline, the curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy which the Board decides to consider.

The tentative agenda calls for portions of the meeting to be open for public attendance on November 17 from 8:15 a.m. to 11:40 a.m. and from 3:30 p.m. to 5 p.m. in the Superintendent's Conference Room, Harmon Hall. Among the items on the tentative agenda during the open portions of the meeting are briefings to the Board on the following subjects: Characteristics of the Class of 1982, Voluntary Attrition and Graduate Retention, Academic Update, Honor Review Committee Changes, Review of National Sports Festival/Special Olympics, and an Update on Recommendations of the Previous Board. In addition to these open portions of the meeting, a press conference which will be open to the public has been scheduled for 10 a.m. on November 18 in Arnold Hall.

Portions of this meeting are tentatively scheduled to be closed to the public pursuant to subsections (2) and (6) of section 552b(c), Title 5, United States Code. These closed portions include panel discussions with groups of cadets involving internal personnel rules and practices and personal information and opinions, the disclosure of which would be a clearly unwarranted invasion of personal privacy. Also included are the executive deliberations of the Board involving discussion of such personal information.

If additional information is desired, contact Headquarters, U.S. Air Force (MPPA), Washington, D.C. 20330, at 202-697-7116.

CAROL M. ROSE,
Air Force Federal Register
Liaison Officer.

[FR Doc. 78-31269 Filed 11-3-78; 8:45 am]

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[3810-71-M]

Department of the Navy

ACADEMIC ADVISORY BOARD TO THE SUPERINTENDENT, U.S. NAVAL ACADEMY, A SUBCOMMITTEE OF THE SECRETARY OF THE NAVY'S ADVISORY BOARD ON EDUCATION AND TRAINING

Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Academic Advisory Board to the Superintendent, U.S. Naval Academy, a subcommittee of the Secretary of the Navy's Advisory Board on Education and Training, will meet on November 27, 1978, at conference room 301 (Rickover Hall Conference Room), Rickover Hall, U.S. Naval Academy, Annapolis, Md. The meeting will commence at 8:30 a.m. and terminate at 3 p.m.

The purpose of the meeting is to advise and assist the superintendent of the Naval Academy concerning the education of midshipmen. To accomplish this objective, the Board will review academic policies and practices of the Naval Academy and will submit their proposals to the Superintendent to aid him in improving educational standards and in solving academic problems.

For further information concerning this meeting contact: Maj. Donald W. Nelson, USAF, Military Secretary to the Academic Advisory Board, Division of English and History, U.S. Naval Academy, Annapolis, Md. 21402, telephone 301-267-2170.

Dated: October 27, 1978.

P. B. WALKER,
Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Administrative Law).

[FR Doc. 78-31205 Filed 11-3-78; 8:45 am]

[3128-01-M]

DEPARTMENT OF ENERGY

URANIUM HEXAFLUORIDE

Separative Work Charges, and Base Charges for Natural Uranium

The Department of Energy (DOE) hereby announces changes in the base charges for uranium as published in the notice entitled, "Uranium Hexafluoride: Separative Work Charges, and Base Charges for Natural Uranium," as published in the FEDERAL REGISTER on September 29, 1977 (42 FR 51636) (hereafter called the notice). Paragraph 2 of the notice is deleted and the following paragraph is inserted in lieu thereof:

2. Base Charges for Natural Uranium

(a) The base charge for natural uranium furnished on other than a short notice, one time basis, is $19.75 per pound of contained U_{308} in the form of concentrate and $55.50 per kg of contained uranium in the form of UF_6.

(b) The base charge for natural uranium furnished on a short notice, one time basis, is $41.80 per pound of contained U_{308} in the form of concentrate and $112.83 per kg of contained uranium in the form of UF_6.

Effective date: This notice is effective November 6, 1978.

Issued in Washington, D.C., November 1, 1978.

WILLIAM P. DAVIS,
Deputy Director of Administration.

[FR Doc. 78-31335 Filed 11-3-78; 8:45 am]

[3128-01-M]

Energy Information Administration

ENERGY EMERGENCY MANAGEMENT INFORMATION SYSTEM

Changed Hearings

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of change in locations for public hearings scheduled in Washington, D.C., and Chicago, Ill.

SUMMARY: The Energy Information Administration of the Department of Energy hereby gives notice of the change in location for the Washington, D.C., and Chicago, Ill., public hearings on the energy emergency management information system program plan previously set forth in a Notice of Public Hearings issued on September 29, 1978 (43 FR 46564, October 10, 1978). The location for the public hearing in Washington, D.C., on November 16, 1978, has been changed from Room 3000A, 12th and Pennsylvania Avenue, NW., to room 2105, 2000 M Street NW., and the location for the regional public hearing scheduled for Chicago, Ill., on November 15, 1978, has been changed from room 204A to room 1220, Everett McKinley Dirksen Building, 219 South Dearborne Street.

HEARING LOCATIONS: Washington hearing: Room 2105, 2000 M Street, NW., Washington, D.C. Chicago hearing: Room 1220, Everett McKinley Dirksen Building, 219 South Dearborne Street, Chicago, Ill.

FOR FURTHER INFORMATION CONTACT:

Barry Yaffe (Energy Emergency Management Information System Project Office), Department of Energy, 1726 M Street NW., Room 820, Washington, D.C. 20461, 202-634-2079.

Yvonne Allen (Energy Emergency Center), Department of Energy, 2000 M Street NW., Room 7204, Washington, D.C. 20461, 202-252-5155.

Robert Gillette (Office of Public Hearing Management), Department of Energy, 2000 M Street NW., Room 2313, Washington, D.C. 20461, 202-254-5201.

William Luck (Office of General Counsel), Department of Energy, Federal Building, 12th and Pennsylvania Avenue, room 6144, Washington, D.C. 20461, 202-566-9296.

Issued in Washington, D.C., October 31, 1978.

LINCOLN E. MOSES,
Administrator, Energy Information Administration.

[FR Doc. 78-31202 Filed 11-3-78; 8:45 am]

[6740-02-M]

Federal Energy Regulatory Commission

[Docket Nos. RP78-10, (PGA78-3) & RP74-61 (PGA78-3)]

ARKANSAS LOUISIANA GAS CO.

Order Accepting for Filing and Suspending Proposed PGA Rate Change, Subject to Conditions, and Establishing Hearing Procedures

OCTOBER 27, 1978.

On September 29, 1978, Arkansas Louisiana Gas Co. (Arkla) filed an 8.04 cents PGA rate increase under its Rate Schedule X-26, and a 27.5 cents PGA rate decrease under its Rate Schedule G-2.[1] The increase under Rate Schedule X-26 reflects an 8.91 cents per Mcf (at 14.65 psia) increase in the cost of purchased gas and a 0.87 cent per Mcf decrease in the surcharge used to recover the $1,103,548 in the deferred account applicable to Rate X-26. The decrease under Rate Schedule G-2 represents an 8.96 cents per Mcf (at 14.73 psia) increase in the cost of purchased gas and a 36.46 cents per Mcf decrease in the surcharge used to recover the $94,431 in the deferred account applicable to Rate Schedule G-2.

The filing was noticed October 3, 1978, with comments due by October 19, 1978.

The surcharge adjustments include three emergency purchases at rates in excess of those established by Opinion No. 770-A. Determination of the prudency of the first purchase, from Oklahoma Natural Gas Co. (ONG) for 1,288,287 Mcf at $1.96 per Mcf, is at issue in Docket Nos. RP74-61 (PGA78-2) et al. The filing herein involves a later accounting period in which Arkla is attempting to recover continuing costs incurred under the controverted purchase at issue in the prior proceeding. The second purchase, made from Stephens Production Co. for 301,164 Mcf at $1.80 per Mcf, was found to be prudent and was thus accepted without suspension by Commission order of May 19, 1978 in Docket Nos. RP74-61 (PGA78-2), et al. Therefore no further action is required with respect to this purchase.

The third emergency transaction at issue in this filing involves a purchase from Louisiana State Gas Corp., of 7,745 Mcf at $2.60 per Mcf, plus a 0.30 cent per Mcf transportation charge and fuel factor of 1.91% of delivered volume. This purchase was made to serve an area in East Arkansas which is an isolated portion of Arkla's system, not connected to Arkla's integrated system. Arkla proposes to roll the cost of gas served to this isolated area into its system supply in its PGA clause. Thus the cost of this gas would be allocated to the customers in its integrated system as well to the customers in the isolated portion of its system. Additionally, further PGA adjustments proposed by Arkla are at issue in Docket Nos. RP77-54 (PGA77-5), et al., a separate proceeding also awaiting initial decision by an administrative law judge.

Based on a review of Arkla's filing, the Commission finds that the proposed PGA adjustments and the propriety of rolling in costs of serving Arkla's isolated system portions have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, preferential or otherwise unlawful. The Commission shall therefore accept Arkla's submittal for filing and suspend the proposed rates for one day, making them effective November 2, 1978, subject to refund.

Accordingly, the Commission finds it is necessary and proper in carrying out the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the rates, terms and conditions proposed by Arkla, and that the proposed tariff changes be accepted for filing and suspended as ordered below.

The Commission orders:

(A) Arkansas Louisiana's proposed Revised Tariff Sheets No. 185 to FPC Gas Tariff, Original Volume No. 3 and Eighteenth Revised Sheet No. 4 to FPC Gas Tariff, First Revised Volume No. 1 are accepted for filing, suspended for 1 day until November 2, 1978, subject to refund.

(B) The PGA adjustments in this case which are identical to those at issue in Docket No. RP77-54 (PGA77-5), et al., are hereby made subject to the outcome of the proceedings in that docket.

(C) Costs associated with the Oklahoma Natural Gas purchase shall be collected subject to refund pending final Commission determination of the prudency of that purchase in Docket Nos. RP74-61 (PGA78-2), et al.

(D) Pursuant to the authority of the Natural Gas Act particularly sections 4, 5, 8, and 15 thereof, and the Commission's rules and regulations, a public hearing shall be held concerning the prudency of the purchase from Louisiana State and the propriety of allocating the costs of such purchase and any other purchased gas costs to all of Arkla's customers, including those served by Arkla's integrated system.

(E) Arkansas Louisiana shall serve its case-in-chief on or before December 4, 1978.

(F) Staff shall serve its statement of position, on or before January 4, 1979.

(G) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose (18 CFR 3.5(d)) shall convene a settlement conference in this proceeding to be held within 10 days after the service of Staff's top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. The Presiding Administrative Law Judge is authorized to establish such further procedural dates as may be necessary and to rule on all motions (except motions to sever, consolidate, or dismiss) as provided for in the rules of practice and procedure.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31237 Filed 11-3-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-27]

BOSTON EDISON CO.

Filing

OCTOBER 26, 1978.

Take notice that Boston Edison Co. (Edison) on October 18, 1978, tendered for filing a revised Exhibit D for Contract Demand Service to the town of Reading (Mass.) Municipal Light Department. Edison states that the new Exhibit D contains Reading's specifications of its contract demand and transmission service requirements for the period November 1, 1981 to October 31, 1982. Edison proposes an effective date of November 18, 1978.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 6, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31239 Filed 11-3-78; 8:45 am]

[6740-02-M]

[Docket No. RP79-4]

CITIES SERVICE GAS CO.

Proposed Changes in FERC Gas Tariff

OCTOBER 25, 1978.

Take notice that Cities Service Gas Co. (Cities Service) on October 23, 1978, tendered for filing Fourth Revised Sheet No. 6 to Original Volume No. 1 and First Revised Sheet No. 91 to Original Volume No. 2 of its FERC Gas Tariff to be effective on November 23, 1978.

Cities Service states that the filing proposes an increase above its presently effective rates which would increase revenues from jurisdictional sales by $22,245,595, based on the test period (the 12 months ended July 31, 1978, adjusted for known changes through April 30, 1979).

Cities Service states that the increased rates are required to reflect an overall rate of return of 12.50 percent; increases in plant and related cost of service items; increases in the cost of materials, supplies, wages and services, including the gathering and transportation of gas by others; and increases in ad valorem, payroll, and franchise taxes.

Cities Service states that this filing was served on each of its customers and affected state commissions pursuant to § 154.16(b) of the Commission's Regulations.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 9, 1978. Protests will be considered by the Commission in deter-

[1] Sixteenth Revised Sheet No. 185 to FPC Gas Tariff, Original Volume No. 3, and Eighteenth Revised Sheet No. 4 to FPC Gas Tariff, First Revised Volume No. 1.

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mining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31240 Filed 11-3-78; 8:45 am]

[6740-02-M]

[Docket No. RP72-157]

CONSOLIDATED GAS SUPPLY CORP.

Proposed Changes in FERC Gas Tariff

OCTOBER 26, 1978.

Take notice that Consolidated Gas Supply Corp. (Consolidated) on October 19, 1978 tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, pursuant to its PGA clause for rates to be effective October 1, 1978.

Consolidated states that the filing includes revised rate changes filed by Texas Eastern Transmission Corp. (Texas Eastern) and Transcontinental Gas Pipe Line Corp. both for effectiveness September 2, 1978.

Additionally, Consolidated submitted as part of the filing, Substitute Seventh Revised Sheet No. 16 to be effective November 1, 1978 in lieu of rates filed October 2, 1978. The substitute tariff sheet was revised to reflect the changes proposed for effectiveness October 1, 1978.

Consolidated requested a waiver of the Commission's Rules and Regulations, specifically § 154.22, Notice Requirements, citing that it did not receive the rate change in time to make a timely filing. Additionally, Consolidated requested a waiver of any other of the Commission's Rules and Regulations as may be deemed necessary, to permit the rates to be become effective as proposed.

Copies of this filing were served upon Consolidated's jurisdictional customers as well as interested State Commissions.

Any persons desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 13, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31241 Filed 11-3-78; 8:45 am]

[6740-02-M]

[Docket No. RP78-52]

CONSOLIDATED GAS SUPPLY CORP.

Extension of Time

OCTOBER 25, 1978.

On October 12, 1978, Commission Staff Counsel filed a motion for an extension of time within which to file top sheets in the above captioned proceeding pursuant to the Commission order of April 28, 1978. The motion states that staff is waiting for Consolidated to provide supporting data before completing its analysis.

Upon consideration, notice is hereby given that an extension of time is granted to and including December 15, 1978, for filing top sheets in this proceeding.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31242 Filed 11-3-78; 8:45 am]

[6740-02-M]

[Project No. 2232]

DUKE POWER CO.

Applications for Change in Land Rights

OCTOBER 26, 1978.

Public Notice is hereby given that application for approval of a change in land rights was filed on January 13, 1978, by Duke Power Co. (Duke) (correspondence to: William L. Porter, Associate General Counsel, Duke Power Co., Box 2178, Charlotte, N.C. 28242).

Applicant, Licensee for Project No. 2232, requests Commission approval to convey perpetually by deed of easement to the State of North Carolina certain lands that are now within the boundaries of the Catawba Development of the Catawba-Wateree Project No. 2232. The lands to be conveyed will be used in construction of a highway bridge spanning project lands and waters.

The proposed bridge, as part of State Road 2302, would replace an existing steel truss bridge crossing Catawba Creek. The new bridge would be 480 feet long and 40 feet wide and would accommodate two lanes of traffic. The proposed right-of-way would be 70 feet wide.

The existing one-lane bridge is considered to be structurally inadequate and a safety hazard to the public.

The new bridge will be located about 50 feet upstream of the existing bridge.

Upon completion of the proposed bridge, the superstructure and upper portions of the supporting piers of the old bridge will be removed.[1]

The project is located in Alexander, Burke, Caldwell, Catawba, Gaston, Iredell, Lincoln, McDowell and Mecklenburg Counties, N.C.; and Chester, Fairfield, Kershaw, Lancaster, and York Counties, S.C.

The project is located on the Catawba River, N.C. and the Catawba and Wateree Rivers, S.C. These are navigable waters of the United States. The lands to be conveyed are located in Gaston County, N.C. and are on the Catawba Creek Arm of Lake Wylie.

Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR § 1.8 or § 1.10 (1977). In determining the appropriate action to take, the Commission will consider all protests filed, but a person who merely files a protest does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any protest or petition to intervene must be filed on or before December 7, 1978. The Commission's address is: 825 North Capitol Street NE., Washington, D.C. 20426.

The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31243 Filed 11-3-78; 8:45 am]

[6740-02-M]

[Docket No. ER78-591]

EMPIRE DISTRICT ELECTRIC CO.

Order Conditionally Accepting Proposed Rate Schedule for Filing and Granting Intervention

OCTOBER 27, 1978.

On August 30, 1978, as completed September 29, 1978,[1] the Empire District Electric Co. (Empire) tendered for filing a proposed rate increase for three municipals and one cooperative customer and an initial filing for one cooperative customer.[2] The proposed rate increase would result in additional revenues of $826,338 (45.5 percent) based upon the twelve month period ending October 1, 1979. In addition, Empire will experience added revenues of $56,491 from a new cooperative customer in the same period. In support of its filing, Empire points to additional expenses incurred during the term of the contracts including fuel, labor, interest, taxes and construction to provide additional capacity and meet environmental requirements.

Empire requests that the rates become effective for all customers as their filed rate contracts expire. We will treat this as an implied request for waiver of the Commission's notice requirements with respect to those customers whose contracts expire after the minimum 90 day notice period.[3]

Notice of the filing was issued on September 12, 1978, with comments, protests or petitions to intervene due on or before September 20, 1978.

On September 6, 1978, the City of Mt. Vernon filed a mailgram with this Commission which will be treated as a timely protest and petition to intervene. A formal protest and petition followed on October 20, 1978, in which Mt. Vernon argues that the Commission should not approve the full increase because Empire's increased costs have been partially offset by the institution of a fuel adjustment clause. We note that the Commission has taken into account the revenues collected by Empire under the fuel adjustment clause in making the determination that the proposed rates are just and reasonable. In addition, Mt. Vernon submits that, because its fixed rate contract expires one year before the fixed rate contract of the neighboring municipality of Monett, the resulting disparity in rates would constitute an unreasonable difference in rates in violation of Section 205(b). It is well-established, however, that a temporary difference in rates in this situation is permissible. *Borough of Chambersburg, et. al.* v. *Federal Energy Regulatory Commission*, No. 76-1506, *et. al.* (D.C. Circuit, April 3, 1978); *Southwestern Electric Power Co.*; Docket Nos. ER76-177, *et. al.*, Opinion No. 28, issued September 20, 1978.[4]

On September 19, 1978, the City of Monett filed a mailgram with the Commission protesting Empire's rate increase application. This was followed by a letter filed September 23, 1978, which will be treated as a timely protest and petition to intervene. In its letter, Monett also points out that Empire has had the benefit of a fuel adjustment clause and, therefore, is not entitled to the full rate increase requested. We again note that Empire's fuel adjustment clause revenues have been considered by the Commission.

Monett filed an additional letter on October 20, 1978 in which they state, inter alia, that Empire's largest facility is located on a property which contains a coal mine. While they are "not sure whether the mine is owned in whole or in part by Empire", Monett argues that the resulting availability of coal should reduce the amount of the requested increase. Our files indicate that Empire does not own any part of the coal mine. In addition, Empire's cost justification for the increase is based on increased expenses over the term of the contracts for labor, interest, taxes and construction as well as fuel.

Twin Valley Electric Cooperative filed an untimely protest and petition to intervene on October 4, 1978. In its petition, Twin Valley requests Staff to investigate and evaluate the reasonableness of the increase sought and prepare a top sheet considering the full impact of the increase. The Commission has reviewed Empire's cost-revenue analysis including appropriate adjustments with respect to all of Empire's wholesale customers and has determined that the proposed rates would not result in excess revenues. This eliminates the need for the preparation of top sheets.

In addition, Twin Valley expressed concern about the inclusion of the "Kansas Unrecovered Fuel Surcharge" in Empire's cost of service submittal, Statement B. The Commission has reviewed this item and determined that Empire has not allocated any portion of this fuel surcharge to its wholesale customers. Finally, we note that analysis of Twin Valley's excess facilities charge indicates that such charge is just and reasonable.

We note that Empire has included an "Article VII—Resale" provision in the proposed tariff which restricts purchasers from reselling electric power and energy except at the retail level. Such a provision may unduly restrict the electric operation of purchasers under the tariff. In addition, this provision may be unduly discriminatory in that other agreements filed by Empire with the Commission do not contain a similar provision. In the recent order approving settlement in *Gulf States Utilities Co.*, Docket No. ER76-816 (issued October 20, 1978), this Commission established a per se rule against direct resale prohibition, such as the one here, finding such provisions to be unduly restrictive and anticompetitive. Accordingly, we will direct Empire to remove the offending resale prohibition. However, recognizing the Company's legitimate need for orderly power supply planning, we will declare these restrictive provisions null and void and of no legal effect ninety (90) days from the date of issuance of this order. This time period will allow Empire to refile substitute tariff provisions appropriate for system planning.

Our review indicates that the proposed rates have been shown to be just and reasonable. Therefore, the Commission will accept the submittal for filing and permit the rate schedules for the Town of Mt. Vernon and the Twin Valley Electric Cooperative to go into effect on October 30, 1978, 30 days after filing.

The Commission has found that good cause has not been shown for waiver of the notice requirements pursuant to the requirements of Section 205(d) of the Federal Power Act and Section 35.11 of the Commission's Regulations. If Empire intends to provide service under the presently filed FERC Electric Tariff, Original Volume No. 1 to the City of Monett, Mo., City of Chetopa, Kans., and Sekan Electric Cooperative Association, Inc. upon expiration and lawful termination of these contracts, the Company is required to file with the Commission an appropriate form of service agreement (signed or unsigned) and a revised index of purchasers pursuant to a decision by this Commission and affirmed by the U.S. Court of Appeals (*Alabama Power Co.*, Opinion No. 679-A, (1975), 51 FPC 1315, *aff'd., Municipal Electric Utility Association of Alabama, et. al.* v. *FPC*, 512 F. 2d 992 (D.C. Cir. 1975).

We find that participation by the Petitioners in this proceeding may be in the public interest. Accordingly, the Commission will grant the Petitioner's intervention pursuant to § 1.8(d) of the Commission's Rules and Regulations.

The Commission orders: (A) The designated rate schedules will be conditionally accepted for filing and will become effective for the City of Mt. Vernon and the Twin Valley Electric Cooperative on October 30, 1978. This acceptance for filing does not constitute approval of any service, rate, charge, classification, or any rule, regulation, contract, or practice affecting such rate or service provided for in the above-designated rate schedule; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation affecting or relating to such service or rate; and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pend-

[1] Duke is required under Commission license to remove obstructions to a maximum elevation of 555 feet msl, 5 feet below the maximum drawdown (560 foot contour) of Lake Wylie.

[1] By letter dated September 22, 1978, Empire District Electric Co. (Empire) was apprised that the filing of August 30, 1978 had been assessed deficient. On September 29, 1978, Empire filed additional information curing the deficiency.

[2] See Attachment A for Rate Schedule.

[3] Three of Empire's four existing customers have fixed rate contracts expiring on various dates through 1983.

[4] We note that Mt. Vernon made no allegation of undue discrimination. *Town of Norwood* v. *Federal Energy Regulatory Commission*, No. 72-1326, (D.C. Circuit, issued October 23, 1978).

ing or hereafter instituted against Empire.

(B) Waiver of the Commission's notice requirements is hereby denied.

(C) Within 90 days of the date of issuance of this order, Empire shall file revised rate schedules excluding the restrictive language contained in Article VII—Resale. This order is without prejudice to Empire to file within that ninety day period appropriate tariff provisions in accordance with the discussion in the body of this order. Such refiling shall be subject to Commission review and approval.

(D) The Petitioners, the Cities of Mt. Vernon and Monett, Mo., and Twin Valley Electric Cooperative, Inc., are hereby permitted to intervene in this proceeding subject to the Rules and Regulations of the Commission; *Provided, however,* That the participation by these intervenors shall be limited to matters set forth in their petitions to intervene; and *Provided, further,* that the admission of these intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(C) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

ATTACHMENT A

EMPIRE DISTRICT ELECTRIC CO.

(1) FERC Electric Tariff, Original Vol. No. 1 (Sheet Nos. 1-21).

(2) Exhibit A to Rate Schedule FPC No. 83 (Notice of Termination of Contract with the City of Mt. Vernon, Mo).

(3) Service Agreement under (1) above (City of Mt. Vernon, Mo.) (Supersedes Rate Schedule FPC No. 83 as supplemented).

(4) Service Agreement under (1) above (Twin Valley Electric Cooperative, Inc.).

[FR Doc. 78-31244 Filed 11-3-78; 8:45 am]

[6740-02-M]

[Docket No. RP76-3]

INLAND GAS CO.

Informal Conference

OCTOBER 26, 1978.

Take notice that on November 2, 1978 at 10 a.m. an informal conference will be convened of all interested parties to discuss modifications of the interim curtailment plan of Inland Gas Co. All parties should be prepared to discuss the effect, if any, of the Natural Gas Policy Act of 1978 upon Inland's interim curtailment plan. Customers and other interested parties are invited to attend, but if such persons have not previously been permitted to intervene by order of the Commission, attendance will not be deemed to authorize intervention as a party in this proceeding. Parties are expected to come fully prepared to make commitments with respect to any issues raised and any officers of settlement or stipulations discussed at the conference.

The conference will be held in Room 8402 at the office of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31245 Filed 11-3-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-28]

IOWA POWER & LIGHT CO.

Proposed Cancellation

OCTOBER 27, 1978.

Take notice that Iowa Power & Light Co. (Iowa Power) tendered for filing on October 18, 1978, a proposed cancellation of Rate Schedule FPC No. 23 dated November 6, 1965.

Iowa proposes an effective date of December 31, 1978.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 20, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31246 Filed 11-3-78; 8:45 am]

[6740-02-M]

[Docket No. CP79-32]

KANSAS-NEBRASKA NATURAL GAS CO., INC.

Application

OCTOBER 25, 1978.

Take notice that on October 16, 1978, Kansas-Nebraska Natural Gas Co. (Applicant), P.O. Box 608, Hastings, Nebr. 68109, filed in Docket No. CP79-32 an application pursuant to section 7 of the Natural Gas Act and §§ 157.7(b), 157.7(e), and 157.7(g) of the Regulations thereunder (18 CFR 157.7(b), 157.7(e), and 157.7(g)) for a certificate of public convenience and necessity authorizing the construction, during the calendar year 1979, and operation of facilities to enable Applicant to take into its certificated main pipeline system natural gas which would by purchased from producers or other similar sellers thereof; authorizing the construction and for permission and approval to abandon for the same period and operation of new or additional field compression and related metering and appurtenant facilities; and for permission and approval to abandon during the same period of time, direct sales service and facilities no longer required for deliveries of natural gas to Applicant's customers, all as more fully set forth in the application on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in the construction of gas-purchase facilities to enable Applicant to connect its system with the facilities of an independent producer or other similar sellers, authorized by the Commission to make a sale of gas to Applicant for resale in interstate commerce, or the system of another natural gas company authorized to transport gas for the account of, or for the exchange of gas with Applicant; to augment Applicant's ability to act with reasonable dispatch in the construction, relocation, and operation and abandonment of facilities which would not result in changing Applicant's system saleable capacity or service from that authorized prior to the filing of the instant application; and to augment Applicant's ability to act with reasonable dispatch in abandoning service and removing direct sale measuring, regulating, and related facilities. Applicant states that it would abandon service and facilities only when deliveries to any one direct sale customer would not exceed 100,000 Mcf of natural gas during the last year of service.

Applicant states that the total cost of the proposed gas-purchase facilities would not exceed $5,300,000 with no single project to exceed $1,325,000, and that the total cost of its proposed construction, relocation, removal or abandonment of field compression facilities would not exceed $2,000,000 with no single project to exceed $500,000. Applicant states that the cost of the new facilities would be met out of current working capital or would be obtained by interim bank loans which at a later date may be funded by a security issue.

The application states that Applicant would not abandon any service

unless it would have received a written request or written permission from the customer to terminate service. In the event such request or permission could not be obtained, a statement certifying that the customer has no further need for service would be filed with the Commission, it is said.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 14, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31247 Filed 11-3-78; 8:45 am]

[6740-02-M]

[Docket No. RP73-14 (PGA 78-3 and DCA 78-2)]

MICHIGAN WISCONSIN PIPE LINE CO.

Order Accepting for Filing, Suspending, and Setting for Hearing Proposed Purchased Gas Adjustment Rate Increase

OCTOBER 27, 1978.

On September 15, 1978, Michigan Wisconsin Pipe Line Co. (Mich-Wisc) filed in Docket No. RP73-14 revised tariff sheet [1] containing a demand charge decrease of 31 cents and a commodity rate increase of 8.56 cents per Mcf. The proposed commodity rate increase consists of (1) an increase of 15.61 cents per Mcf or approximately $115.8 million annually in the current cost of gas, (2) a reduction of 6.17 cents (from 12.09 cents to 5.92 cents) in the surcharge level to recover approximately $28.1 million in the deferred account, and (3) a reduction of 0.88 cent per Mcf (from 1.27 cents to 0.39 cent) in the demand charge credits. Mich-Wisc requests an effective date of November 1, 1978.

Mich-Wisc's filing was noticed on September 25, 1978, providing that comments or petitions to intervene be filed on or before October 16, 1978.

Mich-Wisc's PGA filing includes 60-day emergency purchases which have been made at rates in excess of the applicable nationwide rates. There is insufficient evidence for the Commission to find that the prices paid for these emergency purchases were at rates that a prudent pipeline would have paid under similar circumstances. We will suspend the effectiveness of the tendered tariff sheets, listed above in note one, for 1 day until November 2, 1978, subject to refund. We will also set for hearing the question of the prudence of these purchases.

In anticipation that such a suspension would be imposed in connection with the emergency purchase costs, Mich-Wisc filed alternate revised tariff sheets which do not include emergency purchase costs in excess of the appropriate nationwide rates.[2] The rates proposed by the alternate tariff sheets exclude an additional 0.01 cent per Mcf from the deferred account surcharge. Mich-Wisc requests that the rates proposed by the additional tariff sheets be effective November 1, 1978, without suspension. Based upon an examination of the information contained in Mich-Wisc's filing, the Commission finds that these proposed rates are in accord with the requirements of Mich-Wisc's PGA tariff provision and are otherwise just and reasonable. Accordingly, such proposed rates shall be accepted for filing without suspension, and will be effective for 1 day on November 1, 1978.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4, 5, 8, and 15 thereof, and the Commission's rules and regulations, a public hearing shall be held concerning the lawfulness of the increased rates proposed by Mich-Wisc.

(B) Mich-Wisc's proposed Alternate Twenty-first Revised Sheet No. 27F to FPC Gas Tariff, Second Revised Volume No. 1, is accepted for filing without suspension and may become effective for 1 day on November 1, 1978.

(C) Mich-Wisc's proposed Twenty-first Revised Sheet No. 27F to FPC Gas Tariff, Second Revised Volume No. 1, is accepted for filing and suspended for 1 day, and may become effective, subject to refund, on November 2, 1978.

(D) Mich-Wisc's case-in-chief in support of the prudence of the above referenced purchases shall be filed with the Commission no later than November 22, 1978. The staff shall serve its statement of position on or before December 22, 1978.

(E) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose (18 CFR 3.5(d)), shall convene a settlement conference in this proceeding to be held within 10 days after the service of top sheets by the staff, in a hearing or conference room of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. The Presiding Administrative Law Judge is authorized to establish such further procedural dates as may be necessary, and to rule upon all motions (except motions to consolidate, sever, or dismiss), as provided for in the rules of practice and procedure.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31248 Filed 11-3-78; 8:45 am]

[1] Twenty-first Revised Sheet No. 27F to FPC Gas Tariff, Second Revised Volume No. 1.

[2] Alternate Twenty-first Revised Sheet No. 27F to FPC Gas Tariff, Second Revised Volume No. 1.

[6740-02-M]

[Docket No. CP79-13]

PANHANDLE EASTERN PIPE LINE CO.

Application

OCTOBER 25, 1978.

Take notice that on October 10, 1978, Panhandle Eastern Pipe Line Co. (Panhandle) filed in Docket No. CP79-13 an application pursuant to section 7 of the Natural Gas Act and § 157.7(g) of the Commission's regulations under the Natural Gas Act (18 CFR 157.7(g)) for a certificate of public convenience and necessity authorizing the con-

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struction and for permission for and approval of the abandonment for a 12-month period commencing January 31, 1979, and operation of field gas compression and related metering and appurtenant facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to augment Panhandle's ability to act with reasonable dispatch in the construction, relocation, and operation and abandonment of facilities which will not result in changing Panhandle's system saleable capacity or service from that authorized prior to the filing of the instant application.

Panhandle states that the total cost of the proposed construction and abandonment of facilities would not exceed $3,000,000, and that the cost of any single project would not exceed $500,000. Panhandle indicates that it would finance such cost from internally generated funds and short-term bank borrowing as necessary.

Any person desiring to be heard or to make any protest with reference to said application should, on or before November 14, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be take but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Panhandle to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31249 Filed 11-3-78; 8:45 am]

[6740-02-M]

[Docket No. CP79-27]

PANHANDLE EASTERN PIPE LINE CO.

Application

OCTOBER 25, 1978.

Take notice that on October 16, 1972, Panhandle Eastern Pipe Line Co. (Applicant), P.O. Box 1642, Houston, Tex. 77001, filed in Docket No. CP79-27 an application pursuant to section 7(c) of the Natural Gas Act and § 157.7(b) of the Commission's regulations thereunder (18 CFR 157.7(b)) for a certificate of public convenience and necessity authorizing the construction, during the 12-month period commencing January 30, 1979, and operation of facilities to enable Applicant to take into its certificated main pipeline system natural gas which would be purchased from producers or other similar sellers thereof, all as more fully set forth in the application on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in connecting to its pipeline system supplies of natural gas which may become available from various producing areas generally coextensive with its pipeline system or the systems of other pipeline companies which may be authorized to transport gas for the account of or exchange gas with Applicant.

Applicant states that the total cost of the proposed gas purchase facilities would not exceed $18,000,000, with the cost of no single project to exceed $2,000,000, which costs Applicant would finance from internally generated funds and short-term bank borrowing as necessary.

Applicant recognizes that the proposed budget-type authorization for the construction of gas purchase facilities has an estimated total cost and estimated single project cost in excess of the amounts specified in subparagraphs (1) (i) and (ii) of § 157.7(b) of the Commission's regulations. Consequently, pursuant to subparagraph (2) of § 157.7(b) of the Commission's regulations, Applicant requests waiver of the cost limitations so as to allow for a total project cost and estimated single project cost in excess of the amounts specified in subparagraph (1) (i) and (ii). Applicant asserts that present monetary limitations are now insufficient to accomplish the task of connecting new natural gas supplies to Applicant's pipeline system, partially due to the drastic increase in the cost of materials and construction. Applicant indicates that it has been confronted with situations requiring it to connect more new natural gas supply sources to its system than in previous times. Likewise, Applicant has experienced situations wherein it is required to construct pipeline facilities over longer distances in order to attach new natural gas supply sources to its pipeline system, it is asserted.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 14, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be take but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31250 Filed 11-3-78; 8:45 am]

NO 6 78 UMI

[6740-02-M]

[Docket No. ES79-6]

UNION LIGHT, HEAT & POWER CO.

Application

OCTOBER 26, 1978.

Take notice that on October 20, 1978, the Union Light, Heat & Power Co., a corporation organized under the laws of the State of Kentucky, with its principal business office in Covington, Ky., filed an application pursuant to section 204 of the Federal Power Act, seeking authority to issue up to $10 million unsecured short-term notes and commercial paper, on or before December 31, 1979, and to mature on or before December 31, 1980.

The proceeds from the short-term borrowings will be added to general funds and will be used in part to pay for Applicant's construction program.

Any person desiring to be heard or to make any protest with reference to said Application should file petitions or protests on or before November 16, 1978, with the Federal Energy Regulatory Commission, Washington, D.C. 20426, in accordance with the requirements of the Commission's rules of practice and procedures (18 CFR 1.8 to 1.10). The Application is on file and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31253 Filed 11-3-78; 8:45 am]

[6740-02-M]

[Docket No. RA79-1]

UNION OIL CO. OF CALIFORNIA

Extension of Time

OCTOBER 25, 1978.

On October 10, 1978, Union Oil Co. of California filed a motion for an extension of time to file its petition for review of the final decision on an exception request by the Department of Energy (DOE Case No. FEE-4411). The motion states that the time allowed for appealing the denial is insufficient because the attorney who prepared the exception is no longer employed by the company and other company attorneys have had conflicts which have prevented their preparing a timely petition for review.

Upon consideration, notice is hereby given that an extension of time is granted to and including October 30, 1978, for the filing of a petition for review by Union Oil Co. in this proceeding.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31251 Filed 11-3-78; 8:45 am]

[6740-02-M]

TEXAS EASTERN TRANSMISSION CORP. ET AL.

Proposed Plans of Refund

OCTOBER 26, 1978.

In the matter of Area Rate Proceeding, et al., Texas Gulf Coast Area, Southern Louisiana Area, Other Southwest Area, Texas Eastern Transmission Corp., (Docket Nos. AR64-2, et al., Docket Nos. ARE61-2 and AR69-1, et al. Docket Nos. AR67-1, et al., Docket Nos. G-1964, G-12706, G-18841, RP65-59, RP69-13, RP70-29, et al., RP72-98).

Take notice that Texas eastern Transmission Corp., on October 23, 1978, tendered for filing three suplemental plans of refund for money received subsequent to previous filings pursuant to Opinion Nos. 595 and 595-A, 598 and 598-A, and 607 and 607-A.

Texas Eastern proposes to flow-thorugh to its jurisdictional customers the jurisdictional portion of refunds, totaling $235,161.87, received subsequent to July 30, 1976, pursuant to Opinion Nos. 595 and 595-A; it proposes to follow and supplement its previously approved plan of refund filed November 29, 1977, (Opinion Nos. 598 and 598-A) and flow-through to its jurisdictional customers the jurisdictional portion of $7,255,198.43 received subsequent to November 29, 1977, pursuant to Opinion No. 598 and 598-A; and it proposes, consistent with and as a supplement to its plan of refund filed July 30, 1976 (Opinion Nos. 607 and 607-A), to flow-thorugh to its jurisdictional customers the jurisdictional portion of $764,940.65 received subsequent to July 30, 1976, pursuant to Opinion Nos. 607 and 607-A. Texas Eastern proposes, in each case, to flow-through the refunds by crediting the balance of its Gas Cost Adjustment Account by the appropriate jurisdictional amount as provided for in § 23.8 of the General Terms and Conditions of its FERC Gas Tarriff, Fourth Revised Volume No. 1.

The company states that copies of the filing were served on the company's jurisdictional customers and interested State commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 6, 1978. Protests will be considered by the Commission in deterining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31238 Filed 11-3-78; 8:45 am]

[6740-02-M]

[Docket No. CI77-298]

TENNECO, INC.

Informal Settlement Conference

OCTOBER 26, 1978.

Take notice that on November 1, 1978, at 10 a.m., an informal conference will be convened of all interested persons to continue the settlement discussions in the above-entitled proceeding. The conference will be held in a room whose number will be posted on the second floor hearing calendar at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C.

Take further notice that the formal conference before Presiding Administrative Law Judge Michel Levant scheduled for November 1, 1978, will be convened on that date at 2 p.m.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31252 Filed 11-3-78; 8:45 am]

[6740-02-M]

[Docket No. RA78-5]

YOUNG REFINING CORP.

Filing of Petition for Review

OCTOBER 25, 1978.

Take notice that Young Refining Corp. (Young) on September 7, 1978 filed a Petition for Review under 42 U.S.C. § 7194(b) (1977 Supp.) from Department of Energy Orders of July 24, and August 1, 1978 (Case No. DEX-0099) denying in part Young's application for Exception from § 211.67 of Title 10, Code of Federal Regulations.

Young has served copies of its Petition for Review on the Secretary, Department of Energy and other participants in the prior proceeding before the Secretary.

Any person desiring to be heard with reference to said filing should, on or before November 17, 1978, file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C., 20426, a petition to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8). Any person wishing to become a party to a proceeding or to participate as a party must file a petition to intervene in accordance with the Commission's Rules. Copies of the petition for

review are on file with the Commission and available for public inspection at Room 1000, 825 North Capitol Street, NE., Washington, D.C., 20426.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31254 Filed 11-3-78; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1001-5; OPP-66044B]

PESTICIDE PROGRAMS

Order of Cancellation of Registration of Certain Pesticide Products

On February 9, 1978, the Agency published in the FEDERAL REGISTER final regulations (40 CFR 162.31) classifying for restricted use certain uses of pesticide products containing certain active ingredients, limiting them to use by or under the direct supervision of a certified applicator (43 FR 5788).

On the same date, the Agency also published final regulations (40 CFR 162.30(d)-(i)) establishing the procedures to be followed by registrants of pesticide products which have use(s) classified for restricted use by regulation (43 FR 5782). In particular § 162.30(d) of those regulations requires the registrant of an affected product to submit an appropriate application for amended registration (as detailed in that subsection) no later than 60 days after the effective date of the final rule classifying the use(s) for restricted use. Further, § 162.30(h) of those regulations states that a notice of intent to cancel the registration of an affected product will be issued unless an appropriate application for amended registration is submitted in a timely manner in accordance with § 162.30(d).

On March 7, 1978, the Agency sent letters to affected registrants, informing them that use(s) of their registered products had been classified by regulation for restricted use, and detailing the procedures for them to follow in order to comply with the requirements of § 162.30(d).

On June 30, 1978, more than 60 days after the transmission of that information, the Agency published in the FEDERAL REGISTER a notice of intent to cancel the registrations of those products for which appropriate applications for amended registration had not been submitted (43 FR 28774). That notice stated that a final order of cancellation of the registrations listed therein would be issued at the end of 30 days from receipt of the notice by the registrant (or from publication thereof, whichever occurred later), unless within that time the registrant either submitted an appropriate application for amended registration or requested a hearing in accordance with § 6(b) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended (7 U.S.C. § 136 et seq.).

The applicable 30-day periods have expired with respect to the registrations listed, and the respective registrants have neither submitted appropriate applications for amended registration nor requested a hearing. Accordingly, the registrations listed herein have been cancelled. The cancellations became final and effective as a matter of law at the expiration of the applicable 30 day periods (FIFRA section 6(b)). However, for administrative purposes, the effective date of cancellation for all the registrations listed will be the date of this order.

Dated: October 30, 1978.

STEVEN D. JELLINEK,
Assistant Administrator for Toxic Substances.

[FR Doc. 78-31197 Filed 11-3-78; 8:45 am]

PAGE 1 **** PRODUCT SEARCH LISTING **** PAGE 2

10/03/78 FEDERALLY REGISTERED PRODUCTS

**CUNTINUE REGISTRANT DUDING

**001711* UE-PESTEK PHOBORIN THIO E=8

**007808* UE PESTEK PHOBURIN KELTHANE BULFUN 1=8=10

**007879* UE-PESTEK COTTON &PHAT 1,8=8=0

**008062* DE-PESTEK PHOBOHIN E=8

**008139* DE-PESTEK PARATHION 2% DUST

**008080* DE-PESTEK PARATHION-METHYL PARATHION 8=3

**010078* T=M 1% PARATHION DUST

**010139* T=M 2% PARATHION DUST

**010200* T=M TOXAPHENE-PARATHION DUST

**010210* T=M 2% PHOSDRIN DUST

**010280* T=M METHYL PARATHION EMULSIBLE CONCENTRATE

**010308* T=M 5% DEVINE 1% PARATHION DUST

**010388* T=M NIRE-DHM GRANULES

**010448* T=M METHYL PARATHION 4 E

**010688* T=M 3% DEVIM 1% PARATHION 7% COPPER DUST

**010738* T=M 2 LBS PARATHION EMULSION

**010798* T=M 4 LBS PHOSDRIN EMULSIFIABLE CONCENTRATE

**010818* T=M FLORIDA BHOE DUST 1=3=10

**010908* T=M FLORIDA BHOE DUST 2=3=10 CONT 2% PAR 3% THIODAN=0.5% ZINEB

**010918* T=M FLORIDA BHOE DUST 2=3=20 CONT 2% PAR=3% THIODAN=13% ZINEB

**010928* T=M FLORIDA BHOE DUST 1=3=20 CONT 1% PAR 3% THIODAN 13% ZINEB

**010938* T=M FLORIDA BHOE DUST 2=8=10

**010968* T=M PARATHION 2 THIODAN 3 DUST INSECTICIDE

**010978* T=M METHYL PARATHION THIODAN 1=2 EMULSIBLE CONCENTRATE

[6560-01-C]

**** PRODUCT SEARCH LISTING ****

10/03/78 FEDERALLY REGISTERED PRODUCTS

REGISTRANT **NAME AND ADDRESS**

• 000030 BREENEY M R MFR INC
300 S MAIN ST
SALISBURY MO 65281

PRODUCT NAME

**000038* S=BEENY'S POISON-HEAT

REGISTRANT **NAME AND ADDRESS**

• 000056 EATON JT & COMPANY INC
1393 E. HIGHLAND ROAD
TWINSBURG, OH 44087

PRODUCT NAME

**000228* EATUNIS PIGEON POISONED GRAIN

REGISTRANT **NAME AND ADDRESS**

• 000148 THUMPSON-HAYWARD CHEMICAL COMPANY
HDR 2383
KANSAS CITY KS 66110

PRODUCT NAME

**003068* UL-PESTEK PARATHION E=2

**003858* DE-PESTEK COTTON DUST 2,5=0=0 METHYL PARATHION

**003878* T=M PHUSDRIN E-2#

**003908* DE PESTEK METHYL PARATHION E=5

**007108* DE PESTEK PHUSDRIN 2% DUST

V 4 3 / 2 1 5 N 0 6 7 8 UMI

**CONTINUE REGISTRANT 000140

01040 T-H SULFUR-COPPER 21/25 M.P. DUST

01101 T-H PARATHION 1 THIODAN 2 EMULSIFIABLE CONCENTRATE INSECTICIDE

01108 T-H TOBACCO SPRAY

01151 THION 3-75

01156 COTNION-M E-2

01201 CUTTON SPRAY 1.6-1-0

REGISTRANT *NAME AND ADDRESS*

* 000180 WASATCH CHEMICAL DIVISION ENTRADA IND INC
P O BOX 8219
SALT LAKE CITY UT 84108

********** PRODUCT NAME **********

**00198* METHYL PARATHION 25% EMULSIBLE

REGISTRANT *NAME AND ADDRESS*

* 000221 HEARDON-G LABORATORIES INC
PLEASANT VIEW RD
PLEASANT VALLEY NY 12569

********** PRODUCT NAME **********

**00001* MOUSE SEED

REGISTRANT *NAME AND ADDRESS*

* 000240 DALY HERRING COMPANY
PO BOX 428
KINSTON NC 28501

********** PRODUCT NAME **********

**00150* D-M PARATOX CONTAINS 8 LBS. TOXAPHENE & 2 LBS. METHYL PARATHION PER GA

REGISTRANT *NAME AND ADDRESS*

* 000380 MASTER LABS
BEAVER FALLS PA 15010

********** PRODUCT NAME **********

**00030* 81AM TREATED SEED FOR KILLING MICE

**00040* 81AM POISON WHEAT

**00045* 81AM POISON PEANUTS

REGISTRANT *NAME AND ADDRESS*

* 000419 CENOL COMPANY
DIV OF BURGESS VIBROCRAFTERS INC
P O BOX 177 ROUTE 65 & PETERSON RD
LIBERTYVILLE, IL 60048

********** PRODUCT NAME **********

**00006* CENOL POISONED WHEAT

**00020* CENOL GOPHER CORN POISON

REGISTRANT *NAME AND ADDRESS*

* 000449 TECHNE CORPORATION
C/O REGULATORY AFFAIRS DEPT, FARMLAND IND., INC.
P. O. BOX 7305
KANSAS CITY, MO 64116

********** PRODUCT NAME **********

**00442* SURE DEATH BRAND APHICIDE 50 SPRAY CONCENTRATE

REGISTRANT *NAME AND ADDRESS*

* 000530 PIPER COMPANY INC
2152 YALE AVE
ST LOUIS MO 63143

********** PRODUCT NAME **********

**00001* PAKET BRAND MOUSE SEED BAIT KILLS MICE

**00006* PAKET BRAND POISON WHEAT

REGISTRANT *NAME AND ADDRESS*

* 000635 GNOMEN SERVICE CORP
DIV. OF GNOMER SERVICE CORP.
BOX 18037
LANSING MI 48901

********** PRODUCT NAME **********

**00373* TOBACCO FORMULA 2-3

**00378* TOBACCO FORMULA 1-3

**00379* PHOSDRIN 4E

**00390* TOBACCO FORMULA 1-3-10

**CONTINUE REGISTRANT 000635

**00394* TOBACCO FORMULA 1-3-20

**00421* TOBACCO FORMULA 1% PARATHION-10(T) DITHANE DUST

**00441* E Z FLO TOBACCO DUST NO. 101

**00472* E-Z-FLO 1% PARATHION + 10% DITHANE DUST

**00491* E-Z-FLO PEACH DUST

**00496* TOBACCO FORMULA 1% PARATHION 20 DITHANE DUST

**00497* E-Z-FLO PEACH SPRAY NO. 6

**00498* E-Z-FLO PEACH SPRAY NO. 8

**00518* E-Z-FLO 23% PARATHION E.C.

**00554* E Z FLO 2% PARATHION 20% TOXAPHENE DUST

**00556* E-Z-FLO TOBACCO DUST NO. 51

**00564* E-Z FLO CYPREX PARATHION 3-3 DUST

**00568* E-Z-FLO 10% DEVIN 2% PARATHION DUST

**00571* E-Z-FLO CYPREX PARATHION LEAD ARSENATE 3-3-15 DUST

**00577* E-Z FLO BULK METHYL BROMIDE

**00598* E Z FLO TOBACCO FORMULA 1% PARATHION 0.5% ZINEB DUST

**00603* E-Z-FLO TOBACCO FORMULA 1% PARATHION 3% THIODAN AND 0.5% ZINEB DUST

**00611* E Z FLO TOBACCO FORMULA 2% PARATHION 4% THIODAN 0.5% ZINEB

**00613* E-Z-FLO TOBACCO FORMULA 2% PARATHION 4% THIODAN

**00623* E-Z-FLO PAMA CAP

REGISTRANT	*NAME AND ADDRESS*
* 000490	PENN PRODUCTS CO 1338 LEMIS ST NASHVILLE,TN 37210

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REGISTRANT	*NAME AND ADDRESS*
* 002342	KERR-MCGEE CHEMICAL CORP MGR PKG & LABELING KERR-MCGEE CENTER OKLAHOMA CITY OK 73102

PRODUCT NAME	
**000788*	KERR-MCGEE DO-FUME MC-2
**00678*	4% PARATHION GRANULES
**00784*	1% PARATHION 5% DEVIN DUST
**00790*	4# METHYL PARATHION EMULSIBLE CONCENTRATE
**00797*	METHYL PARATHION 1,5 IMIDOAN & E.C.
**00800*	METHYL PARATHION EMULSIBLE CONCENTRATE
**00847*	PARATHION 8-E
**00852*	5% CAPTAN 1,5% PARATHION DUST
**00855*	2% PARATHION DUST
**00860*	10% CAPTAN 3% PARATHION DUST
**00870*	25% ETHYL PARATHION DUST CONC.
**00900*	THUNA M-B-C .5
**00911*	THUNA M-B-C-1

REGISTRANT	*NAME AND ADDRESS*
* 002459	STEVENS IND INC N MAIN ST PO BOX 272 DAMBUN GA 31702

PRODUCT NAME	

**CONTINUE REGISTRANT 002459

**00040*	MASTER BRAND 2% ENDRIN DUST
**00170*	MASTER BRAND 1,0 METHYL PARATHION 1,0 ENDRIN EMULSIFIABLE CONCENTRATE
**00220*	MASTER BRAND BIG M DEVIN PARATHION TOBACCO DUST
**00240*	MASTER BRAND 2,5% METHYLPARATHION-20% TOXAPHENE DUST

REGISTRANT	*NAME AND ADDRESS*
* 002737	PUEBLO CHEMICAL & SUPPLY COMPANY BOX 1279 - 2200 E. ST. JOHN CAMDEN CITY, NJ 08104

PRODUCT NAME	
**00015*	BUKE KILL BLD. PARATHION-MISCIBLE EMULSIFIABLE CONCENTRATE

REGISTRANT	*NAME AND ADDRESS*
* 002917	CANTEM INSEC & CHEMICAL COMPANY INC PO BOX 127 TEACHEY, NC 28464

PRODUCT NAME	
**00022*	CANTEM CAMOLINA BRAND 1% PARATHION DUST
**00048*	CANTEM CAMOLINA BRAND 2% PARATHION DUST
**00063*	CAMOLINA PARATHION EMULSIFIABLE CONCENTRATE
**00086*	4% PARATHION GRANULAR
**00073*	CANTEMFUME BOIL FUMIGANT
**00077*	CANTEMFUME 98 PENETRATING FUMIGANT

REGISTRANT	*NAME AND ADDRESS*
* 003051	AGRICULTURAL PRODUCTS COMPANY INC PO BOX 698 MESQUITE NM 88048

PRODUCT NAME	
**00081*	AGCO PARATHION IMIDOAN 2-1

REGISTRANT	*NAME AND ADDRESS*
* 003238	AGMICO CHEMICAL CO, CROP PROTECTION CHEMICAL DIV. BOX 3451 TULSA, OK 74101

PRODUCT NAME	
**00085*	AGMICO BROM-O-SOL

REGISTRANT	*NAME AND ADDRESS*
* 003342	CAPE FEAR CHEMICALS INC PO BOX 895 ELIZABETHTOWN NC 28337

PRODUCT NAME	
**00057*	TIGER BRAND PARATHION 8 EMULSIABLE

REGISTRANT	*NAME AND ADDRESS*
* 003743	SOUTHERN AGRICULTURAL CHEMICALS INC PO BOX 527 KINGSTREE SC 29556

PRODUCT NAME	
**00088*	ROYAL BRAND METHYL PARATHION 2 EMULSIFIABLE
**00211*	ROYAL BRAND DUAND COTTON BPHAT EMULSIFIABLE INSECTICIDE CONCENTRATE

REGISTRANT	*NAME AND ADDRESS*
* 00388*	FENGUSON FUMIGANTS 93 FUMO LANE HAZELWOOD MO 63042

PRODUCT NAME	
**00011*	DANSON MALISOL FUMIGANT
**00013*	NOTOX GELLED BOIL FUMIGANT
**00014*	ZYTOX GELLED BOIL FUMIGANT

REGISTRANT	*NAME AND ADDRESS*
* 004706	CHEMICAL INDUSTRIES INC P O BOX 991 BONGER IA 79007

PRODUCT NAME	
**00006*	MEMEFUNO BRAND PHOSORIN EMULSIBLE CONCENTRATE
**00040*	MEMEFUNO BRAND METHYL PARATHION TOXAPHENE 3-6 E

REGISTRANT *NAME AND ADDRESS*

* 004941 NIP-CO MANUFACTURING CO INC
27b PAIR ST
KINGSTON NY 12401

********** PRODUCT NAME **********

**000028* MOUSE-NIP

REGISTRANT *NAME AND ADDRESS*

* 005549 COASTAL CHEMICAL CORPORATION
PO BOX 858
GREENVILLE NC 27834

********** PRODUCT NAME **********

**000568* COASTAL IMP 8-2

**000598* COASTAL METHYL PARATHION 6-E EMULSIFIABLE CONCENTRATE

REGISTRANT *NAME AND ADDRESS*

* 005602 HUB STATES CORPORATION
2002 NORTH ILLINOIS STREET
INDIANAPOLIS IN 46202

********** PRODUCT NAME **********

**000828* HUB STATES FORMULA 40

REGISTRANT *NAME AND ADDRESS*

* 006023 STOKER COMPANY
P.O. BOX 2010
EL CENTRO CA 92243

********** PRODUCT NAME **********

**000248* METHYL-ETHYL PARATHION 5,E,

**000268* METHYL PARATHION 5,E

REGISTRANT *NAME AND ADDRESS*

* 006735 TIDE PRODUCTS INC
ATTN MR MARSH BOX 1020
EDINBURG TX 78539

********** PRODUCT NAME **********

**000808* 2,5 METHYL PARATHION

**000908* ENDRIN METHYL PARATHION 1,6-2E

**002008* TIDE EL PRO-DUC-TOR

REGISTRANT *NAME AND ADDRESS*

* 007401 VOLUNTARY PURCHASING GROUP INC
PO BOX 490
BONHAM TX 75418

********** PRODUCT NAME **********

**001918* MI-YIELD BRAND KILLZALL #3

**002458* MI-YIELD 1,6-1,6 EC COTTON SPRAY

REGISTRANT *NAME AND ADDRESS*

* 007629 PLANTERS OF PINE BLUFF INC
PO BOX 897
PINE BLUFF AR 71601

********** PRODUCT NAME **********

**000198* RAZORBACK METHYL PARATHION 7,5 EC

REGISTRANT *NAME AND ADDRESS*

* 007679 AMERICAN BRAND CHEMICAL COMPANY
BOX 4
BONHAM TX 75418

********** PRODUCT NAME **********

**000108* AMERICAN 4 LB. METHYL PARATHION

REGISTRANT *NAME AND ADDRESS*

* 007794 W.R. GRACE & CO, BD. CENTRAL REGION
P.O. BOX 35647
TULSA, OK 74135

********** PRODUCT NAME **********

**000508* RED BARN EPN + MP 303 EMULSIFIABLE CONCENTRATE

**000538* RED BARN TOXAPHENE-METHYL PARATHION 6-3 EMULSIFIABLE CONCENTRATE

**000548* RED BARN METHYL PARATHION TOXAPHENE 505

REGISTRANT *NAME AND ADDRESS*

* 008434 DUTSON & SONS INC
BOX 173
CHANLET CA 92227

********** PRODUCT NAME **********

**000268* DUT-SON BRAND METHYL PARATHION + 5

REGISTRANT *NAME AND ADDRESS*

* 008620 ESCAMBIA CHEMICAL CORP
PO BOX 467
PENSACOLA FL 32502

********** PRODUCT NAME **********

**000418* BIG BOY TRIPLE THREAT 8-2-1

**000478* BIG BOY ENDRIN 1,8 EMULSIFIABLE CONCENTRATE

REGISTRANT *NAME AND ADDRESS*

* 008848 STAPLE COTTON SERVICES ASSOCIATION
210 + MARKET ST
GREENWOOD MS 38930

********** PRODUCT NAME **********

**002928* GUTHION METHYL PARATHION

REGISTRANT *NAME AND ADDRESS*

* 008660 STA-GREEN PLANT FOOD COMPANY
P. O. BOX 940
STLACAUGA, AL 35150

********** PRODUCT NAME **********

**00005* STA-GREEN SYSTEMIC ROSE FOOD 12-6-6

REGISTRANT *NAME AND ADDRESS*

* 009275 WENNIEN PRODUCTS COMPANY INC
BOX 355
NASHVILLE GA 31639

********** PRODUCT NAME **********

**00021* WENNIEN WHAND METHYL PARATHION ENDRIN EMULSIFIABLE CONCENTRATE
**00025* WENNIEN 2% ENDRIN DUST
**00031* METHYL PARATHION EMULSION
**00037* WENNIEN 1.6 ENDRIN EMULSION CONCENTRATE
**00039* WENNIEN 02% PARATHION

REGISTRANT *NAME AND ADDRESS*

* 009708 THATCHER CHEMICAL COMPANY
BOX 8037
SALT LAKE CITY UT 84108

********** PRODUCT NAME **********

**00001* T CHEM PARATHION 25% EMULSION CONCENTRATE

**CONTINUE REGISTRANT 009708

**00008* T CHEM PARATHION 50% EMULSION CONCENTRATE

REGISTRANT *NAME AND ADDRESS*

* 009779 RIVERSIDE CHEM COMPANY
P.O. BOX 171199 855 RIDGE LAKE BLVD
MEMPHIS TN 38117

********** PRODUCT NAME **********

**00008* RIVERSIDE 23% PARATHION
**00019* 25% METHYL PARATHION
**00048* RIVERSIDE 2% PARATHION COTTON DUST
**00064* RIVERSIDE 20% TOXAPHENE 1% METHYL PARATHION DUST
**00110* RIVERSIDE 2.5% METHYL PARATHION DUST
**00160* KILL A PLENTY METHYL PARATHION ENDRIN 1&2
**00171* KILL A PLENTY BIG 6
**00177* RIVERSIDE WHAND MP##
**00184* RIVERSIDE WHAND TOXON 81
**00185* RIVERSIDE TORBIDAN 28

REGISTRANT *NAME AND ADDRESS*

* 009857 *SM INCORPORATED
202 E BANK ST
PETERSBURG VA 23803

********** PRODUCT NAME **********

**CONTINUE REGISTRANT 009857

**00001* AGEL MB-88 SOIL FUMIGANT
**00003* AGEL TG-87 SOIL FUMIGANT

REGISTRANT *NAME AND ADDRESS*

* 010108 RED STAR POISON COMPANY
RT 1 BOX 70 E
*OUDBURN, OR 97071

********** PRODUCT NAME **********

**00001* RED STAR DEATH TO GOPHERS
**00003* RED STAR POISONED GROUND GRAIN FOR GROUND SQUIRRELS AND MICE

REGISTRANT *NAME AND ADDRESS*

* 010212 GREAT LAKES NATURAL GAS CORP.
PO BOX 2200
*, LAFAYETTE, IN 47906

********** PRODUCT NAME **********

**00001* GLC 75-25 PREPLANT SOIL FUMIGANT

REGISTRANT *NAME AND ADDRESS*

* 027997 ARIES ALPHA INC
PO BOX 590
TIPTON, GA 31794

********** PRODUCT NAME **********

**CONTINUE REGISTRANT 027997

**00006* 6-3 CUTION SPRAY

V 43 / 215

[6560-01-M]

[FRL 1003-6]

RECEIPT OF ENVIRONMENTAL IMPACT STATEMENTS

President Carter's Reorganization Plan No. 1 (see President's Message of July 15, 1977) transferred certain functions from the Council on Environmental Quality (CEQ) to the Environmental Protection Agency (EPA). Some of these functions relate to operational duties associated with the administrative aspects of the environmental impact statement (EIS) process. In Memorandum of Agreement No. 1 entered into between CEQ and EPA, dated March 29, 1978, it was agreed that EPA would be the official recipient of EIS's and would publish the availability of each EIS received on a weekly basis. This is the duty formerly carried out by CEQ pursuant to § 1500.11(c) of the CEQ Guidelines.

Review periods for draft and final EIS will be computed as follows: The 45-day review period for draft EIS's will be computed from the Friday following the week which is being reported; the 30-day wait period for final EIS's will be computed from the date of receipt of the EIS by EPA and commenting parties.

The following is a list of environmental impact statements received by the Environmental Protection Agency from October 23, 1978 through October 27, 1978; the date of submission of comments on draft EIS's as computed from November 3, 1978 is December 18, 1978.

Copies of individual statements are available for review from the originating agency. Back copies are also available at 10 cents per page from the Environmental Law Institute, 1346 Connecticut Avenue, Washington, D.C. 20036.

Dated: November 1, 1978.

WILLIAM D. DICKERSON,
Acting Director,
Office of Federal Activities.

DEPARTMENT OF AGRICULTURE

Contact: Mr. Barry Flamm, Coordinator, Environmental Quality Activities, U.S. Department of Agriculture, Room 359A, Washington, D.C. 20250, 202-447-3965.

FOREST SERVICE

Draft

Guadalupe Escarpment Wilderness, Lincoln National Forest, Eddy County, N. Mex., October 24: Proposed is the inclusion into the National Wildlife Preservation system a total of 22,800 acres of land to be known as the Guadalupe Escarpment Wilderness. The area involved inclused 21,000 acres in the Lincoln National Forest and 1,800 acres of adjacent land all located in Eddy County, N. Mex. Three alternatives are considered which include: (1) Increasing the wilderness area by 2,000 acres, (2) increasing the wilderness area by 16,400 acres, and (3) continuance of the present management direction. (USDA-FS-DES-03-08-79-01) (EPA Order No. 81155).

Final

Troy project, Asarco, Inc., proposed mining operation Lincoln County, Mont., October 26, 1978: This proposal concerns an application by Asarco, Inc., for the issuance by the USDA for permits and leases to develop and mine approximately 48-million tons of copper-silver ore over a 19-year period in the Bull Lake Valley, Kootenai National Forest, Lincoln County, Mont. The ore would be milled at a plant site near the mine and transported to a copper smelter. The waste would be transported in slurry, through pipeline, to a tailing impoundment area for water recovery. Comments made by: EPA, DOI, State and local agencies, groups, individuals and businesses (EPA Order No. 81167).

SOIL CONSERVATION SERVICE

Final

Elk Creek watershed plan, Atchison, Jackson, and Nemaha Counties, Kans., October 24, 1978: The proposed action concerns the Elk Creek watershed of the Delaware River which covers 89,036 acres in Atchison, Jackson, and Nemaha Counties of northeastern Kansas. The action will consist of land treatment and structural measures to control flooding, erosion, grade instability; and the development of water and recreational facilities. One multipurpose structure for floodwater retardation, recreation, and water supply; and 70 grade stabilization structures will be installed on 1,796 acres of cropland, 1,052 acres of grassland and 746 acres of forest land and other land. (USDA-SCS-EIS-WS-(ADM)-78-2 (F)-KS). Comments made by: USA, DOI, HEW, USDA, and EPA State agencies (EPA Order No. 81153).

Middle Fork-Obion River watershed, Henry and Weakley Counties, Tenn., October 25, 1978: Proposed is a project to reduce floodwater damages to farmland and flood plain within the Middle Fork-Obion River watershed, Henry and Weakley Counties, Tenn. Planned project measures remaining to be installed include conservation land treatment measures, three single-purpose flood water retarding structures, and about 14.6 miles of channel work (USDA-SCS-EIS-WS-(ADM)-78-2-F-TN). Comments made by: DOI, HEW, USDA, EPA State agencies (EPA Order No. 81162).

U.S. ARMY CORPS OF ENGINEERS

Contact: Dr. C. Grant Ash, Office of Environmental Policy Department, Attention: DAEN-CWR-P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 1000 Independence Avenue SW., Washington, D.C. 20314, 202-693-6795.

Draft

Hatcher Bayou and Durden Creek, Warren County, Miss., October 26, 1978: The proposed project is for recommended channel improvements which consists of the enlargment of a total of 4.84 miles of channel in Hennesseys Bayou, Hatcher Bayou, and Durden Creek in Warren County, Miss. The proposal provides for the placement of excavated material from the channel on adjacent streambanks. Several altenatives, including dams and lakes, levees and pumping plants, channel improvement, floodproofing, exacavation, combination of two or more of the preceding, and no action, have been considered. (Vicksburg District) (EPA Order No. 81166).

Puerco River and Tributaries, flood control, McKinley County, N. Mex., October 26, 1978: Proposed is a flood control plan for the Puerco River and tributaries located in Gallup, McKinley County, N. Mex. Features of the plan include: (1) Raising and revetting the existing north levee, (2) constructing a 3,280-foot single levee on the south bank, (3) removal of a portion of the rock knoll north of the river, (4) construction of a 2,400-foot embankment to prevent overflow onto I-40, (5) a bicycle trail and rest area along the south bank, and (6) purchasing 30 acres of flood plain north of the river to be managed as a natural wildlife area. (Los Angeles District) (EPA Order No. 81168).

DEPARTMENT OF COMMERCE

Contact: Dr. Sidney R. Galler, Assistant Secretary for Environmental Affairs, Environmental Affairs, Department of Commerce, Washington, D.C. 20230, 202-377-4335.

Draft

Stone Crab Fishery, management plan, Florida, October 27, 1978: Proposed is a fishery management plan for the Stone Crab Fishery in the Gulf of Mexico conservation zone from the Florida-Alabama line southwest to and including the Florida Keys. The basic objectives of the management plan are: (1) Orderly conduct of the fishery to reduce conflict between other fisheries in the area, (2) establishment of a fishery statistical reporting system for monitoring the Stone Crab Fishery, (3) full utilization of the stone crab resource in the management area, and (4) promote uniformity of regulation throughout the management area. (EPA Order No. 81171).

ECONOMIC DEVELOPMENT ADMINISTRATION

Final supplement

Humboldt Bay Harbor Marina, Woodley Island, Humboldt County, Calif., October 19, 1978: This statement supplements a final EIS filed in August 1976 concerning the proposed release of financial assistance to the Humboldt Bay Harbor, recreation and conservation district for the construction of a 237-berth marina on Woodley Island, Eureka, Humboldt County, Calif. The proposed marina would provide berthing space for commercial fishing vessels currently based in Humboldt Bay and some recreational vessels. Five alternate sites are considered. A phased, multisite marina development program incorporating reduced sizes at some alternate sites is also considered, in addition with no action. Comments made by: DOI, COE, DOC, USCG, State and local agencies, groups, and individuals (EPA Order No. 81137).

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Final supplement

Atlantic billfish/shark, preliminary management, Florida, October 27, 1978: This statement supplements a final EIS filed in January 1978 concerning a preliminary fishery management plan for Atlantic billfishes and sharks, which prohibited the retention of billfishes and other nontarget species taken incidental to directed fisheries for tunas and sharks within the U.S. Fisheries conservation zone, and sets shark allocations for foreign nations. The proposed action is to extend into the 1979 fishing season. The fishing plan and the implementation of procedures to protect nontarget species in directed foreign shark fisheries by imposing area and gear limitations. Comments made by: USCG, DOC, State groups, and individuals (EPA Order No. 81170).

DEPARTMENT OF DEFENSE

DEPARTMENT OF DEFENSE, ARMY

Contact: Mr. George A. Cunney, Jr., Acting Chief, Environmental Office, Office of the Assistant Chief of Engineers, Department of the Army, Room 1E676, Pentagon, Washington, D.C. 20310, 202-694-4269.

Final

Drill and transfer system, Dugway Proving Ground Tooele County, October 25, 1978: The proposed action consists of moving recovered chemical agent filled test munitions from a storage area to a remote operational site where the chemical agent fill will be either identified or verified and then the agent will be transferred to a shipping container. The drill transfer of Dugway Proving Ground, approximately 80 miles southwest of Salt Lake City, is located on the eastern edge of the great Salt Lake Desert. The proving ground has been divided into two major regions: The test area is Dugway Valley where all testing and disposal operations are performed, and English Village in Skull Valley which is the administrative and residential area. Comments made by: DOT, EPA, State, and local agencies (EPA Order No. 81164).

DEPARTMENT OF DEFENSE, NAVY

Contact: Mr. Ed Johnson, Head, Environmental Impact Statement, R.D.T. & E. Branch, Office of the Chief of Naval Operations, Department of the Navy, Washington, D.C. 20350, 202-697-3689.

Final

San Diego Naval Station, berthing/repair pier No. 2, San Diego County, Calif., October 25, 1978: Proposed is the construction of a reinforced caoncrete pier 120-feet wide by 1,005-feet long at the naval station, San Diego, Calif. The project site of the proposed new berthing pier No. 2 will be midway between berthing piers 1 and 3, where the water is approximately 30-feet mllw. The project will deepen the area to 35 mllw and the dredged material will be disposed of about 8 miles west of Point Loma. Dredging will tenporarily disturb marine and botton life. Comments made by: DOC, COE, and EPA (EPA Order No. 81161).

Draft supplement

Restrictive easement acquisition, Oceana and Fentres, Chesapeake County, Va., October 25, 1978: This statement supplements a final EIS filed in January 1976 concerning the Navy air installations compatible use zones (AICUZ) program for the master jet base, Oceana. This statement concerns the purchase of restrictive easements over 364 acres of land adjacent to naval air station, Oceana, Virginia Beach and 868 acres of land adjacent to auxiliary landing field, Fentress, Chesapeake, Va. The AICUZ program is designed to prevent incompatible use of lands surrounding air installation operations, and to protect local residents from excessive noise levels and possible accident (EPA Order No. 81160).

DEPARTMENT OF ENERGY

Contact: Mr. Robert Stern, Office of NEPA Affairs, Department of Energy, 1200 Pennsylvania Avenue NW., Room 7119, Washington, D.C. 20461, 202-566-9760.

FEDERAL ENERGY REGULATORY COMMISSION

Draft:

Green Lake project, Alaska, October 25, 1978: Proposed is the issuance of a license for the construction and operation of the Green Lake project No. 2818 by the city and borough of Sitka, Alaska. The issuance of a license would authorize the construction of: (1) A dam at the outlet of Green Lake, (2) a power tunnel leading to a powerhouse at tidewater on Silver Bay, (3) a switchyard, (4) access roads, (5) a transmission line, and (6) appurtenant facilities. This license would also authorize the operation of project works to produce an electric power supply. The project area is located approximately 10 air miles southeast of Sitka City proper on the Vodopad River (FERC-EIS-0006-D) (EPA Order No. 81163).

ENVIRONMENTAL PROTECTION AGENCY

Contact: Mr. Wallace Stickney, Region I, Environmental Protection Agency, John F. Kennedy Federal Building, Room 2203, Boston, Mass. 02203, 617-223-7210.

Final

Southeast Massachusetts, 208 water quality management plan, Massachusetts, October 26, 1978: Proposed is a 208 water quality areawide management plan for southeastern Massachusetts and includes the Tauton River drainage basin, the Ten-Mile River drainage basin, and the coastal drainage areas. The statement discusses the technical and management alternatives which have been considered to deal with water quality in these areas for the next 20 years. Also included are local and industrial recommendations, and management designation recommendations. Comments made by: DOT, AHP, State and local agencies, groups, individuals and businesses (EPA Order No. 81169).

DEPARTMENT OF HUD

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, 202-755-6308.

Final

Belle Terre development, St. John the Baptist Parish, La. October 13: The proposed action is the securing of home mortgage insurance for a total of 1,600 housing units located between U.S. Highway 61 (Airline Highway) and Interstate 10 in LaPlace, St. John the Baptist Parish, La. Approximately 15 miles west of New Orleans. The units are to be built over the next 7 years; they will utilize a 900-acre site, and will consist of single family residences and an 18-hole golf course with club house, swimming pools, and tennis courts. Increased population of the area will have a long-term adverse impact on air quality and will increase noise and traffic levels. (HUD-R06-EIS-78-30F). Comments made by: AHP, USDA, HEW, DOE, DOI, DOT, EPA, VA, State agencies and businesses (EPA Order No. 81152).

Atascocita North, Houston, Harris County, Tex. October 24: The proposed action is acceptance of an application for home mortgage insurance for the Atascocita North project located in the city of Houston, Harris County, Tex. This project will involve development of approximately 1,550 units of primarily single family dwellings. The entire site will encompass an estimated 388 acres of which 34 lie in the Houston city limits. The application was submitted by Homecraft Profit Participation Number One, Inc. (HUD-R06-EIS-78-35F). Comments made by: HEW, AHP, DOE, EPA, DOT, DOI, State and local agencies and groups (EPA Order No. 81158).

Homestead Planned Community, Spokane County, Wash., October 24: Proposed is the issuance of HUD home mortgage insurance for the Homestead planned community located in Spokane County, Wash. The development will encompass 1,175 acres of land and will consist of community shopping facilities and campus areas for institutional services, a 2,534-unit residential community, and public services including recreational and educational facilities. (HUD-R10-EIS-78-2F). Comments made by: USDA, USPS, State and local agencies (EPA Order No. 81157).

DEPARTMENT OF INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 4256 Interior Building, Department of the Interior, Washington, D.C. 20240, 202-343-3891.

BUREAU OF LAND MANAGEMENT

Draft

Development of coal resources in the Powder River Basin, Campbell and Converse Counties, Wyo. October 23: Proposed is a coal mining and reclamation plan for the Shell Oil Co.'s proposed Buckskin Mine in Gillete, Campbell County, Wyo. The purpose of the proposed action is to allow recovery of 80 million tons of low-sulfur, subbituminous coal over a 20 year period. The 600 acre mining area will include: (1) surface facilities, (2) access roads, (3) a 6-mile railroad, (4) extension of an existing 69-kv power line, (5) water supply, and (6) sewage treatment facilities. Seven alternatives are considered. (DES-78-48) (EPA Order No. 81151).

Final

500 MW coal fired generating station, Humboldt County, Nev. October 27: This action proposes the construction of two 250 megawatt coal-fired steam-electric generting units in Humboldt County, Nev. by the Sierra Pacific Power Co. This project would encompass approximately 3,100 acres, 940 of which are federally administered. The construction of the proposed power plant, in part, would also include 2 coal-fired boilers, a turbine-generator unit, a baghouse, a mechanical draft cooling tower, well field, coal storage area, evaporation pond for waste disposal, land fill for ash disposal, a railroad spur, an access road, a transmission system, a 500-foot stack, a warehouse, and an administration building. (FES-78-31). Comments made by: DOT, USDA, DOE, DOI,

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FERC, AHP, DOC, NOAA, EPA, USN, DOE, State agencies and groups (EPA Order No. 81172).

Josephine sustained yield unit, timber management plan, Oreg. October 23: The proposed action is a 10-year timber management plan for public lands administered by the Bureau of Land Management (BLM) in the Josephine Sustained Yield Unit (SYU). The proposed annual harvest is 20.10 million cubic feet, approximately 103 million board feet. This amount is 43 million board feet less than the present annual harvest level. The Josephine SYU constitutes the western half of the Medford District, Bureau of Land Management. The SYU encompasses an aggregate area of over 850,000 acres of which approximately 425,700 acres are public lands administered by BLM. This unit is bounded on the west by the Siskiyou National Forest. (FES-78-30) Comments made by: AHP, USDA, COE, DOE, DOI, EPA, State and local agencies, groups, individuals and businesses (EPA order No. 81156).

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 7th Street SW., Washington, D.C. 20590, 202-426-4357.

FEDERAL HIGHWAY ADMINISTRATION

Final

Cheyenne Federal-aid urban system, north portion, Laramie County, Wyo. October 26: Proposed is the construction of portions of the Cheyenne Federal-aid urban system in the northern part of the city. Portions of Routes 4000, 4002, 4010, and 4037 and isolated intersection improvements encompassing approximately 12 miles of improvements in a 9 square mile area are included. Improvements will consist of constructing new arterials or upgrading existing roads to meet functional requirements. (FHWA-WYO-EIS-76-01-F) Comments made by: HUD, VA, DOT, EPA, State and local agencies and businesses (EPA order No. 81165).

Draft supplement

Rail relocation and consolidation demonstration, Lancaster County, Nebr. October 24: This statement supplements a Draft EIS filed in July 1977, proposed is a demonstration project of relocation and consolidation to alleviate highway/rail conflicts in Lincoln County, Nebr. Changes in the corridors under consideration (C and D) include: (1) Reduction of improvements to better accommodate changing traffic projection, and (2) The proposed consolidation of rail lines through the South Salt Creek community organization area would be shifted westward from 3rd Street to a point closer to Salt Creek to minimize adverse neighborhood effects. (FHWA-NEB-EIS-77-04-D-DS) (EPA Order No. 81159).

Durham East-West Freeway, I-85 to U.S. 70, Durham County, N.C. October 24: Proposed is the completion of portions of the Durham East-West Freeway in Durham County, N.C. which extends from the vicinity of the I-85/U.S. 70 interchange northwest of Durham to U.S. 70 east of Durham. The total length of the project is approximately 10.9 miles. Approximately 4.3 miles of the total length have already been completed. The portions under consideration for construction are between U.S. 15-501 and Erwin Road and the east end connector and involve a total length of 4.4 miles. (FHWA-NC-EIS-72-13-D) (Revised) (EPA order No. 81154).

[FR Doc. 78-31337 Filed 11-3-78; 8:45 am]

[6712-01-M]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 18875; FCC 78-758]

TRANSATLANTIC COMMUNICATIONS FACILITIES CONSTRUCTION AND USE PLAN

OCTOBER 25, 1978.

The Commission has voted to institute further procedures in its Docket No. 18875 concerning adoption of policies governing the licensing of transatlantic communications facilities through 1985.

On December 23, 1977, the Commission released its Report, Order and Third Statement of Policy and Guidelines in Docket No. 18875 which adopted as the Commission's policy guideline a comprehensive facilities construction and use plan (Plan 4-M) against which it proposed to judge applications for specific facilities. That policy guideline set forth the cable and satellite transmission facilities, and the utilization of those facilities, which the Commission found would satisfy its objective of providing the lowest-cost combination of facilities which would meet traffic requirements and provide a high level of service reliability. That plan did not include the TAT-7 cable advocated by the U.S. international service carriers (USISC) [1] and included in the plan adopted by the European countries within CEPT [2] and supported by Teleglobe/Canada.[3]

Following adoption of the Commission's comprehensive facilities construction and use plan, petitions were filed by the USISC, the United States Department of Defense, and the United States Department of Commerce/National Telecommunications and Information Administration requesting the Commission to reconsider its adoption of Plan 4-M. The petitions were opposed by the Communications Satellite Corporation (Comsat).

In its action today, the Commission determined that it had no basis to modify its plan now, but could not ignore the fact that its guideline for the construction and utilization of transatlantic facilities adopted in its December 1977 Third Statement remains substantially different from the plan adopted by the CEPT and supported by Teleglobe/Canada. Thus, the Commission noted that the policy objectives set forth in its November 1976 Further Statement of Policy and Guidelines to evolve a mutually-acceptable comprehensive cable and satellite plan incorporating the necessary commitments to its implementation and requiring the cooperation of all entities concerned had not yet been achieved.

The Commission also noted that the utilization guideline contained in Plan 4-M needs further examination in light of information received in the petitions for reconsideration and Comsat's Opposition to those petitions. The Commission will undertake this further examination with the view of revising and updating Plan 4-M to make for a more-efficient use of the INTELSAT space segment should Plan 4-M be the plan ultimately implemented within the 1980-85 period.

To address these two areas of concern, the Commission adopted the further procedures and time schedule set forth below. In so doing, the Commission stressed its objective of arriving at a cable and satellite utilization plan as its guideline which would also be acceptable to the foreign owners and operators of transatlantic facilities. The necessary assurance that the steps required to implement the plan will be taken and reflected in both the cable and satellite planning arenas was emphasized by the Commission.

To achieve its objectives the Commission established the following procedures and timetable:

Phase 1. The Commission shall direct the U.S. service carriers and Comsat to meet with its staff to develop two facilities construction and use plans:

(1) A revised construction and utilization plan using FCC Plan 3 contained in the Commission's August 1, 1977, Memorandum Opinion and Order and Notice of Proposed Rulemaking in Docket No. 18875 and scheduling the TAT-7 cable for a July 1, 1983 operational date; and

(2) A revised and updated Plan 4-M which makes the most-efficient use of the INTELSAT space segment, in view of current information regarding antenna availability in the Atlantic Ocean Region.

This phase should be concluded by November 30, 1978.

Phase 2. The USISC will negotiate with their correspondents in CEPT and Teleglobe/Canada a cable and satellite utilization plan which is within the bounds represented by the two plans developed in Phase 1. The USISC should then file the negotiated plan with the Commission by December 15, 1978 or report the progress made in the negotiations.

[1] The American Telephone and Telegraph Co. and the international record carriers: FTC Communications, Inc.; ITT World Communications Inc.; RCA Global Communications, Inc.; TRT Telecommunications Corp.; and Western Union International, Inc.

[2] An organization of the postal and telecommunications entities of twenty-six European countries.

[3] The Canadian overseas telecommunications entity.

Phase 3. The Commission will subject the negotiated plan filed with it to review, and, by February 15, 1979, either adopt it as the Commission's policy guideline or reject it as unacceptable. In reviewing this plan, the Commission will ascertain the extent the plan agreed to reflects a mutual commitment to implementing the integrated cable and satellite utilization plan, and assuring the completion of Phase 4 below.

Phase 4. Comsat, as the U.S. Signatory to Intelsat and U.S. representative on the Board of Governors will provide Intelsat with the necessary information resulting from the plan adopted by the Commission in order that Intelsat may revise its present Atlantic region operational plan and extend that plan through 1985 to reflect the information provided. The European countries in CEPT and Canada as members of Intelsat would also provide to Intelsat the necessary information resulting from the negotiated plan so that this information is reflected in Intelsat planning through 1985. Intelsat plans would therefore contain the necessary commitments for the ground facilities required to implement the plan adopted by the Commission and agreed by the CEPT and Canada.

This phase should be completed no later than May 31, 1979.

Phase 5. The USISC and Comsat will file the appropriate applications necessary to implement the plan adopted by the Commission as soon as possible after Commission adoption. The processing of these applications can move forward and be completed at the same time the plans are completed within Intelsat to implement the satellite portion of the total comprehensive cable and satellite construction and use plan evolved in the previous phases. Appropriate authorizations will be issued by May 31, 1979.

In taking the above action, the Commission expressed its continued support for the North Atlantic Consultative Process. The Commission expressed its desire to strengthen and improve the consultative process and to continue to work within that process to develop common methodologies that can be applied in assessing alternative system plans for the future. The Commission said that only through such comprehensive and integrated planning procedures can the policy objectives established in this docket be realized and the benefits of more efficient planning flow to the using public.

Action by the Commission October 25, 1978. Commissioners Ferris (Chairman), Lee, Quello, Fogarty and Brown, with Commissioners Washburn and White concurring in the result and Commissioner White issuing a statement.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

CONCURRING STATEMENT OF COMMISSIONER MARGITA E. WHITE

I am pleased that the Commission has decided not to reaffirm its December 23, 1977, decision and is reopening the fact finding part of the procedure in Docket 18875.

I dissented to the adoption of Plan 4-M because I was not persuaded by the Commission's analysis and conclusions that Plan 4-M best will meet the needs for traffic growth, service reliability and diversity at the lowest cost by 1985 and beyond. I also concluded that although the Commission's decision was made in the name of competition, its effect would be to stifle competition between satellite and cable technologies in the future, to the detriment of the consumer. Moreover, I believed that insufficient account was given to the decisions of 26 sovereign correspondent nations and to the Commission's commitment to give "due regard" to the needs and strongly articulated views of their Administrations.

No new information has been presented which would lead me to withdraw my opposition to Plan 4-M.

However, I welcome the Commission's willingness to again review Plan 3. I also commend my colleagues and the Commission staff for their sincere efforts to seek agreement on procedures which hopefully will result in a final comprehensive cable and satellite construction and use plan that all parties and nations will find mutually acceptable. Such an outcome is vital to the continuation of the consultative process and is in the best interest of all transatlantic consumers.

[FR Doc. 78-31234 Filed 11-3-78; 8:45 am]

[6712-01-M]

[FCC 78-754; BC Docket Nos. 78-353, 78-354; File Nos. BR-4598, BRH-2239]

STREET BROADCASTING CORP.

Renewal of License of Stations WIZR(AM) and WIZR-FM; Order Designating Applications for Consolidated Hearing on Stated Issues

Adopted: October 19, 1978.

Released: October 27, 1978.

By the Commission:

1. The Commission has before it for consideration the above-captioned license renewal applications and its inquiries into the operation of Stations WIZR and WIZR-FM, Johnstown, N.Y.

2. Information before the Commission raises serious questions as to whether the applicant possesses the qualifications to remain a licensee of the captioned stations. In view of these questions, the Commission is unable to find that a grant of the renewal applications would serve the public interest, convenience and necessity, and must, therefore, designate the applications for hearing.

3. Accordingly, *It is ordered,* That the captioned applications *are designated for consolidated hearing* pursuant to section 309(e) of the Communications Act of 1934, as amended, at a time and place to be specified in a subsequent Order, upon the following issues:

(a) To determine whether, and if so, the extent to which the licensee has violated, in its operation of Stations WIZR and WIZR-FM, the Commission's Rules regarding fraudulent billing practices, the degree of knowledge or participation in those practices by principals of the licensee, and the degree of supervision over the operation of the stations exercised by the licensee.

(b) To determine all the facts and circumstances surrounding Street Broadcasting Corp.'s preparation and issuance of ABC Information Network station discrepancy affidavits in connection with programing broadcast on Stations WIZR and WIZR-FM.

(c) To determine whether, and if so, the extent to which Street Broadcasting Corp. and/or its principals misrepresented facts to the Commission regarding fraudulent billing practices at Stations WIZR and WIZR-FM.

(d) To determine, in light of the evidence adduced under the preceeding issues, whether the licensee of Station WIZR and WIZR-FM possesses the requisite qualifications to be or remain a licensee of the Commission, and whether a grant of the captioned applications would serve the public interest, convenience and necessity.

4. *It is ordered,* That the Chief of the Broadcast Bureau is directed to serve upon the captioned applicant, within thirty (30) days of the release of this Order, a Bill of Particulars with respect to issues (a) through (c), inclusive.

5. *It is further ordered,* That the Broadcast Bureau proceed with the initial presentation of evidence with respect to issues (a) through (c), inclusive, and the applicant then proceed with its evidence and have the burden of establishing it possesses the requisite qualifications to be and remain a licensee of the Commission and that a grant of the application would serve the public interest, convenience and necessity.

6. *It is further ordered,* That to avail itself of the opportunity to be heard, the applicant, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, shall, within twenty (20) days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and present evidence on the issues specified in this Order.

7. *It is further ordered,* That the applicant herein, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's Rules, shall give notice of the hearing within the time and in the manner prescribed in such Rules and shall advise the Commission thereof as required by § 1.594(g) of the Rules.

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8. *It is further ordered*, That the Secretary of the Commission send a copy of this Order by Certified Mail—Return Receipt Requested to Street Broadcasting Corp. licensee of Radio Stations WIZR and WIZR-FM, Johnstown, N.Y.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-31235 Filed 11-3-78; 8:45 am]

[6730-01-M]

FEDERAL MARITIME COMMISSION

AGREEMENTS FILED

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street NW., Room 10218; or may inspect the agreements at the field offices located at New York, N.Y.; New Orleans, La.; San Francisco, Calif.; Chicago, Ill.; and San Juan, Puerto Rico. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, by November 27, 1978. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

Agreement No.: T-1887-2.
Filing Party: Dorothy L. Vecchiarelli, Lawyers' Assistant, Sea-Land Service, Inc., 10 Parsonage Road, P.O. Box 900, Edison, N.J. 08817.
Summary: Agreement No. T-1887-2, originally between Sea-Land Service, Inc. and Delaware River Terminal, Inc. (DRT) to be subsequently assigned to Philadelphia Port Corp., amends a basic agreement which provides for the 20-year lease of certain terminal property to be used for the loading and unloading of vessels and for the handling, storage, receipt, and delivery of cargo and containers. The purpose of the modification is to: (1) return 26,060 square feet of premises to DRT; (2) lease an additional 78,450 square feet of unimproved property; (3) provide for the movement of a fence; and (4) relocate certain facilities located in the returned area.

Agreement No.: T-2523-3.
Filing Party: Mr. R. Higashionna, State of Hawaii, Department of Transportation, Water Transportation Facilties Division, 79 South Nimitz Highway, Honolulu, Hawaii 96813.
Summary: Agreement No. T-2523-3, between the State of Hawaii and Matson Terminals, Inc., modifies the basic agreement between the parties which provides for the 20-year lease of a container facility at Sand Island Container Yard Complex, Honolulu, Hawaii. The purpose of the modification is to increase the size of an area, known as Easement "A", from 163,200 square feet to 192,000 square feet and increase the rental for that area by an additional $2,966 per annum.

Agreement No.: T-3737.
Filing Party: Peter P. Wilson, Senior Counsel, Matson Navigation Co., 100 Mission Street, San Francisco, Calif. 94105.
Summary: Agreement No. T-3737, between Matson Terminals, Inc. (Matson), and Nippon Yusen Kaisha (NYK) is a container terminal service agreement whereby Matson will provide NYK with complete container terminal services at its facilities located at the Ports of Oakland and Terminal Island, Calif. The services contained in this agreement include the providing of: (1) adequate berthing space for NYK vessels; (2) adequate yard space for the purpose of hauling, sorting, consolidating, storing, and handling containers carried on NYK vessels; and (3) container gantry cranes suitable to handle such containers.

Agreement No. T-3738.
Filing Party: Marion S. Moore, Jr., Traffic Manager, South Carolina State Ports Authority, P.O. Box 817, Charleston, S.C. 29402.
Subject: Agreement No. T-3738, between South Carolina State Ports Authority (Port) and Orient Overseas Container Line, Inc. (OOCL), provides for the Port's 5-year lease to OOCL (with renewal options), for certain premises at the Port's North Charleston Terminal, Charleston, S.C. As compensation OOCL shall pay Port a fixed monthly rental charge of $5,917.85 plus Port tariff charges, with the exception that wharfage charges shall be governed by minimum annual tonnages moved through the leased area. The Port shall make available to OOCL on a nonexclusive basis, an area containing at least 16,000 square feet for the storage, handling, stuffing, and stripping of containers. This agreement succeeds FMC Agreement No. T-3436, between the same parties and approved by the Commission May 3, 1977.

Agreement No. 93-18.
Filing Party: Howard A. Levy, Esq., Suite 727, 17 Battery Place, New York, N.Y. 10004.
Summary: Agreement No. 93-18, among the members of the North Europe U.S. Pacific Freight Conference, amends articles 1 and 11 to provide that present provisions providing for limited independent action and participation in the conference by joint services as one party only would be extended through December 31, 1979, subject to agreement for further extension prior to October 31, 1979.

Agreement No. 10357.
Filing Party: Mr. F. W. Krueger, Vice President—Operations, Orient Overseas Container Line, Eckert Overseas Agency, Inc., As General Agents, 88 Pine Street, New York, N.Y. 10005.
Summary: Agreement No. 10357 entitled *Equipment Interchange and Lease Basic Agreement*, is a cooperative working agreement between Orient Overseas Container Line Ltd. and Columbus Line, Inc. The agreement would permit the parties to lease cargo containers and/or related equipment between them in accordance with the terms and conditions set forth in the agreement.

Agreement No. 10208-1.
Filing Party: Peter P. Wilson, Senior Counsel, Matson Navigation Co., P.O. Box 3933, San Francisco, Calif. 94119.
Summary: Agreement 10208 is an arrangement whereby the Matson Navigation Co. (Matson) undertakes to perform certain computer services for Nippon Yusen Kaisha (NYK) in connection with the latter's containerships service between Japan and the United States via ports in California. Agreement 10208-1 would expand the scope of the services performed by Matson to include NYK's containerships' service between Korea and the United States via Californian ports as well as that identical service of the Korea Marine Transport Co. (KMTC) which NYK and KMTC contemplate operating subsequent to the approval of Agreement 10332 between the two.

Agreement No. 10358.
Filing Party: Peter P. Wilson, Senior Counsel, Matson Navigation Co., P.O. Box 3933, San Francisco, Calif. 94119.
Summary: Agreement No. 10358 between Nippon Yusen Kaisha, and Matson Agencies, Inc., is a subagency agreement whereby Nippon Yusen Kaisha appoints Matson Agencies, Inc. to be its subagent for the container services of Korea Marine Transport Co., Limited. The subagent appointment will be in California, Oregon, Washington, Alaska, Hawaii, Nevada, Utah, Arizona, Colorado, New Mexico, Montana, Wyoming, and Idaho. The subagent accepts such appointment on the terms and conditions set forth in the agreement.

By Order of the Federal Maritime Commission.

Dated: November 1, 1978.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-31273 Filed 11-3-78; 8:45 am]

[6730-01-M]

[Independent Ocean Freight Forwarder License No. 2018]

KURDIAN INTERNATIONAL TRANSPORT, INC.

Order of Revocation

On October 23, 1978, Kurdian International Transport, Inc., Administration Center, Mid-Continent Airport, Wichita, Kans. 67209 requested the Commission to revoke its Independent Ocean Freight Forwarder License No. 2018.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 201.1 (Revised), § 5.01(c), dated August 8, 1977;

It is ordered, That Independent Ocean Freight Forwarder License No. 2018 issued to Kurdian International Transport, Inc. be and is hereby revoked effective October 23, 1978, without prejudice to reapplication for a license in the future.

It is further ordered, That a copy of this Order be published in the FEDERAL REGISTER and served upon Kurdian International Transport, Inc.

ROBERT G. DREW,
Director, Bureau of Certification and Licensing.

[FR Doc. 78-31271 Filed 11-3-78; 8:45 am]

[6730-01-M]

[Independent Ocean Freight Forwarder License No. 771]

WALTER PLUNKETT & CO., WALTER PLUNKETT D.B.A.

Order of Revocation

On October 24, 1978, Walter Plunkett & Co., Walter Plunkett d.b.a., 351 California Street, San Francisco, Calif. 94104, voluntarily surrendered its Independent Ocean Freight Forwarder License No. 771 for revocation.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 201.1 (Revised), § 5.01(c), dated August 8, 1977;

It is ordered, That Independent Ocean Freight Forwarder License No. 771 issued to Walter Plunkett & Co., Walter Plunkett d.b.a., be and is hereby revoked effective October 24, 1978, without prejudice to reapplication for a license in the future.

It is further ordered, That a copy of this Order be published in the FEDERAL REGISTER and served upon Walter Plunkett & Co., Walter Plunkett d.b.a.

ROBERT G. DREW,
Director, Bureau of Certification & Licensing.

[FR Doc. 78-31272 Filed 11-3-78; 8:45 am]

[1610-01-M]

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Receipt of Report Proposal

The following request for clearance of a report intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on October 30, 1978. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the FEDERAL REGISTER is to inform the public of such reciept.

The notice includes the title of the request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed FEC request are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed request, comments (in triplicate) must be received on or before November 24, 1978, and should be addressed to Mr. John M. Lovelady, Assistant Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street NW., Washington, D.C. 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

FEDERAL ELECTION COMMISSION

The Federal Election Commission requests clearance of a new Form 3-P and supporting schedules developed for use by Presidential candidates and their authorized committees and proposes to promulgate these forms. Included in the Form 3-P, Reports of Receipts and Expenditures by a Candidate or Authorized Committee of a Candidate Seeking Nomination or Election to the Office of the President of the United States, are Schedule A-P, Itemized Receipts; Schedule B-P, Itemized Expenditures; Schedule C-P, Debts and Obligations; Schedule D-P, Itemized Receipts Sales and Collections for line 17c only to Form 3-P; Schedule G-P, Liquidation of Advances; and Form 3Pb, Consolidation Report of Receipts and Expenditures. Form 3-P and the supporting schedules incorporate further simplifications in the disclosure techniques and clarification of information to be reported by Presidential candidates and committees based on experience gained in the 1976 Presidential Election and policies adopted by the Commission. The FEC states that reports must be filed monthly during election years and quarterly in non-election years. FEC estimates (based on 1976 election year data) that respondents will number approximately 464 and reporting burden will average 9 hours per response.

NORMAN F. HEYL,
Regulatory Reports Review Officer.

[FR Doc. 78-31274 Filed 11-3-78; 8:45 am]

[1610-01-M]

REGULATORY REPORTS REVIEW

Receipt and Approval of Report Proposal

A request for clearance of a proposed report intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on October 24, 1978. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice is to inform the public of such receipt and the action taken by GAO.

CIVIL AERONAUTICS BOARD

The Civil Aeronautics Board (CAB) requested emergency clearance of a monthly listing of all unused route authority by certificated route air carriers. CAB has determined that this report is necessary to implement section 10 of the Airline Deregulation Act of 1978.

The GAO agreed to review the reporting requirement on an emergency basis because section 10 of the Airline Deregulation Act, which requires that CAB initiate the program to reassign unused route authority, took effect immediately upon enactment. The President signed the legislation on October 25, 1978.

Under the provisions of this statute, CAB must award new route authority to the first applicant who applies for unused authority and certifies that it meets certain Federal Aviation Administration requirements. In order to assist applicants in determining what authority is available, CAB has determined that all certificated route carriers holding section 401 route authority will be required to file unused route authority data with the Board each month. CAB will in turn make this information available to applicants interested in applying for unused routes.

The 36 certificated air carriers are required to submit this information on a monthly basis. The CAB estimates that the first report will require 20 hours to prepare and thereafter each report will only require 1 hour.

The GAO granted clearance of this reporting requirement on October 27, 1978, under number B-180226 (R0567). This clearance is granted on a temporary basis and expires on March 15, 1979. Since the opportunity may exist to reduce respondent burden by modifying the reporting requirement, GAO has limited its clearance to four data collections. Another decision will be made at that time regarding an extension of the GAO clearance.

NORMAN F. HEYL,
Regulatory Reports Review Officer.

[FR Doc. 78-31275 Filed 11-3-78; 8:45 am]

V 4 3 / 2 1 5

[1610-01-M]

REGULATORY REPORTS REVIEW

Receipt and Approval of Report Proposal

A request for emergency clearance of a new section 21 Order—Identification of Controlled Carriers was received by the Regulatory Reports Review Staff, GAO, on October 26, 1978. See 44 U.S.C. 3512(c) and (d). The purpose of publishing this notice is to form the public of such receipt and the action taken by GAO.

FEDERAL MARITIME COMMISSION

The Federal Maritime Commission (FMC) requested clearance of a new section 21 Order—Identification of Controlled Carriers. In order to comply with the Ocean Shipping Act of 1978 which becomes effective on November 17, 1978, the FMC must first ascertain the identity of those foreign flag line carriers operating in the foreign commerce of the United States who would be classified as "controlled carriers" within the meaning of the act. It is essential that the FMC identify all controlled carriers immediately to begin timely implementation of the Act's provisions.

The GAO agreed to accept FMC's emergency request for clearance due to the exigent need to identify the controlled carriers before the act becomes effective. The FMC estimates that the section 21 Order will be sent to 81 common carriers in the United States foreign commerce. The average response time is estimated to be 4 hours per response.

The GAO granted emergency clearance to the section 21 Order on October 27, 1978, under number B-180233 (R0569). This clearance expires on October 31, 1979.

NORMAN F. HEYL,
Regulatory Reports Review Officer.

[FR Doc. 78-31276 Filed 11-3-78; 8:45 am]

[4110-88-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Alcohol, Drug Abuse, and Mental Health Administration

NATIONAL ADVISORY MENTAL HEALTH COUNCIL

Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following National advisory body scheduled to assemble during the month of December 1978:

NATIONAL ADVISORY MENTAL HEALTH COUNCIL

December 4-5; 9:30 a.m.—Open Meeting. Conference rooms G and H, Parklawn Building, Rockville, Md. 20857. Contact: Zella Diggs, room 11-101, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4333.

Purpose: The National Advisory Mental Health Council advises the Secretary, Department of Health, Education, and Welfare, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health, regarding the policies and programs of the Department in the field of mental health. The Council reviews applications for grants-in-aid relating to research, training, and services in the field of mental health and makes recommendations to the Secretary with respect to approval of applications for, and the amount of, these grants.

Agenda: The entire meeting will be devoted to discussion of NIMH policy issues and will be open to the public. Discussions will include current administrative, legislative, and program developments.

Substantive information may be obtained from the contact person listed above. Attendance by the public will be limited to space available.

The NIMH Information Officer who will furnish upon request summaries of the meeting and rosters of the Council members is Dr. Jacquelyn Hail, Acting Chief, Public Information Branch, Division of Scientific and Public Information, NIMH, Room 15C-17, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4573.

Dated: October 31, 1978.

ELIZABETH A. CONNOLLY,
Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 78-31209 Filed 11-3-78; 8:45 am]

[4110-02-M]

Office of Education

NATIONAL ADVISORY COUNCIL OF VOCATIONAL EDUCATION

Meeting

AGENCY: Office of Education, Department of Health, Education, and Welfare.

ACTION: Notice of Public Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Vocational Education. It also describes the functions of the Council. Notice of these meetings is required under the Federal Advisory Committee Act (5 U.S.C. Appendix I section 10(a)(2)). This document is intended to notify the general public of its opportunity to attend.

DATE: December 4, 1978.

ADDRESS: Dallas Hilton Hotel, 1914 Commerce, Dallas, Texas 75201, Embassy Ballroom.

FOR FURTHER INFORMATION CONTACT:

Virginia Solt, NACVE STAFF, 425 13th Street NW., Suite 412, Washington, D.C. 20004, 202-376-8873.

The National Advisory Council on Vocational Education is established under section 104 of the Vocational Education Amendments of 1968, Pub. L. 90-576. The Council is directed to:

(A) advise the Commissioner concerning the administration of, preparation of general regulations for, and operation of, vocational education programs supported with assistance under this title;

(B) review the administration and operation of vocational education programs under this title, including the effectiveness of such programs in meeting the purposes for which they are established and operated, make recommendations with respect thereto, and make annual reports of its findings and recommendations (including recommendations for changes in the provisions of this title) to the Secretary for transmittal to the Congress; and

(C) conduct independent evaluations of programs carried out under this title and publish and distribute the results thereof.

The Committees and Task Forces of the Council are as follows:

BOAE Task Force.
Technical Assistance Committee.
Communications Committee.
MERC Task Force.
Ad Hoc Committee on Special Populations (which includes Sex Equity in Vocational Education and the Handicapped).
Ad Hoc Committee on Objectives and Priorities.

Information on meetings which may be planned for any or all of these groups may be obtained by calling the Council office as indicated.

On December 4, 1978, the National Advisory Council on Vocational Education will meet in regular session from 8:30 a.m. to 1 p.m. at the Dallas Hilton Hotel, in the Embassy Ballroom. The following agenda will be included in the meeting:

8:30 a.m.—Convene.
8:30 a.m.-8:45 a.m.—Report of the Chairman, Approval of Minutes of October Meeting, Report of the Executive Director.
8:45 a.m.-9:15 a.m.—Review of BOAE Final Report—Mr. Donald N. McDowell, Task Force Chairperson.

9:15 a.m.-9:30 a.m.—Review of Sex Equity Task Force Activities—Mrs. Virla Krotz, Chairperson.
9:30 a.m.-9:45 a.m.—Report of Communication Committee, "CETA/Voc Ed Community Resource Centers".
9:30 a.m.-10:15 a.m.—Report from the BOAE, USOE.
10:15 a.m.-10:45 a.m.—Public Comment.
10:45 a.m.-12:45 p.m.—Presentation of Council Priorities/Work Plan, fiscal year 1979-1981.
12:45 p.m.-1 p.m.—Closing of Meeting.
1 p.m.—Adjourn.

Records shall be kept of all Council proceedings and shall be available fourteen days after the meeting for public inspection at the Office of the National Advisory Council on Vocational Education, located at 425 13th Street NW., Suite 412, Washington, D.C. 20004.

Signed at Washington, D.C., on October 31, 1978.

RAYMOND C. PARROTT,
Executive Director, National Advisory Council on Vocational Education.

[FR Doc. 78-31236 Filed 11-3-78; 8:45 am]

[4310-84-M]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

LEWISTOWN DISTRICT GRAZING ADVISORY BOARD

Meeting

In accordance with section 403 of Pub. L. 94-579, the Federal Land Policy and Management Act, notice is given of the following Board meeting.

Name: Lewistown District Grazing Advisory Board.
Date: December 14 and 15, 1978.
Place: Sapphire A Room, Yogo Inn, Corner of Main and Daws Streets, Lewistown, Mont.
Time: 1 to 5 p.m.; 8 a.m. to 12 p.m.
Proposed agenda:

December 14, 1978:

1:30 to 2 p.m.—Election of officers.
2 to 5 p.m.—Role and constraints of grazing advisory boards.

December 15, 1978:

8 to 9:45 a.m.—Allotment management plans—definition, status and future plans.
9:45 to 11 a.m.—Range betterment funds—status, constraints, and future plans.
11 to 11:30 a.m.—Public comment period.
11:30 a.m. to 12 p.m.—Agenda, time, and place of next meeting.

This is the first meeting of the Board which shall serve to offer advice and make recommendations regarding commercial livestock grazing in the development of allotment management plans (AMPs) and the utilization of range-betterment funds with respect to commercial livestock grazing within the Lewistown District.

The public is invited to attend, and any individual may comment or file a statement with the Board regarding agenda topics, excepting that the authorized Federal Representative may set per-person time limits and require that presentations be reduced to writing and copies filed with the Board.

All communications regarding this grazing advisory board should be addressed to John F. Fields, Lewistown District Manager, Bureau of Land Management, Drawer 1160,, Lewistown, Montana 59457.

Dated: October 27, 1978.

GLENN W. FREEMAN
Acting District Manager.

[FR Doc. 78-31207 filed 11-3-78; 8:45 am]

[4310-84-M]

[ES 7048]

OHIO

Opportunity for Public Hearing and Republication of Notice of Proposed Withdrawal

The Bureau of Sport Fisheries and Wildlife (now the Fish and Wildlife Service), Department of the Interior, filed application ES 7048 on March 11, 1970 for the withdrawal of the following described land:

MICHIGAN MERIDIAN

T. 9 S., R. 11 E.,
That part of West Sister Island and Tract 37, lying *west* of a line bearing north and south through a point which is east 200 feet distant from the center of the West Sister Island lighthouse tower (the geographic position of said lighthouse is lat. 40°44'13" N., and long. 88°6'38" W., from Greenwich), containing approximately 3.00 acres in Lucas County, Ohio.

The Fish and Wildlife Service desires to add the land to the West Sister Island National Wildlife Refuge, created by Executive Order No. 7937 of August 2, 1938. A notice of the proposed withdrawal was previously published as FR Document No. 71-13327 in 36 FR 18254 on September 10, 1971.

Pursuant to section 204(h) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2745, notice is hereby given that an opportunity for a public hearing is afforded in connection with the pending withdrawal application.

All interested persons who desire to be heard on the proposed withdrawal must file a written request for a hearing with the Director, Eastern States, Bureau of Land Management, 7981 Eastern Avenue, Silver Spring, Md. 20910, on or before December 4, 1978. Notice of the public hearing will be published in the FEDERAL REGISTER, giving the time and place of such hearing. The hearing will be scheduled and conducted in accordance with BLM Manual Sec. 2351.16B. All previous comments submitted in connection with the withdrawal application are included in the record and will be considered in making final determination on the application.

In lieu of or in addition to attendance at a scheduled public hearing, written comments or objections to the pending withdrawal application may be filed with the undersigned authorized officer of the Bureau of Land Management on or before December 4, 1978.

The above-described lands are temporarily segregated from the operation of the public land laws, including the mining laws, to the extent that the withdrawal applied for, if and when effected, would prevent any form of disposal or appropriation under such laws. Current administrative jurisdiction over the segregated lands will not be affected by temporary segregation. In accordance with section 204(g) of the Federal Land Policy and Management Act of 1976 the segregative effect of the pending withdrawal application will terminate on October 20, 1991, unless sooner terminated by action of the Secretary of the Interior.

All communications in connection with the pending withdrawal application should be addressed to the Director, Eastern States, Bureau of Land Management, 7981 Eastern Avenue, Silver Spring, Md. 20910.

LOWELL J. UDY,
Director, Eastern States.

[FR Doc. 78-31206 Filed 11-3-78; 8:45 am]

[4310-70-M]

National Park Service

[Order No. 9]

POINT REYES NATIONAL SEASHORE

Administrative Officer and Procurement Assistant; Delegation of Authority regarding execution of contracts for supplies, equipment or services.

Section 1. *Administrative Officer.* The Administrative Officer may execute and approve contracts not in excess of $50,000.00 for supplies, equipment, or services, in conformity with authority and subject to availability of appropriated funds.

Section 2. *Purchasing Agent.* The Purchasing Agent may execute and approve contracts not in excess of $2,000.00 for supplies, equipment, or services in conformity with applicable regulations and statutory authority, and subject to availability of appropriated funds.

Section 3. *Revocations.* This order supersedes Order No. 2, as published

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in Vol. 37 F.R. 143, dated July 25, 1972.

National Park Service Order No. 77, 38 F.R. 7478, published March 22, 1978, as amended.

Dated: October 10, 1978.

JOHN L. SANSING,
Superintendent, Point Reyes National Seashore.

Dated: October 18, 1978.

JOHN H. DAVIS,
Acting Regional Director, Western Region.

[FR Doc. 78-31220 Filed 11-3-78; 8:45 am]

[4410-01-M]

DEPARTMENT OF JUSTICE

Attorney General

BULLOCK COUNTY, ALA.

Certification of the Attorney General

In accordance with section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, I hereby certify that in my judgement the appointment of examiners in necessary to enforce the guarantees of the Fifteenth Amendment to the Constitution of the United States in Bullock County, Ala. This county is included within the scope of the determination of the Attorney General and the Director of the Census made on August 6, 1965, under section 4(b) of the Voting Rights Act of 1965, and published in the FEDERAL REGISTER on August 7, 1965 (30 FR 9897).

Dated: November 1, 1978.

GRIFFIN B. BELL,
Attorney General of the United States.

[FR Doc. 78-31375 Filed 11-3-78; 8:45 am]

[4410-01-M]

DARLINGTON COUNTY, S.C.

Certification of the Attorney General

In accordance with section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, I hereby certify that in my judgment the appointment of examiners is necessary to enforce the guarantees of the Fifteenth Amendment to the Constitution of the United States in Darlington County, S.C. This county is included within the scope of the determination of the Attorney General and the Director of the Census made on August 6, 1965, under section 4(b) of the Voting Rights Act of 1965 and published in the FEDERAL REGISTER on August 7, 1965 (30 FR 9897).

Dated: November 1, 1978.

GRIFFIN B. BELL,
Attorney General of the United States.

[FR Doc. 78-31373 Filed 11-3-78; 8:45 am]

[4410-01-M]

EL PASO COUNTY, TEX.

Certification of the Attorney General

In accordance with section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, I hereby certify that in my judgment the appointment of examiners is necessary to enforce the guarantees of the Fourteenth and Fifteenth Amendments to the Constitution of the United States in El Paso County, Tex. This county is included within the scope of the determination of the Attorney General and the Director of the Census made on September 18, 1975, under section 4(b) of the Voting Rights Act of 1965 and published in the FEDERAL REGISTER on September 23, 1975 (40 FR 43746).

Dated: November 1, 1978.

GRIFFIN B. BELL,
Attorney General of the United States.

[FR Doc. 78-31374 Filed 11-3-78; 8:45 am]

[7535-01-M]

NATIONAL CREDIT UNION ADMINISTRATION

NATIONAL CREDIT UNION BOARD

Meeting and Agenda

Pursuant to the provisions of the Federal Advisory Committee Act, Pub. L. 92-463, 86 Stat. 770, notice is hereby given that the National Credit Union Board will hold its quarterly meeting on December 6-7, 1978, at the Offices of the National Credit Union Administration, 2025 M Street NW., Washington, D.C. 20456. The meeting will commence at 9 a.m. daily in Room 4002.

The agenda for this meeting will consist of an update briefing regarding the activities of the several offices of the National Credit Union Administration. An NCU Board review will also be held.

This meeting of the National Credit Union Board will be open to the public. Members of the public may file written statements with the Board either before or after the meeting. To the extent that time permits, interested persons may be permitted to present oral statements to the Board only on items listed in the aforementioned agenda. Requests to present such oral statements must be approved in advance by the Chairman of the Board. Such requests should be directed to the Chairman, National Credit Union Board, National Credit Union Administration, Washington, D.C. 20456.

LAWRENCE CONNELL,
Administrator.

OCTOBER 31, 1978.

[FR Doc. 78-31226 Filed 11-3-78; 8:45 am]

[7536-01-M]

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

IMPROVING GOVERNMENT REGULATIONS

Semiannual Agenda of Regulations and Report

AGENCY: National Foundation on the Arts and the Humanities.

SUMMARY: Executive Order No. 12044 on improving Government regulations required that each executive agency publish a semiannual agenda of significant regulations and prepare a draft report outlining (1) a brief description of its process for developing regulations; (2) its proposed criteria for defining significant agency regulations; (3) its proposed criteria for identifying which regulations require regulatory analysis; and (4) its proposed criteria for selecting existing regulations to be reviewed and a list of regulations that the agency will consider for its initial review.

This draft report was published in the FEDERAL REGISTER on May 25, 1978. Comments were invited, and were to be submitted by July 24, 1978.

Two comments were received. One comment suggested that regulations be free of sex-based criteria and unnecessary gender-specific terminology, and that possible disparate impact on the basis of sex of future regulations be considered in determining which regulations are significant regulations. The other comment asked that in all education-related regulations regular consideration of the possible impact on private schools be considered. The suggestions in both comments are being adopted.

In addition, the date of the first publication of the Semiannual Agenda of Regulations to be made each calendar year is being changed from the first Monday in April to the first Monday in May. In 1979 that would be May 7.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert Wade, General Counsel, National Endowment for the Arts, 2401 E Street NW., Washington, D.C. 20506, 202-634-6588; or

Mr. Joseph Schurman, General Counsel, National Endowment for the Humanities, 806 15th Street NW., Washington, D.C. 20506, 202-724-0367.

SEMIANNUAL AGENDA OF REGULATIONS

Neither the National Endowment for the Arts, nor the National Endowment for the Humanities are proposing to issue or review any significant regulations during the next 6 months.

REPORT

To give the public adequate notice, the National Foundation on the Arts and the Humanities shall publish in the FEDERAL REGISTER, at least semiannually during the period Executive Order 12044 is in effect, an agenda of significant regulations under development or review. This agenda will be published on the first Monday in November and the first Monday in May. The Chairman of the National Endowment for the Arts and the Chairman of the National Endowment for the Humanities shall approve the agenda for his Endowment before it is published. Each agenda shall describe the regulations being considered, the need for and the legal basis for the action being taken, and the status of regulations previously listed on the agenda.

Each item on the agenda shall also include the name and telephone number of a knowledgeable official and, if possible, state whether or not a regulatory analysis will be required.

1. Description of the process for developing regulations. (a) Before either the National Endowment for the Arts or the National Endowment for the Humanities proceeds to develop significant new regulations, the Chairman of that Endowment shall review the issues to be considered, the alternative approaches to be explored, a tentative plan for obtaining public comment, and target dates for completion of steps in the development of the regulation.

(b) Opportunity for public participation. Each Endowment shall give the public an early and meaningful opportunity to participate in the development of agency regulations. A variety of ways to provide this opportunity shall be considered, including (1) publishing an advance notice of proposed rulemaking; (2) holding open conferences or public hearings; (3) sending notices of proposed regulations to publications likely to be read by those affected; (4) notifying interested parties directly.

(c) Time for comment. Each Endowment shall give the public at least 60 days to comment on proposed significant regulations. In the few instances where an endowment determines this is not possible, the regulations shall be accompanied by a brief statement of the reasons for a shorter time period.

(d) Approval of significant regulations. The Chairman of each Endowment, or the designated offical with statutory responsibility, shall approve significant regulations before they are published in the FEDERAL REGISTER. At a minimum, this offical should determine that:

(1) The regulation is needed;

(2) The direct and indirect effects of the regulation have been adequately considered;

(3) Alternative approaches have been considered and the least burdensome of the acceptable alternatives has been chose;

(4) Public comments have been considered and an adequate response has been prepared;

(5) The regulation is written in plain English and is understandable to those who must comply with it;

(6) The regulation is free of sex-based criteria, both in substance and for unnecessary gender-specific terminology;

(7) An estimate has been made of the new reporting burdens or recordkeeping requirements necessary for compliance with the regulation;

(8) The name, address and telephone number of a knowledgeable agency official is included in the publication; and

(9) A plan for evaluating the regulation after its issuance has been developed.

(e) Education-related regulations. In all education-related regulations, the National Endowment for the Arts and the National Endowment for the Humanities will consider the possible impact on private schools—kindergarten through twelfth grade.

2. Criteria for determining significant regulations. The National Endowment for the Arts and the National Endowment for the Humanities shall consider among other things: (a) The type and number of individuals, businesses, organizations, State and local governments affected; (b) the compliance and reporting requirements likely to be involved; (c) direct and indirect effects of the regulation including the effect on competition; (d) the relationship of the regulations to those of other programs and agencies. Regulations that do not meet the criteria for determining significance shall be accompanied by a statement to that effect at the time the regulation is proposed; and (e) the effect of the regulation on the rights of individuals and/or may have a disparate impact on the basis of sex.

3. Regulatory analysis. Some of the regulations identified as significant may have major economic consequences for the general economy, for the individual industries, geographical regions or levels of government. For these regulations, a regulatory analysis shall be prepared exept in the case of regulations prepared by all executive agencies where another agency has already prepared a regulatory analysis, and that agency's regulation is on the same subject and affects the same people or institutions as the Endowments' regulation. Such a regulatory analysis shall involve careful consideration of alternative approaches early in the decision-making process.

(a) Criteria. Regulatory analysis will be performed for all regulations which will result in (1) an annual effect on the economy of $100 million or more; or (2) a major increase in costs or prices for individual industries, levels of government or geographic regions. It is within the discretion of the Chairman of either Endowment to have regulatory analysis completed on any proposed regulation.

(b) Procedures. The following procedures for developing regulatory analysis and obtaining public comment shall apply. (1) Each regulatory analysis shall contain a succinct statement of the problem; a description of the major alternative ways of dealing with the problem that were considered; an analysis of the economic consequences of each of these alternatives, and a detailed explanation of the reasons for choosing one alternative over the others. (2) Public notice of proposed rules shall include an explanation of the regulatory approach that has been selected or is favored and a short description of the other alternatives considered. A statement of how the public may obtain a copy of the draft regulatory analysis shall also be included. (3) A final regulatory analysis will be prepared and made available when the final regulations are published.

4. Review of existing regulations. (a) The National Endowment for the Arts and the National Endowment for the Humanities shall periodically review their existing regulations to determine whether they are achieving the policy goals of these regulations. This review will follow the same procedural steps outlined for the development of new regulations.

(b) In selecting regulations to be reviewed, the following criteria shall be considered: (1) The continuing need for the regulation; (2) the type and number of complaints or suggestions received; (3) the burdens imposed on those directly or indirectly affected by the regulation; (4) the need to simplify or clarify language; (5) the need to eliminate overlapping or duplicative regulations, and (6) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions or other factors have changed in the area affected by the regulation.

5. Coverage. (a) As used in this notice, the term regulation means both rules and regulations issued by the National Endowment for the Arts or the National Endowment for the Humanities including those which establish conditions for financial assist-

ance. Closely related sets of regulations shall be considered together.

(b) This notice does not apply to: (1) Regulations issued in accordance with the formal rule-making provisions of the Administrative Procedure Act (5 U.S.C. 556,557); (2) regulations issued with respect to military or foreign affairs functions of the United States; (3) matters related to agency management or personnel; (4) regulations related to Federal Government procurement; (5) regulations that are issued in reponse to an emergency or which are governed by short term statutory or judicial deadlines. In these cases, a statement shall be published in the FEDERAL REGISTER of the reasons why it is impracticable or contrary to the public interest to follow the procedures of this notice. Such a statement shall include the name of the policy official responsible for this determination.

LIVINGSTON L. BIDDLE,
Chairman, National Endowment for the Arts.

JOSEPH D. DUFFEY,
Chairman, National Endowment for the Humanities.

[FR Doc. 78-30939 Filed 11-3-78 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-592-A and 50-593-A]

ARIZONA PUBLIC SERVICE CO., ET AL., PALO VERDE NUCLEAR GENERATING STATION, UNITS 4 AND 5

Establishment of Atomic Safety and Licensing Board To Rule on Petitions

Pursuant to delegation by the Commission dated December 29, 1972, published in the FEDERAL REGISTER (37 FR 28710), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717, and 2.721 of the Commission's regulations, all as amended, an Atomic Safety and Licensing Board is being established to rule on petitions and/or requests for leave to intervene in the following proceeding:

ARIZONA PUBLIC SERVICE CO. ET AL.

(Palo Verde Nuclear Generating Station, Units 4 and 5)

This action is in reference to a notice published by the Commission on September 25, 1978, in the FEDERAL REGISTER (43 FR 43398), entitled "Receipt of Attorney General's Advice and Time for Filing of Petitions To Intervene on Antitrust Matters."

The Chairman of this Board and his address is as follows:

Ivan W. Smith, Esq., Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

The other members of the Board and their addresses are as follows:

Mr. Michael A. Duggan, College of Business Administration, University of Texas, Austin, Tex. 78712.

Seymour Wenner, Esq., 4807 Morgan Drive, Chevy Chase, Md., 20015.

Dated at Bethesda, Md. this 27th day of October 1978.

JAMES R. YORE,
Chairman, Atomic Safety and Licensing Board Panel.

[FR Doc. 78-31213 Filed 11-3-78; 8:45 am]

[7590-01-M]

[Docket No. 50-313]

ARKANSAS POWER & LIGHT CO., ARKANSAS NUCLEAR ONE—UNIT NO. 1

ORDER FOR MODIFICATION OF LICENSE

I

The Arkansas Power & Light Co. (the licensee), is the holder of Facility Operating License No. DPR-51, which authorizes the operation of the nuclear power reactor known as Arkansas Nuclear One—Unit No. 1 (the facility or ANO-1), at steady-state power levels not in excess of 2,568 megawatts thermal (rated power). The facility consists of a Babcock & Wilcox Co. (B&W) designed pressurized water reactor (PWR) located at the licensee's site in Pope County, Ark.

II

During our review of the electrical power systems at the ANO-1 facility which experienced an electrical trip on September 16, 1978, a question arose concerning the capability of the offsite power systems to handle the emergency and house loads in the event of a loss of coolant accident (LOCA). The licensee confirmed by letter dated October 25, 1978, that an undervoltage condition would be created in the startup transformers which would provide a degraded voltage to engineered safety features.

The concern is that in the event of a LOCA during which the startup transformer receives the house loads and the starting loads of the engineered safety features, the loads cause a voltage reduction. The plant electrical systems are capable of handling the normal plant loads and engineered safety feature loads once started. By the letter dated October 25, 1978, the licensee indicated that this event would result in all safety loads transferring to the diesel generators. However, after later discussions with the licensee's staff, we concluded and the licensee agreed that such an event would not result in the safety loads transferring to the diesel generators but would result in all safety loads remaining on the startup transformers with degraded voltage. Although there is margin in the sizing of equipment and the conditions of operation of such equipment, such a situation could result in blown fuses in engineered safety feature circuits which could result in disabling these safety loads in the event of a LOCA. In that case, those particular components would not perform even if the voltage subsequently returned to normal.

By the letter dated October 25, 1978, supplemented by letter dated October 27, 1978, the licensee has proposed facility modification and associated tests which would alleviate the above possible situation. Further, the licensee committed to implementing the modifications by October 31, 1978, subject to our approval.

The modification involves the connection of the load sequence circuitry used for loading the diesel generators such that they will also sequence safety loads onto the startup of transformers thereby alleviating the undervoltage situation. The licensee has proposed tests of the proposed modifications which would demonstrate the operability of the system yet not require the shutdown of the plant.

We have completed our review of the licensee's proposed facility modifications and find that they would correct an undervoltage situation of the startup transformers during the LOCA. We find that the proposed test of the proposed modifications will verify the operability of the modifications. We find the licensee's commitment to complete the modifications and tests to be reasonable and consistent with the time required to prepare designs, conduct reviews, prepare procedures and to perform the modifications and tests. Therefore, we conclude, based on our review, that the proposed facility modifications, tests, and commitment of implementation are acceptable.

Until these modifications are completed the current design of the electrical power system may not be wholly in conformance with General Design Criterion (GDC) 17 of Appendix A to 10 CFR Part 50.

This was discussed with the licensee and by letter dated October 27, 1978, the licensee has proposed an interim modification which would alleviate the concern for degraded voltage at ANO-1 engineered safety features until completion of the proposed modifications and testing as proposed by letters dated October 25 and 27, 1978. These interim modifications remove one train of engineered safety feature equipment from the unit auxiliary transformer and connect it to the startup transformer shared with Unit 2. The shared transformer would be locked out from providing power to Unit 2 and thus dedicated to Unit 1 for this interim period.

The licensee has stated that by assigning the shared startup transformer to one train of Unit 1 engineered safety features equipment, no unacceptable degraded voltage conditions would occur as a result of a safety injection signal and main generation trip which are the loads imposed in the event of a LOCA.

We have reviewed the possible consequences of operating ANO-1 during the period until the facility modifications and tests are completed. We have reviewed the proposed interim modifications and find that they would alleviate the concern for degraded voltage at the startup transformers and are acceptable.

Therefore, based on our review we find this arrangement will provide an adequate power supply for safety systems at ANO-1 and that therefore continued operation for the period of time necessary to perform the modifications will not endanger life or property or the common defense and security.

The NRC staff believes that under the circumstances, the modifications proposed by the licensee are appropriate and should be confirmed by NRC Order.

III

Copies of the following documents are available for inspection at the Commission's Public Document Room at 1717 H Street NW., Washington, D.C. 20555, and are being placed in the Commission's local public document room at Arkansas Polytechnic College, Russellville, Ark.:

1. Letter from Mr. Daniel H. Williams (AP&L) to Mr. R. W. Reid (NRC), dated October 25, 1978: and
2. Letters from Mr. Daniel H. Williams (AP&L) to Mr. R. W. Reid (NRC), dated October 27, 1978.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's Rules and Regulations in 10 CFR Parts 2 and 50, it is ordered that Facility Operating License No. DPR-51 is hereby amended as follows:

1. By October 31, 1978, the licensee shall:

a. Modify the electrical power systems such that the load sequence circuitry used for loading the diesel generators will also sequence safety loads onto the startup transformers in the manner described by the letter dated October 25, 1978; and

b. Provide test of the modifications as proposed by letter dated October 27, 1978, to assure operability of the proposed modifications.

2. Starting immediately upon receipt of this Order, and until the modifications set forth in Paragraph 1 are completed, the licensee shall provide interim modifications as proposed by letter dated October 27, 1978.

Dated at Bethesda, Md., this 27th day of October 1978.

For the Nuclear Regulatory Commission.

VICTOR STELLO, Jr.,
Director, Division of Operating Reactors, Office of Nuclear Reactor Regulation.

[FR Doc. 78-31214 Filed 11-3-78; 8:45 am]

[7590-01-M]

[Docket No. 50-410]

NINE MILE POINT NUCLEAR STATION, UNIT 2, NIAGARA MOHAWK POWER CORP., ET AL.

Issuance of Amendment to Construction Permit

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission), has issued Amendment No. 1 to Construction Permit No. CPPR-112, issued to the Niagara Mohawk Power Corp. The amendment reflects a change in the ownership of Nine Mile Point Nuclear Station, Unit 2 (the facility), located in Oswego County, N.Y. The amendment is effective as of the date of its issuance.

The amendment adds the Central Hudson Gas & Electric Corp., New York State Electric & Gas Corp., Long Island Lighting Co., and Rochester Gas & Electric Corp., as co-owners of and co-applicants for the facility. Niagara Mohawk Power Corp. will retain responsibility for the design, construction, and operation of the facility.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the amendment.

Prior public notice of this amendment was not required since this amendment does not involve a significant hazards consideration.

For further details with respect to this action, see (1) the application for amendment dated February 6, 1978, and amendment dated August 16, 1978, (2) Amendment No. 1 to Construction Permit CPPR-112, and (3) the Commission's related safety evaluation.

All of these items and other related material are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the local Public Document Room located at the Oswego County Office Building, 46 East Bridge Street, Oswego, N.Y. 13126.

A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Project Management.

Dated at Bethesda, Md., this 27th day of October 1978.

For the Nuclear Regulatory Commission.

STEVEN A. VARGA,
Chief, Light Water Reactors Branch No. 4, Division of Project Management.

[FR Doc. 78-31215 Filed 11-3-78; 8:45 am]

[7590-01-M]

[Docket No. 50-263]

NORTHERN STATES POWER CO.

Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission), has issued Amendment No. 36 to Facility Operating License No. DPR-22, issued to Northern States Power Co. (the licensee), which revised the Technical Specifications for operation of the Monticello Nuclear Generating Plant (the facility), located in Wright County, Minn. The amendment is effective as of the date of its issuance.

The amendment revised the Technical Specifications to incorporate requirements for establishing and maintaining the suppression chamber water level, to maintain the margins of safety established in the NRC staff's "Mark I Containment Short Term Program Safety Evaluation," NUREG-0408. Operation in accordance with the conditions specified in NUREG-0408 has been previously authorized in 43 FR 13111, March 29, 1978.

There is no requirement to establish and maintain the drywell to suppression chamber differential pressure for Monticello Nuclear Generating Plant based on documentation submitted by NSP 1, specific plant structure modifications, and subsequent staff review.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

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The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4), an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) application for amendment dated November 5, 1976, as supplemented April 15 and August 29, 1977, (2) Amendment No. 36 to License No. DPR-22 and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the Environmental Conservation Library, Minneapolis, Public Library, 300 Nicollet Mall, Minneapolis, Minn. 55401. A single copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 30th day of October 1978.

For the Nuclear Regulatory Commission.

THOMAS A. IPPOLITO,
Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc. 78-31216 Filed 11-3-78; 8:45 am]

[7590-01-M]

REGULATORY GUIDE

Issuance and Availability

The Nuclear Regulatory Commission has issued a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 1.128, Revision 1, "Installation Design and Installation of Large Lead Storage Batteries for Nuclear Power Plants," describes a method acceptable to the NRC staff for performing the installation design and installation of large lead storage batteries for all types of nuclear powerplants. This guide endorses IEEE Std 484-1975, "IEEE Recommended Practice for Installation Design and Installation of Large Lead Storage Batteries for Generating Stations and Substations." Revision 1 of this guide reflects public comments and additional staff review.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of the latest revision of issued guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a)).

Dated at Rockville, Md. this 25th day of October 1978.

For the Nuclear Regulatory Commission.

RAY G. SMITH,
Acting Director, Office of Standards Development.

[FR Doc. 78-31219 Filed 11-3-78; 8:45 am]

[7590-01-M]

[Docket No. 50-346]

TOLEDO EDISON CO. AND THE CLEVELAND ELECTRIC ILLUMINATING CO.

Granting of Relief from ASME Section XI Inservice Inspection (Testing) Requirements

The U.S. Nuclear Regulatory Commission (the Commission) has granted relief from certain requirements of the ASME Code, Section XI, "Rules for Inservice Inspection of Nuclear Power Plant Components" to the Toledo Edison Co. and the Cleveland Electric Illuminating Co. The relief relates to the inservice inspection (testing) program for the Davis Besse Nuclear Power Station, Unit 1, located in Ottawa County, Ohio. The ASME Code requirements are incorporated by reference into the Commission's regulations in 10 CFR Part 50. The relief is effective as of its date of issuance.

The relief is granted, on an interim basis, pending completion of our detailed review, from those inservice inspection and testing requirements of the ASME Code that the licensee has determined to be impractical within the limitations of design, geometry, and materials of construction of components, because compliance would result in hardships and unusual difficulties without a compensating increase in the level of quality or safety.

The request for relief complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the letter granting relief. Prior public notice of this action was not required since the granting of this relief from ASME Code requirements does not involve a significant hazards consideration.

The Commission has determined that the granting of this relief will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

For further details with respect to this action, see (1) the requests for relief dated June 27, 1977 and November 22, 1977 and (2) the Commission's letter to the licensee dated April 22, 1977.

These items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the Ida Rupp Public Library, 310 Madison Street, Port Clinton, Ohio 43452. A copy of items (1) and (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Project Management.

Dated at Bethesda, Md., this 19th day of October 1978.

For the Nuclear Regulatory Commission.

JOHN F. STOLZ,
Chief, Light Water Reactors Branch No. 1, Division of Project Management.

[FR Doc. 78-31217 Filed 11-3-78; 8:45 am]

[7590-01-M]

[Docket No. 50-397 OL]

WASHINGTON PUBLIC POWER SUPPLY SYSTEM, WPPSS NUCLEAR PROJECT NO. 2

Order Relative to a Prehearing Conference

In the Board's Order of October 11, 1978, it was stated that arrangements would be made for a prehearing conference on November 15, 1978, and that the time and place would be the subject of a subsequent Order.

Due to a problem in the servicing of the Order of October 11, 1978, on Petitioners, Ms. Susan M. Garrett and Ms. Helen Vozenilek, agreement was reached in a conference call on October 26, 1978, that these Petitioners would file an amended petition on November 10, 1978, with immediate response by the parties and the prehearing would be rescheduled.

Take notice, a prehearing conference to consider petitions filed in this proceeding will be held in Courtroom G174, Federal Building, 825 Jadwin Avenue, Richland, Wash., on November 21, 1978. The proceeding will commence at 9 a.m. (local time).

The public is invited to attend. No limited appearance statements will be accepted at this proceeding.

It is so ordered.

Dated at Bethesda, Md., this 30th day of October 1978.

For the Atomic Safety and Licensing Board for the Review of Petitions.

ELIZABETH S. BOWERS,
Chairman.

[FR Doc 78-31218 Filed 11-3-78; 8:45 am]

[3210-01-M]

OVERSEAS PRIVATE INVESTMENT CORP.

[Redelegation of Authority No. A-78-23]

REDELEGATION OF AUTHORITY FROM THE PRESIDENT, OVERSEAS PRIVATE INVESTMENT CORP., REGARDING EXERCISE OF THE AUTHORITY OF DIRECTOR OF PERSONNEL AND ADMINISTRATION

By virtue of the authority vested in me as President of the Overseas Private Investment Corp., ("OPIC"), I hereby redelegate authority as follows:

1. I hereby appoint Richard K. Childress Director of Personnel and redelegate to him authority to perform all functions as set forth in Title 5, United States Code, and pertinent Civil service Regulations.

2. I hereby appoint Richard K. Childress a Contracting Officer and redelegate to him authority to enter into and administer contracts pursuant to Title III of the Federal Property and Administrative Services Act (41 U.S.C. Sec. 251 et seq.) and the Federal Procurement Regulations (Title 41, Code of Federal Regulations) and to make related determinations and findings.

3. I hereby appoint Patrick Noone a Contracting Officer with the authority set forth in paragraph 2; provided, however, that he shall have no authority to enter into contracts in excess of $10,000.

4. This redelegation shall continue until further notice. The authority herein conferred may not be further delegated.

5. Subparagraphs 12(d) and (e) of OPIC Redelegation of Authority No. A-78-19 and OPIC Redelegation of Authority No. A-78-20 are hereby rescinded.

Dated: October 31, 1978.

J. BRUCE LLEWELLYN,
President, Overseas Private Investment Corporation.

[FR Doc. 78-31286 Filed 11-3-78; 8:45 am]

[4710-07-M]

DEPARTMENT OF STATE

Office of the Secretary

ADVISORY COMMITTEE ON THE 1979 WORLD ADMINISTRATIVE RADIO CONFERENCE

Meeting

The Department of State announces that the Advisory Committee on the 1979 World Administrative Radio Conference (WARC) will meet on November 29, 1978, in Conference Room B of the Pan American Health Organization Building, 23rd Street and Virginia Avenue NW., Washington, D.C., from 10 a.m. to 4 p.m. This will be the third meeting of the full Committee. It will be a joint meeting with the members of the initial U.S. delegation to the WARC.

The Committee assists in the formulation of U.S. Government positions for the Conference which will be held in Geneva in September 1979. It reports to its Chairman, Mr. Glen O. Robinson, who also serves as Chairman of the U.S. delegation to the WARC.

The general agenda of the November 29 meeting will be:

(a) Report by the Committee Chairman on the current state of WARC delegation preparations, including recent consultations with foreign government representatives.

(b) Reports from the five Advisory Committee working groups.

Members of the general public may attend the meeting and join in the discussions, subject to instructions of the Chairman. Admittance of public observers will be limited to the seating available. It is reguested that prior to November 29, members of the general public who plan to attend the meeting inform their name and address to Mr. Wilson Dizard, WARC Delegation Staff, Office of International Communications Policy (EB/CTA/TD), Department of State, Washington, D.C. 20520. The telephone number is area code 202-632-8490.

Dated: October 24, 1978.

RUTH H. PHILLIPS,
Executive Secretary, Advisory Committee on the 1979 World Administrative Radio Conference.

[FR Doc. 78-31270 Filed 11-3-78; 8:45 am]

[8120-01-M]

TENNESSEE VALLEY AUTHORITY

IMPROVING GOVERNMENT REGULATIONS

Rescheduled Publication of the Notice of Semiannual Agenda of Significant Regulations

The Tennessee Valley Authority (TVA), has rescheduled publication of the first Notice of Semiannual Agenda of Significant Regulations developed in accordance with Executive Order No. 12044, from November 6, 1978, to December 4, 1978. November 6 will continue to be the date scheduled for publication of the agenda in subsequent years. Requests for information concerning the rescheduled publication may be addressed to: Lynn G. Morehous, Assistant General Counsel, Tennessee Valley Authority, 400 Commerce Avenue, E10D76, Knoxville, Tenn. 37902.

Dated: November 2, 1978.

H. N. STROUD, JR.,
Acting General Manager.

[FR Doc. 78-31377 Filed 11-3-78; 8:45 am]

[4910-14-M]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 78-150]

NATIONAL BOATING SAFETY ADVISORY COUNCIL, HULL IDENTIFICATION NUMBER SUBCOMMITTEE

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1) notice is hereby given of a meeting of the National Boating Safety Advisory Council's Hull Identification Number Subcommittee to be held on December 12, 1978, in the San Francisco Room, Bellevue Hotel, Geary and Taylor Streets, San Francisco, Calif. The meeting is scheduled to begin at 2 p.m. and adjourn at 5 p.m.

The purpose of this meeting is to review the present Hull Identification Number requirements and discuss possible amendments to improve the current regulation.

Attendance is open to the interested public. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral

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statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Subcommittee at any time. Additional information may be obtained from CDR Neal Mahan, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard (G-BA) , Washington, D.C. 20590, or by calling 202-426-1080.

Issued in Washington, D.C. on October 26, 1978.

B. E. THOMPSON,
Rear Admiral, U.S. Coast Guard,
Chief, Office of Boating Safety.

[FR Doc. 78-31322 Filed 11-3-78; 8:45 am]

[4910-14-M]

[CGD 78-149]

NATIONAL BOATING SAFETY ADVISORY COUNCIL, CANOE SUBCOMMITTEE

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the National Boating Safety Advisory Council's Canoe Subcommittee to be held on December 12, 1978, in the Mayflower Room, Bellevue Hotel, Geary and Taylor Street, San Francisco, Calif. The meeting is scheduled to begin at 4 p.m. and adjourn at 6 p.m.

The purpose of this meeting is to review and discuss the canoe research program.

Attendance is open to the interested public. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Subcommittee at any time. Additional information may be obtained from CDR Neal Mahan, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard (G-BA), Washington, D.C. 20590, or by calling 202-426-1080.

Issued in Washington, D.C. on October 26, 1978.

B. E. THOMPSON,
Rear Admiral, U.S. Coast Guard,
Chief, Office of Boating Safety.

[FR Doc. 78-?]

[4910-14-M]

[CGD 78-148]

NATIONAL BOATING SAFETY ADVISORY COUNCIL

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of the National Boating Safety Advisory Council to be held on Wednesday and Thursday, December 13 and 14, 1978, in the Riviera Room, Bellevue Hotel, Geary and Taylor Streets, San Francisco, Calif. The meeting is scheduled to begin at 9 a.m. on both days and recess at 4 p.m. on Wednesday and adjourn at approximately noon on Thursday. The agenda for this meeting will be as follows:

1. Review of action taken at the nineteenth meeting of the Council.
2. Executive Director's Report.
3. Canoe Subcommittee Report.
4. Hull Identification Number Subcommittee Report.
5. Update on Personal Flotation Device (PFD) Research.
6. Rules of the Road Advisory Committee (RORAC) Report.
7. Discussion on Federal Preemption.
8. Presentation on ABYC Standards on Safe Powering.
9. Visual Distress signal Status Report.
10. Discussion on Windsurfer's Exemption From PFD Regulations.
11. Office of Boating Safety Report.
12. Members' Items.
13. Chairman's Session.

Subj: Twentieth National Boating Safety Advisory Council Meeting.

Attendance is open to the interested public. With the approval of the Chairman, members of the public may present oral statements at the meeting. Public participation is encouraged. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Council at any time. Additional information may be obtained from Commander Neal Mahan, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard (G-BA), Washington, D.C. 20590, or by calling 202-426-1080.

Issued in Washington, D.C., on October 26, 1978.

B. E. THOMPSON,
Rear Admiral, U.S. Coast Guard,
Chief, Office of Boating Safety.

[FR Doc. 78-31324 Filed 11-3-78; 8:45 am]

[4910-13-M]

Federal Aviation Administration

HIGH ALTITUDE POLLUTION PROGRAM SCIENTIFIC ADVISORY COMMITTEE

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Federal Aviation Adminstration High Altitude Pollution Program Scientific Advisory Committee to be held November 29-30 and December 1, 1978, in conference rooms 9A, B, and C at the FAA Headquarters, 800 Independence Avenue SW., Washington, D.C. 20591, at the following times (e.d.t.):

November 29, 1978—1 p.m. to 5 p.m.
November 30, 1978—9 a.m. to 5 p.m.
December 1, 1978—9 a.m. to 12:30 p.m.

The agenda for the meeting includes a briefing to the Committee of the findings and plans of the High Altitude Pollution Program followed by a discussion of the plans and recommendations by the Committee.

Attendance is open to the interested public but limited to the space available. Any member of the public wishing to attend, make a presentation, or obtain additional information should contact Dr. N. Sundararaman, AEE-10, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591, 202-755-8933 or 202-755-1851 by close of business November 24, 1978.

Any member of the public may present a written statement for the consideration of the Committee at any time.

Issued in Washington, D.C., on October 30, 1978.

ANTHONY J. BRODERICK,
Chief, High Altitude Pollution Staff.

[FR Doc. 78-31224 Filed 11-3-78; 8:45 am]

[4910-59-M]

National Highway Traffic Safety Administration

NATIONAL HIGHWAY SAFETY ADVISORY COMMITTEE

Field Trip

The National Highway Safety Advisory Committee's State-Federal Relations Task Force is planning a field trip to Albany, N.Y., on November 29 and 30, 1978.

On November 29 and 30, the Task Force members plan to discuss with legislators, State and local officials, and FHWA and NHTSA regional personnel current program management and the impact on New York of the new management concept envisioned in the development of a Highway Safety Plan. Some specific items for discussion will be how highway safety problem areas will be identified, what will be the role of local communities, and what are the State's priority programs.

A report on the trip will be made by the Task Force Chairperson at the January meeting of the Advisory Committee. The arrangements for the visit with New York officials are being made by the New York State Highway Safety Coordinator.

The field trip is subject to the approval of the appropriate DOT officials.

Additional information may be obtained from the NHTSA Executive Secretary, Room 5215, 400 Seventh Street SW., Washington, D.C. 20590, telephone 202-426-2872.

Issued in Washington, D.C., on November 1, 1978.

WM. H. MARSH,
Executive Secretary.

[FR Doc. 78-31233 Filed 11-3-78; 8:45 am]

[4910-59-M]

[Docket 25; Notice 28]

CONSUMER INFORMATION REGULATIONS

Uniform Tire Quality Grading

AGENCY: National Highway Traffic Safety Administration (NHTSA).

ACTION: Announcement of Test Results.

SUMMARY: This notice announces the availability for inspection of the data from, and NHTSA's analysis of, agency testing of radial tire treadwear under the road test conditions of the Uniform Tire Quality Grading (UTQG) regulation. The notice also discusses the significance of the test results with respect to the treadwear grading system established by the UTQG standard. The notice is intended to provide interested parties with the opportunity to examine the treadwear data and provide comments to the agency prior to the establishment of an effective date for radial tires under the UTQG system.

DATE: Comments must be received on or before December 4, 1978.

ADDRESSES: Comments should refer to the docket number and be submitted to: Room 5108, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT:
Dr. F. Cecil Brenner, Office of Automotive Ratings, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590, 202-426-1740.

SUPPLEMENTARY INFORMATION: In May 1975, NHTSA issued the UTQG Standards (49 FR 575.104), which require manufactures to provide grading information for new passenger car tires in the performance areas of treadwear, traction, and temperature resistance (40 FR 23073; May 28, 1975). The U.S. Court of Appeals for the Sixth Circuit reviewed the issuance of the UTQGS regulation in *B. F. Goodrich Co. v. Department of Transportation*, 541 F.2d 1178 (1976), and remanded to the agency the matter of the selection and testing of the course monitoring tires (CMT's). The Court also remanded issues realting to the labeling of tires which were addressed in Notice 21 (41 FR 54205; Dec. 13, 1976).

In accordance with the remand, NHTSA issued Notice 22 announcing the selection of bias-ply, bias-belted, and radial CMT's (42 FR 10320; Feb. 22, 1977), and made available in the public docket for comment the test results upon which the selections were based. At that time, NHTSA noted that it had detected in its testing a possible problem with radial treadwear grading, caused by an apparently higher than average wear rate for radial tires during the first several thousand miles of travel following break-in. The agency announced that further tests on radial tires would be conducted and the results made available for review and comment by interested persons. NHTSA's notice establishing effective dates for the UTQG regulation (43 FR 30542; July 17, 1978) deferred action on an effective date for radial tires pending full analysis of all available test data on radials.

Following issuance of Notice 22, NHTSA conducted a program of tests of radial tires on the UTQG treadwear test course in San Angelo, Tex. Sets of radial tires of nine different manufacturers, representing a wide range of tire designs and materials, were on the test course along with radial CMT's to distances of 38,400 miles, following the specified 800-mile break-in. Average groove depth measurements were recorded in accordance with the Governments UTOG producer (49 CFR 575.104(e)(2)). A limited number of tires were removed from the test, mostly between 25,600 and 38,400 miles, due to prematured failure. The results of this testing have been placed in the General Reference section of Docket 25, accompanied by an explanation of the test results, and are available for public inspection and comment.

DETERMINATION OF BASE COURSE WEAR RATE

The test data indicate that the rate of reduction of groove depth of radial tires, as a function of mileage, is greater during a proportion of the initial 6,400-mile test interval compared to the remainder of the tire's life. The agency has concluded that the apparently higher treadwear rate early in a radial tire's life is the result of changes in tire geometry as the tire is broken in, rather than being the result of a greater actual loss of tread rubber. This phenomenon. is reported in the National Bureau of Standards Technical Note 486, *Some Problems in Measuring Tread Wear of Tires.* (Docket 25, General Reference No. 19.)

Radial tires appear to break in over a longer period than bias and bias-belted tires, which reach their equilibrium geometric shape during the 800-mile break-in period. The data indicate that the equilibrium geometric shape of a radial tire as attained within approximately 4,000 miles following the 800-mile break-in period.

Notwithstanding this apparent deviation in wear rate pattern, the data indicate that a wear-out point for radial CMT's can be accurately predicted, thereby allowing the establishment of a base course wear rate (BCWR) to be used in the adjustment of candidate tire wear rates. The BCWR for a CMT is the average rate at which the tire wears through-out its tread life to give its total mileage to wearout on the test course. For purposes of UTQG treadwear testing, NHTSA considers tire wearout as the point at which a tire's average remaining groove depth equals 62 mils (one-sixteenth of an inch). Under the UTQG regulation, the agency will furnish BCWR's to CMT purchasers at the time of purchase. (49 CFR 575.104(e)(2)(ix)(C)). The agency computes BCWR by dividing original CMT groove depth minus 62 mils by the CMT's average mileage to wear out minus break-in mileage. The establishment of a BCWR is thus dependent upon accurate measurement of CMT tread life.

The data indicates that radial tire groove depth at different mileages can be adequately represented by a straight line fitted to the data points obtained following the initial 6,400-mile test interval and 800-mile break-in period. The mileage achieved when the groove depth is 62 mils would thus estimate wear out. Based on NHTSA's testing, where CMT's were actually run to 38,400 miles, the expected CMT mileage to wear out on the San Angelo course is approximately 65,000 miles. The BCWR resulting from this expected tread life is 4.44 mils per thousand miles.

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CONSISTENCY OF RADIAL WEAR RATE PATTERNS

One way of compensating for the apparently higher wear rate of radial tires, as measured by changes in groove depth during the first 4,000 miles after break-in, would be to require a longer break-in period for radials. Another alternative method of eliminating the effects of tread geometry changes would be to determine treadwear by actual loss of tread rubber, rather than by groove depth, using the weighing technique referred to in NBS Technical Note 486. However, since these courses of action would take additional time and impose additional costs on the tire industry and on consumers, the agency has elected to deal with the radial tire wear rate phenomenon by use of the existing UTQG adjustment procedure.

In projecting candidate tire mileage, the UTQG procedure applies an adjustment factor to candidate tire wear rates obtained in a 6,400-mile test sequence. (49 CFR 575.104(e)(2)(ix)). This adjustment compensates for environmental and other factors which may affect the wear rates of the candidate tire. The adjustment procedure also compensates for the apparently greater wear rates of radials during their early life.

For the adjustment procedure to provide an adequate estimate of candidate tire tread life, candidate tire and CMT wear rate patterns must be consistent. In its tests of nine sets of candidate radial tires and three sets of CMT's reported in "Test of Tread Wear Grading Procedure—the Course Monitoring Tire Adjustment on Radial Tire Wear Rates," by Dr. F. Cecil Brenner and Harry Williams (Docket 25, General Reference Number 105), it was found that the higher rate of radial tire wear during the first 4,000 miles of travel after the 800-mile break-in was a consistent phenomenon of all radial tires tested. As explained by Brenner and Williams, when the unadjusted wear rates recorded for each 6,400-mile test interval in NHTSA's multi-cycle test were ranked for particular radial tire brands, the ranking of intervals remained highly consistent from tire brand to tire brand. Similarly, when candidate tire unadjusted wear rate data were plotted on a graph along with unadjusted CMT data from the same convoy, the wear rate plots were substantially parallel, indicating that the wear rate data of candidate tires and CMT's was affected in the same manner by the various factors which influence treadwear patterns.

This consistency in wear rate patterns among radial tires permits use of the existing UTQG adjustment procedure to account for the apparent deviation in wear rate, as measured by the change in groove depth, experienced by radial tires during the early phases of their tread life. Since both the CMT and candidate tires will exhibit uniformly higher wear rates (as measured by groove depth changes) in the 6,400-mile test sequence than later in the tires' life, the adjustment factor will modify the candidate tire's wear rates to eliminate the effect of this wear pattern, providing an accurate basis for projecting the treadlife of the tested tires.

As noted in the previously mentioned Brenner/Williams paper, the agency verified the accuracy of this adjustment procedure by comparing estimates of tread life for nine sets of candidate tires, arrived at by the UTQG procedure, with estimates based on more extensive tests (i.e., based on the data from 6,400 miles until the tire was removed or until 38,400 miles and the average of the adjusted wear rates from each 6,400-mile interval from 0 to 38,400 miles). The estimates computed from these data sets did not differ significantly, indicating that the adjustment procedure specified in the UTQG standard can be accurately employed to account for the apparent deviation in wear rate pattern characteristic of radial tires during the first 6,400 miles of testing.

The results of NHTSA's radial tire tests are available for public inspection at the Docket Section, National Highway Traffic Safety Administration, Room 5108, 400 Seventh Street SW., Washington, D.C., in the General Reference section of Docket No. 25. Interested persons are invited to submit comments on the test results and the agency's analysis. It is requested but not required that 10 copies of each comment be submitted. All comments should be accompanied by any necessary supporting data or material.

All comments must be limited not to exceed 15 pages in length. Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a succinct and concise fashion.

In the case of comments that contain materials for which confidential treatment is requested, those materials should be deleted from the copies submitted to the docket. A copy of the complete comments should be submitted to the Office of Chief Counsel at the above address, with an indication of which portions of the comments are the subject of the request for confidentiality.

The effective date for application of the UTQG regulation to radial tires will not be set until after timely comments on the radial tire test data have been reviewed.

(Secs. 103, 112, 119, 201, 203; Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1401, 1407, 1421, 1423); delegations of authority at 49 CFR 1.50 and 501.8).

Issued on November 2, 1978.

MICHAEL M. FINKELSTEIN,
Associate Administrator for Rulemaking.

[FR Doc. 78-31394 Filed 11-3-78; 8:45 am]

[4810-31-M]

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco, and Firearms

FIREARMS

Granting of Relief

Notice is hereby given that, pursuant to 18 U.S.C. 925(c), the following named persons have been granted relief from disabilities imposed by Federal laws with respect to the acquisition, transfer, receipt, shipment, or possession of firearms incurred by reason of their convictions of crimes punishable by imprisonment for a term exceeding 1 year.

It has been established to my satisfaction that the circumstances regarding the convictions of each applicant's record and reputation are such that the applicants will not be likely to act in a manner dangerous to public safety, and that the granting of the relief will not be contrary to the public interest.

Ackerman, Perry J., 1238 East 45th Street, Brooklyn, N.Y., convicted on April 9, 1965, in the New York Supreme Court, Second Judicial District, Kings County, N.Y.

Allmand, William D., III, P.O. Box 372, Independence, La., convicted on May 28, 1975, in the U.S. District Court, Eastern District of Louisiana.

Armstrong, Charles E., 13000 Houston-Whittier, Detroit, Mich., convicted on January 5, 1956, and on January 20, 1956, in the Recorder's Court of the City of Detroit, Mich.

Barbati, Emidio, 320 South Concord Road, West Chester, Pa., convicted on Arpil 26, 1954, in the U.S. Marine Corps General Court Martial, San Diego, Calif.

Barton, Jerry W., Ridgecrest Trailer Park, No. 74, Route 9, Box 74, Hattiesburg, Miss., convicted on December 13, 1972, in the U.S. District Court, Northern District of Alabama, Jasper Division.

Bengen, Dietrick K., 6300 Lawrence Road, Everson, Wash., convicted on March 3, 1915, in the Superior Court of the State of Washington, Whatcom County, Wash.

Bengen, Jon Robert, 6300 Lawrence Road, Everson, Wash., convicted on March 3, 1915, in the Superior Court of the State of Washington, Whatcom County, Wash.

Bengen, Robert Ray, 6300 Lawrence Road, Everson, Wash., convicted on Marsh 3, 1915, in the Superior Court of the State of Washington, Whatcom County, Wash.

Bennett, Jerry, 205 East 12th Street, Benton, Ky., convicted on November 2, 1976, in the U.S. District Court for the Western District of Kentucky.

Billings, Melvin L., Jr., 5977 March Road, Haslett, Mich., convicted on January 9, 1956, in the Circuit Court for the County of Montcalm, Montcalm County, Mich.; and on November 16, 1959, in the County of Saginaw, County of Saginaw, Mich.

Blevins, Raymond, V., Sr., Route 3, Marion, Va., convicted on March 11, 1974, in the Symth County Circuit Court, Marion, Va.

Brasier, Laurence M., 13025 Otsego Street, Sherman Oaks, Calif., convicted on April 10, 1975, in the U.S. District Court, Boston, Mass.

Bron, Morris E., 1907 Burrell Street NW., Roanoke, Va., convicted on April 14, 1958, in the Hustings Court (now Circuit Court) of the City of Roanoke, Va.

Browning, Arms Co., Route 4, P.O. Box 624-B, Arnold, Mo., convicted on April 19, 1978, in the U.S. District Court, Eastern District of Missouri, Eastern Division.

Cash, Ira D., 3819 Rampart Street, Boise, Idaho, convicted on September 30, 1974, in the U.S. District Court for the District of Montana, Helena Division.

Chamliss, Bobby, Jr., 1317 Rosemont, Mesquite, Tex., convicted on September 8, 1967, and on April 3, 1970, in the Criminal District Court, Dallas County, Tex.

Chipperini, John M., 102 Riverside Park, Gloucester, Mass., convicted on March 21, 1956, in the Municipal Court of the Roxbury District, Roxbury, Mass.; on May 5, 1956, in the Municipal Court of the City of Boston; and on May 17, 1956, in the Suffolk Superior Court at Boston.

Corley, Dennis W., Route 1, Box 234, Kountze, Tex., convicted on January 17, 1969, in the U.S. District Court for the Western Division of Louisiana, Shreveport Division.

Culbertson, Barney R., 1018 South 4th Street, Dayton, Wash., convicted on October 21, 1971, in the Columbia County Superior Court, Dayton, Wash.

Dallas, Elaine C., 1219 Greenview Drive, Lakeland, Fla., convicted on July 2, 1976, in the U.S. District Court for the Middle District of Florida, Tampa Division.

Davis, John D., Route 2, Box 358, Pullman, Wash., convicted on December 12, 1975, in the Superior Court of the State of Washington, Clark County.

DeMoulin, David W., 8118 111th Avenue, Kenosha, Wis., convicted on January 7, 1960, and on June 1, 1960, in the Municipal Court, Kenosha County, Wis.

Dickerson, Robin E., Route 1, Shattalon Drive, Winston-Salem, N.C., convicted on October 17, 1973, in the Superior Court Division of the General Court of Justice, County of Forsythe, Winston-Salem, N.C.

Dudgeon, Ray P., 403 Walling Avenue, Campbellsville, Ky., convicted on September 14, 1973, in the Taylor Circuit Court, Taylor County, Ky.

Earin, Robert E., Jr., 1714 Tennessee Avenue, New Orleans, La., convicted on November 30, 1951, in Section D, Criminal District Court, Orlean Parish, La.

Fondren, Fred D., 343 Avenue T, Pratt City, Ala., convicted on May 1, 1961, in the U.S. District Court, Northern District of Alamaba.

Frey, Russell L., 252 North Reservoir Street, Lancaster, Pa., convicted on August 2, 1966, in the Municipal Court of the San Diego, Calif.

Gold, Lawrence G., 1365 Belford Road, Reno, Nev., convicted on April 27, 1973, in the U.S. District Court, Nev.

Graves, Robert W., 831 Richard Street, Marietta, Ga., convicted on March 29, 1968, in the Superior Court of Cobb County, Ga.

Havnes, James T., 212 3rd Street, NE., Wadena, Minn., convicted on January 21, 1977, in the District Court, Seventh Judicial District, Minn.

Henton, Farley, 312 West 8th Street, Benton, Ky., convicted on September 24, 1946, in the U.S. District Court, Eastern District of Michigan; and on November 2, 1976, in the U.S. District Court, Paducah, Ky.

Jeffreys, John T., 109 West Washington Street, Howell, Mich., convicted on September 24, 1975, in the U.S. District Court for the Eastern District of Michigan, Southern Division, Flint, Mich.

Johnson, John M., 101 South Burbank Drive, Montgomery, Ala., convicted on March 7, 1975, in the Circuit Court of Montgomery County, Montgomery, Ala.

Kannenberg, John M., 6101 Belmar Avenue, Racine, Wis., convicted on May 25, 1959, in the U.S. District Court, Eastern District, Wis.

Kiceina, David, 7996 Valley View, Custer, Wash., convicted on May 11, 1973, in the Superior Court, Whatcom County, Wash.

Kissinger, Frederick H., 1950 West main Street, West Bend, Wis., convicted on May 15, 1970, in the Washington County Court, Wis.

Koski, Donald A., Route 4, Box 322A, Walla Walla, Wash., convicted on September 27, 1958, in the Superior Court, State of Washington, Walla, Walla County; and on May 27, 1969, in the District Court, State of Idaho, Second Judicial District, Clearwater County.

Lester, Moticue, P.O. Box 68, Margarettesville, N.C., convicted on August 19, 1939, in the Superior Court, Bibb County, Macon, Ga.

Lewallen, Roy L., Route 2, 108 Jay Lane, Burleson, Tex., convicted on May 2, 1938, in the 104th District Court, Jones County, Tex.; and on May 20, 1940, in the 42nd District Court, Taylor County, Tex.

Logan, Billy R., 9020 Hamilton Creek Drive, Mobile, Ala., convicted on March 4, 1969, in the Mobile county Circuit Court, Mobile, Ala.

McDaniel, Jerry R., 219 West Avenue, Hamlet, N.C., convicted on February 25, 1975, in the Superior Court, Richmond County, N.C.

Miller, David C., 2458 Laura Drive, Flint, Mich., convicted on September 16, 1960, in the Circuit Court for the County of Genesee, Flint, Mich.

Mugg, Charles R., 5323 North 19th Avenue, Phoenix, Ariz., convicted on October 26, 1962, in the District Court, Seventh District, Okla.

Neal, Douglas F., 301 South 11th, Philadelphia, Pa., convicted on May 28, 1969, in the Court of Common Pleas, Philadelphia, Pa.

Nelson, Robert C., III, 6616 East 9th Street, Spokane, Wash., convicted on February 23, 1976, in the Superior Court of the State of Washington, County of Spokane.

Norboe, Paul H., 2930 Crooks Creek Road, Selma, Oreg., convicted on July 19, 1974, in the U.S. District Court for the District of Nevada, Reno, Nev.

Osborne, Stanley M., 97 Quinault Way, NE., Olympia, Wash., convicted on January 14, 1976, in the Superior Court, Thurston County, Wash.

Pardue, Vestal L., Route 2, Box 150, Ronda, N.C., convicted on May 25, 1936, May 16, 1938, May 22, 1941, November 25, 1949, and on May 23, 1963, in the U.S. District Court, Wilkes County, N.C.

Perry, Robert C., 30246 West Chicago Boulevard, Livonia, Mich., convicted on April 8, 1966, in the State District Court, Columbus, Ga.

Peterson, Carl K., 783 El Monte Street, Twin Falls, Idaho, convicted on April 2, 1976, in the District Court, Fifth Judicial District of Idaho, Twin Falls County.

Ploof, Roger W., 23 Sycamore Street, San Francisco, Calif., convicted on March 21, 1972, in the Superior Court, Calif., Marion County.

Provencher, Jackie D., Sr., Box 114, Keewatin, Minn., convicted on April 1, 1970, in the Ninth District Court, Minn.

Reynolds, James D., P.O. Box 102, Stanfield, Oreg., convicted on February 16, 1970, in the Circuit Court in Umatilla County at Pendleton, Oreg.

Rhyne, Carlton L., 8142 River Drive, Houston, Tex., convicted on January 17, 1974, in the 182nd District Court of Harris County, Tex.

Russell, James D., 6503 Goodman Drive, Merriam, Kans., convicted on March 1, 1971, in the U.S. District Court, District of Kansas.

Russo, Anthony N., Johnstown, N.Y., convicted on January 21, 1949, in the Supreme Court of the County of Fulton.

Sarullo, Salvatore, 1110 Greenway, Greenville, Miss., convicted on November 9, 1973, in the U.S. District Court for the Western District of Tennessee, Western Division.

Seelig, Charles J., Jr., 51 Bianbird Drive, Sinking Spring, Pa., convicted on April 21, 1969, in the Court of Quarter Sessions of Centre County, Pa.

Senatore, Alfred R., Jr., 6127 Coolidge, Dearborn Heights, Mich., convicted on December 3, 1973, in the U.S. District Court for the Eastern District of Michigan.

Shepherd, Arvis A., 210 E. Jefferson Street, Crawfordsville, Ind., convicted on March 17, 1977, in the U.S. District Court, southern District of Indiana.

Shively, Garvice W., Route 1, Ferrum, Va., convicted on February 12, 1969, in the Circuit Court for Franklin County, Rocky Mount, Va.

Sparks, Ted W., 1013 41st Avenue, Tuscaloosa, Ala., convicted on July 13, 1971, in the Circuit Court, Sixth Judicial Circuit of Alabama.

Steinemann, Geoffrey H., One Overlook Drive, Port Washington, N.Y., convicted on January 27, 1978, in the U.S. District Court, Southern District of New York, Foley Square, New York, N.Y.

Strickland, Lester R., Route 5, Box 478, Mount Airy, N.C., convicted on August 24, 1971, in the General Court of Justice, Superior Court Division, County of Wilson, N.C.

Thomas, Thessalonia, 1140 LaFayette, Pratt City, Birmingham, Ala., convicted on or about May 11, 1965, in a General Court Martial, Headquarters, Fort Lewis, Fort Lewis, Wash.; and on June 3, 1975, in the Criminal Division, Circuit Court, Tenth Judicial District of Alabama, Birmingham, Ala.

Tilson, Richard B., Route 1, Box 53, Sugar Grove, Va., convicted on February 26, 1975, in the Pulaski County Circuit Court, Pulaski, Va.

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Vallan, Daniel, 6767 Tradewind Drive, Lantana, Fla., convicted on March 8, 1957, in the U.S. District Court, Western District, Fla.

Wagner, Martin D., 707 Oak Drive, Madison, Fla., convicted on May 14, 1970, in the U.S. District Court, Middle District of Florida, Tampa Division.

Walsh, Joseph E., 674 Vaughn, Memphis, Tenn., convicted on April 9, 1965, in the Criminal Court of Shelby County, Tenn.

Watkins, Floyd T., 5180 Sonoma Mountain Road, Santa Rosa, Calif., convicted on May 2, 1962, in the Superior Court of the State of California in and for the County of San Diego.

Webb, Bobbie, J., 19681 Nadol Drive, Southfield, Mich., convicted on October 21, 1965, in the U.S. District Court, Eastern District of Michigan, Southern Division, Detroit, Mich.

Western, Guy G., 2166 West Washington Street, West Bend, Wis., convicted on July 28, 1971, in the Circuit Court, Outagamie County, Appleton, Wis.

Whitaker, George H., 210 Cornell Drive, Sanford, N.C., convicted on January 31, 1967, in the Orange County District Court, N.C.; on January 29, 1968, in the Wake County Superior Court, N.C.; and on March 19, 1973 in the Lee County Superior Court, N.C.

Williams, Billy Joe, Route 2, Box 367, Cottondale, Ala., convicted on June 17, 1966, in the Tuscaloosa Circuit Court, Tuscaloosa, Ala.

Zimmerman, Larry D., 1204 Camino Flora, Farmington, N. Mex., convicted on November 14, 1973, in the U.S. District Court, Northern District of Texas, Fort Worth Division.

Signed at Washington, D.C., this 30th day of October 1978.

JOHN G. KROGMAN,
Acting Director, Bureau of Alcohol, Tobacco, and Firearms.

[FR Doc. 78-31222 Filed 11-3-78; 8:45 am]

[1505-01-M]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 113 (Rev. 6)]

DISTRICT DIRECTORS

Delegation of Authority

Correction

In FR Doc. 78-27608 appearing on page 45496 in the issue of Monday, October 2, 1978, in the 3d column, a sentence was inadvertently omitted after paragraph 3. The last sentence of that document should read, "This Order supersedes Delegation Order No. 113 (Rev. 5) issued July 2, 1978.".

[1505-01-M]

FORM 990, RETURN OF ORGANIZATION EXEMPT FROM INCOME TAX

Proposed Revision

Correction

In FR Doc. 78-90684 appearing at page 50769 in the issue for Tuesday, October 31, 1978, "Form 990, Return of Organization Exempt from Income Tax" was incorrectly printed. Form 990 is reprinted below as it should have appeared.

[1505-01-C]

Form **990** — Department of the Treasury, Internal Revenue Service

Return of Organization Exempt from Income Tax

Under section 501(c) (except private foundation), 501(e) or (f) of the Internal Revenue Code

19

For the calendar year 19 , or fiscal year beginning , 19 , and ending , 19

Use IRS label. Otherwise, please print or type.	Name of organization	A Employer identification number (see instructions)
	Address (number and street)	B If exemption application is pending check here ▶ ☐
	City or town, State, and ZIP code	C If address changed check here ▶ ☐
		D Fair market value of assets at end of year (see instructions) ▶

E Check applicable box—Exempt under section ▶ ☐ 501(c) ( ) (insert number), ☐ 501(e) OR ☐ 501(f).

F Is this a group return (see Instruction K) filed for affiliates? ☐ Yes ☐ No. Is this a separate return filed by a group affiliate? ☐ Yes ☐ No. If "Yes" to either, give four-digit group exemption number ▶

Note: If your gross receipts are: (a) normally not more than $10,000 (see instruction U), check here ☐ and do not complete the rest of this return (see Instruction C), OR (b) $25,000 or less (but normally more than $10,000), check here ☐ and complete ONLY the shaded items in Parts I, II and IV and all of Parts III and V (see Instruction D).

All section 501(c)(3) organizations must also complete Schedule A (Form 990) and attach it to this return.

Part I Analysis of Revenue, Expenses and Fund Balances

		Total	These columns are strictly optional—see Instructions: Restricted	Unrestricted
Revenue	1 Contributions, gifts, grants and similar amounts received:			
	(a) Directly from the public			
	(b) Through professional fundraisers			
	(c) As allotments from fundraising organizations			
	(d) As government grants			
	(e) Other			
	(f) Total (add lines 1(a) through 1(e)) (attach schedule—see instructions)			
	2 Membership dues and assessments			
	3 Interest			
	4 Dividends			
	5 (a) Gross rents			
	(b) Less: Rental expenses			
	(c) Net rental income			
	6 Royalties			
	7 Capital gains:			
	(a) Gross amount received from sale of assets other than inventory			
	(b) Less: Cost or other basis and sales expenses of assets sold			
	(c) Net gain/loss (attach schedule)			
	8 (a) Gross sales			
	(b) Less: Returns and allowances			
	(c) Less: Cost of goods sold (attach schedule)			
	(d) Gross profit (loss)			
	9 Other revenue (state nature):			
	(a)			
	(b)			
	(c)			
	(d)			
	(e) Total (add lines 9(a) through 9(d))			
	10 Total revenue (add lines 1(f), 2, 3, 4, 5(c), 6, 7(c), 8(d) and 9(e))			
Expenses	11 Fundraising (from line 38(B))			
	12 Program services (from line 38(C))			
	13 Management and general (from line 38(D))			
	14 Total expenses (add lines 11 through 13)			
Fund Balances	15 Excess (deficit) for the year (subtract line 14 from line 10)			
	16 Fund balances or net worth, beginning of year (from line 61(A))			
	17 Other changes in fund balances or net worth (attach explanation)			
	18 Fund balances or net worth, end of year (add lines 15, 16 and 17)			

FOR DISCUSSION PURPOSES ONLY

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Form 990 (19) Page 2

Part II Allocation of Expenses by Function

Note: Do not include amounts reported on lines 5(b), 7(b) and 8(c) of Part I.	(A) Total	(B) Fundraising	(C) Program services	(D) Management and general
Expenses				
19 Contributions, gifts, grants and similar amounts awarded (attach schedule)				
20 Benefits disbursed to or for members				
21 Compensation of officers, directors and trustees				
22 Other salaries and wages				
23 Pension plan contributions (enter amount of plans ▶.....)				
24 Other employee benefits				
25 Payroll taxes				
26 Fees for fundraising				
27 Other professional services				
28 Interest				
29 Occupancy				
30 Rental and maintenance of equipment				
31 Printing and postage				
32 Telephone				
33 Supplies				
34 Travel and entertainment				
35 Other expenses (attach schedule)				
36 Total expenses before depreciation (add lines 19 through 35)				
37 Depreciation, depletion, etc.				
38 Grand total (add lines 36 and 37). Enter here and on lines 11 through 13				

Part III List of Officers, Directors and Trustees (See Instructions)

(A) Name and address	(B) Title and time devoted to position	(C) Compensation	(D) Contributions to employee benefit plans	(E) Expense account and other allowances

FOR DISCUSSION PURPOSES ONLY

Form 990 (19) Page 3

Part IV Balance Sheet

Assets	(A) Beginning of tax year	(B) End of tax year
39 Cash:		
(a) Savings and interest-bearing accounts		
(b) Other		
40 Accounts receivable ▶..... less allowance for doubtful accounts ▶.....		
41 (a) Notes receivable (attach schedule) ▶..... less allowance for doubtful accounts ▶.....		
(b) Loans to officers, directors and trustees (attach schedule)		
42 Inventories		
43 Government obligations:		
(a) U.S. and instrumentalities		
(b) State, subdivisions thereof, etc.		
44 Investments in nongovernmental bonds, etc. (attach schedule)		
45 Investments in corporate stocks (attach schedule)		
46 Mortgage loans (number of loans ▶.....)		
47 Other investments (attach schedule)		
48 Depreciable (depletable) assets (attach schedule):		
(a) Beginning assets ▶..... less accumulated depreciation ▶.....		
(b) Ending assets ▶..... less accumulated depreciation ▶.....		
49 Land		
50 Other assets (attach schedule)		
51 Total assets		
Liabilities		
52 Accounts payable		
53 Contributions, gifts, grants, etc., payable		
54 (a) Bonds and notes payable (attach schedule)		
(b) Mortgages payable		
(c) Loans from officers, directors and trustees (attach schedule)		
55 Other liabilities (attach schedule)		
56 Total liabilities		
Fund Balances and Net Worth		

Note: You must complete this section of the balance sheet based on the method of accounting you normally use. Please check either "Fund Accounting" or "All Others" and provide the information requested under the method you have checked.

Fund Accounting	All Others		
Check here ▶ ☐	Check here ▶ ☐		
57 Current funds:			
(a) Unrestricted			
(b) Restricted			
58 Land, buildings and equipment	Capital stock or trust principal		
59 Endowment and similar funds	Paid-in or capital surplus		
60 Other	Retained earnings or accumulated income		
61 Total fund balances	Total net worth		
62 Total liabilities and fund balances/net worth			

FOR DISCUSSION PURPOSES ONLY

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Form 990 (19) Page 4

Part V Statements Regarding Certain Activities	Yes	No
63 Describe briefly the nature of the activities conducted in accomplishing your exempt purpose(s):		
64 Have you engaged in any activities not previously reported to the Internal Revenue Service? If "Yes," attach a detailed description of such activities.		
65 Have any changes not previously reported to the Internal Revenue Service been made in your organizing or governing documents? If "Yes," attach a copy of the changes.		
66 (a) Did you have unrelated business gross income of $1,000 or more during the year covered by this return?		
(b) Have you filed a tax return on Form 990–T, Exempt Organization Business Income Tax Return, for this year?		
(c) If you have gross sales or receipts from business activities not reported on Form 990–T, attach a statement explaining your reason for not reporting them on Form 990–T.		
67 Was there a liquidation, dissolution, termination, or substantial contraction during the year (see instructions)? If "Yes," attach a schedule of the dispositions for the year showing type of assets disposed of, the dates disposed, the cost or other basis, the fair market value on dates of disposition and the names and addresses of the recipients of the assets distributed.		
68 Are you related (other than by association with a statewide or nationwide organization) through common membership, governing bodies, trustees, officers, etc., to any other exempt or nonexempt organization (see instructions)? If "Yes," enter the name of organization ▶ ..... and check whether it is ☐ exempt OR ☐ nonexempt.		
69 (a) Enter amount expended, if any, directly or indirectly for political purposes		
(b) Did you file Form 1120–POL, U.S. Income Tax Return of Certain Political Organizations, for this year?		
70 Did your organization receive donated services or the use of facilities or equipment at no charge or at substantially less than fair rental value? If "Yes," you may if you choose indicate the value of such services or use here. Do not include this amount elsewhere on this return ▶		
The following statements should be completed ONLY by the organizations indicated.		
71 Section 501(c)(5) or (6) organizations.—Did you expend any amounts in connection with any attempt to influence the general public, or segments thereof, with respect to legislative matters or referendums (see instructions and section 1.162–20(c) of the Income Tax Regs.)? If "Yes," enter the total amount expended for this purpose		
72 Section 501(c)(7).—Enter amount of:		
(a) Initiation fees and capital contributions included on line 10		
(b) Gross receipts from general public from use of club facilities included in line 10 (see instructions)		
(c) Does your governing instrument or any written policy statement provide for discrimination against any person because of race, color or religion?		
73 Section 501(c)(12) organizations—Enter:		
(a) The total amount of gross income received from members or shareholders		
(b) The total amount of gross income received from other sources (do not net amounts due or paid to other sources against amounts due or received from them)		
74 *Public interest law firm.*—Attach information required by specific instruction for line 74.		

FOR DISCUSSION PURPOSES ONLY

Please Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

▶ Signature of officer Date

▶ Title

▶ Paid preparer's signature (see instructions)

▶ Paid preparer's address (or employer's name and address)

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[4810-28-M]

Office of Revenue Sharing

ENTITLEMENT PERIOD EIGHT

Final Date for Adjustment Demands

Section 102(b) of the State and Local Fiscal Assistance Act of 1972 as amended by § 6(e)(2) of the State and Local Fiscal Assistance Amendments of 1976 (Pub. L. 94-488; 90 Stat. 2347; 31 U.S.C. 1221) provides that for entitlement periods beginning with Entitlement Period Eight, no adjustment shall be made to increase or decrease a payment for such entitlement periods, unless a demand therefore shall have been made by such government or the Secretary of the Treasury within one year of the end of the entitlement period with respect to which the payment was made.

If a demand for an adjustment to a government's allocation for Entitlement Period Eight has not been made by the recipient government or the Secretary of the Treasury by September 30, 1978, no adjustment shall be made to increase or decrease its payments for that entitlement period.

An entry in the FEDERAL REGISTER of December 9,1976 (41 FR 53882) gave notice that the Office of Revenue Sharing will honor demands by recipient governments or the Secretary up to and including September 30, 1978. This notice finalizes the Entitlement Period Eight allocations to recipient governments for which demands for adjustment were received by the Office of Revenue Sharing on or before September 30, 1978. Exempted from this closing date are all demands for adjustment received from governments or the Secretary by the September 30, 1978 deadline and which are currently pending with the Office of Revenue Sharing. These demands with their supporting documentation will be researched and a decision on the data challenge will be rendered. Any allocation adjustments required by these still pending data challenges received by the September 30, 1978 deadline will be made by the Office of Revenue Sharing.

For further information contact: Matthew Butler, Manager, Data and Demography Divison, Office of Revenue Sharing, 2401 E Street NW., Washington, D.C. 20226, 202-634-5166.

Dated: October 31, 1978.

BERNADINE DENNING,
Director,
Office of Revenue Sharing.

[FR Doc. 78-31265 Filed 11-3-78; 8:45 am]

[4810-22-M]

Office of the Secretary

CERTAIN STEEL WIRE NAILS FROM CANADA

Antidumping; Determination of Sales at Less Than Fair Value and Final Discontinuance of Investigation

AGENCY: Treasury Department.

ACTION: Determination of sales at less than fair value and final discontinuance.

SUMMARY: This notice is to advise the public that based upon an antidumping investigation it has been determined that certain steel wire nails from Canada are being sold at less than fair value within the meaning of the Antidumping Act, 1921. Sales at less than fair value generally occur when the price of merchandise for exportation to the United States is less than the price of such or similar merchandise sold in the home market. This proceeding is being referred to the United States International Trade Commission for a determination concerning injury to an industry in the United States. In the case of two manufacturers the investigation is being discontinued based upon minimal margins and assurances that prices have been revised.

EFFECTIVE DATE: November 6, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Michael Ready, Operations Officer, Duty Assessment Division, United States Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, 202-566-5492.

SUPPLEMENTARY INFORMATION: On November 21, 1977, information was received in proper form pursuant to §§ 153.26 and 153.27, Customs Regulations (19 CFR 153.26 and 153.27), indicating that steel wire nails from Canada are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the Act"). This information was submitted by counsel on behalf of Atlantic Steel Co; Bethlehem Steel Corp.; Armco Steel Corp.; CF&I Steel Corp.; Keystone Steel & Wire; Northwestern Steel & Wire; and, the Penn-Dixie Steel Corp. On the basis of this information and subsequent preliminary investigation by the Customs Service, an "Antidumping Proceeding Notice" was published in the FEDERAL REGISTER of December 29, 1977 (42 FR 64942). A "Withholding of Appraisement Notice" was published in the FEDERAL REGISTER of July 10, 1978 (43 FR 29654).

For purposes of this notice, the term "certain steel wire nails" refers to steel wire brads, nails, spikes, staples and tacks of one-piece construction which are one inch or more in length and 0.065 inch or more in diameter.

DETERMINATION OF SALES AT LESS THAN FAIR VALUE AND FINAL DISCONTINUANCE OF ANTIDUMPINMG INVESTIGATION

On the basis of the information developed in Customs' investigation and for the reasons noted below, pursuant to section 201(a) of the Act (19 U.S.C. 160(a)), I hereby determine that the purchase price of certain steel wire nails, other than those produced by Tree Island Steel Co., Ltd. and the Steel Co. of Canada, Ltd. (Stelco) for export to the United States, is less, or is likely to be less, than the fair value, and thereby the foreign market value, of such or similar merchandise. In the case of such merchandise from Tree Island and Stelco, I hereby discontinue the investigation.

STATEMENT OF REASONS ON WHICH THIS DETERMINATION AND DISCONTINUANCE IS BASED

a. *Scope of the investigation.* Over 78 percent of the imports of the subject merchandise from Canada were manufactured by Sivaco Wire & Nail Co. (Sivaco), The Steel Co. of Canada, Ltd. (Stelco), Tree Island Steel Co., Ltd. (Tree Island), and Titan Steel & Wire Co., Ltd. (Titan). The investigation therefore was limited to sales by these four exporters.

b. *Basis of comparison.* For the purposes of this determination the basis of comparison was between purchase price or exporter's sales price, as appropriate, and the adjusted home market price of such or similar merchandise. Purchase price, as defined in section 203 of the Act (19 U.S.C. 162), was used in the case of sales made to unrelated customers in the United States. Exporter's sales price, as defined in section 204 of the Act (19 U.S.C. 163), was used in the case of certain sales made by Tree Island to related U.S. purchasers within the meaning of section 207 of the Act (19 U.S.C. 166). Home market prices, as defined in § 153.2, Customs Regulations (19 CFR 153.2), were used for all four companies since such or similar merchandise was sold in the home market in sufficient quantities to provide an adequate basis for comparison.

In accordance with § 153.31(b), Customs Regulations (19 CFR 153.31(b)), pricing information was obtained concerning imports and home market sales during the period July 1, through December 31, 1977.

c. *Purchase price.* For the purposes of this determination, purchase price was calculated on the basis of sales

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prices to unrelated purchasers with deductions, where applicable, for freight charges, U.S. customs duty, brokerage, and quantity discounts, discounts granted to customers at different levels of trade, early payment discounts and discounts granted for short term exchange rate fluctuations. An adjustment was made, where applicable, for drawback of Canadian customs duties paid on imported wire rods used to manufacture the nails exported to the U.S. during the investigatory period.

d. *Exporter's sales price.* For the purposes of this determination, exporter's sales price was calculated on the basis of the selling price to related U.S. customers, with deductions, where appropriate, for freight, handling, customs duty, early payment discount, and selling expenses. An addition was made for drawback of Canadian customs duty paid on imported wire rods consumed in the manufacture of steel wire nails for export to the United States.

e. *Home market prices.* For the purposes of this determination, the home market prices were calculated on the basis of the selling prices to unrelated purchasers in Canada. Deductions were made, where applicable, for freight charges, freight allowances, selling commissions, and discounts offered on sales to other nail manufacturers and certain distributors, primarily in Western Canada. In making comparisons using exporter's sales price, a further deduction was made pursuant to § 153.10(b), Customs Regulations (19 CFR 153.10(b)), for actual selling expenses incurred in the home market up to the amount of the selling expenses incurred in the United States market. Adjustments were made, where applicable, for differences in the merchandise compared, and for differences in level of trade.

An adjustment for a level of trade difference was claimed and granted in the case of sales by Tree Island, pursuant to § 153.15, Customs Regulations (19 CFR 153.15). During the period of investigation Tree Island sold and shipped steel wire nails both to dealers and distributors in the United States, but only shipped to dealers in Canada. However, a contract was signed by Tree Island during the period of investigation with a Canadian customer at the distributor level, with shipments subsequent to that period in sufficiently large quantities and at the contract prices. Therefore, it has been determined that the dealer's prices in Canada during the investigative period should be adjusted to reflect a distributor level of trade to compare with U.S. distributor level sales by Tree Island. The adjustment was calculated as the difference in prices between sales to the Canadian customer at the distributor level and sales to dealers purchasing in similar quantities.

An adjustment was requested by Sivaco under § 153.10, Customs Regulations (19 CFR 153.10), for a number of selling expenses incurred in the home market, including salesmen salaries, rent and other general office expenses. Such expenses have not been shown to be directly related to the sales under investigation and therefore no adjustment has been made.

A request was made that the Canadian home market be considered two markets and that sales to the United States be compared to prices prevailing in the Canadian market corresponding to the location of the sale in the United States. Although section 205(a) of the Act (19 U.S.C. 164(a)) recognizes that there may be more that one set of prices prevailing in the country of exportation, both the Act and § 153.16, Customs Regulations (19 CFR 153.16), contemplate the calculation of one home market price for purposes of making fair value comparisons. Therefore, the request was denied and the home market price was calculated as a weighted average of prices charged to customers in Canada.

f. *Results of comparison.* Using the above criteria, the purchase prices or exporter's sales prices were found to be lower than the home market price of such or similar merchandise in certain instances. Information was received on the following approximate percentages of the nails shipped to the United States during the period of investigation for each manufacturer: 80 percent for Sivaco; 78 percent for Stelco; 76 percent for Tree Island; and 97 percent for Titan. Margins ranged from .03 to 45.4 percent for Sivaco, from .06 to 19.7 precent for Stelco, from .01 to 58.5 percent for Tree Island, and from .04 to 15.6 percent for Titan. Weighted-average margins for each firm's sales compared were 5.3 percent for Sivaco, 1.5 percent for Stelco, 0.9 percent for Tree Island and 2.5 percent for Titan. In the case of Tree Island and Stelco, the weighted-average margin is considered to be minimal in relation to the total volume of exports. In addition, formal assurances have been received from Tree Island and Stelco that they would make no future sales at less than fair value within the meaning of the Act.

The Secretary has provided an opportunity to known interested persons to present written and oral views pursuant to § 153.40, Customs Regulations (19 CFR 153.40).

The U.S. International Trade Commission is being advised of this determination.

The order to withhold appraisement on the subject merchandise from Canada, cited above and published in the FEDERAL REGISTER on July 10, 1978 (43 FR 29654), is hereby terminated with respect to Tree Island Steel Co. Ltd., and the Steel Co. of Canada, Ltd., effective upon publication of this notice.

This determination and discontinuance are being published pursuant to section 201(d) of the Act (19 U.S.C. 160(d)).

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

CTOBER 30, 1978.

[FR Doc. 78-31221 Filed 11-3-78; 8:45 am]

[4810-22-M]

MARINE RADAR SYSTEMS FROM THE UNITED KINGDOM

Antidumping Proceeding

AGENCY: U.S. Treasury Department.

ACTION: Initiation of Antidumping Investigation.

SUMMARY: This notice is to advise the public that a petition in proper form has been received and an antidumping investigation is being initiated for the purpose of determining whether imports of certain marine radar systems from the United Kingdom are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended. Sales at less than fair value generally occur when the prices of the merchandise sold for exportation to the United States are less than the prices in the home market.

EFFECTIVE DATE: November 6, 1978.

FOR FURTHER INFORMATION CONTACT:

David P. Mueller, Operations Officer, U.S. Customs Service, Office of Operations, Duty Assessment Division, Technical Branch, 1301 Constitution Avenue NW., Washington, D.C. 20229, 202-566-5492.

SUPPLEMENTARY INFORMATION: On October 12, 1978, information was received in proper form pursuant to §§ 153.26 and 153.27, Customs Regulations (19 CFR 153.26, 153.27), from counsel on behalf of Raytheon Marine Co., Manchester, N.H., alleging that certain marine radar systems from the United Kingdom are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.).

The merchandise under consideration is described as "X-band radar systems provided for in item 685.60, Tariff Schedules of the United States, designed principally for boat or ship installation with direct current power supply from 6 to 60 volts, having a maximum viewable display dimension of less than 11 inches, and having an antenna assembly with transmitter-receiver permanently affixed weighing less than 80 pounds, and parts thereof; all the foregoing, whether such radar system components are imported together as units or separately."

Petitioner alleges that the subject merchandise is imported at prices from 18 percent to 38 percent below fair value, with fair value based on a comparison of exporter's sales price with prices to customers in the home market.

There is evidence on record concerning injury to, or likelihood of injury to, an industry in the United States. This information indicates that the profitability of this product for the petitioner, the sole U.S. producer of this merchandise, is at an unacceptably low level; that production and sales of domestically-produced radar systems have declined significantly between 1975 and 1977; and that imports from the United Kingdom are substantially underselling the comparable domestic products, which is accounted for in whole or in part by the alleged margins of sales at less than fair value. (The share of domestic consumption accounted for by imports of the subject merchandise from the United Kingdom is slightly more than one-third.) Also, man-hours used in the production of this merchandise have declined appreciably and capacity utilization is currently at an extremely low level. Furthermore, prices of domestically-produced small ship marine radar systems have been depressed or suppressed in the face of increased costs.

Having conducted a summary investigation as required by section 153.29 of the Customs Regulations (19 CFR 153.29) and having determined as a result thereof that there are grounds for so doing, the U.S. Customs Service is instituting an inquiry to verify the information submitted and to obtain the facts necessary to enable the Secretary of the Treasury to reach a determination as to the fact or likelihood of sales at less than fair value.

This notice is published pursuant to section 153.30 of the Customs Regulations (19 CFR 153.30).

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

OCTOBER 31, 1978.

[FR Doc. 78-31277 Filed 11-3-78; 8:45 am]

[4810-40-M]

[Supplement to Department Circular, Public Debt Series—No. 25-78]

TREASURY NOTES

Series K—1982

NOVEMBER 1, 1978.

The Secretary of the Treasury announced on October 31, 1978, that the interest rate on the notes designated Series K-1982, described in Department Circular, Public Debt Series No. 25-78, dated October 26, 1978, will be 9¼ percent. Interest on the notes will be payable at the rate of 9¼ percent per annum.

PAUL H. TAYLOR,
Fiscal Assistant Secretary.

SUPPLEMENTARY STATEMENT

The announcement set forth above does not meet the Department's criteria for significant regulations and, accordingly, may be published without compliance with the Departmental procedures applicable to such regulations.

[FR Doc. 78-31285 Filed 11-3-78; 8:45 am]

[4810-25-M]

EFFECTS OF IMPORTED ARTICLES ON THE NATIONAL SECURITY

Publication of Report of Investigation to Determine Effects on National Security of Metal Fastener Imports

NOVEMBER 1, 1978.

Notice is hereby given pursuant to section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862), and 31 CFR 9.9, of the publication of a report by the Secretary of the Treasury to the President of an investigation under section 232 of the Trade Expansion Act of 1962. At the President's direction, the Secretary of the Treasury undertook this investigation to determine the effects on the national security of imports of iron and steel lag screws and bolts, bolts (except mine-roof bolts), nuts and large screws specified in TSUS items 646.48, 646.54, 646.56, and 646.63 (referred to collectively as "screws, bolts, and nuts"). The report, dated October 18, 1978, states that, as a result of the investigation, the Secretary has concluded that screws, bolts, and nuts are not being imported in such quantities or under such circumstances as to threaten to impair the national security. Accordingly, the report recommends that the President take no action under section 232 of the Trade Expansion Act of 1962 to limit imports of screws, bolts, and nuts. The report further states that its conclusion in no way prejudges the merits of the International Trade Commission (ITC) investigation of imports of screws, bolts, and nuts under section 201 (the escape clause) of the Trade Act of 1974 in which a determination was announced by the ITC on October 26, 1978.

The Secretary's report to the President was based on an investigation of the effect of screws, bolts, and nuts imports on the national security conducted by the General Counsel of the Treasury Department. The Secretary's report to the President and the General Counsel's report of his investigation are published herein, and copies thereof are available through the Office of Public Affairs, Department of the Treasury, by contacting the individual listed at the conclusion of this notice. Documents received from other Federal agencies and the public in the course of this investigation are available for public reading at the Library of the Treasury Department, Room 5030, Main Treasury, 15th and Pennsylvania Avenue NW., Washington, D.C.

The proincipal authors of these reports were Robert H. Mundheim, Gary C. Hufbauer, Clyde C. Crosswhite, Leonard E. Santos, Richard B. Self, and Russell L. Munk of the office of the Secretary of the Treasury. Contact John P. Plum, 202-566-2615.

THE SECRETARY OF THE TREASURY,
Washington 20220, October 18, 1978.

MEMORANDUM TO THE PRESIDENT

Subject: Report on Section 232 Investigation of Metal Fastener Imports

On February 10, 1978, you directed me to investigate, pursuant to Section 232 of the Trade Expansion Act of 1962, whether screws, bolts and nuts* imports are entiring United States in such quantities or under such circumstances as to threaten to impair the national security. I have completed that investigation and have concluded that imports of screws, bolts and nuts do not pose such a threat.

In 1975, the metal fastener industry first petitioned the International Trade Commission (ITC) for escape clause relief but in that case the ITC reached a negative determination on injury. In 1977, the ITC opened a second escape clause investigation, and in December 1977, the ITC found injury and recommended tariff relief. You rejected that recommendation on the grounds that it would be inflationary and not in the public interest. On August 3, 1978, the ITC opened a third escape clause investigation which is now in progress. I understand that the ITC will announce its decision on October 26, 1978. My conclusion that imports of screws, bolts and nuts do not pose a threat to the national security in no way pre-judges the merits of the current escape clause investigation.

I have been guided in the conduct of this investigation by the central legal standard

* The term "screws, and nuts" as used in this report means iron and steel lag screws and bolts, bolts (except mine-roof bolts), nuts and large screws specified in TSUS items 646.48, 646.54, 646.56 and 646.63.

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of Section 232: do imports of screws, bolts and nuts threaten to impair the national security. Congress did not intend that Section 232 become an alternative method to Section 201 of the Trade Act of 1974 of achieving relief for industries which believe themselves injured. The health of a particular industry affected by the imported article is not necessarily determinative of the existence of a national security threat.

Although there is clear evidence of increasing screws, bolts and nuts imports into the U.S. and a concomitant decline in U.S. employment in that segment of the metal fastener industry, the evidence does not lead to the conclusion that our increasing reliance on imports threatens to impair the national security.

The basis of this conclusion is that:

—The only scenario for which a threat to the national security has been articulated is based on World War II—type of conflict. Although wartime scenarios are not within our expertise, we think the likelihood of this scenario is debatable

—Assuming a World War II—type of scenario, there is insufficient evidence to document the inadequacy of screws, bolts and nuts production to meet U.S. needs

—The available data does not distinguish between "specials" and "standards" fastener wartime requirements; this distinction is important in view of the fact that the United States currently enjoys a trade surplus in specials screws, bolts and nuts and ship, military vehicle and automotive fasteners are practically all specials; there is no adequate data on exclusively military needs for screws, bolts and nuts in case of a war

—The national security threat articulated for a wartime scenario was based on the questionable assumptions that:

civilian needs for screws, bolts and nuts would increase;

domestic productive capacity could not be significantly expanded; and

foreign supplies would be seriously interrupted.

Finally, the remedies available to limit imports of screws, bolts and nuts are very expensive. Direct import restraints or the stockpiling of either screws, bolts and nuts or their production equipment would have a significant inflationary impact on the U.S. economy. Our finding is buttressed by our weighing the inflationary costs implicit in available remedies against the likelihood of the wartime scenario in which a national security threat is said to arise.

FINDINGS

I find that screws, bolts and nuts are not being imported in such quantities or under such circumstances as to threaten to impair the national security.

RECOMMENDATION

I, therefore, recommend that no action be taken under Section 232 of the Trade Expansion Act to reduce United States imports of screws, bolts and nuts.

W. MICHAEL BLUMENTHAL.

REPORT OF INVESTIGATION UNDER SECTION 232 OF THE TRADE EXPANSION ACT, 19 U.S.C. SECTION 1862, AS AMENDED

I. INTRODUCTION

Section 232(b) of the Trade Expansion Act of 1962 authorizes the President to take action to reduce imports of iron and steel lag screws and bolts, bolts (except mine-roof bolts), nuts and large screws specified in TSUS items 646.48, 646.54, 646.56, and 646.63 (hereinafter referred to collectively as "screws, bolts and nuts") if the Secretary of the Treasury finds that screws, bolts, and nuts are being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security.

In 1975, the metal fastener industry first petitioned the International Trade Commission (ITC) for escape clause relief but in that case the ITC reached a negative determination on injury. In 1977, the ITC opened a second escape clause investigation, and in December 1977, the ITC found injury and recommended tariff relief. The recommendation was rejected by the President on the grounds that it would be inflationary and not in the public interest. The directive for the current national security investigation was issued subsequent to that decision. On August 3, 1978, the ITC opened a third escape clause investigation which is now in progress. The ITC plans to announce its decision on October 26, 1978.

This investigation was initiated by the Secretary of the Treasury on February 10, 1978, pursuant to the President's directive to determine whether imports of screws, bolts, and nuts threaten to impair the national security. In keeping with the terms of the statute, this investigation has focused on whether imports of screws, bolts, and nuts pose such a national security threat rather than whether such imports have affected the health of the metal fastener industry in the United States. While the latter inquiry is not necessarily irrelevant to a national security finding, we have been mindful of the fact that Congress did not intend that section 232 become an alternative to section 201 of the Trade Act of 1974 as a means of providing relief to industries which believe themselves injured.

In summary, the conclusion of this report is that screws, bolts, and nuts are not being imported in such quantities and under such circumstances as to threaten to impair the national security. This conclusion is based on the absence of persuasive evidence indicating that the Nation's requirements for screws, bolts, and nuts cannot be satisfied in probable emergency scenarios and on the failure of available evidence to identify with reasonable precision the need for and the capacity to produce the principal categories of screws, bolts, and nuts in an emergency.

In the conduct of this investigation, the Treasury Department has requested and received data from the Federal Preparedness Agency (FPA), and the Departments of Defense, Commerce, and Labor. In response to an invitation for public comments published in the FEDERAL REGISTER on March 1, 1978, the Fastener Institute of Japan, the Japan Machinery Exporters' Association, and the United States Fastener Manufacturing Group submitted comments to the Treasury Department concerning the investigation. Several interagency meetings were held to discuss the case and consider the application of section 232 to imports of screws, bolts, and nuts. Agencies represented at these meetings included the State, Treasury, Defense, Commerce, and Labor Departments as well as the Council on Wage and Price Stability and the FPA.

II. STATUS OF METAL FASTENER INDUSTRY AND IMPORTS

Screws, bolts, and nuts are basic to the United States economy. The two broad categories of screws, bolts, and nuts are "standard" and "specials." There are about 500,000 sizes, shapes, strengths, and finishes of standards and 1.5 million specials. Standard screws, bolts, and nuts are the common fasteners for multipurpose uses; practically all imported screws, bolts, and nuts are standards. Specials screws, bolts, and nuts are made to specification. Practically all ship, military vehicle, and automotive metal fasteners are specials. The United States metal fastener industry now concentrates on producing specials and exports substantial quantities falling in this category.

During the first 6 months of 1978, the United States production of screws, bolts, and nuts for domestic use and export was approximately 67 percent of the total amount of screws, bolts, and nuts consumed in the United States. During this period, the United States imported approximately $181 million of screws, bolts, and nuts and exported approximately $60 million of these items. The U.S. screws, bolts, and nuts imports (primarily of standards) have more than doubled in the past 9 years. Of this amount, Japan provides approximately 60 percent to 70 percent. According to the Commerce Department, idle production machinery accounts for 53.3 percent (by pounds) of the total 1978 U.S. production capacity for screws, bolts, and nuts. Bolts/screws production capacity in the United States is now idle. Workers employed in the production of screws, bolts, and nuts have declined by about 44 percent over the past 9 years. Increasingly, U.S. producers have changed their production lines to manufacture specials screws, bolts, and nuts.

III. AVAILABLE EVIDENCE FAILS TO ESTABLISH THAT IMPORTS OF SCREWS, BOLTS AND NUTS POSE A THREAT TO THE NATIONAL SECURITY OF THE UNITED STATES

There is no suggestion that imports of screws, bolts, and nuts threaten to impair the national security under current conditions. Screws, nuts, and bolts are not in short supply in the United States. Japan and the other suppliers of these items have shown themselves to be dependable sources of supply. While imports of screws, bolts, and nuts do contribute to the U.S. trade deficit, they are not a major factor in that deficit. Moreover, such imports do not appear to create the impression of U.S. vulnerability in the eyes of other countries or in the foreign exchange markets.

A study by staff members of the Economic Preparedness Division of FPA carried out in December 1978 and April 1978 has tentatively concluded that, despite current import levels, the United States could satisfy its "emergency requirements" for screws, bolts, and nuts, except in a "less favorable" case scenario in which a conventional war causes a subsantial, and at times total, cutoff of supplies of screws, bolts, and nuts from foreign sources other than Canada. We are not convinced by the assumptions and analysis leading to this latter conclusion. In December 1977, the FPA staff issued its study of metal fasteners as the first of a series of reports examining requirements for, and supplies of, selected essential industrial products in a national emergency. The report examines recent market trends, projects future domestic supply, estimates war time supply and compares these elements with "essential emergency requirements." The study was pepared as a possible basis for military stockpiling, and was not geared for the particular objectives of a section 232 investigation. In April 1978, the FPA staff prepared an addendum to the December 1977 study to the original study focussing on only screws, bolts, and nuts rather than on all metal fasteners.

Although the FPA staff study to some degree distinguishes between screws, bolts, and nuts used directly for military hardware and those which are used for nondefense essential requirements, the study grouped both categories into one for purposes of determining total wartime requirements. In the absence of a direct computation of defense needs in this sector, this failure to distinguish between the kinds and amounts of screws, bolts, and nuts used directly for militay hardware and the kinds and amounts of screws, bolts, and nuts used for other purposes is crucial. Had the distinction been made for purposes of gauging war-time requirements, the study might have found that the United States has sufficient capacity for its emergency (military and nondefense essential) needs even in a "less favorable" scenario since the United States now has a trade surplus with respect to specials screws, bolts, and nuts which are the predominant variety used for ships, tanks, and other military equipment. (Metal fasteners of the types used in aircraft and missiles are not included in screws, bolts, and nuts which are the subject of this study.)

The World War II-type of conventional war "less favorable" scenario appears implausible. But even if the plausibility of this scenario is conceded, the study's assessment of emergency requirements is unconvincing. In its analysis of this scenario the sudy concluded that U.S. domestic production capacity of screws, bolts, and nuts could not satisfy "emergency requirements" for both direct military applications and the economy as a whole. The "emergency requirements" projected in the study for a mobilization beginning in 1977 amount to 57 percent more than actual 1977 U.S. domestic consumption. This projection includes a 24 percent increase (from actual levels) in nondefense needs during the mobilization year even though the civilian economy would presumably be running on an austerity basis. Based on this projection of "emergency requirements," the study posits that serious shortages could only be avoided if imports of other countries were somehow readily available; the study regards stockpiling alternatives as impractical.

At least one failing of the FPA staff's projection of "essential emergency requirements" in time of a conventional war is the imprecision of the data available for gauging the Nation's needs in such circumstances. Existing data indicate that the United States currently enjoys a trade surplus in specials; this surplus would be available to help cover wartime needs. There are no projections available indicating what the military need for standards would be during a time of war. Neither are there any available projections indicating the shortage of standards which may be created in essential civilian industries. Implicit in the FPA staff's "less favorable" conventional war scenario is the assumption that there will be substantial, and at times total, cutoff of supplies of screws, bolts, and nuts from foreign sources except Canada. Yet during the Nation's most recent "war" experience, the Vietnamese conflict, imports of screws, bolts, and nuts were not interrupted. Furthermore, collective security arrangements are now being finalized to afford the United States the support of other countries for defense equipment and supplies.

Also present levels of production of screws, bolts, and nuts could be significantly and quickly increased in the event that imports of these goods from countries other than Canada were to be decreased or stopped altogether during a war. According to the Commerce Department, idle equipment capable of producing (in terms of pounds) the same amount of screws, bolts, and nuts as are now being domestically produced could be put back into production in 3 to 18 months, thus doubling present production levels. Equipment now producing screws, bolts, and nuts could be used for more hours each week, with corresponding increases in production. Preliminary information provided by the Labor Department indicates that operators for machines which produce screws, bolts, and nuts could, in many instances, be trained rapidly or obtained from a number of other manufacturing industries in an emergency.

The magnitude of the conventional war-related needs projected in the FPA staff study is highlighted by the comments submitted to the Treasury Department by the U.S. Fastener Manufacturing Group. The group estimates that total U.S. screws, bolts, and nuts production facilities operating at full capacity could produce only about half of the "emergency requirements" projected in the FPA staff study. Accordingly, it has recommended the imposition of restraints on imports (except from Canada) so that the industry can, over a period of 3 years, build sufficient capacity to meet all domestic peacetime requirements. However, even if the U.S. Government were to implement such restraints, capacity would be provided to meet only one-half of the conventional war requirements projected by the FPA staff. For the balance of those requirements, the group suggests that supply might be augmented under other statutory authority, such as the Defense Production Act, which authorizes stockpiling of finished goods and production equipment.

There are important economic costs inherent in these alternatives. Although cost calculations are tenuous, an "adequate" stockpile of screws, bolts, and nuts satisfying standards established by the FPA would involve a one-time budget cost of at least $2.9 billion. Moreover, given the large variety of screws, bolts, and nuts and the impossibility of projecting future re-

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quirements for a given type of fastener, as well as the fact that screws, bolts, and nuts are susceptible to deterioration if stored for substantial periods of time, it would appear uneconomic to spend large amounts of money on stockpiles of these items. The alternative of stockpiling production equipment probably would result in a one-time budget cost of at least $1.8 billion. Import restraints sufficiently restrictive to replace all peacetime imports with domestic production would increase cost to U.S. consumers of screws, bolts, and nuts by more than $500 million each year. The further need ultimately to provide comparable remedies for other industries which are similarly situated could also aggravate the inflationary impact of import restrictions. Under present circumstances the inflationary impact associated with such increased cost could itself pose a threat to the national security.

Adverse economic consequences may also flow from the possible reactions of our trading partner to such restrictions on imports of screws, bolts, and nuts. Any decision to impose import restrictions on screws, bolts, and nuts for national security reasons would have to take into account the possible adverse action of our trading partners. For example, it may be possible under GATT for them to withdraw concessions equivalent to those the United States would be imposing on imports of screws, bolts, and nuts.

IV. FINDINGS AND RECOMMENDATIONS

Finding

At a result of this investigation, I recommend that the following determination and recommendation be made by the Secretary of the Treasury and forwarded to the President: The investigation has established that there is insufficient probative evidence indicating that imports of screws, bolts, and nuts threaten to impair the national security.

Recommendation

I therefore recommend that no action be taken pursuant to section 232 of the Trade Expansion Act of 1962 to reduce the U.S. imports of screws, bolts, and nuts.

ROBERT H. MUNDHEIM,
General Counsel,
Department of the Treasury.

OCTOBER 18, 1978.

[FR Doc. 78-31055 Filed 11-3-78; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-43 (Sub-53F)]

ILLINOIS CENTRAL GULF RAILROAD CO.

Abandonment Near Danforth and Lula in Coahoma County, Miss.; Findings

Notice is hereby given pursuant to section 1a of the Interstate Commerce Act (49 U.S.C. 1a) that by a Certificate and Decision decided October 20, 1978, a finding, which is administratively final, was made by the Commission, Review Board No. 5, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in *Oregon Short Line Railroad Co.—Abandonment Goshen*, 354 ICC 584 (1978), the present and future public convenience and necessity permit the abandonment by the Illinois Central Gulf Railroad Co. of a line of railroad known as the Helena District (portion) extending from railroad milepost 6.37 at Danforth, Miss., to milepost 7.5 at Lula, Miss., a distance of 1.13 miles, in Coahoma County, Miss. A certificate of public convenience and necessity permitting abandonment was issued to the Illinois Central Gulf Railroad Co. Since no investigation was instituted, the requirement of § 1121.38(a) of the Regulations that publication of notice of abandonment decisions in the FEDERAL REGISTER be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (§ 1121.45 of the Regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed and served no later than November 21, 1978. The offer, as filed, shall contain information required pursuant to § 1121.38(b) (2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall become effective December 21, 1978.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-31289 Filed 11-3-78; 8:45 am]

[7035-01-M]

[Docket No. AB-12 (Sub-57F)]

SOUTHERN PACIFIC TRANSPORTATION CO.

Abandonment at Salem in Marion County, Oreg.; Findings

Notice is hereby given pursuant to section 1a of the Interstate Commerce Act (49 U.S.C. 1a) that by a Certificate and Decision decided October 20, 1978, a finding, which is administratively final, was made by the Commission, Review Board No. 5, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in *Oregon Short Line Railroad Co.—Abandonment Goshen*, 354 ICC 584 (1978), *Provided, however,* That applicant shall keep intact all of the right-of-way underlying the track, including all of the bridges and culverts for a period of 120 days from the effective date of this certificate and decision to permit any State or local government agency or other interested party to negotiate the acquisition for public use of all or any portion of the right-of-way, and *Provided, further,* That Southern Pacific Transportation Co. (SPT) may not exercise the authority granted herein until approval of the pending directly related application in Finance Docket No. 28839 and institution of operation thereunder, the present and future public convenience and necessity permit the abandonment by the Southern Pacific Transportation Co. of a line of railroad known as the Dallas Branch extending from railroad milepost 718.36 to railroad milepost 719.74 at Salem, a distance of 1.38 miles in Marion County, Oreg. A certificate of public convenience and necessity permitting abandonment was issued to the Southern Pacific Transportation Co. Since no investigation was instituted, the requirement of § 1121.38(a) of the Regulations that publication of notice of abandonment decisions in the FEDERAL REGISTER be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (§ 1121.45 of the Regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed and served no later than November 21, 1978. The offer, as filed, shall contain information required pursuant to § 1121.38(b) (2) and (3) of the Regulations. If no such offer is receivd, the certificate of public convenience and necessity authorizing abandonment shall become effective December 21, 1978.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-31290 Filed 11-3-78; 8:45 am]

[7035-01-M]

[Docket No. AB-7 (Sub-67F)]

STANLEY E. G. HILLMAN, TRUSTEE OF THE PROPERTY OF CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD CO., DEBTOR

Abandonment Near Cambria and Portage in Columbia County, Wis., Findings

Notice is hereby given pursuant to section 1a of the Interstate Commerce Act (49 U.S.C. 1a) that by a Certificate and Decision decided October 16, 1978, a finding, which is administratively final, was made by the Commission, Review Board No. 5, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in *Oregon Short Line Railroad Co.—Abandonment Goshen*, 354 ICC 584 (1978), and for public use as set forth in said decision, the present and future public convenience and necessity permit the abandonment by Stanley E. G. Hillman, Trustee of the Property of the Chicago, Milwaukee, St. Paul & Pacific Railroad Co., Debtor, of its line of railroad known as the Cambria to Portage Junction line extending from railroad milepost 165.7 near Cambria to railroad milepost 182.4 near Portage Junction, a distance of 16.7 miles in Columbia County, Wis. A certificate of public convenience and necessity permitting abandonment was issued to Stanley E. G. Hillman, Trustee of the Property of Chicago, Milwaukee, St. Paul & Pacific Railroad Co., Debtor. Since no investigation was instituted, the requirement of § 1121.38(a) of the Regulations that publication of notice of abandonment decisions in the FEDERAL REGISTER be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (§ 1121.45 of the Regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed and served no later than November 21, 1978. The offer, as filed, shall contain information required pursuant to § 1121.38(b) (2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall become effective December 21, 1978.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-31288 Filed 11-3-78; 8:45 am]

[7035-01-M]

[Docket No. AB-126]

WELLSVILLE, ADDISON & GALETON RAILROAD CORP.

Abandonment of Entire Line in Potter and Tioga Counties, Pa.; Correction; Findings

Notice is hereby given pursuant to section 1a(6)(a) of the Interstate Commerce Act (49 U.S.C. 1a(6)(a)) that by a decision served October 4, 1978, and the decision of the Commission, Review Board No. 5, entered on September 30, 1977, which is administratively final, stating that, the present and future public convenience and necessity permit the abandonment by the Wellsville, Addison & Galeton Railroad Corp. of its entire line of railroad extending from Galeton, in Potter County, to Elkland, in Tioga County, a distance of approximately 31.5 miles, and from Gaines Junction to Ansonia, in Tioga County, a distance of approximately 8.5 miles, together with approximately 6,500 feet of siding, all in the State of Pennsylvania. A certificate of abandonment will be issued to the Wellsville, Addison & Galeton Railroad Corp. based on the above-described finding of abandonment, 30 days after publication of this notice (Dec. 6, 1978), unless within 30 days from the date of publication, the Commission further finds that:

(1) A financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued; and

(2) It is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed for such reasonable time, not to exceed 6 months, as is necessary to enable such person or entity to enter into a binding agreement, with the carrier seeking such abandonment, to provide such assistance or to purchase such line and to provide for the continued operation of rail services over such line. Upon notification to the Commission of the execution of such an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in the Notice of the Commission entitled "Procedures for Pending Rail Abandonment Cases" published in the FEDERAL REGISTER on March 31, 1976, at 41 FR 13691, as amended by publication of May 10, 1978, at 43 FR 20072. All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

NOTE.—Corrected to show that by decision served Oct. 4, 1978, the entire Commission voted to reopen the proceeding on its own record and modify the prior decision dated Mar. 16, 1978, by eliminating imposition of the conditions for the protection of employees found in *Oregon Short Line Railroad Co.—Abandonment Goshen*, 354 ICC 76 (1977).

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-31287 Filed 11-3-78; 8:45 am]

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sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409), 5 U.S.C. 552b(e)(3).

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[6351-01-M]

1

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11 a.m., November 13, 1978.

PLACE: 2033 K Street NW., Washington, D.C., 8th floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market surveillance matters.

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254-6314.

[S-2231-78 Filed 11-2-78; 11:53 am]

[6740-02-M]

2

NOVEMBER 1, 1978.

FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: 10 a.m., November 8, 1978.

PLACE: 825 North Capitol Street NE., Washington, D.C., Room 9306.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

NOTE.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth F. Plumb, Secretary, telephone 202-275-4166.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers revelant to the items on the agenda. However, all public documents may be examined in the Office of Public Information.

GAS AGENDA—206TH MEETING, NOVEMBER 8, 1978, REGULAR MEETING (10 A.M.)

CAG-1. Docket No. RP79-3. Southern Natural Gas Co.
CAG-2. Docket No. RP72-41 (PGA No. 78-4a), Western Transmission Corp.
CAG-3. Docket No. G-17062, Estate of L. D. French.
CAG-4. Docket No. CI78-968, United Gas Pipe Line Co.
CAG-5. Docket No. CI76-701, Texaco Inc.
Docket No. CI78-640, Mesa Petroleum Co.
Docket No. CI78-1116, HNG Oil Co.
Docket No. CI76-38, Cities Service Co.
Docket No. CI78-1105, Atlantic Richfield Co.
Docket No. CI74-528, Exxon Corp.
CAG-6. Docket No. CP77-400, Sea Robin Pipeline Co.
Docket No. CP77-594, Tennessee Gas Pipeline Co.
CAG-7. Docket No. CP74-126, El Paso Natural Gas Co.
Docket No. CP74-162, Natural Gas Pipeline Co. of America.
Docket No. CP78-444, El Paso Natural Gas Co.
Docket No. CP78-445, El Paso Natural Gas Co. and Transcontinental Gas Pipe Line Corp.
Docket No. CP78-446, Michigan Wisconsin Pipe Line Co.
Docket No. CP78-447, El Paso Natural Gas Co.
Docket No. CP78-448, El Paso Natural Gas Co. and Transcontinental Gas Pipe Line Corp.
CAG-8. Docket No. CP78-423, Tennessee Gas Pipeline Co., a division of Tenneco Inc., Michigan-Wisconsin Pipe Line Co.
CAG-9. Docket No. CP78-338, Trunkline Gas Co.
Docket No. CP78-386, United Gas Pipe Line Co. Natural Gas Pipeline Co. of America, Texas Eastern Transmission Corp. Northern Natural Gas Co., and Trunkline Gas Co.
RP-1. Docket No. RP78-87, Texas Eastern Transmission Corp.

POWER AGENDA—206TH MEETING, NOVEMBER 8, 1978, REGULAR MEETING

CAP-1. Docket No. ER78-532, Illinois Power Co.
CAP-2. Docket No. ER78-579, New Bedford Gas & Edison Light Co.
CAP-3. Docket No. ER76-5, Indiana & Michigan Power Co.
CAP-4. Docket No. E-9578, Texas Power & Light Co.
CAP-5. Docket No. ER78-44, New England Power Co.
CAP-6. Docket No. ES78-52, Northwestern Public Service Co.
ER-1. Docket Nos. ER76-177, ER76-207, ER76-208, ER76-210, Southwestern Electric Power Co.
ER-2. Docket Nos. ER79-22, EL78-40, EL78-42, Georgia Power Co.
P-1. Project No. 2422, Brown—New Hampshire, Inc.

KENNETH F. PLUMB,
Secretary.

[S-2233-78 Filed 11-2-78; 11:53 am]

[6820-12-M]

3

NOVEMBER 2, 1978.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 10 a.m., November 9, 1978.

PLACE: Room 600, 1730 K Street NW., Washington, D.C. 20006.

STATUS: This meeting will be open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Any agenda items carried over from a previously announced meeting.
2. Pocahontas Fuel Co., Docket No. HOPE 76-680 (Motion to Withdraw Petition for Discretionary Review).
3. In re Thomas S. Kale, Esq., and Paul D. Kelly, Jr., Esqs., Docket No. BARB 76-168-P.

CONTACT PERSON FOR MORE INFORMATION:

Philip Paschall, 202-653-5610.

[S-2236-78 Filed 11-2-78; 3:24 pm]

[7715-01-M]

4

POSTAL RATE COMMISSION.

TIME AND DATE: 10 a.m., Thursday, November 9, 1978.

PLACE: Conference Room, Room 500, 2000 L Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: Proceedings in Docket No. MC78-3 (ECOM case.)

CONTACT PERSON FOR MORE INFORMATION:

Ned Callan, Information Officer, Postal Rate Commission, Room 500, 2000 L Street NW., Washington, D.C. 20268, telephone 202-254-5614.

[S-2234-78 Filed 11-2-78; 3:24 pm]

[7910-01-M]

5

RENEGOTIATION BOARD.

DATE AND TIME: Tuesday, November 7, 1978; 10 a.m.

PLACE: Conference room, 4th floor, 2000 M Street NW., Washington, D.C. 20446.

STATUS: Matters 1 through 5 are open to public observation. Matters 6 and 7 are closed to public observation. Matters 8 and 9 are not applicable for status.

MATTERS TO BE CONSIDERED:

1. Approval of minutes of meeting held October 31, 1978, and other Board meetings, if any.
2. Recommended Clearances Without Assignment (List 1923):
A. Burke Industries, Inc., fiscal year ended December 26, 1975.
B. Charter International Oil Co., fiscal year ended December 31, 1973.
B-1 Kern County Refinery Inc., fiscal year ended December 31, 1973.
C. Ogden Merrimac Transport Inc., fiscal year ended December 31, 1975.
C-1 Ogden Sea Transport Inc., fiscal year ended December 31, 1975.
D. Operations Research Inc., fiscal years ended December 31, 1974 and 1975.
E. Space Corp., fiscal year ended December 31, 1975.
F. W. Pat Crow Forgings, Inc., fiscal year ended December 31, 1975.
3. Request to make an untimely application for commercial exemption: Microdot Manufacturing Inc., fiscal year ended February 10, 1976.
4. Recommended clearances without assignment (List 1924):
A. Watkins-Johnson Co., fiscal year ended December 31, 1975.
A-1 Watkins-Johnson Service Co., fiscal year ended December 31, 1975.
B. John A. Blume Associates, fiscal year ended October 31, 1975.
B-1 URS Corp., fiscal year ended October 31, 1975.
B-2 URS Research Co., fiscal year ended October 21, 1975.
C. Treadwell Corp., fiscal year ended December 31, 1975.
D. Bechtel Power Corp., fiscal years ended December 31, 1973, 1974, and 1975.
D-1 Bechtel Corp., fiscal years ended December 31, 1973, 1974, and 1975.
D-2 Bechtel Inc., fiscal years ended December 31, 1973, 1974, and 1975.
D-3 Pacific International Computing Corp., fiscal years ended December 31, 1972, 1973, 1974, and 1975.
D-4 Bechtel International Corp., fiscal years ended December 31, 1974 and 1975.
D-5 American Bechtel Inc., fiscal year ended December 31, 1975.
E. Robertshaw Controls Co., fiscal year ended December 31, 1975.
F. Marotta Scientific Controls, Inc., fiscal year ended February 29, 1976.
5. Report on partial year filings.
6. Recommendation for approval of terms for payment of order: Vinnell Corp., fiscal year ended December 31, 1972.
7. Recommendation for approval of terms for payment of agreement: OEA, Inc. (Consolidated), fiscal years ended April 30, 1970, 1971, 1972, and 1973.
8. Approval of agenda for meeting to be held November 21, 1978.
9. Approval of agenda for other meetings, if any.

CONTACT PERSON FOR MORE INFORMATION:

Kelvin H. Dickinson, Assistant General Counsel-Secretary, 2000 M Street NW., Washington, D.C. 20446, 202-254-8277.

Dated: October 31, 1978.

GOODWIN CHASE,
Chairman.

[S-2230-78 Filed 11-2-78; 11:53 am]

[7910-01-M]

6

RENEGOTIATION BOARD.

DATE AND TIME: Wednesday, December 6, 1978; 9:30 a.m.

PLACE: Conference Room, 4th floor, 2000 M Street NW., Washington, D.C. 20446.

STATUS: Closed to public observation.

MATTER TO BE CONSIDERED: Dow Corning Corp., fiscal years ended December 31, 1967, 1968, and 1969.

CONTACT PERSON FOR MORE INFORMATION:

Kelvin H. Dickinson, Assistant General Counsel-Secretary, 2000 M Street NW., Washington, D.C. 20446, 202-254-8277.

Dated: November 2, 1978.

GOODWIN CHASE,
Chairman.

[S-2235-78 Filed 11-2-78; 3:24 pm]

[8120-01-M]

7

[Meeting No. 1199]

TENNESSEE VALLEY AUTHORITY.

TIME AND DATE: 10:30 a.m., Thursday, November 9, 1978.

PLACE: Conference Room B-32, West Tower, 400 Commerce Avenue, Knoxville, Tenn.

STATUS: Open.

MATTERS FOR DISCUSSION: Water Recreation Safety Program.

MATTERS FOR ACTION:

OLD BUSINESS

No. 1. Program to assist small independent coal operators.

NEW BUSINESS

C—Purchase awards

1. Req. No. 823554—Main transformers for the proposed Yellow Creek Nuclear Plant.
2. Req. No. 824213—Structural steel for diesel generator building for the Hartsville and Phipps Bend Nuclear Plants.
3. Rejection of bids received in response to Invitation No. 150486 for indefinite quantity term contract for removal, hauling, and disposal of ash for the John Sevier Steam Plant.
4. Amendment to Contract 77X72-543371-1 with Siskin Steel & Supply Co., Inc., Chattanooga, Tenn., for carbon steel, warehouse quantities.
5. Req. No. 577564—Rental, purchase, and maintenance of Xerox equipment, accessories, and supplies for any TVA project or warehouse.
6. Req. No. 572427—Requirement contract for portland cement for Pickwick Landing Lock Project.

F—Power items

1. Lease and amendatory agreement with Mount Pleasant, Tenn., covering arrangements for lease of TVA's Mount Pleasant District Substation and TVA's Mount Pleasant District-Hoover Mason and Mount Pleasant District-Charleston Mines (American Recycle Corp.) 46-kV Lines.

G—Real property transactions

1. Grant of 43-year easement to the Franklin L. Haney Co. for construction and lease to TVA of Chemical Engineering Building, affecting approximately 4.3 acres of the Muscle Shoals Reservation land—tract XT2NPT-9E.
2. Filing of condemnation suits.

Dated: November 2, 1978.

CONTACT PERSON FOR MORE INFORMATION:

John Van Mol, Director of Information, or a member of his staff can respond to requests for information about this meeting. Call 615-632-3257, Knoxville, Tenn. Information is also available at TVA's Washington Office, 202-566-1401.

[S-2237-78 Filed 11-2-78; 3:58 p.m.]

[4410-01-M]

8

UNITED STATES PAROLE COMMISSION: National Commissioners (the Commissioners presently maintaining offices at Washington, D.C. Headquarters).

TIME AND DATE: Tuesday, November 21, 1978 at 9:30 a.m.

PLACE: Room 500, 320 First Street NW., Washington, D.C. 20537.

STATUS: Open or closed, pursuant to a vote to be taken at the beginning of the meeting.

MATTER TO BE CONSIDERED: Referrals from Regional Commissioners of approximately 15 cases in which inmates of Federal Prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION:

Lee H. Chait, Analyst, 202-724-3094.

[S-2232-78 Filed 11-2-78; 11:53 am]

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federal register

TUESDAY, NOVEMBER 7, 1978

highlights

HOW TO USE THE FEDERAL REGISTER

Pittsburgh, Pennsylvania Workshop

December 2, 1978

See inside cover for details.

SUNSHINE ACT MEETINGS 51895

ANTI-INFLATION PROGRAM
Council on Wage and Price Stability proposes to amend its regulations by specifying voluntary standards for noninflationary wage and price behavior; comments by 12-2-78 (Part II of this issue) 51938

COAL LOAN GUARANTEE PROGRAM
DOE/ERA authorizes issuance of guaranty on loans for the developing expanding, or reopening of underground mines; effective 11-7-78 (Part III of this issue) 51956

REQUIREMENTS OF EMERGENCY GENERATOR AND GROUND FAULT INTERRUPTERS
HEW/HCFA revokes condition of coverage for suppliers of end-stage renal disease services; comments by 1-8-79 51822

ANNUAL WHOLESALE TRADE
Commerce/Census gives notice of intent to conduct a survey for the collection of data covering year-end inventories and annual sales of firms 51825

COMMERCIAL CARRIERS
GSA/FSS proposes to revise the format submitted to Government agencies for consideration of transportation offers; comments by 1-5-79 51817

CABLE TELEVISION ANNUAL FINANCIAL REPORT
FCC amends the financial reporting system for the industry; effective 11-7-78 51791

CIVIL AIR PATROL
DOD/AF prescribes regulations applicable to support and employment authorizations; effective 4-26 and 7-10-78 (2 documents) 51763, 51765

STATE'S WORKERS
Labor/OSHA releases final rules on State's protection plan of safety and health; effective 11-7-78 51761

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PITTSBURGH, PENNSYLVANIA WORKSHOP

HOW TO USE THE FEDERAL REGISTER

FOR: Any person who uses the Federal Register and the Code of Federal Regulations.

WHO: The Office of the Federal Register in cooperation with the Duquesne University School of Law.

WHAT: Free public workshop (approximately 2½ hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between Federal Register and the Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHEN: December 2, 1978, at 9:30 a.m.

WHERE: Moot Court Room, Duquesne University School of Law, Rockwell Hall (7th Floor), 600 Forbes Avenue, Pittsburgh, Pennsylvania.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them, as part of the General Services Administration's efforts to encourage public participation in Government actions. There will be no discussion of specific agency regulations.

RESERVATIONS: Call 412–434–6293.

federal register

Area Code 202 Phone 523–5240

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NOTE: There were no items eligible for inclusion in the list of RULES GOING INTO EFFECT TODAY.

List of Public Laws

This is a continuing listing of public bills that have become law, the text of which is not published in the FEDERAL REGISTER. Copies of the laws in individual pamphlet form (referred to as "slip laws") may be obtained from the U.S. Government Printing Office.

[Last Listing: November 6, 1978]

H.R. 12605 ..... Pub. 95–567
Public Telecommunications Financing Act of 1978. (Nov. 2, 1978; 92 Stat. 2405) Price: $1.00

H.R. 7577 ..... Pub. L. 95–568
Economic Opportunity Amendments of 1978. (Nov. 2, 1978; 92 Stat. 2425) Price: $.90

S. 1029 ..... Pub. L. 95–569
To authorize the Smithsonian Institution to construct support museum facilities. (Nov. 2, 1978; 92 Stat. 2444) Price: $.60

H.R. 11003 ..... Pub. L. 95–570
To clarify the authority for employment of personnel in the White House Office and the Executive Residence at the White House, to clarify the authority for employment of personnel by the President to meet unanticipated needs, and for other purposes. (Nov. 2, 1978; 92 Stat. 2445) Price: $.70

H.R. 14224 ..... Pub. L. 95–571
To authorize and direct the Secretary of the Interior to acquire certain lands for the benefit of the Mille Laes Band of the Minnesota Chippewa Indians. (Nov. 2, 1978; 92 Stat. 2452) Price: $.60

S. 2075 ..... Pub. L. 95–572
Jury System Improvements Act of 1978. (Nov. 2, 1978; 92 Stat. 2453) Price: $.70

H.R. 14145 ..... Pub. L. 95–573
To amend title 28 of the United States Code to make certain changes in the divisions within judicial districts and in the places of holding court, and to require the Director of the Administrative Office of the United States Courts to conduct a study of the judicial business of the Central District of California and the Eastern District of New York. (Nov. 2, 1978; 92 Stat. 2458) Price: $.60

S. 3081 ..... Pub. L. 95–574
Federal Railroad Safety Authorization Act of 1978. (Nov. 2, 1978; 92 Stat. 2459) Price: $.60

S. 1487 ..... Pub. L. 95–575
To amend title 18 of the United States Code to eliminate racketeering in the sale and distribution of cigarettes, and for other purposes. (Nov. 2, 1978; 92 Stat. 2463) Price: $.60

H.R. 12140 ..... Pub. L. 95–576
To amend the Federal Water Pollution Control Act to provide additional authorizations for certain operating programs under the Act. (Nov. 2, 1978; 92 Stat. 2467) Price: $.60

H.R. 13597 ..... Pub. L. 95–577
To authorize the Architect of the Capitol to install solar collectors for furnishing a portion of the energy needs of the Rayburn House Office Building and House Office Building Annex Numbered 2, and for other purposes. (Nov. 2, 1978; 92 Stat. 2470) Price: $.60

S. 2820 ..... Pub. L. 95–578
Reclamation Safety of Dams Act of 1978. (Nov. 2, 1978; 92 Stat. 2471) Price: $.60

S. 2247 ..... Pub. L. 95–579
Amending section 312 of the Immigration and Nationality Act. (Nov. 2, 1978; 92 Stat. 2474) Price: $.60

S. 1835 ..... Pub. L. 95–580
To establish a Rural Transportation Advisory Task Force, and for other purposes. (Nov. 2, 1978; 92 Stat. 2475) Price: $.60

H.R. 10343 ..... Pub. L. 95–581
To provide for recalculation of the retired pay of individuals who served as sergeant major of the Marine Corps before December 16, 1967. (Nov. 2, 1978; 92 Stat. 2478) Price: $.60

H.R. 12393 ..... Pub. L. 95–582
To provide for nationwide service of subpoenas in all suits involving the False Claims Act, and for other purposes. (Nov. 2, 1978; 92 Stat. 2479) Price: $.60

H.R. 4319 ..... Pub. L. 95–583
To amend subchapter III of chapter 83 of title 5, United States Code, to provide that employees who retire after 5 years of service, in certain instances may be eligible to retain their life and health insurance benefits, and for other purposes. (Nov. 2, 1978; 92 Stat. 2481) Price: $.60

S. 3371 ..... Pub. L. 95–584
To repeal certain provisions of law establishing limits on the amount of land certain religious corporations may hold in any Territory of the United States. (Nov. 2, 1978; 92 Stat. 2483) Price: $.60

H.R. 3185 ..... Pub. L. 95–585
To amend the Act commonly known as the Miller Act to raise the dollar amount of contracts to which such Act applies from $2,000 to $25,000. (Nov. 2, 1978; 92 Stat. 2484) Price: $.60

rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

[6325–01–M]

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Department of the Navy

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amends part 213 to include under schedule B, § 213.3202, those cooperative education students employed by the Department of the Navy who are preparing for preapprentice and helper positions at the WG–5 level in specified occupations and work locations. The approval of this amendment supports the Department of the Navy's cooperative education programs conducted under the provisions of Executive Order 12015 within shipyards, air rework facilities and other major industrial activities. Students completing such programs will receive skills training necessary to perform helper and preapprentice duties in the marine trades for which the Department has experienced difficulty in recruiting through competitive examinations.

EFFECTIVE DATE: August 22, 1978.

FOR FURTHER INFORMATION CONTACT:

James R. Poole, 202–632–5678.

Accordingly, 5 CFR 213.3202(e) is added as set out below:

§ 213.3202 Entire executive civil service.

• • • • •

(e) Positions at shipyards, air rework facilities and other major industrial activities in the Department of the Navy which prepare students at the high school level, upon satisfactory completion of a cooperative education program of at least 1,040 hours, for employment in preapprentice positions or in helper positions at the WG–5 level as pipefitters, marine machinist, inside machinist, welder, sheet metal mechanic, and such other occupations where the journeyman level is WG–9 or above as the Director of the Bureau of Recruiting and Examining shall have approved, provided that: (1) Not more than 25 percent of the positions in covered occupations will be filled annually at any single installation through this conversion authority, and (2) the maximum time during which any student will be employed in the program is 18 months, and (3) except for conditions specified in this authority, students will be subject to instructions governing all other high school vocational education students in cooperative education programs, and (4) any student who completes a program without a diploma must have an authenticated certificate from the school indicating satisfactory completion in his/her personnel folder.

(5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.)

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78–31333 Filed 11–6–78; 8:45 am]

[6325–01–M]

PART 300—EMPLOYMENT (GENERAL)

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment to the Commission's regulations reflects changes required by the expiration of the Whitten amendment (5 U.S.C. 3101, note) under Pub. L. 94–412. Specifically, it deletes obsolete and unnecessary provisions relating to permanent ceilings and obligated positions.

EFFECTIVE DATE: September 14, 1978.

FOR FURTHER INFORMATION CONTACT:

Raleigh M. Neville, 202–632–6817.

Accordingly, 5 CFR Part 300 is amended by deleting subparts D and E.

(Pub. L. 94–412.)

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78–31334 Filed 10–6–78; 8:45 am]

[3410–37–M]

Title 7—Agriculture

CHAPTER XXVIII—FOOD SAFETY AND QUALITY SERVICE, DEPARTMENT OF AGRICULTURE

PART 2852—PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS

Subpart—U.S. Standards for Grades of Processed Raisins[1]

NOVEMBER 1, 1978.

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the grade standards for processed raisins. The action is taken at the request of the Raisin Administrative Committee. It establishes a separate moisture allowance for the Monukka variety of seedless raisins.

EFFECTIVE DATE: December 1, 1978.

FOR FURTHER INFORMATION:

Sterling P. Ingram, Jr., Processed Products Branch, Fruit and Vegetable Quality Division, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C., 202–447–4693.

SUPPLEMENTARY INFORMATION: At the request of the Raisin Administrative Committee, the U.S. standards for grades of processed raisins are being amended to establish a moisture allowance of 19 percent for the Monukka variety of seedless raisins. The Federal marketing agreement and order regulating the handling of California raisins (Part 989) was recently amended to include the Monukka raisins at that moisture level. Being thin-skinned, Monukka raisins pick up more moisture during processing than the other seedless raisin varieties.

The amendment herein reflects the change to the marketing order and

[1] Compliance with the provisions of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or with applicable State laws and regulations.

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makes the marketing order and the U.S. standards compatible.

Pursuant to the authority contained in the Agricultural Marketing Act of 1946 (60 Stat. 1087 et seq., as amended; 7 U.S.C. 1621-1627), § 2852.1846 only is amended to read as follows:

§ 2852.1846 Grades of seedless raisins.

(a) "U.S. Grade A" is the quality of seedless raisins that have similar varietal characteristics; that have a good typical color; that have a good characteristic flavor; that show development characteristics of raisins prepared from well-matured grapes with not less than 80 percent, by weight, of raisins that are well-matured or reasonably well-matured; that contain not more than 18 percent, by weight, of moisture for all varieties of seedless raisins except the Monukka variety, which may contain not more than 19 percent, by weight, of moisture; and that meet the additional requirements outlined in table I of this subpart.

(b) "U.S. Grade B" is the quality of seedless raisins that have similar varietal characteristics; that have a reasonably good typical color; that have a good characteristic flavor; that show development characteristics of raisins prepared from reasonably well-matured grapes with not less than 70 percent, by weight, of raisins that are well-matured or reasonably well-matured; that contain not more than 18 percent, by weight, of moisture for all varieties of seedless raisins except the Monukka variety, which may contain not more than 19 percent, by weight, of moisture; and that meet the additional requirements outlined in table I of this subpart.

(c) "U.S. Grade C" is the quality of seedless raisins that have similar varietal characteristics; that have a fairly good typical color; that have a fairly good flavor; that show development characteristics of raisins prepared from fairly well-matured grapes with not less than 55 percent, by weight, of raisins that are well-matured or reasonably well-matured; that contain not more than 18 percent, by weight, of moisture for all varieties of seedless raisins except the Monukka variety, which may contain not more than 19 percent, by weight, of moisture; and that meet the additional requirements outlined in table I of this subpart.

(d) "Substandard" is the quality of seedless raisins that fail to meet the requirements of U.S. grade C.

Notice of proposed rulemaking, public procedure thereon, and the postponement of the effective time of this action later than December 1, 1978 (5 U.S.C 553), are impractical, unnecessary, and contrary to the public interest in that: (1) The coverage of the Monukka variety in the U.S. standards increases the selection of seedless variety raisins available to the consumer, (2) the public was given an extensive period of time to comment upon this raisin variety prior to its inclusion in the marketing agreement and order regulating the handling of California raisins, (3) the addition of Monukka raisins into the U.S. grade standards, effective December 1, 1978, will maintain the compatibility of the U.S. grade standards and the raisin marketing order, and (4) additional time is not required by the users of the grade standards or of the inspection service to comply with the amendment.

NOTE.—The Department of Agriculture has determined that these regulations do not have major economic consequences requiring preparation of a regulatory analysis in accordance with sec. 3 of Executive Order 12044 (Mar. 24, 1978).

Dated to become effective at 12:01 a.m., December 1, 1978.

Done at Washington, D.C., on November 1, 1978.

SYDNEY J. BUTLER,
Acting Administrator,
Food Safety and Quality Service.

[FR Doc. 78-31331 Filed 11-6-78; 8:45 am]

[3410-37-M]

Title 9—Animals and Animal Products

CHAPTER III—FOOD SAFETY AND QUALITY SERVICE, MEAT AND POULTRY PRODUCTS INSPECTION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER A—MANDATORY MEAT INSPECTION

PART 307—FACILITIES FOR INSPECTION

SUBCHAPTER C—MANDATORY POULTRY PRODUCTS INSPECTION

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

Subpart G—Facilities for Inspection; Overtime and Holiday Service; Billing Establishments

CHANGE IN VETERANS' DAY

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends provisions in the Federal meat inspection regulations and the poultry products inspection regulations listing holidays for Federal employees to reflect that Veterans' Day was changed from the fourth Monday in October to November 11.

EFFECTIVE DATE: November 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Dr. L. V. Sanders, Acting Chief Staff Officer, Issuance Coordination Staff, Technical Services, Meat and Poultry Inspection Program, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-3759.

SUPPLEMENTARY INFORMATION: Pub. L. 94-97 (5 U.S.C. 6103(a)) which became effective January 1, 1978, changed the official date for Veterans' Day from the fourth Monday in October to November 11. The provisions in § 307.5(b) of the Federal meat inspection regulations (9 CFR 307.5(b)) and in § 381.38(b) of the poultry products inspection regulations (9 CFR 381.38(b)) listing holidays for Federal employees are hereby amended to reflect this change.

Accordingly, in the first sentence of § 307.5(b) of the Federal meat inspection regulations (9 CFR 307.5(b)) "Veterans' Day the fourth Monday in October" is amended to read "Veterans' Day, November 11.

(Sec. 21, 34 Stat. 1264, as amended, 21 U.S.C. 621; 42 FR 35625, 35626, 35631.)

Further in the first sentence of § 381.38(b) of the poultry products inspection regulations (9 CFR 381.38(b)) "Veterans' Day, the fourth Monday in October" is amended to read "Veteran' Day, November 11."

(Sec. 14, 17 Stat. 441, as amended, 21 U.S.C. 463; 42 FR 35625, 35631.)

These amendments update information due to a legislative act and must be promulgated and implemented without delay in order to avoid confusion concerning whether November 11 would be deemed to be a holiday under the meat and poultry inspection regulations. It does not appear that additional relevant information would be made available by public participation in rulemaking proceedings on these amendments, and it is found upon good cause, under the administrative procedure provisions of 5 U.S.C. 553, that notice and other public procedure with respect to these amendments are impracticable and unnecessary, and good cause is found for making these amendments effective less than 30 days after publication in the FEDERAL REGISTER.

Also, Sydney J. Butler has determined that this document represents an emergency situation requiring immediate program action without a notice and comment period. Further, these amendments have not been classified as "significant," and an impact analysis was not prepared since the amendments are mandated by statute.

Done at Washington, D.C., on November 2, 1978.

SYDNEY J. BUTLER,
Acting Administrator,
Food Safety and Quality Service.

[FR Doc. 78-31484 Filed 11-6-78; 8:45 am]

[3128-01-M]

Title 10—Energy

CHAPTER II—FEDERAL ENERGY ADMINISTRATION [1]

PART 205—ADMINISTRATIVE PROCEDURES AND SANCTIONS

1978 Interpretations of the General Counsel

AGENCY: Department of Energy.

ACTION: Notice of Interpretations.

SUMMARY: Attached are the Interpretation and responses to Petitions for Reconsideration issued by the Office of General Counsel of the Department of Energy under 10 CFR Part 205, Subpart F, during the period October 1, 1978, through October 31, 1978. Also attached is a modification of Interpretation 1978-58, issued to Campbell H. Elkins and El Ran, Inc., on September 22, 1978. See appendices below.

FOR FURTHER INFORMATION CONTACT:

Diane Stubbs, Office of General Counsel, Department of Energy, 12th and Pennsylvania Avenue NW., Room 1121, Washington, D.C. 20461 202-568-9070.

SUPPLEMENTARY INFORMATION: Interpretations issued pursuant to 10 CFR Part 205, Subpart F, are published in the FEDERAL REGISTER in accordance with the editorial and classification criteria set forth in 42 FR 7923 (February 8, 1977), as modified in 42 FR 46270 (September 15, 1977).

These Interpretations depend for their authority on the accuracy of the factual statement used as a basis for the Interpretation (10 CFR 205.84(a)(2)) and may be rescinded or modified at any time (§ 205.85(d)). Only the persons to whom Interpretations are addressed and other persons upon whom Interpretations are served are entitled to rely on them (§ 205.85(c)). An Interpretation is modified by a subsequent amendment to the regulation(s) or ruling(s) interpreted thereby to the extent that the Interpretation is inconsistent with the amended regulation(s) or ruling(s) (§ 205.85(e)). The Interpretations published below are not subject to appeal.

The responses to Petitions for Reconsideration published herein have been issued in accordance with the provisions set forth in 10 CFR 205.85(f). As DOE has indicated on prior occasions, "it should be emphasized that the reconsideration procedure is not the equivalent of an administrative appeal, but merely provides a mechanism to insure that no inadvertent errors are made which affect the validity of the interpretation."

Also published today is Interpretation 1978-58 which was modified in accordance with 10 CFR 205.85(d). The modification corrects an inaccuracy in the statement of facts and does not alter the decision reached in Interpretation 1978-58.

Issued in Washington, D.C., November 1, 1978.

EVERARD A. MARSEGLIA, Jr.,
Acting Assistant General Counsel for Interpretations and Rulings, Office of General Counsel.

APPENDIX A—*Interpretations*

Number	To	Date and category
1978-60	G. W. Tinnin	October 12, allocation.
1978-58M	Campbell H. Elkins and El Ran, Inc.	October 31, price.

INTERPRETATION 1978-60

To: G. W. Tinnin.
Date: October 12, 1978.
Rules interpreted: 10 CFR 211.9; 211.51.
Code: GCW-AI—Supplier/wholesale purchaser-reseller relationship.

FACTS

G. W. Tinnin (Tinnin) has operated as a consignee of petroleum products (principally motor gasoline), allocated under the Mandatory Petroleum Allocation Regulations, for Texaco, Inc. (Texaco), in Fayetteville, N.C. since 1964. Under the terms of the Consignment Agreement (Agreement), Tinnin obtains motor gasoline and other products from Texaco storage facilities for delivery to retail outlets in and around Fayetteville at prices and terms fixed by Texaco. Title to the products remains with Texaco. The Agreement consists of Texaco standard form S-82 as amended by standard form S-368.

The Agreement provides that Tinnin, as a consignee, is free to sell to any purchasers he selects for cash or properly authorized credit. Tinnin may also extend credit to customers on his own account without authorization from Texaco, but in such cases becomes responsible to Texaco for the amount of the sale.

The Agreement further requires Tinnin to keep records of all sales, deliveries, inventory, and receipts, which are subject to audit by Texaco. He is required to pay for any shortages of products consigned to him by Texaco if such shortages are disclosed in an audit by Texaco. Tinnin carries liability insurance on his business operations, which also covers the petroleum products consigned to him by Texaco. He carries health and life insurance for his employees. Texaco does not withhold Federal income or social security taxes on the commissions it pays to Tinnin.

Since July 1973, Texaco has made direct deliveries to four stations which were served by Tinnin during each month of 1972—the base period for motor gasoline. In addition, Texaco terminated "standby" or "supervisory" commission agreements that it had maintained with Tinnin for three other stations.

ISSUE

Is Tinnin a wholesale purchaser-reseller as that term is defined in 10 CFR 211.51?

INTERPRETATION

It has been concluded that Tinnin, a consignee agent of Texaco, operating pursuant to the Agreement mentioned above, is a wholesale purchaser-reseller as defined in 10 CFR 211.51.

Wholesale purchaser-reseller is defined in 10 CFR 211.51 as:

"any firm which purchases, receives through transfer, or otherwise obtains (*as by consignment*) an allocated product and resells or otherwise transfers it to other purchasers without substantially changing its form." (Emphasis added.)

The use of the term "as by consignment" in the definition of wholesale purchaser-reseller was interpreted in ruling 1975-8, 40 FR 30037 (July 17, 1975). In that ruling, it was determined that firms which obtain and resell or otherwise transfer allocated products are not automatically excluded from the definition of wholesale purchaser-reseller solely on the ground that they fail to take legal title to the allocated product. Those consignees which have a substantial degree of operational independence in conducting their business of transferring and selling a supplier's products (rather than merely providing a distribution service between a supplier and the supplier's customers or functioning like an employee of the supplier) fully qualify as wholesale purchaser-resellers pursuant to § 211.51. These firms are subject to the same benefits and obligations of the Mandatory Petroleum Allocation Program which apply to other wholesale purchaser-resellers.

According to ruling 1975-8, a consignee that qualifies under 10 CFR 211.51 as a wholesale purchaser-reseller will generally have most (but not necessarily all) of the following characteristics: (a) Appropriate facilities and equipment for the conduct of the business of selling and distributing its supplier's product; (b) responsibility, independent of its supplier, for its internal financial management and physical and administrative operations; (c) responsibility to its supplier and others for expenses and liabilities arising from and connected with the business of transfer and sale of its supplier's products; and (d) independent control over the disposition of the allocated product, including the right to enter into and terminate relationships with customers rather than being restricted to distributing products solely to customers designated by the supplier.

The pertinent facts in this case are similar to those in another Texaco consignee case, Warren Stevenson, Interpretation 1978-46.

[1] EDITORIAL NOTE.—Chapter II will be renamed at a future date to reflect that it contains regulations administered by the Economic Regulatory Administration of the Department of Energy.

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43 FR 34437 (August 4, 1978). In Stevenson it was noted at 34438:

"Although the Agreement specifies the status of its distributors as that of 'consignee-agent,' this nomenclature is not determinative of Stevenson's status. It is only necessary that the consignee meet most of the four qualifications contained in ruling 1975-8 to satisfy DOE that the 'consignee' is in fact a wholesale purchaser-reseller as defined in 10 CFR 211.51."

Tinnin, like Stevenson, is responsible for the internal financial management and phyical and administrative operations of his business, is responsible for certain of the expenses and liabilities arising from and connected with the business of transfer and sale of the products, and has independent control to enter into and to terminate supply relationships.

An additional element discussed in Stevenson which has a bearing on this case is the fact that Texaco's Consignment Agreement with Tinnin, like that in Stevenson, is substantially the same as the agreements analyzed in National Association of Consignees, Inc., Interperetation 1975-19, 42 FR 23736 (May 10, 1977) and John Hattenhauer, Interpretation 1977-20, 42 FR 39963 (August 8, 1977). In those two interpretations, also involving Texaco consignment agreements, it was determined that under the terms of the consignee agreement, the Texaco consignees retained sufficient functional autonomy in the distribution and sale of Texaco products to qualify as wholesale purchaser-resellers.

In light of the standards set forth in Ruling 1975-8, as interpreted in Stevenson, National Association of Consignees, Inc., and Hattenhauer, and the facts presented by Tinnin, it has been determined that Tinnin is a wholesale purchaser-reseller as defined by 10 CFR 211.51 of the Mandatory Petroleum Allocation Regulations.

In addition, Tinnin's request for interpretation raises questions involving Texaco's direct supply of four motor gasoline retail outlets that were supplied by Tinnin during the base period. Although, based on the facts presented by Tinnin, it is clear that pursuant to § 211.9 Tinnin is the base period supplier of the four retail outlets (since Tinnin supplied them with motor gasoline during each month of 1972), it is also clear that these retail outlets need not purchase their base period allocation of product from Tinnin. See Swann Oil, Inc., Interpretation 1974-19, 42 FR 25657 (May 18, 1977). Thus, the four retail outlets having a supplier/purchaser relationship with Tinnin may elect to purchase motor gasoline from Tinnin, Texaco, or any other supplier (subject, of course, to the provisions of § 211.10(g)(7) concerning surplus product). However, the only assured source of supply for these four retail gasoline stations is their base period suppiler, Tinnin. Texaco's supply of the four retail outlets that are not its base period purchasers does not unilaterally shift the § 211.9 supply obligation for those outlets from Tinnin to Texaco. Texaco must continue to supply or offer to supply Tinnin with its entire base period allocation of motor gasoline, including an amount representing the base period entitlement of product for the four retail stations. See John Hattenhauer, supra.

Finally, the issue of whether Texaco's termination of "standby" or "supervisory" commissions on three other stations violated pertinent provisions of the Mandatory Petroleum Price and Allocation Regulations has been addressed in a prior interpretation. The Federal Energy Administration, a predecessor agency of DOE, held, in R. C. Fresh, et al., Interpretation 1977-8, 42 FR 31144 (June 20, 1977), that "* * * the (requesters) receipt of 'standby' commissions in the base period would not give rise to an allocation entitlement for the volumes of motor gasoline giving rise to those commissions, since the (requesters) performed no distribution functions with respect thereto."

Accordingly, Tinnin is a wholesale purchaser-reseller as defined in § 211.51, and is entitled to receive its entire adjusted base period allocation of product from Texaco.

INTERPRETATION 1978-58M

To: Campbell H. Elkins and El Ran, Inc.
Date:
Rules Interpreted: 10 CFR 212.54 and 212.72.
Code: GCW-PI—Definition of property.

FACTS

In August of 1977, Campbell H. Elkins (Elkins), a crude oil producer, acquired the production rights to oil and gas leases from Westland Energy Corporation (Westland), in a single lease instrument.[1] The leased area had formerly been leased to Sinclair Oil and Gas Co. (Sinclair), which obtained working interest rights in 1967 and 1968 pertaining to a tract of land of approximately 40 acres. Sinclair failed to drill any producing wells on the tract, and all rights thereto were released in 1972 by Atlantic Refining Co., successor to Sinclair.

In 1974, the undivided interest owners leased their interest in the subject tract to Macdonald Oil Corp. and its successor Adobe Oil and Gas Corp. Both companies failed to exercise their rights in the lease, and in 1977, Westland, the present lessee of the tract, exercised the right to assign the lease to Elkins.

El Ran, Inc, (El Ran), a crude oil producer, will operate the crude oil wells which Elkins proposes to drill on the leased acreage.

According to Elkins, crude oil was not produced from the leased area in 1972. Commercial production from the leased area began on January 1, 1978.

ISSUE

1. May crude oil produced from a property that did not produce crude oil in 1972, be treated as "new" crude oil pursuant to 10 CFR Part 212, Subpart D?

2. When would the Elkins property qualify as a stripper well property pursuant to 10 CFR 212.54?

INTERPRETATION

From the information presented by Elkins, it has been determined that the leased acreage acquired by Elkins in 1977, is a single property which did not produce crude oil in 1972.

The term "property" is defined in 10 CFR 212.72, in relevant part, as "the right to produce domestic crude oil, which arises from a lease or from a fee interest." The meaning of the terms "property" and "lease" was reviewed in detail by the Department of Energy (DOE) in ruling 1977-1, 42 FR 3628 (January 19, 1977), in which it was concluded that, for price control purposes in those cases involving an oil and gas lease, "property" is the right to produce crude oil from specific leased premises, rather than the right only as vested in a particular lessee. Thus, since Elkins acquired the right to produce on the leased acreage, which was historically treated as a single tract since the original conveyance to Sinclair, Elkins acquired a "property" for purposes of 10 CFR Part 212, Subpart D. See e.g. Meridian Oil Corp., Interpretation 1977-46, 43 FR 1481 (January 10, 1978).

Moreover, all crude oil produced from the property is "new" crude oil subject to the upper tier ceiling price rule in 10 CFR 212.74. "New crude oil," defined in 10 CFR 212.72, generally consists of the incremental crude oil production above the property's historic base production control level (BPCL)[2] (if any), less any current cumulative deficiency. If no crude oil was produced from a tract in 1972, the BPCL is zero. Therefore, with respect to the Elkins property, all crude oil production will qualify as upper tier crude oil, as defined in 10 CFR 212.74.

In its submission, Elkins also requests guidance concerning the qualification of the property as a stripper well property. "Stripper well property" is defined in 10 CFR 212.54(c) as:

"a 'property' whose average daily production of crude oil (excluding condensate recovered in nonassociated production) per well did not exceed 10 barrels per day during any preceding consecutive 12-month period beginning after December 31, 1972."

"Average daily production" is defined in 10 CFR 212.54(c) as:

"the qualified maximum total production of crude oil (excluding condensate recovered in nonassociated production) produced from a property, divided by a number equal to the number of days in the 12-month qualifying period times the number of wells that produced crude oil (excluding condensate recovered in nonassociated production) from that property in that 12-month qualifying period. To qualify as maximum total production, each well on the property must have been maintained at the maximum feasible rate of production throughout the 12-month qualifying period and in accordance with recognized conservation practices, and not significantly curtailed by reason of mechanical failure or other disruption in production."

Thus, the property would qualify as a stripper well property if crude oil is produced from the property at the stripper well levels of less than 10 barrels per well per day for 12 consecutive months. See e.g. *H. H. Weinert Estate,* Interpretation 1978-9, 43 FR 15620 (April 14, 1978); *Rustex Oil, Inc.,* Interpretation 1978-5, 43 FR 12852 (March 28, 1978). Upon its certification as a stripper well property, crude oil produced from the Elkins property is eligible to receive "exempt" prices as set forth in 10 CFR 212.54(a).

[1] This leased acreage is located in the Southeast Quarter, section 34, Township South, Range East in Roosevelt County, N. Mex.

[2] "Base production control level" means:

* * * * *

"(2) with respect to months commencing after Jan. 31, 1976, except as provided in § 212.76, either: (A) the total number of barrels of old crude oil produced and sold from the property concerned during calendar year 1975, divided by 365, multiplied by the number of days in the month in 1975 which corresponds to the month concerned; or (B) if the producer elects to certify crude oil sales for 1972 in accordance with § 212.131(a)(1)[sic], the total number of barrels of crude oil produced and sold from the property concerned during the calendar year 1972, divided by 366, multiplied by the number of days during the month in 1972 which corresponds to the month concerned." (10 CFR 212.72.)

APPENDIX B—*Responses to petitions for reconsideration*

Petitioner	Interpretation	Date of response
Crown Central Petroleum Corp.	Crown Central Petroleum Corp., 1978-39, 43 FR 29545 (July 10, 1978).	September 21.
Warren Stevenson	Warren Stevenson, 1978-46, 43 FR 34437 (Aug. 4, 1978).	October 24.

PETITION FOR RECONSIDERATION OF CROWN CENTRAL PETROLEUM CORP., 1978-39

Petitioner: Crown Central Petroleum Corp.
Date: September 21, 1978.

This is in response to your petition for reconsideration of Warren Stevenson, Interpretation 1978-46, 43 FR 34437 (August 4, 1978), submitted on behalf of Warren Stevenson (Stevenson) and received on August 21, 1978. For the reasons discussed below, I have determined that the petition for reconsideration must be denied.

Interpretations issued by the Office of General Counsel of the Department of Energy (DOE) may be reconsidered only in certain limited circumstances. In these cases, the burden is upon the petitioner to demonstrate that the interpretation was erroneous in fact or in law, or that the result reached in the interpretation was arbitrary or capricious. 10 CFR 205.83(f)(3).

In the Interpretation, it was determined that Stevenson is a wholesale purchaser-reseller of petroleum products (primarily motor gasoline) as defined in 10 CFR 211.51. As such, since Stevenson was supplied petroleum products by Texaco, Inc. (Texaco) during the base period which, for motor gasoline is defined in 10 CFR 211.102 as "the month of 1972 corresponding to the current month," the firm remains entitled to its full base period allocation of motor gasoline from Texaco, as provided in 10 CFR 211.9.

The petition for reconsideration reiterates the arguments presented in the initial interpretation request and generally raises no new arguments of fact or of law. Stevenson does not question the basic result reached in the interpretation, but rather requests a further determination that only the base period supplier may continue to supply its base period purchasers with product. As indicated in the interpretation, Stevenson is a wholesale purchaser-reseller of motor gasoline and is the base period supplier of all of those firms which it supplied during the base period. Stevenson, therefore, is entitled to receive its entire adjusted base period allocation of product from Texaco. See John Douglas Hattenhauer, Interpretation 1977-20, 42 FR 39963 (August 8, 1977). However, contrary to Stevenson's assertions, it is well established that under the Mandatory Petroleum allocation Regulations, a base period purchaser may obtain product from a supplier other than Stevenson. See Swann Oil, Inc., Interpretation 1974-19, 42 FR 25657 (May 18, 1977).

Accordingly, since Stevenson has failed to demonstrate that the Interpretation is erroneous in fact or in law, or that the Interpretation is arbitrary or capricious, the petition for reconsideration is hereby denied. The denial of Stevenson's petition for reconsideration is a final order of the Department of Energy from which the petitioner may seek judicial review.

PETITION FOR RECONSIDERATION OF WARREN STEVENSON 1978-46

Petitioner: Warren Stevenson.
Date: October 24, 1978.

This is in response to your petition for reconsideration of Crown Central Petroleum Corporation, Interpretation 1978-39, 43 FR 29545 (July 10, 1978). That petition for reconsideration submitted by Crown Central Petroleum Corp. (Crown) was received on July 19, 1978. For the reasons discussed below, I have concluded that the petition for reconsideration must be denied.

Interpretations issued by the Office of General Counsel of the Department of Energy (DOE) may be reconsidered only in certain limited circumstances. In these cases, the burden is upon the petitioner to demonstrate that the interpretation was erroneous in fact or in law, or that the result reached in the interpretation was arbitrary or capricious. 10 CFR 205.85(f)(3)).

In the Interpretation, it was determined that during the period March 1, 1976, to October 1, 1977, 10 CFR 212.94(b)(2) permitted a refiner-seller to recover all domestic transportation expenses associated with the delivery of crude oil to a refiner-buyer under the domestic crude oil allocation program (the buy/sell program) as set forth in 10 CFR 211.65. Therefore, the Interpretation held that Exxon (a refiner-seller), was permitted by § 212.94(b) to sell its "buy-sell program" crude oil to Crown at the weighted-average landed cost per barrel of its imported crude oil for the 3-month period, plus a handling fee of 5 cents per barrel plus any actual additional transportation expenses which were incurred to move the crude oil to the refiner-buyer's refinery.

Your petition for reconsideration reiterates arguments presented in the initial interpretation request and generally raises no new arguments of fact or law. As the interpretation indicated, § 212.94(b)(2) (as in effect for the quarter in question) permitted a refiner-seller to recoup any actual transportation costs which it incurred in delivering domestic crude oil to a refiner-buyer's refinery. The preamble to the final rulemaking which adopted the revisions to § 212.94(b) at issue in this matter (41 FR 16448-9 (April 19, 1976)), expressly stated that "the rule adopted provides that the refiner-buyer will be charged any actual additional transportation expenses that are incurred to move the crude oil to the refiner-buyer's refinery."

Accordingly, since Crown Central Petroleum Corp., has failed to demonstrate that the Interpretation is erroneous in fact or in law, or that the Interpretation is arbitrary or capricious, the petition for reconsideration is hereby denied. The denial of Crown's petition for reconsideration is a final order of the Department of Energy from which the petitioner may seek judicial review.

[FR Doc. 78-31483 Filed 11-6-78; 8:45 am]

[6750-01-M]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

SUBCHAPTER A—ORGANIZATION, PROCEDURES, AND RULES OF PRACTICE

PART 2—NONADJUDICATIVE PROCEDURES

PART 3—RULES OF PRACTICE FOR ADJUDICATIVE PROCEEDINGS

Disclosure of Material Pertaining to Consent Order Settlements; Withdrawal of Matter From Adjudication To Consider Consent Agreements

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: These rules amend the Commission's rules governing disclosure of material pertaining to consent order settlements. Because of the burden on the Commission and the lack of public interest, the Commission will no longer automatically make available material submitted to the Commission by the respondent that is not exempt from public disclosure under the Freedom of Information Act. Other steps will be taken, however, to assist those who desire to comment on Commission consent agreements.

EFFECTIVE DATE: November 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Thomas A. Sheehan III, Office of General Counsel, Federal Trade Commission, Washington, D.C. 20580, 202-523-3865.

SUPPLEMENTARY INFORMATION: On August 5, 1977, the Commission published in the FEDERAL REGISTER (42 FR 39658) final rules that made avail-

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able for public inspection, at the beginning of the period for public comment on a proposed consent order, material submitted to the Commission that was reasonably related to the order and was not exempt from disclosure under the Freedom of Information Act. At that time the Commission indicated that it would review the effect of the rule change after 1 year. (This rule was revised on January 23, 1978, to clarify that it was intended to apply only to material submitted by a respondent. 43 FR 3088.)

The Commission's experience with the rule demonstrates a lack of public interest in the material being made available (as of August 1, 1978, only one person has been recorded as having looked at material made available under the rule, although 29 consent agreements had been placed on the public record), with the comment process consequently being unaffected by the rule. The rule did have the unfortunate effect of delaying the placement of consent agreements on the public record for comment because of the time required to segregate documents into exempt and nonexempt categories; this consequently resulted in the delay in the consent order becoming effective. The segregation of documents also required significant staff time. In view of the burden of the Commission and the resultant cost in public resources, the delay in consent agreements taking effect, and the minimal public interest in these materials, the Commission is terminating its experiment with this procedure. The Commission believes that the goal that the procedure sought to achieve, i.e., more informed public comment on proposed consent orders, can be obtained by publication of a more complete explanation of the consent order. See Commission rule 2.34, 16 CFR 2.34.

While this rule is effective immediately, the Commission invites comments on it for 30 days after date of publication. Comments should be addressed to the Office of the Secretary. The Commission will review all comments received and take whatever action, if any, it deems appropriate.

Accordingly, and pursuant to 15 U.S.C. 46(g), the Commission hereby amends its rules of practice §§ 2.34 and 3.25(f), 16 CFR 2.34 and 3.25(f), as set forth below.

1. By revising § 2.34 to read as follows:

§ 2.34 Disposition.

Upon receiving an executed agreement conforming with the requirements of § 2.32, the Commission may: (1) Accept it; (2) reject it and issue its complaint; or (3) take such other action as it may deem appropriate. If an agreement is accepted, the Commission will place the order contained therein and any initial report of compliance submitted pursuant to § 2.33 on the public record, and at the same time, will make available an explanation of the provisions of the order and the relief to be obtained thereby, and any other information which it deems helpful in assisting interested persons to understand the terms of the order. The Commission will publish the agreement, order, and explanation in the FEDERAL REGISTER. For a period of sixty (60) days after placement of the order on the public record and issuance of the statement, the Commission will receive and consider any comments or views concerning the order that may be filed by any interested person. Thereafter, the Commission may either withdraw its acceptance of the agreement and so notify the other party, in which event it will take such other action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

2. By amending § 3.25(f) to read as follows:

§ 3.25 Consent agreement settlements.

* * * * *

(f) After the matter has been withdrawn from adjudication, the Commission may: (1) Accept the agreement, (2) reject it and return the matter to adjudication for further proceedings, or (3) take such other action as it may deem appropriate. If an agreement is accepted, the Commission will place it on the public record, together with any initial report of compliance submitted pursuant to § 2.33, and at the same time, will make available an explanation of the provisions of the order and the relief to be obtained thereby, and any other information which it deems helpful in assisting interested persons to understand the terms of the order. The Commission will publish the agreement, order, and explanation in the FEDERAL REGISTER. For a period of sixty (60) days after placement of the order on the public record and issuance of the statement, the Commission will receive and consider any comments or views concerning the order that may be filed by any interested persons. Thereafter, the Commission may either withdraw its acceptance of the agreement and so notify the other party, in which event it will return the matter to adjudication for further proceedings or take such other action as it may consider appropriate, or issue and serve its decision in disposition of the proceeding.

* * * * *

By direction of the Commission, dated September 27, 1978. Commissioner Pitofsky did not participate.

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-31490 Filed 11-6-78; 8:45 am]

[4110-03-M]

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER A—GENERAL

[Docket No. 78N-0347]

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

Subpart B—Redelegations of Authority From the Commissioner of Food and Drugs

DISCLOSURE OF OFFICIAL RECORDS

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document amends the regulations for delegations of authority for disclosing official records and information. The records of registration of blood product establishments are maintained by the Management and Data Systems staff in the Office of the Director of the Bureau of Biologics. This amendment provides the Chief of that staff the authority to sign affidavits regarding the presence or absence of blood product establishment registration records.

EFFECTIVE DATE: November 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert L. Miller, Office of Management and Operations (HFA-340), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION: The amendment to § 5.23 disclosure of official records gives the Chief of the Management and Data Systems staff in the Office of the Director of the Bureau of Biologics the authority to sign affidavits regarding the presence or absence of registration records of blood product establishments. These records are submitted according to part 607 (21 CFR Part 607) of this chapter.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis, unless prohibited by a restriction written into the document designating him or her as "acting," or unless not legally permissible.

Therefore, under the Federal Food, Drug, and Cosmetic Act (Sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), § 5.23 is amended by adding new paragraph (e) to read as follows:

§ 5.23 Disclosure of official records.

* * * * *

(e) The Chief of the Management and Data Systems staff in the Office of the Director of the Bureau of Biologics is authorized to sign affidavits regarding the presence or absence of records of registration of blood product establishments.

Effective date: This regulation shall be effective November 7, 1978.

(Sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a)).)

Dated: October 30, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 78-31223 Filed 11-6-78; 8:45 am]

[4510-26-M]

Title 29—Labor

CHAPTER XVII—OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Revocation of Selected General Industry Safety and Health Standards; Corrections

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Final Rule; Corrections.

SUMMARY: This notice announces corrections to the final Revocation of Selected General Industry Safety and Health Standards which appeared in the FEDERAL REGISTER on October 24, 1978 (43 FR 49726).

EFFECTIVE DATE: November 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Dr. Jerry Purswell, Directorate of Safety Standards Programs, Occupational Safety and Health Administration, Department of Labor, Third Street and Constitution Avenue, NW., Room N3510, Washington, D.C. 20210, Telephone: 202-523-7198.

SUPPLEMENTARY INFORMATION: On October 24, 1978, a document was published in the FEDERAL REGISTER (43 FR 49726) which, with an accompanying explanation, revoked selected general industry safety and health standards. The effective date of the revocations is November 24, 1978. There were a number of inadvertent errors and omissions in the October 24, 1978 document. This document corrects those errors.

Accordingly, FR Doc. 78-30164, appearing at 43 FR 49726, is corrected as follows:

1. Page 49728, column 1, line 22, "607" is corrected to read "606."

2. Page 49729, column 2, line 7, "Table D-4" is corrected to read Table D-2."

3. Page 49731, column 3, line 16, "manufacture" is corrected to read "installation."

4. Page 49732, column 1, last paragraph, line 2, "1910.96(l)(2)(iii)" is corrected to read "1910.96(l)(2)(ii)."

5. Page 49732, column 2, last line, "subparts" is corrected to read "supports."

6. Page 49732, column 3, next to last line, add the words "the second sentence of" before "1910.106(h)(2)(i)."

7. Page 49733, column 1, second paragraph, delete the comma at the end of line 1 and, beginning with the words "For example" in line 7, delete the remainder of the paragraph.

8. Page 49733, column 3, second paragraph, line 6, add after "1910.106(b)(2)(vi)(*b*)" the phrase "—the words 'or public ways'."

9. Page 49733, column 3, second paragraph, line 16, "1910.106(b)(2)(vii)(*d*)" is corrected to read "1910.106(b)(2)(viii)(*d*)."

10. Page 49733, column 3, second paragraph, line 17, "1910.106(b)(2)(vii)(*e*)" is corrected to read "1910.106(b)(2)(viii)(*e*)."

11. Page 49733, column 3, second paragraph, line 18, "1910.106(b)(2)(vii)(*f*)" is corrected to read "1910.106(b)(2)(viii)(*f*)."

12. Page 49733, column 3, second paragraph, line 20, "1910.106(d)(5)(ii)(*a*)" is corrected to read "1910.106(d)(5)(vi)(*a*)."

13. Page 49735, column 2, fourth paragraph, line 11, "1910.110(b)(6)(i)(*b*)" is corrected to read "1910.110(f)(6)(i)(*b*)," and a comma is added at the end of line 11.

14. Page 49738, column 1, line 1, "Figure J-7" is corrected to read "Figure J-8."

15. Page 49738, column 2, lines 38 and 39, "Paragraph 1910.145(d)(11)—Symbols" is corrected to read "Paragraph 1910.145(d)(10)—Slow Moving Vehicle Emblem."

16. Page 49738, column 2, line 44, "Figure J-8—Poison/Electricity" is corrected to read "Figure J-7—Slow Moving Vehicle Emblem."

17. Page 49740, column 1, second paragraph, the phrase "the second sentence of" is added before "1910.213(m)(2)" in the second line.

18. Page 49740, column 3, sixth paragraph, "Paragraph 1910.219(m)(2)" is corrected to read "Paragraph 1910.219(m)(2)(i)."

19. Page 49741, column 1, line 11, "Paragraph 1910.219(o)" is corrected to read "Paragraph 1910.219(o)(1)."

20. Page 49741, column 3, add the following at the end of the column: *"1910.244 Other Portable Tools and Equipment.*

"Paragraph 1910.244(a)(2) prescribes regulations for the operation and maintenance of jacks. Upon reexamination of the evidence, OSHA has determined that, in the best interest of worker protection, the following provision in paragraph 1910.244(a)(2) should not be revoked:

"1910.244(a)(2)(v)—Second sentence dealing with manufacturer's lubrication instructions."

21. Page 49742, column 3, second paragraph, line 1, "There was no public comment" is corrected to read "There were several comments."

22. Page 49743, column 2, fifth paragraph under "Subpart R—Special Industries," lines 6 and 7, "two requirements" is corrected to read "following requirement."

23. Page 49743, column 2, seventh paragraph under "Subpart R—Special Industries," after line 7 (ending in "kiln tender room") add the following title line: *"1910.266 Pulpwood Logging."*

§ 1910.96 [Corrected]

24. Page 49746, column 2, item 180, "Paragraph (r)(4)(iii)" is corrected to read "Paragraph (r)(4)(ii)."

§ 1910.106 [Corrected]

25. Page 49746, column 3, item 210, "Paragraph (b)(2)(vii)(*a*)" is corrected to read "Paragraph (b)(2)(viii)(*a*)."

26. Page 49746, column 3, item 211, "Paragraph (b)(2)(vii)(*b*)" is corrected to read "Paragraph (b)(2)(viii)(*b*)."

27. Page 49747, column 1, item 227, line 2, "revoked" is corrected to read "amended by deleting the second sentence thereof."

§ 1910.145 [Corrected]

28. Page 49749, column 1, item 417, "Figure J-7" is corrected to read "Figure J-8."

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§ 1910.219 [Corrected]

29. Page 49750, column 2, item 502, "Paragraph (m)(2)" is corrected to read "Paragraph (m)(2)(i)."

30. Page 49750, column 2, item 514, "Paragraph (o)" is corrected to read "Paragraph (o)(1)."

§ 1910.265 [Corrected]

31. Page 49751, column 2, item 584. Item 584 is deleted. Paragraph (c)(7) of § 1910.265 is not revoked.

§ 1910.1008 [Corrected]

32. Page 49751, column 2, item 597, "Paragraph (d)(10)" is corrected to read "Paragraph (d)(1)."

(Section 6, 84 Stat. 1593 (29 U.S.C. 655); Secretary of Labor's Order 8-76 (41 FR 25059); 29 CFR Part 1911.)

Signed at Washington, D.C., this 2nd day of November 1978.

EULA BINGHAM,
Assistant Secretary of Labor.

[FR Doc. 78-31524 Filed 11-6-78; 8:45 am]

[4510-26-M]

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Revocation of Selected Special Industry Safety and Health Standards; Corrections

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Final Rule; Corrections.

SUMMARY: This notice announces corrections to the final Revocation of Selected Special Industry Safety and Health Standards which appeared in the FEDERAL REGISTER on October 24, 1978 (43 FR 49751).

EFFECTIVE DATE: November 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Dr. Jerry Purswell, Directorate of Safety Standards Programs, Occupational Safety and Health Administration, Department of Labor, Third Street and Constitution Avenue NW., Room N3510, Washington, D.C. 20210, telephone: 202-523-7198.

SUPPLEMENTARY INFORMATION: On October 24, 1978, a document was published in the FEDERAL REGISTER (43 FR 49751) which, with an accompanying explanation, revoked selected special industry safety and health standards. The effective date of the revocations is November 24, 1978. There were a number of inadvertent errors and omissions in the October 24, 1978 document. This document corrects those errors.

Accordingly, FR Doc. 78-30165 appearing at 43 FR 49751 is corrected as follows:

1. Page 49752, column 1, second paragraph, line 4, "conerning" is corrected to read "concerning."

2. Page 49752, column 2, second paragraph, line 9, "brevised" is corrected to read "revised."

3. Page 49753, column 2, third paragraph, line 16, "Two Hundred twenty-three" is corrected to read "Two Hundred nineteen."

4. Page 49753, column 3, first paragraph, line 15, "Sixty-four" is corrected to read "Sixty-five."

5. Page 49756, column 1, second paragraph, lines 1 and 2, delete the words "Also, paragraph 1910.212(a)(3). This provision is therefore revoked."

6. Page 49756, column 3, first paragraph, add the following lines after line 25: "1910.263(d)(7)(iii)—Screw conveyor covers. 1910.263(d)(8)(i)—Flour sifter enclosures."

7. Page 49757, column 2, first paragraph, add the following lines after line 2: "1910.263(e)(1)(viii)—Access doors and covers."

8. Page 49757, column 3, third paragraph, line 4, "reviwed" is corrected to read "reviewed."

9. Page 49757, column 3, third paragraph, line 6, "23" is corrected to read "22."

10. Page 49757, column 3, third paragraph, line 7, "Twelve" is corrected to read "Eleven."

11. Page 49758, column 1, first paragraph, line 28, "Pagagraph" is corrected to read "Paragraph."

12. Page 49758, column 1, second paragraph, line 6 & 7, "Paragraph 1910.212(l)(19)(ii)" is corrected to read "Paragraph 1910.263(i)(19)(ii)."

13. Page 49758, column 1, second paragraph, line 11, "Paragraph 1910.212(i)(20)(i)" is corrected to read "Paragraph 1910.263(i)(20)(i)."

14. Page 49758, column 2, line 5, "fire extinguisher for a Class B" is corrected to read "fire extinguishing devices suitable for a Class B."

15. Page 49758, column 2, first paragraph, lines 29 and 30, delete the words "Paragraph 1910.263(i)(8)(i)—Handles for overhead trolley switches."

16. Page 49759, column 1, first paragraph, line 5, "provisions" is corrected to read "provision."

17. Page 49762, column 2, eighth paragraph, add the following lines after line 9: "Paragraph 1910.263(l)(3)(ii)—Oven piping."

18. Page 49763, column 3, seventh paragraph, line 4, "other paragraphs" is corrected to read "following provisions."

19. Page 49763, column 3, seventh paragraph, line 5, the period after the word "revoked" is changed to a colon.

20. Page 49763, column 3, seventh paragraph, add the following lines after line 5: "Paragraph 1910.264(c)(1)(ii)(*b*)—Holding door open on washing machine.

Paragraph 1910.264(c)(2)(iii)(*b*)—Holding door open on drying tumblers.

Paragraph 1910.264(c)(2)(iv)(*b*)(*2*)—Holding door open on shakers.

Paragraph 1910.264(c)(2)(v)—Exception of holding door open for automatic machines.

Paragraph 1910.264(c)(4)(iii)(*a*)—Insulating steam pipes to prevent burns.

Paragraph 1910.264(c)(4)(iii)(*b*)—Safety valves on steam lines."

21. Page 49764, column 1, seventh paragraph, line 4, "other paragraphs" is corrected to read "following provisions."

22. Page 49764, column 1, seventh paragraph, line 5, the period after the word revoked is corrected to a colon.

23. Page 49764, column 1, seventh paragraph, add the following lines after line 5: "Paragraph 1910.264(d)(1)(iii)—Precautions for handling soiled clothes.

Paragraph 1910.264(d)(1)(v)—Employee instruction.

Paragraph 1910.264(d)(2)(i)(*a*)—Prohibition against removing safety guards."

24. Page 49764, column 1, delete last four lines.

25. Page 49764, column 2, delete first eight lines.

26. Page 49764, column 2, delete fifth paragraph, starting with the first word "Upon" to the last word "guards."

§ 1910.263 [Corrected]

27. Page 49765, column 2, item 82, "(d)(6)(iii)" is corrected to read "(d)(6)(iv)."

28. Page 49767, column 1, item 237, "(l)(9)(ix)(*a*)" is corrected to read "(1)(9)(xi)(*a*)."

§ 1910.264 [Corrected]

29. Page 49767, column 2, item 290 "(c)(2)(iv)(*a*)(a2)" is corrected to read "(c)(2)(iv)(*a*)(*2*)."

30. Page 49767, column 3, item 298 "(c)(4)(i)" is corrected to read "(c)(3)(ii)(*d*)."

31. Page 49767, column 3, add the following lines after item 321: "322. Paragraph (a)(3) of § 1910.264 is revoked."

(Section 6, 84 Stat. 1593 (29 U.S.C. 655); Secretary of Labor's Order 8-76 (41 FR 25059); 29 CFR Part 1911.)

Signed at Washington, D.C. this 2nd day of November 1978.

EULA BINGHAM,
Assistant Secretary of Labor.

[FR Doc. 78-31525 Filed 11-6-78; 8:45 am]

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[4510-26-M]

PART 1953—STATE PLANS FOR THE DEVELOPMENT AND ENFORCEMENT OF STATE STANDARDS

Changes to State Plans for the Development and Enforcement of State Standards

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: State occupational safety and health plans must meet certain criteria for initial approval under the Occupational Safety and Health Act of 1970. State plans are subject to change as a result of Federal program changes and Federal evaluation of State operations. This document amends the regulation to specify a six-month period for the States to complete Federal program and evaluation changes in their State plans in order to adequately protect the safety and health of the State's workers.

EFFECTIVE DATE: November 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles Boyd, Project Officer, Office of State Programs, Occupational Safety and Health Administration, 3rd and Constitution Avenue NW., Washington, D.C. 20210, 202-653-5377.

SUPPLEMENTARY INFORMATION:

BACKGROUND

29 CFR Part 1953 sets forth the process for decisions by the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) on changes in State occupational safety and health plans approved under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) (29 U.S.C. 651). Section 18 requires States to meet or give adequate assurances of meeting certain criteria for initial approval. Once these criteria are met, the actual operations of the plan are evaluated to determine whether the plan adequately protects the safety and health of the State's workers.

There are four categories of State plan changes which require review: (1) developmental changes required to meet the plan's developmental schedule as approved under section 18(c); (2) Federal program changes, including, but not limited to, adoption or revision of occupational safety and health standards which require comparable State action; (3) evaluation changes required as a result of Federal evaluation of the State operations, and (4) State-initiated changes.

Under 29 CFR 1953.23(a)(1) and 29 CFR 1953.31(a), the Regional Administrator is required to advise the States of Federal program changes and changes required as a result of State evaluations. Within 30 days after such notification, the States must submit a plan supplement indicating the adoption of the change or a schedule for completing the change. Although the regulation does not explicitly state a definite time limit for the State to complete all types of program changes, standards changes are specifically required to be completed within six months after the promulgation of the Federal Standard and this time frame has generally been applied to other changes. This regulation will formalize this practice, requiring the States to complete Federal program and evaluation changes within a six month time period.

In addition, since the adoption of Part 1953, the title of Assistant Regional Director for Occupational Safety and Health has been changed to Regional Administrator for Occupational Safety and Health. This change in title will be reflected whenever it appears in the regulation.

Accordingly, pursuant to sections 8(g)(2) and 18 of the Occupational Safety and Health Act of 1970 (84 Stat. 1600, 1608, 29 U.S.C. 657, 667) 29 CFR Part 1953 is amended as follows:

1. Sections 1953.2(e), 1953.4, 1953.10(b) 1953.11, 1953.22, 1953.23, 1953.31, 1953.41, 1953.50 and 1953.51 are amended by changing the words "Assistant Regional Director" wherever they appear to "Regional Administrator."

2. Section 1953.23(a)(1) is amended to read as follows:

§ 1953.23 Submission and consideration of Federal Program changes.

(a)(1) Within a reasonable time after the occurrence of a Federal program change, other than promulgation of emergency temporary standards, the Regional Administrator as directed by the Assistant Secretary, shall advise the States of a Federal program change which requires a State supplement. This notification shall also contain a date by which States must submit the supplement. This date will generally be thirty days from the date of notification, except where the Assistant Secretary determines that the complexity and scope of the change warrants a longer period for submission of the completed Federal program change supplement. This extended submission period may not exceed six months, unless the Assistant Secretary determines that a state has made a timely and specific showing that good cause exists to extend the time limitation for that State.

. . . . . .

3. Section 1953.31(a) is amended to read as follows:

§ 1953.31 Submission and consideration of evaluation changes.

(a) Within 30 days after an evaluation report has been made, the Regional Administrator shall advise the State of the evaluation findings that require a supplement and the reasons supporting this decision. This notification shall also contain a date by which State must submit the supplement. This date will generally be thirty days from the date of notification, except where the Assistant Secretary determines that the complexity and scope of the change warrants a longer period for submission of the completed change supplement. This extended submission period may not exceed six months, unless the Assistant Secretary determines that the State has made a timely and specific showing that good cause exists to extend the time limitation for that State.

. . . . . .

Signed at Washington, D.C., this 1st day of November 1978.

EULA BINGHAM,
Assistant Secretary of Labor.

[FR Doc. 78-31532 Filed 11-6-78; 8:45 am]

[4510-43-M]

Title 30—Mineral Resources

CHAPTER I—MINE SAFETY AND HEALTH ADMINISTRATION

SUBCHAPTER G—FILING AND OTHER ADMINISTRATIVE REQUIREMENTS

PART 41—NOTIFICATION OF LEGAL IDENTITY

Deferral of Effective Date of Rule

AGENCY: Mine Safety and Health Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: The effective date of the rules for reporting the legal identity of mine operators is deferred to November 30, 1978. Because of unanticipated delays in obtaining the form from the printer, the Mine Safety and Health Administration (MSHA) will be unable to supply form 2000-7 in time for operators to comply with the timetable set forth in the rule. The extension of the effective date will provide sufficient opportunity for MSHA to obtain the form from the printer and to supply the forms to all operators and MSHA field offices.

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EFFECTIVE DATE: This amendment is effective on November 7, 1978. The rules contained in part 41 are effective on November 30, 1978.

ADDRESS: Mine Safety and Health Administration, Ballston Tower No. 3, 4015 Wilson Boulevard, Room 631, Arlington, Va. 22203, telephone 703-235-1910.

FOR FURTHER INFORMATION CONTACT:

Frank A. White, Office of Standards, Regulations and Variances, Room 613, Ballston Tower No. 3; 4015 Wilson Boulevard, Arlington, Va. 22203, telephone 703-235-1910.

SUPPLEMENTARY INFORMATION: On July 7, 1978, the Secretary of Labor published final rules in the FEDERAL REGISTER (43 FR 29510), which required each operator of a coal or other mine to file specific information with the Mine Safety and Health Administration (MSHA) and set forth the procedures for filing such notification of legal identity. Section 41.20 of those rules require each mine operator to file the notification of legal identity and any subsequent changes on MSHA form 2000-7, which was to be provided by MSHA for this purpose. Originally, the rule was to become effective on September 5, 1978, and each operator was to have filed the first report within 30 days of that date under § 41.11(a). This effective date was deferred until October 15, 1978, by a notice in the FEDERAL REGISTER of Friday, September 8, 1978. The effective date is further deferred until November 30, 1978.

This amendment is issued under the authority of sections 103(h), 109(d), and 508 of the Federal Mine Safety and Health Act of 1977 (Pub. L. 91-173, as amended by Pub. L. 95-164). In view of the circumstances stated above, it is determined that good cause exists for omitting notice and comment rulemaking procedures. This amendment is effective on date of publication.

Drafting Information: The principal person responsible for drafting this document is Frank A. White, Office of Standards, Regulations and Variances, MSHA.

Dated: November 2, 1978.

ROBERT B. LAGATHER,
Assistant Secretary for Mine Safety and Health.

[FR Doc. 78-31487 Filed 11-6-78; 8:45 am]

[4810-25-M]

Title 31—Money and Finance: Treasury

CHAPTER V—OFFICE OF FOREIGN ASSETS CONTROL, DEPARTMENT OF THE TREASURY

PART 515—CUBAN ASSETS CONTROL REGULATIONS

Definition of Authorized Trade Territory; Member of the Authorized Trade Territory

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control is amending § 515.322 of its Cuban Assets Control Regulations, which defines "authorized trade territory" and "member of the authorized trade territory." The purpose of the amendment is to update the list of countries included within the authorized trade territory. The need for this amendment is to take into account the existence of new political entities (e.g., Bangladesh), changes of official names (e.g. Sri Lanka) and similar political changes, as well as to delete from the list certain countries against which embargoes or sanctions are currently maintained (e.g., Cambodia, South Vietnam, and Southern Rhodesia). The effect of this amendment will be to make the definitions reflect the current political status of the entities listed and to harmonize this definition with the other regulations administered by this Office.

EFFECTIVE DATE: October 26, 1978.

FOR FURTHER INFORMATION CONTACT:

Stanley L. Sommerfield, Acting Director, Office of Foreign Assets Control, Department of the Treasury, 202-376-0395.

SUPPLEMENTARY INFORMATION: Since this amendment involves a foreign affairs function, the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date are inapplicable.

31 CFR 515.322 is amended to read as follows:

§ 515.322 Authorized trade territory; member of the authorized trade territory.

(a) The term "authorized trade territory" shall include:

(1) North, South, and Central America, including the Caribbean region, except Cuba;

(2) Africa, except Southern Rhodesia;

(3) Oceania, including Indonesia and the Philippines;

(4) Andorra, Austria, Belgium, Cyprus, Denmark, Ireland, the Federal Republic of Germany, and the Western Sector of Berlin, Finland, France (including Monaco), Greece, Iceland, Italy, Liechtenstein, Luxembourg, Malta, the Netherlands, Norway, Portugal, San Marino, Spain, Sweden, Switzerland, Turkey, the United Kingdom, Vatican City, and Yugoslavia;

(5) Afghanistan, Bangladesh, Bhutan, Burma, Hong Kong, India, Iran, Iraq, Israel, Japan, Jordan, Kuwait, Laos, Lebanon, Macao, Malaysia, Nepal, Oman, Pakistan, Qatar, Saudi Arabia, Singapore, South Korea, Sri Lanka, Syrian Arab Republic, Taiwan, Thailand, United Arab Emirates, and Yemen;

(6) Any colony, territory, possession, or protectorate of any country included within this paragraph; but the term shall not include the United States.

(b) The term "member of the authorized trade territory" shall mean any of the foreign countries or political subdivisions comprising the authorized trade territory.

Dated: October 26, 1978.

STANLEY L. SOMMERFIELD,
Acting Director.

Approved:

RICHARD J. DAVIS,
Assistant Secretary.

[FR Doc. 78-31386 Filed 11-6-78; 8:45 am]

[4810-25-M]

PART 515—CUBAN ASSETS CONTROL REGULATIONS

Remittances to Close Relatives Who Are Nationals of Cuba

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control is amending § 515.563 of its Cuban Assets Control Regulations. The purpose of the amendment is to permit support remittances to be made to blocked Cuban nationals who are residents of countries in the authorized territory. The need for the amendment is to extend the authorization contained in § 515.563 to Cuban residents of third countries, with the effect that such remittances will be permitted.

EFFECTIVE DATE: October 26, 1978.

FOR FURTHER INFORMATION CONTACT:

George F. Hazard, Chief of Licensing, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220, 202-376-0428.

SUPPLEMENTARY INFORMATION: Since this amendment relaxes existing restrictions and involves a foreign affairs function, the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and a delay in effective date are inapplicable.

Section 515.563 is amended by revising the section heading and paragraph (a) to read as follows:

§ 515.563 Family remittances to nationals of Cuba.

(a) Remittances to any close relative of the remitter or of the remitter's spouse who is a national of Cuba and who is resident in Cuba or in the authorized trade territory are authorized, provided they are not made from blocked accounts. Such remittances may be made only as follows:

(1) For the support of the payee, or for the support of the payee and members of his household, in amounts not exceeding $500 in any consecutive 3-month period to any one payee or to any one household; and

(2) For the purpose of enabling the payee to emigrate from Cuba, in an amount not exceeding $500 to be made only once to any one payee, provided that the payee is a resident of and within Cuba on the effective date of this section.

* * * * *

Dated: October 26, 1978.

STANLEY L. SOMMERFIELD,
Acting Director.

Approved:

RICHARD J. DAVIS,
Assistant Secretary.

[FR Doc. 78-31387 Filed 11-6-78; 8:45 am]

[4810-25-M]

PART 500—FOREIGN ASSETS CONTROL REGULATIONS

Remittances to Close Relatives who are Nationals of Vietnam or Cambodia

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control is amending § 500.565 of its Foreign Assets Control Regulations. The purpose of the amendment is to permit support remittances to be made to certain blocked Vietnamese nationals who are residents of countries in the authorized trade territory or of the People's Republic of China and to certain blocked Cambodian nationals who are residents of countries in the authorized trade territory or of Vietnam. The need for the amendment is to extend the authorization contained in § 500.565 to Vietnamese and Cambodian residents of third countries and to Cambodian residents of Vietnam, with the effect that such remittances will be permitted.

EFFECTIVE DATE: October 26, 1978.

FOR FURTHER INFORMATION CONTACT:

George F. Hazard, Chief of Licensing, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220, 202-376-0428.

SUPPLEMENTARY INFORMATION: The authorization in this amendment permits remittances to close relatives who are Cambodian citizens residing in Vietnam or in countries in the authorized trade territory. However, it does not authorize remittances to persons in Cambodia.

Since this amendment relaxes existing restrictions and involves a foreign affairs function, the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and a delay in effective date are inapplicable.

Section 500.565 is amended to read as follows:

§ 500.565 Family remittances to nationals of Vietnam, and certain Cambodian nationals

(a) Remittances to any close relative of the remitter or of the remitter's spouse, who is a national of Vietnam, are authorized, provided that the recipient is a resident of Vietnam, a country in the authorized trade territory or the People's Republic of China (notwithstanding the provisions of § 500.303), and is not a specially designated national.

(b) Remittances to any close relative of the remitter or of the remitter's spouse, who is a national of Cambodia, are authorized provided that the recipient is a resident of Vietnam (notwithstanding the provisions of § 500.303) or of a country in the authorized trade territory, and is not a specially designated national.

(c) Remittances made pursuant to this section may be made only as follows:

(1) For the support of the payee, or for the support of the payee and members of his household, in amounts not exceeding $300 in any consecutive 3-month period to any one payee or to any one household; and

(2) For the purpose of enabling the payee to emigrate from Vietnam, in an amount not exceeding $750, to be made only once to any one payee, provided that the payee is a resident of and within Vietnam on the effective date of this section.

(d) The term "close relative" used with respect to any person means spouse, child, grandchild, parent, grandparent, uncle, aunt, brother, sister, nephew, niece, or spouse, widow, or widower of any of the foregoing.

(e) The term "member of a household" used with respect to any person means a close relative sharing a common dwelling with such person.

(f) This section does not authorize remittances:

(1) From blocked accounts; or,

(2) To persons in Cambodia.

Dated: October 26, 1978.

STANLEY L. SOMMERFIELD,
Acting Director.

Approved:

RICHARD J. DAVIS,
Assistant Secretary.

[FR Doc. 78-31388 Filed 11-6-78; 8:45 am]

[3910-01-M]

Title 32—National Defense

CHAPTER VII—DEPARTMENT OF THE AIR FORCE

SUBCHAPTER C—PUBLIC RELATIONS

PART 832—EMPLOYMENT OF CIVIL AIR PATROL

Subpart A—General Information

AGENCY: Department of the Air Force, DOD.

ACTION: Final rule.

SUMMARY: The Civil Air Patrol (CAP) is provided support by the Air Force under 10 U.S.C. 9441. This statute directs the Secretary of the Air Force to prescribe regulations applicable to the employment authorized for Civil Air Patrol. This document updates the Air Force agencies that employ CAP and types of missions involved, revises the reimbursement procedures, and identifies the revised accounting needs for reimbursing CAP.

EFFECTIVE DATE: July 10, 1978.

FOR FURTHER INFORMATION CONTACT:

Lt. Col. Hettinger, the Pentagon, room BF655, Washington, D.C., phone: 202-697-2463.

SUPPLEMENTARY INFORMATION: On January 19, 1978, the Department of the Air Force, DOD, published a proposed revision to subpart A of part

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832, title 32 CFR (43 FR 2735) inviting public comment. As outlined at that time, this subpart explains the use of Civil Air Patrol (CAP) services employed on Air Force noncombat missions. It applies to Air Force activities only and does not dictate or limit the private activities of CAP. This revision updates the Air Force agencies that employ CAP and types of missions involved, revises the reimbursement procedures, and identifies the revised accounting needs for reimbursing CAP. Since no public comments were received, the subpart is revised to read as follows:

Subpart A—Employment of Civil Air Patrol

Sec.

832.1 Purpose.
832.2 Use of CAP services by the Air Force.
832.3 CAP mission employment by the Air Force.
832.4 Use of Air Force funds.
832.5 CAP accidents or incidents.
832.6 Procedures for reimbursing CAP.
832.7 Accounting procedures for reimbursement funding.
832.8 Cost estimates for CAP reimbursement.
832.9 Training and evaluation of CAP members.

AUTHORITY: 10 U.S.C. 8012, 9441.

NOTE.—This subpart is derived from Air Force Regulations 46-5, July 10, 1978. Part 806 of this chapter states the basic policies and instructions governing the disclosure of records and tells members of the public what they must do to inspect or obtain copies of the material referenced herein.

§ 832.1 Purpose.

This subpart explains the use of Civil Air Patrol (CAP) services employed on Air Force noncombat missions. It applies to Air Force activities only and does not dictate or limit the private activities of CAP.

§ 832.2 Use of CAP services by the Air Force.

Use of CAP services to support Air Force noncombat missions is provided for by law. CAP participates in these missions on a voluntary basis; therefore, the use of CAP services must be formally requested by a specific Air Force agency.

§ 832.3 CAP mission employment by the Air Force.

CAP members and their available equipment can perform light aircraft operations and provide mobile ground team support and local or long range radio communications from a mobile or stationary site. CAP resources are primarily used on these types of missions:

(a) *Search and rescue.* CAP voluntarily supports the National Search and Rescue Plan. The Aerospace Rescue and Recovery Service (ARRS), Air Force Commanders in Alaska and Hawaii and the Commander, CAP-USAF may request the assistance of CAP for search and rescue missions. These agencies authorize, coordinate, and assist CAP in the conduct of such missions.

(b) *Disaster relief.* CAP resources may be used to assist in the relief of disasters that occur in the United States and Puerto Rico. CAP services are requested and coordinated by one of the numbered Air Force headquarters within the Air Force Reserve.

(c) *Civil defense.* CAP resources may be used in the event of a Civil Defense Emergency. Tasks are assigned by Civil Defense agencies to CAP under the guidelines in Civil Defense Emergency plans. Examples of these tasks are:

(1) Air radiological monitoring,
(2) Air surveillance and reconnaissance,
(3) Light air transport,
(4) Courier service, and
(5) Radio communications.

(d) *Test missions.* The ability of CAP to perform search and rescue, disaster relief, or civil defense tasks is evaluated through test missions. These missions are requested by the Commander, CAP-USAF, and conducted by Air Force liaison members assigned to CAP.

(e) *Other missions for CAP.* An Air Force commander who may need CAP services for other than search and rescue, disaster relief, or civil defense activities must coordinate the use of CAP services through HQ CAP-USAF/DO before any mission activity by CAP members. This is to insure that the requesting major command (MAJCOM) is fully aware of the policies, procedures, and limitations that apply to CAP when performing Air Force missions.

(f) *Basic requirements for CAP missions.* An Air Force agency that authorizes the use of CAP services on any Air Force mission must provide at least this information:

(1) Written authority for the specific mission,
(2) Scope of CAP activity,
(3) Assignment of mission number or designator,
(4) Date and time of start and mission length,
(5) Air Force point of contact for CAP mission coordinator,
(6) CAP wings involved, and
(7) Release of information to news media.

§ 832.4 Use of Air Force funds.

(a) Air Force appropriated funds are authorized only to furnish or reimburse CAP for:

(1) Aviation and automotive fuel and lubricants used to perform an Air Force authorized mission.
(2) Communications expenses used to alert or control CAP resources involved with an authorized mission.

(b) Air Force appropriated funds are not authorized to:

(1) Reimburse CAP for depreciation of privately owned equipment.
(2) Set up indemnity provisions for damage to equipment, or for personal injury or death of CAP members as a result of participation on an Air Force mission.
(3) Set up indemnity claims for equipment or facilities used by CAP or its members that are obtained from private owners by loan, lease, contract, or otherwise.
(4) Pay for personal services or expenses of CAP members engaged in Air Force missions, except as identified in this subpart.

§ 832.5 CAP accidents or incidents.

A CAP accident or incident that occurs on an authorized Air Force mission and that results in damage to or loss of property, or personal injury or death, is reported to the Air Force liaison officer for the CAP wing performing the mission. Part 842 of this chapter, Claims Manual, explains the CAP provisions in these situations.

§ 832.6 Procedures for reimbursing CAP.

CAP members who participate on an authorized Air Force mission are reimbursed for aviation and automotive fuel and lubricants as well as the cost of communications used on such missions. If CAP members are not able to purchase fuel or lubricants during a mission, a local vendor may be used to provide fuel and lubricants to CAP and receive reimbursement by the Air Force.

(a) CAP Form 108, reimbursement document, is used to identify all claims for reimbursement by CAP members or vendors. AFM 177-102, commercial transactions at base level, paragraph 20844, states the certifications needed on any CAP claim for reimbursement. The statement from the CAP wing commander is entered and signed after the last entry on the CAP Form 108.

(b) CAP members or vendors submit all reimbursement claims to the Air Force liaison office that serves the CAP wing participating on the mission. The liaison officer reviews all claims and fills out a standard form (SF) 1034, Public Voucher or Purchases and Services Other Than Personnel, as outlined in AFM 177-102, paragraph 20884.

(c) The liaison officer sends SF 1034 and supporting documents for search and rescue, disaster relief, or civil defense missions, as well as test exercises for these type of missions, to 375 AAW/ACFM, Scott AFB IL 62225 for payment. CAP reimbursement claims for other missions are forwarded to the accounting and finance office specified by the MAJCOM that requested and authorized the mission.

§ 832.7 Accounting procedures for reimbursement funding.

(a) The Military Airlift Command (MAC) is responsible for CAP reimbursement funding on search and rescue, disaster relief, or civil defense missions, as well as test exercises for these types of missions. The following procedures apply:

(1) *Search and rescue missions.* When the ARRS requests a CAP wing to perform a mission, ARRS provides a cost estimate to HQ MAC/ACB. This data includes: The CAP wing, mission number, mission purpose, and estimated cost by category of expense. When a mission is closed or suspended, a letter of authorization for the mission is sent to the CAP wing commander, with copies to HQ MAC/ACB and 375 AAW/ACFM.

(2) *Disaster relief or civil defense missions.* When an Air Force Reserve numbered Air Force headquarters authorizes a CAP mission, it uses the same procedures and data as for a search and rescue mission.

(3) *Test or exercise missions.* The Commander, CAP-USAF may task a CAP wing to perform an exercise or test mission to evaluate its ability to conduct an actual search and rescue, disaster relief, or civil defense mission. HQ CAP-USAF/DO requests funds to support these missions from HQ MAC/ACB, who provides the available funding by category of expense to HQ CAP-USAF/DO and 375 AAW/ACFM. HQ CAP-USAF, as the CAP mission manager, provides the same data as required for actual missions to HQ MAC/ACB and 375 AAW/ACFM.

(b) The Air Force liaison officer enters the proper accounting classifications on the SF 1034. The account classification for MAC-reimbursed mission is:

57(FY)3400—30(FY)6591—(RC/CC)—09(EEIC)S525300.

(1) Fiscal Year (FY)—use eight for fiscal year 1978, nine for fiscal year 1979, etc.

(2) Responsibility Center/Cost Center code (RC/CC).

RC/CC and Description

100901 Actual Search and Rescue missions.
190902 Actual Disaster Relief or Civil Defense Missions.
190903 Search and Rescue or Disaster Relief or Civil Defense test missions.

(3) Element of Expense Investment Code (EEIC).

EEIC and Description

49510 Official toll calls.
601 Aviation fuel and lubricants.
612 Automotive fuel and lubricants.

(c) Other MAJCOMS which use CAP services for noncombat missions must insure enough funds are available to reimburse CAP for fuel, lubricants, and communications costs used on these missions. The using MAJCOM must also provide an account classification to HQ CAP-USAF/DO for liaison officers to complete an SF 1034 for the mission.

§ 832.8 Cost estimates for CAP reimbursement.

HQ CAP-USAF submits these estimates annually to HQ MAC/ACB soon enough for them to be included in the MAC budget request. The estimates identify the number of actual and test missions, their purpose, and projected cost by expense category.

§ 832.9 Training and evaluation of CAP members.

(a) Training for CAP members is the responsibility of CAP commanders and supervisors; however, the Commander, CAP-USAF, through the liaison program for CAP, may give training assistance to CAP members or coordinate training assistance from other Air Force organizations.

(b) The Commander, CAP-USAF, may authorize test missions or exercises as needed to evaluate the ability of the CAP to perform Air Force-requested missions.

CAROL M. ROSE,
Air Force Federal Register Liaison Officer.

[FR Doc 78-31437 Filed 11-6-78; 8:45 am]

[3910-01-M]

PART 832—EMPLOYMENT OF CIVIL AIR PATROL

Subpart D—Support for Civil Air Patrol

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule.

SUMMARY: The Civil Air Patrol (CAP) is provided support by the Air Force under 10 U.S.C. 9441. This statute directs the Secretary of the Air Force to prescribe regulations applicable to the support authorized for Civil Air Patrol. This document sets forth provisions relating to support functions; limitations on support; acquisition of property, and use of Air Force services and facilities.

EFFECTIVE DATE: April 26, 1978.

FOR FURTHER INFORMATION CONTACT:

Lieutenant Colonel Hettinger, the Pentagon, Room BF655, Washington, D.C., phone 202-697-2463.

SUPPLEMENTARY INFORMATION: On January 5, 1978, the Department of the Air Force, DOD, published a proposed new subpart D of Part 832, Title 32 CFR (43 FR 980) inviting public comment. This new subpart tells how support is set up for the Civil Air Patrol (CAP). It applies to Air Force activities only. Since no public comments were received, the new subpart is added and will read as follows:

Subpart D—Support for Civil Air Patrol

Sec.

832.40 Background information.
832.41 Legal authority.
832.42 Air Force liaison function.
832.43 Limitations on CAP support.
832.44 Screening and acquiring DOD property.
832.45 Accounting and disposing of DOD property.
832.46 CAP use of Air Force services and facilities.

AUTHORITY: 10 U.S.C. 9441.

NOTE.—This subpart is derived from Air Force Regulation 46-6, April 26, 1978.

Part 806 of this Chapter states the basic policies and instructions governing the disclosure of records and tells members of the public what they must do to inspect or obtain copies of the material referenced herein.

§ 832.40 Background information.

This subpart tells how support is set up for the Civil Air Patrol (CAP). It applies to Air Force activities only.

§ 832.41 Legal authority.

Support for CAP is provided for by law, 10 U.S.C. 9441. This law allows the Air Force to assign members to CAP for liaison and training duty; makes CAP eligible to receive DOD excess personal property, and allows CAP to use Air Force services and facilities.

§ 832.42 Air Force liaison function.

The Air Force assigns both active and reserve military members as well as civilians to liaison duty with CAP. Subpart C of this part sets up the organization and responsibilities of the active duty liaison program, and Air Force Regulation 45-10 describes the Reserve Assistance program for CAP.

§ 832.43 Limitations on CAP support.

(a) *Acquiring DOD property for CAP.* DOD property turned over to CAP becomes CAP property. CAP is required to maintain an account of all property it receives from the DOD and obtains CAP-USAF approval prior to disposing of any DOD item.

(b) *Loaning property to CAP.* Headquarters, U.S. Air Force Reserve, through CAP-USAF, sets up the loan of Air Force property to CAP.

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(c) *Obligating Government funds.* Air Force commanders must not use appropriated funds for CAP except as set out in this subpart, or other 46 series Air Force regulations.

(d) *Using AF Form 15, USAF invoice.* Air Force liaison officers may use AF Form 15 to obtain fuel or lubricants for approved CAP missions.

(e) *Misusing property.* Should CAP misuse DOD property it receives, or misuse the funds it obtains from an approved sale of such property, the offending CAP unit may be suspended from receiving DOD items.

§ 832.44 Screening and acquiring DOD property.

(a) *Defense Property Disposal Service (DPDS).* DOD personal property no longer needed by a Military Service/Defense Agency is transferred to a Defense Property Disposal Office (DPDO). The DPDO makes sure property turned over to them is made available to meet the needs of all DOD agencies. Once these needs are met, property items are made available to fill the needs of CAP before being offered to Federal civil agencies or donee activities. The DPDS uses two ways to dispose of property:

(1) *Reportable property.* Based on the condition and value of available property, the DPDS publishes declared excess personal property lists. These lists are put together at a central control point for distribution.

(i) Declared excess personal property lists are sent to CAP-USAF and to their regional liaison offices by DPDS. CAP-USAF or the region liaison offices sends a request for changes to the distribution of these lists to DPDS-U, Battle Creek, MI 49016.

(ii) Liaison personnel review property listings to find out what items of property are suitable for CAP. CAP-USAF or the region liaison office sends these requirements to DPDS. When property becomes available for transfer, DPDS tells CAP-USAF or the region liaison office.

(iii) CAP-USAF or the region liaison office sends a Department of Defense Form 1149, Requisition and Invoice/Shipping Document, to the activity which reported the property to pick up the items needed.

(2) *Nonreportable property.* Property not offered in writing is made available for screening at the local DPDO.

(i) Nonreportable property is kept for screening at a disposal facility for 21 calendar days.

(ii) The region liaison office verifies CAP requirements for nonreportable property.

(b) *General Services Administration (GSA).* The regional offices publish lists of property available for disposal within their regional area. These catalogs or bulletins list property from both DOD and Federal civil agencies. These publications tell when the property is available, where it is located, and what the condition of the property is.

(1) *Distributing GSA catalogs/bulletins.* GSA sends their catalogs or bulletins to CAP-USAF or region liaison offices. Any request for change to these publications is forwarded to a GSA regional office.

(2) *Reviewing GSA catalogs or bulletins.* Liaison officers review GSA catalogs or bulletins only for DOD property suitable for CAP. These publications set out DOD items by the location reporting the property.

(3) *Procedure for acquiring property from GSA.* GSA catalogs or bulletins identify the procedures to follow for picking up property items.

(c) *Limitations on property items.* (1) DOD personal property items are acquired to support CAP programs and activities recognized by the Air Force within these limits:

(i) Obtaining DOD property for the purpose of sale is prohibited.

(ii) Property obtained for CAP is to be in usable condition or need only minimum repair.

(iii) DOD property may be acquired for spare parts provided it is used for that purpose only and not as an item by itself.

(2) The Commander, CAP-USAF may delegate authority to liaison region commanders to acquire DOD property for CAP. This does not include aircraft. CAP-USAF screens and acquires excess DOD aircraft for CAP.

(d) *Handling and transportation costs.* (1) The Air Force pays for moving property acquired for CAP to a location approved by CAP-USAF. Property sent from Air Force installations uses funds from that facility.

(2) AFLC pays the handling and transportation costs for property from other military installations.

(3) DOD property acquired for CAP is authorized to be shipped in the Defense transportation system to a location approved by the Commander, CAP-USAF. Property is shipped at the same rates as other military cargoes.

§ 832.45 Accounting and disposing of DOD property.

(a) CAP maintains an account of all property received from the DOD. These basic rules apply:

(1) CAP must maintain an account of all items it receives so that an audit identifies where the item came from, where it is being used in CAP, or tells when and how it was disposed of.

(2) A written release from CAP-USAF is needed for CAP to dispose of any former DOD property. The funds that are received from an authorized sale of such property items are sent to the National Headquarters, CAP, to be used for support of approved CAP programs. CAP-USAF is told when the items are disposed and the amount of funds from any sale.

(3) The Commander, CAP-USAF, must approve any former DOD aircraft that CAP wants to dispose of. He may approve the trade of these aircraft for commercial aircraft that cost less to operate and maintain. The commercial aircraft received in trade are accounted for and disposed of in the same manner as aircraft received directly from the DOD.

(b) CAP-USAF establishes the procedures for control of any Air Force property that is loaned to CAP.

(c) An annual audit of each CAP region and wing supply account is made to determine if DOD property is being properly managed.

§ 832.46 CAP use of Air Force services and facilities.

(a) *Air Force policy.* (i) CAP may use Air Force services or facilities that are needed to assist CAP-approved programs. However, use of any service or facility is not to interfere with the mission assigned to an Air Force unit or installation.

(ii) A request to use any service or facility of the Air Force by CAP members is sent to the appropriate Air Force liaison office.

(b) *Maintenance support.* (1) CAP equipment requiring maintenance that a CAP unit cannot perform, may be done at an Air Force facility. Payment for this service is not required; however, the parts, supplies, or instructions needed to complete the work are to be provided by CAP.

(2) Organizational maintenance is done by the CAP unit.

(3) Field maintenance that a CAP unit cannot do may be done by the nearest Air Force facility.

(4) Depot maintenance may be done at an Air Force facility serving the geographical area of the CAP unit needing this type of assistance.

(c) *Using real property.* CAP uses Air Force real property under the guidelines in the 87-series Air Force regulations on real property management.

(d) *Air Force mission support.* CAP resources may be used on Air Force noncombat missions. The Air Force reimburses CAP for the fuel, lubricants, and communications expenses used on these missions. The procedures used for reimbursing CAP are provided in subpart A of this part.

(e) *Other services.* There are other Air Force services which CAP may use. These services are identified in Air Force regulations and include emergency medical treatment (168 series), temporary billeting (30 series), transportation (DOD 4515.13R) and limited exchange privileges (147 series). In addition to reviewing the regulation that applies to a service being provided to CAP, an Air Force unit or installation member should contact the nearest Air Force liaison office for CAP to get further assistance.

CAROL M. ROSE,
Air Force Federal Register Liaison Officer.

[FR Doc. 78-31436 Filed 11-6-78; 8:45 am]

[6560-01-M]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

[FRL 989-8]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

California Plan Revision: Del Norte County Air Pollution Control District

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to approve and, where appropriate, disapprove or take no action on changes to the Del Norte County APCD portion of the California State Implementation Plan (SIP) submitted by the Governor's designee. The intended effect of this action is to update rules and regulations and to correct certain deficiencies in the SIP.

EFFECTIVE DATE: December 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Allyn M. Davis, Director, Air and Hazardous Materials Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, Calif. 94105, attention: Wallace Woo, 415-556-7288.

SUPPLEMENTARY INFORMATION: On April 3, 1978 (43 FR 13901), EPA published a notice of proposed rulemaking for revisions to the Del Norte County Air Pollution Control District's rules and regulations submitted on November 4, 1977.

The most significant changes to rules being acted upon by this notice are as follows:

(a) Continuous monitoring requirements for certain pollutants from certain stationary sources are added.

(b) Exceptions to the particulate emission limits are added.

(c) Emission limits and compliance verification requirements for sulfur compounds from geothermal operations are added.

A list of the rules being considered by this action was published as part of the notice of proposed rulemaking on April 3, 1978 (43 FR 13901). The notice of proposed rulemaking provided 30 days for public comment. No comments were received.

Under section 110 of the Clean Air Act, as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove these regulations as State implementation plan revisions.

Rule 240(e) Mandatory Monitoring Requirements, and appendix D to Regulation 1, Continuous Monitoring, are approved because they partially fulfill the requirements of 40 CFR 51.19(e). It is noted, however, that this rule and appendix do not meet all of the requirements of 40 CFR 51.19(e) and appendix P of part 51.

It is the purpose of this notice to approve all changes contained in the November 4, 1977, submittal and to incorporate them into the California SIP, with the exceptions of the rules discussed below.

EPA is disapproving Rules 420(e), Waste Incineration, and 420(f), Geothermal Well Drilling.

Rule 420(e) would exempt from the emission limit of rule 420(a) single chamber incinerators "used for the disposal of approved combustibles subject to permit conditions specified by the control officer after a finding that such use is compatible with the county solid waste management program and will not cause a violation of the control strategy." This rule is disapproved because it relaxes emission control, provides an excessive amount of discretion on the part of the control officer, and as such could interfere with the attainment/maintenance of the national ambient air quality standards (NAAQS).

Rule 420(f) provides an exception to the emission limits of rule 420(d) (including table I), Non-Combustion Sources, for geothermal wells. Without a demonstration that this exception would not interfere with the attainment/maintenance of the NAAQS, rule 420(f) cannot be approved.

No action is being taken at this time on rules concerning emergency episodes, new source review, or sulfide emission standards. Those pertaining to emergency episodes or new source review will be acted upon in separate FEDERAL REGISTER notices.

Rules 450, Sulfide Emission Standards for Kraft Pulp Mills; 455(b), Geothermal Operations—Power Plant Emissions; 455(c), Geothermal Operations—Pre-Power Emissions; and Appendix B to Regulation 1, Sonoma County Geothermal Zone I, are not appropriate for inclusion in the SIP because they would regulate a pollutant for which there is no NAAQS.

The State has submitted revisions to rule 490 and regulation 3, concerning new source performance standards (NSPS). These revisions implement section 111 of the Clean Air Act and are not appropriate for inclusion in the SIP under section 110 of the Act. Therefore, they will be neither approved nor disapproved by EPA as part of an applicable implementation plan. They will, however, be reviewed under the appropriate provisions of section 111, and will be acted upon in a separate FEDERAL REGISTER notice.

The California Air Resources Board has certified that the public hearing requirements of 40 CFR 51.4 have been satisfied.

(Secs. 110, 301(a), Clean Air Act as amended (42 U.S.C. 7410 and 7601(a)).)

Dated: October 30, 1978.

DOUGLAS M. COSTLE,
Administrator.

Subpart F of part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. Section 52.220, paragraph (c)(42)(xv) is added as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(42) * * *

(xv) Del Norte County APCD.

(A) New or amended rules 240(e), 420 (e) and (f), and 455 (a) and (d), and appendix D to regulation 1.

* * * * *

2. Section 52.234, paragraph (e)(9) is added as follows:

§ 52.234 Source surveillance.

* * * * *

(e) * * *

(9) North Coast Intrastate AQCR.

(i) Del Norte County APCD

* * * * *

3. Section 52.275, paragraph (b)(3)(i)(B) is added as follows:

§ 52.275 Particulate matter control.

* * * * *

(b) * * *

(3) * * *

(i) * * *

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(B) Rules 420(e), Waste Incineration, and 420(f), Geothermal Well Drilling, submitted on November 4, 1977.

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[FR Doc. 78-31342 Filed 11-6-78; 8:45 am]

[6560-01-M]

[FRL 989-7]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

California Plan Revision: Great Basin Unified Air Pollution Control District

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to disapprove or take no action on changes to the Great Basin Unified Air Pollution Control District (APCD) portion of the California State Implementation Plan (SIP) submitted by the Governor's designee. The intended effect of this action is to update rules and regulations and to correct certain deficiencies in the SIP.

EFFECTIVE DATE: December 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Allyn M. Davis, Director, Air and Hazardous Materials Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, Calif. 94105, attention: Wallace Woo, 415-556-7288.

SUPPLEMENTARY INFORMATION: On August 25, 1978, in 43 FR 38049, EPA published a notice of proposed rulemaking for revisions to the Great Basin Unified APCD's rules and regulations submitted on June 22, 1978, by the California Air Resources Board for inclusion in the California SIP.

The changes contained in this submittal and being acted upon by this notice concern changes in permit assessments and control equipment description for gasoline loading into stationary tanks.

Under section 110 of the Clean Air Act as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove rules submitted as State implementation plan revisions.

A list of the rules being considered by this action was published as part of the notice of proposed rulemaking and can be found in 43 FR 38050 (August 25, 1978). No comments were received during the 30-day public comment period.

Rule 419, Gasoline Loading into Stationary Tanks, has been revised to include reference to regulation IX for a description of proper vapor loss control devices. However, regulation IX is not part of the California SIP, as it was never approved. Therefore, this revision could render the rule unenforceable and must be disapproved. For Federal enforcement purposes, rule 419, submitted April 21, 1976, and previously approved (42 FR 28883), will remain in effect.

Rule 601, Filing Petitions, although listed in the August 25, 1978, notice, will be addressed in a future FEDERAL REGISTER action.

The California Air Resources Board has certified that the public hearing requirements of 40 CFR 51.4 have been satisfied.

(Secs. 110 and 301(a), Clean Air Act as amended (42 U.S.C. 7410 and 7601(a)).)

Dated: October 30, 1978.

DOUGLAS M. COSTLE,
Administrator.

Subpart F of part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. Section 52.220, paragraph (c)(44)(i) is added as follows:

§ 52.220 Identification of plan.

• • • • •

(c) • • •

(44) Revised regulations for the following APCD's submitted on June 22, 1978, by the Governor's designee.

(i) Great Basin Unified APCD.

(A) Amended rule 419.

• • • • •

2. Section 52.269, paragraph (b)(4)(i)(B) is added as follows:

§ 52.269 Control strategy and regulations: photochemical oxidants (hydrocarbons) and carbon monoxide.

• • • • •

(b) • • •

(4) • • •

(i) • • •

(B) Rule 419, Gasoline Loading into Stationary Tanks, submitted on June 22, 1978, is disapproved, and rule 419, submitted April 21, 1976, and previously approved in 40 CFR 52.223, is retained.

• • • • •

[FR Doc. 78-31341 Filed 11-6-78; 8:45 am]

[6560-01-M]

[FRL 982-6]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

California Plan Revision: Mendocino County Air Pollution Control District (APCD)

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to approve and, where appropriate, disapprove or take no action on changes to the Mendocino County APCD portion of the California State Implementation Plan (SIP) submitted by the Governor's designee. The intended effect of this action is to update rules and regulations and to correct certain deficiencies in the SIP.

EFFECTIVE DATE: December 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Allyn M. Davis, Director, Air and Hazardous Materials Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, Calif. 94105, Attn: Wayne A. Blackard, 415-556-7882.

SUPPLEMENTARY INFORMATION: On June 14, 1977 (42 FR 30396), EPA published a notice of proposed rulemaking for revisions to the Mendocino County Air Pollution Control District's rules and regulations submitted on December 13, 1972; July 25, 1973; January 22, 1974; July 19, 1974; January 10, 1975; July 22, 1975; February 10, 1976; and November 10, 1976. Since the November 10, 1976, submittal represents the most recent complete set of rules and regulations for the district, only it will be addressed in this notice.

The rules contained in the November 10, 1976, submittal comprise a complete revision of the Mendocino County APCD's rules and regulations and are identical for four of the five APCD's in the North Coast Air Basin. All rules have been renumbered, and many have been reworded or reorganized. In addition to those changes, the most significant changes to rules being acted upon by this notice are as follows:

(a) Language changes are made to conform with recodification of the State health and safety code and to accommodate the uniform regulations of the North Coast Air Basin.

(b) Procedures are added regarding public records and trade secrets.

(c) Provisions are added regarding severability, intent of the regulations, and liberal construction.

(d) Exceptions to the visible emissions rule are added.

(e) Measures to be taken to control fugitive dust are added.

(f) Controls over incineration of animal matter are added.

(g) A requirement for submerged fill pipes for stationary gasoline tanks is added.

(h) Procedures for issuing orders for abatement are updated and detailed.

(i) Exemptions from open burning prohibitions are added.

(j) Open burning policies are specified.

(k) Use classifications under which open fires are allowed on "permissive-burn" days are specified.

(l) Procedures for notifying the public of "permissive-burn" and "no-burn" days are specified.

(m) Reporting procedures, exceptions to prohibition of burning on "no-burn" days, and agencies that may issue burning permits are specified.

(n) Conditions under which waste may be burned are specified, and an exception to the rule on drying time is provided.

(o) Penalties for violations of open burning rules are established.

A list of the rules being considered by this action was published as part of the notice of proposed rulemaking on June 14, 1977 (42 FR 30396). The notice of proposed rulemaking provided 30 days for public comment.

In response to EPA's evaluation reports on the Del Norte County APCD's rules (which are now identical to the Mendocino County APCD's rules), and to a letter dated July 21, 1977, from EPA to the Del Norte County APCD, the Humboldt County APCD sent two letters, dated July 27 and 28, 1977, to EPA. Both letters dealt with regulation 2, Open Burning Procedures, while the July 28 letter also dealt with Rule 240(e), Mandatory Monitoring Requirements.

Regarding regulation 2, and in particular the general prohibitions as set forth at page 1, the July 27 letter noted that certain exceptions would not allow the unregulated burning that EPA had questioned, because of limiting definitions, conditions normally included in the granting of exemptions, and a proposed revision of the general prohibitions. In an August 16, 1977 letter to the Humboldt County APCD, EPA responded to those comments by suggesting ways in which the regulation could be further improved, and pointing out that, until a revision is submitted to EPA by the California Air Resources Board as an official SIP revision, EPA cannot act upon it.

The July 28 letter noted that special burning practices permitted on the basis of economic considerations might "be further conditioned that they will not cause a violation of the SIP control strategy." EPA encourages such conditioning, provided also that a demonstration is made that such permitted burning practices will not prevent the attainment or maintenance of the national Ambient Air Quality Standards (NAAQS).

Regarding rule 240(e), the July 28 letter noted that the Del Norte County APCD has adopted a revised rule 240(e). (The Mendocino County APCD has adopted the same rule.) Although that revised rule was submitted to EPA for both APCD's by the California Air Resources Board on November 4, 1977, it has not yet been evaluated. It will be acted upon in a subsequent FEDERAL REGISTER notice.

In response to EPA's evaluation reports on the Humboldt County APCD's rules, the Humboldt County APCD sent EPA a letter dated February 10, 1978. That letter stated (a) that detailed emergency procedures (rule 140) are required only in priority I regions; (b) that a provision for correlation of emission data with applicable emission limitations (now missing from rule 150) would be proposed to be added to rule 240(d), along with other revisions suggested by EPA; (c) that changes elsewhere would be required to clarify rules 410(c) (2) and (7); (d) that rule 420(e) would be deleted or modified; and (e) that regulation 2 was being completely redrafted.

In an April 27, 1978 letter to the Humboldt County APCD, EPA responded to those comments by noting that some of the proposed revisions would improve the rules and that the revisions would be evaluated in the future. Regarding emergency procedures, rules pertaining to that subject will be acted upon in a separate FEDERAL REGISTER notice.

Under section 110 of the Clean Air Act, as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove these regulations as State implementation plan revisions.

Rule 150, Public Records, provides for the public availability of emission data. The rule does not, however, require the correlation of emission data with applicable emission limitations as required by 40 CFR 51.10(e). Rule 150 is approved since it partially satisfies the requirements of § 51.10(e). However, since the correlation requirement is not met, paragraph (b)(4) of the federally promulgated regulation, 40 CFR 52.224 General Requirements, is retained as applicable to the Mendocino County APCD.

Rule 630, Decisions, is being approved as a procedure for the granting of variances. Each variance, however, must satisfy the requirements of section 110 of the Clean Air Act and 40 CFR Part 51 in order to be approved by EPA as a revision to the SIP.

It is the purpose of this notice to approve all changes contained in the November 10, 1976, submittal and to incorporate them into the California SIP, with the exceptions of the rules discussed below.

EPA is disapproving rules 130(p4), 130(s3), 410(c)(2), and 410(c)(7), and the following portions of Regulation 2, Open Burning Procedures: general prohibitions (all of page 1) (Open Burning Procedures), paragraphs (e) and (f) of article I (Scope and Policy), paragraphs (f) and (g) of article V (Burning Permits and Reports), and paragraph (f) of article VI (Burning Preparation and Restrictions).

Definition (p4), Process Weight Per Hour, of rule 130 is being disapproved because it has been revised to delete a sentence pertaining to continuous processes. That deletion could result in a weakening of the SIP emission limitations and could render Rule 420(d) unenforceable.

Definition (s3), Standard Cubic Meter (Foot) of Gas, of rule 130 is being disapproved because it has been revised to delete a sentence dealing with the adjustment of gas volume to the percent CO_2 or the percent excess air. That deletion could allow, by dilution, excessive emissions with no increase in concentration.

Paragraph (c)(7) of Rule 410, Visible Emissions, would exempt from the opacity limit of rule 410(a) "dust and particulate matter released incident to completing and cleaning out a geothermal well and placing it in production." This paragraph is disapproved because no analysis has been submitted to show that the exemption would not interfere with the attainment/maintenance of the NAAQS.

Paragraph (c)(2) of Rule 410, Visible Emissions, would exempt from the opacity limit of rule 410(a) "smoke from fires set pursuant to regulation 2 (Open Burning Procedures) of the North Coast Air Basin." Several provisions of regulation 2 are being disapproved for the reasons given in the four paragraphs immediately following. Rule 410(c)(2) is disapproved for the same reasons.

The general prohibitions (all of page 1) of regulation 2 would permit the burning of specified substances under certain conditions. These general prohibitions (all of page 1) are disapproved because certain controls have been relaxed and no analysis has been submitted to show that such burning would not interfere with the attainment/maintenance of the NAAQS.

Paragraph (e) of article I of regulation 2 would permit open outdoor fires

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"• • • on those days for which satisfactory meteorological burning conditions and adequate area ventilation are predicted to occur • • •". This provision is disapproved because it is too vague to be enforceable.

Paragraph (f) of article I, paragraph (g) of article V, and paragraph (f) of article VI, all of which are contained in regulation 2, are disapproved because each would allow the granting of exceptions from open burning rules if "imminent and substantial economic loss" is threatened by denial of an exception. Economic factors are an impermissible basis upon which to grant such an exception absent a showing that all other requirements of § 110 of the Clean Air Act, as well as the NAAQS, will be met.

Paragraph (f) of article V of regulation 2 would allow, from January 1 until May 31, range improvement or forest management burning on "no-burn" days, provided that more than 50 percent of the land has been "brush treated." This paragraph is disapproved because no analysis has been submitted to show that the allowance would not interfere with the attainment/maintenance of the NAAQS.

No action is being taken at this time on rules concerning emergency episodes, noncriteria pollutants, new source review, exemption from fees, nuisance, particulate standards, sulfide emission standards, malfunction, and open burning (use classification 6). Of these rules, Rule 140, Emergency Conditions; Chapter II, Permits; Rule 300(a), Application Fee; Rule 320, Hearing Board Fees; and Rule 540, Equipment Breakdown, will be or have been acted upon in separate FEDERAL REGISTER notices.

Rule 160, Ambient Air Quality Standards, is being approved with the exceptions of the noncriteria pollutants, which are not appropriate for inclusion in the SIP. For the same reason, EPA is taking no action on the appendix to regulation 1, which indicates the area of applicability of the formaldehyde standard in rule 160(a).

Paragraphs (a) and (c) of Rule 400, Public Nuisance, are not appropriate for inclusion in the SIP because they are not specifically directed at the attainment or maintenance of the NAAQS. Therefore, EPA is taking no action on these paragraphs.

Rule 420, Particulate Matter, has been replaced by a more recent submittal. Therefore, EPA is taking no action on this rule.

Rule 450, Sulfide Emission Standards, is not appropriate for inclusion in the SIP because it would regulate a pollutant for which there is no NAAQS. Therefore, EPA is taking no action on this rule.

Use classification 6 of article III, and paragraph (j) of article VI, both of Regulation 2, Open Burning Procedures, are not appropriate for inclusion in the SIP because they expired on January 1, 1977. Therefore, EPA is taking no action on these rules.

Paragraph (a) of Rule 410, *Visible Emissions*, sets a general opacity limit for the North Coast Air Basin. Since paragraph (b) sets a more stringent limit for Mendocino County, paragraph (a) does not apply to Mendocino County. Appendix A (map: Humboldt Bay Air Basin) to Regulation 2, *Open Burning Procedures*, although included in the uniform regulations of the North Coast Air Basin, also does not apply to the Mendocino County APCD. Therefore, EPA is taking no action on these rules.

The state has submitted rules 490 and 492, and regulations 3 and 4, concerning New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS). These rules and regulations implement sections 111 and 112 of the Clean Air Act, and are not appropriate for inclusion in the SIP under section 110 of the Act. Therefore, these regulations will be neither approved nor disapproved by EPA as part of an applicable implementation plan. NSPS and NESHAPS regulations were, however, reviewed under the appropriate provisions of sections 111 and 112, and delegation of authority to implement and enforce the NSPS and NESHAPS standards was made to the State of California, on behalf of the Mendocino County APCD, on March 29, 1976. The FEDERAL REGISTER notice for this delegation of authority was published on July 8, 1976 (41 FR 28006).

Finally, the deletions of Part IV, Officers, Employees, Duties, Hearing Board, Compensation; Part V-5-B, Dustfall or Fallout Particulate Matter; Part VI-1, Maintenance; and Part VI-4, Inspection, previously approved in the February 21, 1972, submittal, are approved because the rules are not required by 40 CFR Part 51, and the deletions will not affect any control regulation.

The California Air Resources Board has certified that the public hearing requirements of 40 CFR 51.4 have been satisfied.

(Secs. 110 and 301(a), Clean Air Act, as amended (42 U.S.C. 7410 and 7601(a)).)

Dated: October 31, 1978.

DOUGLAS M. COSTLE,
Administrator.

Subpart F of part 52 of Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. Section 52.220, paragraphs (c)(35)(xv) (C) and (D) are added as follows:

§ 52.220 Identification of plan.

• • • • •

(c) • • •
(35) • • •
(xv) • • •

(C) New or amended rules 100, 110, 120, 130, 150, 160 (except 160(a) and noncriteria pollutants), 190, 300 (except paragraph (a)), 310, 340, 400(b), 410(b), 410(c), 430, 440, 460, 470, 480, 482, 500, 510, 520, 600, 610, 620, 630, 640, and 650; and the following portions of regulation 2: general prohibitions (all of page 1), articles I and II, paragraphs A1, A2, A3, A4, 5, 7, and 8 of article III, articles IV and V, article VI(a) to (i), article VII, and appendices B and C.

(D) Previously approved and now deleted (without replacement) parts IV, V-5-B, VI-1, and VI-4.

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2. Section 52.224, paragraph (a)(2)(iii)(D) is added as follows:

§ 52.224 General requirements.

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(a) • • •
(2) • • •
(iii) • • •
(D) Mendocino County APCD.

• • • • •

3. Section 52.236, paragraph (e) is added as follows:

§ 52.236 Rules and regulations.

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(e) Since the following air pollution control districts have revised definitions so as to render the associated emission control requirements less stringent without a control strategy demonstration, the revisions are disapproved.

(1) North Coast Intrastate Region:

(i) Mendocino County APCD.

(A) Rule 130 (p4), Process Weight Per Hour, submitted on November 10, 1976. Part III-49, Process Weight Per Hour, previously submitted on February 21, 1972, and approved in 40 CFR 52.223, is retained.

(B) Rule 130(s3), Standard Cubic Meter of Gas (Standard Cubic Foot of Gas), submitted on November 10, 1976. Part III-55, Standard Cubic Foot of Gas, previously submitted on February 21, 1972, and approved in 40 CFR 52.223, is retained.

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4. In § 52.273, paragraphs (a)(4)(iv) and (b)(3)(iv) are added as follows:

§ 52.273 Open burning.

(a) • • •
(4) • • •
(iv) Mendocino County APCD.

(A) Rule 410(c)(2) and the following portions of regulation 2: general prohibitions (all of page 1), paragraph (f) of article I, paragraphs (f) and (g) of article V, and paragraph (f) of article VI, submitted on November 10, 1976.

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(b) • • •
(3) • • •
(iv) Mendocino County APCD.

(A) Paragraph (e) of article I of regulation 2, submitted on November 10, 1976.

• • • • •

5. Section 52.275, paragraph (b)(3)(iv) is added as follows:

§ 52.275 Particulate matter control.

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(b) • • •
(3) • • •
(iv) Mendocino County APCD.

(A) Rule 410(c)(7), submitted on November 10, 1976.

• • • • •

[FR Doc. 78-31340 Filed 11-6-78; 8:45 am]

[6560-01-M]

[FRL 1002-6]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

California Plan Revision: San Joaquin County Air Pollution Control District

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to approve and, where appropriate, disapprove or take no action on changes to the San Joaquin County air pollution control district (APCD) portion of the California State implementation plan (SIP) submitted by the Governor's designee. In addition, rules or portions of rules which were previously not acted upon or which are now part of the applicable SIP are being disapproved. The intended effect of this action is to update rules and regulations and to correct certain deficiencies in the SIP.

EFFECTIVE DATE: December 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Allyn M. Davis, Director, Air and Hazardous Materials Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, Calif. 94105, Attention: Wallace D. Woo, 415-556-7288.

SUPPLEMENTARY INFORMATION: On June 28, 1978 (43 FR 28003), EPA published a notice of proposed rulemaking for revisions to the San Joaquin County APCD's rules and regulations submitted on November 4, 1977 by the California Air Resources Board for inclusion in the California SIP. In addition, EPA proposed to disapprove certain agricultural burning exemption rules and portions of rules which are now part of the applicable SIP.

The changes contained in the November 4, 1977 submittal and being acted upon by this notice include the following: Addition of an in-stack monitoring rule and revision to the gasoline vapor recovery rule.

Under section 110 of the Clean Air Act as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove regulations submitted as SIP revisions.

Regulations were submitted concerning emergency episodes. Those regulations will be considered in a separate FEDERAL REGISTER action.

The State also submitted regulations concerning new source performance standards (NSPS) and national emission standards for hazardous air pollutants (NESHAPS) on November 4, 1977. These NSPS and NESHAPS regulations implement sections 111 and 112 of the Clean Air Act, and are not appropriate for inclusion in a State implementation plan under section 110 of the Act. Therefore, these regulations will be neither approved nor disapproved by EPA as part of an applicable implementation plan. They will, however, be reviewed in determining whether to delegate authority to implement and enforce the NSPS and NESHAPS regulations in the APCD under the appropriate provisions of sections 111 and 112. Announcement of such delegation would appear in a separate FEDERAL REGISTER notice.

A list of the rules being considered by this action was published as part of the notice of proposed rulemaking and can be found in 43 FR 28003 (June 28, 1978). No comments were received during the public comment period.

It is the purpose of this final rulemaking notice to approve Rule 108, Stack Monitoring, contained in the November 4, 1977 submittal and to incorporate the rule into the California SIP and to disapprove rule 411.2 as discussed below. This rulemaking notice also finalizes the disapproval of certain agricultural burning exemption rules as discussed below:

Rule 108 is approved since it requires continuous monitoring for specified sources, and thereby partially fulfills the requirements of 40 CFR 51.19(e). It is noted, however, that rule 108 does not meet all of the requirements of 40 CFR 51.19(e) and appendix P of part 51.

Rule 411.2, Transfer of Gasoline Into Vehicle Fuel Tanks, revises the previously approved rule submitted on February 10, 1976. The revised rule changes the definition of "motor vehicle". In the previously approved rule, it was defined as "any vehicle registered with the California Department of Motor Vehicles"; it is now defined as "any self-propelled vehicle registered for use on the highway". This is a weakening in the control requirements since the previously approved rule covered all motor vehicles, and the revised rule covers only vehicles used on the highway; thereby exempting off-highway vehicles such as trail bikes, motorcycles, dune buggies, etc. The revised rule is disapproved since a control strategy demonstration has not been submitted indicating that the weakening of the control requirements will not interfere with the attainment and maintenance of the national ambient air quality standards (NAAQS). Rule 411.2, submitted on February 10, 1976 and previously approved under 40 CFR 52.223, will be retained.

In the FEDERAL REGISTER notice dated August 22, 1977 (42 FR 42219), action was deferred on certain agricultural burning exemption rules; namely, rules 416.1 (D)(1) and (D)(2), submitted on October 23, 1974. These rules are now being disapproved as follows:

Rule 416.1(D)(1), Agricultural Burning, Exceptions, is disapproved since it allows the air pollution control officer to authorize agricultural burning on no-burn days if denial of such permission would threaten economic loss. Economic factors are an impermissible basis upon which to condition the granting of exceptions from the emission limitations absent a showing that all other requirements of section 110 of the Clean Air Act as well as NAAQS will be met.

Rule 416.1(D)(2), Agricultural Burning, Exceptions, is disapproved because it relaxes the elevation exemption for agricultural burning from 4,000 feet mean sea level to 3,000 feet mean sea level and a control strategy demonstration showing that this relaxation will not interfere with the attainment and maintenance of the NAAQS was not submitted.

In addition, we have reevaluated a rule concerning agricultural burning exemptions and found that a portion of that San Joaquin County APCD rule was approved in error.

Rule 416.1(c)(1), Agricultural Burning, Exceptions, submitted on June 30, 1972 and previously approved under 40

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CFR 52.223, allows the air pollution control officer to authorize burning on no-burn days. Since this authority has the potential of allowing exceedance of the NAAQS, it is not consistent with the Clean Air Act and is therefore disapproved.

The California Air Resources Board has certified that the public hearing requirements of 40 CFR 51.4 have been satisfied.

(Secs. 110 and 301(a), Clean Air Act as amended (42 U.S.C. §§ 7410 and 7601(a)).)

Dated: October 30, 1978.

DOUGLAS M. COSTLE,
Administrator.

Subpart F of part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. Section 52.220, paragraphs (c)(25)(ii)(C) and (c)(42)(xii) are added as follows:

§ 52.220 Indentification of plan.

* * * * *

(c) * * *

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(25) * * *
(ii) * * *
(C) New or amended rules 416.1 (D)(1) and (D)(2).

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(42) * * *
(xii) San Joaquin County APCD.
(A) New or amended rules 108 and 411.2.

* * * * *

2. Section 52.234, paragraph (e)(2)(viii) is added as follows:

§ 52.234 Source surveillance.

* * * * *

(e) * * *
(2) * * *
(viii) San Joaquin County APCD.

* * * * *

3. Section 52.269, paragraph (b)(1)(viii) is added as follows:

§ 52.269 Control strategy and regulations: Photochemical oxidants (hydrocarbons) and carbon monoxide.

(a) * * *
(b) * * *
(1) * * *
(viii) San Joaquin County APCD.
(A) Rule 411.2, Transfer of Gasoline Into Vehicle Fuel Tanks, submitted on November 4, 1977, is disapproved; and rule 411.2, submitted on February 10, 1976 and previously approved under 40 CFR 52.223, is retained.

* * * * *

4. Section 52.273, paragraphs (a)(3)(i)(B) and (a)(3)(i)(C) are added as follows:

§ 52.273 Open burning.

(a) * * *
(3) * * *
(i) * * *
(B) Rule 416.1(c)(1), Agricultural Burning, Exceptions, submitted on June 30, 1972 and previously approved under 40 CFR 52.223 (37 FR 19812).
(C) Rule 416.1(D)(1) and Rule 416.1(D)(2), Agricultural Burning, Exceptions, submitted on October 23, 1974.

* * * * *

[FR Doc. 78-31343 Filed 11-6-78; 8:45 am]

[6560-01-M]

[FRL 1002-7]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

California Plan Revision: Calaveras County Air Pollution Control District

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to approve and, where appropriate, disapprove or takes no action on revisions to the Calaveras County air pollution control district (APCD) portion of the California State implementation plan (SIP) submitted by the Governor's designee. The intended effect of this action is to update rules and regulations, and to correct certain deficiencies in the SIP.

DATES: Final rulemaking actions taken in this notice will be effective on December 7, 1978. Comments on rule 213 should be submitted no later that December 7, 1978. See supplementary information section for details.

ADDRESS: Comments on Rule 213 should be sent to: Regional Administrator, attention: Air and Hazardous Materials Division, Air Programs Branch, California SIP Section (A-4), U.S. Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, Calif. 94105.

FOR FURTHER INFORMATION CONTACT:

Allyn M. Davis, Director, Air and Hazardous Materials Division, U.S. Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, Calif. 94105, attention: Wallace Woo, telephone 415-556-7288.

SUPPLEMENTARY INFORMATION: On January 20, 1978, EPA published a notice of proposed rulemaking (43 FR 2897) for revisions to the rules of the Calaveras County APCD submitted on October 13, 1977 by the California Air Resources Board (CARB) as an amendment to the California SIP.

The changes contained in the October 13, 1977 submittal that are being acted on in this notice include the following:

(a) Some definitions are amended.
(b) The list of exceptions to the visible emission control rule is amended.
(c) New rules are added to control pathological incineration, abrasive blasting and malfunction conditions.
(d) The language of the California Health and Safety Code is incorporated into a number of rules.
(e) The rule for controlling particulate matter emissions based on process weight rates is amended.
(f) The equipment coverage of the rule for controlling emissions from fuel burning equipment is changed.
(g) Some of the rules for controlling open burning, including agricultural burning, are amended.
(h) A new rule is added to implement the continous monitoring program.
(i) Fees for permits, analyses, reports and procedures before the hearing board are readjusted.
(j) Some procedures before the hearing board are modified.
(k) Minor wording changes, that do not affect the degree of control, are made to a number of rules.
(l) The sections of the California Health and Safety Code cited in a number of rules are renumbered to conform with the recodification of the code.
(m) A number of rules are renumbered.

A list of the rules considered in this notice was published as part of the January 20, 1978 notice of proposed rulemaking. The proposed rulemaking provided 30 days for public comments. No comments have been received.

Under section 110 of the Clean Air Act, as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove the submitted rules as SIP revisions. It is the purpose of this notice to approve all of the revisions contained in the October 13, 1977 submittal, and incorporate them into the California SIP, with the exception of those rules not being acted upon and those rules being disapproved as discussed below.

No action is being taken on Rule 203 (D and G), Exceptions; Rule 307, Exceptions to Rule 306; Rule 409, Public Records; Rule 601, Permit Fees; and Rule 605, Hearing Board Fees, as these rules will be addressed in a future FEDERAL REGISTER notice.

In addition, no action is being taken on Rule 205, Nuisance, and Rule 210(B), Total Reduced Sulfur, because these rules are not specifically directed at the attainment and maintenance of the national ambient air quality standards (NAAQS) and thus are not appropriate for inclusion in the SIP.

Rule 209, Fossil Fuel-Steam Generator Facility, revises Rule 408, Fuel Burning Equipment, previously approved in the June 30, 1972 submittal, by narrowing the equipment coverage of the rule from the more inclusive "fuel burning equipment" to the less inclusive "fossil fuel-steam generator facility." The revision is disapproved because this relaxation in control is not supported by any analysis demonstrating noninterference with the attainment and maintenance of the NAAQS. Rule 408 in the June 30, 1972 submittal is retained and shall remain in effect for Federal enforcement purposes.

Rule 211, Process Weight Per Hour, revises an analogous rule under the same number and title, previously approved in the July 22, 1975 submittal, by narrowing the pollutant coverage from the more inclusive "particulate matter" to the less inclusive "dust." The revision is disapproved because no analysis has been submitted to demonstrate that this relaxation in control will not interfere with the attainment and maintenance of the NAAQS. The previously approved Rule 211, Process Weight Per Hour, in the July 22, 1975 submittal is retained and shall remain in effect for Federal enforcement purposes.

No action is being taken on Rule 213, Storage of Petroleum Products, because EPA is now in the process of reevaluating the appropriateness of applying the vapor recovery programs specified in 40 CFR 52.255 and 40 CFR 52.256 to the districts within the area presently known as the Mountain Counties Air Basin. Preliminary information supplied by the Mountain Counties Air Basin Control Council indicates that existing ambient air quality standard excursions for ozone in the Mountain Counties Air Basin are due to transport from the Sacramento Valley and the San Joaquin Valley rather than to the emissions of hydrocarbons within the area. Thus, EPA, by this notice, is inviting public comments on this thesis for the purpose of promulgating final approval or disapproval of rule 213. Comments should be sent to the EPA Region IX office at the address given above. Comments received within thirty (30) days following the publication of this notice will be considered and made available for public inspection at the EPA Region IX office and the EPA public information reference unit. In addition, copies of the proposed rule and preliminary analysis are available for public inspection during normal business hours at the EPA Region IX office and at the following locations:

Calaveras County Air Pollution Control District, Government Center, San Andreas, Calif. 95249.
California Air Resources Board, 1709—11th Street, Sacramento, Calif. 95814.
Public Information Reference Unit, Room 2922 (EPA Library), 401 "M" Street SW., Washington, D.C. 20460.

Rule 304, Exceptions to Rule 303, is disapproved because it exempts open burning of agricultural waste at altitudes above 3,000 feet mean sea level from permit requirements without an adequate demonstration that this exemption will not interfere with the attainment and maintenance of the NAAQS.

Rule 322, Mechanized Burners, is disapproved because it exempts open outdoor fires in mechanized burners from "no-burn day" requirements. Although a visible emission limitation of Ringelmann No. 1 is set, there is no demonstration that this new exemption will not interfere with the attainment and maintenance of the NAAQS.

Rule 404, Upset Conditions, Breakdown or Scheduled Maintenance, is disapproved because it permits the automatic exemption of sources from the applicable emission limitations during equipment malfunction and scheduled maintenance, and therefore could render such limitations unenforceable. In addition, the automatic exemption of sources could interfere with the attainment and maintenance of the NAAQS.

Rule 507, Provision of Sampling and Testing Facilities, is approved since it requires continuous monitoring for specified sources, and thereby partially fulfills the requirements of 40 CFR 51.19(e). It is noted, however, that rule 507 does not meet all of the requirements of 40 CFR 51.19(e) and appendix P of part 51.

Regulation VII revisions (which include rules 700, 702, 703, 710, and 715) are approved as part of a procedure for the granting of variances. Each variance, however, must satisfy the requirements of section 110 of the Clean Air Act and 40 CFR Part 51 in order to be approved by EPA as a revision to the SIP.

Certification has been received from the CARB that the public hearing requirements of 40 CFR 51.4 have been satisfied.

(Secs. 110 and 301(a), Clean Air Act as amended (42 U.S.C. §§ 7410 and 7601(a)).)

Dated: October 30, 1978.

DOUGLAS M. COSTLE,
Administrator.

Subpart F of part 52 of chapter I, title 40, of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. Section 52.220, paragraph (c)(41)(ix) is added as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *
(41) * * *
(ix) Calaveras County APCD.
(A) New or amended rules 102, 203 (with the exception of (D) and (G)), 206(B), 207, 208, 209, 211, 215, 216, 217, 301, 302, 303, 304, 319, 320, 321, 322, 323, 324, 402, 404, 407, 507, 602 to 604, 700, 702, 703, 710, and 715.
(B) Previously approved and now deleted (without replacement) rule 203(J).

* * * * *

2. Section 52.234, paragraph (e)(2)(vi) is added as follows:

§ 52.234 Source surveillance.

* * * * *

(e) * * *
(2) * * *
(vi) Calaveras County APCD.

* * * * *

3. Section 52.271, paragraph (a)(4)(x)(B) is added as follows:

§ 52.271 Malfunction regulations.

(a) * * *
(4) * * *
(x) * * *
(B) Rule 404, Upset Conditions, Breakdown or Scheduled Maintenance, submitted on October 13, 1977.

* * * * *

4. Section 52.273, paragraph (a)(3)(vii) is added as follows:

§ 52.273 Open burning.

(a) * * *
(3) * * *
(vii) Calaveras County APCD.
(A) Rule 304, Exceptions to Rule 303; and Rule 322, Mechanized Burners, submitted on October 13, 1977.

* * * * *

5. Section 52.275, paragraph (c)(1)(iii) is added as follows:

§ 52.275 Particulate matter control.

(a) • • •
(b) • • •
(1) • • •
(iii) Calaveras County APCD.
(A) Rule 211, Process Weight Per Hour, submitted on October 13, 1977, is disapproved; and Rule 211, Process Weight Per Hour, previously approved in the July 22, 1975, submittal, is retained and shall remain in effect for Federal enforcement purposes.

• • • • •

6. Section 52.280, paragraph (a)(1)(ii) is added as follows:

§ 52.280 Fuel burning equipment.

(a) • • •
(1) • • •
(ii) Calaveras County APCD.
(A) Rule 209, Fossil Fuel-Steam Generator Facility, submitted on October 13, 1977, is disapproved; and Rule 408, Fuel Burning Equipment, previously approved in the June 30, 1972, submittal, is retained and shall remain in effect for Federal enforcement purposes.

• • • • •

[FR Doc. 78-31344 Filed 11-6-78; 8:45 am]

[6560-01-M]

[FRL 1003-1]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

California Plan Revisions: Great Basin Unified Air Pollution Control District

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to approve and, where appropriate, disapprove or take no action on changes to the Great Basin Unified Air Pollution Control District (APCD) portion of the California State Implementation Plan (SIP) submitted by the Governor's designee. The intended effect of this action is to update rules and regulations and to correct certain deficiencies in the SIP.

EFFECTIVE DATE: December 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Allyn M. Davis, Director, Air and Hazardous Materials Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, Calif. 94105, Attention: Wayne A. Blackard, 415-556-7882.

SUPPLEMENTARY INFORMATION: On February 14, 1978, EPA published a notice of proposed rulemaking for revisions to the Great Basin Unified APCD's rules and regulations submitted on November 4, 1977, by the California Air Resources Board for inclusion in the California SIP.

The State also submitted regulations concerning new source performance standards and national emission standards for hazardous air pollutants; however, no action is being taken at this time as these rules will be acted upon in separate FEDERAL REGISTER notices.

The changes contained in the above submittal that are acted upon by this notice include the following:

(a) Procedural changes,

(b) Old rules deleted, new rules introduced,

(c) Rules granting exceptions for research operations and upset/breakdown situations.

The notice of proposed rulemaking for this submittal was published on February 14, 1978 (43 FR 6266). No comments were received during the comment period.

Under section 110 of the Clean Air Act, as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove regulations submitted as SIP revisions.

It is the purpose of this notice to approve all changes contained in the November 4, 1977, submittal and incorporate them into the California SIP with the exception of those rules not being acted upon and those rules being disapproved as discussed below.

No action is being taken on the repeal of rule 208, Instack Monitoring—Specific Sources, because the rule, although adopted and later repealed by the APCD, was never approved by EPA as a part of the SIP.

The repeal of rule 418, Storage of Petroleum Products, previously approved under 40 CFR 52.223, is disapproved because the rule designated to replace it has the potential to increase emissions and no control strategy demonstration has been submitted to show that this increase would not interfere with the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS).

Rule 423, Research Operations, and rule 617, Emergency Variance, are disapproved because they allow for exemptions from applicable emission standards and could interfere with the attainment and maintenance of the NAAQS.

The California Air Resources Board has certified that the public hearing requirements of 40 CFR 51.4 have been satisfied.

(Secs. 110 and 301(a), Clean Air Act as amended (42 U.S.C. §§ 7410 and 7601(a)).)

Dated: October 30, 1978.

DOUGLAS M. COSTLE,
Administrator.

Subpart F of part 52 of chapter I, title 40, of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. Section 52.220 is amended by adding paragraph (c)(42)(ix) as follows:

§ 52.220 Identification of plan.

• • • • •

(c) • • •
(42) • • •
(ix) Great Basin Unified APCD.
(A) New or amended rules 300, 423, and 617.
(B) Previously approved and now deleted (without replacement) rules 411 and 418.

• • • • •

2. Section 52.269 is amended by adding paragraph (b)(4) as follows:

§ 52.269 Control strategy: photochemical oxidants (hydrocarbons) and carbon monoxide.

• • • • •

(b) • • •
(4) Great Basin Valleys Intrastate Region.
(i) Great Basin Unified APCD.
(A) Rule 418 submitted on November 4, 1977, is disapproved. Rule 418 submitted on April 21, 1976 remains in effect.

• • • • •

3. Section 52.271 is amended by adding paragraph (a)(5)(i)(B) as follows:

§ 52.271 Malfunction regulations.

• • • • •

(a) • • •
(5) • • •
(i) • • •
(B) Rule 617 submitted on November 4, 1977 is disapproved.

• • • • •

4. Section 52.272 is amended by adding paragraph (a)(5) as follows:

§ 52.272 Research operations exemption.

• • • • •

(a) • • •
(5) Great Basin Valleys Intrastate Region.
(i) Great Basin Unified APCD.

(A) Rule 423, submitted on November 4, 1977 is disapproved.

• • • • •

[FR Doc. 78-31346 Filed 11-6-78; 8:45 am]

[6560-01-M]

[FRL 1003-2]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

California Plan Revision: Amador County Air Pollution Control District

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to approve and, where appropriate, disapprove or take no action on revisions to the Amador County Air Pollution Control District (APCD) portion of the California State Implementation Plan (SIP) submitted by the Governor's designee. The intended effect of this action is to update rules and regulations, and to correct certain deficiencies in the SIP.

EFFECTIVE DATE: December 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Allyn M. Davis, Director, Air and Hazardous Materials Division, U.S. Environmental Protection Agency Region IX, 215 Fremont Street, San Francisco, Calif. 94105, Attn: Wallace Woo. Tel: 415-556-7288.

SUPPLEMENTARY INFORMATION: On January 20, 1978, EPA published a notice of proposed rulemaking (43 FR 2896) for revisions to the rules of the Amador County APCD submitted to EPA on October 13, 1977 by the California Air Resources Board (ARB) as an amendment to the California SIP.

The changes contained in the October 13, 1977 submittal that are acted on in this notice include the following:

(a) Some definitions are amended.

(b) The list of exceptions to the visible emission control rule is amended.

(c) The language of the California Health and Safety code is incorporated into a number of rules.

(d) Emission rates for particulate matter are modified.

(e) Fees for permits, analyses and reports are readjusted.

(f) The sections of the California Health and Safety Code cited in a number of rules are renumbered to conform with the recodification of the Code.

(g) Some of the rules for the control of open burning, including agricultural burning, are amended.

(h) A new rule is adopted to implement the continuous monitoring program, and a new rule is adopted to control abrasive blasting.

(i) Some procedures before the hearing board are modified.

(j) Minor wording changes, that do not affect the degree of control, are made to a number of rules.

(k) A number of rules are renumbered.

A list of the rules considered in this notice was published as part of the January 20, 1978 notice of proposed rulemaking. The proposed rulemaking provided 30 days for public comments. No comments have been received.

Under section 110 of the Clean Air Act, as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove the submitted rules as SIP revisions. It is the purpose of this notice to approve all the revisions contained in the October 13, 1977 submittal, and incorporate them into the California SIP, with the exception of those rules not being acted upon and those rules being disapproved as discussed below.

No action is being taken on rule 203, Nuisance, because this rule is not specifically directed at the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) and thus is not appropriate for inclusion in the SIP.

Also, no action is being taken on rule 205(B)(1), Exceptions, as the rule will be addressed in a future FEDERAL REGISTER notice.

Rule 207, Particulate Matter, revises rule 10 of regulation V, Particulate Matter, previously approved in the June 30, 1972 submittal, by relaxing the particulate emission limitation for incinerators and wood-fired boilers from 0.1 to 0.2 grains per standard cubic foot. Since no control strategy analysis has been submitted by the District to demonstrate that this relaxation in control will not interfere with the attainment and maintenance of the NAAQS, the revision is disapproved. Rule 10 of regulation V in the June 30, 1972 submittal is retained and shall remain in effect for Federal enforcement purposes.

Rule 212, Process Weight Table—Dust and Condensed Fumes, supplements an analogous rule under the same rule number and title, in the April 21, 1976 submittal, by providing equations to the table of allowable emission rates. Rule 212 in the April 21, 1976 submittal was previously disapproved (43 FR 25682) because it revised rule 14 of regulation V, Process Weight Table, previously approved in the June 30, 1972 submittal, by narrowing the pollutant coverage from the more inclusive "particulate matter" to the less inclusive "dust and condensed fumes" without a control strategy analysis demonstrating noninterference with the attainment and maintenance of the NAAQS. Based on the same rationale, rule 212 in the October 13, 1977 submittal is now also disapproved. Thereby, rule 14 of regulation V in the June 30, 1972 submittal is retained and shall remain in effect for Federal enforcement purposes.

Rule 304, Open Burning Permitted, allows one additional category of open burning to be carried out, namely, the open burning of unsalable wood waste from property being developed for commercial or residential use. Without any demonstration that this relaxation in control will not cause any interference with the attainment and maintenance of the NAAQS, this relaxation should not be allowed. Thus, rule 304 is disapproved.

Rule 507, Provision of Sampling and Testing Facilities, is approved since it requires continuous monitoring for specified sources, and thereby partially fulfills the requirements of 40 CFR 51.19(e). It is noted, however, that rule 507 does not meet all of the requirements of 40 CFR 51.19(e) and appendix P of part 51.

Regulation VII revisions (which include rules 701, 703 and 710) are approved as part of a procedure for the granting of variances. Each variance, however, must satisfy the requirements of section 110 of the Clean Air Act and 40 CFR Part 51 in order to be approved by EPA as a revision to the SIP.

Certification has been received from the ARB that the public hearing requirements of 40 CFR 51.4 have been satisfied.

(Secs. 110 and 301(a), Clean Air Act, as amended (42 U.S.C. 7410 and 7601(a)).)

Dated: October 30, 1978.

DOUGLAS M. COSTLE,
Administrator.

Subpart F of part 52 of chapter I, title 40, of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. Section 52.220, paragraph (c)(41)(viii) is added as follows:

§ 52.220 Identification of plan.

• • • • •

(c) • • •
(41) • • •
(viii) Amador County APCD.
(A) New or amended rules 102(C), 102(F), 102(AW), 103, 205(A)(1), 207, 212, 216, 302(A), 304, 305(C), 313(A),

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507, 602.1, 604, 605, 701, 703(E) and 710.

* * * * *

2. Section 52.234, paragraph (e)(2)(v) is added as follows:

§ 52.234 Source surveillance.

* * * * *

(e) * * *
(2) * * *
(v) Amador County APCD.

* * * * *

3. Section 52.273, paragraph (a)(3)(iv)(B) is added as follows:

§ 52.273 Open burning.

(a) * * *
(3) * * *
(iv) * * *
(B) Rule 304, Open Burning Permitted, submitted on October 13, 1977.

* * * * *

4. Section 52.275, paragraphs (b)(1)(i) (B) and (C) are added as follows:

§ 52.275 Particulate matter control.

(a) * * *
(b) * * *
(1) * * *
(i) * * *
(B) Rule 207, Particulate Matter, submitted on October 13, 1977 is disapproved; and the analogous rule 10 of Regulation V, Particulate Matter, previously approved in the June 30, 1972 submittal is retained and shall remain in effect for Federal enforcement purposes.

(C) Rule 212, Process Weight Table—Dust and Condensed Fumes, submitted on October 13, 1977 is disapproved; and the analogous rule 14 of Regulation V, Process Weight Table, previously approved in the June 30, 1972 submittal, is retained and shall remain in effect for Federal enforcement purposes.

* * * * *

[FR Doc. 78-31347 Filed 11-6-78; 8:45 am]

[6560-01-M]

[FRL 1002-8]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

California Plan Revision: San Luis Obispo County Air Pollution Control District

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to approve and, where appropriate, disapprove or take no action on changes to the San Luis Obispo County Air Pollution Control District (APCD) portion of the California State implementation plan (SIP) submitted by the Governor's designee. The intended effect of this action is to update rules and regulations and to correct certain deficiencies in the SIP.

EFFECTIVE DATE: December 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Allyn M. Davis, Director, Air and Hazardous Materials Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, Calif. 94105, attention: Wayne A. Blackard, 415-556-7882.

SUPPLEMENTARY INFORMATION: On June 22, 1977, and February 14, 1978, EPA published notices of proposed rulemaking for revisions to the San Luis Obispo County APCD's rules and regulations submitted on November 10, 1976, October 13, 1977, and November 4, 1977, by the California Air Resources Board for inclusion in the California SIP.

The State also submitted rule 213(N) concerning new source review and rule 104, Action in Areas of High Concentration, which will be addressed in separate FEDERAL REGISTER notices.

The changes contained in the abovementioned submittal that are being acted upon by this notice include the following:

(a) Agricultural and open burning amendments,

(b) Organic material emissions amendments,

(c) Continuous emissions monitoring.

The notices of proposed rulemaking for this submittal were published on June 22, 1977 (42 FR 31609), and February 14, 1978 (43 FR 6265). No comments were received during the comment periods.

Under section 110 of the Clean Air Act, as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove the submitted regulations as SIP revisions.

It is the purpose of this notice to approve and, where appropriate, disapprove or take no action on changes contained in the November 10, 1976, October 13, 1977, and November 4, 1977, submittals and to incorporate them into the California SIP as discussed below.

Rules 105(A)(1) and 407 are approved.

No action is being taken on some sections of rule 502, Agricultural Burning. Section G of this rule is a nuisance rule and is not appropriate for inclusion in the SIP since it is not specifically directed at the attainment and maintenance of the national ambient air quality standards (NAAQS). Section J (1)-(4) provides exemptions from this rule in the event of threatened economic loss, burning from January to May, and the burning of empty pesticide sacks or containers. Action will be taken on Section J (1)-(4) in a separate FEDERAL REGISTER notice. No action will be taken on section O(2) because it contains a typographical error. The remainder of rule 502 is approved.

Sections A(7) and B of rule 501, General Burning Provisions, are disapproved because they relax the control of emissions and no control strategy has been submitted to show that this relaxation of control will not interfere with the attainment and maintenance of the NAAQS. The previously approved rule 115(2) remains in effect since it does not permit the additional burning allowed under rule 501(B). The remainder of rule 501 is approved.

Rule 113, Continuous Emissions Monitoring, is approved since it partially satisfies the requirements of 40 CFR 51.19(e). However, this rule does not meet all the requirements of § 51.19(e) and appendix P.

The California Air Resources Board has certified that the public hearing requirements of 40 CFR 51.4 have been satisfied.

(Secs. 110 and 301(a) of the Clean Air Act as amended (42 U.S.C. §§ 7410 and 7601(a)).)

Dated: October 30, 1978.

DOUGLAS M. COSTLE,
Administrator.

Subpart F of part 52 of chapter I, title 40, of the Code of Federal Regulation is amended as follows:

Subpart F—California

1. Section 52.220 is amended by adding paragraphs (c)(35)(xii)(D), (c)(41)(vi), and (c)(42)(vii) as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *
(35) * * *
(xii) * * *
(D) Amended rules 501, and 502 (sections A-F, H-I, K-N, O(1), P-Q).

* * * * *

(41) * * *
(vi) San Luis Obispo County APCD.
(A) New rule 113.

* * * * *

(42) * * *
(vii) San Luis Obispo County APCD.
(A) New or amended rules 105(A)(1), 407, 501(A)(7), 502(A)(3).

* * * * *

2. Section 52.273 is amended by adding paragraph (b)(1)(ii) as follows:

§ 52.273 Open burning.

* * * * *

(b) * * *
(1) * * *
(ii) San Luis Obispo County APCD.
(A) Sections A(7) and B of rule 501, submitted on November 4, 1977, and November 10, 1976, respectively, are disapproved. The previously approved rule 115(2), submitted in February 1972, remains in effect.

* * * * *

3. Section 52.234 is amended by adding paragraph (e)(7) as follows:

§ 52.234 Source surveillance.

* * * * *

(e) * * *
(7) South Central Coast Intrastate AQCR:
(i) San Luis Obispo APCD.

* * * * *

[FR Doc. 78-31345 Filed 11-6-78; 8:45 am]

[6560-01-M]

[FRL 1003-3]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

California Plan Revision: Madera County Air Pollution Control District

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to disapprove changes to the Madera County Air Pollution Control District (APCD) portion of the California State Implementation Plan (SIP) submitted by the Governor's designee. In addition, rules or portions of rules which were previously not acted upon or which are now part of the applicable SIP are being disapproved. The intended effect of this action is to update rules and regulations and to correct certain deficiencies in the SIP.

EFFECTIVE DATE: December 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Allyn M. Davis, Director, Air and Hazardous Materials Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, Calif. 94105, attention: Wallace D. Woo, 415-556-7283.

SUPPLEMENTARY INFORMATION: On June 29, 1978 (43 FR 28214) EPA published a Notice of Proposed Rulemaking for revisions to the Madera County APCD's rules and regulations submitted on October 13, 1977, by the California Air Resources Board for inclusion in the California SIP. In addition, EPA proposed to disapprove certain agricultural burning exemption rules or portions of rules which were previously not acted upon and which are now part of the applicable SIP.

The October 13, 1977, submittal contained only revisions to Rule 412.1, *Transfer of Gasoline Into Stationary Storage Containers.*

Under section 110 of the Clean Air Act as amended and 40 CFR Part 51, the Administrator is required to approve or disapprove the rule as a State Implementation Plan revision.

A list of the rules being considered by this action was published as part of the Notice of Proposed Rulemaking and can be found in 43 FR 28214 (June 29, 1978). No comments were received during the public comment period.

It is the purpose of this final rulemaking notice to disapprove the change contained in the October 13, 1977, submittal. This rulemaking notice also finalizes the disapproval of certain agricultural burning exemption rules or portions of rules as discussed below.

Rule 412.1, *Transfer of Gasoline Into Stationary Storage Containers,* has been revised by weakening certain control requirements. A new exemption is provided for the transfer of gasoline into storage containers having a capacity of 2,000 gallons or less, which were installed prior to January 1, 1978. This exemption replaces the exemption contained in the previously approved Rule 411.1 submitted on April 10, 1976, for all tanks installed prior to January 1, 1975. The Federally promulgated regulation 40 CFR 52.255, is presently applicable to tanks installed prior to January 1, 1975. Further, section 52.255 provides an exemption for tanks installed prior to July 1, 1975, provided they are installed with permanent submerged fill pipes by May 31, 1977. The effect of approving the new revision contained in Rule 412.1 would be to eliminate the control requirement of 90 percent vapor recovery for storage tanks smaller than 2,000 gallons installed between July 1, 1975 and January 1, 1978.

The previously approved Rule 411.1 provides an exemption for delivery vehicles which exclusively service exempt storage containers. Rule 412.1 contains a revision to this exemption which eliminates the requirement that a delivery vehicle exclusively service exempt accounts. This revision has the effect of potentially exempting delivery vehicles which only service one exempt account, and thereby weakens the current control requirements.

Rule 412.1 has also been revised to exempt loading facilities exempted by Rule 413, and storage containers and delivery vehicles serviced from such loading facilities. This revision has the effect of exempting the loading of storage containers at bulk plants with daily throughputs less than 20,000 gallons, and the storage containers serviced by them. This revision is a weakening of the control requirements contained in the previously approved Rule 411.1, and the control requirements of 40 CFR 52.255.

Since an adequate control strategy demonstration has not been submitted indicating that the weakening of the control requirements will not interfere with the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS), the rule is disapproved. Rules 411 and 411.1, submitted on June 30, 1972, and April 10, 1976, respectively, will remain the applicable regulations for storage containers installed after January 1, 1975, in Madera County, and the federally promulgated regulation 40 CFR 52.255 will remain applicable to all other sources.

In the FEDERAL REGISTER notice dated August 22, 1977 (42 FR 42219), action was deferred on certain agricultural burning rules; namely rules 416.1 (c)(1), (e)(1), (e)(3), and (e)(4), submitted on January 10, 1975. These rules are now being disapproved as follows:

Rule 416.1(c)(1), *Agricultural Burning, Prohibitions, Range Improvement Burning,* allows range improvement burning on no-burn days and authorizes the Air Pollution Control Officer to prohibit range improvement burning during the permitted period where "such prohibition is required for maintenance of suitable air quality." This rule is disapproved because (1) "suitable air quality" is not defined, and (2) no data was submitted which demonstrates that this additional exemption would not interfere with the attainment and maintenance of the NAAQS.

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Rule 416.1(e)(1), *Agricultural Burning, Exceptions,* is disapproved since it allows the Air Pollution Control Officer to authorize agricultural burning on no-burn days if denial of such permission would threaten economic loss. Economic factors are an impermissible basis upon which to condition the granting of exceptions from the emission limitations absent a showing that all other requirements of section 110 of the Clean Air Act as well as NAAQS will be met.

Rule 416.1(e)(3), *Agricultural Burning, Exceptions,* is disapproved because it exempts open burning in agricultural operations above 3,000 feet mean sea level and a control strategy demonstration showing that this exemption will no interfere with the attainment and maintenance of the NAAQS was not submitted.

Rule 416.1(e)(4), *Agricultural Burning, Exceptions,* exempts agricultural burning in areas above 6,000 feet mean sea level. Since paragraphs (e)(3) and (e)(4) taken together replace rule 416.1(c)(2) and they are not separable, they both are disapproved. Rule 416.1(c)(2) submitted on June 30, 1972, and previously approved under 40 CFR 52.223 is retained.

In addition, we have reevaluated rules concerning agricultural burning and visible emission exemptions and found that portions of Madera County APCD's rules were approved in error. We are now disapproving rules 402 (c) and (e), *Exceptions* and Rule 416.1(c)(1) *Agricultural Burning,* previously approved under 40 CFR 52.223.

Rules 402 (c) and (e), *Exceptions,* submitted on January 10, 1975, and previously approved exempt "agricultural operations" and "other equipment used in agricultural operations" from the visible emissions rule. The terms "agricultural operations" and "other equipment" are not defined in the rules and regulations. The lack of definitions for these terms renders rule 401, *Visible Emissions,* potentially unenforceable. EPA is therefore disapproving rules 402 (c) and (e).

Rule 416.1(c)(1), *Agricultural Burning, Exceptions,* submitted on June 30, 1972, and previously approved, allows the Air Pollution Control Officer to authorize burning on no-burn days. Since this authority has the potential of allowing exceedance of the NAAQS, it is not consistent with the Clean Air Act and is therefore disapproved.

The California Air Resources Board has certified that the public hearing requirements of 40 CFR 51.4 have been satisfied.

(Secs. 110 and 301(a), Clean Air Act as amended (42 U.S.C. 7410 and 7601(a)).)

Dated: October 30, 1978.

DOUGLAS M. COSTLE,
Administrator.

Subpart F of Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. Section 52.220, paragraphs (c)(26)(xiii)(D) and (c)(41)(xiii) are added as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *
(26) * * *
(xiii) * * *
(D) New or amended rules 416.1 (c)(1), (e)(1), (e)(3), and (e)(4).

* * * * *

(41) * * *
(xiii) Madera County APCD.
(A) Amended Rule 412.1.

* * * * *

2. Section 52.236, paragraph (b)(3)(v) is added as follows:

§ 52.236 Rules and regulations.

* * * * *

(b) * * *
(3) * * *
(v) Madera County APCD.
(A) Rules 402(c) and 402(e), *Exceptions,* submitted on January 10, 1975, and previously approved under 40 CFR 52.223 (42 FR 42219).

* * * * *

3. Section 52.269, paragraph (b)(1)(vii) is added as follows:

§ 52.269 Control strategy and regulations: Photochemical oxidants (hydrocarbons) and carbon monoxide.

* * * * *

(b) * * *
(1) * * *
(vii) Madera County APCD.
(A) Rule 412.1, *Transfer of Gasoline Into Stationary Storage Containers,* submitted on October 13, 1977, is disapproved; and Rules 411, *Gasoline Storage* and 411.1, *Transfer of Gasoline Into Stationary Storage Containers,* submitted on June 30, 1972, and April 10, 1976, respectively, and previously approved under 40 CFR 52.223 are retained.

* * * * *

4. Section 52.273, paragraphs (a)(3)(ix) and (b)(2)(iv) are added as follows:

§ 52.273 Open burning.

(a) * * *
(3) * * *
(ix) Madera County APCD.
(A) Rules 416.1 (e)(1), (e)(3), and (e)(4), *Agricultural Burning, Exceptions,* submitted on January 10, 1975.
(B) Rule 416.1(c)(1), *Agricultural Burning, Exceptions,* submitted on June 30, 1972, and previously approved under 40 CFR 52.223 (37 FR 19812).

* * * * *

(b) * * *
(2) * * *
(iv) Madera County APCD.
(A) Rule 416.1(c)(1), *Agricultural Burning, Prohibitions—Range Improvement Burning,* submitted on January 10, 1975.

* * * * *

[FR Doc. 78-31348 Filed 11-6-78; 8:45 am]

[6560-01-M]

[FRL 1003-4]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

California Plan Revision: Fresno County Air Pollution Control District

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to approve and, where appropriate, disapprove or take no action on changes to the Fresno County Air Pollution Control District (APCD) portion of the California State Implementation Plan (SIP) submitted by the Governor's designee. In addition, rules or portions of rules which were previously not acted upon or which are now part of the applicable SIP are being approved or disapproved. The intended effect of this action is to update rules and regulations and to correct certain deficiencies in the SIP.

EFFECTIVE DATE: December 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Allyn M. Davis, Director, Air and Hazardous Materials Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, Calif. 94105, Attention: Wallace D. Woo, 415-556-7288.

SUPPLEMENTARY INFORMATION: On July 25, 1978 (43 FR 32151) EPA published a Notice of Proposed Rulemaking for revisions to the Fresno County APCD's rules and regulations submitted on November 4, 1977 by the California Air Resources Board for inclusion in the California SIP. In addition, EPA proposed to approve/disapprove certain agricultural burning and visible emission exemption rules which were previously not acted upon and portions of rules which are now part of the applicable SIP.

The changes contained in this submittal and being acted upon by this notice include the following: addition of an exemption for the burning of cotton gin wastes and revision to the gasoline vapor recovery rule.

In addition, regulations were submitted concerning new source review. Those regulations will be considered in a separate FEDERAL REGISTER notice.

The State also submitted regulations concerning New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS) on November 4, 1977. These NSPS and NESHAPS regulations implement sections 111 and 112 of the Clean Air Act, and are not appropriate for inclusion in a State Implementation Plan under section 110 of the Act. Therefore, these regulations will be neither approved nor disapproved by EPA as part of an applicable implementation plan. They will, however, be reviewed in determining whether to delegate authority to implement and enforce the NSPS and NESHAPS regulations in the APCD under the appropriate provisions of section 111 and 112. Announcement of such delegation would appear in a separate FEDERAL REGISTER notice.

Under section 110 of the Clean Air Act as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove regulations submitted as SIP revisions.

A list of the rules being considered by this action was published as part of the Notice of Proposed Rulemaking and can be found in 43 FR 32151 (July 25, 1978). No comments were received during the public comment period.

It is the purpose of this final rulemaking notice to disapprove the changes contained in the November 4, 1977 submittal as discussed below. This rulemaking notice also finalizes the approval/disapproval of certain agricultural burning and visible emission exemption rules which is also discussed below.

Rule 411.1, *Gasoline Transfer Into Vehicle Fuel Tanks,* revises the previously approved rule submitted on April 21, 1976. A new subparagraph has been added to the rule which contains exemptions. These exemptions include: (1) the fueling of implements of husbandry; (2) the transfer of gasoline from any stationary storage container having a capacity of 7,570 liters (2,000) gallons or less which was installed prior to July 1, 1975; (3) the transfer of gasoline from any stationary storage container of a capacity of 950 liters (250 gallons) or less; and (4) the transfer of gasoline from any stationary storage container served from loading facilities exempted in rule 411. These exemptions represent a weakening of the control requirements from the currently approved SIP regulation.

The revised rule is disapproved since a control strategy demonstration has not been submitted indicating that the weakening of the control requirements would not interfere with the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS). Rule 411.1 submitted on April 21, 1976 and previously approved under 40 CFR 52.223 will remain the applicable regulation for Fresno County APCD.

Rule 416.1(g), *Cotton Gin Waste Burning,* represents a relaxation in control requirements in that the burning of cotton gin waste was previously prohibited under rule 415, *Open Burning.* A control strategy analysis has not been submitted indicating that this new exemption would not interfere with the attainment and maintenance of the NAAQS, and therefore, is disapproved.

In the FEDERAL REGISTER notice dated August 22, 1977 (42 FR 42219), action was deferred on certain agricultural burning and visible emission exemption rules; namely, rules 402 (a) to (g), and rules 416.1(c)(1), (e)(1), (e)(3), and (e)(4), submitted on October 23, 1974. These rules are now being approved or disapproved as follows:

Rules 402 (c) and (e), *Exceptions,* exempt "agricultural operations" and "other equipment used in agricultural operations" from the visible emissions rule. The terms "agricultural operations" and "other equipment" are not defined in the rules and regulations. The lack of definitions for these terms renders rule 401, *Visible Emissions* potentially unenforceable. EPA is therefore disapproving rules 402 (c) and (e).

Rule 402(f), *Exceptions,* exempts emissions in excess of established limits due to equipment breakdown from a violation of emission limits. This rule is disapproved because it renders applicable emission limitations potentially unenforceable and as such could interfere with the attainment and maintenance of the national standards.

All other sections of rule 402 (paragraphs a, b, d, and g) are approved as consistent with section 110 of the Clean Air Act.

Rule 416.1(c)(1), *Agricultural Burning, Prohibitions,* allows range improvement burning on "no burn" days and authorizes the Air Pollution Control Officer to prohibit range improvement burning during the permitted period where "such prohibition is required for maintenance of suitable air quality." This rule is disapproved because (1) "suitable air quality" is not defined, and (2) no data was submitted which demonstrates that this additional exemption would not interfere with the attainment and maintenance of the NAAQS.

Rule 416.1(e)(1), *Agricultural Burning, Exceptions,* is disapproved since it allows the Air Pollution Control Officer to authorize agricultural burning on no-burn days if denial of such permission would threaten economic loss. Economic factors are an impermissible basis upon which to condition the granting of exceptions from the emission limitations absent a showing that all other requirements of section 110 of the Clean Air Act as well as NAAQS will be met.

Rule 416.1(e)(3), *Agricultural Burning, Exceptions,* is disapproved because it exempts open burning in agricultural operations above 3,000 feet mean sea level and a control strategy demonstration showing that this exemption will not interfere with the attainment and maintenance of the NAAQS was not submitted.

Rule 416.1(e)(4), *Agricultural Burning, Exceptions,* exempts agricultural burning in areas above 6,000 feet mean sea level. Since paragraphs (e)(3) and (e)(4) taken together replace rule 416.1(c)(2) and they are not separable, they both are disapproved. Rule 416.1(c)(2) submitted on June 30, 1972 and previously approved under 40 CFR 52.223 is retained.

In addition, we have reevaluated rules concerning agricultural burning and visible emission exemptions and found that portions of Fresno County APCD's rules were approved in error. We are now disapproving rules 402 (c) and (e), *Exceptions,* submitted on June 30, 1972 and previously approved in 40 CFR 52.223, for the reasons discussed above regarding rules 402 (c) and (e) submitted on October 23, 1974.

Rule 416.1(c)(1), *Agricultural Burning, Exceptions,* submitted on June 30, 1972 and previously approved, allows the Air Pollution Control Officer to authorize burning on no-burn days. Since this authority has the potential of allowing exceedance of the NAAQS, it is not consistent with the Clean Air Act and is therefore disapproved.

It is also the purpose of this action to correct a clerical error that appeared in 40 CFR 52.220. Rule 416.1, *Agricultural Burning,* submitted on January 10, 1975, was inadvertently listed under subparagraph (c)(26)(vii), which indicates that the rule had been acted upon. Since that rule has not and will not be acted upon because it is identical to rule 416.1, submitted on October 23, 1974, it is being eliminated from this list.

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The California Air Resources Board has certified that the public hearing requirements of 40 CFR 51.4 have been satisfied.

(Secs. 110 and 301(a), Clean Air Act as amended (42 U.S.C. §§ 7410 and 7601(a)).)

Dated: October 30, 1978.

DOUGLAS M. COSTLE,
Administrator.

Subpart F of Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. In § 52.220, the following changes are made:

a. Paragraph (c)(25)(i)(C) is added.

b. Paragraph (c)(26)(vii)(A) is revised.

c. Paragraph (c)(42)(xl) is added.

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(25) * * *

(i) * * *

(C) New or amended Rules 402 (a to g), 416.1(c)(1), 416.1(e)(1), 416.1(e)(3), and 416.1(e)(4).

* * * * *

(26) * * *

(vii) * * *

(A) Rules 409, 417, 503, 507, 513, and 515.

* * * * *

(42) * * *

(xl) Fresno County APCD

(A) New or amended Rules 411.1 and 416.1(g).

* * * * *

2. Section 52.236, paragraph (b)(3)(iii) is added as follows:

§ 52.236 Rules and regulations.

* * * * *

(b) * * *

(3) * * *

(iii) Fresno County APCD.

(A) Rules 402(c) and 402(e), *Exceptions*, submitted on October 23, 1974.

(B) Rules 402(c) and 402(e), *Exceptions*, submitted on June 30, 1972, and previously approved under 40 CFR 52.223 (37 FR 19812).

* * * * *

3. Section 52.269, paragraph (b)(1)(v) is added as follows:

§ 52.269 Control strategy and regulations: Photochemical oxidants (hydrocarbons) and Carbon Monoxide.

* * * * *

(b) * * *

(1) * * *

(v) Fresno County APCD.

(A) Rules 411.1, *Gasoline Transfer Into Vehicle Fuel Tanks*, submitted on November 4, 1977, is disapproved; and Rule 411.1 submitted on April 21, 1976, and previously approved under 40 CFR 52.223, is retained.

* * * * *

4. Section 52.271, paragraph (a)(4)(ii)(C) is added as follows:

§ 52.271 Malfunction regulations.

(a) * * *

(4) * * *

(ii) * * *

(C) Rule 402(f) submitted on October 23, 1974, is disapproved.

* * * * *

5. Section 52.273, paragraphs (a)(3)(viii) and (b)(2)(iii) are added as follows:

§ 52.273 Open burning.

(a) * * *

(3) * * *

(viii) Fresno County APCD.

(A) Rules 416.1 (e)(1), (e)(3), and (e)(4), *Agricultural Burning, Exceptions*, submitted on October 23, 1974.

(B) Rule 416.1(c)(1), *Agricultural Burning, Exceptions*, submitted on June 30, 1972 and previously approved under 40 CFR 52.223 (37 FR 19812).

* * * * *

(b) * * *

(2) * * *

(iii) Fresno County APCD.

(A) Rule 416.1(g), *Cotton Gin Waste Burning*, submitted on November 4, 1977.

(B) Rule 416.1(c)(1), *Agricultural Burning, Prohibitions*, submitted on October 23, 1974.

* * * * *

[FR Doc. 78-31349 Filed 11-6-78; 8:45 am]

[6560-01-M]

[FRL 1003-5]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

California Plan Revision: Tulare County Air Pollution Control District

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to approve and, where appropriate, disapprove or take no action on changes to the Tulare County Air Pollution Control District (APCD) portion of the California State Implementation Plan (SIP) submitted by the Governor's designee. In addition, rules or portions of rules which were previously not acted upon or which are now part of the applicable SIP are being disapproved. The intended effect of this action is to update rules and regulations and to correct certain deficiencies in the SIP.

EFFECTIVE DATE: December 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Allyn M. Davis, Director, Air and Hazardous Materials Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, Calif. 94105, attention: Wallace D. Woo, 415-556-7288.

SUPPLEMENTARY INFORMATION: On July 25, 1978 (43 FR 32150) EPA published a Notice of Proposed Rulemaking for revisions to the Tulare County APCD's rules and regulations submitted on October 13, 1977, by the California Air Resources Board for inclusion in the California SIP. In addition, EPA proposed to disapprove certain agricultural burning exemption rules which were previously not acted upon and portions of rules which are now part of the applicable SIP.

The changes contained in this submittal and being acted upon this notice include the following: Addition of an in-stack monitoring rule and revision to the gasoline vapor recovery rule.

Under section 110 of the Clean Air Act, as amended, and 40 CFR part 51, the Administrator is required to approve or disapprove regulations submitted as SIP revisions.

The State also submitted regulations concerning New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS) on October 13, 1977. These NSPS and NESHAPS regulations implement sections 111 and 112 of the Clean Air Act, and are not appropriate for inclusion in a State Implementation Plan under section 110 of the Act. Therefore, these regulations will be neither approved nor disapproved by EPA as part of an applicable implementation plan. They will, however, be reviewed in determining whether to delegate authority to implement and enforce the NSPS and NESHAPS regulations in the APCD under the appropriate provisions of sections 111 and 112. Announcement of such delegation would appear in a separate FEDERAL REGISTER notice.

A list of the rules being considered by this action was published as part of the Notice of Proposed Rulemaking

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and can be found in 43 FR 32150 (July 25, 1978). No comments were received during the comment period.

It is the purpose of this final rulemaking notice to approve section 108, *Stack Monitoring*, contained in the October 13, 1977, submittal and to incorporate the rule into the California SIP and to disapprove § 412.1 as discussed below. This rulemaking notice also finalizes the disapproval of certain agricultural burning exemption rules as discussed below.

Section 108 is approved since it requires continuous monitoring for specified sources, and thereby partially fulfills the requirements of 40 CFR 51.19(e). It is noted, however, that it does not meet all of the requirements of 40 CFR 51.19(e) and appendix P of part 51.

Section 412.1, *Transfer of Gasoline Into Vehicle Fuel Tanks*, revises the previously approved rule submitted on April 21, 1976. The previously approved rule regulated the transfer of gasoline into motor vehicle fuel tanks. The revised rule only regulates the transfer of gasoline from "stationary storage containers" into motor vehicle fuel tanks. This change constitutes a weakening in that the fueling of vehicles from tank trucks is exempted. This would affect the fueling of emergency vehicles while performing emergency work, such as fire fighting. The control requirement that vapor recovery systems be designed to prevent automotive fuel tank overfills or spillage on fill nozzle disconnect has been eliminated from the new rule. The elimination of this requirement weakens the control requirements for vapor recovery systems and, thereby, has the potential of allowing exceedance of the National Ambient Air Quality Standards (NAAQS). The revised rule is disapproved since a control strategy demonstration has not been submitted indicating that the weakening of the control requirements will not interfere with the attainment and maintenance of the NAAQS. Section 412.1, submitted on April 21, 1976, and previously approved under 40 CFR 52.223, will remain the applicable regulation for Tulare County APCD.

In the FEDERAL REGISTER notice dated August 22, 1977 (42 FR 42219), action was deferred on certain agricultural burning rules; namely, § 417.1 (e)(1), (e)(3), and (e)(4) submitted on January 10, 1975. These rules are now being disapproved as follows:

Section 417.1(e)(1), *Agricultural Burning, Exceptions*, is disapproved since it allows the Air Pollution Control Officer to authorize agricultural burning on no-burn days if denial of such permission would threaten economic loss. Economic factors are an impermissible basis upon which to condition the granting of exceptions from the emission limitations absent a showing that all other requirements of section 110 of the Clean Air Act as well as NAAQS will be met.

Section 417.1(e)(3), *Agricultural Burning, Exceptions*, is disapproved because it exempts open burning in agricultural operations above 3,000 feet mean sea level and a control strategy demonstration showing that this exemption will not interfere with the attainment and maintenance of the NAAQS was not submitted. Section 417.1(e)(4), *Agricultural Burning, Exceptions*, exempts agricultural burning in areas above 6,000 feet mean sea level. Since paragraphs (e)(3) and (e)(4) taken together replace section 417(III)(B) and they are not separable, they both are disapproved. Section 417(III)(B) submitted on June 30, 1972 and previously approved is retained.

In addition, we have reevaluated rules concerning agricultural burning and visible emission exemptions and found that portions of Tulare County APCD's rule were approved in error. We are now disapproving section 402(c), *Exceptions*, submitted on November 10, 1976 and previously approved in 40 CFR 52.223. Section 402(c) exempts "agricultural operations" from the visible emissions rule. The term "agricultural operations" is not defined in the rules and regulations. The lack of definition for this term renders section 401, *Visible Emissions* potentially unenforceable. EPA is therefore disapproving section 402(c).

Section 417(III)(A), *Exceptions*, submitted on June 30, 1972, and previously approved, allows the Air Pollution Control Officer to authorize burning on no-burn days. Since this authority has the potential of allowing exceedance of the NAAQS, it is not consistent with the Clean Air Act and is therefore disapproved.

The California Air Resources Board has certified that the public hearing requirements of 40 CFR 51.4 have been satisfied.

(Secs. 110 and 301(a), Clean Air Act, as amended (42 U.S.C. 7410 and 7601(a)).)

Dated: October 31, 1978.

DOUGLAS M. COSTLE,
Administrator.

Subpart F of part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. Section 52.220, paragraphs (c)(26)(xl)(B) and (c)(41)(xl) are added as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(26) * * *

(xl) * * *

(B) New or amended rules 417.1(e)(1), (e)(3) and (e)(4).

* * * * *

(41) * * *

(xl) Tulare County APCD.

(A) New or amended rules 108 and 412.1.

* * * * *

2. Section 52.234, paragraph (e)(2)(vii) is added as follows:

§ 52.234 Source surveillance.

* * * * *

(e) * * *

(2) * * *

(vii) Tulare County APCD.

* * * * *

3. Section 52.236, paragraph (b)(3)(iv) is added as follows:

§ 52.236 Rules and regulations.

* * * * *

(b) * * *

(3) * * *

(iv) Tulare County APCD.

(A) Section 402(c), *Exceptions*, submitted on November 10, 1976, and previously approved under 40 CFR 52.223 (42 FR 47556).

* * * * *

4. Section 52.269, paragraph (b)(1)(vi) is added as follows:

§ 52.269 Control strategy and regulations: Photochemical oxidants (hydrocarbons) and carbon monoxide.

* * * * *

(b) * * *

(1) * * *

(vi) Tulare County APCD.

(A) section 412.1, *Transfer of Gasoline Into Vehicle Fuel Tanks*, submitted on October 13, 1977, is disapproved; and Section 412.1, submitted on April 21, 1976, and previously approved under 40 CFR 52.223, is retained.

* * * * *

5. Section 52.273, paragraphs (a)(3)(ii) (B) and (C) are added as follows:

§ 52.273 Open burning.

(a) * * *

(3) * * *

(ii) * * *

(B) Section 417(III)(A), *Exceptions*, submitted on June 30, 1972, and previ-

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ously approved under 40 CFR 52.223 (37 FR 19812).

(C) Sections 417.1 (e)(1), (e)(3) and (e)(4), *Agricultural Burning, Exceptions*, submitted on January 10, 1975.

* * * * *

[FR Doc. 78-31350 Filed 11-6-78; 8:45 am]

[6560-01-M]

[FRL 999-1]

PART 65—DELAYED COMPLIANCE ORDERS

CLINTON CORN PROCESSING CO., CLINTON, IOWA

Approval of a Delayed Compliance Order Issued by Iowa Department of Environmental Quality

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby approves a delayed compliance order issued by Iowa Department of Environmental Quality to the Clinton Corn Processing Co. (Clinton Corn). The order requires the company to bring air emissions from its Heil Dryers Nos. 1, 2, 3, 4, and 5 at Clinton into compliance with certain regulations contained in the federally approved Iowa State Implementation Plan (SIP). Because of the Administrator's approval, Clinton Corn's compliance with the order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violation(s) of the SIP regulations covered by the order during the period the order is in effect.

DATE: This rule takes effect on November 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Peter J. Culver or Henry F. Rompage, Environmental Protection Agency, Region VII, 1735 Baltimore, Kansas City, Mo. 64108, 816-374-2576.

ADDRESS: A copy of the delayed compliance order, any supporting material, and any comments received in response to a prior FEDERAL REGISTER notice proposing approval of the order are available for public inspection and copying during normal business hours at: Environmental Protection Agency, Region VII, Enforcement Division, 1735 Baltimore, Kansas City, Mo. 64108.

SUPPLEMENTARY INFORMATION: On September 1, 1978, the Regional Administrator of EPA's Region VII Office published in the FEDERAL REGISTER, 43 FR 39152, a notice proposing approval of a delayed compliance order issued by Iowa Department of Environmental Quality to Clinton Corn. The notice asked for public comments by October 2, 1978, on EPA's proposed approval of the order. No public comments were received in response to the proposal notice.

Therefore, the delayed compliance order issued to Clinton Corn is approved by the Administrator of EPA pursuant to the authority of section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The order places Clinton Corn on a schedule to bring its Heil Dryers Nos. 1, 2, 3, 4, and 5 at Clinton into compliance as expeditiously as practicable with subrule 400—4.4(7) Iowa Administrative Code, grain handling and processing plants, a part of the federally approved Iowa State Implementation Plan. The order also imposes interim requirements which meet sections 113(d)(1)(C) and 113(d)(7) of the Act, and emission monitoring and reporting requirements. If the conditions of the order are met, it will permit Clinton Corn to delay compliance with the SIP regulations covered by the order until July 1, 1979. The company is unable to immediately comply with these regulations.

Because the order has been approved by EPA, compliance with its terms will preclude Federal enforcement action under section 113 of the Act for violations of the SIP regulations covered by the order during the period the order is in effect. Citizen suits under section 304 of the Act are similarly precluded. If the Administrator determines that Clinton Corn is in violation of a requirement contained in the order, one or more of the actions required by section 113(d)(9) of the Act will be initiated. Publication of this notice of final rulemaking constitutes final Agency action for the purposes of judicial review under section 307(b) of the Act.

EPA has determined that its approval of the order shall be effective upon publication of this notice because of the need to immediately place Clinton Corn on a schedule which is effective under the Clean Air Act for compliance with the applicable requirement(s) of the Iowa State Implementation Plan.

(42 U.S.C. 7413(d), 7601.)

Dated: October 30, 1978.

DOUGLAS M. COSTLE,
Administrator.

In consideration of the foregoing, chapter 1 of title 40 of the Code of Federal Regulations is amended as follows:

1. By amending the table in § 65.201 as follows:

§ 65.201 EPA approval of State delayed compliance orders issued to major stationary sources.

* * * * *

Source	Location	Docket No.	SIP regulation(s) involved	Date of FR proposal	Final compliance date
•	•	•	•	•	•
Clinton Corn Processing Co.	Clinton, Iowa	VII-78-DCO-8	Subrule 400—4.4(7) I.A.C.	Sept. 1, 1978..	July 1, 1979

[FR Doc. 78-31351 Filed 11-6-78; 8:45 am]

[6560-01-M]

[FRL 991-7]

PART 65—DELAYED COMPLIANCE ORDERS

Approval of a Delayed Compliance Order Issued by the Department of Ecology to Kaiser Aluminum & Chemical Corp.

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby approves a delayed compliance order issued by the Department of Ecology to the Kaiser Aluminum & Chemical Corp. The order requires the company to bring air emissions from its petroleum coke calcining plant at Mead, Wash., into compliance with certain regulations contained in the federally approved Washington State Implementation Plan (SIP). Because of the Administrator's approval, Kaiser Aluminum & Chemical Corp.'s compliance with the order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violation(s) of the SIP regulations covered by the order during the period the order is in effect.

DATED: This rule takes effect on November 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Kenneth D. Brooks, Environmental Protection Agency, M/S 513, 1200 Sixth Avenue, Seattle, Wash. 98101, telephone 206-442-1387.

ADDRESS: A copy of the delayed compliance order, any supporting material, and any comments received in response to a prior FEDERAL REGISTER notice proposing approval of the order are available for public inspection and copying during normal business hours at: 1200 Sixth Avenue, Seattle, Wash. 98101, 11D, Park Place Building.

SUPPLEMENTARY INFORMATION: On August 23, 1978, the Regional Administrator of EPA's Region 10 Office published in the FEDERAL REGISTER, 40 CFR 37468 (August 23, 1978) a notice proposing approval of a delayed compliance order issued by the Department of Ecology to the Kaiser Aluminum & Chemical Corp. The notice asked for public comments by September 22, 1978, on EPA's proposed approval of the order. No public comments were received.

Therefore, the delayed compliance order issued to Kaiser Aluminum & Chemical Corp. is approved by the Administrator of EPA pursuant to the authority of section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The order places Kaiser Aluminum & Chemical Corp. on a schedule to bring its petroleum coke calcining plant at Mead, Wash., into compliance as expeditiously as practicable with the provisions of the Washington administrative code, WAC 18-52-031, a part of the federally approved Washington State Implementation Plan. The order also imposes interim requirements which meet sections 113(d)(1)(C) and 113(d)(7) of the Act, and emission monitoring and reporting requirements. If the conditions of the order are met, it will permit Kaiser Aluminum & Chemical Corp. to delay compliance with the SIP regulations covered by the order until July 1, 1979. The company is unable to immediately comply with these regulations.

Because the order has been approved by EPA, compliance with its terms will preclude Federal enforcement action under section 113 of the Act for violations of the SIP regulations covered by the order during the period the order is in effect. Citizen suits under section 304 of the Act are similarly precluded. If the Administrator determines that Kaiser Aluminum & Chemical Corp. is in violation of a requirement contained in the order, one or more of the actions required by section 113(d)(9) of the Act will be initiated. Publication of this notice of final rulemaking constitutes final Agency action for the purposes of judicial review under section 307(b) of the Act.

EPA has determined that its approval of the order shall be effective upon publication of this notice because of the need to immediately place Kaiser Aluminum & Chemical Corp. on a schedule which is effective under the Clean Air Act for compliance with the applicable requirement(s) of the Washington State Implementation Plan.

(42 U.S.C. 7413(d), 7601.)

Dated: October 30, 1978.

DOUGLAS M. COSTLE,
Administrator.

In consideration of the foregoing, chapter 1 of title 40 of the Code of Federal Regulations is amended as follows:

1. By amending § 65.521 to read as follows:

§ 65.521 EPA approval of State delayed compliance orders issued to major stationary sources.

* * * * *

Source	Location	Order No.	SIP regulation(s) involved	Date of FR proposal	Final compliance date
•	•	•	•	•	•
Kaiser Aluminum & Chemical Corp.	Mead, Wash	W03.....	WAC 18-52-031.	Aug. 23, 1978.	July 1, 1979.

[FR Doc. 78-31353 Filed 11-6-78; 8:45 am]

[6560-01-M]

[FRL 999-3]

PART 65—DELAYED COMPLIANCE ORDERS

Approval of a Delayed Compliance Order Issued by Iowa Department of Environmental Quality to Clinton Corn Processing Co., Clinton, Iowa

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby approves a delayed compliance order issued by Iowa Department of Environmental Quality to the Clinton Corn Processing Co. (Clinton Corn). The order requires the company to bring air emissions from its gluten dust pickup cyclone at Clinton into compliance with certain regulations contained in the federally approved Iowa State Implementation Plan (SIP). Because of the Administrator's approval, Clinton Corn's compliance with the order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violation(s) of the SIP regulations covered by the order during the period the order is in effect.

DATE: This rule takes effect on November 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Peter J. Culver or Henry F. Rompage, Environmental Protection Agency, Region VII, 1735 Baltimore, Kansas City, Mo. 64108, 816-374-2576.

ADDRESS: A copy of the delayed compliance order, any supporting material, and any comments received in response to a prior FEDERAL REGISTER notice proposing approval of the order are available for public inspection and copying during normal business hours at: Environmental Protection Agency, Region VII, Enforcement Division, 1735 Baltimore, Kansas City, Mo. 64108.

SUPPLEMENTARY INFORMATION: On September 1, 1978, the Regional Administrator of EPA's Region VII Office published in the FEDERAL REGISTER, 43 FR 39153, a notice proposing approval of a delayed compliance order issued by Iowa Department of Environmental Quality to the Clinton Corn. The notice asked for public comments by October 2, 1978, on EPA's proposed approval of the order. No public comments were received in response to the proposal notice.

Therefore the delayed compliance order issued to Clinton Corn is approved by the Administrator of EPA

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pursuant to the authority of § 113(d)(2) of the Clean Air Act, 42 U.S.C 7413(d)(2). The order places Clinton Corn on a schedule to bring its gluten dust pickup cyclone at Clinton into compliance as expeditiously as practicable with subrule 400—4.4(7) Iowa Administrative Code, grain handling and processing plants, a part of the federally approved Iowa State Implementation Plan. The order also imposes emission monitoring and reporting requirements. It has been determined that interim requirements for emission reduction prior to final compliance as specified in subparagraph A-5, are not feasible. If the conditions of the order are met, it will permit Clinton Corn to delay compliance with the SIP regulations covered by the order until February 15, 1979. The company is unable to immediately comply with these regulations.

Because the order has been approved by EPA, compliance with its terms will preclude Federal enforcement action under section 113 of the Act for violations of the SIP regulations covered by the order during the period the order is in effect. Citizen suits under section 304 of the Act are similarly precluded. If the Administrator determines that Clinton Corn is in violation of a requirement contained in the order, one or more of the actions required by section 113(d)(9) of the act will be initiated. Publication of this notice of final rulemaking constitutes final Agency action for the purposes of judicial review under section 307(b) of the act.

EPA has determined that its approval of the order shall be effective upon publication of this notice because of the need to immediately place Clinton Corn on a schedule which is effective under the Clean Air Act for compliance with the applicable requirement(s) of the Iowa State Implementation Plan.

(42 U.S.C. 7413(d), 7601.)

Dated: October 30, 1978.

DOUGLAS M. COSTLE,
Administrator.

In consideration of the foregoing, chapter 1 of title 40 of the Code of Federal Regulations is amended as follows:

1. By amending § 65.201 to read as follows:

§ 65.201 EPA approval of State delayed compliance orders issued to major stationary sources.

• • • • • •

Source	Location	Docket No.	SIP regulation(s) involved	Date of FR proposal	Final compliance date
•	•	•	•	•	•	•
Clinton Corn Processing Co.	Clinton, Iowa	VII-78-DCO-9	Subrule 400—4.4(7) I.A.C.	Sept. 1, 1978..	Feb. 15, 1979.

[FR Doc. 78-31352 Filed 11-6-78; 8:45 am]

[6325-01-M]

Title 45—Public Welfare

CHAPTER VIII—U.S. CIVIL SERVICE COMMISSION

PART 801—VOTING RIGHTS PROGRAM

Appendix A: Alabama, South Carolina, Texas

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: The Attorney General has designated additional counties as coming under the provisions of the Voting Rights Act of 1965, as amended, in the general election on November 7, 1978. This designation requires Federal observers (under the administrative direction of the U.S. Civil Service Commission) to be on site, in the specified county, to monitor the election. This designation also requires the Civil Service Commission to identify the location of a new office for the filing of applications or complaints under the Voting Rights Act of 1965, as amended.

EFFECTIVE DATE: November 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Joseph A. Norris, Acting Coordinator, Voting Rights Program, U.S. Civil Service Commission, Washington, D.C. 20415, 202-632-4604.

SUPPLEMENTARY INFORMATION: The Attorney General has designated Bullock County, Ala., as coming within the provisions of the Voting Rights Act of 1965, as amended.

Accordingly, 45 CFR Part 801, appendix A, is amended to show an additional place under the heading "Dates, Times and Places" for filing in Alabama, as follows:

ALABAMA

County; place for filing; beginning date.

• • • • • •

Bullock; Union Springs—U.S. Post Office, 108 E. Hardaway Street; November 7, 1978.

• • • • • •

The Attorney General has also designated Darlington County, S.C., as coming within the provisions of the Voting Rights Act of 1965, as amended.

Accordingly, 45 CFR Part 801, appendix A, is amended to show on additional place under the heading "Dates, Times and Places" for filing in South Carolina, as follows:

SOUTH CAROLINA

County; place for filing; beginning date.

• • • • • •

Darlington; Darlington—U.S. Post Office, 201 Pearl Street; November 7, 1978.

• • • • • •

In addition, the Attorney General has designated El Paso County, Tex., as coming within the provisions of the Voting Rights Act of 1965, as amended.

Accordingly, 45 CFR Part 801, appendix A, is amended to show an additional place under the heading "Dates, Times and Places" for filing in Texas, as follows:

TEXAS

County; place for filing, beginning date.

• • • • • •

El Paso; El Paso—2211 East Missouri Avenue, Suite N300; November 7, 1978.

• • • • • •

(Secs. 7, 9, 79 Stat. 440, 441 (42 U.S.C. 1973c, 1973g).)

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-31614 Filed 11-6-78; 8:45 am]

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[4110-92-M]

CHAPTER XIII—OFFICE OF HUMAN DEVELOPMENT SERVICES, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 1350—JUVENILE DELINQUENCY PREVENTION PROGRAMS AND ACTIVITIES

Deletion of Part 1350 of Title 45

AGENCY: Office of Human Development Services, HEW.

ACTION: Notice of deletion from the Code of Federal Regulations.

SUMMARY: This document amends the Code of Federal Regulations by deleting an entire part (Part 1350). The amendment is necessary because the statutory authority for this program has expired. The effect of the amendment will be to update the current regulations of the Office of Human Development Services.

EFFECTIVE DATE: November 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Ms. Sheila Morgenstern, Office of Human Development Services, Youth Development Bureau, ACYF, 330 Independence Avenue SW., Washington, D.C. 20201, 202-245-2840.

SUPPLEMENTAL INFORMATION: The regulations set forth in this part were established pursuant to the Juvenile Delinquency Prevention Act (42 U.S.C. 3801 et seq.). Our authority to make grants under that Act expired on June 30, 1975, and these regulations are now obsolete. Therefore, Part 1350 is removed from Title 45 of the Code of Federal Regulations.

(Catalog of Federal Domestic Assistance Program No. 13610.)

Dated: September 28, 1978.

ARABELLA MARTINEZ,
Assistant Secretary for Human Development Services.

Approved: November 1, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary.

[FR Doc. 78-31486 Filed 11-6-78; 8:45 am]

[6820-35-M]

CHAPTER XVI—LEGAL SERVICES CORPORATION

PART 1602—PROCEDURES FOR DISCLOSURE OF INFORMATION UNDER THE FREEDOM OF INFORMATION ACT

Revision of Part

AGENCY: Legal Services Corporation.

ACTION: Final regulations.

SUMMARY: This rule revises the Corporation's regulations issued in accordance with the Freedom of Information Act. The only substantive change is in the fees charged for locating and reproducing materials requested under the Act. The fees have been adjusted to reflect the actual charge to the Corporation. All other changes are merely technical or stylistic in nature.

EFFECTIVE DATE: December 7, 1978.

ADDRESS: Legal Services Corporation, 733 15th Street NW., Suite 700, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT:

Stephen S. Walters, 202-376-5113.

SUPPLEMENTARY INFORMATION: On July 28, 1978, the Corporation published for notice and comment certain stylistic and other minor revisions of Part 1602—Procedures for Disclosure of Production of Information Under the Freedom of Information Act. No comments were received. The Corporation's Board of Directors has authorized republication of the proposed revision in final form. Part 1602 of the Legal Services Corporation regulations was repealed and replaced by the following:

Sec.
1602.1 Purpose.
1602.2 Definitions.
1602.3 Policy.
1602.4 Index of records.
1602.5 Central records room.
1602.6 Regional records rooms.
1602.7 Use of records rooms.
1602.8 Availability of records on request.
1602.9 Invoking exemptions to withhold a requested record.
1602.10 Officials authorized to grant or deny requests for records.
1602.11 Denials.
1602.12 Appeals of denials.
1602.13 Fees.

AUTHORITY: Sec. 1005(g) (42 U.S.C. 2996d(g)).

§ 1602.1 Purpose.

This part prescribes the procedures by which records of the Legal Services Corporation may be made available pursuant to section 1005(g) of the Legal Services Corporation Act, 42 U.S.C. 2996d(g), and the Freedom of Information Act, as amended in 1974, 5 U.S.C. 552.

§ 1602.2 Definitions.

As used in this part—

(a) "FOIA" means the Freedom of Information Act, as amended in 1974, 5 U.S.C. 552;

(b) "Records" means books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by the Corporation in connection with the transaction of the Corporation's business and preserved by the Corporation as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Corporation, or because of the informational value of data in them. The term does not include books, magazines, or other materials acquired solely for library purposes and available through any officially designated library of the Corporation.

§ 1602.3 Policy.

The Corporation will make records concerning its operations, activities, and business available to the public to the maximum extent reasonably possible. Records will be withheld from the public only in accordance with the FOIA and this regulation. Records that may be exempt from disclosure may be made available as a matter of discretion when disclosure is not prohibited by law, and it does not appear adverse to legitimate interests of the public, the Corporation, or any individual. The Corporation will attempt to provide assistance to requesting parties, including information about how a request may be submitted. The Corporation will act on requests for records in a timely manner.

§ 1602.4 Index of records.

The Corporation will maintain a current index identifying any matter within the scope of § 1602.5(b) (1)-(3) which has been issued, adopted, or promulgated by the Corporation, and other information published or made publicly available. The index will be maintained and made available for public inspection and copying at the Corporation's headquarters in Washington, D.C., and at each regional office. The Corporation will provide a copy of the index on request, at a cost not to exceed the direct cost of duplication.

§ 1602.5 Central records room.

(a) The Corporation will maintain a central records room at its headquarters at 733 15th Street NW., Suite 700, Washington, D.C. 20005, 202-376-5100. This room will be supervised by a Rec-

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ords Officer, and will be open during regular business hours of the Corporation for the convenience of members of the public in inspecting and copying records made available pursuant to this part. Certain records, described in paragraph (b) of this section, will be regularly maintained in or in close proximity to the records room, to facilitate access thereto by any member of the public.

(b) Subject to the limitation stated in paragraph (c) of this subsection, there will be available in the central records room the following:

(1) All final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases;

(2) Statements of policy and interpretations adopted by the Corporation;

(3) Administrative staff manuals and instructions to the staff that affect the public;

(4) To the extent feasible, guidelines, forms, published regulations, notices, program descriptions, and other records considered to be of general interest to members of the public in understanding activities of the Corporation or in dealing with the Corporation in connection with those activities;

(5) The current index required by § 1602.4.

(c) Certain types of staff manuals or instructions, such as instructions to auditors or inspection staff, or instructions covering certain phases of contract negotiation, that deal with the performance of functions that would automatically be rendered ineffective by general awareness of the Corporation's techniques or procedures, may be exempt from mandatory disclosure even though they affect or may affect the public. These records will not be maintained in the central records room.

(d) Certain records maintained in the records room or otherwise made available pursuant to this part may be "edited" by the deletion of identifying details concerning individuals, to prevent a clearly unwarranted invasion of personal privacy. In such cases, the record shall have attached to it full explanation of the deletion.

§ 1602.6 Regional records rooms.

(a) Each regional office shall have either a specially designated records room similar to the central records room described in § 1602.5 or, if that is not feasible, a designated area within the office, a principal function of which is to serve the public in accordance with this part. The Corporation will endeavor to maintain and have readily available in its regional offices the records described in § 1602.5(b), and will designate a Records Officer in each regional office to receive and process requests submitted pursuant to this part.

(b) The regional records rooms as of June 15, 1978, are located at the following addresses:

Boston Regional Office, 84 State Street, Room 520, Boston, Mass. 02101.

New York Regional Office, 10 East 40th Street, Room 2010, New York, N.Y. 10016.

Philadelphia Regional Office, 101 North 33rd Street, Suite 404, Philadelphia, Pa. 19104.

Northern Virginia Regional Office, 1730 North Lynn Street, Suite 600—Rosslyn, Arlington, Va. 22209.

Chicago Regional Office, 310 South Michigan Avenue, 24th Floor, Chicago, Ill. 60604.

Atlanta Regional Office, 615 Peachtree Street NE., 9th Floor, Atlanta, Ga. 30308.

San Francisco Regional Office, 177 Post Street, Suite 890, San Francisco, Calif. 94104.

Denver Regional Office, 1726 Champa Street, Suite 500, Denver, Colo. 80202.

Seattle Regional Office, 506 Second Avenue, Room 1621, Seattle, Wash. 98104.

§ 1602.7 Use of records rooms.

(a) Any member of the public who wishes to inspect or copy records regularly maintained in the central or a regional records room may secure access to these records by presenting himself or herself at the records room during business hours. No advance notice or appointment is required, although persons wishing to make extended use of regional office facilities should take account of the possible limitations in these facilities.

(b) Each records room will also be available to any member of the public to inspect and copy records which are not regularly maintained in such room. To obtain such records a person should present his or her request identifying the records to the Records Officer. Because it will sometimes be impossible to produce these records or copies of them on short notice, a person who wishes to use records room facilities to inspect or copy such records is advised to arrange a time in advance, by telephone or letter request made to the Records Officer of the facility which he or she desires to use. Persons submitting requests by telephone will be advised by the Records Officer or another designated employee whether a written request would be advisable to aid in the identification and expeditious processing of the records sought. Persons submitting written requests should identify the records sought in the manner provided in § 1602.8(b) and should indicate whether they wish to use the records room facilities on a specific date. The Records Officer will endeavor to advise the requesting party as promptly as possible if, for any reason, it may not be possible to make the records sought available on the date requested.

§ 1602.8 Availability of records on request.

(a) In addition to the records made available through the records rooms, the Corporation will make such records available to any person in accordance with paragraphs (b) and (c) of this section, unless it is determined that such records should be withheld and are exempt from mandatory disclosure under the FOIA and § 1602.9 of these regulations.

(b) *Requests.* (1) A request will be acceptable if it identifies a record with sufficient particularity to enable officials of the Corporation to located the record with a reasonable amount of effort. Requests seeking records within a reasonably specific category will be deemed to conform to the statutory requirement of a request which "reasonably describes" such records if professional employees of the Corporation who are familiar with the subject area of the request would be able, with a reasonable amount of effort, to determine which particular records are encompassed within the scope of the request, and to search for, locate, and collect the records without unduly burdening or materially interfering with operations because of the staff time consumed or the resulting disruption of files. If it is determined that a request does not reasonably describe the records sought as specified in this paragraph, the response denying the request on that ground shall specify the reasons why the request failed to meet the requirements of this paragraph and shall extend to the requesting party an opportunity to confer with Corporation personnel in order to attempt to reformulate the request in a manner that will meet the needs of the requesting party and the requirements of this paragraph.

(2) To facilitate the location of records by the Corporation, a requesting party should try to provide the following kinds of information, if known: (i) the specific event or action to which the record refers; (ii) the unit or program of the Corporation which may be responsible for or may have produced the record; (iii) the date of the record or the date or period to which it refers or relates; (iv) the type of record such as an application, a grant, a contract, or a report; (v) personnel of the Corporation who may have prepared or have knowledge of the record; (vi) citations to newspapers or publications which have referred to the record.

(3) The Corporation is not required to create a record to satisfy a request for information. When the information requested exists in the form of several records at several locations, the requesting party should be referred to those sources if gathering the information would unduly burden or materially interfere with operations of the Corporation.

(4) All requests for records under this section shall be made in writing, with the envelope and the letter clearly marked: "Freedom of Information Request." All such requests shall be addressed to the Records Officer at the headquarters of the Corporation or at any regional records office. Any request not marked and addressed as specified in this subparagraph will be so marked by Corporation personnel as soon as it is properly identified, and forwarded immediately to the Records Officer. A request improperly addressed will not be deemed to have been received for purposes of the time period set forth in paragraph (c) of this section until forwarding to the appropriate office has been effected. On receipt of an improperly addressed request, the Records Officer shall notify the requesting party of the date on which the time period commenced to run.

(5) A person desiring to secure copies of records by mail should write to the Records Officer at the headquarters in Washington, D.C. The request must identify the records of which copies are sought in accordance with the requirements of this paragraph, and should indicate the number of copies desired. Fees may be required to be paid in advance in accordance with § 1602.13. The requesting party will be advised of the estimated fee, if any, as promptly as possible. If a waiver of fees is requested, the grounds for such request should be included in the letter.

(c) The Records Officer, upon request for any records made in accordance with this Part, shall make an initial determination of whether to comply with or deny such request and dispatch such determination to the requesting party within 10 days (excepting Saturdays, Sundays, and legal public holidays) after receipt of such request, except for unusual circumstances in which case the time limit may be extended for not more than 10 working days by written notice to the requesting party setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. In determining whether to issue a notice of extension of time for a response to a request beyond the 10-day period, Corporation officials shall consult with the Office of the General Counsel. As used herein, "unusual circumstances" are limited to the following, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the Corporation having substantial subject matter interest therein.

(d) If no determination has been dispatched at the end of the 10-day period, or the last extension thereof, the requesting party may deem his request denied, and exercise a right of appeal in accordance with § 1602.12. When no determination can be dispatched within the applicable time limit, the Records Officer shall nevertheless continue to process the request. On expiration of the time limit, he shall inform the requesting party of the reason for the delay, of the date on which a determination may be expected to be dispatched, and of his right to treat the delay as a denial and to appeal to the President in accordance with § 1602.12; and he may ask the requesting party to forego appeal until a determination is made.

(e) After it has been determined that a request will be granted, the Corporation will act with diligence in providing a substantive response.

§ 1602.9 Invoking exemptions to withhold a requested record.

(a) A requested record of the Corporation may be withheld from public disclosure only if one or more of the following categories exempted by the FOIA apply:

(1) Matter which is related solely to the internal personnel rules and practices of the Corporation;

(2) Matter which is specifically exempted from disclosure by statute;

(3) Trade secrets and commercial or financial information obtained from a person and priviledged or confidential;

(4) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the Corporation;

(5) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(6) Investigatory records compiled for enforcing the Act or any other law, but only to the extent that the production of such records would (i) interfere with enforcement proceedings, (ii) deprive a person of a right of a fair trail or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel;

(b) In the event that one or more of the above exemptions applies, any reasonably segregable portion of a record shall be provided to the requesting party after deletion of the portions that are exempt. In appropriate circumstances, subject to the discretion of Corporation officials, it may be possible to provide a requesting party with: (1) a summary of information in the exempt portion of a record or (2) an oral description of the exempt portion of a record. In determining whether any of the foregoing techniques should be employed in accordance with this paragraph or whether an exemption should be waived in accordance with paragraph (c) of this section, Corporation officials shall consult with the Office of General Counsel. No requesting party shall have a right to insist that any or all of the foregoing techniques should be employed in order to satisfy a request.

(c) Records that may be exempted from disclosure pursuant to paragraph (a) of this section may be made available as a matter of discretion when disclosure is not prohibited by law, if it does not appear adverse to legitimate interests of the Corporation, the public, or any person.

§ 1602.10 Officials authorized to grant or deny requests for records.

The General Counsel shall furnish necessary advice to Corporation officials and staff as to their obligations under this Part and shall take such other actions as may be necessary or appropriate to assure a consistent and equitable application of the provisions of this Part by and within the Corporation. Other officials of the Corporation shall consult with the General Counsel before denying requests under this Part, or before granting requests for waiver or modified application of an exemption or for categories of documents which the General Counsel determines may present special or unusual problems. The General Counsel and, subject to consultation with him where required, the Records Officer, each Regional Director, and each Regional Records Officer are authorized to grant or deny requests under this part.

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§ 1602.11 Denials.

(a) A denial of a written request for a record that complies with the requirements of § 1602.8 shall be in writing and shall include the following:

(1) A reference to the applicable exemption or exemptions in § 1602.9(a) upon which the denial is based;

(2) An explanation of how the exemption applies to the requested records;

(3) A statement explaining why it is deemed unreasonable to provide segregable portions of the record after deleting the exempt portions;

(4) The name and title of the person or persons responsible for denying the request; and

(5) An explanation of the right to appeal the denial and of the procedures for submitting an appeal, including the address of the official to whom appeals should be sumitted.

(b) Whenever the Corporation makes a record available subject to the deletion of a portion of the record, such action shall be deemed a denial of a record for purposes of paragraph (a) of this section.

(c) All denials shall be treated as opinions and shall be maintained and indexed accordingly, subject only to the necessity of deleting identifying details the release of which would constitute a clearly unwarranted invasion of personal privacy.

§ 1602.12 Appeals of denials.

(a) Any person whose written request has been denied is entitled to appeal the denial within ninety days by writing to the President of the Corporation at the headquarters in Washington, D.C. The envelope and letter should be clearly marked: "Freedom of Information Appeal." An appeal need not be in any particular form, but should adequately identify the denial, if possible, by describing the requested record, identifying the official who issued the denial, and providing the date on which the denial was issued.

(b) No personal appearance, oral argument, or hearing will ordinarily be permitted on appeal of a denial. Upon request and a showing of special circumstances, however, this limitation may be waived and an informal conference may be arranged with the President, or the President's specifically designated representative, for this purpose.

(c) The decision of the President on an appeal shall be in writing and, in the event the denial is in whole or in part upheld, shall contain an explanation responsive to the arguments advanced by the requesting party, the matters described in § 1602.11(a) (1)-(4), and the provisions for judicial review of such decision under section 552(a)(4) of the FOIA. The decision shall be dispatched to the requesting party within twenty working days after receipt of the appeal, unless an additional period is justified pursuant to § 1602.8(c) and such period taken together with any earlier extension does not exceed ten days. The President's decision shall constitute the final action of the Corporation. All such decisions shall be treated as final opinions under § 1602.5(b).

§ 1602.13 Fees.

(a) Information provided routinely in the normal course of doing business will be provided at no charge.

(b) The Records Officer may waive or reduce fees where special circumstances, including but not limited to the benefit of the general public, warrant. A Records Officer shall waive fees where the requesting party is indigent unless the fees would exceed $25 and may waive or reduce fees for the request of an indigent where the fees would exceed $25. These provisions will be subject to appeal in the same manner as appeals from denial under § 1602.12.

(c) There shall be no fee charged for services rendered by the Corporation pursuant to this Part, unless the charges, as calculated in paragraph (e) of this section, exceed $6.50. Where the charges are calculated to exceed $6.50, the fee shall be the difference between $6.50 and the calculated charges.

(d) Ordinarily, no fee shall be levied where the records requested are not provided or made available. However, if the time expended in processing the request is substantial, and if the requesting party has been notified of the estimated cost pursuant to paragraph (f) of this section, and has been specifically advised that it cannot be determined in advance whether any records will be made available, fees may be charged.

(e) The schedule of charges for services regarding the production or disclosure of the Corporation's records is as follows:

(1) Search for records and production of information based on the following schedule of direct labor charges:

(a) Programmer = $6.25/quarter hour
(b) Analyst = $3.50/quarter hour
(c) Processor/Clerical = $1.50/quarter hour

(2) Computer time: Actual charges as incurred.

(3) Reproduction, duplication, or copying of records: $0.10 per page.

(4) Reproduction, duplication, or copying of microfilm: Actual charges as incurred.

(5) Certification of true copies: $1.00 each.

(f) Where it is anticipated that the fee chargeable under this Part will amount to more than $25, and the requesting party has not indicated in advance his willingness to pay so high a fee, the requesting party shall be notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In such cases, a request will not be deemed to have been received until the requesting party is notified of the anticipated cost and agrees to bear it. Such a notification shall be transmitted as soon as possible, but in any event within five working days, giving the best estimate then available. The notification shall offer the requesting party the opportunity to confer with appropriate representatives of the Corporation for the purpose of reformulating the request so as to meet his needs at a reduced cost.

(g) Where the anticipated fee chargeable under this Part exceeds $25, an advance deposit of 25 percent of the anticipated fee may be required. Where a requesting party has previously failed to pay a required fee, an advance deposit of the full amount of the anticipated fee together with the fee then due and payable may be required.

(h) The Corporation reserves the right to limit the number of copies that will be provided of any document to any one requesting party, or to require that special arrangements for duplication be made in the case of bound volumes or other records representing unusual problems of handling or reproduction.

ALICE DANIEL,
General Counsel,
Legal Services Corporation.

[FR Doc. 78-31479 Filed 11-6-78; 8:45 am]

[6820-35-M]

PART 1609—FEE-GENERATING CASES

Authorized Representation

AGENCY: Legal Services Corporation.

ACTION: Final regulation.

SUMMARY: Under provisions of the Legal Services Corporation Act, legal services lawyers are restricted from undertaking fee-generating cases. In cases of this type, an attempt must be made to refer the client to a private lawyer. In 1977 that particular provision of the Act was amended to exclude those cases which involve clients seeking either social security or supplemental security income benefits. This rule implements that statutory change. It would eliminate the need for a legal services program to attempt to refer eligible clients to private attorneys.

EFFECTIVE DATE: December 7, 1978.

ADDRESS: Legal Services Corporation, 733 Fifteenth Street NW., Suite 700, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT:

Stephan S. Walters, 202-376-5113.

SUPPLEMENTARY INFORMATION: On August 1, 1978, the Legal Services Corporation published for notice and comment a proposal to amend Part 1609—Fee-Generating Cases, by adding a new § 1609.4(d). The proposal was designed to implement the statutory change permitting the exclusion of Social Security and Supplemental Income Cases from the statutory prohibition on accepting fee-generating cases. After reviewing the comments that were received, the Board of Directors has authorized republication of new § 1609.4(d) in final form.

§ 1609.4 Authorized representation in a fee-generating case.

Other adequate representation is deemed to be unavailable when:

* * * * *

(d) An eligible client is seeking benefits under Title II of the Social Security Act, 42 U.S.C. 401, *et seq.*, Federal Old Age, Survivors, and Disability Insurance Benefits; or Title XVI of the Social Security Act, 42 U.S.C. 1381, *et seq.*, Supplemental Security Income for Aged, Blind, and Disabled.

ALICE DANIEL,
General Counsel,
Legal Services Corporation.

[FR Doc. 78-31480 Filed 11-6-78; 8:45 am]

[6820-35-M]

PART 1620—PRIORITIES IN THE ALLOCATION OF RESOURCES

Revision of Part

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This rule revises the Corporation's regulations involving priorities in the allocation of resources. This action is taken to implement an amendment to section 1007(a)(2)(C) of the Legal Services Corporation Act which requires that recipients of Corporation resources take into account the relative needs of eligible clients in setting priorities for use of those resources.

EFFECTIVE DATE: December 7, 1978.

ADDRESS: Legal Services Corporation, 733 Fifteenth Street NW., Suite 700, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT:

Stephen S. Walters, 202-376-5113.

SUPPLEMENTARY INFORMATION:

On July 28, 1978, a revised version of Part 1620 was published for notice and comment in the FEDERAL REGISTER. The purposes of the revision were two: first, language was added to implement the amendment to section 1007(a)(2)(C) of the Act. That amendment requires that, in setting priorities for the use of resources, recipients take into account the relative needs of eligible clients "including particularly the needs for service on the part of significant segments of the population of eligible clients with special difficulties of access to legal services or special legal problems * * *." The revisions to Part 1620 implement this requirement by ensuring that the needs of all significant segments of the client community are considered in the priority-setting process, and that the consideration addresses the need for expanded access to service as well as substantive problems.

Second, the published revision to Part 1620 responded to the concerns of many in the legal services community that recipients should approach priority-setting in a systematic way, and involve clients at every step of the process. These goals are reflected in the requirements that recipients conduct an appraisal of client needs, prepare a publicly-available report regarding their priorities and the manner in which those priorities were developed, and review priorities at least annually. It bears emphasis, however, that these changes maintain the flexible approach to priority-setting that characterized the present regulation. The specific method for setting and reporting priorities, as well as the priorities themselves, remain a matter for decision by the recipients.

The Corporation is now re-publishing Part 1620 in final form. The Regulation contains a number of changes, based on comments received on the proposed version. The changes are as follows:

Section 1620.2(a)(1). As published, this section required that recipients perform an "assessment of the needs" of their client communities based solely on comments from members of that community. Some felt that the quoted language required programs to conduct scientifically validated surveys of their client communities. The revision is designed to clarify this point, and to emphasize that no particular method of appraising client needs is mandated. The revision also reflects the reality that, although direct consultation with clients must be the primary source for any appraisal of their needs, other persons may be sufficiently in touch with the client community that they can provide valuable insight. Discussions with such persons should not be foreclosed, although they may not substitute for direct contact with eligible clients.

Section 1620.2(a)(2). This section originally required recipients to "insure participation by all significant segments of the client community * * *." The comments observed that some persons may ignore a program's priority-setting process, despite good faith efforts to include them. The draft has been revised to reflect that reality. It should be clear, however, that a press release or other general announcement cannot alone satisfy the requirement that all significant segments of the client community have an opportunity to participate. Rather, a program must take affirmative steps to identify and include all significant segments of its client community in the priority-setting process.

Section 1620.2(b). Subsection (1) has been amended to reflect the changes described above. In addition, new subsections (8) and (9) have been drafted. Those provisions require that a program consider the potential effect of its efforts on particular problems when setting priorities. It may make little sense to devote scarce resources to addressing problems, however pressing, that are not susceptible to resolution through the activities of a legal services program.

Section 1620.2(c). This section originally required a recipient to prepare a detailed work plan describing its priorities and the manner in which they would be accomplished. Many commentators observed that developing such a plan might be beyond the capability of some programs, and that the requirement of public availability could require premature disclosure of strategy and tactics. The provision has been redrafted to require programs to report briefly on their priorities, the reasons for adopting those priorities, and the implications of those priorities for the allocation of resources. More detailed work plans setting out specific objectives and strategies for achieving them are desirable for sound planning. The immediate development of such plans, however, should not be required.

Section 1620.3(a). This section required a recipient to consider the extent to which the objectives of its work plan have been achieved in reviewing priorities. It has been revised to conform to the change in section 1620.2(c) discussed above, and to require that priorities be reviewed—but not necessarily revised—at least annually.

Part 1620 is revised as follows:

Sec.
1620.1 Purpose.
1620.2 Procedure.
1620.3 Review.

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AUTHORITY: Sec. 1007(a)(2); 42 U.S.C. 2996(a)(2).

§ 1620.1 Purpose.

This Part is designed to insure that a recipient, through policies and plans adopted by its governing body, takes into account the views of eligible clients, staff and other interested persons in establishing priorities for allocating its resources in an economical and effective manner, consistent with the purposes and requirements of the Act and other provisions of federal law.

§ 1620.2 Procedure.

(a) A recipient shall adopt procedures for establishing priorities in the allocation of its resources. The procedure adopted shall:

(1) Include an appraisal of the needs of eligible clients in the geographic areas served by the recipient, and their relative importance, based on comments from eligible clients solicited in a manner reasonably calculated to obtain the attitudes of all significant segments of the client population, as well as comments from the recipient's employees, governing body members, and other interested persons. In addition to substantive legal problems, the appraisal shall address the need for outreach, training of the recipient's employees, and support services;

(2) Insure an opportunity for participation by all significant segments of the client community and the recipient's employees in the setting of priorities, in the development of the report required by paragraph (c), and in the review required by § 1620.3, and provide an opportunity for comment by interested members of the public.

(b) The following factors shall be among those considered by the recipient in establishing priorities:

(1) The appraisal described in paragraph (a)(1) of this section;

(2) The population of eligible clients in the geographic area served by the recipient, including all significant segments of that population with special legal problems or special difficulties of access to legal services;

(3) The resources of the recipient;

(4) The availability of another source of free or low-cost legal assistance in a particular category of cases or matters;

(5) The availability of other sources of training, support, and outreach services;

(6) The relative importance of particular legal problems of the clients of the recipient;

(7) The general effect of the resolution of a particular category of cases or matters on eligible clients in the area served;

(8) The susceptibility of particular problems to solution through legal processes; and,

(9) Whether legal efforts by the recipient will complement other efforts to solve particular problems in the area served.

(c) The recipient shall prepare a brief written report describing its priorities, how they were developed, and the implications of those priorities for the allocation of its resources. The report shall be available to the public.

§ 1620.3 Review.

Priorities shall be reviewed at least annually. The following factors shall be among those considered in determining whether the recipient's priorities should be changed:

(a) The extent to which the objectives of the recipient's priorities have been accomplished;

(b) Changes in the resources of the recipient; and,

(c) Changes in the size or needs of the eligible client population.

ALICE DANIEL,
General Counsel,
Legal Services Corporation.

[FR Doc. 78-31478 Filed 11-6-78; 8:45 am]

[6712-01-M]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

PART 73—RADIO BROADCAST SERVICES

PART 74—EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST, AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

Editorial Corrections

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: This action corrects the Zip Code number for the U.S. Department of Commerce, Environmental Research Laboratories at Boulder, Colorado. The Zip Code is found in Sections 73.711(c)(2), 73.1030(b)(2) and 74.12(c)(2) of the FCC's Rules and Regulations in the Title 47, Code of Federal Regulations.

DATE: Effective November 10, 1978.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

John W. Reiser, Broadcast Bureau, 202-632-9660.

SUPPLEMENTARY INFORMATION:

ORDER

Adopted: October 25, 1978.

Released: October 26, 1978.

In the matter of editorial corrections of §§ 73.711, 73.1030 and 74.12 of the Commission's rules.

1. The U.S. Department of Commerce, Environmental Research Laboratories has notified the Commission that the Zip Code for its facilities at Boulder, Colo., is not correctly printed in §§ 73.711, 73.1030, and 74.12 of the Commission's Rules.

2. The city address Zip Code in §§ 73.711(c)(2), 73.1030(b)(2), and 74.12(c)(2) is corrected to read as follows: Boulder, Colo. 80303

3. We conclude that adoption of the editorial amendment shown in this Order will serve the public interest. Prior notice of rule making, effective date provisions, and public procedure thereon are unnecessary, pursuant to the Administrative Procedure and Judicial Review Act provisions of 5 U.S.C. 553(b)(3)(B), inasmuch as this amendment imposes no additional burdens and raises no issue upon which comments would serve any useful purpose.

4. Therefore, it is ordered, That pursuant to sections 4(i), 303(r) and 5(a)(1) of the Communications Act of 1934, as amended, and Section 0.281 of the Commission's Rules, Parts 73 and 74 of the Commission's Rules and Regulations is amended as set forth in paragraph 2 above, effective November 10, 1978.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; 47 U.S.C. 154, 155, 303)

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc. 78-31438 Filed 11-6-78; 8:45 am]

[6712-01-M]

[Docket No. 20936; FCC 78-760]

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

Exempting SSB Equipped Vessels Operating Solely in Alaska Waters From Mandatory VHF Capabilities

AGENCY: Federal Communications Commission.

ACTION: Second report and order.

SUMMARY: The Federal Communications Commission amends its regulations relating to stations on shipboard in the maritime services. The amendment extends for one year the present exemption of single-side-band (SSB) equipped vessels operating solely in Alaskan waters from mandatory VHF capabilities. The amendment adopts a Coast Guard recommendation and will provide an opportunity for the establishment of additional VHF Public coast and U.S. Coast Guard stations in Alaska.

EFFECTIVE DATE: January 2, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

John Hays, Safety and Special Radio Services Bureau, 202-632-7197.

SUPPLEMENTARY INFORMATION: In the matter of amendment of Part 83 to exempt SSB equipped vessels operating solely in Alaska waters from mandatory VHF capabilities; Second report and order (Proceeding Terminated). (See also 41 FR 56806, December 30, 1976.)

Adopted: October 24, 1978.

Released: November 2, 1978.

By the Commission: 1. Under the Commission's rules, a ship radio station equipped with a transmitter capable of operating on the radiotelephony frequencies in the band 2000-2850 kHz (2 MHz band) must also have a transmitter capable of transmitting in the VHF band 156-162 MHz. The band 2000-2850 kHz is in the medium frequency (MF) range and provides regional radio coverage to the maritime public as distinguished from worldwide coverage and local VHF coverage, both of which are furnished by other frequency bands.

2. The use of the 2 MHz band for maritime communications preceded the use of the VHF band. As traffic expanded in the 2 MHz band, congestion increased to the point that the communication range of this band was greatly reduced. After VHF became established as a primary means of conducting short range (20-50 miles) marine communications, it was decided to limit the use of the 2 MHz band to reduce this congestion. Under the present rules, ship stations having equipment capable of transmitting in the 2 MHz band must also have equipment capable of VHF transmission. Prior to initiating a call on 2 MHz frequencies, a ship station shall first attempt to communicate on the appropriate VHF frequencies. If no reply is received to the call on VHF, then the frequencies in the band 2000-2850 kHz may be used for authorized communications.

3. Except for vessels operating solely in Alaskan waters, the Commission provided a transitional period of approximately 6½ years, from June 10, 1970, to January 1, 1977, before these rules became fully effective. In Alaska, the Commission extended the transitional period for an additional 2 years, until January 1, 1979, because of the lack of VHF coverage.[1] The extension would provide an opportunity for the establishment of additional VHF public coast and U.S. Coast Guard stations in Alaska.

4. The U.S. Coast Guard has submitted its coverage plan for existing and proposed VHF coverage and has recommended that the present exemption from the requirement for mandatory equipping of VHF in Alaska be extended for an additional year.

5. After considering the present VHF coverage which should be improved in the near future by new U.S. Coast Guard stations, the Commission has decided to adopt the recommendation of the U.S. Coast Guard and extend the present exemption from the requirement for mandatory equipping of VHF in Alaska for one year until January 1, 1980.

6. Regarding questions on matters covered by this document contact John Hays, 202-632-7197.

7. Accordingly, *it is ordered*, That pursuant to the authority contained in Section 4(i) and 303 (c), (d), (f), and (r) of the Communications Act of 1934, as amended, Part 83 of the Commission's rules is amended, as set forth below. Inasmuch as this relieves a restriction, the provisions of 5 U.S.C. 553(d) are not applicable and the rule amendment shall become effective January 2, 1979.

8. *It is further ordered*, That this proceeding is terminated.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.)

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

Part 83 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

Section 83.351(c)(3)(i) is amended to read as follows and the note deleted.

§ 83.351 Frequencies available.

* * * * *

(c) * * *

(3) * * *

(i) The ship station is equipped for use of F3 emissions on frequencies in the band 156-162 MHz, except for vessels bearing Alaska registration or documented vessels with a home port in Alaska and operating solely in waters off Alaska until January 1, 1980.

* * * * *

[FR Doc. 78-31476 Filed 11-6-78; 8:45 am]

[1] *Report and Order*, Docket No. 20936, 62 FCC 2d 493 (1976).

[6712-01-M]

[Docket No. 21202; FCC 78-459]

PART 0—COMMISSION ORGANIZATION

PART 76—CABLE TELEVISION SERVICE

Cable Television Annual Financial Report (FCC Form 326)

AGENCY: Federal Communications Commission.

ACTION: Final rule (report and order).

SUMMARY: Amendment of Parts 0 and 76, Subpart F of the Commission's Rules and Regulations with Respect to the Cable Television Annual Financial Report (FCC Form 326). The amendment incorporates the following major features: (1) Disclosure of accounting policies for several critical accounts; (2) Reduced filing burden on small cable operators; (3) Changes in income statement schedule; (4) Elimination of current schedule 4, "Non Recurring Telephone Company Charges"; (5) Expanded explanations in instructions and clarified account definitions.

EFFECTIVE DATE: November 7, 1978.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

R. C. Earnest, Cable Television Bureau, 202-632-9797.

SUPPLEMENTARY INFORMATION: In the matter of amendment of Part 76, Subpart F of the Commission's Rules and Regulations with respect to the Cable Television Annual Financial Report (FCC Form 326) (see also 42 FR 30401, June 14, 1977).

Adopted: June 28, 1978.

Released: November 1, 1978.

By the Commission: [1]

1. On April 14, 1977, the Commission adopted a *Notice of Proposed Rulemaking* in the above titled matter, which was published in the FEDERAL REGISTER on May 9, 1977 (42 FR 23519). The notice proposed revisions of FCC Form 326 to adopt a reporting system which includes partial reporting exemptions for small operators, changes in several financial schedules, and, of most significance perhaps, disclosures of accounting policies that underlie several critical accounts. This reporting system culminates four years of research, coordination, and administrative procedure in an effort

[1] Commissioner Lee concurring in the result; Commissioner Quello absent.

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to develop a reporting methodology that not only minimizes the paperwork burdens but provides reliable data that can be useful in the Commission decision making process.

2. Annual financial filings by cable operators are necessary to enable the Commission to keep abreast of cable television developments, fulfill its regulatory responsibilities in this field, and assist Congress in its consideration of related legislative proposals. Since the financial data is indispensable in providing dependable estimates of the economic consequences of many proposed and existing government requirements on cable television systems, it is imperative that the data have a reasonable degree of reliability and accuracy. As stated in the *Notice of Proposed Rulemaking:*

> In rulemakings, for example, it is often essential to determine what constitutes an extraordinary burden on certain cable systems so that exemptions or limitations may be incorporated into the rules, such as the subscriber size exemptions in the nonduplication, exclusivity and cablecasting rules. In special relief requests, where financial showings frequently are used, accurate financial data is required so that normal industry characteristics can be used as a basis for comparison. In the aggregate, financial information is necessary to monitor the effect of Commission rules on the industry as a whole on a year to year basis.

However, the use of financial data has been severely limited primarily because of the dissimilarity in accounting procedures used by reporting units. A variation in accounting procedures, in only a few accounts, can substantially affect the accuracy of critical indicators upon which many regulatory decisions are partly or wholly based. Therefore, the attached financial reporting system incorporates a schedule of disclosure regarding critical accounting policies which allows uniformity in the aggregation and analysis of financial data which, in turn, insures fair and efficient regulation.

3. The Commission's needs for uniform financial data are not unrelated to State and local needs, even though there are generally different objectives in the regulation of cable television at each level of government. In developing the proposed reporting system, the account instructions and form schedules have been designed to satisfy a large number of State and local reporting needs in carrying out their respective responsibilities. There are two major purposes for this design effort. First, it encourages consistency in regulatory reporting and accounting requirements so that unnecessary burdens on cable operators can be avoided. This would be especially true where operators own cable systems in many different State and local areas. Under consistent reporting requirements, these multiple system operators could provide similar types of financial information to the regulatory bodies in each State and local area without the necessity of keeping separate books and using different accounting procedures. The second purpose is that, for regulatory bodies at each level of government, consistent reporting requirements may aid in efficiency and cost reduction. Consistent and uniform financial data, even where displayed in aggregated tables, is extremely useful information in ratemaking determinations. Furthermore, the administrative costs and manpower of developing and maintaining separate reporting and accounting systems in each state and/or each locality are substantially reduced.

4. The *Notice* proposed revisions and additions in the schedules and in the instructions of the Commission's Cable Television Annual Financial Report (FCC Form 326), which, in effect, provides a complete financial reporting system for the industry. The proposed revisions and additions are as follows:

(a) Schedule 4, which requires information pertaining to nonrecurring telephone company charges, would be deleted.

(b) A new schedule would be added which would disclose accounting procedures used in selected accounts such as Deferred System Development Costs, Franchise Costs, Goodwill, Capitalized Interest on System Construction, Overhead Costs Allocated to System, and Original Cost of Purchased Assets. This schedule would also include disclosure of expenses which represent payments to owners and their relatives.

(c) Schedule 2, which requires income statement information, would include several account changes. The revenue format would be more compact, eliminating the need for separate accounts in the "other revenue" category. An account would be added for the copyright fees paid in compliance with the Copyright Act of 1976, Pub. L. 94-553, 90 Stat. 2541. Also, the account items "Total Profit (or Loss)" and "Total Federal and State Income Taxes" would be deleted.

(d) Schedules 1 and 5 would be made public. Although the present form is entirely confidential, it is considered that Schedules 1 and 5 contain informaton that is already available to the public. Schedule 1 requires information regarding communities served, FCC system code, installation fees and subscriber fees. Schedule 5 requires information regarding number of full time and part time employees.

(e) A continuation of the present consolidated reporting, which allows a single reporting entity to include those systems within a 40-mile radius of an owner-designated point, keeping a consolidated set of bookkeeping records, and technologically connected either by private microwave or by cable. However, community units which comprise a cable television system, as defined in the recently amended § 76.5 of the Commission's Rules, must file a consolidated report.

(f) A continuation of fiscal year reporting in lieu of calendar year reporting.

(g) A revised and more complete set of instruction which provides respondents with a detailed definition for each account and the line item number of Form 326 which corresponds to each account.

(h) Guidelines are provided for separating cable from noncable data in consolidated accounts, separating accounts which are consolidated for two or more reporting entities, and allocating corporate overhead costs.

(i) An appendix which simplifies instructions for relatively small privately owned cable operations having uncomplicated accounting procedures.

(j) Small cable operators, who serve 500 or fewer subscribers, would be exempted from filing schedules 3 and 4 (the balance sheet and disclosure schedules).

5. Comments were received from the National Cable Television Association; the New York State Commission on Cable Television; the State of Alaska Public Utilities Commission; Cox Cable Communications, Inc.; the City of Eugene, Oregon; Cablecom-General, Inc.; Storer Broadcasting Co.; the City of Stockton, Calif., Teleprompter Corp.; Viacom International, Inc.; Warner Cable Corp.; and Service Electric Cable TV, Inc. The comments submitted predominantly supported the Commission's proposed actions to bring about uniformity of reporting.

6. Many comments were received regarding the definition of "original cost" as used in the plant accounts of Schedule 3. Most respondents indicated that there are many problems in reporting "original cost" data. Storer Broadcasting Co., Warner Cable Corp., and the National Cable Television Association commented that when a system is sold which was previously included in a consolidated filing, the buyer has no way of knowing the original costs of the assets for each system since there is no requirement that these costs be separated. Other comments indicated that requiring original cost data for several account items might cause respondents to make subjective judgments in allocating costs. In such cases, the reported figures would be inaccurate. The New York State Commission on Cable Television agrees that the burden of reporting allocated original cost data for ownership transfers may prove very difficult for many companies, particularly those which were involved in ownership transfers several years ago. The New York Commission's solution to these difficulties would be to exempt from filing original cost data those systems having ownership changes before a specified date. The Commission has reevaluated the needs for this information versus the burden involved. In particular, it is recognized that requiring original cost data for several accounts would lead to issuance of numerous administrative opinions on specific problems. Furthermore, since the Commission does not regulate rates of the cable television industry, there is no predominant need for the Commission to collect original cost data. Considering the burdens indicated by many respondents and the administrative costs in monitoring original cost accounts, the Commission is requiring original cost information only from those operators who are required to report this information to State regulatory bodies. However, there may be exceptions to this requirement where Federal and State reporting entities differ substantially. Because the Commission seeks financial information regarding business operations within specific geographic areas, the Federal consolidated reporting requirements may differ from those of the States. For example, a State may allow all systems within the State, under common ownership, to report as one financial entity. In these instances, cable operators reporting original cost data to the State may be exempted from reporting original cost data on FCC Form 326. The purpose here is to reduce the reporting burden while retaining the information necessary for State and Federal requirements. Uniformity in asset reporting is maintained by adding the "plant adjustment" account to the "total fixed assets" account for those operators reporting original cost. This account will then be comparable with the "total fixed assets" account of those operators who report assets as historical cost rather than at original cost.

7. Another major topic of discussion was the Commission's consolidation requirement for financial filings. The comments on this issue generally indicated that the allocation of costs on the cable system level is a burdensome and expensive task for the cable operators. Service Electric Cable TV, Inc., for example, estimated that making the required allocations for each of its 13 headend cable systems to meet the proposed FCC Form 326 reporting requirements will likely cost very nearly as much as a complete revision of its consolidated bookkeeping procedures. Several comments suggest that the proposed reporting entity has the added disadvantage of potential inaccuracy. The National Cable Television Association commented that individual system figures resulting from the most well-intentioned but nonetheless arbitrary allocations have no guarantee of total accuracy and may, in some instances, present a distorted picture of the system's financial status. The Commission recognizes that there may be occasional problems with respect to situations where the entities in the consolidated reports do not conform to the entities in the corporation's bookkeeping practices, particularly in the allocation of certain line items in the balance sheet schedule. Financial filings are restricted to small geographic areas because the Commission's rules are designed to apply directly to the community level or the cable system level. If reporting entities were allowed to be larger than that currently specified in the FCC Form 326 instructions, the financial data collected would not be useful in evaluating the economic consequences of many proposed or existing rules. If problems should arise in obtaining information for certain line items, the cable operator should use generally accepted cost accounting techniques to estimate the line items, and then should indicate by a footnote which accounts were estimated. This procedure should minimize burden and allow a control for accuracy.

8. Several comments were directed to clarifying and improving the financial schedules and instructions regarding pay cable data. Warner Cable Corp. commented that the instructions for schedule 2, line 3 do not specify whether pay cable revenues should be reported as gross or net of payments to third parties (e.g. movie companies). Warner is of the opinion that these revenues should be reported as net figures. The National Cable Television Association and Viacom International, Inc., suggested that the programing and production costs of pay cable should be included in the origination expense accounts of Schedule 2. Viacom also indicated that the installation charges of pay cable are not specifically requested in the instructions for schedules 2, line 3. Teleprompter Corp. suggested that revenues from connector rentals that are unrelated to pay cable should be specified as regular subscriber revenues rather than per program or channel revenues. We believe that these suggestions would substantially improve the reliability of the collected pay cable data. The instructions and relevant line items of the FCC Form 326 have been revised accordingly. Pay revenues are to be reported as gross amounts in schedule 2, line 3, and payments to pay cable program suppliers are to be reported as a separate account in schedule, 2, line 15. Installation charges for pay cable are to be reported on schedule 2, line 3 along with other pay cable revenues.

9. It was proposed in the *Notice* to exempt "small systems" of fewer than 500 subscribers from filing schedules 3 and 4. Viacom International, Inc. and Warner Cable Corp. have suggested increasing the subscriber size of the "small system" exemption. The New York State Commission on Cable Television and the Public Utilities Commission of the State of Alaska commented that important data needed for regulation will be lost if balance sheet data are not required from all systems. The Commission has studied the exemption proposal and concluded that the "small system" exemption should be expanded to include all financial entities having fewer than 1,000 subscribers. While "1,000" is not considered a magic number, our experience over several years indicates that systems of this size and below do not normally keep sophisticated balance sheet accounts. They often lack the expertise to prepare these account schedules or the funds to hire outside assistance. Additionally, Commission regulations which place a direct fixed asset cost requirement upon cable operators apply only to those systems having 1,000 or more subscribers. For example, the regulations governing nonduplication protection, program origination requirements and nonbroadcast service obligations (access) do not apply to systems with fewer than 1,000 subscribers. Therefore, in an effort to reduce the reporting burden to the maximum extent consistent with meeting its need to monitor regulatory impact, the Commission will expand the "small system" exemption to apply to all financial entities having fewer than 1,000 subscribers. Cable operators of cable television systems serving fewer than 1,000 subscribers are thus exempted from completing schedule 3 and schedule 4. However, these operators must report total assets on line 32 of schedule 2. This exemption only applies to a cable television system as defined in the Commission's *First Report and Order* in Docket No. 20561—FCC 2d—(1977). The exemption, of course, does not preclude State or local regulatory bodies from requiring whatever level of financial detail is necessary to satisfy their own needs.

10. Teleprompter Corp., the National Cable Television Association, and Warner Cable Corp. suggested that Schedule 5 be eliminated since employment data is provided on FCC Form 395. We wish to stress that the employment data required on schedule 5, FCC Form 326, may not correspond with the employment data being reported on FCC Form 395 since the

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consolidation requirements of the financial reporting form are not applicable to the definitions of an employment unit. For example, unless permission has been granted for consolidation, a financial entity consists of only one cable television system; whereas an employment unit may consist of more than one system. Additionally, the FCC Form 326 employment data is collected as of the fiscal year-end date of the reporting entity and can thus be directly related to the financial data: The FCC Form 395 employment data does not normally relate to the same reporting period (fiscal year-end). In order to use employment data in financial analysis, the data must be directly related to the financial reporting entity. Finally, cable television operators who employ fewer than five employees do not have to file Form 395 statistics. Since there is very little burden upon respondents to provide this information, Schedule 5 remains unchanged in FCC Form 326.

11. In order to simplify the reporting burden, while also providing detailed information to operators, the Form 326 instructions have been separated into two parts: (1) The General Reporting Instructions and (2) a Reporting Manual containing detailed instructions, definitions, and guidelines. For many operators, the General instructions will provide sufficient information for completing and filing the Form 326. Since the General Reporting Instructions include a simple outline of all instructions, this should ease the burden of filling out the Form for small privately owned cable operators who use uncomplicated accounting procedures. Those operators requiring additional clarification should reference the Reporting Manual for specific line item instructions, precise account definitions and guidelines for allocating costs.

12. Many comments were received which were the result of misinterpreting the instructions. The most common misinterpretation regards the inclusion of cost allocation guidelines in the instructions. These guidelines are included only to assist those respondents who might be unfamiliar with generally accepted cost allocation techniques. Respondents may use any cost allocation technique that complies with generally accepted accounting principles. The guidelines included in the instructions of Appendix B are not mandatory, but these methods are good examples of acceptable techniques. Although the instructions and account definitions have been carefully revised to be clear and complete, many specific or technical questions may arise. In such cases the respondent may contact the Research Division of the Cable Television Bureau for clarification.

13. The revised FCC Form 326 includes a redesigned Schedule 1 which allows direct entry of monthly pay cable charges. Previously, the instructions required an exhibit be attached which listed all per program or per channel pay cable charges. Since the predominant method of pay cable pricing is charged on a per channel monthly basis, the revised schedule 1 allows for direct entry of such charges. In cases where pricing methodology differs from this basis, an exhibit is still required. This revision allows more uniformity in the Commission's data processing procedures.

14. In view of the foregoing, we conclude that the public interest would be served by the adoption of the revised FCC Form 326. Authority for adoption of this form is contained in Sections 4 (i), (j), and (k), 303 and 403 of the Communications Act of 1934, as amended. Set forth below is a related editorial amendment of Part O of the Commission's Rules. The revised Form and General Instructions are set forth in Appendix A, and Appendix B provides a Reporting/Accounting Manual to be used as a reference source for those operators seeking detailed instructions regarding specific accounts.

15. Accordingly, *It is ordered*, That (a) effective November 7, 1978, FCC Form 326 is adopted as modified herein subject to Government Accounting Office clearance. (b) Part O of the Commission's Rules and Regulations is amended as set forth below. Because the amendment of Part 76 of the Rules and Regulations involves a matter of procedure and internal organization, the prior notice and effective date provisions of 5 U.S.C. 553 are inapplicable, and § 0.457(d)(1)(iii) is effective November 7, 1978. (c) All comments, to the extent they have not been accepted herein, are denied. (d) This proceeding is terminated.

(Secs. 4, 303, '48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.)

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 0—COMMISSION ORGANIZATION

In § 0.457, paragraph (d)(1)(iii) is revised as follows:

§ 0.457 Records not routinely available for public inspection.

* * * * *

(d) * * *

(1) * * *

(iii) Schedules 2, 3, and 4 of financial reports submitted for cable television systems pursuant to § 76.403 of this chapter.

* * * * *

PART 76—CABLE TELEVISION SERVICE

Section 76.403, *Cable television system reports*, is amended by revising FCC Form 326 and Instructions to read as set forth in Appendix A.

APPENDIX A

FINANCIAL UNIT IDENT: [ ] DO NOT ALTER THIS AREA

OPERATOR

FEDERAL COMMUNICATIONS COMMISSION
Washington DC 20554

ANNUAL REPORT OF CABLE TELEVISION SYSTEMS

FINANCIAL UNIT DATA

FCC FORM 326, SCHEDULE 1

▲ This is Schedule 1 of YOUR FCC FORM 326. It must be completed and/or corrected and returned to the Commission with Schedules 2 through 5. If the communities listed do not reflect your present consolidation, add or delete as necessary. If the pay cable fee is a "per program", rather than a "per month" charge, attach a rate schedule. Include cents with all fee data. APPROVED BY GAO B-180227 (R0205) EXPIRES 7-31-81

PREVIOUSLY FILED:

SYSTEM COMMUNITIES COMPRISING THIS FINANCIAL UNIT

IDENT	NAME	TYPE	OPERATIONAL STATUS	INSTALLATION FEE	SUBSCRIBER FEE	MONTHLY PAY CABLE FEE
				$.	$.	$.

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Approved by GAO
B-180227 (R0205)
Expires 7-31-81

SCHEDULE 2 — CABLE TELEVISION REVENUES AND EXPENSES

FOR PERIOD BEGINNING: 19 [ ] mo [ ] dy [ ] ENDING: 19 [ ] mo [ ] dy [ ]

Line No.	ITEM	AMOUNT (OMIT CENTS)
	OPERATING REVENUES	
1	Installation Revenue	
2	Regular Subscriber Revenue	
3	Per Program or Per Channel Gross Revenue *(Pay Television)*	
4	Advertising Revenue	
5	Special Service Revenue	
6	Other Revenue	
7	**TOTAL OPERATING REVENUES**	
	OPERATING EXPENSES	
	SERVICE EXPENSES:	
8	Salaries, Wages, and Employee Benefits	
9	Pole Rentals	
10	Duct Rentals	
11	Private Microwave Service (CARS)	
12	Common Carrier Microwave Service	
13	Total Tariff (Leaseback) Charges *(Applies only to Systems receiving telephone company channel service.)*	
14	All Other Service Expenses	
15	**PAYMENTS TO PAY CABLE PROGRAM SUPPLIERS**	
	ORIGINATION EXPENSES:	
16	Salaries, Wages, and Employee Benefits	
17	All Other Origination Expenses	
	SELLING, GENERAL, AND ADMINISTRATIVE EXPENSES:	
18	Salaries, Wages, and Employee Benefits	
19	Franchise Fees	
20	Copyright Fees	
21	All Other Selling, General, and Administrative Expenses	
22	**TOTAL OPERATING EXPENSE**	
23	**TOTAL OPERATING INCOME**	
	DEPRECIATION AND AMORTIZATION	
24	Depreciation	
25	Amortization	
	OTHER INCOME AND EXPENSES	
	OTHER INCOME	
26	Total Other Income	
	OTHER EXPENSES:	
27	Interest	
28	Miscellaneous	
29	**TOTAL OTHER INCOME (OR LOSS)**	
30	**EXTRAORDINARY ITEMS**	
31	**TOTAL INCOME (OR LOSS) BEFORE TAXES**	
	TOTAL ASSETS:	
32	To be entered only for those systems (fewer than 1,000 subscribers) exempted from filing Schedule 3.	

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SCHEDULE 3 — BALANCE SHEET INFORMATION

Line No.	ITEM	AMOUNT (OMIT CENTS)
	ASSETS	
	CURRENT ASSETS:	
1	Cash	
2	Accounts Receivable	
3	Other Current Assets	
4	Total Current Assets	
	FIXED ASSETS:	
5	Land and Buildings	
6	Headend	
7	Trunk and Distribution System	
8	Subscriber Devices	
9	Program Origination Equipment	
10	Construction Work in Progress	
11	Other Fixed Assets	
12	Plant Adjustment	
13	Less: Accumulated Depreciation	
14	Total Fixed Assets	
	OTHER ASSETS:	
15	Other Assets	
16	Less: Accumulated Amortization	
17	Total Other Assets	
18	**TOTAL ASSETS**	
	LIABILITIES	
	CURRENT LIABILITIES:	
19	Loans Payable	
20	Accounts Payable	
21	Other Current Liabilities	
22	Total Current Liabilities	
	DEFERRED CREDITS:	
23	Total Deferred Credits	
	LONG TERM DEBT:	
24	Total Long Term Debt	
	OWNER'S EQUITY:	
25	Total Stock Issued	
26	Proprietor's Equity	
27	Retained Earnings	
28	Other Owner's Equity	
29	Total Owner's Equity	
30	**TOTAL LIABILITY AND OWNER'S EQUITY**	
	CHECK METHOD OF DEPRECIATION USED	
31	☐ (1) Straight Line ☐ (2) Declining Balance ☐ (3) Double Declining Balance ☐ (4) Sum-of-the-Years-Digit. ☐ (5) Other	

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SCHEDULE 4 — SUPPLEMENTAL ACCOUNTING INFORMATION

PART A	AMORTIZATION TERM (IN YEARS)	AMORTIZATION METHOD USED (CODE)	AMOUNT CAPITALIZED DURING YEAR	AMOUNT AMORTIZED DURING YEAR
1. Deferred System Development Costs			$	$
2. Franchise Costs *(recorded as assets)*			$	$
3. Goodwill			$	$

CODES: (1) Straight line (2) Declining balance (3) Double declining balance (4) Sum-of-the-years digits (5) Other

PART B	TOTAL CAPITALIZED	AMOUNT CAPITALIZED DURING YEAR	USEFUL LIFE (YEARS)
4. Capitalized Interest on System Construction	$	$	

PART C	TOTAL AMOUNT OF ASSET	AMOUNT NOT BEING AMORTIZED	AMOUNT BEING AMORTIZED
5. Deferred System Development Costs	$	$	$
6. Franchise Costs *(recorded as assets)*	$	$	$
7. Goodwill	$	$	$

PART D	TOTAL AMOUNT OF ALLOCATED COSTS	METHOD USED TO ALLOCATE COSTS TO SYSTEM (CODE)
8. Overhead Costs Allocated to System	$	

CODES: (1) Per number of subscribers (2) Per gross revenues (3) Per miles of plant (4) Other

PART E	AMOUNT
9. Original Cost of Fixed Assets *(Seller's Book Value)*	$
10. Portion of Purchase Price Allocated to Seller's Book Value	$
11. Recorded Cost of Fixed Assets by Purchaser	$

PART F	FIXED ASSET CLASSIFICATION	AMOUNT	USEFUL LIFE (YEARS)	FIXED ASSET CLASSIFICATION	AMOUNT	USEFUL LIFE (YEARS)
12. Estimated Useful Lives of Fixed Assets		$			$	
		$			$	
		$			$	
		$			$	

PART G	AMOUNT	NUMBER OF PERSONS
13. Salaries to Owners	$	

14. Other Direct Payment Included in Total	TOTAL AMOUNT	TYPE
	$	

15. Expense Payments to Spouse or Relatives	TOTAL AMOUNT	TYPE
	$	

TYPE: (1) Rent (2) Payments for services (3) Payment for equipment (4) Payments for supplies (5) Travel & Entertainment (6) Other

SCHEDULE 5 — EMPLOYMENT

Indicate the number of employees for the workweek in which the last day of the Fiscal Year fell.

	NUMBER OF EMPLOYEES
FULL TIME	
PART TIME	

CERTIFICATION

THIS REPORT MUST BE CERTIFIED BY THE INDIVIDUAL OWNING THE REPORTING CABLE TELEVISION SYSTEM, IF INDIVIDUALLY OWNED; BY A PARTNER, IF A PARTNERSHIP; BY AN OFFICER OF THE CORPORATION, IF A CORPORATION; OR BY A REPRESENTATIVE HOLDING POWER OF ATTORNEY IN CASE OF PHYSICAL DISABILITY OF AN INDIVIDUAL OWNER OR HIS/HER ABSENCE FROM THE UNITED STATES.

I CERTIFY THAT I HAVE EXAMINED THIS REPORT, AND THAT ALL STATEMENTS OF FACT CONTAINED THEREIN ARE TRUE, COMPLETE, AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, AND ARE MADE IN GOOD FAITH.

SIGNATURE	TITLE
PRINTED NAME OF PERSON SIGNING	DATE

LEGAL NAME OF RESPONDENT

RESPONDENT'S ADDRESS	STREET ADDRESS		
	CITY	STATE	DATE

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GENERAL INSTRUCTIONS

[FCC Form 326]

1. These General Instructions should provide sufficient information for many respondents to complete FCC Form 326. Schedules 2, 3 and 4 are confidential. Generally Accepted Accounting Principles must be followed in the consolidation of the financial schedules (Schedules 2, 3 and 4). The accounts used in the financial schedules are comparable to those used in normal industry practices. For those operators who require more precise information, a Reporting/Accounting Manual is attached as a reference source. It contains detailed instructions, account definitions, and allocation guidelines.

2. General Instructions for each Schedule:

Schedule 1 requires a listing of all communities which comprise the financial entity. For each community listed, the system code, installation fee, monthly subscriber fee and monthly pay cable charge (if applicable) must be included. For detailed explanations of codes and fees, refer to the Reporting/Accounting Manual.

Schedule 2 is comparable to the income statement used in industry accounting practices. The account definitions are designed to conform to general practices. The financial information entered in this schedule must apply only to these business activities related to the operation of cable television services.

Schedule 3 is comparable to the balance sheet used in industry accounting practices. The account definitions are designed to conform to general practices. Original cost for plant accounts is only required for those cable systems located in States which mandate such accounting standards. The financial information must apply only to those business activities related to the operation of cable television services.

Schedule 4 requires supplemental accounting information regarding disclosures of critical accounting policies. If there has been no deferment of system development costs, franchise costs or good will or if such deferment has been entirely capitalized, then Parts A, B and C should be left blank. If all costs can be identified with the particular reporting system(s) and directly relate to its operation, Part D should be left blank. If the operator is the original owner of the assets of this reporting entity or is not required by a State or local regulatory agency to adhere to the "original cost" concept, then Part E should be left blank. Parts F and G must be filled out by cable operators of systems with 1,000 or more subscribers unless all fixed assets are leased. For line-by-line instructions, refer to the Reporting/Accounting Manual.

Note the following major filing change: Operators of cable television systems with fewer than 1,000 subscribers are not required to file Schedules 3 and 4 of Form 326. These operators are required to list Net Total Assets on line 32 of Schedule 2. Net Total Assets consist of Total Assets less accumulated depreciation/amortization.

3. File one copy of this form with the Federal Communications Commission, Washington, D.C. 20554, Room 6216. Do not return these instructions to the Commission.

4. A Form 325 shall be filed for a cable television system on an annual basis within 90 days after the close of its latest fiscal year. All information contained in the form shall be stated as of the last day of the fiscal year.

A cable system is defined as: A nonbroadcast facility consisting of a set of transmission paths and associated signal generation, reception, and control equipment, under common ownership and control, that distributes or is designed to distribute to subscribers the signals of one or more television broadcast stations, but such terms shall not include (1) any such facility that serves fewer than 50 subscribers, or (2) any such facility that serves or will serve only subscribers in one or more multiple unit dwellings under common ownership, control, and management.

5. This report must be certified by the individual owning the reporting cable television system, if individually owned; by a partner, if a partnership; by an officer of the corporation, if a corporation; or by a representative holding power of attorney in case of physical disability of an individual owner or his/her absence from the United States. Willful false statements made on this form are punishable by fine or imprisonment. (U.S. Code, Title 128, Section 1001.)

6. All pertinent schedules of this form must be completed for every filing. The only exception to this requirement is for cable operators who own a cable television system which serves fewer than 1,000 subscribers. Cable operators who meet these criteria are exempted from completing schedule 3 and schedule 4. The following examples clarify this exemption.

Example 1—A cable television system services 5 communities having a total subscribership of less than 1,000 subscribers. In this case the cable operator is exempt from completing schedule 3 and schedule 4.

Example 2—A cable television system services 5 communities having a total subscribership of more than 1,000 subscribers. However, one of the communities has less than 1,000 homes subscribing to the system. The exemption does not apply in this case because the community with less than 1,000 subscribers is technologically integrated with a cable system of more than 1,000 subscribers.

Incomplete filings will not be accepted and will be returned to the respondent for completion. Copies of income tax returns should not be sent. Financial statements and other such information will not be accepted in lieu of a completed FCC Form 326.

7. The financial information disclosed in Schedules 2 and 3 must present fairly the respondent cable television system's financial position in conformity with "generally accepted accounting principles" on a consistent basis. The term "generally accepted accounting principles" refers to the issued Opinions of the Accounting Principles Board, and the rulings of the Financial Accounting Standards Board. This applies to every account except those affected by the "original cost" definition. It is required that the accrual basis of accounting be used in preparing the financial information for this form. Essentially, accrual accounting differs from cash accounting in that revenue is recognized when earned, not when received; expenses are recognized when incurred, not when paid.

8. Those systems within a 40-mile radius of an owner-designated reference point, keeping a consolidated set of bookkeeping records, and technologically connected either by private microwave or cable may file a consolidated Form 326. However, communities which comprise a cable television system must file a consolidated Form 326. A cable operator may be allowed to consolidate a filing, with prior Commission approval, for systems that are not technologically connected if these systems are within a 40-mile radius of a designated reference point and operationally integrated.

9. There may be financial entities, as defined by a company's bookkeeping practices, which do not conform to the entities allowed for reporting purposes of the Form 326, particularly in the allocation of certain line items in the balance sheet schedule. In cases such as these, the cable operator must use generally accepted cost accounting techniques to estimate the line items, and he must indicate by a footnote which accounts are estimated and what estimating methods are used for each account. Detailed guidelines on allocating accounts are provided in the attached Reporting/Accounting Manual.

10. If the respondent company includes business activity other than cable television service (such as broadcasting), those accounts which include such activities must be properly separated or allocated so that only cable television service financial information is disclosed in the Form 326. For those respondents who cannot separate cable television service-related financial information from other lines of business because of consolidated bookkeeping records, those affected accounts should be separated by generally accepted accounting techniques and footnotes should be included which indicate the affected accounts and allocation methods used. Detailed guidelines on acceptable methods for separating accounts are provided in the attached Reporting/Accounting Manual.

11. Owner's Withdrawals from Business: Cash withdrawals by partners or sole proprietors reduce the assets and proprietor's equity in the business but are not reflected in the income statement. Salaries paid to owners for work performed are not considered as withdrawals and would be reported on the income statement (Schedule 2).

12. Owner's Equity Section (Schedule 3): For a partnership or sole proprietorship, lines 25 (total stock), 27 (retained earnings), and 28 (other owner's equity) would be left blank. The entire amount of owner's equity in the business would appear on line 26 and would consist of the owner's total assets in the business minus total liabilities. Withdrawals or capital distributions would be deducted from the owner's equity account prior to filling in this line.

APPENDIX B—REPORTING/ACCOUNTING MANUAL

[FCC Form 326]

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Schedule 1 Instructions.
Schedule 2 Instructions and Account Definitions.
Schedule 3 Instructions and Account Definitions.
Schedule 4 Instructions.
Schedule 5 Instructions.
Certification Instructions.
Allocation and Consolidation Guidelines.
Additional Assistance.

SCHEDULE 1 INSTRUCTIONS

1.1 Respondents filing Form 326 must complete Schedule 1 by listing each community included in this financial report.

1.2 For each community listed, the system code, installation fee, monthly subscriber fee and monthly pay cable charge (if applicable) must be included.

1.3 The system code number is generally assigned by the Cable Television Bureau at the time of certification. It appears on the Certificate of Compliance as the "System Community Ident". If no number has been assigned, leave blank.

1.4 The installation fee information to be entered in this schedule is the standard fee charged for the initial installation of a single drop for a single television set. (Include cents.)

1.5 The subscriber fee information to be entered in this schedule is the standard monthly charge for basic cable television service. If there are two or more subscriber rates, enter the rate most commonly charged. (Include cents.)

1.6 The pay cable fee to be entered in this schedule applies only to those cable systems which bill pay cable services on a per channel monthly basis. The entered pay cable fee should be the standard monthly charge (please include cents). Those cable systems which bill pay cable services on a per program basis must explain and list the fees in an exhibit attached to the form.

SCHEDULE 2 INSTRUCTIONS AND ACCOUNT DEFINITIONS

INSTRUCTIONS

2.1 The financial information entered in Schedule 2 must apply to only those business activities related to the operation of cable television services.

2.2 Accounts must be entered as defined in this section. If allocations or separations of accounts are necessary because bookkeeping records are consolidated, refer to page 17 of this Manual for guidelines.

2.3 "Proprietor or Partner Withdrawals"—from business operations that are not compensation for work performed must not be reported as an expense nor appear in any account in Schedule 2. Those payments to owners which may be classified as operating expenses directly related to the operation of the cable television system should be reported in Schedule 4, Part G as well as in Schedule 2.

2.4 Schedule 2 Definitions: "Operating Revenues"—All revenue which directly results from the rendering of services connected with the cable television activity.

Line No. 1. "Installation Revenue"—Revenue earned from services rendered to subscribers for connecting subscribers to the cable system (drops), relocating cable connections and installing additional connections.

Line No. 2. "Regular Subscriber Revenue"—Revenue earned from regular, periodic charges for cable television service. This amount should not include pay cable or other service charges that are in addition to the standard monthly charges for basic cable television service.

Line No. 3. "Per Program or Per Channel Revenue"—Revenue earned from charges for per program or per channel services, (commonly called pay cable services). The service must not be obtainable from regular subscriber charges. Revenue from pay cable related lease agreements, converter rentals and other revenue from subscribers that can be directly related to pay cable services, should be included on this line.

Line No. 4. "Advertising Revenue"—Revenue earned from advertisements appearing over cablecasting channels (cable origination).

Line No. 5. "Special Services Revenue"—Revenue (other than pay cable services) earned from the lease or sale of time or studio and cable facilities.

Line No. 6. "Other Revenue"—All revenue derived from operation of the cable television system not included in any other revenue accounts, such as converter rentals that are not related to pay cable services.

Line No. 7. "Total Operating Revenue"—The total amount of revenues as entered on lines one through six of Schedule 2, as defined above.

"Operating Expenses"—All expenses which directly result from rendering of services connected with the cable television activity. This category does not include expenses directly related to construction in progress, which should be entered on Schedule 3, line 10.

"Service Expenses"—All expenses directly related to receiving and distributing signals to the community(s) served by the cable television system.

Line No. 8. "Salaries, Wages, and Employee Benefits"—The expenses for services of all employees of the system engaged in technical activities and maintenance required to receive and distribute signals to the communities listed in Schedule 1. Applicable expenses include: salaries and wages for all hours worked by employees, employer payroll taxes, vacation, bonus, and profit-sharing payments, pension costs and life and health insurance costs. (Does not include salaries, wages and employee benefits that are capitalized in construction accounts.)

Line No. 9. "Pole Rentals"—The rental cost of pole attachments and duct space. Site rentals are to be included in "All Other Service Expenses".

Line No. 10. "Duct Rentals"—The rental cost of duct space.

Line No. 11. "Private Microwave Service"—The expenses of receiving microwave transmissions from private sources of microwave service (not the cost of receiving microwave service from common carriers—see next definition). Costs are included on this line for CARS, or other private microwave services.

Line No. 12. "Common Carrier Microwave Service"—The cost of receiving microwave transmissions from Common Carrier public microwave relay service including service charges, equipment rental or other related costs.

Line No. 13. "Total Tariff Charges"—The cost of receiving channel service from a telephone company. If such services are not obtained, leave this line blank.

Line No. 14. "All Other Service Expenses"—The expense of receiving and distributing cable signals which have not been included on lines 8 through 13. All expenses entered on this line must directly relate to providing cable services. Such expenses include: the cost of expendable maintenance materials, payments to utilities for heat, light, and power, the nonlabor expenses related to operation of service vehicles, rent, supplies and telephone services.

Line No. 15. "Payments to Pay Cable Program Suppliers"—All amounts paid for any products or services received from suppliers of movies, sports, and other entertainment programs for the purpose of pay cable operations.

"Origination Expenses"—The expenses directly related to program origination including automated and nonautomated program origination such as the purchase or production of films, features, local news, weather, sports events or other programing.

Line No. 16. "Salaries, Wages and Employee Benefits"—The expenses for services of all employees engaged in the origination of programing. Applicable expenses include: salaries and wages for all hours worked, employer payments, pension costs, and life and health insurance costs.

Line No. 17. "Other Origination Expenses"—All other origination expenses not included in Salaries, Wages, and Employee Benefits.

"Selling, General and Administrative Expenses"—The expenses directly related to selling, general and administrative activities such as advertising, insurance, property taxes, traveling expenses, utilities and telephone and office supplies.

Line No. 18. "Salaries, Wages, and Employee Benefits"—The expenses of employees engaged in selling, general and administrative activities directly related to the operation of the cable system. Applicable expenses include: Salaries and Wages of employees engaged in promoting and advertising the system as directed towards prospective subscribers and advertisers, system manager's salary, and all other salaries and wages not included as service or origination expenses, employer payroll taxes, vacation, bonus and profit sharing payments, and life and health insurance costs.

Line No. 20. "Copyright Fees"—Copyright fees for broadcast signal carriage (as defined by 17 U.S.C. Section 111) "limitations on exclusive rights: secondary transmission". This account should not include the cost of cablecast and film rights which are classified as assets and are recorded in Schedule 3.

Line No. 21. "All Other Selling, General and Administrative Expenses"—The total of all selling, general and administrative expenses not included in lines 18, 19, and 20 such as utilities and telephone, local property taxes, accounting and legal fees, bad debts expense, insurance, management fees, and corporate overhead allocations.

Line No. 22. "Total Operating Expenses"—The total of lines 8 through 21.

Line No. 23. "Total Operating Income"—The difference of the amount entered on line 7 less the amount entered on line 22 of Schedule 2. This amount is the total operating income (or operating margin) for the system(s) which comprises this report.

Line No. 24. "Depreciation"—The amount provided annually for allocating the cost of the fixed assets that are entered on Schedule 3, including plant adjustment and amortization of leasehold improvements. Depreciation expense allocates the cost of fixed assets over their estimated economic life.

Line No. 25. "Amortization"—The amount provided annually for allocating the cost of the intangible assets entered on Schedule 3 that are normally capitalized. Amortization expense should allocate the cost of intangible assets over the expected periods benefited.

Line No. 26. "Other Income"—The revenue earned from sources not directly related to the operation of a cable system such as interest, dividends, gains from the sale or

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disposal of fixed assets, and gains from the sale of marketable securities.

Line No. 27. "Interest Expense"-The amount of the interest expense of obligations, such as notes, bonds, and mortgages payable. This item should not include interest charged to construction in progress, which should appear in Schedule 3, line 10, nor does it include intercompany charges for the use of debt equity capital which should appear in Schedule 2, line 21.

Line No. 28. "Miscellaneous"—The amount of all other expenses not directly related to the operation of a cable television system, such as credits allocated to systems by parent corporations, losses from the sale or disposal of fixed assets, and losses from the sale of marketable securities.

Line No. 29. "Total Other Income (or Loss)"—Line 26 less lines 27 and 28.

Line No. 30. "Extraordinary Items"—The amount of income or (loss) resulting from an event or transaction not reasonably expected to recur in the foreseeable future or an event or transaction that is unusual in nature. Do not include gains or losses from the sale or disposal of fixed assets or from the sale of marketable securities.

Line No. 31. "Total Profit (or Loss) Before Taxes"—The sum of lines 23, 29, and 30 less lines 24 and 25.

Line No. 32. "Total Assets (Net)"—This line item is to be completed only for those cable systems (fewer than 1,000 subscribers) exempted from completing the balance sheet—Schedule 3. Net total assets consist of total assets less accumulated depreciation and amortization. Operators of cable systems having more than 1,000 subscribers would report "Total Assets" with their completion of Schedule 3.

Schedule 3 Instructions and Account Definitions

Instructions

3.1 The financial information entered in Schedule 3 must apply to only those business activities related to the operation of cable television services.

3.2 Accounts must be entered as defined in this section. If allocations or separations are necessary because bookkeeping records are consolidated, refer to section 3 of these instructions.

3.3 Financial entities serving fewer than 1,000 subscribers need not fill out this schedule. They may enter the amount of total assets on line 32 of Schedule 2.

3.4 Schedule 3 Definitions. "Current Assets"—Those assets which are expected to be converted into cash or consumed in business operations within a short period of time (normally 1 year or less).

Line No. 1. "Cash"—The total amount of cash on hand or on deposit in banks, including interest-bearing certificates of deposit. Do not include amounts resulting from banking arrangements permitting automatic loans by writing overdrafts. These amounts should be classified as loans payable.

Line No. 2. "Accounts Receivable"—The amounts due from subscribers advertisers or other trade accounts. Also any amounts due from employees, officers or any other party. Include only those amounts expected to be collected within 1 year. Include accrued interest if earned but not yet received. Do not include collections made in advance nor accounts deemed uncollectable.

Line No. 3. "Other Current Assets"—All other current assets not included in lines 1 or 2, such as: short-term investments, inventory, prepaid expenses, and the current portion of cablecast and film rights.

Line No. 4. "Total Current Assets"—The total of lines 1 through 3.

"Fixed Assets" Capital Assets used for operation which have a life expectancy of more than one year. Fixed assets items must be reported in terms of original cost, wherever state or local regulatory agencies demand, otherwise report as the current owner's purchase cost i.e. "Historical cost". In cases where the state reporting entity is larger than the federal reporting entity, the cable operator may be exempted from reporting original cost data in FCC Form 326, even if the systems are located in those states which require such data. Original cost is defined as the cost of the fixed item when it is first put in use for cable television service.

Line No. 5. "Land and Buildings"—The cost of real property, its acquisition costs, costs of permanent improvements, office buildings and headend shack.

Line No. 6. "Headend"—The cost of tower, antennae, electronic equipment and all other equipment related to the headend, including time and weather channel equipment. The cost of the headend building should be included on line 5, not on this line.

Line No. 7. "Trunk and Distribution System"—The cost of all trunk and distribution lines in-use to deliver cable signals to subscribers, including rebuilt trunk and distribution plant. This includes the costs of owned poles (including related guys, anchors, messenger cable and pole hardware), trunk and distribution cable (including lashing wire, splices and connectors), amplifiers and power suppliers (including housing and associated hardware and electronic equipment).

Line No. 8. "Subscriber Devices"—The costs associated with connecting a subscriber to the system. This includes costs of installing or placing into service taps, blocks, transformers, cable convertors and other subscriber connection devices.

Line No. 9. "Program Origination Equipment"—The cost of all equipment used for program origination and located at the cable studio or program origination site. Program origination equipment includes cameras, studio equipment, film processing equipment, video recording equipment, editing recorder monitor, and production consoles.

Line No. 10. "Construction Work in Progress"—The cost of uncompleted construction of buildings, improvements and equipment. Once construction of specific assets is completed to the point of use, the associated costs should be transferred to the appropriate fixed asset account.

Line No. 11. "Other Fixed Assets"—The cost of all fixed assets utilized for the operation of the cable system and not included in any other fixed asset account. Examples of fixed assets whose costs should be included in the amount entered on this line are: test equipment, automobiles and trucks (vehicles), office equipment, leasehold improvements and capitalized leased property (if any).

Line No. 12. "Plant Adjustment"—If the accounting records of the cable operator are maintained on the basis of the seller's original cost of purchased cable assets, enter on this line the difference between the original cost of the purchased assets and the appraised fair value of these assets at the time of purchase (called plant adjustment). This does not include any amounts recorded as goodwill or franchise costs; only the excess of the appraised fair value over the seller's book value of purchased, tangible assets, or the excess of the seller's book value over the appraised fair value.

Line No. 13. "Accumulated Depreciation"—The cumulative portions of the cost of all tangible, depreciable assets included in Fixed Assets Accounts (which includes Plant Adjustment if the accounting records of the cable operator are maintained on the original cost basis) in this schedule that have been allocated as an expense for the current year and appropriate preceding years. Common forms of allocating costs of fixed assets to expenses are: the straight line method, the sum-of-the-year's digits method, the declining balance method and the double declining balance method.

Line No. 14. "Total Fix Assets"—The total of lines 5 through 12 less line 13.

Line No. 15. "Other Assets"—The total of the costs of all other assets not included on any previous line of Schedule 3. the assets whose costs should be entered on this line include intangible assets such as goodwill, franchise costs, the costs of licensee, permits or other intangible assets, deferred development costs (startup costs), noncurrent cablecast and film rights, unamortized bond discount, deposits and cash value of life insurance.

Line No. 16. "Accumulated Amortization"—The cumulative portions of the cost of all amortizable assets that have been allocated as an expense for the current year and appropriate preceding years.

Line No. 17. "Total Other Assets"—Line 15 less line 16.

Line No. 18. "Total Assets"—The total of lines 4, 14 and 17.

"Current Liabilities"—Those obligations to be liquidated by the use of existing current assets within 1 year.

Line No. 19. "Loans Payable"—The amount of debt payable within 1 year under terms of an agreement with a financing institution such as banks and insurance companies. This includes funds received through banking arrangements providing automatic protection of overdrafts.

Line No. 20. "Accounts Payable"—The amount payable for goods and services received from vendors and suppliers and the amounts accrued as expenses for obligations which are due but have not been paid.

Line No. 21. "Other Current Liabilities"—The amount of all current liabilities not included on lines 19 and 20. Examples of current liabilities which would be included on this line are: unearned subscriber revenues (subscriber payments for services to be provided in the future), refundable subscriber deposits, income tax liabilities currently payable, amounts payable within 1 year on cablecast and film rights (contracts), and dividends payable.

Line No. 22. "Total Current Liabilities"—The total of lines 19, 20 and 21.

Line No. 23. "Total Deferred Credits"—Revenues that are deferred into a future operating period. This arises upon the receipt of an asset preceding the period in which the asset is considered to be earned, such as an investment credit or a deferred tax liability. This account also includes any other liabilities not included as current liabilities (on lines 19, 20 and 21) or long-term debt (on line 24).

Line No. 24. "Total Long-Term Debt"—The amount payable after 1 year to all holders of debt securities, notes and agreements and other long-term liabilities for which the cable operator is legally obligated. The amount of liabilities (noncurrent) arising from capitalized leases and unamortized bond premiums is to be included on this line.

Line No. 25. "Total Stock Issued"—The amount of par or stated value of common and preferred stock issued, capital in excess of par and all other capital contributions, less the cost of capital stock repurchased and held in the treasury. This line does not apply to proprietorships or partnerships.

Line No. 26. "Proprietor's Equity"—The amount owned by the proprietor, partners or joint venture members. This amount includes undistributed earnings less the amount of drawings or distributions. This line does not apply to incorporated businesses.

Line No. 27. "Retained Earnings"—The amount should represent the accumulated balance of earnings in prior years which has not been otherwise classified by action of the directors or declared as payable to stockholders as dividends, whether paid yet or not. This amount is often called Earned Surplus or Reinvested Income and does not represent any specific asset. This line does not apply to proprietorships or partnerships.

Line No. 28. "Other Owners Equity"—The amount of all other equity not included on lines 25, 26, or 27. Examples of amounts which should be entered on this line are the fund balances for nonprofit or municipal cable systems.

Line No. 29. "Total Owners Equity"—The total of lines 25, 26, 27 and 28.

Line No. 30. "Total Liability and Owners Equity"—The total of lines 22, 23, 24 and 29.

Line No. 31. "Method of Depreciation Used"—Indicate the depreciation method used by one of the following codes:

Code No. and Method

1—Straight line.
2—Declining balance.
3—Double declining balance.
4—Sum-of-the-years' digits.
5—Other.

When more than one depreciation method is used, enter the code number for the method most commonly used.

Schedule 4 Instructions

4.1 *General Instructions:* If there has been no system construction or expansion within 5 years of this filing, Parts A, B and C of Schedule 4 should be left blank. If all costs can be identified with the particular reporting system(s) and directly relate to the operation of this reporting entity, Part D should be left blank. If the operator is the original owner of the assets of this reporting entity or is not required by a State or local regulatory agency to adhere to the "original cost" concept (defined in Part 3.4 of the instructions for Schedule 3), Part E should be left blank. All operators of systems with 1,000 or more subscribers must fill out Part F of Schedule 4 unless all fixed assets are leased. If payments which may be classified as operating expenses are made to system owners or relatives, Part G must be filled out.

4.2 Schedule 4—Explanation of Terms:

Line No. 1 and 5. "Deferred System Development Costs"—include operating promotional, general and administrative costs, net of incidental revenues, incurred prior to becoming "Operational", which are deferred and subsequently amortized over the future periods benefited by these costs (usually 5 to 15 years). Deferral of systems development costs must be based upon relative certainty that they will be recovered, not deferred solely because an operator is in the development stage.

Line No. 2 and 6. "Franchise Costs"—represent the costs of obtaining franchises and include legal expenses and other costs associated with franchises.

Line No. 3 and 7. "Goodwill"—is recorded in the accounting records of cable operators when a cable system is purchased at a price in excess of the fair value of the assets acquired less liabilities assumed and represents that portion of the purchase price that cannot be related to the identifiable assets.

Line No. 4. "Capitalized Interest on System Construction"—Interest costs that are directly related to system construction may be depreciated much the same as other construction costs.

Line No. 8. "Overhead Costs Allocated to System"—are costs which cannot be identified with any particular cable system and are accumulated in corporate accounts. These costs include the salaries, wages, and employee benefits of the corporation's officers and directors, other corporate selling, general and administrative expenses, management fees and federal and state income taxes payable. Overhead costs must be allocated to individual systems, as described in the Allocation Guidelines section of these instructions (p. 17).

Line No. 9. "Original Cost of Purchased Assets"—This concept of cost is generally a bookkeeping requirement of rate base regulation. Its purpose is to reflect original purchase price of plant, buildings and equipment used in providing the regulated services. If used in completing the fixed asset line items of this form, the appropriate state definition of original cost applies.

Line No. 10. "Portion of Purchase Price Allocated to Seller's Book Value"—is that amount of the purchase price allocated to the original cost less the accumulated depreciation of the seller.

Line No. 11. "Recorded Cost of Purchased Assets by Purchaser"—is the entire cost of the purchased assets, incurred by the purchaser.

Line No. 12. "Estimated Useful Life of Fixed Assets"—is the amount, in years, of each asset's estimated economic life.

Line No. 13. "Owners"—Proprietors, partners, or stockholders who own at least 3 percent of the reporting cable television system(s). This does not include payments to a parent company for services performed by the parent company's staff. Such amounts would be included in line 8, "Overhead Costs Allocated to Systems".

"Salaries"—The amount paid to those owners employed by the reporting cable television system(s) as remuneration for their services and which are classified as an operating expense.

Line No. 14. "Other Direct Payments"—The amounts paid to owners (other than salaries) for goods or services rendered which are classified as operating expense.

Line No. 15. "Relatives"—Sons, daughters, sons-in-law, daughters-in-law, mother, father of owners.

4.3 Schedule 4—Line Item Instructions:

Part A

Line No. 1. "Deferred System Development Costs" (Annual)—If system development costs are deferred, enter the number of expected periods benefited in the column entitled "Amortization Term". Indicate method of amortization used by entering one of the following codes: (1—straight line, 2—declining balance, 3—double declining balance, 4—sum-of-the-years' digits, 5—other) in the column entitled "Amortization Method Used". Enter the total amount of deferred costs capitalized during the year in the column entitled "Amount Capitalized During Year". Enter the amount of development cost amortization which applies only to the present accounting period in the column entitled "Amount Amortized During Year".

Line No. 2. "Franchise Costs" (recorded as assets) (Annual)—If the cost of obtaining a franchise is amortized, enter the number of expected periods benefited in the column entitled "Amortization Term". Indicate the method of amortization used by entering one of the following codes: (1—straight line, 2—declining balance, 3—double declining balance, 4—sum-of-the-years' digits, 5—other) in the column entitled "Amount Capitalized During Year". Enter the amount of franchise cost amortization which applies only to the present accounting period in the column entitled "Amount Amortized During Year".

Line No. 3. "Goodwill" (Annual)—If goodwill is recorded, enter the number of expected periods benefited in the column entitled "Amortization Term". Indicate the method of amortization used by entering one of the following codes: (1—straight line, 2—declining balance, 3—double declining balance, 4—sum-of-the-years' digits, 5—other) in the column entitled "Amortization Method Used". Enter the total amount of goodwill capitalized during the year in the column entitled "Amount Capitalized During Year". Enter the amount of goodwill amortization which applies only to the present accounting period in the column entitled "Amount Amortized During Year".

Part B

Line No. 4. "Capitalized Interest on System Construction"—If interest costs on system construction are capitalized, enter the total amount of interest being capitalized in the column entitled "Total Capitalized". Enter the amount capitalized during the year in the column entitled "Amount Capitalized During Year". Enter the number of expected periods benefited in the column entitled "Useful Life".

Part C

Line No. 5. "Deferred System Development Costs"—If system development costs are deferred, enter the entire amount of these costs in the column entitled "Total Amount of Asset". Enter the total amount to be capitalized, if any, in the column entitled "Amount Not Being Amortized". Enter the entire amount of system development costs to be amortized in the column entitled "Amount Being Amortized".

Line No. 6. "Franchise Costs"—If franchise costs are being deferred, enter the entire amount of franchise costs in the

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column headed "Total Amount of Asset". Enter the total amount to be capitalized, if any, in the column entitled "Amount Not Being Amortized". Enter the entire amount of franchise costs to be amortized in the column entitled "Amount Being Amortized".

PART D

Line No. 8. "Overhead Costs Allocated to System"—Enter the entire amount of Allocated Costs, if any, in the column entitled "Total Amount of Allocated Costs". Indicate the method of allocation used by entering one of the following codes: (1—per number of subscribers, 2—per gross revenues, 3—per miles of plant, 4—other) in the column entitled "Method Used to Allocate Costs to System".

PART E

Line No. 9. "Original Cost of Fixed Assets"—Enter the total amount of the original cost of fixed assets in the column entitled "Amount".

Line No. 10. "Portion of Purchase Price Allocated to Seller's Book Value"—Enter the amount of the purchase price allocated to the seller's book value in the column entitled "Amount".

Line No. 11. "Recorded Cost of Purchased Assets by Purchaser"—Enter the entire cost to the buyer of purchased assets in the column entitled "Amount".

PART F

Line No. 12. "Estimated Useful Lives of Fixed Assets"—Enter each asset classification (land & buildings, headend, subscriber devices, trunk and distribution system) in the column entitled "Fixed Asset Classification". In the column entitled "Amount", enter each asset's original cost, if mandated by local regulatory authority. If original cost is not necessary, enter each asset's historical cost. Enter the estimated economic life of each asset in the column entitled "Useful Life". When computing the estimated economic life of assets, such as trunk and distribution system and subscriber devices, use a weighted average, if necessary.

PART G

Line No. 13. "Salaries to Owners"—Enter the entire amount of salaries paid to owners of the reporting cable television system(s) in the column entitled "Amount". Enter the number of owners to whom the salaries were paid in the column entitled "Number of Persons".

Line No. 14. "Other Payments to Owners"—Enter the total amount of any other direct payments, which are classified as operating expenses, to owners of the reporting cable television system(s) in the column entitled "Total Amount". Indicate the type(s) of payments made in the appropriate column by entering one or more of the following codes: 1—rent, 2—payments for services, 3—payments for equipment, 4—payments for supplies, 5—travel and entertainment expenses, 6—other.

Line No. 15. "Expense Payments to Spouse or Relatives"—Enter the total amount of payments, which are classified as operating expenses, to a spouse or relative of the owners of the reporting cable television system(s) in the column entitled "Total Amount". Indicate the type(s) of payments made in the appropriate column by entereing one or more of the following codes: 1—rent, 2—payments for services, 3—payments for equipment, 4—payments for supplies, 5—travel and entertainment expenses, 6—other.

SCHEDULE 5 INSTRUCTIONS

5.1 Indicate the number of employees for the work week in which the last day of the Fiscal Year fell. If there are no employees, indicate this fact by entering zeros in the spaces provided.

5.2 If the number of employees is recorded in books which are consolidated for more than one reporting entity, refer to Part C of the Allocation Guidelines section of these Instructions.

CERTIFICATION INSTRUCTIONS

Enter the following in the appropriate spaces: signature of owner, partner, corporate officer or representative holding power of attorney, title of person signing; date of signature; legal name and mailing address of cable television operator. If certification is not complete, FCC Form 326 will not be accepted and will be returned for complete certification.

ALLOCATIONS AND CONSOLIDATIONS GUIDELINES

PART A—SEPARATING CABLE FROM NON-CABLE DATA

In many instances, cable operators are also involved in other lines of business. If the accounting records of the differing "segments" of the businesses are kept separately, there is no problem in filing FCC Form 326. If, however, the accounting records of the business are consolidated, the need for allocation of costs to each business "segment" arises. In order to facilitate the separation of cable related from non-cable related financial information, a step-by-step guideline for the allocation of the cable related financial data is provided herein. However, the cable operator may use an allocation method of his own choosing, provided the method adheres to generally accepted accounting principles and is properly footnoted.

Guideline for Separation of Cable from Non-Cable Financial Data:

Step No. 1. Identify all financial data (balance sheet and income statement data) which directly relate to cable television activities.

Step No. 2. Enter the amounts of all the accounts identified as directly relating to cable television activities on the appropriate lines of Schedules 2 and 3, as indicated in the Schedule 2 and 3 instructions/definitions contained in this Manual.

Step No. 3. For the remaining revenue accounts, obtain the ratio of cable related gross revenues to total gross revenues (cable gross revenues ÷ total gross revenues). Apply this percentage to all revenues that cannot be identified as directly relating to cable television activities or other business activities. Enter the resulting amount(s) on the appropriate line(s) of Schedule 2, as indicated in the instructions for Schedule 2.

Step No. 4. For the remaining expense accounts obtain the ratio of cable related expenses to total expenses (cable expenses ÷ total expenses). Apply this percentage to all expenses that cannot be identified as directly relating to cable television activities. Enter the resulting amount(s) on the appropriate lines of Schedule 2, as indicated in the instructions for Schedule 2.

Step No. 5. For the remaining asset accounts, obtain the ratio of cable related assets to total assets (cable assets ÷ total assets). Apply this percentage to all assets that cannot be identified as directly relating to cable television activities. Enter the resulting amount(s) on the appropriate lines of Schedule 3, as indicated in the instructions for Schedule 3.

Step No. 6. For the liability and equity accounts, apply the percentage obtained in step 5 to the liability and equity accounts. Enter the resulting amounts on the appropriate lines of Schedule 3, as indicated in the instructions for Schedule 3.

Step No. 7. Attach, in appendix form, an explanatory outline of all calculations and their results.

PART B—ALLOCATION OF CONSOLIDATED DATA TO PARTICULAR SYSTEMS

In many instances, cable operators consolidate the financial data of several systems into one set of accounts. If the Commission's consolidation requirements are fulfilled in the consolidation, allocation of financial data is not necessary. However, if the Commission's consolidation requirements are not met, the financial data must be separated for reporting as separate financial entities. In order to facilitate separation of the reporting entities, a step-by-step guideline for the allocation of financial data to particular systems is provided herein. However, the cable operator may use an allocation method of his own choosing, provided the method adheres to generally accepted accounting principles and is properly footnoted.

Guidelines for the Allocation of Consolidated Financial Data to Particular Systems:

Step No. 1. Identify all accounts which can be related to each reporting entity and enter the amounts on the appropriate lines of Schedules 2 and 3 as indicated in the Schedule 2 and 3 instructions/definitions contained in this Manual.

Step No. 2. Obtain the ratio of subscribers per reporting entity to total subscribers to all systems consolidated on the company's books (number of subscribers ÷ total number of subscribers).

Step No. 3. Apply the percentage obtained in step 2 to all accounts which cannot be identified as relating to each reporting entity. Enter the resulting amounts on the appropriate lines of Schedules 2 and 3, as indicated in the instructions for Schedules 2 and 3.

Step No. 4. Apply the percentage obtained in step 2 for determining the number of employees per reporting entity. Enter the resulting figure in the appropriate spaces of Schedule 5.

Step No. 5. Attach, in appendix form, an explanatory outline of all calculations and their results.

PART C—ALLOCATION OF OVERHEAD COSTS

Although the accounting records of individual reporting entities are often kept separately, in many instances there are corporate overhead costs that must be allocated to the reporting entities. In order to facilitate allocation of these costs, examples of acceptable allocation methods are provided herein. However, the cable operator may use an allocation method of his own choosing, provided the method adheres to generally accepted accounting principles and is properly footnoted.

Method 1. "Per Number of Subscribers"—Obtain the ratio of subscribers per reporting entity to total subscribers (subscribers per entity ÷ total subscribers). Apply this percentage to each overhead cost and enter the resulting amount on the appropriate lines of Schedule 2, as designated in the Schedule 2 instructions/definitions contained in this Manual.

Method 2. "Per Gross Revenues"—Obtain the ratio of gross revenues per reporting entity to total gross revenues of all systems consolidated on the company's books (gross revenues per entity ÷ total gross revenues). Apply this percentage to each overhead cost and enter the resulting amount on the appropriate lines of Schedule 2, as indicated in the Schedule 2 instructions.

Method 3. "Per Miles of Plant"—Obtain the ratio of miles of plant per entity to total miles of plant of all systems consolidated on the company's books (miles of plant per entity ÷ total miles of plant). Apply this percentage to each overhead cost and enter the resulting amount on the appropriate lines of Schedule 2, as indicated in the instructions for Schedule 2.

Method 4. Attach, in appendix form, an explanatory outline of all calculations and their results.

ADDITIONAL ASSISTANCE

Should questions arise in the preparation of FCC Form 326, assistance may be obtained from the Research Division of the Cable Television Bureau.

[FR Doc. 78-31330 Filed 11-6-78; 8:45 am]

[7035-01-M]

Title 49—Transportation

PART 1056—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE OR FOREIGN COMMERCE

Agency Relationships; Extension of Time

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time for compliance with reporting requirements of final regulations.

SUMMARY: By decision of July 7, 1978, the Commission issued final under 49 CFR Part 1056 (43 FR 32303, July 26, 1978). Section 1056.19(e) of that part requires that carriers of household goods file certain information with the Commission. By notice to the parties, served October 6, 1978, the compliance date for submission of the required information was extended to November 1, 1978.

In order to ensure that carriers have sufficient time to comply with section 1056.19(e), the date for compliance is extended to January 15, 1979.

DATE: The compliance date for submission of reports required by 49 CFR 1056.19(e) is extended to January 15, 1979.

FOR FURTHER INFORMATION CONTACT:

Michael Erenberg, 202-275-7292.

Decided October 31, 1978.

By the Commission, Alan Fitzwater, Director, Office of Proceedings.

H. G. HOMME, JR.,
Acting Secretary.

[FR Doc. 78-31491 Filed 11-6-78; 8:45 am]

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proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

[1505-01-M]

DEPARTMENT OF COMMERCE

Bureau of the Census

[15 CFR Part 90]

CERTAIN POPULATION AND PER CAPITA INCOME ESTIMATES

Challenge Procedures

Correction

In FR DOC. 78-30775 appearing at page 50696 in the issue of Tuesday, October 31, 1978, on page 50697 in the first column, in the "DATE" paragraph, "January 2, 1978" should read "January 2, 1979."

[3410-30-M]

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

[7 CFR part 225]

SUMMER FOOD SERVICE PROGRAM FOR CHILDREN

Correction

In FR Doc. 78-30906 appearing at page 50820 in the issue for Tuesday, October 31, 1978, make the following corrections:

(1) On page 50821, in the first column, first paragraph, the introductory sentence should read *"Use of small and minority-owned businesses"*.

(2) Also on page 50821, in the middle column, in the paragraph under the heading, "PROGRAM MANAGEMENT AND ADMINISTRATION PLAN", in the first line, the "3" before the words, *"Additional provisions"* should be deleted.

(3) Also on page 50821, in the third column, in the first full paragraph, in the 16th line, "wuld" should read "would".

(4) On page 50823, in the first column, in the paragraph under the heading, "FOOD SERVICE REQUIREMENTS", in the 12th line, the word "as" should be replaced by the word "at".

(5) On page 50825, in the middle column, in § 225.4(h)(3), in the second line, "utilized" should read "utilize".

(6) On page 50827, in the third column, in § 225.5(j)(3), in the 20th line, "pereiods" should read "periods".

(7) On page 50831, in the third column, in § 225.7(h), in the 13th line, the date given should be "February 15" and not "November 15".

(8) On page 50832, in the first column, in § 225.8(b), in the 8th line, insert the word "such" between the words "which" and "letter".

(9) Also on page 50832, in the middle column, in § 225.8(g), in the first sentence, "Septemgber" should read "September".

(10) Also on page 50832, in the middle column, in § 225.8(i), in the 18th line, "inspecitons" should read "inspections".

(11) On page 50833, in the middle column, in § 225.9(h)(6), "§ 225.9(k)" should read "§ 255.9(k)".

(12) On page 50834, in the third column, in § 225.11(a), in the 18th line, substitute the word "food" for the word "blood".

(13) On page 50836, in the third column, in § 225.13(e), in the first line, "project" should read "projected".

(14) On page 50838, in the first column, in subparagraph (2), in the fifth line, "exced" should read "exceed".

[1505-01-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 350]

[Docket No. 78N-0064]

ANTIPERSPIRANT DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Establishment of a Monograph; Notice of Proposed Rulemaking

Correction

In FR Doc. 78-28083 appearing at page 46694 in the issue for Tuesday, October 10, 1978, on page 46694, in the second column, in the third full paragraph, in the 11th line, the date "November 6, 1978" should be "November 9, 1978".

[4310-02-M]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 231]

COLORADO RIVER IRRIGATION PROJECT, ARIZONA

Proposed Revision of Rates and Procedures

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Proposed Revision of Rates and Procedures.

SUMMARY: The purpose of the proposed revision is to increase the four power rate schedules: § 231.51 Rate Schedule No. 1—Residential Rate, § 231.52 Rate Schedule No. 2—Commercial Rate, § 231.53 Rate Schedule No. 3—Irrigation Pumping Rate, and § 231.54 Rate Schedule No. 4—Street and Area Lighting, and to modify the procedure for adjusting power rates.

A rate increase is necessary because the Arizona Public Service Co., a power supplier of the Colorado River Irrigation Project, has increased the cost of wholesale power by 33.5 percent. The increased cost, when averaged with power purchased from the Department of Energy, will be 9 percent. A study has determined that the various classes of customers within the Project contribute revenue in proportion to the cost of serving them; therefore, an approximate 9 percent general increase is proposed to the existing rates. This increase is the minimum required to offset the additional cost of power purchased from Arizona Public Service Co.

The Project purchases its power and energy from the Department of Energy and Arizona Public Service Co. The cost of the power and energy purchased from these entities is subject to change; consequently, the Project power rates in most instances must be adjusted to offset these changes. The present procedure for adjusting Project power rates is through the rulemaking process which is somewhat time consuming. The time delays associated with the rulemaking process have prevented the Project from adjusting its power rates in a timely manner, thus causing economic instability in the operation and maintenance of the power system. A provision (Section 231.55) has been added to Part 231 of the CFR which will provide for the area director to automatically adjust Project power rates through unilateral action in order to avoid delays associated with the rulemaking process. Rate adjustments due to increased costs of labor, materials and equipment will continue to be initiated through the rulemaking process.

DATE: Comments must be received on or before November 27, 1978, at the Bureau of Indian Affairs, Phoenix Area Office, 3030 North Central Avenue, P.O. Box 7007, Phoenix, Ariz. 85011.

FOR FURTHER INFORMATION CONTACT:

Harold Roberson, Bureau of Indian Affairs, Phoenix Area Office, Phoenix, Ariz. 85011, telephone 602-261-4184.

SUPPLEMENTARY INFORMATION: Authority for this proposed revision has been delegatd by the Assistant Secretary-Indian Affairs to the Area Director by section 3.1 of 10 BIAM.

The principal author of this document is Harold Roberson, Bureau of Indian Affairs, Phoenix Area Office, Phoenix, Ariz. 85011, telephone 602-261-4184.

It is the policy of the Department of Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections with respect to the proposed amendment, to John H. Artichoker, Area Director, Phoenix Area Office, P.O. Box 7007, Phoenix, Ariz. 85011, on or before November 20, 1978.

(Section 2, 49 Stat. 1039; 54 Stat. 422; and 5 U.S.C. Sec. 301.)

It is proposed to amend Part 231, Subchapter U, Chapter 1, of Title 25 of the Code of Federal Regulations as follows:

1. By revising § 231.51 to read as follows:

§ 231.51 Rate Schedule No. 1—Residential.

(a) *Application of schedule.* This schedule applies to electrical service required for residential purposes in individual private dwellings and in individually metered apartments delivered through one meter to a customer at one premise either urban or rural, for domestic use only. The electrical service is to be used on the consumer's own premises only and must not be resold.

(b) *Type of service.* Single phase, 60 cycle, 120/240 volts.

(c) *Monthly rate.* (1) $6.65 for the first 100 kilowatt-hours or less.

(2) 5.2 cents per kilowatt-hour for the next 300.

(3) 4.4 cents per kilowatt-hour for the next 800 kilowatt-hours.

(4) 3.3 cents per kilowatt-hour for all additional kilowatt-hours.

(d) *Fuel cost adjustment.* An adjustment shall be added to each kilowatt-hour used equal to the estimated average purchased power adjustment (rounded to the nearest $0.0001) paid by the Project to the Project's Power Supplier.

2. By revising § 231.52 to read as follows:

§ 231.52 Rate Schedule No. 2—Commercial rate.

(a) *Application of schedule.* This schedule applies to service required by commercial, industrial and off-reservation irrigation pumping for all uses when such service is supplied at one point of delivery and measured through one meter. The electric service is to be used on the consumer's own premises only and must not be resold.

(b) *Type of service.* Single or three phase, 60 cycle, at one standard voltage (120/240, 120/208, 277/480, or 480 volts).

(c) *Monthly rate.* (1) $6.65 for the first 100 kilowatt-hours or less.

(2) 5.1 cents per kilowatt-hour for the next 900 kilowatt-hours.

(3) 4.1 cents per kilowatt-hour for the next 4,000 kilowatt-hours.

(4) 3.1 cents per kilowatt-hour for all additional kilowatt-hours.

(d) *Demand charge.* (1) None for the first 5 kilowatts.

(2) $2.77 per kilowatt for all billing demand over 5 kilowatts.

(e) *Minimum charge.* (1) $8.50 or $2.77 per kilowatt of billing demand for billing demands over 5 kilowatts, or the amount specified in the contract whichever is greater, except where the Officer in Charge determines that the customer's requirements are of a distinctly recurring seasonal nature. Then the minimum monthly bill shall not be more than an amount sufficient to make the total charges for the twelve (12) months ending with the current month equal to twelve (12) times the highest monthly minimum computed for the same 12-month period.

(f) *Billing demand.* The highest 15-minute integrated demand in kilowatt-hours occurring during the month of the demand specified in a contract, whichever is greater.

(g) *Fuel cost adjustment.* An adjustment shall be added to each kilowatt-hour used equal to the estimated average purchased power adjustment (rounded to the nearest 0.0001) paid by the Project to the Project's power suppliers.

3. By revising § 231.53 to read as follows:

§ 231.53 Rate Schedule No. 3—Irrigation pumping rate.

(a) *Application of schedule.* This schedule shall apply to power used on the reservation for pumping of irrigation water for irrigation systems when such service is supplied at one point of delivery and measured through one meter and is approved by the officer in charge. Use must be limited to the customer's premises and must not be resold.

(b) *Type of service.* Single or three phase, 60 cycle at one standard voltage (120/240, 120/208, 277/480, or 480 volts).

(c) *Monthly rate.* (1) Energy charge—1.9 cents per kilowatt-hour.

(2) Demand charge—$1.65 per kilowatt of billing demand.

(3) Minimum charge—$1.65 per kilowatt of billing demand.

4. By revising § 231.54 to read as follows:

§ 231.54 Rate Schedule No. 4—Street and area lighting.

(a) *Application of schedule.* This rate schedule applies to service for lighting public streets, alleys, thoroughfares, public parks, school yards, industrial areas, parking lots, and similar areas where dusk-to-dawn service is desired. The Project will own, operate, and maintain the lighting system including normal lamp and globe replacement.

(b) *Monthly rate.*

Lamps	Per lamp	
	Metered	Unmetered
1. 175 w, mercury vapor (approximately 6,500 lumens)	$5.55	$6.65
2. 250 w, mercury vapor (approximately 10,000 lumens)	7.00	8.50
3. 400 w, mercury vapor (approximately 18,000 lumens)	9.50	12.10

(c) *Minimum term of service.* The minimum term of service will be 12 months, payable in advance. This advance payment may be waived by the officer in charge.

(d) *Installation charges.* The customer will be required to pay the total installation costs including labor and materials as determined by the officer in charge. Ownership of all facilities will remain with the Project including lamp and globe replacement.

5. By adding § 231.55 to read as follows:

231.55 Adjustments due to purchased power cost changes.

The rate schedules given in §§ 231.51, 231.52, 231.53, and 231.54 shall be adjusted as necessary and appropriate to offset changes in costs of power and energy purchased from the power

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supplier(s) of the Project. Rate adjustments pursuant to this provision shall become effective upon unilateral action of the area director; however, when a rate adjustment is determined to be necessary, the area director shall give sufficient notice to customers and other interested parties.

NOTE.—It is hereby certified that the economic and inflationary impacts of this proposed action have been carefully evaluated in accordance with Executive Order 11821.

CHARLES D. WORTHMAN,
Acting Area Director.

[FR Doc. 78-31439 Filed 11-6-78; 8:45 am]

[4810-31-M]

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[27 CFR Parts 194, 197, 201, 250, 251 and 252]

[Notice No. 312]

USE OF STRIP STAMPS AND DEVICES OTHER THAN STRIP STAMPS ON CONTAINERS OF DISTILLED SPIRITS

Proposed Rulemaking

AGENCY: Bureau of Alcohol, Tobacco and Firearms.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) proposes to: (1) add and amend regulations to implement Pub. L. 94-569 (approved October 20, 1976), which authorizes the use of alternatives to strip stamps; (2) amend the regulations concerning serial numbers on strip stamps; (3) amend the regulations to eliminate blue and white strip stamps and substitute use of green and red strip stamps respectively; and (4) amend the regulations to eliminate the overprinting requirements for domestic bottled in bond spirits. The proposed changes should result in a reduced administrative burden to industry members while providing protection to Federal revenues and to consumers.

DATE: Comments must be received on or before January 8, 1979.

ADDRESSES: Comments may be submitted to the Director, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, D.C. 20044 (Attention: Chief, Regulations and Procedures Division).

FOR FURTHER INFORMATION CONTACT:

Edward J. Sheehan, Specialist, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, D.C. 20044, 202-566-7626.

SUPPLEMENTARY INFORMATION: This notice of proposed rulemaking is being issued in keeping with ATF's policy of implementing rules that will pose the least administrative burden to industry members while providing protection to Federal revenues and to consumers.

The proposed regulation changes would permit the Director to authorize the use of devices other than strip stamps as evidence of tax determination or compliance with Federal law on containers of distilled spirits and to eliminate serial numbers on strip stamps. The proposed regulations also drop the use of blue and white strip stamps and eliminate the requirement for overprinting the season and year of production, the season and year of bottling, and the name of the distiller on green bottled in bond strip stamps for domestic use. The added flexibility of alternative devices would allow the Treasury Department and members of the distilled spirits industry to benefit from modern technological advances in the container closure industry, to improve efficiency of operations, and to reduce administrative costs.

DRAFTING INFORMATION

The principal author of this document is Edward J. Sheehan of the Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, personnel from other offices of the Bureau and from the Treasury Department participated in developing the document, both on matters of substance and style.

PUBLIC PARTICIPATION

Interested persons may submit written comments or suggestions regarding these proposals, in duplicate, to the Director, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, D.C. 20044 (Attention: Chief, Regulations and Procedures Division) on or before January 8, 1979.

Written comments or suggestions which are not exempt from disclosure by the Bureau of Alcohol, Tobacco and Firearms may be inspected by any person upon compliance with 27 CFR 71.22. The provisions of 27 CFR 71.31(b) shall apply with respect to designation of portions of comments or suggestions as exempt from disclosure. All communications received during the 60-day comment period will be considered by the Director before final rules are issued. Any interested person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit their request, in writing, to the Director within the 60-day comment period. The Director, however, reserves the right to determine, in the light of all circumstances, whether a public hearing should be held. Copies of the proposed changes and any comments received are available for public inspection during normal business hours at the following location: Public Reading Room, Room 4408, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C. 20226.

BACKGROUND

Requirements of Law. Under previous requirements of law (sections 5205 and 5235 of the Internal Revenue Code of 1954), evidence of determination of the Federal excise tax or an indication of compliance with Federal law on containers of distilled spirits was shown by attaching to the container what is commonly known as a "strip stamp". This paper stamp is attached to the container in such a way that it is broken (thus voiding it) upon opening the container. Previous requirements of law (section 6801 of the Internal Revenue Code of 1954) also restricted the preparation and distribution of the strip stamps to the Treasury Department.

Under the provisions of Pub. L. 94-569, the Director may by regulation authorize devices other than paper strip stamps to be used on containers of distilled spirits, and may also authorize persons outside the Treasury Department to prepare and distribute these alternative devices under the controls necessary to protect Federal revenues.

Present Regulations. Under present regulations, strip stamps are designed and issued by the U.S. Government for use as evidence of tax determination or compliance with Federal law on containers of distilled spirits. The Federal revenues are collected on the basis of spirits withdrawn from the bonded premises of distillers and bottlers rather than the number of strip stamps used. However, since the strip stamps serve as evidence of tax determination or indicate compliance with Federal Law, control is maintained over all strip stamps by a system involving requistions, records, and reports. Separate series of stamps have been designed to serve specific needs, as described below.

The strip stamps presently required are identified as red, green, blue, and white strip stamps. Red strip stamps are used on all bottled distilled spirits except alcohol bottled for industrial use and distilled spirits bottled in bond. Strip stamps are issued in two sizes—the "standard" size (for use on bottles of a capacity of 200 ml. or more) and the "small" size (for use on miniatures). Red strip stamps represent by far the greatest quantity of stamps used.

Green bottled-in-bond strip stamps are used on spirits meeting the requirements for bottling in bond for domestic use.

Blue bottled-in-bond strip stamps are used only on spirits which are bottled in bond especially for exportation.

Both green and blue strip stamps are issued in the standard and small sizes.

White strip stamps are used on containers of 190 degrees or more of proof alcohol for industrial purposes bottled in internal revenue bond. These stamps are issued in standard size only.

Standard size strip stamps are serially numbered at the time of printing. Serial numbers are not on small size strip stamps.

In many instances specific information must now be "overprinted" on strip stamps after they have been issued to the bottler or importer. Most of this overprinting is done by commercial printers (the cost paid by the bottler or importer) while the stamps are still in sheets (each sheet contains 50 stamps).

Green strip stamps must be overprinted with the season and year of production, the season and year of bottling, and the name of the distiller. This overprinting must be done in red ink and is done before the stamp is affixed to the bottle. Should spirits originally bottled in bond for demestic consumption be exported with benefit of drawback, the green strip stamp may remain on the bottle, but must additionally be overprinted with the word "EXPORT." This overprinting is, of course, done after the stamp has been affixed to the bottle.

Red strip stamps applied to spirits bottled in the United States after tax determination for the domestic market are not required to be overprinted. Red strip stamps on spirits bottled in the United States after tax determination for export with benefit of drawback must be overprinted with the word "EXPORT." This overprinting may be placed on the stamp either before or after the stamp is affixed, depending on when the decision to export is made.

Blue strip stamps applied to spirits bottled in bond for export with benefit of drawback must be overprinted with the word "DRAWBACK." Those applied to spirits bottled in bond for export without payment of tax need no overprinting as the word "EXPORT" is preprinted on all blue strip stamps.

White strip stamps applied to bottles of alcohol which are to be exported must be overprinted with the word "EXPORT." Those for domestic used need no overprinting.

Red strip stamps to be affixed to imported bottled sprits must be overprinted with the importer's permit number. This overprinting is done after the stamps are issued to the importer and before he affixes them or sends them to a foreign country for affixing to bottles.

All strip stamps must be affixed to the containers in such a manner that on opening the container the stamp will be broken and a portion of the stamp, sufficient to identify the kind of stamp used, will remain attached on the container.

PREVIOUS ADVANCE NOTICE OF PROPOSED RULEMAKING (308)

In considering regulations to implement the provisions of Pub. L. 94-569, two appraches were considered in the previous advance notice:

Approach (A) to allow closure manufacturers, distillers, and other qualified persons to produce and distribute approved alternative closure devices, in a finished state, under a system of rigid controls and security, with corresponding bonding, recordkeeping and report filing requirements; or

Approach (B) to allow closure manufacturers, distillers, and other qualified persons to produce and distribute approved alternative closure devices, in an unfinished state, with minimal recordkeeping, controls and security, and with no bonding or report filing requirements. The alternative closure devices would be brought to a finished state and thus become accountable at the premises of distilled spirits producers and bottlers by the addition of a U.S. Treasury indicia of tax determination to the devices. The indicia of tax determination would be affixed to the devices by means of plates or dies prepared to the specifications of the Treasury Department and provided by the manufactuer of the device to the distiller or bottler authorized to use alternative closure devices.

The Director's authorization for production, distribution, and utilization of alternative devices would have limited devices for use on distilled spirits bottled in the United States for the domestic market, and would have been restricted to alternatives only for standard and small size red strip stamps.

The authorization was not extended to foreign distillers or bottlers, to Puerto Rican or Virgin Islands distillers or bottlers, or to importers, because of difficulty in monitoring the use of and the security necessary for the plates or dies bearing U.S. Treasury indicia of tax determination.

WRITTEN COMMENTS

More than 45 briefs were received during the period for the filing of comments on proposals in the advance notice. A general summary of the comments received are as follows:

The Bureau received 22 comments from consumers. Of these, 21 were in favor of alternatives to strip stamps, and suggested ways of implementing closure devices on containers of distilled spirits. Most suggestions recommended a pilfer proof cap which would leave a portion of the closure on the container after opening. Several comments suggested imprinting a Treasury indicia on top of the closure. Other comments suggested using a celluloid neck wrap, a cork, or a wax closure with Treasury indicia incorporated. One suggestion did not comment on alternative closures, but recommended a reduction in the size of the present strip stamp. There were no negative comments from consumers, however, consumers did not comment on the manufacture or distribution of alternative devices.

The Bureau received 12 comments from members of the distilled spirits industry, and two comments from industry trade associations. They were generally opposed to the alternative device proposals as outlined in the advance notice. Their main objections were as follows:

(1) Requiring a serial number on the alternative device would be cost prohibitive;

(2) Use of alternative devices would be restricted as an alternative to the standard and small size red strip stamps used on domestically bottled spirits;

(3) Requiring a daily accounting of alternative devices received, used, lost, mutilated and destroyed would pose an administrative burden to the proprietor;

(4) Conversion of equipment to handle alternative devices would be costly; and

(5) Approach A, controlling manufacturers of finished alternative devices would require ATF supervision of an industry not previously regulated.

The Bureau received nine comments from members of the code printing, closure and bottle manufacturing industries. Of these, six comments were in favor of an alternative device, and three comments were opposed. The code printing industry said that ink coding machinery could print a Treasury indicia and a user identification code on the surface of closures. The cost of the code printing machinery would be in the $2,000 to $6,000 price range. One closure manufacturer was in favor of approach "B" in the advance notice, but this manufacturer emphasized the fact that placing serial numbers on alternative devices would be impractical. The main objections in the comments from the closure and bottle manufacturing industries were as follows:

(1) Plastic caps probably could not meet a pilfer proof closure criteria;

(2) Retooling conversion for closure manufacturers from plastic to aluminum closures would be costly;

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(3) Glass molds would have to be changed to meet the requirements of aluminum pilfer proof caps;

(4) Retooling conversion for glass manufacturers to change molds would be costly; and

(5) Requiring serial numbers on closures would be cost prohibitive.

SUMMARY OF PROPOSED CHANGES

Proposed regulations to implement the provisions of Pub. L. 94-569 will allow domestic distilled spirits plant proprietors to use devices other than strip stamps on containers of distilled spirits. This authorization is limited to alternatives for standard and small red strip stamps. The authorization is not extended to foreign, Puerto Rican, or Virgin Islands bottlers of distilled spirits, or to importers at this time.

Any distilled spirits plant proprietor desiring to use alternative devices on containers of distilled spirits will file an application with the Director. The application shall contain sufficient information to satisfy the Director that the Federal revenues will not be jeopardized. Use of an alternative device will not be allowed until a proprietor's application is approved by the Director.

Proprietors may continue to use strip stamps, or use approved alternative devices, or use both.

A. *Alternative devices.* Devices used as an alternative to strip stamps will have to meet certain requirements before the Director will consider an application. The device will have to:

(1) Have an identification code applied after the container is filled;

(2) Be securely affixed to containers of distilled spirits; and

(3) Be constructed so that a portion remains on the container upon opening.

B. *Elimination of references to strip stamp serial numbers.* References to serial numbers on strip stamps will be deleted from the regulations. Standard size strip stamps will continue to have serial numbers in the immediate future, but these serial numbers may be later removed from strip stamps. Since a serial number similar to that found on a strip stamp will not be required on an alternative device, a requirement for serial numbers would be inconsistent. In the past, the strongest objections to the elimination of serial numbers on strip stamps were from those citing a need for their stamp accounting, product accounting, and quality control systems. We believe other methods can be easily used by those proprietors. This has already been done with miniature strip stamps with little difficulty to the proprietors concerned. The actual deletion of serial numbers on strip stamps in the future will probably be governed by budget savings for the Bureau.

C. *Elimination of blue and white strip stamps.* The regulations are amended to eliminate the use of blue and white strip stamps, and substitute the use of green and red strip stamps, respectively, as replacements. This step is being taken to simplify the strip stamp program and to reduce an administrative burden to industry members and ATF.

The strip stamps required under proposed regulations would be identified as red and green strip stamps in the standard and small sizes. Red strip stamps would be used on alcohol bottled for industrial use and containers of spirits bottled on bottling premises, except spirits bottled in bond after tax determination. Green strip stamps would be used on containers of distilled spirits bottled in bond for the domestic market and for export.

D. *Elimination of overprinting on bottled in bond strip stamps.* The regulations are proposed to be amended to delete the requirement for overprinting green bottled in bond strip stamps with the season and year of production, the season and year of bottling, and the name of the distiller. A bottler may continue to overprint this information if desired. However, green strip stamps on spirits bottled in bond for export must be overprinted with the word "Export".

This notice of proposed rulemaking is issued under authority of 26 U.S.C. 5205, 5235, and 7805.

SPECIFIC CHANGES TO THE REGULATIONS

In consideration of the foregoing, the following parts of 27 CFR are proposed to be amended and read as set forth below:

PART 194—LIQUOR DEALERS

A. Proposed changes to 27 CFR 194:

Paragraph 1. The table of sections for Subpart P of 27 CFR 194 is amended to read as follows:

. . . . . .

Subpart P—Strip Stamps or Alternative Devices

194.251 Strip stamps or alternative devices required on bottles.
194.252 Breaking of strip stamps or alternative devices on opening bottles.
194.253 Mutilated or missing strip stamps or alternative devices.
194.254 Affixing strip stamps on containers found to have mutilated or missing strip stamps or alternative devices.
194.255 Strip stamps or alternative devices found by ATF officer to be mutilated or missing.
194.256 Stamp or device replacement not required.

Paragraph 2. §§ 194.251, 194.252, and 194.253 referencing strip stamps are amended to include requirements for alternative devices. These sections read as follows:

Subpart P—Strip Stamps or Alternative Devices

§ 194.251 Strip stamps or alternative devices required on bottles.

Except as provided in §§194.264, 194.271, and 194.272, all distilled spirits in the possession of wholesale or retail dealers in liquors shall be in bottles or similar containers of a capacity of 1 gallon (3.785 liters) or less and shall have the prescribed strip stamps or alternative devices evidencing bottling in compliance with internal revenue law. The strip stamp or alternative device shall be affixed in such a manner as to be broken when the container is opened.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§ 194.252 Breaking of strip stamps or alternative devices on opening bottles.

The strip stamp or alternative device affixed to a container of distilled spirits (whether affixed over the mouth of the container or in some other authorized manner) shall be broken on opening the container. A portion of the strip stamp or alternative device shall remain attached to the container while any part of the contents remain.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended 26 U.S.C. 5205))

§ 194.253 Mutilated or missing strip stamps or alternative devices.

Any unopened bottle or other approved container of distilled spirits—

(a) From which the strip stamp or alternative device is missing;

(b) On which the strip stamp or alternative device is mutilated to the extent that the genuineness of the stamp or device cannot be determined; or

(c) The contents of which are accessible without breaking the stamp or device, shall be restamped under §§ 194.254–194.255, or be returned to a distilled spirits plant for restamping or to have devices replaced. Where the containers of distilled spirits are to be returned to a distilled spirits plant for restamping or to have devices replaced, the dealer shall record the transaction in his record of disposition and include in this record an accurate description of the containers of distilled spirits to be restamped or to have devices replaced, and the name and address of the proprietor who has agreed to accept the liquors for restamping or for reaffixing alternative devices.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

Paragraph 3. Section 194.254 is amended to include requirements for alternative devices as exist for strip stamps. As amended, this section reads as follows:

§ 194.254 Affixing strip stamps on containers found to have mutilated or missing strip stamps or alternative devices.

Containers requiring restamping, as described in § 194.253, shall be set aside by the dealer, and application for necessary stamps submitted with Form 428, Requisition for Bottle Strip Stamps, in duplicate, to the regional regulatory administrator. Copies of Form 428 may be obtained from the regional regulatory administrator. In every case the application shall state the cause of mutilation or absence of strip stamps or alternative devices and submit evidence that the spirits are eligible for stamping under 26 U.S.C. 5205(e). The evidence may consist of invoices covering purchase of the spirits, in addition to other available documents. The application shall be signed by the dealer or his authorized agent under the penalties of perjury immediately below a declaration, worded as follows:

I declare under the penalties of perjury that I have examined this application and to the best of my knowledge and belief it is true and correct.

If the regional regulatory administrator is satisfied from the evidence submitted that the mutilation or absence of the strip stamps or alternative devices has been satisfactorily explained, he will approve the requisition for stamps, Form 428, and deliver the strip stamps to the applicant by mail or by a representative of his office, with instructions in regard to affixing them to the containers. If an overprinted stamp is to be replaced by the dealer, the word "Restamped", the name of the dealer, and the date of restamping shall be imprinted, or written in ink, in lieu of overprinting the replacement stamp.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

Paragraph 4. Sections 194.255 and 194.256 are amended to include requirements for alternative devices as exist for strip stamps. The amended sections read as follows:

§ 194.255 Strip stamps or alternative devices found by ATF officer to be mutilated or missing.

When an ATF officer discovers an unopened bottle of distilled spirits which requires restamping or replacement of alternative devices due to conditions specified in § 194.253, the bottle will be set aside. If the officer is satisfied that the spirits are eligible for restamping or for having alternative devices replaced, he will secure from the dealer the application for strip stamps and form 428 required under § 194.254, and forward this information to the regional regulatory administrator. When the ATF officer has reason to believe that the distilled spirits have not been lawfully marked with a strip stamp or alternative device, or that the original contents of the bottle have been replaced or increased by the addition of any substance whatsoever, the spirits will be seized for forfeiture.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended, 1404 (26 U.S.C. 5205, 5613))

§ 194.256 Stamp or device replacement not required.

Where a minor portion of the stamp or alternative device is missing, or where the strip stamp has dropped off a container and may be reaffixed by the dealer, it will not be necessary to restamp the container or to replace the alternative device.

PART 197—DRAWBACK ON DISTILLED SPIRITS USED IN MANUFACTURING NONBEVERAGE PRODUCTS.

B. Proposed changes to 27 CFR 197:

Paragraph 1. Section 197.130(c) is revised to eliminate reference to serial numbers on strip stamps. This section reads as follows:

§ 197.130 Nature of records.

. . . . . .

(c) Kind and serial number of container (such as tank car, drum, case of bottles), and the kind and serial number, if any, of the stamp affixed to the container.

. . . . . .

PART 201—DISTILLED SPIRITS PLANTS

C. Proposed changes to 27 CFR 201:

Paragraph 1. The table of sections to 27 CFR 201 is amended to read as follows:

. . . . . .

Subpart K—Bottling on Bonded Premises

. . . . . .

201.344 Stamps or approved alternative devices, and labels.

. . . . . .

Subpart N—Operations on Bottling Premises other than Bottling in Bond

. . . . . .

201.461 Strip stamps or alternative devices.

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201.466 Rebottling, relabeling, reaffixing alternative devices, and restamping of bottled distilled spirits.

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Subpart P—Containers and Marks and Brands

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201.534 Identification code on devices other than strip stamps.

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Subpart Q—Stamps

STRIP STAMPS AND ALTERNATIVE DEVICES

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201.543 Alternative devices.
201.544 Procurement of strip stamps.
201.545 Affixing stamps or alternative devices.
201.546 Strip stamp accounting.
201.547 Restamping or reaffixing alternative devices on containers of spirits.

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Subpart U—Records and Reports

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201.624 Daily record of strip stamps and alternative devices.

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201.633a Quarterly report of strip stamps, alternative devices, and distilled spirits, Form 2260.

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Paragraph 2. Sections 201.334 and 201.470(1) are revised to eliminate the blue bottled in bond export strip stamps and have green bottled in bond strip stamps for both domestic and export production. As amended these sections read as follows:

§ 201.334 Strip stamps.

The proprietor shall affix a green strip stamp to each bottle of spirits bottled in bond. These stamps shall be procured, overprinted (when required), affixed, and accounted for as provided in Subpart Q of this part.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C 5205)).

§ 201.470(1) Strip stamps.

The proprietor shall affix a green strip stamp to each bottle of spirits bottled in bond. These stamps shall be procured, overprinted (when required), affixed, and accounted for as provided in Subpart Q of this part.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C 5205)).

Paragraph 3. Section 201.469 is amended to include the same requirements for alternative devices as for

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strip stamps. As revised this section reads as follows:

§ 201.469 Spirits not originally intended for export.

Taxpaid spirits, manufactured or produced in the United States, originally intended for domestic use may be exported with benefit of drawback if:

(a) The red strip stamp or alternative device affixed to each bottle is legibly overprinted with the word "EXPORT" by means of a rubber stamp or other suitable method; and

(b) Each case is marked as required by part 252 (Exportation of Liquors) of this chapter. The proprietor may relabel the spirits to show any of the information provided for in § 201.467. Where the proprietor desires to file claim for drawback on spirits prepared for export under this section, the provisions of §252.195a of this chapter shall be followed.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1336, as amended, 1358, as amended (26 U.S.C. 5062, 5205).)

Paragraph 4. Section 201.344 pertaining to strip stamps on containers of alcohol is amended to eliminate the use of white strip stamps and substitute the use of red strip stamps or alternative devices. As revised this section reads as follows:

§ 201.344 Stamps or approved alternative devices and labels.

The proprietor shall affix to each filled bottle of alcohol a red strip stamp or approved alternative device which shall be procured and affixed as provided in Subpart Q of this part. Bottles of alcohol shall have securely affixed a label showing (a) alcohol and (b) the name, address, and plant number of the bottler. In addition, bottled alcohol to be withdrawn on tax determination shall be labeled in accordance with the provisions of Subpart Pa of this part or 27 CFR Part 5, as applicable. The proprietor may place on the label any additional information desired, if it is not inconsistent with the required information.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended, 1369, as amended (26 U.S.C. 5205, 5235).)

Paragraph 5. Sections 201.347 and 201.349 are amended to include requirements for alternative devices. As revised these sections read as follows:

§ 201.347 Alcohol.

The provisions of the subpart relating to the rebottling, relabeling, or restamping of bottled-in-bond spirits shall apply, insofar as applicable, to the rebottling, relabeling or restamping (including reaffixing alternative devices) of alcohol bottled under this subpart.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1369, as amended (26 U.S.C. 5235).)

§ 201.349 Stamp, bottle, and label requirements.

Strip stamps or alternative devices on bottles of spirits to be rebottled shall be destroyed at the time of dumping the bottles, and new strip stamps or alternative devices shall be affixed to the bottles in which the spirits are rebottled. Liquor bottles used for rebottling shall comply with the provisions of §201.328. Where spirits are relabeled, the proprietor shall comply with §201.330, and Subpart Pa of this part. Bottled-in-bond spirits which have been rebottled, relabeled, and restamped (or alternative devices reaffixed in the instance of bottled alcohol) shall be returned to original cases, or placed in new cases. These cases shall be marked in accordance with Subpart P of this part; rebottled spirits shall show the plant number of the rebottler.

Paragraph 6. Sections 201.461 and the first four sentences of 201.466 pertaining to strip stamps and restamping containers are amended to include requirements for alternative devices. As amended, these sections read as follows:

§ 201.461 Strip stamps or alternative devices.

The proprietor shall affix to each bottle of spirits filled on bottling premises under the provisions of this subpart a red strip stamp or an alternative device as authorized by the Director. These stamps or alternative devices shall be procured, overprinted (when required), affixed, and accounted for as provided in Subpart Q of this part.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5205).)

§ 201.466 Rebottling, relabeling, reaffixing alternative devices, and restamping or bottled distilled spirits.

Bottlers desiring to rebottle, restamp, reaffix alternative devices or relabel distilled spirits shall make application, in duplicate, to the assigned officer at the plant, if any; otherwise, in triplicate, to the ATF area supervisor. The application shall state specifically: (a) the reason for rebottling, relabeling, restamping, or reaffixing alternative devices; (b) the serial numbers of the cases; and (c) the name of the original bottler. If the spirits were originally bottled by a bottler other than the applicant, the application shall be accompanied by a statement from the original bottler consenting to the rebottling or relabeling of the spirits by the applicant. When spirits are rebottled, the strip stamps or alternative devices on the original bottles shall be destroyed and new strip stamps or alternative devices used. • • •

(Sec. 201, Pub. L. 85-859, 72 Stat. 1356, as amended (26 U.S.C. 5201).)

Paragraph 7. Section 201.532 is amended to include requirements for alternative devices. As revised, this section reads as follows:

§ 201.532 Relabeling and restamping off bonded or bottling premises.

The proprietor of a distilled spirits plant may relabel, affix brand labels, reaffix alternative devices, or restamp bottled taxpaid spirits (including taxpaid bottled-in-bond spirits) on wholesale liquor dealer premises or at a taxpaid storeroom on or in the immediate vicinity of the plant, if that wholesale liquor dealer premises or taxpaid storeroom is operated in connection with the plant. A proprietor who desires to relabel, restamp, or affix brand labels shall make an application, in duplicate, to the ATF officer at the plant, if any; otherwise the application shall be submitted, in triplicate, to the ATF area supervisor. Individual bottles, if less than a full case, may be relabled and restamped with labels and stamps or alternative devices without an approved application. The approving officer may give continuing authority to conduct the operations described in applications submitted under this section.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1356, as amended, 1866, as amended (26 U.S.C. 5201, 5233).)

Paragraph 8. A new § 201.534 is added immediately following § 201.533. This section is added to require identification codes on alternative devices.

Section 201.534 reads as follows:

§ 201.534 Identification code on devices other than strip stamps.

Devices approved by the Director as an alternative to strip stamps when affixed to containers of distilled spirits shall be marked with a permanent and legible identification code at the distilled spirits plant as follows:

(a) An abbreviation of the State in which the plant is located;

(b) The plant number; and

(c) The date the bottle is filled, starting with—

(1) An alphabetical designation of "A" through "L" representing January through December;

(2) The digits corresponding to the day of the month; and then

(3) The last digit of the calendar year.

For example, DSP-VA-280 bottling on January 20, 1978, would be identified on the device as "VA280A208".

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5205).)

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Paragraph 9. Section 201.541 is amended to eliminate blue and white strip stamps and substitute the use of green and red strip stamps respectively. As revised § 201.541 reads as follows:

§ 201.541 General.

(a) *Spirits bottled in bond.* Each bottle of spirits bottled in bond under Subpart Na or K of this part, except alcohol bottled under Subpart K, shall, when filled, be stamped by the proprietor with a prescribed bottled in bond strip stamp. Green strip stanps are prescribed for spirits bottled in bond for the domestic market and for export. Spirits bottle in bond for export shall be overprinted with the word "EXPORT".

(b) *Distilled spirits bottled on bottling premises, and alcohol bottled under 26 U.S.C. 5235.* Each bottle or other container of less than 5 wine gallons of alcohol bottled under 26 U.S.C. 5235 and distilled spirits bottled on bottling premises, except spirits bottled in bond under Subpart Na of this part, shall be stamped when filled by the proprietor with a prescribed red strip stamp or other device as authorized by the Director. If bottled spirits with red strip stamps or other devices as authorized by the Director, are to be exported, the word "EXPORT" shall be overprinted on the stamps or devices.

(c) *Overprinting.* The word "EXPORT", when required, shall be legibly overprinted on the strip stamp, or other device. Subject to approval by the Director, strip stamps or other authorized devices may be similarly overprinted with the class and type of product or with an appropriate abbreviation or symbol, i.e. "Bbn" for bourbon whiskey.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended, 1369, as amended (26 U.S.C. 5205, 5235).)

Paragraph 10. Section 201.542 is amended to eliminate reference to serial numbers on strip stamps and to delete reference to white strip stamps. Section 201.542 reads as follows:

§ 201.542 Strip stamp format.

All prescribed strip stamps shall be issued in (a) a standard size for bottles or containers of 200 ml capacity or more, and in (b) a small size for bottles or containers of less than 200 ml capacity.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

Paragraph 11. Section 201.543, Procurement of strip stamps, has been redesignated as § 201.544. A new § 201.543, Alternative devices, is added. Section 201.543 reads as follows:

§ 201.543 Alternative devices.

(a) *Application to use alternative devices in lieu of red strip stamps.* Distilled spirits plant proprietors who wish to use devices other than red strip stamps as evidence of tax determination on containers of distilled spirits shall file an application, in triplicate, with the Director. The application shall contain:

(1) The name, address, and distilled spirits plant number;

(2) A description of the alternative device and method of affixing to containers. One sample of the proposed alternative device (including designs and lettering) affixed to an empty container shall accompany the application; and

(3) The signature of the proprietor or authorized agent.

(b) *Alternative devices used as an alternative to red strip stamps.* (1) Alternative devices shall be approved by the Director prior to use;

(2) Alternative devices, after the containers are filled, shall:

(i) Be marked as required by 27 CFR 201.534,

(ii) Be securely affixed, and

(iii) Leave a portion of the device remaining after the container is opened.

(3) Any designs and lettering appearing on the alternative device shall also be approved by the Director prior to use.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

Paragraph 12. Section 201.544, Overprinting of bottled-in-bond stamps, is deleted. Former section 201.543, Procurement of strip stamps, is redesignated as § 201.544. Section 201.544 reads as follows:

§ 201.544 Procurement of strip stamps.

(a) *General.* Strip stamps may be obtained, without charge, by the proprietor, in reasonable anticipation of current needs, from the regional regulatory administrator of the region in which the plant is located, by requisition on Form 428. Such stamps may not be procured by one proprietor from another or transferred to another plant operated by the same proprietor, except on authorization by the regional regulatory administrator. Requisitions shall be for full sheets of stamps. On receipt of the stamps the proprietor shall verify the quantity received and acknowledge receipt, noting any discrepancies, on both copies of Form 428 returned by the regional regulatory administrator, forward one copy of the Form 428 to the regional regulatory administrator and retain one copy on file.

(b) *Alternative method.* When the regional regulatory administrator determines that the interest of the Government will be best served, the stamps may be shipped directly to the proprietor from a location other than the office of the regional regulatory administrator. In that case, the regional regulatory administrator shall notify the proprietor that the strip stamps will be delivered by an alternative method and the minimum quantity, if any, of each size stamp which may be requisitioned on any particular Form 428. Upon approval of Form 428, two copies of the form shall be returned to the proprietor. Upon receipt of the stamps, the proprietor shall (1) indicate the quantity of stamps received and acknowledge receipt, noting any discrepancies, on both copies of form 428 and (2) return one copy to the regional regulatory administrator, and retain one copy.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

Paragraph 13. Section 201.545 is amended to include requirements for alternative devices. As revised, this section reads as follows:

§ 201.545 Affixing stamps or alternative devices.

The proprietor shall affix strip stamps to containers with a strong adhesive. The proprietor shall affix alternative devices to containers of distilled spirits as described in the approved application. Upon opening the container, the stamp or alternative device will be broken and a portion remain attached to the container. Strip stamps or alternative devices affixed to containers shall not be concealed or obscured in any manner except that (a) the Director may authorize labels or State stamps to be so affixed as to partially obscure strip stamps or alternative devices, if a need exists, and the manner of affixing the label or State stamp does not obscure essential information on the strip stamp or alternative device which is not clearly shown on the bottle or on the labels affixed to the bottle, and (b) a stamp or alternative device may be covered by a cup, cap, seal, carton, wrapping, or other means which can readily be removed without injury to the stamp or alternative device or which is sufficiently transparent to permit all data on the stamp or alternative device to be read. If a cup, cap or seal is placed over a stamp, a portion of the stamp must remain plainly visible. If containers are enclosed in sealed opaque cartons or wrappings, the cartons or wrappings must have the words, "This package may be opened for examination by AFT officers." ATF officers have the right to open the cartons and wrappings and examine the containers. Where there is doubt as to the propriety of the use of any cup, cap, or seal, the closure

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and container should be submitted to the Director for approval.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

Paragraph 14. Section 201.547 is amended to include requirements for alternative devices. As revised, this section reads as follows:

§ 201.547 Restamping or reaffixing alternative devices on containers of spirits.

Bottles of alcohol filled on bonded premises may be restamped or have alternative devices reaffixed under the provisions of Subpart K of this part. Bottles of bottled-in-bond spirits may be restamped under the provisions of Subpart K or Na of this part. Bottles, other than bottles of alcohol filled on bonded premises, to which red strip stamps or alternative devices have been affixed, may be restamped or have alternative devices reaffixed under the provisions of Subpart N of this part. Bottles of alcohol and bottled-in-bond spirits, and bottles or other containers to which red strip stamps have been affixed, may also be restamped under the provisions of § 201.532. Replacement of mutilated or missing strip stamps and alternative devices by persons other than proprietors of distilled spirits plants shall be made in accordance with Part 194 of this chapter.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended, 1366, as amended (26 U.S.C. 5205, 5233))

Paragraph 15. Section 201.624 is amended to include requirements for alternative devices. As revised, this section reads as follows:

§ 201.624 Daily record of strip stamps and alternative devices.

Each proprietor bottling spirits under the provisions of this part shall maintain, for each day a transaction in strip stamps occurs, a daily record of green bottled-in-bond strip stamps and of red strip stamps, by kind (green or red) and by size (small or standard), showing the quantity received, used, lost, mutilated, unaccounted for, destroyed or otherwise disposed of, and on hand at the beginning and at the end of the day. The record shall also show by size of bottle, the quantity of bottles to which each kind of strip stamp (green or red) or alternative device was affixed. The record shall be in sufficient detail to enable proprietors to prepare the required quarterly report.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended, 1361, as amended (26 U.S.C. 5202, 5207).)

Paragraph 16. Section 201.625 is amended to include requirements for alternative devices. As revised this section reads as follows:

§ 201.625 Daily record of wholesale liquor dealer and taxpaid storeroom operations.

Where the proprietor, in connection with the distilled spirits plant, conducts wholesale liquor dealer operations or operates a taxpaid storeroom, on, or near the plant premises, or operates storage premises at another location from which distilled spirits are not sold at wholesale, daily records of the receipt and disposition of all distilled spirits and wines, and of all restamping operations conducted under the provisions of § 201.532 shall be maintained at each location. The records shall contain all data necessary to enable ATF officers to identify and trace receipts and dispositions, and to ascertain whether there has been compliance with all internal revenue laws and regulations, and to provide the proprietor with records to compile data for the semiannual report on Form 338 when required by the regional regulatory administrator. The records shall include:

(a) *As to receipt and dispositions.* (1) The date of the transaction (or date of discovery in the case of casualty or theft),

(2) The name and address of each consignor or consignee, as the case may be,

(3) The brand name,

(4) The kind of spirits,

(5) The actual quantity of distilled spirits involved (proof gallons if in packages, wine gallons or liters if in bottles),

(6) The package identification numbers or serial numbers of packages involved,

(7) The name of the producer, and

(8) The country of origin, if imported spirits.

(b) *As to case dispositions.* In addition to the requirements listed in paragraph (a) of this section, the serial numbers of cases involved; however, the regional regulatory administrator may, upon receipt of an application, in duplicate, and a finding that recording is not necessary to law enforcement or protection of the revenue, relieve a dealer from the requirement of recording case serial numbers.

(c) *As to restamping operations.* (1) The date of the transaction,

(2) The serial numbers of the cases involved,

(3) The total number of bottles,

(4) The name of the bottler, and

(5) The quantity and kind of strip stamps and quantity of alternative devices used.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1343, as amended, 1361, as amended (26 U.S.C. 5114, 5207).)

Paragraph 17. Section 201.633a is amended to include requirements for alternative devices. As revised, this section reads as follows:

§ 201.633a Quarterly report of strip stamps, alternative devices, and distilled spirits stamps, Form 2260.

As of the close of business March 31, June 30, September 30, and December 31, of each year, each proprietor using strip stamps, alternative devices, or distilled spirits stamps shall prepare Form 2260, in accordance with instruction on the form. A separate report shall be prepared for alternative devices and for each kind of stamp used. Copies of the completed report shall be filed as provided in the instructions on the form.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1361, as amended, 1395, as amended (26 U.S.C. 5207, 5555).)

D. Proposed changes to 27 CFR 250:

PART 250—LIQUORS AND ARTICLES FROM PUERTO RICO AND VIRGIN ISLANDS

Paragraph 1. The regulations in 27 CFR Part 250 are amended to eliminate reference to serial numbers on strip stamps. The revised sections read as follows:

§ 250.137 Size of red strip stamps.

Red strip stamps are issued in a standard size for bottles or containers of 200 ml. capacity or more, and in a small size for bottles or containers of less than 200 ml. capacity.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5205).)

§ 250.143 Procurement and custody of red strip stamps.

(a) *General.* The distiller, rectifier, or bottler, or his duly authorized agent, shall submit the original and two copies of an approved Form 428 to the Chief, Puerto Rican Operations, who will issue the quantity of stamps covered by the approved requisition, enter the quantity of stamps issued, and stamp the date of issue on all copies of Form 428. The issuing office will retain the original for its files, send one copy with the strip stamps to the revenue agent at the bottling plant, and one copy to the Secretary. The revenue agent will issue the desired number of stamps to the bottler for affixing to bottles of taxpaid distilled spirits upon application from the proprietor.

(b) *Alternative method.* When the Chief, Puerto Rican Operations, determines that the interest of the Government will be best served, the stamps may be shipped directly to the insular revenue agent at the plant from the Bureau of Engraving and Printing. In that case, orders for standard size red strip stamps shall be in multiples of 100,000 stamps, and orders for small-

size shall be in multiples of 50 stamps (one sheet). After approval by the revenue agent, the applicant shall send the original and two copies to the Chief, Puerto Rican Operations. The latter shall prepare Form 5003 and send the original and two copies to the Bureau of Engraving and Printing; then he shall stamp the date of preparation of From 5003 on all copies of Form 428 and sent them to the revenue agent. When the stamps arrive, the revenue agent shall indicate the quantity of stamps received and acknowledge receipt, noting any discrepancies, on the original and two copies of Form 428 returned from the Chief, Puerto Rican Operations. The revenue agent shall retain one copy of the form and forward the original and one copy to the Chief, Puerto Rican Operations. The Chief, Puerto Rican Operations shall retain the original and send the copy to the Secretary.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5205).)

§ 250.232 Size of red strip stamps.

Red strip stamps shall be issued in a standard size for bottles or containers of 200 ml. capacity or more, and in a small size for bottles or containers of less than 200 ml. capacity.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5205).)

§ 250.240 Approval of requisition and issuance of stamps.

The regional regulatory administrator will approve Form 428 and issue the stamps if:

(a) The importer is the holder of an importer's permit issued under the Federal Alcohol Administration Act and the regulations in 27 CFR Part 1; and

(b) The quantity requisitioned is reasonable and necessary; and

(c) There is no information on which a denial of requisition would be made under the provisions of § 250.235.

When satisfied that Form 428 may be appproved, the regional regulatory administrator shall enter the quantity of stamps issued and the date of issue and approve all copies of the form. He shall then deliver the stamps to the applicant, and, if the stamps are mailed, or are delivered to anyone other than the applicant, two copies of the Form 428 shall accompany the stamps. Upon receipt of the stamps, the applicant shall acknowledge receipt on both copies of Form 428 and return one copy to the regional regulatory administrator who issued the stamps and, if an agent, one copy to the importer. In each instance when the regional regulatory administrator approves a requisition which has been submitted by an agent of an importer, the regional regulatory administrator shall immediately forward a copy of Form 428 to the importer, and, if the importer's place of business is located in another region, the regional regulatory administrator shall forward a copy to the regional regulatory administrator of the region in which the importer's place of business is located. If a requisition is disapproved for any reason, the regional regulatory administrator shall return a copy of Form 428 marked "disapproved" to the applicant.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5205).)

§ 250.240a Alternative method for issuance of stamps.

(a) *Action by regional regulatory administrator.* When the regional regulatory administrator determines that the interest of the Government will be best served, strip stamps may be shipped directly to the applicant, as shown on Form 428, from a location other than the office of the regional regulatory administrator. In each case, the regional regulatory administrator shall notify the applicant that strip stamps will be delivered by an alternative method and state the minimum quantity, if any, of each size of stamp which may be requisitioned on any particular Form 428. Upon approval of Form 428, two copies of the form shall be returned to the applicant, and, if the Form 48 was prepared by an agent of an importer, a copy of the form shall be forwarded to the importer and, if applicable, to the regional regulatory administrator of the region in which the importer's place of business is located.

(b) *Action by applicant.* Upon receipt of the stamps, the applicant shall (1) indicate the quantity of stamps received and acknowledge receipt of the stamps on both copies of Form 428, and (2) return one copy to the regional regulatory administrator to whom the Form 428 was submitted for approval and, if an agent, one copy to the importer.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§ 250.252 Destruction or transfer of red strip stamps in the Virgin Islands.

When for any reason a Virgin Islands bottler or exporter has on hand a quantity of red strip stamps which are not to be affixed to containers for shipment to the United States, and it is impractical to return the stamps to the importer from whom they were received or to transfer them to another bottler or exporter conducting operations for the importer, the regional regulatory administrator of the region in which the importer's place of business is located may, on application by the importer in duplicate, authorize the destruction of the stamps in the Virgin Islands. The application shall show the size, quantity of stamps, the name and address of the Virgin Islands bottler or exporter who has possession of the stamps, and the reason why destruction in the Virgin Islands is requested. If the regional regulatory administrator approves the application for destruction he will return the original marked APPROVED, to the importer who will forward it, together with Form 1627, with the pertinent entries in Part 1 completed, to the Virgin Islands bottler or exporter. On receipt of the approved application, the stamps may be destroyed provided the destruction is under the supervision of an authorized representative of the Governor of the Virgin Islands or an officer of the Board of Control of Alcoholic Beverages. Upon destruction of the stamps, the Virgin Islands bottler or exporter and the representative shall complete the applicable portions of Part IV of Form 1627. The completed Form 1627 and the approved application shall be returned to the importer who filed the application. The importer may then take credit for the stamps on his strip stamp record and on Form 96.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

E. Proposed changes to 27 CFR 251:

PART 251—IMPORTATION OF DISTILLED SPIRITS, WINES, AND BEER

Paragraph 1. The regulations in 27 CFR Part 251 are amended to eliminate reference to serial numbers on strip stamps. The revised sections read as follows:

§ 251.63 Size of red strip stamps.

Red strip stamps shall be issued in a standard size for bottles or containers of 200 ml. capacity or more, and in a small size for bottles or containers of less than 200 ml. capacity.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§ 251.66 Approval of requisition and issuance of stamps.

The regional regulatory administrator will approve Form 428 and issue the stamps if:

(a) The importer is the holder of an importer's permit issued under the Federal Alcohol Administration Act and the regulations in 27 CFR Part 1; and

(b) The quantity requisitioned is reasonable and necessary; and

(c) There is no information on which a denial of a requisition would be made under the provisions of § 251.92.

When satisfied that Form 428 may be approved, the regional regulatory administrator shall enter the quantity of stamps issued and the date of issue

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and approve all copies of the form. The stamps shall be delivered to the applicant, and, if the stamps are mailed, or are delivered to anyone other than the applicant, two copies of the Form 428 shall accompany the stamps. Upon receipt of the stamps, the applicant shall acknowledge receipt on both copies of Form 428 and return one copy to the regional regulatory administrator who issued the stamps and, if an agent, one copy to the importer. In each instance when the regional regulatory administrator approves a requisition which has been submitted by an agent of an importer, the regional regulatory administrator shall immediately forward a copy of Form 428 to the importer, and, if the importer's place of business is located in another region, the regional regulatory administrator shall forward a copy to the regional regulatory administrator of the region in which the importer's place of business is located. If a requisition is disapproved for any reason, the regional regulatory administrator shall return a copy of Form 428 marked "disapproved" to the applicant.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§ 251.66a Alternative method for issuance of stamps.

(a) *Action by regional regulatory administrator.* When the regional regulatory administrator determines that the interest of the Government will be best served, strip stamps may be shipped directly to the applicant, as shown on Form 248, from a location other than the office of the regional regulatory administrator. In that case, the regional regulatory administrator shall notify the applicant that strip stamps will be delivered by an alternative method and state the minimum quantity, if any, of each size of stamp which may be requisitioned on any particular Form 428. Upon approval of Form 428, two copies of the form shall be returned to the applicant, and, if the Form 428 was prepared by an agent of an importer, a copy of the form shall be forwarded to the importer and, if applicable, to the regional regulatory administrator of the region in which the importer's place of business is located.

(b) *Action by applicant.* Upon receipt of the stamps, the applicant shall (1) indicate the quantity of stamps received and acknowledge receipt of the stamps on both copies of Form 428, and (2) return one copy to the regional regulatory administrator to whom the Form 428 was submitted for approval and, if an agent, one copy to the importer.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5206))

§ 251.89a Destruction or transfer of red strip stamps abroad.

When for any reason a foreign bottler or exporter has on hand a quantity of red strip stamps which are not to be affixed to containers for export to the United States, and it is impractical to return the stamps to the importer from whom they were recieved or to transfer them to another bottler or exporter conducting operations for the importer, the regional regulatory administrator of the region in which the importer's place of business is located, may, on application, in duplicate, by the importer, authorize the destruction of the stamps abroad. The application shall show the size, quantity of stamps, the name and address of the foreign bottler or exporter who has possession of the stamps, and the reasons why destruction abroad is requested. If the regional regulatory administrator approves the applications for destruction, he will return the original, marked APPROVED, to the importer who will forward it, together with Form 1627 with pertinent entries in Part 1 completed, to the foreign bottler or exporter abroad. On receipt of the approved application, the stamps may be destroyed provided the destruction is under the supervision of a Foreign Service officer of the United States of America, or of a Treasury Department officer stationed abroad, or of an excise official of the foreign Government concerned. Upon destruction of the stamps, the foreign bottler or exporter and the officer or official shall complete the applicable portions of Part IV on Form 1627. The completed Form 1627 and the approved application shall be returned to the importer who filed the application. The importer may then take credit for the stamps on his strip stamp record and on Form 96.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

F. Proposed changes to 27 CFR 252:

PART 252—EXPORTATION OF LIQUORS

Paragraph 1. Section 252.102 is amended to include requirements for alternative devices and to reflect the use of red strip stamps for bottles of alcohol. As revised, this section reads as follows:

§ 252.102 Bottles to be stamped.

Each bottle containing distilled spirits bottled in bond to be withdrawn under the provisions of this subpart shall have an export strip stamp, procured and affixed in accordance with the provisions of Part 201 of this chapter. Each bottle of alcohol bottled for industrial use on the bonded premises of a distilled spirits plant to be withdrawn under the provisions of this subpart shall have a red strip stamp or alternative device, procured and affixed in accordance with the provisions of Part 201 of this chapter, and the strip stamp or alternative device shall be legibly and permanently overprinted or stamped with the word "EXPORT". Export stamps are not required on cases containing bottles of distilled spirits (including industrial alcohol) filled on bonded premises.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended, 1369, as amended (26 U.S.C. 5205, 5235))

Signed: September 21, 1978.

JOHN G. KROGMAN,
Acting Director.

Approved: October 2, 1978.

RICHARD J. DAVIS,
Assistant Secretary, of the Treasury.

[FR Doc. 78-31477 Filed 11-6-78; 8:45 am]

[4410-02-M]

DEPARTMENT OF JUSTICE

Office of the Attorney General

[28 CFR Part 16]

[AAG/A Order No. 17-781

PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

Exemption of Records Systems Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Proposed regulation.

SUMMARY: This regulation proposes to exempt the FBI Investigative Support Information System (ISIS) from 5 U.S.C. 552a(c)(3) and (4), (d), (e)(1), (2), and (3), (e)(4)(G) and (H), (e)(8), (f) (g) and (m). The purposes of the exemption are to maintain the confidentiality and security of information compiled for purposes of cirminal investigation or civil or regulatory law enforcement, or of reports compiled at any stage of the criminial law enforcement process, and to maintain the confidentiality and security of information that is specifically authorized to be kept secret in the interests of national defense or foreign policy. Some records contained in this system of records may not be subject to exemption. A determination will be made as to the exemption of a specific record at the time a request for notification or access is made.

DATES: All comments must be received by November 24, 1978.

ADDRESS: All comments should be addressed to the Administrative Counsel, Office of Management and Finance, Department of Justice, 10th and Constitution Avenue NW., Washington, D.C. 20530.

FOR FURTHER INFORMATION CONTACT:

Mr. William Snyder, The Administrative Counsel, Office of Management and Finance 202-633-4165. The authority for this proposed rule is 5 U.S.C. 552a. Accordingly, it is proposed that 28 CFR 16.96 be amended by adding paragraphs (j) and (k) as follows:

§ 16.96 Exemption of Federal Bureau of Investigation system—limited access.

* * * * *

(j) The following system of records is exempt from 5 U.S.C. 552a(c)(3) and (4), (d), (e)(1), (2), and (3), (e)(4)(G) and (H), (e)(8), (f) (g) and (m):

(1) Investigative Support Information System (ISIS) (Justice/FBI-013). These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j) and (k).

(k) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the release of accounting disclosures would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement or background investigations which may involve law enforcement aspects or the compromising of classified material.

(2) From subsection (c)(4), (d), (e)(4)(G) and (H), (f) and (g) because these provisions concern individual access to records and such access might compromise ongoing investigations, reveal investigatory techniques and confidential informants, and invade the privacy of private citizens who provide information in connection with a particular investigation. In addition, exemption from subsections (d) and (e)(4)(G) and (H) is necessary to protect the security of information classified in the interest of national defense and foreign policy. In addition, from subsection (d) because to require the agency to correct or otherwise amend information thought to be incorrect, irrelevant or untimely might, because of the nature of the information collected and the essential length of time it is maintained, create an impossible administrative and investigative burden by forcing the agency to continuously retrograde its investigations in an attempt to resolve questions of accuracy, etc.

(3) From subsection (e)(1) because information may be received in the course of a criminal, civil or background investigation which may involve a violation of law under the jurisdiction of another Government agency, but it is necessary to maintain this information in order to provide leads for appropriate law enforcement and to establish patterns of activity which may relate to the jurisdiction of both the FBI and other agencies. In addition, classified information may be received which relates to the constitutional powers of the President or the jurisdiction of some other agency. Such information is not susceptible to segregation.

(4) From subsection (e)(2) because collecting information from the subject of criminal or national security investigations would usually thwart the investigation by placing the subject of the investigation on notice.

(5) From subsection (e)(3) because supplying an individual with a form containing the information specified would result in a substantial invasion of privacy of the subject of the investigation, would compromise the existence of a confidential investigation, and would inhibit private citizens from cooperating with the FBI.

(6) From (e)(8) because the notice requirements of this provision could present a serious impediment to law enforcement by revealing investigative techniques, procedures, and the existence of confidential investigations.

(7) From subsection (m) because if the system were ever operated by a contractor it would still be necessary to continue exemption from these same provisions.

KEVIN D. ROONEY,
Assistant Attorney General for Administration.

OCTOBER 26, 1978.

[FR Doc. 78-31475 Filed 11-6-78; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 1001-1]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Utah SO$_2$ Control Strategy; Extension of Public Comment Period

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Extension of public comment period on the proposed regulation.

SUMMARY: Notice is hereby given that the public comment period to receive comments on regulations proposed to correct deficiencies in Utah's Implementation Plan has been extended until November 20, 1978.

DATES: Comments received by November 20, 1978, will be considered in developing the final rule.

ADDRESSES: Submit written comments to the Regional Administrator, Environmental Protection Agency, Region VIII, Suite 900, 1860 Lincoln Street, Denver CO 80295.

Copies of the proposed regulations (43 FR 35952, August 14, 1978) are available by writing: EPA, Air & Hazardous Materials Division, 1860 Lincoln Street, Denver CO 80295. The docket (8A-78-1) in this matter is available for inspection at the above address as well as at EPA Headquarters, Central Docket Section, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Marius J. Gedgaudas, 303-837-3711.

DATED: October 27, 1978.

ALAN MERSON,
Regional Administrator, Environmental Protection Agency, Region VIII.

[FR Doc. 78-31056 Filed 11-6-78; 8:45 am]

[6820-24-M]

GENERAL SERVICES ADMINISTRATION

Federal Supply Service

[41 CFR Part 101-40]

TRANSPORTATION AND TRAFFIC MANAGEMENT

Rate Tenders to the Government

AGENCY: General Services Administration.

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) proposes to amend the Federal Property Management Regulations (FPMR) to revise a format entitled "Uniform Tender of Rates and/or Charges for Transportation Services." This format is used by commercial carriers to submit to Government agencies for consideration offers of rates, charges, or special provisions for freight transportation and related services. The proposed revised version, developed jointly by GSA and the Military Traffic Management Command, Department of Defense, is designed to provide compatability with automated data systems, simplify preparation of rate tenders by commercial transportation companies, and facilitate evaluation of the tenders by Government transportation offices. Federal agencies and persons representing the carrier industry are requested to review the proposed format (and preparation instructions) contained in this notice for sufficiency of information and indicate to GSA

V 4 3 / 2 1 6 N 0 7 7 8 UMI

whether additional items are necessary or desirable.

DATE: Written comments from Federal agencies and persons representing the commercial carrier industry must be submitted on or before January 5, 1979.

ADDRESS: Written comments should be sent to: General Services Administration (FAF), Washington, D.C. 20406.

FOR FURTHER INFORMATION CONTACT:

Mr. John I. Tait, Director, Regulations and Management Control Division, Office of the Executive Director, Federal Supply Service, General Services Administration, Washington, D.C. 20406, 703-557-1914.

SUPPLEMENTARY INFORMATION: Sections 22, 217(b), 306(c), and 405(c) of the Interstate Commerce Act, as amended (49 U.S.C. 22, 317(b) 906(c), and 1005(c)), authorize commercial carriers to provide transportation and related services to the Government at reduced rates. Carriers which intend to furnish services to a Government agency at other-than-published tariff rates or charges must first submit the rates or charges in writing for the agency's consideration. For this purpose, carriers are encouraged, but not required, to use the format "Uniform Tender of Rates and/or Charges for Transportation Services." This format is illustrated in FPMR 101-40.4906-2.

An increased emphasis on automated data and advances in transportation programs and procedures necessitate changes to the current uniform tender format, which has been in use since 1970. The revised format proposed in this notice includes additional information blocks which will serve to more clearly convey the scope and intent of the tendered transportation rate or service and avoid confusion and misunderstanding in the interpretation of the tender by the Government and submitting carrier. Furthermore, the revised format incorporates as standard provisions various items which are now submitted as exceptions or supplemental information.

In consideration of the foregoing, it is proposed to revise § 101-40.4906-2 as follows:

§ 101-40.4906-2 Uniform tender of rates and/or charges for transportation services.

UNIFORM TENDER OF RATES AND/OR CHARGES FOR TRANSPORTATION SERVICES

1. Issuing Carrier, Bureau, Agency, or Conference NAME _____ CARRIER CODE _____		2. Tender No. ICC _____ Supplement No. _____ Cancels _____ Supplements Nos. _____ _____ contain all changes	
3. Tendered to: U.S. GOVERNMENT	4. Issue Date	5. Effective Date	6. Expiration Date
7. Movement Application ☐ From-To ☐ Between	8. Action Code (*supplements only*) ☐ Addition ☐ Deletion ☐ Change	9. Carrier File No.	

10. FREIGHT CLASSIFICATION AND COMMODITY DESCRIPTION

NMFC/UFC Item No.	Description of Articles

11. ORIGIN		DESTINATION	
SPLC	Point Name, County, State	SPLC	Point Name, County, State

12. Load Application: ☐ LOAD ☐ LESS LOAD ☐ ANY QUANTITY ☐ OVERFLOW NOT APPLICABLE

13. RATE OR CHARGE	MINIMUM WEIGHT(S)	14. ROUTE (*Carrier Code-Interchange SPLC*)

15. Protective Services

Service	Charge	Service	Charge
☐ AGS		☐ PSS	
☐ CSS		☐ RSS	
☐ DDPS		☐ SSS	

16. Classifications and Exceptions

(*Insert exceptions, if any*)

The rates, charges, or services shown herein are subject to the rules which at the time of movement, would govern the applicable class rates from and/or to the points and via the routes in this tender, except:

17. Accessorial Services

Rate or Charge	Description of Service or Governing Publication

18. Operating Authority (*Note Item 20 a.*)

(*Insert appropriate operating authority*)

_____

19. COMBINATION RATES

☐ The rates and charges in this tender may be used as factors in construction of any combination through rates, charges, rules, regulations, or other provisions.

☐ The rates and charges in this tender may be used as factors to make combination rates and charges to and/or from other points of origin and destination, provided that such other points are not more than thirty (30) highway miles distant from the pertinent point of origin or destination named herein. This distance shall be measured from (a) the nearest boundary, in the case of designated commercial zones; (b) the nearest corporate limit, in the case of incorporated communities not in commercial zones; or (c) the nearest post office within other points of origin or destination.

☐ The rates and charges in this tender may not be used in construction of combination rates or charges.

20. GENERAL TERMS AND CONDITIONS

a. LAWFUL PERFORMANCE; OPERATING AUTHORITIES

The carrier(s) represent(s) to the United States that the services provided in the tender making reference hereto will be performed in accordance with applicable Federal, State, and municipal laws and regulations and the carrier(s) possess(es) the required operating authority to transport the commodity from, to, or between the places set forth as embraced in authorized certificates, permits, or temporary operating authorities.

b. CHARGES AND ALLOWANCES

Except as otherwise provided herein, shipments under the provisions of this tender are entitled to such additional services and privileges as are provided in separately published tariffs or tenders to which carrier(s) is (are) party, subject to the tariff or tender charges, allowances, rules, and regulations applicable to such services and privileges.

c. PAYMENT

Except for shipments covered by item 21(c) or 21(d), the carrier shall bill the United States on Standard Form 1113, Public Voucher for Transportation Charges, appropriately supported, and shall submit said bill to the paying office shown on the Government bill of lading.

d. REFERENCES

Where reference is made in this tender to an item, tender, tariff, or classification, such reference shall be deemed to include supplements or amendments thereto or reissues thereof, unless otherwise specified herein.

e. CANCELLATION OR AMENDMENT OF TENDER

This tender may be canceled or amended by the carrier(s) on written notice of not less than thirty (30) days, except as to shipments made from original port of shipment (or port of importation, where involved), before the effective date of such notice, and except as to any accrued rights and liabilities of either party hereunder and, further, except such cancellation or amendment may be accomplished upon shorter notice by mutual agreement of the parties concerned.

f. FILING WITH REGULATORY BODIES

Carrier(s) certifies (certify) that, where required, the requisite number of copies of this tender is being filed concurrently with the Interstate Commerce Commission in accordance with Section 22(2) of the Interstate Commerce Act, or with other regulatory agencies as appropriate.

g. ALTERNATIONS AND VOLUME OF TRAFFIC

This tender will not apply where charges accruing hereunder exceed charges otherwise applicable for the same service. Receipt of this tender shall not be construed as a guarantee by the Government of any particular volume of the traffic hereunder described.

21. I am (we are) authorized to and do hereby offer on a continuing basis to the United States Government, herein called the Government, pursuant to Section 22 of the Interstate Commerce Act or other appropriate authority, the transportation services herein described, subject to the terms and conditions herein stated. The property to which rates herein apply must be shipped by or for the Government (a) on Government bills of lading; (b) on commercial bills of lading endorsed to show that such bills of lading are to be exchanged for Government bills of lading at destination or converted to Government bills of lading after delivery to the consignee; (c) on commercial bills of lading showing that the Government is either the consignor or the consignee and endorsed with the following legend: "Transportation hereunder is for the _____ (name the specific agency, such as U.S. Department of Defense), and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are assignable to and are to be reimbursed by the Government"; (d) on commercial bills of lading endorsed with the following legend: "Transportation hereunder is for the _____ (name the specific agency, such as U.S. Department of Defense), and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are to be reimbursed by the Government, pursuant to cost-reimbursable Contract No._____. This may be confirmed by contacting such agency at_____."

22. SIGNATURE(S) OF PARTY(IES) REPRESENTING CARRIER(S)

Issuing Carrier, Bureau, Agency, or Conference	Participating Carrier	Participating Carrier
BY(Signature and Title of Authorized Officer or Agent)	BY(Signature and Title of Authorized Officer or Agent)	BY(Signature and Title of Authorized Officer or Agent)
ADDRESS	ADDRESS	ADDRESS

PREPARATION INSTRUCTIONS

SECTION A—GENERAL

1. *Format design.* The uniform tender format is designed to promote speed and orderliness in handling tenders. Sequence and numbering have been programed for computerized processing; therefore, variance from the terms, sequence, or numbering may results in delaying the processing of tenders.

2. *Specifications.* Tenders shall be prepared by any durable process on paper of good quality, 8 by 10½ inches in size, with a left-hand margin of at least ¾ inch.

3. *Availability of sample format.* The U.S. Government does not provide copies of the uniform tender format for use in filing tenders. Informational or sample copies of the format and preparation instructions may be obtained by contacting either the Military Traffic Management Command or the General Services Administration.

4. *Submission requirements.* In addition to the requirements for filing tenders with the Interstate Commerce Commission or other regulatory agency, copies of tenders and supplements shall be submitted as directed below, as applicable.

a. *Military Traffic Management Command.* Submit copies of tenders and supplements in the number specified in (1) or (2), below, to the following:

Commander, Military Traffic Managment Command, attention: Negotiations Division, Washington, D.C. 20315.

(1) *Tenders and supplements covering other than uncrated household goods (personal effects).* Submit 2 signed and 13 unsigned copies.

(2) *Tenders and supplements covering uncrated household goods (personal effects).* Submit two signed and four unsigned copies for a single installation, plus five additional copies for each additional installation from which the tender applies.

b. *General Services Administration.*

(1) *Tenders and supplements covering other than houshold goods (personal effects).* Submit 5 signed and 10 unsigned copies to the GSA office which initiated the proposal for tender publication. In the absence of a more specific address, the copies may be submitted to the GSA Transportation Services Division, Rate and Routing Branch, at the following mailing address:

General Services Administration (3FZTR), Washington, D.C. 20407.

(2) *Tenders and supplements covering houshold goods (personal effects).*

(a) *Interstate movements.* Submit 5 signed and 20 unsigned copies to the GSA Transportation Services Division, Traffic Management Branch (located at Crystal Mall Building 4, Room 327, Arlington, Va.), at the following mailing address:

General Services Administration (FZTM), Washington, D.C. 20406.

(b) *Intrastate movements.* Submit 5 signed and 20 unsigned copies to the appropriate regional GSA Transportation Services Division.

c. *Other agencies.* Submit copies of tenders and supplements as directed by the agency.

SECTION B—ABBREVIATIONS

The following is a legend of abbreviations appearing on the uniform tender format and in the preparation instructions:

AGS—Armed Guard Service
AQ—Any quantity
CL—Carload
CSS—Constant Surveillance Service
DDPS—Dual Driver Protective Service
DOD—Department of Defense
GSA—General Services Administration
ICC—Interstate Commerce Commission
LCL—Less than carload
LTL—Less than truckload
M/W—Minimum weight
NMFC—National Motor Freight Classification
PSS—Protective Signature Service
PVU—Per vehicle used
RSS—Rail Surveillance Service
SPLC—Standard Point Location Codes[1]
SSS—Signature Security Service
TL—Truckload
UFC—Uniform Freight Classification

SECTION C—COMPLETION OF FORMAT

Completion of each block is required unless otherwise indicated.

Block 1

Issuing carrier, bureau, agency, or conference: Enter complete name and carrier code. The carrier code is the applicable alphabetical code prescribed in tariff publishing rules.

Block 2

Tender No. ICC and Supplement No.: Enter tender number and, if applicable, supplement number. This number is the discrete, consecutive number assigned to each tender or supplement by the issuer for identification purposes as prescribed by the ICC (49 CFR 20.5(e)).

Cancels—Supplement Nos.—Contain all changes: If this issuance cancels either a tender or a supplement, enter the canceled tender or supplement number. Also, enter the number of each supplement remaining in effect with this issuance.

Block 3

Tendered to: A. (Optional) Carriers are encouraged to make tenders applicable to the U.S. Government. If a specifc reason exists for restricting application to a single agency, delete U.S. Government and enter the appropriate agency.

B. GSA only, household goods. Tenders covering household goods under GSA Tender of Service shall be issued as follows: For the account of the U.S. Government except the DOD and the U.S. Coast Guard.

Block 4

Issue date: Enter date of issue. Note information in block 20(e).

Block 5

Effective date: Enter date tender is to become effective. Note information in block 20(e).

Block 6

Expiration date: (Optional) Enter date tender is to expire. Tenders may be supplemented to renew, change, or cancel at any time during the effective period. Note information in block 20(e), and see Section D for special instructions for preparation of supplements.

Block 7

Movement application: Check appropriate box.

Block 8

Action code: Applicable to supplements only. Check appropriate box(es) for this issuance.

Block 9

Carrier file No.: (Optional) For carrier's internal use.

Block 10

Freight classification and commodity description: Enter NMFC or UFC item number(s), and subnumber, if applicable, and description of articles. Item No. 999999 will be used for freight, all kinds, and Item No. 1000 for uncrated household goods and/or personal effects. If this tender is for services only, leave block 10 blank and enter appropriate information under block 17. Regardless of the scope of the NMFC or UFC number, the description of articles shall govern the commodity(ies) covered by the tender.

Block 11

Origin/destination: Enter SPLC and point name (city or Government facility), county, and State for origin and destination. If "Between" movement application is checked in block 7, tender will apply in each direction.

Block 12

Load application: Check appropriate box. If the tender includes both CL-TL and LCL-LTL rates, check both "load" and "less load" boxes. Check "overflow not applicable" only if governing tariff provisions do not provide for overflow or if the tender provisions will supersede the tariff provisions.

Block 13

Rate or charge/minimum weight(s): Enter rate or charge and basis (cents per hundredweight (cwt.), charge per shipment, etc.,) and applicable minimum weights and basis (LCL, LTL, CL, TL, AQ, PVU, etc.).

Block 14

Route: Enter alphabetical code (note block 1 instructions) for each carrier participating in route, and enter SPLC for each interchange point.

Block 15

Protective services: If applicable, check box for appropriate service and enter rate or charge and basis (cents per cwt., charge per shipment, etc.).

Block 16

Classifications and exceptions: If different from printed statement, enter applicable classifications, rules, and exceptions tariffs.

[1] Published by National Motor Freight Traffic Association, Inc., Agent.

Block 17

Accessorial services: If applicable, enter rate or charge and basis (cents per cwt., charge per shipment, etc.) and description of accessorial services to be furnished. If accessorial services are to be furnished at no additional charge, show "No Charge" in rate or charge block.

Block 18

Operating authority: Enter the carrier(s) operating authority references applicable to the services offered. If operating authority is not required, show "none required".

Block 19

Combination rates: Check one box for the applicable provision.

Block 22

Signature(s) of party(ies) representing carrier(s): For issuing carrier, bureau, agency, and conference and all participating carriers print or type required information, including title of authorized officer or agent. Telephone numbers are helpful but not required. The requisite number of signed copies shall be manually signed by the authorized officer or agent of the issuing carrier and all participating carriers.

SECTION D—SPECIAL INSTRUCTIONS FOR COMPLETION OF FORMAT FOR SUPPLEMENTS

1. The minimum information required for issuance of a supplement is listed below.
a. Name of issuing carrier, bureau, agency, or conference, and carrier code (block 1).
b. Tender and supplement numbers (block 2).
c. Issue date (block 4).
d. Effective date (block 5).
e. Action code (block 8).
f. Freight classification and description of commodity or service (block 10).
g. Origin and destination (block 11).
h. Authorized signature(s) (block 22).
i. Description of change to tender unless included in one of above blocks.

2. Particular attention should be given to the following:

a. *Expiration date.* (Block 6) (Optional) If the intent of the supplement is to carry forward an expiration date without change, the expiration date should be entered on the supplement. Leaving this block blank on the supplement will change expiration date to "none."

b. *Partial changes of a block.* If any block containing multiple entries is changed, the block must clearly specify change, such as "Add: (Commodity)," "Delete: (Destination)," "Increase: (Rate, M/W)." Entering changed data only without instructions will change the entire block to read as shown on the supplement.

c. *Blanket supplements.* Blanket supplements will be acceptable if the number of copies specified in item 4, Section A, is furnished for each supplemented tender.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).)

Dated: October 25, 1978.

WILLIAM P. KELLY, JR.,
Commissioner,
Federal Supply Service.

[FR Doc. 78-31489 Filed 11-6-78; 8:45 am]

[4110-35-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Care Financing Administration

[42 CFR Part 405]

FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Conditions for Coverage—Suppliers of ESRD Services; Revocation of Requirements for Emergency Generator and Ground Fault Interrupters

AGENCY: Health Care Financing Administration (HCFA), HEW.

ACTION: Notice of proposed rulemaking.

SUMMARY: These amendments would remove the requirements for emergency generators and ground fault interrupters in end-stage renal dialysis facilities. The purpose is to reduce unnecessary and burdensome requirements without adversely affecting the health and safety of patients.

DATES: Consideration will be given to written comments and suggestions received by January 8, 1978.

ADDRESSES: Address comments to:

Administrator, Health Care Financing Administration, P.O. Box 2381, Washington, D.C. 20013.

In commenting, please refer to HSQ-42-P. Comments will be available for public inspection beginning approximately 2 weeks after publication, in room 5231 of the Department's offices at 330 C Street SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5 p.m., telephone 202-245-0950.

FOR FURTHER INFORMATION, CONTACT:

Janet Harryman, 301-594-9712.

SUPPLEMENTARY INFORMATION: The conditions for Coverage of Suppliers of End-Stage Renal Disease Services, which were published on June 3, 1976 (41 FR 22502) are set forth in 42 CFR Part 405, Subpart U. ESRD facilities are currently required to have an alternate power source provided by an emergency generator, and to have ground fault interrupters in electrical circuits. (See 42 CFR 405.2140(a) (4) and (6).)

The existing requirements for emergency generators and ground fault interrupters have received adverse comment since their publication. The comments generally have been that an emergency generator is not necessary to the health and safety of patients and, therefore, that the expense of acquiring a generator is not justified. The comments have also suggested that there is no need for ground fault interrupters in dialysis facilities because these facilities are not normally subject to wet conditions.

The medical directors of 20 hospital-based dialysis units and 38 nonhospital-based dialysis units were informally surveyed with respect to the necessity for an auxiliary electric generator in the event of a power failure. More than half of the respondents indicated that absence of a generator does not adversely affect patient health safety; 44 of the 58 respondents indicated that an adequate staff-patient ratio and patient training were sufficient to obviate the need for an electric generator.

The National Electrical Code requires ground fault interrupters in electrical circuits of units that are subject to continuously wet conditions. The standards promulgated by HEW to implement the Hill-Burton Act classify dialysis facilities among those subject to continuously wet conditions. The present Subpart U requirements that dialysis facilities have ground fault interrupters in electrical circuits was intended to be consistent with the Hill-Burton Act. However, the Health Resources Administration, which administers the Hill-Burton standards, has requested the Secretary to remove dialysis facilities from the list of units that are subject to continuously wet conditions.

Consequently, we are proposing to delete, from Part 405, Subpart U, the requirements for emergency generators and ground fault interrupters.

§ 405.2140 [Amended]

42 CFR 405.2140 is amended by vacating and reserving paragraph (a)(4) and revoking paragraph (a)(6).

(Sections 226g, 1102, 1871, Social Security Act; 42 U.S.C. 426(g), 1302, 1395hh.)

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare—Hospital Insurance; No. 13.744, Medicare—Supplementary Medical Insurance.)

Dated: September 18, 1978.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

Approved: November 1, 1978.

JOSEPH A. CALIFANO, JR.,
Secretary.

[FR Doc. 78-31485 Filed 11-6-78; 8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

[6110-01-M]

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

COMMITTEE ON RULEMAKING AND PUBLIC INFORMATION

Public Meetings

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of two meetings of the Committee on Rulemaking and Public Information of the Administrative Conference of the United States, to be held in the Library of the Conference, 2120 L Street NW., Suite 500, Washington, D.C. One meeting will be held at 10:30 a.m. on December 1, 1978, and the other will be held at 10:30 a.m. on December 14, 1978.

The Conference's project on Federal Trade Commission trade regulation rulemakings will be the subject of both meetings.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify this office at least two days in advance of each meeting. The Committee Chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meetings; any member of the public may file a written statement with the Committee before, during or after the meetings.

For further information concerning these meetings, contact Stephen L. Babcock 202-254-7020. Minutes of the meetings will be available on request.

RICHARD K. BERG,
Executive Secretary.

OCTOBER 31, 1978.

[FR Doc. 78-31380 Filed 11-6-78; 8:45 am]

[3410-02-M]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

PACKERS AND STOCKYARDS: ST. JOHNS HORSE AUCTION, ASHLEY, MICH., ET AL.

Proposed Posting of Stockyards

Correction

In FR Doc. 78-30519 appearing on page 50488 in the issue for Monday, October 30, 1978, the date given in the 3rd column, 2nd paragraph, 9th line, should be November 14, 1978, instead of November 29, 1978.

[3410-11-M]

Forest Service

CARIBOU NATIONAL FOREST GRAZING ADVISORY BOARD COMMITTEE

Meeting

The Caribou National Forest Grazing Advisory Board Committee will meet at *1:00 p.m., December 5, 1978,* in the *Conference Room, in the basement of the Federal Building at 250 South Fourth Street, Pocatello, Idaho.*

The purpose of this meeting is to secure recommendations for use of the range betterment funds and grazing allotment plans.

The meeting will be open to the public. Persons who wish to attend should notify Frank G. Beitia, Caribou Supervisor's Office, telephone 208-236-6705. Written statements will be filed with the Board before or after the meeting.

The Board has established the following rule for public participation: Non-livestock owners are asked to withhold comments until the close of business.

Dated: October 30, 1978.

FRANK G. BEITIA,
Acting Forest Supervisor.

[FR Doc. 78-31382 Filed 11-6-78; 8:45 am]

[3410-11-M]

MALHEUR NATIONAL FOREST GRAZING ADVISORY BOARD

Meeting

The Malheur National Forest Grazing Advisory Board will meet at 1:00 p.m. PST, December 19, 1978 at Lyons Annex, second building north of Malheur National Forest Headquarters, 139 N.E. Dayton, John Day, OR 97485. The purpose of this meeting is to organize and elect officers, and to advise and make recommendations to the Forest Supervisor pertaining to the development of allotment management plans and the utilization or range betterment funds.

The meeting will be open to the public. Persons who wish to attend should notify the Forest Supervisor, Malheur National Forest, 139 N.E. Dayton, John Day, OR 97845; Phone (503) 575-1731. Written statements may be filed with the committee before or after the meeting.

The committee has established the following rules for public participation: Rules for public participaton will be announced at the beginning of the meeting by the president officer.

DAN E. WILLIAMS,
Forest Supervisor.

OCTOBER 27, 1978.

[FR Doc. 78-31381 Filed 11-6-78 8:45 am]

[3410-15-M]

Rural Electrification Administration

UNITED POWER ASSOCIATION

Final Environmental Impact Statement

Notice is hereby given that the Rural Electrification Administration has prepared a final environmental impact statement in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, in connection with a request for a loan guarantee commitment from the Rural Electrification Administration for United Power Association of Elk River, Minn. This loan guarantee commitment is planned to assist in obtaining financing for the construction of a 60 MW supplemental steam generator planned for construction at United Power Association's Stanton Generating Station near Stanton, N. Dak.

Additional information may be secured on request, submitted to Mr. Richard F. Richter, Assistant Administrator-Electric, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250. The Final Environmental Impact Statement may be examined during regular business hours at the offices of REA in the South Agriculture Building, 12th Street and Independence Avenue SW., Washington, D.C., or at the borrower address indicated above.

Final REA action with respect to this matter (including any release of funds) may be taken after thirty (30) days, but only after REA has reached satisfactory conclusions with respect to its environmental effects and after requirements set forth in the National Environmental Policy Act of 1969 have been met.

V 43/216 NOV 7 78 UMI

V 43 / 216 NOV 7 1978 UMI

Dated at Washington, D.C., this 30th day of October 1978.

DAVID A. HAMIL,
Administrator, Rural Electrification Administration.

[FR Doc. 78-31225 11-6-78; 8:45 am]

[6320-01-M]

CIVIL AERONAUTICS BOARD

TEXAS INTERNATIONAL AIRLINES, INC.

Application for Certificate Amendment

OCTOBER 31, 1978.

Notice is hereby given that the Civil Aeronautics Board on October 27, 1978, received an application, Docket 33862, from Texas International Airlines, Inc. for amendment of its certificate of public convenience and necessity for route 82 so as to delete the requirement that one intermediate stop be made on services between Dallas/Fort Worth, Tex., and Lubbock, Tex.

The applicant requests that its application be processed under the expedited procedures set forth in Subpart M of Part 302 (14 CFR Part 302).

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-31481 Filed 11-6-78; 8:45 am]

[6335-01-M]

COMMISSION ON CIVIL RIGHTS

ARIZONA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a Planning meeting of the Arizona Advisory Committee (SAC) of the Commission will convene at 10 a.m. and will end at 4 p.m. on December 2, 1978, in the Ramada Inn, 3801 East Van Buren, Phoenix, Ariz. 85008.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Western Regional Office of the Commission, 312 North Spring Street, Room 1015, Los Angeles, Calif. 90012.

The purpose of this meeting is that the State Advisory Committee will discuss program planning and prioritize activities for fiscal year 1981.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., October 31, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-31359 Filed 11-6-78; 8:45 am]

[6335-01-M]

MAINE ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Maine Advisory Committee (SAC) of the Commission will convene at 7:30 p.m. and will end at 10 p.m. on December 18, 1978, at the Maine Teachers Association, Augusta, Maine.

Persons wishing to attend this open meeting should contact the committee chairperson, or the Northeastern Regional Office of the Commission, 26 Federal Plaza, Room 1639, New York, N.Y. 10007.

The purpose of this meeting is to review fiscal year 1981 program.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., October 31, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-31360 Filed 11-6-78; 8:45 am]

[6335-01-M]

MASSACHUSETTS ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Massachusetts Advisory Committee (SAC) of the Commission will convene at 3:30 p.m. and will end at 5 p.m. on December 1, 1978, at the Hyatt Regency, Cambridge, Mass.

Persons wishing to attend this open meeting should contact the committee chairperson, or the Northeastern Regional Office of the Commission, 26 Federal Plaza, Room 1639, New York, N.Y. 10007.

The purpose of this meeting is to discuss program planning.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., October 31, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-31361 Filed 11-6-78; 8:45 am]

[6335-01-M]

NEVADA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisons of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Nevada Advisory Committee (SAC) of the Commission will convene at 7:30 p.m. and will end at 10 p.m. on December 1, 1978, in the Marina Hotel, 3800 Las Vegas South, Las Vegas, Nev.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Western Regional Office of the Commission, 312 North Spring Street, Room 1015, Los Angeles, Calif. 90012.

The purpose of this meeting is that the State Advisory Committee will discuss program planning and prioritize activities for fiscal year 1981.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., October 31, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-31362 Filed 11-6-78; 8:45 am]

[6335-01-M]

NEW HAMPSHIRE ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the New Hampshire Advisory Committee (SAC) of the Commission will convene at 12 noon and will end at 2:30 p.m. on December 14, 1978, in the Howard Johnson, Manchester, N.H.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Northeastern Regional Office of the Commission, 26 Federal Plaza, Room 1639, New York, N.Y. 10007.

This meeting will be to discuss program planning.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., October 31, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-31363 Filed 11-6-78; 8:45 am]

[6335-01-M]

NEW JERSEY ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the New Jersey Advisory Committee (SAC) of the Commission will convene at 7 p.m. and will end at 9 p.m. on December 11, 1978, Sateway Holiday Inn, Newark, N.J.

Persons wishing to attend this open meeting should contact the committee chairperson, or the Northeastern Regional Office of the Commission, 26 Federal Plaza, Room 1639, New York, N.Y. 10007.

The purpose of this meeting is to discuss program planning.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., October 31, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-31364 Filed 11-6-78; 8:45 am]

[6335-01-M]

NORTH DAKOTA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the North Dakota Advisory Committee (SAC) of the Commission will convene at 9:30 p.m. and will end at 12 noon on November 30, 1978, in the United Tribes Technical Center, Conference Room, Building 61, 3315 South Airport Road, Bismarck, N.D.

Persons wishing to attend this open meeting should contact the Committee chairperson, or the Rocky Mountain Regional Office of the Commission, 1405 Curtis Street, Suite 1700, Denver, Colo. 80202.

SAC participants will decide on five or six State projects and/or program that will have priority for fiscal years 1979 and 1980. Also follow-up on "Native American Justice Issues in North Dakota."

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., October 31, 1978.

JOHN I. BINKLEY,
Advisory Committee, Management Officer.

[FR Doc. 78-31365 Filed 11-6-78; 8:45 am]

[6335-01-M]

REGIONAL ADVISORY COMMITTEES

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Arkansas, Louisiana, Oklahoma, Texas, and New Mexico Advisory Committees (SACS) of the Commission will convene at 12 noon and will end at 5 p.m. on November 30, 1978, La Mansion del Norte (Board Rooms 1 and 2) 37 Northeast Loop, 410 San Antonio, Tex. 78216.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Southwestern Regional Office of the Commission, Heritage Plaza, 418 South Main, San Antonio, Tex. 78240.

The Regional SAC planning meeting to discuss fiscal year 1979 pertaining to their prespective States.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., October 31, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-31358 Filed 11-6-78; 8:45 am]

[6335-01-M]

SOUTH CAROLINA ADVISORY COMMITTEE

Amendment

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the South Carolina (SAC) of the Commission originally scheduled for November 30, 1978 (FR Doc. 78-29253) on page 47766 has been changed to December 8, 1978.

The meeting place and time will remain the same.

Dated at Washington, D.C., October 31, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-31366 Filed 11-6-78; 8:45 am]

[6335-01-M]

UTAH ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Utah Advisory Committee (SAC) of the Commission will convene at 7 p.m. and will end at 9:30 p.m. on November 30, 1978, at 440 East First South, Library, Salt Lake City Board of Education, Salt Lake, Utah.

Persons wishing to attend this open meeting should contact the committee chairperson, or the Rocky Mountain Regional Office of the Commission, 1405 Curtis Street, Suite 1700, Denver, Colo. 80202.

The purpose of this meeting is for the SAC to develop plans for projects to be conducted over the next 2 years.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., October 31, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-31367 Filed 11-6-78; 8:45 am]

[6335-01-M]

VERMONT ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Vermont Advisory Committee (SAC) of the Commission will convene at 7 p.m. and will end at 9:30 p.m. on November 29, 1978, in the Tavern Motor Inn, Montpelier, Vt.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Northeastern Regional Office of the Commission, 26 Federal Plaza, Room 1639, New York, N.Y. 10007.

The purpose of this meeting is to discuss program planning.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., October 31, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-31368 Filed 11-6-78; 8:45 am]

[3510-07-M]

DEPARTMENT OF COMMERCE

Bureau of the Census

ANNUAL WHOLESALE TRADE

Notice of Consideration

Notice is hereby given that the Bureau of the Census is planning to conduct in 1979 the Annual Wholesale Trade Survey. This survey will be conducted under Title 13, United States Code, Sections 182, 224, and 225. This survey will be conducted to collect data covering yearend inventories and annual sales of firms engaged in wholesale trade. This survey, which would provide data for 1978, is the only source available on a comparable classification basis for use as a benchmark for statistical estimates of wholesale trade.

Information and recommendations received by the Bureau of the Census indicate that the data will have significant application to the needs of the public, the distribute trades, and governmental agencies, and that the data

are not publicly available from nongovernmental or other governmental sources.

Such a survey, if conducted, shall begin not earlier than December 31, 1978.

Reports will be required only from a selected sample of merchant wholesale firms operating in the United States with probability of selection based on sales size. The sample will provide, with measurable reliability, statistics on the subject specified above.

Copies of the proposed forms and a description of the collection methods are available upon request to the Director, Bureau of the Census, Washington, D.C. 20233.

Any suggestions or recommendations concerning the subject matter of this proposed survey will receive consideration if submitted in writing to the Director, Bureau of the Census, on or before December 31, 1978.

Dated: November 2, 1978.

MANUEL D. PLOTKIN,
Director, Bureau of the Census.

[FR Doc. 78-31466 Filed 11-6-78; 8:45 am]

[3510-25-M]

Industry and Trade Administration

[Transmittal No. 240; Order No. 41-1 (Amdt. 2); D.O.O. Reference 10-3, 40-1; effective date Oct. 17, 1978]

DEPUTY ASSISTANT SECRETARY FOR ADMINISTRATIVE AND LEGISLATIVE POLICY

Organization and Function Order

This order amends ITA Organization and Function Order 42-1 of December 4, 1977 (43 FR 9184) as follows:

Section 12.02 (Publications Division) is renumbered as section 12.03.

1. Section 12.01 is revised to read:

.01 The *Office of Public Affairs* shall be headed by a *Director* who shall be responsible for furnishing public affairs and information services to the Industry and Trade Administration. The *Business America Staff* within the Office of the Director shall prepare and publish *Business America*. The Director shall direct the following Divisions:

2. The attached organization chart [1] supersedes the organization chart dated December 1977.

FRANK A. WEIL,
Assistant Secretary for Industry and Trade.

[FR Doc. 78-31422 Filed 11-6-78 8:45 am]

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[1] Filed as part of the original document.

[3510-25-M]

EXPORTERS' TEXTILE ADVISORY COMMITTEE

Public Meeting

Pursuant to Section 10(a) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the Exporters' Textile Advisory Committee will be held at 10 a.m., on December 7, 1978, in Room 3817, U.S. Department of Commerce, Main Commerce Building, 14th and Constitution Avenue NW., Washington, D.C. 20230.

The Committee, which is comprised of 20 members involved in textile and apparel exporting, advises Department officials concerning ways of increasing U.S. exports to textile and apparel products.

The agenda for the meeting is as follows:

1. Review of Export Data.
2. Report on Conditions in the Export Market.
3. Recent Foreign Restrictions Affecting Textiles.
4. Other Business.

A limited number of seats will be available to the public on a first come basis. The public may file written statements with the Committee before or after the meeting. Oral statements may be presented at the end of the meeting to the extent time is available.

Copies of the minutes of the meeting will be made available on written request addressed to the ITA Freedom of Information Officer, Freedom of Information Control Desk, Room 3100, U.S. Department of Commerce, Washington, D.C. 20230.

Further information concerning the Committee may be obtained from Arthur Garel, Director, Office of Textiles, Main Commerce Building, U.S. Department of Commerce, Washington, D.C. 20230, telephone 202-377-5078.

Dated: November 1, 1978.

EDWARD GOTTFRIED,
Acting Director, Office of Textiles.

[FR Doc. 78-31441 Filed 11-6-78; 8:45 am]

NORTHWESTERN UNIVERSITY

Decision on Application for Duty-Free Entry of Scientific Article

Correction

In FR Doc. 29450 appearing at page 48676 in the issue for Thursday, October 19, 1978, on page 48677 the first line of the second full paragraph should be corrected to read "Docket No.: 78-0239."

[3510-15-M]

Maritime Administration

[Docket No. S-626]

FARRELL LINES INC.

Show Cause Notice

Notice was given in the FEDERAL REGISTER on June 7, 1978 (43 FR 24724), Docket No. S-611, that Farrell Lines Inc. (Farrell) has filed an application dated May 22, 1978, with the Maritime Subsidy Board (Board), pursuant to Title VI (46 U.S.C. 1171-1183) of the Merchant Marine Act, 1936, as amended (the Act), for a 1-year operating-differential subsidy agreement (ODSA) on trade routes (TRs) 5-7-8-9, 10, 12, and 18. If Farrell is granted a 1-year ODSA, it will begin upon the termination of its current contract, FMB-87, which terminates on December 31, 1979, and run until the earlier of: (1) December 31, 1980, including voyages in progress as of that date, or (2) completion of the administrative processing of Farrell's applications for 20-year contracts to replace Contract No. FMB-87 insofar as (a) the TR 18 service (Docket No. S-547) and (b) the TRs 5-7-8-9, 10, and 12 services (Docket No. S-610) are concerned.

American Export Lines, Inc. (AEL) held ODSA, Contract No. FMB-87, until March 28, 1978, when AEL was merged with and into Farrell in accordance with procedures established by the Bankruptcy Court of the Southern District of New York in Chapter XI proceedings involving AEL's parent, American Export Industries, Inc. It is noted that all references to Farrell's services on TRs 5-7-8-9, 10, 12, and 18 before March 28, 1978, are actually references to the service provided by Farrell's predecessor, AEL.

Farrell proposes to provide the same services on TRs 5-7-8-9, 10, 12, and 18 as it currently is providing under Contract No. FMB-87 or as may be modified by Docket No. S-544, Farrell's application to modify its TR 18 service under its existing ODSA. The service descriptions and sailing minima and maxima under the proposed 1-year contract are as follows:

Service	Sailing minimum	Sailing maximum
Line I, TR 5-7-8-9 (U.S. North Atlantic/Western Europe)	40	55
Line B, TR 10 (U.S. Atlantic/Mediterranean and Black Seas)	65	95
Line D, TR 12 (U.S. Atlantic/Far East)	20	30
Line E, TR 18 (U.S. Atlantic/India)	18	25

Farrell has proposed to provide the services applied for in the subject application with the 24 vessels currently assigned to Contract No. FMB-87. These are 15 C-3 and C-4 type breakbulk vessels, 5 C-5 containerships, and 4 Ro/Ro vessels. Request has been made and approval has been given to Farrell for the early withdrawal of three C-4 breakbulk vessels against the delivery of two C-5 containership replacement vessels, which will reduce the number of vessels to 23. Farrell has certain interchange and transfer privileges of vessels assigned to Contract No. FMB-87, has interchange (substitution) rights for breakbulk vessels between Contract No. FMB-87 and its other ODSA, Contract No. MA/MSB-352, and has requested certain transfer rights for breakbulk vessels, C-5 containerships, Ro/Ro vessels and C-6 containerships between services in those contracts.

Farrell's applications for a modification of its TR 18 service (Docket No. S-544) and for a new long-term ODSA on TR 18 (Docket No. S-547) have been consolidated in hearing with several other TR 18 applications under Docket No. S-543, et al. Farrell's application for a long-term ODSA on TRs 5-7-8-9, 10, and 12 has been referred for a hearing under section 605(c) of the Act.

Farrell's Notice of Application for its 1-year ODSA stated that "Any person having an interest in such application who desires to offer views and comments thereon for consideration by the Maritime Subsidy Board should submit them in writing in triplicate to the Secretary, Maritime Subsidy Board, by the close of business on June 19, 1978." Petitions for Leave to Intervene under Docket No. S-611 were received from Lykes Bros. Steamship Co., Inc. (Lykes), Prudential Lines, Inc. (PLI) and Waterman Steamship Corp. (Waterman). All requested a hearing under section 605(c) of the Act. By stipulation between Farrell and Lykes, dated September 29, 1978, Lykes withdrew its protest and will not oppose the application under section 605(c). The U.S.-flag operators on Trade Route No. 5-7-8-9 are Sea-Land Service, Inc. (Sea-Land), United States Lines, Inc. (U.S. Lines), Waterman and Farrell. Sea-Land operates its service on TR 5-7-8-9 with three containerships, providing weekly sailings. These vessels have a dead weight of between 26,600 and 27,300 tons and a bale cubic capacity of about 2,335,000 cubic feet. Each vessel has a container capacity of approximately 2,000 20-foot-equivalent units (TEU's). Normal ports of call for Sea-Land are New York, Norfolk, Bremerhaven, Rotterdam, and Algeciras.

U.S. Lines operates its service on TR 5-7-8-9 with eight C-6 containerships, providing twice-weekly sailings. These vessels have a dead weight of between 15,200 and 15,500 tons and a bale cubic capacity of approximately 1,047,000 cubic feet. The container capacity of those vessels is 1069 TEU's. Normal ports of call for U.S. Lines are New York, Philadelphia, Baltimore, Norfolk, Charleston, Savannah, Jacksonville, Rotterdam, Felixstowe, Bremerhaven, and Hamburg.

Waterman offers unsubsidized monthly service on TR 5-7-8-9 with two C-4, 15,000 deadweight ton (DWT), breakbulk vessels. These vessels have a bale cubic capacity of approximately 738,000 cubic feet. Waterman's normal ports of call are New Orleans, Mobile, Houston, New York, Bayonne, Wilmington, N.C., Leningrad and Bremerhaven.

Farrell serves TR 5-7-8-9 with one C-5 Ro/Ro vessel and two C5 containerships. These vessels are 15,700 dwt and have a bale cubic capacity of about 1,194,000 cubic feet. The Ro/Ro/ has a container capacity of 810 TEU's while the containerships have a container capacity of 1070 TEU's each. Farrell made 45 unsubsidized voyages on TR 5-7-8-9 in both 1974 and 1975, 35 subsidized and 14 unsubsidized voayages during 1976, 42 subsidized voyages and one unsubsidized voyage during 1977 and 21 subsidized voayages during the first 6 months of 1978. Farrell's normal ports of call are New York, Baltimore, Norfolk, Amsterdam, Bremerhaven, Felixstowe and Le Havre.

U.S.-flag vessels carried 34 percent of the inbound cargo on TR 5-7-8-9 in 1974 and 32 percent of the inbound cargo during each of the years 1975, 1976, 1977 and for the first quarter of 1978. U.S.-flag vessels carried 31 percent, 29 percent, 30 percent, 31 percent and 29 percent of the outbound cargo on TR 5-7-8-9 for the years 1974, 1975, 1976, 1977 and for the first quarter of 1978, respectively.

The U.S.-flag operators with direct sailings on TR 10 are PLI and Farrell. It should also be noted that Sea-Land's line haul SL-7 vessels connect at Rotterdam with U.S.-flag feeder vessels which carry TR 10 cargo to the Mediterranean area in lieu of direct sailings on TR 10 from the United States. Sea-Land maintained a direct service on TR 10 in 1974, 1975 and 1976 and made, 50, 49 and 54 sailings, respectively.

PLI operates three LASH vessels on TR 10. PLI's LASH vessels have a dwt of 29,800, can accommodate 73 barges and have a bale cubic capacity of 1,560,000 cubic feet. During the years 1974, 1975, 1976, 1977, and for the first 6 months of 1978, PLI made 26, 41, 35, 24, and 9 sailings, respectively, on TR 10. The normal U.S. ports of call for PLI on TR 10 are New York, Philadelphia, Norfolk, Newport News, Savannah, Charleston and Jacksonville. Foreign ports on TR 10 that PLI normally calls include Alexandria, Bandirma, Istanbul, Constanta, Salonika, Cadiz, Kenitra, Piraeus, Arzew, Port Said, Iskenderun, Tartous, Ilichevsk, Beirut, Oran, Casablanca, Algeciras, Izmir, and Eregli.

Farrell serves TR 10 with three C5 Ro/Ro's, three C5 containerships and three C3 breakbulk vessels. The Ro/Ro's have a deadweight of 15,700 tons and a container capacity of 810 TEU's. The bale cubic capacity of the vessels is approximately 1,193,000 cubic feet. The dwt of the containerships is 16,300 tons and the container capacity is 1070 TEU's. The bale cubic capacity of the containerships ranges from approximately 952,000 cubic feet to approximately 1,126,000 cubic feet. The breakbulk vessels have a deadweight of 12,700 tons and their bale cubic capacity varies from approximately 705,000 cubic feet to approximately 716,000 cubic feet. Farrell made 63, 69, 65, 55, and 27 sailings on TR 10 during 1974, 1975, 1976, 1977, and the first 6 months of 1978, respectively. U.S. ports served by Farrell on TR 10 are New York, Bayonne, Philadelphia, Savannah, Baltimore, and Charleston. Foreign ports served by Farrell on TR 10 include Cadiz, Barcelona, Naples, Piraeus, Istanbul, Izmir, Iskenderun, Haifa, Leghorn, Genoa, Marseille, Casablanca, Alicante. Valencia, Tunis, Rijeka, and Alexandria.

During the years 1974, 1975, 1976, and 1977, U.S.-flag vessels carried 49 percent, 50 percent, 45 percent and 39 percent, respectively, of the inbound cargo carried on TR 10 and 48 percent, 55 percent, 48 percent, and 36 percent, respectively, of the outbound cargo on TR 10. During the first quarter of 1978 on TR 10, U.S.-flag ships carried 41 percent of the inbound cargo and during the first quarter of 1978, U.S.-flag ships carried 35 percent of the outbound cargo.

Farrell's privileged service on TR 10 includes service from the U.S. South Atlantic to the Mediterranean, which is part TR 13, and from ports in the Great Lakes to ports in the Mediterranean, Trade Area 4. Lykes has established U.S.-flag service on both TR 13 and Trade Area 4. PLI also serves South Atlantic ports on TR 13, as indicated under the discussion on TR 10.

Farrell called at South Atlantic ports on 40 voyages made on its TR 10 service in 1976 and on 33 such voyages in 1977. During 1976, Farrell carried approximately 59,000 tons of outbound commercial cargo on TR 13 and

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about 22,000 tons of inbound commercial cargo. Farrell has not provided any service on Trade Area 4 since 1969.

During 1977, Lykes served TR 13 with 13 C5 freighters, 8 C4 freighters and 3 C3 freighters. All of these vessels, however, did not serve TR 13 for the entirety of the year. Normal operations would include approximately 12 vessels for year-round service. The C5 vessels have a deadweight of 14,300 tons, a bale cubic capcity of 796,000 cubic feet (less if cellular hatch no. 4 is used for containers) and a container capacity of 185 TEU's. The C4 vessels have a deadweight of 14,600 tons, a bale cubic capacity of approximately 750,000 cubic feet and a container capacity of 118 TEU's. The C3 vessels have a deadweight of 12,700 dwt, a bale cubic capacity of 562,000 cubic feet and a container capacity of between 79 and 86 TEU's. Lykes made 37, 40, 48, 50, and 28 sailings on TR 13 during 1974, 1975, 1976, 1977, and the first 6 months of 1978, respectively. Of these, 5, 6, 17, and 15 sailings were on the Sounth Atlantic portion of TR 13 during 1974, 1975, 1976, and 1977, resepctively. Data for the first 6 months of 1978 was not available as to which of Lykes sailings on TR 13 were made on the South Atlantic portion of TR 13. U.S. ports of call for Lykes on TR 13 are Beaumont, New Orleans, Mobile, Galveston, Orange, Port Arthur, Houston, Wilmington, N.C., Charleston and Jacksonville. Foreign ports of call for Lykes on TR 13 are Casablanca, Leghorn, Marseille, Cadiz, Constanta, Istanbul, Alexandria, Augusta, Piraeus, Valencia, Haifa, and Ashdod.

U.S.-flag carriage on TR 13 during 1974, 1975, 1976, and 1977, respectively, was 32, 31, 35, and 40 percent of inbound cargo carriage and 38, 39, 39, and 35 percent of outbound cargo carriage. U.S.-flag vessels carried 38 percent of the inbound cargo during the first quarter of 1978 and 37 percent of the outbound cargo during the first quarter of 1978. On the South Atlantic portion of TR 13, U.S.-flag vessels carried 46 and 47 percent, respectively, of the inbound cargo during 1975 and 1976 and 48 and 36 percent, respectively of the outbound cargo.

Lykes serves Trade Area 4 with three 14,300 dwt C-5 freighters. These vessels have a container capacity of 285 TEU's and bale cubic capacity of 790,000 cubic feet (less if cellular hatch No. 4 is used for containers). Lykes made 6, 8. 11, and 2 voyages on Trade Area 4, respectively, during 1975, 1976, 1977, and the first 6 months of 1978. Lykes regularly serves the following ports on Trade Area 4: Green Bay, Milwaukee, Detroit, Cleveland, Erie, Chicago, Kenosha, Toledo, Montreal, Mersin, Iskenderun, Alexandria, Salonika, Derince, Kherson, Leghorn, Marseille, Cadiz, Suez Canal, Jeddah, Assab, Bombay, Cochin, and Casablanca. U.S.-flag vessels carried 3 percent of the inbound cargo on Trade Area 4 during 1977 and 32 percent of the outbound cargo on Trade Area 4 during 1977.

U.S. Lines, Waterman, and Farrell are the U.S.-flag operators on TR 12. U.S. Lines operates eight C-7 containerships with a container capacity of 1,330 TEU's each on TR 12. The dwt of these vessels varies from 20,600 to 22,200 tons and the bale cubic capacity per vesel is approximately 1,335,000 cubic feet. U.S. Lines offers weekly service on TR 12 and regularly serves New York, Baltimore, Norfolk, Savannah, Long Beach, Oakland, Honolulu, Hong Kong, Kobe, Yokohama, and Guam.

Waterman serves TR 12 and TR 22 with five C-4 breakbulk vessels whose bale cubic capacity ranges from about 716,000 to about 738,000 cubic feet. The deadweight of the vessels is 13,400 to 13,500 tons. Waterman has made 22, 13, 8, 3, and 5 sailings on TR 12 during 1974, 1975, 1976, 1977 and the first 6 months of 1978, respectively. The ports that Waterman regularly serves include New York, Bayonne, Philadelphia, Baltimore, Orange, Corpus Christi, Houston, New Orleans, Mobile, Galveston, Yokohama, Pusan, Keelung, Kaohsiung, Manila, Dadingas, Davao, and Hong Kong.

Farrell operates on TR 12 with three C-3 breakbulk vessels that bave a bale cubic capacity ranging from about 571,000 cubic feet to about 708,000 cubic feet. The dwt of these vessels varies from 11,100 tons to 12,500 tons. Farrell made 17, 15, 11, 8, and 2 sailings, respectively, in 1974, 1975, 1976, 1977, and the first 6 months of 1978. Additionally, Farrell has made 0, 1, 4, 7, and 4 sailings, respectively, on the predominant inbound leg of TR 12 in 1974, 1975, 1976, 1977, and for the first 9 months of 1978. The ports served by Farrell are Savannah, Charleston, Norfolk, Baltimore, Philadelphia, New York, Pusan, Inchon, Keelung, Kaohsiung, and Kobe.

During the years 1974, 1975, 1976, and 1977, U.S.-flag vessels carried 22, 22, 19, and 17 percent, respectively, of the inbound cargo on TR 12 and 30, 21, 13, and 12 percent, respectively, of the outbound cargo on TR 12. U.S.-flag vessels carried 16 percent of the inbound cargo on TR 12 during the first quarter of 1978 and 11 percent of the outbound cargo on TR 12 during the first quarter of 1978.

The U.S.-flag operators on TR 18 are Central Gulf Lines, Inc. (Central Gulf), Waterman and Farrell. Sea-Land presently serves the Persian Gulf area of TR 18 with U.S.-flag feeder vessels from Western Europe. Sea-Land has announced that in January 1979 it plans to extend this service to Bombay and Cochin on the West Coast of India.

Central Gulf is an unsubsidized operator on TR 18 with LASH vessels of 40,700 to 40,900 dwt. These vessels have a barge-carrying capacity of 89 barges and a bale cubic capacity of approximately 1,736,000 cubic feet. Central Gulf made 15 voyages in 1975, 23 voyages in 1976, and 30 voyages in 1977 on TR 18. Regular ports of call for Central Gulf on TR 18 are Norfolk, Baltimore, New Orleans, Jeddah, and Persian Gulf ports.

Waterman operates on TR 18 with three LASH vessels and four C-4 breakbulk vessels. The LASH vessels have a deadweight of 40,900 tons, a barge-carrying capacity of 89 barges and a bale cubic capacity of about 1,744,000 cubic feet. The breakbulk vessels range in size from 13,700 dwt to 15,500 dwt and have approximate bale cubic capacity varying from 735,000 cubic feet to 760,000 cubic feet. During 1974, 1975, 1976, 1977, and the first 6 months of 1978, Waterman made 21, 25, 28, 22, and 13 sailings, respectively, on TR 18. Waterman's regular ports of call on TR 18 are New Orleans, Houston, Norfolk, New York, Jeddah, Aqaba, Persian Gulf ports, Kandla, Karachi, Bombay, Colombo, Madras, Chittagong, Calcutta, and Assab.

Farrell serves TR 18 with six C-3 breakbulk vessels. These vessels have a dwt of between 11,000 tons and 12,600 tons and a bale cubic capacity ranging from about 506,000 cubic feet to about 708,000 cubic feet. Farrell has made 11, 16, 19, 21, and 10 sailings on TR 18 during 1974, 1975, 1976, 1977, and the first 6 months of 1978, respectively. U.S. ports served by Farrell on TR 18 include New York, Philadelphia, Baltimore, Norfolk, Savannah, Charleston, Houston, Corpus Christi, New Orleans, Lake Charles, Pensacola, and Mobile. The regular foreign ports of calls for Farrell include Alexandria, Port Suez, Jeddah, Karachi, Bombay, Mangalore, Colombo, Madras, Chittagong, Chalna, Calcutta, and Kandla.

U.S.-flag vessels have carried 28, 39, 45, 40, and 38 percent, respectively of the inbound TR 18 cargo during the years 1974, 1975, 1976, 1977 and for the first quarter of 1978. Outbound cargo carriage TR 18 by U.S.-flag vessels for the years 1974 through 1977 and for the first quarter of 1978 was 23, 31, 36, 35, and 34 percent, respectively.

Notice is hereby given that the Board, after consideration of the above-stated facts, is prepared to award a contract on existing services of 55 maximum sailings on TR 5-7-8-9, 70 maximum sailings on TR 10, 20 maximum sailings on TR 12, and 25 maximum sailings on TR 18, for a period to run from the expiration of Contract No. FMB-87 to the earlier of: (1) December 31, 1980, including voyages in progress as of that date, or (2) completion of the administrative processing of Farrell's applications for 20-year contracts to replace Contract No. FMB-87 insofar as (a) the TR 18 service (Docket No. S-547), and (b) the TR's 5-7-8-9, 10, and 12 services (Docket No. S-610), which would not be unduly prejudicial or give undue advantage as between citizens of the United States operating on the above TR's. Such finding is to be without prejudice to any material issue in Docket Nos. S-547 and S-610.

Any person, firm, or corporation having an interest in the application and who would contest the above proposed finding of the Board is invited to file a written statement, by November 28, 1978, showing cause why this finding should not be made. Any party requesting oral argument before the Board shall specifically include such a request in its statement.

Any party desiring an evidentiary hearing on the application should set forth his interest in the application and should, with particularity, articulate any or all of the facts upon which he desires to adduce evidence. Any allegation of undue prejudice or unfair advantage shall be accompanied by a statement describing in detail the undue prejudice or unfair advantage.

All allegations of other factual issues which the party wishes the Board to consider in a hearing on the application shall include: (1) A clear and concise statement of the issues upon which a hearing is desired; and (2) the grounds upon which such allegations rest, in such detail as to permit the Board to determine their exact nature.

(Catalog of Federal Domestic Assistance Program No. 11.504 Operating-Differential Subsidy (ODS).)

Dated: November 2, 1978.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc. 78-31482 Filed 11-6-78; 8:45 am]

[3510-12-M]

National Oceanic and Atmospheric Administration

APPROVAL OF THE MICHIGAN, MARYLAND, NORTH CAROLINA, HAWAII, PUERTO RICO, MAINE, AND THE BAY AND OCEAN SEGMENT OF THE NEW JERSEY COASTAL MANAGEMENT PROGRAMS

Approvals

Notice is hereby given that, pursuant to the authority contained in section 306(a) of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1445(a)), the Assistant Administrator for Coastal Zone Management (on behalf of the Secretary of Commerce) has recently approved the coastal programs of Michigan, Maryland, North Carolina, Hawaii, Puerto Rico, Maine, and the Bay and Ocean Shore Segment of the New Jersey Coastal Program.

Approval activates Federal agency responsibility for being consistent with these programs pursuant to the Federal consistency provisions of the Coastal Zone Management Act as of the date of approval. Further information on the responsibilities of affected Federal agencies in this regard may be found in 15 CFR Part 930, published in the FEDERAL REGISTER, at page 10510, on March 13, 1978.

Below is a complete list of State programs currently approved pursuant to the above Act, the program approval dates, and the agency responsible for administration of the program.

State	Approved date	Administrative agency
Washington	June 1, 1976	Department of Ecology.
Oregon	May 6, 1977	Department of Land Conservation and Development.
California	Nov. 7, 1977*	California Coastal Commission.
Massachusetts	Apr. 24, 1978	Executive Office of Environmental Affairs.
Rhode Island	May 12, 1978	Office of the Governor.
Wisconsin	May 22, 1978	Office of State Planning and Energy.
Michigan	Aug. 15, 1978	Department of Natural Resources.
North Carolina	Sept. 1, 1978	Department of Natural Resources and Community Development, Office of Coastal Zone Management.
Hawaii	Sept. 18, 1978	Department of Planning and Economic Development.
Puerto Rico	....do	Department of Natural Resources.
Maine	Sept. 29, 1978	State Planning Office.
New Jersey (bay and ocean segment).	....do	Department of Environmental Protection, Office of Coastal Zone Management.
Maryland	Sept. 30, 1978	Department of Natural Resources and Coastal Zone Administration.

*Pursuant to an order of the U.S. District Court for the Central District of California, the Federal consistency requirements with respect to the California program became effective on Aug. 31, 1978.

A copy of the written findings made by the Assistant Administrator in determining that the program met the requirements of the Coastal Zone Management Act may be obtained upon request from the Office of Coastal Zone Management. Inquiries regarding the Michigan and Wisconsin programs should be addressed to the Great Lakes Regional Manager; Maryland and North Carolina to the South Atlantic Regional Manager; Washington, Oregon, California, and Hawaii to the Pacific Regional Manager; Puerto Rico to the Gulf Regional Manager; Maine, Massachusetts, the New Jersey Bay and Ocean Shore Segment, and Rhode Island to the North Atlantic Regional Manager; Office of the Coastal Zone Management, Page Building 1, 3300 Whitehaven Street NW., Washington, D.C. 20235.

R. L. CARNAHAN,
Deputy Assistant Administrator for Administration.

[FR Doc. 78-31423 Filed 11-6-78; 8:45 am]

[3510-22-M]

National Oceanic and Atmospheric Administration

GULF OF MEXICO FISHERY MANAGEMENT COUNCIL

Meeting

AGENCY: National Marine Fisheries Service, NOAA.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council established by section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265) will meet to: (1) Review status reports on development of fishery management plans; (2) consider foreign fishing applications, if any; and (3) conduct other fishery management business.

DATES: The meeting will convene on Tuesday, December 5, 1978, at 1:30 p.m. and adjourn at approximately 12 noon on Friday, December 8, 1978. The meeting is open to the public.

ADDRESS: The meeting will take place at Galdo's Motel, 38th, 39th, and Boulevard, Galveston, Tex.

FOR FURTHER INFORMATION CONTACT:

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, Fla. 33609, telephone: 813-228-2815.

Dated: November 1, 1978.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.

[FR Doc. 78-31390 Filed 11-6-78; 8:45 am]

N O 7 7 8 UMI

[3510-22-M]

WESTERN PACIFIC FISHERY MANAGEMENT COUNCIL; SCIENTIFIC AND STATISTICAL COMMITTEE

Meeting

AGENCY: National Marine Fisheries Service, NOAA.

ACTION: Notice of public meeting.

SUMMARY: The Scientific and Statistical Committee of the Western Pacific Fishery Management Council, established by section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265) will meet to discuss the status of fishery management planning for the precious coral, spiny lobster, billfish, bottomfish, and seamount groundfish fisheries.

DATES: The meeting will convene on Tuesday, November 21, 1978, and on Wednesday, November 22, 1978, at 9 a.m. and adjourn at 5 p.m. on both days. The meeting is open to the public.

ADDRESS: The meeting will take place in the Mokihana Room of the Maui Surf Hotel, Kaanapali, Maui, Hawaii.

FOR FURTHER INFORMATION CONTACT:

Wilvan G. Van Campen, Executive Director, Western Pacific Fishery Management Council, Room 1506, 1164 Bishop Street, Honolulu, Hawaii 96813, telephone 808-523-1368.

Dated: November 2, 1978.

WINFRED H. MEIBOHM,
Associate Director,
National Marine Fisheries Service.

[FR Doc. 78-31389 Filed 11-6-78; 8:45 am]

[3510-25-M]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

COTTON, WOOL, AND MAN-MADE FIBER TEXTILE PRODUCTS FROM THE REPUBLIC OF KOREA

Adjusting Import Restraint Level

NOVEMBER 2, 1978.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Deducting carryforward yardage used in categories 333/334/335, 433/434, 443, 633/634/635, 638/639, 641, and 643, during the 15-month agreement period which began on October 1, 1976 and extended through December 31, 1977.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on January 4, 1978 (43 FR 884), as amended on January 25, 1978 (43 FR 3421), March 3, 1978 (43 FR 8828), June 22, 1978 (43 FR 26773), and September 5, 1978 (43 FR 39408)).

SUMMARY: The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 23, 1977, between the Governments of the United States and the Republic of Korea, provides, among other things, for designated percentage increases in certain specific category ceilings for carryforward during an agreement year. Carryforward is an amount borrowed from the level of restraint applicable to the affected category in the succeeding agreement year and is deducted from that succeeding year's level. Pursuant to paragraph 9(a)(iii) of the bilateral agreement, as amended, the import restraint levels for categories 333/334/335, 433/434, 443, 633/634/635, 638/639, 641, and 643 are being reduced to account for carryforward used during the previous agreement period.

EFFECTIVE DATE: November 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert C. Woods, International Trade Specialist, Office of Textiles, U.S. Department of Commerce, Washington, D.C. 20230, 202-377-5423.

SUPPLEMENTARY INFORMATION: On December 30, 1977 a letter dated December 27, 1977 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs was published in the FEDERAL REGISTER (42 FR 65246), which established import restraint levels for certain specified categories of cotton, wool, and man-made fiber textile products produced or manufactured in the Republic of Korea and exported to the United States during the 12-month period which began on January 1, 1978. In the letter published below the Commissioner of Customs is directed, in accordance with the bilateral agreement to reduce the 12-month levels of restraint previously established for categories 333/334/335, 433/434, 443, 633/634/635, 638/639, 641, and 643 to the designated amounts.

EDWARD GOTTFRIED,
Acting Chairman, Committee for the Implementation of Textile Agreements.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

NOVEMBER 2, 1978.

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20229

DEAR MR. COMMISSIONER: On December 27, 1977, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry for consumption, or withdrawal from warehouse for consumption during the 12-month period beginning on January 1, 1978, and extending through December 31, 1978, of cotton, wool, and man-made fiber textile products in certain specified categories, produced or manufactured in the Republic of Korea, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.[1]

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of December 23, 1977, as amended, between the Governments of the United States and the Republic of Korea; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to amend, effective on November 7, 1978, the 12-month levels of restraint established for the following categories in the directive of December 27, 1977, to the amounts indicated:

Category and Adjusted 12-Month Level of Restraint[2]

333/334/335—86,018 dozen, of which not more than 49,368 dozen shall be in Cat. 333/334 and not more than 49,759 dozen shall be in Cat. 335.
433/434—18,084 dozen, of which not more than 13,162 dozen shall be in Cat. 433 and not more than 6,739 dozen shall be in Cat. 434.
443—29,232 dozen.
633/634/635—1,320,288 dozen, of which not more than 171,314 dozen shall be in Cat. 633; not more than 777,733 dozen shall be in Cat. 634; and not more than 574,940 dozen shall be in Cat. 635.
638/639—5,241,254 dozen.
641—1,000,367 dozen.
643—58,621 dozen.

The actions taken with respect to the Government of the Republic of Korea and with respect to imports of cotton, wool, and man-made fiber textile products from Korea have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

EDWARD GOTTFRIED,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 78-31472 Filed 11-6-78; 8:45 am]

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of December 23, 1977, as amended, between the Governments of the United States and the Republic of Korea which provide, in part, that: (1) Within the aggregate and applicable group limits, specific levels of restraint may be exceeded by designated percentages; (2) these same levels may be increased for carryover and carryforward up to 11 percent of the applicable category limit; (3) consultation levels may be increased within the aggregate and applicable group limits upon agreement between the two governments; and (4) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

[2] The levels of restraint have not been adjusted to account for any imports after December 31, 1977.

[6740-02-M]

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CI77-641]

ARKANSAS LOUISIANA GAS CO. AND DYCO PETROLEUM CO., ET AL.

Informal Settlement Conference

OCTOBER 30, 1978

Take notice that an informal settlement conference will be held regarding the above-captioned proceeding on Thursday, November 2, 1978, at 1:30 p.m. Room 8402 of the Commission's office at 825 North Capitol Street NE., Washington, D.C.

The conference is open to all interested persons, however, for those persons that have not previously intervened in the above-captioned proceedings attendance at the conference will not be considered as a formal intervention.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31396 Filed 11-6-78; 8:45 am]

[6740-02-M]

[Docket No. RA78-4]

BAYOU STATE OIL CORP.

Filing of Petition for Review

OCTOBER 25, 1978.

Take notice that Bayou State Oil Corp. (Bayou) on August 9, 1978 filed a petition for review under 42 U.S.C. § 7194(b) (1977 Supp.) from Department of Energy, Office of Hearings and Appeals, Decision and Order of August 1, 1978 (Case No. FEE-4264) denying Bayou's application for Exception under Part 212 of Title 10, Code of Federal Regulations.

Bayou has served copies of its Petition for Review on the Secretary, Department of Energy and other participants in the prior proceeding before the Secretary.

Any person desiring to be heard with respect to such filing should on or before November 17, 1978 file a petition to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8). Any person wishing to become a party or to participate as a party must file a petition to intervene in accordance with the Commission's Rules. Copies of the petition of review are on file with the Commission and available for public inspection at Room 1000, 825 North Capitol Street NE., Washington, D.C. 20426.

KENNETH F. PLUMB,
Secretary

[FR Doc. 78-31397 Filed 11-6-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-29]

CENTRAL ILLINOIS PUBLIC SERVICE CO.

Filing

OCTOBER 30, 1978.

Take notice on October 19, 1978, Central Illinois Public Service Co. (CIPS) tendered for filing proposed Amendment No. 1 to Interconnection Agreement dated May 2, 1972, with Southern Illinois Power Cooperative.

CIPS indicates this amendment primarily reflects the changes to the agreement required to add additional interconnection points.

Any person desiring to be hard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions should be filed on or before November 9, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31398 Filed 11-6-78; 8:45 am]

[6740-02-M]

[Docket Nos. ER78-526 and ER77-331]

CENTRAL POWER & LIGHT CO.

Order Granting Rehearing

OCTOBER 27, 1978.

On September 27, 1978, Central Power & Light Company (CP&L) filed an application seeking rehearing of the Commission's[1] order issued August 30, 1978 in the above-captioned docket, accepting CP&L's proposed Interchange Agreement and, with the exception of the fuel adjustment clause, suspending for four months, subject to refund, on the condition that CP&L file within thirty (30) days, revised rates removing deferred investment tax credit in equity capitalization in accordance with Commission Opinion No. 19. The proposed fuel adjustment clause filed on July 31, 1978 was accepted and suspended for one day, becoming effective August 1, 1978, subject to refund. The Commission further directed CP&S to file a modification to the new fuel clause to reflect the recovery of the 20 cents per million BTU in the present base rates. This modification of the fuel adjustment clause would be effective from August 1, 1978, until the end of the suspension period for the new base rates at which time the fuel adjustment clause tendered on July 31, 1978, will go into effect.

CP&L seeks rehearing of our order of August 30, 1978, alleging that the Commission is without authority to order a change in CP&L effective fuel clause; that the need for a four month suspension period is not supported by the record; that intervenors have not raised sufficient allegations to intiate "price squeeze" procedures; and that CP&L's inclusion of deferred investment tax credits in the equity capitalization was proper.

In addition, attached to the application for rehearing as Appendix A are tables showing that CP&L will lose revenues in the amount of $202,733 during the four-month suspension period by complying with our August 30th Order. Also attached to CP&L application for rehearing as Appendix B is a copy of the fuel clause "which basically tracks the clause originally filed with the 1967 contract".[2]

In support of its allegations, CP&L states that it will earn only 2.317 per-

[1] The "Commission" when used in the context of the action taken prior to October 1, 1977, refers to the Federal Power Commission; when used otherwise, the reference is to the Federal Energy Regulatory Commission, which succeeded to the powers and duties of the FPC pertinent here by operation of the Department of Energy Act.

[2] Application for Rehearing of Central Power & Light Co., Docket Nos. ER78-526 andf ER77-331, p. 5.

cent on the rate base allocable to sales to Stec-Medina under the 1967 contract. In addition, CP&L asserts the *Sierra-Mobile* defense[3] stating that the 1967 Interconnection Agreement with South Texas Electric Cooperative, Inc., and Medina Electric Cooperative (Stec-Medina) filed on April 28, 1977, in Docket No. ER77-331 is a fixed rate contract that cannot be changed unilaterally by either of the parties or this Commission absent hearings and findings pursuant to section 206 of the Federal Power Act.

In light of the fact that CP&L would lose approximately $200,000 by complying with our August 30th Order, and the fact that, under the present rates for Stec-Medina, CP&L would earn as inordinately low return on the allocated rate base, we believe reconsideration of our August 30th Order is appropriate. Therefore, we will permit the rates and the fuel clause contained in the 1967 Inter-connection Agreement to remain in effect until the new rates and the fuel clause contained in the proposed agreement filed on July 31, 1978 become effective on December 31, 1978, subject to refund.

We need not address the question of whether the 1967 agreement between CP&L and Stec-Medina is a fixed-rate contract in granting CP&L instant application for rehearing. As noted above, and in our August 30th Order, the 1967 Agreement expired on January 1, 1978. Stec-Medina has merely continued to receive service under the rates contained in the expired agreement. It is well-settled law that where a contract specifies the period of its duration, it terminates on the expiration of such period. The *Sierra-Mobile* doctrine applies to a fixed-rate, fixed-term contract only during the life of a contract and is inapplicable to contracts that have expired by their own terms. This fact renders CP&L's extensive discussion of and heavy reliance on *West Texas Utilities Co.* (WTU), Docket No. ER76-747, et al. inappropriate.

As to the length of the suspension period, we have reviewed the application and would have ordered the same suspension period even without the price squeeze allegations.

We have again considered the other issues raised in CP&L's application for rehearing, and for the reasons set forth in the Order of August 30, 1978, in Docket Nos. ER78-526 and ER77-331, these contentions are again rejected.

The Commission orders: (A) CP&L application for rehearing is hereby granted.

[3] A contractual rate cannot be increased until this Commission first determines that it is "so low as to conflict with the public interest". *FPC* v. *Sierra Power Co.*, 350 U.S. 348 (1956), *FPC* v. *Mobile Gas Service Corporation*, 350 U.S. 332 (1956).

(B) The rates and the fuel clause contained in the 1967 Interconnection Agreement shall remain in effect until the rates and fuel clause contained in the proposed Interchange Agreement, filed by CP&L on July 31, 1978, become effective on December 31, 1978, subject to refund.

(C) the Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31399 Filed 11-6-78; 8:45 am]

[6740-02-M]

[Docket No. CP77-423 (Phase I)]

COLORADO INTERSTATE GAS CO.

Application to Amend

OCTOBER 30, 1978.

Take notice that on October 17, 1978, Colorado Interstate Gas Co. (CIG), Post Office Box 1087, Colorado Springs, Colo. 80944, filed an application to amend the order issued in Docket No. CP77-423 (Phase I), pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

It is said that the Commission's order in Docket No. CP77-423 (Phase I) authorized CIG to transport for and exchange natural gas with Panhandle Eastern Pipe Line Company (Panhandle) from the Greater Green River Basin area in southwestern Wyoming (Area of Interest), in accordance with the terms of a Gas Purchase and Exchange Agreement (Agreement), dated December 3, 1976. It is further said that the area of interest is limited to Uinta, Lincoln, Sublette, Sweetwater, Carbon, and portions of Fremont Counties, Wyo. CIG may purchase up to 25 percent of the volumes delivered and would redeliver the balance, less applicable fuel and unaccounted-for volumes, on a thermally equivalent basis to Panhandle from existing delivery points located in Kearny County, Kans., and Texas County, Okla.

CIG requests that the order in Docket No. CP77-423 (Phase I) be amended to add the Fuller Reservoir area of Fremont County, Wyo., to the Area of Interest. It is said that approximately 30 percent of the Fuller Reservoir natural gas production is committed to Panhandle; the remaining 70 percent is committed to CIG. It is further said that pursuant to the order issued in Docket No. CP78-198, Montana-Dakota Utilities Co. (MDU) will transport and redeliver the Fuller Reservoir gas to CIG at mutually agreeable locations on CIG's pipeline facilities. It is stated that CIG would accept deliveries from MDU and, as appropriate, would transport and redeliver Panhandle's portion of the Fuller gas to Panhandle in accordance with the terms of the Agreement certificated in Docket No. CP77-423 (Phase I).

Any person desiring to be heard or to make any protest with reference to said application should on or before November 20, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31400 Filed 11-6-78; 8:45 am]

[6740-02-M]

[Docket No. RP73-86]

COLUMBIA GAS TRANSMISSION CORP.

Proposed Changes in FERC Gas Tariff

OCTOBER 31, 1978.

Take notice that Columbia Gas Transmission Corporation (Columbia) on October 19, 1978, tendered for filing the following revised tariff sheet to its FERC Gas Tariff, Original Volume No. 1, to become effective November 1, 1978.

Substitute Forty-seventh Revised Sheet No. 16.

Columbia states that Forty-seventh Revised Sheet No. 16 was filed on September 29, 1978 in order to comply with Commission Order issued January 20, 1975 at Docket No. RP73-86 which provides for a phased removal of the multiple zone system. In compliance with the above mentioned order the rates contained in that filing reflected a further one-sixth movement to be effective November 1, 1978 toward a system-wide rate structure.

This revised filing is necessitated by Columbia's revised PGA filing of October 19, 1978, to be effective September 2, 1978 at Docket No. RP73-65 (PGA No. 78-4) (AP78-1). Such revised PGA filing was the result of revised rates of Texas Eastern Transmission Corporation filed October 12, 1978 to become effective September 1, 1978 and the reduced rates of Transcontinental Gas Pipe Line Corporation at Docket No. RP73-3 approved by the Letter Order issued October 16, 1978 to be effective September 1, 1978.

Copies of this filing were served upon the Company's jurisdictional customers, interested state commissions and to each of the parties set forth on the official service list in this proceeding.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before November 13, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31412 Filed 11-6-78; 8:45 am]

[6740-02-M]

[Docket Nos. G-10122, *et al.*].

CONTINENTAL OIL CO., ET AL.

Notice of Applications for Certificates, Abandonment of Service and Petitions to Amend Certificates

OCTOBER 27, 1978.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before on before November 24, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[1] This notice doe not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft[2]	Pressure base
G-10122, D, Oct. 11, 1978	Continental Oil Co., P.O. Box 2197, Houston, Tex. 77001.	Tennessee Gas Pipeline Co., West Delta area, offshore Louisiana.	(3)	
G-13447, D, Oct. 13, 1978	Gulf Oil Corp., P.O. Box 2100, Houston, Tex. 77001.	Southern Natural Gas Co., Black Bay fields, Plaquemines Parish, La.	Leases expired.	
CI61-1327, C, Oct. 19, 1978	Mobil Oil Corp., 9 Greenway Plaza, Suite 2700, Houston, Tex. 77046.	Cities Service Gas Co., Guymon-Hugoton deep field, Texas County, Okla.	(3)	14.73
CI62-588, F, Oct. 16, 1978	Amoco Production Co., (partial successor in interest to Roland S. Bond), Security Life Bldg., Denver, Colo. 80202.	Michigan Wisconsin Pipe Line Co., Laverne gas area, Harper County, Okla.	(3)	14.65
CI88-621, D, Oct. 5, 1978	Tenneco Oil Co., P.O. Box 2511, Houston, Tex. 77001.	Tennessee Gas Pipeline Co., South Marsh Island block 79 field, offshore Louisiana.	Depleted and lease released.	
CI78-33, C, Oct. 19, 1978	Amoco Production Co., P.O. Box 3092, Houston, Tex. 77001.	El Paso Natural Gas Co., Empire South Morrow and Burton Flat fields, Lea County, N. Mex.	(4)	14.65
CI78-137, C, Oct. 16, 1978	Anadarko Production Co., P.O. Box 1330, Houston, Tex. 77001.	Panhandle Eastern Pipe Line Co., Mauck A-1, Maxwell A-1, and Royce A-1 wells from formations within the Mississippian System of the Paleozoic Era only in the Langdon field, Reno County, Kans.	(3)	14.65
CI78-298, C, Oct. 17, 1978	Anadarko Production Co.	Panhandle Eastern Pipe Line Co., Real Estate "A" No. 1 well from the Council Grove zone of the Permian System only in the Panoma Council Grove field, Grant County, Kans.	(3)	14.65
CI78-1131, A, Aug. 28, 1978	Amoco Production Co., P.O. Box 50879, New Orleans, La. 70150.	Transco Gas Supply Co., block A-340 east addition, south extension High Island area, offshore Texas.	(3)	14.65
CI78-1151, A, Aug. 28, 1978	Transco Exploration Co., P.O. Box 1396, Houston, Tex. 77001.	Transcontinental Gas Pipe Line Corp., Chandeleur Sound area blocks 58 and 59, offshore St. Bernard Parish, La.	(3)	15.025
CI78-1152 (CI72-818), B, Aug. 28, 1978.	Anadarko Production Co., P.O. Box 1330, Houston, Tex. 77001.	Colorado Interstate Gas Co., a division of Colorado Interstate Corp., certain acreage in Sweetwater County, Wyo.	Depleted and leases terminated as a result of cessation of production and were released.	
CI78-1153, A, Aug. 28, 1978	ONG Exploration, Inc., P.O. Box 871, Tulsa, Okla. 74102.	Colorado Interstate Gas Co., certain acreage in the Mocane Field, Beaver County, Okla.	(3)	14.73
CI78-1154, A, Aug. 28, 1978	Amoco Production Co., Security Life Bldg., Denver, Colo. 80202.	Arkansas Louisiana Gas Co., W. D. Fast No. 1 well, Northwest Okeene field, Major County, Okla.	(3)	14.65
CI78-1155, A, Aug. 29, 1978	Energy Increments, Inc., P.O. Box 15015, Las Vegas, Nev. 89114.	Southwest Gas Corp., State Bancos No. 1 well in Rio Arriba County, N. Mex.	(3 6)	14.73

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Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
CI78-1156, A, Aug. 29, 1978	Helmerich & Payne, Inc., 1579 East 21st St., Tulsa, Okla. 74114.	Michigan Wisconsin Pipe Line Co., Unnamed field, Major County, Okla.	(1)	14.73
CI78-1157, A, Aug. 29, 1978	Amerada Hess Corp., 1200 Milam, 6th Floor, Houston, Tex. 77002.	Southern Natural Gas Co., (successor in interest to United Gas Pipe Line Co.), blocks 37, 38, 57, and 58, Eugene Island area, offshore Louisiana.	(1)	15.025
CI78-1158, A, Aug. 24, 1978	Cotton Petroleum Corp., 4200 1 Williams Center, Tulsa, Okla. 74103.	Michigan Wisconsin Pipe Line Co., certain acreage in the East Lookeba field, Caddo County, Okla.	(1)	14.65
CI78-1159, B, Aug. 30, 1978	Sarkeys, Inc., 1200 Mercantile Bank Bldg., Dallas, Tex. 75201.	Aminoil U.S.A., Inc., Putnam field, Dewey County, Okla.	(2)	
CI78-1160, A, Aug. 30, 1978	The Superior Oil Co., P.O. Box 1521, Houston, Tex. 77001.	Michigan Wisconsin Pipe Line Co., West Cameron block 71 field, offshore Louisiana.	(1)	15.025
CI78-1161, A, Aug. 30, 1978	Shell Oil Co., 2 Shell Plaza, P.O. Box 2099, Houston, Tex. 77001.	Florida Gas Transmission Co., a portion of South Marsh Island block 150 and all of South Marsh Island block 149, offshore Louisiana.	(1)	15.025
CI78-1162, B, Aug. 31, 1978	John B. Hawley, Jr., 1915 57th Ave., North, Minneapolis, Minn. 55430.	Northern Natural Gas Co., Panoma (Council Grove) field, Stevens County, Kans.	(10)	
CI78-1163, A, Aug. 30, 1978	Estate of H. L. Hunt, 2900 First National Bank Bldg., Dallas, Tex. 75202.	Michigan Wisconsin Pipe Line Co., Dyche Well No. 1, NE/4, sec. 27, T22N, R15W, Major County, Okla.	(1)	14.65
CI78-1164, A, Aug. 31, 1978	The Louisiana Land & Exploration Co., 225 Baronne St., P.O. Box 60350, New Orleans, La. 70160.	Texas Eastern Transmission Corp., certain acreage located in block 294 field, East Cameron area, south addition, offshore Louisiana.	(1)	15.025
CI78-1165, B, Sept. 1, 1978	Isaac Arnold, Jr., et al., First City National Bank Bldg., Houston, Tex. 77002.	United Gas Pipe Line Co., Garden City field, St. Mary Parish, La.	(11)	
CI78-1166 (CI72-854) (G-18063) (G-13274), B, Sept. 1, 1978.	Joseph I. O'Neill, Jr., P.O. Box 2840, Midland, Tex. 79702.	Getty Oil Co., Reinecke and Von Roeder fields, Borden County, Tex.	(12)	
CI78-1167, A, Sept. 1, 1978	Shell Oil Co., 2 Shell Plaza, P.O. Box 2099, Houston, Tex. 77001.	Southern Natural Gas Co., all of South Marsh Island block 149, offshore Louisiana.	(1)	15.025
CI78-1168, A, Sept. 1, 1978	Murphy Oil Corp., 200 Jefferson Ave., El Dorado, Ark. 71730.	Consolidated Gas Supply Corp., A and B platform wells, Vermilion block 102 in the Gulf of Mexico, offshore Louisiana.	(1)	15.025
CI78-1169, A, Sept. 5, 1978	Stephens Production Co., P.O. Box 2407, Fort Smith, Ark. 72902.	Arkansas Louisiana Gas Co., lands located in sec. 25-10N-25E of Sequoyah County, Okla.	(1)	14.65
CI78-1170 (CI63-759), B, Sept. 5, 1978.	Robbins Petroleum Corp., et al., P.O. Box 1389, Longview, Tex. 75601.	Lone Star Gas Co., Peatown field, Gregg County, Tex.	Supply exhausted.	
CI78-1171, A, Sept. 5, 1978	Stephens Production Co.	El Paso Natural Gas Co., certain acreage located in sec. 9-13N-26W of Roger Mills County, Okla.	(1)	14.65
CI78-1172, A, Sept. 5, 1978	do	Arkansas Louisiana Gas Co., certain acreage located in sec. 28-10N-27E of LeFlore County, Okla.	(1)	14.65
CI78-1173, A, Sept. 5, 1978	Gulf Oil Corp., P.O. Box 2100, Houston, Tex. 77001.	Montana-Dakota Utilities Co., Little Knife field (Mission Canyon Formation only) Dunn, Billings, and McKenzie Counties, N. Dak..	(1)	14.73
CI78-1174, A, Sept. 5, 1978	Energy Reserves Group, Inc., P.O. Box 1201, Wichita, Kans. 67201.	El Paso Natural Gas Co,. certain acreage in Crockett County, Tex..	(1)	14.73
CI78-1175, A, Sept. 5, 1978	Hunt Oil Co., 2900 First National Bank Bldg., Dallas, Tex. 75202.	El Paso Natural Gas Co., southeast quarter, sec. 76, Block Y, TC RR Co. Survey, Amacker Tippett, southwest (Wolfcamp) field, Upton County, Tex..	(1)	14.73
CI78-1176, A, Sept. 5, 1978	Transco Exploration Co., P.O. Box 1396, Houston, Tex. 77001.	Transcontinental Gas Pipe Line Corp., certain acreage in the Lake Hatch field, Terrebonne Parish, La.	(1)	15.025
CI78-1177, A, Sept. 5, 1978	Diamond Shamrock Corp. (successor to the Shamrock Oil & Gas Corp.), P.O. Box 631, Amarillo, Tex. 79173.	Natural Gas Pipeline Co. of America, certain acreage located in Ochiltree, Roberts, Lipscomb, and Hemphill Counties, Tex.	(13)	14.65
CI78-1178, A, Sept. 5, 1978	Anadarko Production Co., P.O. Box 1330, Houston, Tex. 77001.	Panhandle Eastern Pipe Line Co., Mallory No. 1 well, Avard field, Woods County, Okla., limited to the Hunton Formation of the Siluro-Devonian System.	(1)	14.65
CI78-1180, A, Sept. 7, 1978	Union Texas Petroleum, a division of Allied Chemical Corp., P.O. Box 2120, Houston, Tex. 77001.	Cities Service Gas Co., Macy-Conley No. 1 well, Sooner Trend field, Kingfisher County, Okla.	(14)	14.65
CI78-1181, A, Sept. 1, 1978	Terra Resources, Inc., 5416 South Yale, Tulsa, Okla. 74135.	Southern Natural Gas Co., Breton Sound Plaquemines Parish, La.	(15)	15.025
CI78-1182, A, Sept. 5, 1978	Sun Oil Co., P.O. Box 20, Dallas, Tex. 75221.	Arkansas Louisiana Gas Co., Samson Resources, No. 1 McBee, sec. 23-5N-16E, Pittsburg County, Okla.	(1)	14.73
CI78-1183 (CI72-86), B, Sept. 5, 1978.	Kerr-McGee Corp., P.O. Box 25861, Oklahoma City, Okla. 73125.	Arkansas Louisiana Gas Co., Red Deer area, Roberts County, Tex.	Uneconomical, plugged, and abandoned.	
CI78-1184 (CI65-529), B, Sept. 5, 1978.	Petroleum, Inc. (operator), et al., 300 West Douglas, Wichita, Kans. 67202.	Northern Natural Gas Co., Baldwin unit No. 1 well, SE/4 sec. 30-1N-26ECM, Beaver County, Okla.	Lease expired, plugged, and abandoned.	
CI78-1185, A, Sept. 7, 1978	Mesa Petroleum Co., P.O. Box 2009, Amarillo, Tex. 79189.	El Paso Natural Gas Co. West Reydon field, Roger Mills County, Okla.	(1)	14.73
CI78-1186, A, Sept. 7, 1978	Mobil Oil Corp., 9 Greenway Plaza, Suite 2700, Houston, Tex. 77046.	United Gas Pipe Line Co., certain acreage in the Carthage field, Panola County, Tex.	(16)	14.73
CI78-1187 (CI73-967), B, Sept. 7, 1978.	Gas Producing Enterprises, Inc. (operator), et al., 9 Greenway Plaza East, Houston, Tex. 77046.	South Texas Natural Gas Gathering Co., Cortez field, Starr County, Tex.	(17)	

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft.³	Pressure base
CI78-1188, A, Sept. 8, 1978	Mobil Oil Corp., 9 Greenway Plaza, Suite 2700, Houston, Tex. 77046.	Texas Eastern Transmission Corp., certain acreage in the Vermilion, south addition, block 261 field, Federal offshore Louisiana.	(1)	14.73
CI78-1189, A, Sept. 11, 1978	Southland Royalty Co., 1000 Fort Worth Club Tower, Fort Worth, Tex. 76102.	Michigan Wisconsin Pipe Line Co., Painton No. 1-3 well located in sec. 3-T20N-R15W, Major County, Okla.	(1)	14.73
CI78-1190, A, Sept. 11, 1978	Transco Exploration Co., P.O. Box 1396, Houston, Tex. 77001.	Transcontinental Gas Pipe Line Corp., certain acreage located in the Campbell Ranch field, Hemphill and Roberts Counties, Tex.	(1)	14.65
CI78-1191, A, Sept. 11, 1978	Exxon Corp., P.O. Box 2180, Houston, Tex. 77001.	Columbia Gas Transmission Corp., High Island area, blocks A-280 and A-286, offshore Texas.	(1)	14.73
CI78-1192, A, Sept. 11, 1978	Marathon Oil Co., 539 South Main St., Findlay, Ohio 45840.	Natural Gas Pipeline Co. of America, Ship Shoal area, block 272 field, offshore Louisiana.	(1)	14.73
CI78-1193, A, Sept. 11, 1978	Phillips Petroleum Co., 5 C4 Phillips Bldg., Bartlesville, Okla. 77004.	Michigan Wisconsin Pipe Line Co., Jaco lease, the No. 1-A Jaco well located on sec. 49, block A-8, H & GN Survey, Wheeler County, Tex.	(1)	14.65
CI78-1194, A, Sept. 11, 1978	Mobil Oil Corp	Southern Natural Gas Co., certain acreage in the Eugene Island area, block 261 and 262 field, Federal offshore Louisiana.	(1)	14.73
CI78-1196 (CI77-240), B, Sept. 11, 1978.	Victory Petroleum Co., P.O. Box 36666, Houston, Tex. 77036.	Texas Gas Transmission Corp., South Minden field, Webster Parish, La.	(18)	
CI78-1197, A, Sept. 12, 1978	Terra Resources, Inc., 5416 South Yale, Tulsa, Okla. 74135.	Transwestern Pipeline Co., South Carlsbad field, Eddy County, N. Mex.	(19)	14.65
CI78-1198 (G-12721) (CI71-115), B, Sept. 8, 1978.	Anadarko Production Co., P.O. Box 1330, Houston, Tex. 77001.	Texas Gas Transmission Corp., Jefferson Davis Parish, La.	Depleted, leases terminated as a result of cessation of production and were released.	
CI78-1199, A, Sept. 11, 1978	Amoco Production Co., P.O. Box 3092, Houston, Tex. 77001.	Transwestern Pipeline Co., Buffalo Valley Field, Chaves County, N. Mex..	(20)	14.65
CI78-1200, A, Sept. 11, 1978	Tenneco Oil Co., P.O. Box 2511 Houston, Tex. 77001.	El Paso Natural Gas Co., Pardue Farms Gas Com No. 1, east half of sec. 26-T23S-R28E, Eddy County, N. Mex..	(1)	14.73
CI78-1201, A, Sept. 13, 1978	Anadarko Production Co., P.O. Box 1330, Houston, Tex. 77001.	Panhandle Eastern Pipe Line Co., Beck No. 1-25 well, Mocane-Laverne field, Beaver County, Okla..	(1)	14.65
CI78-1202, A, Sept. 13, 1978	Amoco Production Co., P.O. Box 50879, New Orleans, La. 70150.	Michigan Wisconsin Pipe Line Co., High Island block A-349, offshore Texas.	(1)	15.025
CI78-1203, A, Sept. 5, 1978	Sun Oil Co., P.O. Box 20, Dallas, Tex. 75221.	Colorado Interstate Gas Co., Great Divide Creek field, Moffat County, Colo..	(1)	14.73
CI78-1204 (CI61-1098), B, Sept. 14, 1978.	Exxon Corp., P.O. Box 2180, Houston, Tex. 77001.	United Gas Pipe Line Co., Mt. Selman field, Cherokee County, Tex..	Depleted, plugged and abandoned, leases terminated and contract has been canceled.	
CI78-1205, A, Sept. 14, 1978	General Crude Oil Co., P.O. Box 2252, Houston, Tex. 77001.	Northwest Pipeline Corp., Federal 1-30 well, Rio Blanco County, Colo..	(1)	14.73
CI78-1206, A, Sept. 19, 1978	Phillips Petroleum Co., 5 C4 Phillips Bldg., Bartlesville, Okla. 74004.	Southern Natural Gas Co., Kerr-McGee, et al., State lease No. 6802, well No. 1, located in block 35, Breton Sound area, Plaquemines Parish, La.	(1)	15.025
CI78-1209, A, Sept. 20, 1978	Tenneco Oil Co	Northern Natural Gas Co., Kemnitz Deep No. 1, NE/4 sec. 29-T16S-R34E, Kemnitz field, Lea County, N. Mex., limited to the Atoka-Morrow Formation.	(1)	14.73
CI78-1210, A, Sept. 13, 1978	American Natural Gas Production Co., 5075 Westheimer, Suite 1100, Galleria Towers West, Houston, Tex. 77056.	El Paso Natural Gas Co., certain acreage in Woodward County, Okla.	(1)	14.73
CI78-1211, A, Sept. 8, 1978	Forest Oil Corp., 1500 Colorado National Bldg., 950 17th St., Denver, Colo. 80202.	Colorado Interstate Gas Co., Hay Reservoir unit, Sweetwater County, Wyo.	(1)	14.73
CI78-1213, A, Sept. 11, 1978	Texas Pacific Oil Co., Inc., 1700 1 Main Pl., Dallas, Tex. 75250.	El Paso Natural Gas Co., J. W. Cooper No. 7 well, NW/4 SE/4 sec. 14-T24S-R36E, Lea County, N. Mex.	(21)	14.65
CI78-1214, A, Sept. 13, 1978	Sun Oil Co., P.O. Box 20, Dallas, Tex. 75221.	Cities Service Gas Co., Alpar-Tonkawa field, Hemphill County, Tex., Ora Ramsey lease, sec. 58, block 41, H & TCRR Survey, limited to production from surface to base of Tonkawa Formation.	(1)	14.73
CI78-1215, A, Sept. 15, 1978	The Superior Oil Co., P.O. Box 1521, Houston, Tex. 77001.	El Paso Natural Gas Co., Angel Ranch field, Eddy County, N. Mex.	(1)	14.73

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Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
CI78-1216, F, Sept. 15, 1978 ..	Phillips Petroleum Co., successor in interest to P. Julius Fohs and Lucerne Corp., 5 C4 Phillips Bldg., Bartlesville, Okla. 74004.	Arkansas Louisiana Gas Co., certain acreage in Webster Parish, La.	(21)	15.025
CI78-1217, A, Sept. 20, 1978 ..	Cities Service Co., P.O. Box 300, Tulsa, Okla. 74102.	Colorado Interstate Gas Co., Green "C-2" in sec. 30-28S-34W, and the Pickens "A-2" in sec. 31-28S-34W, both in Haskell County, Kans., limited to the base of the Chase Group to the base of the Council Grove.	(4)	14.65
CI78-1218 (G-16152), B, Sept. 19, 1978.	Getty Oil Co., P.O. Box 1404, Houston, Tex. 77001.	Arkansas Louisiana Gas Co., Numa-West field, Grant County, Okla.	(22)	

[1] Leases or parts of leases which were committed to the subject contract and rate schedule but which Continental no longer holds. Continental endeavored to hold these properties but could not meet the demands of the State Mineral Board for the additional drilling necessary to hold them.
[2] Applicant is willing to accept the applicable national rate pursuant to Opinion No. 770, as amended.
[3] Applicant is filing under gas purchase contract dated Sept. 11, 1958, amended by amendatory agreement dated Aug. 17, 1978.
[4] Applicant is filing under gas purchase contract dated Sept. 27, 1977, amended by amendment dated Aug. 3, 1978.
[5] Applicant is filing under gas purchase contract dated Aug. 11, 1978.
[6] Applicant and purchaser are affiliated.
[7] Applicant is filing under gas purchase contract dated July 31, 1978.
[8] Applicant is filing under gas purchase contract dated May 16, 1978, amended by letter agreement dated June 7, 1978.
[9] Sarkeys desires this abandonment so that it might enter into a gas purchase agreement with Panhandle Eastern for this gas. This will enable Sarkeys to take advantage of its small producer status and thereby enable it to collect the small producer rates to which it is entitled.
[10] The land owner would like to buy gas from this well to run his motor to pump water for irrigation purposes. The gas would be metered and sold to farmer at well head price to be used only for irrigation purposes.
[11] Contract expires on its own terms Sept. 15, 1979; the remaining reserves are dedicated to Columbia Gas Transmission Corp. under contract dated June 28, 1963, as amended.
[12] Contract was for 15 years, ending Sept. 4, 1967, and thereafter from month to month until canceled by either party upon thirty (30) days written notice to the other. Residue gas will be delivered to same purchaser, El Paso Natural Gas Co., at tailgate of new plant.
[13] Applicant is filing under gas purchase contract dated Aug. 25, 1978.
[14] Applicant is filing under casinghead gas contract dated Sept. 9, 1978.
[15] Applicant is filing under gas purchase contract dated Aug. 8, 1978.
[16] Applicant is willing to accept an initial rate determined in accordance with opinion No. 749, as amended, and opinion No. 770-A.
[17] Depletion of the reservoir, plugged and abandoned, lease expired by it's own terms, no gas sold since June 1978 and gas sales contract has been canceled.
[18] Well was shut-in due to uneconomical rates of production and seller attempted recompletion into other zones which were unsuccessful and no sales have been made under the contract since November 1977.
[19] Applicant is filing under gas purchase contract dated March 31, 1978.
[20] Applicant is filing under gas purchase agreement dated July 1, 1978.
[21] Phillips acquired a partial interest in the Monzingo "B" lease from the estate of Lewis T. Lohman and the estate of P. Julius Fohs effective on November 1, 1977 and May 16, 1978, respectively, and are filing to continue service of predecessor under gas purchase contract dated March 24, 1950, as amended.
[22] Nonproductive since August 1975, has no recompletion possibilities, and is considered to be depleted. Contract of July 29, 1958, has expired of its own term on July 29, 1978.

Filing code: A—Initial service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total succession. F—Partial succession.

[FR Doc. 78-31267 Filed 11-6-78; 8:45 am]

[6740-02-M]

[Docket No. RP72-134]

EASTERN SHORE NATURAL GAS CO.

Purchased Gas Cost Adjustment to Rates and Charges

OCTOBER 30, 1978.

Take notice that Eastern Shore Natural Gas Co. (Eastern Shore) on October 12, 1978, tendered for filing the following revised tariff sheets:

To be Effective September 1, 1978

Substitute Fifth Revised Sheets No. 5 and No. 6.
Superseding Fifth Revised Sheets No. 5 and No. 6.
Substitute Fifth Revised Sheets No. 10, No. 11 and No. 12.

To be Effective September 2, 1978

Substitute Sixth Revised Sheets No. 5 and No. 6.
Superseding Substitute Fifth Revised Sheets No. 5 and No. 6.
Substitute Sixth Revised Sheets No. 10, No. 11, and No. 12.

The revised tariff sheets track a similar filing by Eastern Shore's sole supplier, Transcontinental Gas Pipe Line Corp.

Eastern Shore requests a waiver of the Commission's Rules and Regulations, specifically section 154.22, Notice Requirements, or any other of the Commission's Rules and Regulations as may be deemed necessary to allow the revised rates to become effective as proposed.

Copies of this filing were served on Eastern Shore's customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 8, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31401 Filed 11-6-78; 8:45 am]

[6740-02-M]

[Docket No. CP79-36]

EQUITABLE GAS CO.

Application

OCTOBER 31, 1978

Take notice that on October 18, 1978, Equitable Gas Co. (Equitable), 420 Boulevard of the Allies, Pittsburgh, Pa. 15219, filed in Docket No. CP79-36 and application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to install a mainline tap on its transmission line No. H-508 at a cost of approximately $500 and to transport approximately 200 Mcf of natural gas per year in order to provide gas service to one residence located in Monongalia County, W. Va., all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that in March 1976, Equitable obtained a right-of-way for its transmission line No. H-508 across the property of Ms. Dora D. Herron located in Fairview, Monongalia County, W. Va., Route 2, Box 161. Equitable agreed in writing to provide Ms. Herron with domestic gas service "as current regulations permit," it is said.

It is said that by orders dated August 14, 1975, and October 29, 1975, in Case No. 7555, *et al.*, the West Virginia Public Service Commission ordered Equitable to provide service to all applicants whose peak day usage did not exceed 30 Mcf. It is further said that Equitable contested the State commission's order, claiming jurisdiction was in the Federal Power Commission. On January 27, 1977, the Federal Power Commission found in Docket No. CP76-394 that Equitable was required to receive Federal Power Commission authorization for such service. It is said that this application is submitted in conformance with said order of the Federal Power Commission.

It is said that Ms. Herron's residence is now heated by means of coal and wood and that she desires to convert to natural gas. Equitable states that it is ready, willing, and able to provide the requested service.

Equitable proposes to install a mainline tap and regulators on its transmission line No. H-508 on or about November 15, 1978, at an estimated cost of $500. It is said that construction should be completed within 1 day. It is further said that the gas line from the tap to the residence is to be provided by the customer at customer's expense.

The proposed service would require the transportation in interstate commerce of approximately 200 Mcf of natural gas per year, it is said.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 24, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Equitable to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31413 Filed 11-6-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-31]

LOUISIANA POWER & LIGHT CO.

Filing

OCTOBER 30, 1978

Take notice that on October 20, 1978, the Louisiana Power & Light Co. (LP&L) tendered for filing an Electric System Interconnection Agreement dated May 25, 1976, with Cajun Electric Power Cooperative, Inc. (Cajun) which provides in addition to Emergency Assistance Service, schedules for Supplemental Power, Surplus Power, Economy Energy, and Transmission Service.

LP&L indicates that the LP&L-Cajun Agreement contemplates the construction by Cajun of generating stations and transmission service by LP&L to deliver power for Cajun.

LP&L requests that the proposed agreement be accepted for filing to become effective May 29, 1980, or the date upon which the interconnection is first made available, whichever is earlier.

LP&L states that a copy of this filing was mailed to Cajun.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 9, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31402 Filed 11-6-78; 8:45 am]

[6740-02-M]

[Docket No. RA78-1]

LUNDAY-THAGARD OIL CO.

Filing of Petition for Review

OCTOBER 25, 1978.

Take notice that Lunday-Thagard Oil Co. (Lunday-Thagard) on October 4, 1978, filed a Petition for Review under 42 U.S.C. § 7194(b) (1977 Supp.) from an order of the Secretary of Energy issued on June 20, 1978, denying Lunday-Thagard's application for an exception from § 211.67 of Title 10, Code of Federal Regulations.

Copies of the petition for review have been served on the Secretary, Department of Energy, and all participants in prior proceedings before the Secretary.

Any person desiring to be heard with reference to such filing should on or before November 17, 1978, file a petition to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, D.C. 20426, in accordance with the Commission's rules of practice and procedure (18 CFR 1.8). Any person wishing to become a party or to participate as a party must file a petition to intervene. Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Cap-

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itol Street NW., Washington, D.C. 20426.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31403 Filed 11-6-78; 8:45 am]

[6740-02-M]

[Docket No. RP74-100 (PGA78-8)]

NATIONAL FUEL GAS SUPPLY CORP.

Granting Extension of Time

OCTOBER 27, 1978.

On October 12, 1978, Counsel for National Fuel Gas Supply Corp. (National Fuel) filed a motion requesting extensions of time to file its case-in-chief and for Commission staff to file its statement of position pursuant to the Commission order of September 29, 1978, in the above captioned proceeding. The motion noted that staff has no objection to the proposed extensions. Upon consideration, notice is hereby given that an extension of time is granted to and including November 13, 1978, for National Fuel to file its case-in-chief. Staff shall file its statement of position on or before December 12, 1978.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31404 Filed 11-6-78; 8:45 am]

[6740-02-M]

[Docket No. RP73-8]

NORTH PENN GAS CO.

Proposed Changes in FERC Gas Tariff

OCTOBER 30, 1978.

Take notice that North Penn Gas Co. (North Penn) on October 20, 1978, tendered for filing proposed changes in its FERC Gas Tariff, First Revised Volume No. 1, pursuant to its PGA Clause for rates to be effective November 1, 1978.

The rates contained in Substitute Fifty-Eighth Revised No. PGA-1, reflect on increase of 1.063 cents per Mcf over the rates contained in Substitute Fifty-Seventh Revised Sheet No. PGA-1, filed October 9, 1978.

Substitute 58, Revised Sheet No. PGA-1, reflects the increase in rates filed by Consolidated Gas Supply Corp. on October 2, 1978, to be effective November 1, 1978, and the increase in rates filed by Transcontinental Gas Pipe Line Corp. on September 15, 1978, to be effective September 2, 1978.

North Penn requests a waiver of the Commission's Rules and Regulations, specifically § 154.22, Notice Requirements, or any other of the commission's Rules and Regulations as may be deemed necessary to allow the revised rates to become effective as proposed.

Copies of this filing were served upon North Penn's jurisdictional customers as well as interested State commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 9, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31405 Filed 11-6-78; 8:45 am]

[6740-02-M]

[Docket No. RP76-52, et al.]

NORTHERN NATURAL GAS CO.

Informal Conference

OCTOBER 31, 1978.

By notice issued October 25, 1978, in this docket, Presiding Judge Benkin initiated a conference on the afternoon of November 14, 1978, to discuss the impact of the Natural Gas Policy Act and other recent legislation on the pending curtailment proceeding. In order to permit the parties to discuss the legislation among themselves, prior to the conference before the Presiding Judge, an informal conference will be held at 10 a.m. on November 14, 1978, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31414 Filed 11-6-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-34]

PACIFIC POWER & LIGHT CO.

Filing

OCTOBER 30, 1978.

Take notice that on October 17, 1978, Pacific Power & Light Co. tendered for filing its proposed annual revision of the Load and Resource Forecast, exhibit A, dated September 27, 1978, to the Cheyenne Light, Fuel & Power Co. Service Agreement, dated May 5, 1972, designated as Pacific Power & Light Co. Rate Schedule FPC No. 108.

Each year a revised exhibit A is submitted by Cheyenne Light, Fuel & Power Co. in accordance with article 2-d of the contract.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 9, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are available for public inspection at the Federal Energy Regulatory Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31406 Filed 11-6-78; 8:45 am]

[6740-02-M]

[Docket No. ER77-523]

PUGET SOUND POWER & LIGHT CO.

Certification

OCTOBER 30, 1978.

Take notice that Presiding Administrative Law Judge Samuel Z. Gordon, on October 16, 1978, certified to the Commission a settlement proposal in the above-noted docket. The settlement proposal is described by Puget Sound Power & Light Co. as settling all issues set for hearing by the Commission's orders in this docket.

Any person desiring to be heard or to protest said settlement proposal should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before December 1, 1978. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this proposal are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31407 Filed 11-6-78; 8:45 am]

[6740-02-M]

[Docket No. RP76-99]

TENNESSEE NATURAL GAS LINES, INC.

Report of Refunds

OCTOBER 31, 1978.

Take notice that on October 23, 1978, Tennessee Natural Gas Lines, Inc. (TNGL) tendered for filing a Report of Refunds made pursuant to Opinion No. 8.

TNGL states that it refunded $308,697.73 which constitutes the full principal plus interest due to its jurisdictional customer, Nashville Gas Co. (Nashville). The refund report includes a statement of the method of computing the refund, a detail of the computations, and a release by Nashville.

TNGL states that a copy of this filing has been mailed to the Tennessee Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 17, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31415 Filed 11-6-78; 8:45 am]

[6740-02-M]

[Docket No. RP79-5]

TEXAS EASTERN TRANSMISSION CORP.

Proposed Changes in FERC Gas Tariff

OCTOBER 31, 1978.

Take notice that Texas Eastern Transmission Corp. on October 24 1978, tendered for filing as a part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets:

Second Substitute Sheet No. 14.	Forty-fourth	Revised
Second Substitute Sheet No. 14A.	Forty-fourth	Revised
Second Substitute Sheet No. 14B.	Forty-fourth	Revised
Second Substitute Sheet No. 14C.	Forty-fourth	Revised
Second Substitute Sheet No. 14D.	Forty-fourth	Revised

Texas Eastern is reducing its rates due to repayment of advance payments for gas pursuant to Article V of the Stipulation and Agreement under Docket No. RP75-73 and accepted by Commission Orders issue June 6, 1977 and August 1, 1977.

Texas Eastern has requested that the Commission waive all its rules and regulations necessary to allow the above tariff sheets to become effective October 1, 1978.

Copies of the filing were served on the compnay's jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before *November 17, 1978.* Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary,

[FR Doc. 78-31416 Filed 11-6-78; 8:45 am]

[6740-02-M]

[Docket No. CP79-37]

TEXAS GAS TRANSMISSION CORP.

Application

OCTOBER 31, 1978.

Take notice that on October 20, 1978, Texas Gas Transmission Corp. (Applicant), P.O. Box 1160, Owensboro, Ky. 42301, filed in Docket No. CP79-37 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the retention in place of certain pipeline which was constructed on a temporary basis during the period of time that Applicant was performing necessary reconditioning work on its Herbert-Cannelton 8-inch pipeline in Ohio County and Hancock County, Ky., all as more fully set forth in the application on file with the Commission and open to public inspection.

It is indicated that pursuant to the Commission's temporary certificate of July 7, 1978, issued in Docket No. CP78-408, Western Kentucky Gas Co. (Western), National Pipeline Co. (National) and Orbit Gas Co (Orbit) were authorized to transport and deliver up to 30,000 Mcf of natural gas per day for Applicant during the time when Applicant was performing necessary reconditioning work on its Herbert-Cannelton 8-inch pipeline. Such temporary certificate also authorized Western, National and Orbit to construct and operate certain temporary facilities necessary to effectuate the above described transportation arrangement, it is said.

Applicant states that the reconditioning work on the Herbert-Cannelton line has now been completed with the exception of minor cleanup work. Applicant proposes now to retain in place approximately 1,681 feet of pipeline which it installed during the reconditioning period, which pipeline connects Applicant's 12-inch pipeline with the 12-inch pipeline owned by National and operated by Orbit in Hopkins County, Ky. All other temporary facilities installed in order to effectuate the reconditioning work would be or have been removed, it is stated.

Applicant states that the pipeline which it proposes to retain in place would be utilized, only under emergency conditions, in order to allow Applicant to maintain continuity of service to existing customers served from the Herbert-Cannelton line. A blind flange would be placed between the Applicant system and the National system in order to insure that no gas flows between the interstate and intrastate systems during nonemergency periods, it is said.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 24, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the

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time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless other wise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31417 Filed 11-6-78; 8:45 am]

[6740-02-M]

[Docket No. RP78-94]

TEXAS GAS TRANSMISSION CORP.

Order Accepting for Filing and Suspending Rate Increase Subject to Conditions and Establishing Hearing Procedures

OCTOBER 26, 1978.

On September 29, 1978, Texas Gas Transmission Corp. (Texas Gas) tendered for filing certain revised tariff sheets [1] proposed to be effective November 1, 1978, which would increase its annual jurisdictional revenues by approximately $92,607,000 or about 14.4 percent. For the reasons stated below, the Commission shall accept the revised tariff sheets for filing, subject to certain conditions, suspend them for 5 months and set the matter for hearing.

Public notice of Texas Gas' September 29, 1978 filing was issued on October 13, 1978, providing for protests or petitions to intervene to be filed on or before October 30, 1978.

Texas Gas states that the principal reasons for the proposed rate increase are to recover increases in operating expenses and to reflect increases in rate base and related costs as well as an increased rate of return and related taxes. Texas Gas states that it requires an overall rate of return of 10.97 percent (13.5 percent on equity) because of increased costs for long-term capital resulting from continued rising inflation and the consequent increases in the embedded cost of senior capital since the last general increase in the company's rates on April 1, 1978, and the increased risk associated with the continuing deterioration in its natural gas supply.

Based on a review of Texas Gas' filing herein, the Commission finds that the proposed higher rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission shall accept Texas Gas' proposed rate increase for filing, suspend its use for five months or until April 1, 1979, when it shall become eligible to become effective in the manner prescribed in section 4 of the Natural Gas Act, subject to refund, and shall set the matter for hearing.

Texas Gas requests a waiver of § 154.63(e)(2)(ii) of the Commission's regulations to allow in its proposed rates the costs associated with facilities that are not certificated or in service but anticipated to be in service by the end of the test period. The increased rates are based on the overall cost of service for the 12 months ended June 30, 1978, adjusted to include charges which are expected to become effective by march 31, 1979. Texas Gas has included in its rate base $5.3 million of facilities related to certificates which have not yet been granted by the Commission. The Commission will grant Texas Gas' requested waiver on the condition that Texas Gas will file revised tariff sheets to reflect the elimination of facilities not placed in service on or before March 31, 1979. Texas Gas shall also adjust its rates to reflect the actual balances of advance payments in Account 166 at the end of the test period: *Provided,* That the inclusion of a higher advance payments balance shall not be permitted to increase the overall level of the original suspended rates. The waiver granted in this order is subject to the condition that Texas Gas shall not be permitted to make offsetting adjustments to its suspended rates other than those made pursuant to Commission approved tracking provisions, those adjustments required by this order, and those required by other Commission orders.

The Commission finds:

It is necessary and proper in the public interest and in carrying out the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the rates proposed by Texas Gas and that the same be accepted for filing and suspended as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act particularly sections 4, 5, 8, and 15 thereof, and the Commission's rules and regulations, a public hearing shall be held concerning the lawfulness of the increased rates proposed by Texas Gas.

(B) Pending hearing and decision Texas Gas' tariff sheets are accepted for filing and suspended for five months until April 1, 1979, when they shall be permitted to become effective subject to refund, subject to the conditions set forth below in ordering Paragraph (C), upon motion filed by Texas Gas in accordance with the provisions of the Natural Gas Act.

(C) Texas Gas shall, within 30 days prior to April 1, 1979, file revised tariff sheets to reflect:

1. Removal of costs associated with facilities not in service as of March 31, 1979, and

2. adjustment of the estimated balance of advance payments in account 166 to the actual balance at the end of the test period, provided that the inclusion of a higher advance payment balance shall not be permitted to increase the level of the original suspended rates.

(D) Waiver of § 154.63(e)(2)(ii) is granted to permit the action taken in ordering paragraph (C) above, subject to the condition that Texas Gas shall not be permitted to make offsetting adjustments to its original suspended rates other than those made pursuant to Commission approved tracking provisions, those adjustments required by this order, and those required by other Commission orders.

(E) The Commission Staff shall prepare and serve top sheets on all parties on or before February 1, 1979.

(F) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose (18 CFR 3.5(d)), shall convene a settlement conference in this proceeding to be held within 10 days after the service of top sheets by the Staff, in a hearing or conference room of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. The Presiding Administrative Law Judge is authorized to establish such further procedural dates as may be necessary, and to rule upon all motions (except motions to consolidate, sever or dismiss), as provided for in the rules of practice and procedure.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31418 Filed 11-6-78; 8:45 am]

[1] In the Third Revised Volume No. 1 the following sheets: Second Revised Sheet No. 7-A, Sixth Revised Sheet No. 102 and Twenty-fifth Revised Sheet No. 7. In the Original Volume No. 2 the following sheets: First Revised Sheet Nos. 982 and 1005; Second Revised Sheet Nos. 85, 547, 854, 896, 919, 939 and 959; Third Revised Sheet No. 643, Twelfth Revised Sheet Nos. 362 and 365; thirteenth Revised Sheet No. 363; and Fourteenth Revised Sheet No. 333.

[6740-02-M]

[Docket No. RP73-3 (PGA78-3), et al.]

TRANSCONTINENTAL GAS PIPELINE CORP.

Extension of Time

OCTOBER 27, 1978.

On September 19, 1978, Transcontinental Gas Pipeline Corporation (Transco) filed a letter for an extension of time to file its case-in-chief as required by the Commission's order of August 31, 1978. The letter stated that Transco had filed for rehearing of that order and that favorable action by the Commission on the issues raised would substantially change the scope of its case-in-chief. The Commission issued an order on rehearing modifying the prior order on October 16, 1978. On October 18, 1978, Transco filed a letter proposing a schedule agreed to by Staff Counsel.

Upon consideration, notice is hereby given that the time for filing Transco's case-in-chief is extended to and including November 13, 1978. Staff shall file its statement of position on or before December 13, 1978. The Presiding Judge will convene a settlement conference as directed by ordering paragraph (F) of the order within 10 days after Staff serves its statement of position.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31408 Filed 11-6-78; 8:45 am]

[6740-02-M]

[Docket No. CP79-25]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Application

OCTOBER 31, 1978

Take notice that on October 13, 1978, Transcontinental Gas Pipe Line Corp. (Applicant), P.O. Box 1396, Houston, Tex. 77001, filed in Docket No. CP79-25 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the reduction of storage services for a certain customer and additional storage services for certain other customers, all as more fully set forth in the application on file with the Commission and open to inspection.

Applicant states that its customers Clinton-Newberry Natural Gas Authority (Clinton-Newberry), Fort Hill Natural Gas Authority (Fort Hill), and the city of Greenwood, S.C. (Greenwood), have requested Applicant to eliminate certain storage service allocations of Clinton-Newberry and to distribute such allocations between Fort Hill and Greenwood. It is stated that due to the installation of peak-shaving facilities on Clinton-Newberry's system and the purchase of substantial quantities of storage service under Applicant's rate schedule WSS (Washington Storage Service), Clinton-Newberry wishes to give up its allocation under Applicant's rate schedules GSS (General Storage Service) and LG—A (Liquefied Natural Gas Storage Service—upstream of Carlstadt, N.J.) as follows:

Rate schedule	Demand	Capacity	Docket authorized
GSS	100	5,700	CP70-193
LG-A	600	3,000	CP75-118

Fort Hill, it is stated, wishes to acquire such LG-A allocation, which would increase its service under that rate schedule as follows:

Rate schedule	Demand	Capacity	Docket authorized
LS-A	140	2,770	CP71-162
	143	667	CP75-118
	600	3,000	(1)
	883	6,437	

[1] Requested herein.

Greenwood, it is stated, wishes to acquire such GSS allocation, which would increase its service under that schedule as follows:

Rate schedule	Demand	Capacity	Docket authorized
GSS	220	11,000	CP72-244
	100	5,700	(1)
	320	16,700	

[1] Requested herein.

Applicant states that the additional storage capacity that would be available to Fort Hill and Greenwood would enable those customers to meet their peak demands during the coldest days.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 24, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.70). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commissions rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission, or its designee, on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31419 Filed 11-6-78; 8:45 am]

[6740-02-M]

[Dockets Nos. RP75-30, RP74-20 and RP74-83]

UNITED GAS PIPE LINE CO.

Further Extension of Time

OCTOBER 27, 1978.

On October 25, 1978, United Gas Pipe Line Co. filed a motion for a further extension of time to comply with ordering paragraphs (B) and (C) of Opinion No. 16, issued June 3, 1978. The motion states that the Commission has not yet acted on the merits of United's application for rehearing of that opinion. Because of the pending rehearing application, an extension had been granted by notice issued September 19, 1978.

Upon consideration notice is hereby given that an extension of time for complying with the above-mentioned ordering paragraphs is granted to and including 45 days from the Commission's order on rehearing unless otherwise ordered by the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31409 Filed 11-6-78; 8:45 am]

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[6740-02-M]

[Docket No. ER79-30]

VERMONT ELECTRIC POWER

Filing

OCTOBER 30, 1978.

Take notice that on October 19, 1978, Vermont Electric Power Co., Inc. (VELCO) tendered for filing a Rate Schedule for the sale of capacity and energy equal to 0.1758 percent of the Operable Capability of the Vermont Yankee Nuclear Electric Generating Unit in Vernon, VT. to the Connecticut Light & Power Co., The Hartford Electric Light Co., and the Western Massachusetts Electric Co. for a 5-month period beginning on June 1, 1978 and ending on October 31, 1978. VELCO states that the Vermont Yankee power being sold to the three purchasers will be at its cost to VELCO, and that there will be no change in the overall rate of return of VELCO.

VELCO further states that the purchasers are buying Vermont Yankee Capacity and Energy under the Rate Schedule from VELCO for a flat-negotiated charge of 16.5 mills/kwh for only the kwh of energy actually made available.

VELCO proposes an effective date of June 1, 1978, and therefore requests waiver of the Commission's notice requirements.

According to VELCO copies of this filing were served upon the Vermont Public Service Board, the Massachusetts Department of Public Utilities, the Connecticut Public Service Commission.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practical and Procedure (18 CFR 1.8, 1.10). All such petitions should be filed on or before November 9, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31410 Filed 11-6-78; 8:45 am]

[6740-02-M]

[Docket No. E-9611]

WISCONSIN POWER & LIGHT CO.

Notice of Compliance Filing

OCTOBER 30, 1978.

Take notice that Wisconsin Power & Light Co. on April 1, 1978, tendered for filing a refund report stating that Wisconsin Power paid $85,080.01 to the Columbus Water and Light Department, Columbus, Wis. on March 29, 1978, in compliance with the Commission's order of February 27, 1978, in the above-noted docket.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such protests should be filed on or before November 22, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31411 Filed 11-6-78; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1002-5]

DRAFT FINAL REPORT ON SECTION 125 STUDY FOR OHIO COAL BURNING POWER PLANTS

Notice of Availability

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of availability of draft final report on section 125 study for Ohio coal burning power plants.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has made available for public review and comment a draft final report entitled: "Section 125 Study for Ohio Coal Burning Power Plants." This report examines alternative compliance methods for selected Ohio utilities for complying with the Ohio sulfur dioxide regulations. The report was prepared as part of a comprehensive economic and financial analysis initiated by EPA in response to petitions from Senator Metzenbaum of Ohio, the State of Ohio, the United Mine Workers of America, District 6, and the Ohio Mining and Reclamation Association to institute proceedings under section 125 of the Clean Air Act, as amended August 1977 (42 U.S.C. 7425) in Ohio. Notice of proceedings under section 125 of the Clean Air Act was published July 13, 1978 (43 FR 30113).

The report examines the technical feasibility and associated costs for various compliance options including low sulfur coal, coal washing, coal blending, and stack gas scrubbing for 15 coal-burning power plants and investigates the feasibility of increased Ohio coal use for 6 plants. These 21 plants are operated by 9 utility companies and account for 95 percent of the coal burned in Ohio to generate electric power.

Copies of the draft final report have been distributed to organizations and individuals who are known to have an interest in the Ohio section 125 proceedings.

Copies of the draft final report are available for public inspection and copying during normal business hours at the following locations:

(1) Air Programs Branch, Air and Hazardous Materials Division, EPA, Region V, 230 South Dearborn Street, Chicago, Ill. 60604.

(2) U.S. Environmental Protection Agency Public Information Reference Unit, Room 2922, 401 M Street SW., Washington, D.C. 20460

(3) Cleveland Public Library, Main Branch, 325 Superior Avenue, Cleveland, Ohio 44115.

(4) Columbus Public Library, Main Branch, 96 South Grant, Columbus, Ohio 43215.

(5) St. Clairsville Public Library, 108 West Main Street, Clairsville, Ohio 43950.

Comments and views concerning the draft final report are requested from all interested agencies, organizations, and individuals. Comments should be sent to Francis J. Biros, Chief, Technical Support Branch, Division of Stationary Source Enforcement, EN-341, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, 202-755-2560.

Those submitting comments on the draft final report should endeavor to make their comments as specific, substantive, and factual as possible without undue attention to matters of form. Comments may recommend modifications and/or new alternatives to the analytical approach and assumptions used in the preparation of the draft final report that will enhance its accuracy.

Copies of comments received on the draft report will be placed in the above referenced locations for inspection and will be considered in the preparation of the final Ohio section 125 economic and financial analysis study if received on or before December 7, 1978.

Dated: November 1, 1978.

WILLIAM F. JOHNSON,
Acting Deputy Assistant Administrator for Enforcement.

[FR Doc. 78-31338 Filed 11-6-78; 8:45 am]

[6730-01-M]

FEDERAL MARITIME COMMISSION

[Independent Ocean Freight Forwarder License No. 1660]

LATINVAN, INC.

Order of Revocation

The bond issued in favor of Latinvan, Inc., P.O. Box 440281, Miami, Fla. 33144, FMC No. 1660, was canceled effective October 5, 1978.

By letter dated September 11, 1978, Latinvan, Inc. was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 1660 would be automatically revoked or suspended unless a valid surety bond was filed with the Commission.

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.9 of Federal Maritime Commission General Order 4, further provides that a license will automatically be revoked or suspended for failure of a licensee to maintain a valid bond on file.

Latinvan, Inc. has failed to furnish a valid surety bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 201.1 (revised) § 5.01(d), dated August 8, 1977;

It is ordered, That Independent Ocean Freight Forwarder License No. 1660 be and hereby is revoked effective October 5, 1978.

It is further ordered, That Independent Ocean Freight Forwarder License No. 1660 issued to Latinvan, Inc. be returned to the Commission for cancellation.

It is further ordered, That a copy of this order be published in the FEDERAL REGISTER and served upon Latinvan, Inc.

ROBERT G. DREW,
Director, Bureau of Certification and Licensing.

[FR Doc. 78-31371 Filed 11-6-78; 8:45 am]

[6210-01-M]

FEDERAL RESERVE SYSTEM

CORNING INVESTMENT CO., INC.

Formation of Bank Holding Company

Corning Investment Co., Inc., Atchison, Kans., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80.68 percent of the voting shares of the Farmers State Bank of Corning, Corning, Kans. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than December 1, 1978. Any comment on an application that requests a hearing must be sent to the Secretary's Office within 30 days of the date of this notice and must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 1, 1978.

JOHN M. WALLACE
Assistant Secretary of the Board.

[FR Doc. 78-31442 Filed 11-6-78; 8:45 am]

[6210-01-M]

DESOTO FINANCIAL CORP.

Formation of Bank Holding Company

DeSoto Financial Corp., DeSoto, Tex., has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 89.66 percent of the voting shares of DeSoto State Bank, DeSoto, Tex. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than November 30, 1978. Any comment on an application that requests a hearing must be sent to the Secretary's Office within 30 days of the date of this notice and must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 1, 1978.

JOHN M. WALLACE,
Assistant Secretary of the Board.

[FR Doc. 78-31443 Filed 11-6-78; 8:45 am]

[6210-01-M]

MINNEAPOLIS HOLDING CO.

Formation of Bank Holding Company

Minneapolis Holding Co., Minneapolis, Minnesota, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 97 percent of the voting shares of Bank of Minneapolis and Trust Company, Minneapolis, Minnesota. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 27, 1978.

Board of Governors of the Federal Reserve System, October 27, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-31444 Filed 11-6-78; 8:45 am]

[6210-01-M]

NORTH CENTRAL BANCO, INC.

Acquistion of Bank

North Central Banco, Inc., Hutchinson, Minn., has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 20.1 percent of the voting shares of Citizens Bank and Trust Co., Hutchinson, Minn. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than November 30, 1978.

Board of Governors of the Federal Reserve System, October 30, 1978.

JOHN M. WALLACE,
Assistant Secretary of the Board.

[FR Doc. 78-31445 Filed 11-6-78; 8:45 am]

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[6210-01-M]

OHIO COUNTY BANCSHARES, INC.

Formation of Bank Holding Company

Ohio County Bancshares, Inc., Beaver Dam, Kentucky, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 84.93 per cent of the voting shares of Beaver Dam Deposit Bank, Beaver Dam, Kentucky. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 22, 1978. Any comment on an application that requests a hearing must be sent to the Secretary's Office within 30 days of the date of this notice and must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 1, 1978.

JOHN M. WALLACE,
Assistant Secretary of the Board.

[FR Doc. 78-31447 Filed 11-6-78; 8:45 am]

[6210-01-M]

PANHANDLE BANCSHARES CORPORATION

Formation of Bank Holding Company

Panhandle Bancshares Corporation, Guymon, Okla., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Bank of the Panhandle, Guymon, Okla. The factors that are considering in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 28, 1978.

Board of Governors of the Federal Reserve System, October 30, 1978.

JOHN M. WALLACE,
Assistant Secretary of the Board.

[FR Doc 78-31446 Filed 11-6-78 8:45 am]

[6210-01-M]

PEOPLES STATE BANCSHARES, INC.

Formation of Bank Holding Company

Peoples State Bancshares, Inc., Turkey, Tex., has applied for the Board's approval under Section (3)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1) to become a bank holding company by acquiring 80 percent or more of the voting shares of People State Bank, Turkey, Tex. The factors that are considered in acting on the application are set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 24, 1978.

Board of Governors of the Federal Reserve System, October 27, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc 78-31448 Filed 11-6-78 8:45 am]

[6210-01-M]

REPUBLIC OF TEXAS CORPORATION

Acquisition of Bank

Republic of Texas Corporation, Dallas, Tex., has applied for the Board's approval under § 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent, less directors' qualifying shares, of the voting shares of The First National Bank of Plano, Plano, Tex. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than November 30, 1978. Any comment on an application that requests a hearing must be sent to the Secretary's Office within 30 days of the date of this notice and must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 30, 1978.

JOHN M. WALLACE,
Assistant Secretary of the Board.

[FR Doc. 78-31450 Filed 11-6-78; 8:45 am]

[6210-01-M]

RUTH JONES NELSON FINANCE CORP.

Formation of Bank Holding Company

Ruth Jones Nelson Finance Corp., Correctionville, Iowa, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a multibank holding company by acquiring 50 percent or more of the voting shares of Corn Belt State Bank, Correctionville, and Peterson State Bank, Peterson, both in the State of Iowa. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received no later than November 20, 1978.

Board of Governors of the Federal Reserve System, October 26, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-31449 Filed 11-6-78; 8:45 am]

[6210-01-M]

T. & C. BANCORP, INC.

Formation of Bank Holding Company

T. & C. Bancorp, Inc., St. Joseph, Mo., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 86 percent or more of the voting shares of Town and Country Bank of Quincy, Quincy, Ill. The factors that are considered in acting on the application are set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received no later than December 1, 1978. Any comment on an application that requests a hearing must be sent to the Secretary's office within 30 days of the date of this notice and must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 31, 1978.

JOHN M. WALLACE,
Assistant Secretary of the Board.

[FR Doc 78-31451 Filed 11-6-78; 8:45 am]

[6210-01-M]

UNITED BANCSHARES, INC.

Formation of Bank Holding Company

United Bancshares, Inc., Tulsa, Okla., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 percent, less directors' qualifying shares, of the voting shares of United Bank, Tulsa, Okla. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than November 26, 1978.

Board of Governors of the Federal Reserve System, October 26, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-31452 Filed 11-6-78; 8:45 am]

[1610-01-M]

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Receipt of Report Proposal

The following request for clearance of a report intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on November 1, 1978. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the FEDERAL REGISTER is to inform the public of such receipt.

The notice includes the title of the request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed NRC request are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed request, comments (in triplicate) must be received on or before November 27, 1978, and should be addressed to Mr. John M. Lovelady, Assistant Director, Regulatory Reports Review, U.S. General Accounting Office, Room 5106, 441 G Street NW., Washington, D.C. 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

NUCLEAR REGULATORY COMMISSION

The NRC requests clearance of revisions to Form NRC-313R, Application for Byproduct Material License-Use of Sealed Sources in Radiography. Several minor revisions in format were made to aid applicants in filling out the form and other revisions clarify the information requested by NRC to help reduce the time required for processing the form. The revised form should benefit both NRC and applicants. NRC estimates that applicants will number approximately 400 and the burden associated with filling out Form 313R will average approximately 7 hours per application.

JOHN M. LOVELADY,
Assistant Director, Regulatory Reports Review.

[FR Doc. 78-31357 Filed 11-6-78; 8:45 am]

[6820-25-M]

GENERAL SERVICES ADMINISTRATION

[Intervention Notice 74; Docket No. 27411]

ROCHESTER TELEPHONE CORP., NEW YORK PUBLIC SERVICE COMMISSION

Increase in Annual Revenues

The Administrator of General Services seeks to intervene in a proceeding before the New York Public Service Commission involving an application of Rochester Telephone Corp. for an increase in annual revenues of $8,746,300. The Administrator of General Services represents the interests of the executive agencies of the United States Government as users of utility services.

Persons desiring to make inquiries of GSA concerning this case should submit them, in writing, to Mr. Spence W. Perry, Assistant General Counsel, Regulatory Law Division, General Services Administration, 18th and F Streets, NW., Washington, D.C. 20405, telephone 202-566-0726, on or before December 7, 1978.

Persons making inquiries are put on notice that the making of an inquiry shall not serve to make any persons parties of record in the proceeding.

(Section 201(a)(4), Federal Property and Administrative Services Act, 40 U.S.C. 481(a)(4))

Dated: October 26, 1978.

PAUL GOULDING,
Acting Deputy Commissioner.

[FR Doc. 78-31383 Filed 11-6-78; 8:45 am]

[4110-03-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. 78G-0310]

KREY PACKING CO. AND SHARED TECHNOLOGY, INC.

Filing of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Krey Packing Co. and Shared Technology, Inc. have jointly filed a petition (GRASP 8G0212) proposing affirmation that chlorine dioxide used in water to disinfect freshly slaughtered red meat carcasses is generally recognized as safe (GRAS).

DATE: Comments by January 8, 1979.

FOR FURTHER INFORMATION CONTACT:

Corbin I. Miles, Bureau of Foods, (HFF-335), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-472-4750.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that a petition (GRASP 8G0212) has been filed jointly by Krey Packing Co., 3607 North Florissant, St. Louis, Mo. 63107, and Shared Technology, Inc., 721 Olive Street, Suite 1111, St. Louis, Mo. 63101, and placed on public display at the office of the Hearing Clerk, Food and Drug Administration (FDA), proposing affirmation that chlorine dioxide used in water to disinfect freshly slaughtered red meat carcasses is GRAS.

Any petition which meets the format requirements outlined in § 170.35 is filed by FDA. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for affirmation.

Interested persons may, on or before January 8, 1979, review the petition and/or file comments (four copies,

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identified with the Hearing Clerk docket number found in brackets in the heading of this document) with the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857. Comments should include any available information that would be helpful in determining whether the substance is, or is not, generally recognized as safe. A copy of the petition and received comments may be seen in the office of the Hearing Clerk, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 30, 1978.

ROBERT M. SHAFFNER,
Acting Director,
Bureau of Foods.

[FR Doc. 78-31395 Filed 11-6-78; 8:45 am]

[4110-03-M]

[78-3187]

SCIENCE ADVISORY BOARD

Meeting Cancellation

AGENCY: Food and Drug Administration.

ACTION: Notice

SUMMARY: The Science Advisory Board Meeting announced by a notice in the FEDERAL REGISTER of October 20, 1978 (43 FR 49051), for November 13 and 14, 1978, has been canceled.

FOR FURTHER INFORMATION CONTACT:

Ruth S. Magee, National Center for Toxicological Research, Jefferson, Ark. 72079, 501-541-4528.

Dated: October 30, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner
for Regulatory Affairs.

[Fr Doc.78-31208 Filed 11-6-78; 8:45 am]

[4110-12-M]

Office of the Assistant Secretary for Planning and Evaluation

[Contract No. HEW-100-78-0004]

DENVER INCOME MAINTENANCE EXPERIMENT

Notice of Contract Award

Pursuant to section 606 of the Community Services Act of 1974 (Pub. L. 93-644) 42 U.S.C. 2946, this agency announces the award of a continuation of Contract No. HEW-100-78-0004 to the State of Colorado Department of Social Services, to continue the research project entitled "Denver Income Maintenance Experiment." The purpose of this project, as well as its companion project in Seattle, is to provide data on selected behavioral responses to various alternative income maintenance programs in certain low-income populations. This project also tests three types of manpower training programs. The estimated cost of this continuation is $3,410,085, and the project is scheduled to be completed by June 1980.

Dated: November 1, 1978.

HENRY AARON,
Assistant Secretary for
Planning and Evaluation.

[FR Doc. 78-31457 Filed 11-6-78; 8:45 am]

[4110-12-M]

[Contract No. HEW-100-78-0074]

MANAGEMENT ANALYSIS FOR THE SURVEY OF INCOME AND PROGRAM PARTICIPATION (SIPP)

Notice of Contract Award

Pursuant to section 606 of the Community Services Act of 1974, (Pub. L. 93-644) 42 U.S.C. 2946, this agency announces the award of Contract No. HEW-100-78-0074 to Moshman Associates, Inc., 6400 Goldsboro Road, Washington, D.C. 20034. The purpose of the contract is to provide DHEW with an optimal design plan for staffing and managing the survey when it is operational. The data are collected through comparative analyses of five federally sponsored surveys. The method of data collection will be informal interviews with persons who were instrumental in the design and management phases of these surveys.

The estimated cost of the contract is $76,500 and the intended completion date is January 1, 1979.

Dated: November 1, 1978.

HENRY AARON,
Assistant Secretary for
Planning and Evaluation.

[FR Doc. 78-31455 Filed 11-6-78; 8:45 am]

[4110-12-M]

[Contract No. HEW-100-78-0005]

SEATTLE INCOME MAINTENANCE EXPERIMENT

Notice of Contract Award

Pursuant to section 606 of the Community Services Act of 1974, (Pub. L. 93-644) 42 U.S.C. 2946, this agency announces the award of a continuation of Contract No. HEW-100-78-0005 to the State of Washington Department of Public Assistance, to continue the research project entitled "Seattle Income Maintenance Experiment." The purpose of this project, as well as its companion project in Denver, is to provide data on selected behavioral responses to alternative income support programs in certain low-income populations. This project also tests three types of manpower training programs. The estimated cost of this continuation is $2,512,818, and the project is scheduled for completion in June 1980.

Dated: November 1, 1978.

HENRY AARON,
Assistant Secretary for
Planning and Evaluation.

[FR Doc. 78-31454 Filed 11-6-78 8:45 am]

[4110-12-M]

[Contract No. HEW-100-78-0068]

SURVEY OF INCOME AND PROGRAM PARTICIPATION (SIPP) CONFERENCE

Notice of Contract Award

Pursuant to section 606 of the Community Services Act of 1974 (Pub. L. 93-644), 42 U.S.C. 2946, this agency announces the award of Contract No. HEW-100-78-0068 to JWK International Corporation, 7617 Little River Turnpike, Annandale, Va. 22003, for a technical conference "The Survey of Income and Program Participaton (SIPP): Potential for Analysis". The purpose of the conference is to make academics and professionals aware of the development program of the survey (ISDP) and its substantive and methodological content, and to informally gather information from academic and professional circles concerning their suggestions about and opinions of the survey. This will be done via a 2-day conference with a general information and discussion session, three panel discussions of professionals highly respected in their fields, and three workshops dealing with major aspects of the survey. Presentations and deliberations will be recorded, and verbatim reports will be produced.

The estimated cost of the contract is $85,000 and the intended completion date is January 15, 1979.

Dated: November 1, 1978.

HENRY AARON,
Assistant Secretary for
Planning and Evaluation.

[FR Doc 78-31456 Filed 11-6-78 8:45 am]

[4110-84-M]

Office of the Secretary

PRIVACY ACT OF 1974

System of Records and Notice of Proposed Routine Uses

AGENCY: Department of Health, Education, and Welfare.

ACTION: Notification of new system of records, Health Care Provider Profile, HEW/HSA/BMS, 09-15-0034.

SUMMARY: A new system of records within the Bureau of Medical Services is hereby published in accordance with 5 U.S.C. 552a(e)(4). In accordance with 5 U.S.C. 552a(e)(11), the routine uses of this new system are published for public comment. Interested persons are invited to submit written comments to the address below.

DATES: The routine uses will be adopted as proposed without further notice 30 calendar days after date of publication unless comments are received on or before (30 calendar days after date of publication) which would result in a contrary determination. A new system report was filed for this new system with the Director, Office of Management and Budget, the Speaker of the House, and the President of the Senate on October 31, 1978. Because of the requirements of OMB Circular A-108, this new system of records will not be put into effect until 60 days after the date that the new system report was sent to OMB and Congress.

ADDRESS: Comments should be addressed to the Acting Director, Fair Information Practice Staff, Department of Health, Education, and Welfare, 200 Independence Avenue SW., Washington, D.C. 20201. Comments received will be available for inspection in Room 526-F, Hubert H. Humphrey Building, at the above address.

FOR FURTHER INFORMATION CONTACT:

Nancy Seiler, HSA Privacy Act Coordinator, Room 1418, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857, or call 301-443-5366.

SUPPLEMENTAL INFORMATION: The Bureau of Medical Services, Health Services Administration, proposes to establish a new system of records which will provide a data base for determining the quality and efficacy of medical care and utilization of services in a sample of Public Health Service hospitals and outpatient clinics. A profile will be developed on all health care professionals in the Division of Hospitals and Clinics of the Bureau of Medical Services who have primary responsibility for: (1) Assessing the condition of the patient; (2) exercising independent judgment as to the care of the patient; and (3) rendering services during a patient/health care provider encounter.

This data will be correlated with specific criteria which reflect minimum critical elements essential to appropriate health care services rendered to a patient. Since patients may be treated for an illness by different health care providers of various medical disciplines, it will be important to track each health care provider in the Division of Hospitals and Clinics (DHC). Analysis of the data will enable DHC to monitor quality care, provide baselines for levels of clinical skills, training needs, and background for staffing, assignments, planning, reporting, and remedial programs when necessary.

The health care providers involved in this study will be evaluated by performance as a specific group; i.e., medical specialty or discipline and by experience and background. They will not be evaluated as individuals.

Dated: October 31, 1978.

LEONARD SCHAEFFER,
Assistant Secretary for
Management and Budget.

09-15-0034

System name:

Health Care Provider Profile HEW/HSA/BMS.

Security classification:

None.

System location:

See Appendix.

Categories of individuals covered by the system:

Physicians, dentists, other health care persons in PHS facilities and private health care professionals under contract to BMS, who have primary responsibility for assessing the condition of the patient, exercising independent judgment as to the care of the patient, and rendering service during a patient encounter.

Categories of records in the system:

Assignment data, demographic data, education, training and experience, specialty boards, record of continuing education credit.

Authority for maintenance of the system:

Public Health Service Act, Section 321 (42 U.S.C. 248).

Routine uses of records maintained in the system including categories of users and the purposes of such uses:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. In the event of litigation where one of the parties is (a) the Department, any component of the Department, or any employee of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent an employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party, provided such disclosure is compatible with the purpose for which the records were collected.

3. Disclosure may be made to evaluation teams of the Joint Commission on Accreditation of Hospitals for hospital accreditation purposes only.

4. Records may be disclosed to the Professional Standards Review Organizations (PSRO) review boards for evaluation of services covered by Medicare, Medicaid, and Maternal and Child Health programs.

5. The Department contemplates that it will contract with a private firm for the purpose of collating, analyzing, aggregating, or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records. (Departmental Regulations (45 CFR Part 5b) Appendix B, Item (9).)

Storage:

Hard copy, computer printouts, and magnetic tape.

Retrievability:

The records will be retrieved by the Provider Identification Number (PIN).

The records in this system will be used to establish a research and management data base which will provide a basis for determining the quality and efficacy of medical care as well as effective utilization of health care services.

Safeguards (Access Controls):

Manual files in this system of records will be stored in locking file units. Only authorized personnel will have access to the data.

Access to computerized material will conform to the guidelines contained in HEW ADP Systems manual, Part 6, "ADP System Security Policy," and the National Bureau of Standards

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Federal Information Processing Standards (FIPS PUB 41 and FIPS PUB 31).

Retention and disposal:

Records will be maintained 1 year after the health care provider leaves the Bureau of Medical Services, Division of Hospitals and Clinics' service. Destruction will be by shredding of the hard copy or erasing of the tape.

System manager(s) and address:

Director, Division of Hospitals and Clinics, Bureau of Medical Services, 6525 Belcrest Road, Hyattsville, Md. 20782.

Notification procedure:

Write to the system manager to determine if a record exists.

Record access procedures:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. These access procedures are in accordance with Departmental Regulations (45 CFR 5b.5 (a)(2)).

Contesting record procedures:

Write to the offical at the address specified under the notification procedures above, and reasonably identify the record and specify the information to be contested. [These procedures are in accordance with Departmental Regulations (45 CFR, 5b.7).]

Record source categories:

Health care professionals assigned to the PHS general hospitals and outpatient clinics as listed in Appendix 1.

Systems exempted from certain provisions of the Act:

None.

Appendix 1

Director, USPHS Hospital, 3100 Wyman Park Drive, Baltimore, Md. 21211.
Director, USPHS Hospital, 77 Warren Street, Boston (Brighton), Mass. 02135.
Director, USPHS Hospital, 4400 Avenue N, Galveston, Tex. 77550.
Director, USPHS Hospital, 210 State Street, New Orleans, La. 70118.
Director, USPHS Hospital, 6500 Hampton Boulevard, Larchmont, Norfolk, Va. 23508.
Director, USPHS Hospital, 15th Avenue and Lake Street, San Francisco, Calif. 94118.
Director, USPHS Hospital, Box 3145 or 1131, 14th Avenue South, Seattle, Wash. 98114.
Director, USPHS Hospital, Bay Street and Vanderbilt Avenue, Staten Island, N.Y. 10304.
Director, USPHS Hospital, Carville, La. 70721.
Director, USPHS Outpatient Clinic, 1600 Clifton Road NE., Atlanta, Ga. 30333.
Director, USPHS Outpatient Clinic, Switzer Building, 4th and C Streets, SW., Washington, D.C. 20201.

[FR Doc. 78-31510 Filed 11-6-78; 8:45 am]

[4210-01-M]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-78-896]

PRIVACY ACT OF 1974

New System of Records

AGENCY: Department of Housing and Urban Development.

ACTION: Notification of new system of records.

SUMMARY: The Department is giving notice of a new system of records it intends to maintain that is subject to the Privacy Act.

EFFECTIVE DATE: The system of records shall become effective without further notice in 30 calendar days December 7, 1978, unless comments are received on or before December 7, 1978, which would result in a contrary determination.

ADDRESS: Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT:

Mr. Harold Rosenthal, Departmental Privacy Act Officer, telephone 202-755-5192.

SUPPLEMENTARY INFORMATION: The system will result from data gathered in a study of real estate settlement costs on residential housing units.

A new system report was filed with the Speaker of the House, the President of the Senate, and the Office of Management and Budget on August 7, 1978.

The prefatory statement containing General Routine Uses applicable to all of the Department's systems of records was published at 42 FR 54765 (October 7, 1977). Appendix A, which lists the addresses of HUD's field offices was published at 42 FR 54777 (October 7, 1977).

HUD/PD&R—6

System name:

Real Estate Settlement Costs Research Files.

System location:

Contractor's office (contractor to be selected).

Categories of individuals covered by the system:

Buyers and sellers of individual residential housing units and owners of such units who refinance their mortgages.

Categories of records in the system:

A national sample of Uniform Settlement Statement (HUD-1) forms, showing detailed settlement items and their costs, will be collected from mortgage lenders. Follow-up phone calls to buyers and sellers listed on these forms may be made to elicit information on settlement procedures, costs, etc. In addition, a sample of HUD-1 forms and good-faith estimates of settlement costs will be collected from mortgage lenders in about 12 different housing markets across the country; a sub-sample of these forms will be used to draw a sample of buyers and sellers, as well as a sample of attorneys, mortgage lenders, and others who provided services to buyers and sellers in the sub-sample; this subsample will then be interviewed.

Data will also be collected from national experts in this subject area and from State and local bodies which regulate providers of settlement services.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

See Routine Uses paragraphs in prefatory statement. Other routine uses: None.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders and magnetic tape/disc/drum.

Retrievability:

Name or address of subject.

Safeguards:

Manual records stored in lockable file cabinets and desks in lockable rooms and computer facilities are in secured areas. Access to both types of records are limited to authorized personnel.

Retention and disposal:

All records will be maintained for five years until the end of 1983.

System manager and address:

Director, Office of Organization and Management Information, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

Notification procedure:

For information, assistance, or inquiry about existence of records, contact the Privacy Act Officer at the Headquarters location in accordance with 24 CFR Part 16. This location is given in Appendix A.

Record access procedures:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR Part 16. If additional information or assistance is required, contact the Privacy Act Officer at the headquarters location. This location is given in Appendix A.

Contesting record procedures:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR Part 16. If additional information or assistance is needed, it may be obtained by contacting: (i) In relation to contesting contents of records, the Privacy Act Officer at the Headquarters location. This location is given in Appendix A; (ii) in relation to appeals of initial denials, the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC, 20410.

Record source categories:

Subject individual, mortgage lenders, title insurance firms, real estate agents, title abstractors, land surveyors and other providers of settlement services.

AUTHORITY: 5 U.S.C. 552a, 88 Stat. 1896; Section 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

Issued at Washington, D.C., November 1, 1978.

WILLIAM A. MEDINA,
Assistant Secretary for Administration.

[FR Doc. 78-31511 Filed 11-6-78; 8:45 am]

[4810-84-M]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[M-41268-A; M-41268-B]

MONTANA

Applicetion

OCTOBER 30, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), Fuel Resources Development Co. has applied for two 2-inch natural gas pipeline rights-of-way across the following land:

PRINCIPAL MERIDIAN, MONTANA

T. 23 N., R. 18 E.,
Sec.1, NW¼SW¼; and
Sec. 2, Lot 1 and SE¼NE¼.
T. 24 N., R. 18 E.,
Sec. 35, N½SW¼, SE¼SW¼, and SW¼SE¼.
T. 23 N., R. 19 E.,
Sec. 7, Lots 2, 3, and 4; and
Sec. 18, Lot 1.
T. 24 N., R. 19 E.,
Sec. 21, N½NE¼ and NE¼NW¼.

The 2-inch gathering lines in these applications are a part of a system which will be used to gather natural gas from wells in Blaine County, Mont., and convey it to an existing transmission line.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, Bank Electric Building, Drawer 1160, Lewistown, Mont. 59457.

EDGAR D. STARK,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-31424 Filed 11-6-78; 8:45 am]

[4310-84-M]

[M 42101]

MONTANA

Application

OCTOBER 30, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), The Montana Power Company has applied for one 6-inch natural gas pipeline right-of-way across the following land:

PRINCIPAL MERIDIAN, MONTANA

T. 35 N., R. 20 E.,
Sec. 5, SW¼SW¼; and
Sec. 8, N½NW¼ and SE¼NW¼.

This pipeline will convey natural gas across 0.71 mile of public lands in Blaine County, Mont.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, Bank Electric Building, Drawer 1160, Lewistown, Mont. 59457.

EDGAR D. STARK,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-31425 Filed 11-6-78; 8:45 am]

[4310-03-M]

Heritage Conservation and Recreation Service

NATIONAL REGISTER OF HISTORIC PLACES

Additions, Deletions, and Corrections

By notice in the FEDERAL REGISTER of February 7, 1978, part II, there was published a list of the properties included in the National Register of Historic Places. Further notice is hereby given that certain amendments or revisions in the nature of additions, deletions, or corrections to the previously published list are adopted as set out below.

It is the responsibility of all Federal agencies to take cognizance of the properties included in the National Register as herein amended and revised in accordance with section 106 of the National Historic Preservation Act of 1966, 80 Stat., 16 U.S.C. 470 et seq. (1970 ed.), and the procedures of the Advisory Council on Historic Preservation, 36 CFR Part 800.

RONALD M. GREENBERG,
Acting Keeper of the National Register.

The following list of properties has been added to the National Register of Historic Places since notice was last given in the February 7, 1978, Federal Register. National Historic Landmarks are designated by NHL; properties recorded by the Historic American Buildings Survey are designated by HABS; properties recorded by the Historic American Engineering Record are designated by HAER; properties receiving grants-in-aid for historic preservation are designated by G.

ALABAMA

Clarke County

Grove Hill, *Dickinson House*, 101 Dickinson Ave. (9-13-78).

Lauderdale County

Florence, *Wood Avenue Historic District*, N Wood Ave. roughly bounded by Tuscaloosa and Hawthorne Sts. (10-10-78).

Madison County

Huntsville, *Dallas Mill*, 701 Dallas Ave. (9-18-78).

Perry County

Marion, *Chapel and Lovelace Hall, Marion Military Institute*, AL 14 (9-13-78).

Walker County

Oakman, *Stephenson House*, Cobb St. (9-18-78).

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ALASKA

Anchorage Division

Girdwood vicinity, *Crow Creek Consolidated Gold Mining Company*, NE of Girdwood (9-13-78).

Cook Inlet Division

Hope vicinity, *Hirshey Mine*, SE of Hope (9-13-78).

Matanuska-Susitna Division

Palmer vicinity, *Rebarchek, Raymond, Colony Farm*, S of Palmer off Glenn Hwy. (10-3-78).

ARIZONA

Pima County

Tucson, *Barrio Libre*, roughly bounded by 14th, 19th, Stone and Osborne Sts. (10-18-78).

ARKANSAS

Pulaski County

Little Rock, *Governor's Mansion Historic District*, bounded by the Mansion grounds, 13th, Center, Gaines, and 18th Sts. (9-13-78).

Union County

El Dorado, *El Dorado Junior College Building*, 300 S. West Ave. (9-13-78).

CALIFORNIA

Alameda County

Alameda, *St. Joseph's Basilica*, 1109 Chestnut St. (9-18-78).

Contra Costa County

Richmond, *Winehaven*, Point Molate (10-2-78).

Fresno County

Fresno, *Y.W.C.A. Building*, 1660 M St. (9-21-78).

Kings County

Hanford, *Kings County Courthouse*, 114 W. 8th St. (9-21-78).

Los Angeles County

Los Angeles, *Plaza Substation*, 10 Olvera St. (9-13-78).
Pomona, *Greenwood, Barbara, Kindergarten*, Hacienda Pl. and McKinley Ave. (9-18-78).

Orange County

Placentia, *Bradford, A. S., House*, 136 Palm Circle (10-3-78).

Riverside County

Riverside, *All Souls Universalist Church*, 3657 Lemon St. (9-18-78).

Sacramento County

Sacramento, *Coolot Company Building*, 812 J St. (9-20-78).

San Benito County

Soledad vicinity, *Chalone Creek Archeological Sites*, E of Soledad (8-31-78).

San Bernardino County

Needles vicinity, *Topock Maze Archeological Site*, E of Needles (10-5-78).

San Francisco County

San Francisco, *San Francisco Civic Center Historic District*, roughly bounded by Golden Gate Ave., 7th Franklin, Hayes and Market Sts. (10-10-78).

San Joaquin County

Stockton, *Gee, Wong K., Mansion*, 345 W. Clay St. (9-20-78).
Stockton, *Nippon Hospital*, 25 S. Commerce St. (9-18-78).

Santa Clara County

Saratoga vicinity, *Welch-hurst*, 15800 Sanborn Rd. (9-18-78) HABS.

Solano County

Vacaville, *Vacaville Town Hall*, 820 E. Main St. (9-18-78).

Sonoma County

Bodega vicinity, *Watson School*, 15000 Bodega Hwy. (9-18-78).

Tehama County

Mineral, *Park Headquarters, Lassen Volcanic National Park*, off CA 36 (10-3-78).

Tulare County

Mineral King vicinity, *Generals' Highway Stone Bridges*, N of Mineral King in Sequoia National Park (9-13-78).

Ventura County

Simi, *Colony House*, 137 Strathearn Pl. (9-18-78).

COLORADO

Denver County

Denver, *Bailey House, 1600 Ogden St.* (9-18-78).
Denver, *Boston Building*, 828 17th St. (9-18-78) HABS.
Denver, *Temple Emanuel*, 24 Curtis St. (10-10-78).

Larimer County

Fort Collins, *Botanical and Horticultural Laboratory*, Colorado State University campus.

Otero County

La Junta, *Lincoln School*, 300 block W. 3rd St. (9-13-78).

Pueblo County

Pueblo, *Glass, J. S., Clothing Store*, 308 S. Union Ave. (9-18-78).

Saguache County

Saguache vicinity, *Saguache Flour Mill*, W of Saguache (9-18-78).

CONNECTICUT

Fairfield County

Darien, *Pond-Weed House*, 2591 Post Rd. (10-11-78).

Hartford County

Hartford, *Charter Oak Bank Building*, 114-124 Asylum St. (10-11-78).

Middlesex County

Westbrook vicinity, *Lay-Pritchett House*, N of Westbrook on CT 145 (10-11-78).

New Haven County

Waterbury, *Waterbury Municipal Center Complex*, 195, 235, 236 Grand St.; 7, 35, 43 Field St. (10-10-78).

Windham County

Chaplin, *Chaplin Historic District*, Chaplin St. (10-11-78).

DELAWARE

Kent County

Sandtown vicinity, *Dill Farm Site*, E of Sandtown (10-2-78).

New Castle County

Middletown, *Middletown Historic District*, roughly bounded by Redding, Scott, Lockwood, and Catherine Sts. (10-4-78).
Wilmington, *Rockford Park*, roughly bounded by Red Oak and Rockford Rds., Church and Rising Sun Lanes, and the Brandywine River (9-20-78).

Sussex County

Millsboro vicinity, *Warren's Mill*, NW of Millsboro on DE 326 (9-13-78).
Rehoboth Beach vicinity, *Thompson's Loss and Gain Site*, SW of Rehoboth Beach (9-13-78).

DISTRICT OF COLUMBIA

Washington

Anacostia Historic District, roughly bounded by Good Hope Rd., 16th St., Mapleview Pl., and Martin Luther King, Jr. Ave. (10-11-78).
Civil War Monuments in Washington, DC, various parks within the original boundaries of city (9-20-78).
National Metropolitan Bank Building, 613 15th St., NW. (9-13-78).
United Brick Corporation Brick Complex, 2801 New York Ave., NE. (10-3-78).

FLORIDA

Dade County

Coral Gables, *Coral Gables Congregational Church*, 3010 DeSoto Blvd. (10-10-78).

Hamilton County

Jasper, *United Methodist Church*, Central Ave. and 5th St. (9-29-78).

GEORGIA

Putnam County

Eatonton vicinity, *Tompkins Inn*, N of Eatonton on U.S. 441 (10-5-78).

Stewart County

Lumpkin vicinity, *West Hill*, S of Lumpkin on U.S. 27 (9-18-78).

Thomas County

Metcalf, *Metcalfe Historic District*, roughly bounded by Magnolia, Hancock, Louis and Williams Sts. (9-20-78).

HAWAII

Hawaii County

Kailua, *Mokuaikaua Church*, off HI 11 (10-3-78).

Honolulu County

Honolulu, *Kakaako Pumping Station*, 653 Ala Moana Blvd. (10-4-78).

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Honolulu, *Lishman Building*, Makiki Park, Keeaumoku St. (9-13-78).

IDAHO

Ada County

Boise, *Overland Building*, 8th and Main Sts. (9-21-78).
Grandview vicinity, *Guffey Butte-Black Butte Archeological District*, NW of Grandview (10-10-78).

Canyon County

Caldwell, *Academy Building, College of Idaho*, 1015 Albany St. (10-11-78).
Nampa vicinity, *Horse Barn*, NE of Nampa at Idaho State School and Hospital (10-11-78).

Cassia County

Albion, *Swanger Hall*, Albion State Normal School campus (9-20-78).

Idaho County

Kooskia vicinity, *O'Hara House*, E of Kooskia off U.S. 12 (10-2-78).

Latah County

Moscow, *First Methodist Church*, 322 E. 3rd St. (10-5-78).

ILLINOIS

Cook County

Chicago, *New Masonic Building and Oriental Theater*, 20 W. Randolph St. (9-26-78).
Evanston, *Ridgewood*, 1703-1713 Ridge Ave. (10-4-78).

DuPage County

Clarendon Hills, *Middaugh, Henry C., House*, 66 Norfolk Ave. (9-21-78).

Jackson County

Makanda vicinity, *Agnew, Dr. Frank M., House*, SE of Makanda on SR 12 (9-13-78).

Marshall County

Sparland, *Waugh, Robert, House*, 202 School St. (10-4-78).

Randolph County

Schuline vicinity, *Charter Oak Schoolhouse*, W of Schuline (10-11-78).

Rock Island County

Rock Island, *Rodman, Gen. Thomas, House*, 2532 8½ Ave. (10-3-78).

St. Clair County

Lebanon, *Lebanon Historic District*, irregular pattern centered along St. Louis and Belleville Sts. (10-4-78).

INDIANA

Allen County

Fort Wayne, *Trinity Episcopal Church*, 611 W. Berry St. (9-13-78).

DeKalb County

Auburn, *Auburn Automobile Company Administration Building*, 1600 S. Wayne St. (9-21-78).

Gibson County

Oakland City, *Cockrum, William M., House*, 627 W. Oak St. (9-13-78).

Monroe County

Bloomington vicinity, *Honey Creek School*, NE of Bloomington on Low Gap Rd. (9-20-78).

Tippecanoe County

Lafayette, *St. John's Episcopal Church*, 315 N. 6th St. (9-20-78).

IOWA

Polk County

Des Moines, *Owl's Head Historic District*, Ridge Rd., Forest Dr., 28th and 29th Sts. (10-11-78).

KANSAS

Elk County

Elk City vicinity, *Elk River Archeological District*, W and S of Elk City (9-13-78) (also in Montgomery County).

Montgomery County

Elk River Archeological District. Reference—see Elk County.

Riley County

Manhattan, *Ulrich, Robert, House*, 121 N. 8th St. (9-20-78).

Stafford County

Stafford vicinity, *Comanche Archeological Site*, NE of Stafford (9-18-78).

KENTUCKY

Jefferson County

Louisville, *Limerick Historic District*, roughly bounded by Breckinridge, Oak, 5th and 7th Sts. (9-13-78).

LOUISIANA

Orleans Parish

New Orleans vicinity, *Fort Macomb*, E of New Orleans at Chef Menteur Pass on U.S. 90 (10-11-78).

St. Bernard County

Shell Beach vicinity, *Fort Proctor*, N of Shell Beach on Lake Borgne (9-20-78).

MAINE

Greenville, *Katahdin* (lake boat), Moosehead Lake (9-13-78).

Somerset County

Hinckley vicinity, *Quincy Building (L. C. Bates Museum)* S of Hinckley (10-4-78).

MARYLAND

Baltimore County

Kingsville vicinity, *Jericho Covered Bridge*, E of Kingsville on Franklinville Rd. (9-13-78) (also in Harford County).
Owings Mills, *Owings Upper Mill*, Bonita Ave. and Reisterstown Rd. (9-13-78).

Frederick County

Woodsboro vicinity, *LeGore Bridge*, N of Woodsboro over Monacacy River (9-18-78).

Harford County

Jericho Covered Bridge. Reference—see Baltimore County.

Howard County

Savage vicinity, *Barney, Commodore Joshua, House*, N of Savage at 7912 Savage-Guilford Rd. (8-25-78).

Kent County

Stillpond vicinity, *Hebron*, SE of Stillpond off MD 292 (9-18-78).

Montgomery County

Gaithersburg, *Gaithersburg B & O Railroad Station and Freight Shed*, Summit and E. Diamond Aves. (10-5-78).

Prince Georges County

Upper Marlboro, *Content*, 14518 Church St. (9-13-78) HABS.

Washington County

Hagerstown, *Old Washington County Library*, 21 Summit Ave. (10-2-78).

MASSACHUSETTS

Bristol County

New Bedford, *Union Street Railway Carbarn, Repair Shop (Centennial Building*, 1959 Purchase St. (10-2-78).
North Swansea, *Martin House and Farm*, 22 Stoney Hill Rd. (10-2-78).

Norfolk County

Brookline, *Longwood Historic District*, roughly bounded by Chapel, St. Marys, Monmouth, and Kent Sts. (9-13-78).

Suffolk County

Boston, *Fenway Studios Building*, 30 Ipswich St. (9-13-78).

Worcester County

Worcester, *Day Building*, 300-310 Main St. (9-13-78).
Worcester, *Worcester Five Cents Savings Bank*, 316 Main St. (9-13-78).

MICHIGAN

Calhoun County

Battle Creek, *Battle Creek Sanitarium*, 197 N. Washinvton Ave. (10-4-78).

Genesee County

Flint, *Elks Lodge Building*, 142 W. 2nd St. (10-4-78).

Grand Traverse County

Traverse City, *Boardman Neighborhood Historic District*, roughly bounded State and Webster Sts., and Railroad and Boardman Aves. (10-3-78).
Traverse City, *Northern Michigan Asylum*, bounded by C & O RR. tracks, Division and 11th Sts., Elmwood Ave., Orange and Red Drs. (10-3-78).

Lenawee County

Hudson, *Hall, Dr. Leonard, House*, 334 W. Main St. (10-2-78).

Marquette County

Marquette, *Savings Bank Building*, 125 W. Washington St. (9-13-78).

Sanilac County

Lexington, *Fead, John L., House*, 5349 Washington St. (10-5-78).

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Washtenaw County

Ann Arbor, *Unitarian Universalist Church*, 100 N. State St. (10-4-78).

MINNESOTA

Dakota County

Hastings, *VanDyke-Libby House*, 612 Vermillion St. (10-2-78).

Hennepin County

Minneapolis, *Foshay Tower*, 821 Marquette Ave. (9-20-78).
Minneapolis, *Little Sisters of the Poor Home for the Aged*, 215 Broadway Ave. NE (9-21-78).
Robbinsdale, *Hennepin County Library*, 4915 N. 42nd Ave. (10-2-78).

LeSueur County

St. Peter vicinity, *Andrews House*, SE of St. Peter (10-10-78).

Wabasha County

Wabasha, *Hurd House*, 333 W. Main St. (9-18-78).
Weaver, *Weaver Mercantile Building*, U.S. 61 and MN 74 (9-21-78).

Yellow Medicine County

Canby, *Lund, John G., House*, 101 W. 4th St. (10-2-78).

MISSISSIPPI

Hinds County

Jackson, *Watkins, Will, House*, 1423 N. State St. (9-13-78).

MISSOURI

Cedar County

Stockton vicinity, *Montgomery Archeological Site*, NE of Stockton (9-21-78).

Greene County

Springfield vicinity, *Pearson Creek Archeological District*, SE of Springfield (10-11-78).

Lewis County

Canton, *Henderson Hall*, College Hill (10-2-78).

MONTANA

Fergus County

Lewistown, *St. Joseph's Hospital*, U.S. 87 (9-13-78).

NEBRASKA

Douglas County

Omaha, *Flatiron Hotel*, 1722 St. Mary's Ave. (9-21-78).

Saline County

Wilber, *Hotel Wilber*, 2nd and Wilson Sts. (9-20-78).

Seward County

Seward, *Cattle, John Jr., House*, W. Hillcrest St. (9-13-78).

NEW HAMPSHIRE

Coos County

Bretton Woods vicinity, *Mount Washington Hotel*, off U.S. 302 (9-27-78).

Merrimack County

Concord, *Eagle Hotel*, 110 N. Main St. (9-20-78).
Northfield, *Hall Memorial Library*, Park St. (10-4-78).

NEW JERSEY

Morris County

Whippany, *Our Lady of Mercy Chapel*, 100 Whippany Rd. (9-18-78).

NEW MEXICO

San Miguel County

Pecos, *San Antonio de Padua Church*, NM 63 (9-13-78).

Taos County

Ranchos de Taos, *Ranchos de Taos Plaza*, off U.S. 64 (10-2-78).

NEW YORK

Dutchess County

Red Hook, *Elmendorph Inn*, 43-45 N. Broadway (9-20-78).

Madison County

Cazenovia, *Albany Street Historic District*, irregular pattern along Albany St. (10-10-78).

Monroe County

Honeoye Falls vicinity, *Totiakton Site*, N of Honeoye Falls (9-21-78).
Penfield, *Mud House*, 1000 Whalen Rd. (10-11-78).

New York County

New York, *Schomburg Center for Research in Black Culture*, 103 W. 135th St. (9-21-78).

Putnam County

Brewster, *Brewster, Walter, House*, Oak St. (10-4-78).

Saratoga County

Saratoga Springs, *Pure Oil Gas Station*, 65 Spring St. (10-18-78).

Schenectady County

Schenectady, *Schenectady City Hall and Post Office*, Jay St. (10-11-78).

Schoharie County

Cobleskill, *Cobleskill, Historic District*, irregular pattern along Washington Ave., Main, Grand, and Elm Sts. (9-13-78).

NORTH CAROLINA

Mecklenburg County

Charlotte, *Independence Building*, 100-102 W. Trade St. (9-18-78).

Moore County

Eastwood vicinity, *Black-Cole House*, NW of Eastwood (9-18-78).

Robeson County

Lumberton, *Caldwell, Luther Henry, House*, 209 Caldwell St. (9-18-78).

OHIO

Allen County

Lima, *MacDonell House (Banta-Van Dyke House)*, 632 W. Market St. (9-20-78).

Athens County

Nelsonville, *Dew House*, Public Sq. (10-3-78).

Cuyahoga County

Cleveland, *Lindner Building*, 1331 Euclid Ave. (9-13-78).
Cleveland, *Playhouse Square Group*, 2067 E. 14th St.; 1422, 1501, 1515, 1621 Euclid Ave. (10-5-78).

Delaware County

Delaware vicinity, *Limestone Vale*, 3490 Olentangy River Rd. (10-2-78).

Erie County

Sandusky, *Baltimore and Ohio Railroad Company Depot*, Washington and Warren Sts. (9-13-78).

Fairfield County

Carroll vicinity, *John Bright No. 1 Iron Bridge*, 2 mi. (3.2 km) NE of Carroll on Havensport Rd. (9-20-78).

Franklin County

Columbus, *Jones, W. H., Mansion*, 731 E. Broad St. (10-2-78).

Gallia County

Gallipolis, *Ohio Hospital for Epileptics Stone Water Towers*, Mill Creek Rd. (9-13-78).

Hamilton County

Cincinnati, *Hoffner Historic District*, bounded by Bluerock, Moline Court, Langland, and Hamilton Aves.(10-3-78).
Cincinnati, *Holy Cross Monastery and Chapel*, 1055 St. Paul Pl. (9-13-78).
Cincinnati, *Observatory Historic District*, Observatory Pl. and Ave. (9-20-78).

Lawrence County

Ironton, *Norfolk and Western Railroad Depot*, 1st St. and Park Ave. (9-13-78).

Lorain County

Lorain, *Root, William H., House*, 3535 E. Erie Ave. (9-20-78).
North Ridgeville, *Cahoon, Samuel C., House*, 38369 Center Ridge Rd. (9-20-78).
Sheffield, *Garfield, Milton, House*, 4921 Detroit Rd. (9-21-78).
Sheffield, *Sheffield Village Hall*, Detroit Rd. (10-5-78).

Lucas County

Toledo, *Wright, Dr. John A., House*, 1822 Cherry St. (10-5-78).

Muskingum County

Zanesville, *Lafayette Lodge No. 79*, 333 Market St. (9-13-78).
Zanesville, *St. James Episcopal Church*, 155 N. 6th St. (10-2-78).

Preble County

Eaton, *St. Clair Street Bridge*, St. Clair St. over seven Mile Creek (9-21-78).

Sandusky County

Fremont, *Fremont City Hall*, 401 Croghan St. (8-30-78).

Scioto County

Minford vicinity, *Bennett Schoolhouse Road Covered Bridge*, SE of Minford (10-11-78).

Shelby County

Anna, *Anna Town Hall*, Main St. (9-20-78).

OKLAHOMA

Cimarron County

Felt vicinity, *Cedar Breaks Archeological District*, W of Felt (10-10-78).

Cleveland County

Norman, *Norman Historic District*, 105 W. Main and 100-232 E. Main St. (10-10-78).

Haskell County

Stigler vicinity, *Mule Creek Site*, SE of Stigler (9-13-78).

Oklahoma County

Oklahoma City, *Oklahoma Publishing Company Building*, 500 N. Broadway (9-18—78).

Roger Mills County

Hammon vicinity, *Lamb-Miller Site*, NW of Hammon (10-2-78).

Texas County

Guymon vicinity, *Nash II-Clawson Archeological Site*, E of Guymon (10-2-78).
Guymon vicinity, *Two Sisters Archeological Site*, N of Guymon (10-2-78).

OREGON

Clackamas County

Oregon City, *Canemah Historic District*, roughly bounded by Williamette River, 5th Ave., Marshall and Paquet Sts. (10-11-78).

Marion County

Salem, *Adolph, Samuel, House*, 2493 State St. (10-2-78).
Salem, *Port-Manning House*, 4922 S. Halls Ferry Rd. (10-2-78).

Morrow County

Boardman vicinity, *Oregon Trail, Wells Springs Segment*, S of Boardman (9-13-78).

Multnomah County

Portland, *Bay E, West Ankeny Carbarns*, 2706 NE. Couch St. (10-10-78).
Portland, *Day Building*, 2068 NW. Flanders St. (10-2-78).
Portland, *Dosch, Henry E., House*, 5298 SW. Dosch Rd. (10-2-78).
Portland, *First Church of Christ, Scientist*, 1813 NW. Everett St. (10-2-78).

PENNSYLVANIA

Allegheny County

Pittsburgh, *Burke Building*, 209-211 4th Ave. (9-18-78).
Pittsburgh, *Way, Nicholas, House*, 108 Beaver Rd. (9-13-78).

Bedford County

Bedford, *Barclay House*, 230 Juliana St. (9-18-78).

Berks County

Lenhartsville, *Lenhart Farm*, jct. of U.S. 22 and PA 143 (9-18—78).

Blair County

Culp vicinity, *St. John's Evangelical Lutheran Church*, NE of Culp (9-18-78).
Hollidaysburg, *Highland Hall*, 517 Walnut St. (9-13-78).

Bucks County

Pipersville vicinity, *Stover-Myers Mill*, N of Pipersville on Dark Hollow Rd. (9-13-78).
Southampton, *Southampton Baptist Church and Cemetery*, 2nd St. Pike and Maple Ave. (9-18-78).

Centre County

Philipsburg, *Philips, Hardman, House*, Presquisle and 4th Sts. (9-18-78).

Crawford County

Meadville, *Ruter Hall*, N. Main St. on Allegheny College campus (9-18-78).

Delaware County

Darby, *Darby Meeting*, 1017 Main St. (9-13-78).
Media vicinity, *St. David's Church and Graveyard*, 7 mi. (11 km) N of Media (9-20-78).

Northampton County

Easton, *Lehigh Canal: Eastern Section Glendon and Abbott Street Industrial Sites*, Lehigh River from Hopeville to confluence of Lehigh and Delaware Rivers (10-2-78).
Walnutport, *Lehigh Canal: Lehigh Gap-Walnutport Section*, Lehigh Gap to S Walnutport boundary (10-2-78).

Philadelphia County

Philadelphia, *Adelphi School*, 1223-1225 Spring St. (9-18-78).
Philadelphia, *Drake Hotel*, 1512-1514 Spruce St. (9-18-78).
Philadelphia, *Witherspoon Building*, 1319-1323 Walnut St. (9-18-78).

Pike County

Bushkill, *Turn Store and the Tinsmith's Shop*, U.S. 209 (9-18-78).

Schuylkill County

Tamaqua, *Anthracite Bank Building*, 133 W. Broad St. (9-13-78).

Union County

Allenwood vicinity, *Griffey, Benjamin, House*, W of Allenwood on PA 44 (9-13-78).
Lewisburg, *Packwood House-American Hotel*, 10 Market St. (9-20-78).

Venango County

Oil City, *National Transit Building*, 206 Seneca St. (9-13-78).

Warren County

Russell vicinity, *Irvine, Guy C., House*, 1.5 mi. S of Russell on U.S. 62 (9-13-78).

Wayne County

Waymart, *Delaware & Hudson Canal Company Gravity Railroad Depot*, South St. (9-13-78).
White Mills, *Dorflinger, Eugene, Estate*, U.S. 6 and Charles St. (9-18-78).

Westmoreland County

Delmont, *Salem Crossroads Historic District*, Pittsburgh and Greenburg Sts. (9-18-78).

RHODE ISLAND

Kent County

Nooseneck vicinity, *Allen, Stephen, House*, NW of Nooseneck on Sharp St. (9-20-78).

Newport County

Jamestown vicinity, *Windmill Hill Historic District*, N of Jamestown at Eldred Ave. and N. Main Rd. (10-2-78).
South Portsmouth vicinity, *Lawton-Almy-Hall Farm*, 559 Union St. (10-11-78).

Providence County

Pawtucker, *Pawtucket Congregational Church*, 40 and 56 Walcott St. (9-18-78).
Providence, *Pine Street Historic District*, irregular pattern along Pine St. from Myrtle to Seekell Sts. (9-13-78).

SOUTH CAROLINA

Lexington County

West Columbia, *New Brookland Historic District*, roughly bounded by Alexander Rd., Augusta, State, Spring, and Meeting Sts. (10-10-78).

TENNESSEE

Greene County

Afton vicinity, *Ripley Stone House*, E of Afton off U.S. 11 (9-18-78).
Greeneville vicinity, *New Bethel Cumberland Presbyterian Church*, NW of Greeneville on TN 70 (10-5-78).

Montgomery County

Clarksville vicinity, *Allen House*, N of Clarksville on Allen-Griffey Rd. (10-3-78).
Fredonia, *Wilson, Sanford, House*, Old Ashland City Hwy. (9-13-78).

Shelby County

Memphis, *Lee, James, House*, 239 Adams Ave. (10-2-78).
Memphis, *Sterick Building*, 8 N. 3rd St. (10-2-78).

Smith County

Dixon Springs vicinity, *Bradley, James, House*, SE of Dixon Springs off TN 25 (9-18-78).

TEXAS

Clay County

Henrietta, *Clay County Courthouse and Jail*, (courthouse) 100 N. Bridge St.; (jail) Ikard St. (10-3-78).

Collin County

McKinney, *McKinney, Collin, Cabin*, Finch Park (9-18-78).

Dallas County

Dallas, *Munger Place Historic District*, roughly bounded by Henderson, Junius, Prairie, and Reiger Sts. (9-13-78).

Harris County

Houston, *Foley, W. L., Building*, 214-218 Travis St. (10-11-78).

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Harrison County

Marshall, *Hagerty House*, 505 E. Rusk St. (9-13-78).

Randall County

Canyon, *Lester, L. T., House*, 310 8th St. (9-13-78).

UTAH

Salt Lake County

Salt Lake City, *Capitol Building*, Capitol Hill (10-11-78).
Salt Lake City, *Ladies Literary Club Clubhouse*, 850 E. South Temple (10-11-78).
Salt Lake City, *Tracy Loan and Trust Company Building*, 151 S. Main St. (10-10-78).

Sanpete County

Ephraim, *Anderson, Niels Ole, House*, 306 S. 100 East (10-5-78).
Mt. Pleasant, *Wasatch Academy*, off U.S. 89 (10-2-78).

Summit County

Park City, *Silver King Ore Loading Station*, Park Ave. (10-4-78).

Utah County

Goshen vicinity, *Tintic Standard Reduction Mill*, E of Goshen off U.S. 6 (9-13-78) HAER.

VERMONT

Chittenden County

Burlington, *First Methodist Church of Burlington*, S. Winooski Ave. (10-5-78).
Jericho vicinity, *Galusha House*, S of Jericho (10-10-78).

Franklin County

Enosburg Falls, *Enosburg Opera House*, 31 Depot St. (9-20-78).

Orange County

Newbury vicinity, *Wildwood Hall*, SW of Newbury off U.S. 5 (10-2-78).

VIRGIN ISLANDS

St. Croix Island

Christiansted vicinity, *Friedensthal Mission*, SW of Christiansted (8-25-78).
Frederiksted vicinity, *Estate Butler's Bay*, N of Frederiksted (8-25-78).

St. Thomas Island

Charlotte Amalie, *Hamburg-America Shipping Line Administrative Offices*, 48B Tolbod Gade (10-10-78).

VIRGINIA

Halifax County

Oak Level vicinity, *Redfield*, 3 mi. SE of Oak Level on VA 683 (9-20-78).
South Boston vicinity, *Tarover*, W of South Boston on VA 659 (9-20-78).

WASHINGTON

Grant County

Richland, *Paris Archeological Site*, NW of Richland (9-20-78).

Okanogan County

Oroville vicinity, *Enloe Dam and Powerplant*, 4 mi. (6.4 km) W of Oroville (10-18-78).

Spokane County

Spokane, *Hyde Building and Annex*, W. 611½ Riverside Ave. (2-8-78).

Thurston County

Olympia, *McCleary, Henry, House*, 111 W. 21st Ave. (10-2-78).

WEST VIRGINIA

Harrison County

Clarksburg, *Waldomore*, W. Pike and N. 4th Sts. (10-4-78).

Ohio County

Wheeling, *List, Henry K., House*, (10-4-78) HABS.

Pocahontas County

Huntersville, *Huntersville Presbyterian Church*, off WV 39 (10-4-78).

WISCONSIN

Dane County

Madison, *Fess Hotel*, 1123 E. Doty St. (9-21-78).

Outagamie County

Appleton, *Temple Zion and School*, 320 N. Durkee St. and 309 E. Harris St. (9-18-78).

WYOMING

Albany County

Laramie, *Union Pacific Athletic Club*, off U.S. 30 (9-13-78).

Laramie County

Cheyenne, *Van Tassell Carriage Barn*, 1010 E. 16th St. (9-13-78).

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The following is a list of corrections to properties previously listed in the Federal Register.

DISTRICT OF COLUMBIA

Washington

Civil War Fort Sites (Defenses of Washington) (7-15-74) (boundary increase) also in Prince Georges County, MD and Fairfax County, VA.

GEORGIA

Fulton County

Atlanta, *Fox Theatre Historic District*, Ponce de Leon Ave. and Peachtree St. (5-17-74) (boundary increase).

MARYLAND

Baltimore (independent city) *Fells Point Historic District*, bounded by the harbor, Aliceanna, Wolfe, and Dallas Sts. (3-28-69) (boundary increase).

MASSACHUSETTS

Essex County

Salem, *Chestnut Street Historic District*, roughly bounded by Broad, Warren, Flint, River, and Summer Sts. (8-28-73) (boundary increase).

MICHIGAN

Menominee County

Menominee, *First Street Historic District*, roughly bounded by N side of 10th Ave., 4th Ave., 2nd St. and Green Bay shoreline (12-31-74) (boundary increase).

MISSOURI

Clay County

Kearney vicinity, *James Brothers' House and Farm*, E of Kearney (3-16-72) (boundary increase).

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The following properties have been demolished and/or removed from the National Register of Historic Places.

CALIFORNIA

Los Angeles County

Pasadena, *Pasadena Athletic and Country Club*, E. Green St. and S. Los Robles Ave. (demolished).

RHODE ISLAND

Kent County

Coventry vicinity, *Hopkins Mill*, SW of Coventry on RI 3 at Nooseneck River (demolished).

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Determinations of eligibility are made in accordance with the provisions of 36 CFR 63, procedures for requesting determinations of eligibility, under the authorities in section 2(b) and 1(3) of Executive Order 11593 and section 106 of the National Historic Preservation Act of 1966, as amended, as implemented by the Advisory Council on Historic Preservation's procedures, 36 CFR part 800. Properties determined to be eligible under section 63.3 of the procedures for requesting determinations of eligibility are designated by (63.3).

Properties which are determined to be eligible for inclusion in the National Register of Historic Places are entitled to protection pursuant to section 106 of the National Historic Preservation Act of 1966, as amended, and the procedures of the Advisory Council on Historic Preservation, 36 CFR part 800. Agencies are advised that in accord with the procedures of the Advisory Council on Historic Preservation, before any agency of the Federal Government may undertake any project which may have an effect on an eligible property, the Advisory Council on Historic Preservation shall be given an opportunity to comment on the proposal.

The following list of additions, deletions and corrections to the list of properties determined for inclusion in the National Register is intended to supplement the cumulative version of that list published in February of each year.

CALIFORNIA

Monterey County

Salinas, *Bunn, Thomas M., House*, 425 Blanco Rd.
Salinas, *Surbeck, Margaret Hart, House*, 322 Blanco Rd. (63.3.).
Salinas, *275 Blanco Road House* (63.3.).

Santa Barbara County

U.S. Coast Guard Rescue Station and Lookout Tower, Vanderberg Air Force Base (63.3).

Trinity County

Ironside Mountain, Shasta-Trinity National Forest (63.3).

CONNECTICUT

New London County

Colchester, *1887 Stone Railroad Viaduct over River Road* (63.3).

FLORIDA

Hillsborough County

Tampa vicinity, *Egmont Key (Fort Dade Site)*.

ILLINOIS

Adams County

FALL CREEK MULTIPLE RESOURCE AREA

(63.3) (also in Pike County) This area includes:
Acorn Knoll
Altrogge
Ambrose-Flick
Angus
Arp North
Austin Creek
Baker
Beechnut
Blacksetter
Bluffhall Mound Group
Bonifield
Buffalo
Burlington-Northern
Burton Creek
Bushmeyer
Butco
Camp Grove
Cedar Crest
Cold Rock
Crabapple School
Crackle
Crazy Dog
Crazy Horse
Crestview
Crowfoot Mound
Dale
D. Paul
Dewrock
Dickhut
Dunker
Earl
Echternkamp
Echternkamp Mound Group
Fall Creek
Foogy Hill
Gose Creek
Hadley Creek
Hadley Creek North
Harkness Creek
Heitholt
Hellgate
Hickory Gove
Hungenberg Mound Group
Humphrey
Hunter
Ippenson
Jimson Ridge
Juanita
Jug Run
Kappner
Keil
Ke-Wa-Nec
Kuhlman
Kuhlman Mound Group
Lakker
Lazy "S" Bluff
Lepper-Griffin
Lewton
Marblehead
McCraney Creek
Mill Creek Fork
Moss Green
Mosquito Gorge
Neuer
Niere
Orchard View
Otto's Truck
Peregrine Point
Pigeon Creek
Politsch
Ponderosa Ranch
Poor-Wittland
R. Dykes
Radar Range
Rice Patty
Ripper Mound Group
Rock Quarry
Rogers Lake
Sand Trees
Schafer
Schaffnil
Schuhardt
Sharp-Shin
Sharp-Shin Mound Group
Sinkhole
Snappy
Speckhardt
Squirrel Hollow
Sweetwater
Thirty-Six Nineth-Six
Thursday's Delight
Two Left Feet
West Pond
Windchill
Wolverine
Yakima
Yellow Jacket
Zion Church

Pike County

FALL CREEK MULTIPLE RESOURCE AREA

Reference—see Adams County.

INDIANA

Wells County

State Route 316 Bridge over the Wabash River (63.3).

LOUISIANA

Avoyelles Parish

Log Raft Site, near Bank River (63.3).

MICHIGAN

Wayne County

Detroit, *Robson-Dodge House*, 642 W. Forest Ave.

MISSOURI

Clay County

Kansas City vicinity, *Smithville Multiple Resource Area.* (63.3) **This area includes** sites: SL239, SL408, SL446, SL441.

MONTANA

Stillwater County

Red Lodge vicinity, *West Rosebud Lake site*, W of Red Lodge.

NEW JERSEY

Appalachian Trail in New Jersey (63.3) (also in Warren County.)

Warren County

Appalachian Trail in New Jersey Reference—see Sussex County.

NEW MEXICO

San Juan County

MULTIPLE RESOURCE AREA IN BOLACK LAND EXCHANGE. This area includes sites: 10808, 10809, 10812, 10816, 10817, 10818, 10819, 10821, 10822, 10823, 10824, 10825, 10826, 10827, 10828, 10830, 10831, 10832, 10833, 10834, 10837, 10838, 10841, 10842, 10843, 10845, 10846, 10847, 10848, 10849, 10850, 10851, 10853, 10855, 10856, 10857, 10858, 10859, 10861, 10862, 10863, 10864, 10865, 10866, 10868, 10869, 10870, 10871, 3657, 3658, 3662, 3664, 3665.

NEW YORK

Westchester County

Ossining, *Main Street Crescent.*

RHODE ISLAND

Washinton County

North Kingstown, *Quonset Point Naval Air Station*

TEXAS

Hidalgo County

McAllen, *Federal Building.*

WISCONSIN

Fond du Lac County

Fond du Lac, *Chicago, Milwaukee, St. Paul and Pacific Railroad Company Fond du Lac Enginehouse.*

[FR Doc. 78-30764 Filed 11-6-78; 8:45 am]

[4310-03-M]

NATIONAL REGISTER OF HISTORIC PLACES

Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the Heritage Conservation and Recreation Service before October 30, 1978. Pursuant to § 60.13(a) of 36 CFR Part 60, published in final form on January 9, 1976, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to

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the Keeper of the National Register, office of Archeology and Historic Preservation, U.S. Department of the Interior, Washington, D.C. 20240. Written comments or a request for additional time to prepare comments should be submitted by November 17, 1978.

WILLIAM J. MURTAGH,
Keeper of the National Register.

ALABAMA

Shelby County

Montevallo, *Alabama Girls' Industrial School*, bounded by Middle Campus Dr., Oak, Bloch and Middle Sts.

COLORADO

Boulder County

Boulder, *Highland School*, 885 Arapahoe Ave.
Ward vicinity, *Modoc Mill*, N of Ward.

Chaffee County

Granite vicinity, *Littlejohn Mine Complex*, SW of Granite.

Denver County

Denver, *Dunwoody, William J., House*, 2637 W. 26th Ave.

Douglas County

Larkspur vicinity, *Spring Valley School* E of Larkspur at Spring Valley and Lorraine Rds.

Jefferson County

Golden, *Colorado National Guard Armory*, 1301 Arapahoe St.

Kit Carson County

Burlington, *Carousel No. 6*, Kit Carson Fairgrounds.

Larimer County

Estes Park, *Elkhorn Lodge*, 530 W. Elkhorn Ave.
Fort Collins, *Andrews House*, 324 E. Oak St.
Fort Collins, *Bouton, Jay H., House*, 113 N. Sherwood St.
Fort Collins, *Fuller, Montezuma, House*, 226 W. Magnolia St.
Fort Collins, *McHugh-Andrews House*, 202 Remington St.

Park County

Fairplay, *Park County Courthouse*, 418 Main St.

Pueblo County

Pueblo, *Hazelhurst*, 905 Berkley Ave.
Pueblo, *Vail Hotel*, 217 S. Grand Ave.

Routt County

Steamboat Springs, *Steamboat Springs Depot*, 39265 Routt County Rd.

San Miguel County

Telluride vicinity, *Smuggler-Union Hydroelectric Power Plant*, SE of Telluride along Bridal Veil Falls.

ILLINOIS

De Kalb County

De Kalb, *Egyptian Theatre*, 135 N. 2nd St.

KENTUCKY

Anderson County

Lawrenceburg vicinity, *Moore, Rev. William Dudley, House*, 4 mi. (6.4 km) S of Lawrenceburg on KY 425.

Bourbon County

Paris, *Paris Courthouse Square Historic District*, Courthouse Sq. and environs.

Fayette County

Lexington vicinity, *Cave Spring*, SE of Lexington off U.S. 25/421.

Franklin County

Frankfort, *Beeches*, off U.S. 421.

Harrison County

Cynthiana, *Church of the Advent, Episcopal*, 122 N. Walnut St.

Henry County

Eminence, *Eminence Historic Commerical District*, Broadway, Main, and Penn Sts.

Madison County

College Hill vicinity, *Cane Springs Primitive Baptist Church*, N of College Hill.

Mercer County

Harrodsburg, *College Street Historic District*, College St. from North La. to Factory St., 487-488 Price Ave., 223-224 Factory St.
Harrodsburg vicinity, *Jones, Moses, House*, N of Harrodsburg on Oregon Rd.

Washington County

Springfield, *McChord, William C., House*, 202 Lincoln Park Rd.

MISSOURI

Callaway County

Mokane vicinity, *Union Electric Company Site*, NE of Mokane.

MONTANA

Gallatin County

Bozeman, *Bozeman Carnegie Library*, 35 N. Bozeman Ave.

NEW JERSEY

Bergen County

Saddle River, *Achenbach House*, 184 Chestnut Ridge Rd.

Hunterdon County

Pattenburg vicinity, *Case Farmstead*, W of Pattenburg on SR 14.

Morris County

Parsippany vicinity, *Bowlsby-DeGelleke House*, NW of Parsippany at 320 Baldwin Rd.

NEW YORK

New York County

New York, *Fort Tryon Park and The Cloisters*, Broadway and Dyckman St.

Schenectady County

Niskayuna, *Niskayuna Reformed Church*, 3041 Troy-Schenectady Rd.

Westchester County

Ossining, *Calvary Baptist Church and Annex*, St. Paul's Pl.

NORTH CAROLINA

Buncombe County

Asheville, *Ravenscroft School*, 29 Ravenscroft Dr.

OHIO

Cuyahoga County

Valley View, *Gleason, Edmund, House (Edwin Carey House)* 7243 Canal Rd.

Summit County

Richfield vicinity, *Blackmoor (Lawrence Higgins House)* E of Richfield at 4370 Black Rd.

PENNSYLVANIA

Allegheny County

Pittsburgh, *Pittsburgh Athletic Association Building*, 4215 5th Ave.

Beaver County

Aliquippa, *Jones, B. F., Memorial Library*, 663 Franklin Ave.

Bedford County

Bedford vicinity, *Bonnet's Tavern*, 4 mi. (6.4 km) W of Bedford at jct. of U.S. 30 and PA 31.

Berks County

Kutztown vicinity, *Kemp's Hotel*, E of Kutztown on U.S. 222.

Bucks County

Doylestown, *Doylestown Agricultural Works*, W. Ashland and S. Main St.

Cambria County

Johnstown, *Grand Army of the Republic Hall*, 132 Park Pl.

Centre County

Spring Mills vicinity, *Egg Hill Church*, SW of Spring Mills on Egg Hill Rd.
Woodward, *Woodward Inn*, PA 45.

Chester County

Strickersville, *Lunn's Tavern*, PA 896.

Clearfield County

Clearfield, *Clearfield County Courthouse*, 2nd and Market Sts.

Crawford County

Springboro vicinity, *Shadeland Mansion*, N of Springboro on PA 18.

Dauphin County

Elizabethville vicinity, *Henniger Farm Covered Bridge*, NE of Elizabethville over Wisconisco Creek.

Elk County

Ridgway, *Elk County Courthouse and Jail*, Main and S. Broad Sts.
Ridgway vicinity, *Bonifels*, W of Ridgway off Laurel Mill Rd.

Forest County

Cooksburg, *Cook, Anthony Wayne, Mansion*, River Dr.

Tionesta, *Forest County Courthouse and Jail*, Elm St.

Franklin County

Chambersburg, *Townhouse Row*, 57-85 N. Main St.

Lackawanna County

Scranton, *Silkman House*, 2006 N. Main Ave.

Lancaster County

Marietta, *Duffy, Col. James, Mansion*, 320 W. Market St.

Lycoming County

English Center, *English Center Suspension Bridge*, spans Pine Creek.
Williamsport, *Herdic, Peter, House*, 407 W. 4th St.

Mifflin County

Lewistown vicinity, *Old Hoopes School*, NE of Lewistown.

Montgomery County

Cheltenham vicinity, *Wall House*, W of Cheltenham on Old York Rd.
Lansdale, *Griffith-Snyder House*, 1075 Valley Forge Rd.
Norristown vicinity, *Old Norriton Presbyterian Church*, NW of Norristown on U.S. 422.

Montour County

Danville, Montour, *Montour County Courthouse*, 28 Mill St.

Northumberland County

Watsontown vicinity, *Hopper-Snyder Homestead*, NE of Watsontown off SR 49061.

Philadelphia County

Philadelphia, *Land Title Building*, 1400 Chestnut St.
Philadelphia, *Lemon Hill*, E. River Dr., E. Fairmount Park.

Pike County

Milford, *Pike County Courthouse*, Broad and High Sts.

Schuylkill County

New Ringgold, *New Ringgold Gristmill*, SR 53062.

Snyder County

Selinsgrove, *Selinsgrove Hall and Seibert Hall*, Pine St.

Somerset County

Addison, *Petersburg Toll House*, off U.S. 40.

Venango County

Pleasantville, *Allegheny Baptist, Church (Free Methodist Church)*, PA 27 and Main St.

Washington County

California, *Pennsylvania Railroad Passenger Station*, Water and Wood Sts.

York County

Lewisberry vicinity, *Hammersly-Strominger House*, NE of Lewisberry on PA 177.

TEXAS

Dallas County

Dallas, *South Boulevard-Park Row Historic District*, South Blvd. and Park Row from Central Expwy. to Oakland Ave.

UTAH

Garfield County

Escalante vicinity, *Friendship Cove Pictograph*, E of Escalante on UT 12.

Kane County

Kanab vicinity, *Cottonwood Canyon Cliff Dwelling*, NW of Kanab.

Salt Lake County

Salt Lake City, *Grant Steam Locomotive No. 223*, Liberty Park.
Salt Lake City, *McDonald, David, House*, 4659 Highland Dr.

San Juan County

Blanding vicinity, *Defiance House*, W of Blanding in Glen Canyon National Recreation Area.

Summit County

Coalville, *Summit County Courthouse*, Main St.

Weber County

Ogden, *Perry's Egyptian Theatre*, 2439 Washington Blvd.

VERMONT

Chittenden County

Burlington, *Wells-Richardson District*, bounded by Main, Pine, College, and St. Paul Sts.

WASHINGTON

King County

Woodinville vicinity, *Hollywood Farm*, SE of Woodinville at 14111 NE. 145th St.

Pacific County

Seaview, *Shelburne Hotel*, WA 103 and K St.

[FR DOC. 78-31199 Filed 11-6-78; 8:45 am]

[4410-01-M]

DEPARTMENT OF JUSTICE

Antitrust Division

UNITED STATES v. ENDERLE METAL PRODUCTS COMPANY, NOLL MANUFACTURING COMPANY, SUGDEN ENGINEERING COMPANY AND WELLMADE METAL PRODUCTS COMPANY

Proposed Consent Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b) and (h) (APPA), that a proposed consent judgment and a competitive impact statement as set out below have been filed with the U.S. District Court for the Northern District of California in Civil No. 77-1579 CFP, *United States* v. *Enderle Metal Products Company, et al.* Consenting to the proposed judgment are all defendants in the case, Enderle Metal Products Co., Noll Manufacturing Co., Sugden Engineering Co., and Wellmade Metal Products Co. The complaint in this action alleges that defendants conspired to fix the prices at which Enderle Metal Products Co. and Noll Manufacturing Co. would sell furnace pipe and fittings in California and Reno, Nev. The judgment enjoins the defendants from agreeing to fix the prices of furnace pipe and fittings, allocating markets or customers of furnace pipe and fittings, or exchanging information about prices of furnace pipe and fittings or changes therein before such information is available to the public; it further requires Enderle Metal Products Co. to send its current price book to each account it served in northern California between April 1973 and April 1975. The competitive impact statement describes the anticipated effects of the proposed judgment on competition, and evaluates alternative relief proposals actually considered by the United States. Public comment is invited within the statutory 60 day comment period. Such comments and responses thereto will be published in the FEDERAL REGISTER and filed with the court. Comments should be directed to Anthony E. Desmond, Chief, San Francisco Field Office, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Room 16216C, Box 36046, San Francisco, Calif. 94102.

Dated: October 23, 1978.

CHARLES F. B. MCALEER,
Special Assistant for Judgment Negotiations.

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA

United States of America, Plaintiff, v. *Enderle Metal Products Company; Noll Manufacturing Company; Sugden Engineering Company; and Wellmade Metal Products Company*, Defendants.

No. C77-1579 CFP.

Filed: October 23, 1978.

STIPULATION

It is stipulated by and between the undersigned parties, plaintiff United States of America and defendants Enderle Metal Products Company, Noll Manufacturing Company, Sugden Engineering Company, and Wellmade Metal Products Company, by their respective attorneys, that:

1. A final judgment in the form hereto attached may be filed and entered by the Court upon the motion of either party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16) and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed final judgment by serving notice thereof of defendant and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed final judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall not prejudice any consenting party in this or any other proceeding.

For the Plaintiff: John H. Shenefield, *Assistant Attorney General;* William E. Swope, Charles F. B. McAleer, Anthony E. Desmond, William S. Farmer, Jr., Irene Saal Holmes, *Attorneys, Department of Justice.*

For the Defendants: Melby & Anderson, Glendale, Calif., by Henry Melby, *Attorney for Enderle Metal Products Co.;* Ehrlich, Allison & Sparks, San Francisco, Calif., by Philip Ehrlich, *Attorney for Noll Manufacturing Co.;* Garfield, Tepper & Ashworth, Century City, Calif., by Franklin Garfield, *Attorney for Sugden, Engineering Co.;* Kipperman, Shawn, Keker & Brockett, San Francisco, Calif., by Steven M. Kipperman, *Attorney for Wellmade Metal Products Co.*

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA

United States of America, Plaintiff, v. *Enderle Metal Products Company; Noll Manufacturing Company; Sugden Engineering Company; and Wellmade Metal Products Company,* Defendants.

No. C77-1579 CFP.
Filed: October 23, 1978.

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on July 21, 1977, and plaintiff and defendants by their respective attorneys having each consented to the entry of this Final Judgment without trial or adjudication of any issues of fact or law herein, and without this Final Judgment constituting evidence against or admission by any party hereto with respect to any such issue;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby,

Ordered, adjudged and decreed, as follows:

I

This Court has jurisdiction over the subject matter of this action and of the parties hereto. The Complaint states claims upon which relief may be granted against the defendants under Section 1 of the Sherman Act (15 U.S.C. § 1).

II

As used in this Final Judgment:

(A) "Person" means any individual, partnership, corporation, association, firm or other business or legal entity;

(B) "Furnace pipe and fittings" means pipe, ducts and fittings used to install heating and air conditioning systems in residential and commercial structures;

(C) "Manufacturer" means a person who produces and sells furnace pipe and fittings, and includes each of the defendants;

(D) "Northern California market" means Reno, Nevada and California generally north of Bakersfield;

III

The provisions of this Final Judgment shall apply to each defendant and to each of defendants' officers, directors, employees, agents, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise. For the purpose of this Final Judgment, each defendant together with its controlled subsidiaries and each of its officers, directors and employees when acting solely in such capacity shall be deemed to be one person.

IV

Each defendant is enjoined and restrained from entering into, adhering to, maintaining or furthering any contract, agreement, understanding, plan or program with any other person, directly or indirectly:

(A) To fix, establish, raise, maintain or stabilize the price or process at which furnace pipe and fittings are sold to third persons;

(B) To allocate the markets in which or the customers to whom furnace pipe and fittings may be sold.

V

Each defendant is enjoined and restrained from:

(A) Communicating to, requesting from, or exchanging with any other manufacturer, information concerning:

(1) Prices or terms or conditions upon which furnace pipe and fittings would then be or are then being sold or offered for sale by any manufacturer;

(2) Future prices or terms or conditions upon which furnace pipe and fittings will be sold or offered for sale;

(3) Consideration of changes or revisions in the prices or terms or conditions upon which any manufacturer sells or offers to sell furnace pipe and fittings;

(B) Complaining or otherwise commenting to any manufacturer concerning prices charged by that manufacturer.

VI

Nothing in Section V hereof shall prohibit:

(A) The communication of information, by employees of defendant who routinely conduct furnace pipe and fittings purchase and sale transactions, to such employees of another manufacturer in the course of, and related to, negotiating for, entering into, or carrying out a bona fide purchase or sale transaction between such defendant and such other manufacturer;

(B) The transmission by a defendant, without additional comment or explanation, to another manufacturer upon the request of said manufacturer, of such defendant's price list or price book (or any change therein) for furnace pipe and fittings regularly issued in the course of business, which price book or price list (or said change) such defendant had previously released and circulated to the trade generally, if such transmission is made after the effective date of the prices included in such price list or price book (or said change).

VII

Defendant Enderle Metal Products Company shall:

(A) Send copies of its current price book to each account or former account in the Northern California market to which it sold furnace pipe and fittings during the two (2) year period immediately preceding April 1975.

(B) Within ninety (90) days after the entry of this Final Judgment, file with the Court, and serve a copy on plaintiff, an affidavit concerning the fact and manner of compliance with this Section VII.

VIII

Each defendant is ordered and directed to:

(A) Within sixty (60) days after the entry of this Final Judgment, furnish a conformed copy hereof to: (1) each of its own officers and directors; (2) each of its own employees and agents who has any responsibility for the pricing or sale of furnace pipe and fittings; and (3) each officer, director and aforementioned employee and agent of a domestic subsidiary of said defendant engaged in the manufacture or sale of furnace pipe and fittings; and advise and inform each such person that violation of this Final Judgment could result in a conviction for contempt of court and imprisonment and/or fine.

(B) Within ninety (90) days after the entry of this Final Judgment, file with the Court, and serve a copy on plaintiff, an affidavit concerning the fact and manner of compliance with Paragraph (A) of this Section VIII.

(C) Furnish a copy of this Final Judgment to each successor to an officer, director, or employee described in Paragraph (A) of this Section, together with the advice specified by said paragraph, within thirty (30) days after such succession occurs.

(D) For a period of five (5) years from the entry of this Final Judgment, obtain, and retain in its files, from each officer, director, employee and agent furnished with a copy of this Final Judgment pursuant to Paragraph (A) or Paragraph (C) of this Section VIII, a signed statement evidencing each such person's receipt of a copy of this Final Judgment.

IX

(A) For the purpose of determining or securing compliance with this Final Judgment:

(1) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to a defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(a) Access during the office hours of such defendant to inspect and copy all books, ledg- ers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the defendant relating to any of the matters contained in this Final Judgment; and

(b) Subject to the reasonable convenience of such defendant, and without restraint or interference from it, to interview officers, directors, employees and agents of the defendant, who may have counsel present regarding any such matters.

(2) Any defendant, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to the defendant's principal office, shall submit such reports in writing, under oath if requested, with respect to any of the matters contained in this Final Judgment as may from time to time be requested.

(B) No information or documents obtained by the means provided in this Section IX shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(C) If at any time information or documents are furnished by a defendant to plaintiff, the defendant represents and identifies in writing the material in any such information or documents which is of a type described in Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendant marks each pertinent page of such material, "Subject to Claim of Protection under the Federal Rules of Civil Procedure," then ten (10) days' notice shall be given by plaintiff to the defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which the defendant is not a party.

X

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, or for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and punishment of violations hereof.

XI

Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge

UNITED STATES DISTRICT COURT, DISTRICT OF CALIFORNIA

United States of America, Plaintiff, v. *Enderle Metal Products Company, Noll Manufacturing Company, Sugden Engineering Company, and Wellmade Metal Products Company,* Defendants.

Civil No. 77-1579CFP.
Filed: October 23, 1978.

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act [15 U.S.C. § 16(b)], the United States hereby submits this Competitive Impact Statement relating to the proposed consent judgment submitted for entry in this civil antitrust proceeding.

I. NATURE OF THE PROCEEDING

On July 21, 1977 the United States filed a civil complaint under Section 4 of the Sherman Act [15 U.S.C. § 4] alleging that the defendants Enderle Metal Products Company, Noll Manufacturing Company, Sugden Engineering Company and Wellmade Metal Products Company violated Section 1 of the Sherman Act [15 U.S.C. § 1]. The complaint alleges that the defendants and various coconspirators engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce, the substantial terms of which were that Enderle Metal Products Company raise the prices at which it sold furnace pipe and fittings in the Northern California market to the level of Noll Manufacturing Company's prices there, and that Noll Manufacturing Company raise the prices at which it sold furnace pipe and fittings in the Southern California market to the level of Enderle Metal Products Company's prices there. The Northern California market includes Reno, Nevada and California generally north of Bakersfield; the Southern California market is California generally south of Bakersfield.

In a grand jury indictment and an information filed respectively July 21, 1977 and July 7, 1977 these same four corporate defendants and two individuals were charged with a criminal violation of the Sherman Act on the basis of the same alleged conspiracy charged in this civil complaint. All defendants entered pleas of *nolo contendere* to the criminal price fixing charge and were sentenced to fines totalling $320,000. Those fines have been paid and the criminal cases are concluded.

Entry by the court of the proposed consent judgment will terminate this civil action, except insofar as the court will retain jurisdiction over the matter for possible further proceedings which may be required to interpret, modify or enforce the judgment, or to punish violations of any of the provisions of the judgment.

II. DESCRIPTION OF EVENTS CONSTITUTING THE ALLEGED VIOLATION

Defendants manufacture, from sheet metal, furnace pipe and fittings used to install heating and air conditioning systems in residential and commercial buildings. They sell such furnace pipe and fittings to building supply wholesalers and sometimes directly to building contractors. In 1975 the four defendants sold approximately $6 million worth of furnace pipe and fittings. Their sales accounted for 80% of all sales of furnace pipe and fittings to wholesalers in Northern California and 50% of such sales in Southern California. Sheet metal used by defendants to manufacture furnace pipe and fittings is in part acquired by them from steel plants located outside California. Most of defendants' sales of furnace pipe and fittings were made in California, but some furnace pipe and fittings were sold by them either outside California, or to California companies which resold or delivered to customers or branches outside California.

Historically the market prices for furnace pipe and fittings in Northern and Southern California have been different, with Northern California prices being about 20% higher. In approximately 1973 defendant Enderle Metal Products Company, of Los Angeles, began selling furnace pipe and fittings to several building supply wholesalers in the Northern market, but at the lower prices prevailing in the Southern market. Noll Manufacturing Company headquartered in Richmond, California with a branch in Riv- erside, thereafter proceeded to sell furnace pipe and fittings in the Southern market at prices below those being charged there by Enderle Metal Products Company, and by Sugden Engineering Company, of Bell Gardens, California, and substantially below Noll's own prices in the Northern market.

A Bill of Particulars filed by the United States in the case arising from the criminal indictment states that the United States was prepared to prove at trial that the following events occured. In January 1975 the principal officers of each of the four defendants met. Thomas A. Kelly, president of Wellmade Metal Products Company, Arthur L. Enderle, general manager of Enderle Metal Products Company, Robert E. Noll, then president of Noll Manufacturing Company and Bazil H. Sugden, president of Sugden Engineering Company met at Kelly's request, and the alleged agreement charged in this civil complaint was made. Thereafter Enderle Metal Products Company raised its Northern market prices to the prices charged there by Wellmade Metal Products Company, of Oakland, California, and by Noll Manufacturing Company; likewise Noll Manufacturing Company raised its Southern market prices to the prices charged there by Enderle Metal Products Company. These higher prices continued in effect to the time of the filing of the civil complaint.

According to the allegations of the complaint, this combination and conspiracy had the following effects: (1) furnace pipe and fittings prices in the Northern and Southern California markets have been maintained at noncompetitive levels; (2) purchasers of furnace pipe and fittings from the defendants have been deprived of the benefits of free and open competition in the sale of furnace pipe and fittings; (3) competition between and among the defendants in the sale of furnace pipe and fittings has been restrained; and (4) Endrele Metal Products Company ceased being a substantial competitor in the Northern market and Noll Manufacturing Company became a less substantial competitor in the Southern market.

In statements submitted for sentencing purposes in the criminal cases arising out of the same allegations as this civil complaint the defendants here have admitted attending the above meeting and have admitted the existence of the above agreement to raise prices. However no admissions have been made in this civil suit, which would be settled by the entry of this proposed consent judgment.

III. EXPLANATION OF THE PROPOSED CONSENT JUDGMENT

The United States and the defendants have stipulated that the proposed consent judgment, which is in a form negotiated by the parties, may be entered by the court at any time after compliance with the Antitrust Procedures and Penalties Act. Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, entry of the proposed judgment by the court is conditioned upon a determination by the court that the judgment is in the public interest.

A. Prohibited Conduct

The proposed judgment will permanently enjoin the defendants from entering into or adhering to any agreements or arrangements with any person to fix or maintain the prices at which furnace pipe and fittings are sold, or to allocate the markets in which or customers to whom furnace pipe and fittings are sold. The judgment also prohibits the defendants from communicating to, requesting from, or exchanging with another manufacturer of furnace pipe and fittings information about the prices at which either the defendant or any other manufacturer is selling furnace pipe and fittings, except for the purpose of effecting routine sales transactions between manufacturers. It further prohibits defendants from discussing with another manufacturer or among themselves changes they are considering in prices or terms and conditions of

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the sale of furnace pipe and fittings, and from complaining to another manufacturer about that manufacturer's prices.

The judgment permits the defendants to provide a copy to another manufacturer of their own price list or price change announcements without further comment or discussion once those prices have been circulated to the trade and have been put into effect.

B. Required Conduct

The judgment also specifically requires Enderle Metal Products Company to send to the accounts it served in Northern California between April 1973 and April 1975 a copy of its current price book in effect at the time the judgment is entered.

In order to make the provisions of this judgment and the penalties for violation of it known to all responsible employees, each defendant is required, withing sixty days, to furnish a copy of the judgment to each of its officers and directors and to each of its employees or agents with pricing responsibility in the sale of furnace pipe and fittings, and to each officer and director of any affiliated company engaged in the manufacture or sale of furnace pipe and fittings. If new employees are hired in any of these positions, the judgment requires that they be furnished copies of the judgment within thirty days. In order to ensure that all employees required to receive a copy of the judgment do in fact receive a copy and become aware of the judgment's prohibitions, each defendant must, for a period of five years, obtain and keep a signed statement acknowledging receipt from each such employee. This permits enforcement of the judgment by means of a criminal contempt proceeding against employees who violate the prohibitions of the judgment.

The Department of Justice is given access under the proposed judgment to the files and records of the defendant corporations, to examine such records for compliance or non-compliance with the judgment. The Department is also granted access to interview employees of the defendants to determine whether defendants are complying with the judgment. Defendants' officials may also be required to appear before the court to testify under oath regarding their companies' compliance with the judgment.

C. Effect of the Proposed Judgment on Competition

The relief encompassed in the proposed consent judgment is designed to prevent a recurrence of the activities alleged in the complaint. The prohibitory language of the judgment will ensure that pricing decisions are independently made by each defendant without prior consultation with, or complaints from, competitors. The judgment provides for sufficient access to defendants' records to allow the Department adequately to monitor defendants' compliance in the future.

The requirement of the judgment that Enderle Metal Products Company circulate its price list to customers and former customers in Northern California will ensure that those customers are apprised of Enderle Metal Products Company's readiness to compete in that market.

It is the opinion of the Department of Justice that the proposed judgment is fully adequate to prevent future antitrust violations of this nature by these defendants. Furthermore, in the Department's opinion, disposition of the case without further litigation is appropriate in view of the fact that the proposed judgment provides for relief equal in scope to that which might be obtained after a full airing of the facts and legal issues at trial.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act [15 U.S.C. § 15] provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages such person has suffered, as well as costs and reasonable attorney's fees. Following the filing of the government's complaint, a private lawsuit, captioned *Heieck Supply Corp. (San Francisco), et al.* v. *Enderle Metal Products Company, et al.* No. C77-1788 CFP, was brought against these defendants under Section 4 on behalf of building supply wholesalers allegedly injured as a result of the violation of the antitrust laws alleged in the government's lawsuit. This private lawsuit is currently in the discovery stage. The plaintiffs have obtained through discovery some of the government's records pertaining to the alleged violation.

These plaintiffs and any potential plaintiffs will retain the same rights to seek monetary damages and equitable remedies that they would have had if the proposed judgment had not been entered. However, pursuant to Section 5(a) of the Clayton Act [amended 15 U.S.C. § 16(a)], the judgment may not be used as *prima facie* evidence in private litigation.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED JUDGMENT

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed judgment should be modified may submit written comments to Anthony E. Desmond, Department of Justice, Antitrust Division, 450 Golden Gate Avenue, Box 36046, San Francisco, Calif. 94102, within the 60-day period provided by the Act. The comments and the government's responses to them will be filed with the court and published in the FEDERAL REGISTER. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed judgment at any time prior to its entry if it should determine that some modification of the judgment is necessary to the public interest. The proposed judgment itself provides that the court will retain jurisdiction over this action, and that the parties may apply to the court for such orders as may be necessary or appropriate for the modification or enforcement of the judgment.

VI. ALTERNATIVES TO THE PROPOSED CONSENT JUDGMENT

This case does not involve any novel or unusual issues of fact or law which might make litigation a more desirable alternative than the entry of the negotiated consent judgment. The proposed judgment provides for all equitable relief requested in the complaint. It further severely limits the circumstances under which representatives of the defendants can communicate with competitors about prices. It does not, however, contain a decree by the court as requested in the complaint, that defendants have violated Section 1 of the Sherman Act. On the contrary it states that the judgment is neither an admission or adjudication of such a violation. Litigation might result in an adjudication that the defendants have violated the Sherman Act but is not likely to result in further relief than that contained in the proposed judgment.

VII. OTHER MATERIALS

No materials and documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act [15 U.S.C. § 16(b)] were considered in formulating this proposed judgment.

Dated: October 23, 1978.

WILLIAM S. FARMER, Jr.,
IRENE SAAL HOLMES,
Attorneys, Department of Justice.

[FR Doc. 78-31384 Filed 11-7-78; 8:45 am]

[4410-01-M]

Antitrust Division

UNITED STATES v. WHITTENSERG ENGINEERING & CONSTRUCTION CO., ET AL.

Written Comments Upon Consent Judgment and Department of Justice Response Thereto

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, the following written comments on the proposed judgment filed with the United States District Court in the Western District of Kentucky in Civil Action No. C75-0380L(A), *United States of America* v. *Whittenberg Engineering & Construction Co., et al.* were received by the Department of Justice and are published herewith, together with Justice's response to the comments.

Dated: October 30, 1978.

CHARLES F. B. MCALEER,
Special Assistant for Judgment Negotiations.

SEPTEMBER 29, 1978.

MR. JOHN A. WEEDON,
Chief, Antitrust Division, Cleveland Field Office, 995 Celebrezze, Federal Building, Cleveland, Ohio 44199.

Re: *Settlement of United States* v. *Whittenberg Engineering & Construction Co., et al., No. C 75-0380L(A).*

DEAR MR. WEEDON: This letter is being written pursuant to the Antitrust Procedures and Penalties Act and as a consequence of the Competitive Impact Statement filed by the Antitrust Division in the above-captioned case. We represent General Electric, a potential private litigant against the named defendants in the above case and others. As you know, the criminal indictments in the general contracting industry in the Louisville, Ky. market area spawned civil litigation which is ongoing. We are informed that to date no civil litigant has been successful in obtaining the grand jury transcripts of any indicted party and further that discovery in the pending civil cases has been hampered by the inability of certain witnesses to recollect events relevant to charges of complementary bidding activity.

Our review of the proposed stipulated Final Judgment does not disclose any provisions which provide that the defendants shall not destroy any files relevant to the charges in the civil complaint filed by the United States or files submitted to the grand jury which returned the indictment. We feel that it is in the public interest that files and documents not otherwise privileged which relate to the subject matter of the civil complaint filed by the United States should not be destroyed by any of the defendants and that such a provision should be incorporated in the Final Judgment. In our opinion, without such a provision, entry of the proposed Decree would not be in the public interest.

Very truly yours,

TERRY M. GRIMM.

OCTOBER 20, 1978.

TERRY M. GRIMM, Esquire,
Winston & Strawn, Suite 5000, One First National Plaza, Chicago, Ill. 60603.

Re: *United States* v. *Whittenberg Enginnering & Construction Co., et al., C75-0380 L(A).*

DEAR MR. GRIMM: Pursuant to 15 U.S.C. § 16(a), the U.S. files the following response to those comments set forth in your letter of September 29, 1978, written on behalf of your client General Electric Co., with regard to the proposed Final Judgment filed in this case. The United States has reviewed your comments, as counsel for a potential private plaintiff, and finds the objections which you raised not sufficient to require any alteration in the proposed judgment.

The original grand jury transcripts to which you refer in the first paragraph of your letter are in the custody of the United States and will remain so regardless of the entry of this Final Judgment. Those files and documents alluded to in the second paragraph of your letter, which were subpenaed from the defendants, are subject to an Inpounding Order of this Court and, pursuant to the Order, will remain in our possession until they are no longer needed in this and any further related proceedings of the United States, only after the need for such files and documents is concluded will these materials be returned.

The proposed Final Judgment covers all of the matters which were alleged in the U.S. Complaint. The purposes of our suit, and the relief sought, have been completely fulfilled by the Judgment. It is the U.S. behalf that it was not contemplated by Congress that consent decrees would be entered into to encourage, or affect the outcome of, private litigation. With regard to any potential private litigants, the proposed judgment is, in effect, neutral as to whatever relief or damages they believe they are entitled to.

The proposed Final Judgment between the United States and the defendants in this action is not the place for such a provision as you propose, i.e., one preventing the destruction of any files relevant to this civil Complaint or any documents subpenaed by the grand jury. Normally, it is the responsibility of a private litigant to move the Court to enjoin any document destruction which it suspects may occur.

In accord with section 2 (b) and (d) of the Antitrust Procedures and penalties Act, 15 U.S.C. § 16, your written comment and this response will be filed with the Court and published in the FEDERAL REGISTER.

Sincerely yours,

JOHN A. WEEDON, *Chief, Great Lakes Field Office.*

[FR Doc. 78-31426 Filed 11-6-78; 8:45 am]

[4410-01-M]

Attorney General

CERTIFICATION OF THE ATTORNEY GENERAL

In accordance with section 6 of the Voting Rights of 1965, as amended, 42 U.S.C. 1973d, I hereby certify that in my judgment the appointment of examiners is necessary to enforce the guarantees of the Fifteenth Amendment to the Constitution of the United States in Burke County, Ga. This county is included within the scope of the determination of the Attorney General and the Director of the Census made on August 6, 1965, under section 4(b) of the Voting Rights Act of 1965 and published in the FEDERAL REGISTER on August 7, 1965 (30 FR 9897).

GRIFFIN B. BELL,
Attorney General of the United States.

NOVEMBER 3, 1978.

[FR Doc. 78-31603 Filed 11-6-78; 8:45 am]

[4410-02-M]

[AAG/A Order No. 16-78]

PRIVACY ACT OF 1974

New System of Records

On July 21, 1978, notice of the existence of a system of records maintained by the Federal Bureau of Investigation entitled "The FBI Central Records System" was published in the FEDERAL REGISTER pursuant to 5 U.S.C. 552a(e)(4).

Notice is hereby given that pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, the Federal Bureau of Investigation, Department of Justice, proposes to more fully describe certain records in the Central Records System by publishing a new and separate system, the Investigative Support Information System (ISIS). This system will consist of computerized records concerning individuals involved in several investigations, the nature of which requires compilation of voluminous records relevant to each investigation.

Title 5 U.S.C. 552a(e) (4) and (11) provides that the public be provided a 30-day period in which to comment; the Office of Management and Budget (OMB), which has oversight responsibility under the provisions of the Act, requires a 60-day period in which to review the system before it is implemented. Therefore, the public, OMB, and the Congress are invited to submit written comments on this system. Comments should be addressed to the Administrative Counsel, Office of Management and Finance, Room 1118, Department of Justice, 10th and Constitution Avenue NW., Washington, D.C. 20530. If no comments are received from either the public, OMB, or the Congress within 60 days from the date of publication of this notice, the system will be implemented without further notice in the FEDERAL REGISTER; except that the final rule exempting the system will be published after 60 days. No oral hearings are contemplated.

Appropriate reports have been filed with the Congress and OMB.

Dated: October 26, 1978.

KEVIN D. ROONEY,
Assistant Attorney General for Administration.

Justice/FBI—013

System name:

Investigative Support Information System (ISIS).

System location:

Federal Bureau of Investigation, J. Edgar Hoover FBI Building, 10th and Pennsylvania Avenue NW., Washington, D.C. 20535, *or* in one of the 59 field divisions (see Appendix) [1] depending upon the location of the office of origin (i.e., the office where the case is being supervised and investigated).

Categories of individuals covered by the system:

The ISIS consists of alphabetical listings on computer tape of individuals whose names surface during the administration of an active, major investigation, and concerning whom information also is maintained in the appropriate investigative file in the FBI Central Records System (JUSTICE/FBI—002), published at 43 FR 31443 on July 21, 1978.

Categories of records in the system:

The ISIS was developed to provide a more efficient method to access the voluminous information documented in significant investigations.

The ISIS consists of a computer record created on individuals whose names appear on documents within the case file.

The ISIS records are maintained in addition to, not in lieu of, the records described in the FBI Central Records System.

Authority for maintenance of the system:

Federal Records Act of 1950, the Constitution of the United States,

[1] Published at 43 FR 31455 on July 21, 1978.

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Title 28 U.S.C. 531-537 and various provisions of Title 18, U.S.C., Executive orders and Presidential directives.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

These computerized listings, which are maintained only during the active life of an investigation, are used solely to facilitate the administration of a particularly complex case with voluminous records. Routine use of the information is limited to access by FBI and Department of Justice personnel directly involved in the administration of a specific major case.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

ISIS records are maintained on computer tapes and in computer printed listings. In certain cases the ISIS records are on computer disk files.

Retrievability:

The ISIS computer listings and the FBI General Index (as described in JUSTICE/FBI—002 supra) must be searched to determine what information, if any, the FBI may have in its files. The records are retrieved manually from the ISIS listings or, in some cases, through a CRT (Cathode Ray Tube) video screen terminal to the records resident in an FBI computer.

Safeguards:

Records are maintained in a restricted area and are accessed only by FBI employees. All FBI employees receive a complete background investigation prior to being hired. All employees are instructed not to divulge confidential information or any information contained in FBI files. Failure to abide by this instruction violates Department of Justice regulations and may violate certain statutes providing maximum severe penalties of a $10,000 fine or 10 years' imprisonment, or both. Employees who resign or retire are also instructed not to divulge information acquired on the job. These safeguards are the same as explained in JUSTICE/FBI—002, supra.

Retention and disposal:

When the case is brought to a conclusion and when the ISIS is no longer of any use, all listings will be destroyed in an appropriate manner and the computer tapes and disks will be erased and reused for other tasks within the FBI's computer center.

System manager(s) and address:

Director, Federal Bureau of Investigation, Washington, D.C. 20535.

Notification procedure:

Inquiries should be directed to the Director, Federal Bureau of Investigation, Washington, D.C. 20535. Requester should include his full name, complete address, date of birth, place of birth, notarized signature, and any other identifying data which may assist in making a record search. The requester should also include the general subject matter of the document or its file number.

Record access and contesting procedures:

Although the Attorney General has exempted the system from the access, contest and amendment provisions of the Privacy Act, some records may be available under the Freedom of Information Act. Inquiries should be addressed to the Director, Federal Bureau of Investigation, Washington, D.C. 20535. The requester should clearly state which record(s) is being contested, the reason(s) for contesting, and the proposed amendment(s) to the record(s).

Record source categories:

The FBI, by the very nature of its responsibilities to investigate violations of law within its investigative jurisdiction and to protect the internal security of the United States, collects information from a wide variety of sources. Basically the records are the result of investigative efforts and information furnished by other Government agencies, law enforcement agencies, the general public, informants, witnesses, and public source material.

Systems exempted from certain provisions of the act:

The Attorney General has exempted this system from subsection (c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e)(8), (f), (g), and (m) of the Privacy Act pursuant to 5 U.S.C. 552a (j) and (k). Rules have been promulgated in accordance with the requirements of 5 U.S.C 553 (b), (c), and (e) and are being published in the proposed rules section of today's FEDERAL REGISTER.

[FR Doc 78-31512 Filed 11-6-78 8:45 am]

[4510-43-M]

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-78-109-C]

EASTERN ASSOCIATED COAL CO.

Petition for Modification of Application of Mandatory Safety Standard

Eastern Associated Coal Co., 1728 Koppers Building, Pittsburgh, Pa. 15219, has filed a petition to modify application of 30 CFR 75.1700 (oil and gas well barriers) to its Federal No. 2 Mine in Monongalia County, W.Va. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of the petition is as follows:

(1) No appreciable volume of gas comes from the nearly depleted oil and gas sands in the area of the mine.

(2) In lieu of leaving barriers around oil and gas wells, the petitioner proposes to plug the wells to seal them from the surrounding mining area.

(3) The petitioner outlines the plugging technique to be used and cites in support of its effectiveness MESA Informational Report 1052, ERDA Report MERC/R1-771, USBM Technical Progress Report 56.

(4) The petitioner states that this alternative will provide as much if not more safety for the miners than intended by the standard for these reasons:

(a) Elimination of a possible gas flow path;

(b) Simplification of the mine ventilation and haulage system; and

(c) Improvement of subsidence control in second mining.

REQUEST FOR COMMENTS

Persons interested in this petition may furnish written comments on or before December 7, 1978. Comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Willson Boulevard, Arlington, Va. 22203. Copies of the petition are available for inspection at that address.

Dated: October 31, 1978.

E. MUESSIG,
Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 78-31459 Filed 11-6-78; 8:45 am]

[4510-43-M]

[Docket No. M-78-56-M]

HARBISON-WALKER REFRACTORIES

Petition for Modification of Application of Mandatory Safety Standard

Harbison-Walker Refractories, 2 Gateway Center, Pittsburgh, Pa. 15222, has filed a petition to modify application of 30 CFR 55.9-88 (ROPS) to its Clearfield No. 3 Plant in Clearfield, Pa. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of the petition is as follows:

(1) This petition pertains to a 955 Caterpillar Front End Loader used at the mine.

(2) The loader operates on a level roadway and approach to hoppers under a railroad tipple; there are no embankments. Hence the petitioner believes there is no danger from an overturn.

(3) ROPS (rollover protective structures) equipped loaders cannot move material from railroad cars into trucks because of insufficient vertical clearance under the tipple.

(4) The petitioner states that operation of the loader without ROPS will not lessen the safety of the loader operator.

REQUEST FOR COMMENTS

Persons interested in this petition may furnish written comments on or before December 7, 1978. Comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Willson Boulevard, Arlington, Va. 22203. Copies of the petition are available for inspection at that address.

Dated: October 31, 1978.

E. MUESSIG,
Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 78-31460 Filed 11-6-78; 8:45 am]

[4510-43-M]

[Docket No. M-78-52-M]

PICKANDS MATHER & CO.

Petition for Modification of Application of Mandatory Safety Standard

Pickands Mather & Co., 811 Sellwood Building, Duluth, Minn. 55802, has filed a petition to modify application of 30 CFR 55.12-14 (trailing cables) to its Hibbing Taconite Co. Mine in St. Louis County, Minn. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of the petition is as follows:

(1) Each trailing cable has two equipment grounding conductors. These provide ground fault protection for miners.

(2) In addition, each cable has a ground check conductor. A ground check system constantly monitors the ground fault system. It will cut the power to the cable instantly if any loss of continuity in the equipment grounding conductors occurs or if a failure of the ground check conductor or circuitry occurs.

(3) The petitioner states that the ground check system allows miners to safely handle the cable without using insulated tools. It provides an alternative to the standard and affords miners the same protection.

REQUESTS FOR COMMENTS

Persons interested in this petition may furnish written comments on or

before December 7, 1978. Comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Va. 22203. Copies of the petition are available for inspection at that address.

Dated: October 31, 1978.

E. MUESSIG,
Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 78-31461 Filed 11-6-78; 8:45 am]

[4510-26-M]

Occupational Safety and Health Administration

NEW MEXICO STATE STANDARDS

Notice of Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On December 10, 1975 notice was published in the FEDERAL REGISTER (40 FR 57455) of the approval of the New Mexico plan and the adoption of Subpart DD to Part 1952 containing the decision.

The New Mexico plan provides for the adoption of Federal standards as State standards by:

1. Technical Advisory Committee recommendation to the Environmental Improvement Board.

2. Notice of public hearing(s) published in a newspaper of general circulation in the state at least thirty (30) days prior to the date of such hearing(s).

3. Public hearing(s) conducted by the Environmental Improvement Board.

4. Filing of adopted regulations, amendments or revocations under the State Rules Act.

Section 1953.20 of 29 CFR provides that "where any alteration in the Federal program could have an adverse impact on the 'at least as effective as' status of the State program, a program change supplement to a State plan shall be required." In response to the Federal program changes the State of New Mexico has submitted by letter dated May 16, 1978, from Thomas E. Baca, Director, Environmental Improvement Division, to Robert A. Wendell, Acting Regional Administrator, and incorporated as part of the plan, the State submitted State Standards comparable to Federal standard § 1910.184 dated June 27, 1975, with revisions and deletions to this section dated July 28, 1975, and March 30, 1976; § 1928.57 dated March 9, 1976, with revisions, corrections and amendments to this section dated March 16, 1976, June 2, 1976, and October 22, 1976. The State adopted amendments, corrections or deletions for §§ 1910.179 and 1910.190 dated June 27, 1975; §§ 1910.309 and 1926.400 dated December 21, 1976; § 1910.1001 dated March 19, 1976; §§ 1910.1003, 1910.1004 and §§ 1910.1006 through 1910.1016 dated August 20, 1976. The State deleted its regulation comparable to § 1910.1005.

These standards, which are contained in New Mexico Occupational Health and Safety Regulations, Section 200—General Standards, Section 300—Construction Standards, and Section 400—Agricultural Standards, were promulgated after public hearings held on April 9, 1976 and March 10, 1978, pursuant to the New Mexico Occupational Health and Safety Act, Chapter 63, Laws of 1972, 59-14-1 though 59-14-24, N.M.S.A.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards it has been determined that the State standards are identical to the Federal standards and accordingly should be approved.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, U.S. Department of Labor—OSHA, Room 602, 555 Griffin Square Building, Griffin and Young Streets, Dallas, Tex. 75202; Director, Environmental Improvement Division, Crown Building, 725 St. Michael's Drive, Santa Fe, N. Mex. 87503; and the Technical Data Center, Room N2439R, Third and Constitution Avenue, NW., Washington, D.C. 20210.

4. *Public participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the New Mexico State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law

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including meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective November 7, 1978.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667)). Signed at Dallas, Tex. this 7th day of September 1978.

GILBERT J. SAULTER,
Regional Administrator.

[FR Doc 78-31474 Filed 11-6-78; 8:45 am]

[4510-26-M]

STANDARDS ADVISORY COMMITTEE ON CUTANEOUS HAZARDS

Meeting

Notice is hereby given that the Standards Advisory Committee on Cutaneous Hazards will meet on December 18 and 19, 1978, in Seminar Room No. 2, C-5515, of the New Department of Labor Building, Third Street and Constitution Avenue NW., Washington, D.C.

The Standards Advisory Committee on Cutaneous Hazards was established under section 7(b) of the Occupational Safety and Health Act of 1970 (Pub. L. 91-596) to assist the Secretary of Labor in his standards-setting function.

Draft of the Committee's report to OSHA will be discussed at the meeting. The Meeting will begin at 9 a.m. The public is invited to attend.

For additional information contact:

Mr. John M. Couric, Division of Consumer Affairs, U.S. Department of Labor, OSHA, Room N-3635, Third Street and Constitution Avenue NW., Washington, D.C. 20210, Telephone 202-523-8024.

Written data or views concerning the Committee's assigned subject may be submitted to the Division of Consumer Affairs. Such documents which are received before the scheduled meeting date, preferably with 20 copies, will be presented to the committee and included in the official record of the proceedings.

Anyone who wishes to make an oral presentation should notify the Division of Consumer Affairs before the meeting date. The request should include the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation. Oral presentations will be scheduled at the discretion of the chairman of the committee, to the extent which time permits.

Official records of the meetings will be available for public inspection at the Division of Consumer Affairs.

Signed at Washington, D.C. the 1st day of November 1978.

EULA BINGHAM,
Assistant Secretary of Labor.

[FR Doc. 78-31325 Filed 11-6-78; 8:45 am]

[4510-28-M]

Office of the Secretary

[TA-W-3377]

AVONDALE MILLS COWIKEE PLANT, EUFAULA, ALA.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3377: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on March 21, 1978 in response to a worker petition received on March 7, 1978, which was filed on behalf of workers and former workers producing 100 percent cotton drills and sheeting at the Cowikee Plant of Avondale Mills, Eufaula, Ala.

The Notice of Investigation was published in the FEDERAL REGISTER on March 28, 1978 (43 FR 12967). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Avondale Mills, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the act must be met. The investigation revealed that all of the criteria have been met.

The 100-percent cotton drills and sheeting produced by the Cowikee plant of Avondale Mills are included in the categories gray woven cottin fabric and gray woven industrial cotton fabric. Although U.S. imports of gray woven cotton fabric decreased from 945 million square yards in 1976 to 654 million square yards in 1977, they were higher than the 570 million square yards recorded in 1975. Imports of gray woven cotton fabric increased from 141 million square yards in the first quarter of 1977 to 197 million square yards in the first quarter of 1978. The ratio of imports to domestic production increased from 11.0 percent in 1975 to 17.5 percent in 1976 before decreasing to 11.7 percent in 1977.

Although U.S. imports of gray woven industrial cotton fabric decreased from 332 million square yards in 1976 to 209 million square yards in 1977, they were higher than the 203 million square yards recorded in 1975. Imports of gray woven industrial cotton fabric increased from 49 million square yards in the first quarter of 1977 to 69 million square yards in the first quarter of 1978. The ratio of imports to domestic production increased from 15.9 percent in 1975 to 25.0 percent in 1976 before declining to 20.2 percent in 1977.

The Department conducted a survey of Avondale Mills' customers, which represented over 80 percent of Avondale Mills' sales in 1976. Several customers indicated that they reduced purchases of cotton drills and sheetings from Avondale Mills and switched to imports in 1977. Many customers indicated an import influence in this market stating that price is the significant factor.

CONCLUSION

After careful review, I conclude that increases of imports of articles like or directly competitive with cotton drills and sheetings produced by the Avondale Mills' Cowikee plant in Eufaula, Ala., contributed importantly to the declines in production and to the total or partial separations of workers at that plant. In accordance with the provisions of the Trade Act of 1974, I make the following certification:

All workers of the Cowikee plant in Eufaula, Ala., of Avondale Mills engaged in employment related to the production of cotton drills and sheetings who became totally or partially separated from employment on or after March 3, 1977, and before May 1, 1978, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974. All workers separated on or after May 1, 1978, are denied eligibility to apply for adjustment assistance.

Signed at Washington, D.C., this 31st day of October 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-31462 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-3173]

E. BONELLI & CO., INC., NEW YORK, N.Y.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3173: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on February 21, 1978, in response to a worker petition received on February 6, 1978, which was filed by the Amalgamated Clothing & Textile Workers Union on behalf of workers and former workers producing men's jackets at E. Bonelli & Co., Inc., New York, N.Y.

The Notice of Investigation was published in the FEDERAL REGISTER on March 3, 1978 (43 FR 8864). No public hearing was requested and none was held.

The workers of E. Bonelli & Co., Inc. were certified as eligible to apply for adjustment assistance on January 16, 1976(TA-W-294). That certification expired on January 16, 1978.

The information upon which the determination was made was obtained principally from officials of E. Bonelli & Co., Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the act must be met. It is concluded that all of the requirements have been met.

U.S. imports of men's and boys' tailored dress coats and sportcoats decreased from 6,965 thousand in 1976 to 6,269 thousand in 1977, and increased to 1,776 thousand during the first three months of 1978 compared with 1,323 thousand during the same period of 1977.

The surveyed customers as a group increased their purchases of imported men's sportcoats from 1976 to 1977, and in the first 6 months of 1978 compared with the first 6 months of 1977. Several of the customers increased their purchases of imported men's sportcoats from 1976 to 1977, and decreased their purchases from the manufacturer during the same period. Several customers increased purchases of imports in the first 6 months of 1978 compared with the first 6 months of 1977, and decreased purchases from the manufacturer over the same period. Bonelli closed permanently in April 1978.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's sportcoats produced by E. Bonelli & Co., Inc., New York, N.Y. contributed importantly to the decline in production and to the total or partial separation of workers at the firm. In accordance with the provisions of the act, I make the following certification:

All workers at E. Bonelli & Co., Inc., New York, N.Y., who became totally or partially separated from employment on or after January 16, 1978 and before June 1, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974. All workers separated after June 1, 1978 are denied program benefits.

Signed at Washington, D.C., this 31st day of October 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-31463 Filed 11-6-78; 8:45 am]

[4510-28-M]

INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 24, 1978.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 24, 1978.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C., this 31st day of October 1978.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Carlisle Finishing Co. (Machine Printers & Engravers Association).	Carlisle, S.C	Oct. 31, 1978	Oct. 25, 1978	TA-W-4,316	Commission dyeing, printing and finishing of fabric.
Center Garment Co., Inc. (workers)	Fall River, Mass	Oct. 30, 1978	Oct. 24, 1978	TA-W-4,317	Ladies' better dresses.
DeSoto, Inc., United Wall Covering Division (United Paperworkers International Union).	Chicago, Ill	do	Oct. 22, 1978	TA-W-4,318	Wall coverings, vinyl, plastic, paper, etc.
F. V. Maria Co. (company)	South Dartmouth, Mass	Oct. 25, 1978	Oct. 23, 1978	TA-W-4,319	Catching and selling of lobsters and crabs.
Robertson Factories, Inc. (ACTWU)	Bairdford, Pa	Oct. 27, 1978	Oct. 18, 1978	TA-W-4,320	Readymade draperies.
Rockwell International Corp., Admiral Group (IPSSEU).	West Babylon, N.Y	Oct. 30, 1978	Oct. 18, 1978	TA-W-4,321	Service center only—service repair for televisions and refrigerators.
Rud-Shaw Manufacturing Corp. (workers).	Brooklyn, N.Y	Oct. 31, 1978	Oct. 30, 1978	TA-W-4,322	Men's clothing.
San Juan Milling Co. (workers)	Silverton, Colo	Oct. 23, 1978	Oct. 16, 1978	TA-W-4,323	Mining of gold, silver, lead, and zinc, selling of lead and zinc concentrates to the smelter.
Titmus Optical Co. (workers)	Petersburg, Va	Oct. 31, 1978	Oct. 27, 1978	TA-W-4,324	Metal and plastic frames, safety vision lenses, single vision glass and bifocals.
Willis & Paul Corp. (workers)	Wind Gap, Pa	do	do	TA-W-4,325	Fabricate structural steel.

[FR Doc. 78-31464 Filed 11-6-78; 8:45 am]

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[4510-28-M]

INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 24, 1978.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 24, 1978.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C., this 30th day of October 1978.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Char-Lin Handbags, Inc. (company)	New Haven, Conn	Oct. 26, 1978	Oct. 24, 1978	TA-W-4,304	Ladies' vinyl handbags.
Chicago Rivet (IAM & AW)	Bellwood, Ill	Oct. 25, 1978	Oct. 23, 1978	TA-W-4,305	Rivets and automatic rivet setting equipment.
Farwell Manufacturing Inc. (workers)	Farwell, Mich	Oct. 27, 1978	Oct. 25, 1978	TA-W-4,306	Moldings for small automobile (upper and lower inside window).
Jaton Corp. (workers)	Boston, Mass	Oct. 26, 1978	Oct. 10, 1978	TA-W-4,307	Women's sportswear.
Carol Lee Fashions (ILGWU)	Santa Monica, Calif	do	Oct. 23, 1978	TA-W-4,308	Women's coats, suits, and jackets.
F/V Marrissa Ann (workers)	Mattaposett, Mass	Oct. 25, 1978	do	TA-W-4,309	Catching and selling finfish.
Nabisco, Inc. (Bakery & Confectionery Workers International Union).	Fair Lawn, N.J	Oct. 26, 1978	do	TA-W-4,310	Cookies and biscuits.
Nazareth Steel Fabricators, division of United Industrial Syndicate, Inc. (workers).	Nazareth, Pa	do	do	TA-W-4,311	Structural steel for custom designed fabricated products.
Pervel Industries, Inc. (workers)	Plainfield, Conn	do	Oct. 5, 1978	TA-W-4,312	Vinyl coated fabrics.
Professional Resource Consultants, Inc. (company).	San Diego, Calif	Oct. 27, 1978	Oct. 20, 1978	TA-W-4,313	Provided engineering and consulting work for the copper producing industries.
Salant & Salant, Inc. (ACTWU)	Henderson, Tenn	Oct. 26, 1978	Oct. 24, 1978	TA-W-4,314	Men's jeans.
S.M.R. Associates (Industrial Union of Marine & Shipbuilding Workers of America).	Glassboro, N.J	Oct. 27, 1978	Oct. 25, 1978	TA-W-4,315	Semitrailers and metal containers for air freight.

[FR Doc. 78-31465 Filed 11-6-78; 8:45 am]

[4510-28-M]

Office of the Secretary

[TA-W-3646]

ADRIANA COAT CO., JERSEY CITY, N.J.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3646: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 8, 1978, in response to a worker petition received on April 28, 1978, which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' coats at Adriana Coat Co., Jersey City, N.J.

The notice of investigation was published in the FEDERAL REGISTER on May 26, 1978 (43 FR 22793). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Adriana Coat Co., its customers (manufacturers), the National Cotton Council of America, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met. Without regard to whether any of the other criteria have been met, the following criteria has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or subdivision have contributed importantly to the total or partial separation, or threat thereof, and to the absolute decline in sales or production:

The Department conducted a survey of the principal manufacturers for whom Adriana Coat Co. worked in 1976 and 1977. Manufacturers that accounted for a majority of sales in 1976 and 1977, reduced purchases of ladies' fall and winter coats from Adriana Coat, but did not import ladies' fall and winter coats during the period under consideration. These same manufacturers experienced increased sales of ladies' fall and winter coats in 1976, 1977 and in the first half of 1978.

CONCLUSION

After careful review, I determine that all workers of Adriana Coat Co., Jersey City, N.J. are denied eligibility to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 31st day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-31293 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-3580]

ALL STAR, INC., PATERSON, N.J.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3580: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 8, 1978, in response to a worker petition received on April 28, 1978, which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' coats and raincoats at All Star, Inc., Paterson, N.J.

The notice of investigation was published in the FEDERAL REGISTER on May 26, 1978 (43 FR 22793). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of All Star, Inc., its customers (manufacturers), customers of the manufacturers, the U.S. Department of Commerce, the U.S. International Trade Commission, the National Cotton Council of America, industry analysts, and department files.

In order to make affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. The investigation revealed that all of the requirements have been met.

U.S. imports of women's, misses', and children's coats and jackets increased from 2,252 thousand dozen in 1976 to 2,723 thousand dozen in 1977. The ratio of imports to domestic production increased from 48.3 percent in 1976 to 54.9 percent in 1977. U.S. imports of women's, misses' and children's raincoats decreased from 261 thousand dozen in 1976 to 242 thousand dozen in 1977, and increased from 84 thousand dozen in the first quarter of 1977 to 129 thousand dozen in the first quarter of 1978.

A customer representing a majority of sales of All Star, Inc. reduced contracts with the subject firm in 1977 compared to 1976 and in the first quarter of 1978 compared to the same period in 1977. A survey of customers which had reduced purchases from the manufacturer revealed that they had increased purchases of imported ladies' coats and raincoats.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increased imports of articles like or directly competitive with the ladies' coats and raincoats produced at All Star, Inc., Paterson, N.J. contributed importantly to the decline in sales and to the separation of workers at that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of All Star, Inc., Paterson, N.J., who became totally or partially separated from employment on or after October 1, 1977, are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 31st day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management Administration and Planning.

[FR Doc. 78-31292 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-4220]

BETHLEHEM CONTRACTING CO., BATH, PA.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4220: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on September 29, 1978, in response to a worker petition received on September 27, 1978, which was filed on behalf of workers and former workers of Bethlehem Contracting Co., Bath, Pa. The investigation revealed that the workers of Bethlehem Contracting Co. produce and install fabricated structural steel on buildings under construction.

The notice of investigation was published in the FEDERAL REGISTER on October 17, 1978 (43 FR 40796). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Bethlehem Contracting Co., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Workers of Bethlehem Contracting Co. install fabricated structural steel on buildings under construction. Fabrication is done on the steel prior to its installation. Workers of Bethlehem Contracting Co. were on strike during the second half of 1977. During this period the company was unable to bid on contracts. Following the strike, the firm experienced declines in sales since no projects had been bid upon in prior months.

Imports of fabricated structural steel decreased both absolutely and relative to domestic shipments in the first half of 1978 compared to the first half of 1977. The ratio of imports to domestic shipments declined to 3.9 percent during the first half of 1978 compared to 5.6 percent during the first half of 1977.

CONCLUSION

After careful review, I determine that all workers of Bethlehem Contracting Co., Bath, Pa. are denied eligibility to apply for adjustment assistance under title II, chapter 3 of the Trade Act of 1974.

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Signed at Washington, D.C., this 31st day of October 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-31294 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-3785, 3785A]

CMC INDUSTRIES, INC., NEW YORK, N.Y., AND LUTEEN MANUFACTURING, INC., MORAVIA, N.Y.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3785, 3785A: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 31, 1978, in response to a worker petition received on May 25, 1978, which was filed on behalf of workers and former workers producing girls' tops, blouses, and shirts at CMC Industries, Inc., New York, N.Y. The investigation revealed that CMC Industries contracted with an affiliate company, Luteen Manufacturing, Moravia, N.Y., to have sewn the girls' tops and blouses CMC Industries produced. Luteen Manufacturing, owned by the principals of CMC Industries, worked exclusively for CMC Industries. The investigation, therefore, has been expanded to cover CMC Industries, Inc. (TA-W-3785) and Luteen Manufacturing, Inc. (TA-W-3785A).

The notice of investigation was published in the FEDERAL REGISTER on June 20, 1978 (43 FR 26497-98). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of CMC Industries, Inc., its customers, manufacturers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of women's, misses', and children's blouses and shirts increased from 30,273 thousand dozen in 1976 to 30,849 thousand dozen in 1977. Imports increased to 10,186 thousand dozen in the first quarter of 1978 compared to 8,280 thousand dozen in the first quarter of 1977. The ratio of imports to domestic production decreased from 70.3 percent in 1976 to 69.7 percent in 1977.

Customers surveyed by the Department and accounting for a substantial proportion of CMC Industries Inc.'s sales of blouses, shirts, and tops in 1977 indicated that they decreased their purchases from the CMC Industries in 1977 and increased purchases of imported blouses, shirts, and tops.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with the girls' tops, blouses, and shirts produced at CMC Industries, Inc., New York, N.Y., and Luteen Manufacturing, Inc., Moravia, N.Y., contributed importantly to the decline in sales or production and to the total or partial separation of workers of those firms. In accordance with the provisions of the Act, I make the following certification:

All workers of CMC Industries, Inc., New York, N.Y., and Luteen Manufacturing, Inc., Moravia, N.Y., who became totally or partially separated from employment on or after May 19, 1977, are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 31st day of October 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-31295 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-3802]

CITY GIRL, INC., LODI, N.J.,

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3802: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on June 5, 1978, in response to a worker petition received on April 28, 1978, which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing men's coats at City Girl, Inc., Lodi, N.J.

The notice of investigation was published in the FEDERAL REGISTER on June 20, 1978 (43 FR 26498). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of City Girl, Inc., its customers (manufacturers), customers of the manufacturers, the U.S. Department of Commerce, the U.S. International Trade Commission, the National Cotton Council of America, industry analysts, and Department files.

In order to make affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or subdivision have contributed importantly to the total or partial separation, or threat thereof, and to the absolute decline in sales or production.

The Department conducted a survey of the principal manufacturers for which City Girl, Inc., worked in 1976 and 1977. None of the manufacturers increased imports in the period under investigation. One manufacturer that accounted for a significant portion of sales in 1978, went out of business in 1977. This manufacturer's customers were surveyed regarding their purchases of men's coats. It was revealed that customers of the manufacturer did not reduce purchases from the manufacturer while increasing imports of men's coats.

CONCLUSION

After careful review, I determine that all workers of City Girl, Inc., Lodi, N.J., are denied eligibility to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 31st day of October 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-31296 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-3616]

DELCOR FASHIONS, JERSEY CITY, N.J.

Negative Determination Regarding Eligibility To apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3616: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 8, 1978, in response to a worker petition received on April 28, 1978, which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' coats, at Delcor Fashions, Hoboken, N.J. The investigation revealed that the company was located in Jersey City, N.J.

The notice of investigation was published in the FEDERAL REGISTER on May 26, 1978 (43 FR 22793). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Delcor Fashions, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated.

The plant was closed from January through April in 1977. The date of the petition is April 25, 1978. In accordance with section 223(b) of the Trade Act no certification may apply to any worker whose last total or partial separation from the subject firm occurred before April 25, 1977, 1 year prior to the date of the petition. Production related employment resumed in the third week of May 1977. Employment increased throughout May and June 1977 as the company geared up to normal production levels. Employment increased in the second and third quarters of 1977 when compared to the same periods in 1976. Employment increased in the first quarter of 1978 compared to the same period in 1977. Employment increased in the first 5 months of 1978 when compared to the same period in 1977.

CONCLUSION

After careful review, I determine that all workers of Delcor Fashions, Jersey City, N.J., are denied eligibility to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 31st day of October 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-31297 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-4006]

E. I. DUPONT DE NEMOURS & CO., INC., POTOMAC RIVER WORKS, MARTINSBURG, W. VA.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4006: Investigation regarding certification of eligibility apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on July 31, 1978 in response to a worker petition received on July 25, 1978 which was filed on behalf of workers and former workers producing smokeless powder at the Potomac River Works, Martinsburg, W. Va., of E. I. duPont de Nemours & Co., Inc.

The notice of investigation was published in the FEDERAL REGISTER on August 8, 1978 (43 FR 35130). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of E. I. duPont de Nemours & Co., Inc., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of smokeless powder increased from 2,000 pounds in the first half of 1977 to 40,000 pounds in the first half of 1978. The ratio of imports to domestic production increased from 0.02 percent in the first half of 1977 to 0.4 percent in the first half of 1978.

DuPont began importing finished smokeless powder in June 1978. Company imports increased in quantity 162 percent from June 1978 to July 1978. Imports of finished smokeless powder increased as a percentage of total company sales of finished powder from 27.4 percent in June 1978 to 42.9 percent in July 1978. The company intends to cease domestic production of smokeless powder, and import finished powder for sale to its customers.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with the smokeless powder produced at the Potomac River Works, Martinsburg, W. Va., of E. I. duPont de Nemours & Co., Inc., contributed importantly to the decline in sales or production and to the total or partial separation of workers engaged in employment related to the production of that product at the plant. In accordance with the provisions of the Act, I make the following certification:

All workers engaged in employment related to the production of smokeless powder at the Potomac River Works, Martinburg, W. Va., of E. I. duPont de Nemours & Co., Inc., who became totally or partially separated from employment on or after April 1, 1978, are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 31st day of October 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-31298 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-3405B]

FIN-TEX VII, INC., LONG ISLAND CITY, N.Y.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3405B: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on March 22, 1978, in response to a worker petition received on February 21, 1978, which was filed on behalf of workers and former workers producing ladies' knitted suits, dresses, pants, skirts and sweaters at Venice Industries, Inc., Carlstadt, N.J. The investigation was expanded to include workers of the following subsidiaries of Venice Industries: (1) Shells of Miami, Inc., Miami, Fla., (2) Fin-Tex VII, Inc., Long Island City, N.Y., and (3) Knit Studios, U.S.A., Inc. The investigation revealed that women's knitted skirt suits, pant suits, shells (pullover blouses) and dresses are produced by Venice Industries and its subsidiaries.

The notice of investigation was published in the FEDERAL REGISTER on April 7, 1978 (43 FR 14775). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Venice Industries, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility

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requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of women's, misses' and children's suits (including pant suits and jumpsuits) decreased from 408 thousand dozen in 1976 to 384 thousand dozen in 1977. The ratio of imports to domestic production decreased from 11.4 percent in 1976 to 10.5 percent in 1977. Imports increased from 62 thousand dozen in the first 3 months of 1977 to 104 thousand dozen in the same period of 1978.

U.S. imports of women's, misses' and children's blouses and shirts increased from 30,273 thousand dozen in 1976 to 30,849 thousand dozen in 1977. The ratio of imports to domestic production decreased from 70.3 percent in 1976 to 69.7 percent in 1977. Imports increased from 8,280 thousand dozen in the first 3 months of 1977 to 10,186 thousand dozen in the same period of 1978. U.S. imports of women's, misses' and children's dresses decreased from 1,614 thousand dozen in 1976 to 1,420 thousand dozen in 1977. The ratio of imports to domestic production decreased from 8 percent in 1976 to 6.7 percent in 1977. Imports increased from 371 thousand dozen in the first 3 months of 1977 to 403 thousand dozen in the first 3 months in 1978.

Evidence developed during the course of the investigation revealed that Fin-Tex VII finishes fabric used solely in the production of ladies' pant suits, skirt suits, shells and dresses for its parent company, Venice Industries, Inc. A departmental survey of Venice's customers revealed that some of those who responded to the survey increased their purchases of imported pant suits, skirt suits and dresses in 1977 compared to 1976 while decreasing purchases of like or directly competitive products from Venice Industries during the same time periods.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with women's pant suits, skirt suits, shells and dresses produced at Venice Industries, Inc., from fabric finished at Fin-Tex VII contributed importantly to the decline in sales or production and to the total or partial separation of workers of Fin-Tex VII, Inc., Long Island City, N.Y. In accordance with the provisions of the Act, I make the following certification:

All workers of Fin-Tex VII, Inc., Long Island City, N.Y., who became totally or partially separated from employment on or after August 20, 1977, are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 30th day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-31299 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-3146]

FRASER-JOHNSTON, SAN LORENZO, CALIF.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3146: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on February 16, 1978, in response to a worker petition received on January 19, 1978, which was filed by the International Brotherhood of Boilermakers on behalf of workers and former workers producing fabricated metal at Fraser-Johnston, San Lorenzo, Calif. The investigation revealed that the plant produces residential central heating and cooling systems.

The notice of investigation was published in the FEDERAL REGISTER on March 3, 1978 (43 FR 8862). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Fraser-Johnston, Westinghouse Electric Corp., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The petitioners allege that imports of fabricated metal have contributed to the closing of Fraser-Johnston. Fabricated metal cannot be considered like or directly competitive with residential central heating and cooling systems. Imports of residential central heating and cooling systems must be considered in determining import injury to workers at Fraser-Johnston.

Industry sources indicate that imports of nonwindow, nonwall, air-conditioners are insignificant. Industry sources indicated that foreign-made air-conditioners have no perceptible impact on the domestic market.

U.S. imports of heaters and heating systems are negligible according to industry sources.

A Department survey of Fraser-Johnston's major customers indicated that none of the customers increased purchases of imported home central heating and cooling systems while decreasing purchases from Fraser-Johnston in 1977 compared to 1976. Survey results confirm the industry analysis which found insignificant imports of these products.

CONCLUSION

After careful review, I determine that all workers of Fraser-Johnston, San Lorenzo, Calif., are denied eligibility to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 31st day of October 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-31300 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-3591, etc.]

HIGH FASHION, INC., PATERSON, N.J., ET AL.

Certifications Regarding Eligibility To Apply for Worker Adjustment Assistance: Corrections

In the matter of [TA-W-3591] High Fashion, Inc., Paterson, N.J.; [TA-W-3610] Style Sportswear, Paterson, N.J.; [TA-W-3619] Grace Coat Co., Hoboken, N.J.; [TA-W-3629] Star Coat Manufacturing Co., Inc., Hoboken, N.J.; [TA-W-3644] RCR Sportswear, Inc., Passaic, N.J.; [TA-W-3670] Super Craft Coats, Inc., Garfield, N.J.; [TA-W-3682] Brade Sportswear, Perth Amboy, N.J.

Due to an administrative error, the impact dates in the certification paragraphs in the conclusion of the following cases were published incorrectly and should be corrected to read "April 25, 1977," instead of "March 28, 1977." These cases were published in the FEDERAL REGISTER as indicated below:

TA-W-3591—October 3, 1978—43 FR 45656, FR Doc. 78-27903.
TA-W-3610—September 12, 1978—43 FR 40573, FR Doc. 78-25528.
TA-W-3629—October 20, 1978—43 FR 49074, FR Doc. 78-29657.
TA-W-3644—October 13, 1978—43 FR 47329, FR Doc. 78-28892.
TA-W-3670—October 13, 1978—43 FR 47316, FR Doc. 78-28465.

TA-W-3682—October 17, 1978—43 FR 47797, FR Doc. 78-29145.

Due to an administrative error, the impact date in the certification paragraph in the conclusion of the following case was published incorrectly and should be corrected to read "April 25, 1977," instead of "March 23, 1977." This case was published in the FEDERAL REGISTER as indicated below:

TA-W-3619—September 26, 1978—43 FR 43579, FR Doc. 78-26886.

Signed at Washington, D.C., this 31st day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-31301 Filed 11-5-78; 8:45 am]

[4510-28-M]

[TA-W-3592]

INTERNATIONAL COAT, INC., PATERSON, N.J.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3592: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 8, 1978 in response to a worker petition received on April 28, 1978 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' coats and raincoats at International Coat, Inc., Paterson, N.J.

The notice of investigation was published in the FEDERAL REGISTER on May 26, 1978 (43 FR 22793). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of International Coat, Inc., its customers (manufacturers), industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met.

That increases of imports of articles like or directly competitive with articles produced by the firm or subdivision have contributed importantly to the total or partial separation, or threat thereof, and to the absolute decline in sales or production.

International Coat began producing ladies' coats and jackets in January 1977. Sales increased in each quarter of 1977 compared to the previous quarter. Sales increased in the first quarter of 1978 compared to the first quarter of 1977.

CONCLUSION

After careful review, I determine that all workers of International Coat, Inc., Paterson, N.J. are denied eligibility to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 31st day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-31302 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-3622]

JERSEY MADE FASHIONS, INC., HOBOKEN, N.J.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3622: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 8, 1978 in response to a worker petition received on April 28, 1978 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' winter garments at Jersey Made Fashions, Hoboken, N.J. The investigation revealed that the company made ladies' coats.

The notice of investigation was published in the FEDERAL REGISTER on May 26, 1978 (43 FR 22793). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Jersey Made Fashions, Inc., its customers (manufacturers), the U.S. Department of Commerce, the U.S. International Trade Commission, the National Cotton Council of America, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That sales or production, or both, of the firm or subdivision have decreased absolutely.

Jersey Made Fashions, Inc., began operations in May 1976 as a contractor. Sales are equal to production. Sales during the June-December period increased in 1977 compared to 1976. Sales during the January to May 1978 period increased compared to the same period in 1977.

The few layoffs that occurred in the first quarter of 1978 resulted from seasonality which is evident in the employment history of the firm and the industry.

CONCLUSION

After careful review, I determine that all workers of Jersey Made Fashions, Inc. of Hoboken, N.J. are denied eligibility to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 31st day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-31303 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-3405C]

KNIT STUDIOS, U.S.A., INC., REGO PARK, WEST BABYLON, AND NANUET, N.Y.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3405C: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on March 22, 1978, in response to a worker petition received on February 21, 1978, which was filed on behalf of workers and former workers producing ladies' knitted suits, dresses, pants, skirts, and sweaters, at Venice Industries, Inc., Carlstadt, N.J. The investigation was expanded to include workers of the following subsidiaries of Venice Industries: (1) Shells of Miami, Inc., Miami, Fla. (2) Fin-Tex VII, Inc., Long Island City, N.Y. and (3) Knit Studios, U.S.A., Inc. The investigation revealed that women's knitted skirt suits, pant suits, shells (pullover blouses) and dresses are produced by Venice Industries and its subsidiaries.

The Notice of Investigation was published in the FEDERAL REGISTER on April 7, 1978 (43 FR 14775). No public hearing was requested and none was held.

U.S. imports of women's, misses' and children's dresses decreased from 1,614

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thousand dozen in 1976 to 1,420 thousand dozen in 1977. The ratio of imports to domestic production decreased from 8 percent in 1976 to 6.7 percent in 1977. Imports increased from 371 thousand dozen in the first 3 months of 1977 to 403 thousand dozen in the first 3 months of 1978.

Knit Studios, U.S.A., Inc. is a retail outlet operation of Venice Industries, Inc. engaged in the sale of ladies' pant suits, skirt suits, shells, and dresses, purchased solely from its parent company, Venice Industries, Inc. A Departmental survey of Venice's customers revealed that some of those who responded to the survey increased purchases of imported pant suits, skirt suits, and dresses in 1977 compared to 1976 while decreasing purchases of like or directly competitive products from Venice Industries during the same time periods.

The determination was based upon information obtained principally from officials of Venice Industries, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of women's misses' and children's suits (including pant suits and jumpsuits) decreased from 408 thousand dozen in 1976 to 384 thousand dozen in 1977. The ratio of imports to domestic production decreased from 11.1 percent in 1976 to 10.5 percent in 1977. Imports increased from 62 thousand dozen in the first 3 months of 1977 to 104 thousand dozen in the same period of 1978.

U.S. imports of women's, misses', and children's blouses and shirts increased from 30,273 thousand dozen in 1976 to 30,849 thousand dozen in 1977. The ratio of imports to domestic production decreased from 70.3 percent in 1976 to 69.7 percent in 1977. Imports increased from 8,280 thousand dozen in the first 3 months of 1977 to 10,186 thousand dozen in the same period of 1978.

U.S. imports of women's, misses', and children's dresses decreased from 1,614 thousand dozen in 1976 to 1,420 thousand dozen in 1977. The ratio of imports to domestic production decreased from 8 percent in 1976 to 6.7 percent in 1977. Imports increased from 371 thousand dozen in the first 3 months of 1977 to 403 thousand dozen in the first 3 months of 1978.

Knit Studios, U.S.A., Inc. is a retail outlet operation of Venice Industries, Inc. engaged in the sale of ladies' pant suits, skirt suits, shells, and dresses, produced solely by Venice. A Departmental survey of Venice's customers revealed that some of those who responded to the survey increased purchases of imported pant suits, skirt suits, and dresses in 1977 compared to 1976 while decreasing purchases of like or directly competitive products from Venice Industries, Inc. during the same time periods.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with ladies' pant suits, skirt suits, shells, and dresses, produced at Venice Industries, Inc., and sold at Knit Studios, U.S.A., Inc., Rego Park, N.Y., West Babylon, N.Y. and Nanuet, N.Y. contributed importantly to the decline in sales or production and to the total or partial separation of workers of those retail outlets. In accordance with the provisions of the Act, I make the following certification:

All workers of Knit Studios, U.S.A., Inc., Rego Park, N.Y., West Babylon, N.Y. and Nanuet, N.Y. engaged in employment related to the production of ladies' pant suits, skirt suits, shells, and dresses, who became totally or partially separated from employment on or after August 20, 1977, are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 30th day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-31304 Filed 11-6-78; 8:45 am]

[TA-W-3405D]

[4510-28-M]

KNIT STUDIOS, U.S.A., INC., CARLSTADT AND BURLINGTON, NEW JERSEY

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3405D: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on March 22, 1978, in response to a worker petition received on February 21, 1978, which was filed on behalf of workers and former workers producing ladies' knitted suits, dresses, pants, skirts, and sweaters, at Venice Industries, Inc., Carlstadt, N.J. The investigation was expanded to include workers of the following subsidiaries of Venice Industries: (1) Shells of Miami, Inc., Miami, Fla. (2) Fin-Tex VII, Inc., Long Island City, N.Y. and (3) Knit Studios, U.S.A., Inc. The investigation revealed that women's knitted skirt suits, pant suits, shells (pullover blouses), and dresses are produced by Venice Industries and its subsidiaries.

The notice of investigation was published in the FEDERAL REGISTER on April 7, 1978 (43 FR 14775). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Venice Industries, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of women's misses' and children's suits (including pant suits and jumpsuits) decreased from 408 thousand dozen in 1976 to 384 thousand dozen in 1977. The ratio of imports to domestic production decreased from 11.4 percent in 1976 to 10.5 percent in 1977. Imports increased from 62 thousand dozen in the first 3 months of 1977 to 104 thousand dozen in the same period of 1978.

U.S. imports of women's, misses', and children's blouses and shirts increased from 30,273 thousand dozen in 1976 to 30,849 thousand dozen in 1977. The ratio of imports to domestic production decreased from 70.3 percent in 1976 to 69.7 percent in 1977. Imports increased from 8,280 thousand dozen in the first 3 months of 1977 to 10,186 thousand dozen in the same period of 1978.

U.S. imports of women's, misses', and children's dresses decreased from 1,614 thousand dozen in 1976 to 1,420 thousand dozen in 1977. The ratio of imports to domestic production decreased from 8 percent in 1976 to 6.7 percent in 1977. Imports increased from 371 thousand dozen in the first 3 months of 1977 to 403 thousand dozen in the first 3 mopths of 1978.

Knit Studios, U.S.A., Inc. is a retail outlet operation of Venice Industries, Inc. engaged in the sale of ladies' pant suits, skirt suits, shells, and dresses, produced solely by Venice. A Departmental survey of Venice's customers revealed that some of those who responded to the survey increased purchases of imported pant suits, skirt suits, and dresses in 1977 compared to 1976 while decreasing purchases of like or directly competitive products from Venice Industries, Inc. during the same time periods.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with ladies pant suits, skirt suits, shells, and dresses, produced at Venice Industries, Inc. and sold at Knit Studios, U.S.A., Inc., Carlstadt, N.J. and Burlington, N.J. contributed importantly to the decline in sales or production and to the total or partial separation of workers of those retail outlets. In accordance with the provisions of the Act, I make the following certification:

All workers of Knit Studios, U.S.A., Inc. engaged in employment related to the production of ladies' pant suits, skirt suits, shells, and dresses, who became totally or partially separated from employment on or after August 20, 1977, are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 30th day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-31305 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-3405E]

KNIT STUDIOS, U.S.A., INC., READING, PA.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3405E: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on March 22, 1978, in response to a worker petition received on February 21, 1978, which was filed on behalf of workers and former workers producing ladies' knitted suits, dresses, pants, skirts, and sweaters at Venice Industries, Inc., Carlstadt, N.J. The investigation was expanded to include workers of the following subsidiaries of Venice Industries: (1) Shells of Miami, Inc., Miami, Fla., (2) Fin-Tex VII, Inc., Long Island City, N.Y., and (3) Knit Studios, U.S.A., Inc. The investigation revealed that women's knitted skirt suits, pant suits, shells (pullover blouses), and dresses are produced by Venice Industries and its subsidiaries.

The notice of investigation was published in the FEDERAL REGISTER on April 7, 1978 (43 FR 14775). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Venice Industries, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of women's, misses', and children's suits (including pant suits and jumpsuits) decreased from 408 thousand dozen in 1976 to 384 thousand dozen in 1977. The ratio of imports to domestic production decreased from 11.4 percent in 1976 to 10.5 percent in 1977. Imports increased from 62 thousand dozen in the first 3 months of 1977 to 104 thousand dozen in the same period of 1978.

U.S. imports of women's, misses', and children's blouses and shirts increased from 30,273 thousand dozen in 1976 to 30,849 thousand dozen in 1977. The ratio of imports to domestic production decreased from 70.3 percent in 1976 to 69.7 percent in 1977. Imports increased from 8,280 thousand dozen in the first 3 months of 1977 to 10,186 thousand dozen in the same period of 1978.

U.S. imports of women's, misses', and children's dresses decreased from 1,614 thousand dozen in 1976 to 1,420 thousand dozen in 1977. The ratio of imports to domestic production decreased from 8.0 percent in 1976 to 6.7 percent in 1977. Imports increased from 371 thousand dozen in the first 3 months of 1977 to 403 thousand dozen in the first 3 months of 1978.

Knit Studios, U.S.A., Inc., is a retail outlet operation of Venice Industries, Inc., engaged in the sale of ladies pant suits, skirt suits, shells, and dresses purchased solely from Venice. A departmental survey of Venice's customers revealed that some of those who responded to the survey increased purchases of imported pant suits, skirt suits, and dresses in 1977 compared to 1976 while decreasing purchases of like or directly competitive products from Venice Industries, Inc., during the same time periods.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with ladies pant suits, skirt suits, shells, and dresses produced at Venice Industries, Inc., and sold at Knit Studios, U.S.A., Inc., Reading, Pa., contributed importantly to the decline in sales or production and to the total or partial separation of workers of that retail outlet. In accordance with the provisions of the Act, I make the following certification:

All workers on Knit Studies, U.S.A., Inc., Reading, Pa., engaged in employment related to the production of ladies pant suits, skirt suits, shells, and dresses who became totally or partially separated from employment on or after August 20, 1977, are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 30th day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-31306 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-3558]

M & D COAT CO., INC., HUNTINGTON, LONG ISLAND, N.Y.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3558: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on April 27, 1978, in response to a worker petition received on April 18, 1978, which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' coats, suits, and rainwear at M & D Coat Inc., Huntington, Long Island, N.Y. The investigation revealed that the plant primarily produces women's coats and raincoats.

The notice of investigation was published in the FEDERAL REGISTER on May 16, 1978 (43 FR 21069). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of M & D Coat Co., Inc., Huntington Long Island, N.Y., its customers (manufacturers), the National Cotton Council of America, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or subdivision have contributed importantly to the total or partial separation, or threat thereof, and to the absolute decline in sales or production.

The manufacturer which contracts most of the company's production does not import finished coats and does not use foreign contractors to produce coats. Sales of this manufacturer increased from 1976 to 1977 and in the first half of 1978 compared to the same period of 1977.

CONCLUSION

After careful review, I determine that all workers of M & D Coat Co., Inc., Huntington, Long Island, N.Y., are denied eligibility to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

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Signed at Washington, D.C., this 31st day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-31307 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-3965]

NELELY DON, INC., KANSAS CITY, MO.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3965: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on July 11, 1978, in response to a worker petition received on July 5, 1978, which was filed by the International Ladies' Garment Workers Union on behalf of workers and former workers producing ladies' dresses and sportswear at the Kansas City, Mo., plant of Nelly Don, Inc.

The notice of investigation was published in the FEDERAL REGISTER on July 25, 1978 (43 FR 32199-32200). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Nelly Don, Inc., its customers, the National Cotton Council of America, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Nelly Don produced primarily women's and misses' dresses at the Kansas City plant. U.S. imports of women's and misses' dresses declined from 659 thousand dozen in 1976 to 587 thousand dozen in 1977. Imports increased from 346 thousand dozen during January-June 1977 to 392 thousand dozen during January-June 1978. Imports amounted to 4.6 percent of total U.S. production of women's and misses' dresses in 1976 and 4.0 percent in 1977.

A survey conducted by the Department revealed that most customers surveyed who decreased purchases from Nelly Don, Inc., in 1977 and the first 6 months of 1978 did not purchase imported dresses during those periods. Those few customers who did purchase imports indicated that neither Nelly Don nor foreign suppliers were their principal sources of supply for women's and misses' dresses. Those customers who increased import purchases in 1977 and the first 6 months of 1978 also increased purchases from other domestic sources to a greater degree during the same period.

CONCLUSION

After careful review, I determine that all workers of the Kansas City, Mo., plant of Nelly Don, Inc., are denied eligibility to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 31st day of October 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-31308 Filed 11-6-78; 8:45 am]

[4519-28-M]

[TA-W-3134]

PARIS KNITTING MILLS, INC. OZONE PARK, N.Y.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3134: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on February 15, 1978, in response to a worker petition received on January 16, 1978, which was filed on behalf of workers and former workers producing ladies' knitted wear at the Ozone Park, N.Y., plant of Paris Knitting Mills. The investigation was expanded to include each plant of Paris Knitting Mills. They are as follows: Carlstadt, N.J. (TA-W-3134A), Maspeth, N.Y., knitting department (TA-W-3134B), Maspeth, N.Y., cutting department (TA-W-3134C), and Long Island City, N.Y. (TA-W-3134D).

The notice of investigation was published in the FEDERAL REGISTER on February 28, 1978 (43 FR 8209). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Paris Knitting Mills, Inc., Venice Industries Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. It is concluded tht all of the requirements have been met.

U.S. imports of women's, misses', and children's suits (including pantsuits and jump suits), decreased from 408 thousand dozen in 1976 to 384 thousand dozen in 1977. The ratio of imports to domestic production decreased from 11.4 percent in 1976 to 10.5 percent in 1977. Imports increased from 62 thousand dozen in the first 3 months of 1977 to 104 thousand dozen in the same period of 1978.

U.S. imports of women's, misses', and children's blouses and shirts increased from 30,273 thousand dozen in 1976 to 30,849 thousand dozen in 1977. The ratio of imports to domestic production decreased from 70.3 percent in 1976 to 69.7 percent in 1977. Imports increased from 8,280 thousand dozen in the first 3 months of 1977 to 10,186 thousand dozen in the same period of 1978.

U.S. imports of women's, misses', and children's dresses decreased from 1,614 thousand dozen in 1976 to 1,420 thousand dozen in 1977. The ratio of imports to domestic production decreased from 8.0 percent in 1976 to 6.7 percent in 1977. Imports increased from 371 thousand dozen in the first 3 months of 1977 to 403 thousand dozen in the first 3 months of 1978.

Evidence developed during the course of the investigation revealed that Paris Knitting Mills produces pant suits, skirt suits, shells, and dresses solely for its parent company, Venice Industries, Inc. A departmental survey of Venice's customers revealed that some of those who responded to the survey increased their purchases of imported pant suits, skirt suits, and dresses in 1977 compared to 1976 while decreasing purchases of like or directly competitive products from Venice Industries during the same time periods.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with women's pant suits, skirt suits, shells, and dresses, produced by Paris Knitting Mills, Inc., Carlstadt, N.J., contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Paris Knitting Mills, Inc., Ozone Park, N.Y., who became totally or partially separated from employment on or after August 20, 1977, are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 30th day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-31309 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-3134A]

PARIS KNITTING MILLS, INC., CARLSTADT, N.J.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3134A: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on February 15, 1978, in response to a worker petition received on January 16, 1978, which was filed on behalf of workers and former workers producing ladies' knitted wear at the Ozone Park, Queens, N.Y., plant of Paris Knitting Mills Inc. (TA-W-3134). The investigation was expanded to include each plant of Paris Knitting Mills Inc. They are as follows: Carlstadt, N.J. (TA-W-3134A), Maspeth, N.Y., knitting department (TA-W-3134B), Maspeth, N.Y., cutting department (TA-W-3134C), and Long Island City, N.Y. (TA-W-3134D).

The notice of investigation was published in the FEDERAL REGISTER on February 28, 1978 (43 FR 8209). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Paris Knitting Mills, Inc., Venice Industries Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of women's, misses', and children's suits (including pant suits and jumpsuits), decreased from 408 thousand dozen in 1976 to 384 thousand dozen in 1977. The ratio of imports to domestic production decreased from 11.4 percent in 1976 to 10.5 percent in 1977. Imports increased from 62 thousand dozen in the first 3 months of 1977 to 104 thousand dozen in the same period of 1978.

U.S. imports of women's, misses', and children's blouses and shirts increased from 30,273 thousand dozen in 1976 to 30,849 thousand dozen in 1977. The ratio of imports to domestic production decreased from 70.3 percent in 1976 to 69.7 percent in 1977. Imports increased from 8,280 thousand dozen in the first 3 months of 1977 to 10,186 thousand dozen in the same period of 1978.

U.S. imports of women's, misses', and children's dresses decreased from 1,614 thousand dozen in 1976 to 1,420 thousand dozen in 1977. The ratio of imports to domestic production decreased from 8 percent in 1976 to 6.7 percent in 1977. Imports increased from 371 thousand dozen in the first 3 months of 1977 to 403 thousand dozen in the first 3 months of 1978.

Evidence developed during the course of the investigation revealed that Paris Knitting Mills produces pant suits, skirt suits, shells, and dresses, solely for its parent company, Venice Industries, Inc. A departmental survey of Venice's customers revealed that some of those who responded to the survey increased their purchases of imported pant suits, skirt suits, and dresses in 1977 compared to 1976 while decreasing purchases of like or directly competitive products from Venice Industries during the same time periods.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with women's pant suits, skirt suits, shells, and dresses, produced by Paris Knitting Mills, Inc., Carlstadt, N.J., contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Paris Knitting Mills, Inc., Carlstadt, N.J., who became totally or partially separated from employment on or after August 20, 1977, are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 30th day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-31310 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-3134B]

PARIS KNITTING MILLS, INC., MASPETH KNITTING DEPARTMENT, MASPETH, N.Y.

Certificotion Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3134B: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on February 15, 1978, in response to a worker petition received on January 16, 1978, which was filed on behalf of workers and former workers producing ladies' knitted wear at the Ozone Park, Queens, N.Y., plant of Paris Knitting Mills Inc. (TA-W-3134). The investigation was expanded to include each plant of Paris Knitting Mills Inc. They are as follows: Carlstadt, N.J. (TA-W-3134A), Maspeth, N.Y., knitting department (TA-W-3134B), Maspeth, N.Y., cutting department (TA-W-3134C), and Long Island City, N.Y. (TA-W-3134D).

The notice of investigation was published in the FEDERAL REGISTER on February 28, 1978 (43 FR 8209). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Paris Knitting Mills, Inc., Venice Industries Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all the requirements have been met.

U.S. imports of women's, misses', and children's suits (including pant suits and jumpsuits), decreased from 408 thousand dozen in 1976 to 384 thousand dozen in 1977. The ratio of imports to domestic production decreased from 11.4 percent in 1976 to 10.5 percent in 1977. Imports increased from 62 thousand dozen in the first 3 months of 1977 to 104 thousand dozen in the same period of 1978.

U.S. imports of women's, misses', and children's blouses and shirts increased from 30,273 thousand dozen in 1976 to 30,849 thousand dozen in 1977. The ratio of imports to domestic production decreased from 70.3 percent in 1976 to 69.7 percent in 1977. Imports increased from 8,280 thousand dozen in the first 3 months of 1977 to 10,186

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thousand dozen in the same period of 1978.

U.S. imports of women's, misses', and children's dresses decreased from 1,614 thousand dozen in 1976 to 1,420 thousand dozen in 1977. The ratio of imports to domestic production decreased from 8.0 percent in 1976 to 6.7 percent in 1977. Imports increased from 371 thousand dozen in the first 3 months of 1977 to 403 thousand dozen in the first 3 months of 1978.

Evidence developed during the course of the investigation revealed that Paris Knitting Mills produces pant suits, skirt suits, shells, and dresses solely for its parent company, Venice Industries, Inc. A departmental survey of Venice's customers revealed that some of those who responded to the survey increased their purchases of imported pant suits, skirt suits, and dresses, in 1977 compared to 1976 while decreasing purchases of like or directly competitive products from Venice Industries during the same time periods.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with women's pant suits, skirt suits, shells, and dresses, produced by Paris Knitting Mills, Inc., contributed importantly to the total or partial separation of workers of the knitting department of the Maspeth, N.Y., plant. In accordance with the provisions of the Act, I make the following certification:

All workers of the knitting department of the Maspeth, N.Y. plant of Paris Knitting Mills, Inc., who became totally of partially separated from employment on or after February 10, 1978, are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 30th day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-31311 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-3134C]

PARIS KNITTING MILLS, INC., MASPETH CUTTING DEPARTMENT, MASPETH, N.Y.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3134C: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on February 15, 1978, in response to a worker petition received on January 16, 1978, which was filed on behalf of workers and former workers producing ladies' knitted wear at the Ozone Park, Queens, N.Y. plant of Paris Knitting Mills, Inc. (TA-W-3134). The investigation was expanded to include each plant of Paris Knitting Mills, Inc. They are as follows: Carlstadt, N.J. (TA-W-3134A), Maspeth, N.Y., Knitting Department (TA-W-3134B), Maspeth, N.Y., Cutting Department (TA-W-3134C), and Long Island City, N.Y. (TA-W-3134D).

The notice of investigation was published in the FEDERAL REGISTER on February 28, 1978 (43 FR 8209). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Paris Knitting Mills, Inc., Venice Industries, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of women's, misses' and children's suits (including pant suits and jumpsuits) decreased from 408 thousand dozen in 1976 to 384 thousand dozen in 1977. The ratio of imports to domestic production decreased from 11.4 percent in 1976 to 10.5 percent in 1977. Imports increased from 62 thousand dozen in the first 3 months of 1977 to 104 thousand dozen in the same period of 1978.

U.S. imports of women's, misses' and children's blouses and shirts increased from 30,273 thousand dozen in 1976 to 30,849 thousand dozen in 1977. The ratio of imports to domestic production decreased from 70.3 percent in 1976 to 69.7 percent in 1977. Imports increased from 8,280 thousand dozen in the first 3 months of 1977 to 10,186 thousand dozen in the same period of 1978.

U.S. imports of women's, misses' and children's dresses decreased from 1,614 thousand dozen in 1976 to 1,420 thousand dozen in 1977. The ratio of imports to domestic production decreased from 8.0 percent in 1976 to 6.7 percent in 1977. Imports increased from 371 thousand dozen in the first 3 months of 1977 to 403 thousand dozen in the first 3 months of 1978.

Evidence developed during the course of the investigation revealed that Paris Knitting Mills produces pant suits, skirt suits, shells and dresses solely for its parent company, Venice Industries, Inc. A Departmental survey of Venice's customers revealed that some of those who responded to the survey increased their purchases of imported pant suits, skirt suits and dresses in 1977 compared to 1976 while decreasing purchases of like or directly competitive products from Venice Industries during the same time periods.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with women's pant suits, skirt suits, shells and dressed produced by Paris Knitting Mills, Inc. contributed importantly to the decline in sales or production and to the total or partial separation of workers of the Cutting Department of its Maspeth, N.Y. plant. In accordance with the provisions of the Act, I make the following certification:

All workers of the Cutting Department of the Maspeth, N.Y. plant of Paris Knitting Mills, Inc. who became totally or partially separated from employment on or after August 20, 1977 are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 30th day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-31312 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-3134B]

PARIS KNITTING MILLS, INC., LONG ISLAND CITY, N.Y.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3134D: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on February 15, 1978, in response to a worker petition received on January 16, 1978, which was filed on behalf of workers and former workers producing ladies' knitted wear at the Ozone Park, Queens, N.Y., plant of Paris Knitting Mills, Inc. (TA-W-3134). The investigation was expanded to include each plant of Paris Knitting Mills, Inc. They are as follows: Carlstadt, N.J. (TA-W-3134A), Maspeth, N.Y., Knitting Department (TA-W-3134B), Maspeth, N.Y., Cutting Department (TA-W-3134C), and Long Island City, N.Y. (TA-W-3134D).

The notice of investigation was published in the FEDERAL REGISTER on February 28, 1978 (43 FR 8209). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Paris Knitting Mills, Inc., Venice Industries, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of women's, misses' and children's suits (including pant suits and jumpsuits) decreased from 408 thousand dozen in 1976 to 384 thousand dozen in 1977. The ratio of imports to domestic production decreased from 11.4 percent in 1976 to 10.5 percent in 1977. Imports increased from 62 thousand dozen in the first 3 months of 1977 to 104 thousand dozen in the same period of 1978.

U.S. imports of women's, misses' and children's blouses and shirts increased from 30,273 thousand dozen in 1976 to 30,849 thousand dozen in 1977. The ratio of imports to domestic production decreased from 70.3 percent in 1976 to 69.7 percent in 1977. Imports increased from 8,280 thousand dozen in the first 3 months of 1977 to 10,186 thousand dozen in the same period of 1978.

U.S. imports of women's, misses' and children's dresses decreased from 1,614 thousand dozen in 1976 to 1,420 thousand dozen in 1977. The ratio of imports to domestic production decreased from 8 percent in 1976 to 6.7 percent in 1977. Imports increased from 371 thousand dozen in the first 3 months of 1977 to 403 thousand dozen in the first 3 months in 1978.

Evidence developed during the course of the investigation revealed that Paris Knitting Mills produces pant suits, skirt suits, shells and dresses solely for its parent company, Venice Industries, Inc. A Departmental survey of Venice's customers revealed that some of those who responded to the survey increased their purchases of imported pant suits, skirt suits and dresses in 1977 compared to 1976 while decreasing purchases of like or directly competitive products from Venice Industries during the same time periods.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with women's pant suits, skirt suits, shells and dresses produced by Paris Knitting Mills, Inc., contributed importantly to the decline in sales or production and the the total or partial separation of workers of the Long Island City plant. In accordance with the provisions of the Act, I make the following certification:

All workers of Paris Knitting Mills, Inc., Long Island City, N.Y., who became totally or partially separated from employment on or after August 20, 1977 are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 30th day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-31313 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-3973]

POIRETTE CORSET CO., INC., NEW YORK, N.Y.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3973: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on July 13, 1978 in response to a worker petition received on July 10, 1978 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing brassieres and girdles at Poirette Corset Co., New York, N.Y. The investigation revealed that the plant primarily produces corsets and girdles.

The notice of investigation was published in the FEDERAL REGISTER on July 28, 1978 (43 FR 32685). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Poirette Corset Co., Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Imports of corsets and girdles increased from 231,000 dozen in 1976 to 269,000 dozen in 1977, and from 53,000 dozen in the first quarter of 1977 to 72,000 dozen in the first quarter of 1978. The ratio of imports to domestic production increased from 6 percent in 1976 to 6.8 percent in 1977.

A survey of Poirette's customers was conducted by the Department. The survey revealed that customers who reduced purchases of girdles and corsets from Poirette in 1977 and 1978 did not increase their purchases of imports during the same period. customers indicated that there was minimal import influence in the market for corsets and girdles.

CONCLUSION

After careful review, I determine that all workers of Poirette Corset Co., Inc., New York, N.Y. are denied eligibility to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 31st day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-31314 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-3642]

PRESIDENT SPORTSWEAR, INC., PASSAIC, N.J.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3642: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 8, 1978 in response to a worker petition received on April 28, 1978 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing children's coats at President Sportswear, Inc. Passaic, N.J. The investigation revealed that workers at President Sportswear produce juniors' and children's coats.

The notice of investigation was published in the FEDERAL REGISTER on May 26, 1978 (43 FR 22793). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of President Sportswear, its customers (manufacturers), customers of the manufactur-

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ers, the U.S. Department of Commerce, the U.S. International Trade Commission, the National Cotton Council of America, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criteria have not been met:

That sales or production, or both, of such firm or subdivision have decreased absolutely; and that such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production.

U.S. imports of women's, misses' and children's coats and jackets increased from 2252 thousand dozen in 1976 to 2723 thousand dozen in 1977. The ratio of imports to domestic production increased from 48.3 percent in 1976 to 54.9 percent in 1977. Imports declined from 590 thousand dozen in the first quarter of 1977 to 572 thousand dozen in the first quarter of 1978.

Subsequent to the earliest impact date which could be set under the law—April 25, 1977—there were no significant layoffs until November 1977 when the layoffs typical to the firm and the industry occurred. Sales and production at President Sportswear for the first 5 months of 1978 were 12 percent higher than for the same period in 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I determine that all workers of President Sportswear, Inc., Passaic, N.J., are denied eligibility to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 31st day of October 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-31315 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-3405A]

SHELLS OF MIAMI, INC., MIAMI, FLA.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3405A: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on March 22, 1978, in response to a worker petition received on February 21, 1978, which was filed on behalf of workers and former workers producing ladies' knitted suits, dresses, pants, skirts, and sweaters, at Venice Industries, Inc., Carlstadt, N.J. The investigation was expanded to include workers of the following subsidiaries of Venice Industries: (1) Shells of Miami, Inc., Miami, Fla. (2) Fin-Tex VII, Inc., Long Island City, N.Y. and (3) Knit Studios, U.S.A., Inc. The investigation revealed that women's knitted skirt suits, pant suits, shells (pullover blouses) and dresses are produced by Venice Industries and its subsidiaries.

The Notice of Investigation was published in the FEDERAL REGISTER on April 7, 1978 (43 FR 14775). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Venice Industries, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of women's, misses', and children's suits (including pant suits and jumpsuits), decreased from 408 thousand dozen in 1976 to 384 thousand dozen in 1977. The ratio of imports to domestic production decreased from 11.4 percent in 1976 to 10.5 percent in 1977. Imports increased from 62 thousand dozen in the first 3 months of 1977 to 104 thousand dozen in the same period of 1978.

U.S. imports of women's, misses', and children's blouses and shirts increased from 30,273 thousand dozen in 1976 to 30,849 thousand dozen in 1977. The ratio of imports to domestic production decreased from 70.3 percent in 1976 to 69.7 percent in 1977. Imports increased from 8,280 thousand dozen in the first 3 months of 1977 to 10,186 thousand dozen in the same period of 1978.

U.S. imports of women's, misses', and children's dresses decreased from 1,614 thousand dozen in 1976 to 1,420 thousand dozen in 1977. The ratio of imports to domestic production decreased from 8 percent in 1976 to 6.7 percent in 1977. Imports increased from 371 thousand dozen in the first 3 months of 1977 to 403 thousand dozen in the first 3 months of 1978.

Evidence developed during the course of the investigation revealed that Shells of Miami produces pant suits, skirt suits, shells, and dresses, solely for its parent company, Venice Industries, Inc. A departmental survey of Venice's customers revealed that some of those who responded to the survey increased their purchases of imported pant suits, skirt suits, and dresses, in 1977 compared to 1976 while decreasing purchases of like or directly competitive products from Venice Industries during the same time periods.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with women's pant suits, skirt suits, shells, and dresses, produced by Shells of Miami, Inc., Miami, Fla., contributed importantly to the decline in sales or production and to the total or partial separation of workers of that plant. In accordance with the provisions of the Act, I make the following certification:

All workers of Shells of Miami, Inc., Miami, Fla., who became totally or partially separated from employment on or after August 20, 1977, are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 30th day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-31316 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-3957]

SPEER OPTICAL CORP., SOUTH ORANGE, N.J.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3957: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on July 6, 1978, in response to a worker petition received on July 5, 1978, which was filed on behalf of workers and former workers producing eyeglass frames at Speer Optical Corp., South Orange, N.J.

The notice of investigation was published in the FEDERAL REGISTER on July 18, 1978 (43 FR 30927-30928). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Speer Optical Corp., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of eyeglass frames increased from 27.1 million units in 1976 to 29 million units in 1977 and from 7.6 million units in the first quarter of 1977 to 8.4 million units in the first quarter of 1978. The import to domestic production ratio increased from 120.7 percent in 1976 to 126.0 percent in 1977 and from 139.7 percent in the first three months of 1977 to 145.1 percent in the same period of 1978.

Several customers of Speer Optical who were surveyed decreased purchases from Speer from 1976 to 1977 and increased import purchases, either directly or indirectly through domestic suppliers.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with eyeglass frames produced at Speer Optical Corp., South Orange, N.J., contributed importantly to the decline in sales and to the total or partial separation of workers at that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Speer Optical Corp., South Orange, N.J., who became totally or partially separated from employment on or after June 27, 1977, are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 31st day of October 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-31317 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-3675]

TONIA FASHIONS, INC., WEEHAWKEN, N.J.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3675: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 8, 1978 in response to a worker petition received on April 28, 1978 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' coats and suits at Tonia Fashions, Inc., Weehawken, N.J. The investigation revealed that ladies' coats and jackets are produced.

The notice of investigation was published in the FEDERAL REGISTER on May 26, 1978 (43 FR 22793). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Tonia Fashions, Inc., its customers (manufacturers), customers of the manufacturers, the U.S. Department of Commerce, the U.S. International Trade Commission, the National Cotton Council of America, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of women's, misses', and children's coats and jackets increased from 2252 thousand dozen in 1976 to 2723 thousand dozen in 1977. Imports declined from 590 thousand dozen in the first quarter of 1977 to 572 thousand dozen in the first quarter of 1978. The ratio of imports to domestic production increased from 48.3 percent in 1976 to 54.9 percent in 1977.

The Department conducted a survey of the principal manufacturers for which Tonia Fashion worked in 1976 and 1977. A manufacturer that accounted for 100 percent of Tonia's sales in the first quarter of 1977 discontinued purchases of ladies' coats from Tonia in the first quarter of 1978. This manufacturer's sales declined in the first quarter of 1978 compared to the first quarter of 1977. Customers of the manufacturer reduced purchases of ladies' coats from the manufacturer and increased purchases of imported coats in the first quarter of 1978 compared to the first quarter of 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increased imports of articles like or directly competitive with the ladies' coats produced at Tonia Fashions, Inc., Weehawken, N.J., contributed importantly to the decline in sales and to the separation of workers at that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Tonia Fashions Inc., Weehawken, N.J., who became totally or partially separated from employment on or after October 21, 1977 are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 30th day of October 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-31318 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-3845 and 3845 A]

TRAVIS MILLS, INC., NEW YORK, N.Y., LITITZ, PA.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3845: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on June 14, 1978 in response to a worker petition received on June 9, 1978 which was filed on behalf of workers and former workers warehousing fabrics at Travis Mills, Inc., New York, N.Y. The investigation revealed that the petitioning workers cut samples and warehoused some synthetic fabric, which was produced at the Lititz, Pa., plant of Travis Mills. The investigation also revealed that Travis Mills employed workers in an office in New York, N.Y. The investigation was expanded to include all workers and former workers producing, warehousing and providing services to Travis Mills, Inc., in Lititz, Pa. and New York, N.Y.

The notice of investigation was published in the FEDERAL REGISTER on June 27, 1978 (43 FR 27924). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Travis Mills, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separation, or threat thereof, and to the absolute decline in sales or production.

Imports of finished fabric, which are considered to be like or directly competitive with synthetic fabric, declined

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from 464 million yards in 1976 to 453 million yards in 1977.

Imports in the first quarter of 1978 increased to 255 million yards compared to 187 million yards in the first quarter of 1977. The imports to production ratio for finished fabric increased to 1.9 percent in 1977 compared to 1.8 percent in 1976.

The U.S. Department of Labor conducted a survey of some of the customers of Travis Mills. Responses to the survey revealed that there were no customers that reduced purchases from Travis Mills and increased purchases from foreign sources in 1977 as compared to 1976 or in the first half of 1978 as compared to the first half of 1977.

CONCLUSION

After careful review, I determined that all workers of Travis Mills, Inc., New York, N.Y., and Lititz, Pa., are denied eligibility to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 31st day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-31319 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-3405]

VENICE INDUSTRIES, INC., CARLSTADT, N.J.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3405: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on March 22, 1978 in response to a worker petition received on February 21, 1978 which was filed on behalf of workers and former workers producing ladies' knitted suits, dresses, pants, skirts and sweaters at Venice Industries, Inc., Carlstadt, N.J. The investigation was expanded to include workers of the following subsidiaries of Venice Industries: (1) Shells of Miami, Inc., Miami, Fla., (2) Fin-Tex VII, Inc., Long Island City, N.Y. and (3) Knit Studios, U.S.A., Inc. The investigation revealed that women's knitted skirt suits, pant suits, shells (pullover blouses) and dresses are produced by Venice Industries and its subsidiaries.

The notice of investigation was published in the FEDERAL REGISTER on April 7, 1978 (43 FR 14775). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Venice Industries, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of women's, misses' and children's suits (including pant suits and jumpsuits) decreased from 408 thousand dozen in 1976 to 384 thousand dozen in 1977. The ratio of imports to domestic production decreased from 11.4 percent in 1976 to 10.5 percent in 1977. Imports increased from 62 thousand dozen in the first 3 months of 1977 to 104 thousand dozen in the same period of 1978.

U.S. imports of women's, misses' and children's blouses and shirts increased from 30,273 thousand dozen in 1976 to 30,849 thousand dozen in 1977. The ratio of imports to domestic production decreased from 70.3 percent in 1976 to 69.7 percent in 1977. Imports increased from 8,280 thousand dozen in the first 3 months of 1977 to 10,186 thousand dozen in the same period of 1978.

U.S. imports of women's, misses' and children's dresses decreased from 1,614 thousand dozen in 1976 to 1,420 thousand dozen in 1977. The ratio of imports to domestic production decreased from 8.0 percent in 1976 to 6.7 percent in 1977. Imports increased from 371 thousand dozen in the first 3 months of 1977 to 403 thousand dozen in the first 3 months of 1978.

A Departmental survey of Venice's customers revealed that some of those who responded to the survey increased their purchases of imported pant suits, skirt suits, and dresses in 1977 compared to 1976 while decreasing purchases of like or directly competitive products from Venice Industries during the same time periods.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with ladies pant suits, skirt suits, shells and dresses produced at Venice Industries, Inc., Carlstadt, N.J. contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Venice Industries, Incorporated, Carlstadt, N.J. who became totally or partially separated from employment on or after August 20, 1977 are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 30th day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-31320 Filed 11-6-78; 8:45 am]

[4510-29-M]
[4830-01-M]

DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

Internal Revenue Service

[Application No. D-495]

DANIEL INDUSTRIES, INC. EMPLOYEES' PROFIT SHARING AND RETIREMENT PLAN

Proposed Exemptions From Certain Transaction

AGENCIES: Department of Labor, Department of the Treasury/Internal Revenue Service.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor and the Internal Revenue Service (collectively, the Agencies) of a proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the sale of a parcel of real property by Daniel Industries, Inc. Employees' Profit Sharing and Retirement Plan (the Plan) to Daniel Industries, Inc. (the Employer). The proposed exemption, if granted, would affect participants and beneficiaries of the Plan, the Employer, and other persons participating in the proposed transaction.

DATE: Written comments and requests for a public hearing must be received by the Department of Labor on or before December 7, 1978.

ADDRESS: All written comments and requests for a hearing (at least six copies) should be sent to: Office of Regulatory Standards and Exceptions, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20216, Attention: Application No. D-495. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue NW., Washington, D.C. 20216,

and at the Internal Revenue Service National Office Reading Room, 1111 Constitution Avenue NW., Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

Robert N. Sandler of the Department of Labor, 202-523-8882. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Agencies of a proposed exemption from the restrictions of sections 406(a), 406(b)(1), and 406(b)(2) of the Act and from the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of the Employer, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) and Rev. Proc. 75-26, 1975-1 C.B. 722.

SUMMARY OF FACTS AND REPRESENTATIONS

The application contains facts and representations with regard to the proposed exemption which is summarized below. Interested persons are referred to the application on file with the Agencies for the complete representations of the applicants.

On January 31, 1968, the Plan purchased 13.8841 acres of real estate adjacent to the Employer for approximately $410,000. The subject property is presently improved with asphalt surfacing over a portion of the property and a perimeter fence surrounding a portion of the property. There is also a small metal building located on the property. By written agreement dated May 1, 1969, the Plan leased 29,380 square feet of the property to the Employer for use as a parking lot. Over the years the Employer required an increasingly greater parking area for its employees and on six occasions the amount of leased property was increased without written amendment to the lease. The total area leased by the Employer is currently 151,138 square feet or approximately 25 percent of the entire property. The remainder of the property is unoccupied and nonincome producing. Currently the Employer is paying a rental of $1,200 per month based on a valuation of the leased property at $0.90 per square foot. The Plan owns no other real property.

The Administrative Committee makes investment decisions for the Plan. Its members are corporate officers of either the Employer or a division of the Employer.

The Administrative Committee has determined that it would be in the best interests of the Plan to sell the subject real property. The number of employees of the Employer has increased over the years since the property was purchased and the payment of benefits has likewise increased during that period of time. The Plan now requires increased liquidity of funds in order to assure the payment of benefits to retiring participants and their beneficiaries. In order to achieve the desired liquidity, the Plan must either sell the subject property or part of the approximately 213,400 shares of Employer stock which it owns. Those shares are not registered under the Securities Act of 1933, and therefore, under the Securities Act and Rule 144 of the Securities and Exchange Commission thereunder, the shares can be sold by the Plan only subject to certain restrictions. For this reason, the sale by the Plan of a substantial portion of the Employer stock would involve substantially more time and expense than the sale for cash of the subject property.

The Employer has obtained three separate appraisals of the subject real property. The Employer proposes to purchase the subject property for a cash price of $1,130,000 ($1.87 per square foot), the highest appraised value of the property. The proposed purchase price represents 18 percent of Plan assets.

The Trustee retained an independent realtor, Laguarta, Gavrel & Kirk, Inc., to offer the property for sale at a cash price of $1,200,000. The reason for the realtor's price being $70,000 higher than the appraised value is that a 6-percent sales commission is included in the realtor's offering price. There will be no sales commission of any kind in connection with the sale of the subject property by the Plan to the Employer. The property was offered for sale by the realtor for a period of 6 months. No offers at the above-stated price were received.

NOTICE TO INTERESTED PERSONS

Notice of the pending exemption will be given to all interested parties, including the Trustee of the Plan and all active and retired participants or their beneficiaries, within 10 days of the publication of this notice in the FEDERAL REGISTER, by delivery in person or by first class mail.

GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, that a fiduciary discharge his duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and of their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Agencies must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction;

(5) This document does not meet the Treasury Department's criteria for significant regulations set forth in paragraph 8 of the proposed Treasury directive appearing in the FEDERAL REGISTER for Wednesday, May 24, 1978 (43 FR 22319).

WRITTEN COMMENTS AND HEARING REQUEST

All interested persons are invited to submit written comments or requests for a hearing on the proposed exemption to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the application for exemption at the addresses set forth above.

PROPOSED EXEMPTION

Based on the facts and representations set forth in the application, the Agencies are considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set

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forth in ERISA Procedure 75-1 and Rev. Proc. 75-26. If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (E) of the Code, would not apply to the purchase of 13.881 acres of real property located in Houston, Harris County, Tex. by the Employer from the Plan for $1,130,000 cash, provided that such amount is not less than the fair market value of such property. The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 1st day of November, 1978.

IAN D. LANOFF,
Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

FRED J. OCHS,
Director, Employee Plans Division, Internal Revenue Service.

[FR Doc. 78-31280 Filed 11-6-78; 8:45 am]

[4510-30-M]

NATIONAL COMMISSION ON UNEMPLOYMENT COMPENSATION

MEETING

The ninth meeting of the NCUC will be held in the Los Angeles Hilton Hotel, Los Angeles, Calif., in the Patio Room on November 11, 12, 13, and 14. The meeting will begin at 2 p.m. on November 11 and will conclude at 5 p.m. on November 14.

TENTATIVE AGENDA—NOVEMBER MEETING

Hilton Hotel, Los Angels, Calif., Patio Room.

November 11

2-5:30 p.m.—Commission discussion of first interim report and review of second draft.
Adjourn (5:30 p.m.).

November 12

10 a.m.-12:30 p.m.—Commission discussion of First Interim Report and review of second draft.
2-3 p.m.—Report to Commission by Phil Booth on research concerning agricultural coverage.
3-5 p.m.—Commission discussion of first interim report and review of second draft.
Adjourn (5:30 p.m.).

November 13

9 a.m.-12:30 p.m.—Public testimony—The emphasis will be on agricultural coverage.
2-5 p.m.—Public testimony (continued).
Adjourn (5 p.m.).

November 14

9 a.m.-12:30 p.m.—Commission discussion of first interim report and review of second draft.
2-5 p.m.—Commission discussion of first interim report and review of second draft.
Adjourn (5 p.m.).
Telephone inquiries and communications concerning this meeting should be directed to:

James M. Rosbrow, Executive Director, National Commission on Unemployment Compensation, Room 440, 1815 Lynn Street, Rosslyn, Va. 22209.

Signed at Washington, D.C., this 2d day of November 1978.

JAMES M. ROSBROW,
Executive Director, National Commission on Unemployment Compensation.

[FR Doc. 31458 Filed 11-6-78; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-97]

CORNELL UNIVERSITY

Proposed Renewal of Facility License

The U.S. Nuclear Regulatory Commission (the Commission) is considering renewal of Facility License No. R-89, issued to Cornell University (the licensee), for operation of the Zero Power Reactor located on the licensee's campus in Ithaca, N.Y.

The renewal would extend the expiration date of Facility License No. R-89 to November 21, 1998, in accordance with the licensee's timely application for renewal dated October 6, 1978.

Prior to renewal of Facility License No. R-89, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By December 7, 1978, the licensee may file a request for a hearing with respect to renewal of the subject facility license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend his petition, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, the petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., by the above date. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for renewal dated October 6, 1978, as supplemented by future submittals, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C.

Dated at Bethesda, Md., this 27th day of October 1978.

For the Nuclear Regulatory Commission.

ROBERT W. REID,
Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.

[FR Doc. 78-31211 Filed 11-6-78; 8:45 am]

[7590-01-M]

[Docket No. 50-220]

NIAGARA MOHAWK POWER CORP.

Proposed Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-63 issued to Niagara Mohawk Power Corp. (the licensee), for operation of the Nine Mile Point Nuclear Station, Unit No. 1, located in Oswego County, N.Y.

The amendment would revise the provisions on the Technical Specifications to increase the spent fuel storage capacity from 1984 fuel assemblies to 3009 fuel assemblies in accordance with the licensee's application for amendment dated March 22, 1978.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By December 7, 1978, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specfically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect or any order which may be entered in the proceeding on the petitioner's interest, The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend his petition, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, the petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 800-325-6000 (in Missouri 800-342-6700). The Western Union operator should be given Datagram Identification No. 3737 and the following message addressed to Thomas A. Ippolito: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this FEDERAL REGISTER notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Eugene B. Thomas, Jr., Esq. LeBoeuf, Lamb, Leiby, and Mac Rae, 1752 N Street NW., Washington, D.C. 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 22, 1978, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Oswego County Office Building, 46 East Bridge Street, Oswego, N.Y. 13126.

Dated at Bethesda, Md., this 27th day of October 1978.

For the Nuclear Regulatory Commission.

THOMAS A. IPPOLITO,
Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc. 78-31212 Filed 11-6-78; 8:45 am]

[3110-01-M]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on October 31, 1978 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes—

The name of the agency sponsoring the proposed collection of information;

The title of each request reveived;

The agency form number(s), if applicable;

The frequency with which the information is proposed to be collected;

An indication of who will be the respondents to the proposed collection;

The estimated number of responses;

The estimated burden in reporting hours; and

The name of the reviewer or reviewing division or office.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C., 20503, 202-395-4529, or from the reviewer listed.

NEW FORMS

COUNCIL ON ENVIRONMENTAL QUALITY

Mailing list questionnaire
Annually
Mailing lists and target particular interests, 16,000 responses; 2,000 hours
Clarke, Edward H., 395-5867

U.S. CIVIL SERVICE COMMISSION

Mid level data sheet
CSC-1056-A-12/76 and 1056-B-5/76
On occasion
Employment applicants, 110,300 responses; 55,150 hours
Marsha Traynham, 395-3773

DEPARTMENT OF ENERGY

Petroleum product emergency telephone survey
EIA-92
On occasion
Prime suppliers of residual fuel and refined petroleum, 900 responses; 900 hours
Hill, Jefferson B., 395-5867

DEPARTMENT OF COMMERCE

Bureau of Census
Multiplicity survey—reconciliation of sample persons
D-846 (X)
Single-time
Households in census dress rehearsal areas, 3,000 responses; 510 hours
C. Louis Kincannon, 395-3211

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institutes of Health
NICHD centers staff development survey
Single-time
Researchers at NICHD centers, 385 responses; 77 hours
Richard Eisinger, 395-3214

Office of Human Development
Intake and service summary form; youth served on a one-time basis by the RYA-funded projects; YDB summary sheet
Other (See SF-83)
Clients of funded runaway youth projects, 35,404 responses; 8,851 hours
Reese, B. F., 395-3211

Alcohol, Drug Abuse and Mental Health Administration
Nationwide survey of adult drinking patterns
Single-time
U.S. household population within the 48 contiguous States, 2,000 responses; 2,333 hours
Office of Federal Statistical Policy and Standard
Richard Eisinger, 673-7956

REVISIONS

ENVIRONMENTAL PROTECTION AGENCY

NPDES—Manufacturing and commercial and municipal discharge permit application standard forms EPA 7550- 22, 23, 24
On occasion
Point source discharge to navigable waters, 10,000 responses; 100,000 hours
Clarke, Edward H., 395-5867

DEPARTMENT OF COMMERCE

Bureau of Census
Area sample—Interviewer record, interviewer followup, monthly noncertainty
B-645, B-646, B-647
Monthly
Retail and service business firms, 35,280 responses; 5,440 hours
C. Louis Kincannon, 395-3211

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Alcohol, Drug Abuse and Mental Health Administration
Client oriented data acquisition process (CODAP)
Adm 427- 1, 2, 3, 4
Monthly
Federally funded drug abuse programs, 427,700 responses; 62,700 hours
Richard Eisinger, 395-3214

DEPARTMENT OF JUSTICE

Law Enforcement Assistance Administration
Law enforcement education program application
LEEP-1
Annually
Colleges and universities participating in LEEP, 1,000 responses; 5,000 hours
Laverne V. Collins, 395-3214

EXTENSIONS

ENVIRONMENTAL PROTECTION AGENCY

Application to discharge wastewater
EPA 7550-7
On occasion
Point source discharge wastewater, 5,000 responses; 10,000 hours
Clarke, Edward H., 395-5867

DEPARTMENT OF COMMERCE

Bureau of Census
Cotton, manmade fiber staple, and raw linters (consumption and stocks, and spindle activity)
M-22P
Monthly
Fiber spinning mills, 7,800 responses; 1,950 hours
C. Louis Kincannon, 395-3211

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration
Application for approval of use of methadone in a treatment program
FD-2632
On occasion
Methadone treatment program, clinics treating narcotic addicts, 50 responses; 250 hours
Richard Eisinger, 395-3214

Health Services Administration
Questionnaire for study of patterns of utilization of contraceptive services for teenagers
Single-time
Teenage clients of title X clinics, 800 responses; 200 hours
Richard Eisinger, 395-3214

Food and Drug Administration
Medical responsibility statement for use of methadone in a treatment program
FD-2633
On occasion
Physicians employed by methadone clinics, 200 responses; 100 hours
Richard Eisinger, 395-3214

National Institutes of Health
Application for research grant and for continuation grant
PHS 398
On occasion
Research institutions, 25,000 responses; 700,000 hours
Richard Eisinger, 395-3214

DAVID R. LEUTHOLD,
Budget and Management Officer.

[FR Doc. 78-31379 Filed 11-6-78; 8:45 am]

[8025-01-M]

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 1517; Amdt. No. 1]

NEBRASKA

Declaration of Disaster Loan Area

The above numbered declaration (see 43 FR 39880), is amended by adding the following counties:

County and natural disaster(s)	Date(s)
Buffalo:	
Drought	Apr. 1 to Aug. 15, 1978.
Hail	Sept. 11, 1978.
Cherry:	
Hail, Wind	Aug. 1, 1978
Hail	Aug. 10, 1978.
Dawson:	
Hail, tornado-like winds	Sept. 11, 1978.
Dundy:	
Hail, wind and rain	Aug. 24, 1978.
Drought and insect infestation (grasshopper).	May 1 to Sept. 27, 1978.
Hayes:	
Drought and insect infestation (grasshopper).	June 1 to Sept. 27, 1978.
Hitchcock:	
Hail, rain	Aug. 20, 1978.
Drought and insect infestation (grasshopper).	May 1 to Sept. 27, 1978.
Kearney:	
Drought	Apr. 1 to Aug. 15, 1978.
Hail, wind	Sept. 11, 1978.
Lancaster:	
Hail	Sept. 2, 13, 1978.
Lincoln:	
Hail	Aug. 1, 1978.
Drought and insect infestation.	May 1 to Sept. 27, 1978.
Morrill:	
Hail	Aug. 14, 1978.
Phelps:	
Hail	July 30, 1978.
Red Willow:	
Hail, rain, wind	Aug. 20, 1978.
Drought and insect infestation.	June 1 to Sept. 27, 1978.
Sherman:	
Hail	July 30, 1978.

and adjacent counties within the State of Nebraska, and the time for filing applications is extended to March 30, 1979, for physical damage and June 30, 1979, for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: October 27, 1978.

A. VERNON WEAVER,
Administrator.

[FR Doc. 78-31369 Filed 11-6-78; 8:45 am]

[4710-02-M]

DEPARTMENT OF STATE

Agency for International Development

[Redelegation of Authority No. 99.1.41, Amendment No. 2]

AID AFFAIRS OFFICER, QUITO, ECUADOR

Redelegation of Authority, Regarding Contracting Functions

Pursuant to the authority delegated to me under Redelegation of Authority No. 99.1 (38 FR 12836) from the Assistant Administrator for Program and Management Services of the Agency for International Development, I hereby further amend Redelegation of Authority No. 99.1.41 dated September 26, 1973 (38 FR 27628) as follows:

1. Delete all references to "Mission Director" and substitute in lieu thereof "AID Affairs Officer."

2. The first paragraph is hereby amended to reflect the following changes:

(a) The last two words in the first paragraph are deleted, i.e. "or approve:".

(b) Subhead 1 is revised to read as follows:

"1. U.S. Government contracts, grants, and amendments thereto (other than grants to foreign governments or agencies thereof) provided that the aggregate amount of each individual contract or grant does not exceed $50,000 or local currency equivalent."

(c) Subhead 2 is revised to read as follows:

"2. Contracts with individuals for the services of the individual alone provided that the aggregate amount of each individual contract does not exceed $100,000 or local currency equivalent."

(d) Subhead 3 is deleted in its entirety.

3. The third paragraph is revised to read as follows:

"The authority delegated herein is to be exercised in accordance with regulations, procedures, and policies established or modified and promulgated within AID and is not in derogation of the authority of the Director of the Office of Contract Management to exercise any of the functions herein redelegated."

Except as provided herein, the Redelegation of Authority remains unchanged and continues in full force and effect.

This amendment is effective on the date of signature.

Dated: October 30, 1978.

HUGH L. DWELLEY,
Director,
Office of Contract Management.

[FR Doc 78-31435 Filed 11-6-78 8:45 am]

[4710-02-M]

[Redelegation of Authority No. 99.1.68, Amendment No. 1]

AID REPRESENTATIVE, PORTUGAL

Redelegation of Authority Regarding Contracting Functions

Pursuant to the authority delegated to me under Redelegation of Authority No. 99.1 (38 FR 12836) from the Assistant Administrator for Program and Management Services of the Agency for International Development, I hereby further amend Redelegation of Authority No. 99.1.68 dated June 2, 1975 (40 FR 25077), as follows:

1. The first paragraph is hereby amended to reflect the following changes:

(*a*) The last two words in the first paragraph are deleted, i.e., "and approve:".

(*b*) Subhead 1 is revised to read as follows:

"1. U.S. Government contracts, grants, and amendments thereto provided that the aggregate amount of each individual contract or grant does not exceed $50,000 or local currency equivalent."

(c) Subhead 2 is revised to read as follows:

"2. Contracts with individuals for the services of the individual alone provided that the aggregate amount of each individual contract does not exceed $100,000 or local currency equivalent.

2. The third paragraph is revised to read as follows: "The authority delegated herein is to be exercised in accordance with regulations, procedures, and policies established or modified and promulgated within AID and is not in derogation of the authority of the Director of the Office of Contract Mangement to exercise any of the functions herein redelegated."

Except as provided herein, the Redelegation of Authority remains unchanged and continues in full force and effect.

This amendment if effective on the date of signature.

Dated: October 23, 1978.

HUGH L. DWELLEY,
Director,
Office of Contract Management.

[FR Doc. 78-31432 Filed 11-6-78; 8:45 am]

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[4710-02-M]

[Redelegation of Authority No. 99.1.31, Amdt. No. 3]

AID REPRESENTATIVE, SANTIAGO, CHILE

Redelegation of Authority Regarding Contracting Functions

Pursuant to the authority delegated to me under Redelegation of Authority No. 99.1 (38 FR 12836) from the Assistant Administrator for Program and Management Services of the Agency for International Development, I hereby further amend Redelegation of Authority No. 99.1.31 dated September 21, 1973 (38 FR 27628) as follows:

1. Delete all references to "Mission Director" and substitute in lieu thereof "AID Representative."

2. The first paragraph is hereby amended to reflect the following changes:

a. The last two words in the first paragraph are deleted, i.e. "and approve:".

b. Subhead 1 is revised to read as follows: "1. U.S. Government contracts, grants, and amendments thereto (other than grants to foreign governments or agencies thereof) provided that the aggregate amount of each individual contract or grant does not exceed $50,000 or local currency equivalent."

c. Subhead 2 is revised to read as follows: "2. Contracts with individuals for the services of the individual alone provided that the aggregate amount of each individual contract does not exceed $100,000 or local currency equivalent."

d. Subhead 3 is deleted in its entirety.

3. The third paragraph is revised to read as follows: "The authority delegated herein is to be exercised in accordance with regulations, procedures, and policies established or modified and promulgated within AID and is not in derogation of the authority of the Director of the Office of Contract Management to exercise any of the functions herein redelegated."

Except as provided herein, the Redelegation of Authority remains unchanged and continues in full force and effect.

This amendment is effective on the date of signature.

Dated: October 30, 1978.

HUGH L. DWELLEY,
Director, Office of Contract Management.

[FR Doc. 78-31433 Filed 11-6-78; 8:45 am]

[4710-02-M]

Agency for International Development

[Redelegation of Authority No. 99.1.103]

MISSION DIRECTOR, USAID/BOTSWANA

Redelegation of Authority Regarding Contracting Functions

Pursuant to the authority delegated to me as Director, Office of Contract Management, under Redelegation of Authority No. 99.1 (38 FR 12836) from the Assistant Administrator for Program and Management Services of the Agency for International Development, I hereby redelegate to the Mission Director, USAID/Botswana, the authority to sign:

1. U.S. Government contracts, grants, or amendments thereto provided that the aggregate amount of each individual contract or grant does not exceed $50,000 or local currency equivalent; and

2. Contracts with individuals for the services of the individual alone provided that the aggregate amount of each individual contract does not exceed $100,000 or local currency equivalent.

The authority herein delegated may be redelegated in writing, in whole or in part, by said Mission Director at his discretion to the person or persons designated by the Mission Director as Contracting Officer. Such redelegation shall remain in effect until such designated person or persons ceases to hold the office of Contracting Officer or until the redelegation is revoked by the Mission Director, whichever shall first occur. The authority so redelegated by the Mission Director may not be further redelegated.

The authority delegated herein is to be exercised in accordance with regulations, procedures, and policies established or modified and promulgated within AID and is not in derogation of the authority of the Director of the Office of Contract Management to exercise any of the functions herein redelegated.

The authority herein redelegated may be exercised by duly authorized persons who are performing the functions of the Mission Director in an acting capacity.

Actions within the scope of this delegation and any redelegation hereunder heretofore taken by officials designated in such delegation or redelegation are hereby ratified and confirmed.

This redelegation of authority is effective October 1, 1978.

Dated: October 23, 1978.

HUGH L. DWELLEY,
Director, Office of Contract Management.

[FR Doc. 78-31430 Filed 11-6-78; 8:45 am]

[4710-02-M]

[Redelegation of Authority No. 99.1.38, Amdt. No. 2]

MISSION DIRECTOR, USAID, COLOMBIA

Redelegation of Authority Regarding Contracting Functions

Pursuant to the authority delegated to me under Redelegation of Authority No. 99.1 (39 FR 12836) from the Assistant Administrator for program and Management Services of the Agency for International Development, I hereby further amend Redelegation of Authority No. 99.1.38 dated September 25, 1973 (38 FR 27628) as follows:

1. The first paragraph is hereby amended to reflect the following changes:

a. The last two words in the first paragraph are deleted, i.e. "or approve:"

b. Subhead 1 is revised to read as follows: "1. U.S. Government contracts, grants, and amendments thereto (other than grants to foreign governments or agencies thereof) provided that the aggregate amount of each individual contract or grant does not exceed $50,000 or local currency equivalent."

c. Subhead 2 is revised to read as follows: "2. Contracts with individuals for the services of the individual alone provided that the aggregate amount of each individual contract does not exceed $100,000 or local currency equivalent."

d. Subhead 3 is deleted in its entirety.

2. The third paragraph is revised to read as follows: "The authority delegated herein is to be exercised in accordance with regulations, procedures, and policies established or modified and promulgated within AID and is not in derogation of the authority of the Director of the Office of Contract Management to exercise any of the functions herein redelegated."

Excepted as provided herein, the Redelegation of Authority remains unchanged and continues in full force and effect.

This amendment is effective on the date of signature.

Dated: October 30, 1978.

HUGH L. DWELLEY,
Director, Office of Contract Management.

[FR Doc. 78-31434 Filed 11-7-78; 8:45 am]

[4710-02-M]

[Redelegation of Authority No. 99.1.104]

MISSION DIRECTOR, USAID/LESOTHO

Redelegation of Authority Regarding Contracting Functions

Pursuant to the authority delegated to me as Director, Office of Contract Management, under Redelegation of Authority No. 99.1 (38 FR 12836) from the Assistant Administrator for Program and Management Services of the Agency for International Development, I hereby redelegate to the Mission Director, USAID/Lesotho, the authority to sign:

1. U.S. Government contracts, grants, or amendments thereto provided that the aggregate amount of each individual contract or grant does not exceed $50,000 or local currency equivalent; and

2. Contracts with individuals for the services of the individual alone provided that the aggregate amount of each individual contract does not exceed $100,000 or local currency equivalent.

The authority herein delegated may be redelegated in writing, in whole or in part, by said Mission Director at his discretion to the person or persons designated by the Mission Director as Contracting Officer. Such redelegation shall remain in effect until such designated person or persons ceases to hold the office of Contracting Officer, or until the redelegation is revoked by the Mission Director, whichever shall first occur. The authority so redelegated by the Mission Director may not be further redelegated.

The authority delegated herein is to be exercised in accordance with regulations, procedures, and policies established or modified and promulgated within AID and is not in derogation of the authority of the Director of the Office of Contract Management to exercise any of the functions herein redelegated.

The authority herein rededegated may be exercised by duly authorized persons who are performing the functions of the Mission Director in an acting capacity.

Actions within the scope of this delegation and any redelegation hereunder heretofore taken by officials designated in such delegation or redelegation are hereby ratified and confirmed.

This redelegation of authority is effective October 1, 1978.

Dated: October 23, 1978.

HUGH L. DWELLEY,
Director, Office of Contract Management.

[FR Doc. 78-31431 Filed 11-6-78; 8:45 am]

[4710-02-M]

[Redelegation of Authority No. 99.1.102]

MISSION DIRECTOR, USAID/SWAZILAND

Redelegation of Authority Regarding Contracting Functions

Pursuant to the authority delegated to me as Director, Office of Contract Management, under Redelegation of Authority No. 99.1 (38 FR 12836) from the Assistant Administrator for Program and Management Services of the Agency for International Development, I hereby redelegate to the Mission Director, USAID/Swaziland, the authority to sign:

1. U.S. Government contracts, grants, or amendments thereto provided that the aggregate amount of each individual contract or grant does not exceed $50,000 or local currency equivalent; and

2. Contracts with individuals for the services of the individual alone provided that the aggregate amount of each individual contract does not exceed $100,000 or local currency equivalent.

The authority herein delegated may be redelegated in writing, in whole or in part, by said Mission Director at his discretion to the person or persons designated by the Mission Director as Contracting Officer. Such redelegation shall remain in effect until such designated person or persons ceases to hold the office of Contracting Officer, or until the redelegation is revoked by the Mission Director, whichever shall first occur. The authority so redelegated by the Mission Director may not be further redelegated.

The authority delegated herein is to be exercised in accordance with regulations, procedures, and policies established or modified and promulgated within AID and is not in derogation of the authority of the Director of the Office of Contract Management to exercise any of the functions herein redelegated.

The authority herein redelegated may be exercised by duly authorized persons who are performing the functions of the Mission Director in an acting capacity.

Actions within the scope of this delegation and any redelegation hereunder heretofore taken by officials designated in such delegation or redelegation are hereby ratified and confirmed.

This redelegation of authority is effective October 1, 1978.

Dated: October 23, 1978.

HUGH L. DWELLEY,
Director, Office of Contract Management.

[FR Doc. 78-31429 Filed 11-6-78; 8:45 am]

[4710-02-M]

[Redelegation of Authority No. 99.1.13]

REDELEGATION OF AUTHORITY

Regarding Contracting Functions

Redelegation of Authority No. 99.1.13 to OSARAC is hereby canceled since that office was recently abolished.

Dated: October 23, 1978.

HUGH L. DWELLEY,
Director, Office of Contract Management.

[FR Doc. 78-31428 Filed 11-6-78; 8:45 am]

[4710-02-M]

Agency for International Development

REGIONAL A.I.D. REPRESENTATIVE IN THE SOUTH PACIFIC

Redelegation of Authority

Pursuant to the authority delegated to me by A.I.D. Delegations of Authority No. 5, dated December 29, 1961 (27 FR 449), as amended, with respect to Loan Agreements; No. 38, date April 10, 1964 (29 FR 5280), as amended, with respect to Project Agreements, Trust Fund Agreements, and Grants to International Organizations; No. 99, dated April 27, 1973 (38 FR 12834), with respect to Contracting and Related Functions; and No. 112, dated October 12, 1975 (40 FR 48955), with respect to other authorities and functions delegated to me, I hereby redelegate to the Regional A.I.D. Representative in the South Pacific and to any person acting in this official capacity, authority to exercise any of the following functions, retaining for myself concurrent authority to exercise any of the functions herein redelegated:

1. Authority to negotiate and execute loan and grant agreements and amendments thereto up to five hundred thousand U.S. dollars ($500,000) with respect to loans and grants authorized under the Foreign Assistance Act of 1961, as amended (the Act), in accordance with the terms of the authorization of such loan or grant; such grant agreements for purposes of this authority and all other authorities contained in this redelegation shall mean agreements with foreign governments, foreign government agencies and international organizations having a membership consisting primarily of such foreign governments;

2. Authority to implement such loan and grant agreements with respect to loans and grants authorized under the Act, including the following:

NOV 7 78 UMI

(a) Authority to prepare, negotiate, sign and deliver letters of implementation;

(b) Authority to review and approve documents and other evidence submitted by borrowers or grantees in satisfaction of conditions precedent to financing under such loan or grant agreements;

(c) Authority to negotiate, execute and implement all agreements and other documents ancillary to such loan and grant agreements;

(d) Authority to sign or approve project implementation orders; and

(e) Authority to approve contractors, review and approve the terms on contracts, amendments, and modifications thereto, and invitations for bids with respect to such contracts financed by funds made available under such loan or grant agreements.

The authorities enumerated above may be exercised only after consultation with the regional contracting oficer and/or regional legal advisor, as appropriate, and may not be redelegated.

The authority enumerated above in paragraph one (1) is also hereby redelegated under the same terms and conditions set forth herein to the U.S. Ambassador to Fiji.

This redelegation of authority is effective immediately.

Dated: October 25, 1978.

ALEXANDER R. LOVE,
Assistant Administrator,
Bureau for Asia.

[FR Doc. 78-31427 Filed 11-6-78; 8:45 am]

[4910-06-M]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Emergency Order No. 10]

CONSOLIDATED RAIL CORP.; BLACK ROCK BRANCH

Emergency Order Forbidding Movement of Hazardous Materials

The Federal Railroad Administration (FRA), Department of Transportation, has determined that considerations of public safety necessitate the issuance of an emergency order prohibiting the further movement of placarded hazardous materials cars over the Black Rock Branch, a segment of Consolidated Rail Corp. (Conrail) track in the Buffalo Division which connects Bison Yard (at Milepost 389.7) and Black Rock Yard (at Milepost 399.3).

Located within the city of Buffalo, N.Y., this branch consists of about 9.7 miles of double track, much of it elevated to a height of 20 feet to accommodate the six major three- or four-lane streets over which it passes. Approximately 50,000 people live within one-quarter mile of the track. Within that area are approximately 15 schools and one hospital. A nursing home with 255 patients is located 100 yards from the track. Among the factories in the vicinity are American Brass with 500 to 700 workers, a Chevrolet plant with 300 to 500 workers, and a large industrial park at Elmwood Street with 5,000 to 6,000 workers.

An average of 14 trains, many 100 cars long, operate daily on the Black Rock Branch, carrying a total of 10.3 million gross tons per year.[1] It is a principal freight route reaching Canadian points via the International Bridge over the Niagara River. Both the Norfolk & Western Railway Co. (N&W) and the Chesapeake & Ohio Railway Co. (C&O) operate trains over the Black Rock Branch under trackage rights arrangements.

In the course of operations, large amounts of harzardous materials are transported. According to Conrail records, two cars of nitroguanidine, a class A high explosive, were interchanged during the week of October 23, 1978, from the Canadian National railway to Conrail and transported over the Black Rock Branch to Bison Yard. During that week there were also movements of one chlorine car and 24 cars of liquified petroleum gas.[2] In addition, Conrail records showed one car of organic peroxide, an unstable oxidizer which is extremely hazardous, and at least five cars of ammonium nitrate, the oxidizer in the 1947 Texas City disaster. Other hazardous materials among the shipments included phosphorus (a flammable solid), xylene (a flammable liquid), and carbolic acid (Poison B).[3] A total of 54 cars containing hazardous materials were moved on this branch during the week of October 23.

On October 23, 1978, in response to a complaint, an FRA inspector began inspections of the Black Rock Branch. His first inspection on that date revealed over 67 violations of the FRA track safety standards in only one-half mile of track. There were 40 instances of defective joint ties, i.e., defective ties at the point where rail sections are joined together by joint bars, a normally weaker part of the track structure, made even more so by the defective ties. In addition, FRA found two defective tie conditions affecting cross level, four areas where the distance between nondefective ties exceeded the minimal standards for class I track, 20 joints with loose or insufficient bolts, and one rail with a two-foot long, vertical split head. (See Appendix A).

The FRA inspector returned for a second inspection on October 24, 1978. Approximately five miles were walked, and conditions found to be representative of other areas inspected by riding in a specially designed track inspection vehicle. The October 24 inspection revealed numerous defects, especially at critical points in the track structure: defective ties on the bridges and highway overpasses, other defects on an elevated grade, and defective ties under a frog (a track component used where rails intersect) which caused the frog to break. The 58 defects noted were only a small sampling of the actual number of defects present along the line.

The FRA inspector noted 11 locations where tie conditions were far below FRA's minimum standards, which prescribe the maximum allowable distance between nondefective ties as 100 inches. The inspector found single violations involving distances of 172, 191, 220, 221, and 155 inches. These defects often occurred at points such as frogs, switches, and bridges, which are subjected to greater than normal stress. In the worst example, the frog was floating and not spiked to the ties. Likewise, there were 18 instances of defective joint ties.

In addition to numerous areas of noncompliance with crosstie regulations, there were five areas of wide gage,[4] including one location of 4 feet 11¼-inch gage, which is 2¾ inches beyond standard and 1½-inch wider than the maximum permitted by the track safety standards for any movement of trains. In addition, one broken rail and two broken frogs were found, which also pose a danger of derailment. (See Appendix B.)

The nature and degree of nearly all of the defects noted during these inspections are such that each presents a definite possibility of a derailment resulting solely from that defect. The locations of many of the defects increase the probability that a derailed car or locomotive would completely leave the track structure and possible roll down the side of the embarkment.

The nature of traffic on the Black Rock Branch presents a high probability of a serious derailment. An annual tonnage of 10.3 million gross tons per year, handled in an average of 14 trains per day, is far from inconsequential.

In fact, derailments on this line have occurred almost weekly. Carrier records for every month in 1977 except September showed a total of 40 derailments, 23 of which were listed as track-related. In 6 months of 1978, the total was 18, with 10 described as track-related.

In response to the FRA inspection, which disclosed numerous serious track defects, Conrail issued on the evening of October 24, 1978, a general speed restriction, ordering speeds on all trains reduced to 5 miles per hour. Until then, Conrail had allowed light engines and engines with cabooses a higher speed limit of 10 miles per hour.[5] Although expanson of the slow order was a positive step, its effectiveness was somewhat doubtful, given the evidence of noncompliance with the original order. (At 4:32 p.m., October 23, 1978, an FRA inspector observed a C&O train hauling 35 or more cars at about 10 to 13 per hour, in violation of the 5-mile per hour rule then in effect.) On October 26, 1978, 2 days after the second inspection, FRA served Conrail in Buffalo with a Notice of Track Conditions, issued pursuant to 49 CFR Part 216, informing the carrier that FRA had under consideration issuance of an emergency order removing the Black Rock Branch from service. The carrier has not undertaken action to remedy the problems in a timely manner.

In the meantime, despite the defect notice and the possibility of an emergency order, traffic in hazardous and other materials has continued as usual. Conrail has placed no restrictions of any kind on the movement of hazardous materials.

The derailment of a car containing hazardous material would pose a threat not only to train crews but to people living in the vicinity. For example, a number of backyards fronting on St. Lawrence Avenue border the embankment. Houses are as close as 60 feet from the foot of the slope. A derailment would also endanger motorists using the roads which cross underneath the line, students attending the various elementary and high schools nearby, patients in neighboring hospital and nursing facilities, and employees in neighboring factories. Far too many lives are at stake to allow continued shipment of hazardous cargo over the Black Rock Branch in its present deteriorated condition.

In light of the high risk that derailments will result in death or injury because of the release of hazardous materials, I have determined that the track defects on the Black Rock Branch operated by the Consolidated Rail Corp. between Bison Yard and Black Rock Yard, in Buffalo, N.Y., constitute an unsafe condition and create an emergency situation involving a hazard of death or injury to persons affected by the use of this line.

Therefore, pursuant to the authority of section 203 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 432) delegated to me by the Secretary of Transportation (49 CFR 1.49(n)), it is ordered:

1. That all transportation of railroad cars containing a material which is required to be placarded in accordance with Department of Transportation regulations, 49 CFR Parts 170-189 ("placarded hazardous materials"), over the Consolidated Rail Corp.'s Black Rock Branch, between Bison Yard, at approximately milepost 389.7, and Black Rock Yard, at approximately milepost 399.3, in Buffalo, N.Y., shall cease not later than 12:01 a.m., November 3, 1978. However, any cars in transit over such track at that time may continue to their final terminal.

2. This order shall remain in effect until such track has been restored to compliance with Federal Railroad Administration standards for at least class I track (49 CFR Part 213).

3. Transportation over such track of any car containing any hazardous material required to be placarded shall be and is prohibited by this order until the authorized designated official of the Consolidated Rail Corp. has certified that required repairs have been made and the track has been inspected by a representative of the Federal Railroad Administration. Subject to these procedures, service over the line may be restored incrementally.

A civil penalty of $2,500 will be assessed for any violation of this order. (45 U.S.C. 438.)

Opportunity for formal review of this emergency order will be provided in accordance with section 203 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 432) and section 554 of Title 5 of the U.S. Code. Petition for such review must be submitted in writing to the Office of Chief Counsel, Federal Railroad Administration, Washington, D.C. 20590 in accordance with 49 CFR 216.25.

This order does not authorize the Consolidated Rail Corp. to transport cars which do not contain placarded hazardous materials, over track which is not in compliance with the track safety standards. Any such operation may subject the Consolidated Rail Corp. to the imposition of penalties prescribed by the Federal Railroad Safety Act of 1970 (45 U.S.C. 438).

Issued in Washington, D.C., on November 2, 1978.

JOHN M. SULLIVAN,
Administrator.

APPENDIX A

CONSOLIDATED RAIL CORP.

October 23, 1978, Inspection of Black Rock Branch track inspected between Milepost 395.8 and Milepost 396.25.

Number of Violations, 49 CFR Part 213

40—joint tie defects (.109).
2—defective tie conditions affecting cross level (.63).
4—distance between nondefective ties exceeding 100 inches (.109).
2—missing joint bar bolts (.121).
18—loose bolt conditions (.121).
1—vertical split in rail head, two feet long (.113).

APPENDIX B

CONSOLIDATED RAIL CORP.

October 24, 1978, Inspection of Black Rock Branch track inspected between Milepost 389.7 and Milepost 399.3.

Number of Violations, 49 CFR Part 213

5—gage defects (.53).
12—distance between nondefective ties exceeding 100 inches (.109).
1—alinement defect (.55).
18—joint tie defects (.109).
2—broken frogs (.137).
4—missing bolts (.121).
1—missing frog bolts (.133).
1—insufficient ballast (.103).
2—missing cotter pins (.133).
7—deviation exceeding allowable cross level (.63).
1—uniform profile exceeding allowable (.63).
1—incorrect holddown clearance (.139).
1—broken rail (.113).
1—vertical split head rail, 11 feet long (.113).
1—failure to inspect as required (.233).

[FR Doc. 78-31530 Filed 11-6-78; 8:45 am]

[4830-01-M]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Application No. S-929]

HAROLD PRINTUP, JR., KEOGH PLAN

Proposed Tax Exemption

AGENCY: Department of the Treasury/Internal Revenue Service.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Internal Revenue Service (the Service) of a proposed exemption from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption, if granted, would exempt the sale of real property by the Harold Printup, Jr., Kiogh Plan

[1] According to the dispatcher's daily record of train movements.

[2] Chlorine is classified as a nonflammable gas. Liquified petroleum gas is a flammable gas. Both have been involved in recent tragic derailments. At Youngstown, Fla., on February 26, 1978, eight persons were killed when they were overcome by chlorine gas fumes from a punctured tank car. A few days earlier, on February 23, 1978, 15 persons died and 60 were injured in Waverly, Tenn., when tank cars carrying liquified petroleum gas exploded and burned.

[3] Hazard class under DOT hazardous materials regulations.

[4] Track gage is defined as the distance between the inside faces of the rail heads, measured at a point ⅝ inch below the top of the rail head. Standard gage is 4 feet 8½ inches. The track safety standards permit gage to widen to 4 feet 9¾ inches before a defect is considered to exist. Gage wider than 4 feet 9¾ inches usually indicates a lack of sufficient lateral support for the rail, and greatly increases the possibility of a derailment due to car or locomotive wheels dropping between the rails.

[5] Bulletin Order No. 1—S17 June 28, 1978.

V 4 3 / 2 1 6

(the Plan) to Harold Printup, Jr. The proposed exemption, if granted, would affect the sole participant, Harold Printup, Jr., and beneficiaries of the Plan.

DATE: Written comments and requests for a public hearing must be received by the Service on or before December 7, 1978.

ADDRESS: All written comments and requests for a hearing (at least six copies) should be addressed to the Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attention: E:EP:PT:2, Application No. S-929. The application for exemption and the comments received will be available for public inspection at the Internal Revenue Service National Office Reading Room, 1111 Constitution Avenue NW., Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

Ivan Strasfeld of the Prohibited Transactions Staff of the Employee Plans Division, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 (Attention: E:EP:PT:2), 202-566-3045. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Service of a proposed exemption from the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (E) of the Code. The application was filed pursuant to section 4975(c)(2) of the Code and in accordance with the procedures set forth in Rev. Proc. 75-26, 1975-1 C.B. 722.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Service for the complete representations of the applicant.

1. The Plan owns 20.02 acres of land in Riverside County, Calif. The Plan purchased this unimproved property on June 7, 1976, from an unrelated person for $19,900. This property represents approximately 66 percent of Plan assets.

2. A copy of the tax assessor's bill for 1977-78, which accompanied the application, indicates a value of $11,200 for the property. An appraisal by Lester E. Crossley, S.R.A., estimated the market value of the property to be $16,000 as of June 10, 1978.

3. The sole participant of the Plan and its certified public accountant have determined that the real property has not been a profitable investment. In addition, the property produces no current income and is subject to various holding costs including property taxes and assessments.

4. No efforts were made to locate a purchaser for the property who is not a disqualified person. The applicant represents that the property is desert land with little or no sales activity.

5. Mr. Harold Printup, the sole Plan participant, has offered to purchase the property for $19,900, the original cost of the Plan.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 4975(c)(2) of the Code does not relieve a disqualified person with respect to the Plan to which the exemption is applicable from certain other provisions of the Code, including any prohibited transaction provisions to which the exemption does not apply, nor does it affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the Plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 4975(c)(2) of the Code, the Service must find that the exemption is administratively feasible, in the interests of the Plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the Plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that the transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

5. This document does not meet the criteria for significant regulations set forth in paragraph 8 of the proposed Treasury directive appearing in the Federal Register for Wednesday, May 24, 1978 (43 FR 22319).

Written Comments and Hearing Request

All interested persons are invited to submit written comments or requests for a hearing on the proposed exemption to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the application for exemption at the addresses set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Service is considering granting the requested exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in Rev. Proc. 75-26. If the exemption is granted, the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale by the Plan of the above-described real property to Mr. Printup for $19,900 cash. The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 1st day of November 1978.

Fred J. Ochs,
Director, Employee Plans Division, Internal Revenue Service.

[FR Doc. 78-31372 Filed 11-6-78; 8:45 am]

[4510-29-M]
[4830-01-M]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

EMPLOYEE BENEFIT PLANS

Proposed Exemption Relating to a Transaction Involving the Haag Engineering Company Profit Sharing Trust (Application No. D-229)

AGENCIES: Department of the Treasury/Internal Revenue Service, Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Internal Revenue Service and the Department of Labor (the Agencies) of a proposed exemption from the prohibited transactions restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the sale of a parcel of land from the Haag Engineering Co. Profit Sharing Trust (the plan) to Haag Engineering Co. (the employer). The proposed exemption, if granted, would affect participants and beneficiaries of the plan, the employer, and other persons participating in the proposed transaction.

DATES: Written comments and requests for a public hearing must be received by the Internal Revenue Service on or before December 7, 1978.

ADDRESS: All written comments and requests for a hearing (at least six copies) should be addressed to the Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, attention: E:EP:PT:1 (D-299).

The application for exemption, all comments relating to the proposed exemption, and any requests for a hearing will be available for public inspection at the Internal Revenue Service National Office Reading Room, 1111 Constitution Avenue NW., Washington, D.C. 20224, and at the Public Documents Room of the Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT:

John R. Blasi of the Prohibited Transactions Staff of the Employee Plans Division, Internal Revenue Service, 202-566-6761. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the agencies of a proposed exemption from the restrictions of section 406(a)(1) (A) and (D) and 406 (b)(1) and (b)(2) of the Act and from the taxes imposed by section 4975 (a) and (b) of the Code by reason of sections 4975(c)(1) (A), (D), and (E) of the Code. The proposed exemption was requested in an application filed by the trustees of the plan, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) and Rev. Proc. 75-26, 1975-1 C.B. 722.

Summary of Facts and Representations

The application contains facts and representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the agencies for the complete representations of the applicants.

1. The Plan was adopted by the Employer in 1963. At present, the number of plan participants is 23. The plan has three trustees: C. B. Parish, E. E. Taylor, Jr., and John M. Dorsey, who are also shareholders and employees of the Employer. Messrs. Parish and Taylor are also two of the Employer's three-man board of directors, are its two largest sharholders (owning approximately 27 percent of the outstanding shares), and hold the office of president and executive vice president, respectively.

2. The Plan is the owner of a certain parcel of unimproved real property contiguous to the Employer's principal office facility in Addison, Tex. (the Property). The Property contains approximately 35,922 square feet and is described according to the plot record in volume 50 at page 207 of the map records of Dallas County, Tex. as lot No. 6, block "B" of Addition Airport industrial district, an addition to the city of Addison, Tex. The surrounding area is developing but there are a large number of undeveloped lots in the vicinity.

3. The Property was acquired in 1964 by the Plan along with a purchase of the contiguous lot 7 for a total consideration of $20,213 for an average per square foot cost of $0.25. (The cost of lot 6 was $8,890 and lot 7 was $11,233.) In 1966, the Plan constructed a building on lot 7 and in November of 1966 leased the land and the building to the Employer. In 1972, the Plan sold lot 7, with its improvements, to the Employer for $120,000.

4. The Plan has been attempting to sell the Property on the open market since June of 1975. To that end, it has engaged a realtor, Patrick J. Haggerty of Hank Dickerson & Co./Realtors, Dallas, Tex. The Plan authorized Mr. Haggerty to place a "For Sale" sign on the Property. To date, Mr. Haggerty has received only one offer to purchase the Property.

5. On August 29, 1977, the Plan entered into a lease agreement with Forney Engineering Co. (the Tenant), Dallas, Tex., an unrelated party, whereby the Tenant leased the property for use as a parking lot and driveway for its offices, which are located on adjacent property. Incident to the lease, the Plan expended $18,200 in order to pave and curb the lot. The lease is for an initial term of 48 months. Under the lease agreement the Tenant has the option to renew the lease for two successive 24-month periods following the initial term.

6. In the latter part of January 1978 the Plan received an offer to purchase the land from the Tenant. The offer was conditioned on cancellation of the lease and the simultaneous closing of two other purchases of adjoining land. The offer price was $71,999.55, from which the Plan would be required to pay an agent's commission of $2,243. An appraisal by G. William Maquire, real estate couselor, Dallas, Tex., dated March 13, 1978, value the Property at $74,000, as of February 14, 1978. On the basis of the appraisal the Plan rejected the Tenant's offer. To date there have been no further offers to purchase the Property.

7. While the Property will remain for sale to independent parties, the Plan now proposes to sell the property to the Employer for $80,000. The proposed purchase price is in excess of the $74,000 appraised value of the Property. The Employer will pay the entire amount of the purchase price in cash upon the transfer of the Property. All costs of the proposed sale are to be paid by the Employer. Further, the sale will be handled with all formalities customary to this type of real property transfer in Dallas, Tex.

Notice to Interested Persons

Notice of the proposed exemption will be given to all interested parties within 10 days of the publication of this notice in the Federal Register by posting, at a conspicuous place at each office of the Employer, a copy of the notice of proposed exemption along with an explanation which will advise all participants of their right to comment and/or to request a hearing within the period specified in the notice.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 4975(c)(2) of the Code and section 408(a) of the Act does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Code and the Act, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which require, among other things, that a fiduciary discharge his duties respecting the plan solely in the interests of the plan's participants and beneficiaries and in a prudent fashion in accordance with section 404(a)(1)B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 4975(c)(1)(F) of the Code and section 406(b)(3) of the Act;

(3) Before an exemption may be granted under section 4975(c)(2) of the Code and section 408((a) of the Act, the Agencies must find that the exemption is administratively feasible, in the interests of the plan and its participants and beneficiaries, and protective of the rights of the participants and beneficiaries of the plan;

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provi-

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sions of the Code and Act, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) This document does not meet the criteria for significant regulations set forth in paragraph 8 of the proposed Treasury directive appearing in the FEDERAL REGISTER for Wednesday, May 24, 1978 (43 FR 22319).

WRITTEN COMMENTS AND HEARING REQUESTS

All interested persons are invited to submit written comments or requests for a hearing on the proposed exemption to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

PROPOSED EXEMPTION

Based on the facts and representations set forth in the application, the Agencies are considering granting the requested exemption under the authority of section 4975(c)(2) of the Code and section 408(a) of the Act and in accordance with the procedures set forth in Rev. Proc. 75-26 and ERISA Procedure 75-1. If the exemption is granted, the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A), (D) and (E) of the Code and the restrictions of section 406(a)(1) (A) and (D) and section 406 (b)(1) and (b)(2) of the Act shall not apply to the sale of the Property from the Plan to the Employer for $80,000 cash, provided that this amount is not less than the fair market value of the Property. The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 1st day of November 1978.

FRED J. OCHS,
Director, Employee Plans Division, Internal Revenue Service.

IAN D. LANOFF,
Administrator of Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 78-31229 Filed 11-1-78; 12:10 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

[Notice 737]

ASSIGNMENT OF HEARINGS

NOVEMBER 2, 1978.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested. No amendments will be entertained after the date of this publication.

MC 504 (Sub-102), Harper Motor Lines, Inc., now being assigned for hearing on December 4, 1978, (1 week), at Atlanta, Ga. in a hearing room to be later designated.
MC 113678 (Sub-432), (MIF), Curtis, Inc., now being assigned for hearing on January 9, 1979, (2 days), at St. Paul, Minn. in a hearing room to be later designated.
MC 123407 (Sub-438F), Sawyer Transport, Inc., now being assigned for hearing on January 11, 1979, (2 days), at St. Paul, Minn. in a hearing room to be later designated.
MC 135874 (Sub-114F), LTL Perishables, Inc., now being assigned for hearing on January 15, 1979, (5 days), at St. Paul, Minn. in a hearing room to be later designated.
MC 105813 (Sub-241F), Belford Trucking Co., Inc., now being assigned for hearing on December 6, 1978, (1 day), at Peachtree Plaza, Peachtree Center, Peachtree at International Boulevard, Atlanta, Ga.
MC 111485 (Sub-19F), Paschall Truck Lines, Inc., now being assigned for continue hearing on January 9, 1979, (4 days), at Louisville, Ky. in a hearing room to be later designated.
MC 129701 (Sub-3), Jasper Furniture Forwarding, Inc., now being assigned for hearing on January 15, 1979, (1 day), at Louisville, Ky. in a hearing room to be later designated.
MC 102616 (Sub-942F), Coastal Tank Lines, Inc., now being assigned for hearing on January 16, 1979, (2 days), at Louisville, Ky. in a hearing room to be later designated.
MCC 10038, A & H Truck Line, Inc., et al. v. Overnite Transportation Co., now being assigned for hearing on January 18, 1979, (2 days), at Louisville, Ky. in a hearing room to be later designated.
MC 115826 (Sub-305F), W. J. Digby, Inc., now being assigned for hearing on January 30, 1979, (1 day), at Denver, Colo. in a hearing room to be later designated.
MC 143993, (Sub-2), Black Hills Trucking, Inc., now being assigned for hearing January 31, 1979, (3 days), at Denver, Colo. in a hearing room to be later designated.
MC F 13545, MC 1334, (Sub-20), Riteway Transport, Inc.—Purchase—Thomas C. Hedlund DBA Telluride Transfer now being assigned for hearing on February 5, 1979, (5 days), at Denver, Colo. in a hearing room to be later designated.
MC 105813 (Sub-241F), Belford Trucking Co., Inc., now being assigned for hearing on December 6, 1978, (1 day), at Peachtree Plaza, Peachtree Center, Peachtree at International Boulevard, Atlanta, Ga.
MC 118859 (Sub-11F), Bullock Trucking Co., Inc., now being assigned for hearing on December 7, 1978, (2 days), at Peachtree Plaza, Peachtree Center, Peachtree at International Boulevard, Atlanta, Ga.
MC 143869 (Sub-1), Douglas Express, Inc., now assigned December 11, 1978 at Atlanta, Ga. (5 days) in a hearing room to be later designated.
MC 2115826 (Sub-300F), W. J. Digby, Inc., now assigned December 7, 1978 (2 days) at Denver, Colo. in a hearing room to be later designated.
MC 94201 (Sub-161F), Bowman Transportation, Inc., now assigned December 6, 1978 (3 days) at Jackson, Miss., in a hearing room to be later designated.
MC 35628 (Sub-397F), Interstate Motor Freight System now assigned January 9, 1979 at Lansing, Mich. (14 days) in a hearing room to be later designated.
MC 49387 (Sub-49), Orschein Bros. Truck Lines, Inc., now assigned December 14, 1978 (2 days) at Jefferson City, Mo. in a hearing room to be later designated.
MC 121658 (Sub-11), Steve D. Thompson, now assigned December 4, 1978 at Baton Rouge, La. (5 days) in a hearing room to be later designated.
MC 118859 (Sub-11F), Bullock Trucking Co., Inc., now being assigned for hearing on December 7, 1978, (2 days), at Peachtree Plaza, Peachtree Center, Peachtree at International Boulevard, Atlanta, Ga.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-31467 Filed 11-6-78; 8:45 am]

[7035-01-M]

CHANGE IN FORM OF PROCEEDINGS TO REVOKE CERTIFICATES, PERMITS AND LICENSES

NOVEMBER 2, 1978.

Sections 204(c) and 312a(2) of the Interstate Commerce Act authorize the Commission, upon complaint or its own initiative, to conduct investigations looking toward the revocation of operating rights when motor carriers, brokers, and water carriers fail to comply with statutory requirements and the aiding Commission regulations. These requirements and regulations pertain to the filing of insurance, bonds, or other security for the protection of the public, the performance of adequate service, the filing of tariffs, contracts, and schedules, and the filing of annual reports.

For the past several years, revocation proceedings have contemplated the issuance of a maximum of three orders and a final notice. These documents gave the carrier or broker respondent official notice of particular compliance problems and three 30-day periods to correct them or show good cause why the Commission should not revoke the respondent's certificate, permit, or licenses. If these burdens were not satisfied, the Commission revoked the rights after 120 days.

To eliminate paperwork, the revocation proceeding is being changed so that two documents (decisions) will be issued instead of four. The first decision will pinpoint the specific aspects of noncompliance and allot 60 days for the respondent to submit written justification that its authority should not be revoked. It it fails to do so, a second decision will be issued. It will contain a self-executing provision to automatically revoke the rights if, after 60 additional days, respondent neither achieves compliance nor shows good cause why its rights should not be revoked.

The new revocation procedure will become effective December 1, 1978.

By the Commission, Alan Fitzwater, Acting Director, Office of Proceedings.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-31468 Filed 11-7-78; 8:45 am]

[7035-01-M]

[Notice No. 208]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

NOVEMBER 2, 1978.

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and a "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

MC 144-41 (Sub-12TA), filed May 8, 1978. Applicant: DOWNS TRANSPORTATION CO., INC., 2705 Canna Ridge Circle, N.E., Atlanta, GA 30345. Representative: Kim G. Meyer, P.O. Box 872, 235 Peachtree Street, NE., Atlanta, GA 30303. By order of October 16, 1978, the Motor Carrier Board granted authority to applicant to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (A) *Insulation and insulating materials* (except in bulk), from the facilities of Callaway Insulation Co. in Clayton County, GA to points in AR, AL, FL, LA, SC, NC, VA, KY, TN and MS, and (B) *Materials, supplies and equipment* used or dealt in by insulation manufacturing plants (except in bulk), from points in AR, AL, FL, LA, SC, NC, VA, KY, TN and MS to the facilities of Callaway Insulation Co. in Clayton County, GA.

Notice of this application in the FEDERAL REGISTER on July 13, 1978, inadvertently omitted the destination state of AL in part (1). Insofar as authority to serve points in AL is concerned interested parties may file petitions for reconsideration on or before 15 calendar days from the date of publication of this notice. Send petitions to: Acting Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 78-31469 Filed 11-6-78; 8:45 am]

[7035-01-M]

[Finance Docket Nos. 28499 (Sub-No. 1) and 28676 (Sub-No. 1)]

NORFOLK & WESTERN RAILROAD CO. AND BALTIMORE & OHIO RAILROAD CO.—CONTROL—DETROIT, TOLEDO & IRONTON RAILROAD CO.

GRAND TRUNK WESTERN RAILROAD CO. AND GRAND TRUNK CORP.—CONTROL—DETROIT, TOLEDO & IRONTON RAILROAD CO. AND THE DETROIT & TOLEDO SHORE LINE RAILROAD CO.

OCTOBER 23, 1978.

The Interstate Commerce Commission's Section of Energy and Environment (Section) has concluded that the proposed acquisition of the Detroit, Toledo & Ironton Railroad Co. (DT&I) by the Norfolk & Western Railroad Co. and the Baltimore & Ohio Railroad Co., if approved by the Commission, is not a major Federal action significantly affecting the quality of the human environment. Likewise, the Section has found that the proposed acquisition of DT&I and of the Detroit & Toledo Shore Line Railroad Co. (DTSL) by the Grand Trunk Western Railroad Co. (GTW), if approve by the Commission, would also not be a major Federal action significantly affecting the quality of the human environment.

It was concluded, among other things, that under neither of the proposed actions would diversion of traffic over other rail lines and through other rail yards have significant impacts on energy consumption, air pollutant emissions, noise levels, or safety hazards.

The effect on income and employment levels in the communities which would incur a change in railroad employment as a consequence of the GTW proposal is not expected to be significant.

Finally, the Section concluded that, should the GTW acquire the DT&I but not the DTSL, and should the DTSL, therefore, eventually be abandoned, the environmental impacts of such an abandonment probably would not be significant. However, the environmental impacts of potential abandonment of the DTSL would be addressed in greater detail in the context of an abandonment application, should one be filed.

These conclusions are contained in a staff-prepared environmental threshold assessment survey, which is available on request to the Interstate Commerce Commission, Office of Proceedings, Washington, D.C. 20423; telephone 202-275-7011. Interested persons may comment on this matter by filing their statements in writing on or before (30 days after publication in the FEDERAL REGISTER).

It should be emphasized that the environmental threshold assessment survey represents an evaluation of the

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environmental issues in the proceeding and does not purport to resolve the issues of whether the present or future public convenience and necessity permit discontinuance of the line proposed for abandonment. Consequently, comments on the environmental study should be limited to discussion of the presence or absence of environmental impacts and reasonable alternatives.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-31470 Filed 11-6-78; 8:45 am]

sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409), 5 U.S.C. 552b(e)(3).

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[6320-01-M]

1

[M-173, Amdt. 4; Oct. 26, 1978]

CIVIL AERONAUTICS BOARD.

Notice of deletion of item from the October 24, 1978, meeting agenda.

TIME AND DATE: 2 p.m., October 24, 1978.

PLACE: Room 1011, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: (6) BIA Briefing concerning proposed ad referendum agreement with Peru.

STATUS: Closed.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: Time did not permit the discussion of this item. Accordingly, the following Members have voted that agency business requires the deletion of item (6) from the October 24, 1978 agenda and that no earlier announcement of this change was possible:

Chairman, Alfred E. Kahn
Member, Elizabeth E. Bailey
Member, Gloria Schaffer
Member, Marvin S. Cohen

[S-2239-78 Filed 11-3-78; 11:38 am]

[6320-01-M]

2

[M-174, Amdt. 1; Oct. 31, 1978]

CIVIL AERONAUTICS BOARD.

Notice of time change for oral argument.

TIME: AND DATE: 9 O'clock, November 1, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: Oral argument—Docket 21670, Frontier Airlines, Inc., Subsidy Mail Rates.

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

[S-2240-78 Filed 11-3-78; 11:38 am]

[6335-01-M]

3

U.S. COMMISSION ON CIVIL RIGHTS.

DATE AND TIME: Monday, November 13, 1978, 9 a.m. to 12 noon; 1:30 to 5:30 p.m. Tuesday, November 14, 7:30 p.m. to 9 p.m.

PLACE: Room 512, 1121 Vermont Avenue NW., Washington, D.C.

STATUS: All sessions are open to the public.

MATTERS TO BE CONSIDERED: 9 a.m. to 12 noon:

I. Approval of agenda.
II. Approval of minutes from last meeting.
III. Staff Director's report:
A. Status of funds.
B. Personnel report.
C. Correspondence:
1. Letter from Secretary Harris on HUD affirmative action efforts.
2. Letter from Ms. L. Foster on Alabama SAC file—"Where are Women and Blacks: Patterns of Employment in Alabama Government".
3. Selected letters re Social Indicators report from:
a. Secretary of Interior Cecil D. Andrus,
b. Bureau of Census Director Manuel D. Plotkin,
c. ACTION Director Sam Brown,
d. Secretary of HEW Joseph A. Califano,
e. OMB Director James McIntyre, and
f. NAACP Legal Defense Fund—Jean Fairfax.
IV. SAC-charters: (A) Arkansas, (B) Iowa, (C) North Dakota, (D) Washington, (E) West Virginia, and (F) Wisconsin.
V. Report on civil rights developments in the southern region.
VI. Action re affirmative action in Kentucky Bureau of State Police.
VII. Action re equal employment opportunity in motion picture industry.
VIII. Action re employment statistics for Indians in Minnesota.
IX. Report on post-*Bakke* initiatives.
X. Presentations by Chief Harry Caldwell, Glen Murphy, Director for Governmental Relations and Legal Counsel, and Executive Director Glen King, International Association of Chiefs of Police.

MATTERS TO BE CONSIDERED: November 13, 1:30 to 5:30 p.m.

XI. Review of School Desegregation Report.
XII. Review of Media Update Report.

MATTERS TO BE CONSIDERED: November 14, 7:30 to 9 p.m.

Review of Media Update Report.

FOR FURTHER INFORMATION CONTACT:

Loretta Ward, Public Affairs Unit, 202-254-6697.

[S-2243-78 Filed 11-3-78; 12:07 pm]

[6351-01-M]

4

COMMODITY FUTURES TRADING COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 43, No. 214, November 3, 1978, page 51503.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., November 7, 1978.

CHANGES IN THE MEETING:

Add to the agenda: Delegation of authority to deny registration.

[S-2248-78 Filed 11-3-78; 3:21 pm]

[6351-01-M]

5

COMMODITY FUTURES TRADING COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 43, No. 214, November 3, 1978, page 51503.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:30 a.m., November 7, 1978.

CHANGES IN THE MEETING:

Delete: Policy discussion of compliance reviews and schedule of compli-

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ance reviews throught the first quarter of calendar 1980.

[S-2249-78 Filed 11-3-78; 3:21 pm]

[6351-01-M]

6

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10 a.m., November 13, 1978.

PLACE: 2033 K Street NW., Washington, D.C., Office of the Vice Chairman.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Internal personnel matters.

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254-6314.

[S-2250-78 Filed 11-3-78; 3:21 pm]

[6570-06-M]

7

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: S-2160-78, S-2199-78, and S-2201-78.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m. (eastern time), Friday, November 3, 1978.

CHANGE IN THE MEETING: The following matter is added to the open portion:

Proposed contract for technical assistance in examining and certifying applicants for certain EEOC positions.

A majority of the entire membership of the Commission determined by recorded vote that the business of the Commission required this change and that no earlier announcement was possible.

In favor of change: Eleanor Holmes Norton, Chair; Daniel E. Leach, Vice Chair; Ethel Bent Walsh, Commissioner; and J. Clay Smith, Jr., Commissioner.
Opposed: None.

CONTACT PERSON FOR MORE INFORMATION:

Marie D. Wilson, Executive Officer, Executive Secretariat, at 202-634-6748.

This notice issued November 1, 1978.

[S-2238-78 Filed 11-3-78; 11:38 am]

[6712-01-M]

8

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:20 a.m., Wednesday, November 8, 1978.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Speical open Commission meeting.

MATTER TO BE CONSIDERED:

SUBJECT

Review of the status of domestic U.S. activities in the development of Teletext services.

If additional information is required concerning this meeting it may be obtained from FCC Public Information Office, telephone 202-632-7260.

Issued: November 1, 1978.

[S-2244-78 Filed 11-3-78; 3:21 pm]

[6712-01-M]

9

FEDERAL COMMUNICATIONS COMMISSION.

PREVIOUSLY ANNOUNCED TIME AND DATE OF ORAL ARGUMENTS: 9:30 a.m. and 11 a.m., Tuesday November 7, 1978.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Oral arguments and closed instructions following oral arguments.

CHANGES IN THE MEETING:

The closed Commission meeting for the purpose of issuing instructions to the staff following oral argument on applications of WMUR-TV, Manchester, N.H. and KECC-TV, El Centro, Calif. (Docket Nos. 19336 and 19338) has been canceled. Oral argument in this case has been rescheduled to a date to be set by a subsequent order.

The oral argument of the renewal of KAIT (TV) and the closed instruction session which follows remains scheduled for 9:30 a.m. on November 7, 1978

Additional information concerning this change may be obtained in the FCC Public Information Office, telephone 202-632-7260.

Issued: November 2, 1978.

[S-2247-78 Filed 11-3-78; 3:21 pm]

[6730-01-M]

10

FEDERAL MARITIME COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 51197, November 2, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., November 8, 1978.

CHANGES IN THE MEETING: Addition of the following item to the closed session:

1. Interagency Maritime Study.

[S-2251-78 Filed 11-3-78; 3:43 pm]

[6730-01-M]

11

FEDERAL MARITIME COMMISSION.

TIME AND DATE: 10 a.m., November 9, 1978.

PLACE: Room 12126, 1100 L Street NW., Washington, D.C. 20573.

STATUS: Closed.

MATTER TO BE CONSIDERED: 1. interagency Maritime Study.

CONTACT PERSON FOR MORE INFORMATION:

Francis C. Hurney, Secretary, 202-523-5725.

[S-2252-78 Filed 11-3-78; 3:43 pm]

[6210-01-M]

12

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

TIME AND DATE: 8:45 a.m., Friday, November 3, 1978.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTER CONSIDERED: Federal Reserve Bank Senior Officers salary procedures. (This matter was originally announced for a meeting on October 18, 1978.)

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board, 202-452-3204.

Dated: November 3, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[S-2245-78 Filed 11-3-78; 3:21 pm]

[7550-01-M]

13

NATIONAL MEDIATION BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 48814.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 2 p.m., Wednesday, November 1, 1978.

CHANGES IN THE MEETING: Addition to matters to be considered—Determination to issue notice of proposed rulemaking providing page limitations for main and reply briefs filed in NMB proceedings.

SUPPLEMENTARY INFORMATION: Chairman Stowe and Board Members Harris and Ives have determined by recorded vote that Agency business required this change and that no earlier announcement of such change was possible.

Date of notice: November 1, 1978.

[S-2242-78 Filed 11-3-78; 11:48 am]

[7600-01-M]

14

[Form 1]

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSON.

TIME AND DATE: 1 p.m., November 15, 1978.

PLACE: Room 1101, 1825 K Street NW., Washington, D.C.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE INFORMATION:

Mrs. Patricia Bausell, 634-4015.

DATE: October 27, 1978.

[S-2246-78 Filed 11-3-78; 3:21 pm]

[8010-01-M]

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SECURITIES AND EXCHANGE COMMISSION.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securites and Exchange Commission will hold the following meetings during the week of November 6, 1978, in Room 825, 500 North Capitol Street, Washington, D.C.

An open meeting will be held on Wednesday, November 8, 1978, at 10 a.m. Closed meetings will be held on Tuesday, November 7, 1978, at 10 a.m., and on Wednesday, November 8, 1978, immediately following the 10 a.m. open meeting.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meetings may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A), and (10) and 17 CFR 200.402(a) (8), (9)(i), and (10).

Chairman Williams and Commissioners Loomis, Evans, Pollack and Karmel determined to hold the aforesaid meetings in closed session.

The subject matter of the closed meeting scheduled for Tuesday, November 7, 1978, at 10 a.m., will be:

Access to investigative files by Federal, State, or self-regulatory authorities.
Formal order of investigation.
Freedom of Information Act appeal.
Institution of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Other litigation matters.
Subpoena enforcement action.

The subject matter of the open meeting scheduled for Wednesday, November 8, 1978, at 10 a.m., will be:

1. Consideration of the comments on S. 3240, "The Independent Regulatory Commission Act," to be transmitted to the Senate Committee on Governmental Affairs. For further information, please contact John P. Seeney at 202-755-1362.
2. Consideration of technical amendments to rule 144, form 144, and form S-8 under the Securities Act of 1933 that would conform the rule and the forms in their entirety to certain recent amendments to the volume limitation and manner of sale requirements of rule 144. For further information, please contact Peter J. Romeo at 202-755-1240.
3. Consideration of whether an order should be issued terminating the exemption from registration as a national securities exchange of the Honolulu Stock Exchange which has been inactive since December 30, 1977. For further information, please contact William S. Muller at 202-755-7484.

The subject matter of the closed meeting scheduled for Wednesday, November 8, 1978, immediately following the 10 a.m. open meeting, will be:

Other litigation matters.
Opinion.

FOR FURTHER INFORMATION, PLEASE CONTACT:

Mark Goldfus at 202-755-1129.

NOVEMBER 1, 1978.

[S-2241-78 Filed 11-3-78; 11:38 am]

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TUESDAY, NOVEMBER 7, 1978
PART II



COUNCIL ON WAGE AND PRICE STABILITY

NONINFLATIONARY WAGE AND PRICE BEHAVIOR

Voluntary Standards

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[3175-01-M]

COUNCIL ON WAGE AND PRICE STABILITY

[6 CFR Part 705]

NONINFLATIONARY WAGE AND PRICE BEHAVIOR

Voluntary Standards

AGENCY: Council on Wage and Price Stability.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the regulations of the Council on Wage and Price Stability to implement the President's anti-inflation program by adding a new part 705 to title 6 and an appendix to that part specifying voluntary standards for noninflationary wage and price behavior.

DATE: These proposed standards may be used now for public guidance and by the Council on Wage and Price Stability and other Government agencies. Comments may be submitted by December 2, 1978, although comments after that date will be considered as practicable. Because rapid implementation of the anti-inflation program is required a longer comment period is not possible.

FOR FURTHER INFORMATION CONTACT:

Peter H. Lowry, General Counsel, Council on Wage and Price Stability, Room 4025, 726 Jackson Place NW., Washington, D.C. 20506, 202-456-6570.

ADDRESS: Ten copies of comments should be sent to the Office of the General Counsel, Council on Wage and Price Stability, 726 Jackson Place NW., Room 4025, Washington, D.C. 20506. Individuals may submit their views without filing multiple copies where submitting multiple copies would be a hardship.

SUPPLEMENTARY INFORMATION: In his presentation of the anti-inflation program on October 24, 1978, the President announced standards for noninflationary wage and price behavior. He has directed the Council on Wage and Price Stability to further define the standards, to monitor changes in prices and wages and to identify publicly those firms and workers who do not abide by the standards.

The Council recognizes that identification of an economic unit as noncomplying could have a substantial economic impact on the members of that economic entity. To ensure that these identifications are not arbitrary, the Council is publishing specific detailed standards and proposing to adopt them as an appendix to a new part 705 of the Code of Federal Regulations. In addition, the Council intends to publish procedural regulations shortly.

The President has stressed repeatedly the value of simplicity of Government documents and the importance of not placing undue reporting burdens on the public. This is particularly important in a voluntary program of this type. Therefore, these standards are designed to be largely self administered, much like the income tax system. Companies will determine for themselves how their own actions can be made to conform with these standards. The Council will not, in general, approve such actions in advance.

The Council, however, recognizes that there will be a need for further clarification of the standards. Because of limited staff, the Council prefers that clarification be coordinated by trade associations and labor groups. In responding to questions from these organizations and persons, the Council will give priority to general questions of interpretation that have broad applicability.

The Council will be responsible for auditing the actions of individual companies to determine whether their decisions conform with the intent of the standards and will take appropriate action where they do not.

The specific form of standards presented below is applicable to most industries. In some industries, however, their application may be modified later to reflect different institutional arrangements. These modifications will, however, be consistent with the original objective of the program.

The standards proposed by the Council are not rules and regulations since the program is voluntary. Therefore, the requirements of E.O. 12044, section 2(d) and 3(b) regarding the process for developing significant regulations and regulatory analysis procedures do not apply. Nevertheless, the procedures and analysis required by that Executive order were substantially followed.

Further supplementary information is organized as follows:

I. The Administration's White Paper which discusses the general background of the anti-inflation program and contains a synopsis of the standards.
II. Answers to some of the most frequently asked questions about the standards.
III. Some specific examples of methods of calculating rates of change of wage and prices.

Following this supplementary information, the proposed part 705, including an appendix which contains the proposed standards, are set forth.

WHITE PAPER: THE PRESIDENT'S ANTI-INFLATION PROGRAM

OCTOBER 24, 1978

I. INTRODUCTION

Over the past three years our economy has made great strides in recovering from the severe recession of 1974-75. Since early 1975, the rate of unemployment has been reduced from almost 9 percent to 6 percent. More than 10 million new jobs have been created—6 million of them during the first year and a half of this Administration. The nation's phyiscal output has expanded by almost 20 percent and the real (inflation adjusted) after-tax incomes of consumers have risen by more than 15 percent.

We have no progress, however, in solving the problem of inflation. As a result, inflation now ranks as our nation's most serious economic problem. The economic gains we have made can be extended, and the benefits of a fuller prosperity more widely shared, only if inflation is reduced.

The current inflation began many years ago—in the middle 1960's. For more than a decade, American consumers, businesses, and workers have been suffering the consequences of an inflation that has averaged over 6 percent a year.

During the first two and a half years of the current economic recovery—from early 1975 to the fall of 1977—the long-term inflation trend did not improve, but neither did it worsen. Late last year, however, prices and costs began to move up more rapidly. Thus far in 1978, consumer prices have risen at an annual rate of almost 10 percent—a rate of inflation that would cut the real value of accumulated savings in half in little more than 7 years.

Some of this acceleration of the inflation rate was accounted for by special factors. Food prices soared as a result of abnormally cold winter weather and limited supplies of meat that resulted from a prolonged decline in the size of cattle herds. Depreciation of the dollar also added to inflation pressures by boosting the prices of imports and encouraging American manufacturers of competing goods to raise the prices of their products. Sharply rising mortgage financing costs in 1978 added an additional element to inflation.

The recent worsening of the inflation problem, however, cannot be ascribed solely to these factors; other price and cost measures also indicate acceleration. Within the domestic nonfarm sector, for example, prices are rising at a rate near 8 percent annually. Nonfood raw material prices are rising at double-digit-rates. Unit labor costs have accelerated—as wage rates have been moving up more rapidly, while productivity growth has weakened. Excessive wage increases were not the *cause* of the current inflation, but wage moderation is an essential part of the *cure*.

The present inflation is imposing severe hardships on many Americans whose incomes do not rise in step with higher prices. Those who suffer the most—the poor and the elderly—can least afford to bear the harsh burden imposed by rapid price escalation.

More importantly, the current inflation threatens the prospects for continued economic expansion. Inflation undermines consumer confidence, drives up interest rates, weakens the value of the dollar in exchange markets, reduces the future purchasing power of savers, and upsets business plans for investing in the new plant and equipment needed to foster healthy economic expansion.

Inflation has several causes. Reducing inflation, therefore, requires that we deal, not just with one, but with several problems:

- Since the economy has come far in its recovery from recession, monetary and fiscal policies must now guard against the emergence of excessive demands and economic overheating that inevitably lead to accelerating inflation.
- Legislative and regulatory actions to achieve social objectives must be carefully screened to minimize the effects on costs and prices.
- Ways must be found to break the momentum of self-perpetuating prices and wage increases that has become so deeply entrenched in the private sector after ten years of inflation.

A balanced program must address all three of these problems. Trying to attack inflation by concentrating on any one alone would lead to policies that were either ineffective or damaging to our economy. In the first instance, relying solely on highly restrictive monetary and fiscal policies to reduce inflation, given its strong momentum, would lead to recession. On the other hand, voluntary measures to break the momentum would not be effective in an exuberant economy, unrestrained by responsible fiscal and monetary policy.

Mandatory wage and price controls represent an extreme approach that creates serious inequities and inefficiencies. They should only be used in periods of national emergency. Our experience with controls in the early 1970's is replete with examples of economic distortions and is illustrative of how mandatory controls soon sow the seeds of their own destruction.

A STRENGTHENED ANTI-INFLATION PROGRAM

Earlier this year, the President outlined the framework of a voluntary program that required the cooperation of government, business, and labor. This program was designed to break the momentum of wage/price increases in the private sector and to reduce government's contribution to inflation. Simultaneously, the Federal budget deficit for fiscal 1979 was reduced by some $20 billion. These efforts have not been enough; stronger measures are required. Thus, the President has now acted:

- To intensify the anti-inflation efforts of government by
  - —adopting a stringent budget policy that will create an overall climate in which the inflationary process can unwind,
  - —establishing procedures that minimize the inflationary impact of government regulations, and
  - —indicating his intention to veto legislative measures and other actions of government that provide benefits to narrow special-interest groups;
- to break the upward spiral of costs and prices by
  - —enunciating explicit numerical standards for noninflationary wage and price increases, and
  - —making clear his intention to use his administrative powers to support adherence to those standards in individual situations.

Success in controlling inflation would strengthen the confidence of consumers and businesses and improve conditions in financial markets. Rising interest rates have always accompanied worsening inflation. High interest rates threaten to price young families out of the housing market. They also add to the costs that businesses confront when they borrow to expand.

The burden of controlling inflation should not be left to monetary policy alone, which can only deal with the problem through tight restrictions on money and credit.

The President's new proposals for dealing with inflation constitute a balanced and concerted program under which tight budget restraint, private wage and price moderation, and responsible monetary policy support each other.

As the Executive Branch, Congress, and the private sector, working together, show sacrifice and restraint and we begin to make progress in reducing inflation, we should expect lower interest rates for consumers and businesses alike.

With cooperation, this program will succeed in reversing the inflation trend without resorting to another recession or to controls. But success will require a willingness to give the highest priority with the inflation problem.

II. ACTIONS BY THE FEDERAL GOVERNMENT

A strong contrubution by government is vital to any effective effort to reduce inflation. No program will work unless the Federal budget promotes a proper balance between supply and demand in the economy. Government must also keep to a minimum those actions that directly increase private costs and prices—actions that include regulations that add unnecessarily to costs and prices, increased payroll taxes, and expensive favors for special-interest groups.

BUDGETARY POLICY

Given the substantial progress that has been made in reducing unemployment and the persistence of rising prices, the emphasis in budgetary policy has already shifted toward fighting inflation. That emphasis must now be further strengthened.

The Federal Government must pursue a stringent budgetary policy with respect both to spending and to the budget deficit. The growth of spending must be strictly limited. As moderate and sustainable economic growth continues, the budget deficit must be reduced and eliminated. Business and labor must be convinced that excessive demands will not be created by the government's overall economic policies. Only under these circumstances will it be possible for inflationary pressures to unwind gradually.

To achieve this objective, it is neither necessary nor desirable to pursue a budgetary policy that seeks to wring inflation out of the economic system by raising unemployment. Attempting to reduce inflation by throwing millions of people out of work and idling a significant proportion of our plant facilities would be inequitable and intolerably costly. But, the achievement of further overall reductions in unemployment will require that we show progress in reducing the rate of inflation.

In fiscal 1976, Federal expenditures represented 22.5 percent of the nation's GNP and the deficit was $66 billion. since then, the size of the deficit has been reduced substantially. In fiscal 1979, the deficit in the Federal budget will be less than $40 billion. Next January, the Administration will submit its budget for fiscal 1980—the year beginning October 1, 1979. In the context of an overall ecnonomy growing at a moderate rate, the President has set targets for planning the 1980 budget under which

- The share of total spending in GNP would be reduced to about 21 percent of GNP—a goal originally scheduled to be reached a year later—and

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● the 1980 Federal budget deficit would be reduced to less than half the level of 1976.

In order to contribute to these goals, the President has imposed severe limits on hiring of Federal employees for an indefinite period. Effective immediately, Federal agencies may fill only one out of two vacancies as they occur. This step will reduce the number of Federal employees budgeted for this fiscal year by about 20,000. In July, the President announced a 5.5 percent limitation on Federal employee pay raises and a freeze on Federal executive pay levels.

REGULATORY POLICY

During the last decade we have expanded our efforts to protect the environment and the health and safety of workers and consumers. These goals are central to our welfare. But they are not free. Regulations designed to achieve these goals add to costs and hence to consumer prices. We must not abandon our regulatory goals, but we must attain them without imposing unnecessary burdens.

It is vital that equal attention be paid to decisions that impose costs on the public through raising private sector prices as to those that involve the expenditure of funds through the budget.

With this principle in mind, the President has stated his intention personally to exercise his authority, as necessary, to ensure that the regulatory process is balanced and well managed, and that specific regulations with large economic impacts achieve their statutory goals at minimum economic cost and regulatory burden.

The effort to reform the regulatory process has been underway since 1977. The regulatory agencies now prepare analyses of all of their proposed major new regulations. These analyses must identify the benefits and the costs of the proposed regulation and examine the implications of alternatives. A regulatory analysis review group has been established to review the most important of these proposals.

To strengthen further the government's effort to improve the regulatory process, the President has taken the following additional steps:

● The President has directed the formation of a Regulatory Council. The Council would comprise all Executive Branch departments and agencies with significant regulatory responsibilities. It would have the important task of coordinating duplicative or overlapping regulations.

● Most important, the Regulatory Council would develop a unified *calendar* of major regulations. The calendar would provide for the first time a comprehensive list of regulations the Federal Government is proposing, together with information on their cost, their objectives, and why they must be issued.

● He has directed each regulatory agency in the Executive Branch to include in its "sunset" reviews of existing regulations at least one set of regulations that has a major economic impact.

Progress also has been made in reducing the costs of existing economic regulations. In the past year, the Civil Aeronautics Board relaxed rules that controlled airline fares and allowed increased competition. The results have been lower air fares and record air passenger travel. The air deregulation bill just passed in Congress is the first major deregulation effort in recent history. It will extend these benefits and make them permanent. Next year, the Administration plans to work with Congress to reduce regulation in other areas, such as surface transportation.

OTHER ACTIONS

At a time when inflation is the number-one economic problem, it is especially important that the pressure of individual groups that seek government measures to protect them against domestic and international competition be resisted.

Another way of helping to reduce inflation is to slow and reverse the inflationary impact of actions by State and local governments. In August, the President asked the leaders of the State and local government associations (Governors, mayors, State legislators, county officials) to work with his staff and other appropriate offices to identify specific anti-inflation actions appropriate to those levels of government.

All of the associations have agreed to participate in this effort. Staff groups are now working on an agenda of actions that can be taken at the State and local level to deal with the problems of spiraling health costs, unnecessary costs associated with State regulation, the need to improve State and local government productivity, and the inflationary impact of Federal policies on State and local governments. The result will be specific initiatives that each State and local jurisdiction can consider taking within its own constitutional and legal authority.

III. PRIVATE SECTOR ACTIONS

Government must take the lead in the effort to slow inflation. Actions by government alone, however, will not suffice. A successful campaign to break the continuing cycle by which wage and price increases feed upon one another will require restraint on the part of everyone. A voluntary approach to achieve this goal must reflect several basic principles:

● *It must be equitable.* A successful effort will require self-restraint by everyone. No one group should be asked to shoulder all of the burden. The program should be designed to protect workers from the eroding effects of inflation and to assure that all groups share in the growth of income.

● *It must establish clear and explicit standards for both wage and price behavior.* If individual businesses and workers do not clearly preceive the way in which they can contribute to the fight against inflation, they are unlikely to do so. And if the government is to undertake countermeasures against inflationary behavior, that behavior must be clearly defined.

● *It must instill confidence that others will participate.* In order to encourage widespread cooperation, the government must play an active part. Few groups can be expected to cooperate if they have no confidence that others will do the same. The government must set its own house in order; and it must take measures to encourage individual decision makers in the private sector to do likewise.

The anti-flation program announced by the President at the beginning of 1978 called for moderation in everyone's price and wage increases. The program adopted a standard of deceleration for the price and wage increases of individual industries and employee groups. Thus, each industry was asked to hold its price and wage increases during 1978 below the average of the prior two years.

Although many individuals and groups did make a major effort to cooperate, others did not. The program was struck a severe blow when adverse weather conditions and a severe shortage of meat supplies led to huge increases in food prices. It is particularly difficult to ask workers to moderate their wage demands when food prices—constituting about one-fifth of the typical family budget—are increasing at a double-digit annual rate. And, in turn, continued increases in labor costs make it difficult to achieve a deceleration of industrial price increases.

Yet, the need for strong efforts to moderate inflation has become even more urgent. More potent actions are required if we are to break the momentum of wage and price increases in the private sector.

A. PRICE/WAGE STANDARDS FOR 1979

The President has asked for a stronger effort by the private sector to be achieved by (1) instituting an explicit numerical standard for wage and fringe-benefit increases; (2) specifying a price deceleration standard for individual firms in a fashion that is consistent with the limitation on wage increases; (3) expanding the government's efforts to monitor inflation

trends and to identify sectors of the economy where the standards are being exceeded; and (4) instituting specific government measures to encourage compliance with the standards.

It is essential that these more explicit standards for private wage and price decisions retain the flexibility required for equity and economic efficiency. The following standards, promulgated by the President, accomplish that objective:

1. *Wage Standards*

Annual *increases* in *wages* and *private fringe-benefit* payments *should not exceed 7 percent.* This standard is achievable and consistent with protecting the real incomes of workers against inflation.

In new collective bargaining situations, a contract in which wage and fringe-benefit increases average no more than 7 percent annually over the life of the contract will be consistent with the pay standard. However, no more than an 8-percent pay increase should be included within the first year of a multi-year contract.

In evaluating the consistency of new contracts with the pay standard, provisions for cost-of-living increases will be costed out on the assumption of a 6-percent annual rate of price inflation over the duration of the contract period. Thus, a 100-percent cost-of-living adjustment, which fully protects workers against losses in real income due to inflation, fits within the wage standard. Therefore, the standard leaves room for complete flexibility in the allocation of the pay increase between wage and fringe benefits and between fixed increases and cost-of-living adjustments.

Formal wage agreements signed prior to announcement of the program will not be subject to the pay standard.

For employee groups not covered by collective bargaining agreements, the pay limitation applies to the annual increase in average hourly private compensation. The period of measurement extends from the firm's fiscal quarter ending prior to announcement of the program to the corresponding quarter of 1979. Compensation excludes overtime pay and government-mandated labor costs, such as increased employer payroll taxes.

In the interest of equity or improved productivity, some exemptions from the pay limitation are allowed. First, workers who earn an hourly wage below $4.00 are excluded from the program. Second, wage increases in excess of the standard are acceptable if they reflect explicit changes in work rules and practices that result in demonstrable improvements in productivity of equal or greater value. Third, wage increases above the standard are justifiable if required in order to maintain a close historical tandem relationship to another employee group whose wage adjustment occurred prior to announcement of the program.

Within an individual company, *each* of the following groups would be expected to satisfy the wage standard: (1) Individual employee groups covered by major collective bargaining agreements; (2) other nonmanagement personnel; and (3) management personnel. This categorization is required in order to take account of the differing institutional arrangements for setting wage rates and in order to prevent an inequitable distribution of the wage moderation.

These standards apply to all nonfederal employees. The President has already taken actions, consistent with this standard, that limit the Federal employee pay increase to 5.5 percent.

2. *Price Standards*

A single standard for individual firms' price increases would be impractical. A target for an economy-wide rate of inflation cannot be translated into a uniform target for each industry. While wage increases tend to be roughly uniform among various labor groups during periods of stable economic growth, rates of price increase vary considerably from industry to industry, partly because of the marked variability of productivity growth across industries.

It is equally important to avoid a price standard based upon a simple passthrough of costs. This type of rule can have debilitating effects on incentives to improve efficiency. Moreover, it raises complex administrative issues for any monitoring effort. But the standard for prices must be as explicit as that for wages.

The price standard requires that *individual firms limit their cumulative price increases over the next year to one half of a percentage point below the firm's averge annual rate of price increase during 1976-77.*

The 1976-77 period has been selected as being representative of basic underlying cost and productivity trends in individual industries. Some industries experienced abnormally high rates of price increase during that period. These extremes are taken into account by limiting the price increase for an individual firm to be no more than 9.5 percent.

Furthermore, if hourly wage rate increases within a firm decelerate by more than one half of a percentage point relative to the 1976-77 rate of increase, the deceleration of prices should be commensurately tightened to reflect a full passthrough into prices of the moderation of wage increases.

Firms that cannot meet the deceleration standard because of uncontrollable cost increases will be required to show that their before-tax profit margin (on sales) is no higher than the average of the firm's best two out of three fiscal years ending prior to October 1, 1978.

These price standards are designed to ensure that wage moderation is matched by price moderation and that prices are not increased as a means of raising profit margins.

3. *A Program of "Real Wage Insurance"*

One of the major obstacles to the success of voluntary wage and price standards is the fear on the part of each group of workers that their observance of the wage standard could lead to a loss of real income if others do not cooperate, or if uncontrollable events like a serious crop shortage occur.

To deal with this very legitimate fear, the President will propose to the Congress in January a program of *real wage insurance* for those who observe the wage standard. In broad outline the program will work as follows:

● Groups of employees would become eligible for the program through certification by their employer that their wage increase over the next year falls within the 7-percent standard outlined above.

● Employers would transmit this information to the IRS on the W-2 forms of the employees.

● Members of employee groups that meet the standard would receive a tax refund if the consumer price index (CPI) increased by more than 7 percent over the year.

● That refund would be equal to the excess of the CPI increase over 7 percent applied to the employee's wages, up to some reasonable limit.

● Only members of employee groups that adhere to the standard would be eligible for the refund.

The details of this legislative proposal will be developed over the next several months and presented to the Congress early in the next session.

Widespread observation of the standard should lead to a rate of inflation below 7 percent. But this is an uncertain world and there are risks for those who cooperate. By substantially eliminating those risks, the real wage insurance program will provide a strong incentive to observe the standards and a major support for the fight against inflation.

4. *Monitoring Observance of the Standards.*

The adherence of private-sector firms to the standards will be moni-

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tored by the Council on Wage and Price Stability. The Council has the statutory authority to obtain, where necessary, the required information on prices, profits, and wage rates. It will use that authority to identify publicly areas of the economy and firms in which compliance to the standards is not being achieved.

There will be a need to expand the staff of the Council by about 100 persons. The monitoring effort will, of necessity, focus principally upon those sectors of the economy dominated by large firms and employee groups. It is in these industries where the most discretion exists in wage and price decisions and where public pressure can most usefully augment the competitive restraints of open markets.

There are four basic facets of the Council's monitoring activities.

First, *all* of the components of the consumer and producer price indexes published by the government will be monitored in order to identify markets in which prices are rising in excess of the deceleration standards. The Council will identify the major firms in those industries and seek information to determine whether or not their actions are consistent with the standards.

Second, the Council will concurrently begin a program to monitor the price and wage actions of about 400 large firms—primarily those with annual sales in excess of $500 million. This monitoring effort will provide significant coverage of wage and price trends in the major industrial sectors of the economy.

Third, although the standards apply to the average price increases of firms rather than price hikes for individual products or product lines, the Council will conduct investigations to ascertain the causes of sustained increases in major categories of the price indexes that exceed an annual rate of 10 percent. Public reports, identifying the factors responsible for the increases, will be issued by the Council.

Finally, in addition to the monitoring of wage actions by large corporations, the Council will follow developments in major collective bargaining agreements and provide public analyses of the consistency of these agreements with the wage standard.

5. *Incentives for Compliance*

This is a voluntary program. Nevertheless, individuals and firms cannot be expected to adhere to the suggested limitations on prices and wages unless they are provided with a reasonable expectation that others will do the same. Thus, government must be prepared to support the standards through its own actions. In this respect, the Administration will interpret wage or price increases above the standards as an indication of inflationary conditions in the markets concerned—shortages, excessive market power, shelter from competition, etc.—and the Administration is prepared to take those steps within its power to alleviate such conditions. The range of potential actions would include the following:

(1) A reexamination of various restrictions on import competition in industries in which wage or price increases are exceeding the standards, and, where administratively possible, relaxing these barriers to trade. Many of these restrictions have the objective of protecting the output and employment of domestic industries. But they are not intended to provide an umbrella under which excessive price and cost increases could be imposed on the American public.

(2) A request to the appropriate regulatory agencies that they, in their decisions on rates and entry, evaluate the reasonableness of cost-passthrough and other rate-increase requests in light of the anti-inflation standards for wage and price behavior.

(3) An examination of specific markets in which minimum levels for prices or wages are set by administrative regulations. Those regulations will be modified if inflationary pressures and nonobservance of the standards are evident.

(4) The circumstances surrounding specific inflationary situations will be brought to the public's attention through public hearings and reports of the Council on Wage and Price Stability. The public can help by redirecting their purchases away from those markets where inflationary pressures are evident.

In effect, increases in excess of the standards will trigger a consideration of government policies and programs that affect the specific market in which the excessive increase takes place. Most of the actions outlined above can be adopted administratively (i.e., no legislation is required). In other cases, the Administration will be prepared to provide the Congress with specific legislative proposals if necessary to change government policies that exacerbate individual inflationary situations.

6. *Government as a Buyer*

The Federal Government itself is a major purchaser of goods and services. By channeling its procurement to those firms whose price and wage decisions meet the standards of noninflationary behavior, the government, acting as a prudent buyer, can realize important long-term savings in its procurement budget and simultaneously take the lead in the fight against inflation.

The Federal Government will limit government procurement activities, insofar as feasible, to firms that observe the wage and price standards. Beginning in January, for Federal contract awards in excess of $5 million, supplying firms will be required to certify that they are in compliance with the wage and price standards. Those firms who cannot certify that they are complying with the standards will be ineligible for government cantracts. This program will be administered by the Office of Federal Procurement Policy in OMB. Specific procedures to carry out the policy will be issued shortly. As the government gains experience in administering the policy, the $5 million cutoff will be gradually lowered.

Furthermore, the competitive position of the U.S. in world markets will be sharply improved by a moderation of inflation. Thus, the Eximbank has been requested to limit, insofar as is feasible and consistent with the President's export-promotion policy, the availability of its financing programs to those supplying companies that observe the wage and price standards.

Beginning in January, 1979, for export transactions in excess of $5 million, U.S. exporters seeking Eximbank assistance will be required to certify that they are observing the wage and price standards. This certification will be needed in connection with (1) Foreign Credit Insurance Association short- and medium-term export credit insurance policies and renewals, (2) Eximbank commitments (under the medium-term bank guarantee program) to guarantee export credit obligations purchased by commercial banks, and (3) commitments issued to U.S. suppliers in connection with Eximbank loans and financial guarantees. Specific procedures to carry out this policy will be issued shortly.

In order to avoid unwarranted interference in the purchasing decisions of foreign buyers of U.S. products and services, and to avoid an adverse effect on U.S. exports, the rules for Eximbank implementation of this policy will have prospective application only (i.e., no existing commitments will be interrupted) and will apply only to those cases in which Eximbank support is sought by U.S. companies. Certifications will not be required when the foreign purchaser applies directly to Eximbank for financing.

7. *Overall Implications*

The deceleration standard for prices can be related to the wage standard by adding one half of a percentage point to the wage standard to reflect scheduled increases in legislatively mandated payroll costs, and by deducting 1¾ percentage points for productivity growth. The resulting economy-wide 5¾ percent rate of increase in unit labor costs, with unchanged markups over costs, would imply an equal rate of economy-wide price increase. This rate of price increase is ½ percentage point below the 6¼ percent average of 1976-77. Thus, the wage and price standards are consistent with one another.

Yet, even with very widespread observance of the wage and price standards, the overall rate of cost and price increase in 1979 will probably exceed 5¾ percent. Some exceptions to the strict numerical standards have been adopted to ensure the degree of flexibility required to avoid gross inequities and inefficiencies. Some competitive markets—especially farm-product markets—could continue to be sources of inflationary pressures. Widespread compliance with the wage/price standards is likely, however, to reduce inflation to the range of 6 to 6½ percent over the next year. This would represent significant progress over 1978.

In future years, as success is achieved, the wage/price standards will be lowered. Thus, the nation will achieve price stability over a period of several years while simultaneously avoiding recession and maintaining real incomes.

B. SPECIAL PROBLEM SECTORS

The wage/price standards are designed to serve as guides for the behavior of decisionmaking agents who have discretionary power over the prices and wages that they receive. Thus, standards are not directly relevant to pricing behavior in those markets in which prices are determined by the impersonal workings of supply and demand. In particular, the program, as discussed thus far, does not address inflationary problems in such highly competitive markets as those for farm products and many other raw materials. Yet, several of these sectors have been significant sources of inflation in recent years.

In these and some other markets it will be necessary to supplement the standards with special programs that are tailored to the unique conditions of each situation. Some examples of this approach are discussed briefly below.

Food Prices

Over the last decade, food-price increases, at both the retail and farm levels, have exceeded the rise in other prices by only a slight margin. However, year-to-year food-price changes have followed a far more erratic course. In particular, food-price increases have accounted for a fourth of the inflation in consumer prices thus far this year.

The outlook for food-price inflation, except for meat products, is generally more favorable for 1979. Prices are not depressed currently relative to costs in most major food-product categories and the supply outlook, in the absence of adverse weather conditions, is good. There will continue to be, however, limited supplies of beef due to previous sharp contractions in herd sizes.

The monitoring of food prices will concentrate on food prices both at the raw commodity or farm level and at the retail level.

Farm level prices are a major source of the volatility in retail food prices. These commodity prices are determined by competitive-market supply and demand forces. In these markets, erratic price movements are most often the result of major supply-side shocks such as weather conditions, disease, and biological forces. Since these factors, and the resulting market-price movements, are outside the control of the individual farming units, the monitoring of these prices will focus on overall market trends.

Price stability in our agricultural economy is and will continue to be a cornerstone of Federal policy. The monitoring will identify sustained upward price movements in particular commodity markets in excess of the overall inflation rate. Where such changes are not justified by changes in costs, administrative actions will be considered to expand supply and moderate price increases.

At the retail level, individual firms in the processing and distribution sectors will be expected to adhere to the price standards with respect to increases in margins. The Department of Agriculture and the Council on Wage and Price Stability will cooperate in a joint effort to monitor national trends in marketing margins. Efforts will be made to ensure that commodity price decreases at the farm level are accurately and quickly reflected in retail prices and that when farm product prices rise, there are no more than commensurate increases in retail food prices.

Housing

The costs to homeownership have risen about as fast as the general rate of inflation over the last decade. In recent years, however, these costs have increased much more rapidly than other consumer prices—at an average annual rate of 9 percent. In some regions of the country the increases have been even larger. These rapid cost increases reflect a combination of (1) strong demand pressures in those markets that supply materials for homebuilding, (2) local land-use restrictions that have sharply increased development costs for new housing, and (3) large increases in financing charges.

These problems cannot be solved easily by a program of voluntary price and wage restraint. The most effective way to moderate the rise in homeownership costs is to bring the general inflation under control. Success of the anti-inflation program would help bring down interest rates and dampen speculation in real estate as a hedge against inflation.

Local land-use planning, important as it is to the preservation of a healthy and esthetic environment, can be very costly. The Administration has recently launched a cooperative effort with State and local governments, one aspect of which will work to mitigate the inflationary impact of local land-use regulations without jeopardizing the goals of these planning activities.

Health Care

The health-care sector is of particular importance. Yet a price standard cannot be easily applied to an industry in which output is not an easily measured concept. Inflation in this industry has been a severe and persistent problem. Medical-care prices have consistently outpaced overall inflation, and expenditures for medical care constitute a steadily escalating share of our national output. A decade ago, health-care costs accounted for 6½ percent of GNP. Now they account for 9 percent. The health-care industry is not one in which market forces can be expected to provide an adequate restraint on price increases. The most significant action we can take to reduce inflation in medical-care costs is to institute direct controls over hospital costs. Hospital costs are the largest and fastest growing component of medical-care costs. They have increased between 15 and 20 percent in each of the last three years and now constitute 40 percent of total health-care costs.

A deceleration of only one half of a percentage point in medical-care costs is not commensurate with the extreme magnitude of these recent cost increases. A more appropriate standard for this industry is a deceleration of at least two percentage points next year and continued deceleration in future years until the rate of growth of medical-care expenditures is brought into line with the rate of growth of the overall Gross National Product.

The Administration has already taken actions to contain health-care costs. Measures have been taken to strengthen health planning and encourage growth in Health Maintenance Organization programs, which embody incentives to promote cost consciousness and to keep enrolled members healthy. Within the Medicare and Medicaid programs, steps have been taken to discourage unnecessary surgery, to encourage use of generic drugs (which are typically less costly than brand-name drugs), and to

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promote greater price competition for medical equipment and supplies.

These activities and voluntary actions of the medical-care industry have moderated the rate of medical-care inflation. The Council on Wage and Price Stability will continue to monitor inflation in this sector and will assist the industry's own efforts to contain health-care costs. However, the best way to make substantial inroads into the persistent medical-care inflation problem is to enact cost-containment legislation.

Conclusion

The actions that the President has announced rely heavily upon the balanced use of overall economic policies, exercise of the administrative powers of Government, and voluntary cooperation of the private sector. They will be implemented immediately. However, more must be done. The President has instructed his advisors to analyze and prepare a set of complementary legislative proposals for submission to the 96th Congress when it convenes in January.

QUESTIONS AND ANSWERS

1. *Question.* Are companies subject to a reporting requirement under this program?

Answer. There is no reporting requirement. This policy is consistent with the President's desire to minimize paperwork and reporting burdens on firms. However, firms are expected to collect, organize, and retain information needed to determine whether they are in compliance with both the wage and price standards. Firms should tailor their data system to the structure of the anti-inflation program. Firms should measure their price and pay actions against the standards and be able to demonstrate that they are doing so.

2. *Question.* Why is 1978 not included in the base period?

Answer. The first half of the year is excluded in order to avoid penalizing those who made a good-faith effort to comply with the deceleration effort begun earlier in the year. If the early 1978 experience were incorporated into the base, then those firms that accelerated their price increases earlier this year would be better off than those who decelerated because they would have a relatively higher base going into the program year.

3. *Question.* Can't a firm with prices that have been depressed due to weak demand and that has faced higher costs raise prices?

Answer. In general, monitoring efforts will not focus on firms with a program-year rate of price change less than 1.5 percent. With respect to the approximately 400 large firms that will be monitored most closely, this procedure does not provide an escape for those that could be expected to achieve price deceleration.

A firm with negative base-period profits would qualify as an exception to the profit test standard on the basis that applying such a test would cause undue hardship. Firms with negative profit margins are still expected to meet the price standards, but in cases where they fail, the Council will consider each situation individually to determine if an exception should be granted.

4. *Question.* Are all raw materials excluded?

Answer. Raw materials are part of the program. However, since the prices of raw materials (such as raw farm commodities, crude oil, natural gas, and coal) are not determined at the level of the individual firm, raw material prices should be excluded from the company average price calculations. Instead, raw material markets will be monitored by CWPS to identify sustained price increases in excess of the overall inflation rate. Where such increases are not justified by changes in costs, government actions will be considered to expand supply and moderate price movements.

A company would be exempt from the profit margin standard if more than 75 percent of its revenues are accounted for by sales of raw materials and there is no reasonable accounting basis for computing a profit margin on its remaining sales.

5. *Question.* Are interest rates covered by the program? Are banks covered?

Answer. Interest rates are set in open markets and influenced to a large extent by government agencies. Therefore, they will not be part of the Council's monitoring of individual firms and should be excluded from the calculation of an individual company's average price. The Council expects interest rates to decline as the overall inflation rate is reduced.

Banks are covered by the program. However, since interest rates are excluded, banks will be expected necessarily to meet the price deceleration standard, but will be expected to meet the profit margin standard. Thus, changes in the interest rates charged by banks should reflect changes in the cost of funds. In addition, banks are expected to comply with the pay standard. The Council may in future months consider a program tailored to the special institutional characteristics of banks—a program that maintains the original objectives of the program. But certainly a bank that complies with the current standards will be in compliance with any new program.

6. *Question.* Does the pay standard apply to collective bargaining settlements which were being negotiated prior to the announcement on October 24 but in which no formal agreement was signed?

Answer. The pay standard does not apply under any of the following circumstances:

(1) There was a written memorandum of agreement covering wages and benefits between the parties prior to October 24;

(2) There was a written management offer outstanding on October 24, and the contract is later signed with wage and benefit terms that are no higher; or

(3) There was evidence of an oral agreement covering wages and benefits between the parties prior to October 24.

7. *Question.* Does the pay standard apply to increases for nonunion employees that were announced prior to October 24 but not effective until after that date?

Answer. As in the case of union contracts agreed to before October 24, such increases are exempted from the standard if it can be shown that it is the company's historically established practice to announce its pay increases to its employees at such time to be effective at a later date.

8. *Question.* Does the tandem unit exception to the pay standard apply to nonunion units claiming to follow union units?

Answer. It does, if it can be shown clearly that the nonunion unit claiming tandem has historically followed the union unit exactly in both timing and size of pay increases. These criteria are to be applied strictly.

9. *Question.* How do you define the nonunion management group of employees as opposed to the nonunion nonmanagement group?

Answer. Companies will be asked to determine this according to past practices. In general, management employees should be those whose duties are primarily of a supervisory nature. For example, the Fair Labor Standards Act distinction between exempt and nonexempt employees might be used. Firms should not, however, alter or stretch previously used categories in order to permit above-guideline pay increases for large numbers of workers. Firms should not "gerrymander" the lines of demarcation among different types of employee units. Each firm should determine for itself exactly where to draw the line between management and nonmanagement personnel, based on past practice.

10. *Question.* Does the work-rule change provision for pay-rate increases above the pay standard open a loophole by allowing management and labor to overstate productivity gains and thereby justify larger pay increases?

Answer. The Council will review claims of productivity gains resulting from work-rule changes to ensure that the cost reductions are genuine and are large enough to offset the excess of the pay increase over the pay standard. Claims that larger pay increases are justified by an historically higher rate of productivity gain in a particular industry are not relevant; there must be a demonstrated gain in productivity from changes in specific work rules in the new agreement.

11. *Question.* Are such forms of executive compensation as bonuses and stock options included within the pay increase to be measured against the standard?

Answer. All such forms of compensation are included within the standard. Deferred forms of compensation are included in the year in which they are received.

ILLUSTRATIONS

1. MEASURING RATES OF PRICE CHANGE: AN EXAMPLE

To establish compliance with the anti-inflation program price deceleration standard, two rates of price increase should be computed. The first summarizes the rate of price increase over the 1976–77 period. The second summarizes the rate of price increase over the program year. These two rates of change are compared to determine compliance with the price deceleration standard.

Constructing Company Average Price

To determine compliance with the price deceleration standard on an annual basis, it is necessary to compute company-wide average prices in each of four quarters. The quarters are

1.	Last complete fiscal or calendar quarter of 1975.	Required to compute rate of price change over 1976-77 period
2.	Last complete fiscal or calendar quarter of 1977.	
3.	Last complete fiscal or calendar quarter ending by September 30, 1978 (referred to as the base quarter).	Required to compute program-year rate of price change
4.	Last complete fiscal or calendar quarter ending by September 30, 1979 (last quarter of the program year).	

An example illustrating how the average price calculations can be made is presented in Table 1. In this example, it is assumed that the company produces three products, A, B, and C. In each quarter, the individual product line prices are determined by dividing gross receipts during that quarter by the number of units sold (alternative methods of determining product-line prices are discussed below).

The company-wide average price is an index of individual product line prices. Using the definition in §705C of the standards, the company average price will always equal one in the last quarter of 1975 and the base quarter. Applying this definition to the data in Table 1, the company average prices in the final quarters of 1975 and 1977 are

$$P_{75} = \left[\frac{3.00}{3.00} \times \left(\frac{60}{450}\right)\right] + \left[\frac{2.00}{2.00} \times \left(\frac{50}{450}\right)\right] + \left[\frac{34.00}{34.00} \times \left(\frac{340}{450}\right)\right] = 1.000$$

$$P_{77} = \left[\frac{4.00}{3.00} \times \left(\frac{60}{450}\right)\right] + \left[\frac{1.60}{2.00} \times \left(\frac{50}{450}\right)\right] + \left[\frac{39.75}{34.00} \times \left(\frac{340}{450}\right)\right] = 1.150$$

TABLE 1

Last Complete Fiscal or Calendar Quarter Ending on or Before	Product Lines A Gross Receipts	A Units Sold	B Gross Receipts	B Units Sold	C Gross Receipts	C Units Sold	Total Receipts
December 31, 1975	60	20	50	25	340	10	450
December 31, 1977	48	12	40	25	318	8	
September 30, 1978	100	20	50	25	400	10	550
September 30, 1979	130	25	52	25	510	12	

	Individual Product-Line Prices A	B	C
December 31, 1975	3.00	2.00	34.00
December 31, 1977	4.00	1.60	39.75
September 30, 1978	5.00	2.00	40.00
September 30, 1979	5.20	2.08	42.50

	Company Average Price
December 31, 1975	1.0000
December 31, 1977	1.1500
September 30, 1978	1.0000
September 30, 1979	1.0564

The base quarter and final program-year quarter company-wide average prices are similarly calculated as

$$P_{78} = \left[\frac{5.00}{5.00} \times \left(\frac{100}{550}\right)\right] + \left[\frac{2.00}{2.00} \times \left(\frac{50}{550}\right)\right] + \left[\frac{40.00}{40.00} \times \left(\frac{400}{550}\right)\right] = 1.000$$

$$P_{79} = \left[\frac{5.20}{5.00} \times \left(\frac{100}{550}\right)\right] + \left[\frac{2.08}{2.00} \times \left(\frac{50}{550}\right)\right] + \left[\frac{42.50}{40.00} \times \left(\frac{400}{550}\right)\right] = 1.0564$$

Given the company average prices in the above example, the 1976-77 base rate of price change and the program-year rate of price change are computed as follows:

$$\text{Base rate of price change} = \left(\sqrt{\frac{P_{77}}{P_{75}}} - 1\right) \times 100$$

$$= \left(\sqrt{1.150} - 1\right) \times 100 = \boxed{7.24\%}$$

$$\text{Program-year rate of price change} = \left(\frac{P_{79}}{P_{78}} - 1\right) \times 100$$

$$= \left(1.0564 - 1\right) \times 100 = \boxed{5.64\%}$$

Price increase deceleration = 7.24% -5.64% = 1.60%

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As is evident, the program year rate of price change (5.64 percent) is 1.60 percent below the 1976–77 base rate of price change (7.24 percent). This company therefore complies with the price deceleration standard, which requires at least a 0.50 percent reduction in the average rate of price increase for all products.

Alternative Price Measurement Method

In the above example, average prices are obtained for individual product lines by dividing quarterly revenues by units sold. Actual list prices may be used instead if the timing of list-price changes is constant for year-to-year and if discounting practices do not vary substantially. In these cases, list prices should be measured at the same point in each quarter (e.g., at the end of each quarter).

Further, companies with a very large number of products and prices may determine product line average prices from a representative sample of products within each product line. The products should be selected according to accepted statistical procedures so that a company's calculated rates of price increase are not unduly sensitive to the sampling procedure.

These, and other methods, are acceptable ways to evaluate product-line prices, so long as the methods are consistent with the objectives of the price standards.

Six-month Price Check

In order to satisfy the 6-month price increase limitation, the average price increase over the first 6 months of the program year should be less than 50 percent of the annual increase suggested by the price deceleration standard.

In the example in table 1, the 1976–77 rate of price increase was 7.24 percent the program-year rate of price increase allowed by the price deceleration standard is 6.74 percent (7.24 percent to 0.50 percent). The six-month limitation is therefore 3.37 percent (6.74 percent/2). Therefore, to satisfy the 6-month limitation, the company average price in the first and second quarters of the program year should be less than 1.0337. To check for compliance with this limitation, an average price should be calculated for the first and second quarters using the base-quarter gross receipt shares as weights.

Calculating Pass-Through of Pay Deceleration

Compliance requires that companies pass through the cost savings from substantial pay deceleration by effecting additional price deceleration. The standard calls for additional price deceleration whenever the percentage change of the company-wide pay rate in the program year falls below the average 1976–77 rate of change by more than 0.5 percentage points.

The method of calculating the required price deceleration is illustrated in the following example. If the company pay rate is $5 in the last quarter of 1975 and $6 in the last quarter of 1977, the base rate of change in the company pay rate is:

$$\left(\sqrt{\frac{6.00}{5.00}} - 1\right) \times 100 = 9.54\%$$

If the company pay rate rises to $6.50 in the base quarter and, further, to $7 in the final quarter of the program year, the program-year rate of change of the company pay rate is 7.69 percent. Thus, the rate of deceleration of the company pay rate is 1.85 percent (9.54 percent to 7.69 percent).

If the pay share is 0.6 (i.e., pay is ⅗ of gross revenue), then the price deceleration required is

$$0.5 + [(1.85 - 0.50) \times 0.6] = 1.3$$

CALCULATING PAY-RATE INCREASES: AN EXAMPLE

The pay standard is applied separately to each collective bargaining unit. For nonunion employees, the standards are applied separately to two groups: (1) Management employees and (2) nonmanagement employees. The first example below illustrates the application of the 7-percent wage standard to the latter two groups. The second example illustrates the application of the pay standard to collectively negotiated contracts.

Nonunion employee units

Although the following example uses hourly pay rates, pay increases may be measured in terms of monthly salaries if this conforms to the method of compensating these workers. If some workers are paid by the hour and others are paid by the month, a reasonable assumption, about the hours worked per month by the latter group must be made.

Table 2 contains hypothetical data on payroll costs. The firm has a total payroll cost of $3 million for one of the two employee groups in the first quarter of the company's program year. To check for compliance, the firm would first deduct the cost over the quarter of employer contributions to such items as social security, unemployment insurance, and worker's compensation. In the example, these items total $200,000; the difference ($2.8 million) represents the total private payroll cost for this employee unit in the base quarter. This cost includes both wages and payments for private fringe benefits such as health insurance and pension plans. Since the standard applies to straight-time pay rates, overtime payments should also be deducted. In the example, this entails subtracting $100,000 from the $2.8 million in total wages and private fringe benefits. The sum of straight-time wages and private fringes, then, is $2.7 million.

Division of total pay by the total number of straight-time employee hours worked in this unit yields the hourly pay rate.

TABLE 2: BREAKDOWN OF TOTAL PAYROLL COSTS

	Base Quarter Payroll Costs (e.g., July to September 1978)		
(1)	Straight-time hourly wage	$1,800,000	
(2)	Private fringe benefits	600,000	
(3)	Total private straight-time payroll costs	2,400,000	
	Labor Cost Items Excluded in Program Calculations		
(4)	Overtime payments	100,000	
(5)	Legally-mandated employer paid payroll taxes	200,000	
(6)	Total payroll cost	2,700,000	
	Payroll Hours		
(7)	Straight-time hours worked	475,000	
(8)	Overtime hours worked	10,000	
(9)	Total hours worked	485,000	
(10)	Hourly pay rate (3)/(7)	= $2,400,000 / 475,000	
		$5.05 per hr.	
(a)			(b)
First quarter percent change in average pay rate =		[10b / 10a − 1.00 × 100]	[5.51 / 5.05 − 1.00 × 100] = [9.1%]

	First Quarter Payroll Costs (e.g., October to December 1978)		
(1)	Straight-time hourly wage	$2,000,000	
(2)	Private fringe benefits	700,000	
(3)	Total private straight-time payroll costs	2,700,000	
	Labor Cost Items Excluded in Program Calculations		
(4)	Overtime payments	100,000	
(5)	Legally-mandated employer paid payroll taxes	200,000	
(6)	Total payroll cost	3,000,000	
	Payroll Hours		
(7)	Straight-time hours worked	490,000	
(8)	Overtime hours worked	10,000	
(9)	Total hours worked	500,000	
(10)	Hourly pay rate (3)/(7)	= $2,700,000 / 490,000	
		$5.51 per hr.	
(a)			(b)
First quarter percent change in average pay rate =		[10b / 10a − 1.00 × 100]	[5.51 / 5.05 − 1.00 × 100] = [9.1%]

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In the example, of the 500,000 hours worked in the quarter, straight-time hours comprise 490,000. Dividing $2.7 million by 490,000 hours yields $5.51 per hour. This is the relevant average hourly pay rate for this employee unit in the first quarter of the company's program year.

A comparable hourly pay rate figure for the company's base quarter must be calculated. The base quarter is either the company's last fiscal quarter completed by September 30, 1978, or the calendar quarter ending September 30, 1978. In this example, the average hourly pay rate in the base quarter is $5.05 ($2,400,000 divided by 475,000 hours).

The pay increase for the employee unit in the first quarter of the program year is 9.1 percent. This is greater than the 7-percent limit; the company is not in compliance with the pay standard. By contrast, if the base quarter hourly compensation had been $5.30, the percentage increase for this employee unit during the first quarter of the program year would be 4.0 percent, and the firm would be in compliance with the 7-percent standard.

Similar checks for compliance should be performed for the second, third, and fourth quarters of the program year. In each quarter, compliance requires that the pay rate be no greater than 7 percent above the base-quarter pay rate.

Collective bargaining agreements

In determining the cost of a collective bargaining agreement, several general principles should be followed:

(a) The average straight-time hourly wage rate for the bargaining unit at the expiration date of the prior contract will be the base rate for calculating percentage wage increases.

(b) This base rate includes any cost-of-living adjustments (COLA) made under the expiring agreement that have not yet been incorporated into the base rate.

(c) Wage increases over the period of the new agreement should be compounded. For example, the wage increase in the second year of an agreement is calculated by multiplying the stipulated percentage increase for the second year times the wage rate that will prevail at the beginning of the second year, including any first-year wage increase (including COLA).

(d) COLA increases should be calculated assuming a 6-percent average annual rate of inflation from the effective date of the contract.

(e) The increased cost of maintaining existing private benefit programs (e.g., expected increases in health premiums), as well as the cost of new benefit provisions, is to be included in pay.

(f) "Roll-up," the added cost of wage-related benefits resulting from a scheduled wage increase, should also be included.

The following example, summarized in table 3, illustrates the specific procedures to be followed in calculating the cost of an agreement. In this example, the new collective bargaining settlement calls for a fixed wage increase of 50 cents per hour in the first year and 3-percent increases in both the second and third years; continuation of a cost-of-living clause providing payments of one cent per hour for each 0.3 point rise in the CPI, payable in the second and third years; maintenance of all health insurance benefits; an additional holiday; and higher pension benefits. The average straight-time wage rate at the start of the contract is $8.00 an hour and the average wage-and-benefit rate is $11.00 an hour.

1. The first-year fixed increase in the wage rate is 50 cents per hour. There is no COLA payment in the first year.

2. The second-year fixed increase is 3 percent of the new base of $8.50, or 25 cents. To this must be added the COLA. In the example, the COLA is payable at the start of the second year, based on the change in the CPI from September 1978 to September 1979. The CPI in September 1978 stood at 198.0; the assumed September 1979 CPI is 209.9 (198.0 × 1.06). Under this 6-percent inflation assumption, the CPI rises 11.9 points (209.9–198.0). Dividing 11.9 by 0.3 produces a 39-cent COLA payment (rounding is always down). The 39-cent COLA added to a 25 cent fixed increase results in a total wage increase of 64 cents.

3. The third-year fixed increase is 3 percent of the new base of $9.14, resulting in an increase of 27 cents per hour. The assumed 6-percent inflation rate would raise the September 1980 CPI to 222.4, a gain of 12.5 points, which, when divided by 0.3, generates a third-year COLA increase of 41 cents per hour. The resulting total wage-rate increase is, therefore, 68 cents per hour.

4. Nonwage items are considered separately. The cost of maintaining existing health insurance plans or the cost of increasing monthly pension benefits will depend on existing health insurance coverage and the age and seniority composition of the work force. In this example, each holiday costs an average of $64 ($8 per hour times 8 hours) which, spread over the standard work year (2,080 hours), results in a 3-cent-per-hour ($64/2,080 hours) pay-rate increase. The estimated dollar cost of all nonwage items can be converted to an hourly figure in a similar fashion. Assume that these items total 53 cents per hour (50 cents to maintain health insurance and improve pension benefits and 3 cents for the additional holiday). To these must be added the "rollup" effect of the wage increases, i.e., the additional cost of existing wage-related benefits such as holidays and vacations resulting from the wage increase. This will depend on each individual company's benefit structure. Assuming, in the example, that rollup amounts to 20 percent of the wage-rate increase ($1.82 per hour), another 36 cents per hour is added to the pay rate over the contract term.

5. The total pay-rate increase is $1.82 in wages plus 89 cents in nonwage items and rollup for a total of $2.71 per hour. Assuming that the pay rate at the expiration of the prior contract was $11 per hour, the $2.71 increase over the new contract life represents a 24.6-percent pay-rate increase. The annual rate of increase is obtained by using the formula in 705B-2 of the above description of the standards: the cube root of 1.2464 is 1.076; subtracting 1.0 from this figure and multiplying by 100, we obtain the average annual rate of increase: 7.6 percent. This collective-bargaining agreement, therefore, would not be in compliance with the pay-rate standard.

6. Similar calculations for private fringe benefit increases and rollup over the first year of the contract should be made. The resulting increase should be added to the 50-cent first-year wage-rate increase. For compliance, this sum must be no more than 8 percent of the $11 per hour base pay rate at the time of expiration of the old agreement.

TABLE 3: WAGE AND BENEFIT INCREASES

COLA Calculation

CPI Assumption

September 1978	198.0	First Year COLA	None
September 1979	209.9	Second Year COLA = $\frac{209.9 - 198.0}{.3}$	= 39 Cents
September 1980	222.4	Third Year COLA = $\frac{222.4 - 209.9}{.3}$	= 41 Cents

Fixed Increases

First Year		= 50 Cents
Second Year	= .03 × (2nd year base)	
	= .03 × (8.00 + .50)	= 25 Cents
Third Year	= .03 × (3rd year base)	
	= .03 × (8.50 + .25 +.39)	= 27 Cents

Wage Summary

	Base Wage	Fixed Increase	COLA	Total Increase	Percent by Year
First Year	$8.00	$ .50	$ .00	$ .50	6.25
Second Year	8.50	.25	.39	.64	7.53
Third Year	9.14	.27	.41	.68	7.44
Life-of-Contract		1.02	.80	1.82	

Wage Plus Private Fringe Benefits

Total Wage Increase	1.82	Base Pay Rate	= $ 11.00
Fringe Benefit Increase	.53		
Roll-up	.36		
		Percent Change over	= 2.71 / 11.00
Total Pay-rate Increase	2.71	Life-of-Contract	

Total increase over life of the contract = 24.64%

Annual rate of increase over the life of the contract = 7.6%

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Accordingly, it is proposed to add a new part 705 to title 6 of the Code of Federal Regulations and an appendix to that part as follows:

PART 705—WAGE AND PRICE GUIDANCE

§ 705.1 Authority

The provisions of this part are promulgated under the Council on Wage and Price Stability Act, Pub. L. 93-387, as amended by Pub. L. 94-78, and Pub. L. 95-121 (12 U.S.C. 1904 note), and particularly in furtherance of § 2(c), § 3(a)(4), and § 3(a)(5) of that Act.

APPENDIX

705A PRICE STANDARD

705A-1 *Price deceleration standard.* A company satisfies the price deceleration standard if its program-year rate of price change is at least 0.5 percentage points less than the base rate of price change.

(i) The program-year rate of price change is the percentage change in the company average price from the base quarter to the fourth following quarter (see the definitions for more detail).

(ii) The base rate of price change is the average annual rate of change in the company average price from the last calendar or complete fiscal quarter of 1975 to the same quarter of 1977 (see the definitions for more detail).

705A-2 *Full pass-through of pay deceleration.* If the program-year rate of change of the company pay rate falls below the base rate of change of the compnay pay rate by more than 0.5 percentage points, additional price deceleration is required for compliance. In particular, the program-year rate of price change should be less than the base rate of price change by the following percentage: 0.5+[(company pay share)×(rate of deceleration of the company pay rate minus 0.5)].

705-3 *Maximum increase.* If the base rate of price change is greater than 10.0 percent, compliance requires a program-year rate of price change of 9.5 percent or less.

705A-4 *Profit margin standard.* A company which does not achieve the price deceleration standards in 705A-1, 2, and 3 will be considered to be in compliance if its program-year profit margin does not exceed its profit margin base. If product lines excluded under parts 705A-6(i)(1) and 705A-6(i)(3) account for more than 75 percent of program-year dollar sales volume and there is no reasonable accounting method capable of establishing a separate profit margin for the nonexcluded product lines, the company is excepted from the preceding profit margin criterion for compliance.

705A-5 *Six-month standard for price increases.* During the first half of the program year, increases in the company average price should be limited to no more than 50 percent of the allowable program-year price increase. However, companies need not comply with this 6-month limit if they can demonstrate that their actions are consistent with adherence to the profit margin standard and either reflect seasonal variations in business operations or reflect their historical business practice or reflect unusual business conditions.

705A-6 *Exclusions from company average price calculations.*

(i) *Raw material and auction-type markets.* Prices that are not typically set at the level of the individual company are excluded from company average price calculations. These prices will be monitored on an overall market basis. This exclusion applies to three categories of prices:

(1) Prices of agricultural and industrial raw materials (including crude petroleum and natural gas),

(2) Interest rates, and

(3) Prices of commodities whose historical price changes can be shown to have been closely tied to price movements in an organized open exchange market.

(ii) Prices of imported goods at the time of first sale in the United States, prices charged in foreign sales or leases, and prices of product lines exchanged in other than open arms length transactions are excluded from company average price calculations.

(iii) Prices of new or discontinued product lines and custom product lines are excluded from the company average price calculations.

705A-7 *Alternative methods of accounting.*

(a) Companies may use alternative methods of accounting which are consistent with the objectives of these standards. For example, companies may:

(i) Sample prices within product lines (using generally accepted statistical procedures);

(ii) Rely upon list prices where price discounting practices are not volatile;

(iii) Measure prices at the end of calendar (or fiscal) quarters where prices are not frequently changed.

(b) The Council on Wage and Price Stability may request, for the purpose of determining whether a company is in compliance with these standards, that a company change one or more of its procedures if the Council determines that the company's method of measurement does not properly reflect the annual rates of price increase or profit margins.

705A-8 *Insufficient product coverage.* Any company that cannot compute a rate of price change representing more than 75 percent of its dollar sales volume during the base quarter should comply with the conditions of the profit margin standard. For purposes of calculating this percentage of sales volume, dollar sales volume should exclude revenues from product lines covered under § 705A-6 (i) and (ii).

705A-9 *Undue hardship or Gross Inequities.* The Council on Wage and Price Stability may except a company from the application of the price standard, make adjustments to the base rate of price change, or alter application of the profit-margin standard to avoid extreme situations of hardship or gross inequity.

705B PAY STANDARD

705B-1 *Employee units.* For the purpose of establishing compliance with the pay standard, a company must identify three types of employee units:

(i) Each group of the company's employees subject to a particular collective bargaining agreement to which the company is a party will constitute a separate employee unit;

(ii) All management employees (not under a collective bargaining agreement) will constitute a single employee unit; and

(iii) All other employees will constitute a single employee unit.

A company need not identify separately collective-bargaining units accounting for less than 5 percent of its employees. However, if a collective-bargaining unit is not separately identified, the workers must be included in the "all other employees" category.

705B-2 *Pay standard for collective-bargaining agreements.*

(i) A company complies with the pay standard if the annual rate of pay-rate change over the life of each collective-bargaining agreement negotiated during the program year is no greater than 7 percent. This compliance criterion is computed by the following formula:

$$\left[\left(\frac{W_T}{W_o}\right)^{\frac{1}{T}} - 1\right] \times 100 \leq 7.0$$

where

W_T = the pay rate at the end of the period covered by the new contract,

W_o = the pay rate in effect at the expiration of the period covered by the previous contract, and

T = the length of the period covered by the new contract (in years or fraction thereof).

(ii) In addition, the first-year increase of a contract for which the duration extends beyond 12 months must be no greater than 8 percent.

(iii) For purposes of determining whether the annual rate of pay-rate change is consistent with the pay standard, formulae for cost-of-living adjustments should be computed on the assumption of a 6-percent annual rate of inflation in the Consumer Price Index over the life of the contract.

(iv) The cost of private fringe benefit programs should be evaluated in terms of employer contribution rates.

(v) Pay-rate increases dictated by agreements signed prior to October 24, 1978, are exempted from the pay standard.

(vi) A contract that includes a provision for a future reopening will be assumed to be terminating on that date.

705B-3 *Pay standard for employee units of types (ii) and (iii).* A company complies with the pay standard if the pay rate for each of the employee units of types (ii) and (iii) in each quarter of the program year does not exceed the base-quarter pay rate of the employee unit by more than 7 percent.

705B-4 *Low-wage exemption.* Employees earning $4 or less per hour in straight-time hourly wages on October 1, 1978, must be excluded from each employee unit in making pay-rate computations.

705B-5 *Tandem pay rate changes.* Pay-rate changes in one employee unit that have been regularly linked to pay-rate changes in another employee unit are exempted if the pay-rate increase was granted to the latter unit prior to October 24, 1978. Employee units need not be in the same company. In order to establish such a linkage, the parties must demonstrate that the past pay-rate increases of the two employee units have been equal in value and directly related in timing. Companies with annual sales in excess of $500 million should notify the Council when they employ this exemption in determining compliance.

705B-6 *Pay-rate increases traded for productivity-improving work-rule changes.* In determining compliance, that part of a pay-rate change that is in return for changes in contractual work-rules and practices that alter productivity will be deducted from the pay-rate change. In order to comply in this manner, it must be demonstrated that the cost reductions generated by the work-rule change are equal to or greater than the excess of the pay-rate change over the pay standard.

705B-7 *Undue hardship or gross inequities.* The Council on Wage and Price Stability may grant an exception from the application of the pay standard or may make appropriate adjustments in the standard to avoid extreme situations of hardship or gross inequity.

705C DEFINITIONS (ALPHABETICAL ORDER)

Base quarter. The base quarter for price and pay computations means either (1) the company's last complete fiscal quarter prior to October 1, 1978, or (2) the calendar quarter July 1, 1978 to September 30, 1978.

Base quarter pay rate. An employee unit's base-quarter pay rate is determined by dividing pay (as defined in this appendix) to the employee unit during the base quarter by the number of straight-time employee hours worked during that quarter.

Base rate of change of the company pay rate (for determining price deceleration under 705A-2). The base rate of change of the company pay rate is the annual rate of change in the company pay rate over the two-year period, 1976-77, and is computed by the following formula:

$$G = \left[\sqrt{\frac{W_{77}}{W_{75}}} - 1\right] \times 100$$

where

G = the base rate of change of the company pay rate,

W_{77} = the company pay rate in the last complete fiscal or calendar quarter of calendar-year 1977,

W_{75} = the company pay rate in the last complete fiscal or calendar quarter of calendar-year 1975.

The choice of fiscal or calendar quarters must be consistent throughout the company's computations.

Base rate of price change. The base rate of price change is the annual rate of price change over the two-year period, 1976-77, and is computed using the following formula:

$$g = \left[\sqrt{\frac{P_{77}}{P_{75}}} - 1\right] \times 100$$

where

g = the base rate of price change,

P_{77} = the company average price in the last complete fiscal or calendar quarter of calendar-year 1977, and

P_{75} = the company average price in the last complete fiscal or calendar quarter of calendar-year 1975.

The choice of fiscal or calendar quarters must be consistent throughout the company's calculations.

Company. The term "company" means any person, sole proprietorship, partnership, corporation, association, joint venture, estate, trust, or any other entity however organized (but does not include Federal, State, or local governmental entities). The term "company" shall include such other entities, including operating divisions, that are effectively controlled, either directly or indirectly, through ownership by the company. The term "company" only applies to an entity's domestic business operations. One or more controlled entities may be treated as a separate, single company. In that case the standards apply separately to each of those groups of controlled entities as separate companies. Companies with sales in excess of $500 million should notify the Council of such treatment. However, this option is available if those controlled separated entities maintain accounting records which permit the Council to be sure that the prices and profits of the separate entities accurately reflect the economic realities of their operations. In particular, allocation of overhead must be made in a consistent and reasonable manner as if the separated entities were not commonly owned. Similarly, transfers between entities must be made at market prices.

Company average price. The company average price is an index of normalized product-line average prices. In the base quarter and quarters during the program year, base-quarter product-line average prices are used for normalization and base-quarter revenue shares are used as weights. For quarters in the 1975-77 periods, product-line average prices and revenue shares in the last complete fiscal or calendar quarter of 1975 are used for normalization and weighting. All revenues and prices for product lines covered in § 705A-6 are to be excluded from these calculations. The company average price in any quarter should be calculated as

$$P(t) = \sum_i \left[\frac{P_i(t)}{P_i} \times S_i\right]$$

where

t = the quarter of computation,

P(t) = company average price in quarter t,

$P_i(t)$ = ith product-line average price in quarter t,

P_i = ith product-line average price in the base quarter (or last complete quarter of 1975),

S_i = ith product-line revenue share in the base quarter (or last complete quarter of 1975),

Σ = the summation operator where the subscript i runs over all product lines not excluded in § 705A-6.

However, other generally accepted methods of computing price indices can be used. Companies with revenues in excess of $500 million should notify

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the Council of alternative methods employed.

Company pay rate. In any quarter, the company pay rate is obtained by dividing pay in that quarter (for all employee units) by the number of straight-time employee hours worked during that quarter (by all employee units).

Company pay share. The company pay share is the pay for all employee units in the base quarter divided by company total gross revenue in the base quarter.

Custom product line. A custom product line means a unit of property or service specially manufactured, produced, or provided by the company to a particular buyer's specifications. Product lines do not become custom product lines simply because of the addition or exclusion of optional parts or accessories or because of alterations at the request of the buyer.

Employee. An employee is any individual residing in the United States who is either an employee within the meaning of Section 3121(d) of the Internal Revenue Code 26 U.S.C. or the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151 et seq.

New product line. New product lines are defined separately for the program year and the 1976–77 period. In the program year (alternatively, the 1976–77 period), a product line introduced by a company since the beginning of the base quarter (alternatively, the last complete fiscal or calendar quarter of 1975) is a new product line if there is no reasonable accounting method capable of establishing a price correspondence with a similar product line which existed in the base quarter (alternatively, the last complete fiscal or calendar quarter of 1975).

Pay. Pay is defined as follows:

(1) Pay includes the straight-time wage or salary paid during the company's customary pay period. This includes, where applicable, payments for shift differentials, skill adjustments, cost-of-living adjustments,value received from stock options and other deferred compensation when received as reportable income, and incentive compensation. This does not include overtime pay as long as the conditions of that pay are not changed.

(2) Pay also includes employer contributions or costs for the following fringe benefits and payments:

(i) Paid leave,
(ii) Vacations;
(iii) Holidays,
(iv) Civic and personal leave,
(v) Private retirement (pension) programs,
(vi) Life insurance, accident insurance, and health benefit programs,
(vii) Sick leave,
(ix) Savings and thrift plans, and
(x) Forms of compensation, such as job perquisites, required to be reported as income or compensation under the Internal Revenue Code.

(3) Employer contributions for items listed in (2) above should be amortized evenly over each year.

(4) Pay does not include employer contributions for legally mandated programs such as Social Security, Workmen's Compensation, or unemployment insurance.

Pay rate. An employee unit's pay rate in any quarter is determined by dividing the pay during that quarter by the number of straight-time hours worked during that quarter.

Product line. A product line includes all comparable units of property or services that are sold or leased for comparable prices.

Product-line average price. The average price of a product line during a quarter is computed by dividing the gross revenues from sale or lease of the product line by the number of units sold or leased.

Product margin. In any time period, a company's profit margin is operating income (net sales less total costs and expenses including wages but not including nonoperating items, extraordinary items and income taxes) divided by net sales. Terms used in this definition have the same meaning as those used in annual reporting to the SEC under section 13 or 15(d) of the Securities Exchange Act of 1934.

Profit margin base. The profit margin base is the arithmetic average of the highest two annul profit margins during the three company fiscal years completed prior to October 1, 1978.

Program year. For a company, the program year is the 12-month period immediately following the company's base quarter.

Program-year rate of change of the company pay rate. The program-year rate of change of the company pay rate is the percentage change in the company pay rate from the base quarter to the last quarter in the program year.

Program-year rate of price change. The program-year rate of price change is the percentage change in the company average price from the base quarter to the last quarter in the program year.

Rate of deceleration of the company pay rate. The rate of deceleration of the company pay rate is computed as the difference between the base rate of change of the company pay rate and the program-year rate of change of the company pay rate.

BARRY P. BOSWORTH,
Director.

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TUESDAY, NOVEMBER 7, 1978
PART III



DEPARTMENT OF ENERGY

FEDERAL LOAN GUARANTEES FOR DEVELOPMENT OF UNDERGROUND COAL MINES

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[3128-01-M]

Title 10—Energy

CHAPTER II—FEDERAL ENERGY ADMINISTRATION [1]

PART 300—THE COAL LOAN GUARANTEE PROGRAM

Federal Loan Guarantees for Development of Underground Coal Mines

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: On July 18, 1977, the Federal Energy Administration (FEA) issued an advance notice of proposed rulemaking (42 FR 36836) in which FEA proposed policies and procedures for implementing the coal loan guarantee program, as authorized by the Energy Policy and Conservation Act (EPCA), and the Energy Conservation and Production Act (ECPA). Under this program, the Department of Energy (DOE) is authorized to issue guarantees of loans obtained for the purpose of developing, expanding, or reopening underground mines. This rule adopts policies and procedures for implementing the coal loan guarantee program.

EFFECTIVE DATE: November 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert M. Grubenmann, Department of Energy, Coal Loan Guarantee Program, Resource Applications, Room 3515, Federal Building, 1200 Pennsylvania Avenue NW., Washington, D.C. 20461, telephone 202-566-9934.

SUPPLEMENTARY INFORMATION:

I. Background
II. Comments on Proposed Regulations
III. Additional Information

I. Background

Section 102 of the Energy Policy and Conservation Act (EPCA) (Pub. L. 94-163) as amended by section 164 of the Energy Conservation and Production Act (ECPA) (Pub. L. 94-385) authorizes the Administrator of the Federal Energy Administration (FEA) to guarantee loans issued for the development of new underground coal mines, the expansion of existing underground coal mines, and the reopening of underground coal mines which had been previously closed. The Department of Energy Organization Act, 42 U.S.C. 7101 et seq., transferred to DOE the functions of FEA under this program.

The coal loan guarantee program is designed to encourage and assist small and medium sized coal producers to increase the Nation's coal production from low-sulfur underground coal mines, to enhance competition among coal producers, and to encourage new market entry by small coal producers. In addition, the program is likely to stimulate additional job opportunities in geographic areas where low-sulfur underground reserves are located.

FEA issued an advance notice of proposed rulemaking on July 18, 1977 (42 FR 36836), in order to obtain the public's views regarding the need for the program, its impact and its feasibility, as well as suggestions—regarding program operating procedures. The preliminary regulations offered for comment outlined a procedure by which the FEA would administer its responsibilities to issue loan guaranteees.

Certain comments received in response to the advance notice were incorporated into the proposed regulations issued on May 19, 1978. Specifically, the filing and processing fee was eliminated, the financial reporting requirement was reduced, and the guarantee was extended to include accrued interest to enhance the attractiveness of this program. In addition, a requirement for flood insurance was added if the proposed project is located in an identified flood plain area, as required under the Flood Disaster Protection Act of 1973 (Pub. L. 92-234).

The environmental review section was also revised to establish criteria to be used by DOE in determining the appropriate level of environmental review to be afforded individual loan guarantee actions. It recognized that in some cases, the Environmental Protection Agency (EPA) will be involved in these projects through the issuance of National Pollutant Discharge Elimination System (NPDES) permits, which will be subject to an environmental review by EPA. In order to assure consistency of Federal reviews, DOE decided to utilize the draft criteria developed by EPA to assist in determining the level of the environmental review required (see 42 FR 47934, September 19, 1977, for a full discussion of this policy and the basis upon which it was developed).

Public comments were not adopted concerning the desirability of legislative authority for loan quarantees for surface mine development; the requirement for a coal sales contract before a guarantee may be made; and the definition of low-sulfur coal. The reason for not adopting these recommendations is that their adoption would require an amendment to the enabling legislation.

II. Comments on Proposed Regulations

Written comments were received in response to the advance notice and, where appropriate, were incorporated in a notice of proposed rulemaking, issued on May 19, 1978 (43 FR 21682). Five written comments were received in response to this notice, and formal oral presentations were made by three persons at a public hearing held on June 21, 1978, in Charleston, W.Va. All of these written comments and presentations, as well as other information available to DOE, were considered in arriving at the final rules adopted herein.

Further refinements have been made to these final regulations based on comments received in response to the May 19, 1978 proposed regulations. The changes which have been made are as follows:

One party suggested that the borrower be designated as the applicant, rather than the lender, as indicated in the proposed regulations, so that the lender would not bear full responsibility for the accuracy of information contained in the application, which was supplied by the borrower. DOE has accepted this suggestion and revised the regulations accordingly.

It has also been suggested that the default section should be revised to more clearly define the events of default and remedies, and to protect holders who have purchased portions of the guaranteed debt in the secondary market, especially in the event of the forebearance by some of the parties. Consequently, the default section has been revised to reflect that the lender shall notify DOE within 30 calendar days of default, and remedies may be applied by the lender if the default remains uncured for 45 calendar days or more from the date of nonpayment. Payment on the guarantee to the lender or the holder is due from DOE within 60 calendar days of demand. Further procedures and conditions have been included which govern the payment of guarantees to holder(s) other than lenders, and to clarify the forebearance procedure.

A party suggested that the language regarding pledged collateral should be clarified to indicate that both existing, and to be acquired, project assets are to be pledged as collateral. It has always been our intent to consider both existing and developed or acquired project assets as collateral for the guaranteed loan. Changes have been made in the final regulations to more clearly express this intent.

Another party suggested that the disbursements be approved on a milestone basis. DOE agrees with this recommendation and has revised the disbursement section to reflect adoption of the comment. This procedure alleviates potential disruptions of project development which could result from delays of obtaining Government approval of drawdowns.

It was recommended that the section titled "Reduction or Withdrawal of Guarantee" be revised in order to clarify the Secretary's position regarding the incontestability of the guarantee to secondary market holders. It was also suggested that the reduction of the guarantee should be preceded by notification from the DOE of a right to a hearing. DOE has retitled and rewritten this section to reflect that the guarantee may be reduced for funds not yet disbursed if the lender or the borrower fails to comply with the terms and conditions of the guarantee agreement. In such event, the holders of the outstanding guarantees will continue to have an incontestable right to the amount of disbursed principal and accrued interest thereon, except for misrepresentation or fraud on the part of the holder. Also, a new § 300.93 on appeals has been added to provide the parties with the right to a hearing before the DOE Board of Contract Appeals on disputes over questions of fact, such as, whether a material term of the guarantee has been breached by the lender.

It was suggested by the Advisory Council on Historic Preservation that the regulations confused the DOE's responsibilities under the National Environmental Policy Act (NEPA), and the National Historic Preservation Act. To eliminate any possible confusion, § 300.24(f) was added, as recommended.

EPA suggested that § 300.24 be expanded to clearly state that § 102(b)(1)(D) of ECPA requires the end user of the coal from loan guaranteed mines to use such coal "in compliance with all applicable requirements of the Clean Air Act, and of any applicable implementation plan * * *." A new paragraph § 300.24(d)) has been added to accommodate this suggestion.

The user charge has been retitled the "guarantee fee" in order to clearly identify the purpose of the annual charge. Additionally, DOE has adopted a 1 percent ceiling on such guarantee fees. This ceiling is consistent with other DOE loan guarantee fees. It is currently envisioned that the fee will be lower than 1 percent in most cases.

Other revisions to the proposed regulations are editorial, procedural, or for the purpose of greater clarity. In addition, changes were made for the purpose of implementing other requirements based on statutes and Executive orders, such as provisions for nondiscrimination.

The public comments which were not incorporated in these final regulations, and the reasons therefor, are as follows:

1. It was suggested that a procedure be established to assess the need for continuing guarantees on loans made in prior years so that a guarantee might be terminated or reduced if there was mutual agreement between the borrower and the lender that such guarantees were no longer required to insure a successful mining project. This suggestion was not adopted since it is believed that such a procedure would negatively impact the secondary market for the guaranteed loans.

2. It was suggested that the regulations be modified to allow loan guarantees for high-sulfur coal in accordance with section 102(b)(3) of EPCA (no more than 20 percent of the amount of guarantees issued in any fiscal year may be issued for coal mines which produce high-sulfur coal). DOE assumes that a major portion of this 20-percent ceiling will result from coal seam variability and guarantees for multiple seam projects, with one or more high-sulfur coal seams. This assumption was used in developing the programmatic environmental impact statement (EIS). The final regulations, therefore, do not provide for guaranteed loans for high-sulfur coal. DOE, however, is analyzing the environmental impact of such guaranteed loans, and will publish a supplemental EIS on such loans. Following consideration of this and other appropriate material, DOE will make the applicable changes to these regulations.

3. Two parties suggested that the definition of "Affiliate" contained in section 300.02(b) be narrowed, since the restrictions contained in this section would preclude many business firms from qualifying for loan guarantees. One of the parties suggested that the term "control" in the definition of affiliate be limited to complete or near-complete legal power or domination as established by direct inquiry into the factual circumstances in each case. A second party suggested that the gross revenues of an affiliate not be included with the revenues of the applicant, if such revenues are not derived from energy resource extraction. The narrowing of the definition, as suggested, would permit a small affiliate of a large organization having indirect control over the small affiliate to obtain a loan guarantee. It was decided not to adopt this narrow definition, since DOE considers that the major thrust of the loan guarantee program should, at this time, be directed to assisting small coal and medium sized businesses who do not have the financial resources which could be available from a large affiliate, in accordance with the intent of this legislation.

In addition, one party suggested that the requirements of section 102(c)(1) (A) through (C) must be read in the conjunctive, whereas section 300.20(a) of the proposed regulations provided for the consideration of these requirements in the disjunctive. While section 102(c)(1) utilizes the conjunctive "and" in specifying the restrictions of (A) through (C), the legislative intent to provide financial assistance to small producers would be thwarted to so read the statute. It is generally recognized that there is great laxity in the use of these terms, and courts view the words "or" and "and" to be interchangeable, if to do so is consistent with legislative intent.

4. It was suggested that DOE had no statutory authority to give priority considerations to certain classes of mining projects, such as mine expansions and reopenings, in determining which applicant should be given a loan guarantee. It is agreed that loan guarantee applications should normally be processed on a first-come-first-served basis. However, in instances where the unused guarantee authority is limited, it may be necessary to first consider those applications which have the greatest probability of achieving rapid production. Such prioritization is inherent in the Secretary's authority to manage this program.

5. It was suggested that the user charge or guarantee fee be eliminated, since it is a disincentive to coal producers to use the loan guarantee program. It was decided that the loan guarantee fee should be retained per guidance contained in 31 U.S.C. 483A (OMB Circular A-25), which requires recovery of administrative costs when the Government is providing a service such as a loan guarantee.

6. EPA suggested that the preamble be modified to reflect that the national pollutant discharge elimination system (NPDES) permit program only covers those coal mines that have water discharges. DOE recognizes that EPA's permit issuance will not be required for all coal mines, and that the NPDES permits do not necessarily address all pollutants contained in coal mine discharges. The environmental review criteria set forth in section 300.24 shall apply whether or not EPA is involved in permit issuance. The reason for the reference to the NPDES program was to identify another Federal program which might be involved with an environmental review, and was directed at minimizing potential duplication.

III. Additional Information

These regulations outline requirements for the filing and processing of applications for loan guarantees, and for the issuance and subsequent servicing of guaranteed loans. The specific documentation required to be submitted by the applicant, including certain site-specific environmental information, are described in the coal loan

[1] Editorial Note.—Chapter II will be renamed at a future date to reflect that it contains regulations administered by the Department of Energy.

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guarantee application form, which is available from:

Robert M. Grubenmann, Department of Energy, Coal Loan Guarantee Program, Resource Applications, Room 3515, Federal Building, 1200 Pennsylvania Avenue NW., Washington, D.C. 20461, 202-566-9934.

In accordance with section 102(2)(C) of NEPA, it was determined that the coal loan guarantee program was a major Federal action which required an environmental review. Accordingly, a draft programmatic EIS was published for public comment in March 1978, and a final programmatic EIS was published in August 1978.

In accordance with its proposed plan for implementing Executive Order 12044, Improving Government Regulations (43 FR 18634, May 1, 1978), DOE has determined that these final regulations are significant because Congress and DOE regard the development of domestic coal to be of widespread concern. DOE has also determined that these regulations will have no major economic impacts, as defined in 43 FR 18634, and that a regulatory analysis of this guarantee program is not required.

DOE has made these regulations effective immediately upon publication because there has been much delay in implementing this guarantee program, and several coal producers are presently in the final stages of completing their loan guarantee applications. In addition, public comments were twice previously solicited, as indicated earlier in this preamble.

TEXT OF THE AUTHORIZING LEGISLATION

For convenience, the texts of the provisions in EPCA and ECPA authorizing the coal loan guarantee program have been reprinted below:

ENERGY POLICY AND CONSERVATION ACT INCENTIVES TO DEVELOP UNDERGROUND COAL MINES

Section 102(a). The Administrator may, in accordance with subsection (b) and rules prescribed under subsection (d), guarantee loans made to eligible persons described in subsection (c)(1) for the purpose of developing new underground coal mines.

(b)(1) A person may receive a loan guarantee under subsection (a) only if the Administrator determines that:

(A) Such person is capable of successfully developing and operating the mine with respect to which the loan guarantee is sought;

(B) Such person has provided adequate assurance that the mine will be constructed and operated in compliance with the provisions of the Federal Coal Mine Health and Safety Act, and that no final judgment holding such person liable for any fine or penalty under such Act is unsatisfied;

(C) There is a reasonable prospect of repayment of the guaranteed loan;

(D) Such person has obtained a contract, of at least the duration of the period during which the loan is required to be repaid, for the sale or resale of coal to be produced from such mine to a person who the Administrator of the Environmental Protection Agency certifies will be able to burn such coal in compliance with all applicable requirements of the Clean Air Act, and of any applicable implementation plan (as defined in section 110 of such Act);

(E) The loan will be adequately secured;

(F) Such person would be unable to obtain adequate financing without such guarantee;

(G) The guaranteeing of a loan to such person will enhance competition or encourage new market entry; and

(H) such person has adequate coal reserves to cover contractual commitments described in subparagraph (D).

(2) The total amount of guarantees issued to any person (including all persons affiliated with such person) may not exceed $30,000,000. The amount of a guarantee issued with respect to any loan may not exceed 80 percent of the lesser of (A) the principal balance of the loan, or (B) the cost of developing the coal mine.

(3) The aggregate outstanding principal amount of loans which are guaranteed under this section may not, at any time, exceed $750,000,000. Not more than 20 percent of the amount of guarantees issued under this section in any fiscal year may be issued with respect to loans for the purpose of opening new underground coal mines which produce coal which is not low-sulfur coal.

(c) For purposes of this section:

(1) A person shall be considered eligible for a guarantee under this section is such person (together with all persons affiliated with such person):

(A) Did not produce more than 1,000,000 tons of coal in the calendar year preceding the year in which he makes application for a loan guarantee under this section;

(B) Did not produce more than 300,000 barrels of crude oil or own an oil refinery in such preceding calendar year; and

(C) did not have gross revenues in excess of $50,000,000 in such calendar year.

(2) A person is affiliated with another person if he/she controls, is controlled by, or is under common control with such other person, as such term may be further defined by rule by the Administrator.

(3) The term "low-sulfur coal" means coal which, in a quantity necessary to produce 1 million British thermal units, does not contain sulfur or sulfur compounds the elemental sulfur content of which exceeds 0.6 pound. Sulfur content shall be determined after the application of any coal preparation process takes place, before sale of the coal by the producer.

(d) The Administrator shall prescribe such regulations as may be necessary or appropriate to carry out this section. Such rules shall require that each application for a guarantee under this section shall be made in writing to the Administrator in such form and with such content and other submissions as the Administrator shall require, in order reasonably to protect the interests of the United States. Each guarantee shall be issued in accordance with subsections (a) through (c), and:

(1) Under such terms and conditions as the Administrator, in consultation with the Secretary of the Treasury, considers appropriate;

(2) With such provisions with respect to the date of issuance of such guarantee as the Administrator, with the concurrence of the Secretary of the Treasury, considers appropriate, except that the required concurrence of the Secretary of the Treasury may not, without the consent of the Administrator, result in a delay in the issuance of such guarantee for more than 60 days; and

(3) In such form as the Administrator considers appropriate.

(e) Each person who receives a loan guarantee under this section shall keep such records as the Administrator or the the Secretary of the Treasury shall require, including records which fully disclose the total cost of the project for which a loan is guaranteed under this section, and such other records as the Administrator or the Secretary of the Treasury determines necessary to facilitate an effective audit and performance evaluation. The Administrator, the Secretary of the Treasury, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any pertinent books, documents, papers, and records of any person who receives a loan guarantee under this section.

ENERGY CONSERVATION AND PRODUCTION ACT

Section 164. Section 102 of the Energy Policy and Conservation Act is amended by adding at the end of subsection (c) the following paragraph:

"(4) The term 'developing new underground coal mines' includes expansion of any existing underground mine in a manner designed to increase the rate of production of such mine, and the reopening of any underground coal mine which had previously been closed."

Issued in Washington, D.C., November 1, 1978.

WILLIAM P. DAVIS,
Deputy Director of Administration.

Title 10 is amended by adding part 300 to read as follows:

Subpart A—General Provisions, Purpose and Objectives

Sec.
300.01 Purpose and objectives.
300.02 Definitions.
300.03 Full faith and credit provision.
300.04 Department of the Treasury concurrence.

Subpart B—Applications

300.20 Determination of eligibility.
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300.40 Approval criteria.
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Subpart E—Default

300.80 Default.
300.81 Nonpayment to holder.
300.82 Liquidation.
300.90 Disclosure.
300.92 Noninterference with Federal, State, and local requirements.
300.93 Appeals.

AUTHORITY: Sec. 102, Energy Policy and Conservation Act and Sec. 164 Energy Conservation and Production Act.

Subpart A—General Provisions, Purpose, and Objectives

§ 300.01 Purpose and objectives.

The coal loan guarantee program is designed to encourage and assist small- and medium-sized coal producers to increase the Nation's coal production from low-sulfur underground mines. These regulations provide the necessary information to apply for and obtain U.S. Government loan guarantees to develop new underground coal mines, to expand existing underground coal mines, and to reopen underground coal mines which had previously been closed.

§ 300.02 Definitions.

For the purpose of this part:

(a) "Act" means the Energy Policy and Conservation Act of 1975 (Pub. L. 94-163), as amended.

(b) "Affiliate" means a person who directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with another specified person. For the purpose of this definition, control means direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(c) "Applicant" means any person who applies to the Department of Energy (DOE) for a guarantee of a loan with respect to a coal project. The applicant is also the borrower.

(d) "Application" means the written request of an applicant for a loan guarantee in accordance with the requirements of this regulation.

(e) "Borrower" means any person directly liable for repayment of any part of a loan guaranteed by DOE.

(f) "Coal sales contract" means a written coal sales agreement or agreements for at least the duration of the period during which a guaranteed loan is required to be repaid, for the direct and indirect sale or resale of coal to be produced from the subject mine to a person who the Administrator of the Environmental Protection Agency (EPA) certifies will be able to burn such coal in compliance with all applicable requirements of the Clean Air Act (42 U.S.C. 1857 et seq.), and with any applicable implementation plan (as defined in section 110 of the Clean Air Act).

(g) "Conditional committment" means that document, issued by DOE, which sets forth specifically or by reference, the terms and conditions under which DOE may issue a guarantee.

(h) "DOE" means the Department of Energy.

(i) "Guarantee" means the written guarantee agreement issued by DOE setting forth DOE's undertaking to pay the lender or holder, as applicable, in the event of a default, the principal and accrued interest on the guaranteed portion of the loan.

(j) "Holder" means the person other than the lender who has lawfully succeeded in due course to all or part of the right, title, and interest of the lender in the guaranteed portion of the loan.

(k) "Lender" means any person making and servicing a loan guaranteed by DOE.

(l) "Loan" means any note, bond, or other evidence of indebtedness.

(m) "Loan agreement" means the written contract between the borrower and the lender specifying the terms and conditions under which the lender provides financing to the borrower.

(n) "Low-sulfur coal" means coal which, in a quantity necessary to produce 1 million British thermal units, does not contain sulfur or sulfur compounds the elemental sulfur content of which exceeds 0.6 pound. Sulfur content shall be determined after the application of any coal preparation process which takes place before the sale of the coal by the borrower.

(o) "Person" means any individual, partnership, corporation, association, joint venture, or any other entity.

(p) "Project" means an undertaking by the borrower, to be financed in whole or in part by a loan for which a guarantee is hereunder applied for, which will produce coal by the development of any new underground mine, expansion of any existing underground mine in a manner designed to increase production of such mine, or the reopening of any underground mine which had previously been closed.

(q) "Secretary" means the Secretary of DOE, or his duly designated representative.

§ 300.03 Full faith and credit provision.

Any guarantee issued by DOE under these regulations shall be conclusive evidence that the guaranteed loan qualifies for such guarantee, and the validity of such guarantee so made shall be incontestable in the hands of a holder, except for fraud or material misrepresentation on the part of such holder.

§ 300.04 Department of the Treasury concurrence.

The Secretary shall consult with the Secretary of the Treasury concerning the terms and conditions of the guarantee. The Secretary shall obtain the concurrence of the Secretary of the Treasury with respect to the date of issue of any loan guarantee, except that this concurrence may not, without the consent of the Secretary, result in a delay in the issuance of a guarantee for more than 60 calendar days.

Subpart B—Applications

§ 300.20 Determination of eligibility.

(a) Each application must include a statement from the borrower representing that the borrower (including affiliates) did not, in the prior calendar year, meet any one of the following conditions:

(1) Produce more than 1,000,000 tons of coal;

(2) Produce more than 300,000 barrels of crude oil;

(3) Own an oil refinery; and

(4) Have gross revenues in excess of $50,000,000.

(b) The applicant must also submit a statement representing that there is no unsatisfied final judgment that holds the borrower (or affiliates) liable for any fine or penalty under the Federal Mine Safety and Health Act of 1977 (Pub. L. 95-164).

§ 300.21 General application information requirements.

The applicant must provide, at the time of application, the following:

(a) Evidence that the borrower owns, leases, or otherwise controls sufficient economically recoverable coal reserves at the site described in the application to produce sufficient coal to permit the borrower to honor any obligation under the coal sales contract;

(b) A letter of intent to purchase coal, a coal sales contract, or a draft coal sales contract, for the sale or resale of the coal to be produced from the project, and, if appropriate, the Secretary may require sufficient financial information concerning the purchaser of such coal, showing that said purchaser has the capability to carry out the coal sales contract;

(c) An estimate of the sulfur content of the coal reserves, as mined and as sold, at the site described in the application;

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(d) Adequate assurance that the mine will be constructed and operated in compliance with the Federal Mine Safety and Health Act of 1977;

(e) Evidence that the borrower has been unable to obtain adequate financing without such guarantee. Such evidence may consist of a signed statement from the lender representing that the lender would not provide financing under the proposed terms without a Federal guarantee;

(f) A statement from the lender disclosing whether any of its officers or directors, major stockholders, or other owners have a financial interest in the borrower. The lender will also disclose whether any of the borrower's officers or directors, stockholders, or other owners have a financial interest in the lender;

(g) A full description of the scope, nature, extent, and location of the project, and a copy of the mine development plan (normally the same plan submitted to Federal and State officials will suffice), which includes a description of the processes and methods the borrower plans to use in the project;

(h) A list of permits, licenses, and other authorizations required by local, State, or Federal authorities prior to opening of the proposed mine, with copies of any permits already issued, and a schedule of expected dates of application and expected approval dates for the remaining required permits; and

(i) Environmental data describing the environmental characteristics and impacts of the project.

§ 300.22 Financial and other application information requirements.

(a) The applicant shall provide information in support of the application, such as prescribed below. The Secretary may require additional information at his discretion in order to adequately evaluate the likelihood of repayment of the loan:

(1) A description of the borrower's organization and nature of activities, including a copy of the business certificate, partnership agreement or corporate charter, bylaws, and appropriate authorizing resolutions;

(2) A description of the affiliates of the borrower;

(3) Résumés of the borrower's key employees, which include, in reverse chronological order, their business and managerial experience, with emphasis on history of recent experience in the coal industry;

(4) A description of any other Federal financial assistance (e.g., direct loans, guaranteed loans, grants, or contracts) expected to be applied for or already obtained by the borrower in connection with the project;

(5) Itemized estimates of costs of the project;

(6) A summary of insurance coverage for the project;

(7) A schedule of salaries (and other financial remuneration, including profit sharing and stock options) to be paid to officers and key employees of the borrower who are, or will be, directly associated with the project;

(8) A technical and economical feasibility report, which includes:

(i) Coal reserve quantification;

(ii) Coal reserve quality;

(iii) Site inspection;

(iv) Assets value appraisal;

(v) Mining method;

(vi) Mining costs;

(vii) Financial analysis; and

(viii) Comparable property evaluation.

(9) A list identifying the collateral to be pledged to secure the loan, together with the estimated market value and source(s) of such estimated values.

(b) Evidence must be submitted which will enable DOE to make an independent evaluation of the creditworthiness of the borrower and the project for which a loan guarantee is sought. The evidence submitted should consist of, but need not be limited to:

(1) The credit analysis performed by the lender; and

(2) The following financial statements of the borrower, including adequate explanation, and covering the 3 most recent fiscal years, if applicable:

(i) Balance sheet; and

(ii) Income statement.

(3) A pro forma income statement and projected source and uses of funds statement must be submitted for the first 5 years of the project. In the case of mine expansion projects, the borrower shall submit a cash flow statement for total production, and a separate cash flow statement for the production from the expansion operation.

(4) The borrower's interim balance sheet and income statements, prepared within 90 days of the date of application, if the annual statements contained in (1) and (2) above are more that 3 months old. It is desirable that these statements be audited by an independent certified public accountant.

§ 300.23 Project cost documentation requirements.

(a) Except as provided in paragraph (b) of this section, reasonable and customary costs actually paid, or to be paid by the borrower applicable to the development of a project, are generally permitted in computing the estimated aggregate project cost, as approved by the Secretary. However, the Secretary reserves the right to exclude any such costs in determining the estimated aggregate project cost for the guarantee. All costs for facilities and plant and equipment must relate to, and be used substantially in connection with the project. These costs related to the project include, but are not necessarily limited to, the following:

(1) Land and/or mineral rights purchase and lease payments, including reasonable real estate commissions;

(2) Acquisition or construction of buildings, including offices, bathhouses, lamphouses, and other buildings related to the project;

(3) Coal preparation plant construction, including all support equipment;

(4) Coal handling facilities, including tipples, storage facilities, and related equipment;

(5) Mining equipment, including continuous miners, short and long wall equipment, shuttle cars, loaders, roof bolters, trucks, conventional mining equipment, conveyor belt systems, and all other equipment necessary for coal mine development and production;

(6) Powerplant equipment and transmission lines, including installation costs;

(7) Employee salaries, wages, and benefits, consultant fees, and independent contractor costs;

(8) Surveys and title insurance costs; and engineering, recording, and legal fees incurred in connection with land and/or mineral rights acquisition;

(9) Technical, financial, and environmental feasibility studies;

(10) Infrastructure, including site preparation, rail systems, access roads, and related support facilities;

(11) Transportation equipment;

(12) Refuse disposal systems;

(13) Water treatment systems;

(14) Air pollution control systems;

(15) Ventilation systems;

(16) Communications systems;

(17) Insurance and bonds;

(18) Costs of safety and environmental protection equipment, facilities, and services,

(19) Legal and accounting fees for mine permit acquisition and mine development;

(20) Royalty payments and license fees;

(21) Reasonable loan fees;

(22) Interest on interim construction financing;

(23) Costs of complying with the terms and conditions specified in the guarantee, or required by local, State, and Federal government laws and regulations;

(24) Initial working capital;

(25) Other costs not specified, but directly related to the project, which are reasonable and necessary;

(26) A contingency reserve.

(b) Costs which are not considered as project costs, and are excluded from the guaranteed portion of the loan are illustrated below:

(1) Dividends and profit sharing to stockholders, employees, and officers;

(2) Expenses not paid or incurred by the borrower;

(3) Normal operating expenses incurred after an initial period of start-up; and

(4) Costs that are excessive, or are not directly required to carry out the project.

§ 300.24 Consideration of environmental impacts and historical preservation.

(a) The issuance of a Federal guarantee for a loan under this program is subject to the provisions of the National Environmental Policy Act (NEPA), which requires identification and environmental review of "major Federal actions significantly affecting the quality of the human environment," and the DOE regulations which implement this Act.

(b) DOE will initially review the environmental data submitted by applicants for guarantees under this program. Upon completion of this review, DOE may issue a finding that no significant environmental impact is anticipated, or may conduct a more detailed environmental review pursuant to its NEPA regulations.

(c) In addition to the general criteria used for a determination as to the level of environmental review to be accorded individual applications under this program, DOE has determined that it will not routinely conduct a detailed environmental review (i.e., an environmental assessment or environmental impact statement) for:

(1) Underground coal mines of less than 100,000 annual designed tonnage, unless such a review is warranted in a particular case, based on information available to DOE indicating that impacts relating to any of the following may be significant: archeological sites; sensitive ecosystems; habitats of endangered species; historic sites; wild and scenic rivers; wetlands, prime agricultural lands; significant surface water or groundwater pollution; recreational land uses; air quality; noise levels; mining in a saturated zone; presence of toxic overburden; mining in alluvial valley floors; and

(2) Underground coal mines of greater than 100,000 annual designed tonnage, where the applicant certifies on the environmental impact questionnaire that he will use "Best Practice Procedures" as set forth in a document published by EPA entitled, "Best Practices for New Source Surface and Underground Coal Mines" (42 FR 47934). Copies of this proposed regulation will be supplied by DOE upon request.

(d) The EPA must provide certification that the borrower's coal can be burned by the purchaser of such coal under the coal sales contract in compliance with all applicable provisions of the Clean Air Act, and of any applicable implementation plan.

(e) No guarantee will be issued prior to the completion of the NEPA process. Where the NEPA process reveals that mitigation steps should be included as conditions to the guarantee, those steps shall be required by DOE to prevent or minimize significant environmental impacts.

(f) DOE will afford the Advisory Council on Historic Preservation an opportunity to review and comment upon applications for guarantees for any project which would affect property listed or eligible for listing in the National Register of Historic Places or which may meet the criteria for listing in the National Register, pursuant to 36 CFR Part 800.

Subpart C—Application Processing and Guarantee Conditions

§ 300.40 Approval criteria.

The Secretary will evaluate the proposed project and will determine whether the following criteria have been met:

(a) That the amount of a guarantee issued with respect to any loan does not exceed 80 percent of the lesser of (1) the original principal balance of the loan, or (2) the cost of the project;

(b) That the total amount of Federal financial assistance, including guarantees under this regulation obtained by the borrower for the project, does not exceed 80 percent of the estimated aggregate cost of the project to be undertaken by the borrower;

(c) That the total amount of guarantees outstanding at any time on behalf of any borrower (including all persons affiliated with such borrower) does not exceed $30,000,000 in principal amount;

(d) That the borrower is unable to obtain adequate financing without a guarantee;

(e) That the guarantee will enhance competition or encourage new market entry;

(f) That the terms of such a guarantee requires repayment of the loan over a period of no more than 30 years, or a period no longer than the term of the coal sales contract, whichever is less, as determined by the Secretary;

(g) That a coal sales contract has been executed prior to the issuance of a guarantee, and that the EPA has certified that the project coal can be burned by the purchaser in compliance with all applicable provisions of the Clean Air Act, and of any applicable implementation plans. The coal sales contract need not necessarily provide for the sale of all coal production from the project, but should indicate that there is sufficient revenue from sales to provide reasonable assurance of repayment of the loan;

(h) That the borrower has adequate coal reserves to cover the coal sales contract;

(i) That the borrower is of established integrity and demonstrated management capability, and is capable of successfully developing and operating the project mine(s);

(j) That there is a reasonable prospect of repayment of the loan;

(k) That the proceeds from the loan, together with other available funds, are sufficient to successfully carry out the project;

(l) That the assets obtained from the proceeds of the loan are pledged as collateral, and that the total value of all collateral pledged is adequate to protect the interests of the U.S. Government;

(m) That the project is environmentally acceptable;

(n) That the lender is capable of performing the servicing requirements of Subpart D of this regulation; and

(o) That the terms and conditions of the loan agreement, including interest rates, are acceptable to the Secretary.

§ 300.41 Conditional commitment.

A conditional commitment to guarantee the loan may be issued by the Secretary. A conditional commitment will state that the Secretary is prepared to guarantee a loan, and will further state the terms and conditions under which the guarantee may be issued. No amendment to a conditional commitment shall be made unless reduced to writing and duly executed by the parties to the conditional commitment.

§ 300.42 Personal and corporate financial statements.

(a) Personal endorsements of the loan may be required from major stockholders, owners, or others having a major interest in the borrower. Endorsements of the loan by parent, subsidiary, or affiliated companies may also be required.

(b) Persons who endorse the loan will:

(1) In the case of personal endorsements, provide current financial statements (not over 90 days old at the time of filing), that fairly represent the financial position of the endorsers;

(2) In the case of corporate endorsers, provide current financial statements, including income statement, balance sheets, and a statement of uses and application of funds (not over 90 days old at the time of filing), represented by an officer of the corporation, presenting fairly the financial position and results of operations of the corporation.

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§ 300.43 Guarantee conditions.

(a) The guarantee shall include the terms and conditions necessary to implement the requirements of this regulation; and any additional terms and conditions deemed to be appropriate by the Secretary to protect the interests of the U.S. Government.

(b) The guarantee shall also include appropriate provisions concerning nondiscrimination and fair lending practices as may be required by applicable statutes, Executive orders, and implementing regulations.

§ 300.44 Mandatory purchase of flood insurance.

The Flood Disaster Protection Act of 1973 (Pub. L. 92-234) may require that the borrower purchase flood insurance as a condition of receiving a guarantee on a loan for acquisition of real estate or construction purposes in an identified flood plain area having special flood hazards. Questions emanating from borrowers or lenders regarding compliance with provisions of the Flood Disaster Protection Act and guidelines should be referred to the Department of Housing and Urban Development's Federal Insurance Administration. When the purchase of flood insurance is required, as finally determined by the Secretary, such costs can be included by the borrower in the estimated project cost.

§ 300.45 Interest rate.

Interest rates for guaranteed loans shall be negotiated between the borrower and the lender, but must be approved by the Secretary. Interest rates may be fixed or variable, provided they are legal in the appropriate jurisdiction. If approved by the Secretary, one interest rate may apply to the guaranteed portion of the loan, and another interest rate may apply to the unguaranteed portion of the loan. The interest rate should reflect the value, in terms of security to the lender, of the Government guarantee.

§ 300.46 Annual guarantee fee.

(a) An annual guarantee fee imposed on the guaranteed portion of the loan, and computed at a rate to be set forth in the guarantee, will be collected from the lender and used for the purpose of defraying the administrative costs of the program. The rate shall be imposed on the unpaid balance of the guaranteed portion of the loan that is outstanding on each loan anniversary date. The guarantee fee may be passed to the borrower by the lender and, in such instances, may be included as an eligible project cost.

(b) At the time the guarantee is executed, the lender shall present to the Secretary, payment of the first year's annual guarantee fee.

(c) The Secretary will evaluate, at least annually, whether the guarantee fee then in effect is sufficient to cover anticipated administrative costs and, whenever appropriate, will establish a revised fee schedule to be applied to the new guarantees. The payment of the guarantee fee by the lender, or lack thereof, will in no way impair the guarantee to a holder of the guaranteed portion of the loan that is outstanding during the year.

(d) The guarantee fee fixed by the Secretary for any guarantee shall not exceed 1 percent per annum on the guaranteed portion of the loan that is outstanding during the year.

§ 300.47 Disbursements.

The guarantee shall provide the procedure and documentation requirements for loan disbursements and drawdowns. As a minimum, the guarantee shall stipulate that the lender shall not provide the borrower with any funds under the loan agreement until:

(a) The lender has provided the Secretary with an updated schedule of milestones under the project, indicating dates and amounts of future loan disbursements and drawdowns, and the lender has received written approval for each milestone loan disbursement from the Secretary.

(b) The lender has received from the borrower a written statement in support of each request by the borrower for loan drawdowns. The statement shall detail the purposes for which loan disbursements or drawdowns is requested, and a certification that such disbursements will be used only for the stated purposes. When appropriate, copies of invoices to be paid, copies of invoices and lien waivers, and copies of cancelled checks shall be attached to the statement. The statement shall be signed by a person authorized to order expenditure of the borrower's funds.

(c) The lender has verified that loan disbursements and drawdowns approved under prior milestones have been used only for the previously stated purposes.

Subpart D—Servicing the Guaranteed Loan

§ 300.50 Loan servicing and reporting requirements.

Loan servicing is the responsibility of the lender. The guarantee will specify the lender's servicing requirements which include, but are not limited to, loan disbursements under § 300.47, and notification by the lender to the Secretary immediately upon knowledge, but in no event within more than 30 calendar days of:

(a) Any nonpayment by the borrower of the principal or interest on the date specified in the loan agreement, together with appropriate notices to the borrower;

(b) Any failure by the borrower, known to the lender, to comply with the terms and conditions as set forth in the loan agreement; and

(c) Any information or circumstance which has caused the lender to believe that repayment of the loan is in jeopardy.

§ 300.51 Collateral.

(a) The lender is responsible for seeing that proper and adequate liens upon all collateral are obtained and maintained in existence and of record to protect the interest of the lender, the U.S. Government, and any holders of the guaranteed loan. The lender will be the mortgagee, or secured party of record, with regard to such collateral, notwithstanding the fact that another party may hold a portion of the loan.

(b) Collateral may include, but is not necessarily limited to, the following: Land, buildings, machinery, equipment, furniture, fixtures, inventory, accounts receivable, cash or special cash collateral accounts, marketable securities, and cash surrender value of life insurance policies. Collateral may also include assignments of leases or leasehold interests, revenues, patents, copyrights, and contract rights.

(c) The lender may not take separate collateral to secure only that protion of the loan not covered by the guarantee. The lender may not require compensating balances or certificates of deposit, other than as used in the ordinary course of business, as a means of reducing its exposure on the unguaranteed portion of the loan.

(d) First liens on all assets pledged as collateral will be preferred. Loans collateralized entirely with secondary or other inferior lien positions will receive lower priority treatment under the program.

§ 300.60 Project monitoring and auditing.

(a) The guarantee shall provide that the lender and the borrower shall keep such records concerning the project as is necessary to facilitate an effective audit and performance evaluation of the project. The guarantee shall also provide that the Secretary of Energy, the Secretary of the Treasury, and the Comptroller General, or their duly authorized representatives, shall have access, for the purpose of audit and examination, to any pertinent books, documents, papers, and records of the borrower and the lender. Such inspection may be made during the regular office hours of the borrower or the lender, or at any other time mutually convenient.

(b) The Secretary may undertake certain loan monitoring functions which will be performed by a representative of the Secretary acting in coordination with the lender's loan servicing. Specifically, the Secretary's role in loan monitoring may include, but not necessarily be limited to, the following:

(1) Written approval of all requests for disbursements as set forth in the guarantee. Requests for disbursements should be aggregated to cover milestones of the project, such as infrastructure improvements, equipment purchases, etc.;

(2) Review of periodic financial statements of the borrower; and

(3) Periodic inspection of the collateral pledged to secure the loan and the borrower's operating facilities and records.

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§ 300.61 Assignment or transfer of guaranteed loan.

(a) The lender may assign, participate, sell, or otherwise transfer any part or all of his right, title, and interest in the guaranteed loan, subject to the procedures and limits specified in the guarantee. The lender will, however, continue to be responsible for the collateral and servicing of the loan, unless the Secretary approves a substitute lender.

(b) When a guaranteed protion of a loan is transferred from the lender to a holder, the holder then succeeds to all rights of the lender in the guarantee to the extent of the portion of the loan purchased by the holder.

(c) The assignment agreement of the quaranteed portion of the loan, or any part thereof, shall be executed by the holder, the lender, and the Secretary, and will set forth (specifically or by reference) the terms and conditions of the assignment.

(d) After assignment, sale, or transfer of all or part of a guaranteed loan, the lender shall promptly remit to the holder or other party then having an interest in the loan, their respective pro-rata shares of all payments received by the lender in connection with the loan, less only the lender's servicing fee (if any) as mutually agreed by the lender and the appropriate other party. Unless otherwise specified in the assignment agreement, all such payments due from the lender shall be made within 30 calendar days of the lender's receipt of the corresponding amounts.

(e) The guarantee shall be conclusive proof that the guarantee and the underlying loan are in compliance with the provisions of this regulation, and that such loan has been approved and is legal as to disbursed principal an accrued interest and other terms.

§ 300.62 Reduction or withdrawal of guarantee.

(a) The Secretary may reduce or withdraw the guarantee of loan amounts not yet drawn down by the borrower upon written notice to the lender and the borrower, if:

(1) Initiation of activity on the project has not occurred within the period of time set forth in the guarantee;

(2) The borrower has failed to comply with any material term or condition as set forth in the loan agreement. Drawdowns approved by the lender after such notification is received will not be covered by the guarantee;

(3) The lender has failed to comply with any material term or condition set forth in the guarantee. The guarantee may by reduced to the amount that has been received by the borrower as of the date the Secretary's notice has been received by the lender; or

(4) The Secretary and the lender determine that the project's economic success is no longer achievable. The guarantee shall be reduced to amounts which have been received by the borrower as of the date of the notice.

(b) In the event of (2), (3), or (4) above, the holder(s) of the guarantee or portions thereof shall nevertheless have an incontestable right to the disbursed amount of principal and accrued interest thereon, except for fraud or material misrepresentation on the part of the holder.

Subpart E—Default

§ 300.80 Default.

(a) In the event of nonpayment of principal and/or interest due on the loan by the borrower under the terms of the loan, the lender shall notify the Secretary promptly, but in no event later than 30 calendar days of the occurrence of such nonpayment, provided such nonpayment has not been cured. If such default remains uncured for a total period of 45 calendar days or more from the date of nonpayment, the lender may elect, with the concurrence of the holder(s), if any, and with the approval of the Secretary, to defer payment from the borrower of any overdue principal and accrued interest, or to reschedule the overdue and subsequent loan payments.

(b) If the lender and the holder(s), if any, cannot agree with the borrower to defer or reschedule the borrower's payment(s), either the lender or the holder(s), if any, may:

(1) Demand payment by the Secretary of any overdue amounts of guaranteed principal and accrued interest due from the borrower as a result of the default; or

(2) Demand payment by the Secretary of the entire outstanding guaranteed principal balance of the loan, and all unpaid interest accrued thereon to the date of the Secretary's payment hereunder.

(c) Upon receipt by the Secretary of a demand for payment as aforesaid, the Secretary shall pay the amounts lawfully demanded under the terms of the preceding paragaraph, within 60 calendar days of the date of such demand. In the event the demand is for an overdue payment under subparagraph (b)(1) above, the Secretary may, in his discretion, consider the loan in default and pay the outstanding guaranteed balance of the loan with accrued interest.

(d) If the overdue amounts of guaranteed principal and accrued interest are paid by the Secretary, the loan remains in default until the borrower reimburses the Secretary for such payment(s). When the borrower remains in default, the Secretary may take action necessary to protect the interest of the U.S. Government.

(e) In the event of any payment under a guarantee, the Secretary shall be subrogated to the rights and remedies of the parties to which payment is made.

§ 300.81 Nonpayment to holder.

(a) In the event of the nonpayment by the borrower of a scheduled payment, the holder shall first make demand upon the lender for such payment, or for the repurchase of the holder's interest in the guaranteed loan. The holder shall provide the Secretary with notice of such demand for payment within 10 calendar days. The lender shall have the option to advance the overdue payments or to repurchase the guaranteed portion(s) of the loan according to the holder(s) demand. If the lender does not make the payment within 30 calendar days, the holder may demand payment of the Secretary. Upon receipt by the Secretary of a demand for payment from the holder, the Secretary shall pay the holder the amounts lawfully demanded within 60 calendar days of the date of such demand. The Secretary shall make such payment regardless of whether the nonreceipt of the payment by the holder is due to a default by the borrower or the nontransmittal by the lender of the borrower's payment to the holder.

(b) Subsequent to a demand for payment by any holder under this section, the lender shall, within 10 calendar days, furnish to the Secretary an accounting of all payments received by the lender and all payments made to any holder in connection with the respective loan.

§ 300.82 Liquidation.

(a) After borrower default has occurred, and demand for payment has been made upon the Secretary, as provided in § 300.80(b) (1) and (2), or in the event that the Secretary and the lender agree that default has occurred, the lender shall, in consultation with the Secretary, prepare a

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plan for liquidation of the assets pledged as collateral to secure the loan. When the liquidation plan has been approved by the Secretary, the lender shall proceed to take the necessary steps under applicable law to foreclose upon all of the collateral securing the loan, and to sell the collateral for the highest attainable value under the circumstances. Provisions shall be set forth in the guarantee for notice to the Secretary of the sale of collateral, expenses incurred in such sale, and other matters pertaining to the method of handling the disposition of such collateral in a coordinated manner between the Secretary and the lender.

(b) The lender shall give a full accounting of the sale of assets made pursuant to the plan of liquidation, and shall serve in a fiduciary capacity for the benefit of the parties having an interest in the proceeds of the sale of the assets.

(c) No action taken by the lender in the liquidation of any assets pledged by the borrower shall affect the rights of any party, including the Secretary, having an interest in the loan to pursue, jointly or severally, to the extent provided in the loan agreement, legal action against the borrower, or other liable parties, for any deficiencies owing on the guaranteed balance after application of the proceeds received upon liquidation.

(d) Funds received by the lender as a result of liquidation actions shall be applied as follows:

(1) First, to the payment of reasonable and customary fees and expenses incurred in the liquidation process, and as set forth in the liquidation plan; and

(2) Second, distributed among the legal owners of interests in the loan; pro-rated in accordance with their relative percentage ownership of the loan.

(e) In the event the Secretary deems it necessary or desirable to protect or further the interest of the United States in connection with the liquidation of collateral or recovery of deficiencies due under the loan, the Secretary shall take such action as may be appropriate under the circumstances.

(f) Nothing in this section shall preclude the Secretary from purchasing the lender's interest in the project upon liquidation.

§ 300.90 Disclosure.

Subject to the requirements of law, and applicable regulations, information such as trade secrets, commercial and financial information, geological, geophysical, and geographical information, and data (including maps) concerning mine sites, which the borrower or the lender submits to DOE in writing during the preliminary discussions, or at any other time throughout the duration of the project, on a priviledged or confidential basis, will not be publicly disclosed by DOE without prior notification to the submitter. Any submitter asserting that information is priviledged or confidential shall appropriately identify and mark such information.

§ 300.92 Noninterference with Federal, State, and local requirements.

Nothing in this regulation shall be construed to modify requirements imposed on the borrower or the lender by Federal, State, or local government agencies in connection with permits, licenses, or other authorizations to conduct or finance any project.

§ 300.93 Appeals.

The guarantee shall include a provision which specifies that any dispute concerning a question of fact arising under the guarantee shall be decided in writing by the DOE official, or his successor, executing the guarantee. The borrower or the lender, as appropriate, may, within 7 calendar days from receipt of any such decision, request the DOE official to reconsider any such decision. If not satisfied with this final decision, the borrower or the lender, upon receipt of such written decision, may appeal the decision within 30 calendar days, in writing, to the Chairman, Energy Board of Contract Appeals (EBCA), Department of Energy, Washington, D.C. 20545. That Board, when functioning to resolve such loan guarantee disputes, shall proceed in the same general manner as when it presides over appeals involving contract disputes. The decision of the Board with respect to such appeals shall be the final decision of the Secretary.

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federal register

TUESDAY, NOVEMBER 7, 1978
PART IV



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

ADMINISTRATIVE PRACTICES AND PROCEDURES

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[4110-03-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Parts 10, 12, 13, 14 ,15, and 16]

[Docket No. 78N-0286]

ADMINISTRATIVE PRACTICES AND PROCEDURES

Proposed Amendments

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: This document proposes to revise the Food and Drug Administration (FDA) regulations on administrative practices and procedures. The proposed revisions are based on FDA's experience in using the regulations, and they incorporate editorial changes to make the regulations more concise and readable.

DATES: Comments by January 8, 1978.

ADDRESSES: Written comments to the hearing clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

Ronald J. Wylie, Compliance Regulations Policy Staff (HFC-10), Food and Drug Administration, Department of Health, Education and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3480

SUPPLEMENTARY INFORMATION: This proposal would revise FDA's administrative practices and procedures regulations. The regulations appear in parts 10, 12, 13, 14, 15, and 16 of chapter I of title 21 of the Code of Federal Regulations. The regulations were proposed in the FEDERAL REGISTERS of September 3, 1975 (40 FR 40681) and published as final rules in the FEDERAL REGISTER of June 28, 1976 (41 FR 26636), November 2, 1976 (41 FR 48258), November 23, 1976 (41 FR 51706), November 26, 1976 (41 FR 52148), and January 25, 1977 (42 FR 4680).

There are two reasons why the procedural regulations are being revised at this time. First, FDA has had considerable experience in using the regulations since they were published in 1976 and 1977. Based on this experience, interested members of FDA's staff have made suggestions for improving the regulations. Many of these suggestions are included in this proposal.

The second reason for revising the procedural regulations is to apply several of the principles of "Operation Common Sense" issued by the Department of Health, Education, and Welfare (HEW). Operation Common Sense was described in a notice published in the FEDERAL REGISTER of November 18, 1977 (42 FR 59555). Its goals include rewriting regulations so that they are clear and understandable and revising them on the basis of experience since their issuance. The agency's separate program under HEW's Operation Common Sense, published in the FEDERAL REGISTER of May 30, 1978 (43 FR 23122), emphasizes the importance of using clear English in regulations. Similarly, Executive Order 12044, "Improving Government Regulations," which appeared in the FEDERAL REGISTER of March 24, 1978 (43 FR 12661), requires periodic review of regulations to determine whether language should be simplified or clarified.

The procedural regulations were chosen for review under these standards because of their comparatively broad impact on persons with an interest in FDA activities. Although regulations for products within FDA's jurisdiction are mainly of interest to particular companies or segments of the industry, the procedural regulations are intended to guide all persons in their dealings with the agency. It is therefore important that the procedural regulations be as understandable as possible without sacrificing the precision needed in describing the complicated network of relationships, and the elaborate sequences of events, that make up a system of procedures such as these.

With that goal in mind, FDA staff conducted an editorial review of the procedural regulations. Many changes were made to eliminate redundant language, simplify sentence structure, condense and reorganize specific regulations, and generally use clearer, simpler English. Some of the changes are simple. For instance, cross-references to sections in other parts of chapter I of title 21 as currently written include the description "of this chapter," as in "§ 10.20 (j)(3) of this chapter." Because all FDA regulations are in chapter I and, with rare exception, all cross-references are to FDA regulations, there should be no confusion concerning the chapter in which a cross-referenced section is located. Therefore, part 10 would be revised to state that, in parts 10 through 16, all cross-references to regulations should be understood to mean regulations in chapter I, title 21, unless otherwise specified.

Other editorial changes are more extensive. In part 16, §§ 16.22 and 16.24 have been reorganized to place in § 16.22 the common procedures applicable to all regulatory hearings, and to place in § 16.24 the additional procedures applicable solely to regulatory hearings required by the Federal Food, Drug, and Cosmetic Act (the act) or a regulation. In addition, provisions concerning the administrative decision and record for decision, formerly found in §§ 16.24(g) and 16.80(c), have been consolidated with the similar provision in § 16.95.

The procedural regulations, as revised, are set out below. This preamble is intended to identify and explain all changes of a substantive nature. Editorial changes are not discussed except to note when a numbered provision has been eliminated. Changes in the regulations that are not discussed in the preamble are solely editorial and are not meant to alter the requirements of the regulations. Public comment is invited both on proposed substantive amendments and on editorial changes. In particular, FDA welcomes suggestions for futher clarifying the regulations and comments on whether the changes made are helpful. If any person believes that an editorial change has inadvertently altered the substance of a regulation by modifying, adding, or eliminating an obligation, the change should be identified in the person's comments.

ADMINISTRATIVE PRACTICES AND PROCEDURES (PART 10)

1. Section 10.1 would be amended by the addition of two paragraphs. Proposed § 10.1(c) explains that references to regulatory sections in the text of parts 10, 12, 13, 14, 15, and 16, are to chapter I of title 21 of the Code of Federal Regulations, unless otherwise noted. Proposed § 10.1(d) explains that references in parts 10, 12, 13, 14, 15, and 16 to the day or date of publication refer to publication in the FEDERAL REGISTER.

2. The proposal would modify some of the definitions in § 10.3 and alphabetize the listing. The phrase "the laws administered by the Food and Drug Administration" would be added and defined like the phrase "the laws administered by the Commissioner." A new definition, for the phrase "administrative record," would be added. As defined, "administrative record" would include in the administrative file of a particular matter documents on which the Commissioner relies to support the agency's decision in the matter. While most documents of this type would be filed in the hearing clerk's office, the definition is intended to permit the inclusion in the administrative record of documents that are in the possession of the agency but which for some reason (e.g., inadvertence, the documents contain trade secret information, the documents are internal communications) may not have routinely been included in the file on the matter in the office of the hearing clerk. These documents would still be part of the administrative record and would be subject to inclusion in any record filed in a court or other proceeding.

3. Section 10.20(c)(1), which lists types of information that may be incorporated by reference in submissions to the hearing clerk, would be amended by adding the designated journals listed in §§ 310.9 and 510.95. The full text of articles in any designated journal would not then have to be submitted because the designated journals are available to the agency.

4. Section 10.30(a) would be amended to clarify that the citizen petition requirements apply to any person wishing FDA to take some form of administrative action, including a person who may not be a citizen of the United States. Some confusion has apparently arisen on this point because of the wording of the section heading, "Citizen petition." The Commissioner has not proposed to change the section heading, even though "citizen" includes corporations and unnaturalized persons. As originally promulgated, the requirements for citizen petitions were intended to serve as a mechanism by which individuals could request agency action on regulatory matters. That is still the primary thrust of the regulation, and the Commissioner views its present title as appropriate.

5. Proposed § 10.30(c) would use the term "docket file" to refer to the file on a matter in the hearing clerk's office. The present reference to "administrative file" is not correct, nor would be the substitution of "administrative record," which is defined by this proposal to include documents not on file with the hearing clerk in some circumstances. Consequently, the file in the office of the hearing clerk on a particular matter would be referred to as the docket file.

6. Section 10.33(b) would be amended to permit requests for reconsideration to be filed for any action initiated under § 10.25. The present requirement permits requests for reconsideration only in those actions initiated under § 10.25(a), which provides for agency action to be initiated by interested persons outside the agency. The Commissioner believes there in no substantial reason to so limit requests for reconsideration. They should be available in other instances as well, particularly for those actions initiated by the agency.

7. Section 10.33(b) would be amended also to permit a petition for administrative reconsideration of action to be filed after 30 days from the date of the decision involved. There may be legitimate reasons for the filing of a petition for administrative reconsideration of action later than 30 days after the date of the decision, and the proposed amendment would permit the Commissioner to respond properly to those situations. A conforming change would be made in § 10.33(g).

8. Section 10.35(b) would be amended to permit a petition for administrative stay of action to be submitted after 30 days from the date of the decision involved. The proposal would permit the Commissioner to respond to situations in which there are adequate reasons for submitting the petition to stay administrative action after 30 days from the date of the decision, as in the case of a request for reconsideration. A conforming change would be made in § 10.35(g)

9. Section 10.40(b) would be amended to reflect the new format for rulemaking documents now required by the Office of the FEDERAL REGISTER. Although not substantially different from FDA's present requirements, the new provisions would require certain information to appear in a particular sequence. Under § 10.40(b)(1), each proposed rulemaking document would contain, in approximately the following order, (i) the name of the agency, (ii) the nature of the action, for example, whether the document is a proposed rule or notice, (iii) a summary in the first paragraph describing the substance of the document in easily understandable terms, (iv) relevant dates, for example, the comment closing date and proposed effective dates, (v) the name, business address, and phone number of an agency contact person who can provide further information to the public about the notice, (vi) an address for the submission of written comments, and (vii) supplementary information about the notice in the form of a preamble that summarizes the proposal and the facts and policy underlying it. The preamble would further retain information presently required by § 10.40(b)(1), such as references to all information on which the Commissioner relies and the authority under which the regulation is proposed. The document would also contain either the terms or substance of the proposed regulation or a description of the subjects and issues involved, and a reference to the existence of, or lack of need for, an environmental impact statement. The document would further contain the docket number established by the hearing clerk for all submissions relating to the matter. (The docket number is generally included in the document's heading.)

Section 10.40(c) would require, in accordance with FEDERAL REGISTER format, that final regulations include the same type of information in approximately the same order. Here, however, the nature of the action would be characterized as a final rule or notice, and the relevant dates would include the rule's effective date and the closing date for comments, if an opportunity for such comment is provided. The preamble to a final rule would be required to contain a summary of comments submitted on the proposed rule, the Commissioner's conclusions with respect to each, and a thorough and comprehensible explanation of the reasons for the Commissioner's decision of each issue. In other respects, the requirements for proposed and final regulations would be essentially the same, and would not differ from those in the present regulation.

10. Section 10.40(b)(3)(i) would be amended by deleting the statement that extensions of time to comment on proposed rules will not ordinarily be granted. The statement does not reflect agency practice. The Commissioner's decision to grant a requested extension is based wholly on the merits of the request. In reviewing past action on these requests, it appears that they are granted, at least in part, more frequently than they are denied.

11. Section 10.65 would be amended to refelct the agency's reorganization in which the Office of Legislative Serv<ices is now part of the Office of Legislative Affairs. Under proposed § 10.65(i), memoranda recording meetings with Representatives of Congress relating to matters listed in the section would be forwarded to the latter office.

12. Section 10.85(i) would be amended to require four rather than three copies of comments on advisory opinions. The change would make uniform the number of comments to be submitted on agency documents under Part 10. Individuals would still be permitted to submit only one copy.

13. Section 10.90(b)(4) and (5) would be amended to indicate that authority to issue agency guidelines is held by both the Commissioner and bureau directors. The present sections imply that only individual bureau directors are responsible for approving or revoking guidelines. Because guidelines represent the agency position on a matter, however, it is appropriate that the authority to issue and revoke them be exercised as well by the Commissioner, particularly for matters affecting more than one bureau.

14. Section 10.90(b)(7) would be amended to require four copies of comments on a guideline to be submitted to the hearing clerk. The present requirements call for the submission of two copies to the Public Records and Document Center and two copies to the office designated as responsible for maintaining the guideline. The hearing clerk is being substituted for the Public Records and Document Center because § 10.90(b) presently re-

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quires the hearing clerk to maintain the public file of guidelines. All four copies would be submitted to the hearing clerk as a convenience to persons submitting comments. The hearing clerk would forward additonal copies to the appropriate agency offices.

15. Section 10.95 would be amended to delete references to specific agency individuals who may approve participation in outside standard-setting activities and to specific forms used to obtain approval. Because agency procedures may change from time to time, it is impractical to specify particular officials and forms in these general requirements. Instead, the particular procedures will be specified in the FDA Staff Manual Guide. Section 10.95 (b) (1) and (2), (c) (1) and (2), and (d) (1) and (2) would be amended to reflect this change.

16. Section 10.100(a), specifying requirements for prospective public calendars of public proceedings, would be amended to eliminate the requirement that the listing on the public calendar include trials or arguments of court cases. Although significant court cases may be listed from time to time, the agency sees no need to list all pending court cases. The cases may be numerous at any given time and may not be of a significance to warrant inclusions on the public calendar. Section 10.100(b), specifying requirements for the retrospective public calendar, would be changed to list employee titles created by a recent agency reorganization. The employee titles listed, similar to those on the existing list, are generally of those who serve on the FDA Policy Board.

Formal Evidentiary Public Hearing (Part 12)

17. References to the hearing provisions for medical devices have been added to proposed §§ 12.21(a), 12.28(d)(3), and 12.38. Because these sections refer specifically to all formal proceedings for the issuance, amendment, or revocation of an order, orders relating to medical devices should be expressly mentioned.

18. Section 12.22(a)(5)(i) would be amended to exclude certain documents from the requirement for submission of all documents relied upon in a request for hearing. The documents excluded are FDA documents routinely publicly available, recognized medical or scientific textbooks readily available to the agency, and designated journals listed in § 310.9 or § 510.95. This change conforms § 12.22(a)(5)(i) to § 10.20(c)(1), as it would be amended by this proposal, and is intended to avoid unnecessary effort and expense.

19. The Commissioner proposes new § 12.23 to remedy an inadvertent omission in the regulations as first published. The new section provides for issuance of a notice specifying the parts of a regulation stayed by the filing of objections when the filing results in an automatic stay. Notice that objections have been filed is not a ruling on their merits and is not a determination that a hearing on them has been justified. The Commissioner may, however, make a preliminary determination whether an objection is in proper form and is in fact an objection to the action mentioned in it.

20. Section 12.32(f), relating to an alternative form of public hearing, would be revised to delete the requirement that a tentative order be issued after a public hearing before the Commissioner under part 15. Section 12.32(f) now provides that a decision by the Commissioner in such a proceeding is issued as a tentative order for public comment, after which the Commissioner publishes a final order. The tentative order procedure is identical to one included in part 12 when that part was first proposed, for use when the presiding officer in a formal evidentiary public hearing issues a recommended decision instead of an initial decision. The recommended decision option was eliminated in the final regulations as unnecessary because review by the Commissioner of the presiding officer's initial decision can always be obtained through an appeal. All provisions relating to recommended decisions and tentative orders were accordingly deleted from part 12, but at that time, the tentative order procedure for use in the special case of a decision after a hearing before the Commissioner should have been retained.

Rather than revise § 12.32(f) to provide a tentative order procedure when part 15 is used as an alternative form of hearing, however, the Commissioner is proposing that a part 15 hearing decision be issued as a final order, with the same content as an initial decision. Agency review is necessary for an initial or a recommended decision by an administrative law judge of a subordinate presiding officer or body. The agency, being responsible for all final decisions that apply its statutory authority, must have a mechanism for bringing before the Commissioner, the head of the agency, all decisions reached after hearings over which the agency itself did not preside. However, when the Commissioner or the Commissioner's designee presides, as at a part 15 hearing, future proceedings at the Commissioner's level are unnecessary. Although a tentative order may still be used in that situation to obtain further public views, the Commissioner maintains that the advantage from receiving those views is outweighed by the disadvantage of prolonging the hearing. The Commissioner, as presiding officer in a part 15 hearing, will have been exposed directly to all relevant points of view. Additional comment on a tentative order, the Commissioner believes, would probably add little to an understanding of the matters in issue. Moreover, persons may petition for reconsideration if the decision after a part 15 hearing is wrong because of mistake or omission.

The Commissioner notes that the Administrative Procedure Act requires the use of a tentative decision only in formal rulemaking proceedings conducted under 5 U.S.C. 556 and 557, and then only when the agency did not preside at the hearing and the presiding officer certified the hearing record to the agency without an initial or tentative decision. The hearing before the Commissioner provided in § 12.32(f) is an optional procedure, over which the Commissioner or the Commissioner's designee presides.

21. Proposed new paragraph (h) of § 12.32 would make clear that the discretionary availability of a hearing before a public advisory committee under § 12.32 is not intended to limit the statutory right, found in section 515(g)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e(g)(2)), to a hearing before a public advisory committee on certain proposed agency actions relating to medical devices. As an alternative form of hearing, the Commissioner must agree to a hearing before a public advisory committee. The Commissioner's agreement is not a condition to invoking the right to a hearing before a public advisory committee granted by section 515(g)(2) of the act.

22. Section 12.40 would be revised to eliminate the requirement that a person appearing in a representative capacity in a formal evidentiary public hearing file a signed statement verifying the person's authority to do so. This amendment conforms § 12.40 with § 10.20(b), from which the requirement was omitted when the final rule was published in the Federal Register of January 25, 1977 (42 FR 4680, ¶3).

23. The present rule under § 12.45(g) would be redesignated as § 12.45(e) and amended to eliminate the requirement for giving notice of an opportunity to show cause why a person's participation should not be stricken. The need for such notice would ordinarily arise only in cases where a person's participation is to be stricken for failure to participate. A person whose participation is stricken for that reason may request reinstatement from the presiding officer when the person again desires to participate. Notice and an opportunity to respond in those circumstances serve no useful purpose, and burden the proceeding unnecessarily.

24. Section 12.75(a) would be amended to permit the ruling on a motion to disqualify the presiding officer to be appealed under the interlocutory appeal procedure in § 12.97(b), rather than to require the ruling to be certified automatically to the Commissioner. The revision preserves the right to obtain review of such a ruling while eliminating unnecessary review when the ruling is not controversial.

25. Section 12.80(a) would be amended to require that only two copies of submissions in a part 12 hearing need be filed with the hearing clerk. (However, submissions must comply with other requirements of § 10.20.) Because § 12.80(b) requires that most submissions in an evidentiary hearing be served on other hearing participants, the hearing clerk does not need the usual number of copies of submissions.

26. Section 12.80(a) would be amended also to provide that in a formal evidentiary public hearing, submissions are considered submitted on the date of actual receipt by the hearing clerk, not the date of postmark, as provided in § 10.20(e) for submissions generally. A participant's submission in a formal evidentiary public hearing often requires a response by other participants, or it is a necessary part of other participants' preparation for the hearing. These factors, which are generally not present in other types of agency proceedings, require greater certainty than the postmark rule provides about the time submissions are actually received.

27. Section 12.85(a)(2) would be amended to clarify the requirement for filing with the hearing clerk all documents in the files of the bureau director that contain information on the issues in the hearing. It is impractical for the bureau to search every file that might possibly contain relevant information. The value of what little additional information might be found is greatly outweighed by the burden of making such a search.

Therefore, the Commissioner proposes to add a definition for "files" as "the principal files in the bureau in which documents relating to the issues in the hearing are ordinarily kept * * *." The definition excludes bureau files of secondary importance, even though they contain information relating to the issues. Examples of files of secondary importance are files maintained by individual bureau employees for their personal use, and files containing large quantities of purely analytical data (e.g., gas chromatographic measurements) generated for internal agency use. If the bureau is aware that an important document is located in a file of secondary importance, however, it should include that document in its filing under § 12.85(a)(2).

The meaning of the term "principal files" will vary with the issues in a hearing. If a hearing involves an issue which squarely addresses the agency's assessment of analytical data about the quantitation of a regulated substance, for example, some files containing such data would be "principal files." However, if the hearing involves the safety of that substance, and no issue concerning quantitation techniques is raised, those files would not be "principal files."

Determining which files are "principal files" is a judgmental decision. The bureau is expected to exercise good faith in selecting files to be searched; it is not expected to locate every document that other participants have obtained by means other than this filing requirement, such as through previous communications with the bureau or the Freedom of Information Act. Other participants in part 12 hearings are required to adhere to the same ground rules; they, too, are expected to exercise good faith in searching files for documents containing information relating to hearing issues, but they need not locate every document that contains such information. Section 12.85(b) would be revised to state this rule by requiring participants to exercise "reasonable diligence in identifying documents in files comparable to those described in" § 12.85(a). Section 12.85(d) would be revised to require persons to comply with § 12.85 (a) and (b) "substantially and in good faith."

Section 12.85(a) would be amended also to make clear that paragraph (a)(2) does not require filing internal memoranda reflecting the deliberative process or attorney work product and material prepared specifically for use in connection with a part 12 hearing. This qualification was originally stated in the preamble to the final part 12 regulations, published in the Federal Register of November 23, 1976 (41 FR 51714, ¶30). To avoid misunderstanding, the regulations specifically describe the types of documents not required to be filed under § 12.85(a)(2). The bureau and other hearing participants are free to disclose such documents, however, and the process has often been improved when this was done.

28. Section 12.87 (b)(1) and (c) would be revised to eliminate the specific standards for granting cross-examination in part 12 hearings, now listed in § 12.87(c), and replace them with the general standard that permits cross-examination if it is "the most effective and efficient method of clarifying the matters at issue." That standard is similar to the existing standard in § 12.87(c)(6), which is one of several criteria for determining whether oral cross-examination should be granted.

Experience since the part 12 regulations were issued has shown that written direct examination is a valuable means of expediting the oral phase of formal hearings, of presenting factual evidence clearly, fully, and concisely, and of focusing cross-examination on key issues. Experience has also shown that oral cross-examination is usually the most effective and efficient method of challenging written direct testimony, because participants can organize their cross-examination before the oral hearing, and exclude irrelevant or unproductive questions. Oral cross-examination is therefore quicker than it would be if direct testimony were not submitted in writing, and probably requires less time than other methods of challenging direct testimony, such as written rebuttal or written cross-examination through interrogatories.

For these reasons, the Commissioner believes that the presiding officer should grant oral cross-examination if it is the most effective and efficient means of clarifying the issues. The list of factors to be considered in determining whether oral cross-examination should be granted is unnecessary, and, accordingly, the Commissioner proposes to delete them from the regulations.

29. Section 12.92(b)(1) would be revised to eliminate several of the provisions that specify procedures the presiding officer may use at the prehearing conference. The procedures are those for requiring participants to file written statements of areas of disagreement, to summarize testimony on which they will rely, and to justify the submission of documentary evidence not originally filed. These procedures are discretionary; their availability is specified in other provisions of the part 12 regulations, such as § 12.70, relating generally to the authority of the presiding officer, and § 12.92(b)(2), relating to the presiding officer's authority to identify the most appropriate techniques for developing the evidence.

Section 12.92(b)(2) itself would be revised to eliminate explicit mention of the identification of all witnesses and the submision of each witness's testimony as an appropriate technique for developing evidence. The provision is unnecessary because it describes a procedure routinely followed at Part 12 hearings.

30. Section 12.92(c) would be amended to delete the requirement that the prehearing order be in writing. Under current practice, the presiding officer issues prehearing rulings orally and often restates those rulings in a written order issued shortly thereafter. This practice has proved efficient, and participants in hearings have had no problems complying with orders issued orally. Oral rulings not subsequently

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reduced to writing are recorded by the stenographer for later reference.

31. Section 12.94, relating to the receipt of evidence, would be amended to permit the presiding officer to exclude irrelevant, immaterial, unreliable, or repetitive evidence. The regulation now provides that, unless they are not authentic or their exclusion is required to make a participant comply with other regulations, all written submissions are admissible as evidence, subject to diminished weight if not <reliable or relevant. The current <procedure, an object of considerable criticism, has never been used. The criticism concerns the possibility that allowing all submissions into evidence regardless of materiality or reliability would produce an unmanageable record and would require hearing participants to respond to irrelevant evidence as a precaution because other participants or the presiding officer may rely on such evidence.

Although this criticism is obviously not verified by experience, the Commissioner believes that an alternative procedure is advisable. Section 12.94 would therefore be revised to authorize the presiding officer to exclude, on objection of a participant or on the presiding officer's own initiative, irrelevant, immaterial, unreliable, or repetitive evidence, as well as evidence that must be excluded to enforce compliance with the hearing procedures, and evidence not submitted as required by § 12.85. The proposed revisions also provide that all written evidence must be specifically identified as such; submissions not identified as evidence will not be admitted as evidence; evidence must be submitted in the form of sequentially numbered documents; and a voluminous document may be submitted as a cross-reference to a written submission under § 12.85, but other documents must be separately submitted to be considered evidence. Provisions of § 12.94 relating to the admissibility of oral evidence would be substantively unchanged.

The present rule under § 12.94(e), which requires participants to apprise themselves of the contents of the record for purposes of filing objections to the admissibility of evidence, would be deleted. This obligation is necessary only if all written submissions are automatically admitted, subject to objection. It is assumed that participants will evaluate the more particularized record that will be developed under the new procedures to determine whether they wish to object to specific items.

32. Sections 12.94(h) (proposed 12.94(g)), 12.96(c) and 12.120(c), relating to closed hearings to receive oral testimony about certain trade secret information, would be revised to conform with § 10.20(j) as published in the FEDERAL REGISTER January 25, 1977 (42 FR 4680, 4682-4684, ¶10).

33. Section 12.94(i), which provides a procedure for terminating the taking of evidence, would be eliminated. Experience since publication of part 12 has shown no need for this provision.

34. Section 12.96(a) would be amended to require posthearing briefs to be filed within 45 days of the close of the hearing in the ordinary case.

35. Section 12.97(c) would be amended to prohibit the filing of briefs in interlocutory appeals except when specifically authorized by the presiding officer or the Commissioner. Interlocutory appeals often require expedited handling, and generally do not raise complex issues that would benefit from extended written discussion. They should, accordingly, be presented orally unless the presiding officer or Commissioner determines that briefing would be useful.

36. Section 12.99 would be amended to require that all motions to the presiding officer include a draft order, and to prohibit a moving party from replying to the opposing party's response without the presiding officer's permission. For greater certainty, the provision would also be modified to make receipt by the hearing clerk, rather than the date of source, the triggering event for the 10-day time limit for responses to motions.

37 Section 12.100(a)(1) would be revised to add the notice of opportunity for a hearing to the list of items comprising the administrative record in proceedings commenced by such a notice. This item was inadvertently omitted from the regulations.

38. Section 12.110, regarding correction of the administrative record, would be deleted. Its substance is included in proposed § 12.98(d). Section 12.115, which defines the administrative record, would also be deleted. Its substance is contained in existing § 12.120(b)(1).

39. Section 12.120(a) would be revised to eliminate the requirement that initial decisions be filed within 90 days of the submission of briefs, unless the Commissioner extends the time at the request of the presiding officer. Experience has shown the time limit to be impractical because of the agency's heavy hearing load. The presiding officer is nevertheless expected to file an initial decision promptly, and to consult with the Commissioner when encountering delays in a given case.

PUBLIC HEARING BEFORE A PUBLIC BOARD OF INQUIRY (PART 13)

40. Section 13.10(b), 13.10(c), and 13.10(d) would be revised to make clear that, in selecting the members of a Public Board of Inquiry, the special status of the person whose petition is the subject of the hearing exists only when the petition in question has been granted. When FDA grants a petition and its action is challenged, the person whose petition is the subject of the hearing is not a party to it. Unless special provision is made, that person would have no voice in selecting the members of a Public Board of Inquiry, a result incompatible with the importance of the person's actual interest in the outcome of the proceeding. Section 13.10 therefore provides that when a person whose petition is the subject of a Public Board of Inquiry is not a party to the proceeding because the petition has been granted, the person may nevertheless submit a list of nominees, and one member of the Board will be chosen either from that list or from the bureau's. The bureau's and the petitioner's lists are alternatives because when a petition has been granted, the petitioner's and the bureau's interests are allied.

When FDA denies a petition, the person whose petition is the subject of a Public Board of Inquiry is also a party to it, and thus has the right to participate as such in the selection of members of the Board. Since the petitioner's interests are opposed to the bureau's, the petitioner's nominees are not alternatives to the bureau's nominees, but are considered to be those of a party. Hence, when a person whose petition is the subject of a Public Board of Inquiry is also a party to the proceeding because the petition has been denied, the person's rights and obligations in the proceeding are solely those of a party.

To make clear that the special status of a petitioner in the selection of Board members is avalable only to petitioners whose petition has been granted, the phrase "person whose petition is the subject of the hearing" is revised, wherever it appears in § 13.10 to read "person whose petition was granted and is the subject of the hearing."

41. Section 13.25 (a)(3) and (b) are identical to proposed § 12.85 (a)(2) and (b), and would be revised to conform.

42 Section 13.30(c) would be revised to make clear that a participant's presentation may be made by more than one person.

PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE (PART 14)

43. To cross-reference certain provisions of the Medical Device Amendments of 1976 (Pub. L. 94-295), § 14.1 would be amended by adding new paragraphs (a)(2) (vi) through (ix) to the list of provisions for a hearing before an advisory committee.

43a Section 14.1(b)(5)(i) would be amended to eliminate the implication that an unstructured group is an advisory committee within the meaning of the Federal Advisory Committee Act if the group, as a group, provides advice to the agency. The change is based on a recent decision of the U.S. District Court for the Southern District of New York in a case involving FDA's use of an ad hoc group to provide advice in a food labeling rulemaking proceeding (*National Nutritional Foods Assn. et al.* v. *Califano et al.*, No. 77 CIV 6083(LBS), Op. No. 47567 (S.D.N.Y. Aug. 29, 1978). Accord, *Nader* v. *Baroody*, 396 F. Supp. 1231 (D.D.C. 1975), vacated on appeal for mootness, App. No. 74-1675 (D.C. Cir. 1977).

44. Section 14.1 would be amended by adding a new paragraph (b)(10) to provide that FDA operational committees—as opposed to committees that give advice and recommendations—are not advisory committees within the meaning of the Federal Advisory Committee Act and part 14. The distinction is significant because the Federal Advisory Committee Act and these regulations apply only to advisory committees.

45. Section 14.22(d) would be amended to allow a committee charter to establish quorum rules different from the general rule. Under the general rule, a majority of the current voting members of the committee constitutes a quorum.

46. Section 14.22 would be amended also be adding a new paragraph (g) setting out the procedures to be followed when a meeting is conducted by a telephone conference call. The Commissioner expects that a conference call would be used infrequently, usually to discuss a matter overlooked at a regular meeting, to take final votes, or in other situations where time and expense do not permit or justify convening a regular meeting at a central location. Arrangements would be made for adequate participation by the public, as in other FDA advisory committee meetings. Because the new provision would be designated as (g), the current paragraphs (g) and (h) would be redesignated as (h) and (i).

47. The introductory text of § 14.35(d) would be amended to emphasize that written submissions to an FDA advisory committee must be made to the committee's executive secretary and not directly to the committee members. The proposed amendment would correct the problem created in the past by some persons submitting documents directly to advisory committee members, Thus making it difficult for FDA to maintain an accurate official administrative record of the proceedings.

48. Section 14.40(a) would be amended to provide that the Commissioner will directly charter advisory committees which have been established under statutes (e.g., the Federal Food, Drug, and Cosmetic Act) and for which the Commissioner has been delegated enforcement responsibility. Other committees will continue to be chartered by the Secretray.

49. New Paragraph (a)(5) would be added to § 14.70 to require that the administrative record include any reports by consultants working for an advisory committee.

50. The revised standing list of FDA advisory committees in proposed § 14.100 reflects the reduced number of committees under the President's Advisory Committee reduction program. Among the advisory committees that have been terminated is the Toxicology Advisory Committee. To reflect this fact, § 14.19, concerning the use of the Toxicology Advisory Committee to resolve scientific issues relating to the anticancer clauses, is deleted, and conforming changes are made in § 14.147(a)(2) (ii) and (iii).

PUBLIC HEARING BEFORE THE COMMISSIONER (PART 15)

50a. Cross-references to certain provisions of the Medical Device Amendments would be added to § 15.1(b).

51. A new paragraph (c) would be added to § 15.20 to state that participants in a hearing before the Commissioner may be required to submit the text of their presentations in advance of the hearing. The Commissioner, and others who would preside, could then prepare questions for the participants to sharpen the discussion at the hearing.

52. The "notice of appearance" under § 15.21 would be redesignated a "notice of Participation" and simplified in its form and the manner in which it must be submitted. Under the revised procedure, whenever it serves the public interest FDA may permit the notice to be submitted at the time of the hearing or by telephone. The Commissioner expects the more informal procedures to be particularly useful when a hearing is to be attended primarily by individuals without an organizational affiliation.

53. Procedures for scheduling presentations would be revised. Proposed § 15.21 would provide that when several hearings are to be held on the same subject, a participant will ordinarily be allotted time for a presentation at only one hearing. Further, because the hearing schedules are mailed or telephoned to participants in advance, the provision for publishing them in the FEDERAL REGISTER has been eliminated as unnecessary.

In several agency-conducted proceedings, FDA has found that some scheduled participants do not attend or they appear late. Such absences may make it possible to hear all those present and to close a hearing early, before participants scheduled for a later presentation have yet arrived. Proposed new § 15.21(e) would provide that the hearing schedule will state whether participants must be present by a specific time to assure being heard, in case the absence of participants makes possible an early closing of the hearing. Section 15.30 would be revised to add new paragraph (g), to provide that the hearing will not close before the time specified unless all persons scheduled for a later presentation have already participated.

54. Section 15.30(e) would be amended to clarify that the presiding officer may permit those present to question the presiding officer or panel. The presiding officer and panel may also address these or other questions to specific participants.

55. The presiding officer and the Commissioner have always had the authority under § 10.19 to waive any of the procedures governing a hearing. This authority to waive the rules would be restated in proposed new § 15.30(h) to ensure that it is not overlooked when it is needed in this type of proceeding.

REGULATORY HEARING BEFORE THE FOOD AND DRUG ADMINISTRATION (PART 16)

56. Editorial revisions, but no substantive changes, would be made in §§ 16.1 and 16.5, which contain a listing and description of proceedings for which regulatory hearings are available or have a limited applicability. The Commissioner is also proposing to add to the list all proceedings under the Medical Device Amendments that require opportunity for an "informal hearing," as defined in new section 201(y) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(y)). An "informal hearing" under this definition is equivalent to a hearing under part 16. The Commissioner will list in the regulations any other proceedings to which part 16 applies if comments identify relevant provisions.

57. The procedures for initiating a regulatory hearing on the initiative of the Commissioner and the procedures for a regulatory hearing in accordance with a regulation would be made identical to the extent possible. The common procedures, with minor changes, would be consolidated in § 16.22. Proposed § 16.24 would state the additional procedures applicable to regulatory hearings that are initiated in accordance with the act of a regulation. Consistent with the flexibility provided by § 16.22, under which any form of written communication may be used to send notice, §§ 16.22 and 16.24 would no longer require the use of registered mail.

58. Proposed § 16.22(b) would permit a request for a regulatory hearing to be made to any FDA employee designated for the purpose, who need not

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be the presiding officer. This change would make it possible in all hearings to wait until a request for hearing is made before designating a presiding officer.

59. Section 16.22(c) would be amended to provide that, in scheduling a time for the hearing, the presiding officer is to consult both with the party requesting the hearing and the FDA employees representing the bureau or other FDA organizational unit that is to make a presentation for FDA at the hearing.

60. Proposed § 16.24(e), (§ 16.24(d) of the present rule), would allow FDA officials generally, rather than just the Commissioner, to decide whether information relating to the notice of matters for hearing should be provided orally or in writing. Similarly, to reduce unnecessary involvement by the Commissioner, § 16.60(d) would be revised to allow the presiding officer, rather than the Commissioner, to decide if a hearing should be transcribed.

61. Proposed new provisions in part 16 relate to the prior involvement of the presiding officer and the Commissioner in the subject of a regulatory hearing, and to communications with them concerning the hearing. Some uncertainty has existed within the agency about these matters, and, in most respects, the revisions simply clarify the effect of the existing requirements.

The present rule under § 16.42, relating to delegation of the Commissioner's authority concerning a regulatory hearing, would be redesignated § 16.40; § 16.40 is proposed to be redesignated as § 16.42. Proposed § 16.42(b) would continue to limit the presiding officer's prior involvement in the matter that is the subject of the hearing, but, as proposed, its applicability would be limited to regulatory hearings required by regulation. When a regulatory hearing is held on the initiative of the Commissioner, the hearing is a matter of discretion and the Commissioner should have the option of selecting as a presiding officer someone already familiar with the issues. Because the decision in the matter is not to be made only on an exclusive record, it is not essential that the presiding officer obtain information on the issues solely on the record.

62. A new § 16.44 would be added to state expressly that the separation of functions rules in § 10.55 do not apply to regulatory hearings, and to provide certain restrictions on communications between participants and the presiding officer. When a regulatory hearing is required by regulation, some limitation on communications is needed to implement the requirement in § 16.95 that establishes an exclusive record for decision. Also, §§ 16.60(e) and 16.80 specify the type of comments to be made by the participants and the timing of the comments. It would be inconsistent with these provisions for the participants in a hearing to be able to communicate in other ways about pending matters to the presiding officer or to the official who is delegated the Commissioner's functions.

The Commissioner believes that a corollary of the requirement that the decision be made on a limited record is that the participants in the hearings must avoid comunications to the presiding officer and the final decisionmaker about the very matters to be decided exclusively on the record. Proposed new § 16.44 would impose this limitation, which applies to those directly involved in the investigation or presentation of matters in the hearing. However, § 16.44 would limit only those communications that would be inconsistent with having an exclusive record for decision. Because it is difficult to determine which communications are permitted, parties should avoid any questionable communications. If a communication were made that was inconsistent with § 16.44, the communication would have to be included in the record and the other participants in the hearing given an opportunity to comment on it.

63. The revised regulation also expressly states the way proposed § 16.42 applies to the Commissioner. As discussed in detail in the preamble to the final regulation, published in the FEDERAL REGISTER of November 2, 1976 (41 FR 48259, ¶7), and as provided in proposed § 16.40, the Commissioner's functions in issuing the ultimate decision can be exercised by an official to whom the Commissioner's substantive authority for the matter has been delegated under part 5. Neither the Commissioner nor the delegate is precluded by proposed § 16.42 from involvement, before the proceeding, in the issues in dispute, although once the proceeding begins, the decisionmaker should avoid communications inconsistent with a decision based on an exclusive record. If the Commissioner or delegate has had a prior involvement in the issues at the hearing, that official would still be able to make the final decision for the agency. But if there has been such prior involvement by the official who is to make the final decision and if it is feasible, the presiding officer should not be a subordinate of that official. This precaution is a safeguard against any possible reluctance by a subordinate to change a preliminary determination in which a superior has been involved. When the Commissioner has been involved in the issues at the hearing and is also to make the final decision efforts should be made to secure a presiding officer who is either an administrative law judge or is not an FDA employee.

The Commissioner's or the delegate's exercise of general supervisory responsibility over employees who were involved in the issues in dispute, or of the authority to designate the presiding officer, does not constitute prior involvement for purposes of proposed § 16.42. If the Commissioner or the delegate were to review personally the decision to take the action leading to a hearing, however, it would be considered a prior involvement, and in that case the presiding officer should not be a subordinate of that official if it is reasonably possible to appoint someone else.

64. Proposed § 16.42.(c)(2) would permit a party to request a hearing before the Commissioner or the delegate making the final decision, notwithstanding any prior involvement in the issues at the hearing. The provision has been included in response to comments on the proposed regulation which suggested that an affected party may prefer a regulatory hearing before the final decisionmaker, even if the decisionmaker initiated the action that is the subject of the hearing or had some other direct involvement, rather than have a hearing before a presiding officer who is uninvolved and unfamiliar with the issues.

65. Sections § 16.60(e) and 16.80(a)(4) would be revised to allow the participants in a regulatory hearing to comment in any manner on the presiding officer's report, and not simply to offer corrections.

66. The provisions concerning the administrative record would be reorganized, but substantially changed, and transferred from §§ 16.24(g) and 16.80(c) to § 16.95.

Therefore, under the Federal Food, Drug, and Cosmetic Act, (sec. 201 et seq., 52 Stat. 1040 (21 U.S.C. et seq.)), the Public Health Service Act (sec. 1 et seq., 58 Stat. 682, as amended (42 U.S.C. 201 et seq.)), the Comprehensive Drug Abuse Prevention and Control Act of 1970 (sec. 4, 84 Stat. 1241 (42 U.S.C. 257a)), the Controlled Substances Act (sec. 301 et seq., 84 Stat. 1253 (21 U.S.C. 821 et seq.)), the Federal Meat Inspection Act (sec. 409(b), 81 Stat. 600 (21 U.S.C. 679(b))), the Poultry Products Inspection Act (sec. 24(b), 82 Stat. 807 (21 U.S.C. 467f(b))), the Egg Products Inspection Act (sec. 2 et seq., 84 Stat. 1620 (21 U.S.C. 1031 et seq.)), the Federal Import Milk Act (secs. 1 through 9, 44 Stat. 1101-1103 as amended (21 U.S.C. 141-149)), the Tea Importation Act (secs. 1 through 10, 29 Stat. 604-607 (21 U.S.C. 41-50)), the Federal Caustic Poison Act (44 Stat. 1406 (15 U.S.C. 401-411 notes)), the Fair Packaging and Labeling Act (80 Stat. 1296 15 U.S.C. 1451 et seq.)), and under authority delegated to the

Commissioner (21 CFR 5.1), it is proposed to amend Subchapter A by revising Parts 10, 12, 13, 14, 15, and 16 as follows:

PART 10—ADMINISTRATIVE PRACTICES AND PROCEDURES

Subpart A—General

Sec.
10.1 Scope.
10.3 Definitions.
10.10 Summaries of administrative practices and procedures.
10.19 Waiver, suspension, or modification of procedural requirements.

Subpart B—General Administrative Procedures

10.20 Submission of documents to hearing clerk; computation of time; availability for public disclosure.
10.25 Initiation of administrative proceedings.
10.30 Citizen petition.
10.33 Administrative reconsideration of action.
10.35 Administrative stay of action.
10.40 Promulgation of regulations for the efficient enforcement of the law.
10.45 Court review of final administrative action; exhaustion of administrative remedies.
10.50 Promulgation of regulations and orders after an opportunity for a formal evidentiary public hearing.
10.55 Separation of functions; ex parte communications.
10.60 Referral by court.
10.65 Meetings and correspondence.
10.70 Documentation of significant decisions in administrative file.
10.75 Internal agency review of decisions.
10.80 Dissemination of draft FEDERAL REGISTER notices and regulations.
10.85 Advisory opinions.
10.90 Food and Drug Administration regulations, guidelines, recommendations, and agreements.
10.95 Participation in outside standard-setting activities.
10.100 Public calendars.
10.105 Representation by an organization.
10.110 Settlement proposals.

AUTHORITY: Sec. 201 et seq., Pub. L. 717, 52 Stat. 1040 as amended (21 U.S.C. 321 et seq.); sec. 1 et seq., Pub. L. 410, 58 Stat. 682 as amended (42 U.S.C. 201 et seq.); sec. 4, Pub. L. 91-513, 84 Stat. 1241 (42 U.S.C. 257a); sec. 301 et seq., Pub. L. 91-513, 84 Stat. 1253 (21 U.S.C. 821 et seq.); sec. 409(b), Pub. L. 242, 81 Stat. 600 (21 U.S.C. 679(b)); sec. 24(b), Pub. L. 85-172, 82 Stat. 807 (21 U.S.C. 467f(b)); sec. 2 et seq., Pub. L. 91-597, 84 Stat. 1620 (21 U.S.C. 1031 et seq.); secs. 1 through 9, Pub. L. 625, 44 Stat. 1101-1103 as amended (21 U.S.C. 141-149); secs. 1 through 10, Chapter 358, 29 Stat. 604-607 as amended (21 U.S.C. 41-50); sec. 2 et seq., Pub. L. 783, 44 Stat. 1406 as amended (15 U.S.C. 401 et seq.); sec. 1 et seq., Pub. L. 89-755, 80 Stat. 1296 as amended (15 U.S.C. 1451 et seq.).

Subpart A—General Provisions

§ 10.1 Scope.

(a) Part 10 governs practices and procedures for petitions, hearings, and other administrative proceedings and activities conducted by the Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and other laws that the Commissioner of Food and Drugs administers under § 5.1.

(b) If a requirement in another part of title 21 differs from a requirement in this part, the requirements of this part apply to the extent that they do not conflict with the other requirements.

(c) References in this part and parts 12, 13, 14, 15, and 16 to regulatory sections of the Code of Federal Regulations are to chapter I of title 21 unless otherwise noted.

(d) References in this part and parts 12, 13, 14, 15, and 16 to "publication" or to the day or date of publication refer to publication in the FEDERAL REGISTER unless otherwise noted.

§ 10.3 Definitions.

(a) The following definitions apply in this part and parts 12, 13, 14, 15, 16, and 19:

"Act" means the Federal Food, Drug, and Cosmetic Act unless otherwise indicated.

"Administrative action" includes every act, including the refusal or failure to act, involved in the administration of any law by the Commissioner, except that it does not include the referral of apparent violations to U.S. attorneys for the institution of civil or criminal proceedings or an act in preparation of a referral.

"Administrative file" means the file or files containing all documents pertaining to a particular administrative action, including internal working memoranda and recommendations.

"Administrative record" means the documents in the administrative file of a particular administrative action on which the Commissioner relies to support the action.

"Agency" means the Food and Drug Administration.

"Commissioner" means the Commissioner of Food and Drugs, Food and Drug Administration, U.S. Department of Health, Education, and Welfare, or the Commissioner's designee.

"Department" means the U.S. Department of Health, Education, and Welfare.

"Ex parte communication" means an oral or written communication not on the public record for which reasonable prior notice to all parties is not given, but does not include requests for status reports on a matter.

"FDA" means the Food and Drug Administration.

"Food and Drug Administration employee" or "Food and Drug Administration representative" includes members of the Food and Drug Division of the office of the General Counsel of the Department of Health, Education, and Welfare.

"Formal evidentiary public hearing" means a hearing conducted under part 12.

"Hearing Clerk" means the Hearing Clerk of the Food and Drug Administration, U.S. Department of Health, Education, and Welfare, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

"Interested person" or "any person who will be adversely affected" means a person who submits a petition or comment or objection or otherwise asks to participate in an informal or formal administrative proceeding or court action.

"Meeting" means any oral discussion, whether by telephone or in person.

"Office of the Commissioner" includes the offices of the associate commissioners but not the bureaus, the office of the Executive Director for Regional Operations, or the regional or district offices.

"Order" means the final agency disposition, other than the issuance of a regulation, in a proceeding concerning any matter and includes action on a new drug application, new animal drug application, or biological license.

"Participant" means any person participating in any proceeding, including each party and any other interested person.

"Party" means the bureau of the Food and Drug Administration responsible for a matter involved and every person who either has exercised a right to request or has been granted the right by the Commissioner to have a hearing under part 12 or part 16 or who has waived the right to a hearing to obtain the establishment of a Public Board of Inquiry under part 13 and as a result of whose action a hearing or a Pulic Board of Inquiry has been established.

"Person" includes an individual, partnership, corporation, association, or other legal entity.

"Petition" means a petition, application, or other document requesting the Commissioner to establish, amend, or revoke a regulation or order, or to take any other form of administrative action, under the laws administered by the Food and Drug Administration.

"Presiding officer" means the Commissioner or the Commissioner's designee or an administrative law judge appointed as provided in 5 U.S.C. 3105.

"Proceeding" and "administrative proceeding" means any undertaking to issue, amend, or revoke a regulation or order, or to take or refrain from taking any other form of administrative action.

"Public advisory committee" or "advisory committee" means any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or

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other subgroup of an advisory committee, that is not composed wholly or full-time employees of the Federal Government and is established or utilized by the Food and Drug Administation to obtain advice or recommendations.

"Public Board of Inquiry" or "Board" means an administrative law tribunal constituted under part 13.

"Public hearing before a public advisory committee" means a hearing conducted under part 14.

"Public hearing before a Public Board of Inquiry" means a hearing conducted under part 13.

"Public hearing before the Commissioner" means a hearing conducted under part 15.

"Regulations" means an agency rule of general or particular applicability and future effect issued under a law administered by the Commissioner or relating to administrative practices and procedures. In accordance with § 10.90(a), each agency regulation will be published in the FEDERAL REGISTER and codified in the Code of Federal Regulations.

"Regulatory hearing before the Food and Drug Administration" means a hearing conducted under part 16.

"Secretary" means the Secretary of Health, Education, and Welfare.

"The Laws administered by the Commissioner" or "the laws administered by the Food and Drug Administration" means all the laws that the Commissioner is authorized to administer under § 5.1.

(b) A term that is defined in section 201 of the Federal Food, Drug, and Cosmetic Act or part 1 has the same definition in this part.

(c) Words in the singular form include the plural, words in the masculine form include the feminine, and vice versa.

(d) Whenever a reference is made in this part to a person in FDA, e.g., the director of a bureau, the reference includes all persons to whom that person has delegated the specific function involved.

§ 10.10 Summaries of administrative practices and procedures.

To encourage public participation in all agency activities, the Commissioner will prepare for public distribution summaries of FDA administrative practices and procedures in readily understandable terms.

§ 10.19 Waiver suspension, or modification of procedural requirements.

The Commissioner or a presiding officer may, either voluntarily or at the request of a participant, waive, suspend, or modify any provision in parts 12 through 16 applicable to the conduct of a public hearing by announcement at the hearing or by notice in advance of the hearing. If no participant will be prejudiced, the ends of justice will thereby be served, and the action is in accordance with law.

Subpart B—General Administrative Procedures

§ 10. 20 Submission of documents to hearing clerk; computation of time; availability for public disclosure.

(a) A submission to the hearing clerk of a petition, comment, objection, notice, compilation of information, or any other document is to be filed in four copies except as otherwise specifically provided in a relevant FEDERAL REGISTER notice or in another section of this chapter. The hearing clerk is the agency custodian of these documents.

(b) A submission is to be signed by the person making it, or by an attorney or other authorized representative of that person. Submissions by trade associations are also subject to the requirements of § 10.105(b).

(c) Information referred to or relied upon in a submission is to be included in full and may not be incorporated by reference, unless previously submitted in the same proceeding.

(1) A copy of an article or other reference or source cited must be included, except where the reference or source is—

(i) A reported Federal court case;

(ii) A Federal law or regulation;

(iii) An FDA document that is routinely publicly available;

(iv) A recognized medical or scientific textbook that is readily available to the agency; or

(v) A designated journal listed in § 310.9 or § 510.95.

(2) If a part of the material submitted is in a foreign language, it must be accompanied by an English translation verified to be complete and accurate, together with the name, address, and a brief statement of the qualifications of the person making the translation. A translation of literature or other material in a foreign language is to be accompanied by copies of the original publication.

(3) Where relevant information is contained in a document also containing irrelevant information, the irrelevant information is to be deleted and only the relevant information is to be submitted.

(4) Under § 20.63 (a) and (b), the names and other information that would identify patients or research subjects are to be deleted from any record before it is submitted to the hearing clerk in order to preclude a clearly unwarranted invasion of personal privacy.

(5) Defamatory, scurrilous, or intemperate matter is to be deleted from a record before it is submitted to the hearing clerk.

(6) The failure to comply with the requirements of this part will result in rejection of the submission for filing or, if it is filed, in exclusion from consideration of any portion that fails to comply. If a submission fails to meet any requirement of this section and the deficiency becomes known to the hearing clerk, the hearing clerk shall not file the submission but return it with a copy of the applicable regulations indicating those provisions not complied with. A deficient submission may be corrected or supplemented and subsequently filed. The office of the hearing clerk does not make decisions regarding the confidentiality of submitted documents. Persons wishing to voluntarily submit information considered confidential shall follow the presubmission review requirements of § 20.44.

(d) The filing of a submission means only that the hearing clerk has identified no technical deficiencies in the submission. The filing of a petition does not mean or imply that it meets all applicable requirements or that it contains reasonable grounds for the action requested or that the action requested is in accordance with law.

(e) All submissions to the hearing clerk will be considered as submitted on the date they are postmarked or, if delivered in person during regular business hours, on the date they are delivered, unless a provision in this part, an applicable FEDERAL REGISTER notice, or an order issued by an administrative law judge specifically states that the documents must be received by a specified date, e.g., § 10.33(g) relating to a petition for reconsideration, in which case they will be considered submitted on the date received.

(f) All submissions are to be mailed or delivered in person to the hearing clerk, Food and Drug Administration, room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, except that a submission which is required to be received by the hearing clerk by a specified date may be delivered in person to the FDA building in Washington (room 6819, 200 C Street SW., Washington, D.C. 20201) and will be considered as received by the hearing clerk on the date on which it is delivered.

(g) FDA ordinarily will not acknowledge or give receipt for documents, except—(1) Documents delivered in person or by certified or registered mail with a return receipt requested; and

(2) Petitions for which acknowledgment of receipt of filing is provided by regulation or by customary practice, e.g., § 10.30(c) relating to a citizen petition.

(h) Saturdays, Sundays, and Federal legal holidays are included in computing the time allowed for the submission of documents, except that when the time for submission expires on a Saturday, Sunday, or Federal legal holiday, the period will be extended to include the next business day.

(i) All submissions to the hearing clerk are representations that, to the best of the knowledge, information, and belief of the person making the submission, the statements made in the submission are true and accurate. All submissions are subject to the False Reports to the Government Act (18 U.S.C. 1001) under which a willfully false statement is a criminal offense.

(j) The availability for public examination and copying of submissions to the hearing clerk is governed by the following rules:

(1) Except to the extent provided in paragraphs (j) (2) and (3) of this section, the following submissions, including all supporting material, will be on public display and will be available for public examination between 9 a.m. and 4 p.m., Monday through Friday. Requests for copies of submissions will be filed and handled in accordance with subpart C of part 20:

(i) Petitions.

(ii) Comments on petitions, on documents published in the FEDERAL REGISTER, and on similar public documents.

(iii) Objections and requests for hearings filed under part 12.

(iv) Material submitted at a hearing under § 12.32(a)(2) and parts 12, 13, and 15.

(v) Material placed on public display under the regulations in this chapter, e.g., agency guidelines filed under § 10.90(b).

(2)(i) Material prohibited from public disclosure under § 20.63 (clearly unwarranted invasion of personal privacy) and, except as provided in paragraph (j)(3) of this section, material submitted with objections and requests for hearing filed under part 12, or at a hearing under part 12 or part 13, or an alternative form of public hearing before a public advisory committee or a hearing under § 12.32(a) (2) or (3), of the following types will not be on public display, will not be available for public examination, and will not be available for copying or any other form of verbatim transcription unless it is otherwise available for public disclosure under part 20:

(*a*) Safety and effectiveness information, which includes all studies and tests of an ingredient or product on animals and humans and all studies and tests on the ingredient or product for identity, stability, purity, potency, bioavailability, performance, and usefulness.

(*b*) A protocol for a test or study.

(*c*) Manufacturing methods or processes, including quality control procedures.

(*d*) Production, sales distribution, and similar information, except any compilation of information aggregated and prepared in a way that does not reveal confidential information.

(*e*) Quantitative or semiquantitative formulas.

(*f*) Information on product design or construction.

(ii) Material submitted under paragraph (j)(2) of this section is to be segregated from all other submitted material and clearly so marked. A person who does not agree that a submission is properly subject to paragraph (j)(2) may request a ruling from the Associate Commissioner for Public Affairs whose decision is final, subject to judicial review under § 20.46.

(3) Material listed in paragraph (j)(2)(i) (*a*) and (*b*) of this section may be disclosed under a protective order issued by the administrative law judge or other presiding officer at a hearing referenced in paragraph (j)(2)(i). The administrative law judge or presiding officer shall permit disclosure of the data only in camera and only to the extent necessary for the proper conduct of the hearing. The administrative law judge or presiding officer shall direct to whom the information is to be made available (e.g., to parties or participants, or only to counsel for parties or participants), and persons not specifically permitted access to the data will be excluded from the in camera part of the proceeding. The administrative law judge or other presiding officer may impose other conditions or safeguards. The limited availability of material under this paragraph does not constitute prior disclosure to the public as defined in § 20.81, and no information subject to a particular order is to be submitted to or received or considered by FDA in support of a petition or other request from any other person.

§ 10.25 Initiation of administrative proceedings.

An administrative proceeding may be initiated in the following three ways:

(a) An interested person may petition the Commissioner to issue, amend, or revoke a regulation or order, or to take or refrain from taking any other form of administrative action. A petition must be either: (1) In the form specified in other applicable FDA regulations, e.g., the form for a color additive petition in § 71.1, for a food additive petition in § 171.1, for a new drug application in § 314.1, for a new animal drug application in § 514.1, or (2) in the form for a citizen petition in § 10.30.

(b) The Commissioner may initiate a proceeding to issue, amend, or revoke a regulation or order or take or refrain from taking any other form of administrative action. FDA has primary jurisdiction to make the initial determination on issues within its statutory mandate, and will request a court to dismiss, or to hold in abeyance its determination of or refer to the agency for administrative determination, any issue which has not previously been determined by the agency or which, if it has previously been determined, the agency concluded should be reconsidered and subject to a new administrative determination. The Commissioner may utilize any of the procedures established in this part in reviewing and making a determination on any matter initiated under this paragraph.

(c) The Commissioner will institute a proceeding to determine whether to issue, amend, or revoke a regulation or order, or take or refrain from taking any other form of administrative action whenever any court, on its own initiative, holds in abeyance or refers any matter to the agency for an administrative determination and the Commissioner concludes that an administrative determination is feasible within agency priorities and resources.

§ 10.30 Citizen petition.

(a) This section applies to any petition submitted by a person (including a person who is not a citizen of the United States) except to the extent that other sections of this chapter apply different requirements to a particular matter.

(b) A petition (including any attachments) must be submitted in accordance with § 10.20 and in the following form:

(Date) ——————

Hearing Clerk, Food and Drug Administration, Department of Health, Education, and Welfare, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

CITIZEN PETITION

The undersigned submits this petition under —— (relevant statutory sections, if known) of the —— (Federal Food, Drug, and Cosmetic Act or the Public Health Service Act or any other statutory provision for which authority has been delegated to the Commissioner of Food and Drugs under 21 CFR 5.1) to request the Commissioner of Food and Drugs to —— (issue, amend, or revoke a regulation or order or take or refrain from taking any other form of administrative action).

A. ACTION REQUESTED

((1) If the petition requests the Commissioner to issue, amend, or revoke a regulation, the exact wording of the existing regulation (if any) and the proposed regulation or amendment requested.)

((2) If the petition requests the Commissioner it issue, amend, or revoke an order, a copy or the exact wording of the citation to

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the existing order (if any) and the exact wording requested for the proposed order.)

((3) If the petition requests the Commissioner to take or refrain from taking any other form of administrative action, the specific action or relief requested.)

B. STATEMENT OF GROUNDS

(A full statement, in a well organized format, of the factual and legal grounds on which the petitioner relies, including all relevant information and views on which the petitioner relies, as well as representative information known to the petitioner which is unfavorable to the petitioner's position.)

C. ENVIROMENTAL IMPACT

(An environmental impact analysis report in the form specified in 21 CFR 25.1(g), except for the types of actions specified in 21 CFR 25.1(d).)

D. ECONOMIC IMPACT

(The following information is to be submitted only when requested by the Commissioner following review of the petition: A statement of the effect of requested action on: (1) Cost (and price) increases to industry, government, and consumers; (2) productivity of wage earners, businesses, or government; (3) competition; (4) supplies of important materials, products, or services; (5) employment; and (6) energy supply or demand.)

The undersigned certifies, that, to the best knowledge and belief of the undersigned, this petition includes all information and views on which the petition relies, and that it includes representative data and information known to the petitioner which are unfavorable to the petition.

(Signature) _____
(Name of petitioner) _____
(Mailing address) _____
(Telephone number) _____

(c) A petition which appears to meet the requirements of paragraph (b) of this section and § 10.20 will be filed by the hearing clerk, stamped with the date of filing, and assigned a docket number. The docket number identifies the file established by the hearing clerk for all submissions relating to the petition, as provided in this part. Subsequent submissions relating to the matter must refer to the docket number and will be filed in the docket file. Related petitions may be filed together and given the same docket number. The hearing clerk will promptly notify the petitioner in writing of the filing and docket number of a petition.

(d) An interested person may submit written comments to the hearing clerk on a filed petition, which comments become part of the docket file. The comments are to specify the docket number of the petition and may support or oppose the petition in whole or in part. A request for alternative or different administrative action must be submitted as a separate petition.

(e)(1) The Commissioner shall, in accordance with paragraph (e)(2), rule upon each petition filed under paragraph (c) of this section, taking into consideration (i) available agency resources for the category of subject matter, (ii) the priority assigned to the petition considering both the category of subject matter involved and the overall work of the agency, and (iii) time requirements established by statute.

(2) The Commissioner shall furnish a response to each petitioner within 180 days of receipt of the petition. The response will either—(i) Approve the petition, in which case the Commissioner shall concurrently take appropriate action (e.g., publication of a FEDERAL REGISTER notice) implementing the approval;

(ii) Deny the petition; or

(iii) Provide a tentative response, indicating why the agency has been unable to reach a decision on the petition, e.g., because of the existence of other agency priorities, or a need for additional information. The tentative response may also indicate the likely ultimate agency response, and may specify when a final response may be furnished.

(3) The Commissioner may grant or deny such a petition, in whole or in part, and may grant such other relief or take other action as the petition warrants. The petitioner is to be notified in writing of the Commissioner's decision. The decision will be placed in the public docket file in the office of the hearing clerk and may also be in the form of a notice published in the FEDERAL REGISTER.

(f) If a petition filed under paragraph (c) of this section requests the Commissioner to issue, amend, or revoke a regulation, § 10.40 or § 10.50 also apply.

(g) A petitioner may supplement, amend, or withdraw a petition in writing without agency approval and without prejudice to resubmission at anytime until the Commissioner rules on the petition, unless the petition has been referred for a hearing under parts 12, 13, 14, or 15. After a ruling or referral, a petition may be supplemented, amended, or withdrawn only with the approval of the Commissioner. The Commissioner may approve withdrawal, with or without prejudice against resubmission of the petition.

(h) In reviewing a petition the Commissioner may use the following procedures:

(1) Conferences, meetings, discussions, and correspondence under § 10.65.

(2) A hearing under parts 12, 13, 14, 15, or 16.

(3) A FEDERAL REGISTER notice requesting information and views.

(4) A proposal to issue, amend, or revoke a regulation, in accordance with § 10.40 or § 12.5.

(5) Any other specific public procedure established in this chapter and expressly applicable to the matter.

(i) The record of the administrative proceeding consists of the following:

(1) The petition, including all information on which it relies, filed by the hearing clerk.

(2) All comments received on the petition, including all information submitted as a part of the comments.

(3) If the petition resulted in a proposal to issue, amend, or revoke a regulation, all of the documents specified in § 10.40(g).

(4) The record, consisting of any transcripts, minutes of meetings, reports, FEDERAL REGISTER notices, and other documents resulting from the optional procedures specifed in paragraph (g) of this section, except a transcript of a closed portion of a public advisory committee meeting.

(5) The Commissioner's decision on the petition, including all information identified or filed by the Commissioner with the hearing clerk as part of the record supporting the decision.

(6) All documents filed with the hearing clerk under § 10.65(h).

(7) If a petition for reconsideration or for a stay of action is filed under paragraph (j) of this section, the administrative record specified in § 10.33(k) or § 10.35(h).

(j) The administrative record specified in paragraph (i) of this section is the exclusive record for the Commission's decision. The record of the administrative proceeding closes on the date of the Commission's decision unless some other date is specified. Thereafter any interested person may submit a petition for reconsideration under § 10.33 or a petition for stay of action under § 10.35. A person who wishes to rely upon information or views not included in the administrative record shall submit them to the Commissioner with a new petition to modify the decision in accordance with this section.

(k) This section does not apply to the referral of a matter to a United States attorney for the initiation of court enforcement action and related correspondence, or to requests, suggestions, and recommendations made informally in routine correspondence received by FDA. Routine correspondence does not constitute a petition within the meaning of this section unless it purports to meet the requirements of this section. Action on routine correspondence does not constitute final administrative action subject to judicial review under § 10.45.

(l) The hearing clerk will maintain a chronological list of each petition filed under this section and § 10.85, but not of petitions submitted elsewhere in the agency under § 10.25(a)(1), showing—

(1) The docket number;

(2) The date the petition was filed by the Hearing Clerk;

(3) The name of the petitioner;

(4) The subject matter involved; and

(5) The disposition of the petition.

§ 10.33 Administrative reconsideration of action.

(a) The Commissioner may at any time reconsider a matter, on the Commissioner's own initiative or on the petition of an interested person.

(b) An interested person may request reconsideration of part or all of a decision of the Commissioner on a petition submitted under § 10.25. Each request for reconsideration must be submitted in accordance with § 10.20 and in the following form no later than 30 days after the date of the decision involved. The Commissioner may, for good cause, permit a petition to be filed after 30 days. In the case of a decision published in the FEDERAL REGISTER, the day of publication is the day of decision.

(Date) _____

Hearing Clerk, Food and Drug Administration, Department of Health, Education, and Welfare, Room 4–65, 5600 Fishers Lane, Rockville, Md. 20857.

PETITION FOR RECONSIDERATION

[Docket No.]

The undersigned submits this petition for reconsideration of the decision of the Commissioner of Food and Drugs in Docket No.

A. DECISION INVOLVED

(A concise statement of the decision of the Commissioner which the petitioner wishes to have reconsidered.)

B. ACTION REQUESTED

(The decision which the petitioner requests the Commissioner to make upon reconsideration of the matter.)

C. STATEMENT OF GROUNDS

(A full statement, in a well-organized format, of the factual and legal grounds upon which the petitioner relies. The grounds must demonstrate that relevant information and views contained in the administrative record were not previously or not adequately considered by the Commissioner.

No new information or views may be included in a petition for reconsideration.)

(Signature) _____
(Name of petitioner) _____
(Mailing address) _____
(Telephone number) _____

(c) A petition for reconsideration relating to a petition submitted under § 10.25(a)(2) is subject to the requirements of § 10.30 (c) and (d), except that it is filed in the same docket file as the petition to which it relates.

(d) The Commissioner shall promptly review a petition for reconsideration. The Commissioner may grant the petition when the Commissioner determines it is in the public interest and in the interest of justice. The Commissioner shall grant a petition for reconsideration in any proceeding if the Commissioner determines all of the following apply:

(1) The petition demonstrates that relevant information or views contained in the administrative record were not previously or not adequately considered.

(2) The petitioner's position is not frivolous and is being pursued in good faith.

(3) The petitioner has demonstrated sound public policy grounds supporting reconsideration.

(4) Reconsideration is not outweighed by public health or other public interests.

(e) A petition for reconsideration may not be based on information and views not contained in the administrative record on which the decision was made. An interested person who wishes to rely on information or views not included in the administrative record shall submit them with a new petition to modify the decision under § 10.25(a).

(f) The decision on a petition for reconsideration is to be in writing and placed on public display as part of the docket file on the matter in the office of the Hearing Clerk. A determination to grant reconsideration will be published in the FEDERAL REGISTER if the Commissioner's original decision was so published. Any other determination to grant or deny reconsideration may also be published in the FEDERAL REGISTER.

(g) The Commissioner may consider a petition for reconsideration only before the petitioner brings legal action in the courts to review the action, except that a petition may also be considered if the Commissioner has denied a petition for stay of action and the petitioner has petitioned for judicial review of the Commissioner's action and requested the reviewing court to grant a stay pending consideration of review. A petition for reconsideration submitted later than 30 days after the date of the decision involved will be denied as untimely unless the Commissioner permits the petition to be filed after 30 days. A petition for reconsideration will be considered as submitted on the day it is received by the Hearing Clerk.

(h) The Commissioner may initiate the reconsideration of all or part of a matter at any time after it has been decided or action has been taken. If review of the matter is pending in the courts, the Commissioner may request that the court refer the matter back to the agency or hold its review in abeyance pending administrative reconsideration. The administrative record of the proceeding is to include all additional documents relating to such reconsideration.

(i) After determining to reconsider a matter, the Commissioner shall review and rule on the merits of the matter under § 10.30(e). The Commissioner may reaffirm, modify, or overrule the prior decision, in whole or in part, and may grant such other relief or take such other action as is warranted.

(j) The Commissioner's reconsideration of a matter relating to a petition submitted under § 10.25(a)(2) is subject to § 10.30 (f) through (h), (j), and (k).

(k) The record of the administrative proceeding consists of the following:

(1) The record of the original petition specified in § 10.30(i).

(2) The petition for reconsideration, including all information on which it relies, filed by the Hearing Clerk.

(3) All comments received on the petition, including all information submitted as a part of the comments.

(4) The Commissioner's decision on the petition under paragraph (f) of this section, including all information identified or filed by the Commissioner with the hearing clerk as part of the record supporting the decision.

(5) Any FEDERAL REGISTER notices or other documents resulting from the petition.

(6) All documents filed with the hearing clerk under § 10.65(h).

(7) If the Commissioner reconsiders the matter, the administrative record relating to reconsideration specified in § 10.30(i).

§ 10.35 Administrative stay of action.

(a) The Commissioner may at any time stay or extend the effective date of an action pending or following a decision on any matter.

(b) An interested person may request the Commissioner to stay the effective date of any administrative action. A stay may be requested for a specific time period or for an indefinite time period. A request for stay must be submitted in accordance with § 10.20 and in the following form no later than 30 days after the date of the decision involved. The Commissioner may, for good cause, permit a petition to be filed after 30 days. In the case of a decision published in the FEDERAL REGISTER, the day of publication is the day of decision.

(Date) _____

Hearing Clerk, Food and Drug Administration, Department of Health, Education, and Welfare, Room 4–65, 5600 Fishers Lane, Rockville, Md. 20857.

PETITION FOR STAY OF ACTION

The undersigned submits this petition requesting that the Commissioner of Food

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and Drugs stay the effective date of the following matter.

A. DECISION INVOLVED

(The specific administrative action being taken by the Commissioner for which a stay is requested, including the docket number or other citation to the action involved.)

B. ACTION REQUESTED

(The length of time for which the stay is requested, which may be for a specific or indefinite time period.)

C. STATEMENT OF GROUNDS

(A full statement, in a well-organized format, of the factual and legal grounds upon which the petitioner relies for the stay.)

(Signature) _____
(Name of petitioner) _____
(Mailing address) _____
(Telephone number) _____

(c) A petition for stay of action relating to a petition submitted under § 10.25(a)(2) is subject to the requirements of § 10.30 (c) and (d), except that it will be filed in the same docket file as the petition to which it relates.

(d) Neither the filing of a petition for a stay of action nor action taken by an interested person in accordance with any other administrative procedure in this part or in any other section of this chapter, e.g., the filing of a citizen petition under § 10.30 or a petition for reconsideration under § 10.33 or a request for an advisory opinion under § 10.80, will stay or otherwise delay any administrative action by the Commissioner, including enforcement action of any kind, unless one of the following applies:

(1) The Commissioner determines that a stay or delay is in the public interest and stays the action.

(2) A status requires that the matter be stayed.

(3) A court orders that the matter be stayed.

(e) The Commissioner shall promptly review a petition for stay of action. The Commissioner may grant or deny a petition, in whole or in part, and may grant such other relief or take such other action as is warranted by the petition. The Commissioner may grant a stay in any proceeding if it is in the public interest and in the interest of justice. The Commissioner shall grant a stay in any proceeding if all of the following apply:

(1) The petitioner will otherwise suffer irreparable injury.

(2) The petitioner's case is not frivolous and is being pursued in good faith.

(3) The petitioner has demonstrated sound public policy grounds supporting the stay.

(4) The delay resulting from the stay is not outweighed by public health or other public interests.

(f) The Commissioner's decision on a petition for stay of action is to be in writing and placed on public display as part of the file on the matter in the office of the hearing clerk. A determination to grant a stay will be published in the FEDERAL REGISTER if the Commissioner's original decision was so published. Any other determination to grant or to deny a stay may also be published in the FEDERAL REGISTER.

(g) A petition for a stay of action submitted later than 30 days after the date of the decision involved will be denied as untimely unless the Commissioner permits the petition to be filed after 30 days. A petition for a stay of action is considered submitted on the day it is received by the hearing clerk.

(h) The record of the administrative proceeding consists of the following:

(1) The record of the proceeding to which the petition for stay of action is directed.

(2) The petition for stay of action, including all information on which it relies, filed by the hearing clerk.

(3) All comments received on the petition, including all information submitted as a part of the comments.

(4) The Commissioner's decision on the petition under paragraph (e) of this section, including all information identified or filed by the Commissioner with the hearing clerk as part of the record supporting the decision.

(5) Any FEDERAL REGISTER notices or other documents resulting from the petition.

(6) All documents filed with the hearing clerk under § 10.65(h).

§ 10.40 Promulgation of regulations for the efficient enforcement of the law.

(a) The Commissioner may propose and promulgate regulations for the efficient enforcement of the laws administered by FDA whenever it is necessary or appropriate to do so. The issuance, amendment, or revocation of a regulation may be initiated in any of the ways specified in § 10.25.

(1) This section applies to any regulation (i) not subject to § 10.50 and part 12, or (ii) if it is subject to § 10.50 and part 12, to the extent that those provisions make this section applicable.

(2) A regulation proposed by an interested person in a petition submitted under § 10.25(a) will be published in the FEDERAL REGISTER as a proposal if—

(i) The petition contains facts demonstrating reasonabale grounds for the proposal; and

(ii) The petition substantially shows that the proposal is in the public interest and will promote the objectives of the act and the agency.

(3) Two or more alternative proposed regulations may be published on the same subject to obtain comment on the different alternatives.

(4) A regulation proposed by an interested person in a petition submitted under § 10.25(a) may be published together with the Commissioner's preliminary views on the proposal and any alternative proposal.

(b) Except as provided in paragraphs (d) and (e) of this section, each regulation must be the subject of a notice of proposed rulemaking published in the FEDERAL REGISTER.

(1) The notice will contain (i) the name of the agency; (ii) the nature of the action, e.g., proposed rule, or notice; (iii) a summary in the first paragraph describing the substance of the document in easily understandable terms; (iv) relevant dates, e.g., comment closing date, and proposed effective date(s); (v) the name, business address, and phone number of an agency contact person who can provide further information to the public about the notice; (vi) an address for submitting written comments; (vii) supplementary information about the notice in the form of a preamble that summarizes the proposal and the facts and policy underlying it, includes reference to all information on which the Commissioner relies for the proposal (copies or a full list of which are a part of the docket file on the matter in the office of the hearing clerk), and cites the authority under which the regulation is proposed; (viii) either the terms or substance of the proposed regulation or a description of the subjects and issues involved; (ix) a reference to the existence or lack of need for an environmental impact statement under § 25.25(a)(3) (ii) or (iii); and (x) the docket number of the matter, which identifies the docket file established by the hearing clerk for all relevant submissions.

(2) The proposal will provide 60 days for comment, although the Commissioner may shorten or lengthen this time period for good cause. In no event is the time for comment to be less than 10 days.

(3) After publication of the proposed rule, an interested person may request the Commissioner to extend the comment period for an additional specified period by submitting a written request to the hearing clerk stating the grounds for the request. The request is submitted under § 10.35 but should be headed "REQUEST FOR EXTENSION OF COMMENT PERIOD."

(i) A request must discuss the reason comments could not feasibly be submitted within the time permitted, or that important new information will shortly be available, or that sound public policy otherwise supports an extension of the time for comment. The Commissioner may grant or deny the request or may grant an extension for

a time period different from that requested. An extension may be limited to specific persons who have made and justified the request, but will ordinarily apply to all interested persons.

(ii) A comment time extension of 30 days or longer will be published in the FEDERAL REGISTER and will be applicable to all interested persons. A comment time extension of less than 30 days will be the subject either of a letter or memorandum filed with the hearing clerk or of a notice published in the FEDERAL REGISTER.

(4) A notice of proposed rulemaking will request that four copies of all comments be submitted to the hearing clerk, except that individuals may submit single copies. Comments will be stamped with the date of receipt and will be numbered chronologically.

(5) Persons submitting comments critical of a proposed regulation are encouraged to include their preferred alternative wording.

(c) After the time for comment on a proposed regulation has expired, the Commissioner will review the entire administrative record on the matter, including all comments, and, in a notice published in the FEDERAL REGISTER, will terminate the proceeding, issue a new proposal, or promulgate a final regulation,

(1) The quality and persuasiveness of the comments will be the basis for the Commissioner's decision. The number or length of comments will not ordinarily be a significant factor in the decision unless the number of comments is material where the degree of public interest is a legitimate factor for consideration.

(2) The decision of the Commissioner on the matter will be based solely upon the administrative record.

(3) A final regulation published in the FEDERAL REGISTER will have a preamble stating (i) the name of the agency, (ii) the nature of the action, e.g., final rule, notice, (iii) a summary first paragraph describing the substance of the document in easily understandable terms, (iv) relevant dates, e.g., the rule's effective date and comment closing date, if an opportunity for comment is provided, (v) the name, business address, and phone number of an agency contact person who can provide further information to the public about the notice, (vi) an address for the submission of written comments when they are permitted, (vii) supplementary information about the regulation in the body of the preamble that contains references to prior notices relating to the same matter and a summary of each type of comment submitted on the proposal and the Commissioner's conclusions with respect to each. The preamble is to contain a thorough and comprehensible explanation of the reasons for the Commissioner's decision on each issue.

(4) The effective date of a final regulation may not be less than 30 days after the date of publication in the FEDERAL REGISTER, except for—

(i) A regulation that grants an exemption or relieves a restriction; or

(ii) A regulation for which the Commissioner finds, and states in the notice, good cause for an earlier effective date.

(d) The provisions for notice and comment in paragraphs (b) and (c) of this section will apply to interpretive rules and rules of agency practice and procedure except as provided in paragraph (e) of this section. Paragraphs (b) and (c) of this section do not apply to general statements of policy in the form of informational notices published in the FEDERAL REGISTER or to matters involving agency organization.

(e) The requirements of notice and public procedure in paragraph (b) of this section do not apply in the following situations:

(1) When the Commissioner determines for good cause that they are impracticable, unnecessary, or contrary to the public interest. In these cases, the notice promulgating the regulation will state the reasons for the determination, and provide an opportunity for comment to determine whether the regulation should subsequently be modified or revoked. A subsequent notice based on those comments may, but need not, provide additional opportunity for public comment.

(2) Food additive and color additive petitions, which are subject to the provisions of § 12.20(b)(2).

(3) New animal drug regulations, which are promulgated under section 512(i) of the act.

(f) In addition to the notice and public procedure required under paragraph (b) of this section, the Commissioner may also subject a proposed or final regulation, before or after publication in the FEDERAL REGISTER, to the following additional procedures:

(1) Conferences, meetings, discussions, and correspondence under § 10.65.

(2) A hearing under parts 12, 13, 14, or 15.

(3) A notice published in the FEDERAL REGISTER requesting information and views before the Commissioner determines whether to propose a regulation.

(4) A draft of a proposed regulation placed on public display in the office of the hearing clerk. If this procedure is used, the Commissioner shall publish an appropriate notice in the FEDERAL REGISTER stating that the document is available and specifying the time within which comments on the draft proposal may be submitted orally or in writing.

(5) A revised proposal published in the FEDERAL REGISTER, which proposal is subject to all the provisions in this section relating to proposed regulations.

(6) A tentative final regulation or tentative revised final regulation placed on public display in the office of the hearing clerk and, if deemed desirable by the Commissioner, published in the FEDERAL REGISTER. If the tentative regulation is placed on display only, the Commissioner shall publish an appropriate notice in the FEDERAL REGISTER stating that the document is available and specifying the time within which comments may be submitted orally or in writing on the tentative final regulation. The Commissioner shall mail a copy of the tentative final regulation and the FEDERAL REGISTER notice to each person who submitted comments on the proposed regulation if one has been published.

(7) A final regulation published in the FEDERAL REGISTER that provides an opportunity for the submission of further comments, in accordance with paragraph (e)(1) of this section.

(8) Any other public procedure established in this chapter and expressly applicable to the matter.

(g) The record of the administrative proceeding consists of all of the following:

(1) If the regulation was initiated by a petition, the administrative record specified in § 10.30(l).

(2) If a petition for reconsideration or for a stay of action is filed, the administrative record specified in § 10.33(k) and § 10.35(h).

(3) The proposed rule published in the FEDERAL REGISTER, including all information identified or filed by the Commissioner with the hearing clerk on the proposal.

(4) All comments received on the proposal, including all information submitted as a part of the comments.

(5) The notice promulgating the final regulation, including all information identified or filed by the Commissioner with the hearing clerk as part of the administrative record of the final regulation.

(6) The transcripts, minutes of meetings, reports, FEDERAL REGISTER notices, and other documents resulting from the optional procedures specified in paragraph (f) of this section, but not the transcript of a closed portion of a public advisory committee meeting.

(7) All documents submitted to the hearing clerk under § 10.65(h).

(h) The record of the administrative proceeding closes on the date of the Commissioner's decision unless some other date specified. Thereafter any interested person may submit a petition for reconsideration under § 10.33 or a petition for stay of action under

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§ 10.35. A person who wishes to rely upon information or views not included in the administrative record shall submit it to the Commissioner with a new petition to modify the final regulation.

(i) The hearing clerk shall maintain a chronological list of all regulations proposed and promulgated under this section and § 10.50 (which list will not include regulations resulting from petitions filed and assigned a docket number under § 10.30) showing—

(1) The docket number (for a petition submitted directly to a bureau, the list also includes the number or other designation assigned by the bureau, e.g., the number assigned to a food additive petition);

(2) The name of the petitioner, if any;

(3) The subject matter involved; and

(4) The disposition of the petition.

§ 10.45 Court review of final administrative action; exhaustion of administrative remedies.

(a) This section applies to court review of final administrative action taken by the Commissioner, including action taken under §§ 10.25 through 10.40 and § 16.1(b), except action subject to § 10.50 and part 12.

(b) A request that the Commissioner take or refrain from taking any form of administrative action must first be the subject of a final administrative decision based on a petition submitted under § 10.25(a) or, where applicable, a hearing under § 16.1(b) before any legal action is filed in a court complaining of the action or failure to act. If a court action is filed complaining of the action or failure to act before the submission of the decision on a petition under § 10.25(a) or, where applicable, a hearing under § 16.1(b), the Commissioner shall request dismissal of the court action or referral to the agency for an initial administrative determination on the grounds of a failure to exhaust administrative remedies, the lack of final agency action as required by 5 U.S.C. 701 et seq., and the lack of an actual controversy as required by 28 U.S.C. 2201. If a court action is filed requesting a stay of administrative action after a petition for a stay of action is denied because it was submitted after expiration of the time period provided under § 10.35, or after the time for submitting such a petition has expired, the Commissioner will request dismissal of the court action on the ground of a failure to exhaust administrative remedies.

(c) A request that administrative action be stayed must first be the subject of an administrative decision based upon a petition for stay of action submitted under § 10.35 before a request is made that a court stay the action. If a court action is filed requesting a stay of administrative action before the Commissioner's decision on a petition submitted in a timely manner pursuant to § 10.35, the Commissioner shall request dismissal of the court action or referral to the agency for an initial determination on the grounds of a failure to exhaust administrative remedies, the lack of final agency action as required by 5 U.S.C. 701 et seq., and the lack of an actual controversy as required by 28 U.S.C. 2201. If a court action is filed requesting a stay of administrative action after a petition for a stay of action is denied because it was submitted after expiration of the time period provided under § 10.35, or after the time for submitting such a petition has expired, the Commissioner will request dismissal of the court action on the ground of a failure to exhaust administrative remedies.

(d) The Commissioner's final decision constitutes final agency action (reviewable in the courts under 5 U.S.C. 701 et seq. and, where appropriate, 28 U.S.C. 2201) on a petition submitted under § 10.25(a), on a petition for reconsideration submitted under § 10.33, on a petition for stay of action submitted under § 10.35, on an advisory opinion issued under § 10.85, on a guideline issued under § 10.90, on a matter involving administrative action which is the subject of an opportunity for a hearing under § 16.1(b), or on the issuance of a final regulation published in accordance with § 10.40.

(1) It is the position of FDA except as otherwise provided in paragraph (d)(2) of this section, that—

(i) Final agency action exhausts all administrative remedies and is ripe for preenforcement judicial review as of the date of the final decision, unless applicable law explicitly requires that the petitioner take further action before judicial review is available;

(ii) An interested person is affected by, and thus has standing to obtain judicial review of final agency action; and

(iii) It is not appropriate to move to dismiss a suit for preenforcement judicial review of final agency action on the ground that indispenable parties are not joined or that it is an unconsented suit against the United States if the defect could be cured by amending the complaint.

(2) The Commissioner shall object to judicial review of a matter if—

(i) The matter is committed by law to the discretion of the Commissioner, e.g., a decision to recommend or not to recommend civil or criminal enforcement action under sections 302, 303, and 304 of the act; or

(ii) Review is not sought in a proper court.

(e) An interested person may request judicial review of a final decision of the Commissioner in the courts without first petitioning the Commissioner for reconsideration or for a stay of action, except that in accordance with paragraph (c) of this section, the person shall request a stay by the Commissioner under § 10.35 before requesting a stay by the court.

(f) The Commissioner shall take the position in an action for judicial review under 5 U.S.C. 701 et seq., whether or not it includes a request for a declaratory judgment under 28 U.S.C. 2201, or in any other case in which the validity of administrative action is properly challenged, that the validity of the action must be determined solely on the basis of the administrative record specified in §§ 10.30(i), 10.35(h), 10.40(g), and 16.80(c) or the administrative record applicable to any decision or action under the regulations referenced in § 16.1(b), and that additional information or views may not be considered. An interested person who wishes to rely upon information or views not included in the administrative record shall submit them to the Commissioner with a new petition to modify the action under § 10.25(a).

(g) The Commissioner requests that all petitions for judicial review of a particular matter be filed in a single U.S. District court. If petitions are filed in more than one jurisdiction, the Commissioner will take appropriate action to prevent a multiplicity of suits in various jurisdictions, such as—

(1) A request for transfer of one or more suits to consolidate separate actions, under 28 U.S.C. 1404(a) or 28 U.S.C. 2112(a);

(2) A request that actions in all but one jurisdiction be stayed pending the conclusion of one proceeding;

(3) A request that all but one action be dismissed pending the conclusion of one proceeding, with the suggestion that the other plaintiffs intervene in that one suit; or

(4) A request that one of the suits be maintained as a class action in behalf of all affected persons.

(h) Upon judicial review of administrative action under this section—

(1) If a court determines that the administrative record is inadequate to support the action, the Commissioner shall determine whether to proceed with such action.

(i) If the Commissioner decides to proceed with the action, the court will be requested to remand the matter to the agency to reopen the administrative proceeding and record, or on the Commissioner's own initiative the administrative proceeding and record may be reopened upon receipt of the court determination. A reopened administrative proceeding will be conducted under the provisions of this part and in accordance with any directions of the court.

(ii) If the Commissioner concludes that the public interest requires that the action remain in effect pending further administrative proceedings, the court will be requested not to stay the matter in the interim and the Commissioner shall expedite the further administrative proceedings.

(2) If a court determines that the administrative record is adequate, but the rationale for the action must be further explained—

(i) The Commissioner shall request either that further explanation be provided in writing directly to the court without further administrative proceedings, or that the administrative proceeding be reopened in accordance with paragraph (h)(1)(i) of this section; and

(ii) If the Commissioner concludes that the public interest requires that the action remain in effect pending further court or administrative proceedings, the court will be requested not to stay the matter in the interim and the Commissioner shall expedite the further proceedings.

§ 10.50 Promulgation of regulations and orders after an opportunity for a formal evidentiary public hearing.

(a) The Commissioner shall promulgate regulations and orders after an opportunity for a formal evidentiary public hearing under part 12 whenever all of the following apply:

(1) The subject matter of the regulation or order is subject by statute to an opportunity for a formal evidentiary public hearing.

(2) The person requesting the hearing has a right to an opportunity for a hearing and submits adequate justification for the hearing as required by §§ 12.20 through 12.22 and other applicable provisions in this chapter, e.g., §§ 314.200, 430.20(b), 514.200, and 601.7(a).

(b) The Commissioner may order a formal evidentiary public hearing on any matter whenever it would be in the public interest to do so.

(c) The provisions of the act, and other laws, that afford a person who would be adversely affected by administrative action an opportunity for a formal evidentiary public hearing as listed below. The list imparts no right to a hearing where the statutory section provides no opportunity for a hearing.

(1) Section 401 on definitions and standards for food.

(2) Section 403(j) on regulations for labeling of foods for special dietary uses.

(3) Section 404(a) on regulations for emergency permit control.

(4) Section 406 on tolerances for poisonous substances in food.

(5) Section 409 (c), (d), and (h) on food additive regulations.

(6) Section 501(b) on tests or methods of assay for drugs described in official compendia.

(7) Section 502(d) on regulations designating habit forming drugs.

(8) Section 502(h) on regulations designating requirements for drugs liable to deterioration.

(9) Section 502(n) on prescription drug advertising regulations.

(10) Section 506(c) on insulin regulations.

(11) Section 507(f) on regulations for antibiotic drug certification.

(12) Section 512(n)(5) on regulations for animal antibiotic drugs and certification requirements.

(13) Section 706 (b) and (c) on regulations for color additive listing and certification.

(14) Section 4(a) of the Fair Packaging and Labeling Act on food, drug, device, and cosmetic labeling.

(15) Section 5(c) of the Fair Packaging and labeling Act on additional economic regulations for food, drugs, devices, and cosmetics.

(16) Section 505 (d) and (e) on new drug applications.

(17) Section 512 (d), (e), and (m) (3) and (4) on new animal drug applications.

(18) Section 515(g) on device premarket approval applications and product development protocols.

(19) Section 351(a) of the Public Health Service Act on plant and product licenses for a biologic.

§ 10.55 Separation of functions; ex parte communications.

(a) This section applies to any matter subject by statute to an opportunity for a formal evidentiary public hearing, as listed in § 10.50(c), and any matter subject to a hearing before a Public Board of Inquiry under part 13.

(b) In the case of a matter listed in § 10.50(c)(1) through (10) and (12) through (15)—

(1) An interested person may meet or correspond with any FDA representative concerning a matter prior to publication of a notice announcing a formal evidentiary public hearing or a hearing before a Public Board of Inquiry on the matter; the provisions of § 10.65 apply to the meetings and correspondence; and

(2) upon publication of a notice announcing a formal evidentiary public hearing or a hearing before a Public Board of Inquiry, the following separation of functions apply:

(i) The bureau responsible for the matter is, as a party to the hearing, responsible for all investigative functions and for presentation of the position of the bureau at the hearing and in any pleading or oral argument before the Commissioner. Representatives of the bureau may not participate or advise in any decision except as witness or counsel in public proceedings. There is to be no other communication between representatives of the bureau and representatives of the office of the Commissioner concerning the matter before the decision of the Commissioner. The Commissioner may, however, designate representatives of a bureau to advise the office of the Commissioner, or designate members of that office to advise a bureau. The designation will be in writing and filed with the hearing clerk no later than the time specified in paragraph (b)(2) of this section for the application of separation of functions. All members of FDA other than representatives of the involved bureau (except those specifically designated otherwise) shall be available to advise and participate with the office of the Commissioner in its functions relating to the hearing and the final decision.

(ii) The Chief Counsel for FDA shall designate members of the office of General Counsel to advise and participate with the bureau in its functions in the hearing and members who are to advise the office of the Commissioner in its functions related to the hearing and the final decision. The members of the office of General Counsel designated to advise the bureau may not participate or advise in any decision of the Commissioner except as counsel in public proceedings. The designation is to be in the form of a memorandum filed with the hearing clerk and made a part of the administrative record in the proceeding. There may be no other communication between those members of the office of General Counsel designated to advise the office of the Commissioner and any other persons in the office of General Counsel or in the involved bureau with respect to the matter prior to the decision of the Commissioner. The Chief Counsel may assign new attorneys to advise either the bureau or the office of the Commissioner at any state of the proceedings. The Chief Counsel will ordinarily advise and participate with the office of the Commissioner in its functions relating to the hearing and the final decision.

(iii) The office of the Commissioner is responsible for the agency review and final decision of the matter, with the advice and participation of anyone in FDA other than representatives of the involved bureau and those members of the office of General Counsel designated to assist in the bureau's functions in the hearing.

(c) In a matter listed in § 10.50(c)(11) and (16) through (19), the provisions relating to separation of functions set forth in §§ 314.200(f), 430.20(b)(7), 514.200, and 601.7(a) are applicable before publication of a notice announcing a formal evidentiary public hearing or a hearing before a Public Board of Inquiry. Following publication of the notice of hearing, the rules in paragraph (b)(2) of this section apply.

(d) Except as provided in paragraph (e) of this section, between the date that separation of functions applies

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under paragraph (b) or (c) of this section and the date of the Commissioner's decision on the matter, communication concerning the matter involved in the hearing will be restricted as follows:

(1) No person outside the agency may have an ex parte communication with the presiding officer or any person representing the office of the Commissioner concerning the matter in the hearing. Neither the presiding officer not any person representing the office of the Commissioner may have any ex parte communication with a person outside the agency concerning the matter in the hearing. All communications are to be public communications, as witness or counsel, under the applicable provisions of this part.

(2) A participant in the hearing may submit a written communication to the office of the Commissioner with respect to a proposal for settlement. These communications are to be in the form of pleadings, served on all other participants, and filed with the hearing clerk like any other pleading.

(3) A written communication contrary to this section must be immediately served on all other participants and filed with the hearing clerk, and an oral communication contrary to this section must be immediately recorded in a written memorandum, served on all other participants, and filed with the hearing clerk. A person, including a representative of a participant in the hearing, who is involved in an oral communication contrary to this section, must, if possible, be made available for cross-examination during the hearing with respect to the substance of that conversation. Rebuttal testimony pertinent to a written or oral communication contrary to this section will be permitted. Cross-examination and rebuttal testimony will be transcribed and filed with the hearing clerk.

(e) The prohibitions specified in paragraph (d) of this section apply to a person who knows of a notice of hearing in advance of its publication from the time the knowledge is acquired.

(f) The making of a communication contrary to this section may, consistent with the interests of justice and the policy of the underlying statute, result in a decision adverse to the person knowingly making or causing the making of such a communication.

§ 10.60 Referral by court.

(a) This section applies when a Federal, State, or local court holds in abeyance, or refers to the Commissioner, any matter for an initial administrative determination under § 10.25(c) or § 10.45(b).

(b) The Commissioner shall promptly agree or decline to accept a court referral. Whenever feasible in light of agency priorities and resources, the Commissioner shall agree to accept a referral and shall proceed to determine the matter referred.

(c) In reviewing the matter, the Commissioner may use the following procedures:

(1) Conferences, meetings, discussions, and correspondence under § 10.65.

(2) A hearing under parts 12, 13, 14, 15, or 16.

(3) A notice published in the FEDERAL REGISTER requesting information and views.

(4) Any other public procedure established in other sections of this chapter and expressly applicable to the matter under those provisions.

(d) If the Commissioner's review of the matter results in a proposed rule, the provisions of § 10.40 or § 10.50 also apply.

§ 10.65 Meetings and correspondence.

(a) In addition to public hearings and proceedings established under this part and other sections of this chapter, meetings may be held and correspondence may be exchanged between representatives of FDA and an interested person outside FDA on a matter within the jurisdiction of the laws administered by the Commissioner. Action on meetings and correspondence does not constitute final administrative action subject to judicial review under § 10.45.

(b) The Commissioner may conclude that it would be in the public interest to hold an open public meeting to discuss a matter (or class of matters) pending before FDA, at which any interested person may participate.

(1) The Commissioner shall give public notice through the public calendar described in § 10.100(a) of the time and place of the meeting and of the matters to be discussed, and may also publish notice of the meeting.

(2) The meeting will be informal, i.e., any interested person may attend and participate in the discussion without prior notice to the Agency unless the notice of the meeting specifies otherwise.

(3) No transcript of recording of the meeting will be made. A written memorandum summarizing the substance of the meeting will be prepared by an FDA representative.

(c) A meeting with a person outside the Department, including a person in the executive or legislative branch of the Federal Government, concerning a pending court case, administrative hearing, or other regulatory action or decision, which involves more than a brief description of the matter, is to be summarized in a written memorandum, which is filed in the administrative file on the matter.

(d) Every person outside the Federal Government may request and obtain a private meeting with a representative of FDA in agency offices to discuss a matter.

(1) The person requesting a meeting may be accompanied by a reasonable number of employees, consultants, or other persons with whom there is a commercial arrangement within the meaning of § 20.81(a). Neither FDA nor any other person may require the attendance of a person who is not an employee of the executive branch of the Federal Government without the agreement of the person requesting the meeting. Any person may attend by mutual consent of the person requesting the meeting and FDA.

(2) FDA will determine which representatives of the Agency will attend the meeting. The person requesting the meeting may request but not require or preclude the attendance of a specific FDA employee.

(3) Whenever appropriate (e.g., the meeting involves a matter covered by paragraph (c) of this section or other important matter, a decision on an issue, or statements or advice or conclusions to which future reference may be desirable), a written memorandum summarizing the substance of the meeting will be prepared by an FDA representative.

(4) A person who wishes to attend a private meeting, but who either is not permitted to attend by the person requesting the meeting or by FDA or who cannot attend because the meeting is conducted by telephone, may obtain a separate meeting with FDA to discuss the same matter or an additional matter.

(e) FDA employees have a responsibility to meet with all segments of the public to promote the objectives of the laws administered by the Agency. In pursuing this responsibility the following general policy applies where agency employees are invited by persons outside the Federal Government to attend or participate in meetings outside agency offices as representatives of the Agency.

(1) A person outside the executive branch may invite an agency representative to attend or participate in a meeting outside agency offices. The agency representative is not obligated to attend or participate, but may do so where it is in the public interest and will promote the objectives of the act.

(2) The agency representative may request that the meeting be open if that would be in the public interest. The agency representative may decline to participate in a meeting held as a private meeting if that will best serve the public interest.

(3) An agency representative may not knowingly participate in a meeting which is closed on the basis of sex, race, or religion.

(4) A meeting, whether open or closed, is subject to paragraph (d)(3) of this section with respect to memoranda summarizing the substance of the meeting.

(f) Representatives of FDA may initiate a meeting or correspondence with any person outside the Federal Government on any matter concerning the laws administered by the Commissioner.

(1) A meeting initiated by FDA representatives which involves a small number of interested persons, for example, a meeting with a petitioner or with two manufacturers of a particular product which requires additional testing or with a trade association employee to discuss an industry labeling problem, may be a private meeting. A meeting initiated by FDA representatives which invloves a large number of interested persons, for example, 10 manufacturers of an ingredient in a discussion of appropriate testing or labeling, must be held as an open conference or meeting under paragraph (b) of this section.

(2) Whenever appropriate (e.g., the meeting invloves a matter covered by paragraph (c) of this section or another important matter, a decision on an issue, or statements or advice or conclusions to which future reference may be desirable), a written memorandum summarizing the substance of the meeting will be prepared by an FDA representative.

(g) A person who participates in a meeting described in paragraphs (b) through (f) of this section may also prepare and submit to FDA for inclusion in the administrative file a written memorandum summarizing the substance of the meeting.

(h) Memoranda of meetings prepared by an FDA representative or by any other person and all correspondence which relate to a matter pending before the agency will promptly be filed in the administrative file of the proceeding.

(i) A meeting with a representative of Congress relating to a pending or potential investigation, inquiry, or hearing by a congressional committee or a Member of Congress will be summarized in a written memorandum which is to be forwarded to the Food and Drug Administration, Office of Legislative Affairs. This provision does not restrict the right of an agency employee to participate in the meeting.

(j) A meeting of an advisory committee is subject to the requirements of part 14.

(k) Under 42 U.S.C. 2631(a)(8), a log or summary is to be made of all meetings between representatives of FDA and industry and other interested parties to implement the Radiation Control for Health and Safety Act of 1968.

§ 10.70 Documentation of significant decisions in administrative file.

(a) This section applies to every significant FDA decision on any matter under the laws administered by the Commissioner, whether it is raised formally, for example, by a petition or informally, for example, by correspondence.

(b) FDA employees responsible for handling a matter are responsible for insuring the completeness of the administrative file relating to it. The file must contain—

(1) Appropriate documentation of the basis for the decision, including relevent evaluations, reviews, memoranda, letters, opinions of consultants, minutes of meetings, and other pertinent written documents; and

(2) The recommendations and decisions of individual employees, including supervisory personnel, responsible for handling the matter.

(i) The recommendations and decisions are to reveal significant controversies or differences of opinion and their resolution.

(ii) An agency employee working on a matter and, consistent with the prompt completion of other assignments, an agency employee who has worked on a matter may record individual views on that matter in a written memorandum, which is to be placed in the file.

(c) A written document placed in an administrative file must—

(1) Relate to the factual, scientific, legal or related issues under consideration;

(2) Be dated and signed by the author;

(3) Be directed to the file, to appropriate supervisory personnel, and to other appropriate employees, and show all persons to whom copies were sent;

(4) Avoid defamatory language, intemperate remarks, undocumented charges, or irrelevant matters (e.g., personnel complaints);

(5) If it records the views, analyses, recommendations, or decisions of an agency employee in addition to the author, be given to the other employees; and

(6) Once completed (i.e., typed in final form, dated, and signed) not be altered or removed. Later additions to or revisions of the document must be made in a new document.

(d) Memoranda or other documents that are prepared by agency employees and are not in the administrative file have no status or effect.

(e) FDA employees working on a matter have access to the administrative file on that matter, as appropriate for the conduct of their work. FDA employees who have worked on a matter have access to the administrative file on that matter so long as attention to their assignments is not impeded. Reasonable restrictions may be placed upon access to assure proper cataloging and storage of documents, the availability of the file to others, and the completeness of the file for review.

§ 10.75 Internal agency review of decisions.

(a) A decision of an FDA employee, other than the Commissioner, on a matter, is subject to review by the employee's supervisor under the following circumstances;

(1) At the request of the employee.

(2) On the initiative of the supervisor.

(3) At the request of an interested person outside the agency.

(4) As required by delegations of authority.

(b) The review will be made by consultation between the employee and the supervisor or by review of the administrative file on the matter, or both. The review will ordinarily follow the established agency channels of supervision or review for that matter.

(c) An interested person outside the agency may request internal agency review of a decision through the established agency channels of supervision or review. Personal review of these matters by bureau directors or the office of the Commissioner will occur for any of the following purposes:

(1) To resolve an issue that cannot be resolved at lower levels within the agency (e.g., between two parts of a bureau or other component of the agency, between two bureaus or other components of the agency, or between the agency and an interested person outside the agency).

(2) To review policy matters requiring the attention of bureau or agency management.

(3) In unusual situations requiring an immediate review in the public interest.

(4) As required by delegations of authority.

(d) Internal agency review of a decision must be based on the information in the administrative file. If an interested person presents new information not in the file, the matter will be returned to the appropriate lower level in the agency for reevaluation based on the new information.

§ 10.80 Dissemination of draft Federal Register notices and regulations.

(a) A representative of FDA may discuss orally or in writing with an interested person ideas and recommendations for notices of regulations. FDA welcomes assistance in developing

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ideas for, and in gathering the information to support, notices and regulations.

(b) *Notices and proposed regulations.* (1) Once it is determined that a notice or proposed regulation will be prepared, the general concepts may be discussed by a representative of FDA with an interested person. Details of a draft of a notice or proposed regulation may be discussed with a person outside the executive branch only with the specific permission of the Commissioner.

(2) A draft of a notice or proposed regulation or its preamble, or a portion of either, may be furnished to an interested person outside the executive branch only if it is made available to all interested persons by a notice published in the FEDERAL REGISTER. A draft of a notice or proposed regulation made available in this manner may, without the prior permission of the Commissioner, be discussed with an interested person to clarify and resolve questions raised and concerns expressed about the draft.

(c) After publication of a notice or proposed regulation in the FEDERAL REGISTER, and before preparation of a draft of the final notice or regulation, a representative of FDA may discuss the proposal with an interested person as provided in paragraph (b)(2) of this section.

(d) *Final notices and regulations.* (1) Details of a draft of a final notice or regulation may be discussed with an interested person outside the executive branch only with the specific permission of the Commissioner.

(2) A draft of a final notice or regulation or its preamble, or any portion of either, may be furnished to an interested person outside the executive branch only if it is made available to all interested persons by a notice published in the FEDERAL REGISTER, except as otherwise provided in paragraphs (g) and (j) of this section. A draft of a final notice or regulation made available to an interested person in this manner may, without the prior permission of the Commissioner, be discussed as provided in paragraph (b)(2) of this section.

(i) The final notice or regulation and its preamble will be prepared solely on the basis of the administrative record.

(ii) If additional technical information from a person outside the executive branch is necessary to draft the final notice or regulation or its preamble, it will be requested by FDA in general terms and furnished directly to the hearing clerk to be included as part of the administrative record.

(iii) If direct discussion by FDA of a draft of a final notice or regulation or its preamble is required with a person outside the executive branch, appropriate protective procedures will be undertaken to make certain that a full and impartial administrative record is established. Such procedures may include either—

(*a*) The scheduling of an open public meeting under § 10.65(b) at which interested persons may participate in review of and comment on the draft document; or

(*b*) The preparation of a tentative final regulation or tentative revised final regulation under § 10.40(f)(9), on which interested persons will be given an additional period of time for oral and written comment.

(e) After a final regulation is published, an FDA representative may discuss any aspect of it with an interested person.

(f) In addition to the requirements of this section, the provisions of § 10.55 apply to the promulgation of a regulation subject to § 10.50 and part 12.

(g) A draft of a final food additive, color additive, or new animal drug regulation or a proposed or final antibiotic regulation may be furnished to the petitioner for comment on the technical accuracy of the regulation. Every meeting with a petitioner relating to the draft will be recorded in a written memorandum, and all memoranda and correspondence will be filed with the hearing clerk as part of the administrative record of the regulation under the provisions of § 10.65.

(h) In accordance with 42 U.S.C. 263f, the Commissioner shall consult with interested persons and with the Technical Electronic Product Radiation Safety Standards Committee (TEPRSSC) before prescribing any performance standard for an electronic product. Accordingly, the Commissioner shall publish in the FEDERAL REGISTER an announcement when a proposed or final performance standard, including any amendment, is being considered for an electronic product, and any draft of any proposed or final standard will be furnished to an interested person upon request and may be discussed in detail.

(i) The provisions of § 10.65 apply to meetings and correspondence relating to draft notices and regulations.

(j) The provisions of this section restricting discussion and disclosure of draft notices and regulations do not apply to situations covered by §§ 20.83 through 20.89.

§ 10.85 Advisory opinions.

(a) An interested person may request an advisory opinion from the Commissioner on a matter of general applicability.

(1) The request will be granted whenever feasible.

(2) The request may be denied if—

(i) The request contains incomplete information on which to base an informed advisory opinion;

(ii) The Commissioner concludes that an advisory opinion cannot reasonably be given on the matter involved;

(iii) The matter is adequately covered by a prior advisory opinion or a regulation;

(iv) The request covers a particular product or ingredient or label and does not raise a policy issue of broad applicability; or

(v) The Commissioner otherwise concludes that an advisory opinion would not be in the public interest.

(b) A request for an advisory opinion is to be submitted in accordance with § 10.20, is subject to the provisions of § 10.30 (c) through (l), and must be in the following form:

(Date) _____

Hearing Clerk, Food and Drug Administration, Department of Health, Education, and Welfare, Rm. 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

REQUEST FOR ADVISORY OPINION

The undersigned submits this request for an advisory opinion of the Commissioner of Food and Drugs with respect to _____ (the general nature of the matter involved).

A. *Issues involved.*

(A concise statement of the issues and questions on which an opinion is requested.)

B. *Statement of facts and law.*

(A full statement of all facts and legal points relevant to the request.)

The undersigned certifies that, to the best of his/her knowledge and belief, this request includes all data, information, and views relevant to the matter, whether favorable or unfavorable to the position of the undersigned, which is the subject of the request.

(Signature) _____
(Person making request) _____
(Mailing address) _____
(Telephone number) _____

(c) The Commissioner may respond to an oral or written request to the agency as a request for an advisory opinion, in which case the request will be filed with the hearing clerk and be subject to this section.

(d) A statement of policy or interpretation made in the following documents, unless subsequently repudiated by the agency or overruled by a court, will constitute an advisory opinion:

(1) Any portion of a FEDERAL REGISTER notice other than the text of a proposed or final regulation, e.g., a notice to manufacturers or a preamble to a proposed or final regulation.

(2) Trade Correspondence (T.C. Nos. 1-431 and 1A-8A) issued by FDA between 1938 and 1946.

(3) Compliance policy guides issued by FDA beginning in 1968 and codified in the Compliance Policy Guides manual.

(4) Other documents specifically identified as advisory opinions, e.g., advisory opinions on the performance standard for diagnostic X-ray systems, issued before July 1, 1975, and filed in a permanent public file for prior advisory opinions maintained by the Freedom of Information Staff (HFI-35).

(5) Guidelines issued by FDA under § 10.90(b).

(e) An advisory opinion represents the formal position of FDA on a matter and, except as provided in paragraph (f) of this section, obligates the agency to follow it until it is amended or revoked. The Commissioner may not recommend legal action against a person or product with respect to an action taken in conformity with an advisory opinion which has not been amended or revoked.

(f) In unusual situations involving an immediate an significant danger to health, the Commissioner may take appropriate civil enforcement action contrary to an advisory opinion before amending or revoking the opinion. This action may be taken only with the approval of the Commissioner, who may not delegate this function. Appropriate amendment or revocation of the advisory opinion involved will be expedited.

(g) An advisory opinion may be amended or revoked at any time after it has been issued. Notice of amendment or revocation will be given in the same manner as notice of the advisory opinion was originally given or in the FEDERAL REGISTER, and will be placed on public display as part of the file on the matter in the office of the hearing clerk. The hearing clerk shall maintain a separate chronological index of all advisory opinions filed. The index will specify the date of the request for the advisory opinion, the date of the opinion, and identification of the appropriate file.

(h) Action undertaken or completed in conformity with an advisory opinion which has subsequently been amended or revoked is acceptable to FDA unless the Commissioner determines that substantial public interest considerations preclude continued acceptance. Whenever possible, an amended or revoked advisory opinion will state when action previously undertaken or completed does not remain acceptable, and any transition period that may be applicable.

(i) An interested person may submit written comments on an advisory opinion or modified advisory opinion. Four copies of any comments are to be sent to the hearing clerk for inclusion in the public file on the advisory opinion. Individuals may submit only one copy. Comments will be considered in determining whether further modification of an advisory opinion is warranted.

(j) An advisory opinion may be used in administrative or court proceedings to illustrate acceptable and unacceptable procedures or standards, but not as a legal requirement.

(k) A statement made or advice provided by an FDA employee constitutes an advisory opinion only if it is issued in writing under this section. A statement or advice given by an FDA employee orally, or given in writing but not under this section or § 10.90, is an informal communication that represents the best judgment of that employee at that time but does not constitute an advisory opinion, does not necessarily represent the formal position of FDA, and does not bind or otherwise obligate or commit the agency to the views expressed.

§ 10.90 FDA regulations, guidelines, recommendations, and agreements.

(a) *Regulations.* FDA regulations are promulgated in the FEDERAL REGISTER under § 10.40 or § 10.50 and codified in the Code of Federal Regulations. Regulations may contain provisions that will be enforced as legal requirements, or which are intended only as guidelines and recommendations, or both. The dissemination of draft notices and regulations is subject to § 10.80.

(b) *Guidelines.* FDA guidelines are included in the public file of guidelines established by the hearing clerk, under this paragraph, unless they have been published as regulations under paragraph (a) of this section.

(1) Guidelines establish principles or practices of general applicability and do not include decisions or advice on particular situations. Guidelines relate to performance characteristics, preclinical and clinical test procedures, manufacturing practices, product standards, scientific protocols, compliance criteria, ingredient specifications, labeling, or other technical or policy criteria. Guidelines state procedures or standards of general applicability that are not legal requirements but are acceptable to FDA for a subject matter which falls within the laws administered by the Commissioner.

(i) A person may rely upon a guideline with assurance that it is acceptable to FDA, or may follow different procedures or standards. When different procedures or standards are chosen, a person may, but is not required to, discuss the matter in advance with FDA to prevent the expenditure of money and effort on activity that may later be determined to be unacceptable.

(ii) Use of testing guidelines established by FDA assures acceptance of a test as scientifically valid, if properly conducted, but does not assure approval of any ingredient or product so tested. Test results or other available information may require disapproval or additional testing.

(2) A guideline represents the formal position of FDA on a matter and, except as provided in paragraph (b)(3) of this section, obligates the agency to follow it until it is amended or revoked. The Commissioner may not recommend legal action against a person or product with respect to an action taken in conformity with a guideline issued under this section that has not been amended or revoked.

(3) In unusual situations involving an immediate and significant danger to health, the Commissioner may take appropriate civil enforcement action contrary to a guideline before amending or revoking the guideline as provided in paragraph (b)(5) of this section. This action may be taken only with the approval of the Commissioner, who may not delegate that function. Amendment or revocation of the guideline involved will be expedited.

(4) A guideline will be included in the public file upon approval of the guideline by the Commissioner or relevant bureau director and publication of a notice of its availability. The notice will state (i) the title of the guideline, (ii) the subject matter it covers, and (iii) the office or individual responsible for maintaining the guideline.

(5) A guideline may be amended or revoked by the Commissioner or relevant bureau director and publication of a notice of the amendment or revocation. The notice will state (i) the title of the guideline, (ii) the subject matter it covers, and (iii) the office or individual responsible for maintaining the guideline. All original guidelines and subsequent amendments will be retained in the public file permanently so that a complete record of the development of each guideline is available.

(6) Action undertaken or completed in conformity with a guideline which has subsequently been amended or revoked will remain acceptable to FDA unless the Commissioner determines that substantial public interest consideration preclude continued acceptance. This determination may be made at the time of or after amendment or revocation of the guideline. Whenever possible, notice of an amended or revoked guideline will state when it has been determined that action previously undertaken or completed in conformity with a prior guideline does not remain acceptable, and any transition period that may be applicable.

(7) The notice of a guideline or of an amended or revoked guideline will state that an interested person may submit written comments on the guideline. Four copies of comments are to be sent to the hearing clerk for inclusion in the public file on the guideline. The comments will be con-

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sidered in determining whether further amendments to or reinstitution of a guideline are warranted.

(8) A guideline may be used in administrative or court proceedings to illustrate acceptable and unacceptable procedures or standards, but not as a legal requirement.

(9) A statement relating to acceptable procedures or standards given by an FDA employee orally, or in writing but not under § 10.85 of this section, is an informal communication that represents the best judgment of that employee at that time but does not <constitute a guideline, does not necessarily represent the formal position of FDA, and does not bind or otherwise obligate the agency to the views expressed.

(10) Because of the large number of analytical methods involved in FDA activities, their length and complexity and the volume and frequency of amendment, paragraph (b)(4) of this section does not apply to analytical methods except to the extent that the Commissioner concludes that particular analytical methods should be included in the public file for a particular purpose. FDA analytical methods are available for public disclosure under part 20.

(11) The dissemination of draft guidelines is subject to the same provisions as the dissemination of draft notices and regulations under § 10.80.

(c) *Recommendations.* In addition to the guidelines subject to paragraph (b) of this section, FDA often formulates and disseminates recommendations about matters which are authorized by, but do not involve direct regulatory action under, the laws administered by the Commissioner, e.g., model State and local ordinances, or personnel practices for reducing radiation exposure, issued under 42 U.S.C. 243 and 263d(b). These recommendations may, in the discretion of the Commissioner, be handled under the procedures established in paragraph (b) of this section, except that the recommendations will be included in a separate public file of recommendations established by the Freedom of Information Staff (HFI-35) and will be separated from the guidelines in the notice of availability published in the FEDERAL REGISTER as regulations under paragraph (a) of this section.

(d) *Agreements.* Formal agreements, memoranda of understanding, or other similar written documents executed by FDA and another person will be included in the public file on agreements established by the Freedom of Information Staff (HFI-35) under § 20.108. A document not included in the public file is deemed to be rescinded and has no force or effect whatever.

§ 10.95 Participation in outside standard-setting activities.

(a) *General.* This section applies to participation by FDA employees in standard-setting activities outside the agency. Standard-setting activities include matters such as the development of performance characteristics, testing methodology, manufacturing practices, product standards, scientific protocols, compliance criteria, ingredient specifications, labeling, or other technical or policy criteria. FDA encourages employees participation in outside standard-setting activities that are in the public interest.

(b) *Standard-setting activities by other Federal Government agencies.* (1) An FDA employee may participate in these activities after approval of the activity under procedures specified in the current agency Staff Manual Guide.

(2) Approval forms and all pertinent background information describing the activity will be included in the public file on standard-setting activities established in the Public Records and Documents Center.

(3) If a member of the public is invited by FDA to present views to, or to accompany, the FDA employee at a meeting, the invitations will be extended to a representative sampling of the public, including consumer groups, industry associations, professional societies, and academic institutions.

(4) An FDA employee appointed as the liaison representative to an activity shall refer all requests for information about or participation in the activity to the group or organization responsible for the activity.

(c) *Standard-setting activities by State and local government agencies and by United Nations organizations and other international organizations and foreign governments pursuant to treaty.* (1) An FDA employee may participate in these activities after approval of the activity under procedures specified in the current agency Staff Manual Guide.

(2) Approval forms and all pertinent background information describing the activity will be included in the public file on standard-setting activities established by the Freedom of Information Staff (HFI-35).

(3) The availability for public disclosure of records relating to the activity will be governed by part 20.

(4) If a member of the public is invited by FDA to present views to, or to accompany, the FDA employee at a meeting, the invitation will be extended to a representative sampling of the public, including comsumer groups, industry associations, professional societies, and academic institutions.

(5) An FDA employee appointed as the liaison representative to an activity shall refer all requests for information about or participation in the activity to the group or organization responsible for the activity.

(d) *Standard-setting activities by private groups and organizations.* (1) An FDA employee may engage in these activities after approval of the activity under procedures specified in the current agency Staff Manual Guide. A request for official participation must be made by the group or organization in writing, must describe the scope of the activity, and must demonstrate that the minimum standards set out in paragraph (d)(5) of this section are met. Except as provided in paragraph (d)(7) of this section are met. Except as provided in paragraph (d)(7) of this section, a request that is granted will be the subject of a letter from the Commissioner or the bureau director to the organization stating—

(i) Whether participation by the individual will be as a voting or nonvoting liaison representative;

(ii) That participation by the individual does not connote FDA agreement with, or endorsement of, any decisions reached; and

(iii) That participation by the individual precludes service as the deciding official on the standard involved if it should later come before FDA. The deciding official is the person who signs a document ruling upon the standard.

(2) The letter requesting official FDA participation, the approval form, and the Commissioner's or bureau director's letter, together with all pertinent background information describing the activities involved, will be included in the public file on standard-setting activities established by the Freedom of Information Staff (HFI-35).

(3) The availability for public disclosure of records relating to the activities will be governed by part 20.

(4) An FDA employee appointed as the liaison representative to an activity shall refer all requests for information about or participation in the activity to the group or organization responsible for the activity.

(5) The following minimum standards apply to an outside private standard-setting activity in which FDA employees participate:

(i) The activity will be based upon consideration of sound scientific and technological information, will permit revision on the basis of new information, and will be designed to protect the public against unsafe, ineffective, or deceptive products or practices.

(ii) The activity and resulting standards will not be designed for the economic benefit of any company, group, or organization, will not be used for such antitrust violations as fixing prices or hindering competition, and will not involve establishment of certification or specific approval of individual products or services.

(iii) The group or organization responsible for the standard-setting activity must have a procedure by which an interested person will have an opportunity to provide information and views on the activity and standards involved, without the payment of fees, and the information and views will be considered. How this is accomplished, including whether the presentation will be in person or in writing, will be decided by the group or organization responsible for the activity.

(6) Membership of an FDA employee in an organization that also conducts a standard-setting activity does not invoke the provisions of this section unless the employee participates in the standard-setting activity. Participation in a standard-setting activity is subject to this section.

(7) The Commissioner may determine in writing that, because direct involvement by FDA in a particular standard-setting activity is in the public interest and will promote the objectives of the act and the agency, the participation is exempt from the requirements of paragraph (d)(1) (ii) and/or (iii) of this section. This determination will be included in the public file on standard-setting activities established by the Public Records and Documents Center and in any relevant administrative file. The activity may include the establishment and validation of analytical methods for regulatory use, drafting uniform laws and regulations, and the development of recommendations concerning public health and preventive medicine practices by national and international organizations.

(8) Because of the close daily cooperation between FDA and the associations of State and local government officials listed below in this paragraph, and the large number of agency employees who are members of or work with these associations, participation in the activities of these associations is exempt from paragraph (d)(1) through (7) of this section, except that a list of the committees and other groups of these associations will be included in the public file on standard-setting activities established by the Freedom of Information Staff (HFI-35):

(i) American Public Health Association.

(ii) Association of American Feed Control Officials, Inc.

(iii) Association of Food and Drug Officials.

(iv) Association of Official Analytical Chemists.

(v) Conference of State Sanitary Engineers.

(vi) Conference of Radiation Control Program Directors.

(vii) International Association of Milk, Food and Environmental Sanitarians, Inc.

(viii) Interstate Seafood Seminar.

(ix) National Conference on Interstate Milk Shipments.

(x) National Conference on Weights and Measures.

(xi) National Environmental Health Association.

(xii) National Shellfish Sanitation Program.

§ 10.100 Public calendars.

(a) *Prospective public calendar of public proceedings.* (1) A public calendar will be prepared and made publicly available each week showing, to the extent feasible, for the following 4 weeks, the public meetings, conferences, hearings, advisory committee meetings, seminars, and other public proceedings of FDA, and other significant public events involving FDA, e.g., congressional hearings.

(2) A copy of this public calendar will be placed on public display in the following places:

(i) Office of the Hearing Clerk.

(ii) Office of the Associate Commissioner for Public Affairs.

(iii) A central place in each bureau.

(iv) A central place in each field office.

(v) A central place at the National Center for Toxicological Research.

(b) *Retrospective public calendar of meetings.* (1) A public calendar will be prepared and made publicly available each week showing for the previous week meetings with persons outside the executive branch and other significant events involving the representatives of FDA designated under paragraph (b)(3) of this section, but telephone conversations will be included on an optional basis and meetings with the working press, except for "house organs" (i.e., publications of firms that manufacture or distribute regulated products, or industry associations), and with on-site contractors will not be included. Meetings with members of the judiciary, representatives of Congress, or staffs of congressional committees will be included when the meeting relates to a pending court case, administrative hearing, or other regulatory action or decision and involves more than a brief description of the matter.

(2) The calendar will include all meetings, conferences, seminars, social events sponsored by the regulated industry, and speeches. The calendar will specify the date and the person and subject matter involved. When more than one FDA representative is in attendance, only the presiding or head representative will report the meeting on the public calendar. If a large number of persons is involved, the name of each need not be specified. Meetings that would prejudice law enforcement activities (e.g., a meeting with an informant) or invade privacy (e.g., a meeting with a candidate for possible employment in FDA) will not be reported.

(3) The following FDA representatives and their deputies are subject to the requirements of paragraphs (b) (1) and (2) of this section:

(i) Commissioner of Food and Drugs.

(ii) Deputy Commissioner.

(iii) Associate Commissioner.

(iv) Executive and Special Assistants to the Commissioner.

(v) Executive Director for Regional Operations.

(vi) Director, Office of International Affairs.

(vii) Director, National Center for Toxicological Research.

(viii) Bureau Directors.

(ix) Chief Counsel for the Food and Drug Administration, or any representative of that office attending on behalf of the Chief Counsel.

(4) A copy of the public calendar will be placed on public display in the following places:

(i) Office of the Hearing Clerk.

(ii) Office of the Associate Commissioner for Public Affairs.

(iii) A central place in each bureau.

(iv) A central place in each field office.

(v) A central place at the National Center for toxicological Research.

§ 10.105 Representation by an organization.

(a) An organization may represent its members by filing petitions, comments, and objections, and otherwise participating in an administrative proceeding subject to this part.

(b) A petition, comment, objection, or other representation by an organization will not abridge the right of a member to take individual action of a similar type, in the member's own name.

(c) It is requested that each organization participating in FDA administrative proceedings file annually with the hearing clerk a current list of all of the members of the organization.

(d) The filing by an organization of an objection or request for hearing under §§ 12.20 through 12.22 does not provide a member a legal right with respect to the objection or request for hearing that the member may individually exercise. A member of an organization wishing to file an objection or request for hearing must do so individually.

(e) In a court proceeding in which an organization participates, the Commissioner will take appropriate legal measures to have the case brought or considered as a class action or other-

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wise as binding upon all members of the organization except those specifically excluded by name. Regardless of whether the case is brought or considered as a class action or as otherwise binding upon all members of the organization except those specifically excluded by name, the Commissioner will take the position in any subsequent suit involving the same issues and a member of the organization that the issues are precluded from further litigation by the member under the doctrines of collateral estoppel or res judicata.

§ 10.110 Settlement proposals.

At any time in the course of a proceeding subject to this part, a person may propose settlement of the issues involved. A participant in a proceeding will have an opportunity to consider a proposed settlement. Unaccepted proposals of settlement and related matters, e.g., proposed stipulations not agreed to, will not be admissible in evidence in an FDA administrative proceeding. FDA will oppose the admission in evidence of settlement information in a court proceeding or in another administrative proceeding.

PART 12—FORMAL EVIDENTIARY PUBLIC HEARING

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AUTHORITY: Sec. 201 et seq., Pub. L. 717, 52 Stat. 1040 as amended (21 U.S.C. 321 et seq.); sec. 1 et seq., Pub. L. 410, 58 Stat. 682 as amended (42 U.S.C. 201 et seq.); sec. 4, Pub. L. 91-513, 84 Stat. 1241 (42 U.S.C. 257a); sec. 301 et seq., Pub. L. 91-513, 84 Stat. 1253 (21 U.S.C. 821 et seq.); sec. 409(b), Pub. L. 242, 81 Stat. 600 (21 U.S.C. 679(b)); sec. 24(b), Pub. L. 85-172, 82 Stat. 807 (21 U.S.C. 467f(b)); sec. 2 et seq., Pub. L. 91-597, 84 Stat. 1620 (21 U.S.C. 1031 et seq.); secs. 1 through 9, Pub. L. 625, 44 Stat. 1101-1103 as amended (21 U.S.C. 141-149); secs. 1 through 10, Chapter 358, 29 Stat. 604-607 as amended (21 U.S.C. 41-50); sec. 2 et seq., Pub. L. 783, 44 Stat. 1406 as amended (15 U.S.C. 401 et seq.); sec. 1 et seq., Pub. L. 89-755, 80 Stat. 1296 as amended (15 U.S.C. 1451 et seq.).

Subpart A—General Provisions

§ 12.1 Scope.

The procedures in this part apply when—

(a) A person has a right to an opportunity for a hearing under the laws specified in § 10.50; or

(b) The Commissioner concludes that it is in the public interest to hold a formal evidentiary public hearing on any matter before FDA.

Subpart B—Initiation of Proceedings

§ 12.20 Initiation of a hearing involving the issuance, amendment, or revocation of a regulation.

(a) A proceeding under section 409(f), 502(n), 507(f), 512(n)(5), 701(e), or 706(d) of the act or section 4 or 5 of the Fair Packaging and Labeling Act may be initiated—

(1) By the Commissioner on the Commissioner's own initiative, e.g., as provided in § 170.15 for food additivies; or

(2) By a petition—

(i) In the form specified elsewhere in this chapter, e.g., the form for a color additive petition in § 71.1 or for an antibiotic petition in § 431.50; or

(ii) If no form is specified, by a petition under § 10.30.

(b) If the Commissioner receives a petition under paragraph (a)(2) of this section, the Commissioner will—

(1) If it involves any matter subject to section 701(e) of the act or section 4 or 5 of the Fair Packaging and Labeling Act, and meets the requirements for filing, follow the provisions of § 10.40 (b) through (f);

(2) If it involves a color additive or food additive, and meets the requirements for filing in §§ 71.1 and 71.2, or in 171.1, 171.6, 171.7, and 171.100, publish a notice of filing of the petition within 30 days after the petition is filed instead of a notice of proposed rulemaking.

(c) The Commissioner may issue, amend, or revoke an antibiotic regulation without the requirements of notice and public procedure in § 10.40(b) or delayed effective date in § 10.40(c)(4), on the Commissioner's own initiative or as a result of a petition containing the required evidence of safety and effectiveness in the circumstances described in § 10.40(e)(1).

(d) The notice promulgating the regulation will describe how to submit objections and requests for hearing.

(e) On or before the 30th day after the date of publication of a final regulation, or of a notice withdrawing a proposal initiated by a petition under § 10.25(a), a person may submit to the Commissioner written objections and a request for a hearing. The 30-day period may not be extended except that additional information supporting an objection may be received after 30 days upon a showing of inadvertent omission and hardship, and if review of the objection and request for hearing will not thereby be impeded. If, after a final color additive regulation is published, a petition or proposal relating to the regulation is referred to an advisory committee in accordance with section 706(b)(5)(C) of the act, objections and requests for a hearing may be submitted on or before the 30th day after the date on which the order confirming or modifying the Commissioner's previous order is published.

§ 12.21 Initiation of a hearing involving the issuance, amendment, or revocation of an order.

(a) A proceeding under section 505 (d) or (e), 512 (d), (e), (m) (3) or (4), of 515(g)(1) of the act, or section 351(a) of the Public Health Service Act, may be initiated—

(1) By the Commissioner on the Commissioner's own initiative;

(2) By a petition in the form specified elsewhere in this chapter, e.g., § 314.1(c) for new drug applications, § 514.1 for new animal drug applications, § 514.2 for applications for animal feeds, or § 601.3 for licenses for biologic products; or

(3) By a petition under § 10.30.

(b) A notice of opportunity for hearing on a proposal to deny or revoke approval of all or part of an order will be published together with an explanation of the grounds for the proposed action. The notice will describe how to submit requests for hearing. A person subject to the notice has 30 days after its issuance to request a hearing. The 30-day period may not be extended.

(c) The Commissioner may use an optional procedure specified in § 10.30(h) to consider issuing, amending, or revoking an order.

§ 12.22 Filing objections and requests for a hearing on a regulation or order.

(a) Objections and requests for a hearing under § 12.20(d) must be submitted to the Hearing Clerk and will be accepted for filing if they meet the following conditions:

(1) They are submitted within the time specified in § 12.20(e).

(2) Each objection is separately numbered.

(3) Each objection specifies with particularity the provision of the regulation or proposed order objected to.

(4) Each objection on which a hearing is requested specifically so states. Failure to request a hearing on an objection. Failure to include a description and analysis for an objection constitutes a waiver of the right to a hearing on that objection.

(5) Each objection for which a hearing is requested includes a detailed description and analysis of the factual information to be presented in support of the objection constitutes a waiver of the right to a hearing on that objection. The description and analysis may be used only for the purpose of determining whether a hearing has been justified under § 12.24, and do not limit the evidence that may be presented if a hearing is granted.

(i) A copy of any report, article, survey, or other written document relied upon must be submitted, except if the document is—

(*a*) An FDA document that is routinely publicly available;

(*b*) A recognized medical or scientific textbook that is readily available to the agency; or

(*c*) A designated journal listed in § 310.9 or § 510.95.

(ii) A summary of the nondocumentary testimony to be presented by any witnesses relied upon must be submitted.

(b) Requests for hearing submitted under § 12.21 will be submitted to the hearing clerk and will be accepted for filing if they meet the following conditions:

(1) They are submitted on or before the 30th day after the date of publication of the notice of opportunity for hearing.

(2) They comply with §§ 314.200, 514.200, or 601.7(a).

(c) If an objection or request for a public hearing fails to meet the requirements of this section and the deficiency becomes known to the hearing clerk, the hearing clerk shall return it with a copy of the applicable regulations, indicating those provisions not complied with. A deficient objection or request for a hearing may be supplemented and subsequently filed if submitted within the 30-day time period specified in § 12.20(e) or § 12.21(b).

(d) If another person objects to a regulation issued in response to a petition submitted under § 12.20(a)(2), the petitioner may submit a written reply to the hearing clerk.

§ 12.23 Notice of filing of objections.

As soon as practicable after the expiration of the time for filing objections to and requests for hearing on agency action involving the issuance, amendment, or revocation of a regulation under sections 502(n), 701(e), or 706(d) of the act or sections 4 or 5 of the Fair Packaging and Labeling Act, the Commissioner shall publish a notice in the FEDERAL REGISTER specifying those parts of the regulation that have been stayed by the filing of proper objections and, if no objections have been filed, stating that fact. The notice does not constitute a determination that a hearing is justified on any objections or requests for hearing that have been filed. When to do so will cause no undue delay, the notice required by this section may be combined with the notices described in §§ 12.28 and 12.35.

§ 12.24 Ruling on objections and requests for hearing.

(a) As soon as possible the Commissioner will review all objections and requests for hearing filed under § 12.22 and determine—

(1) Whether the regulation should be modified or revoked under § 12.26;

(2) Whether a hearing has been justified; and

(3) Whether, if requested, a hearing before a Public Board of Inquiry under part 13 or before a public advisory committee under part 14 or before the Commissioner under part 15 has been justified.

(b) A request for a hearing will be granted if the material submitted shows the following:

(1) There is a genuine and substantial issue of fact for resolution at a hearing. A hearing will not be granted on issues of policy or law.

(2) The factual issue can be resolved by available and specifically identified reliable evidence. A hearing will not be granted on the basis of mere allegations or denials or general descriptions of positions and contentions.

(3) The data and information submitted, if established at a hearing, would be adequate to justify resolution of the factual issue in the way sought by the person. A hearing will be denied if the Commissioner concludes that the data and information submitted are insufficient to justify the factual determination urged, even if accurate.

(4) Resolution of the factual issue in the way sought by the person is adequate to justify the action requested. A hearing will not be granted on factual issues that are not determinative with respect to the action requested, e.g., if the Commissioner concludes that the action would be the same even if the factual issue were resolved in the way sought, or if a request is made that a final regulation include a provision not reasonably encompassed by the proposal. A hearing will be granted upon proper objection and request when a food standard or other regulation is shown to have the effect of excluding or otherwise affecting a product or ingredient.

(5) The action requested is not inconsistent with any provision in the act or any regulation in this chapter particularizing statutory standards. The proper procedure in those circumstances is for the person requesting the hearing to petition for an amendment or waiver of the regulation involved.

(6) The requirements in other applicable regulations, e.g., §§ 10.20, 12.21, 12.22, 314.200, 430.20(b), 514.200, and 601.7(a), and in the notice of opportunity for hearing are met.

(c) In making the determination in paragraph (a) of this section, the Commissioner may use any of the optional procedures specified in § 10.30(h) or in other applicable regulations, e.g., §§ 314.200, 430.20(b), 514.200, and 601.7(a).

(d) If it is uncertain whether a hearing has been justified under the principles in paragraph (b) of this section, and the Commissioner concludes that summary decision against the person requesting a hearing should be considered, the Commissioner may serve upon the person by registered mail a proposed order denying a hearing. The

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person has 30 days after receipt of the proposed order to demonstrate that the submission justifies a hearing.

§ 12.26 Modification or revocation of regulation or order.

If the Commissioner determines upon review of an objection or request for hearing that the regulation or order should be modified or revoked, the Commissioner will promptly take such action by notice in the FEDERAL REGISTER. Further objections to or requests for hearing on the modification or revocation may be submitted under §§ 12.20 through 12.22 but not further issue may be taken with other provisions in the regulation or order. Objections and requests for hearing that are not affected by the modification or revocation will remain on file and be acted upon in due course.

§ 12.28 Denial of hearing in whole or in part.

If the Commissioner determines upon review of the objections or requests for hearing that a hearing is not justified, in whole or in part, a notice of the determination will be published.

(a) The notice will state whether the hearing is denied in whole or in part. If the hearing is denied in part, the notice will be combined with the notice of hearing required by § 12.35, and will specify the objections and requests for hearing that have been granted and denied.

(1) Any denial will be explained. A denial based on an analysis of the information submitted to justify a hearing will explain the inadequacy of the information.

(2) The notice will confirm or modify or stay the effective date of the regulation or order involved.

(b) The record of the administrative proceeding relating to denial of a public hearing in whole or in part on an objection or request for hearing consists of the following:

(1) If the proceeding involves a regulation—

(i) The documents specified in § 10.40(g);

(ii) The objections and requests for hearing filed by the hearing clerk;

(iii) If the proceeding involves a color additive regulation referred to an advisory committee in accordance with section 706(b)(5)(C) of the act, the committee's report and the record of the committee's proceeding; and

(iv) The notice denying a formal evidentiary public hearing.

(2) If the proceeding involves an order—

(i) The notice of opportunity for hearing;

(ii) The requests for hearing filed by the hearing clerk;

(iii) The transcripts, minutes of meetings, reports, FEDERAL REGISTER notices, and other documents constituting the record of any of the optional procedures specified in § 12.24(c) used by the Commissioner, but not the transcript of a closed portion of a public advisory committee meetings; and

(iv) The notice denying the hearing.

(c) The record specified in paragraph (b) of this section is the exclusive record for the Commissioner's decision on the complete or partial denial of a hearing. The record of the proceeding will be closed as of the date of the Commissioner's decision unless another date is specified. A person who requested and was denied a hearing may submit a petition for reconsideration under § 10.33 or a petition for stay of action under § 10.35. A person who wishes to rely upon information or views not included in the administrative record shall submit them to the Commissioner with a petition under § 10.25(a) to modify the final regulation or order.

(d) Denial of a request for a hearing in whole or in part is final agency action reviewable in the courts, under the statutory provisions governing the matter involved, as of the date of publication of the denial in the FEDERAL REGISTER.

(1) Before requesting a court for a stay of action pending review, a person shall first submit a petition for a stay of action under § 10.35.

(2) Under 28 U.S.C. 2112(a), FDA will request consolidation of all petitions on a particular matter.

(3) The time for filing a petition for judicial review of a denial of a hearing on an objection or issue begins on the date the denial is published in the FEDERAL REGISTER, (i) when an objection or issues relating to a regulation, if a hearing is denied on all objections and issues concerning a part of the proposal the effectiveness of which has not been deferred pending a hearing on other parts of the proposal; or (ii) when an issue relates to an order, if a hearing is denied on all issue relates to an order, if a hearing is denied on all issues relating to a particular new drug application, new animal drug application, device premarket approval application or product development protocol, or biologics license. The failure to file a petition for judicial review within the period established in the statutory provision governing the matter involved constitutes a waiver of the right to judicial review of the objection or issue, regardless whether a hearing has been granted on other objections and issues.

§ 12.30 Judicial review after waiver of hearing on a regulation.

(a) A person with a right to submit objections and a request for hearing under § 12.20(d) may submit objections and waive the right to a hearing. The waiver may be either an explicit statement, or a failure to request a hearing, as provided in § 12.22(a)(4).

(b) If a person waives the right to a hearing, the Commissioner will rule upon the person's objections under §§ 12.24 through 12.28. As a matter of discretion, the Commissioner may also order a hearing on the matter under any of the provisions of this part.

(c) If the Commissioner rules adversely on a person's objection, the person may petition for judicial review in a U.S. Court of Appeals under the act.

(1) The record for judicial review is the record designated in § 12.28(b)(1).

(2) The time for filing a petition for judicial review begins as of the date of publication of the Commissioner's ruling on the objections.

§ 12.32 Request for alternative form of hearing.

(a) A person with a right to request a hearing may waive that right and request one of the following alternatives:

(1) A hearing before a public board of inquiry under part 13.

(2) A hearing before a public advisory committee under part 14.

(3) A hearing before the Commissioner under part 15.

(b) The request—

(1) May be on the person's own initiative or at the suggestion of the Commissioner;

(2) Must be submitted in the form of a citizen petition under § 10.30 before publication of a notice of hearing under § 12.35 or a denial of hearing under § 12.28; and

(3) Must be—

(i) In lieu of a request for a hearing under this part; or

(ii) If submitted after or with a request for hearing, in the form of a waiver of the right to request a hearing conditioned on an alternative form of hearing. Upon acceptance by the Commissioner, the waiver becomes binding and may be withdrawn only by waiving any right to any form of hearing unless the Commissioner determines otherwise.

(c) When more than one person requests and justifies a hearing under this part, an alternative form of hearing may be used only if all the persons concur and waive their right to request a hearing under this part.

(d) The Commissioner will determine whether an alternative form of hearing should be used, and if so, which alternative is acceptable, after considering the requests submitted

and the appropriateness of the alternatives for the issues raised in the objections. The Commissioner's acceptance is binding unless, for good cause, the Commissioner determines otherwise.

(e) The Commissioner will publish a notice of an alternative form of hearing setting forth the following information:

(1) The regulation or order that is the subject of the hearing.

(2) A statement specifying any part of the regulation or order that has been stayed by operation of law or in the Commissioner's discretion.

(3) The time, date, and place of the hearing, or a statement that such information will be contained in a later notice.

(4) The parties to the hearing.

(5) The issues at the hearing. The statement of issues determines the scope of the hearing.

(6) If the hearing will be conducted by a Public Board of Inquiry, the time within which—

(i) The parties should submit nominees for the Board under § 13.10(b);

(ii) A notice of participation under § 12.45 should be filed; and

(iii) Participants should submit written information under § 13.25. The notice will list the contents of the portions of the administrative record relevant to the issues at the hearing before the Board. The portions listed will be placed on public display in the office of the Hearing Clerk before the notice is published. Additional copies of material already submitted under § 13.25 need not be included with any later submissions.

(f)(l) The decision of a hearing before a Public Board of Inquiry or a public advisory committee under this section has the legal status of and will be handled as an initial decision under § 12.120.

(2) The decision of a public hearing before the Commissioner under this section will be issued as a final order. The final order will have the same content as an initial decision, as specified in § 12.120 (b) and (c).

(3) Thereafter, the participants in the proceeding may pursue the administrative and court remedies specified in §§ 12.120 through 12.159.

(g) If a hearing before a public advisory committee or a hearing before the Commissioner is used as an alternative form of hearing, all submissions will be made to the Hearing Clerk, and § 10.20(j) governs their availability for public examination and copying.

(h) This section does not affect the right to an opportunity for a hearing before a public advisory committee under section 515(g)(2) of the act regarding device premarket approval applications and product development protocols. Advisory committee hearing procedures are found in part 14.

§ 12.35 Notice of hearing; stay of action.

(a) If the Commissioner determines upon review of the objections and requests for hearing that a hearing is justified on any issue, the Commissioner will publish a notice setting forth the following:

(1) The regulation or order that is the subject of the hearing.

(2) A statement specifying any part of the regulation or order that has been stayed by operation of law or in the Commissioner's discretion.

(3) The parties to the hearing.

(4) The issues of fact on which a hearing has been justified.

(5) A statement of any objections or requests for hearing for which a hearing has not been justified, which are subject to § 12.28.

(6) The presiding officer, or a statement that the presiding officer will be designated in a later notice.

(7) The time within which notices of participation should be filed under § 12.45

(8) The date, time, and place of the prehearing conference, or a statement that the date, time, and place will be announced in a later notice. The prehearing conference may not commence until after the time expires for filing the notice of participation required by § 12.45(a).

(9) The time within which participants should submit written information and views under § 12.85. The notice will list the contents of the portions of the adminstrative record relevant to the issues at the hearing. The portions listed will be placed on public display in the office of the Hearing Clerk before the notice is published. Additional copies of material already submitted under § 12.85 need not be included with any later submissions.

(b) The statement of the issues determines the scope of the hearing and the matters on which evidence may be introduced. The issues may be revised by the presiding officer. A participant may obtain interlocutory review by the Commissioner of a decision by the presiding officer to revise the issues to include an issue on which the Commissioner has not granted a hearing or to eliminate an issue on which a hearing has been granted.

(c) A hearing is deemed to begin on the date of publication of the notice of hearing.

§ 12.37 Effective date of a regulation.

(a) If no objections are filed and no hearing is requested on a regulation under § 12.20(e), the regulation is effective on the date specified in the regulation as promulgated.

(b) The Commissioner shall publish a confirmation of the effective date of the regulation. The FEDERAL REGISTER document confirming the effective date of the regulation may extend the time for compliance with the regulation.

§ 12.38 Effective date of an order.

(a) If a person who is subject to a notice of opportunity for hearing under § 12.21(b) does not request a hearing, the Commissioner will—

(1) Publish a final order denying or withdrawing approval of an NDA, NADA, device premarket approval application, or biologics license, in whole or in part, or revoking a device product development protocol or notice of completion, or declaring that such a protocol has not been completed, and stating the effective date of the order; and

(2) If the order involves withdrawal of approval of an NADA, forthwith revoke, in whole or in part, the applicable regulation, under section 512(i) of the act.

(b) If a person who is subject to a notice of opportunity for hearing under § 12.21(b) requests a hearing and others do not, the Commissioner may issue a final order covering all the drug or device products at once or may issue more than one final order covering different drug or device products at different times.

Subpart C—Appearance and Participation

§ 12.40 Appearance.

(a) A person who has filed a notice of participation under 12.45 may appear in person or by counsel or other representative in any hearing and, subject to § 12.89, may be heard concerning all relevant issues.

(b) The presiding officer may strike a person's appearance for violation of the rules of conduct in § 12.90.

§ 12.45 Notice of participation.

(a) Within 30 days after publication of the notice of hearing under § 12.35, a person desiring to participate in a hearing is to file with the hearing clerk under § 10.20 a notice of participation in the following form:

(Date) _____

Hearing Clerk, Food and Drug Administration, Department of Health, Education, and Welfare, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

NOTICE OF PARTICIPATION

[Docket No. ——]

Under 21 CFR Part 12, please enter the participation of:

(Name)_____
(Street address) _____
(City and State) _____
(Telephone number) _____

Service on the above will be acepted by:

(Name)_____
(Street address) _____

V 4 3 / 2 1 6

(City and State) _____
(Telephone number) _____

The following statements are made as part of this notice of participation:

A. *Specific interests.* (A statement of the specific interest of the person in the proceeding, including the specific issues of fact concerning which the person desires to be heard. This part need not be completed by a party to the proceeding.)

B. *Commitment to participate.* (A statement that the person will present documentary evidence or testimony at the hearing and will comply with the requirements of 21 CFR 12.85, or, in the case of a hearing before a Public Board of Inquiry, with the requirements of 21 CFR 13.25.)

(Signed) _____

(b) An amendment to a notice of participation should be filed with the hearing clerk and served on all participants.

(c) No person may participate in a hearing who has not filed a written notice of participation or whose participation has been stricken under paragraph (e) of this section.

(d) The presiding officer may permit the late filing of a notice of participation upon a showing of good cause.

(e) The presiding officer may strike the participation of a person for nonparticipation in the hearing or failure to comply with any requirement of this subpart, e.g., disclosure of information as required by § 12.85 or the prehearing order issued under § 12.92. Any person whose participation is stricken may petition the Commissioner for interlocutory review.

§ 12.50 Advice on public participation in hearings.

(a) *Designated agency contact.* All inquiries from the public about scheduling, location, and general procedures should be addressed to the Associate Commissioner for Regulatory Affairs (HFC-10), Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20857, or telephone 301-443-3480. The staff of the Associate Commissioner for Regulatory Affairs will attempt to respond promptly to all inquiries from members of the public, as well as to simple requests for information from participants in hearings.

(b) *Hearing schedule changes.* Requests by hearing participants for changes in the schedule of a hearing or for filing documents, briefs, or other pleadings should be made in writing directly to the Administrative Law Judge (HF-3), Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20857.

(c) *Legal advice to individuals.* FDA does not have the resources to provide legal advice to members of the public concerning participation in hearings. Furthermore, to do so would compromise the independence of the Commissioner's office and invite charges of improper interference in the hearing process. Accordingly, the Associate Commissioner for Regulatory Affairs will not answer questions about the strengths or weaknesses of a party's position at a hearing, litigation strategy, or similar matters.

(d) *Role of the office of the Chief Counsel.* Under no circumstances will the office of the Chief Counsel of FDA directly provide advice about a hearing to any person who is participating or may participate in the hearing. In every hearing, certain attorneys in the office are designated to represent the bureau or bureaus whose action is the subject of the hearing. Other members of the office, including ordinarily the Chief Counsel, are designated to advise the Commissioner on a final decision in the matter. It is not compatible with these functions, nor would it be professionally responsible, for the attorneys in the office of the Chief Counsel also to advise other participants in a hearing, or for any attorney who may be called on to adivse the Commissioner to respond to inquiries from other participants in the hearing, for such participants may be urging views contrary to those of the bureau involved or to what may ultimately be the final conclusions of the Commissoner. Accordingly, members of the office of the Chief Counsel, other than the attorneys responsible for representing the bureau whose action is the subject of the hearing, will not answer questions about the hearing from any participant or potential participant.

(e) *Communication between participants and attorneys.* Participants in a hearing may communicate with the attorneys responsible for representing the bureau whose action is the subject of the hearing, in the same way that they may communicate with counsel for any other party in interest about the presentation of matters at the hearing. It would be inappropriate to bar discussion of such matters as stipulations of fact, joint presentation of witnesses, or possible settlement of hearing issues. Members of the public, including participants at hearings, are advised, however, that all such communications, including those by telephone, will be recorded in memoranda that can be filed with the hearing clerk.

Subpart D—Presiding Officer

§ 12.60 Presiding officer.

The presiding officer in a hearing will be the Commissioner, a member of the Commissioner's office to whom the responsibility for the matter involved has been delegated, or an administrative law judge qualified under 5 U.S.C. 3105.

§ 12.62 Commencement of functions.

The functions of the presiding officer begin upon designation and end upon the filing of the initial decision.

§ 12.70 Authority of presiding officer.

The presiding officer has all powers necessary to conduct a fair, expeditious, and orderly hearing, including the power to—

(a) Specify and change the date, time, and place of oral hearings and conferences;

(b) Establish the procedures for use in developing evidentiary facts, including the procedures in § 12.92(b) and to rule on the need for oral testimony and cross-examination under § 12.87(b);

(c) Prepare statements of the areas of factual disagreement among the participants;

(d) Hold conferences to settle, simplify, or determine the issues in a hearing or to consider other matters that may expedite the hearing;

(e) Administer oaths and affirmations;

(f) Control the course of the hearing and the conduct of the participants;

(g) Examine witnesses and strike their testimony if they fail to respond fully to proper questions;

(h) Rule on, admit, exclude, or limit evidence;

(i) Set the time for filing pleadings;

(j) Rule on motions and other procedural matters;

(k) Rule on motions for summary decision under § 12.93;

(l) Conduct the hearing in stages if the number of parties is large or the issues are numerous and complex;

(m) Waive, suspend, or modify any rule in this subpart under § 10.19 if the presiding officer determines that no party will be prejudiced, the ends of justice will be served, and the action is in accordance with law;

(n) Strike the participation of any person under § 12.45(e) or exclude any person from the hearing under § 12.90, or take other reasonable disciplinary action; and

(o) Take any action for the fair, expeditious, and orderly conduct of the hearing.

§ 12.75 Disqualification of presiding officer.

(a) A participant may request the presiding officer to disqualify himself/herself and withdraw from the proceeding. The ruling on any such request may be appealed in accordance with § 12.97(b).

(b) A presiding officer who is aware of grounds for disqualification shall withdraw from the proceeding.

§ 12.78 Unavailability of presiding officer.

(a) If the presiding officer is unable to act for any reason, the Commissioner will assign the powers and duties to another presiding officer. The substitution will not affect the hearing, except as the new presiding officer may order.

(b) Any motion based on the substitution must be made within 10 days.

Subpart E—Hearing Procedures

§ 12.80 Filing and service of submissions.

(a) Submissions, including pleadings in a hearing, are to be filed with the hearing clerk under § 10.20 except that only two copies need be filed. To determine compliance with filing deadlines in a hearing, a submission is considered submitted on the date it is actually received by the hearing clerk.

(b) The person making a submission shall serve copies of it on the other participants. Submissions of documentary data and information are not required to be served on each participant, but any accompanying transmittal letter, pleading, summary, statement of position, certification under paragraph (d) of this section, or similar document must be served on each participant.

(c) Service is accomplished by mailing a submission to the address shown in the notice of participation or by personal delivery.

(d) All submissions are to be accompanied by a certificate of service, or a statement that service is not required.

(e) No written submission or other portion of the administrative record may be held in confidence, except as provided in § 12.105.

§ 12.82 Petition to participate in forma pauperis.

(a) A participant who believes that compliance with the filing and service requirements of this section constitutes an unreasonable financial burden may submit to the Commissioner a petition to participate in forma pauperis.

(b) The petition will be in the form specified in § 10.30 except that the heading will be "Request to Participate in Forma Pauperis, Docket No. ——." Filing and service requirements for the petition are described in paragraph (c) of this section, whether or not the petition is granted. The petition must demonstrate that either (i) the person is indigent and a strong public interest justifies participation, or (ii) the person's participation is in the public interest because it can be considered of primary benefit to the general public.

(c) The Commissioner may grant or deny the petition. If the petition is granted, the participant need file only one copy of each submission with the hearing clerk. The hearing clerk will make sufficient additional copies for the administrative record, and serve a copy on each other participant.

§ 12.83 Advisory opinions.

Before or during a hearing, a person may, under § 10.85, request the Commissioner for an advisory opinion on whether any regulation or order under consideration in the proceeding applies to a specific situation.

§ 12.85 Disclosure of data and information by the participants.

(a) Before the notice of hearing is published under § 12.35, the director of the bureau responsible for the matters involved in the hearing shall submit the following to the hearing clerk:

(1) The relevant portions of the administrative record of the proceeding. Portions of the administrative record not relevant to the issues in the hearing are not part of the administrative record.

(2) All documents in the director's files containing factual information, whether favorable or unfavorable to the director's position, which relate to the issues involved in the hearing. "Files" means the principal files in the bureau in which documents relating to the issues in the hearing are ordinarily kept, e.g., the food additive master file and the food additive petition in the case of issues concerning a food additive, or the new drug application in the case of issues concerning a new drug. Internal memoranda reflecting the deliberative process, and attorney work product and material prepared specifically for use in connection with the hearing, are not required to be submitted.

(3) All other documentary data and information relied upon.

(4) A narrative position statement on the factual issues in the notice of hearing and the type of supporting evidence the director intends to introduce.

(5) A signed statement that, to the director's best knowledge and belief, the submission complies with this section.

(b) Within 60 days of the publication of the notice of hearing or, if no participant will be prejudiced, within another period of time set by the presiding officer, each participant shall submit to the hearing clerk all data and information specified in paragraph (a) (2) through (5) of this section, and any objections that the administrative record filed under paragraph (a)(1) of this section is incomplete. With respect to the data and information specified in paragraph (a)(2) of this section, participants shall exercise reasonable diligence in identifying documents in files comparable to those described in that paragraph.

(c) Submissions required by paragraphs (a) and (b) of this section may be supplemented later in the proceeding, with the approval of the presiding officer, upon a showing that the material contained in the supplement was not reasonably known or available when the submission was made or that the relevance of the material contained in the supplement could not reasonably have been foreseen.

(d) A participant's failure to comply substantially and in good faith with this section constitutes a waiver of the right to participate further in the hearing; failure of a party to comply constitutes a waiver of the right to a hearing.

(e) Participants may reference each other's submissions. To reduce duplicative submissions, participants are encouraged to exchange and consolidate lists of documentary evidence. If a particular document is bulky or in limited supply and cannot reasonably be reproduced, and it constitutes relevant evidence, the presiding officer may authorize submission of a reduced number of copies.

(f) The presiding officer will rule on questions relating to this section.

§ 12.87 Purpose; oral and written testimony; burden of proof.

(a) The objective of a formal evidentiary hearing is the fair determination of relevant facts consistent with the right of all interested persons to participate and the public interest in promptly settling controversial matters affecting the public health and welfare.

(b) Accordingly, the evidence at a hearing is to be developed to the maximum extent through written submissions, including written direct testimony, which may be in narrative or in question-and-answer form.

(1) In a hearing, the issues may have general applicability and depend on general facts that do not concern particular action of a specific party, e.g., the safety or effectiveness of a class of drug products, the safety of a food or color additive, or a definition and standard of identity for a food; or the issues may have specific applicability to past action and depend upon particular facts concerning only that part, e.g., the applicability of a grandfather clause to a particular brand of a drug or the failure of a particular manufacturer to meet required manufacturing and processing specification or other general standards.

(i) If the proceeding involve general issues, direct testimony will be submitted in writing, except on a showing that written direct testimony is insufficient for a full and true disclosure of relevant facts and that the participant will be prejudiced if unable to present oral direct testimony. If the proceeding involves particular issues, each party may determine whether, and the

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extent to which, each wished to present direct testimony orally or in writing.

(ii) Oral cross-examination of witnesses will be permitted if it appears that alternative means of developing the evidence are insufficient for a full and true disclosure of the facts and that the party requesting oral cross-examination will be prejudiced by denial of the request, or that oral cross-examination is the most effective and efficient means to clarify the matters at issue.

(2) Witnesses shall give testimony under oath.

(c) Except as provided in paragraph (d) of this section, in a hearing involving issuing, amending, or revoking a regulation or order, the originator of the proposal or petition or of any significant modification will be, within the meaning of 5 U.S.C. 556(d), the proponent of the regulation or order, and will have the burden of proof. A participant who proposes to substitute a new provision for a provision objected to has the burden of proof in relation to the new provision.

(d) At a hearing involving issuing, amending, or revoking a regulation or order relating to the safety or effectiveness of a drug, antibiotic, device, food additive, or color additive, the participant who is contending that the product is safe or effective or both and who is requesting approval or contesting withdrawal of approval has the burden of proof in establishing safety or effectiveness or both and thus the right to approval. The burden of proof remains on that participant in an amendment or revocation proceeding.

§ 12.89 Participation of nonparties.

(a) A nonparty participant may—

(1) Attend all conferences (including the prehearing conference), oral proceedings, and arguments;

(2) Submit written testimony and documentary evidence for inclusion in the record;

(3) File written objections, briefs, and other pleadings; and

(4) Present oral argument.

(b) A nonparty participant may not—

(1) Submit written interrogatories; and

(2) Conduct cross-examination.

(c) A person whose petition is the subject of the hearing has the same rights as a party.

(d) A nonparty participant will be permitted additional rights if the presiding officer concludes that the participant's interests would be adequately protected otherwise or that broader participation is required for a full and true disclosure of the facts, but the rights of a nonparty participant may not exceed the rights of a party.

§ 12.90 Conduct at oral hearings or conferences.

All participants in a hearing will conduct themselves with dignity and observe judicial standards of practice and ethics. They may not indulge in personal attacks, unseemly wrangling, or intemperate accusations or characterizations. Representatives of parties shall, to the extent possible, restrain clients from improprieties in connection with any proceeding. Disrespectful, disorderly, or contumacious language or conduct, refusal to comply with directions, use of dilatory tactics, or refusal to adhere to reasonable standards of orderly and ethical conduct during any hearing, constitute grounds for immediate exclusion from the proceeding by the presiding officer.

§ 12.91 Time and place of prehearing conference.

A prehearing conference will commence at the date, time, and place announced in the notice of hearing, or in a later notice, or as specified by the presiding officer in a notice modifying a prior notice. At that conference the presiding officer will establish the methods and procedures to be used in developing the evidence, determine reasonable time periods for the conduct of the hearing, and designate the times and places for the production of witnesses for direct and cross-examination if leave to conduct oral examination is granted on any issue, as far as practicable at that time.

§ 12.92 Prehearing conference procedure.

(a) Participants in a hearing are to appear at the prehearing conference prepared to discuss and resolve all matters specified in paragraph (b) of this section.

(1) To expedite the hearing, participants are encouraged to prepare in advance for the prehearing conference. Participants should cooperate with each other, and request information and begin preparation of testimony at the earliest possible time. Failure of a participant to appear at the prehearing conference or to raise matters that could reasonably be anticipated and resolved at that time will not delay the progress of the hearing, and constitutes a waiver of the rights of the participant regarding such matters as objections to the agreements reached, actions taken, or rulings issued by the presiding officer and may be grounds for striking the participation under § 12.45.

(2) Participants shall bring to the prehearing conference the following specific information, which will be filed with the hearing clerk under § 12.80:

(i) Any additional information to supplement the submission filed under § 12.65, which may be filed if approved under § 12.85(c).

(ii) A list of all witnesses whose testimony will be offered, orally or in writing, at the hearing, with a full curriculum vitae for each. Additional witnesses may later be identified, with the approval of the presiding officer, on a showing that the witness was not reasonably available at the time of the prehearing conference or the relevance of the witness's views could not reasonably have been foreseen at that time.

(iii) All prior written statements, including articles and any written statement signed or adopted, or a recording or transcription of an oral statement made, by persons identified as witnesses if—

(*a*) The statement is available without making request of the witness or any other person;

(*b*) The statement relates to the subject matter of the witness's testimony; and

(*c*) The statement either was made before the time the person agreed to become a witness or has been made publicly available by the person.

(b) The presiding officer will conduct a prehearing conference for the following purposes:

(1) To determine the areas of factual disagreement to be considered at the hearing. The presiding officer may hold conferences off the record in an effort to reach agreement on disputed factual questions.

(2) To identify the most appropriate techniques for developing evidence on issues in controversy and the manner and sequence in which they will be used, including, where oral examination is to be conducted, the sequence in which witnesses will be produced for, and the time and place of, oral examination. The presiding officer may consider—

(i) Submission of narrative statements of position on factual issues in controversy;

(ii) Submission of evidence or identification of previously submitted evidence to support such statements, such as affidavits, verified statements of fact, data, studies, and reports;

(iii) Exchange of written interrogatories directed to particular witnesses;

(iv) Written requests for the production of additional documentation, data, or other relevant information;

(v) Submission of written questions to be asked by the presiding officer of a specific witness; and

(vi) Identification of facts for which oral examination and/or cross-examination is appropriate.

(3) To group participants with substantially like interests for presenting evidence, making motions and objections, including motions for summary decision, filing briefs, and presenting oral argument.

(4) To hear and rule on objections to admitting into evidence information submitted under § 12.85.

(5) To obtain stipulations and admissions of facts.

(6) To take other action that may expedite the hearing.

(c) The presiding officer shall issue, orally or in writing, a prehearing order reciting the actions taken at the prehearing conference and setting forth the schedule for the hearing. The order will control the subsequent course of the hearing unless modified by the presiding officer for good cause.

§ 12.93 Summary decisions.

(a) After the hearing commences, a participant may move, with or without supporting affidavits, for a summary decision on any issue in the hearing. Any other participant may, within 10 days after service of the motion, which time may be extended for an additional 10 days for good cause, serve opposing affidavits or countermove for summary decision. The presiding officer may set the matter for argument and call for the submission of briefs.

(b) The presiding officer will grant the motion if the objections, requests for hearing, other pleadings, affidavits, and other material filed in connection with the hearing, or matters officially noticed, show that there is no genuine issue as to any material fact and that a participant is entitled to summary decision.

(c) Affidavits should set forth facts that would be admissible inevidence and show affirmatively that the affiant is competent to testify to the matters stated. When a properly supported motion for summary decision is made, a participant opposing the motion may not rest upon mere allegations or denials or general descriptions of positions and contentions; affidavits or other responses must set forth specific facts showing that there is a genuine issue of fact for the hearing.

(d) Should it appear from the affidavits of a participant opposing the motion that for sound reasons stated, facts essential to justify the opposition cannot be presented by affidavit, the presiding officer may deny the motion for summary decision, order a continuance to permit affidavits or additional evidence to be obtained, or issue other just order.

(e) If on motion under this section a summary decision is not rendered upon the whole case or for all the relief asked, and evidentiary facts need to be developed, the presiding officer will issue an order specifying the facts that appear without substantial controversy and directing further evidentiary proceedings. The facts so specified will be deemed established.

(f) A participant may obtain interlocutory review by the Commissioner of a summary decision of the presiding officer.

§ 12.94 Receipt of evidence.

(a) A hearing consists of the development of evidence and the resolution of factual issues as set forth in this subpart and in the prehearing order.

(b) All orders, transcripts, written statements of position, written direct testimony, writtern interrogatories and responses, and any other written material submitted in the proceeding is a part of the administrative record of the hearing, and will be promptly placed on public display in the office of the hearing clerk, except as provided in § 12.105.

(c) Written evidence, identified as such, is admissible unles a participant objects and the presiding officer excludes it on objection of a participant or on the presiding officer's own initiative.

(1) The presiding officer may exclude written evidence as inadmissible only if—

(i) The evidence is irrevelant, immaterial, unreliable, or repetitive;

(ii) Exclusion of part or all of the written evidence of a participant is necessary to enforce the requirements of this subpart; or

(iii) The evidence was not submitted as required by § 12.85.

(2) Items of written evidence are to be submitted as separate documents, sequentially numbered, except that a voluminous document may be submitted in the form of a cross-reference to the documents filed under § 12.85.

(3) Written evidence excluded by the presiding officer as inadmissible remains a part of the administrative record, as an offer of proof, for judicial review.

(d) Testimony, whether on direct or on cross-examination, is admissible as evidence unless a participant objects and the presiding officer excludes it.

(1) The presiding officer may exclude oral evidence as inadmissible only if—

(i) The evidence is irrelevent, immaterial, unreliable, or repetitive; or

(ii) Exclusion of part or all of the evidence is necessary to enforce the requirements of this part.

(2) If oral evidence is excluded as inadmissible, the participant may take written exception to the ruling in a brief to the Commissioner, without taking oral exception at the hearing. Upon review, the Commissioner may reopen the hearing to permit the evidence to be admitted if the Commissioner determines that its exclusion was erroneous and prejudicial.

(e) The presiding officer may schedule conferences as needed to monitor the progress of the hearing, narrow and simplify the issues, and consider and rule on motions, requests, and other matters concerning the development of the evidence.

(f) The presiding officer will conduct such proceedings as are necessary for the taking of oral testimony, for the oral examination of witnesses by the presiding officer on the basis of written questions previously submitted by the parties, and for the conduct of cross-examination of witnesses by the parties. The presiding officer shall exclude irrelevant or repetitious written questions and limit oral cross-examination to prevent irrelevant or repetitious examination.

(g) The presiding officer shall order the proceedings closed for the taking of oral testimony relating to matters specified in § 10.20(j)(2)(i) (*a*) and (*b*). Such closed proceedings will be conducted in accordance with § 10.20(j)(3). Participation in closed proceedings will be limited to the witness, the witness's counsel, and Federal Government executive branch employees and special Government employees. Closed proceedings will be permitted only for, and will be limited to, oral testimony directly relating to matters specified in § 10.20(j)(3).

§ 12.95 Official notice.

(a) Official notice may be taken of such matters as might be judicially noticed by the courts of the United States or of any other matter peculiarly within the general knowledge of FDA as an expert agency.

(b) If official notice is taken of a material fact not appearing in the evidence of record, a participant, on timely request, will be afforded an opportunity to show the contrary.

§ 12.96 Briefs and arguments.

(a) Promptly after the taking of evidence is completed, the presiding officer will announce a schedule for the filing of briefs. Briefs are to be filed ordinarily within 45 days of the close of the hearing. Briefs must include a statement of position on each issue, with specific and complete citations to the evidence and points of law relied on. Briefs must contain proposed findings of fact and conclusions of law.

(b) The presiding officer may, as a matter of discretion, permit oral argument after the briefs are filed.

(c) Briefs and oral argument are to refrain from disclosing specific details of written and oral testimony and documents relating to matters specified in § 10.20(j)(2)(i) (*a*) and (*b*), except as specifically authorized in a protective order issued under § 10.20(j)(3).

§ 12.97 Interlocutory appeal from ruling of presiding officer.

(a) Except as provided in paragraph (b) of this section and in §§ 12.35(b),

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12.45(e), 12.93(f), and 12.99(d), when an interlocutory appeal is specifically authorized by this subpart, rulings of the presiding officer may not be appealed to the Commissioner before the Commissioner's consideration of the entire record of the hearing.

(b) A ruling of the presiding officer is subject to interlocutory appeal to the Commissioner if the presiding officer certifies on the record or in writing that immediate review is necessary to prevent exceptional delay, expense, or prejudice to any participant, or substantial harm to the public interest.

(c) When as interlocutory appeal is made to the Commissioner, a participant may file a brief with the Commissioner only if specifically authorized by the presiding officer or the Commissioner, and if such authorization is granted, within the period the Commissioner directs. If no briefs are authorized, the appeal will be presented as an oral argument to the Commissioner. If briefs are authorized, oral argument will be heard only at the discretion of the Commissioner.

§ 12.98 Official transcript.

(a) The presiding officer will arrange for a verbatim stenographic transcript of oral testimony and for necessary copies of the transcript.

(b) One copy of the transcript will be placed on public display in the office of the hearing clerk upon receipt.

(c) Except as provided in § 12.105, copies of the transcript may be obtained by application to the official reporter and payment of costs thereof or under part 20.

(d) Witnesses, participants, and counsel have 30 days from the close of the hearing to propose corrections in the transcript of oral testimony. Corrections are permitted only for transcription errors. The presiding officer shall promptly order justified corrections.

§ 12.99 Motions.

(a) A motion on any matter relating to the proceeding is to be filed under § 12.80, and must include a draft order, except one made in the course of an oral hearing before the presiding officer.

(b) A response may be filed within 10 days of receipt of a motion by the hearing clerk. The time may be shortened or extended by the presiding officer for good cause shown.

(c) The moving party has no right to reply, except as permitted by the presiding officer.

(d) The presiding officer shall rule upon the motion and may certify that ruling to the Commissioner for interlocutory review.

Subpart F—Administrative Record

§ 12.100 Administrative record of a hearing.

(a) The record of a hearing consists of—

(1) The order or regulation or notice of opportunity for hearing that gave rise to the hearing;

(2) All objections and requests for hearing filed by the hearing clerk under §§ 12.20 through 12.22;

(3) The notice of hearing published under § 12.35;

(4) All notices of participation filed under § 12.45;

(5) All FEDERAL REGISTER notices pertinent to the proceeding;

(6) All submissions filed under § 12.82, e.g., the submissions required by § 12.85, all other documentary evidence and written testimony, pleadings, statements of position, briefs, and other similar documents;

(7) The transcript, written order, and all other documents relating to the prehearing conference, prepared under § 12.92;

(8) All documents relating to any motion for summary decision under § 12,93;

(9) All documents of which official notice is taken under § 12.95;

(10) All pleadings filed under § 12.96;

(11) All documents relating to any interlocutory appeal under § 12.97;

(12) All transcripts prepared under § 12.98; and

(13) Any other document relating to the hearing and filed with the hearing clerk by the presiding officer or any participant.

(b) The record of the administrative proceeding is closed—

(1) With respect to the taking of evidence, when specified by the presiding officer; and

(2) With respect to pleadings, at the time specified in § 12.96(a) for the filing of briefs.

(c) The presiding officer may reopen the record to receive further evidence at any time before the filing of the initial decision.

§ 12.105 Examination of record.

Documents in the record will be publicly available in accordance with § 10.20(j). Documents available for examination or copying will be placed on public display in the office of the hearing clerk promptly upon receipt in that office.

Subpart G—Initial and Final Decisions

§ 12.120 Initial Decision.

(a) The presiding officer shall prepare and file an initial decision as soon as possible after the filing of briefs and oral argument.

(b) The initial decision must contain—

(1) Findings of fact based upon relevant, material, and reliable evidence of record;

(2) Conclusions of law;

(3) A discussion of the reasons for the findings and conclusions, including a discussion of the significant contentions made by any participant;

(4) Citations to the record supporting the findings and conclusions;

(5) An appropriate regulation or order supported by substantial evidence of record and based upon the findings of fact and conclusions of law; and

(6) An effective date for the regulation or order.

(c) The initial decision must refrain from disclosing specific details of matters specified in § 10.20(j)(2)(i) (*a*) and (*b*), except as specifically authorized in a protective order issued pursuant to § 10.20(j)(3).

(d) The initial decision is to be filed with the hearing clerk and served upon all participants.

(e) The initial decision becomes the final decision of the Commissioner by operation of law unless a participant files exceptions with the hearing clerk under § 12.125(a) or the Commissioner files a notice of review under § 12.125(f).

(f) Notice that an initial decision has become the decision of the Commissioner without appeal to or review by the Commissioner wil be published in the FEDERAL REGISTER, or the Commissioner may publish the decision when it is of widespread interest.

§ 12.125 Appeal from or review of initial decision.

(a) A participant may appeal an initial decision to the Commissioner by filing exceptions with the hearing clerk, and serving them on the other participants, within the period specified in the initial decision. The period may not exceed 30 days, unless extended by the Commissioner under paragraph (d) of this section.

(b) Exceptions must specifically identify alleged errors in the findings of fact or conclusions of law in the initial decision, and provide supporting citations to the record. Oral argument before the Commissioner may be requested in the exceptions.

(c) Any reply to the exceptions is to be filed and served within the period specified in the initial decision. The period may not exceed 30 days after the period (including any extensions) for filing exceptions, unless extended by the Commissioner under paragraph (d) of this section.

(d) The Commissioner may extend the time for filing exceptions or replies to exceptions for good cause shown.

(e) If the Commissioner decides to hear oral argument, the participants

will be informed of the date, time, and place, the amount of time allotted to each participant, and the issue to be addressed.

(f) Within 10 days following the expiration of the time for filing exceptions (including any extensions), the Commissioner may file with the hearing clerk, and serve on the participants, a notice of the Commissioner's determination to review the initial decision. The Commissioner may invite the participants to file briefs or present oral argument on the matter. The time for filing briefs or presenting oral argument will be specified in that or a later notice.

§ 12.130 Decision by Commissioner on appeal or review of initial decision.

(a) On appeal from or review of the initial decision, the Commissioner has all the powers given to make the initial decision. On the Commission's own initiative or on motion, the Commissioner may remand the matter to the presiding officer for any further action necessary for a proper decision.

(b) The scope of the issues on appeal is the same as the scope of the issues at the public hearing unless the Commissioner specifies otherwise.

(c) As soon as possible after the filing of briefs and any oral argment, the Commissioner will issue a final decision in the proceeding, which meets the requirements established in § 12.120 (b) and (c).

(d) The Commissioner may adopt the initial decision as the final decision.

(e) Notice of the Commissioner's decision will be published in the FEDERAL REGISTER, or the Commissioner may publish the decision when it is of widespread interest.

§ 12.139 Reconsideration and stay of action.

Following notice or publication of the final decision, a participant may petition the Commissioner for reconsideration of any part or all of the decision under § 10.33 or may petition for a stay of the decision under § 10.35.

Subpart H—Judicial Review

§ 12.140 Review by the courts.

(a) The Commissioner's final decision constitutes final agency action from which a participant may petition for judicial review under the statutes governing the matter involved. Before requesting an order from a court for a stay of action pending review, a participant shall first submit a petition for a stay of action under § 10.35.

(b) Under 28 U.S.C. 2112(a), FDA will request consolidation of all petitions related to a particular matter.

§ 12.159 Copies of petitions for judicial review.

The Chief Counsel for FDA has been designated by the Secretary as the officer on whom copies of petitions of judicial review are to be served. This officer is responible for filing the record on which the final decision is based. The record of the proceeding is certified by the Commissioner.

PART 13—PUBLIC HEARING BEFORE A PUBLIC BOARD OF INQUIRY

Subpart A—General Provisions

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13.10 Members of a Board.
13.15 Separation of functions; ex parte communications; administrative support.

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13.20 Submissions to a Board.
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13.30 Proceedings of a Board.

Subpart C—Records of Hearing Before a Board

13.40 Administrative record of a Board.
13.45 Examination of administrative record.
13.50 Record for administrative decision.

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Subpart A—General Provisions

§ 13.1 Scope.

The procedures in this part apply when—

(a) The Commissioner concludes, as a matter of discretion, that it is in the public interest to hold a public hearing before a Public Board of Inquiry ("Board") with respect to any matter before FDA;

(b) Under specific sections of this chapter a matter before FDA is subject to a hearing before a Board; or

(c) Under § 12.32, a person who has a right to an opportunity for a formal evidentiary public hearing waives that opportunity and requests that a Board act as an administrative law tribunal concerning the matters involved, and the Commissioner decides to accept this request.

§ 13.5 Notice of a hearing before a Board.

If the Commissioner determines that a Board should be established to conduct a hearing on any matter, a notice of hearing will be published in the FEDERAL REGISTER setting forth the following information:

(a) If the hearing is under § 13.1 (a) or (b), all applicable information described in § 12.32(e).

(1) Any written document that is to be the subject matter of the hearing will be published as a part of the notice, or the notice will refer to it if the document has already been published in the FEDERAL REGISTER or clerk or an agency employee designated in the notice.

(2) For purposes of a hearing under § 13.1 (a) or (b), all participants who file a notice of participation under § 12.32(e)(6)(ii) are deemed to be parties and entitled to participate in selection of the Board under § 13.15(b).

(b) If the hearing is in lieu of a formal evidentiary hearing, as provided in § 13.1(c), all of the information described in § 12.32(e).

§ 13.10 Members of a Board.

(a) All members of a Board are to have medical, technical, scientific, or other qualifications relevant to the issues to be considered, are subject to the conflict of interest rules applicable to special Government employees, and are to be free from bias or prejudice concerning the issues involved. A member of a Board may be a full-time or part-time Federal Government employee or may serve on an FDA advisory committee but, except with the agreement of all parties, may not currently be a full-time or part-time employee of FDA or otherwise act as a special Government employee of FDA.

(b) Within 30 days of publication of the notice of hearing, the director of the bureau of FDA responsible for a matter before a Board, the other parties to the proceeding, and any person whose petition was granted and is the subject of the hearing, shall each submit to the hearing clerk the names and full curricula vitae of five nominee for members of the Board. Nominations are to state that the nominee is aware of the nomination, is interested in becoming a member of the Board, and appears to have no conflict of interest.

(1) Any two or more persons entitled to nominate members may agree upon a joint list of five qualified nominees.

(2) The lists of nominees must be submitted to the persons entitled to submit a list of nominees under this paragraph but not to all participants. Within 10 days of receipt of the lists of nominees, such persons may submit comments to the hearing clerk on whether the nominees of the other persons meet the criterial established

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in paragraph (a) of this section. A person submitting comments to the hearing clerk shall submit them to all persons entitled to submit a list of nominees.

(3) The lists of nominees and comments on them are to be held in confidence by the hearing clerk as part of the administrative record of the proceeding and are not to be made available for public disclosure, and all persons who submit or receive them shall similarly hold them in confidence. This portion of the administrative record remains confidential but is available for judicial review in the event that it becomes relevant to any issue before a court.

(c) After reviewing the lists of nominees and any comments, the Commissioner will choose three qualified persons as members of a Board. One member will be from the lists of nominees submitted by the director of the bureau and by any person whose petition was granted and is the subject of the hearing. The second will be from the lists of nominees submitted by the other parties. The Commissioner may choose the third member from any source. That member is the Chairman of the Board.

(1) If the Commissioner is unable to find a qualified person with no conflict of interest from among a list of nominees or if additional information is needed, the Commissioner will request the submission of the required additional nominees or information.

(2) If a person fails to submit a list of nominees as required by paragraph (b) of this section, the Commissioner may choose a qualified member without further consultation with that person.

(3) The Commissioner will announce the members of a board by filing a memorandum in the record of the proceeding and sending a copy to all participants.

(d) Instead of using the selection method in paragraphs (b) and (c) of this section, the director of the bureau, the other parties to the proceeding, and any person whose petition was granted and is the subject of the hearing, may, with the approval of the Commissioner, agree that a standing advisory committee listed in § 14.80 constitutes the Board for a particular proceeding, or that another procedure is to be used for selection of the members of the Board, or that the Board consists of a larger number of members.

(e) The members of a Board serve as consultants to the Commissioner and are special Government empoyees or Government employees. A Board functions as an administrative law tribunal in the proceeding and is not an advisory committee subject to the requirements of the Federal Advisory Committee Act or part 14.

(f) The Chairman of a Board has the authority of a presiding officer set out in § 12.70.

§ 13.15 Separation of functions; ex parte communications; administrative support.

(a) The proceedings of a Board are subject to the provisions of § 10.55 relating to separation of functions and ex parte communications. Representatives of the participants in any proceeding before a Board, including any members of the office of the Chief Counsel of FDA assigned to advise the bureau responsible for the matter, may have no contact with the members of the Board, except as participants in the proceeding, and may not participate in the deliberations of the Board.

(b) Administrative support for a Board is to be provided only by the office of the Commissioner and the office of the Chief Counsel for FDA.

Subpart B—Hearing Procedures

§ 13.20 Submissions to a Board.

(a) Submissions are to be filed with the hearing clerk under § 10.20.

(b) The person making a submission shall serve copies of it on each participant in the proceeding, except as provided in §§ 13.10(b)(2) and 13.45. Submissions of documentary data and information need not be sent to each participant, but any accompanying transmittal letter, summary, statement of position, certification under paragraph (d) of this section, or similar document must be.

(c) A submission must be mailed to the address shown in the notice of appearance or personally delivered.

(d) All submissions are to be accompanied by a certificate of service, or a statement that service is not required.

(e) No written submission or other portion of the administrative record may be held in confidence, except as provided in §§ 13.10(b)(2) and 13.45.

(f) A participant who believes that compliance with the requirements of this section constitutes an unreasonable financial burden may submit to the Commissioner a petition to participate in forma pauperis in the form and manner specified in § 12.82.

§ 13.25 Disclosure of data and information by the participants.

(a) Before the notice of hearing is published under § 13.5, the director of the bureau responsible for the matters involved in the hearing must submit to the hearing clerk—

(1) The relevant portions of the existing administrative record of the proceeding. Portions of the existing administrative record not relevant to the issues in the hearing are not part of the administrative record;

(2) A list of all persons whose views will be presented orally or in writing at the hearing;

(3) All documents in the director's files containing factual information, whether favorable or unfavorable to the director's position, which relate to the issues involved in the hearing. "Files" means the principal files in the bureau in which documents relating to the issues in the hearing are ordinarily kept, e.g., the food additive master file and the food additive petition in the case of issues concerning a food additive, or the new drug application in the case of issues concerning a new drug. Internal memoranda reflecting the deliberative process, and attorney work product and material prepared specifically for use in connection with the hearing, are not required to be submitted.

(4) All other documentary information relied on.

(5) A signed statement that, to the best of the director's knowledge and belief, the submission complies with this section.

(b) Within the time prescribed in the notice of hearing published under § 13.5, each participant shall submit to the hearing clerk all information specified in paragraph (a) (2) through (5) of this section and any objections under the administrative record filed under paragraph (a) (1) of this section is incomplete. With respect to the information specified in paragraph (a) (3) of this section, participants are to exercise reasonable diligence in identifying documents in files comparable to those described in that paragraph.

(c) The submissions required by paragraphs (a) and (b) of this section may be supplemented later in the proceeding, with the approval of the Board, on a showing that the views of the persons or the material contained in the supplement was not known or reasonably available when the initial submission was made or that the relevance of the views of the persons or the material contained in the supplement could not reasonably have been foreseen.

(d) The failure to comply substantially and in good faith with this section in the case of a participant constitutes a waiver of the right to participate further in the hearing and in the case of a party constitutes a waiver of the right to a hearing.

(e) The Chairman rules on questions relating to this section. Any participant dissatisfied with a ruling may petition the Commissioner for interlocutory review.

§ 13.30 Proceedings of a Board.

(a) The purpose of a Board is to review medical, scientific, and technical issues fairly and expeditiously. The proceedings of a Board are conducted as a scientific inquiry rather than a legal trial.

(b) A board may not hold its first hearing until after all participants have submitted the information required by § 13.25.

(c) The Chairman calls the first hearing of the Board. Notice of the time and location of the first hearing is to be published at least 15 days in advance and the hearing shall be open to the public. All participants will have an opportunity at the first hearing to make an oral presentation of the information and views which in their opinion are pertinent to resolution of the issues being considered by a Board. A participant's presentation may be made by more than one person. The Chairman determines the order of the presentation. Participants may not interrupt a presentation, but members of the Board may ask questions. At the conclusion of a presentation, each of the other participants may briefly comment on the presentation and may request that the Board conduct further questioning on specified matters. Members of the Board may then ask further questions. Any other participant may be permitted to ask questions if the Chairman determines that it will help resolve the issues.

(d) The hearing is informal and the rules of evidence do not apply. No motions or objections relating to the admissibility of information and views may be made or considered, but other participants may comment upon or rebut all such information and views. No participant may interrupt the presentation of another participant for any reason.

(e) Within the time specified by the Board after its first hearing, participants may submit written rebuttal information and views in accordance with § 13.20. The Chairman will then schedule a second hearing, if requested and justified by a participant. A second hearing, and any subsequent hearing, will be called only if the Chairman concludes that it is needed to fully and fairly present information that cannot otherwise adequately be considered and to properly resolve the issues. Notice of the time and location of any later hearing is to be published at least 15 days in advance. The hearing is open to the public.

(f) A Board may consult with any person who it concludes may have information or views relevant to the issues.

(1) The consultation may occur only at an announced hearing of a Board. Participants have the right to suggest or, with the permission of the Chairman, ask questions of the consultant and present rebuttal information and views, as provided in paragraphs (c) and (d) of this section except that written statements may be submitted to the Board with the consent of all participants.

(2) A participant may submit a request that the Board consult with a specific person who may have information or views relevant to the issues. The request will state why the person should be consulted and why the person's views cannot be furnished to the Board by means other than having FDA arrange for the person's appearance. The Board may, in its discretion, grant or deny the request.

(g) All hearings are to be transcribed. All hearings are open to the public, except that a hearing under § 10.20(j)(3) is closed to all persons except those persons making and participating in the presentation and Federal Government executive branch employees and special Government employees. At least a majority of Board members are to be present at every hearing. The executive sessions of a Board, during which a Board deliberates on the issues, are to be closed and are not transcribed. All members of the Board shall vote on the report of the Board.

(h) All legal questions are to be referred to the Chief counsel for FDA for resolution. The Chief Counsel's advice on any matter of procedure or legal authority is to be transmitted in writing and made a part of the record or presented in open session and transcribed.

(i) At the conclusion of all public hearings the Board will announce that the record is closed to receiving information. The Board will provide an opportunity for participants to submit written statements of their positions, with proposed findings and conclusions, and may, in its discretion, provide an opportunity for participants to summarize their positions orally.

(j) The Board will prepare a decision on all issues. The decision is to include specific findings and references supporting and explaining the Board's conclusions, and a detailed statement of the reasoning on which the conclusions are based. Any member of the Board may file a separate report stating additional or dissenting views.

Subpart C—Records of a Hearing Before a Board

§ 13.40 Administrative record of a Board.

(a) The administrative record of a hearing before a Board consists of the following:

(1) All relevant FEDERAL REGISTER notices.

(2) All written submissions under § 13.20.

(3) The transcripts of all hearings of the Board.

(4) The initial decision of the Board.

(b) The record of the administrative proceeding is closed—

(1) Relevant to receiving information and data, at the time specified in § 13.30(i); and

(2) Relevant to pleadings, at the time specified in § 13.30(i) for filing a written statement of position with proposed findings and conclusions.

(c) The Board may, in its discretion, reopen the record to receive further evidence at any time before filing an initial decision.

§ 13.45 Examination of administrative record.

(a) The availability for public examination and copying of each document which is a part of the administrative record of the hearing is governed by §10.20(j). Each document available for public examination or copying is placed on public display in the office of the hearing clerk promptly upon receipt in that office.

(b) Lists of nominees and comments submitted on them under § 13.10(b)(3) are not subject to disclosure unless they become an issue in a court proceeding.

§ 13.50 Record for administrative decision

The administrative record of the hearing specified in § 13.40(a) constitutes the exclusive record for decision.

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

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AUTHORITY: Sec. 201 et seq., Pub. L. 717, 52 Stat. 1040 as amended (21 U.S.C. 321 et seq.); sec. 1 et seq., Pub. L. 410, 58 Stat. 682 as amended (42 U.S.C. 201 et seq.); sec. 4, Pub. L. 91-513, 84 Stat. 1241 (42 U.S.C. 257a); sec. 301 et seq., Pub. L. 91-513, 84 Stat. 1253 (21 U.S.C. 821 et seq.); sec. 409(b), Pub. L. 242, 81 Stat. 600 (21 U.S.C. 679(b)); sec. 24(b), Pub. L. 85-172, 82 Stat. 807 (21 U.S.C. 467f(b)); sec. 2 et seq., Pub. L. 91-597, 84 Stat. 1620 (21 U.S.C. 1031 et seq.); secs. 1 through 9, Pub. L. 625, 44 Stat. 1101-1103 as amended (21 U.S.C. 141-149); secs. 1 through 10, Chapter 358, 29 Stat. 604-609 as amended (21 U.S.C. 41-50); sec. 1 et seq., Pub. L. 783, 44 Stat. 1406 as amended (15 U.S.C. 401 et seq.); sec. 1 et seq., Pub. L. 89-755, 80 Stat. 1296 as amended (15 U.S.C. 1451 et seq.).

Subpart A—General Provisions

§ 14.1 Scope.

(a) This part governs the procedures when any of the following applies:

(1) The Commissioner concludes, as a matter of discretion, that it is in the public interest for a standing or ad hoc policy or technical public advisory committee ("advisory committee" or "committee") to hold a public hearing and to review and make recommendations on any matter before FDA and for interested persons to present information and views at an oral public hearing before the advisory committee.

(2) Under specfic provisions in the act or other sections of this chapter, a matter is subject to a hearing before an advisory committee. The specific provisions are—

(i) Section 14.120 on review of a performance standard for an electronic product by the Technical Electronic Product Radiation Safety Standards Committee (TEPRSSC);

(ii) Section 14.140 on review of the safety of color additives;

(iii) Section 14.160 on review of the safety and effectiveness of human prescription drugs;

(iv) Section 330.10 on review of the safety and effectiveness of over-the-counter drugs;

(v) Section 601.25 on review of the safety and effectiveness of biological drugs;

(vi) Part 860, on classification of devices;

(vii) Section 514(g)(5) of the act on establishment, amendment, or revocation of a device performance standard;

(viii) Section 515 of the act on review of device premarket approval applications and product development protocols; and

(ix) Section 520(l) of the act on review of device good manufacturing practice regulations.

(3) A person who has a right to an opportunity for a formal evidentiary public hearing under part 12 waives that opportunity and instead under § 12.32 requests a hearing before an advisory committee, and the Commissioner, as a matter of discretion, accepts the request.

(b) In determining whether a group is a "public advisory committee" as defined in § 10.3(a)(14) and thus subject to this part and to the Federal Advisory Committee Act, the following guidelines will be used:

(1) An advisory committee may be a standing advisory committee or an ad hoc advisory committee. All standing advisory committees are listed in § 14.100.

(2) An advisory committee may be a policy advisory committee or a technical advisory committee. A policy advisory committee advises on broad and general matters. A technical advisory committee advises on spcific technical or scientific issues, which may relate to regulatory decisions before FDA.

(3) An advisory committee includes any of its subgroups when the subgroup is working on behalf of the committee. Section 14.40(d) describes when a subgroup will be established as an advisory committee separate from the parent committee.

(4) A committee composed entirely of full-time Federal Government employees is not an advisory committee.

(5) An advisory committee ordinarily has a fixed membership, a defined purpose of providing advice to the agency on a particular subject, regular or periodic meetings, and an organizational structure, for example, a chairman and staff, and serves as a source of independent expertise and advice rather than as a representative of or advocate for any particular interest. The following groups are not advisory committees.

(i) A group of persons convened on an ad hoc basis to discuss a matter of current interest to FDA, but which has no continuing function or organization and does not involve substantial special preparation.

(ii) A group of two or more FDA consultants meeting with the agency on an ad hoc basis.

(iii) A group of experts who are employed by a private company or a trade association which has been requested by FDA to provide its views on a regulatory matter pending before FDA.

(iv) A consulting firm hired by FDA to provide advice regarding a matter.

(6) An advisory committee that is utilized by FDA is subject to this subpart even though it was not established by FDA. In general, a committee is "utilized" when FDA requests advice or recommendations from the committee on a specific matter in order to obtain an independent review and consideration of the matter, and not when FDA is merely seeking the comments of all interested persons or of persons who have a specific interest in the matter.

(i) A committee formed by an independent scientific or technical organization is utilized if FDA requests advice of that committee rather than of the parent organization, or if the circumstances show that the advice given is that of the committee and not of the parent organization. A committee formed by an independent scientific or technical organization is not utilized if FDA requests advice of the organization rather than of a committee and if the recommendations of any committee formed in response to the request are subject to substantial independent policy and factual review by the governing body of the parent organization.

(ii) A committee is not utilized by FDA if it provides only information, as contrasted with advice or opinions or recommendations.

(iii) FDA is charged with seeking out the views of all segments of the public on enforcement of the laws administered by the Commissioner. The fact that a group of individuals or a committee meets regularly with FDA, for example, a monthly meeting with comsumer representatives, does not make that group or committee an advisory committee. Thus, this subpart does not apply to routine meetings, discussions, and other dealings, including exchanges of views, between FDA and any committee representing or advocating the particular interests of consumers, industry, professional organizations, or others.

(7) The inclusion of one or two FDA consultants who are special Government employees on an internal FDA committee does not make that committee an advisory committee.

(8) A Public Board of Inquiry established under part 13, or other similar group convened by agreement between the parties to a regulatory proceeding pending before FDA to review and prepare an initial decision on the issues in lieu of a formal evidentiary public hearing, is acting as an administrative law tribunal and is not an advisory committee.

(9) An open public conference or meeting conducted under § 10.65(b) is not an advisory committee meeting.

(10) An FDA committee that primarily has operational responsibility rather than that of providing advice and recommendations is not an advisory committee, for example, the Research Involving Human Subjects Committee (RIHSC).

(c) This part applies only when a committee convenes to conduct committee business. Site visits, social gatherings, informal discussions by telephone or during meals or while traveling or at other professional functions, or other similar activities do not constitute a meeting.

(d) An advisory committee that is utilized but not established by FDA is subject to this part only to the extent of such utilization, and not concerning any other activities of such committee.

(e) Any conference or meeting between an employee of FDA and a committee or group which is not an advisory committee shall be subject to § 10.65 or other provisions specifically applicable to the committee or group, for example, part 13 for a Public Board of Inquiry.

(f) This part applies to all FDA advisory committees, except to the extent that specific statutes require otherwise for a particular committee, for example, TEPRSSC, the Board of Tea Experts, and advisory committees established under the Medical Device Amendments of 1976.

§ 14.5 Purpose of proceedings before an advisory committee.

(a) An advisory committee is utilized to conduct public hearings on matters of importance that come before FDA, to review the issues involved, and to provide advice and recommendations to the Commissioner.

(b) The Commissioner has sole discretion concerning action to be taken and policy to be expressed on any matter considered by an advisory committee.

§ 14.7 Administrative remedies.

A person who alleges noncompliance by the Commissioner or an advisory committee with any provision of this part or the Federal Advisory Committee Act may pursue the following administrative remedies:

(a) If the person objects to any action, including a failure to act, other than denial of access to an advisory committee document, the person shall submit a petition in the form and in accordance with the requirements of § 10.30. The provisions of § 10.45 relating to exhaustion of administrative remedies are applicable.

(1) If the person objects to past action, the person shall submit the petition within 30 days after the action objected to. If the Commissioner determines that there was noncompliance with any provision of this subpart or of the Federal Advisory Committee Act, the Commissioner will grant any appropriate relief and take appropriate steps to prevent its future recurrence.

(2) If the person objects to proposed future action, the Commissioner will expedite the review of the petition and make a reasonable effort to render a decision before the action concerned in the petition.

(3) If the person objects to action that is imminent or occurring and which could not reasonably have been anticipated, e.g., the closing of a portion of a meeting which is made known for the first time on the day of the meeting, the matter may be handled by an oral petition in lieu of a written petition.

(b) If the person objects to a denial of access to an advisory committee document, administrative review is in accordance with the procedures established by the Department of Health, Education, and Welfare under 45 CFR 5.82.

§ 14.10 Applicability to Congress.

This part applies to Congress, individual Members of Congress, and other employees or representatives of Congress in the same way that they apply to any other member of the public, except that disclosure of advisory committee records to Congress is governed by § 20.87.

§ 14.15 Committees working under a contract with FDA.

(a) FDA may enter into contracts with independent scientific or technical organizations to obtain advice and recommendations on particular matters, and these organizations may in turn undertake such work throught existing or new committees. Whether a particular committee working under such a contract is an advisory committee subject to the Federal Advisory Committee Act and this subpart depends upon application of the criteria and principles in § 14.1(b).

(b) The following minimum standards apply to any committee of an independent scientific or technical organization which is working under a contract initially executed with FDA after July 1, 1975, but which is determined not to be an advisory committee:

(1) The committee shall give public notice of its meetings and agenda, and provide interested persons an opportunity to submit relevant information and views in writing at any time, and orally at specified times. The notice may be published in the FEDERAL REGISTER or disseminated by other reasonable means. It is in any event to be filed with the hearing clerk not less than 15 days before the meeting. The time for oral presentations and the extent to which the committee meets in open session other than for such oral presentations is in the discretion of the committee.

(2) Minutes of open sessions are to be maintained, with all written submissions attached which were made to the committee in open session. After approval, the minutes are to be forwarded to the hearing clerk and placed on public display. The extent to which the committee maintains minutes of closed sessions is in the discretion of the committee.

(3) In selecting the members of the committee, the organization involved is to apply the principles relating to conflicts of interest that FDA uses in establishing a public advisory committee. Those principles are set out or cross-referenced in this part and in part 19. Upon request, FDA will assist or provide guidance to any organization in meeting this requirement.

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Subpart B—Meeting Procedures

§ 14.20 Notice of hearing before an advisory committee.

(a) Before the first of each month, and at least 15 days in advance of a meeting, the Commissioner will publish a notice in the FEDERAL REGISTER of all advisory committee meetings to be held during the month. Any advisory committee meetings for that month called after the publication of the general monthly notice are to be announced in the FEDERAL REGISTER on an individual basis at least 15 days in advance. The Commissioner may authorize an exception to these notice requirements in an emergency or for other reasons requiring an immediate meeting of an advisory committee, in which case public notice will be given at the earliest time and in the most accessible form feasible including, whenever possible, publication in the FEDERAL REGISTER.

(b) The FEDERAL REGISTER notice will include—

(1) The name of the committee;

(2) The date, time, and place, of the meeting;

(3) The general function of the committee;

(4) A list of all agenda items, showing whether each will be discussed in an open or closed portion of the meeting;

(5) If any portion of the meeting is closed, a statement of the time of the open and closed portions;

(6) The nature of the subjects to be discussed during, and the reasons for closing, any closed portion of the meeting;

(7) The time set aside for oral statements and other public participation;

(8) The name, address, and telephone number, of the advisory committee executive secretary and any other agency employee designated as responsible for the administrative support for the advisory committee;

(9) A statement that written submissions may be made to the advisory committee through the executive secretary at any time, unless a cutoff date has been established under § 14.35(c)(2); and

(10) When a notice is published in the FEDERAL REGISTER less than 15 days before a meeting, an explanation for the lateness of the notice.

(c) If a public hearing before an advisory committee is used in lieu of a formal evidentiary public hearing under § 14.1(a)(3), an initial notice of hearing is to be published separately in the FEDERAL REGISTER containing all the information described in § 12.32(e). This procedure may be used for any other hearing before an advisory committee when the Commissioner concludes, as a matter of discretion, that it would be informative to the public.

(d) A list of advisory committee meetings will be distributed to the press by the Associate Commissioner for Public Affairs.

(e) All advisory committee meetings are to be included on the public calendar described in § 10.100(a).

§ 14.22 Meetings of an advisory committee.

(a) No advisory committee may conduct a meeting except at the call or with the advance approval of, and with an agenda approved by, the designated Federal employee or alternate. No meeting may be held in the absence of the designated Federal employee.

(1) If any matter is added to the agenda after its publication in the FEDERAL REGISTER under § 14.5(b)(4), an attempt is to be made to inform persons known to be interested in the matter, and the change is to be announced at the beginning of the open portion of the meeting.

(2) The advisory committee meeting is to be conducted in accordance with the approved final agenda insofar as practical.

(b) Advisory committee meetings will be held at places that are reasonably accessible to the public. All advisory committee meetings will be held in Washington, D.C., or Rockville, Md., or the immediate vicinity, unless the Commissioner receives and approves a written request from the advisory committee for a different location. A different location may be approved when one or more of the following applies:

(1) The total cost of the meeting to the Government will be reduced.

(2) A substantial number of the committee members will be at the location at no expense to FDA for other reasons, e.g., for a meeting of a professional association.

(3) It is a central location more readily accessible to committee members.

(4) There is a need for increased participation available at that location.

(5) The committee wishes to review work or facilities in a specific location.

(6) The committee is concerned with matters that functionally or historically occur in some other location, e.g., the Board of Tea Experts and the Science Advisory Board of the National Center for Toxicological Research will generally hold meetings in Brooklyn, N.Y., and in the Little Rock, Ark., vicinity, respectively.

(c) Advisory committee members may, with the approval of FDA, conduct onsite visits relevant to their work.

(d) Unless the committee charter provides otherwise, a quorum for an advisory committee is a majority of the current voting members of the committee, except as provided in § 14.125(c) for TEPRSSC. Any matter before the advisory committee is to be decided by a majority vote of the voting members present at the time, except that the designated Federal official may require that any final report be voted upon by all current voting members of the committee. Any current voting member of the committee may file a separate report with additional or minority views.

(e) If space is available, any interested person may attend any portion of any advisory committee meeting which is not closed.

(f) Whenever feasible, meetings are to be held in government facilities or other facilities involving the least expense to the public. The size of the meeting room is to be reasonable, considering such factors as the size of the committee, the number of persons expected to attend a meeting, and the resources and facilities available.

(g) The Commissioner may authorize a meeting to be held by conference telephone call. For these meetings, a speaker phone will be provided in a conference room located in Washington, D.C., or Rockville, Md., to permit public participation in open portions of the meetings, as provided in §§ 14.25 and 14.29. These meetings generally will be brief, and authorized—

(1) For the purpose of taking final votes or otherwise confirming actions taken by the committee at other meetings; or

(2) Where time does not permit a meeting to be held at a central location.

(h) Any portion of a meeting will be closed by the committee chairman only when matters are to be discussed which the Commissioner has determined may be considered in closed session under § 14.27(b). If a portion of the meeting is closed, the closed portion will be held after the conclusion of the open portion whenever practicable.

(i) Any committe member may take notes during meetings and report and discuss committee deliberations after a meeting is completed and before official minutes or a report are available, within the rules and regulations adopted by FDA and by the advisory committee with the concurrence of FDA, including all of the following:

(1) There may be no attribution of individual views expressed in a closed session or revealing of numerical votes.

(2) There may be no reporting or discussion of any particular matter if the committee or FDA specifically so directs, e.g., where deliberations are incomplete or involve a sensitive regulatory decision that requires preparation or implementation.

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(3) There may be no reporting or discussion of information prohibited from public disclosure under § 14.75.

(4) Notes or minutes kept or reports prepared by a committee member have no status or effect unless adopted into the official minutes or report by the committee. It is the responsibility of each committee member to make certain that the official minutes and reports are complete and accurate and fully reflect what happened at any meeting the committee member attended.

§ 14.25 Portions of advisory committee meetings.

An advisory committee meeting has the following portions:

(a) *The open public hearing.* Every committee meeting includes an open portion, which constitutes a public hearing during which interested persons may present relevant information or views orally or in writing. The hearing is conducted in accordance with § 14.29.

(b) *The open committee discussion.* A committee discusses any matter pending before it in an open portion of its meeting unless the meeting has been closed for that matter under § 14.27. To the maximum extent feasible, consistent with the policy expressed in § 14.27, a committee conducts its discussion of pending matters in an open portion. No public participation is permissible during this portion of the meeting except with the consent of the committee chairman.

(c) *The closed presentation of data.* Information prohibited from public disclosure under part 20 and the regulations referenced therein is presented to the committee in a closed portion of its meeting. However, if information is in the form of a summary that is not prohibited from public disclosure, the presentation is to be made in an open portion of a meeting.

(d) *The closed committee deliberations.* Deliberations about matters before an advisory committee may be held in a closed portion of a meeting only upon an appropriate determintation by the Commissioner under § 14.27.

§ 14.27 Determination to close portions of advisory committee meetings.

(a) No committee meeeting may be entirely closed. A portion of a meeting may be closed only in accordance with a written determination by the Commissioner under this section.

(b) The executive secretary or other designated agency employee shall prepare the initial request for a determination to close a portion of a meeting, specifying the matter(s) to be discussed during the closed portion and the reasons why the portion should be closed. The Commissioner, based upon this request and with the concurrence of the Chief Counsel, will determine whether to close a portion of a meeting. The reasons for closing a portion of a meeting will be announced in the FEDERAL REGISTER notice of the meeting under § 14.20 in accordance with the following rules:

(1) Any determination to close a portion of a meeting restricts the closing to the shortest possible time consistent with the policy in this section.

(2) A portion of a meeting may be closed only if the Commissioner determines that the closing is permitted under 5 U.S.C. 552b(c), and that the closing is necessary.

(3) Portions of meetings may ordinarily be closed if they concern the review, discussion, and evaluation of drafts or regulations, guidelines or similar preexisting internal agency documents, but only if their premature disclosure would significantly impede proposed agency action; review of trade secrets and confidential commercial or financial information; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(4) Portions of meetings ordinarily may not be closed if they concern review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs and devices; review of information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other information not exempt from public disclosure under 5 U.S.C. 552b(c); the formulation of advice and recommendations to FDA on matters that do not independently justify closing.

(5) Only a portion of a meeting devoted to matters other than those designated in paragraph (b) (1) through (3) of this section may be closed.

(6) A matter which is properly considered in an open portion of a meeting may instead be considered in a closed portion only if it is so inextricably intertwined with matters to be discussed in a closed portion that it is not feasible to separate them or discussion of the matter in an open portion would compromise the matters to be discussed in the closed portion.

(c) Attendance at a closed portion of a meeting is governed by the following rules:

(1) A portion of a meeting closed for the presentation or discussion of information that constitutes a trade secret or confidential commercial or financial information as defined in § 20.61 may be attended only by voting advisory committee members, nonvoting members representing consumer interests who are also special government employees as provided in § 14.80(b), the executive secretary of the advisory committee, a transcriber, consultants, and such other regular employees of FDA (including members of the Office of the Chief Counsel) as the chairman of the advisory committee may invite, and by those persons authorized to be present under § 14.25(c), for presentation of information prohibited from public disclosure. A person making a presentation described in § 14.25(c) may be accompanied by a reasonable number of employees, consultants, or other persons in a commercial arrangement within the meaning of § 20.81(a).

(2) A portion of a meeting that has been closed for consideration of existing internal agency documents falling within § 20.62 where premature disclosure is likely to significantly impede proposed agency action; personnel, medical, and similar files, disclosure of which would be a clearly unwarranted invasion of personal privacy within the meaning of § 20.63; or investigatory records compiled for law enforcement purposes as defined in § 20.64 may be attended only by committee members (voting and nonvoting), the executive secretary of the committee, a transcriber, and other regular employees of FDA (including members of the Office of the Chief Counsel) whom the chairman of the committee may invite. Consultants, individuals performing personal service contracts, employees of other Federal agencies, and the general public may not attend such portions.

(3) If a person other than a person permitted to attend in accordance with paragraph (c) (1) and (2) of this section attempts to attend a closed portion of a meeting without the approval of the executive secretary and the chairman, and the matter is brought to their attention, the person will be required to leave the meeting immediately. This inadvertent and unauthorized attendance does not enable other unauthorized persons to attend, nor does it, of itself, constitute grounds for release of transcripts of closed portions or any other documents otherwise exempt from disclosure under § 14.75 and part 20.

(4) If a person other than a person permitted to attend in accordance with paragraph (c) (1) and (2) of this section is allowed by the executive secretary and the chairman to attend a closed portion of a meeting, that portion is open to attendance by any interested person.

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§ 14.29 Conduct of a hearing before an advisory committee.

(a) For each meeting, the open portion for public participation, which constitutes a public hearing under § 14.25(a), will be at least 1 hour, unless public participation does not last that long, and may last for whatever longer time the committee chairman determines will facilitate the work of the committee. The FEDERAL REGISTER notice published under § 14.20 will designate the time specifically reserved for the hearing, which is ordinarily the first portion of the meeting. Further public participation in any open portion of the meeting under § 14.25(b) is solely at the discretion of the chairman.

(b) An interested person who wishes to be assured of the right to make an oral presentation at a meeting shall inform the executive secretary or other designated agency employee, orally or in writing, before the meeting.

(1) The person shall state the general nature of the presentation and the approximate time desired. Whenever possible, all written information to be discussed by that person at the meeting should be furnished in advance to the executive secretary or other designated agency employee. This material may be distributed or mailed by FDA to the committee members in advance of the meeting if time permits, and otherwise will be distributed to the members when they arrive for the meeting. The mailing or distribution may be undertaken only by FDA unless FDA grants permission to a person to mail or distribute the material.

(2) Before the meeting, the executive secretary or other designated agency employee shall determine the amount of time allocated to each person for oral presentation and the time that the presentation is to begin. Each person will be so informed in writing, if time permits, or by telephone. FDA may require persons with common interests to make joint presentations.

(c) The chairman of the committee shall preside at the meeting in accordance with § 14.30 and be accompanied by other committee members, who serve as a panel in conducing the hearing portion of the meeting.

(d) Each person may use the allotted time as desired, consistent with an orderly hearing. A person may be accompanied by additional persons, and may present any written information or views for inclusion in the record of the hearing, subject to the requirements of § 14.35(c).

(e) If a person is absent at the time specified for that person's presentation, the persons following will appear in order. An attempt will be made to hear the person at the conclusion of the hearing. Interested persons attending the hearing who did not request an opportunity to make an oral presentation may be given an opportunity to do so at the discretion of the chairman.

(f) The chairman and other members may question a person concerning that person's presentation. No other person, however, may question the person. The chairman may allot additional time when it is in the public interest, but may not reduce the time allotted without consent of the person.

(g) Participants may question a committee member only with that member's permission and only about matters before the committee.

(h) The hearing is informal, and the rules of evidence do not apply. No motions or objections relating to the admissibility of information and views may be made or considered, but other participants may comment upon or rebut matters presented. No participant may interrupt the presentation of another participant.

§ 14.30 Chairman of an advisory committee.

(a) The advisory committee chairman has the authority to conduct hearings and meetings, including the authority to adjourn a hearing or meeting if the chairman determines that adjournment is in the public interest, to discontinue discussion of a matter, to conclude the open portion of a meeting, or to take any other action to further a fair and expeditious hearing or meeting.

(b) If the chairman is not a full-time employee of FDA, the executive secretary or other designated agency employee, or alternate, is to be the "designated Federal employee" who is assigned to the advisory committee. The designated Federal employee is also authorized to adjourn a hearing or meeting if the employee determines adjournment to be in the public interest.

§ 14.31 Consultation by an advisory committee with other persons.

(a) A committee may confer with any person who may have information or views relevant to any matter pending before the committee.

(b) An interested person may submit to the committee a written request that it confer with specific persons about any matter pending before the committee. The request is to contain adequate justification. The committee may, in its discretion, grant the request.

(c) A committee may confer with a person who is not a Federal Government executive branch employee only during the open portions of a meeting. The person may, however, submit views in writing to the committee as part of the administrative record under § 14.70. The person may participate at the closed portions of a meeting only if appointed as a special Government employee by the Commissioner as provided in paragraph (e) of this section. This paragraph (c) is not intended to bar the testimony of a person during a closed portion of a meeting about matters prohibited from public disclosure under § 14.25(c) and § 14.27(c).

(d) To prevent inadvertent violation of Federal conflict of interest laws and laws prohibiting disclosure of trade secrets (18 U.S.C. 208, 21 U.S.C. 331(j), 18 U.S.C. 1905), Federal executive branch employees who are not employees of the Department may not confer, testify, or otherwise participate (other than as observers) at any portion of an advisory committee meeting unless they are appointed as special Government employees by the Commissioner under paragraph (e) of this section. This paragraph does not apply to Federal executive branch employees who are appointed as members of TEPRSSC, as provided in § 14.127.

(e) The Commissioner may appoint persons as special Government employees to be consultants to an advisory committee. Consultants may be appointed to provide expertise, generally concerning a highly technical matter, not readily available from the members of the committee. Consultants may be either from outside the Government or from agencies other than the Department of Health, Education, and Welfare. Reports, data, information, and other written submissions made to a public advisory committee by a consultant are part of the administrative record itemized in § 14.70.

§ 14.33 Compilation of materials for members of an advisory committee.

The Commissioner shall prepare and provide to all committee members a compilation of materials bearing upon members' duties and responsibilities, including—

(a) All applicable conflict of interest laws and regulations and a summary of their principal provisions;

(b) All applicable laws and regulations relating to trade secrets and confidential commercial or financial information that may not be disclosed publicly and a summary of their principal provisions;

(c) All applicable laws, regulations, and guidelines relating to the subject matter covered by the advisory committee and a summary of their principal provisions;

(d) All applicable laws, regulations, including the regulations in part 20 of this chapter, advisory committee charters, FEDERAL REGISTER notices, curricula vitae, rules adopted by the

advisory committee, and other material relating to the formation, composition, and operation of the advisory committee, and a summary of their principal provisions;

(e) Instructions on whom to contact when questions arise; and

(f) Other material relating to FDA and the subject matter covered by the committee which may facilitate the work of the committee.

§ 14.35 Written submissions to an advisory committee.

(a) Ten copies of written submissions to a committee are to be sent to the executive secretary unless an applicable FEDERAL REGISTER notice or other regulations in this chapter specify otherwise. Submissions are subject to the provisions of § 10.20, except that it is not necessary to send copies to the hearing clerk.

(b) At the request of a committee, or on the Commissioner's own initiative, the Commissioner may issue in the FEDERAL REGISTER a notice requesting the submission to the committee of written information and views pertinent to a matter being reviewed by the committee. The notice may specify the manner in which the submission should be made.

(c) At the request of a committee, or on the Commissioner's own initiative, the Commissioner may at any time request the applicant or sponsor of an application or petition about a specific product on which action is pending before FDA, and is being reviewed by an advisory committee, to present or discuss safety, effectiveness, or other data concerning the product during a regularly scheduled meeting of the committee. The request may be for an oral presentation or for a concise, well-organized written summary of pertinent information for review by the committee members before the meeting, or both. Unless specified otherwise, one copy of the written summary along with a proposed agenda outlining the topics to be covered and identifying the participating industry staff members or consultants that will pre<sent each topic is to be submitted to the executive secretary or other designated agency employee at least 3 weeks before the meeting.

(d) An interested person may submit to a committee written information or views on any matter being reviewed. Voluminous data is to be accompanied by a summary. A submission is to be made to the executive secretary and not directly to a committee member.

(1) FDA will distribute submissions to each member, either by mail or at the next meeting. Submissions will be considered by the committee in its review of the matter.

(2) A committee may establish, and give public notice of, a cutoff date after which submissions about a matter will no longer be received or considered.

(e) The Commissioner will provide the committee all information the Commissioner deems relevant. A member will, upon request, also be provided any material available to FDA which the member believes appropriate for an independent judgment on the matter, e.g., raw data underlying a summary or report, or a briefing on the legal aspects of the matter.

§ 14.39 Additional rules for a particular advisory committee.

(a) In addition to these rules, an advisory committee may, with the concurrence of the designated Federal employee, adopt additional rules which are not inconsistent with this subpart or with other legal requirements.

(b) Any additional rules will be included in the minutes of the meeting when adopted and in the materials compiled under § 14.33 and will be available for public disclosure under § 14.65(c).

Subpart C—Establishment of Advisory Committees

§ 14.40 Establishment and renewal of advisory committees.

(a) An advisory committee may be established or renewed whenever it is necessary or appropriate for the committee to hold a public hearing and to review and make recommendations on any matter pending before FDA. Except for committees established by statute, before a committee is established or renewed it must first be approved by the Department pursuant to 45 CFR Part 11 and by the General Services Administration.

(b) When an advisory committee is established or renewed, the Commissioner will issue a FEDERAL REGISTER notice certifying that the establishment or renewal is in the public interest and stating the structure, function, and purposes of the committee and, if it is a standing advisory committee, shall amend § 14.100 to add it to the list of standing advisory committees. The notice will be published at least 15 days before the filing of the advisory committee charter under paragraph (c) of this section.

(c) No committee may meet or take action until its charter is prepared and filed as required by sections 9(c) of the Federal Advisory Committee Act. This requirement is to be met by an advisory committee utilized by FDA, even though it is not established by the agency, prior to utilization.

(d) The regulations of the Department cited in paragraph (a) of this section provide that the charter of a parent committee may incorporate information concerning activities of a subgroup. In such instances, a subgroup will not be established as a committee distinct from the parent committee. However, a subgroup will be established as a separate committee when the charter of the parent committee does not incorporate the activities of the subgroup, or when the subgroup includes members who are not all drawn from the parent committee.

(e) An advisory committee not required to be established by law will be established or utilized only if it is in the public interest and only if its functions cannot reasonably be performed by other existing advisory committees or by FDA.

(f) An advisory committee must meet the following standards:

(1) Its purpose is clearly defined.

(2) Its membership is balanced fairly in terms of the points of view represented in light of the functions to be performed. Although proportional representation is not required, advisory committee members are selected without regard to race, color, national origin, religion, age, or sex.

(3) It is constituted and utilizes procedures designed to assure that its advice and recommendations are the result of the advisory committee's independent judgment.

(4) Its staff is adequate. The Commissioner designates an executive secretary and alternate for every advisory committee, who are employees of FDA. The executive secretary is responsible for all staff support unless other agency employees are designated for this function.

(5) Whenever feasible, or required by statute, it includes representatives of the public interest.

§ 14.55 Termination of advisory committees.

(a) Except as provided in paragraph (c) of this section, a standing advisory committee is terminated when it is no longer needed, or not later than 2 years after its date of establishment unless it is renewed for an additional 2-year period. A committee may be renewed for as many 2-year periods as the public interest requires. The requirements for establishment of a committee under § 14.40 also apply to is renewal.

(b) FDA will issue a FEDERAL REGISTER notice announcing the reasons for terminating a committee and, if it is a standing committee, amending § 14.100 to delete it from the list.

(c) TEPRSSC is a permanent statutory advisory committee established by section 358(f)(1)(A) of the Public Health Service Act (42 U.S.C. 263f(f)(1)(A)), as added by the Radiation Control for Health and Safety Act of 1968, and is not subject to ter-

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mination and renewal under paragraph (a) of this section, except that a new charter is prepared and filed at the end of each 2-year period as provided in § 14.40(c). Also, the statutory medical device classification panels established under section 513(b)(1) of the act and part 860, and the statutory medical device good manufacturing practice advisory committees established under section 520(f)(3) of the act, are specifically exempted from the normal 2-year duration period.

(d) The Board of Tea Experts is a permanent statutory advisory committee established by the Tea Importation Act (21 U.S.C. 42) and is not subject to termination and renewal under paragraph (a) of this section, except that a new charter is prepared and filed at the end of each 2-year period as provided in § 14.40(c).

(e) Color additive advisory committees are required to be established under the circumstances specified in section 706(b)(5) (C) and (D) of the act. A color additive advisory committee is subject to the termination and renewal requirements of the Federal Advisory Committee Act and of this part.

Subpart D—Records of Meetings and Hearings Before Advisory Committees

§ 14.60 Minutes and reports of advisory committee meetings.

(a) The executive secretary or other designated agency employee prepares detailed minutes of all advisory committee meetings, except that less detailed minutes may be prepared for open portions of meetings which, under § 14.61, must be transcribed or recorded by the agency. Their accuracy is approved by the committee and certified by the chairman. The approval and certification may be accomplished by mail or by telephone.

(b) The minutes include the following:

(1) The time and place of the meeting.

(2) The members, committee staff, and agency employees present, and the names and affiliations or interests of public participants.

(3) A copy of or reference to all written information made available for consideration by the committee at the proceedings.

(4) A complete and accurate description of matters discussed and conclusions reached. A description is to be kept separately for the following portions of the meeting to facilitate their public disclosure: The open portions specified in § 14.25 (a) and (b), any closed portion during which a presentation is made under § 14.25(c), and any closed deliberative portion under § 14.25(d). The minutes of a closed deliberative portion of a meeting may not refer to members by name, except upon their request, or to data or information described in § 14.75(b). Any inadvertent references that occur are to be deleted before public disclosure.

(5) A copy of or reference to all reports received, issued, or approved by the committee.

(6) The extent to which the meeting was open to the public.

(7) The extent of public participation, including a list of members of the public who presented oral or written statements.

(c) For a meeting that has a closed portion, either (1) the minutes of the closed portion are available for public disclosure under § 14.75(a) (6)(i), or (2) if under § 14.75(a) (6)(ii) they are not promptly available, the executive secretary or other designated agency employee shall prepare a brief summary of the matters considered in an informative manner to the public, consistent with 5 U.S.C. 552(b).

(d) Where a significant portion of the meeting of a committee is closed, the committee will issue a report at least annually setting forth a summary of its activities and related matters informative to the public consistent with 5 U.S.C. 552(b). This report is to be a compilation of or be prepared from the individual reports on closed portions of meetings prepared under paragraph (c) of this section.

(e) The executive secretary or other designated agency employee shall, with the approval of the committee, prepare an annual report describing its membership, functions, recommendations, and other actions.

§ 14.61 Transcripts of advisory committee meetings.

(a) The agency will arrange for a transcript or recording to be made for each portion of a meeting.

(b) A transcript or recording of an open portion of a meeting made by FDA is to be included in the record of the committee proceedings.

(c) A transcript or recording of any closed portion of a meeting made by FDA will not be included in the administrative record of the committee proceedings. The transcript or recording will be retained as confidential by FDA, and will not be discarded or erased.

(d) Any transcript or recording of a meeting or portion thereof which is publicly available under this section will be available at actual cost of duplication, which will be, where applicable, the fees established in § 20.42. FDA may furnish the requested transcript or recording for copying to a private contractor who shall charge directly for the cost of copying under § 20.51.

(e) A person attending any open portion of a meeting may, consistent with the orderly conduct of the meeting, record or otherwise take a transcript of the meeting. This transcription will not be part of the administrative record.

(f) Only FDA may make a transcript or recording of a closed portion of a meeting.

14.65 Public inquiries and requests for advisory committee records.

(a) Public inquiries on general committee matters, except requests for records, are to be directed to: Committee Management Officer (HFA-25), Office of the Associate Commissioner for Management and Operations, Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857.

(b) Public inquiries on matters relating to a specific committee, except requests for records, are to be directed to the executive secretary or the designated agency employee listed in the FEDERAL REGISTER notices published under § 14.20.

(c) Requests for public advisory committee records, including minutes, are to be made to FDA's Freedom of Information Staff (HFI-35) under § 20.40 and the related provisions of part 20.

§ 14.70 Administrative record of a public hearing before an advisory committee.

(a) Advice or recommendations of an advisory committee may be given only on matters covered in the administrative record of the committee's proceedings. Except as specified in other FDA regulations, the administrative record consists of all the following items relating to the matter:

(1) Any transcript or recording of an open portion of a meeting.

(2) The minutes of all portions of all meetings, after any deletions under § 14.60(b)(4).

(3) All written submissions to and information considered by the committee.

(4) All reports made by the committee.

(5) Any reports prepared by a consultant under § 14.31(e).

(b) The record of the proceeding is closed at the time the advisory committee renders its advice or recommendations or at any earlier time specified by the committee or in other sections in this chapter.

§ 14.75 Examination of administrative record and other advisory committee records.

(a) The administrative record and other committee records are available for public disclosure under part 20, except as provided in paragraph (b) of the section, at the following times:

(1) The written information for consideration by the committee at any

meeting: at the same time it is made available to the committee.

(2) The transcript or recording of any open portion of a meeting: as soon as it is available.

(3) The minutes of any open portion of a meeting: after they have been approved by the committee and certified by the chairman.

(4) The brief summary of any closed portion of a meeting prepared under § 14.60(c): as soon as it is available.

(5) All written information or views submitted to the committee at an open portion of a meeting: as soon as they are submitted.

(6) The minutes or portions thereof of a closed portion of a meeting—

(i) For a matter not directed to be maintained as confidential under § 14.22(h)(2): After they have been approved by the committee and certified by the chairman; and

(ii) For a matter directed to be maintained as confidential under § 14.22(h)(2): After the advice or report of the committee relevant to those minutes or portions thereof is acted upon by the Commissioner, or upon a determination by the Commissioner that such minutes or portions thereof may be made available for public disclosure without undue interference with agency or advisory committee operations.

(7) Formal advice or a report of the committee: after it has been acted upon, i.e., approved, disapproved, or rejected as inadequate, by the Commissioner, or upon a determination by the Commissioner that such formal advice or report may be made available for public disclosure without undue interference with agency or committee operations. Such formal advice or report may be retained as confidential while it is under active advisement.

(8) Any other committee records relating to the matter, except transcripts and recordings of closed portions of meetings: After the advice or report of the committee relevant to those records is acted upon by the Commissioner, or upon a determination by the Commissioner that the records may be made available for public disclosure without undue interference with agency or committee operations.

(b) The following information contained in the administrative record is not available for public examination or copying except as provided in § 12.32(g):

(1) Material provided to the committee by FDA that is exempt from public disclosure under part 20 and the regulations referenced there.

(2) Material provided to the advisory committee by a person making a presentation described in § 14.25(c) and which is prohibited from public disclosure under part 20 and the regulations referenced there.

(c) The Freedom of Information Staff (HFI-35) will maintain a file for each committee containing the following principal records for ready access by the public:

(1) The committee charter.

(2) A list of committee members and their curricula vitae.

(3) The minutes of committee meetings.

(4) Any formal advice or report of the committee.

Subpart E—Members of Advisory Committees

§ 14.80 Qualifications for members of standing policy and technical advisory committees.

(a) Members of a policy advisory committee—

(1) Shall have diverse interests, education, training, and experience; specific technical expertise is not a requirement;

(2) Are special Government employees subject to the conflict of interest laws and regulations (the Commissioner has determined that, because members representing particular interests, e.g., a representative of labor, industry, consumers, or agriculture, are included on advisory committees specifically for the purpose of representing these interests, any financial interest covered by 18 U.S.C. 208(a) in the class which the member represents is irrelevant to the services which the Government expects from them and thus is hereby exempted under 18 U.S.C. 208(b) as too remote and inconsequential to affect the integrity of their services); and

(3) Shall be voting members.

(b) Technical advisory committee. (1) Voting members of technical advisory committees—

(i) Shall have expertise in the subject matter with which the committee is concerned and have diverse professional education, training, and experience so that the committee will reflect a balanced composition of sufficient scientific expertise to handle the problems that come before it; and

(ii) Except for members of TEPRSSC, are special Government employees subject to the conflict of interest laws and regulations.

(2) The Commissioner shall, when required by statute, and may when not required by statute, provide for nonvoting members of a technical advisory committee to serve as representatives of and liaison with interested organizations. Nonvoting members—

(i) Shall be selected by the interested organizations, as provided in § 14.84; technical expertise in the subject matter with which the committee is involved is not a requirement; and

(ii) May be special Government employees subject to the conflict of interest laws and regulations, except as provided in § 14.84(e).

(c) A person may serve as a voting or nonvoting member on only one FDA advisory committee unless the Commissioner determines in writing that dual membership will aid the work of the committees involved and is in the public interest.

(d) Members of FDA advisory committees, and the chairman, are appointed from among those nominated under §§ 14.82 and 14.86 and from any other sources by the Secretary, or, by delegation of authority, by the Assistant Secretary for Health, or the Commissioner.

(e) Members appointed to an advisory committee serve for the duration of the committee, or until their terms of appointment expire, they resign, or they are removed from membership by the Commissioner.

(f) A committee member may be removed from membership for good cause. Good cause includes excessive absenteeism from committee meetings, a demonstrated bias that interferes with the ability to render objective advise, failure to abide by the procedures established in this subpart, or violation of other applicable rules and regulations, e.g., for nonvoting members, the provisions of § 14.86(c).

(g) Consultants appointed under § 14.31(e) are not members of advisory committees.

§ 14.82 Nominations of voting members of standing advisory committees.

(a) The Commissioner will publish one or more notices in the FEDERAL REGISTER each year requesting nominations for voting members of all existing standing advisory committees. The notice will invite the submission of nominations for voting members from both individuals and organizations.

(b) The notice announcing the establishment of a new committee under § 14.40(b) will invite the submission of nominations for voting members.

(c) A person may nominate one or more qualified persons to an advisory committee. Nominations will specify the advisory committee for which the nominee is recommended and will include a complete curriculum vitae of the nominee. Nominations are to state that the nominee is aware of the nomination, is willing to serve as a member of the advisory committee, and appears to have no conflict of interest that would preclude membership.

(d) Voting members serve as individuals and not as representatives of any group or organization which nominated them or with which they may be affiliated.

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§ 14.84 Nominations and selection of nonvoting members of standing technical advisory committees.

(a) This section applies when the Commissioner concludes that a technical advisory committee should include nonvoting members to represent and serve as a liaison with interested individuals and organizations.

(b) Except when the Commissioner concludes otherwise, nonvoting members of a technical advisory committee are selected in accordance with paragraphs (c) and (d) of this section and are normally limited to one person selected by consumer groups and organizations and one person selected by industry groups and organizations.

(c) To select a nonvoting member to represent consumer interests, except as provided in paragraph (c)(5) of this section, the Commissioner publishes a notice in the FEDERAL REGISTER requesting nominations for each specific committee, or subcommittee, for which nonvoting members are to be appointed.

(1) A period of 30 days will be permitted for submission of nominations for that committee or subcommittee. Interested persons may nominate one or more qualified persons to represent consumer interests. Although nominations from individuals will be accepted, individuals are encouraged to submit their nominations through consumer organizations as defined in paragraph (c)(3) of this section. Nominations of qualified persons for general considerations as nonvoting members of unspecified advisory committees or subcommittees may be made at any time. All nominations are to be submitted in writing to Office of Consumer Affairs (HF-7), Food and Drug Administration, Room 15B-41, 5600 Fishers Lane, Rockville, Md. 20857.

(2) A complete curriculum vitae of any nominee is to be included. Nominations must state that the nominee is aware of the nomination, is willing to serve as a member of an advisory committee, and appears to have no conflict of interest. The nomination must state whether a nominee is interested only in a particular advisory committee or subcommittee, or whether the nominee is interested in becoming a member of any advisory committee or subcommittee. Nominations that do not comply with the requirements of this paragraph will not be considered.

(3) The Office of Consumer Affairs will compile a list of organizations whose objectives are to promote, encourage, and contribute to the advancement of consumer education and to the resolution of consumer problems. All organizations listed are entitled to vote upon the nominee. The list will include organizations representing the public interest, consumer advocacy groups, and consumer/health branches of Federal, State, and local governments. Any organization that meets the criteria may be included on such list on request.

(4) The executive secretary, or other designated agency employee, will review the list of nominees and select three to five qualified nominees to be placed on a ballot. Names not selected will remain on a list of eligible nominees and be reviewed periodically by the Office of Consumer Affairs to determine continued interest. Upon selection of the nominees to be placed on the ballot, the curriculum vitae for each of the nominees will be sent to each of the organizations on the list compiled under paragraph (c)(3) of this section, together with a ballot to be filled out and returned within 30 days. After the time for return of the ballots has expired, the ballots will be counted and the nominee who has received the highest number of votes will be selected as the nonvoting member representing consumer interests for that particular advisory committee or subcommittee. In the event of a tie, the Commissioner will select the winner by lot from among those tied for the highest number of votes.

(5) If a member representing consumer interests resigns or is removed before termination of the committee on which the member is serving, the following procedures will be used to appoint a replacement to serve out the term of the former member:

(i) The Commissioner will appoint the runner-up, in order of number of ballots received, on the original ballot submitted under paragraph (c)(4) of this section to fill the vacancy. If the runner-up is no longer willing to serve as a member, then the next runner-up will be appointed.

(ii) If none of the nominees on the original ballot is willing to serve, or if there was only one nominee on the original ballot, the Office of Consumer Affairs will contact by telephone eligible individuals whose names have been submitted in the past as candidates for membership as representatives of consumer interests. A list of persons who are interested in serving on an advisory committee will then be prepared. The curricula vitae of these persons, together with a ballot, will be sent to a representative number of consumer organizations that have been determined to be eligible to vote for consumer representatives in accordance with paragraph (c)(3) of this section. After 4 days have elapsed, the Office of Consumer Affairs will contact the consumer organizations by telephone and elicit their votes. The candidate who has received the highest number of votes will be selected. In the event of a tie, the Commissioner will select the winner by lot from among those tied for the highest number of votes.

(d) To select a nonvoting member to represent industry interests, the Commissioner will publish, for each committee for which the Commissioner has determined to appoint a nonvoting member, a notice requesting that, within 30 days, any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests send a letter stating that interest to the FDA employee designated in the notice. After 30 days, a letter will be sent to each organization that has expressed an interest, attaching a complete list of all such organizations, and stating that it is their responsibility to consult with each other in selecting, within 60 days after receipt of the letter, a single nonvoting member to represent industry interests for that committee. If no individual is selected within 60 days, the Commissioner will select the nonvoting member representing industry interests.

(e) The Commissioner has determined that, because nonvoting members representing consumer and industry interests are included on advisory committees specifically for the purpose of representing such interests and have no vote, any financial interest covered by 18 U.S.C. 208(a) in the class which the member represents is irrelevant to the services the Government expects from them and thus is hereby exempted under 18 U.S.C. 208(b) as too remote and inconsequential to affect the integrity of their services.

§ 14.86 Rights and responsibilities of nonvoting members of advisory committees.

(a) A nonvoting member of an advisory committee selected to represent and serve as a liaison with interested individuals, associations, and organizations has the same rights as any other committee member except that—

(1) A nonvoting member may vote only on procedural matters such as additional rules adopted under § 14.39(a), approval of minutes under § 14.60(a), decisions on transcripts under § 14.61(b), and future meeting dates;

(2) A nonvoting member who is a representative of industry interests may have access to data and information that constitute a trade secret or confidential commercial or financial information as defined in § 20.61 only if the person has been appointed as a special Government employee under § 14.80(b).

(b) A nonvoting member of an advisory committee is subject to, and shall abide by, all rules and regulations adopted by FDA and the committee.

(c) It is the responsibility of the nonvoting consumer and industry members of an advisory committee to represent the consumer and industry interests in all deliberations.

(1) A nonvoting member does not represent any particular organization or group, but rather represents all interested persons within the class which the member is selected to represent. Accordingly, an interested person within the class represented by that nonvoting member may, upon request, have access to all written statements or oral briefings concerning the committee prepared by the nonvoting member for distribution to any person outside the committee. When documents are prepared with non-Government funds, persons desiring copies may be required to pay a reasonable fee to cover printing and similar costs.

(2) The nonvoting member reviews all official committee minutes to assure their completeness and accuracy.

(3) The nonvoting member acts as a liaison between the committee and the interested persons whom that member represents, and transmits requests for information from the committee and relevant information and views to the committee. The nonvoting member takes the initiative in contacting interested persons whom the member represents to seek out relevant information and views and to relate the progress of the advisory committee.

(4) A nonvoting industry member represents all members of the industry, and not any particular association, company, product, or ingredient. If a matter comes before the committee that directly or indirectly affects the company employing the nonvoting industry member, the member shall so inform the committee but need not be absent during the discussion or decline to participate in the discussion. A nonvoting industry member may not discuss the company's position as such, but may discuss any matter in general terms. All presentations and discussions of scientific data and their interpretation on behalf of a company will occur in open session, except as provided in § 14.25(c).

(5) A nonvoting member of an advisory committee may not make any presentation to that advisory committee during a hearing conducted by that committee.

(6) Although a nonvoting member serves in a representative capacity, the nonvoting member shall exercise restraint in performing such functions and may not engage in unseemingly advocacy or attempt to exert undue influence over the other members of the committee.

(d) A nonvoting member of an advisory committee may be removed by the Commissioner for failure to comply with this section as well as § 14.80(f).

§ 14.90 Ad hoc advisory committee members.

In selecting members of an ad hoc advisory committee, the Commissioner may use the procedures in §§ 14.82 and 14.84 or any other procedure deemed appropriate.

§ 14.95 Compensation of advisory committee members.

(a) All voting advisory committee members shall, and nonvoting members may: (1) Be appointed as special Government employees (except for members of TEPRSSC), and (2) receive a consultant fee and be reimbursed for travel expenses, including per diem in lieu of subsistence, unless such compensation and reimbursement are waived.

(b) Notwithstanding the member's primary residence, an advisory committee member, while attending meetings of the full committee or a subcommittee, will be paid whether the meetings are held in the Washington, D.C., area or elsewhere.

(c) A committee member who participates in any agency-directed assignment will be paid at an hourly rate when doing assigned work at home, a place of business, or in an FDA facility located within the member's commuting area, and at a daily rate when required to travel outside of that commuting area to perform the assignment. A committee member will not be paid for time spent on normal preparation for a committee meeting.

(1) An agency-directed assignment is an assignment that meets the following criteria:

(i) An activity that requires undertaking a definitive study. The activity must produce a tangible end product, usually a written report. Examples are (*a*) an analysis of the risks and benefits of the use of a class of drugs or a report on a specific problem generated by an IND or NDA; (*b*) the performance of similar investigations or analysis of complex industry submissions to support advisory committee deliberations other than normal meeting preparation; (c) the preparation of a statistical analysis leading to an estimate of toxicologically safe dose levels; and (*d*) the design or analysis of animal studies of toxicity, mutagenicity, teratogenicity, or carcinogenicity.

(ii) The performance of an IND or NDA review or similar review.

(2) A committee member who undertakes a special assignment, the end product of which does not represent the end product of the advisory committee, but rather of the committee member's own assignment, can be compensated. Should this preparatory work by members collectively result in an end product of the committee, this is to be considered normal meeting preparation and committee members are not to be compensated for this work.

(d) Salary while in travel status is authorized when a committee member's ordinary pursuits are interrupted for the substantial portion of an additional day beyond the day or days spent in performing those services, and as a consequence the committee member loses some regular compensation. This applies on weekends and holidays if the special Government employee loses income that would otherwise be earned on that day. For travel purposes, a substantial portion of a day is defined as 50 percent of the working day, and the traveler will be paid at a daily rate.

Subpart F—Standing Advisory Committees

§ 14.100 List of standing advisory committees.

Standing advisory committees and the dates of their establishment are as follows:

(a) *Office of the Commissioner*—(1) *Board of Tea Experts.* (i) Date established: March 2, 1897.

(ii) Function: Advises on establishment of uniform standards of purity, quality, and fitness for consumption of all tea imported into the United States under 21 U.S.C. 42.

(2) *National Advisory Food and Drug Committee.* (i) Date established: November 15, 1974.

(ii) Function: Reviews and evaluates agency programs and advises on policy matters of national significance related to the statutory mission of FDA concerning foods, drugs, cosmetics, medical devices, biological products, and electronic products. Reviews and makes recommentations on applications for grants-in-aid for research projects relevant to the mission of FDA as required by law.

(b) *Bureau of Biologics*—(1) Advisory review panels for biological products, and the dates of their establishment are as follows: (i) *Bacterial Vaccines and Toxoids Panel.* Established April 16, 1973.

(ii) *Viral Vaccines and Rickettsial Vaccines Panel.* April 16, 1973.

(iii) *Allergenic Extracts Panel.* Established August 24, 1973.

(iv) *Blood and Blood Derivatives Panel.* Established August 24, 1973.

(2) Function: Review and evaluate available data on the safety and effectiveness of biological products.

(c) *Bureau of Drugs*—(1) *Anesthetic and Life Support Drugs Advisory Committee.* (i) Date established: May 1, 1978.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in the field of anesthesiology and surgery.

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(2) *Anti-Infective and Topical Drugs Advisory Committee.* (i) Date established: April 10, 1978.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in infectious diseases, dermatological disorders, and ocular disease.

(3) *Arthritis Advisory Committee.* (i) Date established: April 5, 1974.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in arthritic conditions.

(4) *Cardiovascular and Renal Drugs Advisory Committee.* (i) Date established: August 27, 1970.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in cardiovascular and renal disorders.

(5) *Drug Abuse Advisory Committee.* (1) Date established: May 31, 1978.

(ii) Function: Advises on the scientific and medical evaluation of information gathered by the Department of Health, Education, and Welfare and the Department of Justice on the safety, efficacy, and abuse potential of drugs and recommends actions to be taken on the marketing, investigation, and control of such drugs.

(6) *Endocrinologic and Metabolic Drugs Advisory Committee.* (i) Date established: August 27, 1970.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in endocrine and metabolic disorders.

(7) *Fertility and Maternal Health Drugs Advisory Committee.* (i) Date established: March 23, 1978.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in the practice of obstetrics and gynecology.

(8) *Gastrointestinal Drugs Advisory Committee.* (i) Date established: March 3, 1978.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in gastrointestinal diseases.

(9) *Oncologic Drugs Advisory Committee.* (i) Date established: September 21, 1978.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in the treatment of cancer.

(10) *Peripheral and central Nervous System Drugs Advisory Committee.* (i) Date established: June 4, 1974.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in neurologic disease.

(11) *Psychopharmacologic Drugs Advisory Committee.* (i) Date established: June 4, 1974.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in the practice of psychiatry and related fields.

(12) *Pulmonary-Allergy Drugs Advisory Committee.* (i) Date established: February 17, 1972.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in the treatment of pulmonary disease and diseases with allergic and/or immunologic mechanisms.

(13) *Radiopharmaceutical Drugs Advisory Committee.* (i) Date established: August 30, 1967.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in the practice of nuclear medicine.

(14) *Advisory review panels for over-the-counter (OTC) drugs.* (i) Dates established—(*a*) *Antimicrobial Panel.* Established March 16, 1972;

(*b*) *Dentifrice and Dental Care Panel.* Established December 27, 1972;

(*c*) *Ophthalmic Panel.* Established April 16, 1973;

(*d*) *Contraceptive and Other Vaginal Drug Products Panel.* Established June 27, 1973;

(*e*) *Oral Cavity Panel.* Established July 16, 1973;

(*f*) *Miscellaneous Internal Drug Products Panel.* Established July 16, 1973; and

(*g*) *Miscellaneous External Drug Products Panel.* Established July 16, 1973..

(ii) Function: Review and evaluate available data on the safety and effectiveness of nonprescription drug products.

(d) *Bureau of Medical Devices.* (1) Advisory panels for medical devices, and the dates of their establishment are as follows:

(i) *Circulatory Systems Devices Panel.* Established April 28, 1978.

(ii) *Clinical Chemistry and Hematology Devices Panel.* Established April 28, 1978.

(iii) *General Medical Devices Panel.* Established April 28, 1978.

(iv) *Immunology and Microbiology Devices Panel.* Established April 28, 1978.

(v) *Obstetrics-Gynecology and Radiologic Devices Panel.* Established April 28, 1978.

(vi) *Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel.* Established April 28, 1978.

(vii) *Respiratory and Nervous System Devices Panel.* Established April 28, 1978.

(viii) *Surgical and Rehabilitation Devices Panel.* Established April 28, 1978.

(2) Function: Review and evaluate available data on the safety and effectiveness of devices currently in use and make recommendations for their regulation.

(3) *Device Good Manufacturing Practice Advisory Committee.* (i) Dated Established: August 12, 1976.

(ii) Function: Reviews proposed regulations for good manufacturing practices governing the methods used in, and the facilities and controls used for, the manufacture, packing, storage, and installation of devices, and makes recommendations on the feasibility and reasonableness of the proposed regulations.

(e) *Bureau of Radiological Health—*(1) *Medical Radiation Advisory Committee.* (i) Date established: October 31, 1963.

(ii) Function: Advises on the formulation of policy and development of a coordinated program for the application of ionizing radiation in the healing arts.

(2) *Technical Electronic Product Radiation Safety Standards Committee.* (i) Date established: October 18, 1968.

(ii) Function: Advises on technical feasibility, reasonableness, and practicability of performance standards for electronic products to control the emission of radiation under 42 U.S.C. 263f(f)(1)(A).

(f) *National Center for Toxicological Research, Science Advisory Board.* (1) Date established: June 2, 1973.

(2) Function: Advises on establishment and implementation of a research program that will assist the Commissioner of Food and Drugs and the Administrator, Environmental Protection Agency, in fulfilling their regulatory responsibilites.

Subpart G—Technical Electronic Products Radiation Safety Standards Committee

§ 14.120 Establishment of the Technical Electronic Product Radiation Safety Standards Committee (TEPRSSC).

The Technical Electronic Product RaAdiation Safety Standards Committee (TEPRSSC), consisting of 15 members, is established in accordance with the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f(f)(1)(A)) to provide consultation before the Commissioner prescribes any performance standard for an electronic product.

§ 14.122 Functions of TEPRSSC.

(a) In performing its function of advising the Commissioner, TEPRSSC—

(1) May propose electronic product radiation safety standards to the Commissioner for consideration;

(2) Provides consultation to the Commissioner on all performance standards proposed for consideration under 42 U.S.C. 263f; and

(3) May make recommendations to the Commissioner on any other matters it deems necessary or appropriate in fulfilling the purposes of the act.

(b) Responsibility for action on performance standards under 42 U.S.C. 263f rests with the Commissioner, after receiving the advice of TEPRSSC.

§ 14.125 Procedures of TEPRSSC.

(a) When the Commissioner is considering promulgation of a performance standard for an electronic product, or an amendment of an existing standard, before issuing a proposed regulation in the FEDERAL REGISTER the Commissioner will submit to TEPRSSC the proposed standard or amendment under consideration, together with other relevant information to aid TEPRSSC in its deliberations.

(b) The agenda and other material to be considered at any meeting will be sent to members whenever possible at least 2 weeks before the meeting.

(c) Ten members constitute a quorum, provided at least three members are present from each group specified in 42 U.S.C. 263f(f)(1)(A) and in § 14.127(a), i.e., Government, industry, and the public.

(d) The chairman of TEPRSSC will ordinarily submit a report to the Commissioner of the committee's consideration of any proposed performance standard for an electronic product within 60 days after consideration. If the chairman believes that more time is needed, the chairman will inform the Director of the Bureau of Radiological Health in writing, in which case an additional 30 days will be allowed to make the report.

(e) Sections 14.1 through 14.7 apply to TEPRSSC, except where other provisions are specifically included in §§ 14.120 through 14.130.

§ 14.127 Membership of TEPRSSC.

(a) The Commissioner will appoint the members after consultation with public and private organizations concerned with the technical aspect of electronic product radiation safety. TEPRSSC consists of 15 members, each of whom is technically qualified by training and experienced in one or more fields of science or engineering applicable to electronic product radiation safety, as follows:

(1) Five members selected from government agencies, including State and Federal Governments.

(2) Five members selected from the affected industries after consultation with industry represenstatives.

(3) Five members selected from the general public, of whom at least one shall be a representative of organized labor.

(b) The Commissioner will appoint a committee member as chairman of TEPRSSC.

(c) Appointments of members are for a term of 3 years or as specified by the Commissioner.

(1) The chairman is appointed for a term concurrent with the chairman's term as a member of TEPRSSC. If the chairmanship becomes vacant without adequate notice, the executive secretary may appoint a committee member as temporary chairman pending appointment of a new chairman by the Commissioner.

(2) Members may not be reappointed for a second consecutive full term.

(d) A person otherwise qualified for membership is not eligible for selection as a member of TEPRSSC from Government agencies or the general public if the Commissioner determines that the person does not meet the requirements of the conflict of interest laws and regulations.

(e) Retention of membership is conditioned upon the following:

(1) Continued status as a member of the group from which the member was selected as specified in paragraph (a) of this section.

(2) Absence of any conflict of interest during the term of membership as specified in paragraph (d) of this section.

(3) Active participation in TEPRSSC activities.

(f) Appointment as a member of TEPRSSC is conditioned on certification that the prospective member:

(1) Agrees to the procedures and criteria specified in this subpart.

(2) Has no conflict of interest as specified in paragraph (d) of this section.

(3) Will notify the executive secretary of TEPRSSC before any change in representative status on TEPRSSC which may be contrary to the conditions of the appointment.

(g) Members of TEPRSSC who are not full-time officers or employees of the United States receive compensation under § 14.95, in accordance with 42 U.S.C. 210(c).

§ 14.130 Conduct of TEPRSSC meeting; availability of TEPRSSC records.

(a) In accordance with 42 U.S.C. 263f(f)(1)(B), all proceedings of TEPRSSC are recorded, and the record of each proceeding is available for public inspection.

(b) All proceedings of TEPRSSC are open except when the Commissioner has determined, under § 14.27, that a portion of a meeting may be closed.

Subpart H—Color Additive Advisory Committees

§ 14.140 Establishment of a color additive advisory committee.

The Commissioner will establish a color additive advisory committee under the following circumstances:

(a) The Commissioner concludes, as a matter of discretion, that it would be in the public interest for a color additive advisory committee to review and make recommendations about the safety of a color additive on which important issues are pending before FDA and for interested persons to present information and views at an oral public hearing before a color additive advisory committee.

(b) A person who would be adversely affected by the issuance, amendment, or repeal of a regulation listing a color additive requests that any issue concerning the safety of the color additive arising under section 706(b)(5)(B) of the act because of the color additive's potential or actual carcinogenicity and requiring the excerise of scientific judgment be referred to a color additive advisory committee.

(1) Paragraph (b) applies to any issue arising under the transitional provisions in section 203 of the Color Additive Amendments of 1960 relating to provisional listing of commercially established colors. A color additive advisory committee to consider any such matter will be established under paragraph (a) of this section.

(2) A request for establishment of a color additive advisory committee is to be made in accordance with § 10.30. The Commissioner may deny any petition if inadequate grounds are stated for establishing a color additive advisory committee. A request for establishment of a color additive advisory committee may not rest on mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires scientific judgment and justifies a hearing before a color additive advisory committee. When it conclusively appears from the request for a color additive advisory committee that the matter is premature or that it does not involve an issue arising under section 706(b)(5)(B) of the act or that there is no genuine and substantial issue of fact requiring scientific judgment, or for any other reason a color additive advisory committee is not justified, the Commissioner may deny the establishment of a color additive advisory committee.

(3) Establishment of a color additive advisory committee on the request of an interested person is conditioned upon receipt of the application fee specified in § 14.155.

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(4) Any person adversely affected may request referral of the matter to a color additive advisory committee at any time before, or within 30 days after, publication of an order of the Commissioner acting upon a color additive petition or proposal.

§ 14.142 Functions of a color additive advisory committee.

(a) A color additive advisory committee reviews all available information relating to the matter referred to it, including all information contained in any pertinent color additive petition and in FDA files. All information reviewed is placed on public display and is available for review at the office of the hearing clerk.

(b) The Commissioner specifies to the color additive advisory committee, in writing, the issues on which review and recommendations are requested.

(c) The date of the first meeting of a color additive advisory committee, following receipt of the administrative record by each of the committee members, is designated as the beginning of the period allowed for consideration of the matter by the committee. Within 60 days after the first meeting, unless the time is extended as provided in paragraph (d) of this section, the chairman of the committee shall certify to the Commissioner the report containing the recommendations of the committee, including any minority report. The report states the recommendations of the committee and the reasons or basis for them. The report includes copies of all material considered by the committee in addition to the administrative record furnished to it.

(d) If the chairman concludes that the color additive advisory committee needs additional time, the chairman shall so inform the Commissioner in writing and may certify the report of the committee to the Commissioner within 90 days instead of 60 days.

(e) More than one matter may be handled concurrently by a color additive advisory committee.

§ 14.145 Procedures of a color additive advisory committee.

(a) A color additive advisory committee is subject to all the requirements of the Federal Advisory Committee Act and this part.

(b) All interested persons have a right to consult with the color additive advisory committee reviewing a matter and to submit information and views to a color additive advisory committee, in accordance with the procedures in this part.

§ 14.147 Membership of a color additive advisory committee.

(a) The members of a color additive advisory committee are selected in the following manner:

(1) If a color additive advisory committee is established for purposes that do not include review of an issue arising under section 706(b)(5)(B) of the act, or is established on the initiative of the Commissioner, the Commissioner may use the procedure in paragraph (a)(2) of this section to select the members, or may use an existing standing advisory committee listed in § 14.100, or may establish a new advisory committee under this subpart. Once the Commissioner has established a color additive advisory committee under this paragraph and has referred to it a matter relating to a color additive, no interested person may subsequently request that an additional or different color additive advisory committee be established to review and make recommendations about that color additive.

(2) If the Commissioner established a color additive advisory committee to review an issue arising under section 706(b)(5)(B) of the act on the request of an interested person, it shall be established under the following requirements:

(i) Except as provided in paragraph (a)(2) (ii) and (iii) of this section, the Commissioner will request the National Academy of Sciences to select the members of a color additive advisory committee from among experts qualified in the subject matter to be reviewed by the committee, and of adequately diversified professional backgrounds. The Commissioner will appoint one of the members as the chairman.

(ii) If the National Academy of Sciences is unable or refuses to select the members of a color additive advisory committee, the Commissioner will select the members.

(iii) If the Commissioner and the requesting party agree, section 706(b)(5)(D) of the act may be waived and the matter may be referred to any standing advisory committee listed in § 14.100 or to any advisory committee established under any other procedure that is mutually agreeable. Once the Commissioner has established a color additive advisory committee and has referred to it a matter relating to a color additive, no interested person may subsequently request that an additional or different color additive advisory committee be established to review and make recommendations about that color additive.

(b) Members of a color additive advisory committee are subject to the requirements of the Federal Advisory Committee Act and this subpart, except that no member of a color additive advisory committee may by reason of such membership alone be a special government employee or be subject to the conflict of interest laws and regulations.

§ 14.155 Fees and compensation pertaining to a color additive advisory committee.

(a) When a matter is referred to a color additive advisory committee, all related costs, including personal compensation of committee members, travel, materials, and other costs, are borne by the person requesting the referral, such costs to be assessed on the basis of actual cost to the government. The compensation of such costs includes personal compensation of committee members at a rate not to exceed $128.80 per member per day.

(b) In the case of a request for referral to a color additive advisory committee a special advance deposit is to be made in the amount of $2,500. Where required, further advances in increments of $2,500 each are to be made upon request of the Commissioner. All deposits for referrals to a color additive advisory committee in excess of actual expenses will be refunded to the depositor.

(c) All deposits and fees required by this section are to be paid by money order, bank draft, or certified check drawn to the order of the Food and Drug Administration, collectable at par in Washington, D.C. All deposits and fees are to be forwarded to the Associate Commissioner for Management and Operations, Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20857, and after appropriate record of them is made, they will be transmitted to the Treasurer of the United States for deposit in the special account "Salaries and Expenses, Certification, Inspection, and Other Services, Food and Drug Administration."

(d) The Commissioner may waive or refund such fees in whole or in part when, in the Commissioner's judgment, such action will promote the public interest. Any person who believes that payment of these fees will be a hardship may petition the Commissioner under § 10.30 to waive or refund the fees.

Subpart I—Advisory Committees for Human Prescription Drugs

§ 14.160 Establishment of standing technical advisory committees for human prescription drugs.

The standing technical advisory committees for human prescription drugs are established to advise the Commissioner:

(a) Generally on the safety and effectiveness, including the labeling and advertising, and regulatory control of the human prescription drugs falling within the pharmacologic class covered by the advisory committee and on the scientific standards appropriate for a determination of safety and effectiveness in that class of drugs.

(b) Specifically on any particular matter involving a human prescription drug pending before FDA, including whether the available information is adequate to support a determination that—

(1) A particular IND study may properly be conducted;

(2) A particular drug meets the statutory standard for proof of safety and effectiveness necessary for approval or continued approval for marketing; or

(3) A particular drug is properly classified as a new drug, an old drug, or a banned drug.

§ 14.171 Utilization of an advisory committee on the initiative of FDA.

(a) Any matter involving a human prescription drug under review within the agency may, in the discretion of the Commissioner, be the subject of a public hearing and continuing or periodic review by the appropriate standing technical advisory committee for human prescription drugs. The Commissioner's determinations on the agenda of the committee are based upon the priorities of the various matters pending before the agency which fall within the pharmacologic class covered by that committee.

(b) High priority for such hearing and review by the appropriate standing technical advisory committee for human prescription drugs are given to the following types of human prescription drugs:

(1) Investigational drugs which are potential therapeutic advances over currently marketed products from the standpoint of safety or effectiveness, or which pose significant safety hazards, or which present narrow benefit-risk considerations requiring a close judgmental decision on approval for marketing, or which have a novel delivery system or formulation, or which are the subject of major scientific or public controversy, or which may be subject to special regulatory requirements such as a limitation on clinical trials, a patient followup requirement, postmarketing Phase IV studies, distributional controls, or boxed warnings.

(2) Marketed drugs for which an important new use has been discovered, or which pose newly discovered safety hazards, or which are the subject of major scientific or public controversy, or which may be subject to important regulatory actions such as withdrawal of approval for marketing, boxed warnings, distributional controls, or newly required scientific studies.

(c) The committee may request the Commissioner for an opportunity to hold a public hearing and to review any matter involving a human prescription drug which falls within the pharmacologic class covered by the committee. The Commissioner may, after consulting with the committee on such request, grant or deny the request in light of the priorities of the other matters pending before the committee. Whenever feasible, consistent with the other work of the committee, the request will be granted.

(d) For a drug that meets any of the criteria established in paragraph (b) of this section, one or more members of or consultants to the appropriate advisory committee may be selected for more detailed monitoring of the matter and consultation with FDA on behalf of the committee. The member or consultant may be invited to attend appropriate meetings and shall assist the bureau in any briefing of the committee on that matter.

(e) An advisory committee may obtain advice and recommendations from other agency advisory committees, consultants, and experts which the advisory committee and the bureau conclude would facilitate the work of the advisory committee.

(f) Presentation of all relevant information about the matter will be made in open session unless it relates to an IND the existence of which has not previously been disclosed to the public as defined in § 20.81 or is otherwise prohibited from public disclosure under part 20 and the regulations referenced therein. Sections 314.14, 431.71, and 601.51 determine whether, and the extent to which, relevant information may be made available for public disclosure, summarized and discussed in open session but not otherwise made available for public disclosure, or not in any way discussed or disclosed in open session or otherwise disclosed to the public.

§ 14.172 Utilization of an advisory committee at the request of an interested person.

Any interested person may request, under § 10.30, that a specific matter relating to a particular human prescription drug be submitted to an appropriate advisory committee for a hearing and review and recommendations. The request must demonstrate the importance of the matter and the reasons why it should be submitted for a hearing at that time. The Commissioner may grant or deny the request.

§ 14.174 Advice and recommendations in writing.

Advice and recommendations given by a committee on a specific drug or a class of drugs are ordinarily in the form of a written report. The report may consist of the approved minutes of the meeting or a separate written report. The report responds to the specific issues or questions which the Commissioner has addressed to the advisory committee, and states the basis of the advice and recommendations of the committee.

PART 15—PUBLIC HEARING BEFORE THE COMMISSIONER

Subpart A—General Provisions

Sec.
15.1 Scope.

Subpart B—Procedures for Public Hearing Before the Commissioner

15.20 Notice of a public hearing before the Commissioner.
15.21 Notice of participation; schedule for hearing.
15.25 Written submissions.
15.30 Conduct of a public hearing before the Commissioner.

Subpart C—Records of a Public Hearing Before the Commissioner

15.40 Administrative record.
15.45 Examination of administrative record.

AUTHORITY: Sec. 201 et seq., Pub. L. 717, 52 Stat. 1040 as amended (21 U.S.C. 321 et seq.); sec. 1 et seq., Pub. L. 410, 58 Stat. 682 as amended (42 U.S.C. 201 et seq.); sec. 4, Pub. L. 91-513, 84 Stat. 1241 (42 U.S.C. 257a); sec. 301 et seq., Pub. L. 91-513, 84 Stat. 1253 (21 U.S.C. 821 et seq.); sec. 409(b), Pub. L. 242, 81 Stat. 600 (21 U.S.C. 679(b)); sec. 24(b), Pub. L. 85-172, 82 Stat. 807 (21 U.S.C. 467f(b)); sec. 2 et seq., Pub. L. 91-597, 84 Stat. 1620 (21 U.S.C. 1031 et seq.); secs. 1 through 9, Pub. L. 625, 44 Stat. 1101-1103 as amended (21 U.S.C. 141-149); secs. 1 through 10, Chapter 358, 29 Stat. 604-607 as amended (21 U.S.C. 41-50; sec. 2 et seq., Pub. L. 783, 44 Stat. 1406 as amended (15 U.S.C. 401 et seq.); sec. 1 et seq., Pub. L. 89-755, 80 Stat. 1296 as amended (15 U.S.C. 1451 et seq.).

Subpart A—General Provisions

§ 15.1 Scope.

The procedures in this part apply when:

(a) The Commissioner concludes, as a matter of discretion, that it is in the public interest to permit persons to present information and views at a public hearing on any matter pending before the Food and Drug Administration.

(b) The act or regulation specifically provides for a public hearing before the Commissioner on a matter, e.g., § 330.10(a)(8) relating to over-the-counter drugs and sections 520 (b) and (f)(1)(B), and 521 of the act relating to proposals to allow persons to order custom devices, to proposed device good manufacturing practice regulations, and to proposed exemptions from preemption of State and local device requirements under § 808.25(e).

(c) A person who has right to an opportunity for a formal evidentiary public hearing under part 12 waives that opportunity and instead requests under § 12.32 a public hearing before

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the Commissioner, and the Commissioner, as a matter of discretion, accepts the request.

Subpart B—Procedures for Public Hearing Before the Commissioner

§ 15.20 Notice of a public hearing before the Commissioner.

(a) If the Commissioner determines that a public hearing should be held on a matter, the Commissioner will publish a notice of hearing setting forth the following information:

(1) If the hearing is under § 15.1 (a) or (b), the notice will state the following:

(i) The purpose of the hearing and the subject matter to be considered. If a written document is to be the subject matter of the hearing, it will be published as part of the notice, or reference made to it if it has already been published in the FEDERAL REGISTER, or the notice will state that the document is available from an agency office identified in the notice.

(ii) The time, date, and place of the hearing, or a statement that the information will be contained in a subsequent notice.

(2) If the hearing is in lieu of a formal evidentiary public hearing under § 15.1(c), all of the information described in § 12.32(e).

(b) The scope of the hearing is determined by the notice of hearing and any regulation under which the hearing is held. If a regulation, e.g., § 330.10(a)(10), limits a hearing to review of an existing administrative record, information not already in the record may not be considered at the hearing.

(c) The notice of hearing may require participants to submit the text of their presentations in advance of the hearing if the Commissioner determines that advance submissions are necessary for the panel to formulate useful questions to be posed at the hearing under § 15.30(e).

§ 15.21 Notice of participation; schedule for hearing.

(a) The notice of hearing will provide persons an opportunity to file a written notice of participation with the hearing clerk within a specified period of time containing the information specified in the notice, e.g., name of participant, address, phone number, affiliation, if any, topic of presentation and approximate amount of time requested for the presentation. If the public interest requiries, e.g., a hearing is to be conducted within a short period of time or is to be primarily attended by individuals without an organizational affiliation, the notice may name a specific FDA employee and telephone number to whom an oral notice of participation may be given or provide for submitting notices of participation at the time of the hearing. A written or oral notice of participation must be received by the designated person by the close of business of the day specified in the notice.

(b) Promptly after expiration of the time for fliing a notice, the Commissioner will determine the amount of time allotted to each person and the approximate time that oral presentation is scheduled to begin. If more than one hearing is held on the same subject, a person will ordinarily be allotted time for a presentation at only one hearing.

(c) Individuals and organizations with common interests are urged to consolidate or coordinate their presentations and to request time for a joint presentation. The Commisioner may require joint presentations by persons with common interests.

(d) The Commissioner will prepare a hearing schedule showing the persons making oral presentations and the time allotted to each person, which will be filed with the hearing clerk and mailed or telephoned before the hearing to each participant.

(e) The hearing schedule will state whether participants must be present by a specified time to be sure to be heard in case the absence of participants advances the schedule.

§ 15.25 Written submissions.

A person may submit information or views on the subject of the hearing in writing to the hearing clerk, under § 10.20. The record of the hearing will remain open for 15 days after the hearing is held for any additional written submissions, unless the notice of the hearing specifies otherwise or the presiding officer rules otherwise.

§ 15.30 Conduct of a public hearing before the Commissioner.

(a) The Commissioner or a designee may preside at the hearing, except where a regulation provides that the Commissioner will preside personally. The presiding officer may be accompanied by other FDA employees or other Federal Government employees designated by the Commissioner, who may serve as a panel in conducting the hearing.

(b) The hearing will be transcribed.

(c) Persons may use their allotted time in whatever way they wish, consistent with a reasonable and orderly hearing. A person may be accompanied by any number of additional persons, and may present any written information or views for inclusion in the record of the hearing, subject to the requirements of § 15.25. The presiding officer may allot additional time to any person when the officer concludes that it is in the public interest, but may not reduce the time allotted for any person without the consent of the person.

(d) If a person is not present at the time specified for the presentation, the persons following will appear in order, with adjustments for those appearing at their scheduled time. An attempt will be made to hear any person who is late at the conclusion of the hearing. Other interested persons attending the hearing who did not request an opportunity to make an oral presentation will be given an opportunity to make an oral presentation at the conclusion of the hearing, in the discretion of the presiding officer, to the extent that time permits.

(e) The presiding officer and any other persons serving on a panel may question any person during or at the conclusion of the presentation. No other person attending the hearing may question a person making a presentation. The presiding officer may, as a matter of discretion, permit questions to be submitted to the presiding officer or panel for response by them or by persons attending the hearing.

(f) The hearing is informal in nature, and the rules of evidence do not apply. No motions or objections relating to the admissibility of information and views may be made or considered, but other participants may comment upon or rebut all such information and views. No participant may interrupt the presentation of another participant at any hearing for any reason.

(g) The hearing may end early only if all persons scheduled for a later presentation have already appeared or it is past the time specified in the hearing schedule, under § 15.21(e), by which participants must be present.

(h) The Commissioner or the presiding officer may, under § 10.19, suspend, modify, or waive any provision of this part.

Subpart C—Records of a Public Hearing Before the Commissioner

§ 15.40 Administrative record.

(a) The administrative record of a public hearing before the Commissioner consists of the following:

(1) All relevant FEDERAL REGISTER notices, including any documents to which they refer.

(2) All written submissions under § 15.25.

(3) The transcript of the oral hearing.

(b) The record of the administrative proceeding will be closed at the time specified in § 15.25.

§ 15.45 Examination of administrative record.

Section 10.20(j) governs the availability for public examination and copying of each document in the administrative record of the hearing.

PART 16—REGULATORY HEARING BEFORE THE FOOD AND DRUG ADMINISTRATION

Subpart A—General Provisions

Sec.
16.1 Scope.
16.5 Inapplicability and limited applicability.

Subpart B—Initiation of proceedings

16.22 Initiation of regulatory hearing.
16.24 Regulatory hearing required by the act or a regulation.

Subpart C—Commissioner and Presiding Officer

16.40 Commissioner
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Subpart D—Procedures for Regulatory Hearing

16.60 Hearing procedure.
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16.80 Administrative record of a regulatory hearing.
16.85 Examination of administrative record.
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Subpart F—Reconsideration and Stay

16.119 Reconsideration and stay of action.

Subpart G—Judicial Review

16.120 Judicial review.

AUTHORITY: Sec. 201 et seq., Pub. L. 717, 52 Stat. 1040 as amended (21 U.S.C. 321 et seq.); sec. 1 et seq., Pub. L. 410, 58 Stat. 682 as amended (42 U.S.C. 201 et seq.); sec. 4, Pub. L. 91-513, 84 Stat. 1241 (42 U.S.C. 257a); sec. 301 et seq., Pub. L. 91-513, 84 Stat. 1253 (21 U.S.C. 821 et seq.); sec. 409(b), Pub. L. 242, 81 Stat. 600 (21 U.S.C. 679(b)); sec. 24(b), Pub. L. 85-172, 82 Stat. 807 (21 U.S.C. 467f(b)); sec. 2 et seq., Pub. L. 91-597, 84 Stat. 1620 (21 U.S.C. 1031 et seq.); secs. 1 through 9, Pub. L. 625, 44 Stat. 1101-1103 as amended (21 U.S.C. 141-149); secs. 1 through 10, Chapter 358, 29 Stat. 604-607 as amended (21 U.S.C. 41-50); sec. 2 et seq., Pub. L. 783, 44 Stat. 1406 as amended (15 U.S.C. 401 et seq.); sec. 1 et seq., Pub. L. 89-755, 80 Stat. 1296 as amended (15 U.S.C. 1451 et seq.).

Subpart A—General Provisions

§ 16.1 Scope.

The procedures in this part apply when:

(a) The Commissioner is considering any regulatory action, including a refusal to act, and concludes, as a matter of discretion, on the Commissioner's initiative or at the suggestion of any persons, to offer an opportunity for a regulatory hearing to obtain additional information before making a decision or taking action.

(b) The act or a regulation provides a person with an opportunity for a hearing on a regulatory action, including proposed action, and the act or a regulation either specifically provides an opportunity for a regulatory hearing under this part or provides an opportunity for a hearing for which no procedures are specified by regulation. Listed below are the statutory and regulatory provisions under which regulatory hearings are available:

(1) Statutory provisions:

Section 304(g) of the act relating to the administrative detention of devices.

Section 514(g)(4)(B) of the act relating to an action to make a device performance standard effective upon publication.

Section 515(e)(1) of the act relating to the proposed withdrawal of approval of a device premarket approval application.

Section 515(f)(6) of the act relating to a proposed order revoking a device product development protocol or declaring a protocol not completed.

Section 515(f)(7) of the act relating to revocation of a notice of completion of a product development protocol.

Section 516 of the act relating to a proposed banned device regulation.

Section 518(b) of the act relating to a determination that a device is subject to a repair, replacement, or refund order or that a correction plan, or revised correction plan, submitted by a manufacturer, importer, or distributor is inadequate.

Section 520(g) (4) and (5) of the act relating to disapproval and withdrawal of approval of an application for an investigational device exemption (see §§ 813.30(d) and 813.35(c)).

Section 520(1)(2) of the act relating to approval or denial of a petition to reclassify a class III device that FDA previously had regarded as a new drug (see § 860.136).

(2) Regulatory provisions:

§ 71.37(a), relating to use of food containing a color additive.

§ 80.31(b), relating to refusal to certify a batch of a color additive.

§ 80.34(b), relating to suspension of certification service for a color additive.

§ 130.17(1), relating to a temporary permit to vary from a food standard.

§ 170.17(b), relating to use of food containing an investigational food additive.

§ 202.1(j)(5), relating to approval of prescription drug advertisements.

§ 312.1(c)(1), relating to whether an investigator is entitled to receive investigational new drugs.

§ 312.1(c) (4) and (d), relating to termination of an IND for a sponsor.

§ 312.9(c), relating to termination of an IND for tests in vitro and in laboratory research animals for a sponsor.

§ 429.50, relating to suspension of certification service for an insulin drug.

§ 431.52, relating to suspension of certification service for an antibiotic drug.

§ 433.2(d), relating to exemption from certification for an antibiotic drug.

§ 433.12(b)(5), relating to an exemption from labeling for a certifiable antibiotic drug.

§ 433.13(b), relating to an exemption from manufacturing use for a certifiable antibiotic drug.

§ 433.14(b), relating to an exemption for storage for a certifiable antibiotic drug.

§ 433.15(b), relating to an exemption for processing for a certifiable antibiotic drug.

§ 433.16(b), relating to an exemption for repacking for a certifiable antibiotic drug.

§ 511.1(b)(5), relating to use of food containing an investigational new animal drug.

§ 511.1(c)(1), relating to termination of an INAD for an investigator.

§ 511.1(c) (4) and (d), relating to termination of an INAD for a sponsor.

§ 514.210, relating to suspension of certification service for a veterinary antibiotic drug.

§ 1003.11(a)(3), relating to the failure of an electronic product to comply with an applicable standard or to a defect in an electronic product.

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§ 1004.6, relating to plan for repurchase, repair, or replacement of an electronic product.

§ 1210.30, relating to denial, suspension, or revocation of a permit under the Federal Import Milk Act.

§ 16.5 Inapplicability and limited applicability.

(a) This part does not apply to the following:

(1) Informal presentation of views before reporting a criminal violation under section 305 of the act and section 5 of the Federal Import Milk Act and § 1210.31.

(2) A hearing on a refusal of admission of a food, drug, device, or cosmetic under section 801(a) of the act and § 1.94, or of an electronic product under section 360(a) of the Public Health Service Act and § 1005.20.

(3) Factory inspections, recalls, regulatory letters, and similar compliance activities related to law enforcement.

(b) If a regulation provides a person with an opportunity for hearing and specifies some procedures for the hearing but not a comprehensive set of procedures, the procedures in this part apply to the extent that they are supplementary and not in conflict with the other procedures specified for the hearing. Thus, the procedures in subpart A of part 108 relating to emergency permit control are supplemented by the nonconflicting procedures in this part, e.g., the right to counsel, public notice of the hearing, reconsideration and stay, and judicial review.

Subpart B—Initiation of Proceedings

§ 16.22 Initiation of regulatory hearing.

(a) A regulatory hearing is initiated by a notice of opportunity for hearing from FDA. The notice will—

(1) Be sent by mail, telegram, telex, personal delivery, or any other mode of written communication;

(2) Specify the facts and the action that are the subject of the opportunity for a hearing;

(3) State that the notice of opportunity for hearing and the hearing are governed by this part; and

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(4) State the time within which a hearing may be requested, and state the name, address, and telephone number of the FDA employee to whom any request for hearing is to be addressed.

(b) A person offered an opportunity for a hearing has the amount of time specified in the notice, which may not be less than 3 working days after receipt of the notice, within which to request a hearing. The request may be filed by mail, telegram, telex, personal delivery, or any other mode of written communication, addressed to the designated FDA employee. If no response is filed within that time, the offer is deemed to have been refused and no hearing will be held.

(c) If a hearing is requested, the Commissioner will designate a presiding officer, and the hearing will take place at a time and location agreed upon by the party requesting the hearing, the FDA, and the presiding officer or, if agreement cannot be reached, at a reasonable time and location designated by the presiding officer.

(d) A notice of opportunity for hearing under this section will not operate to delay or stay any administrative action, including enforcement action by the agency unless the Commissioner, as a matter of discretion, determines that delay or a stay is in the public interest.

§ 16.24 Regulatory hearing required by the act or a regulation.

(a) A regulatory hearing required by the act or a regulation under § 16.1(b) will be initiated in the same manner as other regulatory hearings subject to the additional procedures in this section.

(b) The notice will state whether any action concerning the matter that is the subject of the opportunity for hearing is or is not being taken pending the hearing under paragraph (c) of this section.

(c) The Commissioner may take such action pending a hearing under this section as the Commissioner concludes is necessary to protect the public health, except where expressly prohibited by statute or regulation. A hearing to consider action already taken, and not stayed by the Commissioner, will be conducted on an expedited basis.

(d) The hearing may not be required to be held at a time less then 2 working days after receipt of the request for hearing.

(e) Before the hearing, FDA will give to the party requesting the hearing reasonable notice of the matters to be considered at the hearing, including a comprehensive statement of the basis for the decision or action taken or proposed that is the subject of the hearing and a general summary of the information that will be presented by FDA at the hearing in support of the decision or action. This information may be given orally or in writing, in the discretion of FDA.

(f) FDA and the party requesting the hearing will, if feasible, at least 1 day before the hearing provide to each other written notice of any published articles or written information to be presented at or relied on at the hearing. A copy will also be provided in advance if the other participant could not reasonably be expected to have or be able to obtain a copy. If written notice or a copy is not provided, the presiding officer may, if time permits, allow the party who did not receive the notice or copy additional time after the close of the hearing to make a submission concerning the article or information.

Subpart C—Commissioner and Presiding Officer

§ 16.40 Commissioner.

Whenever the Commissioner has delegated authority under part 5 on a matter for which a regulatory hearing is available under this part, the functions of the Commissioner under this part may be performed by any of the officials to whom the authority has been delegated, e.g., a bureau director.

§ 16.42 Presiding officer.

(a) An FDA employee to whom the Commissioner delegates such authority, or any other agency employee designated by an employee to whom such authority is delegated, may serve as the presiding officer and conduct a regulatory hearing under this part.

(b) In a regulatory hearing required by the act or a regulation, the presiding officer is to be free from bias or prejudice and may not have participated in the investigation or action that is the subject of the hearing or be subordinate to a person, other than the Commissioner, who has participated in such investigation or action.

(c)(1) The Commissioner or the delegate under § 16.40 is not precluded by this section from prior participation in the investigation or action that is the subject of the hearing. If there has been prior participation, the Commissioner or the delegate should, if feasible, designate a presiding officer for the hearing who is not a subordinate. Thus, if the Commissioner's authority to make a final decision has been delegated to a bureau director, the presiding officer may be an official in another bureau or the office of the Commissioner. The exercise of general supervisory responsibility, or the designation of the presiding officer, does not constitute prior participation in the investigation or action that is the subject of the hearing so as to preclude the Commissioner or delegate from designating a subordinate as the presiding officer.

(2) The party requesting a hearing may make a written request to have the Commissioner or the delegate under § 16.40 be the presiding officer, notwithstanding paragraph (c)(1) of this section. If accepted, as a matter of discretion, by the Commissioner or the delegate, the request is binding upon the party making the request.

(3) A different presiding officer may be substituted for the one originally designated under § 16.22 without notice to the parties.

§ 16.44 Communications to presiding officer and Commissioner.

(a) Regulatory hearings are not subject to the separation of functions rules in § 10.55.

(b) Those persons who are directly involved in the investigation or presentation of the position of FDA or any party at a regulatory hearing that is required by the act or a regulation should avoid any off-the-record communication on the matter to the presiding officer or the Commissioner or their advisors if the communication is inconsistent with the requirement of § 16.95(b)(1) that the administrative record be the exclusive record for decision. If any communication of this type occurs, it is to be reduced to writing and made part of the record, and the other party provided an apportunity to respond.

Subpart D—Procedures for Regulatory Hearing

§ 16.60 Hearing procedure.

(a) A regulatory hearing is public, except when the Commissioner determines that all or part of a hearing should be closed to prevent a clearly unwarranted invasion of personal privacy; to prevent the disclosure of a trade secret or confidential commercial or financial information that is not available for public disclosure under § 20.61; or to protect investigatory records compiled for law enforcement purposes that are not available for public disclosure under § 20.64.

(1) The Commissioner may determine that a regulatory hearing is closed either on the Commissioner's initiative or on a request by the party asking for a regualatory hearing, in the request for the hearing.

(2) If the hearing is a private hearing, no persons other than the party requesting the hearing, counsel and witnesses, and an employee or consultant or other person subject to a commercial arrangement as defined in § 20.81(a) and FDA representatives, are entitled to attend.

(3) If the hearing is a public hearing, it will be announced on the public calendar described in § 10.100(a) whenever feasible, and any interested person who attends the hearing may participate to the extent of presenting relevant information.

(b) A regulatory hearing will be conducted by a presiding officer. Employees of FDA will first give a full and complete statement of the action which is the subject of the hearing, together with the information and reasons supporting it, and may present any oral or written information relevant to the hearing. The party requesting the hearing may then present any oral or written information relevant to the hearing. All parties may confront and conduct reasonable cross-examination of any person (except for the presiding officer and counsel for the parties) who makes any statement on the matter at the hearing.

(c) The hearing is informal in nature, and the rules of evidence do not apply. No motions or objections relating to the admissibility of information and views will be made or considered, but any other party may comment upon or rebut all such data, information, and views.

(d) The presiding officer may order the hearing to be transcribed. The party requesting the hearing may have the hearing transcribed, at the party's expense, in which case a copy of the transcript is to be furnished to FDA. Any transcript of the hearing will be included with the presiding officer's report of the hearing.

(e) The presiding officer shall prepare a written report of the hearing. All written material presented at the hearing will be attached to the report. Whenever time permits, the parties to the hearing will be given the opportunity to review and comment on the presiding officer's report of the hearing.

(f) The presiding officer shall include as part of the report of the hearing a finding on the credibility of witnesses (other than expert witnesses) whenever credibility is a material issue, and shall include a recommended decision, with a statement of reasons, unless the Commissioner directs otherwise.

(g) The presiding officer has the power to take such actions and make such rulings as are necessary or appropriate to maintain order and to conduct a fair, expeditious, and impartial hearing, and to enforce the requirements of this part concerning the conduct of hearings. The presiding officer may direct that the hearing be conducted in any suitable manner permitted by law and these regulations.

(h) The Commissioner or the presiding officer has the power under § 10.19 to suspend, modify, or waive any provision of this part.

§ 16.62 Right to counsel.

Any party to a hearing under this part has the right at all times to be advised and accompanied by counsel.

Subpart E—Administrative Record and Decision

§ 16.80 Administrative record of a regulatory hearing.

(a) The administrative record of the regulatory hearing consists of the following:

(1) The notice of opportunity for hearing and the response.

(2) All written information and views submitted to the presiding officer at the hearing or after if specifically permitted by the presiding officer.

(3) Any transcript of the hearing.

(4) The presiding officer's report of the hearing and comments on the report under § 16.60(e).

(b) The record of the regulatory hearing is closed to the submission of information and views, at the close of the hearing, unless the presiding officer specifically permits additional time for a further submission.

§ 16.85 Examination of administrative record.

Part 20 governs the availability for public disclosure of each document that is a part of the administrative record of a regulatory hearing.

§ 16.95 Administrative decision and record for decision.

(a) With respect to a regulatory hearing at the Commissioner's initiative under § 16.1(a), the Commissioner shall consider the administrative record of the hearing specified in § 16.80(a) together with all other relevant information and views available to FDA in determining whether regulatory action should be taken and, if so, in what form.

(b) With respect to a regulatory hearing required by the act or a regulation under § 16.1(b)—

(1) The administrative record of the hearing specified in § 16.80(a) constitutes the exclusive record for decision;

(2) On the basis of the administrative record of the hearing, the Commissioner shall issue a written decision stating the reasons for the Commissioner's administrative action and the basis in the record; and

(3) For purposes of judicial review under § 10.45, the record of the administrative proceeding consists of the record of the hearing and the Commissioner's decision.

Subpart F—Reconsideration and Stay

§ 16.119 Reconsideration and stay of action.

After any final administrative action that is the subject of a hearing under this part, any party may petition the Commissioner for reconsideration of any part or all of the decision or action under § 10.33 or may petition for a stay of the decision or action under § 10.39.

Subpart G—Judicial Review

§ 16.120 Judicial review.

Section 10.45 governs the availability of judicial review concerning any regulatory action which is the subject of a hearing under this part.

Interested persons may, on or before January 8, 1978, submit to the hearing clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, MD. 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the hearing clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Hearing Clerk, Food and Drug Administration.

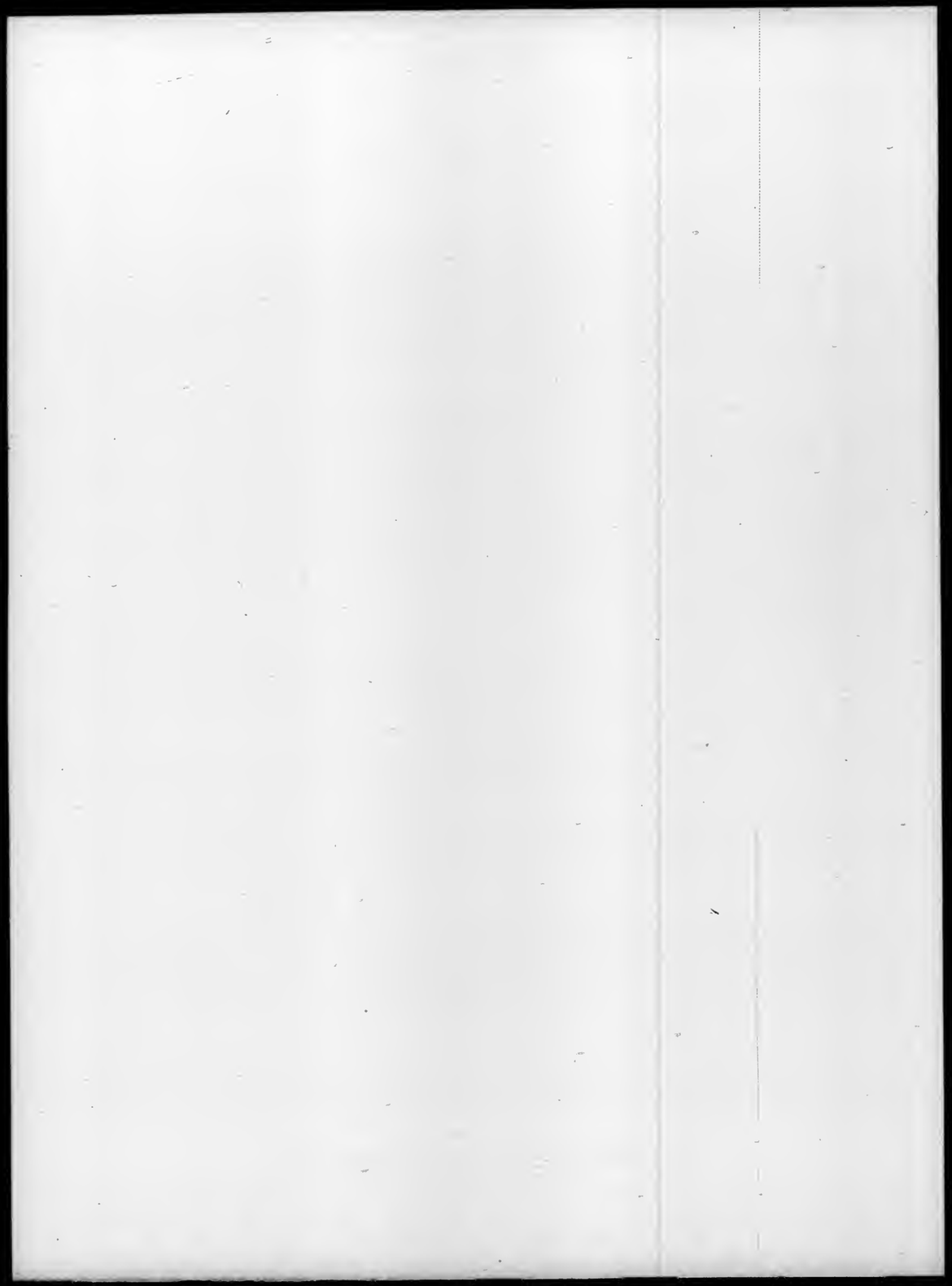
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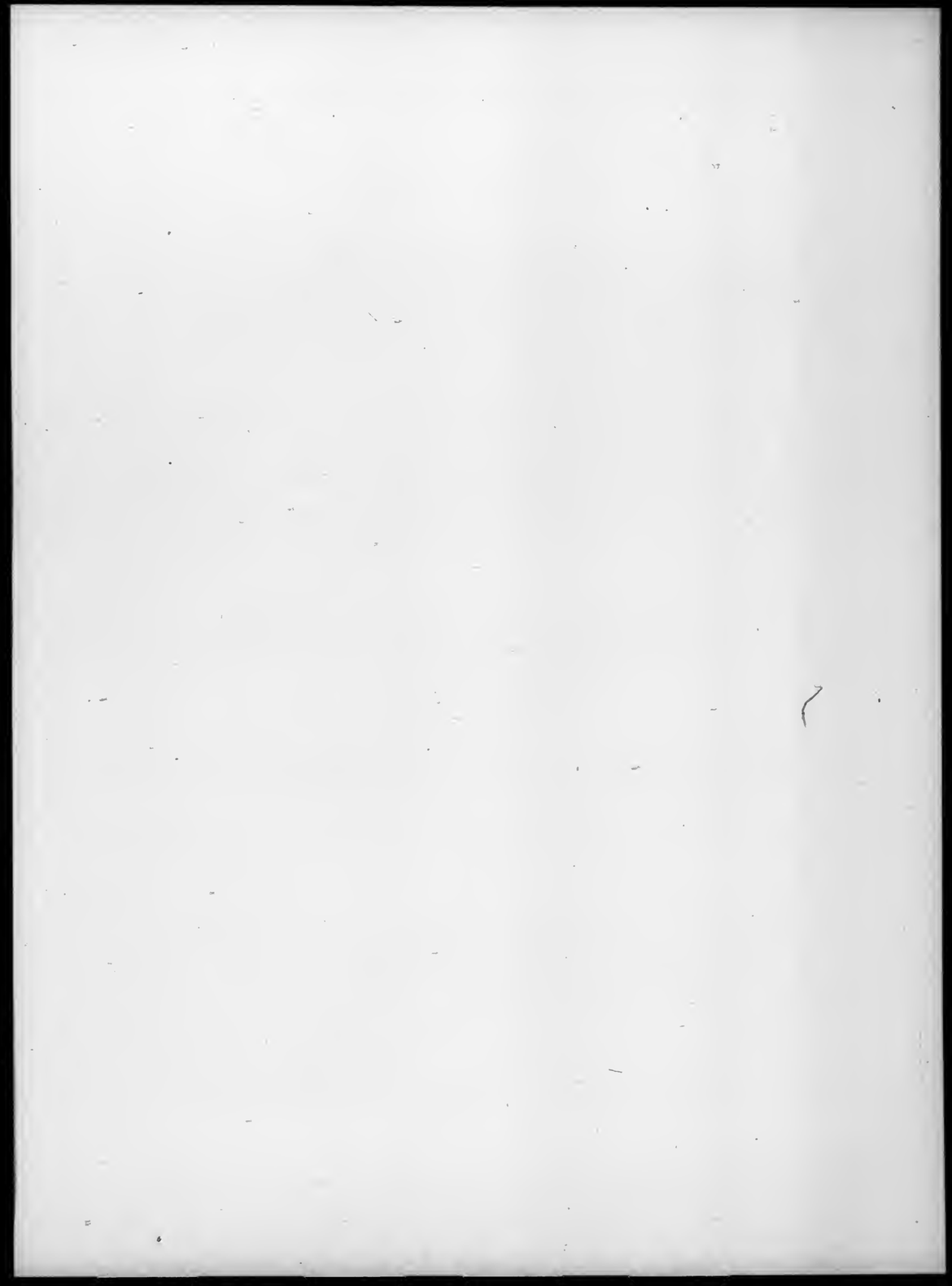
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[FR Doc. 78-31393 Filed 11-2-78; 12:24 pm]

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rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

[3410-02-M]

Title 7—Agriculture

CHAPTER I—AGRICULTURAL MARKETING SERVICE [1] (STANDARDS, INSPECTIONS, AND MARKETING PRACTICES), DEPARTMENT OF AGRICULTURE

PART 26—GRAIN STANDARDS

Fees for Certain Grain Inspection and Weighing Services

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Final rulemaking.

SUMMARY: This amendment reduces the fees for weighing services and orginal inspection of grain in barges, ships, and bins performed by the FGIS in the United States. During fiscal year 1978, retained earnings were accumulated more repidly than previously estimated. The changes are expected to generate income adequate for fiscal year 1979 operating costs plus maintaining a nominal operating reserve.

DATES: The changes in fees become effective December 3, 1978.

FOR FURTHER INFORMATION CONTACT:

Leslie E. Malone, Assistant Deputy Administrator, Program Operations (Staff), Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Room 1627, Washington, D.C. 20250, 202-447-9166.

SUPPLEMENTARY INFORMATION: Pursuant to the authority in sections 7 and 7A of the U.S. Grain Standards Act, as amended, (7 U.S.C. 71 et. seq.) (hereinafter cited as the Act). The Federal Grain Inspection Service (FGIS) is amending § 26.71(a) of the regulations (7 CFR 26.71(a)) under the Act to reduce the fees for certain grain inspection and weighing services performed in the United States by representatives of the Administrator of FGIS.

Sections 7(j) and 7A(1) of the Act (7 U.S.C. 79(j) and 79a(1)) authorizes the charging and collection of fees for the inspection and weighing of grain and related services performed by representatives of the Administrator of FGIS. Further, the Act provides that the fees shall be reasonable to cover the estimated costs to the FGIS incident to the performance of the services.

FGIS fees for services performed by its representatives in the United States were published in the FEDERAL REGISTER of December 8, 1977 (42 FR 61987-61991). In publishing the fees, it was indicated that further evaluations of the fees would be made and adjusted as necessary.

During fiscal year 1978, retained earnings were accumulated more rapidly than previously estimated. Previous estimates were based on expected employment levels, and estimated costs and revenues. As a result, a nominal operating reserve has now been established. Therefore, fees for the original inspection of grain in barges, ships, and bins performed by representatives of the Administrator of FGIS in the United States are being reduced by 12.5 percent. Also, all hourly rates for weighing services performed by representatives of the FGIS in the United States are being reduced by 20 percent.

The changes in fees are based on estimated income and expenses for fiscal year 1979, including the cost of a Federal pay increase which became effective on October 8, 1978. The changes are expected to generate income adequate for fiscal year 1979 operating costs plus maintaining a nominal operating reserve. The changes will not affect the FGIS original inspection fees for trucks and railcars or reinspection or appeal inspections in the United States or the fees for inspection and weighing services in Canada.

Further evaluations are being made with regard to other aspects of the fee schedule including the feasibility of unit and hourly fees for inspection services and the assessment of standby time at export locations where FGIS inspection services are performed on a routine basis. These evaluations are expected to be completed by the end of 1978.

The costs to the FGIS of providing the services for which the fees are prescribed are matters known only to the FGIS and the collection of fees for such services is prescribed by law.

Therefore, it is found upon good cause that publication of a notice of proposed rulemaking and other public procedures on the changes in the provisions of § 26.71(a) of the regulations are impractical and unnecessary and good cause is found for making these changes effective December 3, 1978.

Accordingly, pursuant to sections 7(j) and 7A(1), (7 U.S.C. 79(j) and 79a(1)) of the United States Grain Standards Act, as amended, § 26.71(a) of the regulations (7 CFR 26.71(a)) under the Act are hereby amended or restated to read as follows:

§ 26.71 Fees for official services performed by the Service.

(a) The fees shown in schedules A and B apply to official grain inspection and weighing services performed by the Service in the United States and Canada.

SCHEDULE A.—*Fees for Official Inspection and Weighing Services Performed by the Service in the United States* [1]

TABLE 1

Inspection services (bulk or sacked grain)	Original inspection service	Reinspection or appeal inspection service [2]
(1) Official sample-lot inspection service (white certificate):		
(i) For official grade and official factor determinations:		
(A) Based on official sample (fee includes cost of sampling):		
(1) Truck or trailer (per truck or trailer or part truck or part trailer)	$6.50	$16.00
(2) Boxcar (per car or part car)	10.00	19.60
(3) Hopper car (per car or part car)	13.50	23.80
(4) Barge (per 1,000 bushels or fraction thereof)	2.50	3.50
(5) Ship, bin, and all other lots of grain (per 1,000 bushels or fraction thereof)	2.50	3.50
(B) Based on official file sample (any lot or part lot, per sample)	[4]	13.50
(ii) For official factor or official criteria determinations:		
(A) Based on sample used for official grade and official factor determinations:		
(1) Factor determinations (per factor)	4.20	5.45
(2) Protein test (per sample)	3.35	4.35
(B) Based on new sample (any lot or part lot)	[3]	[3]
(2) Special inspection services (sampling, stowage examination, testing of inspection equipment, demonstrating official inspection functions, furnishing standard illustrations, and related services) (per man-hour per Service representative)[5]	16.80	21.80

[1] Includes matters within the responsibility of the Federal Grain Inspection Service.

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SCHEDULE A.—*Fees for Official Inspection and Weighing Services Performed by the Service in the United States*[1]

TABLE 1—Continued

Inspection services (bulk or sacked grain)	Original inspection service	Reinspection or appeal inspection service [2] [3]
(3) Warehousemen's sample-lot inspection service (yellow certificate) or submitted sample inspection service (pink certificate):		
(i) For official grade and official factor determinations (per sample)	5.50	13.50
(ii) For official factor or official criteria determinations:		
(A) Factor determinations (per factor)	4.20	5.45
(B) Protein test (per sample)	3.35	4.35
(4) Minimum fee per service request (applicable when the request for service is cancelled after the Service representative(s) arrive at the point of service—fee does not include standby):		
(i) Grain in trucks, trailers, boxcars, or hopper cars	(7)	(7)
(ii) All other lots of grain and special services (per service representative)	33.60	43.60
(5) Standby (per man-hour per Service representative)[8]	16.80	21.80
(6) Extra copies of certificates (per copy)	2.50	2.50

NOTE.—The footnotes for table 1 are shown at the end of table 2.

TABLE 2

Weighing services (bulk or sacked grain)	Official weighing services					
	Specified inspection point				Noninspection point	
	Contract service		Noncontract service		Contract service	
	Regular workday	Nonregular workday	Regular workday	Nonregular workday	Regular workday	Nonregular workday
(1) Official weighing or supervision of weighing services (per man-hour per Service representatives)	$11.20	$14.40	$12.80	$16.00	$11.20	$14.40
(2) Special weighing services (stowage examination, testing of weighing equipment, checkweighing sacked grain, checkloading sacked grain, demonstrating official weighing functions, and related services) (per man-hour per Service representative)[8]	11.20	14.40	12.80	16.00	11.20	14.40
(3) Minimum fee per service request (applicable only when request is cancelled after Service representative arrives at point of service—fee does not include standby) (per Service representative	(4)	14.40	12.80	16.00	(4)	14.40
(4) Standby (per man-hour per Service representative [8]	(4)	14.40	12.80	16.00	(4)	14.40
(5) Carrier condition and/or scale record report (not available as a single service)	(5)	(5)	5.00	5.00	(5)	(5)
(6) Extra copies of certificates (per copy)	2.50	2.50	2.50	2.50	2.50	2.50

[1] The fees include the cost of performing official inspection and official weighing or supervision of weighing functions by Service representatives. For incidental costs included in the fees, and fees in addition to the unit and the hourly fees, see § 26.72, pars. (a) and (b).

[2] If it is found that there was a material error in the inspection from which a reinspection, a field appeal inspection, or a Board appeal inspection is taken, the specified reinspection, field appeal inspection, or Board appeal inspection fee shall not be assessed. (But see § 26.72(b) for fees that are assessed in all instances.)

[3] Board appeal inspections are based on file samples. The fee for Board appeal inspection service shall be $34 per sample.

[4] Not applicable.

[5] Same fees as in (1)(ii)(A), plus applicable sampling charge—see (2).

[6] Only one inspection fee or one weighing fee, as applicable, will be charged for these services whether performed singly or concurrently.

[7] The unit fee.

[8] For application of fee for standby, see § 26.72(b).

[9] No charge.

(Secs. 8(j), 9(l), Pub. L. 94-582, 90 Stat. 2873, 2875, 2884 (7 U.S.C. 79(j), 79a(e)).)

Dated: November 1, 1978.

L. E. MALONE,
Acting Administrator.

[FR Doc. 78-31471 Filed 11-7-78; 8:45 am]

[6320-01-M]

Title 14—Aeronautics and Space

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER B—PROCEDURAL REGULATIONS

[Regulation PR-183; Amendment No. 45]

PART 302—RULES OF PRACTICE IN ECONOMIC PROCEEDINGS

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., November 2, 1978.

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The Board recently adopted rules to govern unused authority proceedings under the Airline Deregulation Act of 1978. This amendment of those rules simplifies the application requirements. The Board also takes this occasion to elaborate on the environmental implications of unused authority proceedings.

DATES: Adopted: November 2, 1978. Effective: November 2, 1978.

FOR FURTHER INFORMATION CONTACT:

Mark Schwimmer, Civil Aeronautics Board, Office of the General Counsel, 1825 Connecticut Avenue NW., Washington, D.C. 20428, 202-673-5442.

SUPPLEMENTARY INFORMATION: The Airline Deregulation Act of 1978, Pub. L. 95-504, added a new section 401(d)(5) to the Federal Aviation Act of 1958, concerning unused nonstop route authority. This provision became effective on October 24, 1978. Anticipating a large number of applications for new certificates under section 401(d)(5), we adopted PR-180 on October 18.[1] That amendment added a new subpart R governing unused authority proceedings to part 302 of the procedural regulations (14 CFR Part 302), effective immediately.

The second sentence of § 302.1805(c)(4) of subpart R requires an application for new authority along a dormant route to include copies of the relevant portions of the Official Airline Guide (OAG) necessary to demonstrate that the incumbent carrier's authority has in fact been unused. In connection with General Accounting Office review under the Federal Reports Act, 44 U.S.C. 3512, of the new rule's requirements for submission of information, several carriers objected to this aspect of paragraph (c)(4) as unnecessarily burdensome, particularly in view of the general requirement of § 302.3(c) that applications be submitted in 20 copies. Upon reflection, we agree. Therefore, we are amending subpart R to permit applications to contain simple citations, by publication date and page number, of the relevant portions of the OAG, instead of copies of the actual pages. Applicants will not be prejudiced by exercising this option. This amendment should substantially reduce the size of applications, and hence the burden of preparing them. There is no change in the 20-copy requirement, however.

Because of the need to obtain speedy GAO clearance of subpart R, we find that notice and public procedure on this amendment are impracticable and contrary to the public interest. Since the amendment relieves a restriction and creates no additional burden, we also find that an immediate effective date is in the public interest. Finally, we will give the amendment retroactive effect by not rejecting any applications already filed for failure to include copies of actual OAG pages.

Section 302.1811 of subpart R eliminates the need for applicants for unused authority to file the environmental evaluations and energy information usually required by 14 CFR 312.12 and 313.5. Although we are not amending § 302.1811, we would like to take this opportunity to elaborate on the environmental implications of unused authority proceedings.

There are three types of actions the Board may take in these proceedings. First, there are those cases in which an applicant asks to serve a market that receives no round-trip nonstop service or receives such service from only one carrier. In these cases Congress has directed the Board to certificate the first applicant that certifies that it complies with FAA regulations and is able to comply with Board regulations. Because the Board is given no discretion in these cases, granting certificates in these markets under section 401(d)(5)(A) or (5)(B) cannot be construed as a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). It is therefore unnecessary to determine whether granting these certificates will have a significant impact on the quality of the human environment, as NEPA requires when a major Federal action is being considered.

The second type of action the Board may take in an unused authority proceeding is to grant a certificate, under section 401(d)(5)(D) or (5)(E), in a market that receives round-trip nonstop service from at least two carriers. In these cases, there are already at least three carriers authorized to serve the market. These are therefore situations in which there is a high level of service and potential for competition even before certification of the new carrier. The addition of a single new carrier in these markets is thus likely to have little effect on the amount of service provided. This is especially true because these are markets in which at least one incumbent carrier has determined that there is not enough demand to support service by it. Normally, therefore, granting authority in these markets would not significantly affect the quality of the environment.

Finally, the Board is directed by section 401(d)(5)(J) to suspend all dormant authority in markets receiving round-trip nonstop service from not more than one carrier unless it finds that suspension is not necessary to encourage continued service by the newly authorized carrier. Suspending a certificate that has not been used by its holder may have some effect on the level of service received by the market, but the impact of such an action is likely to be insignificant. This is especially true in the long run, as econom-

[1] 43 FR 49529, Oct. 24, 1978.

ic pressures adjust the amount of service provided to the level that the market demands. Similarly, a decision not to suspend dormant authority is not likely to have a significant impact on the level of service provided, since there would be even less reason for the inactive carrier or carriers to reenter the market after a new competitor is introduced.

We therefore conclude that ordinarily none of the actions we might take in unused authority proceedings would constitute major Federal actions significantly affecting the quality of the human environment. Having made this finding, we believe that the environmental evaluations and energy information normally required of route applicants would impose an undue burden on applicants in these cases. However, if unusual circumstances exist, our staff will prepare an analysis of the environmental and energy implications in particular cases.

Accordingly, the Civil Aeronautics Board amends part 302 of its Procedural Regulations, *Rules of Practice in Economic Proceedings* (14 CFR Part 302), as follows:

In Subpart R—Rules Applicable to Unused Authority Proceedings, § 302.1805 is amended by revising the second sentence of paragraph (c)(4), so that it reads:

§ 302.1805 Contents of applications.

* * * * *

(c) * * *

(4) For each carrier named in paragraph (c)(3) of this section, the dates of below-minimum service during the time described in paragraph (c)(1) upon which the application is based. The application shall include citations by publication date and page number, or a copy, of the relevant portions of the Official Airline Guide necessary to demonstrate that the carrier has not provided the minimum level of service. The absence from the Official Airline Guide of a listing for any service shall create a rebuttable presumption that the service was not provided.

* * * * *

(Secs. 204 and 401 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 754; 14 U.S.C. 1324, 1371.)

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-31508 Filed 11-7-78; 8:45 am]

[1505-01-M]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-5985, IC-10419, File No. S7-578]

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

Advertising Rule Amended to Permit Notice of Certain Special Offerings to Mutual Fund Shareholders

PART 231—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

Prospectus Delivery Requirements in Special Offerings to Mutual Fund Shareholders

PART 271—INTERPRETATIVE RELEASES RELATING TO THE INVESTMENT COMPANY ACT OF 1940 AND GENERAL RULES AND REGULATIONS THEREUNDER

Sales Load Variation in Special Offerings to Permit Mutual Fund Shareholders to Purchase Additional Shares

Correction

FR Doc. 79-29098 which was published at page 47492 in the FEDERAL REGISTER for Monday, October 16, 1978, contained an interpretative release which will be reflected in the tables codified under 17 CFR Parts 231 and 271. However, only a heading showing Part 230—which was also amended by that document—appeared at the top of FR Doc. 79-29098 as it was printed on page 47492. Therefore the headings for that document are corrected by adding headings for Parts 231 and 271 to read as set forth above.

[4810-22-M]

Title 19—Customs Duties

CHAPTER I—U.S. CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

[T.D. 78-411]

PART 153—ANTIDUMPING

Clear Sheet Glass Weighing Over 28 Ounces Per Square Foot From West Germany

AGENCY: United States Treasury Department.

ACTION: Revocation of Dumping Finding.

SUMMARY: This notice is to inform the public that clear sheet glass weighing over 28 ounces per square foot from West Germany is no longer being sold to the United States at less than fair value under the Antidumping Act of 1921. In addition, the manufacturers have given assurances that they have not been, and do not intend to resume, selling clear glass weighing over 28 ounces per square foot to the United States. This rule revokes the finding of dumping with respect to certain clear sheet glass from West Germany (T.D. 71-295).

EFFECTIVE DATE: July 17, 1978.

FOR FURTHER INFORMATION CONTACT:

Ms. Barbara J. Victor, Operations Officer, U.S. Customs Service, Office of Operations, Duty Assessment Division, Technical Branch, 1301 Constitution Avenue NW., Washington, D.C. 20229, telephone 202-566-5492.

SUPPLEMENTARY INFORMATION: On December 9, 1971, a finding of dumping with respect to clear sheet glass weighing over 28 ounces per square foot from West Germany was published in the FEDERAL REGISTER as Treasury Decision 71-295 (36 FR 23360). A "Notice of Tentative Determination to Modify or Revoke Dumping Finding" with respect to this merchandise from West Germany was published in the FEDERAL REGISTER of July 17, 1978 (43 FR 30635).

Reasons for the tentative determination were published in the above-mentioned notice and interested persons were afforded an opportunity to provide written submissions or request the opportunity to present oral views in connection therewith.

No written submissions or requests having been received, I hereby determine that, for the reasons stated in the "Notice of Tentative Determination to Modify or Revoke Dumping Finding," clear sheet glass weighing over 28 ounces per square foot from West Germany is not being, nor is likely to be, sold at less than fair value, and T.D. 71-295 is hereby revoked.

§ 153.46 [Amended]

Accordingly, § 153.46 of the Customs Regulations (19 CFR 153.46) is hereby amended by deleting from the column headed "Merchandise," the words "Clear sheet glass weighing over 28 ounces per square foot," from the column headed "Country," the words "West Germany," and from the column headed "T.D.," reference to T.D. 71-295.

This notice is published pursuant to § 153.44(d) of the Customs Regulations (19 CFR 153.44 (d)).

(Secs., 201, 407, 42 Stat. 11, as amended, 18; 19 U.S.C. 160, 173.)

Dated: October 31, 1978.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

[FR Doc. 78-31535 Filed 11-7-78; 8:45 am]

[4310-02-M]

Title 25—Indians

CHAPTER I—BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

SUBCHAPTER E—EDUCATION

PART 36—MAINTENANCE AND CONTROL OF STUDENT RECORDS IN BUREAU SCHOOLS

Administrative Regulations and Procedures

OCTOBER 26, 1978.

AGENCY: Bureau of Indian Affairs.

ACTION: Final regulations.

SUMMARY: These regulations will govern the maintenance and control of student records in all educational institutions under the jurisdiction of the Bureau of Indian Affairs, whether operated under contract or otherwise. The passage of the Privacy Act of 1974, the Buckley Amendment, and the Education of All Handicapped Children Act all created the need for these regulations.

DATE: These regulations will become effective November 8, 1978.

FOR FURTHER INFORMATION CONTACT:

Mary F. Asbill, Office of Indian Education Programs, I.E.R.C., Division of Continuing Education, telephone 505-766-3351. Principal author David C. Young, O.I.E.P., I.E.R.C., Division of Evaluation, Research, and Development, telephone 505-766-3354, Albuquerque, N. Mex.

SUPPLEMENTARY INFORMATION: Recent enactments of Congress have reflected a strong legislative intent that Agencies of the Executive Branch of our Government take strong administrative measures to protect the privacy of records kept on individuals. The enactments include (1) the Privacy Act of 1974 (Pub. L. 93-579), which contains special provisions restricting the Federal Government's collection and use of information kept on individuals and which gives the individual greater rights over the access and control of such information; and (2) section 438 of the General Education Provisions Act of 1974, as amended (Pub. L. 93-380), commonly referred to as the Buckley Amendment, which provides that no Office of Education funds shall be made available to any educational agency or institution which denies parents and/or elegible students the right to inspect and review their educational records. The Buckley Amendment contains special provisions designed to protect the privacy rights of parents and students with respect to such records and to promote the maintenance of only such records as are accurate and essential; and (3) the Education of All Handicapped Children Act, commonly referred to as Pub. L. 94-142, which is pertinent to these regulations only with respect to those records maintained on handicapped students enrolled in the Bureau of Indian Affairs school system.

It is to insure that the spirit of these enactments reach all student records maintained by the Bureau of Indian Affairs, that these regulations are being promulgated.

The authority for the Assistant Secretary to issue these regulations is contained under the Act of April 30, 1908 (35 Stat. 72, 25 U.S.C. 295), Pub. L. 93-380, as amended, and (5 U.S.C. 301) and sections 463 and 465 of the revised statutes (25 U.S.C. 2 and 9), and 230 DM 1 and 2.

On September 26, 1977, the Bureau of Indian Affairs published a notice of intent to issue proposed rules and regulations governing the maintenance and control of student records in Bureau schools. A draft of the proposed rules was included and the public was invited to submit comments by October 26, 1977.

A total of eight written and two verbal comments were received. Of the eight written comments, four were favorable and required no revision. Each of the comments were carefully reviewed and evaluated by a special Bureau of Indian Affairs Task Force which convened in Albuquerque, N. Mex., on November 8 and 9, 1977. The Task Force was comprised of leading BIA educators from across the Nation. The Task Force decided that two of the comments justified some minor revisions as follows:

The first of those two comments called attention to the possible language problems that could arise in situations involving Native Americans who requested administrative hearings, and who had difficulty understanding the English language. In order to remedy this problem, the Task Force decided to provide for the use of interpreters where necessary. The revised language appears under § 36.12(b).

The second comment called attention to the fact that these regulations must be in harmony with the record-keeping requirements of the Education of All Handicapped Children Act. Accordingly, the Task Force reviewed the special requirements of the Education of All Handicapped Children Act with respect to student records to insure that no conflicts existed between the Act and these regulations.

As a result of that review, the Task Force determined that it was necessary to make the following additional revisions to these regulations so as to conform with this Act:

(1) Under the definition of parent in 25 CFR 36.2(d), it was deemed necessary to include the term "surrogate" as used in the Education of the Handicapped Act. Accordingly, the following sentence was added to that section: "For purposes of the Education of All Handicapped Children Act, the term 'parent' also included a 'surrogate' as referred to in 20 U.S.C. 1415(b)(1)(B)."

(2) The exception to "student records" as set forth under proposed rule 25 CFR 36.2(e)(4) was in conflict with the Education of All Handicapped Children Act, because under that Act, it is mandatory that records maintained by certain professionals relative to the precise nature of the handicap be accessible to the parent, in the event of a dispute as to the proper "evaluation" of the student, and whether the special education and services to be provided to the student are adequate. Under that Act, parents have a right to challenge a school's "evaluation" of the handicapped child. It was noted that the language used in the Buckley Amendment under similar section 20 U.S.C. 1232g(a)(4)(B)(iv) was in harmony with the Education of All Handicapped Children Act, because it only excepted those records maintained by certain professionals on a student who is 18 years of age or older, or is attending an institution of post-secondary education. The Task Force, therefore, decided to revise the language under 25 CFR 36.2(e)(4) so as to conform with the precise language used in the Buckley Amendment, since such language would also conform with the special requirement of the Education of All Handicapped

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Children Act. Accordingly, § 36.2(e)(4) now provides as follows: "records on a student who is eighteen years of age or older, or is attending an institution of post secondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student's choice."

(3) Under 25 CFR 36.14(i), it was deemed necessary to include language that would permit the BIA to utilize professional social service organizations and personnel in providing assistance to handicapped students in BIA schools, because such organizations often make their services available free of charge. Thus, § 36.14(i) as revised now reads as follows: "Indian groups, contractors, grantees, and professional social service organizations and personnel performing professional services, when necessary to carry out an official function authorized by the Bureau of Indian Affairs."

Title 25 of the Code of Federal Regulations is amended by adding a new Part 36 to read as follows:

Sec.
36.1 Purpose and scope.
36.2 Definitions.
36.3 Student rights.
36.4 Annual notification of rights.
36.5 Access to records.
36.6 Limitations on access.
36.7 Access rights.
36.8 Destruction of records.
36.9 Procedures for granting access.
36.10 Right to challenge.
36.11 Informal proceedings.
36.12 Right to a hearing.
36.13 Right of appeal.
36.14 Consent.
36.15 Content of consent.
36.16 Copy to be provided to parents or eligible students.
36.17 Release of information for health or safety emergencies.
36.18 Record of access.
36.19 Transfer of information by third parties.
36.20 Directory information.
36.21 Standards for collection and maintenance of student records.
36.22 Assuring integrity of records.
36.23 Conduct of employees.

AUTHORITY: 35 Stat. 72 (25 U.S.C. 295); Pub. L. 93-579, 88 Stat. 1896; Sec. 438, Pub. L. 93-380, as amended; Pub. L. 94-142.

§ 36.1 Purpose and scope.

This part contains the regulations of the Bureau of Indian Affairs, U.S. Department of the Interior, governing the maintenance, control, and accessibility of student records. This part will apply to all educational institutions under the jurisdiction of the Bureau of Indian Affairs, whether operated under contract or otherwise.

§ 36.2 Definitions.

As used in this part:

(a) "Assistant Secretary" means the Assistant Secretary—Indian Affairs, Department of the Interior.

(b) "Educational institution" means any institution operated under the jurisdiction of the Bureau of Indian Affairs either directly or by contract, including, but not limited to, schools or dormitories from which Indian students attend public schools.

(c) "Eligible student" means a student who has become 18 years of age or is attending an institution of post-secondary education. When a student becomes an "eligible student," the permission required of and the rights given to the parents of the student shall thereafter only be required of and given to the student.

(d) "Parent" means a natural parent, an adoptive parent, the legal guardian, or a legal custodian of a student. (Where the natural parents are unavailable, a required written parental consent may be obtained from the person who has assumed custody of the student.) For purposes of the Education of All Handicapped Children Act, the term "parent" also includes a "surrogate" as referred to in 20 U.S.C. 1415(b)(1)(B).

(e) "Student records" means those records, files, documents, and other materials which contain information directly related to a student and which are maintained by an educational institution, or by a person acting for that institution. The term does not include:

(1) Records of any educational personnel which are in the sole possession of the maker and which are not accessible or revealed to any other person except a substitute.

(2) Records made and maintained in the normal course of business which relate exclusively to persons who are employed in an educational institution but do not attend that institution.

(3) Directory information as given in § 36.20.

(4) Records on a student who is 18 years of age or older, or is attending an institution of post-secondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.

§ 36.3 Student rights.

The regulations in this part do not prevent educational institutions from giving noneligible students rights similar to those given to parents and eligible students. Educational institutions may do so at their discretion.

§ 36.4 Annual notification of rights.

(a) Each educational institution to which this part applies and which maintains records on students shall inform parents or eligible students of the rights given them by this part.

(b) In meeting the requirement in paragraph (a) of this section the educational institution shall give notice to parents and eligible students at least annually of the following:

(1) The types of education records and information contained in them which are directly related to students and maintained by the institution.

(2) The name and position of the official responsible for maintaining each type of record, the persons who have access to those records, and the purpose for which they have access.

(3) The policies of the institution for reviewing and expunging those records.

(4) The procedures established by the institution under § 36.5.

(5) The procedures for challenging the content of education records including those in § 36.10.

(6) The cost, if any, which will be charged to the parent or eligible student for reproducing copies of records under § 36.5.

(7) The categories of information which the institution has designated as "directory information" under § 36.20.

(c) The notice given to a parent or eligible student under this section shall be in a language considered by the institution to be understandable by the parent or eligible student.

§ 36.5 Access to records.

Educational institutions shall give parents of students or eligible students, who are or have been in attendance at the institutions, access to student records, except as stated in § 36.6.

§ 36.6 Limitations on access.

Educational institutions are not required to make available to students the following materials:

(a) Financial records of the parents of the student or any information contained in those records.

(b) Confidential letters and statements of recommendations, which were placed in any student's record prior to January 1, 1975, and which

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are not used for purposes other than those for which they were specifically intended.

(c) Those records listed in § 36.2(e) which are exempt from the definition of "student records."

§ 36.7 Access rights.

The right of access specified in § 36.5 shall include:

(a) The right to obtain a list of the types of student records which are maintained by the institution.

(b) The right to inspect and review the content of those records.

(c) The right to obtain copies of those records, the cost, if any, not to exceed the actual cost to the educational institution of reproducing the copies.

(d) The right to a response from the institution to reasonable requests for explanations and interpretations of those records.

(e) The right to an opportunity for a hearing to challenge the content of records.

(f) If any material or document in the record of a student includes information on more than one student, the right to inspect and review only that portion of such material or document as relates to that particular student or to be informed of the specific information contained in such part of such materials.

§ 36.8 Destruction of records.

This part does not prevent educational institutions from destroying any records, if not otherwise prevented by law. However, access shall be granted under § 36.5 before destroying student records where the parent or eligible student has requested access. Only records which are no longer relevant or necessary may be destroyed, subject to § 36.23(c).

§ 36.9 Procedures for granting access.

Each educational institution shall establish appropriate procedures for granting a request by parents for access to the records of their children, or by eligible students for access to their own records within a reasonable period of time. In no case shall access be withheld more than forty-five (45) days after the request has been made.

§ 36.10 Right to challenge.

Each educational institution shall give parents of students and eligible students, who are or have been in attendance at the institution, an opportunity to challenge the content of the student's records to:

(a) Insure that the records are not inaccurate, misleading, or otherwise violating the privacy or other rights of students.

(b) Provide an opportunity for correcting or deleting any inaccurate, misleading, or otherwise inappropriate data in the record.

(c) Insert into such records a written comment by the parents or eligible students pertaining to the content of such records.

§ 36.11 Informal proceedings.

Educational institutions may attempt to resolve differences with the parent of a student or the eligible student regarding the content of the student's records through informal meetings and discussions with the parent or eligible student.

§ 36.12 Right to a hearing.

Upon the request of the educational institution, the parent, or eligible student, a hearing shall be conducted under the procedures adopted and published by the institution. Such procedures shall include at least the following elements:

(a) The hearing shall be conducted and decided within a reasonable period of time following the request for the hearing.

(b) The hearing shall be informal and a verbatim record of proceedings will not be required. Interpreters will be utilized when necessary.

(c) The hearing shall be conducted by an institutional official or other party who does not have a direct interest in the outcome of the hearing.

(d) The parents or eligible student shall be given a full and fair opportunity to present evidence relevant to the issues raised under § 36.10.

(e) Within a reasonable period of time after the hearing ends, the hearing official shall make his recommendation in writing to the head of the educational institution. Within 20 days after receipt of the recommendation, the head of the institution shall issue his decision in writing to the parent or eligible student.

§ 36.13 Right of appeal.

If any parent or eligible student is adversely affected by the decision of the head of the institution, that party shall have appeal rights as given in 25 CFR Part 2. However, each official decision shall be issued within 30 days from receipt of the appeal.

§ 36.14 Consent.

Educational institutions shall not permit access to or the release of student records or personally identifiable information contained in them, other than directory information of students, without the written consent of the parents or of an eligible student, to any party other than the following:

(a) Local school officials, including teachers within the educational institution, who have been determined by the institution to have legitimate educational interests in the records.

(b) Officials of other schools or school systems at which a student is interested in enrolling. The student or parent must be notified of such release except in cases involving Bureau of Indian Affairs schools. All Bureau of Indian Affairs schools are considered to be components of one school system whether operated under contract or otherwise.

(c) Persons having official involvement with a student's application for or grant of financial aid.

(d) Parents of a dependent student as defined in section 152 of the Internal Revenue Code of 1954, as amended.

(e) Accreditation agencies in order to carry out their accrediting functions.

(f) U.S. Office of Education officials and other governmental education officials when deemed necessary by the institution to carry out their official functions.

(g) An education testing center or similar institution as a part of its validation research which has been authorized by the school.

(h) In an emergency, any person to whom the information is necessary in the discretion of the school's administration in order to protect the student's health and safety, subject to § 36.17.

(i) Indian groups, contractors, grantees, professional social service organizations and personnel performing professional services, when necessary to carry out an official function authorized by the Bureau of Indian Affairs.

(j) Pursuant to the order of a court of competent jurisdiction; however, the parent or eligible student must be notified of such order in advance of compliance therewith by the educational institution.

§ 36.15 Content of consent.

The consent of a parent or eligible student requested under this part for the release of student records shall be in writing, signed and dated by the person giving the consent. The consent shall include:

(a) A specification of the records to be released.

(b) The reasons for release.

(c) The names of the parties to whom the records will be released.

§ 36.16 Copy to be provided to parents or eligible students.

Where the consent of a parent or eligible student is required under this part for the release of student records, a copy of the records to be released shall be provided on request to:

(a) The student's parents or the eligible student.

(b) The student who is not an eligible student, if desired by the parents.

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§ 36.17 Release of information for health or safety emergencies.

(a) Educational institutions may release information from student records to appropriate persons in an emergency if the information is necessary to protect the health or safety of a student or other person. The factors to be used in determining whether records may be released under this section include the following:

(1) The seriousness of the threat to the health or safety of the student or other persons.

(2) The need for those records to meet the emergency.

(3) Whether the persons to whom the records are released are in a position to deal with the emergency.

(4) The extent to which time is of the essence in dealing with the emergency.

§ 36.18 Record of access.

(a) Each educational institution shall maintain a record kept with the student records of each student, which will indicate all parties other than those specified in § 36.14 which have requested or obtained access to those records and which will indicate specifically the legitimate interest that each party had in obtaining this information.

(b) A record of access shall be available only to:

(1) Parents or eligible students.

(2) The school official and his or her assistants who are responsible for the custody of such records.

(3) Persons or organizations authorized in and under the conditions of § 36.14.

§ 36.19 Transfer of information by third parties.

(a) Educational institutions shall not release personal information on a student except on the condition that the party to which the information is being transferred will not permit any other party to have access to the information without the written consent of the parents or of the eligible students.

(b) With any information released to a party under paragraph (a) of this section, educational institutions shall include a written statement which informs the party of the requirement in paragraph (a) of this section.

§ 36.20 Directory information.

(a) Any educational institution making public directory information shall make a reasonable effort to individually notify the parent or eligible student of the categories of information which it has designated as directory information. The institution shall allow a reasonable period of time after notice has been given for a parent or eligible student to inform the institution that any or all of the information designated should not be released without the prior consent of the parent or eligible student.

(b) Directory information may include the following: A student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student, tribe, agency, area, name of parent, sex, and classification (grade). No other information may be included. Educational institutions have the right to limit the content of directory information.

§ 36.21 Standards for collection and maintenance of student records.

(a) Records shall contain only information about an individual which is relevant and necessary to accomplish a purpose of the Bureau required to be accomplished by statute or Executive order of the President.

(b) Student records which are used in making any determination about any student shall be maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the student in making the determination.

(c) Information which may be used in determining a student's rights, benefits, and privileges under Federal programs shall be collected directly from the student or his parents, to the greatest extent practicable. In deciding whether collection of information from a parent or eligible student, as opposed to a third-party source is practicable, the following factors among others may be considered:

(1) Whether the nature of the information sought is such that it can only be obtained from a third party.

(2) Whether the cost of collecting the information from the parent or student is unreasonable, when compared with the cost of collecting it from a third party.

(3) Whether there is a risk that information collected from third parties, if inaccurate, could result in an adverse determination to the student concerned.

(4) Whether the information, if supplied by the parent or student, would have to be verified by a third party.

(5) Whether provisions can be made for verification by the parent of student of information collected from third parties.

(d) Each individual parent or eligible student who is asked to supply information about himself which will be added to a system of student records shall be notified of the basis for requesting the information, how it may be used, and what the consequences, if any, are of not supplying the information. At a minimum, the notice to the parent or eligible student must state:

(1) The authority (whether granted by statute or Executive order of the President) which authorizes requesting the information and whether disclosure of such information is mandatory or voluntary.

(2) The principle purpose or purposes for which the information is intended to be used.

(3) The routine uses which may be made of the information.

(4) The effects, if any, of not providing all or any part of the requested information.

(e) When information is collected on a standard form, the notice to the parent or eligible student shall be on the form or on a tear-off sheet attached to the form or on a separate sheet, whichever, is most practical.

(f) When information is collected by an interviewer, the interviewer shall provide the parent or eligible student with a written notice which the individual may retain. If the interview is conducted by telephone, however, the interviewer may summarize the notice for the individual and need not provide a copy to the individual unless the individual requests that a copy be mailed to him.

(g) A parent or eligible student may be asked to acknowledge, in writing, that he has been given the notice required by this section.

(h) No student records may be maintained describing how any individual exercises rights guaranteed by the first amendment to the Constitution unless:

(1) Expressly authorized by statute or by the individual about whom the student record is maintained; or

(2) Pertinent to and within the scope of an authorized law enforcement activity.

§ 36.22 Assuring integrity of records.

(a) Student records shall be maintained with appropriate administrative, technical and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained.

(b) When maintained in manual form, student records shall be maintained, at a minimum, subject to the following safeguards, or safeguards giving comparable protection:

(1) Areas in which the student records are maintained or regularly used shall be posted with an appropriate warning, stating that access to the records is limited to authorized persons. The warning shall also summarize the requirements of § 36.23 and state that employees may be subject to a criminal penalty for the unauthorized disclosure of student records.

(2) During working hours, the area in which the student records are maintained or regularly used shall be occupied by authorized personnel, or access to the student records shall be restricted by their storage in locked metal file cabinets or a locked room.

(3) During nonworking hours, access to the student records shall be restricted by their storage in locked metal file cabinets or a locked room.

(4) Where a locked room is the method of security provided for a system, the educational institution responsible for the system shall, no later than December 31, 1978, supplement that security by:

(i) Providing lockable file cabinets or containers for the student records, or

(ii) Changing the lock or locks for the room so that they may not be opened with a master key. For the purpose of this paragraph, a master is a key which may be used to open rooms other than the room containing student records, unless those rooms are used by officials or employees authorized to have access to the student records.

(c) When maintained in computerized form, student records shall be maintained, at a minimum, subject to safeguards based on those recommended in the National Bureau of Standards' booklet, "Computer Security Guidelines for Implementing the Privacy Act of 1974" (May 30, 1975), and any supplements to it, which are adequate and appropriate to assure the integrity of records in the system.

(d) The education institution responsible for a system of student records shall be responsible for assuring that specific procedures are developed to assure that the student records in the system for which it is responsible are maintained with security meeting the regulations in this section. These procedures shall be in writing and shall be posted or otherwise periodically brought to the attention of employees working with the student records contained in the system.

§ 36.23 Conduct of employees.

(a) Employees whose duties require handling of student records shall, at all times, take care to protect the integrity, security, and confidentiality of these records.

(b) No employee of the educational institution may disclose student records unless disclosure is permitted under § 36.14 or made to the parent of the student or eligible student to whom the record pertains.

(c) No employee of the educational institution may alter or destroy a student record, unless:

(1) Alteration or destruction is properly undertaken in the course of the employee's regular duties, or

(2) Alteration or destruction is required by an authorized administrative decision or the decision of a court of competent jurisdiction.

(d) The educational institution responsible for a system of student records shall be responsible for assuring that employees with access to the system are made aware of the requirements of this section.

NOTE.—It is hereby certified that the economic and inflationary impacts of this final regulation have been carefully evaluated in accordance with Executive Order 11821. The Assistant Secretary has determined that the provisions of Executive Order 11821 do not apply.

FORREST J. GERARD,
Assistant Secretary,
Indian Affairs.

[FR Doc. 78-31529 Filed 11-7-78; 8:45 am]

[4830-01-M]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7570]

PART 6—TEMPORARY INCOME TAX REGULATIONS UNDER THE BANK HOLDING COMPANY TAX ACT OF 1976

Elections Under the Bank Holding Company Tax Act of 1976

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides temporary regulations relating to elections under the Bank Holding Company Tax Act of 1976. These regulations affect all bank holding companies and provide them with the guidance needed to comply with the law.

DATE: The regulations apply to elections to be made after September 30, 1977.

FOR FURTHER INFORMATION CONTACT:

Jack A. Levine of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, attention: CC:LR:T, 202-566-3474, (not a toll-free call).

SUPPLEMENTARY INFORMATION:

BACKGROUND

This document contains temporary regulations relating to elections by bank holding companies under sections 1103(g), 1103(h), and 6158 of the Internal Revenue Code of 1954 as added by the Bank Holding Company Tax Act of 1976. A new part 6, Temporary Income Tax Regulations under the Bank Holding Company Tax Act of 1976, is added by this document to title 26 of the Code of Federal Regulations. A notice of proposed rulemaking relating to divestitures of assets by bank holding companies will be published in the future. The notice will afford the public the opportunity to comment on the rules contained in these temporary regulations as well as on other rules relating to the divestitures of assets by bank holding companies prior to their adoption as final regulations.

EXPLANATION OF PROVISIONS

In general, the Bank Holding Company Act Amendments of 1970 (12 U.S.C 1841 et seq.) require a bank holding company to divest either its banking or nonbanking properties on or before December 31, 1980. However, the Act provides exemptions from this requirement for certain closely held bank holding companies and for property representing pre-June 30, 1968, activities. The Bank Holding Company Tax Act of 1976 provides relief from the tax burden resulting from the divestitures required under the amendments of 1970. The relief is available in two forms. First, the Bank Holding Company Tax Act provides that a bank holding company may distribute either bank or nonbank property to its shareholders or security holders without recognition of gain by either the shareholders or the security holders. Second, the Tax Act permits a bank holding company selling its bank or nonbank property to elect to pay the resulting income tax in installments over a 10-year period. The Tax Act also allows bank holding companies to elect to forego the exemptions provided by the Bank Holding Company Tax Act so as to enable them to divest themselves of exempt property without incurring a tax burden.

In order to receive the tax relief provided by the Bank Holding Company Act, a bank holding company must be granted a certification by the Federal Reserve Board stating that the pending sale or distribution is necessary or appropriate to effectuate section 4 or the policies of the Bank Holding Company Act. The certification must be made before the sale of the distribution. Where a bank holding company plans to elect to forgo the exemptions provided by the Bank Holding Compa-

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ny Act, the Federal Reserve Board may grant it a certification that is conditioned upon the bank holding company's making the election. The regulations provide that both the certification and the election must be made prior to the sale or distribution in order for the bank holding company to receive the tax relief.

The regulations also provide a formula for determining the tax attributable to sales with respect to which an election has been made to pay the resulting income tax in installments.

Additionally, the regulations describe the time and manner in which the elections permitted by the Bank Holding Company Tax Act are to be made and the scope of the elections.

DRAFTING INFORMATION

The principal author of this regulation was Jack A. Levine of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

WAIVER OF PROCEDURAL REQUIREMENTS OF PROPOSED TREASURY DIRECTIVE

The bank holding companies affected by this regulation are in need of immediate guidance in order to be able to comply with the Bank Holding Company Tax Act of 1976. For this reason, it has been determined by one of the undersigned, Jerome Kurtz, Commissioner of Internal Revenue, that it is impractical to follow the procedures of paragraphs 8 through 13 of the proposed Treasury directive for regulatory reform (54 FR 22319).

ADOPTION OF AMENDMENTS TO THE REGULATIONS

Accordingly, a new part 6, Temporary Income Tax Regulations under the Bank Holding Company Tax Act of 1976, is added to title 26 of the Code of Federal Regulations and the following temporary regulations are adopted:

§ 6.1 Election by a bank holding company to forego grandfather provision for all property representing pre-June 30, 1968, activities.

(a) *In general.* For purposes of sections 1101 through 1103 and 6158 of the Code, a bank holding company may elect under section 1103(g) to have the determination of whether property is prohibited property or is property eligible to be distributed without recognition of gain under section 1101(b)(1) made under the Bank Holding Company Act (12 U.S.C. 1841 et seq.) as if the Act did not contain the proviso of section 4(a)(2) thereof.

(b) *Manner of making election.* The election under section 1103(g) shall be made in a written statement filed with the Federal Reserve Board indicating that by resolution of its board of directors, the bank holding company is electing to apply the provisions of section 1103(g). In addition, the bank holding company shall indicate on its income tax return for each taxable year in which the election applies to a distribution or sale of property (in the manner specified in the Internal Revenue Service's instructions for the preparation of the return) that it has made the election under section 1103(g). The election shall be considered to be made on the date on which the written statement is received by the Federal Reserve Board.

(c) *Scope of election.* The election under section 1103(g) applies to all determinations of whether property is prohibited property or is property eligible to be distributed without recognition of gain under section 1101(b)(1).

(d) *Election; binding effect.* An election made under section 1103(g) is irrevocable.

(e) *Final certification.* An election under section 1103(g) shall not apply unless the final certification referred to in section 1101(e) or section 6158(c)(2), as the case may be, includes a certification by the Federal Reserve Board that the bank holding company has disposed of either all banking property or all nonbanking property described in the proviso of section 4(a)(2) of the Bank Holding Company Act).

(f) *Conditional certification.* A certification by the Federal Reserve Board under section 1101 (a)(1)(B), 1101 (b)(1)(B), 1101 (c)(2)(C), 1101 (c)(3)(C), or 6158(a) that is conditioned upon the bank holding company's making an election under section 1103(g) shall not be considered to be made before the distribution or sale unless the certification and the election are made before the distribution or sale.

§ 6.2 Election by certain family-owned bank holding companies to divest all banking or nonbanking property.

(a) *In general.* For purposes of sections 1101 through 1103 and 6158 of the Code, a bank holding company may elect under section 1103(h) to have the determination of whether property is prohibited property or is property eligible to be distributed without recognition of gain under section 1101(b)(1) made under the Bank Holding Company Act (12 U.S.C. 1841 et seq.) as if the Act did not contain clause (ii) of section 4(c) thereof.

(b) *Manner of making election.* The election under section 1103(h) shall be made in a written statement filed with the Federal Reserve Board indicating that by resolution of its board of directors, the bank holding company is electing to apply, the provisions of section 1103(h). In addition, the bank holding company shall indicate on its income tax return for each taxable year in which the election applies to a distribution or sale of property (in the manner specified in the Internal Revenue Service's instructions for the preparation of the return) that it has made the election under section 1103(h). The election shall be considered to be made on the date on which the written statement is received by the Federal Reserve Board.

(c) *Scope of election.* The election under section 1103(h) applies to all determinations of whether property is prohibited property or is property eligible to be distributed without recognition of gain under section 1101(b)(1).

(d) *Election; binding effect.* An election made under section 1103(h) is irrevocable.

(e) *Final certification.* An election under section 1103(h) shall not apply unless the final certification referred to in section 1101(e) or section 6158(c)(2), as the case may be, includes a certification by the Federal Reserve Board that the bank holding company has disposed of either all banking property or all nonbanking property.

(f) *Conditional certification.* A certification by the Federal Reserve Board under section 1101 (a)(1)(B), 1101 (b)(1)(B), 1101 (c)(2)(C), 1101 (c)(3)(C), or 6158(a) that is conditioned upon the bank holding company's making an election under section 1103(h) shall not be considered to be made before the distribution or sale unless the certification and the election are made before the distribution or sale.

§ 6.3 Election by a qualified bank holding corporation to pay in installments the tax attributable to sales under the Bank Holding Company Act.

(a) *In general.* Under section 6158(a) of the Code, a qualified bank holding corporation may elect to pay in installments the tax under chapter 1 of the Code attributable to the sale of bank property or prohibited property (as those terms are defined in section 6158(f) (2) and (3)) if—

(1) It meets the conditions described in paragraph (b) of this section, and

(2) It files an election in accordance with the rules set forth in paragraph (c) of this section.

(b) *Conditions.* (1) The sale of bank property or prohibited property must take place after July 7, 1970.

(2) The Federal Reserve Board must certify before the sale of the bank property or prohibited property that the divestiture of such property is necessary or appropriate to effectuate section 4 or the policies of the Bank Holding Company Act (12 U.S.C. 1841 et seq.).

(3) If bank property is sold, the qualified bank holding corporation (or a corporation having control of it or a subsidiary of it) must not have—

(i) Previously elected to apply section 6158 to a sale of prohibited property, or

(ii) Previously distributed prohibited property under section 1101(a).

(4) If prohibited property is sold, the qualified bank holding corporation (or a corporation having control of it or a subsidiary of it) must not have—

(i) Previously elected to apply section 6158 to a sale of bank property, or

(ii) Previously distributed bank property under section 1101(b).

(5) The qualified bank holding corporation must not have elected to return the income from the sale under the installment provisions of section 453.

(c) *Time and manner of making election.* (1) Except as provided in paragraph (c)(2) of this section, a qualified bank holding corporation shall make the election under section 6158(a) by—

(i) Attaching a statement to its income tax return for the taxable year in which the prohibited property or bank property is sold showing the tax computation under paragraph (f) of this section and the amount of the installment paid with the return, and

(ii) Entering the amount of the installment payment followed by the words "computed under section 6158" in the appropriate place on the tax return.

(2) If the qualified bank holding corporation filed its income tax return for the year of sale before February 6, 1979 (without electing under section 6158(a)), then it shall make the election under section 6158(a) by attaching a statement to its claim for credit or refund (amended tax return) for its overpayment of income tax attributable to the application of section 6158 showing the tax computation under paragraph (f) of this section and entering the amount of the credit or refund followed by the words "attributable to the application of section 6158" in the appropriate place on the claim. In order for the election to be effective, the claim must be filed before the earlier of—

(i) The expiration of the period of limitation for the filing of the claim, or

(ii) February 6, 1979.

(d) *Scope of election.* An election under section 6158 will apply only to the particular sale or sales of property with respect to which the election is being made.

(e) *Special rule for certifying sales.* For purposes of section 6158(a) and paragraph (b)(2) of this section, in the case of a sale which takes place after July 7, 1970, and before January 1, 1977, a certification by the Federal Reserve Board shall be treated as made before the sale if application for such certification was made before January 1, 1977.

(f) *Tax attributable to sales.* The tax under chapter 1 of the Code attributable to sales with respect to which an election under section 6158 has been made shall be the amount, if any, by which the tax under chapter 1 on the taxable income of the qualified bank holding corporation (computed without regard to section 6153) for the taxable year during which the sales occur exceeds the greater of—

(1) The tax under chapter 1 for such year on the taxable income of the corporation exclusive of gains on sales of property with respect to which an election under section 6158 has been made, or

(2) The tax under chapter 1 for such year on the taxable income of the corporation exclusive of gains and losses on all sales of the type of property (either bank property or prohibited property) with respect to which an election under section 6158 has been made.

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

This Treasury decision is issued under the authority contained in sections 1103 (g) and (h), 6158 (a) and 7805 of the Internal Revenue Code of 1954 (90 Stat. 1511 and 1512 and 68A Stat. 917; 26 U.S.C. 1103 (g) and (h), 6158 (a) and 7805).

JEROME KURTZ,
Commissioner of Internal Revenue.

Approved: October 25, 1978.

DONALD C. LUBICK,
Assistant Secretary of the Treasury.

[FR Doc. 78-31473 Filed 11-7-78; 8:45 am]

[6560-01-M]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

[FRL 982-4]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Approval of Oklahoma Regulation No. 3

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action approves revisions to Oklahoma Regulation No. 3, Defining Terms Used in Oklahoma Air Pollution Control Regulations. The revision to Regulation No. 3 includes the addition of new terms and words, and changes to previously defined terms and words. Oklahoma's definition of "Best Available Control Technology (BACT)" is disapproved. This revision, which is a general update of Regulation No. 3, should allow a better interpretation, implementation, and administration of Oklahoma's air pollution control program.

EFFECTIVE DATE: November 8, 1978.

FOR FURTHER INFORMATION CONTACT:

Anita B. Turpin, Air Program Branch, Environmental Protection Agency, Region VI, Dallas, Tex. 75270. 214-767-2742.

SUPPLEMENTARY INFORMATION: On November 28, 1977, after adequate notice and public hearing, the Governor of Oklahoma submitted revisions to Regulation No. 3, defining Terms Used in Oklahoma Air Pollution Control Regulations. The revisions include amendments adopted by the state on June 2, 1974, and June 11, 1977.

Part 52 of Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart LL—Oklahoma

1. In § 52.1920, paragraph (c) is amended by adding a new paragraph (12) as follows:

§ 52.1920 Identification of plan.

. . . . . .

(c) * * *

(12) Revision to Oklahoma Regulation No. 3, Defining Terms Used in Oklahoma Air Pollution Control Regulations, were submitted by the Governor on November 28, 1977. The revisions include amendments adopted by the State on June 2, 1974 and June 11, 1977. (See § 52.1926(a).)

2. Subpart LL is amended by adding § 52.1926 as follows:

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§ 52.1926 General requirements.

(a) The definition of "Best Available Control Technology (BACT)", as submitted by the Governor on November 28, 1977, is disapproved.

. . . . . .

With the exception of the definition for "Best Available Control Technology (BACT)", revisions to Regulation No. 3 were proposed for approval in the FEDERAL REGISTER on June 26, 1978. The definition of BACT was proposed for disapproval since it was not acceptable for determining control technology requirements or for the administration of New Source Performance Standards.

Interested persons were provided 30 days in which to comment on EPA's proposed action. No comments were received. No additional information was received which indicated that a change in the proposed action was warranted.

CURRENT ACTION

This action approves the new definition of terms and words to Regulation No. 3 and the revision of existing terms and words, except the definition of "Best Available Control Technology (BACT)".

This notice of final rulemaking is issued under the authority of section 110(a) of the Clean Air Act, as amended, 42 U.S.C. 7410-(a).

Dated: October 31, 1978.

DOUGLAS M. COSTLE,
Administrator.

[FR Doc. 78-31497 Filed 11-7-78; 8:45 am]

[6560-01-M]

[FRL 975-1]

PART 65—DELAYED COMPLIANCE ORDERS

Delayed Compliance Order for City of Cleveland, Cleveland, Ohio

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: By this rule, the Administrator of EPA issues a delayed compliance Order to the city of Cleveland. The Order requires the city of Cleveland to bring air emissions from its boilers at the Division Pumping Station in Cleveland, Ohio, into compliance with certain regulations contained in the federally approved Ohio State Implementation Plan (SIP). The city of Cleveland's compliance with the Order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violations of the SIP regulations covered in the Order.

DATES: This Order takes effect on November 8, 1978.

FOR FURTHER INFORMATION CONTACT:

Peter Kelly, Attorney, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Ill. 60604, telephone 312-353-2082.

SUPPLEMENTARY INFORMATION:

On May 31, 1978, the Acting Regional Administrator of EPA's Region V Office published in the FEDERAL REGISTER (43 FR 23611) a notice setting out the provisions of a proposed Federal delayed compliance Order for the city of Cleveland. The notice asked for public comments and offered the opportunity to request a public hearing on the proposed Order.

Only the city of Cleveland submitted comments. No other comments and no request for a public hearing were received in response to the proposed notice.

Therefore, a delayed compliance Order effective this date is issued to the city of Cleveland by the Administrator of EPA pursuant to the authority of section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places the city of Cleveland on a schedule to bring its boilers at the Division Pumping Station, Cleveland, Ohio, into compliance as expeditiously as practicable with Ohio Regulation AP-3-11 and 40 CFR 52.1881 et seq., part of the Ohio State Implementation Plan. The city of Cleveland is unable to immediately comply with these regulations. The Order also imposes interim requirements which meet sections 113(d)(1)(C) and 113(d)(7) of the Act, and emission monitoring and reporting requirements. If the conditions of the Order are met, it will permit the city of Cleveland to delay compliance with the SIP regulations covered by the Order until July 1, 1979.

Compliance with the Order by the city of Cleveland will preclude Federal enforcement action under section 113 of the Act for violations of the SIP regulations covered by the Order. Citizen suits under section 304 of the Act to enforce against the source are similarly precluded. Enforcement may be intitated, however, for violations of the terms of the Order, and for violations of the regulations covered by the Order which occurred before the Order was issued by EPA or after the Order is terminated. If the Administrator determines that the city of Cleveland is in violation of a requirement contained in the Order, one or more of the actions required by section 113(d)(9) of the Act will be initiated. Publication of this notice of final rulemaking constitutes final Agency action for the purposes of judicial review under section 307(b) of the Act.

The provisions of the Order will be summarized, as set forth below, in 40 CFR 65. The provisions of 40 CFR Part 65 will be promulgated by EPA soon, and will contain the procedure for EPA's issuance, approval, and disapproval of an Order under section 113(d) of the Act. In addition, Part 65 will contain sections summarizing Orders issued, approved, and disapproved by EPA. A prior notice proposing regulations for Part 65, published at 40 FR 149876 (April 2, 1975), will be withdrawn, and replaced by a notice promolgating these new regulations.

EPA has determined that the Order shall be effective on November 8, 1978, because of the need to immediately place the city of Cleveland on a schedule for compliance with the Ohio State Implementation Plan.

(42 U.S.C. 7413(d), 7601)

Dated: October 30, 1978.

DOUGLAS M. COSTLE,
Administrator.

In consideration of the foregoing, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. By amending the table in § 65.400 to read as follows:

By amending the table in § 65.400 by adding the following entry:

§ 65.400 **Federal delayed compliance Orders issued under Section 113(d) (1), (3), and (4) of the Act.**

. . . . . .

Source	Location	Order No.	Date of FR Proposal	SIP regulation involved	Final compliance date
City of Cleveland	Cleveland, Ohio	EPA-5-78-A-8	May 31, 1978.	AP-3-11 and 40 CFR § 52.1881 et seq.	July 1, 1979.

[FR Doc. 78-31354 Filed 11-7-78; 8:45 am]

[6560-01-50]

[FRL 978-3]

PART 65—DELAYED COMPLIANCE ORDERS

Delayed Compliance Order for the Town of Washburn, Maine

AGENCY: Environmental Protection Agency.

ACTION: Final Rule.

SUMMARY: The Administrator of EPA hereby issues a Delayed Compliance Order to the town of Washburn, Maine. The Order requires the town to bring air emissions from its open burning dump into compliance with certain regulations contained in the federally approved Maine State Implementation Plan (SIP). The town of Washburn's compliance with the Order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violation(s) of the SIP regulations covered by the Order during the period the Order is in effect.

DATES: This rule takes effect on November 8, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert O'Meara, engineer, 617-223-5610 or Mr. Wesley Marshall, attorney, 617-223-5600 both at EPA, Region I, Room 2103, J.F.K. Federal Building, Boston, Mass. 02203.

ADDRESSES: The Delayed Compliance Order, supporting material, and any comments received in response to a prior FEDERAL REGISTER notice proposing issuance of the Order are available for public inspection and copying during normal business hours at: EPA, Region I, Room 2103, J.F.K. Federal Building, Boston, Mass. 02203.

SUPPLEMENTARY INFORMATION: On July 5, 1978, the Regional Administrator of EPA's Region I Office published in the FEDERAL REGISTER, 43 FR 29013, a notice setting out the provisions of a proposed delayed compliance order for the town of Washburn, Maine. The notice asked for public comments and offered the opportunity to request a public hearing on the proposed Order. No public comments or requests for a public hearing were received in response to the proposal notice.

Therefore, a delayed compliance order effective this date is issued to the town of Washburn, Maine by the Administrator of EPA pursuant to the authority of section 113(d)(1) of the Clean Air Act, 42 U.S.C. 7413(d)(1). The Order places the town of Washburn, Maine on a schedule to bring its solid waste disposal system into compliance as expeditiously as practicable with § 100.2.2 of the Maine Department of Environmental Protection Air Pollution Control Regulations, a part of the federally approved Maine State Implementation Plan. The Order also imposes interim requirements which meet sections 113(d)(1)(C) and 113(d)(7) of the act, and reporting requirements. Although section 113(d)(C) of the act normally requires emission monitoring in an order, no reasonable system of emission monitoring for the town of Washburn's open burning dump site exists. If the conditions of the order are met, it will permit the town of Washburn to delay compliance with the SIP regulations covered by the order until July 1, 1979. The Town is unable to immediately comply with these regulations.

EPA has determined that the order shall be effective November 8, 1978 because of the need to immediately place the town of Washburn, Maine on a schedule for compliance with the applicable requirement of the Maine State Implementation Plan.

(Authority: 42 U.S.C. 7413(d), 7601.)

Dated: October 31, 1978.

DOUGLAS M. COSTLE,
Administrator.

In consideration of the foregoing, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

By amending the table in § 65.240 by adding the following entry:

§ 65.240 **Federal delayed compliance orders issued under section 113(d) (1), (3), and (4) of the act.**

. . . . . .

Source	Location	Order No.	Date of FR Proposal	SIP regulation involved	Final compliance date
Town of Washburn	Maine	A-SS-77-560	July 5, 1978	§ 100.2.2	July 1, 1979.

[FR Doc. 78-31499 Filed 11-7-78; 8:45 am]

[6560-01-M]

SUBCHAPTER E—PESTICIDE PROGRAMS

[FRL 1003-7; OPP—250011]

PART 162—REGULATIONS FOR THE ENFORCEMENT OF THE FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

Subpart A—Registration, Reregistration and Classification Procedures

AGENCY: Environmental Protection Agency (EPA), Office of Pesticide Programs.

ACTION: Notification to Secretary of Agriculture of final regulation relating to Special Packaging of Pesticides.

SUMMARY: Notice is hereby given as required by section 25(a)(2)(D) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (Pub. L. 92-516, 86 Stat. 973; Pub. L. 94-140, 89 Stat. 753; 7 U.S.C. 136 et seq., hereinafter referred to as FIFRA) that the Administrator of the Environmental Protection agency (EPA) has forwarded to the Secretary of the U.S. Department of Agriculture, a copy of EPA's final regulation designed to implement section 25(c)(3) of FIFRA (which will be designated 162.16) which authorizes the Administrator to establish standards for the special packaging of pesticides.

FOR FURTHER INFORMATION CONTACT:

Maureen Grimmer, Office of Pesticide Programs (TS-766), EPA, Room 537, East Tower, 401 "M" Street SW., Washington, D.C. 20460, 202-755-8030.

SUPPLEMENTARY INFORMATION:

Section 25(a)(2)(B) of FIFRA provides that the Administrator shall provide the Secretary of Agriculture a copy of any final regulation at least 30 days prior to signing it for publication in the FEDERAL REGISTER. If the Secretary comments in writing regarding the regulation within 15 days after receiving it, the Administrator shall publish in the FEDERAL REGISTER (with the final regulation) the comments of the Secretary, if requested by the Secretary, and the response of the Administrator. If the Secretary does not comment in writing within 15 days after receiving the final regulation, the Administrator may sign the regulation for publication in the FEDERAL REGISTER anytime after the 15 day period.

Pursuant to FIFRA Section 25(a)(3), a copy of this final regulation has been forwarded to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture and Forestry of the Senate. The special packaging regulation was also submitted to the FIFRA Scientific Advisory Panel on October 3, 1978, as required by section 25(d).

Dated: October 31, 1978.

JAMES M. CONLON,
Acting Deputy Assistant Administrator for Pesticide Programs.

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proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

[7550-01-M]

NATIONAL MEDIATION BOARD

[29 CFR Part 1202]

RULES OF PROCEDURE

AGENCY: National Mediation Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The proposed text provides specific page limitations for briefs filed in NMB hearing proceedings. This approach has become nessary in order to control the filing of unreasonably lengthy briefs before the Board. It is intended that the proposed limitations will promote the more effective use of Agency staff resources, ease the regulatory burden on the public, and facilitate the processing of hearing cases before the Board.

DATES: Consideration will be given to all written comments received on or before January 8, 1979.

ADDRESS: Written comments should be addressed to Mr. Rowland K. Quinn, Jr., Executive Secretary, National Mediation Board, Washington, D.C. 20572.

FOR FURTHER INFORMATION CONTACT:

Rowland K. Quinn, Jr., Executive Secretary, National Mediation Board, telephone: 202-523-5920.

SUPPLEMENTARY INFORMATION: These proposed regulations are issued pursuant to the authority of 44 Stat. 577, as amended. 45 U.S.C. section 151, et seq.

By direction of the National Mediation Board.

Dated: November 3, 1978.

ROWLAND K. QUINN, JR.,
Executive Secretary.

It is proposed that 29 CFR 1202.15, which currently is vacant, be issued as follows:

§ 1202.15 Length of briefs in NMB hearing proceedings.

(a) In the event briefs are authorized by the Board or the assigned Hearing Officer, prinicpal briefs shall not exceed fifty (50) pages in length and reply briefs, if permitted, shall not exceed twenty-five (25) pages in length.

(b) The page limitations provided by this section (§ 1202.15) are exclusive of those pages containing the table of contents, tables of citations, and any copies of administrative or court decisions which have been cited in the brief.

(c) Briefs not complying with this section (§ 1202.15) will be returned promptly to their initiators.

[FR Doc. 78-31534 Filed 11-7-78; 8:45 am]

[3110-01-M]

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

[32 CFR Chapter I]

[41 CFR Chapter 1]

ANTI-INFLATION MEASURES

Invitation for Public Comment

AGENCY: Office of Federal Procurement Policy (OFPP), Office of Management and Budget.

ACTION: Notice of proposed rules concerning anti-inflation measures affecting Federal contracts.

SUMMARY: The President has determined that the Government will benefit by contracting only with firms which cooperate in the fight against inflation. This means that whenever possible, the Government will refrain from awarding contracts to business units which do not cooperate in anti-inflation efforts by keeping price and wage increases within established standards. Proposed regulations and procedures are set forth.

DATE: Comments must be received on or before December 7, 1978.

ADDRESSES: Comments are to be submitted to the Office of Federal Procurement Policy, OMB, 726 Jackson Place NW., Room 9013, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT:

Mr. LeRoy J. Haugh, Associate Administrator for Regulations and Procedures, 202-395-6166.

LESTER A. FETTIG,
Administrator.

[OFPP Policy Letter 78-]

Subject: Wage and Price Standards for Federal Contractors

A program of voluntary wage and price standards was announced by President Carter on October 24, 1978. The President directed that Federal procurement of property and services be conducted so as to recognize anti-inflationary efforts and to benefit Federal contracting by doing business with those firms which limit wage and price increases. Accordingly, the following regulations are furnished for compliance by all executive agencies.

The following provisions will be added to general policies in section I, part 3, of the Defense Acquisition Regulation (DAR) and the Federal Procurement Regulations (FPR):

Wage and price standards for Federal contractors: (a) The Government will, to the maximum practicable extent, purchase goods and services only from those firms in compliance with the wage and price standards. Firms in noncompliance with the standards will be ineligible for Federal contracts or subcontracts except in accordance with paragraph h below.

(b) *Solicitation provision.* All solicitations issued on or after January 1, 1979, expected to result in new contracts, orders under existing contracts, or supplemental agreements to existing contracts, in excess of $5 million will contain the following provision:

The offeror hereby certifies that he is in compliance with the wage and price standards announced by the President on October 24, 1978.

(c) *Contract provision.* All new contracts, orders under existing contracts, and supplemental agreements to existing contracts, in excess of $5 million, resulting from solicitations issued on or after January 1, 1979, will contain the following provision:

The contractor hereby certifies that he is in compliance with the wage and price standards announced by the President on October 24, 1978. If it is later determined that the contractor was in fact not in compliance as of the date of this action, and knew or should have known that he was not in compliance, then this contract may be terminated in accordance with the provisions of the Termination for Default Clause.

(d) *Compliance determinations.* For purposes of certification, companies will determine for themselves whether or not they are in compliance, unless they are listed as noncompliant. The Council on Wage and Price Stability (CWPS) has established procedures to monitor overall compliance with the Federal Wage and Price Standards. CWPS will from time to time publish a list of companies which it determines to be in noncompliance. The Office of Federal Procurement Policy (OFPP) will disseminate to all procuring agencies a current list of noncompliant companies.

(e) *Effect on prior awards.* Contractors who are determined to be noncompliant, but are already performing under Federal contracts will be treated as follows:

1. If their contracts do not contain the certification provision, they will continue to perform those contracts, but will be ineligible for any further awards until they are removed from the noncompliance list.

2. If they were awarded contracts with a compliance certification, but are later found by CWPS not be in compliance, such contracts may be terminated for default in accordance with the contract provision in paragraph (c) above.

3. If they were awarded contracts with a compliance certification, but it is determined that they become noncompliant after the award of such contracts, they will continue to perform those contracts, but will be ineligible for any further awards until they are removed from the concompliance list.

(f) *Application to subcontractors.* Certification requirements shall be included in all subcontracts over $5 million. The same penalties provided with respect to prime contractors shall also apply to subcontractors who are determined by CWPS not to be in compliance. Any waiver or relaxation of these penalties with respect to subcontractors can only be made by the head of the procuring agency involved.

(g) *Reduced penalties.* (1) termination for default of contractors or subcontractors who were not in compliance at the time of certification may be waived by the agency head if he determines in writing that:

1. The agency's need for the product or service is essential to National security or public safety, and

2. There are no alternative sources of supply, or that seeking alternative sources is not feasible because of:

a. urgency of requirements, or

b. disruption of essential program functions.

(2) Termination for default may also be waived by the agency head if he determines that such action would result in severe financial hardship, particularly for small and minority business firms. Such waivers should be limited to those contractors or subcontractors whose ability to survive, if terminated for default, is in question.

(3) In any case in which termination for default is determined to be feasible the agency shall consider negotiating a reduction in the contract price to ensure that the contractor does not profit from his failure to comply with the wage and price standards.

(h) *Waiver of certification.* (1) Waiver of the contract certification should be considered only in situations where the Government cannot forgo or postpone a procurement because of an urgent national security or public safety and where there are no alternative sources.

(2) Such waivers will be granted only by the head of the procuring agency involved, and only after thoroughly exhausting all reasonable alternatives.

(3) Waivers shall be in writing, and a copy of such waiver shall be forwarded within 10 days to the Administrator for Federal Procurement Policy.

(4) A contractor's refusal to accept the certification provision shall be considered in future determinations of responsibility until such time as the contractor accepts the certification provision or is otherwise determined to be in compliance.

(i) *Contract pricing actions.* while determinations of noncompliance are the concern of CWPS, all procuring agencies must be cognizant of the wage and price standards and make every effort to stay within these standards in pricing actions under negotiated contracts. Such pricing actions include cost and price analyses, forward pricing rate agreements, price negotiation objectives, and contract pricing structures.

[FR Doc. 78-31581 Filed 11-3-78; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 1003-8]

STATE OF MARYLAND

Proposed Revision of the Maryland State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The State of Maryland has submitted a proposed revision of the State Implementation Plan (SIP) consisting of a Consent Order for the Chalk Point Generating Station of the Potomac Electric Power Co. (PEPCO) at Aquasco, Md. The schedule would require PEPCO to achieve compliance with Maryland's particulate regulation by December 31, 1980, and specifies other milestones which the company must meet toward that end. The sulfur dioxide air quality standards are being met. A further review will be conducted by July 1, 1979.

DATE: Comments must be submitted on or before December 8, 1978.

ADDRESSES: Copies of the proposed SIP revision and the accompanying support documents are available for inspection during normal business hours at the following offices:

U.S. Environmental Protection Agency, Air Programs Branch, Curtis Building, 6th and Walnut Streets, Philadelphia, Pa. 19106. Attn: William E. Belanger.

Bureau of Air Quality and Noise Control, State of Maryland, 201 West Preston Street, Baltimore, Md. 21201. Attn: George Ferreri.

Public Information Reference Unit, Room 2922—EPA Library, U.S. Environmental Protection Agency, 401 M Street SW. (Waterside Mall), Washington, D.C. 20460.

All comments on the proposed revision submitted on or before December 8, 1978, will be considered and should be directed to:

Mr. Howard Heim, Chief, Air Programs Branch (3AH10), Air and Hazardous Materials Division, U.S. Environmental Protection Agency, Region III, Sixth and Walnut Streets, Philadelphia, Pa. 19106. Attn: AH013MD.

FOR FURTHER INFORMATION CONTACT:

William E. Belanger (3AH13), U.S. Environmental Protection Agency, Region III, Sixth and Walnut Streets, Philadelphia, Pa. 19106, telephone 215-597-8188.

SUPPLEMENTARY INFORMATION: On March 21, 1978, the Governor of Maryland submitted to EPA, Region III a proposed revision of the Maryland State Implementation Plan consisting of a Consent Order for the Chalk Point Generating Station of the Potomac Electric Power Co. (PEPCO). In his letter, Acting Governor Blair Lee III certified that the Order was adopted in accordance with the public hearing and notice requirements of 40 CFR, Part 51.4 and all relevant State procedural requirements, and asked that EPA consider the Consent Order as a revision of the State Implementation Plan. The Order states that PEPCO at Chalk Point is not now in compliance with the State's particulate limitation applicable to this facility, and establishes a schedule for compliance with that limitation. It also provides for measurement of sulfur dioxide emissions and levels around the plant. By July 1, 1979, there will be a new evaluation and projection of sulfur dioxide ambient air levels, based on these measurements. If no standards violations are measured or projected, the evaluation will be repeated every five years. The proposed SIP change would reduce particulate matter from boiler units 1 and 2 (coal burning) according to the following schedule:

April 1, 1977—complete upgrade of precipitator on Unit 2 so emissions do not exceed .24 pounds per million Btu. This has been reported complete by PEPCO.

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July 1, 1977—complete upgrade of precipitator on Unit 1 to meet the same limitation. This has been reported complete by PEPCO.

January 1, 1978—select a method to secure compliance of both units with Regulation 10.03.39.03B. Cold electrostatic precipitators have been chosen by PEPCO and the following schedule applies:

April 30, 1978—Award engineering and construction contracts.

June 30, 1978—Award precipitator contracts and begin site preparation.

May 31, 1979—Begin construction.

June 30, 1980—Begin precipitator installation.

September 30, 1981—Have precipitators operational.

December 31, 1981—Full compliance.

Until December 31, 1981, visible emissions are limited to No. 2 on the Ringelmann Smoke Chart (40 percent opacity) and coal ash content is limited to 15 percent by weight.

For sulfur oxides, PEPCO determined the impact of the plant through proper use of EPA's CRSTER model based on one year's meteorological data. The model shows the plant to be in compliance with applicable national ambient air quality standards.

PEPCO is required to submit new projections, based on actual ambient air measurements and emissions, by July 1, 1979. If the study then finds or projects a violation, PEPCO has agreed to come into compliance expeditiously on a preset schedule.

Therefore, it is the tentative decision of the Administrator to approve the proposed revision of the Maryland State Implementation Plan.

The public is invited to submit to the address stated above, comments on whether the Chalk Point Consent Order should be approved as a revision of the Maryland State Implementation Plan.

The Administrator's decision to approve or disapprove the proposed revision will be based on the comments received and on a determination whether the amendments meet the requirements of Section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of State Implementation Plans.

(42 U.S.C. 7401.)

Dated: October 31, 1978.

JACK J. SCHRAMM,
Regional Administrator.

[FR Doc. 78-31496 Filed 11-7-78; 8:45 am]

[3510-22-M]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[50 CFR Part 611]

PRELIMINARY FISHERY MANAGEMENT PLAN

Pacific Billfishes and Sharks

AGENCY: National Oceanic and Atmospheric Administration/Commerce.

ACTION: Supplemental notice of public hearings.

SUMMARY: On October 20, 1978, the National Marine Fisheries Services (NMFS) published a notice of public hearing in the FEDERAL REGISTER (43 FR 49024). Three additional meetings will be held (see below for dates, time, and place).

In addition to the particular issues mentioned in the previous notice, NMFS would like input on consideration of setting aside portions of the total allowable foreign fishing (TALFF) for each species by sub-area as a "reserve" in the event domestic fishing is greater than projected. The domestic fishery is quite variable, and catches from year to year may differ greatly. The estimates of expected U.S. harvest are based on average catches over a period of years (adjusted for increased fishing capacity), and the harvest in a given year may exceed the estimates given. Several commentators have maintained that past U.S. harvests were underestimated. The "reserve" approach would provide flexibility in management by allowing allocations to be based on actual experience in the fishery. NMFS is contracting for a survey of recreational fishing to determine catch and effort data. Information from this survey could be used to monitor the fishery for subsequent actions on the reserve if necessary. It is possible, given the migratory nature of the stocks and the variability of the fishery, that the "reserve" could be shifted from one area to another to alleviate special problems as they arise.

DATES: Comments will be received until December 24, 1978.

ADDRESSES: November 28, Kona Hilton, Kona, Hawaii, 4 p.m., November 29, Pagoda Hotel, Honolulu, Hawaii, 4 p.m., November 28, California Department of Fish and Game, 350 Golden Shores Drive, Long Beach, California, 4 p.m.

FOR FURTHER INFORMATION CONTACT:

Mr. Gerald V. Howard, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731, Telephone: (213) 548-2575.

Dated: November, 1978.

WINFRED H. MEIBOHM,
Acting Executive Director,
National Marine Fisheries Service.

[FR Doc. 78-31509 Filed 11-7-78; 8:45 am]

[3510-22-M]

[50 CFR Parts 611 and 671]

TANNER CRAB OFF THE COAST OF ALASKA

Fishery Management Plan Amendment

AGENCY: National Oceanic and Atmospheric Administration/Commerce.

ACTION: Notice of approval of fishery management plan amendment.

SUMMARY: The fishery management plan (FMP) for the commercial Tanner Crab fishery off the coast of Alaska is amended to extend the period of time during which the FMP will be effective through October 31, 1979. The plan originally was effective until December 31, 1978. The North Pacific Management Council has submitted to the Secretary of Commerce an amendment to extend the effective date of the FMP through October 31, 1979. This amendment to the FMP is proposed for public comment.

DATE: Comments will be received until December 22, 1978.

ADDRESS: Comments should be addressed to the Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C. 20235. Please mark "Alaska Tanner crab" on outside of the envelope.

FOR FURTHER INFORMATION CONTACT:

Mr. Harry L. Rietze, Regional Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99807, telephone 907-586-7221.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The FMP for the commercial Tanner Crab fishery which was prepared by the North Pacific Fishery Management Council was approved by the Secretary of Commerce (Secretary) and published in the FEDERAL REGISTER on May 16, 1978 (43 FR 21180). That FMP contained conservation and management measures for both the foreign and domestic Tanner crab fisheries off the coast of Alaska under authority of the Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801 et seq. Proposed regulations to implement the plan were published on May 16, 1978. See 43 FR 21170 regulating foreign vessels, and 43 FR 21171 regulating vessels of the United States.

The FMP was designed to conserve and manage Tanner crab resources off the coast of Alaska during 1978. The purpose of this amendment to the FMP is to extend the period of time during which the FMP will be in effect through October 31, 1979. No adverse impact is anticipated to the Tanner crab resource or to the domestic or foreign fishermen because the management measures remain unchanged from those published in both the FMP and the proposed regulations.

The Assistant Administrator for Fisheries, under the delegation of authority from the Secretary, has determined that the amendment to the FMP extending the effective date of this FMP through October 31, 1979; (1) is necessary and appropriate to the conservation and management of Tanner crab resources off the coast of Alaska; (2) is consistent with the National Standards and other provisions of the Act and other applicable law; and (3) does not constitute a major Federal action requiring the preparation of an environmental impact statement.

The FMP is revised as follows:

1. On page 21176, Section I.C., 1st paragraph, line 7, delete "1978".

2. On page 21176, Table A, Title, delete "for the 1977/78" and add "for the 1978/79".

3. On page 21180, Table A and Table 11, delete ". . . 1977/78" and add ". . . 1978/79".

4. On page 21195, Table 11 delete ". . . 1977/78" and add "1978/79".

5. On page 21199, Section 7.0, 1st paragraph, line 22, delete "for the 1978 fishing season".

6. On page 21210, Section A.5.3., 4th paragraph, line 4, delete "during the 1977/78 season".

7. On page 21210, Section A.5.3, 8th paragraph, line 5, delete "during the 1977/78 season".

8. On page 21215, Section B.6.3, 1st paragraph, line 3 delete "1977/78".

9. On page 21227, Section C.6.3, 1st paragraph, line 2 delete "for the 1977/78 season".

10. On page 21232, Section D.7.0, 1st paragraph, line 2, delete "for 1977/78".

11. On page 21237, Section E.4.7.1, 1st paragraph, line 13, delete ". . . has . . .".

12. On page 21238, Section E.5.3, 1st paragraph, line 10, delete "1977/78 . . ." and insert "1978/79".

13. On page 21238, Section E.5.3, 1st paragraph, line 14, delete ". . . for the 1977/78 season . . .".

14. On page 21238, Section E.7.0, 1st paragraph, line 2, delete "for 1977/78".

15. On page 21249, Section F.6.2.d, 2nd paragraph, line 7, delete "during the 1977/78 season".

16. On page 21249-21250, Section F.6.2.f, 2nd paragraph, line 1, delete ". . . 1978 . . ." and insert ". . . 1979 . . .".

(Authority: 16 U.S.C. 1801 et seq.)

Signed in Washington, D.C., this 2nd day of November 1978.

WINFRED H. MEIBOHM,
Acting Executive Director,
National Marine Fisheries Service.

[FR Doc. 78-31536 Filed 11-7-78; 8:45 am]

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notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

[4310-01-M]

ADVISORY COUNCIL ON HISTORIC PRESERVATION

PUBLIC INFORMATION MEETING

Notice is hereby given in accordance with section 800.5(c) of the Council's "Procedures for the Protection of Historic and Cultural Properties" (36 CFR Part 800) that on November 15, 1978, at 7 p.m., a public information meeting will be held at the Cedarburg Town Hall, 1293 Highway 143, Cedarburg, Wis. The purpose of this meeting is to provide an opportunity for representatives of public and private organizations, and interested citizens to receive information and express their views on the proposed reconstruction of the Hamilton Bridge and its approaches, an undertaking of the county of Ozaukee assisted by funds from the Federal Highway Administration, that will adversely affect Hamilton Historic District, a property included in the National Register of Historic Places.

The following is a summary of the agenda of the public information meeting:

I. An explanation of the procedures and purpose of the meeting by a representative of the Executive Director of the Council.

II. A description of the undertaking and an evaluation of its effects on the historic district by the Federal Highway Administration, county officials, and consultants who prepared the plans and reports.

III. A statement by the Wisconsin State Historic Preservation Officer.

IV. Statements from local officials, private organizations, and the public on the effects of the undertaking on the historic district.

V. A general question period.

Speakers should limit their statements to 5 minutes. Written statements in furtherance of oral remarks will be accepted by the Council at the time of the meeting. Additional information regarding the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1522 K Street NW., Washington, D.C. 20005, telephone 202-254-3974.

ROBERT M. UTLEY,
Deputy Executive Director.

[FR Doc. 78-31568 Filed 11-7-78; 8:45 am]

[6320-01-M]

CIVIL AERONAUTICS BOARD

[Docket Nos. 33411, 33488, 33713, 33717, 33559, 3351, 33715; Order 78-11-4]

ATLANTA-MEMPHIS SERVICE INVESTIGATION

Order of Consolidation

Issued Under Delegated Authority November 1, 1978. Applications of Allegheny Airlines, Inc., Continental Air Lines, Inc., North Central Airlines, Inc., Northwest Airlines, Inc., Ozark Air Lines, Inc., Western Air Lines, Inc.

This investigation was instituted by Order 78-9-61, served September 19, 1978, which consolidated the previously filed applications of Eastern Air Lines, Inc., Braniff Airways, Inc., Frontier Airlines, Inc., Piedmont Aviation, Inc., Southern Airways, Inc., and Texas International Airlines, Inc., into this docket. Further applications and motions to consolidate have been timely filed by Allegheny Airlines, Inc., in Docket 33488, Continental Air Lines, Inc., in Docket 33713, North Central Airlines, Inc., in Docket 33717, Northwest Airlines, Inc., in Docket 33559, Ozark Air Lines, Inc., in Docket 33551, and Western Air Lines, Inc., in Docket 33715.

No answers have been filed to the applications and motions.

All these applications conform to the scope of the proceeding instituted by Order 78-9-61 except that of Delta, which requests additional authority. The applications will be consolidated into Docket 33411 to the extent that they conform to the scope of the investigation as presently delineated. All applicants are also made party to this proceeding.

Accordingly, pursuant to authority delegated to the presiding administrative law judge by Order 78-9-61,

It is ordered that:

1. The motions to consolidate the applications of Allegheny Airlines, Inc., in Docket 33488, Continental Air Lines, Inc., in Docket 33713, North Central Airlines, Inc., in Docket 33717, Northwest Airlines, Inc., in Docket 33559, Ozark Air Lines, Inc., in Docket 33551, and Western Air Lines, Inc., in Docket 33715 into the investigation in Docket 33411 are granted to the extent that the applications conform to the scope of the investigation instituted by Order 78-9-61.

2. The following are made parties to the proceeding in Docket 33411: Allegheny Airlines, Inc., Braniff Airways, Inc., Continental Air Lines, Inc., Eastern Air Lines, Inc., Frontier Airlines, Inc., North Central Airlines, Inc., Northwest Airlines, Inc., Ozark Air Lines, Inc., Piedmont Aviation, Inc., Southern Airways, Inc., Texas International Airlines, Inc., and Western Air Lines, Inc.

Persons entitled to petition the Board for review of this Order pursuant to the Board's regulations, 14 CFR 385.50, may file such petitions within 10 days after the service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period unless before that date a petition for review thereof is filed, or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

By KATHERINE A. KENT
Administrative Law Judge.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-31594 Filed 11-7-78; 8:45 am]

[6320-01-M]

[Docket No. 30635; Order 78-10-89]

ARIZONA SERVICE INVESTIGATION

Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 20th day of October, 1978.

By order 78-8-195 in Docket 30635, the Board has granted certificates of public convenience and necessity to Cochise Airlines and Sky West Aviation. We have tentatively found that the public convenience and necessity requires that, once certificated, these carriers be governed by any determinations made by the Board in the *Domestic Passenger Fare Investigation* (*DPFO*), including the requirements as to joint fares in Phase 4 of that proceeding.

We made similar findings following the initial certification of Air New England,[1] Air Midwest,[2] and Air Wisconsin [3] and following the grant of authority to Pan American to carry domestic traffic between Detroit and Boston.[4] Similar action is warranted here. Therefore we tentatively find and conclude that the above-named carriers shall be bound by the Board's present and future determinations in the *DPFI* as if they had been parties to the original proceeding.

Although most of the *DPFI* requirements can be met unilaterally, participation in Phase 4—which establishes maximum joint fares on interline connecting flights—obviously requires cooperation from other carriers. Accordingly, we tentatively find and conclude that Cochise Airlines and Sky West Aviation on the one hand, and all carriers certificated to provide scheduled service within the 48 contiguous states,[5] on the other, shall enter into and maintain all joint fares which are now, or may in the future be required by the Board in Phase 4 of the *Domestic Passenger Fare Investigation*, Docket 21866-4, as if the former carriers were local service carriers parties to that proceeding; and they shall divide all joint fares by such methods as are or may be prescribed by the Board.[6]

Interested persons will be given 21 days following service of this order to show cause why the tentative findings and conclusions set forth here should not be made final. We expect such persons to support any objections they might have with detailed answers, specifically stating the findings and conclusions to which objection is taken. Such objections should be accompanied by arguments of fact or law and should be supported by legal precedent or detailed economic analysis. If an evidentiary hearing is requested, the objector should state in detail why such a hearing is considered necessary and what relevant and material facts he would expect to establish through such a hearing. General, vague or unsupported objections will not be entertained. Answers may be filed 10 days after the date for filing objections.

Accordingly:

1. The Board directs all interested persons to show cause why it should not issue an order making final the tentative findings and conclusions stated here;

2. Any interested person objecting to the issuance of an order making final the findings and conclusions set forth here shall, no later than November 13, 1978, file with the Board and serve upon all certificated air carriers a statement of objections together with a summary of testimony, statistical data and any other evidence that is expected to be relied upon to support the stated objections, answers to objections shall be filed no later than November 24, 1978;

3. If timely and properly supported objections are filed, full consideration will be accorded the matters or issues raised by the objections before further action is taken by the Board;

4. In the event no objections are filed, all further procedural steps will be deemed to have been waived, and the matter will be submitted to the Board for final action.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board. (All Members concurred except Member Cohen who did not participate at this time.)

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-31596 Filed 11-7-78 8:45 am]

[6320-01-M]

[Docket No. 33151; Order 78-10-92]

BRANIFF AIRWAYS, INC.

Order To Show Cause and Denying Exemption

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 20th day of October, 1978.

On August 4, 1978, Braniff Airways filed an application for exemption authority to operate between Hartford, Conn./Springfield, Mass., and New York, N.Y./Newark, N.J., until final decision on certificate proceedings under section 401 of the Act.

In support, Braniff alleges that: The Hartford-New York segment is not used effectively by incumbent carriers as entry mileage, especially to Midwest and Southwest points; its proposal will provide improved service to numerous points not easily accessible to Hartford passengers,[1] supplement the current Hartford-New York service and offer local passengers a broader selection of service options and low fares; and its operations will result in a profit of over $6 million during the first year.

The Greater Hartford Chamber of Commerce supports the application. Four carriers filed objections.[2] Air New England opposes only that part of Braniff's request which would permit it to operate in the Hartford-LaGuardia market. The other carriers maintain that Braniff's application fails to meet the statutory requirements of section 416(b) of the Act; that the proposal is of doubtful economic feasibility and will offer Hartford-New York passengers no additional benefits; and that improved service between Hartford and the Southwest is now before the Board in other proceedings.[3]

We have decided to issue an order to show cause which proposes to add a new segment to Braniff's certificate for Route 9 between Hartford/Springfield and New York/Newark, and to deny Braniff's exemption request. Our tentative conclusion that Braniff should be authorized to conduct nonstop operations between Hartford and New York is based on the following findings:

Braniff's request, which involves addition of Hartford to its system, falls within the class of cases which can be handled by show-cause procedures because of the absence of any material, determinative issue of fact requiring resolution in a formal evidentiary proceeding.[4] Implementation of its service proposal will significantly benefit the traveling public (Appendix A). It will result in new single-carrier service in three beyond-New York markets, as well as first effective competitive service in five (see Appendix B). Braniff will be able to offer these benefits by a short extension of existing flights, thereby increasing traffic revenues through relatively minor increases in costs.

Braniff claims that its proposal will benefit over 108,000 passengers and will result in profitable operations in the 1979 forecast year. We agree with Delta that Braniff's profit forecast should be reduced for self-diversion. Even so, we find that there is sufficient traffic to sustain profitable operations, if not under the exact operating plan put forward, then under some variation of it.[5] We need not find that Braniff's precise proposal here, or any other specific service pattern, can in fact be profitably operated.[6] If Braniff's proposal or a variation can be operated on a profitable basis, service is likely to be provided, and we are persuaded that has been plausibly shown here.[7] On the other hand, under permissive authority, even if the service is

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[1] *New England Service Investigation*, Order 74-10-102, October 18, 1974.

[2] *Air Midwest Certification Proceeding*, Order 76-11-3, November 2, 1976.

[3] *Air Wisconsin Certification Proceeding*, Order 78-8-197, August 31, 1978.

[4] *Detroit-Boston Nonstop Route Proceeding*, Order 76-9-168, September 30, 1976.

[5] Except for Aspen Airways and Wright Lines, which are not subject to the *DPFI*.

[6] All the issues involved in this show cause order have been exhaustively litigated in the *DPFI* and the addition of two new carriers results in no appreciable change in any of the conclusions reached in that proceeding. Similarly, in light of the evidentiary record compiled in the *DPFI* we find no need for further hearings directed solely to the addition of Cochise Airlines and Sky West Aviation.

[1] Oklahoma City, San Antonio, Tulsa, Dallas/Ft. Worth, Houston, Washington (Dulles), Austin, Brownsville, and Lubbock.

[2] Air New England, Allegheny Airlines, American Airlines, and Delta Air Lines.

[3] In the *Baltimore/Washington-Houston Low-Fare Route Case*, Docket 31870, Allegheny is proposing two-stop service between Hartford and Houston via Baltimore and Dulles, and in the *Dallas/Fort Worth/Houston-Philadelphia Service Investigation*, Docket 32343, Allegheny is proposing one-stop service in both the Hartford-Houston and Hartford-Dallas/Fort Worth markets.

[4] E.g., Piedmont Boston Entry, Orders 78-4-69 and 78-8-97, Eastern Albany Entry, Orders 78-6-60 and 78-7-168, and Air New England Hartford/Springfield Entry, Orders 78-7-39 and 78-8-129.

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or becomes unprofitable the carrier is free to cease serving the markets. We are satisfied that nothing developed in an oral evidentiary hearing would reverse this conclusion.

The objectors' arguments fail to persaude us from our course of action. The pendency of Allegheny's applications in the above Texas cases does not constitute a valid reason for failing to act on Braniff's now. As for Delta's argument that now it has Hartford-Atlanta nonstop rights it will be in an excellent position to offer single-plane service to some of the points proposed by Braniff, we presume that Braniff's management will respond in an economically rational manner and will gear its services to market conditions and its economic opportunities between Hartford and New York and elsewhere. Whether or not Braniff provides the level of service which it now proposes or serves the market at all,[8] its certification benefits the public by creating a competitive spur to the incumbents to provide the public with the level and kinds of service it wants.[9] Finally, we find that grant of this authority will not threaten the ability of any carrier to perform its certificate obligations.[10]

Interested persons will be given 30 days following the date of service of this order to show cause why these tentative findings and conclusions should not be made final. We expect that objections will be supported by detailed economic or legal arguments. If an oral evidentiary hearing complete with the opportunity for cross-examination is requested, the objector should state, in detail, why such a hearing is necessary and what relevant and material facts the objector would expect to establish through such a hearing that cannot be established through written pleadings. General, vague, or unsupported objections will not be entertained. Answers to objections are due within 10 days after the due date for objections.

We have also decided to deny Braniff's exemption request. Under the circumstances presented here, we feel that show-cause procedures are preferable to exemption procedures.

Accordingly,

1. We direct all interested persons to show cause why the Board should not issue an order under section 204 of the Act, making final these tentative findings and conclusions and amending Braniff's certificate for Route 9 so as to add a new segment authorizing the permissive nonstop scheduled air transportation of persons, property, and mail between the terminal point Hartford, Conn./Springfield, Mass., and the terminal point New York, N.Y./Newark, N.J.;

2. Any interested person having objections to the issuance of an order making final the proposed findings, conclusions, and certificate amendments shall, no later than November 24, 1978, file with the Board and serve upon all persons listed in paragraph 6 a statement of objections together with a summary of testimony, statistical data, and evidence expected to be relied upon to support its objections; answers to objections shall be filed by December 4, 1978;

3. If timely and properly supported objections are filed, full consideration will be accorded the matters or issues raised before further action is taken by the Board; [11]

4. In the event no objections are filed to any part of this order, all further procedural steps relating to such part or parts will be deemed to have been waived, and the case will be submitted to the Board for further action;

5. We deny the application of Braniff Airways for an exemption filed in Docket 33151; and

6. We shall serve a copy of this order on all persons named in the service list of Docket 33151.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board. (All Members concurred.)

PHYLLIS T. KAYLOR,
Secretary.

(FR Doc. 78-31595 Filed 11-7-78; 8:45 am)

[8] We find that the public convenience and necessity require that the authority we propose to grant Braniff be permissive, so that its management can have the discretion to provide service or not as the demands of the market dictate.

[9] We also tentatively conclude that Braniff is fit, willing, and able to perform the air transportation it proposes and to conform to the provisions of the Act and the Board's rules; that, on evaluation of Braniff's environmental submission, our proposed action will not be a major Federal action significantly affecting the quality of the environment within the meaning of the National Environmental Policy Act of 1969; and that approval of Braniff's proposal will not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975, as defined in section 313 of our regulations. Braniff does not have a certificate amendment application on file. We will give the carrier 15 days after the date of service of this order to file such an application.

[10] Air New England has asked that Braniff be prohibited from serving the Hartford-LaGuardia market. We will not grant Air New England's request. The objecting carrier's authority is permissive and hence even under worst case assumptions, it is free to withdraw from the market to avoid losses. The idea is contrary to our general policy of promoting a more competitive environment in the certificated system.

[11] All motions and/or petitions for reconsideration shall be filed within the period allowed for filing objections and no further motions, requests or petitions for reconsideration of this order will be entertained.

[6320-01-M]

[Docket No. 32840; Order 78-10-87]

BROOKER-WHEATON AVIATION, LTD.

Statement of Tentative Findings and Conclusions and Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 20th day of October, 1978.

Application of BROOKER-WHEATON AVIATION LTD. for a foreign air carrier permit pursuant to section 402 of the Federal Aviation Act of 1958, as amended.

By application filed June 9, 1978, Brooker-Wheaton Aviation Ltd. (Brooker-Wheaton) requests a foreign air carrier permit to engage in charter foreign air transportation of persons and their accompanied baggage, and planeload charter foreign air transportation of property, between any point or points in Canada and the United States, using "small aircraft." [1] The application is filed pursuant to the Nonscheduled Air Service Agreement executed on May 8, 1974, by the Governments of the United States and Canada.

No answers to Brooker-Wheaton's application for a foreign air carrier permit have been filed.

FITNESS OF THE APPLICANT

Brooker-Wheaton is incorporated under the laws of the Province of Alberta, as set forth in the Companies Act. The Canadian Air Transport Committee has issued Brooker-Wheaton a license which provides for the operation of a charter commercial air service operated wholly within Canada for the transport of persons or goods originating in Edmonton, Alberta, Canada. The applicant also has obtained from the Air Transport Committee a class 9-4 license which authorizes the holder to operate charter commercial air services within Canada and internationally from a base at Edmonton, Alberta, Canada. Brooker-Wheaton is restricted in its operations to the use of Group A, B, or C aircraft having a maximum authorized weight on wheels no greater than 18,000 pounds.[2] The Canadian Department of Transport, Civil Aviation Branch has issued the operating certificate certifying that the carrier's aircraft are adequately equipped, and it is able to conduct safe operations. Brooker-Wheaton also holds an operating certificate which permits the corporation to operate between points that can be safely served in North America from a base at Edmonton Municipal Airport, Edmonton, Alberta, Canada using Group A, B, or C aircraft.

The applicant's balance sheet as of August 31, 1977, shows total assets of $1,482,133 of which $897,088 is shown as current assets. On the liabilities side, the company shows current liabilities of $844,270 and total liabilities of $1,282,672 resulting in total shareholders equity of $167,214 (with $32,247 in deferred taxes). Brooker-Wheaton is in a profitable position; the corporation showed a net profit of $25,773 for the year ended August 31, 1977, which gave the corporation retained earnings of $162,614 on this date. Brooker-Wheaton owes $581,336 to the Cessna Finance Corp., $200,000 to the Bank of British Columbia, and $165,559 to the Cessna Aircraft Corporation—these are all Canadian corporations.

The carrier lists the following aircraft, which are either owned or leased, as available for charter service between Canada and the United States:

Type of aircraft	Number	Passenger seating capacity	Maximum payload
Cessna 421	1	7	2,200
Cessna 402	1	7	1,950
Cessna 401	1	6	2,100
Cessna 414	1	6	1,915
Cessna 310	1	5	1,570
Cessna 337	1	3	1,790
Cessna 182	1	3	1,300

The applicant states that it has had no safety or tariff violations in the last five years, nor have there been any aircraft accidents during such period. Furthermore, the applicant has stated that it will comply with all necessary insurance conditions.

"PUBLIC INTEREST" IN AWARD OF THE AUTHORITY SOUGHT

The applicant relies on the Non schedule Air Service Agreement signed by the Governments of Canada and the United States of America on May 8, 1974 as the basis for the grant of the requested authority. By diplomatic Note No. ECT-1108, dated June 24, 1976, the Government of Canada designated the applicant under the agreement to perform charter services with small aircraft.

OWNERSHIP AND CONTROL

The only stockholders, officers, directors, and management personnel of the corporation are Donald H. Wheaton, Beverly W. Brooker, and Edward Mitchell. Mr. Wheaton is President, and holds 50 percent of all shares outstanding (6,000 shares of common stock). Ms. Brooker is Secretary and holds the other 50 percent of outstanding shares. Mr. Mitchell is General Manager, Operations Manager, and Sales Manager of Brooker-Wheaton Aviation Ltd. All of the stockholders, officers, directors and management personnel of the corporation are Canadian citizens. Likewise, all creditors to the applicant are Canadian.

The application reveals that neither the applicant, nor its officers, directors or holders of 5 percent or more of the stock of the air carrier, own, either directly or indirectly, any other Canadian carrier or foreign carrier or any person engaged in a phase of aeronautics, or any common carrier, or in any person whose principal business is the holding of stock in, or control of, any such entities.

In view of the foregoing and all of the facts of record, the Board tentatively finds and concludes that:

1. It is in the public interest to issue a foreign air carrier permit to Brooker-Wheaton Aviation Ltd. authorizing it to engage in charter foreign air transportation with small aircraft of persons and their accompanied baggage and planeload charters of property between any point or points in Canada and the United States;

2. Brooker-Wheaton Aviation Ltd. is fit, willing, and able properly to perform the charter foreign air transportation described in the specimen permit, and to conform to the provisions of the Act and the rules, regulations, and requirements of the Board;

3. The public interest requires that the exercise of the privileges granted by the permit shall be subject to the terms, conditions, and limitations contained in the specimen permit attached to this order, and to such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Board;

4. Brooker-Wheaton Aviation Ltd. is substantially owned and effectively controlled by nationals of Canada;

5. The proposed issuance of Brooker-Wheaton Aviation Ltd.'s foreign air carrier permit will not constitute a "major regulatory action" under the Energy Policy and Conservation Act as defined in subsection 313.4(a)(1) of the Board's regulations; [3]

6. An oral evidentiary hearing is not required in the public interest; [4] and

7. Except to the extent granted, the application of Brooker-Wheaton Aviation Ltd. in Docket 32840 should be denied.

Accordingly,

1. We direct all interested persons to show cause why the Board should not (1) make final its tentative findings and conclusions, and (2) issue a foreign air carrier permit to Brooker-Wheaton Aviation Ltd. in the specimen form attached, subject to the approval of the President pursuant to section 801 of the act;

2. Any interested person having objection to the issuance of an order making final the tentative findings and conclusions and issuing the foreign air carrier permit shall, no later than November 14, 1978, file with the Board and serve upon the persons named in paragraph 5, a statement of objections specifying the part or parts of the tentative findings and conclusions objected to, together with a summary of testimony, statistical data, and concrete evidence relied upon in support of the objections. If an evidentiary hearing is requested, the objector should state in detail why such hearing is considered necessary and what relevant and material facts he would expect to establish through such hearing which he could not establish in written pleadings. Any interested person who wishes to answer these objections shall file such answers no later than November 24, 1978;

3. If timely and properly supported objections are filed, we will accord further consideration to the matters and issues raised by the objections before further action is taken by the Board; *Provided*, That the Board may enter an order in accordance with the tentative findings and conclusions, if it determines that there are no factual issues present that warrant the holding of an oral evidentiary hearing; [5]

4. In the event no objections are filed, we will waive all further procedural steps and the Secretary shall enter an order which (1) shall make final the Board's tenative findings and conclusions set forth in this order, and (2) subject to the approval of the President, shall issue a foreign air carrier permit to the applicant in the specimen form attached; and

5. We shall serve this order upon Brooker-Wheaton Aviation Ltd., the Ambassador of Canada in Washington, D.C. and the U.S. Departments of State and Transportation.

[1] "Small aircraft" are defined by the Nonscheduled Air Service Agreement as aircraft which are not "large aircraft." "Large aircraft" are defined as aircraft having both (a) a maximum passenger capacity of more than 30 seats or a maximum payload capacity of more than 7,500 pounds, and (b) a maximum authorized takeoff weight on wheels greater than 35,000 pounds.

[2] Under Canadian Air Transport Committee Regulations, Group A aircraft can weigh no more than 4,300 pounds, Group B aircraft can weigh no more than 7,000 pounds, and Group C aircraft can weigh no more than 18,000 pounds (maximum authorized takeoff weight on wheels).

[3] This is not an action with environmental consequences. See subsection 312.2(a) of the Board's Procedural Regulations regarding Canadian permits for small aircraft charter operations.

[4] Any interested persons having objections to the issuance of an order making final the Board's tentative findings and conclusions and issuing the attached permit, shall be allowed 10 days from the date of service of this order to respond. Answers to objections shall be filed not later than ten (10) days thereafter.

[5] Since provision is made for the filing of objections to this order, petitions for reconsideration will not be entertained.

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We shall publish this order in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

All Members concurred.

UNITED STATES OF AMERICA CIVIL AERONAUTICS BOARD, WASHINGTON, D.C.

PERMIT TO FOREIGN AIR CARRIER FOR SMALL AIRCRAFT OPERATIONS

Brooker-Wheaton Aviation, Ltd., is authorized, subject to the provisions set forth, the provisions of the Federal Aviation Act of 1958 and the Board's orders, rules, and regulations, to engage in charter foreign air transportation, as follows:

Charter flights with respect to persons and their accompanied baggage, and planeload charter flights with respect to property, between any point or points in Canada and any point or points in the United States.

The holder shall be authorized to perform those types of charters originating in Canada as are now, or may be, prescribed for carriage by small aircraft in Annex B(III)(B) of the Nonscheduled Air Service Agreement between the United States and Canada, signed May 8, 1974, including amendments, supplements, reservations, or supersessions to that Agreement: *Provided*, That any such charters may be performed only to the extent authorized by the Air Carrier Regulations of the Canadian Transport Commission applicable to operations by small aircraft, and the authority of the holder to perform such charters shall be subject to those Regulations.[1] The authority of the holder to perform United States-originating charters shall, in accordance with Annex B(III)(A) of the Nonscheduled Air Service Agreement, be limited to commercial air transportation of passengers and their accompanied baggage, and property, on a time, mileage or trip basis, where the entire planeload capacity of one or more aircraft has been engaged by a person for his own use or by a person for the transportation of a group of persons and/or their property, as agent or representative of such group, or such small aircraft operations as may be authorized pursuant to any amendment, supplement, reservation or supersession to that Agreement.

This permit shall be subject to the following terms, conditions, and limitations:

(1) In the performance of the charter operations authorized by this permit, the holder shall not use "large aircraft" as defined in Annex A(i)(A) of the Nonscheduled Air Service Agreement between the United States and Canada, signed May 8, 1974, including amendments, supplements, reservations, or supersessions to that Agreement.

(2) The holder shall not engage in foreign air transportation between the United States and any point or points, other than a point or points in Canada, or transport any property or persons whose journey includes a prior, subsequent, or intervening movement by air (except for the movement of passengers independently of any group) to or from a point not in the United States or Canada: *Provided*, That the Board may, upon application by the holder, or by regulation, authorize the performance of charters where such movements are involved.

(3) The holder shall not perform United States-originating charter flights which at the end of any calendar quarter would result in the aggregate number of all United States-originating charter flights performed by the holder on or after May 8, 1974, exceeding by more than one-third the aggregate number of all Canadian-originating charter flights performed by the holder on or after May 8, 1974: *Provided*, That the Board may authorize the performance of charters not meeting the requirements set forth. For the purpose of making such computation the following shall apply:

(a) A charter shall be considered to originate in the United States (or Canada) if the passengers or property are first taken on board in that country, and shall be considered as one flight whether the charter be one-way, round trip, circle tour, or open jaw, even if a separate contract is entered into for a return portion of the charter trip from Canada (or the United States).

(b) The computation shall be made separately for (i) "small aircraft" flights of persons; and (ii) "small aircraft" flights of property.

(c) In the case of a lease of aircraft with crew for the performance of a charter flight on behalf and under the authority of another carrier, the flight shall be included in the computation if the holder is the lessee, and shall not be included if the holder is the lessor.

(d) There shall be excluded from the computation:

(i) Flights utilizing aircraft having a maximum authorized takeoff weight on wheels (as determined by Canadian Transport Commission Regulations) not greater than 18,000 pounds; and (ii) flights originating at a United States terminal point of a route authorized pursuant to the Air Transport Services Agreement between the United States and Canada, signed January 17, 1966, as amended, or any agreement which may supersede it, or any supplementary agreement thereto which establishes obligations or privileges thereunder (if, pursuant to any such agreement, the holder also holds a foreign air carrier permit authorizing individually ticketed or individually waybilled service over such route, and provides some scheduled service on any route pursuant to any such agreement), when the flights serve either (a) a Canadian terminal point on the route, or (b) any Canadian intermediate point authorized for service on the route by the foreign air carrier permit.

(4) The holder may grant stopover privileges at any point or points in the United States only to passengers and their accompanied baggage moving on a Canadian-originating flight operating under a contract for round-trip charter transportation to be provided solely by the holder and as to which the same aircraft stays with the passengers throughout the journey: *Provided*, That the Board may authorize the performance of charters not meeting the requirements set forth.

(5) The Board, by order or regulation and without hearing, may require advance approval of individual charter trips conducted by the holder pursuant to the authority granted by this permit, if it finds such action to be required in the public interest.

(6) The holder shall conform to the airworthiness and airman competency requirements prescribed by the Government of Canada for Canadian international air service.

(7) The holder shall not operate any aircraft under the authority granted by this permit, unless the holder complies with the operational safety requirements at least equivalent to Annex 6 of the Chicago Convention.

(8) This permit shall be subject to all applicable provisions of any treaty, convention, or agreement affecting international air transportation now in effect, or that may become effective during the period this permit remains in effect, to which the United States and Canada shall be parties.

(9) This permit shall be subject to the condition that the holder shall keep on deposit with the Board a signed counterpart of CAB Agreement 18900, an agreement relating to liability limitations of the Warsaw convention and The Hague Protocol approved by Board Order E-23680, May 13, 1966, and a signed counterpart of any amendment or amendments to such agreement which may be approved by the Board and to which the holder becomes a party.

(10) The holder (1) shall not provide foreign air transportation under this permit unless there is in effect third-party liability insurance in the amount of $1,000,000 or more to meet potential liability claims which may arise in connection with its operations under this permit, and unless there is on file with the Docket Section of the Board a statement showing the name and address of the insurance carrier and the amounts of liability limits of the third-party liability insurance provided, and (2) shall not provide foreign air transportation with respect to persons unless there is in effect liability insurance sufficient to cover the obligations assumed in CAB Agreement 18900, and unless there is on file with the Docket Section of the Board a statement showing the name and address of the insurance carrier and the amounts and liability limits of the passenger liability insurance provided. Upon request, the Board may authorize the holder to supply the name and address of an insurance syndicate in lieu of the names and addresses of the member insurers.

(11) By accepting this permit, the holder waives any right it may posses to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the holder in any court or other tribunal in the United States (or its territories or possessions) based upon any claim arising out of operations by the holder under this permit.

(12) The exercise of the privileges granted by this permit shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Board.

This permit shall become effective on————. Unless otherwise terminated at an earlier date pursuant to the terms of any applicable treaty, convention, or agreement, this permit shall terminate (1) upon the effective date of any treaty, convention or agreement, or amendment, which shall have the effect of eliminating the charter foreign air transportation authorized from the transportation which may be operated by carriers designated by the Government of Canada (or in the event of the elimination of part of the charter foreign air transportation authorized, the authority granted shall terminate to the extent of such elimination), or (2) upon the effective date of any permit granted by the Board to any other carrier designated by the Government of Canada in lieu of the holder, or (3) upon the termination or expiration of the Nonscheduled Air Service Agreement between the United States and Canada, signed May 8, 1974: *However*, clause (3) of this paragraph shall not apply if, prior to the occurrence of the event specified in clause (3), the operation of the foreign air transporation authorized becomes the subject of any treaty, convention, or agreement to which the United States of America and Canada are or shall become parties.

The Civil Aeronautics Board has directed its Secretary to execute this permit and affix its seal, on the————.

————,
Secretary.

(SEAL)

Issuance of this permit to the holder approved by the President of the United States on in .

[FR Doc. 78-31597 Filed 11-7-78; 8:45 am]

[1] Annex B(III)(B) presently authorizes Canadian-originating small aircraft charters of the types prescribed in section (II)(B); but only to the extent applicable to small aircraft pursuant to Canadian Transport Commission Regulations. The applicable types of charters presently authorized are: Single Entity Passenger, Single Entity Property, Pro Rata Common Purpose, and Inclusive Tour (in some instances split passenger charters are authorized).

[6320-01-M]

[Docket Nos. 32708, 32974; Order 78-11-5]

HOUSTON-PHOENIX/TUCSON CASE

Order of Consolidation

Issued under delegated authority November 1, 1978.

North Central Airlines, Inc., has filed an amendment to the application in Docket 32974 that was previously consolidated into Docket 32708. The amended application conforms to the scope of the investigation as expanded by Order 78-9-31, served September 8, 1978, and will be consolidated herein.

Accordingly, pursuant to authority delegated by Order 78-9-31, it is ordered that: Amendment No. 1 to the application of North Central Airlines, Inc., in Docket 32974 is consolidated into the investigation in Docket 32708.

Persons entitled to petition the Board for review of this order pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within ten days after the service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period unless before that date a petition for review thereof is filed, or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

By Katherine A. Kent, Administrative Law Judge.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-31599 Filed 11-7-78; 8:45 am]

[6320-01-M]

[Docket No. 32319; Order 78-10-93]

PIEDMONT AVIATION, INC.

Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on October 20, 1978.

On April 4, 1978, Piedmont Airlines filed an application to amend its certificate to authorize it to provide nonstop service between Charlotte, Greensboro/High Point, and Columbia, on the one hand, and Tampa, on the other. The application was accompanied by a motion for hearing or, in the alternative, a request for an order to show cause why it should not be granted.

Piedmont alleges, in support of its request, that it will provide two nonstop round trips between Tampa and both Charlotte and Greensboro and one nonstop round trip between Tampa and Columbia, with each flight originating or terminating at other points on its system. It recites several public benefits resulting from implementation of this proposal, including year-round single-plane service in several Tampa markets, improved service between cities already on its system, the reduction of congestion at Atlanta by elimination of connection requirements, fare benefits to passengers, and improved operating conditions resulting from the expected increase in its average passenger haul and aircraft hop. Piedmont also claims that it will achieve a $3 million operating profit, resulting in a $1 million subsidy-need reduction, at the cost of minimal diversion from other carriers.

Answers in support of Piedmont's application were filed by the Raleigh-Durham Airport Authority; the Richmond-Lexington Airport Commission; the Norfolk Port and Industrial Authority; the North Carolina Department of Transportation; the State of Maryland; the Greensboro-High Point Airport Authority; the Greater Charlotte Chamber of Commerce and city of Charlotte; the Commonwealth of Virginia (accompanied by a motion for leave to intervene, which we will grant); and the Tampa Bay Area Parties.[1]

Delta Airlines and Eastern Airlines filed answers in opposition. Delta urges us to take a cautious approach and to defer processing this application until we evaluate the effect of Piedmont's recent extensions to Miami and Boston. It alleges that other, larger and less well-served markets should be given priority in our hearing program, giving as examples its own applications for Atlanta-Greensboro/Ft. Myers/Raleigh authority. Eastern argues that Piedmont has not shown a need for the grant of new authority. It alleges that the Tampa markets are thin and adequately served for their size; that Piedmont's forecast is overly optimistic; that Piedmont's fare proposal is not a significant improvement over existing discount fares; and that Piedmont already has the authority to operate over most of the segments named as part of its service proposal. Piedmont filed a reply to the answers, together with a motion for leave to file an otherwise unauthorized document, which we will grant.

We have tentatively concluded, on the basis of the findings below, that the public convenience and necessity require the amendment of Piedmont's certificate for Route 87 to add a new segment between the terminal point Tampa and the coterminals Greensboro, Charlotte, and Columbia. The authority would be permissive and Category II subsidy-ineligible. We also tentatively find that Piedmont is fit, willing, and able to perform the air transportation it proposes and to conform to the provisions of the Act and to our rules, regulations, and requirements. We also find that our proposed action does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969, or a major Federal action under the Energy Policy and Conservation Act.

We also tentatively conclude that Piedmont's Tampa application, like its recent Boston and Dallas entry proposals,[2] falls within the class of cases that can be handled by show-cause procedures, because of the absence of any material determinative issue of fact requiring resolution in a formal evidentiary proceeding.

We find that the grant of Piedmont's request will result in significant benefits to the traveling public (see Appendix). Virtually none of the Tampa single-plane markets[3] in Piedmont's proposal received year-round, round-trip single-plane service in 1977. Piedmont's operation will not only provide better service in these markets, but in so doing, will also eliminate the necessity of connecting at At-

[1] Hillsborough County, Pinellas County, the city of Tampa, and the Greater Tampa Chamber of Commerce.

[2] Order 78-4-69, April 14, 1978, made final by Order 78-8-97, August 17, 1978.

[3] These are Tampa-Charlotte, Raleigh, Richmond, Norfolk, Greensboro, Columbia. Only Tampa-New York/BWI received year-round single-plane service.

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lanta,[4] thus cutting travel time by about 50 percent in addition to helping to relieve Atlanta's congestion.[5]

Piedmont forecasts a first-year operating profit of $3 million,[6] and we find that there is sufficient traffic in the markets [7] to sustain profitable operations, if not under its proposal, then under a variation. We need not find that Piedmont's precise proposal here, or any other specific service pattern, in fact can be profitably operated. If Piedmont's proposal or a variation can be operated on a profitable basis, service is likely to be provided, and we are persuaded that this has been plausibly shown here.[8] However, even if the service is or becomes unprofitable, the carrier is free, with the permissive, Category II subsidy-ineligible authority we propose to give it, to cease serving the markets. We are satisfied that nothing developed in an oral evidentiary hearing would reverse this conclusion. Finally, neither Delta nor Eastern raised the issue of diversion, and we find that grant of this authority will not threaten the ability of any carrier to perform its certificate obligations or necessarily result in the termination of essential services that cannot be replaced by another carrier.

We will give interested persons 30 days from the date of service of this order to show cause why these tentative findings and conclusions should not ber made final; replies will be due within 10 days thereafter. We expect that objections will be supported by detailed economic or legal arguments. If an oral evidentiary hearing is requested, the objector should state, in detail, why such a hearing is necessary, and what relevant and material facts the objector would expect to establish through such a hearing that cannot be established in written pleadings. We will not entertain general, vague or unsupported objections.

Accordingly, 1. We direct all interested persons to show cause why we should not issue an order making final the tentative findings and conclusions stated here and amending Piedmont's certificate for Route 87 to add a new segment authorizing the nonstop scheduled air transportation of persons, property and mail between the terminal point Tampa/St. Petersburg/Clearwater, Florida, on the one hand, and the coterminal points Greensboro/High Point, N.C., Charlotte, N.C., and Columbia, S.C., on the other; [9]

2. We direct that any interested person having objections to the issuance of an order making final the proposed findings, conclusions, and certificate amendments set forth here shall, no later than November 24, 1978, file with us and serve upon all persons listed in paragraph 7 a statement of objections together with a summary of testimony, statistical data, and evidence expected to be relied upon to support the objections; replies to objections shall be filed no later than December 4, 1978;

3. We will give full consideration to the matters raised by timely and properly supported objections before taking further action; [10]

4. In the event no objections are filed to any part of this order, we will deem all further procedural steps relating to such part or parts to have been waived and we will take further action;

5. We grant the motion for leave to intervene filed by the Commonwealth of Virginia;

6. We grant Piedmont's motion for leave to file an otherwise unauthorized document;

7. We will serve a copy of this order upon all persons named in the service list of Docket 32319.

We will publish this order in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-31598 Filed 11-7-78; 8:45 am]

[4] In FY 1977 about 88 percent of the true O&D in the Tampa-Charlotte, Columbia, Greensboro, Norfolk, Raleigh, Richmond markets used connecting service and about 93 percent of these connections were over Atlanta.

[5] PI-801, Piedmont's motion.

[6] Exhibit PI-401.

[7] In CY 1977 the traffic in various Tampa markets in Piedmont's application was:

Between Tampa and—	True O&D	Interline connex	Total
Charlotte	23,360	1,500	24,860
Columbia, S.C.	10,820	670	11,490
Greensboro	13,050	630	13,680
Norfolk	11,810	120	11,930
Raleigh	15,650	870	16,520
Richmond	11,370	660	12,030
Total	86,060	4,450	90,510

Source: Tables 8 and 10, *O&D Survey.*

[8] As noted in Order 78-4-69, our contention that Piedmont has made a plausible showing that service can be profitably provided is not an element of our tentative public convenience and necessity findings, but rather of our determination to process this application now.

[9] This authority will be permissive and subsidy-ineligible under Category II.

[10] Since we have provided for objections, we will not entertain petitions for reconsideration.

[3510-07-M]

DEPARTMENT OF COMMERCE

Bureau of the Census

ANNUAL SURVEYS IN MANUFACTURING AREA

Consideration

Notice is hereby given that the Bureau of the Census is considering a proposal to initiate or to continue the annual surveys listed below for the year 1978 and for each year thereafter under the authority of Title 13, United States Code, Sections 182, 224, and 225. These surveys, most of which have been conducted for many years, are significant in the manufacturing area. On the basis of information and recommendations received by the Bureau of the Census, the data have significant application to the needs of the public and industry and are not available from nongovernmental or other governmental sources.

The establishments covered by these surveys directly account for the bulk of all manufacturing employment. The information to be developed from these surveys is necessary for an adequate measurement of total industrial production. Government agencies need data on the output of these industries. Manufacturers in the industries involved, as well as their suppliers and customers and the general public, have all requested such data in the interest of business efficiency and stability.

These surveys, if conducted, shall begin not earlier than December 8, 1978.

Most of the following commodity or product surveys provide data on shipments and/or production; some provide data on stocks, unfilled orders, orders booked, consumption, etc. Reports will be required of all or a sample of establishments engaged in the production of the items covered by the following list of surveys. These surveys have been arranged under major group headings based on the Standard Industrial Classification Manual (1972 edition) promulgated by the Office of Management and Budget for the use of Federal statistical agencies.

MAJOR GROUP 22—TEXTILE MILL PRODUCTS

Broadwoven goods finished; narrow fabrics; and yarn production.

MAJOR GROUP 23—APPAREL AND OTHER FINISHED PRODUCTS MADE FROM FABRICS AND SIMILAR MATERIALS

Apparel; brassieres, corsets, and allied garments; and gloves and mittens.

MAJOR GROUP 24—LUMBER AND WOOD PRODUCTS, EXCEPT FURNITURE

Hardwood plywood; softwood plywood; and lumber.

MAJOR GROUP 26—PAPER AND ALLIED PRODUCTS

Pulp, and detailed grades of paper and board.

MAJOR GROUP 28—CHEMICALS AND ALLIED PRODUCTS

Industrial gases; inorganic chemicals; pharmaceutical preparations, except biologicals; and sulfuric acid.

MAJOR GROUP 29—PETROLEUM REFINING AND RELATED INDUSTRIES

Asphalt and tar roofing and siding products.

MAJOR GROUP 30—RUBBER AND MISCELLANEOUS PLASTICS PRODUCTS

Rubber and plastics products.

MAJOR GROUP 31—LEATHER AND LEATHER PRODUCTS

Shoes and slippers (by method of construction).

MAJOR GROUP 32—STONE, CLAY, AND GLASS

Consumer, scientific, technical, and industrial glassware and fibrous glass.

MAJOR GROUP 33—PRIMARY METAL INDUSTRIES

Steel mill products; insulated wire and cable; and magnesium mill products.

MAJOR GROUP 34—FABRICATED METAL PRODUCTS EXCEPT ORDNANCE, MACHINERY, AND TRANSPORTATION EQUIPMENT

Commercial steel forgings; steel power boilers; selected heating equipment; and metal cans.

MAJOR GROUP 35—MACHINERY, EXCEPT ELECTRICAL

Internal combustion engines; tractors, except garden tractors; farm machines and equipment; mining machinery and mineral processing equipment; refrigeration and air-conditioning equipment, including warm air furnaces; computers and office and accounting machines; pumps and compressors; selected industrial air pollution control equipment; and construction machinery.

MAJOR GROUP 36—ELECTRICAL MACHINERY, EQUIPMENT, AND SUPPLIES

Radios, televisions, and phonographs; motors and generators; wiring devices and supplies; switchgear, switchboard apparatus, relays, and industrial controls; selected electronic and associated products, including telephone and telegraph apparatus; electric housewares and fans; electric lighting fixtures; and major household appliances.

MAJOR GROUP 37—TRANSPORTATION EQUIPMENT

Aircraft propellers.

MAJOR GROUP 38—PROFESSIONAL, SCIENTIFIC, AND CONTROLLING INSTRUMENTS; PHOTOGRAPHIC AND OPTICAL GOODS; WATCHES AND CLOCKS

Selected instruments and related products and atomic energy products and services.

The following survey represents an annual supplement of a monthly survey and will cover the same establishments canvassed monthly. There will be no duplication of reporting, however, since the type of data collected on the annual supplement will be different from that collected monthly.

MAJOR GROUP 32—STONE, CLAY, AND GLASS

Glass containers.

The following list of surveys represents annual counterparts of monthly and quarterly surveys and will cover only those establishments which are not canvassed or do not report in the more frequent surveys. Accordingly, there will be no duplication in reporting. The content of these annual reports will be identical with that of the monthly and quarterly reports.

MAJOR GROUP 20—FOOD AND KINDRED PRODUCTS

Flour milling products.

MAJOR GROUP 22—TEXTILE MILL PRODUCTS

Finishing plant report—broadwoven fabrics; consumption of wool and other fibers, and production of tops and noils; carpet and rugs; and knit fabric production.

MAJOR GROUP 23—APPAREL AND OTHER FINISHED PRODUCTS MADE FROM FABRICS AND SIMILAR MATERIALS

Sheets, pillowcases, and towels.

MAJOR GROUP 25—FURNITURE AND FIXTURES

Mattresses and bedsprings.

MAJOR GROUP 26—PAPER AND ALLIED PRODUCTS

Converted flexible packaging products.

MAJOR GROUP 28—CHEMICALS AND ALLIED PRODUCTS

Phosphatic fertilizer materials; and paint, varnish, and lacquer.

MAJOR GROUP 30—RUBBER AND MISCELLANEOUS PRODUCTS

Plastics bottles.

MAJOR GROUP 32—STONE, CLAY, AND GLASS

Flat glass containers; refractories; and clay construction products.

MAJOR GROUP 33—PRIMARY METAL INDUSTRIES

Nonferrous castings; iron and steel foundries; steel inventories (consumers and producers report); and copper inventories.

MAJOR GROUP 34—FABRICATED METAL PRODUCTS EXCEPT ORDNANCE, MACHINERY, AND TRANSPORTATION EQUIPMENT

Plumbing fixtures; steel shipping drums and pails; and closures for containers.

MAJOR GROUP 35—MACHINERY, EXCEPT ELECTRICAL

Construction machinery.

MAJOR GROUP 36—ELECTRICAL MACHINERY, EQUIPMENT AND SUPPLIES

Fluorescent lamp ballasts.

MAJOR GROUP 37—TRANSPORTATION EQUIPMENT

Aircraft engines; complete aircraft; backlog of orders for aircraft, space vehicles, missiles, engines, and selected parts; and truck trailers.

The annual survey of manufactures will collect general statistical data, such as employment; payroll; manhours; capital expenditures; cost of materials consumed; gross book value, retirements, and depreciation of fixed assets; rental payments; supplemental labor costs; information on the quantity of fuels used, etc. This survey, while conducted on a sample basis, will cover all manufacturing industries, including data on plants under construction but not yet in operation.

A survey of research and development (R. & D.) activities will be conducted. The major data to be obtained in this survey will include total R. & D. expenditures by source of funds, the number of scientists and engineers employed, the amounts spent for pollution abatement and energy R. & D., and, for comparative purposes, the total net sales and receipts and the total employment of the company.

A survey of shipments to Federal Government agencies is planned to provide information on the impact of Federal procurement on selected industries and on the economy of States, standard metropolitan statistical areas, and geographic regions.

The annual survey of oil and gas will canvass the industry which provides most of the fuel produced in the United States as well as a substantial portion of the raw material requirements of many industries. The survey will collect information on exploration, development, and production costs; sales volumes and values; drilling activity; and assets in the crude petroleum and natural gas industry.

The annual survey on pollution abatement expenditures is designed to collect from the manufacturing area total expenditures by industry to abate pollutant emissions. The survey covers current operating costs and capital expenditures by industry to reduce pollution in its air, water, or solid forms. It will also obtain the costs recovered from abatement activities and quantities of pollutants abated.

The survey of plant capacity will obtain information such as number of shifts; the actual operating rate; the number of production workers for actual, preferred, and practical operating rates; the reasons for operating at less than capacity; and the length of time required to reach and to maintain practical rates. The survey will be done on a sample basis and will cover all manufacturing industries.

Copies of the proposed forms are available on request to the Director, Bureau of the Census, Washington, D.C. 20233.

Any suggestions or recommendations concerning the subject matter of these proposed surveys should be sub-

mitted in writing to the Director of the Bureau of the Census within 30 days after the date of this publication in order to receive consideration.

Dated: November 3, 1978.

MANUEL D. PLOTKIN,
Director, Bureau of the Census.

[FR Doc. 78-31585 Filed 11-7-78; 8:45 am]

[3128-01-M]

DEPARTMENT OF ENERGY

Economic Regulatory Administration

GASOLINE MARKETING ADVISORY COMMITTEE

Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given that the Gasoline Marketing Advisory Committee and Ad Hoc Subcommittee will meet Wednesday, November 29, 1978, in the Renaissance Room, and Thursday, November 30, 1978, in the Roman Room of the Biltmore Hotel, 515 South Olive Street, Los Angeles, Calif.

The purpose of the Committee is to provide the Department of Energy with expert and technical advice concerning the wholesale and retail selling of gasoline.

The agenda for the meetings is as follows:

Wednesday, November 29, 1978

Ad Hoc Subcommittee—Renaissance Room, 1 to 4:30 p.m.
Agenda:
- Opening remarks;
- Gasohol in today's motor fleet;
- Potential problems and alternative uses;
- Legislative initiatives;
- Market acceptance;
- Remarks from the floor (10-minute rule).

Thursday, November 30, 1978

Full Committee—Roman Room, 9:30 a.m. to 5 p.m.
Agenda:
- Old business: Follow-up to the prior Committee meeting;
- Report from the Ad Hoc Subcommittee on Gasohol;
- Update on gasoline rationing plan;
- Retail gasoline prices;
- Report on title III of the Dealer Day Act;
- New business: Items for discussion at the next meeting;
- Remarks from the floor (10-minute rule).

The meetings are open to the public. The Chairman of the Committee or subcommittee is empowered to conduct the meetings in a fashion that will, in his judgment, facilities the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee or subcommittee will be permitted to do so, either before or after the meetings. Members of the public who wish to make oral statements pertaining to agenda items should inform Georgia Hildreth, Director, Advisory Committee Management Office, 202-252-5935, at least 5 days prior to the meeting and reasonable provision will be made to include their presentation on the agenda.

Transcripts of the meeting will be availabe for public review at the Freedom of Information Public Reading Room, Room GA-152, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Any person may purchase a copy of the transcripts from the reporter.

Issued at Washington, D.C., on November 2, 1978.

WILLIAM P. DAVIS,
Deputy Director of Administration.

[FR Doc. 78-31521 Filed 11-7-78; 8:45 am]

[6740-02-M]

Federal Energy Regulatory Commission

[Docket No. CP79-6]

NORTHERN NATURAL GAS CO.

Application

OCTOBER 30, 1978.

Take notice that on October 4, 1978, Northern Natural Gas Co. (Northern), 2223 Dodge Street, Omaha, Nebr. 68102, filed in docket No. CP79-6, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Northern to construct and operate certain minor sales measuring station facilities and to sell and deliver natural gas in the States of Montana, Oklahoma and Texas to certain pipeline right-of-way grantors, all as more fully set forth in the application which is on file with the Commission and open to public inspection and the appendix hereto.

It is stated that Northern presently has in operation certain minor sales measuring stations in the State of Oklahoma through which the sale and delivery of natural gas is made to Southern Union Gas Co. (So. Union) pursuant to rate schedule X-46 of Northern's FERC Gas Tariff, Original Volume No. 2. It is further stated that such gas is resold by So. Union to Northern's right-of-way grantors and others for use as irrigation engine fuel, residential and other high priority uses.

It is said that seven of Northern's pipeline right-of-way grantors located in So. Union's service areas in Oklahoma have requested natural gas service from its pipeline. It is further stated that granting of authority requested herein would result in an increase in annual sales to So. Union under rate schedule X-46 of 19,660 Mcf, requiring an increase in the authorized annual sales form 726,509 Mcf to 746,169 Mcf.

Also, it is said, Northern has in operation certain sales measuring stations in the state of Texas through which the sale and delivery of natural gas is made to West Texas Gas, Inc. (WTN). It is further said that pursuant to rate Schedule X-40 of Northern's FERC Gas Tariff, Original Volume No. 2, the gas is resold to Northern's right-of-way grantors and others for use as irrigation engine fuel, residential and other high priority uses.

It is stated that one of Northern's pipeline right-of-way grantors located in the State of Texas has requested natural gas service from applicant's pipeline through WTN. It is further said that this gas is for residential heating with an estimated additional annual sales of 188 Mcf, resulting in total annual authorized sales of 2,294,219 Mcf of WTN.

It is said that Northern presently operates certain pipeline facilities in the State of Montana for the purpose of gathering and transporting natural gas volumes purchased from the Tiger Ridge and Sherard areas. It is further said that Northern has received requests from three individuals located in rural areas of Blaine County, Mont., who, being right-of-way easement grantors, desire natural gas service from applicant's pipeline.

Therefore, Northern requests authority to install and operate the required delivery stations for direct sale and delivery of natural gas volumes to the new Montana customers. It is said that such service would be rendered pursuant to terms of a farm tap service contract between Northern and the new customer.

It is said that the above-described small volume industrial, commercial and residential service would provide necessary natural gas volumes for individual rural dwellings for heating, cooking, water heating and clothes drying appliances and seasonal use by forms as irrigation engine fuel.

It is said that each of the 11 proposed measuring stations would be installed at individual locations. It is further said that the facilities would be used to provide service to those right-of-way grantors, who, pursuant to the terms of their easement agreements, have requested natural gas service as partial consideration for the right-of-way granted to Northern.

It is stated that the total cost of the proposed facilities is estimated to be $10,210, and that the costs will be borne by the new top customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 20, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

APPENDIX.—*Market Data*

Utility Number and right-of-way grantor	Estimated sales (1) in Mcf Peak day	Peak month	Annual	Primary end-use
Northern Natural Gas (direct):				
N-1—Burns, T. P. and E. G	*3.2	*60	295	Residential heat.
N-2—Erskine, M. and R. E	*3.2	*60	295	Do.
N-3—Young, J. W. and H. A	*3.2	*60	295	Do.
Total NNG (direct)	9.6	180	885	
Southern Union Gas Co.:				
S-1—Anderson, Richard	*1.0	*20	150	Do.
S-2—Chaloupek, Ron	*1.0	*20	150	Do.
S-3—Clawson, K. B	*54.0	*1,600	13,110	Irrigation.
S-4—Devore, R. A	*1.0	*20	150	Residential heat
S-5—Hale, J. and O	*1.0	*20	150	Do.
S-6—Hamilton, R. D	*1.0	*20	150	Do.
S-7—Woodson, R. S	*24.0	*700	5,800	Irrigation.
Total Southern Union	83.0	2,400	19,660	
West Texas Gas, Inc.:				
W-1—Doty, K. S	*1.5	*35	180	Residential heat.
Total all projects	94.1	2,615	20,738	

NOTE.—(1) W - Winter; S - Summer.

[FR Doc. 78-31391 Filed 11-7-78; 8:45 am]

[6740-02-M]

[Docket Nos. CI75-729, et al.]

UNION TEXAS PETROLEUM, A DIVISION OF ALLIED CHEMICAL CORP.

Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates,

OCTOBER 31, 1978.

Take notice that each of the applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before November 29, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

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herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicants to appear or to be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
CI75-729, C, Oct. 23, 1978	Union Texas Petroleum, a division of Allied Chemical Corp., P.O. Box 2120, Houston, Tex. 77001.	El Paso Natural Gas Co., certain acreage in Eddy County, N. Mex.	(1)	14.73
CI77-443, C, Oct. 24, 1978	General American Oil Co. of Texas, Meadows Bldg., Dallas, Tex. 75206.	Transwestern Pipeline Co., Loco Hills Federal unit well No. 1, Eddy County, N. Mex..	(1)	14.73
CI78-1195, A, Sept. 12, 1978	Mobil Oil Corp., 9 Greenway Plaza, Suite 2700, Houston, Tex. 77046.	Transcontinental Gas Pipe Line Corp., certain acreage in the West Cameron, south addition, block 494 field, Federal offshore Louisiana.	(1)	14.73
CI78-1220 (CI64-1278), B, Sept. 11, 1978.	Sohio Natural Resources Co. 50 Penn Place, Suite 1100, Oklahoma City, Okla. 73118.	Northern Natural Gas Co., Follet field, Lipscomb County, Tex.	Ceased production, plugged, and abandoned June 21, 1975, and lease terminated.	
CI78-1221, A, Sept. 11, 1978	Texas Gas Exploration Corp., P.O. Box 52310, Houston, Tex. 77052.	Northwest Pipeline Corp., South Canyon and Bridle fields, Garfield County, Colo.	(1)	14.73
CI78-1222 (G-3894) (G-8668), B, Sept. 15, 1978.	Atlantic Richfield Co., P.O. Box 2819, Dallas, Tex. 75221.	Texas Eastern Transmission Corp., Jennie Bell field, Dewitt County, Tex.	(2)	
CI78-1223, A, Sept. 15, 1978	American Natural Gas Production Co., 5075 Westheimer, Suite 1100, Galleria Towers West, Houston, Tex. 77056.	Michigan Wisconsin Pipe Line Co., certain acreage in Canadian County, Okla.	(13)	14.65
CI78-1224, A, Sept. 15, 1978	American Natural Gas Production Co	Michigan Wisconsin Pipe Line Co., certain acreage in Major County, Okla.	(13)	14.65
CI78-1225 (G-3894) (G-8880), B, Sept. 18, 1978.	Atlantic Richfield Co	Texas Eastern Transmission Corp., Jennie Bell field, Dewitt County, Tex.	(2)	
CI78-1226, A, Sept. 18, 1978	The Louisiana Land & Exploration Co., 225 Baronne St., P.O. Box 60350, New Orleans, La. 70160.	Alabama-Tennessee Natural Gas Co., certain acreage located in Tatums Camp field, Lamar County, Miss.	(1)	14.73
CI78-1227, A, Sept. 18, 1978	Atlantic Richfield Co., P.O. Box 2819, Dallas, Tex. 75221.	Northern Natural Gas Co., certain acreage in Beaver County, Okla., limited to Morrow Formation.	(1)	14.73
CI78-1228, A, Sept. 18, 1978	Atlantic Richfield Co	Pioneer Gas Products Co., certain acreage in the Oil Creek field area, Bryan County, Okla., limited to Creek Formation.	(1)	14.73
CI78-1229, A, Sept. 18, 1978	Continental Oil Co., P.O. Box 2197, Houston, Tex. 77001.	Phillips Petroleum Co., Dane field, Major County, Okla., limited to Mississippi Formation only.	(1)	14.73
CI78-1230, A, Sept. 20, 1978	Cabot Corp., 1 Houston Center, Suite 1000, Houston, Tex. 77002.	Phillips Petroleum Co., certain acreage in Hansford County, Tex., and Texas County, Okla.	(1)	14.73
CI78-1231, A, Sept. 20, 1978	Continental Oil Co	El Paso Natural Gas Co., certain acreage located in the Eumont and Jalmat fields, Lea County, N. Mex.	(5)	14.73
CI78-1232, A, Sept. 21, 1978	Gulf Oil Co., P.O. Box 2100, Houston, Tex. 77001.	Texas Gas Transmission Corp., certain acreage located in the Simon Pass field, St. Martin, St. Mary, and assumption Parishes, La.	(1)	14.73
CI78-1234, (G-13373), B, Sept. 15, 1978.	Marathon Oil Co., (operator) et al., 539 South Main St., Findlay, Ohio 45840.	United Gas Pipe Line Co., Phoenix Lake field, Calcasieu Parish, La.	(6)	
CI78-1235, A, Sept. 14, 1978	Northwest Exploration Co., P.O. Box 1526, Salt Lake City, Utah 84110.	Northwest Pipeline Corp., Twin Arrows Farm-Out (undesignated field), Rio Blanco County, Colo.	(1)	14.73
CI78-1236, A, Sept. 14, 1978	Northwest Exploration Co	Northwest Pipeline Corp., Lower Horse Draw (undesignated field), Rio Blanco County, Colo.	(1)	14.73
CI78-1237, E, Sept. 21, 1978	Gulf Oil Corp., (successor in interest to Kewanee Oil Co.).	Michigan Wisconsin Pipe Line Co., certain acreage located in the Eugene Island SA block 306 field, offshore Louisiana.	(7)	15.025
CI78-1238, E, Sept. 21, 1978	Do	Michigan Wisconsin Pipe Line Co., certain acreage located in the West Cameron block 171 field, offshore Louisiana.	(7)	15.025
CI78-1239, A, Sept. 21, 1978	Helmerich & Payne, Inc., 1579 East 21st St., Tulsa, Okla. 74114.	Michigan Wisconsin Pipe Line Co., Cheyenne field, Roger Mills County, Okla..	(1)	14.73
CI78-1240, A, Sept. 25, 1978	Harper Oil Co., 904 Hightower Bldg., 105 North Hudson, Oklahoma City, Okla. 73102.	Northern Natural Gas Co., Smith Estate No. 1, sec. 21-23N-21W, Woodward County, Okla..	(1)	14.65
CI78-1241 (G-10286), B, Sept. 11, 1978.	Monsanto Co., 1300 Post Oak Tower, 5051 Westheimer, Houston, Tex. 77056.	Arkansas Louisiana Gas Co., J. P. Graham No. 2 well, Lincoln Parish, La..	Lease expired, depleted and plugged and abandoned Feb. 19, 1966.	
CI78-1242 (G-6949), B, Sept. 20, 1978.	Continental Oil Co., P.O. Box 2197, Houston, Tex. 77001.	United Gas Pipe Line Co., Johnson Bayou field, Cameron Parish, La..	(9)	
CI78-1243 (CI77-132), B, Sept. 20, 1978.	Continental Oil Co	United Gas Pipe Line Co., Shongaloo area, Webster Parish, La..	(10)	
CI78-1244, B, Sept. 25, 1978	Arlen Spradley et al., P.O. Box 2433, Pampa, Tex. 79065.	Warren Petroleum Co., East Panhandle field, Gray County, Tex..	Wells 5 and 6 were plugged and abandoned May 3, 1975.	
CI78-1245, A, Sept. 25, 1978	Phillips Petroleum Co., 5 C4 Phillips Bldg., Bartlesville, Okla. 74004.	El Paso Natural Gas Co., HNQ-Woods "9" Com. No. 2, Malaga field, sec. 9-T24S-R28E, Eddy County, N. Mex..	(1)	14.73
CI78-1246, A, Sept. 25, 1978	The Louisiana Land & Exploration Co., 225 Baronne St., P.O. Box 60350, New Orleans, La. 70160.	United Gas Pipe Line Co., certain acreage located in Ridge field, Lafayette Parish, La..	(1)	15.025
CI78-1247, A, Sept. 25, 1978	Florida Gas Exploration Co., P.O. Box 44, Winter Park, Fla. 32790.	Florida Gas Transmission Co., South Marsh Island blocks 149 and 150, offshore Louisiana.	(1)	15.025

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
CI78-1248, E, Sept. 25, 1978	Gulf Oil Corp. (Successor in interest to Kewanee Oil Co.), P.O. Box 2100, Houston, Tex. 77001.	Consolidated Gas Supply Corp., certain acreage located in the Sycamore Millstone field, Calhoun County, W. Va..	(11)	14.65
CI78-1249 (G-11224), B, Sept. 25, 1978.	Exxon Corp., P.O. Box 2180, Houston, Tex. 77001.	Texas Eastern Transmission Corp., Bethany Longstreet field, DeSoto Parish, La..	Depleted, plugged, and abandoned, lease has terminated and contract has been canceled.	
CI78-1250, A, Sept. 26, 1978	Chevron U.S.A., Inc., P.O. Box 7643, San Francisco, Calif. 94120.	Transportation Gas Pipeline Corp., South Timbalier blocks 148 and 149, offshore Louisiana.	(1)	14.73
CI78-1251, A, Sept. 28, 1978	Exxon Corp., P.O. Box 2180, Houston, Tex. 77001.	Columbia Gas Transmission Corp., Lake Raccourci field, LaFourche Parish, La.	(1)	15.025
CI78-1252, E, Sept. 28, 1978	Gulf Oil Corp. (successor in interest to Kewanee Oil Co), P.O. Box 2100, Houston, Tex. 77001.	Consolidated Gas Supply Corp., certain acreage located in the Henrietta DeKalk field, Calhoun County, W. Va.	(12)	14.65
CI78-1253, E, Sept. 22, 1978	Gulf Oil Corp. (successor in interest to Kewanee Oil Co.).	Michigan Wisconsin Pipe Line Co., certain acreage located in the Ship Shoal blocks 204, 205, 207, and 216 fields, offshore Louisiana.	(13)	15.025
CI78-1254, A, Sept. 11, 1978	Mobil Oil Corp., Nine Greenway Plaza, Suite 2700, Houston, Tex. 77046.	United Gas Pipe Line Co., certain acreage in the Eugene Island area, block 261 and 262 field, Federal offshore Louisiana.	(1)	14.73
CI78-1255 (CI65-398), B, Sept. 21, 1978.	Phillips Petroleum Co., 5 C4 Phillips Bldg., Bartlesville, Okla. 74004.	Horner & Smith (successor to Tensas Gas Gathering Corp.), Locust Ridge field, Tensas Parish, La.	(14)	
CI78-1256, A, Sept. 22, 1978	Anadarko Production Co., P.O. Box 1330, Houston, Tex. 77001.	Trunkline Gas Co., High Island area (east addition—south extension), blocks A-327 and A-332, offshore Texas.	(1)	14.73
CI78-1257 (G-12900), B, Sept. 27, 1978.	Sun Oil Co., P.O. Box 20, Dallas, Tex. 75221.	El Paso Natural Gas Co., Mescalero field, Lea County, N. Mex.	Nonproductive.	
CI78-1258, A, Sept. 28, 1978	Canadian Superior Oil (U.S.) Ltd., P.O. Box 1521, Houston, Tex. 77001.	Sea Robin Pipeline Co., blocks 235 and 244, South Marsh Island area, offshore Louisiana.	(1)	15.025
CI78-1259, A, Sept. 28, 1978	Alminex U.S.A., Inc., P.O. Box 1521, Houston, Tex. 77001.	do	(1)	15.025
CI78-1260, A, Sept. 25, 1978	Atlantic Richfield Co., P.O. Box 2819, Dallas, Tex. 57221.	El Paso Natural Gas Co., certain acreage in Rio Arriba County, N. Mex.	(1)	14.65
CI78-1261, E, Sept. 28, 1978	Gulf Oil Corp. (successor in interest to Kewanee Oil Co.), P.O. Box 2100, Houston, Tex. 77001.	Consolidated Gas Supply Corp., certain acreage located in the Burnt House Lucern field, Ritchie County, W. Va.	(15)	14.65
CI78-1262, A, Sept. 28, 1978	Mesa Petroleum Co., P.O. Box 2009, Amarillo, Tex. 79189.	Transcontinental Gas Pipe Line Corp., Brazos area, block 409, offshore Texas, Gulf of Mexico.	(1)	14.73
CI78-1264, A, Sept. 29, 1978	Pan Eastern Exploration Co., P.O. Box 1642, Houston, Tex. 77001.	Panhandle Eastern Pipe Line Co., High Island area, east addition, south extension, blocks A-327 and A-332, offshore Texas.	(1)	14.65
CI78-1265, A, Sept. 29, 1978	The Superior Oil Co., P.O. Box 1521, Houston, Tex. 77001.	El Paso Natural Gas Co., North Horseshoe Bend field, Eddy County, N. Mex.	(1)	14.73
CI78-1266, E, Sept. 27, 1978	Gulf Oil Corp. (successor in interest to Kewanee Oil Co.).	Consolidated Gas Supply Corp., certain acreage located in the Vadis field, Gilmer and Lewis Counties, W. Va.	(16)	14.65
CI78-1267 E, Sept. 27, 1978	do	Consolidated Gas Supply Corp., certain acreage located in the Elk Creek field, Barbour County, W. Va.	(17)	14.65
CI78-1268, A, Sept. 27, 1978	Exxon Corp., P.O. Box 2180, Houston, Tex. 77001.	Transwestern Pipeline Co., Rio Pecos field, Eddy County, N. Mex.	(1)	14.73
CI78-1269, E, Sept. 25, 1978	Gulf Oil Corp. (successor in interest to Kewanee Oil Co.).	Consolidated Gas Supply Corp., certain acreage located in the Burnt House Lucern field, Gilmer County, W. Va.	(18)	14.65
CI78-1270, E, Sept. 25, 1978	do	Consolidated Gas Supply Corp., certain acreage located in the Vandalia field, Lewis County, W. Va.	(19)	14.65
CI78-1271, A, Sept. 26, 1978	Columbia Gas Development Corp., P.O. Box 1350, Houston, Tex. 77001.	Columbia Gas Transmission Corp., certain acreage in Eddy County, N. Mex.	(1)	14.65
CI78-1272, A, Sept. 28, 1978	Exxon Corp	El Paso Natural Gas Co., Scarborough field, Lea County, N. Mex.	(1)	14.65
CI78-1273, E, Sept. 27, 1978	Gulf Oil Corp. (successor in interest to Kewanee Oil Co.).	Consolidated Gas Supply Corp., certain acreage located in the Glenville West field, Gilmer County, W. Va.	(20)	14.65
CI78-1274, E, Sept. 27, 1978	Gulf Oil Corp. (successor in interest to Kewanee Oil Co.), P.O. Box 2100, Houston, Tex. 77001.	Consolidated Gas Supply Corp., certain acreage located in the Sycamore Millstone field, Calhoun County, W. Va.	(21)	14.65
CI78-1275, A, Sept. 29, 1978	The Rosewood Corp., 2500 First National Bank Bldg., Dallas, Tex. 75202.	Northern Natural Gas Co., Southeast Arnett field, sec. 10, 11, and 15-T19N-R23W, Ellis County, Okla. limited to Morrow Formation.	(22)	14.65
CI78-1276, A, Sept. 29, 1978	Texaco, Inc., P.O. Box 6052, New Orleans, La. 70160.	Tennessee Gas Pipeline Co., Raphael Pass field, Plaquemines Parish, La.	(1)	14.73
CI78-1277 A, Sept. 29, 1978	Caroline Hunt Trust Estate, 2500 First National Bank Bldg., Dallas, Tex. 75202.	Northern Natural Gas Co., sec. 14-T19N-R23W, Ellis County, Okla., limited to Morrow formation.	(22)	14.65

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Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
CI78-1278, A, Sept. 29, 1978	Amoco Production Co., Security Life Bldg., Denver, Colo. 80202.	Panhandle Eastern Pipe Line Co., South Forgan field, Beaver County, Okla.	(1)	14.65
CI78-1279, A, Sept. 29, 1978	Aminoil, U.S.A. Inc., Golden Center 1, 2800 North Loop West, P.O. Box 94193, Houston, Tex. 77018.	Texas Eastern Transmission Corp., certain acreage located in block 606, West Cameron area, offshore Louisiana.	(1)	15.025
CI78-1280 (G-8603), F, Feb. 24, 1978.	American Petrofina Co. of Texas (successor to Continental Oil Co., P.O. Box 2159, Dallas, Tex. 75221.	Texas Eastern Transmission Corp., Helen Gohlke field, Victoria County, Tex.	(2)	14.73

[1] Applicant is willing to accept the applicable national rate pursuant to opinion No. 770, as amended.
[2] Atlantic Richfield Co. no longer has any interest in the properties (leases) covered by the sales contract, certificate, and rate schedule. All wells were depleted and subsequently plugged and abandoned.
[3] Applicant and purchaser are affiliated.
[4] Applicant is filing under gas purchase and sales agreement dated July 18, 1978.
[5] Applicant is filing under gas purchase and sales agreement dated May 8, 1978.
[6] The basic contract was superseded by gas purchase contract dated Oct. 1, 1977, which combined the sale with that authorized by certificate in docket No. G-11819 under Marathon gas rate schedule No. 14. The superseding contract consolidating the sale under rate schedule No. 14 was accepted for filing by the Secretary's letter order issued July 22, 1978.
[7] Effective as of July 1, 1978, applicant acquired all of Kewanee's interest in properties covered by contract dated Sept. 20, 1972, as amended.
[8] Effective as of July 1, 1978, applicant acquired all of Kewanee's interest in properties covered by contract dated Oct. 10, 1971.
[9] The only leasehold commitment to the subject contract and rate schedule was sold and assigned to Allegheney American Corp. (½) and Royce A. Scott (½), effective Aug. 1, 1977.
[10] Continental has assigned, as aforesaid, all of its properties which contribute to the production of gas from the Mitchell A-1, well, Roseberry Formation, Continental's gas from such well and formation being its commitment under rate schedule 432.
[11] Effective as of July 1, 1978, applicant acquired all of Kewanee's interest in properties covered by contract dated Feb. 13, 1968, as amended.
[12] Effective as of July 1, 1978, applicant acquired all of Kewanee's interest in properties covered by contract dated Aug. 27, 1952, as amended.
[13] Effective as of July 1, 1978, applicant acquired all of Kewanee's interest in properties covered by contract dated Jan. 2, 1968.
[14] The last remaining property covered under rate schedule No. 407 was assigned to W. E. Risher effective July 6, 1967. All other leases under this sales agreement had previously expired.
[15] Effective as of July 1, 1978, applicant acquired all of Kewanee's interest in properties covered by contract dated May 4, 1955, as amended.
[16] Effective as of July 1, 1978, applicant acquired all of Kewanee's interest in properties covered by contract dated July 25, 1961, as amended.
[17] Effective as of July 1, 1978, applicant acquired all of Kewanee's interest in properties covered by contract dated Apr. 9, 1946, as amended.
[18] Effective as of July 1, 1978, applicant acquired all of Kewanee's interest in properties covered by contract dated Sept. 24, 1962, as amended.
[19] Effective as of July 1, 1978, applicant acquired all of Kewanee's interest in properties covered by contract dated July 27, 1964, as amended.
[20] Effective as of July 1, 1978, applicant acquired all of Kewanee's interest in properties covered by contract dated Sept. 25, 1969, as amended.
[21] Effective as of July 1, 1978, applicant acquired all of Kewanee's interest in properties covered by contract dated Apr. 22, 1964, as amended.
[22] Applicant is filing under gas purchase contract dated Sept. 22, 1978.
[23] That by assignment dated Nov. 29, 1977 (effective Aug. 1, 1977), Conoco assigned to Petrofina all of Conoco's right, title, and interest in and to the oil and gas leasehold estate and are requesting to continue service of predecessor.

Filing code: A—Initial service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total succession. F—Partial succession.

[FR Doc. 78-31392 Filed 11-7-78; 8:45 am]

[3128-01-M]

Office of Hearings and Appeals

CASES FILED

Week of October 6, 1978, Through October 13, 1978.

Notice is hereby given that during the week of October 6, 1978 through October 13, 1978 the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under the DOE's procedural regulations, 10 CFR, Part 205, any person who will be aggrieved by the DOE action sought in such cases may file with the DOE written comments on the application within ten days of service of notice, as prescibed in the procedural regulations. For purposes of those regulations, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 29461.

MELVIN GOLDSTEIN,
Director, Office of Hearings and Appeals.

OCTOBER 30, 1978.

List of Cases Received by the Office of Hearings and Appeals

[Week of Oct. 6 through 13, 1978]

Date	Name and location of applicant	Case No.	Type of submission
Oct. 6, 1978	City of Long Beach, Long Beach, Calif	DEE-1951	Price exception (sec. 212.73). If granted: The city of Long Beach would be permitted to sell a portion of the crude oil produced from the Upper Terminal VI Reservoir, Long Beach Unit at upper tier ceiling prices.
Do	New England Power Co., Washington, D.C.	DPI-0021	Exception from base fee requirements. If granted: New England Power Co. would be permitted to import residual fuel oil on a fee-exempt basis during the current allocation period, May 1, 1978 through Apr. 30, 1979.
Oct. 10, 1978	Bob Adams (St. Louis Post), Washington D.C.	DFA-0229	Appeal of an information request denial. If granted: The DOE's Aug. 23, 1978, information request denial would be rescinded and Mr. Adams would receive access to EEO-1 forms and other data on hiring practices.
Do	Basin Petroleum, Inc., Long Beach, Calif	DEE-1948	Exception from the entitlements program. If granted: Basin Petroleum, Inc., would be granted an exception from the "reverse entitlements" penalty which would enable Basin to transport residual fuel oil to the east coast market.
Do	Cleary, Gottlieb, Steen, & Hamilton, Washington, D.C.	DFA-0230	Appeal of an information request denial. If granted: The DOE's Sept. 5, 1978, information request denial would be rescinded and Cleary, Gottlieb, Steen, & Hamilton would be granted access to certain DOE memoranda.
Do	Continental Oil Co., Houston, Tex	DEE-1947 and DST-1947.	Allocation exception (sec. 211.10) request for temporary stay. If granted: Continental Oil Co. would receive an exception from the provisions of 10 CFR 211.10(b) with respect to its single allocation requirement. The firm would be granted a temporary stay of the single allocation fraction requirements and would be permitted to implement an emergency allocation program.

List of Cases Received by the Office of Hearings and Appeals—Continued

[Week of Oct. 6 through 13, 1978]

Date	Name and location of applicant	Case No.	Type of submission
Do	Gulf Oil Corp., Houston, Tex	DEE-1952	Price exception (sec. 212.83). If granted: Gulf Oil Corp. would be permitted to adjust its May 1973 marketing cost base, calculated pursuant to 10 CFR 212.83, to reflect the reduction in marketing costs occurring from changes in marketing operations.
Do	Herlocker Fuel Co., Albemarle, N.C	DEE-1960	Exception to change suppliers. If granted: Herlocker Fuel Co. would be the distributor for Shell Products in the Stanly County area, replacing the present supplier, Mainliner Oil Co.
Do	Northland Oil & Refining Co., Tulsa, Okla.	DES-0109	Request for stay. If granted: Northland Oil & Refining Co. would be granted a stay of the provisions of 10 CFR 211.67 with respect to its entitlement purchase obligations pending a final determination on its application for exception.
Do	W. H. Price, Granbury, Tex	DEE-1949	Price exception (sec. 212.54). If granted: W. H. Price would be permitted to retroactively classify the crude oil produced from W. D. Hawthorne lease, located in Jones County, Tex., as stripper well oil for the period of Sept. 1, 1976 to Apr. 1, 1978.
Do	Schultz Gas Service, Inc., Washington, D.C	DSG-0035 and DES-0110.	Request for special redress and stay request. If granted: The Office of Hearings and Appeals would review the Economic Regulatory Administration's modified special report order and compliance with the order would be stayed pending a determination on the firm's petition for special redress.
Do	Taunton Municipal Lighting Plant, Washington, D.C.	DED-0007	Request for discovery. If granted: Discovery would be granted to Taunton Municipal Lighting Plant with respect to certain documents in the possession of Quincy Oil, Inc.
Oct. 11, 1978	Little America Refining Co., Washington, D.C.	DEX-0116	Supplemental order. If granted: The DOE would review the entitlements exception relief granted to Little America Refining Co. during the 1978 fiscal year in order to determine whether the level of relief accorded the firm was appropriate.
Oct. 12, 1978	Chevron, U.S.A. (Tognazzini), Washington, D.C.	DEE-1953	Price exception (sec. 212.73). If granted: Chevron, U.S.A., would be permitted to sell the crude oil from the Tognazzini lease located in Santa Barbara County, Calif. at upper tier ceiling prices.
Do	Damson Oil Corp., Houston, Tex	DEE-1954	Price exception (sec. 212.73). If granted: Damson Oil Corp. would be permitted to sell the crude oil produced from the Venice Beach Unit located in Los Angeles, Calif., at upper tier ceiling prices.
Do	James A. Leonard, Austin, Tex	DRA-0231	Appeal of supplemental remedial order. If granted: The supplemental remedial order would be rescinded and James A. Leonard would not be required to refund overcharges made on sales of crude oil sold to the Permian Corp.
Do	do	DEE-1958	Price exception (sec. 212.73). If granted: James A. Leonard's Coffield leases located in Milam and Burleson Counties, Tex., would be treated as separate properties.
Do	M. L. Mayfield, Houston, Tex	DEE-1957	Price exception (sec. 212.73). If granted: M. L. Mayfield would be permitted to sell the crude oil produced from the Pine Prairie located in Louisiana at stripper well prices.
Do	Oswego Oil Service Corp., Hempstead, N.Y.	DEE-1956	Exception to reporting requirements. If granted: Oswego Oil Service Corp. would not be required to submit various DOE forms.
Do	Shell Oil Co., Houston, Tex	DEE-1955	Price exception (sec. 212.73). If granted: Shell Oil Co. would be permitted to sell the crude oil produced from the Gas City Red River Waterflood Unit located in Dawson County, Mont., at upper tier ceiling prices.
Oct. 13, 1978	Mid-America Refining Co., Inc., Washington, D.C.	DEE-1959 and DES-1959.	Exception to the entitlements program: Stay request. If granted: Mid-America Refining Co., Inc., would receive an exception to the provisions of 10 CFR 211.67 which would relieve the firm of any obligations to purchase entitlements during the months of July 1978 through December 1978 for its crude oil receipts and runs to still from May 1978 through October 1978. Mid-America Refining Co. would also be granted a stay of its entitlements purchase obligations pending a final determination on its application for exception.
Do	Selby Williams, Piketon, Ohio	DRW-0001	Proposed remedial order for which no objections have been filed. If granted: The proposed remedial order of Feb. 17, 1978 by DOE region V would be issued as a remedial order by the Department of Energy.

Remedial Orders—Notices of Objection Received

Date	Name and location of applicant	Case No.
Oct. 10, 1978	Marcum Oil Co., Jefferson City, Mo	DRO-0214
Do	Pierremont Petroleum Corp., Dallas, Tex	DEE-1429
Do	Newhall Refining Co., Inc., Dallas, Tex	DXE-1322
Do	Appalachian Flying Service, Washington, D.C	DEO-0125
Oct. 12, 1978	Olympia Exploration Co., Oklahoma City, Okla	DRO-0128
Do	Atlantic Oil Co., Los Angeles, Calif	DRO-0127
Do	Chester F. Dolley, Los Angeles, Calif	DRO-0126

[FR Doc. 78-31495 Filed 11-7-78; 8:45 am]

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[3128-01-M]

CASES FILED

Week of October 13, 1978, Through October 20, 1978.

Notice is hereby given that during the week of October 13, 1978 through October 20, 1978 the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under the DOE's procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in such cases may file with DOE written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of those regulations, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 29461.

MELVIN GOLDSTEIN,
Director, Office of Hearings and Appeals.

OCTOBER 30, 1978.

List of Cases Received by the Office of Hearings and Appeals

[Week of October 13 through 20, 1978]

Date	Name and locations of applicant	Case No.	Type of submission
Oct. 13, 1978	Amerada Hess Corp., Washington, D.C	DRH-0096 and DRD-0096	Request for evidentiary hearing and discovery. If granted: Amerada Hess Corp. would be granted discovery of certain DOE materials and would receive an evidentiary hearing with regard to certain issues of fact raised by the proposed remedial order.
Do	Eastern Oil Co, Tallahassee, Fla	DFA-0232	Appeal of an information request denial. If granted: The Sept. 19, 1978, information request denial would be rescinded and Eastern Oil Co. would receive access to certain DOE materials relating to Eastern's August 1974 notice of probable violation.
Do	Exxon Co., U.S.A., Washington, D.C	DFA-0233	Appeal of information request denial. If granted: The Aug. 30, 1978, information request denial would be rescinded and Exxon Co., U.S.A., would be granted access to DOE materials relating to stripper well crude oil.
Oct. 16, 1978	Ashland Oil, Inc., Washington, D.C	DRH-0084	Motion for an evidentiary hearing. If granted: An evidentiary hearing would be convened in connection with Ashland Oil, Inc.'s, statement of objections regarding the proposed remedial order issued to the firm.
Do	Ashland Oil, Inc., Washington, D.C	DRD-0010	Motion for discovery. If granted: Discovery would be granted to Ashland Oil, Inc., with respect to objections to a proposed remedial order, case No. DRO-0084.
Do	Pierson, Semmes, Crollus & Finley, Washington, D.C.	DFA-0234	Appeal of information request denials. If granted: The DOE's Aug. 15, 1978, and Sept. 15, 1978, information request denials would be rescinded and Pierson, Semmes, Crollus & Finley would receive access to DOE materials relating to System Fuels, Inc., and Varibus Corp.
Do	Southland Royalty Co., Fort Worth, Tex	DEE-1964 and DEE-1965.	Price exception (sec. 212.73). If granted: Southland Royalty Co. would be permitted to sell the crude oil produced at its Joss and House Creek Federal leases located in Niobrara County and Campbell County, Wyo., at upper tier ceiling prices.
Oct. 17, 1978	John T. Ackerman, Jr. (Sisseton Bottle Gas Co.), Sisseton, S. Dak.	DRW-0002	Proposed remedial order for which no objections have been filed. If granted: The proposed remedial order of Apr. 10, 1978, by region VIII would be issued as a remedial order by the Department of Energy.
Do	Robert L. Adams, Corpus Christi, Tex	DRW-0003	Proposed remedial order for which no objections have been filed. If granted: The proposed remedial order of June 23, 1978, by region VI would be issued as a remedial order by the Department of Energy.
Do	Bassett Oil & Equipment Co., Inc., Alexandria, Va.	DRS-0112	Request for stay. If granted: Bassett Oil & Equipment Co., Inc., would be granted a stay of the requirement that the firm appeal a revised remedial order pending judicial action in a different case.
Do	Butler Fuel Co., Oxford, Mass	DRW-0004	Proposed remedial order for which no objections have been filed. If granted: The proposed remedial order of Mar. 6, 1978, by region I would be issued as a remedial order by the Department of Energy.
Do	Del's Oil Co., Belton, Mo	DEE-1961	Request to change supplier. If granted: Del's Oil Co. would be assigned a new supplier of motor gasoline to replace its base period supplier, Vickers Petroleum Co.
Do	Greene Oil, Inc., Latcher, S. Dak	DRW-0005	Proposed remedial order for which no objections have been filed. If granted: The proposed remedial order of Apr. 28, 1978, by region VIII to Greene Oil, Inc., would be issued as a remedial order by the Department of Energy.
Do	Halter Gas Co., Oran, Mo	DEE-1966	Exception to change supplier. If granted: Halter Gas Co. would be assigned a new base period supplier of propane to replace Atlantic Richfield Co.
Do	JEDCO, Inc., Mobile, Ala	DRW-0006	Proposed remedial order for which no objections have been filed. If granted: The proposed remedial order of June 23, 1978, by region IV would be issued as a remedial order by the Department of Energy.
Do	R. W. Jones and E. Haag, Freer, Tex	DRW-0007	Proposed remedial order for which no objections have been filed. If granted: The proposed remedial order of June 8, 1978, by region VI would be issued as a remedial order by the Department of Energy.
Do	Mecca Oil Co., Olney, Ill	DRW-0008	Proposed remedial order for which no objections have been filed. If granted: The proposed remedial order of May 10, 1978, by region V would be issued as a remedial order by the Department of Energy.
Do	Mitchell Energy Corp., Houston, Tex	DRD-0093 and DRH-0093.	Request for evidentiary hearing motion for discovery. If granted: An evidentiary hearing would be convened in connection with Mitchell Energy Corp.'s statement of objections to the July 29, 1978, proposed remedial order issued to the firm. Discovery would also be granted to Mitchell Energy Corp. with respect to certain DOE documents.
Do	O-Kans Fluid Service, Inc., Liberal, Kan	DRW-0009	Proposed remedial order for which no objections have been filed. If granted: The proposed remedial order of July 12, 1978, by region VII would be issued as a remedial order by the Department of Energy.
Do	Peterson Gas Co., Harlan, Iowa	DRW-0010	Proposed remedial order for which no objections have been filed. If granted: The proposed remedial order of July 18, 1978, by region VII would be issued as a remedial order by the Department of Energy.
Do	J. L. Pulsipher and W. L. Pulsipher, Salt Lake City, Utah.	DRW-0011	Proposed remedial order for which no objections have been filed. If granted: The proposed remedial order of May 9, 1978, by region VIII would be issued as a remedial order by the Department of Energy.

List of Cases Received by the Office of Hearings and Appeals—Continued

[Week of October 13 through 20, 1978]

Date	Name and locations of applicant	Case No.	Type of submission
Do	Raymond Oil Co., Huron, S. Dak	DEE-1960	Price exception (sec. 212.93). If granted: Raymond Oil Co. would be granted a retroactive exception permitting it to increase its prices for No. 2 fuel oil.
Do	South Texas Oil & Gas Producing Co., Inc., Corpus Christi, Tex.	DRW-0012	Proposed remedial order for which no objections have been filed. If granted: The proposed remedial order of June 9, 1978, by region VI would be issued as a remedial order by the Department of Energy.
Do	Texaco, Inc., White Plains, N.Y	DSG-0038	Request for special redress. If granted: The Office of Hearings and Appeals would order the Economic Regulatory Administration to conclude its rulemaking concerning amendments to the refiner price regulations allowing the allocation of increased costs to gasoline prices.
Do	Thomas Petroleum, Liberal, Kans	DRW-0013	Proposed remedial order for which no objections have been filed. If granted: The proposed remedial order of May 30, 1978, by region VII would be issued as a remedial order by the Department of Energy.
Oct. 19, 1978	Florida Power & Light Co., Miami, Fla	DPI-0022	Exception from base fee requirements. If granted: Florida Power & Light Co. would be permitted to import residual fuel oil on a fee-exempt basis during the period May 1, 1978, to Apr. 30, 1979.
Do	Husky Oil Co. of Delaware, Washington, D.C.	DEZ-0112	Interlocutory order. If granted: The exception proceeding initiated by the Husky Oil Co. of Delaware (case No. FEE-3231) would be reopened for reconsideration.
Do	Mobil Oil Corp., Washington, D.C	DEA-0235	Appeal of the Canadian crude oil allocation notice. If granted: The DOE's Canadian crude oil allocation notice would be modified and the Economic Regulatory Administration would be directed to change the priority designations of certain refineries.
Do	Mobile Bay Refining Co., Washington, D.C	DPI-0023	Exception from base fee requirement. If granted: Mobil Bay Refining Co. would be permitted to offset future oil import license fee payments with tariff duties incurred and paid during the period October 1977 through April 1978.
Do	Olympian Oil Co., San Francisco, Calif	DMR-0033	Request for modification. If granted: The order issued to Olympian Oil Co. by the Fuels Regulation Division of region IX of the Department of Energy would be rescinded, and Pacific Refining Co. would not replace Gulf Oil Corp. as the base period supplier of Olympian Oil Co.
Oct. 18, 1978	Pawnee Petroleum Co, Seminole, Okla	DRX-0117	Supplemental order. If granted: The ordering par. (3) of DOE Aug. 9, 1978, decision and order would be rescinded and a new ordering paragraph relating to the firm's appeal rights would be substituted in its place.
Oct. 19, 1978	Phillips Petroleum Co., Bartlesville, Okla	DEE-1967	Price exception (sec. 212.73). If granted: Phillips Petroleum Co. would be permitted to sell the crude oil produced from the Arntson lease, located in Divide County, N. Dak, at upper tier ceiling prices.
Do	Texas Pacific Oil Co., Inc., Dallas, Tex	DXE-1970	Extension of relief granted in *Texas Pacific Oil Company*, case No. DEE-0910 (decided July 6, 1978) (unreported decision). If granted: Texas Pacific Oil Co., Inc., would be permitted to increase its prices to reflect nonproduct cost increases incurred in producing natural gas liquids and natural gas liquid products at the Enville Gas Plant.
Do	True Oil Co., Casper, Wyo	DEE-1969	Price exception (sec. 212.73). If granted: True Oil Co. would be allowed to sell crude oil produced at its Laubach properties located in McCone County, Mont., at upper tier ceiling prices.

Notices of Objection Received

Date	Name and locations of applicant	Case No.
Oct. 19, 1978	McCulloch Gas Processing Corp., Washington, D.C	DXE-1617 and DXE-1618
Do	Sentry Refining, Inc., Washington, D.C	DEE-1459

Proposed Remedial Order—Notices of Objection Received

Oct. 18, 1978	J-W Operating Co., et al., Dallas, Tex	DRO-0130
Oct. 19, 1978	Callon Petroleum Co., Natchez, Miss	DRO-0131
Oct. 16, 1978	J. R. Parten, Houston, Tex	DRO-0129
Oct. 19, 1978	J-W Operating Co., Dallas, Tex	DRO-0133
Do	do	DRO-0132
Do	do	DRO-0134
Do	Memphis Aero Corp., Washington, D.C	DRO-0135

[FR Doc. 78-31494 Filed 11-7-78; 8:45 am]

[3120-01-M]

Office of Intergovernmental and Institutional Relations

NATIONAL ENERGY EXTENSION SERVICE ADVISORY BOARD

Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given that a special subcommittee of the National Energy Extension Service Advisory Board will meet Tuesday, November 28, 1978, from 1 p.m. to approximately 5 p.m. and Wednesday, November 29, 1978, from 9 a.m. to approximately 12 noon, at the Green Center, Colorado School of Mines, Golden, Colo.

The purpose of the Board is to carry out a continuing review of the operation of the comprehensive Energy Extension Service program and the State Energy Extension Service plans to evaluate their effectiveness in achieving the objectives of the Nation-

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al Energy Extension Service Act (Pub. L. 95-39, title V) and determining how their operation might be improved in order to further these objectives.

The purpose of the special subcommittee of the Board is to identify and recommend to the Board the specific concerns and issues which the Board should address and the methods and procedures, including a budget, for dealing with those concerns and issues.

The sole agenda item for this meeting of the subcommittee is to fulfill the purpose as stated above.

The meeting is open to the public. The Chairman of the subcommittee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to the agenda should inform Georgia Hildreth, Director, Advisory Committee Management, 202-252-5935, at least 5 days prior to the meeting, and reasonable provision will be made for their presentation.

The transcript of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room GA-152, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Any person may purchase a copy of the transcript from the reporter.

Issued at Washington, D.C., on November 2, 1978.

WILLIAM P. DAVIS,
Deputy Director
of Administration.

[FR Doc. 78-31520 Filed 11-7-78; 8:45 am]

[3128-01-M]

Office of Conservation and Solar Applications

FOOD INDUSTRY ADVISORY COMMITTEE; SUBCOMMITTEE ON TRANSPORTATION AND DISTRIBUTION

Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given that the Subcommittee on Transportation and Distribution of the Food Industry Advisory Committee will meet on Wednesday, November 29, 1978, from 9 a.m., until 12 noon, in Room 7E-083, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C.

The parent Committee was established to provide the Secretary of Energy with recommendations and advice with respect to the development and implementation of policies and programs affecting the food industry.

The subcommittee will make recommendations to the parent Committee concerning energy efficiency for transportation and distribution in the food system. The tentative agenda is as follows:

9 to 11 a.m.—Presentation by officers from the Department of Transportation, U.S. Department of Agriculture, Interstate Commerce Commission, Federal Trade Commission, and Department of Energy regarding energy efficiency for transportation and distribution in the food system.

11 to 11:30 a.m.—Discussion.

11:30 a.m.—Public comment.

The meeting is open to the public. The Chairman of the subcommittee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should inform Georgia Hildreth, Director, Advisory Committee Management Office, 202-252-5935, at least 5 days prior to the meeting and reasonable provision will be made to include their presentation on the agenda.

The transcript of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room GA-152, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Any person may purchase a copy of the transcript from the reporter.

Issued at Washington, D.C. on November 2, 1978.

WILLIAM P. DAVIS,
Deputy Director
of Administration.

[FR Doc. 78-31522 Filed 11-7-78; 8:45 am]

[6712-01-M]

FEDERAL COMMUNICATIONS COMMISSION

[FCC 78-765, CC Docket No. 78-356; File No. 324-CSG-P-78]

COMMUNICATIONS SATELLITE CORP.

For Authority To Construct a Temporary Communications Satellite Earth Station in Lake Placid, N.Y., Operation With Atlantic Primary Path Satellite for Television Transmission of the Events of the 1980 Winter Olympic Games; Memorandum Opinion and Order

Adopted: October 25, 1978.

Released: November 6, 1978.

By the Commission:

1. Presently before the Commission is the application of Communications Satellite Corporation (Comsat) for authority pursuant to sections 214, 308, 309, 319 of the Communications Act of 1934, as amended, and sections 201(c)(6) and 201(c)(7) of the Communications Satellite Act of 1962 for authority to:

(1) Construct an 11-meter Earth station facility; and

(2)To provide special television transmission service to the European Broadcasting Union (EBU), as an authorized user, for the provision of service at the 1980 Olympic Games to be held in Lake Placid, N.Y.

2. This application was filed by Comsat on July 27, 1978 and was placed on public notice of "International and Satellite Radio Applications Accepted for Filing" on July 31, 1978. Copies of the application together with notices extending the opportunity to file comments were mailed to all interested parties, including those required by statute to be served.

3. Petitions to deny this application were filed by ITT World Communications Inc. (ITT Worldcom), RCA Global Communications, Inc. (RCA Globcom), and Western Union International, Inc. (WUI). These are entities which currently provide international television transmission service.

4. Comments in support of Comsat's application were filed by the EBU. Comsat represents the EBU to be a nongovenmental Swiss association of broadcasting organizations.

5. Comsat proposes to erect an 11-meter, standard B, Earth station to operate directly with an Intelsat satellite in the Atlantic Ocean region. The service to be provided will permit the transmission of two television wideo channels with appropriate program audio channels for each video channel.

6. Comsat represents that the period of service to be provided by this earth station will extend from February 6 through February 25, 1980. To provide this service Comsat will purchase an appropriate standard B Earth station and staff it with its personnel and make the necessary arrangements for the provision of this service. Comsat has included a signed contract with the EBU binding itself to provide service at the agreed upon rate. Section 8(b) of this agreement provided that the failure to receive FCC authorizations by September 27, 1978, will terminate the agreement. Comsat has since informed the Commission that the period for Commission approval has been extended to October 4, 1978. Later Comsat informed the Commission that the period had been further extended to October 5, 1978.[1]

7. Comsat states that locating an Earth station in Lake Placid will be technically and operationally superior to accessing the existing Andover and Etam Earth stations via landlines. It further notes that the EBU specifically has asked Comsat to construct the special Earth station to service its needs.

8. Comsat estimates the cost of constructing the proposed Earth station equipped to transmit two half-transponders television channels and two audio channels to be $589,000. Comsat states that the operating cost to provide television services to EBU from the Lake Placid Earth station will be about $289,000. According to Comsat the EBU will pay a total of $365,000 for a minimum service period of 125 hours. Comsat claims this figure will fully cover operating costs and contribute $76,000 to capital costs. Any service requirements in excess of 125 hours will be charged to the EBU at the prevailing Comsat television rates.

9. All the international record carriers (IRC's) participating in this proceeding have petitioned the Commission to deny this application. Their objections go to the manner by which Comsat will provide service to the EBU, the cost of providing the service, and Comsat's claim that an immediate decision is needed from the Commission on the subject application.

10. WUI argues that Comsat's application demonstrates that the proposed Earth station is economically unsound. Comsat, it is stated, has failed to provide sufficient ecomonic information to the Commission. Further, Comsat allegedly has failed to provide any information to the Commission that establishes possible future uses which would permit Comsat to amortize the large capital cost involved in the acquisition of an Earth station of this size. WUI further argues that Comsat's application fails to comply with § 214 and § 63.01 of the Commission's rules.[2]

12. After reviewing Comsat's application and the comments filed against it, we question whether the proposal is economically viable and whether it could result in the American ratepayers subsidizing this proposal.[3] Examining Comsat's application, we find the contribution to capital cost to be at best $76,000. Indeed WUI alleges that Comsat will not even recover its operation costs from the EBU. When faced with these allegations and arguments, Comsat argues that it should not be required to recover the total capital costs from the EBU, but fails to identify specific future uses which can be used to cover the capital costs of the Lake Placid facility. The Commission questions whether Comsat's proposal would unduly burden its other customers and the end users of its service. Given this concern, we believe that under section 309 of Communications Act of 1934, we must designate the subject application for hearing.

13. We also note that Comsat's cost and revenue information does not meet the requirement contained in section 63.01(m) of the rules that the applicant provide the Commission with the "economic justification for the proposed project including, where the application involves an extension into new territory at present not directly served by the applicant, estimated added revenue and costs therefor."

14. Moreover, the IRC's also have raised the issue of anit-competitive pricing. They claim Comsat's rates for this special service appear to be noncompensatory for the service provided to the EBU. While the IRC's have not proven their contentions, we must conclude that Comsat's information is not sufficient to make a determination on this issue. The anti-competitives aspects of Comsat's proposal for the EBU are clearly at issue.

15. Finally we find that Comsat's application has failed to comply in major areas with the information requirement of section 214 of the Communi-

[1] While we do not have any evidence that Comsat and the EBU have extended the contract again, they have indicated an intention to re-execute the contract if the Commission acts favorably on the subject application during the week of October 23, 1978.

[2] Section 63.01 of the Commission's rules sets forth the information required to be submitted in a 214 application necessary to permit the Commission to make its public interest determination.

[3] Comsat is the designated U.S. entity for participation in Intelsat. As such it supplies as a de jure monopolist international satellite service to U.S. carriers who then serve the end user. See Communications Satellite Act 47 U.S.C. 701-744.

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cation's Act and Part 63 of the Commission's rules. While Comsat notes in its opposition that its application contains all the essential information required of a 214 application, we find that not to be the case. The applicant has failed to give detailed cost information as required in § 63.01(k)(1), and it has failed to provide the information required by § 63.01(a)–(e), and § 63.01(p) of our rules.

16. In view of these deficiencies we do not find it necessary to further consider the section 214 aspects of Comsat's application at this time. Since the Olympic games and the need for the Earth station are more than a year away Comsat will have ample time to file an appropriate application under section 214 during the pendency of proceedings on this application should EBU continue to want to order service from Comsat at Lake Placid.

17. We, however, are designating the title III aspects of Comsat's application for hearing for the reasons explained in paragraphs 12 and 14 above. We do not believe that this action will jeopordize delivery of television coverage of the 1980 Olympic games to Europe since Comsat never alleges that other than immediate favorable action on its application would result in EBU not obtaining coverage of the 1980 Olympic games. Indeed, our review of the terrestrial network in the Lake Placid area indicated that terrestrial microwave service could easily be available in advance of the 1980 Olympic games.

18. Accordingly, *It is ordered*, That authority requested by Communications Satellite Corp. pursuant to section 214 of the Communications Act is hereby denied for failure to comply with § 63.01 of the Commission's rules.

19. *It is further ordered*, That a hearing in this proceeding at the Commission's offices in Washington, D.C. at a time to be specified and that an administrative law judge be designated to preside at the proceeding. Should Comsat not wish to prosecute this application, it should seek dismissal of the application.

20. *It is further ordered*, That, without limiting the scope of the proceeding, it shall include consideration of the following:

(a) Whether Comsat will fully recover the capital and operating costs associated with the Lake Placid application from EBU?

(b) Whether if Comsat will not fully recover the cost associated with providing service from Lake Placid to the EBU, how much the shortfall will be and how will the shortfall be recovered?

(c) Whether granting Comsat's Lake Placid application will be anticompetitive in effect?

(d) Whether in light of the evidence adduced in these matters the grant of application file No. 324-CSGH-P-78 would be in the public interest?

21. *It is further ordered*, That the Communications Satellite Corporation, ITT World Communications, Inc., RCA Global Communications, Inc. and Western Union International Inc., are made parties respondent hereto, and that any other carrier and interested person shall have leave to intervene herein upon the filing of notice of intention to appear and participate within 20 days of the release date of this order in the FEDERAL REGISTER.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-31573 Filed 11-7-78; 8:45 am]

[6712-01-M]

[FCC 78-772]

FCC ESTABLISHES MINORITY BUYERS LISTING

NOVEMBER 2, 1978.

As a means of fostering minority ownership of broadcast properties, the Federal Communications Commission will maintain a list of minority persons who are interested in purchasing broadcast facilities. The list, which will be public information, will be kept on file at the FCC in the Consumer Assistance Office (CAO) and the Industry EEO Office (IEEO). Copies will be made available upon request to the CAO or the IEEO Office.

The list will consist of minority persons who are interested in purchasing a broadcast facility and who wish to make their interests known to sellers, brokers, and other persons who are looking for station buyers. A copy of the current listing will be made available and sent out when requests are received.

The Commission noted, however, that neither inclusion nor exclusion from the list is indicative of qualification for licenseeship. Nor does inclusion on the list have any bearing on actions the Commission might take involving license applications by parties on the list; each licensing action must, by law, be decided on the merits of the individual application.

Minority persons who wish to be on the list should use the reverse side of this notice to supply the information they would like to have on file. It is necessary to read the instructions carefully before filling out the information. Sign the form and submit it to the FCC.

Completed forms, questions, additional forms and requests for copies of the list should be sent directly to the Federal Communications Commission, in care of the following offices:

Consumer Assistance Office, 1919 M Street NW., Room 258, Washington, D.C. 20554, 202-632-7000; or

Industry EEO Office, 1919 M Street NW., Room 646, Washington, D.C. 20554, 202-254-6530.

Upon submitting this form, you will be added to the FCC's Minority Buyers Listing. The listing will be public information, on file at the FCC, and will be made available upon request. Using the guidelines and space below, supply the information you would like to have on file. Please sign the form and return it to one of the offices listed on the reverse side.

Name _____
Address _____

Phone: (optional) _____
Type of facility (AM, FM, TV) _____
Price range: (optional) _____
Daytime/fulltime operation: _____
Desired location: (optional) _____

Additional information: (optional) _____

(The information contained herein is available for public inspection.)
Signature) _____

Action by the Commission October 31, 1978. Commissioners Ferris (chairman), Lee, Quello, Washburn, Fogarty, White and Brown.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-31572 Filed 11-7-78; 8:45 am]

[6712-01-M]

[FCC 78-718; BC Docket No. 78-332, File No. BRH-965]

PATRICK HENRY

For Renewal of License of Station KJAZ(FM) Alameda, Calif.; Order Designating Application for Hearing on Stated Issues

Adopted: October 5, 1978.

Released: November 3, 1978.

By the Commission: Commissioner Brown concurring in part and dissenting in part and issuing a statement.

1. The Commission has before it: (1) The license renewal applications for station KJAZ(FM), Alameda, Calif., filed August 1, 1974 and August 1, 1977, by its licensee, Patrick Henry; (2) a petition to deny the former application, filed November 1, 1974, by the Committee for Open Media, San Francisco Chapter (COM), and related pleadings; (3) a petition for reconsideration of the Commission's action on the application and the petition to deny, filed August 2, 1976, by COM, and related pleadings; and (4) a "petition for emergency relief," filed April 13, 1978, by COM, and related pleadings.

BACKGROUND

2. By memorandum opinion and order, 59 FCC 2d 1204, released July 2, 1976, the Commission granted the above-captioned renewal application without hearing and denied COM's petition to deny; and subsequently denied COM's petition for reconsideration of that decision, 62 FCC 2d 293, released January 6, 1977. On February 1, 1977, COM appealed the Commission's action to the U.S. Court of Appeals for the District of Columbia Circuit *sub nom. Committee for Open Media* v. *FCC*, D.C. Cir. No. 77-1135. In preparing to oppose the appeal, the Commission realized that certain facts relating to the station's public affairs programing set forth infra were subject to conflicting interpretations. On July 15, 1977, it filed a motion for remand of the case, and a later supplement thereto, in order to consider fully these matters in an evidentiary hearing. That motion was granted by the Court per curiam on November 21, 1977.

3. At its April 5, 1978 open meeting, while considering a proposed order dealing with KJAZ(FM)'s renewal, the Commission expressed concern over information that COM and its individual members might have engaged in extortion of the license. Accordingly, the Commission deferred action on the order until these charges could be explored. The charges were investigated and, as set forth at paragraphs 8-11, infra, there apear to be serious questions remaining concerning petitioner's conduct which must be fully explored in hearing. Finally, on April 13, 1978, petitioner filed a "petition for emergency relief," requesting that the Commission stay its investigation of petitioner; stay licensee from prosecuting a civil suit which it filed against petitioner, and to intervene in that proceeding; and specify a character issue against licensee for harassing and intimidating petitioner by filing that suit. For the reasons set forth at pragraphs 12-18, infra, we are denying petitioner's request, in part, but are specifying an issue to explore the facts and circumstances surrounding the filing of licensee's civil suit. Accordingly, this order designates KJAZ(FM)'s supplemented 1974 renewal application for evidentiary hearing on appropriate programing issues, pursuant to the Commission's representation in its motion to the court of appeals, as well as issues relating to petitioner's conduct and licensee's qualifications to remain a Commission licensee.

PAST PROGRAMING

4. On appeal, COM challenged the Commission's renewal of Henry's license on the basis of arguments of, inter alia, an inadequate level of public affairs programing and failure to perform as promised in that area of programing. In formulating its initial memorandum opinion and order, supra, it appeared to the Commission that Henry's only public affairs program, response, was broadcast fron one-half hour to 1 hour per week on a regular basis during the 1971-1974 license term, and thus it found it unnecessary to inquire further into the amount of his past public affairs programing. 59 FCC 2d at 1212-13. As to the question of promise versus performance, the Commission found that during that term there had been a reduction in Henry's public affairs programing, as compared with his 1971 proposal, of 75 percent for the composite week and 25 percent for an additional month (February 1974) selected by Henry. The Commission admonished Henry for this reduction, but concluded that the matter was not serious enough to warrant a hearing. ID. at 1214. However, it stated it carefully would scrutinize the station's 1977 renewal application to insure compliance with Henry's 1974 program proposals and presentation of sufficient nonentertainment programing to warrant a grant of that application. Id. at 1215.[1]

5. In its comments on the Commission's supplement to its motion for remand, Henry argued, in essence, that the various programming exhibits and 1976 amendment to its application, and the relevant portions of his opposition to the petition to deny, support the grant of the application, and thus the Commission's claimed inconsistencies in the record are unsubstantiated "prejudicial gleanings" from that record. We disagree. Exhibit 6 to Henry's application ("supplemental statement as to past programming") states that Response "usually" was broadcast twice weekly, presumably during the entire 1971-1974 license term. However, exhibit 7 (typical and illustrative past programming which has served public needs and interests) states that Response was carried once a week with a 30-minute duration. Further, exhibit 4 (typical and illustrative proposed programming to meet community needs and interests) states that Response "[is] broadcast at least once a week" for 30 minutes. Moreover, although in his November 29, 1974 opposition, Henry says he had "increased the number of Response programs by 50 percent (an extra one every other week)", in an attachment to that pleading he listed the Response programs broadcast from July 21 to November 24, 1974, which listing never included more than one program per week. Indeed, there were 4 weeks during that 19-week period in which no program was listed. Finally, on February 13, 1976, at the request of the Commission's Broadcast Bureau, Henry filed an amendment to his renewal application listing the topics and subjects discussed on Response during the year prior to the filings of the application. That amendment listed a total of 30 topics and subjects. Licensee did not supply the dates when these topics were broadcast, nor is there any assertion that the same topics were covered on different programs during different weeks. Thus, it appears that conceivably licensee failed to broadcast Response for up to 22 weeks during that period.

6. Thus, in light of the inconsistencies in the record set forth above—and particularly in view of the information contained in Henry's attachment to his opposition and the 1976 amendment to his application—we cannot ascertain the frequency of broadcast of the program Response during the entire term in question. That uncertainty becomes a matter of critical focus in the instant proceeding because, although ordinarily we would not inquire in such depth into the precise frequency of the broadcast of any particular program, see *Columbus Broadcasting Coalition* v. *FCC*, 505 F. 2d 320, 327, (D.C. Cir. 1974), here the station broadcast no news and Response was its only actual public affairs program. Clearly, there was a substantial reduction in Henry's public affairs programming in the composite week and in the additional selected month, as compared with his proposal (see para. 3, supra). However, the facts outlined supra demonstrate a priori that, on the record before us, we cannot estimate accurately the degree to which Henry's public affairs programming fell short of the levels promised during the entire license term. In this regard, we carefully have scrutinized Henry's arguments to the court in his comments on the Commission's supplement to its motion for remand that the interrelated exhibits to his renewal application show that the one-half hour of Response promised was regularly scheduled and the commitment exceeded; and that neither the information in the attachment to his opposition nor that in his 1976 amendment was represented as being all-inclusive concerning the broadcast of that program. To the contrary, as set forth supra, we find that overall record unsupportive of the former assertion; and the opposition attachment and 1976 amendment, even construed most favorably to Henry, plainly are devoid of the subse-

[1] The Commission also found unrebutted evidence of mislogging of entertainment, educational, and public service announcement programing as public affairs. Although no forfeiture was imposed for these violations, it stated it would scrutinize closely the 1977 application with particular regard to Henry's logging practices. 59 FCC 2d at 1207.

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quently-advanced latter contention. Therefore, substantial and material questions are presented as to the adequacy and responsiveness of Henry's public affairs programming to meet the needs and interests of his community during the 1971-1974 license term, as well as to the amount of such programming actually broadcast during that term compared with that proposed. Accordingly, appropriate issues will be specified infra.

EXTORTION, INTIMIDATION AND HARASSEMENT ALLEGATIONS

7. As noted supra, various charges and counter-charges have been made by licensee and petitioner alleging improper activities and conduct by the other party. The record now contains numerous additional pleadings, including replies to replies and supplements to supplements. The Commission is well aware of the climate of this proceeding from its beginning in 1974 to the present. There has been a great deal of public support for KJAZ (FM) and its jazz format, as evidenced by numerous commendatory newspaper and magazine articles and the volume of mail received by the Commission in support of the station.[2] We also are aware of the amount of criticism of petitioner and ill-will expressed against it for exercising its legal rights to petition to deny a broadcast license renewal. Further, as noted infra, licensee has filed suit against COM, which action resulted in its filing of the instant petition for emergency relief containing charges of intimidation and harassment of COM by licensee. Indeed, this proceeding, involving a small FM station in Alameda, Calif., has turned into a virtual battleground where the programming issues confronting licensee have been deemphasized and issues other than the licensee's programming have come to the fore. Within this troublesome context, the Commission has attempted to make an objective review of the facts to determine whether issues should be specified exploring the charges of misconduct on the part of both parties. The Commission having reached a determination on these matters below, we anticipate the parties now will proceed promptly to hearing on the specified issues so that the KJAZ(FM) renewal matter finally may be resolved. To assure a prompt resolution of the issues herein, the Chief Administrative Law Judge is instructed to expedite this proceeding. (See paragraph 22, infra). We turn first to the allegations against COM.

8. *Extortion charges against COM.* Various allegations were brought to the Commission's attention that Phillip Jacklin, president of COM had made an offer to purchase station KJAZ(FM) in return for withdrawing COM's petition to deny. The Commission, on its own motion, decided to explore these charges. Accordingly, Commission staff members interviewed several interested parties in and around San Francisco, Calif. from April 12-15, 1978. Specifically, the following persons were interviewed: Patrick Henry, licensee of KJAZ(FM); Lester Spillane, communications counsel for the station; Andrew A. Stern, a lecturer at U. C. Berkeley; David Braun, general manager of the station; John Wasserman, music critic for the San Francisco Chronicle; and Phillip Jacklin, president of COM.

9. The investigation disclosed the following. A meeting between Jacklin and representatives of KJAZ(FM) was arranged at the request of David Braun and was held on August 29, 1977, in Lester Spillane's office. At that meeting, Jacklin presented a proposal whereby KJAZ(FM) would be sold by Henry to a nonprofit corporation; the purchase price would be $1,000,000 with no money down and no security arrangements; the corporation would be governed by a nine-member board of directors, five black and four nonblack; Henry would appoint four members and COM would appoint four members with the final member being appointed by a local black group; and Henry and his wife would be permitted to draw a salary from the corporation. According to Jacklin, he was concerned about obtaining a long-term commitment from Henry because he was afraid Henry would sell the station and thereby the station's format might be changed. Henry also stated that he had indicated that he might be interested in selling the station due to the prolonged FCC litigation over his license renewal. Jacklin himself said he regarded the proposal as a bargaining point and not as an ultimatum. However, several persons stated that in conversations with Jacklin in late 1977, he indicated that he considered the sale to a nonprofit corporation as the only basis for withdrawing his petition to deny.[3]

10. After reviewing the material gathered in connection with the field investigation and the various related pleadings and filings in this proceeding, we believe that substantial and material questions remain as to petitioner's conduct in filing and prosecuting its petition to deny against KJAZ(FM). On the one hand, it appears that Jacklin may have advanced the proposal in good faith believing that such a proposal would save the jazz format of the station and provide a broadcast outlet for the black community. It also appears that Jacklin may have viewed the proposal as a negotiating point and not as an ultimatum. On the other hand, Andrew Stern's statement suggests that Jacklin may have had another motive in proposing the nonprofit corporation and, indeed, in prosecuting the petition against KJAZ(FM)—e.g., using the petition to deny to acquire a broadcast station for COM. The timing of Jacklin's proposal may also be significant in that the proposal was made on August 29, 1977, shortly after the Commission indicated to the court of appeals that it was seeking a remand of the case to designate the station's renewal application for hearing. This situation could have afforded Jacklin an opportune moment to present his purchase proposal. Additionally, Jacklin's insistence that Henry turn the station into a nonprofit corporation, together with the actual terms of the proposal—e.g., that there was to be no security, no down payment, and COM would appoint four of the nine board members—add further support to the inference that petitioner may have abused the Commission's process.

11. We are aware of the sensitive and unusual nature of these charges and we wish to make clear that we in no way wish to cast a chilling effect on those parties who seek to negotiate to resolve differences by entering into broadcaster-citizens agreements or who desire to exercise their right to file petitions to deny against broadcasters. However, we equally are concerned that those who use our processes do not abuse those processes or utilize them in such a manner as to improperly influence broadcast licensees. We are faced here with conflicting facts or uncontested facts which lend themselves to conflicting interpretations as to the motives underlying the filing and prosecution of the petition to deny filed against KJAZ(FM). Since we are unable to resolve this serious

[2] Since the court remand of this case, we have received approximately 1,000 letters in support of the station and its past and proposed programing.

[3] Specifically, Andrew A. Stern, lecturer in Journalism at U. C. Berkeley, stated that during the course of an interview with Jacklin in December 1977:

Jacklin told me: "We would like to have our own station, but do not have the money to buy a license." Jacklin indicated that forcing Henry to sell would be one way of obtaining one (a license). Jacklin indicated that his continued involvement in the KJAZ proceeding was not only to "enforce the law" but also get control of the station. We then discussed COM's offer to KJAZ and how the station would be run.

John A. Wasserman, critic of the San Francisco Chronicle, stated that he contacted Jacklin on or about November 27, 1977 regarding KJAZ(FM); he asked Jacklin what it would take on the part of KJAZ(FM) management for Jacklin to withdraw his petition to deny against the station; and Jacklin replied that the station would have to "guarantee that KJAZ remain a jazz station by transferring the license to a nonprofit corporation."

matter on the facts before us, we believe that the matter should be fully explored in hearing.[4] Therefore, an apporporate issue will be specified infra.

12. *Intimidation and harassment charges against licensee.* As noted supra, the record herein has been expanded by numerous additional pleadings—viz., a total of 14 documents. The primary pleadings are a petition for emergency relief, filed April 13, 1978, by COM, and supplements thereto; and licensee's motion to strike that petition, dated April 27, 1978. The essential relief requested by COM is that the Commission: (a) Issue an order staying Henry from further prosecution of its civil suit filed against COM; (b) order the termination of its investigation (see paragraphs 8-10, supra); (c) intervene in Henry's civil proceeding to preserve our "primary jurisdiction" in that matter; and (d) designate a character issue against Henry because of its "actions, in threatening • • • [COM and its members] with suit, as well as with injury to both person and property, and in actually filing the threatened suit • • •." Because, as set forth infra, we are granting, in part, COM's petition for relief, and because we think the remaining portions of COM's requested relief require discussion, we shall deny Henry's motion to strike (see para. 21, infra).

13. Regarding COM's first request, we are constrained to point out that we manifestly lack any authority to issue an order purporting to restrain any individual or entity from the exercise of its legal rights concerning matter over which we have no jurisdiction. Accordingly, we decline to do so. (But see paras. 14-18, infra). Next, although COM's request that we terminate our investigation is in practical effect mooted by the fact that that inquiry was conducted and completed several months ago, we note that section 403 of the Communications Act of 1934, as amended, 47 U.S.C. 403, specifically gives us authority to conduct such investigations.[5] Furthermore, even without regard to section 403, we believe we have the authority to inquire into allegations and charges against those who seek to use our processes, particularly where they are potential parties to a Commission hearing proceeding. Thus, we likewise decline to issue that order. As for our requested intervention in Henry's civil suit, we think such action by us would be unwarranted at this time. Henry's complaint alleges "abuse of process" and coercion of licensee by COM under section 506 of the Communications Act, 47 U.S.C. 506, as well as interference with business profits under a California State statute, and seeks relief in the form of, inter alia, actual and punitive monetary damages. In this regard, we note that licensee initially filed suit in a California State court on March 24, 1978. Subsequently, COM petitioned the United States District Court for the Northern District of California for removal of the case to that Court, which petition was granted. Henry then moved the District Court for an order remanding the case to the California State court, which motion was set to be heard on July 14, 1978. The Commission traditionally has declined to intervene in matters of local law which best are settled by local forums having jurisdiction over such proceedings, and we decline to do so here.

14. Finally, we turn to COM's request that we designate a character issue against Henry because of its alleged threatening of COM and its members with civil action, as well as its actually filing that suit. COM alleges that such action constitutes "harassment and attempted intimidation • • • [which] is patently offensive to Commission policy," citing *Chronicle Broadcasting Co.*, 19 FCC 2d 240 (Rev. Bd. 1969), and *Fort Collins Broadcasting Co., Inc.*, 38 FCC 2d 707 (1972). It is undisputed that, several months after the negotiations described supra, Henry's personal attorney, Allan Lipney, telephonically advised Jacklin, Larry Bensky (a former member of COM) and COM's counsel that Henry intended to file suit against COM; and that Lipney wrote two letters to COM's counsel to that effect. COM avers that Lipney's conversations and letters were "threatening" to Jacklin and his attorney because Lipney allegedly stated that unless COM's petition to deny were withdrawn, Henry would bring suit against COM and its members.[6] COM also alleges that, in a telephone conversation, David Braun, KJAZ(FM)'s station manager, threatened Jacklin and his family with violance and with the burden of defending the litigation. On the other hand, Henry, Lipney and Braun deny any such threats. Henry contends that Lipney merely informed COM and its attorneys of the contemplated lawsuit; and Braun's version of the telephone conversation with Jacklin likewise differs from COM's version. Finally, as noted supra, Henry filed the suit in question on March 24, 1978.

15. Initially, we note in *Fort Collins*, licensee threatened to file suit against the petitioner to deny for defamation if it did not withdraw its petition, but withheld such action on advice of counsel pending Commission action on the petitions. There, the Commission stated: "• • • licensees, as do all individuals, have the right to pursue any legal remedies they may have at their disposal • • •. But we do stress that • • • licensees should exercise great care and caution in any statements or threats to petitioners that if they file or maintain their filing, they may be subject to suit • • •. In our view, the most appropriate course is therefore generally to refrain from any threat of suit by a broadcast licensee in these circumstances at least until the matter is concluded by the Commission." 38 FCC 2d at 711-12.

16. In our view, the quoted *Fort Collins* language clearly expresses the Commission's strong concern regarding the potentially chilling effect of lawsuits filed against petitioners to deny by petitioned-against licensees. However, the Commission did not reach the question of whether designation of a character issue against the licensee under that circumstance would be warranted, for there the licensee did not actually file suit, and it was a case of first impression. In the instant proceeding, however, licensee not only allegedly threatened to file suit, but in fact did so. Thus, we need not reach the question here of whether threats alone in this situation would warrant specification of an issue. Rather, we now are confronted with the necessity to decide whether, on the basis of the facts before us, this licensee's actions in allegedly threatening petitioner and its members with suit, and in actually filing that suit, raise a substantial and material ques-

[4] Petitioner herein is not a licensee of this Commission and, thus, the sanctions available to us, should the issue be resolved against petitioner, are limited. One procedure would be to try the issue against petitioner first, and, if the issue were resolved against it, then to exclude petitioner from further participation in the hearing. However, given the intricate nature of this case where the issues against both licensee and petitioner are intertwined and interrelated, we do not believe that such a sanction is appropriate. Also, because of the long delay in disposing of this case, we do not believe that a two-part proceeding, looking first to petitioner's right to participate and then to the remaining issues, would serve the public interest. Accordingly, we believe petitioner should be permitted to participate in the entire proceeding, and, should the issue against petitioner be resolved against it, the administrative law judge may invoke whatever sanction he may deem appropriate—i.e., a reprimand, a censure or other similar action.

[5] 47 U.S.C. 403 provides, in pertinent part: "The Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which complaint is authorized to be made, to or before the Commission by any provision of this Act, or concerning which any question may arise under any of the provisions of this Act, or relating to the enforcement of any of the provisions of this Act • • •."

[6] In this regard, COM states that Lipney's letters to COM's counsel, "although • • • [subtly] phrased, clearly threaten a lawsuit • • •." (Reply to reply to opposition to motion to strike, p. 14.) Jacklin states that Lipney's conversation with him "was initiated with the threat of retaliatory litigation." (Id., attachment A.)

tion of fact regarding its character qualifications to remain a Commission licensee.

17. Initially, we observe that if Lipney did state that he would file suit unless COM's petition were withdrawn, such a relation arguably could have been intended as a mere statement of fact—that is, unless the source of Henry's problems were eliminated, he (Lipney) would be forced to invoke legal rights to make his client whole. The statement also could be viewed merely as a bargaining point between Henry's attorney and COM concerning the potential exercise of Henry's right to seek legal redress for alleged damages suffered.[7] On the other hand, that statement equally could be construed as a threat against COM to deter it from exercising its legal right to maintain the prosecution of its petition to deny Henry's license renewal. In this regard, we note that Lipney's statements were made only after the Commission had filed its motion for remand so that KJAZ(FM)'s application could be designated for hearing on programming issues. Further, in the Braun-Jacklin conversation, COM alleges Braun stated: "Phil, if you win [the petition to deny] I would hate to live where you live"; and, in response to Jacklin's query whether Brown was threatening physical violence, Braun allegedly stated: "Hopefully, not literally, but there are a lot of other things coming up that are going to make your life difficult. Given what I know, I would just hate to be in your shoes." (Petition for emergency relief, Jacklin affidavit.) Braun, on the other hand, denies threatening Jacklin in any manner (reply to opp., Braun affidavit). Here again, such statements, if they were made, equally could be construed as containing some sympathy toward Jacklin, as Braun alleges, or as containing at least an inferred threat to Jacklin as COM contends.

18. After reviewing the record set forth supra, as with petitioner, we believe that substantial and material questions of fact remain as to the motivation underlying Braun's and Lipney's oral and written statements prior to the filing of the lawsuit, as well as to licensee's actual filing of that suit. Here again, we are aware of the sensitive nature of petitioner's charges, and we stress that we in no way wish to cast a chilling effect on those—licensees or others—who seek to exercise their right to obtain legal redress for alleged damages incurred. However, we equally are concerned that licensees do not abuse our processes by attempting to coerce petitioners to deny by the threat, or actual filing, of retaliatory civil actions against petitioner. As with licensee's allegations against COM, we again are faced with conflicting facts or uncontested facts which lend themselves to conflicting interpretations as to the motives underlying the filing of the civil damage suit against petitioners. Because we are unable to resolve this matter on the record before us, we believe that it also must be fully explored in hearing. Thus, an appropriate issue will be specified infra.

CONCLUSION

19. Accordingly, it is ordered, that paragraphs 22, 24 and 31 of the Commission's memorandum opinion and order, FCC No. 76-577, released July 2, 1976, 59 FCC 2d 1204, and paragraphs 4, 5 and 7 of the Commission's memorandum opinion and order, FCC No. 76-1160, released January 6, 1977, 62 FCC 2d 293, hereby are withdrawn; and the orders of those dates, to include the grant of the 1974 license renewal application of station KJAZ(FM), hereby are vacated.*

20. It is further ordered, that the petition to deny Henry's 1974 renewal application for station KJAZ(FM), and the petition for reconsideration of the Commission's denial of the petition to deny, both filed by the Committee for Open Media, San Francisco Chapter, are granted to the limited extent indicated herein and are otherwise denied; and that the Committee for Open Media is made a party to the hearing ordered herein.

21. It is further ordered:

(a) That the petition for emergency relief, as supplemented, filed April 13, 1978, by the Committee for Open Media, San Francisco Chapter, is granted to the limited extent indicated herein and is otherwise denied; and

(b) That the motion to strike petition for emergency relief, dated April 27, 1978, filed by Patrick Henry, is denied.

22. It is further ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e), the above-captioned application and 1977 supplement thereto are designated for expedited hearing at a time and place to be specified in a subsequent order, upon the following issues:

(1) To determine whether Patrick Henry made reasonable and good faith efforts to carry out its nonentertainment programming proposal during the 1971–1974 license term as set forth in its 1971 application for renewal of license for station KJAZ(FM);

(2) To determine whether the nonentertainment programming broadcast by station KJAZ(FM) during the 1971–1974 license term was reasonably responsive to the ascertained problems, needs and interests of its community;

(3) To determine the facts and circumstances relating to the motivation of Patrick Henry in allegedly threatening to file and in filing the civil damage suit against the Committee for Open Media, et al.; and what effect, if any, the foregoing facts and circumstances have upon the qualifications of Patrick Henry to be a Commission licensee;

(4) To determine, in light of the evidence adduced under the above issues, whether a grant of the captioned application would serve the public interest, convenience and necessity.

(5) To determine the facts and circumstances relating to the alleged connection between petitioner's proposal to acquire station KJAZ and petitioner's motivation in filing and continued prosecution of the petition to deny; and whether such conduct constituted an abuse of the Commission's processes: and

(6) To determine, in the event issue (5) above should be resolved against the petitioner, what sanction would be appropriate.

23. It is further ordered, that, in accordance with section 309(e) of the Communications Act of 1934, as amended, the burden of proceeding with the introduction of evidence and the burden of proof as to issues (1) and (2) shall be on Patrick Henry; with respect to issue (3), the burden of proceeding with the introduction of evidence shall be on the Committee for Open Media and the burden of proof shall be on Patrick Henry; the burden of proof as to issue (4) shall be on Patrick Henry; and, with respect to issue (5), the burden of proceeding with the introduction of evidence shall be on the Commission's Broadcast Bureau and the burden of proof shall be on the Committee for Open Media.

24. It is further ordered, that, to avail themselves of the opportunity to be heard, the parties respondent, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, shall, within twenty (20) days of the mailing of this order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and present evidence on the issues specified in this order.

25. It is further order, that Patrick Henry shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's rules, give notice of the hearing within the time and in the manner prescribed in such rules, and shall advise the Commission of the publication of such notice as required by section 1.594(g) of the rules.

26. It is further ordered, that the Secretary of the Commission shall send a copy of this order, by certified mail—return receipt requested, to each of the parties to this proceeding.

FEDERAL COMMUNICATIONS COMMISSION,*
WILLIAM J. TRICARICO,
Secretary.

STATEMENT OF COMMISSIONER TYRONE BROWN CONCURRING IN PART AND DISSENTING IN PART

Re Application of PATRICK HENRY for Renewal of License of Station KJAZ(FM), Alameda, Calif. (File No. BRH-965).

I concur in the Commission's decision to designate the renewal application for station KJAZ(FM) for a hearing concerning its nonentertainment programming during the license term. However, I dissent from that portion of the order which designates for hearing issues dealing with the "motivations" of both the licensee and the Committee for an Open Media (COM) which petitioned to deny the KJAZ(FM) license renewal.

Allegations have been raised that the petitioner filed its petition to deny as part of a plan to force the transfer of the KJAZ(FM) license from Patrick Henry to itself. Indeed, the licensee has filed suit against COM in state (California) court based on these charges. The Commission today orders a hearing on the facts and circumstances surrounding the motivations of both parties to that lawsuit.

I understand the dangers to the process if a licensee is permitted to intimidate a petitioner to deny by the threat, or actual institution, of a lawsuit against the petitioner. I also recognize that we have designated similar issues in the past. In this case, however, I am convinced that a hearing on the licensee's "motivation" in instituting suit against COM will unnecessarily burden the hearing process, result in substantial delay and contribute nothing to the central issue raised against the licensee—whether it has performed in the public interest during the license period under review.

While the designation vel non of an issue against the licensee is admittedly a close question, I have no such trouble with rejecting the suggestion that we designate an issue against the petitioner—a nonlicensee. This unprecedent action will require the Commission to determine answer to difficult questions concerning the motivation of COM's filing of its petition—questions which are unrelated to the merits of the matters raised in that petition. In my opinion, this is an unwarranted burdening of the hearing process. To the extent COM's actions constitute actionable misconduct, the licensee has a right to a civil remedy, which it as in fact chosen to exercise by filing suit. I am not persuaded that it is wise or appropriate for the FCC to make itself available as an additional forum for the thrashing out of these issues.

My fellow Commissioners contend that we have the authority and perhaps the obligation to guard against abuse of the Commission's process, pointing to our strike petition policy directed against licensees who, for purposes of delay, submit nonmeritorious petitions to deny applications of competitors or potential competitors. Putting aside the question of whether in the present case a "strike petition" issue is being designated against COM to balance the "motivation" issue designated against the licensee, it should be noted that in discussing the criteria comprising our recently clarified strike petition policy we emphasized that a key factor we would consider in determining whether a petition constitutes an abuse of process would be the "absence of any reasonable basis for the adverse allegations in the petition." We concluded, "(s)hould it appear that the allegations in the petition are specious, with little or no factual or legal basis, such evidence would tend to raise the question whether petitioner was acting in good faith."[1]

In this case, however, the Commission itself found at least some of COM's allegations meritorious enough to designate them for a hearing. We certainly could not find that there was no "reasonable basis for the adverse allegations in the petition." And, if the Commission concludes that KJAZ(FM) must lose its license on the basis of the substantive issues which have been designated, the petitioner's motivations, good or bad, cannot change that result.

Moreover, should the most serious allegations made by the licensee in this case be valid, i.e., that COM has used the petition to deny process to force a transfer of control of KJAZ(FM) to COM, the Commission can consider such charges in acting on any application for transfer of control which must come before us for decision. This is precisely the position the Commission took not just 6 months ago when we renewed the license of WGOW, Chattanooga, Tenn. against allegations that the licensee had attempted to force the sale of another station (WSWB-TV) to himself. We concluded, "we do not preclude the possibility of exploring this entire matter in hearing should (the licensee) file an assignment application for WSWB-TV."[2] If we postponed consideration of those charges until presented to us in a transfer application even though the allegations concerned a licensee whose renewal application was then before us, our action in dealing with a nonlicensee—against whom our sanctions are limited if not nonexistent—should be no less restrained.

Finally, the choice made today to institute inquiry into the motivations of a nonlicensee seems to me inconsistent with our policy of encouraging community dialogue with broadcasters. It is quite clear by now that the Commission will summarily dismiss petitions to deny which do not raise very serious issues against our licensees. The action we take today—designating a "motivation" issue against a nonlicensee—will only discourage public groups from challenging a licensee even when the issues are substantial. I seriously question whether our licensees need this additional protection from the people from the people they are supposed to serve.

In designating "motivation" issues against both the licensee and the petitioner, the Commissioner is abusing its own processes. We have many more important things to do than provide an additional forum for relitigation of issues already being tried in the courts.

[FR Doc. 78-31574 Filed 11-7-78; 8:45 am]

[6730-01-M]

FEDERAL MARITIME COMMISSION

[Independent Ocean Freight Forwarder License No. 1673]

DRAKE MARINE DIVISION, A DIVISION OF DRAKE MOTOR LINES, INC.

Order of Revocation

The bond issued in favor of Drake Marine Division, a division of Drake Motor Lines, Inc., 20 Olney Avenue, Cherry Hill, N.J. 08022, FMC No. 1673, was cancelled effective October 12, 1978.

By letter dated September 12, 1978, Drake Marine Division, a division of Drake Motor Lines, Inc., was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 1673 would be automatically revoked or suspended unless a valid surety bond was filed with the Commission.

Section 44(c), Shipping Act, 1916, provides that no independent ocean

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[7] In this regard, we note that Lipney's letter to COM's counsel dated February 8, 1978, reads, in pertinent part: "Hopefully, we can resolve this matter without the need for litigation • • •. If I have received no response • • • [by February 20, 1978], I will take whatever steps I deem necessary." (Petition for emergency relief, Jacklin affidavit, exhibit K1). Lipney's second letter to COM's counsel, dated Febraury 26, 1978, states, inter alia: "In our recent phone conversations, we discussed the possibility of resolving the present dispute between the • • • parties in the hope that • • • [COM] would drop its protest against the reissuance of the KJAZ license • • •. I will take no further action until I hear from you in the immediate future." (Id., Exh. K2.)

* Henry's current renewal application has not been challenged. Since we are setting aside our grant of Henry's 1974 application, we view the 1977 renewal application as a supplement to that application. We have examined the supplement in the respects mentioned at para. 4 and n. 1, supra. In that regard, Henry's 1974 amended proposed nonentertainment programming was 6.1 percent. Because of discrepancies between his 1977 renewal composite week program logs and exhibit 15 of his supplement (description of nonentertainment programs in the composite week) and because none of the days in that year's composite week reflected KJAZ(FM)'s operation subsequent to the release of the Commission's initial order which admonished Henry for, inter alia, program mislogging (see n. 1, *supra*), the Broadcast Bureau requested Henry to submit the program logs and appropriate descriptive exhibits for the special week of August 14-20, 1977. Those submissions reveal no mislogging of public affairs programs. Further, the original composite week indicates 6.3 percent nonentertainment programming and the amended composite week indicates 8.06 percent nonentertainment programming, both of which exceed its 6.1 percent prior proposal; and Henry now proposes 6.3 percent nonentertainment programming for the 1977-80 license term. Moreover, our examination of the supplement reveals it is in compliance with our rules in all other respects. Accordingly, no programming or other questions are presented regarding the supplemental application.

* See attached statement of Commissioner Tyrone Brown concurring in part and dissenting in part.

[1] *Radio Carrollton*, 43 Pike & Fischer, R.R.2d 29, 43 (1978).

[2] *Turner Communications Corp. (WGOW)*, 42 Pike & Fischer, R.R.2d 1315, 1322 (1978).

freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.9 of Federal Maritime Commission General Order 4, further provides that a license will automatically be revoked or suspended for failure of a licensee to maintain a valid bond on file.

Drake Marine Division, a division of Drake Motor Lines, Inc., has failed to furnish a valid surety bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 201.1 (Revised) § 5.01(d) dated August 8, 1977;

It is ordered, That Independent Ocean Freight Forwarder License No. 1673 be and is hereby revoked effective October 12, 1978.

It is further ordered, That Independent Ocean Freight Forwarder License No. 1673 issued to Drake Marine Division, a division of Drake Motor Lines, Inc., be returned to the Commission for cancellation.

It is further ordered, That a copy of this order be published in the FEDERAL REGISTER and served upon Drake Marine Division, a division of Drake Motor Lines, Inc.

ROBERT G. DREW,
Director, Bureau of Certification and Licensing.

[FR Doc. 78-31527 Filed 11-7-78; 8:45 am]

[6730-01-M]

(Independent Ocean Freight Forwarder License No. 1200)

LAKESHEAD FORWARDING CORP.

Order of Revocation

The bond issued in favor of Lakeshead Forwarding Corp., 600 Board of Trade Building, Duluth, Minn. 55802 (FMC 1200), was cancelled effective October 13, 1978.

By letter dated August 17, 1978, Lakeshead Forwarding Corp. was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 1200 would be automatically revoked or suspended unless a valid surety bond was filed with the Commission.

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid surety bond is in effect and on file with the Commission. Rule 510.9 of Federal Maritime Commission General Order 4, further provides that a license will be automatically revoked or suspended for failure of a licensee to maintain a valid bond on file.

Lakeshead Forwarding Corp. has failed to furnish a valid surety bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 201.1 (Revised) section 5.01(d) dated August 8, 1977;

It is ordered, That Independent Ocean Freight Forwarder License No. 1200 be and is hereby revoked effective October 13, 1978.

It is further ordered, That Independent Ocean Freight Forwarder License No. 1200 issued to Lakeshead Forwarding Corp. be returned to the Commission for cancellation.

It is further ordered, That a copy of this order be published in the FEDERAL REGISTER and served upon Lakeshead Forwarding Corp.

ROBERT G. DREW,
Director, Bureau of Certification and Licensing.

[FR Doc. 78-31528 Filed 11-7-78; 8:45 am]

[6750-01-M]

FEDERAL TRADE COMMISSION

PROPOSED ACQUISITION OF DELTA & PINE LAND CO. OF MISSISSIPPI

Early Termination of Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the 30-day waiting period of the premerger notification rules.

SUMMARY: Southwide, Inc., is granted early termination of the 30-day waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of Delta & Pine Land Co. of Mississippi. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to requests for early termination submitted by Southwide, Inc., and Delta & Pine Land Co. of Mississippi. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: October 6, 1978.

FOR FURTHER INFORMATION CONTACT:

Malcolm R. Pfunder, Associate Director for Premerger Notification, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580, 202-523-3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by sections 201 and 202 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act and § 803.11 of the rules implementing the Act permit the agencies, in individual cases, to terminate this waiting period prior to its expiration and to publish notice of this action in the FEDERAL REGISTER.

By direction of the Commission.

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-31582 Filed 11-7-78; 8:45 am]

[6750-01-M]

TRANSMITTAL RULES

Early Termination of Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the 30-day waiting period of the premerger notification rules.

SUMMARY: Metromedia, Inc. is granted early termination of the 30-day waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of W. R. Grace & Co.'s Figi's Inc. and Figi's Data Center, Inc. assets. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to requests for early termination submitted by Metromedia, Inc. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: October 6, 1978.

FOR FURTHER INFORMATION CONTACT:

Malcolm R. Pfunder, Associate Director for Premerger Notification, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580, 202-523-3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by sections 201 and 202 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act and § 803.11 of the rules implementing the Act permit the agencies, in individual cases, to terminate this waiting period prior to its expiration and to publish notice of this action in the FEDERAL REGISTER.

By direction of the Commission.

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-31583 Filed 11-7-78; 8:45 am]

[6115-02-M]

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

CLOSING DATE FOR NOMINATIONS

Notice is hereby given that, pursuant to the authority contained in the Harry S. Truman Memorial Scholarship Act, Pub. L. 93-642 (20 U.S.C. 2001), nominations are being accepted from eligible institutions of higher education for Truman Scholarships. Procedures are prescribed at 45 CFR 1801, and were published (in the FEDERAL REGISTER on June 19, 1978 (43 FR 26366)).

In order to be assured of consideration, all documentation in support of nominations must be received by the Truman Scholarship Review Committee, Box 2838, Princeton, N.J. postmarked no later than Thursday, December 8, 1978.

MALCOLM C. MCCORMACK,
Executive Secretary.

NOVEMBER 3, 1978.

[FR Doc. 78-31569 Filed 11-7-78; 8:45 am]

[4110-88-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Alcohol, Drug Abuse, and Mental Health Administration

ADVISORY COMMITTEES

Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following National Advisory bodies scheduled to assemble during the month of December 1978:

SOCIAL SCIENCES TRAINING REVIEW COMMITTEE

December 11; 9 a.m. Conference Room C, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857. OPEN—December 11; 9-10 a.m. CLOSED—Otherwise. Contact: Hope Williams, Room 9C-09, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3857.

Purpose: The Committee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Institute of Mental Health relating to social sciences training activities and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9-10 a.m., December 11, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

PSYCHOLOGICAL SCIENCES FELLOWSHIP REVIEW COMMITTEE

December 17-19; 9 a.m. Conference Room Shenandoah C, Ramada Inn, 1900 North Fort Myer Drive, Arlington, Va. 22209. OPEN—December 18; 9-11 a.m. CLOSED—Otherwise. Contact: Mary Cope, Room 9C-15, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3856.

Purpose: The Committee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Institute of Mental Health relating to psychological sciences fellowships and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9-11 a.m., December 18, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

BIOLOGICAL SCIENCES TRAINING REVIEW COMMITTEE

December 18-20; 9 a.m. Conference Room C, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857. OPEN—December 18; 9-10 a.m. CLOSED—Otherwise. Contact: Donna Spain, Room 9C-09, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3855.

Purpose: The Committee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Institute of Mental Health relating to biological sciences research training and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9-10 a.m., December 18, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Substantive program information may be obtained from the contact persons listed above. The NIMH Information Officer who will furnish upon request summaries of the meetings and rosters of the committee members is Dr. Jacquelyn Hall, Acting Chief, Public Information Branch, Division of Scientific and Public Information, NIMH, Room 15C-17, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4573.

Dated: November 2, 1978.

ELIZABETH A. CONNOLLY,
Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 78-31506 Filed 11-7-78; 8:45 am]

[4110-85-M]

Office of the Assistant Secretary for Health

ADVISORY COMMITTEE

Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of November 1978:

Name: Technical Consultant Panel on Mental Health Statistics of the United States National Committee on Vital and Health Statistics.

Date and Time: November 27-28, 1978, 9 a.m.

Place: Hubert H. Humphrey Building, Room 305-A, 200 Independence Avenue, SW., Washington, D.C. 20201.

Open—9-5 p.m.

Purpose: The Technical Consultant Panel on Mental Health Statistics makes recommendations to the United States National Committee on Vital and Health Statistics about a mental health aspect of Federal health surveys and statistics reporting systems. Specifically, examines the National, State and local needs for mental health data; assesses which of these needs can now be met through existing data systems and which needs require new programs or modifications to existing ones; examines the feasibility of establishing a mental health component or subcomponent within the Cooperative Health Statistics System; examines relationships of current mental health uniform data sets to other data sets; examines current practices at the State level of integrating the mental health and health data systems; and makes recommendations as appropriate.

Agenda: The Technical Consultant Panel (TCP) will discuss the following agenda items: 1) review background, history and purpose of the TCP; 2) review and discuss the National Institute of Mental Health's statistics program; 3) review of the Cooperative Health Statistics system; and 4) review of the National Center for Health Statistics' National Surveys.

The meeting is open to the public for observation and participation. Anyone wishing to participate, obtain a roster of members, or other relevant information, should contact Mr. James A. Smith, National Center for Health Statistics, Room 2-12, Center Building, 3700 East-West Highway, Hyattsville, Md. 20782, telephone 301-436-7122.

Agenda items are subject to change as priorities dictate.

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Dated: November 3, 1978.

WAYNE RICKEY, JR.,
Associate Director for Management, Office of Health Policy Research and Statistics.

[FR Doc. 78-31570 Filed 11-7-78; 8:45 am]

[4110-85-M]

ADVISORY COMMITTEE

Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of November 1978:

Name: United States National Committee on Vital and Health Statistics.
Date and Time: November 29-30, 1978, 9 a.m.
Place: Room 727-A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201.
Open for entire meeting.

Purpose: The Secretary and by delegation the Assistant Secretary for Health and the Director, National Center for Health Statistics (NCHS), are charged under section 306 of the Public Health Service Act, as amended, 42 USC 242k, with the responsibility to collect, analyze, and disseminate national health statistics on vital events and health activities, including the physical, mental, and physiological characteristics of the population, illness, injury, impairment, the supply and utilization of health facilities and manpower, the operation of the health services system, health economic expenditures, and changes in the health status of people; administer the Cooperative Health Statistics System; stimulate and conduct basic and applied research in health data systems and statistical methodology; coordinate the overall health statistical activities of the programs and agencies of the Health Resources Administration and provide technical assistance in the management of statistical information; maintain operational liaison with statistical gathering and processing services of other health agencies, public and private, and provide technical assistance within the limitations of staff resources, research, consultation and training programs in international statistical activities; and participate in the development of national health policy with Federal agencies.

AGENDA

(1) Report of events, since May 3-4, 1978, meeting.
(2) International Social, Demographic, and Health Statistics:
  a. Problems of Health Statistics.
  b. Review of National Health Information Systems.
  c. National Center for Health Statistic's International Program and Activities.
  d. Comparative Birth-Number Study.
(3) Telephone Survey Activities.
(4) Environmental Health Statistics.
(5) Technical Consultant Panel Reports:
  a. Long-Term Care.
  b. Ambulatory Care.
  c. Manpower and Facilities.
  d. National Health Insurance.
  e. Health Interview Survey.
  f. Cooperative Health Statistics.
  g. Mental Health Statistics.

The meeting is open to the public for observation and participation. Anyone wishing to participate, obtain a roster of members, or other relevant information, should contact Mr. James A. Smith, National Center for Health Statistics, Room 2-12, Center Building, 3700 East-West Highway, Hyattsville, Md. 20782, telephone 301-436-7122.

Agenda items are subject to change as priorities dictate.

Dated: November 3, 1978.

WAYNE RICHEY, JR.,
Associate Director for Management, Office of Health Policy Research and Statistics.

[FR Doc. 78-31571 Filed 11-7-78; 8:45 am]

[4110-12-M]

Office of the Secretary

OFFICE OF PUBLIC AFFAIRS

Statement of Mission, Organization, and Functions

Section AP.00. *Mission.* The mission of the Office of Public Affairs is to serve as the Secretary's principal public affairs policy advisor; to provide centralized professional leadership and continuous monitoring and evaluation of Departmentwide policies, procedures and operating practices regarding public affairs activities; and to administer the Freedom of Information Act.

Section AP.10. *Organization.* The Office of Public Affairs, headed by the Assistant Secretary for Public Affairs, who reports to the Secretary, consists of the following organizations:

The Office of the Assistant Secretary for Public Affairs
  Planning and Evaulation Public Affairs Staff
  Inspector General Public Affairs Staff
News Division
  Information Services Staff
Freedom of Information Division
Regional and Outreach Division
Audiovisual Division
Editorial and Publications Management Division

Section AP.20. *Functions.*

A. *The Office of the Assistant Secretary for Public Affairs:*

Provides executive leadership, policy direction, and management strategy for the Department's public affairs programs and activities. Counsels and acts for the Secretary and the department in carrying out responsibilities under statutes, Presidential directives, and Secretarial orders for informing the general public, specialized audiences, HEW employees, and other Federal employees about the programs, policies, and services of the Department. Establishes and enforces policies and practices which produce an accurate, clear, efficient, and consistent flow of information to the general public and other audiences about Departmental programs and activities.

Maintains channels and procedures for transmitting to Departmental policy officials information on how the Department's programs and proposals are viewed by both the general and specialized publics. Consults on the selection of key public affairs personnel in the Principal Operating Components (POC's) and the Regions.

Establishes guidelines and standards (with the Office of Personnel Administration) for development, training, promotions, details, and related matters for the public affairs personnel in the Department. Concurs in all public affairs plans and budgets for the POC's and regional offices and otherwise exercises functional supervision over their public affairs activities.

Insures coordination among public affairs components. Manages public affairs issues and special activities that cut across POC lines.

Reviews and approves all publications and audiovisual materials produced with Departmental funds. Reviews and approves contracts for public affairs services.

Provides administrative and budgetary services for the Office of Public Affairs.

A.1. *Office of Planning and Evaluation Public Affairs Staff:*

Provides advice and assistance on all public affairs matters to the Office of Planning and Evaluation, Office of the Secretary, in consultation with the Assistant Secretary for Public Affairs.

Assists in the preparation of press releases, articles, speeches and related materials. Provides information to news gathering and reporting media on planning and evaluation issues.

Arranges interviews and other direct contacts with media representatives.

Coordinates with other elements of OASPA the public affairs activities of P & E.

A.2. *Inspector General Public Affairs Staff:*

Provides advice and assistance on all public affairs matters to the Office of Inspector General (OIG), Office of the Secretary, in consultation with the Assistant Secretary for Public Affairs.

Assists in the preparation of press releases, articles, speeches, and related materials. Provides information to news gathering and reporting media on issues relating to the OIG. Arranges interviews and other direct contacts with media representatives.

Coordinates with other elements of OASPA the public affairs activities of OIG.

B. *News Division:*

Plans, directs and coordinates the issuance of public information from HEW to the press and broadcast media.

Prepares news releases and other news material for the Secretary and other top Department officials. Reviews and clears all news releases and other news materials prepared by HEW components.

Coordinates and arranges news conferences, briefings, interviews and appearances by the Secretary and other key HEW officials with the press and broadcast media.

B.1. *Information Services Staff:*

Directs the preparation of the *Green Sheet*, a daily compilation of news concerning HEW programs and activities.

Manages the Public Affairs Resource Center containing information on HEW programs and activities.

Prepares analyses of current issues and programs.

C. *Freedom of Information Division:*

Administers the Freedom of Information Act (FOIA) and the HEW regulations implementing that law. Develops policy guidelines and training programs for all HEW components regarding the FOIA and related legislation, i.e., the Privacy Act, Federal Advisory Committee Act, and the Government in the Sunshine Act; and, together with staff of the Office of General Counsel, assists in development of HEW regulations implementing these statutes.

Provides responses to requests made under the Freedom of Information Act and determines the availability of records and information under the law and HEW regulations.

Coordinates with the Office of Fair Information Practices in resolving questions which overlap the FOIA and the Privacy Act regarding release of records.

Directs operation of the HEW Public Reading Room, visitors information and telephone locator service. Provides policy guidance on and maintains the index of materials required by FOIA.

D. *Regional and Outreach Division:*

Serves as liaison between the regional staff and headquarters agencies.

Coordinates public affairs activities among regions.

Provides technical assistance, and general information to public affairs staff in the region.

Advises the ASPA on all regional public affairs issues and procedures.

Provides briefing materials for Presidential and Secretarial travel to the regions.

Coordinates, assists and maintains liaison with all elements of the Department, including the regions, in outreach activities.

Initiates, designs and effects outreach programs involving national and community organizations, minority and women's groups, organizations for the handicapped, student and public interest groups, and individuals concerned with the broad range of policies, programs, and issues of the Department.

Reviews, and approves or disapproves, all proposals for outreach plans by all elements of the Department. Acts as the central resource within HEW for information on outreach techniques and procedures.

Conducts seminars and conferences to achieve productive citizen interaction with HEW issues, programs and policies.

Conducts the HEW Speakers Bureau. Screens requests for the Secretary's speaking engagements and coordinates the scheduling of speaking engagements of other policy-level officials of the Department.

E. *Audiovisual Division:*

Under the direction of the Assistant Secretary for Public Affairs, exercises management oversight of all audiovisual activities in and for the Department.

Establishes Departmental policy and procedures for the procurement, design, production, distribution and quality control of audiovisual products, and exhibits.

Reviews and clears all audiovisual products and exhibits.

Reviews audiovisual aspects of HEW public affairs components plans to insure they are supportive of HEW policy.

Provides technical assistance on the development of audiovisual products.

F. *Editorial and Publications Management Division:*

Reviews and clears all HEW publications.

Establishes Department Policy and procedures for the design, production, distribution and quality control of publications.

Serves as the principal resource within the Department for preparing, reviewing, and editing written materials reflecting HEW policy.

Prepares speeches, statements, articles, and related material for the Secretary and other top Departmental officials.

Drafts other materials for non-Departmental publications.

Edits Congressional testimony of Departmental officials.

Directs the preparation of publications with Departmentwide implications such as *HEW Now.*

Reviews publication aspects of HEW public affairs components' plans to insure they are supportive of Departmental priorities and standards.

Provides technical assistance on development of publications products.

LEONARD D. SCHAEFFER,
Assistant Secretary for Management and Budget.

OCTOBER 31, 1978.

[FR Doc. 78-31588 Filed 11-7-78; 8:45 am]

[1505-01-M]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

WASHINGTON

Filing of Corrective Dependent Resurvey Plat

Correction

In FR Doc. 78-18462 appearing on page 29035 in the issue of Wednesday, July 5, 1978, the land description in the 4th line should read, "[T.32,] N., R. 41 E., W.M., restoring the quarter. . .]".

[4310-84-M]

[2880 U-41385 (U-942)]

UTAH

Application

OCTOBER 30, 1978.

Notice is hereby given that pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Northwest Pipeline Corp. has applied for a 4½ inch natural gas pipeline right-of-way across the following lands:

SALT LAKE MERIDIAN, UTAH

T. 20 S., R. 22 E.,
Sec. 30.

The needed right-of-way is a portion of applicant's gas gathering system located in Grand County, Utah.

The purpose of this notice is to inform the public that the Bureau will be proceeding with the preparation of environmental and other analyses necessary for determining whether the application should be approved, and if so, under what terms and conditions.

Interested persons should express their interest and views to the Moab District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532.

DELL T. WADDOUPS,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-31503 Filed 11-7-78; 8:45 am]

NO 8 78 UMI

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[4310-84-M]

[2880; U-41383; U-41384 (U-942)]

UTAH

Application

OCTOBER 30, 1978.

Notice is hereby given that pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Northwest Pipeline Corp. has applied for two 4½ inch natural gas pipeline rights-of-way across the following lands:

SALT LAKE MERIDIAN, UTAH

T. 17 S., R. 26 E.,
Sec. 30.

The needed rights-of-way are a portion of applicant's gas gathering system located in Grand County, Utah.

The purpose of this notice is to inform the public that the Bureau will be proceeding with the preparation of environmental and other analyses necessary for determining whether the applications should be approved, and if so, under what terms and conditions.

Interested persons should express their interest and views to the Moab District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532.

DELL T. WADDOUPS,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-31504 Filed 11-7-78; 8:45 am]

[4310-84-M]

[2880; U-41386; U-41387; (U-942)]

UTAH

Application

OCTOBER 30, 1978.

Notice is hereby given that pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Northwest Pipeline Corp. has applied for two 4½ inch natural gas pipeline rights-of-way across the following lands:

SALT LAKE MERIDIAN, UTAH

T. 20 S., R. 21 E.,
Secs. 11, 24, and 25.

The needed rights-of-way are a portion of applicant's gas gathering system located in Grand County, Utah.

The purpose of this notice is to inform the public that the Bureau will be proceeding with the preparation of environmental and other analyses necessary for determining whether the applications should be approved, and if so, under what terms and conditions.

Interested persons should express their interest and views to the Moab District Manager, Bureau of land Management, P.O. Box 970, Moab, Utah 84532.

DELL T. WADDOUPS,
Chief, Branch of Lands Minerals Operations.

[FR Doc. 78-31505 Filed 11-7-78; 8:45 am]

[4310-84-M]

ELY DISTRICT GRAZING ADVISORY BOARD

Meeting

OCTOBER 30, 1978.

Notice is hereby given, in accordance with Pub. L. 94-579, that a meeting of the Ely District Grazing Advisory Board will be held on Friday, December 15, 1978.

The meeting will begin at 9 a.m. (PST) in the White Pine County Library Conference Room in the Courthouse Plaza, Ely, Nev.

The agenda for the meeting will include: (1) a discussion of the functions of the board; (2) election of officers; (3) explanation of laws and regulations which apply to the distribution and use of range betterment funds; (4) use of advisory board funds for range improvements; (5) review of the schedule for the district's range environmental statements; (6) review of district's allotment management plans and proposed range improvements projects; (7) the arrangements for the next meeting.

The meeting is open to the public. Interested persons may make oral statements to the board during the public comment period, or file written statements for the board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, U.S. Highway 93, Star Route 5 Box 1, Ely, Nev. 89301 by December 12, 1978. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the board meeting will be maintained in the District Office and will be available for public inspection and reproduction, during regular business hours, within 30 days following the meeting.

Dated: October 30, 1978.

GEORGE W. CROPPER,
Acting District Manager.

[FR Doc. 78-31502 Filed 11-7-78; 8:45 am]

[7020-02-M]

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-52]

CERTAIN APPARATUS FOR THE CONTINUOUS PRODUCTION OF COPPER ROD

Notice Denying Motion 52-31 and Extending the Deadline for Completion of the Hearing Before the Presiding Officer From December 22, 1978, to January 22, 1979

BACKGROUND

On July 28, 1978, complainant, Southwire Co., filed a motion (Motion Docket No. 52-31) to have the above-captioned investigation designated "more complicated," pursuant to 19 U.S.C. 1337(b)(1) and to 19 CFR 210.15. By designating an investigation as "more complicated," the period within which the investigation must be completed is extended from 12 months to 18 months. On August 8, 1978, respondents Fried Krupp GmbH, Krupp GmbH, and Krupp International filed an opposition to complainant's motion. On August 9, 1978, respondents American Telephone and Telegraph Co., Nassau Recycle Corporation, and Western Electric Company filed their opposition to complainant's motion. On August 30, 1978, the presiding officer, acting in conformity with 19 CFR 210.15 and 19 CFR 210.41(e)(1), recommended to the Commission that Motion 52-31 be denied and that the deadline for completion of the hearing before the presiding officer be extended for a period of 1 month, from December 22, 1978 to January 22, 1979.

COMMISSION ORDER AND DENIAL OF MOTION 52-31

Having considered the motion by the complainant to designate Investigation No. 337-TA-52 "more complicated," the respondents' opposition to the motion, and the presiding officer's recommendation that the hearing deadline be extended 1 month, the Commission DENIES Motion 52-31. The Commission ORDERS that the time limit for the hearing under 19 CFR 210.41(e)(1) be extended 1 additional month, from December 22, 1978 to January 22, 1979.

OPINION

In denying the motion and ordering the extension, the Commission adopts the recommendation of the presiding officer, Judge Janet D. Saxon. Under Rule 210.41(e)(1) (19 CFR 210.41(e)(1)), the hearing must be completed within a 7-month period after the date of publication of the notice of institution, unless otherwise ordered by the Commission. Upon consideration of all of the facts, the Commission believes that a 1-month extension of the 7-month deadline for completion of the hearing before the Presiding Officer will provide adequate time for preparation by the participants. This belief is based on statements made by the complainant that 1 extra month of discovery would probably be sufficient to complete discovery and thus to complete the investigation within the normal 12-month period. The presiding officer stated that there is a reasonable prospect at this time that the investigation can be completed within 12 months if the extension is granted. In keeping with the policy expressed by the Congress that investigations under section 337 of the Tariff Act of 1930 should be completed "at the earliest practicable time" (19 U.S.C. 1337(b)(1)), the Commission believes that an extension of the hearing deadline will accomplish the goal of an expedited hearing process and will ameliorate the time problems raised by complainant in Motion Docket No. 52-31. The Commission therefore grants an extension of the deadline for completion of the hearing and denies Motion 52-31.

Issued: November 3, 1978.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc. 78-31593 Filed 11-7-78; 8:45 am]

[4510-23-M]

NATIONAL ADVISORY COMMITTEE FOR WOMEN

MEETING

Pursuant to the Provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given of a meeting of the National Advisory Committee for Women.

Date and Time: November 20 and 21, 1978; 10 a.m. to 5 p.m. each day.

Place: Conference Room N4437, Nov. 20; Conference Room S4215, Nov. 21; Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Purpose: This is a regular meeting of the Advisory Committee.

The Committee will meet with the President of the United States to discuss the Committee's response to the Carter administration's status report on International Women's Year resolution prior to the meeting of the Committee. The agenda for the meeting will focus on the projected activities of the Committee's Action Work groups.

The reason for not publishing this notice within the 15-day period prior to the meeting, as required by OMB Circular A63, Revised, is due to the difficulty coordinating the date requested for a meeting with the President.

Dated: November 6, 1978.

ELLEN MCGOVERN,
Executive Director.

[FR Doc. 78-31701 Filed 11-7-78 8:45 am]

[7510-01-M]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 78-55]

LUNAR SAMPLE ANAYLSIS ADVISORY COMMITTEE

Meeting

The Lunar Sample Analysis Advisory Committee will meet on November 11 and 12, 1978, in the Vintage Room, Hilton Hotel, San Francisco Airport, San Francisco, Calif. 94128. The meeting will be open to the public up to the seating capacity of the room (approximately 25 including Committee members and other participants). Visitors will be required to sign a visitor's register.

The NASA Lunar Sample Analysis Advisory Committee was established as an interdisciplinary guide to advise NASA management as to future funding mechanisms for Lunar Sample Analysis projects within NASA and other Government agencies. The Committee members provide a wide range of scientific and administrative expertise in space and other science. The chairperson of the Committee is Professor Richard H. Jahns. There are currently seven members on the Committee. The meeting of the Committee is being held at this time because of the urgent need for the Committee to provide recommendations in time to be used in developing program funding plans for fiscal year 1979 and for consideration of fiscal year 1980 budgets. For further information, contact the Executive Secretary, Dr. Bevan M. French, 202-755-3760 NASA Headquarters, Code SL-4, Washington, D.C. 20546.

ARNOLD W. FRUTKIN,
Acting Associate Administrator for External Relations.

NOVEMBER 2, 1978.

[FR Doc. 78-31507 Filed 11-7-78; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-295 and 50-304]

COMMONWEALTH EDISON CO. (ZION STATION, UNITS 1 AND 2)

Order for Special Prehearing Conference

The October 24, 1978 joint motion of the Petitioner, Applicant, and Regulatory Staff for a special prehearing conference in this proceeding is hereby granted. The conference will begin at 9:30 a.m., on Monday, November 20, 1978 at the Lake County Board Room (10th floor), Lake County Building, 18 North County Street, Waukegan, Ill. If necessary, the conference will continue on November 21 and, for a part of the day, on November 22.

The Licensing Board will hear the oral argument of the parties and Petitioner on any motions which may have been presented at the time. Additionally, the Board will consider the setting of a schedule for further actions in this proceeding.

Interested members of the public are expressly invited to attend this special prehearing conference. Members of the public who wish to do so will be permitted to give oral or written statements by way of limited appearance at the special prehearing conference.

So ordered.

Dated at Bethesda, Md. this 2d day of November 1978.

For the Atomic Safety and Licensing Board.

EDWARD LUTON,
Chairman.

[FR Doc. 78-31557 Filed 11-7-78; 8:45 am]

[7590-01-M]

[Docket No. 50-213]

CONNECTICUT YANKEE ATOMIC POWER CO.

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 29 to Facility Operating License No. DPR-61, issued to Connecticut Yankee Atomic Power Co. (the licensee) which amended the license and its appended Technical Specifications for operation of the Haddam Neck Plant (the facility) located in Middlesex County, Conn. The amendment is effective as of its date of issuance.

The amendment deletes License Condition C.(3) issued in Amendment No. 26, dated May 26, 1978, which prohibited operation beyond 300 effective full power days in cycle 8 until a main steam line break reanalysis could be performed to support operation with-

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out automatic boron injection from the charging pumps in the event of loss of offsite power. The amendment also revises the Appendix A Technical Specifications to incorporate the appropriate assumptions used as input conditions for the main steam line break reanalysis.

The license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated September 29, 1978, and the supporting analyses submitted by letters dated September 22 and October 20, 1978, (2) Amendment No. 29 to License No. DPR-61, and (3) the Commission's related safety evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the Russell Library, 119 Broad Street, Middletown, Conn. 06457. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 24th day of October 1978.

For the Nuclear Regulatory Commission.

DENNIS L. ZIEMANN,
Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc. 78-31558 Filed 11-7-78; 8:45 am]

[7590-01-M]

[Docket No. 50-155]

CONSUMERS POWER CO.

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 21 to Facility Operating License No. DPR-6, issued to Consumers Power Co. (the licensee), which revised Technical Specifications for operation of the Big Rock Point Plant (the facility) located in Charlevoix County, Mich. The amendment is effective as of its date of issuance.

This amendment changes the Technical specifications by incorporating the requirements of Appendix J to 10 CFR Part 50 for the periodic test schedule and the formula for reduced pressure leak rate tests.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) and environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated May 17, 1978, (2) Amendment No. 21 to License No. DPR-6, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Charlevoix Public Library, 107 Clinton Street, Charlevoix, Mich. 49720.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 20th day of October 1978.

For the Nuclear Regulatory Commission.

DENNIS L. ZIEMANN,
Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc. 78-31559 Filed 11-7-78; 8:45 am]

[7590-01-M]

[Docket No. 50-318]

BALTIMORE GAS & ELECTRIC CO.

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 18 to Facility Operating License No. DPR-69, issued to Baltimore Gas & Electric Co. (the licensee), which revised the technical specifications for operation of the Calvert Cliffs Nuclear Power Plant Unit No. 1 (the facility) located in Calvert County, Md. The amendment is effective as of its date of issuance.

The amendment authorizes operation with modified (sleeved and reduced flow) guide tubes for the Control Element Assemblies (CEA's) and revises the Appendix A Technical Specifications by: (1) Incorporating changes resulting from the analyses of Cycle 2 reload fuel, and (2) authorizing the removal of all part length CEA's.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission had made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 50.5(d)(4) an environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated July 26, 1978, as supplemented July 31, August 14, September 7, and October 6, 16, and 17, 1978, (2) Amendment No. 18 to License No. DPR-69, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the Calvert County Library, Prince Frederick, Md. 20678. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C., Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 21st day of October 1978.

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For the Nuclear Regulatory Commission.

ROBERT W. REID,
Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.

[FR Doc. 78-31556 Filed 11-7-78; 8:45 am]

[7590-01-M]

[Dockets Nos. 50-269, 50-270 and 50-287]

DUKE POWER CO.

Issuance of Amendments To Facility Operating Licenses and Negative Declaration

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendments Nos. 65, 65, and 62 to Facility Operating Licenses Nos. DPR-38, DPR-47, and DPR-55, respectively, issued to Duke Power Co., which revised technical specifications for operation of the Oconee Nuclear Station, Units Nos. 1, 2, and 3, located in Oconee County, S.C. The amendments are effective as of the date of issuance.

The amendments (1) revise the station's common technical specifications to support the operation of Oconee Unit No. 1 at full rated power during Cycle 5 after core reload, to add high pressure injection pump operability requirements, to add procedures for remote operation of the high pressure injection system, and to remove the orifice rod assemblies from the core, and (2) permit the use of five previously burned fuel assemblies which will be irradiated for a fourth cycle as part of a fuel demonstration program.

The applications for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has prepared an environmental impact appraisal for the fuel demonstration program (Item 2, above) and has concluded that an environmental impact statement for this particular action is not warranted because there will be no appreciable environmental impact attributable to this action.

The Commission has determined that the issuance of Item 1, above, will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

For further details with respect to this action, see (1) the applications for amendment dated April 20 and June 26, 1978, as supplemented April 27, August 21, 28, September 6, 22, and 26, 1978, (2) Amendments Nos. 65, 65, and 62, to Licenses Nos. DPR-38, DPR-47, and DPR-55, respectively, and (3) the Commission's related Safety Evaluation and Environmental Impact Appraisal. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Oconee County Library, 201 South Spring Street, Walhalla, S.C. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 23rd day of October 1978.

For the Nuclear Regulatory Commission.

ROBERT W. REID,
Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.

[FR Doc. 78-31560 Filed 11-7-78; 8:45 am]

[7590-01-M]

[Docket No. 50-269]

DUKE POWER CO. OCONEE NUCLEAR STATION UNIT NO. 1

Exemption

I.

Duke Power Co. (the licensee) is the holder of Facility Operating License No. DPR-38, which authorizes the operation of the nuclear power reactor known as Oconee Nuclear Station, Unit No. 1 (the facility), at steady reactor power levels not in excess of 2,568 megawatts thermal (rated power). The facility consists of a Babcock & Wilcox (B&W) designed pressurized water reactor (PWR) located at the licensee's site in Oconee County, S.C.

II.

In accordance with the requirements of the Commission's Emergency Core Cooling System (ECCS) Acceptance Criteria, 10 CFR 50.46, the licensee submitted on July 9, 1975, an ECCS evaluation for the facility. The ECCS performance submitted by the licensee was based upon an ECCS Evaluation Model developed by B&W, the designer of the Nuclear Steam Supply System for this facility. The B&W ECCS Evaluation Model had been previously found to conform to the requirements of the Commission's ECCS Acceptance Criteria, 10 CFR 50.46, and Appendix K. The evaluation indicated that with the limits set forth in the facility's technical specifications, the ECCS cooling performance for the facility would conform with the criteria contained in 10 CFR 50.46(b) which govern calculated peak clad temperature, maximum cladding oxidation, maximum hydrogen generation, coolable geometry, and long-term cooling.

On April 12, 1978, B&W informed the NRC that it had determined that in the event of a small break Loss of Coolant Accident (LOCA) on the discharge side of a reactor coolant pump, high pressure injection (HPI) flow to the core could be reduced somewhat. Subsequent calculations indicated that in such a case the calculated peak clad temperature might exceed 2,200° F.

Previous small break analyses for B&W 177 fuel assembly (FA) lowered loop plants had identified the limiting small break to be in the suction line of the reactor coolant pump. Recent analyses have shown that the discharge line break is more limiting than the suction line break.

The Oconee Nuclear Station Unit No. 1 has an ECCS configuration which consists of two HPI trains which are supplied by three HPI pumps. Each train injects into two of the four reactor coolant system (RCS) cold legs on the discharge side of the RCS pump. The two parallel HPI trains are connected but are kept isolated by manual values (known as the crossover valves) that are normally closed.

Duke Power has proposed by letter dated April 21, 1978, to maintain all three pumps in an operable status. The Oconee emergency power system is designed with sufficient capacity for this mode of operation. Upon receiving a safety injection signal the HPI pumps are started and valves in the injection lines are opened. Assuming loss of offsite power and the worst single failure (the HPI pump C or the HPI valve HP26), two HPI pumps would still be available and only one of the two injection valves would fail to open.

If a small break is postulated to occur in the RCS piping between the RCS pump discharge and the reactor vessel, the high pressure injection flow injected into this line (about 50 percent of the output of two high pressure pumps) could flow out the break. Therefore, for the worst combination of break location and single failure, 50 percent of the flow rate of two high pressure ECCS pumps would contribute to maintaining the coolant inventory in the reactor vessel. This situation had not been previously analyzed and B&W had indicated that the limits specified in 10 CFR 50.46 may be exceeded.

B&W has stated that they have analyzed a spectrum of small breaks in

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the pump discharge line and have determined that to meet the limits of 10 CFR 50.46(b), operator action is required to open the two manual operated crossover valves and to manually align the motor driven isolation valve which had failed to open. This would allow the flow from the two HPI pumps to feed all four reactor coolant legs. B&W has assumed that 30 percent of the flow would be lost through the break and 70 percent would enter the core. The licensee has committed to provide for the necessary operator actions within the required time frame. That is, in the event of a small break and a limiting single failure, manual action will be taken to begin opening these valves within 5 minutes and have them fully opened and an adequate flow split obtained within the following 10 minutes. The analyses performed by B&W assumed that the flow split was established at 650 seconds by operator action. We conclude that the analyses are a reasonable approximation of the operator action that actually will be taken, provided specific procedures are prepared and followed to assure such action.

B&W has prepared a summary entitled "Analysis of Small Breaks in the Reactor Coolant Pump Discharge Piping for the B&W Lowered Loop 177 FA Plants," April 24, 1978 (the B&W Summary), which describes the methods used and the results obtained in the above analysis. The analysis models operator action by assuming a step increase in flow to the reactor vessel (with balanced flow in the three intact loops) 10 minutes after the LOCA reactor protection system trip signal occurs.

On April 26, 1978, the Commission issued an Order for Modification of License which amended the license for Oconee Unit No. 1 requiring (1) submission of a reevaluation of the emergency core cooling system calculated in accordance with the B&W Evaluation Model for operation with operating procedures described in the licensee's letter of April 21, 1978, and (2) operation in accordance with the procedures described in the licensee's letter of April 21, 1978.

By letter dated May 16, 1978, the licensee submitted a copy of the B&W Summary for our review. In their submittal the licensee stated that the analysis indicates that the ECCS Cooling performance calculated in accordance with the B&W Evaluation Model for operation of Oconee units at the rated core thermal power of 2568 Mwt with operating procedures described in their letter of April 21, 1978, is wholly in conformance with the provisions of 10 CFR 50.46. We have reviewed the B&W Summary and find that the methods of analysis meet the requirements of 10 CFR 50.46.

By letter dated April 20, 1978 and as supplemented on Aptil 27, 1978, the licensee submitted proposed Technical Specifications to implement the operating procedures and maintenance of all three HPI pumps in an operable status as described in the licensee's April 21, 1978 letter. We are issuing these Technical Specifications in the license amendment accompanying this Exemption.

On August 21, 1978, the licensee requested an exemption from the provisions of § 50.46.

In the licensee's submittal of June 8, 1978, it was stated that to meet the limits of 10 CFR 50.46, operator action at the valve locations is required to open High Pressure Injection (HPI) Pump B-C discharge header cross over valves (HP-116 and HP-117) and the HPI injection line A engineering safeguards valve (HP-26) within 10 minutes.

Reliance on local operation of valves this soon after the onset of a loss-of-coolant accident is not desirable on a permanent basis. The licensee has requested an exemption from the requirements of 10 CFR 50.46 for operation at Oconee 1 during Cycle 5 until such time as a permanent solution to this problem can be implemented.

The original concern derived from an unexpected but nevertheless inadequate assessment of a spectrum of breaks. This deviation from 10 CFR 50.46 has been ameliorated on a temporary basis by the actions discussed herein. However, combined reliance on prompt operator action to perform the required steps to assure plant safety over a period of years into the future is undesirable and should be replaced as promptly as possible by returning the system to automatic or control room actuation. To this extent, the original defect still remains until the modifications, are made to eliminate the reliance on prompt operator actions.

We have reviewed the effects of changes made to the facility during the current refueling outage and have concluded that operation of Oconee Unit 1 at power levels of up to 2568 Mwt and in accordance with the Technical Specifications will assure that the ECCS system will conform to the performance criteria of 10 CFR 50.46. Accordingly, until modifications are completed to achieve full compliance with 10 CFR 50.46, operation of the facility at power levels up to 2568 Mwt with appropriate operating procedures will not endanger life or property or the common defense and security.

While Oconee Unit No. 1 does not comply with our requirements for ECCS, appropriate actions, as previously described, have been taken to mitigate the consequences of any accidents at this plant. The Technical Specifications will provide protection against the subject small break LOCA and will bring plant operation wholly in conformance with 10 CFR 50.46. These Technical Specifications will be in force only for the brief interval of time until the proposed modifications of the ECCS are completed. The public interest is served in that by issuing this exemption for Unit No. 1 a significant power reduction with no concomitant increase in safety is avoided. Such a power reduction could affect system reliability, cause unemployment and increase consumer power costs in the area.

III.

Copies of the following documents are available for inspection at the Commission's Public Document Room at 1717 H Street, Washington, D.C. 20555, and are being placed in the Commission's local public document room at the Oconee County Library, 201 South Spring, Walhalla, S.C.

(1) The application for exemption dated August 21, 1978, and

(2) This Exemption in the matter of Duke Power Co., Oconee Nuclear Station, Unit No. 1.

IV.

Wherefore, in accordance with the Commission's regulations as set forth in 10 CFR 50.12, the licensee is hereby granted an exemption from the provisions of 10 CFR Part 50, Paragraph 50.46(a). With respect to Oconee Unit 1 this exemption supersedes the conditions of the Commission's Order for Modification of License dated April 26, 1978, and is conditioned as follows:

(1) The licensee has submitted the plans and schedules to modify the facility to eliminate reliance on prompt operator action described herein. Additional guidance in these areas has been provided by the NRC letter of September 26, 1978 to Duke Power Co.

(2) Upon approval by the staff the licensee shall undertake such modifications in accordance with the approved schedule.

(3) This exemption shall be terminated upon completion of the modifications in accordance with this exemption or upon shutdown for the next scheduled refueling outage, whichever occurs first.

Dated at Bethesda, Md., this 23d day of October 1978.

For the Nuclear Regulatory Commission.

VICTOR STELLO, Jr.,
Director, Division of Operating Reactors, Office of Nuclear Reactor Regulation.

[FR Doc. 78-31561 Filed 11-7-78; 8:45 am]

N 0 8 7 8 UMI

[7590-01-M]

[Docket Nos. 50-250 and 50-251]

FLORIDA POWER & LIGHT CO.

Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 40 and 32 to Facility Operating License Nos. DPR-31 and DPR-41, respectively, issued to Florida Power & Light Co. which revised Technial Specifications for operation of the Turkey Point Nuclear Generating Units Nos. 3 and 4, located in Dade County, Fla. The amendents are effective as of the date of the issuance.

These amendments change the Technical Specifications to reduce the pressurizer heatup rate from 200°F per hour to 100°F per hour which is necessitated by a discrepancy discovered in the Westinghouse analysis of the pressurizer heat-up rate.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act or 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the application for amendments dated December 15, 1977; (2) Amendments Nos. 40 and 32 to License Nos. DPR-31 and DPR-41 and; (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Environmental and Urban Affairs Library, Florida International University, Miami, Fla. 33199. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 25th day of October 1978.

For the Nuclear Regulatory Commission.

A. SCHWENCER,
Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.

[FR Doc. 78-31562 Filed 11-7-78; 8:45 am]

[7590-01-M]

[Docket Nos. STN 50-498 OL and STN 50-499 OL]

HOUSTON LIGHTING & POWER CO., ET AL. (SOUTH TEXAS PROJECT, UNITS 1 AND 2)

Order Scheduling Special Prehearing Conference

The special prehearing conference provided for in the Licensing Board's Memorandum and Order of October 23, 1978, will commence at 9:30 a.m., local time, on December 12, 1978, in the Jury Assembly Room, 10th Floor, U.S. District Court, Federal Building and U.S. Courthouse, 515 Rusk Street, Houston, Tex.

In accordance with the provisions of 10 CFR 2.751a, and to the extent consistent with the nature of an operating license proceeding (see 10 CFR 2.760a), the conference will be held to:

(1) Consider all intervention petitions to allow the Board to make such preliminary or final determinations as to the parties to the proceeding, as maybe appropriate;

(2) Permit identification of the key issues in the proceeding;

(3) Take any steps necessary for further identification of the issues; and

(4) Establish a schedule for further actions in the proceeding.

As further provided in the October 23, 1978 Memorandum and Order, those who have filed petitions for leave to intervene may amend or supplement their petitions by no later than November 27, 1978.

As permitted by 10 CFR 2.715(a), and to the extent that time is available on December 12, 1978 beyond that necessary to complete the formal business of the conference, the Board will hear oral limited appearance statements. It is our present intention to hear any such statements after these formal matters have been concluded.

It is so ordered.

Dated at Bethesda Md., this 1st day of November 1978.

For the Atomic Safety and Licensing Board, designated to rule on petitions for leave to intervene.

CHARLES BECHHOEFER,
Chairman.

[FR Doc. 78-31563 Filed 11-7-78; 8:45 am]

[7590-01-M]

REGULATORY GUIDE

Expiration of Initial Comment Period

On August 8, 1978, the Nuclear Regulatory Commission announced in the FEDERAL REGISTER (43 FR 35136) the issuance of a proposed revision to Chapters 4 and 18 of Regulatory Guide 5.52, Revision 1, "Standard Format and Content for the Physical Protection Section of a License Application (for Facilities Other Than Nuclear Power Plants)." These chapters were revised to provide guidance to licensees for preparing the training and qualification plan they will be required to provide under amendments to paragraphs 73.30(d), 73.30(e), 73.50(a)(4), and 73.50(h) of 10 CFR Part 73 and the new Appendix B to Part 73 entitled "General Criteria for Security Personnel" which became Criteria for Security Personnel." which became effective on October 23, 1978. The August 8, 1978, notice stated that these revised chapters would be published in final form after consideration of public comment. During the public comment period, which ended on September 8, 1978, few comments were received; none were judged sufficiently substantive to necessitate further revision of the chapters. The entire Regulatory Guide 5.52 is currently undergoing revision in connection with the recently proposed upgraded physical protection requirements for fuel cycle facilities and transportation published in the FEDERAL REGISTER on August 9, 1978 (43 FR 35321). The revised chapters 4 and 18 will be incorporated in the revised document when it is published for comment.

One commenter suggested that "• • • substantive guidance on the specific intent of some of the revised requirements is really what is necessary." The intent of the regulation in general and of specific provisions in the regulation was discussed in the statement of considerations of both the proposed and the final regulation. If commenters will identify specific areas where the intent is not clear, these will be addressed further.

Another commenter stated that the information requested in §§ 4.3 and 18.3 of the regulatory guide duplicates the information required in Appendix B to Part 73 and the licensee should be permitted to submit his plan in accordance with Part 73 in lieu of completing §§ 4.3 and 18.3. The regulatory guide is intended to identify the format and content of the plan to be submitted in compliance with Part 73, Appendix B. Sections 4.3 and 18.3 are not requirements for submittal but rather guidance on what to submit pursuant to the Part 73 requirement.

Other commenters questioned the items in the revised chapters that called for criteria to be used to ensure an armed person's maturity and reliability if younger than 21 in view of the fact that the regulation requires an armed person to be at least 21 years of age. The purpose of this requirement is to ensure maturity in armed personnel. It is based on the experience of many organizations that persons aged 21 or over generally are sufficiently mature and reliable to serve in an armed capacity. If there are other criteria to provide this assurance, it is conceivable that an exemption to the 21-year age requirement could be made. Commenters also noted that the 21-year age requirement also might be in conflict with some State laws. The NRC staff is studying this situation further.

At the time the revised chapters to Regulatory Guide 5.52 were issued, two additional guidance documents were published for public comment. These were NUREG-0464 (Draft), "Site Security Personnel Training Manual," and NUREG-0465 (Draft), "Transportation Security Personnel Training Manual." Extensive comments were received on these documents, and they are being revised before being published in final form. When published, the final documents may be purchased at current rates from the National Technical Information Service, Springfield, Va. 22161. Copies will be provided to those on the original distribution list.

Single copies of the revised chapters to Regulatory Guide 5.52 and the drafts of the two training manuals may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, attention: Bernadine Scharf, Distribution Services Branch.

(5 U.S.C. 552(a))

Dated at Rockville, Md. this 1st day of November 1978.

For the Nuclear Regulatory Commission.

RAY G. SMITH,
Acting Director, Office of Standards Development.

[FR Doc. 78-31564 Filed 11-7-78 8:45 am]

[7590-01-M]

TOPICAL REPORT

Issuance and Availability

The Nuclear Regulatory Commission staff has released a topical report on potential radiation doses from wristwatches containing tritium gas. The report was prepared by the Oak Ridge National Laboratory under a contract to NRC.

The report, NUREG/CR-0215, "Estimates of Potential Radiation Doses from Wristwatches Containing Tritium Gas," presents estimates of potential radiation doses to members of the general public, both individually and collectively, from exposure to wristwatches containing tritium gas in sealed glass tubes. The study considered exposures that could occur during the distribution, use, repair, and disposal of such wristwatches, as well as under certain postulated accident conditions involving the wristwatches.

NUREG/CR-0215 is available for public inspection at the Commission's Public Document Room at 1717 H Street NW., Washington, D.C. Copies may be purchased at current rates from the National Technical Information Service, Springfield, Va. 22161. (Paper copy: $4.50; Microfiche: $3.00).

(5 U.S.C. 552(a))

Dated at Rockville, Md., this 31st day of October 1978.

For the Nuclear Regulatory Commission.

ROBERT B. MINOGUE,
Director, Office of Standards Development.

[FR Doc. 78-31565 Filed 11-7-78 8:45 am]

[7590-01-M]

[Docket Nos. 50-338A, 50-339A, 50-404A and 50-405A]

VIRGINIA ELECTRIC & POWER CO. ET AL.

Receipt of Additional Antitrust Information: Time for Submission of Views on Antitrust Matters

Virginia Electric & Power Co., pursuant to section 103 of the Atomic Energy Act of 1954, as amended, filed on September 1, 1978, information requested by the Attorney General for Antitrust Review as required by 10 CFR Part 50, Appendix L. The information concerns two additional ownership participants, Old Dominion Electric Cooperative and North Carolina Electric Membership Corp. for the North Anna Power Station, Units 1, 2, 3 and 4 located on the south shore of Lake Anna in Louisa County, Va.

The information was filed in connection with the Virginia Electric & Power Co.'s applications for construction permits and operating licenses for the North Anna Power Station, Units 1, 2, 3 and 4. Unit 1 of the station is operating and Units 2, 3 and 4 are under construction. The information submitted by Virginia Electric & Power Co. is the first part of the application for Amendments to the North Anna Power Station, Unit 1 operating license and construction permits for Units 2, 3 and 4.

The original "Notice of Application for Construction Permit and Operating License," for the North Anna Power Station, Units 1 and 2 included the antitrust aspects of the application and was published in the FEDERAL REGISTER on December 30, 1970 (35 FR 19805). The original antitrust portion of the application for Units 3 and 4, "Notice of Receipt of Application for Construction Permit and Facility License; Time for Submission of Views on Antitrust Matters," was published in the FEDERAL REGISTER on October 28, 1971 (36 FR 20709).

A copy of the Virginia Electric & Power Co. letter, dated September 1, 1978 and above stated documents are available for public examination and copying for a fee at the Commission's Public Document Room at 1717 H Street NW., Washington, D.C. 20555 and at the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Va. 22901 and Office of the Board of Supervisors, Louisa County Courthouse, Main Street (P.O. Box 27), Louisa, Va. 23093.

Information in connection with the antitrust review of this application can be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, D.C., attention: Antitrust and Indemnity Group, Office of Nuclear Reactor Regulation.

Any person who wishes to have his views on the antitrust matters with respect to Old Dominion Electric Cooperative and North Carolina Electric Membership Corp. presented to the Attorney General for Consideration should submit such views to the U.S. Nuclear Regulatory Commission: Washington, D.C. 20555, attention: Chief, Antitrust and Indemnity Group, Office of Nuclear Reactor Regulation on or before January 2, 1979.

Dated at Bethesda, Md., this 23d day of October, 1978.

For the Nuclear Regulatory Commission.

OLAN D. PARR,
Chief, Light Water Reactors Branch No. 3, Division of Project Management.

[FR Doc. 78-30679 Filed 11-7-78; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

REGIONAL STATE LIAISON OFFICERS

Meeting

On November 30 and December 1, 1978, the Nuclear Regulatory Commission will sponsor a meeting with State Liaison Officers in Virginia, Kentucky, Tennessee, North Carolina, South Carolina, Mississippi, Alabama, Georgia, Florida and Puerto Rico to discuss mutual regulatory interests. Forty-nine Governors have appointed liaison officers to NRC and this will be the first meeting of officers from the States in NRC region II (Atlanta, Ga). The meeting, which will be open to the public, will be held on November 30 from 11 a.m. to 5:30 p.m. and on December 1 from 8:30 a.m. to 12:15 p.m. at the region II office, 101 Marietta Street NW., Suite 3100, Atlanta, Ga.

Questions regarding this meeting should be directed to Sue Weissberg, Office of State Programs at 301-492-7794.

Dated at Bethesda, Md., this 2d day of November, 1978.

For the Nuclear Regulatory Commission.

ROBERT T. JASKE,
Acting Director, Office of State Programs.

[FR Doc. 78-31553 Filed 11-7-78; 8:45 am]

[3110-01-M]

OFFICE OF MANAGEMENT AND BUDGET

ADVISORY COMMITTEE FOR THE PRESIDENT'S STATISTICAL SYSTEM REORGANIZATION PROJECT

Meeting

Pursuant to Pub. L. 92-463, notice is given of the convening of the Advisory Committee for the President's Statistical System Reorganization project from 1:30 to 9 p.m. on November 20, 1978 and from 8:30 a.m. to 3:30 p.m. on November 21, 1978. The meeting will be held in room 10103, New Executive Office Building, 726 Jackson Place NW., Washington, D.C.

The Committee will review project development and activities to date. The meeting is open to the public.

Issued in Washington, D.C. on November 2, 1978.

VELMA N. BALDWIN,
Assistant to the Director for Administration.

[FR Doc. 78-31523 Filed 11-7-78; 8:45 am]

[3110-01-M]

PRIVACY ACT

New Systems

The purpose of this notice is to give members of the public an opportunity to comment on Federal agency proposals to establish or alter personal data systems subject to the Privacy Act of 1974.

The act states that "each agency shall provide adequate advance notice to Congress and the Office of Management and Budget of any proposal to establish or alter any system of records in order to permit an evaluation of the probable or potential effect of such proposal on the privacy and other personal or property rights of individuals * * *".

OMB policies implementing this provision require agencies to submit reports on proposed new or altered systems to Congress and OMB 60 days prior to the issuance of any data collection forms or instructions, or 60 days prior to the issuance of any requests for proposals for computer and communications systems or services to support such systems—whichever is earlier.

The following reports on new or altered systems were received by OMB between October 16, 1978 and October 27, 1978. Inquiries or comments on the proposed new systems or changes to existing systems should be directed to the designated agency point-of-contact and a copy of any written comments provided to OMB. The 60 day advance notice period begins on the report date indicated.

DEPARTMENT OF THE INTERIOR

System Name: Personnel Correspondence Files.

Report Date: October 17, 1978.

Point-of-Contact: Mr. Warren Dahlstrom, Department of the Interior, Washington, D.C. 20240.

Summary: In this report, the Secretary of the Interior proposes to separate the Personnel Correspondence Files from a larger, existing system, Secretarial Subject Files, to reflect an internal reorganization.

DEPARTMENT OF DEFENSE

System Name: Individual Credentialing Services Program.

Report Date: October 3, 1978.

Point-of-Contact: Mr. William Cavaney, Defense Privacy Board, 1000 Independence Avenue SW., Washington, D.C. 20314.

Summary: This new system of records is proposed by the Federal Acquisition Institute. It is intended to provide academic accreditation services to Federal employees who are involved in procurement/acquisition and Federal Assistance efforts, and thus improve those individuals' quality, efficiency, and performance. Information will be obtained from individuals and with their consent, from college and university registrars, held by FAI and provided to the individuals' employing agencies.

System Name: Family Housing Mock Utility Billing System.

Report Date: October 18, 1978.

Point-of-Contact: Mr. William Cavaney, Defense Privacy Board, 1000 Independence Avenue SW., Washington, D.C. 20314.

Summary: This is a new system of records, proposed by the Department of the Navy under the Military Construction Authorization Act of 1978 (P.L. 95-82), which requires the Secretary of Defense to "conduct a test program to determine the feasibility of assessing occupants of military family housing charges for excess energy consumption." The system will include utility bill and fuel usage information for a random cross section of about 10,000 military family units.

FEDERAL TRADE COMMISSION

System Name: Consumer and Industry Correspondence Files.

Report Date: October 19, 1978.

Point-of-Contact: Karen C. Gabbert, Office of General Counsel, Federal Trade Commission, Washington, D.C. 20580.

Summary: This is a proposed change to an existing system of records. FTC's Division of Credit Practices, Bureau of Consumer and Industry maintains the Correspondence Files for law enforcement or other FTC action under the Truth in Lending, Fair Credit Reporting, Equal Credit Opportunity, Fair Credit Billing, and Fair Debt Collection Practices Acts. The system is also used to prepare reports to Congress on the nature and number of consumer complaints received. The modification is the entry of the information into a computer, to allow "faster, more complete and accurate retrieval of the necesary information."

Waiver Requests: OMB procedures permit a waiver of the advance notice requirement when the agency can show that the delay caused by the 60 day advance notice would not be in the public interest. It should be noted that a waiver of the 60 day advance notice period does not releive an agency of the obligation to publish notice describing the system and to allow 30 days for public comment on the proposed routine uses of the personal information to be collected. A waiver of the 60 day advance notice provision was requested by agencies for the following reports received between October 16, 1978 and October 27 1978. Public inquiries or comments on the proposed new or altered systems should be directed to the designated agency point-of-contact and a copy of any written comments provided to OMB. Comments on the operation of the waiver procedure should be directed to OMB.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

System Name: SSI/CSC Temporary Matching File.

Report Date: October 13, 1978.

Point-of-Contact: Mr. John M. Allen, Privacy Coordinator, Office of Inspector General, Department of Health, Education, and Welfare, Washington, D.C. 20201.

Summary: This new system of records is proposed by HEW's Office of Inspector General to support a program which will involve a computerized "match" of the Federal civilian pay roll and the files of the Supplemental Security Income (SSI) program. The match, intended to identify and remove from the SSI rolls Federal employees who may be receiving benefits illegally, is being conducted in accordance with OMB's proposed guidelines on matching programs, issued August 2, 1978 (43 FR 34724, August 4, 1978).

Waiver Status: Granted, October 30, 1978. HEW has also been asked to provide information on the costs and benefits of the match, upon completion of the program.

DEPARTMENT OF TRANSPORTATION

System Name: Employee Health Record System.

Report Date: October 20, 1978.

Point-of-Contact: Mr. John J. Windsor, Privacy Act Coordinator, Department of Transportation, Washington, D.C. 20590.

Summary: This is a proposed modification to an existing system of records. As part of a health and fitness program for DOT employees, the agency plans to expand the

system to include records of physical examinations and stress testing on employees who volunteer for the fitness program.

Waiver Status: No action as of October 31, 1978.

VELMA N. BALDWIN,
Assistant to the Director for Administration.

[FR Doc. 78-31575 Filed 11-7-78; 8:45 am]

[3110-01-M]

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on November 11, 1978 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; an indication of who will be the respondents to the proposed collection; the estimated number of responses; the estimated burden in reporting hours; and the name of the reviewer or reviewing division or office.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503, 202-395-4529, or from the reviewer listed.

NEW FORMS

DEPARTMENT OF AGRICULTURE

Science and Education Administration, competitive research grants.
On occasion.
Research organizations; 1,000 responses; 16,000 hours.
Ellett, C. A., 395-6132.

Forest Service.
Nationwide river recreation study.
Annually.
Recreation users of selected rivers; 1,920 responses; 634 hours.
Ellett, C. A., 395-6132.

Science and Education Administration, agricultural research facilities questionnaire.
SEA 615.
Single-time.
Agricultural research facilities; 200 responses; 1,600 hours.
Ellett, C. A., 395-6132.

Forest Service interagency study of recreation and related issues.
In Alaska.
Single-time.
Alaska residents and cruiseship passengers; 6,100 responses; 4,170 hours.
Ellett, C. A., 395-6132.

DEPARTMENT OF DEFENSE

Departmental and other questionnaire petroleum product suppliers.
Single-time.
Petroleum suppliers; 900 responses; 900 hours.
Marsha Traynham, 395-3773.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Alcohol, Drug Abuse and Mental Health Administration, use of volunteers in drug abuse treatment programs: A preliminary analysis.
Single-time.
Paid counselors, volunteers, and administration of drug program; 250 responses; 188 hours.
Richard Eisinger, 395-3214.

DEPARTMENT OF LABOR

Employment and Training Administration, total family support services.
MT-298.
Single-time.
WIN participants in the Salt Lake, Utah; 2,200 responses; 1,100 hours.
Strasser, A., 395-6132.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Report on NASA subcontracts.
NASA 667
On occasion.
Prime contractors issuing subcontracts; 3,600 responses; 900 hours.
Caywood, D. P., 395-3443.

DEPARTMENT OF LABOR

Mine Safety and Health Administration, records of training.
MSHA 5000-1 and 5000-23.
On Occasion.
Mines—metal nonmetal and coal; 300,000 responses; 45,000 hours.
Strasser, A., 395-6132.

DAVID R. LEUTHOLD,
Budget and Management Officer.

[FR Doc. 78-31584 Filed 11-7-78; 8:45 am]

[8010-01-M]

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 20756; 70-6039]

APPALACHIAN POWER CO.

Proposed Extension of Short-Term Borrowing Authorization

NOVEMBER 1, 1978.

Notice is hereby given that Appalachian Power Co. ("Appalachian"), an electric utility subsidiary company of America Electric Power Co., Inc. a registered holding company, has filed with this Commission a post-effective amendment to its application previously filed and amended in this matter pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating section 6(b) of the Act and Rules 50(a)(2) and 50(a)(5) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application, as amended by said post-effective amendment, which is summarized below, for a complete statement of the proposed transactions.

By order dated September 30, 1977 (HCAR No. 20191), Appalachian was authorized to issue and sell short-term notes and commercial paper through December 31, 1978, in an aggregate amount not to exceed $175,000,000 outstanding at any one time, such indebtedness to mature not later than June 30, 1979. By order dated September 8, 1978 (HCAR No. 20702), the borrowing authorization was increased to $200,000,000 outstanding at any one time.

By post-effective amendment Appalachian requests that its borrowing authorization, pursuant to the credit arrangements described below, of $200,000,000 be extended from December 31, 1978, to December 31, 1979, all such indebtedness issued thereunder to mature not later than June 30, 1980.

Concerning the credit arrangements, it is stated that Appalachian has lines of credit with 78 banks which total $319,000,000. For purposes of borrowing, these banks are of three classes. Each note to be issued to a Class I bank will mature not more than 270 days after the date of issuance or renewal thereof, and will be prepayable at any time without premium or penalty. Appalachian's credit arrangements with these banks require it to maintain compensating balances equal to a percentage of the line of credit made available by the bank plus a percentage of any amount actually borrowed (generally not in excess of 10 percent of the line of credit and 10 percent of the amount borrowed). In most cases Appalachian maintains deposit balances for its operational and financial needs in amounts sufficient to satisfy any compensating balances required with respect to borrowings from such banks. Borrowings from a Class I bank would generally bear interest at an annual rate not greater than the bank's prime commercial rate in effect from time to time.

Each note to be issued to a Class II bank will nature not more than 90 days after the date of issuance or renewal thereof, and will be prepayable at any time without premium or penalty. Appalachian's credit arrangements with these banks require it to maintain compensating balances of 5 percent of the line of credit and to pay a fee equal to 4 percent of the bank's prime commercial rate then in effect on the size of the line. The combination of 5 percent compensating balances and a fee is generally equivalent to compensating balances not in excess of 10 percent of the line of credit made available. In addition, Appalachian must pay interest at the rate of 108.5 percent of the bank's prime commercial rate then in effect on the borrowings. It is stated that if the balances maintained and the fees paid by Appalachian with and to the Class I and II banks were maintained and paid solely to fulfill requirements for borrowings by Appalachian, the effective annual interest cost under either such arrangement, assuming full use of the line of credit, would not exceed 125 percent of the prime commercial rate in effect from time to time, or not more than 12.5 percent on the basis of a prime commercial rate of 10 percent.

With respect to the Class III banks, Appalachian has a money market facility at each of two named banks in an aggregate amount of $25,000,000. These money market facilities do not represent a formal commitment or engagement by these banks to Appalachian, but represent merely the ability of Appalachian to request unsecured borrowings, in the form of promissory notes, on a case-by-case basis. These money market facilities are available for unsecured borrowings in domestic dollars and/or in Eurodollars for periods of up to 180 days after the date of issuance, and any such borrowings will be prepayable at any time without premium or penalty. No compensating balances are required. The interest rate, which is presently to be negotiated on a case-by-case basis (using a 360-day year), is pegged to either the London Interbank Offering Rate plus a designated percent, if the borrowings are made in Eurodollars, or to a designated percent of the bank's prime rate, if the borrowings are made in domestic dollars. It is stated that interest rates on these notes will be lower than the effective interest rates for borrowings made from Class I and II banks, including the effect of any compensating balances and fees paid.

Appalachian also proposes to issue commercial paper in the form of promissory notes in denominations of not less than $50,000 nor more than $5,000,000, which will be of varying maturities, with no maturity more than 270 days after the date of issue and none will be prepayable prior to maturity. The commercial paper notes will be sold directly by Appalachian to Lehman Commercial Paper, Inc. (the "Dealer") at a discount rate not in excess of the discount rate per annum prevailing at the time of issuance for commercial paper of comparable quality and maturity. No commercial paper notes will be issued having a naturity of more than 90 days if such commercial paper notes would have an effective interest cost which exceeds the effective interest cost at which Appalachian could borrow from banks. The Dealer will reoffer the commercial paper notes to not more than 200 of the Dealer's customers identified and designated in a nonpublic list prepared by the Dealer in advance, at a discount rate of one-eighth of 1 percent per annum less than the discount rate to Appalachian. It is expected that such customers of the Dealer will hold the commercial paper prior to maturity, but, if any such customer wishes to resell such commercial paper prior to maturity, the Dealer, pursuant to a verbal repurchase agreement, will repurchase such commercial paper sold by it and reoffer it to other customers on its nonpublic list.

The proceeds from the issue and sale of the notes will be used by Appalachian to reimburse its treasury for past expenditures made in connection with its construction program and to pay part of the cost of its future construction program. Such construction expenditures for the years 1978 and 1979 are estimated at approximately $314,000,000 and $371,000,000, respectively.

Appalachian claims exception from the competitive bidding requirements of Rule 50 for the proposed issuance of notes to banks pursuant to paragraph (a)(2) thereof. Additionally, Appalachian requests exception from the competitive bidding requirements of Rule 50 for the proposed issue and sale of its commercial paper pursuant to paragraph (a)(5) thereof.

The fees and expenses to be incurred in connection with the proposed transactions will be supplied by amendment. It is stated that the State Corporation Commission of Virginia has jurisdiction over the proposed transactions and that no other State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than November 28, 1978, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application, as amended by said post-effective amendment, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as amended, or as it may be further amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-31538 Filed 11-7-78; 8:45 am]

[8010-01-M]

[Administrative Proceeding File No. 3-5536; File No. 81-391]

BROWNING

Application and Opportunity for Hearing

OCTOBER 31, 1978.

Notice is hereby given that Browning ("Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), seeking an exemption from the requirement to file reports pursuant to sections 13 and 15(d) of the 1934 Act.

The Applicant states, in part:

1. The Applicant was a publicly-held company with a class of securities registered pursuant to section 12(g) of the 1934 Act, and was thus subject to the reporting provisions of section 13 of the 1934 Act.

2. On June 30, 1978, the Applicant was merged with a wholly owned subsidiary of Fabrique National, S.A. Herstal, of Leige, Belgium ("FN").

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3. As a result of the merger, all the issued and outstanding shares of common stock of the Applicant are now owned by FN.

In the absence of an exemption, Applicant will be required to file certain periodic reports with the Commission for periods ending in 1978.

The Applicant contends that no useful purpose would be served in filing the periodic reports because FN now owns all of the Applicant's common stock, and its common stock is no longer publicly traded.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the Office of the Commission at 500 North Capitol Street NW., Washington, D.C. 20549.

Notice is further given that any interested person not later than November 27, 1978, may submit to the Commission in writing his views on any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-31539 Filed 11-7-78; 8:45 am]

[8010-01-M]

[File No. 81-387]

CALIFORNIA WINDSOR CO.

Application and Opportunity for Hearing

OCTOBER 31, 1978.

Notice is hereby given that California Windsor Co. ("Applicant") has filed an application pursuant to section 12(h) of the Securities Echange Act of 1934, as amended (the "1934 Act"), seeking an exemption from the requirements to file reports pursuant to sections 12(g), 13, and 15(d) of the Exchange Act.

The Applicant states, in part:

1. On February 21, 1978, pursuant to a Plan of Reorganization and Agreement, E. F. Hutton California Co., a wholly-owned subsidiary of E. F. Hutton Group, Inc. ("Hutton") acquired the business and substantially all of the assets of California Windsor Co., and delivered 961,667 shares of Hutton common stock to Applicant. Upon transfer of its assets Applicant ceased doing business and commenced liquidation in accordance with California law. In the liquidation the interest of a former shareholder was 0.88 share of Hutton common stock for each share of Applicant's common stock held. Applicant was formally dissolved in August 1978.

2. In the absence of an exemption, Applicant would be required to file pursuant to sections 12(g), 13, and 15(d) of the 1934 Act and the rules and regulations thereunder a Form 10-K for the year ending December 31, 1977, and the required periodic reports for the 1978 fiscal year. Applicant believes that its request for an order exempting it from the provisions of sections 12(g), 13, and 15(d) of the 1934 Act is appropriate in view of the fact that the time, effort, and expense involved in preparation of additional periodic reports would be disproportionate to any benefit to the public.

For a more detailed statement of the information presented, all persons are referred to said application which may be examined at the Commission's Public Reference Section, 1100 L Street NW., Washington, D.C. 20549.

Notice is further given that any interested person not later than November 27, 1978, may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed to Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-31540 Filed 11-7-78; 8:45 am]

[8010-01-M]

[Release No. 104670; 811-1564]

COMBINED SECURITIES FUND, INC.

Application

OCTOBER , 1978.

Pursuant to section 8(f) of the Act for an order declaring that applicant has ceased to be an investment company notice is hereby given that Combined Securities Fund, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on September 22, 1978, pursuant to section 8(f) of the Act, for an order declaring that Applicant has ceased to be an investment company defined by the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant registered under the Act on November 22, 1967 and when its registration statement for the public offer and sale of its common stock was declared effective on March 5, 1968, Applicant commenced a public offering of such stock.

Applicant states that its Board of Directors approved an Agreement and Plan of Reorganization ("Plan") between Applicant and Security Investment Fund, Inc. ("Fund"), a registered, open-end, management investment company, whereby substantially all of Applicant's assets were to be exchanged for shares of Fund and Applicant was to be liquidated. According to the application, Applicant's shareholders approved the Plan at a special meeting held on July 28, 1978, by a vote in excess of two-thirds of its outstanding shares. The application states that the exchange was made on the basis of the net asset values of Fund and Applicant computed as of the close of business on the New York Stock Exchange on July 28, 1978. On that same date, Applicant asserts, the shares of Fund received in exchange for Applicant's assets were distributed to Applicant's shareholders pro rata according to their interests in Applicant.

Applicant further asserts that all of its shareholders received distributions in complete liquidation of their interests, and that it has no assets, debts, or other outstanding liabilities, is not a party to any litigation or administrative proceeding, and does not propose to engage in any business activity other than that necessary for the winding up of its affairs.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and that, upon the effectiveness of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than November 24, 1978, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who requests a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-31541 Filed 11-7-78; 8:45 am]

[8010-01-M]

[Admin. Proceeding File No. 3-5548; File No. 81-369]

ESL, INC.

Application and Opportunity for Hearing

OCTOBER 31, 1978.

Notice is hereby given that ESL Inc. ("Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") seeking an exemption from the requirements to file reports pursuant to sections 13 and 15(d) of the Exchange Act.

The Applicant states, in part:

1. The Applicant is a California corporation subject to the reporting provisions of sections 13 and 15(d) of the 1934 Act.

2. On June 9, 1978, TRW Inc. ("TRW") became the sole shareholder of the Applicant when it acquired 100 percent of Applicant's outstanding equity securities as a result of a merger of a wholly owned subsidiary of TRW with and into the Applicant.

3. The merger was voted upon and approved by the Applicant's shareholders at a meeting held on June 8, 1978.

4. Upon the terms of the merger, the shares of the Applicant's common stock outstanding prior to the merger were each converted into $47 cash.

5. The holders of such shares do not have any continuing interest in, or rights as shareholders of the Applicant, TRW, or TRW's subsidiary.

In the absence of an exemption, Applicant is required to file pursuant to sections 13 and 15(d) of the 1934 Act and the rules and regulations thereunder, an annual report on Form 10-K for its fiscal year ending December 31, 1978, and its quarterly reports on Form 10-Q for the periods ending June 30, 1978 and September 30, 1978. Applicant believes that its request for an order exempting it from the provisions of sections 13 and 15(d) of the 1934 Act is appropriate in view of the fact that Applicant believes that the time, effort and expense, involved in preparation of additional periodic reports would be disproportionate to any benefit to the public.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 500 North Capitol Street NW., Washington, D.C.

Notice is further given that any interested person not later than November 27, 1978, may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) any postponements thereof. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-31542 Filed 11-7-78; 8:45 am]

[8010-01-M]

[Rel. No. 645; 803-10]

HIGHLAND INVESTMENT CORP.

Application

OCTOBER 31, 1978.

Pursuant to section 206A of the Act for order granting exemption from all provisions of the Act except the examination provisions of section 204, certain recordkeeping requirements of Rule 204-2, and section 206, notice is hereby given that Highland Investment Corp. ("Applicant"), a Delaware corporation, has filed an application on January 25, 1978, and amendments thereto on June 12 and August 30, 1978, pursuant to section 206A of the Investment Advisers Act of 1940 ("Act"), for an order of the Commission exempting Applicant from all provisions of the Act except the examination provisions of section 204, certain recordkeeping requirements of the Rule 204-2 under section 204, and the anti-fraud provisions of section 206. Applicant contends that the purposes and policies of the Act do not require that it comply fully with the Act's provisions since it is a family controlled corporation which provides investment advice solely for the benefit of family related clients and not to the general public. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant was incorporated on September 8, 1976, by Mr. Abe Plough of Memphis, Tenn. Applicant claims that it was organized for the purpose of providing advice and recommendations to its clients with respect to investments and reinvestments of securities in order to achieve and maintain balanced investment portfolios and in order to implement certain tax planning programs. Applicant states that its clients are and will be expressly limited to Union Planters National Bank of Memphis and National Bank of Commerce, the two corporate trustees of certain trusts created for the benefit of members of the family of Mr. Plough (but solely in respect of the corporate trustees administration of the assets of such trusts), The Memphis-Plough Charitable Trust ("MPCT"), a private Plough family charitable trust, and Plough Invest-

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ment Corp. ("PIC"), a family controlled personal holding company. The Applicant further states that no investment advice will be offered or provided to the general public.

The two corporate trustees act as trustees of 22 family trusts, all but 1 of which are irrevocable, for the benefit of no more than 31 family members—the furthest relation from Mr. Plough being great nieces and nephews and step-grandchildren. Applicant states that if the interest of any beneficiary of the family trusts is divested by death, such interest shall pass to that beneficiary's issue, or if no issue is then surviving, then to other members of the Plough family or to MPCT. The Applicant also asserts that Mr. Plough is the sole donor of MPCT's assets and that a majority of MPCT's board of trustees is comprised of Plough family members. The Applicant further asserts that all of the outstanding shares of PIC's preferred and common stock is held by MPCT and the two corporate trustees for the benefit of various Plough family members. The Applicant represents that each adult beneficiary of the family trusts will consent in writing to the investment advisory contracts proposed to be entered into between the Applicant and the two corporate trusts.

The Applicant states that Mr. Plough owns all of the outstanding capital stock of the Applicant and that all of the members of the board of directors of the Applicant and all officers of the Applicant, with the exception of the Secretary and Treasurer, are members of the Plough family. Applicant indicates that Jocelyn Plough Rudner, Mr. Plough's daughter, is President of Applicant, and that it is anticipated that Mrs. Rudner will succeed to Mr. Plough's entire stock ownership interest in Applicant. Applicant represents that it employs or will employ approximately two persons who are not members of the Plough family to provide technical research and analysis to the board of directors of Applicant. In addition, Applicant states that these persons will perform administrative functions on behalf of Applicant. Applicant claims, however, that Applicant's board of directors will make all final decisions as to investment advice and recommendations offered to Applicant's clients.

According to the application, technical research and analysis by such professional persons would include the review of current industrial, governmental, financial and monetary trends and the recommendation from time to time to buy, sell or hold specific securities. These persons will also provide statistical information to the board of directors of Applicant as to the composition of the assets of the various trusts and the personal holding company (such as current values, amounts of income and principal, etc.), and they will verify the actions of the corporate trustees in effectuating purchases and sales of securities. They will also act as a liaison between members of the Plough family and the corporate trustees.

Applicant represents that the employment of these persons was solicited by representatives of Applicant and they did not in any way initiate contact with Applicant, or offer their services to Applicant. Applicant also asserts that it is understood between such persons and Applicant that they will not provide services or information of the type provided to applicant to any person outside the Plough family group, so long as they are employed by Applicant.

The Applicant states that it will receive as compensation for its services out of the income of the trusts only a reimbursement of expenses actually incurred by it in connection with the rendering of investment advisory services to its clients, that in no event will the Applicant receive any compensation which will result in a profit to the Applicant, and that neither Mr. Plough nor Mrs. Rudner will receive any compensation from the Applicant. Further, Applicant claims that no bonuses or additional compensation will be paid to any of Applicant's employees based upon the performance of the securities of Applicant's clients.

The Applicant states that it has received an order from the Commissioner of Insurance of the State of Tennessee dated September 29, 1977, declaring Applicant not to be an investment adviser under the Tennessee securities laws based upon essentially the same facts as are described in the application on file with the Commission.

Applicant agrees to comply only with the examination provisions of section 204, the recordkeeping requirements contained in subparagraphs (1) through (6) and subparagraphs (9), (10), and (12) of Rule 204-2(a) under section 204 of the Act, and with the other provisions of Rule 204-2 to the extent they relate to the requirements of subparagraphs (1) through (6) and subparagraphs (9), (10), and (12) of Rule 204-2(a), and with the anti-fraud provisions of section 206, to the extent they may be applicable. In addition, however, Applicant states that, anything in Rule 204-2(a) to the contrary notwithstanding, the term "advisory representative" shall not, for Applicant's purposes, mean any officer or director of Applicant who is a member of the Plough family, except Mr. Plough or any person who succeeds to his stock ownership interest in Applicant, unless such officer or director, in connection with his duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of such recommendations or of the information concerning such recommendations, in which event, that officer or director shall be deemed to be an "advisory representative" under Rule 204-2(a). Applicant contends that compliance by Applicant only with these provisions is appropriate in the public interest and consistent with the protection of investors because compliance with the remaining provisions of the Act by Applicant, a family controlled adviser providing investment advisory services to the same family and not to the general public, is unnecessary and would be unduly burdensome under the circumstances.

Section 206A provides in part that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than November 27, 1978, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

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By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-31543 Filed 11-7-78; 8:45 am]

[8010-01-M]

[Rel. No. 10457; 812-4381]

MASSACHUSETTS MUTUAL LIFE INSURANCE CO. AND MASSMUTUAL CORPORATE INVESTORS, INC.

Application

OCTOBER 30, 1978.

Pursuant to section 17(d) of the Act and rule 17d-1 thereunder, notice is hereby given that Massachusetts Mutual Life Insurance Co. ("Insurance Company"), a mutual life insurance company organized under the laws of the Commonwealth of Massachusetts, and MassMutual Corporate Investors, Inc. ("Fund"), a nondiversified, closed-end management investment company registered under the Investment Company Act of 1940 ("Act") (hereinafter collectively referred to as the "Applicants"), filed an application on October 26, 1978, purusant to section 17(d) of the Act and Rule 17d-1 thereunder, for an order of the Commission permitting Applicants to convert their 6½ percent Convertible Subordinated Notes ("Convertible Notes") of Flowers Industries, Inc. ("Flowers") into Flowers common stock. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The application states that pursuant to an order of the Commission issued on August 19, 1971 (Investment Company Act Release No. 6690, referred to herein as the "Order"), the Insurance Company, which acts as investment adviser to the Fund, is permitted to invest concurrently for its general account in each issue of securities purchased by the Fund at direct placement, and to exercise warrants, conversion privileges and other rights at the same time as the Fund. Applicants state that among the conditions of the Order, paragraph (4) thereof provides that once the Insurance Company and the Fund have acquired interests in an issuer, neither the Insurance Company nor the Fund, unless otherwise permitted by order of the Commission, may acquire any further interest in such issuer other than interests in all respects identical.

The application states that the Insurance Company and the Fund now each hold $3,750,000 in principal amount of the Convertible Notes due December 8, 1992, of Flowers, and that the Convertible Notes, which were purchased by the Insurance Company and the Fund in December of 1972, are convertible into Flowers common stock at a ratio of one share of common stock for each $10.00 in outstanding principal amount of Convertible Notes converted.

Applicants state that in addition to the Convertible Notes, the Insurance Company also holds $5,000,000 in principal amount of Flowers' 9½ percent Promissory Notes due August 1, 1996 ("Promissory Notes"), purchased in November and December of 1976. Applicants explain that since the Promissory Notes contain no equity feature, they would not have been an appropriate investment for the Fund in light of the Fund's investment policies.

The application states that on October 10, 1978, Applicants received formal notice from Flowers that it intends to repay the Convertible Notes on December 8, 1978, pursuant to the note agreement dated December 8, 1972, between Flowers and the Insurance Company and the Fund, respectively, relating to the Convertible Notes ("Note Agreements"). The application further states that pursuant to the Note Agreements, Applicants have the option to convert their Convertible Notes into Flowers common stock in lieu of accepting prepayment thereof. Applicants propose to exercise this option.

According to the application, neither the Insurance Company nor the Fund wishes to hold Flowers common stock for an extended period of time. Applicants propose to sell such common stock as promptly after conversion as is reasonably feasible without depressing the market price of such common stock. Applicants submit that if they have an opportunity to sell all or part of their Flowers common stock in a registered public offering, they might choose to do so, but that if they do not have such an opportunity they would sell such stock in accordance with Rule 144 under the Securities Act of 1933 ("Rule 144"). Applicants further state that even if they have an opportunity to sell their Flowers common stock in a registered public offering, they might choose to sell such common stock in accordance with Rule 144 either before or after such public offering in order to avoid increasing the number of shares of Flowers common stock sold in such public offering to a point where the price received by Applicants for such common stock might be significantly depressed. Applicants propose to make all their conversions of Convertible Notes concurrently in equal principal amounts and to sell equal amounts of Flowers common stock concurrently and on the same terms, as required by the Order.

Section 17(d) of the Act and Rule 17d-1 thereunder, taken together, provide, in part, that it is unlawful for an affiliated person of a registered investment company, acting as principal, to effect any transaction in which such investment company is a joint participant, without the permission of the Commission. Rule 17d-1 provides, in part, that in passing upon applications for orders granting such permission, the Commission will consider (1) whether the participation of the investment company in such transaction on the basis proposed is consistent with the provisions, policies, and purposes of the Act, and (2) the extent to which such participation is on a basis different from or less advantageous than that of other participants.

Applicants state that unless the requested relief is granted, paragraph (4) of the Order would prevent Applicants from exercising their conversion privileges in respect of the Convertible Notes as long as the Insurance Company holds the Promissory Notes. Applicants state that the Order was granted pursuant to section 17(d) of the Act and Rule 17d-1 thereunder, and the requested relief would be an order granting an exemption from one of the conditions specified in the Order. Therefore, Applicants assert that the standards for consideration of the present application should be the standards specified in Rule 17d-1. Such standards, Applicants assert, require that the Commission consider (1) whether conversion of the Convertible Notes in the manner proposed by Applicants would be on a basis consistent with the provisions, policies and purposes of the Act, and (2) the extent to which such conversion by the Fund would be on a basis different from or less advantageous than that of the Insurance Company.

Applicants submit that the proposed transaction is consistent with the policies of the Fund, and with the provisions, policies and purposes of the Act, and will be on a basis not less advantageous to the Fund than to the Insurance Company. According to the application, the Fund's investment policy specifies that the principal investments of the Fund will be long-term obligations and, occasionally, preferred stock purchased directly from the issuers, if such obligations or preferred stocks have equity features such as accompanying shares of common stock, securities convertible into such shares, or conversion rights or warrants to purchase such shares. Applicants submit that in order to realize the maximum capital profits on convertible securities, the Fund must convert those securities and sell the common stock received in respect of the conversion, and that, therefore, in seeking to convert the Convertible Notes and sell the Flowers common stock received in respect of such con-

version, the Fund is seeking to achieve its investment objective by realizing the entire capital profit available in respect of the excess of the current value of Flowers common stock over the amount it would receive upon prepayment of its Convertible Notes pursuant to the Note Agreements. Applicants state that the Note Agreements provide that any prepayment on December 8, 1978, would have to be made at a premium of 6.5 percent of the principal amount of the Convertible Notes prepaid, and that, therefore, upon prepayment of the Convertible Notes held by Applicants, they would each receive $3,993,750, plus accured interest on their Convertible Notes. Applicants further submit that if they were to convert their Convertible Notes into Flowers common stock at the conversion price of $10 per share, they would each receive 375,000 shares of such common stock, plus accrued interest on the Convertible Notes. Applicants also submit that on the basis of September stock prices, the Flowers commonstock which Applicants would receive upon conversion of their Convertible notes would be worth approximately $5,910,938. Applicants therefore estimate that if they can convert their Convertible Notes and sell the Flowers common stock received upon such conversion at prices comparable to the September stock prices, they will realize approximately $1,917,188 more by converting their Convertible Notes and selling Flowers common stock than they would receive by accepting prepayment of their Convertible Notes.

The application states that, in converting the Convertible Notes, the intention of the Applicants would be ultimately to dispose of the interest in Flowers represented by the Convertible Notes.

Applicants assert that since the Convertible Notes were purchased in a private placement under section 4(2) of the Securities Act of 1933, they are restricted securities. Applicants state that they have now satisfied the holding-period requirement of Rule 144 with respect to the Convertible Notes and with respect to any Flowers common stock received by them in respect of any conversion of Convertible Notes. Applicants further state that since Flowers is a reporting company under section 13 of the Securities Exchange Act of 1934 and Flowers common stock is traded on the American Stock Exchange, the Insurance Company believes that Applicants would be able to sell Flowers common stock on the American Stock Exchange in compliance with Rule 144. Applicants argue that, on the other hand, there is no public market for the Convertible Notes, and that, moreover, if the Convertible Notes were sold in a private placement, they would be restricted securities in the hands of the purchaser. Thus, Applicants argue, if such purchaser converted the Convertible Notes and received Flowers common stock, he would not be free to sell such common stock under Rule 144 until he had held the Convertible Notes or such common stock for 2 years. Applicants believe, therefore, that they would get a higher price by converting their Convertible Notes and selling Flowers common stock than by selling their Convertible Notes.

Applicants assert that the interests of the Insurance Company and the Fund in Flowers are identical in all respects except that the Insurance Company holds the Promissory Notes and the Fund does not, and that no benefit which might accrue to the Insurance Company as a holder of the Promissory Notes has been a material factor in the decision of Applicants that they will convert their Convertible Notes under the circumstances contemplated by the application. Applicants further state that the conversion of the Convertible Notes will reduce the amount of Flowers outstanding indebtedness by $7,500,000, and that, in the absence of conversion, Flowers indebtedness would be reduced by this amount by Flowers prepayment of the Convertible Notes.

Accordingly, Applicants request that an order be issued, pursuant to the provisions of section 17(d) of the Act and of Rule 17d-1 thereunder, permitting them to convert their Convertible Notes, notwithstanding Paragraph (4) of the Order and ownership by the Insurance Company of the Promissory Notes, on the following conditions:

(1) That the conversion of Convertible Notes by the Insurance Company and the Fund, and each disposition of Flowers common stock received in respect of such conversion, shall be effected in compliance with all terms of the Order other than Paragraph (4) thereof;

(2) That Convertible Notes shall be converted by the Insurance Company and the Fund only with the intention of disposing of the Flowers common stock received in respect of such conversion; and

(3) That at the time of the conversion of Convertible Notes by the insurance Company and the Fund the value of the Flowers common stock to be received upon such conversion (as measured by the closing price of such comon stock on the American Stock Exchange on the day immediately preceding such conversion) shall exceed 106.5 percent of the principal amount of the Convertible Notes converted.

Notice is further given that any interested person may, not later than November 24, 1978, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Managment, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-31544 Filed 11-7-78; 8:45 am]

[8010-01-M]

[Rel. No. 5989; 18-22]

MILBANK, TWEED, HADLEY & McCLOY PARTNERS' RETIREMENT PLAN

Application

OCTOBER 31, 1978.

Pursuant to section 3(a)(2) of the Securities Act of 1933 for an order exempting from the provisions of section 5 of the Act interests or participations in the Milbank, Tweed, Hadley & McCloy Partners' Retirement Plan, notice is hereby given that Milbank, Tweed, Hadley & McCloy (hereinafter referred to as the "Applicant" or the "Firm"), a law firm organized as a partnership under the laws of the State of New York, on October 4, 1978, filed an application for exemption from the registration requirements of the Securities Act of 1933 (the "Act") for participations or interests issued in connection with the Milbank, Tweed, Hadley & McCloy Partners' Retirement Plan (the "Plan"). All interested persons are referred to that document, which is on file with the Commission, for the facts and representations contained therein, which are summarized below.

The Plan covers the Applicant's partners, of whom 51 were eligible to participate, and of whom 38 were active participants, as of December 31, 1977. At December 31, 1977, the aggregate market value of the assets of the Plan was $1,602,464. All partners are eligible to participate in the Plan if they are at least 25 years of age and have completed one year of service with the Firm.

Applicant states that the Plan is of the type commonly referred to as a "Keogh" plan, which covers persons (in this case, Applicant's partners) who are employees within the meaning of section 401(c)(1) of the Internal Revenue Code of 1954, as amended (the "Code"), and therefore, is excepted from the exemption provided by section 3(a)(2) of the Act for interests or participations in employee benefit plans of corporate employers. Section 3(a)(2) of the Act provides, however, that the Commission may exempt from the provisions of section 5 of the Act any interest or participation issued in connection with a pension of profit-sharing plan which covers employees, some or all of whom are employees within the meaning of section 401(c)(1) of the Code, if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant states that the Plan, originally adoptd effective as of January 1, 1968, was amended from time to time and was amended and restated in its entirety, effective as of January 1, 1976, in order to comply with the Employee Retirement Income Security Act of 1974 ("ERISA"). The Internal Revenue Service ("IRS") has issued a ruling dated October 3, 1977, to the effect that the Plan, as so amended and restated, is a qualified plan under section 401(a) of the Code. Applicant makes annual contributions to the Plan on behalf of participants based on a percentage of the participant's share of Firm net income not to exceed $7,500. The Firm proposes to further amend the Plan to provide that active participants may make voluntary contributions to the Plan of not more than 10 percent of such participant's share of Firm net income for all year during which the person has been a participant, subject to certain limitations. Such proposed amendment will be effective as of January 1, 1978, subject to issuance by the IRS of a determination as to the continued qualification of the Plan, as so amended.

Applicant states that because the Plan covers persons, all of whom are employees within the meaning of section 401(c)(1) of the Code, the Plan is not an "employee pension benefit plan" under Title I of ERISA. However, as a qualified Plan under section 401(a) of the Code, the Plan is subject to Title II of ERISA and IRS regulations thereunder. In addition, even though the Plan is not subject to the reporting and disclosure requirements of Title I, the tax provisions of Title II of EIRSA require the filing with the IRS of an annual report with respect to the Plan similar to the annual report required under Title I of ERISA.

Applicant submits that the primary reason for denying a blanket exemption to pension and profit-sharing plans covering self-employed persons was concern on the part of Congress that such plans constitute complex investment vehicles, interests in which could be sold by sponsoring financial institutions to self-employed persons who might not be sophisticed in field or who might be be unable to protect adequately their interests and those of their participating employees. Applicant states that the Plan does not present the risks associated with the sale of interests or participations in multiemployer plans by spronsoring financial institutions with which Congress appeared to be concerned. Applicant further submits that the registration requirement exists at all only because of the Firm does business as a partnership. If it were incorporated, its partners would not be self-employed persons and there would be no question as to availability to question as to the available of the exemption.

Applicant states that the Plan is not a uniform prototype or master plan designed to be marketed by a sponsoring financial institution or promoter to numerous unrelated self-employed persons. The Plan was prepared by attorneys in the Firm and covers only partners of the Firm.

Applicant states that it has employed independent experts to provide investment services with respect to the Plan. The Chase Manhattan Bank, N.A. is trustee (the "Trustee") for the Plan under an agreement of trust dated as of January 1, 1968, as amended (the "Trust Agreement"). Under the Trust Agreement the Trustee has the power in its sole discretion to invest and reinvest Plan assets in any permitted investments as provided therein. Although the Plan and the Trust Agreement permit the assets of the Plan to be invested in any collective trust established and invested by the Trustee for the collective investment of funds of plans qualified under section 401(a) of the Code, the assets of the Plan have not been commingled in collective investment media with the assets of the plans of other employers and Applicant represents that the Trustee has expressed that it has no intention of commingling Trust assets and Applicant has no intention of requesting the Trustee to do so.

Applicant states that it maintains substantial administrative control over the Plan. The Plan provides for the appointment of a Committee consisting of at least three persons each of whom must be a partner in the Firm. The Committee has overall responsibility and authority for administration of the Plan, including construction of the Plan, determinations of questions of fact and law arising under the Plan and authorization of distributions from the trust fund established by the Trustee pursuant to the Plan. The Committee may employ such investment advisers, experts and other persons as it deems appropriate in connection with the administration of the Plan. The Committee has no authority with respect to the acquisition or disposition of Plan assets, such authority being the exclusive responsibility of the Trustee.

Applicant represents that it has not distributed and does not intend to distribute any type of promotional material relating to the Plan and has not made and does not intend to make any solicitation of voluntary contributions under the Plan. The Firm makes available to Plan participants, upon request and without charge, copies of the Plan, the Trust Agreement and monthly summaries of the Trust's investments and furnishes each participant with other descriptive materials relating to various features of the Plan, including annual financial statements of the Plan and monthly statements setting forth the amount of contributions to and the value of each participant's account.

Applicant states that it is engaged in furnishing legal services of a type which necessarily involve financially sophisticated and complex matters and, for that reason as well as the extensive administrative control over the Plan maintained by the Firm, is able to represent adequately the interests of its partners who are participants in the Plan. Applicant further states that in light of the limited number as well as the high degree of sophistication of the participants, the nature of the Plan's interests, and the partners' access of information regarding the interests, participants are able to represent themselves adequately with respect thereto.

Applicant concludes that for the foregoing reasons, granting the requested exemptive orders would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than

November 24, 1978, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his or her interest, the reason for such request and the issues, if any, of fact or law proposed to be controverted, or he or she may request to be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit, or in the case of an attorney at law, by certificate) shall be filed contemporaneously with the request. An order disposing of the matter will be issued as of course following November 24, 1978, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-31545 Filed 11-7-78; 8:45 am]

[8010-01-M]

[Rel. No. 20755; 70-6049]

OHIO POWER CO.

Proposed Extension of Short-Term Borrowing Authorization

NOVEMBER 1, 1978.

Notice is herby given that Ohio Power Co. ("Ohio Power"), an electric utility subsidiary of American Electric Power Co., Inc., a registered holding company, has filed with this Commission a post-effective amendment to its application previously filed and amended pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating section 6(b) of the Act and rules 50(a)(2) and 50(a)(5) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application, as amended by said post-effective amendment, which is summarized below, for a complete statement of the proposed transactions.

By orders dated October 11, 1977, and August 21, 1978 (HCAR Nos. 20206 and 20674), Ohio Power was authorized to issue short-term notes to banks and dealers in commercial paper and demand notes to bank trust departments through December 31, 1978, in the maximum principal amount of $137,000,000 outstanding at any one time, all such indebtedness to mature not later than June 30, 1979.

By post-effective amendment Ohio Power requests that its borrowing authorization of $137,000,000, pursuant to credit arrangements described below, be extended until December 31, 1979, any such indebtedness issued pursuant to such extension to mature not later than June 30, 1980.

Concerning the credit arrangements, it is stated that Ohio Power has lines of credit with 67 banks in an aggregate amount of $305,565,000 with banks of three classes. Each note to be issued a class I bank will mature not more than 270 days after the date of issuance or renewal thereof, and will be prepayable at any time without premium or penalty. Ohio Power's credit arrangements with these banks require it to maintain compensating balances equal to a percentage of the line of credit made available by the bank plus a percentage of any amount actually borrowed (generally not in excess of 10% of the line of credit and 10% of the amount borrowed). In most cases Ohio Power maintains deposit balances for its operational and financial needs in amounts sufficient to satisfy any compensating balances required with respect to borrowings from such banks. Borrowings from a class I bank would generally bear interest at an annual rate not greater than the bank's prime commercial rate in effect from time to time.

Each note to be issued a class II bank will mature not more than 90 days after the date of issuance or renewal thereof, and will be prepayable at any time without premium or penalty. Ohio Power's credit arrangements with these banks require it to maintain compensating balances of 5 percent of the line of credit and to pay a fee equal to 4 percent of the bank's prime commercial rate then in effect on the size of the line. The combination of 5 percent compensating balances and a fee is generally equivalent to compensating balances not in excess of 10 percent of the line of credit made available. In addition, Ohio Power must pay interest at the rate of 108.5 percent of the bank's prime commercial rate then in effect on the borrowings. It is stated that if the balances maintained and the fees paid by Ohio Power with and to the class I and II banks were maintained and paid solely to fulfill requirements for borrowings by Ohio Power, the effective annual interest cost under either such arrangement, assuming full use of the line of credit, would not exceed, 125 percent of the prime commercial rate in effect from time to time, or not more than 12.50 percent on the basis of a prime commercial rate of 10 percent.

With respect to the class III banks, Ohio Power has a money market facility at each of two named banks in an aggregate amount of $25,000,000. These money market facilities do not represent a formal commitment or engagement by these banks to Ohio Power, but represent merely the ability of Ohio Power to request unsecured borrowings, in the form of promissory notes, on a case-by-case basis. These money market facilities are available for unsecured borrowings in domestic dollars and/or in Eurodollars for periods of up to 180 days after the date of issuance, and any such borrowings will be prepayable at any time without premium or penalty. No compensating balances are required. The interest rate, which is presently to be negotiated on a case-by-case basis (using a 360 day year), is pegged to either the London Interbank Offering Rate plus a designated percent, if the borrowings are made in Eurodollars, or to a designated percent of the bank's prime rate, if the borrowings are made in domestic dollars. It is stated that interest rates on these notes will be lower than the effective interest rates for borrowings made from class I and II banks, including the effect of any compensating balances and fees paid.

Ohio Power also has arrangements to issue commercial paper notes in denominations of not less than $50,000 nor more than $5,000,000. Such notes will be of varying maturities with no maturity more than 270 days after the date of issue, and will not be prepayable prior to maturity. The commercial paper notes will be sold directly by Ohio Power to Lehman Commercial Paper Inc. (the "Dealer"), at a discount rate not in excess of the discount rate per annum prevailing at the time of issuance for commercial paper of comparable quality and maturity. No commercial paper notes will be issued having a maturity of more than 90 days at an effective interest cost which exceeds the effective interest cost at which Ohio Power could borrow from banks. The Dealer will reoffer the commercial paper notes to not more than 200 of the Dealer's customers identified and designated in a nonpublic list prepared by the Dealer in advance. It is expected that such customers of the Dealer will hold the commercial paper notes to maturity, but, if any such customer wishes to resell such commercial paper prior to maturity, the Dealer, pursuant to a verbal repurchase agreement, will repurchase such commercial paper sold by it and reoffer it to other customers on its nonpublic list.

Ohio Power also has arrangements to issue demand notes to the trust departments of the Cleveland Trust Co., Cleveland, Ohio, and the Fidelity Bank, Philadelphia, Pa., in the maximum amounts of $10,000,000 and $20,000,000, respectively. It is stated that the bank trust departments have a flow of funds, as fiduciary for various accounts, which would be available for investment in such demand notes. These demand notes will be in denominations of not less than $1,000 and will bear interest at a rate equivalent to not more than the sum of ¼ percent and the highest rate paid daily by General Motors Acceptance Corp. on its commercial paper with a maturity of less than 180 days. Notes issued from January 1 to June 30 will mature July 1 of the same year and those issued from July 1 to December 31 will mature on January 1 of the following year. The bank trust departments will have the right to demand payment at any time, and Ohio Power will have the right to repay, without penalty, all or any part of the principal amount of such demand notes outstanding.

The proceeds from the issue and sale of the notes will be used by Ohio Power to reimburse its treasury for past expenditures made in connection with its construction program and to pay part of the cost of its future construction program. Such construction expenditures for the years 1978 and 1979 are estimated at approximately $197,000,000 and $239,000,000, respectively, exclusive of the cost of the construction program of its subsidiary, Ohio Electric Co. Estimates of this subsidiary's construction expenditures for the years 1978 and 1979 are approximately $8,000,000 and $2,000,000, respectively.

Ohio Power claims exception from the competitive bidding requirements of rule 50 for the proposed issuance of notes to banks and demand notes to bank trust departments pursuant to paragraph (a)(2) thereof. Applicant also requests exception from the competitive bidding requirements of rule 50 for the proposed issue and sale of its commercial paper pursuant to paragraph (a)(5) thereof.

The fees and expenses to be incurred in connection with the proposed transactions will be supplied by amendment. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than November 28, 1978, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application, as amended by said post-effective amendment, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as amended by said post-effective amendment, or as it may be further amended, may be granted as provided in rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-31546 Filed 11-7-78; 8:45 am]

[8010-01-M]

[Admin. Proceeding File No. 3-5569; File No. 81-401]

STP CORP.

Application and Opportunity for Hearing

OCTOBER 31, 1978.

Notice is hereby given that STP Corp. ("Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934 (the "1934 Act") for an order granting Applicant an exemption from filing periodic reports required by the provisions of sections 13 and 15(d) of the 1934 Act.

The Applicant states, in part:

1. On May 11, 1978, Applicant was merged with New STP Corp., and thereby became a wholly-owned subsidiary of Esmark, Inc. Applicant's common stock was delisted from the American Stock Exchange, and its registration under section 12(b) of the 1934 Act was terminated effective May 25, 1978.

Applicant argues that the granting of the exemption would not be inconsistent with the public interest or the protection of investors, in view of the fact that its securities are no longer publicly held.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 500 North Capitol Street, Washington, D.C. 20549.

Notice is further given that any interested person not later than Nov. 27, 1978 may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person for the request, and the issues of fact and law raised by the application which such person desires to controvert. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-31549 Filed 11-7-78; 8:45 am]

[8010-01-M]

[Rel. No. 10459; 811-2406]

ST. PAUL LIFE FUND, INC.

Application

OCTOBER 31, 1978.

Pursuant to section 8(f) of the Act for order declaring that company has ceased to be an investment company, notice is hereby given that St. Paul Life Fund ("Applicant"), an open-end diversified management company registered under the Investment Company Act of 1940 (the "Act"), filed an application on October 23, 1978, for an order of the Commission declaring that Applicant, which sold all its assets to St. Paul Capital Fund, Inc. ("Capital") on September 25, 1978, has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant, a Minnesota corporation, was organized and registered under the Act as an open-end diversified management investment company in 1973. Its registration statement under the Securities Act of 1933 became effective in May, 1974, and at that time it commenced sales of its shares to the public.

According to Applicant, the sale of its assets to Capital was approved by the Board of Directors of both at a meeting on June 14, 1978, and by stockholders of Applicant at a meeting on September 20, 1978.

V 4 3 / 2 1 7 N 0 8 7 8 (IM)

On September 13, 1978, the Commission issued an order (Investment Company Release No. 10404) pursuant to section 17(b) of the Act exempting the sale from the provisions of section 17(a) of the Act. On September 25, 1978, pursuant to an Agreement and Plan of Reorganization, the sale of assets took place; the then stockholders of Applicant received, in exchange for their shares of applicant, shares of Capital having an equivalent aggregate net asset value; and Applicant thereupon ended its existence as a separate corporation.

Applicant states that it has therefore ceased in any operating sense to be an investment company; that it no longer has any assets or liabilities; and that any expenses incurred in connection with the winding-up of its affairs will be borne by its adviser, St. Paul Advisers, Inc.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order and, upon the taking effect of such order, the registration of such company shall cease to be in effect.

Accordingly, Applicant has requested the Commission to issue an order pursuant to section 8(f) of the Act declaring that it has ceased to be an investment company.

Notice is further given that any interested person may, not later than November 27, 1978, at 5:30 p.m. submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit, or in the case of an attorney at law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following November 27, 1978, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-31547 Filed 11-7-78; 8:45 am]

[8010-01-M]

[Admin. Proceeding File No. 3-5549; File No. 81-384]

THE SEVEN-UP CO.

Application and opportunity for hearing

OCTOBER 31, 1978.

Notice is hereby given that the Seven-Up Co. ("7 Up") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") for an order exempting it from the periodic reporting requirements under section 15(d) of the 1934 Act.

7 Up's application discloses in part:

(1) On June 19, 1973, 7 Up was merged into a wholly-owned subsidiary of Philip Morris, Incorporated ("PM").

(2) At that time, PM through its subsidiary owned approximately 97 percent of 7 Up's outstanding shares of common stock, which were acquired in May and June of 1978 in a tender offer for 7 Up shares.

(3) The public shareholders of 7 Up remaining at the merger received cash for their 7 Up shares or exercised their appraisal rights.

(4) PM and 7 Up have made the appropriate filings concerning the tender offer and the merger required under the 1934 Act.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of Commission at 500 North Capitol Street NW., Washington, D.C. 20549.

Notice is further given that any interest person no later than Nov. 27, 1978 may submit to the Commission in writing his views of any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communications or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capital Street NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. At any time after said date, an order granting the application of may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

GEORGE A FITZSIMMONS,
Secretary.

[FR Doc. 78-31548 Filed 11-7-78; 8:45 am]

[8010-01-M]

[Administrative Proceeding File No. 3-5567]

UNION TANK CAR CO.

Application and Opportunity for Hearing

OCTOBER 31, 1978.

Notice is hereby given that Union Tank Car Co. (the "Applicant") has filed an application pursuant to section 310(b)(1)(ii) of the Trust Indenture Act of 1939, as amended (the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of the Northern Trust Co. under an existing indenture, and the proposed trusteeship of the Northern Trust Co. under a proposed indenture, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Northern Trust Co. from acting as trustee under such indentures.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire a conflicting interest (as defined in such section) it shall within 90 days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such section provides, in effect, with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same obligor are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture under which other securities of the same obligor are outstanding, if the obligor shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under such qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under either of such indentures.

The Applicant alleges that:

1. The Applicant desires to appoint the Northern Trust Co. to act as Trustee under the proposed Series 16 Equipment Trust Agreement.

2. The Northern Trust Co. is presently acting as Trustee under the Applicant's Series 4 Equipment Trust Agreement, which is one of the Applicant's 15 presently outstanding issues of Equipment Trust Certificates. The aggregate principal amount of Equipment Trust Certificates outstanding under the Series 4 Equipment Trust as of August 31, 1978, was $13,979,000.

3. The Series 4 Equipment Trust Certificates issued under the present trusteeship of the Northern Trust Co. and the Proposed Series 16 Equipment Trust Certificates for which it is proposed shall act as Trustee, are secured by a separate lot of identified railroad tank cars, so that, should the Trustee have occasion to proceed against the security under either one of the Equipment Trusts, such action would not affect the security, or the use of any security, under the other Equipment Trust. Thus, the existence of the other trusteeship should in no way inhibit or discourage the Trustee's actions.

4. The Applicant is not in default under any of its Equipment Trust obligations.

The Applicant has waived notice of hearing, hearing, and any and all rights to specify procedures under the Rules of Practice of the Commission with respect to the application.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application, which is a public document on file in the offices of the Commission at 500 North Capitol Street NW., Washington, D.C. 20549.

Notice is further given that any interested person may not later than *November 25, 1978*, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to contravert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and the interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-31550 Filed 11-7-78; 8:45 am]

[8010-01-N]

[Admin. Proceeding File No. 3-5564; File No. 81-398]

WELLS, RICH, GREENE, INC.

Application and Opportunity for Hearing

OCTOBER 31, 1978.

Notice is hereby given that Wells, Rich, Greene, Inc. ("Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act") for exemption from the filing requirements of sections 13 and 15(d) of the 1934 Act.

The Application states in part:

(1) The Applicant is a New York corporation subject to the reporting provisions of sections 13 and 15(d) of the 1934 Act;

(2) As a result of a merger in November 1977, Applicant currently has 28 common stockholders, all of whom are directors, officers or members of their immediate families; and

(3) There is no public market for Applicant's securities.

In the absence of an exemption, Applicant is required to file certain reports with the Commission pursuant to Sections 13 and 15(d) of the 1934 Act, including an annual report on Form 10-K for the fiscal year ended October 31, 1978. Applicant argues that no useful purpose would be served in filing the required periodic reports.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the office of the Commission at 500 North Capitol Street, Washington, D.C. 20549.

Notice is further given that any interested person not later than November 27, 1978 may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and order issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-31551 Filed 11-7-78; 8:45 am]

[8025-01-M]

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 1543]

CALIFORNIA

Declaration of Disaster Loan Area

Los Angeles County and adjacent counties within the State of California constitute a disaster area because of damage resulting from a fire beginning on October 23, 1978. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on January 2, 1979, and for economic injury until the close of business on August 1, 1979, at:

Small Business Administration,
District Office,
350 South Figueroa Street—6th Floor,
Los Angeles, Calif.

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: November 1, 1978.

A. VERNON WEAVER,
Administrator.

[FR Doc. 78-31586 Filed 11-7-78; 8:45 am]

[8025-01-M]

[Declaration of Disaster Loan Area No. 1539]

LOUISIANA

Declaration of Disaster Loan Area

The following three parishes and adjacent parishes within the State of Louisiana constitute a disaster area as a result of natural disasters as indicated:

Parish	Natural disaster(s)	Date(s)
Franklin	drought	June 1, 1978-August 28, 1978
Madison	drought	June 1, 1978-September 30, 1978
Richland	drought	June 1, 1978-September 13, 1978

Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on May 1, 1979, and for economic injury until the close of business on August 1, 1979, at:

Small Business Administration,
District Office,
Plaza Tower,

1001 Tower—17th Floor,
New Orleans, La. 70113

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: November 1, 1978.

A. VERNON WEAVER,
Administrator.

[FR Doc. 78-31587 Filed 11-7-78; 8:45 am]

[4710-02-M]

DEPARTMENT OF STATE

Agency for International Development

[Delegation of Authority 27]

DIRECTOR: OFFICE OF PERSONNEL AND TRAINING

Delegation of Authority

Pursuant to the authority delegated to me by Delegation of Authority No. 104, as amended, from the Secretary of State dated November 13, 1961 (26 FR 10608), I hereby direct that Delegation of Authority No. 27 be, and it is hereby further amended, as follows:

Section I. The Director, Office of Personnel and Training, is hereby authorized to exercise the following authorities with respect to all personnel of the Agency whether assigned to the United States or abroad:

1. To employ, appoint, detail, or assign personnel to carry out functions under the Foreign Assistance Act of 1961, pursuant to sections 625(a), 625(d), 626(a), 626(c), 627, and 628 of that Act, and section 536 of the Mutual Security Act of 1954; to classify Foreign Service positions in the appropriate class, and to authorize the renewal of the employment of persons as experts and consultants pursuant to section 626(a) of the Foreign Assistance Act of 1961;

2. In accordance with section 625(d)(2) of the the Foreign Assistance Act of 1961 to utilize such authority contained in the Foreign Service Act of 1946, including authority to appoint and assign personnel for the duration of operations under the Foreign Assistance Act, as is delegated to the Administrator by Delegation of Authority No. 104 from the Secretary of State, and to exercise the authority contained in the third proviso thereof to initially assign personnel for duty within the United States, and to make the requisite determination that such assignment is important for the purposes of the Act;

3. In accordance with section 625(e) of the Act, the following:

(a) to prescribe by regulation standards or other criteria for maintaining adequate performance levels for personnel appointed or assigned pursuant to section 527(c)(2) of the Mutual Security Act of 1954 or section 625(d)(2) of the Foreign Assistance Act, and with respect to persons to be compensated at rates in excess of those provided for GS-15 to sign and issue the formal notification (Standard Form 50) covering the approved personnel action of such persons;

4. In accordance with section 625(b) of the Foreign Assistance Act of 1961, to appoint, compensate or remove without regard to the provisions of any law such personnel as are authorized to be employed and compensated at rates not in excess of those provided for grade 15 of the general schedule established by the Classification Act of 1949, as amended; and with respect to any of the persons authorized to be employed and compensated at rates higher than those provided for grade 15 of the General Schedule established by section 5332 of Title 5 of the United States Code the authority (1) to appoint those personnel transferring from appointment under sections 631 (b) and (c) of the Act, and (2) to remove those persons in cases of death, resignation, or retirement, except trial retirement;

5. To authorize or establish rates of compensation for personnel employed pursuant to section 625(d) and section 626(a) of the Foreign Assistance Act of 1961, as amended;

6. To place positions in the appropriate class and grade in accordance with the Classification Act of 1949, as amended, for positions so subject, and to promote and grant step increases, including quality increases, for personnel serving in such positions in accordance with the regulations prescribed by the Civil Service Commission;

7. To detail or transfer personnel in accordance with the Federal Employees International Organization Service Act of 1958 (Pub. L. 85-795), and implementing regulations of the Civil Service Commission;

8. To enter into training agreements with departments and agencies of the Government and to authorize training of employees in accordance with authority contained in the Government Employees Training Act (Pub. L. 85-507), Executive Order 10800, and implementing regulations of the Civil Service Commission, and to approve, in connection with said Act and regulations, and in accordance with section 636(e) of the Foreign Assistance Act of 1961, the acceptance of awards, contributions, and payments in connection with authorized training;

9. To authorize and approve leave as provided for in the Annual and Sick Leave Act of 1951, as amended, and in implementing regulations of the Civil Service Commission, including authority to approve leave without pay, and to approve leaves of absences for

Chiefs of Mission class 2, class 3, and class 4;

10. To authorize and approve travel, transportation, and storage of effects, including motor vehicles, and related expenses, for Foreign Service employees, including Chiefs of Mission class 3 and 4, and their dependents;

11. To authorize, as appropriate, and to approve travel and transportation of effects, including related expenses for eligible domestic employees, in accordance with regulations including those of other agencies, where appropriate;

12. To administer oaths of office;

13. To authorize preemployment invitational travel for non-U.S. Government personnel;

14. In accordance with the Standardized Regulations (Government Civilians, Foreign Areas), to grant post differential; quarters, cost-of-living and representation allowances to eligible overseas personnel; to authorize payments, including advance payments, during evacuation, and special allowances, as appropriate, in connection therewith; to authorize payment of, or reimbursement for, official residence expenses to eligible Foreign Service personnel; and to exercise the authority vested in "head of agency," under any provision of such regulations;

15. To exercise the authority relating to personnel delegated to the Administrator of AID by the Secretary of State under the following sections of the Delegation of Authority No. 104 of November 3, 1961:

(a) Section 2(a)(7) relating to functions conferred upon the Secretary of State under any provision of law pertaining specifically or generally applicable to Foreign Service Reserve Officers, Foreign Service Staff Officers, and employees, and alien clerks and employees;

(b) Section 2(b)(4) authority to prescribe or issue in pursuance of the Foreign Service Act of 1946 and the Act, such regulations, orders, and instructions, as may be incidental to, or necessary for, or desirable in connection with, the carrying out of the provisions of section 625(d)(2) of the Act or provisions of Delegation of Authority No. 104;

(c) Section 2(d) relating to the exercise by the Administrator of the functions delegated pursuant to section 625(d)(1) of the Foreign Assistance Act of 1961, as amended, as consists of authorization of rates of compensation for employees of agencies of the U.S. Government including AID; and

(d) Section 6(d) to make the designations and standards provided for by section 625(g) of the Foreign Assistance Act of 1961, as amended, for Foreign Service personnel carrying out functions under the Foreign Assistance Act;

16. To convert, and authorize the conversion of, Foreign Service employees with "Limited" appointments to appointments without limitations;

17. To exercise custody over, and to provide for the control and maintenance of official personnel folders of all employees in according with the Civil Service regulations;

18. To discipline, to terminate, to separate, or to reduce in force any employee in accordance with applicable law and implementing regulations prescribed by Executive order or the Civil Service Commission;

19. To sign and issue the formal notification (Standard Form 50) covering the approved personnel action of persons to be employed or continued in employment pursuant to section 631 of the Foreign Assistance Act of 1961, as amended, and to approve the grant of step increases for such personnel;

20. To authorize the employment or assignment of officers or employees by agencies of the U.S. Government pursuant to section 625(d)(1) of the Foreign Assistance Act of 1961, as amended, and when agreed to by AID and another U.S. Government agency, to authorize and approve for personnel of such agency and their dependents travel, transportation, and storage of effects, including motor vehicles, and related expenses;

21. In accordance with sections 631 (b) and (c) of the Act, the authority to approve removals for the purpose of appointment under section 625(b), and to remove in the case of death, resignation, or retirement, except trial retirement, persons employed as Chief of Mission, Deputy Chief of Mission, AID Representative, and the Chairman of the Development Assistance Committee of the Organization for Economic Cooperation and Development;

22. To perform so much of the functions under Title VIII of the Foreign Service Act of 1946, as amended, as relate to establishing and maintaining retirement records for personnel participating in the Foreign Service retirement and disability system under section 625(k) of the Foreign Assistance Act of 1961, as amended, and for transferring such records to the Department of State upon the separation, retirement or death of such personnel;

23. To approve, in acordance with section 636 of the Foreign Service Act of 1946, as amended and 3 FAM 670 et seq., the voluntary retirement of personnel participating in the Foreign Service retirement and disability system, subject to the reservations set forth in section III;

24. To extend the service, pursuant to section 625(k)(6) of the Foreign Assistance Act of 1961, as amended and 3 FAM 670 et seq., of personnel participating in the Foreign Service retirement and disability system for a period of time not to exceed 5 years beyond mandatory retirement age, subject to the reservations set forth in section III.

Section II. The Administrator for Near East, the Assistant Administrator for Africa, the Assistant Administrator for Asia, the Assistant Administrator for Latin America, and the Auditor General, each for the countries or areas within their responsibility, are hereby authorized to exercise the following authorities:

1. To approve consultation in AID/W for Foreign Service personnel, including Mission Directors, Deputy Mission Directors, and AID Representatives;

2. To approve leaves of absence for Mission Directors, including Chiefs of Mission class 3 and class 4, and AID Representatives;

3. To authorize salary step increases for persons serving pursuant to section 631 of the Foreign Assistance Act of 1961, as amended.

Section III. The following functions are specifically reserved to the Administrator:

1. In accordance with section 624(b) of the Foreign Assistance Act of 1961, the authority to fix the rate of compensation, to fix the order of succession, and to designate the title of, any officer authorized to be appointed by and with the advice and consent of the Senate pursuant to section 624(a) of the Foreign Assistance Act of 1961;

2. In accordance with section 625(b) of the Act, the authority to appoint, compensate, and remove any of the persons authorized to be employed and compensated at rates higher than those provided for grade 15 of the General Schedule established by section 5332 of Title 5 of the United States Code. Notwithstanding this reservation, the Director, Office of Personnel and Training, may exercise those authorities set forth in subsections 4 and 21 of section I of this Delegation of Authority;

3. In accordance with sections 631 (b) and (c) of the Act, the authority to approve the appointment, promotion, extension of tours beyond 3 months, transfer, and removal of persons employed as Chief of Mission, Deputy Chief of Mission, AID Representative, and the Chairman of the Development Assistance Committee of the Organization for Economic Cooperation and Development, including the authority to set or approve the compensation and allowances to be paid such personnel. Notwithstanding this reservation, the Director, Office of Personnel and Training, may exercise those authorities set forth in subsections 4 and 21 of this Delegation of Authority;

4. To approve, in accordance with section 636 of the Foreign Service Act of 1946, as amended, and 3 FAM 670 et seq., the voluntary retirement of persons serving under the Executive Schedule (5 U.S.C. 5311 et seq.) and persons employed as Chief of Mission, Deputy Chief of Mission, AID Representative and the Chairman of the Development Assistance Committee of the Organization for Economic Cooperation and Development;

5. To extend the service, pursuant to section 625(k)(6) of the Foreign Assistance Act of 1961, as amended, and 3 FAM 670 et seq., of persons serving under the Executive Schedule (5 U.S.C. 5311 et seq.) and persons employed as Chief of Mission, Deputy Chief of Mission, AID Representative and the Chairman of the Development Assistance Committee of the Organization for Economic Cooperation and Development;

6. To extend U.S. rotation assignments of Foreign Service personnel beyond 8 years.

Section IV. General Provisions:

1. The authorities delegated in sections I and II shall be exercised in accordance with applicable law, AID Regulations, directives, or instructions, and regulations or instructions of other agencies, where applicable;

2. To the extent permitted by law or by regulation of the competent authority, there is hereby delegated to the Director, Office of Personnel and Training, the authority vested in the Administrator as "head of agency" by statute or regulation, including those of other agencies, relating to any aspect of personnel authority or administration, including authority to prescribe regulations and to establish policy and procedures relating thereto;

3. The officers to whom authority has been delegated by this Delegation may, to the extent consistent with law, delegate or assign any of the functions delegated or assigned by this Delegation of Authority, and may authorize the subordinates to whom functions are delegated or assigned successively to redelegate or reassign any of such functions;

4. Notwithstanding any provision of this Delegation of Authority, the Administrator may at any time exercise any function delegated by this Delegation of Authority;

5. Reference to statutes, directives, orders, Delegations of Authority, and regulations shall be deemed to be references to such statutes, Executive Orders, Delegations of Authority regulations, and directives as amended from time to time;

6. There is hereby rescinded:

(a) Redelegation of Authority 114-1 to the Director, Office of Personnel

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and Manpower, dated March 7, 1974 from the Assistant Administrator for Program and Management.

7. This Delegation of Authority shall be effective immediately and shall continue in effect until such time as it is modified or revoked by me.

Dated: October 25, 1978.

JOHN J. GILLIGAN,
Administrator.

NOTE.—Delegation of Authority No. 27 was originally issued effective April 15, 1963;
Revision No. 1 was effective November 5, 1963;
Revision No. 2 was effective May 18, 1964;
Revision No. 3 was effective December 8, 1964;
Revision No. 4 was effective October 7, 1966;
Revision No. 5 was effective February 19, 1968 (33 FR 3441);
Revision No. 6 was effective September 12, 1968 (33 FR 14179);
Revision No. 8 was effective March 6, 1974 (39 FR 10165); and
Revision No. 9 was effective October 12, 1975 (40 FR 48955).
Delegations of Authority Nos. 112 and 113, each effective October 12, 1975 (40 FR 48955 and 49582, respectively), substituted "Assistant Administrator for Near East" for "Assistant Administrator for Near East and South Asia" and "Assistant Administrator for Asia" for "Assistant Administrator for East Asia."

This delegation embraces all textual changes made by the above revisions.

[FR Doc. 78-31579 Filed 11-7-78; 8:45 am]

[1505-01-M]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 66 (Rev. 8), Chief Counsel's Order No. 1031.2B]

REGIONAL COMMISSIONER

Delegation of Authority

Correction

In FR Doc. 78-28578 appearing on page 46916 in the issue of Wednesday, October 11, 1978, in the heading, in small print, the delegation order number should read as it appears above.

[4830-01-M]

EMPLOYEE BENEFIT PLANS

Proposed Exemption Relating to a Transaction Involving the Henry E. Storino, M.D., Self-Employed Retirement Plan (Application No. S-1021)

AGENCY: Department of the Treasury/Internal Revenue Service.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Internal Revenue Service (the Service) of a proposed exemption from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the sale of certain real estate from the Henry E. Storino, M.D., Self-Employed Retirement Plan's trust (the Plan) to Dr. Henry E. Storino. The proposed exemption, if granted, would affect the participant and beneficiaries of the Plan and other persons participating in the proposed transaction.

DATES: Written comments and requests for a public hearing must be received by the Internal Revenue Service on or before December 8, 1978.

ADDRESS: All written comments and requests for a hearing (at least six copies) should be sent to: the Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, attention: E:EP:PT:1, Application No. S-1021. The application for exemption and the comments received will be available for public inspection at the Internal Revenue Service National Office Reading Room, 1111 Constitution Avenue, NW., Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

Pete Knox of the Internal Revenue Service, 202-566-6761. This is not a toll free number.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Service of a proposed exemption from the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by Dr. Storino pursuant to section 4975(c)(2) of the Code and in accordance with the procedures set forth in Rev. Proc. 75-26, 1975-1 C.B. 722.

SUMMARY OF FACTS AND REPRESENTATIONS

The application contains facts and representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Service for the complete representations of the applicant.

1. Dr. Henry E. Storino is a self-employed physician in Portland, Oregon. He has had no common law employees since November 1, 1977, and since then has been the sole participant in the Plan. Prior to November 1, 1977, the Plan had two participants, Dr. Storino and Mrs. Phillis Jones. Mrs. Jones was terminated from her job on November 1, 1977, and was cashed out of the Plan on February 7, 1978 for $4,414.59. The participants' respective interests in the Plan were maintained in separate accounts.

2. The Plan is a part of the First State Bank of Oregon Master Self-Employed Retirement Plan and Trust, a profit sharing Keogh plan. The First State Bank of Oregon is the trustee, although Dr. Storino makes all investment decisions for the Plan. As of December 30, 1977, the Plan had net assets of $45,101.61. The Plan's investments other than real estate, primarily stocks, bonds and bank accounts, have yielded a return of from 4.5 percent to 9.67 percent.

3. Only July 8, 1977, Dr. Storino caused a special sub-account of his separate Plan account to purchase Lot No. 469 in Salisham Hills I, Lincoln County, Oreg. (Lot No. 469) for $18,500. The Plan paid twenty percent down and took a 10 year, 9 percent mortgage on the remainder. The Plan has incurred the following expenses, as of June 19, 1978, with regard to this lot: closing costs of $34.27, appraisal fee of $150.00, interest of $519.83, property taxes of $238.01 and yearly maintenance fee of $174.60. No funds from Mrs. Jones' account were involved with Lot No. 469.

4. The Plan purchased the property both as an investment and to hold in order that Dr. Storino might build a residence on it in the future. Lot No. 469 is a vacant, unimproved site in a residential development overlooking the Oregon coast. At the time of purchase the lot comprised about 46 percent of total Plan assets.

5. Dr. Storino has submitted one appraisal, one reappraisal and one opinion of value of Lot No. 469. One appraisal by G. W. Biddle, a real estate appraiser from Lincoln City, Oreg., estimated that the lot's fair market value was $18,250 as of May 15, 1978. This appraisal gave no indication of the method used to arrive at this dollar valuation. On June 24, 1978, G. W. Biddle, at the request of Dr. Storino, reappraised Lot No. 469 and re-estimated its May 15, 1978, fair market value to be $19,500. However, this appraisal also did not indicate the method used to arrive at the dollar valuation. Dr. Storino also submitted a letter of opinion, dated January 28, 1978, from Gary A. Hilbert, of Salishan Hills, Inc., in which he opined that Lot No. 469 could be expected to sell within a reasonably short time for a price of $23,500. Salishan Hills, Inc., has sold 130 lots in Salishan Hills I, and has resold 3 lots as an agent for individuals, within the 19 months preceding January 28, 1978. Mr. Hilbert based his opinions on this marketing experience of Salishan Hills, Inc. The Plan has made no attempts to sell Lot No. 469 to any unrelated parties.

6. Dr. Storino has represented that his offer to pay $23,500 in cash is at least equal to or greater than the fair market value of Lot No. 469. In addition, Dr. Storino will have Mr. Gary A. Hilbert reappraise the lot within 30 days prior to that proposed sale and Dr. Storino will pay the greater of $23,500 or the then current appraised value.

7. The proposed sale would be beneficial to the Plan since it would remove a non-income producing asset from the Plan at a gain to the Plan of approximately 26 percent on its initial investment and of almost 20 percent on its initial investment plus carrying costs. The cash generated would also improve plan liquidity and provide funds for investing in more diversified, income producing investments.

NOTICE TO INTERESTED PERSONS

Written notice shall be given to all interested persons. The interested persons include the participant in the Plan and the beneficiaries of the trust. The notice shall be hand delivered to the interested persons within 10 days after the notice of the proposed exemption is published in the FEDERAL REGISTER. The notice shall contain a copy of the notice of proposed exemption as published in the FEDERAL REGISTER and it shall inform the interested persons of their right to comment and their right to request a hearing within the period set forth in the notice of proposed exemption.

GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 4975(c)(2) of the Code does not relieve a disqualified person from certain other provisions of the Code, including any prohibited transactions provisions to which the exemption does not apply, nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) The proposed exemption, if granted, will not extend to transaction prohibited under section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 4975(c)(2) of the Code, the Service must find that the exemption is administratively feasible, in the interests of the Plan and of its participants and beneficiaries, and protective of the rights of the participants and beneficiaries of the Plan;

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) This document does not meet the criteria for significant regulations set forth in paragraph 8 of the proposed Treasury directive appearing in the FEDERAL REGISTER for Wednesday, May 24, 1978 (43 FR 22319).

WRITTEN COMMENTS AND HEARING REQUESTS

All interested persons are invited to submit written comments on requests for a hearing on the proposed exemption to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

PROPOSED EXEMPTION

Based on the facts and representation set forth in the application, the Service is considering granting the requested exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in Rev. Proc. 75-26. If the exemption is granted, the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale of Lot No. 469, Salishan Hills I, Lincoln County, Oreg., from the Plan to Dr. Henry E. Storino for $23,500, in cash, provided, however, that the sale price is not less than the fair market value of the property. The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 31st day of October, 1978.

FRED J. OCHS,
Director, Employee Plans
Divison, Internal Revenue Service.

[FR Doc. 78-31552 Filed 11-7-78; 8:45 am]

[4810-22-M]

Office of the Secretary

LIGHT BULBS FROM HUNGARY

Termination of Investigation Based on No Likelihood of Injury

AGENCY: U.S. Treasury Department.

ACTION: Termination of antidumping investigation.

SUMMARY: This notice is to advise the public that an antidumping investigation involving light bulbs from Hungary is being terminated. The investigation is being terminated as the result of a finding by the U.S. International Trade Commission that there is "no reasonable indication of injury or likelihood of injury" to the domestic industry caused by imports of the subject merchandise from Hungary.

EFFECTIVE DATE: November 8, 1978.

FOR FURTHER INFORMATION CONTACT:

David P. Mueller, U.S. Customs Service, Office of Operations, Duty Assessment Division, 1301 Constitution Avenue NW., Washington, D.C. 20229, 202-566-5492.

SUPPLEMENTARY INFORMATION: On August 7, 1978, an "Antidumping Proceeding Notice" was published in the FEDERAL REGISTER with respect to light bulbs from Hungary (43 FR 32293).

The notice stated that Treasury had concluded that there was substantial doubt of injury to, or likelihood of injury to, an industry in the United States by reason of imports of light bulbs from Hungary. Accordingly, the U.S. International Trade Commission was advised of such doubt pursuant to section 201(c)(2) of the Antidumping Act of 1921, as amended (19 U.S.C. 160(c)(2)) (hereinafter referred to as the "Act").

The U.S. International Trade Commission has determined, and on September 5, 1978, it advised the Secretary of the Treasury pursuant to section 201(c)(2) of the Act (19 U.S.C. 160(c)(2)), that there is no reasonable indication that an industry in the United States is being, or is likely to be, injured, or is prevented from being established, by reason of the importation of light bulbs, alleged to be sold at less than fair value, from Hungary into the United States. This determination was published in the FEDERAL REGISTER of September 13, 1978 (43 FR 40937).

Accordingly, the antidumping investigation with respect to light bulbs from Hungary is hereby terminated.

as provided for in section 201(c)(2) of the Act (19 U.S.C. 160(c)(2)).

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

OCTOBER 30, 1978.

[FR Doc. 78-31517 Filed 11-7-78; 8:45 am]

[4810-25-M]

TREATIES AND NEGOTIATIONS WITH FOREIGN COUNTRIES

Announcement of Status

The Treasury Department today announced the countries with which it is engaged in tax treaty negotiations, and invited comments.

The Treasury Department has a general policy of announcing initial income tax treaty negotiations with particular countries, and giving an opportunity for comment. However, negotiations are sometimes scheduled on short notice, making such an announcement impractical, and often negotiations extend over a period of several years, so that earlier comments no longer reflect current problems. In order to give better guidance and in order to obtain comments from interested persons, the Treasury Department today announced the status of treaties and negotiations with the following countries:

I. INCOME TAX TREATIES

Sent to Senate for advice and consent to ratification; date transmitted

Morocco—May 1978.
The Philippines—December 1976.
South Korea—September 1978.[1]

Negotiations completed but text not yet signed; date signature expected

France (Protocol)—1978.
Hungary—1978.
Republic of China—Early 1979.

Ongoing negotiations; date of next meeting (or last discussions)

Argentina—February 1979.
Bangladesh—December 1978.
Brazil—Late 1978 or early 1979.
Canada—(September 1978).
Cyprus—(June 1978).
Denmark—(September 1978).
Egypt—November 1978.
Germany—November 1978.
Indonesia—(Correspondence, October 1978).
Israel—November 1978.
Italy—(May 1978).
Jamaica—(May 1978).
Malta—Spring 1979.
Nigeria—Not Available.[2]

[1] Approved by Senate Foreign Relations Committee in March 1978 but not voted on by full Senate, so must be reconsidered by Foreign Relations Committee in next Congress.

[2] Nigeria terminated the existing treaty by diplomatic notice given in June 1978. The termination will be effective for assessment years beginning on or after April 1, 1979.

United Kingdom—(October 1978).

Negotiations initiated but currently inactive; date of last meeting

Australia—July 1977.
Botswana—August 1974.
India—December 1977.
Iran—April 1975.
Kenya—January 1977.
The Netherlands—December 1972.
Singapore—April 1977.
Spain—March 1977.
Sri Lanka—June 1977.
Tunisia—September 1975.
Yugoslavia—February 1976.
Zambia—May 1974.

II. ESTATE TAX TREATIES

Denmark—Negotiations held in September 1978.
France—Signature expected 1978.
Germany—Negotiations in advanced state but currently inactive.
Luxembourg—Negotiations in advanced state but currently inactive.
United Kingdom—Signed October 19, 1978.

The Treasury Department would welcome amendments to previous comments, or new or supplemental comments concerning negotiations with those countries. Comments should be sent in writing to H. David Rosenbloom, International Tax Counsel, U.S. Treasury Department, Room 3064, Washington, D.C. 20220. In addition, the Treasury Department always welcomes comments with respect to the advisability of entering into or revising tax treaties with any country.

Dated: November 3, 1978.

DONALD C. LUBICK,
Assistant Secretary for Tax Policy.

[FR Doc. 78-31516 Filed 11-7-78; 8:45 am]

[4810-40-M]

[Supplement to Department Circular, Public Debt Series—No. 26-78]

TREASURY NOTES

Series B—1988

NOVEMBER 3, 1978.

The Secretary of the Treasury announced on November 2, 1978, that the interest rate on the notes designated Series B-1988, described in Department Circular, Public Debt Series, No. 26-78, dated October 26, 1978, will be 8¾ percent. Interest on the notes will be payable at the rate of 8¾ percent per annum.

PAUL H. TAYLOR,
Fiscal Assistant Secretary.

SUPPLEMENTARY STATEMENT

The announcement set forth above does not meet the Department's criteria for significant regulations and, accordingly, may be published without compliance with the Departmental procedures applicable to such regulations.

[FR Doc. 78-31537 Filed 11-7-78; 8:45 am]

[8320-01-M]

VETERANS ADMINISTRATION

STATION COMMITTEE ON EDUCATIONAL ALLOWANCES

Meeting

Notice is hereby given pursuant to Section V, Review Procedure and Hearing Rules, Station Committee on Educational Allowances that on Monday, December 4, 1978, at 1 p.m., the Des Moines Regional Office Station Committee on Educational Allowances shall at Room 1025, Federal Building, 210 Walnut Street, Des Moines, Iowa 50309, conduct a hearing to determine whether Veterans Administration benefits to all eligible persons enrolled in Des Moines Flying Service, Des Moines Municipal Airport, Des Moines, Iowa 50321, should be discontinued, as provided in 38 CFR 21.4134, because a requirement of law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the committee at that time and place.

Dated: November 1, 1978.

ROBERT L. WINTERS,
Director.

[FR Doc. 78-31580 Filed 11-7-78; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

AGRICULTURAL COOPERATIVE

Notice to the Commission of Intent To Perform Interstate Transportation for Certain Nonmembers

NOVEMBER 3, 1978.

The following Notices were filed in accordance with section 208(b)(5) of the Interstate Commerce Act provided for under 49 CFR 1047.23. These rules provide that agricultural cooperatives intending to perform nonmember, non-exempt, interstate transportation must file the Notice, Form BOp 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change. The name and address of the agricultural cooperative, the location of the records, and the name and address of the person to whom inquiries and correspondence should be addressed, are published here for interested persons. Submission of information that could have bearing upon the propriety of a filing should be directed to the Commission's Bureau of Investigations and Enforcement, Washington, D.C. 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C.

Sutherland Farmers Cooperative Co., Box 100, Sutherland, Iowa 51058, Gary Masters, Box 100, Sutherland, Iowa 51058.

H. G. HOMME, JR.,
Acting Secretary.

[FR Doc. 78-31592 Filed 11-7-78; 8:45 am]

[1505-01-M]

[Notice No. 182]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

Correction

In FR Doc. 78-28150 appearing at page 46411 in the issue for Friday, October 6, 1978, in the middle column of page 46415, in the eleventh line of MC 145183TA, the abbreviation "MI" should have read "MS".

[1505-01-M]

[Notice No. 183]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

Correction

In FR Doc. 78-28151 appearing at page 46408 in the issue for Friday, October 6, 1978, in the middle column of page 46410 "MC 14405 (Sub-49TA)" should have read "MC 134405 (Sub-49TA)".

V 4 3 / 2 1 7

sunshine act meetings

This section of the FEDERAL REGISTER contoins notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409), 5 U.S.C. 552b(e)(3).

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[6320-01-M]

1

CIVIL AERONAUTICS BOARD.

[M-175 Amdt 4; Nov. 2, 1978]

Notice of Addition of Item to the November 2, 1978 Meeting Agenda

TIME AND DATE: 10 a.m., November 2, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 2a. Amendment of rules applicable to unused authority proceedings (memo No. 8247-A, OGC, BPDA, BAS).

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: The unused authority provisions of the Airline Deregulation Act of 1978 requires the Board to issue certificates to certain applicants next week. These certificates cannot be issued until the Board has obtained clearance from the General Accounting Office of the application requirements included in Subpart R of Part 302 of the Board's Rules of Practice. (Subpart R was adopted in PR-180, Oct. 18, 1978.) The GAO will not approve those requirements unless they have been amended as set forth in this item. Accordingly, the following Members voted that agency business require the addition of 2a to the November 2, 1978, meeting and that no earlier announcement of this addition was possible:

Chairman Marvin S. Cohen.
Member Richard J. O'Melia.
Member Elizabeth E. Bailey.
Member Gloria Schaffer.

[S-2253-78 Filed 11-6-78; 10:34 am]

[6320-01-M]

2

CIVIL AERONAUTICS BOARD.

[M-176; Nov. 2, 1978]

TIME AND DATE: 10 a.m., November 9, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

1. Ratification of items adopted by notation.
2. Docket 21670, *Frontier Airlines Subsidy Mail Rates* (Instructions to Staff).
3. Docket 20051, Proposed waiver of *ex parte* rule to allow staff discussions with FAA and DOT on the application of Airline Scheduling Committees (Memo No. 8268, OGC).
4. Proposed waiver of *ex parte* rule to allow staff discussions with FAA and DOT on the Board's prospective scheduling of route cases (Memo No. 8269, OGC).
5. Docket 33635, Western's and Southern's requests to designate the hyphenated points in Miami and Fort Lauderdale as coterminals. (BPDA).
6. Docket 31977, Application of International Developers, Inc. (Japan) d.b.a. Toyo World Enterprises of California, Inc. for indirect foreign air carrier permit (BIA).
7. Final rules amending Part 384 *Statement of Organization Delegation of Authority and Availability of Records and Information* and Part 385 *Delegations and Review of Action Under Delegation; Nonhearing Matters.* (Memo No. 8266, OGC, BAS, BCP, OMD).

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, 202-673-5068.

[S-2254-78 Filed 11-6-78; 10:34 am]

[6570-06-M]

3

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

TIME AND DATE: 1:30 p.m. (eastern time), Thursday, November 9, 1978.

PLACE: Commission Conference Room, No. 5240, on the fifth floor of the Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C. 20506.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED: Open to the public:

1. Proposed procedures for the Office of Interagency Coordination.
2. Proposed designation of the Tennessee Commission for Human Development as a 706 Agency.
3. Freedom of Information Act Appeal No. 78-8-FOIA-209, concerning a request by the respondent in a Commissioner's charge for information which served as the basis for, or is otherwise related to, that charge.
4. Report on Commission Operations by the Executive Director.

Closed to the public:

Litigation Authorization; General Counsel Recommendations: Matters closed to the public under the Commission's regulations at 29 CFR 1612.13.

A majority of the entire membership of the Commission determined by recorded vote that the business of the Commission required that this meeting be held and that no earlier announcement was possible.

In favor of change: Eleanor Holmes Norton, Chairman, Daniel E. Leach, Vice Chairman, J. Clay Smith, Jr. Commissioner.

NOTE.—Any matter not discussed or concluded may be carried over to a later meeting.

CONTACT PERSON FOR MORE INFORMATION:

Marie D. Wilson, Executive Officer, Excecutive Secretariat, at 202-634-6748.

This notice is issued November 3, 1978.

[S-2257-78 Filed 11-6-78; 10:34 am]

[6712-01-M]

4

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Thursday, November 2, 1978.

PLACE: Room 856, 1919 M Street, NW., Washington, D.C.

STATUS: Open Commission meeting.

CHANGES IN THE MEETING: Additional item considered.

Agenda, Item No., and Subject

Complaints and Compliance—3—Application for review of Bureau decision regarding Section 315 complaint by John J. Marino against WCVB-TV, Boston, Massachusetts.

The prompt and orderly conduct of Commission business did not permit announcement prior to the meeting.

Additional information concerning this meeting may be obtained from the FCC Public Information Office, telephone 202-632-7260.

Issued: November 3, 1978.

[S-2258-78 Filed 11-6-78; 10:34 am]

[6712-01-M]

5

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Thursday, November 9, 1978.

PLACE: Room 856, 1919 M Street, NW., Washington, D.C.

STATUS: Special open Commission meeting.

MATTERS TO BE CONSIDERED:

Agenda, Item No., and Subject

Renewal—1—Petitions to deny by the New Jersey Coalition for Fair Broadcasting, the Congress of Afrikan People, the Legislature of the State of New Jersey, and an informal objection by John Cervase against the application for renewal of license for television station WNET, Newark, N.J.

2—Petitions to deny by the New Jersey Coalition for Fair Broadcasting, the Legislature of the State of New Jersey, The Office of the Public Advocate of the State of New Jersey, and the Governor of the State of New Jersey against the applications for renewal of license of television stations WABC-TV, WCBS-TV, WNBC-TV, WNEW-TV, WOR-TV, WPIX-TV (all licensed to New York, N.Y.) and WCAU-TV, WPHL-TV and KYW-TV (all Philadelphia, Pa.).

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from the FCC Public Information Office, telephone 202-632-7260.

Issued: November 2, 1978.

[S-2259-78 Filed 11-6-78; 10:34 am]

[6712-01-M]

6

FEDERAL COMMUNICATION COMMISSION.

TIME AND DATE: 9:30 a.m., Thursday, November 9, 1978.

PLACE: Room 856, 1919 M Street, NW., Washington, D.C.

STATUS: Special open Commission meeting.

CHANGES IN THE MEETING: Additional item to be considered.

Agenda, Item No., and Subject

Television—1—Application of WNJU-TV Broadcasting Corporation for authority to operate subscription television on station WNJU-TV, Channel 47, Linden, N.J.

Additional information concerning this meeting may be obtained from the FCC Public Information Office, telephone 202-632-7260.

Issued: November 3, 1978.

[S-2260-78 Filed 11-6-78; 10:34 am]

[6210-01-M]

7

BOARD OF GOVERNORS

FEDERAL RESERVE SYSTEM.

TIME AND DATE: 10 a.m., Monday, November 13, 1978. The closed portion of the meeting will commence at the conclusion of the open discussion.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Part of the meeting will be open; part will be closed.

MATTERS TO BE CONSIDERED: Open portion:

1. Information on pricing of Federal Reserve services to be submitted to the Congress for consideration in connection with pending legislation dealing with fair competition among financial institutions and soundness of the commercial banking system. (This item was previously announced for the closed meeting on Monday, November 6, 1978.)
2. Any agenda items carried forward from a previously announced meeting.

NOTE: This meeting will be recorded for the benefit of those unable to attend. Cassetts will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling 202-452-3684 or by writing to:

Freedom of Information Office
Board of Governors of the Federal Reserve System Washington, D.C. 20551.

Closed portion:

1. Federal Reserve Bank and Branch director appointments.
2. Personnel actions (appointment, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any agenda items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board, 202-452-3204.

Dated: November 3, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[S-2255 Filed 11-6-78; 10:34 am]

[6210-01-M]

8

FEDERAL RESERVE SYSTEM.

BOARD OF GOVERNORS

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 50799, October 31, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11 a.m., Monday, November 6, 1978.

CHANGES IN THE MEETING: One of the items announced for inclusion at this meeting was consideration of any agenda items carried forward from a previous meeting; the following such closed item was added:

Federal Reserve Bank and Branch director appointments. (This matter was originally announced for the meeting of October 27, 1978).

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board, 202-452-3204.

Dated: November 6, 1978.

THEODORE E. ALLISON,
Secretary of the Board.

[S-2265-78 Filed 11-6-78; 3:51 pm]

[6750-01-M]

9

FEDERAL TRADE COMMISSION

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR, October 27, 1978, page No. 50283.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 2 p.m., Tuesday, November 7, 1978.

CHANGES IN THE AGENDA: The Federal Trade Commission has added an item to its previously announced open meeting of November 7, 1978:

2. Consideration of Interim Amendments to Fuel Economy Guide, 16 CFR Part 259.

[S-2262-78 Filed 11-6-78; 10:58 am]

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[4910-58-M]

10

NATIONAL TRANSPORTATION SAFETY BOARD.

TIME AND DATE: 9 a.m., Thursday, November 9, 1978 [NM-78-38].

PLACE: NTSB Board Room, National Transportation Safety Board, 800 Independence Avenue SW., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED: A majority of the Board has determined by recorded vote that the business of the Board requires that the following items be discussed on this date and that no earlier announcement was possible:

1. *Railroad Accident Report*—Derailment of Atlantic & St. Andrews Bay Railway Co. freight train, Youngstown, Fla., February 26, 1978.
2. *Aircraft Accident Report*—National Airlines, Inc., Boeing 727, N4744, Pensacola, Fla., May 8, 1978.
3. *Highway Accident Report*—Osterkamp Trucking, Inc., truck/full trailer and Dodge Van collision, Scipio, Utah, August 26, 1978.
4. *Discussion* of party status of Aviation Consumer Action project in the hearing into the Pacific Southwest Airlines Boeing 727/Cessna 172 midair collision over San Diego, Calif., September 25, 1978.

CONTACT PERSON FOR MORE INFORMATION:

Sharon Flemming, 202-472-6022.

[S-2264-78 Filed 11-6-78; 2:50 pm]

[7590-01-M]

11

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: Week of November 6, 1978 (Revised).

PLACE: Commissioners' Conference Room, 1717 H St. NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE CONSIDERED:

Monday, November 6, 1:30 p.m.

1. Discussion of Licensing Bill (approximately 1 hour) (public meeting) (time changed).
2. Discussion of EDO Testimony of July and August 1977 (approximately 1 hour) (closed—exemption 6) (additional item).

Discussion of Personnel Matter (approximately 1 hour) (closed—exemption 6) (additional item).

Tuesday, November 7, 9:30 a.m.

Discussion and Vote on Classification of Sensitive Safeguards Information (approximately ½ hour) (closed—exemption 1) (additional item).

2. Briefing on Report of the Interagency Review Group on Waste Management (approximately 1½ hours) (public meeting) (time changed).

Wednesday, November 8, 9 a.m.

1. Discussion of Proposed NRC Statement in Response to the Risk Assessment Review Group Report (approximately 1 hour) (public meeting) (rescheduled from November 6—tentative).

OR

2. Discussion of Reducing Procedural Cost Burdens (approximately 1 hour) (public meeting) (rescheduled from November 6—tentative).

10 a.m. (approximately)

3. Discussion of Export-Import Licensing Review Procedures/General Administrative Meeting (approximately 1 hour) (public meeting) (as announced).

ADDITIONAL INFORMATION:

By a vote of 4-0 (Commissioner Gilinsky not participating) on November 2, the Commission determined pursuant to 5 U.S.C. 552b(e)(1) and § 9.107(a) of the Commission's Rules that Commission Business requires that the above items "EDO Testimony", "Personnel Matter" and "Classification of Sensitive Safeguards Information" be held on less than 1 week's notice to the public. The Commission also voted on November 1 to add to the Affirmative Session scheduled on November 1, an item "Approval of Employment of J. Cummings", with less than 1 week's notice. Prompt scheduling of these matters is required.

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee, 202-634-1410.

NOVEMBER 2, 1978.

WALTER MAGEE,
Office of the Secretary.

[S-2263-78 Filed 11-6-78; 10:34 am]

[8010-01-M]

12

SECURITIES AND EXCHANGE COMMISSION.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 50540, October 30, 1978.

STATUS: Closed meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Wednesday, November 1, 1978.

CHANGES IN THE MEETING: Additional item to be considered.

The following additional item will be considered at the closed meeting on Wednesday, November 1, 1978:

Access to investigative files by Federal, State or Self-Regulatory Authorities.

Chairman Williams and Commissioners Evans, Pollack and Karmel determined that Commission business required the above change and that no earlier notice thereof was possible.

OCTOBER 31, 1978.

[S-2256-78 Filed 11-6-78; 10:34 am]

[7910-01-M]

13

THE RENEGOTIATION BOARD.

AGENCY HOLDING THE MEETING: The Renegotiation Board.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 51751, November 6, 1978.

PREVIOUSLY ANNOUNCED DATE AND TIME OF MEETING: Tuesday, November 7, 1978; 10:00 a.m.

CHANGE IN MEETING: Matter 10 is added to the previously announced agenda.

MATTER TO BE CONSIDERED:

10. Recommended Clearances Without Assignment (List No. 1925)
A. U.S. Oil and Refining Co., fiscal years ended December 31, 1974 and 1975.
A-1 Time Oil Co., fiscal years ended December 31, 1974 and 1975.

STATUS: Matter 10 is open to public observation.

CONTACT PERSON FOR MORE INFORMATION:

Kelvin H. Dickinson, Assistant General Counsel-Secretary, 2000 M Street NW., Washington, D.C. 20446, 202-254-8277.

Dated: November 3, 1978.

GOODWIN CHASE,
Chairman.

[S-2261-78 Filed 11-6-78; 10:34 am]

Federal Register

WEDNESDAY, NOVEMBER 8, 1978
PART II



DEPARTMENT OF ENERGY

Economic Regulatory Administration

PRICE-CONTROLLED CRUDE OIL

Amendments to Include Nonrefining Uses Within the Entitlements Program

[3128-01-M]

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[10 CFR Part 211]

[Docket No. ERA-R-78-13]

AMENDMENTS TO INCLUDE NONREFINING USE OF PRICE-CONTROLLED CRUDE OIL WITHIN THE ENTITLEMENTS PROGRAM

Proposed Rulemaking; Public Hearing

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is proposing to expand the coverage of its domestic crude oil allocation (or entitlements) program to provide for entitlement obligations or payments for the nonrefining uses of price-controlled domestic crude oil. The entitlements program as currently structured requires only refiners to account for the competitive advantages deriving from access to price-controlled crude oil. Under this proposal, a reseller of crude oil (including refiners that resell crude oil rather than process it) would incur an entitlement obligation with respect to the volumes of lower tier and upper tier crude oil sold as a boiler fuel, a bunker fuel, or for other nonrefining uses, on the same basis as would a refiner that processed that crude oil. The proposal would not apply to crude oil used for production purposes. By including the nonrefining uses of price-controlled crude oil within the entitlements program, this proposal is intended to insure that firms using price-controlled crude oil as fuel, or for any other end use, do not receive a disproportionate share of the benefits of the domestic crude oil price control program.

DATES: Comments by January 5, 1979, 4:30 p.m. Requests to speak by November 29, 1978, 4:30 p.m. Hearing date, New Orleans hearing: December 14, 1978, 9:30 a.m.

ADDRESSES: All comments to: Public Hearing Management, ERA docket No. ERA-R-78-13, Department of Energy, Room 2313, 2000 M Street NW., Washington, D.C. 20461. Requests to speak: Department of Energy, attention: Gary Andrews, 2626 West Mockingbird Lane, P.O. Box 35228, Dallas, Tex. 75235.

Hearing location: 5th Circuit, Court of Appeals, Room 105, 600 Camp Street, New Orleans, La. 70130.

FOR FURTHER INFORMATION CONTACT:

Robert C. Gillette (Office of Public Hearing Management), Economic Regulatory Administration, 2000 M Street NW., Room 2214B, Washington, D.C. 20461, 202-254-5201.

William L. Webb (Office of Public Information), Room B110, 2000 M Street NW., Washington, D.C. 20461, 202-634-2170.

Douglas McIver (Entitlements Program Office), Economic Regulatory Administration, 2000 M Street NW., Room 6128I, Washington, D.C. 20461, 202-254-8660.

Robert J. Kane (Regulations and Emergency Planning), Economic Regulatory Administration, 2000 M Street NW., Room 2304, Washington, D.C. 20461, 202-245-7200.

Fred A. Wolgel (Office of General Counsel), Department of Energy, 12th and Pennsylvania Avenue NW., Room 7134, Washington, D.C. 20461, 202-566-2454.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Discussion of comments.
III. Proposed amendments.
IV. Additional comments requested.
V. Relationship to other rulemakings.
VI. Comment procedures.

I. Background

On April 17, 1978, we issued an advance notice of proposed rulemaking and notice of inquiry (43 FR 16987; Apr. 21, 1978), requesting public comment on our tentative conclusion that the nonrefining uses of lower tier crude oil should be brought within the coverage of the entitlements program. Our stated premise was that the purpose of the entitlements program is to spread equitably the benefits of price-controlled domestic crude oil among all sectors of the petroleum industry and among all users, as called for by section 4(b)(1)(F) of the Emergency Petroleum Allocation Act of 1973, as amended, Pub. L. 93-159 (EPAA). The April 17 notice stated:

> To the extent that any firm obtains and consumes price-controlled lower tier crude oil without incurring an entitlement obligation, it is obtaining crude oil at a price far below the average price that refiners must pay, and consequently far below the average prices that other consumers must pay for petroleum products (43 FR 16987).

Accordingly, we tentatively concluded that the nonrefining uses of lower tier crude oil should be included in the entitlements program. In that way, firms which consume lower tier crude oil would obtain such crude oil on the same basis as if they had used a petroleum product refined from crude oil processed by a domestic refiner in its refinery.

The April 17 notice set forth tentative views as to how this objective might be accomplished, and specifically requested comments both on the general proposition and on the specific manner in which the entitlements program would be made applicable to various nonrefining uses. The April 17 notice tentatively proposed that all nonrefining uses of lower tier crude oil by producers be included in the entitlements program, but solicited comments on whether we should exempt crude oil used by crude oil producers for the purpose of increasing production, such as by burning crude oil to generate steam for a steam flood enhanced recovery project.

II. Discussion of Comments

In response to our April 17 notice, we received 55 written comments. public hearings were held in San Francisco, Calif. on May 15, 1978, at which 16 persons testified, and in Washington, D.C. on May 17, 1978, at which 8 persons testified. The commenters included major, large independent, and small refiners, independent producers, crude oil resellers, electric utilities, State and local governments, and trade and industry associations.

The majority of the comments that addressed our principal proposal agreed that the nonrefining uses of lower tier crude oil should be included in the entitlements program. The overwhelming majority of refiners commenting endorsed our proposal. Several refiners stated that the sale of lower tier crude oil in direct competition with refined residual fuel oil was influential in the deterioration of the west coast residual fuel oil market. Other comments claimed that the direct burning of crude oil, except for the very heavy crude oils, results in the loss of the lighter component products that would be extracted in the refining process.

Most of the comments that opposed the proposal emphasized their opposition to the inclusion of lease fuel in the proposal. A few comments suggested exempting crude oil sold to utilities as boiler fuel, and several commenters opposed DOE's proposal on the grounds that it would further burden and complicate the entitlements program.

The overwhelmingly majority of all comments received on the issue opposed the inclusion of crude oil consumed as lease fuel within the entitlements program. Substantial evidence was presented, notably by California producers, that such a proposal would threaten the economic viability of many steam injection or tertiary recovery projects, and would cause much of such crude oil production to be shut in. Additionally, several commenters disclaimed knowledge of a producing field market for residual fuel oil, and contended that producers historically have consumed crude oil as a fuel in their enhanced recovery projects.

We have carefully considered the written comments received and the testimony given at the public hearings. On July 14, 1978, we issued a notice of intent to issue a proposed rulemaking (43 FR 31157, July 20, 1978) in which we stated our intention to go forward with a proposal to amend the regulations to include nonrefining uses of lower tier and upper tier crude oil within the entitlements program. In the July 14 notice we further stated our tentative determination to exempt the use of crude oil consumed on a lease for production purposes. The regulations that we propose today adopt this approach, with the clarification that all crude oil consumed on a property for production purposes will be exempt, regardless where that crude oil is produced.

The majority of the comments addressing the issue stated that the nonrefining uses of lower tier crude oil, as well as lower tier crude oil, should also be included in any final rule that is adopted. Currently the average acquisition cost of upper tier crude oil is coincidentally nearly equal to the post-entitlements average acquisition cost of crude oil to domestic refiners. Thus, there currently would appear to be little or no economic incentive to consume upper tier crude oil in preference to a refined petroleum product. However, several commenters pointed out that it is conceivable that the price of upper tier crude oil may vary substantially in the future from the weighted average acquisition cost of crude oil for domestic refiners, and thus a consistent approach would require its inclusion in the entitlements program. In light of the comments received and our analysis of the issue, the July 14 notice stated our tentative determination to include the nonrefining uses of upper tier crude oil in the proposed regulations. It is our belief that the inclusion in the entitlements program of the nonrefining uses of all price-controlled domestic crude oil is appropriate to achieve the equitable distribution of the economic benefits of price-controlled domestic crude oil.

III. Proposed Amendments

We are proposing in this notice several amendments designed to include the nonrefining uses of price-controlled domestic crude oil in the entitlements program, so that the cost of crude oil used for nonrefining purposes would be equalized in the same manner as is currently done for domestic refiners. We specifically request comments on whether the regulations proposed would accomplish this objective.

Our April 17 notice proposed generally that the seller of crude oil for a nonrefining use should incur the entitlement obligation, rather than the end-user. The majority of commenters on this issue disagreed with this approach, asserting that the seller often does not know the ultimate disposition of the crude oil which is sold. Notwithstanding these comments, information available to us indicates that in many instances crude oil has been sold as residual fuel oil to utilities and other firms, either in a blend with residual fuel oil, or in undiluted form. Because some heavy crude oil is indistinguishable from residual fuel oil, where the seller fails to properly certify the crude oil as required by 10 CFR § 212.131(b) (1) and (3), the purchaser may not know whether it has purchased crude oil. Accordingly, we have tentatively concluded that the best method of including the nonrefining uses of price-controlled domestic crude oil in the entitlements program would be for the seller of such crude oil to incur the entitlements burden and receive the corresponding entitlement issuances. This method would eliminate the problem of end users not realizing that they are purchasing unrefined crude oil, and would also likely result in having to add fewer new firms to the list of those participating in the entitlements program.

To facilitate the operation of these proposed amendments, we propose to prepare a list of qualified crude oil buyers. Firms appearing on the "Crude Oil Buyers List" would initially be refiners or domestic oil first purchasers (that is, those firms filing form P-124, the first purchaser report[1]). Any firm that sold price-controlled domestic crude oil to a firm on the crude oil buyers list would not incur an entitlements obligation, since such a sale would be presumed to be for eventual refinery use. If a firm on the crude oil buyers list purchased price-controlled crude oil and subsequently sold it or consumed it for a nonrefining use, such firm would be required to report it as a crude oil receipt, and would incur the related entitlement purchase obligation. If a firm sold price-controlled crude oil to a firm that was not on the crude oil buyers list, it would be presumed to be a sale for a nonrefining use, and the seller would incur the corresponding entitlement obligation. In the event that a firm that was not on the crude oil buyers list purchased price-controlled crude oil for resale to a refinery, such firm could furnish the seller with a letter or other written document certifying that the crude oil is for refinery use, and the seller would therefore not have to report the oil as a crude oil receipt under § 211.62.[2] If the purchaser who furnished the certification letter subsequently decided to sell the crude oil for a nonrefining use (or, alternatively, to sell it to a reseller who is not on the crude oil buyers list), the purchaser would have to report the oil as a crude oil receipt for purposes of the entitlements program. We request comments on this approach, and solicit specific comments on improving these procedures, or alternative proposals for accomplishing our regulatory objective.

Where a firm on the crude oil buyers list or a firm that is a refiner itself consumes the crude oil in a nonrefining use, it would be required under the proposed rule to report the oil as a crude oil receipt. For purposes of the proposed rule, nonrefining uses will include the blending of crude oil with other oil so that the crude oil loses its identity. In this case, the crude oil so blended would be reported by the blender as a crude oil receipt, even if the blended oil is subsequently sold to a firm on the crude oil buyers list.

As noted above, crude oil consumed by producers for production purposes is excepted from the operation of the proposed rule. Thus, the sale of crude oil to a producer for production purposes would not subject the seller to an entitlements obligation. However, since many producers would not be on the crude oil buyers list, a firm that sells crude oil to a producer for production purposes would have to obtain and maintain in its files a written certification to the effect that the oil will be used for production purposes in order to avoid the presumption that the sale was for a nonexempted nonrefining use.

In some cases a producer of crude oil may sell directly to a firm that consumes it in a nonrefining use. In this case, the entitlements burden will be imposed on the end-user, rather than the producer. The producer will, however, have the obligation to certify the crude oil to the user pursuant to 10 CFR § 212.131(b) (1) and (3).

The following table illustrates the effect of the proposed regulations on buyers and sellers of price-controlled domestic crude oil, as to which party, if any, is deemed to have crude oil receipts for the volumes sold:

Seller	Purchaser	Crude oil receipt
Reseller A	Reseller B	None.*
Do	Refiner	Refiner.
Do	Producer	None.**
Do	End-user	Reseller A.
Refiner A	Refiner B	Refiner B.
Do	Reseller	None.***
Do	Producer	None.**

[1] Attached to this notice as an appendix is a list of all refiners and first purchasers of comestic crude oil, obtained from DOE form P-124. We request specific comments on the appropriateness of utilizing the form P-124 to establish a qualified crude oil buyers list.

[2] In a subsequent audit, the seller would have to present the written certification by the purchaser in order to overcome the presumption that the sale to a firm not on the crude oil buyers list was for a nonrefining purpose.

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Seller	Purchaser	Crude oil receipt
Do	End-user	Refiner A.
Producer A	Reseller	None.***
Do	Refiner	Refiner.
Do	Producer B	None.**
Do	End-user	End-user.

*Assuming both firms are qualified crude oil buyers, and unless reseller A blends the crude oil with another product, in which case reseller A would incur a crude oil receipt for the volume of crude oil blended and sold.

**Assuming that the producer certifies that the crude oil will be used for production purposes.

***Assuming that the reseller is on the crude oil buyers list, or certifies to the seller that the purchase is for refinery use.

On June 15, 1978, we issued a final rule that substantially reduced the entitlement obligations for all California lower tier and upper tier crude oil included in a refiner's crude oil receipts (43 FR 26540, June 20, 1978). The purpose of the June 15 rulemaking was to shore up a depressed crude oil market and to prevent such crude oil production from becoming uneconomical. Accordingly, the regulations proposed today would amend § 211.67(a)(4) to provide that the same reductions in entitlement obligations applicable to a refiner's crude oil receipts with respect to California lower tier and upper crude oil receipts would also be applicable to firms which incur such crude oil receipts as a result of the rules which we have proposed today.

A. Effect of Proposal on Resellers

The proposed regulations would amend the definition of "crude oil receipts" found in § 211.62 to provide that any firm other than a refiner would be deemed to have a crude oil receipt (and a corresponding requirement to make an entitlement payment) for the volumes of lower tier and upper tier crude oil sold to a firm for a use other than refining. For example, if a reseller were to sell lower tier crude oil for industrial boiler fuel use, that reseller would incur an entitlement obligation for those volumes sold. Sales of price-controlled crude oil by a reseller to a refiner which consumed it for refinery fuel would not be deemed a crude oil receipt by the firm selling the crude oil, since such crude oil would be included in that refiner's crude oil receipts.

In order to provide that firms which consume price-controlled domestic crude oil for nonrefining uses obtain such crude oil subject to the cost-equalizing effect of the entitlements program, proposed § 211.67(m)(2)(ii) would permit crude oil resellers to pass through the cost of entitlements to such users, pursuant to an adjustment in the sale price in a month subsequent to a sale of crude oil. For example, assume reseller A sold 100 barrels of lower tier crude oil to firm B for a nonrefining use in February at $5.70 a barrel. In April, reseller A would incur an entitlement purchase obligation for the 100 barrels sold. Following the purchase of the entitlements, reseller A could adjust the price charged to firm B in February by the amount paid for the entitlements.

The proposed amendments to § 211.62 would specifically include in a firms's crude oil receipts the volumes of lower tier and upper tier crude oil blended and sold by that firm. For example, if a firm blended 30 barrels of lower tier crude oil with 70 barrels of residual fuel oil and sold the blend as bunker fuel, the firm selling the blend would be deemed to have crude oil receipts of 30 barrels of lower tier crude oil (and the resulting applicable entitlement obligation) for purposes of the entitlements program. Similarly, a firm selling very light crude oil or condensate for blending into gasoline or middle distillates in a terminal or blending plant would be deemed to have crude oil receipts equal to such crude volumes blended.

B. Effect of Proposal on Refiners

The proposed amendments to § 211.62 would require a refiner to include in its crude oil receipts the volumes of lower tier and upper tier crude oil (1) consumed by that refiner, or (2) sold to a firm other than a refiner, for a use other than refining, even if such volumes have not been added to the selling refiner's refinery feedstock inventory. Where one refiner sells to another refiner for a nonrefining use, the second refiner (the user) would include the crude in its receipts. Thus, if an integrated oil company sold or otherwise transferred price-controlled domestic crude oil from its production department to its transportation department for use as bunker, industrial, or utility fuel, it would be required to include such volumes in its crude oil receipts, even though under its historical accounting practices these volumes might have been booked into its refinery feedstock inventories. But, if the sale were made to another party that is also a refiner, and that second refiner consumes or resells it for a nonrefining use, that crude oil would be reported as a receipt by the second refiner.

Proposed § 211.67(m)(1)(i)(D) would prohibit a refiner from applying the entitlement costs incurred from sales to nonrefining uses to its product prices under the "A"formula found in § 212.83(c)(2) of the refiner price regulations. Instead, proposed § 211.67(m)(1)(i)(D) would require that the cost of such entitlements shall be applied only to the prices for crude oil sold to firms for nonrefining uses.

C. Effect of Proposal on Producers

The proposed amendments to § 211.62 do not include the nonrefining uses of domestic crude oil by producers for purposes of crude oil production. Sales of lower tier or upper tier crude oil to crude oil producers for purposes of crude oil production are also exempted by proposed § 211.62 from the entitlement purchases that would be required if such sales were deemed to have crude oil receipts, provided that the producer certifies to the seller that the crude oil will be used for production purposes. Proposed § 211.62 also requires that the volumes of crude oil associated with such sales by physically transferred.

Because the first sale of lower tire and upper tire crude oil is subject to mandatory ceiling prices, we propose in those instances where a producer sells lower tier or upper tire crude oil to a firm for a nonrefining use, that the purchaser (the user) of that crude oil shall incur the related crude oil receipt (in § 211. 62 rather than the producer that sells the crude oil.

D. Compensating Entitlement Issuances to Refiners and Other Firms

Since refiners would incur entitlement obligations under the proposed amendments to § 211.62 for their use of crude oil other than as a refinery feedstock, the entitlement purchase obligation for those volumes would raise the cost of those volumes to approximately the weighted average cost of uncontrolled crude oil. Proposed subparagraph § 211.67(d) (9) provides that a refiner's crude oil runs to stills would be deemed (except for purposes of computing the small refiner bias) to include those volumes of lower tier and upper tier crude oil consumed by that refiner to a firm for a nonrefining use.

A new subparagraph § 211.67(b) (1) (ii) would be added to require the purchase of entitlements by firms which incur crude oil receipts with respect to lower tier and upper tier crude oil sold or consumed for nonrefining uses. A new subparagraph § 211.67(d) (10) would provide for entitlement issuances to resellers and other firms on the same basis as a refiner with respect to those volumes of lower tier and upper tier crude oil that constitute crude oil receipts. Thus, a firm with a nonrefining use entitlement obligation would be deemed to have crude oil runs to stills (and thus receive entitlement issuances) for the volume of price-controlled crude oil so sold or consumed. The effect of this further entitlement adjustment would be to render the after-entitlement cost for price-controlled crude oil equivalent to the weighted average cost of crude oil for domestic refiners.

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E. Reporting Requirements

In order to implement these proposed regulations, amendments to the reporting requirements contained in § 211.66 are proposed. Proposed. § 211.66 (1) would require firms other than producers or refiners to report sales of lower tier and upper tier crude oil for nonrefining uses, as well as the identity of such purchasers. For those firms which consume lower tier and upper tier crude oil for a nonrefining use, and directly purchase such crude oil from a producer, proposed § 211.66(m) would require such purchasers to report the volumes and composition of the crude oil so prchased. Section § 211.66 (i) is proposed to be amended to require any firm which is required to buy or sell entitlements to file the monthly entitlement transaction report. Currently, only refiners and eligible firms are required to file this form. We are interested in receiving specific comments on the reporting requirements as proposed, whether any further modifications to the reporting requirements should be made, or whether the reporting of any additional information should be required.

F. Effective Date of the Proposed Amendments

The majority of the comments expressed opposition to the proposed effective date of the proposal (the date of publication in the Federal Register was proposed as the effective date), citing the disruptive effect on existing contractual arrangements. We have tentatively concluded, however, that it is appropriate and necessary to adopt these amendments effective at the earliest practicable date. Although the April 17, notice suggested the date of publication (April 21, 1978) as the effective date of the final rule, we are proposing here that May 1, 1978 (the first day of the first full month following publication of the April 17 notice) be the effective date in order to ease any accounting burden which might result from the proposal's application to a partial month.

IV. Additional Comments Requested

We request additional comments on the following:

(1) Concern has been expressed that, by including nonrefining used of crude oil in the entitlements program, we may be prohibiting some producers from realizing ceiling prices for their crude oil and may in fact cause some production to be shut in for lack of a market at an economic price. Information presented to us as a result of the April 17 notice suggests that this may particularly be true with regard to certain heavy crude oils produced in California and Florida which, at least until publication of the April 17, notice, were being consumed by electric utilities as boiler fuel.

As part of our June 15 rulemaking in which we reduced the entitlement obligations for California lower tier and upper tier crude oil, we announced that expedited procedures would be established to allow refiners outside the State of California to apply for a further exception from entitlement purchase obligations associated with California crude oil to offset the cost of transporting such oil to their refineries for processing. The purpose of such exceptions relief is to provide an expanded market for California heavy crude oil and thus to expand its production potential.

If the amendments proposed here are adopted, resellers and nonrefining users, as well as refiners, would be eligible for entitlements exceptions relief to cover the cost of transporting California heavy crude oil outside the State for use elsewhere. The same procedures could be applied as readily to nonrefining uses of crude oil produces in States other than California if it could be shown that such exceptions relief is necessary to maintain the production in question. However, the question is raised as to whether, instead of making nonrefining uses of distressed domestic crude oil production subject by regulation to entitlements obligations and then exempting through the exceptions process, it might be simpler and impose less of an administrative burden if boiler fuel uses of certain types of crude oil were under certain circumstances simply exempted from the operation of this rule. We specifically request comments on whether we should adopt this approach and, if so, the criteria that should be applied (relating, for example, to the gravity and sulphur content of the crude oil involved, comparative transportation logistics to refining and nonrefining users, etc.) to determine the types of crude oils and end uses that should be exempted. We also request comments on whether an application to the Office of Hearings and Appeals for exceptions reller from the entitlement obligations for nonrefining uses of distressed domestic crude oil production would be a more appropriate mechanism to assure that it would not be shut in.

(2) One utility proposed that the nonrefining uses of imported crude oil should be included in the entitlements program. We take no position on this proposal at this time, but invite specific comments as to whether this proposal should be included in the final rule that is adopted. Similarly, we request comments on whether stripper well and other types of domestic crude oil that are exempt from price controls should also be included in the final rule.

V. Relationship to Other Rulemakings

On April 5, 1978, we issued a notice of inquiry (42 FR 15158 (April 11, 1978) which indicated we have under consideration a proposed rulemaking that would simplify crude oil pricing regulations by, among other things, basing them upon entitlements-driven price controls. One aspect of the proposal presented there was the concept of shifting the payment of entitlements obligations to the first purchasers of crude oil off the lease, regardless of whether they are also refiners. Such a change in the entitlements program would automatically result in including all nonrefining uses of domestic crude oil in the entitlements program (unless a specific exception were made), since the entitlements obligation would attach at the point of first sale regardless of the ultimate use of the oil.

We may soon propose for public comment a rule that would implement such an amendment to the entitlements program. If such a rule is proposed while the present rulemaking is pending, this proceeding will be consolidated into the later one, and the issues raised here will be considered in the context of a broader rule placing the entitlements purchase obligations on a first purchaser basis.

VI. Public Hearing and Comment Procedures

A. Written Comments

You are invited to participate in this proceeding by submitting data, views or arguments with respect to the proposals set forth in this advance notice of proposed rulemaking. Comments should be submitted by 4:30 p.m., e.s.t., December 28, 1978 to the address indicated in the "Addresses" section of this notice and should be identified on the outside envelope and on the document with the designation: "Inclusion of Nonrefining Uses of Price-Controlled Crude Oil Within the Entitlements Program." Fifteen copies should be submitted.

Any information or data submitted which you consider to be confidential must be so identified and submitted in writing, one copy only. We reserve the right to determine the confidential status of such information or data and to treat it according to our determination.

B. Public Hearings

1. *Procedure for request to make oral presentation.* The times and places for the hearings are indicated in the "Dates" and "Addresses" sections of this preamble. If necessary to present

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all testimony, a hearing will be continued to 9:30 a.m. of the next business day following the first day of the hearing.

If you have any interest in the proposals in this notice, or represent a group or class of persons that has an interest, you may make a written request for an opportunity to make oral presentation by 4:30 p.m., November 29, 1978. You should be prepared to describe the interest concerned; if appropriate, to state why you are a proper representative of a group or class of persons that has such an interest; and to give a concise summary of the proposed oral presentation. You should also provide a phone number where you may be contacted through the day before the hearing.

If you are selected to be heard, you will be so notified before 4:30 p.m., e.s.t., December 4, 1978 and will be required to submit one hundred copies of your statement to the appropriate address indicated in the "Addresses" section of this preamble by 9:30 a.m. of the date of the hearing.

2. *Conduct of the hearings.* We reserve the right to select the persons to be heard at the hearing, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based on the number of persons requesting to be heard.

An ERA official will be designated to preside at the hearing. It will not be a judicial or evidentiary-type hearing. Questions may be asked only those conducting the hearing, and there will be no cross-examination of persons presenting statements. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

You may submit questions to be asked of any person making a statement at the hearing to the address indicated above for requests to speak before 4:30 p.m., December 4, 1978. If you wish to ask a question at the hearing, you may submit the question, in writing, to the presiding officer. The ERA or, if the question is submitted at the hearing, the presiding officer will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by the ERA and made available for inspection at the ERA's Office of Public Information, Room B110, 2000 M Street NW., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. You may purchase a copy of the transcript of the hearing from the reporter.

As required by section 7(a)(1) of the Federal Energy Administration Act of 1974, Pub. L. 93-275, a copy of this notice has been submitted to the Administrator of the Environmental Protection Agency for his comments concerning the impact of this proposal on the quality of the environment. The Administrator had no comments.

Executive Order 12044 (43 FR 12661, Mar. 24, 1978) requires that a regulatory analysis be prepared for all regulations which will result in "an annual effect on the economy of $100 million or more" or will result in "a major increase in costs or prices for individual industries, levels of government or geographic regions." We have determined that neither of these threshold criteria for the preparation of a regulatory analysis is met by the proposed rule, and therefore a regulatory analysis is not required.

Pursuant to the requirements of section 404(a) of the Department of Energy Organization Act (Pub. L. 95-91), this proposed rule has been referred, concurrently with the issuance hereof, to the Federal Energy Regulatory Commission for a determination whether the proposed rule would significantly affect any function within the Commission's jurisdiction.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, Pub. L. 94-332, Pub. L. 94-385, Pub. L. 95-70, and Pub. L. 95-91; Energy Policy and Conservation Act, Pub. L. 94-163, as amended, Pub. L. 94-385, and Pub. L. 95-70; Department of Energy Organization Act, Pub. L. 95-91; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, part 211 of chapter II, title 10 of the Code of Federal Regulations, is proposed to be amended as set forth below.

Issued in Washington, D.C., November 1, 1978.

DAVID J. BARDIN,
Administrator, Economic Regulatory Administration.

1. Section 211.62 is amended by adding a definition of "Crude Oil Buyers List", and by revising the definition of "crude oil receipts" by deleting the next to the last sentence and adding eight sentences in its place to read as follows:

§ 211.62 Definitions.

• • • • •

"Crude oil buyers list" means a listing maintained by the DOE of firms which are deemed by the DOE to engage in the refining of crude oil or the resale of crude oil for eventual refinery use.

• • • • •

"Crude oil receipts" means • • • The volumes of lower tier or upper tier crude oil which are consumed by a refiner or sold by that refiner to any firm other than a refiner for consumption by that firm for purposes other than use as a refinery feedstock shall be included in that refiner's crude oil receipts, whether or not such volumes have been added to its refinery inventory. Any firm other than a refiner or producer that sells lower tier or upper tier crude oil to any firm other than a refiner for consumption by that firm for purposes other than refining shall be deemed to have crude oil receipts with respect to those volumes sold. A seller of crude oil may presume that a sale of lower tier or upper tier crude oil to any firm which certifies to the seller that the crude oil is for eventual refinery use, or a sale to any firm listed on the most recent crude oil buyers list, is a sale for eventual refinery use. Any firm listed on the crude oil buyers list (or any firm which certifies to the seller that the crude oil is for eventual refinery use) which purchases lower tier or upper tier crude oil and consumes such crude oil for a purpose other than refining, or sells such crude oil to any firm other than a refiner for consumption other than refining, shall be deemed to have crude oil receipts with respect to those volumes consumed or sold. Any firm that purchases lower tier or upper tier crude oil from a producer for consumption by that firm for purposes other than refining shall be deemed to have crude oil receipts with respect to those volumes purchased. The preceding provisions shall not apply to sales of lower tier or upper tier crude oil to crude oil producers for purposes of crude oil production, provided that the producer certifies to the seller that the crude oil will be used for production purposes, and provided further that the volumes of crude oil associated with such sales are physically transferred. The volumes of lower tier or upper tier crude oil blended with a refined petroleum product or residual fuel oil and sold shall be included by the seller in its crude oil receipts. Crude oil which has been added by a refiner to its inventory and which is thereafter sold or otherwise disposed of without processing for the account of that refiner shall be deducted from its crude oil receipts (unless such crude oil is consumed by that refiner prior to refining or sold by that refiner to any firm other than a refiner for consumption by that firm for purposes other than refining) at the time when the related cost is deducted from refinery inventory in accordance with accounting procedures generally accepted and consistently and historically applied by the refiner concerned.

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2. Section 211.66 is revised in paragraph (i), and by adding new paragraphs (l) and (m) to read as follows:

§ 211.66 Reporting requirements.

• • • • •

(i) *Monthly transaction report.* On or prior to the tenth day of each month, commencing with the month of February 1975, each refiner, eligible firm, or other firm that was required to purchase or sell entitlements for the third month prior to the month in which the report is filed shall file with the ERA a report certifying its purchases or sales of entitlements for that prior month.

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(l) *Report for sales to nonrefining uses.* On or prior to the fifth day of each month, commencing with the month of May 1978, each firm other than a producer or refiner that has sold lower tier or upper tier crude oil in the second month preceding that month to any firm for consumption by that firm for a purpose other than refining, shall file with the ERA a report certifying the following information:

(i) The volume of lower tier crude oil included in the crude oil receipts of that firm by reason of their sale to a nonrefining use;

(ii) The volume of upper tier crude oil included in the crude oil receipts of that firm by reason of their sale to a nonrefining use;

(iii) The identity of the purchasers and the volumes of lower tier and upper tier crude oil, respectively, for each sale of lower tier or upper tier crude oil to a nonrefining use;

(iv) The volume of California lower tier crude oil included in the crude oil receipts of that firm, and the weighted average gravity (calculated as a single figure for the entire month) of such California lower tier crude oil included in such crude oil receipts;

(v) The volume of California upper tier crude oil included in the crude oil receipts of that firm, and the weighted average gravity (calculated as a single figure for the entire month) of such California upper tier crude oil included in such crude oil receipts; and

(vi) Such additional information as the ERA may require.

(m) *Special report for direct purchases from producers.* On or prior to the fifth day of each month, commencing with the month of May 1978, each firm that purchases lower tier or upper tier crude oil from a producer for consumption by that firm for purposes other than refining shall file with the ERA a report certifying the following information:

(i) The volume of lower tier crude oil included in the crude oil receipts of that firm by reason of its purchase from a producer for consumption by that firm for purposes other than refining;

(ii) The volume of upper tier crude oil included in the crude oil receipts of that firm by reason of its purchase from a producer for consumption by that firm for purposes other than refining; and

(iii) The volume of California lower tier crude oil included in the crude oil receipts of that firm, and the weighted average gravity (calculated as a single figure for the entire month) of such California lower tier crude oil included in such crude oil receipts;

(iv) The volume of California upper tier crude oil included in the crude oil receipts of that firm, and the weighted average gravity (calculated as a single figure for the entire month) of such California lower tier crude oil included in such crude oil receipts; and

(v) Such additional information as the ERA may require.

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3. Section 211.67 is amended by revising subparagraph (a)(4), by revising paragraph (b), by adding new subparagraphs (9) and (10) to paragraph (d), by adding a new subparagraph (6) to paragraph (g), by adding a new subparagraph (D) to subparagraph (m)(1)(i), and by revising subparagraph (2) to paragraph (m) to read as follows:

§ 221.67 Allocation of domestic crude oil.

(a) *Issuance of entitlements.*

• • • • •

(4) For each month, commencing with the month of June 1978, the number of entitlements issued under paragraph (a)(1) of this section to each refiner and the number of entitlements issued under paragraph (d)(10) of this section to firms other than refiners shall be increased by: (i) The number of barrels of California lower tier crude oil included in its adjusted crude oil receipts in that month multiplied by a fraction, the numerator of which is $2.38 plus or minus $0.09 for each degree API gravity (or fraction thereof) by which the weighted average gravity of all California lower tier crude oil included in that refiner's or other firm's adjusted crude oil receipts in that month either falls below or exceeds, respectively, 18 degrees API, and the denominator of which is the entitlement price for that month; and (ii) the number of barrels of California upper tier crude oil included in its adjusted crude oil receipts in that month multiplied by a fraction, the numerator of which is $1.45 plus or minus $0.09 for each degree API gravity (or fraction thereof) by which the weighted average gravity of all California upper tier crude oil included in that refiner's or other firm's adjusted crude oil receipts in that month either falls below or exceeds, respectively, 18 degrees API, and the denominator of which is the entitlement price for that month; *provided that* the dollar value of additional entitlements issued under this subparagraph (4) shall not exceed the dollar value of the obligation (as calculated under paragraph (b) of this section) for the crude oil with respect to which such additional entitlements are issued. The refiner or other firm shall calculate and report the weighted average gravity of California lower tier crude oil and California upper tier crude oil separately, and in calculating such weighted average gravities shall (A) determine the gravity of such crude oil for each receipt of such crude oil in that month on the basis of the gravity of such crude oil at the time it becomes a receipt, and (B) determine a single monthly weighted average gravity for such crude oil by weight averaging (on a volumetric basis) all of such individual receipts in that month.

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(b) *Required purchase of entitlements by refiners or other firms.* (1)(i) For each month, commencing with the month of February 1976, each refiner that has been issued fewer entitlements for that month than the number of barrels of deemed old oil (as calculated under paragraph (b)(2) of this section) included in its adjusted crude oil receipts shall purchase a number of entitlements effective for that month equal to the difference between the number of barrels of deemed old oil (as so calculated) included in that refiner's adjusted crude oil receipts for that month and the number of entitlements issued to and retained by that refiner.

(ii) For each month, commencing with the month of May 1978, any firm othe than a refiner that has been issued fewer entitlements for that month than the number of barrels of deemed old oil (as calculated under paragraph (b)(2) of this section) included in its adjusted crude oil re-

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ceipts shall purchase a number of entitlements effective for that month equal to the difference between the number of barrels of deemed old oil (as so calculated) included in that firm's crude oil receipts for that month and the number of entitlements issued to and retained by that firm.

(iii) Entitlement purchases required under this paragraph (b) with respect to a particular month shall be effected by the close of the second month following that month.

(2) To calculate the number of barrels of deemed old oil included in a refiner's or other firm's adjusted crude oil receipts for purposes of the definition of national domestic crude oil supply ratio in § 211.62 of this subpart paragraph (b)(1) of this section and paragraph (c) of this section, each barrel of old oil shall be equal to one barrel of deemed old oil and each barrel of upper tier crude oil shall constitute that fraction of a barrel of deemed old oil the numerator of which is equal to the reported weighted average cost per barrel to refiners of ANS crude oil, imported crude oil, stripper well crude oil (as defined in part 212 of this chapter), incremental tertiary crude oil (as determined pursuant to § 212.78, and other domestic crude oils the first sale of which is exempt from the provisions of part 212 of this chapter for that month, less the sum of 21 cents and such weighted average cost per barrel to refiners of upper tier crude oil, and the denominator of which is the entitlement price for that month.

. . . . .

(d) *Adjustments to volume of crude oil runs to stills.*

. . . . .

(9) Commencing with the month of May 1978, the volume of a refiner's crude oil runs to stills in a particular month for purposes of the calculations in paragraph (a)(1) of this section and the calculations for the national domestic crude oil supply ratio (without giving effect to the provisions of paragraph (e) of § 211.67) shall include the number of barrels of lower tier or upper tier crude oil consumed (other than as a refinery feedstock) by that refiner or blended with a refined petroleum product or residual fuel oil by that refiner and sold to any firm other than a refiner for consumption by that firm for purposes other than refining.

(10) Notwithstanding any other provisions of this section, any firm other than a refiner shall be eligible for entitlement issuances on the same basis as a refiner under subparagraph (9) above with respect to those volumes of lower tier or upper tier crude oil which constitute crude oil receipts for that firm by reason of (1) their sale to any firm other than a refiner for consumption by that firm for purposes other than refining, or (2) their purchase from a producer for consumption by that firm for purposes other than refining, or (3) having been blended by that firm with a refined petroleum product or residual fuel oil and sold.

. . . . .

(m) *Adjustments to crude oil and product costs.*

. . . . .

(1) *Refiners.*

. . . . .

(i) *Entitlements purchased.*

. . . . .

(D) The cost of entitlements purchased in a particular month pursuant to the inclusion in a refiner's crude oil receipts of the volumes of lower tier and upper tier crude oil sold by a refiner for a nonrefining use, and the corresponding adjustments to a refiner's crude oil runs to stills under paragraph (d)(9) of this section shall not be applied to product prices pursuant to the "A" factor of the general formulae of § 212.83(c)(2) of this chapter. The cost of these entitlements may be applied only to the prices of such crude oil or blends of crude oil and refined products or blends of crude oil and residual fuel oils that are sold to a firm for consumption by that firm for a purpose other than refining.

. . . . .

(2) *Resellers and retailers.* (i) The sales revenues from entitlements sold pursuant to this section by resellers or retailers shall be subtracted from the cost of the product in inventory for which the entitlements were issued, so as to reduce the weighted average unit cost of that product in inventory computed pursuant to § 212.92 of this chapter.

(ii) If in a month subsequent to a sale of crude oil, a reseller is required to purchase entitlements with respect to that crude oil, the reseller may adjust the price charged the purchaser of that crude oil to include the cost of the entitlements purchased. The amount of such adjustment shall be disregarded in the determination of the reseller's average markup and acquisition cost (as defined in § 212.182 of this chapter) for the month in which the crude oil was sold and for the month in which the adjustment is made.

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BIGHEART PIPE LINE CORP
P.O. BOX 370
TULSA OK ZIP CODE 74101

BRUIN CORP
SUITE 1505 CAPITAL NATL PARK B
1330 MAIN ST
HOUSTON TX ZIP CODE 77002

C R P INC
P O BOX 2515
MIDLAND TX ZIP CODE 79702

CALUMET INDUSTRIES INC
13921 MACKINAW AVE
CHICAGO IL ZIP CODE 60633

CARRICK SERVICE CO
3102 S CLACK
ABILENE TX ZIP CODE 79604

CARIBOU FUEL COMPANY INC
P.O. BOX 457
AFTON WY ZIP CODE 83110

CENTRAL CRUDE CORP
910 FOURTH FINANCIAL CENTER
WICHITA KS ZIP CODE 67217

ANDSUN TRANSPORTATION CO
3814 NINTH BANTA PE
OKLAHOMA CITY OK ZIP CODE 73116

AMERADA HESS CORP
1185 AVE OF THE AMERICAS
NEW YORK NY ZIP CODE 10036

AMERICAN PACIFIC INTERNATIONAL
700 S. FLOWER STREET
SUITE 1600
LOS ANGELES CA ZIP CODE 90017

AMERICAN PETROFINA INC
PO BOX 2159
DALLAS TX ZIP CODE 75221
AMERICAN PETROFINA CO OF

AMERADA HESS CORP
P.O. BOX 2040
TULSA OK ZIP CODE 74102

AMERICAN PETROFINA INC
PO BOX 2159
DALLAS TX ZIP CODE 75221

AMINOIL USA
2000 NORTH LOOP WEST
PO BOX 94105
HOUSTON TX ZIP CODE 77018

AMOCO PRODUCTION CO
P O BOX 591
200 EAST WASHINGTON DRIVE
TULSA OK ZIP CODE 74102
STANDARD OIL CO INDIANA

ANDERSON OIL CO INC
311 QUEEN MLDG
SHREVEPORT LA ZIP CODE 71101

ARCO OIL CORP
PO BOX 1601
OKLAHOMA CITY OK ZIP CODE 73101

ARIZONA FUELS CORP
150 EAST 3900 SOUTH
P O BOX 7507
SALT LAKE CITY UT ZIP CODE 84107

ASAHENA OIL U S A INC
PO BOX 1104
DENVER CO ZIP CODE 80201

ASHLAND OIL INC
P.O. BOX 391
1409 WINCHESTER AVE
ASHLAND KY ZIP CODE 41101

ATLANTIC MICHFIELD CO
515 SOUTH FLOWER ST
LOS ANGELES CA ZIP CODE 90071

B & M GATHERING INC
211 NORTH ENVAY BLDG
SUITE 1120
DALLAS TX ZIP CODE 75201

BALL MARKETING INC
P O BOX 376
LAFAYETTE LA ZIP CODE 70502

BASIN INC
511 WEST OHIO ST
PO BOX 2207
MIDLAND TX ZIP CODE 79701

BASS PECAN CO
P.O. BOX 42
LUMBERTON MS ZIP CODE 39455

BATUM STATE OIL CORP
P O BOX 2107
SHREVEPORT LA ZIP CODE 71166

BEACON OIL CO
P O BOX 400
525 W 3RD ST
MANFORD CA ZIP CODE 93238

BI-PETRO INC
P O BOX 3245
SPRINGFIELD IL ZIP CODE 62705

MID-TEX CRUDE OIL CO
P O BOX 5762
ABILENE TX ZIP CODE 79601

NAME
ADDRESS 1
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NOTE

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NOTE

NAME CHAMPLIN PETROLEUM CO
ADDRESS 1 301 WEST MAINE PO BOX 552
ADDRESS 2 9301 CAMP BOWIE BLVD
CITY ENID
STATE OK ZIP CODE 73701
NOTE

NAME CHANTER OIL CO
ADDRESS 1 P O BOX 9008
ADDRESS 2
CITY HOUSTON
STATE TX ZIP CODE 77012
NOTE CHANTER INT'L OIL CO

NAME CHEVRON USA INC
ADDRESS 1 P O BOX 7643
ADDRESS 2
CITY SAN FRANCISCO
STATE CA ZIP CODE 94120
NOTE STANDARD OIL CO OF CALIF

NAME CITIES SERVICE CO
ADDRESS 1 BOX 300
ADDRESS 2
CITY TULSA
STATE OK ZIP CODE 74102
NOTE

NAME CITRONELLE-MOBILE GATHERING
ADDRESS 1 717 FIRST FEDERAL TOWER
ADDRESS 2 BOX 16705
CITY MOBILE
STATE AL ZIP CODE 36610
NOTE

NAME CLAIBORNE GASOLINE CO
ADDRESS 1 4500 1ST NATL BANK BLDG
ADDRESS 2
CITY DALLAS
STATE TX ZIP CODE 75202
NOTE

NAME CLARK OIL & REFINING CORP
ADDRESS 1 8530 W. NATIONAL AVE.
ADDRESS 2 P O BOX 1770
CITY MILWAUKEE
STATE WI ZIP CODE 53201
NOTE

NAME COASTAL STATES GAS CORP
ADDRESS 1 9 GREENWAY PLAZA EAST
ADDRESS 2
CITY HOUSTON
STATE TX ZIP CODE 77046

NAME COFFIELD PIPE LINE CO
ADDRESS 1 PO BOX 900
CITY RINGDALE
STATE TX ZIP CODE 76567

NAME CONSTRUCTION MOULDING CO INC
ADDRESS 1 PO DRAWER 3159
CITY TUSCALOOSA
STATE AL ZIP CODE 35401

NAME CONSUMERS POWER CO
ADDRESS 1 212 W MICHIGAN AVE
CITY JACKSON
STATE MI ZIP CODE 49201

NAME CONTINENTAL OIL CO
ADDRESS 1 P O BOX 2197
CITY HOUSTON
STATE TX ZIP CODE 77001

NAME COWBOY OIL CO
ADDRESS 1 2700 SOUTH 5TH
ADDRESS 2 PO DRAWER L
CITY PUCATELLO
STATE ID ZIP CODE 83201

NAME CROWN CENTRAL PETROLEUM
ADDRESS 1 ONE NORTH CHARLES
CITY BALTIMORE
STATE MD ZIP CODE 21203

NAME CRUDE CO INC
ADDRESS 1 P.O. BOX 1908
CITY CASPER
STATE WY ZIP CODE 82602

NAME CRUDE OIL PURCHASING
ADDRESS 1 PO BOX 22000
CITY JACKSON
STATE MS ZIP CODE 39205

NAME CRYSTAL OIL CO
ADDRESS 1 P O BOX 21101
CITY SHREVEPORT
STATE LA ZIP CODE 71120

NAME DEUTSCHE FINANCIAL SERVICES
ADDRESS 1 1201 PETROLEUM CLUB BLDG
CITY TULSA
STATE OK ZIP CODE 74114

NAME DIAMOND SHAMROCK CORP
ADDRESS 1 P.O. BOX 631
CITY AMARILLO
STATE TX ZIP CODE 79173

NAME DOMA CORP
ADDRESS 1 3102 S CLACK ST
CITY ABILENE
STATE TX ZIP CODE 79600

NAME DONCHESTER GAS CORP
ADDRESS 1 1509 MAIN ST.
ADDRESS 2 SUITE 900
CITY DALLAS
STATE TX ZIP CODE 75201

NAME DOW CHEMICAL CO
ADDRESS 1 SOUTH MADISON ST.
CITY LUDINGTON
STATE MI ZIP CODE 49431

NAME ECHO DRILLING INC
ADDRESS 1 526 SHINNICK STREET
CITY ZANESVILLE
STATE OH ZIP CODE 43701

NAME EDDY REFINING CO
ADDRESS 1 P.O. BOX 105
CITY HOUSTON
STATE TX ZIP CODE 77001

NAME ENGINGTON OIL CO
ADDRESS 1 2400 E ARTESIA BLVD
CITY LONG BEACH
STATE CA ZIP CODE 90805

NAME ENERGY EXCHANGE CO INC
ADDRESS 1 PO BOX 801
CITY BAKERSFIELD
STATE CA ZIP CODE 93302

NAME EXXON INC
ADDRESS 1 PO DRAWER 1850
CITY JACKSON
STATE MS ZIP CODE 39205

NAME EXXON CORP
ADDRESS 1 P.O. BOX 2180
CITY HOUSTON
STATE TX ZIP CODE 77001

NAME FARMERS UNION CENTRAL EXCHANGE
ADDRESS 1 PO BOX 126
CITY LAUREL
STATE MT ZIP CODE 59044
NOTE

NAME FARMLAND IND-CRA INC
ADDRESS 1 P O BOX 7305
CITY KANSAS CITY
STATE MO ZIP CODE 64116
NOTE CRA INC

NAME FLETCHER OIL & REFINING
ADDRESS 1 BOX 548
CITY WILMINGTON
STATE CA ZIP CODE 90748
NOTE

NAME FOHLEN J E PETROLEUM PRODUCTS
ADDRESS 1 P O BOX 108
ADDRESS 2 OIL & GAS BLDG
CITY SHREVEPORT
STATE LA ZIP CODE 71101
NOTE

NAME GEEN TANK TRUCKS INC
ADDRESS 1 DRAWER J
CITY JACKSBORO
STATE TX ZIP CODE 76056
NOTE

NAME GENERAL CRUDE OIL HYDROCARBON
ADDRESS 1 PO BOX 2252
CITY HOUSTON
STATE TX ZIP CODE 77001
NOTE

NAME GENERAL ENERGY CO INC
ADDRESS 1 SUITE 430
ADDRESS 2 2035 EAST SKELLY DR
CITY TULSA
STATE OK ZIP CODE 74105
NOTE

NAME GETTY OIL CO
ADDRESS 1 5810 WILSHIRE BLVD.
CITY LOS ANGELES
STATE CA ZIP CODE 90036

NAME GIANT INDUSTRIES INC
ADDRESS 1 5107 N 7TH ST.
CITY PHOENIX
STATE AZ ZIP CODE 85014

NAME GLACIER PARK CO
ADDRESS 1 FIRST NORTHWESTERN BANK CENTER
ADDRESS 2 175 NORTH 27TH ST RM 904
CITY BILLINGS
STATE MT ZIP CODE 59101

NAME GLADIEUX REFINERY INC
ADDRESS 1 9133 NEW HAVEN AVE.
CITY FORT WAYNE
STATE IN ZIP CODE 46803

NAME GULF OIL CORP
ADDRESS 1 PO BOX 2001
CITY HOUSTON
STATE TX ZIP CODE 77001

NAME HERNDON OIL & GAS CO
ADDRESS 1 P O BOX 889
CITY TULSA
STATE OK ZIP CODE 74105

NAME HOLLAND JACK & SON INC
ADDRESS 1 700 FLETCHER LANE
CITY HAYWARD
STATE CA ZIP CODE 94544

NAME HOUSTON OIL & MINERALS TRADING
ADDRESS 1 202 THE MAIN BUILDING
ADDRESS 2 1212 MAIN STREET
CITY HOUSTON
STATE TX ZIP CODE 77002

NAME HOWELL CORP
ADDRESS 1 120 TRAVIS
ADDRESS 2 SUITE 800
CITY HOUSTON
STATE TX ZIP CODE 77002

NAME HUNT H L ESTATE OF
ADDRESS 1 2900 FIRST NATL BANK BLDG
CITY DALLAS
STATE TX ZIP CODE 75202

NAME HUNT OIL CO
ADDRESS 1 2900 FIRST NATL BANK BLDG
CITY DALLAS
STATE TX ZIP CODE 75202

NAME HURRICANE TRADING COMPANY INC
ADDRESS 1 P O BOX 35207
CITY TULSA
STATE OK ZIP CODE 74135

NAME HUSKY OIL CO
ADDRESS 1 PO BOX 380
CITY CODY
STATE WY ZIP CODE 82414

NAME INDEPENDENT OIL PRODUCERS AGEN
ADDRESS 1 4647 LONG BEACH BLVD DR
ADDRESS 2 RM 637
CITY LONG BEACH
STATE CA ZIP CODE 90805

NAME INDIANA FARM BUREAU COOP ASSN
ADDRESS 1 120 E MARKET ST
CITY INDIANAPOLIS
STATE IN ZIP CODE 46204

NAME INTERCOASTAL OIL CO
ADDRESS 1 P O BOX 5413
ADDRESS 2 1317 E WARDLOW RD
CITY LONG BEACH
STATE CA ZIP CODE 90807

NAME INTERNATIONAL PETROLEUM TRADIN
ADDRESS 1 1660 BROADWAY
ADDRESS 2 SUITE 2000
CITY DENVER
STATE CO ZIP CODE 80202

NAME J & W REFINING INC
ADDRESS 1 P O BOX 828
CITY PALESTINE
STATE TX ZIP CODE 75801

NAME KENTUCKY OIL & REFINING INC
ADDRESS 1 ROUTE 1
ADDRESS 2 BOX 63
CITY BETSY LAYNE
STATE KY ZIP CODE 41605

NAME KERN COUNTY REFINERY INC
ADDRESS 1 ROUTE 6 BOX 336
CITY BAKERSFIELD
STATE CA ZIP CODE 93307

NAME KERN-MCGEE CORP
ADDRESS 1 MCGEE TOWER
ADDRESS 2 123 ROBERT S KERR AV.
CITY OKLAHOMA CITY
STATE OK ZIP CODE 73102

NAME ROCM INDUSTRIES INC
ADDRESS 1 8111 EAST 37TH STREET NORTH
ADDRESS 2
CITY WICHITA
STATE KS ZIP CODE 67201
NOTE

NAME LA GLORIA OIL AND GAS CO
ADDRESS 1 P O BOX 2521
ADDRESS 2
CITY HOUSTON
STATE TX ZIP CODE 77001
NOTE

NAME LAKETON ASPHALT REFINING INC
ADDRESS 1 BOX 3525
ADDRESS 2
CITY EVANSVILLE
STATE IN ZIP CODE 47734
NOTE

NAME LITTLE AMERICA REFINING CO
ADDRESS 1 BOX 1677
ADDRESS 2
CITY ENGLEWOOD
STATE CO ZIP CODE 80150
NOTE

NAME LOUISIANA LAND & EXPLORATION
ADDRESS 1 SUITE 1200-225 BARONNE ST
ADDRESS 2 PO BOX 60350
CITY NEW ORLEANS
STATE LA ZIP CODE 70160
NOTE

NAME LUNDAY-THAGARD OIL CO
ADDRESS 1 P O BOX 1519
ADDRESS 2
CITY SOUTH GATE
STATE CA ZIP CODE 90280
NOTE

NAME MACLASKEY VACUUM TRANSMISSI
ADDRESS 1 111 WEST 3RD ST
ADDRESS 2 BOX 20
CITY EUREKA
STATE KS ZIP CODE 67045
NOTE

NAME MACMILLAN RING-FREE OIL CO INC
ADDRESS 1 90 PARK AVE
ADDRESS 2
CITY NEW YORK
STATE NY ZIP CODE 10016
NOTE

NAME MADISONVILLE TERMINAL CORP
ADDRESS 1 PO BOX 2551
ADDRESS 2
CITY BATON ROUGE
STATE LA ZIP CODE 70821
NOTE

NAME MAIN STAR OIL CO
ADDRESS 1 PO BOX 170
ADDRESS 2
CITY NEPHI
STATE UT ZIP CODE 84648
NOTE

NAME MAHATHON OIL CO
ADDRESS 1 539 S. MAIN STREET
ADDRESS 2
CITY FINDLAY
STATE OH ZIP CODE 45840
NOTE

NAME MARION CORP
ADDRESS 1 516 BEL AIR BOULEVARD
ADDRESS 2 P O BOX 16006
CITY MOBILE
STATE AL ZIP CODE 36606
NOTE

NAME MARTIN GAS SALES
ADDRESS 1 PO DRAWER 191
ADDRESS 2
CITY MILGONE
STATE TX ZIP CODE 75602
NOTE

NAME MELROSE OIL CO
ADDRESS 1 601 JEFFERSON
ADDRESS 2
CITY HOUSTON
STATE TX ZIP CODE 77002
NOTE NEW RESPONDENT 9/78

NAME MESA PIPE LINE CO
ADDRESS 1 1100 MILAM BUILDING
ADDRESS 2 SUITE 3400
CITY HOUSTON
STATE TX ZIP CODE 77002
NOTE

NAME MITCHELL ENERGY AND DEV CORP
ADDRESS 1 3900 ONE SHELL PLAZA
ADDRESS 2
CITY HOUSTON
STATE TX ZIP CODE 77002
NOTE

NAME MOBIL OIL CORP
ADDRESS 1 150 E. 42ND ST.
ADDRESS 2
CITY NEW YORK
STATE NY ZIP CODE 10017
NOTE

NAME MONLEY TRANSPORTS INC
ADDRESS 1 P O BOX 598
ADDRESS 2
CITY JACKSBORO
STATE TX ZIP CODE 76458
NOTE FORMERLY TEAGUE TANKS

NAME MONSANTO CO
ADDRESS 1 800 N LINDBERGH BLVD
ADDRESS 2
CITY ST LOUIS
STATE MO ZIP CODE 63166
NOTE

NAME MURPHY OIL CORP
ADDRESS 1 200 JEFFERSON AVE.
ADDRESS 2
CITY EL DORADO
STATE AR ZIP CODE 71730
NOTE

NAME MUSTANG GAS PRODUCTS CO
ADDRESS 1 FIRST NAT'L CENTER SUITE 1106E
ADDRESS 2
CITY OKLAHOMA CITY
STATE OK ZIP CODE 73102
NOTE

NAME MUTUAL PETROLEUM MARKETING INC
ADDRESS 1 342 FIFTH AVE
ADDRESS 2
CITY NEW YORK
STATE NY ZIP CODE 10001
NOTE

NAME NATL COOPERATIVE REFINERY ASSN
ADDRESS 1 P O BOX 1167
ADDRESS 2
CITY MCPHERSON
STATE KS ZIP CODE 67460
NOTE MCNA

NAME NAVAJO CRUDE OIL PURCHASING CO
ADDRESS 1 P O DRAWER 159
ADDRESS 2
CITY ARTESIA
STATE NM ZIP CODE 88210
NOTE

NAME NAVAJO REFINING CO
ADDRESS 1 PO DRAWER 159
ADDRESS 2 501 EAST MAIN ST
CITY ARTESIA
STATE NM ZIP CODE 88210
NOTE

NAME NEWHALL REFINING CO INC
ADDRESS 1 P.O. BOX 93A
ADDRESS 2 22674 N CLAMPITT ROAD
CITY NEWHALL
STATE CA ZIP CODE 91322
NOTE

NAME NORTH AMERICAN PETROLEUM
ADDRESS 1 SUITE 200
ADDRESS 2 BANK OF COMMERCE BUILDING
CITY ABILENE
STATE TX ZIP CODE 79605
NOTE

NAME NORTHERN MONTANA OIL SERVICES
ADDRESS 1 1108 E RAILROAD ST
ADDRESS 2
CITY CUT BANK
STATE MT ZIP CODE 59427
NOTE

NAME NORTHERN NATURAL GAS CO
ADDRESS 1 2223 DODGE ST
ADDRESS 2
CITY OMAHA
STATE NE ZIP CODE 68102
NOTE

NAME NORTHWEST CRUDE INC
ADDRESS 1 P O BOX 20211
ADDRESS 2
CITY BILLINGS
STATE MT ZIP CODE 59104
NOTE

NAME O R C CORP
ADDRESS 1 PO BOX 30190
ADDRESS 2 4835 LBJ FREEWAY
CITY DALLAS
STATE TX ZIP CODE 75230
NOTE

NAME OASIS PETRO ENERGY CORP
ADDRESS 1 10880 WILSHIRE BOULEVARD
ADDRESS 2 9665 SOUTH SEPULVEDA BOULEVARD
CITY CULVER CITY
STATE CA ZIP CODE 90230
NOTE

NAME OIL TRANSPORT CO
ADDRESS 1 PO BOX 698
ADDRESS 2
CITY WILMINGTON
STATE CA ZIP CODE 90748
NOTE

NAME OSAGE OIL & TRANSPORTATION INC
ADDRESS 1 PO BOX 29
ADDRESS 2
CITY CLEVELAND
STATE OK ZIP CODE 74020
NOTE

NAME OXNARD REFINERY
ADDRESS 1 P.O. BOX 258
ADDRESS 2
CITY OXNARD
STATE CA ZIP CODE 93032
NOTE

NAME P & O PALCO INC
ADDRESS 1 P.O. BOX 100
ADDRESS 2
CITY SHREVEPORT
STATE LA ZIP CODE 71161
NOTE

NAME P G LANE PIPE LINE CO
ADDRESS 1 BOX 179
ADDRESS 2
CITY TYLER
STATE TX ZIP CODE 75710
NOTE

NAME PENNZOIL CO
ADDRESS 1 PENNZOIL PLACE
ADDRESS 2 PO BOX 2967
CITY HOUSTON
STATE TX ZIP CODE 77001
NOTE

NAME PERMIAN CORP THE
ADDRESS 1 PO BOX 1183
ADDRESS 2 2800 SOUTH POST OAK ROAD
CITY HOUSTON
STATE TX ZIP CODE 77001
NOTE OCCIDENTAL PETROLEUM CORP

NAME PETRO BANDS INC
ADDRESS 1 P O BOX 809
ADDRESS 2
CITY ENID
STATE OK ZIP CODE 73701
NOTE

NAME PETRO PRODUCTS INC
ADDRESS 1 2805 EAST SKELLY DRIVE
ADDRESS 2 SUITE 807
CITY TULSA
STATE OK ZIP CODE 74105
NOTE

NAME PETROLEUM TREATING CO
ADDRESS 1 3010 GILMORE AVE
ADDRESS 2
CITY BAKERSFIELD
STATE CA ZIP CODE 93308
NOTE

NAME PHILLIPS PETROLEUM CO
ADDRESS 1 8TH & KEELER STREET
ADDRESS 2 1250 ADAMS BUILDING
CITY BARTLESVILLE
STATE OK ZIP CODE 74004
NOTE

NAME PLACID OIL CO
ADDRESS 1 1000 FIRST NATIONAL BANK BLDG
ADDRESS 2
CITY DALLAS
STATE TX ZIP CODE 75202
NOTE

NAME PLATEAU INC
ADDRESS 1 P O BOX 108
ADDRESS 2
CITY FARMINGTON
STATE NM ZIP CODE 87401
NOTE

NAME POWERINE OIL CO
ADDRESS 1 12354 LAKELAND ROAD
ADDRESS 2
CITY SANTA FE SPRINGS
STATE CA ZIP CODE 90670
NOTE

NAME PRIDE REFINING CO
ADDRESS 1 P.O. BOX 3237
ADDRESS 2
CITY ABILENE
STATE TX ZIP CODE 79604
NOTE

NAME PRODUCERS CRUDE INC
ADDRESS 1 PO DRAWER 2757
ADDRESS 2
CITY ABILENE
STATE TX ZIP CODE 79604
NOTE

NAME QUAKER STATE OIL REFINING CORP
ADDRESS 1 MAIN 9RN
ADDRESS 2 MAIN WHS
CITY OIL CITY
STATE PA ZIP CODE 16301
NOTE

NAME QUASAR ENERGY INC
ADDRESS 1 2550 FORT WORTH NAT BANK BLDG
ADDRESS 2
CITY FORT WORTH
STATE TX ZIP CODE 76102
NOTE

NAME QUINTANA MORELL JT VENT
ADDRESS 1 5450 UPRIVER RD
ADDRESS 2
CITY CORPUS CHRISTI
STATE TX ZIP CODE 77408
NOTE

NAME QUINTANA REFINERY CO
ADDRESS 1 601 JEFFERSON
ADDRESS 2
CITY HOUSTON
STATE TX ZIP CODE 77002
NOTE NEW RESPONDENT 9/78

NAME RESERVE OIL & GAS CO
ADDRESS 1 1776 LINCOLN ST
ADDRESS 2 SUITE 1200
CITY DENVER
STATE CO ZIP CODE 80203
NOTE

NAME RIDDWAY EXPRESS INC
ADDRESS 1 P O BOX 671
ADDRESS 2 1077 GORGE BLVD
CITY AKRON
STATE OH ZIP CODE 44309
NOTE

NAME ROCK ISLAND REFINING CORP
ADDRESS 1 P.O. BOX 68007
ADDRESS 2
CITY INDIANAPOLIS
STATE IN ZIP CODE 46268
NOTE

NAME SAHNE REFINING INC
ADDRESS 1 P O BOX 2005
ADDRESS 2 5121 STANDARD STREET
CITY BAKERSFIELD
STATE CA ZIP CODE 93303
NOTE

NAME SAN JOAQUIN REFINING CO
ADDRESS 1 PO BOX 5570
ADDRESS 2 STANDARD AND BELL STS
CITY BAKERSFIELD
STATE CA ZIP CODE 93308
NOTE

NAME SCURLOCK OIL CO
ADDRESS 1 1501 HOUSTON CLUB BLDG
ADDRESS 2
CITY HOUSTON
STATE TX ZIP CODE 77002
NOTE

NAME SHELL OIL CO
ADDRESS 1 ONE SHELL PLAZA
ADDRESS 2 P O BOX 2463
CITY HOUSTON
STATE TX ZIP CODE 77001
NOTE

NAME SIGMOR REFINING CO
ADDRESS 1 P O BOX 20267
ADDRESS 2
CITY SAN ANTONIO
STATE TX ZIP CODE 78220
NOTE

NAME SOUTH KENTUCKY PURCHASING CO.
ADDRESS 1 520 MONTICELLO ST
ADDRESS 2
CITY SOMERSET
STATE KY ZIP CODE 42501
NOTE

NAME SOUTHERN UNION REFINING CO
ADDRESS 1 P O BOX 986
ADDRESS 2
CITY HOBBS
STATE NM ZIP CODE 88240
NOTE

NAME STANDARD OIL CO (OHIO) THE
ADDRESS 1 1635 MIDLAND BLDG
ADDRESS 2 RM 1018
CITY CLEVELAND
STATE OH ZIP CODE 44115
NOTE

SUN CO INC
1608 WALNUT STREET

PHILADELPHIA
PA ZIP CODE 19103

SUNLAND REFINING CORP
P O BOX 1345

BAKERSFIELD
CA ZIP CODE 93302

TEXMECH OIL CO
P.O. BOX 2511

HOUSTON
TX ZIP CODE 77001

TEXORO PETROLEUM CORP
8750 TESORO DRIVE

SAN ANTONIO
TX ZIP CODE 78200

TEXACO INC
2000 WESTCHESTER AVE

WHITE PLAINS
NY ZIP CODE 10650

TEXAS CITY REFINING INC
PO BOX 1271

TEXAS CITY
TX ZIP CODE 77590

TEXPATA PIPE LINE CO
P. O. BOX 809
1400 SALINAS
LAREDO
TX ZIP CODE 78040

THRIFTWAY CO
PO BOX 1367

FARMINGTON
NM ZIP CODE 87401

THUNDERBIRD PETROLEUMS INC
500 E.CENTRAL AVE.
P.O. BOX 1700
MINOT
ND ZIP CODE 58701

TIJUANA REFINING CO
6001 N PENNSYLVANIA
SUITE 402
OKLAHOMA CITY
OK ZIP CODE 73116

TOSCO CORP
10100 SANTA MONICA BLVD

LOS ANGELES
CA ZIP CODE 90067

TOTAL PETROLEUM INC
PO BOX 231
E. SUPERIOR ST.
ALMA
MI ZIP CODE 48801

TOWN OIL CO
NPO 88

PAOLA
KS ZIP CODE 66071

TRUE OIL PURCHASING CO
300 RIVER CROSS ROAD
P O BOX 2360
CASPER
WY ZIP CODE 82601
INCLUDES TRUE OIL CO

UNI OIL INC
6339 GULFTOWN SUITE 306

HOUSTON
TX ZIP CODE 77081

UNION OIL OF CALIF
1650 EAST GOLF ROAD

SCHAUMBURG
IL ZIP CODE 60196

UNITED GAS PIPELINE CO
PO BOX 1478
700 MILAM
HOUSTON
TX ZIP CODE 77001

US OIL & REFG CO
PO BOX 2255
3601 MARSHALL AVE PO BOX 225
TACOMA
WA ZIP CODE 98421

USA PETROLEUM CORP
PO BOX 1830

SANTA MONICA
CA ZIP CODE 90406
NEW MEMBERSHIP 7/78

V G S CORP
PO BOX 10668

JACKSON
MS ZIP CODE 39206

VICKERS PETROLEUM CORP
VICKERS-SIMS & T BUILDING
BOX 2200
WICHITA
KS ZIP CODE 67201

NAME WAGGONER W T ESTATE P/L
ADDRESS 1 SPO BOX 2130
ADDRESS 2
CITY VERNON
STATE TX ZIP CODE 76384
NOTE

NAME WANDA PETROLEUM CO
ADDRESS 1 P O BOX 53126
ADDRESS 2
CITY HOUSTON
STATE TX ZIP CODE 77052
NOTE

NAME WARRIOR ASPHALT CO OF ALABAMA
ADDRESS 1 PO DRAWER 3150
ADDRESS 2
CITY TUSCALOOSA
STATE AL ZIP CODE 35401
NOTE

NAME WARRIOR OIL CO INC
ADDRESS 1 P O DRAWER 3150
ADDRESS 2
CITY TUSCALOOSA
STATE AL ZIP CODE 35401
NOTE

NAME WEST COAST OIL CO
ADDRESS 1 PO BOX 5075
ADDRESS 2
CITY OILDALE
STATE CA ZIP CODE 93308
NOTE

NAME WESTERN PETRO CHEMICAL
ADDRESS 1 PO BOX 558
ADDRESS 2
CITY CHANUTE
STATE KS ZIP CODE 66720
NOTE

NAME WESTLAND OIL DEVELOPMENT CORP
ADDRESS 1 P O BOX 33369
ADDRESS 2
CITY HOUSTON
STATE TX ZIP CODE 77036
NOTE

WILLIAMS ENERGY CO
ONE WILLIAMS CENTER
P O BOX 3474
TULSA
OK ZIP CODE 74101

WING CORP
SUITE 3400
1100 MILAM BUILDING
HOUSTON
TX ZIP CODE 77002

WITCO CHEMICAL CORP
277 PARK AVENUE

NEW YORK
NY ZIP CODE 10017
GOLDEN BEAM DIVISION

WOODS CHARLES J PETROLEUM INC
332 S MICHIGAN AVE
P O BOX 185
CHICAGO
IL ZIP CODE 60604

YOUNG REFINING CORP
P. O. BOX 775

DOUGLASVILLE
GA ZIP CODE 30133

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GENERAL CHEM UTIL MICHOACANSUR
GENERAL ENERGY CO INC
GEYER OIL CO
GIANT INDUSTRIES INC
GLACIER PARK CO
GLADIEUX REFINERY INC
GULF OIL CORP
HERNDON OIL & GAS CO
HIGLAND JACK & SON INC
HOUSTON OIL & MINERALS TRADING
HOWELL CORP
HUNT H L ESTATE OF
HUNT OIL CO
HURRICANE TRADING COMPANY INC
HUSKY OIL CO
INDEPENDENT OIL PRODUCERS AGEN
INDIANA FARM BUREAU COOP ASSN
INDUSTRIAL PETROLEUM TRADIN
INTERNATIONAL PETROLEUM TRADIN
J & W REFINING INC
KENTUCKY OIL & REFINING INC
KERN COUNTY REFINERY INC
KOCH INDUSTRIES INC
LA GLORIA OIL AND GAS CO
LAKEFIN ASPHALT REFINING INC
LITTLE AMERICA REFINING CO
LOUISIANA LAND & EXPLORATION
LUNDBY-MAGNUS OIL CO
MACLANEY VACUUM TRANSPORT
MACMILLAN RING-FREE OIL CO INC
MAGNOLIA PIPE LINE CORP
MAPCO INC
MARATHON OIL CO
MARTIN FORD
MARTIN GAS SALES
MEDFORD OIL CO
MESA PIPE LINE CO
MITCHELL ENERGY AND DEV CORP
MOBIL OIL CORP
MOBLEY TRANSPORTERS INC
MONSANTO CO
MUMPOWER OIL CORP
MUSTANG GAS PRODUCTS INC
MUTUAL PETROLEUM MARKETING INC
NAVAJO CRUDE OIL PURCHASING CO
NAVAJO REFINING CO
NEWHALL REFINING CO INC
NINNAH AMERICAN PETROLEUM
NORTHERN MONTANA OIL SERVICES
NORTHERN NATURAL GAS CO
NORTHWEST CHEMIE INC
O M C CORP
OASIS PETRO ENERGY CORP
OIL TRANSPORT CO
ONEAL OIL & TRANSPORTATION INC
ORMAND REFINERY
P & O PIPELINE INC
P G LAND PIPE LINE CO
PENNZOIL CO
PLAINS CORP INC
PETRO SANDS INC
PETROL PRODUCTS INC
PETROLEUM TREATING CO
PETTIBONE PETROLEUM CO
PLACID OIL CO
PLATEAU INC
PINEWINE OIL CO
PRIOR REFINING CO
PRODUCERS CHEMICAL INC
QUAKER STATE OIL REFINING CORP
QUITMAN ENERGY INC
QUITMAN REFINERY CO
RIESENFELD & GAS INC
RIGHT ISLAND REFINING CORP
SAN JUAQUIN REFINING CO
SEMCO OIL CO
SHELL OIL CO
SOUTH MONTCHEY PURCHASING CO.
SOUTHERN UNION REFINING CO
STANDARD OIL CO (OHIO) THE
SUN CO INC
SUNLAND REFINING CORP
TEMPECO OIL CO
TENNECO PETROLEUM CORP
TESORO INC
TEXAS CITY REFINING INC
TEXPATA PIPE LINE CO
THRIFTWAY CO
THUNDERBIRD PETROLEUMS INC
TIMBANA REFINING CO
TOSCO CORP
TOTAL PETROLEUM INC
TRUM OIL CO
UNIT OIL INC
UNION OIL OF CALIF
UNITED GAS PIPELINE CO
US OIL & REFG CO
UTA PETROLEUM CORP
V G S CORP
VIKING REFINING CORP
WAGGONER & T ESTATE P/L
WANDA PETROLEUM CO
WARRIOR ASPHALT CO OF ALABAMA
WASHBURN OIL CO INC
WEST COAST OIL CO
WESTERN REFAC CHEMICAL
WESTLAND OIL DEVELOPMENT CORP
WILLIAMS ENERGY CO
WING CORP
WITCO CHEMICAL CORP
WINN CHARLES J PETROLEUM INC
YOUNG REFINING CORP

ANKEY OIL CO INC
ALLIED MATERIALS CORP
AMERADA HESS CORP
AMERICAN PACIFIC INTERNATIONAL
AMERICAN PETROFINA INC
AMINOIL USA
AMOCO PRODUCTION CO
ANDSON TRANSPORTATION CO
ARCO OIL CORP
ARIZONA FUELS CORP
ASHLAND OIL INC
ATLANTIC RICHFIELD CO
B & W GATHERING INC
BALL MARKETING INC
BASIN INC
BASS PECAN CO
BAYOU STATE OIL CORP
BEACON OIL CO
BI-PETRO INC
BIGATEX CRUDE OIL CO
BIGHEART PIPE LINE CORP
BRION CORP
C O P INC
CALUMET INDUSTRIES INC
CARNEGIE SERVICE CO
CENTENNIAL CRUDE CORP
CENTRAL CRUDE CORP
CHAMPLIN PETROLEUM CO
CHANTEN OIL CO
CHEVRON USA INC
CITIES SERVICE CO
CITRONELLE-MOBILE GATHERING
CLAIBORNE GASOLINE CO
CLARK OIL & REFINING CORP
COASTAL STATES GAS CORP
COFFEEN PIPE LINE CO
CONSTRUCTION MOULDING CO INC
CONSUMERS FIRM CO.
CONTINENTAL OIL CO
COSMIC OIL CO
CRIMSON CENTRAL PETROLEUM
CROWN CO INC
CRUDE OIL PURCHASING
CRYSTAL OIL CO
DEUTSCHE FINANCIAL SERVICES
DIAMOND SHAMROCK CORP
DIMA CORP
DIXIE-LESTER GAS CORP
DU CHEMICAL CO
ECHO DRILLING INC
EDDY REFINING CO
ENCINO EXCHANGE CO INC
ENRON CORP
EXXON CORP
FARMERS UNION CENTRAL EXCHANGE
FARMLAND INDUSTRIES INC
FLETCHER OIL & REFINING
FINLEN J E PETROLEUM PRODUCTS
FREE TANK TRUCKS INC

federal register

WEDNESDAY, NOVEMBER 8, 1978
PART III

THE NATIONAL ARCHIVES OF THE UNITED STATES 1934

DEPARTMENT OF THE TREASURY

Office of the Secretary

IMPROVING GOVERNMENT REGULATIONS

Final Report for Implementation of EO 12044

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[4810-25-M]

DEPARTMENT OF THE TREASURY

Office of the Secretary

EXECUTIVE ORDER 12044 ON IMPROVING GOVERNMENT REGULATIONS

Final Report for Implementation

AGENCY: Department of the Treasury.

ACTION: Revised implementation report required by Executive Order 12044.

SUMMARY: This revised report, as required by section 5(b) of Executive Order 12044, provides a final Treasury Directive designed to implement the Executive order. The Directive contains revisions as a result of public comment on the draft implementation report published May 24, 1978.

EFFECTIVE DATE: May 22, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Anthony V. DiSilvestre, Regulatory Improvement Implementation Project (RIIP) Coordinator, 202-566-2966.

SUPPLEMENTARY INFORMATION: On May 24, 1978, the Department of the Treasury published for public comment in the FEDERAL REGISTER (43 FR 22319), a draft report for implementation of Executive Order 12044. The provisions contained in the draft Treasury Directive published at Part Two of the draft report have been in effect since May 22, 1978, pending revision as a result of comments submitted. This revised report has been approved by the Office of Management and Budget prior to publication.

During the comment period, the Department received comments from several associations, an industry member, another Government agency, and several offices within Treasury. We wish to express our appreciation to those who provided their views.

COMMENTS RECEIVED AND TREASURY RESPONSES

The comments received have been grouped by the paragraphs of the Directive to which they refer. The Department's responses to substantive public comments received appear below. In addition, some editorial changes and modifications in response to comments not adopted in total were made.

PARAGRAPH 6, EFFECTIVE DATE

The Treasury Directive is effective May 22, 1978. In response to publication of the draft Treasury Directive on May 24, 1978, comment was received stressing the importance of early publication of many pending Treasury regulations and citing the large number of such pending regulations as a result of recent extensive legislation. Delay in publication of these much needed regulations would result if work plans or regulatory analyses were prepared on regulations which were in the process of preparation before May 22, 1978. In order to avoid this delay, it was decided that any regulation in the process of active preparation (that is, any regulation on which at least initial developmental steps have been taken) before that date will not require a work plan or a regulatory analysis unless otherwise directed by higher authority. Processing of regulations initiated before May 22, 1978, however, shall take into account the intent of the Directive, and shall be subject to Secretarial approval prior to publication in final form.

PARAGRAPH 7, POLICY

Several comments were received concerning policy issues covered in the proposed Directive. The respondents suggested that additional areas should be specified and the Department's policy should include:

(1) placing a particular emphasis on early consultation with State and local governments;

(2) consideration of the impact of education-related regulations on private schools; and

(3) elimination of substantive and terminological sex discrimination from the regulations.

Treasury believes that the first two comments listed are already covered by paragraphs 7.c. and 10. (formerly 9.f.) of the Directive which call for early participation and comment in developing regulations. The Department is of the opinion that the use of sex neutral language in the regulations, as requested by the President in a memorandum of August 26, 1977, should be expressed as a policy of the Department and has, therefore, amended paragraph 7. of the Directive accordingly.

PARAGRAPH 8, CRITERIA FOR SIGNIFICANT REGULATIONS

Several comments received suggested changes to the criteria listed in paragraph 8. of the Directive. One respondent indicated that since various reporting forms used by State and local governments may be revised without consultation, and that since their revisions may be made without publication in the FEDERAL REGISTER, the forms should be considered significant regulations. This respondent also indicated that State and local governments should be notified of pending action when a regulation concerning them is determined nonsignificant. The Department believes, in both instances, that the Directive adequately provides for participation by State and local governments in the regulatory process, and further, that since the information requested in the forms is generally authorized in the regulations, that State and local governments will have ample input. In addition, any regulation addressed to State and local governments is normally considered significant.

Another respondent suggested including language to the effect that regulations not have a disparate impact on the basis of sex. Since the policy statement was amended to include this issue, this suggestion was not adopted.

The final comment concerned the classification of a certain portion of regulations as nonsignificant unless the regulations are legislative rather than interpretative as to substantive matter, or if they reverse long-standing Treasury policy. This respondent cited as cause a backlog of regulations to be issued, and that the Directive, as proposed, might further delay issuance of the regulations. The Department, by modifying the effective date requirements to prevent delay in issuing regulations already in process, has already treated this issue and believes that exempting certain classes of regulations from the requirements is not in line with the spirit of the Executive order. This respondent also suggested that, rather than amending the Directive, the Executive order be amended to accomplish the same goals. This part of the suggestion is beyond the scope of this document and was referred to the Office of Management and Budget for their consideration.

PARAGRAPH 9, DEVELOPMENT OR REVIEW OF REGULATIONS

Some comments were received concerning the work plan concept contained in paragraph 9. The comments are summarized as follows:

(1) A work plan should not be required for nonsignificant regulations since it may cause undue delay, and, to further expedite the process, authority to approve work plans should be given to bureau heads.

(2) The work plan should include a reference to the applicable statutory language justifying the regulation and a brief discussion of the alternative approaches rejected for exploration.

(3) Add a requirement that Treasury consult with State and local governments before a regulation is proposed, and then include in the work plan a procedure for obtaining comments by State and local governments in completion of the consultative process.

(4) The entire work plan should be made available on request since the information contained in it may be important to an understanding of the proposal.

(5) The work plan should contain a procedure for coordination of review of regulatory proposals by affected bureaus within the Department.

The Department has considered these suggestions and has decided to adopt number (4) and (5). Information in the work plan will be available to the public upon request in accordance with the Freedom of Information Act. As a respondent noted, this is in line with Executive Order 12044 as it provides openness and a cooperative spirit in the development of the regulations. The implementation of comment number (5) was modified to now require that bureau and office heads and Assistant Secretaries be responsible for alerting the Secretary or Deputy Secretary to "proposed regulation projects involving particularly far reaching or sensitive issues requiring particular review." Accordingly, revisions were made to paragraphs 9. and 15. of the Directive.

The Department decided not to adopt the other suggestions for several reasons. First, it was not felt that the use of work plans for nonsignificant regulations would cause undue delay. Second, the Office of Management and Budget agrees with Treasury's determination that the Secretary is properly the approving official for all work plans in order to exercise effective oversight of the regulation process. Third, the work plan already contains a discussion of potential alternative approaches to explore which should cover the applicable ones. Fourth, the statutory basis justifying the regulation provides sufficient information. Finally, paragraph 10. (formerly paragraph 9.f.) provides, in particular, for State and local governments to have an early opportunity to participate. Paragraph 10. also references bureaus and offices taking into account, in terms of public participation, the provisions of the Federal Advisory Committee Act. (NOTES.—Old Subparagraph 9.f. of the draft Directive has been redesignated as paragraph 10., and old paragraphs 10. through 17. are now paragraphs 11. through 18.).

PARAGRAPH 11, SEMIANNUAL AGENDA

An internal suggestion was made to clarify whether a negative semiannual agenda is needed when a bureau or office has no regulation projects under review or consideration. Semiannual agendas are necessary under these circumstances and each bureau of office will be required to publish one; this is now expressed in paragraph 11. of the Directive. Another revision to paragraph 11. states that, "The publication of supplemental semiannual agendas shall be publicized in accordance with the applicable provisions of paragraph 10."

PARAGRAPH 12, REVIEW OF EXISTING REGULATIONS

One respondent suggested adding another criterion to those determining which existing regulations are to be reviewed. The respondent suggested including any regulation which is the subject of a request for review by State and local government officials. Paragraph 12.a.(2) of the Directive already provides that regulations which are the subject of meaningful criticism directed to the agency shall be reviewed. The Department decided to clarify this further by adding a reference to "requests for review" as well as meaningful criticism, and by "businesses and State and local governments, or their representatives" as well as the general public.

PARAGRAPH 13, REGULATORY ANALYSIS

Several comments were received regarding paragraph 13. It was suggested that such analyses should:

(1) Specify State and local governments in terms of "levels of government;"

(2) Describe the alternative approaches rejected for analysis;

(3) Include an analysis of the costs of preparing reports and the costs of delay in operations resulting from compliance;

(4) Eliminate the $40 million increase in annual costs (contained in paragraph 13.b.(2)) as a criterion since it is too difficult to identify with any certainty; and

(5) Require that no essential data already available to the government shall be sought from State and local government in addition to the public, and that, if the data is not available, the least burdensome manner of obtaining it shall also be chosen for State and local governments.

The Department considered these suggestions and decided to adopt numbers (3) and (5). Paragraph 13.e.(3) reflects the third suggestion in that it now closes with the phrase "including consideration of costs of compliance." It was also the intention that no available data would be sought from State and local governments, but if, nonetheless, essential data had to be sought, the least burdensome manner would be chosen, and paragraph 13.e. now so states.

It was decided that it was not necessary to adopt the other suggestions in that: State and local governments are the levels of government referred to (but this is now clarified in paragraph 13.a.); the examination of alternative approaches is already specified in paragraph 13.e.(3); and the $40 million criterion does provide a threshold amount that can be used to determine the impact of the regulation.

PARAGRAPH 15, RESPONSIBILITIES

As discussed earlier, this paragraph was revised to make it the responsibility of bureau and office heads and Assistant secretaries to alert the Secretary or Deputy Secretary to particularly far reaching or sensitive regulation projects issues requiring their particular review.

LIST OF EXISTING REGULATIONS SELECTED FOR INITIAL REVIEW

One comment was received concerning Part Three of the draft report. The respondent suggested revisions to the list of regulations selected for initial review contained in Part Three. The suggestion was not adopted since the particular bureau believes the regulations already listed are more in need of review. Since no revisions will be made, the list of existing regulations for review is not repeated in this report, but is hereby adopted as proposed in Part Three of the draft report which appeared in the FEDERAL REGISTER of May 24, 1978 (43 FR 22319).

Final directive. The text of the Treasury Directive is as follows:

SUBJECT: CRITERIA AND PROCEDURES FOR THE PREPARATION, REVIEW, AND APPROVAL OF REGULATIONS

1. PURPOSE

This Directive establishes policies, criteria, and procedures for the issuance of new regulations, the review of existing regulations, and the preparation of regulatory analyses, and makes assignments of related responsibilities. The Directive is intended to improve the quality of Treasury regulatory practices. It is not intended to create delay in the process.

2. SCOPE

This Directive applies to the Office of the Secretary and all bureaus.

3. AUTHORITY AND REFERENCES

a. Executive Order 12044, "Improving Government Regulations," dated March 23, 1978, (43 FR 12661).

b. Federal Register Document Drafting Handbook, dated January 1975.

c. 1 CFR 18.12, Preparation of Preambles for Federal Register Documents.

d. TD 50-04.A, "Filing Documents for Publication with the FEDERAL REGISTER," dated September 22, 1975.

4. CANCELLATION

a. TD 50-04.D, "Inflation Impact Statements for Proposed Legislation, Regulations or Rules," dated October 8, 1976.

b. TD 50-04.E, "Procedures for Preparing Documents Which Impact the Public," dated September 26, 1977.

5. APPLICABILITY

a. *In general.*

The Department, through its bureaus and offices, issues regulations

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which, for the purposes of this Directive, are divided into three categories. The first category consists of internal directives, generally published in Treasury directives systems. The second consists of regulations which impact the public and which are published in the FEDERAL REGISTER and codified in the Code of Federal Regulations. The third consists of notices and other essentially nonpermanent matters published in the FEDERAL REGISTER, but not codified in the Code of Federal Regulations. The policies set forth in paragraph 7. and the responsibilities assigned by paragraph 15. of this Directive govern all three categories. The principal purpose of this Directive is to implement Executive Order 12044. In recognition of this, the criteria and procedures described in paragraphs 8. through 14. relate principally to the second category of regulations.

b. *Specific nonapplicability.* Specifically, the criteria and procedures set forth in paragraphs 8. through 14. do not apply to:

(1) internal management documents issued in the Department of the Treasury Directives Manual, the Treasury Personnel Manual, the Treasury Fiscal Requirements Manual, the Treasury Procurement Regulations, and similar or related constituent unit directives systems;

(2) regulations issued in accordance with the formal rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 556, 557); and

(3) regulations issued with respect to a military or foreign affairs function of the United States.

c. *Notice section material.* Materials which are published in the Notice section of the FEDERAL REGISTER are also not subject to the criteria and procedures set forth in paragraphs 8. through 14. The FEDERAL REGISTER publication of these materials shall include an express statement to the effect that the published material does not meet the Department's criteria for significant regulations. However, in the discretion of the office or person proposing issuance, or when directed by higher authority, material to be published in the Notice section may be made subject to these criteria and procedures to the extent possible.

(d) *Waiver.* The provisions of paragraphs 8. through 14. may be waived with respect to regulations otherwise subject to those provisions, when the regulations are issued in response to an emergency, or are governed by short-term deadlines imposed by a statute or judicial decision. However, when such waiver is necessary, the FEDERAL REGISTER publication of the regulation shall include a statement of the reasons why it is impractical or contrary to the public interest to follow the procedures of this Directive, together with the name and title of the policy official responsible for the determination.

6. EFFECTIVE DATE

The provisions of this Directive are effective as of May 22, 1978. Any regulation in the process of active preparation (that is, any regulation on which at least initial developmental steps have been taken) before that date will not require a work plan (paragraph 9.b.), or a regulatory analysis (paragraph 13.), unless otherwise directed by higher authority. The implementation of this effective date is designed so that the issuance of any regulation which was in the process of preparation before that date will not be delayed. Processing of regulations initiated before May 22, 1978, however, shall take into account the intent of this Directive and shall be subject to Secretarial approval prior to publication in final form.

7. POLICY

It is the policy of the Department of the Treasury that the spirit as well as the letter of Executive Order 12044 be followed in the development of regulations. To achieve this objective, regulations shall be developed through a process which insures that:

a. the need for, and the purposes of, the regulation are clearly established;

b. the Secretary and other policy officials are able to exercise effective oversight;

c. opportunity exists, as otherwise required (e.g., the President's memorandum of March 23, 1978, on the subject of State and local government participation in the regulatory process), for early participation and comment by other Federal agencies, State and local governments, businesses, organizations, and individual members of the public;

d. meaningful alternatives are considered and analyzed before the regulation is issued;

e. compliance costs, paperwork and other burdens on the public are minimized; and

f. it is also the policy of the Department that regulations will be neutral as to gender, both in substance and terminology, unless the context clearly justifies gender specificity.

8. CRITERIA FOR SIGNIFICANT REGULATIONS

Each regulation or amendment to an existing regulation which is to be (or has been) issued by the Department of the Treasury or a component thereof, published in the FEDERAL REGISTER, and codified in the Code of Federal Regulations is considered to be a significant regulation. Any document which is not published in the FEDERAL REGISTER, or published there, but not codified in the Code of Federal Regulation, is not significant and may not be a regulation. A regulation which would otherwise be eligible for consideration as a significant regulation may, nonetheless, with Secretarial approval, be determined not to be a significant regulation. Such determination shall be expressly justified. Examples of qualifying justifications are the following. The regulation or amendment:

a. Is required to implement a statute, an international agreement, a court decision, or a regulatory action of another agency, bureau, or office, and no sustantial element of discretion is afforded the rulemaker;

b. Is nonsubstantive;

c. Is essentially procedural;

d. Does not materially change existing, or establish new, policy;

e. Does not impose substantial additional requirements or costs on, or substantially alter the legal rights or obligations of, those affected thereby; or

f. Is addressed to, and primarily impacts, Federal officials or employees, and not the general public, business entities or State and local governments.

9. DEVELOPMENT OR REVIEW OF REGULATIONS

a. *Approval to develop or review regulations.* No action, other than preliminary studies, on any regulation which is to be, or has been, published in the FEDERAL REGISTER and codified in the Code of Federal Regulations, shall be without Secretarial approval of a work plan.

b. *Work plan to be funished the Secretary.* The initiating office wishing to gain approval of such a regulation project shall prepare a work plan in memorandum form from the bureau or office head, through the appropriate policy review officials, to the Secretary. Each work plan shall serially numbered by the bureau or office. The work plan shall contain the following information:

(1) a description of the subject matter of the regulation project or whether a new regulation, or revision or rescission of an existing regulation is proposed;

(2) a justification of the need for a new or revised regulation or other action proposed;

(3) the statutory basis for the regulation;

(4) the name and telephone number of a knowledgeable official;

(5) if applicable or possible, a statement of whether a regulatory analysis will be prepared, or a statement as to when and how it will be determined whether such an analysis will be prepared;

(6) a brief description of the policy issues involved;

(7) a brief discussion of potential alternative approaches to be explored for solving the issues;

(8) the plan for obtaining public comments, which shall address whether a public hearing or conference will be held;

(9) the target dates for completion of the following steps in the development of the regulation:

(a) completion of advance notice of proposed rulemaking or notice of intent (if any), and proposed publication date for such notice;

(b) completion of the draft regulatory analysis, if applicable, and the preliminary draft of the notice of proposed rule-making;

(c) completion of the final draft of proposed rulemaking, the period of review within Treasury, and the proposed date for publication in the FEDERAL REGISTER;

(d) expiration of the period for written comments and completion of hearing, if any;

(e) completion of the final regulatory analysis, if applicable, and the preliminary draft of the final rulemaking; and

(f) completion of the final draft, the period for review within Treasury, and the proposed date for publication in the FEDERAL REGISTER;

(10) if applicable, the reasons why the regulation should not be considered significant in accordance with paragraph 8.; and

(11) a recommendation that the work plan receive Secretarial approval.

c. *Work plan for nonsignificant regulations.* If a work plan in accordance with b. (10) above states reasons why the regulation should not be considered significant, the work plan shall fully address the matters in b. (1) through b. (5) and b. (10), and may address all other matters in an abbreviated, conclusionary manner. For example, with respect to b.(9), only the information in b. (9)(f) need be specified.

d. *Approval of work plan.* Any reviewing official may disapprove or direct that a work plan be revised. By concurring and forwarding the work plan to the next reviewer, each reviewing official will be deemed to recommend approval of the work plan as presented. Approval of a work plan is limited to the Secretarial level. The initiating office may be required to revise the work plan prior to, or as a condition of, approval. An approved work plan is a commitment by the initiating bureau or office that the regulation project will be undertaken in conformity with the approved plan. Bureau and office heads will be held accountable for carrying out the plan as approved, whether revised or amended.

e. *Revision or amendment of work plan.* (1) The originating office may, at any time during the development of a regulation, initiate a revision of an approved work plan. Unless the Secretary has determined the regulation not to be significant, a material, substantive revision of items (1), (2), (3), (5), (6), (7), or (8) of the work plan, prior to publication of a notice of proposed rulemaking, requires resubmission for Secretarial approval. Any such revision made to the work plan after such publication does not require resubmission, but shall be explained in connection with approval of the final regulation under paragraph 14.c. A revision of item (9) also requires resubmission, if the target dates under (a), (c), or (f) are to be delayed for more than three months. In such event, the resubmission for approval shall state the reasons for the delay. Revision of item (10), at any time, requires resubmission for Secretarial approval.

(2) Nonmaterial, nonsubstantive changes in any item, and changes in item (9), other than as specified in e. (1) above, of approved work plans for significant regulations, or any changes (other than to item (10)) to work plans covering regulations identified as nonsignificant, may be accomplished by amendment. Amendments do not require Secretarial approval.

(3) Revisions or amendments to approved work plans shall be made by placing brackets "[]" around material to be deleted and underlining new language. This will permit immediate focus on changes and will provide a continous history of the work plan.

f. *Public availability of work plans.* Items (1) through (5) of approved work plans will usually be publicly available as published in semiannual agendas. In addition, other items of approved work plans will be publicly available upon request in accordance with the provisions of the Freedom of Information Act.

10. OPPORTUNITY FOR PUBLIC PARTICIPATION

As otherwise required, and in accordance with paragraph 7.c., each bureau and office shall give the public, in general, and State and local governments or their representatives, in particular, an early and meaningful opportunity to participate in the regulatory process. In so doing, bureaus and offices shall also take into account the provisions of the Federal Advisory Committee Act, and TD 10-06.E, Treasury Advisory Committee Management, dated September 2, 1977. Bureaus and offices may consider a number of ways to provide this opportunity, including:

(1) publishing an advance notice of proposed rulemaking;

(2) holding open conferences or public hearings;

(3) sending notices of proposed regulations to publications likely to be read by those affected; and

(4) notifying interested parties directly. Bureaus and offices shall allow at least 60 days for comment on proposed significant regulations. If this is not possible, the regulation shall be accompanied by a brief statement of the reason why a shorter time period is necessary.

11. SEMIANNUAL AGENDA

a. *Schedule of semiannual agenda.* Each year, by September 1, starting in 1978, the head of each bureau or office shall submit to the Executive Secretary, a statement of the dates on which the bureau or office proposes to publish its semiannual agenda. The Executive Secretary shall compile the Department's publication schedule on the basis of these submissions and, with Secretarial approval, submit the schedule for publication in the FEDERAL REGISTER on the first Monday in October of each year, starting in 1978.

b. *Semiannual agendas.* Each bureau or office shall publish its semiannual agenda in accordance with the schedule published in the FEDERAL REGISTER in October of each year, and may publish a supplement at any time. The publication of supplemental agendas shall be publicized in accordance with the applicable provisions of paragraph 10. The head of each bureau or office shall submit the semiannual agenda, or supplements thereto, for FEDERAL REGISTER publication by signing below the subscription, "By direction of the Secretary of the Treasury."

(1) Each semiannual agenda shall be composed of two parts, a list of significant existing regulations under development, and a list of significant regulations under development, and a list of significant existing regulations to be reviewed. Each list shall include significant regulations for which a work plan is not required by reason of the effective date provisions of paragraph 6., or by the waiver provisions of paragraph 5.d. Other regulations for which a work plan has not been prepared shall not be included. Regulations determined to be nonsignificant may also be listed within the appropriate list of significant regulations. For each regulation listed, the semiannual agenda shall set forth the information described in paragraph 9.b.(1) through (5). The semiannual agenda shall also indicate the status of regulations listed on prior semiannual agendas.

(2) In keeping with the intent of this Directive, bureaus and offices shall, as necessary, publish negative semiannual agendas.

(3) Upon publication of a semiannual agenda or supplement, the bureau

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or office shall also furnish a copy to the Executive Secretary.

12. REVIEW OF EXISTING REGULATIONS

a. *Criteria.* Bureaus or offices shall periodically review their existing regulations to determine if they are achieving the policy goals set forth in paragraph 7. Selection of regulations for review shall be made on the basis of the following criteria listed in the order of their significance. Regulations which:

(1) were issued prior to enactment of legislation which either materially alters the statute under which the regulations were issued or provides significantly different rules concerning the subject regulatory matter from the rules contained in the regulations;

(2) are the subject of meaningful criticism or requests for review directed to the agency by the public, businesses, or State and local governments or their representatives;

(3) apply only with respect to a period of time for which the opportunity has expired for the agency to secure compliance;

(4) were issued with respect to circumstances or conditions which are no longer material;

(5) have not been invoked by those affected or the government for more than one year;

(6) the bureau or office considers are complied with at an unacceptable level by a significant portion of the public;

(7) by their terms (and without regard to the requirements of an underlying statute or court decision) impose a reporting, recordkeeping, or other burden on those affected thereby;

(8) may duplicate or overlap other regulations of the Federal government;

(9) have been the subject of a significant volume of litigation questioning their validity or interpretation;

(10) contain substantive rules that are not simply interpretative rules, general statements of policy or rules of agency organization, procedure, or practice and which have not been significantly revised in the preceding six years; and

(11) are complex and can be clarified and simplified.

b. *Identification.* The head of each bureau or office shall ensure that the bureau of office maintains a systematic process for the identification of regulations for review using the criteria set forth above.

c. *Work plan.* The bureau of office proposing a regulation for review shall prepare and obtain Secretarial approval of a work plan in accordance with paragraph 9., prior to starting the review of the regulation, unless not required by reason of the effective date provisions of paragraph 6. Review of a regulation shall follow the procedural steps applicable to the development of new regulations.

d. *Agenda.* Significant regulations approved for review shall be included in the semiannual agenda as provided in paragraph 11.

13. REGULATORY ANALYSIS

a. *Responsibility.* Some significant regulations may have major economic consequences for the general economy, for individual industries, geographic regions, or levels of State or local governments. For these regulations, a regulatory analysis shall be prepared. Such an analysis shall be a careful examination of alternative approaches, which is undertaken early in the regulatory process in order to be available to reviewers and the Secretary.

b. *Criteria.*. A regulatory analysis shall be prepared for significant regulations or amendments to existing regulations which will, or can reasonably be calculated or estimated to, result in:

(1) an annual impact (positive, negative, or combination) on the general economy of $100 million or more;

(2) an annual increase in costs or prices for an individual industry, geographic region, level of government, or identifiable class of individuals or business entities of $40 million or more; or

(3) an effect on an individual industry, geographical region, or level of government which is of such a magnitude, without reference to a particular dollar threshold, that:

(a) the continued existence of an industry, or significant sector thereof, is seriously threatened;

(b) severe dislocation, market disruptions, or shortages of labor would result; or

(c) the ability of a governmental unit to continue to carry out its governmental functions is seriously undermined.

c. *Exception.* A regulatory analysis will not be required if the economic or other consequences meeting the above criteria flow directly from the statute, international agreement, or court decision being implemented. In such event, an abbreviated, conclusionary statement setting forth these facts shall be prepared in lieu of a regulatory analysis and shall be publicly available in the same manner as a regulatory analysis.

d. *Discretion.* In addition to the specific criteria in b. above, a work plan submitted for Secretarial approval may provide that a regulatory analysis shall be prepared on any proposed significant regulation or amendment to an existing regulation. The Secretary may also direct that such an analysis be prepared as part, or as a condition, of Secretarial approval of the original or revised work plan.

e. *Preparation of draft regulatory analysis.* When an approved work plan requires a regulatory analysis, the originating office shall prepare a draft prior to, or at the time of, the actual drafting of the proposed regulation. The originating office shall obtain such information, expertise, assistance, or review as is necessary from any available source within and outside the Government. However, no essential data shall be sought (other than data protected from disclosure by law) from State or local governments, or from the private sector that is already available to the Government, even if in some other form. If it, nonetheless, becomes necessary to seek essential data from State or local governments or the private sector, it shall be done in the least burdensome manner, and in accordance with applicable laws concerning reports by the public and the safeguarding of proprietary information. Each regulatory analysis shall contain, as a minimum, the following:

(1) a succinct statement of the problem;

(2) a description of the major alternative ways of dealing with the problem that were considered; and

(3) an analysis of the economic consequences of each alternative and a detailed explanation of reasons for choosing one alternative over the others, including consideration of costs of compliance.

f. *Preparation of final regulatory analysis.* The originating office shall prepare the final regulatory analysis, using the same process as with the draft, to reflect changes resulting from public participation in the rulemaking process. The final regulatory analysis shall accompany the final rulemaking through all review and approval levels, including Secretarial approval.

g. *Availability.* An explanation of the regulatory approach selected or favored and a short description of other alternatives considered shall be included in both the notice of proposed rulemaking and the final rulemaking. Also, a statement shall be included as to how the public may obtain a copy of the draft or final regulatory analysis.

14. APPROVAL OF REGULATIONS

a. *Proposed regulations.* Each advance notice of proposed rulemaking, or notice of intent to hold a public hearing or conference, or notice of proposed rulemaking issued in accordance with an approved work plan shall be signed by, or at the direction of, the bureau or office head, approved, if otherwise required, by the appropriate policy official, and submitted by the bureau or office to the FEDERAL REGISTER for publication. if the approved work plan includes a determination that the rulemaking does not involve a significant regulation, a statement shall be included in the notice that the regulation does not meet the Treasury criteria for a significant regulation.

b. *Nonsignificant final regulations.* Final regulations which have been determined not to be significant in an approved work plan shall be signed by the bureau or office head, approved, if otherwise required, by the appropriate policy official, and submitted by the bureau or office to the FEDERAL REGISTER for publication. The final rulemaking shall include a statement that the regulation does not meet Treasury criteria for a significant regulation.

c. *Significant final regulations.* regulations which are significant shall be signed by the bureau or office head, approved, if otherwise required, by the appropriate policy official, and forwarded to the Executive Secretary for the Secretarial determination that the regulation should be approved for publication in the FEDERAL REGISTER. The Secretarial determination shall be requested by a memorandum from the appropriate policy official. The memorandum shall contain or transmit the following:

(1) the justification of the need for the new or revised regulation or other final action;

(2) a brief discussion demonstrating the adequacy of consideration given to both the direct and indirect effects of the regulation;

(3) a brief discussion of alternative approaches considered and the reason(s) why the approach chosen is considered the least burdensome of the acceptable alternatives;

(4) evidence that public comments received during the development of the regulation have been considered and that an adequate response has been prepared, addressing the issues raised by the comments;

(5) documentation of new reporting burdens or recordkeeping requirements necessary for compliance;

(6) a plan for evaluating the effectiveness of the regulation after its issuance;

(7) a copy of the final regulatory analysis, where applicable; and

(8) a recommendation for Secretarial authorization to publish the regulation.

Approval of the recommendation to authorize publication of the regulation will evidence that the Secretary has determined the regulation to be needed and that all steps preliminary to publication have been satisfactorily completed. It will also evidence that the regulation has been reviewed, that it is written in plain English, and that it contains the name, address, and telephone number of a knowledgeable, responsible official. After approval, the regulation shall be submitted to the FEDERAL REGISTER for publication by the bureau or office.

15. RESPONSIBILITIES

a. *Heads of bureaus and offices* shall insure that:

(1) the initiation, preparation, publication, and review of regulations by their respective organizations are conducted in accordance with this Directive;

(2) proposed regulation projects, which require a work plan, are submitted for Secretarial approval with well articulated work plans responsive to the requirements of this Directive, and that work plans are accomplished as approved and by the specified target dates;

(3) when appropriate, those proposed regulation projects involving particularly far reaching or sensitive issues requiring particular review by the Secretary or Deputy Secretary are so identified; and

(4) the President's objectives as expressed in Executive Order 12044 and this Directive are met as fully as possible.

b. *Under Secretaries, the General Counsel, and Assistant Secretaries* shall insure that:

(1) heads of bureaus and offices reporting to them receive the cooperation and assistance they may require to carry out their responsibilities under this Directive; and

(2) every responsibility is carried out, including the identification of those proposed regulation projects involving particularly far reaching or sensitive issues requiring particular review by the Secretary or Deputy Secretary.

c. *The Assistant Secretary for Economic Policy* and, where appropriate, *the Assistant Secretary for Tax Policy* shall assist and cooperate with heads of bureaus and offices in preparing regulatory analyses, when required, and review, and advise the Secretary on, the adequacy of such analyses. The Office of Tax Analysis shall prepare those portions of regulatory analyses respecting Internal Revenue Service regulations dealing with economic consequences.

d. *The Executive Secretary* shall serve as the principal point of contact with the Office of Management and Budget and other agencies on the improvement of regulations and provide staff support to the Secretary by:

(1) compiling and publishing the annual listing of semiannual agenda publication dates;

(2) reviewing work plans;

(3) maintaining a current file of approved work plans;

(4) monitoring bureau and office publication and compliance with semiannual agendas and, for that purpose, maintaining a current file of published agendas;

(5) reviewing, and maintaining a current file of, regulatory analyses in draft and final form;

(6) reviewing final rulemaking requests and insuring that each such request and final rule complies with this Directive and is ready for Secretarial approval; and

(7) monitoring and evaluating the effectiveness of this Directive, in terms of the Executive order which it implements, and providing a report on such effectiveness to the Secretary by January 15, 1980.

16. JUDICIAL REVIEW

Nothing in this Directive is intended to provide new grounds for judicial review or to be interpreted as superseding any existing statutory obligation governing rulemaking.

17. EXPIRATION

Unless extended, this Directive expires on September 30, 1980.

18. OFFICE OF PRIMARY INTEREST

Office of the Executive Secretary, Immediate Office of the Secretary.

W. MICHAEL BLUMENTHAL.

* * * * *

This report is submitted for the Department of the Treasury.

Dated: November 2, 1978.

W. MICHAEL BLUMENTHAL,
Secretary of the Treasury.

[FR Doc. 78-31533 Filed 11-7-78; 8:45 am]

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WEDNESDAY, NOVEMBER 8, 1978
PART IV



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

■

NATIONAL DIRECT STUDENT LOAN, COLLEGE WORK-STUDY, AND SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAMS

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[4110-02-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Parts 144, 175, and 176]

NATIONAL DIRECT STUDENT LOAN, COLLEGE WORK-STUDY, AND SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAMS

AGENCY: Office of Education, HEW.

ACTION: Notice of proposed rulemaking.

SUMMARY: 1. The Commissioner is revising sections 3, 4, 5, 6, 7, and 16 of the National Direct Student Loan, College Work-Study, and Supplemental Educational Opportunity Grant Program regulations. These three programs are popularly known as the three "campus-based" Federal programs of student financial aid.

2. These revisions are being made (a) to correct previous inequities in distributing funds among institutions of higher education and (b) to require that the institutions verify any estimated family income data on applications for financial aid submitted before January 1 for an award year beginning after that date.

3. As a result of these changes, the form used by institutions for applying for Federal funds will be simplified. Regional review panels will be eliminated. Funds will be distributed among institutions by formula, rather than in accordance with panel recommendations. The Commissioner's "discretionary" 10 percent of each appropriation will also be distributed among States by the same formula. Finally, no Federal funds may be given to any student based on unverified income data submitted before Januar 1. Verification will be optional on forms submitted after January 1.

DATES: Comments must be received on or before December 7, 1978. There will be hearings in New York, New Orleans, Chicago, and Seattle at the locations listed below.

ADDRESSES: Comments should be addressed to Mr. Thomas Butts, Room 4662 ROB, 400 Maryland Avenue SW., Washington, D.C. 20202.

November 27—New York, N.Y., Office of Education, Region II, Room 1-102-Lobby Floor, 26 Federal Plaza, New York, N.Y. 10007; 9 a.m. to conclusion. Contact person for scheduling presentation times: Ms. Tillie Wachs, 212-264-4045.

December 4—New Orleans, La., Tulane University, McAlister Drive University Center, Stibbs Room A and B, New Orleans, La.; 10 a.m. to conclusion. Contact person for scheduling presentation times: Ms. Carole Sivright, Dallas Regional Office, 214-767-3766.

December 6—Chicago, Ill., Loyola University, Downtown Campus, Regis Room, 820 N. Michigan Avenue, Chicago, Ill. 60611; 9 a.m. to conclusion. Contact person for scheduling presentation times: Mr. Tom Schindler, 312-353-8943.

December 8—Seattle, Wash., Federal Building, South Auditorium, 915 Second Avenue, Seattle, Wash., 98174; 9 a.m. to conclusion. Contact person for scheduling presentation times: Mr. Jesse Lockyer, 206-442-4156.

FOR FURTHER INFORMATION CONTACT:

Mr. Jack Reynolds, 202-245-0231.

SUPPLEMENTARY INFORMATION: The proposed amendments regarding distribution of campus-based student aid funds are based on recommendations made to the Commissioner by a panel of student financial aid experts and on public comment received on those recommendations. The recommendations were distributed to the public in the June 1978 Bulletin of the Bureau of Student Financial Assistance of the Office of Education (BSFA Bulletin), the relevant portions of which are reproduced below, after "Other comments." Readers are invited to read that part of the preamble for the text of the recommendations, and for the background and rationale of this proposal. Written comments were received on those recommendations, and public hearings were held during the first 2 weeks of July in San Francisco, Houston, Washington, D.C., and Chicago.

As a result of public comment on the recommendations of the panel of experts, this proposal varies from those recommendations in several ways. First, this proposal covers only the first year of the recommended 3-year phase-in process. A later Notice of Proposed Rulemaking will be required to carry out the second and third years of that process. This guarantees that public comment will be received on the results of the first year of the new procedure before the second and third years are incorporated in the regulations. Additionally, changes have been made in some details of the formulas recommended by the panel of experts.

This proposal is similar to the recommendations of the panel of experts in that it gives both current participants in the programs and new applicants a conditionally guaranteed level of funding during the first year of implementation of the new process. In general, the guarantee is conditional on enough money being appropriated for each program. This proposal differs from the recommendations in its definition of funding and in other details discussed below.

Under this proposal an institution's level of funding will be considered the greater of its actual 1977-78 expenditures or its projected 1978-79 expenditures. These amounts will be compared for each program separately.

Each institution's projected 1978-79 expenditures will be calculated by the Office of Education. This will be done in two steps: First, the Office of Education will determine for each institution what percent it spent of the funds available to it in each program during 1977-78. The data for making this determination will be taken from the fiscal-operations report filed by the institution as part of its application. Then, the amount of funds available to the institution in each program during 1978-79 will be multiplied by that percentage to determine its projected expenditures.

If an institution did not participate in a particular program during 1977-78 but has funds available to it in that program during 1978-79, 100 percent use will be assumed.

If an institution is a nonparticipant in all programs during 1978-79, it will also receive a conditional guarantee of funding. Since that guarantee cannot be based on the institution's actual 1977-78 or projected 1978-79 expenditures, a substitute measure will be used. That substitute measure will be the amount of funds awarded in each program to last year's new applicants for their expenditure during 1978-79 divided by the number of enrolled students in those schools. This will give an average award per enrolled student. Averages will be calculated by type and control, using a national data base. (Types of institutions are universities, 4-year schools, 2-year schools, area vocational schools, and others. Control means public, nonprofit private, and proprietary.) The average for each program will be multiplied by a new applicant's current actual enrollment to determine its conditional guarantee in that program for 1978-80.

This approach differs from that recommended by the panel of experts. Their recommendation was that a new applicant's funding level should be its "fair share," computed as described under "Calculation of fair shares."

Each institution, both "new" and "old," therefore will have a conditional guarantee for a specific amount of funding. If it has participated in one or two of the programs, but not all three, its conditional guarantee will cover only the program(s) in which it has participated. It will know this amount before it files its application for funding.

To apply for the funds covered by its conditional guarantee, an institution need only file its fiscal-operations report for 1977-78 (if it had funds for that year) plus an abbreviated application stating its request in each program. First-time applicants and those who had no funds for 1977-78 may file the application form only.

To receive more funds than its conditional guarantee, the institution must file the additional data discussed below in the description of fair shares.

The amount of funding an institution eventually receives may be lower than the amount of its conditional guarantee. There may not be enough money available either in the appropriation nationally or in the funds available for a particular State to honor all conditional guarantees fully. In that case reductions in funding will be made. The amount of reduction may vary State-by-State and program-by-program because of the operation of the various statutory State allotment/apportionment formulas.

To determine whether the conditional guarantees can be honored in full, the Commissioner will total them nationally and by State and compare those totals with the funds available. If available funds are sufficient to honor all conditional guarantees, they will be honored. Otherwise they will be reduced by the amount necessary to make them equal the amount of available funds.

If available funds exceed the amount of the conditional guarantees, the excess funds will be given to those institutions whose fair shares exceed the amount of their conditional guarantees.

Calculation of Fair Shares

The Office of Education will compute by formula an institution's fair share of each appropriation. To have its fair share computed, an institution must supply the actual, verifiable date elements needed to perform the necessary calculations. Those data elements are defined in some detail in section 6 of the three regulations and are discussed further below under "Factors used in the formulas." One formula will be used for SEOG, a second one for NDSL and CWS.

Expressed in simple terms, SEOG need equals 70 percent of cost minus EFC and gift aid. Stated another way, if gift aid funds available to applicant undergraduate students plus their expected family contribution total less than 70 percent of their costs, the institution will be considered to have a need for SEOG funds.

That "need" will then be split between initial year (IY) funds and continuing year (CY) funds in the same proportion as the institution's requests in those two categories. For example, if the institution requests $100,000 in IY funds and $200,000 in CY funds and is determined to need $150,000 total in SEOG funds, that total will be divided between IY and CY in the proportion of 1:2, which would amount to $50,000 in IY and $100,000 in CY.

To determine an institution's fair share of the IY anbd CY appropriations, the amount of need for all applicant institutions for IY and CY funds will be divided by the total need for those funds to compute that institution "IY index" and its "Cy index." Those indexes will be multiplied by the appropriations for initial and continuing funds to determine the institution's fair share of those funds. If the institution does not supply the figures needed to make these computations, its fair share of the available funds will be assumed to equal its conditional guarantee.

The "self-help" formula to be used for CWS and NDSL considers both undergraduate and graduate students. The formula totals need for self-help among undergraduates plus need for self-help among graduate students. Self-help is the amount of funds a student receives from work or from loans.

Since 70 percent of undergraduate costs have already been considered in determining an institution's SEOG index, only 30 percent of undergraduate costs will be considered in determining the need for self-help among undergraduates. Need for self-help among undergraduates. Need for self-help at an institution is computed by adding the need for self-help among the various income-level categories of students attending the institution.

Specifically, for each undergraduate income cell (all of which are displayed in section 6 of the proposed regulations), need for self-help equals the lesser of (1) 30 percent of cost, or (2) cost minus expected family contribution (but not less than zero). As an example, suppose at one institution the average undergraduate cost is $4,000 and the expected family contribution (EFC) is $2,500 per student in one income cell. The per capita need for self-help funds is the lesser of (1) 30 percent of the cost, which is $1,200 (30 percent of $4,000), or (2) cost minus EFC, which is $1,500 ($4,000 minus $2,500). Since $1,200 is less than $1,500, the per capita need for self-help in that cell will be considered to be $1,200. If for another income cell the EFC is $3,900 per student, the per capita need for self-help funds is the lesser of (1) 30 percent of cost ($1,200), or (2) cost minus EFC ($100) or $100. Finally, if the EFC in a cell is $5,000 per student, the per capita need for self-help is zero.

For graduate students 100 percent of cost will be considered in determining the need for self-help funds. Thus, for each graduate student income cell the per capita need for self-help funds will be cost minus EFC (but not less than zero). An institution's total need for self-help funds is the sum of undergraduate and graduate need for those funds. An institution's self-help index will be computed by dividing its need for self-help funds by the total need of all institutions, nationally, for those funds.

The institution's fair share of the CWS appropriation will be calculated by multiplying the CWS appropriation by its self-help index. If the institution does not file the information needed by the Office of Education to make this calculation, its fair share will be assumed to equal its conditional guarantee.

For the NDSL program, each institution will receive a fair share of the amount available for lending in 1979-80. Funds available for lending include collections, other Fund income, and reimbursements of cancelled Direct loans as well as the appropriation and the matching institutional capital contributions. This amount will be multiplied by the institution's self-help index to give the institution's total approved level of expenditure (LOE), which is its fair share of the total funds available. If the institution does not file the information the Office of Education needs to compute its fair share of available funds, its LOE will be considered to equal its conditionally guaranteed amount.

The amount of new Federal capital contribution for any institution will be derived from its LOE, by subtracting from that amount its projected collections, other Fund income, and Federal reimbursements to its Fund of Direct Loans cancelled by its borrowers. The difference obtained by making that subtraction will be multiplied by 90 percent to determine its Federal Capital Contribution.

Institutions can expect the full amount of their calculated FCC if they can fulfill one of the following three requirements:

(1) The institution's default rate is less than 10 percent;

(2) The institution's default rate is more than 10 percent, but the number of loans made by that institution which are in default for less than 2 years on June 30, 1978, are at least 10 percent less than the number of loans made by that institution and in default for less than 2 years on June 30, 1977;

(3) The institution's default rate is more than 10 percent, but the institution can document, under § 144.7, that it has exercised due diligence as set forth in Subpart C of the NDSL regulations published in the Federal Register of November 24, 1976, for the past 2 award years.

NOTE.—See *Subpart C—Loan Collection—Due Diligence*, attached as an appendix to this NPRM.

In projecting an institution's collections, the Commissioner will consider its default rate. If its default rate is 10 percent or below, its collections will be projected by multiplying its actual 1977-78 collections by 121 percent. If

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its default rate is greater than 10 percent, it will be expected to increase its 1977-78 collections by 121 percent plus the excess overdue amount.

The excess overdue amount will be computed as follows: First, the Commissioner will determine the amount of defaulted loans which would equal a 10 percent rate. This will be done by multiplying the total amount of matured loans by 10 percent. Second, the Commissioner will determine the ratio between this amount and the unpaid principal balance of defaulted loans, which the institution will report on line IIC6.8E of its fiscal-operations report. Third, this ratio will be subtracted from one. Fourth, the principal amount past due on defaulted loans (which is reported on line IIC6.8F) will be multiplied by this difference to determine the excess overdue amount.

As an example, suppose that an institution's Loan Fund has matured loans totalling $1,000,000. Further suppose that the unpaid principal balance of defaulted loans reported by the institution on line IIC6.8E of its fiscal-operations report equals $150,000. Then suppose that the past-due principal amount in line IIC6.8F of the institution's fiscal-operations report is $90,000. Using these figures, the institution's excess overdue amount would be calculated as follows:

1. Ten percent of $1,000,000 equals $100,000.
2. The ratio of $100,000 to $150,000 equals ⅔.
3. One minus ⅔ equals ⅓.
4. One-third times $90,000 equals $30,000, the excess overdue amount.

Shifting Funds in Self-Help Programs

A procedure will be established to accommodate those institutions filing under Part B which wish to shift a portion of funding from one self-help program to another.

In situations where the institutional formula generates a potential level of NDSL or CW-S funding in excess of that requested by an institution, this excess will be "brokered" (within the Office of Education funding process) with other institutions. For example, if the Self-Help formula provides a CW-5 recommendation which exceeds the maximum amount requested in that program, the difference will be put into an "excess" CW-S pool. Assuming that the institution's need for NDSL funds has not been fully met, each of these institutions will have its NDSL (FCC) recommendation increased by money in the "excess" NDSL (FCC) pool times its proportionate contribution to the "excess" CW-S pool. Similarly, other institutions may have their CW-S recommendation increased by the money in the "excess" CW-S pool times the proportionate contribution to the "excess" NDSL pool.

In this manner, shifting of funds by one institution between programs may be possible but no other institution needing those funds will be adversely affected. Shifting of self-help funds into SEOG will not be permitted.

Factors Used in the Formulas

There was considerable public confusion concerning the meaning of various terms used in the formulas recommended by the panel of experts, as those formulas were explained in the *BSFA Bulletin*. We are therefore offering the following clarification of the terms used in this proposal.

"Undergraduate costs" and "graduate student costs" will be computed as follows:

First, the institution will determine the number of "applicant students" in each category and report those numbers to the Office of Education. The institution will do this by counting the number of undergraduate and graduate students from whom it received completed applications for financial aid for 1977-78 (or comparable information in another form) and subtracting from these numbers the number of students who did not meet the requirements of (a) being a citizen or permanent resident of the United States and (b) being enrolled as at least a half-time student in an eligible program.

Second, the institution will tell the Office of Education its total tuition and fee revenue from all undergraduate students and its total tuition and fee revenue from all graduate students and the total numbers of those students. Using these numbers the Office of Education will compute the institution's average tuition and fee revenue per undergraduate student and its average tuition and fee revenue per graduate student. The Office of Education will then multiply these averages by the number of applicant students in each category to determine the total amount of tuition and fee revenue from applicant students in each category.

Third, the Office of Education will multiply the number of applicant students in each category by a single national average figure for living expenses plus books and supplies. The living expenses figure used will be the Basic Grant family size offset for 1977-78 for single persons, multiplied by three-fourths to cover 9 months rather than 12. For the 1979-80 application the living expense figure used will be $2,250. The Office of Education will add $200 to this figure for books and supplies.

Fourth, the Office of Education will add together the amounts it computes for total tuition and fee revenues from applicant students and for their living expenses and books and supplies to determine their total costs. This will be done separately for undergraduate and graduate students.

A number of commenters objected to the use of a single national figure for living expenses and suggested other figures they considered to be more sensitive to local variations in the cost of living. These recommendations were not accepted. The most "local" of the readily available published cost of living figures are the Department of Labor's figures for standard metropolitan statistical areas (SMSA's). The variation of living costs within each SMSA is at least as great as the difference between the least expensive and the most expensive SMSA. Therefore using the cost of living figures for SMSA's would not eliminate the inequity identified by the commenters.

"Expected family contribution" will be computed by the Office of Education. To do this, the Office of Education will multiply the number of students reported by the institution in each family income category by the national average expected family contribution for that income category. The Office of Education is considering two different alternatives for computing these averages. One alternative is to use data furnished us by the major private need analysis services and their method of computing expected family contributions. The other is to use the 1979-80 family contribution schedule for Basic Grants, which is currently under development, and Basic Grant data.

For the SEOG formula, "gift aid" is defined as including Basic Grants and State scholarships and grants plus all the categories of gift aid used by the institution in determining its maintenance of effort figures for CWS and SEOG. The amount to be deducted from cost will be 100 percent of the grant and scholarship funds received by the institution's students during 1977-78 from Basic Grants and from State scholarships and grants, plus two-thirds of the other scholarships and grants paid out by the institution during that year. The same State and institutional figures will be used for all of the later years of the new process. They will not be recomputed from year to year to reflect increased expenditures for scholarships and grants in later years either by the State or by the institution. This is being done in response to several commenters who objected that deducting State and institutional scholarships and grants from costs to determine the amount of Federal funds an institution will receive is unfair to those States and institutions which have made greater efforts than others to aid their needy students, often at considerable sacrifice to themselves. Some of these commenters complained that the recommended procedures would move funds out of their States to other States whose financial aid programs have been less commendable.

Since funds for the campus-based programs are allotted among the States by statutory formula, the amount of funds being reallotted from one State to another will be minimal. Furthermore, the Office of Education will be using a permanent base year (1977-78) to determine the amount of State and institutional gift aid it will deduct from costs. As a result institutions and States may increase their scholarship and grant expenditures without fear of losing future Federal funds.

On the other hand, the campus-based programs are not intended to replace State and institutional funds. That is the very meaning of the statutory requirement for maintenance of effort in the SEOG in CWS programs. Also, some institutions and States are much richer than others and therefore better able to provide scholarships and grants to their students. It would not be fair to ignore these differences in ability to pay. For both these reasons State and institutional expenditures for scholarships and grants must be considered. Using 1977-78 as a permanent base year accomplishes this purpose with a minimum of undesirable side effects.

"State scholarships and grants" include funds given by a State on a case-by-case basis to individual students. They do not include the "implicit" scholarships given to all students in public institutions in the form of low tuition and fees.

Other Comments

A number of commenters objected to implementing these proposed changes for the application which they must file in October 1978. They stated that the Office of Education is not giving them enough leadtime to collect the new information that will be required.

If an institution is not able to file these new figures, it will still receive its conditional guarantee, but it may not apply for an amount greater than its guarantee. Thus an institution's inability to supply these figures will not keep it from receiving funds but will prevent it from receiving any increase.

A few commenters objected to basing an institution's conditional guarantee on its actual expenditures or use rate in 1977-78, because that 1 year could have shown an abnormally low use, for a number of good reasons. Several other commenters objected to the fact that the recommendations made by the panel of experts did not include provisions to increase funding levels for inflation.

In response to these commenters, it should be noted that any institution, even one with a low use rate, may request additional funding and have the Office of Education compute its fair share. If an institution's fair share exceeds its conditional guarantee, it will share in any funds that remain available after all conditional guarantees have been funded. Any additional amount an institution receives as its fair share may or may not be enough to compensate for the amount of inflation it has experienced, much of which may be reflected in increased tuition and fees. However, these programs are not intended to help an institution increase its tuition and fees. In fact, proprietary institutions may not, by statute, increase their tuition and fees as a result of the aid their students receive under these programs.

Several commenters complained that the recommendations made by the panel of experts discriminated against independent students. Others complained that the recommendations would prevent an institution from shifting a portion of its CWS award to its SEOG award and *vice versa*, which is permitted by statute.

Both of these commenters appear to misunderstand the recommendations. An institution's fair share will be calculated by using an average living cost for single students. Independent students frequently have dependents. No allowance is made in the computations for those dependents. On the other hand, no deduction is being made for students whose living costs are lower than average, such as students who live in their parents home. We are not proposing to forbid an institution to consider an independent student's full living costs in computing that student's individual need, even though the Office of Education does not take them specifically into account in computing the institution's fair share. We are also not proposing to amend the statute to forbid an institution to shift a portion of its SEOG award to its CWS award and *vice versa*.

A number of commenters objected to the fact that the panel of experts recommended that Regional Panels should be abolished. These commenters believed that it is desirable to use a "human element" in evaluating applications and that the recommended process is excessively mechanized.

In response to these commenters we must state that the previous application procedures were tried for a number of years and failed to distribute funds fairly among all institutions, despite the fact that those procedures relied heavily on use of the "human element."

Several commenters claimed that the effect of the recommended changes would be to shift funds from low-cost schools to high-cost ones and therefore from disadvantaged students to students from middle-income families.

It should be emphasized that the only funds shifted under the proposed system will be those above the conditional guarantees. Each institution will continue to receive the amount of funds it has been spending. The formulas will only distribute funds above the conditional guarantees.

Preliminary computer simulations indicate that these additional funds are not likely to be distributed proportional to current funding. These simulations do not indicate an overall shift from low-cost to high-cost schools or *vice versa*. Rather, funds will be shifted from some low-cost schools to others and from some high-cost schools to others, reflecting the inequities in the old system.

We do not believe that our proposal will penalize disadvantaged students. If they are in low-cost institutions, Basic Grants will pay up to half their costs. Campus-based funds can be used to pay the remaining half of costs. If they are in high-cost institutions, their Basic Grants will not pay as much as half of their costs, because those costs are greater than $3,600, and a Basic Grant may not exceed $1,800. At a high-cost institution a student from a low-income family needs much larger amounts of campus-based funds than he or she would at a low-cost institution. These factors are all considered in the formulas.

The Office of Education used a survey to decide that 70 percent of undergraduate costs should be met with gift aid and family contributions. One commenter claimed that the survey is unreliable.

In response to this commenter, the Office of Education acknowledges that all surveys are fallible. For the purpose of this fund-distribution procedure, however, it is not essential that the survey data be absolutely accurate. The survey was adequate to show that nationally the share of need met with gift aid is between two-thirds and three-fourths of need. This is true in all categories of institution, both low-cost and high-cost. It is plainly apparent that it is not fair to give some institutions enough SEOG funds to enable them to meet the full need of all their needy students with gift aid, while other institutions are not able to do so. This would give the favored schools a competitive advantage. Therefore a value judgment has been made that SEOG funds will be restricted to those institutions which cannot meet approximately 70 percent of their students aggregate need with gift aid. This figure may be changed in the final reguation as additional facts become known concerning the amount

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of the appropriation and other pertinent factors.

One commenter observed that the recommended changes would encourage grantsmenship by the "numbers gameplayers."

In reply to this commenter it must be stated that all the data which institutions furnish to the Office of Education under these new procedures will be audited. The HEW Audit Agency's audit guidelines will be amended to require the institution's independent auditors to verify these numbers as part of the audit procedure now required by all three of the campus-based programs.

Verification of Estimated Income Data

The verification proposal in section 16 is not related to the changes being made in the institutional application process and the consequent changes being made in the methods of distributing funds among the States and among the institutions within a State. It is being included in this Notice of Proposed Rule Making only to avoid issuing a separate Notice.

Studies have shown that families make errors when they file application for financial aid using estimated income data for a year which has not yet been completed. Lower-income families tend to believe that they will make more money than they actually do. Higher-income families believe the opposite. To avoid these problems, the Office of Education is proposing that no campus-based funds may be disbursed to a student whose need has been computed using estimated data submitted before January 1. Institutions may continue to accept applications before January 1, but they must verify the estimates before disbursing campus-based funds. They may do this by requiring families which apply before January 1 to submit a copy of their Federal income tax form 1040 which proves that their proves that their estimate of income data was correct. If the estimate was not correct, the institution must make the appropriate adjustments in need analysis. Verification of data on applications submitted after January 1 is optional with the institution.

Recommendations of the Panel of Experts

For the convenience of those readers who may not have seen the June 1978, *BSFA Bulletin*, we are repeating the substance of the recommendations made by the panel of experts. The earlier part of this preamble responds to the public comment we received on those recommendations.

Part I—Background

During the summer of 1977, nine experts on student financial aid and related areas were asked by the Commissioner of Education to review the process by which Federal student assistance funds are awarded to institutions. He asked that recommendations be made toward improving the process for funding those institutions participating in the National Direct Student Loan (NDSL), College Work-Study (CW-S), and Supplemental Educational Opportunity Grant (SEOG) programs. The appointment of this Panel was prompted by recommendations made by the Student Financial Assistance Study Group, the General Accounting Office, and members of the financial aid community.

Criticism of the Present Funding Process

There has been growing agreement that the current funding process is inequitable, overly complex, and too time consuming. The funding process includes the following elements, some of which are based upon legislation, while others are based upon regulations:

1. The institutional application process.
2. A review and appeal process culminating in a recommended level of funding.
3. Establishment of a nationwide level of available funds.
4. Establishment of the available level of funds for the eligible institutions in each State including consideration of the statutory State allotment formulas, the regulatory Commissioner's discretionary 10 percent funds, and the level of recommended funding in each State.
5. The finalization of an award letter for each eligible institution.

The application process for campus-based funds has undergone many changes since 1970. In spite of the changes, however, the application process and the review and appeal process have required an inordinate amount of time on the part of institutions and OE staff. Up until 1977 when the application was developed for use by continuing institutions, funding decisions were based on unaudited projected figures which served to encourage grantsmanship.

The entire funding process is complicated by inflexible State allotment formulas which differ among the three campus-based programs in seemingly random and inconsistent ways. Furthermore, these statutory formulas have enrollment as their primary ingredient, and thus they bear little relationship to the actual financial need in a State. The present regulatory method of assigning the Commissioner's discretionary "10 percent funds" has ameliorated some of the problems of the rigid statutory formulas, but it has also encouraged grantsmanship.

Part II—Operating Assumptions

The Panel has developed and agreed to a number of operating assumptions which must be a part of the new funding process.

1. *Phase in:* Any new funding process must be phased in over a period of years to prevent sudden and precipitous dislocations of funds.
2. *Streamlined process:* The funding process must be sufficiently streamlined to permit the mailing of institutional award letters as early as possible but not later than January. This implies that the Panel Review process will no longer exist in its present form.
3. *Standard measurements of need:* Data collected during the application process must allow a standard measurement of relative institutional financial need. The ability to make standard measurements implies that data must be actual (historical), verifiable, and auditable. Furthermore, the data must be compatible to the extent possible, with other Federal requests.
4. *Use of the data:* (a) The data collected during the application process must be computerized, edited, and made available in a very short time frame for funding decisions. (b) The data must also be available for the development of a nationwide Date Base which will allow the evaluation of future funding alternatives.
5. *Reduction of forms:* The Fiscal-Operations Report and the Tripartite application must be combined to assure that data will be available on time and to eliminate present duplication in the forms. (FISAP Report)
6. *Timing:* The appropriation process must precede the application process so that exact dollars available will be known at each step on the new funding process.
7. *Inclusion of unutilized funds:* Funds distributed in a new funding process must include not only new appropriations, but also, to the extent possible, unutilized funds from the prior year.
8. *Ease of administration:* There should be liberalized opportunities to transfer funds between the campus-based programs once they have been allocated. Furthermore, the distinction between Initial Year and continuing Year SEOG authorizations should be eliminated.
9. *Changing the formulas and the assignment of the 10 percent funds:* The State allocation formulas and the present method of assigning the discretionary 10 percent funds are inequitable and should be changed. The changes are generally seen as long-range changes, although some portion

of the 10 percent funds might be used to assist institutions stressed over the introduction of a new funding system.

10. *Differentiate grant aid from self-help:* The funding process should use a different conceptual framework for assigning SEOG funds than that used for assigning funds in the self-help programs of NDSL and CW-S. It is acknowledged that there is a great demand for grant assistance. It is difficult for very needy students to borrow enough or work enough to meet their educational costs, particularly at higher cost institutions.
11. *Peer involvement:* (Formerly the Panel Process) will be confined to an evaluative role of the Funding system and to the national appeal Process.

Part III—The New Funding Process

Based on its Operating Assumptions, the new process will be implemented in several phases. It is designed to use the strengths of the current interim funding system as well as to provide needed changes.

Phase I—(Effective Fall 1978 for 1979-80 Award Year)

PART A

An institution applying under Part A will be awarded funds in one or more of the campus-based programs based on the amount it is expected to use in the current year. (1978-79 award in each program multiplied by the percentage of the 1977-78 award used during 1978). This is similar to the formula Limit Concept used in the Fall of 1977. Adjustments will be made for cash carryover and collections of the NDSL program. All information needed will be taken from the FISAP report. Funding levels will, in general, be held relatively constant. Available funds not used to fund Part A will be held for use in funding Part B. No modification will be made in Part A because of an enrollment change or inflation. There will be no shifting of a portion of the request between programs in Part A.

Institutions Participating for the First Time in 1978-79

In the case of institutions receiving awards for the first time in 1978-79, 100 percent utilization will be assumed and recommendations under Part A will be equal to 1978-79 award levels. Such an institution may also apply under Part B. (See below)

PART B

Institutions wishing a greater level of funding than that permitted under Part A will be required to submit a minimal amount of additional data[1] on the combined Fiscal Operations Report and Tripartite Application (FISAP). A funding level under Part B will be calculated for each applicant institution with the use of formulas developed for the purpose of providing a standard measurement of institutional need. The formula to be employed for the self-help programs of NDSL and CW-S is different from the formula to be employed for the SEOG program. Those Part B institutions whose need, program by program, has not already been met under Part A will be awarded an additional sum based upon a formula produced institutional index and the sum remaining in each program after part Part A funding levels have been set. If additional funding becomes available, these new funds will be used to proportionately increase allocations under Part B.

New Institutions

Institutions which will be participating for the first time in 1979-80 will submit those items required of Part B filers. Data used to measure institutional need will be derived from cumulative Student Eligibility Report data available through the filing of applications in the BEOG program. A number of additional questions on enrollment will be included on the FISAP for use of newly applying institutions only.

Testing the Formulas

It is assumed that the possible availability of additional dollars under Part B will persuade a substantial number of institutions to provide the Office of Education with Part B data. This data base will, in turn, permit the testing, validating, and notification of the formulas prior to Phase II of the process at which time all institutions will be required to file Part B information. Since the formulas have been designed to produce standard measurements of financial need, one of the criteria used to evaluate the formulas will be the effectiveness with which financial need is measured at institutions with various cost and with various levels of non-campus-based financial aid programs.

Phase II (Effective in the Fall, 1979, or at Such Time as Formulas Have Been Sufficiently Tested and Determined to Produce Effective Results)

PART A

Institutional funding levels will be calculated in a manner similar to Phase I, Part A. However, institutions will be awarded no more than x percent (perhaps 90 percent) of their current funding level multiplied by the previous years' utilization percentage. Therefore, all else being equal, a higher level of funds will be available for the funding of Phase II, Part B, than were available for Phase I, Part B.

PART B

All institutions will be required to submit the information described under Phase I, Part B, and these data will be used to test the institution's need for further funds to supplement the amount available under Part A. Thus, the formulas which will have been developed will play an increasingly important role in the assignment of funds to institutions.

Phase III

PART A

Institutional funding will again be calculated in a manner similar to Phase II, Part A; however, the percentage protection of the previous level of utilization will decrease.

PART B

Part B will be similar to Phase II, Part B, with the exception that repeated data collection will only be necessary periodically, and may not be necessary for all data elements. Since the percentage protection of the previous level of funding has decreased in Phase III, Part A, the formulas will continue to play an increasingly important role in the assignment of funds to institutions.

How the System Will Work in 1978 (for the 1979-80 Award Period)

All institutions which have participated previously as well as newly applying institutions will be supplied with a new form, the FISAP (Fiscal Operations Report—Funding Application). Information requested in that report will be essentially the same information as that previously requested on the Fiscal Operations Report. It will include an additional short section to be completed by institutions wishing funding greater than previously utilized amounts (Part B) and those institutions applying for the first time.

Institutions will be given the option of applying for Part A only or additionally applying for Part B funds. If they apply for Part A only, they will have completed their request at the time they complete the Fiscal Operations Sections of the FISAP and the section requesting funds for the coming year. New institutions will not complete the Fiscal Operations Sections of the FISAP.

All FISAP's will be mailed to the OE Central office and put through a ma-

[1] Funds requested in each of the campus-based programs, total tuition and fee revenues, headcount enrollment, BEOG award level, State Grants and Scholarships, Institutionally administered grants and scholarships, and the number of enrolled students in various categories of family income.

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chine edit. The edit print-out of tentative Part A recommended levels will be mailed to the institutions with instructions on how to make corrections. A copy will also be mailed to the Regional Office. Institutions will be responsible for resolving errors. Regional Office assistance will be available in the most difficult of cases, and corrections will be forwarded directly to the OE Central Office for Keypunch.

With the assistance of a software program designed for this purpose, State totals in each program will be derived and compared with sums available. Remaining sums will be used to satisfy Part B requests or whatever portion of those requests is possible. A set of formulas which measure relative need for Federal funds will be used to derive two measurements of need for each Part B applicant (one measurement for the SEOG program and one measurement for the Self-Help programs).

Institutions will be sent information on dollar recommendations made under Part A from the OE Central Office. If they have completed Part B, they will be informed of the recommended amount (if any) which will be available to them under Part B.

Since there will be no individual judgment exerted on these decisions, no Regional Panel will be used for the review.

Shifting in Self-Help Programs

A procedure will be established to accommodate those institutions filing under Part B which wish to shift a portion of funding from one self-help program to another.

NDSL Defaults

At the present time the Bureau is considering several approaches which would incorporate the NDSL default record into the Part A and/or Part B funding process. Comments will be welcomed regarding whether and how NDSL defaults should be incorporated in the funding process.

PART IV—THE FORMULAS—HOW THEY WORK

A. SEOG FORMULA

The SEOG formula=70 percent × cost—(EFC+BEOG+State Grant Aid+Institutional Grant Aid)

(70 percent was chosen because it represents the approximate average amount of nonreturnable aid received by students in all types of institutions.[1]) The terms in the formula are defined below along with the data sources which will be utilized.

(i) *Cost.* The term "Cost" is meant to reflect the aggregate cost of attendance of undergraduate applicants enrolled at the institution and will consist of tuition and fee costs and living costs. Tuition and fees will represent the total tuition and fee revenues from all undergraduates at the institution in 1977-78.

Living costs are equal to: 0.75 (Social Security annual budget for an individual) × total headcount undergraduate enrollment. The ".75" factor reflects a 9-month average school year compared to the 12-month living cost of the Social Security budget.

Total undergraduate tuition and fee revenues and total undergraduate living costs will be added together in order to obtain total undergraduate costs. In order to obtain the "Cost" figure for enrolled applicants, which will be used in the formula, the following calculation will be made by OE:

Enrolled undergraduate applicants over Total undergraduate headcount enrollment × Total undergraduate costs = the total "Cost" for enrolled undergraduate applicants. Example: An institution with an undergraduate headcount enrollment of 2,000 has 1,000 enrolled undergraduate applicants. If that institution's total undergraduate costs are $10 million, then their calculation would be:

Total Cost of Enrolled Undergraduate Applicants =1,000/2,000 × $10,000,000=$5,000,000

(ii) *Total expected family contribution (EFC).* Institutions will be requested to provide the number of enrolled applicants [2] by income level, dependency status (dependent-independent), and academic level (undergraduate-graduate [3]). (See chart in section 6 of the proposed regulation.) Based upon these data the Office of Education will calculate the total EFC for each income category based upon current need analysis methodology.

The sum of the total EFC's for each income category of undergraduates represents the value of "EFC" to be used in the SEOG formula.

(iii) *BEOG.* The term "BEOG" refers to total Basic Grant funds received by students at the institution in 1977-78. In future years it is expected that BEOG data will be provided by USOE, rather than by institutions.

(iv) *State grant and scholarship aid.* The Panel recommended defining State Grant Aid to be the sum of all State scholarships and grants for undergraduates for the academic year 1977-78. This amount would be held constant for future funding cycles to prohibit it becoming a disincentive for States to expand scholarship and grant programs.

(v) *Institutional grant and scholarship aid.* The Panel recommended difining Institutional Grant Aid as 70 percent of the grant and scholarship component of the institutional maintenance of level of effort for fiscal year 1977-78. This amount would be held constant for future cycles to prohibit it becoming a disincentive for institutions to expand scholarship and grant programs.

HOW THE FORMULA WILL WORK

The procedure for determining recommended levels (IY and CY) for Part B filers is:

1. Estimated need for SEOG will be computed as follows: 70 percent × Cost—(EFC+BEOG+State Grant Aid+Institutional Grant Aid)

2. A Relative National Index (RNI) will be calculated for each institution as the ratio of that institution's formula-determined need to the sum of the need for all institutions. This Relative National Index will then be split in proportion to the institution's request for IY and CY funds.

Example: If an institution requests $30,000 in IY funds and $70,000 in CY funds, its Relative National Index for IY funds will be 30 percent of its overall RNI and its Relative National Index for CY funds will be 70 percent of its overall RNI.

3. The Relative National Index for IY and CY funds multiplied by the corresponding IY and CY SEOG appropriation will equal the institutional Fair Shares of the available IY and CY SEOG funds.

Example: If an institution's Relative National Index for IY funds is .001 and the IY SEOG appropriation for that year is $150,000,000 that institution's Fair Share of IY SEOG funds is determined by:

Fair Share SEOG (IY)=$150,000,000×.001=$150,000

4. The amount the institution is scheduled to receive under Part A may be equal to, less than, or greater than that institution's Fair Share. If it is equal to or greater than the Fair Share, then it represents the maximum grant for that institution for that year.

5. If additional funds are available for Part B, they will be distributed based upon the relative amount by which the institutional Fair Share exceeds the amount the institution is scheduled to receive under Part A.

Example: If institution No. 1 has a Fair share of SEOG IY funds of $150,000 and its Part A recommendation is $100,000 then that institution's shortfall of Part A of Fair Share is $50,000. If institution No. 2 has a shortfall of Part A to Fair Share of $25,000. then institution No. 1 would receive twice as much Part B funds as institution No. 2.

B. SELF-HELP FORMULA (CW-S AND NDSL)

The Panel recommended one Self-Help formula to be used for both CW-S and NDSL allocations.

Self-help formula=(undergraduate "cost"—total undergraduate EFC) [4]+(graduate "costs"—total graduate EFC) [5]

The Self-Help formula represents the need for all loans and work, both federally subsidized and others, rather than just the need for CW-S and NDSL.

HOW THE SELF-HELP FORMULA WILL WORK FOR THE CW-S PROGRAM

1. A Relative National Index (RNI) will be calculated for each institution as the ratio of that institution's formula-determined need to the sum of the need for all institutions.

2. The Relative National Index multiplied by the CW-S appropriation will equal the institutional Fair Share of the available CW-S funds.

3. The amount the institution is scheduled to receive under Part A may be equal to, less than, or greater than that institution's Fair Share. If it is equal to or greater than the Fair Share, then it represents the maximum employment for that institution for that year.

4. If additional funds are available for Part B, they will be distributed based upon the relative amount by which the institutional Fair Share exceeds the amount the institution is scheduled to receive under Part A.

HOW THE SELF-HELP FORMULA WILL WORK FOR THE NDSL PROGRAM

1. A Relative National Index will be calculated for each institution as the ratio of that institution's formula determined need to the sum of the need for all institutions.

2. The Relative National Index multiplied by the national pool of funds to be lent [6] equals the institutional Fair Share of NDSL funds.

3. The level of expenditures under Part A may equal to, less than, or greater than that institution's Fair Share. If it is equal to or greater than the Fair Share, then it represents the maximum level of expenditures.

4. Institutions FCC will be calculated by subtracting its collections and reimbursements from its Part A level of expenditures.

5. If additional funds are available for Part A, they will be distributed based upon the relative amount by which the institutional Fair Share exceeds the amount of the level of expenditures under Part A.

SHIFTING FUNDS IN SELF-HELP PROGRAMS

In situations where the institutional formula generates a potential level of NDSL or CW-S funding in excess of that requested by an institution, this excess will be "brokered" (within the Office of Education funding process) with other institutions in the State. For example, if the Selp-Help formula provides a CW-S recommendation which exceeds the maximum amount requested in that program, the difference will be put into an "excess" CW-S pool. Assuming that the institution's need for NDSL funds has not been fully met, each of these institutions will have its NDSL (FCC) recommendation increased by money in the "excess" pool times its proportionate contribution to the "excess" CS-S pool. Similarly, other institutions may have their CW-S recommendation increased by the money in the "excess" CWS pool times the proportionate contribution to the NDSL pool.

In this manner, shifting of funds by one institutions between programs may be possible but no other institution needing those funds will be adversely affected. Shifting of self-help funds into SEOG will not be permitted.

Dated: August 23, 1978.

ERNEST L. BOYER,
U.S. Commissioner of Education.

Approved: October 27, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary of Health, Education, and Welfare.

(Catalog of Federal Domestic Assistance No. 13.471 National Direct Student Loan; 13.463 College Work-Study; and 13.418 Supplemental Educational Opportunity Grant.)

PART 144—NATIONAL DIRECT STUDENT LOAN PROGRAM

1. Sections 144.3, 144.4, 144.5, 144.6, 144.7, and 144.16(l) of Part 144 of Title 45 of the Code of Federal Regulations are amended to read as follows:

§ 144.3 Apportionment and reapportionment of Federal capital contributions to States.

(a) *Apportionment.* (1) Ninety percent of the funds appropriated for Federal capital contributions will be apportioned in accordance with section 462(a)(1) of the act.

(2) After apportioning funds under subparagraph (a)(1), the Commissioner will apportion the remaining funds so that each institution in each State receives the amount of Federal capital contributions calculated under §§ 144.6 or 144.7.

(b) *Reapportionment.* If the apportionment to a State under paragraph (a) exceeds (1) the total amount of approved requests for Federal capital contributions of institutions in that State and (2) the amount to be transferred to carry out the State Student Financial Assistance Training Program under paragraph (c), the excess will be reapportioned. The Commissioner will reapportion those funds among the States according to the need for Federal capital contributions of institutions in each State as calculated under §§ 144.6 or 144.7.

(c) *Amounts to be transferred to the State Student Financial Assistance Training Program.* (1) The Commissioner may transfer an amount equal to .05 percent of a State's apportionment determined under paragraph (a) of this section, or $10,000, whichever is less, to that State under the State Student Financial Assistance Training Program authorized under Section 493C of the Higher Education Act of 1965, if the State has submitted an approved application.

(2) Funds reserved for transfer to the State Student Financial Assistance Training Program, which have not been granted to the appropriate agency by the end of the fiscal year for which appropriated, will be returned to that State's apportionment. The Commissioner may allocate this amount on an equitable basis to one or more institutions in that State.

(20 U.S.C. 1087bb and 1088b-3.)

§ 144.4 Allocation, reallocation and payment to institutions.

(a) When funds available within a State for Federal capital contributions are less than the amount of funds requested by institutions in that State, the funds will be distributed as set forth in § 144.6. However, allocations to proprietary schools may not exceed the difference between $190,000,000 and the amount appropriated for Federal capital contributions. If the allocations to proprietary schools would exceed that difference, the allocations to those schools will be reduced on a pro rata basis to the appropriate amount.

(b)(1) If an institution anticipates that it will not lend all the money allocated to it by the end of an award period, it must notify the Commissioner of the amount it does not expect to use. The Commissioner will reduce the institution's allocation accordingly.

(2) When enough Federal capital contributions become available for reallocation to make a significant increase in the amount of Federal capi-

[1] Cooperative Institutional Research Program: Higher Educational Research Institute (Fall 1975).

[2] Enrolled applicants are students enrolled at least half-time in an eligible program, who meet the program requirements for citizenship and whose family income, dependency status, and academic level are known to the institution.

[3] Only data for undergraduate students will be included in the calculation of the SEOG Index. Undergraduate and graduate data will be utilized in the CW-S and NDSL programs.

[4] "Undergraduate cost—total undergraduate EFC" cannot exceed 30 percent of cost since it is assumed that 70 percent of undergraduate costs are being met by EFC and other assistance. Undergraduate need cannot be less than zero.

[5] "Graduate Cost—Total Graduate EFC" cannot be less than zero.

[6] FCC, ICC, Collections, and Reimbursements to the NDSL Fund.

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tal contributions that can be awarded to other institutions in a State that have a need for those funds, the Commissioner will reallocate those funds on a pro rata basis to those other institutions.

(c) The Commissioner will make new Federal capital contributions available for a specific period of time. Funds will be paid to the institution in advance or by way of reimbursement, based on periodic fiscal reports.

(20 U.S.C. 1087bb.)

§ 144.5 Application.

(a) An institution that wishes to make loans under this program must file an application with the Commissioner for an approved level of expenditure before an annually established closing date. The application may request Federal capital contributions.

(b) The application must be on the form prescribed by the Commissioner and contain the information needed to determine the institution's level of expenditure and Federal capital contribution under the procedures set forth in § 144.6.

(c) The application must be signed by the official authorized to submit the application and must contain the names of the institution's Director of Student Financial Aid and the individual or official who will be responsible for the receipt, custody and disbursement of Federal funds.

(20 U.S.C. 1087bb.)

§ 144.6 Funding procedures.

(a)(1) The Commissioner will calculate an approved level of expenditure for each institution applying under paragraph (b) of this section (conditional guarantee). Institutions seeking a higher level of expenditure than their conditional guarantee may receive a higher level under paragraph (c) of this section. The amount of Federal capital contribution awarded depends in part on the institution's approved level of expenditure. The Federal capital contribution is calculated under paragraph (e) of this section.

(2) The amount of Federal capital contributions awarded as a result of the level of expenditure calculated under paragraph (b) is conditioned upon enough money being available in the State in which the institution is located to pay the amounts calculated under paragraph (e) to all institutions in that State. If the Federal capital contribution available in a State is below the amount calculated under paragraph (e), each institution's Federal capital contribution award will be reduced on a pro rata basis to the level of available funds.

(b)(1) An institution that participated in the NDSL program in the 1977-1978 and 1978-1979 award years will be approved for a level of expenditure for the 1979-1980 award year that is the greater of (i) its level of expenditure for the 1977-1978 award year, or (ii) its projected level of expenditure for the 1978-1979 award year.

(2) The level of expenditure for the 1977-1978 award year equals 104 percent of the amount of loans made in that award year.

(3) The projected level of expenditure for the 1978-1979 award year is calculated by multiplying the funds available for lending in 1978-1979 by the NDSL utilization rate for the 1977-1978 award year.

(4) As used in paragraph (b)(3) of this section, funds available for lending in 1978-1979 include—

(i) The Federal capital contribution awarded for 1978-1979,

(ii) The matching institutional capital contribution,

(iii) 110 percent of loan repayments received in 1977-1978,

(iv) Reimbursements for 1977-1978 Direct loan cancellations,

(v) Cash on hand as of June 30, 1978, and

(vi) Fund income.

(5) The 1977-1978 NDSL utilization rate equals the 1977-1978 level of expenditure (i.e., 104 percent of the amount of loans made) divided by the funds available for lending in 1977-1978. Funds available for lending in 1977-1978 included:

(i) The Federal capital contribution awarded for 1977-1978,

(ii) The matching institutional capital contribution,

(iii) Loan repayments received in 1977-1978,

(iv) Reimbursement for 1976-1977 Direct loan cancellations,

(v) Cash on hand as of June 30, 1977, and

(vi) Fund income.

(6) If an institution is participating in the NDSL program in the 1978-1979 award year, but did not participate in the NDSL program in award year 1977-1978, it will be considered to have a 100 percent utilization rate.

(7)(i) If an institution applies to participate in the NDSL program in the 1979-1980 award year, and is not participating in any of the campus based programs in the 1978-1979 award year, its level of expenditure will be calculated by comparing the institution to institutions of the same type and control, that first participated in the NDSL program in the 1978-1979 award year. Specifically, the authorized level of expenditure of the comparable institutions is divided by their number of enrolled students to get a per-student amount. The Commissioner multiplies that amount by the number of students enrolled at the applicant institution.

(ii) For the purpose of this subparagraph: control means public, nonprofit private, and proprietary; and type means universities, four year schools, two year schools, and others.

(8) If an institution applies to participate in the NDSL program in the 1979-1980 award year, is not participating in that program in 1978-1979, but is participating in the SEOG or CWS program in 1978-1979, it will not receive a conditional guarantee and must apply for a level of expenditure under paragraph (c).

(9) If the sum of Federal capital contributions awarded to all institutions in a State as a result of the level of expenditures approved under this paragraph is less than the State apportionment for Federal capital contributions calculated under § 144.3(a), awards will be increased to those institutions applying for a higher level of expenditure under paragraph (c). An increase in the Federal capital contribution under this subparagraph will increase the institution's level of expenditure by the same percentage as the percentage increase in the Federal capital contribution. To increase awards, the Commissioner will—

(i) Subtract from the State apportionment for Federal capital contributions calculated under § 144.3(a), the sum of the Federal capital contribution awards already determined as a result of the level of expenditure calculated under paragraphs (b)(1), (6), and (7) of this section.

(ii) Multiply the remainder by the relative State index for self-help of each institution that applies for additional funds under paragraph (c).

(iii) Add the amount obtained in (ii) for each institution to the amount previously calculated for that institution under paragraphs (b)(1), (6), or (7) of this section.

(10) For purposes of paragraph (b)(9)(ii) of this section, an eligible institution's relative State index for self-help is calculated by determining that institution's aggregate need for self-help under § 144.6(c)(1) and dividing that amount by the sum of the need for self help of all institutions in the eligible institution's State applying for additional funds under paragraph (c).

(c) *Calculation of fair share.* Each institution applying under this paragraph will receive a level of expenditure which represents the institution's "fair share" of the funds available for lending in the 1979-1980 award year. The "fair share" will be calculated by multiplying each institution's "self help relative national index" by the funds available for lending in the 1979-1980 award year. The Commissioner calculates an institution's "self help relative national index" as follows:

(1) The Commissioner determines the need for self help (need for funds from work and loan sources) of graduate students at the institution by—

(i) Establishing various income categories for dependent and independent graduate students,

(ii) Establishing an expected family contribution for each income category of dependent students and each income category of independent students, using need analysis methods approved under § 144.13,

(iii) Determining the average cost of education for graduate students,

(iv) Substracting from the average cost of education for graduate students, the calculated expected family contribution for each income category of dependent students, multiplying that amount by the number of students in that category and adding the amounts obtained for each income category of dependent students,

(v) Subtracting from the average cost of education for graduate students, the calculated expected family contribution for each income category of independent students, multiplying that amount by the number of students in that category, and adding the amounts obtained for each income category of independent students, and

(vi) Adding the amounts obtained under paragraphs (c)(1)(iv) and (v) of this section.

(2) The Commissioner determines the need for self help (need for funds from work and loan sources) of undergraduate students at the institution by:

(i) Establishing various income categories for dependent and independent undergraduate students;

(ii) Establishing an expected family contribution for each income category of dependent students and each income category of independent students, using need analysis methods approved under § 144.13,

(iii) Calculating 30 percent of the average cost of education for undergraduate students,

(iv) Multiplying the number of dependent students in each income category by the lesser of (A) 30 percent of the average cost of education for undergraduate students or (B) the average cost of education for undergraduate students minus the expected family contribution determined under paragraph (c)(1)(ii) of this section for that income category, and adding the amounts obtained for each income category of dependent students,

(v) Multiplying the number of independent students in each income category by the lesser of (A) 30 percent of the average cost of education for undergraduate students or (B) the average cost of education for undergraduate students minus the expected family contribution determined under paragraph (c)(1)(ii) of this section for that income category, and adding the amounts obtained for each income category of independent students,

(vi) Adding the amounts obtained in paragraphs (c)(1)(iv) and (v) of this section.

(3) For purposes of paragraphs (c)(1) and (2) of this section the average cost of education minus expected family contribution may not be less than zero.

(4) The total amount of self help need of the institution is the sum of the self help need of graduate students ((c)(1)(vi)) and undergraduate students ((c)(2)(vi)).

The following chart indicates the income categories and the manner in which the appropriate number of students will be reported.

NUMBER OF ENROLLED APPLICANTS BY INCOME CATEGORY FOR 1977-1978

INCOME	UNDERGRADUATE DEPENDENT	GRADUATE/PROF. DEPENDENT	INCOME	UNDERGRADUATE INDEPENDENT	GRADUATE INDEPENDENT
$0 - $ 5,999			$0 - $ 999		
$6,000 - $ 8,999			$1,000 - $1,999		
$9,000 - $11,999			$2,000 - $2,999		
$12,000 - $14,999			$3,000 - $3,999		
$15,000 - $17,999			$4,000 - $4,999		
$18,000 - $20,999			$5,000 - $5,999		
$21,000 - $23,999			$6,000 - $6,999		
$24,000 - $26,999			$7,000 - $7,999		
$27,000 - $29,999			$8,000 - $8,999		
$30,000 - over			$9,000 - over		
TOTAL					

(5) The Commissioner divides the result obtained in paragraph (c)(4) of this section by the sum of—

(i) The self help need of all institutions applying under this paragraph or under § 175.6(c) of the CWS regulations (45 CFR 175.6(c)), and

(ii) The conditional guaranteed level of expenditure for NDSL and the conditional guaranteed CWS amount for all institutions not applying under this paragraph or § 175.6(c) of the CWS regulations.

(6) The increase in an institution's level of expenditure may not exceed the difference between its "fair share" and its conditional guarantee.

(d) As used in paragraph (c):

(1) "Cost of education" is the cost of attendance for undergraduate and graduate students who satisfy the eligibility requirements of § 144.9(a) (1) and (2). These costs include tuition and fees and a standard cost for living expenses and books and supplies. (The institution will report its total tuition and fee revenues and the Commissioner will prorate this amount for eligible students.)

(2) "Funds available for lending in the 1979-1980 award year" include

(i) The 1979 appropriation for Federal capital contribution,

(ii) The matching institutional capital contribution,

(iii) 121 percent of 1977-1978 loan repayments,

(iv) Reimbursements for 1978-1979 Direct loan cancellations, and

(v) Fund income.

DETERMINATION OF FEDERAL CAPITAL CONTRIBUTION (FCC)

(e)(1) The Commissioner determines the Federal Capital Contribution (FCC) for an award year by

(i) Subtracting from an institution's approved level of expenditure for that year, the loan repayments for that year, fund income, and reimbursements for cancellations of direct loans for the previous year and,

(ii) Multiplying the remainder by 90 percent.

(2) Loan repayments for the purpose of calculating FCC for the 1979-80 award year will be considered to be 121 percent of the amount collected in the award year if

(i) The institution's default rate is 10 percent or less,

(ii) The institution's default rate is more than 10 percent, but the number of loans made by that institution, which are in default for less than 2 years, on June 30, 1978 are at least 10 percent less than the number of loans made by that institution and in de-

fault for less than 2 years on June 30, 1977, or

(iii) The institution's default rate is more than 10 percent, but the institution can document, under 144.7, that it has exercised due diligence as set forth in Subpart C of the NDSL regulations published in the FEDERAL REGISTER of November 24, 1976, for the past 2 award years.

NOTE.—See *Subpart C—Loan Collection—Due Diligence*, attached as an appendix to this NPRM.

(3) If an institution does not qualify under one of the three conditions in subparagraph 2, its loan repayments will be considered to be, for the purpose of calculating FCC for the 1979-80 award year,

(i) 121 percent of the amount collected in the 1977-1978 award year, plus

(ii) The amount it would have collected through June 30, 1978 if its default rate was 10 percent.

(f)(1) If an institution's "fair share" of the CWS appropriation exceeds its request for CWS funds, the Commissioner will place the excess in an "Excess CWS Pool." Similarly if an institution is scheduled to receive more Federal capital contributions than it requested, the Commissioner will place that excess in an "Excess Federal Capital Contribution (FCC) Pool."

(2)(i) If an institution has contributed to the "Excess CWS Pool," and its need for Federal capital contributions has not been fully met, it may receive additional Federal capital contributions from the "Excess FCC Pool."

(ii) If an institution has contributed to the "Excess FCC Pool" and its need for CWS funds has not been fully met, it may receive additional funds form the "Excess CWS Pool".

(iii) The amount of additional Federal capital contributions an institution may receive under this subparagraph is proportional to its contribution to the "Excess CWS Pool." The amount of additional CWS funds an institution may receive under this subparagraph is proportional to its contribution to the "Excess FCC Pool". Stated as an equation—

Additional FCC equals institutional contribution to Excess CWS Pool divided by Excess CWS Pool multiplied by Excess FCC Pool

Additional CWS equals institutional contribution to Excess FCC Pool divided by Excess FCC Pool multiplied by Excess CWS Pool

(g) Notwithstanding paragraphs (b), (c), (e) and (f) of this section, no institution may receive more Federal capital contributions than it requested.

(20 U.S.C. 1087bb.)

§ 144.7 Application review—approval of request.

(a) An institution may request a review of its calculated level of expenditure or Federal capital contribution. The Commissioner will convene a national review panel consisting of student financial aid officers and OE personnel.

(b) The review panel will review each request and notify the Commissioner of its recommendations and the reasons for its recommendations.

(c) The Commissioner will establish an approved level of expenditure and Federal capital contributions based on the procedures set forth in § 144.6 and the national review panel recommendations.

(20 U.S.C. 1087bb.)

§ 144.16 Making and disbursing loans.

* * * * *

(i) No loan may be made to a student whose need for the loan was computed using estimated data submitted to the institution before January 1 of the previous award year unless the institution verifies that information.

PART 175—COLLEGE WORK-STUDY PROGRAM

2. Sections 175.3, 175.4, 175.5, 175.6, 175.7, and 175.16(f) of Part 175 of Title 45 of the Code of Federal Regulations are amended to read as follows:

§ 175.3 Allotment of Federal funds to States.

(a) *Initial allotments.* Two percent of the CWS appropriation will be allotted in accordance with section 442(a) of the Act. An additional amount will be allotted in accordance with section 442(f) of the Act.

(b) *Initial allotment to States.* (1) Ninety percent of the amount remaining after allotment of funds under paragraph (a) will be allotted in accordance with section 442(b) and that portion of section 442(c) of the Act which relates to the 1972 allotment guarantee.

(2) After allotting funds under paragraph (a) and subparagraph (b)(1), the Commissioner will allot any amount remaining so that each institution in each State receives the amount of CWS funds calculated under §§ 175.6 or 175.7.

(c) *Amounts to be transferred to the State Student Financial Assistance Training Program.* (1) The Commissioner may transfer an amount equal to .05 percent of each State's initial allotment, as determined under paragraphs (a) and (b) of this section, or $10,000, whichever is less, to that State under the State Student Financial Assistance Training Program authorized under section 493C of the Higher Education Act of 1965, if the State has submitted an approved application.

(2) Funds reserved for transfer to the State Student Financial Assistance Training Program, which have not been granted to the appropriate agency by the end of the fiscal year for which appropriated, will be returned to that State's allotment under the College Work-Study Program. The Commissioner may allocate this amount on an equitable basis to one or more institutions in that State.

(20 U.S.C. 1088b-3.)

(d) *Reallotment.* The Commissioner will reallot the amount of any State's allotment which (1) exceeds the approved requests of institutions in that State, (2) has not been granted to any institution at the end of the fiscal year for which appropriated, or (3) has not been transferred to carry out the State Student Financial Assistance Training Program. The Commissioner will reallot those funds among the States according to the need for CWS funds of institutions in each State as calculated under §§ 175.6 or 175.7.

(42 U.S.C. 2752.)

§ 175.4 Allocation, reallocation and payment to institutions.

(a) When funds available within a State are less than the amount of funds requested by institutions in that State, the funds will be distributed as set forth in § 175.6.

(b)(1) If an institution anticipates that it will not use all the money allocated to it by the end of an award period, it must notify the Commissioner of the amount it does not expect to use. The Commissioner will reduce the institution's allocation accordingly.

(2) The Commissioner may reallocate those funds on an equitable basis to other institutions in the State that have a need for those funds. If no institution in that State has a need for those funds, the funds may be reallotted in accordance with section 175.3, for use in other States.

(c) The Commissioner will make funds available for a specific period of time. Funds will be paid to the institution in advance or by way of reimbursement, based on periodic fiscal reports.

(42 U.S.C. 2756.)

§ 175.5 Application.

(a) An institution that wishes to participate in the College Work-Study program must file an application with the Commissioner before an annually established closing date.

(b) The application must be on the form prescribed by the Commissioner and contain the information needed to determine the institution's allocation of funds under the procedures set forth in § 175.6.

(c) The application must contain the information needed to determine whether the institution is complying with the maintenance of effort requirements set forth in § 175.20.

(d) The application must be signed by the official authorized to submit the application and must contain the names of the institution's Director of Student Financial Aid and the individual or official who will be responsible for the receipt, custody and disbursement of Federal funds.

(42 U.S.C. 2756.)

§ 175.6 Funding procedure.

(a) Institutions requesting CWS funds will receive an amount calculated under paragraph (b) of this section (conditional guarantee). An institution seeking more than its conditional guarantee may receive an additional amount under paragraph (c) of this section. The conditional guarantee is conditioned upon enough money being available in the State in which the institution is located to pay the amounts calculated under paragraph (b) to all institutions in that State. If the CWS funds available in a State will not fully satisfy all conditional guarantees, each institutions's award will be reduced on a pro rata basis to the level of available funds.

(b)(1) An institution that received CWS funds in the 1977-1978 and 1978-1979 award years will receive for the 1979-1980 award year, the greater of (i) its actual CWS expenditures for the 1977-1978 award year of (ii) its projected 1978-1979 award year expenditures.

(2)(i) An institution's projected 1978-1979 expenditure is calculated by multiplying its 1978-1979 allocation by the school's CWS utilization rate for the 1977-1978 award year.

(iii) The CWS utilization rate is calculated by dividing the CWS expenditure in an award year by the grant funds available for expenditure in that award year.

(3) If an institution received CWS funds for the 1978-1979 award year and did not participate in the CWS program in the 1977-1978 award year, it will be considered to have a 100 percent utilization rate.

(4)(i) If an institution applies to participate in the CWS program in the 1979-1980 award year, and is not participating in any of the campus based programs in the 1978-1979 award year, its conditional guarantee will be calculated by comparing the institution to institutions of the same type and control that first participated in the CWS program in the 1978-1979 award year. Specifically, the amount of CWS funds the comparable institutions received is divided by the number of enrolled students at the schools to get a per-student amount. The Commissioner multiples that amount by the number of students enrolled at the applicant institution.

(ii) For purposes of this subparagraph: control means public, nonprofit private, and proprietary; and type means universities, four year schools, two year schools, area vocational schools and others.

(5) If an institution applies to participate in the CWS program in the 1979-1980 award year, is not participating in that program in the 1978-1979 award year, but is participating in the SEOG or NDSL program in 1978-1979, it will not receive a conditional guarantee and must apply for funds under paragraph (c).

(6) If the sum of CWS conditional guarantee awards for all institutions in a State is less than the State allotment calculated under § 175.3(b), awards will be increased to those institutions applying for additional funds under paragraph (c). To increase awards, the Commissioner will—

(i) Subtract from the State allotment calculated under § 175.3(b), the sum of the awards already calculated in paragraphs (b)(1), (3), or (4) of this section for all institutions in the State.

(ii) Multiply the remainder by the relative State index for self help of each institution that applies for additional funds under paragraph (c).

(iii) Add the amount obtained in paragraph (b)(6)(ii) of this section for each institution to the amount calculated for that institution under paragraphs (b)(1), (3), or (4) of this section.

(7) For purposes of paragraph (b)(6)(ii) of this section, an eligible institution's relative State index is calculated by determining that institution's aggregate need for self help under § 175.6(c)(1) and dividing that amount by the sum of the aggregate self help need of all institutions in the eligible institution's State applying under paragraph (c).

(c) *Calculation of fair share.* Each institution applying under this paragraph will receive a "fair share" of the CWS appropriation. The "fair share" will be calculated by multiplying each institution's "self help relative national index" by the CWS appropriation. The Commissioner calculates an institution's self help relative national index as follows:

(1) The Commissioner determines the need for self help (need for funds from work and loan sources) of graduate students at the institution by—

(i) Establishing various income categories for dependent and independent graduate students,

(ii) Establishing an expected family contribution for each income category of dependent students and each income category of independent students, using need analysis methods approved under § 175.13,

(iii) Determining the average cost of education for graduate students,

(iv) Subtracting from the average cost of education for graduate students, the calculated expected family contribution for each income category of dependent students, multiplying that amount by the number of students in that category and adding the amounts obtained for each income category of dependent students,

(v) Subtracting from the average cost of education for graduate students, the calculated expected family contribution for each income category of independent students, multiplying that amount by the number of students in that category, and adding the amounts obtained for each income category of independent students, and

(vi) Adding the amounts obtained under paragraphs (c)(1) (iv) and (v) of this section.

(2) The Commissioner determines the need for self help (need for funds from work and loan sources) of undergraduate students at the institution by:

(i) Establishing various income categories for dependent and independent undergraduate students;

(ii) Establishing an expected family contribution for each income category of dependent students and each income category of independent students, using need analysis methods approved under § 175.13,

(iii) Calculating 30 percent of the average cost of education for undergraduate students,

(iv) Multiplying the number of dependent students in each income category by the lesser of (A) 30 percent of the average cost of education for undergraduate students or (B) the average cost of education for undergraduate students minus the expected family contribution determined under paragraphs (c)(2)(ii) of this section for that income category, and adding the amounts obtained for each income category of dependent students,

(v) Multiplying the number of independent students in each income category by the lesser of (A) 30 percent of the average cost of education for undergraduate students or (B) the average cost of education for undergraduate students minus the expected family contribution determined under clause (ii) for that income category, and adding the amounts obtained for each income category of independent students,

(vi) Adding the amounts obtained in paragraphs (c)(2) (iv) and (v) of this section.

(3) For purposes of paragraphs (c)(1) and (2) of this section, the average

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cost of education minus expected family contribution may not be less that zero.

(4) The total amount of self help need of the institution is the sum of the self help need of graduate students ((c)(1)(vi)) and undergraduate students ((c)(2)(vi)).

The following chart indicates the income categories and the manner in which the appropriate number of students will be reported.

NUMBER OF ENROLLED APPLICANTS BY INCOME CATEGORY FOR 1977-1978

INCOME	UNDERGRADUATE DEPENDENT	GRADUATE/PROF. DEPENDENT	INCOME	UNDERGRADUATE INDEPENDENT	GRADUATE INDEPENDENT
$0 - $ 5,999			$0 - $ 999		
$6,000 - $ 8,999			$1,000 - $1,999		
$9,000 - $11,999			$2,000 - $2,999		
$12,000 - $14,999			$3,000 - $3,999		
$15,000 - $17,999			$4,000 - $4,999		
$18,000 - $20,999			$5,000 - $5,999		
$21,000 - $23,999			$6,000 - $6,999		
$24,000 - $26,999			$7,000 - $7,999		
$27,000 - $29,999			$8,000 - $8,999		
$30,000 - over			$9,000 - over		
TOTAL					

(5) The Commissioner divides the result obtained in paragraph (c)(4) of this section by the sum of—

(i) The formula determined self help need of all institutions applying under this paragraph, or under § 144.6(c) of the NDSL regulations (45 CFR 144.6(c)) and

(ii) The CWS conditional guarantee plus the conditional guaranteed level of expenditure for all institutions not applying under this paragraph or § 144.6(c) of the NDSL regulations.

(6) An institution may not receive more than the difference between its "fair share" and its conditional guarantee.

(d) As used in paragraph (c): "Cost of education" is the cost of attendance for undergraduate and graduate students who satisfy the eligibility requirements of § 175.9(a)(1) and (2). These costs include tuition and fees and a standard cost for living expenses and books and supplies. (The institution will report its total tuition and fee revenues, and the Commissioner will prorate that amount for eligible students.)

(e)(1) If an institution's "fair share" of the CWS appropriation exceeds its request for CWS funds, the Commissioner will place the excess in an "Excess CWS Pool." Similarly if an institution is scheduled to receive more Federal capital contribution than it requested, the Commissioner will place that excess in an "Excess Federal Capital Contribution (FCC) Pool."

(2)(i) If an institution has contributed to the "Excess CWS Pool," and its need for Federal capital contribution has not been fully met, it may receive additional Federal capital contributions from the "Excess FCC Pool."

(ii) If an institution has contributed to the "Excess FCC Pool" and its need for CWS funds has not been fully met, it may receive additional funds from the "Excess CWS Pool."

(iii) The amount of additional Federal capital contributions an institution may receive under this subparagraph is proportional to its contribution to the "Excess CWS Pool." The amount of additional CWS funds an institution may receive under this subparagraph is proportional to its contribution to the "Excess FCC Pool." Stated as an equation—

Additional FCC equals institutional contribution to Excess CWS Pool divided by Excess CWS Pool multiplied by Excess FCC Pool

Additional CWS equals institutional contribution to Excess FCC Pool divided by Excess FCC Pool multiplied by Excess CWS Pool

(f) Notwithstanding paragraphs (b), (c), and (e) of this section, no institution may receive more CWS funds than it requested.

(42 U.S.C. 2756)

§ 175.7 Application review—approval of request.

(a) An institution may request a review of the amount of its conditional guarantee. The Commissioner will convene a national review panel consisting of student financial aid officers and OE personnel.

(b) The review panel review each request and notify the Commissioner of its recommendations and the reasons for its recommendations.

(c) The Commissioner will set an award amount based on the procedures set forth in § 175.6 and the national review panel recommendations.

(42 U.S.C. 2756.)

§ 175.16 Payments to students.

* * * * *

(f) No payment may be made to a student whose need was computed using estimated data submitted to the institution before January 1 of the previous award period unless the institution verifies that information.

(42 U.S.C. 2754.)

PART 176—SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

3. Sections 176.3, 176.4, 176.5, 176.6, 176.7, and 176.16(i), 4, 5, 6, 7 and 16 of Part 176 of Title 45 of the Code of Federal Regulations are amended to read as follows:

§ 176.3 Apportionment and reapportionment.

(a) *Initial grant—apportionment.* (1) Ninety percent of the funds appropriated for making initial grants for any fiscal year will be apportioned as set forth in section 413D(a) of the Act.

(2) After apportioning funds under paragraph (a)(1) of this section, the Commissioner will apportion the remaining funds so that each institution in each State receives the amount for initial grants calculated under §§ 176.6 or 176.7.

(b) *Initial grants—reapportionment.* The Commissioner will reapportion the part of any State's apportionment which exceeds the approved requests for initial grants of institutions in that State, or which has not been transferred to carry out the State Student Financial Assistance Training Program. The Commissioner will reapportion these funds among the remaining States according to the need for initial funds by institutions in these States as calculated under §§ 176.6 or 176.7.

(c) *Continuing grants—apportionment.* The Commissioner will apportion the funds appropriated for continuing grants so that each institution in each State receives the amount for continuing grants calculated under §§ 176.6 or 176.7.

(d) *Continuing grants—reapportionment.* Any funds apportioned under paragraph (c) which are later determined by the Commissioner to exceed the amount required by any State for continuing grants under §§ 176.6 or 176.7, or which have not been transferred to carry out the State Student Financial Assistance Training Program, will be reapportioned among the remaining States.

(e) *Amounts to be transferred to the State Student Financial Assistance Training Program.* (1) The Commissioner may transfer an amount equal to .05 percent of each State's apportionment, as determined under paragraphs (a) and (c) of this section, or $10,000, whichever is less, to that State under the State Student Financial Assistance Training Program authorized under Section 493C of the Higher Education Act of 1965, if the State has submitted an approved application.

(2) Funds reserved for transfer to the State Student Financial Assistance Training Program, which have not been granted to the appropriate agency by the end of the fiscal year for which appropriated, will be returned to that State's apportionment. The Commissioner may apportion the amount on an equitable basis to one or more institutions in that State.

(20 U.S.C. 1070b-3 and 1088b-3.)

§ 176.4 Allocation, reallocation and payment to institutions.

(a) When funds available within a State for initial or continuing awards are less than the amount of funds requested by institutions in that State, the funds will be distributed as set forth in § 176.6.

(b)(1) If an institution anticipates that it will not use all the money allocated to it for initial or continuing grants by the end of an award period, it must notify the Commissioner of the amount it does not expect to use. The Commissioner will reduce the institution's allocation accordingly.

(2) The Commissioner may reallocate those funds on an equitable basis to other institutions in the State that have a need for those funds. If no institution in that State has a need for those funds, the funds may be reapportioned in accordance with § 176.3, for use in other States.

(3) The Commissioner will make funds available for initial and continuing grants for a specific period of time. Funds will be paid to an institution in advance or by way of reimbursement, based on periodic fiscal reports.

(20 U.S.C. 1070b-3.)

§ 176.5 Application.

(a) An institution that wishes to participate in the SEOG program must file an application with the Commissioner before an annually established closing date.

(b) The application must be on the form prescribed by the Commissioner and contain the information needed to determine the institution's allocation of funds under the procedures set forth in § 176.6.

(c) The application must contain the information needed to determine whether the institution is complying with the maintenance of effort requirements set forth in § 176.20.

(d) The application must be signed by the official authorized to submit the application and must contain the names of the institution's Director of Student Financial Aid and the individual or official who will be responsible for the receipt, custody and disbursement of Federal funds.

(20 U.S.C. 1070b-3.)

§ 176.6 Funding procedure.

(a) Institutions requesting SEOG funds will receive an amount calculated under paragraph (b) of this section (conditional guarantee). An institution seeking more than its conditional guarantee may receive an additional amount under paragraph (c) of this section. The conditional guarantee is conditioned upon enough money being apportioned or reapportioned to the State in which the institution is located to pay the amounts calculated under paragraph (b) to all institutions in that State. If the SEOG funds available in a State will not fully satisfy all conditional guarantees, each institution's award will be reduced on a pro rata basis to the level of available funds.

(b)(1) An institution that received SEOG funds in the 1977-1978 and 1978-1979 award years will receive for the 1979-1980 award year, the greater of (i) its actual SEOG expenditure for the 1977-1978 award year, of (ii) its projected 1978-1979 award year SEOG expenditure.

(2)(i) An institution's projected 1978-1979 SEOG expenditure is calculated by multiplying its 1978-1979 allocation by its SEOG utilization rate for the 1977-1978 award year.

(ii) The SEOG utilization rate is calculated by dividing the aggregate SEOG expenditure in an award year by the grant funds available for expenditure in that award year.

(3) If an institution received SEOG funds for the 1978-1979 award year and did not participate in the SEOG program in the 1977-1978 award year, it will be considered to have a 100% utilization rate.

(4)(i) If an institution applies to participate in the SEOG program in the 1979-1980 award year, and is not participating in any of the campus based programs in the 1978-1979 award year, its conditional guarantee will be calculated by comparing the institution to institutions of the same type and control, that first participated in the SEOG program in the 1978-1979 award year. Specifically, the amount of SEOG funds the comparable institutions received is divided by the number of enrolled students at the comparable schools to get a per-student amount. The Commissioner multiplies that amount by the number of students enrolled at the applicant institution to determine its conditional guarantee.

(ii) For purposes of this subparagraph: control means public, nonprofit private and proprietary; and type means universities, four year schools, two schools, and others.

(5) If an institution applies to participate in the SEOG program in the 1979-1980 award year, is not participating in that program in 1978-1979, but is participating in the CWS or NDSL program in 1978-1979, it will not receive a conditional guarantee and must apply for funds under paragraph (c).

(6) Each institution's conditional guarantee will be divided between initial grants and continuing grants. This division will be based on the percentage that the institution's request for each type of grant bears to its total request. (For example, if an institution requests $45,000 for initial grants and $55,000 for continuing, 45 percent of its conditional guarantee will be for initial grants and 55 percent for continuing grants).

(7) If the sum of initial year conditional guarantee awards for all institutions in a State is less than the State allotment for initial year grants calculated under § 176.3(a), awards will be increased to those institutions applying for additional funds under paragraph (c). To increase awards, the Commissioner will—

(i) Subtract from the State allotment for initial grants calculated under § 176.3(a), the sum of the awards already calculated in paragraphs (b)(1), (3) or (4) of this section for all institutions in the State.

(ii) Multiply the remainder by the relative State index for initial grants of each institution that applies for additional funds under § 176.6(c).

(iii) Add the amount obtained in paragraph (b)(7)(ii) of this section for each institution to the amount calculated for that institution under paragraphs (b)(1), (3) or (4) of this section.

(8) For purposes of paragraph (b)(7)(ii) of this section, an eligible institution's relative state index is calculated by determining that institution's aggregate need for initial year grants under § 176.6(c)(1) and dividing that amount by the sum of the need for initial year awards of all instititulons in the eligible institution's State applying under paragraph (c).

(c) *Calculation of fair share.* Each institution applying under this paragraph will receive a "fair share" of the SEOG appropriation. An institution's fair share of the SEOG initial grant appropriation is calculated by multiplying the appropriation for initial grants by that institution's relative national index for initial grants. An institu-

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tinuing grant appropriation is calculated by multiplying the appropriation for continuing grants by that institution's relative national index for continuing grants.

(1) The Commissioner calculates a relative national index for initial grants by dividing each institution's need for initial grants (determined under paragraphs (c)(3) and (4) of this section) by the sum of the need for initial grants of all institutions applying for initial year funds. For purposes of this calculation, the need for initial year funds at an institution not applying for additional initial year funds under this paragraph is its conditional guarantee.

(2) The Commissioner calculates a relative national index for continuing grants by dividing each institution's need for continuing grants (determined under paragraphs (c)(3) and (4) of this section) by the sum of the need for continuing grants of all institutions applying for continuing funds. For purposes of this calculation, the need for continuing year funds of an institution not applying for additional continuing year funds under this paragraph is its conditional guarantee.

(3) The Commissioner calculates the need for SEOG funds for each institution applying under paragraph (c) under the following formula:

SEOG need=70 percent × cost of education—(Aggregate Expected Family Contribution (EFC)+Basic Grants+State Grants+⅔ Institutional Grants)

(4) The Commissioner divides each institution's aggregate need for SEOG funds between initial grants and continuing grants. This division will be based on the percentage that the institution's request for each type of grant bears to its total request for SEOG funds. (For example, if a school asks for $45,000 for initial grants and $55,000 for continuing grants, 45 percent of the amount determined in paragraph (c)(1) of this section will be apportioned to initial grants and 55 percent to continuing grants.)

(5) An institution may not receive more than the difference between its "fair share" and its conditional guarantee for each type of grant (i.e., initial or continuing).

(d) As used in paragraph (c):

(1) "Aggregate Expected Family Contribution" (EFC) is calculated by the Commissioner by—

(i) Establishing various income categories for dependent and independent undergraduate students,

(ii) Establishing an expected family contribution for each income category of dependent students and each income category of independent students, using need analysis methods approved under § 176.13,

(iii) Multiplying the number of dependent students in each income category by the expected family contribution determined under paragraph (d)(1)(ii) of this section for that income category, and adding the amounts obtained for each income category of dependent students,

(iv) Multiplying the number of independent students in each income category by the expected family contribution determined under paragraph (d)(1)(ii) of this section for that income category, and adding the amounts obtained for each income category of independent students, and

(v) Adding the amounts obtained in paragraphs (d)(1) (iii) and (iv) of this section.

(2) "Cost of education" is the cost of attendance for undergraudate students who satisfy the eligibility requirements of § 176.9(a) (1) and (2). These costs include tuition and fees and a standard cost for living expenses and books and supplies. (The institution will report its total tuition and fee revenues and the Commissioner prorates this amount for eligible undergraduate students.)

The following chart indicates the income categories and the manner in which the appropriate number of students will be reported.

NUMBER OF ENROLLED APPLICANTS BY INCOME CATEGORY FOR 1977-1978

INCOME	UNDERGRADUATE DEPENDENT	INCOME	UNDERGRADUATE INDEPENDENT
$ 0 - $ 5,999		$0 - $ 999	
$ 6,000 - $ 8,999		$1,000 - $1,999	
$ 9,000 - $11,999		$2,000 - $2,999	
$12,000 - $14,999		$3,000 - $3,999	
$15,000 - $17,999		$4,000 - $4,999	
$18,000 - $20,999		$5,000 - $5,999	
$21,000 - $23,999		$6,000 - $6,999	
$24,000 - $26,999		$7,000 - $7,999	
$27,000 - $29,999		$8,000 - $8,999	
$30,000 - over		$9,000 - over	
TOTAL			

(3) State grants are the sum of all State grants and scholarships received by undergraduate students at the institution during the 1977-1978 award year.

(4) Institutional grants include the sum of those categories of undergraduate gift aid included in determining the maintenance of effort amount under § 176.20.

(e) Notwithstanding paragraphs (b) and (c) of this section, no institution may receive more money than it requested by initial or continuing grants.

(20 U.S.C. 1070b-3.)

§ 176.7 Application review—approval of request.

(a) An institution may request a review of its conditional guarantee. The Commissioner will convene a national review panel consisting of student financial aid officers and OE personnel.

(b) The review panel will review each request and notify the Commissioner of its recommendations and the reasons for its recommendations.

(c) The Commissioner will set an award amount based on the procedures set forth in § 176.6 and the national review panel recommendations.

(20 U.S.C. 1070b-3.)

§ 176.16 Payment of grant.

* * * * *

(i) No Supplemental Grant may be paid to a student whose need for the grant was computed using estimated data submitted to the institution before January 1 of the previous award period unless the institution verifies that information.

APPENDIX

From: FEDERAL REGISTER, Volume 41, No. 228—Wednesday, November 24, 1976

Subpart C—Loan Collection—Due Diligence

§ 144.41 General.

Each institution at which a Fund is established shall exercise due diligence as described in this subpart in the collection of the amounts due and payable to its Fund. In the exercise of such responsibility each institution must consistently utilize extensive and forceful collection practices. In particular, an institution shall:

(a) Provide to each borrower, not later than the time when he signs his promissory note, full disclosure of his rights and obligations thereunder:

(b)(1) Conduct an exit interview as described in § 144.42 with each borrower prior to his leaving the institution and provide the borrower at that time with a copy of his repayment schedule specifying the total amount of the loan and the dates and amounts of installments as they become due:

(2) If a borrower leaves the institution without notice, the institution shall mail the borrower a copy of his note and 2 copies of his repayment schedule and shall request the borrower to sign and return one of the copies of the repayment schedule.

(c) Maintain a written record of the exit interview, including a repayment schedule signed by the borrower which shall be made a part of the borrower's file;

(d) Maintain contact with the borrower after his leaving the institution in order to facilitate billing and in order to keep him informed on a timely basis of all changes in the program affecting his rights and obligations.

§ 144.42 Contact with the borrower prior to repayment period.

(a) *Coordination of institutional offices.* Each institution shall provide for the exchange of information among all appropriate institutional offices, e.g., the registrar, student financial aid, business, and alumni offices in order to determine (1) the approximate time a borrower will graduate in order that an exit interview may be conducted, or (2) whether a student has left school without proper notice so that it may mail the borrower required information.

(b) *Exit interview.* (1) Each institution shall, if possible, conduct an exit interview with each borrower prior to the time the borrower leaves the institution. The exit interview shall be conducted on an individual basis, except that, if individual interviews are not feasible, the institution may conduct group exit interviews.

(2) During the exit interview the institution shall provide the borrower with a detailed explanation of his obligations and rights. It shall advise the borrower: (i) Of the fact that he has received a loan which must be repaid on a timely basis as called for in his repayment schedule, (ii) of his responsibility to inform the institution immediately of any change of address, (iii) of the full amount of his loan including the interest rate, (iv) of the date and amount when the first payment becomes due, (v) of his responsibility to contact the institution prior to the due date of any installment if payment cannot be made for any reason, (vi) of his rights to deferment pursuant to 144.34, postponement pursuant to 144.35, and/or cancellation pursuant to 144.51 through 144.56 as well as his responsibility to submit timely certification of such right to the deferment, postponement, cancellation, (vii) of his right to accelerate loan repayments without penalty, (viii) of any optional features which the institution has inserted in its note including the minimum monthly repayment provision pursuant to § 144.32(e), total costs of collection chargeable to the borrower pursuant to § 144.32(j), and penalty charges pursuant to § 144.32(f).

(c) The institution shall contact each borrower no less than three times during the borrower's 9 month grace period as follows: (1) 90 days into the grace period the institution shall transmit to the borrower in writing the information described in paragraph (b)(2) of this section and such other information as is necessary to satisfy Truth in Lending Act regulations; (2) 180 days into the grace period the institution shall notify the borrower of the date of expiration of the borrower's grace period; and (3) no less than 30 days preceding the due date of the first repayment installment the institution shall notify the borrower of the date when his first payment become due and of the amount of principal and interest due at that time.

(d) If the institution finds that a borrower's address has changed, it shall implement the procedures set forth in 144.43(a)(4) in order to secure the borrower's correct address.

(20 U.S.C. 425 and 1087cc.)

§ 144.43 Billing procedures.

(a) Each institution shall establish and maintain regular billing and follow up procedures during the period in which any outstanding balance remains unpaid, including:

(1) The sending of:

(i) A letter of notice and a statement of account to each borrower no later than 30 days preceding the date on which the first repayment installment is due;

(ii) A statement of account to each borrower no fewer than 10 days preceding the due date of each payment subsequent to the first payment, unless a coupon system is established;

(iii) When any payment is not received within 15 days of the due date, a telephoned or written demand to the borrower for payment followed by two more such demands spaced 30 days apart if no response to the initial demand is received;

(2) The maintenance of a monthly list of payments in arrears with respect to loans not paid when due;

(3) Other procedures for effecting prompt and regular repayment including personal or telephonic contact where possible;

(4) In the case of a borrower whose address is no longer known, which may be evidenced by return of mail, performance of a thorough search of all reasonably accessible information which may lead to the borrower's current address, including records checks in all appropriate institutional offices, checks of the telephone directory or information operator in the city or town of the borrower's last known address, long distance phone calls to the borrower if a phone has been obtained and the use of the Office of Education's skip-tracing service, which will be provided free of charge to the institution.

(b) Costs incurred by the institution in carrying out the activities enumerated in paragraph (a) of this section shall be considered routine administrative expenses which may not be charged to the Fund, except for the costs of long distance phone calls to the borrower described in paragraphs (a)(3) and (a)(4) of this section, which may, in accordance with 144.46, be considered other collection costs chargeable to the Fund.

(20 U.S.C. 424 and 1087cc)

§ 144.44 Skip-tracing activities.

(a) If an institution is still unable to locate a borrower, in spite of its efforts pursuant to § 144.43(a)(4), it shall engage the services of a commercial skip tracing organization or perform equivalent skip tracing activities with its own personnel.

(b) If the borrower's address is located as a result of the activities described in paragraph (a) of this section, the institution shall immediately contact the borrower for the purpose of collecting amounts past due.

(20 U.S.C. 424 and 1087cc)

§ 144.45 Collection procedures.

(a) If an institution is still unable to obtain payment from a borrower after performing all of the activities set forth in § 144.46, be § 144.44, it shall utilize the services of a collection agency or perform such collection activities with its own personnel or shall resort to litigation.

(b) If a collection agency is used it must be bonded in an amount to cover those particular assets of the Fund which are under the control of the agency at any particular time.

(c) Notwithstanding the provisions of paragraph (a) of this seciton, if the amount of principal and interest outstanding on a loan is not more than $2, the institution may write-off that amount and need not take any further collection action with regard to that loan.

(20 U.S.C. 424 and 1087cc)

§ 144.46 Other collection costs—litigation costs.

(a) Reasonable costs incurred in carrying out the activities described in §§ 144.44(a) and 144.45 and the costs of long distance calls incurred in carrying out §§ 144.43 (a)(3) and (a)(4) and § 144.44(b) shall be considered other collection costs and may be charged to the Fund, except that any collection costs paid by the borrower may not be charged to the Fund. For audit purposes, such costs must be supported by appropriate financial statements (e.g. telephone bills and collection agency bills). The statement of the collection agency shall indicate specific amounts collected and charges retained.

(b) If an institution elects to perform its own collections, rather than using a collection agency, its actual costs of collection may be considered an other collection cost and charged to the Fund, so long as such costs do not exceed the costs that would have been permitted under paragraph (a) of this section if the institution had used a commercial collection agency.

(c) Reasonable litigation costs incurred in carrying out this subpart may be charged to the Fund.

(20 U.S.C. 424 and 1087cc)

§ 144.47 Utilization of fiscal agent.

(a) If an institution utilizes a billing service, collection agency or any other type of fiscal agent in carrying out its functions under this part, the function of such service or agency must be limited solely to the performance of ministerial acts. The ultimate responsibility of the institution to make determinations relative to the making and collection of loans and decisions relative to cancellation and deferment of loans cannot be delegated.

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(b) If a billing service is used to carry out the functions pursuant to 144.43, the billing service may not deduct its fee from the funds it receives from borrowers.

(20 U.S.C. 424 and 1087cc)

§ 144.48 Use of commonly owned billing service and collection agency prohibited.

If in carrying out the activities required under 144.43 an institution uses a commercial billing service, it may not utilize a collection agency pursuant to 144.45 which owns or controls, or is owned or controlled by, the billing service or which is owned and controlled by a corporation, partnership, association or individual which also owns or controls the billing service.

(20 U.S.C. 1087cc)

§ 144.49 Bankruptcy of borrower.

An institution shall refrain from collection activity with respect to a loan in the event the borrower is adjudicated a bankrupt and such loan has been discharged. However, no such loan shall be written off until an official notice of the adjudication has been received by the institution. Such notification must be maintained in the file of that borrower to support the writeoff entry. If the institution receives any payment from a borrower subsequent to his adjudication as a bankrupt, it shall deposit such payment in its Fund.

(20 U.S.C. 424, 1087cc)

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federal register

WEDNESDAY, NOVEMBER 8, 1978
PART V



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

Health Care Financing Administration

Office of Human Development Services

■

STERILIZATIONS AND ABORTIONS

Federal Financial Participation

federal register

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[4110-84-M]

Title 42—Public Health

CHAPTER I—PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER D—GRANTS

PART 50—POLICIES OF GENERAL APPLICABILITY

Provision of Sterilization in Federally Assisted Programs of the Public Health Service

AGENCY: Public Health Service.

ACTION: Final rules.

SUMMARY: The Department is promulgating new rules to govern expenditures for sterilizations provided under various Department programs. Three parallel sets of regulations are being issued. This set applies to programs of Federal financial assistance administered by the Public Health Service; the other two sets, which appear in this issue of the FEDERAL REGISTER, apply to the progams administered under title XIX of the Social Security Act and the social services programs administered by the Administration for Public Services of the Office of Human Development Services. The rules are being revised at this time because the recent decision in *Relf* v. *Weinberger*, C.A. No. 74-1797 (D.C. Cir. 1977) resolved questions as to the scope to the Department's authority to regulate in this area. Based on its experience under the rules which currently apply to sterilizations under the Federal programs and the public comment received during rulemaking, the rules below establish new rules applicable to sterilizations.

EFFECTIVE DATE: These rules are effective February 6, 1979.

FOR FURTHER INFORMATION CONTACT:

Marilyn L. Martin, Hubert Humphrey Building, Room 722-H, 200 Independence Avenue SW., Washington, D.C. 20201, 202-245-7581.

SUPPLEMENTARY INFORMATION: On December 13, 1977, the Department of Health, Education, and Welfare proposed new rules to govern Federal Financial participation in sterilizations funded through various programs administered by the Department under the Social Security Act and the performance of sterilizations by programs and projects funded by the Public Health Service. 42 FR 62718. In addition to inviting written comments on the proposed rules, the Department held public hearings, both in Washington, D.C., and in the Department's 10 regions, to get the views of interested persons. The substance of the comments received, both through the hearings and the approximately 500 written comments submitted, is set forth below. A discussion of the Department's actions in response to those comments also appears. The historical context in which the Department's policies on sterilization were developed, the rules previously applicable to sterilizations, relevant provisions of the proposed and final rules and the Federal programs themselves are summarized at the outset.

The discussion below applies to the rules being issued on this date which apply to programs funded by the Public Health Service, title XIX of the Social Security Act ("Medicaid"), and the social services programs under titles I, IV,-A, X, XIV, XVI (AABD), and XX of the Social Security Act. The rules applicable to the Public Health Service programs appear below; the rules applicable to title XIX appear elsewhere in this issue of the FEDERAL REGISTER. The rules applicable to the social services programs also appear elsewhere in this issue.

I. THE DEVELOPMENT OF THE DEPARTMENT'S POLICIES ON FEDERALLY FUNDED STERILIZATIONS

A. POLICIES OF THE CURRENT RULES

1. *Background.* Before 1973, the Department funded sterilizations, among other family planning services, under a number of Department programs. Although the statutes authorizing such services all required that receipt of such services be "voluntary," [1] the Department had not defined what that term meant in the context of sterilization. In mid-1973, several tragic examples of sterilization abuse under the Federal programs were brought to its attention—the sterilization of the adolescent Relf sisters in Alabama and a case of coerced sterilization in South Carolina. The Department responded to these situations in July 1973 by imposing a moratorium on the Federal funding of sterilization of persons under 21 or legally incapable of consent.

In September 1973, the Department began rulemaking proceedings, which ultimately resulted in the rules issued on February 6, 1974. Those rules permitted, among other things, the sterilization of minors and persons legally incapable of giving consent if certain procedures were followed. 39 FR 4730. The *Relf* litigation was initiated immediately to enjoin implementation of those rules. In March 1974, Judge Gesell of the United States District Court for the District of Columbia held that the February 6 rules were inconsistent with the statutory requirement of voluntariness insofar as they permitted the provision of sterilization to persons who could not give legally effective consent under State law, and permanently enjoined the Department from providing Federal funds for the sterilization of such persons. *Relf* v. *Weinberger*, 372 F. Supp. 1196 (D. D.C. 1974). Although the Department appealed the *Relf* decision, in April 1974 it adopted as an interim measure the rules summarized in section 2 below.

2. *Current policies.* The current policies are found in the existing rules, 42 CFR 50.201-50.204 and 45 CFR 205.35, and in the moratoruim on any sterilization of individuals under 21 or legally incapable of consenting to be sterilized declared by the Secretary on July 27, 1973, 38 FR 20903 (August 3, 1973). These policies are still in effect and will remain in full force until the date these rules become effective, 60 days from the date of their publication. In brief, the current policies are:

a. Federal financial participation is available only in the sterilization of people at least 21 years old who are mentally competent under State law. In other words, Federal funding is not available for any sterilization of a person who is either under 21 or who is mentally incompetent.

b. In Medicaid and the social services programs, Federal financial participation is available in the sterilization of people at least 21 years old only where informed consent, as defined and required by the current rules, is obtained. In all except so-called therapeutic sterilizations, legally effective informed consent must be obtained at least 72 hours prior to the sterilization. In the programs administered by PHS, PHS-supported projects may not perform or arrange for the performance of sterilizations unless these conditions are met.

B. POLICIES OF THE PROPOSED RULES

1. *Background.* In 1977, the Court of Appeals for the District of Columbia vacated the injunction entered against the Department in 1974. It further indicated that the Department had the legal authority to define a Federal standard of "voluntariness" and took note of the Department's intention to engage in rulemaking to devise that standard. *Relf* v. *Weinberger*, C.A. No. 74-1797 (D.C. Cir. 1977). Shortly thereafter, the Department published the proposed rules for public comment.

2. *Proposed rules.* The proposed rules proposed the following policies: (1) Retention of the minimum age of 21. (2) Extension of the waiting period from 72 hours to 30 days. (3) Alternatives for the sterilization of mentally incompetent individuals with the capacity to give informed consent: under one option, the present ban on the sterilization of such individuals (and all other mentally incompetent individuals) would continue; under the other option, the sterilization of such individuals would be permitted where they are capable of understanding and consenting to the sterilization and if certain procedural safeguards were followed. (4) Limitation of the circumstances under which institutionalized individuals could be sterilized. (5) Prohibition of payment for hysterectomies done for family planning purposes and provision to persons undergoing hysterectomies for other, nonfamily planning purposes of information that the procedure results in sterility, along with a written acknowledgement that such information was presented. (6) The following changes to the informed consent procedures of the current regulations: (a) individuals to be sterilized would be required to be informed of the elements of informed consent orally; (b) if the consent form was not in the individual's primary language, an interpreter was required; (c) provision for handicapped individuals was required; (d) certifications as to certain facts from the individual obtaining the consent, the physician performing the procedure, and, where applicable, the interpreter was required; (e) instead of the alternative "long" and "short" form consent forms permitted under the present regulations, use of a specific consent form was mandated; (f) documentation of compliance with the consent form and other requirements as required as a condition of payment for the procedure.

C. POLICIES OF THE FINAL RULES

1. *Policy considerations.* In developing the final rules, the Department has attempted to reconcile several competing policy considerations. Two of these are statutory. On the one hand, it is the policy of all of the Federal statutes under which family planning services are provided to encourage access to and use of those services, including sterilization. On the other hand, it is also the policy of those statutes that receipt of such services be voluntary, and that no one be sterilized [2] in the absence of full knowledge or against one's will. Implementation of this policy requires a strong enforcement program including monitoring of the recipients of Federal financial assistance to see that the procedural safeguards contained in the regulation are followed. Therefore, at the same time that safeguards are built into the sterilization consent process, these requirements must be carefully crafted to permit effective enforcement.

Accommodating these three policy considerations has required making difficult judgments, since they in many cases dictate conflicting results. However, these rules reflect what is hoped to be a workable balance between them, in which no one consideration is given so much weight that another is not achieved, and in which the overall goal of providing federally funded sterilizations to those who voluntarily choose this service is realized.

The final rules resolve the competing considerations of insuring access to sterilization and insuring that this access does not lead to involuntary sterilizations in two ways. They limit the access of those individuals least able to give an informed consent or those least able to understand the consequences of a permanent and irreversible sterilization. In addition, they establish procedures to insure that those individuals who have access to federally funded sterilizations are provided an opportunity to make an informed and voluntary choice. This must be accomplished without burdensome administrative procedures or excessive paperwork.

These approaches have been developed in light of the third consideration guiding the Department's decisionmaking—the need to ensure the enforceability of the rules. The Department's enforcement record was criticized repeatedly at the public hearings and in many of the written comments. Therefore, in designing these rules the Department had to consider not only its need to develop effective safeguards against abuse but also its need to enforce them. This has dictated the adoption of policies that minimize exceptions, that do not make subtle or individual distinctions, and that are susceptible to verification or documentation.

Because the proposed rules carried forward some of the current policies, the Department scrutinized the public comment for evidence that the current rules have either unduly restricted access to sterilization services or alternatively, that they have permitted abuse of those services. It also paid particular attention to the experience gained in the administration of similar requirements in various jurisdictions, such as New York and California, as well as the testimony of individuals familiar with situations outside the Federal programs. On this basis and based on its own experience in adminstering the current rules, it has revised the proposed rules as described below.

2. *Final rules.* a. *Eligibility for Federally funded sterilizations*—The claims of involuntary sterilization poignantly made by the plaintiffs in cases such as *Relf* v. *Weingberger, supra,* and *Madrigal* v. *Quilligan,* CA. No. 75-2057 (C.D. Cal. 1975), along with the testimony and comments elicited during rulemaking concerning the need for an enforceable program, have led the Department to adopt the following policies with regard to access to sterilization.

The final rules prohibit Federal funding of sterilizations to any of the following: Persons under 21, mentally incompetent persons, and institutionalized persons. The public comment produced no hard evidence that the first two restrictions created undue hardship in the past. Indeed, there was a balance between examples cited of potential hardship and of potential for abuse if the policies were made less restrictive. Given the irreversibility of the procedure, the Department feels that the balance should be struck in favor of safeguarding such persons from potential sterilization abuse.

b. *Informed Consent*—There is no evidence that the existing procedures requiring informed consent have unduly impeded access to sterilization services. To the contrary, in fiscal year 1976 alone, medicaid reimbursed State claims for the sterilization of over 67,000 individuals.

However, both the Department's experience with the current rules and the public comments suggested the need to improve those procedures in certain respects. First, the public comment suggested the need to provide additional safeguards. Second, much concern was voiced about the burdensomeness of some of the proposed procedures. Third, the public comment also stressed the need for adequate monitoring and enforcement of the procedures. The Department is likewise cognizant of this last need, and it is concerned about the difficulty of monitoring and enforcing compliance with complex procedures in national programs.

The final rules attempt to accommodate these concerns. The requirements that have been added to the regulations are all aimed at increasing the understanding of the individual to be sterilized while at the same time imposing minimal burdens on providers. For example, the Department has ex-

[1] Under title XIX of the Social Security Act ("Medicaid") family planning services are to be provided to "eligible individuals who desire such services." Section 1905(a)(4)(C), 42 U.S.C. 1396d(a)(4)(C) title V of the Act provides that "acceptance of family planning services * * * shall be voluntary on the part of the individual to whom such services are offered * * *" Section 508(a)(3), 42 U.S.C. 708(a)(3). Title X of the Public Health Service Act authorizes support for "voluntary family planning projects." Section 1001(a), 42 U.S.C. 300(a).

[2] Section 205 of Pub. L. 94-63, 42 U.S.C. 300a-8 (note), makes it a felony, punishable by a fine up to $1,000, or by imprisonment of up to one year, or both, to coerce any person to undergo an abortion or sterilization through the threat of withholding any service or benefits under a program receiving Federal financial assistance.

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plicitly prohibited the obtaining of consent while a woman is in the hospital for labor or childbirth. This should eliminate the major situation in which coercion is alleged to have taken place. Neither this requirement, nor the other requirements such as allowing a witness to be present when consent is obtained, providing for the expiration of the consent form in 180 days and giving a copy of the consent form to the individual to be sterilized should burden significantly the physician providers. To the contrary, they accord with sound medical practice by assuring a knowledgeable patient.

The Department has responded also to the major objection voiced by physicians and others concerned with access to sterilization services. While the 30-day waiting period has been retained, the final rules provide for a waiver by the patient in certain circumstances. This change will give providers the flexibility they need to perform sterilizations in a limited group of cases—those delivering prematurely or having emergency abdominal surgery—without the added risk of a second operation, even if 30 days have not elapsed from the date consent was obtained. Moreover, while this does provide an exception, it is one in which verification of the circumstances will be possible and the conditions for operation of the waiver can be documented.

These and other changes in the final rules are discussed more fully in section III.

II. Federal Programs Under Which Sterilization Is Provided

The Department funds family planning services, including sterilizations, under several Federal statutes. Three agencies within the Department are responsible for administering programs under which sterilizations are performed—the Medicaid Bureau (MMB) of the Health Care Financing Administration (HCFA), the Administration for Public Services (APS) of the Office of Human Development Services (OHDS), and the Public Health Service (PHS).

A. The Medicaid Program

The medical assistance (medicaid) program under title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., which is administered by MMB, provides for Federal matching of reimbursements for family planning services pursuant to sections 1902(a)(13) and 1905(a)(4)(C) of the Act, 42 U.S.C. 1396a(a)(13) and 1396d(4)(C). MMB has not defined family planning services by regulation; however, its policy has been to consider sterilization as a federally funded family planning service.

B. The Title XX Social Services Program

Title XX of the Social Security Act, which is administered by APS, authorizes grants to States for social services, including family planning services. See section 2002(a)(1) of the Act, 42 U.S.C. 1397a(a)(1). While title XX itself does not mandate the provision of family planning services, however, title IV-A effectively does mandate such services in a State's Title XX plan. In order for a State to qualify for Federal financial participation under title IV-A of the Social Security Act (aid to families with dependent children), the State's title IV-A plan must provide that family planning services will be provided under title XX. Section 402(a)(15) of the Social Security Act, 42 U.S.C. 602(a)(15) as amended by Pub. L. 93-647 (the legislation enacting title XX).

C. The AFDC and Aged, Blind and Disabled Programs in Guam, Puerto Rico, and the Virgin Islands

In Guam, Puerto Rico, and the Virgin Islands, titles I, X, XIV, and XVI of the Social Security Act are relevant to the provision of sterilizations. (In all other jurisdictions those titles have been superseded by the new title XVI (Supplemental Security Income) and title XX (Social Services).) Each of those titles provides, at subsection (c)(1) of sections 3, 1003, 1403, and 1603, and 1353(c)(1), 42 U.S.C. 303(c)(1), 1203(c)(1), and 881, respectively, that in order to qualify for Federal payments the State plan must provide that the State agency must make available "at least those services to help them attain or retain capability for [self-support or] self-care which are prescribed by the Secretary." (The bracketed words do not appear in title I.) 45 CFR 222.59, applicable to the original adult titles, authorizes family planning as an optional service under those titles. 45 CFR 222.7 (also applicable to the original adult titles) provides that "eligible individuals must be free to determine whether to accept or reject services from the agency."

Title IV-A reads virtually identically for Guam, Puerto Rico, and the Virgin Islands as for the other States except that the provision in section 402(a)(15) referring to title XX does not apply. In these jurisdictions section 402(a)(15) requires that the title IV-A plan itself must provide for family planning services.

D. Programs Administered by the Public Health Service

Title V of the Social Security Act, which is administered by PHS, requires each State, as a condition to the receipt of formula grant funds for maternal and child health and crippled children's services, to include in its State plan a program of family planning service projects. See section 505(a)(8) of the Act, 42 U.S.C. 705(a)(8).

PHS also funds sterilizations under title X of the Public Health Service Act. Section 1001(a), 42 U.S.C. 300(a). In addition, family planning services are included in the care offered by community health centers under section 330 of the Public Health Service Act, 42 U.S.C. 254c, and in the migrant workers health program under section 319 of the Act, 42 U.S.C. 247d.

Public Health Service personnel perform sterilizations in PHS hospitals, in the Indian Health Service, and in other direct programs. Although these rules govern only sterilizations funded in the programs of Federal financial assistance, the policies of the rules are simultaneously being made applicable to these direct programs by administrative directive.

III. Summary of Public Comment and Changes to the Rules

The preamble to the Notice of Proposed Rulemaking identified several major issues on which public comment was particulary solicited. Specifically, the public was asked to comment on the definition of "sterilization" in the proposed rules, the appropriateness of the 30-day waiting period, the appropriateness of the age 21 minimum, the provisions relating to the sterilization of mental incompetents and institutionalized individuals, the effectiveness of the informed consent procedures of the proposed rules, and the appropriateness of excluding hysterectomy as a family planning technique. In general, the public comment focused on these major issues. The discussion of the public comment and the revisions to the proposed rules below likewise is organized around these major issues.

The policies adopted for both the programs funded under the Social Security Act and those funded under the Public Health Service Act are identical. The regulations differ only in the choice of regulatory mechanism, since the HCFA and APS programs regulate by restricting Federal financial participation if the Federal requirements are not followed, while PHS regulates primarily by making following the requirements a condition of the grant. Consequently, differences between the two types of regulations are generally mechanical in nature. Since the policies are the same and in the interests of brevity and clarity, only the PHS regulations are set out in full in the preamble below, with references to the corresponding sections of the HCFA regulations.

A. Definition of "Sterilization"

Text of proposed rule (42 CFR 50.202(a). (CF., 45 CFR 205.35-2(a)):

"Sterilization" means any medical procedure or operation for the purpose of rendering an individual permanently incapable of reproducing.

Text of final rule (42 CFR 50.202. (CF., 42 CFR 441.251)):

"Sterilization" means any medical procedure, treatment, or operation for the purpose of rendering an individual permanently incapable of reproducing.

Summary of Public Comment

Over 50 comments were received on the definition of sterilization. Approximately one-quarter of these endorsed the proposed definition. The remaining comments made the following points:

1. Several comments recommended that the word "solely" or "primarily" be inserted before the word "purposed," to emphasize that the regulations do not apply to procedures done for other purposes. Two comments suggested that the definition be amended to exclude explicitly procedures which, while they produce sterility, are done for purposes totally unrelated to the intent to sterilize, e.g., hysterectomy for uterine carcinoma.

2. A number of comments dealt with the question of whether the definition of sterilization should distinguish between "therapeutic" and "nontherapeutic" sterilizations and, if so whether therapeutic sterilizations should be covered by some or all of the proposed requirements. The comments argued that a procedure which is medically indicated should not be encumbered with the restrictions of the regulations. One commenter suggested, on the other hand, that the definition should be amended to state that it covers both therapeutic and nontherapeutic sterilizations.

3. A number of comments disagreed with the definition's test of whether or not a procedure is a sterilization, i.e., whether the purpose of the procedure is to produce sterility. It was suggested that the purpose test creates a loophole, in that practitioners will avoid the restrictions of the regulations simply by articulating a different purpose for a procedure. To close this loophole, it was suggested that the test instead be whether the procedure would have the effect of producing sterility, possibly with an exception for cases where the procedure is necessary to correct a substantial danger to life or health.

4. Several comments stated that the definition should be modified to reflect the likelihood of failure and/or reversibility of sterilizations. It was suggested that absent such a modification, the definition is medically inaccurate, since there is a small risk of failure and some chance of reversing certain sterilization procedures (e.g., tubal ligations). One commenter also pointed out that advances in medical technology (such as the availability of sperm banks and artificial insemination) would remove many sterilizations from the definition.

5. Several comments pointed out that it is possible to sterilize by administering certain drugs or x-rays, and the definition as proposed would not cover such cases. It was suggested that the word "treatment" be added to the definition to close this loophole.

6. Other suggestions included adding a reference to "males," adding a reference to "emergency" and "nonemergency" sterilizations, and modifying the definition to explicitly exclude hysterectomies.

Department's Response

The Department agrees that the comment discussed in paragragh 5 above identifies a loophole in the definition of sterilization. The definition has accordingly been modified to include "treatment" (by drugs or x-rays) for the purpose of inducing sterility. The remainder of the comments have not been accepted, for the following reasons.

1. The comments which suggested modifying the word "purpose" with "solely" or "primarily," introducing the "therapeutic"/"nontherapeutic" distinction, and substituting an "effect" test for the "purpose" test have been rejected for related reasons. As a policy matter, the Department believes that the procedural protections of the regulations should apply to so-called "therapeutic" sterilizations (i.e., ones which are medically indicated but one of the purposes of which is to produce sterility), as well as to those sterilizations done solely for family planning purposes. In either case, the individual is making a decision which is usually irreversible. To the extent any other medical options exist (such as alternative forms of birth control), he or she should have the opportunity to exercise that option. If less stringent requirements apply to therapeutic sterilizations than to nontherapeutic sterilizations, there may also be an incentive to characterize as therapeutic a sterilization that properly should be characterized as nontherapeutic or the two definitions might be appied differently by different providers, creating problems for monitoring and enforcement. Thus, the therapeutic/nontherapeutic distinction has not been added to the definition, nor have the words "solely" and "primarily", which would have the effect of introducing the distinction, been added. Since the definition clearly applies to both types of sterilization, however, it was considered unnecessary to add an explicity statement to that effect.

It should be emphasized that the definition as proposed and adopted does not cover medical procedures which, while they may have the effect of producing sterility, have an entirely different purpose, such as removal of a cancerous uterus or prostate gland. In such a case, there is no reasonable alternative to the procedure. The point of the informed consent and other procedural requirements of the regulations is to permit exercise of a reproductive choice. However, since there is no choice in such a situation and imposition of such procedural requirements could also be medically inadvisable, the rationale for imposing the requirements does not apply. Since the "effect" test would reach such situations, it was rejected as too broad.

2. The proposed definition has not been modified to reflect the risk of failure and likelihood of reversing the procedure. The definition's test of sterilization is whether the purpose of the procedure is to produce sterility, and the risk of failure and chance of reversal are unrelated to this test. Specifically, the accepted medical purpose in all such procedures is to produce permanent sterility, not to produce sterility in all but a few cases or for some temporary time period.

The questions of incorporating provision for sterilization procedures which medical technology may in the future make reversible is more problemmatic. Since such situations are at present hypothetical and thus their ramifications cannot be understood, however, the Department considers it inadvisable to establish rules relating to them at this time.

3. The suggestion that the definition refer to "males" has been rejected as redundant. The suggestion that the definition explicitly exclude hysterectomies was not adopted for two reasons: (1) Hysterectomy is still used as a sterilization procedure and to exclude it from the definition of sterilizations would artificially ignore common medical practice; and (2) it is felt that the concern underlying the suggestion—to make clear that hysterectomies for family planning purposes are not an approved form of sterilization—is more appropriately handled through a prohibition on their use, rather than by limiting the definition.

B. 30-Day Waiting Period

Text of Proposed Rule

1. *42 CFR 50.204 (Cf., 45 CFR 205.35-4(b)):*

Programs or projects to which this subpart applies shall perform or arrange for the performance of sterilization of a mental-

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ly competent individual only when the following requirements are met:

• • • • •

(b) At least 30 days have passed between the date of informed consent and the date of the sterilization.

2. *Related requirements:* 42 CFR 50.203(a)(7) (Cf., 45 CFR 205.35-3(a)(7)); 42 CFR 50.203(b)(4)(ii) (Cf., 45 CFR 205.35-3(b)(4)(ii)); appendix. For text of these sections, see sections F and G below.

Text of Final Rule

1. *42 CFR 50.203 (Cf., 42 CFR 441.256(b), (c)):*

Programs or projects to which this subpart applies shall perform or arrange for the performance of sterilization of a mentally competent individual only if the following requirements have been met:

• • • • •

(d) At least 30 days but no more than 180 days have passed between the date of informed consent and the date of sterilization, except in the case of premature delivery or emergency abdominal surgery. An individual may consent to be sterilized at the time of premature delivery or emergency abdominal surgery if at least 72 hours have passed after he or she gave informed consent to sterilization. In the case of premature delivery, the informed consent must have been given at least 30 days before the expected date of delivery.

2. *Related requirements:* 42 CFR 50.204(a)(7) (Cf., 42 CFR 441.257(a)(1)(vii)); 42 CFR 50.205(c)(2) (Cf., 42 CFR 441.258(c)(2)); appendix. For text of these sections, see sections F and G below.

Summary of Public Comment

Almost 300 comments addressed the 30 day waiting period requirement of the proposed rules. The majority of these comments (over 200) either opposed it absolutely or advocated provision for waiver of the waiting period for special circumstances. The comments articulated the following concerns:

1. The comments supporting the 30-day waiting period as proposed cited several reasons for adopting the requirement. First, 30 days would provide the time necessary to consult with family, friends and others about the procedure and its irreversible consequences. Second, the 30-day period would also allow adequate time for the individual to get away from the environment in which consent was obtained and, to the extent the person was intimidated by that environment, would allow more exercise of choice. Third, it was suggested that there is no such thing as an "emergency" sterilization, and thus the 30-day waiting period would not work a hardship. The experience in New York City under a similar 30-day waiting period requirement was cited as an example that such a requirement does not duly interfere with access to services.

2. Comments opposing the 30-day waiting period requirement gave several grounds for their opposition. A number of comments stated that the waiting period—which is generally not required for persons who can afford to pay for their own sterilizations—would discriminate against the poor. Many comments also pointed out that the waiting period would create a hardship for and limit access to sterilizations for residents of rural areas, migratory workers, and many low-income individuals. Such individuals may find it difficult to get to a health care facility and hence do so only infrequently, because of the travel time involved or, where the sterilization is performed 30 days or more after delivery, the necessity of arranging for child care. In this regard, several comments cited the example of North Carolina, where a 30-day waiting period requirement was repealed in 1973 on the ground that it unduly impeded access to sterilization for residents of rural areas and patients with emergency conditions. a few physicians also stated that the New York and California waiting period requirements had likewise occasioned hardship. Another objection voiced was that the 30-day waiting period would mean that persons whose eligibility for medicaid terminated during that period would be unable to obtain a federally funded sterilization. Several comments objected that the waiting period was overly broad and should not apply to men or to nonpregnant women, since they would not be subject to the coercion associated with obtaining a consent during labor, delivery, or abortion. Other comments objected to the waiting period per se on the grounds that it (1) is arbitrary and will not prevent abuse, and (2) constitutes excessive regulation of medical practice.

The majority of objections to the waiting period as proposed, however, stemmed from concern about hardships it would cause in certain exceptional situations. Specifically, imposition of an inflexible requirement in cases of premature delivery, emergency abdominal surgery or unanticipated abortion was objected to as medically unsound. If a rigid requirement is imposed in such cases, the individual will have to undergo two surgical procedures, with concomitantly increased risks. It was suggested that since none of these circumstances is foreseeable and they can also be documented, there is little likelihood that a waiver covering these circumstances would be subject to abuse. Several comments recommending such a waiver suggested nevertheless that no waiver be permitted for a short time period (e.g., 72 hours) after consent was obtained in order to ensure that the consent was not obtained under the stress of labor or another medical emergency.

Department's Response

The Department is persuaded by the numerous comments objecting to the inflexibility of the 30-day waiting period as proposed for the reasons set out above. Consequently, the final rule adopts provision for waiver by the individual of the waiting period requirement in cases of emergency abdominal surgery or premature delivery. It should be noted, however, that the waiver does not apply to cases of unanticipated abortions, since—unlike situations involving emergency abdominal surgery or premature delivery—an abortion in the first trimester of pregnancy is not generally considered a major surgical procedure with consequent double exposure to the risks of major surgery. Moreover, since Federal funding for abortion is currently restricted by law, the Department is concerned that permitting waiver in cases of unanticipated abortion may create potential for abuse, in that women may be persuaded to consent to a sterilization in order to obtain an abortion funded from other resources.

To ensure that the waiver provision is not abused, however, two other requirements have been added. Specifically, even in a case to which the waiver would otherwise apply, a federally funded sterilization may not be performed less than 72 hours after the consent was obtained. Moreover, where the waiver applies, the physician performing the procedure is required to certify that the sterilization was performed less than 30 days but more than 72 hours after consent was obtained because of emergency abdominal surgery or premature delivery, as applicable, and furnish certain details. See 42 CFR 50.205(c)(2) (Cf., 42 CFR 441.258(c)(2)); appendix (physician's certification). It is felt that this latter requirement will both discourage abuse and facilitate monitoring of compliance.

The Department has rejected the remainder of the comments, for the following reasons:

1. The Department disagrees with and has not accepted the numerous recommendations for a shorter or no waiting period. The purpose of the waiting period is twofold: (1) To give the individual sufficient time for careful consideration of the sterilization decision, and (2) in cases where consent is obtained in an intimidating environment or stressful situation (such as during hospitalization), to increase the likelihood that those individuals will be able to reconsider the decision free of those circumstances. It is felt that the 30-day period responds to both of these considerations while not creating an undue lag between the consent and performance of the procedure. While the choice of 30 days is admittedly somewhat arbitrary, the Department notes that it poses no medical burden (in terms of additional surgical procedures) greater than a waiting period of, say, 7 or 14 days. It has, however, the advantage of giving the individual more time to reflect on the consequences of the decision than those shorter periods. Moreover, the Department does not agree that the waiting period will necessitate an additional and unnecessary hospitalization and exposure to surgery. In most cases, the consent can be obtained well in advance of the anticipated hospitalization for delivery. In cases where there is a premature delivery or emergency abdominal surgery intervening before the 30-day waiting period has run, provision for waiver of the waiting period in most such cases has been added.

2. The most troublesome policy issues are presented by those comments pointing out the barrier to access which the waiting period raises for certain people who, by virtue of their circumstances, have difficulty obtaining health care (e.g., migrants, rural residents, persons whose medicaid eligibility terminates during the waiting period). The Department recognizes that for such individuals the waiting period may pose a substantial hardship. Nevertheless, it does not believe that provision for waiver of the waiting period should be made for such individuals. Provision for waiver in such cases would be extremely hard to administer and susceptible to abuse. For example, even assuming that a definition of rural areas satisfactory for these purposes could be developed, applying it would call for complex judgments in each case. Monitoring the application of such a waiver provision would also call for knowledge and information about the transportation and population characteristics of rural areas that the Department does not have. With respect to migrants, assuming the provision for waiver were tied to job movement within the waiting period, it would similarly be hard to ascertain whether such circumstances had indeed existed at the time the waiver was made, since the migrant will generally no longer be available to check with. While the situation of persons whose medicaid eligibility terminates is unfortunate, their situation is no different from that of persons whose eligibility terminates while they are waiting for treatment or admission for any other kind of scheduled medical care. Such a situation is thus not a function of the waiting period per se but rather of the structure of the medicaid program itself. It is felt that on balance the difficulty of administration and potential for abuse in providing such waivers outweigh the advantages they would present.

3. The Department has not accepted the suggestion that the waiting period be waived for males and nonpregnant women. The comments argued that since those individuals are not subject to coercion under labor or delivery, the waiting period is not needed. This argument misconceives the rationale for the 30-day waiting period. The purpose of the 30-day waiting period is not just to prevent coercion but to insure, insofar as possible, that the individual reflects carefully on the consequences of the proposed sterilization and makes a decision that he or she will not later regret, since the procedure must be considered to be irreversible. Considerations that were not thought of at the time the consent was signed may become apparent later as the procedure is considered and discussed with friends and family. These underlying policy considerations apply to males and nonpregnant females as much as they do to women in labor or delivery. Moreover, it appears that the universe of males and nonpregnant women seeking sterilization is large enough to make applying these requirements to that universe warranted. For example, Departmental data for 1975 indicates that only 38 percent of tubal ligations were post-partum; thus, approximately 62 percent of all tubal ligations were performed on nonpregnant women. Thus, the Department does not believe that waiver of the waiting period is appropriate for men and nonpregnant women.

4. The Department disagrees with and has not accepted the comments which characterized the waiting period as "discriminatory," "arbitrary" or "excessive." The need to prevent abuse of sterilization dictates imposition of procedural requirements that protect the right to choose. The waiting period helps serve this purpose, in that abuse appears likely to occur when persons are pressured or rushed into a decision. Moreover, the waiting period requirement as revised in these rules takes account of cases of medical hardship. Accordingly, the Department does not believe that it can fairly be characterized as arbitrary.

C. MINIMUM AGE OF 21

Text of Proposed Rule

1. *42 CFR 50.204 (Cf., 45 CFR 205.35-4(c)):*

Programs or projects to which this subpart applies shall perform or arrange for the performance of sterilization of a mentally competent individual only when the following requirements are met:

• • • • •

(c) The individual is at least 21 years old.

2. *Related requirements:* a. *42 CFR 50.206 (Cf., 45 CFR 205.35-6):*

Programs or projects to which this subpart applies shall not perform or arrange for the performance of sterilizations of individuals under 21 years old.

b. Appendix. For text of the Appendix, see section G below.

Text of Final Rule

1. *42 CFR 50.203(a) (Cf., 42 CFR 441.253(a)):*

Programs or projects to which this subpart applies shall perform or arrange for the performance of sterilization of an individual only if the following requirements have been met:

(a) The individual is at least 21 years old at the time consent is obtained.

2. *Related requirements:* Appendix. For text of the appendix, see section G below.

Summary of Public Comment

Approximately 150 comments addressed the proposed rule to set the minimum age for sterilization under a Federal program at 21. Approximately one-quarter of them supported the age 21 floor on sterilization as proposed. Most of the remaining comments advocated lowering the floor to age 18 or the State age of consent or providing for waiver of the age 21 floor in certain circumstances. A few comments urged raising the minimum age. The comments cited the following considerations in support of their respective positions:

1. The comments supporting the age 21 floor as proposed gave several reasons in support of their position. In general, it was suggested that persons under 21 are more susceptible to coercion than those over 21 and are more likely to lack the maturity to make an informed decision. Because the procedure is generally irreversible, these considerations favor protecting such individuals by limiting their access to the procedure. Also, several studies show a higher rate of regret at being sterilized among younger women than among those who were sterilized at a later age. (E.g., Moor, "Sequelae of Tubal Ligation, Medicial and Psychological," Am. J. Obs. Gyn., Vol. 101 No. 3, June 1978, pp. 350-1.) A speaker from the New York City Health and Hospitals Corporation noted that experience over a 2-year period with the Corporation's ban on sterilizations of persons under 21 had produced only one instance where the policy had caused undue hardship. Several of the comments advocated adopting the age

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21 floor as proposed, but re-evaluating it in 18 months or 2 years on the basis of experience.

2. The comments advocating raising the minimum age for sterilization to, among others, age 26 or 35, based this recommendation generally on the higher regret rate among young women discussed above and the fact that at age 21 persons are just entering their prime childbearing years.

3. The comments opposing the age 21 floor as proposed cited a number of reasons for their opposition, as follows:

a. Many comments noted that the age of majority is 18 in virtually all States (47) and only in one State (Mississippi) is the age of consent to medical procedures as high as 21. Comments cited this as overwhelming evidence that—at least in the judgment of State legislatures—persons age 18 and over have sufficient maturity to give informed consent to sterilization. Other comments advocated setting the minimum age at the age of consent set by State law, since capacity to consent to medical procedures has traditionally been an area regulated by the States.

b. A number of comments also argued that many persons have completed their families before the age of 21 and should have the option of terminating reproduction before then also. In this regard statistics were cited showing that in 1975 almost 230,000 second and higher order births (including almost 35,000 third and higher order births, of which over 5,000 were fourth and higher order births) occurred to women under 21 years of age. In general, it was suggested that where persons have had several children at an early age, they are more likely to have the maturity to consent to sterilization and less likely later to regret the procedure, and thus should have access to it. A number of comments also pointed out that the age 21 floor would work a hardship on persons who have had one or more children at an early age, who do not want or medically should not have more children, and for whom other methods of contraception have been ineffective or are medically contraindicated.

c. Many comments expressed concern about effect of the age 21 floor as it relates to the plight of some mentally retarded individuals under 21. According to the comments, many such individuals are unable to use the temporary forms of birth control, and cannot cope with pregnancy, birth, and child care. For some such individuals sterilization may thus mean the difference between institutionalization and deinstitutionalization, while for others it may be the most effective means of preventing a frightening or debilitating experience.

d. Other comments opposed the age 21 on the grounds that it: (1) discriminates against individuals under 21 and limits their rights of self-determination; (2) usurps the State's authority to regulate the age of consent for this procedure.

4. A large number of comments objected to the age 21 floor as proposed on the grounds of its inflexibility. These comments in general took the position that while the age 21 floor might be appropriate in most cases, in some cases it would create undue hardship. They accordingly suggested provision for waiver of the age 21 floor in certain circumstances. The following circumstances were suggested as a basis for waiver of the age 21 floor:

a. Where the individual has a condition or conditions (such as severe heart disease or advanced renal disease) which make a pregnancy life-threatening, regardless of age;

b. Where preganancy is inadvisable because the person has a short life expectancy due to a congenital problem;

c. Where pregnancy is inadvisable because there is a high probability of producing offspring with serious genetic disease;

d. Where the woman to be sterilized has already had some number (e.g., two or three) of previous pregnancies resulting in miscarriage, still birth or detriment to her health.

A number of the comments suggesting waiver in such circumstances advocated that procedural safeguards be required as a condition of the waiver. For example, they suggested safeguards such as the review committee mechanism proposed for the sterilization of mental incompetents or obtaining concurring opinions of one or two other physicians that the waiver was appropriate. It was suggested that if application of a waiver were tied to such procedural restrictions, potential for abuse would be small, particularly since the conditions under which waiver would be granted would generally be objectively verifiable.

Department's Response

The Department has decided to retain the age 21 floor as proposed. While much of the support for retaining the age 21 floor as proposed was admittedly anecdotal in nature, so was much of the evidence cited against it. The public comments did elicit some fairly persuasive evidence that the regret rate among young persons who have been sterilized is significantly higher than among those who were sterilized at a later age. These studies suggest that, even assuming that persons under 21 are capable of fully understanding the ramifications of the decision to be sterilized, they will be more likely to regret that decision as their circumstances change in later years. For example, a recent study notes that—

> A crucial feature (in determining whether or not sterilization is regretted) appears to be the age at sterilization • • •. Norris suggested that sterilization under the age of 30 may result in regret. These findings (of the Winston study) tend to support his view. (M. L. Winston, "Why 103 Women Asked for Reversal of Sterilization," British Medical Journal, Vol. 2, July 1977, at 306.)

In the Department's view, therefore, it is advisable to apply a policy of restraint in this area, particularly since it seems highly likely that young persons are indeed more susceptible to suggestion and coercion than are older individuals. As noted by the court in *Voe* v. *Califano*, C.A. No. N-77-195 (D. Conn., 1977): "the • • • evident purpose of an age 21 rule is to eliminate those instances where substantial questions of informed consent might arise, and that is plainly a legitimate objective."

However, recognizing that information on the ramifications of this important policy is still imperfect, the Department has accepted the suggestion to review the operation of the regulations at a later date, and will accordingly undertake such review in 36 months, to ascertain whether (1) the policy has caused undue hardship and (2) there is further evidence supporting this policy choice.

Proposed § 50.206 has been eliminated. Since the final rules simplify the rules applicable to mental incompetents and institutionalized individuals, it was felt that the section was no longer needed for clarity, and it thus has been removed as redundant. The final rule has also been changed to clarify that the individual must be 21 at the time consent is obtained.

Other considerations entering into the Department's decision to retain the age 21 floor as proposed are set out in the discussion below.

1. The Department is not raising the minimum age above 21. The figures on the large number of second and higher order births below the age of 21 cited in paragraph 3b of the preceding section suggest that raising the age floor above 21 would indeed work a hardship on many individuals, since an increasingly high number of persons complete their families with each year of age over 21. The choice of age 21 over a higher age is also favored by the fact that above age 21 all present State statutes presume that individuals are legally capable of making such a choice for themselves.

2. The Department recognizes that most States have set the age of consent to medical procedures at 18 or below, and that this evidences a consensus as to the capacity of persons ages 18-21 to consent in general which conflicts with its judgment. Nevertheless, it is clear that in making policy choices for the administration of a Federal program, State law is not controlling. See generally, *Planned Parenthood of Central Missouri* v. *Danforth*, 428 U.S. 52 (1976); see also, *Relf* v. *Weinberger, supra; Peck* v. *Califano*, C.A. No. C-76-229 (D. Utah, 1977); *Voe* v. *Califano*, C.A. No. N-77-195 (D. Conn., 1977). For the reasons stated above, the Department is of the view that the provision of federally funded sterilizations only to persons 21 and over represents sound policy. Moreover, setting an age dependent upon State law is administratively less practical than setting age 21 as the floor. According conclusive effect to State law in this area would force the Department to make numerous individualized judgments (both as to what the State law of consent is and whether a given individual can be considered legally able to consent under it) which the Department cannot feasibly make. Age 21, by contrast, is the only age at or over which persons in every State have the legal capacity to consent to sterilization. It thus facilitates administration of a national program, since the Department is not compelled to administer policies that differ from State to State.

The Department recognizes that setting the age floor at 18 for all States except those few in which the age of consent is higher would have most of the administrative advantages of the age 21 floor and yet in almost all States obviate the potential hardship of the age 21 floor on individuals between the ages of 18 and 21. However, an age 18 floor (with an exception for certain States) would effectively be as arbitrary a minimum as the age 21 floor, since age 18, while the age of majority in most States, is higher than the age of consent for medical procedures in many of those States. Thus, the rationale for an age 18 floor is the same as that for the age 21 floor. However, it lacks the administrative feasibility of the age 21 floor, since it would require treating individuals in several States differently than individuals in most States. More important, the Department feels, for the reasons outlined above, that as between protection against abuse and mistake on the one hand and access to sterilization on the other hand, the policy choice—at least as it concerns young people—should err on the side of caution. This is undeniably better achieved by the age 21 floor.

3. The Department recognizes that there are a substantial number of persons who have completed their families at an early age and for whom sterilization is the family planning method of choice. The age 21 floor denies such persons Federal assistance in exercising that choice. Nevertheless, temporary methods of birth control which have no side effects and a high degree of effectiveness are generally available to such persons and will be provided under the Federal programs. The potential for coercion of young people and the greater potential for regret among them, when taken together with the availability of temporary methods of birth control in most cases, leads the Department to choose the age 21 minimum.

4. The Department has decided not to provide federally funded sterilizations to any mentally incompetent individuals, whether over or under the age of 21. The bases for this decision—and for the rejection of the comments advocating provision of sterilization to mentally incompetent individuals under 21—are discussed in section D below.

5. The Department has decided against adopting a provision for waiver of the age 21 floor as suggested in the public comments. The considerations discussed above in support of the age 21 floor suggest that provision for waiver would be inappropriate. Moreover, while most of the circumstances for which waiver is suggested involve medical indications and thus are potentially verifiable, they would create problems of compliance. Unlike the conditions for waiver of the 30 day requirement, which depend on very limited facts, the conditions suggested as a basis for waiver of the age 21 floor are essentially open-ended, as they are not limited to any particular disease or set of physical conditions. Thus, applying the conditions for waiver would require individualized judgments by providers and thus would tend to lead to inconsistent applications. Moreover, determining whether such waivers were warranted would require auditors to make medical judgments beyond their expertise.

6. The age 21 floor concededly gives persons over 21 a choice under the federally funded family planning programs which is not available to persons under 21. The reasons for this are discussed above, and in the Department's view, justify this restriction of the latter individuals' "right to self-determination" in the area of family planning. The Department disagrees with the comment that the Federal Government is usurping State authority to regulate the age of consent. This regulation does not affect the right of States to regulate the age of consent to sterilization. What it does is make the age of 21 a condition precedent to the provision of a federally funded sterilization.

D. STERILIZATION OF MENTALLY INCOMPETENT INDIVIDUALS

Text of Proposed Rule

a. *42 CFR 50.205 (Cf., 45 CFR 205.35-5):*

(a) Programs or projects to which this subpart applies shall not perform or arrange for the performance of a sterilization of any person declared mentally incompetent by a State, Federal, or local court, or who is in fact mentally incompetent under Federal or State law.

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or

(a) Programs or projects to which this subpart applies shall not perform or arrange for the performance of a sterilization of a mentally incompetent individual, or any individual institutionalized in a correctional, mental, or other facility unless:

(1) The individual has voluntarily given his/her informed consent in accordance with the procedures prescribed in § 50.203;

(2) At least 30 days have elapsed between the date of informed consent and the date of sterilization;

(3) The individual is at least 21 years old;

(4) The sterilization review committee has certified to a court, after a hearing at which counsel representing the patient has presented the evidence for and against such a certification, that all of the requirements for sterilization have been met, that the patient understands the nature and consequences of the proposed sterilization procedure as set forth in § 50.203(a), and that the patient has voluntarily consented to be sterilized; and

(5) The court has found, after a hearing at which counsel for the patient has presented the evidence for and against such a finding, that all of the requirements for sterilization have been met, that the patient understands the nature and consequences of the proposed sterilization procedure as set forth in § 50.203(a), and that the patient has voluntarily consented to be sterilized.

(b) Programs or projects to which this subpart applies shall not perform or arrange for the performance of a sterilization of a mentally incompetent individual who does not understand the nature and consequences of the proposed sterilization procedure as set forth in § 50.203(a).

b. *Related requirements:*

1. *42 CFR 50.202(d) (Cf., 45 CFR 205.35-2(d)):*

(d) "A mentally incompetent individual" means a person who has been declared mentally incompetent by a Federal, State, or local court, or who is in fact mentally incompetent under Federal or State law.

2. 42 CFR 50.203(b)(4)(i), (ii) (Cf., 45 CFR 205.35.3(b)(4)(i), (ii)). For the text of these sections, see sections F and G of the preamble below.

Text of Final Rule

a. *42 CFR 50.206 (Cf., 42 CFR 441.254):*

Programs or projects to which this subpart applies shall not perform or arrange for the performance of a sterilization of any mentally incompetent individual • • •.

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b. *Related requirements:*

1. *42 CFR 50.202 (Cf., 42 CFR 441.251):*

"A mentally incompetent individual" means a person who has been declared mentally incompetent by a Federal, State, or local court of competent jurisdiction for any purpose unless he or she has been declared competent for purposes which include the ability to consent to sterilization.

2. 42 CFR 50.205(c)(1), (2) (Cf., 42 CFR 441.258(c)(1), (2)); appendix. For the text of these sections, see sections F and G of the preamble below.

Summary of Public Comment

The proposed rules proposed two alternative approaches to the sterilization of the mentally incompetent. Under the first alternative, the present moratorium on the sterilization of such individuals would be continued. Under the second alternative, mentally incompetent individuals who could give informed consent under the regulations could be sterilized if the requirements applicable to all sterilizations were met and the review committee and judicial review procedures of the proposed rules were followed. The discussion below treats these alternatives separately, along with the other major issue in this area addressed by the public comments: the definition of "Mentally incompetent individual."

1. *Alternative No. 1: No Sterilization of mentally incompetent individuals.* Most of the public comment on this alternative opposed it. The arguments given both for and against adoption of this alternative were generally as follows:

a. The minority favoring adoption of this policy gave the following reasons in support of their position. Some stated that the mentally incompetent by definition cannot give informed consent and thus, to the extent informed consent is statutorily required or represents the most reasonable reading of the legislative intent, sterilization of such individuals should not be provided under the Federal programs. A number of comments also stated that because of the hardship childbearing by a mentally incompetent individual could present for the individual's family or the difficulty or inconvenience of having such an individual use temporary methods of birth control, the family or other guardian or custodian of a mentally incompetent individual could be tempted to consent to sterilization to minimize this burden, irrespective of the "best interests" of the individual; it was felt that permitting federally funded sterilizations of such individuals could lead to abuse in such cases. A few comments noted that some mentally incompetent individuals are "incompetent" only temporarily and may subsequently improve (e.g., persons whose incompetence is based on emotional dysfunction). It was suggested that it would be improper to deprive such people of the ability later to exercise their right to reproduce. Finally, a number of public interest groups supported adoption of this alternative on the ground that the Department has not proved that it is able to police the present safeguards against sterilization abuse effectively. Until it can do so, it should not undertake to enforce compliance with even more complicated safeguards in an area which is as sensitive and susceptible to abuse as is the sterilization of the mentally incompetent.

b. The comments favoring provision of sterilization to mentally incompetent individuals in many cases distinguished between the sterilization of persons who are mentally incompetent under State law but who are nevertheless able to provide informed consent and mentally incompetent persons who are unable to give informed consent, such as the profoundly retarded. While some of the arguments cited in favor of sterilization of the two groups overlap, in general they do not. Accordingly, they are discussed separately below.

i. *Sterilization of mentally incompetent individuals with the mental capacity to give informed consent.* A number of reasons were cited in support of providing federally funded sterilizations to this group. In general, however, the basic concern stated was that such persons should not be deprived of their right not to have children, since by definition they are capable of making an informed decision on the matter. As long as adequate safeguards are provided (and generally the Department's proposed safeguards were considered adequate), it was felt that such individuals should not be deprived of access to sterilization. Moreover, even though such individuals may be able to make an informed decision about sterilization, they may nevertheless be unable—mentally or emotionally—to cope with parenthood. Having children may thus physically, emotionally and financially burden them and their families or, if they are in an institution, burden the staff caring for them and their offspring. Since many such individuals may not be able to use temporary methods of birth control, depriving such individuals of access to sterilization may cause their parents or guardians to institutionalize them in order to ensure that pregnancy is avoided.

ii. *Sterilization of mentally incompetent individuals who lack the mental capacity to give informed consent.* A substantial number of comments also favored provision of sterilization to this group. Among the reasons cited in support of this position were the following: Continued fertility is against their best interests and that of society, since preganancy itself has substantial risks, such persons are by definition unable to rear their offspring, and the children of such persons are subject to severe and unavoidable medical and social risk. Since temporary methods of birth control are, almost by definition, unsuitable for this group, they should have access to sterilization. It was also suggested that parents and guardians of such individuals regularly consent to irreversible medical procedures on their behalf; there is thus no basis for treating sterilization differently. Moreover, since the parents and guardians of such individuals are generally the ones who will have to assume the burdens of any unwanted preganancies, equity dictates that they should exercise the choice as to termination of reproductive capacity.

2. *Alternative No. 2: Provision for the sterilization of certain mentally incompetent individuals.* The policy considerations raised by the public comment in support of sterilizing mentally incompetent individuals who can give an informed consent are set out in paragraph (1)(b)(i) above. The remainder of the public comment on Alternative No. 2 concerned the mechanism proposed for carrying out this proposed policy and focused on: (1) The review committee mechanism; and (2) the provision for court review of the review committee's finding.

a. *Review committee.* (i) A large number of comments, while implicitly or explicitly endorsing the concept of the review committee, questioned its composition as proposed. In general, the comments advocated inclusion of the following types of persons to protect the patient's rights: An attorney for the patient; a person familiar with the patient's medical history; a psychologist; a psychiatrist; a patient advocate. In order to insure that the patient's right not to be sterilized is protected, other comments suggested measures such as requiring that at least one member of the review committee be of the same sex and race or ethnic background as the patient and requiring that no members of the review committee be affiliated with the institution caring for the patient.

(ii) Other comments questioned or suggested alternatives to the specific committee procedures proposed. A few comments expressed the view that the lawyer required by the proposed rules could not ethically present the evidence both for and against sterilization. Several comments stated that the patient should be present at the review committee hearing and a few comments felt that the patient rather than the family or a professional should request committee review. A few comments felt that the procedures should be spelled out in more detail.

b. *Court review.* A few comments objected to the provision for court review in addition to the review committee procedures as too expensive. Other comments suggested that only court review should be required, on the grounds that determination of competence is traditionally a judicial function. A third point of view was that court review should be required regardless of the outcome of the review committee hearing.

3. *Definition of "mentally incompetent individual."* The public comment on proposed § 50.205 revealed extensive confusion over the term "mentally incompetent individual." Numerous comments indicated uncertainty over whether the definition covered the "mentally retarded", the "mentally impaired", the "mentally handicapped". Several comments noted that the term "mental incompetence" sets a test which is irrelevant, since what is at issue is not mental competence but ability to understand the procedure and its effects. A great number of comments questioned what the proposed test of "incompetence in fact" meant. In this regard, one attorney stated that since the parameters of legal incompetence differ, often radically, from State to State, the term "incompetence in fact" is so vague as to be meaningless. Another attorney suggested that since under many State laws persons are presumed competent until adjudicated incompetent, the term and the application of it mandated by the regulations would require persons such as physicians and social workers to perform a judicial function they have no legal authority to perform. Still other comments objected to the "incompetence in fact" test as essentially unfair, in that it requires the health care provider to make a complex legal judgment, the accuracy of which might only be possible to ascertain after the fact.

Several clarifications of the definition were suggested. One organization recomended changing the definition to cover only persons who have been adjudicated incompetent or are known to be mentally incompetent under applicable law. Other comments suggested deleting all references to persons who are incompetent in fact, and defining as mentally incompetent only those who have been so adjudicated. Other comments suggested that all noninstitutionalized persons who have not been judicially declared incompetent be governed by the same procedures, on the grounds that most of the more serious case of mental incompetence will be covered either by having been declared incompetent or by being institutionalized.

Department's Response

The Department has clarified the definition of "mentally incompetent individual" as suggested by many of the comments and has accepted the view that the Federal programs should not provide sterilizations to persons who are mentally incompetent. These changes and the reasons therefor are set forth in the discussion of the comments below.

1. Alternative No. 1: No sterilization of mentally incompetent individuals. The public comment failed to elicit any persuasive evidence that the present moratorium, which this alternative would essentially continue, has cause significant hardship. It did, however, underscore the difficulty and sensitivity of the medical and legal judgments that would have to be made if the Department were to permit sterilization of mental incompetents as a class. For example, the Department considers that it would be unsound public policy to permit sterilization of persons who are only temporarily incompetent. Yet making a reliable judgment as to the permanence of a person's incompetence may well call for a degree of expertise not generally available to providers. Certainly, policing the administration of such a distinction would appear to be beyond the Department's present capabilities. The Department also agrees with the comments that the difficulty of coping with many mentally incompetent individuals either in or outside an institutional setting might result in abuse if sterilization were permitted. Thus, it feels that alternative No. 1 represents the sounder policy.

Moreover, while the Department may well have the legal authority to permit the sterilization of incompetents, it is now of the view that exercising it is a policy change so fundamental as to call for clear congressional endorsement. To date, the available evidence suggests that Congress agrees with the present policy of prohibiting federally funded sterilizations to mental incompetents. See, for example, the approval of the Department's present requirement of informed consent in the legislative history of Pub. L. 94-63. S. Rep. No. 94-29 at 57-58; H. Rep. No. 94-192 at 31.

The Department's response to the public comments opposing this alternative is as follows:

a. *Sterilization of mentally incompetent individuals with the mental capacity to give informed consent.* Where a person has the mental (but not legal) capacity to give informed consent and absent a potentially coercive institutional setting, whether to treat him or her differently than other people becomes a troublesome question. However, since mental competence is essentially a legal concept, the Department does not feel that either it or health care providers can second-guess a judicial finding of incompetence. In this regard, it should be noted that such a person could obtain readjudication of his or her competency. The Department has hence changed the rules to provide that if a person has been adjudicated incompetent for any purpose he or she may not be sterilized under the Federal programs unless he or she is adjudicated competent for purposes which include the ability to consent to sterilization.

b. *Sterilization of mentally incompetent individuals who lack the mental capacity to give informed consent.* The Department is sympathetic to the reasons advanced by those advocating provision of sterilization to such individuals. Nevertheless, it has not accepted their comments. Its reasons are set out in paragraph 1 of this section above. In addition, it is felt that until an effective enforcement program has been established, the potential for sterilization abuse is too great.

2. *Alternative No. 2: Provision for sterilization of certain mentally incompetent individuals.* As stated in paragraph 1a of this section above, the Department has revised the definition to make clear that certain "mentally incompetent" individuals may obtain sterilizations under the Federal programs. However, the rule limits this access to those mental incompetents who have been readjudicated competent for the purposes which include the ability to consent to sterilization. The Department has concluded that the review committee/court review provision of the proposed rules are unnecessary for such individuals and accordingly has eliminated them. The bases for this conclusion are two-fold: (1) Such persons are by definition competent for purposes of consenting to the service in question; and (2) the potential for coercion of such individuals who are institutionalized is eliminated by the prohibition on sterilization of institutionalized individuals (see section E below).

As is also stated above, the Department has chosen alternative No. 1 with respect to all other mentally incompetent individuals. This choice makes irrelevant the provisions for review committee approval and court review of alternative No. 2. Hence, the public comment on those provisions will not be discussed.

3. *Definition of "mentally incompetent individual."* As stated above in paragraph 1 of this section, the proposed definition of mentally incompetent individual has been modified to clarify that the term covers individuals who have been adjudicated incompetent for any purpose unless they are specifically adjudicated competent

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for purposes which include the ability to consent to sterilization. In accordance with the suggestion of many of the comments received on the proposed definition, all references to "incompetence in fact" have been deleted. It is recognized that the definition thus does not cover persons who are in fact incompetent under applicable law to consent to sterilization but who have not been so adjudicated. Nevertheless, the Department is persuaded by the public comment that the proposed test of "incompetence in fact" would indeed prove to be unworkable, and require of providers judgments that they are legally and professionally unable to make. Moreover, the Department feels that the prohibition on the provision of sterilization to institutionalized individuals, together with the requirement that the physician and person obtaining the consent certify that the individual to be sterilized appears to be mentally competent, will insure that most such individuals do not get sterilized.

E. STERILIZATION OF INSTITUTIONALIZED INDIVIDUALS

Text of Proposed Rule

a. *42 CFR 50.205(b) (Cf., 45 CFR 205.35-5):*

(b) Programs or projects to which this subpart applies shall not perform or arrange for the performance of a sterilization of any individual institutionalized in a correctional, mental or other facility unless:

(1) The individual has voluntarily given his/her informed consent in accordance with the procedures prescribed in § 50.203;

(2) At least 30 days have elapsed between the date of informed consent and the date of the sterilization;

(3) The individual is at least 21 years old;

(4) The sterilization review committee has certified to a court, after a hearing at which counsel representing the patient has presented the evidence for and against such a certification, that all of the requirements for sterilization have been met, that the patient understands the nature and consequences of the proposed sterilization procedure as set forth in § 50.203(a), and that the patient has voluntarily consented to be sterilized; and

(5) The Court has found, after a hearing at which counsel for the patient has presented the evidence for and against such a finding, that all of the requirements for sterilization have been met, that the patient understands the nature and consequences of the proposed sterilization procedure, as set forth in § 50.203(a), and that the patient has voluntarily consented to be sterilized.

(b) *Related requirements:* 42 CFR 50.209(b), (c) (Cf., 45 CFR 205.35-9(b), (c)). For text of these sections, see section I of the preamble below.

Text of Final Rule

(a) *42 CFR 50.206 (Cf., 42 CFR 441.254):*

Programs or projects to which this subpart applies shall not perform or arrange for the performance of a sterilization of any * * * institutionalized individual.

(b) *Related requirement: 42 CFR 50.202 (Cf., 42 CFR 441.251):*

"Institutionalized individual" means a person who is (1) involuntarily confined or detained, under a civil or criminal statute, in a correctional, or rehabilitative facility including a mental hospital or other facility for the care and treatment of mental illness, or (2) confined, under a voluntary commitment, in a mental hospital or other facility for the care and treatment of mental illness.

Summary of Public Comment

1. Relatively few of the public comments addressed the issue of provision of sterilization to institutionalized individuals. Of those that did, most took the position that sterilization should not be provided to such individuals because of the "inherently coercive" nature of institutions. Several comments pointed out that the control institutions exert over those institutionalized in them would lead to abuse. For example, consenting to sterilization could be manipulated by the conferring of rewards (such as furloughs, less demanding work assignments) or punishments (such as more demanding work assignments, denial of exercise privileges). Several comments also pointed out that since programs for conjugal visits or similar programs are relatively rare in institutions, there is little need to provide access to the procedures. One comment suggested that provision of sterilization to prisoners is particularly inappropriate since their imprisonment itself may cause family changes that may make them wish to reverse the decision when they are released.

2. A number of comments supported the proposed policy of providing sterilization to institutionalized individuals, but suggested other or additional safeguards. Several comments suggested that another patient from the same institution, patient's attorney, or patient advocate should participate in the review committee and court procedures. A couple of comments suggested that institutions be prohibited from promising rewards (such as early release from prison) or punishment as an incentive for sterilization and advocated modifying the consent form to reflect such a requirement. Other safeguards proposed were increasing the waiting period to 90 days, providing strict monitoring, requiring the procedure to be performed in a civilian hospital.

3. A few comments expressed confusion over the meaning of the term "institutionalized individuals" and suggested definition of the term. Other comments assumed the term applied only to certain subgroups of the universe of persons in institutions, such as persons incarcerated in correctional facilities. Several comments suggested that, if it is decided to provide sterilization to institutionalized individuals, the safeguards should differ depending on the type of institution involved.

Department's Response

1. The Department is persuaded by the comments opposing provision of sterilization to institutionalized individuals for the reasons described above. In this regard, the Department notes that due to the separation of sexes characteristic of prisons, there is little need for the service among that population. Other institutions are generally dedicated to the care of the mentally incompetent or minors, classes of persons to whom the Department has decided that federally funded sterilizations should not be provided, for the reasons set out above. As for any institutions that do not fall within these three groups (as well as for these three types of institutions), the potential for abuse inherent in institutions pointed out by the public comments likewise favors prohibiting Federal funding of the sterilization of persons confined in them. Consequently, the rules have been revised to prohibit the federally funded sterilization of all institutionalized individuals. This decision makes unnecessary the safeguards of the proposed rules or the other safeguards suggested by the public comment. Accordingly, they are not discussed.

2. The Department agrees with the comments pointing out the need to define "institutionalized individuals" and accordingly has added the definition set out in § 50.202. The intent of the definition is to cover institutions which, because of the legal nature of the confinement or the mental disability of the person confined, constitute a potentially coercive environment. It would thus cover all institutions where persons are confined as a result of a court order including facilities such as reform schools or "halfway houses", where the confinement, while perhaps not as restricted as prison, is involuntary. It also covers all mental institutions and facilities such as halfway houses regardless of whether the person has been civilly committed or voluntarily signed him or herself in as a patient. The definition does not cover health care institutions, such as acute care hospitals, which are not primarily residential and which provide medical services.

F. INFORMED CONSENT PROCEDURES

Text of Proposed Rule

1. *42 CFR 50.203 (Cf., 45 CFR 205.35-3)):*

Informed consent does not exist unless a consent form is completed voluntarily and in accordance with all the requirements of this paragraph.

(a) *Preparing to obtain informed consent.* An individual who obtains informed consent for a sterilization procedure must provide orally all of the following information or advice to the individual who is to be sterilized.

(1) Advice that the individual is free to withhold or withdraw his/her consent to the procedure at any time prior to the sterilization without affecting his/her right to future care or treatment, and without loss or withdrawal of any federally funded programs benefits to which the individual might be otherwise entitled;

(2) A description of available alternative methods of family planning and birth control;

(3) A full description of the benefits or advantages he/she may expect to gain as a result of the sterilization;

(4) Advice that the sterilization procedure is considered to be irreversible;

(5) A thorough explanation of the specific sterilization procedure to be performed;

(6) A full description of the discomforts and risks which may accompany and follow the performing of the procedure, including an explanation of the type and possible effects of any anesthetic to be used;

(7) Advice that the sterilization will not be performed for at least 30 days; and

(8) An opportunity to ask and have answered any questions he/she may have concerning the sterilization procedure.

(b) *Filling out the consent form.* (1) *Language of the consent form.* The consent form should be in the primary language of the patient. If the consent form is not in the primary language of the patient, an interpreter must be made available to assist the individual.

(2) *Provisions for the handicapped.* Suitable arrangement must be made to ensure that consent information is effectively communicated to blind, deaf and other handicapped patients.

(3) *Signatures on the consent form.* The consent form must be signed and dated by:

(i) The patient; and

(ii) The interpreter, if one is provided; and

(iii) The individual who obtains the consent of the patient; and

(iv) The physician who will perform the sterilization procedure.

(4) *Required certification.* (i) The person securing the patient's consent must certify by signing the consent form that, before the patient signed the consent form he/she advised the patient that no Federal benefits may be withdrawn because of the patient's decision not to be sterilized, that he/she explained orally the requirements for informed consent as set forth on the consent form, and that the patient, to the best of his/her knowledge and belief, appeared mentally competent and knowingly and voluntarily consented to be sterilized.

(ii) The physician performing the sterilization must certify by signing the consent form, that immediately prior to the performance of the sterilization, he/she advised the patient that no Federal benefits may be withdrawn because of the patient's decision not to be sterilized, that he/she explained orally the requirements for informed consent as set forth on the consent form, and that the patient, to the best of his/her knowledge and belief appeared mentally competent and knowingly and voluntarily consented to be sterilized. The physician will further certify that, to the best of his/her knowledge and belief, at least 30 days have passed between the date upon which the patient signed the consent form, and the date upon which the sterilization was performed.

(iii) The physician performing the sterilization must, in cases where court orders are required by this section, certify, by signing the consent form, and he/she was provided with a copy of the court order prior to the performance of the sterilization.

(c) *Following State and local procedures.* In addition to the consent procedures required by this part, any requirement of State and local law, except one of spousal consent, must be followed.

2. *Related requirements:* a. *42 CFR 50.202(b) (Cf., 45 CFR 205.35-2(b)):*

"Informed consent" to a sterilization procedure means a written authorization to be sterilized given by the person to be sterilized and given voluntarily and with an understanding of the nature and consequences of the procedure to be performed.

b. *42 CFR 50.204 (Cf., 45 CFR 205.35-4):*

Programs or projects to which this subpart applies shall perform or arrange for the performance of sterilization of a mentally competent individual only when the following requirements have been met:

(a) The individual has voluntarily given his/her informed consent in accordance with all the procedures prescribed in section 50.203.

Text of final rule

1. *42 CFR 50.204-50.205 (Cf., 42 CFR 441.257-441.258):*

§ 50.204 *Informed consent requirement.*

Informed consent does not exist unless a consent form is completed voluntarily and in accordance with all the requirements of this section and § 50.205 of this subpart.

(a) An individual who obtains informed consent for a sterilization procedure must offer to answer any questions the individual to be sterilized may have concerning the procedures, provide a copy of the consent form and provide orally all of the following information or advice to the individual who is to be sterilized:

(1) Advice that the individual is free to withhold or withdraw consent to the procedure at any time before the sterilization without affecting his or her right to future care or treatment, and without loss or withdrawal of any federally funded program benefits to which the individual might be otherwise entitled;

(2) A description of available alternative methods of family planning and birth control;

(3) Advice that the sterilization procedure is considered to be irreversible;

(4) A thorough explanation of the specific sterilization procedure to be performed;

(5) A full description of the discomforts and risks that may accompany and follow the performing of the procedure, including an explanation of the type and possible effects of any anesthetic to be used;

(6) A full description of the benefits or advantages that may be expected as a result of the sterilization; and

(7) Advice that the sterilization will not be performed for at least 30 days except under the circumstances specified in § 50.203(d) of this subpart.

(b) An interpreter must be provided to assist the individual to be sterilized if he or she does not understand the language used on the consent form or the language used by the person obtaining consent.

(c) Suitable arrangements must be made to insure that the information specified in paragraph (a) of this section is effectively communicated to individuals to be sterilized who are blind, deaf or otherwise handicapped.

(d) A witness chosen by the individual to be sterilized may be present when consent is obtained.

(e) Informed consent may not be obtained while the individual to be sterilized is:

(i) In labor or childbirth;

(ii) Seeking to obtain or obtaining an abortion; or,

(iii) Under the influence of alcohol or other substances that affect the individual's state of awareness.

(f) Any requirement of State and local law for obtaining consent, except one of spousal consent, must be followed.

§ 50.205 *Consent form requirements.*

(a) *Required consent form.* The consent form appended to this subpart or another consent form approved by the Secretary must be used.

(b) *Signature on the consent form.* The consent form must be signed and dated by:

(1) The individual to be sterilized; and

(2) The interpreter, if one is provided; and

(3) The individual who obtains the consent; and

(4) The physician who will perform the sterilization procedure.

(c) *Required certifications.* (1) The person securing the consent must certify by signing the consent form that: (i) before the individual to be sterilized signed the consent form, he or she advised the individual to be sterilized that no Federal benefits may be withdrawn because of the decision not to be sterilized, (ii) he or she explained orally the requirements for informed consent as set forth on the consent form, and (iii) to the best of his or her knowledge and belief, the individual to be sterilized appeared mentally competent and knowingly and voluntarily consented to be sterilized.

(2) The physician performing the sterilization must certify by signing the consent form that: (i) shortly before the performance of the sterilization, he or she advised the individual to be sterilized that no Federal benefits may be withdrawn because of the decision not to be sterilized, (ii) he or she explained orally the requirements for informed consent as set forth on the consent form, and (iii) to the best of his or her knowledge and belief, the individual to be sterilized appeared mentally competent and knowingly and voluntarily consented to be sterilized. Except in the case of premature delivery or emergency abdominal surgery, the physician must further certify that at least 30 days have passed between the date of the individual's signature on the consent form, and the date upon which the sterilization was performed. If premature delivery occurs or emergency abdominal surgery is required within the 30-day period, the physician must certify that the sterilization was performed less than 30 days but not less than 72 hours after the date of the individual's signature on the consent form because

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of premature delivery or emergency abdominal surgery, as applicable. In the case of premature delivery, the physician must also state the expected date of delivery. In the case of emergency abdominal surgery, the physician must describe the emergency.

(3) If an interpreter is provided, the interpreter must certify that he or she translated the information and advice presented orally to the individual to be sterilized, read the consent form and explained its contents, and, to the best of the interpreter's knowledge and belief, the individual to be sterilized understood what the interpreter told him or her.

2. *Related requirement: 42 CFR 50.203 (Cf., 42 CFR 441.253):*

Programs or projects to which this subpart applies shall perform or arrange for the performance of sterilization of a mentally competent individual only when the following requirements have been met:

(c) The individual has voluntarily given his or her informed consent in accordance with all the procedures of § 50.204 of this subpart.

(d) At least 30 days but no more than 180 days have passed between the date of informed consent and the date of the sterilization * * *.

Summary of Public Comment

Between the hearings and written comments, several hundred comments addressed the consent procedures of the proposed rules. While the comments generally supported the thrust of the proposed procedures, they also suggested a number of modifications. The major criticisms and suggestions of the public comment are summarized below.

1. There was widespread opposition to permitting consent to be obtained in situations where the individual is under stress or for some reason incapable of exercising judgment. Of particular concern was obtaining consent during labor, childbirth, or abortion. Generally, the comments addressing this issue proposed banning obtaining consent in such circumstances.

2. Several approaches were suggested to insure that consent to the procedure is informed and voluntary. A number of comments suggested revision of the consent procedures to provide for expiration of the consent within a certain period (e.g., 120 days, 180 days). Among the grounds given were that persons' circumstances may change significantly over a long period of time and cause a revision of their desires, or that passage of time may cause people to forget information relevant to the procedure. Another alternative suggested was to have the individual to be sterilized initially sign a declaration of intent and then sign the consent immediately prior to surgery. A similar approach proposed was to require the individual to sign the consent a second time prior to surgery.

3. Many comments took the position that the regulations should require more counseling or the provision of different or additional information. The following were suggested:

a. A number of comments advocated requiring that the individual undergo one or more counseling sessions prior to the procedure to insure that he or she makes an informed choice. Many of these comments also suggested additional requirements relating to the counselors. For example, it was suggested that the counselors should be of the same sex or ethnic background of the patient, that they should be specially trained nonphysician staff, that they should speak the patient's language where the patient does not speak English.

b. Several comments advocated requiring provision of the consent form or a pamphlet detailing the information required under proposed § 50.203, so that the individual to be sterilized could consider the information during the 30-day period. Others advocated requiring showing of a film setting forth the required information, particularly for persons with literacy problems. One comment suggested that grantees and State Agencies be required to mount public information campaigns to familiarize the patient population with the elements of informed consent.

c. While most comments agreed that individuals to be sterilized should be told that the procedure is irreversible, several suggested that they should also be informed of the failure rates associated with the various procedures since they are relevant risks. Others advocated a prohibition on the use of the potentially misleading phrase "tying the tubes." Several testifiers urged expansion of the discomforts and risks required to be conveyed, e.g., explanation of the infant mortality rate (so that persons considering sterilization while pregnant do not automatically assume that the infant will survive), the increased risk of ectopic pregnancies attendant on certain procedures, the mortality rates associated with the various procedures. Several comments advocated requiring the project or provider obtaining the consent to offer alternative birth control measures during the waiting period.

4. Several comments stated that the rules should emphasize that the individual to be sterilized has the right to have a witness of his or her choice present when consent is obtained.

5. Several providers objected to the requirement that physicians certify as to the patient's appearance of competency as calling for a legal judgment or one generally beyond their expertise.

6. A great number of comments stated that the proposed consent procedures would be ineffective unless closely monitored and enforced. Several of these suggested specific programs. A couple suggested the establishment of federally financed review boards to interview patients and review cases on a regular basis. One comment suggested requiring monitoring by citizen committees.

7. The main opposition to the proposed procedures was twofold. First, a number of providers objected to the expense involved, particularly where the Federal procedures duplicate procedures to be followed by the providers because of other requirements. Second, a number of physicians opposed the procedures in general on the ground that they constitute an undue intrusion into the physician-patient relationship.

Department's Response

The Department has accepted a number of the public comments, generally for the reasons stated above. Specifically, it is persuaded by the numerous objections to permitting consents obtained in stressful situations or situations of clearly impaired judgment. While in the Department's view such a limitation was implicit in the proposed rules, it has been made explicit here. See § 50.204(e) (Cf., 42 CFR 441.257(b)). The requirement for an interpreter has been clarified: if the person obtaining the consent does not speak a language the patient understands, an interpreter is to be made available to translate the explanation of the procedure and its consequences. See § 50.204(b) (Cf., 42 CFR 441.257(a)(3)). It also agrees with the suggestion that the duration of the consent should be limited; an expiration date of 180 days from the signature of the consent has thus been added. See § 50.203(d) (Cf., 42 CFR 441.253(d)). The Department also agrees that the right of the individual to be sterilized to have a witness present when consent is obtained when he or she chooses, although arguably implicit in the proposed rules, is sufficiently important to justify explicit mention. Such a provision has hence been added. See § 50.204(d) (Cf., 42 CFR 441.257(a)(4)). The Department has accepted the suggestion that it require that the individual to be sterilized be given a copy of the consent form for consideration during the waiting period. See § 50.204(a) (Cf., 42 CFR 441.257(a)(1)). Finally, the certification requirement has been revised to delete the physician certification provisions made irrelevant by the elimination of the review committee/court review process, and to add the interpreter certification requirement already present in the proposed consent form. See § 50.205(c) (2), (3) (Cf., 42 CFR 441.258(c) (2), (3)).

The Department has rejected the remainder of the public comment on this issue, for the following reasons:

1. The suggestions for a two-tier signature process, discussed in paragraph 2 of the preceding section, have not been accepted. It is felt that such a requirement would complicate the consent process unduly, in view of the other patient protections built into the process. In particular, the new requirement that the individual to be sterilized be provided a copy of the consent form to keep during the waiting period will, since the consent form itself clearly states that consent may be withdrawn at any time, serve substantially the same purpose of making clear to the individual that he or she may withdraw consent prior to performance of the sterilization.

2. The comments suggesting expansion of the consent process to include additional counseling (through individual sessions, films, etc.) have been rejected as administratively infeasible, particularly in a program the size of medicaid. Admittedly, inclusion of such additional procedures is desirable, and is encouraged where feasible. Nevertheless, the Department is of the view that the consent procedures of the final rules, if followed, should insure that sufficient information is provided for individuals to make an informed decision, without excessively encumbering the delivery of services in terms of time or expense.

3. The comments advocating requiring presentation of specific information (such as infant mortality rates) have not been accepted, since medical judgment may differ as to what constitutes relevant risk, and the amount of risk, discomfort and so on may also differ for different individuals. The Department feels that such judgments are most appropriately left to those professionals who deal with the individual during the consent process. Accordingly, it is not mandating the provision of particular facts (such as infant mortality rates, failure rates, rate of ectopic pregnancy with certain procedures), although the procedures themselves require that all areas relevant to the decision (benefits, risks and so on) be discussed. Hence, many of the particular facts that comments suggested be required will generally be conveyed in the discussion of discomforts and risks. Requiring that a specific pamphlet be used would be analogous, so this suggestion has likewise been rejected. However, while the Department is not inclined to mandate use of an informational pamphlet, it is strongly of the view that provision of a pamphlet is an efficient and effective means of reinforcing the information required to be given orally. It also gives the individual to be sterilized information to consider during the waiting period. Consequently, it has developed pamphlets setting out the general information required under § 50.204(a) for male and female surgical sterilizations. The Department plans to make these pamphlets generally available for use by providers and encourages their use. These pamphlets are published following the rules below.

4. The requirement that the attending physician certify that, to the best of his knowledge and belief the patient appeared competent has been retained despite the objections raised. Since the physician is only certifying to the extent of his knowledge and belief, the requirement does not impose a duty on him that is beyond his expertise. It does, however, help insure that the physician will take pains to satisfy him or herself that the individual to be sterilized is competent, and thus may help avoid abuse.

5. The Department agrees that compliance with the consent procedures should be carefully monitored and enforced. While not all the suggestions made in this regard are administratively feasible, the Department intends to seek compliance with its requirements by providers. For a full statement of its plans in this regard, see the discussion under section I of the preamble below.

6. The Department disagrees with the comments that the consent procedures impose an undue administrative or financial burden on providers. It should be noted that the consent procedures of these rules build upon the procedures of the present rules. As noted in section I C above, experience with the present rules has not shown that their consent requirements impede the delivery of sterilizations. Thus, the Department is not inclined to believe that these procedures will be unduly burdensome, when considered in light of the need to insure informed consent.

7. The Department likewise does not believe that the consent procedures of these rules intrude unduly into the physician-patient relationship. As noted above, the Department is not prescribing what specific facts must be conveyed to patient; rather, it is prescribing only the general kinds of information to be communicated, leaving the selection of which facts are relevant to the particular patient's situation up to the physician. Moreover, the Department believes that the consent procedures of these rules accord with sound medical practice and, indeed, several of the comments took this position. Even assuming for the purpose of argument that these procedures do intrude to a limited extent into the physician-patient relationship, however, the Department notes that such an intrusion is apparently approved of by Congress, as evidenced by the legislative history cited in section III D above.

G. INFORMED CONSENT FORM

Text of Proposed Rule

1. *Appendix.*

NOTICE: Your decision at any time not to be sterilized will not result in the withdrawal or withholding of any benefits provided by programs or projects receiving, Federal funds.

CONSENT TO STERILIZATION

I have asked for and received information about sterilization from ———— (doctor or clinic).

When I first asked for the information, I was told that the decision to be sterilized is completely up to me. I was told that I could decide not to be sterilized. If I decide not to be sterilized, my decision will not affect my right to future care or treatment and I will not lose any help or benefits from programs receiving Federal funds such as A.F.D.C. or medicaid that I am now getting or for which I may become eligible.

I understand that the sterilization must be considered permanent and not reversible. I have decided that I do not want to become pregnant, bear children or father children.

I was told about those temporary methods of birth control that are available and could be provided to me which will allow me to bear or father a child in the future. I have rejected these alternatives and freely chosen to be sterilized.

I understand that I will be sterilized by an operation known as a ————. The discomforts, risks, and benefits associated with the operation have been explained to me. All my questions have been answered to my satisfaction.

I understand that the operation will not be done until at least 30 days after I sign this form. I understand that I can change my mind at any time and that my decision at any time not to be sterilized will not result in the withholding of any benefits or medical services provided by Federally funded programs.

I am —— years old. I was born on — (day), ———— (month), —— (year).

I, ————, hereby consent of my own free will to be sterilized by ———— by a method called ————.

I also consent to the release of this form and other medical records about the operation to:

Representatives of the Department of Health, Education, and Welfare or

Employees of programs or projects funded by that Department but only for purposes of research or for determining if Federal laws were observed.

You are requested to supply the following information, but it is not required:

Race and ethnicity designation (please check).
Black (not of Hispanic origin) ————
Hispanic ————
Asian or Pacific Islander ————
American Indian or Alaskan Native ————
White (not of Hispanic origin) ————

Patient's signature ————
Date: ————
(Month, day, year)

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Where the consent form is not in the primary language of the patient:

I have read the consent form to _____ in _____ language and explained its contents to him/her. To the best of my knowledge and belief he/she understood this explanation.

Interpreter _____
Date _____

Before _____ (name of individual) signed this consent form, I explained to him-her the nature of the sterilization operation _____, the fact that it is intended to be a final and irreversible procedure and the discomforts, risks, and benefits associated with it.

I counseled the patient that alternative methods of birth control are available which are temporary. I explained that sterilization is different because it is permanent.

I informed the patient that his/her consent can be withdrawn at any time and that he/she will not lose any health services or any benefits provided by Federal funds.

To the best of my knowledge and belief that patient is at least 21 years old and appears mentally competent. He/she knowning and voluntarily requested to be sterilized and appears to understand the nature and consequence of the procedure.

Signature of person obtaining consent _____
Date _____
Facility _____
Address _____

PHYSICIAN'S STATEMENT

Immediately before I performed a sterilization operation upon _____ (name of patient) I explained to him/her the sterilization operation _____, the fact that it is intended to be a final and irreversible procedure and the discomforts, risks and benefits associated with it.

I counseled the patient that alternative methods of birth control are available which are temporary. I explained that sterilization is different because it is permanent.

I informed the patient that his/her consent can be withdrawn at any time and that he/she will not lose any health services or benefits provided by Federal Funds.

To the best of my knowledge and belief at least thirty days have passed since the patient consented to the sterilization.

To the best of my knowledge and belief the patient is at least 21 years old and appears mentally competent. He/She knowingly and voluntarily requested to be sterilized and appeared to understand the nature and consequences of the procedure.

Physician _____
Date _____

Alternative final paragraph for use where court order is required:

To the best of my knowledge and belief the patient is at least 21 years old. He/She knowingly and voluntarily requested to be sterilized and appears to understand the nature and consequences of the procedure. I have been provided with a copy of the attached court order.

Physician _____
Date _____

2. *Related requirements:*

a. *42 CFR 50.203(b) (Cf., 45 CFR 205.35-3(b)): For text of this section see section E of the preamble above.*

b. *43 CFR 50.209(a) (Cf., 45 CFR 205.35-9(a)):*

Federal financial assistance administered by the Public Health Service may not be used for expenditures for sterilization procedures unless the consent form appended to this section or another form approved by the Secretary is used for purposes of this section.

Text of Final Rule

1. *Appendix:*

NOTICE: YOUR DECISION AT ANY TIME NOT TO BE STERILIZED WILL NOT RESULT IN THE WITHDRAWAL OR WITHHOLDING OF ANY BENEFITS PROVIDED BY PROGRAMS OR PROJECTS RECEIVING FEDERAL FUNDS.

CONSENT TO STERILIZATION

I have asked for and received information about sterilization from _____ (doctor or clinic).

When I first asked for the information, I was told that the decision to be sterilized is completely up to me. I was told that I could decide not to be sterilized. If I decide not to be sterilized, my decision will not affect my right to future care or treatment and I will not lose any help or benefits from programs receiving Federal funds, such as A.F.D.C. or medicaid, that I am now getting or for which I may become eligible.

I UNDERSTAND THAT THE STERILIZATION MUST BE CONSIDERED PERMANENT AND NOT REVERSIBLE. I HAVE DECIDED THAT I DO NOT WANT TO BECOME PREGNANT, BEAR CHILDREN OR FATHER CHILDREN.

I was told about those temporary methods of birth control that are available and could be provided to me which will allow me to bear or father a child in the future. I have rejected these alternatives and chosen to be sterilized.

I understand that I will be sterilized by an operation known as a _____. The discomforts, risks and benefits associated with the operation have been explained to me. All my questions have been answered to my satisfaction.

I understand that the operation will not be done until at least thirty days after I sign this form. I understand that I can change my mind at any time and that my decision at any time not to be sterilized will not result in the withholding of any benefits or medical services provided by Federally funded programs.

I am over 21 years of age and was born on —(day) _____ (month) _____ (year).

I, _____, hereby consent of my own free will to be sterilized by _____ by a method called _____. My consent expires 180 days from the date of my signature below.

I also consent to the release of this form and other medical records about the operation to:

Representatives of the Department of Health, Education, and Welfare or

Employees of programs or projects funded by that Department but only for determining if Federal laws were observed.

I have received a copy of this form.

Signature _____
Date: _____
(Month, day, year)

You are requested to supply the following information, but it is not required:

Race and ethnicity designation (please check)
Black (not of Hispanic origin) _____
Hispanic _____
Asian or Pacific Islander _____
American Indian or Alaskan Native _____
White (not of Hispanic origin) _____

INTERPRETER'S STATEMENT

If an interpreter is provided to assist the individual to be sterilized:

I have translated the information and advice presented orally to the individual to be sterilized by the individual obtaining this consent. I have also read the consent form to _____ in _____ language and explained its contents to him/her. To the best of knowledge and belief he/she understood this explanation.

Interpreter _____
Date _____

STATEMENT OF PERSON OBTAINING CONSENT

Before _____ (name of individual) signed this consent form, I explained to him/her the nature of the sterilization operation _____, the fact that it is intended to be a final and irreversible procedure and the discomforts, risks and benefits associated with it.

I counseled the individual to be sterilized that alternative methods of birth control are available which are temporary. I explained that sterilization is different because it is permanent.

I informed the individual to be sterilized that his/her consent can be withdrawn at any time and that he/she will not lose any health services or any benefits provided by Federal funds.

To the best of my knowledge and belief the individual to be sterilized is at least 21 years old and appears mentally competent. He/She knowingly and voluntarily requested to be sterilized and appears to understand the nature and consequence of the procedure.

Signature of person obtaining consent _____
Date _____
Facility _____
Address _____

PHYSICIAN'S STATEMENT

Shortly before I performed a sterilization operation upon _____ (name of individual to be sterilized), on _____ (date of sterilization operation). I explained to him/her the nature of the sterilization operation _____ (specify type of operation), the fact that it is intended to be a final and irreversible procedure and the discomforts, risks and benefits associated with it.

I counseled the individual to be sterilized that alternative methods of birth control are available which are temporary. I explained that sterilization is different because it is permanent.

I informed the individual to be sterilized that his/her consent can be withdrawn at any time and that he/she will not lose any health services or any benefits provided by Federal funds.

To the best of my knowledge and belief the individual to be sterilized is at least 21 years old and appears mentally competent. He/She knowingly and voluntarily requested to be sterilized and appeared to understand the nature and consequences of the procedure.

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(*Instructions for use of alternative final paragraphs:* Use the first paragraph below except in the case of premature delivery or emergency abdominal surgery where the sterilization is performed less than 30 days after the date of the individual's signature on the consent form. In those cases, the second paragraph below must be used. Cross out the paragraph which is not used.)

(1) To the best of my knowledge and belief at least 30 days have passed between the date of the individual's signature on this consent form and the date the sterilization was performed.

(2) This sterilization was performed less than 30 days but more than 72 hours after the patient consented to the sterilization because of the following circumstances (check applicable box and fill in information requested);

_____ Premature delivery
Individual's date of expected delivery:

_____

_____ Emergency abdominal surgery (describe circumstances):

_____

Physician _____
Date _____

2. *Related requirements:*

a. *42 CFR 50.205 (Cf., 42 CFR 441.258)*: For text of this section, see Section F of the preamble above.

b. *42 CFR 50.209(a) (Cf., 42 CFR 257(a)(5))*:

Federal financial assistance administered by the Public Health Service may not be used for expenditures for sterilization procedures unless the consent form appended to this section or another form approved by the Secretary is used.

Summary of Public Comment

Approximately 100 comments addressed various aspects of the consent form required under the proposed rules. In general, the following modifications were suggested:

1. Many responses dealt with the proposed requirement that the consent form be in the "primary language" of the individual to be sterilized or, if it is not, that a translator be provided. While some comments agreed with the rule as proposed, a number of others pointed out problems with it. Several respondents noted that this requirement would create problems in the case of Indians because of the numerous Indian languages and because many Indians neither read nor write their native language. It was also pointed out that in the case of patients from an ethnic group of small numbers in an area, securing the services of a translator may be difficult. It was argued that where such individuals also understand English, it makes little sense to require the form to be translated. Another comment noted that where a patient understands English as well as his or her native language, it can be difficult to determine which is his or her "primary language." It was suggested that the Department change the requirement to the patient's "preferred language," a language the patient "fully understands," or a language the patient "can reasonably be expected to understand."

2. A few comments disagreed with the proposed rule's approach of requiring the use of the consent form in the appendix. A couple of these stated that each health care facility should design its own consent form in compliance with Federal standards in order to allow for local needs. Another comment opposed the required consent form on the ground that it would supplant form that had been worked out to withstand court challenge. A group representing gynecologists opposed the form on the ground that the form for sterilization should not be different than that for other surgical procedures. A couple of comments, however, took the position that the Secretary should permit use of only the consent form in the appendix.

3. A number of comments took the position that the consent form itself should set out certain kinds of information. Several comments stated that the consent form should contain all of the elements of informed consent. Other comments urged inclusion of specific items of information, such as information relating to failure rates associated with the various procedures, discomforts and risks associated with the various procedures, and other methods of birth control.

4. A number of comments took issue with the provision in the consent form permitting its release for research purposes, mainly on the ground that it could lead to breaches of confidentiality. A number of these simply opposed release per se, while the remainder took the position that release of the form for research purposes without the patient's name would be acceptable. A few comments urged that the regulations provide penalties for breach of confidentiality, require that patients' names be deleted from the forms after passage of a certain period of time, and that information relating to sterilization be exempt from release under the Freedom of Information Act.

5. The certification provisions of the proposed rules generated much comment. Several dozen comments urged that the requirement for initial certification from the person obtaining the consent be clarified to provide that the individual may not be a physician. In general, these comments took the position that physicians frequently lack the time or ability to provide a full explanation, often intimidate patients so that the patients may not seek clarification of points that confuse them, and often present patients with only one choice when there may in fact be more than one. Other comments urged that the regulations require that the person obtaining the consent be a trained professional (although not a physician) to insure that an adequate explanation is presented. A number of providers expressed concern that the requirement for physician certification would cause unnecessary paperwork and expense. One physician recommended that the physician certification be modified to state that the physician performing the procedure had not recommended the procedure and had not solicited the consent. A number of comments evidenced confusion with the requirement, assuming that the physician signing the certification had to be "the physician obtaining the consent." One comment stated that physician certification would be inappropriate where the counseling was done by a separate agency, apparently on the ground that the provision would require the physician to certify to facts he could not attest to. Other comments questioned whether the "physician performing the sterilization" could be a resident or intern.

6. A number of comments agreed with the proposed rule's provision making spousal consent, if required by State law, inapplicable for purposes of the Federal programs. Other comments expressed confusion on the subject, and a few opposed it on the grounds that it would interfere with family life. One Indian group felt that a spousal consent requirement should be imposed for Indians in view of the importance of family in Indian life.

7. A few comments addressed the problem of how the consent form should be signed by the illiterate or physically handicapped. They recommended stipulating that the consent form be signed or marked in a manner acceptable at law for one unable to sign.

8. Several comments expressed concern over requiring the consent form to comply with State and local law on the ground that it invites those governments to impose additional restrictive and perhaps questionable requirements.

Department's Response

The Department has made several changes in the consent form in response to the public comment. As noted in the preceding section, additional requirements relating to the period of effectiveness of the consent form and provision of a copy of the consent form to the individual to be sterilized were added to §§ 50.203 and 50.204. The consent form itself has likewise been modified to reflect these added requirements. The consent form of the final rules also reflects the provision for waiver of the 30 day requirement and the additional certification required in such circumstances by § 50.205(c)(2). Permitting release of the form for research purposes has also been dropped. This consent provision would have indisputably increased access to the forms, and concomitantly increased the potential for unintended release of very private information. Moreover, it is felt that most research needs will be adequately met by use of general patient data without information identifying individuals. Finally, the Department has amended the requirement for an interpreter if the consent form is not in the patient's "primary language". Under these rules, the interpreter requirement applies only if the form is not in a language that the patient "understands." It is felt that this change should obviate the difficulties with the provision of the proposed rules forecast by the public comment, yet insure that the basic purpose of the requirement (i.e., that the patient understands the form and hence has the information needed to give an informed consent) is met.

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The remainder of the suggestions made by the public comment were not accepted, for the following reasons:

1. The approach of requiring use of the consent form in the appendix unless an alternate one is approved by the Department has been retained. Experience under the present rules has shown the difficulty of securing compliance where the choice of form is left to the providers without requiring prior departmental approval. The Department recognizes, however, that many providers may wish to use forms that contain additional information than that set out in the consent form of the appendix. While the Department encourages the use of the consent form set out in the appendix, it is concerned primarily that the consent form evidence that the required information was presented and contain the required certifications. Accordingly, the Department will permit providers to use such forms, if they are approved by the Department prior to use.

2. The Department has not mandated the inclusion of specific facts relating to the procedure in the consent form itself as suggested by the public comment. Its reasons for not doing so are set out at paragraph 3 of the "Department's response" section of section III F of the preamble above. As noted in the preceding paragraph, however, providers may use a consent form different than that set out in the appendix if it is approved, and consequently may include such information on an approved form as in their judgment appears advisable.

3. While the Department has revised the certification requirements as explained above, it has not accepted all the suggestions made concerning the certifications. Most of the comments on this issue in some way concerned the role of physicians in initially obtaining consent. The Department agrees with many of the comments that trained nonphysician personnel can play an extremely valuable role in explaining the elements of informed consent to individuals considering sterilization, and in many cases serve the purpose of these rules as well or better than would a physician. Nevertheless, it believes that the critical part of the process is what information is communicated, not who communicates it. These rules enumerate what information must be presented, and the Department is not prepared to assume that physicians will not comply with them in good faith. To require otherwise might also unduly intrude into the physician-patient relationship. Moreover, requiring use of trained nonphysician personnel may be impractical for providers with small staffs, such as those in rural areas. These considerations are sufficient in the Department's view to dictate retention of the requirement as proposed. Thus, under these rules, the person obtaining the consent may, but is not required to, be the physician performing the procedure. Since the person obtaining the consent may be the physician performing the procedure, it is considered inappropriate to adopt the suggestion that the physician performing the procedure certify that he neither recommended the procedure nor solicited the consent.

4. These rules retain the proposed requirement relating to spousal consent. It should be noted, however, that the provision of these rules is simply that a State requirement of spousal consent need not be followed under these rules in order to obtain a sterilization under the Federal programs; they do not supersede State law requirements as to what constitutes a legally effective consent. The Department has not adopted the suggestion that spousal consent be required for Indians, in part because such a requirement may be consitutionally questionable and in part because such a requirement would be administratively impracticable.

5. With respect to the query as to whether residents or interns can sign the physician certification, if a resident or intern is the physician performing the procedure, he or she is the person who should sign the physician's certification.

6. The Department has not changed the other requirement relating to following State and local laws. To date, States do not appear to have adopted more restrictive policies under the current rules, which contain an identical requirement. If the danger foreseen by the public comment in this regard materializes, the Department will reconsider its position.

7. The Department has not revised the requirement relating to signature by the patient to provide for signature by mark or other means. In general, the term "signature" includes signature by mark or by other means evidencing assent. See, e.g., *Joseph Denunzio Fruit Co.* v. *Crane*, 79 F. Supp. 117, 128 (S.D. Cal. 1948); *Bustillos* v. *State*, 213 S.W. 2d 837, 841, 152 Tex. Cr. R. 324 (Tex. Cr. App., 1948). In any event, if further formalities are required under State or local law where a person is unable to sign his or her name, § 50.204(f) requires that they be followed. Thus, the requirement as presently stated meets the concerns raised by the public comment, and the requirement accordingly has not been revised.

H. HYSTERECTOMIES

Text of Proposed Rule

1. *42 CFR 50.207 (Cf., 45 CFR 205.35-7):*

(a) Programs or projects to which this subpart applies shall not perform or arrange for the performance of any hysterectomy for the purpose of rendering an individual permanently incapable of reproducing, unless [exception with appropriate safeguards, to be added if comments describe circumstances in which sterilization by hysterectomy is generally accepted as the appropriate method].

(b) Programs or projects to which this subpart applies may perform or arrange for the performance of a hysterectomy the purpose of which is other than to render the patient permanently incapable of reproducing, provided that:

(1) The individual who secures the usual authorization from the patient or her representative, if any, to perform the hysterectomy has informed the patient and her representative, if any, orally and in writing, that the hysterectomy will render the patient permanently incapable of reproducing; and

(2) The patient or her representative, if any, has signed a written acknowledgment of receipt of the foregoing information.

2. *Related requirements:* a. *42 CFR 50.208(a) (Cf., 45 CFR 205.35-8(a)):*

A program or project must, with respect to any sterilization procedure or hysterectomy it performs or arranges, (1) meet all requirements of this subpart; and (2) provide legal counsel for the patient at all review committee and court proceedings described in this subpart.

b. *42 CFR 50.209(b) (Cf., 45 CFR 205.39-9(b)):*

A program or project shall not use Federal financial assistance for any sterilization or hysterectomy without first receiving documentation showing that the requirements of this subpart have been met. Documentation includes consent forms, review committee certifications, court orders, and acknowledgments of receipt of hysterectomy information.

Text of final rule: 1. *42 CFR 50.207 (Cf., 42 CFR 441.255)*

(a) Programs or projects to which this subpart applies shall not perform or arrange for the performance of any hysterectomy solely for the purpose of rendering an individual permanently incapable of reproducing or where, if there is more than one purpose to the procedure, the hysterectomy would not be performed but for the purpose of rendering the individual permanently incapable of reproducing.

(b) Programs or projects to which this subpart applies may perform or arrange for any hysterectomy not covered by paragraph (a) of this section, only if:

(1) The person who secures the authorization to perform the hysterectomy has informed the individual and her representative, if any, orally and in writing, that the hysterectomy will render her permanently incapable of reproducing; and

(2) The individual or her representative, if any, has signed a written acknowledgment of receipt of the foregoing information.

2. *Related requirements:* a. *42 CFR 50.208(a) (Cf., 42 CFR 441.252):*

A program or project must, with respect to any sterilization procedure or hysterectomy it performs or arranges, meet all the requirements of this subpart.

b. *42 CFR 50.209(b) (Cf., 42 CFR 441.256):*

A program or project shall not use Federal financial assistance for any sterilization or hysterectomy without first receiving documentation showing that the requirements of this subpart have been met. Documentation includes consent forms, and acknowledgments of receipt of hysterectomy information.

Summary of Public Comment

In general, the public comment supported the proposed rules and opposed creating any exceptions to the proposed requirement that hysterectomies for contraceptive purposes only may not the provided under the Federal programs. The remainder of the comments were generally as follows:

1. The largest number of criticisms of the proposed rule took the position that hysterectomies for family planning purposes should be permitted under the rules when there are medical indications (such as fibroids, fallen uterus, retroverted uterus) which by themselves do not mandate a hysterectomy but taken together with a desire to end fertility do favor hysterectomy as the preferred treatment. Several of the comments, including the comment of the National Commission for the Protection of Human Subjects, advocated that the rules be changed to prohibit Federal funding of hysterectomies "solely" for contraceptive purposes, in order to clarify that any hysterectomy for which there are medical indications (whether or not those indications are sufficient to justify hysterectomy) is not covered by proposed § 50.207(a).

2. Several physicians commented that hysterectomy solely for contraceptive purposes is appropriate and should be permitted since subsequent removal of the unterus is increasingly likely due to the increasing incidence of uterine pathology. In this regard, one comment suggested that this question should be left to the professional judgment of the treating physician, while two other comments opposed the rule on the ground that it deprives the patient of a full choice in the selection of a sterilization procedure.

3. Several comments advocated provision of hysterectomies to the severely retarded and the physically handicapped where indicated by considerations of hygiene and emotional health. It was suggested that the rules be revised to permit this.

4. Several comments expressed the fear that by disallowing payment for hysterectomies done for contraceptive purposes the Department would: (1) Encourage physicians to contrive medical justifications to secure Federal payment for the procedure; and (2) remove such hysterectomies from the procedural protections of the rules. These comments suggested permitting hysterectomies solely for contraceptive purposes subject to safeguards such as the following: (1) Mandatory second opinion; (2) preoperative monitoring; and (3) compliance audits at frequent intervals.

5. A majority of the comments addressing the proposed § 50.207(b) (relating to medically indicated hysterectomies) supported it. A number of these, however, also recommended that such procedures should be made subject to the consent requirements of the rules or suggested special consent requirements.

6. Several comments suggested that instead of treating hysterectomies in the context of sterilization, the Department should develop separate rules dealing with hysterectomies. Several other comments urged expanding the hysterectomy information requirement of proposed § 50.207(b)(1) to all procedures which have the effect of sterilizing an individual.

Department's Response

Since the public comment failed to elicit any circumstances which would justify permitting exceptions to the requirement of proposed § 50.207(a), the Department has eliminated the proposed provision for waiver. Aside from that change, the rule is otherwise unchanged in substance. However, it has been changed to clarify the Department's intent to exclude payment for hysterectomies done for sterilization purposes for which there are also some medical indications which are themselves insufficient to justify performance of a hysterectomy. The Department's reasons for rejecting the suggestions made by the public comment are as follows:

1. The Department has not accepted the comments that proposed § 50.207(a) be amended by the inclusion of the word "solely" with no other change, since such a change would not be consistent with its intent. The premise of these comments was that hysterectomy could and should be used where there are medical indications for the procedure which do not independently justify it, but, taken together with a desire for sterility, make it the preferred treatment mode. However, the Department does not believe that hysterectomy is an appropriate method of sterilization, since, compared to other forms of sterilization, hysterectomy is a risky, painful, and expensive procedure. The fact that the desire for sterilization is just one of several indications for hysterectomy does not make the procedure any less a sterilization in intent when the sterilization purpose is the decisive factor in making the choice to perform the hysterectomy. Since the Department does not consider hysterectomy an appropriate method of sterilization, it does not believe it should fund its use in such situations.

2. The Department disagrees with the comments that it should fund hysterectomies for contraceptive purposes for the reasons set out above. Indeed, comments received from physicians during the comment period reinforced its impression that the medical profession does not consider such hysterectomies to represent sound medical practice. While it is true that the Department's decision in this regard deprives women of one sterilization option, the Department feels that the policy considerations stated above sufficiently justify this restriction of choice.

3. The Department has not accepted the comments advocating provision of hysterectomies to the severely retarded and the physically handicapped. The former, it should be noted, could most likely not be sterilized under these rules in any event (see § 50.206). As for the latter, if the hysterectomy is medically necessary, the procedure would come under § 50.207(b) and hence a special provision is unnecessary.

4. The Department recognizes that by disallowing expenditures for hysterectomies for contraceptive purposes it may create some incentive for providers to fabricate medical rationales for the procedures. Nevertheless, it is not prepared to assume that providers will act in such bad faith and believes, further, that the potential of PSRO review and disapproval together with the potential of malpractice liability for clearly unnecessary procedures should serve to minimize abuses of the rules. Moreover, the Department, through HCFA, has recently begun encouraging recipients under the Federal programs to obtain second opinions when hysterectomy is recommended by a physician, and believes that such action may go far to reducing the unnecessary utilization of the procedure.

The comments criticizing the rules on the ground that they remove hysterectomies for contraceptive purposes from the procedural protections of the rules raise a more troublesome issue. The point is undoubtedly a valid one. However, the basic question raised by these comments is which approach more effectively discourages such hysterectomies—insuring that the patient knows about their risks or removing the financial incentive to provide them. The Department believes that the latter approach has a greater like-

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lihood of success, and accordingly has retained it.

5. The Department has not expanded the consent requirements applicable to sterilizations to medically indicated hysterectomies as recommended by a number of comments for two reasons. First, the requirement that women receiving such hysterectomies must be told that their effect will be to render them sterile will insure that they will be given the opportunity to consider the procedure in light of that information. Second, there are by definition substantial medical indications for such hysterectomies. The Department is unwilling at this juncture to prescribe further how providers should act in the provision of such medical treatment on the ground that doing so might overregulate the physician-patient relationship.

6. The Department believes it is valid to treat hysterectomies in the context of sterilization because hysterectomies are a widely used method of sterilization. Although the Department may not approve of that practice, it does not consider it appropriate to ignore it. Accordingly, the provisions relating to hysterectomies have been retained in these rules.

7. The Department is not accepting the suggestion to expand the hysterectomy requirements to cover other procedures resulting in sterilization. First, there is no ready method of identifying such procedures. Second, to date the Department is aware of no other procedures that have been as widely overutilized as a method of sterilization as has hysterectomy. Hence, there does not appear to be similar need for such a requirement with respect to other procedures.

I. MONITORING AND ENFORCEMENT

Text of Proposed Rule

1. *42 CFR 50.208 (Cf., 45 CFR 205.35-8):*

(a) A program or project must, with respect to any sterilization procedure or hysterectomy it performs or arranges: (1) Meet all requirements of this subpart; and (2) provide legal counsel for the patient at all review committee and court proceedings described in this subpart.

(b) The program or project shall maintain sufficient records and documentation to assure compliance with these regulations, and must retain such data for at least 3 years.

(c) The program or project shall submit other reports as required and when requested by the Secretary.

Text of Final Rule

1. *42 CFR 50.208 (Cf., 42 CFR 441.252, 441.256):*

(a) A program or project must, with respect to any sterilization procedure or hysterectomy it performs or arranges, meet all requirements of this subpart.

(b) The program or project shall maintain sufficient records and documentation to assure compliance with these regulations, and must retain such data for at least 3 years.

(c) The program or project shall submit other reports as required and when requested by the Secretary.

2. *42 CFR 50.210 (Cf., 42 CFR 441.259):*

The Secretary will request public comment on the operation of the provisions of this subpart no later than 3 years after their effective date.

Summary of Public Comment

As is evident from the summaries of public comment in the preceding sections, a theme running throughout the public comment as a whole was the need for effective monitoring and enforcement of the regulations. While most of these comments stressed the need for such activity rather than proposing mechanisms for conducting it, several specific suggestions were made, as follows:

1. A number of comments suggested that the Department reevaluate the regulations after a certain time period (generally, 18-24 months) in light of experience with them.

2. Several comments suggested targeting evaluation efforts on particular groups (such as the rural poor, the young, the mentally incompetent) to determine what, if any, hardship the regulations have caused for those groups.

3. Other comments suggested specific monitoring and enforcement programs. A Member of Congress urged the Department to set up an oversight program under the Inspector General. Other comments suggested requiring monitoring by federally funded citizens review boards or similar groups.

Department Response

The Department has revised the reporting requirements of the regulation to be consistent with its deletion of the proposed review committee/court review requirements. It also agrees with the public comment on this issue generally, and intends to monitor and enforce compliance with the regulations to the best of its ability. Specifically, HCFA, PHS, and APS will continue their present monitoring efforts of their programs as a whole. Those efforts will be supplemented by a special program of monitoring conducted by the Inspector General to identify instances of chronic or particular noncompliance and take appropriate enforcement steps. Finally, the Department will review these rules after 3 years of experience with them to determine what, if any, aspects of them may be causing hardship among the population served by the Federal programs and what, if any, of the compliance requirements need to be changed. A section providing for such review has accordingly been added.

The Department notes that several provisions of these rules should make such monitoring easier than it has been in the past. The requirement that the consent form set out in the appendix or another approved form be used should virtually eliminate one troublesome area of compliance, while the documentation requirements of these rules will facilitate compliance reviews. In addition, acquisition of the racial and ethnic data requested on the consent form should serve to highlight situations where sterilization procedures are being overprescribed for one or more groups.

As the above indicates, the Department is accepting most of the specific suggestions made by the public comment. It has, however, not accepted the suggestion to set up private, federally funded review panels, since at this juncture it is not convinced that such a program is needed in view of the monitoring and enforcement efforts it plans to make.

J. BALANCE OF THE RULES BETWEEN ACCESS TO STERILIZATION AND PROTECTION AGAINST ABUSE

Summary of Public Comment

While many persons speaking at the public hearings stated either that the proposed rules struck an adequate balance between access to sterilization and protection against abuse or that the rules needed to be strengthened to provide for further protection, most of the written comment stated that the proposed rules would unduly impede access. The following reasons were given in support of this position:

1. A number of comments stated that the few abuses inherent in a massive health care system do not justify altering the current adequate informed consent procedures that characterize medical practice in the United States.

2. Other comments stated that everyone should not be penalized for the sake of the rare individual who has second thoughts after the operation and who then blames the hospital and physician for "coercion." Most of those who eventually regret their sterilization operation do so because of unpredictable changes in their life circumstances. When regretters are asked what they would do if they had it to do over again, most respond that given the circumstances at the time they got the operation, their decision would be the same.

3. Several comments suggested that the whole approach of the rules is wrong: The emphasis should be on finding abusers rather than "punishing the average person who requests sterilization but cannot pay."

4. It was also suggested that the proposed rules would increase health care costs; interfere with women's rights to reproductive self-determination; limit the medical choices of poor women (i.e. create a double standard in medicine); result in more unwanted births, child abuse, maternal deaths from septic abortions, etc.; and create unnecessary paperwork.

Department's Response

In general, the Department believes that these rules strike an appropriate balance between the goals of access to sterilization services and protection against abuse. Its reasons for this are fully set out in section I C of the preamble above. With respect to the particular comments made, the Department responds as follows:

1. As noted above, the consent procedures of the final rules build upon the consent procedures of the current rules. Thus, the Department does not believe they materially alter the current practice applicable in this area under the Federal programs.

2. While the incidence of regret may in fact be rare, it appears that it is predictably higher among certain groups, especially among the young. See section III C of the preamble above. Moreover, even if the regret rate is low, the Department is of the view that the potential for tragedy in such cases is great enough to warrant safeguards against its occurrence.

3. The Department agrees that it is important to find providers who abuse sterilization services and prevent them from continuing such abuse. However, it does not agree that it can reasonably do this by eliminating the procedural protections of the regulations, since those procedures in part define what constitutes abuse. Moreover, assuming for the moment that the Department could ascertain what constituted abuse without procedures defining compliance, the approach suggested of punishing abusers rather than restricting access would mean that the Department could only act after abuse had occurred rather than preventing it.

4. It is true that these rules do restrict one family planning choice for the persons who receive services under the Federal programs. The basis for this restriction are set out above and, in the Department's view, fully warrant it. Moreover, it should be noted that temporary forms of birth control are still available under the Federal programs, so while these rules may in some cases restrict choice, they do not preclude access to family planning services per se.

5. Although some comments suggested that these rules will increase health care costs, at present, the Department believes that the increase in cost will not differ significantly from present costs, since many of the procedures are already required under the current rules.

K. TECHNICAL AND CONFORMING CHANGES

The Department has made a number of changes in the regulations which are essentially technical in nature. The major ones are summarized below.

1. Both the PHS and Medicaid regulations are renumbered and slightly reorganized, to take account of the ongoing Departmental effort to simplify regulations. In addition, the medicaid regulations have been moved to a different title of the Code of Federal Regulations, in line with the ongoing recodification of the medicaid regulations.

2. The recodification of the medicaid regulation necessitates revision of the social services regulations, applicable to sterilizations, since they incorporate the former medicaid regulation by reference. A final rule revising the social services regulations to refer to the recodified medicaid regulation is thus being issued.

3. The Department has attempted to make its references to the person being sterilized consistent throughout the regulation. Thus, the term "patient" has been eliminated and the term "individual to be sterilized" substituted.

4. References in proposed 42 CFR §§ 50.208 and 50.209 (proposed §§ 205.35-8 and 205.35-9) to review committee certifications and proceedings, court orders and court proceedings, and legal counsel have been dropped, consistent with the deletion from these rules of the review committee/court review procedures of the proposed rules.

5. The "State Agency" requirements of proposed 45 CFR § 205.35-8 have been changed to "State plan" requirements in the HCFA rules to facilitate compliance enforcement.

6. A definition of the term "arrange for" has been added to the PHS regulations to make clear that these requirements do not apply where the project's connection with the procedure is so tenuous as to make it impracticable for it to enforce compliance with these requirements. The medicaid regulations have no such definition, since the structure of their programs does not make it appropriate.

In view of the foregoing, the Assistant Secretary of Health, with the approval of the Secretary of Health, Education, and Welfare, hereby revises subpart B of part 50, title 42 Code of Federal Regulations, as set forth below.

Dated: September 8, 1978.

CHARLES MILLER,
Acting Assistant Secretary for Health.

Approved: October 30, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary.

Subpart B of 42 CFR Part 50 is revised to read as follows:

Subpart B—Sterilization of Persons in Federally Assisted Family Planning Projects

Sec.
50.201 Applicability.
50.202 Definitions.
50.203 Sterilization of a mentally competent individual aged 21 or older.
50.204 Informed consent requirement.
50.205 Consent form requirements.
50.206 Sterilization of a mentally incompetent individual or an institutionalized individual.
50.207 Sterilization by hysterectomy.
50.208 Program or project requirements.
50.209 Use of Federal financial assistance.
50.210 Review of regulation.
Appendix: Required consent form.

AUTHORITY: Sec. 215, Public Health Service Act, as amended (42 U.S.C. 216).

Subpart B—Sterilization of Persons in Federally Assisted Family Planning Projects

§ 50.201 Applicability.

The provisions of this subpart are applicable to programs or projects for health services which are supported in whole or in part by Federal financial assistance, whether by grant or contract, administered by the Public Health Service.

§ 50.202 Definitions.

As used in this subpart:

"Arrange for" means to make arrangements (other than mere referral of an individual to, or the mere making of an appointment for him or her with, another health care provider) for the performance of a medical procedure on an individual by a health care provider other than the program or project.

"Hysterectomy" means a medical procedure or operation for the purpose of removing the uterus.

"Institutionalized individual" means an individual who is (1) involuntarily confined or detained, under a civil or criminal statute, in a correctional or rehabilitative- facility, including a mental hospital or other facility for the care and treatment of mental illness, or (2) confined, under a voluntary commitment, in a mental hospital or other facility for the care and treatment of mental illness.

"Mentally incompetent individual" means an individual who has been declared mentally incompetent by a Federal, State, or local court of competent

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jurisdiction for any purpose unless he or she has been declared competent for purposes which include the ability to consent to sterilization.

"Public Health Service" means the Health Services Administration, Health Resources Administration, National Institutes of Health, Center for Disease Control, Alcohol, Drug Abuse and Mental Health Administration and all of their constituent agencies.

The "Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of the Department of Health, Education, and Welfare to whom the authority involved has been delegated.

"Sterilization" means any medical procedure, treatment, or operation for the purpose of rendering an individual permanently incapable of reproducing.

§ 50.203 Sterilization of a mentally competent individual aged 21 or older.

Programs or projects to which this subpart applies shall perform or arrange for the performance of sterilization of an individual only if the following requirements have been met:

(a) The individual is at least 21 years old at the time consent is obtained.

(b) The individual is not a mentally incompetent individual.

(c) The individual has voluntarily given his or her informed consent in accordance with the procedures of § 50.204 of this subpart.

(d) At least 30 days but not more than 180 days have passed between the date of informed consent and the date of the sterilization, except in the case of premature delivery or emergency abdominal surgery. An individual may consent to be sterilized at the time of premature delivery or emergency abdominal surgery, if at least 72 hours have passed after he or she gave informed consent to sterilization. In the case of premature delivery, the informed consent must have been given at least 30 days before the expected date of delivery.

§ 50.204 Informed consent requirement.

Informed consent does not exist unless a consent form is completed voluntarily and in accordance with all the requirements of this section and § 50.205 of this subpart.

(a) A person who obtains informed consent for a sterilization procedure must offer to answer any questions the individual to be sterilized may have concerning the procedure, provide a copy of the consent form, and provide orally all of the following information or advice to the individual who is to be sterilized:

(1) Advice that the individual is free to withhold or withdraw consent to the procedure any time before the sterilization without affecting his or her right to future care or treatment and without loss or withdrawal of any federally funded program benefits to which the individual might be otherwise entitled:

(2) A description of available alternative methods of family planning and birth control;

(3) Advice that the sterilization procedure is considered to be irreversible;

(4) A thorough explanation of the specific sterilization procedure to be performed;

(5) A full description of the discomforts and risks that may accompany or follow the performing of the procedure, including an explanation of the type and possible effects of any anesthetic to be used;

(6) A full description of the benefits or advantages that may be expected as a result of the sterilization; and

(7) Advice that the sterilization will not be performed for at least 30 days except under the circumstances specified in § 50.203(d) of this subpart.

(b) An interpreter must be provided to assist the individual to be sterilized if he or she does not understand the language used on the consent form or the language used by the person obtaining the consent.

(c) Suitable arrangements must be made to insure that the information specified in paragraph (a) of this section is effectively communicated to any individual to be sterilized who is blind, deaf or otherwise handicapped.

(d) A witness chosen by the individual to be sterilized may be present when consent is obtained.

(e) Informed consent may not be obtained while the individual to be sterilized is:

(1) In labor or childbirth;

(2) Seeking to obtain or obtaining an abortion; or

(3) Under the influence of alcohol or other substances that affect the individual's state of awareness.

(f) Any requirement of State and local law for obtaining consent, except one of spousal consent, must be followed.

§ 50.205 Consent form requirements.

(a) *Required consent form.* The consent form appended to this subpart or another consent form approved by the Secretary must be used.

(b) *Required signatures.* The consent form must be signed and dated by:

(1) The individual to be sterilized; and

(2) The interpreter, if one is provided; and

(3) The person who obtains the consent; and

(4) The physician who will perform the sterilization procedure.

(c) *Required certifications.* (1) The person obtaining the consent must certify by signing the consent form that: (i) before the individual to be sterilized signed the consent form, he or she advised the individual to be sterilized that no Federal benefits may be withdrawn because of the decision not to be sterilized, (ii) he or she explained orally the requirements for informed consent as set forth on the consent form, and (iii) to the best of his or her knowledge and belief, the individual to be sterilized appeared mentally competent and knowingly and voluntarily consented to be sterilized.

(2) The physician performing the sterilization must certify by signing the consent form, that: (i) shortly before the performance of the sterilization, he or she advised the individual to be sterilized that no Federal benefits may be withdrawn because of the decision not to be sterilized, (ii) he or she explained orally the requirements for informed consent as set forth on the consent form, and (iii) to the best of his or her knowledge and belief, the individual to be sterilized appeared mentally competent and knowingly and voluntarily consented to be sterilized. Except in the case of premature delivery or emergency abdominal surgery, the physician must further certify that at least 30 days have passed between the date of the individual's signature on the consent form and the date upon which the sterilization was performed. If premature delivery occurs or emergency abdominal surgery is required within the 30-day period, the physician must certify that the sterilization was performed less than 30 days but not less than 72 hours after the date of the individual's signature on the consent form because of premature delivery or emergency abdominal surgery, as applicable. In the case of premature delivery, the physician must also state the expected date of delivery. In the case of emergency abdominal surgery, the physician must describe the emergency.

(3) If an interpreter is provided, the interpreter must certify that he or she translated the information and advice presented orally, read the consent form and explained its contents and to the best of the interpreter's knowledge and belief, the individual to be sterilized understood what the interpreter told him or her.

§ 50.206 Sterilization of a mentally incompetent individual or of an institutionalized individual.

Programs or projects to which this subpart applies shall not perform or arrange for the performance of a sterilization of any mentally incompetent individual or institutionalized individual.

§ 50.207 Sterilization by hysterectomy.

(a) Programs or projects to which this subpart applies shall not perform or arrange for the performance of any hysterectomy solely for the purpose of rendering an individual permanently incapable of reproducing or where, if there is more than one purpose to the procedure, the hysterectomy would not be performed but for the purpose of rendering the individual permanently incapable of reproducing.

(b) Programs or projects to which this subpart applies may perform or arrange for the performance of a hysterectomy not covered by paragraph (a) of this section only if:

(1) The person who secures the authorization to perform the hysterectomy has informed the individual and her representative, if any, orally and in writing, that the hysterectomy will render her permanently incapable of reproducing; and

(2) The individual or her representative, if any, has signed a written acknowledgment of receipt of that information.

§ 50.208 Program or project requirements.

(a) A program or project must, with respect to any sterilization procedure or hysterectomy it performs or arranges, meet all requirements of this subpart.

(b) The program or project shall maintain sufficient records and documentation to assure compliance with these regulations, and must retain such data for at least 3 years.

(c) The program or project shall submit other reports as required and when requested by the Secretary.

§ 50.209 Use of Federal financial assistance.

(a) Federal financial assistance adminstered by the Public Health Service may not be used for expenditures for sterilization procedures unless the consent form appended to this section or another form approved by the Secretary is used.

(b) A program or project shall not use Federal financial assistance for any sterilization or hysterectomy without first receiving documentation showing that the requirements of this subpart have been met. Documentation includes consent forms, and acknowledgments of receipt of hysterectomy information.

§ 50.210 Review of regulation.

The Secretary will request public comment on the operation of the provisions of this subpart not later than 3 years after their effective date.

APPENDIX: REQUIRED CONSENT FORM

NOTICE: YOUR DECISION AT ANY TIME NOT TO BE STERILIZED WILL NOT RESULT IN THE WITHDRAWAL OR WITHHOLDING OF ANY BENEFITS PROVIDED BY PROGRAMS OR PROJECTS RECEIVING FEDERAL FUNDS.

CONSENT TO STERILIZATION

I have asked for and received information about sterilization from ———— (doctor or clinic). When I first asked for the information, I was told that the decision to be sterilized is completely up to me. I was told that I could decide not to be sterilized. If I decide not to be sterilized, my decision will not affect my right to future care or treatment. I will not lose any help or benefits from programs receiving Federal funds, such as A.F.D.C. or medicaid that I am now getting or for which I may become eligible.

I UNDERSTAND THAT THE STERILIZATION MUST BE CONSIDERED PERMANENT AND NOT REVERSIBLE. I HAVE DECIDED THAT I DO NOT WANT TO BECOME PREGNANT, BEAR CHILDREN OR FATHER CHILDREN.

I was told about those temporary methods of birth control that are available and could be provided to me which will allow me to bear or father a child in the future. I have rejected these alternatives and chosen to be sterilized.

I understand that I will be sterilized by an operation known as a ————. The discomforts, risks and benefits associated with the operation have been explained to me. All my questions have been answered to my satisfaction.

I understand that the operation will not be done until at least 30 days after I sign this form. I understand that I can change my mind at any time and that my decision at any time not to be sterilized will not result in the withholding of any benefits or medical services provided by federally funded programs.

I am at least 21 years of age and was born on — (day), ———— (month), —— (year).

I, ————, hereby consent of my own free will to be sterilized by ———— by a method called ————. My consent expires 180 days from the date of my signature below.

I also consent to the release of this form and other medical records about the operation to:

Representatives of the Department of Health, Education, and Welfare or

Employees of programs or projects funded by that Department but only for determining if Federal laws were observed.

I have received a copy of this form.

Signature ————————————

Date: ————————————

(Month, day, year)

You are requested to supply the following information, but it is not required:

Race and ethnicity designation (please check)

Black (not of Hispanic origin) ————

Hispanic ————

Asian or Pacific Islander ————

American Indian or Alaskan native ————

White (not of Hispanic origin) ————

INTERPRETER'S STATEMENT

If an interpreter is provided to assist the individual to be sterilized:

I have translated the information and advice presented orally to the individual to be sterilized by the person obtaining this consent. I have also read him/her the consent form in ———— language and explained its contents to him/her. To the best of my knowledge and belief he/she understood this explanation.

Interpreter ————————————

Date ————————————

STATE OF PERSON OBTAINING CONSENT

Before ———— (name of individual), signed the consent form, I explained to him/her the nature of the sterilization operation ————, the fact that it is intended to be a final and irreversible procedure and the discomforts, risks and benefits associated with it.

I counseled the individual to be sterilized that alternative methods of birth control are available which are temporary. I explained that sterilization is different because it is permanent.

I informed the individual to be sterilized that his/her consent can be withdrawn at any time and that he/she will not lose any health services or any benefits provided by Federal funds.

To the best of my knowledge and belief the individual to be sterilized is at least 21 years old and appears mentally competent. He/She knowingly and voluntarily requested to be sterilized and appears to understand the nature and consequence of the procedure.

Signature of person obtaining consent ——

Date ————————————

Facility ————————————

Address ————————————

PHYSICIAN'S STATEMENT

Shortly before I performed a sterilization operation upon ———— (name of individual to be sterilized), on ———— (date of sterilization), ———— (operation), I explained to him/her the nature of the sterilization operation ———— (specify type of operation), the fact that it is intended to be a final and irreversible procedure and the discomforts, risks and benefits associated with it.

I counseled the individual to be sterilized that alternative methods of birth control are available which are temporary. I explained that sterilization is different because it is permanent.

I informed the individual to be sterilized that his/her consent can be withdrawn at any time and that he/she will not lose any health services or benefits provided by Federal funds.

To the best of my knowledge and belief the individual to be sterilized is at least 21 years old and appears mentally competent. He/She knowingly and voluntarily requested to be sterilized and appeared to understand the nature and consequences of the procedure.

(Instructions for use of alternative final paragraphs: Use the first paragraph below except in the case of premature delivery or emergency abdominal surgery where the sterilization is performed less than 30 days after the date of the individual's signature on the consent form. In those cases, the second paragraph below must be used. Cross out the paragraph which is not used.)

(1) At least 30 days have passed between the date of the individual's signature on this consent form and the date the sterilization was performed.

(2) This sterilization was performed less than 30 days but more than 72 hours after the date of the individual's signature on this consent form because of the following circumstances (check applicable box and fill in information requested):

☐ Premature delivery

Individual's expected date of delivery: ——

☐ Emergency abdominal surgery:
(Describe circumstances): _____
Physician _____
Date _____

Your Sterilization Operation: Information for Women

WHY THIS PAMPHLET IS IMPORTANT TO YOU

Sterilization is an operation which is intended to make it impossible for you to ever become pregnant. This pamphlet describes the different types of sterilization operations, their benefits, their discomforts, and their risks. You should read the pamphlet completely.

Both men and women can be sterilized. This pamphlet is about sterilization operations for a woman. (Ask your doctor or clinic for the pamphlet on sterilization for a man.)

If the Federal Government is to pay for your sterilization, certain conditions must be met. They are listed on page . The purpose of these conditions is to ensure that you understand sterilization and that you choose freely to have this operation.

MAKING UP YOUR MIND

Sterilization must be considered permanent. For nearly all women, once this operation has been done, it can never be undone. Some doctors try to undo a sterilization by rejoining the tubes. This is a difficult and expensive operation and it doesn't work very often. Some people call sterilization "tying the tubes." But don't think the tubes can be untied! They can't. So it's not a good idea to think your sterilization can be undone.

Make sure you do not want to bear children under any circumstances before you decide to be sterilized. Are you sure you would not want to bear children even if one of your present children died? Or your husband died? Or you got divorced and remarried? Be sure, before you decide to be sterilized.

No one can force you to be sterilized! Don't let anyone push you into it. If you do not want to be sterilized, no one can take away any of your Federal benefits such as welfare, Social Security, or health care—including sterilization at a later date. No one can force you to be sterilized as a condition for delivering your baby or performing an abortion.

To have this operation paid for with Federal funds, you must be at least 21 years old. If you are married, you should discuss the operation with your husband. However, his consent is not required if Medicaid or any other Federal Government program is going to pay for your operation. Your consent to sterilization cannot be obtained while you are in the hospital for childbirth or abortion, or if you are under the influence of alcohol or other substances that affect your state of awareness.[1]

You must sign the consent form at least 30 days before you plan to have the operation. This is so you will have at least 30 days to think it over and discuss it with your family and others. You can change your mind any time before the operation and can cancel your appointment if you do.

[1]This condition, the minimum age of 21, and the 30-day waiting period must be met if the Federal Government is to pay for your sterilization.

OTHER METHODS OF BIRTH CONTROL

There are many other ways to avoid pregnancy. Before you decide to be sterilized, think about these other methods of birth control.

TEMPORARY METHODS OF BIRTH CONTROL

The following methods of birth control are temporary. This means that when you or your partner stop using them you can become pregnant. Temporary methods of birth control are effective only if you use them according to instructions. If you think you might want to become pregnant later, you should use a temporary method of birth control instead of sterilization.

Ask your doctor or clinic for pamphlets and counseling on any of these temporary methods of birth control if you want them. If you decide you want a temporary method of birth control, ask for it today.

Birth control pill—A pill you take regularly which makes you 98 percent certain you will not get pregnant. It is usually safe, but has occasional side effects and rare serious complications. The pill has been linked in some women with minor side effects such as darkening of the skin of the face, nausea, and vaginal discharge. More serious complications which occur infrequently include depression, increased tendency for abnormal blood clotting, increased risk of heart attack and stroke (especially among women over age 35 who smoke), and a small increased risk of liver or gall bladder disease.

Loop, coil, intrauterine device (IUD)—A small piece of plastic a doctor or family planning specialist inserts into your uterus (womb) which makes you 96 percent certain you will not get pregnant. It is usually very safe, but has occasional side effects and rare serious complications. IUD use has been linked in some women with irregular periods, cramps, and increased risk of infection of the uterus.

Diaphragm with contraceptive jelly or cream—A cup of rubber or soft plastic you place in your vagina each time before intercourse. Contraceptive jelly or cream must be used with the diaphragm for it to be effective. Sometimes it fails if it is not used properly (85-90 percent effective) and you can get pregnant anyway, but it has no risk of serious complications.

Contraceptive foam, foaming tablet—A foam (which looks like shaving cream) or a tablet you place in your vagina each time before intercourse. Sometimes it fails (85 percent effective) and you can get pregnant anyway. It occasionally has minor side effects.

Condom, prophylactic—A thin sheath of rubber the man places over his penis each time before intercourse. Sometimes it fails (90 percent effective) and you can get pregnant anyway, but there is no risk of serious complications. A condom and contraceptive foam or diaphragm can be used at the same time for extra protection.

Natural methods—A type of birth control in which you do not have intercourse on the 8-15 days each month when you are likely to get pregnant. It is sometimes hard to tell when these days occur and effectiveness depends on proper instruction and motivation. The sympto-thermal method (90 percent effective) is an example of natural methods. It involves keeping a chart of your body temperature and checking your cervical mucus. Effectiveness depends upon the care with which you follow it. Some people think of natural methods as only rhythm (the calendar method), but this method is no longer recommended by experts in natural methods. There is no risk of complications with natural methods.

STERILIZATION FOR A MAN

A man can be sterilized by an operation called a vasectomy. This operation is intended to make it impossible for him to ever father children. It is simpler, quicker, and safer than the sterilization operation for a woman, so you and your partner may decide that it is better for him to have the sterilization operation. (Ask your doctor or clinic for the pamphlet on sterilization for a man.)

WHAT ABOUT ABORTION?

Abortion does not prevent pregnancy. It is an operation to stop a pregnancy which has already started. It should be done during the first 3 months of pregnancy. It can be done later, but it is more expensive, less safe, and usually requires that you stay in a hospital. Abortion works to stop a pregnancy almost 100 percent of the time. There are some discomforts and occasional complications (sometimes serious) with abortion. When this pamphlet was written, Medicaid and some other Federal Government programs would pay for abortions only in certain cases. Ask your doctor or clinic.

WHEN CAN A WOMAN HAVE A STERILIZATION OPERATION?

A sterilization operation can be done at different times. A talk with your doctor or clinic can help you to decide what might be most suitable for you.

A woman can have a sterilization operation at any time in her life. This means a woman can have a sterilization operation at any time she wants. It doesn't matter if she is not married or doesn't have children. It is up to her.

A woman can have a sterilization operation right after having a baby. This means that a woman may want to be sterilized while she is in the hospital for the delivery. A woman should think about this early in her pregnancy because in order for the sterilization to be paid for with Federal funds she must sign the consent form at least 30 days before the baby is due. If the woman delivers prematurely or has emergency abdominal surgery at least 72 hours after she has signed the consent form, she does not need to wait 30 days, and the sterilization may be performed at the same time as the other surgery. She should be sure that she would not want to have children again even if the baby did not live very long after birth.

A woman can have a sterilization operation at the same time she has a baby by cesarean section. Sometimes a baby has to be delivered by an operation through the abdomen. This is called a cesarean section. A sterilization operation can be done at the same time through the same incision, but the woman must make up her mind at least 30 days before the baby is due.

A woman can have a sterilization operation right after she has an abortion if she has signed the consent form at least 30 days previously. Remember that an abortion which is delayed may be more difficult and carry more risk. If a woman is not sure about the sterilization, she can still have an abortion, and then decide to be sterilized or not at a later time.

FACTS ABOUT THE OPERATION

The surgical method of birth control is called a tubal sterilization or tubal ligation.

In this operation the doctor blocks or separates each of your two tubes so that your eggs cannot travel through them from your ovaries to your uterus. Blocking the tubes makes pregnancy impossible. (See figures at left.) Menstruation (monthly bleeding period) continues as before. Tubal sterilization will not change your hormones (will not cause change of life).

IS THE OPERATION GUARANTEED TO WORK?

Tubal sterilization works almost all the time. This means that only from 2 to 5 out of every 1,000 women who have the operation will still get pregnant. This is usually because the two ends of the tubes have grown back together. It is more than 99 percent effective—higher than all other methods of birth control for women. You should use some temporary method of birth control until you have your operation. Your doctor will try to be certain you are not already pregnant at the time of the operation.

FOUR TYPES OF TUBAL STERILIZATION

1. Laparotomy, mini-laparotomy;
2. Laparoscopy;
3. Postpartum tubal ligation; and
4. Vaginal tubal ligation.

The operation you have depends on your health and your doctor. Talk to him or her about which operation you will have.

LAPAROTOMY, MINI-LAPAROTOMY

In both of these operations, the doctor makes an incision (cut) in the lower portion of your abdomen. The difference between the two is the length of the incision and the extensiveness of the surgery. In a mini-laparotomy the incision is very short (1 or 2 inches) and leaves only a small scar. In a laparotomy it is much longer (3 to 5 inches) and leaves a longer scar. Ask your doctor which method he or she uses.

Through the incision on the abdomen, the doctor can reach both tubes, one at a time. The doctor can either remove a section and then use surgical thread to tie the tubes shut or seal them with electric current, bands, or clips. After the tubes are sealed, the incision on your abdomen is stitched closed.

The operation, including the anesthesia, takes about 30 minutes. With a mini-laparotomy, you will probably stay in the hospital less than 24 hours, and be back to normal in 2 or 3 days. With a laparotomy, you will be in the hospital 4 days or more, and it may be 2 weeks before you feel back to normal.

LAPAROSCOPY

Using a special needle, the doctor inflates your abdomen with a harmless gas which pushes your intestines away from your uterus and tubes. (See figure at left.)

The doctor then makes a small incision about one-half inch long near your navel. A "laparoscope," or special telescope, is inserted through this incision. It is a thin metal tube with a light on it which allows the doctor to see your tubes, and through which the doctor can insert the operating instrument. Your tubes are sealed by the use of electric current, bands, or clips. Some doctors make a second small incision at the pubic hairline to insert the operating instrument.

After the gas in your abdomen is released, the incision is closed.

The operation, including the anesthesia, takes about 30 minutes. You will probably stay in the hospital less than 24 hours and be back to normal in 2 or 3 days. Because of the gas, you may feel a pain in your neck or shoulders and you may seem bloated after the surgery. This goes away after a day or two.

POSTPARTUM TUBAL LIGATION

This operation is done in the hospital shortly after a woman has a baby. The doctor makes a small incision below your navel. The doctor then closes off a section of each tube using surgical threads. After the tubes are tied, a small section between the ties is removed. The incision below your navel is stitched closed.

The operation, including the anesthesia, usually takes about 30 minutes. Having the operation may make your hospital stay a day or two longer. How fast you get better will depend on how you feel after having the baby.

VAGINAL TUBAL LIGATION

In this operation, the doctor makes a small incision far back in the vagina. Through this, the doctor finds your tubes, then closes them off either with electric current, bands, or clips, or by removing a small section and closing the ends with surgical threads. After the tubes are sealed, the incision in your vagina is stitched closed.

Sometimes the doctor will use a metal tube with a light (called a culdoscope) to see your tubes and seal them.

The operation, including the anesthesia, usually takes about 30 minutes. Your stay in the hospital will probably be less than 24 hours. You should be back to normal in 2 or 3 days. After this type of operation, you should not have intercourse for 3 to 4 weeks so the vagina can heal.

THE ANESTHETIC

With any method of sterilization, you will first be given an anesthetic which is a drug to keep you from feeling pain during the operation. A medical person who specializes in anesthesia may do this part of the operation.

Sometimes the operation is done under "general" anesthesia. That means you will be asleep during the operation. The drugs used are a gas which you inhale and/or a liquid given to you by injection.

Sometimes the operation is done under "local" anesthesia or "spinal" anesthesia. That means you are awake, but do not feel any pain.

A local anesthetic is given by injection into the skin. It makes your skin numb.

A spinal anesthetic is given by injection low in the spine. This type of injection makes you feel numb from the waist down.

With local or spinal anesthesia, you may also be given pills or another injection to help you relax.

You should have a chance to discuss and participate in the decision regarding your type of anesthesia with someone before your operation.

BENEFITS OF TUBAL STERILIZATION

The benefits of tubal sterilization are:

You never have to use a temporary method of birth control again (such as the pill or the IUD).

You don't have to worry about getting pregnant.

DISCOMFORTS AND RISKS

No matter which type of operation you have, you can expect to feel pain and soreness in your abdomen for a few days. You can take medicine to help relieve the discomfort.

If you had general anesthesia, you may have a sore throat for a day or two from the tube used to keep your airway open while you were asleep. This goes away quickly and is not serious. Spinal anesthesia may give some persons a temporary headache.

Sterilization operations have some risks, including a very small risk of death. This is true of any type of operation. serious problems happen rarely. Most of the time serious problems can be treated and cured by the doctor without further surgery; however, an operation may be necessary to correct some of these problems.

Some of the medical problems you could have during or after a sterilization operation:

1. You may bleed from the incision on your skin or in your vagina.
2. You may bleed inside your abdomen. (Another operation may be necessary to stop the bleeding.)
3. You may get an infection on or near the stitches or inside your abdomen.
4. The operation may not make you sterile. The operation cannot be guaranteed 100 percent to make you sterile. From 2 to 5 out of 1,000 women get pregnant after the operation.
5. As in other operations, the anesthetic drugs used to put you to sleep or to make the operation painless may cause problems. You may vomit while under anesthesia, and pneumonia may result.

Go back to your doctor at once if you get fever and/or severe pain in your abdomen. Either of these could be signs that you have an infection.

WHAT ABOUT HYSTERECTOMY?

Hysterectomy is different from tubal sterilization. Instead of blocking off the tubes, the whole uterus is taken out. A hysterectomy should be done only when there is a disease of the woman's uterus or some other problem that can only be treated by removing the uterus.

A hysterectomy is a much more serious operation than a tubal sterilization. A hysterectomy takes much longer to do, and the woman is in the hospital longer than with a tubal sterilization. There are more discomforts, and there is a greater chance of serious health problems. For these reasons, neither medicaid nor any other Federal program will pay for a hysterectomy if the only reason you are having it is to avoid bearing children, and you have no disease of your uterus.

SUMMARY

If you are sure you do not want to bear children and you want to become permanently sterile, then tubal sterilization is a safe, effective operation. It requires a relatively brief stay in the hospital, and problems are rare.

IF YOU HAVE QUESTIONS

If there is anything that is not clear to you, or anything you are worried about, it is important that you bring up these ques-

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tions. All of your questions should be answered to your satisfaction before the operation.

REMEMBER

You may change your mind at any time before the operation. Make sure you do not wish to bear children under any circumstances before you decide to be sterilized.

RULES FOR STERILIZATION OPERATIONS FUNDED BY THE FEDERAL GOVERNMENT

You must be at least 21 years old.

You must wait at least 30 days to have the operation after you sign the consent form except in instances of premature delivery or emergency abdominal surgery that take place at least 72 hours after consent is obtained.

Your consent to sterilization cannot be obtained while you are in the hospital for childbirth or abortion, or under the influence of alcohol or other substances that affect your state of awareness.

You may, if you choose, bring someone with you when you sign the consent form.

Your consent is effective for 180 days from the date you sign the consent form.

Be sure to take this pamphlet and your signed consent form with you.

YOUR STERILIZATION OPERATION: INFORMATION FOR MEN

WHY THIS PAMPHLET IS IMPORTANT TO YOU

Sterilization is an operation which is intended to make it impossible for you to ever father children. This pamphlet describes the sterilization operation for a man—called vasectomy—its benefits, its discomforts, and its risks. You should read the pamphlet completely.

Both men and women can be sterilized. (Ask your doctor or clinic for the pamphlet on sterilization for a woman.) The man's operation is easier, safer, and less expensive than the woman's operation.

If the Federal Government is to pay for your sterilization, certain conditions must be met. They are listed on page ——. The purpose of these conditions is to ensure that you understand sterilization and that you choose freely to have this operation.

MAKING UP YOUR MIND

Sterilization must be considered permanent. For nearly all men, once this operation has been done, it can never be undone. Some doctors try to undo a vasectomy by rejoining the tubes. This is a difficult and expensive operation and it doesn't work very often. So it's not a good idea to think your vasectomy can be undone.

Some men have heard about storing their sperm in sperm banks to use later. There is not enough known right now about keeping sperm to show that it works.

Make sure you do not want to father children under any circumstances before you decide to be sterilized. Are you sure you would not want to father children even if one of your present children died? Or your wife died? Or you got divorced and remarried? Be sure, before you decide to be sterilized.

No one can force you to be sterilized! Don't let anyone push you into it. If you do not want to be sterilized, no one can take away any of your Federal benefits such as welfare, Social Security, or health care—including sterilization at a later date.

To have this operation paid for with Federal funds, you must be at least 21 years old. If you are married, you should discuss the operation with your wife. However, her consent is not required if Medicaid or any other Federal program is going to pay for your operation.

You must sign the consent form at least 30 days before you have the operation.[1] This is so you will have at least 30 days to think it over and discuss it with your family and others. You can change your mind any time before the operation and can cancel your appointment if you do.

OTHER METHODS OF BIRTH CONTROL

There are other ways to avoid fathering children. Before you decide to be sterilized, think about these other methods of birth control.

TEMPORARY METHODS OF BIRTH CONTROL

The following methods of birth control are temporary. This means that when you or your partner stop using them you can father children. Temporary methods of birth control are effective only if you use them according to instructions. If you think you might want to father children later, you should use a temporary method of birth control instead of sterilization.

Ask your doctor or clinic for pamphlets and counseling on any of these temporary methods of birth control if you want them. If you decide you want a temporary method of birth control, ask for it today.

Condom, prophylactic—A thin sheath of rubber the man places over his penis each time before intercourse. Sometimes it fails (90 percent effective) and the woman can get pregnant anyway, but there is no risk of serious complications. A condom and contraceptive foam or diaphragm can be used at the same time for extra protection.

Birth control pill—A pill the woman takes regularly which makes her 98 percent certain she will not get pregnant. It is usually safe, but has occasional side effects and rare serious complications. The pill has been linked in some women with minor side effects such as darkening of the skin of the face, nausea, and vaginal discharge. More serious complications which occur infrequently include depression, increased tendency for abnormal blood clotting, increased risk of heart attack and stroke (especially among women over age 35 who smoke), and a small increased risk of liver of gall bladder disease.

Loop, coil, intrauterine devise (IUD)—A small piece of plastic a doctor or family planning specialist inserts into the woman's uterus (womb) which makes her 96 percent certain she will not get pregnant. It is usually very safe, but has occasional side effects and rare serious complications. IUD use has been linked in some women with irregular periods, cramps, and increased risk of infection of the uterus.

Diaphragm with contraceptive jelly or cream—A cup of rubber or soft plastic the woman places in her vagina each time before intercourse. Contraceptive jelly or cream must be used with the diaphragm for it to be effective. Sometimes it fails if it is not used properly (85-90 percent effective) and she can get pregnant anyway, but it has no risk of serious complications.

Contraceptive foam, foaming tablet—A foam (which looks like shaving cream) or a tablet the woman places in her vagina each time before intercourse. Sometimes it fails (85 percent effective) and she can get pregnant anyway. It occasionally has minor side effects.

Natural methods—A type of birth control in which the woman does not have intercourse on the 8-15 days each month when she is likely to get pregnant. It is sometimes hard to tell when these days occur, and effectiveness depends on proper instruction and motivation. Effectiveness can be as high as 90 percent for the sympto-thermal method if used properly. There is no risk of complications with natural methods.

STERILIZATION FOR A WOMAN

A woman can be sterilized by an operation called a tubal ligation. This operation is intended to make it impossible for her to ever bear children. Tubal ligation is more complex and not as safe as the sterilization operation for a man. (Ask your doctor or clinic for the pamphlet on sterilization for a woman.)

WHEN CAN A MAN HAVE A STERILIZATION OPERATION?

A man can have a sterilization operation at any time in his life. This means a man can have a sterilization operation at any time he wants. It doesn't matter if he is not married or doesn't have children. It is up to him.

FACTS ABOUT THE OPERATION

The surgical method of birth control is called a vasectomy. It is done in a doctor's office or clinic. Under local anesthesia, the doctor closes off the sperm duct (tubes) so that sperm cannot get through these ducts into the semen (the fluid ejected at climax). (See diagram at left.) When there are no sperm in the semen, you cannot cause a pregnancy. Only the sperm are blocked, not the liquid part of the semen. You will still ejaculate (eject fluid) as before. Vasectomy will not change your hormones. (NOTE: Vasectomy is not castration. The testicles are not removed.)

HOW A VASECTOMY IS DONE

First, a local anesthetic is given by injection into your skin on each side of the scrotum (sac) to make it temporarily numb. You will feel mild pain, like a pin prick, for a few seconds.

Once the area is numb, the doctor makes one or two very small (one-half inch) incisions (cuts). Through these, the doctor reaches the sperm ducts, cuts them, and closes them off. The incisions on the skin are then closed with stitches. The scars can hardly be seen after a couple of weeks.

The operation, including anesthesia, usually takes about 15-20 minutes. You can usually go home shortly after the operation.

IS THE OPERATION GUARANTEED TO WORK?

Vasectomy works almost all the time. This means that only about 1 out of 1,000 men who have the operation will still be able to get a woman pregnant. This is usually because the two ends of the ducts have grown back together. It is more than 99 percent effective—higher than all other methods of birth control for men. You should use some temporary method of birth control until you have your operation.

[1] This condition must be met if the Federal Government is to pay for your sterilization.

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You are not immediately sterile after your vasectomy. There will still be some sperm in your ducts until you have ejaculated 10 or more times after your operation. During this time, you can still cause a pregnancy. So it is important that you and your partner use another good method of birth control until tests of your semen show it contains no more sperm. Your doctor will tell you when to return for a simple test of your semen under a microscope.

BENEFITS OF VASECTOMY

The benefits of vasectomy are:

You never have to use a temporary method of birth control again (such a rubber).

You never have to worry about making a woman pregnant.

DISCOMFORTS AND RISKS

Vasectomy is considered a safe and simple operation, but there is a small chance you will have some medical problems afterwards. You can expect some soreness after the operation. This is not serious and will go away after a few days.

Serious medical problems happen rarely. Most of the time they can be treated and cured by the doctor without further surgery; however, an operation may be necessary to correct some of them. Some of the medical problems you could have after a sterilization operation:

1. You may have swelling around the incision on your skin. This happens right after the operation and is only temporary.

2. You may have bleeding under the skin which causes a bruise. This usually clears up by itself. Ice bags are often recommended to reduce the chance of this bleeding.

3. You may get an infection either on the skin or inside the scrotum. It is important to follow the doctor's recommendations about the care and cleansing of the incision while it is healing.

4. The operation may not make your sterile. The operation cannot be guaranteed 100 percent to make you sterile. About 1 out of 1,000 men who have the operation will still be able to get a woman pregnant.

Go back to your doctor at once if swelling lasts for more than a few days, or you have a fever, or you have severe pain.

A very few men (4 out of 1,000 who have had the operation) said they had sexual problems after the operation. These were either decreased sexual desire or inability to have an erection. There is no medical explanation for these rare symptoms, and they are believed to result from an emotional reaction to the operation.

Some doctors have reported long term medical problems, but so far research has not proven that such problems really exist.

SUMMARY

If you are sure you do not want to father children and you want to become permanently sterile, then vasectomy is a safe, effective operation. It requires only a short time in a doctor's office or clinic, and problems are rare.

IF YOU HAVE QUESTIONS

If there is anything that is not clear to you, or anything you are worried about, it is important that you bring up these questions. All of your questions should be answered to your satisfaction before the operation.

REMEMBER

You may change your mind any time before the operation. Make sure you do not wish to father children under any circumstances before you decide to be sterilized.

RULES FOR STERILIZATION OPERATIONS FUNDED BY THE FEDERAL GOVERNMENT

You must be at least 21 years old.

You must wait at least 30 days to have the operation after you sign the consent form.

You may, if you choose, bring someone with you when you sign the consent form.

Your consent is effective for 180 days from the date you sign the consent form.

BE SURE TO TAKE THIS PAMPHLET AND YOUR SIGNED CONSENT FORM WITH YOU.

[FR Doc. 78-31576 Filed 11-7-78; 8:45 am]

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CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER C—MEDICAL ASSISTANCE PROGRAMS

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

Federal Financial Participation in State Claims for Sterilizations

AGENCY: Health Care Financing Administration (HCFA), HEW.

ACTION: Final rules.

SUMMARY: These rules amend the existing requirements for sterilizations that are paid for under the Medicaid program (Title XIX of the Social Security Act).

Our experience under current regulations, and the responses to a Notice of Proposed Rulemaking published on December 13, 1977 (42 FR 62718) confirmed the need for these amendments.

The intent is to assure that individuals considering sterilization are fully aware of the consequences and the available alternatives to sterilization, and have ample time to consider the matter; and that Medicaid agencies have documentation showing that all the requirements were met for sterilizations funded under the Medicaid program.

EFFECTIVE DATE: These rules are effetive on February 6, 1979.

FOR FURTHER INFORMATION CONTACT:

Emily J. Nichols, Room 2607, Switzer Building, 330 C Street, SW., Washington, D.C. 20201, 202-245-9263.

SUPPLEMENTARY INFORMATION: The Department is adopting uniform requirements with respect to sterilizations for Medicaid, for the six social services programs administered by the Administration for Public Services of the Office of Human Development Services, and for programs administered by the Public Health Service. These regulations are all being published in this issue of the FEDERAL REGISTER. A single preamble, fully explaining the new regulations and responding to the comments on the previous proposed rules, was prepared jointly by the responsible organizational units. It is published with the amendments to the Public Health Service regulation (42 CFR Part 50) published elsewhere in this issue.

42 CFR Chapter IV is amended by adding a new Part 441, Subpart F, to read as follows:

Subparts A Through E [Reserved]

Subpart F—Sterilizations

Sec.
441.250 Applicability.
441.251 Definitions.
441.252 State plan requirements.
441.253 Sterilization of a mentally competent individual aged 21 or older.
441.254 Mentally incompetent or institutionalized individuals.
441.255 Sterilization by hysterectomy.
441.256 Additional condition for Federal financial participation (FFP).
441.257 Informed consent.
441.258 Consent form requirements.
441.259 Review of regulations.
Appendix: Required consent form.

AUTHORITY: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

Subpart F—Sterilizations

§ 441.250 Applicability.

This subpart applies to sterilizations and hysterectomies reimbursed under Medicaid.

§ 441.251 Definitions.

As used in this subpart:

"Hysterectomy" means a medical procedure or operation for the purpose of removing the uterus.

"Institutionalized individual" means an individual who is (a) involuntarily confined or detained, under a civil or criminal statute, in a correctional or rehabilitative facility, including a mental hospital or other facility for the care and treatment of mental illness; or (b) confined, under a voluntary commitment, in a mental hospital or other facility for the care and treatment of mental illness.

"Mentally incompetent individual" means an individual who has been declared mentally incompetent by a Federal, State, or local court of competent jurisdiction for any purpose, unless the individual has been declared com-

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petent for purposes which include the ability to consent to sterilization.

"Sterilization" means any medical procedure, treatment, or operation for the purpose of rendering an individual permanently incapable of reproducing.

§ 441.252 State plan requirements.

A State plan must provide that the Medicaid agency will make payment under the plan for sterilization procedures and hysterectomies only if all the requirements of this subpart were met.

§ 441.253 Sterilization of a mentally competent individual aged 21 or older.

FFP is available in expenditures for the sterilization of an individual only if—

(a) The individual is at least 21 years old at the time consent is obtained;

(b) The individual is not a mentally incompetent individual;

(c) The individual has voluntarily given informed consent in accordance with all the requirements precribed in §§ 441.257 through 441.258; and

(d) At least 30 days, but not more than 180 days, have passed between the date of informed consent and the date of the sterilization, except in the case of premature delivery or emergency abdominal surgery. An individual may consent to be sterilized at the time of a premature delivery or emergency abdominal surgery, if at least 72 hours have passed since he or she gave informed consent for the sterilization. In the case of premature delivery, the informed consent must have been given at least 30 days before the expected date of delivery.

§ 441.254 Mentally incompetent or institutionalized individuals.

FFP is not available for the sterilization of a mentally incompetent or institutionalized individual.

§ 441.255 Sterilization by hysterectomy.

(a) FFP is not available in expenditures for a hysterectomy if—

(1) It was performed solely for the purpose of rendering an individual permanently incapable of reproducing; or

(2) If there was more than one purpose to the procedure, it would not have been performed but for the purpose of rendering the individual permanently incapable of reproducing.

(b) FFP is available in expenditures for a hysterectomy not covered by paragraph (a) of this section only if—

(1) The person who secured authorization to perform the hysterectomy has informed the individual and her representative, if any, orally and in writing, that the hysterectomy will render the individual permanently incapable of reproducing; and

(2) The individual or her representative, if any, has signed either a written acknowledgement of receipt of that information.

§ 441.256 Additional condition for Federal financial participation (FFP).

FFP is not available in expenditures for any sterilization or hysterectomy unless the Medicaid agency, before making payment, obtained documentation showing that the requirements of this subpart were met. This documentation must include a consent form or an acknowledgement of receipt of hysterectomy information.

§ 441.257 Informed consent.

(a) *Informing the individual.* For purposes of this subpart, an individual has given informed consent only if—

(1) The person who obtained consent for the sterilization procedure offered to answer any questions the individual to be sterilized may have concerning the procedure, provided a copy of the consent form and provided orally all of the following information or advice to the individual to be sterilized:

(i) Advice that the individual is free to withhold or withdraw consent to the procedure at any time before the sterilization without affecting the right to future care or treatment and without loss or withdrawal of any federally funded program benefits to which the individual might be otherwise entitled.

(ii) A description of available alternative methods of family planning and birth control.

(iii) Advice that the sterilization procedure is considered to be irreversible.

(iv) A thorough explanation of the specific sterilization procedure to be performed.

(v) A full description of the discomforts and risks that may accompany or follow the performing of the procedure, including an explanation of the type and possible effects of any anesthetic to be used.

(vi) A full description of the benefits or advantages that may be expected as a result of the sterilization.

(vii) Advice that the sterilization will not be performed for at least 30 days, except under the circumstances specified in § 441.253(c).

(2) Suitable arrangements were made to insure that the information specified in paragraph (a)(1) of this section was effectively communicated to any individual who is blind, deaf, or otherwise handicapped;

(3) An interpreter was provided if the individual to be sterilized did not understand the language used on the consent form or the language used by the person obtaining consent;

(4) The individual to be sterilized was permitted to have a witness of his or her choice present when consent was obtained;

(5) The consent form requirements of § 441.258 were met; and

(6) Any additional requirement of State or local law for obtaining consent, except a requirement for spousal consent, was followed.

(b) *When informed consent may not be obtained.* Informed consent may not be obtained while the individual to be sterilized is—

(1) In labor or childbirth;

(2) Seeking to obtain or obtaining an abortion; or

(3) Under the influence of alcohol or other substances that affect the individual's state of awareness

§ 441.258 Consent form requirements.

(a) *Content of consent form.* The consent form must be a copy of the form appended to this subpart or another form approved by the Secretary.

(b) *Required signatures.* The consent form must be signed and dated by—

(1) The individual to be sterilized;

(2) The interpreter, if one was provided;

(3) The person who obtained the consent; and

(4) The physician who performed the sterilization procedure.

(c) *Required certifications.* (1) The person securing the consent must certify, by signing the consent form, that (i) Before the individual to be sterilized signed the consent form, he or she advised the individual to be sterilized that no Federal benefits may be withdrawn because of the decision not to be sterilized; (ii) he or she explained orally the requirements for informed consent as set forth on the consent form; and (iii) to the best of his or her knowledge and belief, the individual to be sterilized appeared mentally competent and knowingly and voluntarily consented to be sterilized.

(2) The physician performing the sterilization must certify, by signing the consent form, that: (i) Shortly before the performance of sterilization, he or she advised the individual to be sterilized that no Federal benefits may be withdrawn because of the decision not to be sterilized; (ii) he or she explained orally the requirements for informed consent as set forth on the consent form; and (iii) to the best of his or her knowledge and belief, the individual appeared mentally competent and knowingly and voluntarily consented to be sterilized. Except in the case of premature delivery or emergency abdominal surgery, the physician must further certify that at least 30 days have passed between the date of the individual's signature on the consent form and the date upon which the sterilization was performed.

(3) In the case of premature delivery or emergency abdominal surgery performed within 30 days of consent, the physician must certify that the sterilization was performed less than 30 days, but not less than 72 hours after informed consent was obtained because of premature delivery or emergency abdominal surgery and—

(i) In the case of premature delivery, must state the expected date of delivery; or

(ii) In the case of abdominal surgery, must describe the emergency.

(4) If an interpreter is provided, the interpreter must certify that he or she translated the information and advice presented orally and read the consent form and explained its contents to the individual to be sterilized and that, to the best of the interpreter's knowledge and belief, the individual understood what the interpreter told him or her.

§ 441.259 Review of regulations.

The Secretary will request public comment on the operation of this subpart not later than 3 years after its effective date.

APPENDIX: REQUIRED CONSENT FORM

NOTICE: Your decision at any time not to be sterilized will not result in the withdrawal or withholding of any benefits provided by programs or projects receiving Federal funds.

CONSENT TO STERILIZATION

I have asked for and received information about sterilization from (doctor or clinic). When I first asked for the information, I was told that the decision to be sterilized is completely up to me. I was told that I could decide not to be sterilized. If I decide not to be sterilized, my decision will not affect my right to future care or treatment. I will not lose any help or benefits from programs receiving Federal funds, such as A.F.D.C. or Medicaid that I am now getting or for which I may become eligible.

I understand that the sterilization must be considered permanent and not reversible. I have decided that I do not want to become pregnant, bear children or father children.

I was told about those temporary methods of birth control that are available and could be provided to me which will allow me to bear or father a child in the future. I have rejected these alternatives and chosen to be sterilized.

I understand that I will be sterilized by an operation known as a ————. The discomforts, risks and benefits associated with the operation have been explained to me. All my questions have been answered to my satisfaction.

I understand that the operation will not be done until at least 30 days after I sign this form. I understand that I can change my mind at any time and that my decision at any time not to be sterilized will not result in the withholding of any benefits or medical services provided by Federally funded programs.

I am at least 21 years of age and was born on (Day) (Month) (Year).

I, ————, hereby consent of my own free will to be sterilized by ———— by a method called ————. My consent expires 180 days from the date of my signature below.

I also consent to the release of this form and other medical records about the operation to:

Representatives of the Department of Health, Education, and Welfare or

Employees of programs or projects funded by that Department but only for determining if Federal laws were observed.

I have received a copy of this form. (Signature) (Date) (Month) (Day) (Year).

You are requested to supply the following information, but it is not required: (Race and ethnicity designation (please check)) Black (not of Hispanic origin); Hispanic; Asian or Pacific Islander; American Indian or Alaskan native; or White (not of Hispanic origin).

INTERPRETER'S STATEMENT

If an interpreter is provided to assist the individual to be sterilized:

I have translated the information and advice presented orally to the individual to be sterilized by the person obtaining this consent. I have also read him/her the consent form in ———— ———— language and explained its contents to him/her. To the best of my knowledge and belief he/she understood this explanation. (Interpreter) (Date).

STATEMENT OF PERSON OBTAINING CONSENT

Before (name of individual) signed the consent form, I explained to him/her the nature of the sterilization operation ————, the fact that it is intended to be a final and irreversible procedure and the discomforts, risks and benefits associated with it.

I counseled the individual to be sterilized that alternative methods of birth control are available which are temporary. I explained that sterilization is different because it is permanent.

I informed the individual to be sterilized that his/her consent can be withdrawn at any time and that he/she will not lose any health services or any benefits provided by Federal funds.

To the best of my knowledge and belief the individual to be sterilized is at least 21 years old and appears mentally competent. He/She knowingly and voluntarily requested to be sterilized and appears to understand the nature and consequence of the procedure. (Signature of person obtaining consent) (Date) (Facility) (Address).

PHYSICIAN'S STATEMENT

Shortly before I performed a sterilization operation upon (Name of individual to be sterilized) on (Date of sterilization) (operation), I explained to him/her the nature of the sterilization operation (specify type of operation), the fact that it is intended to be a final and irreversible procedure and the discomforts, risks and benefits associated with it.

I counseled the individual to be sterilized that alternative methods of birth control are available which are temporary. I explained that sterilization is different because it is permanent.

I informed the individual to be sterilized that his/her consent can be withdrawn at any time and that he/she will not lose any health services or benefits provided by Federal funds.

To the best of my knowledge and belief the individual to be sterilized is at least 21 years old and appears mentally competent. He/She knowingly and voluntarily requested to be sterilized and appeared to understand the nature and consequences of the procedure.

(Instructions for use of alternative final paragraphs: Use the first paragraph below except in the case of premature delivery or emergency abdominal surgery where the sterilization is performed less than 30 days after the date of the individual's signature on the consent form. In those cases, the second paragraph below must be used. Cross out the paragraph which is not used.)

(1) At least 30 days have passed between the date of the individual's signature on this consent form and the date the sterilization was performed.

(2) This sterilization was performed less than 30 days but more than 72 hours after the date of the individual's signature on this consent form because of the following circumstances (check applicable box and fill in information requested): ● Premature delivery.

Individual's expected date of delivery:————

□ Emergency abdominal surgery: (describe circumstances):————(Physician) (Date).

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program.)

Dated: September 11, 1978.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

Approved: October 30, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary.

[FR Doc. 78-31577 Filed 11-7-78; 8:45 am]

[4110-92-M]

Title 45—Public Welfare

CHAPTER II—SOCIAL AND REHABILITATION SERVICE (ASSISTANCE PROGRAMS); DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

FEDERAL FINANCIAL PARTICIPATION IN STATE CLAIMS FOR STERILIZATION AND ABORTIONS

AGENCY: Administration for Public Services (APS), Office of Human Development Services (OHDS), HEW.

ACTION: Final rules.

SUMMARY: These rules amend the requirements for sterilizations for which Federal financial assistance might be claimed under the six social services programs administered by APS. The purpose is to conform the rules for these programs to the rules being adopted for Medicaid and for programs administered by the Public Health Service.

EFFECTIVE DATE: These rules are effective on February 6, 1979.

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FOR FURTHER INFORMATION CONTACT:

Mrs. Johnnie U. Brooks, Room 2225, Switzer Building, 330 C Street, SW., Washington, D.C. 20201, 202-245-9415.

SUPPLEMENTARY INFORMATION: In three sets of regulations published today in the FEDERAL REGISTER, the Department is issuing new rules governing expenditures for sterilizations provided under various Department programs. One set of rules applies to the title XIX program (Medicaid); one set applies to programs administered by the Public Health Service; and this set applies to the social services programs administered by the Administration for Public Services. A comprehensive preamble, discussing the provisions of the new rules and responding to the comments received on the notice of proposed rulemaking, is set forth with the PHS regulations (42 CFR Part 50) published elsewhere in this issue.

The programs administered by APS are those under titles I, IV-A, X, XIV, XVI(AABD) and XX of the Social Security Act. The title XX program is implemented in the 50 States and the District of Columbia. The regulations for title XX appear in 45 CFR Part 228. The other programs are implemented in Guam, Puerto Rico and the Virgin Islands and are subject to the regulations in 45 CFR Parts 220 and 222.

These six programs, and the Medicaid program, are currently subject to the rule on sterilizations set forth in 45 CFR 205.35. However, the Medicaid regulation being published today revises that rule and recodifies it in 42 CFR Part 441, Subpart F. Rather than setting out the rule in detail for the APS programs, we are merely incorporating the new Medicaid rule by reference in the pertinent regulations for APS. The present rule in 45 CFR 205.35 is vacated.

We are also taking this opportunity to correct a technical omission with respect to the rules on abortions for which financial assistance might be claimed under the APS programs. On July 21, 1978, final rules were published governing Federal financial participation in State claims for abortions. (43 FR 31868) These rules are effective August 21, 1978 for Medicaid, for programs administered by the Public Health Service, and for title XX. Through an oversight, the rules for the other social services programs administered by APS were not amended to reflect the change in policy on abortions. Since we are again incorporating the Medicaid rule by reference, and are doing so in the same section that deals with sterilization, we have added that amendment to this rule. For a full discussion of the rule on abortion, see the preamble for the July 21, 1978 publication.

WAIVER OF PROPOSED RULEMAKING

Because these amendments merely conform the APS regulations to the amendments adopted for Medicaid and PHS, we consider them to be technical in nature and believe that their omission from the proposed rule did not preclude full public review and comment. Therefore, we believe that further notice of proposed rulemaking is unnecessary and are publishing these rules in final. In accordance with the Medicaid and PHS regulations, the amendments pertaining to sterilizations will be effective February 6, 1978. The rules pertaining to abortions are effective on August 21, the effective date of the rules published on July 21. Therefore, the Secretary amends 45 CFR Chapter II as set forth below.

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

1. Section 205.35 of Part 205 is vacated and reserved as follows, and its content amended and relocated to 42 CFR Part 441, Subpart F.

§ 205.35 [Reserved]

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PART 220—SERVICE PROGRAMS FOR FAMILIES AND CHILDREN: TITLE IV PARTS A AND B OF THE SOCIAL SECURITY ACT

2. Section 220.21 of Part 220 is revised to codify the first paragraph as (a) and to add paragraphs (b) and (c) to read as follows:

§ 220.21 Family planning services.

(a) Family planning services must be offered and provided to those individuals wishing such services, specifically including medical contraceptive services (diagnosis, treatment, supplies, and followup), social services and educational services. Such services must be available without regard to marital status, age, or parenthood. Individuals must be assured choice of method and there must be arrangements with varied medical resources so that individuals can be assured choice of source of service. Acceptance of any services must be voluntary on the part of the individual and may not be a prerequisite or impediment to eligibility for the receipt of any other service or aid under the plan. Medical services must be provided in accordance with the standards of other State programs providing medical services for family planning (e.g., maternal and child health services).

(b) Federal financial participation in State claims for abortions is governed by 42 CFR 449.100 through 449.109.

(c) If a State authorized sterilization as a family planning service, it must comply with the provisions of 42 CFR Part 441, Subpart F.

PART 222—SERVICE PROGRAMS FOR AGED, BLIND, OR DISABLED PERSONS: TITLES I, X, XIV AND XVI OF THE SOCIAL SECURITY ACT

3. Section 222.59 of Part 222 is revised to codify the first paragraph as (a) and to add paragraph (b) to read as follows:

§ 222.59 Services to individuals to meet special needs.

(a) Services may include any or all of the following individual service items: Legal services for persons desiring the help of lawyers with their legal problems (see separate policies governing the provision of such services); family planning; services for such groups as alcoholics, drug addicts, and mentally retarded individuals; special services to the blind, deaf, and other disabled individuals.

(b) Regarding the provision of family planning services:

(1) If a State authorizes abortions, Federal financial participation in State claims is governed by 42 CFR 449.100 through 449.109.

(2) If a State authorizes sterilization, it must comply with the provisions of 42 CFR Part 441, Subpart F.

PART 228—SOCIAL SERVICE PROGRAMS FOR INDIVIDUALS AND FAMILIES: TITLE XX OF THE SOCIAL SECURITY ACT

4. Section 228.63 of Part 228 is revised to amend paragraph (c) to read as follows:

§ 223.63 Family planning services.

(a) FFP is available in the cost of family planning services provided without regard to income.

(b) For purposes of this part, family planning services means counseling, educational and medical services (including diagnosis, treatment and continuing supervision, necessary laboratory examinations and tests, drugs, supplies, devices and related counseling furnished, prescribed by, or under the supervision of, a physician) to enable individuals (including minors) voluntarily to limit their family size, to space their children, or to correct infertility.

(c) If a state authorizes sterilization as a family planning service, it must comply with the provisions of 42 CFR Part 441, Subpart F, except that the State plan requirement under 42 CFR 441.252 does not apply to the title XX program.

(Sec. 101, Pub. L. 95-205, 91 Stat. 1461, December 9, 1977; Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302).)

(Catalog of Federal Domestic Assistance Program No. 13.642, Social Services for Low Income and Public Assistance Recipients.)

NOTE.—It has been determined that this document does not require preparation of an Inflationary Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: September 11, 1978.

ARABELLA MARTINEZ,
Assistant Secretary for Human Development Services.

Approved: October 30, 1978.

JOSEPH A. CALIFANO, JR.,
Secretary.

[FR Doc. 78-31578 Filed 11-7-78; 8:45 am]

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WEDNESDAY, NOVEMBER 8, 1978
PART VI



DEPARTMENT OF THE INTERIOR

Bureau of Land Management

WETLAND-RIPARIAN AREA PROTECTION AND MANAGEMENT

Availability of Interim Guidelines To Implement E.O. 11990

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PREVIOUSLY PUBLISHED DOCUMENTS

Listed below are other documents on implementation of Executive Orders 11988 and 11990 previously published in the FEDERAL REGISTER:

Agency	1978 Date of Issue	Vol. 43 FR, Page No.
Interior Department, Bureau of Land Management	Sept. 28	44798
Commerce Department, Office of the Secretary	Sept. 29	45284
Transportation Department, Office of the Secretary	Sept. 29	45285
Nuclear Regulatory Commission	Oct. 6	46499
Interior Department, Heritage Conservation and Recreation Service	Oct. 13	47449
Small Business Administration	Oct. 20	49237
Interior Department, Reclamation Bureau	Oct. 27	50391

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[4310-84-M]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

WETLAND-RIPARIAN AREA PROTECTION AND MANAGEMENT

Policy and Protection Procedures—Interim Guidelines

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Availability of Interim Guidelines.

SUMMARY: The Bureau of Land Management (BLM) has developed interim policy and interim internal procedures to implement Executive Order 11990, Protection of Wetlands. The purpose of this notice is to inform the public that these guidelines are available for review. The final policy and procedures will be published in the FEDERAL REGISTER and made part of the Bureau Manual after the guidelines are reviewed and revised.

DATE: Comment by: January 8, 1978.

ADDRESS: Copies of the interim guidelines are available from the Director (360), Bureau of Land Management, 18th and C Streets, NW., Washington, D.C. 20240. Comment should be sent to the preceding address and all comments will be available for public inspection in room 2649 at the above address from 7:45 a.m. to 4:15 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Dr. William B. Krohn, 202-343-6189 or 6792.

SUPPLEMENTARY INFORMATION: BLM anticipates publishing Manual Section 6740 (Wetland-Riparian Area Protection and Management) to provide policy and internal procedures to implement Executive Order 11990. Additionally, Executive Order 11988 (Floodplain Management) and Section 102(a) (8) and (11) of the Federal Land Policy and Management Act of 1976 (43 USC 1701) mandate strong Bureau programs for the conservation of wetland-riparian areas.

The proposed Manual Section establishes policy and procedures for the identification, enhancement, and protection of fresh, brackish, and saline wetland areas. These guidelines have been reviewed internally by BLM and are applicable to all Bureau actions. In meeting BLM responsibilities for the acquisition, disposal, and management of public lands it will be policy:

1. To avoid long- and short-term adverse impacts associated with the destruction, loss, or degradation of wetland-riparian areas.

2. To avoid the direct or indirect support of new construction in wetland-riparian areas whenever there is a practical alternative.

3. To preserve and enhance the natural and beneficial values of wetland-riparian areas which may include constraining or excluding those uses causing irreparable damage.

4. To include practical measures to minimize harm in all actions causing definable adverse impacts to wetland-riparian areas.

The Bureau's planning process will be the mechanism for implementing BLM Manual Section 6740. An outline of this process, specifically as related to floodplain management, was published on September 28, 1978, in the FEDERAL REGISTER (43 FR 44798). The major steps of BLM's planning system described in this publication apply to the protection and management of wetland-riparian areas.

The Department of the Interior's interim guidelines on floodplain management and wetland protection, published on June 9, 1978, in the FEDERAL REGISTER (43 FR 25319-25321), were used in developing the proposed BLM Manual Section 6740.

ARNOLD E. PETTY,
Director,
Bureau of Land Management.

OCTOBER 31, 1978.

[FR Doc. 78-31601 Filed 7-8-78; 8:45 am]

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WEDNESDAY, NOVEMBER 8, 1978
PART VII



CIVIL AERONAUTICS BOARD

REDUCTION IN AIR TAXI REPORTING REQUIREMENTS

Classification and Exemption of Air Taxi Operators

[6320-01-M]

CIVIL AERONAUTICS BOARD

[14 CFR Part 298]

[EDR-367, Docket 33910, Dated: November 2, 1978]

REDUCTION IN AIR TAXI REPORTING REQUIREMENTS

Classification and Exemption of Air Taxi Operators

AGENCY: Civil Aeronautics Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board on its own initiative is proposing to reduce the amount of information now required to be submitted by air taxi operators and commuter air carriers by eliminating some reports and reducing the filing frequency of others. State governments collecting the same air taxi data would be encouraged to share these data with the Board in return for exempting their air taxi operators from Board reporting requirements. The limited period of confidential treatment accorded commuter origin and destination (O&D) data would also be eliminated.

DATES: Comments by: January 8, 1979.

Comments and other relevant information received after this date will be considered by the Board only to the extent practicable.

ADDRESSES: Twenty copies of comments should be sent to Docket 33910, Docket Section, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, as soon as they are received.

FOR FURTHER INFORMATION CONTACT:

Raymond Kurlander, Director, Bureau of Accounts and Statistics, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, 202-673-5270.

SUPPLEMENTARY INFORMATION: As part of its continuing efforts to reduce reporting burdens, the Board is proposing in this notice revisions to Part 298, Classification and Exemption of Air Taxi Operators, 14 CFR Part 298, which would eliminate annual reporting altogether for most air taxi operators, while consolidating, and reducing the filing frequency of schedules required of those air taxis classified as commuter air carriers.

In developing these proposed revisions, the Board's staff looked at the current reporting requirements for air taxi operators, including commuter air carriers, and found several areas in which the need for air taxi operating data had changed. Highlights of the resulting proposals are:

1. Eliminate reporting altogether on CAB Form 298-D, "Report of All Revenue Operations (Excluding Rotary-Wing and All-Cargo Operations) Performed by Air Taxi Operators, Including Commuter Air Carriers;"

2. Eliminate one of the three reports comprising CAB Form 298-C, "Report of Scheduled Operations of Commuter Air Carriers," consolidate the remaining schedules of Form 298-C into a new one-page format, reduce the filing frequency from quarterly to semiannually, and reduce the required number of copies from three to one;

3. Modify the definition of "commuter air carrier" to exclude air taxi operators with mail contracts of $20,000 or less per year who would otherwise not qualify as commuters;

4. Add a provision to encourage State governments collecting the same commuter operating data as the Board collects to share these data with us in return for exemption of their commuters from our reporting requirements.

5. Eliminate the limited period of confidential treatment currently accorded commuter O&D data.

The following discussion expands on each of these proposals.

Reporting by Air Taxi Operators

Currently, air taxi operators are required to file with the Board one annual report, CAB Form 298—D. This report contains only four basic data items, categorized into domestic and international operations: number of passengers carried, aircraft hours flown, aircraft miles flown, and number of departures performed.

When this filing requirement was established, the information was used both by the Board and by the National Transportation Safety Board (NTSB). This report is no longer necessary, however, to carry out the Board's responsibilities, and we now understand that the NTSB's needs for this information would be satisfied by providing them with periodic air taxi survey data.

Thus, the burden of submitting CAB Form 298-D is no longer warranted, and we are proposing to eliminate the reporting requirement. In its place, we will have the Director, Bureau of Accounts and Statistics, under delegated authority, conduct periodic surveys of the air taxi industry to satisfy NTSB's needs. Any air taxi operators and commuter air carriers to be included in a survey will be notified of this in advance.

Reporting by Commuter Air Carriers

In addition to CAB Form 298-D, air taxi operators classified as commuter air carriers are also required to file quarterly CAB Form 298-C. This report consists of three separate schedules: a certification statement, Schedule A-1 containing a "Report of Aircraft Operated" and a report of "Flight and Traffic Statistics in Scheduled Operations by Commuter Air Carriers," and Schedule T-1, "Report of Revenue Traffic by On-Line Origin and Destination." CAB Form 298-C covers only scheduled operations and excludes any data for on-demand service.

We have tentatively decided that the "Report of Aircraft Operated" on Schedule A-1 can be eliminated from this filing requirement. The report presents FAA registration, type, model, and passenger and cargo capacity information for the aircraft used in operations during the reporting quarter. Since we already collect this information biennually for air taxi reregistration and receive amendments from the air taxis whenever there is a change in the status of aircraft operated, repeated submission on a quarterly basis does not appear to be necessary.

Additionally, we have proposed to consolidate the remaining schedules of CAB Form 298-C into a new one-page format which commuters would file semiannually as opposed to the present quarterly requirement. With the proposed elimination of CAB Form 298-D discussed above, this proposal would reduce commuter reporting from the current 13 separate schedules per year to only two.

Definition

Currently, an air taxi operator is classified as a "commuter air carrier" if it either (1) performs at least five round trips per week and publishes flight schedules, or (2) transports mail by air under contract with the U.S. Postal Service. We propose to modify this definition to exclude those air taxis having mail contracts of $20,000 or less per year [1] who would otherwise not qualify as commuters. This would relieve those small businesses from the reporting requirements associated with commuter status when they are classified as commuters only because of small mail contracts. We estimate that as many as fifteen small commuters could benefit from this change in definition.

The change in definition, along with the elimination of CAB Form 298-D discussed above, would reduce the reporting requirements for qualifying carriers from the current 13 schedules per year to none at all.

[1] As reasonably estimated at the beginning of any reporting period for compensation to be earned over the next 12 months. These estimates can be verified by referring to bids for, amendments to, and renewals of mail contracts on USPS Form 7405, 7447, and 7450 or subsequent replacement forms.

Invitation for State Participation

We propose to add a provision to Part 298 which would permit and encourage the sharing of air taxi operating data with those States already collecting these data. This provision would give the Director, Bureau of Accounts and Statistics, delegated authority to exempt a commuter air carrier or group of commuter air carriers from the reporting requirements of Part 298 when the information prescribed by the Board can be collected from State governments with at least the same degree of reliability and timeliness that the Board has now.

This concept stems directly from a program we have recently designed with the Alaska Transportation Commission, whose needs for air taxi data are equivalent to ours. The Alaska Commission collects the same air taxi data we do and, under the new air taxi reporting system, would provide us with these data in return for our suspension of the recurring reporting requirements for Alaskan air taxis.

Since the reporting benefit which would be derived from this "single reporting system" need not be restricted to Alaskan carriers, all States who collect air taxi data are invited to participate in this sharing program. What we hope to accomplish through this type of program is to eliminate the duplication that occurs when small businesses must file the same or similar information with different levels of government. We encourage any comments or proposals from State agencies concerning this sharing program.

Public Disclosure of Origin and Destination Data

We have also tentatively decided to eliminate the limited period of confidential treatment accorded to commuter O&D data now reported on Schedule T-1 of CAB Form 298-C. There are several reasons for this conclusion.

In 1970, the Board decided to restrict the disclosure of commuter traffic data and stated that immediate disclosure of these data would subject a commuter carrier to a competitive disadvantage in relation to another air taxi (ER-605, adopted February 24, 1970 (35 FR 3897, February 28, 1970)). For this and other competitive reasons, we decided to treat these data in the same manner as certificated carrier service segment data, then similarly restricted.

Public policy favors disclosure of all data filed with the Board unless there are sufficient countervailing reasons for withholding.[2] We have tentatively decided that these reasons no longer exist for the data involved here. To begin with, immediate disclosure of commuter traffic should not cause any substantial competitive injury vis-a-vis other air taxis, since each would have equal access to the others' data. Also, since 1970, commuters have substantially increased their share of the total air traffic market and have established themselves as a strong part of the scheduled air transportation system, often providing replacement service for certificated carriers. Thus, there no longer appears to be a need for protective treatment of these data. To continue the restricted release of these commuter data while freely releasing certificated carriers' domestic service segment data (ER-973, adopted October 15, 1976 (41 FR 46582, October 22, 1976)), could provide commuters with an artificial competitive advantage at a time when the Board is trying to return the air carrier system to a greater reliance on less-restricted competition for operational decisions.

Prompt public disclosure of commuter traffic data should improve the performance of the air transportation system, in that airport agencies and air carriers will be better able to evaluate the air service needs of local communities. Further, immediate disclosure of this information should spur additional development of the air taxi industry as the link of small communities to the certificated air system.

Thus, we propose to eliminate § 298.62 "Public disclosure of schedule T-1 data" in its entirety.

In view of recent organizaitonal changes within the Board, we are also planning to make several technical changes which would delete the terms "Bureau of Operating Rights" and "Office of Facilities and Operations" to be replaced by the terms "Bureau of Pricing and Domestic Aviation" and "Office of Administrative Support Operations," respectively.

Proposed Rule

The Board proposes to amend Part 298 of its Economic Regulations (14 CFR Part 298) as follows:

1. The Table of Contents would be amended by revoking and reserving §§ 298.62 and 298.63 and by adding a new § 298.65 to Subpart F as follows:

Subpart F—Requirements for Filing of Flight Schedules and Reports

Sec.

* * * * *

298.62 [Reserved]
298.63 [Reserved]

* * * * *

298.65 Reporting exemption for State collection of data.

* * * * *

2. Paragraph (f) of § 298.2 would be amended to read as follows:

§ 298.2 Definitions.

* * * * *

(f) "Commuter air carrier" means an air taxi operator which (1) performs at least five round trips per week between two or more points and publishes flight schedules which specify the times, days of the week and places between which they are performed, or (2) transports mail by air under a contract or contracts with the U.S. Postal Service when the total amount of the contract or contracts is estimated at the beginning of any reporting period (January 1 and July 1) to be in excess of $20,000 over the next 12 months.

* * * * *

3. All references in Part 298 to the term "Bureau of Operating Rights" would be deleted and replaced by the term "Bureau of Pricing and Domestic Aviation."

§ 298.60 [Amended]

4. Section 298.60 would be amended by deleting the term "Office of Facilities and Operations" and by replacing it with the term "Office of Administrative Support Operations."

5. Section 298.61 would be revised in its entirety, to read as follows:

§ 298.61 Reporting of scheduled operations by commuter air carriers.

(a) Each "commuter air carrier" shall file CAB Form 298-C "Report of Scheduled Operations of Commuter Air Carriers" as prescribed in this section.[3]

(b) The original of CAB Form 298-C shall be filed with the Bureau of Accounts and Statistics semiannually for the 6-month periods ended June 30 and December 31 of each year to be received on or before August 10 and February 10, respectively. NOTE: Due dates falling on a Saturday, Sunday, or national holiday will become effective on the first following working day.

(c) The information included in this report shall pertain only to flights performed in scheduled service during the 6-month reporting period. The numeric carrier code and the date code established by the Bureau of Accounts and Statistics shall be inserted in the spaces provided in the hearing of the report. All information shall be typed or neatly printed.

[2] Freedom of Information Act, as amended, 80 Stat. 250, 5 U S C 552; *see, National parks and Conservation Association* v. *Kleppe*, 547 F.2d 673 (D.C. Cir. 1976).

[3] CAB Form 298-C is filed as part of the original document and can be obtained from the Publications Services Division, Civil Aeronautics Board, Washington, D.C. 20428.

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(d) The "Flight and Traffic Statistics in Scheduled Operations" section of this report shall be filled out as follows:

(1) Line 1 "Aircraft-Hours Flown" shall show the total airborne aircraft hours flown computed from the moment an aircraft leaves the ground until it touches ground at the end of each flight stage.

(2) Line 2 "Aircraft-Miles Flown" shall show the total aircraft-miles operated computed in airport-to-airport distances for each flight stage as actually operated, whether or not actually performed according to the scheduled service pattern.

(3) Line 3 "Number of Departures Performed" shall show the total number of takeoffs performed, including extra section takeoffs and takeoffs from nonscheduled airports resulting from deviations from the scheduled service pattern.

(4) Line 4 "Revenue Passenger-Miles" shall show total revenue passenger-miles, computed by multiplying the aircraft-miles flown on each flight stage by the number of revenue passengers carried on that flight stage.

(5) Line 5 "Available Seat-Miles" shall show total revenue seat-miles available, computed by multiplying the aircraft-miles flown on each flight stage by the number of passenger seats available for sale on that flight state.

(6) Line 6 "Revenue Ton-Miles" shall show total revenue ton-miles, computed by first multiplying the aircraft-miles flown on each flight stage by the number of pounds of revenue traffic carried on that flight stage to obtain revenue pound-miles. Revenue pound-miles are then divided by 2,000 pounds to find revenue ton-miles. For passengers and their baggage, a standard weight of 200 pounds per passenger may be used.

(7) Line 7 "Available Ton-Miles" shall show total revenue ton-miles available, computed by first multiplying the aircraft-miles flown on each flight stage by the number of pounds of aircraft capacity available for use on that stage to obtain revenue pound-miles available. Revenue pound-miles available are then divided by 2,000 pounds to find available ton-miles.

(8) Line 8 "Number of Departures Scheduled in Passenger Service" shall show the total number of takeoffs scheduled to be performed in passenger service.

(9) Line 9 "Number of Scheduled Departures Completed in Passenger Service", shall show the total number of scheduled departures in passenger service reported on line 8 which were performed, excluding extra sections. To determine if a departure is performed as scheduled, only the originating point of a flight stage need be considered; whether the flight lands at its scheduled destination or not has no bearing.

(e) The "Report of Revenue Traffic by On-Line Origin and destination" section of this report shall show the total traffic in scheduled service for the period as follows:

(1) Each pair of origin and destination airports shall appear only once, i.e., no entry shall have the same origin and destination airports as another entry.

(2) The origin and destination data shall be for the on-line movement of traffic rather than for flight stages or flight origin and destination. For example, if a flight operates from A to B to C with 5 passengers enplaning at A, 1 deplaning and 2 enplaning at B, and 6 deplaning at C, the applicable passenger data would be reported as follows:

Origin airport	Destination airport	No. of Passengers
A	B	1
A	C	4
B	C	2

(3) Only the ultimate origins and destinations of the traffic moving on the reporting carrier's system shall be reported. Using the example given above, the traffic report would remain the same, even if the carrier operated one flight from A to B and a different flight from B to C, as long as the passengers' on-line origins and destinations remained the same.

(4) Only one grand total shall be shown in the space provided after the final traffic entry. Do not use subtotals.

(5) Columns (1) and (2) shall show the airport codes for the movement of traffic from the point of origin to the point of destination. Carriers shall use the airport codes in the *Official Airline Guide* (OAG). If an airport cannot be found in the OAG, the carrier shall, until otherwise instructed by the Board, insert its own code for the airport in column (1) or (2) followed by an asterisk, and shall identify the airport and its location in the space provided.

(6) Columns (3), (4) and (5) shall show the total number of revenue passengers, pounds of cargo, and pounds of mail, respectively, transported from the point of on-line origin to the point of on-line destination.

(f) The information requested in CAB Form 298-C may be submitted on any comparable form prepared on automatic data processing equipment if the substitute form has been approved by the Director, Bureau of Accounts and Statistics, Civil Aeronautics Board, Washington, D.C. 20428. Data in any approved format shall contain the same column headings arranged in the same sequence as in CAB Form 298-C.

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§§ 298.62 and 298.63 [Reserved]

6. Sections 298.62 and 298.63 would be revoked and reserved.

7. Section 298.64 would be revised in its entirety to read as follows:

§ 298.64 Requests for extensions of time within which to file reports or for waivers from reporting requirements.

(a) If circumstances prevent the filing of CAB Form 298-C on or before the due date, a written request for an extension may be submitted. Except in cases of emergency, the request must be delivered to the Board's Bureau of Accounts and Statistics in writing at least 3 days in advance of the due date. The request must state good and sufficient reason to justify the granting of the extension and the date when the reports can be filed. If the request is denied, the air carrier remains subject to the filing requirements to the same extent as if no request for extension of time had been made.

(b) The Director, Bureau of Accounts and Statistics, may waive any reporting requirement contained in § 298.61 upon his own initiative or upon Written request from any commuter air carrier if the waiver is in the public interest and the request demonstrates that (i) unusual circumstances warrant such a departure, (ii) a specifically defined alternative procedure or technique will result in a substantially equivalent or more accurate portrayal, and (iii) the application of the alternative procedure will maintain or improve uniformity in reporting between commuter air carriers.

8. A new § 298.65 would be added to Subpart F to read as follows:

§ 298.65 Reporting exemption for State collection of data.

(a) The Director, Bureau of Accounts and Statistics, may exempt a commuter air carrier from the reporting requirements of § 298.61 if a State government collects the information specified in this section and provides it to the Board by the dates specified in that section. The data provided to the Board in this manner must be at least as reliable as if they were collected by the Board directly.

(b) The Director, Bureau of Accounts and Statistics, will provide assistance to any State agency interested in participating in this exemption program.

9. CAB Form 298-C would be amended as shown in Exhibit A (filed as part of the original document).

(Secs. 204(a) and 416(b) of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 771, 91 Stat. 2184, 49 U.S.C. 1324(a), and 1386(b).)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-31602 Filed 11-7-78; 8:45 am]

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federal register

WEDNESDAY, NOVEMBER 8, 1978
PART VIII



DEPARTMENT OF ENERGY

Economic Regulatory Administration

PRODUCTION INCENTIVES FOR MARGINAL PROPERTIES

Proposed Rulemaking and Public Hearing

V 4 3 / 2 1 7

[3128-01-M]

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[10 CFR Parts 211 and 212]

[Docket No. ERA-R-78-18]

PRODUCTION INCENTIVES FOR MARGINAL PROPERTIES

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE), in the interest of optimizing the production of domestic crude oil from the nation's older, declining properties, presents several alternative proposals for incentives to promote increased production of domestic crude oil.

One of the alternative proposals described in this Notice would apply, if adopted, to crude oil produced and sold from "marginal properties" and would provide for immediate eligibility of a portion of the crude oil produced and sold from such properties for market clearing prices. The proposal would also provide that all domestic crude oil produced and sold from such properties would gradually qualify for market clearing prices.

Under another of the alternative proposals, producers would be permitted, generally, to update the base production control levels (BPCLs) and adjustments to these BPCLs for their properties, and would be permitted to accomplish a one-time elimination of current cumulative deficiencies, without regard to whether the properties would qualify as "marginal." Under a third alternative, a certain volume of the daily crude oil production of each well on a property would be eligible for sale at market clearing prices, regardless of whether the property is considered "marginal" in a technical sense. Finally, there is an alternative proposal to increase generally the ceiling prices of lower tier crude oil in order to keep pace with increasing operating costs for certain types of domestic production.

A related proposal is to eliminate the current 21 cents per barrel entitlement "penalty" on uncontrolled crude oil.

DATES: Comments by January 22, 1979, 4:30 p.m.; Requests to speak by January 2, 1979, 4:30 p.m.; Hearing dates: *Austin Hearing:* January 9, 1979, 9:30 a.m.; *Los Angeles Hearing:* January 11, 1979, 9:30 a.m.

ADDRESSES: All comments to: Public Hearing Management, Docket No. ERA-R-78-18, Department of Energy, Room 2313, 2000 M Street NW., Washington, D.C. 20461. Requests to speak: *Austin Hearing:* Department of Energy, P.O. Box 3228, 2626 W. Mockingbird Lane, Dallas, 75235, Attn: A. Millard; *Los Angeles Hearing:* Department of Energy, 3d Floor, 111 Pine Street, San Francisco, Calif. 94111, Attn: R. Laffel; Hearing locations: *Austin Hearing:* Federal Building, Room 5777, 300 East 8th Street, Austin, Tex.; *Los Angeles Hearing:* Los Angeles Convention Center, 1201 South Figureroa Street, Los Angeles, Calif.

FOR FURTHER INFORMATION CONTACT:

Robert C. Gillette (Hearing Procedures), Economic Regulatory Administration, 2000 M Street NW., Room 2214B, Washington, D.C. 20461, 202-254-5201.

William Webb (Office of Public Information), Economic Regulatory Administration, 2000 M Street NW., Room B110, Washington, D.C. 20461, 202-634-2170.

William Carson (Office of Regulations and Emergency Planning), Economic Regulatory Adminstration, 2000 M Street NW., Room 2304, Washington, D.C. 20461, 202-254-7200.

Cheryl Anderson (Office of General Counsel), Department of Energy, 12th and Pennsylvania Avenue NW., Room 7134, Washington, D.C. 20461, 202-566-2085.

SUPPLEMENTARY INFORMATION:

I. *Background*
A. *Third stage of EPCA implementing regulations*
B. *The Energy Conservation and Production Act*
II. *General principles underlying consideration of the proposals*
III. *Alternative amendments proposed*
A. *Alternative proposal No. 1: Market price for certain production from "marginal" properties*
B. *Alternative proposal No. 2: Updating of BPCL for all properties*
C. *Alternative proposal No. 3: Release of some crude oil production from all wells to market prices*
D. *Alternative proposal No. 4: Increase in lower tier ceiling price*
IV. *Other conforming amendments*
V. *Findings required by EPAA section 8(b)(2); specific information requested*
VI. *Additional proposal to eliminate 21 cents per barrel entitlement penalty for uncontrolled crude oil*
VII. *Comment procedures*

I. BACKGROUND

A. *Third stage of EPCA implementing regulations*

On May 4, 1976, the Federal Energy Administration (FEA) issued a Notice of Proposed Rulemaking and Public Hearing (41 FR 18873, May 7, 1976) to consider whether additional incentives, beyond the lower tier and upper tier price levels (including adjustments for inflation and as a production incentive) that had been adopted pursuant to the pricing policy of the Energy Policy and Conservation Act ("EPCA," Pub. L. 94-163), would be needed to maintain or increase production volumes in any classifications of domestic crude oil. At that time any amendment to provide such incentives would have been required to be submitted to Congress pursuant to the review procedures established by section 551 of the EPCA for composite price adjustments in excess of the adjustments for inflation and as a production incentive which were then permitted without such review.

Any such amendment submitted for Congressional review was required by section 8(e)(2) of the Emergency Petroleum Allocation Act of 1973 ("EPAA," Pub. L. 93-159), as amended by section 401 of the EPCA, to be accompanied by a finding that it was necessary to provide a more adequate incentive with respect to:

(A) The discovery or development of high cost and high risk properties (including new wildcat properties, and properties located on the Outer Continental Shelf, properties located north of the Arctic Circle, deep wells and deep horizons in onshore or offshore properties, and properties operated by independent producers);

(B) The application of enhanced recovery techniques to producing properties to obtain a level of production higher than would otherwise occur from those properties but for such adjustment; or

(C) Sustaining production from marginal wells, including production from stripper wells.

Accordingly, the FEA proposed additional incentives with respect to each of the three categories specified in the EPAA (i.e., the discovery and development of high cost and high risk properties, the application of enhanced recovery techniques, and sustaining production from marginal wells). Among the proposals from that proceeding were:

(1) Qualification for stripper well prices (which at that time were subject to the upper tier ceiling price rule) according to well depth, onshore or offshore location, as well as average daily production; and

(2) Market level prices instead of upper tier prices for crude oil produced and sold from stripper well properties.

Final action on any of the proposals in that proceeding was ultimately deferred due to (1) the increased pricing flexibility afforded by the elimination of the 3 percent limitation on the production incentive adjustments contained in the Energy Conservation and Production Act ("ECPA," Pub. L. 94-385), which was enacted on August 14, 1976 during the pendency of the proceeding, and (2) the express priorities identified in the ECPA for treatment under that increased pricing flexibility.

B. THE ENERGY CONSERVATION AND PRODUCTION ACT

The ECPA amended the EPAA in several significant respects regarding crdue oil prices. Specifically, the ECPA removed the EPCA 3 percent limitation on adjustments to the composite price as a production incentive, so that only the overall limitation of 10 percent on the combined effect of adjustments to reflect inflation and as a production incentive was retained. The EPCA has limited the annual rate of adjustment to the rate of inflation, as measured by the first revision of the GNP deflator, plus not more than 3 percent as a production incentive, with the total rate of adjustment not to exceed 10 percent per year. The ECPA permitted increased pricing flexibility to up to a full 10 percent per year, with the result that composite price increases as a production incentive could exceed 3 percent if the rate of inflation were below 7 percent.

This increased pricing flexibility provided a means to encourage domestic production, and the ECPA included as express priorities in this regard the application of bona fide tertiary recovery techniques and adjustments to certain gravity price differentials that were associated at that time with heavy crude oil.

Action has since been taken to accomplish adjustments to gravity price differentials (41 FR 48324, November 3, 1976) and to provide additional price incentives for bona fide tertiary enhanced recovery techniques (43 FR 33679, August 1, 1978).

Effective September 1, 1976, crude oil produced and sold from stripper well properties is exempt from first sale price controls. Congress provided a statutory exemption for crude oil produced and sold from stripper well properties (first in the EPAA and later in the ECPA) to provide an incentive to maintain domestic crude oil production from marginal producing properties. Under the current ECPA exemption, Congress determined the qualifying limits for the exemption to be production of crude oil at levels of 10 barrels or less per well per day during any preceding consecutive 12-month period beginning after December 31, 1972. Although such crude oil is statutorily exempt from first sale price reported to DOE, are given an imputed price (as determined under section 121 of the ECPA), and are included in the calculations to determine the actual weighted average first sale price each month for all domestic crude oil.

We have determined that the examination, begun by the FEA, of additional production incentives for domestic crude oil (particularly with respect to domestic crude oil volumes the production of which may be marginally economic to produce at currently controlled price levels) should be continued. Accordingly, set forth in section III, below, are four alternative proposals which are not necessarily mutually exclusive to amend the price regulations to provide such production incentives for domestic crude oil. We are requesting comments on these alternatives, and we may adopt whichever proposal (or variation thereof) we determine to be most appropriate.

II. GENERAL PRINCIPLES UNDERLYING CONSIDERATION OF THE PROPOSALS

An important element of the policy of the DOE is to promote the maximization of domestic crude oil production, and thus to promote national energy self-sufficiency, in a manner compatible with the mandates of the EPAA and overall national policies.

In this connection, we wish to consider whether current controlled crude oil price levels under our regulations, and particularly lower tier crude oil price levels, may be resulting in the premature abandonment of domestic crude oil producing properties that would be self-sustaining in the absence of controls or at higher price levels. Also, we are aware that the present crude oil price control system may to some extent be creating incentives for producers not to undertake actions that would increase crude oil production, because allowing production to decline might result in more favorable regulatory treatment than if production efforts were maintained or increased.

We desire to prevent the crude oil price regulations from operating in a fashion that is counterproductive to the goal of maximizing domestic crude oil production, and in an effort to address the potential problems discussed above we are setting forth, in section III, below, four alternative proposals. These proposals would have the effect of permitting an increase in the price of crude oil produced from the properties to which the provisions would apply, in some cases to market price levels.

Our consideration of whether to adopt any of these proposals, and if so which of them (or variations of them) to adopt, will be guided by several considerations. First, we want to determine whether and to what extent their adoption would be likely to result in increased production above that which would occur in the absence of their adoption. (As indicated in section V of this notice, to the extent that the price of lower tier crude oil would be increased as a result of any of these proposals, a finding must be made that the price increase would be likely to result in a level of production above that which would occur in the absence of the price increase.) Second, we wish to establish at least a general correlation between the amount of the price increases that would be involved and the amount of increased production that would result from these proposals. Finally, if we determine to adopt any of these alternatives (or variations thereof), we will give appropriate weight to the administrative feasibility of each particular alternative or variations thereof. The matter of administrative feasibility involves such factors as the desirability of avoiding undue compliance costs and uncertainties, both for the producer and also for the DOE.

In determining which if any of the alternatives to adopt, we will balance all of the foregoing considerations, as well as any other relevant factors. We may adopt any variations of these proposals that are determined to be appropriate, or a combination of more than one of these alternatives. Our primary purpose is to take such action as may be necessary to assure that our regulations do not operate to produce the potential counterproductive results described above.

III. ALTERNATIVE AMENDMENTS PROPOSED

A. ALTERNATIVE PROPOSAL NO. 1: MARKET PRICE FOR CERTAIN PRODUCTION FROM "MARGINAL" PROPERTIES

This proposal is designed generally to provide incentives for maintaining marginal domestic production that more closely correspond to costs of production at different well depths. It is intended to determine whether production costs for domestic crude oil significantly increase in proportion to the depth of that production. For example, per-well operating costs at well depths of greater than 8,000 feet are generally significantly more than the per-well operating costs at depths of 2,000 feet or less.

While section 12 of the EPAA does not permit the exemption of additional volumes of domestic crude oil production from the composite price restrictions of section 8 of the EPAA, the Conference Report accompanying the EPCA made it clear that Congress intended to provide—

broad authority to establish ceiling prices for classifications of domestic crude oil production if he finds that such classifications are administratively feasible and will optimize domestic production. Subject to the statutory requirement that such ceiling price and such classification be supported by appropriate findings, the President would have authority, in certain instances, to establish a ceiling price which could be at levels above the then current market clearing price as long as the actual weighted average first sale price for the totality of domestic crude oil production does not exceed the maximum weighted average price under

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this Act. (S. Rep. No. 94-516, 94th Cong., 1st sess. 191 (1975))

In the exercise of this authority, we are proposing under this alternative to establish a new classification of domestic crude oil produced from "marginal" properties, called "market tier" crude oil, which would immediately be eligible to be sold without regard to the current ceiling prices applicable to first sales of lower tier and upper tier crude oil. However, because of the constraints of section 12 of the EPAA with regard to exempting additional volumes of domestic crude oil production from the composite price restrictions, we would require actual volumes and actual first sale prices of such market tier crude oil to be reported to DOE for inclusion in the composite price calculations.

Under this proposal, once qualified, a marginal property" would be assigned a "Marginal Base Production Control Level" (BPCL), and any volumes of current production and sale in excess of the Marginal BPCL could be sold at market clearing prices. (All other volumes of current production and sale that are equal to or less than the Marginal BPCL would be classified as either lower tier or upper tier crude oil, as more fully explained below.) Additionally, an imputed decline rate would operate continuously to decrease the property's Marginal BPCL so as to provide an additional incentive to maintain or increase production levels.

1. Qualification as a "marginal property"

Inasmuch as our proposed concept of a "marginal property" is analogous to a stripper well property, and because the calculations to be used in determining a property's qualification are similar to those used for stripper well properties, Rulings 1974-28, 1974-29, 1974-30, 1975-12, 1975-15, 1977-6, and relevant portions of Rulings 1977-1 and 1977-2 would apply with respect to marginal properties as well as stripper well properties.

a. Determination of "average completion depth"

In order to qualify a property as a "marginal property, a producer would first determine the property's "average completion depth" by computing the average depth, in feet, of all completions of crude oil producing wells on the property, divided by the total number of crude oil producing wells on the property. For audit purposes, a producer would be required to provide evidence of completion depth for each well documented by applications for drilling or other permits submitted to the applicable State regulatory body. For properties located in States where no such applications are required, or where no such regulatory body exists, the producer would be required to provide evidence of completion depth for each well documented by an affidavit executed by a registered petroleum engineer. Where a well produced crude oil during the qualifying period from two or more completion depths at the same time, the well could be counted as two or more wells—and the various completion depths averaged—only where the well qualifies as a multiple completion well for purposes of the stripper well property exemption, as interpreted in Ruling 1975-12, i.e., where

(a) the well consists of two (or more) separate tubing strings run inside the casing, each of which carries crude oil from a separate and distinct producing formation, and

(b) the production capabilities of each formation are unaffected by any change in the production level of any other formation producing through the same well.

In all other cases, e.g., where a single well produces crude oil from two or more different completion depths but does not otherwise meet the criteria in Ruling 1975-12, the producer would count the well as one well and would use as the completion depth the distance in feet to the lowest completion depth. The only exception to this rule would arise where a well produced crude oil during the qualifying period from two or more separate and distinct producing reservoirs, and the producer had properly elected to treat the separate reservoirs as separate properties during the entire qualifying period. In such a case, one or more separate and distinct reservoirs could qualify as marginal properties depending upon average daily production during the qualifying period. (Comments are specifically requested to address the most appropriate treatment of separate and distinct producing reservoirs subject to the same right to produce crude oil, where the producer elected to segregate such reservoirs (or was required to reaggregate previously segregated reservoirs) during the qualifying period so that there was discontinuity in property treatment during the qualifying period.)

b. Qualifying period

After determining the property's average completion depth, the producer would then determine the property's average daily production during the qualifying period. Under this proposal, the qualifying period would begin on July 1, 1977 and end on June 30, 1978, and once a property qualified as marginal, it would retain that status for the duration of price controls—even though production levels subsequently increased above the qualifying limits—in order to provide the additional incentive to increase production levels. We are proposing to use an historical qualifying period—rather than a "rolling" qualifying period as is used for the stripper well property exemption—so as to eliminate any incentive to curtail production in order to qualify a particular property as "marginal." A full year period is proposed because our experience with the stripper well property exemption indicates that in most cases one year appears to be the optimum period to establish marginal status while providing the incentive of market prices: It is generally long enough to compensate for short-term production anomalies and establish representative production levels, and it is not an inordinately long period of time for a property to be operated near its economic limit.

We specifically request comments upon whether we should use as the qualifying period an historical period, as proposed, or rather a "rolling" period in which the qualifying status of the property would be based upon the consecutive 12-month period immediately (or a certain number of months) preceding the month in which the property would qualify for "marginal" status. We recognize that the value of avoiding incentives to curtail production, reflected in the use of a specific historical period as the qualifying period, must be weighed against the value of applying the incentive on a basis reflecting a relatively current production picture for the property. In this regard, comments are requested on the feasibility of administering a current qualification period on a case-by-case basis, with eligibility conditioned upon a showing that the property's recent production decline was consistent with its historical rate of decline.

c. Determination of "average daily production"

A property's average daily production would be determined in the same way as is done for stripper well properties, and the provisions of the relevant stripper well property rulings would be applicable with respect to such computations.

d. Qualifying thresholds

Once the property's average completion depth and average daily production had been determined, the producer would compare those figures with qualifying limits that we will establish, if this proposal is adopted, after our consideration of all the data submitted in response to this Notice and otherwise available to us. In order to provide an example for data computations, and for the purpose of eliciting comments, the qualifying limits set forth below should be considered as one possible approach:

Average completion depth in feet and average daily production: 2,000 or more but less than 4,000—20 barrels or less; 4,000 or more but less than 6,000—25 barrels or less; 6,000 or more but less than 8,000—30 barrels or less; 8,000 or more—35 barrels or less.

For example, assume that a property consisted of four producing wells completed at depths of 3,300 feet, 4,700 feet, 4,500 feet, and 6,600 feet, and that during the qualifying period all four wells were operating at the maximum feasible rate of production, with no production disruptions or other curtailments. Assume also that during this period a total of 29,500 barrels of crude oil, excluding condensate recovered in nonassociated production, were produced from the property. Under our proposal, the property's average completion depth would be computed as follows:

$$ACD = \frac{3,300 + 4,700 + 4,500 + 6,600}{4}$$

$$= 4,775 \text{ feet}$$

The property's average daily production would be computed as follows:

$$ADP = \frac{29,500 \text{ barrels}}{(365 \text{ days})\ (4 \text{ wells})}$$

$$= 20.21 \text{ barrels per well per day}$$

Accordingly, the property as described in the example would qualify as a marginal property because for its average completion depth of 4,775 feet (more than 4,000 but less than 6,000 feet) it produced less than 25 barrels of crude oil per well per day during the qualifying period. Therefore, as of the effective date of this rule, if adopted, the producer could certify the property as a marginal property and begin to determine volumes of market tier crude oil, if any.

In the third-stage EPCA proceeding, referred to previously, the FEA suggested the possibility of adopting a qualifying depth/volume scale similar to depth allowables utilized by some state agencies. In addition, certain legislation introduced in the most recent session of Congress would have established qualifying levels based upon certain current state regulatory allowables. The depth/volume qualifying scale set forth above is based upon the scale proposed in recent legislation and based upon Texas Railroad Commission allowables. We specifically request comments upon the economic bases for these qualifying limits, and more generally we request comments and information establishing production costs at various completion depths for purposes of establishing the appropriate qualifying production limits.

2. Determination of market tier crude oil volumes

In order to provide an incentive for producers to maintain production of crude oil from marginal properties, and to provide the further incentive to increase domestic production from such properties, once a property qualifies for treatment as a marginal property the producer would be permitted to establish a more recent base production control level—designated as a Marginal BPCL—designed to provide an incentive base line against which current production levels would be measured for eligibility for market level prices. Generally, the property's Marginal BPCL would, in the first month of eligibility, be equal to a certain percentage—to be established at a later date in light of data received in response to this Notice—of the property's average monthly production and sale of crude oil in the qualifying period, and would be adjusted downward in succeeding months. Current volumes of crude oil that were produced and sold in excess of the Marginal BPCL would be eligible for market prices in the first sale. Volumes equal to or less than the property's Marginal BPCL would be sold as lower tier and upper tier crude oil in the same proportion as the property's old-to-new crude oil ratio during the qualifying period. This proposal would have the effect of preserving a property's relative proportions of old and new crude oil (as existed in the qualifying period), and gradually releasing volumes of current production from each controlled tier to the market tier until the property's Marginal BPCL was ultimately reduced to zero, and all of the property's current production of crude oil could be sold at market prices.

a. Calculation of the marginal BPCL

As an example, during the first month after the effective date of this rule, if adopted, the property's Marginal BPCL would be equal to a percentage, to be specified later, of the property's average monthly production and sale of all crude oil, excluding condensate recovered in non-associated production, during the qualifying period. In the second month, and for successive months thereafter, the Marginal BPCL would be reduced each month by a reduction factor, which represents a specified percentage of the property's Marginal BPCL for the first month of eligibility.

For purposes of the examples that follow, and in order to solicit comments, we have used a 1.1 percent per month reduction factor, which is based upon an imputed decline rate for all marginal properties of 0.9 per cent month, plus an additional margin of 0.2 per cent per month as an additional production incentive. While our data tend to confirm that the average decline rate among all domestic crude oil properties is on the order of 0.9 per cent per month, we specifically solicit comments addressed to the validity of this assumption. The imputed decline rate would be applicable to all marginal properties except those that have demonstrated an actual historical decline rate of more than the imputed decline rate that we adopt for marginal properties generally. For such properties, the reduction factor would be equal to the property's actual monthly historical decline rate, plus 0.2 per cent. Our proposal is to measure a property's actual monthly decline rate over any 3 calendar-year period (selected by the producer) beginning after December 31, 1972 and ending before January 1, 1978.

Calculation of a property's actual decline rate would be accomplished by comparing the property's total production and sale of crude oil during the first year of the 3-year period selected, with the property's total production and sale of crude oil during the first calendar year following the 3-year period. Where the comparison results in a total decline which is equal to or greater than the imputed decline rate, the reduction factor would be greater than the monthly reduction factor that we adopt for marginal properties generally.

For example, assume that a marginal property produced and sold 15,000 barrels of crude oil during calendar year 1973, and that it produced and sold 11,000 barrels of crude oil during calendar year 1976. The actual decline rate would be calculated as follows:

$$DR = \frac{1 - \frac{A}{B}}{36}$$

Where:

A = total production and sale of crude oil during 1976

b = total production and sale of crude oil during 1973

$$DR = \frac{1 - \left(\frac{11,000}{15,000}\right)}{36}$$

$$= \frac{1 - (.73)}{36}$$

$$= \frac{.27}{36}$$

= .0075 or .75 per cent

Because the marginal property in this example had an actual decline rate of less than the imputed decline rate of 0.9 percent, the imputed decline rate would be used, resulting in a reduction factor of 1.1 percent per month. However, if during 1976 the property produced and sold 10,000 barrels of crude oil, the decline rate would be calculated as follows:

$$DR = \frac{1 - \frac{A}{B}}{36}$$

$$= \frac{1 - \frac{10,000}{15,000}}{36}$$

$$= \frac{1 - (.67)}{36}$$

$$= \frac{.33}{36}$$

= .00917 or .917 per cent

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Because the marginal property in the second example experienced an actual decline rate that was greater than 0.9 percent per month, the reduction factor would equal 1.17 percent per month, i.e., 0.917 percent per month plus 0.2 percent, equals 1.17.

The following formula incorporates the use of the decline rate, and would be used to determine a property's Marginal BPCL for any month following qualification as a marginal property. To illustrate this formula, and in the other examples that follow, we have set the percentage of the property's average monthly production and sale of all crude oil to be used in calculating the property's marginal BPCL at 80 percent. The Marginal BPCL could be set anywhere from 100 percent to zero (as in some legislative propsals), and we invite comments on the level at which the Marginal BPCL should appropriately be established.

$$\text{Marginal BPCL} = .8\left(\frac{A}{B}\right) - C\left(\frac{A}{B}\right)(DR + .002)(.8) \quad (1)$$

Where:

A = the total number of barrels of domestic crude oil produced and sold from the property concerned during the qualifying period.

B = the number of days in the current month.

C = the number of months, excluding the current month, since the effective date of this section for the date of the producer's qualification, whichever is later).

DR = the decline rate for the particular marginal property concerned

Thus, each month following the effective date of this rule, if adopted, the producer would compare the marginal property's total current monthly production and sale of crude oil against the property's Marginal BPCL for that month. All crude oil produced and sold in the current month in excess of the property's Marginal BPCL would qualify as market tier crude oil and could be sold without regard to the ceiling price rules of Part 212. The following example illustrates such calculations.

Assume an effective date of December 31, 1978 for this rule, that we adopt an imputed decline rate of .9 percent per month, and that a marginal property produced and sold a total of 12,000 barrels of crude oil during the qualifying period. For purposes of this example, assume also that the property's decline rate has been calculated to be 1.03 percent per month. Using the formula set forth above, the property's Marginal BPCL for April 1979, for example, would be computed as follows:

$$\text{Marginal BPCL} = .8\left(\frac{A}{B}\right) - C\left(\frac{A}{B}\right)(DR + .002)(.8)$$

$$= .8\left(\frac{12{,}000 \div 31}{365}\right) - 3\left(\frac{12{,}000 \div 31}{365}\right)$$

$$(.0103 + .002)(.8)$$

$$= .8 \quad (1019.18 - 3\ (1019.18)\ (0.0123)\ (.8)$$

$$= 815.34 - 30.09$$

$$= 785.25$$

Assuming that production and sale of domestic crude oil from the property had declined to 900 barrels per month by April 1979, 114.75 barrels of crude oil would qualify as market tier crude oil in that month and could be sold without regard to the lower and upper tier ceiling price rules. The remaining 785.25 barrels of crude oil (equal to the property's Marginal BPCL) could qualify in whole, or in part as new crude oil, as explained below.

(Once a property has qualified as marginal, any existing cumulative deficiency would be eliminated, and would not begin to run until such time as market tier crude oil had been produced and sold from the property, and production and sale volumes subsequently declined to below the property's Marginal BPCL. As with the two tier price system, a cumulative deficiency rule would be used to prevent the practice of withholding volumes of current production so as periodically to qualify larger production volumes as market tier crude oil, and to provide an additional incentive to maintain increased production levels. However, the operation of the cumulative deficiency rule would be suspended during periods of suspended production due to mechanical failure or other disruption in production.)

3. Calculation of Old and New Crude Oil Volumes

Under our proposal, a producer of crude oil from a marginal property would be assured of the average relative proportions of old and new crude oil that were produced and sold from the property during the qualifying period. This would be accomplished by applying a "new crude oil ratio" to current production and sale volumes equal to or less than the property's Marginal BPCL, which do not qualify as market tier crude oil. The new crude oil ratio would simply be a measure of the proportion of new crude oil volumes to total crude oil volumes produced and sold from the property concerned during the qualifying period. In the example above, if 1,500 barrels of new crude oil (properly determined under 10 CFR 212.72) had been produced and sold from the property as new crude oil during the qualifying period, the "New crude oil ratio would be determined as follows:

$$\text{New crude oil ratio} = \frac{\text{total number of barrels of new crude oil produced and sold during the qualifying period}}{\text{total number of barrels of domestic crude oil produced and sold during the qualifying period}}$$

$$= \frac{1{,}500}{12{,}000}$$

$$= .125$$

Applying this ratio in the example above, the 785.25 barrels of crude oil not qualified as market tier crude oil would be classified in April 1979 as follows:

New crude oil = (785.25) (.125)
= 117.79 barrels

Old crude oil = 785.25 - 117.79
= 667.46 barrels

To summarize the results of the calculations for the marginal property described in the example above, the total production of 900 barrels of domestic crude oil produced and sold from the property in April 1979 would be classified as follows:

Market tier crude oil	=	114.75 barrels
New crude oil	=	117.79 barrels
Old crude oil	=	667.46 barrels
Total production and sale	=	900 barrels

We invite comments on this proposal and in particular ask commenters for their views concerning (1) what percentage of a property's average monthly production and sale of all crude oil during the qulaifying period should be used in calculating the property's Marginal BPCL under the proposed system and (2) what is the appropriate reduction factor for decreasing the Marginal BPCL on a monthly basis.

It should be emphasized again that the use of an 80 percent (.8) multiplier for determining the initial marginal BPCL level is for illustrative purposes only. The use of that multiplier would mean that, if the property's production in the first month after qualification equalled the average monthly production during the qualifying period, 20 percent of that production would be "released" to market level prices. We specifically request comments upon whether we should adopt a higher or lower number as providing the appropriate incentive to maintain or increase production from marginal properties.

B. ALTERNATIVE PROPOSAL NO. 2: UPDATING OF BPCL FOR ALL PROPERTIES

Under this proposal, which might be adopted independently or in conjuction with some variation of the proposal described in Alternative No. 1, producers would be provided an option to establish a BPCL for a particular property based on production from the property in 1977, in addition to the existing options to establish the property's BPCL based on either 1972 or 1975 production levels. In connection with this action, the producer would be permitted to eliminate any current cumulative deficiency existing with respect to the property prior to the month in which this proposal, if adopted, becomes effective as a final rule.

If the producer selects the 1977 calendar year to establish the property's BPCL under this alternative, such BPCL could then be adjusted, in accordance with the formula of § 212.76 for determing adjusted BPCL's, based upon the decline in production experienced between 1974 and 1977.

This alternative would apply basically to properties producing only lower tier crude oil, and is intended generally to permit producers to establish and thereafter adjust a BPCL that is more current than that provided for under the present provisions of the crude oil pricing regulations. Where elected, this alternative would appear to provide incentives to maintain or increase crude oil production by allowing producers to receive upper tier prices for production is excess of the property's more recent decline rate, without requiring the producer to "pay back" from such increased production the amount by which prior production was less than the property's prior BPCL. The one-time elimination of the current cumulative deficiency would assure that there are no disincentives to increase production solely by reason of the fact that such increased production would otherwise be required to be sold at lower tier prices.

A variation of this proposal which we wish to consider is one which is similar in all respects, except that the decline rate and the adjusted BPCL for the property would be calculated in the manner provided under Alternative Proposal No. 1 for the Marginal BPCL, rather than under § 212.76. That is, the decline rate would be based upon the decline calculated for any three year period beginning after December 31, 1972 and ending before January 1, 1978, and would then be adjusted on a monthly basis rather than on a semi-annual basis as provided in § 212.76. Moreover, adjustments would not be dependent upon whether the property produced only old crude oil or produced a total volume of crude oil that is below the BPCL volumes, as is the case under § 212.76 .

As proposed here, under either variation of this alternative there would be no initial multiplier applied to the BPCL adopted, and the decline rate applied would not include any additional "incentive factor." In these respects, the variations discussed above would differ from the manner in which the Marginal BPCL would be established under Alternative Proposal No. 1.

C. ALTERNATIVE PROPOSAL NO. 3: RELEASE OF SOME CRUDE OIL PRODUCTION FROM ALL WELLS TO MARKET PRICES

Under this proposal, a certain volume of the daily crude oil production of each well on a property would be eligible for sale at market clearing prices. We are specifically soliciting comments on the question of how many barrels of crude oil per day per well should be released to market prices under this proposal in order to provide an adequate incentive for maintaining domestic production. For example, we could permit the first 10 barrels per day of crude oil produced from each well on a property to be sold at market clearing prices to provide an incentive for domestic production. This should counteract any tendency of producers to refrain from stimulating recovery, but instead allowing production to decline normally, in order to qualify for stripper well pricing under the current regulations.

As a variation of this proposal, the incentive of releasing a certain volume of crude oil to market prices might be applied only to those properties that have secondary or tertiary recovery projects in order to encourage the use of enhanced recovery methods. In commenting on this proposal, commenters are asked to address the question as to whether it would be necessary and administratively feasible for us to require some type of evidence, such as state agency certification, that the property for which the incentive is sought is subject to a *bona fide* secondary or tertiary recovery project.

D. ALTERNATIVE PROPOSAL NO. 4: INCREASE IN LOWER TIER CEILING PRICE

This proposal would increase the ceiling price of lower tier crude oil by an amount to be determined in light of data received in response to this Notice.

On September 1, 1977, the FEA issued Crude Oil Price Schedule No. 8 (42 FR 45284, September 9, 1977), which implements the policy contained in the President's National Energy Plan and provides for monthly increases in lower tier and upper tier ceiling prices, beginning September 1, 1977, at the rate of inflation (measured by the first revision of the GNP deflator).

Comments received in connection with the rulemaking proceeding that culminated in Crude Oil Price Schedule No. 8 indicated that adjustments to the lower tier ceiling price measured by the adjusted GNP deflator might not be adequate to keep pace with increasing costs of oil field materials and services, with the result that operating costs may begin to exceed revenues for certain types of production subject to lower tier ceiling prices. Accordingly, we are interested in this proceeding in receiving data related to documented operating costs (both generally and with respect to particular properties), and the extent, if any, to which these operating costs are approaching lower tier ceiling price levels.

We also request comments as to whether as an incentive for domestic crude oil production, it is necessary to raise the ceiling price of lower tier crude oil generally, or whether case-by-case determinations by the Office of Hearings and Appeals are sufficient for this purpose. Commenters are asked to specify, and support with data, the increment to the lower tier ceiling price which they consider necessary to provide an adequate incentive for domestic production. With respect to this and the other proposals, specific comments are requested on whether the increased revenues to producers that would result from adoption of the proposals are needed to meet current operating expenses, to provide funds for new enhanced recovery projects, or to provide funds for exploration activities.

IV. OTHER CONFORMING AMENDMENTS

Should we decide to adopt any of the proposals described in this Notice, other conforming amendments to the Mandatory Petroleum Allocation and Price Regulations would need to be made. Although we are not proposing specific conforming amendments in this Notice, we solicit comments on the particular areas identified below, as well as any other technical amendments that would be needed.

1. With respect to Alternative Proposals No. 1 and No. 3, the certification requirements in 10 CFR 212.131 would need to be amended so that actual volumes and prices of market

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tier crude oil could be identified in first sales, and reported to the DOE, as crude oil volumes and prices to be used in determining compliance with the composite price restrictions of section 8 of the EPAA.

2. Again with respect to Alternative Proposals No. 1 and No. 3, technical amendments to the Entitlements Program would have to be made so that volumes of market tier crude oil could be treated as "exempt" crude oil and properly cost equalized.

3. In the case of Alternative Proposal No. 1, substantive amendments to 10 CFR 212.75 applicable to unitized properties may be appropriate to avoid the creation of a disincentive to producers of marginal properties to enter unitization agreements.

Comments should address these and any other collateral issues that may be raised by the alternative proposals discussed in this Notice.

V. FINDINGS REQUIRED BY EPAA SECTION 8(b)(2); SPECIFIC INFORMATION REQUESTED

Section 8(b)(2) of the EPAA provides:

(2) No amendment to the regulation under section 4(a) after the date of enactment of this section may permit, in any month which begins after such date, an increase in the price for any volume of old crude oil production from any properties unless the President finds that such amendment—

(A) will give positive incentives for (i) enhanced recovery techniques, or (ii) deep horizon development, from such properties; or

(B) is necessary to take into account declining production from such properties; and

(C) is likely to result in a level of production from such properties beyond that which would otherwise occur if no such amendment were made.

To the extent that any proposal set forth above, if adopted, would result in any volumes of old crude oil (as defined in the EPAA) being sold prior to June 1, 1979, at prices in excess of the lower tier ceiling price rule, the EPAA section 8(b)(2) findings set forth above would be required to be made.

Because of the constraints imposed by EPAA section 8(b)(2), we wish to emphasize that the alternative proposals set forth in this Notice with respect to incentives for domestic production can be seriously considered only if supported by detailed cost and revenue data. Therefore, to the extent that comments are submitted in response to this Notice either in support of or in opposition to particular incentives, they should be accompanied by as much supporting financial data, either general in nature or relating to specific properties, as are available to the commenter. As noted below, we will treat as confidential (according to our determination), and withhold from the public, data submitted pursuant to this Notice that are proprietary in nature, that are so labelled and that are otherwise submitted in accordance with the procedures set out below for the submission of confidential data.

In order to help focus comments on those issues of most interest in connection with incentives for production from marginal properties and other domestic production, we request that commenters address themselves to as many of the following issues as possible, in addition to those issues previously identified in the discussion of particular alternatives:

(1) Whether, as a general regulatory policy, incentives are needed to maintain production from "marginal" wells, such as those described above, or whether a case-by-case analysis by the Office of Hearings and Appeals is sufficient to provide such incentives.

(2) Whether, if generally-applicable incentives are adopted, a case-by-case analysis by the Office of Hearings and Appeals would continue to be necessary to provide relief to other "marginal" properties not explicitly covered by those regulations.

(3) Whether, and to what extent, if any, the incentives discussed above would, if adopted, result in an overall increase in total recoverable domestic crude oil reserves or in the amount of crude oil recovered from any particular reservoir or property.

(4) The extent to which price increases to provide the incentives that are suggested would affect actual composite price levels.

(5) Whether alternative or additional incentives, other than those described above, might better optimize domestic production in general and production from marginal properties in particular.

(6) Whether the following parameters, including representative per-barrel oil well production cost data, would be appropriate in a generally-applicable regulation to describe categories of "marginal" production: production rate in barrels per day, well depth (by 2,000 foot or other increments), the type of artificial lift used, the crude oil/water production ratio; and whether there are any other criteria that would be appropriate and practical for this purpose.

(7) Whether well depth should be measured as the distance from ground level to the point of perforation. Also, by what physical means should well depth be measured?

(8) Whether classifications of "marginal" crude oil production should be established and calculated on a well-by-well, lease, reservoir, property, or other basis.

(9) Whether a qualified marginal property should retain its status once qualified (as with stripper well properties), or whether such properties should be required to requalify periodically. If so, should requalification occur annually, semi-annually, monthly, or on some other periodic basis?

(10) Whether the initial qualification period for marginal properties should be the twelve months proposed, or some other period.

(11) Whether the price of crude oil produced and sold in excess of a property's Marginal BPCL should be permitted in first sales to receive a market clearing price. If so, what are the economic justifications, including representative production cost data?

(12) We understand that offshore production operations are generally more expensive than onshore operations and we solicit comments as to whether modifications might be made to the depth bracket and average daily production thresholds proposed in this Notice so that they might be applied to offshore wells.

(13) Data are also requested on the extent to which inflation of oil field materials and service costs is comparable to the adjusted GNP deflator, as measured since February 1, 1976 and as measured since May 1, 1973, and the extent to which such inflation has caused operating costs to approach or exceed lower tier ceiling price levels. In this regard, we request specific data regarding operating costs generally, and with regard to specific properties.

(14) We also solicit data on the number of wells that have been plugged and abandoned since February 1, 1976 (as compared with the number of wells that were plugged and abandoned in historical periods prior to February 1, 1976), and estimates of volumes of domestic crude oil, if any, that have been lost as a result.

VI. ADDITIONAL PROPOSAL TO ELIMINATE 21 CENTS PER BARREL ENTITLEMENT PENALTY FOR UNCONTROLLED CRUDE OIL

In its March 29, 1976 amendments to the entitlements program (41 FR 13899, April 1, 1976), the FEA adopted a fixed advantage or bias under the program for refiners' receipts of lower and upper tier domestic crude oils as compared with receipts of imported crude oil. This adjustment is implemented by fixing the entitlement price at an amount that is 21 cents less than the exact differential between the weighted average cost of refiners' receipts of imported and exempt domestic crude oils, on the one hand, and those of lower tier crude oil, on the other.

The FEA stated its rationale for this provision as follows:

FEA has further concluded, on the basis of comments solicited and received on this issue, that a fixed advantage of 21 cents per barrel for all domestic crude oil production over receipts of imported crude oil is also appropriate, in that the import program identifies this amount as being necessary to preserve incentives for refining domestic crude oil. Thus, § 211.67(i) has been amended to provide that the entitlement price will be the exact differential between the weighted average costs to refiners of old oil and of imported crude oil less 21 cents. (41 FR at 13901)

It appears that this fixed advantage for refiners' receipts of domestic crude oil may not be serving the purpose for which it was intended, and may be imposing an inappropriate burden on those refiners that are dependent upon imported crude oil. We have therefore tentatively concluded that this 21 cents per barrel penalty should be eliminated. In this regard it should be noted that there now appear to be adequate incentives to refine domestic crude oil, including, in addition to special entitlements adjustments such as those for heavy California crude oil, the fact that the average cost of imported crude oil exceeds that of uncontrolled domestic crudes that are also used in calculating the entitlements price, even without the 21 cents penalty. We are interested in receiving comments upon this proposal, and views as to whether the benefit (if any) from the penalty is outweighed by any adverse competitive impact upon import-reliant refiners. Comments are also requested on whether the deletion of this 21 cents per barrel entitlement adjustment should be accompanied by a corresponding increase in the lower tier ceiling price pursuant to the alternative proposal set forth earlier in this Notice.

Removal of this penalty would be accomplished by amending § 211.67(i)(4) to provide that the entitlement price is equal to the exact differential, for the month concerned, between the weighted average costs to refiners of lower tier crude oil and such weighted average cost of imported crude oil, ANS crude oil, stripper well crude oil, incremental tertiary crude oil, and other exempt domestic crude oils. In addition, reference to the 21 cents per barrel disadvantage, found in § 211.67(b)(2) (relating to the calculation of the entitlement obligation for upper tier crude oil) would be deleted.

VII. COMMENT PROCEDURES

A. WRITTEN COMMENTS

You are invited to participate in this proceeding by submitting data, views or arguments with respect to the issues set forth in this Notice. Comments should be submitted to the address indicated in the "ADDRESSES" section of this Notice and should be identified on the outside envelope and on documents submitted with the designation "Production Incentives for Marginal Properties," Docket No. ERA-R-78-18. You should submit fifteen copies. All comments received will be available for public inspection in the DOE Reading Room GA-152, James Forrestal Building, 1000 Independence Avenue SW., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. We will consider all comments received by January 22, 1979, 4:30 p.m.

You should identify separately any information or data you consider to be confidential and submit them in writing, one copy only. We reserve the right to determine the confidential status of the information or data and to treat them according to our determination.

B. PUBLIC HEARINGS

1. *Request Procedure.*—The times and places for the hearings are indicated in the "DATES" and "ADDRESSES" section of this Notice. If necessary to present all testimony, hearings will be continued at 9:30 a.m. of the next business day following the first day of the hearing.

You may make a written request for an opportunity to make an oral presentation at the hearings. The requests should contain a phone number where you may be contacted through the day before the hearing. Since it may be necessary to limit the number of persons making such presentations, you should be prepared to describe your interest in this proceeding, and why you are a proper representative of a group or class or persons that has such an interest, and to give a concise summary of your proposed oral presentation.

We will notify each person selected to be heard before 4:30 p.m., January 5, 1979. Persons scheduled to speak at the hearings must bring 100 copies of their statement to the appropriate hearing location indicated in the "ADDRESSES" section of this Notice on the date of the hearing.

2. *Conduct of the Hearings.* We reserve the right to select the persons to be heard at these hearings, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearings. The length of each presentation may be limited, based on the number of persons requesting to be heard.

We will designate a DOE official to preside at the hearings, which will not be judicial or evidentiary-type in nature. Questions may be asked only by those conducting the hearings, and there will be no cross-examination of persons presenting statements. Any decision made by the DOE with respect to the subject matter of the hearings will be based on all information available to the DOE. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

You may submit questions to be asked of any person making a statement at the hearings. Such questions must be submitted to the address indicated above for requests to speak, for the location concerned, three days before the hearings. If you wish to ask a question at the hearings, you may submit it, in writing, to the presiding officer. We will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer.

The presiding officer will announce any further procedural rules needed for the proper conduct of the hearing.

We will have transcripts of the hearings made and we will retain the entire record of the hearings, including the transcripts, and make them available for inspection at the DOE Freedom of Information Office, Room GA-152, James Forrestal Building, 1000 Independence Avenue SW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. You may purchase a copy of the transcript from the reporter.

As required by section 7(c)(2) of the Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, a copy of this Notice has been submitted to the Administrator of the Environmental Protection Agency for his comments concerning the impact of this proposal on the quality of the environment. The Administrator had no comments on this proposal.

We have determined that this Notice proposes the adoption of a significant regulation requiring the preparation of a regulatory analysis for purposes of Executive Order No. 12044, "Improving Government Regulations" (43 FR 12661, March 24, 1978) and the DOE Interim Management Directive, "Procedures for the Development and Analysis of Regulations, Standards, and Guidelines" (43 FR 18634, May 1, 1978). Accordingly, a regulatory analysis is in preparation and will be available upon completion in the near future.

Pursuant to the requirements of the Department of Energy Organization Act (Pub. L. 95-91), a copy of this Notice has been referred, concurrently with its issuance, to the Federal Energy Regulatory Commission for a determination, within the comment period prescribed herein, whether the proposed amendments would significantly affect any matter within the Commission's jurisdiction.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L.

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94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, Pub. L. 94-385; Energy Policy and Conservation Act, Pub. L. 94-163, as amended, Pub. L. 94-385; E.O. 11790, 39 FR 23185; Department of Energy Organization Act, Pub. L. 95-91; E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, we propose to amend Parts 211 and 212 of Chapter II, Title 10 of the Code of Federal Regulations, as set forth below.

Issued in Washington, D.C., November 2, 1978.

DAVID J. BARDIN,
Administrator, Economic Regulatory Administration.

ALTERNATIVE No. 1

1. Section 212.73 is amended to revise paragraph (a) to read as follows:

§ 212.73 Lower tier ceiling price rule.

(a) *Rule.*—Except as provided in § 212.74 with respect to new crude oil; except as provided in § 212.75 for certain crude oil produced from unitized properties; except as provided in § 212.78 for incremental crude oil produced from qualified tertiary enhanced recovery projects; except as provided in Supart C of this Part for exempt crude oil; and except as provided in § 212.79 with respect to market tier crude oil, no producer may charge a price higher than the lower tier ceiling price for any first sale of domestic crude oil.

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2. A new § 212.79 is added to read as follows:

§ 212.79 Crude oil produced and sold from marginal properties.

(a) *Rule.*—Notwithstanding the provisions of § 212.73(a), a producer may in any month charge any price in first sales of market tier crude oil produced and sold from a marginal property.

(b) *Definitions.*—For purposes of this section—

"Average completion depth" means for a particular marginal property the sum of all completion depths for all wells that produced crude oil (excluding condensate recovered in nonassociated production) from the property during the qualifying period, divided by the number of wells that produced crude oil (excluding condensate recovered in nonassociated production) during the qualifying period.

"Average daily production" means the qualified maximum total production of crude oil (excluding condensate recovered in nonassociated production) produced from a property, divided by 365 times the number of wells that produced crude oil (excluding condensate recovered in nonassociated production) from that property in the qualifying period. To qualify as maximum total production, each well on the property must have been maintained at the maximum feasible rate of production throughout the qualifying period and in accordance with recognized conservation practices, and not significantly curtailed by reason of mechanical failure or other disruption in production.

"Completion depth" means the depth in feet measured from the surface of the earth to the deepest point of perforation from which a well produces crude oil.

"Decline Rate" means, with respect to a particular marginal property, (1) the imputed decline rate, which is equal to —— percent; or (2) the property's actual decline rate during any three calendar year period beginning after December 31, 1972 and ending before January 1, 1978, determined pursuant to the following formula:

$$DR = 1 - \left(\frac{A}{B}\right)^{\frac{1}{3}}$$

Where:

A = the total number of barrels of domestic crude oil produced and sold from the property concerned during the first calendar year following the three calendar year period

B = the total number of barrels of domestic crude oil produced and sold from the property concerned during the first calendar year of the three calendar year period.

whichever decline rate is greater.

"Marginal base production control level" means a number of barrels of crude oil computed pursuant to the following formula:

$$\text{Marginal BPCL} = (__) \frac{AB}{365} - C \frac{AR}{365} (DR + __) (__)$$

Where:

A = the total number of barrels of domestic crude oil produced and sold from the marginal property concerned during the qualifying period.

B = the number of days in the current month

C = the number of months, excluding the current month, since the effective date of this section

DR = the decline rate for the particular marginal property concerned

"Marginal cumulative deficiency" means, for a particular marginal property, the total number of barrels by which production and sale of crude oil has been less than the property's marginal base production control level subsequent to the first month in which market tier crude oil was produced and sold from the marginal property concerned, minus the total number of barrels of domestic crude oil produced and sold from the marginal property in each prior month, which was in excess of the property's marginal base production control level for that month but which was not classified as market tier crude oil because of this requirement to reduce the amount of market tier crude oil each month by the amount of the marginal cumulative deficiency. For any month during which the marginal property produces no crude oil because production is curtailed or otherwise disrupted, the marginal cumulative deficiency shall be reduced by the number of barrels of domestic crude oil that would otherwise have been produced and sold from the marginal property in that month had the production curtailment or disruption not occurred. "Marginal property" means a property whose average daily production of crude oil (excluding condensate recovered in non-associated production) per well during the qualifying period did not exceed the number of barrels shown in the following table for the corresponding average completion depth:

TABLE

Average completion depth in feet	*Barrels per day*
2,000 or more but less than 4,000	—— or less
4,000 or more but less than 6,000	—— or less
6,000 or more but less than 8,000	—— or less
8,000 or more	—— or less

"Market tier crude oil" means, with respect to a particular marginal property, the total number of barrels of domestic crude oil produced and sold from the marginal property in a particular month, less the marginal base production control level for the marginal property concerned, less the marginal property's marginal cumulative deficiency.

"New crude oil" means, with respect to a particular marginal property, the total number of barrles of domestic crude oil produced and sold from the marginal property in a particular month less the total number of barrels of market tier crude oil produced and sold from the marginal property in that month, times the new crude oil ratio for the marginal property.

"New crude oil ratio" means, with respect to a particular marginal property, the total number of barrels of new crude oil (determined pursuant to § 212.72) produced and sold from the property concerned during the qualifying period, divided by the total number of barrles of domestic crude oil produced and sold from the property concerned during the qualifying period.

"Old crude oil" means, with respect to a particular marginal property, the total number of barrels of domestic crude oil produced and sold from the marginal property in a particular month, less the number of barrels of market tier crude oil produced and sold from the property concerned in that month, less the number of barrels of new crude oil produced and sold from the property concerned in that month.

"Qualifying period" means the 12-month period ending June 30, 1978.

ALTERNATIVE No. 2

1. Section 212.72 is amended by revising the definitions of "Base productioan control level," "Current cumulative deficiency," and "New crude oil" to read as follows:

§ 212.72 Definitions.

• • • • •

"Base production control level" means: (1) With respect to months ending prior to February 1, 1976:

(A) If crude oil was produced and sold from the property concerned in every month of 1972, the total number of barrels of domestic crude oil produced and sold from that property in the same month of 1972;

(B) If crude oil was not produced and sold from the property concerned in every month of 1972, the total number of barrels of crude oil produced and sold from that property in 1972, divided by 12;

(2) With respect to months commencing after January 31, 1976, except as provided in § 212.76, either:

(A) The total number of barrels of old crude oil produced and sold from the property concerned during calendar year 1975, divided by 365, multiplied by the number of days in the month in 1975 which corresponds to the month concerned; or

(B) If the producer elects to certify crude oil sales for 1972 in accordance with § 212.131(a)(2), the total number of barrels of crude oil produced and sold from the property concerned during the calendar year 1972, divided by 366, multiplied by the number of days during the month in 1972 which corresponds to the month concerned.

(3) With respect to months commencing after————, except as provided in § 212.76 either:

(A) The total number of barrels of old crude oil produced and sold from the property concerned during calendar year 1977, divided by 365, multiplied by the number of days in the month in 1977 which corresponds to the month concerned, or

(B) If the producer elects to certify crude oil sales for 1975 in accordance with § 212.131(a)(2), the total number of barrels of old crude oil produced and sold from the property concerned during calendar year 1975, divided by 365, multiplied by the number of days in the month in 1975 which corresponds to the month concerned; or

(C) If the producer elects to certify crude oil sales for 1972 in accordance with § 212.131(A)(2), the total number of barrels of crude oil produced and sold from the property concerned during the calendar year 1972, divided by 366, multiplied by the number of days during the month in 1972 which corresponds to the month concerned.

"Current cumulative deficiency" means: (1) prior to February 1, 1976, the total number of barrels by which production and sale of crude oil was less than the base production control level, for all months in which production and sale of crude oil was less than the base production control level, subsequent to the first month in which new crude oil was produced and sold, minus the total number of barrels of domestic crude oil produced and sold in each prior month which was in excess of the base production control level for that month, but which was not classified as new crude oil because of this requirement to reduce the amount of new crude oil in each month by the amount of the current cumulative deficiency;

(2) Prior to ————, the total number of barrels by which production and sale of crude oil has been less than the base production control level subsequent to the first month (after February 1, 1976) in which new crude oil was produced and sold, minus the total number of barrels of domestic crude oil produced and sold in each prior month after February 1, 1976, which was in excess of the base production control level for that month, but which was not classified as new crude oil because of this requirement to reduce the amount of new crude oil in each month by the amount of the current cumulative deficiency;

(3) Effective ————, the total number of barrels by which production and sale of crude oil has been less than the base production control level subsequent to the first month (after ————,) in which new crude oil was produced and sold, minus the total number of barrels of domestic crude oil produced and sold in each prior month after ————, 1976 which was in excess of the base production control level for that month, but which was not classified as new crude oil because of this requirement to reduce the amount of new crude oil in each month by the amount of the current cumulative deficiency.

• • • • •

"New crude oil" means, with respect to a specific property: (1) Prior to February 1, 1976, the total number of barrels of domestic crude oil produced and sold in a specific month, less (A) the base production control level for that month, and less (B) the current cumulative deficiency;

(2) Prior to ————, the total number of barrels of domestic crude oil produced and sold in a specific month, less (A) the property's base production control level for that month and less (B) the current cumulative deficiency since February 1, 1976;

(3) Effective ————, the total number of barrels of domestic crude oil produced and sold in a specific month, less (A) the property's base production control level for that month and less (B) the current cumulative deficiency since ————; and shall not in any period include any number of barrels not certified as new crude oil pursuant to the provisions of § 212.131(a)(1) within the consecutive two-month period immediately succeeding the month in which the crude oil is produced and sold, except where such recertification is explicitly required or permitted by FEA order, interpretation, or ruling.

2. Section 212.76 is revised to read as follows:

§ 212.76 Adjustments to base production control levels.

(a) *Eligibility.* (1) with respect to each property from which no new crude oil is produced in any month in the 5-month period ending June 30, 1976, or ending ————, [5 months after the effective date] if the BPCL is established under paragraph (3)(A) of the definition of BPCL in § 212.76, a producer may, for each 6-month semiannual period commencing after June 30, 1976 or ————, as the case may be, adjust the base production control level for the property concerned for each month during that 6-month period in accordance with paragraph (b) of this section.

(2) With respect to each property from which new crude oil is produced and any month in the 5-month period ending June 30, 1976, or ending ———— [5 months after the effective date] if the BPCL is established under paragraph (3)(A) of the definition of BPCL in § 212.76, a producer may adjust the base production control levels applicable thereto in accordance with paragraph (b) of this section, commencing with the 6-month semiannual period immediately following a 6-month semiannual period ending subsequent to June 30, 1976 or ————, as the case may be, in which the total amount of crude oil produced and sold from the property concerned was less than the sum of the base production control levels for that period.

(b) *Rule.* The base production control level for properties which qualify for an adjusted base production control level may be adjusted only in accordance with the following formulae:

(1) For the first six-month semi-annual period:

$$ABPCL = \left(1 - \frac{APPD}{1.33}\right) (BPCL)$$

(2) For each Subsequent six-month semi-annual period:

$$ABPCL = \left(1 - \frac{APPD}{2}\right) (ABPCL')$$

Where:

ABPCL=The adjusted base production control level for the month concerned.

BPCL=The base production control level for the month concerned, computed under § 212.72 as revised effective ————.

ABPCL'=The sum of the adjusted base production control levels for the immediately preceding 6 month period as computed pursuant to this section, divided by the number of days in that period and multiplied by the number of days in the month concerned.

ARPD=The annual rate of production decline applicable to the property concerned. If the BPCL is established under paragraph (3)(B) or (3)(C) of the definition of BPCL in § 212.72, the ARPD is determined by subtracting the total amount of crude oil produced and sold from the property concerned in 1975 from that property's total amount of crude oil produced and sold in 1972. The result, expressed as a percentage of the total amount of crude oil produced and sold from that property in 1972, is divided by three to obtain the ARPD. If the BPCL is established under paragraph (3)(A) of the definition of BPCL in § 212.72, the ARPD is determined by subtracting the total amount of crude oil produced and sold from the property concerned in 1977 from that property's total amount of crude oil produced and sold in 1974. The result, expressed as a percentage of the total amount of crude oil produced and sold from that property in 1974, is divided by three to obtain the ARPD.

ALTERNATIVE No. 3

1. Section 212.73 is amended to revise paragraph (a) to read as follows:

§ 212.73 Lower tier ceiling price rule.

(a) *Rule.* Except as provided in § 212.74 with respect to new crude oil; except as provided in § 212.75 for certain crude oil produced from unitized properties; except as provided in § 212.78 for incremental crude oil produced from qualified tertiary enhanced recovery projects; except as provided in Subpart C of this Part for exempt crude oil; and except as provided in § 212.79 with respect to market tier crude oil, no producer may charge a price higher than the lower tier ceiling price for any first sale of domestic crude oil.

• • • • •

2. A new § 212.79 is added to read as follows:

§ 212.79 Market tier price rule.

(a) *Rule.* Notwithstanding the provisions of § 212.73 (a), a producer may in any month charge any price in first sales of the first———barrels of crude oil produced per day from each well on a property.

ALTERNATIVE No. 4

1. Section 212.73 is amended to revise paragraphs (b) and (c) to read as follows:

§ 212.73 Lower tier ceiling price rule.

• • • • •

(b) *Lower tier ceiling price determination other than in Alaska and California.* The lower tier ceiling price for a particular grade of domestic crude oil in a particular field other than in Alaska or California is the sum of: (1) The highest posted price at 6 a.m., local time, May 15, 1973, for transactions in that grade of crude oil in that field, or if there was no posted price in that field for that grade of domestic crude oil, the related price for that grade of domestic crude oil which is most similar in kind and quality in the nearest field for which prices were posted; plus (2) ——— per barrel.

(c) *Lower tier ceiling price determination in Alaska and California.* In Alaska and California, the lower tier ceiling price for a particular grade of domestic crude oil in a particular field is the sum of: (1) The highest posted price at 6 a.m., local time, May 15, 1973, for transactions in that grade of crude oil in that field, or if there was no posted price in that field for that grade of domestic crude oil, the related price for that grade of domestic crude oil which is most similar in kind and quality in the nearest field for which prices were posted; plus (2) ——— per barrel; plus (3) 2 cents for each degree API gravity between 34 degrees API gravity and 40 degrees API gravity that the domestic crude oil being offered for sale is below 40 degrees API gravity, plus (4) 3 cents for each degree API gravity that the domestic crude oil being offered for sale is below 34 degrees API gravity.

ADDITIONAL PROPOSAL

1. Section 211.67 is amended to revise paragraph (b)(2) and (i)(4) to read as follows:

§ 211.67 Allocation of domestic crude oil

• • • • •

(b) *Required purchase of entitlements by refiners.*

• • • • •

(2) To calculate the number of barrels of deemed old oil included in a refiner's adjusted crude oil receipts for purposes of the definition of national domestic crude oil supply ratio in § 211.62 of this subpart, paragraph (b)(1) of this section and paragraph (c) of this section, each barrel of old oil shall be equal to one barrel of deemed old oil and each barrel of upper tier crude oil shall constitute that fraction of a barrel of deemed old oil the numerator of which is equal to the reported weighted average cost per barrel to refiners of imported crude oil, stripper well crude oil (as defined in part 212 of this chapter), incremental tertiary crude oil (as determined pursuant to § 212.78), and other domestic crude oils the first sale of which is exempt from the provisions of Part 212 of this chapter for that month, less such weighted average cost per barrel to refiners of upper tier crude oil, and the denominator of which is the entitlement price for that month.

• • • • •

(i) *Issuance and transfer of entitlements.*

• • • • •

(4) The price at which entitlements shall be sold and purchased shall be fixed by the ERA for each month and shall be the exact differential between the weighted average cost per barrel to refiners of old oil and such weighted average cost of imported crude oil, ANS crude oil, stripper well crude oil (as defined in Part 212 of this chapter), incremental tertiary crude oil (as determined pursuant to § 212.78), and other domestic crude oils the first sale of which is exempt from the provisions of Part 212 of this chapter, such costs to be equivalent to the delivered costs to the refinery.

• • • • •

[FR Doc. 78-31600 Filed 11-6-78; 9:22 am]

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The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR notice 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

[3410-02-M]

Title 7—Agriculture

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS: FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

Correction of Rules

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notification of authority citation.

SUMMARY: The agency adopted final rules at 43 FR 9455 (March 8, 1978) and 43 FR 28433 (June 30, 1978) relating to Florida oranges, grapefruit, tangerines, and tangelos and Washington apricots. This document adds the authority citation under which those rules were issued.

DATE: March 8, 1978, and June 30, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: The proper authority citation for the rule documents published at 43 FR 9455 and 43 FR 28433 is as follows: Sections 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 78-31719 Filed 11-8-78; 8:45 am]

[3410-02-M]

[Orange, Grapefruit, Tangerine, and Tangelo Regulation 2, Amdt. 1]

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

[Grapefruit Regulation 2, Amdt. 1]

PART 944—FRUITS; IMPORT REGULATIONS

Grade and Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: These amended regulations continue through October 14, 1979, current minimum grade and size requirements for Florida oranges, grapefruit, tangerines, and tangelos and imported grapefruit. The regulations will expire on November 12, 1978, unless extended. The action is necessary to assure shipment of ample supplies of mature fruit of acceptable grades and sizes in the interest of growers and consumers.

EFFECTIVE DATE: November 13, 1978, through October 14, 1979.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: Notice was published in the FEDERAL REGISTER on October 16, 1978 (43 FR 47533), that the Department was considering extension of the regulations currently in effect through October 14, 1979, which are effective under the marketing agreement, and order No. 905, both as amended (7 CFR part 905), regulating handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and to a conforming extension of the regulation for imported grapefruit, effective pursuant to section 8e of the act. The notice provided that all written comments in connection with the proposed regulations be submitted by October 27, 1978. None were received.

The minimum grade and size requirements, herein specified, for domestic and export shipments reflect the Department's appraisal of the need for regulation of the designated varieties of Florida oranges, grapefruit, tangerines, and tangelos during the specified period based on the available supply and current and prospective market demand conditions. Such requirements are necessary to establish and maintain orderly marketing, and such action is consistent with the objectives of the act and the interests of producers and consumers.

The Department's Crop Reporting Board estimates the 1978-79 season's crop of all Florida round oranges at 167 million boxes, less than 1 percent under last season's production. The Board estimates early and midseason oranges, including navels at 95 million boxes, about 7.6 percent over last season's crops. It estimates grapefruit production at 51 million boxes, about one-half a percent lower than the record large 1976-77 season production. It estimates the temple orange crop at 4.8 million boxes, tangelos at 3.6 million boxes, and tangerines at 3.8 million boxes. These speciality citrus crops are comparable in size to those harvested last season.

In its recommendation for regulations, the Citrus Administrative Committee, established under the marketing agreement and order, reported that 85 percent or more of the volume of each of the varieties specified will meet the grades herein prescribed for the particular variety. It further reported that 85 percent or more of the early and midseason, valencia and other late-type oranges, navel, and temple oranges will meet or exceed the applicable sizes prescribed; and that approximately the same percentage of each of the varieties of grapefruit will meet the applicable sizes specified in the regulation for the particular grapefruit variety. For tangerines, about 80 percent of the Robinson variety, 55 percent of the Dancy variety, and 95 percent of the Honey variety, will meet or exceed the minimum sizes specified.

The committee projected the fresh market demand for early-midseason, navel, valencia and other late-type oranges at 19,500 carlots. The supply of such oranges meeting the requirements of the regulations is well in excess of the quantity required to meet such demand. Consequently, the

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regulations will permit shipment of more than ample supplies to meet fresh market needs, and the regulations, herein specified, for early and midseason, navel, valencia and other late-type oranges are the same as those currently in effect, and continuance of such regulations, as hereinafter provided, are necessary to avoid disruption of the orderly marketing of such oranges in the public interest, and do not have for their purpose the maintaining of prices to farmers above the level which is declared to be the policy of Congress to establish under the act.

The committee projected fresh market demand at 4,000 carlots of temple oranges, 10 carlots of seeded grapefruit, 37,500 carlots of seedless grapefruit, 4,800 carlots of tangelos, and 6,100 carlots of tangerines. Hence, the volume of each of the varieties exceeds that which can be marketed in fresh markets at a fair return to growers, and, in such circumstance, the exclusion from fresh markets of the less desirable grades and sizes, the marketing of which tends to disrupt such markets and lower returns for the more desirable grades and sizes, is appropriate to meet the objectives of the act.

The minimum grade and size requirements for imported grapefruit are consistent with section 8e of the act. This section requires that whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity.

After consideration of all matters presented, including the proposals in the aforesaid notice and other available information, it is found that the regulations, as set forth herein, are in accordance with said marketing agreement and order and will tend to effectuate the declared policy of the act.

It is further found that good cause exists for not postponing the effective date of these regulations until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) notice of rulemaking concerning the regulations, with an effective date of November 13, 1978, was published in the FEDERAL REGISTER, and no objection to the regulations or such effective date was received; (2) the recommendation for regulation was developed at an open meeting at which interested persons were afforded an opportunity to submit their views; (3) to maintain orderly marketing conditions in the interests of growers and consumers, the regulations should be continued without disruption; and (4) the regulations will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time.

Accordingly, it is found that the provisions of the proposed regulations contained in the Notice of Proposed Rulemaking published in the FEDERAL REGISTER on October 16, 1978 (43 FR 47533), shall be and are the terms and provisions of these regulations, and are set forth in full herein.

§ 905.302 Orange, grapefruit, tangerine, and tangelo regulation 2.

Order. (a) During the period specified in column (2) of table I no handler shall ship between the production area and any point outside thereof in continental United States, Canada, or Mexico, any variety of fruit listed in column (1) of such table unless such variety meets the applicable minimum grade and size (with tolerances for size as specified in paragraph (c) hereof) specified for such variety in columns (3) and (4) of such table.

TABLE I

Variety (1)	Regulation period (2)	Minimum grade (3)	Minimum diameter (inches) (4)
Oranges:			
Early and midseason	Nov. 13, 1978 to Oct. 14, 1979.	U.S. No. 1	2⁹⁄₁₆
Navel	do	U.S. No. 1 Golden.	2⁹⁄₁₆
Valencia and other late type	do	U.S. No. 1	2⁹⁄₁₆
Temple	do	do	2⁹⁄₁₆
Grapefruit:			
Seeded, except pink	do	do	3¹³⁄₁₆
Seeded, pink	do	do	3¹³⁄₁₆
Seedless, except pink	do	Improved No. 2	3⁵⁄₁₆
Seedless, pink	do	do	2⁹⁄₁₆
Tangerines:			
Robinson	do	U.S. No. 1	2⁹⁄₁₆
Dancy	do	do	2⁹⁄₁₆
Honey	do	Florida No. 1	2¹¹⁄₁₆
Tangelos:			
Tangelos	do	U.S. No. 1	2⁹⁄₁₆

(b) During the period specified in column (2) of table II no handler shall ship to any destination outside the continental United States, other than Canada or Mexico, any variety of fruit listed in column (1) of such table unless such variety meets the applicable minimum grade and size (with tolerances for size as specified in paragraph (c) hereof) specified for such variety in columns (3) and (4) of such table.

TABLE II

Variety (1)	Regulation period (2)	Minimum grade (3)	Minimum diameter (inches) (4)
Oranges:			
Early and midseason	Nov. 13, 1978 to Oct. 14, 1979.	U.S. No. 1	2⁹⁄₁₆
Navel	do	U.S. No. 1 Golden.	2⁹⁄₁₆
Valencia and other late type	do	U.S. No. 1	2⁹⁄₁₆
Temple	do	do	2⁹⁄₁₆
Grapefruit:			
Seeded, except pink	do	do	3⁹⁄₁₆
Seeded, pink	do	do	3⁹⁄₁₆
Seedless, except pink	do	Improved No. 2	3⁵⁄₁₆
Seedless, pink	do	do	3⁹⁄₁₆
Tangerines:			
Robinson	do	U.S. No. 1	2⁹⁄₁₆
Dancy	do	do	2⁹⁄₁₆
Honey	do	Florida No. 1	2⁹⁄₁₆
Tangelos:			
Tangelos	do	U.S. No. 1	2⁹⁄₁₆

(c) *Size tolerances:* In the determination of minimum size as prescribed in tables I and II, the following tolerances are permitted (1) for oranges, as set forth in § 51.1152 of the U.S. Standards for Grades of Florida Oranges and Tangelos, except that such tolerances for other than Navel and Temple Oranges shall be based only on the oranges in the lot measuring 2¹³⁄₁₆ inches or smaller in diameter, and the tolerance for Honey tangerines shall be as specified in § 51.1818; of the U.S. Standards for Grades of Florida Tangerines; (2) for grapefruit, as specified in § 51.761 of the U.S. Standards for Grades of Florida Grapefruit; (3) for tangerines, as specified in § 51.1818 of the U.S. Standards for Grades of Florida Tangerines; and (4) for tangelos, as set forth in § 51.1152 of the U.S. Standards for Grades of Florida Oranges and Tangelos.

(d) Terms used in the marketing order, including improved No. 2 grade for grapefruit, when used herein, mean the same as is given to the terms in the order; Florida No. 1 grade for Honey tangerines means the same as provided in rule No. 20-35.03 of the regulations of the Florida Department of Citrus, and terms relating to grade, except Improved No. 2 grade for grapefruit, and diameter shall mean the same as is given to the terms in the revised U.S. Standards for Grades of Florida Oranges and Tangelos (7 CFR 51.1140-51.1180), the revised U.S. Standards for Florida Tangerines (7 CFR 51.1810-51.1835), or the revised U.S. Standards for Grades of Florida Grapefruit (7 CFR 51.750-51.784).

§ 944.102 Grapefruit Regulation 2.

(a) *Applicability to imports.* Pursuant to section 8e of the act and Part 944—Fruits; Import Regulations, during the period specified in column (2) of table I, in § 905.302, the importation into the United States of any variety of grapefruit listed in column (1) of said table is prohibited unless such variety meets the applicable minimum grade and size specified for such variety in columns (3) and (4) of said table. In the determination of minimum size as prescribed in table I, a tolerance is permitted as specified in paragraph (c) of § 905.302.

(b) The Federal or Federal-State Inspection Service, Fruit and Vegetable Quality Division, Food Safety and Quality Service, U.S. Department of Agriculture, is designated as the governmental inspection service for certifying the grade, size, quality, and maturity of grapefruit that are imported into the United States. Inspection by the Federal or Federal-State Inspection Service with evidence thereof in the form of an official inspection certificate, issued by the respective service, applicable to the particular shipment of grapefruit, is required on all imports. The inspection and certification services will be available upon application in accordance with the rules and regulations governing inspection and certification of fresh fruits, vegetables, and other products (7 CFR Part 2851) and in accordance with the Procedure for Requesting Inspection and Designating the Agencies to Perform Required Inspection and Certification (7 CFR Part 944; 43 FR 19340).

(c) Notwithstanding any other provisions of this regulation, any importation of grapefruit which, in the aggregate, does not exceed 10 standard packed cartons, equivalent to four-fifths (⅘) of a U.S. bushel of grapefruit, each, or equivalent quantity, may be imported without regard to the requirements specified herein.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: November 7, 1978, to become effective November 13, 1978.

FLOYD F. HEDLUND,
Director, Fruit and Vegetable Division, Agriculture Marketing Service.

[FR Doc. 78-31793 Filed 11-8-78; 8:45 am]

[3410-02-M]

PART 946—IRISH POTATOES GROWN IN WASHINGTON

Approval of Reapportionment of Committee Members

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This amendment will reapportion the membership of the State of Washington Potato Committee. By providing one handler member and alternate for each of the five districts this reapportionment will result in more equitable representation on the committee.

EFFECTIVE DATE: July 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, Deputy Director, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, Washington, D.C. 20250, phone 202-447-6393.

SUPPLEMENTARY INFORMATION: Marketing Agreement No. 113 and Order 946, both as amended, regulate the handling of Irish potatoes grown in the State of Washington. It is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The State of Washington Potato Committee, established under the order, is responsible for its local administration.

Notice was published in the October 2 FEDERAL REGISTER (43 FR 45375) regarding the proposal. It afforded interested persons an opportunity to file written comments by November 1, 1978. None was filed.

The order provides in § 946.31 that upon recommendation of the committee the Secretary may reapportion committee membership among districts.

At its June 7, 1978, organizational meeting the committee evaluated its handler representation, which currently is comprised of two members from District 1, none from District 2, and one each from Districts 3, 4, and 5. Because District No. 2 has become an important potato shipping area since the committee membership was last apportioned, the committee decided that reapportioning the committee to provide for one handler member and his alternate for each district would result in more equitable representation. The change will become effective July 1, 1979.

The amendment is as follows:

Section 946.104 Reapportionment of committee membership is amended to read as follows:

§ 946.104 Reapportionment of committee membership.

(a) • • •

(1) District No. 1—three producer members and one handler member;

(2) District No. 2—two producer members and one handler member;

• • • • • •

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674).

Dated: November 6, 1978, to become effective July 1, 1979.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 78-31705 Filed 11-8-78; 8:45 am]

[3410-02-M]

PART 966—TOMATOES GROWN IN FLORIDA

Amendment No. 1 to Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This amendment extends through June 16, 1979, the minimum

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grade, size, pack, container, marking, and inspection requirements effective from October 15 through November 15, 1978, for tomatoes grown in certain counties in Florida. It should promote orderly marketing of such tomatoes and keep less desirable sizes and qualities from being shipped to consumers.

EFFECTIVE DATE: November 16, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, Deputy Director, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, Washington, D.C. 20250, telephone: 202-447-6393.

SUPPLEMENTARY INFORMATION: Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR 966) regulate the handling of tomatoes grown in designated counties of Florida. It is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The Florida Tomato Committee, established under the order, is responsible for its local administration.

Notice of proposed rulemaking was published in the October 20, 1978, FEDERAL REGISTER (43 FR 49010 inviting comments by November 4, 1978. None was received.

This regulation is based upon recommendations made by the committee at its public meeting in Palm Beach, Fla. on September 8, 1978.

The recommendations of the committee reflect its appraisal of the composition of the 1978-79 crop of Florida tomatoes and the marketing prospects for this season. The regulation is similar to those issued during past seasons and to the temporary regulation in effect during October 15 through November 15, 1978. The grade and size requirements are necessary to prevent tomatoes of lower quality and undesirable size from being distributed in fresh market channels. Such tomatoes are usually of negligible economic value to producers. This should provide consumers with tomatoes of good quality and size throughout the season consistent with the overall quality of the crop. The requirements, including those for containers, container net weights, and size classifications, are intended to standardize shipments in the interest of orderly marketing and to improve returns to growers.

Exceptions are provided to certain of these requirements to recognize special situations in which such requirements would be inappropriate or unreasonable. Shipments are allowed to certain special purpose outlets without regard to minimum grade, size, container, or inspection requirements provided that safeguards are used to prevent such tomatoes from reaching unauthorized outlets. Tomatoes for canning are exempt under the legislative authority for this part. Since no purpose would be served by regulating tomatoes used for relief or charity purposes such shipments are also exempt. Because export requirements differ materially, on occasion, from domestic market requirements such shipments are also exempt.

The following types of tomatoes are exempt from this regulation: elongated types commonly referred to as pear shaped or paste tomatoes; cerasiform-type tomatoes commonly referred to as cherry tomatoes; hydroponic tomatoes, and greenhouse tomatoes. Such types are generally of good quality, readily identifiable either by their distinctive shapes or container markings and usually comprise a very small part of the total crop. Tomatoes marketed within the regulated area are not subject to the provisions of this section because of an increase in the u-pick type of harvest in the Florida production area close to urban areas and resulting difficulty in obtaining compliance with regulations. The minimum quantity exemption permits persons to handle up to 60 pounds of tomatoes per day without regard to the requirements of this part. This reduces the problem of enforcement on small shipments of essentially noncommercial nature. The provisions concerning special pack shipments are intended to help handlers in the production area compete on an equal basis with those outside the area by not requiring reinspection of previously inspected and certified tomatoes when repacked in consumer size packages.

Occasionally individual fruit of several new varieties, including Flora-Dade, may be elongated in shape. This characteristic may be exaggerated by adverse growing conditions. It is anticipated that handlers packing these varieties usually will be able to comply with all provisions of the regulation. However, if situations arise in which the incidence of tomatoes not of the normal globular shape makes sizing in accordance with present grade standards infeasible, the affected varieties could be exempted from the size requirements of the regulation.

Findings. After consideration of all relevant matters presented, including the above proposal recommended by the Florida Tomato Committee, established pursuant to said marketing agreement and order, it is hereby found and determined that the handling regulation, as hereinafter set forth, will tend to effectuate the declared policy of the act.

It is hereby further found that good cause exists for not postponing the effective date of this section until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) shipments of the 1978-79 crop tomatoes grown in the production area have begun and the regulation should become effective on the effective date herein to maximize benefits to producers; (2) information regarding the provisions of the recommendation by the committee has been disseminated among the growers and handlers of tomatoes in the production area; (3) a temporary regulation with identical requirements is effective for the period October 15 through November 15, 1978; and (4) compliance with this section should not require any special preparation on the part of handlers subject thereto which cannot be completed by such effective date.

The amendment is as follows:

§ 966.317 Handling regulation.

During the period November 16, 1978, through June 16, 1979, no person shall handle any lot of tomatoes for shipment outside the regulated area unless they meet the requirements of paragraph (a) or are exempted by paragraphs (b) or (d).

(a) *Grade, size, container, and inspection requirements.*

(1) *Grade.* Tomatoes shall be graded and meet the requirements specified for U.S. No. 1, U.S. Combination, U.S. No. 2 or U.S. No. 3, of the U.S. Standards for Grades of Fresh Tomatoes. When not more than 15 percent of tomatoes in any lot fail to meet the requirements of U.S. No. 1 grade and not more than one-third of this 15 percent (or 5 percent) are comprised of defects causing very serious damage including not more than 1 percent of tomatoes which are soft or affected by decay, such tomatoes may be shipped and designated as at least 85 percent U.S. No. 1 Grade.

(2) *Size.* (i) Tomatoes shall be at least 2$\frac{6}{32}$ inches in diameter and be sized in accordance with § 2851.1859 of the U.S. tomato standards.

(ii) Tomatoes of designated sizes may not be commingled unless they are over 2$\frac{13}{32}$ inches in diameter and each container shall be marked to indicate the designated sizes.

(iii) Only the generic terms as defined in § 2851.1859 may be used to indicate size designations on containers of tomatoes; except that the following abbreviations may be used—SML for small, MED for medium, LG for large, EX LG for extra large, or MAX LG for maximum large.

(c) *Containers.* (i) Tomatoes shall be packed in containers of 20, 30 or 40 pounds designated net weights and comply with the requirements of § 2851.1863 of the U.S. tomato standards.

(ii) Each container shall be marked to indicate the designated net weight and must show the name and address of the shipper in letters at least one-fourth (¼) inch high.

(iii) If the container in which the tomatoes are packed is not clean and bright in appearance without marks, stains, or other evidence of previous use, the lid of such container shall be marked in a principal display area at least 2½ inches high and 4½ inches long with the words "USED BOX" in letters not less than 1¼ inches high and the name of the shipper and point of origin in letters not less than ⅜ inch high.

(4) *Inspection.* Tomatoes shall be inspected and certified pursuant to the provisions of § 966.60. Each handler who applies for inspection shall register with the committee pursuant to § 966.113. Handlers shall pay assessments as provided in § 966.42. Evidence of inspection must accompany truck shipments.

(b) *Special purpose shipments.* The requirements of paragraph (a) of this section shall not be applicable to shipments of tomatoes for canning, relief, charity, or export if the handler thereof complies with the safeguard requirements of paragraph (c) of this section. Shipments for canning are also exempt from the assessment requirements of this part.

(c) *Safeguards.* Each handler making shipments of tomatoes for canning, relief, charity or export in accordance with paragraph (b) of this section shall:

(1) Apply to the committee and obtain a certificate of privilege to make such shipments.

(2) Prepare on forms furnished by the committee a report in quadruplicate on such shipments authorized in paragraph (b) of this section.

(3) Bill or consign each shipment directly to the designated applicable receiver.

(4) Forward one copy of such report to the committee office and two copies to the receiver for signing and returning one copy to the committee office. Failure of the handler or receiver to report such shipments by signing and returning the applicable report to the committee office within 10 days after shipment may be cause for cancellation of such handler's certificate and/or receiver's eligibility to receive further shipments pursuant to such certificate. Upon cancellation of any such certificate, the handler may appeal to the committee for reconsideration.

(d) *Exemption.* (1) *For types.* The following types of tomatoes are exempt from this regulation: Elongated types commonly referred to as pear shaped or paste tomatoes and including but not limited to San Marzano, Red Top, and Roma varieties; cerasiform type tomatoes commonly referred to as cherry tomatoes; hydroponic tomatoes; and greenhouse tomatoes.

(2) *For minimum quantity.* For purposes of this regulation each person subject thereto may handle up to but not to exceed 60 pounds of tomatoes per day without regard to the requirements of this regulation but this exemption shall not apply to any shipment or any portion thereof of over 60 pounds of tomatoes.

(3) *For special packed tomatoes.* Tomatoes resorted, regraded and repacked by a handler who has been designated as a "Certified Tomato Repacker" by the committee are exempt from the tomato grade classifications of paragraph (a)(1) and the size classifications of paragraph (a)(2) (except that the tomatoes shall be at least 2$\frac{6}{32}$ inches in diameter) and the container requirements of paragraph (a)(3) if such tomatoes comply with the inspection requirements of paragraph (a)(4).

(4) *For varieties.*

Upon recommendation of the committee, varieties of tomatoes that are elongated or otherwise misshapen due to adverse growing conditions may be exempted by the Secretary from the provisions of paragraph (a)(2) *Size.*

(e) *Definitions.* "Hydroponic tomatoes" means tomatoes grown in solution without soil; "greenhouse tomatoes" means tomatoes grown indoors. A "Certified Tomato Repacker" is a repacker of tomatoes in the regulated area who has the facilities for handling, regrading, resorting and repacking tomatoes into consumer size packages and has been certified as such by the committee. "U.S. tomato standards" means the revised U.S. Standards for Grades of Fresh Tomatoes (7 CFR 2851.1855-2851.1877), effective December 1, 1973, as amended, or variations thereof specified in this section (Title 7, Chapter I, Part 51 was redesignated Title 7, Chapter 28, Part 2851 on June 27, 1977). Other terms in this section shall have the same meaning as when used in Marketing Agreement No. 125, as amended, and this part, and the U.S. tomato standards.

(f) *Applicability to imports.* Under Section 8e of the act and Section 980.212 "Import regulations" (7 CFR 980.212, as amended; 43 FR 3349) tomatoes imported during the effective period of this section shall be at least U.S. No. 3 grade and at least 2$\frac{6}{32}$ inches in diameter. Not more than 10 percent, by count, in any lot may be smaller than the minimum specified diameter.

NOTE.—It is hereby certified that the economic and inflationary impacts of this regulation have been carefully evaluated in accordance with OMB Circular A-107.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674).

Dated: November 6, 1978 to become effective November 16, 1978.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 78-31721 Filed 11-8-78; 8:45 am]

[7590-01-M]

Title 10—Energy

CHAPTER I—NUCLEAR REGULATORY COMMISSION

Miscellaneous Amendments

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: This rule (a) changes the telephone number for the Commission's Inspection and Enforcement Regional Office I listed in Parts 20, 21, and 73 of the Commission's regulations and (b) amends the Commission's regulation "Domestic Licensing of Source Material" to exempt the general licensee under § 40.25 from the requirements of the Commission's regulation "Notices, Instructions, and Reports to Workers; Inspections."

EFFECTIVE DATE: November 9, 1978.

FOR FURTHER INFORMATION CONTACT:

Gerald L. Hutton, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone 301-492-7086.

SUPPLEMENTARY INFORMATION: Effective October 2, 1978, the commercial telephone number for the Commission's Inspection and Enforcement Regional Office I, King of Prussia, Pa., was changed to 215-337-5000. This number will be in effect at all times. The amendments set forth below change the telephone number for Region I as set forth in Parts 20, 21, and 73. The amendment of Part 40 set forth below amends § 40.25(e) to exempt the general licensee under § 40.25 from the requirements of 10 CFR Part 19.

Because these amendments relate solely to corrections and minor matters, the Commission has found that good cause exists for omitting notice of proposed rulemaking, and public procedure thereon, as unnecessary and for making the amendments effective upon publication in the FEDERAL REGISTER.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended,

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and sections 552 and 553 of Title 5 of the United States Code, the following amendments to Title 10, Chapter I, Code of Federal Regulations, Parts 20, 21, 40, and 73 are published as a document subject to codification.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

1. Appendix D of 10 CFR Part 20 is amended by changing the telephone number of NRC Regional Office I to 215-337-5000.

PART 21—REPORTING OF DEFECTS AND NONCOMPLIANCE

§ 21.2 [Amended]

2. Footnote 1 to § 21.2 of 10 CFR Part 21 is amended by changing the telephone number of NRC Regional Office I to 215-337-5000.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

§ 40.25 [Amended]

3. Paragraph 40.25(e) of 10 CFR Part 40 is amended by deleting the words "is exempt from the requirements of Parts 20 and 21" and substituting therefor "is exempt from the requirements of Parts 19, 20, and 21."

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

4. Appendix A of 10 CFR Part 73 is amended by changing the telephone number of NRC Regional Office I to 212-337-5000.

(Sec. 161, Pub. L. 83-703, 68 Stat. 948 (42 U.S.C. 2201); sec. 201, Pub. L. 93-438, 88 Stat. 1242 (42 U.S.C. 5841).)

Dated at Bethesda, Md., this 23d day of October 1978.

For the Nuclear Regulatory Commission.

LEE V. GOSSICK,
Executive Director for Operations.

[FR Doc. 78-31528 Filed 11-8-78; 8:45 am]

[6210-01-M]

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. D; Docket No. R-0187]

PART—204—RESERVES OF MEMBER BANKS

Supplementary Reserve Requirements

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board has imposed a supplementary reserve requirement of 2 percent on member bank time deposits in denominations of $100,000 or more and certain other member bank liabilites. The action is being taken to encourage member banks to decrease their domestic borrowings as a source of funds and to increase their borrowings in the Eurodollar market.

DATE: Effective on deposits outstanding beginning November 2, 1978, for reserves required to be maintained beginning November 16, 1978.

FOR FURTHER INFORMATION CONTACT:

Allen Raiken, Associate General Counsel, or Gilbert Schwartz, Senior Attorney, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, 202-452-3000.

SUPPLEMENTARY INFORMATION: The Board of Governors has amended its regulation D to modify the reserve balances that member banks are required to maintain against their deposits. The amendment imposes a 2 percent supplementary reserve requirement against member bank time deposits in denominations of $100,000 or more and certain other member bank liabilities. This action is being taken to strengthen the dollar in exchange markets and thereby counter continuing domestic inflationary pressures. The action will help to moderate recent relatively rapid expansion in bank credit and will also increase the incentive for member banks to increase their borrowings in the Eurodollar market and to decrease their domestic borrowings.

The supplementary 2 percent reserve requirement will apply to a member bank's time deposits of the following types:

(a) Time deposits of $100,000 or more; and

(b) Time deposits of $100,000 or more represented by promissory notes, acknowledgements of advance, due bills, or similar obligations (written or oral) as provided in § 204.1(f) of regulation D; and

(c) Time deposits of any denomination represented by ineligible banker's acceptances or obligations issued by a member bank's affiliate with maturities of 7 years or less to the extent that the proceeds are supplied to the member bank as provided in § 204.1(f) of regulation D.

The supplementary 2 percent reserve requirement will not apply to savings deposits and Christmas club-type deposits.

This action was taken pursuant to the Board's authority under § 19 of the Federal Reserve Act (12 U.S.C. 461) to establish reserve ratios for member banks. This amendment is effective on deposits outstanding during the week beginning November 2, 1978, and affects reserves held by member banks during the week beginning November 16, 1978.

In view of the current conditions in the foreign exchange markets, and in order to achieve the above stated objectives as soon as possible, the Board for good cause finds that the notice, public procedure, and deferral of effective date provisions of 5 U.S.C. § 553(b) with regard to the Board's action are impracticable and contrary to the public interest.

Effective as to the reserves required to be held during the week commencing November 16, 1978 against deposits outstanding in the week beginning November 2, 1978, § 204.5 of regulation D is amended to read as follows:

§ 204.5 Reserve requirements.

(a) *Reserve percentage.* Pursuant to the provisions of section 19 of the Federal Reserve Act and § 204.2(a) and subject to paragraph (c) of this section, the Board of Governors of the Federal Reserve System hereby prescribes the following reserve balances that each member bank of the Federal Reserve System is required to maintain on deposit with the Federal Reserve Bank of its district.

(1) If not in a reserve city—

. . . . . .

(ii) 1 percent of its time deposits outstanding on or issued after October 16, 1975, that have an initial maturity of 4 years or more; 2½ percent of its time deposits outstanding on or issued after December 25, 1975, that have an initial maturity of 180 days or more but less than 4 years; 3 percent of its time deposits up to $5 million, outstanding on or issued after October 16, 1975, that have an intitial maturity of less than 180 days, plus 6 percent of such deposits in excess of $5 million: *Provided, however,* That in no event shall the reserves required on its aggregate amount of time and savings deposits be less than 3 percent. In addition, a member bank shall maintain a reserve balance equal to 2 percent of its time deposits of the following types:

(a) Time deposits of $100,000 or more;

(b) Time deposits of $100,000 or more represented by promissory notes, acknowledgements of advance, due bills, or similar obligations as provided in § 204.1(f); and

(c) Time deposits represented by ineligible banker's acceptances or obligations issued by a member bank's affiliate, as provided in § 204.1(f).

However, the supplementary 2 percent reserve requirement shall not apply to a savings deposit, or a time deposit, open account that constitutes deposits of individuals, such as Christmas club accounts and vacation club accounts, that are made under written contracts providing that no withdrawal shall be made until a certain number of periodic deposits have been made during a period of not less than 3 months.

. . . . . .

(2) If in a reserve city (except as to any bank located in such a city that is permitted by the Board of Governors of the Federal Reserve System, pursuant to § 204.2(a)(2), to maintain the reserves specified in paragraph (a)(1) of this section)—

. . . . . .

(ii) 1 percent of its time deposits outstanding on or issued after October 16, 1975, that have an initial maturity of 4 years or more; 2½ percent of its time deposits outstanding on or issued after December 25, 1975, that have an initial maturity of 180 days or more but less than 4 years; 3 percent of its time deposits up to $5 million, outstanding on or issued after October 16, 1975, that have an initial maturity of less than 180 days, plus 6 percent of such deposits in excess of $5 million: Provided, however, That in no event shall the reserves required on its aggregate amount of time and savings deposits be less than 3 percent. In addition, a member bank shall maintain a reserve balance equal to 2 percent of its time deposits of the following types:

(a) Time deposits of $100,000 or more; and

(b) Time deposits of $100,000 or more represented by promissory notes, acknowledgments of advance, due bills, or similar obligations as provided in § 204.1(f); and

(c) Time deposits represented by ineligible bankers' acceptances or obligations issued by a member bank's affiliate, as provided in § 204.1(f).

However, the supplementary 2 percent reserve requirement shall not apply to a savings deposit, or a time deposit, open account that constitutes deposits of individuals, such as Christmas club accounts and vacation club accounts, that are made under written contracts providing that no withdrawal shall be made until a certain number of periodic deposits have been made during a period of not less than 3 months.

. . . . . .

By order of the Board of Governors, November 1, 1978.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc. 78-31723 Filed 11-8-78; 8:45 am]

[6210-01-M]

[Docket No. R-0184]

PART 262—RULES OF PROCEDURE

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

Reconsideration of Certain Board Actions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; correction.

SUMMARY: This document corrects a previous FEDERAL REGISTER document (FR Doc. 78-30265, filed October 10, 1978) beginning at page 49973 of the issue for Thursday, October 26, 1978. On page 49974 in the first column, paragraph (7) should read as follows: (7) Pursuant to part 262.3(i) of this chapter (Rules of Procedure) to determine whether or not to grant a request for reconsideration of any action taken by the Board with respect to an application as provided in that part.

Board of Governors of the Federal Reserve System, November 2, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-31722 Filed 11-8-78; 8:45 am]

[4910-13-M]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 18434; Amdt. Nos. 11-15, 121-150, 127-36, 133-8, 137-9, 139-12]

SUBCHAPTER B—PROCEDURAL RULES

SUBCHAPTER G—AIR CARRIERS, AIR TRAVEL CLUBS, AND OPERATORS FOR COMPENSATION OR HIRE: CERTIFICATION AND OPERATIONS

OFFICIALS WITHIN THE FAA

Delegations of Authority

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments delegate certain authority of the Administrator of the FAA to officials within the FAA to issue, amend, or repeal: (1) Appendices to parts of the Federal Aviation Regulations; (2) technical standard orders; (3) minimum en route IFR altitudes and associated flight data; and (4) standard instrument approach procedures. They also delegate certain authority of the Administrator to: (1) reconsider refusals of applications for amendments to various operating certificates, operations specifications, and airport operations manuals; and (2) reconsider amendments to operations specifications, and airport operations manuals. In addition, these amendments establish procedures for the reconsideration of denials or grants of exemptions. These amendments also delegate authority to the Regional Directors to grant or deny exemptions from the regulations concerning the certification and operations of land airports serving CAB-certificated air carriers. Finally, the amendments delegate the Chief Counsel's authority in connection with the processing of certain rules. This action is taken to provide more timely governmental response and action. These delegations will reduce review levels within the agency with corresponding savings in time, money, and resources.

DATES: Effective date November 9, 1978. Comments are due on or before March 9, 1979.

ADDRESS: Send comments on the procedures in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-24), Docket No. 18434, 800 Independence Avenue SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT:

Edward P. Faberman, Office of the Chief Counsel, Regulations and Enforcement Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; Telephone: 202-426-3073.

SUPPLEMENTARY INFORMATION:

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I. GENERAL

To reduce review levels within rulemaking areas that largely involve technical and nonpolicy matters, these amendments delegate certain responsibilities of the Administrator and the Chief Counsel to officials within the FAA and authorize certain other delegations by the Chief Counsel. The reduction of review levels will expedite the rulemaking process which will in turn save time, money, and resources and provide more timely governmental response and action. These amendments also establish procedures for the reconsideration of denials or grants of exemptions. The delegations and procedures are accomplished by specific changes to sections of the Federal Aviation Regulations.

II. DESCRIPTION OF AMENDMENTS

A. AUTHORITY OF "CHIEF COUNSEL"

By the addition of a new paragraph (c) to § 11.41, certain authority of the Chief Counsel in processing exemptions under subpart C of part 11 (14 CFR Part 11) is delegated to the Assistant Chief Counsel for Regulations and Enforcement. Further, under this paragraph the Chief Counsel may delegate responsibilities in processing petitions for rulemaking, issuing notices of proposed rulemaking, and adopting final rules. Section 11.61 of subpart D (rules and procedures for airspace assignment and use) and § 11.81 of subpart E (processing of Airworthiness Directives) are amended to delegate to the Assistant Chief Counsel for Regulations and Enforcement the authority of the Chief Counsel in processing rules under these subparts. It should be noted that under the amendment to subpart C, in contrast to existing subparts D and E, the Regional Counsel does not act as the Chief Counsel except in processing petitions for exemptions from the requirements of part 139 (14 CFR Part 139). Further, the last sentence of paragraph (a) of § 11.41 is placed in new paragraph (c) of § 11.41 since new paragraph (c) contains the definitions for the subpart. Finally, paragraph (c) of § 11.53 is deleted since its substance is incorporated in the new paragraph (c) of § 11.41 which relates to the scope of the entire subpart.

B. APPENDICES TO PARTS, TECHNICAL STANDARD ORDERS, MINIMUM EN ROUTE IFR ALTITUDES AND ASSOCIATED FLIGHT DATA, AND STANDARD INSTRUMENT APPROACH PROCEDURES

By amending § 11.49 the head of the Office or Service concerned is delegated the authority to issue, amend, or repeal appendices to parts of the Federal Aviation Regulations. These appendices contain technical details relating to specific sections within the part and they do not involve basic policy considerations. Therefore, the general involvement of the Administrator in regulatory actions related to appendices is not warranted.

Section 11.49 is also amended to delegate the authority to issue, amend, and repeal: (1) Technical standard orders; (2) minimum en route IFR altitudes and associated flight data; and (3) standard instrument approach procedures. These delegations were authorized by a document published in 25 FR 6489 (July 9, 1960) and paragraph 802 of order FSP 1100.1, as amended March 9, 1973. This amendment merely serves to publish these existing delegations in the Federal Aviation Regulations.

C. RECONSIDERATION OF DENIALS OR GRANTS OF EXEMPTIONS

A new section is added to part 11 establishing procedures for processing petitions for reconsideration of denials and grants of exemptions. Previously, there has been no prescribed procedure, but normally, reconsideration has been by the Administrator. New § 11.55 (a) and (b) codifies this procedure in the Federal Aviation Regulations.

In contrast to the above procedure, new § 11.55(c) provides that, in the case of a petition for reconsideration of a denial of an exemption from the requirements of part 67 of the Federal Aviation Regulations, (14 CFR Part 67) the petition is to be filed with, and the reconsideration is to be by, the Federal Air Surgeon. The difference in the procedure for reconsideration of denials of part 67 exemptions is due to the large quantity of part 67 exemptions requested, approximately 100 a month, and the specialized nature of the medical decisionmaking in these cases which requires specialized medical expertise. A decision on a petition for reconsideration still would be made by the Administrator if the Federal Air Surgeon referred the decision on the initial petition for exemption to the Administrator in accordance with § 11.53.

A petition for reconsideration would have to be based on either a material mistake in fact or law or the presence of an additional fact not presented to the FAA in the initial petition.

D. AIRWORTHINESS DIRECTIVES AND AIRSPACE ASSIGNMENT AND USE

Except for the amendments to §§ 11.61 and 11.81, the revisions of part 11 made by these amendments do not relate to the issuance of Airworthiness Directives and rules concerning airspace assignment and use provided for in subparts D and E of part 11. Those subparts already contain delegations sufficient to provide for appropriate decentralization of rulemaking.

E. VARIOUS OPERATING CERTIFICATES, OPERATIONS SPECIFICATIONS AND AIRPORT OPERATIONS MANUALS

Parts 121, 127, 133, 137, and 139 of subchapter G of the Federal Aviation Regulations (14 CFR Parts 121, 127, 133, 137, and 139) are revised to indicate that the Administrator delegates to the head of the Office or Service concerned the authority to reconsider refusals of applications by certificate holders for amendments to various operating certificates, operations specifications, and airport operations manuals, and to reconsider amendments initiated by the FAA to operations specifications and airport operations manuals. Certain editorial changes are also contained in these amendments which make the sections affected consistent with the delegated authority.

F. EXEMPTIONS FROM PART 139

Section 139.19 is revised to delegate to the appropriate Regional Director the authority to grant or deny exemptions from the requirements of part 139 with the exception of those petitions filed on behalf of military airports. The Assistant Administrator for Airports Programs is authorized to grant or deny the petitions for exemptions from the requirements of part 139 filed on behalf of military airports. These delegations are authorized because of the local nature of most part 139 exemptions and the necessity for coordinating a national policy for those exemptions filed on behalf of military airports. Finally, the language in § 11.41 has been changed to more accurately reflect the fact that exemptions are requested "from the requirements of" part 139 and not "filed under" that part.

III. EFFECTIVE DATE AND REQUEST FOR COMMENTS

Since these amendments are procedural in nature and implement existing statutory authority, notice and opportunity for public comment is not required. In addition, since these amendments are procedural and do not impose an additional burden, good cause exists for making them effective less than 30 days after publication. However, the FAA contemplates a review of the procedures established by these amendments after they have been in operation for at least 12 months. Interested persons are invited to submit such comments as they may desire with respect to these amendments. Communications should identify the regulatory docket number and be submitted in duplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-24, 800 Independence Avenue SW., Washington, D.C. 20591. All comments received on or before March 9, 1979, will be considered during the review, and will be available both before and after that date in the Rules Docket for examination by interested persons.

IV. ADOPTION OF THE AMENDMENTS

Accordingly, parts 11, 121, 127, 133, 137, and 139 of the Federal Aviation Regulations (14 CFR Parts 11, 121, 127, 133, 137, and 139) are amended as follows, effective November 9, 1978.

1. By revising § 11.41 by deleting the last sentence of paragraph (a) and by adding a new paragraph (c) to read as follows:

§ 11.41 Scope.

• • • • •

(c) For the purposes of this subpart—

(1) The words "Office or Service" include the Aeronautical Center and the National Aviation Facilities Experimental Center, and include Regional Directors with respect to petitions for exemptions from the requirements of part 139 of this chapter; and

(2) "Chief Counsel" means—

(i) the Chief Counsel;

(ii) a Regional Counsel with respect to petitions for exemptions from the requirements of part 139 of this chapter;

(iii) the Assistant Chief Counsel for Regulations and Enforcement for all other exemptions processed under this subpart; or

(iv) any person to whom the Chief Counsel has delegated authority in the matter concerned.

2. By revising § 11.49 to read as follows:

§ 11.49 Adoption of final rules.

(a) After the Office or Service concerned has completed its analysis and evaluation of the information, views, and arguments submitted with respect to a proposed rule, representatives of that Office or Service and the Office of the Chief Counsel prepare an appropriate rule, subject to the approval of the Chief Counsel as to form and legality. Except as provided in paragraph (b) of this section, the rule is then submitted, with the recommendations of the head of the Office or Service concerned and the Chief Counsel, to the Administrator for consideration. If a rule is adopted, it is published in the FEDERAL REGISTER.

(b) Final authority to issue, amend, and repeal—

(1) An appendix to a part is delegated to the head of the Office or Service concerned;

(2) Technical standard orders for aircraft materials, parts, processes, and appliances under part 37 of this chapter is delegated to the Director, Flight Standards Service; and

(3) Minimum en route IFR altitudes and associated flight data under part 95 of this chapter, and standard instrument approach procedures under part 97 of this chapter is delegated to the Chief, Aircraft Programs Division, Flight Standards Service.

§ 11.53 [Amended]

3. By amending § 11.53 by deleting paragraph (c).

4. By the addition of a new section to subpart C of part 11 to read as follows:

§ 11.55 Reconsideration of a denial or grant of exemption.

(a) Except as provided in paragraph (c) of this section, if a petition for exemption is denied, the petitioner may file a petition for reconsideration with the Administrator. The petition must be filed, in duplicate, within 30 days after the petitioner is notified of the denial of the exemption.

(b) If a petition for exemption is granted, a person other than the initial petitioner may file a petition for reconsideration with the Administrator. The petition must be filed, in duplicate, within 45 days after the grant of exemption is issued.

(c) If a petition for exemption from the requirements of part 67 of this chapter is denied, the petitioner may file a petition for reconsideration with the Federal Air Surgeon. The petition must be filed in duplicate, within 30 days after the petitioner is notified of the denial of the exemption. However, if the final action on the initial petition was by the Administrator in accordance with the second sentence of § 11.53(a), the Federal Air Surgeon refers the petition for reconsideration and recommendations and those of the Chief Counsel to the Administrator for final action.

(d) A petition for reconsideration under this section must be based on the existence of one or more of the following:

(1) A finding of a material fact that is erroneous.

(2) A necessary legal conclusion that is without governing precedent or is a departure from or contrary to law, FAA rules, or precedent.

(3) An additional fact relevant to the decision that was not presented in the initial petition for exemption. In order for a petition under paragraph (a) or (c) of this section to be based on this ground, the petition for reconsideration must state the reason the additional fact was not presented in the initial petition.

§ 11.61 [Amended]

5. By amending paragraph (d) of § 11.61 by inserting the words "or the Assistant Chief Counsel for Regulations and Enforcement," between the words "or a Regional Counsel," and "or".

§ 11.81 [Amended]

6. By amending paragraph (c) of § 11.81 by inserting the words "or the Assistant Chief Counsel for Regulations and Enforcement," between the words "or a Regional Counsel," and "or".

§ 121.77 [Amended]

7. By amending § 121.77 as follows:

(A) By revising the introductory clause of paragraph (a) and by revising paragraph (b) to read as follows:

§ 121.77 Amendment of certificate.

(a) An operating certificate issued under this part may be amended—

• • •

(b) An applicant for an amendment to an operating certificate must file its application with the District Office at least 15 days before the proposed effective date of that amendment, unless a shorter filing period is allowed by that office.

• • • • •

(B) By deleting the word "Administrator" from paragraph (a)(1) and substituting in its place the words "FAA District Office charged with the overall inspection of the certificate holder's operations".

(C) By deleting the words "Administrator personally" from paragraph (c) and substituting in their place the words "Director, Flight Standards Service."

§ 121.79 [Amended]

8. By amending § 121.79 as follows:

(A) By deleting the word "Administrator" from the introductory clause of paragraph (a) and substituting in its place the words "FAA District Office charged with the overall inspection of the certificate holder's operations".

(B) By deleting the word "Administrator" from paragraphs (a)(1) and (a)(2) and substituting in its place the words "District Office".

(C) By amending paragraph (b) by deleting the word "Administrator" from all sentences except the third and substituting in its place the words "District Office" and by deleting the word "he" from the fourth sentence and substituting in its place the word "it".

(D) By revising the third sentence of paragraph (b) and by revising paragraph (c) to read as follows:

§ 121.79 Amendment of operations specifications.

• • • • •

(b) • • • The amendment becomes effective not less than 30 days after the holder receives notice of it, unless the holder petitions the Director,

Flight Standards Service, to reconsider the amendment, in which case its effective date is stayed pending a decision by the Director. • • •

(c) An applicant must file its application for an amendment of operations specifications with the District Office at least 15 days before the date that it proposes for the amendment to become effective, unless a shorter filing period is allowed by that office.

• • • • •

(E) By deleting the words "Administrator personally" from paragraph (d) and substituting in their place the words "Director, Flight Standards Service".

§ 127.25 [Amended]

9. By amending § 127.25 as follows:

(A) By deleting the word "he" from paragraph (a) and substituting in its place the words "the Administrator".

(B) By amending paragraph (b) by deleting the word "Administrator" and substituting in its place the words "FAA District Office charged with the overall inspection of the certificate holder's operations" and by deleting the word "he" and substituting in its place the word "it".

§ 127.27 [Amended]

10. By amending § 127.27 as follows:

(A) By deleting the word "Administrator" from the introductory clause of paragraph (a) and substituting in its place the words "FAA District Office charged with the overall inspection of the certificate holder's operations".

(B) By deleting the word "Administrator" from paragraphs (a)(1) and (a)(2) and substituting in its place the words "District Office".

(C) By amending paragraph (b) by deleting the word "Administrator" from all sentences except the third and substituting in its place the words "District Office" and by deleting the word "he" from the fourth sentence and substituting in its place the word "it".

(D) By revising the third sentence of paragraph (b) and by revising paragraph (c) to read as follows:

§ 127.27 Amendment of operations specifications.

• • • • •

(b) • • • The amendment becomes effective not less than 30 days after the air carrier receives notice of it, unless the air carrier petitions the Director, Flight Standards Service, to reconsider the amendment, in which case its effective date is stayed pending a decision by the Director. • • •

(c) An applicant must file its application for an amendment of operations specifications with the District Office at least 15 days before the date that it proposes for the amendment to become effective, unless a shorter filing period is allowed by that office.

• • • • •

(E) By deleting the words "Administrator personally" from paragraph (d) and substituting in their place the words "Director, Flight Standards Service".

11. By revising § 133.25 to read as follows:

§ 133.25 Amendment of certificate.

The holder of a Rotorcraft External-Load Certificate may apply to the FAA District Office having jurisdiction over the area in which the applicant's home base of operation is located, or to the District Office nearest the area in which operations are to be conducted, for an amendment of the applicant's certificate, to add or delete a rotorcraft or a rotorcraft-load combination authorization, by executing the appropriate portion of the form used in applying for a Rotorcraft External-Load Operator Certificate. If the applicant for the amendment shows compliance with §§ 133.19, 133.21, and 133.23, the District Office issues an amended Rotorcraft External-Load Operator Certificate to the applicant with authorization to operate with those classes of rotorcraft-load combinations for which the applicant complies with the applicable provisions of subpart D of this part.

§ 137.17 [Amended]

12. By amending §137.17 as follows:

(A) By revising the introductory clause of paragraph (a) to read as follows:

§ 137.17 Amendment of certificate.

(a) An agricultural aircraft operator certificate may be amended—

• • • • •

(B) By deleting the word "his" from paragraph (a)(1) and substituting in its place the words "the Administrator's".

(C) By deleting the word "he" from the second sentence of paragraph (b) and substituting in its place the word "it".

(D) By amending paragraph (c) by deleting the word "Administrator" and substituting in its place the words "District Office" and by deleting the word "he" and substituting in its place the word "it".

(E) By deleting the words "Administrator personally" from paragraph (d) and substituting in their place the words "Director, Flight Standards Service".

§ 139.7 [Amended]

13. By amending § 139.7 as follows:

(A) By revising the introductory clause of paragraph (a) to read as follows:

§ 139.7 Amendment of certificate.

(a) An airport operating certificate issued under this part may be amended—

• • • • •

(B) By deleting the word "Administrator" from paragraph (a)(1) and substituting in its place the words "FAA Airport Field Office in whose area the airport is located".

(C) By deleting the words "FAA Airport field office in whose area the airport is located," from paragraph (b) and substituting in their place the words "Airport Field Office".

(D) By amending paragraph (c) by deleting the words "FAA Airport field office" and substituting in their place the words "Airport Field Office" and by deleting the words "Administrator personally" and substituting in their place the words "Assistant Administrator for Airports Programs".

§ 139.9 [Amended]

14. By amending § 139.9 as follows:

(A) By deleting the word "Administrator" from the introductory clause of paragraph (a) and substituting in its place the words "FAA Airport Field Office in whose area the airport is located".

(B) By deleting the word "Administrator" from paragraphs (a)(1) and (a)(2) and substituting in its place the words "Airport Field Office".

(C) By amending paragraph (b) by deleting the word "Administrator" from all sentences except the third and substituting in its place the words "Airport Field Office" and by deleting the word "he" in the fourth sentence and substituting in its place the word "it".

(D) By revising the third sentence of paragraph (b) to read as follows:

§ 139.9 Amendment of airport operations manual or airport operations specifications.

• • • • •

(b) • • • The amendment becomes effective not less than 30 days after the certificate holder receives notice of it, unless the certificate holder petitions the Assistant Administrator for Airports Programs to reconsider the amendment, in which case its effective date is stayed pending a decision by the Assistant Administrator.

• • • • •

(E) By deleting the words "FAA airport field office in whose area the airport is located," from paragraph (c) and substituting in their place the words "Airport Field Office".

(F) By amending paragraph (d) by deleting the words "FAA airport field office" and substituting in their place the words "Airport Field Office" and by deleting the words "Administrator personally" and substituting in their place the words "Assistant Administrator for Airports Programs".

§ 139.19 [Amended]

15. By amending § 139.19 as follows:

(A) By inserting the words "from any requirement of this part. A person may petition for an exemption" between the words "for an exemption" and "from the safety" in the first sentence of paragraph (a).

(B) By deleting the words "airport field office" from paragraph (b) and substituting in their place the words "Airport Field Office".

(C) By revising the title of the section and by revising paragraph (c) to read as follows:

§ 139.19 Exemptions.

• • • • •

(c) Except for a petition filed on behalf of a military airport, each petition filed under this section is referred for action to the appropriate Regional Director who may grant or deny the petition. A petition filed on behalf of a military airport is referred for action to the Assistant Administrator for Airports Programs. However, if the Regional Director or Assistant Administrator finds that the grant or denial involves a technical or policy determination that should be made by the Administrator, the Regional Director or Assistant Administrator refers the petition to the Administrator for final action.

(Secs. 313 and 601 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354 and 1421); Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

The Federal Aviation Administration has determined that this document is not significant in accordance with the criteria required by Executive Order 12044, and set forth in the proposed "Department of Transportation Regulatory Policies and Procedures" published in the FEDERAL REGISTER June 1, 1978 (43 FR 23925). In addition, these amendments are procedural in nature and the Federal Aviation Administration has determined that the expected impact of these amendments is so minimal that they do not require an evaluation.

Issued in Washington, D.C. on October 31, 1978.

LANGHORNE BOND,
Administrator.

[FR Doc. 78-31453 Filed 11-9-78; 8:45 am]

[4910-13-M]

[Docket No. 78-WE-18-AD; Amdt. 39-3320]

PART 39—AIRWORTHINESS DIRECTIVES

Hiller Model UH-12 Series Helicopters Including Military Models

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Correction of final rule.

SUMMARY: On page 49299 of the FEDERAL REGISTER for October 23, 1978 (43 FR 49299), the FAA published a final rule airworthiness directive (AD) on Hiller UH-12 series helicopters. On page 42300 of the FEDERAL REGISTER paragraph (a)(3)(ii) of the AD the rod thread major diameter was incorrect, it should read 0.3677 inch. The priority mail letter issued by the FAA on September 22, 1978, is correct.

FOR FURTHER INFORMATION CONTACT:

Gary Presba, Executive Secretary, Airworthiness Directive Review Board, FAA Western Region, P.O. Box 92007, Worldway Postal Center, Los Angeles, Calif. 90009, telephone: 213-536-6351.

CORRECTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, section 39.13 of part 39 of the Federal Aviation Regulations (14 CFR 39.13) is corrected, by correcting amendment 39-3320 (43 FR 49299) AD 78-22-02 paragraph (a)(3)(ii) to read as follows:

• • • • •

(ii) if the rod thread major diameter measures .3677 inch or less, before returning to service;

• • • • •

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89.)

Issued in Los Angeles, Calif. on October 30, 1978.

LEON C. DAUGHERTY,
Acting Director,
FAA Western Region.

[FR Doc. 78-31751 Filed 11-8-78; 8:45 am]

[4910-13-M]

[Docket No. 18437; Amdt. 39-3346]

PART 39—AIRWORTHINESS DIRECTIVES

Agusta Model A109 Series Helicopters

AGENCY: Federal Aviation Administation (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the FEDERAL REGISTER and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to known operators of certain Agusta Model A109 Series helcopters by individual letters dated April 26, 1978. The AD requires replacement of main transmission pinion gears that do not conform with the manufacturer's design specification to prevent failure of the main transmission.

DATES: November 24, 1978. Effective immediately upon receipt of letter dated April 26, 1978. Compliance schedule—As prescribed in the body of the AD.

ADDRESSES: The applicable service bulletin may be obtained from: Costruzioni Aeronautiche Giovanni Agusta, Cascina Costa (Gallarate), Italy.

A copy of the service bulletin is contained in the rules docket, Room 916, 800 Independence Avenue SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT:

D. C. Jacobsen, Chief, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Region, Federal Aviation Administration, c/o American Embassy, Brussels, Belgium, telephone: 513.38.30.

SUPPLEMENTARY INFORMATION: Pursuant to the authority delegated by the Administrator, an AD was adopted on April 26, 1978, and made effective immediately by letter as to all known operators of Agusta Model A109 Series helicopters having certain serial numbers, certificated in all categories. The AD requires replacement of main transmission pinion gears that do not conform with the manufacturer's design specification to prevent failure of the main transmission.

Since it was found that immediate corrective action was required, notice and public procedure thereon was impracticable and contrary to the public interest and good cause existed for making the AD effective immediately as to all known operators of Agusta Model A109 Series helicopters by individual letters. These conditions still exist and the AD is hereby published in the FEDERAL REGISTER as an amend-

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ment to § 39.13 of part 39 of the Federal Aviation Regulations to make it effective as to all persons.

ADOPTION OF AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following AD:

COSTRUZIONI AERONAUTICHE GIOVANNI AGUSTA. Applies to Agusta Model A109 Series helicopters, S/N, 7107, 7111, 7126, and 7129, certificated in all categories.

Compliance required before further flight, unless already accomplished, but helicopter may be flown in accordance with FAR 21.197 and 21.199 to a base where the required work can be performed.

To prevent possible failure of main transmission P/N 109-0400-02-01, remove pinion gear P/N 109-0403-06-1, S/N 18, 24, 25, or 27, from main transmissions S/N 31, 36, 11, and 10, respectively, and replace with new pinion gear of same part number having serial number other than 17 through 32.

This amendment is effective November 24, 1978, as to all persons except those persons to whom it was made immediately effective by the letter dated April 26, 1978, which contained this amendment.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89.)

Issued in Washington, D.C., on November 1, 1978.

J. A. FERRARESE,
Acting Director,
Flight Standards Service.

[FR Doc. 78-31729 Filed 11-8-78; 8:45 am]

[4910-13-M]

[Docket No. 78-EA-28; Amdt. 39-3338]

PART 39—AIRWORTHINESS DIRECTIVES

Canadair Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to Canadair CL-44D4 and CL-44J type airplanes and requires a repetitive inspection of the elevator resilient stop mechanism at spanwise stations 43 and 178 for wear so as to prevent loss of elevator travel resulting in loss of flight control on takeoff and landing.

DATE: November 10, 1978. Initial compliance is required within the next 100 hours in service.

ADDRESS: Service Bulletins may be acquired from the manufacturer at P.O. Box 6087, Montreal, Canada.

FOR FURTHER INFORMATION CONTACT:

L. Lipsius, Airframe Section, AEA-212, Engineering and Manufacturing Branch, Federal Building, J.F.K. International Airport, Jamaica, N.Y. 11430, telephone 212-995-2875.

SUPPLEMENTARY INFORMATION: There have been reports of loss of elevator travel after extreme wear of the splines of the inner and outer torsion members which caused the connecting bolt to shear. Since this is a condition likely to exist or develop in other airplanes of similar type design, an AD is being issued which will require a repetitive inspection and repair when necessary of the elevator resilient stop mechanism. Since this deficiency affects air safety, notice and public procedure hereon are impractical and the rule may be made effective in less than 30 days.

ADOPTION OF THE AMENDMENT

Accordingly, and pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by issuing a new airworthiness directive, as follows:

CANADAIR: Applies to CL-44D4 and CL-44J airplanes, certificated in all categories.

To preclude loss of elevator travel due to spline wear:

(a) Within the next 100 hours in service after the effective date of this airworthiness directive, unless already accomplished within the last 900 hours in service, and thereafter at intervals not to exceed 1000 hours in service, accomplish the following:

(1) Visually inspect each elevator resilient stop mechanism at spanwise stations 43 and 178 for wear, in accordance with inspection data paragraph of Canadair Service Information Circular (SIC) No. 406-CL44, dated May 17, 1977, or equivalent.

(2) Prior to next flight, repair or replace worn parts with parts of the same part number and install in accordance with instructions outlined in chapter 55-20-2 of the Canadair CL-44 overhaul manual, dated June 19, 1964, or equivalent.

(b) Equivalent inspections and repairs must be approved by the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region.

(c) Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region, may adjust the compliance times specified in this AD.

Effective Date: This amendment is effective November 10, 1978.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, 49 U.S.C. 1354(a), 1421, and 1423; Sec. 6(c), Department of Transportaton Act, 49 U.S.C. 1655(c); and 14 CFR 11.89.)

Issued in Jamaica, N.Y., on October 27, 1978.

MARTIN J. WHITE,
Acting Director, Eastern Region.

[FR Doc. 78-31695 Filed 11-8-78; 8:45 am]

[4910-13-M]

[Docket No. 78-EA-32; Amdt. 39-3341]

PART 39—AIRWORTHINESS DIRECTIVES

Grumman American

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to Grumman American G-164 type airplanes and requires a repetitive inspection of the aileron cables where they cross the pulley near the wing roots so as to prevent failure of the control cables.

EFFECTIVE DATE: November 13, 1978. Compliance is required in accordance with the schedule set forth in the rule.

ADDRESS: Service Bulletins may be acquired from the manufacturer at Grumman American Corp., P.O. Box 147, Elmira, N.Y. 14902.

FOR FURTHER INFORMATION CONTACT:

I. Mankuta, Airframe Section, AEA-212, Engineering and Manufacturing Branch, Federal Building, JFK International Airport, Jamaica, N.Y. 11430, 212-995-2875.

SUPPLEMENTARY INFORMATION: There have been reports of broken strands in the aileron control cables where they cross the pulleys near the wing roots which can result in failed cables. Since this is a condition likely to exist or develop in other airplanes of similar type design, an AD is being issued which will require a repetitive inspection of the cables and replacement where necessary. Since this deficiency affects air safety, notice and public procedure hereon are impractical and good cause exists for making the rule effective in less than 30 days.

ADOPTION OF THE AMENDMENT

Accordingly, and pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by issuing a new airworthiness directive, as follows:

GRUMMAN: Applies to Grumman G-164 S/N's 1 thru 400, G-164A S/N's 401 and up, G-164B S/N's 01B and up, G-164C S/N's 01C and up, certificated in all categories.

Compliance is required as indicated.

To detect aileron balance cables containing broken strands, P/N's A1860-101 and A1860-401 at the wing root pulley, accomplish the following:

(a) Within the next 50 hours in service after the effective date of this AD, unless already accomplished within the last 550 hours, inspect the aileron cables for broken strands where they cross the pulley near the right and left wing roots.

(b) Within the next 600 hours in service after compliance with paragraph (a) of this AD, and within every 600 hours in service thereafter, repeat the inspection of paragraph (a).

(c) Replace cables containing broken strands, prior to next flight, with unused cables of the same part number or with an approved equivalent.

(d) Equivalent parts must be approved by the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region.

(e) Upon submission of substantiating data by an owner or operator through an FAA Maintenance Inspector, the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region, may adjust the inspection intervals in this AD.

(f) The aircraft may be flown in accordance with FAR 21.197 to a location where the AD can be accomplished.

(Grumman American Ag-Cat Service Bulletin No. 63, dated October 6, 1978, is concerned with this subject.

Effective Date: This amendment is effective November 13, 1978.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, as amended, 49 U.S.C. 1354(a), 1421, and 1423; Sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c); and 14 CFR 11.89.)

Issued in Jamaica, N.Y., on October 30, 1978.

WILLIAM E. MORGAN,
Director, Eastern Region.

[FR Doc. 78-31697 Filed 11-8-78; 8:45 am]

[4910-13-M]

[Docket No. 78-WE-20-AD; Amdt. 39-3344]

PART 39—AIRWORTHINESS DIRECTIVES

Hiller Model UH-12 Series Helicopters Including Military Models

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new Airworthiness Directive which requires an inspection of service records on Hiller Model UH-12 Series Helicopters including military models. The need for this inspection arises from failure to assign sale numbers to certain finite life components with attendant possibility of failure to record time and service, and control of return to service of these components. The AD also specifies corrective action in the form of removal from service under certain conditions. The AD is necessary to prevent retention in service of finite life components beyond the established finite life which could result in loss of the rotorcraft.

DATES: Effective December 14, 1978. Initial compliance required within fifty (50) hours time and service of the effective date of this AD.

FOR FURTHER INFORMATION CONTACT:

Jerry Presba, Executive Secretary, Airworthiness Directive Review Board, Federal Aviation Administration, Western Region, P.O. Box 92007, World Way Postal Center, Los Angeles, Calif. 90009, telephone, 213-536-6351.

SUPPLEMENTARY INFORMATION: The FAA has learned that eleven (11) finite life components on Hiller Model UH-12 Series Helicopters were not serialized, i.e., did not have serial numbers assigned by the manufacturer, or assigned serial numbers were obscured by subsequent manufacturing process. In the absence of serial number identification, it is possible that recordation of hours, time and service, and control of return to service of these components may not exist.

Failure to maintain adequate recordation of time and service may result in the retention in service of finite life components beyond their safe lives which could result in loss of the helicopter.

Since this condition is likely to exist or develop in other helicopters of the same type design, an Airworthiness Directive is being issued which requires records inspection and replacement, if necessary, of certain finite life components.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

HILLER HELICOPTERS applies to Hiller Model UH-12D, UH-12E, and UH-12E (4 place) helicopters certificated in all categories, including military models UH-23D, OH-23G, H-23F, and turbine-powered models, equipped with the finite life components listed below:

Part No.	Nomenclature	Replacement period (hours)	Applicability
63192-7, -11	Snubber assembly, engine, longitudinal	4,650	Note A.
63192-5, -9	Snubber assembly, engine, lateral	4,650	All.
63197	Bracket, engine snubber	6,160	All.
63197-5	...do	9,850	All.
31197-3	Flyweight collective pitch ballast	2,500	All.
31318	Bellcrank, collective control	15,000	Note B.
31319-3	Tube, collective control	23,500	Do.
31321	Shaft, dual collective control	10,400	Do.
31344, -3, -5, or -9	Block assembly, collective stick	6,400	Do.
31403	Arm assembly, collective and throttle controls	21,500	E (4 place).
34141,-5	Scissor, cyclic control, lower	275	All.
AN3-7A	Attaching bolts, engine snubber (used to attach P/N 63197 bracket to deck and lord mount).	600	All.

NOTE A.—All models except turbine-powered.
NOTE B.—All models except UH-12D and UH-23D.

To prevent failure of the above listed finite life components accomplish the following:

(a) Within fifty (50) hours time in service after the effective date of this AD, unless already accomplished, inspect the service history of each of the finite life components listed in this AD for adequacy of documentation.

NOTE.—The finite life components may be documented by serial number, part nomenclature, part number or any combination.

(b) For those finite life components listed in this AD for which service history can be documented, no further action is required by this AD.

(c) For any finite life component listed in this AD for which service history cannot be documented:

(1) Prior to further flight, remove and replace those finite life components whose replacement period is less than helicopter total time in service.

(2) Within five hundred (500) hours time in service from the effective date of this AD, remove and replace those components whose replacement period is greater than helicopter total time in service.

NOTE.—The Criteria in (c) (1) and (2) applies only to aircraft in service. Finite life criteria for aircraft submitted for original airworthiness certification are contained in AC-21-13.

(d) Only finite life components for which prior service history or representation as new can be documented may be used as replacement parts. Equivalent inspection procedures may be used when approved by the Chief, Aircraft Engineering Division, FAA Western Region.

This amendment becomes effective December 14, 1978.

V 43 / 218 NO 9 78 UMI

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89.)

Issued in Los Angeles, Calif., on October 31, 1978.

LEON C. DAUGHERTY,
Acting Director,
FAA Western Region.

[FR Doc. 78-31699 Filed 11-8-78; 8:45 am]

[4910-13-M]

[Docket No. 78-WE-8-AD; Amdt. 39-3343]

PART 39—AIRWORTHINESS DIRECTIVES

McDonnell Douglas DC-9 Series Airplanes

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This notice adopts a new airworthiness directive (AD) which requires modification of the stall warning installation on DC-9 series airplanes. This AD is needed to prevent false stall warnings just after the initiation of rotation which have resulted in rejected takeoffs and the consequent possible departure of the airplane from the runway.

DATES: Effective December 11, 1978. Compliance schedule—Within 1 year after the effective date of this AD.

ADDRESS: The applicable service information may be obtained from: McDonnell Douglas Corp., Douglas Aircraft Co., 3855 Lakewood Boulevard, Long Beach, Calif. 90846, Attention: Director, Publications and Training CI-750, 54-60.

Also, a copy of the service information may be reviewed at, or a copy obtained from: Rules Docket in Room 916, FAA, 800 Independence Avenue SW., Washington, D.C. 20591, or Rules Docket in Room 6W14, FAA Western Region, 15000 Aviation Boulevard, Hawthorne, Calif. 90261.

FOR FURTHER INFORMATION CONTACT:

Jerry Presba, Executive Secretary, Airworthiness Directive Review Board, Federal Aviation Administration, Western Region, P.O. Box 92007, World Way Postal Center, Los Angeles, Calif. 90009, 213-536-6398.

SUPPLEMENTARY INFORMATION: On June 15, 1978, the FAA proposed to amend part 39 of the Federal Aviation Regulations (14 CFR Part 39) by adding a new AD applicable to McDonnell Douglas DC-9 series airplanes (43 FR 25832). This AD establishes a modification to the stall warning circuitry which will inhibit the stall warning system for a period of 4 seconds after nose wheel lift-off. The proposal was prompted by two unnecessary rejected takeoffs which resulted in severe damage to the airplanes and endangered passengers and crew.

Interested persons have been afforded an opportunity to participate in the making of this amendment, and due consideration has been given to all comments received in response to the notice of proposed rulemaking.

The Air Transport Association (ATA) questioned the FAA's conclusion that the 4-second time delay will reduce the probability of rejected >takeoffs due to false stall warnings. They are concerned that if the FAA is wrong, the safety problem could be worse. The FAA reached its conclusion after a review of the DC-9 and DC-10 false stall warning incidents and information presented by the ATA. The ATA information indicates that after a false stall warning there have been more successful takeoffs than successful rejected takeoffs. By adding the 4-second delay, the probability of continuing the takeoff is greatly increased after a false stall warning, since the aircraft is airborne and exhibiting all other indications of normal flight.

The ATA suggested that the best solution would be to make the stall warning system more reliable. The FAA encourages incorporation of these improvements, however, after their incorporation false stall warnings at rotation are still probable. Therefore, the FAA has determined that the delay of any possible false stall warning until the airplane is airborne will be the most effective way to prevent unnecessary rejected takeoffs.

The ATA also transmitted comments made by Air Canada. Air Canada states that the 4-second time delay is insufficient, in that a heavy airplane may not become airborne within the 4-second time delay. If a false stall warning should occur under these circumstances, the pilot may reject the takeoff making the modification ineffective. Review of the type certification data shows that with a normal rotation rate (as defined in the FAA approved airplane flight manual) and at maximum aircraft weight, the airplane will be in the air within 3½ seconds after nose wheel lift-off. If the stall warning system delay were increased beyond 4 seconds, then rapid rotations would allow an extended period of flight time without adequate stall warning. The FAA, therefore, has retained 4 seconds as the stall warning time delay value.

Finally, the ATA stated that parts availability and time required to cycle stall warning computers through airline shops would make it difficult to accomplish the modification within 1 year. The ATA, therefore, requested that if the AD were adopted it should have a 2-year compliance time.

The FAA has reviewed these aspects of the problem, including the passage of time since the NPRM was introduced, and finds that retention of the 1-year compliance time is reasonable and warranted.

The phrase "or later FAA approved revisions" has not been included in the service bulletin citations in this AD and a note has been added indicating that the cited version of the service bulletin is the only version acceptable for demonstrating compliance with the AD under the terms of paragraph (a).

After careful review of all available data, including the comments above, the FAA has determined that sufficient evidence exists in the public interest in aviation safety to adopt the proposed rule with minor editorial changes.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator (14 CFR 11.89), section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by adding the following new airworthiness directive:

MCDONNELL DOUGLAS DC-9-10, -20, -30, -40, -50 series airplanes, including the military versions, all serial numbers, certificated in all categories.

Compliance is required within 1 year after the effective date of this AD.

To reduce the probability of an unnecessary rejected takeoff due to a false stall warning just after initiation of rotation, modify the stall warning system by extending the time delay to 4 seconds between nose gear liftoff and the initiation of stall warning, by accomplishing the following:

(a) Modify the stall warning circuitry in accordance with McDonnell Douglas DC-9 service bulletin 34-131 dated January 10, 1978.

NOTE.—Service bulletin 34-131 dated January 10, 1978, is the only version of this service bulletin suitable for compliance with paragraph (a) of this AD.

(b) Equivalent modifications, procedures, or revisions may be used when approved by the Chief, Aircraft Engineering Division, FAA Western Region.

(c) Special flight permits may be issued in accordance with FAR's 21.197 and 21.199 to operate airplanes to a base for accomplishment of the modification required by this AD.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89.)

Issued in Los Angeles, Calif., on October 30, 1978.

LEON C. DAUGHERTY,
Acting Director,
FAA Western Region.

[FR Doc. 78-31698 Filed 11-8-78; 8:45 am]

[4910-13-M]

[Docket No. 78-EA-51; Amdt. 39-3339]

PART 39—AIRWORTHINESS DIRECTIVES

Piper Aircraft

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts an airworthiness directive (AD) amending AD 78-08-03 applicable to Piper PA-23 and PA-23-160 type airplanes and requires removal of the upper rudder hinge during the repetitive inspections so as to assure discovery of any cracks in the area of the nutplate.

DATE EFFECTIVE: November 10, 1978. Compliance is required in accordance with the schedule in the rule.

ADDRESS: Service bulletins may be acquired from the manufacturer at Piper Aircraft Corp., 820 East Bald Eagle Street, Lock Haven, Pa. 11745.

FOR FURTHER INFORMATION CONTACT:

J. Maher, Airframe Section, AEA-212, Engineering and Manufacturing Branch, Federal Building, J.F.K. International Airport, Jamaica, N.Y. 11430, 212-995-2875.

SUPPLEMENTARY INFORMATION: There have been reports of cracks in the fin spar in the nutplate area which could not be discovered when performing AD 78-08-03, since it did not require removal of the upper rudder hinge for the repetitive inspections. Since this is a condition likely to exist or develop in other airplanes of similar type design, AD 78-08-03 is being amended to require removal of the upper rudder hinge. Since the failure to discover such cracks affects air safety, notice and public procedure hereon are impractical and good cause exists for making the rule effective in less than 30 days.

ADOPTION OF THE AMENDMENT

Accordingly, and pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by amending AD 78-08-03, as follows:

(1) In paragraph (a) insert "17063-03" in lieu of 17063-00 and after P/N 17067-18 add "or equivalent."

(2) Delete paragraph (b) and insert in lieu thereof: "(b) Within 1,000 hours in service after the inspection in (a), and thereafter at intervals not to exceed 1,000 hours since the last inspection accomplish the inspections required in (a)."

(3) In paragraph (e) after "Region" add ", or accomplished in accordance with advisory circular 43.13-1A and approved by an FAA maintenance inspector."

Effective Date: This amendment is effective November 10, 1978.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, 49 U.S.C. 1354(a), 1421, and 1423; Sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c); and 14 CFR 11.89.)

Issued in Jamaica, N.Y., on October 27, 1978.

MARTIN J. WHITE,
Acting Director, Eastern Region.

[FR Doc. 78-31696 Filed 11-8-78; 8:45 am]

[4910-13-M]

[Docket No. 78-EA-54; Amdt. 39-3342]

PART 39—AIRWORTHINESS DIRECTIVES

Piper Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to Piper PA-38-112 type airplane and requires an inspection and alteration or replacement of the control wheel so as to prevent separation of the wheel from the control shaft. This results from the finding of such separation due to a weld failure during a pre-flight check.

DATE: November 13, 1978. Compliance is required before further flight.

ADDRESS: Service Bulletins may be acquired from the manufacturer at Piper Aircraft Corp., 820 East Bald Eagle Street, Lock Haven, Pa. 11745.

FOR FURTHER INFORMATION CONTACT:

C. Kallis, Airframe Section, AEA-212, Engineering and Manufacturing Branch, Federal Building, J.F.K. International Airport, Jamaica, N.Y. 11430, telephone 212-995-2875.

SUPPLEMENTARY INFORMATION: There had been a report of separation of the control wheel due to failure of the weld. The wheel, because of its location, became a convenient handhold to assist in getting in and out of the airplane.

Because of the serious nature of such separation, an emergency dispatch was transmitted to known owners and operators of the airplane on June 16, 1978, which required an additional weld. The subject AD requires replacement of cracked wheels and an extra weld where cracks have not been discovered. Since this is a condition likely to exist or develop in other airplanes of similar type design, and AD is being issued.

ADOPTION OF THE AMENDMENT

Accordingly, and pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by issuing a new airworthiness directive, as follows:

PIPER: Applies to Piper Model PA-38-112 Serial Nos. 38-78A0001, 38-78A0004 through 38-78A0016, 38-78A0018 through 38-78A0040, 38-78A0042 through 38-78A0224, 38-78A0226 through 38-78A0232, 38-78A0234 through 38-78A0236, 38-78A0238 through 38-78A0250, 38-78A0252 through 38-78A0266, 38-78A0268, 38-78A0270 through 38-78A0273, 38-78A0276, 38-78A0277, 38-78A0279 through 38-78A0284, 38-78A0286 through 38-78A0289, 38-78A0291, 38-78A0298, 38-78A0315 through 38-78A0318, 38-78A0324, 38-78A0326, 38-78A0329 certificated in all categories.

To prevent possible separation of the control wheel from the control shaft, accomplish the following:

Before further flight, unless already accomplished, inspect and alter or replace the pilot and co-pilot control wheels in accordance with the "Instructions" section of Piper Service Bulletin No. 609 dated June 17, 1978, or equivalent which must be approved by the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region.

Upon submission of substantiating data through an FAA Maintenance Inspector, the compliance time specified in this AD may be adjusted by the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region.

The affected airplanes may be flown in accordance with FAR 21.197 to a location where the AD compliance procedures can be accomplished.

Effective Date: This amendment is effective November 13, 1978.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, 49 U.S.C. 1354(a), 1421, and 1423; Sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c); and 14 CFR 11.89.)

Issued in Jamaica, N.Y., on October 30, 1978.

WILLIAM E. MORGAN,
Director, Eastern Region.

[FR Doc. 78-31700 Filed 11-8-78; 8:45 am]

V 43 / 218 NOV 9 78 UMI

[4910-13-M]

[Docket No. 78-EA-83; Amdt. 39-3340]

PART 39—AIRWORTHINESS DIRECTIVES

Piper Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to certain Piper PA-38-112 type airplanes and requires an inspection and repair where necessary of the left and right wing rear spar attach fittings. The purpose of the inspection is to assess any missing rivets.

DATE: November 10, 1978. Compliance is required within the next 10 hours in service.

ADDRESS: Piper Service Bulletins may be acquired from the manufacturer at Piper Aircraft Corp., 820 East Bald Eagle Street, Lock Haven, Pa. 11745.

FOR FURTHER INFORMATION CONTACT:

C. Kallis, Airframe Section, AEA-212, Engineering and Manufacturing Branch, Federal Building, J.F.K. International Airport, Jamaica, N.Y. 11430; telephone 212-995-2875.

SUPPLEMENTARY INFORMATION: There have been reports of rivets missing from the wing rear spar attach fittings. Since this is a condition likely to exist or develop in other airplanes of similar type design, an AD is being issued which will require an inspection and repair where necessary of the fitting. Since this deficiency affects air safety, notice and public procedure hereon are impractical and good cause exists for making the rule effective in less than 30 days.

ADOPTION OF THE AMENDMENT

Accordingly, and pursuant to the authority delegated to me by the Administrator, section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by issuing a new airworthiness directive, as follows:

PIPER.—Applies to Piper Model PA-38-112 Serial Nos. 38-78A0001, 38-78A0005 through 38-78A0016, 38-78A0018 through 38-78A0039, 38-78A0042 through 38-78A0130, 38-78A0132 through 38-78A0212, 38-78A0214 through 38-78A0233, 38-78A0235 through 38-78A0270, 38-78A0272 through 38-78A0324, 38-78A0326 through 38-78A0329, 38-78A0331, 38-78A0333 through 38-78A0356, 38-78A0358 through 38-78A0372, 38-78A0374, 38-78A0375, 38-78A0377 through 38-78A0385, 38-78A0387 through 38-78A0399, 38-78A0401 through 38-78A0410, 38-78A0413, 38-78A0415, 38-78A0416, 38-78A0418 through 38-78A0421, 38-78A0424 through 38-78A0426, 38-78A0428, 38-78A0429, 38-78A0431, 38-78A0432, 38-78A0434, 38-78A0435, 38-78A0437 through 38-78A0439, 38-78A0441 through 38-78A0443, 38-78A0445, 38-78A0446, 38-78A0449 through 38-78A0455, 38-78A0457 through 38-78A0466, 38-78A0468, 38-78A0469, 38-78A0471, 38-78A0472, 38-78A0474, 38-78A0475, 38-78A0477, 38-78A0478, 38-78A0480, 38-78A0481, 38-78A0483, 38-78A0484, 38-78A0486, 38-78A0489, 38-78A0490, 38-78A0492 through 38-78A0494, 38-78A0496 through 38-78A0498, 38-78A0500 through 38-78A0502, 38-78A0504 through 38-78A0506, 38-78A0509, 38-78A0510, 38-78A0512 through 38-78A0526, 38-78A0528 through 38-78A0532, 38-78A0534, 38-78A0535, 38-78A0537, 38-78A0538, 38-78A0540, 38-78A0541, 38-78A0544, 38-78A0546 through 38-78A0548, 38-78A0550, 38-78A0552, 38-78A0555, 38-78A0556, 38-78A0558, 38-78A0559, 38-78A0561, 38-78A0565, 38-78A0567, 38-78A0568, 38-78A0570, 38-78A0573, 38-78A0574, 38-78A0576, 38-78A0578, 38-78A0581, 38-78A0584, 38-78A0585, 38-78A0587, 38-78A0588, 38-78A0606, and 38-78A0622.

To prevent weakening of the wing rear spar to fuselage attach fitting connection due to missing rivets, accomplish the following:

(a) Within the next 10 hours in service after the effective date of this AD, unless already accomplished, perform the steps 1 through 4 as indicated under the Instructions section in Piper Service Bulletin No. 618, dated September 5, 1978, or equivalent.

(b) Equivalent inspections, repairs, and alterations must be approved by the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region.

(c) The affected airplanes may be flown in accordance with FAR 21.197 to a location where the AD may be accomplished.

(d) Upon submission of substantiating data through an FAA Maintenance Inspector, the Compliance time specified in this AD may be adjusted by the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region.

Effective Date: This amendment is effective November 10, 1978.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, 49 U.S.C. 1354(a), 1421, and 1423; Sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c); and 14 CFR 11.89.)

Issued in Jamaica, N.Y., on October 27, 1978.

MARTIN J. WHITE,
Acting Director,
Eastern Region.

[FR Doc. 78-31731 Filed 11-8-78; 8:45 am]

[4910-13-M]

[Docket No. 18071; Amdt. 39-3345]

PART 39—AIRWORTHINESS DIRECTIVES

Rolls-Royce Dart Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) which requires repetitive inspections of the control box mounting bolts for integrity and replacement of failed bolts on Rolls-Royce Dart engines until bolts of new design are installed. This AD is needed to prevent failure of the control box mounting bolts which could result in loss of engine control.

DATES: Effective date—December 11, 1978. Compliance schedule—As prescribed in the body of the AD.

ADDRESSES: The applicable service bulletin may be obtained from: Rolls-Royce Limited, P.O. Box 31, Derby DE 2 8 BJ, England. A copy of the service bulletin is contained in the Rules Docket, Room 916, 800 Independence Avenue SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT:

D.C. Jacobsen, Chief, Aircraft Certification Staff, AEU-100, Europe, Africa, and Middle East Region, Federal Aviation Administration, c/o American Embassy, Brussels, Belgium, Telephone 513.38.30.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring inspections of the control box mounting bolts for integrity and replacement of failed bolts on Rolls-Royce Dart engines until bolts of new design are installed was published in the FEDERAL REGISTER at 43 FR 27557 on June 26, 1978. The proposal was prompted by reports of failures of the control box mounting bolts which caused power lever movement to be restricted in one instance and also could prevent movement of the high pressure fuel shutoff operating lever. This could cause loss of engine control.

Interested persons have been afforded an opportunity to participate in the making of the amendment and due consideration has been given to the one comment received. That comment suggested an increase in the repetitive inspection interval. FAA considers the AD as proposed to provide adequately for inspection interval adjustments to accommodate an individual operator's maintenance program.

Also, upon further review the FAA has determined that paragraph (e) of the proposed AD should be deleted. If the integrity of these bolts can be established, then a special flight permit is not required. Consequently, proposed paragraph (f) is redesignated as paragraph (e). In addition, the new paragraph (e) has been clarified with respect to the approval of modification equivalents.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new Airworthiness Directive:

ROLLS-ROYCE LIMITED. Applies to Rolls-Royce Dart engines and all variants of those engines listed below which have Rolls-Royce Dart Modification 1525 incorporated (covered in Rolls-Royce Dart Service Bulletin Da 72-351), as installed on, but not necessarily limited to the airplanes listed below.

Dart engine numbers and airplane models

506, 510, 525—Vickers Viscount Model 744, 745D, 810.
511, 514, 528, 532—Fairchild F-27 and FH-227 series and Fokker F-27 series.
526—Armstrong Whitworth AW-650 series 1.
527—Handley Page Herald Type 300.
529—Grumman G-159 and Fairchild F-27 and FH-227 series.
532—Hawker Siddeley 748 series 2.
542—General Dynamics Model 240 with STC No. SA1054WE installed (or Model 600), General Dynamics Model 340/440 with STC No. SA1096 WE installed (or Model 640), and Nihon YS-11 and YS-11A series.

Compliance is required as indicated, unless already accomplished.

To prevent restricted movement of the engine power lever or the high pressure fuel shut-off valve control lever caused by control box mounting bolt failure, accomplish the following:

(a) Within the next 100 hours engine time in service or 1 month after the effective date of this AD, whichever occurs first, inspect the engine control box mounting bolts for integrity as specified in paragraph 5 of Rolls-Royce Service Bulletin Da 76-A17, Revision 1, dated April 4, 1978 (hereinafter referred to as the service bulletin) or an FAA-approved equivalent.

(b) If, during an inspection required by this AD, a bolt head is found to be detached or missing, before further flight replace both mounting bolts either—

(1) With new bolts of the same part number in accordance with paragraph 6 of the Service Bulletin or an FAA-approved equivalent and continue to inspect the bolts in accordance with paragraph (a) of this AD at intervals not to exceed 400 hours engine time in service or 4 months, whichever occurs first; or

(2) Install control box mounting bolts, in accordance with Rolls-Royce Service Bulletin Da 76-16, dated April 18, 1978, or an FAA-approved equivalent.

(c) If a detached or missing bolt head is not found during inspection required by paragraph (a) of this AD, continue to inspect the bolts in accordance with that paragraph at intervals not to exceed 400 hours engine time in service or 4 months, whichever occurs first.

(d) The inspections required by paragraph (b) (1) and (c) of this AD may be discontinued upon the installation of control box mounting bolts in accordance with Rolls-Royce Service Bulletin Da 76-16, dated April 18, 1978 or an FAA-approved equivalent.

(e) Upon request of an operator, the Chief, Aircraft Certification Staff, FAA, Europe, Africa, and Middle East Region, c/o American Embassy, Brussels, Belgium, may adjust the inspection interval specified in paragraphs (b) and (c) of this AD provided that such requests are made through an FAA maintenance inspector and the request contains substantiating data to justify the request for that operator.

This amendment becomes effective December 11, 1978.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89.)

Issued in Washington, D.C., on November 1, 1978.

J. A. FERRARESE,
Acting Director,
Flight Standards Service.

[FR Doc. 78-31730 Filed 11-8-78; 8:45 am]

[4910-13-M]

[Docket No. 18438; Amdt. 39-3347]

PART 39—AIRWORTHINESS DIRECTIVES

Societe Nationale Industrielle Aerospatiale Model SA 330 PUMA Helicopters

AGENCY: Federal Aviation Administation (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the FEDERAL REGISTER and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to known operators of certain Societe Nationale Industrielle Aerospatiale Model SA 330 PUMA helicopters by individual telegrams dated May 19, 1978. The AD requires replacement of the main gear box or determination of vibration level of the input reduction gears to prevent failure of the main gear box which could result in an oil fire and loss of control of the helicopter.

DATES: November 24, 1978. Effective immediately upon receipt of telegram dated May 19, 1978. Compliance schedule: As prescribed in the body of the AD.

ADDRESSES: The applicable service bulletin may be obtained from: Societe Nationale Industrielle Aerospatiale, Division Helicopters, Service Technique Apres-Vente, Boite Postale 13, 13722 Marignane, France, or Aerospatiale Helicopter Corp., 1701 West Marshal Drive, Grand Prairie, Tex. 75051.

A copy of the service bulletin is contained in the Rules Docket, Room 916, 800 Independence Avenue SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT:

D. C. Jacobsen, Chief, Aircraft Certification Staff, AEU-100, Europe, Africa, and Middle East Region, Federal Aviation Administration, c/o American Embassy, Brussels, Belgium, telephone: 513.38.30.

SUPPLEMENTARY INFORMATION: Pursuant to the authority delegated by the Administrator, an AD was adopted on May 19, 1978, and made effective immediately by telegram as to all known operators of certain Societe Nationale Industrielle Aerospatiale Model SA 330 PUMA helicopters, certificated in all categories. The AD requires replacement of the main gear box or determination of vibration level of the input reduction gears to prevent failure of the main gear box which could result in an oil fire and loss of control of the helicopter.

Since it was found that immediate corrective action was required, notice and public procedure thereon was impracticable and contrary to the public interest and good cause existed for making the AD effective immediately as to all known operators of Societe Nationale Industrielle Aerospatiale Model SA 330 PUMA Helicopters by individual telegrams. These conditions still exist and the AD is hereby published in the FEDERAL REGISTER as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

ADOPTION OF AMENDMENT

Accordingly, pursuant to the authority delegated to me be the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following AD:

SOCIETE NATIONALE INDUSTRIELLE AEROSPATIALE. Applies to Model SA 330 Puma helicopters, certificated in all categories, that have accumulated less than 500 hours total time in service on their main gear boxes and have not incorporated Puma Modification AMS 07.51.103.

Compliance required before further flight, unless already accomplished, but helicopter may be flown in accordance with FAR 21.197 and 21.199 to a base where the required work can be performed.

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To prevent failure of the main gear box input reduction gears due to excessive vibration, replace the main gear box with a gear box incorporating Puma Modification AMS 07.51.103 or accomplish the following:

(a) Determine the acceleration spectral level of the input reduction gears in accordance with the accomplishment instructions of Puma SA 330 Service Bulletin No. 01.21, dated July 12, 1977, or an FAA-approved equivalent.

(b) If the acceleration spectral level found during the test required by paragraph (a) of this AD measures 52db or more, replace the forward input reduction gears with gears incorporating Puma Modification AMS 07.51.103, or an FAA-approved equivalent.

(c) If the acceleration spectral level found during the test required by paragraph (a) of this AD measures less than 52db, the input reduction gears may remain in service if the operator receives written information from Aerospatiale that a spectral analysis shows the gears to be acceptable.

(d) Continue to comply with paragraphs (a) through (c) of this AD at intervals not to exceed 20 hours time in service until the gears have been replaced with gears incorporating Puma Modification AMS 07.51.103, or an FAA-approved equivalent.

This amendment is effective November 24, 1978, as to all persons except those persons to whom it was made immediately effective by the telegram dated May 19, 1978, which contained this amendment.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89.)

Issued in Washington, D.C., on November 1, 1978.

J. A. FERRARESE,
Acting Director,
Flight Standards Service.

[FR Doc. 78-31728 Filed 11-8-78; 8:45 am]

[4910-13-M]

[Airspace Docket No. 78-WA-7]

PART 73—SPECIAL USE AIRSPACE

Alteration of Restricted Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment increases the designated time of use of Restricted Area R-3202, south of Mountain Home, Idaho, from 18 hours per day, 5 days per week to 20 hours per day, 7 days per week. The additional time is necessary for the U.S. Air Force to conduct its expanded training programs in fulfilling the requirements of national defense.

EFFECTIVE DATE: December 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Lewis W. Still, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone: 202-426-8525.

SUPPLEMENTARY INFORMATION: On September 7, 1978, the FAA proposed to amend part 73 of the Federal Aviation Regulations (14 CFR Part 73) that would alter the time of use for Restricted Area R-3202, subareas A, B, and C, from the current 0700 to 0100 local time, Mondays through Fridays, to intermittent (43 FR 39804). This action would provide the additional time necessary for the U.S. Air Force to complete their expanded training programs. The controlling agency will continue to be the FAA, Salt Lake City ARTC Center; the using agency is Commander, 366th Tactical Fighter Wing, Mountain Home AFB, Idaho. Restricted Area R-3202 will be available for use by all civil and military aircraft when not being utilized by the 366th Tactical Fighter Wing or the 124th Tactical Reconnaissance Group, ANG.

DISCUSSION OF COMMENTS

Three comments were received, two stating no objection to the proposal. The Air Force objected to the use of the word "Intermittent" for "Time of designation" for military operations within R-3202. The Air Force stated the term "Intermittent" could be construed to mean the Restricted Area is infrequently used, thereby inviting encroachment of the area by nonparticipants. Therefore, the Air Force recommended the use of actual hours of operation in place of "Intermittent" and the FAA concurs.

THE RULE

This amendment to part 73 of the Federal Aviation Regulations increases the designated time of use for Restricted Area R-3202, south of Mountain Home, Idaho, from 18 hours per day, 5 days per week to 20 hours per day, 7 days per week. This amendment does not effect the present boundaries of R-3202, however, it does change the time of designation for use, to allow the Air Force more flexibility in expanded training programs. The U.S. Air Force requested the increased time to fulfill its requirements for the national defense. The FAA has considered and granted that request under § 306 of the Federal Aviation Act of 1958, as amended.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, subpart B of part 73 of the Federal Aviation Regulations (14 CFR Part 73) as republished (43 FR 682) is amended, effective 0901 GMT, December 28, 1978, as follows:

§ 73.32, R-3202 Saylor Creek, Idaho.

Subarea A

Time of designation is amended to read: Daily 0600 to 0200 local time. Other times by NOTAM.

Subarea B

Time of designation is amended to read: Daily 0600 to 0200 local time. Other times by NOTAM.

Subarea C

Time of designation is amended to read: Daily 0600 to 0200 local time. Other times by NOTAM.

(Secs. 306, 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1347, 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89.)

The FAA has determined that this document involves a regulation which is not significant under the procedures and criteria prescribed by Executive Order 12044 and implemented by interim Department of Transportation guidelines (43 FR 9582; March 8, 1978).

Issued in Washington, D.C., on November 3, 1978.

WILLIAM E. BROADWATER,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc.78-31617 Filed 11-8-78; 8:45 AM]

[7510-01-M]

CHAPTER V—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

PART 1208—REPORTING PROCEDURES FOR NASA AND AEROSPACE RELATED EMPLOYMENT

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This document updates the existing published regulations by deleting unnecessary sentences relevant to the dates for fiscal years 1976 and 1977, and amending an organizational title to reflect the current title which became effective on November 8, 1977, as a result of a reorganization at NASA.

EFFECTIVE DATE: November 9, 1978.

ADDRESS: Personnel Programs Division (Code NPB-33), National Aeronautics and Space Administration, Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT:

John F. Duggan, 202-755-3993.

SUPPLEMENTARY INFORMATION: Since this action is administrative and editorial in nature and does not affect the existing regulations, notice and public procedures thereon are not required.

AUTHORITY: The provisions of this Part 1208 are issued under sec. 7 of Pub. L. 91-303 (84 Stat. 372; 42 U.S.C. 2462, 1970 Supp.) and Pub. L. 94-273.

§ 1208.102 [Amended]

1. In § 1208.102(f) delete the opening clause of the first sentence (With the exception of fiscal year 1976) and the last 2 sentences.

§ 1208.104 [Amended]

2. § 1208.104(d) is amended by changing "Director of Personnel" to "Director, Personnel Programs Division."

ROBERT A. FROSCH,
Administrator.

OCTOBER 27, 1978.

[FR Doc. 78-31676 Filed 11-8-78; 8:45 am]

[3510-25-M]

Title 15—Commerce and Foreign Trade

CHAPTER III—INDUSTRY AND TRADE ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 371—GENERAL LICENSES

Deletion of Requirement for Certain Information to be Entered on the Shipper's Export Declaration

AGENCY: Office of Export Administration, Bureau of Trade Regulation, U.S. Department of Commerce.

ACTION: Final rule.

SUMMARY: Commodities exported from the United States must sometimes be returned for repair or other servicing. Under certain circumstances, the commodity, after servicing, may be shipped back to its owner under general license even though it is under individual validated license control. Currently, when such an export is made, the exporter must enter on the Shipper's Export Declaration, (a) the U.S. Customs Entry Number (if any), (b) the country from which the commodity was imported, and (c) the port of entry. As part of its effort to reduce costs to the exporter of reporting, recordkeeping, and export documentation, the Office of Export Administration has reviewed this requirement and has found that it is no longer needed. The requirement, therefore, is being deleted from the Export Administration Regulations.

EFFECTIVE DATE: November 9, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles C. Swanson, Director, Operations Division, Office of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone 202-377-4196.

Accordingly, the introductory paragraph in § 371.17 of the Export Administration Regulations (15 CFR Part 368 et seq.) is revised to read as follows:

§ 371.17 General license GLR; return or replacement of certain commodities.

A general license designated GLR is established, subject to the provisions of § 371.17, authorizing the return of certain commodities to the destination from which imported into the United States or the replacement of defective or unacceptable parts or equipment that were exported from the United States under a validated export license.

* * * * * *

AUTHORITY: Sec. 4, Pub. L. 91-184, 83 Stat. 842 (50 U.S.C. App. 2403), as amended; E.O. 12002, 42 FR 35623 (1977); Department Organization Order 10-3, dated December 4, 1977, 42 FR 64721 (1977); and Industry and Trade Administration Organization and Function Order 45-1, dated December 4, 1977, 42 FR 64716 (1977).

STANLEY J. MARCUSS,
Deputy Assistant Secretary for Trade Regulation.

[FR Doc. 78-31670 Filed 11-8-78; 8:45 am]

[3510-25-M]

PART 376—SPECIAL COMMODITY POLICIES AND PROVISION AND

PART 399—COMMODITY CONTROL LIST AND RELATED MATTERS

Revision of Regulation Regarding Export of Controlled Components in End Products

AGENCY: Office of Export Administration, Bureau of Trade Regulation, U.S. Department of Commerce.

ACTION: Final rule.

SUMMARY: Certain commodities that are under export control to all destinations for national security reasons may be used as components in end products that, because of their peaceful use, are under control only to embargo destinations, i.e., Southern Rhodesia, Cambodia, Cuba, North Korea, and Vietnam. Where a controlled component is the principal element in such an end product, however, and can feasibly be removed or used for other purposes, the object of the control program is defeated unless the end product is subject to the same control as the component. This concept applies both to exports and reexports of U.S. commodities and to the incorporation abroad of U.S. commodities in foreign-made end products for export. This rule revises the Export Administration Regulations to set forth this concept. It also explains why the Commodity Control List is being revised to control television cameras incorporating the types of electron tubes that are under validated license control.

EFFECTIVE DATE: November 9, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles C. Swanson, Director, Operations Division, Office of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone 202-377-4196.

Accordingly, the Export Administration Regulations (15 CFR Parts 376 and 399) are revised as follows:

1. The note to § 376.12 is revised to read as follows;

§ 376.12 Parts, components, and materials in foreign-made end products

* * * * * *

NOTE.—In order to determine whether the prior written approval of the Office of Export Administration is required for the incorporation abroad of U.S.-origin parts or components in a foreign-made end product that will be exported to another country, answer the following questions:

1. Could the U.S.-origin part or component be exported from the United States to the new country of destination under General License *G-DEST*? If the answer is "yes," prior written approval for incorporation in the foreign-made end product is not required.

2. If the answer to "1" is "no," does the U.S.-origin part or component constitute the principal element in the end product and can it feasibly be removed or used for another purpose? If the answers to both are "yes," prior written approval *is* required.

3. If the answer to "2" is "no," could the foreign-made end product, if it were of U.S.-origin, be exported to the new country of destination under General License *G-DEST*? If the answer is "no," prior written approval *is* required.

2. Subparagraph (k) is added to § 399.1 to read as follows;

NOV 9 7 8 UMI

§ 399.1 The commodity control list and how to use it

* * * * *

(k) Control over end products. Certain commodities that are under export control to all destinations for national security reasons may be used as components in end products that, because of their peaceful use, are under control only to embargo destinations. Where a controlled component is the principal element in such an end product, however, and can feasibly be removed or used for other purposes, the object of the control programs is defeated unless the end product is subject to the same control as the component. This explains why, in some instances, commodities that do not appear to qualify for control for national security reasons are under validated license control to all destinations.

3. The Commodity Control List, incorporated by reference at 15 CFR 399.1, is amended by adding the following entry:

Export Control Commodity Number and Commodity Description	Unit	Processing Code	Validated License Required	GLV $ Value Limits		
				V	V	Q
* * *			*	*		
1505A Television cameras incorporating electron tubes defined in entry No. 1555.	No	EE	QSTVWTZ	500	500	0
* * *			*	*		

AUTHORITY: Sec. 4 Pub. L. 91-184, 83 Stat. 842 (50 U.S.C. App. 2403), as amended; EO 12002, 42 FR 35623 (1977); Department Organization Order 10-3, dated Dec. 4, 1977, 42 FR 64721 (1977); and Industry and Trade Administration Organization and Function Order 450-1, dated Dec. 4, 1977, 42 FR 64716 (1977).

Dated: November 3, 1978.

STANLEY J. MARCUSS,
Deputy Assistant Secretary for Trade Regulation.

[FR Doc. 78-31669 Filed 11-8-78; 8:45 am]

[6750-01-M]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

[Docket C-2931]

PART 13—PROHIBITED TRADE PRACTICES AND AFFIRMATIVE CORRECTIVE ACTIONS

Marathon Oil Co.

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: In settlement of alleged violation of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, among other things, requires a Findlay, Ohio producer and retailer of petroleum products to cease instituting, or authorizing the institution of debt collection suits in forums other than those in which consumer resided or signed the credit contract. The firm would further be required to terminate suits pending in distant counties; vacate resulting default judgments; and provide consumers and credit reporting agencies with notice of such suit terminations.

DATES: Complaint and order issued October 18, 1978.[1]

FOR FURTHER INFORMATION CONTACT:

Paul R. Peterson, Director, 4R, Cleveland Regional Office, Federal Trade Commission, Suite 500, Mall Building, 118 Saint Claire Ave., Cleveland, Ohio 44114, 216-522-4207.

SUPPLEMENTARY INFORMATION: On Wednesday, August 9, 1978, there was published in the FEDERAL REGISTER, 43 FR 35338, a proposed consent agreement with analysis In the Matter of Marathon Oil Company, a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions, or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart-Corrective Actions and/or Requirements: Section 13.533 Corrective actions and/or requirements; 13.533-20 Disclosures; 13.533-70 Vacate court action(s). Subpart—Enforcing Dealings or Payments Wrongfully: Section 13.1045 Enforcing dealings or payments wrongfully.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.)

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-31640 Filed 11-8-78; 8:45 am]

[1] Copies of the complaint and the decision and order filed with the original document.

[8010-01-M]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release NO. 33-5991]

PART 201—RULES OF PRACTICE

Notice of Proceedings Relating to the Propriety of Issuing an Order Suspending effectiveness of a Registration Statement

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting an amendment to the Rules of Practice relating to the procedure to be followed by the Commission in giving notice of proceedings to persons entitled to such notice. The amendment concerns notices of proceedings relating to the propriety of the Commission's issuance of a stop order suspending the effectiveness of a registration statement. The new provision specifies that, in addition to the persons identified in the statute as entitled to such notice, if the proceedings are commenced within ninety days after the registration statement became effective, the agent for service and each person designated on the facing sheet of the registration statement to receive copies of communications to such agent must be provided notice of stop order proceedings. This amendment should obviate the need for underwriters and others to request telegrams which state that the Commission has not commenced a stop order proceeding in connection with the closing of the sale of the securities covered by the registration statement.

Accordingly, in the absence of unusual circumstances, confirmation that a stop order proceeding has not been commenced will not be given within 90 days after a registration statement has become effective.

EFFECTIVE DATE: November 6, 1978.

FOR FURTHER INFORMATION CONTACT:

Linda Griggs, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 202-755-1803.

SUPPLEMENTARY INFORMATION: The Commission today announced the adoption of an amendment to Rule 6 of the Rules of Practice (17 CFR 201.6). Rule 6 relates to notice of proceedings and hearings and sets forth the procedure to be followed by the Commission in giving notice to persons of the commencement of proceedings and of the scheduling of hearings.

Subsection (a) of Rule 6 provides that whenever the Commission issues an order for proceeding appropriate notice shall be given to each party to the proceeding and any other person entitled to notice. The provision adopted today amends Rule 6 to add subsection (f) to identify with more specificity the persons entitled to receive notice of proceedings to determine the propriety of the Commission's issuing an order which would suspend the effectiveness of a registration statement ("stop order proceeding") filed under the Securities Act of 1933 [15 U.S.C. 77a et seq., as amended by Pub. L. 94-29 (June 4, 1975] ("Securities Act").

Stop order proceedings are authorized by section 8(d) of the Securities Act. A stop order may be issued when the Commission believes that the "registration statement includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading * * *" (sec. 8(d)). Prior to the issuance of a stop order, however, the Commission must give notice to the persons specified in section 8(f) of the Act and provide such persons with the opportunity to request a hearing within 15 days after notice was given.

Section 8(f) provides that notice should "be sent to or served on the issuer or, in the case of a foreign government or political subdivision thereof, to or on the underwriter, or in the case of a foreign or Territorial person, to or on its duly authorized representative in the United States * * *."

Managing underwriters of an offering being registered under the Securities Act, counsel for the issuer and counsel for the underwriters or the purchasers frequently request the Commission to send to them at the time of the closing of the sale pursuant to the registration statement a telegram advising them that the commission has not commenced a proceeding under section 8(d). Such requests are made despite the requirement in section 8 and Rule 6 that the Commission give notice of stop order proceedings to the issuer. The Commission's staff has attempted to comply with such requests because it understands that the underwriters and counsel desire direct assurance that the Commission has not commenced a stop order proceeding.

Occasionally the requested telegrams are not received on a timely basis. As a result, the time of the staff and the parties to the closing may be inconvenienced by last minute efforts to obtain the transmittal of the telegram or oral confirmation that no stop order proceeding has been instituted. The Commission believes that these problems are of a technical nature but are needless impediments to the capital formation process and aggravations for persons engaged in selling securities.

Accordingly, the Commission has determined to amend Rule 6 to require that, in addition to the persons identified in section 8(f) of the Securities Act as entitled to notice, notice of stop order proceedings be given to the agent for service named on the facing sheet of the registration statement and to each other person designated on the facing sheet of the registration statement as a person to whom copies of communications to such agent are to be sent in all cases when such proceedings are commenced within ninety days after the registration statement has become effective. This amendment should obviate the need for the telegrams and thereby resolve the technical problems relating to requests for such telegrams. Accordingly, in the absence of unusual circumstances, the Commission's staff will no longer give confirmation, either by telegram or orally, that a stop order proceeding has not been commenced if such confirmation is requested within ninety days after a registration statement has become effective.

17 CFR Part 201 is amended by adding the following paragraph (f) to § 201.6:

§ 201.6 Notice of proceedings and hearings.

* * * * *

(f) *Persons entitled to notice.* Any notice of a proceeding relating to the issuance of a stop order suspending the effectiveness of a registration statement pursuant to section 8(d) of the Securities Act of 1933 [15 U.S.C. 77a et seq., as amended by Pub. L. 94-29 (June 4, 1975)], shall be given to each person specified in section 8(f) of that act. In addition, if such proceeding is commenced within 90 days after the registration statement became effective, notice of the proceeding shall be given to the agent for service named on the facing sheet of the registration statement and to each other person designated on the facing sheet of the registration statement as a person to whom copies of communications to such agent are to be sent.

* * * * *

(Secs. 8, 19, 48 Stat. 79, 85; sec. 209, 48 Stat. 908; sec. 301, 54 Stat. 857; sec. 308(a)(2), 90 Stat. 57; 15 U.S.C. 77h, 77s.)

The Commission finds that the foregoing action relates solely to rules of agency procedure or practice and, accordingly, that notice and prior publication for comment under the Administrative Procedure Act, 5 U.S.C. 551, et seq., are unnecessary. See 5 U.S.C. 553(b).

By the Commission.

November 2, 1978.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-31724 Filed 11-8-78; 8:45 am]

[8010-01-M]

[Release No. SAB-25]

PART 211—INTERPRETATIVE RELEASES RELATING TO ACCOUNTING MATTERS

Subpart B—Staff Accounting Bulletins

STAFF ACCOUNTING BULLETIN No. 25

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: These interpretations of the staff of the Commission provide guidance to issuers in disclosing relationships with independent public accountants in proxy statements. Topic 6-L provides the staff's views on various questions that have arisen since the adoption of rules in Accounting Series Release No. 250 that require the disclosure of certain relationships with independent public accountants.

DATE: November 2, 1978.

FOR FURTHER INFORMATION CONTACT:

Gary A. Zell (202-755-0222), Office of the Chief Accountant, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The statements in Staff Accounting Bulletins are not rules or interpreta-

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tions of the Commission nor are they published as bearing the Commission's official approval; they represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

Dated: November 2, 1978.

GEORGE A. FITZSIMMONS,
Secretary.

STAFF ACCOUNTING BULLETIN No. 25

The following interpretation provides the staff's views on various questions concerning the requirements of 17 CFR 240.14a-101 adopted in Accounting Series Release No. 250 [43 FR 29110].

TOPIC 6: INTERPRETATIONS OF ACCOUNTING SERIES RELEASES

L. ASR No. 250—Disclosure of Relationships With Independent Public Accountants

Facts: Instruction No. 1 to Item 8(g) of the proxy rules [17 CFR 240.14a-101] states in part that "all fees for services provided in connection with the audit function (e.g., reviews of quarterly reports, filings with the Commission, and annual reports) may be computed as part of the audit fees."

Question: What other services does the staff believe meet the criterion of being "services provided in connection with the audit function"?

Interpretive Response: The following are additional examples of services provided by the principal accountant that the staff believes may meet the criterion:

- Meetings with the audit committee or the board of directors on matters related to the audit.
- Reviews of the system of internal accounting control for the purpose of determining the adequacy of the system when done in conjunction with the examination of financial statements.
- Review of tax provisions to determine appropriateness.
- Consultations during the year on matters related to accounting and financial reporting.
- Review of financial and related information that is to be included in filings with the Commission and other regulatory agencies.
- Preparation of a letter to management on matters coming to the accountants' attention during an examination of financial statements.
- Limited reviews of financial information to be included in interim reports to shareholders and other investors or otherwise made public.
- Issuance of "comfort" letters to underwriters.
- Reviews of sensitive payments or compliance with corporate codes of conduct when done in conjunction with the examination of financial statements.
- Audits of entities that have been acquired by the issuer.
- Reviews of compliance with restrictive clauses in loan indentures or other agreements.
- Services performed in connection with the issuance of special reports under Statement of Auditing Standards No. 14.

The staff believes the following are among the services which do *not* meet the criterion:

- Reviews or examination of financial records, business practices, et cetera, of companies which the issuer is considering acquiring.
- Internal control services provided for the purpose of designing or redesigning systems and procedures.
- Preparation of tax returns or the rendering of tax advice.
- Assistance with tax authority examinations.
- Reviews of or assistance in the preparation of feasibility studies or limited purpose forecasts and projections.

Question: Should services, including audits, to employee benefit plans where the issuer engages the accountant be included in the disclosures of nonaudit services?

Interpretive Response: Yes.

Question: If tax services for executives are mandated by the audit committee as part of its monitoring of compliance with corporate conduct, should such services be disclosed as nonaudit?

Interpretive Response: Yes.

Facts: Item 8(g) states, in part, "For the fiscal year most recently completed, describe each professional service provided by the principal accountant and state the percentage relationship which the aggregate of the fees for all nonaudit services bear to the audit fees * * *"

Question: What amount should be used as the denominator for this computation?

Interpretive Response: The amount recorded as the cost for audit, including those services provided in connection with the audit function, during the most recently completed fiscal year.

Question: Does each nonaudit service have to be described if the percentage relationship of the individual fee is less than 3 percent of audit fees?

Interpretive Response: Yes. Only the individual fee relationship percentage is exempt from disclosure. However, judgment must be used to determine when it is appropriate to combine, for purposes of description, specific instances of rendering a service.

Question: Should the services and related fees of accountants who are an associated or correspondent firm of the principal accountant be included in the disclosures?

Interpretive Response: Yes. Such accountants are considered extensions of the principal accountant.

Question: Should services provided to subsidiaries of the issuer be included in the disclosures?

Interpretive Response: Yes. Services provided with respect to any subsidiaries, whether or not consolidated, should be included. Services with respect to 50 percent and less owned entities should be excluded, unless such entities are consolidated or unless substantially all of the fees were paid by the issuer.

Question: Should "out-of-pocket" expenses incurred by the accountant and reimbursed by the issuer be included in this computation?

Interpretive Response: Yes. Such expenses should be included with the services to which they apply.

Question: How should non-audit services not completed by year-end be disclosed?

Interpretive Response: Because the staff believes there would be a high correlation between the fiscal period in which a service is provided and the fiscal period in which its cost is recorded and because, in those instances where there is a difference in these fiscal periods the effect on the disclosure is only between years, the staff will not object to issuers disclosing the services and computing the percentages using the amounts recorded as a cost by the issuer during the most recently completed fiscal year if the method is consistently followed year to year.

Question: If the issuer engages the principal accountant to provide tax services for the issuer's executives, do such services have to be disclosed?

Interpretive Response: Yes.

Question: Should services that are disclosed elsewhere in the proxy statement, such as tax services provided to executives that are disclosed as management remuneration, also be disclosed as non-audit services pursuant to Item 8(g)?

Interpretive Response: Yes.

Facts: Item 8(g) states, in part, "Indicate whether, before each professional service provided by the principal accountant was rendered, it was approved by, and the possible effect on the independence of the accountant was considered by, (1) any audit or similar committee of the Board of Directors and, (2) for any service not approved by an audit or similar committee, the Board of Directors."

Question: Is generic approval of nonaudit services satisfactory for disclosures under this requirement?

Interpretive Response: Generic approval by the audit committee or board of directors of a defined group of nonaudit services may result in an affirmative response to this disclosure requirement where such approval is made at least annually and includes a limitation regarding the magnitude of the services and the audit committee or board of directors subsequently compares with earlier approvals the nature and magnitude of the services actually performed.

Question: Is disclosure of whether the audit committee or board of directors has approved a service required if that service was rendered prior to adoption of the rule?

Interpretive Response: Yes. However, the issuer may wish to indicate which services were rendered prior to the adoption of the rule and, if appropriate, indicate that the service was approved and the possible effect on independence was considered by the audit committee or board of directors after it was provided.

Facts: Instruction No. 4 to Item 8(g) states, "Describe the circumstances and give details of any services provided by the registrant's independent accountant during the latest fiscal year that were furnished at rates or terms that were not customary." In Accounting Series Release No. 250, the Commission states, in part, "Fee arrangements where the accountant has agreed to a fee significantly less than a fee that would cover expected direct costs in order to obtain the client or in response to criticism of prior services are examples of situations which would require disclosure."

Question: What costs does the staff believe should be included in direct costs?

Interpretive Response: **The staff believes that at a minimum the compensation and fringe benefits of the personnel assigned to the engagement** and out-of-pocket expenses should be included in direct costs.

Question: Must the provision of a service without charge or at a nominal charge to an audit client be described if the accountant's usual fee for such service is de minimus?

Interpretive Response: No description of the circumstances is necessary if the service is concomitant to the audit and if the accountant's normal fee for such a service is de minimus.

[FR Doc. 78-31725 Filed 11-8-78; 8:45 am]

[6740-02-M]

Title 18—Conservation of Power and Water Resources

CHAPTER I—FEDERAL ENERGY REGULATORY COMMISSION

SUBCHAPTER A—GENERAL RULES

PART 1—RULES OF PRACTICE AND PROCEDURE

Procedures for Review of Remedial Orders Issued by the Secretary of Energy

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final regulations.

SUMMARY: The Federal Energy Regulatory Commission is amending its Rules of Practice and Procedure to provide procedures for Commission review of remedial orders issued by the Secretary of Energy. The final regulations implement the Commission's authority under section 503(c) of the Department of Energy Organization Act.

EFFECTIVE DATE: December 11, 1978.

FOR FURTHER INFORMATION CONTACT:

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A. BACKGROUND

On May 2, 1978, the Federal Energy Regulatory Commission (Commission) issued a notice of proposed rulemaking (43 FR 19669, May 8, 1978) to establish procedures, pursuant to section 503 of the Department of Energy Organization Act, Pub. L. 95-91 (Act), for review by the Commission of remedial orders issued by the Secretary of Energy (Secretary). A public hearing was held on May 25, 1978, at which six persons testified, five representing large oil companies and the American Petroleum Institute, and one representing an association of small companies. Thirty-two written comments were received. While those testifying at the hearing predominantly represented large integrated oil companies, the written comments were received from a wide spectrum of persons affected by the regulations, including large integrated oil companies, trade associations, independent producers, refiners, resellers, retailers, distributors, municipalities owning electric systems, the consumer division of a State attorney general's office and an energy consulting firm. Many of the suggestions made in the testimony and in the comments have been incorporated into the final rule.

B. SUMMARY OF THE COMMISSION'S FINAL REGULATIONS

This rulemaking establishes procedures necessary to implement the Commission's responsibility under section 503 of the Act. Section 503(a) gives the Secretary authority to issue a remedial order to any person, firm, or association whom he believes, after investigation, has violated any regulation, rule, or order issued pursuant to the Emergency Petroleum Allocation Act of 1973 (Pub. L. 93-159), as amended (EPAA). Section 503(b) of the Act provides that the remedial order will become effective 30 days after receipt by the person to whom it is issued unless the person notifies the Secretary that he intends to contest the order. Section 503(c) provides that the Secretary, if notified that a remedial order will be contested, must immediately notify the Commission, and the Commission is required to stay the effect of the remedial order unless it finds that the public interest requires immediate compliance. Section 503(c) further states:

> The Commission shall, upon request, afford an opportunity for a hearing, including, at a minimum, the submission of briefs, oral or documentary evidence, and oral arguments. To the extent that the Commission in its discretion determines that such is required for a full and true disclosure of the facts, the Commission shall afford the right of cross examination. The Commission shall thereafter issue an order, based on findings of fact, affirming, modifying or vacating the Secretary's remedial order, or directing other appropriate relief, and such order shall, for the purpose of judicial review, constitute a final agency action * * *.

This rulemaking establishes a new § 1.38 in part 1 of title 18, Code of Federal Regulations, consisting of procedures to implement the Commission's responsibility under section 503 of the Act.

Scope. As provided in paragraph (a), § 1.38 is applicable to the review of the contested orders issued by the Secretary pursuant to section 503(a) of the Act and initiated by notices of probable violation, proposed remedial orders or other formal administrative initiating documents issued on or after October 1, 1977. Several comments have suggested that the scope be enlarged to include review of orders initiated by formal administrative documents prior to October 1, 1977. However, in light of section 503(f), the Commission declines to take jurisdiction over matters initiated prior to October

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1, 1977. Section 1.38 is thus limited to review of contested remedial orders which were initiated by a formal administrative document on or after October 1, 1977.

Request for nondisclosure. Section 1.38(c) of the final rules describes the procedures by which a party may request that information, which is submitted in a proceeding conducted under this section, be withheld from public disclosure. The party must: (1) Request the presiding officer not to disclose the information; (2) submit a second copy of the document from which the information which is claimed to be exempt from disclosure has been deleted; (3) indicate in the original document that it contains information which is exempt from disclosure; and (4) submit a statement that would justify the withholding of the information under an exception in the Freedom of Information Act (5 U.S.C. 522), under 18 U.S.C. 1905, or under other law. Information thus submitted will be treated as being exempt from public disclosure. Subject to the requirements of the Freedom of Information Act, the information will not be disclosed except to participants in the proceeding, upon request, under the restriction that they may not use or disclose the information except in the context of the proceeding conducted under this section and that they must return all copies of the information, at the conclusion of the proceeding, to the person who submitted the information.

The final rule differs from the proposed rule in two respects. First, the final rule provides that information which is claimed to be exempt from public disclosure requirements is automatically treated as exempt, whereas in the proposed rule the presiding officer was required to make a determination as to its exempt status. The final rule thus eliminates the delay to the proceeding caused by the requirement to make determinations on all information claimed to be confidential, while still providing protection for information which is confidential.

The final rule also differs from the proposed rule in that, in the final rule, information claimed to be exempt from disclosure is automatically disclosed on the aforementioned conditions to other participants in the proceeding, if they request the information and if they agree to the restrictions on its use. Under the proposed rule, the presiding officer was required to make a second determination as to whether the information could be disclosed to other participants. The purpose of the second determination in the proposed rule was to reduce the possibility that a party may be required to risk disclosing trade secrets or sensitive financial data to competitors in order to defend itself in an action before the Commission. However, the proposed rule allowed for the possibility that the presiding officer's decision in the proceeding might be based upon information to which other participants had no access or which they had no opportunity to contest. In order to balance these conflicting interests, the Commission specifically sought comments on the issue in its notice of proposed rulemaking. The comments and testimony suggested that the information should be released to other participants under a protective order, limiting use of the information to the proceeding conducted pursuant to this section and requiring return of the information at the conclusion of the proceeding. The Commission has adopted this suggestion in the final rule.

Commencement of proceedings. Section 1.38(d) provides that a proceeding under this section is commenced by written notice to the Commission by the Secretary or his delegate that he has been notified by the recipient of an order (the petitioner) that the order will be contested. At the same time the Secretary is required to serve the contested order on participants in the prior proceedings and on persons denied participation in the prior proceedings. The contested order may be a remedial order under 10 CFR 205.199B, an interim remedial order for immediate compliance under 10 CFR 205.199D, or an order of disallowance under 10 CFR 205.199E. The proceeding is also commenced by the petitioner's filing a notice of petition for review of an interim remedial order for immediate compliance under 10 CFR 205.199D. Upon notice from the Secretary in the case of an interim or remedial order for immediate compliance, from the petitioner, a presiding officer shall be designated, by the Commission or its designee, for the proceeding. In the notice of proposed rulemaking, the Commission requested comments as to the desirable qualifications and experience of the presiding officer to be appointed in view of the Commission's resources. While some comments responded that only an administrative law judge would be qualified to preside, the majority of comments indicated that the nature of the particular case would determine the necessary qualifications of the presiding officer; that is, where a particular proceeding involved an extensive or complex evidentiary hearing, an administrative law judge should preside, whereas in other cases a staff lawyer knowledgeable in administrative law would suffice. Accordingly, the Commission has decided to retain the flexibility to determine whom it will appoint as presiding officer.

Stay of contested order. Section 1.38(e), which is essentially unchanged from its proposed form, provides that upon filing of the notice by the Secretary under paragraph (d)(1) or the petitioner under paragraph (d)(2) the contested order is automatically stayed unless the presiding officer finds, upon request of the Secretary or other participants, that the public interest requires immediate compliance with the contested order. A request not granted within 10 days would be denied. The presiding officer could extend the time for a determination for up to 7 days. The presiding officer will notify participants of the determination, which may be appealed to the Commission under § 1.28.

Pleadings. Section 1.38(f)(1) of the final rule provides that, within 20 days after filing of notice by the Secretary under paragraph (d), the Secretary must file with the Secretary of the Commission, for the presiding officer, a copy of the contested order, which should contain a complete statement of the factual and legal basis of the order, and must certify to the Secretary of the Commission, for the presiding officer, two copies of the entire record developed in the proceedings before the Secretary. One copy of the record must be complete. The second copy shall have had deletions made of information which the Secretary has determined is confidential or otherwise exempt from public disclosure. The first copy will be made available to participants under the conditions set forth in paragraph (c) (6) and (7). In addition, the Secretary may file a statement, similar to a complaint, setting forth the elements of the alleged offense.

Paragraph (f)(2) provides that the petitioner, within 15 days after the Secretary files the contested order and the record, must file, and serve on all parties, an answer admitting or denying each of the Secretary's findings in the contested order and setting forth affirmative defenses, if any. In the answer, the petitioner may also contest any portion of the record of proceedings before the Secretary which the Secretary certified to the presiding officer and may request permission to raise new facts and issues and to conduct discovery under the criteria set forth in paragraphs (g) and (h), respectively. The reason for allowing the Secretary 20 days to file his statement and allowing the petitioner only 15 days to file the answer is that it has been estimated that 20 days are necessary for the Secretary to compile the record which he must certify to the presiding officer. In contrast, 15 days appears to be sufficient for the petitioner to submit an answer, which need only be a simple statement of his case.

Paragraph (f)(1)(ii) provides that if the petitioner, in the answer, has requested permission to raise new facts or issues, the Secretary may, within 10 days after the filing of the petitioner's answer, file a reply responding to the petitioner's request and requesting permission to raise new facts and issues which: (1) Are necessary to support the Secretary's case as a result of the new facts and issues raised by the petitioner; and (2) are necessary for a full and true disclosure of the facts. In his reply, the Secretary may also request permission to conduct discovery relating to the new facts and issues he wishes to raise.

Paragraph (f)(3) provides that a person may request permission to intervene in the proceedings conducted under this section if the person claims: (1) That he or she has an interest which may be directly affected and which is not adequately represented by existing parties, and that he or she may be bound by Commission action in the proceeding; or (2) that he or she has any other interest so that participation by the person may be in the public interest. A person who wishes to intervene must file with the Secretary of the Commission, for the presiding officer, a request to intervene within 20 days after the commencement of the proceedings under paragraph (d). The presiding officer may, in extraordinary circumstances and for good cause shown, authorize a late filing. The request to intervene must thoroughly advise the presiding officer and participants in the proceeding as to the nature of the filing party's interest and grounds for intervention as well as the facts or law to be raised, citing authorities relied on.

The request to intervene may also request permission to raise new facts and issues and to conduct discovery in accordance with paragraphs (g) and (h), respectively. Participants in the proceedings may file answers to the request for intervention within 15 days after the filing of the request. If a participant does not file an answer, he shall be deemed to waive any objection to the granting of the request. The presiding officer may grant or deny requests to intervene, in whole or in part, or may authorize limited participation where appropriate. The determination of the presiding officer shall be served on all participants. A person whose request for intervention is denied by the presiding officer may submit comments under paragraph (m)(3) requesting the Commission to allow the intervention.

Subparagraphs (1)(iii) and (2)(iii) of paragraph (f), respectively, require the Secretary and the petitioner each to file, and serve on other participants, a brief which fully states the respective case, supported by references to all authorities relied on. The time within which the Secretary must file his brief depends on the nature of the particular proceeding. If none of the participants, including persons requesting intervention, have requested permission to raise new facts or issues or to conduct discovery, the brief is due within 20 days after the filing of the petitioner's answer. If the presiding officer determines that no discovery will be permitted, the Secretary must file his brief within 20 days after the presiding officer so determines. If discovery is permitted, the Secretary must file his brief within 20 days after the conclusion of the time period set for discovery. The petitioner's brief must be filed within 15 days after the filing of the Secretary's brief.

The comments received suggested changes to the proposed pleading procedures, many of which have been adopted in the final regulations. Objection was made to the requirement in the proposed rules that the Secretary and the petitioner were required to file briefs before discovery had been conducted. Accordingly, paragraph (f) of the final regulations requires the Secretary to submit his statement of the case (either by relying on the contested order or by submitting a separate statement) and the petitioner to file only a simply answer prior to discovery. Full briefs are to be submitted after discovery.

A few comments objected to the Secretary being permitted to file a reply under proposed § 1.38(f)(1)(ii) to the petitioner's answer on the grounds that such additional pleadings gave the Secretary an advantage. In the final regulations, the Secretary is permitted under § 1.38(f)(1)(ii) to file a reply to the petitioner's answer only if the petitioner has requested permission to raise new facts or issues and only to the extent that the Secretary may respond to the petitioner's request and may request permission to raise new facts and issues, and to conduct discovery, necessary to support his case in light of the petitioner's new facts and issues.

Several comments objected to § 1.38(f)(3) and (4) of the proposed regulations, which permitted intervention by all persons who had participated in the prior proceedings and by persons denied the opportunity to participate in the prior proceeding upon a showing that the denial was wrongful. Some of the comments argued for no intervention or very limited intervention on the basis that the Secretary adequately represents the public interest, while others, notably consumers of petroleum products, argued that liberal intervention should be permitted especially as to those persons who would receive the economic benefits of the remedial orders. Almost all of the comments responding to this issue agreed that the Commission should set its own standards for intervention rather than rely on the Secretary's determination as to who could intervene in the prior proceedings. The Commission agrees that it should set its own standards for intervention and has done so.

A large number of the comments objected to the requirement that the Secretary certify the record of the prior proceedings to the presiding officer under paragraph (f)(1)(i) and to the requirement that the petitioner contest the portions of the record in dispute, expressed in the final rules in paragraph (f)(2)(ii). The comments argued that these requirements favor the Secretary, shifting the burden to the petitioner to disprove the Secretary's record. They suggest that the Commission must conduct a *de novo* proceeding in every case in order to establish an independent record. The Commission has rejected this suggestion based in part upon the conclusion that a *de novo* proceeding is neither required nor desirable in every case, as discussed below, and in part upon the belief that the Commission's procedures effectively require the Secretary to sustain the burden of proof. The Commission's procedures are designed to obtain a record which satisfies due process standards from which a determination may be made as to whether the remedial order should issue. This record may be established in part by the Secretary's record and in part by the proceeding conducted before the presiding officer. Those portions of the Secretary's record which are contested by the petitioner or other participants, and those portions found to be inadequate by the presiding officer, may be opened for further proceedings before the Commission. Furthermore, new facts and issues may be raised in accordance with paragraph (g). In all cases, the presiding officer will conduct an independent scrutiny of all parts of the record, including the uncontested portions, in order to arrive at a decision. The record as supplemented and the review thereof should provide a sound basis for a determination of whether the Secretary has sustained the burden of demonstrating that the remedial order should issue.

New Facts and Issues. Section 1.38(g) sets forth the conditions under which the various participants may request permission to raise new facts or issues not raised in prior proceedings on the contested order. The petitioner may raise new facts of issues if they are necessary for a full and true disclosure of the facts and if the new facts or issues: (1) were not known and could not, with the exercise of due care, have been known at the time they would otherwise have been raised

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in prior proceedings; (2) are facts or issues that the petitioner was unable to raise in the prior proceedings because of unduly restrictive time limits imposed by the Secretary; or (3) are facts or issues that the petitioner was not permitted to raise in the prior proceedings due to erroneous adverse procedural rulings. The Secretary may request permission to raise new facts or issues not raised in the prior proceedings, which shall be granted if they are necessary for a full and true disclosure of the facts and if they are necessary to support the Secretary's case as a result of new facts and issues raised by the petitioner. Intervenors who did not participate in the prior proceedings may raise new facts or issues subject to the same criteria applicable to the petitioner. Intervenors who participated in the prior proceedings may raise new facts or issues if they are necessary for a full and true disclosure of the facts and if the new facts or issues: (1) were not known, and could not, with the exercise of due care, have been known to the intervenor at the time they would otherwise have been raised during the prior proceedings; (2) are facts or issues that the intervenor was not able to raise at the time they could have been raised during the prior proceeding because of unduly restrictive time limits imposed by the Secretary; or (3) are facts or issues that the intervenor was not permitted to raise in the prior proceedings due to erroneous adverse procedural rulings. The presiding officer shall determine whether to grant or deny, in whole or in part, the request to raise new facts or issues.

Comments suggested that the Commission allow new facts or issues to be raised which are necessary for a full and true disclosure of the facts without regard to whether they were, or could have been, raised below. The Commission has rejected this suggestion, believing that, in the interest of administrative efficiency, the parties should be required to present their case fully before the Secretary and that the Commission's proceedings should be directed toward correcting inequities in the prior proceedings.

Discovery. Section 1.38(h) permits the petitioner and intervenors who participated in the prior proceedings to request permission to conduct discovery which is necessary for a full and true disclosure of the facts and which: (1) relates to new facts or issues permitted to be raised under paragraph (g); or (2) was not permitted to be conducted by the petitioner or the intervenors, respectively, in prior proceedings due to erroneous adverse rulings. The Secretary and intervenors who did not particiapte in the prior proceedings may request discovery related to new facts and issues which the Secretary or an intervenor, respectively, has raised in accordance with paragraph (g). The presiding officer shall determine whether to grant or deny, in whole or in part, the requests for discovery and shall set a time limit within which such discovery must be completed.

Section 1.38(h) adds written interrogatories to the devices by which discovery may be conducted.

Hearing. Section 1.38(i) provides that any participant may request a hearing, which request shall be granted, or the presiding officer may convene a hearing on his own motion. The hearing shall include an opportunity for the submission of oral or documentary evidence and oral arguments. Any participant may request an opportunity for cross-examination, which request must include the reasons why the cross-examination is necessary for full and true disclosure of the facts. The presiding officer may also provide the opportunity for cross-examination on his own motion if he or she determines that it is necessary for a full and true disclosure of the facts. Comments suggested that more specific guidance be given in the regulations to direct the presiding officer as to when cross-examination is necessary for a full and true disclosure of the facts, such as a provision stating that opportunity for cross-examination shall be granted as a matter of right on any material fact in dispute. The Commission believes that the statutory standard is sufficient guidance, and that since a presiding officer's denial of a request for cross-examination may be the subject of written comments to the Commission under paragraph (m)(3), due process is not denied.

The presiding officer may convene a prehearing conference and may determine the issues to be resolved in the proceeding and the time available for oral argument.

Conduct of the hearing. Section 1.38(j) states that the presiding officer shall be responsible for the conduct of the hearing including the order of procedure.

Burden of proof. Section 1.38(k) provides that the Secretary shall have the burden of going forward and must sustain the burden of proof with respect to all elements of his case, by a preponderance of the evidence.

Proposed findings of fact, conclusions of law and comments. Section 1.38(l) provides that any participant may, within 10 days after the conclusion of the hearing, or if no hearing is held, within 20 days after the filing of the petitioner's brief under (f)(2)(iii), file proposed findings of fact and conclusions of law, comments in support thereof and any objections to procedural rulings of the presiding officer. Any participant may file a reply to proposed findings of fact and conclusions of law within 10 days after the filing thereof.

Proposed order. Section 1.38(m) provides that the presiding officer shall issue a decision and proposed order, based on findings of fact, affirming, modifying or vacating the contested order or directing other appropriate relief. The proposed order shall be based upon the entire record before the presiding officer, including the record certified by the Secretary. The presiding officer shall certify a copy of the record in the hearing including the proposed order, to the Commission. The proposed order shall be served on all participants. Participants may, within 15 days of the issuance of the proposed order, file with the Commission written comments on the proposed order or on any procedural or substantive rulings of the presiding officer.

Commission action. Section 1.38(n) provides that, upon consideration of the entire record and the proposed order, the Commission shall issue a final order affirming, modifying, or vacating the contested order or directing other appropriate relief. The final order constitutes final agency action for purposes of judical review. The Commission may, instead of issuing a final order, remand the proceeding to the presiding officer or take other appropriate action.

Ex parte communications. Section 1.38(o) states that the ex parte provisions of § 1.4(d) of Part 1 apply to proceedings under this section as if such proceedings were contested on-the-record proceedings pending before the Commission. The ex parte provisions shall apply commencing with the Secretary's issuance of a proposed remedial order under 10 CFR 205.192, an interim remedial order for immediate compliance under 10 CFR 205.199D, or a proposed order of disallowance under 10 CFR 205.199E.

Withdrawal of petition for review. Section 1.38(p) provides that the petitioner may at any time submit to the presiding officer and serve on other participants, a request to withdraw the petition for review of the contested order. The presiding officer shall then issue, and serve on all participants in the proceeding, an order terminating the proceeding conducted pursuant to this section. The order shall become effective 10 days after issuance. Termination of the proceeding may be appealed to the Commission, within 10 days after issuance, except that if the Commission has not acted on an appeal within 30 days, it shall be deemed denied. The termination order shall be stayed pending the appeal. If the termination order is rescinded by the Commission, the proceeding shall continue in accordance with this section. The Commission believes that any intervenor who claims to be damaged by the petitioner's withdrawal of the petition for review can obtain judicial review thereof and, accordingly, its interest is protected.

Sanctions. Paragraph (g) sets forth certain civil and criminal sanctions the Commission may seek to impose on any person who is violating, or is about to violate, any rule, regulation, restriction, condition, or order the Commission made or imposed under this section.

The nature of the Commission's review. The Commission believes, based upon an examination of the statute and the legislative history, that section 503 of the Act does not require the Commission to conduct a de novo proceeding in every case of remedial order review. The statute requires only a hearing consisting of the submission of briefs, oral and documentary evidence and oral argument. The fact that an opportunity for cross-examination is to be granted only if, in the discretion of the Commission, it is necessary for a full and true disclosure of the facts, indicates that a full de novo hearing is not required. Further, the authority of the Secretary under section 503(d) to set reasonable time limits for the Commission to complete its review indicates that a de novo proceeding is not intended as a matter of course.

In the legislative history, the statement of managers accompanying the conference report explained that the purpose of the Commission's review was to guarantee a separation of the prosecutorial and judicial functions by assuring a departmental review of remedial orders by officials who had no part in the issuance of the order. S. Rep. No. 95-367, 95th Congress, 1st sess. 85 (1977). The managers further emphasized that section 503 was intended to reaffirm Congress intent that "notions of fair play and due process be followed in administrative proceedings." Id. at 85-86. Neither of these concerns, separation of prosecutonial and judicial functions and the extension of due process, requires a de novo hearing in every case. A separation of the judicial and prosecutonial functions is accomplished by Commission review supplemented by limited evidentiary proceedings where necessary. Second, the extension of due process is satisfied in many cases by an independent scrutiny of the record and by less than a de novo proceeding, so long as each side has been afforded an opportunity to present its case in full.

During the debate in the Senate on the amendment adding section 503 to the bill, there was concern about possible delay of a final decision that might be caused by the amendment, frustrating congressional intent to speed up the administrative process. Senator Javits, who introduced the amendment, indicated that delays could be minimized by providing the Commission the discretion to deny opportunity for cross-examination where appropriate and by the fact that the Secretary could impose a reasonable time limit for Commission review, process. Senator Javits, who introduced the amendment, indicated that delays could be minimized by providing the Commission the discretion to deny opportunity for cross-examination where appropriate and by the fact that the Secretary could impose a reasonable time limit for Commission review, which he estimated to be 3 or 4 months. 123 Cong. Rec. S7935-36 (daily ed. May 18, 1977). If the proceedings were entirely de novo, the process would take much longer.

The House debate confirms the proposition that a de novo proceeding was not contemplated. Note the statement of Representative Eckhardt, who introduced the amendment regarding section 503, stating that section 503 provides "an oral hearing, gives [the petitioner] an opportunity to contest the agency position and gives him a record on which a court may ultimately determine whether the agency decision was based substantially on the record as a whole." 123 Cong. Rec. H5372 (daily ed. June 3, 1977). These procedures are provided under the Commission's rule.

Concern in the House centered around the inability of small companies to obtain review of remedial orders due to a lack of financial resources. Representative Brown of Ohio stated:

> It seems to me that it is very important to have a sound, prudent, regular administrative procedure. [This] amendment ideally does that. One of the things we have been observing over the past few months is that small independent producers who are challenged by the FEA just simply have to abandon their cases and accept the FEA ruling because they do not have the wherewithal to fight the FEA's decision. This will help assure that they will have the same kind of rights that bigger outfits with stronger resources have in trying to respond to the bureaucracy.
>
> *Mr. Eckhardt:* The gentleman has stated the situation accurately.

Id. A proceeding that unnecessarily duplicates that part of a record established in prior proceedings, which is not contested, unnecessarily delays a resolution of the case and increases the financial burden on a person seeking relief.

Accordingly, in view of the congressional intent that due process considerations be meshed with minimization of the time required for review and minimization of financial burdens imposed by Commission review, the Commission concludes that de novo proceedings are not required for Commission review of remedial orders under section 503 of the act.

(Department of Energy Organization Act, Pub. L. 95-91, E.O. 12009, 42 FR 46267, Natural Gas Act, 15 U.S.C. § 717 et seq., Federal Power Act, 16 U.S.C. 792 et seq.)

In consideration of the foregoing, Part 1, Subchapter A of Chapter I, Code of Federal Regulations, is amended as set forth below, effective December 11, 1978.

By the Commission.

KENNETH F. PLUMB,
Secretary.

1. Part 1, Subchapter A, Chapter I of Title 18, Code of Federal Regulations, is amended in the table of contents by adding in the appropriate numerical order a new section number and heading to read as follows:

PART 1—RULES OF PRACTICE AND PROCEDURES

. . . . . .

§ 1.38 Commission Review of Remedial Orders.

. . . . . .

2. Part 1, Subchapter A, Chapter I of Title 18, Code of Federal Regulations, is amended in the Statement of Authority by inserting between "under" and "unless otherwise noted," a phrase to read as follows:

AUTHORITY:

. . . . . .

15 U.S.C. 717 et seq., 16 U.S.C. 792 et seq., 42 U.S.C. 7101 et seq., E.O. 12009, 42 FR 46467,

. . . . . .

3. Part 1, Subchapter A, Chapter I of Title 18, Code of Federal Regulations, is amended by adding a new § 1.38 to read as follows:

§ 1.38 Commission review of remedial orders.

(a) *Scope.* (1) The provisions of this section shall apply to proceedings of the Commission held in accordance with section 503(c) of the Department of Energy Organization Act, Pub. L. 95-91, 42 U.S.C. 7913(c), to review orders issued by the Secretary of Energy pursuant to section 503(a) of the Department of Energy Organization Act and initiated by notices of probable violation, proposed remedial orders, or other formal administrative initiating documents issued on or after October 1, 1977, which are contested by the recipient.

(2) Except as otherwise specifically provided in this section, the following provisions of the Part shall apply to proceedings under this section:

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(i) § 1.1—The Commission;
(ii) § 1.2—The Secretary;
(iii) § 1.3—Notice of public sessions and proceedings;
(iv) § 1.4—Appearances and practice before the Commission;
(v) § 1.11—Amendments and withdrawal of pleadings;
(vi) § 1.12—Motions;
(vii) § 1.13—Time, extensions of time, issuance of orders;
(viii) § 1.14—Filings; docket; hearing calendar;
(ix) § 1.15—Formal requirements as to pleadings, documents and other papers filed in proceedings;
(x) § 1.16—Subscription and verification;
(xi) § 1.17—Service;
(xii) § 1.18 (b) and (d)—Conferences;
(xiii) § 1.21—Copies of transcripts;
(xiv) § 1.22—Witnesses;
(xv) § 1.23—Subpoenas;
(xvi) § 1.24—Depositions;
(xvii) § 1.25—Stipulations;
(xviii) § 1.26—Evidence;
(xix) § 1.27—Presiding officers;
(xx) § 1.36—Public information and requests; and
(xxi) § 1.51—Certificate of service.

(b) *Definitions.* For purposes of this section: "Commission" means the Federal Energy Regulatory Commission;

"contested order" means the remedial order, interim remedial order for immediate compliance, or order of disallowance being contested in proceeding pursuant to this section;

"interim remedial order for immediate compliance" means an interim remedial order for immediate compliance issued pursuant to 10 CFR 205.199D;

"order of disallowance" means an order of disallowance issued pursuant to 10 CFR 205.199E;

"participant" means, as appropriate, the Secretary, the petitioner, and intervenors;

"person" means any individual, association, company, corporation, partnership, or other entity however organized;

"petitioner" means a person who has received a remedial order, interim remedial order for immediate compliance, or order of disallowance who notifies the Secretary that he intends to contest the order;

"remedial order" means a remedial order issued pursuant to 10 CFR 205.199B;

"Secretary" means the Secretary of Energy or his delegate.

(c) *Request for nondisclosure of information.* (1) For purposes of this paragraph, nondisclosure means nondisclosure except as to the participants in the proceeding under conditions provided in subparagraphs (4) and (5).

(2) If any person filing under this section claims that some or all of the information contained in a document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act (5 U.S.C. 552), is information referred to in 18 U.S.C. 1905, or is otherwise exempt by law from public disclosure, the person:

(i) shall request the presiding officer not to disclose such information, except to the participants in the proceeding under the conditions provided in subparagrahs (4) and (5), which request the person shall serve upon all participants in the proceeding;

(ii) Shall file, together with the document, a second copy of the document from which has been deleted the information for which the person requests nondisclosure and shall indicate in the original document that the original document is exempt, or contains information which is exempt, from disclosure;

(iii) Shall include a statement specifying why the information is privileged or confidential, if the information for which nondisclosure is requested is claimed to come within the exception in 5 U.S.C. 552(b)(4) for trade secrets and commercial or financial information;

(iv) Shall include a statement specifying the justification for nondisclosure, if the information for which nondisclosure is requested is not within the exception in 5 U.S.C. 552(b)(4).

(3) If the person filing a document does not submit a second copy of the document from which the appropriate information has been deleted, the presiding officer may assume that there is no objection to public disclosure of the document in its entirety.

(4) If information is submitted in accordance with subparagraph (2) of this paragraph, the information will not be disclosed except (i) as provided in the Freedom of Information Act, in accordance with § 1.36 of this Part, and (ii) upon request in accordance with subparagraph (5), to participants in the proceeding under the restrictions that the participants may not use or disclose the information except in the context of the proceeding conducted pursuant to this section and that the participants must return all copies of the information at the conclusion of the proceeding to the person who submitted the information under subparagraph (2).

(5) At any time, any participant may request the presiding officer to direct a person submitting information under subparagraph (2) to provide that information to the participant requesting the information under this subparagraph. The presiding officer shall so direct if the participant requesting the information agrees (i) not to use or disclose the information except in the context of the proceeding conducted pursuant to this section, and (ii) to return all copies of the information, at the conclusion of the proceeding, to the person submitting the information under subparagraph (2).

(6) If the information contained in the record of prior proceedings submitted by the Secretary under paragraph (f)(1)(i)(A), has been determined by the Secretary to be exempt from disclosure, the information shall not be disclosed except (i) as provided in the Freedom of Information Act, in accordance with § 1.38 of this Part, and (ii) upon request in accordance with subparagraph (7), to participants in the proceeding under the restrictions that the participants may not use or disclose the information except in the context of the proceeding conducted pursuant to this section and that the participants must return all copies of the information at the conclusion of the proceeding to the presiding officer.

(7) At any time, any participant may request the presiding officer to direct that the complete record of prior proceedings, including information determined by the Secretary to be exempt from disclosure, be made available to that participant. The presiding officer shall so direct if the participant requesting the complete record agrees (i) not to use or disclose the information determined to be exempt except in the context of the proceeding conducted pursuant to this section, and (ii) to return all copies of the information determined to be exempt to the presiding officer at the conclusion of the proceeding.

(d) *Commencement of proceeding.* (1) Except as provided in subparagraph (2), the proceeding pursuant to this section shall be commenced by the filing with the Secretary of the Commission, for the Commission, written notice by the Secretary that he has been notified by a petitioner that the petitioner intends to contest an order reviewable under this section. At the same time, the Secretary shall serve a copy of the contested order upon other participants in the prior proceedings and upon persons denied intervention in the prior proceedings and shall certify to the Commission that he has made such service, stating the names and addresses of persons served.

(2) The proceeding pursuant to this section with respect to an interim remedial order for immediate compliance shall be commenced by a petitioner's filing with the Secretary of the Commission, for the Commmission, and serving on other participants in the prior proceedings, if any a notice of petition for review of an interim remedial order for immediate compliance pursuant to 10 CFR 205.199D(h)(i)(1). The Commission shall defer consideration of the merits of the order until a final remedial order is issued by the Secretary.

(3) Upon receipt of notice from the Secretary under subparagraph (1), or upon receipt of a notice of a petition for review by the petitioner under subparagraph (2), the Commission or its designee shall designate a presiding officer for the proceeding, and the Commission or its designee shall notify participants in the prior proceedings and persons denied intervention in the prior proceedings of such designation.

(e) *Stay of contested order.* (1) Upon the filing of the notice with the Commission by the Secretary under paragraph (d)(1), or by the petitioner under paragraph (d)(2), the contested order shall be automatically stayed pending review pursuant to this section unless and until, upon request of the Secretary or other participant, the presiding officer finds that the public interest requires immediate compliance with the contested order.

(2) The Secretary or other participants may at any time, prior to the hearing under paragraph (i), or if there is no hearing, prior to the issuance of a proposed order under paragraph (m), file a petition requesting that the contested order not be stayed, or that the stay be lifted, and setting forth the legal and factual basis for the request.

(3) The presiding officer may request a written statement of the views of any participant regarding whether the contested order should be stayed or continue to be stayed and may convene an expedited hearing or conference on a petition under subparagraph (2).

(4) The presiding officer may grant the petition requesting immediate compliance where he finds that the public interest so requires and shall notify all participants of the determination.

(5) If the presiding officer has not granted the petition under subparagraph (2) within 10 days after it is filed, the petition shall be deemed denied. Prior to the expiration of the 10-day period the presiding officer may extend the period for decision up to 7 days. At the end of the extension, the petition, if not granted, shall be deemed denied.

(6) If the petition under subparagraph (2) is denied, the presiding officer shall notify the participants of such denial.

(7) A grant or denial of a petition under subparagraphs (2) and (3) may be appealed, within 10 days after the grant or denial, to the Commission in accordance with § 1.28. The contested order will remain stayed ending the Commission's disposition of the appeal.

(f) *Pleadings.* (1) *By the Secretary.*—(i) Within 20 days after the filing of notice by the Secretary under paragraph (d)(1), the Secretary:

(A) Shall file with the Secretary of the Commission for the presiding officer two certified copies of the entire record developed in prior proceedings on the contested order: One copy shall be complete and shall be deemed a part of the record upon which the order of the Commission is based, and shall be available to the participants subject to the conditions set forth in paragraph (c) (6) and (7); the second copy shall have had deletions made of information which the Secretary has determined to be confidential or not subject to disclosure;

(B) Shall file with the Secretary of the Commission for the presiding officer a copy of the contested order; and

(C) May, in addition, elect to file a statement setting forth the factual elements of the alleged violation, which statement the Secretary must serve on all participants in the proceeding.

(ii) If the petitioner requests permission to raise new facts or issues pursuant to paragraph (g)(1), the Secretary may file, within 10 days after the filing of the petitioner's answer, a reply responding to the petitioner's request to raise new facts or issues. In the reply, the Secretary may also request the permission of the presiding officer to raise new facts or issues under the criteria set forth in paragraph (g)(2) and to conduct discovery relating to the new facts or issues he may raise pursuant to paragraph (g)(2). Failure by the Secretary to request permission to raise new facts or issues or to conduct discovery in this reply shall constitute a waiver of the opportunity to do so at a later time in the proceeding.

(iii) The Secretary shall file with the Secretary of the Commission, for the presiding officer, and serve upon other participants in the proceedings, a brief in support of the affirmative case, which must set forth:

(A) The elements of the alleged violation, including references to all authorities upon which the Secretary relies, including but not limited to regulations, rulings, interpretations and decisions on appeals and exceptions issued by the Department or its predecessor agencies and precedents established by the Commission; and

(B) A complete statement of the factual and legal basis of the contested order.

(iv) The Secretary's brief shall be filed according to the following time period appropriate to the particular proceeding:

(A) If no participant (including persons requesting intervention) has requested permission to raise new facts or issues or to conduct discovery pursuant to paragraphs (f)(1)(ii), (f)(2)(ii), (f)(3)(vii), and (f)(3)(viii), within 20 days after the filing of the petitioner's answer under paragraph (f)(2)(i);

(B) If the presiding officer has determined, under paragraph (h)(4), that no discovery shall be permitted, within 20 days after the presiding officer's determination under paragraph (h)(4); or

(C) If discovery is permitted under paragraph (h)(4), within 20 days after the conclusion of the time period set for discovery under paragraph (h)(4).

(2) *By the petitioner.* (i) Within 15 days after the filing by the Secretary under subparagraph (1)(i), the petitioner shall file with the Secretary of the Commission, for the presiding officer, and serve upon the Secretary and other participants in the proceedings, an answer to the contested order admitting or denying each of the Secretary's findings in the contested order and setting forth affirmative defenses, if any.

(ii) In the answer, the petitioner may:

(A) Contest any part of the record which the Secretary certified to the presiding officer under subparagraph (1)(i)(A);

(B) Request permission to raise new facts or issues not raised in the prior proceedings if the new facts or issues meet the criteria set forth in paragraph (g)(1); and

(C) Request permission to conduct discovery, subject to the criteria provided in paragraph (h)(1). Failure by the petitioner to contest the record or to request permission to raise new facts or issues or to conduct discovery in this answer shall constitute a waiver of the opportunity to do so at a later time in the proceeding.

(iii) Within 15 days after filing of the Secretary's brief under paragraph (f)(1)(iii), the petitioner shall file with the Secretary of the Commission, for the presiding officer, and serve upon other participants in the proceeding, a brief stating fully the objections to the contested order, including references to all authorities upon which the petitioner relies, including but not limited to regulations, rulings, interpretations, and decisions on appeals and exceptions issued by the Department or its predecessor agencies and precedents established by the Commission.

(3) *By intervenors.* (i) A person qualifying under (ii) may request the presiding officer to permit intervention in the proceeding under this section in accordance with the procedures described in this subparagraph.

(ii) A request to intervene may be filed by any person claiming: (A) An interest which may be directly affected and which is not adequately pro-

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tected by existing parties and as to which the person requesting intervention may be bound by the Commission's action in the proceeding; or (B) any other interest of such nature that participation by the person requesting intervention may be in the public interest.

(iii) A request to intervene shall set out clearly and concisely the facts from which the nature of the requester's alleged right or interest can be determined, the grounds of the proposed intervention, and the position of the intervenor in the proceeding, so as fully and completely to advise the participants and the presiding officer as to the specific issues of fact or law to be raised or controverted, by admitting, denying, or otherwise answering, specifically and in detail, each material allegation of fact or law raised or controverted, including references to all authorities upon which the requester relies, including, but not limited to, regulations, rulings, interpretations, and decisions on appeals and exceptions issued by the Department or its predecessor agencies and precedents established by the Commission.

(iv) Requests to intervene may be filed with the Secretary of the Commission, for the presiding officer, within 20 days after the Secretary's commencement of the proceeding under paragraph (d) unless, in extraordinary circumstance and for good cause shown, the presiding officer authorizes a late filing. A person requesting intervention shall serve the request to intervene on all participants in the proceeding at the same time the request is filed with the Secretary of the Commission.

(v) Any participant in the proceedings may file an answer to a request to intervene. Failure to object shall constitute a waiver of any objection to the granting of such request. If made, answers shall be filed within 15 days after the filing of the request to intervene.

(vi) After expiration of the time for filing answers to requests to intervene or default thereof, as provided in (v), the presiding officer will grant or deny such request, in whole or in part, or may, if found to be appropriate, authorize limited participation. The presiding officer shall serve the determination on a request to intervene upon all participants in the proceeding and upon the person requesting intervention. If the presiding officer denies a request for intervention, the person requesting intervention may submit comments to the Commission under paragraph (m)(3) requesting the Commission to permit the intervention under the standards set forth in paragraph (f)(3)(ii).

(vii) A person filing a request to intervene, may request therein the permission of the presiding officer to raise new facts or issues not raised in the prior proceedings on the contested order, if the new facts or issues meet the criteria set forth in paragraph (g)(3). Failure by the person requesting permission to intervene to request permission to raise new facts or issues in the request to intervene shall constitute a waiver of the opportunity to do so at a later time in the proceeding.

(viii) A person filing a request to intervene may request the permission of the presiding officer to conduct discovery, subject to the conditions set forth in paragraph (h)(3). Failure by the person requesting permission to intervene to request permission to conduct discovery in the request to intervene shall constitute a waiver of the opportunity to do so at a later time in the proceeding.

(g) *New facts and issues.* (1) *Raised by the petitioner.* In the answer, as provided in paragraph (f)(2)(ii)(B), the petitioner may request permission of the presiding officer to raise new facts or issues not raised in prior proceedings on the contested order that (i)(A) are facts or issues that were not known and could not, with the exercise of due care, have been known to the petitioner at the time they would otherwise have been raised during the prior proceedings; (B) are facts or issues that the petitioner was unable to raise at the time they could have been raised during the prior proceedings because of unduly restrictive time limits imposed by the Secretary; or (C) are facts or issues that the petitioner was not permitted to raise in the prior proceedings due to erroneous adverse procedural rulings; and (ii) are necessary for a full and true disclosure of the facts.

(2) *Raised by the Secretary.* In his reply under paragraph (f)(1)(ii), the Secretary may request permission of the presiding officer to raise new facts or issues not raised in prior proceedings on the contested order that (i) are necessary to support the Secretary's case as a result of new facts or issues raised by the petitioner under paragraph (f)(2)(ii)(B) and this paragraph; and (ii) are necessary for a full and true disclosure of the facts.

(3) *Raised by intervenors.* In the request to intervene under paragraph (f)(3)(iii) and this paragraph, an intervenor may request permission of the presiding officer to raise new facts or issues not raised in prior proceedings on the contested order that: (i) if the intervenor did not participate in the prior proceedings, meet the criteria of subparagraph (1) (i) and (ii); or (ii) if the intervenor participated in the prior proceedings, are (A)(I) facts or issues that were not known and could not, with the exercise of due care, have been known to the intervenor at the time they would otherwise have been raised during the prior proceedings; (II) facts or issues that the intervenor was unable to raise at the time they could have been raised during the prior proceedings because of unduly restrictive time limits imposed by the Secretary; or (III) facts or issues that the intervenor was not permitted to raise in the prior proceedings due to erroneous adverse procedural rulings; and (B) are necessary for a full and true disclosure of the facts.

(4) *Determination by the presiding officer.* The presiding officer shall determine whether to grant or deny, in whole or in part, the requests of the participants to raise new facts or issues and shall serve those determinations on all participants in the proceeding.

(h) *Discovery.* (1) *By petitioner.* In the answer under paragraph (f)(2)(ii) the petitioner may request permission of the presiding officer to conduct discovery, where such discovery (i) relates to new facts or issues raised in accordance with paragraph (g)(1); or (ii)(A) was not permitted in the prior proceedings on the contested order due to erroneous adverse procedural rulings; and (B) is necessary for a full and true disclosure of the facts.

(2) *By the Secretary.* In the reply under paragraph (f)(1)(ii), the Secretary may request permission of the presiding officer to conduct discovery where such discovery relates to new facts or issues raised in accordance with paragraph (g)(2).

(3) *By intervenors.* In a request to intervene under paragraph (f)(3)(viii), an intervenor may request permission of the presiding officer to conduct discovery where such discovery: (i) relates to new facts or issues raised in accordance with paragraph (g)(3); or (ii) if the intervenor participated in the prior proceedings, (A) such discovery was not permitted in prior proceedings on the contested order due to erroneous adverse procedural rulings; and (B) such discovery is necessary for a full and true disclosure of the facts.

(4) *Determinations by the presiding officer.* The presiding officer shall determine whether to grant or deny, in whole or in part, the requests of the participants for discovery and shall set a time limit within which all discovery must be conducted.

(5) *Interrogatories.* In addition to discovery devices applicable to this section under paragraph (a)(2), participants may conduct discovery by means of written interrogatories under conditions determined by the presiding officer.

(i) *Hearing.* (1) Any participant may, within 10 days after filing of the petitioner's brief under paragraph (f)(2)(iii), file a request for a hearing or a motion for the opportunity for cross-examination including the reasons why cross-examination is necessary for a full and true disclosure of the facts.

(2) If a participant has filed a request for a hearing, the presiding officer shall grant the request for a hearing. The hearing shall include an opportunity for the submission of oral or documentary evidence and oral arguments.

(3) The presiding officer may at any time, on his own motion, convene a hearing.

(4) As soon as practicable after receiving a request for hearing under subparagraph (1) or after determination on his own motion that a hearing will be held under subparagraph (3), the presiding officer shall give notice to all participants of the time and place of the hearing.

(5) The presiding officer shall determine the issues to be resolved in the proceeding, may specify the time available for oral argument and shall give notice thereof to the participants. The presiding officer may require additional information from the participants and may convene a prehearing conference for the purpose of determining the issues or the nature of the proceeding to be held.

(6) If at any time prior to the issuance of a proposed order pursuant to paragraph (m), upon motion of any participant or on his own motion, the presiding officer in his discretion determines that it is necessary for a full and true disclosure of the facts, he may order that the participants be afforded the opportunity for cross-examination on any facts or issues raised in the proceeding.

(j) *Conduct of the hearing.* The presiding officer shall be responsible for conduct of the hearing, including the order of procedure.

(k) *Burden of proof.* (1) The Secretary shall have the burden of going forward and must sustain the burden of proof with respect to all disputed elements of his affirmative case.

(2) The proposed order under paragraph (m) shall be based upon a preponderance of the evidence.

(l) *Proposed findings of fact, conclusions of law and comments.* (1) Within 10 days after the conclusion of the hearing, or, if no hearing is held, within 20 days after the filing of the petitioner's brief under paragraph (f)(2)(iii), any participant may file with the Secretary of the Commission for the presiding officer, and serve upon the other participants, proposed findings of fact and conclusions of law, comments in support thereof and any objections with respect to procedural rulings of the presiding officer.

(2) Within 10 days after the filing of proposed findings of fact and conclusions of law under subparagraph (1), any participant may file, and shall serve on other participants, a reply thereto.

(m) *Proposed order.* (1) After the conclusion of the hearing and after the filings under paragraph (l) (1) and (2), the presiding officer shall issue a decision and proposed order based on findings of fact affirming, modifying, or vacating the contested order or directing other appropriate relief. The proposed order shall be based on the entire record before the presiding officer, including the record of prior proceedings certified by the Secretary.

(2) The presiding officer shall certify and file with the Secretary of the Commission, for the Commission, a copy of the record in the proceedings, including the proposed order.

(3) Participants may, within 15 days of issuance of the proposed order of the presiding officer, file with the Secretary of the Commission, for the Commission, written comments on any rulings of the presiding officer and the decision and proposed order.

(n) *Commission action.* The Commission shall upon consideration of the entire record and the proposed order issue a final order affirming, modifying, or vacating the contested order or directing other appropriate relief. The Commission shall serve the final order on all participants.

(o) *Ex parte communications.* The provisions of § 1.4(d) of this subpart shall apply to proceedings pursuant to this section, commencing at the time the Secretary issues a proposed remedial order under 10 CFR 205.192, an interim remedial order for immediate compliance under 10 CFR 205.199D, or a proposed order of disallowance under 10 CFR 205.199E, as if proceedings were contested on-the-record proceedings pending before the Commission.

(p) *Withdrawal of petition for review.* (1) At any time, including after a hearing has been held or convened, the petitioner may submit to the presiding officer, and serve on other participants in the proceeding, a withdrawal of the petition for review of the contested order. The presiding officer shall thereupon issue, and serve all participants, an order terminating the proceeding conducted pursuant to this section, which order shall be effective 10 days after issuance.

(2) Termination of the proceeding under subparagraph (1) may be appealed to the Commission, within 10 days after issuance of the termination order, except that if the Commission has not acted on an appeal within 30 days, it shall be deemed denied. The termination order shall be stayed pending the appeal. If the Commission rescinds the termination order, the proceeding shall continue in accordance with this section.

(q) *Sanctions.* Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of any rule, regulation, or order made or imposed by the Commission or the presiding officer under this section, it may in its discretion bring an action in the proper court of the United States to enjoin such acts or practices and to enforce compliance with the order, and upon a proper showing, a permanent or temporary injunction or decree or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning such acts or practices to the Attorney General, who in his discretion, may institute the necessary criminal proceedings.

[FR Doc. 78-31702 Filed 11-8-78; 8:45 am]

[4310-02-M]

Title 25—Indians

CHAPTER 1—BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

SUBCHAPTER D—SOCIAL WELFARE

PART 20—FINANCIAL ASSISTANCE AND SOCIAL SERVICES PROGRAM

OCTOBER 30, 1978.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs is amending its regulations relating to its financial assistance and social services program. The purpose of this amendment is to rescind a previous revision in the regulations which provided that the Assistant Secretary—Indian Affairs could waive, under certain conditions, Bureau adherence to public assistance standards when determining the amount of financial assistance to be provided to applicants or recipients. This most current amendment rescinds that previous revision and reaffirms Bureau practice and policy of adhering to established public assistance standards when determining the amount of financial assistance to be provided to applicants or recipients.

EFFECTIVE DATE: This amendment shall become effective December 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Raymond V. Butler, Chief, Division of Social Services, Bureau of Indian Affairs, 1915 Constitution

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Avenue NW., Washington, D.C. 20245, 202-343-7911; principal author, Raymond V. Butler.

SUPPLEMENTARY INFORMATION: It is generally the policy of the Department of the Interior to allow time for interested persons to take part in the rulemaking process. However, this amendment is entirely administrative in nature. The public rulemaking process is dispensed with under the exception provided in 5 U.S.C. 553(b)(B)(1970).

This amendment is made pursuant to the authority vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes (25 U.S.C. 2 and 9).

Subchapter D, Chapter 1, Title 25 of the Code Federal Regulations is hereby amended as follows:

Part 20, § 20.1(s) is amended by deleting the following phrase from the end of the existing section:

§ 20.1 Definitions.

(s) * * *; except that Bureau use of these established basic item/special item cost standards may be waived by the Assistant Secretary—Indian Affairs when required to insure provision of a level of financial assistance not exceeding the absolute limit of appropriated funds.

* * * * *

No further changes are made to Subchapter D.

These regulations will be effective December 1, 1978.

NOTE.—The Bureau of Indian Affairs has determined that this document does not contain a major proposal requiring preparation of an inflation impact statement under Executive Order 11821 and OMB Circular A-107.

FORREST J. GERARD,
Assistant Secretary,
Indian Affairs.

[FR Doc. 78-31639 Filed 11-8-78; 8:45 am]

[3810-70-M]

Title 32—National Defense

CHAPTER I—OFFICE OF THE SECRETARY OF DEFENSE

SUBCHAPTER R—CHARTERS

[DOD Directive 5105.42]

PART 361—DEFENSE INVESTIGATIVE SERVICE (DIS)

AGENCY: Office of the Secretary of Defense.

ACTION: Final rule—DOD Charter Directive 5105.42 [1]

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pa. 19120; attention Code 301.

SUMMARY: The Secretary of Defense has assigned functions and responsibilities to the Director, Defense Investigative Service (DIS), and has delegated specific authorities. This Directive serves as the instrument that authorizes the Director, DIS, to carry out the charter.

EFFECTIVE DATE: July 19, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Brent N. Rushforth, Assistant to the General Counsel (Intelligence, International, and Investigative Programs), Office of the General Counsel, Telephone 202-695-6804.

SUPPLEMENTARY INFORMATION: This information is submitted in compliance with the requirements of section 552(a)(1) of Title 5, United States Code, and Recommendation 76-2 of the Administration Conference of the United States.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

OCTOBER 30, 1978.

Accordingly, 32 CFR, Chapter I, is amended by adding a new Part 361, reading as follows:

PART 361—DEFENSE INVESTIGATIVE SERVICE

Sec.
361.1 Purpose.
361.2 Definitions.
361.3 Mission.
361.4 Organization and management.
361.5 Responsibilities and functions.
361.6 Authority.
361.7 Relationships.
361.8 Administration.
361.9 Delegation of authority.

AUTHORITY: The provisions of this part 361 are issued under 10 U.S.C. Chapter 4.

§ 361.1 Purpose.

Pursuant to the authority vested in the Secretary of Defense under the provisions of Title 10, U.S. Code, this Part is issued to assign direction, authority, and control over the Defense Investigative Service (hereafter referred to as "DIS") to the General Counsel of the Department of Defense, and to prescribe the functions, authorities and relationships described below.

§ 361.2 Definitions.

(a) *DOD components* means the Office of the Secretary of Defense and its field activities, Organization of the Joint Chiefs of Staff, Military Departments, Unified and Specified Commands and Defense Agencies.

(b) *DOD contractor* means any individual, corporation or other commercial or nonprofit entity that has a present or had a past contract or agreement with a DOD component to supply or to dispose of goods or to supply services, and any employee or agent thereof.

(c) *Law enforcement investigations* are investigations of suspected criminal, fraud, conflict of interest, or other activities intended to detect violations of law or DOD directives, and to identify persons who are violaters so that they may be prosecuted or made subject to administrative sanctions.

(d) *Personnel security investigations* are investigations required for the purpose of making a determination as to eligibility for access to classified information, assignment or retention in sensitive duties, or other designated duties requiring such investigation. Personnel security investigations include investigations, of subversive affiliations, suitability information, or hostage situations conducted for the purpose of making personnel security determinations; and also include investigations of allegations that arise subsequent to adjudicative action that requires resolution to determine an individual's current eligibility for access to classified information, or assignment or retention in a sensitive position.

§ 361.3 Mission.

The DIS is a Federal law enforcement and personnel security investigative agency and shall:

(a) Provide a single, centrally directed personnel security investigative service to conduct personnel security investigations within the 50 States, District of Columbia, and the Commonwealth of Puerto Rico for DOD Components and, when authorized by the General Counsel of the Department of Defense (hereafter referred to as "the General Counsel"), for other U.S. Government departments and agencies. DIS will request the Military Departments to accomplish investigative requirements of the DIS in other geographic areas.

(b) Conduct within the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico, when authorized by the General Counsel, law enforcement investigations of activities involving DOD Components or DOD contractors. The military Department investigative agencies will continue to have responsibility for, and unless the Secretary of Defense directs otherwise, DIS will not have responsibility for, law enforcement investigations involving the personnel, property facilities, or contracts, both awarded and administered by a single Military Department, or law enforcement investigations involving instances in which a single Military Department is the victim.

(c) Conduct such other investigations as the General Counsel may direct.

(d) Interface with existing relationships between the Military Departments and civilian Federal investigative agencies and provide liaison with and support for law enforcement investigations involving DOD personnel, facilities, or contractors conducted by the Federal Bureau of Investigation or other Federal investigative agencies in those instances in which the Posse Comitatus Act, 18 U.S.C. 1385 limitations or DOD policy restrict participation by military personnel.

(e) operate a consolidated central Personnel Security Investigation Control Center in accordance with the provisions of DOD Directive 5200.27.[1]

(f) Manage the Defense Central Index of Investigations.

§ 361.4 Organization and Management.

(a) The DIS is a separate agency of the Department of Defense under the direction, authority and control of the General Counsel.

(b) The DIS shall consist of a Director, a headquarters establishment, and such subordinate units, field activities and facilities as are established by the Director within the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico, or as are assigned to the DIS by the Secretary of Defense.

§ 361.5 Responsibilities and Functions.

The *Director, DIS,* shall:

(a) Organize, direct, and manage the DIS and all resources assigned to DIS to include:

(1) Conducting, managing and controlling DIS activities in accordance with applicable DOD directives and applicable law.

(2) Programing, budgeting, funding, accounting for, and reporting the activities of DIS in accordance with the policies and procedures established by the Secretary of Defense.

(3) Assuring that DIS investigators receive appropriate training and are qualified as Federal law enforcement officers and accredited as special agents of the Department of Defense.

(b) Conduct personnel security investigations within the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico for the Department of Defense and, as authorized by the General Counsel, for other U.S. Government departments and agencies.

(c) Conduct law enforcement investigations within the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico, as authorized by the General Counsel.

(d) Conduct other investigations and related operations as directed by the General Counsel.

(e) Provide investigative assistance, upon request and within available resources, to other DOD components.

(f) Maintain liaison on matters of mutual interest with and, within limits of established policy, render appropriate assistance to investigative, law enforcement, and other U.S. and foreign government activities.

(g) Conduct surveys and prepare analyses, special studies, and estimates.

(h) Obtain from DOD components and other U.S. Government departments and agencies, for record and statistical purposes, information on actions taken and final disposition of matters investigated by DIS.

(i) Refer to the appropriate civilian and military investigative agency, in accordance with the provisions of the Delimitation Agreement, February 23, 1949, matters developed as a result of DIS investigations which have a significant intelligence or counterintelligence aspect.

(j) Report to the General Counsel, for referral to the investigative agency or the appropriate military department, matters of a criminal nature involving a single military department.

(k) Establish standards and procedures for certification and accreditation of civilian and military personnel assigned to DIS investigative duties.

(l) Review criminal justice records of civilian police departments, local, State or Federal law enforcement agencies, and their record repositories as required.

(m) Provide personnel investigations support to the Director, National Security Agency.

§ 361.6 Authority.

The Director, DIS, is specifically delegated authority to:

(a) Exercise direction, authority, and control over DIS.

(b) Obtain such reports, information, advice and assistance, consistent with the policies and criteria of DOD Directive 5000.19 [1] as may be necessary for the performance of assigned mission, functions and responsibilities.

(c) Excercise the administrative authorities contained in § 361.9.

§ 361.7 Relationship.

(a) In the performance of assigned functions, the Director, DIS, shall:

(1) Maintain appropriate liaison with DOD components and other agencies for the exchange of information and programs in the field of assigned responsibilities.

(2) Maintain a close working relationship with military department investigative agencies, commanders, and security and military police program managers to insure a coordinated and integrated effort in matters of common concern.

(3) Enter into agreements with Heads of DOD components to provide for direct communication on investigative lead matters between the DIS investigative staff and the military department investigative agency staffs.

(4) Make use of existing DOD facilities and services whenever practical to achieve maximum efficiency.

(b) The General Counsel, for matters pertaining to DIS missions, shall:

(1) Serve as the principal point of contact within DOD and with other U.S. Government departments and agencies.

(2) Serve as the DOD member on interdepartmental boards, committees, and other groups.

(c) DOD components shall cooperate with and assist the Director, DIS, by providing access to information within their respective fields as required for DIS to carry out missions assigned by this part.

(d) The military department shall insure that overseas military investigative agencies provide prompt responses to DIS lead requests in order to expedite investigative matters within the DIS mission. The Director, DIS, will provide, as necessary, programing and workload projection information to the military departments for use in budgeting, and otherwise organizing the provisions of military department operational support to DIS.

§ 361.8 Administration.

(a) The Director, DIS, will be appointed by the Secretary of Defense.

(b) The DIS will be authorized such personnel, facilities, funds, and other administrative support as the Secretary of Defense deems necessary.

(c) Military personnel will be assigned to the DIS from the military departments in accordance with approved authorizations and procedures for assignment to joint duty.

§ 361.9 Delegation of Authority.

Pursuant to the authority vested in the Secretary of Defense, the Director, DIS, or in the absence of the Director, a person acting for the Director is hereby delegated, subject to the direction, authority and control of the Secretary of Defense, and in accordance with DOD policies, directives, and instruction, and pertinent OSD regulations, authority as required in the administration and operation of DIS to:

(a) Exercise the powers vested in the Secretary of Defense by 5 U.S.C. 302 and 3101, pertaining to the employ-

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pa. 19120; attention Code 301.

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ment, direction, and general administration of DIS civilian personnel.

(b) Fix rates of pay for wage board employees exempted from chapter 51 of title 5, U.S.C. on the basis of rates established under the Coordinated Federal Wage System. In fixing those rates, the wage schedules established by DOD Wage Fixing Authority shall be followed.

(c) Establish advisory committees and employ part-time advisors for the performance of DIS functions pursuant to the provisions of 10 U.S.C. 173, and to hire experts and consultants pursuant to the provisions of 5 U.S.C. 3109(b), and the Agreement between the DOD and the Civil Service Commission on employment of experts and consultants, dated June 21, 1977.

(d) Administer oaths of office incident to entrance into the Executive Branch of the Federal Government or any other oath required by law in connection with employment therein, in accordance with the provisions of 5 U.S.C. 2903(b), and to designate in writing other officers and employees of DIS to perform this function.

(e) Establish a DIS Incentive Awards Board and pay cash awards to and incur necessary expenses for the honorary recognition of civilian employees of the Government whose suggestions, inventions, superior accomplishment, or other personal efforts, including special acts or services, benefit or affect DIS or its subordinate activities in accordance with the provisions of 5 U.S.C. 4503, and Civil Service Regulations.

(f) Perform the following functions in accordance with the provisions of 5 U.S.C. 7532; Executive Order 10450; and 32 CFR 156:

(1) Designate any position in DIS as a "sensitive" position;

(2) Authorize, in case of an emergency, the appointment of a person to a sensitive position in the Agency for a limited period of time for whom a full field investigation or other appropriate investigation, including the national security check, has not been completed; and

(3) Authorize the suspension, but not including termination, of the services of an employee in the interest of national security in positions within DIS.

(g) Clear DIS personnel and such other individuals as may be appropriate for access to classified defense material and information in accordance with the provisions of DOD Directive 5210.8,[1] and of Executive Order 11652.

(h) Act as agent for the collection and payment of employment taxes imposed by chapter 21 of the Internal Revenue Code of 1954, and, as such agent, make all determinations and certifications required or provided under 26 U.S.C. 3122, and 42 U.S.C. 405(p) (1) and (2), with respect to DIS employees.

(i) Authorize and approve overtime work for DIS civilian officers and employees in accordance with the provisions of section 550.111 of the Civil Service Regulations.

(j) Authorize and approve:

(1) Travel for DIS civilian officers and employees in accordance with Joint Travel Regulations, Volume 2, Department of Defense Civilian Personnel.

(2) Temporary duty travel only for military personnel assigned or detailed to DIS in accordance with Joint Travel Regulations, Volume I, for Members of the Uniformed Services.

(3) Invitational travel to persons serving without compensation whose consultative, advisory, or highly specialized technical services are required in a capacity that is directly related to or in connection with DIS activities, pursuant to the provisions of 5 U.S.C. 5703, and Part A, Chapter 6, Volume II, Joint Travel Regulations.

(k) Approve the expenditure of funds available for travel by military personnel assigned or detailed to DIS for expenses incident to attendance at meetings of technical, scientific, professional or other similar organizations in such instances where the approval of the Secretary of Defense or his designee is required by law (37 U.S.C. 412). This authority cannot be redelegated.

(l) Develop, establish, and maintain an active and continuing records management program, pursuant to the provisions of 44 U.S.C. 3102.

(m) Enter into and administer contracts, directly or through a DOD component, a DOD contract administration services component, or other Government department or agency, as appropriate, for supplies, equipment and services required to accomplish the mission of the DIS. To the extent that any law or Executive order specifically limits the exercise of such authority to persons at the secretarial level of a military department, such authority will be exercised by the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics).

(n) Establish and use imprest funds for making small purchases of material and services other than personal for DIS when it is determined more advantageous and consistent with the best interest of the Government, in accordance with the provisions of DOD Instruction 5100.71.[1]

(o) Authorize the publication of advertisements, notices, or proposals in public periodicals as required for the effective administration and operation of DIS pursuant to 44 U.S.C. 3702.

(p)(1) Establish and maintain appropriate property accounts for DIS.

(2) Appoint boards of survey, approve reports of survey, relieve personal liability, and drop accountability for DIS property contained in the authorized property accounts that has been lost, damaged, stolen, destroyed, or otherwise rendered unserviceable, in accordance with applicable laws and regulations.

(q) Promulgate the necessary security regulations for the protection of property and activities under the jurisdiction of the Director, DIS, pursuant to subsections III.A. and V.B. of DOD Directive 5200.8.[1]

(r) Establish and maintain, for the functions assigned, appropriate publications system for the promulgation of regulations, instructions, and reference documents, and changes thereto, pursuant to the policies and procedures prescribed in DOD Directive 5025.1.

(s) Enter into support and service agreements with the military departments, other DOD agencies, or other Government agencies as required for the effective performance of responsibilities and functions assigned to DIS.

(t) Issue appropriate implementing documents and establish internal procedures to assure that the selection and acquisition of ADP resources are conducted within the policies contained in DOD Directive 4105.55, the Federal Property Management Regulations and Armed Services Procurement Regulations.

The Director, DIS, may redelegate these authorities, as appropriate, and in writing, except as otherwise specifically indicated above or as otherwise provided by law or regulations.

This delegation of authority is effective immediately.

[FR Doc. 78-31648 Filed 11-8-78; 8:45 am]

[3810-70-M]

[DOD Directive 5105.19]

PART 362—DEFENSE COMMUNICATIONS AGENCY

AGENCY: Office of the Secretary of Defense.

ACTION: Final rule—DOD Charter Directive 5105.19[1]

SUMMARY: The Secretary of Defense has assigned functions and responsibilities to the Director, Defense Communications Agency (DCA), and has delegated specific authorities. This Directive serves as the instrument that authorizes the Director, DCA, to carry out the charter.

EFFECTIVE DATE: August 10, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Arthur H. Ehlers, Director for Organizational and Management Planning, Office of the Deputy Assistant Secretary of Defense (Administration), telephone 202-695-4278.

SUPPLEMENTARY INFORMATION: This information is submitted in compliance with the requirements of section 552(a)(1) of Title 5, United States Code, and Recommendation 76-2 of the Administration Conference of the United States.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

OCTOBER 30, 1978.

Accordingly, 32 CFR, Chapter I, is amended by adding a new Part 362, reading as follows:

PART 362—DEFENSE COMMUNICATIONS AGENCY

Sec.
362.1 Purpose.
362.2 General.
362.3 Mission.
362.4 Organization.
362.5 Responsibilities.
362.6 Authority.
362.7 Administration.
362.8 Definitions.
362.9 Delegation of authority.

AUTHORITY: The provisions of this Part 362 are issued under 10 U.S.C. Chapter 4.

§ 362.1 Purpose.

This Part is issued to define the mission, responsibilities, authorities, and command relationships of the Defense Communications Agency (DCA) and its Director.

§ 362.2 General.

Pursuant to the authority vested in the Secretary of Defense and the provisions of Title 10, U.S. Code, Section 125, DCA is established as an agency of the DOD and is placed under the direction, authority, and control of the Assistant Secretary of Defense (Communications, Command, Control and Intelligence) (ASD(C³ I)). Guidance with regard to military and communications doctrine, operational policies and procedures shall be furnished to the Director, DCA, by the JCS.

§ 362.3 Mission.

The mission of the DCA is to:

(a) Perform system engineering for the Defense Communications System (DCS) and insure that the DCS is planned, improved, operated, maintained, and managed effectively, efficiently, and economically to meet the long-haul, point-to-point, and switched network telecommunications requirements of the National Command Authorities (NCA), the DOD, and, as authorized and directed, other governmental agencies.

(b) Provide system engineering and technical support to the National Military Command System (NMCS) and the Minimum Essential Emergency Communications Network (MEECN). Provide other engineering and technical support to the Worldwide Military Command and Control System (WWMCCS), as assigned.

(c) Perform system architect functions for current and future Military Satellite Communications (MILSATCOM) systems.

(d) Provide analytical and automated data processing (ADP) support to the Joint Chiefs of Staff, the Secretary of Defense, and other DOD components, as directed and authorized.

(e) Procure leased communications circuits, services, facilities, and equipment for the DOD, where authorized, and for other Government agencies as directed by the Secretary of Defense. Initiate or process actions relating to regulatory and tariff matters, including rates for communications facilities leased by the DOD.

(f) Perform those functions and carry out those responsibilities, assigned by such other directives as may be issued by competent authority, that are not explicitly addressed in this part or that may be issued to add to, delete, or modify the contents of this part.

§ 362.4 Organization.

The DCA shall consist of a Director, a headquarters establishment, and such subordinate units, facilities, and activities as established by the Director or specifically assigned to the agency by the Secretary of Defense or by the Joint Chiefs of Staff acting by authority and direction of the Secretary of Defense.

§ 362.5 Responsibilities.

(a) The *Director, DCA*, shall:

(1) Command, organize, direct, and manage the DCA and its field organizations in accordance with assigned missions.

(2) Within assigned authorities, insure systems responsiveness to the requirements of the NCA, the DOD, the Joint Chiefs of Staff, the Commanders of the Unified and Specified Commands, and all other authorized users, to include management of communications support for the national emergency preparedness functions.

(3) Function as a principal adviser to ASD(C³ I) on the DCS and as an adviser to the Secretaries of the Military Departments, the Joint Chiefs of Staff, the Commanders of the Unified and Specified Commands, and other DOD components on assigned mission responsibilities.

(4) Execute such tasks for the National Communications System (NCS) as may be assigned and directed by the Secretary of Defense in his capacity as Executive Agent, NCS.

(5) Provide appropriate planning documents to the ASD(C³ I), the Deputy Under Secretary of Defense for Policy and the Joint Chiefs of Staff.

(6) Develop or recommend, as appropriate, research, development, test, and evaluation (R.D.T. & E.) programs or projects required to accomplish the assigned mission. Manage DCA-funded R.D.T. & E. programs. Monitor the status of, coordinate, and provide guidance for R.D.T. & E. programs, for which DCA is assigned responsibility, that are included in the programs of other DOD components.

(7) Develop and promulgate procedures to insure the continuing supervision, review, and approval of acquisition, implementation, and engineering actions necessary to carry out approved plans and assigned missions.

(8) Perform financial management functions relating to DCA-funded programs. As requested by the ASD(C³ I), assist in the OSD review of programs and budgets supporting DCA missions. Maintain the Communications Services Industrial Fund.

(9) Develop technical standards, in coordination with the Military Departments and all other appropriate DOD Agencies for the DCS and other systems, as assigned and directed.

(10) Exercise through the DCA Operations Control Complex operational direction over the DCS either directly, over technical control facilities, switching centers, and other DCS operating elements, or through the appropriate Military Service operation and maintenance manager.

(11) Provide communications support to the OJCS and provide direct ADP support for: The Joint Chiefs of Staff and OSD analysis and simulation studies, operation of the command centers of the NMCS, and other appropriate tasks from OSD and the Joint Chiefs of Staff and their designated representatives.

(12) Provide computer software programs for the DCS and the NMCS, as required.

(13) Establish in coordination with the Military Departments, equipment levels for DCS switching centers, including the cryptographic equipment that supports the DCS.

(14) Allocate, reallocate, and direct restoral of subsystems, trunks, circuits, channels and networks of the DCS for the authorized users of the system, based on approved requirements and in accordance with established priorities and procedures. The restoration of service requiring use of available resources not currently in

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pa. 19120; attention Code 301.

operation or committed will be coordinated with the Joint Chiefs of Staff or the appropriate operation and maintenance managers of the Military Departments.

(15) Perform subsystem/project engineering as specifically assigned within mission responsibilities.

(16) Perform the centralized engineering and management function for all nontactical offbase DOD multiplex systems.

(17) Coordinate actions with other DOD components and governmental agencies having collateral or related functions in the field of its assigned responsibility.

(18) Coordinate communications security requirements other than communications security monitoring policy, which is not within the purview of this part, with the National Security Agency, the Military Departments, and the Joint Chiefs of Staff.

(19) Maintain active liaison for the exchange of information and advice with all DOD components and other governmental agencies.

(20) Make full use of established facilities of the DOD components and other departments of the Government, rather than unnecessarily duplicating such facilities.

(21) Establish requirements for and recommend assignment of responsibility for preparation of logistic engineering, and other support plans.

(22) Analyze and evaluate the performance of the DCS according to prescribed standards and practices, including the conduct of onsite performance evaluation visits. Inform users and operating elements regarding system status and make recommendations for improvements.

(23) Recommend the composition and identity of the DCS to the ASD(C³ I) in coordination with the Joint Chiefs of Staff.

(24) Coordinate in the management of resources allocated for the National Military Command System (NMCS) ADP support with supported users.

(25) Forward copies of requirements to the ASD(C³ I) and the Deputy Under Secretary of Defense for Policy. The latter official shall confirm and set priorities for such requirements.

(b) The *Deputy Under Secretary of Defense for Policy* shall provide guidance on matters of communications policy, requirements, and priorities.

(c) The *Chairman, Joint Chiefs of Staff* (for the Joint Chiefs of Staff) under the authority and direction of the Secretary of Defense shall:

(1) Provide guidance and, as appropirate, tasking to the Director, DCA, on military and communications doctrine and operational policies and procedures with regard to the development and operation of the Defense Communications System.

(2) Review and provide recommendations to the ASD(C³ I) or to the Director, DCA, as appropriate, on DCS plans, subsystem/project plans, ADP support plans, other joint communications plans and related programing documents, and for those functions where DCA is responsive to the Joint Chiefs of Staff, review and provide recommendations on the joint manpower program submitted by DCA.

(3) Provide advice to the ASD(C³ I) regarding the mission, functions, and responsibilities of the Director, DCA.

(4) Provide guidance and direction on matters pertaining to the planning, design, maintenance, testing and evaluation on systems software for the WWMCCS standard ADP systems.

(5) Develop and submit Joint Chiefs of Staff ADP requirements and priorites to the DCA.

(6) Provide policy and guidance concerning the utilization and implementation of MILSATCOM systems.

(7) Provide guidance concerning the relationships between the Commanders of the Unified and Specified Commands and DCA.

(8) Provide operational direction and guidance to the Director, Defense Communications Agency, on matters related to:

(i) Insuring that adequate and responsive communications support is provided the National Command Authorities, the JCS/OJCS, Unified and Specified Commanders, and the Military Departments, and that interfaces between DCS and tactical communications are maintained.

(ii) Providing systems engineering and technical support for the operation of the National Military Command System (NMCS) and the Minimum Essential Emergency Communications Network (MEECN).

(iii) Providing analytical and automated data processing (ADP) support to the JCS.

(iv) Providing centralized technical support to the JCS, Military Departments, Defense Agencies and Unified and Specified Commands for the WWMCCS standard ADP program.

(9) Provide advice to the Deputy Under Secretary of Defense for Policy regarding matters of communications policy, requirements, and priorities.

(d) *Commanders of Unified and Specified Commands* shall:

(1) Assess the responsiveness of the DCS to their operational needs. Conduct and participate in exercises and technical tests of the DCS and other communications systems.

(2) Develop agreements to delineate clearly the command/operational relationships with the DCA field organization, within the commander's area of responsibility, to insure mutual responsiveness and coordination of effort.

(e) The *Secretaries of the Military Departments*, in support of the DCA mission, shall:

(1) Provide, within the limitation of available resources, full support and assistance to the Director, DCA, in accomplishing his mission. The operating elements of the DCS will be responsive to the operational direction of the Director, DCA.

(2) Accomplish related functions in supports of systems, subsystems, programs, and projects for which DCA is responsible; such as planning, programing, budgeting, funding, providing detailed engineering, procuring, transporting, installing, testing, accepting, manning, activating, deploying, operating, maintaining, training, administering, conducting research and development, and providing logistic support.

(3) Obtain DCA concurrence on advance procurement plans and provide to DCA, for review and approval, technical specifications, statements of work, and, prior to execution, proposed contract changes impacting on configuration, cost, performance, or schedules of schedules of all systems for which DCA is responsible. Request DCA representation on source selection advisory councils and source selection evaluation boards for such systems, subsystems, and projects.

(4) Advise the Director, DCA, of shortages of funds, personnel, facilities, or materials that would prevent effective operation and maintenance of existing systems or prevent or delay scheduled implementation of new subsystems/projects.

(5) Submit long-haul, point-to-point telecommunications requirements to DCA for possible satisfaction within the DCS.

(f) *Other Defense Agencies* within their assigned areas of responsibility shall:

(1) Provide, within the limitation of available resources, full support and assistance to the Director, DCA, in accomplishing his mission.

(2) Submit their long-haul, point-to-point, telecommunications requirements to the DCA for possible satisfaction within the DCS.

§ 362.6 Authority.

The Director, DCA, or his designee, is specifically delegated authority to:

(a) Command the DCA and its field organizations.

(b) Establish DCA headquarters and field organizations and, within overall authorized manpower, allocate military and civilian spaces among such organizations in accordance with the policy of the Office of the Secretary of Defense.

(c) Have free and unrestricted communications with all elements of DOD, as well as with other organizations having national command, control, and communications responsibilities.

(d) Exercise management control and operational direction of the DCS and redelegate such authority over DCS facilities and resources, as appropriate.

(e) Establish the single control and reporting system for operational direction of the DCS and designate those DCS stations which shall function as reporting/reported-on stations within the system. DCA will coordinate information to be reported with the Military Departments to insure their requirements for DCS information are satisfied. Specific reporting requirements, as they are developed and prescribed, will be processed and approved consistent with the policies and criteria of DOD Directive 5000.19.[1]

(f) Exercise subsystem/project management or management control over the activities of the Military Departments, the Unified and Specified Commands, and all of the other DOD Agencies in those areas of endeavor that directly support the establishment and progressive improvement of the DCS and provide technical support of the NMCS.

(g) Prescribe, in coordination with appropriate DOD components, procedures, principles, standards, and practices to accomplish the assigned mission.

(h) Prescribe interface parameters and standards, monitor the installation status of new facilities, specify data and reports required for system traffic engineering and traffic management, and provide DCS traffic managment service with respect to subscriber terminal facilities accessing the DCS and as required to protect network integrity or to serve better the user's needs. In those cases where resource implications prevail, exercise of this authority requires mutual agreement with the Military Department or Defense Agency concerned, and the Assistant Secretary of Defense (Comptroller) when in excess of Military Department or Defense Agency resource authority or availability.

(i) Obtain, in coordination with the appropriate DOD components, such plans, reports, and information as are required to accomplish the DCA mission.

(j) Exercise the administrative authorities contained in § 362.8.

§ 363.7 Administration.

(a) The Director and Vice Director, DCA, shall be appointed by the Secretary of Defense. The Deputy Director, DCA, Military Satellite Communications System, will be appointed in accordance with DOD Directive 5105.44.

(b) The appointment of other personnel to the DCA will be subject to the approval of the Director, DCA.

(c) The DCA will be authorized such personnel, facilities, funds, and other administrative support as deemed necessary by the Secretary of Defense.

(d) The Military Departments and other DOD components shall, within available resources, provide support as necessary to the DCA.

(e) Personnel, facilities, equipment, and other support required to maintain and operate specific elements of the DCS and other national communications facilities as assigned, for which a Military Department or any other DOD component has been assigned responsibility, shall be provided from resources available to the Military Department or DOD components.

§ 362.8 Definitions.

(a) *Defense Communications System (DCS).*

(1) The DCS is a composite of DOD owned and leased telecommunications subsystems and networks comprised of facilities, personnel, and material under the management control and operational direction of the DCA. It provides the long-haul, point-to-point, and switched network telecommunications needed to satisfy the requirements of DOD and certain other Government agencies.

(2) The DCS includes fixed, transportable, and mobile facilities as appropriate. It consists of:

(i) Switching/relay facilities, to include associated software, of the general purpose (common user) networks such as AUTOVON, AUTODIN, and Automatic Secure Voice Communications (AUTOSEVOCOM).

(ii) Transmission media/circuits, which provide user/subscriber connection into or interconnect the switching/relay facilities of the DCS general purpose (common user) networks, or which interconnect the switching/relay facilities and/or the user/subscriber terminals in special purpose and operational (dedicatcd) networks which are authorized use of the DCS.

(iii) The assets of the Defense Satellite Communications System, except any portions which are specifically excluded from the DCS.

(3) The DCS does not include:

(i) The mobile/transportable communications facilities organic to Army forces, Air Force forces, fleets, and Fleet Marine forces.

(ii) Ship/ship, ship/shore/ship, air/air, ground/air/ground, and other tactical telecommunications as defined in DOD Directive 4630.5.[1]

(iii) Post, camp, base, and station user/subscriber facilities.

(iv) The onsite telecommunications facilities associated with or integral to weapon systems and to missile launch complexes.

(4) The above definition of the DCS is amplified as follows:

(i) Generally, the interface point of post, camp, base, or station (fixed or mobile) facilities (non-DCS) with the DCS is established at the main distribution frame of the user/customer facility. In specific cases, if required, the interface point may be any other point agreed to between the DCA and the Services or as prescribed by the ASD(C³ I) or the Joint Chiefs of Staff.

(ii) Telecommunications for weapon destruct at missile and air defense launch and firing complexes and for command, countdown, control, and range safety are non-DCS, unless specifically included; however, the establishment of standards for interface with the DCS is a DCA responsibility.

(iii) Consoles and display devices integral to Unified and Specified Commands, their Component headquarters, and the Military Services' operations centers are non-DCS. The communications interfaces with these facilities, when operated with DCS communications, must be operationally and technically compatible with the DCS. Prescribing such interface standards is a DCA responsibility.

(iv) The DCS includes those telecommunications required to interconnect the National Command Authorities (NCA), the Joint Chiefs of Staff, and Commanders of Unified and Specified Commands with the general purpose networks.

(b) *Operating Elements of the DCS.* Organizations and units of DOD Components that operate and maintain DCS facilities.

(c) *DCA Field Organizations.* Those elements of the DCA that are under the command of the Director, DCA, but are organizationally separate from the DCA headquarters.

(d) *Worldwide Military Command and Control System (WWMCCS).* As defined in DOD Directive 5100.30.[1]

(e) *National Military Command System (NMCS).* As defined in DOD Directive 5100.30.[1]

(f) *NMCS Technical Support.* The engineering and ADP support efforts requisite to insure that NMCS functional requirements and performance objectives are met.

(g) *Military Satellite Communications (MILSATCOM) Systems.* As defined in DOD Directive 5105.44.[1]

(h) *The Minimum Essential Emergency Communications Network (MEECN).* For purposes of this part, MEECN is defined as a composite of designated WWMCCS communications assets that, netted together, provide assurance that decisions of the NCA can be delivered from the NCA to U.S. Forces during all periods of stress.

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(i) *MEECN Technical Support.* The engineering and support effort requisite to insure that the functional requirements and performance objectives of the Joint Chiefs of Staff are met. It includes system analysis, development and supervision of technical plans and tests, technical interface recommendations, and recommendations for development efforts to meet system objectives as assigned.

(j) *Operational Direction.* The authoritative direction necessary to insure effective operation of the DCS. It includes authority to: Direct the operating elements of the DCS, assign tasks to those elements, and supervise the execution of those tasks; allocate and reallocate DCS facilities to accomplish the DCA mission; develop technical standards, practices, methods, and procedures for the performance and operation of the DCA.

(k) *Management Control.* The review, evaluation, coordination, and guidance of management actions necessary to fulfill the responsibilities outlined in this Directive.

(l) *Subsystem.* A functional component of a system which provides a specific capability.

(m) *Project.* An undertaking to analyze, plan, improve, modify, expand, or otherwise change a portion of a system. A project may pertain to elements of a subsystem, an entire subsystem, or a number of related subsystems or elements thereof.

(n) *Subsystem/Project Management.* The continuing review, guidance, and approval, as appropriate, of actions taken in the development, processing, and implementation of approved subsystems/projects.

(o) *The DCS Plan.* A master plan for the evolutionary development and improvement of the DCS in fulfilling communications requirements of the DOD and other Government agencies as authorized and directed. The DCS Plan will cover the period from the budget year to 10 years in the future and will be in consonance with the Joint Strategic Planning System.

(p) *Subsystem/Project Plan (S/PP).* A plan which supports the processing of major telecommunications requirements. Normally it provides justification for the acquisition of a new subsystem, or modification of an existing subsystem, portions thereof, or a combination of related subsystems.

(q) *Management Engineering Plan (MEP).* The control document to effect program implementation by all participating organizations. It is a compilation of documents which places in context the plans, schedules, costs, and scope of all work and resources to be provided by each participating organization. It identifies or specifies subsystem configuration, performance, and interface requirements; technical and operational standards and specifications; type of equipment to be used; work statements required; logistic support planning, integrated testing, and training; management approach to implementation; assignment of responsibility for conduct of all effort; a schedule for task accomplishment; and progress reports required.

(r) *Implementation/Installation Plan (I/IP).* The document which provides such detail as is necessary to serve as a guide for the implementation phase. It specifies the efforts required by participating organizations, establishes detailed schedules, and includes or identifies, as appropriate, supporting plans and documents containing technical and performance specifications, detailed work statements, applicable standards, advanced procurement plans, logistics, training, installation and test plans, and supporting facility requirements. The I/IP responds to and supports the MEP.

(s) *Systems Engineering.* The application of recognized engineering skills, techniques, and principles to the development of system concepts, associated technical design, and performance criteria used in planning, engineering, and implementing a system.

(t) *Subsystem/Project Engineering.* That initial engineering necessary to support the development of the S/PP and similar plans and, subsequent to S/PP approval, the additional engineering refinements needed to define explicitly subsystem configuration, performance, reliability, maintainability, and other values or thresholds applicable to each subsystem component. This additional engineering, which may be included either in the MEP or issued separately, prescribes specific technical guidance for preparation of equipment specifications, control specifications, and other engineering detail to be included in the I/IP.

(u) *Detailed Engineering.* That engineering necessary to prepare complete equipment and software technical design or performance specifications which provide a basis for procurement, design/development, and test and acceptance. It also includes that engineering performed to accomplish site surveys and to install and check out subsystem elements or components.

§ 372.9 Delegation of authority.

Pursuant to the authority vested in the Secretary of Defense, the Director, Defense Communications Agency (DCA), or, in the absence of the Director, the person acting for him is hereby delegated, subject to the direction, authority, and control of the Secretary of Defense and in accordance with Department of Defense (DOD) policies, directives, and instructions and pertinent Office of the Secretary of Defense regulations, authority as required in the administration and operation of DCA to:

(a) Exercise the powers vested in the Secretary of Defense by sections 301, 302(b), and 3101 pertaining to the employment, direction and general administration of DCA civilian personnel.

(b) Fix rates of pay for Wage Board employees exempted from the Classification Act by section 5102(c)(7) of Title 5 of the U.S.C. on the basis of rates established under the Coordinated Federal Wage System. DCA, in fixing such rates, shall follow the wage schedules established by the DOD Wage Fixing Authority.

(c) Establish such advisory committees and employ such part-time advisers as approved by the Secretary of Defense for the performance of DCA functions pursuant to the provisions of 10 U.S.C. 173, 5 U.S.C. 3109(b), the Federal Advisory Committee Act (Pub. L. 92-463, October 6, 1972), and the agreement between the DOD and the Civil Service Commission on employment of experts and consultants, dated July 22, 1959.

(d) Administer oaths of office incident to entrance into the executive branch of the Federal Government or any other oath required by law in connection with employment therein, in accordance with the provisions of the Act of June 26, 1943, as amended (5 U.S.C. 2903(b)) and designate in writing, as may be necessary, officers and employees of DCA to perform this function.

(e) Establish a DCA Incentive Awards Board and pay cash awards to and incur necessary expenses for the honorary recognition of civilian employees of the Government whose suggestions, inventions, superior accomplishments, or other personal efforts, including special acts or services, benefit or affect DCA or its subordinate activities in accordance with DOD Directive 5120.15.[1] (Act of September 1, 1954, as amended (5 U.S.C. 4503) and Civil Service regulations.)

(f) In accordance with the provisions of the Act of August 26, 1950, as amended, (5 U.S.C. 7532); Executive Order 10450, dated April 27, 1953, as amended; and DOD Directive 5210.7[1]

(1) Designate any position in DCA as a "sensitive" position.

(2) Authorize, in case of emergency, the appointment of a person to a sensitive position in the agency for a limited period of time for whom a full field investigation or other appropriate investigation, including the National Agency Check, has not been completed.

(3) Authorize the suspension, but not terminate the services, of an employee in the interest of national security in positions within DCA.

(g) Clear DCA personnel and such other individuals as may be appropriate for access to classified material and information in accordance with the provisions of DOD Directive 5210.8,[1] and of Executive Order 11652, dated March 8, 1972, as implemented by National Security Council Directive, dated May 17, 1972, and the provisions of DOD Directive 5200.1.[1]

(h) Act as agent for the collection and payment of employment taxes imposed by Chapter 21 of the Internal Revenue Code of 1954, and, as such agent, make all determinations and certifications required or provided for under Section 3122 of the Internal Revenue Code of 1954 (26 U.S.C. 3122) and Section 205(p) (1) and (2) of the Social Security Act, as amended (42 U.S.C. 405(p) (1) and (2)), with respect to DCA employees.

(i) Authorize and approve overtime work for DCA civilian officers and employees in accordance with the provisions of Section 550.111 of the Civil Service regulations.

(j) Authorize and approve:

(1) Travel for DCA civilian officers and employees in accordance with Joint Travel Regulations, Volume 2, Department of Defense Civilian Personnel, dated July 1, 1965, as amended.

(2) Temporary duty travel only for military personnel assigned or detailed to DCA in accordance with Joint Travel Regulations, Volume I, for Members of the Uniformed Services, dated November 1969, as amended.

(3) Invitational travel to persons serving without compensation whose consultative, advisory, or other highly specialized technical services are required in a capacity that is directly related to or in connection with DCA activities, pursuant to the provisions of Section 5 of the Administrative Expenses Act of 1946, as amended (5 U.S.C. 5703).

(k) Approve the expenditure of funds available for travel by military personnel assigned or detailed to DCA for expenses incident to attendance at meetings of technical scientific, professional, or other similar organizations in such instances where the approval of the Secretary of Defense or a designee is required by law (37 U.S.C. 412). This authority cannot be redelegated.

(l) Develop, establish, and maintain an active and continuing Records Management Program, pursuant to the provisions of Section 506(b) of the Federal Records Act of 1950 (44 U.S.C. 3102), the Freedom of Information Act (5 U.S.C. 552), and the Privacy Act (5 U.S.C. 552(a)).

(m) Establish and use Imprest Funds for making small purchases of material and services other than personal for the DCA when it is determined more advantageous and consistent with the best interests of the Government, in accordance with the provisions of DOD Instruction 5100.71[1] and the Joint Regulation of the General Services Administration—Treasury Department—General Accounting Office, entitled "For Small Purchases Utilizing Imprest Funds."

(n) Authorize the publication of advertisements, notices, or proposals in newspapers, magazines, or other public periodicals, as required, for the effective administration and operation of the DCA (44 U.S.C. 3702).

(o) Establish and maintain appropriate Property Accounts for the DCA. Appoint Boards of Survey, approve reports of survey, relieve personal liability, and drop accountability for the DCA property contained in the authorized Property Accounts that has been lost, damaged, stolen, destroyed, or otherwise rendered unserviceable, in accordance with applicable laws and regulations.

(p) Promulgate the necessary security regulations for the protection of property and places under the jurisdiction of the Director, DCA, pursuant to subsections III.A. and V.B. of DOD Directive 5200.8.[1]

(q) Establish and maintain, for the functions assigned, an appropriate publications system for the promulgation of regulations, instructions, and reference documents, and changes thereto, pursuant to the policies and procedures prescribed in DOD Directive 5025.1.

(r) Enter into support and service agreements with the Military Departments, other DOD agencies, or other Government agencies, as required, for the effective performance of responsibilities and functions assigned to the DCA.

(s) Exercise the authority delegated to the Secretary of Defense by the Administrator of the General Services Administration with respect to the disposal of surplus personal property.

(t) Enter into and administer contracts, directly or through a Military Department or other Government department or agency, as appropriate, for supplies, equipment, and services required to accomplish the mission of the DCA. To the extent that any law or Executive order specifically limits the exercise of such authority to persons at the Secretarial level of a Military Department, such authority will be exercised by the appropriate Under Secretary or Assistant Secretary of Defense.

(u) Enter into contracts for leasing communications facilities for periods not to exceed 10 years as prescribed in DOD Directive 5100.32.[1]

The Director, DCA, may redelegate these authorities, as appropriate, and in writing, except as otherwise specifically indicated above or as otherwise provided by law or regulation.

This delegation of authority is effective immediately.

[FR Doc. 78-31647 Filed 11-8-78; 8:45 am]

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120; attention Code 301.

[4910-14-M]

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 77-230]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Victoria Channel, Texas

AGENCY: Coast Guard, DOT.

ACTION: Final Rule.

SUMMARY: At the request of Central Technology on behalf of the Missouri Pacific Railroad Co., the Coast Guard is amending the regulations for the railroad bridge across Victoria Channel, mile 29.4, near Bloomington, Tex., to permit automated operation of this draw. Additionally, the regulation provides information to navigational interests on the manner in which the automated draw operates.

EFFECTIVE DATE: This amendment is effective on December 11, 1978.

FOR FURTHER INFORMATION CONTACT:

Frank L. Teuton, Jr., Chief, Drawbridge Regulations Branch (G-WBR/73), Room 7300, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590 202-426-0942.

SUPPLEMENTARY INFORMATION: On May 30, 1978, the Coast Guard published a proposed rule (43 FR 23001) concerning this amendment. The Commander, Eighth Coast Guard District, also published these proposals as a Public Notice dated June 12, 1978. Interested persons were given until July 5, 1975 and July 12, 1978, respectively, to submit comments.

DRAFTING INFORMATION: The principal persons involved in drafting this rule are: Frank L. Teuton, Jr., Project Manager, Office of Marine Environment and Systems, and Lieutenant G. S. Karavitis, Project Attorney, Office of the Chief Counsel.

Discussion of Comments

No comments were received.

In consideration of the foregoing, Part 117 of Title 33 of the Code of Federal Regulations is amended by adding a new § 117.554 immediately after § 117.553 to read as follows:

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§ 117.554 Victoria Channel, mile 29.4 near Bloomington, Tex.

(a) The bridge need not be manned by a regular attendant.

(b) The lift span is normaly in the down position, providing a vertical clearance of 22 feet above mean high water.

(c) Three long blasts of a horn or whistle from an approaching vessel activates navigational approach detectors, located one-half mile upstream and downstream from the bridge. If the span is inoperable, these sound signals will activate an alarm to alert bridge maintenance crews.

(d) Interruption of the approach detector beams by a vessel will cause (1) the draw to open to the fully raised position of 50 feet above mean high water for 10 minutes, (2) a navigation warning siren to sound, (3) the navigtion light in the center of the lift span to change from red to green, (4) the indicator lights, located one quarter mile of each side of the bridge, to change from red to yellow. However, if a train is approaching the bridge so closely that the train may not be safely stopped, the light will remain red and the bridge will not open until the train has passed.

(e) Interruption of the detector beam, located at the end of the bridge fender system will cancel the existing time intervals and start a new 5-minute interval during which the bridge will remain open. The span will not close until the vessel clears the detector located at the opposite end of the fender system, or the 5-minute interval elapses, whichever occurs earlier.

(f) If a vessel is unable to reach the detectors located on the outer ends of the fender system before the span closes, an additional signal of three long blasts of a horn or whistle will cause the span to reopen and initiate a new 10-minute interval.

(g) If the draw is in the open position for the passage of a vessel, and a train enters an approach circuit to the bridge, the bridge will remain open for 5 minutes if the detector beam has been interrupted. If the detector beam has not been interrupted the span will close at the end of the original 10-minute opening period and will not reopen in response to the additional signal described in paragraph (f). After the train passes, the span will open on signal for any waiting vessels.

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5).)

The Coast Guard has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended, and OMB Circular A-107.

Dated: November 1, 1978.

R. H. SCARBOROUGH,
Vice Admiral, U.S. Coast Guard,
Acting Commandant

[FR Doc. 78-31735 Filed 11-8-78; 8:45 am]

[3710-92-M]

CHAPTER II—CORPS OF ENGINEERS, DEPARTMENT OF THE ARMY

[ER 15-2-13]

PART 223—BOARDS, COMMISSIONS AND COMMITTEES

Mississippi River Water Control Management Board

AGENCY: Corps of Engineers, DOD.

ACTION: Final rule.

SUMMARY: This document establishes and prescribes the objectives, composition, responsibilities and authority of the Mississippi River Water Control Management Board. In the past, each division office located within the Mississippi River Basin has acted as a separate entity in the operation of Corps projects with respect to downstream water releases. These releases could have an overall adverse effect on the lower Mississippi River. The establishment of this Water Control Management Board will develop and provide control over a basin-wide operating plan for Corps water activities within the Mississippi River Basin.

EFFECTIVE DATE: November 9, 1978.

FOR FURTHER INFORMATION CONTACT:

Vernon K. Hagen, Chief, Hydrologic Engineering Section, Office, Chief of Engineers, Washington, D.C. 20314, 202-693-7330.

Accordingly, 33 CFR is amended by adding a new Part 223 as follows:

§ 223.1 Mississippi River Water Control Management Board.

(a) *Purpose.* This regulation establishes and prescribes the objectives, composition, responsibilities and authority of the Mississippi River Water Control Management Board.

(b) *Applicability.* This regulation is applicable to the Board members and to all field operating agencies concerned with water control management within the Mississippi River Basin.

(c) *Objectives.* The objectives of the Board are:

(1) To provide oversight and guidance during the development of basin-wide management plans for Mississippi River Basin projects for which the U.S. Army Corps of Engineers has operation/regulation responsibilities.

(2) To serve as a forum for resolution of water control problems among U.S. Army Corps of Engineers Divisions within the Mississippi River Basin when agreement is otherwise unobtainable.

(d) *Composition.* The Mississippi River Water Control Management Board is a continuing board consisting of the Director of Civil Works and Division Engineers serving in LMVD, MRD, ORD, NCD and SWD. The Director of Civil Works serves as permanent chairperson.

(e) *Responsibilities.* The Board functions under the general direction of the Chief of Engineers and is responsible for:

(1) Oversight of procedures for maintaining and improving inter-divisional coordination of water control management activities within the Mississippi River Basin.

(2) Oversight of the development and use of facilities (physical and computer models, Automatic Data Processing Equipment, and communications and information dissemination networks) needed to provide the best obtainable water control system for the entire Mississippi River Basin, utilizing the coordinated capabilities of projects now in operation and scheduled to be placed in operation in the reasonably near future.

(3) Oversight of basin-wide operating/regulation plans for U.S. Army Corps of Engineers projects in the Mississippi River Basin.

(4) Periodic reports to the Chief of Engineers regarding the Board's activities and its plans.

(f) *Procedures.* The procedures used by the board to carry out its responsibilities are as follows:

(1) The Board meets periodically to review past activities and project operations, and to discuss new or revised basin-wide operating/regulation plans.

(2) The Board acts on all proposals for (temporary or permanent) deviation from approved basin-wide operating plans.

(3) The Board provides instructions to committees under its jurisdiction and reviews their recommendations for improvements in basin-wide water control management.

(g) *Board Authority.* The Mississippi River Water Control Management Board is delegated authority to establish continuing or ad hoc inter-divisional operating or study committees comprised of U.S. Army Corps of Engineers personnel to facilitate the work of the Board.

(h) *Funding.* Routine activities of the Mississippi River Water Control Management Board and its committees, such as travel and meeting expenses, will be funded by the separate members' offices using General Expense funds otherwise available. Major expenses connected with special studies or activities will be funded through the normal budgetary process. Budget requests will be supported by appropriate justification material.

(Act of Congress approved 1 March 1917, (33 U.S.C. 701) and Section 2 of the Act of Congress approved 28 June 1938 as amended (33 U.S.C. 701c-1).)

Dated: November 1, 1978.

THOMAS J. WOODALL,
LTC, Corps of Engineers, Assistant Executive Director, Engineer Staff.

[FR Doc. 78-31488 Filed 11-9-78; 8:45 am]

[6560-01-M]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

[FRL 1004-8]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

California Plan Revision: South Coast Air Quality Management District and Los Angeles, Riverside and San Bernardino Air Pollution Control Districts (Southeast Desert Portions)

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to approve new source review rules for the south coast portion of the California State Implementation Plan (SIP) submitted by the Governor's designee.

EFFECTIVE DATE: December 11, 1978.

FOR FURTHER INFORMATION CONTACT:

Lloyd Kostow, Chief, Air Section, Permits Branch, Enforcement Division (E-4-3), Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, Calif. 94105, telephone: 415-556-8005.

SUPPLEMENTARY INFORMATION: On April 21, August 2, and November 19, 1976 the State of California submitted to the Regional Administrator, Region IX, revisions of the Southern California Air Pollution Control District (previously Los Angeles County APCD, Orange County APCD, Riverside County APCD, and San Bernardino County APCD) regulations. On February 1, 1977 the State split the Southern California Air Pollution Control district into the South Coast Air Quality Management District in the western region and three separate APCDs formed out of the remaining parts of Los Angeles, Riverside, and San Bernardino counties in the eastern desert areas. These eastern areas are designated as the Los Angeles, Riverside, and San Bernardino County APCDs (Southeast Desert Portions).

The State of California resubmitted rules for these eastern areas on June 6, 1977, merely to reflect this split. The rules were identical to the previous submittals. South Coast Air Quality Management District and Los Angeles, Riverside, and San Bernardino Air Pollution Control Districts (Southeast Desert Portions) regulation II, rules 201, 202, 203, 204, 205, 206, 207, 209, 210, 211, 212, 213, 213.1, 213.2, 214, 215, 216, 217, and 219 will provide a procedure by which persons who wish to construct, modify or operate any article, machine, equipment, or other contrivance that may cause the issuance of air contaminants may be granted a permit to do so. A permit shall not be granted, if it is determined that such construction, modification, or operation would interfere with the attainment or maintenance of a national ambient air quality standard.

The State of California has certified, by letters of August 2, December 22, 1976, and June 6, 1977, that these revisions to the state implementation plan were adopted after public hearings held on January 9, February 6, and May 7, 1976 in Pomona, Calif., October 4 and 5, 1976 in Fresno, Calif., and October 8, 1976, in Los Angeles, Calif., after notice conforming to 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans was given.

On January 6, 1977 (42 FR 1273), the Environmental Protection Agency published a notice of proposed rulemaking (42 FR 1273) advising the public of receipt of the revised Southern California Air Pollution Control District (both western region and eastern desert areas) regulation II, rules 201-207, 209-217, and 219 and requested public comments within thirty (30) days. Five (5) comment letters were received. Comment letters were received from the following parties: Western Oil & Gas Association, Gulf Oil Co.-U.S., California Council for Environmental and Economic Balance, Union Oil Co. of California, and Southern California Gas Co.

DISCUSSION OF MAJOR COMMENTS

The following are the major comments made, together with EPA's response:

1. The inclusion of emissions from carriers is improper for alleged lack of notice, alleged lack of support in the State record and an alleged burden upon interstate and foreign commerce. The interpretative ruling (December 21, 1976) specifically states (footnote 3) that indirect or secondary impacts which can be accurately quantified should be considered when determining whether the source would cause or exacerbate a violation of the NAAQS. The State certified public hearings were held in accord with 40 CFR 51.4. The rules meet the requirements of 40 CFR 51.18 and the interpretative ruling—IR (41 FR 55524, December 21, 1976). EPA will not inquire into the State record so long as these requirements are met by the State submitted SIP revision. The requirement being commented upon does not regulate or burden carriers. It merely states that emissions from carriers, associated with the new or modified stationary source to be constructed, will be considered in determining the net emissions resulting from the proposed source.

2. "New source review (as required by section 110 of the Clean Air Act) should be required only for sources for which there are standards of performance for new stationary sources, promulgated pursuant to section 111 of the Act." EPA believed the Clean Air Act of 1970 required preconstruction review of all major new or modified stationary sources for determination of interference with attainment or maintenance of the national ambient air quality standrds (NAAQS). The Clean Air Act Amendments of 1977 verified this belief. Section 129 of Pub. L. 95-95 provides that the IR shall apply before July 1, 1979. (Note under 42 U.S.C. 7502.) The IR and the 1977 amendments state that the term "major source" shall cover any source that emits more than a specified amount of pollutant. Thus new source review is required for all new or modified major sources, regardless of whether there are applicable standards of performance.

3. "The proposed rules are impermissibly vague." The IR indicates precisely how "interference" will be determined. Moreover, rule 213 contains adequate guidance for assessing air quality impact.

4. "There has been no showing that the rules are necessary to the attainment and maintenance of the NAAQS." The South Coast Air Basin in nonattainment for most of the criteria pollutants. The IR has been established for dealing with new source construction in areas exceeding the

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NAAQS. Emissions from new sources would otherwise exacerbate existing violations of the NAAQS. Therefore new source review rules implemented by either EPA or the SCAQMD are necessary to the attainment and maintenance of the standards. EPA is presently implementing the IR and issues permits for sources in the SCAQMD. The effect of this approval will be to transfer primary authority under the SIP to the SCAQMD.

5. "The requirement (on certain exemptions) of concurrence by California Air Resources Board and EPA will 'guarantee interminable and very expensive delays on proposed projects'." Concurrence by the State and EPA insures that the granting of exemptions does not violate either State or Federal requirements. Normally EPA and ARB will grant concurrence within the time requirements of the public comment period. In cases where the SCAQMD grants an exemption that is inconsistent with Federal requirements, EPA, or ARB will conduct a review within the time requirements specified in 40 CFR 51.18.

6. One commentor alleged that the California Air Resources Board (ARB) failed to follow State procedural requirements in adoption of new source review rules for the SCAQMD. The ARB is the only agency designated by the Governor of California as the agency for submittal of SIP revisions and has certified that such regulations were adopted in accordance with EPA requirements. Matters of alleged procedural irregularities under State law are best addressed at the State level.

7. Various commentors suggested various substantive changes to rules 213, 213.1, and 213.2. EPA must review and approve or disapprove the SIP revisions as submitted by the State. We do not have the authority to rewrite the State submitted regulations. So long as the proposed SIP revision is equal to or more stringent than the EPA requirements, it will be approved. Proposed substantive changes in the SCAQMD regulations are most appropriately addressed to the adopting body during the regulation's formative stages.

These comments have not caused EPA to change its position, as summarized below:

EPA has thoroughly reviewed the South Coast Air Quality Management District and Los Angeles, Riverside, and San Bernardino Air Pollution Control Districts (Southeast Desert Portions) revised regulation II, rules 201-207, 209-217, and 219. This was done by comparing them to the requirements of section 110 of the Clean Air Act, the requirements of 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans (particularly 40 CFR 51.18—Review of New Sources and Modifications), EPA's Interpretative Ruling for Implementation of the Requirements of 40 CFR 51.18 (41 FR 55524, December 21, 1976). A comparison of the effectiveness of control of emissions of new sources, both for sources proposed for construction within the District and for sources representative of a national projection was also prepared. It is concluded that these rules are broader in scope and at least as stringent as are required under the Clear Air Act and 40 CFR 51.18.

The Administrator hereby approves South Coast Air Quality Management District and Los Angeles, Riverside, and San Bernardino Air Pollution Control Districts (Southeast Desert Portions) rules 201, 202, 203, 204, 205, 206, 207, 209, 210, 211, 212, 213, 213.1, 213.2, 214, 215, 216, 217, and 219 as part of the California State Implementation Plan.

In accordance with this approval the Administrator hereby deletes 40 CFR 52.233 (d)(2), (d)(8)(i-iii), (g)(1)(ii), and (g)(1)(ix)(a-c) which were substitute regulations, implemented and enforced by EPA, for the review of new sources and modifications in the South Coast Air Quality Management District and Los Angeles, Riverside, and San Bernardino Air Pollution Control Districts (Southeast Desert Portions). This approval transfers primary authority for implementation and enforcement from EPA to the District.

(Sections 110 and 301(a) of the Clean Air Act, as amended (42 U.S.C. sections 7410 and 7601(a)).)

Dated: October 31, 1978.

DOUGLAS M. COSTLE,
Administrator.

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. Section 52.220, paragraph (c)(31)(vi)(C), (32)(iv)(C), (36)(i)(A), (39)(ii)(B), (39)(iii)(B), and (39)(iv)(B) are added to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

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(31) * * *

(vi) Southern California APCD.

(C) Rules 201-207, 209-212, 214-217, and 219.

* * * * *

(32) * * *

(iv) Southern California APCD.

(C) Rules 202 and 219.

* * * * *

(36) Revised regulations for the following APCD were submitted on November 19, 1976, by the Governor's designee.

(i) Southern California APCD.

(A) Rules 213, 213.1, and 213.2.

* * * * *

(39) * * *

(i) * * *

(ii) San Bernardino County APCD (Southeast Desert Portion).

(A) * * *

(B) Rules 201-207, 209-212, 213, 213.1, 213.2, 214-217, and 219.

(iii) Los Angeles County APCD (Southeast Desert Portion).

(A) * * *

(B) Rules 201-207, 209-212, 213, 213.1, 213.2, 214-217, and 219.

(iv) Riverside County APCD (Southeast Desert Portion).

(A) * * *

(B) Rules 201-207, 209-212, 213, 213.1, 213.2, 214-217 and 219.

* * * * *

2. Section 52.233 is amended by revoking and reserving paragraphs (d)(2), (d)(8)(i-iii), (g)(1)(ii), and (g)(1)(ix)(a-c).

§ 52.233 Review of new sources and modifications.

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(d) * * *

(1) * * *

(2) [Reserved]

* * * * *

(8) * * *

(i) [Reserved]

(ii) [Reserved]

(iii) [Reserved]

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(e) * * *

(f) * * *

(g) * * *

(l) * * *

(i) * * *

(ii) [Reserved]

* * * * *

(ix) * * *

(a) [Reserved]

(b) [Reserved]

(c) [Reserved]

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[FR Doc. 78-31610 Filed 11-8-78; 8:45 am]

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[6560-01-M]

[FRL 1004-7]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

West Virginia State Implementation Plan; Revision

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This rule announces the Administrator's decision on the amended portion of regulation X of the West Virginia State Implementation Plan. The amendments provide for the relaxation of sulfur dioxide emission limitations at certain power plants, the deletion of the provisions related to secondary standards for all fuel burning units in the State, and a number of administrative changes. The Administrator is approving the portions of the amendments relating to the Fort Martin and Mitchell power plants and the deletion of the provisions related to the secondary standards for all fuel burning units in the State except the portion of § 3.03(b) relating to the Rivesville facility. For the Rivesville facility the Administrator has determined that the existing emission limitation is inadequate to protect National Ambient Air Quality Standards and is calling for a revision for this part of the State implementation plan. Furthermore, the Administrator is delaying action on the portion related to the Kammer facility and approving an interim emission limitation for the Harrison power plant.

EFFECTIVE DATE: January 9, 1978.

ADDRESSES: Copies of the approved West Virginia revision of regulation X and the analysis on which it is based, are available during normal business hours at the following locations:

United States Environmental Protection Agency, Curtis Building, 10th Floor, 6th and Walnut Streets, Philadelphia, Pa. 19106 Attention: Mr. Howard Heim (3AH10).

West Virginia Air Pollution Control Commission, 1558 Washington Street East, Charleston, W. Va. 25311, Attention: Carl G. Beard II.

Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Mr. Howard Heim (3AH10), Chief, Air Programs Branch, U.S. Environmental Protection Agency, Region III, Curtis Building, 10th Floor, 6th and Walnut Streets, Philadelphia, Pa. 19106, phone 215-597-8175.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On January 25, 1978, the Governor of West Virginia submitted to EPA, region III a revision of regulation X (1973) for the control of sulfur dioxide. In his letter, Governor Rockefeller advised that the revision of regulation X had been adopted by the West Virginia Air Pollution Control Commission on December 19, 1977, and approved by the West Virginia Legislature on February 11, 1978. Further, the Governor asked that EPA consider the revision of regulation X as a change of the existing State Implementation Plan (SIP).

The revision primarily concerns section 3 of regulation X, wherein emission limits for electric power generating plants are set forth. These emission limits are intended to protect both the national primary and secondary standards for sulfur dioxide. The new emission limits proposed by West Virginia constitute a relaxation of existing limits. West Virginia's request represents the third proposed modification of regulation X since it was first approved by EPA in 1972.

The first change occurred in 1973 when the State deleted its own secondary standard for sulfur dioxide which was more stringent than the Federal secondary standard.

The second change was adopted by West Virginia on November 4, 1976, and submitted on November 10, 1976, to EPA as a proposed revision of the West Virginia State Implementation Plan. These 1976 revisions constituted a relaxation of emission limits for certain major power generating stations including the Mitchell and Kammer Plants of Ohio Power Co., the Willow Island station of the Monongahela Power Co. and the John Amos plant of the Appalachian Power Co. In addition, the State proposed a deletion of §§ 3.01(b) and 3.03(b) which pertain to emission limitations intended to protect the national secondary standard for sulfur dioxide. These changes reflected the "moratorium" on all sulfur oxide controls deemed to be more stringent than needed to protect air quality standards as declared by the Governor of West Virginia in April, 1976, in an Executive order. The order resulted out of the Governor's concern for West Virginia's coal economy and the parity between West Virginia and Ohio in the enforcement of regulations to control sulfur dioxide. However, the State had not submitted a certification of public hearing and had not adequately demonstrated that air quality standards would be attained and maintained as a result of the changes as required by Federal law. Consequently, the State, on advice of EPA region III, announced its withdrawal of the proposed revision submitted in 1976 and its replacement by the submittal of January 25, 1978.

The most recent proposal primarily concerns the emission limitations of sulfur dioxide as they apply to the Kammer, Mitchell, Fort Martin, and Harrison power plants. The emission limits proposed by West Virginia constitute a relaxation of existing emission limits related to the primary standard. Furthermore, unlike the 1976 revisions, these new changes for the above four power plants, with the exception of deletions of §§ 3.01(b) and 3.03(b), are based on the results of an extensive modeling study performed by the EPA in cooperation with the West Virginia Air Pollution Control Commission. The deletion of §§ 3.01(b) and 3.03(b) is based on an additional study performed by the State. As discussed earlier, these sections are intended to protect the national secondary standard for sulfur dioxide and were effective on June 30, 1978, according to the federally-approved regulation X. Finally, the proposed revision includes changes to certain requirements for emission data reporting and operating conditions.

On June 23, 1978 (43 FR 27208), the Regional Administrator proposed several actions on the amendments to regulation X submitted by the State of West Virginia as a requested revision of the West Virginia State Implementation Plan and provided for a 30-day comment period ending July 23, 1978. The Regional Administrator proposed that the portions of the regulation relating to the Fort Martin and Mitchell power plants and the deletion of §§ 3.01(b) and 3.03(b) concerning the protection of the secondary standard for sulfur dioxide be approved. For the portion relating to the Rivesville power plant of Monongahela Power Co., the Regional Administrator proposed disapproval. For the portion relating to the Kammer power plant of the Ohio Power Co., he proposed to delay rulemaking until the results of a wind tunnel study are available. Finally, for the Harrison power plant of Monongahela Power Co., the Regional Administrator invited the state to submit to EPA an interim emission limitation of 5.12 lbs. $SO_2/10^6$ Btu, approximately a 3.2 percent sulfur-in-fuel requirement, based on an estimated "good engineering practice" stack height which would apply for a short period such as one year or until final promulgation of the section 123 regulation, whichever is the shorter period of time.

On September 13, 1978, the Governor of West Virginia submitted to EPA at the invitation of the Regional Administrator (June 23, 1978, 43 FR 27208), an interim emission limitation of 5.12 lbs $SO_2/10^6$ Btu, approximately

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3.2 percent sulfur-in-fuel, for the Harrison facility of Monongahela Power Co. In his letter, Governor Rockefeller advised that the interim limitation had been adopted by the Air Pollution Control Commission on September 7, 1978, and approved by the West Virginia Legislative Rulemaking Committee on September 11, 1978, to be effective on October 16, 1978, for a period of one year or until final promulgation of the Section 123 regulations, whichever was the shorter period of time.

PUBLIC COMMENTS

During the public comment period, comments were received from the Monongahela Power Co., the Virginia Electric and Power Co., (VEPCO), the State of Maryland, the law offices of Kaufman and Ratliff, and the Pennsylvania Department of Environmental Resources. In addition, comments were received prior to the public comment period from the West Virginia Citizens Action Group and two private citizens.

The first two commentors, Monongahela Power Co., and Virginia Electric and Power Co. supported the proposed action by EPA. The remaining commentors including the West Virginia Citizens Action Group, opposed EPA's action. Generally, these commentors raised concern about the adequacy of the modeling performed by EPA in protecting public health.

FINAL ACTION

The Administrator has reviewed the comments submitted during the public comment period and is today finalizing the action proposed by the Regional Administrator on June 23, 1978, 43 FR 27208.

The Administrator is approving the portion of the revision to regulation X relating to the Fort Martin and Mitchell Power Plants. The basis for his approval is the modeling study performed by EPA which demonstrated adequate protection of the National Ambient Air Quality Standards for Sulfur Dioxide.

With regard to the deletion of §§ 3.01(b) and 3.03(b) relating to protection of the secondary three (3) hour standard for sulfur dioxide, the Administrator hereby approves the amendment except as it relates to the Rivesville facility. The basis for the approval of the deletion is that these sections were intended to protect the National Secondary Ambient Air Quality Standards for sulfur dioxide; the Administrator in 40 CFR 50.5 deleted the National Secondary Annual and 24-hour sulfur dioxide standards and had also approved a deletion of the same standard in 41 FR 51018 for the West Virginia State Implementation Plan. The State submitted information showing the relationship between the 24-hour National primary standard and the 3-hour National secondary standard. On the basis of that information, the Administrator has concluded that the 24-hour primary standard is limiting when compared to the 3-hour secondary standard.

In the case of the Rivesville facility, the Administrator has found through modeling that the existing emission limitations in §§ 3.03(a)1 and 3.03(b) are inadequate to protect National Ambient Air Quality Standards for sulfur dioxide.

Therefore, the Administrator requests that the State of West Virginia correct the emission limitations set forth in § 3.03 as they apply to the Rivesville facility in order to assure attainment and maintenance of sulfur dioxide standards. Until such revisions are submitted to EPA, the current federally approved emission limitations shall apply.

With regard to the Kammer facility of the Ohio Power Co., the Administrator is delaying rulemaking until the results of a wind tunnel study applicable to Kammer are available. The Ohio Power Co. has petitioned the EPA for a public hearing to allow modeling credit for a 900-foot stack under construction. At 900 feet, the stack would substantially exceed two and one-half times the height of the power plant. (See Clean Air Act Section 123(c).) When the results of the wind tunnel study are available, the Administrator will conduct a public hearing as requested by the Ohio Power Co. and in conjunction with the future regulations for section 123 take final action on the portion of regulation X relating to the Kammer facility.

For the portion of the revision relating to the Harrison power plant, the Administrator approves the interim emission limitation as submitted by the Governor on September 13, 1978. The emission limitation of 5.12 lbs $SO_2/10^8$ Btu will remain in effect for a period of 1 year or until such time as the final regulations for section 123 are finalized, whichever is the shorter period of time. After the section 123 regulations are finalized, West Virginia will apply them and determine whether a different emission limitation is authorized for Harrison. Upon making this determination, West Virginia will submit an emission limitation to the EPA for review and public comment as a proposed SIP revision. If the section 123 regulations are not finalized in a timely manner, or if West Virginia does not submit a proposed SIP revision to EPA by a date sufficient to allow review, public comment, and final action before the end of the one-year period, EPA will require West Virginia to amend its SIP to provide an emission limitation to be effective after the one-year period.

With regard to the regulation relating to the Prevention of Significant Deterioration (PSD) the Administrator reminds the State of West Virginia that a periodic assessment must be performed to verify that the applicable PSD increments are not exceeded. If a violation is found, the State is further reminded that a revision of the SIP will be required to correct any such violation.

Finally, the Administrator approves all administrative changes of regulation X.

Dated: October 31, 1978.

(Authority: 42 U.S.C. 7410 and 7601)

DOUGLAS M. COSTLE,
Administrator.

Part 52 of title 40, Code of Federal Regulations is amended as follows:

Subpart XX—West Virginia

1. The section 52.2520, paragraph (c)(9), is added as follows:

§ 52.2520 Identification of plan.

* * * * * *

(c) The plan revisions listed below were submitted on the dates specified * * *

(9) **Amendments to regulation X (to prevent and control air pollution from the emission of sulfur oxides)** §§ 2.07 (added), 2.08 (former section 2.07), 2.09 (added), 3.01(a), 3.02, 3.03(a) (sections 3.01(b) and 3.03(b) are deleted), 3.05, 3.06 through 3.08 (added), 5.01, 6.01, 10 (added) and 11 (former section 10) of the West Virginia Administrative Regulations; submitted on January 25, 1978 (as amended September 13, 1978), by the Governor.

2. In § 52.2522, subsection (b) is added as follows:

§ 52.2522 Approval status.

(a) * * *

(b) The Administrator approves the deletion of the provisions found in § 3.03(b) of regulation X except as it applies to the Rivesville plant, Monongahela Power Co.

3. Section 52.2525 is added as follows:

§ 52.2525 Control strategy: Sulfur dioxide.

(a) The provisions of § 51.13(e) are not met because the State did not adequately demonstrate that the deletion of § 3.03(b) of West Virginia regulation X as it applies to the Rivesville plant would not interfere with attainment and maintenance of the national ambient air quality standard.

[FR Doc. 78-31604 Filed 11-8-78; 8:45 am]

[6560-01-M]

[FRL 979-7]

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

Approval of Submittal Date Extension for Controlling Phosphate Fertilizer Plants in Texas

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This action approves a request from the Texas Air Control Board (TACB) to extend the date for submittal of the plan to control fluoride emissions from phosphate fertilizer plants in Texas to October 31, 1978. Delays in developing adequate control regulations prompted the extension request from the TACB. No adverse impact from extending the submittal date is expected since the currently estimated fluoride emissions from applicable plants are comparable with control levels recommended by EPA.

EFFECTIVE DATE: November 9, 1978.

FOR FURTHER INFORMATION CONTACT:

Jack S. Divita, Air Program Branch, Environmental Protection Agency, Region 6, Dallas, Tex. 75270, 214-767-2742.

SUPPLEMENTARY INFORMATION: On January 9, 1978, the TACB submitted a request to EPA to extend the submittal date for the plan to control fluoride emissions from applicable phosphate fertilizer plants. EPA reviewed the supporting material for the request and determined that since current emission rates from applicable plants were comparable to levels recommended by EPA, there would be no adverse impact resulting from a delayed plan submittal. Accordingly, a proposed approval notice was published on June 11, 1978 (43 FR 29805).

Interested persons were given 30 days in which to comment on the proposed approval. No comments were received. Therefore, there is no reason for EPA to deviate from an approval position.

CURRENT ACTION

This action approves a submittal date extension for the plan to control fluoride emissions from phosphate fertilizer plants in Texas to October 31, 1978.[1]

This action is issued under the authority of section 111(d) of the Clean Air Act, as amended, 42 U.S.C. 7411(d).

Dated: October 31, 1978.

DOUGLAS M. COSTLE,
Administrator.

[FR Doc. 78-31339 Filed 11-8-78; 8:45 am]

[1] EPA plans to codify its approval of the submittal date for the subject plan in Subpart SS of Part 62.

[6560-01-M]

[FRL 978-5]

PART 65—DELAYED COMPLIANCE ORDERS

Approval of a Delayed Compliance Order Issued by Iowa Department of Environmental Quality to Iowa Public Service Co., George Neal Station

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby approves a delayed compliance order issued by the Iowa Department of Environmental Quality to the Iowa Public Service Co., George Neal Station. The order requires the company to bring air emissions from its boiler No. 2 at Salix, Iowa into compliance with certain regulations contained in the federally-approved Iowa State Implementation Plan (SIP). Because of the Administrator's approval, Iowa Public Service Co.'s compliance with the order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violations of the SIP regulations covered by the Order during the period the order is in effect.

DATES: This rule takes effect on November 9, 1978.

FOR FURTHER INFORMATION CONTACT:

Peter J. Culver or Henry F. Rompage, Environmental Protection Agency, Region VII, 1735 Baltimore, Kansas City, Mo. 64108, 816-374-2576.

ADDRESSES: A copy of the delayed compliance order, any supporting material, and any comments received in response to a prior FEDERAL REGISTER notice proposing approval of the order are available for public inspection and copying during normal business hours at: Environmental Protection Agency, Region VII, Enforcement Division, 1735 Baltimore, Kansas City, Mo. 64108.

SUPPLEMENTARY INFORMATION: On August 18, 1978, the Regional Administrator of EPA's Region VII office published in the FEDERAL REGISTER, 43 FR 36654, a notice proposing approval of a delayed compliance order issued by the Iowa Department of Environmental Quality to the Iowa Public Service Co., George Neal Station. The notice asked for public comments by September 18, 1978, on EPA's proposed approval of the order. No public comments were received in response to the proposal notice.

Therefore, the delayed compliance order issued to Iowa Public Service Co. is approved by the Administrator of EPA pursuant to the authority of section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order placed Iowa Public Service Co., George Neal station, on a schedule to bring its boiler No. 2 at Salix into compliance as expeditiously as practicable with sub<rule 400—4.3(2) b and d Iowa Administrative Code Combustion for indirect heating and visible emissions, a part of the federally-approved Iowa State Implementation Plan. The Order also requires installation of continuous monitors by January 1979, interim operating conditions, which meet sections 113(d)(1)(C) and 113(d)(7) of the Act, and emissions monitoring and reporting requirements. If the conditions of the order are met, it will permit Iowa Public Service Co., George Neal Station, to delay compliance with the SIP regulations covered by the Order until September 26, 1978. The company is unable to immediately comply with these regulations.

Because the order has been approved by EPA, compliance with its terms will preclude Federal enforcement action under section 113 of the Act for violations of the SIP regulations covered by the order during the period the order is in effect. Citizen suits under section 304 of the Act are similarly precluded. If the Administrator determines that Iowa Public Service Co., George Neal Station, is in violation of a requirement contained in the order, one or more of the actions required by section 113(d)(9) of the Act will be initiated. Publication of this notice of final rulemaking constitutes final Agency action for the purposes of judicial review under section 307(b) of the Act.

The provisions of the order will be summarized, as set forth below, in 40 CFR Part 65. The provisions of 40 CFR Part 65 will be promulgated by EPA soon,[1] and will contain the procedures for EPA's issuance, approval, and disapproval of orders under section 113(d) of the Act. In addition, part 65 will contain sections summarizing the orders issued, approved, and disapproved by EPA. A prior notice proposing regulations for 40 CFR Part 65, published at 40 FR 149876 (April 2, 1975), will be withdrawn, and replaced

[1] Published at 43 FR 44522 (September 28, 1978).

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by a notice promulgating these new regulations.

EPA has determined that its approval of the Order shall be effective upon publication of this notice because of the need to immediately place Iowa Public Service Co., George Neal Station, on a schedule which is effective under the Clean Air Act for compliance with the applicable requirements of the Iowa State Implementation Plan.

(Authority: 42 U.S.C. 7413(d), 7601.)

Dated: October 31, 1978.

DOUGLAS M. COSTLE,
Administrator.

In consideration of the foregoing, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

1. By amending the table in § 65.201 by adding the following entry:

§ 65.201 EPA Approval of State delayed compliance orders issued to major stationary sources.

• • • • •

Source	Location	Order No.	SIP regulations involved	Date of FR proposal	Final compliance date
Iowa Public Service Co., George Neal Station.	Salix, Iowa.....	Docket No. VII-78-DCO-4.	Subrule 400—4.3(2) b and d, Iowa Administrative Code.	Aug. 18, 1978.	Sept. 26, 1978.

[FR Doc. 78-31500 Filed 11-8-78; 8:45 am]

[6560-01-M]

[FRL 978-6]

PART 65—DELAYED COMPLIANCE ORDERS

Approval of a Delayed Compliance Order Issued by Iowa Department of Environmental Quality to John Deere Tractor Works, Waterloo, Iowa

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby approves a delayed compliance order issued by the Iowa Department of Environmental Quality to the John Deere Tractor Works. The order requires the company to bring air emissions from its boilers Nos. 6, 7, 8, and 9 at Waterloo into compliance with certain regulations contained in the federally approved Iowa State implementation plan (SIP). Because of the Administrator's approval, John Deere's compliance with the order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violations of the SIP regulations covered by the order during the period the order is in effect.

DATE: This rule takes effect on November 9, 1978.

FOR FURTHER INFORMATION CONTACT

Peter J. Culver or Henry F. Rompage, Environmental Protection Agency, Region VII, 1735 Baltimore Ave., Kansas City, Mo. 64108, 816-374-2576.

ADDRESS: A copy of the delayed compliance order, any supporting material, and any comments received in response to a prior FEDERAL REGISTER notice proposing approval of the order are available for public inspection and copying during normal business hours at: Environmental Protection Agency, Region VII, Enforcement Division, 1735 Baltimore Ave., Kansas City, Mo. 64108.

SUPPLEMENTARY INFORMATION: On August 18, 1978, the Regional Administrator of EPA's Region VII Office published in the FEDERAL REGISTER, 43 FR 36654, a notice proposing approval of a delayed compliance order issued by the Iowa Department of Environmental Quality to the John Deere Tractor Works. The notice asked for public comments by September 18, 1978, on EPA's proposed approval of the order. No public comments were received in response to the proposal notice.

Therefore, the delayed compliance order issued to John Deere Tractor Works is approved by the Administrator of EPA pursuant to the authority of section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The order places John Deere Tractor Works on a schedule to bring its boilers Nos. 6, 7, 8, and 9 at Waterloo into compliance as expeditiously as practicable with subrule 400—4.3(2)b Iowa Administrative Code, combustion for indirect heating, a part of the federally approved Iowa State implementation plan. The order also imposes interim requirements which meet sections 113(d)(1)(C) and 113(d)(7) of the Act, and emission monitoring and reporting requirements. If the conditions of the order are met, it will permit John Deere Tractor Works to delay compliance with the SIP regulations covered by the order until February 10, 1979. The company is unable to immediately comply with these regulations.

Because the order has been approved by EPA, compliance with its terms will preclude Federal enforcement action under section 113 of the Act for violations of the SIP regulations covered by the order during the period the order is in effect. Citizen suits under section 304 of the Act are similarly precluded. If the Administrator determines that John Deere Tractor Works is in violation of a requirement contained in the order, one or more of the actions required by section 113(d)(9) of the Act will be initiated. Publication of this notice of final rulemaking constitutes final Agency action for the purposes of judicial review under section 307(b) of the Act.

The provisions of the order will be summarized, as set forth below, in 40 CFR Part 65. The provisions of 40 CFR Part 65 will be promulgated by EPA soon,[1] and will contain the procedures for EPA's issuance, approval, and disapproval of orders under section 113(d) of the Act. In addition, part 65 will contain sections summarizing the orders issued, approved, and disapproved by EPA. A prior notice proposing regulations for 40 CFR Part 65, published at 40 FR 149876 (April 2, 1975), will be withdrawn, and replaced by a notice promulgating these new regulations.

EPA has determined that its approval of the order shall be effective upon publication of this notice because of the need to immediately place John Deere Tractor Works on a schedule which is effective under the Clean Air Act for compliance with the applicable requirement of the Iowa State implementation plan.

(Authority: 42 U.S.C. 7413(d), 7601.)

[1] Published at 43 FR 44522 (September 28, 1978).

Dated: October 31, 1978.

DOUGLAS M. COSTLE,
Administrator.

In consideration of the foregoing, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

1. By amending the table in § 65.201 to add the following entry:

§ 65.201 EPA approval of State delayed compliance orders issued to major stationary sources.

• • • • •

Source	Location	Order No.	SIP regulations involved	Date of FR proposal	Final compliance date
John Deere Tractor Works.	Waterloo, Iowa ...	Docket No. VII-78-DCO-2.	Subrule 400—4.3(2)b, Iowa Administrative Code.	Aug. 18, 1978.	Feb. 10, 1979.

[FR Doc. 78-31501 Filed 11-8-78; 8:45 am]

[6712-01-M]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[FCC 78-764]

PART 0—COMMISSION ORGANIZATION

Delegations to the Chief Cable Television Bureau

AGENCY: Federal Communications Commission.

ACTION: Order—Rule amendment.

SUMMARY: The Commission has reviewed the delegations of authority to the Chief, Cable Television Bureau, and has concluded that a general revision of them is appropriate. Under the revised delegations, the staff will be empowered to process all applications and petitions in the Cable Television Service and the Cable Television Relay Service at staff level, unless they involve a novel question of fact, law, or policy which cannot be resolved under existing precedents and guidelines. The changes should reduce the Commission's workload of routine cases, and will aid the Bureau in expediting the processing of pending cases and thereby reducing its backlog.

EFFECTIVE DATE: November 10, 1978.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION, CONTACT:

Jerold L. Jacobs, Cable Television Bureau, 202-632-6483.

SUPPLEMENTARY INFORMATION:

ORDER

Adopted: October 24, 1978.

Released: November 2, 1978.

By the Commission:

1. The Commission has reviewed the delegations of authority to the Chief, Cable Television Bureau, and has concluded that a general revision of § 0.288 of the rules is in order to simplify them and to take account of the substantial development of precedents in the Cable Television and Cable Television Relay Services since February 1975, when the last general revision occurred. Under the revised delegations, the staff will be empowered to process all applications and petitions in the two services at staff level, unless they involve a novel question of fact, law, or policy which cannot be resolved under existing precedents and guidelines. The changes should reduce the Commission's workload of routine cases, allowing more time to be spent on larger policy issues, and will aid the Cable Television Bureau in expediting the processing of pending cases and thereby reducing its backlog.

2. Since the revisions are either editorial or relate to Commission organization, procedures, or practice, or restate existing requirements, the prior notice provisions of section 4 of the Administrative Procedure Act, 5 U.S.C. 553, do not apply. For the same reason, the revisions will be made effective immediately.

Authority for the rule amendment adopted herein is contained in sections 2, 3, 4 (i) and (j), 5 (b) and (d), 301, 303, 307, 308, and 309 of the Communications Act of 1934, as amended.

Accordingly, *it is ordered*, That effective November 10, 1978, Part 0 of the Commission's rules and regulations is amended as set forth below.

(Secs. 2, 3, 4, 5, 301, 303, 307, 308, 309, 315, 317, 48 Stat., as amended, 1064, 1065, 1066, 1068, 1081, 1082, 1083, 1084, 1085, 1088, 1089; 47 U.S.C. 152, 153, 154, 155, 301, 303, 307, 308, 309, 315, 317.)

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

Section 0.288 is revised to read as follows:

§ 0.288 Authority delegated.

The Chief, Cable Television Bureau, is delegated authority to perform all functions of the Bureau, described in §§ 0.83-0.90, as follows:

(a) To extend or shorten the time required to comply with Commission orders or rules, effectuate a transfer of control or assignment of license or other authorization, or to file pleadings, comments, briefs, annual reports, or responses to official correspondence;

(b) To initiate official correspondence;

(c) To act on requests for withdrawal of papers, and to dismiss petitions and applications, as provided in §§ 76.8 and 78.21 of this chapter, or those which are premature, repetitive, not timely filed, not acceptable under the Commission's rules, or moot;

(d) To modify or set aside on his own motion any action taken pursuant to delegated authority;

(e) To act on all applications for authorization, petitions to deny, objections, waiver requests, complaints, and requests for declaratory rulings in the Cable Television Relay Service, unless novel questions of fact, law, or policy are involved which cannot be resolved under existing precedents and guidelines;

(f) To designate for hearing, upon appropriate issues, mutually exclusive applications for authorization in the Cable Television Relay Service;

(g) To impose or delete conditions on any authorization granted pursuant to this section, to issue corrected authorizations, and to cancel authorizations in accordance with existing precedents and guidelines;

(h) To issue rulings and interpretations concerning complaints arising under section 315 of the Communications Act and §§ 76.205 and 76.209 of this chapter;

(i) To act on petitions for special relief, waiver requests, objections, complaints, and requests for declaratory rulings and stays in the Cable

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Television Service, unless novel questions of fact, law, or policy are involved which cannot be resolved under existing precedents and guidelines;

(j) To act on requests for special temporary authority in the Cable Television Service and for temporary authority for special operations in the Cable Television Relay Service;

(k) To act on petitions for orders to show cause, or to issue orders to show cause on his own motion, unless novel questions of fact, law, or policy are involved which cannot be resolved under existing precedents and guidelines;

(l) To enter into consent agreements pursuant to §§ 1.93 and 1.94 of this chapter;

(m) To issue citations pursuant to § 1.80 of this chapter, and to issue notices of apparent liability, final forfeiture orders, and orders cancelling or reducing forfeitures imposed under § 1.80(f) in the amounts of $4,000 or less for cable television systems and $2,000 or less for facilities in the Cable Television Relay Service.

[FR Doc. 78-31675 Filed 11-8-78; 8:45 am]

[6712-01-M]

[FCC 78-767]

PART 0—COMMISSION ORGANIZATION

Delegation of Forfeiture Authority to the Staff

PREAMBLE

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: FCC delegates authority to its staff to impose forfeitures under the new forfeiture law (Pub. L. 95-234). Where the maximum forfeiture is $20,000 the staff is authorized to impose forfeitures up to $4,000; where the maximum is $5,000, the staff is authorized to impose forfeitures up to $2,000. Forfeitures in larger amounts are acted on by the Commission.

EFFECTIVE DATE: November 9, 1978.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Upton Guthery, Office of General Counsel, 202-632-6444.

In the Matter of Delegation of Forfeiture Authority to the Staff Pursuant to Pub. L. 95-234: Order.

Adopted: October 24, 1978.

Released: November 2, 1978.

By the Commission:

1. By Pub. L. 95-234, February 21, 1978, the Congress enacted new provisions governing the imposition of forfeitures by the Commission. The law applies to conduct taking place on or after March 23, 1978. Conduct which took place on or before March 22, 1978, continues subject to pre-existing law and regulation (47 CFR 1.80, 1.621, and 1.991 (October 1, 1978, ed.)).

2. Procedural changes implementing the new law were adopted on October 5, 1978 (FCC 78-709). The rules set out in the attached appendix delegate to the staff authority to issue citations, notices of apparent liability, orders canceling and reducing forfeitures, and final forfeiture orders, subject to specified monetary limits.

3. The new rules delegate to the Chief of the Field Operations Bureau authority to issue notices of apparent liability subject to statements of policy provided by the other bureaus and offices. In addition, in the case of violation of section 301 or 318 of the Communications Act of 1934, as amended, or of parts 13 or 17 of the Commission's rules (and if the amount of the notice of apparent liability is $2,000 or less) the Chief of the Field Operations Bureau may issue final forfeiture orders and orders canceling or reducing forfeitures. This additional authority in the case of violation of section 301 is limited to instances where the subject holds no station authorizations issued by the Commission in any service.

4. Authority for these rules is contained in sections 4(i), 5(d), 503(b), and 504(b) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 155(d), 503(b), and 504(b). Because the rules concern internal organization, the prior notice and effective date provisions of 5 U.S.C. 553 are inapplicable.

5. Accordingly, *it is ordered*, effective November 9, 1978, that parts 0 and 1 of the rules and regulations are amended as set forth below.

(Secs. 4, 5, 503, 504, 48 Stat., as amended, 1066, 1068, 1101, 47 U.S.C. 154, 155, 503, 504.)

FEDERAL COMMUNICATIONS COMMISSION.
WILLIAM J. TRICARICO,
Secretary.

1. Section 0.115(f) is revised to read as follows:

§ 0.115 Regional services division.

* * * * *

(f) Upon request of the Violations Division, conducts personal interviews in the field of persons who have received citations issued under § 1.80(d) of this chapter.

* * * * *

2. Section 0.243(b) is revised to read as follows:

§ 0.243 Authority delegated to the Chief Engineer.

* * * * *

(b) The Chief Engineer, upon securing concurrence of the General Counsel, is authorized to issue notices of apparent liability, final forfeiture orders, and orders canceling or reducing forfeitures imposed under § 1.80(f) of this chapter, in the amount of $2,000 or less; and is authorized to issue citations pursuant to § 1.80(d).

* * * * *

3. Section 0.281(c)(3) is revised to read as follows:

§ 0.281 Authority delegated.

* * * * *

(c) * * *

(3) Notices of opportunity for hearing pursuant to § 1.80(g) of this chapter; and notices of apparent liability, final forfeiture orders, and orders canceling or reducing forfeitures imposed under § 1.80(f) if the amount set out in the notice of apparent liability is $4,000 or more.

* * * * *

4. Section 0.288(x) is revised to read as follows:

§ 0.288 Authority delegated.

* * * * *

(x)(1) To issue notices of apparent liability, final forfeiture orders, and orders canceling or reducing forfeitures imposed under § 1.80(f) of this chapter, in the amounts of $4,000 or less for cable television systems and $2,000 or less for stations operating in the Cable Television Relay Service; and

(2) To issue citations pursuant to § 1.80(d).

* * * * *

5. Section 0.291(g) is revised to read as follows:

§ 0.291 Authority delegated.

* * * * *

(g) *Authority concerning forfeitures.* Authority to issue a notice of opportunity for hearing pursuant to § 1.80(g) of this chapter; and authority to issue notices of apparent liability, final forfeiture orders, and orders canceling or reducing forfeitures imposed under § 1.80(f) if the amount set out in the notice of apparent liability is $4,000 or more.

* * * * *

6. Section 0.311(d) is added, to read as follows:

§ 0.311 Authority delegated.

* * * * *

(d)(1) The Chief of the Field Operations Bureau is authorized to issue notices of apparent liability pursuant to § 1.80(f) of this chapter and (in the case of violation of sections 301 or 318 of the Communications Act, or parts 13 and 17 of this chapter) to issue final forfeiture orders and orders canceling or reducing forfeitures, if the amount set out in the notice of apparent liability is $2,000 or less. (The scope of the Field Operations Bureau's authority to issue notices of apparent liability will be specified in statements of policy provided by the other bureaus and offices. These statements of policy shall be available for inspection in the Field Operations Bureau.)

(2) The Chief of the Field Operations Bureau is authorized to issue citations pursuant to § 1.80(d) of this chapter.

7. Section 0.331(a)(9) is added, to read as follows:

§ 0.331 Authority delegated.

* * * * *

(a) * * *

(9) Authority to issue a notice of opportunity for hearing pursuant to § 1.80(g) of this chapter; and authority to issue notices of apparent liability, final forfeiture orders, and orders canceling or reducing forfeitures imposed under § 1.80(f) of this chapter if the amount set out in the notice of apparent liability is $2,000 or more.

* * * * *

[FR Doc. 78-31259 Filed 11-8-78; 8:45 am]

[6712-01-M]

PART 21—DOMESTIC PUBLIC RADIO SERVICES (OTHER THAN MARITIME MOBILE)

PART 23—INTERNATIONAL FIXED PUBLIC RADIO COMMUNICATION SERVICES

PART 25—SATELLITE COMMUNICATIONS

PART 78—CABLE TELEVISION RELAY SERVICE

PART 87—AVIATION SERVICES

Editorial Amendments

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: This action changes the address listed in the Commission's rules for the Department of Commerce's Radio Frequency Management Coordinator for the Table Mountain (Colorado) Radio Receiving Zone. The address is found in §§ 21.113(b), 23.20(d), 25.203(f), 78.19(e), and 87.31(f) of the FCC's Rules and Regulations.

DATE: Effective November 14, 1978.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Charles M. Oliver, Common Carrier Bureau 202-632-6363.

ORDER

Adopted: October 27, 1978.

Released: November 2, 1978.

1. The following editorial changes will be made to the Rules and Regulations: §§ 21.113(b), 23.20(d), 25.203(f), 78.19(e), and 87.31(f) will be amended to reflect the new address and telephone number of the Department of Commerce's Radio Frequency Management Coordinator for the Table Mountain (Colorado) Radio Receiving Zone:

From	*To*
Radio Frequency Management Coordinator, Department of Commerce, NOAA/OT/NBS, Time and Frequency Division, Boulder Laboratories, Boulder, CO 80303, telephone: 303-499-1000, ext. 3542 or 3294.	Radio Frequency Management Coordinator, Department of Commerce, Research Support Services, NOAA/R5X3, Boulder Laboratories, Boulder, CO 80303, telephone: 303-499-1000, ext. 6548 or 6549.

2. Since the amendments are editorial in nature the prior notice and effective date provisions of the Administrative Procedure Act are not applicable. Authority for the promulgation of this amendment is contained in Section 4(i) and 5(d) of the Communications Act of 1934, as amended, and § 0.231(d) and the Rules.

3. Accordingly, *it is ordered*, Effective November 14, 1978, §§ 21.113(b), 23.20(d), 25.203(f), 78.19(e), and 87.31(f) of the Rules and Regulations are amended as set forth below.

FEDERAL COMMUNICATIONS COMMISSION,
RICHARD D. LICHTWARDT,
Executive Director.

(Secs. 4, 5, 303, 48 Stat., as amended, 1068, 1068, 1082; 47 U.S.C. 154, 155, 303.)

In chapter I of title 47 of the Code of Federal Regulations, part 21, 23, 25, 78, and 87 are amended as follows:

1. In § 21.113, paragraph (b)(2) is amended to read as follows:

§ 21.113 Quiet zones.

* * * * *

(b) * * *

(2) Applicants concerned are urged to communicate with the Radio Frequency Management Coordinator, Department of Commerce, Research Support Services, NOAA/R5X3, Boulder Laboratories, Boulder, CO 80303; telephone 303-499-1000, extension 6548 or 6549, in advance of filing their applications with the Commission.

* * * * *

2. In § 23.20, paragraph (d)(2) is amended to read as follows:

§ 23.20 Assignment of frequencies.

* * * * *

(d) * * *

(2) Applicants concerned are urged to communicate with the Radio Frequency Management Coordinator, Department of Commerce, Research Support Services, NOAA/R5X3, Boulder Laboratories, Boulder, CO 80303; telephone 303-499-1000, extension 6548 or 6549, in advance of filing their applications with the Commission.

* * * * *

3. In § 25.203, paragraph (f)(3) is amended to read as follows:

§ 25.203 Choice of sites and frequencies.

* * * * *

(f) * * *

(3) Applicants concerned are urged to communicate with the Radio Frequency Management Coordinator, Department of Commerce, Research Support Services, NOAA/R5X3, Boulder Laboratories, Boulder, CO 80303; telephone 303-499-1000, extension 6548 or 6549, in advance of filing their applications with the Commission.

* * * *

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4. In § 78.19, paragraph (e)(2) is amended to read as follows:

§ 78.19 Interference.

. . . . . .

(e) • • •

(2) Applicants concerned are urged to communicate with the Radio Frequency Management Coordinator, Department of Commerce, Research Support Services, NOAA/R5X3, Boulder Laboratories, Boulder, CO 80303; telephone 303-499-1000, extension 6548 or 6549, in advance of filing their applications with the Commission.

. . . . . .

5. In § 87.31, paragraph (f)(2) is amended to read as follows:

§ 87.31 Application for ground station authorization.

. . . . . .

(f) • • •

(2) Applicants concerned are urged to communicate with the Radio Frequency Management Coordinator, Department of Commerce, Research Support Services, NOAA; R5X3, Boulder Laboratories, Boulder, CO 80303; telephone 303-499-1000, extension 6548 or 6549, in advance of filing their applications with the Commission.

. . . . . .

[FR Doc. 78-31716 Filed 11-8-78; 8:45 am]

[6712-01-M]

PART 81—STATIONS ON LAND IN THE MARITIME SERVICES AND ALASKA—PUBLIC FIXED STATIONS

Editorial Amendments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: We are amending our rules to eliminate an error in one of the ship calling frequencies on which public coast radiotelegraph stations are required to maintain a watch. This frequency is stated incorrectly in our rules and this action will correct it.

EFFECTIVE DATE: November 17, 1978.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Kemp J. Beaty, Safety and Special Radio Services Bureau, 202-632-7197.

SUPPLEMENTARY INFORMATION:

ORDER

Adopted: November 3, 1978.

Released: November 3, 1978.

1. It has been brought to our attention that the table in § 81.209(a) (watch on ship calling frequencies) has an error in the last line on the 6 MHz column. The frequency reads 6277 when it should read 6277.5.

2. We are amending our rules to correct this error. Therefore, under the authority of section 4(i), section 303(c) and section 303(r) of the Communications Act of 1934, as amended, and § 0.231(d) of our rules we are amending § 81.209(a) as shown in the attached Appendix. Since this amendment is editorial in nature, the public notice, procedure and effective date provisions of the Administrative Procedure Act, 5 U.S.C. 553 are not applicable.

3. Regarding questions on matters covered in this document contact Kemp J. Beaty, 202-632-7197.

4. In view of the above, *it is ordered*, That the rule amendment set forth below is adopted effective November 17, 1978.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; 47 U.S.C. 154, 155, 303.)

FEDERAL COMMUNICATIONS COMMISSION,
R. D. LICHTWARDT,
Executive Director.

Part 81 of chapter I of title 47 of the Code of Federal Regulations is amended to read as follows:

§ 81.209 [Amended]

In the table under § 81.209(a), the last line under the column labeled "6 MHz" is amended to read 6277.5.

[FR Doc. 78-31714 Filed 11-8-78; 8:45 am]

[1505-01-M]

(Docket No. 21039; FCC 78-713)

PART 21—DOMESTIC PUBLIC RADIO SERVICES (OTHER THAN MARITIME MOBILE)

Reflecting the Availability of Land Mobile Channels in the 470-512 MHz Band in 13 Urbanized Areas of the United States

Correction

In FR Doc. 78-29584 appearing at page 49794 in the issue for Wednesday, October 25, 1978, in the first column of page 49803, in the table for § 21.501, the first item under Philadelphia, Channel 19, now reading "470.0125" should have read "500.0125".

[1505-01-M]

Title 49—Transportation

CHAPTER III—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER B—FEDERAL MOTOR CARRIER SAFETY REGULATIONS

[BMCS Docket No. MC-69-2, Amdt. No. 78-2]

PART 395—HOURS OF SERVICE OF DRIVERS

Driver's Daily Log and Multiday Log, Extension of Use

Correction

In FR Doc. 78-30621 appearing at page 50438 in the issue for Monday, October 30, 1978 in the paragraph beginning "§ 395.8 Drivers daily log," the citation § 895.9 in the first line should be corrected to read "§ 395.9."

[4910-59-M]

CHAPTER V—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION DEPARTMENT OF TRANSPORTATION

[Docket No. 1-22; Notice 6]

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Vehicle Identification Number

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Response to petitions for reconsideration and corrections.

SUMMARY: This notice responds to petitions for reconsideration of the August 17, 1978, notice (43 FR 36448) amending Federal Motor Vehicle Safety Standard No. 115, Vehicle identification number.

Petitions requesting that the responsibility for assigning the vehicle identification number (VIN) to vehicles manufactured in more than one stage be shifted from the final stage manufacturer to the incomplete vehicle manufacturer are granted. Petitions to amend the wording of the standard to clarify the agency's intent that the check digit must be displayed with the VIN on the vehicle, that the engine type must reflect its make and model, and that the production sequence represents the number assigned by the manufacturer in the production process are granted.

Petitions to extend the effective date of the standard are granted to the following extent. The effective date of the standard for passenger cars is extended from January 1, 1980, to September 1, 1980. The date by which manufacturer identifiers must be submitted to the agency is extended from January 1, 1979, to September 1, 1979.

A petition to remove the requirement that the VIN appear on a contrasting background is granted.

Petitions to exempt trailers from the standard are denied. A petition to assign the same multiplication factor to each position as is used in the Federal Republic of Germany is denied, as is a petition to increase the weight increments reflected in the VIN of passenger cars. Petitions to stay or withdraw the standard because the agency lack statutory authority, is acting unconstitutionally, or for other legal impediments are denied.

In addition, this notice corrects typographical and clerical errors in the previous notice.

EFFECTIVE DATE: September 1, 1980.

FOR FURTHER INFORMATION CONTACT:

Frederic Schwartz, Jr., Office of the Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590, 202-426-1834.

SUPPLEMENTARY INFORMATION: On August 17, 1978, the National Highway Traffic Safety Administration (NHTSA) published a notice amending Federal Motor Vehicle Safety Standard No. 115, vehicle identification number (43 FR 36448). The new standard established a 16 character vehicle identification number (VIN) with an associated check digit. The check digit is a device for insuring the accuracy of a VIN, and is derived from a mathematical computation utilizing the VIN.

The VIN itself consists of three sections. The first section consists of three characters which identify the manufacturer, make, and type of vehicle. The second section consists of five characters which identify the attributes of the vehicle. This is called the vehicle descriptor section (VDS). The third section consists of eight characters which identify the model year, plant of manufacture, and production sequence of a specific vehicle.

The amendment was issued after an exhaustive review of past efforts to establish a VIN system by various standard-setting organizations, particularly the Vehicle Equipment Safety Commission (VESC) and the International Standards Organization (ISO), as well as the comments in response to prior rulemaking notices and other available information. A number of petitions for reconsideration were received, and some are responded to below. Other petitions for reconsideration are responded to in a notice of proposed rulemaking issued today.

VIN ASSIGNMENT FOR VEHICLE MANUFACTURED IN MORE THAN ONE STAGE

The final rule provides that the VIN for a vehicle manufactured in more than one stage shall be assigned by the manufacturer of the vehicle. The "manufacturer" was defined in S3 as the entity responsible for affixing the vehicle's certification label. That entity is the final stage manufacturer in almost all instances.

The NHTSA concluded that the final stage manufacturer would be the most appropriate party to affix the VIN to multistage vehicles since it usually has the responsibility under 49 CFR Part 567 of affixing the certification plate to the vehicle and would in all likelihood be the only entity knowing fully the final form the vehicle would take.

The notice of proposed rulemaking (NPRM) specified that the "manufacturer" would assign the VIN. The NHTSA had assumed that it was implicit that the final stage manufacturer would be the manufacturer that would assign the VIN, since only the final stage manufacturer would know all of the characteristics that would have been required to be decoded from the VIN. However, it was clear from the comments received that a more precise definition was required. Therefore, the responsibility for assigning the VIN was made explicit in the final rule.

Petitions for reconsideration of this assignment of responsibility were received from the Truck Body and Equipment Associations, Inc. (TBEA), a number of its members, several States, and several chassis manufacturers. These petitioners asked that final stage manufacturers be removed from the ambit of the regulation entirely, and that the responsibility of assigning the VIN be given to the incomplete vehicle manufacturers as they currently assign an identifying number to the vehicle. In the alternative, some of the petitioners asked that final stage manufacturers only be required to complete a VIN which has been derived, to the fullest extent possible, by the incomplete vehicle manufacturer.

The arguments presented by the petitioners were not raised in the comments on the NPRM, perhaps because of the confusion which some parties apparently had about the NPRM's assignment of responsibility. The major argument presented by the petitioners is that, in general, final stage manufacturers do not purchase vehicles for conversion and resale. Rather, the chassis is purchased by the ultimate owner who, in essence, contracts out the completion. Thus, final stage manufacturers do not issue certificates of origin or other documents on which the VIN must appear, and are not a part of the procurement process.

Further, petitioners stated that because of the variety of work being done and the needs of the customers, production sequence for vehicles manufactured in more than one stage would be a useless designation since it bears no relation to the production sequence of the chassis. In this regard, the petitioners pointed out that some conversions can be carried out in less than 60 days, even though this is the minimum notice period for manufacturers submitting information concerning the coding of the information contained in the VIN. Thus, technically invalid VINs would have to be attached to the vehicles by the final stage manufacturers. Likewise, a designation for the model year could also be partially inaccurate, as the conversion could take place after the actual model year of manufacture of the chassis. The year of chassis manufacture, however, is important to the NHTSA and the States.

The petitioners also pointed out that having the VIN indicate the final stage manufacturer's manufacturer identifier could cause significant defect recall and law enforcement problems. Since the final stage manufacturer is not in the ordinary channels of distribution as explained above, the use of its manufacturer identifier in the VIN would make tracing the true owner exceedingly difficult. This is because the majority of multistage vehicle recall campaigns involve defects in power units or chassis components, rather than body or equipment items. Most multistage vehicles can be readily identified on the road as incorporating a vehicle manufactured by the incomplete vehicle manufacturer. Thus, it would usually be preferable for the VIN to identify the incomplete vehicle manufacturer instead of the final stage manufacturer.

Finally, the petitioners pointed out that a body is sometimes transferred to a different chassis, and the information contained in the VIN would be inaccurate when this occurs.

After reviewing the petitions, the NHTSA has concluded that the arguments have merit, and that the manufacturer of incomplete vehicles, except for motor homes, should continue to bear the responsibility of assigning an identification number to multistage vehicles as they do now.

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A willingness—even a strong desire—to continue affixing identification numbers was articulated by incomplete vehicle manufacturers petitioning for reconsideration. While this may mean that some information required to be decipherable from the VIN is unavailable when the VIN is affixed, the agency determines that the difficulties which arise from having final stage manufacturers establish the VIN far outweigh the disadvantages of not having complete information decipherable from the VIN. Consequently, the amendment relieves the incomplete vehicle manufacturer of the responsibility of encoding data which is unknown to it and requires less information be encoded than was previously required.

Motor home manufacturers currently assign identifying numbers to their vehicles, and did not petition for relief from the standard. Further, motor homes are constructed so that the identity of the incomplete vehicle manufacturer is not so readily determinable as in the case of other multistage vehicles. Consequently, they were not excluded from the ambit of the standard. However, the information required to be deciphered from the VIN is decreased.

Reconstructed Vehicle VIN

California raised the question of the assignment of VINs to reconstructed vehicles. The standard would not apply to these vehicles, as they would be considered vehicles in use so long as the chassis utilized was not new.

Check Digit Procedure

The check digit procedure assigns to each position in the VIN a value which is multiplied by the value of the character in that position. BMW of North America petitioned to assign the same multiplication factor to each position of the VIN as is used in the Federal Republic of Germany. If this petition were to be granted, it would entail multiplying the check digit by a factor other than 0. This is not possible, however, as the check digit which appears within the VIN must be multiplied by 0 so that it will not change the result of the mathematical process. Therefore, this petition is denied.

Meaning of "Chassis"

The agency wishes to clarify the meaning of the term "chassis" as used in the standard. The precise meaning of the term as encoded in the VIN is left to the manufacturer, but it shall at least discriminate between a truck and a truck-tractor.

Display of the Check Digit

California suggested that the wording of the standard is ambiguous as to the inclusion of the check digit with the VIN displayed on the vehicle. S5.1 of the standard is amended to show even more clearly that this is required. The petition of BMW of North America to exclude the check digit from display on the vehicle is denied, as the VIN on the vehicle is used by police officers and others in a number of instances. They must be able to record or transmit the check digit with the VIN so that recipients of the VIN can check the VIN's accuracy.

Effective Date

Several vehicle manufacturers and the AAMVA petitioned for an extension of the effective date because of the time needed to develop computer programs, acquire marking equipment, and in other ways comply with the standard. Further, manufacturers desired that the standard become effective at the time of new model introduction, which for U.S. manufacturers occurs in September. After reviewing these petitions, the NHTSA concludes that the standard's effective date for passenger cars should be extended from January 1, 1980, until September 1, 1980. Likewise, the date by which manufacturer identifiers must be submitted to the agency is extended from January 1, 1979, until September 1, 1979. The agency finds that this period of time will be necessary to achieve the effective implementation of this standard because of the changes being made in the standard by this notice, the proposal today of additional changes and the reasonableness of the manufacturers' desire to institute a new VIN systems at the beginning of the model year. The agency is aware that some manufacturers will be able to adopt the VIN system required by the standard prior to September 1, 1980. The agency urges manufacturers to do so, and specifically proposes optional early compliance in the notice of proposed rulemaking issued today.

This action should also ease the burden on the States suggested by the AAMVA petition, although the agency is not pursuaded that leadtimes as substantial as those suggested by the AAMVA are needed by the States.

Petitions to establish later effective dates are denied because the petitioners did not demonstrate the necessity for such extensions.

Engine Type

The California Highway Patrol petitioned to include a requirement that an engine's make and model be encoded within the VIN. This is the current practice of the industry. The agency intended that this requirement be clear from the definitions of "manufacturer" and "engine type", since make and model are the overall designation for engines with the stated characteristics. Nonetheless, the NHTSA concurs that it should be made even clearer and so amends the standard.

The AAMVA pointed out that engine type was eliminated from the information proposed by the NPRM to be decipherable from the motorcycle VIN. This was a clerical error. Engine type was not meant to be deleted from the proposed requirements as no comments in opposition were received. It is therefore added to the standard. The AAMVA also pointed out that "horsepower" must be further defined as there are several types. "Net brake horsepower" was the type of horsepower meant by the agency, and the standard is so amended.

Notice of Change in Encoded Data

Several States have again raised the issue of the requirement that manufacturers give 60 days notice before changing the information decodable from a particular VIN. These States believe that this will create problems for their computer systems, since they will continually have to update their systems. As the NHTSA pointed out in the final rule, however, the VESC proposal which the States recommend allows the manufacturers to make these same changes, but does not provide for any notice of the changes to the States or other users. The NHTSA requirement is meant to ensure reasonable notice to the States. Otherwise such notice might be unavailable. A period of 60 days was considered reasonable to allow necessary computer program changes, although it is unlikely that changes in the meaning of a particular VIN will be made during a model year.

Production Sequence

Mack Truck, Inc., and Freightliner Corp. petitioned to change the wording of the standard to make it clearer that the production sequence number is meant to represent the number assigned by the manufacturer in the production process. The agency believes that this matter is already clear, but nevertheless amends the standard to make this change.

VIN Legibility

General Motors Corp. (GM) petitioned to remove the requirement that the VIN appear on a contrasting background. GM based its petition on substantial costs involved in retooling, as well as what GM believes is the superiority of its VIN plate embossing technique even though a contrasting background is not used to insure legibility.

The NHTSA has concluded that the requirement for a contrasting background can be eliminated so long as the other visibility requirements of the standard, which relate to the actual ability of a person to read the VIN, are met. The contrasting background requirement was promulgated because the legibility of VIN plates where characters and background are the same color may be reduced by cloudy weather and other atmospheric conditions, angle of mounting vis-a-vis the windshield, and normal accumulation of dirt and dust on the windshield and VIN plate. The agency is reluctant, however, to require GM to incur considerable retooling cost in light of GM's method for improving legibility and the other visibility requirements. The NHTSA will carefully monitor VIN plates installed in vehicles-in-use under varying daylight conditions to insure that the remaining visibility requirements of the standard are met.

The legibility requirements found in S4.3.1 are also amended to specify the minimum spacing requirement between the groups of characters required by S4.5. The spacing requirement was inadvertently eliminated when the final rule was issued, although the requirement for grouping was retained.

VIN Requirements for Trailers

Petitions for exemption from the standard were received from Hogg & Davis, Inc., and Florig Equipment Co., Inc., two small manufacturers of trailers, American Trailer, Inc., and Strick Corp. They argued that having to comply with the standard would be a major burden, and that they currently use a VIN system sufficient for their needs.

The NHTSA considered carefully the position of the small- and medium-size manufacturers in developing the final standard, and attempted to tailor the requirements to meet their needs and problems as well as those of the large manufacturers. Unlike final-stage manufacturers, trailer manufacturers construct their vehicles themselves. Consequently, the responsibility cannot be shifted to other manufacturers. Further, as pointed out in the final rule, allowing trailer manufacturers to utilize a system different from all other vehicles would damage the integrity of the overall system by requiring a separate computer program to process trailer VIN's, as well as destroying the uniform length which is one of the standard's methods for improving the accuracy of transcribed VIN's.

The burden on manufacturers of 500 vehicles per year or less is not so great as it may appear, however, and the burden on medium-size manufacturers is only slightly greater. In the case of producers of less than 500 vehicles per year, such as two of the petitioners, only five characters (and possibly fewer) of the VIN would change during each production year. Thus, the VIN could be predetermined to a large extent. Further, the agency has received from the Truck Trailer Manufacturers Association a draft recommended practice for a relatively simple VIN scheme for trailers.

Statutory and Legal Authority

Several petitioners attacked the statutory and legal authority of the agency to promulgate the standard. The petition of the Vehicle Equipment Safety Commission, which encompasses all of the significant arguments raised by these petitions, will be discussed in detail.

The first objection raised by the VESC is that the system adopted by the NHTSA is not supported by the evidence and its promulgation constitutes an abuse of discretion. The petitioner argues that the States are the largest users of the VIN, and that the NHTSA disregarded their desires in the interest of international comity and other users. The key indication of this, they believe, is the NHTSA's adoption of the check digit which the VESC concludes is an unworkable attempt to compensate for the flexibility of the NHTSA system.

A number of these points have been mooted by the agency's action today in proposing the adoption of the fixed format system along with the check digit system to insure VIN accuracy for passenger cars, multipurpose passenger vehicles with a GVWR of 10,000 pounds or less and trucks with a GVWR of 10,000 pounds or less. Nonetheless, the agency wishes to address these issues. It should first be pointed out that the record indicates, and the NHTSA again acknowledges, that the States are a major user of the VIN. Consequently, the impact of the standard on State activities was carefully considered, and the conclusions of the agency in this regard were discussed at length in the previous notices. Weighing the State comments regarding the impact of the rule was complicated by the limited amount of information about implementation costs made available by the States.

Nevertheless, the views of the States were considered and discussed. Further, in response to their comments, a number of changes were incorporated into the final rule. The plant of origin has been assigned a fixed position in the VIN, the amount of data required to be encoded in the VIN had been reduced, the position of the characters representing model year and plant of origin had been rearranged to be consistent with the desires of the States, and the definition of "model year" had been amended to accommodate State needs. The proposal today of a fixed format is additional evidence of the agency's continuing consideration of State comments.

The alternative presented by the VESC system was carefully considered throughout the rulemaking process. If the scheme proposed by the VESC were adopted, 6 additional characters of the 16 character VIN would be required to be either alphabetic or numeric. Thus, if a person placed an alphabetic character in a space reserved for a numeric character, or vice versa, trained personnel could determine an error has been made. If, however, the same person substituted an erroneous character of the same type, this could not be discovered, and the erroneous VIN would be made a part of the permanent records. Likewise, if that person transposed characters, misread a character, or made an error in any way but substituting the wrong type of character in one of the six specified positions, the error would not be discovered.

The agency did not adopt the VESC request to substitute its fixed format for the check digit because the ability to correct a limited number of errors at the initial transcription phase would not compensate for the loss of a system which will discover almost all errors prior to permanent storage. The agency notes the advancing state of the art in data processing and the increased use by the States of automated titling equipment. Further, the agency generally funds a substantial portion of the cost of this equipment through section 402 of the Highway Safety Act. The agency believes these factors will substantially reduce the size and significance of the technical and financial problems envisioned by the States in the use of the check digit procedure.

The agency acknowledges that transcription errors at the initial stage will occur if access to data processing equipment is not available. By using both systems, as proposed in the notice of proposed rulemaking issued today, this would be considerably less of a problem.

The VESC also argues that the standard is neither practicable nor reasonable because it utilizes the check digit audit procedure which will create, in its view, a large error factor which can only be corrected by a "very costly after-the-fact correction procedure in which the vehicle itself has to be traced and physically inspected." Further, it argues the States will have to substantially modify their computer programs and compile dictionaries of vehicle attributes. This, the VESC states, will be at much greater cost than would be necessary if the VESC system were adopted. In this regard, the VESC argues that most States will be unable to obtain from their legislatures funds to pay for these changes

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in sufficient time to meet the effective date of the standard.

Throughout the rulemaking process, the VESC, AAMVA, and many States have stated that substantial additional costs would be involved if the VESC system was not chosen, but only Minnesota has submitted specific cost data to the docket. Further, the States have not yet explained why the check digit routine, which is a fairly simple data processing technique, will be expensive to develop or why it must be developed fully and individually by each State, rather than by a consortium such as the VESC or the AAMVA.

Further, the NHTSA believes that there are simple solutions which States and other users may adopt to correct errors discovered by the check digit audit system, such as a return postcard advising the vehicle's owner that the VIN is in error and requesting a correction.

The VESC also argues that the NHTSA standard is not authorized by the National Traffic and Motor Vehicle Safety Act because the designation of the VIN content exceeds the agency's performance standard setting authority and bears little relationship to the "operational" safety of motor vehicles. The Act, and its legislative history and associated case law, establish that the agency's safety standards may be specific as necessary to insure a particular type of safety performance. Thus, our authority is similar to that possessed by the VESC under articles I and V of the Vehicle Equipment Safety Compact.

As to the contribution of the NHTSA VIN standards to motor vehicle safety, the improved accuracy of recorded VIN's will aid the manufacturers in notifying owners of defective or noncomplying vehicles of a threat to their safety and of the availability of a free remedy to remove the threat. Each year, millions of defective noncomplying vehicles are recalled by their manufacturers under the recall and remedy provisions of the Act. More accurately recorded VIN's will increase the percentage of owners who receive notification and take their vehicles in for repair. The agency concludes therefore that the standard not only will aid in carrying out the purposes of the Act, but is necessary to that end. The focus of the practicability requirement of the Act, which some petitioners believe have been violated, is whether the manufacturers are capable of complying with the standard. No petitioner has suggested that the manufacturers lack this capability. Further, the NHTSA also considered independently and is seeking to accommodate appropriately the problem which might be encountered by the various users of the VIN.

The VESC and the others opposing the check digit system have not demonstrated that the procedure itself is technologically difficult, ineffective, or not feasible when carried out by data processing equipment. Nor have they suggested that they are incapable of carrying out the process. They prefer to correct some errors by clerks than to obtain the capability of correcting most errors through more complicated and expensive means. While this is certainly an understandable position, the agency concludes otherwise. Under the proposal issued today, this would no longer be an issue. The use of the check digit and fixed format as proposed by the agency today, would insure the availability of a relatively error-free file of VIN's which is the key to an effective defect and noncompliance recall process. The agency believes that adoption of measures to achieve this goal would be a reasonable exercise of its discretion and expertise.

This standard is now unlike standard No. 115 as previously promulgated by Administrator Bridwell in 1968. That standard did not specify requirements concerning either the content or the format of the VIN, and therefore did not preempt State activities in those areas. The amended standard will regulate VIN content and format, and therefore does preempt the States in this regard.

The VESC also believes the standard is unconstitutional, as they argue it is in violation of the 10th amendment. This issue, and the case cited in support of that conclusion, *National League of Cities* v. *Usery*, were discussed in detail in the notice accompanying the final rule. It was pointed out there that the standard will not have substantial effect upon the States under the criteria established by *Usery*, nor will it impair the ability of the States to function effectively in a Federal system.

Additionally, it should be pointed out that the States are not required to collect or maintain information for the NHTSA as the VESC maintains, and are therefore not acting as collectors or repositories of information for the agency. Nor is the agency interfering with the police powers of the States. Indeed, the regulatory authority of the agency extends only to manufacturers. Thus, in the final analysis, no State is required to utilize the VIN, although the agency recognizes that the States use the VIN now and are likely to continue to do so.

In circumstances such as these, the agency's task is to consider the effects of its rulemaking on States and to accommodate the problems of the States in a reasonable manner consistent with the agency's duty, regulations, and legislative authority. The agency believes that the rulemaking record demonstrates that it has accomplished that task.

Passenger Car VIN's

BMW petitioned to increase the gross vehicle weight rating increments encoded in passenger car VIN's. As the agency proposes in the companion notice to eliminate the requirement that gross vehicle weight rating be encoded in the VIN of passenger cars, their concerns have been met. Petitions to eliminate the requirement for encoding the restraint system type in the VIN are denied, as the agency concludes this information is important and encoding it in the VIN is relatively simple.

Technical Corrections

Several technical corrections are also made to the standard. The previous notice number is changed from No. 5 to No. 5A, as a notice No. 5 has been issued previously. The word "type" is substituted for the word "class" in S6.1 and S6.2 to make this section consistent with the rest of the standard.

The principal authors of this notice are Nelson Erickson of the Office of Vehicle Safety Standards and Frederic Schwartz, Jr. of the Office of Chief Counsel.

In consideration of the foregoing, standard No. 115, 49 CFR 571.115, is amended as follows:

§ 571.115 [Amended]

1. By revising S2 *Application* to include "motor homes" as a category of vehicles to which the standard applies. As revised S2 reads as follows:

S2. *Application.*

This standard applies to passenger cars, multipurpose passenger vehicles, trucks, buses, trailers, motorcycles, and motor homes.

2. By revising S3 *Definitions* to delete the definition of "Manufacturer", to substitute new definitions of "Engine Type" and "Plant of manufacture", and to add a definition of "Motor Home" and "Incomplete vehicle". As revised, S3 reads as follows:

S3. *Definitions.*

"Body type" means the general configuration or shape of a vehicle distinguished by such characteristics as the number of doors or windows, cargo-carrying features and the roofline (e.g., sedan, fastback, hatchback).

"Check digit" means a single number or the letter X used to verify the accuracy of the transcription of the vehicle identification number.

"Engine Type" means a power source of a specific make and model with defined characteristics such as fuel utilized, number of cylinders, displacement, manufacturer and net brake-horsepower.

"Incomplete vehicle" means an assemblage consisting, as a minimum, of frame and chassis structure, power train, steering system, suspension system, and braking, to the extent that those systems are to be part of the completed vehicle, that requires further manufacturing operations, other than the addition of readily attachable components, such as mirrors or tire and rim assemblies, or minor finishing operations such as painting, to become a completed vehicle.

"Line" means a name which a manufacturer applies to a family of vehicles within a make which have a degree of commonality in construction, such as body, chassis or cab type.

"Make" means a name which a manufacturer applies to a group of vehicles.

"Model" means the term applied to a family of vehicles of the same type, make, line, series, and body type.

"Model Year" means the year used to designate a discrete vehicle model irrespective of the calendar year in which the vehicle was actually produced, so long as the actual period is less than 2 years.

"Motor Home" means a multipurpose passenger vehicle that provides living accommodations for persons.

"Plant of manufacture" means the plant where the manufacturer affixes the VIN.

"Series" means a name which a manufacturer applies to a subdivision of a "line" denoting price, size or weight identification, and which is utilized by the manufacturer for marketing purposes.

"Type" means a class of vehicle distinguished by common traits, including design and purpose. Passenger cars, multi-purpose passenger vehicles, trucks, buses, trailers, motor homes and motorcycles are separate types.

"Vehicle identification number" means a series of arabic numbers and roman letters which is assigned to a motor vehicle for identification purposes.

3. S4 *Requirements* is amended by revising S4.1 to give the responsibility for assigning the VIN for vehicles manufactured in more than one stage, except for motor homes, to the incomplete vehicle manufacturer. The responsibility for assigning the VIN for motor homes remains with the final stage manufacturer. As revised S4.1 reads as follows:

S4. *Requirements.*

S4.1 Each vehicle manufactured in one stage shall have a vehicle identification number that is assigned by the manufacturer and a check digit which meet the requirements of this standard. Each vehicle manufactured in more than one stage, except a motor home, shall have a VIN and check digit assigned by the incomplete vehicle manufacturer. Each motor home manufactured in more than one stage shall have a VIN and check digit assigned by the final stage manufacturer.

4. S4.3.1 is revised to remove the requirement that the VIN appear on a contrasting background and to indicate the spacing between groups of characters. As revised S4.3.1 reads as follows:

S4.3.1 The type face utilized for the vehicle identification number and check digit shall consist of capital, sans serif characters. Each character shall have a minimum height of 4 mm. The space between groups shall be no less than twice that between characters.

5. S4.5.2 is revised by deleting the requirement that the incomplete vehicle manufacturer of a vehicle completed in more than one stage be decipherable from the second section of the VIN, by indicating that the VIN of vehicles completed in more than one stage, except for motor homes, shall reflect those attributes known to the incomplete vehicle manufacturer and specified in Table I, and by adding engine type to the information required to be decipherable from the motorcycle VIN. As revised, S4.5.2 reads as follows:

S4.5.2 The second section shall consist of five characters which shall uniquely identify the attributes of the vehicle as specified in Table I. If the vehicle is to be completed in more than one stage, the VIN shall identify those attributes which are known to the incomplete vehicle manufacturer and specified in Table I. The characters utilized and their placement within the section may be determined by the manufacturer, but the specified attributes must be decipherable with information supplied by the manufacturer under S6. In submitting data to the NHTSA relating to the gross vehicle weight rating, the following designations shall be utilized. No designations are specified for the VIN.

TABLE I

Type of vehicle	*Information decipherable*
Passenger car	Line, series, body type, engine type, gross vehicle weight rating, and restraint system type.
Multipurpose passenger vehicle.	Line, series, body type, engine type, and gross vehicle weight rating.
Truck	Model or line, series, chassis, cab type, engine type, brake system, and gross vehicle weight rating.
Bus	Model or line, series, body type, engine type, and brake system.
Trailer	Type of trailer, series, body type, length, and axle configuration.
Motorcycle	Type of motorcycle, line, engine type, and net brake horsepower.
Motor home	Model or line, series, engine type, and brake system.
Incomplete vehicle.	Model or line, series, cab type, engine type, and brake system.

A: Not greater than 1,000 pounds.
B: 1,000 pounds–1,500 pounds.
C: 1,500 pounds–2,000 pounds.
D: 2,000 pounds–2,500 pounds.
E: 2,500 pounds–3,000 pounds.
F: 3,000 pounds–3,500 pounds.
G: 3,500 pounds–4,000 pounds.
H: 4,000 pounds–4,500 pounds.
I: 4,500 pounds–5,000 pounds.
J: 5,000 pounds–5,500 pounds.
K: 5,500 pounds–6,000 pounds.
L: 6,000 pounds–6,500 pounds.
M: 6,500 pounds–7,000 pounds.
N: 7,000 pounds–7,500 pounds.
O: 7,500 pounds–8,000 pounds.
P: 8,000 pounds–8,500 pounds.
Q: 8,500 pounds–9,000 pounds.
R: 9,000 pounds–9,500 pounds.
S: 9,500 pounds–10,000 pounds.
T: Over 10,000 pounds.

6. S4.5.3.3 is revised to clarify the meaning of production sequence number. As revised S4.5.3.3 reads as follows:

S4.5.3.3. The third through the eighth characters of the third section shall represent the number sequentially assigned by the manufacturer in the production process if the manufacturer produces 500 or more vehicles of its type annually. If the manufacturer produces less than 500 motor vehicles of its type annually the third, fourth, and fifth characters of the third section, combined with the three characters of the first section, shall uniquely identify the manufacturer, make and type of the motor vehicle and the sixth, seventh, and eighth character of the third section shall represent the number sequentially assigned by the manufacturer in the production process.

7. S5.1 is revised to indicate that the check digit shall appear on the vehicle along with the VIN. As revised S5.1 reads as follows:

S5.1 A check digit shall be provided with each vehicle identification number. The check digit shall immediately follow the fifth character of the second section and appear with the vehicle identification number on the vehicle and on any transfer documents containing the vehicle identification number and prepared by the manufacturer to be given to the first owner for purposes other than resale.

8. The word "type" is substituted for the word "class" in S6.1 and S6.2 to make this section consistent with the rest of the standard, and the date by which manufacturer identification information must be submitted is extended from January 1, 1979, to September 1, 1979. As revised, S6.1 and S6.2 read as follows:

S6. *Reporting Requirements.*

S6.1 Manufacturers of motor vehicles subject to this standard shall

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submit, either directly or through an agent, the unique identifier for each make and type of vehicle it manufactures by September 1, 1979.

S6.2 Manufacturers which begin production of motor vehicles subsequent to September 1, 1979, shall submit, either directly or through an agent, the unique identifier for each make and type of vehicle it manufactures at least 30 days before affixing the first vehicle identification number. Manufacturers whose unique identifer appears in the third section of the vehicle identification number shall also submit the three characters of the first section which constitute a part of their identifer.

(Sec. 103, 112, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1401, 1407); delegation of authority at 49 CFR 1.50.)

Issued on November 1, 1978.

JOAN CLAYBROOK,
Administrator.

[FR Doc. 78-31420 Filed 11-2-78; 2:00 pm]

[3510-22-M]

Title 50—Wildlife and Fisheries

CHAPTER VI—FISHERY CONSERVATION AND MANAGEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 651—ATLANTIC GROUNDFISH

Notice of Fishery Closures; Adjustments to Catch Limits

AGENCY: National Oceanic and Atmospheric Administration/Commerce.

ACTION: Notice of fishery closures and adjustments to catch limitations.

SUMMARY: This notice announces (1) closure of the haddock fisheries in the Gulf of Maine and Georges Bank and South for the 0-60 GRT vessel class, effective November 12; (2) closure of the cod and haddock fisheries in the Gulf of Maine for the over 125 GRT vessel class, effective November 12; (3) closure of the haddock fishery in the Gulf of Maine for the 61-125 GRT vessel class, effective November 19; (4) closure of the haddock fishery for Georges Bank and south for the over 125 GRT vessel class, effective November 19; (5) closure of the cod fishery in the Gulf of Maine for the fixed gear vessel class, effective November 19; (6) closure of the cod and haddock fisheries for Georges Bank and south for the fixed gear vessel class, effective November 26; and, (7) adjustments to weekly catch limitations for four vessel classes, as set forth in the supplementary information, effective November 12.

EFFECTIVE DATES: These actions are effective as of the dates noted in the summary above.

FOR FURTHER INFORMATION CONTACT:

Mr. William G. Gordan, Regional Director, Northeast Region, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, Mass. 01930; telephone 617-281-3600.

SUPPLEMENTARY INFORMATION: The regulations governing fishing for Atlantic groundfish (cod, haddock, and yellowtail flounder) were revised and published on October 4, 1978 (43 FR 45872). These regulations implement the Fishery Management Plan for Atlantic groundfish, as amended, (FMP), prepared by the New England Fishery Management Council and approved by the Assistant Administrator for Fisheries, NOAA, pursuant to the Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801 *et seq.* The regulations establish quarterly quotas for each fishery by species, area and vessel class. They also provide weekly or per-trip catch limitations to spread fishing effort over the quarter. The regulations provide for adjustment of these catch limitations to achieve specified purposes. Fishery closures are mandated when it becomes apparent that the catch, plus the anticipated incidental catch for the rest of the quarter, equals the quarterly quota.

The Regional Director has monitored landings of groundfish for the first month of the quarter which began October 1, 1978. Between 38 and 92 percent of the quotas for the entire quarter was taken during this 1-month period by some vessel classes.

The Regional Director has, pursuant to § 651.24(a), projected that the following vessel classes will catch their quarterly quotas, less an anticipated amount to be taken as an incidental catch during the period of closure, as of the listed dates:

Cod, Gulf of Maine:
Over 125 GRT—November 12.
Fixed gear—November 19.
Cod, Georges Bank and south:
Fixed gear—November 26.
Haddock, Gulf of Maine:
0-60 GRT—November 12.
61-125 GRT—November 19.
Over 125 GRT—November 12.
Haddock, Georges Bank and south:
0-60 GRT—November 12.
Over 125 GRT—November 19.
Fixed gear—November 26.

The Regional Director has recommended, therefore, that these fisheries be closed on those dates. The Assistant Administrator has reviewed the Regional Director's findings and has confirmed that they set forth appropriate dates to close these fisheries in order to prevent the quarterly quotas from being exceeded. Closures for these fisheries, therefore, will become effective on the dates listed.

During the period of closure, which will continue until the beginning of the next quarter of the fishing year on January 1, 1979, the affected vessel classes are limited to an incidental catch of each species under § 651.24(d) as follows:

0-60 GRT: 500 pounds or 4 percent by weight of all fish on board, whichever is the *lesser* amount, per trip.
61-125 GRT: 1,000 pounds or 4 percent by weight of all fish on board, whichever is the *lesser* amount, per trip.
Over 125 GRT: 2,000 pounds or 4 percent by weight of all fish on board, whichever is the *lesser* amount, per trip.
Fixed Gear: 500 pounds or 4 percent by weight of all fish on board, whichever is the *lesser* amount, per trip.

In some other groundfish fisheries, catches during the first month of the quarter have indicated, and the Assistant Administrator has found, that the quarterly allocation is likely to be taken before the end of the quarter, although not within the next 30 days, if current catch rates continue. In order to spread effort out over the quarter, and considering the various factors specified in the regulations, the Assistant Administrator finds the following adjustments to weekly catch limitations to be necessary, effective November 12, 1978:

Cod, Gulf of Maine:
61-125 GRT—2,500 pounds.
Cod, Georges Bank and south:
61-125—4,900 pounds, with a 1,500 pound overrun.
Over 125 GRT—7,000 pounds, with a 1,500 pound overrun.
Haddock, Gulf of Maine:
Fixed gear—5,000 pounds.
Haddock, Georges Bank and south:
61-125 GRT—3,500 pounds, with a 1,500 pound overrun.

For all cod and haddock fisheries not listed above, catches and landings will continue to be monitored. It is anticipated that some action, either to reduce catch limitations or to close fisheries might be necessary before the end of the quarter.

For yellowtail flounder, it is not anticipated that any further action will be necessary during this quarter. This projection may change as new information becomes available, particularly if significant effort is diverted from closed fisheries to those where catch rates during the first month of the quarter were relatively low.

Appendix B to the regulations, which contains the catch limitations by vessel class, species, and area, has been revised to conform with the actions stated in this notice, and is reprinted at the bottom of this notice.

Because these adjustments must be implemented quickly to be effective and because they merely carry out pre-existing provisions in the regulations for adjustments of catch limitations, the Assistant Administrator finds that advance notice and opportunity for comment are unnecessary, impractical, and contrary to the public interest. Any delay in carrying out these adjustments would interfere with meeting the objectives of the FMP.

The Assistant Administrator also finds that this is not a significant Federal action within the meaning of the National Environmental Policy Act and does not require compliance with Executive Orders 12044, 11821, and 11949.

Signed at Washington, D.C. this 7th day of November, 1978.

WINFRED H. MEIBOHM,
Acting Executive Director, National Marine Fisheries Service.

(16 U.S.C. 1801 et seq.)

APPENDIX B—CATCH LIMITATIONS

	Gulf of Maine		Georges Bank and South Vessel class	
	Limits	Overruns	Limits	Overruns
	Cod (Pounds/Week)			
0-60 GRT	2,500	1,500	4,900	3,500
61-125 GRT	2,500	1,500	4,900	1,500
Over 125 GRT	Closed Nov. 12		7,000	1,500
Fixed gear	Closed Nov. 19		Closed Nov. 26	
	Haddock (Pounds/Week)			
0-60	Closed Nov. 12		Closed Nov. 12	
61-125 GRT	Closed Nov. 19		3,500	1,500
Over 125 GRT	Closed Nov. 12		Closed Nov. 19	
Fixed gear	5,000		Closed Nov. 26	

Vessel class	West of 69° west	East of 69° west
	Yellowtail Flounder [1]	
0-60	5,000	
61-125	5,000	
Over 125 GRT	5,000	

[1] Pounds per week or trip, whichever time period is longer. A vessel may land no more than 5,000 pounds, even if it fished on both sides of the 69° West line. No overruns are allowed.

[FR Doc. 78-31868 Filed 11-8-78; 8:45 am]

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

[6720-01-M]

FEDERAL HOME LOAN BANK SYSTEM

[12 CFR Part 526, 545]

FEDERAL SAVINGS AND LOAN SYSTEM

Amendments Relating to Payments to Third Parties

NOVEMBER 1, 1978.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The proposed amendments would expand third party payment powers available to account holders of Federal associations while limiting the rate of return on savings accounts of all member institutions of the Federal Home Loan Bank System subject to nonnegotiable, nontransferable written orders for payment to third parties.

COMMENTS MUST BE RECEIVED BY: December 1, 1978.

ADDRESS: Send comments to the Office of the Secretary, Federal Home Loan Bank Board, 1700 G Street NW., Washington, D.C. 20552. Comments available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT:

Harry W. Quillian, Associate General Counsel, Federal Home Loan Bank Board, 202-377-6440.

SUPPLEMENTARY INFORMATION: The Federal Reserve Board and the Federal Deposit Insurance Corporation have adopted regulations effective November 1, 1978, that permit member banks to arrange with their members for automatic transfer of funds from savings accounts to checking accounts to cover checks drawn by depositors or to replenish or maintain a minimum balance in such accounts. In response to that action by those agencies the Federal Home Loan Bank Board hereby proposes to amend § 545.4-1 of the Rules and Regulations for the Federal Savings and Loan System (12 CFR 545.4-1) to authorize Federal associations to offer a new category of accounts subject to withdrawal by nonnegotiable, nontransferable orders for payment to third parties. The Bank Board also proposes to add to the Regulations for the Federal Home Loan Bank System (12 CFR Subchapter B) a new paragraph to § 526.3 to limit to 5 percent the return which any member of the Bank System may pay on such a payment order account. This proposed amendment to the Bank Regulations is intended to maintain competitive parity in the offering of such accounts among all member institutions of the Bank System and between such institutions and commercial banks subject to regulation by the Federal Reserve or the Federal Deposit Insurance Corporation.

Section 5(b)(1) of the Home Owners Loan Act of 1933 (12 U.S.C. 1464) specifically authorizes the Bank Board to provide for withdrawal or transfer of funds from a Federal association upon nontransferable order or authorization.[1]

Present regulations allow such withdrawals with limitations. Section 545.4-1(a) allows a holder of a savings account in a Federal association to order or authorize payment to a third party. Under the present regulation, an accountholder may direct an association to pay third parties, e.g., by telephone authorization, once-a-month written authorization mailed to the association, or standing authorization for the association to pay recurring bills. However, § 545.4-1(a)(2) precludes an accountholder from sending or delivering a payment order or authorization directly to a third party for presentation for payment by the association unless such orders or authorizations are processed through an automated clearing house.

The Bank Board proposes to amend § 545.4-1(a) to permit an account holder of a Federal association to transfer or withdraw funds from his or her account for payments to third parties by any form of payment order or authorization which is not a check or other negotiable or transferable instrument. A written instrument could be drawn on a new category of account (a payment order account) which would be limited to an interest rate not in excess of 5 percent per annum. Section 526.1 would be amended to add the definition for a payment order account and a new subparagraph would be added to § 526.3 to set the maximum rate of return payable on such accounts. The proposal would continue to allow payments to third parties from regular passbook accounts on the basis of direct order or authorization given to the associations by the accountholder.

Present § 545.4-1(a)(2) would be revoked.

By this action, the Bank Board would expand the third party payment powers of Federal savings and loan associations only; however, all institutions which are members of the Federal Home Loan Bank System would be subject to the maximum rate payable on accounts subject to nonnegotiable written orders of withdrawal.

Nonnegotiable, nontransferable payment orders such as Federal associations would be authorized by these proposed amendments to honor may involve matters such as deposit, collection, and payment procedures, and rights and obligations of the parties involved, which should be governed by regulation. The Bank Board invites comment as to regulation of such matters and especially as to the costs and benefits which such regulation would involve.

Accordingly, the Board hereby proposes to amend § 526.1 by adding a new paragraph (n) thereto, to amend § 526.3 by adding a new subparagraph (a)(10) thereto, and to amend § 545.4-1 by revising subparagraph (a)(1) and revoking subparagraph (a)(2) thereof as set forth below.

§ 526.1 Definitions.

* * * * *

(n) *Payment order account.* A payment order account is a savings account consisting of funds deposited to the credit of or the entire beneficial interest is held by, one or more individuals or by a non-profit organization subject to withdrawals by nonnegotiable, nontransferable written drafts for payment to third parties.

§ 526.3 Maximum rates of return payable by members on savings accounts.

(a) * * *

(10) 5 percent—payment order accounts.

[1] * * * Savings accounts shall not be subject to check or to withdrawal or transfer on negotiable or transferable order or authorization to the association, but the *Board may by regulation provide for withdrawal or transfer of savings accounts upon nontransferable order or authorization* (emphasis added).

§ 545.4-1 Payments to third parties by withdrawals or transfer of savings accounts; checks and money orders.

(a) *Withdrawals and transfers.* (1) *General.* A holder of a savings account in a Federal association may order or authorize payments therefrom to third parties, provided that no such order or authorization is by check or in other negotiable or transferable form. The association may charge a fee for its services in making any payment under this section.

(2) *Restrictions.* (Revoked.)

* * * * *

(Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); Sec. 5, 48 Stat. 132, as amended; (12 U.S.C. 1464). Sec. 5B, 47 Stat. 727, as added by Sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR 1943-48 Comp. 1071).

By The Federal Home Loan Bank Board.

J. J. FINN,
Secretary.

[FR Doc. 78-31764 Filed 11-8-78; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 65]

[Docket No. VII-78-DCO-14; FRL 1002-1]

STATE AND FEDERAL ADMINISTRATIVE ORDERS PERMITTING A DELAY IN COMPLIANCE WITH STATE IMPLEMENTATION PLAN REQUIREMENTS

Proposal Approval of an Administrative Order Issued by Iowa Department of Environmental Quality to Iowa Valley Milling Co., West Branch, Iowa

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve an administrative order issued by the Iowa Department of Environmental Quality to Iowa Valley Milling Co. The order requires the company to bring air emissions from its alfalfa dehydrating plant hammermill cyclone in West Branch, Iowa into compliance with certain regulations contained in the federally approved Iowa State Implementation Plan (SIP) by May 1, 1979. Because the order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by EPA before it becomes effective as a delayed compliance order under the Clean Air Act (the Act). If approved by EPA, the order will constitute an addition to the SIP. In addition, a source in compliance with an approved order may not be sued under the federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the Order. The purpose of this notice is to invite public comment on EPA's proposed approval of the order as a delayed compliance order.

DATE: Written comments must be received on or before December 11, 1978.

ADDRESSEES: Comments should be submitted to Director, Enforcement Division, EPA, Region VII, 1735 Baltimore, Kansas City, Mo. 64108. The State order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT:

Peter J. Culver or Henry F. Rompage, EPA Region VII, 1735 Baltimore, Kansas City, Mo. 64108, telephone 816-374-2576.

SUPPLEMENTARY INFORMATION: Iowa Valley Milling Co. operates an alfalfa dehydrating plant at West Branch, Iowa. The order under consideration addresses emissions from the hammermill cyclone at the facility, which are subject to subrule 400—4.3(2)a Iowa Administrative Code, Process weight rate. The regulation limits the emissions of particulates, and is part of the federally approved Iowa State Implementation Plan. The order requires final compliance with the regulation by May 1, 1979, through the installation of a bagfilter on the hammermill cyclone. The source has consented to the terms of the order. The source has satisfied increments Nos. 1 and 2 contained in the order.

Because this order has been issued to a major source of particulate emissions and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a delayed compliance order under section 113(d) of the Clean Air Act (the Act). EPA may approve the order only if it satisfies the appropriate requirements of this subsection.

If the order is approved by EPA, source compliance with its terms would preclude Federal enforcement action under section 113 of the Act against the source for violations of the regulation covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provision of the Act (section 304) would be similarly precluded. If approved, the order would also constitute an addition to the Iowa SIP.

All interested persons are invited to submit written comments on the proposed order. Written comments received by the date specified above will be considered in determining whether EPA may approve the order. After the public comment period, the Administrator of EPA will pubish in the FEDERAL REGISTER the Agency's final action on the order in 40 CFR Part 65.

(Authority: 42 U.S.C. 7413, 7601.)

Dated: October 26, 1978.

KATHLEEN Q. CAMIN, PH.D.,
Regional Administrator,
Region VII.

BEFORE THE IOWA DEPARTMENT OF ENVIRONMENTAL QUALITY, AIR QUALITY COMMISSION, DES MOINES, IOWA

Order

Docket No. 78-A-010

In the matter of: Iowa Valley Milling Co., West Branch, Iowa.

Whereas employees of the Department of Environmental Quality conducted an inspection of the Iowa Valley Milling Co. facility in Downey, Iowa on June 1, 1978, and determined that the emissions from the hammermill cyclone exceeded the emission standard(s) of subrule 400—4.3(2)a I.A.C.

Whereas the said subrule is a part of the federally-approved implementation plan applicable to Air Quality Control Region 091 in which the Iowa Valley Milling Co. in Downey, Iowa, is located;

Whereas Iowa Valley Milling Co. has acknowledged that it is in violation of subrule 400—4.3(2)a I.A.C. and has agreed to waive its rights to a contested case hearing under the Iowa Administrative Procedure Act and to waive its rights under section 455B.17 of the Iowa Code;

Whereas Iowa Valley Milling Co. is hereby given notice that in the event it fails to meet any requirement of this order, it will be subject to civil penalties for such noncompliance, and that if it fails to achieve final compliance as specified in Subparagraph A-5 by July 1, 1979, it shall be required to pay a noncompliance penalty under Section 120 of the Clean Air Act as amended (42 U.S.C. 7420) or under Iowa Law subsequently enacted to obtain delegation under that section;

Whereas after full consideration of relevant facts, including the seriousness of the violation and any good faith efforts to comply the source cannot immediately comply and compliance with the order below is reasonable and expeditious;

Therefore, it is ordered by the Air Quality Commission:

A. That Iowa Valley Milling Co. complete the following acts with respect to the hammermill cyclone at its plant in Downey, Iowa, on or before the dates specified.

1. June 22, 1978—Submit final control plan. *Completed*

2. July 22, 1978—Award bids and execute contracts for emission control equipment. *Completed*

3. November 1, 1978—Initiate on-site construction or installation of emission control equipment.

4. May 1, 1979—Complete on-site construction or installation of emission control equipment.

5. May 1, 1979—Complete shakedown operations and performance test on system

and achieve final compliance with subrule 400—4.3(2)a I.A.C.

B. That specific interim requirements for emission reduction, prior to final compliance as specified in subparagraph A-5 are not feasible.

C. That specific monitoring and reporting requirements pursuant to subrule 400—2.1(6)(455B) I.A.C., prior to final compliance as specified in subparagraph A-5, are not required.

D. That Iowa Valley Milling Co., prior to the initiation of on-site construction or installation of emission control equipment required by paragraph A-3, obtain a permit for the proposed equipment or related control equipment from the Permits Section of the Air and Land Quality Division of the Department of Environmental Quality, as defined in subrule 400—3.1 I.A.C.

E. That Iowa Valley Milling Co. certify to the Chief of the Surveillance Section of the Air and Land Quality Division of the Department of Environmental quality no later than seven (7) days after the deadline for completing such increment of progress, whether such increment has been achieved; if an increment has not been achieved by the deadline date, a full report of the reasons why the increment was not achieved and of whether the failure is expected to put the subsequent deadline dates in jeopardy should be submitted.

F. That Iowa Valley Milling Co., 15 days prior to conducting the performance tests required by this order, give notice of such scheduled test to the Chief of Surveillance Section to afford him an opportunity to have an observer present.

Dated: September 21, 1978.

For the Air Quality Commission.

HAL B. RICHERSON,
Chairman.

Dated: July 14, 1978.

For the Iowa Valley Milling Co.

H. R. SPENCER.

A public notice was published on July 14, 1978, in the *West Branch Times* regarding this order (and the schedule for compliance contained herein), and a public hearing was held before the Iowa Air Quality Commission on September 14, 1978, at the Department of Environmental Quality, Henry A. Wallace Building, 900 East Grand Avenue, Des Moines, Iowa.

DEPARTMENT OF ENVIRONMENTAL QUALITY,
DES MOINES, IOWA

Waiver

In the Matter of: Iowa Valley Milling Co., West Branch, Iowa.

Iowa Valley Milling Co. acknowledges that it is in violation of subrule 400—4.3(2)a I.A.C. and agrees to waive its rights to a contested case hearing under the Iowa Administrative Procedure Act and its rights under 455B.17 of the Iowa Code. Furthermore, Iowa Valley Milling Co. has reviewed Order 78-A-010, believes it to be a reasonable means to attain compliance with the applicable regulations in that it accords with the intentions of Iowa Valley Milling Co. regarding the hammermill cyclone at its plant in Downey, Iowa, and it consents to the terms of the order. Finally, Iowa Valley Milling Co. acknowledges that compliance with Order 78-A-010 does not relieve it of the responsibility to comply with the provisions of the Rules of the Air Quality Commission.

For the Iowa Valley Milling Co.

Dated: July 14, 1978.

H. R. SPENCER.

[FR Doc. 78-31492 Filed 11-8-78; 8:45 am]

[4110-35-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Care Financing Administration

[42 CFR Parts 405 and 419]

FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Intermediary Nominations Contracts, Evaluations, and Notices

AGENCY: Health Care Financing Administration (HCFA), HEW.

ACTION: Proposed rule.

SUMMARY: This proposal would establish standards, criteria, and procedures for evaluating the performance of agencies or organizations serving or desiring to serve as fiscal intermediaries under the Medicare program. It would also be applied by the Secretary in determining whether (1) to assign or reassign any provider to a fiscal intermediary, and (2) to designate a single fiscal intermidiary to service a class of providers on a regional or national basis. Affected providers and intermediaries would be given a notice of any assignment or reassignment and afforded a hearing. The proposal implements section 14 of the Medicare-Medicaid Anti-Fraud and Abuse Act (Pub. L. 95-142). The intent is to improve the administration of the medicare program.

DATES: Consideration will be given to written comments or suggestions received on or before January 8, 1979.

ADDRESSES: Address comments to: Administrator, Health Care Financing Administration, Department of Health, Education, and Welfare, P.O. Box 2372, Washington, D.C. 20013. When commenting, please refer to MAB-61-P. Agencies and organizations are requested to submit their comments in duplicate. Comments will be available for public inspection, beginning approximately 2 weeks from today, in room 5231 of the Department's offices at 330 C Street SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m., to 5 p.m. (telephone 202-245-0950).

FOR FURTHER INFORMATION CONTACT:

Martin L. Keppert, telephone 301-594-9415.

SUPPLEMENTARY INFORMATION:

BACKGROUD

Under sections 1816 and 1842 of the Social Security Act, private organizations participate in the administration of the Medicare program under contract with the Secretary, and perform the bulk of the actual bill processing and benefit payment functions. The private organizations which administer the Part A paying process are know as "intermediaries". Providers of services submit claims to these intermediaries, which determine whether the services are covered under the program, and determine reasonable costs. The intermediaries reimburse the providers, on behalf of the beneficiaries. The private organizations which administer the Part B program are known as "carriers". Beneficiaries receiving Part B services either pay the physicians' or suppliers' bills themselves, and receive medicare payments from the carrier, or assign their right to payment to the physician or other supplier of the Part B service, who is paid directly by the carrier. In either case, the carrier must determine whether the service is covered and whether the charge is reasonable.

Under the medicare Act prior to enactment of Pub. L. 95-142, groups or associations of providers could nominate an agency or organization to act as fiscal intermediary. Alternatively, a provider could individually elect to receive reimbursement directly from the Secretary. This provision of the law afforded providers considerable latitude in their selection of intermediaries. (See 42 CFR 405.651 through 405.656.) Experience under the program has shown that this nomination process has not, in a number of instances, produced the most effective and efficient administration of the medicare program. Section 14 of Pub. L. 95-142 was designed to permit improvement in the administration of the medicare program by requiring that the Secretary develop standards, criteria, and procedures to be used in evaluating the adequacy of agencies or organizations serving or desiring to serve as fiscal intermediaries. A decision to enter into, renew, or terminate an intermediary agreement must be based on a finding, made after applying the required standards and criteria, that in the particular instance to do so would be in the best interests of the program.

Additionally, Pub. L. 95-142 gives the Secretary the authority, after applying the appropriate standards and criteria, to (1) assign or reassign a provider to a fiscal intermediary, and (2) designate a national or regional intermediary to service a class of providers, if such actions would be consistent with the effective and efficient administration of the medicare program. Classes of providers may be established on the basis of the type of provider, or on common characteristics such as size or type of ownership or control. When the Secretary determines that, to improve program administration, a provider should be assigned or reassigned to a fiscal intermediary or that a national or regional intermediary should be designated, he need not establish poor performance on the part of any specific intermediary to assign or reassign such providers or class of providers to a designated intermediary. The Secretary may also assign or reassign a provider or class of providers to a designated intermediary for an experiment being conducted in a geographic area.

MAJOR PROVISIONS

As discussed more fully below, this regulation would move existing provisions concerning intermediaries and carriers to a new part 419 in 42 CFR. Additionally, the regulation would amend existing regulations to fully implement the provisions of section 14 of Pub. L. 95-142. The regulation does not affect the Secretary's right not to renew an agreement when it expires.

(1) CRITERIA AND STANDARDS FOR EFFICIENT AND EFFECTIVE ADMINISTRATION OF THE MEDICARE PROGRAM

The standards and criteria developed by these regulations would enable the Secretary to evaluate the performance of an intermediary or prospective intermediary in (1) its overall performance of claims processing and related functions, and (2) its performance with respect to specific providers. These standards, criteria, and procedures would be applied whenever the Secretary enters into, renews, or terminates an agreement with an agency or organization to serve as an intermediary or whenever the Secretary assigns or reassigns a provider or providers or designates an intermediary to serve a class of providers.

The criteria and standards would be applied in two steps. First, an assessment would be made as to whether the intermediary meets all of the criteria described in § 419.216. The criteria established by this regulation are designed to aid the Secretary in evaluating the overall capabilities of an intermediary or prospective intermediary. The Secretary would not enter into or renew an agreement with an intermediary unless the intermediary satisfied the listed criteria. The criteria consist of the categories of general administration, fiscal management, beneficiary service activities, bill processing, provider reimbursement, and utilization review. If an intermediary were found not to meet all of the criteria, the Secretary could determine that such failure was sufficient grounds for adverse action such as the reassigning of providers, or nonrenewal, or termination of the agreement.

The second step, undertaken only if the criteria under § 419.216 were met, would consist of measuring the intermediary's performance using standards that we will develop in accordance with § 419.218. The standards consist of measures of timeliness, cost, and quality of the intermediary's, or prospective intermediary's, performance of its medicare operations. For example, we would plan to develop a generally applicable benchmark for the unit cost of processing bills. The standards would be based in part on national intermediary experience by applying acceptable statistical measures of variation to that experience during a base period. The development and occasional revision of the standards would be a continuing process, and the specific standards would be published as a notice in the FEDERAL REGISTER.

(2) ASSIGNMENT, REASSIGNMENT, AND DESIGNATION OF A NATIONAL OR REGIONAL INTERMEDIARY

The regulation would provide that the Secretary, after taking into consideration the preferences of a provider of group of providers, may assign or reassign any provider of services to an intermediary other than the one nominated by the provider or group of providers. The determination to assign or reassign a provider could be made only after the Secretary had applied the standards, criteria, and procedures established by this regulation and had found that such action would result in the more effective and efficient adminstration of Part A of the program. Similarly, the Secretary could designate a national or regional intermediary for a class of providers. The Secretary would determine the class of providers on the basis of the category of services provided such as hospitals, skilled nursing facilities, or home health agencies. Other common characteristics such as ownership or control which impact on the efficient and effective administration of the Medicare program could be used by the Secretary to define a class of providers. Before designating a national or regional intermediary, the Secretary would apply the criteria, standards, and procedures established by this regulation and determine that the designation would result in the effeetive and efficient administration of Part A of the program.

The regulation would provide that the Secretary, prior to taking any action to assign, reassign, or designate a national or regional intermediary, must furnish the affected providers and intermediaries with a full explanation of the reasons for his determination. Any intermediary which would be adversely affected by the determination would be given an opportunity for a hearing and a final determination would be subject to judicial review.

(3) PROVIDERS OF OUTPATIENT PHYSICAL THERAPY AND SPEECH PATHOLOGY SERVICES

The proposed definition of "provider" includes clinics, rehabilitation agencies, and public health agencies furnishing physical therapy and speech pathology services under Part A of Medicare. (See 42 CFR 405, Subpart Q for the conditions of participation for these providers.) The purpose is to treat these providers the same as hospitals and other providers with respect to the selection and assignment of intermediaries. Under § 140 of the Outpatient Physical Therapy Provider Manual (HIM-9), these agencies are currently given some say in the selection of intermediaries, but are not accorded the same rights as other providers.

WITHDRAWAL OF PRIOR PROPOSED RULE

This proposal supersedes a Notice of Proposed Rulemaking published on October 5, 1976 (41 CFR 43917). That proposal would have revised Medicare regulations relating to the provider's right to change its intermediary, with the Secretary's approval. That proposal became outdated with the enactment of Pub. L. 95-142.

RECODIFICATION OF EXISTING REGULATIONS

Current regulations in 42 CFR Part 405, Subpart F, deal with intermediaries (§§ 405.656-405.651 and 405.660-405.663) and with carriers (§§ 405.670-405.678). This proposal would revise the first group of sections to implement section 14 of Pub. L. 95-142. Since that law does not apply to carriers, no substantive changes are being proposed to the second group of sections. We are currently developing standards, criteria, and procedures for evaluating the performance or potential performance of organizations serving or wishing to serve as carriers. We will publish those standards, criteria, and procedures as a Notice of Proposed Rulemaking.

This proposal contains editorial and organizational changes to improve the clarity and readability of both groups of existing regulations. In addition, in anticipation of an eventual recodification of the Medicare regulations, we are placing these regulations in a new part of Title 42, CFR. The following table will help the reader to identify and locate the new sections that are derived from current regulations.

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Old Sec.	New Sec.
405.651(a), 405.652, 405.653	419.13.
405.651(b)	419.3(c).
405.651(c)	419.3(b).
405.654	419.12.
405.655	419.14.
405.656	419.13.
405.660	419.25.
405.662, 405.663	419.30.
405.670, 405.677, 405.678	419.40.
405.671	419.2.
405.672	419.3(a).
405.673	419.41.
405.675	419.44.
405.676	419.45.

42 CFR Chapter IV is amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

1. Sections 405.651 through 405.656 and 405.660 through 405.678 are vacated and reserved, and their content is revised and recodified under a new Part 419.

2. A new Part 419 is added, to read as follows:

PART 419—INTERMEDIARIES AND CARRIERS

Subpart A—Scope, Definitions, and General Provisions

Sec.
419.1 Scope.
419.2 Definitions.
419.3 General provisions.

Subpart B—Intermediaries

419.10 Intermediary functions.
419.12 Option available to providers.
419.13 Nominations for intermediary.
419.14 Notification of action on nomination.
419.15 Change to another intermediary or to direct payment.
419.16 Assignment and reassignment of intermediaries by the Secretary.
419.17 Designation of national or regional intermediaries.
419.18 Designation of intermediaries for experiments.
419.25 Requirements for approval of an agreement.
419.26 Performance criteria.
419.28 Statistical standards.
419.29 Intermediary's failure to meet criteria or standards.
419.30 Termination of agreements.
419.31 Intermediary's opportunity for hearing and right to judicial review.

Subpart C—Carriers

419.40 Carrier functions.
419.41 Requirements and conditions.
419.44 Provision for automatic renewal of contracts.
419.45 Termination by the Secretary.

AUTHORITY: Sections 1102, 1816, 1842, 1961(u), 1971, 1975 of the Social Security Act (42 U.S.C. 1302, 1395h, 1395u, 1395x(u), 1395hh, and 1395).

Subpart A—Scope, Definitions, and General Provisions

§ 419.1 Scope.

The provisions of this part apply to agreements with Part A intermediaries and contracts with Part B carriers. They specify criteria and standards to be used in selecting intermediaries and evaluating their performance; in assigning or reassigning a provider or providers to particular intermediaries, and in designating regional or national intermediaries for certain classes of providers or for experiments. They also set forth the opportunity for hearing for intermediaries and carriers affected by certain adverse actions and the adversely affected intermediaries right to judicial review of hearings decisions on (a) assignment or reassignment of a provider or providers or (b) designation of an intermediary or intermediaries to serve a class of providers.

§ 419.2 Definitions.

As used in this part:

"Act" means the Social Security Act.

"Carrier" means an organization that has entered into a contract with the Secretary to perform designated functions in the administration of Part B of the Medicare program.

"Intermediary" means a national, State, or other public agency or a private agency or organization that has entered into an agreement with the Secretary to perform designated functions in the administration of the Medicare program.

"Provider" means a hospital, skilled nursing facility (SNF), home health agency (HHA), or a clinic or agency furnishing outpatient physical therapy or speech pathology services, that furnishes services under Part A of the Medicare program.

"Secretary" means the Secretary of Health, Education, and Welfare or his delegate.

§ 419.3 General provisions.

(a) *Competitive bidding not required.* The Secretary may enter into contracts with carriers, or with intermediaries to act as carriers in certain circumstances, without regard to section 3709 of the U.S. Revised Statutes or any other provision of law that requires competitive bidding.

(b) *Indemnification of intermediaries and carriers.* Intermediaries and carriers act on behalf of the Secretary in carrying out certain administrative responsibilities that the law imposes on him. Accordingly, their agreements and contracts contain clauses providing for indemnification with respect to actions taken on behalf of the Secretary and the Secretary is the real party of interest in any litigation involving the administration of the program.

(c) *Use of intermediaries to perform carrier functions.* The Secretary may contract with an intermediary to perform carrier functions with respect to services for which Part B payment is made to a provider.

(d) *Nonrenewal of agreement or contract.* Notwithstanding any of the provisions of this part, the Secretary has the authority not to renew an agreement or contract when its term expires.

Subpart B—Intermediaries

§ 419.10 Intermediary functions.

An agreement between the Secretary and an intermediary shall provide for the performance of the following functions:

(a) *Coverage.* The intermediary must assure that it makes payments only for services that:

(1) Are furnished to Medicare beneficiaries;

(2) Are covered under medicare part A or part B; and

(3) Are medically necessary.

(b) *Fiscal management.* The intermediary must receive, disburse, and account for funds in making medicare payments.

(c) *Provider audits.* The intermediary must audit the records of providers of services as necessary to assure proper payments.

(d) *Utilization patterns.* The intermediary must assist providers to:

(1) Develop procedures relating to utilization practices;

(2) Make studies of the effectiveness of those procedures and devise methods to improve them;

(3) Evaluate the results of utilization review activity; and

(4) Assist in the application of safeguards against unnecessary utilization of services.

(e) *Resolution of cost report disputes.* The intermediary must establish and maintain procedures approved by the Secretary to consider and resolve any disputes that may result from provider dissatisfaction with an intermediary's determinations concerning provider cost reports.

(f) *Review and reconsideration of determinations.* The intermediary must establish and maintain procedures approved by the Secretary for the review and reconsideration of determinations that deny payments to an individual or to the provider who furnished services to the individual.

(g) *Information and reports.* The intermediary must furnish to the Secretary any information and reports that he needs to carry out his responsibilities in the administration of medicare program.

(h) *Other terms and conditions.* The intermediary must comply with all applicable laws and regulations and with any other terms and conditions included in its agreement.

§ 419.12 Option available to providers.

A provider may elect to receive payment for covered services furnished to medicare beneficiaries:

(a) Directly from the Secretary; or

(b) Through an intermediary, when both the Secretary and the intermediary consent.

§ 419.13 Nominations for intermediary.

(a) *Nomination by groups or associations of providers.* (1) An association of providers may nominate an organization or agency to serve as intermediary for its members.

(2) The nomination is not binding on any member of the association if it notifies the Secretary of its nonconcurrence with the nomination.

(3) The nomination must be made in writing, to the Secretary, and must:

(i) Identify the proposed intermediary by giving complete name and address;

(ii) Include, or furnish as an attachment, the name, address, and bed capacity (or patient care capacity in the case of home health agencies) of each member of the association;

(iii) List the members that have concurred in the nomination of the proposed intermediary; and

(iv) Be signed by an authorized representative of the association.

(4) The Secretary is not required to enter into an agreement with a proposed intermediary solely because it has been nominated.

(b) *Nomination by nonmembers or nonconcurring members.* Providers that nonconcur in their association's nomination, or are not members of an association, may:

(1) Form a group of 2 or more providers for the specific purpose of nominating an intermediary, in accordance with provisions of paragraph (a) of this section; or

(2) Exercise their right to receive payment directly from the Secretary in accordance with § 419.12.

§ 419.14 Notification of action on nomination.

(a) The Secretary will send, to each member of a nominating association or group, written notice of his decision to enter into or not enter into an agreement with the nominated organization or agency.

(b) Any member of a group or association having more than one nominated intermediary approved by the Secretary to act on its behalf may withdraw from all but one or may exercise the the option provided in § 419.12.

§ 419.15 Change to another intermediary or to direct payment.

(a) Any provider may request a change of intermediary, or that it be paid directly by the Secretary, by

(1) Giving the Secretary written notice of its desire at least 120 days before the end of its current fiscal year; and

(2) Concurrently giving written notice to its intermediary.

(b) If the Secretary finds the change is consistent with effective and efficient administration of the program and approves the request under paragraph (a) of this section, he will notify the provider, the outgoing intermediary and the newly elected intermediary (if any) that the change will be effective on the first day following the close of the fiscal year in which the request was filed.

§ 419.16 Assignment and reassignment of intermediaries by the Secretary.

The Secretary may assign or reassign any provider to any intermediary if he determines the assignment or reassignment will result in more effective and efficient administration of the medicare program than the assignment preferred by the provider. Before making this determination, the Secretary will consider:

(a) The preferences of the provider; and

(b) The criteria and standards specified in §§ 419.26 and 419.28.

§ 419.17 Designation of national or regional intermediaries.

(a) The Secretary may designate a particular intermediary to serve a class of providers in the entire Nation or in any geographic area he designates if he determines, after reviewing the criteria and standards specified in §§ 419.26 and 419.28, that the designation will result in more effective and efficient administration of the medicare program than the assignment preferred by the providers.

(b) For this purpose, the Secretary may establish classes of providers on the basis of:

(1) The type of provider, for example, hospital, skilled nursing facility, home health agency; or

(2) Common characteristics such as type of ownership or control, size, or number of medicare beneficiaries served.

§ 419.18 Designation of intermediaries for experiments.

(a) To facilitate experiments conducted under section 1875(b) of the act, the Secretary may:

(1) Assign or reassign a provider to a particular intermediary; or

(2) Designate a regional intermediary for a class of providers or for all providers within the geographical area where the experiment is being conducted.

(b) Action by the Secretary under this paragraph is not subject to appeal by any party.

§ 419.25 Requirements for approval of an agreement.

Before entering into or renewing an agreement with an intermediary, the Secretary will determine that all of the following requirements are met:

(a) Use of the particular intermediary would be consistent with effective and efficient administration of the medicare program.

(b) The intermediary is willing and able to assist providers in the application of safeguards against unnecessary utilization of services.

(c) The intermediary, and any subcontractor that will perform some or all of the intermediary's functions, meet all solvency and financial responsibilty requirements imposed by the statutes and regulatory authorities of the State or States in which it would serve.

(d) The intermediary has the overall resources and experience to administer its responsibilities under the medicare program and has an existing operational, statistical, and recordkeeping capacity to carry out the additional program responsibilities it proposes to assume. The Secretary will presume that an intermediary meets this requirement if it has at least 5 years experience in paying for or reimbursing the cost of health services.

(e) The intermediary will serve a sufficient number of providers to permit a finding of effective and efficient administration. Under this criterion no intermediary shall be found to be not efficient or effective solely on the grounds that it serves only providers located in a single State.

(f) The intermediary has acted in good faith to achieve effective cooperation with the providers it will service and with the physicians and medical societies in the area.

(g) The intermediary has established a record of integrity and satisfactory service to the public.

(h) The intermediary has an affirmative equal employment opportunity program that complies with the fair employment provisions of the Civil Rights Act of 1964 and Executive Order 11246.

§ 419.26 Performance criteria.

(a) *General administration.* To demonstrate overall effectiveness in carrying out its medicare responsibilities, the intermediary must:

(1) Appropriately identify program integrity issues for referral in accordance with medicare instructions;

(2) Observe provisions in its agreement regarding subcontracts with a third party;

(3) Establish and observe procedures for identification and control of conflict-of-interest situations;

(4) Carry out an effective program designed to maintain good relations

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with providers and medical professionals;

(5) Maintain proper safeguards of program funds, records, and property; and

(6) Comply with all laws and regulations concerning disclosure of information and establish safeguards against invasion of individual privacy, in accordance with the Privacy Act.

(b) *Fiscal management.* To manage Federal funds, including benefit payments and administrative costs, in an efficient and effective manner, the intermediary must:

(1) Allocate allowable Medicare administrative expenses in an equitable manner;

(2) Submit timely budget proposals in accordance with Medicare Bureau instructions;

(3) Limit expenditures to those in the approved budget;

(4) Obtain advances of funds through proper letter of credit procedures; and

(5) Submit accurate and timely financial reports as required.

(c) *Beneficiary service activities.* To insure that beneficiaries are treated in accordance with the existing law, regulations, and policies, the intermediary must:

(1) Accurately and promptly process beneficiary and provider appeals of individual claims determinations;

(2) Accurately identify and resolve claims overpayments;

(3) Assure that providers accurately and promptly refund incorrectly collected money to affected beneficiaries; and

(4) Respond promptly and accurately to beneficiary inquiries.

(d) *Bill processing.* In order to process Medicare bills in an accurate, timely, and economical manner and perform other contractual functions related to the claims process, the intermediary must:

(1) Maintain an adequate system for the control of all bills;

(2) Process admission and Start-of-Care notices so that accurate and timely Reports of Eligibility are released to the provider;

(3) Review provider bills and make correct coverage determinations, providing the beneficiary with accurate and timely notice where required;

(4) Accurately and promptly determine provider requests for waiver of liability and accurately apply these determinations to bills;

(5) Transmit accurate and timely bill information to the Medicare Bureau; and

(6) Furnish the Secretary with timely and accurate reports of the bill processing function.

(e) *Provider reimbursements.* To insure that Medicare payments are made properly, in accordance with Part 405, Subpart D, of this chapter, the intermediary must:

(1) Accurately and promptly establish, review and, where appropriate, adjust interim rates for providers;

(2) Establish and manage a provider cost report settlement program to insure timely receipt of cost reports from providers and arrange for the review, audit, and settlement of cost reports;

(3) Accurately apply the principles of reimbursement to insure that only reasonable and allowable costs incurred in furnishing covered services to Medicare beneficiaries are reimbursed by the Medicare program based on cost reports received from providers;

(4) Promptly and in accord with program instructions, identify, control, and recover or otherwise dispose of, overpayments incurred by providers;

(5) Promptly notify providers of their rights to appeal cost report settlements, explain the procedures involved, and process appeals; and

(6) Furnish the Secretary with provider reimbursement, cost report, and overpayment data as required in program instructions or when requested.

(f) *Utilization review.* (1) To insure that each provider that is not under PSRO review has an effective utilization review, the intermediary must:

(i) Monitor that provider's utilization review committee activities to insure its effectiveness; and

(ii) Maintain effective coordination with the State survey agency and the HCFA regional office regarding UR matters.

(2) Where PSRO's exist, the intermediary must follow guidelines related to intermediary-PSRO activities.

§ 419.28 Statistical standards.

(a) The Secretary will develop standards of timeliness, cost, and quality, to be used in further evaluating the performance of those intermediaries that satisfy the criteria in § 419.26.

(b) These standards will be derived from application of acceptable statistical measures of variation to nationwide intermediary experience during a base period. Any standards derived from base period experience and dealing with administrative cost will be adjusted to reflect the estimated effect of inflation and increased productivity.

(c) The performance of intermediaries during the base period will also be studied, using multiple regression analysis, to determine measurable factors that are not within the intermediary's control, but significantly affect selected performance standards. The Secretary will determine which noncontrollable facotrs will be used in adjusting performance standards.

(d) The development and revision of standards for evaluating intermediary performance will be a continuing process. Before the beginning of each evaluation period, the Secretary will publish a list of standards as a notice in the FEDERAL REGISTER.

§ 419.29 Intermediary's failure to meet criteria or standards.

Failure by an intermediary to meet, or demonstrate the capacity to meet, the criteria and standards specified in §§ 419.26 and 419.28 will be grounds for adverse action, such as reassigning providers, offering a short-term agreement, or termination. If an intermediary meets all criteria and standards in its overall performance, but does not meet them with respect to a specific provider or class of providers, the Secretary may reassign that provider or class of providers to another intermediary in accordance with § 419.16.

§ 419.30 Termination of agreements.

(a) *Termination by intermediary.* An intermediary may terminate its agreement at any time by:

(1) Giving written notice of its intention to the Secretary and to the providers it services at least 180 days before its intended termination date; and

(2) Giving public notice of its intention by publishing a statement of the effective date of termination at least 60 days before that date. Publication must be in a newspaper of general circulation in each community served by the intermediary.

(b) *Termination by the Secretary, and right of appeal.* (1) The Secretary may terminate an agreement if:

(i) The intermediary fails to comply with the requirements of this subpart;

(ii) The intermediary fails to meet the criteria and standards specified in §§ 419.26 and 419.28; or

(iii) The Secretary has reassigned, under §§ 419.16 or 419.17, all of the providers assigned to the intermediary.

(2) If the Secretary decides to terminate an agreement, he will offer the intermediary an opportunity for a hearing, in accordance with § 419.31.

(3) If the intermediary does not request a hearing, or if the hearing decision affirms the Secretary's decision, the Secretary will provide reasonable notice of the effective date of termination to:

(i) The intermediary;

(ii) The providers served by the intermediary; and

(iii) The general public.

(4) The providers served by the intermediary will be given the opportunity to nominate another intermediary, in accordance with § 419.13.

§ 419.31 Intermediary's opportunity for hearing and right to judicial review.

(a) *Basis for appeal.* An intermediary adversely affected by any of the following actions will be granted an opportunity for a hearing:

(1) Assignment or reassignment of providers to another intermediary.

(2) Designation of a national or regional intermediary to serve a class of providers.

(3) Termination of the agreement.

(b) *Request for hearing.* The intermediary shall file the request with the Secretary within 15 days from the date on the notice of intended action.

(c) *Hearing procedures.* The hearing officer shall be a representative of the Secretary not on the staff of the Medicare Bureau and not otherwise a party to the initial administrative decision. The intermediary may be represented by counsel and may present evidence and examine witnesses. A complete recording of the proceedings at the hearing will be made and transcribed.

(d) *Judicial review.* An adverse hearing decision concerning action under paragraph (a)(1) or (a)(2) of this section is subject to judicial review in accordance with chapter 7 of Title 5, United States Code.

Subpart C—Carriers

§ 419.40 Carrier functions.

A contract between the Secretary and a carrier shall provide for the performance of the following functions:

(a) *Coverage.* (1) The carrier must assure that payment is made only for services that:

(i) Are rendered to Medicare beneficiaries;

(ii) Are covered under Medicare Part B; and

(iii) Are medically necessary.

(2) If it determines that the services were not medically necessary or the claim does not properly reflect the kind and amount of services furnished, the carrier must take appropriate action to reject or adjust the claim.

(b) *Payment on a cost basis.* If payment is on a cost basis, the carrier must assure that payments are based on reasonable costs, as determined under Part 405, Subpart D, of this chapter.

(c) *Payment on a charge basis.* If payment is on a charge basis, under Part 405, Subpart E of this chapter, the carrier must assure that:

(1) Charges are reasonable and not higher than the charge for a comparable service furnished under comparable circumstances to the carrier's policyholders and subscribers; and

(2) Payment is based on:

(i) An itemized bill; or

(ii) An assignment under the terms of which the reasonable charge for the service (see § 405.251(b) of this chapter); or

(iii) If the beneficiary has died before the bill is paid, an agreement by the person or persons who furnished the services, to accept the reasonable charge as the full charge for those service.

(d) *Fiscal management.* The carrier must receive, disburse, and account for funds in making payments under Medicare.

(e) *Provider audits.* The carrier must audit the records of providers to whom it makes Medicare Part B payments, to assure that payments are made properly.

(f) *Utilization patterns.* (1) The carrier must have methods and procedures for identifying utilization patterns that deviate from professionally established norms and bring the deviant patterns to the attention of appropriate professional groups.

(2) The carrier must assist providers and other persons who furnish Medicare Part B services to:

(i) Develop procedures relating to utilization practices;

(ii) Make studies of the effectiveness of those procedures and devise methods to improve them;

(iii) Apply safeguards against unnecessary utilization of services; and

(iv) Develop procedures for utilization review, and establish groups to perform such reviews of providers to whom it makes Medicare Part B payments.

(g) *Information and reports.* The carrier must furnish to the Secretary any information and reports that he needs to carry out his responsibilities in the administration of the Medicare program. The carrier must be responsive to requests for information from the public.

(h) *Maintenance and availability of records.* The carrier must maintain and make available to the Secretary the records necessary for verification of payments and for other related purposes.

(i) *Hearings to Part B beneficiaries.* (1) The carrier must provide an opportunity for a fair hearing if it denies the beneficiary's request for payment, does not act upon the request with reasonable promptness, or pays less than the amount claimed.

(2) The hearing procedures must be in accordance with Part 405, Subpart H, of this chapter.

(j) *Other terms and conditions.* The carrier must comply with any other terms and conditions included in its contract.

§ 419.41 Requirements and conditions.

Before entering into or renewing a carrier contract, the Secretary will determine that the carrier:

(a) Has the capacity to perform its contractual responsibilities effectively and efficiently;

(b) Has the financial responsibility and legal authority necessary to carry out its responsibilities; and

(c) Will be able to meet any other requirements the Secretary considers pertinent.

§ 419.44 Provision for automatic renewal of contracts.

Contracts under this subpart may contain an automatic renewal provision, continuing the contract from term to term unless either party gives at least 90 days notice of its intention to terminate it at the end of the current term.

§ 419.45 Termination by the Secretary.

(a) *Cause for termination.* The Secretary may terminate a contract with a carrier at any time if he determines that the carrier has failed substantially to carry out any material terms of the contract or has performed its function in a manner inconsistent with the effective and efficient adminstration of the Medicare Part B program.

(b) *Notice and opportunity for hearing.* If the Secretary notifies the carrier of his intent to terminate the contract, the carrier may request a hearing within 15 days after the date on the notice of intent to terminate.

(c) *Hearing procedures.* The hearing procedures will be those specified in § 419.31(c).

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare—Hospital Insurance; No. 13.774, Medicare—Supplementary Medical Insurance.)

Dated: September 11, 1978.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

Approved: November 1, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary.

[FR Doc. 78-31726 Filed 11-8-78; 8:45 am]

[4910-14-M]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[46 CFR Parts 25, 34, 76, 95, 108, 162, 181, and 193]

[CGD 77-039]

FIRE EXTINGUISHING EQUIPMENT

Wheeled Semiportable Fire Extinguishers

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: The Coast Guard proposes to allow limited use of wheeled semiportable fire extinguishers on

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merchant vessels, offshore structures, and mobile offshore drilling units. Specifically, the proposals would allow their use as excess equipment in addition to extinguishers that are currently required by other regulations, and would allow their use as required equipment on offshore structures and helicopter landing decks of mobile offshore drilling units. Existing regulations prohibit approval and use of wheeled extinguishers. However, in certain vessel operations wheeled extinguishers could be used effectively in conjunction with non-wheeled extinguishers to provide increased fire protection capability. On offshore structures, a prohibition against wheeled extinguishers is unnecessary. The proposals also include stowage and installation requirements for semiportable extinguishers.

DATE: Comments must be received on or before: December 26, 1978.

ADDRESSES: Comments should be submitted to Commandant (G-CMC/81) (CGD 77-039), U.S. Coast Guard, Washington, D.C. 20590. Comments received on the proposed regulations, and a copy of the Draft Evaluation, will be available for examination at the Marine Safety Council (G-CMC/81), Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT:

Frank K. Thompson, Office of Merchant Marine Safety (G-MMT/83), Room 8301, U.S. Coast Guard, Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590, 202-426-2174.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or arguments, persons submitting comments should include their names and addresses, identify this notice (CGD 77-039) and the specific section of the proposal to which their comments apply, and give reasons for the comments. The proposal may be changed in light of comments received. All comments received before the expiration of the public comment period will be considered before final action is taken on this proposal. No public hearing is planned but one may be held at a time and place to be set in a later notice in the FEDERAL REGISTER if requested in writing by an interested person raising a genuine issue and desiring to comment orally at a public hearing.

DRAFTING INFORMATION

The principal persons involved in drafting this proposal are: Frank K. Thompson, Project Manager, Office of Merchant Marine Safety; and William R. Register, Project Counsel, Ofice of the Chief Counsel.

BACKGROUND

1. The fire protection equipment regulations for merchant vessels in Parts 25, 34, 76, 95, 181, and 193 of Title 46 require carriage of approved semiportable fire extinguishers and require their placement at specified locations. Proposed regulations for mobile offshore drilling units, which were published in the FEDERAL REGISTER of May 2, 1977 (42 FR 22296), contain similar requirements. These regulations further require that fire protection equipment provided in excess of required equipment on vessels must be approved.

2. Subpart 162.039 of Title 46 contains the equipment specification for approving semiportable fire extinguishers. Section 162.039-3 of the specification prohibits approval of wheeled semiportable fire extinguishers and requires that approved fire extinguishers be arranged for stowage in fixed locations. The principal purposes of these provisions are to provide for the availability of extinguishers in the locations where their placement is required and to preclude use of an extinguisher that could roll out of control across the deck of a vessel during heavy sea conditions and cause damage or personal injury.

DISCUSSION OF PROPOSALS

3. The proposed amendments would allow approval of wheeled semiportable extinguishers and would clarify the requirement in § 162.039-3 that extinguishers be arranged for stowage in fixed locations to provide that required semiportable fire extinguishers must be welded or otherwise permanently attached to a bulkhead or deck. The proposal also includes requirements to stow wheeled extinguishers in a secure manner when not in use and a provision to allow use of wheeled extinguishers as required equipment on helicopter landing decks of mobile offshore drilling units. These proposals would continue to carry out the purposes of the current provisions in § 162.039-3 and would carry out other purposes discussed below.

4. The principal effect of deleting the prohibition against approving wheeled semiportable extinguishers would be to allow their use as excess equipment in addition to required extinguishers. On some vessels, approved wheeled extinguishers added as excess equipment could be used effectively in conjunction with required extinguishers during cargo transfer operations and other shipboard operations to provide augmented fire protection capability. The requirements in proposed §§ 25.30-20(b)(4), 34.50-20(b), 76.50-20(b), 95.50-20(b), 108.496(b)(2), 181.30-12(b), and 193.50-20(b) that wheeled extinguishers carried as excess equipment be securely stowed when not in use are included as safety measures to prevent accidents during heavy sea conditions.

5. The proposed clarification to § 162.039-3 is more appropriately an equipment requirement than a specification and, accordingly, would be added to each set of fire protection equipment regulations in Title 46. Specifically, the requirement would be added to §§ 25.30-20(b)(3), 34.50-20(a), 76.50-20(a), 95.50-20(a), 108.496(a), 181.30-12(a), and 193.50-20(a).

6. Proposed § 108.496(a) provides that semiportable extinguishers required on a mobile offshore drilling unit, except wheeled extinguishers provided for a helicopter landing deck, must be welded or otherwise permanently attached to a bulkhead or deck. Thus, required extinguishers at a helicopter landing deck, if wheeled, need not be permanently installed. However, proposed § 108.496(b)(1) provides that these extinguishers must be securely stowed when not in use. The proposal would allow wheeled extinguishers as required fire protection equipment on helicopter landing decks since they can often provide more effective fire protection capability than fixed extinguishers can in these locations.

7. The regulations in Parts 145 and 149 of Title 33, Code of Federal Regulations, for artificial islands, fixed structures, and deepwater ports require the use of approved semiportable fire extinguishers in machinery spaces that have a gas fired or oil fired boiler. The current prohibition in § 162.039-3 against wheeled extinguishers also applies to offshore structures. However, the prohibition is unnecessary. Offshore structures are stable platforms and use of a wheeled extinguisher on one of these platforms poses little hazard to personnel. Also, its removal from the space where its placement is required would be unlikely since to do so would normally be both difficult and impractical. Accordingly, the proposed amendments do not include a requirement that semiportable extinguishers on offshore structures be permanently attached to a bulkhead or deck and, by deleting the prohibition against approving wheeled extinguishers, these extinguishers would be allowed on offshore structures.

DRAFT EVALUATION

A Draft Evaluation for these proposed regulations has been prepared in accordance with Department of Transportation Notice 78-1 entitled "Improving Government Regulations" (43 FR 9582-9584).

In consideration of the foregoing, the Coast Guard proposes to amend Chapter I of Title 46, Code of Federal Regulations, as follows:

SUBCHAPTER C—UNINSPECTED VESSELS

PART 25—REQUIREMENTS

1. In § 25.30-20, by adding new paragraphs (b)(3) and (b)(4) to read as follows:

§ 25.30-20 Fire extinguishing equipment required.

* * * * *

(b) * * *

(3) The frame or support of each Type B-III fire extinguisher required by paragraph (b)(2)(ii) of this section must be welded or otherwise permanently attached to a bulkhead or deck.

(4) If an approved semiportable fire extinguisher has wheels and is not required by this section, it must be securely stowed when not in use to prevent it from rolling out of control under heavy sea conditions.

SUBCHAPTER D—TANK VESSELS

PART 34—FIRE FIGHTING EQUIPMENT

2. By adding a new § 34.50-20 to read as follows:

§ 34.50 Semiportable fire extinguishers—TB/ALL.

(a) The frame or support of each size III, IV, and V fire extinguisher required by Table 34.50-10(a) must be welded or otherwise permanently attached to a bulkhead or deck.

(b) If a size III, IV, or V fire extinguisher has wheels and is not required by Table 34.50-10(a), it must be securely stowed when not in use to prevent it from rolling out of control under heavy sea conditions.

SUBCHAPTER H—PASSENGER VESSELS

PART 76—FIRE PROTECTION EQUIPMENT

3. By adding a new § 76.50-20 to read as follows:

§ 76.50-20 Semiportable fire extinguishers.

(a) The frame or support of each size III, IV, and V fire extinguisher required by Table 76.50-10(a) must be welded or otherwise permanently attached to a bulkhead or deck.

(b) If an approved size III, IV, or V fire extinguisher has wheels and is not required by Table 76.50-10(a), it must be securely stowed when not in use to prevent it from rolling out of control under heavy sea conditions.

SUBCHAPTER I—CARGO AND MISCELLANEOUS VESSELS

PART 95—FIRE PROTECTION EQUIPMENT

4. By adding a new § 95.50-20 to read as follows:

§ 95.50-20 Semiportable fire extinguishers.

(a) The frame or support of each size III, IV, and V fire extinguisher required by Table 95.50-10(a) must be welded or otherwise permanently attached to a bulkhead or deck.

(b) If an approved size III, IV, or V fire extinguisher has wheels and is not required by Table 95.50-10(a), it must be securely stowed when not in use to prevent it from rolling out of control under heavy sea conditions.

SUBCHAPTER I-A—MOBILE OFFSHORE DRILLING UNITS

PART 108—DESIGN AND EQUIPMENT

5. By adding a new § 108.496 to read as follows:

§ 108.496 Semiportable fire extinguishers.

(a) The frame or support of each size III, IV, and V fire extinguisher required by Table 108.495(a), except a wheeled size V extinguisher provided for a helicopter landing deck, must be welded or otherwise permanently attached to a bulkhead or deck.

(b) If the following semiportable fire extinguishers have wheels, they must be securely stowed when not in use to prevent them from rolling out of control under heavy sea conditions:

(1) Each size V extinguisher required for a helicopter landing deck.

(2) Each size III, IV, and V extinguisher that is not required by Table 108.495(a).

SUBCHAPTER Q—SPECIFICATIONS

PARTS 162—ENGINEERING EQUIPMENT

§ 162.039-3 [Amended].

6. In § 162.039-3, by deleting the words "as a stationary unit" from paragraph (a), and by deleting the words "arranged for stowage in a fixed location (wheeled units not permitted)," from the first sentence of paragraph (b).

SUBCHAPTER T—SMALL PASSENGER VESSELS (UNDER 100 GROSS TONS)

PART 181—FIRE PROTECTION EQUIPMENT

7. By adding a new § 181.30-12 to read as follows:

§ 181.30-12 Semiportable fire extinguishers.

(a) The frame or support of each semiportable fire extinguisher permitted under § 181.30-10(b) in lieu of a portable fire extinguisher required by Table 181.30-01(a) must be welded or otherwise permanently attached to a bulkhead or deck.

(b) If an approved semiportable fire extinguisher has wheels and is not required by Table 181.30-01(a), it must be securely stowed when not in use to prevent it from rolling out of control under heavy sea conditions.

SUBCHAPTER U—OCEANOGRAPHIC VESSELS

PART 193—FIRE PROTECTION EQUIPMENT

8. By adding a new § 193.50-20 to read as follows:

§ 193.50-20 Semiportable fire extinguishers.

(a) The frame or support of each size III, IV, and V fire extinguisher required by Table 193.50-10(a) must be welded or otherwise permanently attached to a bulkhead or deck.

(b) If an approved Size III, IV, or V fire extinguisher has wheels and is not required by Table 193.50-10(a), it must be securely stowed when not in use to prevent it from rolling out of control under heavy sea conditions.

(46 U.S.C. 375, 390b, 416, 481, and 526p; 49 U.S.C. 1655; 49 CFR 1.46.)

NOTE.—The Coast Guard has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended, and OMB Circular A-107.

Dated: November 6, 1978.

R. H. SCARBOROUGH,
Vice Admiral, U.S. Coast Guard,
Acting Commandant.

[FR Doc. 78-31734 Filed 11-8-78; 8:45 am]

[6712-01-M]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Parts 42 and 43]

[CC Docket No. 78-302]

PROVIDING FOR THE REPORTING OF DETAILED TRAFFIC STATISTICS OF TELEPHONE COMMON CARRIERS

Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Order, Docket No. CC 78-302.

SUMMARY: On petition of American Telephone & Telegraph Co., the Acting Chief, Common Carrier Bureau, upon a finding of good cause, extends the times for filing comments and replies.

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DATES: Comments to be filed on December 1, 1978; and replies to be filed January 2, 1979.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Dr. Boyd Nelson, Common Carrier Bureau, 202-632-7084.

In the matter of changes in Parts 42 and 43 of the Commission's rules so as to Provide for the Reporting of Detailed Traffic Statistics of Telephone Common Carriers (CC Docket No. 78-302; See 43 FR 45892)

Adopted: November 2, 1978.

Released: November 3, 1978.

1. The American Telephone & Telegraph Co. (AT&T) has requested 32 additional days to comment upon the Notice of Proposed Rulemaking in the above captioned docket. It lists several reasons in support of its motion, only one of which appears to warrant more time. The fact that the proposed rule change does (as noted by AT&T in its Request) call for "reports on facilities in place" may justify additional time because AT&T was not forwarned of this requirement and the matter is an involved one which necessitates considerable time to adequately address.[1]

2. Furthermore, we have received a Request from General Telephone & and Electronics Corp. (GT&E) for an extension of time to permit an adequate review of the possibility of its participating in the process of submitting detailed traffic and other data. In the light of our action on AT&T's motion, it will not be necessary for us to consider GT&E's Request.

3. Accordingly, *it is ordered*, pursuant to delegated authority, That the Motion for Extension of Time, filed October 23, 1978, by American Telephone & Telegraph Co. is granted.

4. *It is further ordered*, That the dates for filing comments and replies in this proceeding are extended to the following:

Comments by December 1, 1978.

Replies by January 2, 1979.

LARRY F. DARBY,
Acting Chief, Common Carrier Bureau.

[FR Doc. 78-31715 Filed 11-8-78; 8:45 am]

[1] AT&T claims that the Notice "invites comments on pervasive, complex and costly computer format traffic, tariff and facilities systems . . ." We simply note that the formats and systems proposed are essentially those devised and utilized by the Bell System and AT&T's fear of "freezing present record keeping practices, reporting and data gathering techniques, and supporting procedures and data systems to an outmoded technology . . ." is always a factor whenever standard procedures and formats are proposed. However, there is sufficient flexibility in Commission procedures to handle any necessary changes if and when the need should arise.

[4910-59-M]

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[49 CFR Part 571]

[Docket No. 78-16; Notice 01]

MOTOR VEHICLE SAFETY STANDARDS

Occupant Protection in Interior Impact; Impact Protection for the Driver from the Steering Control System; Steering Control Rearward Displacement

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking and invitation for applications for financial assistance in the preparation of comments.

SUMMARY: Accident data show that the number of occupants being killed and injured in light trucks and vans is rapidly increasing. In view of this data and the requirement in the National Traffic and Motor Vehicle Safety act for the issuance of appropriate motor vehicle safety standards, this agency is proposing to amend several important occupant crash protection standards, standards Nos. 201, 203, and 204, to extend their applicability to light trucks, buses, and multipurpose passenger vehicles, such as vans. This proposal also responds to petitions filed by the Center for Auto Safety and Insurance Institute for Highway Safety. The performance requirements of standard No. 201 would reduce occupant deaths and injuries by requiring the use of energy absorbing material on such interior components as the instrument panel and seat backs. Standard No. 203 would reduce driver deaths and injuries by limiting the amount of force that can be exerted on the driver by the steering assembly in a frontal crash, while standard No. 204 would limit the rearward movement of the steering assembly to reduce the likelihood of death and injury to the driver.

DATES: Comments must be received on or before February 7, 1979. Applications for financial assistance in commenting on this notice must be received on or before December 11, 1978. The proposed effective date for the extension of standard No. 201 is September 1, 1980. The proposed effective date for the extension of standards Nos. 203 and 204 is September 1, 1980, for vehicles that are nonforward control. The proposed effective date for standards Nos. 203 and 204 for forward control vehicles is September 1, 1981.

ADDRESSES: Comments should refer to the docket number and must be submitted in writing to: Docket Section, National Highway Traffic Safety Administration, Room 5108, 400 Seventh Street SW., Washington, D.C. 20590. Applications for financial assistance should be submitted in writing to: Ms. Jeanette Feldman, Public Affairs and Consumer Participation, National Highway Traffic Safety Administration, Room 5232, 400 Seventh Street SW., Washington, D.C. 20590, 202-426-0670.

FOR FURTHER INFORMATION CONTACT:

Mr. Lee Stucki, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590, 202-426-2264.

SUPPLEMENTARY INFORMATION:

APPLICATIONS FOR FINANCIAL ASSISTANCE

NHTSA invites all qualified individuals and organizations financially unable to participate in this proceeding to apply for financial assistance. All applications submitted before the deadline specified at the beginning of this notice will be examined by an evaluation board, composed of NHTSA and other Department of Transportation officials, to determine whether each applicant is eligible to receive funding. Consideration of late applications is at the discretion of the evaluation board.

In general, an applicant is eligible if (1) it represents an interest whose representation can reasonably be expected to contribute to a full and fair determination of the issues in the proceeding, (2) its participation is reasonably necessary to represent that interest, (3) it can competently represent that interest, and (4) it lacks sufficient resources to participate in the absence of such assistance. If more than one applicant representing the same or similar interest is deemed eligible, the board will either select the applicant which can make the strongest presentation or select more than one applicant if the eligible applicants seek to represent significantly different points of view or proposals. Compensation is available only for reasonable out-of-pocket expenses necessary to the applicant's participation, to the extent the agency's budget for this purpose will permit. Payment is made as soon as possible after the selected applicant has completed its work and submitted a claim.

Each applicant should specify in its application which rulemaking actions and issues it proposes to address if its application for funding is approved, and the nature of its proposed work product. Applicants must submit as part of their application all information required by section 5 of the financial assistance regulations which governed the operation of last year's public participation demonstration programs. 42 FR 2864 (January 13, 1977). Failure to submit the required information may result in delays in evaluation and possible disqualification of the application.

BACKGROUND

From 1968 to 1977, the number of trucks and multipurpose passenger vehicles (MPV's) on the road increased 80 percent, from 15.7 million to 28.2 million, while the number of passenger cars increased only 32 percent, from 75.4 million to 99.8 million. Light truck and van sales account for the sharp increase in the number of trucks and MPV's. In 1968, light truck and van sales made up 80 percent of all truck and MPV sales and, by 1977, light truck and van sales increased to 89 percent of the market. All indications point to the continued rapid growth in both the number of light trucks and vans and the amount of miles traveled by those vehicles. Additional information on these and other matters discussed in this notice can be found in the agency's explanation of rulemaking and impact assessment which have been placed in the docket.

The increasing popularity of light trucks and vans has been accompanied by a marked increase in the number of fatalities and injuries to people riding in those vehicles. Crash statistics taken from the agency's Fatal Accident Reporting System (FARS) show that between 1975 and 1977, fatalities in light trucks and vans increased 25.2 percent, from 4,672 in 1975 to 5,848 in 1977 while the number of fatalities in passenger cars increased only 3.9 percent, from 25,929 fatalities in 1975 to 26,929 fatalities in 1977.

A further indication of the vulnerability of light truck and van occupants to injury is the difference in the fatality rates beween those vehicles and full-size passenger cars. In theory, the amount of harmful crash forces experienced by the occupants of a larger and heavier vehicle will be less than those experienced by the occupants of a smaller and lighter vehicle in the same type of crash. Although most light trucks and vans are comparable in weight to full-size passenger cars, the fatality rate for light truck and van occupants is higher. An NHTSA analysis of FARS data and exposure estimates for 1977 shows that 1975 and 1976 model year light trucks had 21.9 fatalities per billion miles and 1975-76 vans had 13.8 fatalities per billion miles compared to 11.7 fatalities per billion miles for full-size cars of the same model years. The agency believes that the differences in the fatality rates can be reduced by applying standards Nos. 201, 203 and 204 to light trucks and vans.

Research done by Karlson, Baker, and Morton on fatal injuries to tractor-trailer and light truck drivers found that "particular attention is needed to prevent steering assembly injuries of the chest and abdomen in drivers of heavy trucks and pickups." They reported that seven of the 22 light truck drivers they studied "had injury patterns and crash configurations consistent with steering column injuries." In addition, the researchers called for extending the applicability of standard No. 201 to trucks and vans. They also concluded that, "it is clear that our greatest need today is to apply available knowledge and technology. The fact that a medical examiner can autopsy the driver of a late-model truck and report 'typical steering column injuries' epitomizes our failure to take obvious and available steps to prevent injuries of long recognized etiology."

In its July 1978 study of light truck and van safety, the General Accounting Office (GAO) also concluded that the safety of those vehicles needs to be improved. GAO said that occupants of light trucks and vans should have "similar assurances as passenger car occupants against unreasonably hazardous dash panels, and steering columns, as well as side and roof structure."

In an effort to substantially reduce the number of deaths and injuries in light trucks, buses, and multipurpose passenger vehicles, the agency is proposing to extend the applicability of Federal Motor Vehicle Safety Standard No. 201, Occupant Protection in Interior Impact, Standard No. 203, Impact Protection for the Driver From the Steering Control System, and Standard No. 204, Steering Control Rearward Displacement. Such an extension has been sought in petitions for rulemaking made by the Center for Auto Safety and the Insurance Institute for Highway Safety.

The purpose of standard No. 201 is to reduce occupant injuries and fatalities by requiring that instrument panels, seat backs, sun visors, and arm rests be designed to lessen injuries when persons are thrown against them in crashes. Performance of the instrument panel and seat backs is measured by impacting those components at a speed of 15 miles per hour with a head form. The deceleration of the head form cannot exceed 80g's for more than 3 milliseconds.

The purpose of standard No. 203 is to reduce driver injuries and fatalities by requiring steering assemblies to absorb the impact forces which occur when the driver strikes the steering column in frontal crashes. The performance requirements of the standard specify that when the steering assembly is impacted at a speed of 15 miles per hour by a body block resembling a human torso and head, the force imposed by the body block on the steering control system shall not exceed 2,500 pounds.

Standard No. 204 is designed to reduce driver injuries and fatalities by limiting the rearward movement of the steering assembly. The standard prohibits more than five inches of rearward displacement of a vehicle's steering assembly when the vehicle is subjected to a 30-mile-per-hour frontal barrier crash.

This proposal would require all trucks, MPV's and buses, including forward control vehicles, to meet standards Nos. 203 and 204. In addition, each light truck, MPV and bus would have to be equipped with a lap and shoulder belt for the front outboard seating positions. Nonforward control vehicles are currently required to have passenger car-type lap and shoulder belts with inertial reels, while forward control vehicles are only required to have a lap belt. At present, Volkswagen voluntarily equips its forward control vehicles with passenger car-type lap and shoulder belts and both General Motors and Chrysler offer lap and shoulder belts as optional equipment for their forward control vehicles. Because a lap and shoulder belt provides more protection than a lap belt against contract with interior vehicle structures in a crash, the agency believes that such belts should be required in all forward control vehicles.

The agency intends to propose additional rulemaking to eliminate the forward control exemption found in other Federal motor vehicle safety standards.

The agency has previously given notice that it was considering applying standards Nos. 203 and 204 to forward control vehicles. In September 1970, the agency formally proposed upgrading standards Nos. 201, 203, and 204 and extending them to all multipurpose passenger vehicles, trucks and buses with a gross vehicle weight rating of 10,000 pounds or less, including forward control vehicles (35 FR 1490). In explaining why it was proposing to apply the standards to forward control vehicles, the agency said that "the need for protection" in those vehicles "is evidently as great as with conventional vehicles." The agency pointed out that "drivers of these vehicles need protection from steering control displacement that occurs from crushing of the front of the vehicle as well as from displace-

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ment of the steering gear box." The agency reiterates those reasons in issuing this proposal.

EFFECTIVENESS OF CURRENT STANDARDS

The accident experience of passenger cars complying with standards Nos. 201, 203, and 204 continues to show that those standards have substantially reduced occupant injuries. NHTSA has recently conducted a preliminary analysis of data from the agency's National Crash Severity Study file comparing injuries sustained by occupants of cars manufactured before standards Nos. 201, 203, and 204 went into effect, with injuries sustained by occupants of cars manufactured after the standards went into effect.

To determine the effectiveness of standard No. 201, the analysis looked at injuries caused by components covered by the standard, such as instrument panels, seat backs, arm rests and sun visors. The analysis estimated that standard No. 201 reduced severe to fatal occupant injuries (i.e., injuries with an abbreviated injury scale ranking of 3 or more) by approximately 23.2 percent. This and other similar figures in this notice are averages of the results of several methodologies discussed in the agency's explanation of rulemaking and impact assessment. The analysis also estimated that the probability of an occupant injured in a crash being injured by a component covered by standard No. 201 was 22.2 percent. Thus, multiplying the probability of injury (i.e., 22.2 percent) by the effectiveness of the standard in reducing serious and fatal injuries (i.e., 23.2 percent) the analysis estimated that the overall reduction in severe to fatal injuries attributable to standard No. 201 is 5.2 percent.

A similar comparison was made for injuries in cars manufactured before and after standards Nos. 203 and 204 went into effect. The comparison looked at two sets of driver injuries that occurred in frontal crashes. One set consisted of injuries that could be specifically attributed to contact with the steering assembly; the other set consisted of neck, chest and abdomen injuries, sustained by drivers in frontal crashes, the type of steering assembly related injuries the standards are designed to reduce. The comparison found that standards Nos. 203 and 204 reduced severe to fatal injuries attributable to steering assembly by an average of 14 percent. The probability of an injured driver receiving an injury specifically attributable to the steering assembly was estimated to be 20.9 percent. The analysis estimated that standard Nos. 203 and 204 produced an overall reduction of 2.9 percent in severe to fatal driver injuries.

Because passenger cars, light trucks and vans all share the same motoring and crash environment, unrestrained passengers in those vehicles face a similar risk of injury presented by hazardous instrument panels and rigid steering assemblies. The agency has tentatively concluded that applying standards Nos. 201, 203, and 204 to light trucks and vans can result in a reduction of deaths and injuries comparable to the reduction experienced in passenger cars complying with those standards.

In the case of standard No. 201, information supplied by Ford for the General Accounting Office's light truck and van safety study shows that extending the applicability of the standard to light trucks and vans will reduce occupant deaths and injuries. Ford estimated that standard No. 201 would reduce severe to fatal injuries to front seat occupants in frontal crashes by 17 percent. According to Ford, the probability of being injured by a component covered by standard No. 201 is 12 percent. Thus, Ford said that the overall reduction in severe to fatal injuries attributable to the standard is 2 percent.

Ford told GAO that its analysis of accident data showed that standards Nos. 203 and 204 would reduce severe to fatal injuries to light truck drivers in frontal crashes by 11.5 percent. Ford estimated that there is a 30 percent probability of being injured by the steering assembly and thus the overall injury reduction in light trucks attributable to standards Nos. 203 and 204 is 3.4 percent. However, it said its "presently available energy absorbing column system will not function in a van as van columns are presently packaged," and thus it assumed its current system would not reduce any deaths or injuries in vans. As with Ford, GM cited the difficulty of meeting standards Nos. 203 and 204 in vans because of their limited frontal structure and steep steering column mounting angles. In commenting on this notice, manufacturers are specifically requested to indicate the degree to which their current vehicles comply with standards Nos. 201, 203, and 204 so that the agency will have up-to-date information from all manufacturers.

Work done by Volkswagen and Chrysler shows that, even in forward control vans with limited frontal structure and steep steering column mounting angles, currently available designs that comply with standards Nos. 203 and 204 are practicable. In a 1977 society of Automotive Engineers paper, Volkswagen reported that it had developed a steering assembly currently for use in its forward control vans that can meet or exceed the performance requirements of standards Nos. 203 and 204.

Chrysler has told the agency that their 1979 model vans, which are forward control vehicles, incorporate an energy-absorbing steering assembly that can probably comply with standards 203 and 204.

UPGRADING STANDARD'S REQUIREMENTS

The agency is aware of data from laboratory tests and investigations of real-world crashes which indicates that while energy absorbing steering assemblies complying with standard No. 203 have substantially reduced driver deaths and injuries, further requirements may be needed to provide additional protection in angular impacts. The Center for Auto Safety and the Insurance Institute for Highway Safety sought additional requirements for steering assemblies in angular impacts in their standard No. 203 petitions for rulemaking. The agency is currently conducting tests to determine what additional requirements may be appropriate to increase protection in angular impacts. The agency is actively working on that testing and on analysis of accident data concerning the performance of energy absorbing steering assemblies in angular impacts and expects to begin rulemaking by the beginning of next year to increase the performance requirements of the standard. However, because of the demonstrated effectiveness of energy absorbing steering assemblies in passenger cars, the agency does not want to delay providing the benefits of that protection to the drivers of light trucks, buses and multipurpose passenger vehicles, while it continues to examine the issue of whether to set additional performance requirements.

The agency is also evaluating whether to extend the applicability of standards Nos. 201, 203, and 204 to large trucks (i.e., trucks with a GVWR greater than 10,000 pounds). The agency invites comments on appropriate performance requirements for those vehicles.

COST AND LEADTIME

The NHTSA has conducted a preliminary evaluation of the economic and other consequences of the proposal on the public and private sector. A copy of the impact assessment has been placed in the docket for this rulemaking.

The agency's cost estimate for meeting standards Nos. 201, 203, and 204 in light trucks, buses and multipurpose passenger vehicles reflect the substantial compliance of many of those vehicles with the standards. For example, General Motors told GAO that most of its current light trucks generally meet the requirements of standard No. 201. Chrysler also told GAO that its current light trucks and multipurpose passenger vehicles generally meet

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standard No. 201. As already pointed out, Chrysler and Volkswagen have developed designs that apparently comply with standards Nos. 203 and 204. In its comments to GAO, GM indicated that some of its light trucks may already meet standard No. 203.

The estimated retail price increase (including a combined 25 percent profit for the manufacturer and dealer) resulting from meeting standard No. 201 in trucks and vans that do not currently have any components that comply with the standard and which only have front seats is approximately $21. In the case of standards Nos. 203 and 204, the estimated retail price increase for noncomplying nonforward control trucks, buses and multipurpose passenger vehicles is $8 to $26. Based on the Chrysler and Volkswagen examples of apparently complying steering assembly designs in forward control vans with limited frontal structures, the agency estimates that manufacturers need not make major modifications to forward control vehicles to comply with standards Nos. 203 and 204, and thus the cost of compliance will not be substantial.

Given the fact that many of the vehicles to which this proposal would apply are in partial or full compliance with standards Nos. 201, 203, and 204, the estimated average retail price increase per vehicle will at most be between $10 and $20. The actual average retail price increase should be even less, since the agency's estimate assumes that vehicles whose current level of compliance is unknown do not have any components which comply with standards Nos. 201, 203, and 204, when in fact those components may fully or partially meet the standards.

The proposed effective date is September 1, 1980, for standard No. 201 in all trucks, multipurpose passenger vehicles and buses and for standards Nos. 203 and 204 in nonforward control vehicles. The proposed effective date is based on engineering judgment and analysis of available information, including information prepared for the agency by Pioneer Engineering on the extent to which current vehicles incorporate designs related to the requirements of standards Nos. 201, 203, and 204 and the amount of time necessary to incorporate complying designs, and the material submitted by manufacturers to GAO and NHTSA indicating the degree to which their current vehicles comply with standards Nos. 201, 203, and 204.

The proposed effective date for complying with standards Nos. 203 and 204 in forward control trucks, buses, and multipurpose passenger vehicles is September 1, 1981, to allow manufacturers sufficient leadtime to make any necessary modifications to those vehicles.

As in the case with all proposals, all provisions of this proposal are tentative. Provisions in the final rule may vary with those in the proposal consistent with the purposes of this rulemaking.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a succinct and concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the chief counsel, NHTSA, at the address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the docket section. Any claim of confidentiality must be supported by a statement demonstrating that the information falls within 5 U.S.C. section 552(b)(4), and that disclosure of the information is likely to result in substantial competitive damage; specifying the period during which the information must be withheld to avoid that damage; and showing that earlier disclosure would result in that damage. In addition, the commenter or, in the case of a corporation, a responsible corporate official authorized to speak for the corporation must certify in writing that each item for which confidential treatment is requested is in fact confidential within the meaning of section 552(b)(4) and that a diligent search has been conducted by the commenter or its employees to assure that none of the specified items has previously been disclosed or otherwise become available to the public.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for considertion in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it it recommended that interested persons continue to examine the docket for new material.

The principal authors of this notice are Mr. Lee Stucki, Office of Vehicle Safety Standards, and Mr. Stephen Oesch, Office of Chief Counsel.

In consideration of the foregoing, it is proposed that the following amendments be made in part 571, title 49 of the Code of Federal Regulations:

1. Section S2 of Standard No. 201, Occupant Protection in Interior Impact (49 CFR 57.201), would be amended to read as follows:

§ 571.201 Standard No. 201; Occupant protection in interior impact.

. . . . . .

S2. *Application.* This standard applies to passenger cars and to multipurpose passenger vehicles, trucks and buses with a GVWR of 10,000 pounds or less.

. . . . . .

2. Section S2 and S4 of Standard No. 203, Impact Protection for the Driver from the Steering Control System (49 CFR 571.203), would be amended and S5 would be added to Standard No. 203 to read as follows:

§ 571.203 Standard No. 203; Impact protection for the driver from the steering control system.

. . . . . .

S2. *Application.* This standard applies to passenger cars and to multipurpose passenger vehicles, trucks and buses with a GVWR of 10,000 pounds or less. However, it does not apply to vehicles that conform to the frontal barrier crash requirements (S5.1) of standard No. 208 (49 CFR 571.208) by means of other than seat belt assemblies.

. . . . . .

S4. *General requirements.*

S4.1 *Passenger cars.* Each passenger car shall meet the performance requirements of S5.1 and S5.3.

S4.2 Multipurpose passenger vehicles, trucks and buses with a GVWR of 10,000 pounds or less. Each multipurpose passenger vehicle, truck and bus with a GVWR of 10,000 pounds or less manufactured on or after September 1, 1980, shall meet the requirements of S5.1, S5.2 and S5.3, except that forward control vehicles manufactured before September 1, 1981, may instead meet the requirements of S5.2.

S5. *Impact protection requirements.*

S5.1 When the steering control system is impacted by a body block in accordance with Society of Automotive Engineers Recommended Practice J944, "Steering Wheel Assembly Laboratory Test Procedure," December 1965, or an approved equivalent, at a relative velocity of 15 miles per hour,

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the impact force developed on the chest of the body block transmitted to the steering control system shall not exceed 2,500 pounds.

S5.2 A type 2 seat belt assembly that conforms to § 571.209 shall be installed for each front outboard designated seating position.

S5.3 The steering control system shall be so constructed that no components or attachments, including horn actuating mechanisms and trim hardware, can catch the driver's clothing or jewelry during normal driving maneuvers.

3. Section S2 and S4 of Standard No. 204, Steering Control Rearward Displacement (49 CFR 571.204), would be amended and S5 would be added to standard No. 204 to read as follows:

§ 571.204 Standard No. 204; Steering control rearward displacement.

• • • • •

S2. *Application.* This standard applies to passenger cars and to multipurpose passenger vehicles, trucks and buses with a GVWR of 10,000 pounds or less.

• • • • •

S4. *General requirements.*

S4.1 *Passenger cars.* Each passenger car shall meet the requirements of S5.1.

S4.2 Multipurpose passenger vehicles, trucks and buses with a GVWR of 10,000 pounds or less. Each multipurpose passenger vehicle, truck or bus with a GVWR of 10,000 pounds or less, manufactured on or after September 1, 1980, shall meet the requirements of S5.1 and S5.2, except that forward control vehicles manufactured before September 1, 1981, may instead meet the requirements of S5.2.

S5. *Rearward displacement requirements.*

S5.1 The upper end of the steering column and shaft shall not be displaced horizontally rearward parallel to the longitudinal axis of the vehicle relative to an undisturbed point on the vehicle more than 5 inches, determind by dynamic measurement, when the vehicle is impacted perpendicularly into a fixed collision barrier at a forward longitudinal velocity of 30 miles per hour.

S5.2 A Type 2 seat belt assembly that conforms to § 571.209 shall be installed for each front outboard designated seating position.

(Sec. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50 and 501.8.)

Issued on November 1, 1978.

A. C. MALLIARIS,
Acting Associate Administrator for Rulemaking.

[FR Doc. 78-31440 Filed 11-8-78; 8:45 am]

[4910-59-M]

[49 CFR Part 571]

[Docket No. 1-22; Notice 7]

FEDERAL MOTOR VEHICLE SAFETY STANDARDS

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking responds to petitions for reconsideration of the August 17, 1978, notice (43 FR 36448) which amended Federal Motor Vehicle Safety Standard No. 115, vehicle identification number. In response to petitions to utilize the fixed format method for improving the accuracy of the vehicle identification number (VIN), this method is proposed for use, in conjunction with the check digit system, for passenger cars, multipurpose passenger vehicles with a gross vehicle weight rating of 10,000 pounds or less and trucks with a gross vehicle weight rating of 10,000 pounds or less. In response to petitions to reposition the check digit within the VIN to further harmonize it with the standard proposed by the International Standards Organization, the repositioning of the check digit in the fourth position and a technical change in the check digit procedure is proposed. In response to petitions to eliminate the requirement that gross vehicle weight rating be encoded in passenger car VINs, the elimination of this requirement is proposed. It is also proposed that Standard No. 115 be amended to allow optional compliance with the amended Standard between September 1, 1979 and September 1, 1980, and that the weight of vehicles with a gross vehicle weight rating of over 10,000 pounds be encoded in the VIN with more specificity.

PROPOSED EFFECTIVE DATE: September 1, 1979, for optional compliance with the standard as amended; September 1, 1980, for mandatory compliance with the standard as amended.

COMMENT CLOSING DATE: December 11, 1978.

ADDRESSES: Comments should refer to the docket number and be submitted to: Room 5108—Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT:

Frederic Schwartz, Jr., Office of the Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590, 202-426-1834.

SUPPLEMENTARY INFORMATION: On August 17, 1978, the National Highway Traffic Safety Administration (NHTSA) published a notice amending Federal Motor Vehicle Safety Standard No. 115, Vehicle identification number (43 FR 36448). The new standard established a sixteen character vehicle identification number (VIN) with an associated check digit. The check digit is a device for insuring the accuracy of a VIN, and is derived from a mathematical computation utilizing the VIN.

The VIN itself consists of three sections. The first section is made up of three characters which identify the manufacturer, make and type of vehicle. The second section is made up of five characters which identify the attributes of the vehicle. This is called the vehicle descriptor section (VDS). The third section is made up of eight characters which identify the model year, plant of manufacture, and production sequence of a specific vehicle.

The amendment was issued after an exhaustive review of past efforts to establish a VIN system by various standard-setting organizations, particularly the Vehicle Equipment Safety Commission (VESC) and the International Standards Organization (ISO), as well as the comments in response to prior rulemaking notices and other available information. A number of petitions for reconsideration were received. To obtain further public comment on issues associated with several petitions, this proposal is being issued. All other petitions for reconsiderations are answered in a separate notice issued today.

ASSURING THE ACCURACY OF THE VIN

VIN errors take place when a person improperly transcribes the VIN prior to its entry into a recordkeeping system. The transcription error can take place when the VIN is being copied from the VIN plate on the vehicle, when it is being copied from a form on which it has been printed or written, or when it is heard. The most common forms of VIN error result from misreading one or more characters, transposing characters, omitting one or more characters and thereby shifting the position of the others, and mistaking one spoken character for another. Errors generally occur because of the length of the VIN and the impossiblity of remembering it in its entirety. Errors also occur due to various environmental and psychological reasons when the VIN is being read, heard or transcribed.

Throughout the rulemaking process, two methods of improving the accuracy of recording the VIN were considered by the NHTSA. One system, requiring a fixed format, specified whether the characters which comprise the VIN shall be alphabetic, numeric or either. In this way, clerks transcribing and computers receiving the VIN can identify errors involving the substitution of a numeric character for an alphabetic character or vice versa.

The other system which was considered utilized a check digit. The check digit is the result of a arithmetic computation involving numerical values assigned to each VIN character.

After a comprehensive study of the two systems, and a consideration of their relative advantages and disadvantages, the NHTSA concluded that the check digit system should be the primary method of insuring the accuracy of the VIN.

Petitions were received from a number of States, State Farm Insurance Co., the Vehicle Equipment Safety Commission (VESC), and the American Association of Motor Vehicle Administrators requesting that the fixed format system recommended by the VESC be substituted for the check digit system. The Insurance Institute for Highway Safety, the National Safety Council, and several individual insurance companies petitioned to incorporate both systems in the standard. Several foreign manufacturers petitoned to eliminate the check digit, as they believed there was no need to utilize a means of ensuring the accuracy of the VIN.

The advantages of the fixed-format system were comprehensively outlined by the petitioners. The primary advantage is that a clerk can be easily familiarized with the appropriate VIN format, thus being able to tell immediately if an alphabetic character has been substituted for a numeric character or vice versa. Further, forms can be developed to make recognition of this type of error easier. This is important, the petitioners argued, because in many instances the initial transcription of the VIN is by hand, and there is no way to utilize the check digit process until a later stage. After the initial transcription, the petitioners believe, it becomes difficult to correct an erroneously recorded VIN.

The State of Maryland also raised the possibility that some States would refuse to use the check digit because it would require increased computer storage capability. In this instance, Maryland reasoned, there would be no check on the VIN's accuracy. Some petitioners also suggested that, based on the docket submissions, adopting the check digit was arbitrary and capricious.

The NHTSA considered carefully the advantages and disadvantages of the fixed format system. Under a fixed format system, an error would only be discovered if a letter was placed in a position reserved for a number, or vice versa. There would be no way to discover if an erroneous number or letter was placed in the position reserved for a character of the same type, e.g., a "7" placed where a "9" should be. The fixed format system would not detect transpositions in the first section, and only in limited instances in the second and third sections. The check digit system would reveal almost all transpositions within a VIN. Further, under the fixed format scheme urged by the petitoners, only six additional characters would be specified as to format. These would be in the 4th, 5th, 6th 7th, 11th, and 12th positions. The final rule provided for a fixed format for the 13th, 14th, 15th, and 16th positions, as well as specifying the character which delineated each model year.

The disadvantage of the check digit system adopted by the NHTSA is that it utilizes a arithmetic operation. While some petitioners also stated that additional computer storage capacity is needed to accommodate the check digit, the agency believes that this is clearly not the case as either the computer can be programed to eliminate the check digit prior to storage or the form on which the VIN is given to the key punch operator can be designed to indicate that the check digit is not to be entered. It should be noted that if the check digit is not stored, it can be regenerated by the computer prior to printing the VIN.

Petitioners are correct, however, in saying that the check digit system will not correct, in many instances, errors in VIN transcription made in the field since data processing equipment is not generally available. They are also correct in saying that utilizing a fixed format for the six additional positions in the VIN would aid in avoiding certain kinds of errors.

The agency has tentatively concluded that the paramount safety concern in relation to the VIN is obtaining the most accurate file for defect and noncompliance recall and other purposes, and that this need takes precedence over utilizing the VIN for research and other purposes. Consequently, the agency has decided to propose adoption of the fixed format system, to be used in conjunction with the check digit system, to insure the accuracy of the VIN for passenger cars, multipurpose passenger vehicles with a gross vehicle weight rating of 10,000 pounds or less and trucks with a gross vehicle weight rating of 10,000 pounds or less. Thus, in a number of cases an erroneous VIN can be corrected while the vehicle or its owner is close at hand. This should aid States and other users in maintaining a relatively error-free VIN file at the least possible cost.

These vehicles represent by far the greatest number of vehicles on the roads and involved in recalls. Further, these vehicles are the most likely to have their VIN's transcribed improperly since they are often transcribed in the first instance by owners with little experience with VIN's and are often transmitted over the telephone or police radio. The fixed format proposed is that adopted by the VESC. Specific comments are requested concerning any difficulties which manufacturers foresee in fixing either the vehicle descriptor section or the last six positions of the VIN. If any difficulties are foreseen, methods of mitigating these difficulties are requested.

The agency is aware that by utilizing a fixed format, the capacity of the VIN to reflect vehicle description information would be reduced substantially. Consequently, the agency is proposing to eliminate the requirement that the gross vehicle weight rating of passenger cars be encoded in the VIN. This will significantly lessen the information which must be encoded in the VIN. In light of this proposal, the petition of BMW of North America to increase the weight increments to be encoded in the VIN has been denied in the companion notice issued today. The requirement that restraint system type be included is retained, as little informational capacity is required to encode this information.

CHECK DIGIT POSITION

A number of the European vehicle manufacturers petitioned to alter the position of the check digit in the VIN. In the final rule, the check digit occupies the ninth position and immediately follows the vehicle descriptor section (VDS). Petitioners requested that it be repositioned in the fourth position, immediately preceding the VDS. This, they argue, will aid them in harmonizing the VIN they intend to use in Europe with the VIN required by the U.S. VIN standard, as it will allow them to retain the same final 13 characters for vehicles sold worldwide. Several States petitioned to move the check digit to the last position of the VIN to allow it to be disregarded with ease.

The NHTSA proposes, in the interest of ease of compliance by the manufacturers, that the check digit be placed in the fourth position of the VIN. Comments are specifically requested from the States concerning the advantages of placing the check

digit in the last position and the disadvantages of placing the check digit in the fourth position.

The National Highway Traffic Safety Administration believes it is important to harmonize, to the extent feasible, the rulemaking activities of the agency with standards in effect outside the United States. By retaining the check digit in the VDS, the NHTSA standard would not be incompatible with the standard proposed by the International Standards Organization (ISO). A VIN in the format required by this standard would satisfy the VIN requirements set forth by the ISO, i.e., it is possible to comply simultaneously with the NHTSA and ISO standards. The agency understands that to reposition the check digit at the end of the VIN, however, would make the two standards incompatible. Comments relating to the accuracy of this appraisal are requested.

It appears to the agency that whether the check digit is placed in the fourth or last position would not demonstrably affect the ease with which the digit can be used or eliminated. A computer can be programed to disregard the fourth character just as easily as the last character. Similarly, a clerk who is trained to determine which characters should be alphabetic and which should be numeric can be trained to omit the check digit when it is placed in the fourth position. Forms used to aid clerks to apply alphabetic/numeric requirements can presumably be used to identify the check digit location. The agency requests detailed cost data and explanation of the problems which the States believe may be caused by placing the check digit in the fourth position instead of the last one. Comment is requested on the need for and value of requiring hyphens, underlining or other means of highlighting the check digit to aid persons in locating it on the VIN plate. For example, hyphens could be required before and after the digit. Comment is also requested on the extent to which forms used by police officers, titling clerks and others could be voluntarily designed by users to highlight the check digit when a VIN is recorded on such forms.

The VESC, the AAMVA, and several States believe that the repositioning of the check digit in the final rule from the seventeenth position to the the ninth position is a substantive change concerning which the public was not given the opportunity to comment. Consequently, in the view of the petitioners, the Administrative Procedure Act (5 U.S.C. 551, et seq.) was violated.

The agency does not agree with this argument. The NPRM raised the issue of check digit location and discussed methods for eliminating the check digit before storage of the VIN. Further, for the reasons stated above, the ease of using or deleting the check digit does not appear to be demonstrably affected by the location of the check digit. Accordingly, NHTSA concludes that the argument about notice and impact is without merit. The agency notes also that the argument is mooted by this notice.

One of the steps in the check digit process is to assign a numerical value to each alphabetic character in the VIN. BMW of North America (BMW) also petitioned to assign the identical numerical value to the alphabetic characters in the check digit process as is currently used in the Federal Republic of Germany. The agency proposes to adopt this change in the interest of international harmonization.

Optional Early Compliance

It is apparent from the comments received that some manufacturers can comply with the amended standard prior to September 1, 1980. Consequently, it is proposed that the standard be amended to allow voluntary compliance with the amended standard between September 1, 1979, and September 1, 1980. Comments are requested on whether an earlier or later beginning date for optional compliance should be permitted.

Weight increments for vehicles with a gross vehicle weight rating greater than 10,000 pounds

To allow more effective use of weight data for vehicles with a gross vehicle weight rating greater than 10,000 pounds, it is proposed that the weight data for these vehicles be submitted in 5,000 pound increments. Comments concerning the cost and feasibility of this proposal are specifically requested.

As in the case with all proposals, all provisions of this proposal are tentative. Provisions in the final rule may vary with those in the proposal consistent with the discussion and questions in this notice and the purposes of this rulemaking. Options may be added or deleted.

In consideration of the foregoing, it is proposed that § 571.115 of Title 49, Code of Federal Regulations, be amended as appears below. It should be noted that the proposed amendments also reflect the amendments to the rule issued today.

1. It is proposed that S4.5.2 be amended by deleting the requirements that the gross vehicle weight rating of passenger cars be decipherable from the second section of the VIN, by adding weight increments for vehicles with a gross vehicle weight rating greater than 10,000 pounds and by specifying the format for passenger cars, multipurpose passenger vehicles with a gross vehicle weight rating of 10,000 pounds or less and trucks with a gross vehicle weight rating of 10,000 pounds or less. As revised, S4.5.2 reads as follows:

§ 571.115 Vehicle identification number.

* * * * *

S4.5.2 The second section shall consist of five characters which shall uniquely identify the attributes of the vehicle as specified in table I. For passenger cars, multipurpose passenger vehicles with a gross vehicle weight rating of 10,000 pounds or less, and trucks with a gross vehicle weight rating of 10,000 pounds or less, the first and second characters shall be alphabetic and third and fourth characters shall be numeric. The fifth character may be either alphabetic or numeric. The characters utilized and their placement within the section may be determined by the manufacturer, but the specified attributes must be decipherable with information supplied by the manufacturer under S6. In submitting data to the NHTSA relating to the gross vehicle weight rating, the following designations shall be utilized. No designations are specified for the VIN.

A: Not greater than 1,000 pounds.
B: 1,000 pounds–1,500 pounds.
C: 1,500 pounds–2,000 pounds.
D: 2,000 pounds–2,500 pounds.
E: 2,500 pounds–3,000 pounds.
F: 3,000 pounds–3,500 pounds.
G: 3,500 pounds–4,000 pounds.
H: 4,000 pounds–4,500 pounds.
I: 4,500 pounds–5,000 pounds.
J: 5,000 pounds–5,500 pounds.
K: 5,500 pounds–6,000 pounds.
L: 6,000 pounds–6,500 pounds.
M: 6,500 pounds–7,000 pounds.
N: 7,000 pounds–7,500 pounds.
O: 7,500 pounds–8,000 pounds.
P: 8,000 pounds–8,500 pounds.
Q: 8,500 pounds–9,000 pounds.
R: 9,000 pounds–9,500 pounds.
S: 9,500 pounds–10,000 pounds.
T: 10,000 pounds–15,000 pounds.
U: 15,000 pounds–20,000 pounds.
V: 20,000 pounds–25,000 pounds.
W: 25,000 pounds–30,000 pounds.
X: 30,000 pounds–35,000 pounds.
Y: 35,000 pounds–40,000 pounds.
Z: 40,000 pounds–45,000 pounds.
AA: 45,000 pounds–50,000 pounds.
AB: 50,000 pounds–55,000 pounds.
AC: 55,000 pounds–60,000 pounds.
AD: 60,000 pounds–65,000 pounds.
AE: 65,000 pounds–70,000 pounds.
AF: 70,000 pounds–75,000 pounds.
AG: 75,000 pounds–80,000 pounds.
AH: Over 80,000 pounds.

TABLE I

Type of vehicle	*Information decipherable*
Passenger car	Line, series, body type, engine type, and restraint system type.
Multipurpose passenger vehicle.	Line, series, body type, engine type, and gross vehicle weight rating.
Truck	Model or line, series, chassis, cab type, engine type, brake system, and gross vehicle weight rating.
Bus	Model or line, series, body type, engine type, and brake system.
Trailer	Type of trailer, series, body type, length, and axle configuration.
Motorcycle	Type of motorcycle, line, engine type, and net brake horsepower.

TABLE I—Continued

Type of vehicle	*Information decipherable*
Truck	Model or line, series, chassis, cab type, engine type, brake system, and gross vehicle weight rating.
Bus	Model or line, series, body type, engine type, and brake system.
Trailer	Type of trailer, series, body type, length, and axle configuration.
Motorcycle	Type of motorcycle, line, engine type, and net brake horsepower.

2. S4.5.3 is revised to specify that the third through the eighth character of the third section shall be numeric for passenger cars, multipurpose passenger vehicles with a gross vehicle weight rating of 10,000 pounds or less and trucks with a gross vehicle weight rating of 10,000 pounds or less. The requirements for other vehicles remain the same. As revised S4.5.3 reads as follows:

S4.5.3 The third section shall consist of eight characters, of which the third through the eighth shall be numeric for passenger cars, multipurpose passenger vehicles with a gross vehicle weight rating of 10,000 pounds or less, and trucks with a gross vehicle weight rating of 10,000 pounds or less, and the fifth through the eighth shall be numeric for all other vehicles.

3. S5.1 is revised to indicate the check digit shall immediately precede the fourth character of the VIN. As revised S5.1 reads as follows:

S5.1 A check digit shall be provided with each vehicle identification number. The check digit shall immediately precede the fourth character of the VIN. It shall appear with the vehicle identification number on the vehicle and on any transfer documents containing the vehicle identification number and prepared by the manufacturer to be given to the first owner for purposes other than resale.

4. Table IV is revised to reflect the arithmetic values currently in use in Germany, and the example is amended to indicate the repositioning of the check digit to the fourth position and the fixed format proposed for the vehicle descriptor section.

TABLE IV

A=1	J=1	T=3
B=2	K=2	U=4
C=3	L=3	V=5
D=4	M=4	W=6
E=5	N=5	X=7
F=6	P=7	Y=8
G=7	R=9	Z=9
H=8	S=2	

EXAMPLE

Vehicle Identification number character:
1 G 4 4 A H 5 9 H 5 G 1 1
8 3 4 1

Assigned value:
1 7 4 4 1 8 5 9 8 5 7 1 1 8
3 4 1

Multiply by weight factor:
8 7 6 0 5 4 3 2 10 9 8 7 6 5
4 3 2

Add products:
8+ 49+24+ 0+ 5+ 32+15+18+80+
45+56+7+ 6+ 40+12+12+2=411

Divide by 11:
411/11=37 4/11

Check digit:
4 (compare to character in 4th position).

5. S4.1 is revised to permit compliance with the amended standard effective September 1, 1980 or the current standard at the option of the manufacturer until September 1, 1980. As revised S4.1 reads as follows:

S4.1 Each passenger car shall have a vehicle identification number which meets, at the option of the manufacturer, the requirements of this standard or the requirements of this standard which will become mandatory on September 1, 1980.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted. All comments must be limited not to exceed 15 pages in length. Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a succinct and concise fashion.

In the case of comments that contain materials for which confidential treatment is requested, those materials should be deleted from the copies submitted to the docket. A copy of the complete comments should be submitted to the Office of chief counsel at the above address, with an indication of which portions of the comments are the subject to the request for confidentiality.

Because this notice does not raise issues which have not previously been raised and commented on in response to other notices, the administrator finds for good cause shown that a comment period of thirty days will be sufficient to respond to this notice.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

The principal authors of this proposal are Nelson Erickson of the Office of Vehicle Safety Standards and Frederick Schwartz, Jr., of the Office of Chief Counsel.

(Secs. 103, 112, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1401, 1407); delegations of authority at 49 CFR 501.8).

Issued on November 2, 1978.

MICHAEL M. FINKELSTEIN,
Associate Administrator for Rulemaking.

[FR Doc. 78-31421 Filed 11-2-78; 2:00 pm]

V 4 3 / 2 1 8 N 0 9 7 8 UMI

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

[6110-01-M]

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

COMMITTEE ON RATEMAKING AND ECONOMIC REGULATION

Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of meeting of the Committee on Ratemaking and Economic Regulation of the Administrative Conference of the United States, to be held at 10 a.m., Thursday, December 14, 1978, in Hearing Room B, Interstate Commerce Commission, 12th and Constitution Avenue NW., Washington, D.C.

The Committee will meet to review the status of the two newly-commissioned projects by Prof. Alfred C. Aman examining the remedial orders and exceptions procedures of the Department of Energy.

Attendance is opened to the interested public, but limited to the space available. Persons wishing to attend should notify this office at least two days in advance. Members of the public may be permitted to present oral statements, if deemed appropriate by the Committee Chairman. Members of the public may also file a written statement with the Committee before, during or after the meeting.

For further information concerning this meeting, contact William C. Bush (202-254-7065). Minutes of the meeting will be available on request.

RICHARD K. BERG,
Executive Secretary.

NOVEMBER 2, 1978.

[FR Doc. 78-31625 Filed 11-8-78; 8:45 am]

[3410-02-M]

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

OFFICIAL AGENCY DESIGNATION

Assignment of Geographic Areas for the States of Idaho and Utah

AGENCY: Federal Grain Inspection Service.

ACTION: Notice.

SUMMARY: This notice announces the assignment of geographic areas to the Idaho State Department of Agriculture and the Utah State Department of Agriculture for the performance of official grain inspection functions. Both agencies were designated as official agencies on July 1, 1978, under the U.S. Grain Standards Act, as amended.

EFFECIVE DATE: Date of publication.

FOR ADDITIONAL INFORMATION CONTACT:

Edith A. Christensen, U.S. Department of Agriculture, Federal Grain Inspection Service, Compliance Division, 201 14th Street SW., Room 2405, Auditors Building, Washington, D.C. 20250, 202-447-8525.

SUPPLEMENTARY INFORMATION: The United States Grain Standards Act, as amended (7 U.S.C. 71 et seq.) (hereinafter the "Act"), has been amended to extensively modify the official grain inspection system. Pursuant to sections 7 and 7A of the Act (7 U.S.C. 79 and 79a) the Administrator of the Federal Grain Inspection Service (FGIS) has the authority to designate any State or local governmental agency, or any person, as an official agency for the conduct of all or specified functions involved in official inspection (other than appeal inspection), weighing and supervision of weighing of grain at locations where the Administrator determines there is a need for such services.

Geographic areas are assigned to each official agency purusant to section 7(f)(2) of the Act (7 U.S.C. 79(f)(2)). This section generally provides that not more than one official agency shall be operative at one time for any geographic area as determined by the Administrator.

The August 9, 1978, issue of the FEDERAL REGISTER (43 FR 35362) announced that on July 1, 1978, the Idaho State Department of Agriculture and the Utah State Department of Agriculture were designated as official agencies under the Act. The designations also included proposed assignments of geographic areas within which each official agency would operate.

NOTE.—Section 7(f)(3) of the Act (7 U.S.C. 79(f)(3)) provides that, except as authorized by the Administrator, no official agency shall officialily inspect under the Act any official or other sample drawn from a lot of grain unless the lot of grain is physically located within the geographic area assigned to the agency at the time such sample is drawn.

Interested persons were given until September 8, 1978, to comment on the proposed geographic areas assigned to the Idaho and Utah State Departments of Agriculture. No comments were received regarding the August 9, 1978, notice.

After due consideration of all relevant matters and information available to the U.S. Department of Agriculture, the geographic areas assigned to the aforementioned agencies will remain as originally proposed. They are: *Idaho State Department of Agriculture*—The southern half of the State of Idaho, up to the northern boundaries of the counties of Adams, Valley, and Lemhi; and *Utah State Department of Agriculture*—The entire State of utah.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2870 (7 U.S.C. 79); sec. 9, Pub. L. 94-582, 90 Stat. 2875 (7 U.S.C. 79a).)

Done in Washington, D.C., November 6, 1978.

D. R. GALLIART,
Acting Administrator.

[FR Doc. 78-31720 Filed 11-8-78; 8:45 am]

[6320-01-M]

CIVIL AERONAUTICS BOARD

[Docket 28366]

DENVER-ALASKA SERVICE INVESTIGATION

Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter will be held on December 14, 1978, at 9:30 a.m. (local time), in Room 1003, Hearing Room D, Universal North Building, 1875 Connecticut Avenue NW., Washington, D.C.

In order to facilitate the conduct of the conference, parties are instructed to submit one copy to each party and six copies to the Judge of: (1) Proposed statements of issues; (2) proposed stipulations; (3) proposed requests for information and for evidence; (4) statements of positions; and (5) proposed procedural dates. The Bureau of Pricing and Domestic Aviation will circulate its material on or before November 28, 1978, and the other parties on or before December 5, 1978. The submissions of the other parties shall be limited to points on which they differ with the Bureau, and shall follow the numbering and lettering used by the Bureau to facilitate cross-referencing.

Dated at Washington, D.C., November 2, 1978.

JOHN J. MATHIAS,
Administrative Law Judge.

[FR Doc. 78-31732 Filed 11-8-78; 8:45 am]

[6320-01-M]

[Docket 32126]

TWIN CITIES-KANSAS CITY-OKLAHOMA-TEXAS ROUTE PROCEEDING

Postponement of Hearing

Notice is hereby given that the hearing in the above-entitled matter now assigned to be held on November 14, 1978 (43 FR 44875, September 29, 1978), at 10 a.m. in Room 1003, Hearing Room C, 1875 Connecticut Avenue NW., Washington, D.C., before the undersigned is postponed until further notice.

Dated at Washington, D.C., November 3, 1978.

ALEXANDER N. ARGERAKIS,
Administrative Law Judge.

[FR Doc. 78-31733 Filed 11-8-78; 8:45 am]

[3510-07-M]

DEPARTMENT OF COMMERCE

Bureau of the Census

SPECIAL CENSUS

The Bureau of the Census conducts a program whereby a local or State government can contract with the Bureau to conduct a special census of population. The content of a special census is ordinarily limited to questions on household relationship, age, race, and sex, although additional items may be included at the request and expense of the sponsor. The enumeration in a special census is conducted under the same concepts which govern the decennial census.

Summary results of special censuses are published semiannually in the *Current Population Reports*, Series P-28, prepared by the Bureau of the Census. For each area which has a special census population of 50,000 or more, a separate publication showing data for that area by age, race, and sex is prepared. If the area has census tracts, these data are shown by the tracts.

The data shown in the following table are the results of special censuses conducted since December 31, 1977, for which tabulations were completed between October 1, 1978, and October 31, 1978.

Dated: November 3, 1978.

MANUEL D. PLOTKIN,
Director,
Bureau of the Census.

State/Place or Special Area	County	Date of Census	Population
Arkansas			
Beedeville city	Jackson	July 18	187
Hoxie city	Lawrence	August 7	2,944
Colorado			
Pitkin County	---	June 14	10,749
Illinois			
Breese city	Clinton	July 18	3,446
Hanover Park village	Cook and DuPage	July 28	25,951
Jerseyville city	Jersey	July 26	7,252
Shorewood village	Will	August 2	4,224
Indiana			
Carmel town	Hamilton	July 13	18,050
Fishers town	Hamilton	July 13	1,350
Merrillville town	Lake	June 29	27,222
Minnesota			
Lake Elmo city	Washington	August 14	5,056
North Dakota			
Mohall city	Renville	August 21	1,081
Trenton Indian Service Area*	McKenzie and Williams	April 13	1,254
Ohio			
Westerville city	Deleware and Franklin	August 3	20,187
Pennsylvania			
Moosic borough	Lackawanna	August 14	5,423
Northampton township	Bucks	July 19	24,151
Wisconsin			
Greenfield city	Milwaukee	July 19	30,651

*Census conducted for selected households in McKenzie and Williams Counties.

[FR Doc. 78-31658 Filed 11-8-78; 8:45 am]

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[3510-25-M]

Foreign-Trade Zones Board

[Docket No. 13-78]

FOREIGN-TRADE ZONES—PIMA COUNTY, ARIZ.

Application and Public Hearing

Notice is hereby given that an application has been submitted to the Foreign-Trade Zones Board (the Board) by the Papago-Tucson Foreign-Trade Zone Corp., a private non-profit Arizona corporation, requesting authority to establish a general-purpose foreign-trade zone in Pima County, Ariz., within the San Xavier Industrial Park on the Papago Indian Reservation, adjacent to the Nogales, Arizona Customs port of entry. The applicant corporation was recently created by the Papago-Tucson Development Corp., an all-Indian nonprofit corporation, in an effort to help promote and develop the industrial park and provide employment for the Papago Reservation.

The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. section 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on November 3, 1978. The applicant is authorized to make this proposal under Title 44, Chapter 18, of the Arizona Revised Statutes of 1978.

The proposal calls for the establishment of a 23-acre general-purpose foreign-trade zone in Pima County within the southeastern portion of the San Xavier Industrial Park, located at U.S. Route 89 and Los Reales Road. The zone site is immediately west of the Tucson International Airport and south of the Tucson city limits. Initially a multipurpose building of at least 35,000 square feet will be constructed within the zone. The applicant has contracted with the Broadway Realty and Trust, Inc. of Tucson for the operation of the proposed zone.

The application contains economic data and information concerning the need for providing zone services to the Tucson area. Several firms have indicated their intention to use the zone for storage, assembly, light manufacturing, distribution, and exhibition activities on a wide range of products including building materials, leather goods, canned food, footwear, hardware items, cameras, burglar alarm systems, toys, and decorative household articles.

In accordance with the Board's regulations, an Examiners Committee has been appointed to investigate the application and report thereon to the Board. The Committee consists of: Hugh J. Dolan (Chairman), Office of the Secretary, U.S. Department of Commerce, 14th and E Streets NW., Washington, D.C. 20230; Lee D. Volle, District Director, U.S. Customs Service, P.O. Box 670, International and Terrace Streets, Nogales, Ariz. 85621; and Colonel Gwynn A. Teague, District Engineer, U.S. Army Engineer District Los Angeles, P.O. box 2711, Los Angeles, Calif. 90053.

As part of its investigation of the proposal, the Examiners Committee will hold a public hearing on December 5, 1978, beginning at 9 a.m., in the san Xavier/Papago Community Center on the Papago Indian Reservation in Pima County. The Community Center is next to the San Xavier del Bac Mission, located south of Tucson on San Xavier Mission Road, some 4 miles west of its intersection with I-19. The purpose of the hearing is to help inform interested persons about the proposal, to provide an opportunity for their expression of views, and to obtain information useful to the examiners.

Interested persons or their representatives are invited to present their views at the hearing. Such persons should, by November 28, notify the Board's executive secretary of their desire to be heard in writing at the address below or by phone 202-377-2862. In lieu of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the Examiners Committee, care of the executive secretary, at any time from the date of this notice through January 4, 1979. Evidence submitted during the post-hearing period is not desired unless it is clearly shown that the matter is new and material and that there are good reasons why it could not be presented at the hearing. A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations: Office of the Station Director, U.S. Customs Service, Gate A-2, Tucson International Airport, Tucson, Ariz. 85706; Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 6886-B, Washington, D.C. 20230.

Dated: November 3, 1978.

JOHN J. DAPONTE,
Executive Secretary,
Foreign-Trade Zones Board.

[FR Doc. 78-31660 Filed 11-8-78; 8:45 am]

[3510-22-M]

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

ALASKA DEPARTMENT OF FISH AND GAME

Issuance of Permit To Take and Import Marine Mammals

On October 3, 1978, notice was published in the FEDERAL REGISTER (43 FR 45628), that an application had been filed with the National Marine Fisheries Service by the Alaska Department of Fish and Game, Subport Building, Juneau, Alaska 99801, for a Permit to take by killing 100 ranged seals (*Phoca hispida*) and by tagging 200 bearded seals (*Erignathus barbatus*) for the purpose of scientific research.

Notice is hereby given that on November 3, 1978, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a scientific research permit for the above taking to the Alaska Department of Fish and Game, subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.; and Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668, Juneau, Alaska 99802.

Dated: November 3, 1978.

WINFRED H. MEIBOHM,
Associate Director, National
Marine Fisheries Service.

[FR Doc. 78-31667 Filed 11-8-78; 8:45 am]

[3510-22-M]

SOUTHWEST FISHERIES CENTER

Modification of Permit

Pursuant to §§ 216.33 (d) and (e) of the regulations governing the taking and importing of marine mammals, Scientific Research Permit No. 151 issued to the Southwest Fisheries Center, National Marine Fisheries Service, La Jolla, Calif. on November 19, 1976, is modified as follows:

Section B is modified by deleting section B-5 and substituting therefore the following:

This permit is valid with respect to the taking and importing authorized until December 31, 1981.

The permit and documentation regarding the modification are available in the following offices: Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.; and Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, Calif. 90731.

Dated: November 2, 1978.

WINFRED H. MEIBOHM,
Associate Director,
National Marine Fisheries Service.

[FR Doc. 78-31666 Filed 11-8-78; 8:45 am]

[3510-17-M]

Office of the Secretary

ADVISORY COMMITTEE ON FEDERAL POLICY ON INDUSTRIAL INNOVATION

Supplemental Notice of Meetings of Subcommittees

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), public notice was given, on October 30, 1978 (43 FR 50489), that three subcommittees of the Commerce Department's Advisory Committee on Federal Policy on Industrial Innovation would each hold a series of open meetings between November 1, 1978, and December 15, 1978. Those three subcommittees are the Advisory Subcommittee on Federal Procurement and Direct Support of R. & D.; the Advisory Subcommittee on Regulation of Industry Structure and Competition; and the Public Interest Advisory Subcommittee.

The October 30 public notice did not list specific meeting times and places because the subcommittees had not yet been organized. The notice indicated reasons why the subcommittees would need to hold meetings within a very brief time after their formation, and was designed to provide the public with the maximum practicable amount of advance information concerning the subcommittees' meetings. It stated that supplementary notices would list exact meeting times and locations as they were set.

The three subcommittees have now been organized, and meetings have been scheduled. The purpose of this supplementary notice is to announce the dates, locations and times of the following subcommittee meetings:

ADVISORY SUBCOMMITTEE ON INDUSTRIAL STRUCTURE AND COMPETITION

November 14, 1978, Room 3817, Main Commerce, Washington, D.C.; 10 a.m.-3 p.m.
November 28, 1978, Room D, Main Commerce, Washington, D.C.; 10 a.m.-3 p.m.
December 12, 1978, Room B-841, Main Commerce, Washington, D.C.; 10 a.m.-3 p.m.

ADVISORY SUBCOMMITTEE ON FEDERAL PROCUREMENT AND DIRECT SUPPORT OF R. & D.

November 17, 1978, Room 6802, Main Commerce, Washington, D.C.; 9 a.m.-5 p.m.
December 1, 1978, Room B-841, Main Commerce, Washington, D.C.; 9 a.m.-5 p.m.
December 15, 1978, Room 3708, Main Commerce, Washington, D.C.; 9 a.m.-5 p.m.

PUBLIC INTEREST ADVISORY SUBCOMMITTEE

November 20, 1978, Room D, Main Commerce, Washington, D.C.; 9:30 a.m.-6 p.m.
December 8, 1978, Room B-841, Main Commerce, Washington, D.C.; 9:30 a.m.-6 p.m.
January 10, 1979, Room 6802, Main Commerce, Washington, D.C.; 9:30 a.m.-6 p.m.

Please see the October 30 public notice for information regarding the purpose and establishment of the subcommittees; public and press seating; and the availability of meeting minutes and material distributed at the meetings.

Further information may be obtained from Mr. John R. Heizer, Room 3868A, U.S. Department of Commerce, Washington, D.C., telephone 202-377-3648.

Dated: November 7, 1978.

JORDAN J. BARUCH,
Assistant Secretary for
Science and Technology.

[FR Doc. 78-31832 Filed 11-8-78; 8:45 am]

[3510-15-M]

Maritime Administration

COVE CARRIERS INC. CTS ASSOCIATES

[Docket No. S-626, Sub. 1]

Amended Notice of Applications

A notice of applications was published in the FEDERAL REGISTER issue of November 1, 1978 (43 FR 50954), advising of the request of Cove Carriers Inc. and CTS Associates for written permission to engage in certain domestic trades under section 805(a) of the Merchant Marine Act, 1936, as amended, in connection with their applications for operating-differential subsidy to engage in bulk cargo carrying service in U.S. foreign trade, principally between the United States and the Union of Soviet Socialist Republics. The notice incorrectly stated the identity of the managing venturer of CTS Associates in paragraph 2, sentence 2. The correct wording of this portion of the Notice is as follows:

An officer and director of Cove Tank Ships Inc. (Managing Venturer of CTS Associates) owns a pecuniary interest in Seatrain Lines, Inc.

(Catalog of Federal Domestic Assistance Program No. 11.504 Operating-Differential Subsidies (ODS).)

By Order of the Assistant Secretary for Maritime Affairs.

Date: November 8, 1978.

ROBERT J. PATTON, JR.
Assistant Secretary.

[FR Doc. 78-31888 Filed 11-8-78; 10:14 am]

[3510-25-M]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

ADJUSTING IMPORT LEVELS FOR CERTAIN COTTON APPAREL PRODUCTS FROM THE POLISH PEOPLE'S REPUBLIC

Correction

NOVEMBER 3, 1978.

On October 31, 1978, there was published in the FEDERAL REGISTER (43 FR 50730) a letter dated October 27, 1978 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs adjusting the import levels for certain cotton apparel products from Poland during the year which began on January 1, 1978. Paragraph 3 of that letter should read as follows:

Cotton textile products in category 334 that have been exported to the United States before January 1, 1978 shall not be subject to this directive.

EDWARD GOTTFRIED,
Acting Chairman, Committee for
the Implementation of Textile
Agreements.

[FR Doc. 78-31659 Filed 11-8-78; 8:45 am]

[3910-01-M]

DEPARTMENT OF DEFENSE

Department of the Air Force

SCIENTIFIC ADVISORY BOARD

Meeting

NOVEMBER 1, 1978.

The USAF Scientific Advisory Board Foreign Technology Division Advisory Group, Air Force Systems Command, will hold meetings on December 7, 1978, from 8 a.m. to 5 p.m. and on December 8, 1978, from 8 a.m. to 1 p.m. at Wright-Patterson Air Force Base, Ohio, in Room 276, Building 828.

The group will receive classified briefings and participate in classified discussions related to FTD's program for developing future threat estimates. In addition to methodology, examples of methodology application to specific disciplines such as missiles and hypersonic aerodynamic systems will be reviewed.

The meetings concern matters listed in section 552b(c), Title 5, United States Code, specifically subparagraph (1) thereof, and that accordingly the meetings are closed to the public.

V 43 / 218

For further information, contact the Scientific Advisory Board Secretariat at 202-697-8404.

CAROL M. ROSE,
Air Force, Federal Register Liaison Officer.

[FR Doc. 78-31628 Filed 11-8-78; 8:45 am]

[3910-01-M]

USAF SCIENTIFIC ADVISORY BOARD

Meeting

NOVEMBER 2, 1978.

The USAF Scientific Advisory Board Ad Hoc Committee on the EF-111A will meet on November 30 and December 1, 1978, from 8:30 a.m. to 5 p.m. each day at Kirtland Air Force Base, N. Mex.

The Committee will receive classified briefings and hold classified discussions on the EF-111A flight testing.

The meetings concerns matters listed in section 552b(c), of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board at 202-697-8404.

CAROL M. ROSE,
Air Force, Federal Register Liaison Officer.

[FR Doc. 78-31626 Filed 11-8-78; 8:45 am]

[3910-01-M]

USAF SCIENTIFIC ADVISORY BOARD

Meeting

NOVEMBER 2, 1978.

The USAF Scientific Advisory Board Electronic Systems Division Advisory Group will meet on December 7, 1978, from 8:30 a.m. to 5 p.m. and on December 8, 1978, from 8:30 a.m. to 12 p.m. in the Command Management Center, Building 1606, Hanscom Air Force Base, Mass.

The Group will receive classified briefings and hold classified discussions on selected Air Force Command, Control, and Communications Programs.

The meetings concerns matters listed in section 552b(c), of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-8404.

CAROL M. ROSE,
Air Force, Federal Register Liaison Officer.

[FR Doc. 78-31627 Filed 11-8-78; 8:45 am]

[3710-08-M]

Department of the Army

ACQUISITION OF MANEUVER AREA II, FORT BLISS, TEX.

Filing of Environmental Impact Statement

In compliance with the National Environmental Policy Act of 1969, the Army, on November 3, 1978, provided the Environmental Protection Agency a draft Environmental Impact Statement (EIS) concerning the proposed acquisition of lands comprising the training area known as Maneuver Area II at Fort Bliss, Tex., which area has been and is currently being leased by the Army.

Copies of the statement have been forwarded to concerned Federal, State, and local agencies. Interested organizations or individuals may obtain copies from the Commander, U.S. Army Air Defense Center and Fort Bliss, Attn: ATZC-FEE, Fort Bliss, Tex. 79916.

In the Washington area, inspection copies may be seen, during normal duty hours, in the Environmental Office, Office of Assistant Chief of Engineers, Room 1E676, Pentagon, Washington, D.C. 20310, telephone: 202-694-3434.

BRUCE A. HILDEBRAND,
Deputy for Environmental Affairs, Office of the Assistant Secretary of the Army (Civil Works).

[FR Doc. 78-31613 Filed 11-8-78; 8:45 am]

[6740-2-M]

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RI78-52]

A. E. PERKINS (OPERATOR)

Amended Petition for Special Relief

NOVEMBER 3, 1978.

Take notice that on September 28, 1978, A. E. Perkins (Operator), 472 W. 3rd, Hoisington, Kans. 67544, filed a petition for special relief in the above-captioned docket pursuant to section 2.76 of the Commission's Rules.

Currently selling gas at 29.45¢ per Mcf from the Bertha J. Gray Well, Sedan-Peru Field, Chautaugua, Kans. Petitioner seeks authorization now to increase this rate to $0.77 per Mcf. Previously, Petitioner requested $1.00 per Mcf. Petitioner states that the life of the well will be increased by 3 years once proposed reworking is done. However, without additional revenue, rework cannot begin.

Any person desiring to be heard or to make any protest with reference to said petition should on or before November 27, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any party wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31678 Filed 11-8-78; 8:45 am]

[6740-02-M]

[Docket No. CP78-256]

ALGONQUIN LNG, INC., ET AL.

Technical Conference

NOVEMBER 1, 1978.

Take notice that at 10 a.m. on Monday, November 6, 1978, staff will meet with representatives of the above-captioned companies for the purposes of obtaining clarification of certain data already submitted regarding the matters raised in the Commission Order of October 13, 1978, in this docket.

The conference will be held in Room 3200 of the Commission's office at 941 North Capitol Street NE., and all parties may at their option attend.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31679 Filed 11-8-78; 8:45 am]

[6740-02-M]

[Docket No. E-7738]

BOSTON EDISON CO.

Extension of Time

OCTOBER 27, 1978.

On October 20, 1978, counsel for the Massachusetts Towns filed a motion to extend the briefing schedule as established in the Presiding Judge's certification in this proceeding dated September 8, 1978. The motion states that other commitments in FERC proceedings have precluded counsel for the Towns from preparing its brief under the schedule. The motion further states that Commission Staff, U.S. Department of Justice and Boston Edison Co. have no objection to the request.

Upon consideration, notice is hereby given that an extension of time is granted to and including November 17, 1978 for the filing of initial briefs. Reply briefs shall be filed on or before December 19, 1978.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31680 Filed 11-8-78; 8:45 am]

[6740-02-M]

[Docket Nos. E-7738, E-7738 (Remand), and ER77-558]

BOSTON EDISON CO. AND READING MUNICIPAL LIGHT BOARD

Joint Motion To Accept Settlement Agreement

OCTOBER 31, 1978.

Take notice that Boston Edison Co. and Reading Municipal Light Board on October 5, 1978, tendered for filing a Settlement Agreement and respectfully moved that the Commission accept such. The parties indicate that the Agreement resolves the parties' differences concerning the all requirements Rate S-2, Docket No. E-7738, and concerning the interest rate issue in Docket No. ER77-558. The parties further indicate that except for the deferred fuel amortization charge in Docket No. ER76-445, the Agreement, in conjunction with the Settlement Agreement filed by the parties on January 16, 1978, has the effect of ending all litigation between the parties.

Any person desiring to be heard or to protest said Settlement Agreement should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before November 17, 1978. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this Agreement are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31681 Filed 11-8-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-32]

CENTRAL VERMONT PUBLIC SERVICE CORP.

Rate Schedule Filing

OCTOBER 31, 1978.

Take notice that on October 23, 1978, Central Vermont Public Service Corp. (Central Vermont) tendered for filing a rate schedule for the sale of power from William F. Wyman Unit No. 4.

Central Vermont states that service under the rate schedule is expected to be furnished to the Village of Johnson, Vt. and Lyndonville Municipal Electric Plant, and is available to Vermont Marble Co. and any wholesale customer. Central Vermont proposes an effective date of November 30, 1978.

Copies of the filing were served upon the Village of Johnson, Lyndonville Municipal Electric Plant, Vermont Marble Co. and the Vermont Public Service Board, according to Central Vermont.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 13, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31682 Filed 11-8-78; 8:45 am]

[6740-02-M]

[Docket No. CP79-35]

COLORADO INTERSTATE GAS CO.

Application

OCTOBER 31, 1978.

Take notice that on October 18, 1978, Colorado Interstate Gas Co. (Applicant), P.O. Box 1087, Colorado Springs, Colo. 80944, filed in Docket No. CP79-35, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation and exchange of natural gas with Mountain Fuel Supply Co. (Mountain Fuel), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authority to implement operations under a Gas Purchase and Exchange Agreement (Agreement) dated June 20, 1978, between it and Mountain Fuel. Pursuant to the Agreement, Applicant states it would gather at the wellhead Mountain Fuel's portion of the natural gas production from the Wamsutter 1-36 well located in Sweetwater County, Wyo., which is estimated to be 1,025 Mcf of gas per day. It is stated that Mountain Fuel would pay Applicant a 4-cent per Mcf fee for this service. Applicant would concurrently deliver thermally equivalent gas to Mountain Fuel at an existing point of interconnection near Green River, Wyo., it is stated. Applicant states it would have an option to purchase up to 25 percent of the volume of gas delivered by Mountain Fuel to it and would pay Mountain Fuel the highest allowable Federal Energy Regulatory Commission price applicable to such gas, including adjustments permitted or required. The stated purpose of the proposed arrangement is to enable Mountain Fuel to obtain the gas since it does not have facilities near the Wamsutter 1-36 well.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 24, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission, or its designee, on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31681 Filed 11-8-78; 8:45 am]

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[6740-02-M]

Federal Energy Regulatory Commission

[Docket Nos. RP79-1 and RP78-51]

COLORADO INTERSTATE GAS CO.

Order Accepting for Filing and Suspending Proposed Rate Increase Subject to Conditions, and Consolidating Dockets

OCTOBER 27, 1978.

On October 2, 1978, Colorado Interstate Gas Co., (CIG) filed revised tariff sheets [1] containing rates designed to achieve an increase in jurisdictional revenues of $8,906,722.[2] The increased rates are predicated on a test period based on actual costs for the twelve months ended June 30, 1978, as adjusted for known changes in costs which are expected to be incurred by the end of the test period, March 31, 1979. The proposed effective date is November 1, 1978.

Public notice of the filing in RP79-1 was issued on October 6, 1978, providing for protests or petitions to intervene to be filed on or before October 23, 1978. Any petitions filed in RP79-1 will be deemed to be filed in the consolidated proceeding, and are referred to the Presiding Judge for appropriate disposition.

Based upon a review of CIG's filing in RP79-1, the Commission finds that the proposed higher rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission shall accept CIG's proposed rate increase for filing, suspend its effectiveness for 5 months or until April 1, 1979, when it shall become eligible to become effective, subject to refund, and shall set the matter for hearing as hereinafter conditioned.

CIG's proposed rates in RP79-1 reflect costs attributable to various projects which have not been certificated and are not in service as of the date of this filing. CIG anticipates that each will be certificated and in service by March 31, 1979, the last day of the test period for this filing Accordingly, CIG requests that the Commission waive § 154.63(e)(2)(ii) of its Regulations to permit the facility costs and associated expenditures to be reflected in this filing. For good cause shown, the Commission shall grant waiver of § 154.63(e)(2)(ii) of the Regulations to permit CIG to include such costs in its filing, conditioned upon the filing of revised tariff sheets reflecting the elimination of costs associated with facilities not in service before April 1, 1979. In addition, CIG shall also adjust its rates to reflect the actual balances of advance payments in Account 166 as of March 31, 1979, provided that the inclusion of a higher advance payments balance shall not be permitted to increase the level of the original suspended rates. This waiver shall be granted upon condition that CIG shall not be permitted to make offsetting adjustments to the suspended rates prior to hearing, except for those adjustments made pursuant to Commission approved tracking provisions, those adjustments required by this order, and those required by other Commission orders.

Additionally, CIG requests that the Commission waive § 154.67(a)(b) and (d) of its Regulations. This request involves the waiver of regulations requiring the company to make a motion to put the proposed rates into effect after suspension and to file a signed undertaking and agreement to comply with the regulations setting forth the requirements for refunds. CIG bases its request upon the alleged difficulty of certain of its customers to timely flow-through the costs of a rate increase, if these documents are required to be filed. CIG states in the application that these filings have become a pro forma action, which require no further action by the Commission.

CIG's arguments on this issue are not persuasive. The section of the Regulations of which CIG seeks waiver provides for undertaking agreements necessary to ensure that the amounts collected by the pipeline pending final resolution of the rate case are available for refunds to customers should the Commission find the proposed rates to be unjust and unreasonable in whole or in part. Also, CIG will be required to make a filing prior to the date the suspended rates in this docket become effective to demonstrate that it has complied with the uncertificated facilities and advance payments conditions included in this order. The Commission is not persuaded that CIG's request for waiver is in the public interest and it shall therefore be denied.

On March 31, 1978, CIG filed in Docket No. RP78-51 proposed changes to its tariff sheets [3] which would increase its jurisdictional revenues by $12,147,530 based on costs and sales volumes for the 12 months ended December 31, 1977, as adjusted for know and measurable changes through September 30, 1978. By Commission order issued May 1, 1978, these rates were accepted for filing and suspended until October 1, 1978. A hearing was initiated to determine the lawfulness of the rates in RP78-51. The Commission order further provided that Staff's top sheets would be filed on or before September 1, 1978. By order issued August 29, 1978, Presiding Administrative Law Judge Lewnes granted an extension of the date for filing of top sheets in RP78-51 until November 24, 1978.

The Commission further finds that the rate increases filed in Docket Nos. RP78-51 and RP79-1 involve a number of issues common to both proceedings. Both increases are predicated upon changes in the costs of service due to additional facilities, increased labor and general operating costs and an alleged need for an increase in the rate of return. Moreover, the rates in Docket No. RP78-51 will be locked-in when the Docket No. RP79-1 rates become effective, which makes it in the interest of all parties that these dockets be consolidated. In view of the similarity of issues in these two dockets, the Commission finds that it is in the public interest to consolidate the dockets and to treat them in one proceeding.

The Commission orders: (A) Pursuant to the authority of the Natural Gas Act, particularly sections 4, 5, 8, and 15 thereof, and the Commission's rules and regulations, a public hearing shall be held concerning the lawfulness of the increased rates proposed by CIG.

(B) Pending hearing and decision, CIG's proposed rate increase is accepted for filing and suspended until April 1, 1979, when it shall be permitted to become effective, subject to refund, upon motion filed by CIG in accordance with the provisions of the Natural Gas Act.

(C) Docket No. RP78-51 and RP79-1 are consolidated for purposes of hearing and decision.

(D) The provisions of § 154.63 (e)(2)(ii) of the Regulations are waived to permit CIG's filing to reflect the inclusion of costs associated with presently uncertificated facilities, on the condition that CIG shall file revised tariff sheets on or before April 1, 1979, reflecting the elimination of all costs included in the proposed rates associated with facilities not placed in service by April 1, 1979. CIG shall also submit supplemental cost and revenue data reflecting the elimination of such costs from its cost of service. In addition, CIG shall aslo adjust its rates to reflect the actual balances of advance payments in Account 166 as of March 31, 1979, provided that the inclusion of a higher advance payments balance shall not be permitted to increase the level of the original suspended rates. This waiver shall be granted upon condition that CIG shall not be permitted to make offsetting adjustments to the suspended rates prior to hearing, except for those adjustments made pursuant to Commission approved tracking provisions, those adjustments required by this order, and those required by other Commission orders.

(E) The Commission Staff shall prepare and serve top sheets on all parties on or before February 5, 1979. Staff's top sheets shall cover all issues in RP78-51 and RP79-1.

(F) The Presiding Administrative Law Judge assigned to Docket No. Rp78-51, or such other Presiding Judge as the Chief Administrative Law Judge my assign, shall convene a settlement conference in the consolidated proceeding to be held within 10 days after the service of top sheets by the staff, in a hearing or conference room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The Presiding Judge is authorized to establish such further procedural dates as may be necessary and to rule upon all motions (except motions to consolidate, sever or dismiss), as provided for in the rules of practice and procedure.

(G) CIG's request for waiver of § 154.67(a)(b) and (d) of the Regulations is denied.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31684 Filed 11-8-78; 8:45 am]

[6740-02-M]

[Docket No. RP72-157]

CONSOLIDATED GAS SUPPLY CORP.

Proposed Changes in FERC Gas Tariff

NOVEMBER 3, 1978.

Take notice that Consolidated Gas Supply Corp. (Consolidated) on October 30, 1978, tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, pursuant to its PGA clause for rates to be effective October 1, 1978.

Consolidated states that the filing includes a rate reduction filed by Texas Eastern Transmission Corp. (Texas Eastern) for effectiveness October 1, 1978.

Additionally, Consolidated submitted as part of the filing Second Substitute Seventh Revised Sheet No. 16 to be effective November 1, 1978, in lieu of rates filed October 19, 1978. The substitute tariff sheet was revised to reflect the changes proposed for effectiveness October 1, 1978.

Consolidated requested a waiver of the Commission's Rules and Regulations, specifically § 154.22, Notice Requirements, citing that it did not receive the rate change in time to make a timely filing. Additionally, Consolidated requested a waiver of any other of the Commission's Rules and Regulations as may be deemed necessary to permit the rates to become effective as proposed.

Copies of this filing were served upon Consolidated's jurisdictional customers as well as interested State Commissions.

Any persons desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 22, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31685 Filed 11-8-78; 8:45 am]

[6740-02-M]

[Docket No. ES79-7]

IDAHO POWER CO.

Application

NOVEMBER 2, 1978.

Take notice that on October 23, 1978, Idaho Power Co. (Applicant), a corporation organized under the laws of the State of Maine, and qualified to transact business in the States of Idaho, Oregon, Nevada, and Wyoming, with its principal business office at Boise, Idaho, filed an Application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act, seeking and Order authorizing it to enter into a Construction Financing Agreement with Carty Services, Inc. (Carty) and incidental agreements and instruments pursuant thereto with respect to the financing of the Applicant's 10 percent interest (Idaho Interest) in the Number One Boardman Station on Carty Reservoir.

Carty will pay the Costs of Construction (up to $60,000,000) of the Idaho Interest with funds obtained pursuant to a Credit Agreement with Bankers Trust Co. Commencing on a date determined pursuant to the Construction Financing Agreement the Applicant will pay, over a period of three years, amounts equal in the aggregate to all Costs of Construction and Costs of Finance paid by Carty.

Any person desiring to be heard or to make any protest with reference to said Application, should, on or before November 17, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). The Application is on file and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31686 Filed 11-8-78; 8:45 am]

[6740-02-M]

[Docket No. ES79-8]

IOWA PUBLIC SERVICE CO.

Application

NOVEMBER 3, 1978.

Take notice that on October 24, 1978, Iowa Public Service Co. (Applicant), a corporation organized under the laws of the State of Iowa, and qualified to transact business in the State of Iowa and South Dakota, with its principal business office in Sioux City, Iowa, filed an application, pursuant to section 204 of the Federal Power Act, seeking an Order authorizing it to negotiate privately with respect to issuance of securities in connection with financing costs of the Company's undividend share of certain pollution control facilities at Unit No. 1 of the Louisa Generating Station, in Louisa County, Iowa.

The Company and others are constructing and will own, as tenants in common, Louisa Unit No. 1, which will be a coal-fired steam electric generating facility of an expected capability of 650,000 KW, located in Louisa County, Iowa. The Company's undivided interest in Louisa Unit No. 1 is expected to be 15.4 percent.

Any person desiring to be heard or to make any protest with reference to said Application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, Washington, D.C. 20426, in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) on or before November 24, 1978. The Application is on file and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31687 Filed 11-8-78; 8:45 am]

[1] Twenty-Second Revised Sheet Nos. 5 and 6, Third Revised Sheet Nos. 198 and 262, Second Revised Sheet No. 341, to the Second Revised Volume No. 1 of CIG's FERC Gas Tariff.

[2] This annual revenue increase is above the revenues generated by the rates presently being collected subject to refund in Docket No. RP78-51.

[3] Twenty-first Revised Sheet No. 5, Twenty-first Revised Sheet No. 6, Second Revised Sheet No. 198, and Second Revised Sheet No. 262 to Second Revised Volume No. 1 of CIG's FERC Gas Tariff.

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[6740-02-M]

[Docket No. ER76-848]

MONTANA POWER CO.

Compliance Filing

OCTOBER 31, 1978.

Take notice that on October 23, 1978, the Montana Power Co. tendered for filing in compliance with the Federal Power Commission's Order of May 6, 1977, a summary of sales made under the Company's FPC Electric Tariff M-1 during September 1978, along with cost justification for the rate charged.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's Rules and Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 17, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31688 Filed 11-8-78 8:45 am]

[6740-02-M]

[Project No. 2729]

POWER AUTHORITY OF THE STATE OF NEW YORK

Notice Granting Additional Time To Comment on Draft Environmental Impact Statement

NOVEMBER 1, 1978.

As a result of (1) the lengthy comments received on the staff's draft environmental impact statement (EIS) for Project No. 2729, (2) a change in personnel among Commission staff working on the draft EIS, and (3) the submittal of additional information by the applicant, it has become evident that there will be a delay in the preparation of the final EIS. Since there were a significant number of requests for additional time to comment on the draft EIS, and some of these persons were not able to file comments within the time specified, it has been determined that a further period for submitting comments will be provided. It is emphasized that this additional period is meant primarily for any person or organization that has not already filed comments on the draft EIS.

In light of the above, the period for filing comments on the draft EIS for Project No. 2729 is hereby extended to, and including, December 11, 1978.

KENNETH F. PLUMB,
Secretary.

[FR Doc.78-31689 Filed 11-8-78; 8:45 am]

[6740-02-M]

[Project No. 2868]

SOUTHERN CALIFORNIA EDISON CO.

Application for Preliminary Permit for Unconstructed Project

NOVEMBER 2, 1978.

Public notice is hereby given that an application has been filed on September 14, 1978, under the Federal Power Act (16 U.S.C. 797) by Southern California Edison Co. (correspondence to: R. E. Woodbury, Vice President and General Counsel, 2244 Walnut Grove Avenue, Rosemead, Calif. 91770) for a preliminary permit for unconstructed Project No. 2868, a proposed hydroelectric installation to be known as the Balsam Meadow Project, located in the Sierra National Forest in the County of Fresno, Calif. The hydroelectric facilities comprising Project No. 2868 would be installed near the inlet of the North Fork of Stevenson Creek on the north shore of Shaver Lake Reservoir in the region of Shaver Lake, Calif. The proposed project will affect lands of the United States of America (U.S. Forest Service) and lands owned in fee by the applicant.

The applicant proposes to study a 140 MW project that would consist of a 5,600-foot long tunnel originating at the outlet of Tunnel No. 7 (the existing Huntington-Pitman-Shaver conduit of Project No. 67) and leading to Balsam Forebay; an 1,800 acre-foot reservoir (Balsam Forebay) to be formed by a 100-foot high dam on the West Fork of Balsam Creek near the point of origin; a 2-mile long tunnel-penstock conduit from the forebay to the powerhouse; and, a powerhouse to be located on the north shore of Shaver Lake (also part of Project No. 67) near the outlet of the North Fork Stevenson Creek. Power produced by the project would be used in Applicant's service area in central and southern California.

A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering and economic feasibility of the proposed project, market for the power, and all other necessary information for inclusion in an application for license.

Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1977). In determining the appropriate action to take, the Commission will consider all protests filed, but a person who merely files a protest does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any protest or petition to intervene must be filed on or before December 18, 1978. The Commission's address is: 825 North Capitol Street NE., Washington, D.C. 20426.

The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31690 Filed 11-8-78; 8:45 am]

[6740-02-M]

[Docket No. CP72-30]

SOUTHERN NATURAL GAS CO.

Petition To Amend

NOVEMBER 1, 1978.

Take notice that on October 6, 1978, Southern Natural Gas Co. (Petitioner), P.O. Box 2563, Birmingham, Ala. 35202, filed in Docket No. CP72-30 a petition to amend the order of November 11, 1971, issued in the instant docket [1] pursuant to section 7(c) of the Natural Gas Act so as to authorize the transportation of natural gas produced from Tylertown Field, Walthall County, Miss., for Florida Gas Transmission Co. (Florida), all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

It is indicated that pursuant to the order of November 11, 1971, Petitioner was authorized to transport and redeliver to Florida up to 2,500 Mcf of natural gas per day from the Kirklin Field, Walthall County, Miss., and up to 6,000 Mcf of natural gas per day from the Unknown Pass Field, Orleans Parish, La., which gas Petitioner accepts for Florida's account at the Kirklin Field delivery point and the Unknown Pass delivery point and redelivers equivalent quantities of gas to Florida at Petitioner's existing delivery point to Florida in Washington Parish, La. It is further indicated that pursuant to the terms of a transportation agreement dated June 1, 1971, Florida pays Southern for the subject transportation service $68 per month for the cost of operating the Unknown Pass Field measuring facilities, and that Florida also pays Petitioner a transportation charge of .75 cent per Mcf of gas transported from the Kirklin Field delivery point and 1.5 cents per Mcf for gas transported from the Unknown Pass Field delivery point.

It is stated that pursuant to the terms of the June 1, 1971, agreement Petitioner has the right to withhold deliveries of gas to Florida on any day or days during the the months of December, January, and February in order to utilize gas from the subject fields for Petitioner's own pipeline requirements. Such withheld gas is to be redelivered to Florida as soon as practicable, it is said.

It is indicated that Florida has contracted to purchase from Florida Gas Exploration Co. and its partners certain quantities of natural gas produced from the Tylertown Field, Walthall County, Miss., and that Florida has requested Petitioner to receive, transport and redeliver the gas purchased by Florida from the Tylertown Field. Pursuant to the terms and conditions of the transportation agreement, dated June 1, 1971, petitioner proposes to transport and redeliver to Florida the volumes of gas that Florida purchases from the Tylertown Field, provided that the aggregate of all volumes tendered by Florida at the said Kirklin Field delivery point for transportation and redelivery to Florida do not exceed 2,500 Mcf per day. Accordingly, Petitioner and Florida have entered into an amendatory agreement dated September 12, 1978, which agreement amends and supplements the June 1, 1971, agreement, by adding the volumes of gas presently tendered by Florida at the Kirklin Field delivery point.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before November 24, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31691 Filed 11-8-78; 8:45 am]

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the FERC.

[6740-02-M]

[Docket No. RP72-99]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Filing of Settlement Agreement as to Curtailment Rules of Transcontinental Gas Pipe Line Corp., Commencing November 1, 1978

NOVEMBER 1, 1978.

Take notice that on October 31, 1978, Transcontinental Gas Pipe Line Corp. (Transco) filed with the Federal Energy Regulatory Commission (Commission) a "Settlement Agreement as to Curtailment Rules of Transcontinental Gas Pipe Line Corp. To Become Effective on November 1, 1978" (Settlement Agreement). Transco states the Settlement Agreement resolves the issue of supply allocation during the term of the agreement and reserves for hearing and decision by the Commission the issue of compensation.

Transco states the filed Settlement Agreement establishes curtailment procedures which will continue in force and effect through October 31, 1979, and thereafter from year to year so long as Transco's projections of annual volumes available for sale to CD, ACQ, and firm direct customers are equal to or in excess of 636,440 Mdt for annual periods subsequent to October 31, 1979. Appended to the Settlement Agreement, as Appendix A, are twenty tariff sheets, which will be filed to become effective as of November 1, 1978, upon approval of the Settlement Agreement. Transco states the tariff sheets provide procedures for the protection of annual allotments, although winter period schedules and procedures related thereto are also contained therein.

Contemporaneous with the filing of the Settlement Agreement, Transco filed a Motion For Expedited Decision. In its motion, Transco outlines the operational difficulties which would arise if the Commission were to delay action on the Settlement Agreement and requests the Commission's procedures be expedited so that the matter be considered and decided no later than November 30, 1978.

The Commission will provide for the filing of initial and reply comments on Transco's offer of settlement on an expedited basis. Any person desiring to be heard or to protest the Settlement Agreement should file initial comments by November 13, 1978, and reply comments by November 22, 1978, with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. Comments on the Settlement Agreement should address the effect of the proposal on the ability of Transco's distributor customers to serve their high priority requirements.

All protests and comments will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any party wishing to become a party must file a petition to intervene in accordance with the Commission's rules: *Provided, however,* That persons that have previously filed a notice or petition for intervention in this proceeding need not file additional notices or petitions to become parties with respect to the instant filings. Copies of the Settlement Agreement are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31692 Filed 11-8-78; 8:45 am]

[6740-02-M]

[Docket No. ER 79-33]

UNION ELECTRIC CO.

Filing of Wholesale Electric Service Agreement

OCTOBER 31, 1978.

Take notice that on October 24, 1978, Union Electric Co. (Union) tendered for filing a new Wholesale Electric Service Agreement dated September 29, 1978, between Citizens Electric Corp. and Union. Union states that said Agreement primarily provides for a new delivery point and format changes have been made to conform with Union's existing wholesale tariff.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 13, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are available for public inspection at the Federal Energy Regulatory Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31704 Filed 11-8-78; 8:45 am]

[6740-02-M]

[Docket No. ER78-522]

VIRGINIA ELECTRIC & POWER CO.

Order Granting Motion for Enforcement of Prior Order

NOVEMBER 2, 1978.

On August 30, 1978, the Commission accepted for filing and suspended for one month the effectiveness of rate increases proposed by Virginia Electric & Power Co. (VEPCO). In that order the Commission also granted summary judgment of VEPCO's proposed inclusion of investment tax credit in its common equity component of its capital structure.

The Commission directed VEPCO to refile its capital structure to be consistent with the Commission's treatment of investment tax credit in Opinion No. 19, *Carolina Power & Light Co.*, within 30 days of the issuance of the August 30, 1978 order.

On October 3, 1978, VEPCO submitted revised capital structures for Period I and Period II reflecting the investment tax credit at the overall rate of return rather than at the common equity return. However, VEPCO did not revise its rates and cost support to reflect the revised capitalization.

ElectriCities of North Carolina, on October 4, 1978, moved to dismiss VEPCO's rate increase, or, in the alternative, moved for enforcement of the August 30, 1978 order to require VEPCO to file new rates reflecting the revised capitalization. On October 12, 1978, VEPCO filed an answer in opposition to ElectriCities' motion.

DISCUSSION

ElectriCities correctly points out that in granting its motion for summary judgment, the Commission intended to require VEPCO to submit revised rates in addition to a revised capital structure. ElectriCities' motion for summary judgment, contained in its petition to intervene, requested that the Commission order that VEPCO be "required to resubmit rates with . . . common equity not inflated by the addition of Accumulated Job Development Deferred Investment Tax Credit."

Because our August 30 order in this docket may not have been sufficiently clear, we shall permit VEPCO an additional thirty days to submit revised rates to reflect the revised capitalization tendered on October 3, 1978. We shall, in addition, require VEPCO to refund all amounts collected in excess of the revised rates with interest at 9 percent per annum after September 30, 1978.

The Commission orders: (A) ElectriCities' motion for enforcement of the August 30, 1978 order is hereby granted.

(B) VEPCO is hereby directed to file revised rates and cost support based on the revised capitalization for Period II within 30 days of the issuance of this order.

(C) VEPCO is hereby directed to refund all amounts collected in excess of the revised rates with interest at 9 percent per annum after September 30, 1978.

(D) VEPCO is hereby directed to file a compliance report within 15 days after refunds have been made. This report shall show monthly billing determinants and revenues under prior, present, and revised rates. The report shall also show the monthly rate increase, the monthly revenue refund, and the monthly interest computations together with a summary of such information for the total refund period. A copy of such report shall be furnished to the appropriate regulatory bodies within whose jurisdiction the resale customers distribute and sell electric energy at retail.

(E) ElectriCities' motion to dismiss is hereby denied.

(F) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31703 Filed 11-8-78; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[OPP-00080, FRL 1004-5]

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT SCIENTIFIC ADVISORY PANEL

Open Meeting

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a 2-day special subcommittee meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel from 9 a.m. to 5 p.m. each day on Thursday and Friday, November 30 and December 1, 1978. The meeting will be held in the Massanet Room (third floor), Sheraton-Houston Hotel, 777 Polk Street, Houston, Tex., and will be open to the public.

FOR FURTHER INFORMATION CONTACT:

Dr. H. Wade Fowler, Jr., Executive Secretary, FIFRA Scientific Advisory Panel, Office of Pesticide Programs (TS-766), Room 803, Crystal Mall, Building No. 2, 1921 Jefferson Davis Highway, Arlington, Va., telephone 703-557-7560.

SUPPLEMENTARY INFORMATION: In accordance with section 25(d) of the amended FIFRA, the Scientific Advisory Panel will comment on the impact on health and the environment of regulatory actions under sections 6(b) and 25(a) prior to implementation. The purpose of this meeting is to discuss the following topic: Subpart G—Product Performance (draft) of the Guidelines for Registering Pesticides in the United States.

Any member of the public wishing to attend this meeting should contact Dr. H. Wade Fowler, Jr., at the address shown above. Time will be allotted for brief comments by the public each day; interested persons should contact Dr. Fowler for special instructions regarding oral statements. Individuals who wish to file written statements are advised to submit ten copies of statements to the Executive Secretary in a timely manner to ensure appropriate consideration by the Advisory Panel. All statements will be made a part of the record and will be taken into consideration by the Panel in formulating comments.

All interested persons are further advised that the meeting announced in this notice is a subcommittee meeting of the Advisory Panel for the purpose of conducting preliminary reviews of draft proposed rulemaking. Formal review of topics considered by the subcommittee will be conducted by the FIFRA Scientific Advisory Panel at a later date.

(Sec. 25(d) of FIFRA, as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136(a) *et seq.*) and sec. 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 770).

Dated November 3, 1978.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 78-31607 Filed 11-8-78; 8:45 a.m.]

[6560-01-M]

[OPP-50390; FRL 1004-3]

ICI AMERICAS, INC. ET AL.

Issuance of Experimental Use Permits

The Environmental Protection Agency (EPA) has issued experimental use permits to the following applicants. Such permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

No. 10182-EUP-12. ICI Americas, Inc., Wilmington, Del. 19897. This experimental use permit allows the use of 0.15 pound of the rodenticide 3-[3-(4' - bromo[1,1' - biphenyl]4yl) - 1,2,3,4-tetrahydro-1-naphthalenyl]4-hydroxy-2H-1-benzopyran-2-one in orchards to evaluate control of Microtus (orchard mice). A total of 250 acres is involved; the program is authorized only in the States of California, Colorado, Illinois, Indiana, Maine, Maryland, Michigan, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Virginia, Washington, West Virginia, and Wisconsin. The experimental use permit is effective from September 21, 1978 to September 21, 1979. (PM-16, Room: E-229, Telephone: 202-755-9315)

No. 432-EUP-36. Penick Corp., Orange, N.J. 07050. This experimental use permit allows the use of 6 pounds of the insecticide permethrin in 135 indoor domestic dwellings to evaluate control of German cockroaches. The program is authorized only in the States of Indiana, New York, and North Carolina. The experimental use permit is effective from September 26, 1978 to September 26, 1979. (PM-17, Room: E-229, Telephone: 202-426-9425)

No. 1824-EUP-21. U.S. Borax Research Corp., Anaheim, Calif. 92801. This experimental use permit allows the use of 728 pounds of the combined herbicides dinitramine and prodiamine on soybeans to evaluate control of annual grasses and broadleaf weeds. A total of 1,680 acres is involved; the program is authorized only in the States of Alabama, Arkansas, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, and Nebraska. The experimental use permit is effective from October 2, 1978 to October 2, 1980. Temporary tolerances for residues of the active ingredient prodiamine in or on soybeans, soybean forage and hay have been established. Permanent tolerances for residues of the active ingredient dinitramine in or on soybeans and soybean forage have been established (40 CFR 180.327). (PM-23, Room: E-351, Telephone: 202-755-1397)

Interested parties wishing to review the experimental use permits are referred to the designated Product Manager (PM), Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street SW., Washington, D.C. 20460. The descriptive paragraph for each permit contains a telephone number and room number for information purposes. It is suggested that interested persons call before visiting the EPA Headquarters Office, so that the appropriate permit may be made conveniently available for review purposes. The files will be available for inspection from 8:30 a.m. to 4 p.m. Monday through Friday.

Statutory Authority: Section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136(a) et seq.).

Dated: November 1, 1978.

DOUGLAS D. CAMPT,
Acting Director, Registration Division.

[FR Doc. 78-31605 Filed 11-8-78; 8:45 am]

[6560-01-M]

PESTICIDE PROGRAMS

[PP 6G1660/T171; FBL 1004-4]

Renewal of Temporary Tolerances; Prodiamine

On June 22, 1977, the Environmental Protection Agency (EPA) announced (42 FR 31644) the renewal of temporary tolerances for residues of the herbicide prodiamine (2,4-dinitro-N^3,N^3-dipropyl-6-(trifluoromethyl)-1,3-benzenediamine) in or on the raw agricultural commodities soybeans, soybean hay, soybean forage, cottonseed, and cotton forage at 0.1 part per million (ppm).

These tolerances were established (40 FR 59775) in response to a pesticide petition (PP 6G1660) submitted by U.S. Borax Corp., 412 Crescent Way, Anaheim, Calif. 92801. This renewal expired April 21, 1978.

U.S. Borax Corp. requested a 30-month renewal of certain of these temporary tolerances to permit continued testing to obtain additional data and to permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit that has been renewed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136(a) et seq).

The scientific data reported and all other relevant material were evaluated, and it was determined that a renewal of the temporary tolerances would protect the public health. Therefore, the temporary tolerances have been renewed on condition that the pesticide is used in accordance with the experimental use permit with the following provisions:

1. The total amount of the pesticide to be used must not exceed the quantity authorized by the experimental use permit.

2. U.S. Borax Corp. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The firm must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These temporary tolerances expire October 2, 1980. Residues not in excess of 0.1 ppm remaining in or on soybeans and soybean forage and hay after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These temporary tolerances may be revoked if the experimental use permit is revoked or if any scientific data or experience with this pesticide indicate such revocation is necessary to protect the public health. Inquiries concerning this notice may be directed to Product Manager (PM) 23, Registration Division (TS-767), Room E-301, Office of Pesticide Programs, EPA, 401 M Street SW., Washington, D.C. 20460, 202-755-1397.

Statutory Authority: Section 408(j) of the Federal Food, Drug, and Cosmetic Act 121 U.S.C. 346(j)1.

Dated: November 1, 1978.

DOUGLAS D. CAMPT,
Acting Director, Registration Division.

[FR Doc. 78-31606 Filed 11-8-78; 8:45 am]

[6560-01-M]

[OPP-00081; FRL 1004-6]

STATE FIFRA ISSUES RESEARCH AND EVALUATION GROUP (SFIREG)

Open Meeting

AGENCY: Environmental Protection Agency (EPA), Office of Pesticide Programs.

ACTION: Notice of open meeting.

SUMMARY: There will be a 2-day meeting of the State FIFRA Issues Research and Evaluation Group (SFIREG) on Thursday and Friday, December 14 and 15, 1978, from 8:30 a.m. to 4:30 p.m. each day. The meeting will be held in Room 3906-3908 Waterside Mall, 401 M Street SW., Washington, D.C. 20460, and will be open to the public.

FOR FURTHER INFORMATION CONTACT:

Mr. P. H. Gray, Jr., Operations Division (TS-770), Office of Pesticide Programs, Room E-507, EPA, 401 M Street SW., Washington, D.C. 20460, telephone 202-755-7014.

SUPPLEMENTARY INFORMATION: This is the first meeting of the full group. The draft agenda thus far includes the following topics:

1. Action items from the April 1978 meeting of the State-Federal FIFRA Implementation Advisory Committee (SFFIAC);

2. Regional reports;

3. Working committee reports;

4. Status of EPA efforts to implement the 1978 amendments to the FIFRA;

5. Policy issues suggested by SFIREG members; and

6. Other subjects which may arise.

Dated: November 3, 1978.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 78-31608 Filed 11-8-78; 8:45 am]

[6712-01-M]

FEDERAL COMMUNICATIONS COMMISSION

[SS Docket No. 78-357 and 78-358]

THOMAS M. NAMNOUM

Designating Applications for Consolidated Hearing on Stated Issues; Order To Show Cause and Order Designating Application for Hearing

Adopted: October 30, 1978.

Released: November 7, 1978.

In the matter of revocation of license of Thomas M. Namnoum, 55 Spruce Street, Newington, Conn. 06111: licensee of Station KWM-3059 in the Citizens Band Radio Service (SS Docket No. 78-357), and application of Thomas M. Namnoum, 55 Spruce Street, Newington, Conn. 06111 for novice class amateur operator and amateur radio station licenses (SS Docket No. 78-358).

The Chief, Safety and Special Radio Services Bureau, has under consideration the above-captioned Citizens Band Radio Service license of Thomas M. Namnoum. Also under consideration is the application for an amateur radio station license and novice class operator license filed by Thomas M. Namnoum.

1. Information before the Commission indicates that on July 26, 1977, Namnoum's station, KWM-3059, transmitted radio communications on the frequency 27.910 MHz, which frequency was not authorized for use in the Citizens Band Radio Service by § 95.455(a) of the Commission's rules.[1] The frequency 27.910 MHz is allocated for U.S. Government use.

2. The information before the Commission further indicates that the radio transmissions of July 26, 1977, from Namnoum's station were not identified by a call sign issued by the Commission as required by § 95.471(c) of the Commission's rules. Instead, the transmissions were identified by the designation "5 with no call the 168." The Commission's information further indicates that Namnoum was an official of the Connecticut Sideband Association, 5 Whiskey Group, Inc.; and that Namnoum's "Whiskey number" was "5W168". Thus it appears that Namnoum has participated in "W" or "Whiskey" clubs, whose members operated radio transmitting equipment on frequencies not authorized by their license and used equipment not type-accepted for use by CB stations. Furthermore, members of "W" or "Whiskey" clubs apparently employed a system of operator identification numbers in lieu of Commission assigned call signs, to enable members to identify each other over the air while concealing their identity and station location from the Commission.

3. The information before the Commission further indicates that during the July 26, 1977, radio transmissions, the operator of Namnoum's radio station communicated with or attempted to communicate with another station over a distance of more than 150 miles, in wilful violation of § 95.501(b) of the Commission's rules, and engaged in radio transmissions for a period of time in excess of 5 minutes, without a 1-minute silent period, in wilful violation of § 95.469(b) of the Commission's rules.

4. The operating violations described above were the subject of an Official Notice of Violation, which was mailed to the licensee on August 23, 1977.

5. Section 312(a)(4) of the Communications Act of 1934, as amended, provides that the Commission may revoke a station license for wilful or repeated violation of the Commission's rules. Furthermore, the apparent conduct described above raises serious questions not only as to Namnoum's qualifications to remain a Citizens Band Radio Service licensee but also as to his qualifications to become an Amateur Radio Service licensee.

6. *Accordingly, it is ordered,* Pursuant to section 312 (a)(4) and (c) of the Communications Act of 1934, as amended, and § 0.331 of the Commission's rules, that Namnoumd *show cause,* why the license for radio station KWM-3059 in the Citizens Band Radio Service *should not be revoked,* and appear and give evidence at a hearing [2] to be held before an Administrative Law Judge at a time and place to be specified by a subsequent order, upon the following issues:

(1) To determine whether Namnoum's station was operated in wilful violation of §§ 95.455(a), 95.469(b), and/or 95.501(b) of the Commission's rules.

(2) To determine whether the operator of Namnoum's station wilfully violated § 95.471(c) of the Commission's rules and/or used a "W" or "Whiskey" club designation for identification.

(3) To determine whether Thomas M. Namnoum participated in "W" or "Whiskey" clubs and, if so, the nature of the club and the extent of his participation therein.

(4) To determine whether, in light of the evidence adduced pursuant to issues (1), (2), and (3), Thomas M. Namnoum possesses the requisite qualifications to remain a Commission licensee.

7. *It is further ordered,* That, pursuant to section 309(e) of the Communications Act of 1934, as amended, and §§ 1.973(b) and 0.331 of the Commission's rules, Namnoum's application for novice class amateur operator and amateur radio station licenses *is designated for hearing* upon issues (1) through (4) specified in paragraph 6, above, at a time and place to be specified by a subsequent order, as well as the following issue:

(5) Whether, in light of the evidence adduced pursuant to issues (1), through (4) a grant of Namnoum's application would serve the public interest, convenience and necessity.

8. *It is further ordered,* That in order to obtain a hearing on the application, Namnoum, in person or by attorney, shall within 30 days of the mailing of this order, file with the Commission in triplicate a written appearance stating an intent to appear on a date fixed for hearing to present evidence on the issues specified in paragraphs 6 and 7.[3] Failure to file a written appearance within the time specified will result in the dismissal of the application with prejudice.

9. *It is further ordered,* pursuant to § 1.227 of the Commission's rules, that the proceedings regarding the Citizens Band license revocation and the amateur application are consolidated for hearing.

10. *It is further ordered,* That the burden of proceeding with the introduction of evidence *shall be* on the Bureau; that the burden of proof for revocation of the Citizens Band license *shall be* on the Bureau; and that the burden of proof for grant of the amateur application *shall be* on the applicant.

11. *It is further ordered,* That a copy of this order shall be sent by certified mail—return receipt requested and by regular mail to the licensee at his address of record as shown in the caption, and to Harold C. Harrison, Esq., 118-21 Queens Boulevard, Forest Hills, N.Y. 11375, counsel for Thomas M. Namnoum.

Chief, Safety and Special Radio Services Bureau,

GERALD M. ZUCKERMAN,
Chief, Legal, Advisory and Enforcement Division.

[FR Doc. 78-31693 Filed 11-8-78; 8:45 am]

[1] Effective August 1, 1978, the rules governing Citizens Band radio revised and renumbered. The rules cited in this order are those in effect at the time of the conduct in question.

[2] The form attached to this order should be detached and used in connection with the procedure set forth in the enclosed instructions and mailed to Federal Communications Commission, Washington, D.C. 20554, in the enclosed addressed envelope, within 30 days.

[3] The 20-day time period specified by § 1.221 of the Commission's rules is waived.

Enclosure 2

Explanation of Procedures

1. Revocation. Section 1.91 of the Commission's Rules provides that in order to have a hearing before an Administrative Law Judge, you have 30 days from the Issue date of this Order in which to state that you will appear and present evidence on the matters specified in the Order. If you are unable to appear at a hearing in Washington, D.C., you may request that the hearing be near your residence. Such request should be supported by whatever facts you feel necessary.

   Your right to a hearing is waived if you (1) fail to file a timely appearance or (2) file within 30 days a statement waiving the right to a hearing. When hearing is waived, you may submit a statement denying or seeking to mitigate or justify the matter alleged in the Order to Show Cause. The Chief Administrative Law Judge will then carrify the case to the Commission. The matter will be handled by the Chief, Safety and Special Radio Services Bureau, who will determine whether a revocation order should be issued or the matter should be dismissed. This determination will be made using all information available, including statements you have filed and your past violation record.

2. Application. In order to have a hearing on your application, you have 30 days from the Issue date of this Order to request it. Section 1.221(c) of the Rules provides that if you do not request a hearing, the application will be dismissed with prejudice.

Enclosure 1

[6712-01-C]

REPLY TO ORDER TO SHOW CAUSE WHY CITIZENS BAND RADIO STATION LICENSE KWM-3059 SHOULD NOT BE REVOKED — SS DOCKET NO. 78-357

In this matter, Respondent takes the action indicated below:

☐ 1. Respondent will appear and present evidence at the hearing.

☐ 2. Respondent waives his right to a hearing and does not submit a written statement.

☐ 3. Respondent waives his right to a hearing and submits the attached written statement.*

REPLY TO ORDER DESIGNATING APPLICATION FOR HEARING — SS DOCKET NO. 78-358

In this matter, Respondent takes the action indicated below:

☐ 1. Respondent will appear on the date affixed for hearing and present evidence on the issues specified in the Order of Designation.

☐ 2. Respondent will not present evidence on the issues specified in the Order of Designation and understands that as a result his application will be dismissed with prejudice.

Date: _____, 1978

_____
Thomas M. Namnoum
Respondent

* If this statement is intended to be in mitigation, it should include the reasons, if any, why you believe that your radio station licenses should not be revoked.

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[6712-01-M]

[SS Docket No. 78-359, 78-360, 78-361, and 78-362]

WARREN K. BROWN

Designating Applications for Consolidated Hearing on Stated Issues

Adopted: October 30, 1978.

Released: November 7, 1978.

In the matters of revocation of license of Warren K. Brown, 210 East Broadway, Mishawaka, Indiana, 46544: licensee of station KJV-4689 in the Citizens Band Radio Service (SS Docket No. 78-359), revocation of license of Warren K. Brown, 210 East Broadway, Mishawaka, Indiana, 46544: licensee of station WD9GBM in the Amateur Radio Service (SS Docket No. 78-360), suspension of license of Warren K. Brown, 210 East Broadway, Mishawaka, Indiana, 46544: amateur novice class operator licensee (SS Docket No. 78-361) and application of Warren K. Brown, 210 East Broadway, Mishawaka, Indiana, 46544: for technician class amateur operator license (SS Docket No. 78-362).

The Chief, Safety and Special Radio Services Bureau, has under consideration the license of Warren K. Brown for Citizens Band radio station KJV-4689, as well as Brown's license for Amateur radio station WD9GBM and his Novice Class Amateur Operator license. Also under consideration is an application for a Technician Class operator license filed by Brown.

1. Information before the Commission indicates that on January 20, 1978, Brown operated radio transmitting equipment on the frequency 27.415 MHz. That frequency is assigned to the Industrial Radio Services. That frequency is not authorized by § 95.455(a) of the Commission's Rules for use in the Citizens Band Radio Service, nor by § 97.61(a) of the Rules for use in the Amateur Radio Service.[1] [2]

2. The information before the Commission indicates that the radio transmissions of January 20, 1978, consisted of voice communications, that is, radio telephony. § 97.7(e) of the Commission's Amateur Rules permits only non-voice communications, that is, radio telegraphy, by a Novice Class operator.

3. During the communications in question, the transmitting station was not identified by a Commission-assigned call sign. Instead, Brown appears to have responded to the identifying terms, "Warren" and "ST5". Both §§ 95.471(c) and 97.87(a) of the Commission's Citizens Band and Amateur Rules require stations in their respective services to be identified by the station's call sign at the beginning and end of each transmission or series of transmission, but at least at intervals not to exceed ten minutes.

4. The information before the Commission further indicates that the radio communications of January 20, 1978, were transmitted with a power in excess of 12 watts, peak envelope power. § 95.613(b) of the Commission's Rules prohibits the use of a transmitter with power output in excess of 12 watts peak envelope power.

5. An inspection of Brown's station by Commission personnel on January 22, 1978, revealed that Brown apparently did not maintain as part of his station records a current copy of Subpart D of Part 95 of the Commission's Rules, as required by § 95.505 of the Commission's Rules.

6. Official Notices of Violation were mailed on February 13, 1978, concerning the above described conduct.

7. Section 312(a)(4) of the Communications Act of 1934, as amended, provides that radio station licenses may be revoked for willful or repeated violation of Commission rules.

8. Accordingly, it is ordered, pursuant to section 312 (a)(4) and (c) of the Communications Act of 1934, as amended, that Brown show cause why the licenses for the captioned radio stations should not be revoked; and that, unless he waives his right to a hearing, Brown shall appear and give evidence at a hearing,[3] to be held at a time and place before an Administrative Law Judge to be specified by a subsequent Order, upon the following issues:

(a) Whether Brown's station was operated in willful or repeated violation of Sections 95.455(a) and/or 95.613(b) of the Commission's Rules;

(b) Whether Brown's station was operated in willful or repeated violation of Sections 97.7(e) and/or 97.61(a) of the Commission's Rules;

(c) Whether Brown's station was operated in willful or repeated violation of Sections 95.471(c) or 97.87(a) of the Commission's Rules and/or used a club designator number for identification;

(d) Whether Brown's station was maintained in willful or repeated violation of Section 95.505 of the Commission's Rules;

(e) Whether, in light of the evidence adduced pursuant to Issues (a), (b), (c), and (d), Warren K. Brown possesses the requisite qualifications to remain a Commission licensee.

9. Section 303(m)(1)(A) of the Communications Act of 1934, as amended, gives the Commission authority to suspend the operator license of any licensee who has violated any provision of the Communications Act or the Commission's Rules. Therefore, it is ordered, under authority contained in section 303(m)(1)(A) of the Communications Act and section 0.331 of the Commission's Rules, that the Novice Class Amateur operator license of Warren K. Brown is suspended for the remainder of the license term.

10. It is further ordered, That, pursuant to § 1.85 of the Commission's Rules, in order to obtain a hearing on the suspension matter, Brown shall, within 30 days[4] after receipt of this suspension order, make a request for a hearing, whereupon the suspension will be held in abeyance until the conclusion of proceedings to determine whether this Suspension Order should be affirmed, modified or revoked; and that if Brown elects not to make such a request, he shall mail his Amateur Radio Operator license to the Commission in Washington, D.C., before the expiration of thirty days.

11. It is further ordered, pursuant to section 309(e) of the Communications Act and §§ 0.331 and 1.973(b) of the Commission's Rules, that Brown's application for an Amateur Technician Class operator license is designated for hearing to be held before an Administrative Law Judge at a time and place to be specified by subsequent Order upon the preceding Issues (a) through (e) as well as the following issue: "(f) Whether in light of the resolution of Issues (a) through (e), above, the public interest, convenience and necessity would be served by a grant of Brown's application for an Amateur Technician Class operator's license."

12. It is further ordered, That, in order to obtain a hearing on the application, Brown, personally or by attorney, shall within 30 days[5] of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intent to appear on a date fixed for hearing to present evidence on the issues specified in the foregoing paragraph. Failure to file a written appearance within the time specified will result in the dismissal of the application with prejudice.

[1] Certain operating violations were either of the CB or the Amateur Radio Service rules, not both. Evidence adduced at the hearing under the specified issues will allow a determination of which violations, if any, occurred.

[2] Certain sections of Part 95 of the Commission's Rules have been revised, renumbered or deleted. The Sections referred to herein are those in effect at the time of operation.

[3] The form attached to this Order should be detached and used in connection with the procedure set forth in the enclosed instructions and mailed to Federal Communications Commission, Washington, D.C. 20554, in the enclosed addressed envelope, within 30 days.

[4] The 15-day time period specified by § 1.85 of the Rules is waived.

[5] The 20-day time period specified by § 1.221 of the Rules is waived.

13. It is further ordered, That the burden of proceeding with the introduction of evidence and the burden of proof for revocation of the Amateur station license (SS Docket No. 78-360), revocation of the CB station license (SS Docket No. 78-359), and the suspension of the operator license (SS Docket No. 78-361), is on the Bureau pursuant to section 312(d) of the Communications Act; and the burden of introduction of evidence and the burden of proof for the grant of the application (SS Docket No. 78-362), is on the respondent, pursuant to section 309(e) of the Act.

14. It is further ordered, pursuant to the provisions of § 1.227 of the Commission's Rules, that the proceeding on the above-stated issues regarding the Revocation, Suspension and Application are consolidated for hearing.

15. It is further ordered, That a copy of this Order shall be sent by Certified Mail—Return Receipt Requested and by Regular Mail to the licensee at his address of record as shown in the caption.

GERALD M. ZUCKERMAN,
Chief, Legal, Advisory, and Enforcement Division.

NOV 9 1978 UMI

Enclosure 1
Page 2

REPLY TO ORDER DESIGNATING APPLICATION FOR HEARING SS DOCKET NO. 78-362

In this matter, Respondent takes the action indicated below:

☐ 1. Respondent will appear on the date affixed for hearing and present evidence on the issues specified in the order of designation.

☐ 2. Respondent will not present evidence on the issues specified in the order of designation and understands that as a result his application will be dismissed with prejudice.

DATE: _____ 197 8

_____
Warren K. Brown
Respondent

SS DOCKET NO. 78-359

SS DOCKET NO. 78-360

SS DOCKET NO. 78-361

[6712-01-C]

Enclosure 1
Page 1

REPLY TO ORDER TO SHOW CAUSE WHY CITIZEN'S BAND RADIO STATION LICENSE MAY NOT BE REVOKED

SS DOCKET NO. 78-362

In this matter, Respondent takes the action indicated below:

☐ 1. Respondent will appear and present evidence at the hearing.

☐ 2. Respondent waives his right to a hearing and does not submit a written statement.

☐ 3. Respondent waives his right to a hearing and submits the attached written statement.*

REPLY TO ORDER TO SHOW CAUSE WHY AMATEUR RADIO STATION LICENSE MODIFICATION SHOULD NOT BE REVOKED

SS DOCKET NO. 78-363

In this matter, Respondent takes the action indicated below:

☐ 1. Respondent will appear and present evidence at the hearing.

☐ 2. Respondent waives his right to a hearing and does not submit a written statement.

☐ 3. Respondent waives his right to a hearing and submits the attached written statement.*

REPLY TO ORDER SUSPENDING AMATEUR NOVICE CLASS OPERATOR License

SS DOCKET NO. 78-364

In this matter, Respondent takes the action indicated below:

☐ 1. Respondent will appear at a hearing on the suspension order.

☐ 2. Respondent does not desire a hearing on the suspension order, and encloses his Amateur Radio Operator license to be held by the Commission for the duration of the suspension.

Date: _____ 1978

_____
Warren K. Brown
Respondent

* If this statement is intended to be in mitigation, it should include the reasons, if any, why you believe that your radio station licenses should not be revoked.

ENCLOSURE 2—EXPLANATION OF PROCEDURES

1. *Revocation.* § 1.91 of the Commission's Rules provides that in order to have a hearing before an Administrative Law Judge, you have 30 days from the Issue date of this Order in which to state that you will appear and present evidence on the matters specified in the Order. If you are unable to appear at a hearing in Washington, D.C., you may request that the hearing be near your residence. Such request should be supported by whatever facts you feel necessary.

Your right to a hearing is waived if you (1) fail to file a timely appearance or (2) file within 30 days a statement waving the right to a hearing. When hearing is waived, you may submit a statement denying or seeking to mitigate or justify the matter alleged in the Order to Show Cause. The Chief Administrative Law Judge will then certify the case to the Commission. The matter will be handled by the Chief, Safety and Special Radio Services Bureau, who will determine whether a revocation order should be issued or the matter should be dismissed. This determination will be made using all information available, including statements you have filed and your past violation record.

2. *Suspension.* If you want a hearing on the suspension you have 30 days from the Issue date in which to request it in writing. § 1.85 of the Rules provides that if you have a hearing, the suspension will be held in abeyance until the conclusion of the proceedings. If you do not want a hearing, the suspension will go into effect in 30 days, and during that 30 days you must send your operator license to the Commission to hold during the suspension.

3. *Application.* In order to have a hearing on your application, you have 30 days from the Issue date of this Order to request it. § 1.221(c) of the Rules provides that if you do not request a hearing, the application will be dismissed with prejudice.

[FR Doc. 78-31737 Filed 11-8-78; 8:45 am]

[6730-01-M]

FEDERAL MARITIME COMMISSION

INDEPENDENT OCEAN FREIGHT FORWARDER / LICENSE APPLICANTS

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to section 44(a) of the Shipping Act, 1916, (Stat. 422 and 46 U.S.C. 841(b)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, D.C. 20573.

Lake Products, Inc., 125 Columbia Court, Jonathan Industrial Park, Chaska, Minnesota 55318. Officers: Bernard Streimikes, President, Dale Streimikes, Vice President, Paul Storms, Treasurer/Accountant, James Turnbull, Director.

Universal Ocean Freight Services (Hyon Tae Choe, d.b.a.), 1220 Broadway, New York, N.Y. 10001.

Consolidated Freight Forwarders Inc., 6945 West 4th Avenue, Hialeah, Fla. 33014. Officers: Alberto P. Armada, President, Norma Manresa, Secretary.

Erich H. Trendel, 53 Maple Street, Roslyn Heights, N.Y. 11577.

Affiliated Forwarding Services, Inc., 10 Parsonage Road, Edison, N.J. 08817. Officers: B. E. Czachowski, Chairman, C. J. Matthews, Jr., President, M. W. Yonge, Vice President/Assistant Secretary, F. M. Brothers, Vice President.

John J. Tarnowski, 810 Warsaw Street, Hitchcock, Tenn. 77563.

Janet Martha Bristow, d.b.a. Universal Forwarding Overseas, 1117 Algonquin Road, Des Plaines, Ill. 60018.

John Jaisli, 505 South 13th Street, New Hyde Park, N.Y. 11040.

Southwest Express, Inc., 3808 Jetero Blvd., Erst, No. 9, Houston, Tex. 77205. Officers: Walter J. Blattel, President, Donald R. Thresher, Secretary.

Bruce Transfer Corp., 144-25 155th Street, Jamaica, N.Y. 11434. Officers: Sol Simon, President, Joel Rhoades, Vice President, Harold McBride, Vice President.

Gonzalo Martinez, 4637 North Elspeth Way, Covina, Calif. 91722.

Maritime Transportation Resources, Inc., Ponce De Leon 221, Hato Rey, Puerto Rico 00919. Officers: Antonio Duen, President, Miguel Coll Villaronga, Vice President/Treasurer, Ferdinand Rodriquez, Vice President/Secretary.

Pro Shipping (Victor S. Bee, d.b.a.), c/o Protimex Corporation, 10100 Santa Monica Blvd., Suite 845, Los Angeles, Calif. 90067.

Ibis Alvarez, 180 East 8th Street, Hialeah, Fla. 33010.

Preferred Air Freight, Inc., Newark International Airport, Newark, N.J. 07114. Officers: Frank D. Slaughter, President, Michael Lansky, Vice President, Anthony J. Monticello, Secretary, Frank V. Monticello, Treasurer.

Inter-Traders Cargo Agency, 7257 N.W. 12th Street, Miami, Fla. 33126. Officers: Placido Garcia-Rios, President, Jose Antero Gonzalez, Secretary/Treasurer.

Miami Valley Transportation Consultants (John P. Sweeney, d.b.a.), 1300 East Third Street, Dayton, Ohio 45403.

Swiss-American Forwarders (Alex A. Bastidas, d.b.a.), 8744 S.W. 154 Circle Place, Miami, Fla. 33193.

Harter International Services (Herman L. Coronado Harter, d.b.a.), 1314 Texas Avenue, Room 1219, Houston, Tex. 77002.

By the Federal Maritime Commission.

Dated: November 6, 1978.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-31727 Filed 11-8-78; 8:45 a.m.]

[6325-01-M]

CIVIL SERVICE COMMISSION

FEDERAL PREVAILING RATE ADVISORY COMMITTEE

Cancellation of Meeting

Pursuant to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463) notice was published in 43 FR 202 of October 18, 1978, that meetings of the Federal Prevailing Rate Advisory Committee would be held on Nov. 2, 9, and Nov. 30, 1978. Notice is hereby given that the meeting scheduled for Nov. 9, 1978, has been cancelled.

JEROME H. ROSS,
Chairman, Federal Prevailing Rate Advisory Committee.

NOVEMBER 7, 1978.

[FR Doc. 78-31827 Filed 11-8-78; 8:45 am]

[6210-01-M]

FEDERAL RESERVE SYSTEM

FEDERAL OPEN MARKET COMMITTEE

Authorization for Domestic Open Market Operations

In accordance with the Committee's rules regarding availability of information, notice is given that on October 10, 1978, paragraph 1(a) of the Committee's authorization for domestic open market operations was amended to raise from $4 billion to $5 billion the limit on changes between Committee meetings in System Account holdings of U.S. Government and Federal Agency securities, effective immediately for the period ending with the close of business October 17, 1978.

NOTE.—For paragraph 1(a) of the authorization see 36 FR 22697.

By order of the Federal Open Market Committee, November 2, 1978.

MURRAY ALTMANN,
Secretary.

[FR Doc. 78-31662 Filed 11-8-78; 8:45 am]

[6210-01-M]

FEDERAL OPEN MARKET COMMITTEE

Authorization for Foreign Currency Operations

On November 1, 1978, paragraph 2 of the authorization for foreign currency operations was amended to raise the amounts for the swap arrangements specified there from $4 billion to $6 billion for the German Federal Bank, from $2 billion to $5 billion for the Bank of Japan, and from $1.4 billion to $4 billion for the Swiss National Bank.

NOTE.—For paragraph 2 of the Authorization see 42 FR 1071.

By order of the Federal Open Market Committee, November 2, 1978.

MURRAY ALTMANN,
Secretary.

[FR Doc. 78-31661 Filed 11-8-78; 8:45 am]

V 43 / 218 NOV 9 78 UMI

[6210-01-M]

PIONEER BANCORPORATION, INC.

Formation of Bank Holding Company

Pioneer Bancorporation Inc., Maplewood, Mo., has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1) to become a bank holding company by acquiring 84 percent or more of the voting shares of Pioneer Bank & Trust Co., Maplewood, Mo. The factors that are considered in acting on the application are set forth in § 3(c) of the act (12 U.S.C. § 1842(c)).

Pioneer Bancorporation Inc., Maplewood, Mo., has also applied, pursuant to § 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR § 225.4(b)(2)), for permission to engage in the activity of acting as agent for the sale of credit life insurance and credit health and accident and credit property insurance that is directly related to extensions of credit by Pioneer Bank & Trust Co. Notice of the application was published on August 27, 1978, in the *St. Louis Post-Dispatch*, a newspaper circulated in St. Louis, Mo. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than November 22, 1978.

Board of Governors of the Federal Reserve System, November 2, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-31663 Filed 11-8-78; 8:45 a.m.]

[6210-01-M]

RUSHFORD BANCORPORATION, INC.

Formation of Bank Holding Company

Rushford Bancorporation, Inc., Rushford, Minn., has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 92 per cent of the voting shares of First National Bank of Rushford, Rushford, Minn. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 29, 1978. Any comment on an application that requests a hearing must be sent to the Secretary's Office within 30 days of the date of this notice and must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 2, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-31664 Filed 11-8-78; 8:45 am]

[6820-22-M]

GENERAL SERVICES ADMINISTRATION

REGIONAL PUBLIC ADVISORY PANEL ON ARCHITECTURAL AND ENGINEERING SERVICES

Meeting

OCTOBER 26, 1978.

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the Regional Public Advisory Panel on Architectural and Engineering Services, Region 10, November 27, 1978, from 9 a.m. to 3 p.m., Public Buildings Service Conference Room, GSA Center, 15th and C Streets SW., Auburn, Wash. The meeting will be devoted to the initial step of the procedures for screening and evaluating the qualifications of architect-engineers under consideration for selection to furnish professional services for the proposed conversion and modernization of the Justice William O. Douglas Federal Building, Third and Chestnut, Yakima, Wash. The meeting will be open to the public.

LOUIS A. BRAUN,
Acting Regional Administrator.

[FR Doc. 78-31784 Filed 11-8-78 8:45 am]

[4110-92-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Human Development Services

FEDERAL COUNCIL ON THE AGING

Meeting

The Federal Council on the Aging was established by the 1973 amendments to the Older Americans Act of 1965 (Pub. L. 93-29, 42 U.S.C. 3015) for the purpose of advising the President, the Secretary of Health, Education, and Welfare, the Commissioner on Aging, and the Congress on matters relating to the special needs of older Americans.

Notice is hereby given pursuant to the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. app. 1, sec. 10, 1976) that the Council will hold a meeting on December 4-5, 1978 from 9:30 a.m. to 5 p.m., Room 5051, HEW North Building, 330 Independence Avenue, SW., Washington, D.C. 20201.

The agenda will consist of a presentation by Dr. Robert Lampman on the Council's Study of Asset Testing; a report will be made on the implementation of the new provisions for older workers under the Comprehensive Employment Training Act (CETA); attention will be devoted to the Council's annual report to the President; recommendations to the Council on the disposition of the Frail Elderly report will be offered by the Special Aging Populations Committee; finally, a review will be made of legislative proposals affecting the elderly for the 96th Congress and the implications of these proposals for Council action.

Further information on the Council may be obtained from the FCA Secretariat, Federal Council on the Aging, Washington, D.C. 20201, telephone 202-245-0441. FCA meetings are open for public observation.

Dated: November 3, 1978.

NELSON H. CRUIKSHANK,
Chairman, Federal Council on the Aging.

[FR Doc. 78-31649 Filed 11-8-78; 8:45 am]

[4110-12-M]

Office of the Secretary

PRESIDENT'S COMMITTEE ON MENTAL RETARDATION

Cancellation of Meeting

The meeting of the President's Committee on Mental Retardation scheduled for November 17-18, 1978, at the Boston-Sheraton Hotel, Prudential Center, Boston, Mass., is hereby cancelled.

Further information on the President's Committee on Mental Retardation may be obtained from Mr. Fred J. Krause, Executive Director, President's Committee on Mental Retardation, Room 2614, ROB No. 3, 7th and D Streets, SW., Washington, D.C. 20201, telephone: 202-245-7634.

Dated: November 2, 1978.

FRED J. KRAUSE,
Executive Director, President's Committee on Mental Retardation.

[FR Doc. 78-31650 Filed 11-8-78; 8:45 am]

[4110-85-M]

Office of the Secretary

PRESIDENT'S COUNCIL ON PHYSICAL FITNESS AND SPORTS

Meeting

The President's Council on Physical Fitness and Sports will hold its quarterly meeting on November 14-15, 1978. The meetings will be held from 1:30 to 5 p.m. Tuesday, November 14, in Room 263, Old Executive Office Building, and from 9 to 11:40 a.m. Wednesday, November 15, in Room 208, Old Executive Office Building.

In order to conserve energy costs which would be involved in a separate meeting, the November 14-15 meeting has been called at a time when the Chairman and members are to be in Washington, D.C. on other matters, thus, necessitating a shorter period of notice than regularly required.

The purpose of the meeting is to apprise the new Council Chairman and members of the 9-point national program of physical fitness and sports; to report on on-going Council programs; and to plan future directions.

A list of Council members and the Executive Order dated September 25, 1970, establishing their responsibilities, may be obtained from:

C. Carson Conrad, Executive Director, President's Council on Physical Fitness and Sports, Washington, D.C. 20201, telephone 202-755-7947.

The meeting will be open to the public.

Dated: November 7, 1978.

C. CARSON CONRAD,
Executive Director, President's Council on Physical Fitness and Sports.

[FR Doc. 78-31833 Filed 11-8-78; 8:45 am]

[4310-02-M]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

ABSENTEE WYANDOTTE ALLOTMENTS

Designation of Administrative Jurisdiction; Correction

NOVEMBER 1, 1978.

In FR Doc. 78-17688 appearing on page 27904 in the issue for Tuesday, June 27, 1978, the following correction should be made: In the second column on page 27904, the Agency listed as having administrative jurisdiction over Allotment 168 now reading "Western Nevada Agency" should have read "Eastern Nevada Agency".

FORREST J. GERARD,
Assistant Secretary, Indian Affairs.

[FR Doc. 78-31629 Filed 11-8-78; 8:45 am]

[4310-84-M]

Bureau of Land Management

IDAHO

Wilderness Inventory

Notice is hereby given that the Bureau of Land Management is conducting wilderness inventories on certain public lands in Idaho. The inventories, which will follow the guidelines established by the Bureau, are the first step in the wilderness review process on public lands.

These inventories are being conducted in the following project areas in advance of the statewide inventory in order to meet time commitments previously established for the projects:

Northern Tier Pipeline—Coeur d'Alene District.
Tendoy, Idaho, to Peterson Flat, Montana, Transmission Line—Salmon District.
Borah, Idaho, to Midpoint, Idaho, Transmission Line—Shoshone District.
Donkey Hills State Land Exchange—Salmon District.
Riddle State Land Exchange—Boise District.
Sun Valley Grazing Environmental Statement—Shoshone District.
Agricultural Environmental Statement—Boise District.
Grassland Kipuka Wilderness Instant Study Area—Idaho Falls District.
China Cup Butte Wilderness Instant Study Area—Idaho Falls District.
Birds of Prey Wilderness Instant Study Area—Boise District.

Upon completion of field analyses, the Bureau will issue draft wilderness inventory maps and narratives. Public review and comment periods will be held, including public meetings. Times and places will be announced in a subsequent notice.

For further information contact:

Dean Bibles, District Manager,
Boise District Office, BLM,
230 Collins Road,
Boise, Idaho 83702.

O'Dell Frandsen, District Manager,
Idaho Falls District Office, BLM,
940 Lincoln Road,
Idaho Falls, Idaho 83401.

Harry Finlayson, Dstrict Manager,
Salmon District Office, BLM,
P.O. Box 430,
Salmon, Idaho 83467.

Charles J. Haszler, District Manager,
Shoshone District Office, BLM,
P.O. Box 2B,
Shoshone, Idaho 83352.

Martin J. Zimmer, District Manager,
Coeur d'Alene District Office,
1808 N. Third Street,
Coeur d'Alene, Idaho 83814.

Dated: October 31, 1978.

WILLIAM L. MATHEWS,
Idaho State Director, Bureau of Land Management.

[FR Doc. 78-31630 Filed 11-8-78; 8:45 am]

[4310-05-M]

Office of Surface Mining Reclamation and Enforcement

McKINLEY MINE

Availability of Coal Mining and Reclamation Plan For Public Review

Pursuant to § 211.5 of Title 30, CFR, notice is hereby given that the office of surface mining has received the following supplemental surface mining and reclamation plan for the reopening and expansion of the southern portion of the McKinley Mine.

The subject plan involves the extraction of both Federal private coal from the following lands, south of Highway 264:

LOCATION OF LANDS TO BE AFFECTED

Applicant	Mine property name	State	County	Township, range and section
Pittsburg and Midway Coal Mining Co.	McKinley Mine South	New Mexico	McKinley	T.16N., R.20W: Sec. 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 26, 27, and 28. T.16N, R.21W.: 11. Sec. 12, 13, 14, and 24.

V 43 / 218 NOV 9 1978

OSM Reference Number: NM-0001.

The mining/reclamation plan under which the company is currently operating, was approved during December 1975, and addressed the expansion of both the northern and southern mining areas, with the mining operation in the northern portion described in detail. As indicated in the approved plan, a supplemental plan would be submitted for review upon development of detailed planning and marketing information. Of the abovementioned lands, sections 9, 10 (southern portion), 11, 15, and 23 to T. 16 N., R. 20 W. were not addressed in the 1975 plan as containing strippable coal.

The environmental impact statement prepared for the Cholla Project (USDA, Forest Service lead) analyzed the expansion of the McKinley Mine to 5 million tons of coal per year. Of this total, 4 million tons would be extracted from lands in the northern area and 1 million from the southern portion.

The supplemental plan is available for public review in the Library, room 270, Office of Surface Mining, Region V, Post Office Building, 1823 Stout Street, Denver, Colo.

This notice is issued at this time for the convenience of the public. The Office of Surface Mining has not yet determined whether the plan is adequate and may request additional information during the course of its reviews. Any additional information so obtained will also be available for public review. Prior to a final decision on this supplemental plan, the Office of Surface Mining will issue a notice of pending decision pursuant to § 211.5(c)(2) of Title 30, Code of Federal Regulations.

Dated: November 1, 1978.

WALTER N. HEINE, P.E.,
Director, Office of Surface Mining, Reclamation and Enforcement.

[FR Doc. 78-31743 Filed 11-8-78; 8:45 am]

[4310-84-M]

[NM 35180]

Bureau of Land Management

NEW MEXICO

Application

NOVEMBER 3, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act 1920 (30 U.S.C. 185), as amended by the act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Co. has applied for one 4½-inch natural gas pipeline right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 29 N., R. 8 W.,
Sec. 35, NW¼NW¼.

This pipeline will convey natural gas across 0.089 of a mile of public land in San Juan County, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, N. Mex. 87107.

RAUL E. MARTINEZ,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-31627 Filed 11-8-78; 8:45 am]

[4310-84-M]

[NM 35080]

NEW MEXICO

Application

OCTOBER 31, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Co. has applied for one 4½-inch natural gas pipeline and related facilities right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 29 N., R. 8 W.,
Sec. 33, S½SE¼.

This pipeline will covey natural gas across 0.059 of a mile of public land in San Juan County, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promply send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, N. Mex. 87107.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-31673 Filed 11-8-78; 8:45 am]

[4310-84-M]

NEVADA

Realty Action—Sale

The following described lands have been identified as suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716, at no less than the fair market value shown:

Parcel number	Legal description, T. 21 S., R. 60 E.	Acreage	Value
	Section 11		
1	Lot 11, E½NW¼ NE¼NW¼.	5.0	$250,000
2	Lot 125, NE¼SE¼ NW¼NW¼.	2.5	60,000
3	Lot 126, SE¼SE¼ NW¼NW¼.	2.5	60,000
4	Lot 135, NE¼SW¼ SW¼NW¼.	2.5	60,000
5	Lot 136, SE¼SW¼ SW¼NW¼.	2.5	60,000
6	Lot 137, NW¼SW¼ SE¼NW¼.	2.5	62,500
7	Lot 138, SW¼SW¼ SE¼NW¼.	2.5	62,500
8	Lot 145, NE¼SW¼ SE¼SW¼.	2.5	62,500
9	Lot 146, SE¼SW¼ SE¼SW¼.	2.5	60,000
	Section 12		
10	Lot 89, NW¼SE¼ NE¼NW¼.	2.5	55,000
11	Lot 90, SW¼SE¼ NE¼NW¼.	2.5	60,000
12	Lot 93, NE¼NE¼ SE¼SW¼.	2.5	60,000
13	Lot 94, SE¼NE¼ SE¼SW¼.	2.5	55,000
14	Lot 95, NE¼NW¼ SW¼SW¼.	2.5	60,000
15	Lot 96, SE¼NW¼ SW¼SW¼.	2.5	52,500
	Section 13		
16	E½NE¼ NE¼SW¼.	5.0	125,000
17	W½SW¼ NE¼SE¼.	5.0	125,000
18	N½NE¼ NW¼SW¼.	5.0	125,000
19	NE¼NW¼ SE¼SW¼.	2.5	60,000
	Section 25		
20	W½SW¼ NE¼NE¼.	5.0	78,000
21	E½SW¼ NW¼NE¼; SE¼NW¼ NE¼.	15.0	218,000
22	E½NE¼ SW¼NE¼.	5.0	73,000
23	NW¼SW¼ NE¼.	10.0	155,000
24	E½SW¼ SW¼NE¼.	5.0	50,000

Parcel number	Legal description, T. 21 S., R. 60 E.	Acreage	Value
25	W½SW¼ SW¼NE¼.	5.0	60,000
26	SW¼SE¼ NE¼.	10.0	105,000
27	S½NE¼ SE½NE¼; N½NE¼ SE¼SE¼ NE¼; N½ S½NE¼SE¼ SE¼NE¼.	6.875	93,000
28	E½NE¼ NE¼SE¼.	5.0	85,000
29	W½NW¼ NE¼SE¼.	5.0	68,000
30	E½SE¼ NE¼SE¼.	5.0	80,000
31	W½SE¼ NE¼SE¼.	5.0	68,000
32	E½NE¼ NW¼SE¼.	5.0	60,000
33	W½NE¼ NW¼SE¼.	5.0	60,000
34	E½NW¼ NW¼SE¼.	5.0	50,000
35	W½NW¼ NW¼SE¼.	5.0	50,000
36	E½NE¼ SW¼SE¼.	5.0	53,000
37	W½NE¼ SW¼SE¼.	5.0	55,000
38	E½NW¼ SW¼SE¼.	5.0	55,000
39	W½NW¼ SW¼SE¼.	5.0	55,000
40	E½SW¼ SW¼SE¼.	5.0	70,000
41	W½SE¼ SW¼SE¼.	5.0	70,000
42	E½SE¼ SW¼SE¼.	5.0	68,000
43	W½NE¼ SE¼SE¼.	5.0	55,000
44	E½NW¼ SE¼SE¼.	5.0	55,000
45	W½NW¼ SE¼SE¼.	5.0	55,000

The sale will be held on December 13, 1978, at the Las Vegas Convention Center, 3150 Paradise Road, Las Vegas, Nev. Registration of bidders will begin at 7 a.m. and the sale will start at 9 a.m. beginning with parcel 1 and continue in order until parcel 45 is sold or until 5 p.m. If necessary, the sale will continue at 8 a.m. the next day, December 14, 1978, until all the parcels are offered for sale.

The lands are being offered for sale in order to facilitate land use planning in the area, enhance land use compatibility with adjoining private lands and to streamline administrative procedures in all phases of suburban and industrial development of this section of the city of Las Vegas. The lands have potential for suburban and industrial development. The sale is consistent with the Bureau's planning for the lands involved and has been discussed with the Clark County Regional Planning Commission and the Clark County Planning and Zoning Commission. The public interest would be served by offering these lands for sale.

The terms and conditions applicable to the sale are:

1. Clark County Flood Control Division requires a plot and grading plan to be submitted with all building permit applications in order to mitigate flood hazards. The sale of these lands will be subject to this requirement and all other applicable Clark County regulations.

2. A reservation for road rights-of-way will be incorporated into each patent in conjunction with the Clark County road network.

3. The sale of these lands will be subject to all existing rights.

4. No preference right will be given to adjoining private land owners.

Detailed information concerning the sale, including the planning documents, environmental assessment, and the record of the public discussions, is available for review at the Las Vegas District Office, 4765 West Vegas Drive, Las Vegas, Nev.

No bid will be accepted for less than the appraised price and bids for a parcel must include all the lands in the parcel. Federal law requires that bidders be U.S. citizens or, in the case of a corporation, subject to the laws of any State or the United States.

Bids must be made by the principal or his agent, either by sealed bids mailed or delivered to the Las Vegas District Office or by oral bids made at the sale. Bids delivered or sent by mail will be considered only if received at the Bureau of Land Management, Las Vegas District Office, P.O. Box 5400, 4765 West Vegas Drive, Las Vegas, Nev. 89102, prior to 4 p.m., Friday, December 8, 1978. These bids must be in sealed envelopes accompanied by a certified check, money order, or cashier's check, made payable to the Bureau of Land Management for the full amount of each bid. The envelopes must be marked in the lower left-hand corner as follows: "Bid Parcel No. ——. Sale to be held December 13, 1978."

The highest sealed bid on each parcel will determine the base of the oral bidding conducted the day of the sale. In the case of identical sealed bids of the same amount for the same parcel, the one with the earliest time stamped on it either by the U.S. Postal Service, or, if hand delivered, by the Bureau of Land Management Office, will be determined the high sealed bid. The highest bid price, either by sealed or oral bid, will establish the sale price. The highest bidder will be required to pay the full bid price immediately at the sale.

All bids will be either returned, accepted, or rejected within 30 days of the sale date.

For a period of 30 days from the date of this notice, interested parties may submit comments to the Secretary of the Interior (LLM 320), Washington, D.C. 20240. Any adverse comments will be evaluated by the Secretary of the Interior, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the Secretary of the Interior, this realty action will become the final determination of the Department of the Interior.

Dated: November 2, 1978.

E. I. ROWLAND,
State Director.

[FR Doc. 78-31632 Filed 11-8-78; 8:45 am]

[4310-84-M]

[Colorado 27176-e]

NORTHWEST PIPELINE CORP.

R/W Application for Pipeline

NOVEMBER 2, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449), as amended (30 U.S.C. 185), Northwest Pipeline Corp., 315 East 200 South, Salt Lake City, Utah 84111, has applied for a right-of-way for a 4¼" o.d. natural gas pipeline for the Rocky Mountain Natural Gas Gathering System approximately 0.365 miles long across the following Public Lands:

SIXTH PRINCIPAL MERIDIAN, RIO BLANCO COUNTY, COLORADO

T. 9 N., R. 93 W.
Sec. 5: Lots 1 & 2, SW¼NE¼

The proposed gathering system will enable the applicant to expand its gathering ability and thereby meet the demand of the applicants' customers.

The purposes for this notice are: (1) To inform the public that the Bureau of Land Management is proceeding with the preparation of environmental and other analytic reports, necessary for determining whether or not the application should be approved and if approved, under what terms and conditions. (2) to give all interested parties the opportunity to comment on the application. (3) to allow any party asserting a claim to the lands involved or having bona fide objections to the proposed natural gas gathering system to file its claim or objections in the Colorado State Office. Any party so filing must include evidence that a copy thereof has been served on Northwest Pipeline Corp.

Any comment, claim or objections must be filed with the Chief, Branch of Adjudication, Bureau of Land Management, Colorado State Office, room 700, Colorado State Bank Building, 1600 Broadway, Denver, Colo. 80202, as promptly as possible after publication of this notice.

ANDREW W. HEARD, JR.,
Leader, Craig Team, Branch of Adjudication.

[FR Doc. 78-31631 Filed 11-8-78; 8:45 am]

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[4310-84-M]

WESTERN LEG OF ALASKA NATURAL GAS TRANSMISSION SYSTEM

Wilderness Inventory

NOVEMBER 2, 1978.

The California State Director has been delegated as the lead Authorized Officer/Deputy Project Manager for the Bureau of Land Management to conduct an inventory of wilderness values associated with the Western Leg Segment of the Alaska Natural Gas Transportation System through California, Oregon, Washington, and Idaho.

When this inventory has been completed, public comments will then be solicited by the individual State Director of the Bureau of Land Management from California, Oregon, and Idaho, through the FEDERAL REGISTER and the appropriate news medias.

For further information, contact the following Bureau of Land Management State Directors. The State Director of Oregon will respond to comments for the State of Washington.

California.—2800 Cottage Way, Sacramento, Calif. 95825.
Idaho.—Post Office Box 042, Boise, Idaho 83724.
Oregon.—Post Office Box 2965, Portland, Oreg. 97208.

ED HASTEY,
State Director.

[FR Doc. 78-31671 Filed 11-8-78; 8:45 am]

[4310-84-M]

[W-65469]

WYOMING

Application

NOVEMBER 2, 1978.

Notice is hereby given that pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Panhandle Eastern Pipe Line Co. of Brighton, Colo., filed an application for a righ-of-way to construct a 4-inch and 10-inch pipeline gathering system and booster station site for the purpose of transporting natural gas across the following described public lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 23 N., R. 111 W.,
Secs. 8, 9, 10, 14, 15, 16, 17, 18, 20, 21, 28, 29, 32, and 33.

The proposed pipeline gathering system will transport natural gas from the Davis-Stormshelter Nos. 1, 2, 3, 4, 6, 7, 8, 9, 10, and 11 wells, the Davis-Farson Cutoff No. 1 well and the Davis-Judith Federal No. 1 well to a point of connection into the proposed booster station site located in the SE¼NE¼ of section 33, all located within T. 23 N., R. 111 W., Sweetwater County, Wyo.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, Highway 187 North, P.O. Box 1869, Rock Springs, Wyo. 82901.

HAROLD G. STINCHCOMB,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-31633 Filed 11-8-78; 8:45 am]

[4310-84-M]

[Wyoming 65101]

WYOMING

Application

NOVEMBER 2, 1978.

Notice is hereby given that pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Northwest Pipeline Corp. of Salt Lake City, Utah, filed an application for a right-of-way to construct a 4½-inch O.D. pipeline for the purpose of transporting natural gas across the following described public lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 27 N., R. 111 W.,
Sec. 19, lot 4;
Sec. 30, lots 1, 2, SE¼NW¼.
T. 27 N., R. 112 W.,
Sec. 23, SW¼NE¼, NW¼NW¼, S½NW¼, N½SE¼, and SE¼SE¼;
Sec. 24, S½SW¼;
Sec. 25, N½NE¼ and NE¼NW¼.

The pipeline will transport natural gas produced from the Federal No. 10-30 well located in the SE¼SW¼ of section 30, T. 27 N., R. 111 W., to a point of connection with Northwest Pipeline Corp.'s existing Big Piney Gathering System in the NW¼NW¼ of sec. 23, T. 27 N., R. 112 W., in Sublette County, Wyo.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, Highway 187 North, P.O. Box 1869, Rock Springs, Wyo. 82901.

HAROLD G. STINCHCOMB,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-31634 Filed 11-8-78; 8:45 am]

[7020-02-M]

INTERNATIONAL TRADE COMMISSION

[TA-201-37]

BOLTS, NUTS, AND LARGE SCREWS OF IRON OR STEEL

Report to the President

NOVEMBER 3, 1978.

To the President: In accordance with section 201(d)(1) of the Trade Act of 1974 (88 Stat. 1978), the U.S. International Trade Commission herein reports the results of an investigation relating to bolts, nuts, and large screws of iron or steel.

The investigation to which this report relates Investigation No. TA-201-37) was undertaken to determine whether—

lag screws or bolts, bolts (except mine-roof bolts) and bolts and their nuts imported in the same shipment, nuts, and screws having shanks or threads over 0.24 inch in diameter, all the foregoing of iron or steel, provided for in items 646.49, 646.54, 646.56, 646.63, and 646.79 of the Tariff Schedules of the United States (TSUS),

are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

The Commission instituted the investigation under the authority of section 201(b)(1) of the Trade Act on August 3, 1978, following receipt on June 9, 1978, of a resolution of the Committee on Ways and Means of the House of Representatives and after determining that there was "good cause" within the meaning of section 201(e) of the Trade Act to investigate the same subject matter as a previous investigation within 1 year of a report to the President on the results of such previous investigation. The report on the previous investigation was transmitted to the President on December 12, 1977.[1]

The Commission held a public hearing in connection with the investigation on September 11 and 12, 1978, in Euclid, Ohio. All interested parties were afforded an opportunity to be present, to present evidence, and to be heard at the hearing.

[1] See Bolts, Nuts, and Large Screws of Iron or Steel: Report to the President on Investigation No. TA-201 27 * * *, USITC Publication 847, December 1977.

The Commission published a notice advising of receipt of the Ways and Means Committee resolution and giving interested persons an opportunity to comment on the "good cause" question in the FEDERAL REGISTER of June 28, 1978 (43 FR 28057). Interested persons were given until July 19, 1978, to comment. Notice of the institution of the investigation and of the scheduling of a public hearing was duly given by publishing notice thereof in the FEDERAL REGISTER of August 15, 1978 (43 FR 36145). Notice of the change in time and place of public hearing from September 6, 1978, to September 11, 1978, was published in the FEDERAL REGISTER of August 24, 1978 (43 FR 37772).

The information in this report was obtained from fieldwork and interviews by members of the Commission's staff, from other Federal agencies, from responses to the Commission's questionnaires, from information presented at the public hearing, from briefs submitted by interested parties, and from the Commission's files.

A transcript of the hearing and copies of briefs submitted by interested parties in connection with the investigation are attached.[2]

There were no significant imports of bolts, nuts, and large screws from countries whose imports are presently subject to the rates of duty set forth in column 2 of the TSUS. The import relief recommended herein, therefore, is not addressed to imports from such countries. Certain recommended relief measures would involve the imposition of rates of duty on imports from countries whose imports are currently subject to rates of duty in column 1 which are higher than the rates set forth in column 2. Should such recommended, or any other, rates of duty higher than the column 2 rates be proclaimed by the President, it would be necessary for him to conform column 2 by proclaiming rates therefor that are the same as those proclaimed for column 1 in order to avoid being in violation of our international obligations.[3]

DETERMINATION, FINDINGS, AND RECOMMENDATION OF THE COMMISSION

Determination

On the basis of the investigation, the Commission determines (Vice Chairman Alberger dissenting, Chairman Parker and Commissioner Stern[4] not participating) that—

lag screws or bolts, bolts (except mine-roof bolts) and bolts and their nuts imported in the same shipment, nuts, and screws having shanks or threads over 0.24 inch in diameter, all the foregoing of iron or steel, provided for in items 646.49, 646.54, 646.56, and 646.63 of the Tariff Schedules of the United States (TSUS),

are being imported into the United States in such increased quantities as to be a substantial cause of serious injury,[5] or the threat thereof,[6] to the domestic industry producing articles like or directly competitive with the imported articles. The Commission makes no determination with respect to imports of the subject articles from Canada admitted free of duty as original equipment for motor vehicles under item 646.79 of the TSUS.[7]

Findings and recommendation

The Commission finds and recommends (Vice Chairman Alberger dissenting,[8] Chairman Parker and Commissioner Stern not participating) that to prevent[9] or remedy[10] such injury it is necessary to impose rates of duty (a) in lieu of the present rates of duty with respect to lag screws or bolts and screws having shanks or threads over 09.24 inch in diameter, of iron or steel, provided for in items 646.49 and 646.63 of the TSUS, and (b) in addition to the present rates with respect to bolts (except mine-roof bolts) and bolts and their nuts imported in the same shipment, and nuts, of iron or steel, provided for in items 646.54 and 646.56 of the TSUS, as follows—

First year: 20 percent ad val.
First year: 20 percent ad val.
Third year: 15 percent ad val.
4th year: [11] 10 percent ad val.
Fifth year: [11] 10 percent ad val.

By order of the Commission.

Issued: November 7, 1978.

KENNETH R. MASON,
Secretary.

[FR Doc. 78-31740 Filed 11-8-78; 8:45 am]

[7020-02-M]

[AA1921-187]

MOTORCYCLES FROM JAPAN

Determination of No Injury

NOVEMBER 3, 1978.

On the basis of its investigation, the U.S. International Trade Commission (Commission) has unanimously determined (Commissioner Stern not participating)[1] that an industry in the United States is not being and is not likely to be injured, and is not prevented from being established, by reason of the importation of motorcycles from Japan that are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended.

On August 3, 1978, the Commission received advice from the Department of the Treasury (Treasury) that motorcycles from Japan are being, or are likely to be, sold at less than fair value (LTFV) within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)). Treasury excluded from its LTFV determination motorcycles produced by Suzuki Motor Co., Ltd. On August 11, 1978, the Commission instituted investigation No. AA1921-187 under section 201(a) of said act to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States. On October 18, 1978, the Commission was advised by Treasury that its determination of sales at LTFV was being amended to discontinue the investigation with respect to motorcycles produced and sold by Yamaha Motor Co., Ltd., and to report certain changes in the margins by which sales by Honda Motor Co., Ltd., and Kawasaki Heavy Industries, Ltd., are at less than fair value. Suzuki Motor Co., Ltd., remained excluded from the investigation.

Notice of the institution of the investigation and of the public hearing held in connection therewith was published in the FEDERAL REGISTER of August 17, 1978 (43 FR 36519). On September 28 and 29, 1978, a hearing was held in Washington, D.C., at which all persons who requested the opportunity were permitted to appear in person or by counsel.

[1] Commissioner Stern assumed her duties as a Commissioner on Oct. 16, 1978, and was not a Commissioner at the time of the public hearing or during most of the investigative period.

[2] Attached to the original report sent to the President, and available for inspection at the U.S. International Trade Commission, except for material submitted in confidence.

[3] See art. I, General Agreement on Tariffs and Trade (*Basic Instruments and Selected Documents*, vol. IV, March 1969).

[4] Commissioner Stern assumed her duties as a Commissioner on Oct. 16, 1978, and was not a Commissioner at the time of the public hearing or during most of the investigative period.

[5] Commissioner Bedell finds serious injury with respect to imports of such articles.

[6] Commissioner Moore finds threat of serious injury with respect to imports of such articles.

[7] Vice Chairman Alberger's negative determination was with respect to all the imported articles under investigation, including these Canadian articles.

[8] Vice Chairman Alberger recommends no remedy.

[9] Commissioner Moore, having found a threat of serious injury, finds and recommends relief necessary to *prevent* such threatened injury.

[10] Commissioner Bedell, having found serious injury, finds and recommends relief necessary to *remedy* such injury.

[11] In view of the fact that the rate of duty set forth in column 1 of the TSUS on lag screws or bolts provided for in item 646.49 of the TSUS is 12.5 percent ad valorem, import relief with respect to such articles provided in accord with this proposal would terminate at the end of the third year.

[1] Commissioner Stern assumed her duties as a Commissioner on Oct. 16, 1978, and was not a Commissioner at the time of the public hearing or during most of the investigative period.

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In arriving at its determination, the Commission gave due consideration to written submissions from interested parties and information adduced at the hearing as well as information obtained by the Commission's staff from questionnaires, personal interviews, and other sources.

STATEMENT OF REASONS OF CHAIRMAN JOSEPH O. PARKER AND COMMISSIONERS BILL ALBERGER, GEORGE M. MOORE, AND CATHERINE BEDELL

In order for a Commissioner to make an affirmative determination in an investigation under the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), it is necessary to find that an industry in the United States is being or is likely to be injured, or is prevented from being established, *and* the injury or likelihood thereof must be by reason of imports at less than fair value (LTFV).

DETERMINATION

On the basis of the information obtained in the investigation, we determine that an industry in the United States is not being is is not likely to be injured, and is not being prevented from being established, by reason of the importation of motorcycles from Japan which the Department of the Treasury has determined are being, or are likely to be, sold at LTFV.

THE IMPORTED ARTICLE AND THE DOMESTIC INDUSTRY

Motorcycles are two-wheeled motorized vehicles powered by internal combustion engines having piston displacements greater than 90 cubic centimeters (cc). Motorcycles are classified by use as on-highway, dual-purpose, and off-highway types and by engine size as lightweight (91cc to 250cc), middleweight (251cc to 700cc), and heavyweight (over 700cc). In this investigation we consider the relevant domestic industry to consist of the facilities in the United States used in the production of motorcycles. Harley-Davidson Motor Co., Inc., a subsidiary of AMF, Inc. (the complainant in this case), and Kawasaki Motors Corp., U.S.A., a wholly owned subsidiary of Kawasaki Heavy Industries, Ltd., Japan, produce motorcycles in the United States.

LTFV SALES FROM JAPAN

The Department of the Treasury's investigation of U.S. imports of motorcycles from Japan covered the 8-month period extending from November 1, 1976, through June 30, 1977. This investigation covered four Japanese companies—Honda Motor Co., Ltd.; Yamaha Motor Co., Ltd.; Kawasaki Heavy Industries, Ltd.; and Suzuki Motor Co., Ltd.—which together accounted for approximately 98 percent of the Japanese motorcycles sold to dealers or independent distributors in the United States during the period under consideration. On the basis of an amended determination of sales at LTFV, which was received by the Commission on October 18, 1978, Treasury found that 18.2 percent of the sales compared were at margin and that the weighted average margin on all sales compared was 2.08 percent. Weighted average margins by company were as follows: 2.6 percent for Honda; 0.82 percent for Yamaha, 6.9 percent for Kawasaki, and 0.15 percent for Suzuki. Treasury determined that the margin applicable to Yamaha's sales was minimal in relation to the total volume of its exports to the United States, and after receiving assurances from Yamaha of no future sales at LTFV, Treasury discontinued its investigation with respect to that firm. Treasury had previously determined (on Aug. 3, 1978) that Suzuki's margin was de minimis and excluded that firm from its determination of sales at LTFV.

U.S. MARKET CONDITIONS, 1972–77

U.S. consumption of motorcycles increased from 873,000 units in 1972 to 1.1 million units in 1973 or by more than 24 percent, apparently in reaction to the oil embargo and growing consumer concern over energy problems. Japanese producers responded to this increased demand and its anticipated continuation by expanding their exports to the United States by more than 50 percent between 1973 and 1974. However, U.S. motorcycle demand fell sharply, by more than 40 percent from 1973 to 1975, as energy concerns lessened. It also became evident that U.S. consumers were more interested in purchasing motorcycles as recreational products than as an alternate means of transportation; this recreational market was also adversely affected by the economic recession of 1974–75. As the U.S. economy improved in 1976, consumption increased about 20 percent and remained at this level through 1977. The result of the misreading of motorcycle demand in 1974 and 1975 was the accumulation of large inventories by importers and to a lesser degree by U.S. producers in 1975 and 1976. As new-model-year motorcycles were imported prices of some of the carry over inventory of prior year models were reduced to the point where they were found by the Secretary of the Treasury to have been sold at less than fair value in 1976 and 1977. As of March 31, 1978, inventories of prior-year-model (1975 and 1976) motorcycles had been virtually eliminated from both importers and U.S. producers stocks.

NO INJURY BY REASON OF LTFV SALES

Since the operations of the two U.S. producers of motorcycles differ significantly with respect to the types and sizes of motorcycles produced and the amount of fabrication performed in the United States, we have examined their performances separately.

Kawasaki, which entered the U.S. market as a producer in 1975, reported increased production, increased capacity utilization, increased shipments, and increased employment in 1976 and 1977. After absorbing significant losses associated with startup costs, it reported a profit in 1977 and again in January–June 1978. In view of these factors and its own claim of no injury at the Commission's public hearing,[2] it is clear that Kawasaki is not being injured by LTFV imports.

Although Harley-Davidson has produced a number of different motorcycle types and sizes, it is known primarily as a heavyweight motorcycle producer. In 1973, Harley-Davidson established an assembly line in its U.S. production facility for the assembly of lightweight on-highway and dual-purpose motorcycles. These models were also being produced at that time in Harley-Davidson's plant in Italy. The company's production of lightweight motorcycles began at a time when the overall U.S. demand for motorcycles was declining. From 1973 to 1975, overall demand for motorcycles declined by 40 percent and demand for lightweight models, especially the dual-purpose type, experienced an even sharper decline. Japanese producers, who had developed the U.S. market for lightweight motorcycles in the 1960's continued to supply the great bulk of the U.S. market for these motorcycles throughout the period for which the Commission obtained data, 1972–77 and January–June 1978.

Harley-Davidson's lightweight production commenced in November 1973, peaked in 1974, and then declined in 1975. U.S. production of lightweight models was discontinued by October 1976. Thus, Harley-Davidson was not actively engaged in the production of lightweight motorcycles during the period (November 1976–June 1977) in which Treasury determined LTFV sales occurred.

The Commission received oral and written testimony that Harley-Davidson's lightweight models were not competitive in terms of quality and performance with Japanese models and that consumer acceptance of Harley-Davidson's lightweight models was poor since they did not conform to the image or quality buyers had come to expect on the basis of the company's reputation as a manufacturer of heavyweight motorcycles.[3] In addition, some of Harley-Davidson's dealers were unwilling to stock the company's lightweight models. These factors indicate that the lightweight motorcycle operations were not injured by reason of LTFV imports.

An analysis of Harley-Davidson's heavyweight motorcycle operations reveals that the firm has had continued success in its sales of heavyweights, the segment of the U.S. market in which it has traditionally held a dominant position. Harley-Davidson's production of heavyweight motorcycles increased by over 20 percent from 1973 to 1977 and capacity utilization increased about 25 percent in the same period. Inventories of prior-year models were minimal. Information was received during the Commission's investigation indicating that Harley-Davidson even found it necessary to backorder some heavyweight motorcycles. Employment was stable and prices continually increased, even during the period in which Treasury found sales at LTFV. Profit and loss data supplied to the Commission by Harley-Davidson show that its overall motorcycle operations were profitable in each of the years 1972-76 and profits increased in 1977. Clearly, Harley-Davidson has not been injured by LTFV imports in its heavyweight motorcycle operations.

NO LIKELIHOOD OF INJURY BY REASON OF LTFV SALES

The facts in the instant case also reveal there is no likelihood of future injury to the domestic industry from LTFV sales. The inordinately high inventories of imported prior-year model motorcycles which led to the LTFV pricing have been reduced to a normal level and thereby reducing the pressure on importers to make sales at LTFV. Furthermore, Kawasaki, which at one time imported all its motorcycles from Japan, has established a U.S. production facility whose output has eliminated its need to import certain types and sizes of motorcycles and Honda has announced that it will open a U.S. production facility in the summer of 1979 which will likewise decrease its dependence on imports. Kawasaki Heavy Industries and Honda are the only Japanese firms with respect to which Treasury has made an LTFV determination. As a share of the U.S. motorcycle market, the combined imports of these two producers declined by about 25 percent from 1975 to January–June 1978.

It is also evident that demand for heavyweight motorcycles of the type produced by Harley-Davidson is increasing. Heavyweight motorcycles, as a share of total U.S. motorcycle consumption increased from about 10 percent in 1972 to about 30 percent in January–June 1978. Demand for certain Harley-Davidson models was sufficiently strong in 1978 that the company found it necessary on several occasions to provide its dealers with lists of overcommitted orders, i.e., orders that were not produced in the month requested and which the dealer could cancel or hold for future scheduling when production slots became available.

NO PREVENTION OF ESTABLISHMENT OF AN INDUSTRY

There are currently two domestic producers of motorcycles which manufacture a variety of types and sizes in their U.S. facilities. Harley-Davidson, which currently produces only heavyweight sizes, has been manufacturing motorcycles in the United States since 1903. This firm made substantial quantities of motorcycles in the United States during each of the years for which the Commission obtained data—1972–77—and in January–June 1978. In addition, this firm reported a profit on its motorcycle operations in each of these years and again in January–June 1978. Kawasaki, which commenced U.S. motorcycle production in 1975, produces both middleweight and heavyweight sizes. This firm also produced substantial quantities of motorcycles in its U.S. plant in 1975, 1976, 1977, and January–June 1978. Notwithstanding the significant startup costs in 1975 and 1976 which accompanied the commencement of production in the United States by Kawasaki, that company reported a profit in 1977 and in January–June 1978 thereby establishing itself as a viable producer. In addition, a representative of American Honda Motor Co., Inc., testified at the Commission's hearing that it would commence production of motorcycles in the United States in the summer of 1979.[4] It is clear that there is an established and a growing industry producing motorcycles in the United States.

CONCLUSION

We therefore conclude on the basis of the information obtained in the investigation that an industry in the United States is not being and is not likely to be injured and is not being prevented from being established by reason of the importation of motorcycles from Japan which are being or are likely to be, sold at LTFV.

Issued: November 3, 1978.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc. 78-31741 Filed 11-8-78; 8:45 am]

[2] See transcript of the hearing, p. 269.

[3] See transcript of the hearing, pp. 322-357 and 396-407; post hearing briefs from Honda, Kawasaki, and Yamaha; and Commission report, pp. A-32-34.

[4] See transcript of hearing, p. 367.

[7020-02-M]

[Investigation No. 337-TA-59]

PUMP TOP INSULATED CONTAINERS

Investigation

Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on September 25, 1978, and supplemented on October 6, 1978, under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), on behalf of Aladdin Industries, Inc., Nashville, Tenn. 37210, alleging that unfair methods of competition and unfair acts exist in the importation of certain pump top insulated containers into the United States, or in their sale, by reason of:

A. The alleged coverage of such pump top insulated containers by the claims of U.S. Letters Patent 4,113,147;

B. The passing off of such pump top insulated containers as though they were complainant's product; and

C. The failure to indicate the country of origin on such pump top insulated containers.

The supplemented complaint alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States. Complainant requests a temporary order of exclusion from entry into the United States of the imports in question. Complainant further requests that, after a full investigation a permanent exclusion of said imports be ordered, and a cease and desist order be issued.

Having considered the supplemented complaint, the U.S. International Trade Commission, on October 24, 1978,

Ordered, (1) That, pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), an investigation be instituted to determine, under subsection (c) whether, on the basis of the allegations set forth in the supplemented complaint, there is, or there is reason to believe there is, a violation of subsection (a) of this section in the importation into the United States and the sale within the United States of pump top insulated containers or components thereof by reason of:

(a) The alleged coverage of such pump top insulated containers by claims of the U.S. Letters Patent 4,113,147;

(b) The passing off of such pump top top insulated containers as though they were complainant's product; and

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(c) The failure to indicate the country of origin on such pump top insulated containers,

Wherein, the effect or tendency of these alleged unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

(2) That, for the purpose of this investigation so instituted, the following are hereby named as parties:

(a) The complainant is: Aladdin Industries, Inc., 703 Murfreesboro Road, Nashville, Tenn. 37210.

(b) The respondents are the following companies alleged to be involved in the unauthorized importation of such articles into the United States, or in their sale, and are parties upon which the supplemented complaint and this notice are to be served: W. P. Hemmenway Co., 1405 Northwest 14th Street, Portland, Oreg. 97209; Rainbow National, Inc., 3104 West Lake Street, Minneapolis, Minn. 55416.

(c) Donald R. Dinan, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, is hereby named Commission investigative attorney, a party to this investigation.

(3) That, for the investigation so instituted, Chief Administrative Law Judge, Donald K. Duvall, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall designate the presiding officer.

Responses must be submitted by the named respondents in accordance with section 210.21 of the U.S. International Trade Commission's *Rules of practice and Procedure*, as amended (19 CFR 210.21). Pursuant to 201.16(d) and 210.21(a) of the Rules, such responses will be considered by the U.S. International Trade Commission if recieved no later than 20 days after the date of service of the supplemented complaint. Extensions of time for submitting a response will not be granted unless good and sufficient cause therefor is shown

Failure of a respondent to file a timely response to each allegation in the supplemented complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the supplemented complaint and this notice, and will authorize the presiding officer and the U.S. International Trade Commission, without further notice to the respondent, to find the facts to be as alleged in the supplemented complaint and this notice and to enter both a recommended determination and a final determination, respectively, containing such findings.

The supplemented complaint is available for inspection by interested persons at the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, and in the New York City office of the U.S. International Trade Commission, 6 World Trade Center, New York, N.Y. 10048.

Issued: November 6, 1978.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc. 78-31742 Filed 11-8-78; 8:45 am]

[4410-01-M]

DEPARTMENT OF JUSTICE

Antitrust Division

PROPOSED FINAL JUDGMENT IN "UNITED STATES v. OWENSBORO RIVER SAND & GRAVEL CO., INC. ET AL.," and COMPETITIVE IMPACT STATEMENT THEREON

Notice is hereby given pursant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b) through (h), that a proposed Final Judgment and a Competitive Impact Statement as set forth below has been filed with the United States District Court for the Western District of Kentucky, Civil No. 77-0110-0-(G), *United States* v. *Owensboro River Sand & Gravel Co., Inc. et al.* The Complaint in this case alleges that two corporations, Owensboro River Sand & Gravel Co., Inc., and Transit-Mix Concrete Co., conspired to fix, raise, stabilize, and maintain the prices of ready-mix concrete in the Owensboro, Ky., area. The proposed Judgment enjoins the defendants from engaging in the alleged activities.

Public comment is invited within the statutory 60 day comment period. Such comments and responses thereto will be published in the *Federal Register* and filed with the Court. Comments should be directed to John A. Weedon, Chief, Cleveland Field Office, Antitrust Division, Department of Justice, 995 Celebrezze Federal Building, Cleveland, Ohio 44199, telephone 216-522-4070.

Dated: November 2, 1978.

CHARLES F. B. MCALEER,
Special Assistant for Judgment Negotiations.

U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY

United States of America, Plaintiff, vs. *Owensboro River Sand & Gravel Co., Inc., and Transit-Mix Concrete Co., Defendants.*
Civil Action No. 77-0110-0(G).
Filed: November 2, 1978.

STIPULATION

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. A Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of either party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to either party or other proceedings, provided that Plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving thereof on Defendant and by filing that notice with the Court.

2. In the event Plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to Plaintiff and Defendant in this and any other proceeding.

For the Plaintiff: United States of America. John H. Shenefield, *Assistant Attorney General,* William E. Swope, Charles F. B. McAleer, John A. Weedon, *Attorneys, Department of Justice.* Albert Jones, *U.S. Attorney.* Donald S. Scherzer, William A. LeFaiver, Robert M. Dixon, *Attorneys, Department of Justice Antitrust Division.*

Attorneys for the Defendant Owensboro River Sand & Gravel Co., Inc.: Burke, Haber & Berick, Myron N. Krotinger, 1500 Central National Bank Building, Cleveland, Ohio 44114; dated: July 31, 1978. Wilson, Wilson, & Plain, William L. Wilson, Sr., 414 Masonic Building, Owensboro, Ky. 42301; dated: July 31, 1978.

Attorney for the Defendant Transit-Mix Concrete Co.: Stites, McElwain & Fowler, T. Kennedy Helm III, 3400 First National Tower, Louisville, Ky. 40202; dated: July 31, 1978.

IN THE U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY

United States of America, Plaintiff vs. *Owensboro River Sand & Gravel Co., Inc.;* and *Transit-Mix Concrete Co.,* Defendants.
Civil Action No. 77-0110-0(G).
Filed: November 2, 1978.

FINAL JUDGMENT

Plaintiff, United States of America, having filed its Complaint herein on July 22, 1977, and defendants, having appeared and responded to the Complaint, and the plaintiff and defendants by their respective attorneys having consented to the making and entry of this Final Judgment, without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or any admission by any party with respect to any issue of fact or law herein:

Now, Therefore, before any testimony or evidence has been taken herein and upon said consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I

This Court has jurisdiction of the subject matter herein and of the parties thereto. The Complaint states claims against the defendants upon which relief may be granted under Section 1 of the Sherman Act (15 U.S.C. § 1).

II

As used in this Final Judgment:

(A) "person" means any individual, corporation, partnership, firm, association or other business or legal entity;

(B) "ready mix concrete" means a mixture of cement and other materials, such as sand, stone, water and, at times, additives, which is used in the construction and improvement of various types of roadways, structures and appurtenances.

III

The provisions of this Final Judgment applicable to each of the defendants shall also apply to each of its officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

Each defendant is enjoined and restrained from entering into, adhering to, participating in, maintaining, furthering, enforcing or claiming, either directly or indirectly, any rights under any contract, agreement, understanding, arrangement, plan, program, combination or conspiracy with any person to determine, fix, raise, stabilize or maintain prices or other terms or conditions for the sale of ready mix concrete or any other product to any third person in the Commonwealth of Kentucky.

V

Each defendant is enjoined and restrained from, directly or indirectly:

(A) communicating to any person prices at which, or terms or conditions upon which, ready mix concrete or any other product is then being sold or offered for sale by said defendant;

(B) communicating to any person information concerning:

(1) future prices at which, or terms or conditions upon which, ready mix concrete or any other product will be sold or offered for sale by said defendant;

(2) consideration by said defendant of changes or revisions in the prices at which, or the terms or conditions upon which, said defendant sells or offers to sell ready mix concrete or any other product;

(C) requesting from any person any information which said defendant could not communicate without violating subparagraphs (A) and (B) of this Section V.

VI

Nothing in Section V of this Final Judgment shall prohibit any defendant from:

(A) formulating or submitting with any person a bona fide joint bid or quotation, when the submission of such joint bid or quotation has been requested by or is known to the purchaser;

(B) communicating information to any person in the course of, and related to, negotiation, or entering into, or carrying out a bona fide purchase or sale purchase transaction with such other person;

(C) advertising to the public or trade generally present or future prices at which, or terms or conditions upon which ready mix concrete or any other product is then being, or will be sold or offered for sale.

VII

Each defendant is ordered and directed for a period of five (5) years from the date of entry of this Final Judgment to affix to every written bid or quotations submitted by said defendant for ready mix concrete or any other product or any combination therof a written certification, in substantially the form set forth in Appendix A attached hereto, signed by an officer or employee of such defendant having authority to determine the price or prices bid or quoted and responsible for the preparation of bids or quotations, that said bid or quotation was not the result, directly or indirectly, of any discussion, communication, agreement, understanding, plan or program, whether formal or informal, between such defendant and any other person, which is prohibited by the provisions of this Final Judgment.

VIII

Each defendant is ordered and directed to:

(A) within thirty (30) days after the date of entry of this Final Judgment, furnish a copy thereof to each of its officers and directors, and also to any employee having pricing authority or responsibility in connection with the sale of ready mix concrete or any other product in the Commonwealth of Kentucky;

(B) furnish a copy of this Final Judgment to each new officer, director, and also to any employee having pricing authority or responsibility in connection with the sale of ready mix concrete or any other product in the Commonwealth of Kentucky within thirty (30) days after employment;

(C) attach to each copy of this Final Judgment furnished pursuant to subsections (A) and (B) of this Section VIII a statement, in substantially the form set forth in Appendix B attached hereto, advising each person of his obligations and of such defendant's obligations under this final Judgment, and of the penalties which may be imposed upon him and/or upon such defendant for violation of this Final Judgment; and

(D) to file with this Court and serve upon the plaintiff within sixty (60) days after the date of entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with subsections (A) and (C) of this section VIII.

IX

For the purpose of determining or securing compliance with this Final Judgment and subject to any legally recognized privilege, from time and time:

(A) duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to a defendant made to its principal office, be permitted:

(1) access during office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant, who may have counsel present, relating to any of the matters contained in this Final Judgment; and

(2) subject to the reasonable convenience of such defendant, and without restraint or interference from it, to interview officers, employees, directors, partners or agents of such defendant, who may have counsel present, regarding any such matters.

(B) Upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to a defendant's principal office, such defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

No information or documents obtained by means provided in this Section IX shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

If at any time information or documents are furnished by a defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents which is of a type described in Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under the Federal Rules of Civil Procedure," then ten (10) days' notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which the defendant is not a party.

X

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, or for the enforcement of compliance therewith, and punishment of violations thereof.

XI

Entry of this Final Judgment is in the public interest.

U.S. District Judge

Entered:

APPENDIX A

The undersigned hereby certifies that to his best knowledge and belief the attached bid has not been prepared in collusion with any other seller of ready mix concrete, and that the prices and other terms and conditions thereof have not been communicated by or on behalf of the bidder to any other seller of ready mix concrete prior to any official opening of said bid.

Dated: _____

Signature of Offical Having Authority to Determine the Price or Prices Bid or Quoted

APPENDIX B

NOTICE

Re: *U.S. v. Owensboro River Sand & Gravel Co., Inc.*

Attached hereto is a copy of a Final Judgment entered ————, 1979 in the captioned case. We are required to provide this to you, and you should read it carefully. The provisions of the Final Judgment con-

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tained in Paragraphs IV, V and VII apply to you, and violation of these provisions by you may subject you and the Company to fines and/or imprisonment.

U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY

United States of America, Plaintiff, v. *Owensboro River Sand & Gravel Co., Inc.*; and *Transit-Mix Concrete Co.*, Defendants.

Civil No. 77-0110-0-(G).

Filed: November 2, 1978.

COMPETITIVE IMPACT STATEMENT

Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. sections 16(b)-(h), the United States filed this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

On July 22, 1977, the United States filed a civil antitrust Compliant alleging that two corporations conspired to fix prices in violation of Section 1 of the Sherman Act (15 U.S.C. section 1).

The Complaint alleged that beginning at least as early as March 1973, and continuing thereafter up to and including the date of the filing of the Complaint, the defendants had engaged in a combination and conspiracy to fix, raise, stabilize, and maintain the prices of ready-mix concrete in the Owensboro area.

The Complaint sought a judgment by the Court declaring that defendants had engaged in an unlawful combination and conspiracy in restraint of trade in violation of the Sherman Act and an Order by the Court to enjoin and restrain the defendants from such activities in the future.

The corporations named in the Complaint were Owensboro River Sand & Gravel Co., Inc.; and Transit-Mix Concrete Co.

Both of these defendants to this action have previously pleaded *nolo contendere* to criminal felony charges with respect to this alleged conspiracy. A fine of $100,000 was levied against Owensboro River Sand & Gravel Co., Inc. and a fine of $10,000 was levied against Transit-Mix Concrete Co.

II. DESCRIPTION OF THE PRACTICES GIVING RISE TO THE ALLEGED VIOLATIONS OF THE ANTITRUST LAWS

The defendants are engaged in the production and sale of ready-mix concrete in the Owensboro area to governmental agencies, general contractors, home builders, owners of homes and buildings, and others on the basis of written or oral price quotations rendered to said customers. These customers use ready-mix concrete in the construction, repair, alteration, and improvement of highways and governmental, industrial, institutional, commercial and residential foundations and structures.

Defendants are two of the four largest ready-mix concrete companies in the Owensboro area.

The Complaint alleges that the defendants engaged in a combination and conspiracy beginning at least as early as March 1973, that consisted of a continuing agreement, understanding, and concert of action among themselves and co-conspirators, to fix, raise, stabilize, and maintain the prices of ready-mix concrete in the Owensboro area.

The Complaint further alleges that the combination and conspiracy had the following effects, among others:

(a) prices of ready-mix concrete in the Ownesboro area were fixed, raised, stabilized, and maintained at artificial and non-competitive levels;

(b) competition in the sale of ready-mix concrete in the Owensboro area was restrained; and

(c) customers in the Owensboro area were deprived of the benefits of free and open competition in the market for ready-mix concrete.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The United States and the defendants have stipulated that the proposed Final Judgment may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act. The stipulation between the parties provides that there is no admission by any party with respect to any issue of fact or law. Under the provisions of section 2(e) of the Antitrust Procedures and Penalties Act, entry of the proposed Judgment is conditioned upon a determination by the Court that the proposed Judgment is in the public interest.

The proposed Final Judgment enjoins any direct or indirect renewal of the type of conspiracy alleged in the Complaint. Specifically, section IV provides that the defendants are enjoined and restrained from entering into, adhering to, participating in, maintaining, furthering, enforcing or claiming, either directly or indirectly, any rights under any contract, agreement, understanding, arrangement, plan, program, combination or conspiracy with any person to determine, fix, raise, stabilize or maintain prices or other terms or conditions for the sale of ready-mix concrete or any other product to any third person in the Commonwealth of Kentucky.

Section V further enjoins each defendant from directly or indirectly:

(A) communicating to any person prices at which, or terms or conditions upon which, ready-mix concrete or any other product is then being sold or offered for sale by said defendant;

(B) communicating to any person information concerning:

(1) future prices at which, or terms or conditions upon which, ready-mix concrete or any other product will be sold or offered for sale by said defendant;

(2) consideration by said defendant of changes or revisions in the prices at which, or the terms or conditions upon which said defendant sells or offers to sell ready-mix concrete or any other product;

(C) requesting from any person any information which said defendant could not communicate without violating subparagraphs (A) and (B) of this section V.

The injunctions in sections IV and V run perpetually.

For a period of five (5) years from the date of entry of the Judgment, each defendant is required to affix to every written bid or quotation submitted by said defendant for ready-mix concrete or any other product or any combination thereof a written certification signed by an officer or employee of such defendant having authority to determine the price or prices bid or quoted and responsible for the preparation of bids or quotations, that said bid or quotation was not the result, directly or indirectly, of any discussion, communication, agreement, understanding, plan or program, whether formal or informal, between such defendant and any other person, which is prohibited by the provisions of this Final Judgment.

Section VIII of the proposed Judgment orders and directs each defendant to:

(A) Furnish a copy of the Judgment, within thirty (30) days after the date of entry of the Judgment, to each of its officers and directors, and also to any employee having pricing authority or responsibility in connection with the sale of ready-mix concrete or any other product in the Commonwealth of Kentucky;

(B) Furnish a copy of the Judgment to each new officer, director, and also to any employee having pricing authority or responsibility in connection with the sale of ready-mix concrete or any other product in the Commonwealth of Kentucky within thirty (30) days after employment;

(C) Attach to each copy of the Judgment furnished pursuant to subsections (A) and (B) of this section VIII a statement, in substantially the form set forth in Appendix B attached hereto, advising each person of his obligations and of such defendant's obligations under the Judgment, and of the penalties which may be imposed upon him and/or upon such defendant for violation of the Judgment; and

(D) To file with the Court and serve upon the plaintiff within 60 days after the date of entry of the Judgment, an affidavit as to the fact and manner of its compliance with subsections (A) and (C) of section VIII.

There are several limited exceptions to the prohibitions against exchange of information set forth in section V of the Judgment. These execptions, found in section VI of the Judgment, relate to possible bona fide joint bids or quotations, bona fide purchases and sales, and advertisements.

The proposed Final Judgment is applicable to each of the defendants and to the officers, directors, agents, and employees of each defendant, as well as to the subsidiaries and successors to any defendant corporation.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE PLAINTIFFS

After entry of the proposed Final Judgment, any potential private plaintiffs who might have been damaged by the alleged violations will retain the same right to sue for monetary damages and any other legal and equitable remedies which they may have had if the Judgment had not been entered. The Judgment may not be used, however, as *prima facie* evidence in private litigation pursuant to section 5(a) of the Clayton Act, as amended, 15 U.S.C. section 16(a).

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Judgment should be modified may submit written comments to John A. Weedon, Chief, Cleveland Field Office, Antitrust Division, United States Department of Justice, 995 Celebrezze Federal Building, Cleveland, Ohio 44199 (telephone: 216-522-4070), within the 60-day period provided by the Act. These comments, and the Department's responses to them, will be filed with the Court and published in the FEDERAL REGISTER. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to its entry if it should determine that some modification of it is necessary. The proposed Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for such order as may be necessary or appropriate for its modification, interpretation or enforcement.

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The alternative to the proposed Judgment considered by the Antitrust Division was a full trial of the issues on the merits and on relief. The Division considers the substantive language of the Judgment to be of sufficient scope and effectiveness to make litigation on the issues unnecessary, as the Judgment provides appropriate relief against the violations charged in the Complaint.

In reaching an agreement on the proposed Final Judgment, five matters were the principal subject of negotiation. These matters were the questions of whether:

1. the scope of section IV of the Judgment should be statewide or local;

2. the injunctive provisions of section IV of the Judgment should include activities which were not specifically alleged in the Complaint;

3. the injunctive provisions of sections IV and V of the Judgment should apply for five years or in perpetuity;

4. the injunctive provisions of sections IV and V of the Judgment should apply only to each defendant's dealings with other defendants, or should apply to each defendant's dealings with all "persons" as defined in section II of the Judgment; and

5. the certification which defendants must attach, for a period of five years, to every bid or quotation they submit, as required by section VII of the Judgment, should be treated as a sworn statement made under oath, and be subject to the provisions of Title 18 U.S.C. section 1001 relating to the making of false statements, and to the provisions of Title 31 U.S.C. sections 231-233, relating to the making of false claims.

The first matter, concerning the geographic scope of the Judgment, arose because the defendants had proposed limiting the Judgment to only those sales occurring in the Owensboro, Kentucky area. The government insisted, however, that the coverage of the section include all sales occurring in the Commonwealth of Kentucky. In as much as both companies make almost all of their sales within the Commonwealth of Kentucky, the government considers that the geographic coverage is sufficient.

The second matter, relating to the types of activities enjoined by section IV of the Judgment, was raised because the government had proposed that the defendants be enjoined from engaging in not only price fixing but also other activities such as the allocation of customers and markets. The government agreed that the proscriptions provided for in section IV would be limited to those activities alleged in the Complaint because the evidence in this case did not require enjoining other activities.

The third matter, involving the length of time for which the defendants would be enjoined by the provisions of sections IV and V, arose because the defendants proposed limiting the applicability of these sections to five years. The government refused to agree to this time limitation. The government's position is reflected in the Judgment.

The fourth matter related to whether the injunctive provisions of sections IV and V of the Judgment should apply to each defendant's dealing only with the other defendants or to each defendant's dealing with any person. Because of the frequent interaction between sellers of ready-mix concrete and suppliers of its component parts, some of which also sell ready-mix concrete, the government insisted that the applicability of sections IV and V include dealings with all persons.

The fifth matter, relating to the certification required by section VII of the Judgment, arose because the government had sought to have included in the certification form set out in Apendix A of the Judgment, a statement of the applicability of Title 18 U.S.C. section 1001 and Title 31 U.S.C. sections 231-233. The defendants refused to accept the government's proposed language. The government agreed to delete this proposed language because, if the defendants violate the provisions of the Judgment, they will still be subject to substantial criminal penalties.

VII. DETERMINATIVE MATERIALS AND DOCUMENTS

No other material or document of the type described in section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. section 16) was considered in formulating this proposed Judgment. Consequently, none is submitted pursuant to that section.

John A. Weedon, David F. Hils, *Attorneys, Department of Justice.*

Donald S. Scherzer, William A. LePaiver, Robert M. Dixon, *Attorneys, Department of Justice, Antitrust Division*, 995 Celebrezze Federal Building, Cleveland, Ohio 44199. Telephone 216-522-4082.

[FR Doc. 78-31635 Filed 11-8-78; 8:45 am]

[4410-09-M]

Drug Enforcement Administration

CONTROLLED SUBSTANCES IN SCHEDULES I AND II

Final 1978 Revised Aggregate Production Quota Thebaine for Conversion

Section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826) requires the Attorney General to establish aggregate production quotas for all controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration pursuant to § 0.100 of Title 28 of the Code of Federal Regulations.

On September 29, 1978, a notice of the proposed revised aggregate production quota for 1978 for Thebaine for Conversion was published in the FEDERAL REGISTER (43 FR 44911). All interested parties were invited to comment on or object to the proposed aggregate production quota on or before October 30, 1978. No comments or objections were received.

Therefore, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826), and delegated to the Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of the Code of Federal Regulations, the Administrator of the Drug Enforcement Administration hereby orders that the revised aggregate production quota for the controlled substance listed below, expressed in grams of anhydrous base, be established as follows:

Basic class and final 1978 aggregate production quota

Thebaine for conversion, 2,217,000.

This order is effective upon publication.

Dated: November 3, 1978.

PETER B. BENSINGER,
Administrator,
Drug Enforcement Administration.

[FR Doc. 78-31736 Filed 11-8-78 8:45 am]

[6820-35-M]

LEGAL SERVICES CORPORATION

INTERIM INTERNAL STAFF DIRECTIVE

Publicity of and Comments on Expansion into Areas Previously Unserved by LSC-Funded Programs

AGENCY: Legal Services Corporation.

ACTION: Internal staff directives.

SUMMARY: The Board of Directors of the Legal Services Corporation has approved, on an interim basis, internal staff directives to guide Corporation personnel in deciding how to allocate funds for expansion into new areas. The Corporation is publishing these staff directives for the information of the public, although publication is not required, and invites comments from interested persons. Some Directors are of the opinion that, all other factors being equal, the Corporation should give preference in allocating expansion funds to existing organizations within the proposed area to be served. The Corporation also invites comments on this issue.

EFFECTIVE DATES: October 19, 1978.

ADDRESS: Legal Services Corporation, 733 15th Street NW., Suite 700, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT:

Stephen S. Walters, 202-376-5113.

INTERIM INTERNAL STAFF DIRECTIVE CONCERNING PUBLICITY OF AND COMMENTS ON EXPANSION INTO AREAS PREVIOUSLY UNSERVED BY LSC-FUNDED PROGRAMS

The Legal Services Corporation is responsible for supporting high quality legal assistance to the poor in civil matters. When the Corporation has funds to support assistance in an area previously unserved by an LSC-funded program, the regional staff of the Corporation shall attempt to develop and recommend for funding arrangements for such assistance that will give the best assurance of the highest quality and the greatest efficiency. It should be recognized, however, that the Corporation is continuing to examine, through the delivery systems study and in other ways, the most effective means of delivering high-quality services in various situations.

This directive is designed to aid the Corporation in obtaining the information needed to reach sound decisions concerning the allocation of expansion funds. The procedures should be followed as a general rule, though it may be appropriate to modify them to meet the circumstances of particular situations.

(1) As soon as practicable, the regional staff should announce the availability of funds to provide legal services for the poor in areas unserved by a Corporation recipient. The announcement should state that the Corporation will consider the views of and proposals from all interested groups, and should be sent to:

a. the State bar association;

b. the State advisory council established under the Legal Services Corporation Act of 1974, as amended;

c. all local bar associations in the unserved area;

d. all existing legal services programs in the unserved area—whether they receive funds or are operated as pro bono programs;

e. the National Clients Council; and

f. all law schools approved by the American Bar Association in the unserved areas.

In addition, the announcement should be sent to other appropriate groups within the unserved area that might be interested and that can be readily identified by regional staff. The announcement should also be published in a newspaper or newspapers of general circulation within the unserved areas. Regional staff should allow at least 30 days after sending and publishing announcements for the submission of proposals for the provision of legal service in an area.

(2) Upon thorough consideration of the proposals received, and other relevant factors, the Office of Field Services should designate those unserved areas in each State for which funds will be made available to provide service in the current fiscal year. The regional office staff should hold a public meeting or meetings in those areas. Meetings generally should be held in locations that are reasonably accessible to the maximum number of interested parties, and, to the extent feasible, interested persons should not have to travel more than approximately 100 miles to attend. Regional staff should attempt to notify interested parties of the date and place of meetings and should publish announcements of meetings in a newspaper or newspapers of general circulation within the area to be served. If the circumstances of a particular situation make it impractical to hold a public meeting in the area to be served, particular care should be taken to insure that all who may have an interest in the matter have an opportunity to express their views in other ways to regional staff.

(3) At least 30 days aprior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project for the provision of legal services in an area not previously served by a recipient of LSC funds, the Corporation shall announce publicly such grant, contract, or project, and shall notify the Governor, the State bar association, and the principal local bar association (if there be any) and any existing legal services programs in the service area where legal assistance will thereby be initiated. Notification shall include a reasonable description of the grant application or proposed contract or project and request comments and recommendations.

(4) When arrangements for expansion into a new area are completed and approved by the Corporation, the Board of Directors of the program selected to serve that area must be constituted in accordance with section 1007(c) of the Legal Services Corporation Act of 1974, as amended, and membership on the Board and any program advisory councils must be structured to reflect the communities to be served.

INTERIM INTERNAL STAFF DIRECTIVE CONCERNING EXPANSION OF SERVICE TO AREAS PREVIOUSLY UNSERVED BY LSC-FUNDED PROGRAMS

In its 1979 budget request, the Corporation sought funds to implement its short-term plan to provide resources for civil legal services to eligible poor persons without minimum access at a level equivalent to 2 attorneys per 10,000 poor persons.

Although the Congress did not approve an appropriation of the full amount requested, we have made available a significant amount of increased funding for expanding access through existing programs and for establishing new programs in areas unserved by Corporation recipients. This directive deals with the allocation of funds for expansion in those areas.

These expansion funds will be divided among the regions and States in proportion to the number of eligible poor who currently live outside the service boundaries of programs funded by the Legal Services Corporation.

Since these funds will be spent as a further step toward the short-term goal of resources sufficient to support the equivalent of 2 lawyers per 10,000 poor persons, the Corporation has concluded that grants should be made to administrative units that will most efficiently provide the highest quality of service. Regional offices should consider applications to provide service through all types of delivery methods and should seek the best possible means to provide a full range of civil legal assistance for the poor in these areas that do not have minimum access to legal services. Economies of scale in the administration of legal services programs, including cooperative arrangements among programs, should be considered along with other factors affecting efficiency and quality.

On this basis, in the allocation of expansion funds, priority should be given to those States and areas within States where the largest number of poor persons reside in areas without access to legal services programs.

Within any given State, priority should be given to funding through administrative units that will provide the highest quality of service to the largest number of eligible clients (including those in rural areas) in the most efficient manner, consistent with local participation and accountability.

Funds available to a program from sources other than the Corporation will be considered by the Corporation in defining the area to be served. It is not the Corporation's present intention to limit total funds (LSC and non-LSC funds) to the minimum access level of the equivalent of 2 attorneys per 10,000 poor, in view of the instability of most non-LSC funding sources. If the total of non-LSC funds plus the proposed LSC grant would allow the program to operate at a level in excess of the equivalent of 4 attorneys per 10,000 poor, however, the amount of LSC funding may be adjusted accordingly.

If in grant year 1978, funds were provided for service in a county at less than the minimum access level, priority will be given in grant year 1979 to increasing the funds for service in that county to the minimum access level.

STEPHEN S. WALTERS,
Deputy, General Counsel,
Legal Services Corporation.

[FR Doc. 78-31638 Filed 11-8-78; 8:45 am]

[7537-01-M]

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Endowment for the Arts

EXPANSION ARTS PANEL

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel to the National Council on the Arts will be held November 28, 1978, from 8:45 a.m. to 4 p.m., November 29, 1978, from 9 a.m. to 5:30 p.m., and on November 30, 1978, from 9 a.m. to 5:30 p.m., in Room 1422, Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C.

A portion of this meeting will be open to the public on November 28, 1978, from 8:45 a.m. to 1 p.m., and on November 29, from 2 p.m. to 3 p.m. The topic of discussion will be policy.

The remaining sessions of this meeting on November 28, 1978, from 1 p.m. to 4 p.m., November 29, 1978, from 9 a.m. to 2 p.m. and from 3 p.m. to 5:30 p.m., and on November 30, 1978, from 9 a.m. to 5:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the FEDERAL REGISTER March 17, 1977, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202-634-6070.

JOHN H. CLARK,
Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 78-31674 Filed 11-8-78; 8:45 am]

[7537-01-M]

MEDIA ARTS (IN RESIDENCE/WORKSHOP) ADVISORY PANEL

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Media Arts (In Residence/Workshop) Advisory Panel to the National Council on the Arts will be held on December 4, 1978, from 9 a.m. to 5 p.m., and December 5, 1978, from 9 a.m. to 5 p.m., in Room 1422 of the Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the FEDERAL REGISTER of March 17, 1977, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(B) of section 552 of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202-634-6070.

JOHN H. CLARK,
Director, Office of Council and Panel Operation, National Endowment for the Arts.

NOVEMBER 2, 1978.

[FR Doc. 78-31738 Filed 11-8-78; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS SUBCOMMITTEE ON THE WILLIAM H. ZIMMER NUCLEAR POWER STATION

Meeting Date

The November 16-17, 1978 meeting of the ARCS Subcommittee on the William H. Zimmer Nuclear Power Station has been rescheduled to be held on November 17 only, at the Holiday Inn, 8050 Highway 42, Florence, KY 41094, starting at 8:30 a.m. until the conclusion of business. All other items regarding this meeting remain the same as published on October 20 and November 1, 1978 (43 FR 49081 and 50975, respectively).

Dated: November 2, 1978.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc. 78-31555 Filed 11-8-78; 8:45 am]

[7590-01-M]

[Docket Nos. 50-450 and 50-451]

DELMARVA POWER & LIGHT CO. (SUMMIT POWER STATION, UNITS 1 AND 2)

Reconstitution of Board

The above proceeding has been in an inactive status for an extended period of time and there is presently a vacancy with respect to the position of Chairman of the Atomic Safety and Licensing Board for this proceeding.

Accordingly, John F. Wolf, Esq., whose address is 3409 Shepherd Street, Chevy Chase, Md. 20015, is appointed Chairman of this Board. Reconstitution of the Board in this manner is in accordance with § 2.721 of the Commission's Rules of Practice, as amended.

Dated at Bethesda, Md. this 2nd day of November 1978.

JAMES R. YORE,
Chairman, Atomic Safety and Licensing Board Panel.

[FR Doc. 78-31642 Filed 11-8-78; 8:45 am]

[7590-01-M]

[Docket No. 70-2623]

DUKE POWER CO.

Hearing on Amendment to Materials License SNM-1773 for Oconee Nuclear Station Spent Fuel Transportation and Storage at McGuire Nuclear Station

NOVEMBER 2, 1978.

Pursuant to the Atomic Energy Act of 1954, as amended, and the regulations in Title 10, Code of Federal Regulations, Part 51, "Licensing and Regulatory Policy and Procedures for Environmental Protection", Part 70, "Special Nuclear Material", and Part 2, "Rules of Practice", notice is hereby given that a hearing will be held before an Atomic Safety and Licensing Board (the Board) to consider the application of Duke Power Co. (the Applicant) for an amendment to Special Nuclear Material License No. SNM-1773 issued pursuant to 10 CFR Part 70 to authorize the receipt and storage

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of Oconee Nuclear Station spent fuel at the McGuire Nuclear Station.

The hearing, which will be scheduled to begin in the vicinity of the site of the William B. McGuire Nuclear Station, will be conducted by an Atomic Safety and Licensing Board which has been designated by the Chairman of the Atomic Safety and Licensing Board Panel. The Board consists of Dr. Emmeth A. Luebke and Dr. Cadet H. Hand, Jr., Members, and Robert M. Lazo, Esq., Chairman.

On July 28, 1978, the Nuclear Regulatory Commission published a notice that it is considering an application filed March 9, 1978, by Duke Power Co. for amendment to Special Nuclear Material License No. SNM-1773. In its application for amendment to its license, Applicant seeks authorization for receipt, possession, inspection, and storage of irradiated fuel from the Applicant's Oconee Nuclear Facility in Oconee County, S.C., at the Applicant's McGuire facility located in Mecklenburg County, N.C., including transport of the irradiated fuel by truck between the two sites. The notice was given general public distribution including the news media and was published in the FEDERAL REGISTER on July 28, 1978 (43 FR 32905).

The notice provided that any member of the public whose interest may by affected by the proceeding may file a request for a public hearing in the form of a petition for leave to intervene with respect to whether the proposed amendment to SNM-1773 should be issued.

Pursuant to the notice, a number of petitions for leave to intervene have been filed. Thereafter, a prehearing conference in this proceeding was held by this Atomic Safety and Licensing Board designated to rule on petitions for leave to intervene (Intervention Board) in Charlotte, N.C., on October 24, 1978. All parties and petitioners were represented and participated in the conference during which the Intervention Board heard oral argument regarding the petitions for leave to intervene and the contentions which petitioners seek to have litigated in this proceeding. The Intervention Board's rulings are set forth in our "Order Following Prehearing Conference" issued on November 2, 1978.

The Order of the Intervention Board granted the petitions filed by Carolina Environmental Study Group (CESG), Safe Energy Alliance (SEA), and Carolina Action in Charlotte (Carolina Action). In addition, the State of South Carolina was admitted to participate as an interested State pursuant to the provisions of 10 CFR § 2.715(c). Rulings on the petitions for leave to intervene filed by Natural Resources Defense Council, Inc., and by the Davidson College chapter of North Carolina Public Interest Research Group, were deferred pending receipt of further pleadings regarding those petitions.

A prehearing conference or conferences will be held by the Hearing Board, at a date and place to be set by it, to consider pertinent matters in accordance with the Commission's rules of practice. The date and place of the hearing will be set by the Board at or after the prehearing conference. Notices as to the dates and places of the prehearing conference and the hearing will be published in the FEDERAL REGISTER. The specific issues to be considered at the hearing will be determined by the Board.

For further details with respect to the matters under consideration, see the application for amendment dated March 9, 1978, and other documents and correspondence related thereto which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the local Public Document Rooms at the Public Library of Charlotte and Mecklenburg County, 310 North Tryon Street, Charlotte, N.C. 28202, and at the Oconee County Library, 201 South Spring Street, Walhalla, S.C. 29691.

Any person who wishes to make an oral or written statement in this proceeding but who has not filed a petition for leave to intervene may request permission to make a limited appearance pursuant to the provisions of 10 CFR § 2.715 of the Commission's rules of practice. Limited appearances will be permitted in this proceeding at the discretion of the Board, within such limits and on such conditions as may be determined by the Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, on or before December 11, 1978. A person permitted to make a limited appearance does not become a party, but may state his or her position and raise questions which he or she would like to have answered to the extent that the questions are within the scope of the hearing as specified above. A member of the public does not have the right to participate unless granted the right to intervene as a party or the right of limited appearance.

An answer to this notice, pursuant to the provisions of 10 CFR § 2.705 of the Commission's rules of practice, may be filed by the parties to this proceeding on or before November 29, 1978.

Papers required to be filed in this proceeding may be filed by mail or telegram addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be filed by delivery to the Commission's Public Document Room, 1717 H Street NW., Washington, D.C.

Pending further order of the Hearing Board designated for this proceeding, parties are required to file, pursuant to the provisions of 10 CFR § 2.708 of the Commission's rules of practice, an original and twenty (20) conformed copies of each such paper with the Commission.

It is so ordered.

For the Atomic Safety and Licensing Board designated to rule on petitions for leave to intervene.

Dated at Bethesda, Md., this 2d day of November 1978.

ROBERT M. LAZO,
Chairman.

[FR Doc. 78-31646 Filed 11-8-78; 8:45 am]

[7590-01-M]

[Docket No. 50-250]

FLORIDA POWER & LIGHT CO.

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 39 to Facility Operating License No. DPR-31, issued to Florida Power & Light Co., for operation of the Turkey Point Nuclear Generating Unit No. 3 located in Dade County, Fla. The amendment is effective as of the date of issuance.

The amendment to the operating license will extend the allowed continued operation of Turkey Point Unit No. 3 from 8 equivalent months of operation (EFPM) beyond February 1, 1978, as authorized by Amendment No. 36 to Facility Operating License No. DPR-31 issued on June 2, 1978, to 12 equivalent months of operation, at which time the steam generators shall be inspected.

The application for the amendment complies with the standards and requirements of the Atomic energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, negative declaration or environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated September 26, 1978 supplemented October 2, 1978, (2) Amendment No. 39 to License No. DPR-31, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Environmental and Urban Affairs Library, Florida International University, Miami, Fla. 33199. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland this 16th day of October, 1978.

For the Nuclear Regulatory Commission.

A. SCHWENCER,
Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.

[FR Doc. 78-31645 Filed 11-8-78; 8:45 am]

[7590-01-M]

[Docket No. 50-106]

OREGON STATE UNIVERSITY

Proposed Issuance of Orders Authorizing Dismantling of Facility, Disposition of Component Parts, and Termination of Facility License

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of orders authorizing Oregon State University (the licensee) to dismantle the AGN-201 Reactor (the facility), a research reactor located on the licensee's campus in Corvallis, Oreg., and to dispose of the component parts in accordance with the licensee's application dated September 13, 1978, and to terminate the facility license. The AGN-201 Reactor is covered by Facility License No. R-51.

Prior to issuance of any orders, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations.

By November 24, 1978, the licensee may file a request for a hearing with respect to issuance of the orders on the subject facility operating license and any person whose interest may be affected by this proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend his petition, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, the petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. by the above date. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(i)-(v) and 2.714(d).

For further details with respect to this action, see the licensee's application dated September 13, 1978, and any further submittals which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C.

Dated at Bethesda, Md. this 31st day of October 1978.

For the Nuclear Regulatory Commission.

ROBERT W. REID,
Chief, Operating Reactors Branch 4, Division of Operating Reactors.

[FR Doc. 78-31554 Filed 11-8-78; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

PRIVACY ACT OF 1974

New System of Records

AGENCY: U.S. Nuclear Regulatory Commssion (NRC)

ACTION: Notification of proposed new system of records.

SUMMARY: The NRC is proposing to establish a new system of records, subject to the Privacy Act. The purpose of the system is to enable the agency to maintain inventory controls over personal property, e.g., any property, except real property, which is owned by, or leased to, the NRC or acquired by the NRC in any manner, and which is under the custody of individual employees, consultants, or contractors. These include major items of equipment (e.g., office furnishings, automobiles, etc.), as well as items of sensitive personal property (e.g., items of equipment desirable for personal use which are easily lost or stolen (such as portable calculators and cassette recorders).

COMMENT DATE: Comments are due on or before December 11, 1978.

ADDRESS: Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, At-

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tention: Docketing and Service Branch.

FOR FURTHER INFORMATION CONTACT:

Ms. Betty L. Wagman, Privacy Act Officer, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone 301-492-8133.

SUPPLEMENTARY INFORMATION: The new system is identified as Property and Supply System (PASS). It will consist of information concerning items of property, other than real property, which are owned by, acquired by, or leased to the NRC; and information about the individuals having custody of those items.

A new system report was filed with the Speaker of the House, the President of the Senate, and the Office of Management and Budget on November 1, 1978. The prefatory statement containing General Routine Uses applicable to all of the NRC's systems of records was published at 42 FR 49082 (September 26, 1977).

All interested persons who desire to submit written comments or suggestions for consideration in connection with the proposed routine uses specified in this notice of systems of records should send them to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, by December 11, 1978. Copies of comments received will be available for inspection and copying at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C.

Dated at Bethesda, Md., this 31st day of October 1978.

For the Nuclear Regulatory Commission.

LEE V. GOSSICK,
Executive Director for Operations.

NRC-24

System name:

Property and Supply System (PASS).

System Location:

Property Management Section, Property and Supply Branch, Division of Facilities and Operations Support, NRC, 4922 Fairmont Avenue, Bethesda, Md.

Duplicate systems:

None.

Categories of individuals covered by the system:

NRC employees, consultants, and contractors who have custody of items of personal property, including major items of equipment (e.g. office furnishings, automobiles, etc.) and items of sensitive property (e.g., cameras, portable calculators, and cassette recorders).

Categories of records in the system:

These records contain information about the equipment (type, make, model, serial number, etc.); and information about the custodians of the equipment (name, office, and office location).

Authority for maintenance of the system:

(a) The Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. 483 (b) and (c).
(b) 31 U.S.C. 66a(a)(3) (1970).
(c) 40 U.S.C. 487(a) (1970).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

These records may be used:
(a) To provide information to maintain inventory of equipment;
(b) To provide information for clearances of employees who separate from the NRC;
(c) For any of the routine uses specified in the Prefatory Statement.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records are maintained on NRC forms and magnetic tape systems, with history and audit files.

Retrievability:

Records are accessed by name, office, or office location.

Safeguards:

Access to and use of these records are limited to those persons whose official duties require such access. Doors are alarmed during nonworking hours.

Retention and disposal:

Records are maintained for 3 years after an individual's responsibility for the assigned equipment terminates. The records are then destroyed or deleted from the data bank.

System manager and address:

Chief, Property and Supply Branch, Division of Facilities and Operations Support, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Notification procedure:

Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Record access procedures:

Same as notification procedure.

Contesting record procedures:

Same as notification procedure.

Record source categories:

Information in this system of records comes from NRC forms signed by the individuals having custody of the items, or from reports and memoranda received by the Division of Facilities and Operations Support.

[FR Doc. 78-31750 Filed 11-8-78; 8:45 am]

[7590-01-M]

[Docket Nos. STN 50-556 & STN 50-557]

PUBLIC SERVICE CO. OF OKLAHOMA, ET AL. (BLACK FOX UNITS 1 AND 2)

Reconstitution of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority in 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has reconstituted the Atomic Safety and Licensing Appeal Board for this construction permit proceeding to consist of the following members:

Richard S. Salzman, Chairman,
Dr. W. Reed Johnson,
Jerome E. Sharfman.

Dated: November 3, 1978.

MARGARET E. DU FLO,
Secretary to the Appeal Board.

[FR Doc. 78-31644 Filed 11-8-78; 8:45 am]

[7590-01-M]

[NUREG-75/087]

REVISION TO THE STANDARD REVIEW PLAN

Issuance and Availability

As a continuation of the updating program for the Standard Review Plan (SRP) previously announced, (FEDERAL REGISTER notice dated December 8, 1977), the Nuclear Regulatory Commission's (NRC's) Office of Nuclear Reactor Regulation has published Revision No. 1 to Section No. 2.5.1, Basic Geologic and Seismic Information, Section No. 2.5.3, Surface Faulting, Section 2.5.4, Stability of Subsurface materials and Foundation, and Section 2.5.5, Stability of Slopes of the SRP for the NRC staff's safety review of applications to build and operate light-water-cooled nuclear power reactors. the purpose of the plan, which is composed of 224 sections, is to improve both the quality and uniformity of the NRC staff's review of applications to build new nuclear power plants, and to make information about regulatory matters widely available, including the improvement of communication and understanding of the staff review process by interested members of the public and the nuclear power industry. The purpose of the updating program is to revise sections of the SRP for which changes in the review plan have been developed since the original issuance in September 1975 to reflect current practice.

Copies of the Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants, which has been identified as NUREG-75/087, are available from the National Technical Information Service, Springfield, Virginia 22161. The domestic price is $70.00, including first-year supplements. Annual subscriptions for supplements alone are $30.00. Individual sections are available at current prices. The domestic price for Revision No. 1 to Section Nos. 2.5.1, 2.5.3, 2.5.4 and 2.5.5 is $4.00 each. Foreign price information is available from NTIS. A copy of the Standard Review Plan including all revisions published to date is available for public inspection at the NRC's Public Document Room at 1717 H Street, NW., Washington, D.C. 20555 (5 U.S.C. 552(a)).

Dated at Bethesda, Md. this 16th day of October, 1978.

For the U.S. Nuclear Regulatory Commission.

DANIEL R. MULLER,
Deputy Director, Division of Site Safety and Environmental Analysis, Office of Nuclear Reactor Regulation.

[FR Doc. 78-31643 Filed 11-8-78; 8:45 am]

[4910-58-M]

NATIONAL TRANSPORTATION SAFETY BOARD

[N-AR 78-45]

RESPONSES TO SAFETY RECOMMENDATIONS

Receipt

The National Transportation Safety Board has recently received letters, summarized below, in response to safety recommendations issued following Board investigation of certain accidents which occured within the past several years.

Aviation

A-72-51 and A-72-55.—The Federal Aviation Administration on October 27 advised the Safety Board concerning amendments to 14 CFR Part 135 in implementation of recommendations issued as a result of investigation into the air taxi accident of Chicago & Southern Airlines, Inc., on October 21, 1971, near Peoria, Ill.

Concerning A-72-51, which recommended that FAA incorporate into the Commuter and V/STOL Air Carrier Handbook (8430.1A) explicit requirements for background investigation of applicants for ATCO certificates and check pilot authorization, FAA now reports that § 135.13 has been amended, effective December 1, 1978, to give the Administrator the authority to deny a certificate on the basis of previous revocation records of the applicant or certain employed key personnel.

With reference to A-72-55, which recommended revision of Part 135 to provide adequate flight and duty time limitations, FAA provides the following extract from the supplementary information published October 10 at 43 FR 46744 for amended Part 135:

Flight and Duty Time Limitations (Proposed Subpart F). An entire subpart dealing with flight crewmember flight and duty time limitations has been deferred for further consideration while the rulemaking proposed in Notice 78-3 is completed. That notice proposed changes in flight and duty time limitations governing Parts 121 and 123 operators. Since many of the concepts presented in Notice 78-3 are similar to those proposed in Notice 77-17, information received in response to Notice 78-3 will be helpful to the FAA in completing the Part 135 flight and duty time limitations rulemaking action. In view of the deferral, the present regulation is retained.

A-74-30 through A-74-34.—FAA's letter of October 12 responds to the Safety Board's letter of August 25 requesting that FAA continue to give high priority to visibility measurements in the approach zone. The Board's request was prompted by FAA's previous response, dated February 21, 1978, indicating that funds from the Slant Visual Range evaluation program had been transferred to the Wind Shear program and that FAA had "no plans to reinstate the Slant Visual Range program unless significant advancements and requirements became evident."

The four subject recommendations were intended to alleviate recurrent problems which accident investigations disclosed were due to "imprecise and nonrepresentative airport meteorological observations and attendant inadequacies in operational meteorological minimums."

The Safety Board's letter of August 25 summarizes an exchange of correspondence with FAA since issuance of the recommendations on April 19, 1974. FAA's response of May 21, 1974, stated: "Evaluation programs are underway which may lead to the development of new systems and techniques for providing slant-range visibility in final approach areas on IFR runways." On September 24, 1974, the Safety Board expressed concern with the FAA response and advised that the Board looked upon these critical, persistent safety problems with a great sense of urgency. The Board advised further that slant visual-range was still in the developmental stage and that interim measures were required, reasserting the conviction that expedited efforts should be made to implement a program designed to provide representative meteorological observations pertinent to the approach areas of instrument runways.

On October 24, 1974, the FAA Administrator stated: "I am pleased to inform you that a Slant Visual Range Measurement System has been developed and is being tested now at NAFEC." The letter also described possible operational evaluation, dependent upon NAFEC results, at Boston and Los Angeles in early FY 76, and concluded: "I assure you that we will continue to expend every effort to provide representative meteorological observations in the approach areas of instrument runways."

The Board on August 25 indicated agreement with a need for better wind shear measurements in the vicinity of airports, but said that accurate wind information is only one of the operational meteorological requirements pertinent to final approaches. The Board stated that the urgent needs expressed in 1974 for accurate visibility measurements in the approach zone have not been met and continued accidents during the past four years involving restricted visibility in the approach zone only serve to reemphasize that need and make it imperative that FAA continue to give priority treatment to the resolution of this problem.

FAA's October 12 letter explains that the slant-range visibility hardware was to have cost approximately $700,000 to install and test, and because of the prospects of limited improvement in approach zone visibility measurements offered by available slant-range technology and an urgent requirement for an extensive wind shear program, the slant-range program funds were applied to the wind shear program. FAA, having determined that productive new developments in slant-range test hardware technology are not available at this time, states: "However, we will continue to monitor all known activity in this area and should viable slant-range systems appear feasible, we will reinstate the program."

A-75-28.—Supplementing its September 8, 1975, response to this recommendation, FAA on October 20 informed the Safety Board that an advance notice of proposed rulemaking, Notice No. 76-9, was issued on April 5, 1976. In view of the decrease in incidents involving inflight overboard leakage of fluids subject to freezing and the comments received, the notice was withdrawn on August 8, 1978. FAA

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believes that the underlying objectives of the notice have been accomplished and that rulemaking is not necessary at this time. However, FAA states, if a particular aircraft design is susceptible to in-flight overboard leakage of fluids subject to freezing, and should an unsafe condition exist, FAA will take appropriate regulatory action.

Recommendation A-75-28 resulted from the investigation of an incident on April 30, 1974, involving a National Airlines Boeing 727 which was cruising at 33,000 feet near El Paso, Tex., when the No. 3 engine separated from the fuselage and fell to earth. Investigation showed that a leaking toilet service drain may have contributed to the cause of the incident. The recommendation asked the FAA to issue an airworthiness directive to require that all external ground service fluid drains on Boeing 727 series airplanes be modified to incorporate a more positive method of sealing to prevent overboard leakage in flight of fluid subject to freezing in the flight environment.

A-75-70.—Supplementing its August 18, 1977, response to this recommendation, FAA on October 20 informed the Safety Board that action has now been completed. Change 14, Chapter 10, Handbook 8260.9, Flight Procedures and Airspace, was issued on January 9. The recommendation, which asked FAA to change the wording of the restriction on the National Ocean Survey instrument approach charts for locations where night approaches are not authorized so that the restriction is clearly understood, resulted from investigation of the crash on February 21, 1975, of a Beechcraft BE-55 during the hours of darkness while on an instrument approach to the Lawrenceburgh (Tenn.) Municipal Airport. According to a witness, the pilot flew the aircraft over the airport twice while attempting to land it in ground fog; the ceiling and visibility were near zero at the airport.

A-78-24 and A-78-26.—Letter of October 20 from FAA responds to the Safety Board's August 23 request for reconsideration of FAA's position with respect to two of four recommendations which resulted from investigation of a helicopter accident at Coldfoot, Alaska, on March 11, 1977.

The Safety Board on August 23 expressed its encouragement over FAA's acceptance of recommendations A-78-23 and 25, noted in FAA's June 27 letter (43 FR 32476, July 27, 1978). However, the Board continues to believe that the changes recommended in A-78-24 and 26 are justified in the interest of safety.

Recommendation A-78-24 asked FAA to amend 14 CFR 133.23(c)(6) to require the pilot to demonstrate his ability to actuate the quick-release switch in normal and simulated emergency operations. The Safety Board noted in reference to FAA's June 27 response that 14 CFR 133.41 is an airworthiness requirement intended to assure demonstration of the aircraft's ability to be maneuvered with and to release external loads. The Board said that this section is not intended to assure that the pilot of every aircraft has the ability to reach and actuate the cargo release control. The intent of the Board's recommendation is to require, by amending 14 CFR 133.23(c)(6), that all pilots demonstrate their abilities; currently, only the operator or the chief pilot is required by 14 CFR 133.23 and 133.41 to demonstrate such abilities, the Board said. In response on October 20, FAA said that as stated in its June 27 letter, regulatory action is not justified. However, FAA plans to issue by March 1979 an operations bulletin directing FAA inspectors assigned to helicopter external-load operators to assure that these items are covered by simulation, cockpit check, or through discussion.

Recommendation A-78-26 called for the deletion of 14 CFR 133.23(d), which allows the Administrator to waive a pilot's test of skill. The Board on August 23 said that this recommendation also was intended to require all pilots who would be flying rotorcraft sling-load operations to demonstrate their skills, without exception. The current requirements of 14 CFR 133.23 apply only to the operator or his chief pilot. Thus, the recommendation to delete the Administrator's prerogative to waive a pilot's test of skill was solely in the interest of safety; it will assure that each pilot flying any helicopter will be fully proficient in the peculiarities of external-load operations of that aircraft before he actually operates it. FAA in response notes that 14 CFR 133.23(d) provides that the Administrator may waive the tests required by §§ 133.23 (b) and (c) only as they apply to the chief pilot. Pilots other than the chief pilot are not eligible for waiver of the tests, FAA said. Section 133.31(d) requires the pilots to demonstrate the knowledge and skill requirements of § 133.23 to the chief pilot or the Administrator.

Highway

H-76-15.—Letter of October 26 from the Federal Highway Administration is accompanied by a copy of a Technical Advisory (T 5140.5), issued on October 12, which provides guidance in the application of skid resistant treatments for timber bridge decks. The formal response to recommendation H-76-15, which involved evaluating timber roadway surfaces for skid resistance, was sent to the Board last February 28. The response indicated that information would be gathered on successful skid resistant treatments of timber surfaces. The recommendation resulted from investigaion into the collapse of the Yadkin River Bridge near Siloam, N.C., on February 23, 1975, after an automobile struck a vital structural member of the bridge.

H-78-48 through H-78-50.—Letter of October 16 from the National Highway Traffic Safety Administration is in response to recommendations issued last June 23 following investigation of five accidents in which commercial vehicle drivers have not been able to maintain speed control on downgrades. The recommendations asked NHTSA to develop Federal Motor Vehicle Safety Standards that would: State a performance requirement for all newly manufactured commercial vehicles to have equipment that would insure brakes being in proper adjustment at all times (H-78-48); require that all motor vehicles equipped with 2-speed rear axles be placarded to warn the driver of the hazards of attempting to shift the 2-speed axle while negotiating downgrades (H-78-49); and require that the maximum in-gear attainable road speed in each position of the vehicle's gear train be added to the FMVSS-102 required shift pattern/progression placard on all newly manufactured commercial vehicles (H-78-50).

In response to H-78-48, NHTSA reports that based upon the information supplied by the Safety Board and others, a program on self-adjusting brakes for commercial vehicles is being developed for possible inclusion in NHTSA's Five Year Plan for motor vehicle safety and fuel economy rulemaking. This program would include research to determine potential safety benefits and costs associated with a requirement for self-adjusting brakes. Also, work would be performed to examine the in-use effectiveness and reliability of available hardware needed to satisfy any future requirement. An exact timetable of such action is not now available, NHTSA stated.

Based on recommendation H-78-49 and information from the California Highway Patrol, NHTSA reported, a review of available accident data will be conducted to determine the potential safety benefit of actions to reduce accidents involving the improper shifting of two-speed rear axles. If the potential benefits warrant action, this program will be added to the Five Year Plan.

Concerning H-78-50, NHTSA said that a review of existing data will be initiated to determine the seriousness of the safety problem. Also, an analysis will be performed of the effectiveness of requiring information on the maximum attainable speed in each gear position to be added to the placard required by Federal Motor Vehicle Safety Standard No. 102. Based on the results of this work, the future inclusion of this activity in the Five Year Plan will be decided, NHTSA stated.

Marine

M-77-16.—U.S. Coast Guard's letter of October 18 is in response to the Safety Board's August 30 request for reconsideration of this recommendation—one of 16 issued to Coast Guard following investigation of the sinking of the charter fishing boat *Pearl C* in the Columbia River near Astoria, Oreg., September 13, 1976. The recommendation asked that operators of inspected charter boats keep a record of service and repairs in a suitable form for Coast Guard examination. Coast Guard's response of last June 28 did not concur with this recommendation (43 FR 32477, July 27, 1978).

The Safety Board's August 30 letter expressed conviction that vessel safety depends greatly on the reliability of its machinery and equipment, that this reliability is a direct function of proper maintenance and servicing, and that the records as discussed in M-77-16 would raise the consciousness of the operators of these vessels to the importance of proper vessel care. Also, the keeping of a service and repair notebook by the operator would do much to increase the reliability of the machinery and equipment and, therefore, the general safety of inspected charter boats.

Coast Guard's October 18 response indicates that after reconsideration Cost Guard "still believes that implementation of this recommendation will not provide any improvement in small passenger vessel safety or machinery reliability." Further, Coast Guard states, "Vessel operators who repeatedly need Coast Guard assistance and who fail to properly service and maintain their vessels and equipment would be the first to make false, self-serving entries in a required logbook.

Coast Guard notes that its annual small passenger vessel inspection program, which has been operating successfully for 20 years, ensures that "at the time of inspection, all vessel machinery, systems, hull structure and equipment (navigation, firefighting, and lifesaving) comply with regulations and are in a condition that will provide for safe operation for at least the succeeding year on the authorized route." Attached to the response letter is a copy of recent casualty statistics which reflect a growing fleet of small passenger vessels accompanied by a substantial decrease in the number of incidents. Cost Guard states that these statistics show the probability of machinery failures to be very slight, adding that the vast majority of safe, conscientious operators of inspected small passenger vessels would, under the provisions of M-77-16, suffer the imposition of an unwarranted record-keeping requirement.

M-78-69.—Letter of October 19 from the Maritime Administration (MAR AD), U.S. Department of Commerce, responds to a recommendation issued following investigation of the breakup of the coastal tankship M/V *Chester A. Poling* during a severe winter storm off Cape Ann, Mass., January 10, 1977. One person, who fell into the ocean while attempting to enter the Coast Guard helicopter's rescue basket, is missing and presumed dead.

MARAD agrees with the recommendation to develop a survival and rescue training course for merchant seamen and is presently working with the Coast Guard in the development of training material covering the subject. MARAD says that as a result of the IMCO International Conference on Taining and Certification of Seafarers, 1978, several IMCO regulations will have significant impact on training requirements for licensed and unlicensed personnel on U.S.-flag merchant vessels. For example, Regulations VI/1 of the Conference requires an approved course in survival techniques, including "Methods of helicopter rescue" and "Effects of hypothermia and its prevention, use of protective covers and protective garments." The results of the IMCO Conference are currently being studied by a joint Coast Guard/MARAD committee and appropriate actions will be taken in the development of training material for use by the industry.

Railroad

R-78-19 through R-78-22.—Letter of September 28 from the Federal Railroad Administration is in response to the recommendations issued last April 24 following a 3-day en banc hearing, held by the Safety Board earlier that month, on railroad derailments and the carriage of hazardous materials. The hearing was prompted by the increasing number of derailments nationwide, especially those involving the release of hazardous materials from DOT 112A/114A "jumbo" tank cars. Testimony was heard from 48 witnesses from the railroad industry, tank car builders and operators, shippers, other Federal agencies, and the public.

The recommendations asked that the U.S. Department of Transportation require that shelf couplers and approved headshields be installed on all DOT 112A/114A jumbo tank cars by December 25, 1978, and that thermal insulation be installed as soon as possible, but in no event later than the original deadline of January 1, 1982, contained in the Materials Transportation Bureau's Docket HM-144. DOT was also asked to assist the responsible Federal regulatory agencies to develop economic regulations that provide a strong economic incentive to install tank car safeguards quickly and a strong economic disincentive for delay.

FRA reports that as a result of several safety inquiries conducted in coordination with the Materials Transportation Bureau, accelerated rules were developed. These rules deal with hazardous materials shipments, packaging, and tank car specifications. The final version of the new regulations was published in the FEDERAL REGISTER on July 12, 1978. FRA provides a brief summary of the amended rules as follows:

1. Existing specifications 112 and 114 tank cars used to transport flammable gases such as propane, vinyl chloride and butane, whose owners have elected to retrofit with jacketed insulation (known as the "J" retrofit), are to be retrofitted over a 3-year period ending December 31, 1980 (former deadline: December 31, 1981).

2. Existing specification 112 and 114 tank cars used to transport flammable gases such as propane, vinyl chloride and butane, whose owners have elected to retrofit with a nonjacketed thermal protection system and tank head protection (known as the "T" retrofit) are to be retrofitted with tank head protection over a 2-year period ending December 31, 1979 (former deadline: December 31, 1981), and with the nonjacketed thermal protection system over a 3-year period ending on December 31, 1980 (former deadline: December 31, 1981).

3. Existing specification 112 and 114 tank cars used to transport anhydrous ammonia exclusively (the "S" retrofit) are to be retrofitted with tank head protection over a 2-year period ending on December 31, 1979 (former dealine: December 31, 1981.)

FRA notes that the recommended timetable for application of shelf couplers (R-78-19) and FRA's requirement is essentially the same—all DOT specification 112 and 114 tank cars will be retrofitted with special shelf couplers by December 31, 1978. FRA's retrofit timetable for application of approved head shields differs from that recommended in R-78-20. FRA believes that an additional one year is needed to apply head shields to those cars undergoing conversion to the "S" and "T" specifications. Any further reduction of this schedule could result in tank cars being out-of-service and severe disruptions and shortages of propane and anydrous ammonia to small consumers, particularly farm families, FRA stated.

With reference to R-78-21, FRA says that under the revised schedule, all thermal insulation will be applied to the "T" and "J" cars by December 31, 1980, a year ahead of the original schedule.

Regarding the recommendation that FRA assist in developing economic incentives for quick compliance with the retrofit program (R-78-22), FRA says it does not see how such an incentive

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program could be undertaken, "particularly since the revised retrofit schedule is 'tight.'" Rather than seek methods of economic incentive, FRA aims to assure compliance through strict reporting, followup inspections (as necessary) and the use of "enforcement" if needed including compliance order proceedings under 49 CFR Part 209. To assist FRA in monitoring the efforts to tank car owners in complying with the retrofit program and its deadlines, Amendment No. 179-24 was published September 7, 1978 (43 FR 39793). This regulation requires disclosure of tank car owner's retrofit plans and quarterly reporting of actual conversion efforts. These reports will be "public information," FRA stated.

R-78-28 through R-78-31.—Letter of September 20 from the Association of American Railroads responds to additional recommendations resulting from the April Safety Board hearing on railroad derailments and carriage of hazardous materials. These recommendations, issued to AAR on June 29 (43 FR 30149, July 13, 1978), called for restructuring the membership and procedures of the AAR Committee on Tank Cars to eliminate conflicts of interest between shippers and the railroad industry in safety decisions (R-78-28); adoption of all safety and analysis methods that will strengthen the safety approval procedures within AAR Committees acting on hazardous materials tank car design and modification questions (R-78-29); implementing emergency procedures for approval of facilities and locations for installation of shelf couplers and head shields on DOT 112A/114A tank cars (R-78-30); and development and documentation of a system to notify FRA of critical car components that exhibit critical failures annually and recommend regulatory action as required (R-78-31).

In response to R-78-28, AAR says it knows of no conflict of interest between shippers and the railroad industry in safety decisions and believes that the trade associations represented on the Tank Car Committee (Manufacturing Chemists, National LP Gas, Compressed Gas, American Petroleum Institute, Chlorine Institute and Railway Progress, and seven railroads) have a common interest in safe transportation of hazardous materials by rail. AAR says that the final decisions on tank car design and other areas relating to safe transportation of hazardous materials by rail rest with the Department of Transportation.

With reference to R-78-29, AAR states that it "is, and always has been, willing to review and adopt any safety analysis methods that have demonstrated, by acceptable methods, that they will strengthen the safety approval procedures within AAR committees."

AAR, commenting on R-78-30, says it has no requirements for approval of facilities and locations for the installation of shelf couplers. Tank Car Committee approval is required for facilities which install head shields, and the Committee continues to give high priority to certification of this type of facility. There is no facility currently awaiting Tank Car Committee approval to install head shields on DOT 112-114 tank cars, AAR said.

In answer to R-78-31, AAR states, that, through the Annual Report of the Mechanical Division Committees, it has developed a system to notify all interested parties of components that exhibit unacceptable failure levels. Since 1970, AAR states, the Mechanical Division has supplemented this annual report notification with a system of "Early Warning" letters notifying interested parties of hazardous conditions on a particular group of railroad equipment. The purpose of the Early Warning letters ranges from a recommendation that special attention should be afforded a particular component during routine inspections to recommendation that the particular group of equipment be removed from service immediately pending corrective action.

NOTE.—The above notice reports on recommendation response letters recently received by the Safety Board. Copies of these letters are available without charge. All requests must be in writing, identified by recommendation number and date of publication of this notice in the FEDERAL REGISTER. Address inquiries to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594.

(Secs. 304(a)(2) and 307 of the Independent Safety Board Act of 1974 (Pub. L. 93-633, 88 Stat. 2169, 2172 (49 U.S.C. 1903, 1906)).)

MARGARET L. FISHER,
Federal Register Liaison Officer.

NOVEMBER 6, 1978.

[FR Doc. 78-31677 Filed 11-8-78; 8:45 am]

[3110-01-M]

OFFICE OF MANAGEMENT AND BUDGET

JOINT FUNDING EVALUATION

AGENCY: Office of Management and Budget.

ACTION: Notice of OMB evaluation of the effectiveness of the Joint Funding Simplification Act of 1974 (Pub. L. 93-510) and OMB Circular No. A-111 which provides guidance and procedures for implementing the Act. Joint funding is an attempt to coordinate the delivery of Federal assistance from more than one Federal program through use of a single application, single letter of credit, single audit, and other mechanisms for administrative simplification.

SUMMARY: The Joint Funding Simplification Act expires February 5, 1980. The Act calls for a comprehensive report to Congress prior to its expiration on actions taken and recommendations for continuation, modification, or termination of the Act. The report must also contain a detailed evaluation of the funding of the Act, including information on benefits and costs to the participants of jointly funding projects.

DATES: Interested parties are invited to submit comments by January 10, 1979, on any aspect of joint funding. We are especially interested in views on the key legislative, administrative, and management problems that impede the joint funding process. We would like suggestions for additional steps Federal agencies can take to facilitate funding programs requiring more than one funding channel, and administrative and legislative recommendations to strengthen, modify, or terminate joint funding.

ADDRESS: Submit written comments to William R. Feezle, Acting Deputy Associate Director, Intergovernmental Affairs Division, Office of Management and Budget, Room 5235, NEOB, Washington, D.C. 20503, telephone: 202-395-3980.

WAYNE G. GRANQUIST,
Associate Director for Management and Regulatory Policy, Office of Management and Budget.

[FR Doc. 78-31908 Filed 11-8-78; 10:34 am]

[7905-01-M]

RAILROAD RETIREMENT BOARD

PROCLAMATION REGARDING RAILROAD UNEMPLOYMENT INSURANCE ACCOUNT

Pursuant to section 8(a) of the Railroad Unemployment Insurance Act, the Railroad Retirement Board has determined, and hereby proclaims, that the balance to the credit of the railroad unemployment insurance account as of the close of business September 30, 1978, was $62,394,921.60. Based on this balance and pursuant to the table in section 8(a) of the Railroad Unemployment Insurance Act, the contribution rate to finance the railroad unemployment insurance program for calendar year 1979 shall be 7.0 percent.

In witness whereof the members of the Railroad Retirement board have hereunto set their hands and caused its seal to be affixed.

Done at Chicago, Ill., this 30th day of October, 1978.

WILLIAM P. ADAMS,
Chairman.
C. J. CHAMBERLAIN,
Member.
EARL OLIVER,
Member.

Dated: November 2, 1978.

By the Railroad Retirement Board.

R. F. BUTLER,
Secretary of the Board.

[FR Doc. 78-31636 Filed 11-8-78; 8:45 am]

[8010-01-M]

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 10462, 812-4302]

CLAREMONT CAPITAL CORP. AND ALLEN H. PARKINSON

Filing of Application for Order Exempting Proposed Transaction

NOVEMBER 1, 1978.

In the matter of Claremont Capital Corp., Suite 258, 810 Third Avenue, Seattle, Wash., 98104, and Allen H. Parkinson, 4020 Birch Street, Suite 201, Newport Beach, Calif., 92660, 812-4302.

Notice is hereby given that Claremont Capital Corp. ("Claremont"), registered under the Investment Company Act of 1940 ("Act") as a closed-end, nondiversified management investment company, and Allen H. Parkinson ("Parkinson") (hereinafter collectively, "Applicants") filed an application on May 2, 1978, and an amendment thereto on September 18, 1978, pursuant to section 17(b) of the Act for an order of the Commission exempting from the provisions of section 17(a) of the Act the proposed sale by Claremont to Parkinson of 237,500 shares of Infoton Inc. ("Infoton") common stock currently held by Claremont. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants represent that from the inception of Claremont's operations in 1968 until the annual meeting of the shareholders of Claremont on October 22, 1976, Claremont's investment objective and policy was to achieve maximum long-term growth through speculative equity investment in companies expected to derive maximum benefit from the development and use of advanced technologies.

Applicants further represent that at the annual meeting of Claremont's shareholders on October 22, 1976, the shareholders of Claremont approved a change in Claremont's investment objective and policy so as to reduce emphasis on investments in nonpublic companies, or companies issuing securities which have only limited markets.

Consistent with Claremont's then existing investment policy, Applicants state that pursuant to a Purchase Agreement entered into as of December 18, 1972, Claremont purchased a $500,000 principal amount 9 percent Convertible Senior Note ("Note") of Optical Scanning Corp. ("Optical") which was due December 18, 1975, and a warrant expiring December 18, 1975, to purchase 15,000 shares of the common stock of Optical. According to the application, Optical subsequently defaulted on the Note and, on March 18, 1976, filed a voluntary petition of bankruptcy ("Petition") under Chapter XI of the Bankrutcy Act. Applicants further state that the Plan of Arrangement ("Plan") dated June 30, 1977, which was filed by Optical in connection with the aforesaid Petition, was approved by the Bankruptcy Judge for the United States District Court, for the Eastern District of Pennsylvania on August 30, 1977. The Plan provided, among other things, for Optical to change its name to Infoton, Inc., and for Claremont to receive, in satisfaction of the Note, 237,500 unregistered shares of Infoton common stock ("Shares") and certain cash payments. Applicants represent that the order issued by the Bankruptcy Judge authorizing such cash payments and delivery to Claremont of the Shares of Infoton common stock was entered on February 21, 1978, and Claremont received the first cash payment and the Shares shortly thereafter.

Applicants further represent that Parkinson, through his attorney, initially contacted representatives of Claremont on or about December 19, 1977, with an offer to purchase the Shares of Infoton common stock to be acquired by Claremont for a total price of $85,000 (or about $0.36 per share), and that negotiations for the purchase of such Shares continued until late January, 1978. Applicants state that during the course of the negotiations from December to late January, 1978, for the purchase of the aforesaid Shares, Claremont insisted that the purchase price approximate the estimated book value of such Shares (about $0.63 per share) as of December 31, 1977. According to the application, the negotiations for the purchase of the Shares were broken off in late January, and reopened on February 28, 1978, at Parkinson's request.

Parkinson offered to pay a total price of $150,000 for the Shares (or about $0.632 per share) and a verbal agreement in principle on this purchase price was reached by Applicants on March 3, 1978. Applicants also state that, on April 19, 1978, they formalized their previous verbal agreement by entering into a written Agreement of Purchase and Sale ("Agreement") dating back to March 3, 1978, pursuant to which Claremont would sell the Shares to Parkinson for an aggregate purchase price of $150,000, or approximately $0.632 per share. The Agreement further provides that the closing of the sale of the Shares is conditioned upon the issuance of an order by the Commission granting the relief requested herein.

Applicants state that Claremont presently owns 237,500 shares, or approximately 6.75 percent, of the total number of shares of Infoton common stock presently outstanding and that, accordingly, Infoton is an affiliated person of Claremont within the meaning of 2(a)(3) of the Act. Applicants further state the Parkinson is an affiliated person of Infoton within the meaning of section 2(a)(3) of the Act by virtue of Parkinson's status as Chairman of the Board of Directors and Chief Executive Officer of Infoton, and Parkinson's ownership of approximately 43 percent of Infoton outstanding common stock. Therefore, the proposed sale by Claremont to Parkinson of the 237,500 shares of Infoton common stock currently held by Claremont might be deemed to constitute the sale of a security by a registered investment company to an affiliated person of an affiliated person of such registered investment company. Accordingly, Applicants request an order exempting the proposed transaction from the provisions of section 17(a) of the Act.

Section 17(a) of the Act provides, in pertinent part, that it shall be unlawful for any affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, knowingly to sell to or to purchase from such registered company any security or other property, subject to certain exceptions not relevant here. Section 17(b) of the Act provides that the Commission, upon application, may exempt a proposed transaction from the provisions of section 17(a) of the Act if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

In support of the relief requested, Applicants represent that the negotiatins were truly arm's length in that, to Claremont's knowledge, there are no other agreements relating to securities

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of Infoton nor any other business relationships between Claremont or any of the officers or directors of Claremont and Parkinson, other than Claremont's ownership of the shares, which ownership resulted from a distribution pursuant to the Plan. Applicants further represent that Parkinson is neither an officer, employee or director of Claremont not any of Claremont's investment advisers, and Parkinson neither exercises influence over nor controls Claremont's investment decisions with respect to its portfolio securities.

In addition, Applicants assert their belief that the purchase price of $0.632 for the Shares, as specified in the Agreement, is fair and reasonable, when considered in light of the actual book value of and prevailing market value for, shares of Infoton common stock. According to the application, the purchase price for the Shares was based in large part upon the then estimated book value of $0.63 per share for Infoton common stock on December 31, 1977, a date close to the beginning of the negotiations between Claremont and Parkinson. Applicants further state that, in fact, the book value on Infoton common stock as of that date was later found to be $0.62 per share. On March 31, 1978, a date close to the termination of the aforesaid negotiations, the book value of Infoton common stock was in fact, $0.7158 cents per share, and such figure was known to Claremont at the time it executed the Agreement. On June 30, 1978, the book value of Infoton common stock was $0.79 per share.

With respect to the prevailing market value of the Shares, Applicants represent that throughout the period that negotiations between Claremont and Parkinson were conducted, the bid price for Infoton common stock generally was either $0.75 or $0.875 per share, although the bid price of such common stock did reach $1.00 per share during the week of February 13, 1978, a period in which negotiations had been broken off. Bid and asked prices quoted for publicly traded Infoton Common Stock were $1.50 and $1.70 per share, respectively, on April 14, 1978, which was the last quotation from the National Quotation Bureau, Inc., available before the Agreement was signed. Accordingly, Applicants point out that $0.632 per share, the price to be received by Claremont for the Shares, represents a discount of 15.7 percent from the bid price of $0.75 per share, 27.8 percent from the bid price of $0.875 per share and 36.8 percent from the bid price of $1.00 per share without giving effect in each case to brokerage commissions or dealer markdowns which would be payable in the connection with a sale of securities in the open market. The sale price of $0.632 per share represents a discount of approximately 58 percent from the April 14, 1978, bid price of $1.50, described above,

Since the signing of the Agreement by Applicants, the bid and ask prices for publicly traded shares of Infoton Common Stock have increased, rising to a high of 4¼ and 4⅝ respectively on September 6, 1978. On October 11, 1978, the bid and asked prices for the above stock were 3¾ and 4⅛ respectively. The Applicants represent that the price and terms of the proposed sale of shares were the subject of arms lenth negotiations which were completed in March 1978; that in entering into a fixed price contract, each of the Applicants exercised independent business judgement; and that each of tha Applicants recognized that such a fixed price provision would effectively eliminate the market risk for one of the parties prior to closing; and that although there presently is a substantial difference between the current market price of unrestricted shares of Infoton Common Stock and the contract price for the Shares, the book value for Infoton Common Stock, upon which the contract price negotiations were in part based, has not increased significantly since the Agreement was executed on April 19, 1978.

The directors of Claremont state that, although they are of the view that the proposed sale of shares was reasonable with respect to Claremont both at the time the sale was negotiated and at the time the Agreement was executed, in light of the increases that have occurred in the market value of publicly traded Infoton shares, Claremont would not today accept a contract price of $0.632 per share but for the Agreement. Applicants state however, their belief that each of them is contractually bound to perform under the Agreement, subject to issuance of an order by the Commission under section 17(b) of the Act, and that Claremont is not free to negotiate a higher contract price with Parkinson.

Applicants further assert their belief that the above described discounts are reasonable in light of the restricted nature of the Shares, and by disposing of the Shares immediately in a single transaction Claremont will alleviate substantial market risks. With respect to the restricted nature of the Shares, Applicants state that Claremont has been advised by its counsel that as the recipient of unregistered securities in a proceeding under Chapter XI of the Bankruptcy Act Claremont may be deemed to be an underwriter, and thus may be required to comply with the provisions of Rule 148, adopted by the Commission under the Securities Act of 1933 ("1933 Act") in reselling the Shares in the open market. Applicants further state that assuming all other conditions of Rule 148 were satisfied, it would take Claremont over three years to dispose of the Shares in the open market under the volume limitations contained in paragraph (b)(1) of Rule 148. Moreover, Applicants assert their belief that it is questionable whether Claremont will be able to dispose of the Shares even within the volume limitations contained in Rule 148(b)(1), since the market for shares of Infoton common stock is thin and disposition of as much as 1 percent of such common stock outstanding and to be issued under the Plan during any 6 month period might disrupt or depress the market. In this connection, Applicants state that shares of Infoton common stock are not quoted on NASDAQ, and thus information concerning the volume of trades in such common stock is unavailable. However, since the filing of the application, NASDAQ bid, ask and volume quotations have become available.

Applicants also state that the proposed sale of the Shares by Claremont to Parkinson is consistent with Clairmont's current investment policy. According to the application, the Note issued by Optical was acquired by Claremont at a time when Claremont's investment policy was to invest in speculative equity securities. Applicants further state, however, that the shareholders of Claremont have since approved a change in Claremont's investment policy to reduce emphasis on companies with limited markets and that, accordingly, the proposed sale of the Shares will afford Claremont an opportunity to dispose of restricted securities and to reinvest the proceeds of such sale in marketable securities.

Applicants finally submit that the proposed sale of the Shares is consistent with the general purposes of the Act in that the Act may not have been intended to cover a situation where an operating company is an affiliated person of an investment company merely because a relatively small amount of such operating company's securities are being held by such investment company.

Notice is further given that any interested person may, not later than November 27, 1978, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the addresses stated above. Proof of such service (by affidavit, or in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons, who request a hearing of advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-31651 Filed 11-8-78; 8:45 am]

[8010-01-M]

[Rel. No. 646, 803-11]

FOSTER MANAGEMENT CO.

Filing of Application for Order for Exemption

NOVEMBER 1, 1978.

In the matter of Foster Management Co., One Battery Park Plaza, New York, N.Y. 10004 (803-11).

Notice is hereby given that Foster Management Co. ("Fomanco"), a Connecticut corporation registered with the Commission as an investment adviser under the Investment Advisers Act of 1940 (the "Act"), filed an application on January 30, 1978, and an amendment thereto on October 25, 1978, pursuant to section 206A of the Act, for an order (1) exempting Fomanco's advisory fee arrangements with a foreign corporation advised by Fomanco and three separate venture capital entities managed by Fomanco from the prohibitions of section 205(1) of the Act, and (2) exempting Fomanco from the recordkeeping requirements of rule 204-2 (b) and (c) promulgated under the Act, to the extent described herein. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Fomanco asserts that it was organized in 1972 to engage in the venture capital business and to provide management services to entities engaged in the business of making venture capital investments. The outstanding capital stock of Fomanco is privately held by the officers and directors of Fomanco, each of whom is actively involved in Fomanco's business. According to the application, the officers of Fomanco and their respective stock ownerships are as follows: John H. Foster ("Mr. Foster"), president and director, 55 percent; Frank J. Hawley, Jr. ("Mr. Hawley"), vice president, secretary and director, 20 percent; and Peter T. Pochna ("Mr. Pochna"), vice president treasurer and director, 25 percent.

Fomanco states that it advises or manages four separate companies engaged in the business of making venture capital investments: Elysee Capital Development Corp., S.A., a Luxembourg corporation ("Elysee"); Foster and Company, a Connecticut limited partnership; J. H. Foster and Company, a Delaware corporation ("J. H. Foster"); and Business Development Capital Co., a Connecticut limited partnership ("BDC"; together with Elysee, Foster and Company and J. H. Foster, the "Entities").

Fomanco asserts that it renders investment advice to Elysee, a venture capital firm sponsored by, and closely associated with, Credit Commercial de France, a major European banking institution headquartered in Paris, France. By agreement with Elysee, Fomanco is required to locate and submit prospective venture capital investments in the United States to Elysee's board of directors, which makes the investment decision. If Elysee elects to invest, Fomanco monitors the investment and assists in its development through the rendering of entrepreneurial services, although any decision to sell an investment is made by Elysee, not Fomanco. Fomanco submits that in return for these services, Fomanco receives an annual retainer of $30,000, from which Fomanco must bear all its expenses associated with Elysee's operation, and a 15 percent participation in Elysee's net investment gain (loss) (as defined below) from investments recommended by Fomanco.

Foster and Company, formed in 1972 has 13 limited partners whose capital contributions aggregate $1,050,000. Foster and Company, of which Fomanco and Mr. Foster are general partners, is fully invested in noncontrol venture capital situations. Fomanco asserts that it is responsible for all investment decisions as well as day-to-day management of the partnership.

J. H. Foster, formed in 1973, is a federally licensed small business investment company engaged in the business of making noncontrol investments in venture capital situations. Fourteen stockholders, including Foster and Company, have invested an aggregate of $2,591,800 and own all of J. H. Foster's issued and outstanding class A common stock. Fomanco states that Foster and Company owns approximately 28.9 percent of the class A common stock. According to the application, (1) all of the outstanding class B common stock of J. H. Foster is owned by Fomanco, and, (2) Fomanco paid a nominal consideration of $.01 per share, or $864.71 in the aggregate, for its shares of class B common stock. J. H. Foster's equity capital has been leveraged with $2 million of debentures guaranteed by the Small Business Administration.

By agreement with J. H. Foster, Fomanco is responsible for day-to-day management of J. H. Foster and for making investment recommendations to, and implementing the investment decisions of, the J. H. Foster board of directors which, Fomanco asserts, has ultimate investment authority. As discussed below, Fomanco is compensated for such services through its ownership of class B stock.

BDC, formed in 1976, has 28 limited partners, including Foster and Company, whose capital contributions total $7,650,000. Unlike Foster and Company and J. H. Foster, which are engaged in the traditional venture capital business of making minority investments (less than 20 percent) in portfolio companies, BDC will, according to the application, almost invariably acquire at least 80 percent of the equity securities of its portfolio companies. According to the application, Fomanco is a general partner of BDC and is responsible for all investment decisions as well as the day-to-day management of the partnership.

Fomanco asserts that its advisory fee arrangements with Foster and Company, J. H. Foster and BDC are essentially similar, providing for (1) annual compensation to cover expenses incurred by Fomanco in discharging its management duties ("Annual Compensation Fee"), and (2) an incentive fee equal to a percentage of each company's net investment gain (loss), payment of such fee being contingent upon all investors' receiving distributions equal to their capital contributions ("Incentive Fee"). Fomanco states that net investment gain of a company is determined in accordance with generally accepted accounting principals and consists of the remainder of (i) the sum of realized and unrealized investment gain less (ii) the sum of realized and unrealized investment loss. Such gain or loss is determined, Fomanco submits, by subtracting the fair market value of each investment in the company's portfolio at the beginning of the accounting period from the fair market value of such investment at the end of the accounting period.

With regard to the Annual Compensation Fee, Fomanco submits the following information. Pursuant to the management contract between J. H. Foster and Fomanco, J. H. Foster paid Fomanco $225,000 in 1977 and has agreed to pay Fomanco $250,000 for 1978. Pursuant to the BDC agreement of limited partnership, BDC pays Fo-

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manco annual compensation equal to 3 percent of the aggregate of the limited partners' capital accounts, determined exclusive of unrealized gain but inclusive of unrealized loss. With BDC's capital contributions aggregating $7.65 million, Fomanco's annual compensation is currently $214,500. Fomanco asserts that because more than 90 percent of Foster and Company's investment portfolio consists of its investment in J. H. Foster and BDC, Foster and Company does not contribute to Fomanco's salary and overhead expenses. Expenses which are annually reimbursed by Foster and Company to Fomanco consist principally of legal and accounting expenses directly allocable to Foster and Company. Historically, these expenses have averaged $3,000 per annum.

As a consequence of the Annual Compensation Fee payments from J. H. Foster and BDC, Fomanco will receive approximately $464,500 in annual compensation from which it will be required to bear all its expenses. According to the application, approximately two-thirds of this amount will be consumed in salary expense for Fomanco's principals and employees. The remaining one-third has been budgeted for general overhead expenses of which the major categories are rent, travel and entertainment, communications, and legal and accounting expenses.

With regard to the Incentive Fee, Fomanco submits the following information. The Foster and Company agreement of limited partnership provides that the net investment gain (loss) of Foster and Company, other than net investment gain (loss) attributable to Foster and Company's investments in J. H. Foster and BDC, is allocated 15 percent to Mr. Foster, as general partner, 10 percent to Fomanco, as general partner, and 75 percent to the limited partners of Foster and Company, pro rata according to their respective capital accounts. Foster and Company's net investment gain (loss) from its investments in J. H. Foster and BDC is allocated 100 percent to the limited partners. According to the application, neither Mr. Foster nor Fomanco is entitled to receive a distribution from Foster and Company until the limited partners have received distributions equal to their capital contributions to Foster and Company. As a consequence of the fact that Foster and Company is largely invested in J. H. Foster and BDC, the Incentive Fee arrangements described above operate with respect to one investment representing less than 10 percent of Foster and Company's portfolio. That investment is currently valued at $100,000.

The certificate of incorporation of J. H. Foster provides that next investment gain (loss) is allocated 75 percent to the class A common stock and 25 percent to the class B common stock. Fomanco asserts that no dividends may be declared or paid on the class B common stock until the holders of the class A common stock have received dividends equal to their capital contributions to J. H. Foster. Upon liquidation, the holders of the class A common stock are entitled to receive preferential distributions equal to their capital contributions (less any dividends theretofore received), before Fomanco, as the holder of the class B common stock, is entitled to receive a distribution equal to its capital contribution (less dividends received), and any remaining assets are distributed 75 percent to the class A common stock and 25 percent to the class B common stock.

The BDC agreement of limited partnership provides that BDC's net investment gain (loss), is credited or charged 75 percent to the capital accounts of the limited partners and 25 percent to the capital account of Fomanco. According to the application, Fomanco is not entitled to receive a distribution from BDC in respect of its capital account until the limited partners have received distributions equal to their capital contributions to BDC.

Fomanco states that the Incentive Fee is allocated to it annually. The allocation results in a credit (or charge) to Fomanco's capital account in the case of Foster and Company and BDC and to the retained earnings account of J. H. Foster. In the cases of Foster and Company and BDC, distributions to the limited partners will result in an offsetting charge to the limited partners' capital accounts and after the limited partners have recovered their capital contributions further distributions to the limited partners and Fomanco will be made pro rata according to the remaining balances in their capital accounts. In the case of J. H. Foster, distributions on the class A common stock will be charged against retained earnings allocable to the class A common stock. Fomanco asserts that neither Foster and Company nor J. H. Foster has made regular distributions to its investors. According to the application, BDC anticipates that it will make annual distributions to its investors of approximately 5 percent of their capital contributions.

Other than the fee arrangements described above, Fomanco asserts that it receives no remuneration from any of the Entities or the investors therein. However, Fomanco does reserve the right to charge the Entities' portfolio companies for management consulting services or investment banking services separately contracted for by such portfolio companies at rates prevailing in the marketplace. Fomanco claims that such remuneration is subject, in the case of J. H. Foster's portfolio companies, to the prior approval of the Small Business Administration and is received as income to J. H. Foster and not Fomanco. In the case of BDC, such remuneration cannot exceed $65,000 annually for any single portfolio company and $175,000 annually for all portfolio companies.

The contributions to Foster and Company, J. H. Foster and BDC to date aggregate $10,200,000 after eliminating Foster and Company's investment of $750,000 in J. H. Foster and $350,000 in BDC. Of this amount, $450,000, or approximately 4.4 percent, has been invested by Fomanco's three principals. Fomanco submits that Mr. Foster has invested $150,000, Mr. Hawley has invested $50,000, and Mr. Pochna has invested $250,000. Fomanco asserts that the investments of each of those three principals of Fomanco represents a material portion of his individual net worth and that, as a group, those principals have invested in each of those three companies. Fomanco submits that, prior to the dissolution of BDC, Foster and Company and J. H. Foster, none of those principals shall withdraw any part of his investment in those companies absent a material adverse change in his circumstances, except through such principal's pro rata participation in distributions to all of the investors in such company. The other two principals of Fomanco will determine what constitutes a "material adverse change in circumstances." In the event of such an adverse change and withdrawal of part of a principal's investment, Fomanco states that it will promptly inform the Commission of such facts and circumstances, and agrees the Commission shall have the opportunity to reconsider the exemption requested hereby.

Fomanco's management agreement with J. H. Foster is subject to annual renewal. Fomanco submits that in the event of termination or non-renewal of Formanco's management agreement, J. H. Foster shall have the option to purchase all, but not less than all, of the outstanding Class B common stock of J. H. Foster owned by Fomanco for its fair market value determined on the date upon which the option is exercised. If the termination or non-renewal is due to change in ownership of a substantial amount of the Class A common stock of J. H. Foster, Fomanco states that it shall have the option to require J. H. Foster to purchase all, but not less than all, of the Class B common stock of J. H. Foster owned by Fomanco for its fair market value determined on the date upon which the option is exercised. In either case, the fair market value of the Class B common stock will be determined initially by the Audit Committee of the Board of Directors of J. H. Foster. If Fomanco disagrees with the determination of the Audit Committee, fair market value will be determined by a panel of three independent appraisers, one to be selected by each of J. H. Foster and Fomanco and the third to be chosen by the two so selected, in appraisal proceedings conducted in accordance with the rules of the American Arbitration Association.

Fomanco states that its capital investment in each of Foster and Company, J. H. Foster and BDC is minimal, Fomanco having paid a nomimal amount for its general partnership interests in Foster and Company and BDC and for its shares of Class B common stock in J. H. Foster. Fomanco states that it is neither a limited partner of Foster and Company or BDC nor a holder of Class A common stock of J. H. Foster.

Fomanco asserts that the interests in Foster and Company, J. H. Foster and BDC have been privately placed with 42 individuals, institutions and family groups. According to Fomanco, each of those investors (excluding Fomanco's principals and members of their families) has a net worth in excess of $1 million and in no event does any investor's investment exceed 10 percent of his or its net worth. Fomanco claims that the investors have close ties to the financial community and substantial prior investment experience.

Fomanco has agreed, as a condition to the order it seeks, that any future sales of limited partnership interests in Foster and Company or BDC, or of shares of Class A common stock of JHF, will be sold only to sophisticated investors in reliance upon the provisions of Section 4(2) of the Securities Act of 1933. Fomanco states that, at the present time, it has no intention of adding additional investors to Foster and Company, J. H. Foster or BDC.

Investors in Foster and Company and BDC have no right to dispose of their limited partnership interests without the consent of Fomanco until ten years after the inception of the partnership, at which time, Fomanco submits, such partners have an annual option to retire from the partnership. Investors in JHF may transfer their shares of Class A common stock provided the proposed transfer is in compliance with the Securities Act of 1933.

Fomanco prepares annual reports with respect to each of the three venture capital entities managed by Fomanco, including financial statements certified by Price Waterhouse & Co., which are mailed to the respective investors. Fomanco asserts that it does not prepare or transmit, to any of the investors in the three Entities managed by Fomanco, reports of an advisory nature containing recommendations with respect to investments.

According to the application, (1) Fomanco does not advise or manage any clients other than the Entities, and (2) any future clients Fomanco advises or manages will be primarily engaged in the business of making venture capital investments.

Fomanco claims that it is not affiliated with any securities broker or dealer and does not function as either a broker or a dealer with respect to investments, or dispositions of investments, by the Entities.

Section 205(1) of the Act, in pertinent part, prohibits a registered investment adviser from entering into or performing any investment advisory contract which provides for compensation to the investment adviser based on a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client. Accordingly, Fomanco requests an order exempting its fee arrangements with the Entities from the provisions of section 205(1) of the Act.

Rule 204-2 (b) and (c) promulgated under the Act requdire a registered investment adviser having custody or possession of a client's securities and rendering investment supervisory or management services to a client, respectively, to maintain designated books and records with respect to such client. Fomanco asserts that it maintains the designated books and records for each of Foster and Company and BDC, rather than for the limited partners thereof. Accordingly, Fomanco requests an order exempting Fomanco from the provisions of Rule 204-2 (b) and (c) promulgated under the Act to the extent that such provisions would otherwise require Fomanco to maintain the designated books and records with respect to each such limited partner.

Fomanco contends that the legislative policies underlying section 205(1) of the Act are to protect the unsophisticated investor-advisee from overreaching and excessive risk taking by investment advisers, and are not applicable to venture capital situations generally or to Fomanco in particular.

Fomanco advances a number of arguments in support of its position that the fee arrangements for which an exemption from section 205(1) of the Act is sought will not encourage Fomanco to take undue risks with the funds which have been invested in the Entities, as follows. First, each of the Entities was formed for the express purpose of making venture capital investments, a high-risk, high reward activity. The risks of venture capital investing are inherent in the activity; they are not, according to Fomanco, appreciably affected by the management fee arrangements. The investors in each of the Entities are, Fomanco asserts, seasoned venture capitalists who have deliberately sought the risks of venture capital investing because of the unusual opportunity for substantial capital gains. Second, Fomanco's principal source of net income will be its Incentive Fees. Fomanco's success is dependent upon the successfull deployment of the Entities' funds. Undue speculation by Fomanco would substantially increase the risk of Fomanco's receiving no performance fees for its efforts. Third, the illiquidity and long-term nature of venture capital investments preclude the use of speculative securities market strategies regardless of the fee arrangement.

As a fourth argument, Fomanco contends that the likelihood of speculative abuse is not increased by its fee arrangements with Foster and Company, J. H. Foster and BDC because Fomanco is not entitled to draw against its incentive compensation as earned. The fee arrangements with those companies require a return of capital to the investors prior to any distributions of incentive compensation to Fomanco. Fifth, Fomanco argues that its fee arrangements will not promote undue risk taking because Fomanco's principals have committed substantial portions of their indivdual net worths to the entities managed by Fomanco.

Finally, and, according to Fomanco, most importantly, all venture capital investment managers must establish and maintain a credible performance record or they will be unable to attract clients from the relatively small and sophisticated group of potential venture capital investors. Fomanco, regardless of its fee arrangements, could not afford the consequences of a poor performance record occasioned by imprudent speculation with funds entrusted to its stewardship.

Fomanco asserts that an exemption for its fee arrangements is appropriate because the investors in the Entities are sophisticated persons of substantial means who have actively sought a high-risk investment. It further asserts that the Commission should grant the exemption it seeks because the venture capital investment management function is markedly different from that of other investment advisers. Fomanco states that the evaluation and selection of a venture capital investment is only the first step in the process of managing a client's account. According to the application, (1) Fomanco closely monitors the performance of the Entities' portfolio companies through frequent meetings with various members of the portfolio companies' management teams; (2) Fomanco's principals usually serve on the Boards of Directors of those portfolio companies; (3) Fomanco partici-

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pates with management in portfolio company corporate planning and becomes directly involved in budgeting, financing, acquisition programs, marketing strategy, expansion and relocation programs and management recruitment and replacement. In the case of BDC, which purchases controlling positions in companies, Fomanco asserts that its principals frequently become officers of the portfolio companies. Fomanco states that these functions are entrepreneurial in nature and have nothing to do with the giving of investment advice.

Fomanco argues that in order to entice competent venture capital managers to assume an active role in their portfolio companies and to take the risk that their substantial endeavors over a protracted period of time may be for naught, the potential compensation must be uniquely substantial. The limited performance based fee exception to section 205(1) of the Act, which permits, generally, investment advisory fees which increase and decrease proportionately with investment performance (as measured against an appropriate index), is not available to Fomanco since, Fomanco asserts, there is no generally recognized index against which such performance can be measured. Therefore, Fomanco claims that the only alternative fee arrangement permitted by section 205(1) of the Act is the standard fee consisting of a fixed percentage of assets annually.

According to Fomanco, however, the normal fixed percentage fee for investment advisers in not adequate compensation for venture capital management. Venture capital pools must be relatively small, particularly when compared to mutual funds. Otherwise, size constrains operations. Fomanco asserts that in order to generate sufficient fees to compensate the management company, a prohibitively high percentage fee would be required, such as 10 percent or more of invested capital annually. Because the portfolio companies would be unable to make annual distributions sufficient to defray such a high fee, Fomanco argues, a significant portion of the investors' capital contributions would be required to be segregated in an interest bearing account to be drawn on to pay the management fee and would not be committed to the client's investment objectives. The rate of return which would be required on the reduced pool in order to restore the investor's capital and reward the investor for the risks of venture capital investing would, Fomanco claims, be unrealistic and unattainable. Thus, Fomanco believes that its fee arrangements are the most satisfactory means of compensation available. Without the incentive of a performance fee based upon capital appreciation, many venture capital management companies would, according to Fomanco, cease operations and an important segment of the capital markets would be adversely affected.

With regard to Rule 204 (b) and (c), Fomanco reconciles annually the capital accounts of the individual limited partners, and, as a condition to the order it requests, Fomanco agrees to continue to maintain records of the capital accounts of the individual limited partners. Fomanco contends that it is impractical and unduly burdensome to require it to prepare and maintain individual books and records for each limited partner on an ongoing basis.

Section 206A of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person or transaction, or any class or classes of persons or transactions, from any provision or provisions of the Act, or any rules promulgated thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than November 24, 1978, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule)-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-31652 Filed 11-8-78; 8:45 am]

[8010-01-M]

[File No. 500-1]

INTERNATIONAL SYSTEMS & CONTROL CORP.

Suspension of Trading

NOVEMBER 2, 1978.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the securities of International Systems & Controls Corp. being traded on a national securities exchange or otherwise is required in the public interest and for the protection of investors;

Therefore, pursuant to section 12(k) of the Securities Exchange Act of 1934, trading in such securities on a national securities exchange or otherwise is suspended, for the period from 9 a.m. (EST) on November 2, 1978 through November 11, 1978.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-31653 Filed 11-8-78; 8:45 am]

[8010-01-M]

[Release No. 15291, File No. SR-NASD-78-3]

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Order Extending Comment Period

NOVEMBER 2, 1978.

In the matter of National Association of Securities Dealers, Inc., 1735 K Street NW., Washington, D.C. 20006, File No. SR-NASD-78-3.

On August 2, 1978, the Commission published Securities Exchange Act Release No. 15020[1] giving notice pursuant to Rule 19b-4 under the Securities Exchange Act of 1934 of a proposed rule change (File No. SR-NASD-78-3) by the National Association of Securities Dealers, Inc. (the "NASD") to amend certain of the NASD's Rules of Fair Practice relating to underwriting practices.

In the case of *Papilsky* v. *Berndt*,[2] it was held that, in the absence of a contrary ruling from the Commission or the NASD, recapture of underwriting fees is "available and legal" under Article III, section 24 of the NASD Rules of Fair Practice. Thereafter, the NASD submitted the proposed rule change published in Securities Exchange Act Release No. 15020. The proposed rule change would amend section 24 to prohibit certain payments of selling concessions, discounts or other allowances in connection with fixed price offerings. The proposed rule change would also introduce a definition of the term "fixed price offerings" and prohibit certain swap transactions and sales to related persons by NASD members in the course of such offerings.

The Commission has received a number of written and oral requests to extend the period within which interested persons are invited to submit comments on the filing. In view of the complexity and potentially far-reaching impact of the proposed rule change, the Commission has determined to extend the comment period until December 15, 1978.

Interested persons should submit six copies of their written views and comments to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549 and should refer to File No. SR-NASD-78-3. All submissions will be made available to public inspection in the Commission's Public reference section, Room 6101, 1100 L Street NW., Washington, D.C.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-31654 Filed 11-8-78; 8:45 am]

[1] 43 FR 35446 (August 9, 1978).

[2] [1976-1977 Transfer Binder] Fed. Sec. L. Rep. (CCH) § 95,627 (S.D.N.Y. 1976).

[8010-01-M]

[Release No. 20760, 70-6220]

NORTHEAST UTILITIES SERVICE CO.

Proposed Sale and Leaseback of Computer Equipment

NOVEMBER 1, 1978.

In the matter of Northeast Utilities Service Co., Selden Street, Berlin, Conn. 06037 (70-6220).

Notice is hereby given that Northeast Utilities Service Co. ("NUSCO"), a service company subsidiary of Northeast Utilities, a registered holding company, has filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 9(a), 10 and 12(d) of the Act as applicable to the proposed transaction. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transaction.

NUSCO, in connection with its obligation to provide central dispatching and other services for the New England Power Pool ("NEPOOL"), proposes to lease up to approximately $1,450,000 worth of data processing equipment which together with the related software will comprise the basis for a new automated dispatching system to be installed at the New England Power Exchange ("NEPEX"), the central dispatching exchange for NEPOOL. NEPEX is located at the headquarters of Western Massachusetts Electric Co., an associate company of NUSCO, in West Springfield, Massachusetts. NUSCO's obligation to provide the services (including dispatching services) required for the operation and maintenance of NEPEX and other miscellaneous services for NEPOOL are described in the Service Agreement between Northeast Utilities Service Co. and the Participants Under the New England Power Pool Agreement dated as of October 1, 1972 ("Service Agreement"). NUSCO has been providing such services since 1970.

The new NEPEX system will replace an existing computerized dispatching system having more limited capabilities. NUSCO expects that the equipment will be delivered by the manufacturers to NEPEX in November, 1978 and, after a short testing period, will become available for use in the development of software for the system later that month. Software development is expected to be completed and the new dispatching system put into service in the Fall of 1979. The software for the system is not included in the proposed lease. That portion of the system which will be leased pursuant to the proposed transaction is hereafter referred to as the "System."

Under the proposed transaction, which is being arranged by New England Merchants Leasing Corp., NUSCO will enter into an Agreement and Lease ("Lease Agreement") with Mellon National Leasing Co. ("Lessor"). Pursuant to the Lease Agreement and prior to putting any part of the System into service, NUSCO will either arrange for the Lessor to acquire such part from the vendor or will itself purchase such part and resell it to the Lessor. In the latter case, NUSCO will be reimbursed, in cash, for all of its estimated investment with respect to the System prior to the Lessor's taking of title. The Lessor will hold title to the System and when the System is delivered to and accepted by the Lessor, the Lessor will simultaneously lease back the System to NUSCO pursuant to the Lease Agreement. The term of the lease will commence in November 1978 and will extend for seven years, with NUSCO having a right to purchase the System on a fair market value basis at the expiration of the lease term. If NUSCO does not purchase the System at the end of the lease term, the System will be returned to the Lessor. It is expected that NUSCO will assign the benefits of the Service Agreement to the Lessor insofar as the provisions of the Service Agreement permit NUSCO to be reimbursed by the participants in NEPOOL for the rental costs for the System. The lease will be a "net lease" in that NUSCO will assume all costs of operating and maintaining the System, including the payment of taxes and insurance.

The average annual rental, which will be payable by NUSCO in eighty-four equal monthly amounts, will be approximately 16.3 percent of the Lessor's cost for the System. In terms of annual interest costs, the average simple interest rate thereof to NUSCO embodied in the rentals will be approximately 6.1 percent per annum. These rental payments are premised upon the availability of certain tax benefits to the Lessor. In the event that any of the premises proves to be incorrect or unavailable, the lease rentals will be adjusted upwards so that the hypothetical after-tax yield on which the lease rentals are based will be maintained. As long as NUSCO is not in default under the lease, it shall be entitled to the exclusive possession, use and quiet enjoyment of the System during the term of the lease.

NUSCO, in connection with the above-described transaction, herewith requests Commission approval to sell and lease back up to approximately $1,450,000 of data processing equipment comprising the System. The dollar amount reflects that, in addition to the cost of the various components of leased equipment, the Lessor's cost may include additional amounts for transportation and other costs which amounts have not yet been finally determined.

The proposed transaction will allow NUSCO to obtain under favorable terms up to approximately $1,450,000 of equipment necessary to fulfill its obligation for providing dispatching services for NEPOOL. NUSCO states that the net lease approach is the most reasonable and least expensive method now available to it for the acquisition of the equipment. It is further stated that if NUSCO were to purchase the System using its conventional financing methods i.e. through borrowings from its parent, Northeast Utilities, at the prevailing prime interest rate plus one-quarter percent, the annual cost to the Applicant would be significantly higher than the approximately 6.1 percent for the rental charge.

The reduction in costs to NUSCO will, in turn, benefit the NEPOOL participants which are obligated under the Service Agreement to reimburse NUSCO's rental costs.

A statement of the fees, commissions and expenses to be incurred by NUSCO in connection with the pro-

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posed transaction will be filed by amendment. It is stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than November 24, 1978, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desired to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-31655 Filed 11-8-78; 8:45 am]

[8010-01-M]

[Rel. No. 80, File No. SIPC-78-3]

SECURITIES INVESTOR PROTECTION CORP.

Order Extending Time Period Within Which Commission Is Required To Act on Proposed Rule Changes

NOVEMBER 2, 1978.

In the matter of Securities Investor Protection Corp., 900 17th Street NW., Washington, D.C. 20006, File No. SIPC-78-3.

The Securities Investor Protection Corp. (SIPC) submitted on June 23, 1978, pursuant to section 3(e)(2) of the Securities Investor Protection Act of 1970, as amended, proposed rule changes to provide for closeouts and completions of the open contractual commitments of an insolvent broker or dealer. Notice of the filing was given by publication of a Commission release (Securities Investor Protection Act Release No. 72 (July 10, 1978)) and by notice in the FEDERAL REGISTER (43 FR 20954 (July 18, 1978)), and interested persons were invited to comment.

The Commission has considered the proposed rule changes. Proposed Rule 306 provides that SIPC may authorize the closeout or completion of open contractual commitments if it appears to SIPC that failure to do so may have a substantial detrimental impact upon the financial condition of one or more brokers or dealers. The Commission believes that proposed Rule 306 should be amended to provide for Commission review of SIPC determinations under that rule and to provide that any subsequent closeout or completion shall be mandatory. SIPC has been requested to amend its filing accordingly

In order to provide time for SIPC to amend its filing and for public notice and comment thereon, the Commission finds it appropriate to extend the time within which it must approve or initiate proceedings to disapprove the proposed rule changes, as amended.

Accordingly, the Commission, pursuant to section 3(e)(2)(B) of the Securities Investor Protection Act of 1970, as amended, hereby extends to January 2, 1979, the time within which the Commission must take action on the above-referenced proposed rule changes.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-31656 Filed 11-8-78; 8:45 am]

[8010-01-M]

[Release No. 34-15262; File No. SR-CBOE-1978-28]

SELF-REGULATORY ORGANIZATIONS

Proposed Rule Change By Chicago Board Options Exchange, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) as amended by Pub. L. 94-29, 16 (June 4, 1975), notice is hereby given that on October 11, 1978, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

EXCHANGE'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

CBOE has elected to treat as a rule change its Educational Circular No. 23 dealing with certain practices generally referred to as "front-running of blocks". The Educational Circular presents a discussion and examples to illustrate that if a member trades in options on the basis of non-public information concerning block transactions in underlying securities, or vice versa, the member has engaged in conduct that is inconsistent with just and equitable principles of trade in violation of CBOE Rule 4.1.

EXCHANGE'S STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule change is as follows:

The purpose of Educational Circular No. 23 is to provide guidance to members concerning the application of CBOE rule 4.1 to the practice known as "front-running of blocks", in order to assure that participants in CBOE's options market and persons trading in underlying securities have reasonable equality of access to relevant information concerning block transactions in the other market, and to remove any incentive for delaying public dissemination of information concerning block transactions that are required to be reported over the respective options and stock price reporting systems. Educational circular No. 23 states that it is inconsistent with just and equitable principles of trade, and thus in violation of rule 4.1, for a member or person associated with a member to capitalize in its securities trading on nonpublic knowledge of the agreed upon terms of a block transaction.

The application of rule 4.1 to front-running, as explained in Educational Circular No. 23, has as its basis under the Act the provisions of section 6(b)(5) requiring that exchange rules be designed "to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade . . . and in general to protect investors and the public interest." It is also based upon section 11A(a)(1)(C)(iii) stating that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability of information with respect to transactions in securities.

Comments were received on proposed rule 4.18 (which is being withdrawn concurrently with this filing) dealing with the same subject matter as Educational Circular No. 23, as stated in File No. SR-CBOE-1976-8. Additional oral comments from certain members with respect to Educational Circular No. 23 were solicited and received by CBOE. These comments were generally in support of Educational Circular No. 23, although several members urged caution in the application of rule 4.1 in the area of market information to avoid interfering with legitimate hedging and arbitrage transactions and to avoid placing unwarranted presumptions of wrongdoing upon members. These concerns have been taken into consideration in Educational Circular No. 23.

The Exchange does not believe that Educational Circular No. 23 imposes any burden on competition.

The foregoing rule change has become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted within 30 days of the date of this publication.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

OCTOBER 20, 1978.

OCTOBER 10, 1978.

EDUCATIONAL CIRCULAR NO. 23

FRONT-RUNNING OF BLOCKS

This educational circular is for the purpose of informing the membership of the Exchange's enforcement policy with respect to certain practices generally referred to as "front-running of blocks". As a block transaction in an underlying security may have an impact on the market for that security or the options covering that security (or vice versa), the Exchange has long been concerned over allegations that some members have engaged in the practice of trading in options or in underlying securities when they are in possession of material nonpublic information concerning block transactions in these securities. In keeping with its responsibility to assure the fairness of its market, the Exchange believes that it should be made clear that this kind of activity on the part of market professionals will not be permitted to take place.

Reflecting this view, in April 1976, the Exchange proposed the adoption of a new Rule 4.18 that, as amended, would have prevented members from executing proprietary orders in options when they are in possession of nonpublic information concerning block transactions in underlying securities. The rule similarly would have applied to orders for an underlying security when in possession of nonpublic information concerning block transactions in options covering that security.

The Exchange originally proposed a new rule to deal with this problem instead of proceeding under existing Rule 4.1 (which prohibits conduct inconsistent with just and equitable principles of trade), because the Exchange believed (and still believes) that in attempting to define unlawful front-running activities, it should proceed cautiously and be as precise as possible in describing conduct that is prohibited. Accordingly, in drafting Rule 4.18, the Exchange attempted to create a rule that would cover the kind of front-running that had been alleged while not interfering with entirely legitimate transactions.

In response to the filing of proposed Rule 4.18, the Commission sent a letter to the Exchange on November 8, 1977, in which the Commission expressed its view that front-running of blocks should appropriately be addressed under Rule 4.1 as conduct inconsistent with just and equitable principles of trade. The Commission stated that the broad standard of Rule 4.1 would permit the flexibility that is needed to distinguish, on a case-by-case basis, between legitimate trading activity and front-running. On the other hand, the Commission indicated that it would not object to the Exchange's prohibiting certain kinds of defined front-running so long as it was made clear that any such definition of prohibited conduct was not exclusive and that instances of front-running not included within the definition would still be covered by the broad prohibitions of Rule 4.1. The Commission deferred acting on proposed Rule 4.18 so as to provide the Exchange with an opportunity to consider its comments as expressed in the letter.

The Exchange agrees with the views of the Commission that front-running of blocks is conduct inconsistent with just and equitable principles of trade and is violative of Rule 4.1. Accordingly, the Exchange has withdrawn proposed Rule 4.18, and has adopted a policy of bringing enforcement proceedings under Rule 4.1 in cases of front-running. As a matter of regulatory philosophy, however, the Exchange continues to believe that it should try to the maximum extent possible to provide clear and unambiguous standards to help define the conduct of its members in this area. For this purpose, the Exchange has prepared this educational circular containing a discussion and examples of conduct involving the front-running of blocks that it considers to be in violation of Rule 4.1.[1] Although this circular concentrates on proprietary trading of members, front-running violations may also occur in certain agency situations, such as where a member passes on non-public information concerning block transactions to a customer who then trades on the basis of the information.

The Exchange considers it to be conduct inconsistent with just and equitable principles of trade in violation of Rule 4.1 for a member or person associated with a member for an account in which such member or person has an interest, or for an account with respect to which such member or person exercises investment discretion, to cause to be executed:

(1) An order to buy or sell an option when such member or person causing such order to be executed has knowledge of a block transaction in the underlying security, or

(2) An order to buy or sell an underlying security when such member or person causing such order to be executed has knowledge of a block transaction in an option covering that security,

prior to the time information concerning the block transaction has been made publicly available. Front-running may be based upon knowledge of less than all of the terms of the transaction, so long as there is knowledge that all of the material terms of the transaction have been or will imminently be agreed upon. Notwithstanding the foregoing, if a member firm receives at or about the same time a customer's order of block size relating to both an option and the underlying security, the member may position the other side of one or both components of the order, subject to applicable exchange rules governing crosses. However, the member firm would not be able to cover any resulting proprietary position by entering an offsetting order until information concerning all block transactions involved has been made publicly available.

The application of this circular is limited to transactions that are required to be reported on the last sale reporting systems administered by CTA or OPRA, and information as to a block transaction shall be considered to be publicly available when it has been disseminated via the tape or high speed communication line of one of those systems. Public outcry on the

[1] This circular is not intended to limit the application of Rule 4.1 to front-running or to other kinds of possible misuse of nonpublic market information.

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Exchange Floor shall not be deemed to make such information publicly available except in unusual circumstances with the advance approval of two Floor Officials.

A transaction involving 10,000 shares or more of an underlying security or options covering such number of shares shall be conclusively deemed to be a block transaction, although transactions of less than 10,000 shares may also be block transactions in appropriate cases. A block transaction that has been agreed upon does not lose its identity as such by arranging partial execution of the transaction in portions which themselves are not of block size. In this situation, the requirement that information concerning the transaction be made publicly available will not be satisfied until the entire block transaction has been completed and publicly reported.

The application of Rule 4.1 to front-running may be illustrated by the following examples. Front-running that is prohibited by Rule 4.1 is not limited to these examples, nor is it necessary for a transaction to involve 10,000 shares in order to constitute front-running.

Example No. 1. Member A has agreed to a transaction involving the sale for its own account or for the account of a customer of 10,000 shares of XYZ common stock, a security listed on the New York Stock Exchange, at a price of 18½. Regardless of whether this price is within or without the bid or offer quoted for XYZ, Member A may not buy or sell any XYZ options for its own account until the sale of the 10,000 shares of XYZ has been reported over CTA Network A. Once the sale has been reported, Member A is free to trade XYZ options.

Example No. 2. Member A has agreed to a transaction involving the purchase of 100 XYZ July 20 options for a premium of 1⅛ for its own account or for the account of a customer. Until this block option transaction has been reported over the OPRA high speed network, Member A may not buy or sell any shares of XYZ common stock for its own account.

[FR Doc. 78-31616 Filed 11-8-78; 8:45 a.m.]

[8010-01-M]

[Rel. No. 10465; 811-1901]

WASHINGTON NATIONAL FUND, INC.

Application for an Order Declaring That Applicant Has Ceased To Be an Investment Company.

NOVEMBER 1, 1978.

In the matter of Washington National Fund, Inc., Westminster at Parker, Elizabeth, N.J. 07207, 811-1901.

Notice is hereby given that Washington National Fund, Inc. ("Applicant"), a Delaware corporation registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on October 5, 1978, pursuant to section 8(f) of the Act, for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it registered under the Act on July 9, 1969, and that it commenced offering shares to the public shortly after its registration under the Securities Act of 1933 was declared effective on September 8, 1969. Applicant asserts that on May 24, 1978, its board of directors approved a plan to merge Applicant into Fundamental Investors, Inc. ("Fund"), a registered investment company organized under the laws of Delaware. Applicant further asserts that after the merger was approved by a majority of the outstanding shareholders of Applicant in accordance with Delaware law, on July 21, 1978, Applicant and Fund merged. Upon effectiveness of such merger, title to all of Applicant's assets was vested in Fund. Applicant asserts that it presently has no shareholders and no assets. According to the application, Applicant has ceased all business activities, is not a party to any litigation or administrative proceedings, and has ceased to exist as a separate entity under Delaware law.

Section 8(f) of the Act provides, in part, that when the Commission upon application finds that a registered investment company has ceased to be an investment company, it shall so declare by order and, upon the effectiveness of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than November 27, 1978, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by main upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-31657 Filed 11-8-78 8:45 am]

[4810-40-M]

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

IMPROVING GOVERNMENT REGULATIONS

Semiannual Agenda of Regulations

As required by paragraph 11 of the draft Treasury Directive implementing Executive Order 12044 "Improving Government Regulations" published in the FEDERAL REGISTER of May 24, 1978 (43 FR 22319), the Bureau of the Public Debt announces that it has no significant or nonsignificant new regulations under development or existing regulations under review.

FOR FURTHER INFORMATION CONTACT:

Charles A. Guerin, Assistant Chief Counsel, Bureau of the Public Debt, Room 309, Washington Building, Washington, D.C. 20226, telephone 202-376-0243.

Dated: October 4, 1978.

By direction of the Secretary of the Treasury.

H. J. HINTGEN,
Commissioner of the Public Debt.

[FR Doc. 78-31668 Filed 11-8-78; 8:45 am]

[4810-22-M]

Customs Service

[520936]

AMERICAN MANUFACTURER'S PETITION

Extension of Time for Comments Concerning Petition To Reclassify Certain Lasted Leather Footwear Uppers

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of extension of time for comments.

SUMMARY: This notice extends the period of time permitted for the submission of comments in response to a recent American manufacturer's petition to the Customs Service to reclassify lasted leather footwear uppers. This extension will permit the preparation and submission of more detailed comments by interested members of the public.

DATES: Comments must be received on or before December 6, 1978.

ADDRESS: Comments, preferably in triplicate, should be addressed to the Commissioner of Customs, Attention: Regulations and Legal Publications Division, Room 2335, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT:

Donald F. Cahill, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, 202-566-8181.

SUPPLEMENTARY INFORMATION: On September 5, 1978, the Customs Service published in the FEDERAL REGISTER (43 FR 39465) a notice of receipt of an American manufacturer's petition, filed under section 516 of the Tariff Act of 1930, as amended (19 U.S.C. 1516). On the basis that leather footwear uppers are lasted (have an insole and midsole and have been formed to fit the foot), petitioner has requested the reclassification of lasted leather footwear uppers under the provisions for leather footwear in items 700.05 through 700.45, Tariff Schedules of the United States (TSUS). This merchandise is currently classifiable under the provisions for leather, cut or wholly or partly manufactured into forms or shapes suitable for conversion into footwear, in items 791.20 and 791.25, TSUS.

COMMENTS

Comments concerning the American manufacturer's petition were to have been received on or before November 6, 1978. However, the Customs Service has been requested to extend the period of time for submission of comments in order to allow additional time for the preparation of a response to the American manufacturer's petition. As a result, the period of time for submission of comments is extended to December 6, 1978.

Dated: November 2, 1978.

LEONARD LEHMAN,
Assistant Commissioner, Regulations and Rulings.

[FR Doc. 78-31739 Filed 11-8-78 8:45 am]

[4830-01-M]

Internal Revenue Service

PUBLIC INSPECTION OF WRITTEN DETERMINATIONS

Intention To Disclose

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of intention to disclose.

SUMMARY: This document provides notice that the Service intends to make open to public inspection certain written determinations. This notice also explains how any person may determine whether any of the described written determinations pertain to that person, and explains the procedures that person may follow if there is disagreement regarding the proposed deletions. This document does not meet the criteria for significant regulations set forth in paragraph eight of the proposed Treasury Directive appearing in the FEDERAL REGISTER for Wednesday, May 24, 1978 (43 FR 2319).

DATES: Persons wanting to find out whether their particular written determinations are among those to be made open to public inspection pursuant to this notice are requested to contact the Service by November 24, 1978.

Requests for additional deletions must be submitted by December 14, 1978. A petition in the U.S. Tax Court must be filed by January 23, 1979. Except for the disputed portion of any document that is the subject of an action brought in the U.S. Tax Court, the written determinations described in this notice will be made open to public inspection on March 5, 1979.

ADDRESS: Any questions or correspondence regarding this notice should be sent to: Internal Revenue Service, Attention: T:FP:R, Ben Franklin Station, Post Office Box 7604, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT:

George E. Freeland of the Rulings Disclosure Branch, Tax Forms and Publications Division, Office of the Assistant Commissioner, Technical: 202-566-4378 or 202-566-6272.

SUPPLEMENTARY INFORMATION: Section 6110(h) of the Internal Revenue Code of 1954 provides that certain written determinations (letter rulings and technical advice memoranda) issued in response to requests submitted before November 1, 1976, shall be open to public inspection. Accordingly, the Service is preparing to open to public inspection certain general written determinations issued after July 4, 1967 (except those issued in response to requests submitted after October 31, 1976) that originated in the Office of the Assistant Commissioner (Employee Plans and Exempt Organizations), and certain reference written determinations issued by that office after December 31, 1953 (except those issued in response to requests submitted after October 31, 1976). The Service is also planning to make open to public inspection certain of those general and reference written determinations that were issued after July 4, 1967, and December 31, 1953, respectively, dealing with issues now under the jurisdiction of the Office of the Assistant Commissioner (Employee Plans and Exempt Organizations) but that were issued prior to the establishment of that office. Prior to the establishment of the Office of the Assistant Commissioner (Employee Plans and Exempt Organizations), issues now under the jurisdiction of that office were issued by the Actuarial, Exempt Organizations, and Pension Trust Branches, Miscellaneous and Special Provisions Tax Division, Office of the Assistant Commissioner (Technical), or in predecessor branches.

A reference written determination is one the Commissioner has determined to have significant reference value. A general written determination is one the Commissioner has not determined to have significant reference value.

Issues falling within the jurisdiction of the Office of the Assistant Commissioner (Employee Plans and Exempt Organizations) are those involving:

1. Employee plans (including the qualifications of pension, annuity, profit sharing, stock bonus, and bond purchase plans and individual retirement accounts) and related trusts.

2. With respect to employee plans, the tax treatment of employees and their beneficiaries, and deductions for employer contributions.

3. Organizations exempt from income tax under section 501 of the Code, private foundations, organizations described in section 170(b)(1)(A) (except certain governmental units), and certain nonexempt trusts described in section 4947.

4. The application of section 527(f) of the Code.

5. With respect to exempt organizations and private foundations: feeder organizations, liability for tax on unrelated business taxable income, and excise taxes imposed by Chapter 42 on private foundations and certain related parties.

6. Actuarial questions involved in the tax treatment of pension, profit sharing, stock bonus, annuity, and other benefit and compensation plans and contracts.

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7. Actuarial questions involved in the tax treatment of annuity, life insurance, and accident and health plans and contracts; valuation of life estates, remainder interests, contingent assurances, services of payments, and reversionary interests; deductions for amounts paid or accrued on indebtedness under insurance contracts; and taxation of life insurance companies.

8. Procedural and administrative questions relating to any of the above matters.

DOCUMENTS NOT COVERED

All written determinations that fall within the scope of section 6110 of the Code issued during the prescribed time periods discussed in this notice and originating in the Office of the Assistant Commissioner (Employee Plans and Exempt Organizations) or in predecessor organizations are intended to be within the scope of this notice. However, the provisions of section 6110 shall not apply to matters for which the determination of whether public inspection should occur is made pursuant to section 6104. Documents within the purview of section 6104 are not covered by this notice; such documents include:

1. Any document issued by the Service in which the qualification or exempt status of an organization, plan, or account described in section 6104(a)(1) of the Code is granted, denied or revoked, or the portion of any document in which Technical advice with respect thereto is given to a district director.

2. Any document issued by the Service with respect to the qualification or status of master, prototype, and pattern employee plans;

3. Any document, or portion thereof, issued by the Service in which is discussed the effect on the qualification or exempt status of an organization, plan, or account described in section 6104(a)(1) of the proposed transaction by such organization, plan, or account;

4. Any documents issued by the Service in which is discussed the qualifications or status of an organization described in section 509(a) or 4942(j)(3) of the Code. However, any written determination issued by the Service to nonexempt charitable trusts described in section 4947(a)(1) would be subject to disclosure under this notice.

DELETIONS

Section 6110(c) of the Code requires the Internal Revenue Service to delete certain information from the documents described in this notice. The Service intends to delete names, addresses and taxpayer identifying numbers, and will also attempt to recognize and delete other identifying details, trade secrets, and the other information described in section 6110(c), before making the written determination open to public inspection.

Persons to whom the written determinations described in this notice pertain (or successors in interest, executors, or authorized representatives of these persons) may contact the Internal Revenue Service to find out whether their particular written determinations are among those to be made open to public inspection pursuant to this notice. These persons may request a copy of their written determinations with proposed deletions indicated. Such requests should be submitted by November 24, 1978. Such requests must indicate the specific name of the party to which the written determinations pertains, for example, a corporation acting on behalf of one or more subsidiaries must indicate the name of such subsidiary or subsidiaries. If such a person disagrees with the proposed deletions, that person may indicate any additional information that person believes should be deleted. Any request for additional deletions must be submitted by December 14, 1978, and must include a statement indicating which of the exemptions provided in section 6110(c) of the Code is applicable to each additional deletion requested. If the Service feels it cannot make any or all of the additional deletions requested, the Service will so advise the requester. The requester will then have to right to file a petition in the U.S. Tax Court. This petition must be filed by January 23, 1979.

ADDITIONAL DISCLOSURE

After the deleted copy of a written determination is made open to public inspection in the National Office Reading Room, any person may request the Service to make additional portions of the written determination open to public inspection. If the Service receives a request that involves disclosure of names, addresses, or taxpayer identifying numbers, the Service will deny the request. If the request involves disclosure of anything other than names, addresses, or taxpayer identifying numbers, the Service will contact the person to whom the written determination pertains before further action is taken.

BACKGROUND FILE DOCUMENTS

After the deleted copy of a written determination is made open to public inspection, any person may request copies of related background file documents. Notice will be provided to the person to whom the written determination pertains if a request for related background file documents is received.

Any notice regarding background file documents or requests for additional disclosure and any other correspondence relating to public inspection of written determinations, will be mailed to the latest address in the Service's written determination file, unless a later address is provided to the Service in connection with these matters.

The written determinations described in this notice will be made open to public inspection by being placed in the National Office Reading Room, Room 1564, Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, D.C. on March 5, 1979. However, the disputed portion of any document that is the subject of an action brought in the U.S. Tax Court shall not be made available until after a court determination regarding such portion is made.

JEROME KURTZ,
Commissioner of Internal Revenue.

[FR Doc. 78-31624 Filed 11-8-78; 8:45 am]

[4810-40-M]

Office of the Secretary

[Supplement to Department Circular (Public Debt Series) No. 27-78]

TREASURY BONDS

Interest Rate on 2003-2008 Bonds

NOVEMBER 6, 1978.

The Secretary of the Treasury announced on November 3, 1978, that the interest rate on the bonds described in Department Circular (Public Debt Series) No. 27-78, dated October 26, 1978, will be 8¾ percent. Interest on the bonds will be payable at the rate of 8¾ percent per annum.

PAUL H. TAYLOR,
Fiscal Assistant Secretary.

NOTE.—Supplementary Statement: The announcement set forth above does not meet the Department's criteria for significant regulations and, accordingly, may be published without compliance withd the Departmental procedures applicable to such regulations.

[FR Doc. 78-31718 Filed 11-8-78; 8:45 am]

[8320-01-M]

VETERANS ADMINISTRATION

STATION COMMITTEE ON EDUCATIONAL ALLOWANCES

Meeting

Notice is hereby given pursuant to section V, Review Procedures and Hearing Rules, Station Committee on Educational Allowances that on December 4, 1978, at 1 p.m., the Veterans Administration Regional Office Station Committee on Educational Allowances shall at Federal Building, U.S. Courthouse, Room A-220, 110 9th Avenue, South, Nashville, Tenn., conduct a hearing to determine whether Veterans Administration benefits to all eligible persons enrolled in State Technical Institute at Knoxville, 3435 Division Street, Knoxville, Tenn., should be discontinued, as provided in 38 CFR 21.4134, because a requirement of law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the Committee at that time and place.

Dated: November 2, 1978.

R. S. BIELAK,
Director.

[FR Doc. 78-31637 Filed 11-8-78; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

NOVEMBER 6, 1978.

These applications for long-and-short-haul relief have been filed with the I.C.C.

Protests are due at the I.C.C. on or before November 24, 1978.

FSA No. 43620, ABC Container Line, N.V., No. 1, intermodal rates on general commodities in containers, from rail carriers terminals on the United States Pacific Coast to ports in the United Kingdom, Ireland, Scandinavia and Continental Europe, to be published in its Tariff I.C.C. No. 1. Grounds for relief—water competition.

FSA No. 43621, Southwestern Freight Bureau, Agent's No. B-787, annual volume rates on chemicals, between East St. Louis, IL, and St. Louis, MO, on the one hand, and, on the other, specified points in LA and TX, in supp. 11 to its Tariff 12-L, ICC 5334, to become effective December 1, 1978. Grounds for relief—market competition.

FSA No. 43622, Pacific Southcoast Freight Bureau, Agent's No. 274, property moving on class and commodity rates, between points in ID and NE, on the one hand, and, on the other, points in the United States and Canada. Grounds for relief—abandonment of segment of Union Pacific Railroad Co.

By the Commission.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 78-31713 Filed 11-8-78; 8:45 am]

[7035-01-M]

IRREGULAR-ROUTE MOTOR COMMON CARRIERS OF PROPERTY

Elimination of Gateway Letter Notices

NOVEMBER 1, 1978.

The following letter-notices of proposals to eliminate gateways for the purpose of reducing highway congestion, alleviating air and noise pollution, minimizing safety hazards, and conserving fuel have been filed with the Interstate Commerce Commission under the Commission's Gateway Elimination Rules (49 CFR 1065), and notice thereof to all interested persons is hereby given as provided in such rules.

An original and two copies of protests against the proposed elimination of any gateway herein described may be filed with the Interstate Commerce Commission on or before November 20, 1978. A copy must also be served upon applicant or its representative. Protests against the elimination of a gateway will not operate to stay commencement of the proposed operation.

Successively filed letter-notices of the same carrier under these rules will be numbered consecutively for convenience in identification. Protests, if any, must refer to such letter-notices by number.

The following applicants seek to operate as a common carrier, by motor vehicles, over irregular routes.

MC 106644 (Sub-E45, E46, E47, E48, and E56) (correction), filed February 10, 1975, published in the FEDERAL REGISTER issue of June 28, 1978, and republished, as corrected, this issue. Applicant: SUPERIOR TRUCKING CO., INC., 2770 Peyton Road, N.W., Atlanta, GA 30318. Representative: Guy H. Postell, Suite 713, 3384 Peachtree Road, NE., Atlanta, GA 30326. The purpose of this correction is to reflect the correct name of applicant.

MC 107515 (Sub-E655), filed December 20, 1976. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 33050. Representative: Alan E. Serby, Fifth Floor, Lenox Towers, I-3390 Peachtree Rd. NE, Atlanta, GA 30326 (1) *Foodstuffs* (except in bulk), in vehicles equipped with mechanical refrigeration, from points in Presidio, Brewster, Terrell, Val Verde, Kinney, Maverick, Webb, Zapata, Starr, Nueces, Hidalgo, Cameron, Willacy, Bexar, and San Patricio Counties, TX, to ME, NH, and VT, and points in OH and points in MI (Lower Peninsula) on or east of a line beginning at the MI-OH State line, and extending along U.S. Hwy 27 to junction I Hwy 75, then along I Hwy 75 to Macinaw City, MI. Restriction: Said operations are restricted against the transportation of canned foodstuffs and flavoring syrup from Dallas, Fort Worth and Paris, TX, and points in their commercial zones as defined by the Commission. (2) *Foodstuffs* (except (a) meats, meat products, and meat by-products as defined by the Commission, and (b) commodities in bulk), in vehicles equipped with mechanical refrigeration, from points in TX on or south of U.S. Hwy 90 (except the counties in (1) above to points in the territory described in (1) above. Restriction: Said operations are restricted against the transportation of (1) frozen fruits, berries and vegetables, (2) canned foodstuffs originating at Paris, TX, and its commercial zones as defined by the Commission. (3) *Foodstuffs* (except in bulk), in vehicles equipped with mechanical refrigeration, from points in Webb, Zapata, Starr, Hidalgo, Cameron, Willacy, Nueces, San Patricio Counties, TX, to points in ME, NH, and VT, and points in IN on or east of a line beginning at the KY-IN State line, and extending along I Hwy 65 to junction I Hwy 465, then east along I Hwy 465 to junction U.S. Hwy 31, then along U.S. Hwy 31 to the MI-IN State line, and points in the Lower Peninsula of MI on or east of U.S. Hwy 31. (4) *Foodstuffs* (except (a) meats, meat products, and meat by-products as defined by the Commission, and (b) commodities in bulk), in vehicles equipped with mechanical refrigeration from points in TX on or south of a line beginning at Freeport, TX, and extending along TX Hwy 288 to junction TX Hwy 35, then along TX Hwy 35 to junction TX Hwy 113, then along TX Hwy 113 to junction U.S. Hwy 77, then along U.S. Hwy 77 to junction TX Hwy 44, then along TX Hwy 44 to junction U.S. Hwy 59, then along U.S. Hwy 59 to the TX-Mexico border at or near Laredo, TX, to points in (3) above (except from points in El Paso, Hudspeth, Culbertson, Jeff Davis, Presidio, Brewster, Terrell, Val Verde, Kinney, Maverick, Webb, Zapata, Starr, Nueces, Titus, Hidalgo, Cameron, Willacy, Bexar, Dallas, Tarrant, San Patricio, and Smith Counties, TX. Restriction: Said operations are restricted against the transportation of (1) frozen fruits, berries and vegetables, (2) canned foodstuffs originating at Paris, TX, and its commercial zone as defined by the Commission. (5) *Foodstuffs* (except in bulk), in vehicles equipped with mechanical refrigeration, from El Paso, Hudspeth, Culbertson, Jeff Davis, Presidio, Brewster, Terrell, Val Verde, Kinney, Maverick, Webb, Zapata, Starr, Nueces, Hidalgo, Cameron, Willacy, Bexar and San Patricio, to points in ME, NH and VT, and points in OH on or east of a line beginning at the OH-KY State line, and extending along U.S. Hwy 23 to junction I Hwy 71, then along I Hwy 71 to Cleveland, OH. (6) *Foodstuffs* (except (a) meats, meat products

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and meat by-products as defined by the Commission, and (b) commodities in bulk), in vehicles equipped with mechanical refrigeration, from points in TX beginning at the TX-LA State line, and extending along TX Hwy 63 to junction TX Hwy 7, then along TX Hwy 7 to junction TX Hwy 6, then along TX Hwy 6 to junction U.S. Hwy 84, then along U.S. Hwy 84 to junction U.S. Hwy 67, then along U.S. Hwy 67 to junction TX Hwy 329, then along TX Hwy 329 to junction TX Hwy 18, then along TX Hwy 18 to junction U.S. Hwy 80, then along U.S. Hwy 80 to junction TX Hwy 54, then along TX Hwy 54 to junction TX Hwy 180, then along TX Hwy 180 to the TX-NM State line (except those counties in (4) above), to points in OH described in (5) above. (7) *Foodstuffs* (except in bulk), in vehicles equipped with mechanical refrigeration, from points in Dallas and Tarrant Counties, TX, to points in ME, NH, and VT. Restriction: Said operations are restricted against the transportation of canned foodstuffs and flavoring syrup from Dallas, Fort Worth and Paris, TX, and points in their commercial zones as defined by the Commission. Restriction: The authority granted herein shall be subject to the right of the Commission, which is hereby expressly reserved, to impose such terms, conditions, or limitations in the future as it may find necessary in order to insure that carrier's operations shall conform to the provisions of section 210 of the Act. (Gateway eliminated: Doraville (Atlanta) GA.)

MC 107515 (Sub-E 666), filed December 20, 1976. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 33050. Representative: Alan E. Serby, Fifth Floor, Lenox Towers I-3390 Peachtree Road NE., Atlanta, GA 30326. *Fresh and cured meats, and dairy products* as described in the appendix to the report in *Modification of Permits—Packing House Products*, 48 M.C.C. 628 (except in bulk) and in vehicles equipped with mechanical refrigeration, (I) from points in that part of AL on or south of a line beginning at the AL-GA State line, and extending along U.S. Hwy 84 to junction I Hwy 65, then along I Hwy 65 to junction I Hwy 10, then along I Hwy 10 to the MS-AL State line, to points in that part of GA on or north of I Hwy 20. (II) from points in that part of AL on, west or north of a line beginning at the MS-AL State line, and extending along U.S. Hwy 80 to junction U.S. Hwy 231, then along U.S. Hwy 231 to junction U.S. Hwy 78, then along U.S. Hwy 78 to the AL-GA State line, to points in that part of GA on or north of a line beginning at the AL-GA State line, and extending along U.S. Hwy 78 to junction U.S. Hwy 23, then along U.S. Hwy 23 to junction GA Hwy 16, then along GA Hwy 16 to junction GA Hwy 24, then along GA Hwy 24 to junction GA Hwy 21, then along GA Hwy 21 to the Atlantic Ocean at Savannah, GA. (III) from points in that part of AL on or north of a line beginning at the MS-AL State line, and extending along U.S. Hwy 82 to junction I Hwy 20, then along I Hwy 20 to junction U.S. Hwy 78, then along U.S. Hwy 78 to the AL-GA State line, to points in that part of GA on, north or east of a line beginning at the AL-GA State line, and extending along U.S. Hwy 78 to junction I Hwy 75, then along I Hwy 75 to the GA-FL State line. (IV) from points in that part of AL on or north of a line beginning at the AL-MS State line, and extending along U.S. Hwy 72 to junction I Hwy 65, then along I Hwy 65 to junction U.S. Hwy 278, then along U.S. Hwy 278 to the AL-GA State line, to points in that part of GA on or south of I Hwy 85. Restriction: The authority granted herein shall be subject to the right of the Commission, which is hereby expressly reserved, to impose such terms, conditions, or limitations in the future as it may find necessary in order to insure that carrier's operations shall conform to the provisions of section 210 of the act. (Gateway eliminated: Doraville (Atlanta) GA.)

MC 107515 (Sub-E668), filed December 20, 1976. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 33050. Representative: Alan E. Serby, Fifth Floor, Lenox Towers I-3390 Peachtree Road N.E., Atlanta, GA 30326. *Fresh and cured meats, frozen foods, dairy products and fresh fruits and vegetables*, from Charleston, SC, to points in TX, AR, OK, MO, IL, KS, NE, IN, those points in AL on, north or west of a line beginning at the AL-FL State line, and extending along AL Hwy 137 to junction U.S. Hwy 84, then along U.S. Hwy 84 to junction AL Hwy 51, then along AL Hwy 51 to junction AL Hwy 30, then along AL Hwy 30 to Eufaula, AL, those points in GA on, north or west of a line beginning at the AL-GA State line near Georgetown, GA, and extending along GA Hwy 27 to junction GA Hwy 41, then along GA Hwy 41 to junction GA Hwy 85, then along GA Hwy 85 to junction I Hwy 75, then along I Hwy 75 to junction I Hwy 285 near Forest Park, GA, then along I Hwy 285 to junction GA Hwy 400, then along GA Hwy 400 to junction U.S. Hwy 19, then along U.S. Hwy 19 to the GA-TN State line, and points in Fulton, DeKalb, Clayton and Gwinnett Counties, GA, those points in TN, on, north or west of a line beginning at the GA-TN State line, and extending along TN Hwy 68 to junction U.S. Hwy 411, then along U.S. Hwy 411 to junction TN Hwy 95, then along TN Hwy 95 to junction TN Hwy 61, then along TN Hwy 61 to junction I Hwy 75, then along I Hwy 75 to the KY-TN State line, and those points in OH on or west of a line beginning at Lake Erie and extending along OH Hwy 4 to junction OH Hwy 203, then along OH Hwy 203 to junction OH Hwy 257, then along OH Hwy 257 to junction OH Hwy 745, then along OH Hwy 745 to junction I Hwy 270 near Dublin, OH, then south along I Hwy 270 to junction U.S. Hwy 62, then along U.S. Hwy 62 to the OH-KY State line.

Restriction: The authority granted herein shall be subject to the right of the Commission, which is hereby expressly reserved to impose such terms, conditions, or limitations in the future as it may find necessary in order to insure that carrier's operations shall conform to the provisions of section 210 of the Act. (Gateway eliminated: Doraville (Atlanta), GA.)

MC 107515 (Sub-E699), filed December 20, 1976. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 33050. Representative: Alan E. Serby, Fifth Floor, Lenox Towers I-3390 Peachtree Road N.E., Atlanta, GA 30326. (I) *Meats, meat products, and meat by-products* (except in bulk), as described in Part A of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, from Covington, KY, to points in that part of AL on or south of a line beginning at the AL-GA State line, and extending along I Hwy 20, to junction U.S. Alt Hwy 231, then along U.S. Alt Hwy 231 to junction U.S. Hwy 231, then along U.S. Hwy 231 to junction U.S. Hwy 80, then along U.S. Hwy 80 to the AL-MS State line; that part of MS on or south of a line beginning at the AL-MS State line, and extending along I Hwy 20 to junction I Hwy 59, then along I Hwy 59 to junction U.S. Hwy 84, then along U.S. Hwy 84 to the MS-LA State line; that part of LA on or south of a line beginning at the MS-LA State line, and extending along U.S. Hwy 84 to junction LA Hwy 28, then along LA Hwy 28 to junction LA Hwy 8, then along LA Hwy 8 to the LA-TX State line; and that part of TX on or south of a line beginning at the LA-TX State line, and extending along I Hwy 10 to junction U.S. Hwy 90, then along U.S. Hwy 90 to junction U.S. Hwy 67, then along U.S. Hwy 67 to the U.S.-Mexico International Border at Presidio, TX.

(II) Vegetable oil shortening, oleomargarine and salads (except in bulk), from Indianapolis, IN, to points in that part of MS on or south of U.S. Hwy 90; and, that part of LA on east or south of a line beginning at the MS-LA State line, and extending along U.S. Hwy 90 to junction LA Hwy 24, then along LA Hwy 24 to junction LA Hwy 1, then along LA Hwy 1 to the Gulf of Mexico at Grand Isle, LA. Restriction: The authority in I and II above is restricted to the transportation in vehicles equipped with mechanical refrigeration.

The authority granted herein shall be subject to the right of the Commission, which is hereby expressly reserved, to impose such terms, conditions, or limitations in the future as it may find necesssary in order to insure that carrier's operations shall conform to the provisions of section 210 of the Act. (Gateway eliminated: Doraville (Atlanta) GA.)

MC 107515 (Sub-E670), filed December 20, 1978. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, Ga 33050. Representative: Alan E. Serby, Fifth Floor, Lenox Towers I-3390 Peachtree Road N.E., Atlanta, GA 30326. *Frozen foods, fresh and cured meats and such commodities* as are classifed as Dairy Products in the appendix to the report in *Modification of Permits—Packing House Products*, 46 M.C.C. 23, and fresh fruits and vegetables (except in bulk), in vehicles equipped with mechanical refrigeration, (1) from points in SC, to points in TX, OK, AR, KS, MO, NE, IA, MN, WI, IL; points in KY on or west of a line beginning at the IN-KY State line, and extending along KY Hwy 69 to junction KY Hwy 54, then along KY Hwy 54 to junction KY Hwy 259, then along KY Hwy 259 to junction U.S. Hwy 31W, then along U.S. Hwy 31W to junction KY Hwy 90, then along KY Hwy 90 to junction U.S. Hwy 31E, then along U.S. Hwy 31E to the KY-TN State line; points in IN on or west of a line beginning at the IN-MI State line, and extending along IN Hwy 15 to junction IN Hwy 18, then along IN Hwy 18 to junction U.S. Hwy 31, then along U.S. Hwy 31 to junction IN Hwy 26, then along IN Hwy 26 to junction IN Hwy 75, then along IN Hwy 75 to junction IN Hwy 39, then along IN Hwy 39 to junction IN Hwy 37, then along IN Hwy 37 to the IN-KY State line; and points in MI on or west of a line beginning at the MI-IN State line, and extending along U.S. Hwy 131 to junction U.S. Hwy 31, then along U.S. Hwy 31 to junction I Hwy 75, then along I Hwy 75 to the International Boundary line at or near Sault Ste. Marie, (2) from Anderson and Fountain Inn, SC to Indianapolis, IN, (3) from Anderson, SC, to Louisville, KY, (4) from points in SC on or south of a line beginning at the SC-GA State line, and extending along SC Hwy 72 to junction U.S. Hwy 25, then along U.S. Hwy 25 to junction U.S. Hwy 178, then along U.S. Hwy 178 to junction U.S. Hwy 378, then along U.S. Hwy 378 to junction U.S. Hwy 501, then along U.S. Hwy 501 to the Atlantic Ocean at or near Myrtle Beach to points in IN on or west of U.S. Hwy 31 and Elkhart, IN; points in KY on or west of a line beginning at the KY-TN State line, and extending along U.S. Hwy 127 to junction U.S. Hwy 421, then along U.S. Hwy 421 to the IN-KY State line, (5) from points in SC on, south or east of a line beginning at the SC-GA State line, and extending along I Hwy 20 to junction U.S. Hwy 378, then along U.S. Hwy 378 to junction U.S. Hwy 521, then along U.S. Hwy 521 to Winyah Bay at or near Georgetown, SC, to points in KY on or west of a line beginning at the KY-TN State line, and extending along U.S. Hwy 127 to junction KY Hwy 49, then along KY Hwy 49 to junction U.S. Hwy 31E, then along U.S. Hwy 31E to the IN-KY State line; points in IN on or west of a line beginning at the KY-IN State line, and extending along IN Hwy 29 to junction U.S. Hwy 50, then along U.S. Hwy 50 to junction IN Hwy 101, then along IN Hwy 101 to junction U.S. Hwy 27, then along U.S. Hwy 27 to junction U.S. Hwy 224, then along U.S. Hwy 224 to the OH-IN State line; points in MI on or west of a line beginning at the MI-OH State line, and extending along U.S. Hwy 127 to junction MI Hwy 20, then along MI Hwy 20 to junction U.S. Hwy 10, then along U.S. Hwy 10 to junction MI Hwy 247, then along MI Hwy 247 to Saginaw Bay, (6) from points in SC on or south of a line beginning at the GA-SC State line, and extending along SC Hwy 72 to junction U.S. Hwy 178, then along U.S. Hwy 178 to junction I Hwy 26, then along I Hwy 26 to Mt. Pleasant, SC, to points in MI, IN, and points in OH or or west of a line beginning at Lake Erie and extending along OH Hwy 4 to junction OH Hwy 203, then along OH Hwy 203 to junction OH Hwy 257, then along OH Hwy 257 to junction OH Hwy 745, then along OH Hwy 745 to junction I Hwy 270, then along I Hwy 270 to junction U.S. Hwy 62, then along U.S. Hwy 62 to the OH-KY State line; points in KY on or west of I Hwy 75. Restriction: The authority granted herein shall be subject to the right of the Commission, which is hereby expressly reserved, to impose such terms, conditions, or limitations in the future as it may find necessary in order to insure that carriers's operations shall conform to the provisions of section 210 of the Act. (Gateway eliminated: Doraville (Atlanta) GA.)

MC 117574 (Sub-E163), filed January 20, 1976. Applicant: DAILY EXPRESS, INC., P.O. Box 39, Carlisle, PA 17013. Representative: E. S. Moore, Jr. (same as above). Commodities, the transportation of which because of size or weight, require the use of special equipment (except boats), and related materials, supplies and parts of such commodities when their transportation is incidental thereto, and self-propelled articles each weighing 15,000 pounds or more, and related machinery, tools, parts, and supplies moving in connection therewith, restricted to self-propelled articles transported on trailers: (1) Between points in DE and points in MD on and east of U.S. Hwy 522, on the one hand, and, on the other, points in IL, IN, IA, MI, MN, MO, WI and points in KY on and west of Interstate Hwy 65. (Gateways eliminated: points within 50 miles of Columbus, OH (Norwalk and Gallipolis, Ohio) and Gettysburg, PA. (2) Between points in NJ, on the one hand, and, on the other, points in IL, IN, IA, KY, MI, MN, MO and WI. (Gateways eliminated: points within 80 miles of Columbus, OH (Norwalk and Gallipolis) and Harrisburg, and Millersburg, PA. (3) Between points in NC on and east of a line beginning at Wilmington, along U.S. Hwy 117 then north along U.S. Hwy 117 to junction U.S. Hwy 301, then north along U.S. Hwy 301 to the NC-VA State line, on the one hand, and, on the other, points in IA, MI, MN, WI and points in the following described states: IL, points on and north of a line beginning at the IL-MO State line along U.S. Hwy 36, then along U.S. Hwy 36 to junction IL Hwy 54, then northeast along IL Hwy 54 to junction U.S. Hwy 24, then east along U.S. Hwy 24 to the IL-IN State line; IN, points on and north of U.S. Hwy 24; MO, points on and north of U.S. Hwy 24. (Gateways eliminated: points within 80 miles of Columbus, OH and Gettysburg, PA.) (4) Between points in VA in and east of Amelia, Brunswick, Culpeper, Frederick, Goochland, Louisa, Nottoway, Orange, Powhatan, Rappahannock, and Warren Counties, on the one hand, and, on the other, points in IA, MI, MN, WI, and points in the following described states: IL points on and north of U.S. Hwy 40; IN points on and north of a line beginning at the IN-IL State line along U.S. Hwy 40 to junction U.S. Hwy 36, then east along U.S. Hwy 36 to the OH-IN State line; MO points on and north of U.S. Hwy 66. (Gateways eliminated: points within 80 miles of Columbus, OH and Gettysburg, PA.) (5) Between points in the VA counties of Augusta, Bath, Highland and Rockbridge, on the one hand, and, on the other, points in MN on and north of a line beginning at the SD-MN State line along U.S. Hwy 14, then east along U.S. Hwy 14 to junction MN Hwy 23, then northeast along MN Hwy 23 to junction Interstate Hwy 35, then along Interstate Hwy 35 to junction MN Hwy 73, then north along MN Hwy 73 to junction U.S. Hwy 53, then north along U.S. Hwy 53 to U.S.-Canada International border. (Gate-

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ways eliminated: points within 80 miles of Columbus, OH and Gettysburg, PA.) (6) Between points in the VA counties of Bedford and Franklin, on the one hand, and, on the other, points in the following described states: IA points on and north of a line beginning at the IA-NE State line along U.S. Hwy 30, then east along U.S. Hwy 30 to junction U.S. Hwy 71, then north along U.S. Hwy 71 to junction IA Hwy 175, then east along IA Hwy 175 to junction U.S. Hwy 169, then north along U.S. Hwy 169 to junction IA Hwy 3, then east along IA Hwy 3 to junction U.S. Hwy 69, then north along U.S. Hwy 69 to junction IA Hwy 105, then east along IA Hwy 105 to junction U.S. Hwy 218, then north along U.S. Hwy 218 to the IA-MN State line; MI points on and north of MI Hwy 72; MN points on and northwest of a line beginning at the MN-IA State line along U.S. Hwy 218, then north along U.S. Hwy 218 to junction MN Hwy 30, then east along MN Hwy 30 to junction U.S. Hwy 63, then north along U.S. Hwy 63 to junction MN Hwy 60, then east along MN Hwy 60 to the MN-WI State line; WI points on and northwest of a line beginning at the WI-MN State line along WI Hwy 25, then north along WI Hwy 25 to junction U.S. Hwy 10, then east along U.S. Hwy 10 to junction U.S. Hwy 51, then north along U.S. Hwy 51 to junction WI Hwy 64, then east along WI Hwy 64 to Marinette, WI. (Gateways eliminated: points within 80 miles of Columbus, OH and Gettysburg, PA.) (7) Between points in the VA counties of Appomattox, Campbell and Pittsylvania, on the one hand, and, on the other, points in the following described states: IA points on and north of a line beginning at the IA-NE State line along U.S. Hwy 30, then easterly along U.S. Hwy 30 to junction U.S. Hwy 71, then northerly along U.S. Hwy 71 to junction IA Hwy 175, then easterly along IA Hwy 175 to junction U.S. Hwy 169, then northerly along U.S. Hwy 169 to junction IA Hwy 3, then east along IA Hwy 3 to junction U.S. Hwy 69, then northerly along U.S. Hwy 69 to junction IA Hwy 105, then easterly along IA Hwy 105 to junction U.S. Hwy 218, then northerly along U.S. Hwy 218 to the IA-MN State line; MI points on and north of MI Hwy 72; MN points on and northwest of a line beginning at the MN-IA State line extending along U.S. Hwy 218 to junction MN Hwy 30, then easterly along MN Hwy 30 to junction U.S. Hwy 63, then along U.S. Hwy 63 to junction MN Hwy 60, then easterly along MN Hwy 60 to the MN-WI State line; points in WI on and northwest of a line beginning at the WI-MN State line extending along WI Hwy 25 to junction U.S. Hwy 10, then easterly along U.S. Hwy 10 to junction U.S. Hwy 51, then northerly along U.S. Hwy 51 to junction WI Hwy 64, then along WI Hwy 64 to Marinette, WI. (Gateways eliminated: points within 80 miles of Columbus, OH and Gettysburg, PA.) (8) Between Albemarle, Amherst, Buckingham, Cumberland, Fluvanna, Green, Madison and Nelson Counties, VA, on the one hand, and, on the other, points in MN; points in IA on and northwest of a line beginning at the IA-MO State line extending along IA Hwy 5 to junction IA Hwy 137, then northerly along IA Hwy 137 to junction IA Hwy 92, then easterly along IA Hwy 92 to junction IA Hwy 149, then northeast along IA Hwy 149 to junction IA Hwy 151, then northeast along U.S. Hwy 151 to the WI-IA State line; points in MI on and north of MI Hwy 46; points in MO on and north of a line beginning at the KS-MO State line extending along MO Hwy 6 to junction MO Hwy 5, then nrotherly along MO Hwy 5 to the IA-MO State line; points in WI on and northwest of a line beginning at the WI-IA State line extending along U.S. Hwy 151 to junction WI Hwy 26, then northerly along WI Hwy 26 to junction U.S. Hwy 41, then northerly along U.S. Hwy 41 to Green Bay, WI. (Gateway eliminated: points within 80 miles of Columbus, OH and Gettysburg, PA.) (9) Between points in Charlotte, Halifax, Lunenburg, Mecklenburg and Prince Edwards Counties, VA, on the one hand, and, on the other, points in IA, MI, MN, WI, points in IL on and north of a line beginning at the MO-IL State line extending along U.S. Hwy 36 to junction IL Hwy 54, then northeast along IL Hwy 54 to junction U.S. Hwy 24, then easterly along U.S. Hwy 24 to the IL-IN State line; points in IN on and norht of a line beginning at the IL-IN State line extending along U.S. Hwy 24 to junction IN Hwy 19, then northerly along IN Hwy 19 to junction U.S. Hwy 20, then easterly long U.S. Hwy 24 to the OH-IN State line; and points in MO on and north of U.S. Hwy 24. (Gateways eliminated: points within 80 miles of Columbus, OH and Gettysburg, PA.) (10) Between points in Carroll, Floyd, Henry and Patrick Counties, VA, on the one hand, and, on the other, points in MN on and north of a line beginning at the MN-ND State line extending along U.S. Hwy 2 to junction MN Hwy 72, then northerly along MN Hwy 72 to the United States-Canadian International Boundary line. (Gateways eliminated: points within 80 miles of Columbus, OH and Gettysburg, PA.) (11) Between points in RI, on the one hand, and, on the other, points in IL, IN, IA, KY, MI, MN, MO and WI. (Gateways eliminated: points within 80 miles of Columbus, OH (Norwalk and Gallipolis), and Lancaster, PA.)

MC 117574 (Sub-E164), filed January 20, 1976. Applicant: DAILY EXPRESS, INC., P.O. Box 39, Carlisle, PA 17013. Representative: E. S. Moore, Jr., (same as above). *Agricultural implements, agricultural machinery, and agricultural equipment,* which are self-propelled, each weighng 15,000 pounds or more, and *agricultural implements, and agricultural machinery and agricultural equipment parts,* when moving in mixed loads with agricultural implements, agricultural machinery, and agricultural equipment, restricted against the transportation of such commodities which because of size or weight require the use of special equipment, (1) from points in IL north and east of a line beginning at the IL-IN State line on U.S. Hwy 30, then along U.S. Hwy 30 to junction U.S. Hwy 51, then along U.S. Hwy 51 to the IL-WI State line; points in IN on and north of a line beginning at the IN-OH State line on IN Hwy 18, then along IN Hwy 18 to junction U.S. Hwy 35, then along U.S. Hwy 35 to junction U.S. Hwy 30, then along U.S. Hwy 30 to the IL-IN State line; points in MI on and west of a line beginning at the MI-OH State line on U.S. Hwy 23, then along U.S. Hwy 23 to junction MI Hwy 81, then a long MI Hwy 81 to junction MI Hwy 15, then along MI Hwy 15 to junction MI Hwy 247, then along MI Hwy 247 to the shore of Lake Huron; points in MN, on and north of a line beginning at the MN-WI State line on U.S. Hwy 14, then along U.S. Hwy 14 to the Minnesota River, then along the Minnesota River to U.S. Hwy 212, then along U.S. Hwy 212 to the MN-SD State line, and points in WI on and north of a line beginning at the IL-WI State line on U.S. Hwy 51, then along U.S. Hwy 51 to junction U.S. Hwy 14 to the MN-WI State line, to points in FL, GA, NC, SC, and those in the following described states: points in AL on and east of a line beginning at the AL-TN State line on I Hwy 65, then along I Hwy 65 to junction U.S. Hwy 11, then along U.S. Hwy 11 to junction AL Hwy 5, then along AL Hwy 5 to junction U.S. Hwy 43, then along U.S. Hwy 43 to junction U.S. Hwy 90, then along U.S. Hwy 90 to the AL-MS State line; points in KY on and east of U.S. Hwy 127; points in TN on and east of U.S. Hwy 231, and points in VA on and south of a line beginning at the WV-VA State line on U.S. Hwy 460, then along U.S. Hwy 460 to the Chesapeake Bay and the Atlantic Ocean. (Gateway eliminated: Coldwater, OH.) (2) from points in IA an from points in IL on and north of U.S. Hwy 24, except points north and east of a line beginning at the IL-IN State line on U.S. Hwy 30, then along U.S. Hwy 30 to junction U.S. Hwy 51, then along U.S. Hwy 51 to the IL-WI State line, points in IN bounded by a line beginning at the IL-IN State line at IN Hwy 18, then along IN Hwy 18 to junction U.S. Hwy 35, then along U.S. Hwy 35 to junction U.S. Hwy 30, then along U.S. Hwy 30 to the IL-IN State line, then along the IL-IN State line to the point of origin, points in MI east of a line beginning at the MI-OH State line on U.S. Hwy 23, then along U.S. Hwy 23 to junction MI Hwy 81, then along MI Hwy 81 to junction MI Hwy 15, then along MI Hwy 15 to junction MI Hwy 247, then along MI Hwy 247 to the shore of Lake Huron, points in MN south of a line beginning at the MN-WI State line on U.S. Hwy 14, then along U.S. Hwy 14 to the Minnesota River, then along the Minnesota River, to U.S. Hwy 212, then along U.S. Hwy 212 to the MN-SD State line, and points in WI south of a line beginning at the IL-WI State line on U.S. Hwy 51, then along U.S. Hwy 51 to junction U.S. Hwy 14, then along U.S. Hwy 14 to the MN-WI State line, to points in FL on and east of a line beginning at the FL-GA State line on U.S. Hwy 221, then along U.S. Hwy 221 to junction U.S. Hwy 27, then along U.S. Hwy 27 to junction FL Hwy 361, then along FL Hwy 361 to the Gulf of Mexico, points in GA on and east of U.S. Hwy 129; points in KY on and east of I Hwy 75; points in NC on and west of a line beginning at the NC-VA State line on I Hwy 95, then along I Hwy 95 to junction U.S. Hwy 64, then along U.S. Hwy 64 to junction U.S. Hwy 17, then along U.S. Hwy 17 to junction U.S. Hwy 70, then along U.S. Hwy 70 to the Atlantic Ocean, points in SC, points in TN on and east of I Hwy 75, and points in VA on and south of a line beginning at the VA-WV State line on U.S. Hwy 460, then along U.S. Hwy 460 to junction U.S. Hwy 220, then along U.S. Hwy 220 to the NC-VA State line. (Gateway eliminated: Coldwater, OH.)

MC 123407 (Sub-E620), filed July 25, 1978. Applicant: SAWYER TRANSPORT, INC., South Haven Square, U.S. Hwy 6, Valparaiso, IN 46383. Representative: Richard L. Loftus (same as above). *Used construction forms* (except commodities requiring special equipment), in containers or in trailers, having an immediately prior or subsequent movement by water, or by water-rail, or by air, between Seattle, WA, on the one hand, and, on the other, points in Crook, Campbell, Natrona, Converse, Niobrara, Albany, Laramie, Weston, Goshen and Platte Counties, WY. (Gateway eliminated: Belle Fourche, SD.)

MC 123407 (Sub-E621), filed July 25, 1978. Applicant: SAWYER TRANSPORT, INC., South Haven Square, U.S. Hwy 6, Valparaiso, IN 46383. Representative: Richard L. Loftus (same as above). *Used construction forms* (except commodities requiring special equipment), in containers or in trailers, having an immediately prior or subsequent movement by water, or by water-rail, or by air, between San Francisco, CA, on the one hand, and, on the other, points in Albany, Laramie, Platte, Goshen, Niobrara, Converse, Weston, Campbell, and Crook Counties, WY. (Gateway eliminated: Bushnell, NE.)

MC 123407 (Sub-E620), filed July 25, 1978. Applicant: SAWYER TRANSPORT, INC., South Haven Square, U.S. Hwy 6, Valparaiso, IN 46383. Representative: Richard L. Loftus (same as above). *Lumber and forest products, pressure treated poles, pressure treated post and pressure treated lumber* (except wood chips, commodities in bulk and commoditites requiring special equipment), in containers or in trailers, having an immediately prior or subsequent movement by water, or by water-rail, or by air, from points in ID, NV, UT, WY, and points in Routt, Jackson, and Moffat Counties, CO, to points in OH. (Gateway eliminated: Rapid City, SD.)

MC 123407 (Sub-E623), filed July 25, 1978. Applicant: SAWYER TRANSPORT, INC., South Haven Square, U.S. Hwy 6, Valparaiso, IN 46383. Representative: Richard L. Loftus (same as above). *Mineral wool, mineral wool products, insulation materials and insulation, air duct* (except commodities in bulk and commodities requiring special equipment), in containers or in trailers, having an immediately prior or subsequent movement by water, or by water-rail, or by air, from Kansas City, KS, to points in WA, OR, ID, CA, NV, UT, and WY. Restriction: This authority is restricted to the transportation of shipments originating at the facilities of CSG Group of the Certain-Teed Products Corp. at Kansas City, KS. (Gateway eliminated: North Sioux City, SD.)

MC 123407 (Sub-E624), filed July 25, 1978. Applicant: SAWYER TRANSPORT, INC., South Haven Square, U.S. Hwy 6, Valparaiso, IN 46383. Representative: Richard L. Loftus (same as above). *Building materials and materials* used in the installation and application of such commodities (except iron and steel, and commodities in bulk and commodities requiring special equipment) in containers or in trailers having an immediately prior or subsequent movement by water, or by water-rail or by air, from points in AZ, NM, and KS to points in TN on and east of Interstate Hwy 24. (Gateway eliminated: Facilities of Certain-Teed Products Corp. at East St. Louis, IL.)

MC 124154 (Sub-E13), filed June 5, 1978. Applicant: WINGATE TRUCKING CO., INC., 1004 21st Ave., Albany, GA 31702. Representative: Thomas F. Panebianco, P.O. Box 1200, Tallahassee, FL 32302. *Agricultural chemicals and agricultural chemical materials* (except fertilizer and fertilizer materials), in containers, between points in LA (except the facilities of Gulf Oil Corp. at Donaldsonville), on the one hand, and, on the other, points in NC, SC, and VA. Restriction: This authority will expire May 8, 1980. (Gateway eliminated: The facilities of Helena Chemical Co. at Dothan, Selma, and Tanner, AL.)

MC 124154 (Sub-E14), filed June 5, 1978. Applicant: WINGATE TRUCKING CO., INC., 1004 21st Ave., Albany, GA 31702. Representative: Thomas F. Panebianco, P.O. Box 1200, Tallahassee, FL 32302. *Agricultural chemicals and agricultural chemical materials* (except fertilizer and fertilizer materials), in containers, between points in MS, on the one hand, and, on the other, points in NC, SC, and VA. (Gateway eliminated: The facilities of Helena Chemical Co. at Dothan, Selma, and Tanner, AL.) Restriction: This authority expires May 8, 1980.

MC 124154 (Sub-E15), filed June 5, 1978. Applicant: WINGATE TRUCKING CO., INC., 1004 21st Ave., Albany, GA 31702. Representative: Thomas F. Panebianco, P.O. Box 1200, Tallahassee, FL 32302. *Agricultural chemicals and agricultural chemical materials,* in containers, between points in TX, on the one hand, and, on the other, points in NC, SC, and VA. Restriction: This authority expires May 8, 1980. (Gateway eliminated: Facilities of Helena Chemical Co. at Dothan, Tanner and Selma, AL.)

By the Commission.

H. G. Homme, Jr.,
Secretary.

[FR Doc. 78-31712 Filed 11-8-78; 8:45 a.m.]

[1505-01-M]

[Notice No. 185]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

Correction

In FR. Doc. 78-28785 appearing at page 47063 in the issue for Thursday, October 12, 1978, in the first column of page 47066, "MC 13581 (Sub-35TA)" should have read "MC 135861 (Sub-35TA)".

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[1505-01-M]

[Notice No. 187]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

Correction

In FR Doc. 78-29042 appearing at page 47344 in the issue for Friday, October 13, 1978, in the third column of page 47345, in the 17th line under MC 102567 (Sub-211TA), the abbreviation "MI" should have read "MO".

[1505-01-M]

[Notice No. 188]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

Correction

In FR Doc. 78-29043 appearing at page 47350 in the issue for Friday, October 13, 1978, in the first column of page 47356, "MC 143775 (Sub-16TA)" should have read "MC 143775 (Sub-15TA)".

[7035-01-M]

[Ex Parte No. 241, Rule 19; Exemption No. 143, Amdt. No. 6]

MANDATORY CAR SERVICE RULES

Exemption

To: All railroads.

Upon further consideration of Exemption No. 143 issued January 26, 1978.

It is ordered, That, under authority vested in me by Car Service Rule 19, Exemption No. 143 to the Mandatory Car Service Rules ordered in Ex Parte No. 241 is amended to expire January 31, 1979.

This amendment shall become effective October 31, 1978.

Issued at Washington, D.C., October 27, 1978.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc. 78-31707 Filed 11-8-78; 8:45 am]

[7035-01-M]

[Ex Parte No. 241, Rule 19; Exemption No. 149, Amdt. No. 3]

MANDATORY CAR SERVICE RULES

Exemption

To: All railroads.

Upon further consideration of Exemption No. 149 issued April 28, 1978.

It is ordered, That under authority vested in me by Car Service Rule 19, Exemption No. 149 to the Mandatory Car Service Rules ordered in Ex Parte No. 241 is amended to expire February 15, 1979.

This amendment shall become effective October 31, 1978.

Issued at Washington, D.C., October 27, 1978.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc. 78-31708 Filed 11-8-78; 8:45 am]

[7035-01-M]

Office of Proceedings

[Notice No. 200]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

OCTOBER 25, 1978.

IMPORTANT NOTICE

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

MC 30844 (Sub-622TA), filed September 1, 1978. Applicant: KROBLIN REFRIGERATED XPRESS, INC., P.O. Box 5000, 2125 Commercial Street, Waterloo, IA 50702. Representative: John P. Rhodes, 2125 Commercial Street, Waterloo, IA 50702. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned and preserved foodstuffs*, from Pittsburgh, PA, to points in IL, IN, and MI, for 180 days. Supporting shipper: Heinz U.S.A., division of H. J. Heinz Co., P.O. Box 57, Pittsburgh, PA 15230. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 53841 (Sub-13TA), filed August 30, 1978. Applicant: W. H. CHRISTIE & SONS, INC., Box 517, East State Street, Knox, PA 16232. Representative: John A. Pillar, attorney-at-law, 205 Ross Street, Pittsburgh, PA 15219. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Petroleum and petroleum products*, vehicle body sealers, and deadener compounds (except commodities in bulk), and (2) *regular advertising materials*, empty cartons and containers when moving in mixed shipments with the commodities in (1) above from the facilities of Quaker State Refining Co. at (1) Farmers Valley, Emlenton, North Warren, and New Kensington, PA, to points in IL, IN, MI, MD, and MO; and (2) Congo, WV, to points in IL, IN, PA, MI, NY, NJ, MD, and MO, for 180 days. Supporting shipper: Quaker State Refining Co., 255 Elm Street, Oil City, PA 16301. Send protests to: John J. England, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

MC 78947 (Sub-18TA), filed September 1, 1978. Applicant: ELLIOTT BROS. TRUCK LINES, INC., 801 Hwy 21, Dysart, IA 52224. Representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, IA 52501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in by manufacturers of metal tool and utility boxes, tool chests, medical cabinets, benches and shelves (except commodities in bulk), between the facilities of Waterloo Industries, Inc., at Waterloo, IA; Sedalia, MO; Pocahontas and Walnut Ridge, AR, and the facilities of Lumidor Manufacturing, Inc., at Los Angeles, CA, on the one hand, and, on the other, points in the United States (except AK and HI), for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Waterloo Industries, Inc., P.O. Box 209, Waterloo, IA 50704. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 97461 (Sub-5TA), filed August 28, 1978. Applicant: H. A. DAY, d.b.a. H. A. DAY TRUCK LINE, 801 East Reno, Oklahoma City, OK. 73104, Representative: T. Earl Curb, 2628 SW. 69th Street, Oklahoma City, OK. 73159. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* with the usual ICC exceptions, between Oklahoma City, OK, and Asher, Konowa, Stratford and Ada, OK, via routes as follows: From Oklahoma City via U.S. Hwy 270 to its junction with State Hwy 3 approximately (4) miles west of McLoud; and from Oklahoma City, via State Hwy 3 to same junction with U.S. Hwy 270, serving the off-routes point of Tinker Air Force Base; then east via both U.S. Hwy 270 and State Hwy 3 to Shawnee and Tecumseh, OK, then south via both U.S. Hwy 177 and State Hwy 3-west to Asher, serving the off-route points of Maud, OK, (via State Hwy 59) and Wanette, OK, (via State Hwy 39); then east from Asher via State Hwy 39 to Konowa, OK, then south from Asher via U.S. Hwy 177 to Stratford; and then south and southeast from Asher via State Hwy Nos. 3-west and 13 to Ada, serving all intermediate points on all proposed routes. With authority to tack at Asher, Konowa, Stratford, and Ada named on existing authority MC 97461 (Sub-3) for transportation to and from and between all points on said interstate authority via. Between Asher and Ada, OK, via State Hwy 18 (now U.S. Hwy 177) to Stratford; then via State Hwy 19 to Ada, serving all intermediate points; and between Asher and Ada via State Hwy 13 as an alternate route. Between Stratford and Roff, OK, via State Hwy 18 (now U.S. Hwy 177) to intersection with State Hwy 29; then via State Hwy 29 to Roff, serving all intermediate points. Between Roff and Ada, OK, via State Hwy 12 (now State Hwy 1), serving all intermediate point. Between Konowa and Ada via State Hwys 3-east and 99. Between Konowa and Allen, via State Hwys 3-east and 99 to intersection with unnumbered county highway approximately (6) six miles south of South Canadian River Bridge; then over such unnumbered county highway to Allen; serving the intermediate point of Francis. Between Ada and Allen via State Hwy 12 (now State Hwy 1, for 180 days. Supporting shipper(s): There are approximately (7) statements of support attached to this application which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: Connie Stanley, Transportation Assistant, Room 240 Old Post Office and Court House Building, 215 NW. Third, Oklahoma City, OK. 73102.

MC 103051 (Sub-452 TA), filed September 5, 1978. Applicant: FLEET TRANSPORT CO., INC., P.O. Box 90408, Nashville, TN 37209. Representative: Russell E. Stone, P.O. Box 90408, Nashville, TN 37209. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Asphalt and residual fuels* (in bulk, in tank vehicles), from Memphis, TN, to AR, MS, and MO, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Delta Refining Co., 543 West Mallory, Memphis, TN. Send protests to: Glenda Kuss, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, Suite A-422, U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 105566 (Sub-181TA), filed August 30, 1978. Applicant: SAM TANKSLEY TRUCKING, INC., P.O. Box 1120, Cape Girardeau, MO 63701. Representative: Thomas F. Kilroy, Suite 406 Executive Building, 6901 Old Keene Mill Road, Springfield, VA 22150. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic articles* in mixed shipments with glassware, chinaware, earthenware and pottery, from Lancaster, OH to points in AZ, CA, ID, NV, NM, OR, UT, WA and WY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Anchor Hocking Corp., 100 North Broad Street, Lancaster, OH 43130. Send protests to: P.E. Binder, District Supervisor, Interstate Commerce Commission, 210 North 12th Street, Room 1465, St. Louis, MO 63101.

MC 108341 (Sub-113TA), filed August 30, 1978. Applicant: MOSS TRUCKING CO., INC., 3027 North Tryon Street, P.O. Box 8409, Charlotte, NC 28208. Representative: Jack F. Counts, P.O. Box 8409, Charlotte, NC 28208. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tractors* (except truck tractors and tractors, each weighing 15,000 pounds or more) from Portsmouth, VA to points in VA, TN, NC, SC, and GA. Restriction: Restricted to (1) traffic having a prior movement by water and (2) traffic destined to dealers of International Harvester Co. or facilities used by International Harvester Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): International Harvester Co., 401 North Michigan Avenue, Chicago, IL 60611. Send protests to: Terrell Price, District Supervisor, 800 Briar Creek, Room CC516, Mart Office Building, Charlotte, NC 28205.

MC 109584 (Sub-179TA), filed September 1, 1978. Applicant: ARIZONA-PACIFIC TANK LINES, 3980 Quebec Street, Denver, CO 80207. Representative: Rick Barker (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Inedible tallow (feed fats)*, in bulk, in tank vehicles, from Phoenix, AR, to Deming, NM, for 180 days. No tack or interline. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Phoenix Tallow Co., 2602 South 15th Avenue, Phoenix, AR 85007. Send protests to: Roger L. Buchanan, District Supervisor, Interstate Commerce Commission, 721 19th Street, 492 U.S. Customs House, Denver, CO 80202.

MC 111485 (Sub-22TA), filed September 5, 1978. Applicant: PASCHALL TRUCK LINES, INC., Route 4, Murray, KY 42071. Representative: Robert H. Kinker, 314 West Main Street, P.O. Box 464, Frankfort, KY 40602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment): Between the facilities of Hickman-Fulton County Riverport at or near Hickman, KY, on the one hand, and, on the other, points in the United States, for 180 days. Applicant intends to interline with other carriers at said facilities of Hickman-Fulton County Riverport. Supporting shipper: Hickman-Fulton County Riverport, Riverport Office, P.O. Box 6, Hickman, KY 42050. Send protests to: Floyd Johnson, District Supervisor, Interstate Commerce Commission, 100 North Main Street, 100 North Main Building, Suite 2006, Memphis, TN 38103.

MC 112822, (Sub-464TA), filed August 29, 1978. Applicant: BRAY LINES, INC., 1401 North Little Street, P.O. Box 1191, Cushing, OK 74023. Representative: Dudley G. Sherrill, 1401 North Little Street, P.O. Box 1191, Cushing, OK 74023. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Malt beverages* (except commodities in bulk, in

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tank vehicles), and *related advertising materials*, and (2) *empty returns*, (1) From Jefferson County, CO, to WA; and (2) from WA to Jefferson County, CO, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Adolph Coors Co., Golden, CO 80401. Send protests to: Connie Stanley, Transportation Assistant, Room 240 Old Post Office and Court House Building, 215 Northwest Third, Oklahoma City, OK 73102.

MC 112963 (Sub-80TA), filed September 5, 1978. Applicant: ROY BROS., INC., 764 Boston Road, Pinehurst, MA 01866. Representative: Leonard E. Murphy, 764 Boston Road, Pinehurst, MA 01866. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Tanning oils* (in bulk, in tank vehicles), and (2) *commodities* used in the manufacture of tanning oils, in bulk, in tank vehicles, (1) from the facilities of Henkel Division of General Mills Chemicals at Saugus, MA, to points in the United States (except MA, NH, and RI), and (2) from points in the United States (except MA, NH and RI), to the plantsite of Henkel Division of General Mills Chemical at Saugus, MA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Henkel, Inc., Division of General Mills Chemicals, 222 Central Street, Saugus, MA 01906. Send protests to: Paul A. Roberts, District Supervisor, Interstate Commerce Commission, 150 Causeway Street, Boston, MA 02114.

MC 115311 (Sub-316TA), filed August 30, 1978. Applicant: J & M TRANSPORTATION CO., INC., P.O. Box 488, Milledgeville, GA 31061. Representative: Mark C. Ellison, Watkins & Daniell, P.C., P.O. Box 872, Atlanta, GA 30301. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum and petroleum products* in packages from Texaco facilities in Jefferson County, TX to points in AL, FL, GA, IN, IL, KY, MI, MS, NC, OH, SC, TN, and Bayonne, NJ, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Texaco, Inc., 1111 Rusk, Houston, TX 77052. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 West Peachtree Street NW., Room 300, Atlanta, GA 30309.

MC 118142 (Sub-184TA), filed September 5, 1978. Applicant: M. BRUENGER & CO., INC., 6250 North Broadway, Wichita, KS 67219. Representative: Lester C. Arvin, 814 Century Plaza Building, Wichita, KS 67202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Boxed frozen meats*, from the facilities of Landmark Beef Processors, Inc., at Los Angeles, CA; to Birmingham, AL; Jacksonville, FL; Tampa, FL; Watertown, MA; Landover, MD, Bayonne, NJ; Camden, NJ; Fort Sill, OK; Charleston, SC; Fort Jackson, SC; Nashville, TN; and Williamsburg, VA, restricted to the transportation of shipments originating at the facilities of Landmark Beef Processors, Inc., and destined to the indicated destinations, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Landmark Beef Processors, Inc., 3163 East Vernon, Los Angeles, CA 90058. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, 101 Litwin Building, Wichita, KA 67202.

MC 123233 (Sub-84TA), filed September 5, 1978. Applicant: PROVOST CARTAGE INC., 7887 rue Grenache, Ville d'Anjou, PQ, Canada. Representative: Gilbert Beriault (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Silica sand* (in bulk, in tank vehicles), from the port of entry on the international boundary line between the United States and Canada located at Champlain, NY, to Plattsburgh, NY, for 190 days. Applicant has also filed an underlying ETA seeking up to 90 days of operation authority. Supporting shipper(s): Usinage de Selica Champlain Ltee, 527 Hodge Street, Ville St. Laurent, PQ, Canada. Send protests to: David A. Demers, District Supervisor, Interstate Commerce Commission, P.O. Box 548, 87 State Street, Montpelier, VT 05602.

MC 123778 (Sub-40TA), filed August 30, 1978. Applicant: JALT CORP., d.b.a. United Newspaper Delivery Service, P.O. Box 398, Woodbridge, NJ 07095. Representative: Morton E. Keil, Suite 6193, 5 World Trade Center, New York, NY 10048. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Magazines*, from carrier's terminal in Edison, NJ to points in CT, NJ, points in that part of NY on and east of NY Hwy 14, points in that part of MD and PA on and east of U.S. Hwy 14, and Wilmington, DE and Washington, DC, under a continuing contract or contracts with R. R. Donnelly, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): R. R. Donnelly, Inc., 2223 Martin Luther King Drive, Chicago, IL 60616. Send protests to: Robert E. Johnston, District Supervisor, Interstate Commerce Commission, 9 Clinton Street, Newark, NJ 07102.

MC 123993 (Sub-41TA), filed September 5, 1978. Applicant: FOGLEMAN TRUCK LINE, INC., P.O. Box 1504, Crowley, LA 70526. Representative: Byron Fogleman, P.O. Box 1504, Crowley, LA 70526. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Poultry and animal feed and mineral or vitamin mixtures for poultry and animal feeding* (except in bulk), from Mountaire Feeds, Inc., at North Little Rock, AR, to points in AR, LA, TX, and MS, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Mountaire Feeds, Inc., P.O. Box 5391, North Little Rock, AR 72119. Send protests to: Connie A. Guillory, District Supervisor, Interstate Commerce Commission, Bureau of Operations, T-9038 U.S. Postal Service Building, 701 Loyola Avenue, New Orleans, LA 70113.

MC 124212 (Sub-101TA), filed September 1, 1978. Applicant: MITCHELL TRANSPORT, INC., 6500 Pearl Road, P.O. Box 30248, Cleveland, OH 44130. Representative: J. A. Kundtz, 1100 National City Bank Building, Cleveland, OH 44114. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cement*, from the facilities of The Flintkote Co., Kosmos Cement Division, at or near Kosmosdale, KY, to points in IL, IN, OH, TN, and WV, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): The Flintkote Co., Kosmos Cement Division, 10101 Linn Station Road, Louisville, KY 40223. Send protests to: Interstate Commerce Commission, 731 Federal Building, 1240 East Ninth Street, Cleveland, OH 44199.

MC 128270 (Sub-30TA), filed August 23, 1978. Applicant: REDIEHS INTERSTATE, INC., 1477 Ripley Street, East Gary, IN 46405. Representative: Richard A. Kerwin, Suite 3520, 180 North La Salle Street, Chicago, IL 60601. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Treated and untreated cross and switch ties, lumber, piling, posts*, (1) from points in MI, MO, KY, and TN; and to Terre Haute, IN, and (2) from Terre Haute, IN, to points in IL, WI, MI, MO, IA, and OH, for 180 days. Supporting shipper(s): Western Tar Products Corp., 2525 Prairieton Road, P.O. Box 270, Terre Haute, IN 47808. Send protests to: Lois Stahl Transportation Assistant, Interstate Commerce Commission, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 134286 (Sub-74TA), filed August 28, 1978. Applicant: ILLINI EXPRESS, INC., Box 1564, Sioux City, IA 51102. Representative: Charles J. Kimball, 350 Capitol Life Center, 1700 Sherman Street, Denver, CO 80203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Foodstuffs;* (2) *Pharmaceutical materials, supplies, and products*, (3) *chemicals;* (4) *alcoholic beverages;* (5) *tobacco products;* (6) *pet foods;* (7) *such commodities* as are dealt in by distribution or consolidation warehouses for the commodities described in (1), (2), (3), (4), (5), and (6), when moving in the same vehicle at the same time as the commodities described in (1) through (6); (8) exempt commodities when moving with regulated commodities; in vehicles equipped with mechanical refrigeration, between the facilities of Beatrice Foods Co., and Beatrice Cold Storage Co. at or near Denver, CO, on the one hand, and, on the other, points in WA, OR, CA, UT, ID, and MT, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Daniel G. Murphy, Beatrice Foods Co. and Beatrice Cold Storage Warehouse, 1901 Winkoop Street, Denver, CO. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 134477 (Sub-271TA), filed September 1, 1978. Applicant: SCHANNO TRANSPORTATION, INC., P.O. Box 3496, 5 West Mendota Road, West St. Paul, MN 55118. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products and articles distributed by meat packinghouses* as described in sections A and C of appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 MCC 209 and 766 (except hides and commodities in bulk), from the facilities of Dubuque Packing Co., Inc., at LeMars, IA, to points in AL, GA, KY, NC, SC, and TN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Dubuque Packing Co., Inc., Box 340, LeMars, IA. 51031. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building, and U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 136258 (Sub-6TA), filed September 5, 1978. Applicant: HARDING TRUCKING, INC., P.O. Box 65, Whiting, IA 51063. Representative: D. Douglas Titus, Titus, Holman, & Myers, Suite 510 Benson Building, Sioux City, IA 51101. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Hides and pieces therefrom*, in dump vehicles, from Omaha, NE, to the facilities of Mid-America Tanning Co., Inc., at or near Sergeant Bluff, IA, under a continuing contract, or contracts, with Mid-America Tanning Co., Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Guy H. Moberg, President, Mid-America Tanning Co., Inc., P.O. Box 668, Sergeant Bluff, IA 51064. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 136315 (Sub-36TA), filed September 5, 1978. Applicant: OLEN BURRAGE TRUCKING, INC., Route 9, Box 22-A, Philadelphia, MS 39350. Representative: Fred W. Johnson, Jr., 1500 Deposit Guaranty Plaza, P.O. Box 22628, Jackson, MS 39205. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Hardwood flooring*, (1) from the facilities of Bruce Hardwood Floors at or near Center, TX, to points in AL, AR, GA, LA, MS, and TN; and (2) from the facilities of Bruce Hardwood Floors at or near Jackson and Nashville, TN, to Center, TX, for 180 days. Supporting shipper(s): Bruce Hardwood Floors, 4255 L. B. J. Freeway, Dallas, TX 75234. Send protests to: Alan C. Tarrant, District Supervisor, Interstate Commerce Commission, 145 East Amite Building, Room 212, Jackson, MS 39201.

MC 136738 (Sub-2TA), filed August 30, 1978. Applicant: DEAKAL CARTING CORP., 39 Central Avenue, Farmingdale, NY. Representative: Donald W. Smith, Esquire, Suite 945-9000 Keystone Crossing, Indianapolis, IN 46240. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Record jackets, paper and paper products*, used in the manufacture of record jackets, (1) from Farmingdale, NY to Oak Ridge, Memphis, and Nashville, TN; (2) from Oak Ridge, TN, to Indianapolis, IN, and (3) from Canton, NC, to Farmingdale, NY, under a continuing contract or contracts with Shoreco International, Inc., for 180 days. Supporting shipper(s): Shoreco International, Inc., Shoreco Packing, Inc., Shorewood Litho, Inc., 55 Engineers Lane, Farmingdale, NY 11735. Send protests to: Maria B. Kejss, Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, NY 10007.

MC 138126 (Sub-30TA), filed August 30, 1978. Applicant: WILLIAMS REFRIGERATED EXPRESS, INC., P.O. Box 47, Old Denton Road, Federalsburg, MD 21632. Representative: Chester A. Zyblut, Esquire, 366 Executive Building, 1030 15th Street NW., Washington, DC 20005. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except in bulk), in vehicles equipped with mechanical refrigeration, from the plantsite and storage facilities owned and/or utilized by J. H. Filbert, Inc., located in Fulton, Clayton, De Kalb, Cobb, and Douglass Counties, GA, to points in the DC, KY, MD, NC, SC, TN, VA, and WV, for 150 days. Supporting shipper(s): Michael R. Hall, Traffic Supervisor, J. H. Filbert, Inc., 3701 Southwestern Boulevard, Baltimore, MD 21229. Send protests to: William L. Hughes, District Supervisor, Interstate Commerce Commission, 1025 Federal Building, Baltimore, MD 21201.

MC 138875 (Sub-103TA), filed September 1, 1978. Applicant: SHOEMAKER TRUCKING CO., 11900 Franklin Road, Boise, ID 83705. Representative: F. L. Sigloh, 11900 Franklin Road, Boise, ID 83705. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods and frozen dinners* (except in bulk), from the facilities of Foodways National, Inc., located at or near Hartford and Wethersfield, CT, to points in AR, AZ, CA, CO, IA, ID, IL, IN, KS, LA, MI, MN, MO, MT, NE, ND, NV, NY, NM, OH, OK, OR, PA, SD, TX, UT, WA, WI, and WY, for 180 days. Supporting shipper(s): Foodways National, Inc., 1000 Silas Dean Highway, Wethersfield, CT 06109. Send protests to: Barney L. Hardin, District Supervisor, Interstate Commerce Commission, 1471 Shoreline Drive, Suite 110, Boise, ID 83706.

MC 139336 (Sub-17TA), filed August 30, 1978. Applicant: TRANSTATES, INC., 3216 East Westminister, Santa Ana, CA 92703. Representative: David P. Christianson, Knapp, Stevens, Grossman & Marsh, 707 Wilshire Boulevard, Suite 1800, Los Angeles, CA 90017. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Aluminum rods*, from points in Flathead County, MT to points in Jefferson City, MO, for 180 days. Supporting shipper(s): Westinghouse Electric Corp., 290 Leger Road, No. Huntingdon, PA 15642. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321 Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

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MC 140033 (Sub-68TA), filed September 1, 1978. Applicant: COX REFRIGERATED EXPRESS, INC., 10606 Goodnight Lane, Dallas, TX 75220. Representative: D. Paul Stafford, Winkle & Wells, Suite 1125 Exchange Park, Dallas, TX 75245. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bakery goods*, not frozen, from Marietta, OK, to New Rochelle, NY; Louisville, KY; Los Angeles, CA; Phoenix, AZ; Corona, CA; San Diego, CA; La Habra, CA; Biddleford, ME; Seattle, WA, and Woburn, MA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Little Brownie Bakers, P.O. Box 249, Marietta, OK 73448. Send protests to: Opal M. Jones Transportation Assistant, Interstate Commerce Commission, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

MC 141138 (Sub-12TA), filed September 1, 1978. Applicant: STEVE SCHRANZ TRUCKING, INC., 350 Honeysuckle Lane, Belleville, IL 62221. Representative: Ernest A. Brooks II, 1301 Ambassador Building, St. Louis, MO 63101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry animal and poultry feed*, from the facilities of International Multifoods Corp., at East St. Louis, IL, to points in AR, IA, IL, IN, KS, KY, MI, MN, MO, NE, OH, TN, and WI, for 180 days. Supporting shipper(s): Joseph Hirt Procurement Manager, International Multifoods Corp., 1200 Multifoods Building, Minneapolis, MN 55402. Send protests to: Charles D. Little, District Supervisor, Interstate Commerce Commission, 414 Leland Office Building, 527 East Capitol Avenue, Springfield, IL.

MC 141197 (Sub-29TA), filed August 30, 1978. Applicant: FLEMING-BABOCK, INC., 4106 Mattox Road, Riverside, MO 64150. Representative: Tom B. Kretsinger, Esq., Kretsinger & Kretsinger, 20 East Franklin, Liberty, MO 64068. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry fertilizer compounds* such as ammonium nitrate, urea, potash, various blends of phosphates or mixtures, from Kansas City, MO and Kansas City, KS to points in MO, KS, OK, NE, and IA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Mid-West Terminal Warehouse Co., 1226 North Topping Avenue, GPO Box 11, Kansas City, MO 64141. Send protests to: Vernon V. Coble, District Supervisor, Interstate Commerce Commission, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

MC 141362 (Sub-11TA), filed September 1, 1978. Applicant: SOUTHWEST BULK TRANSPORT, 1046 C. Commerce Street, San Marcos, CA 92069. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Feed supplements, dry*, from points in Orange County, CA, to points in Cochise County, AZ; and (2) *Feed supplements, dry*, (in bulk, or in bags), when moving in mixed loads with feed supplements, dry, in bulk, from points in Orange County, CA, to points in Pima County, AZ, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): (1) Supreme Feed Supplements, Inc., P.O. Box 400, Cypress, CA 90630. (2) Loper Systems, 6040 Riverside Drive, Chino, CA 91710. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321 Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

MC 141594 (Sub-2TA), filed August 21, 1978. Applicant: TRANSPORTATION SERVICE, INC., 1285 Glendale Road, Sparks, NV 89431. Representative: Robert G. Harrison, 4299 James Drive, Carson City, NV 89701. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (A) *PVC (Poly Vinyl Chloride) pipe, and materials, equipment and supplies* used in the manufacture of PVC pipe: (1) *PVC pipe*, from the facilities of Epco II at Washoe County, NV, to points in ID, UT, OR, WA and points in CA, in and north of Monterey, Kings, Tulare and Inyo Counties, CA; and (2) *Materials, equipment and supplies used in the manufacture of PVC pipe*, from points in CA, to the facilities of Epco II at Washoe County, NV; (3) *PVC pipe, and materials, equipment and supplies* used in the manufacture of PVC pipe, between the facilities of Epco I at Santa Ana, CA, and Epco II at Washoe County, NV, restricted to traffic originating at or destined to the facilities of Epco II at Washoe County, NV, under a continuing contract, or contracts, with Epco II, Inc., for 180 days. Supporting shipper(s): There are approximately (6) statements of support attached to this application which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: W. J. Huetig District Supervisor, Interstate Commerce Commission, 203 Federal Building., 705 North Plaza, Street, Carson City, NV 89701.

MC 141740 (Sub-8TA), filed September 1, 1978. Applicant: STOOPS XPRESS, INC., 2239 Malibu Court, Anderson, IN 46012. Representative: Jeffry Stoops, 2239 Malibu Court, Anderson, IN 46012. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Electrical components and electric furnances, air conditioners and heat pumps*, from Dallas and Masquite, TX, to Miami, Orlando, St. Petersburg, Tampa, FL and Atlanta, GA, restricted to traffic originating at and destined to the named origins and destinations and to service under a continuing contract, or contracts, with Square D. Co., for 180 days. Supporting shipper(s): Square D. Co., Box 488, Florence, KY 41042. Send protests to: J. H. Gray District Supervisor, Bureau of Operations, Interstate Commerce Commission, 343 West Wayne Street, Suite 112, Fort Wayne, IN 46802.

MC 141773 (Sub-7TA), filed September 1, 1978. Applicant: THERMO TRANSPORT, INC., 156 East Market Street, Indianapolis, IN 46204. Representative: Donald W. Smith, Suite 945, 9000 Keystone Crossing, Indianapolis, IN 46240. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Chilled juice*, from the facilities of Maplehurst Farms, Inc., at Indianapolis, IN, to Alpena, Bay City, Birmingham, Detroit, Flint, Grand Rapids, Lansing, Livonia, Muskegon, Plymouth, Saginaw and Warren, MI; Akron, Austintown, Bedford Heights, Bellefontaine, Cincinnati, Cleveland, Columbus, Dayton, Defiance, Findley, Lima, Maple Height, West Carrollton, Xenia, and Youngstown, OH; Altoona, Belle Vernon, DuBois, Johnstown, New Stanton, Pittsburg and Sharon, PA, under a continuing contract, or contracts, with Maplehurst Farms, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Maplehurst Farms, Inc., 3745 Farnsworth Street, Indianapolis, IN 46241. Send protests to: Beverly J. Williams Transportation Assistant, Interstate Commerce Commission, Federal Building, & U.S. Courthouse, 46 East Ohio Street, Room 429, Indianapolis, IN 46204.

MC 141804 (Sub-134TA), filed September 5, 1978. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91786. Representative: Frederick J. Coffman, P.O. Box 3488, Ontario, CA 91786. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Steel welding rods and wire, metal alloys, castings, powder, welding rods or wire, electric welders or parts and welding compound*, from City of Industry, and Santa Fe Springs, CA, to points in the States of AZ, CO, KS, NE, NM, OK, SD, TA, UT and WY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Stoody Company, 16425 Gale Avenue, Industry, CA 91745. Send protests to: Irene Carlos Transportation Assistant, Interstate Commerce Commission, Room 1321 Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

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MC 142508 (Sub-27TA), filed September 5, 1978. Applicant: NATIONAL TRANSPORTATION, INC., P.O. Box 37465, 10810 South 144th Street, Omaha, NE 68137. Representative: Lanny N. Fauss, P.O. Box 37096, Omaha, NE 68137. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Malt beverages, in containers and related advertising materials*, from Jefferson County, CO, to points in IA, MO, and WA; and (2) *Empty used malt containers, materials, and supplies used by brewers*, from points in IA, MO, and WA, to Jefferson County, CO, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Lou Bonner Director of Transportation, Adolph Coors Company, Golden, CO. Send protest to: Carroll Russell District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 142559 (Sub-48TA), filed August 30, 1978. Applicant: BROOKS TRANSPORTATION, INC., 3830 Kelley Avenue, Cleveland, OH 44114. Representative: John P. McMahon, 100 East Broad Street, Columbus, OH 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plumbing fixtures and plumbing supplies and such commodities* as are used in the manufacture and distribution of plumbing fixturers and plumbing supplies (except commodities in bulk), between Knoxville, TN, on the one hand, and, on the other, points in and east of the states of MN, IA, KS, OK and TX, for 180 days. Supporting shipper(s): Briggs Manufacturing Co., 5040 National Drive, Knoxville, TN 37914. Send protests to: Interstate Commerce Commission, 731 Federal Building, 1240 East Ninth Street, Cleveland, OH 44199.

MC 143555 (Sub-4TA), filed September 1, 1978. Applicant: RIVERSIDE TRANSPORTATION CO., INC., 1903 Canal Drive, Wilson, NC 27893. Representative: Robert B. Walker, 915 Pennsylvania Building, 425-13th Street NW., Washington, DC 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Animal feed and feed ingredients*, between points in MD, VA, WV, OH, IN, IL, IA, MI, MO, KY, NC, AR, OK, TX, LA, MS, AL, GA, FL and DC, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Carolina-By-Products, Inc., P.O. Drawer 20687, Greensboro, NC 27420. Send protests to: Archie W. Andrews District Supervisor, Interstate Commerce Commission, 624 Federal Building, 310 New Bern Avenue, P.O. Box 26896, Raleigh, NC 27611.

MC 143702 (Sub-4TA), filed September 1, 1978. Applicant: ALL FREIGHT SYSTEMS, INC., 1026 South 10th Street, Kansas City, KS 66105. Representative: Donald J. Quinn, Suite 900, 1012 Baltimore, Kansas City, MO 64105. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Paper forms, printed NOI, boxed, and paper pads, boxed*, between the facilities of Deluxe Check Printers, Inc., located in Lenexa, KS, Chicago and Des Plains, IL, and West Caldwell, NJ, and between the facilities of Deluxe Check Printers, Inc., located in West Caldwell, NJ; Greensboro, NC; Atlanta, GA, and Jacksonville and Miami, FL, under a continuing contract, or contracts, with Deluxe Check Printers, Inc., for 90 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Deluxe Check Printers, Inc., St. Paul, Minn. Send protests to: Vernon V. Coble District Supervisor, Interstate Commerce Commission, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

MC 144032 (Sub-5TA), filed August 23, 1978. Applicant: R & S TRUCKING, INC., Rural Route 1, Box 123, Garretson, SD 57030. Representative: Jack L. Shultz, P.O. Box 82028, Lincoln, NE 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Meat, meat products, and meat by-products, and articles distributed by meat packinghouses*, as described in sections A and C of appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766 (except hides and commodities in bulk, in tank vehicles), from the facilities of H. Shenson, Inc., in Omaha, NE, to points in the United States (except AK and HI); (2) *Materials, equipment and supplies* (except commodities in bulk, in tank vehicles) *used in the manufacture, production and distribution* of the commodities in (1) above, from points in the United States (except AK and HI), to the facilities of H. Shenson, Inc., in Omaha, NE, restricted to the transportation of traffic to be performed under a continuing contract, or contracts, with H. Shenson, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): H. Shenson, Inc., 2701 Y Street, Omaha, NE 68107. Send protests to: James L. Hammond, District Supervisor, Interstate Commerce Commission, 455 Federal Building, Pierre, SD 57501.

MC 144909 (Sub-1TA), filed September 1, 1978. Applicant: CENTRAL DELIVERY SERVICE OF MASSACHUSETTS, INC., 125 Magazine Street, Boston, MA 02119. Representative: Jeremy Kahn, Kahn & Kahn, Suite 733, Investment Building, 1511 K Street NW., Washington, DC 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Unaccompanied luggage*, having an immediately prior or subsequent movement by air, between Logan International Airport, Boston, MA, on the one hand, and, on the other, points in ME, MA, NH, and RI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): (1) United Air Lines, East Boston, MA 02128. (2) Delta Air Lines, Inc., East Boston, MA 02128. (3) TWA, Inc., East Boston, MA 02128. Send protests to: John B. Thomas, District Supervisor, Interstate Commerce Commission, 10 Causeway Street, Boston, MA 02114.

MC 145011 (Sub-1TA), filed June 29, 1978, and published in the FEDERAL REGISTER issue of October 20, 1978, and republished as corrected this issue. Applicant: R. F. WESTBURY, 1617 Willis Road, Richmond, VA 23224. Representative: Carroll B. Jackson, 1810 Vincennes Road, Richmond, VA 23229. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Toilet and drug preparations, medicines, prescriptions, and ingredients thereof; chemicals, animal, fish and poultry feed, animal, fish and poultry feed ingredients, cleaning compounds, displays, glassware, light bulbs, paper and paper articles, pet products, pharmaceutical products, pesticides, plastic or rubber articles, shampoo, soap, and toys*, and (2) *materials, supplies and equipment* used in the manufacture, sale or distribution of articles in (1) above (except in bulk, tank vehicles), between Richmond, VA, and points in the commercial zone thereof, and Cherry Hill, NJ, on the one hand, and, on the other, Dallas, TX; Des Plaines, IL; and Los Angeles, CA, and points in the commercial zone thereof, under a continuing contract or contracts, with A. H. Robins Co.; Elkins-

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Sinn, Inc.; Miller-Morton, Co.; Chap Stick Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): A. H. Robins Co.; Elkins-Sinn, Inc.; Miller-Morton Co.; Chap Stick Co., Alfred W. Kenney, Director of Transportation, 700 Darbytown Road, Richmond, VA 23231. Send protests to: Paul D. Collins, District Supervisor, Bureau of Operations, Room 10-502 Federal Building, 400 North 8th Street, Richmond, VA 23240. The purpose of this republication is to include the territorial scope as previously omitted.

MC 145149 (Sub-2TA), filed September 1, 1978. Applicant: MATADOR SERVICE, INC., P.O. Box 2256, Wichita, KS 67201. Representative: Clyde N. Christey, 110L Kansas Credit Union Building, Topeka, KS 66612. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia and nitrogen fertilizer solutions*, from the facilities of Farmland Industries, Inc., near Dodge City, KS, to points in CO, NE, OK, NM, and TX, and also *anhydrous ammonia*, from OK and NM, from the Mapco Pipeline Terminal near Conway, KS, to NE and MO, also from the facilities of Farmland Industries, Inc., near Enid, OK, to points in KS, TX, CO, MO, and AR, and also from the facilities of Farmland Industries, Inc., near Barnesville, MN, to points in ND, SD, WI, and MT, also from the facilities of Farmland Industries, Inc., near Benson, MN, to points in ND, SD, WI, and MT, and also from the facilities of Farmland Industries, Inc., near Hoag, NE, to points in IA, KS, and MO, and also from the Mapco Pipeline near Clay Center, KS, to MO and NE, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Farmland Industries, Inc., 3315 North Oak, Kansas City, MO 64116. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, 101 Litwin Building, Wichita, KS 67202.

MC 145166 (Sub-1TA), filed September 5, 1978. Applicant: THE HILLTOP VAN & STORAGE CO., 5178 Fisher Road, Columbus, OH 43228. Representative: Stephen H. Loeb, 205 West Touhy Avenue, Suite 200, Park Ridge, IL 60068. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, (except commodities in bulk), from the facilities of Continental Freezers of Illinois at Chicago, IL, to points in OH, restricted to the transportation of shipments originating at the named origin and destined to the named destinations, for 180 days. Supporting shipper: Continental Freezers of Illinois, 4220 South Kildare Boulevard, Chicago, IL 60632. Send protests to: Frank L. Calvary, District Supervisor, Interstate Commerce Commission, 220 Federal Building, and U.S. Courthouse, 85 Marconi Boulevard, Columbus, OH 43215.

NOTE.—Dual operations may be involved.

MC 145251 (Sub-1TA), filed August 30, 1978. Applicant: HOWELL ENTERPRISES, INC., U.S. Hwy 5, Box 696, Haleyville, AL 35565. Representative: George M. Boles, 727 Frank Nelson Building, Birmingham, AL 35203. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Treated and untreated lumber, poles, boards and logs, plywood, particleboard, and forest products*, between points in the United States lying in and east of ND, SD, NE, KS, OK, and TX on the one hand, and, on the other, facilities of Fullco Lumber Co., located in Winston, Lawrence, Franklin, Marian, Fayette, and Walker Countie, AL. Restriction: Restricted to transportation services performed under a continuing contract or contacts with Fullco Lumber Co., Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operation authority. Supporting shipper: Fullco Lumber Co., Inc., Haleyville, AL 35565. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 145278 (Sub-1TA), filed September 1, 1978. Applicant: TOM B. MARTINEX TRUCKING CO., INC., 6041 Huron Street, Denver, CO 80221, d.b.a. MARTINEZ CONTRACTORS SUPPLY. Representative: Richard H. Hill, 1421 Court Place, Denver, CO 80202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Common brick, concrete block, cinder block, clay tile, and clay pipe* on flatbed trailers equipped with specialized mechanical loading and unloading equipment, and *concrete pipe* on flatbed trailers, from Greeley, CO, and Denver, Boulder, Arapahoe, Jefferson, and Adams Counties, CO, to all points in NE on and west of U.S. Hwy 81 and all points in WY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): (1) Cowan Concrete Products, Inc., P.O. Box 1647, Greeley, CO 80631, (2) Wyoming Clay Products, Inc., P.O. Box 2501, Cheyenne, WY 82001. Send protests to: Roger L. Buchanan, District Supervisor, Interstate Commerce Commission, 721 19th Street, 492 U.S. Customs House, Denver, CO 80202.

MC 145312 (Sub-1TA), filed September 1, 1978. Applicant: SUNBELT SYSTEMS TRANSPORT, INC., 1256 La Quinta Drive, Orlando, FL 32809. Representative: M. Craig Massey, 202 East Walnut Street, P.O. Drawer J, Lakeland, FL 33802. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Commodities* manufactured, sold or dealt in by Datapoint Corp., and (2) *materials, equipment and supplies* used or useful in the manufacture and distribution of data processing and related equipment, (1) between San Antonio and Waco, TX, on the one hand, and, on the other, points in the United States (except AL and HI); and (2) from points in the United States (except AL and HI), to San Antonio and Waco, TX. Restriction: All transportation is restricted against commodities in bulk, in tank vehicles), under a continuing contract, or contracts, with Datapoint Corp., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Datapoint Corp., 9725 Datapoint Drive, San Antonio, TX 78284. Send protests to: G. H. Fauss, Jr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 145328TA, filed September 1, 1978. Applicant: RICHARD M. STEWART, Rural Route No. 1, West Chester, IA. Representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, IA 52501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned goods, frozen foods, and produce*, which is exempt from economic regulation under section 203(b)(6) of the Act, when in mixed loads with canned goods and/or frozen foods, from points in AZ, CA, CO, ID, OR, UT, and WA, to points in IA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Haweye Wholesale Co., Inc., P.O. Box 1820, Iowa City, IA 52240. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 145332 TA, filed September 1, 1978. Applicant: CLEVELAND FREIGHT LINES, INC., 17877 St. Clair Avenue Cleveland, OH 44110. Representative: Lewis S. Witherspoon, 88 East Broad Street, Columbus, OH 43215. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Synthetic fiber yarn and materials, equipment and supplies* used in the manufacture thereof, (except commodities in bulk), between Painesville, OH, on the one hand, and, on the other, points in AL, GA, KY, NJ, NY, NC, PA, SC, TN, and VA, under a continuing contract, or contracts, with IRC Fibers Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: IRC Fibers Co., Wayne, NJ 07470. Send protests to: Interstate Commerce Commission, 731 Federal Office Building, 1240 East Ninth Street, Cleveland, OH 44199.

MC 145333 TA, filed September 1, 1978. Applicant: JAMES P. DOYLE, d.b.a. J. DOYLE TRUCKING, P.O. Box 76, Wisconsin Dells, WI 53965. Representative: David V. Purcell, 111 East Wisconsin Avenue, Milwaukee, WI 53202. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Vinyl, loose-leaf binder mechanisms, and chipboard*, from Lynn and New Bedford, MA, Burlington, NJ, to Edgerton, MN, under a continuing contract, or contracts, with Fey Industries, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Fey Industries, Inc., 200 Fourth Avenue West, Edgerton, MN 56128. Send protests to: Ronald A. Morken District Supervisor, Interstate Commerce Commission, 212 East Washington Avenue, Room 317, Madison, WI 53703.

MC 145337 TA, filed September 5, 1978. Applicant: P. M. E., LTD., Box 181, Group 261, R. R. 2, Winnipeg, MB, Canada. Representative: Gene P. Johnson, P.O. Box 2471, Fargo, ND 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned goods and agricultural commodities* exempt from economic regulation under section 203(b)(6) of the Interstate Commerce Act, when transported in mixed loads with canned goods, from Eugene and Salem, OR, and points in CA, to the ports of entry on the international boundary between the United States and Canada located in ND and MN, for furtherance to points in MB and SK, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: (1) Western Commodities, Ltd., Box 3042, Vancouver, BC, Canada. (2) Stafford Foods, Ltd., 2100 Notre Dame Street, Winnipeg, MB, Canada. Send protests to: Ronald R. Mau, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 268 Federal Building, and U.S. Post Office, 657 2d Avenue North, Fargo, ND 58102.

PASSENGER CARRIER

MC 145286 (Sub-1TA), filed August 3, 1978. Applicant: BANNER ELK BUS CO., Route 1, Licklog Road, Newland, NC 29657. Representative: Dallas Horney, Route 1, Licklog Road, Newland, NC 29657. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers*, between Hampton, TN, Roan Mountain, TN, and Banner Elk, NC, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Banner Elk Glove Mfg., Co., P.O. Box 84, Roan Mountain, TN 37687. Send protests to: Terrell Price District Supervisor, 800 Briar Creek Road, Room CC516, Mart Office Building, Charlotte, NC 28205.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-31589 Filed 11-8-78; 8:45 am]

[7035-01-M]

[Notice No. 201]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

Important Notice

OCTOBER 25, 1978.

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service comtemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

MC 2110 (Sub-8TA), filed September 11, 1978. Applicant: BOWLUS TRUCKING CO., INC., 200 County Road 143, Fremont, OH 43420. Representative: Richard H. Brandon of Sanborn, Brandon & Duvall, Attorney at Law, P.O. Box 97, 220 West Bridge Street, Dublin, OH 43017. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Automotive brakes, brake parts and assemblies* therefor, and (2) *parts and supplies* used in the manufacture, sale and distribution of such brakes, parts, and assemblies (except commodities in bulk) between the facilities of Kelsey-Hayes Co., auto/truck group, and the facilities of the suppliers, and customers of said shipper at Albion, Jackson, Romulus, and St. Joseph, MI, on the one hand, and, on the other, Dayton, Columbus, Fremont, Ironton, Kingsway, Mt. Vernon, and Tiffin, OH, under a continuing contract or contracts with Kelsey-Hayes Co., Auto/Truck Group. For 180 days. Supporting shipper: Kelsey-Hayes Co., Auto/Truck Group, Romulus, MI 48174. Send protests to: Keith D. Warner, District Supervisor, Bureau of Operations-ICC, 313 Federal Office Building, 234 Summit Street, Toledo, OH 43604.

MC 8457 (Sub-7TA), filed September 11, 1978. Applicant: MILWAUKIE TRANSFER & FUEL CO., 15462 Railroad Avenue, Clackamas, OR 97015. Representative: Lawrence V. Smart, 419 NW., 23d Avenue, Portland, OR 97010. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pre-stressed concrete and items* between Tacoma, WA and Portland, OR, for 180 days. Supporting shipper: Grany's Crane & Rigging, Inc., 3445 Northwest Front Avenue, Portland, OR. Send protests to: District Supervisor A. E. Odoms, Bureau of Operations, Interstate Commerce Commission, 114 Pioneer Courthouse, 555 Southwest Yamhill Street, Portland, OR 97204.

MC 10311 (Sub-49TA), filed September 13, 1978. Applicant: CENTRAL TRANSPORT, INC., 34200 Mound Road, Sterling Heights, MI 48077. Representative: Elmer J. Maue, 34200 Mound Road, Sterling Heights, MI 48077. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting:

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Automobile parts; plastic, glass, plastic and/or glass combined with metal from Ashtabula, OH to Buffalo, NY. Restriction: Restricted to the transportation of shipments moving across the United States-Cananda Boundary Line at Buffalo, NY, and destined to plantsite of American Motors (Canada) Ltd. at Brampton, ON, Canada, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): American Motors (Canada) Ltd., Kennedy Road, Brampton, ON, Canada, W. C. Long, Traffic Manager. Send protests to: T. S. Quinn, District Supervisor, Interstate Commerce Commission, 604 Federal Building and U.S. Courthouse, 231 West Lafayette Boulevard, Detroit, MI 48226.

MC 27817 (Sub-146TA), filed September 11, 1978. Applicant: H. C. GABLER, INC., R.D. 3, P.O. Box 220, Chambersburg, PA 17201. Representative: Christian V. Graf, 407 North Front Street, Harrisburg, PA 17101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned and preserved foodstuffs* from the facilities of Heinz U.S.A. Division of H. J. Heinz Co. at Pittsburgh, PA to points in NC and VA, restricted to traffic originating at the named facilities and destined to the named States, for 180 days. Supporting shipper: Heinz U.S.A. Division of H. J. Heinz Co., P.O. Box 57, Pittsburgh, PA 15230. Send protests to: Charles F. Myers, District Supervisor, Interstate Commerce Commission, 278 Federal Building, 228 Walnut Street, P.O. Box 869, Harrisburg, PA 17108.

MC 29886 (Sub-355TA), filed September 13, 1978. Applicant: DALLAS & MAVIS FORWARDING CO., INC., 4314 39th Avenue, Kenosha, WI 53142. Representative: Albert P. Barber, 4314 39th Avenue, Kenosha, WI 53142. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tile and brick* from Canton, OH to IL, IN, IA, CO, KS, NE, MN, MO MD, MI, NJ, NY, VA, DE, CT, MA, RI, NH, VT, ME, WI, KY, WV and PA, for 180 days. Supporting shipper: Stark Ceramics, Inc., P.O. Box 8880, Canton, OH 44711. Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 35706 (Sub-15TA), filed August 30, 1978. Applicant: ATSL, INC., 10 Oregon Avenue, Building A, Philadelphia, PA 19148. Representative: Steven M. Tannenbaum, 135 N. 4th Street, Philadelphia, PA 19106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Ladies apparel wear and store supplies*, except in bulk, from the facilities of Petrie Stores Corp., at Secaucus, NJ, to the facilities of or utilized by Petrie Stores Corp. at or near Cleveland, OH, Detroit, MI, Chicago, IL and Dallas, TX and their commercial zones, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Petrie Stores Corp., 70 Enterprise Avenue, Secaucus, NJ 07094. Send protests to: T. M. Esposito, Transportation Assistant, 600 Arch Street, Room 3238, Philadephia, PA 19106.

MC 44605 (Sub-49TA), filed September 13, 1978. Applicant: MILNE TRUCK LINES, INC., 2500 West California Avenue, Salt Lake City, UT 84104. Representative: Henry A. Dahn, 2500 West California Avenue, Salt Lake City, UT 84104. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, soda ash, and those requiring special equipment). Serving Alchem, WY, as an off-route point in connection with applicant's otherwise authorized regular route operations. Applicant intends to tack the authority here applied for to other authority held by it in MC 44605 Sub-34. Applicant intends to interline with other carriers at Salt Lake City, UT; Las Vegas, NV; Phoenix, AZ; Los Angeles and Oakland, CA; and Rock Springs, WY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Church & Dwight Co., Inc., P.O. Box 369, Piscataway, NJ 08854 (John A. Coneys, Manager of Traffic Projects). Send protests to: District Supervisor Lyle D. Helfer, Interstate Commerce Commission, 5301 Federal Building, Salt Lake City, UT 84138.

MC 51146 (Sub-636TA), filed September 11, 1978. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2293, Green Bay, WI 54306. Representative: John R. Patterson, 2480 E. Commerical Boulevard, Fort Lauderdale, FL 33308. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Materials and supplies* utilized in the manufacture of cheese, cheese products, sausage and bakery products from the facilities of Armbee Corporation Importers at San Francisco, CA to Swiss Colony, Inc. at Madison, WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days operating authority. Supporting shipper: Swiss Colony, Inc., 1112 70th Avenue, Monroe, WI 53566 (Werner Weissensluh). Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 E. Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 51146 (Sub-641TA), filed September 13, 1978. Applicant: Schneider Transport, Inc., P.O. Box 2298, Green Bay, WI 54306. Representative: John R. Patterson, 2480 E. Commercial Boulevard, Fort Lauderdale, FL 33308. Authority sought to operate as a *common carrier*, by motor vehicle over irregular routes, transporting: *Polyethylene articles* from Jackson, TN to points in AL, CT, DE, IL, IN, IA, KY, ME, MD, MA, MI, MN, MO, NH, NJ, NY, NC, OH, PA, RI, VT, VA, WV, WI AND DC, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days operating authority. Supporting shipper: International Paper Co., 220 E. 42nd St., New York, NY 10017 (John T. Passantino). Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 E. Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 95540 (Sub-1039TA), filed September 11, 1978. Applicant: WATKINS MOTOR LINES, INC., 1144 West Griffin Road, P.O. Box 1636, Lakeland, FL 33802. Representative: Benjy W. Fincher, 1144 West Griffin Road, P.O. Box 1636, Lakeland, FL 33802. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: Such merchandise as is dealt in by retail sewing centers from Trumann, AR to Shrewsbury, MA, Richmond, VA, Los Angeles and San Francisco, CA, North Bergen, NJ Tampa, FL, Charlotte, NC and Philadelphia, PA, for 180 days. There is no environmental impact involved in this application. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: The Singer Co., 313 Underhill Boulevard, Syosset, NY 11791. Send protests to: Donna M. Jones Transportation Assistant, Interstate Commerce Commission, Bop Monterey Building, Suite 101, 8410 NW 53rd Terrace, Miami, FL 33166.

MC 105375 (Sub-77TA), filed September 13, 1978. Applicant: DAHLEN TRANSPORT, INC., 1680 Fourth Avenue, Newport, MN 55055. Representative: Joseph A. Eschenbacher, Jr., 1680 Fourth Avenue, Newport, MN 55055. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer and fertilizer materials*, in bulk, from the facilities of Land O' Lakes Agricultural Services Division located at or near Mason City, IA to points in MN, WI, ND, SD and NE, for 180 days. Supporting shipper: Land O' Lakes Agricultural Services Division, 2827 8th Ave. South, Fort Dodge, IA 50501. Send protests to: Delores A. Poe Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 105566 (Sub-182TA), filed September 11, 1978. Applicant: SAM TANKSLEY TRUCKING, INC., P.O. Box 1120, Cape Girardeau, MO 63701. Representative: Thomas F. Kilroy, Suite 406 Executive Building, 6901 Old Keene Mill Road, Springfield, VA 22150. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper, resin, impregnated, not laminated*, in vehicles equipped with mechanical refrigeration, from Sunset Whitney Ranch, CA, to Cincinnati, OH, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Formica Corp., 101 55 Reading Rd., Cincinnati, OH 45241. Send protests to: District Supervisor P. E. Binder, Interstate Commerce Commission, Bureau of Operations, Room 1465, 210 N. 12th Street, St. Louis, MO 63101.

MC 105566 (Sub-183TA), filed September 13, 1978. Applicant: SAM TANKSLEY TRUCKING, INC., P.O. Box 1120, Cape Girardeau, MO 63701. Representative: Thomas F. Kilroy, Suite 406, 6901 Old Keene Mill Road, Springfield, VA 22150. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Clothing*, from Maryville, Knoxville and Memphis, TN and Baldwyn, MS to Henderson, NV, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Levi Strauss & Co., 7950 U.S. Hwy 25, Florence, KY 41042. Send protests to: Acting District Supervisor P. E. Binder, Interstate Commerce Commission, Bureau of Operations, Room 1465, 210 N. 12th Street, St. Louis, MO 63101.

MC 109141 (Sub-25TA), filed September 13, 1978. Applicant: CARL J. AUSTAD & SON, INC., P.O. Box 389, Hettinger, ND 58639. Representative: T. L. Secrest, Box 430, Hettinger, ND 58639. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes transporting: *Liquified petroleum gas* from the facilities of Warren Petroleum Co. at Little Knife Field near Killdeer, ND, to points in MT and SD, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Amoco Oil Co., 200 East Randolph Dr., Chicago, IL 60601. Send protests to: Ronald R. Mau, District Supervisor, Bureau of Operations, Interstate Commerce Commission Room 268 Federal Building and U.S. Post Office, 657 2nd Avenue North, Fargo ND 58102.

MC 111310 (Sub-35TA), filed September 14, 1978. Applicant: BEER TRANSIT, INC., P.O. Box 352, Black River Falls, WI 54615. Representative: Wayne W. Wilson, 150 East Gilman Street, Madison, WI 53703. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Malt beverages and related advertising equipment, premiums, materials and supplies* when shipped therewith, from New Ulm, MN, to Mason City, IA; Kansas City, Mo. St. Louis, MO; Milwaukee, WI; Chicago, IL; and Waukegan, IL; (2) *used empty malt beverage containers* from the above-named points to New Ulm, MN. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Authority sought for 180 days. Supporting shipper: August Schell Brewing Co., Schells Park, New Ulm, MN 56073. Send protests to: (District Supervisor), Mr. Ronald A. Morken, Interstate Commerce Commission, 212 East Washington Avenue, Room 317.

MC 114334 (Sub-37TA), filed September 11, 1978. Applicant: BUILDERS TRANSPORTATION CO., 3710 Tulane Road, Memphis, TN 38116. Representative: Mr. Dale Woodall, 900 Memphis Bank Building, Memphis, TN 38103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bridge girders* from the plantsite of Pidgeon Thomas Iron works, Memphis, TN to a bridge construction site located at Cochrane, AL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Pidgeon Thomas Iron Co. 107 E. H. Crump Boulevard, P.O. Box 20, Memphis, TN 38101. Send protests to: Mr. Floyd A. Johnston, District Supervisor, Interstate Commerce Commission, 100 North Main Building, Suite 2006, 100 North Main Street, Memphis, TN 38103.

MC 114457 (Sub-432TA), filed September 13, 1978. Applicant: DART TRANSIT CO., 2102 University Avenue, St. Paul, MN 55114. Representative: James H. Wills, 2102 University Avenue, St. Paul, MN 55114. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Clock movements, paints, stains and varnishes, printed matter, and fibreboard backs* from Chicago, IL to Traverse City, MI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Burwood Products Co., 807 Airport Access Road, Traverse City, MI 49684. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building and U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 115311 (Sub-305TA), filed September 14, 1978. Applicant: J & M TRANSPORTATION CO., INC., P.O. Box 488, Milledgeville, GA 31061. Representative: Mark C. Ellison, P.O. Box 872, Atlanta, GA 30301. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Limestone*, from Perry, FL to Destrehan, LA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Farmers Dolomite Lime Co., P.O. Box 1018 Moultrie, GA 31768. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 West Peachtree Street, NW., Room 300, Atlanta, Ga 30309.

MC 115904 (Sub-128TA), filed September 13, 1978. Applicant: GROVER TRUCKING CO., 1710 West Broadway, Idaho Falls, ID 83401. Representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic, plastic articles, plastic pipe, tubing, fittings, connections, and materials, supplies and accessories*, used in the manufacture, sale, distribution, and installation thereof, from Bakersfield, Santa Anna, and Sun Valley, CA, to points in AZ, CO, ID, MT, NV, NM, OR, UT, WA and WY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: R & G Sloane Manufacturing Co., Inc., 7606 North Clybourn Avenue, Sun Valley, CA 91352. Send protests to: Barney L. Hardin, District Supervisor, Interstate Commerce Commission, 1471 Shoreline Drive, Suite 110, Boise, ID 83706.

MC 123156 (Sub-6TA), filed September 13, 1978. Applicant: RAND'S TRANSPORT, INC., 11 North Hammond's Ferry Road, Linthicum, MD 21090. Representative: Walter T. Evans, Esq., 7401 Wisconsin Avenue, Washington, D.C. 20014. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Wood chips*, in bulk, from points in DE, MD, NJ, PA, and VA to points in the commercial zones of Luke, MD, and Spring Grove, PA, under a continuing contract or

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contracts with Phelps Brothers Land Clearing, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Charles F. Phelps, Jr., Operations Manager, Phelps Brothers Land Clearing, Inc., P.O. Box 66, Odenton, MD 21113. Send protests to: William L. Hughes, District Supervisor, Interstate Commerce Commission, 1025 Federal Building, Baltimore, MD 21201.

MC 124078 (Sub-862TA), filed September 14, 1978. Applicant: SCHWERMAN TRUCKING CO., 611 South 28th Street, Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, WI 53201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sand*, from Newport and Millville, NJ to Plainfield, CT for 180 days. Supporting shipper: American Standard, Inc., P.O. Box 2003, New Brunswick, NJ 08903, J. P. Nelligan. Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority.

MC 124078 (Sub-869TA), filed September 13, 1978. Applicant: SCHWERMAN TRUCKING CO., 611 South 28th Street, Milwaukee, WI 53215. Representative: Richard H. Prevette, 611 South 28th Street, Milwaukee, WI 53215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Magnetite*, from Monongah, WV to points in MD for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Reiss Viking Corp., P.O. Box 407, Fairmont, WV 26554, Robert Kisner. Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 124711 (Sub-65TA), filed September 13, 1978. Applicant: BECKER CORP., P.O. Box 1050, El Dorado, KS 67042. Representative: Norman A. Cooper, P.O. Box 1050, El Dorado, KS 67042. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid fertilizer solutions and ingredients* thereof, in bulk, from facilities of Poole Chemical Company near Holcomb, KS to points in CO, NE, NM, OK & TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Poole Chemical Co., P.O. Box 169, Holcomb, KS 67851. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, 101 Litwin Building, Wichita, KS 67202.

MC 126539 (Sub-41TA), filed September 14, 1978. Applicant: KATUIN BROS. INC., P.O. Box 311, Fort Madison, IA 52627. Representative: Carl E. Munson, 469 Fischer Building, Dubuque, IA 52001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer and fertilizer materials*, in bulk, from the facilities, of Land O' Lakes Agricultural Services Division, at or near Mason City, IA to points in MN, NE, ND, SD, and WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Land O' Lakes Agricultural Services Division 2827 8th Avenue South, Fort Dodge, IA 50501. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 129480 (Sub-34TA), filed September 13, 1978. Applicant: TRI-LINE EXPRESSWAYS, LTD., 550-71 Avenue SE., Station A, P.O. Box 5245, Calgary, AB, Canada T2H OS6. Representative: Richard S. Mandelson, Attorney at Law, 1600 Lincoln Center, 1600 Lincoln Street, Denver, CO 80264. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cement*, in bags, from the ports of entry on the International Boundary line between the U.S. and Canada located in ID, MT, WA, ND, and MN to points in AZ, CA, CO, ID, KS, MN, MT, NE, NM, ND, OK, SD, TX, UT, WY, and IA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Norman G. Patterson, Traffic Manager., Cascade Imperial Mills, Ltd., Ste 401-4046 Canda Way, Burnaby, BC, Canada V5G 4H7. Send protests to: District Supervisor, Paul J. Labane, Interstate Commerce Commission 2602 First Avenue N., Billings, MT 59101.

MC 129563 (Sub-3TA), filed September 13, 1978. Applicant: ONONDGA BEVERAGE TRANSPORT, INC., 345 Spencer Street, Syracuse, NY 13204. Representative: Freeda Harvey, 345 Spencer Street, Syracuse, NY 13204. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, from Columbus, OH to Elmira Heights, NY, under a continuing contract or contracts with Seneca Beverage Corp., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Seneca Beverage Corp., 3496 Oakwood Avenue Elmira Heights, NY 14903. Send protests to: Interstate Commerce Commission, U.S. Courthouse and Federal Building, 100 South Clinton Street, Room 1259, Syracuse, NY 13260.

MC 133119 (Sub-138TA), filed September 13, 1978. Applicant: HEYL TRUCK LINES, INC., 200 Norka Drive, P.O. Box 206, Akron, IA 51001. Representative: A. J. Swanson, Peterson, Bowman, Larsen & Swanson, 521 South 14th Street, P.O. Box 81849, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from the facilities of Fox Deluxe Pizza Co., at or near Joplin, MO, and the facilities of The Pillsbury Co., at or near Joplin and Carthage, MO, to points in the States of SD, NE, MN, IA, UT, CO, KS, OK, TX, AR, LA, TN, KY, IL, IN, and MI, for 180 days. (Applicant has also filed an underlying ETA seeking up to 90 days operating authority.) Supporting shipper: Totino's Frozen Foods Division, The Pillsbury Co., 7350 Commerce Lane, Fridley, MN 55432. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, 110 North 14th Street, Suite 620, Omaha, NE 68102.

MC 134387 (Sub-55TA), filed September 13, 1978. Applicant: BLACKBURN TRUCK LINES, INC., 4998 Branyon Avenue, South Gate, Ca 90280. Representative: Patricia M. Schnegg, Knapp, Stevens, Grossman & Marsh, 1800 United California Bank Building, 707 Wilshire Boulevard, Los Angeles, CA 90017. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Containers and container ends* from Phoenix, AR to Salt Lake City, UT, for 180 days. Supporting shipper: National Can Corp., 8101 West Higgins Road, Chicago, IL 60631. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321 Federal Building, 200 North Los Angeles Street, Los Angeles, CA 90012.

MC 136228 (Sub-34TA), filed September 13, 1978. Applicant: LUISI TRUCK LINES, INC., P.O. Box H, Milton-Freewater, OR 97862. Representative: Philip G. Skofstad, P.O. Box 594, Gresham, OR 97030. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen fruits and vegetables* between Milton-Freewater, OR, and Walla Walla, WA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: M F Frozen Foods Inc., 235 East Broadway, Milton-Freewater, OR

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97862. Send protests to: R. V. Dubay, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 114 Pioneer Courthouse, Portland, OR 97204.

MC 139577 (Sub-28TA), filed: September 11, 1978. Applicant: ADAMS TRANSIT, INC., P.O. Box 338, Friesland, WI 53935. Representative: Wayne W. Wilson, 150 East Gilman Street, Madison, WI 53703. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pet food* (except in bulk, in tank vehicles) from Ft. Dodge, IA to Rochelle, IL. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Authority sought for 180 days. Supporting shipper: Carnation Co., 5045 Wilshire Boulevard, Los Angeles, CA 90036. Send protests to: District Supervisor, Mr. Ronald A. Morken, 212 East Washington Avenue, Room 317, Madison, WI 53703.

MC 140273 (Sub-10TA), filed September 13, 1978. Applicant: BUESING BROS., TRUCKING, INC., North 520 Tamarack Avenue, Long Lake, MN 55356. Representative: Robert S. Lee, 1000 First National Bank Building, Minneapolis, MN 55402. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer and fertilizer materials*, in bulk, from the facilities of Land O' Lakes Agricultural Services Division at or near Mason City, IA to points in the states of MN, WI, ND, SD and NE., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Lake O' Lakes Agricultural Services Division, 2827 8th Avenue South, Fort Dodge, IA 50501. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 140612 (Sub-56TA), filed September 11, 1978. Applicant: ROBERT F. KAZIMOUR, P.O. Box 2207, Cedar Rapids, IA 52406. Representative: J. L. Kazimour, P.O. Box 2207, Cedar Rapids, 52406. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Non alcoholic beverages, empty bottles and containers and supplies* used in the distribution and production of the above, between Moline, IL, on the one hand and on the other, points in IA, IL, WI, MN, and MO, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Midwest Pop Quad Cities, Inc., 5215 22nd Avenue, Moline, IL 61265. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 140709 (Sub-7TA), filed September 13, 1978. Applicant: FANKHAUSER BROTHERS, INC., 139 Hillside, El Dorado, KS 67042. Representative: Clyde N. Christey, Kansas Credit Union Building, 1010 Tyler, Suite 110L, Topeka, KS 66612. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia*, in bulk, from the facilities of the Mapco Pipeline Terminal near Mocane, OK, to points in KS and TX. For 180 days. Supporting shipper: Olin Corp., P.O. Box 991, Little Rock, AR 72203. C&S Trading & Brokerage, 78A Parsons Plaza, Parsons, KS 67357. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, 101 Litwin Building; Wichita, KS 67202.

MC 141197 (Sub-30TA), filed September 13, 1978. Applicant: FLEMING-BABCOCK, INC., 4106 Mattox Road, Riverside, MO 64151. Representative: Tom B. Kretsinger, 20 East Franklin, Liberty, MO 64068. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry fertilizer and fertilizer materials* in bulk in dump truck, from Atlas, MO to AR, IA, IL, KS, OK, NE and TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: W. R. Grace & Co., 100 North Main Building, Memphis, TN 38103. Send protests to: Vernon V. Coble, District Supervisor, Interstate Commerce Commission, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

MC 142508 (Sub-29TA), filed September 13, 1978. Applicant: NATIONAL TRANSPORTATION, INC., P.O. Box 37465, 10810 South 144th Street, Omaha, NE 68137. Representative: Lanny N. Fauss, P.O. Box 37096, Omaha, NE 68137. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Plastic film*, and (2) *cured preserved meats*, in mechanically refrigerated trailers, from the facilities of Land O' Frost, Inc. at Lansing, IL to Searcy, AR and North Little Rock, AR, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Daniel Perry. Traffic Manager, Land O' Frost, Inc., 16850 Chicago Avenue, Lansing, IL 60438. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 142659 (Sub-54TA), filed September 13, 1978. Applicant: BROOKS TRANSPORTATION, INC., 3830 Kelley Avenue, Cleveland, OH 44114. Representative: John P. McMahon, 100 East Broad Street, Columbus, OH 43215. Temporary Authority for 180 days sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Automotive fuel and lubricant additives and conditioners; fuel line anti-freeze, and automotive glass cleaner and anti-freeze* (except in bulk, in tank vehicles) (1) from Akron, OH to points in DE, IL, IN, KY, MI, NJ, MY, PA, VA, WV, WI, and DC; (2) from Worcester, MA, to points in DE, KY, MD, MI, NJ, NY, OH, PA, VA, WV, and DC; and (3) from Paulsboro and Pennsauken, NJ to points in MD, NY, OH, PA, VA, and WV, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Cristy Chemical Corp., 405 Grove Street, Worcester, MA 01605. Send protests to: Interstate Commerce Commission, 731 Federal Building, 1240 East Ninth Street, Cleveland, OH 44199.

MC 142757 (Sub-3TA), filed September 14, 1978. Applicant: WAYNE H. ROBERTSON, d.b.a. Robertson Tank Service, P.O. Box 100, Elkhart, KS 67950. Representative: Clyde N. Christey, Kansas Credit Union Building, 1010 Tyler, Suite 110L, Topeka, KS 66612. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia*, in bulk, from the facilities of the Mapco Pipeline Terminal near Mocane, OK to points in KS and TX, for 180 days. Supporting shipper: C&S Trading and Brokerage, d.b.a. CSTB, Inc., 78A Parsons Plaza, Parsons, KS 67357. Olin Corp., P.O. Box 991, Little Rock, AR 72203. Send protest to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, Suite 131, Litwin Building, Wichita, KS 67202.

MC 143236 (Sub-19TA), filed September 13, 1978. Applicant; WHITE TIGER TRANSPORTATION, INC., 40 Hackensack Avenue, South Kearny, NJ 07032. Representative: Jay Schiffres, 1001 Connecticut Avenue NW., Washington, DC 20036. Authority sought to operate as a *common carrier*, over irregular routes transporting: *Cellulose insulation* between the facilities of Mono-Therm Northeast, Inc., located at or near East Brunswick, NJ on the one hand, and, on the other, to points in NY, PA, CT, RI, NH, VT, ME, MA, OH, DE, MD, NC, SC, GA, FL, LA, VA, WV, KY, TN, AL and DC, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Mono-Therm Northeast, Inc., 40 Em Carters Lane, East Brunswick, NJ 08816. Send pro-

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tests to: Robert E. Johnston, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 9 Clinton Street, Room 618 Newark, NJ 07102.

MC 143387 (Sub-2TA), filed September 11, 1978. Applicant: ASSOCIATED COURIERS, INC., 342 Fee Fee Road, Maryland Heights, MO 63043. Representative: Warren W. Wallen, Esq., Sullivan & Associates, Ltd., 10 South LaSalle Street, Chicago, IL 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Radioactive pharmaceuticals, radioactive isotopes and medical testing kits*, between Maryland Heights, MO, on the one hand, and on the other points in CO, MT and WY, under a continuing contract or contracts with Mallinckrodt Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Mallinckrodt Inc., Box 10172 Lambert Field, St. Louis, MO 63045. Send protests to: Acting District Supervisor P. E. Binder, Interstate Commerce Commission, Bureau of Operations, Room, 1465, 210 N. 12th Street, St. Louis, MO 63101.

MC 144207 (Sub-3TA), filed September 13, 1978. Applicant: SOUTHWEST TRANSPORT, INC., Hwy 8 East, P.O. Box 806, Mena, AR 71953. Representative: Troy R. Douglas, 15 Court Street, Fort Smith, AR 72901. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, lumber products and building materials* as defined in Appendix VI of the Report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 (1) between points in AR, OK and TX (2) between points in AR, OK and TX on the one hand and, on the other, points in the United States, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Horn Lumber Co., Inc., Box 175, Norman, AR 71960. Lumber Mill Properties, d.b.a. Killian Lumber Co., P.O. Box 98, Norman, AR 71960. Send protests to: District Supervisor William H. Land, Jr., 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 144207 (Sub-4TA), filed September 13, 1978. Applicant: SOUTHWEST TRANSPORT, INC., Hwy 8 East, P.O. Box 806, Mena, AR 71953. Representative: Troy R. Douglas, 15 Court Street, Fort Smith, AR 72901. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wooden pallets*, from Hatfield, AR to points in the United States, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Smith Pallet Co., Inc., P.O. Box 207, Hatfield, AR 71945. Send protests to: District Supervisor William H. Land, Jr., 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 144330 (Sub-39TA), filed September 11, 1978. Applicant: UTAH CARRIERS, INC., P.O. Box 1218 Freeport Center, Clearfield, UT 84016. Representative: Rick J. Hall, P.O. Box 2465, Salt Lake City, UT 84110. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wooden pallets*, from Fayetteville, AR, to points in KS and TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Ozark Forest Products, P.O. Box 1054, Fayetteville, AR 72701, (Mark Thiessen, Sales, Service & Shipping). Send protests to: District Supervisor, L. D. Helfer, Interstate Commerce Commission, 5301 Federal Building, Salt Lake City, UT 84138.

MC 144513 (Sub-4TA), filed September 11, 1978. Applicant: CONDOR CONTRACT CARRIERS, INC., 656 Wooster Street, Lodi, OH 44254. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Shop and construction equipment and supplies, coatings, hand tools, metal products, and rubber products and materials*, between the facilities of Surplus Materials Co. at or near Akron, OH, on the one hand, and, on the other, points in the United State (except AK, HI and OH). Restriction: Restricted against the transportation of commodities in bulk, and commodities which by reason of size or weight require the use of special equipment, for 180 days. Supporting shipper: Surplus Materials Co., Division of C & H Wholesale Jobbers, Inc., 1466 South Main Street, Akron, OH 44301. Send protests to: Mr. James Johnson, District Supervisor, Interstate Commerce Commission, 181 Federal Building, 1240 East Ninth Street, Cleveland, OH 44199.

MC 144709 (Sub-1TA), filed September 13, 1978. Applicant: MINERAL CARRIERS, INC., P.O. Box 110, Bound Brook, NJ 08805. Representative: Paul J. Keeler, P.O. Box 253, South Plainfield, NJ 07080. 180-day Temporary Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting (1) *Activated Carbon*, in dump trailers, from Neville Island, PA and Catlettsburg, KY to points in CT, RI, NY, NJ, PA, DE, MD, VA, WV, OH, MI, IN, IL, KY, TN, NC and DC, and (2) *Spent carbon*, in dump trailers, from points in CT, RI, NY, NJ, PA, DE, MD, VA, WV, OH, MI, IN, IL, KY, TN, NC and DC under a continuing contract or contracts with Calgon Corp., P.O. Box 1346, Pittsburgh, PA 15230, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Calgon Corp., P.O. Box 1346, Pittsburgh, PA 15230. Send protests to: Robert E. Johnston, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 9 Clinton Street, Room 618, Newark, NJ 07102.

MC 145150 (Sub-2TA), filed September 13, 1978. Applicant: HAYNES TRANSPORT CO., INC., P.O. Box 9, R.R. No. 2, Salina, KS 67401. Representative: Clyde N. Christey, Kansas Credit Union Building, Suite 110L, 1010 Tyler, Topeka, KS 66612. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia*, in bulk, from the facilities of the Mapco Pipeline Terminal near Mocane, OK to points in KS and TX, for 180 days. Applicant states it does not intend to tack or interline. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: C&S Trading and Brokerage, d.b.a. CSTB, Inc., 78A Parsons Plaza, Parsons, KS 67357. Send protest to: Thomas P. O'Hara, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 256 Federal Building and U.S. Courthouse, 444 Southeast Quincy, Topeka, KS 66683.

MC 145272 (Sub-1TA), filed September 13, 1978. Applicant: LAWRENCE REIDLINGER, an individual, Box 109, Conception Junction, MO 64434. Representative: Tom B. Kretsinger, 20 East Franklin, Liberty, MO 64068. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Sand*, between Stanberry and Burlington Junction, MO, on the one hand and on the other, Page Taylor, Ringgold and Decatur Counties, IA; and (2) *Crushed rock*, from Page and Taylor Counties, IA, to Nodaway and Atchison Counties, MO, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: B.B.'s Sand Co., Inc., Albany, MO 64402. Gendler Stone Products Co., Inc., 1075 Polk Boulevard, Des Moines, IA 50311.

MC 145306 (Sub-1TA), filed September 11, 1978. Applicant: WEST TRUCKING LINE, INC., West Chester, IA 52359. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Livestock confinement systems* and (2) *material, equipment and supplies* used in the manufacture, distribution and construction of livestock confinement systems (except commodities in bulk), from the facilities of Confinement Specialists, Inc., at or near Kalona, IA, to points in KS, MO, NE, SD, ND, MN, WI, IL, IN and AR, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Confinement Specialists, Inc., P.O. Box 458, Kalona, IA 52247. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

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MC 145365TA, filed September 13, 1978. Applicant: NICK PAVLOVICH AND JUDITH KAY ARNDS, a partnership, P.O. Box 373, Mammoth Lakes, CA 93546. Representative: Robert G. Harrison, 4299 James Drive, Carson City, NV 89701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat and meat products* in Refrigerated Equipment, except commodities in bulk, in tank vehicles from Washoe County, NV to Inyo and Mono Counties, CA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Sierra Meat & Provision Co., 1700 East Second Street (P.O. Box 2456), Reno, NV 89505. Send protests to: District Supervisor, W. J. Huetig, Interstate Commerce Commission, 203 Federal Building, 705 North Plaza Street, Carson City, NV 89701.

MC 145370TA, filed September 13, 1978. Applicant: PHARR BROTHERS, INC., P.O. Box 69, Blanchard Hwy, Blanchard, LA 71009. Representative: Mr. John Schwab, P.O. Box 3036 (617 North Boulevard), Baton Rouge, LA 70821. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Construction machinery and equipment and mining machinery and equipment*, with all attachments and related accessories from, to, and between all points within the States of LA, AR, TX, MS, and OK, for 180 days. Supporting shipper: Mr. Jack Davis, 2204 North Grand, Enid, OK, Joe Moody Machinery Co., 11019 Denton Drive, Dallas, TX, Hyster Co., 1841 Barton Drive, P.O. Box 7465, Shreveport, LA, Cap-Con International, Inc., P.O. Box 7392, Shreveport, LA 71107. Send protest to: Connie A. Guillory, Interstate Commerce Commission, Bureau of Operations, T-9038, U.S. Postal Service Building, 701 Loyola Avenue, New Orleans, LA 70113.

MC 145392TA, filed September 13, 1978. Applicant: RAJOR, INC., 100 Beta Drive, P.O. Box 756, Franklin, TN 37064. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic pipe fittings, connectors, and valves*, from Sun Valley, CA and Cleveland, OH, to points in and east of MN, IA, MO, AR, and LA, and from Cleveland, OH to Bakersfield, Santa Ana, and Sun Valley, CA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days. Supporting shipper: R & G Sloane Manufacturing Co., Inc., 7606 North Clybourn, Sun Valley, CA 91352. Send protests to: Mr. Joe J. Tate, District Supervisor, Interstate Commerce Commission, Suite A422, Federal Building, U.S. Court House, 801 Broadway, Nashville, TN 37203.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-31590 Filed 11-8-78; 8:45 am]

[7035-01-M]

[Decisions Volume No. 43]

DECISION-NOTICE

OCTOBER 27, 1978

The following applications are governed by special rule 247 of the Commission's *Rules of Practice* (49 CFR § 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date notice of the application is published in the FEDERAL REGISTER. Failure to file a protest, within 30 days, will be considered as a waiver of opposition to the application. A protest under these rules should comply with rule 247(e)(3) of the Rules of Practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding, (as specifically noted below), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. A protestant should include a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describe in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed. Protests not in reasonable compliance with requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or upon a applicant if not representative is named. If the protest includes a request for oral hearing, such request shall meet the requirements of section 247(e)(4) of the special rules and shall include the certification required in that section.

Section 247(f) provides, in part, that an applicant which does not intend timely to prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administratively acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

We find:

With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the public convenience and necessity, that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the national transportation policy; and that each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of the Interstate Commerce Act and the Commission's regulations. This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 175.

It is ordered:

In the absence of legally sufficient protests, filed within 30 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain conditions which may be noted in the publication and certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, such duplication shall not be construed as conferring more than a single operating right.

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By the Commission, Review Board Number 1, Members Carleton, Joyce and Jones.

H. G. HOMME, JR.,
Acting Secretary.

MC 200 (Sub-313F), filed September 29, 1978. Applicant: RISS INTERNATIONAL CORP., a Delaware corporation, 903 Grand Avenue, Kansas City, KS 64106. Representative: Ivan E. Moody (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *rolled pressed felt*, Millbury, MA, to Jackson, MI. (Hearing site: Kansas City, MO, or Boston, MA.)

MC 200 (Sub-314F), filed October 2, 1978. Applicant: RISS INTERNATIONAL CORP., a Delaware corporation, 903 Grand Avenue, Kansas City, MO 64106. Representative: Ivan E. Moody (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *meats, meat products and meat byproducts, and articles distributed by meat-packing houses*, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities of Dubuque Packing Co., at Denison, IA, to points in CO, CT, IL, IN, KS, KY, ME, MD, MA, MI, MO, NH, NJ, NY, OH, OK, PA, RI, TX, VT, VA, WV, and DC, restricted to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. (Hearing site: Kansas City, MO.)

MC 720 (Sub-58F), filed September 6, 1978. Applicant: BIRD TRUCKING CO., INC., P.O. Box 227, Waupun, WI 53963. Representative: Wayne W. Wilson, 150 East Gilman Street, Madison, WI 53703. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *foodstuffs, and materials, equipment, and supplies* used in the manufacture or distribution of foodstuffs (except hides and commodities in bulk), between points in WI, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Madison or Milwaukee, WI.)

MC 23618 (Sub-38F), filed October 6, 1978. Applicant: McALISTER TRUCKING CO., a corporation, d.b.a. MATCO, P.O. Box 2377, Abilene, TX 79604. Representative: E. Larry Wells, Suite 1125, Exchange Park, P.O. Box 45538, Dallas, TX 75245. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Steel pipe, pipe fittings, flanges, and attachments and accessories for steel pipe*, and (2) *steel plate*, from Houston, TX, to points in AL, FL, GA, MS, NC, and SC. (Hearing site: Houston, TX, or Atlanta, GA.)

MC 29079 (Sub-96F), filed October 2, 1978. Applicant: BRADA MILLER FREIGHT SYSTEM, INC., 1210 South Union Street, Kokomo, IN 46901. Representative: Richard H. Streeter, 1729 H Street NW., Washington, DC 20006. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *sand and sand with additives*, (except commodities in bulk, in tank vehicles), from the facilities of Acme Resin Company, at or near Oregon, IL, to points in CT, IN (except Kokomo and points within 50 miles thereof), IA, KY (except Louisville), MA, MO, NH, NJ, RI, VA, WV (except points in Brooke, Hancock, Marshall, and Ohio Counties), WI, those in the lower peninsula of MI, those in NY on and east of U.S. Hwy 62, and those in PA on and east of U.S. Hwy 219. (Hearing site: Washington, DC.)

MC 35320 (Sub-159F), filed September 29, 1978. Applicant: T.I.M.E.-DC, INC., a Delaware corporation, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). To operate as a *common carrier*, by motor vehicle, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Black Fox Nuclear Plant, at or near Inola, OK, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Tulsa or Oklahoma City, OK.)

MC 35807 (Sub-86F), filed September 1, 1978. Applicant: WELLS FARGO ARMORED SERVICE CORP., a Delaware corporation, P.O. Box 4313, Atlanta, GA 30302. Representative: Steven J. Thatcher (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Coin and currency*, between Charlotte, NC and Culpeper, VA, under a continuing contract with the Federal Reserve Bank of Richmond, Charlotte, NC Branch. (Hearing site: Charlotte, NC, or Richmond, Va.)

MC 40915 (Sub-50F), filed September 15, 1978. Applicant: BOAT TRANSIT, INC., a Michigian corporation, P.O. Box 1403, Newport Beach, CA 92663. Representative: David R. Parker, 1600 Broadway, Suite 2310, Denver, CO 80202. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Self-propelled motor vehicles*, in truckaway service, and (2) *accessories and parts* for the commodities in (1) above, from the facilities of Chinook International, Inc., at Fontana, CA, to points in the United States (except AK and HI). (Hearing site: Los Angeles, CA.)

MC 47171 (Sub-115F), filed August 24, 1978. Applicant: COOPER MOTOR LINES, INC., P.O. Box 4259, Greenville, SC 29608. Representative: Harris G. Andrews. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Textiles and textile products*, from Athens, Cornelia, Gainesville, and Royston, GA, to points in CT, DE, MD, MA, NJ, NY, PA, RI, VA, and DC. (Hearing site: Washington, DC.)

MC 50307 (Sub-98F), filed September 5, 1978. Applicant: INTERSTATE DRESS CARRIERS, INC., 247 West 35th Street, New York, NY 10001. Representative: Arthur Liberstein, P.O. Box 1409, 167 Fairfilled, NJ 07006. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wearing apparel*, between New York, NY, and St. Clairsville, OH. (Hearing site: New York, NY.)

MC 52460 (Sub-222F), filed September 22, 1978. Applicant: ELLEX TRANSPORTATION, INC., 1420 West 35th Street, P.O. Box 9637, Tulsa, OK 74107. Representative: Wilburn L. Williamson, 280 National Foundation Life Building, Oklahoma City, OK 73112. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Paper and paper articles* (except commodities in bulk), from the facilities of International Paper Co., at or near Pittsburgh, KS, to points in the United States (except AK and HI); and (2) *materials, equipment, and supplies*, used in the manufacture or distribution of paper and paper articles (except commodities in bulk), in the reverse direction. (Hearing site: Kansas City, MO.)

MC 59150 (Sub-136F), filed August 28, 1978. Applicant: PLOOF TRUCK LINES, INC., 1414 Lindrose Street, Jacksonville, FL 32206. Representative: Martin Sack, Jr., 1754 Gulf Life Tower, Jacksonville, FL 32227. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber* from Madison, GA, to points in AL, NC, SC, TN, and VA. (Hearing site: Atanta, GA.)

MC 61396 (Sub-354F), filed August 14, 1978. Applicant: HERMAN BROS., INC., 2565 St. Marys Avenue, P.O. Box 189, Omaha, NE. Representative: John E. Smith, II (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cement*, from Des Moines, IA, to points in NE. (Hearing site: Omaha, NE.)

NOTE.—The person or persons who appear to be engaged in common control must either file an application under section 5(2)

of the Interstate Commerce Act, or submit an affidavit indicating why such approval is unnecessary.

MC 72069 (Sub-16F), filed October 3, 1978. Applicant: BLUE HEN LINES, INC., Box 565, Milford, DE 19963. Representative: Chester A. Zyblut, 366 Executive Building, 1030 Fifteenth Street NW., Washington, DC 20005. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned goods*, from points in Sussex County, DE, to points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, and WA. (Hearing site: Washington, DC.)

MC 77061 (Sub-14F), filed August 28, 1978. Applicant: SHERMAN BROS., INC., 29534 Airport Road, Eugene, OR 97402. Representative: Russell M. Allen, 1200 Jackson Tower, Portland, OR 97205. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used household goods*, between points in Douglas County, Or, restricted to the transportation of shipments having a prior or subsequent movement in containers beyond the points authorized, and further restricted to the performance of pickup and deliver service in connection with packing, crating, and containerization or unpacking, uncrating, and decontainerization of such shipments. (Hearing site: Portland or Eugene, OR.)

MC 78228 (Sub-92F), filed October 2, 1978. Applicant: J MILLER EXPRESS, INC., a Ohio corporation, 962 Greentree Road, Pittsburgh, PA 15220. Representative: Henry M. Wick, Jr., 2310 Grant Building, Pittsburgh, PA 15219. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Ferrous alloys*, from the facilities of R. C. Metals, Inc., at or near Etna, PA, to points in AL, CT, DE, IA, IL, IN, KY, MA, MD, ME, MI, MN, MO, NC, NH, NJ, NY, OH, PA, RI, SC, TN, VT, VA, WI, and WV. (Hearing site: Washington, DC, or Pittsburgh, PA.)

MC 78400 (Sub-65F), filed September 25, 1978. Applicant: BEAUFORT TRANSFER CO., a corporation, P.O. Box 151, Gerald, MO 63037. Representative: Ernest A. Brooks II, 1301 Ambassador Building, St. Louis, MO 63101. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Cellulose fiber insulation*, from Fulton, MO, to points in AR, KS, KY, IL, IN, IA, MN, MT, NE, OK, SD, TN, TX, and WI; and (2) *materials*, used in the manufacture of cellulose fiber insulation, in the reverse direction. (Hearing site: St. Louis or Jefferson City, MO.)

MC 93840 (Sub-40F), filed August 28, 1978. Applicant: GLESS BROS., INC., P.O. Box 216, Blue Grass, IA 52726. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer and fertilizer ingredients*, in bulk, from the facilities of Land O'Lakes, Agricultural Services Division, at or near Mason City, IA, to points in MN, WI, ND, SD, and NE. (Hearing site: Des Moines, IA or St. Paul, MN.)

MC 94201 (Sub-163F), filed August 22, 1978. Applicant: BOWMAN TRANSPORTATION, INC., P.O. Box 17744, Atlanta, GA 30316. Representative: Maurice F. Bishop, 601-09 Frank Nelson Building, Birmingham, AL 35203. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between the facilities of Goodyear Tire & Rubber Co., at or near Lawton, OK, on the one hand, and, on the other, Wilmington, DE, Louisville, KY, Baltimore, MD, New York, NY, Philadelphia, PA, Richmond and Norfolk, VA, Camden, Crossett, El Dorado, Jonesboro, Little Rock, Texarkana, and West Memphis, AR, Kansas City and Topeka, KS, Baton Rouge, Golden Meadow, Grand Isle, Lake Charles, Lockport, Monroe, New Orleans, Ruston, and Shreveport, LA, Columbus, Greenwood, Hattiesburg, Jackson, Laurel, Meridian, Moss Point, Pascagoula, Vicksburg, and Greenville, MS, Carthage, Kansas City, and Springfield, MO, Baytown, Beaumont, Dallas, Fort Worth, Garland, Gladewater, Greenville, Houston, Longview, Orange, Plano, Port Arthur, Texas City, and Texarkana, TX, and points in AL, CT, FL, GA, IL, IN, MA, NJ, NC, OH, RI, SC, TN, and DC. Condition: Issuance of this certificate is subject to prior or coincidental cancellation, at applicant's written request, of MC 94201 Sub 150. (Hearing site: Washington, DC.)

MC 95540 (Sub-1042F), filed October 2, 1978. Applicant: WATKINS MOTOR LINES, INC., 1144 West Griffin Road, P.O. Box 1636, Lakeland, FL 33802. Representative: Benjy W. Fincher (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from the facilities of Rich Products Corp., at or near Appleton, WI, to the facilities of Rich Products Corp., at or near Murfreesboro, TN, restricted to the transportation of traffic originating at the named origin facilities and destined to the named destination facilities. (Hearing site: New York, NY, or Washington, DC.)

MC 95540 (Sub-1043F), filed October 2, 1978. Applicant: WATKINS MOTOR LINES, INC., 1144 West Griffin Road, P.O. Box 1636, Lakeland, FL 33802. Representative: Benjy W. Fincher (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry cellulose acetate*, from Celco, VA, to Newark, NJ. (Hearing site: New York, NY, or Washington, DC.)

MC 96813 (Sub-3F), Filed August 28, 1978. Applicant: FISK TRUCKING & TRANSFER, INC., 716 San Fernando Road, Los Angeles, CA 90065. Representative: John T. Wirth, 2310 Colorado State Bank Building, 1600 Broadway, Denver, CO 80202. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Marble and tile*, from Los Angeles, CA, to points in AZ, CO, NE, NV, OR, UT, and WA. (Hearing site: Los Angeles, CA.)

MC 97275 (Sub-33F), filed September 1, 1978. Applicant: ESTES EXPRESS LINES, a corporation, 1405 Gordon Avenue, Richmond, VA 23224. Representative: Harry J. Jordan, Suite 502, Solar Building, 1000 16th Street NW., Washington, DC 20036. To operate as a *common carrier*, by motor vehicle, transporting *general commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between South of the Border, SC, and the SC-GA State line, over Interstate 95, (2) between Florence and North Augusta, SC, over Interstate 20, (3) between Charleston, SC, and junction Interstate 26 and Interstate 85, over Interstate 26, (4) between Charlotte, NC, and the SC-GA State line, over Interstate 85, (5) between Charlotte, NC, and Columbia, SC, over Interstate 77, (6) between Gastonia, NC, and the SC-GA State line: From Gastonia over U.S. Hwy 321 to junction U.S. Hwys 17 and Alternate U.S. Hwy 17, then over U.S. Hwys 17 and Alternate U.S. Hwy 17 to the SC-GA State line, and return over the same route, (7) between Pocotaligo, SC, and the NC-SC State line, over U.S. Hwy 17, (8) between Myrtle Beach, SC, and junction SC Hwy 5 and Interstate 85, near Blacksburg, SC: From Myrtle Beach over U.S. Hwy 501 to junction SC Hwy 576, then over SC Hwy 576 to junction U.S. Hwys 76 and 301, then over U.S. Hwys 76 and 301 to junction U.S. Hwy 52, then over U.S. Hwy 52 to junction SC Hwy 151, then over SC Hwy 151 to junction SC Hwy 903, then over SC Hwy 903 to junction U.S. Hwy 521, then over U.S. Hwy 521 to junction SC Hwy 5, then over SC Hwy 5 to junction Interstate 85, and return over the same route, (9) be-

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tween Dillon, SC, and junction SC Hwy 9 and U.S. Hwy 17, over SC Hwy 9, (10) between Mullins, SC, and junction SC Hwy 41 and U.S. Hwy 17, over SC Hwy 41, (11) between Georgetown, SC, and Pineville, NC, over U.S. Hwy 521, (12) between Conway and McCormick, SC, over U.S. Hwy 378, (13) between Columbia and Gardens Corner, SC, over U.S. Hwy 21, (14) between Greenville and North Augusta, SC, over U.S. Hwy 25, (15) between Calhoun Falls and Rock Hill, SC, over SC Hwy 72, (16) between Clearwater, SC, and junction U.S. Hwy 78 and Interstate 26: From Clearwater over U.S. Hwy 1 to junction U.S. Hwy 78, then over U.S. Hwy 78 to junction Interstate 26, and return over the same route, (17) between Gaffney and Westminster, SC: From Gaffney over SC Hwy 11 to junction SC Hwy 183, then over SC Hwy 183 to Westminster, and return over the same route, (18) between Gaffney, SC, and junction SC Hwy 121 and U.S. Hwy 25, at or near Trenton, SC: From Gaffney over SC Hwy 18 to junction U.S. Hwy 176, then over U.S. Hwy 176 to junction SC Hwy 121, then over SC Hwy 121 to junction U.S. Hwy 25, at or near Trenton, SC, and return over the same route, (19) between Charleston and Florence, SC, over U.S. Hwy 52, (20) between Columbia and Rock Hill, SC, over U.S. Hwy 21, (21) between Westminster, SC, and junction Interstate 385 and Interstate 85, at or near Greenville, SC: From Westminster, SC, over U.S. Hwy 123 to junction Interstate 385, then over Interstate 385 to junction Interstate 85, at or near Greenville, SC, and return over the same route, (22) between Anderson and Laurens, SC, over U.S. Hwy 76, (23) between Charlotte, NC, and Laurens, SC: From Charlotte over NC-SC Hwy 49 to junction U.S. Hwy 221, then over U.S. Hwy 221 to Laurens, and return over the same route, (24) between Greenville, SC, and junction U.S. Hwy 276 and Interstate 26, over U.S. Hwy 276, (25) between Allendale and McBee, SC: From Allendale over U.S. Hwy 301 to junction U.S. Hwy 601, then over U.S. Hwy 601 to junction U.S. Hwy 1, then over U.S. Hwy 1 to McBee, and return over the same route, (26) Liberty and McCormick, SC: From Liberty over U.S. Hwy 178 to junction SC Hwy 28, then over SC Hwy 28 to McCormick, and return over the same route, (27) between Westminster and Yemassee, SC: From Westminster over SC Hwy 24 to junction SC Hwy 81, then over SC Hwy 81 to junction SC Hwy 28, then over SC Hwy 28 to junction SC Hwy 125, then over SC Hwy 125 to junction U.S. Hwy 278, then over U.S. Hwy 278 to junction SC Hwy 68, then over SC Hwy 68 to Yemassee, and return over the same route, (28) between Conway, SC, and junction SC Hwy 90 and U.S. Hwy 17: From Conway over U.S. Hwy 501 to junction SC Hwy 90, then over SC Hwy 90 to junction U.S. Hwy 17, and return over the same route, (29) between Kershaw and Lake City, SC: From Kershaw over SC Hwy 341 to junction SC Hwy 403, then over SC Hwy 403 to Lake City, and return over the same route, (30) between Honea Path, SC, and junction U.S. Hwy 301 and Interstate 95, at or near Santee, SC: From Honea Path over U.S. Hwy 178 to junction U.S. Hwy 301, then over U.S. Hwy 301 to junction Interstate 95, at or near Santee, SC, and return over the same route, (31) between Pageland, SC, and junction U.S. Hwy 176 and Interstate 85, at or near Spartanburg, SC: From Pageland over SC Hwy 9 to junction U.S. Hwy 176, then over U.S. Hwy 176 to junction Interstate 85, and return over the same route, (32) between Georgetown and Hardeeville, SC: From Georgetown over Alternate U.S. Hwy 17 to junction U.S. Hwy 17, then over U.S. Hwy 17 to Hardeeville, and return over the same route, (33) between Aiken and Columbia, SC, over U.S. Hwy 1, serving in (1) through (33) above, all intermediate points and all points in SC as off-route points, and (34) between Little River, SC, and Wilmington, SC, over U.S. Hwy 17, serving no intermediate points, as an alternate route for operating convenience only.

NOTE.—Applicant states that it seeks to convert its irregular-route authority in MC 97275 and Subs, to regular-route authority.

Conditions: (1) The regular-route authority granted here shall not be severable, by sale or otherwise, from applicant's retained pertinent irregular-route authority; (2) Applicant must request, in writing, the imposition of restrictions on its underlying irregular-route authority precluding service between any two points authorized to be served here pursuant to regular-route authority. (Hearing site: Washington, DC, or Richmond, VA.)

MC 98399 (Sub-7F), filed September 11, 1978. Applicant: SHULL TRUCK LINE CO., INC., P.O. Box A, Savannah, TN 38372. Representative: Robert L. Baker, 618 United American Bank Building, Nashville, TN 37219. To operate as a *common carrier*, by motor vehicle, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Memphis and Waynesboro, TN, (1) over U.S. Hwy 64, serving all intermediate points in McNairy, Hardin, and Wayne Counties, and serving all other points in McNairy, Hardin, and Wayne Counties as off-route points, and (2) from Memphis over TN Hwy 57 to junction TN Hwy 128, then over TN Hwy 128 to junction U.S. Hwy 64, then over U.S. Hwy 64 to Waynesboro, and return over the same route, serving no intermediate points, as an alternate route for operating convenience only in connection with carrier's otherwise authorized regular-route operations, service at Memphis, TN, is restricted to those points in the Memphis commercial zone lying wholly within TN, and restricted against transportation of traffic originating at, destined to, or interlined at Nashville, TN, and points in its commercial zone. (Hearing site: Counce, TN.)

MC 102478 (Sub-7F), filed October 2, 1978. Applicant: BRIGHT BELT MOTOR LINES, INC., P.O. Box 237, Grifton, NC 28530. Representative: Ralph McDonald, P.O. Box 2246, Raleigh, NC 27602. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *roofing, roofing materials, and industrial asphalt* (except commodities in bulk), from the facilities of Trumbull Asphalt Co. and Owens-Corning Fiberglass Corp., at Morehead City, NC, to points in VA. (Hearing site: Raleigh, NC.)

MC 104896 (Sub-53F), filed August 16, 1978. Applicant: WOMELDORF, INC., East Penn Avenue, P.O. Box G, Knox, PA 16232. Representative: James W. Patterson, 1200 Western Savings Bank Building, Philadelphia, PA 19107. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *such commodities as are dealt in or used by grocery and food business houses* (except frozen foods and commodities in bulk), from the facilities of Dauphin Distribution Services, Inc., at Camp Hill, Hampden Township, and Silver Spring Township, PA, to points in PA and NY. (Hearing site: Philadelphia, PA, or Washington, DC.)

MC 105045 (Sub-86F), filed September 18, 1978. Applicant: R. L. JEFFRIES TRUCKING CO., INC., 1020 Pennsylvania Street, Evansville, IN 47701. Representative: Paul F. Sullivan, 711 Washington Building, Washington, DC 20005. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *iron and steel articles*, from the facilities of Natchez Steel, Inc., at Natchez, MS, Rosharon, TX, and New Orleans, LA, to points in MS, LA, TX, OK, AR, NM, FL, GA, AL, NC, SC, and MO. (Hearing site: New Orleans, LA.)

MC 106398 (Sub-843F), filed October 6, 1978. Applicant: NATIONAL TRAILER CONVOY, INC., 525 South Main, Tulsa, OK 74103. Representative: Irvin Tull (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *buildings*, complete, knocked-down, and in sections, from the facilities of Kirby Building Systems, at Spanish Fork, UT, to points in the United States (except AK and HI). (Hearing site: Houston, TX.)

NOTE.—In view of the findings in MC 106398 (Sub-741), of which official notice is taken, the certificate to be issued in this proceeding will be limited to a period expiring 3 years from its effective date unless, prior to its expiration (but not less than 6 months prior to its expiration) applicant files a petition for the extension of said certificate and demonstrates that it has been conducting operations in full compliance with the terms and conditions of its certificate and with the requirements of the Interstate Commerce Act and applicable Commission regulations.

MC 106389 (Sub-844F), filed October 6, 1978. Applicant: NATIONAL TRAILER CONVOY, INC., 525 South Main, Tulsa, OK 74103. Representative: Irvin Tull (Same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Buildings*, complete, knocked-down, and in sections, from the facilities of Kirby Building Systems, at Houston, TX, to points in the United States (except AK and HI). (Hearing site: Houston, TX).

NOTE: In view of the findings in MC 106398 (Sub-No. 741) of which official notice is taken, the certificate to be issued in this proceeding will be limited to a period expiring 3 years from its effective date unless, prior to its expiration (but not less than 6 months prior to its expiration) applicant files a petition for the extension of said certificate and demonstrates that it has been conducting operations in full compliance with the terms and conditions of its certificate and with the requirements of the Interstate Commerce Act and applicable Commission regulations.

MC 106603 (Sub-18F), filed August 25, 1978. Applicant: DIRECT TRANSIT LINES, INC., 200 Colrain Street SW., Grand Rapids, MI 49508. Representative: Martin J. Leavitt, 22375 Haggerty Road, P.O. Box 400, Northville, MI 48167. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Refractories*, from White Cloud, MI, to points in OH, PA, NY, WV, MD, DE, VA, and the port of entry on the International Boundary line between the United States and Canada at Sault Ste. Marie, MI. (Hearing site: Chicago, IL, or Washington, DC.)

MC 107496 (Sub-1156F), filed August 16, 1978. Applicant: RUAN TRANSPORT CORP., 666 Grand Avenue, Des Moines, IA 50309. Representative: E. Check, P.O. Box 855, Des Moines, IA 50304. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products*, in bulk, from Robinson, IL, to points in Lake and Porter Counties, IN. (Hearing site: Des Moines, IA, or Chicago, IL.)

MC 107678 (Sub-68F), filed October 2, 1978. Applicant: HILL & HILL TRUCK LINE, INC., P.O. Box 9698, Houston, TX 77015. Representative: David A. Sutherlund, 1150 Connecticut Avenue, NW., Suite 400, Washington, DC 20036. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, lumber mill products, forest products, and wood products*, from points in CA to points in AR, AZ, CA, CO, IA, ID, IL, IN, KS, LA, MI, MO, MT, NM, NV, OH, OK, OR, TX, UT, WA, WI, and WY. (Hearing site: San Francisco, CA, or Houston, TX.)

MC 108119 (Sub-97F), filed October 2, 1978. Applicant: E. L. MURPHY TRUCKING CO., a corporation, P.O. Box 43010, St. Paul, MN 55164. Representative: Andrew R. Clark, 1000 First National Bank Building, Minneapolis, MN 55402. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Commodities* which because of their size or weight require special handling or the use of special equipment, (2) *rock crushing equipment and construction equipment*, and (3) *parts and materials* for the commodities in (1) and (2) above, between points in Linn County, IA, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Cedar Rapids, IA.)

MC 109449 (Sub-19F), filed October 5, 1978. Applicant: KUJAK BROS. TRANSFER, INC., Junction Avenue, Winona, MN 55987. Representative: John P. Rhodes, P.O. Box 5000, Waterloo, IA 50704. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer and fertilizer materials*, in bulk; (1) between points in IA, on the one hand, and, on the other, points in IL, MN, ND, SD, and WI; and (2) from Mason City, IA, to points in NE. (Hearing site: St. Paul, MN.)

MC 109818 (Sub-32F), filed October 2, 1978. Applicant: WENGER TRUCK LINE, INC., P.O. Box 3427, Davenport, IA 52808. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Meats, meat products and meat byproducts*, and *articles distributed by meat-packing houses*, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), in vehicles equipped with mechanical refrigeration, and (2) *foodstuffs*, when moving in mixed loads with commodities in (1) above, from the facilities of Oscar Mayer & Co., Inc., at Davenport, IA, and Beardstown, IL, to Madison and Jefferson, WI, points in OH, and those in the Lower Peninsula of MI, restricted to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. (Hearing site: Des Moines, IA, or Chicago, IL.)

MC 110098 (Sub-171F), filed September 29, 1978. Applicant: ZERO REFRIGERATED LINES, a corporation, 1400 Ackerman Road, P.O. Box 20380, San Antonio, TX 78220. Representative: T. W. Cothren (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except in bulk), from Kansas City, MO, to points in AR, ID, IA, LA, MI, MN, MO, NE, NM, OK, OR, TX, and WI, restricted to the transportation of traffic originating at the named origin. (Hearing site: Kansas City, MO.)

MC 110525 (Sub-1262F), filed September 15, 1978. Applicant: CHEMICAL LEAMAN TANK LINES, INC., a Delaware corporation, 520 East Lancaster Avenue, Downingtown, PA 19335. Representative: Thomas J. O'Brien (same address as applicant). To operate as a *common carrier*, by motor vehicle, transporting: *Chemicals*, in bulk, in tank vehicles, from the facilities of Union Carbide Corp., at or near Texas City, TX, to points in AR, CT, IN, KY, LA, MD, MA, MI, MN, MS, MT, NJ, NM, NY, NC, ND, OH, OK, PA, SC, SD, TN, VA, WV, and WI, restricted to the transportation of traffic originating at the named origin facilities. (Hearing site: New York, NY.)

MC 110683 (Sub-130F), filed August 31, 1978. Applicant: SMITH'S TRANSFER CORP., P.O. Box 1000, Staunton, VA 24401. Representative: Francis W. McInerny, 1000 16th Street NW., Washington, DC 20036. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, household goods as defined by the Commission, classes A and B explosives, commodities in bulk, and those requiring special equipment), between Charlottesville, VA, and Richmond, VA, (1) over Interstate Hwy 64 and (2) over U.S. Hwy 250, serving points within 20 miles of Richmond as off-route points and serving Charlottesville for purposes of joinder only. (Hearing site: Washington, DC.)

MC 111611 (Sub-35F), filed August 18, 1978. Applicant: NOERR MOTOR FREIGHT, INC., 205 Washington Avenue, Lewistown, PA 17044. Representative: William Davis Taylor, 100 Pine Street, Suite 2550, San Francisco, CA 94111. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Speaker systems and audio component parts*, from the facilities of Fisher Corp., at or near Milroy, PA, to the facilities of Fisher Corp., at or near Chatsworth

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and Kearny Mesa, CA; and (2) *Audio components and audio component parts* from the facilities of Fisher Corp., at or near Kearny Mesa and Chatworth, CA, to the facilities of Fisher Corp., at or near Milroy, PA, and South Plainsfield, NJ. (Hearing sites: San Francisco or San Diego, CA.)

MC 112750 (Sub-347F), filed September 14, 1978. Applicant: PUROLATOR COURIER CORP., 3333 New Hyde Park Road, New Hyde Park, NY 11040. Representative: Elizabeth L. Henoch (same address as applicant). To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Commercial papers, documents, and written instruments* (except coin, currency, and negotiable securities), (1) between Louisville, KY, on the one hand, and, on the other, points in IN, those in OH on and south of Interstate Hwy 70, and those in TN on and east of TN Hwy 13, (2) between points in MO, (3) between points in AR, (4) between points in IL, (5) between Memphis, TN, on the one hand, and, on the other, those points in TN on and west of TN Hwy 13, and points in Greene, Craighead, Mississippi, Poinsett, Crittenden, St. Francis, and Phillips Counties, AR, (6) between those points in OH on and north of Interstate Hwy 70, and (7) between St. Louis, MO, on the one hand, and, on the other, those points in IL on and south of U.S. Hwy 36, restricted in (2), (3), (4), (5), (6), and (7) to the transportation of traffic having a prior or subsequent movement by air, under a continuing contract with Federal Intermediate Credit Bank, of Louisville, KY. (Hearing site: Washington, DC.)

NOTE.—Dual operations may be at issue in this proceeding.

MC 114211 (Sub-368F), filed August 24, 1978. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, IA 50704. Representative: Adelor J. Warren (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cast stone veneer*, from points in Napa and Solano Counties, CA, to points in the United States (except AK and HI.) (Hearing site: San Francisco, CA.)

MC 114211 (Sub-370F), filed August 24, 1978. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, IA 50704. Representative: Adelor J. Warren (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in by retail home improvement stores, home furnishing stores, and lumber stores (except commodities in bulk), between points in CO, DE, IL, IN, IA, KS, KY, MD, MI, MN, MO NE, NJ, NY, OH, PA, TN, VA, WV and WI. (Hearing site: Chicago, IL, or Washington, DC.)

MC 114273 (Sub-458F), filed August 31, 1978. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel shot*, (1) from Cleveland, OH, to Chicago and Danville, IL, Minneapolis, MN, and St. Louis, MO, and (2) from Toledo, OH, to Danville, Decatur, East Moline, East Peoria, Kewanee, Milan, and Rockford, IL, and Keokuk, IA. Condition: The certificate to be issued here shall be limited to a period expiring 2 years from its date of issue, unless, prior to its expiration (but not less than 6 months prior to its expiration), applicant files a petition for permanent extension of the certificate. (Hearing site: Chicago, IL, or Washington, DC.)

MC 114273 (Sub-459F), filed August 31, 1978. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same as address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel lathing, ribbing, area grating, sidewalk grating*, and *expanded aluminum*, from the facilities of Niles Expanded Metals, at or near Niles, OH, and Pulaski, PA, to points in IN, NE, and WI, restricted to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. Condition: The certificate to be issued here shall be limited to a period expiring 2 years from its date of issue, unless, prior to its expiration (but not less than 6 months prior to its expiration), applicant files a petition for permanent extension of the certificate. (Hearing site: Chicago, IL, or Washington, DC.)

MC 114273 (Sub-460F), filed August 31, 1978. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Hides and pelts*, (except in bulk), from points in IA (except Maquoketa) and NE (except Dakota City), to Wilmington, DE, Chicago and Rockford, IL, Williamsport, MD, Detroit, Grand Haven, and Port Huron, MI, Newark, NJ, Gloversville and New York, NY, Luray, VA, Durbin, WV, Fond du Lac and Milwaukee, WI, and points in PA. Condition: The certificate to be issued here shall be limited to a period expiring 2 years from its date of issue, unless, prior to its expiration (but not less than 6 months prior to its expiration), applicant files a petition for permanent extension of the certificate. (Hearing site: Chicago, IL, or Washington, DC.)

MC 114273 (Sub-461F), filed August 31, 1978. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Battery boxes, battery covers, and battery vents, and parts* thereof, from Indianapolis, IN, to Kansas City and St. Joseph, MO, and Salina and Kansas City, KS. Condition: The certificate to be issued here shall be limited to a period expiring 2 years from its date of issue, unless, prior to its expiration (but not less than 6 months prior to its expiration), applicant files a petition for permanent extension of the certificate. (Hearing site: Chicago, IL, or Washington, DC.)

MC 114273 (Sub-462F), filed August 31, 1978. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Castings and forgings*, from Warsaw, IN, to Spencer, IA. Condition: The certificate to be issued here shall be limited to a period expiring 2 years from its date of issue, unless, prior to its expiration (but not less than 6 months prior to its expiration), applicant files a petition for permanent extension of the certificate. (Hearing site: Chicago, IL, or Washington, DC.)

MC 114273 (Sub-463F), filed August 31, 1978. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Vinyl, asphalt felt, adhesives*, and *tools and accessories* used in the installation of tile and asphalt felt, (except commodities in bulk, in tank vehicles), (a) from the facilities of GAF Corp., at or near Whitehall, PA, to the facilities of McKee Enterprises at Cedar Rapids, IA, and Omaha, NE, and the facilities of Central Distributors, at or near Des Moines, IA, and (b) from the facilities of GAF Corp., at or near Vails Gate, NY, to points in IA, MO, and NE, and (2) *cork* (except in bulk, in tank vehicles), from the facilities of Dodge Cork Co., at or near Lancaster, PA, to the facilities of Central Distributors, at or near Des Moines, IA, restricted in (1) (a) and (b) and (2) above to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. Condition: The certificate to be issued here shall be limited to a period expiring 2 years from its date of issue, unless, prior to its expiration (but not less than 6 months prior to its expiration), applicant files a petition for permanent extension of the certificate. (Hearing site: Chicago, IL, or Washington, DC.)

MC 114273 (Sub-463F), filed August 31, 1978. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from Clinton, IA, to Martins Ferry and Napoleon, OH. Condition: The certificate to be issued here shall be limited to a period expiring 2 years from its date of issue, unless, prior to its expiration (but not less than 6 months prior to its expiration), applicant files a petition for permanent extension of the certificate. (Hearing site: Chicago, IL, or Washington, DC.)

MC 114273 (Sub-467F), filed August 31, 1978. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in or used by department stores (except foodstuffs), from the facilities of Montgomery Ward & Co., at or near Chicago, IL, to Omaha and Lincoln, NE, and Kansas City, MO, restricted to the transportation of traffic originating at the named facilities. Condition: The certificate to be issued here shall be limited to a period expiring 2 years from its date of issue, unless, prior to its expiration (but not less than 6 months prior to its expiration), applicant files a petition for permanent extension of the certificate. (Hearing site: Chicago, IL, or Washington, DC.)

MC 114273 (Sub-468F), filed August 31, 1978. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Drugs, chemicals, and toilet preparations* (except commodities in bulk, in tank vehicles), from Brooklyn, NY, Groton, CT, and Parsippany, NJ, to Burlington, Cedar Rapids, Des Moines, and Sioux City, IA, Lincoln and Omaha, NE, and Minneapolis and St. Paul, MN. Condition: The certificate to be issued here shall be limited to a period expiring 2 years from its date of issue, unless, prior to its expiration (but not less than 6 months prior to its expiration), applicant files a petition for permanent extension of the certificate. (Hearing site: Chicago, IL, or Washington, DC.)

MC 114301 (Sub-97F), filed August 24, 1978. Applicant: DELAWARE EXPRESS CO., a corporation, P.O. Box 97, Elkton, MD 21921. Representative: Maxwell A. Howell, 1100 Investment Building, 1511 K Street NW., Washington, DC 20005. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry feed ingredients*, from Peabody, MA, to Roaring Springs and Reading, PA. (Hearing site: Washington, DC.)

MC 114457 (Sub-431F), filed August 28, 1978. Applicant: DART TRANSIT CO., a corporation, 2102 University Avenue, St. Paul, MN 55114. Representative: James H. Wills (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities as are dealt in by manufacturers of glass and glass products* (except commodities in bulk), between points in CA, FL, IL, IN, MD, MN, NJ, OH, PA, TX, and WV, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Columbus, OH, or St. Paul, MN.)

MC 114725 (Sub-91F), filed September 14, 1978. Applicant: WYNNE TRANSPORT SERVICE, INC., 2222 North 11th Street, Omaha, NE 68110. Representative: Donald L. Stern, Suite 610, 7171 Mercy road, Omaha, NE 68106. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Asphalt*, in bulk, in tank vehicles, from Casper, WY, to points in NE. (Hearing site: Omaha, NE.)

MC 115162 (Sub-424F), filed August 7, 1978. Applicant: POOLE TRUCK LINE, INC., P.O. Drawer 500, Evergreen, AL 36401. Representative: Robert E. Tate (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, particleboard, composition board, poles, piling, pallets, timbers, and crossties*, from points in AR, LA, MS, OK, TN, and TX, to those points in the United States in and east of WI, IA, NE, KS, OK, and TX. (Hearing site: New Orleans, LA or Washington, DC.)

MC 115570 (Sub-17F), filed September 25, 1978. Applicant: WALTER A. JUNGE, INC., 3818 Southwest 84th Street, Tacoma, WA 98491. Representative: George R. LaBissoniere, 1100 Norton, Building, Seattle, WA 98104. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper, paper articles, and printed matter*, between points in AZ, CA, CO, ID, MT, NM, NV, OR, TX, UT, WA, and WY, under a continuing contract with Gazette Press, Inc., of Berkeley, CA. (Hearing site: Seattle, WA.)

MC 115651 (Sub-46F), filed August 24, 1978. Applicant: KANEY TRANSPORTATION, INC., 7222 Cunningham Road, Rockford, IL 61102. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 11th Street, NW., Washington, DC 20001. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Asphalt*, in bulk, in tank vehicles, from the facilities of Energy Cooperative, Inc., at or near East Chicago, IN, to points in IL. (Hearing site: Chicago, IL.)

MC 115826 (Sub-338F), filed August 14, 1978. Applicant: W. J. DIGBY, INC., a Nevada corporation, 1960 31st Street, Denver, CO 80217. Representative: Howard Gore (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Plastic products*, (2) *such commodities* as are dealt in or used by manufacturers and converters of paper and paper products, and (3) *materials, equipment, and supplies*, used in the manufacture and distribution of the commodities named in (1) and (2) above, from the facilities of Continental Bondware, at or near Chicago and Shelbyville, IL, to points in CO, IA, KS, MO, NE, and OK. (Hearing site: Denver, CO.)

MC 116077 (Sub-397F), filed September 5, 1978. Applicant: DSI TRANSPORTS, INC., 4550 Post Oak Place Drive, P.O. Box 1505, Houston, TX 77001. Representative: Pat H. Robertson, 500 West 16th Street, P.O. Box 1945, Austin, TX 78767. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals*, in bulk, in tank vehicles, from the facilities of Union Carbide Corp., at or near Texas City, TX, to points in AL, AR, CA, CO, CT, FL, GA, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NJ, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, UT, VA, WV, WI, and WY, restricted to the transportation of traffic originating at the named origin. (Hearing site: Houston or Dallas, TX.)

MC 116763 (Sub-436F), filed August 31, 1978. Applicant: CARL SUBLER TRUCKING, INC., North West Street, Versailles, OH 45380. Representative: H. M. Richters (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Yarn*, from points in NC, IL, and OH, to points in WI. (Hearing site: Chicago, IL.)

MC 117068 (Sub-102F), filed September 29, 1978. Applicant: MIDWEST SPECIALIZED TRANSPORTATION, INC., P.O. Box 6418, Rochester, MN 55901. Representative: Paul F. Sullivan, 711 Washington Building, Washington, DC 20005. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron or steel tanks and parts and accessories*, for iron or steel tanks, from the facilities of A. O. Smith Corp., at

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Dekalb, IL, to points in the United States (except AK and HI); (Hearing site: Chicago, IL.)

MC 117940 (Sub-283F), filed June 28, 1978, previously published in the FEDERAL REGISTER issue of August 24, 1978. Applicant: NATIONWIDE CARRIERS, INC., P.O. Box 104, Maple Plain, MN 55359. Representative: Allan L. Timmerman (same address as applicant). Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, those which require special equipment, and foodstuffs), from Seattle and Longview, WA, and Portland, OR, to points in IL, MN, and WI, restricted to the transportation of traffic, (a) originating at the named origins or having an immediately prior movement by water, and (b) destined to the indicated destinations. Condition: The certificate to be issued herein shall be limited in point of time to a period expiring 3 years from its date of issue, unless, prior to its expiration (but not less than 6 months prior to its expiration), applicant files a petition for permanent extension of the certificate showing that it has been in full compliance with applicable regulations. (Hearing site: Seattle, WA.)

NOTE.—This republication shows MN as a destination, in lieu of IN as previously published.

MC 118142 (Sub-183F), filed August 17, 1978. Applicant: M. BRUENGER & CO., INC., 6250 North Broadway, Wichita, KS 67219. Representative: Lester C. Arvin, 814 Century Plaza Building, Wichita, KS 67202. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Processed meat*, from the facilities of Urban N. Patman Meat Co., Inc., at or near Los Angeles, CA, to FLorence, KY. (Hearing site: Los Angeles or San Francisco, CA.)

NOTE.—Dual operations are at issue in this proceeding.

MC 118560 (Sub-8F), filed September 25, 1978. Applicant: GENERAL TRUCKING CO., INC., 1100 School Street, P.O. Box 269, Columbia, TN 38401. Representative: Edward C. Blank, II, P.O. Box 1004, Columbia, TN 38401. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Silica gravel and silica sand*, in bulk, from the facilities of Southern Stone, Co., Inc., in Elmore County, AL, to points in Maury County, TN, restricted to the transportation of traffic originating in the named origin facilities and destined to the indicated destinations. (Hearing site: Nashville, TN or Birmingham, AL.)

NOTE.—Dual operations may be at issue in this proceeding.

MC 118989 (Sub-205F), filed October 2, 1978. Applicant: CONTAINER TRANSIT, INC., 5223 South Ninth Street, Milwaukee, WI 53221. Representative: Albert A. Andrin, 180 North La Salle Street, Chicago, IL 60601. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Containers and container ends*, from the facilities of Rockford Can Co., at Rockford, IL, to points in MI, MN, and WI, restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations, and (2) *canned and bottled carbonated beverages*, from the facilities of Blue Grass Coca-Cola Bottling Co., Inc., at or near Lexington, KY, to points in IL, IN, MI, MO, NC, OH, TN, and WV. (Hearing site: Chicago, IL.)

MC 119789 (Sub-520F), filed September 29, 1978. Applicant: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 226188, Dallas, TX 75266. Representative: Lewis Coffey (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Lumber, particle board, gypsum wallboard, posts, poles, piling, charcoal briquettes, and insulation board*, from points in AR and OK, to points in TX, and (2) *materials, equipment, and supplies* used in the manufacture, and distribution of the commodities in (1) above, in the reverse direction. (Hearing Site: Dallas, TX.)

MC 120427 (Sub-21F), filed September 5, 1978. Applicant: WILLIAMS TRANSFER, INC., 2128 East Highway 30, Grand Island, NE 68801. Representative: John K. Walker (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Grain storage, grain drying, and grain handling equipment*, (2) *materials and equipment* used in the manufacture of the commodities in (1) above, from the facilities of Blackhawk Systems, Inc., at or near Chicago and Assumption, IL, to points in the United States (except AK and HI), restricted to the transportation of traffic originating at the named origins. (Hearing site: Chicago, IL or Omaha, NE.)

MC 123407 (Sub-486F), filed September 1, 1978. Applicant: SAWYER TRANSPORT, INC., South Haven Square, U.S. Highway 6, Valparaiso, IN 46383. Representative: H.E. Miller, Jr. (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from the facilities of United States Steel Corp., at McDonald, Cleveland, and Lorain, OH, to points in MN, ND, OK, SD, TX, and WI. (Hearing Site: Washington, D.C.)

MC 123407 (Sub-487F), filed September 1, 1978. Applicant: SAWYER TRANSPORT, INC., South Haven Square, U.S. Highway 6, Valparaiso, IN 46383. Representative: H.E. Miller, Jr. (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Roofing and roofing materials*, from points in Pulaski County, AR, to points in FL, LA, MO, OK, and TX. (Hearing Site: Little Rock, AR.)

MC 124069 (Sub-16F), filed October 6, 1978. Applicant: CONCRETE DELIVERY CO., INC., 7 North Steelawanna Avenue, Lackawanna, NY 14218. Representative: William J. Hirsch, 43 Court Street, Suite 1125, Buffalo, NY 14202. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Fly ash*, from points in NY, OH, and PA, to points in CT, DE, FL, GA, ME, MA, NH, NJ, NY, NC, OH, PA, RI, SC, VA, and WV; and (2) *ready-mix dry bonding compounds, ready-mix patching compounds, and sand*, from Marcellus, NY, to points in PA. (Hearing site: Buffalo, NY.)

MC 124078 (Sub-885F), filed September 29, 1978. Applicant: SCHWERMAN TRUCKING CO., a corporation, 611 South 28th Street, Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, WI 53201. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Ground slag*, in bulk, from Neville Island, PA, to points in IL, IN, KY, OH, TN, VA, and WV. (Hearing site: Pittsburgh, PA.)

MC 124078 (Sub-886F), filed October 6, 1978. Applicant: SCHWERMAN TRUCKING CO., a corporation, 611 South 28th Street, Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, WI 53201. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *clay and clay slurry*, in bulk, in tank vehicles, from points in Warren County, GA, to points in AL, FL, ME, MI, NY, NC, OH, PA, SC, and WI. (Hearing site: Washington, DC.)

MC 124160 (Sub-24F), filed September 29, 1978. Applicant: SAVAGE BROTHERS, INC., 585 South 500 East, American Fork, UT 84003. Representative: Lon Rodney Kump, 333 East Fourth South, Salt Lake City, UT 84111. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *fly ash*, in bulk, from points in WY, to points in CO, ID, NV, and UT. (Hearing site: Salt Lake City, UT, or Denver, CO.)

MC 126198 (Sub-18F), filed September 27, 1978. Applicant: MICHAUD TRUCKING, INC., 133 Birch Street, Kinsford, MI 49801. Representative: William J. Bolognesi, 116 East Brown Street, P.O. Box 705, Iron Mountain, MI 49801. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *malt beverages*, in containers, from the facilities of Pabst Brewing Co., at Peoria, IL, to Aurora, WI, and points in the Upper Peninsula of MI. (Hearing site: Milwaukee, WI.)

MC 127267 (Sub-2F), filed September 5, 1978. Applicant: AMERICAN PACIFIC EXPRESS, INC., 33395 Railroad Avenue, Union City, CA 94587. Representative: Eldon M. Johnson, 650 California Street, Suite 2808, San Francisco, CA 94108. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *new furniture, new office fixtures, and new store fixtures*, uncrated, between points in CA, OR, and WA. (Hearing site: Los Angeles or San Francisco, CA.)

MC 127900 (Sub-4F), filed September 19, 1978. Applicant: GROOME TRANSPORTATION, INC., Byrd International Airport, P.O. Box A-23, Richmond, VA 23231. Representative: John R. Sims, Jr., 915 Pennsylvania Building, 425 13th Street NW., Washington, DC 20004. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between John F. Kennedy International Airport, at New York, NY, Philadelphia International Airport, at Philadelphia, PA, Baltimore-Washington International Airport, at Glen Burnie, MD, Washington National Airport, at Arlington, VA, and Dulles International Airport, at Chantilly, VA, on the one hand, and, on the other, Richmond, Norfolk, Suffolk, Williamsburg, Petersburg, Fredericksburg, Colonial Heights, Hopewell, and Farmville, VA, and points in Isle of Wight, Southampton, Sussex, Surry, Dinwiddie, Prince George, Amelia, Chesterfield, Powhatan, Goochland, Hanover, King William, Henrico, Charles City, James City, York, New Kent, Northampton, Gloucester, King George, Spotsylvania, Stafford, Caroline, Prince Edward, Cumberland, Westmoreland, Richmond, King and Queen, Essex, Northumberland, Lancaster, Middlesex, and Matthews Counties, VA, restricted to the transportation of traffic having a prior or subsequent movement by air. (Hearing site: Richmond, VA, or Washington, DC.)

MC 128021 (Sub-34F), filed August 21, 1978. Applicant: DIVERSIFIED TRUCKING CORP., 309 Williamson Avenue, Opelika, AL 36801. Representative: Robert E. Tate, P.O. Box 517, Evergreen, AL 36401. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Tobacco and tobacco products*, from Owensboro, KY, to points in the United States (except AK and HI); and (2) *equipment materials, and supplies* used in the manufacture and distribution of tobacco and tobacco products (except commodities in bulk, in tank vehicles), in the reverse direction, under a continuing contract in (1) and (2) above with the Pinkerton Tobacco Co., of Owensboro, KY. (Hearing site: Louisville, KY, or Washington, DC.)

MC 128527 (Sub-124F), filed August 28, 1978. Applicant: MAY TRUCKING CO., a corporation, P.O. Box 400, Payette, ID 83661. Representative: J. Michael Alexander, 136 Wynnewood Professional Building, Dallas, TX 75224. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Axles and axle assemblies, and* (2) *materials* used in the manufacture of axle assemblies, between points in CA, GA, IN, MI, OK, OR, and WI, on the one hand, and, on the other, points in the United States (except AK, HI, and from McMinnville, OR, to points in Ada, Canyon, and Payette Counties, ID). (Hearing site: Boise, ID.)

MC 128940 (Sub-37F), filed September 27, 1978. Applicant: RICHARD A. CRAWFORD, d.b.a. R. A. CRAWFORD TRUCKING SERVICE, P.O. Box 722, Adelphi, MD 20783. Representative: Edward N. Button, 1329 Pennsylvania Avenue, P.O. Box 1417, Hagerstown, MD 21740. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Synthetic fiber and synthetic fiber yarn*, and (2) *materials and equipment* used in the manufacture of the commodities named in (1) above, between Odenton, MD, on the one hand, and, on the other, points in AL, DE, FL, GA, IN, IA, KS, LA, MI, NJ, NY, NC, OH, PA, SC, TN, WV, and WI, under a continuing contract with Ametek, Inc., Special Filaments Division, of New York, NY. (Hearing site: Washington, DC.)

MC 129537 (Sub-24F), filed September 1, 1978. Applicant: REEVES TRANSPORTATION CO., a Florida corporation, Route 5, Dew's Pond Road, Calhoun, GA 30701. Representative: John C. Vogt, Jr., 406 North Morgan Street, Tampa, FL 33602. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Floor covering, and carpet padding*, and (2) *materials, supplies, and equipment* used in the installation and manufacture of the commodities named in (1) above, between points in Floyd, Bartow, Chattooga, Muscogee, Gordon, Whitfield, Murray, Walker, Catoosa, and Troup Counties, GA, on the one hand, and, on the other, points in AL. (Hearing site: Birmingham, AL.)

MC 133671 (Sub-6F), filed August 23, 1978. Applicant: MILLER BROS. CO., INC., P.O. Box EA, Hyrum, UT 84319. Representative: Irene Warr, 430 Judge Building, Salt Lake City, UT 84111. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products and meat byproducts, and articles distributed by meatpacking houses*, as described in sections A and C of Appendix 1 to report in "Descriptions in Motor Carrier Certificates," 61 MCC 209 and 766 (except hides and commodities in bulk, in tank vehicles), from the facilities of E. A. Miller & Sons Packing Co., Inc., at or near Hyrum, UT, to points in IA, IL, MN, NE, ND, SD, and WI, under a continuing contract with E. A. Miller & Sons Packing Co., Inc., of Hyrum, UT. (Hearing site: Salt Lake City, UT, or Washington, DC.)

MC 134286 (Sub-73F), filed August 21, 1978. Applicant: ILLINI EXPRESS, INC., a Nebraska corporation, P.O. Box 1564, Sioux City, IA 51102. Representative: Charles J. Kimball, 350 Capital Life Center, 1066 Sherman Street, Denver, CO 80203. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *foodstuffs* (except commodities in bulk), from the facilities of Freezer Queen Foods, Inc., at or near Buffalo, NY, to Pittsburgh, PA, and points in CO, IA, IL, IN, MI, MO, NE, OH, and OK. (Hearing site: Buffalo, NY, or Sioux City, IA.)

NOTE.—The person or persons who appear to be engaged in common control must either file an application under section 5(2) of the Interstate Commerce Act, or submit an affidavit indicating why such approval is unnecessary.

MC 134300 (Sub-33F), filed September 27, 1978. Applicant: TRIPLE R EXPRESS, INC., 498 First Street NW., New Brighton, MN 55112. Representative: Samuel Rubenstein, 301 North Fifth Street, Minneapolis, MN 55403. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *sugar* (except in bulk), from Brooklyn, NY, to points in IL, IN, MI, and OH. (Hearing site: New York, NY, or Minneapolis, MN.)

MC 134388 (Sub-19F), filed October 6, 1978. Applicant: HOME RUN, INC., Three East Washington Street, Jamestown, OH 45335. Representative: Boyd B. Ferris, 50 West Broad Street, Columbus, OH 43215. To operate as a *contract carrier*, by motor vehicle,

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over irregular routes, transporting *buildings and parts for buildings, and materials, equipment and supplies* used in the manufacture and assembly of buildings (except commodities in bulk), between the facilities of Ryland Group, Inc., at Houston and Dallas, TX, on the one hand, and, on the other, points in the United States (except AK and HI), under a continuing contract with Ryland Group, Inc., of Houston, TX. (Hearing site: Dallas, TX, or Columbus, OH.)

MC 134761 (Sub-1F), filed August 21, 1978. Applicant: GRASSICK TRANSPORT, LTD., No. 325-777 Broughton Street, Victoria, BC, Canada V9A 3K9. Representative: Harry K. Sprague, 15 South Grady Way, Suite 321, Renton, WA 98055. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *red cedar shakes, red cedar shingles, and red cedar ridges*, between points of entry on the International Boundary line between the United States and Canada on and west of U.S. Hwy 97 in WA, on the one hand, and, on the other, points in WA, OR, and CA, restricted to traffic originating at or destined to the Province of British Columbia, Canada. Condition: Prior receipt from applicant of an affidavit setting forth its appropriate complementary Canadian authority or explaining why no such Canadian authority is necessary. (Hearing site: Seattle, WA.)

NOTE.—The restriction and condition contained in the grant of authority in this proceeding are phrased in accordance with the policy statement entitled Notice to Interested Parties of New Requirements Concerning Applications for Operating Authority to Handle Traffic to and From Points in Canada, published in the FEDERAL REGISTER on December 5, 1974, and supplemented on November 18, 1975. The Commission is presently considering whether the policy statement should be modified, and is in communication with appropriate Canadian officials regarding this issue. If the policy statement is changed, appropriate notice will appear in the FEDERAL REGISTER and the Commission will consider all restrictions or conditions which were imposed pursuant to the prior policy statement, regardless of when the condition or restriction was imposed, as being null and void and having no force or effect.

MC 135945 (Sub-5F), filed September 14, 1978. Applicant: BOB HILDEBRANDT, Prescott, WI 54021. Representative: James T. Flescher, 1745 University Avenue, St. Paul, MN 55104. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *dry animal and poultry feed*, from the facilities of Cargill, Inc., Nutrena Feed Division, at New Richland, MN, to points in WI and those in the Upper Peninsula of MI. (Hearing site: St. Paul, MN.)

MC 136501 (Sub-4F), filed August 24, 1978. Applicant: CARDOSI CONTRACT REFRIGERATED EXPRESS, INC., 5885 Jet Way Drive, Arlington, TN 38002. Representative: Bill R. Davis, Suite 101, Emerson Center, 2814 New Spring Road, Atlanta, GA 30339. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting *foodstuffs*, in containers, from Humboldt, TN, to points in the United States (including AK, but excluding HI), under a continuing contract with Pure Packed Foods, Inc., of Arlington, TN. (Hearing site: Memphis, TN.)

MC 136818 (Sub-40F), filed September 21, 1978. Applicant: SWIFT TRANSPORTATION CO., INC., 335 West Elwood Road, P.O. Box 3902, Phoenix, AZ 85030. Representative: Donald E. Fernaays, Suite 320, 4040 East McDowell Road, Phoenix, AZ 85008. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *General commodities* (except articles of unusual value and classes A and B explosives), between Los Angeles, CA, and points in AZ, restricted to the transportation of traffic having an immediately prior or subsequent movement by water; and (2) *used containers, used trailers, and used trailer chassis*, between Los Angeles, CA, and points in AZ. (Hearing site: Los Angeles, CA, or Phoenix, AZ.)

NOTE.—Dual operations may be at issue in this proceeding.

MC 136996 (Sub-5F), filed July 20, 1978. Applicant: IDEAL TRANSPORTATION CO., a corporation, 1623 West Main Street, Zanesville, OH 43701. Representative: E. H. van Deusen, 220 West Bridge Street, P.O. Box 97, Dublin, OH 43017. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting (1) *aluminum, aluminum products, aluminum scrap, and aluminum dross*, and (2) *materials and supplies* used in the manufacture and distribution of the commodities named in (1) above (except commodities in bulk, in tank vehicles), between Roxboro, NC, on the one hand, and, on the other, points in AL, GA, IL, IN, KY, MD, MI, OH, OK, PA, SC, TX, and VA. (Hearing site: Columbus, OH, or Atlanta, GA.)

MC 138313 (Sub-42F), filed August 29, 1978. Applicant: BUILDERS TRANSPORT, INC., 409 14th Street NW., Great Falls, MT 59404. Representative: Irene Warr, 430 Judge Building, Salt Lake City, UT 84111. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cement* (except in bulk) from ports of entry on the International Boundary line between the United States and Canada at points in MT, ID, and ND, to points in UT, ND, SD, WY, MT, and ID, restricted to the transportation of traffic in foreign commerce. (Hearing site: Washington, DC.)

MC 138328 (Sub-73F), filed October 3, 1978. Applicant: CLARENCE L. WERNER, d.b.a. WERNER ENTERPRISES, I-80 and Hwy 50, P.O. Box 37308, Omaha, NE 68137. Representative: J. F. Crosby, P.O. Box 37205, Omaha, NE 68137. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Feed and feed ingredients*, from points in CO to points in AZ, CA, ID, NV, OR, and WA. (Hearing site: Salt Lake City, UT.)

NOTE.—Dual operations may be at issue in this proceeding.

MC 139108 (Sub-5F), filed October 3, 1978. Applicant: METRO SALES CORP., 1921 W. 1st Street, P.O. Box 1861, Sanford, FL 32771. Representative: Theodore Polydoroff, Suite 301, 1307 Dolley Madison Boulevard, McLean, VA 22101. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Tires and tubes*, (1) from Clarksdale and Tupelo, MS, Texarkana, AR, Memphis, TN, and the facilities of the Mansfield Tire and Rubber Co., at or near Shelby and Findlay, OH, to points in Brevard, Flagler, Marion, Orange, Osceola, Putnam, Seminole, and Volusia Counties, FL, under continuing contracts with John Dickey, Inc., of Sanford, FL, and (2) from Clarksdale and Tupelo, MS, Texarkana, AR, Memphis, TN, and the facilities of the Mansfield Tire and Rubber Co., at or near Shelby and Findlay, OH, to points in Levy, Citrus, Sumter, Hernando, Pasco, Polk, Pinellas, Hillsborough, Manatee, Hardee, Highlands, Okeechobee, Indian River, Saint Lucie, Martin, Glades, Charlotte, Lee, Hendry, De Soto, and Sarasota Counties, FL, under continuing contracts with J. L. Ezell, d.b.a. Seacoast Tire Co., of Tampa, FL. (Hearing site: Sanford or Orlando, FL.)

MC 140619 (Sub-4F), filed October 10, 1978. Applicant: AMAC TRUCKING INC., 5050 First Avenue South, Seattle, WA 98134. Representative: C. Michael McCanta (same address as applicant). To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by retail department stores and mail order houses, and *equipment, materials, and supplies* used in the conduct of such business, between points in ID, MT, OR, and WA, under a continuing contract with Sears, Roebuck & Co., of Chicago, IL. Condition: Prior or coincidental cancellation at carrier's written request of its authority in MC 140619, issued April 29, 1977. (Hearing site: Seattle, WA.)

MC 142508 (Sub-36F), filed October 3, 1978. Applicant: NATIONAL TRANSPORTATION, INC., P.O. Box 37465, 10810 South 144th Street, Omaha, NE 68137. Representative: Lanny N. Fauss, P.O. Box 37096, Omaha, NE 68137. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Drugs and toilet preparations*, in vehicles equipped with mechanical refrigeration, from Philadelphia, PA, to Sparks and Reno, NV. (Hearing site: Philadelphia, PA, or Washington, DC.)

MC 142559 (Sub-58F), filed October 4, 1978. Applicant: BROOKS TRANSPORTATION, INC., 3830 Kelley Avenue, Cleveland, OH 44114. Representative: John P. McMahon, 100 East Broad Street, Columbus, OH 43215. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Preserved foodstuffs, and materials and supplies* used in the manufacture and distribution of preserved foodstuffs, (except commodities in bulk), between Canajoharie, NY, on the one hand, and, on the other, points in IL, IN, KY, OH, NC, SC, WI, and those in PA on the west of U.S. Hwy 219. (Hearing site: Columbus, OH, or Washington, DC.)

NOTE.—Dual operations may be at issue in this proceeding.

MC 143059 (Sub-26F), filed October 2, 1978. Applicant: MERCER TRANSPORTATION CO., a Texas corporation, P.O. Box 35610, Louisville, KY 40232. Representative: Clayte Binion, 1108 Continental Life Building, Ft. Worth, TX 76102. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Electric light poles and electric wire poles*, and (2) *parts, accessories, and supplies*, used in the installation and operations of the commodities in (1) above, (1) from the facilities of K W Industries, at Houston, TX, to points in the United States (except AK and HI), restricted to the transportation of traffic originating at the named origin. (Hearing site: Houston, TX, or Washington, DC.)

MC 143059 (Sub-27F), filed October 4, 1978. Applicant: MERCER TRANSPORTATION CO., a Texas corporation, P.O. Box 35610, Louisville, KY 40232. Representative: J. L. Stone, (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from the facilities of Nucor Steel Co., at Jewett, TX, to points in AL, AZ, AR, CA, CO, FL, GA, IL, IN, IA, KS, KY, LA, MS, MO, NE, NM, OH, OK, and TN, restricted to the transportation of traffic originating at the named origin. (Hearing site: Dallas, TX, or Washington, DC.)

MC 143901 (Sub-2F), filed August 24, 1978. Applicant: THOROUGHBRED TRUCKING, INC., 402 308th Street, NE., Stanwood, WA 98292. Representative: Ronald P. Erickson, 2120 Pacific Building, Seattle, WA 98104. To operate as a *contract carrier*, by motor vehicles, over irregular routes, transporting: *Such commodities* as are dealt in by food and grocer business houses, from Sunnyvale, CA, to points in OR and WA, under a continuing contract with Shedd Food's Products, of Sunnyvale, CA. (Hearing site: Seattle, WA.)

MC 144101 (Sub-4F), filed August 24, 1978. Applicant: R. R. STANLEY, Box 95, Mesquite, TX 75149. Representative: Richard T. Churchill, 5001 S. Hulen, Suite 106, Fort Worth, TX 76132. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *bakery goods, prepared dough*, and *icing paste*, between the facilities of The Pillsbury Co., at Denison, TX, and the facilities of The Pillsbury Co., at Los Angeles, CA, under a continuing contract with The Pillsbury Co., of Minneapolis, MN. (Hearing site: Dallas or Fort Worth, TX.)

MC 144291 (Sub-1F), filed August 24, 1978. Applicant: Robert C. Hickman, d.b.a. Hickman Moving & Storage, P.O. Box 502, Elba, AL 36323. Representative: Alan F. Wohlstetter, 1700 K Street NW., Washington, DC 20006. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used household goods*, between points in Dale, Barbour, Coffee, Geneva, Henry, Houston, Pike, and Covington Counties, AL, restricted to the transportation of shipments having a prior or subsequent movement, in containers beyond the points authorized, and further restricted to the performance of pickup and delivery service in connection with packing, crating, and containerization or unpacking, uncrating, and decontainerization of such shipments. (Hearing site: Birmingham, AL.)

MC 144370 (Sub-5F), filed September 25, 1978. Applicant: DON NASS TRUCKING, INC., 210 Front Street, Clinton, WI 53525. Representative: Richard A. Westley, 4506 Regent St., Suite 100, Madison, WI 53705. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned goods*, from the facilities of Oconomowoc Canning Co., at or near Poynette and Waunakee, WI, to those points in IL on and north of a line described as beginning at the IL-IA State line, then east along Interstate Hwy 80 to junction U.S. Hwy 51, then south along U.S. Hwy 51 to junction Interstate Hwy 74, then east along Interstate Hwy 74 to junction Interstate Hwy 57, then south along Interstate Hwy 57 to junction U.S. Hwy 36, then east along U.S. Hwy 36 to the IL-IN State line (except points in the Chicago, IL, commercial zone. (Hearing site: Milwaukee, WI, or Chicago, IL.)

MC 144622 (Sub-11F), filed August 16, 1978. Applicant: GLENN BROS. MEAT CO., INC., P.O. Box 9343, Little Rock, AR 72219. Representative: Phillip Glenn (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tile*, (1) from Lewisport and Cloverport, KY, to points in AL, AR, CO, GA, IL, IN, IA, KS, LA, MI, MN, MS, MO, FL, NE, OH, OK, TN, TX, and WI, and (2) from Jackson, TN, to points in AL, AR, CO, FL, GA, IA, IN, IL, KS, LA, MI, MN, MO, MS, NE, OH, OK, TX, and WI. (Hearing site: Philadelphia, PA, or Washington, DC.)

NOTE.—Dual operations are at issue in this proceeding.

MC 144735 (Sub-1F), filed September 11, 1978. Applicant: WALKER AND SMITH RIGGING, INC., Route 4 Box 145-1, Charleston, WV 25312. Representative: Norman Walker (same address as applicant). To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Machinery* the transportation of which because of size and weight requires the use of special equipment and rigging, from the facilities of (a) Easton Corp., at Batavia, NY, (b) Furnival Machinery, Division Domatsu American Corp., at Hatfield, PA, (c) Komatsu American Corp., at Packer Division, at Philadelphia, PA, and (d) Euclid Corp., at Cleveland, OH, to points in WV, those in Gallia, Lawrence, Meigs, and Washington Counties, OH, those points in KY on and east of Interstate 75, and those in VA on and west of Interstate 77, under a continuing contract with Mountaineer Euclid Corp., of South Charleston, WV. (Hearing site: Charleston, WV.)

MC 144772 (Sub-2F), filed August 16, 1978. Applicant: PINE PRAIRIE TRUCKING, INC., P.O. Box 305, Hamburg, AR 71646. Representative: James M. Duckett, 1021 Pyramid Life Building, Little Rock, AR 72201. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Soybean meal*, in bulk, from Marks, MS, to Hope, Newell, and Nashville, AR, under a continuing contract with Gold Kist Soy, of Marks, MS. (Hearing Site: Little Rock, AR.)

MC 144827 (Sub-4F), filed September 5, 1978. Applicant: DELTA MOTOR FREIGHT, INC., 2877 Farrisview, P.O. Box 18423, Memphis, TN 38118. Representative: Billy R. Hallum (same address as applicant). To operate as a *common carrier*, by motor ve-

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hicle, over irregular routes, transporting: (1) *parts and accessories* for elevators, (except commodities in bulk, and those which because of size or weight require the use of special equipment), from the facilities of Dover Corp. Elevator Division, at or near Cincinnati, OH, to points in the United States (except AK, HI, and OH); and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk, and those which because of size or weight require the use of special equipment), in the reverse direction. (Hearing site: Memphis, TN.)

MC 144870 (Sub-1F), filed August 28, 1978. Applicant: MERRILL TRANSPORT, INC., P.O. Box 2288, Salisbury, NC 28144. Representative: George W. Clapp, P.O. Box 836, Taylors, SC 29687. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting *malt beverages*, in containers, from Detroit, MI, to points in Rowan County, NC, under a continuing contract with Merrill Wholesale Corp., of Salisbury, NC. (Hearing site: Salisbury, NC.)

MC 145019 (Sub-1F), filed October 4, 1978. Applicant: R. J. HEBERT TRUCKING, INC., 458 Pelham Road, Dracut, MA 01826. Representative: James E. Mahoney, 148 State Street, Boston, MA 02109. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in by drug, chain, discount and department stores, (except commodities in bulk, in tank vehicles), between the facilities of J. M. Fields, Inc., in MA, on the one hand, and, on the other, Salem, NH, under a continuing contract with J. M. Fields, Inc., of New York, NY. (Hearing site: Boston, MA, or Concord, NH.)

MC 145106 (Sub-2F), filed August 14, 1978. Applicant: EDINA CARTAGE CO., a corporation, 100 Taylor Avenue, Flat River, MO 63601. Representative: E. Stephen Heisley 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, DC 20001. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Glass containers*, from Coventry, RI, to those points in the United States in, east, and north of VA, KY, MO, IA, and MN, under continuing contract with National Bottle Co., of Bala Cynwyd, Pa. (Hearing site: Washington, DC.)

MC 145106 (Sub-3F), filed August 18, 1978. Applicant: EDINA CARTAGE CO., a corporation, 1000 Taylor Avenue, Flat River, MO 63601. Representative; E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, DC 20001. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting *Glass containers*, from Parkersburg, WV, to points in CT, DE, MA, MD, ME, NH, NJ, NY, PA, RI, and VT, under continuing contracts with National Bottle Co., of Bala Cynwyd, PA. (Hearing site: Washington, DC.)

MC 145225 (Sub-2F), filed September 15, 1978. Applicant: GAULCO LTD., 1700 Church Avenue, Winnipeg, Manitoba, Canada R2X 2W9. Representative: Robert D. Gisvold, 1000 First National Bank Building, Minneapolis, MN 55402. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting *materials and supplies* used in the installation of carpet, from the ports of entry on the International Boundary line between the United States and Canada, at points in ID, MI, MN, MT, ND, and WA, to points in CA, FL, GA, IL, IN, MD, MN, NY, ND, OR, PA, RI, SC, VA, and WA, under a continuing contract with Grip-Rite Carpet Accessories, Ltd., of Edmonton, AB, Canada. Condition: Prior receipt from applicant of an affidavit setting forth its appropriate complementary Canadian authority or explaining why no such Canadian authority is necessary. (Hearing site: Minneapolis, MN, or Washington, DC.)

NOTE.—The restriction and conditions contained in the grant of authority in this proceeding are phrased in accordance with the policy statement entitled Notice to Interested Parties of New Requirements Concerning Applications for Operating Authority to Handle Traffic to and from Points in Canada published in the FEDERAL REGISTER on December 5, 1974, and supplemented on November 18, 1975. The Commission is presently considering whether the policy statement should be modified, and is in communication with appropriate Canadian officials regarding this issue. If the policy statement is changed, appropriate notice will appear in the FEDERAL REGISTER and the Commission will consider all restrictions or conditions which were imposed pursuant to the prior policy statement, regardless of when the condition restriction was imposed, as being null and void and having no force or effect. Applicant states that traffic originates at Edmonton, AB, Canada.

MC 145271, filed August 24, 1978. Applicant: SCHULTZ CARRIERS, INC., 6038 Linden Lane, Dallas, TX 75230. Representative: Lawrence A. Winkle, Suite 1125 Exchange Park, Post Office Box 45538, Dallas, TX 75245. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *Lime*, in bags, from points in Manitowoc County, WI, to points in TX, OK, LA, and AR. (Hearing site: Dallas, TX, or New Orleans, LA.)

MC 145418F, filed September 26, 1978. Applicant: BROCKHOFF FEED YARDS, INC., Fairview, KS 66425. Representative: Erle W. Francis, 719 Capitol Federal Building, Topeka, KS 66603. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting (1) *dry fertilizer*, from Hoag, NE, to the facilities of Fairview Elevator, at Fairview, KS; and (2) *dry processed feed*, from the facilities of Purina, Inc., at Kansas City and St. Joseph, MO, and Omaha, NE, to the facilities of Fairview Elevator, at Fairview, KS. (Hearing site: Topeka, KS, or Kansas City, MO.)

NOTES.—(1) Applicant shall conduct separately its for-hire carriage and other business operations; (2) it shall maintain separate accounts and records for each operation; and (3) it shall not transport property as both a private and for-hire carrier in the same vehicle at the same time.

MC 145419F, filed September 26, 1978. Applicant: ALAN COSSAR, 21 South Shore Road, Salem, NH 03079. Representative: George A. McLaughlin, Jr., 44 School Street, Boston, MA 02108. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting *fuel oil*, between points in Hillsboro, Merrimack, and Rockingham Counties, NH, and Essex, Middlesex, Suffolk, and Norfolk Counties, MA, under a continuing contract with Automatic Heating Service, Inc., of Methuen, MA. (Hearing site: Boston, MA.)

[FR Doc. 78-31591 Filed 11-8-78; 8:45 am]

[7035-01-M]

[Volume No. 122]

PETITIONS, APPLICATIONS, FINANCE MATTERS (INCLUDING TEMPORARY AUTHORITIES), ALTERNATE ROUTE DEVIATIONS, AND INTRASTATE APPLICATIONS.

NOVEMBER 1, 1978.

PETITIONS FOR MODIFICATION, INTERPRETATIONS OR REINSTATEMENT OF OPERATING RIGHTS AUTHORITY

The following petitions seek modification or interpretation of existing operating rights authority, or reinstatement of terminated operating rights authority.

All pleadings and documents must clearly specify the suffix (e.g. M1 F, M2 F) numbers where the docket is so identified in this notice.

An original and one copy of protests to the granting of the requested authority must be filed with the Commission within 30 days after the date of this notice. Such protests shall comply with Speical Rule 247(e) of the Commission's *General Rules of Practice* (49 CFR 1100.247) * and shall include a concise statement of protestant's interest in the proceeding and copies of its conflicting authorities.

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* Copies of Special Rule 247 (as amended) can be obtained by writing to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

Verified statements in opposition should not be tendered at this time. A copy of the protest shall be served concurrently upon petitioner's representative, or petitioner if no representative is named.

MC 109148(M1F) (Notice of filing petition to modify certificate), filed October 2, 1978. Petitioner: LAS VEGAS-TONOPAH-RENO STAGE LINE, INC., P.O. Box 42130, Las Vegas, NV 89104. Representative: R. Y. Schureman, 1545 Wilshire Boulevard, Los Angeles, CA 90017. Petitoner holds a motor *common carrier* certificate in MC 109148, issued November 27, 1950, authorizing transportation over regular routes of: *Passengers and their baggage, and express, mail and newspapers in the same vehicle with passengers*, between Schurz, NV and Reno, NV: From Schurz over U.S. Hwy 95 via Fallon, NV to junction U.S. Hwy 40 and then over U.S. Hwy 40 to Reno, and return over the same route, serving all intermediate points. Restriction: Service shall not be provided between Reno and Fallon; and service at points on U.S. Hwys 95 and 40 between Fallon and Reno shall be limited to traffic moving in said carrier's vehicles to or from points south of Fallon. Petitioner seeks deletion of the restriction and updating of the route description to read: From Schurz over U.S. Hwy 95 to Fallon, NV; and then over Alt. U.S. Hwy 95 to junction Interstate Hwy 80; then over Interstate Hwy 80 to Reno, NV, and return over the same route, serving all intermediate points. The certificate, otherwise, would remain the same.

MC 113434 (Sub-45) (M1F) (Notice of the filing of petition to modify certificate), filed September 19, 1978. Petitioner: GRA-BELL TRUCK LINE, INC., 679 Lincoln Avenue, Holland, MI 49423. Representative: Wilhelmina Boersma, 1600 First Federal Building, 1001 Woodward Avenue, Detroit, MI 48226. Petitioner holds a motor *common carrier* certificate in MC 113434 (Sub-45) issued October 18, 1972, authorizing transportation, over irregular routes, of *Frozen food*, from the facilities of Chef-Pierre, Inc., in Grand Traverse and Benzie Counties, MI, to points in IN, KY, and IL (except Chicago, IL, restricted to the transportation of traffic originating at the named facilities of Chef-Pierre, Inc., at Traverse City, MI, and destined to points in IN, KY and IL (except Chicago, IL). By the instant petition, petitioner seeks to modify the above authority by deleting the exception of Chicago, IL in both the territorial description and the restriction.

MC 125872 (M1F) (Notice of filing of petition to modify permit), filed October 4, 1978. Petitioner: C. H. DREDGE & CO., INC., 918 South 2000 West, Syracuse, UT 84041. Representative: Bruce W. Shand, 430 Judge Building, Salt Lake City, UT 84111. Petitioner holds a motor *contract carrier* permit in MC 125782 issued July 11, 1974 authorizing transportation, over irregular routes, of *Corn products, cheese nibbles, pizza puffs, bakery goods, bacon crackles, confectioneries, food seasonings, salad dressings, nuts, chip dips, taco shells, sauces, smoked meat, burritos, tortillas, potato products*, and *empty containers* (except frozen foods), between points in MT, ID, CO, UT, NV, CA, AZ, NM, TX, WY, OR, and WA, under a continuing contract(s) with Clover Club Foods Co., Kaysville, UT. By the instant petition, petitioner seeks to modify the above authority by modifying the commodity description to read: "Foodstuffs and materials, equipment and supplies used in the manufacture, processing and distribution of foodstuffs".

MC 130236 (M1F) (notice of filing of petition to modify license), filed October 2, 1978. Petitioner: EXEC-VAN SYSTEMS, INC., 51 Weaver Street, Greenwich, CT 06830. Representative: Edward L. Nehez, P.O. Box 1409, Fairfield, NJ 07006. Petitioner holds a broker's license in MC 130236, issued September 1, 1978, authorizing transportation over irregular routes, of *Household goods* as set forth in 49 CFR 1056.1(a)(1), between points in the United States, including AK and HI, Broker is authorized to engage in the above-specified operations as a broker at Boston, MA, Chicago, IL, Denver, CO, Los Angeles, San Francisco and San Jose, CA, New York, NY, Palm Beach, FL, Washington, DC, and Stamford, CT. By the instant petition, petitioner seeks to modify the above authority by substituting Deerfield, IL, in lieu of Chicago, IL, as a location at which operations may be conducted.

MC 134060 (Sub-1) (M1F) (Notice of filing of petition to modify certificate), filed September 29, 1978. Petitioner: DAVINDER FREIGHTWAYS, LTD., 435 Truck Road, British Columbia, Canada V9L 2P8. Representative: James T. Johnson, 1610 IBM Building, 1200 Fifth Avenue, Seattle, WA 98101. Petitioner holds a motor *common carrier* certificate in MC 134060 (sub-1), issued November 17, 1970, authorizing transportation, over irregular routes, of *Lumber* between ports of entry on the United States-Canada Boundary line, located in WA, on the one hand, and, on the other, points in those parts of WA and OR on and west of U.S. Hwy 97, restricted to the transportation of traffic originating at or destined to points on Vancouver Island, BC, Canada. By the instant petition, petitioner seeks to modify the above authority by deleting the restriction.

MC 136408 (Sub-8) (M1F) and 22 (M2F) (Notice of filing of petition to modify permits), filed September 14, 1978. Petitioner: CARGO CONTRACT CARRIER CORP., P.O. Box 206, U.S. Hwy 20, Sioux City, IA 51102. Representative: William J. Hanlon, 55 Madison Avenue, Morristown, NJ 07960. Petitioner holds motor *contract carrier* permits in MC 136408 (Sub-8 and 22), issued June 9, 1977 and January 25, 1978, respectively. MC 136408 (Sub-8) authorizes transportation, over irregular routes, of *Chemicals* (except in bulk, in tank vehicles), from Wallingford, CT, Linden and Hawthorne, NJ, to points, in WI, MN, IA, NE, KS, and MO, under a continuing contract(s) with American Cyanamid Co., of Wayne, NJ, and Merck & Co., Inc., of Rahway, NJ. MC 136408 (Sub-22) authorizes transportation over irregular routes, of *Chemicals* (except in bulk, in tank vehicles), from Wallingford, CT, and Linden, NJ, to points in OH, MI, IN, and IL, under a continuing contract(s) with American Cyanamid Co., of Wayne, NJ, and Merck & Co., Inc., of Rahway, NJ. By the instant petition, petitioner seeks to modify the above authority by adding Bound Brook, NJ as origin points in each of the above permits.

MC 141721 (M1F) (Notice of filing of petition to modify a permit), filed October 2, 1978. Petitioner: DFC TRANSPORTATION CO., a corporation, 45 E. Main Street, Huntley, IL 60142. Representative: Edward G. Bazelon, 39 South La Salle Street, Chicago, IL 60603. Petitioner holds a motor *contract carrier* permit in MC 141721 issued June 28, 1977, authorizing transportation, over irregular routes, of: (1) *Such commodities* as are dealt in by manufacturers and distributors of foods, food products, and animal feeds, and (2) *machinery, materials, equipment, supplies* and *ingredients* used by manufacturers and distributors of foods, food products, and animal feeds, between Franklin Park, Huntley, Chemung, Belvidere, Rockford, Pecatonica, Loves Park, Amboy, and Dixon, IL, Janesville, Chippewa Falls, and Green Bay, WI, Lafayette and Rochester, IN, Cleveland and Columbus, OH, Eaton Rapids and Evart, MI, Memphis, TN, Jackson, MS, Conway and Little Rock, AR, Louisville, KY, and Heuvelton and Chateaugay, NY, on the one hand, and, on the other, points in the United States (except AK and HI). Restriction: The operations authorized herein are subject to the following conditions: Said authority is restricted to the transportation of shipments originating at or destined to the facilities of Dean

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Foods, Co., Green Bay Foods Co., Dean Milk Co., Inc., Hoffman House Food Products, Dean Food Products Co., Inc, Liberty Dairy, McCadam Cheese Co., Inc., and Bowman Dairy Co. (1) Said operations are restricted against petroleum products, in bulk, originating at or destined to Memphis, TN, or Jackson, MS. (2)(a) Said operations are restricted against animal and vegetable oils, in bulk, originating at or destined to points in VA and NC. (b) Animal and vegetable oils, in bulk, originating at Chicago, IL (except as to points otherwise in the Chicago, IL commercial zone, as defined by the Commission), and destined to points in AL, AR, IN, IA, MI, MN, MS, MO, NE, NJ, NY, OH, OK, PA, and TN. Said operations are limited to service to be performed under a continuing contract(s) with: Dean Foods Co., Green Bay Foods Co., Hoffman House Food Products, Dean Foods Products Co., Dean Milk Co., Inc., Liberty Dairy, McCadam Cheese Co., Inc., Bowman Dairy Co.

By the instant petition, petitioner seeks to modify the above authority by substituting Westby, WI in lieu of Chippewa Falls, WI in the territorial description.

REPUBLICATIONS OF GRANTS OF OPERATING RIGHTS AUTHORITY PRIOR TO CERTIFICATION

NOTICE

The following grants of operating rights authorities are republished by order of the Commission to indicate a broadened grant of authority over that previously noticed in the FEDERAL REGISTER

An original and one copy of a petition for leave to intervene in the proceeding must be filed with the Commission within 30 days after the date of this FEDERAL REGISTER notice. Such pleading shall comply with Special Rule 247(e) of the Commission's *General Rules of Practice* (49 CFR 1100.247) addressing specifically the issue(s) indicated as the purpose for republication, and including copies of intervenor's conflicting authorities and a concise statement of intervenor's interest in the proceeding setting forth in detail the precise manner in which it has been prejudiced by lack of notice of the authority granted. A copy of the pleading shall be served concurrently upon the carrier's representative, or carrier if no representative is named.

MC 51004 (Sub-9F) (republication), filed March 13, 1978, published in the FEDERAL REGISTER issue of May 4, 1978, and republished this issue. Applicant: PAUL H. LISKEY, R.F.D. 1, Kearneysville, WV 25430. Representative: Daniel B. Johnson, 4304 East-West Highway, Washington, DC 20014. A Decision of the Commission, Review Board Number 3, decided October 10, 1978, and served October 16, 1978, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier*, by motor vehicle, over irregular routes, in the transportation of: (1) *Stone and stone products*, from points in Berkeley County, WV (except Martinsburg, WV), to points in MD, PA, VA, WV, and DC; and (2) *precast concrete modules*, (a) between Hagerstown and Frederick, MD, and Martinsburg, WV, and (b) from Martinsburg, WV, to points in MD, PA, VA, WV, and DC, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to modify the commodity description and add VA as a destination point in part (1) above.

MC 105636 (Sub-39F), (republication), filed March 27, 1978, published in the FEDERAL REGISTER issue of May 11, 1978, and republished this issue. Applicant: ARMELLINI EXPRESS LINES, INC., Oak and Brewster Roads, Vineland, NJ 08360. Representative: Wilmer B. Hill, 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, DC 20001. A Decision of the Commission, Review Board No. 3, decided September 29, 1978, and served October 12, 1978, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier*, by motor vehicle, over irregular routes, in the transportation of: *Petroleum products*, in containers, from the facilities of Shell Oil Co., at or near Sewaren, NJ, to the facilities of Sun Oil Co., at or near Marcus Hook, PA; and the facilities of Royal Lubricants Co., Inc., at or near Hanover, NJ, to Riviera Beach, FL; restricted to the transportation of traffic having an immediately subsequent movement by water, that applicant is fit, willing, and able properly to perform such service, and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to modify the commodity and territorial description.

MC 143320 (Sub-2) (republication), filed January 13, 1978, published in the FEDERAL REGISTER issue of February 24, 1978, and republished this issue. Applicant: RICHARD P. MILLER, d.b.a. POTAWATOMIC TRAILS, 51585 Winding Waters Lane, Elkhart, IN 46514. Representative: Richard P. Miller (same address as applicant). A Decision of the Commission, Review Board No. 3, decided October 6, 1978, and served October 19, 1978, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *contract carrier*, by motor vehicle, over irregular routes, in the transportation of: *Tools, and hardware*, between the facilities utilized by G. M. Distributors, Inc., or G. M. Industrial Corp., at or near Elkhart, IN, Woodland and Anaheim, CA, Denver, CO, Newton, KS, Boise, ID, Salem, OR, Ft. Worth, TX, Marshfield, WI, and Redwood Falls, MN, under a continuing contract or contracts with G. M. Distributors, Inc., and G. M. Industrial Corp., of Elkhart, IN, will be consistent with the public interest and the national transportation policy, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to modify the commodity description, and indicate Redwood Falls, MN in lieu of Albert Lea, MN as a destination point.

MOTOR CARRIER, BROKER, WATER CARRIER, AND FREIGHT FORWARDER OPERATING RIGHTS APPLICATIONS

NOTICE

The following applications are governed by Special Rule 247 of the Commission's *General Rules of Practice* (49 CFR § 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date of notice of filing of the application is published in the FEDERAL REGISTER. Failure to seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest under these rules should comply with section 247(e)(3) of the rules of practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding (including a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describing in detail the method—whether by joinder, interline, or other means—by which protestant would use a such authority to provide all or part of the service proposed), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or applicant if no representative is named. All pleadings and documents must clearly specify the "F" suffix where the docket is so identified in this notice. If the protest includes a request for oral hearing, such requests shall meet the requirements of section 247(e)(4) of the special rules, and shall include the certification required therein.

Section 247(f) further provides, in part, that an applicant who does not intend timely to prosecute its application shall promptly request dismissal thereof, and that failure to prosecute an application under procedures ordered by the Commission will result in dismissal of the application.

Further processing steps will be by Commission decision which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication except for good cause shown, and restrictive amendments will not be entertained following publication in the* FEDERAL REGISTER *of a notice that the proceeding has been assigned for oral hearing.*

Each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

MC 107295 (Sub-873) (correction), filed January 15, 1978, previously noticed as MC 107295 (Sub-73) in the FEDERAL REGISTER issue of March 9, 1978. Applicant: PRE-FAB TRANSIT CO., a Corporation, P.O. Box 146, Farmer City, IL 61842. Representative: Mack Stephenson, 42 Fox Mill Lane, Springfield, IL 62707. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Plywood and composition board*, from Los Angeles and Long Beach, CA, to points in the United States (except AK and HI); and (2) *composition board*, (a) from Burns Harbor, IN, and Charleston, MA, to points in the United States (except AK and HI); and (b) from New Orleans, LA, to points in AL, AR, FL, GA, KS, MS, NE, OK, TN, and TX. (Hearing site: Boston, MA.)

NOTE.—The purpose of this republication is to indicate the correct docket number as MC 107295 (Sub-873F).

MC 138824 (Sub-16F), filed February 28, 1978. Applicant: REDWAY CARRIERS, INC., 5910 49th Street, Kenosha, WI 53140. Representative: Paul J. Maton, 10 South La Salle Street, Sulte 1620, Chicago, IL 60603. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Food products*, in containers, and *materials* and *supplies* used in the processing distribution of food products, between the facilities of Ocean Spray Cranberries, Inc., (1) in Kenosha County, WI, and (2) at North Chicago, IL, on the one hand, and, on the other, points in MI, under a continuing contract(s) with Ocean Spray Cranberries, Inc., of Hnaon, MA. (Hearing site: Chicago, IL.)

MC 145568F, filed October 23, 1978. Applicant: POLLARD TRANSPORTATION, INC., 582 West 3½ South, Vernal, UT 84078. Representative: Mark K. Boyle, 10 W. Broadway Building 400, Salt Lake City, UT 84111. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Equipment, materials*, and *supplies* used in connection with the discovery, development, production, refining, manufacture, processing, storage, transmission and distribution of natural gas and petroleum and their products and by products, and (2) *materials, equipment*, and *supplies* used in, or in connection with the construction, operation, repair, servicing, maintenance and dismantling of pipelines, including the stringing and picking up thereof, between points in CO, ID, NV, UT, and WY. (Hearing site: November 28, 1978, at 9:30 a.m. local time, at Denver, CO, in a hearing room location to be later designated.)

FINANCE APPLICATIONS

NOTICE

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control through ownership of stock, of rail carriers or motor carriers pursuant to sections 5(2) or 210a(b) of the Interstate Commerce Act.

An original and one copy of protests against the granting of the requested authority must be filed with the Commission within 30 days after the date of this FEDERAL REGISTER notice. Such protest shall comply with Special Rules 240(c) or 240(d) of the Commission's General Rules of Practice (49 CFR 1100.240) and shall include a concise statement of protestant's interest in the proceeding. A copy of the protest shall be served concurrently upon applicant's representative, or applicant, if no representative is named.

MC-F-13786F. Authority sought for purchase by BE-MAC TRANSPORT COMPANY, INC., 7400 North Broadway, St. Louis, MO 63147 of a portion of the operating rights of Motor Express, Inc. of Indiana, 730 South Keystone Avenue, Indianapolis, IN 46203. Applicants' attorneys: Carl L. Steiner, 39 South La Salle Street, Chicago, IL 60603, and Myer Feldman, 1700 Pennsylvania Avenue NW., Washington, DC 20006. Operating rights sought to be transferred are as a *common carrier* over a regular route in MC 38813, Sub-16, as follows: *General commodities*, except those of unusual value, class A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, between Chicago, IL and Milwaukee, WI, as follows: from Chicago over U.S. 41 to Milwaukee and return over the same route, serving no intermediate points. If the application is granted Transferee will take a restriction against providing service between Chicago, IL and points in its commercial zone, as defined by the Interstate Commerce Commission, on the one hand, and on the other, Milwaukee, WI and points in its commercial zone.

NOTE.—Transferee and Transferor are under common control of U.S. Truck Lines, Inc. of Delaware, 785 Union Commerce Building, Cleveland, OH 44115, as authorized in Docket No. MC-F-4807.

MC-F-13787F. Authority sought for control by OLD DOMINION-EXPEDITER, INC., 1791 West Chester Drive, High Point, NC 27261, of Expediter Systems, Inc., Seven Office Park Circle, Birmingham, AL 35223, and Deaton, Inc., 317 Avenue W, Birmingham AL 35201, and for acquisition by Old Dominion Freight Line, Inc., also of High Point, NC 27261, and E. E. Congdon and J. R. Congdon of control of Expediter Systems, Inc. and Deaton, Inc., through the acquisition. Applicant's attorneys: K. Edward Wolcott, Esquire, Watkins & Daniell, PC 1200 Gas Light Tower, 235 Peachtree Street NE., Atlanta, GA 30303; Kim D. Mann, Esquire, Turney & Turney, Suite 1010, 7101 Wisconsin Avenue, Washington, DC 20014. Operating rights sought to be controlled: *General commodities*, with certain specified exceptions, and numerous other specified commodities, as a *common carrier*, over both regular and irregular routes, from to, and between specified points and territories in the States of AL, AR, FL, GA, KY, LA, MS, MO, NC, OK, TN, TX, VA, and WV, as more specifically described in the Deaton, Inc. Certificate of Public Convenience and Necessity, MC 11207. Dominion-Expediter, Inc. holds no authority from this Commission. However it is a wholly owned subsidiary of Old Dominion Freight Line, Inc., a regulated motor common carrier who is authorized to operate primarily within the States of MD, VA, NC, SC, and GA. Application has not been filed for temporary authority under section 210a(b), of the act.

MOTOR CARRIER ALTERNATE ROUTE DEVIATIONS

NOTICE

The following letter-notices to operate over deviation routes for operating convenience only have been filed with the Commission under the Deviation

NOV 9 1978 UMI

Rules—Motor Carrier of Property (49 CFR 1042.4(c)(11)).

Protests against the use of any proposed deviation route herein described may be filed with the Commission in the manner and form provided in such rules at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of this FEDERAL REGISTER notice.

Each applicant states that there will be no significant effect on either the quality of the human environment or energy policy and conservation.

MOTOR CARRIERS OF PROPERTY

MC 48958 (Deviation No. 85), ILLINOIS-CALIFORNIA EXPRESS, INC., P.O. Box 9050, Amarillo, TX 79189, filed October 24, 1978. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Vernon, TX, over U.S. Hwy 287 to junction U.S. Hwy 183, then over U.S. Hwy 183 to junction U.S. Hwy 70, then over U.S. Hwy 70 to junction U.S. Hwy 277, and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Vernon, TX, over U.S. Hwy 287 to Wichita Falls, TX, then over U.S. Hwy 277 to juction U.S. Hwy 70 near Randlett, OK, and return over the same route.

MC 95540 (Deviation No. 6), WATKINS MOTOR LINES, INC., P.O. Box 1636, 1144 W. Griffing Road., Lakeland, FL 33802, filed October 23, 1978. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over deviation routes as follows: (1) From junction U.S. Hwy 41 and Interstate Hwy 75 near Rossville, GA, over Interstate Hwy 75 to junction U.S. Hwy 64 near Cleveland, TN, then over U.S. Hwy 64 to junction U.S. Hwy 19 near Murphy, NC, then over U.S. Hwy 19 to junction U.S. Hwy 23 near Dillsboro, NC, then over U.S. Hwy 23 to junction Interstate Hwy 40, then over Interstate Hwy 40 to junction U.S. Hwy 25 near Asheville, NC, (2) From junction U.S. Hwy 41 and Interstate Hwy 75 near Rossville, GA, over Interstate Hwy 75 to junction U.S. Hwy 64, near Cleveland, TN, then over U.S. Hwy 64 to junction U.S. Hwy 19 near Murphy, NC, then over U.S. Hwy 19 to junction Interstate Hwy 40, then over Interstate Hwy 40 to junction U.S. Hwy 25 near Asheville, NC, (3) From junction U.S. Hwy 41 and Interstate Hwy 75 near Rossville, GA, over Interstate Hwy 75 to junction Interstate Hwy 40 near Oak Ridge, TN, then over Interstate Hwy 40 to junction U.S. Hwy 25 near Asheville, NC, (4) From junction U.S. Hwy 82 and GA Hwy 257 near Albany, GA over GA Hwy 257 to junction Alt. U.S. Hwy 129 near Hawkinsville, GA, then over Alt U.S. Hwy 129 to junction GA Hwy 26 near Cochran, GA, then over GA Hwy 26 to junction U.S. Hwy 80 near Haskins, GA, (5) From junction SC Hwy 19 and Interstate Hwy 20 near Eureka, SC over SC Hwy 19 to junction U.S. Hwy 78 near Aiken, SC, then over U.S. Hwy 78 to junction Interstate Hwy 26 near Ladson, SC, (6) From junction U.S. Hwy 401 and Interstate Hwy 95 near Fayetteville, NC, over U.S. Hwy 401 to junction U.S. Hwy 74 near Laurinburg, NC, (7) From junction U.S. Hwy 74 and U.S. Hwy 601 near Monroe, NC, over U.S. Hwy 601 to junction NC Hwy 151, then over NC Hwy 151 to junction U.S. Hwy 52 near Darlington, SC, then over U.S. Hwy 52 to junction Interstate Hwy 95 near Florence, SC, (8) From junction U.S. Hwy 220 and Interstate Hwy 85 near Greensboro, NC over U.S. Hwy 220 to junction U.S. Hwy 1 near Rockingham, NC, then over U.S. Hwy 1 to junction U.S. Hwy 52 near Cheraw, SC, then over U.S. Hwy 52 to junction Interstate Hwy 95 near Florence, SC, (9) From junction NC Hwy 49 and Interstate Hwy 85 near Charlotte, NC over NC Hwy 49 to junction U.S. Hwy 64 near Asheboro, NC, then over U.S. Hwy 64 to junction U.S. Hwy 258 near Tarboro, NC, then over U.S. Hwy 258 to junction U.S. Hwy 58 near Franklin, VA, (10) From junction Interstate Hwy 95 and VA Hwy 207 near Golansville, VA or VA Hwy 207 to junction U.S. Hwy 301 near Bowling Green, VA, then over U.S. Hwy 301 to junction U.S. Hwy 13 near Red Lion, DE and return over the same routes for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over pertinent service routes as follows: (1), (2), and (3) From junction U.S. Hwy 41 and Interstate Hwy 75 near Rossville, GA, over U.S. Hwy 41 to Atlanta, GA, then over Interstate Hwy 85 to Greenville, SC, then over U.S. Hwy 25 to Asheville, NC, (4) From junction U.S. Hwy 82 and GA Hwy 257 near Albany, GA over U.S. Hwy 82 to Dawson, GA, then over GA Hwy 55 to junction U.S. Hwy 280, then over U.S. Hwy 280 to junction U.S. Hwy Alt. 27 near Columbus, GA, then over U.S. Hwy Alt. 27 to junction U.S. Hwy 80, then over U.S. Hwy 80 to junction GA Hwy 26 near Haskins, GA, (5) From junction Interstate Hwy 20 and SC Hwy 19 over Interstate Hwy 20 to Columbia, SC, then over Interstate Hwy 26 to junction U.S. Hwy 78 near Ladson, SC, (6) From junction Interstate Hwy 95 and U.S. Hwy 401 near Fayetteville, NC, over Interstate Hwy 95 to junction U.S. Hwy 74, then over U.S. Hwy 74 to junction U.S. Hwy 401 near Laurinburg, NC, (7) From junction U.S. Hwy 74 and U.S. Hwy 601 over U.S. Hwy 74 to junction Interstate Hwy 95, then over Interstate Hwy 95 to junction U.S. Hwy 52 near Florence, SC, (8) From junction Interstate Hwy 85 and U.S. Hwy 220 near Greensboro, NC over U.S. Hwy 85 to junction U.S. Hwy 21 near Charlotte, NC, then over U.S. Hwy 21 to junction U.S. Hwy 76 near Columbia, SC, then over U.S. Hwy 76 to junction Interstate Hwy 95 near Florence, SC, then over Interstate Hwy 95 to junction U.S. Hwy 52 near Florence, SC, (9) From junction Interstate Hwy 85 and NC Hwy 49 near Charlotte, NC over Interstate Hwy 85 to junction U.S. Hwy 58 near South Hill, VA, then over U.S. Hwy 58 to junction US. Hwy 258 near Franklin, VA, and (10) From junction Interstate Hwy 95 and VA Hwy 207 over Interstate Hwy 95 to junction U.S. Hwy 13 near Wilmington, DE, then over U.S. Hwy 13 to junction U.S. Hwy 301, and return over the same routes.

MC 112713 (Deviation No. 55), YELLOW FREIGHT SYSTEM, INC., P.O. Box 7270, 10990 Roe Avenue, Shawnee Mission, KS 66207, filed October 24, 1978. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Mobile, AL, over U.S. Hwy 98 to junction U.S. Hwy 49, then over U.S. Hwy 49 to Jackson, MS, and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Mobile, AL over U.S. Hwy 43 to junction U.S. Hwy 11, then over U.S. Hwy 11 to junction U.S. Hwy 80, then over U.S. Hwy 80 to Jackson, MS and return over the same route.

By the Commission.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 78-31709 Filed 11-8-78; 8:45 am]

[7035-01-M]

[Second Revised Service Order No. 1332]

ST. LOUIS SOUTHWESTERN RAILWAY CO. AND SOUTHERN PACIFIC TRANSPORTATION CO.

OCTOBER 26, 1978.

Because of recent work stoppages on the St. Louis Southwestern Railway Co. (SSW) and on other connections of the Southern Pacific Transportation Co. (SP), and because of a major freight train derailment on the SSW in the vicinity of Gilmer, Tex., on October 20, 1978, the SP and the SSW are temporarily unable to forward all cars within 60-hours as required by

section (a)(4)(i) of Second Revised Service Order No. 1332.

It is ordered, Pursuant to the authority vested in the Railroad Service Board by section (a)(1)(v) of Second Revised Service Order No. 1332, the SSW and the SP are required to forward loaded cars or empty foreign or private cars from the points named below within 72-hours.

SSW—Pine Bluff, Ark. and Shreveport, La.

SP—Eugene, Oreg.; Roseville, Calif.; Los Angeles, Calif.; West Colton, Calif.; El Paso, Tex.; San Antonio, Tex.; Hearne, Tex.; Houston, Tex.; Beaumont, Tex.; and Lafayette, La.

Effective: October 26, 1978.

Expires: 11:59 p.m., October 31, 1978.

JOEL E. BURNS,
Chairman,
Railroad Service Board.

[FR Doc. 78-31706 Filed 11-8-78; 8:45 am]

sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409), 5 U.S.C. 552b(e)(3)

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[6320-01-M]

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[M-177, Nov. 6, 1978]

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 10 a.m., November 13, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: Air Medic to make a presentation regarding the problems experienced in the air transportation industry as related to persons who are handicapped and who have medical problems in connection with their transportation.

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

[S-2273-78 Filed 11-7-78; 3:39 pm]

[6740-02-M]

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FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 51750, published November 6, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., November 8, 1978.

CHANGE IN THE MEETING: The following item has been added:

Item No., Docket No., and Company

ER-3. ER76-149 and E-9537, Public Service Co. of Indiana, Inc.

KENNETH F. PLUMB,
Secretary.

[S-2270-78 Filed 11-7-78; 3:39 pm]

[6740-02-M]

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FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 51750, published November 6, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., November 8, 1978.

CHANGE IN THE MEETING: The following items have been added:

Item No., Docket No., and Company

P-2. Project Nos. 2863 and 2877, City of <Holyoke, Mass.
CAG-10. CP77-216, et al., Distrigas of Massachusetts Corp.

KENNETH F. PLUMB,
Secretary.

[S-2269-78 Filed 11-7-78; 11:13 am]

[6720-01-M]

4

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: 3 p.m., November 1, 1978.

PLACE: 1700 G Street NW., sixth floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION:

Franklin O. Bolling, 202-377-6677.

MATTERS TO BE CONSIDERED: Consideration of third-party payment mechanisms and proposed regulation. Announcement is being made at the earliest practicable time.

No. 194, November 1, 1978.

[S-2267-78 Filed 11-7-78; 11:13 am]

[6720-01-M]

5

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: 9:30 a.m., November 8, 1978.

PLACE: 1700 G Street NW., sixth floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION:

Franklin O. Bolling, 202-377-6677

MATTERS TO BE CONSIDERED:

Application to Acquire Home Savings Association, Odessa, Tex., by Transwestern United Corp., Midland, Tex.
Application for Authority to Acquire Topeka Savings Association, Topeka, Kans., by TSA Financial Corp., Kansas City, Mo.
Consideration of Advisory Council Travel Authorization.
Application for Merger, Maintenance of Branch Offices, Cancellation of Membership and Insurance and Transfer of Stock—Tri County Savings & Loan Association, Hudson, Wis., into First Federal Savings & Loan Association of Eau Claire, Wis.
Request for Commitment to Insure Accounts—Sierra Savings & Loan Association, Minden, Nev.
Voluntary Termination of Insurance of Accounts and Withdrawal from Bank Membership—Pioneer Savings & Loan Association, Whiteville, N. C.
Preliminary Application for Conversion into a Federal Mutual Association—Concord-Kannapolis Savings & Loan Association, Concord, N.C.
Branch Office Application—Biscayne Federal Savings & Loan Association, Miami, Fla.
Branch Office Application—First Federal Savings & Loan Association of Broward County, Fort Lauderdale, Fla.
Applications for Bank Membership and Insurance of Accounts—Equality Savings & Loan Association, San Diego, Calif.
Branch Office Application—Home Federal Savings & Loan Association of San Francisco, San Francisco, Calif.
Amendment to FHLBB Resolution Regarding West Coast Federal Savings & Loan Association, San Mateo, Calif.
Consideration of Uniform Guidelines for Enforcement of Regulation Z.
Consideration of Charter S Merger Regulations.

No. 195, November 1, 1978.

RONALD A. SNIDER,
Assistant Secretary.

[S-2268-78 Filed 11-7-78; 11:13 am]

[6820-35-M]

6

LEGAL SERVICES CORPORATION (Committee on Appropriations and Audit).

TIME AND DATE: 9:30 a.m., Wednesday, November 15, 1978.

PLACE: Seventh floor conference room, Legal Services Corporation, 733 15th Street NW., Washington, D.C.

STATUS: Open meeting.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the September 28, 1978, meeting.
2. Status of the annual audit for fiscal year 1978.
3. Review of fiscal year 1978 balances carried forward to fiscal year 1979.
4. Review of the preliminary consolidated operating budget for fiscal year 1979.
5. Review of the draft fiscal year 1980 budget request to the Congress.
6. Report on the Financial Management Improvement Program.
7. Other business.

CONTACT PERSON FOR ADDITIONAL INFORMATION:

Dellanor Young, Office of the President, telephone 202-376-5100.

Issued: November 6, 1978.

THOMAS EHRLICH,
President.

[S-2276-78 Filed 11-7-78; 3:58 pm]

[6820-35-M]

7

LEGAL SERVICES CORPORATION (Committee on Provision of Legal Services).

TIME AND DATE: 3:30 p.m., Monday, November 13, 1978.

PLACE: International Hotel, 300 Canal Street, New Orleans, La.

STATUS: Open meeting.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the meeting of June 13, 1978, and September 19, 1978.
2. Reports on: (a) The Delivery Systems Study, (b) the study required by section 1007 (h) of the Act, and (c) the Reginald Heber Smith Program.
3. Other business.

CONTACT PERSON FOR ADDITIONAL INFORMATION:

Dellanor Young, Office of the President, telephone 201-376-5100.

Issued: November 6, 1978.

THOMAS EHRLICH;
President.

[S-2268-78 Filed 11-7-78; 11:13 am]

[7910-01-M]

8

THE RENEGOTIATION BOARD.

DATE AND TIME: Tuesday, November 14, 1978; 10 a.m.

PLACE: Conference Room, 4th floor, 2000 M Street NW., Washington, D.C. 20446.

STATUS: Closed to public observation.

MATTER TO BE CONSIDERED: IBM Corp., fiscal years ended December 31, 1969, and December 31, 1970.

CONTACT PERSON FOR MORE INFORMATION:

Kelvin H. Dickinson, Assistant General Counsel-Secretary, 2000 M Street NW., Washington, D.C. 20446, 202-254-8277.

Dated: November 7, 1978.

GOODWIN CHASE,
Chairman.

[S-2272-78 Filed 11-7-78; 3:39 pm]

[7910-01-M]

9

THE RENEGOTIATION BOARD.

DATE AND TIME: Tuesday, November 14, 1978; 11 a.m.

PLACE: Conference Room, 4th floor, 2000 M Street NW., Washington, D.C. 20446.

STATUS: Closed to public observation.

MATTER TO BE CONSIDERED: IBM Corp., fiscal years ended December 31, 1969, and December 31, 1970.

CONTACT PERSON FOR MORE INFORMATION:

Kelvin H. Dickinson, Assistant General Counsel-Secretary, 2000 M Street NW., Washington, D.C. 20446, 202-254-8277.

Dated: November 7, 1978.

GOODWIN CHASE,
Chairman.

[S-2271-78 Filed 11-7-78; 3:39 pm]

[8010-01-M]

10

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published.

STATUS: Closed meeting; open meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Wednesday, November 1, 1978, at 10 a.m.

CHANGES IN THE MEETING: Additional items to be considered.

The following items will be considered by the Commission at a closed meeting scheduled for Tuesday, November 6, 1978, at 10 a.m.:

Report of investigation.
Settlement of administrative proceeding of an enforcement nature.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be so considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A), and (10) and 17 CFR 200.402(a) (8), (9)(i), and (10).

The following item will be considered by the Commission at the open meeting scheduled for Wednesday, November 8, 1978, at 10 a.m.:

Consideration of proposed bylaw changes submitted by the Securities Investor Protection Corp. ("SIPC") concerning: (a) indemnification of SIPC directors, officers and employees; (b) a requirement that SIPC members provide public notice of their membership through advertising or otherwise; and (c) an increase in the annual compensation of the Chairman of SIPC. For further information, please contact Robert J. Millstone at 202-755-8777.

Chairman Williams, Commissioners Evans, Pollack, and Karmel determined that Commission business required the above change and that no earlier notice thereof was possible.

NOVEMBER 7, 1978.

[S-2274-78 Filed 11-7-78; 3:39 pm]

[8010-01-M]

11

SECURITIES AND EXCHANGE COMMISSION.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of November 13, 1978, in Room 825, 500 North Capitol Street, Washington, D.C.

An open meeting will be held on Wednesday, November 15, 1978, at 10 a.m. Closed meetings will be held on Tuesday, November 14, 1978, at 10

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a.m., and on Wednesday, November 15, 1978, immediately following the 10 a.m. open meeting.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meetings may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A), and (10) and 17 CFR 200.402(a) (8), (9)(i), and (10).

Chairman Williams and Commissioners Evans, Pollack, and Karmel determined to hold the aforesaid meetings in closed session.

The subject matter of the closed meeting scheduled for Tuesday, November 14, 1978, at 10 a.m., will be:

Access to investigative files by Federal, State or self-regulatory authorities.
Formal orders of investigation.
Freedom of Information Act appeals.
institution of injunctive actions.
Litigation matters.
Regulatory matters bearing enforcement implications.
Settlement of administrative proceedings of an enforcement nature.
Settlement of injunctive actions.
Subpoena enforcement action.

The subject matter of the open meeting scheduled for Wednesday, November 15, 1978, at 10 a.m., will be:

1. Consideration of the application of Charles D. Pulis asking permission for him to become associated with Greentree Securities Co., a registered broker-dealer, as a registered representative in a nonsupervisory, nonproprietary capacity. For further information, please contact Michael F. Perlis at 202-755-1498.

2. Consideration of whether to issue an order pursuant to section 9(c) of the Investment Company Act granting Hartford Variable Annuity Life Insurance Co. ("HVA") and Hartford Equity Sales Co., Inc. ("HESCO") an exemption from section 9(a) of the Act to permit HVA to act as sponsor-depositor of unit investment trusts organized, operated or sponsored by HVA and to permit HESCO to act as principal underwriter with respect to unit investment trusts and investment companies organized, operated or sponsored by HVA. For further information, please contact Gary N. Sundick at 202-755-1250.

3. Consideration of whether to take any action in response to the concerns raised by underwriters with respect to their liability under Section 11 of the Securities Act of 1933 for documents incorporated by reference into a registration statement on Form S-16. For further information, please contact John Granda at 202-755-1750.

4. Consideration of whether to propose for comment an amendment to regulation A, the small offering exemption promulgated pursuant to section 3(b) of the Securities Act of 1933, which would permit the use of a preliminary offering circular between the date of filing of a regulation A notification relating to a firm commitment underwritten public offering of securities and the date on which the offering is commenced. For further information, please contact Ruth D. Appleton at 202-755-1290.

5. Consideration of whether to affirm the action of the duty officer in authorizing two Commission employees, who have been subpoenaed, to be deposed and to produce documents. The subpoenas are from the United States District Court for the Southern District of Florida in the action of *Conner, et al. v. Bache & Co., et al.*, Nos. 75-483-CIV-JE. The Commission is not a party to this litigation. For further information, please contact Frederic Townsend at 202-376-3315.

6. Consideration of whether to adopt proposed amendments to regulation 14A and schedule 14A as well as related amendments to forms 8-K and 10-Q, which were designed to increase the information available to investors regarding (1) the structure, composition and functioning of issuers' boards of directors; (2) resignations of directors; (3) attendance at board and committee meetings; (4) the voting policies and procedures of certain institutions subject to the Commission's proxy rules which exercise voting rights with respect to equity securities held for their own accounts or the accounts of others and (5) the terms of settlement of proxy contests. In addition, the Commission will consider whether to adopt a rule which would enable shareholder proponents to review management statements in opposition to shareholder proposals prior to the mailing of issuers' proxy soliciting materials. For further information, please contact Barbara Leventhal, Richard Nesson, Jennifer Sullivan or Michael Stakias at 202-755-1750.

The subject matter of the closed meeting scheduled for Wednesday, November 15, 1978, immediately following the 10 a.m. open meeting, will be:

Opinion.

FOR FURTHER INFORMATION, PLEASE CONTACT:

Gregg E. Radetsky at 202-755-1133.

NOVEMBER 7, 1978.

[S-2275-78 Filed 11-7-78; 3:39 pm]

NO 9 78
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federal register

THURSDAY, NOVEMBER 9, 1978
PART II



SECURITIES AND EXCHANGE COMMISSION

LOST AND STOLEN SECURITIES PROGRAM

Extension of the Pilot Period; Redesignation of Securities Information Center, Inc.; Redesignation of Certain Institutions

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[8010-01-M]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-15289]

LOST AND STOLEN SECURITIES PROGRAM

Extension of the Pilot Period; Redesignation of Securities Information Center, Inc; Reregistration of Certain Institutions

AGENCY: Securities and Exchange Commission.

ACTION: Notice of the extension of the Lost and Stolen Securities Program's (the "Program") pilot period, the redesignation of Securities Information Center, Inc. ("SIC") as the Commission's designee to maintain and operate the data base of missing, lost, counterfeit or stolen securities, and the reregistration of certain institutions subject to Rule 17f-1 (17 CFR § 240.17f-1) with SIC.

SUMMARY: This action extends the Program's pilot period until June 30, 1979, redesignates SIC as the Commission's designee for a period of 2 years beginning January 1, 1979, and requires certain institutions subject to § 24017f-1 to register with SIC utilizing a revised registration form before December 15, 1978.

EFFECTIVE DATE: November 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Gregory C. Yadley, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549 202-376-8129.

SUPPLEMENTARY INFORMATION: The Commission today announced the extension of the Program's pilot period until June 30, 1979, the redesignation of SIC as the Commission's designee to maintain and operate the computerized data base of missing, lost, counterfeit or stolen securities for a period of two years beginning Janurary 1, 1979, and the reregistration of certain institutions subject to Rule 17f-1 (17 CFR § 240.17f-1) with SIC before December 15, 1978.[1] In addition, all institutions which reregister as direct inquirers and direct inquirers who fail to submit a new registration form indicating a change of status in accordance with instructions contained in the Appendix will be charged for SIC's services according to an estimated revised fee schedule beginning on January 1, 1979.

BACKGROUND

The problems relating to missing, lost, counterfeit, and stolen securities were outlined by the Commission in 1970 [2] and were subsequently the subject of a series of Congressional hearings.[3] Implementation of a system to receive reports and inquiries concerning missing, lost, counterfeit, and stolen securities was recommended by members of Congress, the industry, and law enforcement agencies. To accomplish this objective, the Securities Acts Amendments of 1975 added section 17(f)(1) into the Securities Exchange Act of 1934 (the "Act"). This section provides that certain financial institutions [4] shall make reports and inquiries with respect ot missing, lost, counterfeit or stolen securities in accordance with rules promulgated by the Commission. Section 17(f)(1) also provides that reports and inquiries shall be made to the "Commission or other person designated by the Commission" and that reasonable fees may be charged for the processing of such data.

On December 6, 1976, the Commission adopted § 240.17f-1, establishing reporting and inquiry requirements with respect to missing, lost, counterfeit, or stolen securities. [5] On August 5, 1977, the Commission published the final, amended version of § 240.17f-1, [6] and on January 2, 1978, the system for the processing of reports and inquiries became fully operational.

In order to monitor the effectiveness of the section and the system designed to carry out the Program,[7] the Commission determined that the Program should be instituted initially on a pilot basis, through December 31, 1978. Furthermore, the Commission determined that it would be appropriate to designate another person, as provided for by the statute, to receive and process reports and inquiries made pursuant to the section on behalf of the Commission.[8] Accordingly, the Commission solicited plans from persons interested in acting at the Commission's designee and, after analysis of the submissions, designated SIC to maintain and operate the data base of missing, lost, counterfeit or stolen securities on its behalf through the pilot period ending December 31, 1978.[9]

On July 31, 1978, the Commission issued a release soliciting public comments concerning the operation of the Program and redesignation of SIC as the Commission's designee.[10] Thereafter, in response to numerous requests for additional time in which to submit comments, the Commission extended the comment period from September 8, 1978, to October 15, 1978.[11]

EXTENSION OF THE PILOT PERIOD

The Commission has determined that, due to the short time in which to consider the comments received, a more permanent version of the Program cannot be in place by December 31, 1978, the end of the pilot period. In order to avoid expiration of the exemptive provisions which are provided only for the duration of the pilot period,[12] without having had sufficient opportunity to fully consider the comments received, the Commission has concluded that the pilot period should be extended. The Commission, therefore, announces that the Program's pilot period which was to expire on December 31, 1978, is extended until June 30, 1979.

REDESIGNATION OF SIC

In anticipation of the end of the pilot period and the expiration of SIC's term of designation, the Commission solicited submissions from persons interested in serving as its designee to operate and maintain the data base of missing, lost, counterfeit or stolen securities in Securities Exchange Act Release No. 15015 (July 31, 1978).[13] In formulating their submissions, prospective designees were to consider carefully the "Criteria for a Lost and Stolen Securities Reporting and Inquiry System" set forth in an appendix to that release. There the Commission stated:

> In making a designation, the Commission will consider the following factors, among others: the cost of implementing the system, the amount of time necessary to initiate the system, the costs of operation, the costs of compliance to reporting institutions, the compatability of the system with existing securities information systems, the ability of the system to respond to fluctuations in reporting and inquiry volume in an efficient manner, the experience of the designee in managing similar programs, and the method of allocating costs and billing subscribers.[14]

In addition, comments were solicited from interested persons concerning their experience in working with SIC, their suggestions for modifications of its system, and the appropriate number of years for which a designation should be made.

In response to the Commission's solicitation, plans were submitted by SIC and Compliance Data Center, Inc. ("CDC"). Furthermore, several public comments regarding SIC's general performance during the pilot program were received and analyzed by members of the Commission's staff.

The Commission has analyzed the plans of CDC and SIC in light of the "Criteria" and the public comments. After careful consideration, it has determined to redesignate SIC for a two year period commencing January 1, 1979. SIC's operational costs for the first year's operation of the Program were significantly less than CDC's projected operational costs for the same period of time. In addition, SIC's method of allocating costs among subscribers appears to be more appropriate and equitable than that proposed by CDC due to the fact that the SIC method spreads the costs over a larger segment of the participating institutions, Finally, since the SIC system is an ongoing system and is fully operative, redesignation will not necessitate any further implementation costs or interruption in service. In contrast, CDC's plan would require an assessment for implementation and a period of three months in order to become fully operational.[15]

It also appears that SIC has managed the system in a satisfactory manner during its term of designation. Since October 3, 1977, the effective date of the reporting provisions of § 240.17f-1, SIC has received a total of 273,734 reports representing $1.4 billion [16] in missing, lost, counterfeit or stolen securities and has processed 1,363,962 inquiries.[17] During the first nine months of the pilot year, a total of 194 inquiries resulted in matching reports ("hits"). The securities involved in these hits are valued at $8,385,102.[18] It is anticipated that the system's effectiveness will be enhanced by the incorporation of the National Crime Information Center's ("NCIC") computerized file of securities thefts into the SIC data base, which will be completed shortly. Finally, comments from industry sources concerning SIC's performance have been favorable.

After consideration of the two plans, the Commission has concluded that SIC's system is sufficiently responsive and lowest in cost. SIC has addressed the Commission's criteria for a system to implement the Lost and Stolen Securities Program during the pilot period and has developed, implemented, operated, and maintained a system flexible enough to react to future developments in the area. Therefore, subject to its undertaking to comply with the Principles of Designation contained below, SIC is redesignated to operate and maintain the data base of missing, lost, counterfeit or stolen securities for a 2-year period beginning January 1, 1979.[19]

The Commission has determined that designation for a 2-year term is appropriate. Such a period of designation is consistent with the Commission's goal of reducing and eventually immobilizing the actual movement of physical securities certificates and provides the Commission with maximum flexibility relating to the future size and scope of the Program as book entry and depository systems are increasingly utilized by the securities industry. In addition, the 2-year term may allow SIC to have more flexibility in its planning and in making appropriate operational and budgetary projections.

PRINCIPLES OF DESIGNATION

Securities Information Center, Inc., has been chosen as the Commission's designee subject to its undertaking to comply with the following "Principles of Designation." [20] These principles are the major responsibilities which SIC is expected to undertake.

1. The designee shall implement 17 CFR 240.17f-1, (Rule 17f-1) through its operation of the Lost and Stolen Securities Information System in accordance with the terms of its submission and at the rates specified below, for a 2-year period commencing January 1, 1979, and ending December 31, 1980.

2. The designee shall:

a. Receive reports and respond to inquiries for which the Commission is the appropriate instrumentality;

b. Maintain records of such reports and inquiries and furnish such records to institutions in accordance with its submission; and

c. Collect fees, as approved by the Commission, from reporting institutions to defray the costs of the system.

3. The designee shall maintain the capacity to:

a. Receive reports and inquiries by telephone, the mails, telex, and other means;

b. Generate hard copy confirmations to reporting institutions with respect to all reports and inquiries made by such institutions; and

c. Retrieve records of inquiry by name of the reporting institution as well as by the name of the particular security.

4. The designee warrants that all work shall be performed in a business-like manner and in accordance with the highest standards.

5. The designee shall have the capacity to include in its data base all reports of missing, lost or stolen securities made prior to the effective date of § 240.17f-1 and shall include such reports as the Commission may direct.

6. The designee shall keep a current and true record, available for inspection by the Commission, with respect to each report, inquiry, confirmation, correction, or other information received pursuant to this designation, the time of and means by which such report, inquiry or other information was received, the time of response, the means by which a response was given, and the nature of the response. The designee shall make available for the

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[1] Both the pilot period and SIC's original period of designation will expire on December 31, 1978.

[2] Study of Unsafe and Unsound Practices of Brokers and Dealers, Report and Recommendations of the Securities and Exchange Commission (pursuant to section 11(h) of the Securities Investor Protection Act of 1970), December, 1970.

[3] Organized Crime-Stolen Securities, Hearings Before the Permanent Subcommittee on Investigations, Senate Committee on Government Operations, 92d Cong., 1st sess. (1971); 93d Cong., 1st sess. (1973); 93d Cong. 2d sess. (1974).

[4] The institutions subject to section 17(f)1) are enumerated in the statute as follows:

> Every national securities exchange, member thereof, registered securities association, broker, dealer, municipal securities dealer, registered transfer agent, registered clearing agency, participant therein, member of the Federal Reserve System, and bank whose deposits are insured by the Federal Deposit Insurance Corporation. . . .

[5] Securities Exchange Act Release No. 13053, 41 FR 54923 (Dec. 10, 1976). Certain technical amendments were made by the Commission in Securities Exchange Act Release No. 13280, 42 FR 11829 (Mar. 1, 1977), and further amendments regarding the role of transfer agents in the Program were proposed in Securities Exchange Act Release No. 13281, 42 FR 1184 (Mar. 1, 1977) and incorporated into the rule by Securities Exchange Act Release No. 13832, 42 FR 41022 (Aug. 12, 1977).

[6] Securities Exchange Act Release No. 13832, 42 FR 41022 (Aug. 12, 1977).

[7] The Lost and Stolen Securities "Program" encompasses both the computerized data bank maintained by SIC and the procedures established for receipt and processing of those reports and inquiries directed to it in accordance with the rule and the Lost and Stolen Securities Checklist maintained by the Federal Reserve Banks. The Lost and Stolen Securities "System" refers only to the SIC data base and procedures.

[8] Under § 240.17f-1, reports and inquiries are directed to the "appropriate instrumentality." In the case of U.S. Government and Agency securities, the appropriate instrumentality is any Federal Reserve Bank or Branch. The Commission is the appropriate instrumentality for all other securities, including corporate and municipal issues.

[9] Securities Exchange Act Release No. 1353, 42 FR 26495 (May 12, 1977). AutEx, Inc. was originally named as the designee. Subsequently, as a result of the acquisition of AutEx by ITEL Corp., SIC was created as a wholly-owned subsidiary of ITEL Corp.

[10] Securities Exchange Act Release No. 15015, 43 FR 34790 (Aug. 7, 1978).

[11] Securities Exchange Act Release No. 15159, 43 FR 43035 (Sept. 22, 1978).

[12] The Commission, in Securities Exchange Act Release NO. 13832 (Aug. 5, 1977), provided inquiry exemptions for registered transfer agents and for securities transactions for less than $10,000 face value and market value of bonds and stocks, respectively, and reporting and inquiry exemptions with respect to corporate and municipal issues not assigned CUSIP numbers.

[13] See note 10, supra.

[14] Id.

[15] In addition to these added implementation costs, designation of CDC would necessitate the transfer of all data contained in the computer storage files of SIC and would lead to some initial confusion and disruption on the part of institutions subject to § 240.17f-1.

[16] As of Oct. 14, 1978.

[17] As of Oct. 1, 1978.

[18] As of Oct. 1, 1978.

[19] A full description of the SIC System is contained as an appendix to this release.

[20] If SIC is unwilling or unable to comply with the Principles of Designation, the Commission may designate another entity or take such other action as it may deem appropriate.

Commission's inspection all records and accounts of amounts billed to reporting institutions, the basis for the bills, amounts received from reporting institutions, and accounts on expenses incurred by the designee. Such records for any calendar year shall be kept for 3 years after the end of the calendar year. The designee shall make periodic reports to the Commission as the Commission deems appropriate and necessary.

7. All reports and inquiries received pursuant to § 240.17f-1 and all confirmations of such reports and inquiries, billing information, and any other records maintained pursuant to this designation, are the property of the Commission. The designee shall furnish to the Commission upon demand true, correct, complete, and current copies of any or all, or any part of, such records maintained pursuant to this designation.

8. The designee shall report to the Commission quarterly:

a. The number of reports received during the quarter, data as to the number relative to stolen securities and counterfeit securities, and data as to the types of securities reported;

b. The number of inquiries received during the quarter;

c. The number of "hits" experienced each quarter, the identity of the inquiring and reporting institutions, and the dollar value of the securities involved;

d. Cumulative data on the identity and location of institutions making reports and inquiries and experiencing "hits;"

e. The dollar value of securities reported as missing, lost, counterfeit, or stolen;

f. The number of reporting institutions which are direct subscribers;

g. The number of reporting institutions which are indirect subscribers;

h. Expenses incurred by the designee;

i. The amounts billed to reporting institutions; and

j. Any other information which the Commission may direct.

9. The Commission may direct that the designee shall carry out different or additional routine and necessary functions incidental to its role as the Commission's designee, as the Commission deems appropriate.

10. Such functions that may be specified as "exceptional" will be outlined in writing to the designee, and if the designee desires compensation for such functions, an estimate of the costs entailed will be submitted to the Commission staff for approval. Upon completion of the function, the designee will submit an accounting of actual costs, which will be the basis for charges to be billed to reporting institutions.

11. During the first year of the term of designation, the designee shall be entitled to charge 28 cents per report and inquiry processed, the aggregate total of which will be allocated to all direct subscribers in accordance with the pricing structure announced in Securities Exchange Act Release No. 15289. In addition, the designee shall be entitled to charge each direct subscriber a $20 fee for registration of each primary access station and $10 for registration of each secondary access station and a fee of $10 per annum for retention of files for indirect inquirers, as part of the operational costs of the Program during the first year of the term of designation. Fees for special services which have been approved by the Commission may also be charged to participating institutions at the direction of the Commission. The Commission may change the pricing structure at any time. The rates to be charged by the designee for the second calendar year of the term of designation shall be increased by a percentage equal to the percentage by which the U.S. Bureau of Labor Statistics Consumer Price Index for Urban Wage Earners and Clerical Workers, New York, N.Y.—Northeastern New Jersey—All items, Series A (1967—100), has increased since September 30, 1978. The percentage increase in such Index shall be determined using the last Index published prior to the beginning of such calendar year.

12. The designee shall agree to any other reasonable conditions as the Commission may direct.

Reregistration of Reporting Institutions

Attached as an appendix to this release is a description of the operations of Securities Information Center, Inc., and a registration form for the 1979 Program. The system will operate in substantially the same manner as in the first year of the Program's operation, with the only major modification being the initiation of procedures for notifying reporting institutions that an inquiry has matched a reported loss. Fees for the Program have been increased slightly, and are described in the attached Appendix.

The 1979 registration form must be submitted by all institutions who (1) have not previously registered in the Program, (2) have registered as direct inquirers, regardless of whether they desire to amend their prior registration, and (3) have registered as indirect inquirers and wish to amend their prior registration. The only class of institution that need not reregister are those that registered previously as indirect inquirers and do not desire to amend or update their prior registration. All reporting institutions will, however, continue to be subject to the provisions of the Program. All institutions may, at this time, change their election of inquiry participation status and such elections will be binding through June 30, 1979. *All registration forms must be submitted to the Securities Information Center, Inc., by December 15, 1978.*

Statutory Basis and Competitive Considerations

The Commission designates SIC to receive reports and inquiries required to be made to the Commission under § 240.17f-1, subject to the conditions contained herein, pursuant to the Securities Exchange Act of 1934, as amended, including sections 2, 10, 15, 17, and 23 thereof. The Commission finds that any burden upon competition imposed by this designation is necessary and appropriate in the public interest and for the protection of investors in order to continue the Lost and Stolen Securities Program established pursuant to section 17(f)(1) of the Act.

By the Commission.

Dated: November 1, 1978.

George A. Fitzsimmons,
Secretary.

Appendix

The Lost, Missing, Stolen, and Counterfeit Securities Information System—Description of the System

Introduction

Under 17 CFR 240.17f-1, certain financial institutions are required to make reports and inquiries related to missing, lost, stolen, and counterfeit securities. If the security involved is a U.S. Government or Agency security, such reports and inquiries must be made to a Federal Reserve Bank or Branch.[1] In the case of all other securities, reports and inquiries must be directed to the Securities Information Center, Inc. ("SIC") which has been designated by the Commission to receive and process all such data until December 31, 1980.

SIC will continue to operate substantially in the same manner as it has since October 3, 1977. All institutions are urged to carefully read the material below and to refer, if necessary, to Securities Exchange Act Release No. 13832[2] in which the text of § 240.17f-1 and important explanatory information appears.

[1] Instructions on how to make reports and inquiries with respect to U.S. Government or Agency securities are contained in Securities Exchange Act Release No. 13832 (42 FR 41022 (Aug. 12, 1977)). The procedures for reports of Government Agency securities have not been changed from those in operation during the pilot period.

[2] 42 FR 41022 (Aug. 12, 1978).

Reporting Institutions

The institutions subject to 17 CFR 240.17f-1 are defined as "reporting institutions" and include every national securities exchange, member thereof, registered securities association, broker, dealer, municipal securities dealer, registered transfer agent, registered clearing agency, participant therein, member of the Federal Reserve System and bank whose deposits are insured by the Federal Deposit Insurance Corporation. All such organizations are required to report to and make inquiries of the system.

1979 Registration Requirements

To make reports and inquiries of the data base maintained by SIC, *all reporting institutions must complete and file the 1979 registration form that accompanies this material, except institutions registered with SIC as indirect inquirers whose 1978 registration forms are presently current and correct.* An institution must file the 1979 registration form if (1) it is presently registered as a direct inquirer, regardless of whether the information submitted on the 1977 registration form continues to be current and correct, (2) it is presently not registered with SIC, or (3) it is presently registered with SIC as an indirect inquirer and desire to amend or update their 1977 registration form in any way.

Direct inquirers must submit the 1979 registration form in order that SIC may have on file a current agreement to pay the 1979 registration fees. Currently registered direct inquirers who fail to submit the 1979 registration form will be deemed to have agreed to the increased 1979 fees and charges and will be billed accordingly. In completing the 1979 registration form, currently registered direct and indirect inquirers should update and amend the information submitted previously and may, if they desire, amend their registration to indicate a change in their inquiry participation status. The election of inquiry participation status will be binding through June 30, 1979.

All registration forms should be filled out and returned to:

Securities Information Center, Inc.,
P.O. Box 421, Wellesley Hills, Mass. 02181.

THE DEADLINE FOR REGISTRATION IS DECEMBER 15, 1978

Reports

A report is a notice of (1) securities lost, stolen, missing, or counterfeit; (2) recovery of securities previously reported lost, stolen, or missing; or (3) a correction or update of a previous report other than recovery.

All reporting institutions are required to make reports enumerated in paragraph (b) of 17 CFR 240.17f-1 directly to the appropriate instrumentality, and should use Form X-17F-1A for such purposes. If the security involved is a U.S. Government or Agency security, the appropriate instrumentality is any Federal Reserve Bank or Branch. In the case of all other securities, the appropriate instrumentality is SIC. Reports must also be sent to a transfer agent for the issue and to the appropriate law enforcement agency if criminality is suspected.

In the case of reports concerning securities for which SIC is the appropriate instrumentality, all Form X-17F-1A's must be signed by an authorized individual whose signature is on file with SIC and should be mailed to SIC at P.O. Box 421, Wellesley Hills, Mass. 02181 within the time limits set forth in 17 CFR 240.17f-1. All reports will be entered into the computer data base within 1 day of receipt.

Preliminary reports may also be made by telephone or telex and institutions are encouraged to use this service. Preliminary reports should include the reporting institution's FINS number, [3] the CUSIP number and certificate numbers (including all prefixes and suffixes) of the securities, and indication of whether or not criminality is suspected. Preliminary reports must be followed promptly by a written report on Form X-17F-1A signed by an authorized individual and mailed to SIC at P.O. Box 421, Wellesley Hills, Mass. 02181.

The designee will send a written report confirmation to the reporting institution on a weekly basis.

Inquiries

Under 17 CFR 240.17f-1, reporting institutions must inquire of the data base of reported security losses, thefts, and counterfeits to determine the validity of securities coming into their possession or control. In the case of inquiries with respect to securities for which SIC is the appropriate instrumentality, reporting institutions must employ the manual, computer-assisted system designed by SIC.

For the purposes of this system, all reporting institutions must register as either direct or indirect inquirers. Direct inquirers make inquiries of the system directly by using telephone, telex, or mail. Alternatively, a reporting institution can participate as an indirect inquirer by arranging with a direct inquirer to act on its behalf in making inquiries of the system. Direct inquirers will be charged the registration fees and usage charges described below. Indirect inquirers will not be charged any fees by SIC but may expect direct inquirers acting on their behalf to charge them costs and service charges.

Upon registering with the systems a direct inquirer, the reporting institution will be assigned appropriate access codes which will be based, in part, on the institution's FINS number. The code must be used each time the reporting institution makes an inquiry of the system, whether on its own behalf or on behalf of another institution, to insure that only authorized direct inquirers have access to the system.

In addition to the reporting institution's access code, the inquiry must include the securities CUSIP and certificate numbers (including all suffixes and prefixes). Multiple inquiries can be made in a single mailing, telephone call, or telex transmission.

All direct inquirers must have at least one primary access station from which inquiries will be made to SIC and to which monthly written inquiry confirmations will be mailed. If desired, a direct inquirer can access the system from various stations within its organization. These additional stations can be registered as either primary or secondary access stations. A secondary station makes inquiries of the system directly but written confirmations of such inquiries will be directed to a primary access station of the institution. A primary access station receives confirmations for its own use of the system and for use by its secondary access stations, if any. Every secondary station must be associated with one and only one primary station.

Processing of Inquiries

Direct inquirers may inquire of the data base by telephone, telex, or mail. In the case of telephone inquiries, direct inquirers will receive a special telpehone number to be used for such purposes. On calling, the direct inquirer must furnish the operator its access code, and the certificate's CUSIP and certificate number. Each inquiry will be assigned a validation number which confirms for the direct inquirer that the inquiry was made. Mail and telex inquiries should include the identical information and will be processed upon their receipt by SIC.

The operator will then enter the data into the data base to determine if the CUSIP and certificate numbers in the inquiry match those in a previous-

[3] FINS ("Financial Industry Number Standard") numbers are compiled in the 1976 FINS Directory (first edition), published by the Depository Trust Co. If an institution is uncertain as to whether it has a FINS number, it should consult this Directory, its self-regulatory organization, its trade association, or SEC personnel at 202-376-8134. If an institution has not been assigned a FINS number, a number may be obtained at no cost by writing the Depository Trust Co., attention: FINS Publication, 55 Water Street, New York, N.Y. 10041.

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ly submitted report. If so (a "hit"), the inquiring institution will be notified immediately of the match. This positive confirmation will include instructions on how to contact the reporting institution which submitted the matching report and notice, if any, of suspected criminality. The reporting institution will also be notified of the hit and of the identity of the inquiring institution.

Written confirmations of inquiries that do not result in a match (negative confirmations) will be mailed to the direct inquirer monthly. An optional prompt written confirmation service will be available to direct inquirers at additional cost. With this service, the primary access station will receive confirmation by mail of all inquiries (positive or negative) and of all reports received by the system from that station or its secondary access stations. There will be one such mailing for each day on which reports and/or inquiries are received from the station or its secondary access stations.

Schedule of Charges

Under a pricing structure and schedule of fees approved by the Commission, organizations that are direct inquirers will be charged an annual registration fee and usage fees. An indirect inquirer will not be charged these fees but may expect that the institution that makes inquiries on its behalf will require compensation for its costs and services.

Fees do not cover participants use of the mails, telephone, or telex for making reports or inquiries, nor any training or education of employees of direct or indirect inquirers in connection with the use of the system.

Registration: This annual fee for direct inquirers covers the cost of maintaining registration data, assignment of access codes, and billing of all charges. The fee is based on the number of access stations designated by the direct inquirer on its registration form.

For each primary access station $20
For each secondary access station..... $10

Prompt Written Confirmation Service (Optional): Institutions desiring this service will receive prompt written confirmaiton of all inquiries and reports received from a direct inquirer each day via mail, telephone or telex.

Each primary access station using the service (per quarter) $20

Usage: These fees will cover the cost of verification of authorized system access, matching of reports and inquiries, notification of matches, confirmation of inquiries, retention of files, and system improvements.

Usage charges will be billed quarterly in advance to a single primary access station. These charges, approved by the Commission, are based on the aggregate volume of inquiries made by all participating institutions. The aggregate cost for processing these inquiries is apportioned among all direct inquiries according to their size classification. Thus, an institution is not billed on the basis of its actual usage of the system and, for the charge assessed, it may make an unlimited number of inquiries.

The charges outlined below are based on estimates of the number of direct inquirers that will register for 1979 and of the aggregate number of inquiries (10,000 per day). The chart shows how the range in rates may be affected by the total number of registered direct inquirers. It must be stressed that neither the Commission nor SIC has any control over this variable.

Type	Size	Estimated Annual Usage Charges If 500 Direct Inquirers	If 1000 Direct Inquirers	If 1500 Direct Inquirers
Banks	Amounts of Deposits			
	Over $1 Billion	3200	3000	2800
	$500 Million to $1 Billion	1600	1500	1400
	Less than $500 Million	150	100	75
Securities Organizations	Annual Revenue (Most recent fiscal year)			
	Over $25 Million	3200	3000	2800
	$5 Million to $25 Million	2100	1800	1600
	$500,000 to $5 million	600	500	400
	Less than $500,000	300	250	200
Non-Bank Transfer Agents	Number of Shares Issued Last Year			
	100,000 shares or more	150	150	150
	Less Than 100,000 shares	50	50	50

All charges will be billed in advance on a quarterly basis and adjusted subsequently to reflect the actual aggregate volume of inquiries.

Questions concerning any aspect of the Lost and Stolen Securites Program should be directed to Commission personnel at 202-376-8129 or to SIC at 617-235-1940.

(Please photocopy this form, complete, and submit to SIC.)

1979 Registration Form
Lost and Stolen Securities Program

Instructions

COMPLETION AND FILING OF THE FORM - All institutions completing and filing this form should fill in Part I and Part IV and either Part II or Part III of the form. Completed forms should be returned to:

Securities Information Center, Inc.
Post Office Box 421
Wellesley Hills, Massachusetts 02181

The deadline for filing this form is December 15, 1978.

WHO SHOULD USE THIS FORM - This form should be completed and filed by all institutions subject to Rule 17f-1 (17 CFR §240.17f-1) 1/

(1) Who have NOT submitted a registration form for the Lost and Stolen Securities Program to Securities Information Center, Inc., OR
(2) Who have submitted a registration form for the Lost and Stolen Securities Program to Securities Information Center, Inc. and registered as a DIRECT INQUIRER, OR
(3) Who have submitted a registration form for the Lost and Stolen Securities Program to Securities Information Center, Inc., and registered as an INDIRECT INQUIRER AND desire to amend their prior registration form to either update the information submitted OR change their inquiry participation status.

WHO SHOULD NOT USE THIS FORM - Institutions should NOT complete or file this form if they have previously registered as an INDIRECT INQUIRER in the Lost and Stolen Securities Program by submission of a registration form to Securities Information Center, Inc. AND the data submitted thereon is current AND they do not desire to change their inquiry participation status. If an institution does not submit this form, the prior election of inquiry participation status will continue and be binding through June 30, 1979.

1/ The institutions subject to Rule 17f-1 are as follows: every national securities exchange, member thereof, registered securities association, broker, dealer, municipal securities dealer, registered transfer agent, registered clearing agency, participant therein, member of the Federal Reserve System and bank whose deposits are insured by the Federal Deposit Insurance Corporation.

PART I

A. Name of Institution _____

Mailing Address _____

_____

Zip Code _____

FINS Identification No. 2/ _ _ _ _ _ _

Name, Title, and Telephone Of Person to Whom Bills Should Be Directed: _____

( )_____

Name, Title and Telephone of Person Responsible for Institution's Compliance with Rule 17f-1 (if different from above): _____

( )_____

B. Type of Institution - Check all classifications listed below that describe the institution. 3/

( ) 1. Federal Reserve System member.
( ) 2. Bank whose deposits are insured by the Federal Deposit Insurance Corporation.
( ) 3. National Securities Exchange.
( ) 4. National Securities Exchange member.
( ) 5. National Securities Exchange member firm.
( ) 6. Registered Securities Association.
( ) 7. Registered Securities Association member.
( ) 8. Securities broker.
( ) 9. Securities dealer.
( ) 10. Municipal securities dealer.
( ) 11. Registered transfer agent.
( ) 12. Registered clearing agency.
( ) 13. Participant in a registered clearing agency.

2/ FINS ("Financial Industry Number Standard") numbers are compiled in the 1976 FINS Directory (First Edition), published by the Depository Trust Company. If an institution is uncertain as to whether it has a FINS number, it should consult this Directory, its

(Footnote Continued)

C. Size of Institution - Check the line below that describes the size of the institution.

1. Banks (those who checked lines 1 or 2 of B, above)

( ) More than $1 billion in deposits
( ) $500 million to $1 billion in deposits
( ) Less than $500 million in deposits

2. Securities Organizations (those who checked lines 3 through 10 of B, above)

( ) More than $25 million in annual revenues
( ) $5 million to $25 million in annual revenues
( ) $500,000 to $5 million in annual revenues
( ) Less than $500,000 in annual revenues

3. Non-Bank Transfer Agents (those who checked only classification 11 of B, above)

( ) That issued 100,000 shares or more last year
( ) That issued less than 100,000 shares last year

(Continued Footnote)

self-regulatory organization, its trade association, or SEC personnel at 202-376-8129. If an institution has not been assigned a FINS number, a number may be obtained at no cost by writing the Depository Trust Company, Attention: FINS Publication, 55 Water Street, New York, New York 10041.

3/ If no classification describes the institution, the institution is not subject to Rule 17f-1. If the institution desires to participate in the Lost and Stolen Securities Program as a "permissive inquirer," a special application must be made to the Commission pursuant to paragraph (d) of Rule 17f-1 in accordance with the instructions given in Securities Exchange Act Release No. 13832 at 42 FR 41024 (August 12, 1977).

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PARTS II & III

Election of Inquiry Participation Status

To register as a DIRECT INQUIRER, complete Part II below. To register as an INDIRECT INQUIRER, complete Part III below. This election of inquiry participation status is binding through June 30, 1979.

Direct inquirers will be able to make inquiries of the data base directly and will be charged usage fees and registration fees as described in the Appendix of Securities Exchange Act Release No. 15289. Indirect inquirers will NOT be able to make inquiries directly and so must make arrangements with a registered direct inquirer to inquire on its behalf. Indirect inquirers will NOT be charged any fees by Securities Information Center, Inc. but should be aware that the institution making inquiries on their behalf may assess costs and service charges. (Indirect inquirers, however, should make reports of loss directly).

PART II

DIRECT INQUIRER

To register as a direct inquirer, please complete (A), (B), and (C) below.

A. Registration of Access Stations - Indicate the number of primary and secondary access stations the institution will use to make inquiries of the system. 4/ All institutions must have at least one primary access station. There is an annual registration fee of $20.00 for each primary access station and $10.00 for each secondary access station. 5/

NUMBER OF PRIMARY ACCESS STATIONS-----_____
NUMBER OF SECONDARY ACCESS STATIONS---_____

4/ Access stations are described in the "Description of the System" to which this form is appended.

5/ Institutions establishing secondary access stations should append to this form a list of the titles, addresses, and names of the responsible individual for each secondary access station.

B. Optional Prompt Written Confirmation Service - Indicate whether the institution desires prompt written confirmation service. If an institution desires this service, the Securities Information Center, Inc. will send the institution written confirmations of all inquiries and reports received by telephone, telex, and mail on a daily basis. If an institution does not desire this service, confirmations of inquiries will be sent on a monthly basis. There is a $20.00 per quarter charge for each primary access station using this service.

( ) We do NOT desire prompt written confirmation service.
( ) We do desire prompt written confirmation service and agree to pay the fee for this service.

C. Agreement to Pay Fees - After reading the statement below, please sign in the space provided.

Beginning January 3, 1979, we will participate in the Lost and Stolen Securities Program as a direct inquirer. We agree to pay Securities Information Center, Inc. the annual registration fee of $20.00 for each primary access station and $10.00 for each Secondary Access Station. We also agree to pay in advance quarterly usage fees, charges for optional services we request, and all sales, use and excise taxes, or other taxes, which may be levied on or in connection with, the furnishing of the facilities or services of the Securities Information Center, Inc. We understand that all fees are due and payable within ten days of date of invoicing.

_____
(Signature of Authorized Institutional Representative)

_____
(Type or Print) (TITLE)

PART III
INDIRECT INQUIRER

To register as an indirect inquirer, please complete the statement below and sign in the space provided.

Beginning January 3, 1979, we will participate in the Lost and Stolen Securities Program as an indirect inquirer. We have entered into an agreement with _____ who will (Name of Registered Direct Inquirer)

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make inquiries on our behalf and we have a copy of this agreement on file available for inspection. We are aware that we will receive no direct confirmations from Securities Information Center, Inc., and that the institution that makes inquiries for us may pass through to us the costs of using the system on our behalf as well as additional service charges.

_____
(Signature of Authorized Institutional Representative)

_____
(Type or Print) (TITLE)

PART IV

ALL institutions filing this form must complete (A) and (B) below.

A. Agreement - After reading the statement below, please sign in the space provided.

We understand that our participation in the Lost and Stolen Securities Program is required by Rule 17f-1 (17 CFR §240.17f-1) under the Securities Exchange Act of 1934, as amended. We agree that we will make reports of missing, lost, counterfeit and stolen securities and make inquiries relative thereto, in accordance with Rule 17f-1 and instructions of the Commission or its designee.

We understand that the Securities Exchange Commission has designated Securities Information Center, Inc. to operate the Lost, Missing, Stolen, and Counterfeit Securities Information System. Securities Information Center, Inc. will perform its work in a businesslike manner and in accordance with reasonable standards of care. It does not, however, guarantee the accuracy of any information contained in the records of the System or of the responses to inquiries concerning missing, lost, counterfeit, and stolen securities furnished by it. Securities Information Center, Inc. shall not be liable for any unintentional delays, inaccuracies, errors or omissions in said responses, or for any damages arising therefrom or occasioned thereby, nor

will it be liable for non-performance or interruption of services due to fire, storms, strikes, labor disputes or any causes beyond its control or due to the act or omission of any other person, firm or corporation.

_____
(Signature of Authorized Institutional Representative)

_____
(Type or Print) (TITLE)

B. Names and Signatures of Persons Making Reports on Behalf of the Institution - All reports of missing, lost, counterfeit or stolen securities and all reports of recoveries must be submitted on Form X-17F-1A and signed by an individual whose signature is on file with Securities Information Center, Inc. All individuals having this authority should fill in the spaces below (attach additional pages on institution letterhead if necessary).

_____ _____
(Signature and Date) (Signature and Date)

_____ _____
(Print or Type) (TITLE) (Print or Type) (TITLE)

MAIL THIS FORM TO:

Securities Information Center, Inc.
Post Office Box 421
Wellesley Hills, Massachusetts 02181

DEADLINE FOR FILING IS DECEMBER 15, 1978.

[FR Doc. 78-31618 Filed 11-8-78; 8:45 am]

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federal register

THURSDAY, NOVEMBER 9, 1978
PART III



DEPARTMENT OF COMMERCE

Economic Development Administration

■

SPECIAL ECONOMIC DEVELOPMENT AND ADJUSTMENT ASSISTANCE

Advance Notice of Proposed Rulemaking

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[3510-24-M]

DEPARTMENT OF COMMERCE

Economic Development Administration

[13 CFR Part 308]

SPECIAL ECONOMIC DEVELOPMENT AND ADJUSTMENT ASSISTANCE

Advance Notice of Proposed Rulemaking

AGENCY: Economic Development Administration (EDA), Department of Commerce.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This advance notice of proposed rulemaking announces that the Economic Development Administration is in the process of revising its regulations regarding the Special Economic Development and Adjustment Assistance Program. The Agency will be revising these regulations to establish separate programs for the two basic types of assistance extended under the authorizing legislation in order to facilitate administration of the Program. The intended effect of this advance notice is to provide the public and interested organizations with the opportunity to participate early in the rulemaking process.

DATES: Comments must be received on or before: December 11, 1978.

ADDRESSES: Send comments to: Assistant Secretary for Economic Development, U.S. Department of Commerce, Economic Development Administration, Room 7800B, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT:

Paul J. Dempsey, National Title IX Coordinator, U.S. Department of Commerce, Room 7814B, Washington, D.C. 20230, 202-377-2659.

SUPPLEMENTARY INFORMATION: The Economic Development Administration (EDA) is considering amending Part 308 of Title 13 of the Code of Federal Regulations to establish separate programs for assistance extended under the "sudden and severe economic dislocation" provisions of section 901 of the Public Works and Economic Development Act of 1965 (Act) (42 U.S.C. 3241) and for assistance extended under the "long-term economic deterioration" provision of section 901. Currently, 13 CFR Part 308 provides a single framework for all assistance extended under the authority of Title IX of the Act. At this time, EDA has developed guidelines for the sudden and severe economic dislocation (SSED) program and is in the process of preparing guidelines to govern the long-term economic deterioration (LTED) program.

EDA is publishing the SSED program guidelines as an advance notice of proposed rulemaking in order to provide the public with opportunity to participate early in the rulemaking process, as required by Executive Order 12044 on Improving Government Regulations. As soon as guidelines are prepared concerning the LTED program, EDA will publish those guidelines as an advance notice as well. EDA is proceeding to revise its regulations at 13 CFR Part 308 in accord with the requirements of Executive Order 12044 regarding the preparation of "significant" regulations and is tentatively planning to publish new proposed regulations within the next six months.

GUIDELINES FOR THE PROPOSED SUDDEN AND SEVERE ECONOMIC DISLOCATION PROGRAM

I. AUTHORITY

Authority for this program is provided by Title IX of the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3121, 3241 *et seq.*), which was enacted on September 27, 1974 (Pub. L. 93-423) and amended on October 12, 1976 (Pub. L. 94-487). Regulations implementing Title IX appear in Volume 13 of the Code of Federal Regulations, Chapter III, Part 308.

II. STATEMENT OF PURPOSE

A. *Public Works and Economic Development Act (PWEDA).* The Act authorizes financial assistance for planning, public works and development activities designed to foster economic development in jurisdictions experiencing substantial and persistent unemployment and underemployment. The financial assistance should enable such areas to contribute to the enhancement of the domestic prosperity and to help themselves achieve: (a) lasting improvement; (b) a stable and diversified local economy; (c) improved local conditions. These objectives should be sought in a manner that does not transfer jobs from other areas of the country and that is consistent with sound, long-range planning.

B. *Title IX.* An amendment to the Act, Title IX provides special economic development and adjustment assistance to help State and local areas:

1. Meet special needs arising from actual or threatened severe and sudden economic dislocations; and

2. Meet special needs associated with long-term economic deterioration.

In addition, Title IX encourages cooperative intergovernmental action to prevent or solve economic adjustment problems.

These guidelines govern only the administration of the sudden and severe economic dislocation provision of Title IX. Separate guidelines have been developed for the long-term economic deterioration provision of Title IX.

III. SUMMARY OF THE SUDDEN AND SEVERE ECONOMIC DISLOCATION PROGRAM

The Sudden and Severe Economic Dislocation program is intended to help local areas develop and implement economic adjustment plans. The assistance is designed to anticipate and prevent the occurrence of an economic dislocation, or to reestablish employment opportunities and economic stability consistent with the long term economic prospects for the area as soon as possible after a dislocation occurs. It is meant to be a rapid response program.

In order to qualify for assistance, an area must be threatened with, or must have recently suffered, a severe economic dislocation. Qualifying criteria are provided in Section IV below.

The cornerstone of the Sudden Dislocation program is an Adjustment Plan that identifies the adjustment needs of the area, describes the activities planned to meet them, and explains how these activities are to be carried out. EDA cannot commit Title IX funds to carry out an adjustment effort until it has reviewed and approved the applicant's Adjustment Plan.

Adjustment Planning Grants are available to support preparation of an Adjustment Plan, if one does not already exist. Awarding such a grant to an area, however, does not commit EDA subsequently to fund all or any of the plan's component projects.

Preliminary Adjustment Planning Grants. When the actual extent of a dislocation is difficult to determine, but there is reason to believe it may be severe, a Preliminary Adjustment Planning Grant may be awarded for the principal purpose of identifying explicit adjustment needs, and their magnitudes. If warranted, a regular Adjustment Planning Grant will subsequently be awarded to complete a detailed Adjustment Plan.

Ajustment Implementation Grant. The Sudden and Severe Economic Dislocation program can fund the implementation of related projects (activities) encompassed by the approved Adjustment Plan with a single Adjustment Implementation Grant. Such assistance may be combined with funds from other EDA programs, as appropriate. While there are virtually no limitations on the types of projects that can be funded (as long as they are shown to help solve the problems(s) identified), a component project must meet all applicable statutory requirements before program funds can be disbursed for it.

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If an Adjustment Plan identifies needed long-term adjustments in the local economy (in addition to immediate measures), the detailed planning for these, and any related implementation funding, will be considered under this program only if they are directly related to the sudden and severe dislocation. If the relationship is marginal, these other adjustments will be considered under other programs.

IV. ELIGIBILITY REQUIREMENTS

A. *Eligible Applicants.* To be eligible, an applicant must be one of the following:

1. A public or private non-profit organization that has been determined to be the representative of a redevelopment area established under Title IV of the Act;

2. An Economic Development District established under Title IV of the Act;

3. An Indian tribe;

4. A State;

5. A city or other political subdivision of a State; or

6. A consortium of such political subdivisions.

In general, the smallest entity capable of dealing effectively with the problem will be deemed the proper applicant. A State will be considered the proper applicant only in those cases in which the problem is common to a wide area or is most effectively handled at the State level.

B. *Eligible Time-Frames.* In order to be eligible for consideration:

1. The applicant may not request assistance more than two years in advance of a threatened dislocation; or

2. The applicant must request assistance within one year after a dislocation has taken place.

C. *Eligible Economic Dislocations.* There are two basic types of eligible economic dislocations:

1. The permanent loss of a significant number of jobs owing to direct actions of the Federal Government, import competition,[1] a disaster that permanently destroys a significant part of the employment base and for which other recovery assistance is unavailable, or the sudden and permanent closure or severe curtailment of a major employer for other reasons; and

2. Sudden major economic changes of a magnitude beyond the capacity of an area to respond, such as those that might be associated with the establishment of a major new defense installation, for which other sources of assistance are unavailable.

[1] Assistance extended under the SSED program on the basis of the loss of jobs because of the effects of import competition is limited to providing assistance to the affected community. Adjustment assistance for trade impacted firms and workers is available under the Trade Act programs.

Priority consideration will be given to dislocations resulting in the loss of a significant number of jobs.

D. *Minimum Impact Thresholds* (for job-loss dislocations only). In order to qualify for consideration, eligible dislocations must meet the following minimum test of impact severity:

1. For areas not in Standard Metropolitan Statistical Areas:

a. If the unemployment rate of the Labor Market Area exceeds the national average, the dislocation must amount to:

- 2 percent of the employed population, or
- 500 direct jobs.

b. If the unemployment rate of the Labor market area is equal to or less than the national average, the dislocation must amount to:

- 4 percent of the employed population, or
- 1,000 direct jobs.

2. For areas within Standard Metropolitan Statistical Areas:

a. If the unemployment rate of the Standard Metropolitan Statistical Area exceeds the national average, the dislocation must amount to:

- 0.5 percent of the employed population, or
- 4,000 direct jobs.

b. If the unemployment rate of the Standard Metropolitan Statistical Area is equal to or less than the national average, the dislocation must amount to:

- 1 percent of the employed population, or
- 8,000 direct jobs.

Surpassing the minimum impact threshold does *not* confer eligibility for the program on an area. These are merely the *minimum* criteria for consideration of an area. Many other factors are considered, as discussed in section V below.

Eligible time-frames and minimum impact threshold requirements may be waived in cases in which the Assistant Secretary determines that adherence to them would hinder achieving the intended purposes of Title IX.

V. PREFERENCE FACTORS IN AWARDING GRANTS

Because of limited program funds, preference will be given to areas demonstrating the greatest need and ability to make effective use of grant funds. Preference factors include the following:

A. *Permanent loss of a significant number of jobs:*

1. The number of jobs lost;

2. The percentage *increase* in unemployment in the impacted area attributable to the dislocation;

3. The characteristics of the affected work force (i.e., age, skill categories, etc., which would have bearing on their ability to obtain other work);

4. The composition and status of the local and area economy and the composition of the area work force;

5. The probable magnitude of the secondary and tertiary impacts on the area;

6. The national implications of the proposed project for saving a large number of jobs nationwide. (Demonstration of the viability of a new technology, for example, could help prevent the threatened loss of a large number of jobs nationwide).

B. *Sudden major change in the economy of an area:*

1. The extent to which the abrupt need for increases on local services exceeds the capacity of the community to provide them;

2. The degree of distress incurred by the population present before the build-up;

3. The degree to which the adjustment problem was precipitated by a direct act of the Federal Government or by a need to meet a national emergency.

C. *General:*

The demonstrated capacity of the applicant to administer the proposed project effectively;

2. The extent to which community support is mobilized behind the adjustment effort;

3. The degree to which the adjustment plan is anticipatory and innovative in meeting the adjustment needs identified;

4. The extent to which program funds will leverage private investment;

5. The amount of funding from other sources, both public and private, and the unavailability of funding from other sources for the activities for which program funds are requested;

6. The extent to which program funds will act as a catalyst to bring forth cooperative efforts;

7. The extent to which the requested assistance will have impacts that go beyond the direct benefits of the assistance;

8. The degree to which the dislocation may cause or exacerbate chronic economic problems in the area; and

9. The extent to which the requested assistance appears to fulfill the purposes of the Act (see section IIA, items a-c).

VI. TYPES OF ASSISTANCE AVAILABLE

A. *Adjustment Planning Grants.* Adjustment Planning Grants may be awarded to eligible applicants that do not have an approved Adjustment Plan, and do not have the resources to prepare one.

The Adjustment Plan must address both the immediate reemployment or other assistance needs of the dislocated workers and the economic adjustment needs of the local economy. Because of the emergency nature of

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these problems, the Adjustment Plan should be completed within three to six months. To be approvable, it must contain the following elements:

Part 1: Detailed Adjustment Plan

a. Brief economic history and overview of the area, providing an understanding of the context of the dislocation(s).

b. Description of each economic dislocation, including the causal factors and the direct and indirect impacts on the area; with particular reference to the preference factors in section V. A or V. B and V. C, above.

c. Identification of the specific immediate and longer term objectives of the adjustment strategy. Objectives should be in measurable terms and should incorporate target dates (e.g., create interim reemployment opportunities for 500 presently dislocated workers within six months; reduce employment dependence on a certain industry by 25 percent within five years; complete a study of potential new indigenous enterprises that would provide at least 200 new local jobs within one year; expand manufacturing employment by 300 jobs within three years; etc.)

d. Description of each activity proposed as part of the Adjustment Plan. The description of each element intended to offset the dislocation(s) in the near term and therfore to be implemented immediately should include: start-up and operating costs, anticipated source(s) of funding, and a detailed explanation of the method by which it will be carried out. The description of elements addressing longer-term restructuring needs of the local economy may be considerably less detailed, if they are to be considered under other programs; their purpose here is to provide an understanding of the broader and longer-term context in which the near-term measures will be taken.

e. Explanation of the interrelationships among the various proposed activities and the manner in which they comprise elements of an integrated overall adjustment program that addresses the reemployment of impacted workers and the adjustment needs of the local economy.

f. A graphic device that shows the timing of the various activities (or components of the activities) that are planned, the relationship between the completion of one activity and the initiation of another, and the connection between each element and one or more of the specified adjustment objectives. The purpose of this graphic device is to establish a set of specific incremental performance criteria for the benefit of both the applicant and the EDA project manager. A summary overall financial plan should accompany the graphic device, including identification of funding sources other than EDA.

Part 2: Adjustment Plan Support

g. Evidence that the plan was developed in cooperation with Regional Commissions, State 302 and other planning agencies, political subdivisions, Indian tribes, Economic Development Districts, and other planning and development organizations that might be affected by its implementation; that it is consistent with existing zoning ordinances, plans, and planning efforts; and that there has been involvement of the impacted individuals in its development.

h. Comparison between the chosen adjustment plan and alternatives that were considered (for selected elements or for the entire plan), and an explanation of why the proposed program is the most cost-effective or otherwise superior means for attaining the specified adjustment objectives.

i. Identification and analysis of the potential environmental impacts of the planned activities, according to instructions provided in Attachment 3 of the guidelines.

j. Where a revolving loan fund has been recommended, detailed plans for the administration and use of the funds as a tool in implementing the adjustment plan and for other development and adjustment uses after the plan has been implemented.

k. Description of how the community is mobilizing to carry out the adjustment plan (groups that have been formed, individual actions and responsibilities, etc.).

Award of an Adjustment Planning Grant does not commit EDA subsequently to fund the implementation of all or any part of the Adjustment Plan.

B. *Preliminary Adjustment Planning Grants.* If EDA determines that insufficient information is available to establish the appropriate level of assistance, a Preliminary Adjustment Planning Grant may be awarded. This preliminary grant will be primarily for the purpose of identifying and assessing the magnitude of the impacts of the dislocation. In addition, the plan must provide a preliminary description of the activities planned to meet identified adjustment needs and a preliminary explanation of the details of the methods of carrying out the planned activities. If the preliminary plan calls for grant funds to be used for adjustment loans, it must contain assurances that proceeds from the repayment of loans will be used for economic adjustment.

A Preliminary Adjustment Planning Grant will usually be modest and of short duration. EDA must approve the choice of contractor, in writing, and must be represented at at least one review meeting during the contract performance period. If, upon completion of the Preliminary Adjustment Planning Grant, EDA determines that further assistance is warranted, a regular Adjustment Planning Grant will be awarded to support full-scale adjustment planning in accordance with VI. A., above. In order to avoid any semblance of conflict of interest, the contractor performing on a Preliminary Adjustment Planning Grant will not be eligible to perform on a subsequent regular Adjustment Planning Grant, if awarded. EDA recognizes that adjustment activities tentatively identified under a Preliminary Adjustment Planning Grant may be revised during plan preparation under a regular Adjustment Planning Grant.

C. *Adjustment Implementation Grants.* An Adjustment Implementation Grant may be awarded to assist the implementation of an approved Adjustment Plan. As a rule, the *maximum* amount of an Adjustment Implementation Grant will be $3,000 per job retained or replaced, with an upper limit of $5 million. Projects for which implementation funds are sought must be shown in the Adjustment Plan to represent the most cost-effective response to the dislocation(s) upon which eligibility is based.

Adjustment Implementation Grants may be used for any of the following: public facilities, public services, business development, planning, unemployment compensation (as provided in 903(d) of the Public Works and Economic Development Act), rent supplements, mortgage payment assistance, research, technical assistance, training, relocation of individuals and businesses, and other assistance which demonstrably furthers the economic adjustment objectives of Title IX.

VII. APPLICATION PROCEDURES

A. *Adjustment Planning Grants.* Application for an Adjustment Planning Grant must be made according to the application procedures contained in Attachment "M" of Office of Management and Budget Circular A-102 Revised. Part IV, Program Narrative, of Attachment "M" (Exhibit M-3) must be prepared according to the instructions in Attachment 1 of these Guidelines. Environmental requirements are explained in Attachment 3 of these Guidelines.

B. *Preliminary Adjustment Planning Grants.* If EDA determines that a Preliminary Adjustment Planning Grant should be awarded, application procedures will be the same as for regular Adjustment Planning Grants. The grant agreement will be amended to convert it to a regular Adjustment Planning Grant, subsequently, if deemed appropriate by EDA.

C. *Adjustment Implementation Grants.* Application for an Adjustment Implementation Grant must be made according to the application procedures contained in Attachment "M" of Office of Management and Budget Circular A-102 Revised. Part III, Budget, and Part IV, Program Narrative, of Attachment "M" (Exhibit M-3) must be prepared according to the instructions in Attachment 2 of these Guidelines. Environmental requirements are explained in Attachment 3 of these Guidelines.

VIII. PROCESSING OF APPLICATIONS

Sudden and Severe Economic Dislocation program applications will be devoloped by the applicant with the assistance of the Economic Development representative and the Regional Office staff. Completed applications will be processed through the Regional Offices and sent to Washington, D.C., for final action.

Grants will be approved by the Assistant Secretary and obligated upon acceptance of the grant offer by the grantee. In most instances, disbursements of funds will be by letter of credit according to procedures provided by the Agency.

IX. FINANCIAL GUIDELINES

A. *Use of Grant Funds.*

1. Adjustment Planning Grants and Preliminary Adjustment Planning Grants may be used by the recipient only for direct expenditures, including the purchase of services.

2. Adjustment Implementation Grants may be used either in direct expenditures by the recipient or through redistribution by it to public and private entities in grants, loans, loan guarantees, payments to reduce interest on loan guarantees, or other forms of assistance, with the exception that no grant shall be made to a private profit-making entity.

B. *Redistribution of Loans*

1. Interest rates on loans may be charged by grant recipients consistent with the rates charged under their existing authorities. In the absence of existing authorities, reasonable rates as agreed to by EDA may be charged. However, the minimum interest rate allowable is four percentage points below the interest rate charged under Title II of the Act.

2. Third party loan repayments will be maintained in a revolving credit account. The grant recipient must certify to EDA that any reuse of loan repayments will be for economic development and adjustment activities consistent with the purposes of Title IX, and consistent with the plan for the reuse of revolving loan funds.

C. *Local Share.* The grant rate for Title IX SSED grants normally will be 75 percent. A non-Federal share is expected and encouraged as evidence of the involvement of State and local government and, if appropriate, the local community. The local share may be in-kind, and at the discretion of EDA does not have to be in place prior to disbursement of grant funds.

Since the program is designed to provide timely assistance to address an economic adjustment problem, the non-Federal share can be waived by EDA if a local share cannot reasonably be expected to be obtained or when its provision would delay and adversely affect the implementation of a plan of adjustment.

D. *Partial Funding.* EDA may choose to fund only certain elements of an Adjustment Plan. This applies to all situations including those in which an applicant received an Adjustment Planning Grant.

X. MONITORING

A. *Reporting Requirements.* Each grantee will be required to submit a complete report to the Assistant Secretary or his designee for each year that grant funds are being used and for one year thereafter.

Such annual reports will describe:

1. The status of each activity identified in the scope of work funded by the grant;

2. The costs incurred for each completed and/or partially completed activity, including operational costs;

3. How each activity in the scope of work was carried out, the extent to which performance benchmarks were achieved or surpassed (and why), and problems encountered in general and with regard to each activity;

4. The degree to which activities have achieved their goals as described in the adjustment strategy; and

5. A general evaluation of the effectiveness of the use of the Special Adjustment Assistance provided to the recipient.

B. *Audit Requirements.* The program budget must provide for audits by an auditor acceptable to the Office of Audits of the Department of Commerce and in accordance with OMB Circular No. A-102, Attachment G, and OMB Circular No. A-110, Attachment F. Such audits will be conducted for submission to the Agency, either at the termination of an individual project that is part of the Adjustment Plan, or at the termination of the entire adjustment program, whichever EDA deems most appropriate.

Comments are welcome on these guidelines. Comments should be sent to the Assistant Secretary at the above address within thirty days, although all comments will be considered. The attachments referred to in Part VII of the guidelines are available upon request.

This advance notice of proposed rulemaking is issued under the authority to sections 701 and 901–905 of the Act (Pub. L. 89-136, 79 Stat. 570, 42 U.S.C. 3211, 3241 *et seq.*), and Department of Commerce Organization Order 10–4, as amended (40 FR 56702, as amended).

Dated: November 6, 1978.

ROBERT HALL,
Assistant Secretary for Economic Development.

[FR Doc. 78-31717 Filed 11-8-78; 8:45 am]

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federal register

THURSDAY, NOVEMBER 9, 1978
PART IV



COMMUNITY SERVICES ADMINISTRATION

GRANTEE FINANCIAL MANAGEMENT

Non-Federal Share Requirements for Title II, Sections 221, 222(a), and 231 Programs

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[6315-01-M]

Title 45—Public Welfare

CHAPTER X—COMMUNITY SERVICES ADMINISTRATION

[CSA Instruction 6802-3a]

PART 1068—GRANTEE FINANCIAL MANAGEMENT

Subpart—Non-Federal Share Requirements for Title II, Sections 221, 222(a) and 231 Programs

AGENCY: Community Services Administration.

ACTION: Final rule.

SUMMARY: The Community Services Administration is filing a final rule informing grantees of a change in the non-Federal share contribution required for assistance provided under sections 221 and 222(a) of the Economic Opportunity Act of 1964 as amended. The final rule also consolidates into one subpart those existing waiver criteria which will continue to be applicable to grants under these sections of the Act. This document implements a legislative change to section 225(c) enacted by passage of the Economic Opportunity Amendments of 1978.

EFFECTIVE DATE: Section 1068.20-2(a), Legislative Requirements (secs. 221 and 222(a)), is effective as of the date of enactment of the Economic Opportunity Amendments of 1978 (Nov. 2, 1978). Remaining sections of this subpart are effective December 11, 1978.

FOR FUTHER INFORMATION CONTACT:

Ms. Jacqueline G. Lemire, telephone 202-254-5047; teletypewriter 202-254-6218.

SUPPLEMENTARY INFORMATION: As a result of a provision in the Community Services Act of 1974 mandating a decrease for 2 consecutive years in the Federal share contribution to grants made under sections 221 and 222(a) of the Economic Opportunity Act, both community action agencies and other organizations were required to increase their share in direct proportion. This brought the Federal to non-Federal ratios to 70/30 and 60/40 depending on the aggregate amount of financial assistance received.

Because of this required massive increase in local support, many CAA's and other grantees were unable to increase local financial support in the amounts called for. Therefore, the Agency was forced to issue relatively broad criteria for waiver as provided for in section 225(c) and published in § 1068.22 (CSA Instructions 6802-5a and 6802-5a, Ch. 1.)

The Congress recognized the burden that this high matching requirement was imposing on programs for the poor and acted to return the matching requirement to the Pre-Community Services Act level by revising the first sentence of section 225(c) of the EOA to read as follows: "Unless otherwise provided in this part, financial assistance extended to a community action agency or other agency pursuant to section 221 and section 222(a) of this title shall not exceed 80 per centum of the approved costs of the assisted programs or activities."

The main purpose for issuing this subpart is to inform grantees and the public that the non-Federal share requirement for grants made under sections 221 and 222(a) has been reduced and to provide a formula by which grantees can calculate the non-Federal share for their ongoing grants.

In addition, we are taking this opportunity to consolidate into this subpart most of the existing regulations containing criteria for waiving the non-Federal share. One major exception to be noted is § 1068.22 (CSA Instruction 6802-5a and the change thereto) which provides eligibility for waiver of some of the NFS to grantees serving communities which are experiencing severe economic problems. This broad criteria for waiver was implemented because almost one-third of CSA's grantees were unable to raise the non-Federal share when the requirements were 30 percent and 40 percent. The Agency feels that the new 80/20 requirement is a realistic match and that most grantees can raise the required local share. In supporting a return to this ratio before the Congress, the Director noted that the new match would be strictly enforced. Therefore, the waiver criteria based on severe economic conditions in the community will not apply to a grant or that portion of a grant that carries an 80/20 matching ratio.

Other existing waiver criteria remain in effect with one exception. Section 1068.25 (CSA Instruction 6802-8, Waiver of Non-Federal Share; Reprogrammed Special Crisis Intervention Program Funds) is being dropped since all conversions from Program Account 22 to Program Account 21 have been completed and the Forms 314 reflect the NFS waiver.

You will note that the waiver criteria for poor counties has been carried over into this consolidated regulation and that the data base continue to be the 1970 Census of Housing and Population, PC-1 Series, as shown in the 1972 County-City Data Book. There has been no update of data related to counties since 1970. The next update will be as a result of the 1980 Census. Therefore, in order to act equitably, CSA is continuing to use the 1970 census data.

The Agency has determined that it will not be necessary to revise existing forms 314 to change the non-Federal share requirement for that portion of the grant/program year which will carry the 80/20 matching ratio. The policy contained in this final regulation will suffice for audit purposes.

The provisions of this subpart are issued under the authority of Sec. 602, 78 Stat. 530; 42 U.S.C. 2942.

GRACIELA (Grace) OLIVAREZ,
Director.

1. 45 CFR 1068.21-1 through 1068.21-3, 1068.23-1 through 1068.23-4, 1068.24-1 through 1068.24-3, and 1061.32-1 through 1061.32-4 are hereby deleted. The substantive provisions of those sections have been consolidated in to a revised subpart consisting of §§ 1068.20-1 through 1068.20-5 as set forth below.

2. 45 CFR 1068.25-1 through 1068.25-2 is deleted.

3. In 45 CFR Part 1068, Subpart — Non-Federal Share Requirements for Title II, Sections 221, 222(a) and 231 Programs, is revised to read as follows:

Subpart—Non-Federal-Share Requirements for Title II, Sections 221, 222 (a), and 231 Programs

Sec.

1068.20-1 Applicability.
1068.20-2 Non-Federal-share requirements.
1068.20-3 Waivers of non-Federal share requirements and criteria.
1068.20-4 Pooling of non-Federal share.
1068.20-5 Maintenance of effort.

AUTHORITY: Sec. 602, 78 Stat. 530; 42 U.S.C. 2942.

Subpart—Non-Federal Share Requirements for Title II, Sections 221, 222(a) and 231 Programs

§ 1068.20-1 Applicability.

This subpart is applicable to grants funded under title II, sections 221, 222(a), and 231 of the Economic Opportunity Act as amended if the assistance is administered by the Community services Administration.

§ 1068.20-2 Non-Federal-share requirements.

(a) Legislative requirement (secs. 221 and 222(a)). All grants funded under sections 221 and 222(a) of the EOA which become effective on or after October 1, 1978 carry a requirement for a 20 percent matching share. for ongoing grants, the 80/20 matching requirement is applicable to that portion of the time remaining in the grant year. (See appendix A, re procedures for prorating the non-Federal share for grants to which both the higher rate and the new requirements apply.)

(b) Administrative requirement (sec: 231). Grantees who receive financial assistance under section 231 (SEOOs) are required to provide non-Federal share in the amount of 20 percent.

§ 1068.20-3 Waivers of non-Federal share requirements and criteria.

Section 225(c) of the EOA as amended also provides that, "The Director may approve assistance in excess of such percentages if he determines, in accordance with regulations establishing objective criteria, that such action is required in furtherance of the purpose of (title II)." Following are notices of waivers for certain programs, communities, and activities. Publication of the following, however, does not preclude the Director from developing additional waiver criteria for other circumstances; however, in the event that such criteria are developed they will be published in the FEDERAL REGISTER.

(a) *Program waivers.* (1) Community Food and Nutrition (222(a)(1)). Because the requirement of non-Federal share could pose serious obstacles to meeting program objectives on an emergency basis the non-Federal share requirments have been waived for this program since its inception and continue to be waived. The waiver is automatic and does not require a request for waiver.

(2) *Emergency energy conservation program—Crisis intervention (222(a)(5)).* Non-Federal share requirements are waived for grants made under section 222(a)(5) for intervention activities to prevent hardship or danger to health due to the emergency nature of these grants. Components include grants, loans, fuel voucher or stamp programs, or payment guarantees; mediation with utility companies or fuel suppliers, warm clothing, and blankets. The waiver is automatic and does not require a request for waiver from grant applicants.

(3) *Emergency energy conservation program—Program Support (222(a)(5)).* Eligible activities under Program Support (training and technical assistance, research and demonstration, and evaluation) are not the type that can generate non-Federal share since they are process-oriented rather than operational in nature. Therefore, the non-Federal-share requirement is automatically waived for Program Support projects funded under section 222(a)(5).

(b) *Activity waivers.* (1) *Crisis relief (natural disasters).* One of the major objectives of non-Federal share is to provide local resources for and to encourage involvement at the local level in the operating programs of CSA grantees. However, to require non-Federal share contributions for grants awarded to provide crisis intervention assistance to communities affected by natural disasters over which there is no control, for example floods and tornadoes, is inconsistent with the major intent of the legislation. Consequently, the Director is exercising his/her authority under section 225(c) of the Economic Opportunity Act of 1964 as amended by waiving the non-Federal share for grants to provide crisis relief as a result of a natural disaster. The waiver is automatic and does not require a request for waiver from the grant applicant.

(2) *Phaseout grants.* (i) In certain instances and under defined procedures, CSA terminates and closes out grantee operations. As necessary, CSA may award additional Federal funds when there is a grantee termination and phaseout action and there are not sufficient funds on hand to meet liabilities of the grantee and/or its delegate agencies to third parties when such costs result from the phaseout activities. To require non-Federal share contributions for grants awarded to meet the legal obligations of grantees is inconsistent with the major intent of the legislation. Consequently, the Director is exercising his/her authority under section 225(c) of the Economic Opportunity Act of 1964 as amended by waiving the non-Federal requirement for a phaseout grant as a result of termination. The grant, however, must include no operational elements, all previously required portions of the work program must have been completed, and there must be documented evidence that the grantee has insufficient funds to meet those liabilities which are costs of phasing out.

(ii) The grantee must formally request a waiver and the above conditions must exist or be satisfied by the grantee prior to consideration of a waiver under this subsection.

(c) *Communities.* (1) *Low-income counties.* (i) A long-standing objective of CSA's exemption policy has been to assure that the poorest counties in the Nation are able to participate in community action programs despite their lack of local economic resources to match Federal grant funds. These exemtions continue. (ii) CSA's waiver criteria in this instance reflects a percentage of the population below the poverty threshold.

Counties with 35 percent or more of families poor[1] are eligible for waivers of a portion or all of the required NFS. In addition those counties with at least 24.5 percent of families poor [1] may request a waiver of up to 50 percent of the required NFS. Appendices B and C provide complete listings of the eligible counties.

(iii) A request for a waiver must be in the form of a letter accompanying application for a grant and shall state (A) the amount of the non-Federal share which the community can provide, and (B) that the applicant has made a reasonable effort to raise more non-Federal share and has been unsuccessful. CSA may require that additional evidence be submitted in support of these representations.

(iv) To compute NFS for a multi-county CAA where one or more counties qualify for waivers, use the following procedure:

(A) Determine each county's NFS on the basis of the relative proportion of total target population in the counties.

Example: A three county CAA with a target population of 100,000 whose Federal assistance requiring NFS is $500,000:

County	Population	Proportion of NFS (percent)	NFS at 20 percent
A	20,000	20	$25,000
B	30,000	30	37,500
C	50,000	50	62,500
Total	100,000	100	125,000

(B) If one or more counties are eligible for waiver the NFS is first computed as noted above. If county A qualifies for and receives a waiver of all NFS, the NFS contribution required of that CAA would be reduced by $25,000.

(C) If county C qualifies for a partial waiver, reduce the $62,500 by the *approved percentage* of NFS waived and reduce the total NFS requirement of that CAA by the resulting dollar figure.

(2) *Indian Reservations, Puerto Rico, the Trust Territories, and the Virgin Islands.* (i) Because of the high incidences of poverty on Indian reservations and in Puerto Rico, the Trust Territories, and the Virgin Islands, any federally recognized Indian tribe on a reservation, or any organization or agency in these areas applying for funds under sections 221, 222(a), and 231 of the Economic Opportunity Act is eligible for a waiver of a portion or all of the non-Federal share requirement.

(ii) A request for waiver must be in the form of a letter accompanying each request for *program year* funding and should be addressed to the community services office which administers grants for that particular area. The letter shall state (A) the period for which the waiver is being requested, (B) the amount of the non-Federal share which the community can provide, and (C) that the applicant has made a reasonable effort to raise the required amount of the non-Federal share and has been unsuccessful. CSA may require that additional evidence be submitted in support of these representations.

[1] 1970 Census of Housing and Population, PC-1(c) series as shown in the 1972 County-City Data Book.

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(3) *Farmworker-governed organizations (grants under section 222(a)(5), emergency energy conservation services program only).* (i) Because of the relatively recent establishment of most farmworker-governed organizations, and the lack of opportunity to develop relationships with private sector, local governments, and other sources of non-Federal share contributions, CSA has determined requirements of a non-Federal share for grants made to farmworker-governed organizations under section 222(a)(5) of the act would be unreasonable.

(ii) Therefore, the non-Federal share requirement is waived for grants made under section 222(a)(5) of the Economic Opportunity Act as amended to farmworker-governed organizations.

(4) *Communities faced with severe economic problems.* The provisions of § 1068.22 (CSA instructions 6802-5a and s 6802-5a, CH1) apply only to those grants or portions of grants whose non-Federal share requirement exceeds 20 percent.

§ 1068.20-4 Pooling of non-Federal share.

(a) CSA permits pooling of non-Federal share between exempt and nonexempt counties served by the same CAA.

(b) Pooling of excess non-Federal share among those program accounts funded by the Community Services Administration during a single program year also is acceptable. (NOTE.—This does not allow pooling with other programs authorized under the Economic Opportunity Act which are administered by other Federal agencies, e.g., title V, Headstart and Follow Through, administered by HEW.)

§ 1068.20-5 Maintenance of effort.

(a) Section 225(d) states that no program shall be approved for assistance under sections 221 and 222(a) unless the Director satisfies himself/herself (1) that the services to be provided under such program will be in addition to, and not in substitution for, services previously provided without Federal assistance and (2) that funds or other resources devoted to programs designed to meet the needs of the poor within the community will not be diminished in order to provide any contributions required under section 225(c).

(b) The principal intent of this requirement is to insure that the ongoing level of antipoverty effort in the community is increased. Federal assistance is intended to supplement and raise existing levels of local support for action against poverty, not to replace it.

(c) To insure that the requirements of section 225(d) are satisfied, both of the following conditions must be met:

(1) The applicant must demonstrate that the proposed expenditures, including any amounts claimed as non-Federal share, will represent a net increase in the expenditures from non-Federal sources for similar activities for this purpose. The base period to be used for comparison is fiscal year 1975.

(2) In addition, the applicant shall assure CSA that the prior level of expenditures or contributions within the community which are concerned with poverty will be maintained in the sense that funds have not been and will not be diverted from other activities focusing on the needs of the poor so as to finance the community action programs.

(d) The requirements of section 225(d) apply only with respect to program accounts funded in whole or in part under sections 221 and 222(a) of the act, and not to activities which are financed under other sections.

APPENDIX A

HOW TO COMPUTE NON-FEDERAL SHARE FOR GRANTS CARRYING BOTH A 20-PERCENT NON-FEDERAL SHARE REQUIREMENT AND A HIGHER RATE

Following are tables and a formula which may be used in computing NFS for grants carrying both a 20-percent NFS requirement and a higher rate.

(NOTE.—Since Federal funds are not affected by the change in NFS requirement, forms 314 will not be amended.)

ACTION

Months* elapsed from effective date of grant to October 1, 1978	Multiply Federal share by figures in appropriate column to determine new non-Federal share (in dollars)	
	Grant currently carries 40 percent NFS requirement	Grant carries 30 percent NFS requirement
1	0.28472	0.26488
2	.31944	.27976
3	.35416	.29464
4	.38889	.30952
5	.42361	.32440
6	.45833	.33928
7	.49305	.35416
8	.52778	.36904
9	.56250	.38392
10	.59722	.39880
11	.63194	.41368

*Do not count partial months.

You may call the Information and Management Systems staff, CSA Headquarters, 202-254-5300, for assistance in determining NFS for grants carrying NFS requirements other than those indicated above.

[6315-01-C]

APPENDIX B
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COUNTIES WITH 35% OR MORE LOW-INCOME FAMILIES
(1970)

REGION	STATE	COUNTY	% OF FAMILIES BELOW LOW-INCOME LEVEL
PHILADELPHIA	VIRGINIA	LEE	39.7
	WEST VIRGINIA	BRAXTON	37.4
		CALHOUN	37.1
		CLAY	39.6
		GILMER	37.0
		LINCOLN	38.0
		MINGO	36.5
		WEBSTER	39.1
ATLANTA	ALABAMA	BARBOUR	36.0
		BULLOCK	46.6
		CHOCTAW	35.5
		CONECUH	35.5
		CRENSHAW	38.5
		GREENE	53.7
		HALE	44.7
		LAMAR	35.0
		LOWNDES	50.2
		MACON	37.4
		MARENGO	40.3
		PERRY	41.5
		SUMTER	45.1
		WILCOX	46.6
	FLORIDA	JEFFERSON	35.1
		WASHINGTON	35.9
	GEORGIA	ATKINSON	41.0
		BAKER	45.7
		BROOKS	35.2
		BURKE	43.1
		CALHOUN	43.0
		CLAY	51.7
		CRAWFORD	35.9
		DOOLY	39.2
		EARLY	36.5
		HANCOCK	42.0
		JENKINS	35.9
		MILLER	40.2
		QUITMAN	47.1
		RANDOLPH	41.8
		STEWART	43.0
		TALIAFERRO	41.0
		TERRELL	35.5
		TREUTLEN	35.0
		UNION	35.4
		WARREN	37.8
		WEBSTER	41.2

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COUNTIES WITH 35% OR MORE LOW-INCOME FAMILIES (1970)

REGION	STATE	COUNTY	% OF FAMILIES BELOW LOW-INCOME LEVEL
ATLANTA	KENTUCKY	BELL	39.3
		BREATHITT	54.9
		CLAY	57.6
		CLINTON	40.0
		CUMBERLAND	39.4
		ELLIOTT	43.7
		HARLAN	36.2
		JACKSON	50.2
		JOHNSON	38.5
		KNOTT	56.6
		KNOX	48.4
		LAWRENCE	40.0
		LEE	48.4
		LESLIE	55.5
		LETCHER	40.1
		MC CREARY	53.7
		MAGOFFIN	48.9
		MARTIN	53.4
		METCALFE	39.7
		MONROE	40.5
		MORGAN	43.5
		OWSLEY	61.6
		PERRY	39.6
		ROCKCASTLE	36.1
		RUSSELL	35.7
		WAYNE	50.1
		WHITLEY	39.7
		WOLFE	59.0
	MISSISSIPPI	AMITE	42.1
		ATTALA	37.3
		BENTON	38.2
		BOLIVAR	44.7
		CARROLL	42.9
		CHOCTAW	35.5
		CLAIBORNE	42.5
		COAHOMA	42.8
		COPIAH	35.9
		FRANKLIN	37.8
		GREENE	38.8
		HOLMES	53.0
		HUMPHREYS	53.8
		ISSAQUENA	42.7
		JASPER	40.5
		JEFFERSON	59.0
		JEFFERSON DAVIS	39.8
		KEMPER	48.6
		LAWRENCE	36.9
		LEAKE	38.5
		LEFLORE	36.4
		MADISON	39.8
		MARION	36.8
		MARSHALL	44.1
		MONTGOMERY	37.8
		NOXUBEE	47.5
		PANOLA	38.5
		QUITMAN	49.8
		SHARKEY	46.8
		SUNFLOWER	46.2
		TALLAHATCHIE	50.0

COUNTIES WITH 35% OR MORE LOW-INCOME FAMILIES (1970)

REGION	STATE	COUNTY	% OF FAMILIES BELOW LOW-INCOME LEVEL
ATLANTA	MISSISSIPPI	TUNICA	55.4
		WALTHALL	35.9
		WAYNE	37.3
		WILKINSON	47.9
		YALOBUSHA	37.4
		YAZOO	42.7
	NORTH CAROLINA	BERTIE	37.5
		NORTHAMPTON	38.1
		PERQUIMANS	35.2
		TYRRELL	37.9
	SOUTH CAROLINA	CLARENDON	42.5
		JASPER	37.0
		LEE	40.1
		WILLIAMSBURG	40.5
	TENNESSEE	CAMPBELL	36.2
		CLAIBORNE	38.8
		CLAY	39.3
		FAYETTE	44.5
		FENTRESS	42.9
		GRUNDY	40.2
		HANCOCK	55.5
		HAYWOOD	40.8
		JACKSON	38.0
		LAUDERDALE	39.6
		OVERTON	35.8
		SCOTT	42.1
CHICAGO	ILLINOIS	PULASKI	35.7
DALLAS - FORT WORTH	ARKANSAS	CHICOT	43.9
		FULTON	41.5
		LEE	43.8
		LINCOLN	36.8
		MONROE	38.5
		NEWTON	41.9
		PHILLIPS	38.1
		SEARCY	35.4
		STONE	41.3
	LOUISIANA	AVOYELLES	38.3
		CATAHOULA	36.6
		EAST CARROLL	51.1

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COUNTIES WITH 35% OR MORE LOW-INCOME FAMILIES (1970)

REGION	STATE	COUNTY	% OF FAMILIES BELOW LOW-INCOME LEVEL
DALLAS - FORT WORTH	LOUISIANA	EVANGELINE	39.4
		FRANKLIN	42.1
		MADISON	45.1
		NATCHITOCHES	37.9
		POINTE COUPEE	36.8
		RED RIVER	40.4
		RICHLAND	37.4
		ST HELENA	44.3
		ST LANDRY	38.4
		ST MARTIN	36.2
		TENSAS	50.1
		WEST CARROLL	37.5
		WEST FELICIANA	39.4
	NEW MEXICO	GUADALUPE	38.5
		MORA	57.3
		SANDOVAL	38.3
		SAN MIGUEL	39.9
		TAOS	35.9
	OKLAHOMA	ADAIR	41.9
		PUSHMATAHA	37.0
	TEXAS	BROOKS	42.0
		CAMERON	38.6
		DIMMIT	51.0
		DUVAL	43.6
		EDWARDS	35.9
		FRIO	35.5
		HIDALGO	42.2
		JIM HOGG	46.3
		KINNEY	45.7
		LA SALLE	48.8
		LOVING	46.2
		MAVERICK	44.1
		PRESIDIO	40.9
		ROBERTSON	36.1
		SAN JACINTO	38.3
		STARR	52.3
		WEBB	38.5
		WILLACY	46.2
		ZAPATA	50.6
		ZAVALA	43.6
KANSAS CITY	MISSOURI	OREGON	36.2
		RIPLEY	36.5

COUNTIES WITH 35% OR MORE LOW-INCOME FAMILIES (1970)

REGION	STATE	COUNTY	% OF FAMILIES BELOW LOW-INCOME LEVEL
DENVER	COLORADO	CONEJOS	36.7
	NORTH DAKOTA	SIOUX	38.2
	SOUTH DAKOTA	BUFFALO	38.8
		SHANNON	44.6
		TODD	40.8
		WASHABAUGH	49.3
		ZIEBACH	41.0
SAN FRANCISCO	ARIZONA	APACHE	46.5
SEATTLE	ALASKA	ANGOON	97.2
		BETHEL	58.9
		KUSKOKWIM	55.2
		WADE HAMPTON	67.8
PHILADELPHIA	MARYLAND	SOMERSET	24.6
	VIRGINIA	ACCOMACK	25.2
		AMELIA	26.2
		BATH	24.9
		BRUNSWICK	25.4
		BUCHANAN	27.2
		BUCKINGHAM	29.1
		CHARLES CITY	28.8
		CUMBERLAND	33.3
		DICKENSON	34.0
		FLUVANNA	27.6
		GREENSVILLE	29.8
		HALIFAX	26.1
		KING AND QUEEN	27.1
		LOUISA	24.5
		MECKLENBURG	24.7
		MIDDLESEX	26.0
		NELSON	28.6
		NORTHAMPTON	32.2
		RAPPAHANNOCK	30.5
		RICHMOND	24.6
		RUSSELL	25.4
		SCOTT	27.0
		SOUTHAMPTON	27.6
		SUSSEX	26.3
		WESTMORELAND	28.9
		WISE	27.4

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COUNTIES WITH 24.5% - 35% LOW-INCOME FAMILIES (1970)

REGION	STATE	COUNTY	% OF FAMILIES BELOW LOW-INCOME LEVEL
PHILADELPHIA	WEST VIRGINIA	BARBOUR	25.9
		BOONE	26.5
		GRANT	28.0
		HARDY	26.9
		MC DOWELL	29.8
		MONROE	29.2
		NICHOLAS	25.2
		PENDLETON	28.7
		POCAHONTAS	27.7
		PRESTON	26.9
		RITCHIE	25.0
		ROANE	27.1
		SUMMERS	33.7
		TUCKER	24.9
		WIRT	29.3
ATLANTA	ALABAMA	BIBB	30.0
		BUTLER	31.5
		CHILTON	24.8
		CLARKE	29.8
		CLAY	28.8
		COVINGTON	24.7
		DALLAS	31.6
		DE KALB	29.5
		ESCAMBIA	25.5
		FAYETTE	25.3
		GENEVA	25.7
		HENRY	31.9
		LAWRENCE	27.3
		MONROE	34.6
		PICKENS	32.5
		PIKE	29.9
		RANDOLPH	27.5
		RUSSELL	28.2
		WASHINGTON	31.8
	FLORIDA	CALHOUN	34.0
		DIXIE	25.9
		FRANKLIN	31.3
		GADSDEN	31.2
		HAMILTON	31.8
		HARDEE	24.6
		HOLMES	32.7
		JACKSON	30.7
		LIBERTY	28.5
		MADISON	33.5
		SUMTER	25.9
		SUWANNEE	28.1
		WAKULLA	26.9
		WALTON	26.8

COUNTIES WITH 24.5% - 35% LOW-INCOME FAMILIES (1970)

REGION	STATE	COUNTY	% OF FAMILIES BELOW LOW-INCOME LEVEL
ATLANTA	GEORGIA	APPLING	31.8
		BACON	28.7
		BEN HILL	24.5
		BERRIEN	25.5
		BRYAN	25.3
		CANDLER	34.7
		CLINCH	29.3
		COFFEE	26.4
		COOK	25.6
		CRISP	26.8
		DAWSON	25.9
		DECATUR	33.0
		DODGE	29.3
		ECHOLS	32.7
		EMANUEL	29.2
		EVANS	32.9
		GILMER	24.6
		GLASCOCK	33.0
		GRADY	29.0
		GREENE	26.8
		HARRIS	25.7
		IRWIN	34.9
		JASPER	32.2
		JEFF DAVIS	24.5
		JEFFERSON	32.6
		JOHNSON	32.0
		LANIER	26.7
		LAURENS	26.3
		LEE	28.1
		LIBERTY	26.3
		LINCOLN	29.9
		LONG	31.8
		MC INTOSH	30.3
		MACON	34.8
		MARION	34.0
		MERIWETHER	26.3
		MITCHELL	30.2
		MONTGOMERY	27.6
		MORGAN	29.5
		PULASKI	29.7
		SCHLEY	27.5
		SCREVEN	34.5
		SUMTER	25.9
		TALBOT	34.6
		TATTNALL	28.5
		TAYLOR	31.1
		TELFAIR	30.9
		THOMAS	25.5
		TOOMBS	26.5
		TOWNS	31.2
		TURNER	26.6
		TWIGGS	33.5
		WASHINGTON	33.0
		WHEELER	32.7
		WILCOX	34.1
		WILKES	28.5
		WILKINSON	25.3
		WORTH	32.5

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COUNTIES WITH 24.5% - 35% LOW-INCOME FAMILIES (1970)

REGION	STATE	COUNTY	% OF FAMILIES BELOW LOW-INCOME LEVEL
ATLANTA	KENTUCKY	ADAIR	34.6
		ALLEN	30.1
		BATH	31.3
		BRACKEN	25.0
		BUTLER	30.5
		CARTER	28.8
		CASEY	30.9
		EDMONSON	28.2
		ESTILL	33.4
		FLEMING	26.5
		FLOYD	34.9
		FULTON	25.9
		GALLATIN	24.6
		GRAYSON	28.6
		HART	27.5
		LAUREL	34.6
		LEWIS	28.1
		LINCOLN	29.9
		MARION	26.2
		MENIFEE	32.0
		OHIO	24.7
		OWEN	24.9
		PIKE	32.2
		POWELL	28.1
		PULASKI	29.3
		ROBERTSON	28.9
		ROWAN	26.9
		TODD	25.7
		TRIGG	24.6
	MISSISSIPPI	ADAMS	28.7
		CALHOUN	32.8
		CHICKASAW	32.1
		CLARKE	33.0
		CLAY	25.9
		COVINGTON	31.8
		GRENADA	27.9
		ITAWAMBA	25.4
		LAFAYETTE	28.6
		LAMAR	27.8
		LINCOLN	29.0
		NESHOBA	30.0
		NEWTON	29.6
		OKTIBBEHA	28.8
		PEARL RIVER	26.1
		PERRY	30.8
		PIKE	30.8
		PONTOTOC	32.4
		PRENTISS	24.7
		SCOTT	32.6
		SIMPSON	30.4
		SMITH	32.9
		TATE	33.2
		TIPPAH	31.8
		UNION	27.6
		WASHINGTON	34.3
		WEBSTER	34.1
		WINSTON	32.9

COUNTIES WITH 24.5% - 35% LOW-INCOME FAMILIES (1970)

REGION	STATE	COUNTY	% OF FAMILIES BELOW LOW-INCOME LEVEL
ATLANTA	NORTH CAROLINA	ALLEGHANY	26.6
		ANSON	27.3
		ASHE	28.0
		AVERY	29.2
		BEAUFORT	25.0
		BLADEN	30.7
		CHEROKEE	25.2
		CHOWAN	25.0
		CLAY	34.7
		COLUMBUS	28.0
		DUPLIN	29.0
		EDGECOMBE	26.5
		FRANKLIN	28.3
		GATES	25.7
		GRAHAM	24.8
		GREENE	32.8
		HALIFAX	30.3
		HERTFORD	27.6
		HOKE	26.9
		HYDE	34.1
		JACKSON	25.4
		JOHNSTON	24.9
		JONES	29.8
		MACON	24.9
		MADISON	32.1
		MARTIN	28.9
		MITCHELL	28.1
		PAMLICO	29.0
		PENDER	28.8
		PITT	27.1
		ROBESON	31.8
		SAMPSON	29.0
		SWAIN	26.9
		WARREN	34.5
		YANCEY	30.5
	SOUTH CAROLINA	ALLENDALE	31.7
		BAMBERG	28.6
		BARNWELL	24.7
		BERKELEY	26.1
		CALHOUN	34.6
		COLLETON	31.7
		DILLON	33.2
		EDGEFIELD	30.3
		FAIRFIELD	31.5
		GEORGETOWN	29.6
		HAMPTON	31.3
		HORRY	25.4
		MC CORMICK	34.4
		MARION	32.1
		MARLBORO	27.6
		ORANGEBURG	31.4
		SUMTER	25.9
	TENNESSEE	BLEDSOE	33.1

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COUNTIES WITH 24.5% - 35% LOW-INCOME FAMILIES (1970)

REGION	STATE	COUNTY	% OF FAMILIES BELOW LOW-INCOME LEVEL
ATLANTA	TENNESSEE	CANNON	26.8
		CHESTER	27.1
		COCKE	29.3
		CROCKETT	25.1
		CUMBERLAND	29.0
		GRAINGER	30.6
		HARDEMAN	31.2
		HARDIN	30.4
		HENDERSON	25.9
		HOUSTON	25.7
		JOHNSON	30.4
		LAKE	33.2
		LAWRENCE	24.9
		LINCOLN	25.2
		MC NAIRY	30.7
		MACON	29.1
		MARION	25.1
		MEIGS	30.0
		MONROE	26.1
		MORGAN	27.6
		PERRY	27.4
		PICKETT	33.9
		RHEA	25.3
		SEQUATCHIE	24.9
		STEWART	31.2
		TIPTON	29.4
		TROUSDALE	30.6
		UNION	34.6
		WAYNE	28.2
CHICAGO	ILLINOIS	ALEXANDER	31.8
		POPE	29.3
	MINNESOTA	MAHNOMEN	26.4
		TODD	24.5
	OHIO	ADAMS	27.4
	WISCONSIN	MENOMINEE	34.0

COUNTIES WITH 24.5% - 35% LOW-INCOME FAMILIES (1970)

REGION	STATE	COUNTY	% OF FAMILIES BELOW LOW-INCOME LEVEL
DALLAS - FORT WORTH	ARKANSAS	ASHLEY	25.2
		BRADLEY	29.6
		CALHOUN	29.6
		CLAY	31.3
		CLEBURNE	33.8
		CLEVELAND	32.1
		CRITTENDEN	32.8
		CROSS	28.7
		DALLAS	24.7
		DESHA	34.2
		DREW	27.1
		HEMPSTEAD	28.3
		IZARD	29.7
		JACKSON	25.0
		JOHNSON	25.6
		LAFAYETTE	33.0
		LAWRENCE	29.5
		LOGAN	27.7
		LONOKE	26.2
		MADISON	33.3
		MARION	30.5
		MISSISSIPPI	29.6
		MONTGOMERY	29.7
		NEVADA	31.9
		OUACHITA	25.2
		PERRY	31.2
		PIKE	24.8
		POINSETT	28.6
		PRAIRIE	29.4
		RANDOLPH	29.7
		ST FRANCIS	34.8
		SCOTT	28.5
		SHARP	32.9
		VAN BUREN	32.5
		WHITE	24.5
		WOODRUFF	34.3
	LOUISIANA	ACADIA	29.6
		ALLEN	30.1
		ASSUMPTION	30.4
		BIENVILLE	34.1
		CALDWELL	33.7
		CLAIBORNE	33.2
		CONCORDIA	32.2
		DE SOTO	34.7
		EAST FELICIANA	33.8
		GRANT	29.2
		IBERVILLE	30.6
		JEFFERSON DAVIS	28.1
		MOREHOUSE	32.9
		SABINE	34.9
		TANGIPAHOA	33.5
		UNION	27.1
		VERMILION	25.2
		WASHINGTON	26.3
		WEST BATON ROUGE	27.3
		WINN	31.2

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COUNTIES WITH 24.5% - 35% LOW-INCOME FAMILIES (1970)

REGION	STATE	COUNTY	% OF FAMILIES BELOW LOW-INCOME LEVEL
DALLAS - FORT WORTH	NEW MEXICO	DE BACA	24.5
		HARDING	28.3
		MC KINLEY	33.7
		RIO ARRIBA	34.7
		SOCORRO	29.5
		TORRANCE	32.6
		UNION	26.2
	OKLAHOMA	ATOKA	29.9
		CHEROKEE	28.0
		CHOCTAW	33.4
		COAL	34.0
		DELAWARE	31.0
		HASKELL	26.7
		HUGHES	29.3
		JOHNSTON	31.1
		LATIMER	29.8
		LE FLORE	29.4
		LOVE	26.7
		MC CURTAIN	32.4
		MC INTOSH	26.8
		OKFUSKEE	34.7
		SEQUOYAH	28.1
	TEXAS	ATASCOSA	28.7
		AUSTIN	25.7
		BASTROP	27.5
		BREWSTER	27.1
		BURLESON	26.4
		CALDWELL	27.7
		CAMP	32.0
		COLLINGSWORTH	25.9
		DELTA	26.9
		FALLS	34.6
		FAYETTE	28.1
		FOARD	28.9
		FRANKLIN	27.2
		GOLIAD	28.2
		GONZALES	28.0
		GRIMES	34.5
		HOUSTON	33.0
		HUDSPETH	28.2
		JEFF DAVIS	26.5
		JIM WELLS	26.6
		KARNES	32.8
		KENEDY	30.1
		KENT	25.1
		LAMB	25.3
		LAVACA	32.2
		LEE	26.8
		LEON	30.4
		LIMESTONE	24.7
		LIVE OAK	26.6
		MADISON	27.7
		MARION	30.9

COUNTIES WITH 24.5% - 35% LOW-INCOME FAMILIES (1970)

REGION	STATE	COUNTY	% OF FAMILIES BELOW LOW-INCOME LEVEL
DALLAS - FORT WORTH	TEXAS	MARTIN	25.0
		MASON	27.6
		MEDINA	24.8
		MENARD	27.7
		MOTLEY	24.8
		NEWTON	26.0
		PANOLA	24.6
		POLK	28.5
		RAINS	26.5
		REAL	27.6
		RED RIVER	31.8
		SABINE	30.9
		SAN AUGUSTINE	33.2
		SAN PATRICIO	25.2
		SAN SABA	30.8
		SHELBY	26.8
		SUTTON	26.3
		TRINITY	28.5
		UVALDE	29.0
		VAL VERDE	24.5
		WASHINGTON	26.4
		WHARTON	24.7
		WILSON	25.7
KANSAS CITY	MISSOURI	BOLLINGER	27.4
		BUTLER	27.5
		CARTER	25.3
		DADE	24.6
		DALLAS	29.6
		DOUGLAS	32.5
		DUNKLIN	29.8
		HICKORY	26.7
		MERCER	24.5
		MISSISSIPPI	33.5
		NEW MADRID	33.4
		OZARK	32.9
		PEMISCOT	34.7
		PUTNAM	28.0
		REYNOLDS	32.6
		ST CLAIR	25.6
		SHANNON	31.2
		TEXAS	25.6
		WASHINGTON	25.4
		WAYNE	30.8
		WRIGHT	26.4
	NEBRASKA	BOYD	32.4
		CEDAR	27.7
		KEYA PAHA	31.7
		KNOX	27.7

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COUNTIES WITH 24.5% - 35% LOW-INCOME FAMILIES (1970)

REGION	STATE	COUNTY	% OF FAMILIES BELOW LOW-INCOME LEVEL
DENVER	COLORADO	COSTILLA	34.7
		SAGUACHE	32.6
	MONTANA	BLAINE	25.2
	NORTH DAKOTA	BILLINGS	28.0
		ROLETTE	28.9
	SOUTH DAKOTA	BENNETT	26.9
		CHARLES MIX	27.8
		CORSON	32.4
		DEWEY	31.5
		HUTCHINSON	24.7
		HYDE	25.4
		MELLETTE	26.9
	UTAH	SAN JUAN	33.2
SAN FRANCISCO	ARIZONA	NAVAJO	32.0
SEATTLE	ALASKA	BARROW	27.7
		BRISTOL BAY DIVISION	32.8
		KOBUK	33.0
		NOME	31.2

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Monday	Tuesday	Wednesday	Thursday	Friday
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Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

NOTE: As of August 14, 1978, Community Services Administration (CSA) documents are being assigned to the Monday/Thursday schedule.

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H.R. 7971 ..... Pub. L. 95–586
To validate certain land conveyances, and for other purposes. (Nov. 3, 1978; 92 Stat. 2485). Price: $.80.

H.R. 7101 ..... Pub. L. 95–587
To amend certain provisions of law relating to land claims by the United States in Riverside County, California, based upon the accretion or avulsion, and for other purposes. (Nov. 3, 1978; 92 Stat. 2496). Price: $.60.

H.R. 10173 ..... Pub. L. 95–588
"Veterans' and Survivors' Pension Improvement Act of 1978." (Nov. 4, 1978; 92 Stat. 2497). Price: $.90.

H.R. 13903 ..... Pub. L. 95–589
To amend title 10, United States Code, to provide that a member of the Board of Regents of the Uniformed Services University of the Health Sciences whose term of office has expired shall continue to serve until a successor is appointed. (Nov. 4, 1978; 92 Stat. 2512). Price: $.60.

H.R. 12874 ..... Pub. L. 95–590
"Solar Photovoltaic Energy Research, Development, and Demonstration Act of 1978." (Nov. 4, 1978; 92 Stat. 2513). Price: $.80.

H.R. 13500 ..... Pub. L. 95–591
"Presidential Records Act of 1978." (Nov. 4, 1978; 92 Stat. 2523). Price: $.70.

S. 1816 ..... Pub. L. 95–592
"Native Latex Commercialization and Economic Development Act of 1978." (Nov. 4, 1978; 92 Stat. 2529). Price: $.70.

S. 703 ..... Pub. L. 95–593
To improve the administration and operation of the Overseas Citizen Voting Rights Act of 1975, and for other purposes. (Nov. 4, 1978; 92 Stat. 2535). Price: $.70.

H.J. Res. 1173 ..... Pub. L. 95–594
Relative to the convening of the first session of the Ninety-sixth Congress, and for other purposes. (Nov. 4, 1978; 92 Stat. 2540). Price: $.60.

H.R. 9701 ..... Pub. L. 95–595
To amend the Budget and Accounting Procedures Act of 1950 to require that the Comptroller General provide for a financial audit with respect to pension plans for officers and employees of the Federal Government and its agencies and instrumentalities, to require that an annual report, including a financial statement and an actuarial statement, be furnished to the Congress and the Comptroller General with respect to such plans, and for other purposes. (Nov. 4, 1978; 92 Stat. 2541). Price: $.60.

S.J. Res. 160 ..... Pub. L. 95–596
To initiate preliminary studies for the restoration and renovation of the Pension Building in Washington, District of Columbia, to house a Museum of the Building Arts, and for other purposes. (Nov. 4, 1978; 92 Stat. 2544). Price: $.60.

H.R. 5646 ..... Pub. L. 95–597
To amend the Regional Rail Reorganization Act of 1973 to require ConRail to make premium payments under certain medical and life insurance policies, to provide that ConRail shall be entitled to a loan under section 211(h) of such Act in an amount required for such premium payments, and to provide that such premium payments shall be deemed to be expenses of administration of the respective railroads in reorganization. (Nov. 4, 1978; 92 Stat. 2547). Price: $.60.

H.R. 8200 ..... Pub. L. 95–598
To establish a uniform Law on the Subject of Bankruptcies. (Nov. 6, 1978; 92 Stat. 2549). Price: $2.50.

H.R. 11733 ..... Pub. L. 95–599
"Surface Transportation Assistance Act of 1978." (Nov. 6, 1978; 92 Stat. 2689). Price: $2.10.

H.R. 13511 ..... Pub. L. 95–600
"Revenue Act of 1978." (Nov. 6, 1978; 92 Stat. 2763). Price: $2.75.

S. 2584 ..... Pub. L. 95–601
To authorize appropriations to the Nuclear Regulatory Commission for fiscal year 1979, and for other purposes. (Nov. 6, 1978; 92 Stat. 2947). Price: $.70.

H.R. 12467 ..... Pub. L. 95–602
Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978. (Nov. 6, 1978; 92 Stat. 2955). Price: $1.80

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[3195-01-M]

Title 3—The President

Executive Order 12097 • **November 8, 1978**

Standards and Guidelines for the Merit Selection of United States District Judges

By virtue of the authority vested in me as President by the Constitution and the statutes of the United States of America, including Section 7(a) of the Omnibus Judgeship Act of 1978, providing that the President shall promulgate and publish standards and guidelines for the selection of nominees for United States district court judgeships, it is hereby ordered as follows:

1-1. *Nomination of District Judges.*

1-101. Whenever a vacancy occurs in a district court of the United States, the President shall nominate as district judge to fill that vacancy a person whose character, experience, ability, and commitment to equal justice under law qualifies that person to serve in the federal judiciary.

1-102. The Attorney General shall assist the President by recommending to the President persons to be considered for appointment who are qualified to be district judges and by evaluating potential nominees. The Attorney General shall receive recommendations of such persons from any person, commission or organization.

1-103. The use of commissions to notify the public of vacancies and to make recommendations for district judge is encouraged. The Attorney General shall make public the suggested guidelines for such commissions.

1-104. Before making recommendations, the Attorney General shall consider whether:

(a) Public notice of the vacancy has been given and an affirmative effort has been made, in the case of each vacancy, to identify qualified candidates, including women and members of minority groups;

(b) The selection process was fair and reasonable;

(c) The person or persons recommended meet the standards for evaluation set forth in Section 1-2 of this Order.

1-105. In evaluating proposed nominees, consideration will be given to reports of Department of Justice investigations and all other relevant information concerning potential nominees and their qualifications.

1-2. *Standards for Evaluating Proposed Nominees.*

1-201. The standards to be used in determining whether a person is qualified to serve as a district judge are whether that person:

(a) Is a citizen of the United States, is a member of a bar of a state, territory, possession or the District of Columbia, and is in good standing in every bar in which that person is a member;

(b) Possesses, and has a reputation for, integrity, good character, and common sense;

(c) Is, and has a reputation for being, fair, experienced, even-tempered and free of biases against any class of citizens or any religious or racial group;

(d) Is of sound physical and mental health;

(e) Possesses and has demonstrated commitment to equal justice under law;

(f) Possesses and has demonstrated outstanding legal ability and competence, as evidenced by substantial legal experience, ability to deal with complex legal problems, aptitude for legal scholarship and writing, and familiarity with courts and their processes;

(g) Has the ability and the willingness to manage complicated pretrial and trial proceedings, including the ability to weigh conflicting testimony and make factual determinations, and to communicate skillfully with jurors and witnesses.

1-3. *Amendments of Existing Orders.*

1-301. Section 3(b) of Executive Order 12059 of May 11, 1978 is amended to read as follows:

"(b) The Panel for the District of Columbia Circuit shall have the additional function of recommending nominees for the United States District Court for the District of Columbia. In exercising this function, the panel shall use the standards set forth in Executive Order 12097 and shall forward its recommendations to the Attorney General.".

1-302. Executive Order 12084, of September 27, 1978 is amended in the following respects:

(1) Section 1-202(d) is amended to read as follows:

"(d) report to the Attorney General, within the time specified in the notification, the results of its activities, including a list of persons whom the Commission considers to be best qualified to fill the vacancy.".

(2) Section 1-203 is amended to read as follows:

"1-203. In evaluating potential nominees, the Commission shall use the standards prescribed in Executive Order 12097.".

Jimmy Carter

THE WHITE HOUSE,
November 8, 1978.

[FR Doc. 78-31952 Filed 11-8-78; 2:50 pm]

rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

[6720-01-M]

Title 1—General Provisions

CHAPTER IV—MISCELLANEOUS AGENCIES

[MC 78-35]

PART 462—FEDERAL HOME LOAN MORTGAGE CORPORATION (BOOK-ENTRY REGULATIONS)

Securities in Book-Entry Form

AGENCY: Federal Home Loan Mortgage Corporation.

ACTION: Final regulation.

SUMMARY: This final regulation sets forth the terms and conditions under which the Corporation will issue securities in book-entry form, and authorizes the Federal Reserve banks to issue Corporation securities by means of entries on the books and records of the Banks.

EFFECTIVE DATE: November 13, 1978.

FOR FURTHER INFORMATION CONTACT:

Richard Cohn, Assistant General Counsel, Federal Home Loan Mortgage Corporation, 1700 G Street NW., Washington, D.C. 20006, telephone 202-789-4763.

SUPPLEMENTARY INFORMATION: This final rule adds a new part 462 to title 1 of the Code of Federal Regulations. These regulations are necessary to enable the Corporation to use the Federal Reserve System's book-entry system for certain of its securities.

Proposed rules were published for public comment in the FEDERAL REGISTER on July 27, 1978 (43 FR 32428). Only one comment, favoring adoption, was received. The Corporation is adopting these regulations because it desires to have flexibility to issue securities in book-entry form. However, the Corporation does not presently contemplate using a book-entry system for other than bonds, notes, or debentures which may be issued by the Corporation, nor does the Corporation presently contemplate issuing either participation certificates (PC's) or guaranteed mortgage certificates (GMC's) in book-entry form.

The final regulations differ from the proposed regulations in one respect. Section 462.5 has been revised to make clear that the Corporation may issue book-entry securities, with or without providing holders conversion rights to obtain definitive securities.

This revision will enable the Corporation to dispense with numerous internal procedures, necessitated whenever conversion rights are provided, in those cases where the type of security offered by the Corporation is not expected to be marketed to investors who are likely to prefer definitive securities. Conforming amendments and typographical corrections have been made to other sections of these rules.

The effective date of these regulations is not being delayed for 30 days (see 5 CFR § 553(d)) because the regulations reduce restriction and because section 553(d) is inapplicable to regulations promulgated by the Corporation.

Part 462 is added as follows:

Sec.
462.1 Definition of terms.
462.2 Authority of Reserve banks.
462.3 Scope and effect of book-entry procedure.
462.4 Transfer or pledge.
462.5 Withdrawal of Federal Home Loan Mortgage Corporation securities.
462.6 Delivery of Federal Home Loan Mortgage Corporation securities.
462.7 Registered bonds and notes.
462.8 Servicing book-entry Federal Home Loan Mortgage Corporation securities; payment of interest; payment at maturity or upon call.

AUTHORITY: 12 U.S.C. 1445(a).

§ 462.1 Definition of terms.

In these regulations, unless the context otherwise requires or indicates:

(a) "Reserve bank" means the Federal Reserve Bank of New York (and any other Federal Reserve bank which agrees to issue Federal Home Loan Mortgage Corporation securities in book-entry form) acting as fiscal agent of the Federal Home Loan Mortgage Corporation and when indicated acting in its individual capacity or as fiscal agent of the United States.

(b) "Federal Home Loan Mortgage Corporation security" means a bond, note, mortgage, obligation or other security of or sold by the Federal Home Loan Mortgage Corporation issued at a Reserve bank by the Federal Home Loan Mortgage Corporation under title III of the Emergency Home Finance Act of 1970, as amended, in the form of a definitive Federal Home Loan Mortgage Corporation security or a book-entry Federal Home Loan Mortgage Corporation security.

(c) "Book-entry Federal Home Loan Mortgage Corporation security" means a Federal Home Loan Mortgage Corporation security in the form of an entry made as prescribed in this part on the records of a Reserve bank.

(e) "Pledge" includes a pledge of, or any other security interest in, Federal Home Loan Mortgage Corporation securities as collateral for loans or advances or to secure deposits of public moneys or the performance of an obligation.

(f) "Date of call" is the date fixed in the authorizing resolution of the Board of Directors of the Federal Home Loan Mortgage Corporation on which the Federal Home Loan Mortgage Corporation will make payment of the security before maturity in accordance with its terms.

(g) "Member bank" means any national bank, State bank, or bank or trust company which is a member of a Reserve bank.

§ 462.2 Authority of Reserve banks.

Each Reserve bank is hereby authorized, in accordance with the provisions of these rules, to: (a) Issue book-entry Federal Home Loan Mortgage Corporation securities by means of entries on its records which shall include the name of the depositor, the amount, the series, and maturity date; (b) effect conversions between book-entry Federal Home Loan Mortgage Corporation securities and definitive Federal Home Loan Mortgage Corporation securities with respect to those securities as to which conversion rights are available pursuant to the applicable securities offering materials; (c) otherwise service and maintain book-entry Federal Home Loan Mortgage Corporation securities; and (d) issue confirmations of transactions in the form of written advices (serially numbered or otherwise) which specify the amount and description of any securities (that it, series and maturity date) sold or transferred and the date of the transaction.

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§ 462.3 Scope and effect of book-entry procedure.

(a) A Reserve bank as fiscal agent of the Federal Home Loan Mortgage Corporation may apply the book-entry procedure provided for herein to any Federal Home Loan Mortgage Corporation securities which have been or are hereafter deposited for any purpose in accounts with it in its individual capacity under terms and conditions which indicate that the Reserve bank will continue to maintain such deposit accounts in its individual capacity, notwithstanding application of the book-entry procedure to such securities. This paragraph is applicable, but not limited, to Federal Home Loan Mortgage Corporation securities deposited:

(1) As collateral pledged to a Reserve bank (in its individual capacity) for advances by it;

(2) By a member bank for its sole account;

(3) By a member bank held for the account of its customers;

(4) In connection with deposits in a member bank of funds of States, municipalities, or other political subdivisions; or,

(5) In connection with the performance of an obligation or duty under Federal, State, municipal, or local law, or judgments of decrees of courts.

The application of the book-entry procedure under this paragraph shall not derogate from or adversely affect the relationships that would otherwise exist between a Reserve bank in its individual capacity and its depositors concerning any deposit under this paragraph. Whenever the book-entry procedure is applied to such Federal Home Loan Mortgage Corporation securities, the Reserve bank is authorized to take all action necessary in respect of the book-entry procedure to enable such Reserve bank in its individual capacity to perform its obligations as depositary with respect to such Federal Home Loan Mortgage Corporation securities.

(b) A Reserve bank as fiscal agent of the Federal Home Loan Mortgage Corporation may apply the book-entry procedure to Federal Home Loan Mortgage Corporation securities deposited as collateral pledged to the United States under Treasury Department Circular Nos. 92 and 176, both as revised and amended, and may apply the book-entry procedure, with the approval of the Secretary of the Treasury, to any other Federal Home Loan Mortgage Corporation securities deposited with a Reserve bank as fiscal agent of the United States.

(c) Any person having an interest in Federal Home Loan Mortgage Corporation securities which are deposited with a Reserve bank (in either its individual capacity or as fiscal agent of the United States) for any purpose shall be deemed to have consented to their conversion to book-entry Federal Home Loan Mortgage Corporation securities pursuant to the provisions of these rules, and in the manner and under the procedures prescribed by the Reserve bank.

(d) No deposits shall be accepted under this section on or after the date of maturity or call of the Federal Home Loan Mortgage Corporation securities.

§ 462.4 Transfer of pledge.

(a) A transfer or pledge of book-entry Federal Home Loan Mortgage Corporation securities to a Reserve bank (in its individual capacity or as fiscal agent of the United States), or to the United States, or to any transferee or pledgee eligible to maintain an appropriate book-entry account in its name with a Reserve bank under these rules is effected and perfected, notwithstanding any provisions of law to the contrary, by a Reserve bank making an appropriate entry in its records of the securities transferred or pledged. The making of such an entry in the records of a Reserve bank shall: (1) Have the effect of a delivery in bearer form of definitive Federal Home Loan Mortgage Corporation securities; (2) have the effect of taking of delivery by the transferee or pledgee; (3) constitute the transferee or pledgee a holder; and (4) if a pledge, effect a perfected security interest therein in favor of the pledgee. A transfer or pledge of book-entry Federal Home Loan Mortgage Corporation securities effected under this paragraph shall have priority over any transfer, pledge, or other interest, theretofore or thereafter effected or perfected under subsection (b) of this section or in any other manner.

(b) A transfer or a pledge of transferable Federal Home Loan Mortgage Corporation securities, or any interest therein, which is maintained by a Reserve bank (in its individual capacity or as fiscal agent of the United States) in a book-entry account under these rules including securities in book-entry form under § 462.3(a)(3), is effected, and a pledge is perfected, by any means that would be effective under applicable law to effect a transfer or to effect and perfect a pledge of the Federal Home Loan Mortgage Corporation securities, or any interest therein, if the securities were maintained by the Reserve bank in bearer definitive form. For purposes of transfer or pledge hereunder, book-entry Federal Home Loan Mortgage Corporation securities maintained by a Federal Reserve bank shall, notwithstanding any provision of law to the contrary, be deemed to be in maintained in bearer definitive form. A Reserve bank maintaining book-entry Federal Home Loan Mortgage Corporation securities either in its individual capacity or as fiscal agent of the United States is not a bailee for purposes of notification of pledges of those securities under this paragraph, or a third person in possession for purposes of acknowledgment of transfers thereof under this paragraph. Where transferable Federal Home Loan Mortgage Corporation securities are recorded on the books of a depositary (a bank, banking institution, financial firm or similar party, which regularly accepts in the course of its business Federal Home Loan Mortgage Corporation securities as a custodial service for customers, and maintains accounts in the names of such customers reflecting ownership of or interest in such securities) for account of the pledgor or transferor thereof and such securities are on deposit with a Reserve bank in a book-entry account hereunder, such depositary shall, for purposes of perfecting a pledge of such securities to a purchaser under applicable provisions of law, be the bailee to which notification of the pledge of the securities may be given or the third person in possession from which acknowledgment of the holding of the securities for the purchaser may be obtained. A Reserve bank will not accept notice or advice of a transfer or pledge effected or perfected under this paragraph, and any such notice or advice shall have no effect. A Reserve bank may continue to deal with its depositors in accordance with the provisions of these rules, notwithstanding any transfer or pledge effected or perfected under this paragraph.

(c) No filing or recording with a public recording office or officer shall be necessary or effective with respect to any transfer or pledge of book-entry Federal Home Loan Mortgage Corporation securities or any interest therein.

(d) A Reserve bank shall, as to book-entry securities having conversion rights and upon receipt of appropriate instructions, convert book-entry Federal Home Loan Mortgage Corporation securities into definitive Federal Home Loan Mortgage Corporation securities and deliver them in accordance with such instructions; no such conversion shall affect existing interests in such Federal Home Loan Mortgage Corporation securities.

(e) A transfer of book-entry Federal Home Loan Mortgage Corporation securities within a Reserve bank shall be made in accordance with procedures established by the bank not inconsistent with these rules. The transfer of book-entry Federal Home Loan Mortgage Corporation securities by a Reserve bank may be made through a telegraphic transfer procedure.

(f) All requests for transfer or withdrawal must be made prior to the maturity or date of call of the securities.

§ 462.5 Withdrawal of Federal Home Loan Mortgage Corporation securities.

(a) A depositor of book-entry Federal Home Loan Mortgage Corporation securities may withdraw them from a Reserve bank by requesting delivery of like definitive Federal Home Loan Mortgage Corporation securities to itself or on its order to a transferee, provided that such securities provide for a right of conversion to definitive form pursuant to the offering materials applicable to such securities.

(b) Federal Home Loan Mortgage Corporation securities of a series which was originally issued in bearer form only and which are actually to be delivered upon withdrawal may be issued in bearer form only, until the date of the first issue of such securities in registered form; Federal Home Loan Mortgage Corporation securities of a series which was originally issued in registered form only and which are actually to be delivered upon withdrawal may be issued in registered form only, until the date of first issue of such securities in bearer form. After the date of first issue in registered form of a series of Federal Home Loan Mortgage Corporation securities originally issued in bearer form only or the date of first issue in bearer form of a series of Federal Home Loan Mortgage Corporation securities originally issued in registered form only, all securities of such series which are actually to be delivered upon withdrawal may be issued either in bearer or registered form. All Federal Home Loan Mortgage Corporation securities of a series which were originally issued in both registered and bearer form and which are actually to be delivered upon withdrawal may be issued either in bearer or registered form.

§ 462.6 Delivery of Federal Home Loan Mortgage Corporation securities.

A Reserve bank which has received Federal Home Loan Mortgage Corporation securities and effected pledges, made entries regarding them, or transferred or delivered them according to the instructions of its depositor is not liable for conversion or for participation in breach of fiduciary duty even though the depositor had no right to dispose of or take other action in respect of the securities. A Reserve bank shall be fully discharged of its obligations under these rules by the delivery of Federal Home Loan Mortgage Corporation securites in definitive form to its depositor or upon the order of such depositor. Customers of a member bank or other depositary (other than a Reserve bank) may obtain Federal Home Loan Mortgage Corporation securities in definitive form only by causing the depositor of the Reserve Bank to order the withdrawal thereof from the Reserve bank.

§ 462.7 Registered bonds and notes.

No formal assignment shall be required for the conversion to book-entry Federal Home Loan Mortgage Corporation securities of registered Federal Home Loan Mortgage Corporation securities held by a Reserve bank (in either its individual capacity or as fiscal agent of the United States) on the effective date of these rules for any purpose specified in § 462.3(a) hereof. Registered Federal Home Loan Mortgage Corporation securities deposited thereafter with a Reserve bank for any purpose specified in § 462.3 shall be assigned for conversion to book-entry Federal Home Loan Mortgage Corporation securities. The assignment, which shall be executed in accordance with the provisions of subpart F of 31 CFR, part 306, so far as applicable, shall be to "Federal Reserve Bank of , as fiscal agent of the Federal Home Loan Mortgage Corporation for conversion to book-entry Federal Home Loan Mortgage Corporation securities."

§ 462.8 Servicing book-entry Federal Home Loan Mortgage Corporation securities; payment of interest; payment at maturity or upon call.

Payments of principal and interest on Federal Home Loan Mortgage Corporation securities will be made by a Federal Reserve bank on the interest due dates and dates of maturity or call and remitted or credited in accordance with the depositor's instructions.

By the Board of Directors.

J. J. Finn,
Secretary.

[FR Doc. 78-31763 Filed 11-9-78; 8:45 am]

[6325-01-M]

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

Miscellaneous Amendments

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: The commission is amending certain parts of 5 CFR 890, the Federal Employees Health Benefits program regulations. The amendments will correct certain inequities, improve administration of the program, and include certain omissions.

EFFECTIVE DATE: January 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Edward G. Borchers, 202-632-4684, Bureau of Retirement, Insurance and Occupational Health, Office of Policy Development and Technical Services, Room 4334, 1900 E Street NW, Washington, D.C. 20415.

SUPPLEMENTARY INFORMATION: On Tuesday, April 25, 1978, there was published in the Federal Register (43 FR 17474-17476) proposed rulemaking explaining proposed amendments to the Federal Employees Health Benefits regulations and giving interested parties an opportunity to submit comments.

Of the 41 comments received, most favored all of the proposed amendments except that which would permit enrollments and enrollment changes to be effective on a daily basis. Although many of the 38 comments relative to this section supported the intent of the proposed amendment, 26 opposed on the grounds that implementation would cause severe disruption of payroll systems, requiring either extensive system changes or greatly increased staffing time for manual processing. In view of this opposition, this proposed amendment will be further evaluated and not forwarded as final rule at this time.

Opposition to the proposed deletion of subsection 890.201(b)(6), which permits carriers to limit benefits to a person confined in a hospital on the effective date of an enrollment or change in enrollment and continuously confined thereafter, was expressed by four commentors. However, a review of these four comments indicated that some, and possibly all, had confused this subsection with § 890.401(b)(2), which provides that benefits under the new plan, in cases where a person is confined on the effective date of a change in enrollment, will not begin until the earlier of: (1) Discharge from the hospital, or (2) the 92d day after the effective date of the change. Since opposition to this amendment resulted in whole or part from confusion over its intent, and this change will permit qualified Health Maintenance Organizations to be in full compliance with the HMO Act of 1973, this rule is being effected.

Two other opposing comments were received. One commentor opposed the proposed amendment which would allow reinstatement of coverage for widowed and divorced children, because of anticipated administrative problems in identifying such children as family members. However, the Commission feels that this amendment is of sufficient benefit to employees to warrant this change, as did 19 commentors who supported the amendment. The

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other opposing comment brought to our attention the need for an additon to the amendment which permits employees to enroll in the same plan or option as was lost when his or her spouse cancels enrollment. This addition permits an employee to change to the same option of any available plan if he or she is not eligible to become a member of the spouse's plan. Since there are cases in which an employee would be excluded from enrolling in his or her spouse's plan, this addition is necessary.

Accordingly, 5 CFR Part 890 is amended as follows:

1. Section 890.201 is revised by amending (a)(8) and revoking (b)(6) as follows:

§ 890.201 Minimum standards for health benefits plans.

(a) To be qualified to be approved by the Commission, a health benefits plan shall:

* * * * *

(8) Provide for a special reserve for the plan. The carrier shall account for amounts retained by it as reserves for the plan separately from reserves maintained by it for other plans. The carrier shall invest the special reserve and income derived from the investment of the special reserve shall be credited to the special reserve. If the contract is terminated or approval of the plan is withdrawn, the carrier shall return the special reserve to the Employees Health Benefits Fund. However, in the case of a comprehensive medical plan, the carrier, without regard to the foregoing provisions of this subparagraph, shall follow such financial procedures as are mutually agreed on by the carrier and the Commission.

* * * * *

(b) * * *

(6) [Revoked]

2. Section 890.301 is revised by adding (g) (4), amending (n) and adding (t) and (u) as set out below:

§ 890.301 Opportunities to register to enroll and change enrollment.

* * * * *

(g) *Loss of coverage under Federal programs.* * * *

(4) An employee who is not enrolled, but is covered by the enrollment of another enrollee under this part, may register to be enrolled in the same plan and option within 31 days after cancellation of the other's enrollment. If the employee is not eligible to enroll in the plan from which coverage is lost, he or she may enroll in the same option of any available plan.

* * * * *

(n) *On becoming eligible for benefits under title XVIII of the Social Security Act.* An enrolled employee or annuitant with a high option enrollment may register, at any time after he or she meets statutory requirements for eligibility under title XVIII of the Social Security Act, to change his or her enrollment to the low option of any plan under this part.

* * * * *

(t) *Loss of medicaid coverage.* An employee who is not enrolled, but is covered by medicaid (State program of medical assistance for the needy), may register to be enrolled within 31 days after termination of medicaid.

(u) *Child's coverage ends.* An employee or annituant may register to change enrollment from self only to self and family within 31 days after an eligible child loses coverage under another enrollment under this part.

3. Section 890.302(e) is added as set out below:

§ 890.302 Coverage of family members.

* * * * *

(e) *Meaning of unmarried.* A child, under age 22 or incapable of self-support, who is divorced or widowed is considered to be unmarried.

4. Section 890.305 is revised to read as follows:

§ 890.305 Reinstatement of enrollment after military service.

(a) The enrollment of an employee or annuitant whose enrollment was terminated because he or she entered on duty in a uniformed service for a period of time not limited to 30 days or less is reinstated automatically on the day the employee is restored to a civilian position pursuant to part 353 of this chapter, or other similar authority, or on the day the annuitant is separated from the uniformed service, as the case may be.

(b) The enrollment of an employee whose enrollment was terminated because he or she entered on duty in a uniformed service for a period of time not limited to 30 days or less, and who retires on an immediate annuity from his or her Federal civilian position while on such duty, is reinstated automatically on the day the person is separated from the uniform service, provided he or she was covered under this part since his or her first opportunity or for the 5 years of civilian service (excluding the period of uniformed service) immediately preceding the civilian retirement, whichever is shorter.

5. Section 890.503(c)(4) is revised as follows:

§ 890.503 Reserves.

* * * * *

(c) * * *

(4) The Commission may, by agreement with the carrier, approve community rating for a comprehensive medical plan. If the contingency reserve of the carrier of a community rated plan exceeds the preferred minimum balance, the carrier may request the Commission to pay to the plan a portion of the reserve not greater than the excess of the contingency reserve over the preferred minimum balance. The carrier shall state the reason for the request. The Commission will decide whether to allow the request in whole or in part and will advise the plan of its decision.

(5 U.S.C. 8913.)

For the United States Civil Service Commission.

JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-31873 Filed 11-9-78; 8:45 am]

[6325-01-M]

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

Elimination of the Second Review Cycle and Mini Open Season

AGENCY: Civil Service Commission.

ACTION: Final rulemaking.

SUMMARY: The purpose of this rule is to eliminate the second review cycle and mini open season conducted under the Federal employees health benefits (FEHB) program. This rule is made in view of the poor response on the part of Federal employees to the mini open season, and the adminstrative effort and expense involved in conducting it.

DATE: Effective October 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Craig Pettibone, Office of Policy Development and Technical Services, Bureau of Retirement, Insurance and Occupational Health, 202-632-4682.

SUPPLEMENTARY INFORMATION: On August 8, 1978, proposed rulemaking was published in the FEDERAL REGISTER (43 FR 35046) to eliminate the second review cycle and mini open season conducted under the Federal employees health benefits (FEHB) program. A 30-day comment period was provided, and the Commission received 17 written comments. Of the responses received, 10 were in favor of

the proposal and 7 were against it. The comments, suggestions, and objections have been carefully considered, and the reasons for or against adopting them are stated below. In addition, a clarifying amendment to provide a limited application opportunity for employee organization plans has been added to the regulation to make it consistent with Pub. L. 95-368. This recent legislation, among other things, amends the FEHB law to permit Federal employee organizations 1 year from December 31, 1978, in which to submit proposals for new health benefits plans to the Commission for approval for participation in the FEHB program.

1. Three objections to the elimination of the mini open season were received to the effect that the mini open season has not been allowed sufficient time to be fully tested. The respondents believe that a larger number of Federal employees enroll during the second enrollment offering of a comprehensive health plan.

Complete data on the 1978 mini open season has not been made available at this time; however, preliminary data indicates a continued trend of light enrollment. For the regular open season of 1976, the mini open season of 1977, and the regular open season of 1977, Commission acturial figures indicate that for 7 out of a total of 12 new plans offered during those open seasons, enrollment during the second enrollment opportunity was less than that of the initial enrollment. For two plans, second enrollment increased over the first enrollment. Of the remaining three plans, two have not provided complete enrollment data, and one was no longer in the program at the time of the open season following its initial offering.

Total enrollment for the five plans offered during the mini open season in 1977 was 1,716, as compared to a total enrollment of 727 for those same comprehensive plans during their second enrollment period (regular open season, November 1977). The seven new comprehensive plans offered during the regular open season in 1976 had a total enrollment of 660, while enrollment for the same plans during their second enrollment period (regular open season November 1977) was 347. These figures do not support the respondents' contention that more Federal enrollment occurs during the second enrollment offering of a plan.

2. Three objections were received regarding possible harm elimination of the mini open season could inflict on comprehensive plans anticipating access to the FEHB program during the next mini open season. To date, only two plans anticipating access to the FEHB program during the next mini open season have voiced objections. Nevertheless, the Commission considers this a valid arguement and, therefore, has postponed the effective date of elimination until October 1, 1979.

3. Two respondents suggested that the Commission review the promotion methods of the mini open season to provide more information on the new comprehensive plans to Federal employees. The Commission continously strives to improve the methods by which open-season information is distributed to Federal employees. During open season periods, explicit instructions are issued to the agencies along with information and materials to be provided to the employees. New brochures are made available for distribution. Every effort is made to inform employees of the opportunity to change enrollment and the plans available to them.

4. Two respondents felt that by eliminating the mini open season, the Commission was being inconsistent with administration and congressional policy to promote the growth of comprehensive health plans. While it may be true that the entry of a few qualified plans into the FEHB program will be delayed until the regular open season, the number of approved plans would be too small to impact on Administration policies. Moreover, interested comprehensive plans may submit applications for the spring review cycle by March 31 of each year, and if approved, their contracts will be effective January 1, of the following year. This is only 6 months later than the date the contracts would have become effective had they been approved during the mini open season.

5. Several respondents noted the short time frame provided in which to respond to the proposed regulations. One respondent believes that the Commission violated its proposed regulations to implement Executive Order 12044, which provides for a greater opportunity for public participation in the regulatory rulemaking process. Commission proposed regulations, published in the FEDERAL REGISTER on May 23, 1978, stipulate that the Commission intent is, among other things, to insure an early and meaningful opportunity for public participation in rulemaking and to insure at least 60 days comment period on significant regulations unless circumstances require a shorter review period. Further, the regulations call for a brief statement of the reasons for a shorter time period when it is not possible to give the public at least 60 days to comment on significant regulations. The respondent believes that the Commission did not comply with the stated requirements of these regulations. However, the supplemental information section of our proposed regulations to eliminate the mini open season contained an explanation of the circumstances warranting a shorter comment period to the effect that a 30-day comment period was necessary in order for the Commission to avert the October 1 review cycle in the event the rulemaking became final as proposed.

Accordingly, 5 CFR § 890.203(a) is revised by renumbering it to read § 890.203(a)(1), by amending the last sentence, and by adding a new subparagraph § 890.203(a)(2); in addition, § 890.301(d) is amended by deleting § 890.301(d)(2), as set out below:

§ 890.203 Application for approval of, and proposal of amendments to, health benefits plans.

(a)(1) * * * Participation of an approved plan becomes effective on the January 1 which is (1) at least 9 months after the Commission receives the application and (2) at least 6 months after the Commission receives all evidence to demonstrate that the plan has met all requirements for approval.

(2) Application for approval of employee organization plans may be made by letter to the U.S. Civil Service Commission, Washington, D.C. 20415, after December 31, 1978, and before January 1, 1980. This letter application is to be accompanied by such descriptive material, financial data and documentations as the Commission may require in its review process and in the format specified by the Commission. Participation of an approved plan becomes effective on the January 1 which is (1) at least 9 months after the Commission receives the application and (2) at least 6 months after the Commission receives all evidence to demonstrate that the plan has met all requirements for approval.

* * * * *

§ 890.301 Opportunities to register to enroll and change enrollment.

* * * * *

(d) *Open season* * * *

(2) [Revoked]

* * * * *

(5 U.S.C. 8913.)

For the United States Civil Service Commission.

JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-31874 Filed 11-9-78; 8:45 am]

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[3410-02-M]

Title 7—Agriculture

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS: FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

[Lemon Reg. 172]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market during the period November 12-18, 1978. Such action is needed to provide for orderly marketing of fresh lemons for this period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: November 12, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: *Findings.* Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, and upon other information, it is found that the limitation of handling of lemons, as hereafter provided, will tend to effectuate the declared policy of the act.

The committee met on November 7, 1978, to consider supply and market conditions and other factors affecting the need for regulation and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons continues good on larger sizes and strengthening on smaller sizes.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

§ 910.472 Lemon Regulation 172.

Order. (a) The quantity of lemons grown in California and Arizona which may be handled during the period November 12, 1978, through November 18, 1978, is established at 175,000 cartons.

(b) As used in this section, "handled" and "carton(s)" mean the same as defined in the marketing order.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.)

Dated: November 9, 1978.

CHARLES R. BRADER,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 78-32047 Filed 11-9-78; 11:36 am]

[3410-07-M]

CHAPTER XVIII—FARMERS HOME ADMINISTRATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER H—GENERAL

(FmHA Instruction 1900-B)

PART 1900—GENERAL

Subpart B—Farmers Home Administration Appeal Procedure

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) adds a new subpart which will provide regulations for appeal, with hearing and review, for all FmHA applicants, borrowers and grantees who are directly and adversely affected by an administrative decision. The intended effect of this action is to assure a standardized and fair appeal from any such action. It consolidates and refines existing FmHA appeals procedures and covers actions not presently subject to existing appeals procedures. This action is taken as a result of an administrative decision.

EFFECTIVE DATE: November 13, 1978.

FOR FURTHER INFORMATION CONTACT:

Arthur M. Collings, Jr., phone 202-447-8448.

SUPPLEMENTARY INFORMATION: On May 16, 1978, there was published in the FEDERAL REGISTER at page 21005 a notice of proposed rulemaking involving the addition of a new subpart B "Farmers Home Administration Appeal Procedure" and a new part 1900 "General" in Subchapter H, Chapter XVIII, Title 7 in the Code of Federal Regulations. This proposal provided for a hearing on appeal from a decision by FmHA, an appeal on the record from the hearing, and a third review to determine whether the decision is "arbitrary and capricious." The appeal officials will vary depending on which FmHA official made the decision from which the appeal is taken. The procedure will apply to all FmHA loan and grant programs.

Comments were received from 51 individuals and organizations and revisions have been made to incorporate a number of the comments. Two comments appeared in a number of responses, and which FmHA is unable to incorporate in the final regulations.

Inclusion of tenants as eligible to appeal, as per the definition in 1900.52(a). FmHA intends to publish for public comment a separate appeals procedure for tenants, and will seek public advice in this regard.

The position of hearing officer be established in each FmHA State office. FmHA does not have the available staff to consider implementing this suggestion at this time.

Comments were received from the public and FmHA personnel. The following sections were reconsidered and in most instances revised, as a result of comments received:

§ *1900.51*—This section has been changed to delete the exemption of foreclosure actions from this regulation.

§ *1900.52*—The term "interested parties" has been limited.

§ *1900.52(d)(1)*—This section has been changed to include appeals of decisions by FmHA county committees.

§ *1900.53(a)(3)*—The requirement that the appellant send a copy of the appeal to the hearing officer has been dropped.

§ *1900.53(a)(4)*—This section has been changed to place discretion in the hearing officer for maintaining status-quo pending appeal.

§ *1900.53(d)(2)*—This section has been changed to clarify that the hearing will be held at a location convenient to appellant, decision maker, and hearing officer.

§ *1900.53(d)(4)*—This section has been revised to provide a suggested order of hearing.

§ *1900.53(d)(4)(iii)*—This section is changed to delete the requirement that the original decision making official present reasons for the adverse decision, at the hearing. New subparagraphs (iv) and (v) have been added.

§ *1900.53(d)(4)(v)*—The appellant will now notify the hearing officer, in advance, if appellant intends to have a transcript made, or tape record the hearing at own expense.

§ *1900.53(d)(7)(ii)*—This section has been changed so that appellant is not required to send a copy of the appeal to the review officer.

§ *1900.53(f)(5)*—This section has been changed to provide that when the decision of the hearing officer is reversed, the decision making official and the hearing officer will be notified of the reasons.

§ *1900.53(f)(6)*—The terms arbitrary and capricious were retained despite objections as being unfamiliar and too legalistic. FmHA believes the explanation that follows in the same section is sufficient.

§ *1900.54*—Retained, despite some adverse comment, to provide (1) a conclusion of administrative process for judicial review purposes and (2) leave open the possible reversal of the final decision if it is determined to be unauthorized.

This document has been reviewed in accordance with FmHA Instruction 1901-G "Environmental Impact Statements". It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190 an environmental impact statement is not required.

As added the new Part 1900, "General", Subpart B, "Farmers Home Administration Appeal Procedures," reads as follows:

Subpart B—Farmers Home Administration Appeal Procedure

Sec.
1900.51 Purpose.
1900.52 Definitions.
1900.53 Appeal from an initial FmHA decision.
1900.54 Effect of appeal decision.
1900.55-1900.100 (Reserved).

AUTHORITY: 7 U.S.C. 1989; 42 U.S.C. 1480; 42 U.S.C. 2942; 5 U.S.C. 301; Sec. 10 Pub. L. 93-357, 88 Stat. 392; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70; delegations of authority by Director, OEO, 29 FR 14764, 33 FR 9850.

§ 1900.51 Purpose.

This subpart provides a uniform procedure whereby a person may appeal any Farmers Home Administration (FmHA) program administrative action directly affecting such person. This procedure does not apply to Freedom of Information Act or Privacy Act appeals and is not intended to affect the suspension and debarment procedure found at subpart E of part 1924 of this chapter. This procedure takes precedence over all other FmHA appeals procedures affecting applicants, borrowers or grantees, including that found at § 1955.15(d)(3) of this chapter. This procedure will be applicable to administrative decisions made after its effective date.

§ 1900.52 Definitions.

(a) *Appellant.* An appellant is an applicant for FmHA assistance or an FmHA borrower or grantee, either individual or organization, that is directly and adversely affected by an administrative decision by FmHA.

(b) *Directly and adversely affected.* The term "directly and adversely affected" includes having a request for FmHA assistance denied in whole or in part or having FmHA assistance reduced, canceled, or not renewed. The term "directly and adversely affected" does not include actions where persons or organizations are clearly not eligible such as in the following cases: (1) loan denial because confirmed income above published limits; (2) interest credit reduced because of acknowledged income increases; or (3) a section 504 grant application denied because the applicant is less than 62 years of age.

(c) *Hearing.* A hearing, as used in this subpart, is an informal proceeding at which an appeal from an adverse decision is heard.

(d) *Hearing officer.* The hearing officer will be:

(1) In the case of an appeal of an initial decision by a county supervisor, or county committee, the district director having jurisdiction over that county office. If that district director had a significant role in the initial determination, the district director from a nearby geographical district office will be designated by the State director. For purposes of this subpart, the decision to accelerate an account will be deemed to have been made by the county supervisor initiating such action.

(2) In the case of an appeal of an initial decision by a district director, the State director, who may designate a program chief or other State office official to be the hearing officer.

(3) In the case of an appeal of an initial decision by a State director, the appropriate program assistant administrator or designee.

(4) In the case of an appeal of an initial decision by an assistant administrator, the appropriate deputy administrator.

(e) *Record.* The term "record" means the FmHA file, papers filed by an appellant, notes or transcript (if any) of a hearing, and decisions made by FmHA officials.

(f) *Review officer.* When the hearing officer is:

(1) The district director, the review officer will be the State director, except that when a decision to foreclose is appealed the review officer will be the area coordinator;

(2) The State director or designee, the review officer will be the appropriate program assistant administrator;

(3) The program assistant administrator or designee, the review officer will be the appropriate deputy administrator; and

(4) The deputy administrator, the review officer will be the administrator.

§ 1900.53 Appeal from an initial FmHA decision.

(a) If an applicant for FmHA assistance, and FmHA borrower, or an FmHA grantee is directly and adversely affected by an FmHA decision or action, the official taking such action or making the decision will inform that person or organization by letter of the action taken. The letter will include the following:

(1) A statement of the action taken or decision made and all of the specific reason(s) for the conclusion reached.

(2) An invitation to call at the decisionmaking official's office to discuss the decision with that official. The person (or organization) may bring to the meeting any additional information or a representative.

(3) A statement that the person (or organization) may appeal the decision directly to the hearing officer.

(i) Except in acceleration notices the statement should read as follows:

You may appeal the above action by writing to: Hearing office ————————, address ————————, within 30 calendar days of the date of this letter, giving the reasons why you believe this matter should be decided differently. This time may be extended if you cannot notify the hearing officer within the 30 days for reasons beyond your control.

(ii) In acceleration notices, the statement shall read substantially as found in the "Notice of Acceleration" exhibit C to subpart A, part 1955 of this chapter.

(4) A statement that if the person (or organization) wants the terminated or reduced assistance maintained at

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the existing level, the decision to reduce or terminate may be stayed pending appeal if requested by the person (or organization) at the discretion of the hearing officer. The appellant will agree to repay any assistance received during the stay for which the appellant is, upon completion of the appeal, determined to have been ineligible.

(b) If a request is received to stay the decision, the hearing officer, based on the facts and circumstances, may stay the decision. An appropriate case for a stay would be if to not grant the stay would make an appeal useless.

(c) If the person or organization takes the opportunity for a meeting with the decisionmaking official, as set forth in § 1900.53(a)(2) then:

(1) If as a result of that meeting, the request is not granted, the official will send a letter to the person (or organization) which will contain the statements as set forth in § 1900.53(a) (1) and (3).

(2) If the meeting results in a resolution of the problem, the official will send the person or organization a letter setting forth the resolution and the reasons for it.

(d) When an appellant appeals a decision as provided in § 1900.53 (a)(3) or (c), the appeal will be handled as follows:

(1) Upon receipt of the appeal letter, the hearing officer will request the entire file from the decisionmaking official who will promptly forward the file on the matter to the hearing officer.

(2) The hearing officer will arrange for a hearing to be held as soon as possible but within 30 calendar days of the receipt of the appeal. The hearing will be held at a location convenient to the appellant, decisionmaking official and hearing officer. If no such place can be agreed on, the hearing officer will select the location. If the appellant or the decisionmaker for good reason is unable to attend a hearing within the 30 calendar day period, the hearing officer, after considering the circumstances, will set a date for the hearing.

(3) *Failure to appear.* (i) If the appellant or appellant's representative, without reasonable cause fails to appear at the hearing, the appellant's appeal will be deemed to have been concluded.

(ii) If the failure to appear is with reasonable cause, the hearing officer will reschedule the hearing at a time convenient to all interested parties.

(4) *The hearing.* (i) The hearing will be an informal proceeding at which the appellant will bear the burden of proving the initial decision erroneous. To do so the appellant may provide any information or witnesses the appellant believes should be considered in reaching a proper decision. The appellant may present evidence, witnesses, and arguments in support of appellant's complaint, controvert evidence relied on by the FmHA, and question all witnesses. Any evidence may be received by the hearing officer without regard to whether that evidence could be employed in judicial proceedings. A suggested guide for the order of presentation at a hearing is:

(A) The appellant makes statement setting forth why the original decision was erroneous.

(B) The decisionmaker, or successor, will explain why the original decision was correct.

(C) The appellant presents evidence, witnesses, and arguments supporting the appellant's position, including questioning of the decisionmaker. The witnesses may be questioned by the decisionmaking official or other FmHA representatives.

(D) Decisionmaking official, or other FmHA person, presents evidence supporting original decision or rebutting appellant's arguments or evidence. Any witnesses used may be questioned by the appellant.

(E) Summary by appellant and FmHA.

(ii) The decisionmaking official (or successor) will be at the hearing and will present evidence if necessary. Any other witnesses or FmHA personnel the decisionmaking official thinks necessary to fully determine the matter will be at the hearing to present evidence.

(iii) The hearing officer may request additional witnesses to appear or request further information if in the hearing officer's opinion such is necessary to reach a proper decision.

(iv) Before the hearing, the appellant or appellant's representative, unless otherwise prohibited by law or regulation, may examine, and, at the appellant's expense, copy all relevant documents, records, and regulations of FmHA.

(v) The appellant may be represented by an attorney or any other person at the hearing. All witnesses may be questioned by the hearing officer, appellant (or representative), and the decisionmaking official (or successor).

(vi) An FmHA employee (not the hearing officer or decisionmaking official) will take notes at the hearing. Within 5 working days after the hearing, a typed copy of the notes will be provided to the appellant who may notify FmHA of any changes appellant thinks should be made to the notes within 5 working days of receipt of the copy. The suggested changes will be made part of the record even if not agreed to by FmHA. If the appellant notified the hearing officer in advance, the appellant may arrange to have a transcript of the hearing made at the appellant's own expense. At FmHA's request, a copy of the transcript will be provided to FmHA for cost of reproduction. If the hearing officer thinks it is needed, a transcript of the proceedings may be made at FmHA's expense (a copy will be made available to appellant at cost). Either the appellant or FmHA may tape record the proceedings at their own expense.

(5) For good cause, the hearing officer on the request of either the appellant or an FmHA official may, in the hearing officer's complete discretion, continue the hearing to a future time.

(6) The decision of the hearing officer shall be based on facts presented at the hearing, appropriate FmHA files, applicable statutes and regulations, and the hearing officer's general knowledge of FmHA program functions.

(7) Within 20 calendar days of the hearing, the hearing officer will determine what action to take with regard to the appeal and:

(i) If the initial decision is reversed, will inform the appellant and original decisionmaking official by letter of the decision, the reason for it, and what action will be taken.

(ii) If the initial decision is upheld or modified but not reversed, will inform the appellant by letter of the decision giving the specific reasons, with a copy to the decisionmaking official. The letter must contain the following statement:

> If you wish to have the above decision further reviewed, you may appeal in writing to: Review officer _____, address _____, within 20 calendar days of the date of this letter explaining why you believe the decision is incorrect. Since this review will be based on the record, including papers filed, FmHA files, notes or transcripts of the appeal meetings, my decision, applicable statutes and regulations, and any additional written information you wish to submit, you should include any additional information you think is important and indicate whether you wish to present any information in person.

(e) If the appellant does not request in writing an appeal of the hearing officer's decision within the 20 calendar day period provided in the letter, the appeal will be considered concluded.

(f) If the appellant appeals to the review officer:

(1) Upon receipt of the appeal the review officer will request that the hearing officer forward the record to the review officer. The hearing officer will promptly do so.

(2) The review officer may obtain a copy of the transcript of the hearing if one was arranged for by the appellant.

(3) If no personal meeting was requested by the appellant, the review officer will review the record on the case and applicable law and regulations, any additional information furnished by the appellant and such additional information as the review officer deems necessary and render a decision within 30 calendar days of receipt of the appeal.

(4) If the appellant indicates a desire to present information in person, the review officer will arrange a meeting for the sole purpose of receiving such additonal information. The meeting will be held within 15 calendar days of receipt of the appeal. A final decision will be rendered within 20 calendar days after the meeting.

(5) If the decision of the hearing officer is reversed, the appellant will be informed by letter of the decision and what action will be taken. The decisionmaking official and the hearing officer will also be notified, with the reasons for reversal provided.

(6) If the hearing officer's decision is upheld or modified but not reversed, the appellant will be informed of the decision by letter giving the specific reasons for the decision, with a copy each to the decisionmaking official and hearing officer. The letter must contain the following statement:

> If you believe the above decision is arbitrary and capricious, that is, lacking any rational, factual, or legal basis, you may write the Administrator, FmHA, 14th and Independence Avenue SW., Washington, D.C. 20250, explaining why. The administrator's review will be based only on the existing written record. A copy of your letter to the administrator should be sent to me so that I can expeditiously forward the record to the administrator.

(g) Upon receipt of an appeal from a hearing review officer's decision, the administrator or a delegate will review the record, which will have been forwarded by the review officer upon receipt of a copy of the letter and determine whether the decision was arbitrary and capricious. If not, the decision will be upheld and the appellant so notified. If the administrator or a delegate finds the decision to have been arbitrary and capricious, the official will determine what action should be taken and notify all affected parties. If the appeal is from an initial decision of an assistant administrator or higher official, the administrator may not delegate this authority except to the associate administrator.

§ 1900.54 Effect of appeal decision.

(a) *Effective date.* When an appeal is concluded, the effective date of the action to be taken will be the originally proposed effective date of the initial decision from which the appeal was taken.

(b) *Legal effect.* A decision made when an appeal is concluded will be administratively conclusive. It will not, however, be determinative of the legality of the action to be taken.

Dated: November 2, 1978.

GORDON CAVANAUGH,
Administrator,
Farmers Home Administration.

[FR Doc. 78-31797 Filed 11-9-78; 8:45 am]

[3410-07-M]

SUBCHAPTER L—LOAN AND GRANT MAKING

[FmHA Instruction 1933-A]

PART 1933—LOAN AND GRANT PROGRAMS (GROUP)

Subpart A—Community Facility Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its loan regulations concerning the use of metering devices on water systems and areas eligible for financing of community facilities. The intended effect of this action is to establish more equitable user rates, to promote conservation of our natural resources, and to clarify present regulations. These regulations as proposed are being amended herein as the result of responses received from the public and FmHA personnel.

EFFECTIVE DATE: November 13, 1978.

FOR FURTHER INFORMATION CONTACT:

Gary L. Smith, telephone 202-447-5717.

SUPPLEMENTARY INFORMATION: On July 10, 1978 (43 FR 29565) the Farmers Home Administration published a proposal to amend section 1933.17(a)(2) and to add section 1933.18(a)(3)(ii)(G) of subpart A of part 1933, chapter XVIII, title 7, Code of Federal Regulations. A correction to section 1933.17(a)(2) was published on July 19, 1978 (43 FR 31022). Three comments have been received and considered.

Two of the comments were in reference to the water meter proposed change. One comment was in support of the change stating that the State director's office was the proper administrative level for making an exception since it is close to the situation. The other comment opposed the change stating that the use of water meters is desirable but it may (1) prove unfeasible to a community if water meters have not been installed; (2) result in a hardship through increased cost to water facilities; and (3) result in more Federal regulations. FmHA does not feel the proposed change will present any undue hardship to the applicant. The change as written allows for an exception by the FmHA State director should the installation of metering devices create a significant economic detriment and if environmental considerations would not be adversely affected by not installing the metering devices. FmHA also feels that the regulation is necessary to assist in water conservation.

The third comment pointed out that there may be a problem in the interpretation of the term town. In some States, such as the New England States, the term town is synonymous with township government. FmHA feels there is sufficient latitude in the regulation that will allow FmHA to provide assistance to these areas. The term town in this regulation is not to be interpreted as meaning the same as township.

This document has been reviewed in accordance with FmHA Instruction 1901-G "Environmental Impact Statements." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190 an environmental impact statement is not required.

Therefore, FmHA amends its regulations for the following purposes:

1. Section 1933.17(a)(2) is amended to provide that loan and/or grants for community facilities will not be made to any city or town in excess of 10,000 population.

2. To add § 1933.18(a)(3)(ii)(G) to prescribe the use of metering devices except in certain limited cases granted by the State director.

3. To establish a subchapter L titled "Loan and Grant Making" in chapter XVIII, title 7, Code of Federal Regulations and to transfer part 1933 from subchapter J to subchapter L.

Accordingly, § 1933.17(a)(2) is amended and § 1933.18(a)(3)(ii)(G) is added and reads as follows:

§ 1933.17 Appendix A—Community facilities

(a) • • •

(2) *Applicant eligibility and priority.* Facilities financed by FmHA shall primarily serve rural residents and be located in rural areas except as provided in § 1933.17(a)(3)(iii)(K). However, loans and/or grants for such facilities will not be made to any city or town in excess of 10,000 population. The terms "rural" and "rural areas" shall not include any area in any city or town having a population in excess of 10,000

inhabitants according to the latest decennial census of the United States.

• • • • •

§ 1933.18 Appendix B—Community facilities—Planning, bidding, contracting, constructing.

(a) • • •

(3) *Design policies.* • • •

(ii) *Water systems.* • • •

(G) *Metering devices.* Water facilities being financed by FmHA will have metering devices for each connection. An exception to this requirement may be granted by the FmHA State director when the applicant demonstrates that installation of metering devices would be a significant economic detriment and that environmental considerations would not be adversely affected by not installing such devices.

• • • • •

(7 U.S.C. 1989; delegation of authority by the Secretary of Agriculture; 7 CFR 2.23; delegation of authority by the Assistant Secretary of Agriculture for Rural Development, 7 CFR 2.70.)

Dated: October 31, 1978.

GORDON CAVANAUGH,
Administrator,
Farmers Home Administration.

[FR Doc. 78-31796 Filed 11-9-78; 8:45 am]

[3410-34-M]

Title 9—Animals and Animal Products

CHAPTER I—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS (INCLUDING POULTRY) AND ANIMAL PRODUCTS

PART 73—SCABIES IN CATTLE

Release of Area Quarantined

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to release a portion of Malheur County in Oregon from areas quarantined because of cattle scabies. Surveillance activity indicates that cattle scabies no longer exists in the area quarantined. No areas in the State of Oregon remain under guarantine.

EFFECTIVE DATE: November 6, 1978.

FOR FURTHER INFORMATION CONTACT:

Dr. Glen O. Schubert, Chief Staff Veterinarian, Sheep, Goat, Equine, and Ectoparasites Staff, USDA, APHIS, VS, Room 737, Federal Building, 6505 Belcrest Road, Hyattsville, Md. 20782, 301-436-8322.

SUPPLEMENTARY INFORMATION: This amendment releases a portion of Malheur County in Oregon from the areas quarantined because of cattle scabies. Therefore, the restrictions pertaining to the interstate movement of cattle from quarantined areas contained in 9 CFR Part 73, as amended, will not apply to the excluded area, but the restrictions pertaining to the interstate movement of cattle from nonquarantined areas contained in said part 73 will apply to the excluded area.

Accordingly, Part 73, Title 9, Code of Federal Regulations, as amended, restricting the interstate movement of cattle because of scabies, is hereby amended in the following respect:

§ 73.1a [Amended]

In § 73.1a, paragraph (c) relating to the State of Oregon is deleted.

(Secs. 4-7, 23 State. 32, as amended; secs. 1 and 2, 32 Stat. 791-792, as amended; secs. 1-4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132; 21 U.S.C. 111-113, 115, 117, 120, 121, 123-126, 134b, 134f; 37 FR 28464, 28477; 38 FR 19141.)

The amendment relieves restrictions no longer deemed necessary to prevent the spread of cattle scabies and should be made effective promptly in order to be of maximum benefit to affected persons. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendment are impracticable and unnecessary, and good cause is found for making the amendment effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 6th day of November 1978.

E. A. SCHILF,
Acting Deputy Administrator,
Veterinary Services.

[FR Doc. 78-31786 Filed 11-9-78; 8:45 am]

[3410-34-M]

SUBCHAPTER D—EXPORTATION AND IMPORTATION OF ANIMALS (INCLUDING POULTRY) AND ANIMAL PRODUCTS

PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

Overtime Work at Laboratories, Border Ports, Ocean Ports, and Airports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulation which establishes charges for overtime work at laboratories, border ports, ocean ports, and airports. Veterinary Services inspectors of the United States Department of Agriculture are charged with performing inspection duties relating to imports and exports at laboratories, border ports, ocean ports, and airports. Such services may be performed outside the regular tour of duty of the inspector when requested by a person, firm, or corporation and the charge for such overtime is recoverable from those requesting the services. The following amendment increases the hourly rates for such services performed on a Sunday or holiday, or at any other time outside the regular tour of duty. These increases are commensurate with salary increases provided Federal employees in accordance with the Federal Pay Comparability Act of 1970 (Pub. L. 91-656), and Executive Order 12087 dated October 7, 1978.

EFFECTIVE DATE: November 13, 1978.

FOR FURTHER INFORMATION CONTACT:

Dr. E. R. Mackery, USDA, APHIS, VS, Room 870, Federal Building, Hyattsville, Md. 20782, 301-436-8695.

Pursuant to the authority conferred by the Act of August 28, 1950 (64 Stat. 561; 7 U.S.C. 2260), and the Airports and Airways Development Act Amendments of July 12, 1976 (90 Stat. 882; 49 U.S.C. 1741), the first sentence of § 97.1, Part 97, Title 9, Code of Federal Regulations, is amended to read:

§ 97.1 Overtime work at laboratories, border ports, ocean ports, and airports.[1]

(a) Any person, firm, or corporation having ownership, custody or control of animals, animal byproducts, or other commodities subject to inspection, laboratory testing, certification, or quarantine under this subchapter and subchapter G of this chapter, and who requires the services of an employee of Veterinary Services on a holiday or Sunday or at any other time outside the regular tour of duty of such employee, shall sufficiently in advance of the period of overtime or holiday or Sunday service request the Veterinary Services inspector in charge to furnish inspection, laboratory testing, certification or quarantine service during such overtime or holiday or Sunday period, except as provided in paragraph (b) of this section, shall pay the Administrator of the Animal and Plant Health Inspection Service at a rate of $22.28 per man hour per employee on a Sunday and at a rate of $14.76 per man hour per employee for holiday or any other period; except that for any services performed on a Sunday or holiday, except as provided in paragraph (b) of this section for inspection or quarantine services requested by an owner or operator of an aircraft at an airport on a Sunday or holiday which are performed within regularly established hours of service, or at any time after 5 p.m. or before 8 a.m. on a week day, in connection with the arrival in or departure from the United States of a private aircraft or vessel, the total amount payable shall not exceed $25 for all inspectional services performed by the Customs Service, Immigration and Naturalization Service, Public Health Service, and the Department of Agriculture. • • •

[1] For designated ports of entry for certain animals, animal semen, poultry, and hatching eggs see 9 CFR 92.1 through 92.3; and for designated ports of entry for certain purebred animals see 9 CFR 151.1 through 151.3.

• • • • •

(64 Stat. 561 (7 U.S.C. 2260).)

Determination of the hourly rate for overtime services and of the commuted traveltime allowances depends entirely upon facts within the knowledge of the Department of Agriculture. It is to the benefit of the public that this amendment be made effective at the earliest practicable date. Accordingly, pursuant to the administrative provisions of 5 U.S.C. 553, it is found upon good cause that notice and public procedure on this amendment are impracticable, unnecessary, and contrary to the public interest and good cause is found for making this amendment effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 6th day of November 1978.

NOTE.—The Animal and Plant Health Inspection Service has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

PIERRE A. CHALOUX,
Deputy Administrator,
Veterinary Services.

[FR Doc. 78-31786 Filed 11-9-78; 8:45 am]

[1505-01-M]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Air Space Docket No. 78-WE-161]

PART 73—SPECIAL USE AIRSPACE

Alteration of Restricted Area

Correction

In FR Doc. 78-30682 appearing at page 50421 in the issue for Monday, October 30, 1978, second column, second line of the second quoted paragraph (R-2507 B) under ADOPTION OF THE CORRECTION, "North" should read "South".

[6750-01-M]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

[Docket C-2932]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

National Indemnity Co., et al.

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair or deceptive acts or practices, this consent agreement, among other things, requires an Omaha, Nebr. insurance company and its subsidiaries to cease failing to provide insurance applicants with required disclosures regarding preparation of investigative consumer reports and the nature and scope of such investigations.

DATES: Complaint and order issued October 18, 1978.[1]

FOR FURTHER INFORMATION CONTACT:

FTC/PD, Lewis H. Goldfarb, Washington, D.C. 20580, 202-724-1181.

SUPPLEMENTARY INFORMATION: On Wednesday, August 9, 1978, there was published in the FEDERAL REGISTER, 43 FR 35339, a proposed consent agreement with analysis in the matter of National Indemnity Co., a corporation, and its subsidiaries: Cornhusker Casualty Co., Home and Automobile Insurance Co., Lakeland Fire and Casualty Co., Texas United Insurance Co., Insurance Co. of Iowa, and Kansas Fire and Casualty Co., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions, or objections, regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Collecting, assembling, furnishing or utilizing consumer reports: Section 13.382 Collecting, assembling, furnishing or utilizing consumer reports; 13.382-5 Formal regulatory and/or statutory requirements: 13.382-5(a) Fair Credit Reporting Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1852 Formal regulatory and statutory requirements.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 82 Stat. 146, 147; 84 Stat. 1127-36; 15 U.S.C. 1601, et seq.)

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-31812 Filed 11-9-78; 8:45 am]

[6351-01-M]

Title 17—Commodity and Securities Exchanges

CHAPTER I—COMMODITY FUTURES TRADING COMMISSION

PART 32—REGULATION OF COMMODITY OPTION TRANSACTIONS

Reporting Requirements for Dealer Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted amendments to rule 32.12. The purpose of these amendments is to establish the form and content of reporting requirements for options on physical commodities (so-called dealer options).

[1] Copies of the complaint and the decision and order filed with the original document.

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Dealers which grant and futures commission merchants (FCM's) which sell dealer options to the public will be required to submit monthly reports to the Commission and to provide the Commission with additional data, as needed, on special calls. These reports will provide the Commission with information on: (1) The extent and composition of the dealer-option market; (2) the level of markups charged by retailers of dealer options; (3) the level of option premiums set by the dealers; (4) the extent to which dealer options are exercised, expire, or are resold to the dealer; (5) the volume and open interest reported by FCM's in comparison with the volume and open interest attributed to each FCM by the reporting dealer; and (6) the extent to which commercial interests use the dealer-option market, either by granting options to the option dealer or by purchasing options either directly from the dealer or indirectly through FCM's.

This reporting system will provide the Commission with data needed for monitoring the market, compliance audits and investigations, and analyses of the extent to which commercial interests use dealer options for purposes related to their businesses.

EFFECTIVE DATE: January 1, 1979, except for § 32.12(a)(6)(iv) which shall become effective December 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Paula Tosini, Office of Chief Economist, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, telephone 202-254-7847; Tom Purcell, Division of Surveillance and Analysis, Commodity Futures Trading Commission Eastern Region Headquarters, One World Trade Center, Suite 4747, New York, N.Y. 10048, telephone 212-791-9220; or Rosemarie Di Cianni, Division of Surveillance and Analysis, Commodity Futures Trading Commission Central Region Headquarters, 233 South Wacker Drive, Suite 4600, Chicago, Ill. 60606, telephone 312-353-9028.

SUPPLEMENTARY INFORMATION: The Commission adopted rule 32.12 as an exemption from the general suspension of the offer or sale of options to the public where the grantor and the seller of an option on a physical commodity satisfy certain conditions set forth in the rule which the Commission believes essential for the protection of option customers (43 FR 23704 et seq. (June 1, 1978)). Rule 32.12 provides that a dealer-option grantor and the person offering or selling these options to an option customer shall make such reports to the Commission as the Commission by rule or regulation or order may require. These amendments to rule 32.12 apply to option grantors whose options are offered or sold to the public through FCM's; however, these amendments do not apply to grantors whose options are offered or sold exclusively under the trade-option exemption in rule 32.4(a).

On August 24, 1978, the Commission published for a 15-day comment period a proposal to establish the form and content of reports to be submitted by grantors of dealer options and persons offering or selling such options to the public (43 FR 37715-17). During the comment period which ended September 8, 1978, the Commission received one written comment. The Commission also received oral comments from five other persons and two written comments after the comment period ended. After reviewing these comments, the Commission has decided to adopt the rule in essentially the form proposed, with certain clarifications, modifications and technical changes.[1]

Most comments received by the Commission concerned the reporting of commercial interests' participation in the dealer-option market.[2] One commentator stated that it would be burdensome to classify each option transaction as commercial or noncommercial.

It is not the intention of the Commission to require futures commission merchants and option grantors to classify and record each individual option transaction as commercial or noncommercial. Rather, it is the classification of the account which determines the classification of that account's transactions. In particular, all transactions undertaken for an account which a futures commission merchant has classified as nonspeculative (in terms of the classification criterion of § 32.12(i)(1)) are to be included in that FCM's monthly report as open interest and/or volume attributed to nonspeculative accounts (Form CFTC-145, Part A, items 2 and 4, respectively, attached hereto as Appendix A). Similarly, it is the open interest and volume attributed to accounts which an option grantor has classified as nonspeculative in accordance with the § 32.12(i)(1) criterion which should be reported by the grantor on Forms CFTC 153 and 154 (attached hereto as part of Appendix B.)

In this context, the portions of the proposed rule which referred to activities of "commercial interests" have been revised to refer to activities undertaken by accounts classified "as being traded for other than speculative purposes." (Compare §§ 32.12(f)(1)(ii) and (iv) and 32.12(g)(1) of the adopted rule with §§ 32.12(f)(1) (ii) and (iv) and 32.12(g)(1) (i) and (ii) of the proposed rule (43 FR 37716-7).) Further, the definition of the term "commercial interests" contained in proposed § 32.12(i) (43 FR 37717) has been recast as the criterion for classifying an account as being "traded for other than speculative purposes" in § 32.12(i)(1) of the rule as adopted.

The Commission is aware that the dealer-option reporting and recordkeeping requirements, particularly as they relate to accounts traded for other than speculative purposes, may cause some FCM's or grantors to institute new procedures and/or to make available to the Commission data which some FCM's or grantors may consider sensitive. These considerations, however, must be weighed against the Commission's long-standing judgment that accurate information on the commodity-option market in general, and on the extent of commercial use of the market in particular, is essential to the determination of whether any economic purpose is served by commodity options and whether public participation in their trading is consistent with the public interest. In this context, the Commission stated in its initial proposal for its pilot program in exchange-traded commodity options (42 FR 18248 (April 5, 1977)) and reiterated in its revised proposal (42 FR 55545 (October 17, 1977)):

> • • • the Commission is aware of arguments that some economic benefits may be derived from the trading of commodity options; however, it has insufficient basis at present to substantiate the nature and magnitude of any such benefits. Consequently, during the pilot program the Commission intends to make a full study of the commercial use of option trading to facilitate the production, marketing and processing of commodities in interstate commerce, the economic effect of option trading, and the public interest served thereby.

These considerations are equally valid in the context of dealer options in

[1] On Sept. 30, 1978, the President signed into law the Futures Trading Act of 1978, Pub. L. 95-405, 92 Stat. 865, et seq., which became effective on Oct. 1, 1978. Among other things, sec. 3 of that Act permits certain grantors and sellers of options on physical commodities who were in business on May 1, 1978, to continue to grant such options in accordance with Commission regulations in effect on Aug. 17, 1978, and directs the Commission to issue regulations concerning option transactions on physical commodities. The Commission shall adopt and shall publish shortly regulations to implement these statutory provisions.

[2] In adopting its general suspension of the offer or sale of commodity options, the Commission noted that it had found no evidence of significant commercial use of dealer options, although commentators had provided examples of how such options might be used. (43 FR 16155-56.) One of the purposes of these reporting requirements is to enable the Commission to ascertain whether, and to what extent and in what manner commercial interests participate in the dealer options market, particularly in acquiring options through FCM's.

order for the Commission to determine whether or not to permit continued offer or sale of such options in the United States.[3] Moreover, with respect to any material submitted to the Commission, 17 CFR § 145.9 (1977) provides that a person has the right to file a petition for confidential treatment of some or all of the information supplied.

Accordingly, the Commission has determined to require futures commission merchants selling dealer options to the public and the grantors of such options to report each month the volume of option trading and the option open interest attributed to accounts which are traded for other than speculative purposes. This rule, as the proposed rule, also requires grantors of dealer options to provide information on the degree to which options held in accounts classified as trading for other than speculative purposes are exercised or expire. (See §§ 32.12(g)(1) and 32.12(f)(1) (ii) and (iv) of this rule.)

Futures commission merchants which offer or sell options to option customers under § 32.12(a) will be required to file reports for any calendar month during which such persons engage in an option transaction for an option customer or acquire an option from an option grantor for their own account. Futures commission merchants may acquire options directly from an option grantor pursuant to § 32.12 or § 32.4(a).

The monthly reports on the volume of activity and open interest attributed to option accounts classified as nonspeculative will provide one indicator of the extent to which commercial interests use the dealer-option market to facilitate their businesses. More detailed analyses of commercial use of the dealer-option market will require additional information at the individual account level. The Commission did not propose, nor is the Commission now requiring, that individual account information be submitted on a routine basis. However, in accordance with the provisions of § 32.12(h) of this rule, more detailed information is required to be made available to the Commission, as needed, on special call.

One commentator objected to making information on its accounts, such as the names and addresses of option customers, available to the Commission on special call. (See §§ 32.12(h)(1)(i) and 32.12(h)(2)(ii)(A).) That commentator stated that its books are available for Commission inspection, at least for investigatory if not statistical purposes. The special call provisions are patterned after 17 CFR Part 21 (1977) of the Commission's regulations pertaining to futures trading. These provisions permit the Commission to be selective in the information it requests from the option grantors' or futures commission merchants' books and are an important adjunct to effective monitoring of market activity. Further, as has been the case with futures trading data collected for research and analysis under part 21, the Commission anticipates using its special-call authority sparingly.

One commentator requested a clearer differentiation between the data to be reported for accounts handled directly by option grantors and the data to be reported for accounts of futures commission merchants with which the grantor deals. Of course, the only option transactions in which an option grantor may engage directly are transactions entered into under the trade-option exemption contained in § 32.4(a),[4] and those with persons registered as futures commission merchants who are acquiring options for their own account.

In response to this request for clarification, the option grantors' monthly reporting requirements have been separated into accounts which the grantor handles directly (§ 32.12(g)(1) of this rule and Appendix B, Forms CFTC-153 and -154) and accounts of futures commission merchants with which the grantor deals (§ 32.12(g)(2) of this rule and Appendix B, Forms CFTC-146 through -152). The reporting requirements for the former type of accounts have been revised to reflect the fact that option contracts which the grantor buys and sells directly are not necessarily standardized with respect to the quantity of the underlying commodities nor in terms of expiration dates. As a result of this separation of the grantor's reporting requirements into two parts, most subsections of § 32.12(g) have been renumbered and several technical changes in language have been made.

In response to several comments, the reporting requirements for payments made to and received by grantors for options sold through FCM's have been revised (see §§ 32.12(f)(1)(vi), 32.12(f)(2)(iii), 32.12(g)(2)(iv)(A), and 32.12(h)(1)(ix)). The purpose of these sections is to obtain data on the proportion of option-customers' payments to FCM's which will ultimately be paid to the grantor. The revised sections add "due to" the grantor to reflect the fact that the payment which the grantor will ultimately receive is placed in a segregated account under rule 32.6 until the rights of the option customer in the transaction are fulfilled.[5]

A definition of the term "option contract" has been added to § 32.12(f)(2). A similar definition appeared in the Supplementary Information portion of the proposed rule (43 FR 37716) and is being incorporated in the text of the rule for completeness.

Except for § 32.12(a)(6)(iv), the effective date of the amendments to § 32.12 is January 1, 1979, and the first reports are due at the Commission's Eastern Region Headquarters (One World Trade Center, Suite 4747), on the 10th business day of January (January 15, 1979). Section 32.12(a)(5)(iv) (the FCM recordkeeping requirements) will become effective December 1, 1978.

The Commission finds that good cause exists to make § 32.12(a)(6)(iv) effective on less than 30 day's notice as would otherwise be required by 5 U.S.C. § 553 (1976). Affected persons have been on notice since August 24, 1978, concerning the types of data the Commission intends to collect for dealer-option transactions. Further, since the Commission considers it important to be able, as soon as possible, to determine whether dealer options are in the public interest, the Commission believes it necessary to receive complete and accurate reports on dealer-option transactions without further delay. In order that complete reports on December 1978 dealer-option transactions be available to the Commission by January 15, 1979, FCM's recordkeeping requirements must become effective December 1, 1978.

The Commission is aware that § 32.12(d) provides that the provisions of paragraphs (a), (b), and (c) of § 32.12 shall be of no further effect 60 days after the effective date of any amendment to section 4c(b) of the Commodity Exchange Act. As indicated above, amendment to the Act's option provisions became effective October 1, 1978. Accordingly, the Commission will amend or repeal § 32.12(d) in order to effectuate the requirements now being adopted.[6]

In consideration of the foregoing, the Commission, pursuant to the authority contained in sections 2(a)(1), 4c, and 8a of the Act, 7 U.S.C. 2, 6c, and 12a (1976), as amended by Pub. L. 95-405, 92 Stat. 865 et seq., hereby amends part 32 of chapter I of title 17 of the Code of Federal Regulations by amending § 32.12 as follows:

1. Section 32.12(a)(6) is revised as set forth below.

2. The first sentence of § 32.12(b)(1) is revised to read as set forth below.

[3] In this connection the Commission notes that sec. 4c(e) of the Commodity Exchange Act, as amended by Pub. L. 95-405, specifically authorizes the Commission to prohibit the offer and sale of dealer options upon a determination that such options are contrary to the public interest.

[4] As a result of the Futures Trading Act of 1978, the Commission will amend the provisions of § 32.4(a). See note 1, supra.

[5] The Commission will amend § 32.6 to reflect enactment of the Futures Trading Act of 1978. See note 1, supra.

[6] See note 1, supra.

3. Section 32.12 (f), (g), (h), and (i) are added as follows.

§ 32.12 Exemption from suspension of commodity option transactions.

(a) • • •

(6) Each person who is offering and selling the option to an option customer (i) is fully in compliance with each and every requirement of this part 32, (ii) includes in the confirmation statement required by § 32.5(d) to be furnished to option customers the transaction identification number provided by the grantor, (iii) makes such reports to the Commission as are provided for in paragraphs (f) and (h) of this section and as the Commission may otherwise require by rule or regulation or order, and (iv) keeps a record in permanent form which shows, for each commodity option account carried by such person (A) the principal occupation or business of the option customer owning the account, (B) the name and address of any other person having a financial interest in such account, (C) the name, address and principal business or occupation of any other person exercising any trading control with respect to such account, and (D) an indicator of whether the account is traded for speculative purposes or for other than speculative purposes.

• • • • •

(b)(1) The grantor of any option publicly offered pursuant to paragraph (a) of this section shall keep full, complete and systematic records together with all pertinent data and memoranda of or relating to such transactions and make such reports to the Commission as provided for in paragraphs (g) and (h) of this section and as the Commission may otherwise require by rule or regulation or order.

• • • • •

(f) Each person registered as a futures commission merchant which offers or sells options to option customers pursuant to paragraph (a) of this section shall file a report with the Commission on form CFTC-145 for any month during which such person entered into an option transaction with an option customer or acquired an option for its own account from a § 32.12 grantor. Such reports shall be filed with the Commission office in New York, N.Y., by the tenth business day of the month following the month covered by the report and shall contain the following information by option grantor and option contract:

(1) For option-customer accounts: (i) The number of open option contracts, end of month.

(ii) The number of open option contracts, end of month, held in accounts classified by the FCM as being traded for other than speculative purposes.

(iii) The number of option contracts entered into during the month.

(iv) The number of option contracts entered into during the month for accounts classified by the FCM as being traded for other than speculative purposes.

(v) The aggregate purchase price, as defined in § 32.1(d), received and due from option customers for option contracts entered into during the month.

(vi) The total of premiums and fees paid to and due to the option grantor for option contracts entered into by option customers during the month.

(2) For proprietary accounts of such person, as defined in § 1.3(y): (i) The number of open option contracts, end of month.

(ii) The number of option contracts entered into with the option grantor during the month.

(iii) The total of premiums and fees paid to and due to the option grantor for option contracts entered into during the month.

(g) The grantor of any option publicly offered or sold during any calendar month pursuant to paragraph (a) of this section shall file reports with the Commission at its office in New York, N.Y. with respect to all commodity-option transactions entered into by the grantor during such month. Such reports are due by the tenth business day of the month following the month covered by the reports and shall be filed on forms CFTC 146, 147, 148, 149, 150, 151, 152, 153 and 154.

(1) Such reports shall contain the following information with respect to all commodity options that were not publicly offered pursuant to paragraph (a) of this section:

(i) By commodity, call or put, and expiration month:

(A) The total quantity of the underlying commodity on which options were bought directly from or granted directly to accounts classified by the grantor as being traded for other than speculative purposes.

(B) The total quantity of the underlying commodity on which options, bought directly from or granted directly to accounts classified by the grantor as being traded for other than speculative purposes, were open as of the last business day of the month.

(ii) By commodity and call or put;

(A) The total quantity of the underlying commodity on which options bought directly from or granted directly to accounts classified as being traded for other than speculative purposes were exercised during the month.

(B) The total quantity of the underlying commodity on which options bought directly from or granted directly to accounts classified as being traded for other than speculative purposes expired during the month.

(2) Such reports shall contain the following information with respect to all commodity options that were publicly offered pursuant to paragraph (a) of this section:

(i) By option contract and expiration date:

(A) The value of option contracts repurchased from option customers through FCM's during the month.

(B) The value of new sales to option customers through FCM's during the month.

(ii) By option contract, expiration date and strike price:

(A) The number of option contracts repurchased from and granted to option customers through FCM's during the month.

(B) The number of option contracts granted to option customers through FCM's which were open as of the last business day of the month.

(C) The bid and ask option premiums available to option customers through FCM's as of the last business day of the month.

(iii) By option contract:

(A) The number of option contracts previously bought by option customers through FCM's which were exercised during the month.

(B) The number of option contracts previously bought by option customers through FCM's which expired during the month.

(iv) By option contract and offering FCM:

(A) The value of premiums and fees received by and due to the grantor for option contracts sold through FCM's during the month.

(B) The number of option contracts open as of the last business day of the month.

(C) The number of option contracts sold during the month.

(h) All information required upon special call as set forth in this paragraph (h) shall be prepared in such form and manner, and summarized in accordance with such instructions, and shall be transmitted at such time and to such office of the Commission, as may be specified in the call.

(1) Upon call by the Commission, each futures commission merchant shall furnish to the Commission for the grantor(s), the option contract(s), the expiration date(s), the strike price(s) and the transaction date(s) any of the following information that is specified in such call for any accounts, including proprietary accounts of such futures commission merchant, in which open dealer-option contracts are carried on the records of such futures commission merchant:

(i) The name(s) and address(es) of the account owner(s).

(ii) The principal business or occupation and industry of the account owner(s).

(iii) The kind of account.

(iv) The name(s), address(es) and principal business or occupation and industry of any other person(s) who controls the trading of the account.

(v) The name(s) and address(es) of any other person(s) having a financial interest in the account.

(vi) Identification of those accounts that trade dealer options for other than speculative purposes.

(vii) The number of open dealer-option contracts held or controlled by such traders.

(viii) The aggregate purchase price (as defined in § 32.1(d)) received from option customers for the purchase of dealer-option contracts.

(ix) The premiums and fees paid to and due to the grantor for the purchase of dealer-option contracts.

(2) Upon call by the Commission, each grantor shall furnish to the Commission for the option contract(s), the expiration date(s), the strike price(s) and the transaction date(s) any of the following information which is specified in such call:

(i) Premium levels.

(ii) For any accounts, including accounts owned or controlled by the grantor, in which open option contracts are carried on the records of such option grantor:

(A) The name(s) and address(es) of the account owner(s);

(B) The principal business or occupation and industry of the account owner(s), other than the account of an FCM selling such grantor's options to the public;

(C) The kind of account, other than the account of an FCM selling such grantor's options to the public;

(D) Identification of those accounts, other than the account of an FCM selling such grantor's options to the public, that trade such options for other than speculative purposes;

(E) The number of open option contracts in the account;

(F) The number of option contracts exercised.

(i)(1) For purposes of paragraphs (a), (f), (g) and (h) of this section, accounts classified as being "traded for other than speculative purposes" shall be limited to accounts of producers, processors, commercial users or merchants which handle the commodity which is the subject of the commodity-option transaction, or the products or by-products thereof, as part of their business.

(2) The term "option contract" as used in paragraphs (f), (g) and (h) of this section shall refer to either a call or a put on a specified weight of the underlying commodity.

Issued in Washington, D.C., on November 6, 1978, by the Commission.

WILLIAM T. BAGLEY,
Chairman, Commodity Futures Trading Commission.

[6351-01-C]

APPENDIX A

INSTRUCTIONS FOR PREPARING AND FILING CFTC FORM ON DEALER OPTIONS

Futures Commission Merchant Form CFTC-145

(See Regulations Under The Commodity Exchange Act)

Who Should Report – Each person registered as a futures commission merchant which offers or sells options to option customers pursuant to §32.12 if, during the reporting month, such person has entered into an option transaction with an option customer or has acquired an option for its own account from a §32.12 grantor.

When To Report – The report shall be submitted to the Commission not later than the tenth business day following the end of the month to which the information relates.

Where To Report – The report should be submitted to the CFTC Eastern Region Headquarters, One World Trade Center, Suite 4747, New York, New York 10048.

Preparation of Report

1. FCM Code Number -- Use the code number assigned to you by the Commodity Futures Trading Commission.
2. Report Date – The report should cover all transactions from the opening of business on the first business day of the month through the close of business on the last business day of the month. (Items A1, A2 and B1 should be reported as of the close of business of the last business day of the reporting month).
3. Grantor – Separate forms should be used for each option grantor.
4. Option Contract – Data should be reported separately for each option contract but should be aggregated over strike prices and expiration dates. For purposes of this report an option contract is restricted to a call or a put on a specified weight of the underlying commodity; e.g., puts on 100 oz. gold bullion and one kilo gold bullion and calls on 100 oz. gold bullion are considered three different option contracts.

What To Report -- Each futures commission merchant must report by grantor and option contract:

1. For Option Customer Accounts:
   a. total number of option contracts open as of the close of business of the last business day of the month;
   b. total number of option contracts open as of the close of business of the last business day of the month which are held in accounts of commercial enterprises (i.e., producers, processors, commercial users or merchants which, as part of their business, handle the commodity which is the subject of the commodity-option transaction, or the products or by-products thereof);
   c. total number of option contracts entered into during the month;
   d. total number of option contracts entered into during the month for accounts of commercial enterprises (i.e., producers, processors, commercial users or merchants which as part of their business handle the commodity which is the subject of the commodity-option transaction, or the products or by-products thereof);
   e. the aggregate purchase price of all option contracts (including premiums, commissions, clearing fees, research fees, etc.) received and due from option customers for option contracts entered into during the month (see §32.1(d));
   f. total of premiums and fees paid and due to the option grantor for option contracts entered into by option customers during the month.
2. For Proprietary Accounts of FCM's, as defined in §1.3y of the regulations under the Commodity Exchange Act, as amended:
   a. total number of option contracts open as of the close of business on the last business day of the month;
   b. total number of option contracts entered into with the option grantor during the month;
   c. total of premiums and fees paid and due to the option grantor for option contracts entered into during the month. (Report only data for options which were not subsequently resold to customers).

In addition, reporting futures commission merchants must list the commodities for which they are producers, processors, commercial users or merchants.

145-A
FRONT - Customer Accounts
BACK - Proprietary Accounts

COMMODITY FUTURES TRADING COMMISSION
FUTURES COMMISSION MERCHANT REPORT ON DEALER COMMODITY OPTIONS (80)
FORM CFTC-145
PART A – Customer Accounts

FCM CODE NO.
REPORT DATE:
NAME OF OPTION GRANTOR:

NOTICE: Failure to file a report required by the Commodity Exchange Act and the regulations thereunder, or the filing of a false or fraudulent report may be a basis for administrative action under 7 U.S.C. Sec. 9, and may be punishable by fine or imprisonment, or both, under 7 U.S.C. Sec. 13, or 18 U.S.C. Sec. 1001.

		85 GOLD BULLION			84 SILVER BULLION			43 GOLD COINS			87 SILVER COINS			76 PLATINUM			86 COPPER		
		CALLS 0	PUTS 1	WEIGHT	CALLS 0	PUTS 1	WEIGHT	CALLS 0	PUTS 1	WEIGHT OR TYPE	CALLS 0	PUTS 1	WEIGHT OR TYPE	CALLS 0	PUTS 1	WEIGHT	CALLS 0	PUTS 1	WEIGHT
1. OPTION CONTRACTS OPEN AT END OF MONTH.	1																		
2. OPTION CONTRACTS HELD BY COMMERCIALS OPEN AT END OF MONTH.	2																		
3. NUMBER OF OPTION CONTRACTS ENTERED INTO DURING MONTH	3																		
4. NUMBER OF OPTION CONTRACTS ENTERED INTO DURING MONTH BY COMMERCIALS	4																		
5. TOTAL AMOUNT PAID AND DUE FROM CUSTOMERS FOR OPTION CONTRACTS ENTERED INTO DURING MONTH	5																		
6. TOTAL AMOUNT PAID AND DUE TO GRANTOR FOR OPTION CONTRACTS ENTERED INTO DURING MONTH	6																		

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FCM CODE NO:

REPORT DATE:

NAME OF OPTION GRANTOR:

COMMODITY FUTURES TRADING COMMISSION
FUTURES COMMISSION MERCHANT REPORT ON DEALER COMMODITY OPTIONS (80)

PART B – Proprietary Accounts*

NOTICE: Failure to file a report required by the Commodity Exchange Act and the regulations thereunder, or the filing of a false or fraudulent report may be a basis for administrative action under 7 U.S.C. Sec. 9, and may be punishable by fine or imprisonment, or both, under 7 U.S.C. Sec. 13, or 18 U.S.C. Sec. 1001.

	83 GOLD COINS			87 SILVER COINS			78 PLATINUM			86 COPPER		
	CALLS 0	PUTS 1	WEIGHT OR TYPE	CALLS 0	PUTS 1	WEIGHT OR TYPE	CALLS 0	PUTS 1	WEIGHT	CALLS 0	PUTS 1	WEIGHT
1. OPTION CONTRACTS AT END OF MONTH. 7												
2. NUMBER OF OPTION CONTRACTS ENTERED INTO DURING MONTH 8												
3. TOTAL AMOUNT PAID AND DUE TO BE PAID FOR OPTION CONTRACTS ENTERED INTO DURING MONTH. 9												

	88 GOLD BULLION			84 SILVER BULLION			43 [illegible]		
	CALLS 0	PUTS 1	WEIGHT	CALLS 0	PUTS 1	WEIGHT	CALLS 0	PUTS 1	WEIGHT
1. OPTION CONTRACTS AT END OF MONTH. 7									
2. NUMBER OF OPTION CONTRACTS ENTERED INTO DURING MONTH 8									
3. TOTAL AMOUNT PAID AND DUE TO BE PAID FOR OPTION CONTRACTS ENTERED INTO DURING MONTH. 9									

145-B
FRONT - Customer Accounts
BACK - Proprietary Accounts

COMMODITY FUTURES TRADING COMMISSION
FUTURES COMMISSION MERCHANT REPORT ON DEALER COMMODITY OPTIONS (80)

* LIST COMMODITIES (IF ANY) OF WHICH THE REPORTING FCM IS A PRODUCER, PROCESSOR, COMMERCIAL USER OR MERCHANT

APPENDIX B

INSTRUCTIONS FOR PREPARING AND FILING CFTC FORMS ON DEALER OPTIONS

Grantor's Forms CFTC-146, 147, 148 and 149

(See Regulations Under The Commodity Exchange Act)

Who Should Report – Each grantor of any option which was, at any time during the reporting month, publicly offered or sold pursuant to rule 32.12(a).

When To Report – The report shall be submitted to the Commission not later than the tenth business day following the end of the month to which the information relates.

Where To Report – The report shall be submitted to the CFTC Eastern Region Headquarters, One World Trade Center, Suite 4747, New York, New York 10048.

Preparation of Report

1. Report Date – The data on form CFTC-146 should be reported as of the close of business of the last business day of the month. The data on forms CFTC-147, 148 and 149 should include all transactions from the opening of business of the first business day of the month through close of business of the last business day of the month.

2. Commodity (weight) – Report data separately for each contract weight of the commodity; e.g., data for 100 oz. gold bullion and one kilo gold bullion should be reported separately.

3. Option Contract – For purposes of this report, an option contract is either a call or a put on a specified weight of the underlying commodity.

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COMMODITY FUTURES TRADING COMMISSION
GRANTOR'S REPORT ON COMMODITY OPTIONS

NAME OF OPTION GRANTOR

REPORT DATE:

145

FORM CFTC-146
OPEN INTEREST BY FCM

INSTRUCTIONS FOR PREPARING FORM CFTC-146

Each grantor must report by option contract and FCM the number of option contracts open in FCM accounts as of the close of business of the last business day of the month.

NAME OF FCM	commodity/wt. CALLS 0	commodity/wt. PUTS 1	commodity/wt. CALLS 0	commodity/wt. PUTS 1	commodity/wt. CALLS 0	commodity/wt. PUTS 1	commodity/wt. CALLS 0	commodity/wt. PUTS 1	commodity/wt. CALLS 0	commodity/wt. PUTS 1	commodity/wt. CALLS 0	commodity/wt. PUTS 1
TOTAL 1												

147

FORM CFTC-147
VOLUME BY FCM, EXERCISES AND EXPIRATIONS

INSTRUCTIONS FOR PREPARING FORM CFTC-147

1. Each grantor must report by option contract and FCM the number of option contracts sold to FCM's during the month.
2. Each grantor must report by option contract:
   a. The number of option contracts, previously bought by or through FCM's, which were exercised during the month.
   b. The number of option contracts, previously bought by or through FCM's which expired worthless during the month. For purposes of this report, the grantor's repurchase, for a nominal payment such as $1.00, of an option which otherwise would have expired worthless is considered an expired rather than a repurchased option.

NAME OF FCM	commodity/wt. CALLS 0	commodity/wt. PUTS 1	commodity/wt. CALLS 0	commodity/wt. PUTS 1	commodity/wt. CALLS 0	commodity/wt. PUTS 1	commodity/wt. CALLS 0	commodity/wt. PUTS 1	commodity/wt. CALLS 0	commodity/wt. PUTS 1	commodity/wt. CALLS 0	commodity/wt. PUTS 1
TOTAL 1												
EXERCISES 2												
EXPIRATIONS 3												

148

FORM CFTC-148
VALUE OF PREMIUMS AND FEES BY FCM (In Thousands of Dollars)

NAME OF OPTION GRANTOR:

REPORT DATE:

INSTRUCTIONS FOR PREPARING FORM CFTC-148

Each grantor must report by option contract and FCM the total value of premiums, fees and other payments received by and due to the grantor for option contracts sold to or through FCM's during the month.

NAME OF FCM	commodity/wt. CALLS 0	commodity/wt. PUTS 1	commodity/wt. CALLS 0	commodity/wt. PUTS 1	commodity/wt. CALLS 0	commodity/wt. PUTS 1	commodity/wt. CALLS 0	commodity/wt. PUTS 1	commodity/wt. CALLS 0	commodity/wt. PUTS 1	commodity/wt. CALLS 0	commodity/wt. PUTS 1
TOTAL												

149

FORM CFTC-149
VALUES OF REPURCHASES AND NEW SALES (In Thousands of Dollars)

INSTRUCTIONS FOR PREPARING FORM CFTC-149

Each grantor must report by option contract and expiration date:

1. The total value of premiums, fees and other payments received by or due to the grantor for new sales of option contracts sold to or through FCM's during the month.
2. The total value of option contracts repurchased from or through FCM's during the month, net of any commissions or other charges such as exit fees.

Expiration dates should indicate the day, month and year option contracts expire, with Expiration 1 the nearest date.

EXPIRATION DATES */		commodity/wt. CALLS 0	commodity/wt. PUTS 1	commodity/wt. CALLS 0	commodity/wt. PUTS 1	commodity/wt. CALLS 0	commodity/wt. PUTS 1	commodity/wt. CALLS 0	commodity/wt. PUTS 1	commodity/wt. CALLS 0	commodity/wt. PUTS 1	commodity/wt. CALLS 0	commodity/wt. PUTS 1
EXPIRATION 1	NEW SALES 0												
	REPURCHASES 1												
EXPIRATION 2	NEW SALES 0												
	REPURCHASES 1												
EXPIRATION 3	NEW SALES 0												
	REPURCHASES 1												
EXPIRATION 4	NEW SALES 0												
	REPURCHASES 1												
EXPIRATION 5	NEW SALES 0												
	REPURCHASES 1												
EXPIRATION 6	NEW SALES 0												
	REPURCHASES 1												

*/ List expiration dates (by commodity):

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INSTRUCTIONS FOR PREPARING AND FILING FORMS ON DEALER OPTIONS

Grantor's Forms CFTC-150, 151 and 152

(See Regulations Under The Commodity Exchange Act)

Who Should Report – Each grantor of any option which was, at any time during the reporting month, publicly offered or sold pursuant to rule 32.12(a).

When To Report – The report shall be submitted to the Commission not later than the tenth business day following the end of the month to which the information relates.

Where To Report – The report shall be submitted to the CFTC Eastern Region Headquarters, One World Trade Center, Suite 4747, New York, New York 10048.

Preparation of Report

1. Commodity (weight) – A separate form should be submitted for each contract weight of the underlying commodity, e.g., data for 100 oz. gold bullion and one kilo gold bullion should be reported separately.

2. Option Contract – For purposes of this report, an option contract is either a call or a put on a specified weight of the underlying commodity.

3. Report Date -- The data on form CFTC-150 should be reported as of the close of business of the last business day of the month. The data on form CFTC-151 should include all transactions from the opening of business on the first business day of the month through the close of business of the last business day of the month. The data on form CFTC-152 should be reported as of noon eastern standard or daylight time of the last business day of the month.

4. Strike Price -- Specify the units or weight of the underlying commodity on which the strike price is based.

5. Expiration -- Indicate month, day and year the option contracts expire, with nearest expirations listed first.

COMMODITY FUTURES TRADING COMMISSION
GRANTOR'S REPORT ON COMMODITY OPTIONS

NAME OF OPTION GRANTOR:

COMMODITY (WEIGHT):

REPORT DATE:

150

FORM CFTC-150
OPEN INTEREST BY OPTION SERIES

INSTRUCTIONS FOR PREPARING FORM CFTC-150

Each grantor must report by option contract, strike price and expiration the number of option contracts granted to option customers through FCM's which were open as of the close of business of the last business day of the month.

Units or weight on which strike price is based:		EXPIRATION: mo./day/yr.	EXPIRATION: mo./day/yr.	EXPIRATION: mo./day/yr.	EXPIRATION: mo./day/yr.	EXPIRATION: mo./day/yr.	EXPIRATION: mo./day/yr.
_____ (strike price)	CALLS 0						
	PUTS 1						
_____ (strike price)	CALLS 0						
	PUTS 1						
_____ (strike price)	CALLS 0						
	PUTS 1						
_____ (strike price)	CALLS 0						
	PUTS 1						
_____ (strike price)	CALLS 0						
	PUTS 1						
_____ (strike price)	CALLS 0						
	PUTS 1						
_____ (strike price)	CALLS 0						
	PUTS 1						
_____ (strike price)	CALLS 0						
	PUTS 1						
_____ (strike price)	CALLS 0						
	PUTS 1						
TOTAL CALLS	2						
TOTAL PUTS	3						

CFTC-150
(10-78)

NO 13 78 UMI

151

FORM CFTC-151
VOLUME BY OPTION SERIES

NAME OF OPTION GRANTOR

COMMODITY (WEIGHT):

REPORT DATE

INSTRUCTIONS FOR PREPARING FORM CFTC-151

Each grantor must report by option contract, strike price and expiration:

a. the number of option contracts granted to option customers through FCM's during the month;

b. the number of option contracts repurchased from option customers through FCM's during the month. For purposes of this report, the grantor's repurchase for a nominal payment such as $1.00 of an option which otherwise would have expired worthless is considered an expired rather than a repurchased option.

Units or weight on which strike price is based:		EXPIRATION: mo./day/yr.		EXPIRATION: mo./day/yr.		EXPIRATION: mo./day/yr.		EXPIRATION: mo./day/yr.		EXPIRATION: mo./day/yr.		EXPIRATION: mo./day/yr.	
		Granted 0	Repurchased 1	Granted 0	Repurchased 1	Granted 0	Repurchased 1	Granted 0	Repurchased 1	Granted 0	Repurchased 1	Granted 0	Repurchased 1
_____ (strike price)	CALLS 0												
	PUTS 1												
_____ (strike price)	CALLS 0												
	PUTS 1												
_____ (strike price)	CALLS 0												
	PUTS 1												
_____ (strike price)	CALLS 0												
	PUTS 1												
_____ (strike price)	CALLS 0												
	PUTS 1												
_____ (strike price)	CALLS 0												
	PUTS 1												
_____ (strike price)	CALLS 0												
	PUTS 1												
_____ (strike price)	CALLS 0												
	PUTS 1												
_____ (strike price)	CALLS 0												
	PUTS 1												
TOTAL CALLS	2												
TOTAL PUTS	3												

CFTC-151
(10-78)

152

FORM CFTC-152
PREMIUMS BY OPTION SERIES

NAME OF OPTION GRANTOR

COMMODITY (WEIGHT):

REPORT DATE:

INSTRUCTIONS FOR PREPARING FORM CFTC-152

Each grantor must report by option contract, strike price and expiration the bid premiums and the ask premiums available to option customers through FCM's. The premiums should be based on the unit of the underlying commodity on which the strike price is quoted.

Units or weight on which strike price is based:		EXPIRATION: mo./day/yr.		EXPIRATION: mo./day/yr.		EXPIRATION: mo./day/yr.		EXPIRATION: mo./day/yr.		EXPIRATION: mo./day/yr.		EXPIRATION: mo./day/yr.	
		BID 0	ASK 1	BID 0	ASK 1	BID 0	ASK 1	BID 0	ASK 1	BID 0	ASK 1	BID 0	ASK 1
_____ (strike price)	CALLS 0												
	PUTS 1												
_____ (strike price)	CALLS 0												
	PUTS 1												
_____ (strike price)	CALLS 0												
	PUTS 1												
_____ (strike price)	CALLS 0												
	PUTS 1												
_____ (strike price)	CALLS 0												
	PUTS 1												
_____ (strike price)	CALLS 0												
	PUTS 1												
_____ (strike price)	CALLS 0												
	PUTS 1												
_____ (strike price)	CALLS 0												
	PUTS 1												
_____ (strike price)	CALLS 0												
	PUTS 1												

CFTC-152
(10-78)

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INSTRUCTIONS FOR PREPARING AND FILING FORMS ON DEALER OPTIONS

Grantor's Forms CFTC-153 and 154

Who Should Report – Each grantor of any option which was, at any time during the reporting month, publicly offered or sold pursuant to rule 32.12(a).

When To Report – The report shall be submitted to the Commission not later than the tenth business day following the end of the month to which the information relates.

Where To Report – The report shall be submitted to the CFTC Eastern Region Headquarters, One World Trade Center, Suite 4747, New York, New York 10048.

Preparation of Report

1. Non-Speculative Accounts – See rule 32.12(i) for the standards to be used in classifying accounts as being traded for other than speculative purposes.
2. Report Date – The data on form CFTC-153 should be reported as of the close of business of the last business day of the month. The data on form CFTC-154 should include all transactions from the opening of business on the first business day of the month through the close of buisness of the last business day of the month.
3. Expiration – Indicate the month and year in which the option expires, with nearest expirations listed first.

COMMODITY FUTURES TRADING COMMISSION
GRANTOR'S REPORT ON COMMODITY OPTIONS

NAME OF OPTION GRANTOR:

REPORT DATE:

153

FORM CFTC-153
OPTION OPEN INTEREST, NON-SPECULATIVE ACCOUNTS

INSTRUCTIONS FOR PREPARING FORM CFTC-153

Report on this form only open option positions in accounts which have been classified by the option grantor as trading for other than speculative purposes. Do not include FCM's accounts. Report by expiration month, call or put, and commodity, in terms of the units specified in the column headings:

a. Options bought by the reporting grantor which were open as of the close of business of the last business day of the month.
b. Options granted by the reporting grantor which were open as of the close of business of the last business day of the month.

EXPIRATION MONTH			88 GOLD BULLION (100 OZ.)		84 SILVER BULLION (10,000 OZ.)		43 GOLD COINS (100's)		87 SILVER COINS (20,000's)		76 PLATINUM (200 OZ.)		85 COPPER (50,000 LBS.)	
			Bought 0	Granted 1	Bought 0	Granted 1	Bought 0	Granted 1	Bought 0	Granted 1	Bought 0	Granted 1	Bought 0	Granted 1
___ ___		CALLS 0												
mo. yr.		PUTS 1												
___ ___		CALLS 0												
mo. yr.		PUTS 1												
___ ___		CALLS 0												
mo. yr.		PUTS 1												
___ ___		CALLS 0												
mo. yr.		PUTS 1												
___ ___		CALLS 0												
mo. yr.		PUTS 1												
___ ___		CALLS 0												
mo. yr.		PUTS 1												
___ ___		CALLS 0												
mo. yr.		PUTS 1												
___ ___		CALLS 0												
mo. yr.		PUTS 1												
___ ___		CALLS 0												
mo. yr.		PUTS 1												
___ ___		CALLS 0												
mo. yr.		PUTS 1												
___ ___		CALLS 0												
mo. yr.		PUTS 1												
TOTAL CALLS		2												
TOTAL PUTS		3												

CFTC-153
(10-78)

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154

FORM CFTC-154
OPTION VOLUME, EXERCISES AND EXPIRATIONS FOR NON-SPECULATIVE ACCOUNTS

NAME OF OPTION GRANTOR

REPORT DATE:

INSTRUCTIONS FOR PREPARING FORM CFTC-154

Report on this form only option transactions for accounts which have been classified by the option grantor as trading for other than speculative purposes. Do not include FCM's accounts.

Volume – Report by expiration month, call or put, and commodity in terms of the units specified in the column headings, the total of options bought and the total of options granted by the reporting grantor during the month.

Exercises and Expirations – Report by call or put and commodity the total exercises and expirations in terms of the units specified in the column headings.

VOLUME

EXPIRATION MONTH		88 GOLD BULLION (100 OZ.)		84 SILVER BULLION (10,000 OZ.)		43 GOLD COINS (100's)		67 SILVER COINS (20,000's)		76 PLATINUM (200 OZ.)		85 COPPER (50 000 LBS.)	
		Bought 0	Granted 1	Bought 0	Granted 1	Bought 0	Granted 1	Bought 0	Granted 1	Bought 0	Granted 1	Bought 0	Granted 1
___ ___ mo. yr.	CALLS 0												
	PUTS 1												
___ ___ mo. yr.	CALLS 0												
	PUTS 1												
___ ___ mo. yr.	CALLS 0												
	PUTS 1												
___ ___ mo. yr.	CALLS 0												
	PUTS 1												
___ ___ mo. yr.	CALLS 0												
	PUTS 1												
___ ___ mo. yr.	CALLS 0												
	PUTS 1												
___ ___ mo. yr.	CALLS 0												
	PUTS 1												
___ ___ mo. yr.	CALLS 0												
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TOTAL PUTS 3													

EXERCISES AND EXPIRATIONS

EXERCISES 4	CALLS 0												
	PUTS 1												
EXPIRATIONS 5	CALLS 0												
	PUTS 1												

CFTC-154 (10-78)

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[FR Doc. 78-31814 Filed 11-9-78; 8:45 am]

[4810-22-M]

Title 19—Customs Duties

CHAPTER I—UNITED STATES CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

[T.D. 78-428]

PART 159—LIQUIDATION OF DUTIES

Nonrubber Footwear, Handbags, and Leather Wearing Apparel From Uruguay—Revocation of Waivers of Countervailing Duties

AGENCY: Customs Service, U.S. Treasury Department.

ACTION: Revocation of waivers of countervailing duties.

SUMMARY: This notice is to inform the public of a revocation of the waivers of countervailing duties on imports of nonrubber footwear, handbags, and leather wearing apparel from Uruguay. The revocation is being issued based on an analysis by Treasury that the conditions for granting the waivers no longer exist. Consequently, countervailing duties in the amount of the benefits found to constitute bounties or grants within the meaning of the countervailing duty law will be collected in addition to duties normally due on imports of this merchandise.

EFFECTIVE DATE: November 13, 1978.

FOR FURTHER INFORMATION CONTACT:

Richard B. Self, Director, Office of Tariff Affairs, U.S. Treasury Department, 15th and Pennsylvania Avenue NW., Washington, D.C. 20220, 202-566-8585.

SUPPLEMENTARY INFORMATION: In T.D.'s 78-34 and 78-155, published in the FEDERAL REGISTER of January 30 and June 1, 1978, respectively (43 FR 3904 and 23709), the Treasury Department waived countervailing duties on imports of nonrubber footwear, handbags, and leather wearing apparel from Uruguay. This action occurred after the Uruguayan Government had taken certain steps to satisfy the waiver criteria set forth in section 303(d) of the Tariff Act of 1930, as amended by the Trade Act of 1974 (19 U.S.C. 1303(d)). Among the Uruguayan actions was the phaseout of the direct export subsidy (reintegro) on all leather products to be completed by no later than January 1, 1979.

Treasury's final countervailing duty determinations governing these cases (T.D. 78-32, T.D. 78-33), published concurrently with the waiver notices cited above, indicated that one program, known as the tanners' subsidy, was a bounty or grant within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303), but that the amount of such bounty was zero. Treasury based its conclusion at that time on information provided by the Government of Uruguay that the tanners' subsidy acted only to make the price of Uruguayan hides no higher than the world market price.

Because the exporter could buy hides on the world market, it was believed that the subsidy did not reduce the exporter's costs but only made it possible for him to use domestic hides. Since those determinations it has been learned that the tanners' subsidy is not quantified in such a manner as to equalize Uruguayan prices with world market prices. Since the amount of tanners' subsidy is not based on market conditions, but effectively serves as a payment to domestic tanners, the effect of which is passed on to the producer of the merchandise sold for export, it should be considered countervailable.

Furthermore, information has been received subsequent to the issuance of the waivers that leather goods' exporters in Uruguay may have been granted forgiveness from, or rebate of, payment of a social security tax. If confirmed, such forgiveness or rebate would be considered to be a bounty or grant.

Based on information available at the time of the final determinations, the tanners' subsidy is approximately 8 percent ad valorem. These amounts, combined with the bounty of approximately 2 percent deemed in the final determinations to stem from the reduction in income tax on export earnings, leaves a substantial subsidy not contemplated at the time the terms of the waiver were established. Accordingly, it is determined that the steps taken by the Government of Uruguay are not adequate to reduce or eliminate the adverse effect of the bounties or grants, and the waivers of duties under section 303(d)(3) of the Act (19 U.S.C. 1303(d)(3)) with respect to imports of nonrubber footwear, handbags, and leather wearing apparel from Uruguay are hereby revoked.

Accordingly, notice is hereby given that nonrubber footwear, handbags, and leather wearing apparel (provided for, respectively, in items 700.05 through 700.85 inclusive of the Tariff Schedules of the United States Annotated (TSUSA), excepting items 700.28, 700.51 to 700.54, and 700.60; item 706.0820 of the TSUSA; and item 791.76 of the TSUSA), imported directly or indirectly from Uruguay, if entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the FEDERAL REGISTER, will be subject to payment of countervailing duties equal to the net amount of any bounty or grant estimated to have been paid or bestowed.

The liquidation of all entries for consumption or withdrawals from warehouse for consumption of such nonrubber footwear, handbags, and leather wearing apparel from Uruguay which benefit from such bounties or grants and which are subject to this order shall be suspended pending declarations of the net amounts of the bounties or grants ascertained and determined to be paid or bestowed. A deposit of the estimated countervailing duties in the amount of 16 percent ad valorem for nonrubber footwear, 14.4 percent ad valorem for handbags, and 13.3 percent ad valorem for leather wearing apparel, respectively, shall be required at the time of entry, or withdrawal from warehouse, for consumption.

Effective November 13, 1978, and until further notice, upon the entry, or withdrawal from warehouse, for consumption of such nonrubber footwear, handbags, and leather wearing apparel, imported directly or indirectly from Uruguay, which benefit from bounties or grants, there shall be collected, in addition to any other duties estimated or determined to be due, countervailing duties in the amounts set forth in the preceding paragraph.

Any merchandise subject to the terms of this order shall be deemed to have benefited from a bounty or grant if such bounty or grant has been or will be credited or bestowed, directly or indirectly, upon the manufacture, production or exportation of such nonrubber footwear, handbags, and leather wearing apparel from Uruguay.

The table in section 159.47(f) of the Customs Regulations (19 CFR 159.47(f)) is amended by inserting after the last entry for Uruguay under the commodity headings "Nonrubber footwear," "handbags," and "leather wearing apparel," respectively, the number of this Treasury Decision in the column headed "Treasury Decision," and the words "Waiver of countervailing duties revoked—new estimated rate declared" in the column headed "Action."

(R.S. 251, secs. 303, as amended, 624; 46 Stat. 687, 759, 88 Stat. 2051, 2052; 19 U.S.C. 66, 1303, as amended, 1624.)

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

NOVEMBER 3, 1978.

[FR Doc. 78-31875 Filed 11-9-76; 8:45 am]

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[8320-01-M]

Title 38—Pensions, Bonuses, and Veterans' Relief

CHAPTER I—VETERANS ADMINISTRATION

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart B—Veterans' Educational Assistance Under 38 U.S.C. Chapter 34

OVERPAYMENT OF EDUCATIONAL ASSISTANCE; ENTITLEMENT CHARGES

AGENCY: Veterans Administration.

ACTION: Final regulation.

SUMMARY: The amended regulation is intended to set forth a method of determining the charge against a veteran's or eligible person's entitlement when the debtor and the Veterans Administration reach a compromise on repayment of an overpayment of educational assistance. Title 38, Code of Federal Regulations previously made no mention of how a charge against entitlement was to be calculated in these cases. The amended regulation corrects this oversight.

EFFECTIVE DATE: November 6, 1978.

FOR FURTHER INFORMATION CONTACT:

June C. Schaeffer, Assistant Director for Policy and Program Administration, Education and Rehabilitation Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, D.C. 20420, 202-389-2092.

SUPPLEMENTARY INFORMATION: On page 39832 of the FEDERAL REGISTER of September 7, 1978, there was published a notice of proposed regulatory development to amend § 21.1045(f) to provide a method of calculating the charge against the entitlement of a veteran or eligible person when a compromise is reached concerning repayment of an overpayment of educational assistance.

Interested persons were given 30 days in which to submit comments, suggestions or objections regarding the proposed regulations. No written comments have been received and the proposed regulation is hereby adopted without change and is set forth below.

Approved: November 6, 1978.

By direction of the Administrator:

RUFUS H. WILSON,
Deputy Administrator.

In § 21.1045, paragraph (f) is revised to read as follows:

§ 21.1045 Entitlement charges.

* * * * *

(f) *Overpayment cases.* Entitlement will be charged for an overpayment in educational assistance allowance only if the overpayment is discharged in bankruptcy, is waived and is not recovered, or is compromised.

(1) The charge against entitlement, if the overpayment is discharged in bankruptcy or is waived and is not recovered, will be at the appropriate rate for the elapsed period covered by the overpayment.

(2) The charge against entitlement, if the overpayment is compromised, will be determined by:

(i) Subtracting the accepted compromise offer from the total amount of the overpayment;

(ii) Dividing the result obtained in paragraph (f)(2)(i) of this section by the total amount of the overpayment; and

(iii) Multiplying the percentage figure obtained in paragraph (f)(2)(ii) of this section by the amount of entitlement which represents the whole overpaid period. Where the computation results in a period of time other than a full month, or other than exactly ¾, ½, or ¼ fractional part of a month, the figure will be reduced to the next lower quarter. (38 U.S.C. 1661.)

* * * * *

[FR Doc. 78-31782 Filed 11-9-78; 8:45 am]

[6560-01-M]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

[PP 4F1429/R181; FRL 1005-3]

SUBCHAPTER E—PESTICIDE PROGRAMS

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

CIPC

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the herbicide CIPC on soybeans. The regulation was requested by PPG Industries, Inc. This rule establishes a maximum permissible level for residues on CIPC on soybeans.

EFFECTIVE DATE: November 13, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert Taylor, Product Manager (PM) 25, Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street SW., Washington, D.C. 20460, 202-426-2632.

SUPPLEMENTARY INFORMATION: On October 26, 1973, notice was given (38 FR 29654) that PPG Industries, Inc., P.O. Box 31, Barberton, Ohio 44203, has filed a pesticide petition (PP 4F1429) with the EPA.

This petition proposed that 40 CFR 180.181 be amended to establish a tolerance for residues of the herbicide CIPC (isopropyl *m*-chlorocarbanilate) and its metabolites isopropyl 5-chloro-1-hydroxycarbanilate, isopropyl 3-chloro-4-hydroxycarbanilate, and 1-hydroxy-2-propyl 3'-chlorocarbanilate in or on raw agricultural commodity soybeans at 0.2 part per million (ppm).

Subsequently, the petitioner amended the petition by deleting the metabolites isopropyl 5-chloro-2-chloro-hydroxycarbanilate and isopropyl 3-chloro-4-hydroxycarbanilate from the proposed tolerance. No comments were received in response to this notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerance included a rat oral lethal dose (LD) study with an LD of 5-7.5 grams (g)/kilogram (kg) of body weight (bw), a 2-year rat feeding study with a no-observable-effect level (NOEL) of 2,000 ppm, a 1-year dog feeding study with NOEL of 2,000 ppm, two 18-month mouse carcinogenicity studies at a feeding level of 160 milligrams (mg)/kg bw/day (negative), a 116-week mouse carcinogenicity study at a feeding level of 1,000 ppm (negative), a 33-month hamster carcinogenicity study at a feeding level of 2,000 ppm, and a three-generation rat reproduction study (negative at 1,000 ppm).

Desirable data that are lacking from the petition are a teratology study, a delayed neurotoxicity study and an adequate study for effects on cholinesterase. The studies are needed for completion of the human safety profile but not necessary to make a safety determination on the 0.2 ppm soybean tolerance. Also lacking is a mutagenicity study, which will be submitted

when the agency requirements are known. In a letter of August 2, 1978, the petitioner agreed to perform the lacking studies and to remove the use on soybeans from the label should results of the delayed neurotoxicity and cholinesterase studies exceed the risk criteria for known toxicity in 40 CFR 162.11.

The 0.2 ppm tolerance on soybeans will not contribute residues to the human diet. The 2,000 ppm NOEL in the 2-year rat feeding study will support an intake of 20 ppm in the human diet using a 100-fold safety factor. This 20 ppm is equivalent to 30 mg daily in a 1,500-gram diet intake for a 60-kg human. The established 50 ppm residue on potatoes would contribute about 4 mg daily, approximately 13 percent of the acceptable daily intake (ADI), which is 05 mg/kg bw/day for 60-kg human consuming 1,500 grams of food.

A tolerance has previously been established for residues of CIPC on potatoes at 50 ppm. Interim tolerances have been established for residues of CIPC on the hay of alfalfa, clover, and grass at 50 ppm. The proposed tolerance of 0.2 ppm on soybeans is adequate to cover residues in or on soybeans. Consumption of soybean byproducts by livestock will not result in residues in meat, milk, eggs, and poultry; therefore, no finite residues are expected as delineated in 40 CFR 180.6(a)(3). An adequate analytical method (colorimetry) is available for enforcement purposes. No actions are currently pending against continued registration of CIPC, nor are there any other considerations involved in establishing the proposed tolerance.

The pesticide is considered useful for the purpose for which a tolerance is sought, and it is concluded that the tolerance (exemption from the requirement of a tolerance) of 0.2 ppm on soybeans established by amending 40 CFR 180.181 will protect the public health. It is concluded, therefore, that the tolerance be established as set forth below.

Any person adversely affected by this regulation may, by December 13, 1978, file written objections with the Hearing Clerk, Environmental Protection Agency, Room M-3708, 401 M Street SW., Washington, D.C. 20460. Such objections should be submitted and should specify both the provisions of the regulation deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing.

A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Effective on November 30, 1978, Part 180 is amended as set forth below.

Section 180.181 is revised by editorially reformatting the section into an alphabetized columnar listing and alphabetically inserting the tolerance of 0.2 ppm on soybeans as follows: Section 180.181 CIPC; tolerances for residues.

Tolerances are established for residues of the plant regulator and herbicide CIPC (isopropyl *m*-chlorocarbinilate) and its metabolite 1-hydroxy-2-propyl 3'-chlorocarbanilate (calculated as CIPC) in or on the following raw agricultural commodities:

Commodity:	Parts per million
Potatoes (POST-H	+ 50
Soybeans	0.2

Dated: November 6, 1978.

(Sec. 408(d)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(d)(2).)

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 78-31746 Filed 11-9-78; 8:45 am]

[4110-83-M]

Title 42—Public Health

CHAPTER I—PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS AND STUDENT LOANS

Health Professions Student Loans

AGENCY: Public Health Service, HEW.

ACTION: Interim-final regulations.

SUMMARY: These regulations implement requirements for health professions schools to be eligible to participate in the health professions student loan program and for individuals to receive repayment of their eligible loans for service in designated health manpower shortage areas under the Public Health Service Act, as amended by Pub. L. 94-484 and Pub. L. 95-83.

DATES: These regulations are effective immediately. As discussed below, comments are invited. To be considered, comments must be received by January 12, 1979.

ADDRESS: Written comments should be addressed to the Director, Bureau of Health Manpower, Health Resources Administration, 3700 East-West Highway, Center Building, 4th Floor, Hyattsville, Md. 20782. All comments received will be available for public inspection and copying at the Office of Program Operations, Bureau of Health Manpower, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT:

Mr. John F. Belin, Acting Chief, Student and Institutional Assistance Branch, Division of Manpower Training Support, Bureau of Health Manpower, Room 5-50, at the above address, telephone 301-436-6310.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Health, Department of Health, Education, and Welfare, with the approval of the Secretary of Health, Education, and Welfare, is hereby revising subpart C of 42 CFR Part 57, "Health Professions Student Loans," to implement the amendments made by the Health Professions Educational Assistance Act of 1976 (Pub. L. 94-484, October 12, 1976) and by Pub. L. 95-83, August 1, 1977, to the authority for student loans in title VII of the Public Health Service Act.

Section 740 of the Public Health Service Act ("the Act") (42 U.S.C. 294m) authorizes the Secretary of Health, Education, and Welfare ("the Secretary") to enter into an agreement for the establishment and operation of a student loan fund with any public or other nonprofit school of medicine, osteopathy, dentistry, pharmacy, podiatry, optometry, or veterinary medicine which is located in a State and is accredited as provided in section 721(b)(1)(B) of the Act. Each school must meet the statutory requirements in this section regarding maintenance and use of the fund.

Section 741 of the Act (42 U.S.C. 294n) sets forth the provisions under which loans may be made to students from a loan fund (established under an agreement with a school under section 740).

The regulations reflect the statutory provisions respecting the amount of the loan, the annual interest rate, repayment by the student, and repayment by the Secretary when the borrower practices in a health manpower shortage area designated under section 332(b) of the Act.

The Department desires comment particularly on the criteria for schools to determine whether a student is of "exceptional financial need" as set forth in § 57.206(a)(3). Pub. L. 94-484 provides that medical and osteopathic students who will graduate after June 30, 1979, will be eligible to receive loans only if they are of "exceptional financial need." Although the criteria are fundamentally the same as those published for health professions schol-

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arships for first-year students in exceptional financial need (42 CFR 57.2804), they differ substantially from the criteria for determining exceptional financial need under the supplementary educational opportunity grant program authorized in section 413c(a)(2)(c) of the Higher Education Act, as amended. The more restrictive criteria in the health professions student assistance programs are based on the legislative history which directs the Department to restrict support for students of exceptional need to those whose financial need is greatest, i.e., students from low-income families earning $10,000 or less. The criteria proposed will achieve this intent, but provide flexibility in taking into account regional cost-of-living differences, family size, etc.

Moreover, the Department is concerned that the meaning of the requirement that qualified students have "no financial resources to meet the costs of attending his or her school" may be misinterpreted. Students who earn summer income or receive student loans can qualify for loans (§ 57.206(a)(3)). Further, students from families with financial resources can qualify provided that none of those resources are determined to be available to meet the cost of attending his or her school.

Timely implementation of this provision is essential if schools are to have firm criteria on which to base determinations of financial need for purposes of deciding student eligibility for loans during academic year 1978-79. Therefore, the Secretary has determined pursuant to 5 U.S.C. 553 and Department policy that it would be impracticable and contrary to the public interest to follow proposed rulemaking procedures or to delay the effective date of these regulations.

Notwithstanding the omission of the proposed rulemaking procedures, interested persons are invited to submit written comments or data relating to these regulations to the Director of the Bureau of Health Manpower at the address given above. All relevant materials received not later than January 12, 1979 will be considered, and following the close of the comment period, the regulations will be revised as warranted by the public comments. It is intended that any revision of the regulations arising from these comments will be published within 90 days of the close of the comment period.

The regulations as set forth below will be effective November 13, 1978.

Accordingly, subpart C of 42 CFR Part 57 is revised to read as set forth below.

NOTE.—The Department of Health, Education, and Welfare has determined that this document does not contain a major proposal requiring preparation of an inflation impact statement under Executive Order 11821 and OMB Circular A-107.

Dated: May 5, 1978.

JULIUS B. RICHMOND,
Assistant Secretary for Health.

Approved: September 29, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary.

Subpart C—Health Professions Student Loans

Sec.

57.201 Applicability.
57.202 Definitions.
57.203 Application by school.
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57.205 Health professions student loan funds.
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57.207 Maximum amount of health professions student loans.
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57.209 Payment of health professions student loans.
57.210 Repayment and collection of health professions student loans.
57.211 Cancellation of health professions student loans for disability and death.
57.212 Repayment of cancellation of loans for practice in a health manpower shortage area.
57.213 Continuation of provisions for cancellation of loans made prior to November 18, 1971.
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57.215 Records, reports, inspection, and audit.
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57.218 Noncompliance.

AUTHORITY: Sec. 215 of the Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); Secs. 740-744 of the Public Health Service Act, 77 Stat. 170-173, 90 Stat. 2266-2268 (42 U.S.C. 294m-q).

Subpart C—Health Professions Student Loans

§ 57.201 Applicability.

The regulations of this subpart apply to the Federal capital contributions made by the Secretary to public or other nonprofit health professions schools for the establishment of health professions student loan funds and to loans made to students by schools from the fund.

§ 57.202 Definitions.

As used in this subpart:

"Act" means the Public Health Service Act, as amended.

"Date upon which a student ceases to be a full-time student" means the first day of the month which is nearest to the date upon which an individual ceases to be a full-time student as defined in this section.

"Education loan" means any bona fide loan made to a student which the Secretary determines was reasonably necessary for meeting the student's costs of attending a health professions school as defined in this section taking into account the tuition, fees, books, equipment, living expenses and whatever other expenses the Secretary determines were reasonably necessary to enable an individual to attend the school.

"Federal capital loan" means a loan made by the Secretary to a school under section 744(a) of the Act, as in effect prior to October 1, 1977, the proceeds of which are to be returned to the Secretary.

"Full-time student" means a student who is enrolled in a school and pursuing a course of study which is a full-time academic workload, as determined by the school, leading to a degree specified in section 701(4) of the Act.

"Health professions school" or "school" means a public or private nonprofit school of medicine, school of dentistry, school of osteopathy, school of pharmacy, school of optometry, and school of veterinary medicine as defined in section 701(4) of the Act.

"Health professions student loan" means the amount of money advanced to a student by a school from a health professions student loan fund under a properly executed promissory note.

"Institutional capital contribution" means the money provided by a school, in an amount not less than one-ninth of the Federal capital contribution, and deposited in a health professions student loan fund.

"National of the United States" means (1) a citizen of the United States, or (2) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

"School year" means the traditional approximately 9-month September to June annual session. For the purpose of computing school year equivalents for students who, during a 12-month period, attend for a longer period than the traditional school year, the school year will be considered to be 9 months in length.

"Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of the Department of Health, Education, and Welfare to whom the authority involved has been delegated.

"State" means, in addition to the several States, only the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

"Uniformed service" means the Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanic and Atmospheric Administration Corps, and the Public Health Service.

§ 57.203 Application by school.

(a) Each school seeking a Federal capital contribution must submit an application at the time and in the form and manner that the Secretary may require.[1] The application must be executed by an individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the statute, the regulations of this subpart, and the terms and conditions of the award.

(b) Each application will be reviewed to determine eligibility and the reasonableness of the amount of Federal support requested. The Secretary may require the applicant to submit additional data for this purpose.

(c) An application will not be approved unless an agreement between the Secretary and the applicant school for a Federal capital contribution under section 740 of the Act is reached.

§ 57.204 Payment of Federal capital contributions.

(a) *Annual payment.* The Secretary will make payments to each school with which he has entered into an agreement under the Act at a time determined by him. If the total of the amounts requested for any fiscal year by all schools for Federal capital contributions exceeds the amount of Federal funds determined by the Secretary at the time of payment to be available for this purpose, the payment to each school will be reduced to whichever is smaller: (1) The amount requested in the application, or (2) an amount which bears the same ratio to the total amount of Federal funds determined by the Secretary at the time of payment to be available for that fiscal year for the health professions student loan program as the number of full-time students estimated by the Secretary to be enrolled in that school bears to the estimated total number of full-time students in all participating schools during that year. Amounts remaining after these payments are made will be distributed in accordance with this paragraph among schools whose applications requested more than the amount paid to them, but with whatever adjustments that may be necessary to prevent the total paid to any school from exceeding the total requested by it.

[1] Applications and instructions are available from the Division of Manpower Training Support, Bureau of Health Manpower, Center Building, 3700 East-West Highway, Hyattsville, Md. 20782.

(b) *Method of payment.* The payment of Federal capital contributions to a school will be paid in a manner that avoids unnecessary accumulations of money in any health professions student loan fund.

§ 57.205 Health professions student loan funds.

(a) *Funds established with Federal capital contributions.* Any fund established by a school with Federal capital contributions will be deposited and carried in a special account of the school. At all times the fund must contain moneys representing the institutional capital contribution. This fund is to be used by the school only for: (1) Health professions student loans to full-time students; (2) capital distribution as provided in section 743 of the Act or as agreed to by the school and the Secretary, (3) costs of litigation and, to the extent specifically approved by the Secretary, other collection costs that are in excess of the usual expenses incurred in the collection of health professions student loans.

(b) *Funds established with Federal capital loans.* (1) Each Federal capital loan is subject to the terms of the promissory note executed by an authorized official on behalf of the borrowing school.

(2) The Federal capital loans must be carried in a special account of the school, to be used by the school only for: (i) Repayments of principal and interest on Federal capital loans; and (ii) costs of litigation and, to the extent specifically approved by the Secretary, other collection costs that are in excess of the usual expenses incurred in the collection of health professions student loans.

§ 57.206 Eligibility and selection of health professions student loan recipients.

(a) *Eligibility.* Health professions student loans from any fund may be made only to students who are:

(1) Nationals of the United States, permanent residents of the Trust Territory of the Pacific Islands of the Northern Mariana Islands or lawful permanent residents of the United States, Puerto Rico, the Virgin Islands, or Guam.

(2) Enrolled, or accepted for enrollment in the school as full-time students.

(3) In need of the amount of the loan to pursue a full-time course of study at the school or in the case of students in a school of medicine or osteopathy who will graduate from that school after June 30, 1979, of exceptional financial need. Exceptional financial need means that a student has no financial resources to meet the costs of attending his or her school as determined by the American college testing program, the college scholarship service program, the graduate and professional student financial aid service, or any other procedure which is approved by the Commissioner of Education and published under 45 CFR 144.13. Summer earnings and educational loans will not be considered to be financial resources.

(b) *Selection of health professions student loan recipients and determination of need.* (1) It is the responsibility of the school to select qualified applicants and to make reasonable determinations of need. In determining whether a student is in need of a health professions student loan to pursue a full-time course of study at the school, the school will take into consideration:

(i) The financial resources available to the student as determined by one of the total need analysis systems listed in 57.206(a)(3); and

(ii) The costs reasonably necessary for the student's attendance at the school; including any special needs and obligations which directly affect the student's ability to attend the school on a full-time basis.

(2) The school will advise in writing each applicant for a loan of the provisions of section 741 of the Act under which health professions student loans may be repaid in whole or in part by the Secretary.

§ 57.207 Maximum amount of health professions student loan.

The total of the health professions student loans made from the fund to any student for a school year may not exceed $2,500 and the cost of tuition. The maximum amount loaned during a 12-month period to any student enrolled in a school which provides a course of study longer than the 9-month school year may be proportionately increased.

§ 57.208 Health professions student loan promissory note.

(a) *Promissory note form.* Each health professions student loan is to be evidenced by a promissory note approved by the Secretary. (1) Each promissory note must state that the loan will bear interest on the unpaid balance computed only for periods during which repayment of the loan is required, at the rate of 7 percent per year.

(2) A copy of each executed note must be supplied by the school to the student borrower.

(b) *Security.* A school may not require security or endorsement except that if the borrower is a minor and if under the applicable State law the note executed by him or her would not create a binding obligation, then the school is permitted to require security or endorsement.

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§ 57.209 Payment of health professions student loans.

(a) Health professions student loans from any fund may be paid to or on behalf of student borrowers in installments considered appropriate by the school except that a school may not pay to or on behalf of any borrower more during any given installment period (e.g., semester, term, or quarter) than the school determines the student needs for that period.

(b) No payment may be made from a fund to or on behalf of any student borrower if at the time of the payment the borrower is not a full-time student.

§ 57.210 Repayment and collection of health professions student loans.

(a) Each health professions student loan, including accrued interest, will be repayable in equal or graduated periodic installments in amounts calculated on the basis of a 10-year repayment period. Except as otherwise provided in this paragraph, repayment of a loan must begin 1 year after the student ceases to be a full-time student.

(1) If a borrower reenters the same or another school as a full-time student within the 1-year period, the date upon which interest will accrue and the repayment period will begin will be determined by the date on which the student last ceases to be a full-time student at the school.

(2) The following periods will be excluded from the 10-year repayment period; (i) all periods for up to a total of 3 years of active duty performed by the borrower as a member of a uniformed service; (ii) all periods for up to a total of 3 years of service as a volunteer under the Peace Corps Act; and (iii) all periods of advanced professional training except that with respect to health professions student loans made prior to November 17, 1971 but after June 30, 1969, these periods of advanced training may not exceed a total of 5 years.[2]

(3) Each student borrower may, subject to the provisions of paragraph (b)(3) of this section, choose the repayment schedule which he or she prefers from those in use by the school, but a student borrower may at his or her option and without penalty, prepay all or part of the principal and accrued interest at any time.

(b) *Collection of health professions student loans.* (1) Each school at which a fund is established must exercise due diligence in the collection of all health professions student loans due the fund. The school must use the collection practices which are generally accepted among institutions of higher education and which are at least as extensive and effective as those used in the collection of other student loan accounts due the school.

(2) With respect to any health professions student loan made after June 30, 1969, the school may fix a charge for failure of the borrower to pay all or any part of an installment when it is due, and in the case of a borrower who is entitled to a deferment under section 741(c) of the Act, or cancellation or repayment under section 741(f) of the Act for any failure to file timely and satisfactory evidence of the entitlement. The amount of the charge may not exceed $1 for the first month or part of a month by which the installment or evidence is late and $2 for each succeeding month or part of a month. The school may elect to add the amount of this charge to the principal amount of the loan as of the day after the day on which the installment or evidence was due, or to make the amount of the charge payable to the school no later than the due date of the next installment following receipt of the notice of the charge by the borrower.

(3) With respect to any health professions student loan made after June 30, 1969, the school may provide that during the repayment period of the loan, payments of principal and interest by the borrower with respect to all the outstanding loans made to him or her from any health professions student loan fund will be a rate equal to not less than $15 per month.

§ 57.211 Cancellation of health professions student loans for disability and death.

(a) *Permanent and total disability.* The Secretary will cancel a student borrower's indebtedness in accordance with section 741(d) of the Act if the borrower is found to be permanently and totally disabled on recommendation of the school and as supported by whatever medical certification the Secretary may require. A borrower is totally and permanently disabled if he or she is unable to engage in any substantial gainful activity because of a medically determinable impairment, which the Secretary expects to continue for a long time or to result in death.

(b) *Death.* The Secretary will cancel a student borrower's indebtedness in accordance with section 741(d) of the Act upon the death of the borrower. The school to which the borrower was indebted must submit a certification of death or whatever official proof is conclusive under State law.

§ 57.212 Repayment or cancellation of loans for practice in a health manpower shortage area.

(a) *Practicing in a health manpower shortage area.* Subject to the provisions of section 741(f) of the Act and of this paragraph, any person who has obtained a degree as specified in section 701(4) of the Act and who (i) has obtained a health professions student loan[3] and (ii) enters into an agreement to practice as a member of the National Health Service Corps or otherwise for at least 2 consecutive years in a health manpower shortage area designated under section 332 of the Act, is entitled to have a portion of these loans repaid by the Secretary as described in paragraph (b) below. Prior to entering into any agreement under this paragraph, the Secretary will require the individual to provide evidence satisfactory to the Secretary of the existence and reasonableness of the education loan(s), including a copy of the written loan agreement establishing the loan, and a notarized statement that the copy is a true copy of the loan agreement.

(b) *Repayment.* Loan repayment will be made to persons who meet the conditions set forth in paragraph (a) as follows:

(i) Upon completion by the borrower of the first year of practice as specified in the agreement, the Secretary will pay 30 percent of the principal of, and the interest on, each loan which was unpaid as of the date the borrower began his or her practice.

(ii) Upon completion by the borrower of the second year of practice the Secretary will pay another 30 percent of the principal of, and the interest on, each loan which was unpaid as of the date the borrower began his or her practice.

(iii) Upon completion by the borrower of a third year of practice, the Secretary will pay another 25 percent of the principal of, and interest on, each loan which was unpaid as of the date the borrower began his or her practice except that, the amount of loan repayments that may be made on behalf of a borrower in any year under paragraph (a) of this section may not exceed $10,000, and the total amount of payment which can be made under this section with respect to any loan may not exceed $50,000.

§ 57.213 Continuation of provisions for cancellation of loans made prior to November 17, 1971.

Individuals who received health professions student loans prior to November 18, 1971, may still receive cancellation of these loans for practicing in a shortage area or for practicing in a

[2] Individuals who received health professions student loans prior to July 1, 1969, remain subject to the repayment provisions of 42 CFR 57.214(a)(2) (1976) as adopted on February 7, 1974. These provisions can be found at 39 FR 4773 (Feb. 7, 1974) and a copy can be obtained by writing the Division of Manpower Training Support, Bureau of Health Manpower, Center Building, 3700 East-West Highway, Hyattsville, Md. 20782.

[3] Other education loans as defined in section 57.202 are eligible for repayment if they were incurred prior to Oct. 12, 1976.

rural shortage area characterized by low family income. The regulations set forth in 42 CFR 57.216(b)(1976), as adopted on February 7, 1974 remain applicable to cancellation on this basis. The provisions can be found at 39 FR 4774 (February 7, 1974) and a copy can be obtained by writing to the Division of Manpower Training Support, Bureau of Health Manpower, Center Building, 3700 East-West Highway, Hyattsville, Md. 20782.

§ 57.214 Repayment of loans made after November 17, 1971 for failure to complete a program of study.

In the event that the Secretary undertakes to repay educational loans under section 741(1) of the Act, he will utilize the following criteria in making his determination as to each applicant's eligibility:

(a) An applicant will be considered to have failed to complete the course of study leading to the first professional degree for which an eligible education loan was made upon certification by a health professions school that the individual ceased to be enrolled in the school subsequent to November 17, 1971;

(b) An applicant will be considered to be in exceptionally needy circumstances if, upon comparison of the income and other financial resources of the applicant with his or her expenses and financial obligations, the Secretary determines that repayment of the loan would constitute a serious economic burden on the applicant. In making this determination, the Secretary will take into consideration the net financial assets of the applicant and the relationship of the income available to the applicant to the low-income levels published annually by the Secretary pursuant to paragraph (c) of this section;

(c) An applicant will be considered to be from a low-income family if the applicant comes from a family with an annual income below a level based on low-income thresholds according to family size published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index, and adjusted by the Secretary for use in this program, and the family has no substantial net financial assets. Income levels as adjusted will be published annually by the Secretary in the FEDERAL REGISTER.

(d) An applicant will be considered to be from a disadvantaged family if the individual comes from a family in which the annual income minus unusual expenses which contribute to the economic burdens borne by the family does not exceed the low-income levels published by the Secretary pursuant to paragraph (c) of this section and the family has no substantial net financial assets;

(e) An applicant will be considered as not having resumed his or her health professions studies within 2 years following the date the individual ceased to be a student upon a certification so stating from the applicant; and

(f) An applicant will be considered as not reasonably expected to resume his or her health professions studies within 2 years following the date upon which he or she terminated these studies, based upon consideration of the reasons for the applicant's failure to complete these studies, taking into account such factors as academic, medical, or financial difficulties.

The Secretary will only repay education loans made subsequent to November 17, 1971.

§ 57.215 Records, reports, inspection, and audit.

(a) *Records and reports.* (1) Each Federal capital contribution and Federal capital loan is subject to the condition that the school must maintain those records and file with the Secretary those reports relating to the operation of its health professions student loan fund that the Secretary may find necessary to carry out the purposes of the Act and these regulations. The school also must comply with the requirements of section 705 of the Act.

(2) The following student records must be retained by the school for 5 years after an individual student has ceased to be a full-time student:

(i) Approved and disapproved student applications for health professions student loans.

(ii) Documentation of the financial need of applicants.

(iii) Reasons for approval or disapproval of applications and;

(iv) Other records as the Secretary may prescribe. Individual student records may be destroyed at the end of the 5-year period, except that in all cases where questions have arisen as a result of a Federal audit, the records will be retained until resolution of all the questions.

(b) *Audit.* Each participating health professions school is responsible for providing and paying for an annual financial audit of its books, accounts, financial records, files, and other papers and property in accordance with the requirements of section 705(b) of the Act. The audit must be conducted by and certified to be accurate by an independent certified public accountant utilizing generally accepted auditing standards. A report of this audit must be filed with the Secretary at the time and in the manner as the Secretary may require.

(c) *Inspection.* Each participating health professions school must make available to the Secretary or the Comptroller General of the United States or any of their authorized representatives all books, documents, papers, and records listed in paragraphs (a) and (b) for examination, copying, or mechanical reproduction, on or off the premises of the grantee upon a reasonable request for them.

§ 57.216 Nondiscrimination.

(a) Participating schools are advised that in addition to complying with the terms and conditions of these regulations, the following laws and regulations are applicable:

(1) Section 704 of the Act (42 U.S.C. 292d) and its implementing regulation, 45 CFR Part 83 (prohibiting discrimination on the basis of sex in the admission of individuals to training programs).

(2) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and its implementing regulation, 45 CFR Part 80 (prohibiting discrimination in federally assisted programs on the grounds of race, color, or national origin).

(3) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) and its implementing regulation, 45 CFR Part 86 (prohibiting discrimination on the basis of sex in federally assisted education programs).

(4) Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. 794) and its implementing regulation, 45 CFR Part 84 (prohibiting discrimination in federally assisted programs on the basis of handicap).

(b) The recipient may not discriminate on the basis of religion in the admission of individuals to its training programs.

§ 57.217 Additional conditions.

The Secretary may with respect to any agreement entered into with any school under § 57.205, impose additional conditions prior to or at the time of any award when in his judgment these conditions are necessary to assure or protect the advancement of the purposes of the agreement, the interest of the public health, or the conservation of funds awarded.

§ 57.218 Noncompliance.

Wherever the Secretary finds that a participating school has failed to comply with the applicable provisions of the Act or the regulations of this subpart, he may, on reasonable notice to the school, withhold further payment of Federal capital contributions, and take such other action, including the termination of any agreement, as he finds necessary to enforce the Act and regulations. In such case no further expenditures shall be made from the health professions student loan fund or funds involved until the Secretary determines that there is no longer any failure of compliance.

[FR Doc. 78-31567 Filed 11-9-78; 8:45 am]

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[6712-01-M]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[FCC 78-759]

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

Extending the Date for Compliance

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: The Federal Communications Commission (FCC) amends its regulations relating to stations on shipboard in the maritime services. The amendment extends for 1 year the requirement for modification of internal timing circuitry within the 500 kHz automatic alarm receiver (radio devices capable of receiving over the air an alarm signal transmitted by a distant ship or shore station). In another proceeding the FCC has proposed the international radio regulations to be amended to reduce the guard band for 500kHz. Implementation of the guard band reduction would necessitate a corresponding modification of the automatic alarm receiver. The 1-year extension, requested by industry, will permit both modifications to be made at the same time.

EFFECTIVE DATE: November 13, 1978.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Walter E. Weaver, Safety and Special Radio Services Bureau, 202-632-7197.

SUPPLEMENTARY INFORMATION: In the matter of amendment of part 83 to extend the date for compliance with the requirements of § 83.554(a)(1)(i).

Adopted: October 24, 1978.

Released: November 2, 1978.

By the Commission:

1. The American Institute of Merchant Shipping (AIMS) and the Central Committee on Telecommunications of the American Petroleum Institute (API) have been requested that the Commission extend the mandatory date of July 1, 1980, appearing in subdivisions (*a*) and (*b*) of section 83.554(a)(1)(i) of the rules. The date of July 1, 1980, applies to the requirements for completion of modifications of internal timing circuitry within the 500 kHz automatic alarm receiver.[1] These requirements were adopted in the proceeding in docket No. 20148.[2]

2. The AIMS and API request results from Commission action in the eighth notice of inquiry in docket No. 20271. In the eighth notice of inquiry the Commission proposed that the international radio regulations be amended to reduce the guard band for 500 kHz from 490-510 kHz to 495-505 kHz. This proposal is one of many proposals developed as a part of the United States preparation for the 1979 World Administrative Radio Conference.[3] The purpose of the proposed amendment is to effect improved efficiency in use of the radio spectrum. AIMS and API point out, correctly, that implementation of this guard band reduction would necessitate a corresponding modification of the 500 kHz automatic alarm receiver.

3. The modifications of the auto alarm receiver required by docket No. 20148 will be implemented by complete replacement of that receiver, in some cases, and by modification in others. Those modifications will be completed at about the time it is necessary to start the modification resulting from reduction of the guard band. Thus, the new auto alarm receivers, installed per docket No. 20148, would have to be removed from aboard ship and modified, or where old receivers were modified, they would have to be again removed and further modified. In view of this duplication, AIMS and API feel, and we agree, that the date of July 1, 1980, in docket No. 20148 should be extended to permit both modifications to be made at the same time.

4. Regarding questions on matters covered by this document contact Walter E. Weaver, 202-632-7197.

5. The amendment adopted herein merely extends for 1 year an exception to certain technical requirements on auto alarms and as such is considered a minor amendment. Hence, the notice and public procedure provisions of 5 U.S.C. 553 are unnecessary. Accordingly, *it is ordered*, That, pursuant to the authority contained in sections 4(i) and 303 (e), (f) and (r) of the Communications Act of 1934, as amended, part 83 of the Commission's rules is amended effective November 13, 1978, as set forth below.

6. *It is further ordered*, That, the Chief, Safety and Special Radio Services Bureau is authorized to determine, on a timely basis, if a further extension, beyond July 1, 1981, is required and to grant a waiver, should he determine that such further extension is required.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.)

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

Part 83 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

In § 83.554(a)(1)(i), subdivisions (*a*) and (*b*) are amended to read as follows:

§ 83.554 Requirements for radiotelegraph auto alarm.

(a) • • •

(1) *Basic technical requirements.*

(i) • • •

(*a*) Auto alarms of the nondigital type employing resistance-capacitance timing covered by type approval granted before October 1, 1969, and placed in service on or before January 1, 1975, need only satisfy the following less stringent rejection limits: The auto alarm shall not respond to dashed longer than 7.40 seconds or shorter than 2.80 seconds, nor to spaces longer than 1.80 seconds or shorter than 5 milliseconds.[1] This exception shall not continue in effect after July 1, 1981.

(*b*) Auto alarms of the digital type employing a stable clock as the basic timing device covered by type approval granted before May 1, 1968, and placed in service on or before December 1, 1975, may be permitted additionally to accept dashes whose lower limit extends beyond 3.33 seconds down to 3.0 seconds.[1] This exception shall not continue in effect after July 1, 1981. Auto alarms installed before • • • (the effective date of this report and order), shall demonstrate compliance with this subsection during their first detailed annual inspection subsequent to that date.

• • • • •

[FR Doc. 78-31817 Filed 11-9-78; 8:45 am]

[1] These are radio devices, usually unattended, which are capable of receiving over the air an alarm signal transmitted by a distant ship or shore station; they are designed to respond to the signal by actuating an alerting device such as a bell at a location where a watch stander is present. The alarm signal is a radio wave made up, ideally, of 12 4-second dashes separated from each other by 1-second spaces.

[2] The report and order was released May 1, 1975; FCC 75-442; 52 FCC 2d818; 40 FR 19644.

[3] To be convened in Geneva late in 1979 by the International Telecommunication Union.

[1] The acceptability of an auto alarm during field inspection under the limits specified in this exception will be determined in the absence of interference of any kind.

[4910-50-M]

Title 49—Transportation

CHAPTER V—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 74-14; Notice 14]

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Occupant Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA).

ACTION: Final rule.

SUMMARY: The purpose of this notice is to amend Safety Standard No. 208, Occupant Crash Protection, to provide for the optional use by motor vehicle manufacturers of alternatives to latches for releasing occupants from passive seatbelt systems in emergencies and to allow means other than pushbuttons to operate the emergency release mechanisms of passive belt systems. The amendment is based on a proposal issued in response to a petition from General Motors Corp. to allow manufacturers greater latitude in designing emergency release mechanisms for passive belt systems. The amendment will allow manufacturers to experiment with various emergency release mechanisms aimed at encouraging passive belt use by motorists, prior to the effective date of passive restraint requirements specified in this standard.

DATE: Effective date: November 13, 1978.

ADDRESS: Petitions for reconsideration should refer to the docket number and notice number and be submitted to: Docket Section, Room 5108, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT:

Guy Hunter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, Washington, D.C. 20590, 202-426-2265.

SUPPLEMENTARY INFORMATION: Safety Standard No. 208, 49 CFR 571.208, currently specifies that a seatbelt assembly installed in a passenger car shall have a latch mechanism that releases at a single point by pushbutton action. General Motors petitioned for relief from this requirement for passive belts, following the issuance of the final rule requiring passenger cars to be equipped with passive restraints (air bags, passive belts, or other means of passive, i.e., automatic, protection) (42 FR 34289; July 5, 1977). The petition described a "spool release" design General Motors would like to use on one of its passive belt systems. The system would include a shoulder belt that would not detach at either end. Rather, the design would allow the belt to "play out" or unwind from the retractor in an emergency, allowing sufficient slack for the door to be opened and the occupant to exit from the vehicle. The purpose of such a "spool release" design is to minimize the disconnection of the passive belt system by motorists. Under the current latch mechanism and pushbutton requirements for belts, a passive belt system could be easily disconnected by a buckle release identical to buckles on current active belt systems (i.e., belts that motorists must manually put into place). As long as the belt remains disconnected, the "passivity" of the system would be destroyed for future use.

In response to the GM petition, the NHTSA issued a proposal to amend standard 208 to allow alternative release mechanisms for passive belts (43 FR 21912, May 22, 1978). As noted in that proposal, the NHTSA is very concerned about the usage rate of passive belts by motorists since it appears that there may be many new cars in the 1980's equipped with these systems. If motorists who would prefer air bags in a particular car line can only obtain passive belts from the manufacturer the defeat rate of the belts could be high. The agency is, therefore, interested in fostering any passive belt design that is effective and that minimizes the rate of disconnection. The notice pointed out, however, that there are other factors to be considered in the proposed change.

The original purpose of the latch mechanism and pushbutton requirements of standard 208 was to insure uniformity of buckle design for the purpose of facilitating routine fastening and unfastening of active belts, encouraging belt use by making the belts as convenient as possible and facilitating the exiting of vehicle occupants in emergency situations. Since the proposed amendment would allow various types of release mechanisms, the agency was concerned that the resulting nonuniformity might have adverse consequences in emergency egress situations from passive belts. In order to examine the implications of the General Motors petition thoroughly, the proposal sought public comments on four specific questions concerning the efficacy and advisability of allowing alternative release mechanisms to latches for passive belt systems. The four questions were as follows:

1. "How should the NHTSA or the vehicle manufacturers monitor the efficacy of and public reaction to various systems for discouraging disconnection of passive belts (such as the latch mechanism with a 4-8 second audible/visible warning system that operates if the belt is not connected when the ignition is turned on, a latch mechanism with additional warning or interlock systems voluntarily installed by a vehicle manufacturer, or a lever operated spool release as requested by General Motors)?"

2. "Are there safety or other considerations that would make it inadvisable to allow the spool release at this time as an option to vehicle manufacturers which install passive belts?"

3. "Compared with a passive belt system equipped with the currently-required latch mechanism, would a passive belt system equipped with a spool release whose actuation lever is located between the seats have substantial disadvantages for emergency exit or extraction from a vehicle that would offset any possible increase in usage in the passive belts?"

4. "If the NHTSA decides to permit the use of alternative occupant release mechanisms, should such use be permitted indefinitely or only for a finite period, e.g., several years, to allow field testing of the various systems? If a finite period were to be established, when should it begin and end?"

All 15 comments to the May 22, 1978, notice supported the intent of the proposed change to allow alternative release mechanisms for passive belts. Most commenters agreed that a nonseparable passive belt should discourage disconnection by motorists and that this should be given higher priority consideration than possible adverse effects such a belt might have on emergency occupant egress. Volkswagen did express some concern that the benefits achieved by increased belt usage might be somewhat offset if problems with emergency exiting arise, but agreed that more flexibility in passive belt design should be allowed to encourage belt use.

Volkswagen urged the use of the passive belt system utilized on its Deluxe Rabbit—a pushbutton release latch mechanism guarded by an ignition interlock. The company stated that this type system is simple and works well in emergency situations regardless of the condition of the retractor or the positioning of the webbing (potential problems of a "spool release" type design). Volkswagen pointed out that a system that is too complex will require close monitoring to insure effectiveness.

While the Volkswagen system has shown high use rates in the field, there is a possibility that widespread use of this type system could lead to adverse public reaction because of the interlock feature. As pointed out by the Alliance of American Insurers in its support of the proposed amendment, there could be a second public "backlash" from a return to the use of starter interlocks, even if placed on the vehicle voluntarily by the manufacturer. Alliance stated that the "spool release" system proposed by

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General Motors should be preferable to the interlock from a public acceptance standpoint.

The Center for Auto Safety and the Prudential Property & Casualty Insurance Co. both commented that "spool release" type mechanisms should be self-restoring to insure that in subsequent uses of the vehicle the passive belt is ready to provide the automatic protection for which it was designed. The self-restoring feature would automatically retract the belt after the manual release has been activated to allow the belt to "play-out." The NHTSA believes that both self-restoring "spool release" designs and manual restoration designs have distinct advantages. The automatic restoration does not require the vehicle user to have any knowledge of the system to reactivate the passive belt. However, a manual restoration design would be less complex and would probably be more reliable. The manual design could be coupled with audible and visible warnings to indicate when the lockup portion of the retractor is inoperative. The amendment set forth in this notice allows both types of restoration systems for "spool release" passive belt designs.

The majority of commenters argued that the proposed amendment should be effective indefinitely, and not merely during the interim period until the passive restraint requirements become effective. The comments stated that manufacturers should be given the greatest possible design latitude to encourage the early introduction of innovative passive belt systems that are designed to minimize disconnection by motorists. The industry noted that manufacturers will be hesitant to initiate such new programs and passive belt designs if alternative release designs are allowed only for an interim period. Further, the commenters stated that an interim rule would not allow time for an adequate examination of the effectiveness of the various new designs that might be developed. The agency has concluded that these arguments have merit. Accordingly, this amendment is effective indefinitely.

Several comments stated that the new passive belt designs should be standardized, so that the public will understand their use and problems of emergency occupant egress will be minimized. While the agency agrees that uniformity in release design is advantageous, it is not practical to standardize systems that are only in the development stage. Further, if manufacturers are not given latitude in their passive belt designs, the purpose of this amendment would be defeated. It is unclear at this time which passive belt systems will be the most effective in encouraging belt use and at the same time be accepted by the public. The agency will, of course, monitor all new passive belt systems as closely as possible, and efforts to standardize systems could be made in the future.

Ford Motor Co. commented that the revision of standard No. 208 as requested in the General Motors petition would provide greater latitude than presently exists, but that the requested wording is restrictive in that it would inhibit the development of methods of release other than those specifically related to the retractor. Ford requested that the proposed revision include language permitting manufacturers the greatest possible design latitude. The agency emphasized in the previous notice that the proposal was tentative as to the language and substance of an amendment that might be adopted in response to the General Motors petition. Accordingly, this amendment is broader than that proposed in the General Motors petition and does not limit the types of passive belt designs that may be developed.

In order to insure that vehicle occupants are aware if their passive belts are inoperable because a release mechanism has been activated, this amendment specifies that the warning light, "Fasten Belts," remain illuminated until the belt latch mechanism has been fastened or the release mechanism has been deactivated. This warning light of indefinite duration is in addition to the 4- to 8-second audible warning signal currently required by the standard. The agency believes a continuous warning light is essential since this amendment will allow various types of unfamiliar release systems for passive belts.

In summary, the agency has concluded that manufacturers should be given considerable latitude in designing emergency release mechanisms for passive belt systems. This will permit the development of innovative systems aimed at limiting passive belt disconnection by motorists. Otherwise, the use rate of passive belt systems could be as low as the current use rate for active belt systems. This amendment will allow manufacturers to experiment with various passive belt designs before the effective date of the passive restraint requirements and determine which designs are the most effective and at the same time acceptable to the public.

The agency does not believe that the use of alternative release mechanisms will cause serious occupant egress problems if manufacturers take precautions to instruct vehicle owners how the systems work through the owner's manual and through their dealers. While uniformity in release mechanisms is certainly important for purposes of emergency occupant egress, the agency has concluded that this consideration is at least temporarily outweighed by the importance of insuring passive belts are not disconnected. The agency will, however, monitor all new passive belt designs to assure that the release mechanisms are simple to understand and operate. If the methods of operation of the various release mechanisms are self-evident, the problem of lack of uniformity in design will be less important in terms of emergency occupant egress.

The agency has concluded that this amendment will have no adverse economic or environmental impacts.

The engineer and lawyer primarily responsible for the development of this rule are Guy Hunter and Hugh Oates, respectively.

§ 571.208 [Amended]

In consideration of the above, standard No. 208 (49 CFR 571.208) is amended as follows:

1. S7.2 introductory text is revised to read:

S7.2 *Latch mechanism.* A seat belt assembly installed in a passenger car, except a passive belt assembly, shall have a latch mechanism—

2. Paragraph S4.5.3.3(a) is revised to read:

S4.5.3.3(a). Conform to S7.1 and have a single emergency release mechanism whose components are readily accessible to a seated occupant.

3. S4.5.3.3(b) is revised to read:

S4.5.3.3(b). In place of a warning system that conforms to S7.3 of this standard, be equipped with the following warning system:

(1) At the left front designated seating position (driver's position), be equipped with a warning system that activates a continuous or intermittent audible signal for a period of not less than 4 seconds and not more than 8 seconds (beginning when the vehicle ignition switch is moved to the "on" or the "start" position) when condition (A) exists simultaneously with condition (B), and that activates a continuous or flashing warning light, visible to the driver, displaying the words "Fasten Seat Belts" or "Fasten Belts" for as long as condition (A) exists simultaneously with condition (B).

(A) The vehicle's ignition switch is moved to the "on" position or to the "start" position.

(B) The driver's passive belt is not in use, as determined by the belt latch mechanism not being fastened or, if the passive belt is nonseparable, by the emergency release mechanism being in the released position.

(Sec. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407), delegation of authority at 49 CFR 1.50.)

Issued on November 1, 1978.

JOAN CLAYBROOK,
Administrator.

[FR Doc. 78-31815 Filed 11-7-78; 2:33 am]

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[1505-01-M]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket Nos. 14324, 14606, 14625, 14685, and 14779; Amdt. Nos. 23-23; 25-46; 27-16; 29-17; and 121-149]

AIRWORTHINESS REVIEW PROGRAM AMENDMENT NO. 7

Airframe Amendments; Final Rule

Correction

In FR Doc. 78-30348 appearing at page 50578 in the issue for Monday, October 30, 1978, make the following changes:

(1) On page 50593, middle column, the section heading now reading "§ 23.785 Seats and berths." should have read "§ 23.785 Seats, berths, safety belts, and harnesses."

(2) On page 50594, third column, the formula in § 25.331(c)(2)(i) should have read as follows:

$$\frac{39n}{V}(n-15),\ (\text{Radians/Sec.}^2)$$

where—

n is the positive load factor at the speed under consideration; and
V is the airplane equivalent speed in knots.

(3) In the same section, in paragraph (c)(1)(ii), in the fifth line, "The negative pitching * * *" should have read "This negative pitching * * *," and the formula should have read as follows:

$$\frac{-26n}{V}(n-15),\ (\text{Radians/Sec.}^2)$$

where—

n is the positive load factor at the speed under consideration; and V is the airplane equivalent speed in knots.

(4) On page 50597, in § 25.811, the first paragraph at the top of the center column, the text labeled "(ii)" in the third line should have been set forth as a separate paragraph.

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proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

[1505-01-M]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 1135]

[Docket No. AO-380]

MILK IN THE SOUTHWESTERN IDAHO-EASTERN OREGON MARKETING AREA

Hearing on Proposed Marketing Agreement and Order

Correction

In FR Doc. 78-29966, appearing at page 49704 in the issue of Tuesday, October 24, 1978, on page 49712 in the third column, in § 1135.73(e), in the 11th line after the word "date" insert "• • • for making payments pursuant to this section following the date • • •"

[3410-07-M]

Farmers Home Administration

[7 CFR Part 1804]

[FmHA Instruction 424.1]

PLANNING AND PERFORMING DEVELOPMENT WORK

Planning and Performing Development Work

REQUEST FOR COMMENTS ON THERMAL INSULATION STANDARDS

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the Farmers Home Administration of the U.S. Department of Agriculture intends to undertake a study of the thermal performance and related economic factors of concrete masonry wall construction in residential structures. This study is in response to the conference report of the House-Senate conference committee on the fiscal year 1979 Agriculture Appropriations Bill which stated:

> In deleting this Amendment, the conferees will expect the Farmers Home Administration to undertake a revision of its standards, based upon available information on the thermal performance aspects of masonry wall construction as agreed to by the Secretary of Agriculture in his letter of September 11, 1978. In the course of this study, the Farmers Home Administration should consult with the various construction materials industries, State, local and Federal government agencies, engineering societies, and various code and standards-writing bodies.
>
> Within 90 days of enactment of this Act, the conferees will expect the Farmers Home Administration to publish in the FEDERAL REGISTER a proposal for adjustments of the thermal performance standards that are indicated as a result of this study. Such adjustments, if the study so indicates, should be in the form of a separate performance thermal insulation standard for masonry construction.

DATES: Comments must be received on or before December 1, 1978.

ADDRESS: Submit written comments to the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6316, Washington, D.C. 20250. All written comments made pursuant to this notice will be available for public inspection at the address given above.

FOR FURTHER INFORMATION CONTACT:

Mr. Daniel Ball, 202-447-3394.

Dated: November 6, 1978.

JAMES E. THORNTON,
Acting Administrator,
Farmers Home Administration.

[FR Doc. 78-31798 Filed 11-9-78; 8:45 am]

[4910-13-M]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Parts 71 and 73]

[Airspace Docket No. 78-SW-50]

PROPOSED ESTABLISHMENT OF TEMPORARY RESTRICTED AREAS AND ALTERATION OF CONTINENTAL CONTROL AREA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish four temporary joint use restricted areas in the vicinity of Fort Hood, Tex., to contain a military joint readiness exercise called Brave Shield 19. These proposed actions would provide for the safe and efficient use of the navigable airspace by prohibiting unauthorized flight operations of nonparticipating aircraft within the temporary restricted areas during the hours they are activated.

DATES: Comments must be received on or before December 13, 1978.

ADDRESSES: Send comments on the proposal in triplicate to:

Director, FAA Southwest Region, Attention: Chief, Air Traffic Division, Docket No. 78-SW-50, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101.

Send comments on the environmental aspects to:

Department of the Air Force, Headquarters, Tactical Air Command (DEEV), Langley AFB, Va. 23665, telephone 804-764-4430.

The official docket may be examined at the following location:

FAA Office of the Chief Counsel, Rules Docket (AGC-24), Room 916, 800 Independence Avenue SW., Washington, D.C. 20591.

An informal docket may be examined at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT:

Mr. Lewis W. Still, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone 202-426-8525.

SUPPLEMENTARY INFORMATION:

COMMENTS INVITED

Interested persons may participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Southwest Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101. All communications received on or before December 13, 1978, will be considered before action is taken on the proposed amendments. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

AVAILABILITY OF NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling 202-426-8058. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

THE PROPOSAL

The FAA is considering amendments to Subpart B of Part 73 and Subpart D of Part 71 of the Federal Aviation Regulations (14 CFR Parts 73 and 71) that would designate four temporary restricted areas identified as R-6303A, R-6303B, R-6303C, and R-6303D in the Fort Hood, Tex., area to contain a military joint service exercise known as Brave Shield 19. Since these restricted areas would penetrate the Continental Control Area, they would be added to Subpart D of Part 71 to provide controlled airspace for the duration of their designation. Participating aircraft will be conducting close support, electronic warfare, reconnaissance, and tactical airlift missions to include airborne delivery of supplies. Accomplishment of these missions will require maneuvering through a wide range of airspace and altitudes. Total air traffic associated with this exercise is expected to exceed 230 sorties per day. A majority of the air activity will be within the Fort Hood Military Reservation permanently designated as R-6302A/B/C/D/E. Aerial delivery of ordnance is not planned for this exercise. Electronic warfare and Chaff operations are planned for this exercise.

These areas would be designated as joint use and IFR/VFR operations within the areas may be authorized by the controlling agency when not in use by the using agency. The controlling agency for the proposed restricted areas would be the FAA, Houston Air Route Traffic Control Center (ARTCC), Houston, Tex. In addition, a Tactical Air Control System (TACS) will be established to provide procedures to accommodate to the maximum extent possible civil aviation interests so as not to cause undue hardships. Participating aircraft will be controlled by TACS so as to provide adequate clearance from nonparticipating aircraft. Lines of communication will be installed with approriate FAA facilities to coordinate movement of nonparticipating air traffic through the areas when exercise activity permits. In addition, local business telephone numbers (reverse charge) will be established and published for coordination on nonparticipating aircraft. All municipal and private airports underlying the exercise area would be excluded within 3 NM radius at and below 1,200 feet above ground level (AGL).

The Department of the Air Force will serve as the lead agency for the purposes of compliance with the National Environmental Protection Act (NEPA).

THE PROPOSED AMENDMENT

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) as republished (43 FR 344 and 704) as follows:

Under § 71.151 (43 FR 344) the following temporary restricted areas are added for the duration of their time of designation from 0600 local time, April 5, 1979, to 2359 local time, April 13, 1979:

R-6303A BRAVE SHIELD 19, Tex.
R-6303B BRAVE SHIELD 19, Tex.
R-6303C BRAVE SHIELD 19, Tex.
R-6303D BRAVE SHIELD 19, Tex.

Under § 73.63 (43 FR 704) the following temporary restricted areas are added: R-6303A BRAVE SHIELD 19, Tex.

Boundaries. Beginning at Lat. 31°09'00" N., Long. 97°55'00" W.; to Lat. 31°16'00" N., Long. 97°54'00" W.; to Lat. 31°19'00" N., Long. 97°51'00" W.; to Lat. 31°24'00" N., Long. 97°48'00" W.; to Lat. 31°23'00" N., Long. 97°43'00" W.; to Lat. 31°21'00" N., Long. 97°41'00" W.; to Lat. 31°20'00" N., Long. 97°41'00" W.; to Lat. 31°14'00" N., Long. 97°33'00" W.; to Lat. 31°06'00" N., Long. 97°33'00" W.; to Lat. 31°08'00" N., Long. 97°39'00" W.; to Lat. 31°10'00" N., Long. 97°41'00" W.; to Lat. 31°09'30" N., Long. 97°43'00" W.; to Lat. 31°09'00" N., Long. 97°43'30" W.; to the point of beginning, excluding airspace 4,000 feet MSL and below within a 5 NM radius of the Hood, Tex., VOR, within a 5 NM radius of the Fort Hood AAF (31°08'15" N., 97°42'50" W.) but south of R-6302 boundary, and within 5 NM each side of the Hood, Tex., VOR 110° T (102° M) and 125° T (117° M) radials extending from the VOR to V-17 airway, and also excluding the airspace 1,200 feet AGL and below within a 3 NM radius of all airports.

Designated altitudes. Surface to and including FL 180.

Time of designation. Intermittent, 0600 to 0001 local time, April 5, 1979, through April 13, 1979.

Controlling agency. Federal Aviation Administration, Houston ARTC Center.

Using agency. U.S. Air Force Tactical Air Command/USAF Readiness Command (TAC/USAFRED), Langley Air Force Base, Va. 23665.

R-6303B BRAVE SHIELD 19, Tex.

Boundaries. Beginning at Lat. 31°30'00" N., Long. 97°46'00" W.; to Lat. 31°48'15" N., Long. 97°46'00" W.; to Lat. 31°30'00" N., Long. 97°37'45" W.; to Lat. 31°13'45" N., Long. 97°30'00" W.; to Lat. 30°50'00" N., Long. 97°37'00" W.; to Lat. 30°50'00" N., Long. 98°03'30" W.; to Lat. 31°07'00" N., Long. 97°45'30" W.; to the point of beginning, excluding R-6302 and airspace 4,000 feet MSL and below, within 5 NM radius of Fort Hood AAF (30°08'15" N., 97°42'50" W.) and within 5 NM radius of the Hood, Tex., VOR, within 5 NM each side of the Hood, Tex., VOR 102° T and 125° T radials extending from the VOR to V-17 airway. The airspace 1,200 feet AGL and below within 3 NM of all airports is excluded.

Designated altitudes. 100 feet AGL to and including FL 180.

Time of designation. Intermittent, 0600 to 0001 local time, April 5, 1979, through April 13, 1979.

Controlling agency. Federal Aviation Administration, Houston ARTC Center.

Using agency. U.S. Air Force Tactical Air Command/USAF Readiness Command (TAC/USAFRED), Langley Air Force Base, Va. 23665.

R-6303C BRAVE SHIELD 19, Tex.

Boundaries. Beginning at Lat. 30°50'00" N., Long. 98°10'00" W.; to Lat. 31°30'00" N., Long. 98°10'00" W.; to Lat. 31°30'00" N., Long. 97°46'00" W.; to Lat. 31°07'00" N., Long. 97°45'30" W.; to Lat. 30°50'00" N., Long. 98°03'30" W.; to point of beginning, excluding R-6302A/B/C 18,000 feet MSL and below, and airspace within 5 NM radius of Fort Hood AAF (31°08'15" N., 97°42'50" W.), within 5 NM radius of Hood, Tex., VOR. The airspace 1,200 feet and below within 3 NM of all airports is excluded.

Designated altitudes. 100 feet AGL to and including FL 250.

Time of designation. Intermittent, 0600 to 0001 local time, April 5, 1979, through April 13, 1979.

Controlling agency. Federal Aviation Administration, Houston ARTC Center.

Using agency. U.S. Air Force Tactical Air Command/USAF Readiness Command (TAC/USAFRED), Langley Air Force Base, Va. 23665.

R-6303D BRAVE SHIELD 19, Tex.

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Boundaries. Beginning at Lat. 31°03'15" N., Long. 99°16'00" W.; to Lat. 31°18'15" N., Long. 99°16'00" W.; to Lat. 31°20'45" N., Long. 99°14'00" W.; to Lat. 31°20'45" N., Long. 99°07'45" W.; to Lat. 31°25'30" N., Long. 98°45'45" W.; to Lat. 32°03'00" N., Long. 98°49'00" W.; to Lat. 32°03'00" N., Long. 97°52'45" W.; to Lat. 31°48'15" N., Long. 97°46'00" W.; to Lat. 31°30'00" N., Long. 97°46'00" W.; to Lat. 31°30'00" N., Long. 98°10'00" W.; to Lat. 30°50'00" N., Long. 98°10'00" W.; to Lat. 30°50'00" N., Long. 98°30'30" W.; to Lat. 30°55'00" N., Long. 98°52'00" W.; to point of beginning. The airspace 1,200 feet AGL and below within 3 NM of all airports is excluded.

Designated altitudes. 500 feet AGL to and including FL 250.

Time of designation. Intermittent, 0600 to 0001 local time, April 5, 1979, through April 13, 1979.

Controlling agency. Federal Aviation Administration, Houston ARTC Center.

Using agency. U.S. Air Force Tactical Air Command/USAF Readiness Command (TAC/USAFRED), Langley Air Force Base, Va. 23665.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65.)

NOTE.—The FAA has determined that this document involves a regulation which is not significant under the procedures and criteria prescribed by Executive Order 12044 and implemented by interim Department of Transportation guidelines (43 FR 9582; March 8, 1978).

Issued in Washington, D.C., on November 8, 1978.

WILLIAM E. BROADWATER,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 78-31942 Filed 11-9-78; 8:45 am]

[4410-05-M]

DEPARTMENT OF JUSTICE

Federal Prison Industries

[28 CFR Part 301]

INMATE ACCIDENT COMPENSATION

Proposed Changes in Compensation Awards

AGENCY: Federal Prison Industries, Justice.

ACTION: Proposed rules.

SUMMARY: This document contains proposed rules governing compensation awards paid to former Federal prison inmates for injuries sustained while working in prison. These proposals are primarily intended to clarify existing regulations, and to: (1) Insure more complete documentation of work-related injuries to inmates; (2) clarify that awards are based on physical impairment rather than disability; (3) provide guidance as to those injuries considered work-related and thus potentially compensable, and (4) eliminate a current regulation providing for suspension of compensation awards upon reincarceration.

COMMENT DATES: Comments on proposed changes must be received on or before January 22, 1979.

FOR FURTHER INFORMATION CONTACT:

Curtis Sitterson, Office of General Counsel, Bureau of Prisons, phone 202-724-3062

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Attorney General by 18 U.S.C. 4126 and delegated by the Attorney General under 28 CFR § 0.99 and by the Board of Directors of Federal Prison Industries, Inc., it is proposed to amend Part 301 of Chapter III of Title 28, Code of Federal Regulations, in several areas, as set forth below.

(1) It is proposed to amend 28 CFR § 301.1 in order to more specifically delineate the scope of part 301.

(2) Under the current 28 CFR § 301.4, only those injuries resulting in "disability" must be reported by the work detail supervisor. This has resulted in inadequate documentation of some injuries which at first appear to be minor, but later result in possible physical impairment. It is therefore proposed to amend § 301.4 by requiring all injuries to be reported. Along the same lines, it is proposed to amend this section by requiring further documentation in all cases where medical treatment is provided, whether provided by a physician or not. It is proposed to amend § 301.3 to clarify the fact that the work supervisor, not the inmate, is responsible for submitting documentation of a work injury once it has been reported by the inmate. It is proposed to amend § 301.5(a) to insure that inmates being transferred to community treatment centers, in addition to those being released, are advised of their right to file for compensation and given appropriate medical examinations. It is also proposed to amend § 301.5(b) to indicate that claims should be forwarded to the claims examiner, Federal Prison Industries, Inc., and not the Office of General Counsel of the Bureau of Prisons.

(3) Under current 28 CFR § 301.21, awards in all cases are based on the minimum wage prescribed by the Fair Labor Standards Act applicable at the time of each periodic payment. Awards are not based on the wages earned by the former inmate in his most recent or predominant area of employment, if any. In spite of this fact, several provisions in part 301 governing inmate accident compensation make reference to awards being based on "disability". This may be interpreted to mean that awards are based not on minimum wage, but rather on the effect of the injury on the work skills, work capacity, and wages earned by the claimant. In fact, awards are based on "physical impairment" which is an objective measure of an anatomic or functional abnormality or loss resulting from an injury.

It is therefore proposed to amend 28 CFR §§ 301.2, 301.4, 301.5, 301.10, 301.21, and 301.24 (as renumbered below) by deleting reference to "disability" and substituting when appropriate "impairment" as a basis in determining awards. There are several reasons for this proposal. First, and most importantly, it would be very difficult, if not impossible in many cases, to make an accurate reliable determination of a former inmate's "disability". As many former inmates were incarcerated for long periods of time and as many had no legitimate employment or means of income prior to incarceration, there is often no evidence to indicate what the claimant's profession or work skills really are. The work performed by the claimant while incarcerated also may bear no relation to the work he or she might seek after release. Consequently, we have concluded that a compensation program based on "disability" could well result in widely divergent, fundamentally inequitable awards. An added factor in our conclusion to base awards on impairment is the added administrative costs which would have to be devoted to keeping constantly updated information concerning each claimant's changing employment and resultant disability ratings.

(4) Under current regulations, little guidance is provided as to which injuries are considered "work-related" and which are not. It is therefore proposed to amend 28 CFR § 301.9 to provide greater direction in this regard. The proposed amendments to this section are basically self-explanatory. It should be noted that the proposal to exclude injuries suffered off the job site coming to and going from work or lunch differs from many Workmen's Compensation laws. This difference is, we believe, supported by the nature of a prison work environment. We see no reason why an inmate worker should receive greater accident compensation coverage going to work or lunch than does an inmate student going to school or lunch. An inmate's status as a worker in no way increases his chance of injury off the job site or affects the basic fact that as an incarcerated individual, he generally spends all his nonworking time within the confines of a correctional institution. This situation can be distinguished from the situation where civilian employees must sleep or have their meals on their employer's property due to the nature of their employment. Under this proposal, injuries suffered while "off the job" may be compensable, if at all, pursuant to private insurance coverage, the Federal Tort Claims Act, or other provision of law.

(5) It is proposed to amend § 301.22(a) to indicate that payments usually begin about the first, instead of the tenth, day of the first month following the month in which the award is effective.

(6) Current 28 CFR § 301.23 provides that compensation awards are generally suspended upon reincarceration of the claimant. This provision is based in part upon the assumption that Inmate Accident Compensation is intended to compensate for loss of wage earning capacity. As an incarcerated individual generally has little or no immediate wage earning capacity and is provided with basic necessities such as room and board by the detaining authority, suspension of disability payments may well be justified. However, since this program is intended to compensate for physical impairment, as set forth above, there is less reason to suspend payment upon reincarceration. An added factor in our conclusion that payments should not be suspended is the administrative costs which have been incurred in the past in attempting to maintain on-going records concerning a claimant's reincarceration. It is therefore proposd to eliminate current 28 CFR § 301.23 and renumber subsequent sections accordingly.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Associate Commissioner, Federal Prison Industries, Inc., 320 First Street NW., Washington, D.C. 20534. Comments received on or before January 22, 1979, will be considered before final action is taken on these proposals. Copies of all written comments received will be available for examination by interested persons at Federal Prison Industries, Room 508, 320 First Street NW., Washington, D.C. 20534. The proposals may be changed in light of comments received. No oral hearings are contemplated.

In consideration of the foregoing, it is proposed to amend 28 CFR, Chapter III as follows:

PART 301—INMATE ACCIDENT COMPENSATION

1. By revising §§ 301.1 through 301.5 to read as follows:

§ 301.1 Purpose and scope.

This part contains procedures governing payment of accident compensation awards to former Federal prison inmates, for injuries sustained while working in Federal Prison Industries, Inc., or in the operation or maintenance of a Federal correctional institution as authorized by 18 U.S.C. 4126. This part also contains procedures governing payment of "lost-time wages" to current inmates working in Federal Prison Industries, Inc., who are absent from work due to work-related injuries (see 28 CFR 301.10). "Injury", as used in this part, is defined to include illness, as work-related illnesses are compensable to the same extent as work-related injuries.

§ 301.2 Medical attention.

Whenever an inmate worker is injured while in the performance of assigned duty, regardless of how trivial the injury may appear, he shall immediately report the injury to his official superior. The employee will take whatever action is necessary to secure for the injured such first aid, medical, or hospital treatment as may be necessary for the proper treatment of the injury. Medical, surgical, and hospital service will be furnished by the medical staff of the institution. Refusal by an inmate worker to accept such medical, surgical, hospital, or first aid treatment may cause forfeiture of any claim for accident compensation for physical impairment resulting therefrom.

§ 301.3 Record of injury and initial claim.

After initiating necessary action for medical attention the work detail supervisor shall immediately secure a record of the cause, nature, and exact extent of the injury, and shall see that the injured inmate submits within 48 hours sufficient information for the supervisor to complete administrative form 19, Injury Report (Inmate). The names and testimony of all witnesses shall be secured. If the injury resulted from the operation of mechanical equipment, an identifying description of the machine or instrument causing the injury shall be given.

§ 301.4 Report of injury.

(a) All injuries reported by the inmate shall be reported by the inmate's work detail supervisor on administrative form 19, Injury Report (Inmate). After review by the institution safety officer, or his appointed representative, for completeness, the report shall be delivered to the warden or superintendent of the institution, and then forwarded promptly to the safety administrator in the Washington office. All questions on form 19 shall be answered in complete detail. A medical description of the injury must be included on administrative form 19 whenever the injury is such as to require medical attention.

. . . . . .

§ 301.5 Prerelease claim for compensation.

(a) As soon as a date release or transfer to a community treatment center is determined, but not in advance of 30 days prior to this date, each inmate injured in industries or on an institutional work assignment during his confinement, who feels he or she has a residual impairment from a work related accident, shall be given FPI form 43 revised, and advised of his rights to make out his claim for compensation. Every assistance will be given him to properly prepare the claim if he wishes to file. Claims must be made within 60 days following release from the institution when circumstances preclude submission prior to release. However, a claim for physical impairment may be allowed within 1 year after release from Federal custody, for reasonable cause shown. In each case a physical examination shall be given and a definite statement made as to the physical impairment caused by the alleged injury.

Failure to submit to a final physical examination before release or transfer to a community treatment center shall result in the forfeiture of all rights to compensation and future medical treatment. In each case of visible impairment, disfigurement, or loss of member, photographs shall be taken to show the actual condition and shall be transmitted with FPI form 43.

(b) The claim, after preparation and execution by the inmate, shall be completed by the physician making the final examination. It shall be forwarded promptly to the Claims Examiner, Federal Prison Industries, Inc., Washington, D.C., accompanied by, or with reference made to, form 19, Injury Report (Inmate).

2. By revising §§ 301.9 and 301.10 to read as follows:

§ 301.9 Compensable and noncompensable injuries.

Compensation is basically paid for "on the job" injuries. This includes not only injuries suffered on an inmate's regular work assignment, but also those injuries resulting from voluntary work, approved by staff, in the operation and maintenance of the institution. Compensation is not paid, however, for injuries resulting from participation in institutional programs (such as programs of a social, recreational, or community relations nature) or from maintenance of one's own living quarters. Furthermore, compensation will not be paid for injuries suffered away from the work location, e.g., while the claimant is going to or leaving work or going to or

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coming from lunch outside of the work station or area.

Injuries sustained by inmate workers willfully or with intent to injure someone else, or injuries suffered in any activity not related to their work assignment are not compensable, and no claim for compensation for such injuries will be considered. Any injury resulting from willful violation of rules and regulations may prevent award of compensation.

§ 301.10 Compensation for lost time.

No accident compensation will be paid for compensable injuries while the injured inmate remains in custody. However, inmates assigned to industries will be paid wages for the number of regular work hours in excess of three consecutive inmate mandays they were absent from work because of injuries suffered while in the performance of their work assignments. The rate of pay shall be 66⅔ percent of the standard hourly rate for the grade if the injured is not helping to support dependents, and 75 percent of the standard hourly rate if the injured is helping to support dependents. No claim for compensation will be considered if full recovery occurs while the injured is in custody and no significant impairment remains after release.

3. By revising §§ 301.21 and 301.22 to read as follows:

§ 301.21 Establishing the amount of the award.

In determining the amount of accident compensation to be paid consideration will be given to the permanency and severity of the injury in terms of temporary and permanent physical impairment. The provisions of the Federal Employees' Compensation Act shall be followed when applicable. The minimum wage prescribed by the Fair Labor Standards Act applicable at the time of each periodic payment shall be used as the wage basis in determining the amount of such compensation. In no event shall compensation be paid in greater amount than that provided in the Federal Employees' Compensation Act. (Title 18, United States Code § 4126.)

§ 301.22 Time and method of payment of compensation claim.

(a) Upon determination of the amount of compensation to be paid, a copy of the award will be furnished the claimant and monthly payments will usually begin about the first day of the month following the month in which the award is effective. Payments shall normally be made through the office of the U.S. probation officer of the district in which the claimant resides. When the amount of the award exceeds $500 lump sum payments will rarely be made, and only in exceptional cases where it is clearly shown to be beneficial and necessary for the support of the claimant or dependents.

* * * * *

§ 301.23 [Deleted]

4. By deleting § 301.23 and renumbering subsequent sections accordingly.

5. By revising § 301.24 (as renumbered) to read as follows:

§ 301.24 Civilian compensation laws distinguished.

Compensation awarded hereunder differs from awards made under civilian workmen's compensation laws in that hospitalization is usually completed prior to the inmate's release from the institution and, except for a 3-day waiting period, the inmate receives wages while absent from work. Other factors necessarily must be considered that do not enter into the administration of civilian workmen's compensation laws. As in the case of Federal employees who allege they have sustained work-related injuries, the burden of proof lies with the claimant to establish that his claimed impairment is causally related to his assigned institution employment.

(18 U.S.C. 4126, 28 CFR 0.99 and by Board of Directors of Federal Prison Industries, Inc.)

Dated: November 6, 1978.

NORMAN A. CARLSON,
Commissioner, Federal Prison Industries, Inc.

[FR Doc. 78-31876 Filed 11-9-78; 8:45 am]

[6732-01-M]

FEDERAL MEDIATION AND CONCILIATION SERVICE

[29 CFR Part 1404]

ARBITRATION SERVICES

Availability of Draft Proposed Regulation

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Availability of draft proposed regulation.

SUMMARY: This notice announces the availability of a draft proposed regulation regarding arbitration services. It is possible that this draft will be used in the formulation of proposed regulations relating to arbitration services. Copies will be sent to interested persons upon requests.

FOR FURTHER INFORMATION CONTACT:

David Vaughn, Assistant General Counsel, 202-653-5305.

ADDRESS: Request for copies should be sent to the General Counsel, Federal Mediation and Conciliation Service, 2100 K Street NW., Washington, D.C. 20427.

SUPPLEMENTARY INFORMATION: Part 1404 of title 29, CFR contains the Federal Mediation and Conciliation Service (FMCS) rules concerning th FMCS Arbitration Services program, standards of eligibility of arbitrators for admission to and retention on the roster, procedures for obtaining arbitration services, guidelines for the conduct of proceedings, and the procedures for administrative action regarding arbitrators on the roster.

During the past 18 months, the Arbitration Services Advisory Committee of FMCS and the Service itself have reviewed the existing regulation and have made suggestions for change to respond to the changing needs of the labor-management community. These suggestions have been incorporated in a draft proposed regulation.

It is anticipated that the draft will be used as the basis of a proposed regulation which will be published in the FEDERAL REGISTER in the near future for a 60-day period of public comment. This will, however, announce the present availability of the draft which will be used as the basis of that notice. The draft will be sent on request made to the Office of the General Counsel, Federal Mediation and Conciliation Service, 2100 K Street NW., Washington, D.C. 20427. For further information please contact David Vaughn, Associate General Counsel, 653-5305.

ROBERT P. GAJDYS,
Director of Administration.

[FR Doc. 78-31799 Filed 11-9-78; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 65]

[FRL 999-4]

STATE AND FEDERAL ADMINISTRATIVE ORDERS PERMITTING A DELAY IN COMPLIANCE WITH STATE IMPLEMENTATION PLAN REQUIREMENTS

Proposed Approval of an Administrative Order Issued by the Spokane County Air Pollution Control Authority to Suntex Veneer—Division of Boise Cascade

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve an administrative order issued by the Spokane County Air Pollution Control Authority (SCAPCA) to Suntex Veneer after a 30-day notice and public hearing. The order requires the company to bring air emissions from its plywood plant in Spokane, Wash., into compliance with certain regulations contained in the federally approved Washington State implementation plan (SIP) by July 1, 1979. Because the order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by EPA before it becomes effective as a delayed compliance order under the Clean Air Act (the Act). If approved by EPA, the order will constitute an addition to the SIP. In addition, a source in compliance with an approved order may not be sued under the Federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the order. The purpose of this notice is to invite public comment on EPA's proposed approval of the order as a delayed compliance order.

DATE: Written comments must be received on or before, December 13, 1978.

ADDRESS: Comments should be submitted to Director, Enforcement Division, EPA, Region 10, 1200 Sixth Avenue, Seattle, Wash. 98101. The State order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT:

Mr. Kenneth D. Brooks, Environmental Protection Agency M/S 513, 1200 Sixth Avenue, Seattle, Wash. 98101, telephone 206-442-1387.

SUPPLEMENTARY INFORMATION: Suntex Veneer operates a plywood plant at Spokane, Wash. The order under consideration addresses emissions from two veneer driers at the facility, which are subject to WAC 18-04-040. The regulation limits the emissions of particulate matter, and is part of the federally approved Washington State implementation plan. The order requires final compliance with the regulation by July 1, 1979. The source is unable to comply with the requirements of the Washington State implementation plan at this time and has consented to the terms of the order. The source has satisfied the increments due contained in the order.

Because this order has been issued to a major source of particulate emissions and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a delayed compliance order under section 113(d) of the Clean Air Act (the Act). EPA proposes to approve the order because it satisfies the appropriate requirements of this subsection.

The elements of the appropriate paragraphs of subsection 113(d) are met in the following resolution and order and administrative order supplement issued to Suntex Veneer by Spokane County Air Pollution Control Authority, including subsection 113(d)(7): The Regional Administrator has determined that the interim requirements are reasonable and practicable, provide for the use of the best practicable system of emission reduction, are necessary to avoid an imminent and substantial endangerment to the health of persons, and assure compliance with WAC 18-04-040 visual emission requirements, a part of the federally approved washington State implementation plan insofar as Suntex Veneer is able to comply during the period this order is in effect.

SPOKANE COUNTY AIR POLLUTION CONTROL AUTHORITY—SEPTEMBER 19, 1978

Mr. Wallace N. Cory, P. E., Environmental Manager, Environmental and Energy Services, Boise Cascade, P.O. Box 8328, Boise, Idaho 83707.

Subject: Administrative Order Supplement to Spokane County Air Pollution Control Authority Resolution 78-05 regarding Suntex Veneer, Spokane, Wash.

DEAR MR. CORY: This administrative order is in response to your letter of August 24, 1978, requesting that our compliance program for the Suntex Plant at Spokane Industrial Park be submitted to the Environmental Protection Agency so that it can be considered for a Federal Delayed Compliance Order.

In order to qualify for a DCO as delineated in section 113D, 42 U.S.C. 7401, The Federal Clean Air Act as amended August 17, 1977, your firm, Boise Cascade and its subsidiary, Suntex Veneer of Spokane, are notified that the following elements are added to Spokane County Air Pollution Control Authority Resolution 78-05 amended compliance schedule for Suntex Veneer:

1. Pursuant to Spokane County Air Pollution Control Authority Regulation I, § 6.02, the above-noted firm, Suntex Veneer, shall comply with the visual emission requirement of this section no later than July 1, 1979.

2. As directed in Resolution 78-05, Suntex Veneer shall report by letter the completion of each interim step in the compliance schedule. This report is to be submitted to SCAPCA within 15 days after each stage is completed.

3. Failure on the part of Suntex Veneer—Division of Boise Cascade, to achieve final compliance by July 1, 1979, may result in a requirement to pay a non-compliance penalty under section 120 of the Act. In the event of such failure, Suntex Veneer—Division of Boise Cascade, will be formally notified by EPA or its delegate of its noncompliance pursuant to section 210(b)(3) of the act and to any applicable regulation promulgated thereunder.

4. The monitoring requirements pursuant to section 113D are waived.

Our agency solicits your firm's cooperation for satisfactory completion of the program.

Sincerely.

FRED A. SHIOSAKI,
Director.

SPOKANE COUNTRY AIR POLLUTION CONTROL AUTHORITY

In the matter of approving the variance request submitted by Suntex Veneer, Division of Boise Cascade, Spokane Industrial Park, Spokane, Wash.

No. 78-05--RESOLUTION AND ORDER

Whereas, on the 6th day of June 1978, the Spokane County Air Pollution Control Authority Board of Directors had a meeting at which time the variance request submitted by Suntex Veneer, Division of Boise Cascade, Spokane Industrial Park, Spokane, Wash., was considered.

It appearing to the Board of Directors that the variance request submitted by Suntex Veneer, Division of Boise Cascade, is valid and timely and its denial would produce serious hardship without equal or greater benefits to the public, the emissions occurring or proposed to occur do not have short-term public health or safety effects and will enable them to comply with the Spokane County Air Pollution Control Authority, Regulation I and Regulation II, Now, Therefore,

Be it resolved by the Board of Directors of the Spokane County Air Pollution Control Authority that the Board approve the variance request submitted by Suntex Veneer, Division of Boise Cascade, Spokane Industrial Park, Spokane, Wash., which is attached hereto as Exhibit A and incorporated herein by reference.

1. Submit final control strategy—October 1, 1978.
2. Issue purchase order—December 1, 1978.
3. Initiate installation/construction—May 1, 1979.
4. Complete installation/construction—June 1, 1979.
5. Demonstrate compliance—July 1, 1979.

It is further ordered that Suntex Veneer, Division of Boise Cascade:

(1) Submit to the Spokane County Air Pollution Control Authority within 30 days following the December 1, 1978, deadline for the issuance of the above-referenced purchase order, a completed Notice of Construction and Application for Approval and Washington State Environmental Policy Act Environmental Checklist;

(2) Specify in the Notice of Construction equipment shipping dates from the factory and delivery dates to Suntex Veneer at the Spokane Industrial Park;

(3) Project in the notice of Construction based on equipment delivery dates, the time for commencing construction and installation if different from May 1, 1979;

(4) Submit a proposal for source testing prior to the completion of construction/installation of equipment.

And it is further ordered, That Suntex Veneer, Division of Boise Cascade, comply with the schedule herein adopted by resolution.

Be it further resolved, That the Board of Directors grant a variance to July 1, 1979.

NOV 13 1978 UMI

Approved by the Board of Directors of the Spokane County Air Pollution Control Authority this 6th day of June 1978.

D. J. SHERLOCK,
Chairman, Spokane County Air Pollution, Control Authority Board of Directors.

If the order is approved by EPA, source compliance with its terms would preclude Federal enforcement action under section 113 of the act against the source for violations of the regulation covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provision of the act (section 304) would be similarly precluded. If approved, the order would also constitute an addition to the Washington SIP. All interested persons are invited to submit written comments on the proposed order. Written comments received by the date specified above will be considered in determining whether EPA may approve the order. After the public comment period, the Administrator of EPA will publish in the FEDERAL REGISTER the Agency's final action on the order on 40 CFR Part 65.

(Authority: 42 U.S.C. 7413, 7601.)

Dated: October 20, 1978.

DONALD P. DUBOIS,
Regional Administrator, Region 10.

[FR Doc. 78-31609 Filed 11-9-78; 8:45 am]

[6820-23-M]

GENERAL SERVICES ADMINISTRATION

Public Buildings Service

[41 CFR Part 101-17]

FEDERAL FACILITIES AND SPACE

Improved Use

AGENCY: General Services Administration.

ACTION: Proposed rule.

SUMMARY: This proposed rule would provide Federal agencies with guidelines to use in establishing programs to improve their utilization of space and with criteria for developing and implementing programs to achieve economies in space utilization. This action is being taken at the direction of the Office of Management and Budget. The intended effect of this action is to reduce the total space utilization rate, which will result in significant annual savings or cost avoidance or both.

DATE: Comments must be received on or before December 28, 1978.

ADDRESS: Comments should be filed in duplicate with the Commissioner, Public Buildings Service, and should be addressed as follows: General Services Administration (P), Washington, D.C. 20405.

FOR FURTHER INFORMATION CONTACT:

James G. Whitlock, Director, Space Management Division, Office of Space Management, Public Buildings Service, General Services Administration, Washington, D.C. 20405. 202-566-1875.

SUPPLEMENTARY INFORMATION: By memorandum of July 27, 1976, GSA was directed by the Office of Management and Budget (OMB) to revise the Federal Property Management Regulations to reflect new space utilization standards and other requirements growing out of studies and reviews of agencies' space needs. In response to that directive, a proposed amendment was published in the FEDERAL REGISTER on January 4, 1977, for comment (42 FR 816). As a result of the comments received, particularly of the reporting requirements, the proposal was substantially revised and was republished for comments. This regulation deletes a reference to the Office of Operating Programs (OOP) as recipient of space requests in region 3 of GSA. OOP has been abolished and its functions have been transferred from the control of GSA central office to the Regional Commissioner, Public Buildings Service, Region 3. The amendment updates current organizational alinement and will insure that space requests are routed to the correct office. This regulation also provides for the substitution in nomenclature and actual use of space allocation standards in lieu of occupancy guides and provides procedures for Federal agencies for the development of work station requirements. By policy memorandum of November 14, 1975, the Commissioner, Public Buildings Service, rescinded the work station allowances contained in all occupancy guides. Since then, the concept of space allocation standards has been developed to replace the occupancy guides. This amendment reflects these changes and formalizes current GSA policy on providing space for work stations. This regulation further provides criteria for Federal agencies to use in developing and implementing programs to achieve economies in space utilization. This amendment outlines the major elements necessary for establishment of effective and responsible programs by agencies for improving the use of Federal space and, with the active participation and cooperation of Federal agencies, reducing the total space utilization rate to the extent that significant annual savings and/or cost avoidance can be realized.

The table of contents for part 101-17 is amended by adding or revising the following entries:

101-17.202-1 Agency space utilization programs.
101-17.302 Use of space allocation standards.
101-17.302-1 Development of work station requirements.

Subpart 101-17.1—Assignment of Space

Section 101-17.101(a) is revised to read as follows:

§ 101-17.101 Requests for space.

(a) Except as provided in § 101-17.101-2 Federal agencies shall satisfy their space needs (additions and deletions as identified in § 101-17.202-1 (d) and (e)) by submitting a Standard Form 81, Request for Space, to the GSA regional office responsible for the geographic area in which the space is required. A listing of GSA regional offices and the areas they serve is shown in § 101-17.4801.

* * * * *

Subpart 101-17.2—Utilization of Space

Section 101-17.202 is revised, and § 101-17.202-1 is added to read as follows:

§ 101-17.202 Responsibility of agencies.

It is the responsibility of Federal agencies to assist and cooperate with GSA in the assignment and utilization of space, including furnishing data relative to the use of space occupied, personnel and work stations housed or to be housed, and establishing agency programs to improve space use. It is the further responsibility of Federal agencies to insure efficient and economical space utilization by continuously studying and surveying space occupied under GSA assignment and other space which is controlled by the agencies. It is the responsibility of agencies to report to GSA any space which is excess to their needs and which might be assigned to other agencies.

§ 101-17.202-1 Agency space utilization programs.

Agencies shall establish internal programs for the improvement of space use. In developing and implementing such programs, the following minimum program elements should be included:

(a) Development of work station and administrative support requirements as described in § 101-17.302-1 shall be undertaken to prescribe efficient overall utilization and to develop space allocation standards in coordination with GSA to replace occupancy guides.

(b) Dissemination of internal guidelines for improving space utilization through space planning and work station design and the establishment of related training programs.

(c) A continuous review of outstanding space requests to insure that they have been submitted to GSA in accordance with the requirements of §§ 101-17.302-1, 101-17.304, or established space allocation standards.

(d) A continuous survey of existing space to: (1) Determine present utilization practices; (2) identify space that might be excessive to that needed for efficient performance of program requirements; and (3) determine the economic feasibility of releasing such space to GSA for possible reassignment.

(e) A continuous review of anticipated personnel and program changes to determine expected space requirements and provide accurate utilization data.

Subpart 101-17.3—Space Standards, Criteria, and Guidelines

1. Section 101-17.302 is revised, and § 101-17.302-1 ia added to read as follows:

§ 101-17.302 Use of space allocation standards.

Space allocation standards are defined in § 101-17.003-32. The objective is to promote more efficient operation and better utilization through development of work stations and administrative support space standards. These standards may be augmented by GSA to consider layout and circulation as defined in §§ 101-17.003-30 and 101-17.003-31.

§ 101-17.302-1 Development of work station requirements.

Development of work station requirements are set forth as follows:

(a) Defining and grouping distinct job categories within the organization;

(b) Determining the function of these job categories and their physical needs;

(c) Translating physical needs of those job categories into compact and efficient individual furniture work station standards and determining the square footage associated with each standard; and

(d) Consolidating the square footage needs into work station groups.

The sum of individual work station square footage standards or work station groups and support space requirements becomes the basis for the request for space.

2. Section 101-17.303(a) is revised to read as follows:

§ 101-17.303 Use of space allocation allowances.

(a) In the absence of either the documented work station analysis described in § 101-17.302-1 or an approved space allocation standard, the space allowances listed in §§ 101-17.304-1 and 101-17.304-2 shall be used in space planning for agencies and components thereof.

* * * * *

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).)

Dated: October 25, 1978.

JAMES B. SHEA, Jr.,
Commissioner, Public Buildings Service.

[FR Doc. 78-31788 Filed 11-9-78; 8:45 am]

[6820-24-M]

Federal Supply Service

[41 CFR Part 101-29]

FEDERAL TELECOMMUNICATIONS STANDARDS

AGENCY: General Services Administration.

ACTION: Proposed rule.

SUMMARY: Notice is hereby given that the General Services Administration (GSA) proposes to amend the Federal Property Management Regulations covering the exceptions to the mandatory use of Federal standards. Several conditions which allow deviations from Federal standards are not appropriate when applied to telecommunications systems because they undermine standards which emanate from Federal Telecommunications Standards program. This proposed regulation will add a separate FPMR section dealing exclusively with exceptions to the mandatory use of Federal telecommunications standards.

DATE: Comments are due on or before December 31, 1978.

ADDRESS: Written comments should be sent to General Services Administration (FAF), Washington, D.C. 20406.

FOR FURTHER INFORMATION CONTACT:

Mr. John I. Tait, Director, Regulations and Management Control Division, Office of the Executive Director, Federal Supply Service, General Services Administration, Washington, D.C. 20406, 703-557-1914.

It is proposed to amend the table of contents for part 101-29 to include the following entry:

§ 101-29.303 Exceptions to mandatory use of Federal telecommunications standards.

It is proposed to amend Subpart 101-29.3 by revising § 101-29.302 and by adding § 101-29.303 as follows:

Subpart 101-29.3—Standards

§ 101-29.302 Mandatory use of Federal standards.

Federal standards shall be used by all Federal agencies, including the Department of Defense. The exceptions in § 101-29.204 relating to the mandatory use of Federal specifications are applicable to Federal standards other than Federal telecommunications standards. Exceptions applicable to Federal telecommunications standards are provided in § 101-29.303. A Federal agency may be granted an exceptions to the use of Federal standards (other than Federal telecommunications standards) by GSA only upon submission of adequate justification to the General Services Administrations (F), Washington, D.C. 20406.

§ 101-29.303 Exceptions to mandatory use of Federal telecommunications standards.

Exceptions to mandatory use of Federal telecommunications standards may be granted by GSA only upon submission of adequate justification to the General Services Administration (C), Washington, D.C. 20405. Circumstances under which exceptions may be granted include, but are not limited to, the following:

(a) The items to be purchased are replacements or augmentation components of an existing system or equipment, the operational integrity or utility of which would be decreased by introduction of components meeting Federal telecommunications standards;

(b) The items are to be purchased in foreign markets for use by overseas activities of agencies;

(c) The items to be purchased are required for experimental or test and evaluation purposes;

(d) The purchase is required under a public exigency, and delay in obtaining agency requirements would be involved in using the applicable standard; and

(e) where otherwise authorized by law.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Dated: October 25, 1978.

WILLIAM P. KELLY, Jr.,
Commissioner, Federal Supply Service.

[FR Doc. 78-31792 Filed 11-9-78; 8:45 am]

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[4910-60-M]

DEPARTMENT OF TRANSPORTATION

Materials Transportation Bureau

[49 CFR Part 195]

[Docket No. PS 55; Notice 1]

TRANSPORTATION OF LIQUIDS BY PIPELINE

Testing Highly Volatile Liquid Pipelines

AGENCY: Materials Transportation Bureau, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: With certain exceptions, part 195 does not require liquid pipelines constructed before January 8, 1971, to be qualified for use by hydrostatic testing. Liquid pipelines have experienced accidents caused by latent material and construction defects which could have been prevented had such defects been discovered and removed through hydrostatic testing. This notice proposes to reduce the potential for severe liquid pipeline accidents by requiring a hydrostatic test in accordance with Subpart E on all onshore pipelines carrying highly volatile liquids (HVL) which have not been previously tested to at least 1.25 times their maximum operating pressure for at least 24 hours.

DATE: Comments must be received by February 15, 1979. Late filed comments will be considered as far as practicable.

ADDRESS: Comments should identify the docket and notice numbers and be submitted in triplicate to the Docket Branch, Materials Transportation Bureau, 2100 Second Street SW., Washington, D.C. 20590. Comments are available at docket room 6500.

FOR FURTHER INFORMATION CONTACT:

Frank Robinson 202-426-2549.

SUPPLEMENTARY INFORMATION:

Need for this proposal:

Accident reports on file with the Materials Transportation Bureau (MTB) covering the past 9 years show that highly volatile liquid (HVL) pipelines have caused a substantially higher percentage of deaths, injuries, and property damage than liquid pipelines carrying less volatile commodities. The record of liquid pipeline accidents reported on form DOT-7000-1 from 1968 through 1977 shows that although HVL pipeline accidents comprise only 10 percent of the total number of accidents involving liquid pipelines, the HVL accidents caused 66 percent of the deaths, 50 percent of the injuries and 30 percent of the property damage. These statistics clearly illustrate that an HVL spill presents a much higher risk to safety than spills of other liquids. This higher potential for damage is due to the fact that when HVL is released to the atmosphere it forms a gas cloud which is a markedly different and more insidious hazard than that presented by spills of less volatile liquids.

Inside the pipeline HVL will remain a liquid as long as the pressure is higher than the vapor pressure of the liquid. If a pipeline rupture occurs and the pressure is reduced to atmospheric, some of the liquid will immediately flash to gas. The remainder will turn to gas as it picks up heat from its surroundings. The gas forms a cloud that will move downhill or downwind depending on the terrain, type of liquid involved, and atmospheric conditions. Because it is generally heavier than air, the rapidly expanding gas cloud will tend to hug the ground as it continues to move. If a source of ignition is encountered a petroleum gas cloud will burn or explode. In the case of anhydrous ammonia, the greatest danger is that of toxicity or asphyxiation. For either commodity, the hazards are severe.

A definition of "highly volatile liquid" has been proposed for adoption under part 195 in notice 1 of docket No. PS-51 (43 FR 35513, August 10, 1978) but is repeated here for clarity: A "highly volatile liquid" or "HVL" means a liquid which has an absolute vapor pressure of 100 kPa (14.5 psi) or more at 37.8° C (100° F).

Analysis of the liquid pipeline accidents reported on Form DOT-7000-1 shows that one-tenth of the accidents during the years 1968 through 1977 were caused by defective pipe seams, defective girth welds, and defective pipe materials. These types of defects should have been found during an original hydrostatic test. However, some pipelines in HVL service under part 195 either have not been hydrostatically tested or have not been hydrostatically tested adequately.

A review by MTB of 2,883 liquid pipeline carrier accident reports (DOT form 7000-1) selected from submissions between 1968 and the first quarter of 1977 showed that 1,364 (47 percent) of the pipelines involved had not been hydrostatically tested. Of those that had been tested, 476 (31 percent) had a test period of 4 hours or less. While not all the reports examined involved HVL pipelines, MTB finds it reasonable to conclude that a substantial number of HVL pipelines have not been either hydrostatically tested or subjected to a sufficiently rigorous hydrostatic test.

The value of an adequate hydrostatic test is well stated in the study "Transportation of Highly Volatile, Toxic, or Corrosive Liquids by Pipeline" (DOT/OPSO/75/06) by Battelle Columbus Laboratories. On page 52 this study states:

"Field Hydrostatic Test. The ultimate test for basic structural integrity of a pipeline is the field hydrostatic tests* * * within thousands of miles of pipelines tested to stress levels of 90 percent of SMYS, or more, and subsequently operated at a stress level of 72 percent of SMYS there have been no ruptures resulting from original manufacturing or construction defects. This operating experience strongly suggests that of all the steps an operator can take to insure that his pipeline is initially free of harmful defects, high-pressure hydrostatic testing in the field (to 90 percent of SMYS or more) is the only one that has demonstrated a successful track record. The benefits of such testing are accrued in rehabilition testing existing lines, as well as in new pipelines."

OBJECTIVE

Pipelines constructed before January 8, 1971, the effective date of subpart E of part 195, are currently not required to be qualified for use by hydrostatic testing. Although qualification testing was proposed in notice 68-4 (33 FR 10213), the proposal was withdrawn when part 195 was adopted (34 FR 15473), primarily on cost-benefit grounds. In view of the HVL accident record, MTB now believes, however, that hydrostatically testing existing onshore HVL pipelines which have never been tested to the level provided by part 195 for new pipelines or existing pipelines which are changed would be justified by the benefits achieved. By preventing failures due to latent material and construction defects and other defects that would appear during hydrostatic testing, the potential for HVL accidents can be significantly reduced. Therefore, this notice proposes to amend subpart E to require that carriers perform a hydrostatic test in accordance with subpart E on each onshore steel pipeline carrying a highly volatile liquid which has not been previously tested to at least 1.25 times its maximum operating pressure for at least 24 hours. The proposed rulemaking is applicable only to onshore pipelines in the belief that an accidental release of HVL from offshore pipelines would not pose the same hazard as a spill onshore.

ISSUES

To comply with this proposed rulemaking the affected pipelines would have to be taken out of service temporarily. However, MTB believes that the relatively high potential for destructive consequences of future HVL pipeline accidents due to latent defects justifies the costs involved.

MTB recognizes that compliance with this proposal might not be equitable for all carriers. Carriers who transport HVL on an occasional basis would be required to hydrostatically test the same as those carriers who transport HVL continuously. Comment on this issue is specifically requested.

There is also the issue of these inadequately tested HVL pipelines which have not yet experienced leaks due to material or construction defects. Should they be subjected to the same testing requirements as similarly constructed HVL pipelines that have had leaks? MTB believes they should be so tested because of the time it takes for a latent defect to surface. Comment is requested.

MTB recognizes that a substantial amount of work would have to be done by those carriers affected by this proposed rulemaking to meet the proposed hydrostatic testing requirement. Consequently, MTB requests comments regarding what an appropriate time period for compliance should be.

Under the text of the proposed amendment set forth hereafter, a carrier would have to test an existing HVL pipeline in accordance with subpart E unless the carrier can demonstrate by "appropriate records" that the pipeline previously was tested to at least 1.25 times its maximum operating pressure for at least 24 hours. Since testing records for pipeline constructed before January 8, 1971, may vary from carrier to carrier, to insure uniform application of the proposed testing requirement, MTB is considering making the proposed proof of adequate prior testing more definitive in the final rule. Thus, comments are requested regarding the types of records that are available that would suffice as appropriate evidence of prior testing. Also, commenters should consider whether any form of proof other than records would satisfactorily show adequate prior testing of a pipeline. It is important to note that under this proposal, carriers who do not have "appropriate records" of prior testing, or proof as it may be further defined in the final rule, would have to retest the HVL pipelines involved in accordance with subpart E.

ALTERNATIVE

The use of electronic detection equipment to detect latent defects was considered in lieu of hydrostatic testing. MTB believes that hydrostatic testing provides better proof of the structural integrity of a pipeline system. Comment on the use of electronic detection equipment as a substitute for or an adjunct to hydrostatic testing is specifically requested.

NOTE.—MTB has determined that this document does not contain a major proposal requiring preparation of a regulatory analysis under DOT procedures.

CHANGES TO REGULATIONS

In consideration of the foregoing, MTB proposes to amend part 195 of title 49 of the Code of Federal Regulations as follows:

1. By revising § 195.300 to read as follows:

§ 195.300 Scope.

This subpart prescribes minimum requirements for hydrostatic testing of existing onshore steel pipeline systems transporting highly volatile liquids, newly constructed steel pipeline systems, and for hydrostatic testing of existing steel pipeline systems that are relocated, replaced, or otherwise changed. However, this subpart does not apply to movement of pipe covered by § 195.424.

2. By redesignating the present § 195.302(b) as § 195.302(c) and adding a new § 195.302(b) to read as follows:

§ 195.302 General Requirements.

. . . . . .

(b) An onshore pipeline constructed before January 8, 1971, transporting a highly volatile liquid must be hydro<statically tested in accordance with this subpart without leakage unless the carrier demonstrates by appropriate records that the pipeline has been hydrostatically tested to at least 1.25 times its maximum operating pressure for at least 24 hours.

. . . . . .

(18 U.S.C. 831-835, 49 U.S.C. 1655, 49 CFR 1.53(b), appendix A of part 1 and paragraph(b)(1) of appendix A to part 106.)

Issued in Washington, D.C., on November 7, 1978.

LUCIAN M. FURROW,
Acting Associate Director for Pipeline Safety Regulation.

[FR Doc. 78-31759 Filed 11-9-78; 8:45 am]

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notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

[6050-01-M]

ACTION

IMPROVING GOVERNMENT REGULATIONS

Response to Executive Order 12044

AGENCY: ACTION.

SUMMARY: On May 24, 1978, ACTION published for comment in the FEDERAL REGISTER (43 FR 22325) its draft report, improving ACTION regulations, response to Executive Order 12044, improving Government regulations.

The draft report included procedures for developing new regulations pertaining to grants and analyzing their potential impact, revising existing outdated or burdensome grant-related regulations, and increasing public participation in the development of such regulations. Criteria for classifying new regulations as major, significant, or nonsignificant were also included.

Comments were received from the U.S. Department of Justice Task Force on Sex Discrimination which recommended two (2) amendments to the draft report directed at the elimination of unequal treatment based on sex. These recommended changes as well as others offered by various ACTION employees, have been incorporated into the final report.

The final report, as approved by the Office of Management and Budget, is divided into two (2) sections, Background and Implementation.

FOR FURTHER INFORMATION CONTACT:

Harry N. MacLean, General Counsel, ACTION, Room M-607, 806 Connecticut Avenue NW., Washington, D.C. 20525, 202-254-3116.

I. BACKGROUND

In the Executive Order the President directed each Executive Agency to improve existing and future regulations so that they are clear, effective, efficient, and not unnecessarily burdensome. The Director of ACTION supports the objectives of the Executive order, especially the objective of providing for early and meaningful public participation in the development of ACTION regulations.

Public awareness of and participation in ACTION programs focuses on the agency's assignment of Volunteers in Service to America (VISTA) to public agencies and private nonprofit organizations, the award of grants to operate Older American Volunteer programs (OAVP) to such agencies and organizations, and the assignment of Peace Corps Volunteers for service abroad.

ACTION's proposals for improving its regulations emphasize the goals of early participation by interested members of the public in the development of clearly written regulations.

For purposes of the report, "regulations" include advance notices of proposed rulemaking, proposed regulations, final regulations, and guidelines which are published in the FEDERAL REGISTER.

II. IMPLEMENTATION

This report outlines ACTION's response to section 5 of the Executive Order, Implementation. In accordance with the requirements of section 6 of the Executive Order, Coverage, this report covers regulations concerning grants awarded by ACTION. Regulations concerning volunteers are exempt from coverage under section 6.(b)(3), as they are matters related to agency management and personnel.

The proposals are divided into the four (4) areas described in section 5.

1. A brief description of the process for developing regulations and the changes that have been made to comply with the Executive Order.

In the past, ACTION has used an informal process to develop regulations. The agency has set up a process in which:

a. Employees responsible for initiating and implementing agency programs and policies propose to the working group a regulation and indicate whether they consider the proposed regulation significant;

b. The working group, composed of representatives of the Office of Policy and Planning, the Office of Administration and Finance, the Office of General Counsel, the Office of Compliance, the Office of Domestic and Anti-Poverty Operations, and the relevant program office (VISTA and OAVP within Domestic and Anti-Poverty Operations, Policy and Planning, Voluntary Citizen Participation), evaluates the proposed regulation to determine whether a regulation is necessary to accomplish the stated purpose, to examine alternatives to the issuance of the proposed regulation, and to determine its potential effect on agency policy and the public;

c. (1) If the working group finds that the proposed regulation is significant, it is forwarded to the Director of ACTION for review and comment. If the Director disagrees with the working group's finding that the proposed regulation is significant, the Director's finding of nonsignificance shall prevail and the proposed regulation shall be developed in accordance with the procedures for nonsignificant regulations, set forth in c.(3). If the Director concurs with the working group's finding that the proposed regulation is significant, a notice and brief synopsis of the proposed regulation are then published in the FEDERAL REGISTER for a 60-day comment period. The notice also provides dates and locations for open meetings in ACTION's ten (10) regions at which interested members of the public may submit oral and/or written comments.

Comments are also solicited from State and local governments and their representative organizations through publication of the notice in their trade journals; and from others through inclusion of the notice in ACTION publications delivered to volunteers and current sponsors.

Any individuals and private nonprofit organizations that wish to receive such notices should submit their names and addesses to ACTION, Office of Recruitment and Communications, 806 Connecticut Avenue NW., Washington, D.C. 20525, so that a mailing list for distribution of these notices may be created;

(2) If the working group finds that the proposed regulation is significant, but that an interim regulation effective immediately is necessary to prevent disruption of an agency program, a notice, brief synopsis, and the interim regulation are published in the FEDERAL REGISTER, as well as the trade journals and ACTION publications described above for the 60-day comment period. The notice explains how the program would be disrupted without the interim regulation. Dates and locations for the open meetings are also included;

(3) If the working group finds that the proposed regulation is not significant, a notice providing for a 30-day comment period and explaining why the proposed regulation is not deemed

significant is published in the FEDERAL REGISTER as well as the trade journals and ACTION publications described above;

d. The Director of Communications, or designee, reviews and edits the proposed regulation to ensure that it is clearly and simply written;

e. The General Counsel, or designee, reviews the proposed regulation to ensure that it is legally sufficient, free of substantive and terminological sex-based criteria, consistent with agency policy, and, if relevant, that it includes reasonable timetables for compliance;

f. After the meetings or at the end of the comment period, the working group, the Director of Communications, or designee, and the General Counsel, or designee, review the proposed regulation and the comments received; if previously deemed insignificant, it is forwarded to the Director of ACTION, or designated program official, with information sufficient to determine:

(1) Whether there is a need for such a regulation;

(2) The direct and indirect effects of such a regulation;

(3) Whether the issuance of such a regulation is the least burdensome of the alternatives considered;

(4) Whether public comments have been considered and responded to adequately;

(5) Whether the regulation is written in plain English and is understand<able to those who must comply with it;

(6) Whether an estimate has been made of the new reporting burdens and recordkeeping requirements necessary for compliance with it;

(7) Whether the name, address, and telephone number of a knowledgcable agency official is included in the publication; and

(8) Whether a plan for evaluating the final regulation after its issuance has been developed by the Office of Policy and Planning;

g. When the Director, or designee, is satisfied that the regulation meets the criteria under paragraph f., he/she signs the regulation and it is published as a final regulation in the FEDERAL REGISTER. If the Director finds that 1 or more of the 8 criteria have not been met, he/she returns it to the working group for further information or investigation necessary to satisfy him/her that the regulation meets all 8 criteria;

h. If previously deemed nonsignificant by the working group and/or the Director, the proposed regulation is not forwarded to the Director; instead, it is forwarded to the responsible official for signature prior to publication as a final regulation in the FEDERAL REGISTER.

2. The criteria for defining significant regulations. An ACTION regulation concerning grant eligibility, grant requirements, or other grant-related factors, is considered significant if it falls within one or more of the following categories:

a. The regulation causes substantial public interest or controversy;

b. The regulation affects an important agency policy or program;

c. The regulation affects the rights of individuals;

d. The regulation imposes substantial compliance and reporting requirements.

3. The criteria for identifying which regulations require regulatory analysis.

ACTION does not issue regulations with major economic consequences which will result in: (a) An annual effect on the economy of $100 million or more; or (b) a major increase in costs or prices for individual industries, levels of government, or geographic regions. Therefore, no criteria are established. If, in the Director's discretion, a regulatory analysis becomes necessary, ACTION will establish and publish criteria at that time.

4. The criteria for selecting existing regulations to be reviewed and a list of regulations that the agency will consider for its initial review.

a. ACTION's criteria for selecting existing grant-related regulations to be reviewed are the same as those for defining significant regulations:

(1) The regulation causes substantial public interest or controversy; or

(2) The regulation affects an important agency policy or program; or

(3) The regulation affects the rights of individuals; or

(4) The regulation imposes substantial compliance and reporting requirements.

b. ACTION will consider for its initial review the following regulations:

(1) 45 CFR § 1209.2-3, Retired Senior Volunteer program (RSVP) cost sharing. This regulation section sets forth required percentages of local cost sharing for ACTION-funded RSVP grants. The agency proposes to modify the cost sharing policy and revise the local cost sharing requirement as it now appears in § 1209.2-3.

(2) 45 CFR Part 1222, Participation of Project Beneficiaries. This part provides the requirements for the meaningful participation of specified project beneficiaries in the planning, development, and implementation of project activities. ACTION proposes to review the requirements of this part as they affect project beneficiaries who receive assistance from the Office of Policy and Planning and Voluntary Citizen Participation to run demonstration grant programs.

c. In addition to reviewing existing published regulations, the working group will review the agency's internal directives that affect grant assistance and recipients to determine whether any such directives should be developed and published in accordance with the regulation development process described in this report.

d. ACTION will publish semi-annually an agenda of significant regulations under development or review. On the first Monday in October, ACTION will publish a schedule in the FEDERAL REGISTER showing the dates during the fiscal year when the semiannual agenda will be published. Each agenda will:

(1) Be approved by the Director, or designee, prior to publication;

(2) Describe the existing or proposed regulation being considered;

(3) Explain the need and legal basis for the action being taken;

(4) Contain the status of regulations previously listed on the agenda; and

(5) Include the name and telephone number of a knowledgeable agency official.

If ACTION receives comments on specified regulations in the agenda from State and local governments, their representative organizations, or private nonprofit organizations, ACTION will develop a plan for consultation with the appropriate organizations in the development of those regulations. Such consultation will be carried out in accordance with the Federal Advisory Committee Act.

The procedures and policies contained in this report, unless extended, will expire on June 30, 1980.

SAM BROWN,
Director, ACTION.

[FR Doc. 78-31818 Filed 11-9-78; 8:45 am]

[3410-05-M]

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

AGRICULTURAL CONSERVATION PROGRAM

Revised Advance Notice of Intent for Decisionmaking and Opportunity for Public Comment

SUMMARY: On October 13, 1978, advance notice of forthcoming decisions concerning certain aspects of the Agricultural Conservation Program (ACP) was given. These decisions relate to the implementation of the Agriculture, Rural Development, and Related Agencies Appropriations Act for fiscal year 1979 (Pub. L. 95-448). This Act provides that ACP assistance will not be used for carrying out measures and practices that are primarily production oriented or that have little or no conservation or pollution abatement benefits.

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Implementation of these provisions of the Act will be achieved through the establishment of: Criteria for determining the practices eligible for ACP assistance; guidelines for directing assistance toward situations in which practices can be expected to yield significant public soil or water conservation, or pollution abatement benefits; and, procedures to facilitate approval of solutions to local soil, water, or pollution abatement problems not addressed by practices thought to meet the national criteria.

The previous notice invited suggestions, comments or other inputs from the public and indicated that proposed criteria, guidelines, and procedures together with a preliminary list of practices thought to be consistent with the objectives of the program would be published on or about November 1. Public comment on the proposal was scheduled for 60 days following publication. Final criteria, guidelines, and procedures were to be published on or about January 1, 1979.

REVISIONS: Publication of the proposed criteria, guidelines and procedures to govern the ACP together with a list of practices thought to meet the proposed criteria is postponed until about November 14, 1978. Since the 1979 agricultural conservation program must be operational by January 1, 1979, the period during which public comments will be solicited on the proposed criteria, guidelines, and procedures has been reduced from 60 days to 30 days.

Publication of the final criteria, guidelines, and procedures to govern the 1979 agricultural conservation program together with a list of practices determined to meet the criteria is expected to occur on or about December 26, 1978 to become effective on January 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Gardner P. Smith, Deputy Director, Conservation and Environmental Protection Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20013, 202-447-5295.

Signed at Washington, D.C. on November 1, 1978.

WELDON B. DENNY,
Acting Administrator, Agricultural Stablization and Conservation Service.

[FR Doc. 78-31641 Filed 11-9-78; 8:45 am]

[3410-03-M]

Science and Education Administration

COMMITTEE OF NINE

Meeting

Pursuant to the Federal Advisory Committee Act, Pub. L. 92-463, notice is hereby given of a meeting of the Committee of Nine from 8:30 a.m. to 5 p.m., December 5, 1978, in the Conference Room, U.S. Department of Agriculture, Science and Education Administration, Agricultural Research, 701 Loyola Avenue, New Orleans, La.

The purpose of the meeting is to evaluate and recommend proposals for cooperative research on problems that concern agriculture in two or more States, and to make recommendations for allocation of regional research funds appropriated by Congress under the Hatch Act for research at the State agricultural experiment stations. The meeting is open to the public, and written statements can be filed with the committee before or after the meeting.

The names of the members of the committee, the agenda, minutes, and other information pertaining to the meeting may be obtained from the Recording Secretary, U.S. Department of Agriculture, Science and Education Administration, Cooperative Research, Washington, D.C. 20250, telephone 202-447-4329.

Dated: November 1, 1978.

T. S. RONNINGEN,
Acting Deputy Director.

[FR Doc. 78-31790 Filed 11-9-78; 8:45 am]

[6320-01-M]

CIVIL AERONAUTICS BOARD

[Docket 33217 et al. Order 78-11-10]

ST. LOUIS-LITTLE ROCK-NEW ORLEANS SERVICE INVESTIGATION

Order on Motions To Consolidate

In the matter of Motions of Allegheny Airlines, Inc. (Docket 33419); American Airlines, Inc. (Docket 33485); Braniff Airways, Inc. (Docket 24800); Continental Air Lines, Inc. (Docket 33496); Delta Air Lines, Inc. (Docket 33501); Eastern Air Lines, Inc. (Docket 33504); Frontier Airlines, Inc. (Docket 32824); Hughes Air Corp., d.b.a. Hughes Airwest (Docket 33401); North Central Airlines, Inc. (Docket 33506); Northwest Airlines, Inc. (Docket 33499); Trans World Airlines, Inc. (Docket 33538); Western Air Lines, Inc. (Docket 33495);

Issued under delegated authority, November 2, 1978.

The following air carriers have moved to consolidate applications for St. Louis-New Orleans, St. Louis-Little Rock, and Little Rock-New Orleans nonstop rights into the St. Louis-Little Rock-New Orleans Service Investigation: Allegheny, American, Braniff, Continental, Delta,[1] Eastern, Frontier,[2] Hughes Airwest, North Central, Northwest, Trans World, and Western.[3]

Since the applications conform to the scope of the proceeding and no party has pointed to any objection to granting any of the motions, the motions should be granted. See order 78-8-95 at p. 5, n. 8.

It is ordered that:

The motions to consolidate the applications of Allegheny Airlines, Inc., in docket 33419, American Airlines, Inc. in docket 33485, Braniff Airways, Inc., in docket 24800, Continental Air Lines, Inc., in docket 33496, Delta Air Lines, Inc., in docket 33501, Eastern Air Lines, Inc., in docket 33504, Frontier Airlines, Inc., in docket 32824, Hughes Air Corp., d.b.a. Hughes Airwest, in docket 33401, North Central Airlines, Inc. in docket 33506, Northwest Airlines, Inc., in docket 33499, Trans World Airlines, Inc., in docket 33538, and Western Air Lines, Inc., in docket 33495 into the investigation in docket 33217 are granted to the extent that the applications conform to the scope of the investigation instituted by order 78-8-95.

This order will be published in the FEDERAL REGISTER.

By Stephen J. Gross, administrative law judge.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-31824 Filed 11-9-78; 8:45 am]

[6335-01-M]

COMMISSION ON CIVIL RIGHTS

INDIANA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning and factfinding meeting of the Indiana Advisory Committee (SAC) of the Commission will convene at 7 p.m. and will end at 10 p.m. on December 5, 1978, Ramada Inn, 1530 North Meridian Street, Indianapolis, Ind. 46202.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Midwestern Regional Office of the Commission, 230 South Dearborn Street, 32 Floor, Chicago, Ill. 60604.

The purpose of this meeting is to review proposal draft of underemployment and unemployment of minorities and females in city's workforce of Indianapolis. Review Fort Wayne; Report on School Desegregation Draft.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., November 6, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-31870 Filed 11-9-78; 8:45 am]

[1] Delta already has nonstop rights between St. Louis and New Orleans and St. Louis and Little Rock. Delta is seeking nonstop rights between Little Rock and New Orleans.

[2] Frontier's initial application in docket 32824 for Little Rock-New Orleans rights was granted by the Board (order 78-8-95). Frontier's consolidation motion relates to its amended application which seeks authority in all three of the markets at issue.

[3] Western seeks only St. Louis-New Orleans rights.

[6335-01-M]

NORTH DAKOTA ADVISORY COMMITTEE

Corrected Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Colorado Advisory Committee originally printed in (FR Doc. 78-30915) on page 51124 should have read *North Dakota Advisory Committee.*

The meeting place and time and date will remain the same.

Dated at Washington, D.C., November 6, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-31869 Filed 11-9-78 8:45 am]

[3510-24-M]

DEPARTMENT OF COMMERCE

Economic Development Administration

ACTION WEAR, INC., ET AL.

Determinations of Eligibility To Apply for Trade Adjustment Assistance

Petitions have been accepted for filing from four firms: (1) Action Wear, Inc., 2200 West Alameda, No. 35, Denver, Colo. 80223, a producer of outerwear garments (accepted October 31, 1978); (2) Utica Cutlery Company, 820 Noyes Street, Utica, N.Y. 13503, a producer of stainless steel flatware, cutlery, and pocket knives (accepted October 31, 1978); (3) Brave-Moc, Inc., 7 Liberty Square, Lynn, Mass. 01901, a producer of footwear and handbags (accepted November 6, 1978); and (4) Max Golden & Son, Inc., 232 North 11th Street, Philadelphia, Pa. 19107, a producer of men's suits, sportcoats, and trousers (accepted November 6, 1978). The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (Pub. L. 93-618) and § 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315).

Consequently, the U.S. Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Chief, Trade Act Certification Division, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the 10th calendar day following the publication of this notice.

CHARLES L. SMITH,
Acting Chief, Trade Act Certification Division, Office of Planning and Program Support.

[FR Doc. 78-31800 Filed 11-9-78; 8:45 am]

[3510-22-M]

National Oceanic and Atmospheric Administration

SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL

Meeting

AGENCY: National Marine Fisheries Service, NOAA.

ACTION: Notice of public meeting.

SUMMARY: The South Atlantic Fishery Management Council established by section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), will meet to discuss: (1) Council decision process on the King and Spanish Mackerel FMP; (2) council decision process on the snapper-grouper FMP; (3) Review foreign fishing permits if any; and (4) Other management business.

DATES: The meeting will convene on Wednesday, November 29, 1978, at 9 a.m. and will adjourn at about 12 on Thursday, November 30, 1978. The meeting is open to the public.

ADDRESS: The meeting will take place at Headquarters, 1 Southpark Circle, Suite 306, Charleston, SC 29407.

FOR FURTHER INFORMATION CONTACT:

Ernest D. Premetz, Executive Director, South Atlantic Fishery Management Council, 1 Southpark Circle, Suite 306, Charleston, SC 29407, telephone 803-571-4366.

SUPPLEMENTARY: For information on seating arrangements, changes to the agenda, and/or written comments, contact the Executive Director.

Dated: November 7, 1978.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.

[FR Doc. 78-31863 Filed 11-9-78; 8:45 am]

[3510-17-M]

Office of the Secretary

BOARD OF VISITORS FOR THE NATIONAL ACADEMY FOR FIRE PREVENTION AND CONTROL

Renewal

AGENCY: U.S. Fire Administration (formerly the National Fire Prevention and Control Administration).

SUMMARY: This is a notice of renewal of the Board of Visitors for the National Academy for Fire Prevention and Control.

FOR FURTHER INFORMATION CONTACT:

Joseph A. Moreland, Acting Deputy Administrator, U.S. Fire Administration, U.S. Department of Commerce, P.O. Box 19518, Washington, D.C. 20036, telephone 202-632-9685.

SUPPLEMENTAL INFORMATION: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. (1976) and section 7(j) of the Federal Fire Prevention and Control Act of 1974 (Pub. L. 93-498, 88 Stat. 1535, 15 U.S.C. 2201 et seq., 278f, 42 U.S.C. 290(a)), it has been determined that the renewal of the Board of Visitors for the National Academy for Fire Prevention and Control is in the public interest in connection with the performance of duties imposed on the Department by law.

The Board was first established on February 28, 1976, and rechartered on October 28, 1976. Its current charter is due to expire on October 28, 1978. The purpose of the Board of Visitors is to review annually the program of the National Academy for Fire Prevention and Control (Academy) and to make comments and recommendations to the Secretary of Commerce regarding the operation of the Academy and any improvements therein which the Board deems appropriate.

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The Board is comprised of eight (8) members, including a chairperson. The Administrator of the U.S. Fire Administration recommended to the Secretary the individuals to be appointed to the Board, including the member to be designated as chairperson. The members of the Board, including the chairperson, were recommended and selected from among professionals in the field of fire safety, fire prevention, fire control, research, and development in fire protection, treatment, and rehabilitation of fire victims, and local government services management. They were selected from among individuals and professional organizations to insure a balanced representation of interests.

The Board functions as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act.

Copies of the Board's revised charter will be filed with appropriate committees of the Congress.

Dated: November 1, 1978.

GUY W. CHAMBERLIN, Jr.,
Assistant Secretary for Administration.

[FR Doc. 78-31810 Filed 11-9-78; 8:45 am]

[3510-17-M]

COASTAL ZONE MANAGEMENT ADVISORY COMMITTEE

Renewal

In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), and the Office of Management and Budget Circular A-63 of March 1974, the Secretary of Commerce has determined that the renewal of the Coastal Zone Management Advisory Committee is in the public interest in connection with the performance of duties imposed on the Department by law.

The Committee was first established in August 1973, was rechartered on August 15, 1975, and on August 15, 1977. Its original purpose was to advise, consult with, and make recommendations to the Secretary on matters of policy concerning the coastal zone, as provided in the Coastal Zone Management Act of 1972.

The Committee's advice has been useful to the Office of Coastal Zone Management in formulating policy, deciding program goals, and as a sounding board for new initiatives. A number of recommendations made in the form of resolutions to the Secretary of Commerce have been applied by the Office of Coastal Zone Management to its program formulation. The Committee has been effective in monitoring legislative amendments which might affect the CZM program; several of its recommendations have been forwarded to appropriate congressional committees by the Secretary of Commerce. During fiscal year 1978, the Committee prepared a study on the implementation of the Coastal Zone Management Act and received testimony from major user groups of the coastal zone. This work resulted in the publication of a report to the Secretary of Commerce, and three additional sets of recommendations to the Administrator of NOAA.

The Committee will continue with a balanced representation of 11 members. The chairperson shall be elected from the membership. The Committee will operate in compliance with the provisions of the Federal Advisory Committee Act.

Copies of the Committee's revised Charter will be filed with appropriate committees of the Congress, and with the Library of Congress.

Inquiries or comments may be addressed to the Committee Liaison Officer, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Washington, D.C. 20235.

Dated: November 1, 1978.

GUY W. CHAMBERLIN, Jr.,
Assistant Secretary for Administration.

[FR Doc. 78-31811 Filed 11-9-78; 8:45 am]

[6820-33-M]

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

PROCUREMENT LIST 1978

Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The committee has received proposals to add to procurement list 1978 commodities and military resale item to be produced by and a service to be provided by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 13, 1978

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Va. 22201.

FOR FURTHER INFORMATION CONTACT:

C. W. Fletcher, 703-557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and military resale item and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities, military resale item and service to Procurement List 1978, November 14, 1977 (42 FR 59015):

Class 1730

Wheel Chock, Wood, 1730-00-163-8317 (4x6x24"). Painted: Yellow; Codit Reflective; and Reflective Tape. The above for all requirements for facilities located west of the Mississippi river and any requirements for facilities located east of the Mississippi river which are not furnished by Federal Prison Industries.

Military Resale Item No. and Name

No. 543—Dish & Pot Scrubber.

SIC 7399

Microfilm Reproduction Service, Naval Submarine Base, Bangor, Silverdale, Wash.

C. W. FLETCHER,
Executive Director.

[FR Doc. 78-31801 Filed 11-9-78; 8:45 am]

[6820-33-M]

PROCUREMENT LIST 1978

Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to procurement list 1978 services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: November 13, 1978.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, suite 610, Arlington, Va. 22201.

FOR FURTHER INFORMATION CONTACT:

C. W. Fletcher, 703-557-1145.

SUPPLEMENTARY INFORMATION: On July 14, 1978 the Committee for Purchase from the Blind and Other Severely Handicapped published notices (43 FR 30330) of proposed additions to Procurement List 1978, November 14, 1977 (42 FR 59015).

After consideration of the relevant matter presented, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77.

Accordingly, the following services are hereby added to Procurement List 1978:

SIC 7349

Janitorial/Custodial Service, U.S. Federal Building and Courthouse, 436 Dwight Street, Springfield, Mass.
U.S. Federal Building and Post Office, 202 Harlow Street, Bangor, Maine.

C. W. FLETCHER,
Executive Director.

[FR Doc. 78-31802 Filed 11-9-78; 8:45 am]

[6820-33-M]

PROCUREMENT LIST 1978

Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Deletion from procurement list.

SUMMARY: This action deletes from procurement list 1978 a service provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: November 13, 1978.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Va. 22201.

FOR FURTHER INFORMATION CONTACT:

C. W. Fletcher, 703-557-1145.

SUPPLEMENTARY INFORMATION: On September 15, 1978 the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (43 FR 41256) of proposed deletion from procurement list 1978, November 14, 1977 (42 FR 59015).

After consideration of the relevant matter presented, the Committee has determined that the service listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77.

Accordingly, the following service is hereby deleted from procurement list 1978:

SIC 7349

Janitorial/Custodial Service, Social Security Administration, District Office Building, Watertown, N.Y.

C. W. FLETCHER,
Executive Director.

[FR Doc. 78-31803 Filed 11-9-78; 8:45 am]

[6355-01-M]

CONSUMER PRODUCT SAFETY COMMISSION

[Petition No. CP 78-5]

ARCHITECTURAL GLAZING MATERIALS

Denial of Petition

AGENCY: Consumer Product Safety Commission.

ACTION: Denial of petition.

SUMMARY: The Commission denies a petition to amend the standard for architectural glazing materials by replacing the environmental and impact test procedures and evaluations in the standard with those used in the voluntary industry standard. The Commission denies the petition because it believes the environmental and impact test procedures and evaluations in the standard are adequate.

FOR FURTHER INFORMATION CONTACT:

Irwin Greif, Acting Program Manager, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207, 301-492-6754.

SUPPLEMENTARY INFORMATION: Section 10 of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2059) provides that any interested person may petition the Consumer Product Safety Commission (CPSC) to begin a proceeding to issue, amend, or revoke a consumer product safety standard or ban. Section 10 also provides that if the Commission denies such a petition, it shall publish its reasons for denial in the FEDERAL REGISTER.

By letter dated October 18, 1977, Mr. Kim Mann, general counsel to the Glass Tempering Association (GTA) (a trade association for the tempered glass industry) petitioned the Commission (CP 78-5) on behalf of GTA to amend the standard for architectural glazing materials. The petition requested that the environmental and impact test procedures and evaluations included in §§ 1201.4 and 1201.5 of the standard be replaced with the physical test procedures in the voluntary industry glazing standard, ANSI Z97.1-1975 and the certification requirements prescribed and administered by the Safety Glazing Certification Council (SGCC).

The petition alleges that (1) the combined testing and certification programs of ANSI and SGCC are a superior alternative to §§ 1201.4 and 1201.5 of the standard in terms of utility and industry acceptance; (2) lack of uniformity in application of the standard is detrimental to the tempered glass industry (i.e., special treatment given other glazing materials leaves only tempered glass subject to the various requirements of the standard); and (3) ambiguities and omissions in the standard place a burden of uncertainty upon persons conducting testing under the standard and certifying compliance with the standard.

The Commission, after considering the petitioner's request, reviewing the language of the standard, and considering its staff's comments, has decided that the environmental and impact test and evaluation procedures in §§ 1201.4 and 1201.5 of the standard are adequate and the language sufficiently clear and unambiguous. In addition, it is the Commission's view that the standard does not place an unequal burden on the tempered glass industry that works to its detriment.

The Commission, in issuing the glazing standard, discussed in the preamble to the standard the inadequacies of the ANSI standard (42 FR 1434, January 6, 1977). These inadequacies involved, in part, the environmental and impact test procedures and evaluations which the petitioner now seeks to have replace the provisions of the mandatory standard. The petitioner has presented no evidence to support the technical adequacy of ANSI or to address the inadequacies previously identified by the Commission.

As to petitioner's allegation that special treatment accorded other glazing materials leaves only tempered glass subject to the various requirements of the mandatory standard, it is the Commission's view that although it has allowed some exceptions to the standard for various types of glazing materials, those exceptions generally are temporary in nature and address specific problems. (In fact, at least one such exception was provided for tempered glass (43 FR 26699, June 22, 1978).)

In regard to petitioner's claim that ambiguities in the mandatory standard have caused confusion in the glazing industry, the Commission is of the view that most of the confusion is merely the inevitable result of a familiar standard (ANSI) being replaced by an unfamiliar one. This is a problem that will be resolved over time. Moreover, the Commission, in the past, has criticized the voluntary industry standard for having incomplete provisions, ambiguous language and subjective requirements.

The Commission notes that the accelerated environmental durability tests in the standard, that the petitioner seeks to have replaced by the provisions of the voluntary standard, are not even applicable to tempered glass. Thus, substituting the environmental provisions of the voluntary standard for those of the mandatory standard would appear to be of little benefit to petitioner, a representative of tempered glass manufacturers.

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The petitioner also requests that the Commission incorporate the SGCC certification program into the Commission's standard. The CPSA, as amended, however, prohibits the Commission from including a sampling plan in a standard issued under sections 7 and 9 of the CPSA (with certain exceptions not relevant here) (15 U.S.C. 2056 (a)(2)). Thus, under the law the Commission cannot take the action requested concerning the SGCC certification program. The Commission, however, will consider the request concerning certification as a comment on the glazing certification program proposed in the FEDERAL REGISTER of December 16, 1977 (42 FR 63586).

In view of the foregoing, the Commission denies petition CP 78-5 to amend the glazing standard. Copies of the petition and the staff's briefing package to the Commission on the petition may be obtained from the Office of the Secretary, Consumer Product Safety Commission, 1111 18th Street NW., Third Floor, Washington, D.C. 20207.

Dated: November 7, 1978.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

[FR Doc. 78-31826 Filed 11-9-78; 8:45 am]

[3710-08-M]

DEPARTMENT OF DEFENSE

Department of the Army

ARMY SCIENCE BOARD

Partially Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee meeting:

Name of committee: Army Science Board.

Dates of meeting: 27-28 November 1978.

Place: Edgewood Arsenal, Md. (exact location on the Arsenal can be obtained by calling LTC Sweeney, 202-697-9703.

Time: 0800-1700 hours, 27 November 1978—Closed Session; 0800-1300 hours, 28 November 1978—Open Session.

Proposed agenda: The meeting is partially closed because the members will receive classified briefings and conduct classified discussions on the defensive posture of the United States. The portion of the meeting that will be closed is between 0800-1700 hours, 27 November 1978. This portion will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof.

This notice is being published in less than the 15 day requirement prior to conduct of the meeting but is providing the maximum notice possible of a Federal Advisory Committee meeting. The reason the 15 day requirement was not met was a result of encountering unanticipated administrative difficulties in arranging the meeting.

JOSEPH H. YANG,
Executive Director, Army Science Board.

[FR Doc. 78-31956 Filed 11-9-78; 8:45 am]

[3710-92-M]

DUGWAY PROVING GROUND, UTAH

Filing of Final Environmental Impact Statement

In compliance with the National Environmental Policy Act of 1969, the Army on October 27, 1978 provided the Environmental Protection Agency with the final environmental impact statement concerning the operation of the drill and transfer system at Dugway Proving Ground, Utah.

Copies of the final environmental impact statement have been forwarded to concerned Federal, State and local agencies. Interested organizations or individuals may obtain copies from Project Manager for Chemical Demilitarization and Installation Restoration, Building E-4585, attention: DRCPM-DRD-TM (Mr. Samuel Hasson) Aberdeen Proving Ground, Md. 21010, phone 301-671-2041.

In the Washington area, inspection copies may be seen in the Environmental Office, Office of the Assistant Chief of Engineers, Room 1E676, Pentagon, Washington, D.C. 20310, phone 202-694-1163.

Dated: October 24, 1978.

BRUCE A. HILDEBRAND,
Deputy for Environmental Affairs, Office of the Assistant Secretary of the Army (Civil Works).

[FR Doc. 78-31867 Filed 11-9-78; 8:45 am]

[3710-08-M]

PRIVACY ACT OF 1974

New System of Records

AGENCY: Department of the Army, DOD.

ACTION: Notification of a new system of records.

SUMMARY: The Department of the Army proposes a new record system identified as AFAI-2, entitled: "Individual Credentialing Services Program". The record system notice is published in its entirety below.

DATES: This system shall become effective as proposed without further notice on December 13, 1978, unless comments are received on or before December 13, 1978, which would result in a contrary determination requiring republication for further comments.

ADDRESS: Comments may be sent to the system manager identified in the record system notice.

FOR FURTHER INFORMATION CONTACT:

Mr. Ann C. Quick, Administrative Assistant, Federal Acquisition Institute, Room 7W06, AMC Building, 5001 Eisenhower Avenue, Alexandria, Va. 22333, telephone 202-274-8404.

SUPPLEMENTARY INFORMATION: The Federal Acquisition Institute (FAI), established by Office of Management and Budget (OMB), Office of Federal Procurement Policy Memorandum of July 14, 1976, performs functions pursuant to Title 41 U.S.C. sections 404, 405, 406, and 411; Title 5 U.S.C. sections 4103 and 4105; and Pub. L. 93-400. For purposes of the Privacy Act of 1974 (5 U.S.C. Sec. 552a), the FAI is considered a part of the Department of the Army whose policy and procedures are published in 32 CFR Part 505 and in Army Regulation 340-21 and shall apply with equal force to FAI.

The Department of Army systems of records notices, as prescribed by the Privacy Act, have been published in the FEDERAL REGISTER as follows:

FR Doc. 77-28255 (42 FR 50396), September 28, 1977.
FR Doc. 78-23953 (43 FR 38070), August 25, 1978.
FR Doc. 78-25562 (43 FR 40272), September 11, 1978.
FR Doc. 78-26372 (43 FR 42026), September 19, 1978.
FR Doc. 78-25819 (43 FR 42374), September 20, 1978.
FR Doc. 78-26699 (43 FR 43059), September 22, 1978.
FR Doc. 78-26998 (43 FR 43539), September 26, 1978.
FR Doc. 78-29130 (43 FR 47604), October 16, 1978.
FR Doc. 78-29211 (43 FR 48894), October 19, 1978.
FR Doc. 78-29982 (43 FR 49557), October 24, 1978.

Advance notice of the proposed new system of records was submitted by the Department of the Army on October 3, 1978 pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a(o)).

MAURICE W. ROCHE,
Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

NOVEMBER 6, 1978.

AFAI-2

System name:

Individual Credentialing Services program.

System location:

Federal Acquisition Institute (FAI), 5001 Eisenhower Avenue, Alexandria, Va. 22333. A segment of the records may reside temporarily at the American Council on Education (ACE) or the University of the State of New York, which serve a contractual role for evaluation of individuals' questionnaires, transcripts, training, and work experience and determination of academic credit.

Categories of individuals covered by the system:

Personnel of Federal agencies involved in Government procurement/acquisition and Federal assistance functions.

Categories of records in the system:

Questionnaires completed by Federal employees who provide name, social security account number (SSAN), date of birth, home address, and telephone number, military and civilian service data, citizenship, work experience, educational attainment level, and other similar relevant biographical data, together with appropriate support documents that may be required; academic transcripts furnished by colleges/universities; results of program manager/participant consultation; determinations/recommendations of the accrediting organization.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The purpose of this system is to enable FAI to provide academic and/or other training accreditation services to Federal employees of Government agencies involved in procurement/acquisition and Federal assistance functions. This service will be provided by the organizations mentioned under "System Location", and will constitute an authenticated evaluation of experience, education, and training and a determination of allowable credit. Information may be disclosed to an individual's employing agency.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Hard copy records.

Retrievability:

By name.

Safeguards:

Records are stored in cabinets accessible only to authorized personnel, within buildings secured by guards.

Retention and disposal:

Retained by FAI indefinitely; disposition will be negotiated with GSA National Archives and Records Service. Records at supporting accreditation organizations are retained only for time necessary to review and provide credentialing service, after which they are returned to FAI.

System manager(s) and address:

Director, FAI, 5001 Eisenhower Avenue, Alexandria, Va. 22333.

Notification procedure:

Information may be obtained from the System Manager.

Record access procedures:

Requests from individuals should be addressed to the System Manager. Written inquiries should contain requester's full name, SSAN, date of birth, and current address. For personal visits, the individual must provide sufficient identification such as valid driver's license, and information that can be verified with his/her records.

Contesting record procedures:

The FAI is guided by the Army's rules for access to records and for contesting contents and appealing initial determinations. These are contained in 32 CFR Part 505 (Army Regulation 340-21).

Record source categories:

Primary information is furnished by the individual to whom the record pertains. With consent of the individual, additional information is obtained from college/university registrars.

Systems exempt from certain provisions of the Act:

None.

[FR Doc. 78-31795 Filed 11-9-78; 8:45 am]

[3128-01-M]

DEPARTMENT OF ENERGY

Economic Regulatory Administration

MANDATORY OIL IMPORT PORGRAM

Oil Import Allocations and Licensing October 1-31, 1978 (Release No. 5)

The fee-exempt allocations and licenses issued in accordance with Presidential Proclamation 3279, as amended, during the period October 1-31, 1978, are given in the following tables. The allocations are listed for the appropriate sections of 10 CFR 213 under which the allocations are made.

Also published is a tabulation of the fee-paid crude oil and product licenses and a listing of the sale and reassignment of fee-exempt crude oil licenses issued during the month of October 1978.

Previous releases covered the issuance of allocations and licenses for the period May 1, 1978, through September 30, 1978. The releases will continue to be issued on a monthly basis.

Dated: November 3, 1978.

BARTON R. HOUSE,
Assistant Administrator, Fuels Regulation, Economic regulatory Administration.

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Table	Title
1	Fee-exempt allocation for imports of Canadian oil based upon exchange for domestic oil—10 CFR 213.28(b)
2	Sales of fee-exempt licenses—10 CFR 213.22
3	Fee-paid licenses issued—10 CFR 213.35

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U.S. DEPARTMENT OF ENERGY

OFFICE OF OIL IMPORTS ALLOCATION OCT. 1-31, 1978

TABLE 1.—*Canadian Crude Oil, Exchange of Material Not Allocated Under Pt. 214, Sec. 213.28(b)*

Company	Address	Exchange volume licensed total barrels
Continental Oil	Houston, Tex	1,825,000
Do	do	7,300,000
Do	do	3,650,000
Murphy Oil	El Dorado, Ark	5,475,000

TABLE 2.—*Oil Import Licenses Sold Pursuant to Sec. 213.22(d)*

DISTRICT I-IV

Seller	Buyer	Date	Commodity	Barrels sold
Shell Oil	Texas U.S. Chemical	Oct. 10, 1978	Unfinished	5,892
CRA, Inc.	Amoco Oil	do	Crude	1,000,000
Delta Refinery	Exxon	do	do	247,697
Louisiana Land	Shell Oil	Oct. 12, 1978	do	2,000,000
Tonkawa Refinery	Amoco Oil	do	do	170,000
Do	do	do	do	74,915
Hassie Hunt	do	do	do	30,295
Pennzoil	do	do	do	1,000,000
Texas American Petroleum	Western Crude	do	do	360,000
Do	do	do	do	160,499
Caribou Four Corners	Texaco	Oct. 17, 1978	do	300,000
Do	do	do	do	129,240
PPG Industries	Crown Central	do	do	62,962
Do	do	do	do	96,097
Do	do	do	do	62,963
Do	do	do	Unfinished	16,958
ARCO	Texaco	do	Crude	3,000,000
Chemplex Co.	Amoco Oil	Oct. 19, 1978	do	135,780
Do	do	do	do	74,481
Do	do	do	do	135,780
Calcasieu Refinery	Coastal States	do	do	1,208,150
Placid Refinery	Amoco Oil	do	do	3,000,000
Refinery Development	Crown Central	do	do	238,498
Tosco	Texaco	Oct. 20, 1978	do	497,645
Do	do	do	do	1,135,000
Do	do	do	do	1,400,870
BASF Wyandotte	Sohio Natural Resources	Oct. 23, 1978	do	90,885
Do	do	do	do	266,920
Rohm & Haas	Getty Refinery	do	do	213,747
Laketon Asphalt & Refinery	Sohio Natural Resources	Oct. 27, 1978	do	298,570
Do	do	do	do	315,000
Do	do	do	do	139,790
B.F. Goodrich	do	do	do	113,333
Do	do	do	do	271,188
J & W Refinery	Crown Central	Oct. 30, 1978	do	146,000
E. I. duPont	Ashland Oil	do	do	1,100,000
Firestone Tire	Shell Oil	do	do	169,597
Allied Chemical	Gulf Oil	do	do	80,300
Do	do	do	do	344,963

DISTRICT V

Thagard Oil	Union Oil	Oct. 10, 1978	Crude	2,643,695
Nevada Refinery	Texaco	Oct. 12, 1978	do	329,900
Witco Chemical	do	do	do	384,435
West Coast Oil	do	Oct. 17, 1978	do	937,500
Do	do	do	do	312,500
Do	do	do	do	516,235
Firestone Tire	Shell Oil	Oct. 30, 1978	do	2,951
B.F. Goodrich	Mobil Oil	do	do	2,650
Do	do	do	do	15,020
Do	do	do	do	3,300
Do	do	do	do	18,470

TABLE 3.—*Fee-Paid Licenses Issued Pursuant to Sec. 213.35*

Company	Date	License quantity total barrels
CRUDE OIL PREPAID		
Lakeside Refining	Oct. 23, 1978	150,000
CRUDE OIL-BOND POSTED		
Coastal States Gas	Sept. 29, 1978	10,000,000
Clark Oil & Refinery	Oct. 2, 1978	3,000,000
Koch Industries	Oct. 10, 1978	1,180,000
Marathon Oil	do	5,000,000
United Refining	do	568,500
Shell Oil	do	5,000,000
Do	do	5,000,000
Ashland Oil	Oct. 12, 1978	5,000,000
Murphy Oil	do	2,000,000
Southwestern Refinery	do	1,000,000
ARCO	do	2,000,000
Do	do	2,000,000
Do	do	1,000,000
Do	do	1,000,000
Gulf Oil	Oct. 14, 1978	1,000,000
Chevron	Oct. 18, 1978	5,000,000
ATC Petroleum	do	1,000,000
Do	do	1,000,000
Delta Refining	do	432,487
Gulf Oil	do	10,000,000
Strategic Petroleum Reserve	do	25,000,000
ATC Petroleum	Oct. 19, 1978	1,000,000
DO	do	1,000,000
Texaco	do	14,000,000
National Cooperative Refining Association	Oct. 23, 1978	780,000
Sun Oil	Oct. 27, 1978	10,000,000
Amoco Oil	Oct 30, 1978	5,000,000
Champlin Petroleum	Oct. 31, 1978	1,295,900
FINISHED PRODUCTS-PREPAID		
NFO International	Oct. 12, 1978	126
Gem/Peerless Electric	do	18
Do	do	21
Industrial Solvents	do	50,000
Ashland Chemical	Oct. 17, 1978	2,000
Mattice Petroleum	Oct. 18, 1978	5,000
Industrial Solvents	do	50,000
Do	Oct. 23, 1978	50,000
Lubrizol	Oct. 26, 1978	22,539
FINISHED PRODUCTS-BOND POSTED		
Consumers Power	Oct. 4, 1978	3,300,000
Chevron, U.S.A.	Oct. 10, 1978	500,000
Shell Oil	do	1,000,000
Amoco Oil	Oct. 12, 1978	500,000
Do	do	500,000
Amerada Hess	Oct. 13, 1978	20,000,000
Koch Industries	Oct. 25, 1978	101,000
Western Trading	Oct. 26, 1978	80,000
Do	Oct. 27, 1978	60,000
Commonwealth Edison	do	653,610
Amoco Oil	Oct. 30, 1978	500,000
Do	do	500,000

[FR Doc. 78-31665 Filed 11-13-78; 8:45 am]

[3128-01-M]

POWERPLANT AND INDUSTRIAL FUEL USE ACT

Availability of Draft Environmental Impact Statement and Public Hearings

AGENCY: Department of Energy.

ACTION: Notice of Availability of Draft Environmental Impact Statement and Public Hearings.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321, et seq., the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces the availability of a draft programmatic environmental impact statement which analyzes the impacts associated with the implementation of the Powerplant and Industrial Fuel Use Act (FUA). The FUA will require utilization of coal or other alternate fuels (other than natural gas or petroleum) as the primary energy source in many new and existing powerplants and major

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fuel burning installations unless an exemption is granted by the Secretary of Energy.

ERA invites the public to submit comments on the draft environmental impact statement and to participate in the public hearings which will be held in various locations across the country. The public hearing schedule will be announced in the FEDERAL REGISTER in the near future. After all testimony and comments have been received and analyzed, a final environmental impact statement will be prepared and issued.

DATES: Written comments by January 26, 1979, 4:30 p.m.

ADDRESS: Written comments to Office of Public Hearing, Management, Department of Energy, Box WA, Room 2313, 2000 M Street NW., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Steven A. Frank, Division of Coal Utilization, Department of Energy, Room 7202, 2000 M Street NW., Washington, D.C. 20461, 202-254-6246.

Janine Landow-Esser, Office of General Counsel, Department of Energy, Room 8217, 20 Massachusetts Avenue NW., Washington, D.C. 20545, 202-376-4266.

Robert Stern, Division of NEPA Affairs/Environment, Department of Energy, Room 7121, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461, 202-566-9760.

SUPPLEMENTARY INFORMATION:

COMMENT PROCEDURES

Single copies of the draft environmental impact statement will be available at the hearing sites and are available from Steven A. Frank at the above address.

Copies of the draft statement also are available for public review in the DOE Freedom of Information Reading Room, Room GA-152, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, and in ERA's Office of Public Information, Room B-110, 2000 M Street NW., Washington, D.C. 20461, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

WRITTEN COMMENTS

Interested parties are invited to submit written comments with respect to this draft environmental impact statement to the Office of Public Hearing Management, Box WA, Department of Energy, Room 2313, 2000 M Street NW., Washington, D.C. 20461. All comments should be received by DOE no later than January 26, 1979 in order to insure consideration.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted (one copy only) in accordance with the procedures set forth at 10 CFR 205.9(f). Any material not filed in accordance with such section will be considered to be nonconfidential. DOE reserves the right to determine the confidential status of the information or data and to treat it according to that determination.

ORAL COMMENTS

Procedures for the submission of oral comments will be discussed in the public hearing schedule which will be published in the FEDERAL REGISTER.

Issued in Washington, D.C., November 6, 1978.

DORIS J. DEWTON,
Acting Assistant Administrator, Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 78-31877 Filed 11-9-78; 8:45 am]

[3128-01-M]

Energy Information Administration

ENERGY EMERGENCY MANAGEMENT INFORMATION SYSTEM

Canceled Hearings

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of cancellation of public hearings scheduled in Atlanta, Ga., Chicago, Ill., and Denver, Colo.

SUMMARY: The Energy Information Administration of the Department of Energy hereby gives notice that the public hearings to be held in Atlanta, Ga., Chicago, Ill., and Denver, Colo. on the Energy Emergency Management Information System program plan previously set forth in a notice of public hearings issued on September 29, 1978 (43 FR 46564, October 10, 1978) are cancelled due to lack of interest. Public hearings will be held in Boston, Mass. on November 14, 1978 and Washington, D.C. on November 16, 1978.

HEARING LOCATIONS: Boston hearing: Room 1900A, J. F. K. Government Center, Boston, Mass. Washington hearing: Room 2105, 2000 M Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Barry Yaffe (Energy Emergency Management Information System Project Office), Department of Energy, 1726 M Street NW., Room 820, Washington, D.C. 20461, 202-634-2079;

Yvonne Allen (Energy Emergency Center), Department of Energy, 2000 M Street NW., Room 7204, Washington, D.C. 20461, 202-252-5155;

Robert Gillette (Office of Public Hearing Management), Department of Energy, 2000 M Street NW., Room 2313, Washington, D.C. 20461, 202-254-5201; or

William Luck (Office of General Counsel), Department of Energy, Federal Building, 12th and Pennsylvania Avenue NW., Room 6144, Washington, D.C. 20461, 202-566-9296.

Issued in Washington, D.C., November 6, 1978.

C. WILLIAM FISCHER,
Deputy Administrator, Energy Information Administration.

[FR Doc. 78-31789 Filed 11-9-78 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1005-5; OPP—180246]

FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Issuance of a Specific Exemption To Use Ambush To Control the Vegetable Leafminer on Celery

The Environmental Protection Agency (EPA) has granted a specific exemption to the Florida Department of Agriculture and Consumer Services (hereafter referred to as the "Applicant") to use Ambush (Permethrin) for the control of the vegetable leafminer on 11,000 acres of celery located in Orange, Palm Beach, Sarasota, and Seminole Counties, Fla. This exemption was granted in accordance with, and is subject to, the provisions of 40 CFR Part 166, which prescribes requirements for exemption of Federal and State agencies for use of pesticides under emergency conditions.

This notice contains a summary of certain information required by regulation to be included in the notice. For more detailed information, interested parties are referred to the application on file with the Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street SW., Washington, D.C. 20460.

Leafminers have periodically plagued Florida celery since the late 1940's. Although normally present in moderate numbers, epidemic population levels have been reached in the late 1940's, early 1960's, and early 1970's. During the 1977-78 growing season, populations of the pest were not controlled by applications of the registered pesticides. Effective control was achieved, however, with an Ambush control program which was

authorized by a specific exemption similar to the one described here, according to the Applicant.

Leafminer damage to the celery results in reduced quality and leaf death; ultimately, the plant branches die. This damage necessitates stripping, trimming, and culling which drastically reduce yield and quality. According to the Applicant, complete fields may be lost or marketed only as a salvage operation.

The following insecticides are registered for leafminer control: Cygon, Dibrom, Diazinon, Orthene, and Vydate. According to the Applicant, the registered alternatives are ineffective to the extent necessary to control the insect due to the leafminer's developed resistance to these pesticides. Pest management programs not requiring chemical controls are under study, but as yet are not sufficiently effective to handle the current emergency. Therefore, the Applicant claimed, chemical control is the only effective means available to control the leafminer.

The total dollar return from 11,000 acres of the 1977-78 celery crop in Florida was approximately $40,000,000, an increase of $10 million over the previous season's crop. This increase was due not only to an increase in the price of celery, but also to an increased yield which the Applicant attributes largely to the Ambush program. The Applicant estimates that 50 percent of the total acreage planted this season may be lost without the use of an effective pesticide; this loss could be valued at $20 million.

The Applicant proposed to use Ambush at a rate of 0.05 to 0.20 pound active ingredient (a.i.) per acre. Applications will be made by qualified growers and State-certified commercial applicators using ground equipment. A 60-day crop rotation restriction will be observed.

Environmental problems associated with permethrin's extreme toxicity to aquatic organisms should be reduced by the restriction of use to ground application. This restriction should also minimize danger to two endangered species, the Everglade kite and southern bald eagle, both of which feed on aquatic organisms.

After reviewing the application and other available information, EPA has determined that (a) a pest outbreak of leafminers on celery has occurred; (b) there is no pesticide presently registered and available for use which gives effective control of this pest in Florida; (c) there is no alternative means of control, taking into account the efficacy and hazard; (d) significant economic problems may result if the leafminers are not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above to the extent and in the manner set forth in the application until June 30, 1979. The specific exemption is also subject to the following conditions:

1. The product Ambush, manufactured by ICI Americas, Inc., is authorized;

2. Applictions may be made to celery fields in the following areas: Zellwood in Orange County; Belle Glade, Pahokee, and South Bay in Palm Beach County; Sarasota in Sarasota County; Sanford and Oviedo in Seminole County;

3. Total acreage treated may not exceed 11,000 acrea;

4. Ambush will be applied at a rate of 0.05 to 0.20 pound a.i. per acre per application;

5. A maximum of 21 applications per season may be made at 5- to 14-day intervals. There is no preharvest interval;

6. A maximum of 33,000 pounds a.i. may be applied;

7. All applications of Ambush must be made by ground equipment;

8. Permethrin spray mixture volumes of 40 to 50 gallons of water per acre will be applied by ground application;

9. All applications will be made by qualified growers or by State-certified commercial applicators. A 60-day crop rotation restriction is imposed;

10. All personnel involved in the preparation and application of Ambush must wear protective clothing (long-sleeve shirts, full length trousers and nonpermeable boots) and a respirator. During the mixing and loading operations, gloves and an apron must also be worn;

11. Precautions must be taken to avoid or minimize spray drift to nontarget areas;

12. This product is highly toxic to bees exposed to direct treatment or to residues on crops or weeds. It must not be applied, or allowed to drift to weeds in bloom on which an economically significant number of bees is actively foraging. Protective information may be obtained from the State Cooperative Agriculture Extension Service;

13. Permethrin is extremely toxic to fish and aquatic invertebrates. It must be kept out of lakes, streams, ponds, tidal marshes and estuaries. Care must be taken to prevent contamination of water by cleaning equipment or disposing waste;

14. Celery treated according to the above provisions is not expected to have residues of permethrin in excess of 5.0 ppm. Celery with residues not exceeding this level may enter interstate commerce. The Food and Drug Administration, U.S. Department of Health, Education, and Welfare, has been advised of this action;

15. All applicable directions, restrictions, and precautions on the product label must be followed;

16. Two endangered species, the Florida Everglade kite and the southern bald eagle, are endemic to regions in the treatment area. Application of the pesticide according to the above instructions and directions is expected to minimize the risk to these animals. Liaison should be established between the Applicant and the Florida Fresh Water Fish and Game Commission in order to protect fish and wildlife;

17. The EPA shall be informed immediately of any adverse effects resulting from this use of permethrin; and

18. The Applicant shall be responsible for assuring that all the provisions of this specific exemption are met and must submit a report summarizing the results of this program by September 1, 1979.

(Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136 et seq.).)

Dated: November 6, 1978.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 78-31745 Filed 11-9-78; 8:45 am]

[6560-01-M]

[FRL 1005-4, OPP-180245]

UNITED STATES DEPARTMENT OF DEFENSE

Issuance of a Specific Exemption To Use Paranitrophenol To Control Fungi Which Deteriorate Leather

The Environmental Protection Agency (EPA) has granted a specific exemption to the U.S. Department of Defense (hereafter referred to as the "Applicant") to use paranitrophenol (PNP) to treat leather military articles in order to prevent the rapid deterioration of these articles by fungi under high humidity conditions. This exemption was granted in accordance with, and is subject to, the provisions of 40 CFR Part 166, which prescribes requirements for exemption of Federal and State agencies for use of pesticides under emergency conditions.

This notice contains a summary of certain information required by regulation to be included in the notice. For more detailed information, interested parties are referred to the application on file with the Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street SW., Room E-315, Washington, D.C. 20460.

According to the Applicant, the military departments have been treating

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various leather military articles, of which the most important were boots and shoes, for 30 years. However, this particular use of PNP—treating leather during manufacture for the end-use protection of the product against fungal decay—has never been registered. The Applicant has formally applied for registration of PNP for the exclusive purpose of treating military leather articles: however, required toxicity studies will not be completed until 1981. The Applicant is also working on getting registrations for alternative compounds. The Applicant was confronted with the problem of not having a registered product for use on leather while being required for logistical and contractual reasons to plan in advance for large scale procurements.

Without an efficient fungicide, the cost of replacing shoes would increase significantly because of fungal decay, the Applicant claimed. In addition, the issuance of new shoes and other leather equipment would be delayed. Further delays in issuing contracts would thus progressively result in unsatisfied demands which could result in the Applicant's inability to store sufficient stock to serve as protection against a national emergency.

The Applicant will use a maximum of 120,000 pounds of PNP at a dosage rate of 0.18 to 0.7 percent based on the dry weight of the leather. PNP will be applied during the tanning, fat liquoring or other operations of the tanners in preparing finished leather. PNP will be applied by personnel of the tanning companies preparing leather for use in end items to be manufactured for the Applicant. The duration of application of PNP is not to exceed one year; either a formal registration of PNP for military use or an acceptable alternative registered fungicide is to be obtained.

At least 13 genera of fungi are known to cause leather deterioration: damage from these fungi occurs not only in humid tropical regios but also in temperate or cold regions where the humidity is in excess of 65 percent. It is known that during the Korean War, leather shoes not treated with PNP lasted only 10 days in the field. While there are registered fungicide products for treating the surfaces of finished leather for mold/mildew prevention, the Applicant has stated that these products are not practical under field use. There appears to be no registered fungicide that (1) is applied during the manufacturing process, and (2) has a claim for preventing mold/mildew on the finished product. Many fungicides are applied to leather during the tanning process, but the intent is to protect the leather duing this process and not for end use.

Paranitrophenol has been used by the Applicant for over 30 years. During this period, no adverse effects have so far been reported other than some irritation when treated leather was applied directly to the skin. There appear to be no significant health hazards associated with the use of PNP for this purpose. However, there is a potential human health hazard associated with mold/mildew on leather. One of the fungal genera, *Aspergillus*, is also capable of causing Aspergillosis, which is a disease of the lungs in humans.

After reviewing the application and other available information EPA has determined that (a) an emergency situation has occurred; (b) there is no pesticide presently registered and available for use to control these fungi during manufacture for end use protection; (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic or potential health problems may result if the fungi are not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until June 16, 1979, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. The fungicide paranitrophenol (PNP) is authorized;

2. The dosage rate for PNP may be from 0.18 to 0.7 percent based on the dry weight of the leather, to be applied during the tanning, fat liquoring, or other operations performed by tanners in the preparation of finished leather;

3. PNP shall be used by the personnel of tanning companies preparing leather for use in end items to be manufactured for the applicant;

4. In addition to boots and shoes, the following items may be made from leather treated with PNP: footwear counters, money bags, pocket ammunition magazines, policeman's club carriers, side arm shoulder straps, police security belts, handcuff cases, first aid dressing cases, flagstaff slings, cartridge belt holders, and dispatch cases;

5. Any excess leather that is treated with PNP shall be used only as inserts for footwear;

6. None of the items made from PNP-treated leather shall be intended for direct human skin contact;

7. A maximum of 120,000 pounds of PNP may be used;

8. The EPA shall be immediately informed of any adverse effects occurring to man or the environment resulting from this specific exemption; and

9. This specific exemption will terminate either when the use of PNP becomes registered for use by the military or when a suitable alternative registered pesticide becomes available. In any event, this exemption will expire on June 16, 1979.

(Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 135(a) *et seq.*).)

Dated: November 6, 1978.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 78-31744 Filed 11-9-78; 8:45 am]

[6720-01-M]

FEDERAL HOME LOAN BANK BOARD

[H. C. No. 258]

OVERLAND PARK FINANCIAL CORP.

Receipt of Application for Permission To Acquire Control of Overland Park Savings & Loan Association

NOVEMBER 1, 1978.

Notice is hereby given that the Federal Savings & Loan Insurance Corp. has received an application from the Overland Park Financial Corp. ("Applicant") for approval of acquisition of control of Overland Park Savings & Loan Association, ("Association"), an insured institution, under the provisions of section 408(e) of the National Housing Act, as amended (12 U.S.C. 1730a(e)), and § 584.4 of the regulations for savings and loan holding companies, said acquisition to be effected through the transfer of all the outstanding guarantee stock of the Association to be held by Dr. Clarke L. Henry, Anne P. Henry, Carolyn H. Coulson and Dr. Clarke L. Henry, Jr., to the Applicant in exchange for the assumption by the Applicant of the debt incurred by such individuals in acquiring the Associations guarantee stock and the issuance of 25,000 shares of Applicant's preferred stock to Dr. Clarke L. Henry, 8,000 shares of preferred stock to the Dr. Clarke L. Henry Keogh Plan, 12,000 shares of preferred stock to the Henry and Graham, Inc. Employees' Pension Trust and 5,000 shares each in Applicant's common stock to Anne P. Henry, Carolyn H. Coulson and Dr. Clarke L. Henry, Jr. Comments on the proposed acquisition should be submitted to the Director, or Deputy Director, Office of the District Banks, Federal Home Loan Bank Board, Washington, D.C. 20552, on or before December 13, 1978.

J. J. FINN,
Secretary,
Federal Home Loan Bank Board.

[FR Doc. 78-31773 Filed 11-9-78; 8:45 am]

[6730-01-M]

FEDERAL MARITIME COMMISSION

All Licensed Independent Ocean Freight Forwarders

SURETY BOND REQUIREMENTS

On July 28, 1978, the FEDERAL REGISTER (vol. 43, No. 146, p. 32776), noticed that the Federal Maritime Commission in its decision in Docket No. 77-53—Licensing of Independent Ocean Freight Forwarders, ordered all licensed independent ocean freight forwarders to file with the Commission a surety bond in the amount of $30,000 on or before December 1, 1978. The new bond must bear an effective date no later than December 1, 1978. The Order of the Federal Maritime Commission also cautioned licensees that failure to so file would result in automatic revocation of the license in accordance with § 510.9 of General Order 4 (46 CFR 510.9).

This Notice is directed to those licensees who have not to date filed the new bond with the Federal Maritime Commission in the required increased amount. Notice is hereby given to licensees who do not submit the required bond on or before December 1, 1978, that orders of revocation of their independent ocean freight forwarder licenses will be issued by the Federal Maritime Commission to become effective December 2, 1978. On or after that date, any licensee not in compliance with the bonding requirements of General Order 4 (46 CFR 510) is prohibited from carrying on the business of forwarding. Continuation of such business by former licensees is in violation of section 44, Shipping Act, 1916, and upon a finding of such violation, appropriate penalties may be assessed.

ROBERT G. DREW,
Director, Bureau of Certification and Licensing.

[FR Doc. 78-31872 Filed 11-9-78; 8:45 am]

[6730-01-M]

CHARLES F. WARREN

Argeements Filed

Notice is hereby given that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain in a copy of the agreements at the Washington office of the Federal Maritime Commission, 1100 L Street NW., Room 10126; or may inspect the agreements at the field offices located at New York, N.Y.; New Orleans, La.; San Francisco, Calif.; and San Juan, P.R. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before November 23, 1978. Any person desiring a hearing on the proposed agreements shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreements (as indicated hereinafter) and the statement should indicate that this has been done.

AGREEMENT NO. 10116-2.

FILING PARTY: Charles F. Warren, Attorney, Warren & Associates, P.C., 1100 Connecticut Avenue NW., Washington, D.C. 20036.

SUMMARY: Agreement No. 10116-2, among Japan Line, Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; Showa Line, Ltd.; and Yamashita-Shinnihon Steamship Co., Ltd., modifies the basic pooling agreement covering cargo movements originating and/or terminating in the trades, eastbound and westbound, between Japanese ports and ports in California, Oregon, and Washington, by amending Article 14 to extend the term of the agreement to and including December 31, 1981. A previous extension is currently pending consideration by the Commission in Docket No. 76-14, *Agreement No. 10116-1—Extension of Pooling Agreement in the Eastbound and Westbound Trades Between Japanese Ports and Ports in California, Oregon and Washington.*

By order of the Federal Maritime Commission.

Dated: November 7, 1978.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-31866 Filed 11-9-78; 8:45 am]

[6730-01-M]

[Independent Ocean Freight Forwarder License No. 1871]

ROBERT A. WARREN

Order of Revocation

On November 2, 1978, Robert A. Warren, 1927 West Georgia Avenue, College Park, Ga. 30337, requested the Commission to revoke his Independent Ocean Freight Forwarder License No. 1871.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 201.1 (Revised), § 5.01(c), dated August 8, 1977;

It is ordered, That Independent Ocean Freight Forwarder License No. 1871 issued to Robert A. Warren be and is hereby revoked effective November 2, 1978 without prejudice to reapplication for a license in the future.

It is further ordered, That a copy of this Order be published in the FEDERAL REGISTER and served upon Robert A. Warren.

ROBERT G. DREW,
Director, Bureau of Certification and Licensing.

[FR Doc. 78-31865 Filed 11-9-78; 8:45 am]

[1610-01-M]

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Receipt of Report Proposal

The following request for clearance of a report intended for use in collecting information from the public was received by the Regulatory Reports Review staff, GAO, on November 6, 1978. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the FEDERAL REGISTER is to inform the public of such receipt.

The notice includes the title of the request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed FTC request are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed request, comments (in triplicate) must be received on or before December 1, 1978, and should be addressed to Mr. John M. Lovelady, Assistant Director, Regulatory Reports Review, U.S. General Accounting Office, Room 5106, 441 G Street NW., Washington, D.C. 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review staff, 202-275-3532.

FEDERAL TRADE COMMISSION

The FTC requests clearance of a new application form "Conference Application—Public Participation in FTC Rulemaking." The FTC pursuant to the authority granted under the Mag-

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nuson-Moss/FTC Improvement Act has established a compensation program for public participation in its rulemaking proceedings. Funds are available to compensate groups and individuals who represent an interest that would not be adequately represented otherwise and where consideration of such interest is necessary for a fair determination of the proceeding. Applicants must also demonstrate that they would be unable to participate effectively without public compensation because of an inability to meet the inherent costs which such participation would entail. In an effort to broaden the access to and participation in this program the FTC is considering sponsoring a training seminar on the mechanics of the application process, the role of public participants, and how to tailor and manage an effective participation effort. Should the funds be made available the seminars would be scheduled serially during fiscal year 1979 in Cleveland, Dallas, Atlanta, Denver, Boston and New York. An outside contractor will handle the arrangements and will be responsible for conducting the six seminars. The seminars will be designed to reach approximately 50 local consumer and community leaders, small business people and state and local consumer agency administrators. In order to identify the 50 trainees per seminar it will be necessary for the contractor to mail out an announcement and the application form to as many as 500 individuals per seminar soliciting information on the background and interests of the groups they represent. The purpose of the application form is to assist the contractor in selecting the 50 most likely candidates for training. The goal being to reach organizational representatives who would not be apt to participate in FTC rulemaking proceedings absent the training program; but who, with training, have a high potential for effective participation and the capability to use and disseminate the information and skills acquired at the seminars. The FTC estimates that potential respondents number 3,000 and that reporting burden will average 1 hour per application.

NORMAN F. HEYL,
Regulatory Reports Review Officer.

[FR Doc. 78-31816 Filed 11-9-78; 8:45 am]

[6820-38-M]

GENERAL SERVICES ADMINISTRATION

[ADM 1095.1B]

GSA ORDER

Subject: Environmental considerations in decisionmaking.

1. *Purpose.* This order prescribes the uniform procedures to be followed in implementing the laws, Executive orders, and directives concerning all major GSA actions that significantly affect the quality of the human environment, consistent with the basic statutory responsibilities governing GSA program operations. This order also provides a basis for the publication, when required, of service and staff office orders and instructions explicitly directed toward the particular functions, activities, and personnel of each organization.

2. *Cancellation.* ADM 1095.1A is canceled.

3. *Background.* a. The laws, Executive orders, and directives to be implemented include the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*), hereinafter referred to as NEPA; Executive Order 11514 of March 5, 1970, entitled "Protection and Enhancement of Environmental Quality"; section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470f); Executive Order 11593 of May 13, 1971, entitled "Protection and Enhancement of the Cultural Environment"; GSA Order PBS 1022.1, entitled "Protection of historic properties"; Executive Order 11752 of December 17, 1973, entitled "Prevention, Control, and Abatement of Environmental Pollution at Federal Facilities"; and the Guidelines issued by the Council on Environmental Quality (CEQ) for preparing environmental impact statements, hereinafter referred to as the Guidelines, published in the FEDERAL REGISTER August 1, 1973, 38 FR 20550, and amended in the FEDERAL REGISTER on August 7, 1973, 38 FR 21265.

b. Section 102 of NEPA directs all Federal agencies to the fullest extent possible (1) to utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and decisionmaking which may have an impact on man's environment; (2) to identify and develop methods and procedures which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations; (3) to include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official which includes to the fullest extent possible the following:

(1) The environmental impact of the proposed action;

(2) Any adverse environmental effects which cannot be avoided should the proposal be implemented;

(3) Alternatives to the proposed action;

(4) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and

(5) Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

c. Executive Order 11514 effectuates the purpose of NEPA, and the revised Guidelines implement NEPA.

4. *Nature of revision.* This revision reflects GSA organizational changes and the transfer of certain responsibilities from the Council on Environmental Quality to the Environmental Protection Agency. Several editorial changes have also been made.

5. *Role of the environmental impact statement process.* The environmental impact statement process is a means of coodinating active consideration of environmental concerns throughout the GSA planning, action development, and review processes. Environmental enhancement, protection, and restoration shall be regarded as primary responsibilities. Through serious consideration of all reasonable alternatives, adverse environmental effects must be avoided or minimized to the fullest extent possible. The process shall be used to reassess ongoing actions as NEPA applies to those actions approved prior to January 1, 1970, and to assess future actions to avoid or minimize adverse effects.

6. *Responsibilities.*

a. *External to GSA.*—(1) *Council on Environmental Quality.* Under section 202 of NEPA (42 U.S.C. 4344), CEQ is responsible for reviewing and appraising the environmental programs and activities of the Federal Government. CEQ will determine the extent to which these programs and activities are contributing to the achievement of NEPA's policy and will make recommendations to the President with respect thereto.

(2) *Environmental Protection Agency (EPA).* Pursuant to section 309 of the Clean Air Act, as amended (42 U.S.C. 1857h-7), EPA is responsible for the review of agency activities and proposed legislation and regulations if these would result in environmental impact on any activities under the authority of the EPA Administrator.

(3) *Advisory Council on Historic Preservation.* The Council is charged in section 202 of the National Historic Preservation Act of 1966 (16 U.S.C. 470j) with advising the President and the Congress in the field of historic preservation and with commenting on Federal, federally assisted, and federally licensed undertakings which affect properties listed in the National Register of Historic Places.

b. *Internal GSA.*—(1) *Commissioner, Public Buildings Service.* The Commissioner acts for the Administrator on environmental and historic preservation matters.

(2) *Assistant Commissioner, Office of Space Management (PR).* The Assistant Commissioner is responsible for the initiation and direction of GSA's agencywide environmental program policy. The Assistant Commissioner has review responsibility on the environmental impact statement process and responsibility for dealing with entities outside the agency on environmental policy matters.

(3) *Director, Environmental Affairs Division, Office of Space Management (PRE).* The Director coordinates and implements the GSA environmental program and serves as the official GSA liaison officer with the Council on Environmental Quality and the Environmental Protection Agency.

(4) *General Counsel.* The General Counsel has responsibility for interpreting statutes, Executive orders, guidelines, and regulations, and for reviewing and commenting on the legal sufficiency of environmental assessments, negative declarations, and draft and final environmental impact statements.

(5) *Other.* As appropriate, each major program area within GSA shall be responsible for drafting and implementing corresponding orders consistent with the requirements of this order and with their program functions and operations. Responsibilities within the services and staff offices are to be delineated in the corresponding orders.

7. *Preparation of the environmental assessment.* Any major GSA action which may significantly affect environmental quality shall be carefully evaluated, and an environmental assessment of the action shall be prepared which will, to the fullest extent possible, address the requirements of section 102(2)(C) of NEPA. (See subpar. 3b(3).) From this assessment a determination can be made to develop an environmental impact statement or a negative declaration. Those GSA actions and activities which are covered by NEPA include, but are not limited to:

a. Major actions which would result from recommendations or favorable reports on legislation, including requests for appropriations, originating both within and outside the agency when GSA has primary responsibility for implementing the legislation;

b. Major actions which would result from establishment or modification of rules, regulations and procedures, and policies;

c. Major new and continuing actions by GSA, including grants, loans, and other funding assistance, new construction, real property actions, procurement actions, stockpile management and disposal actions, leases, permits, easements, and licenses; and

d. Major actions which would result from new technology, research, and development, based on the size of GSA's investment, likelihood of widespread application, potential environmental impacts, and degree that continued investment will foreclose alternatives.

8. *Decision to prepare an environmental impact statement.* Subsequent to an environmental assessment, if there is doubt whether a statement should be prepared or if the proposed action is likely to be highly environmentally controversial, a statement shall be prepared. It must be recognized that many Federal decisions seem of limited environmental consequence when viewed individually but are of significant consequence when viewed collectively. When GSA is responsible for all such decisions, a GSA statement shall be filed covering the entire complex of decisions and actions.

9. *Specific criteria.* As required by § 1500.6(c) of the Guidelines, the services and staff offices must review the typical classes of actions that they undertake and develop specific criteria and methods for identifying those actions likely to require environmental statements and those actions likely not to require environmental statements. The specific criteria, if applicable to existing actions and activities, shall be transmitted by the Heads of Services and Staff Offices to the Assistant Commissioner, Office of Space Management, upon request or as new agency activities arise which could qualify under the Guidelines.

Dated: October 23, 1978.

JAY SOLOMON,
Administrator.

ATTACHMENT

CHAPTER 1. DEFINITIONS

1. *Environment.* The whole complex of physical, social, cultural, and esthetic factors which affect individuals and communities and ultimately determine their form, character, relationship, and survival.

2. *Resources.* All actions and ideas, as well as living and nonliving materials devoted to the action.

3. *Public entities.* Any Federal, State, or local offices and legislatures, and any public or semipublic agencies.

4. *Relevant A-95 clearinghouse.* Clearinghouse(s) listed in OMB Circular No. A-95 (Revised) clearinghouse directory for the geographical area in which the GSA action is to take place. (OMB, through its Circular No. A-95 (Revised), established this system of clearinghouses to facilitate intergovernmental and intragovernmental communication.)

5. *Corresponding service and staff office orders and instructions.* Service and staff office orders and instructions which provide guidelines, delineate procedures, and assign responsibilities relevant to the personnel and activities of the appropriate organization consistent with the basic statutory provisions governing its operations.

6. *Environmental assessment.* An evaluation occurring early in the approval process of the potential environmental impact of a project or activity.

7. *Environmental impact statement.* A detailed statement which, pursuant to section 102(2)(C) of the NEPA, to the fullest extent possible, identifies and analyzes, among other things, the anticipated environmental impact of a proposed GSA action and discusses how the adverse effects will be mitigated.

8. *Negative declaration.* An official administrative decision stating that an analysis of the environmental assessment has been made and that the proposed action is not considered a major GSA action having a significant impact on the environment, and, therefore, will not require the preparation of an environmental impact statement. (The declaration must also include a summary of any known environmental impacts.)

9. *Significant environmental effects.* Socioeconomic and physical effects which may be beneficial and/or detrimental to the environment, even if the net is believed to be beneficial. (These effects may be influenced by the geographical location of the subject project or action. Significant detrimental effects include those that degrade the environment, curtail its range of uses, or sacrifice its long-term productivity to serve only humanity's short-term needs.)

10. *Comments.* All formal reactions by public and private entities to the proposed action and to the environmental impact statement.

11. *Areas of jurisdiction by law or special expertise.* Specific Federal agencies identified by appendix II of the Guidelines as competent to comment on environmental impact statements which have bearing on particular environmental concerns. (GSA's areas of jurisdiction by law or special expertise include energy and natural resources conservation (design and operation of buildings); property management; redevelopment and construction in built-up areas; historic, architectural, and archaeological preservation; and any other areas designated by the Council on Environmental Quality.)

12. *Lead agency.* The Federal agency which has primary authority for committing the Federal Government to a course of action with significant environmental impact.

CHAPTER 2. ENVIRONMENTAL IMPACT STATEMENT PROCESS, CONTENT, AND FORMAT

1. *Environmental assessment.* The preparation of an environmental assessment shall begin within the regional office, service, or staff office in the early stages of planning an action. As the action develops, the assessment shall be prepared by all involved, using interdisciplinary expertise to insure complete assessment and full consideration of the range of environmental factors in the development of the action to make certain that:

a. Commitments are not made to courses of action that will unnecessarily complicate reconciliation with environmental factors;

b. Environmentally desirable alternatives are not inadvertently foreclosed; and

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c. Negative environmental impacts are minimzied.

2. *Lead agency.*

a. If there is a question concerning the primary responsibility for statement preparation, the matter shall be referred to the Office of Space Management (PR) for resolution by EPA. However, it is possible for a statement to be submitted jointly by all agencies concerned, with the comments being returned to a single designated official.

b. If GSA is the lead agency and one or more other agencies have partial responsibility for the action, the other agencies shall be requested to provide to the responsible GSA official such information as may be necessary to prepare a suitable and complete environmental impact statement. If another agency is designated to be the lead agency, the criteria for statement preparation for that agency shall apply. Thus, GSA should consider its planned action in relation to those actions of other agencies in the area, as well as those actions jointly undertaken by GSA and other Federal agencies.

3. *Clearinghouse consultation.* The relevant A-95 clearinghouse (as defined in ch. 1-4) shall be notified of plans for the project or action at the earliest practicable point. Thus, any comments germane to the environmental assessment, to the decision to prepare an environmental impact statement, or to the early planning of the action may be promptly received and incorporated.

4. *Decision to prepare an environmental impact statement or negative declaration.* a. Upon completion of an environmental assessment a decision must be made to prepare either a negative declaration or an environmental impact statement. If it is determined that an environmental impact statement will be necessary, the regional office, service, or staff office developing the action shall begin preparation of the statement as described in paragraphs 5 and 8.

b. If, however, after preparation of an environmental assessment it is concluded that the action will not constitute a major Federal action signficantly affecting the quality of the human environment, the regional office, service, or staff office shall, in accordance with appropriate service or staff office orders:

(1) Forward the environmental assessment and negative declaration or recommendation for a negative declaration to the Central Office program official for a review and comment. Copies shall also be forwarded to the Office of General Counsel (L) and the Assistant Commissioner, Office of Space Management (PR), unless the action is a class of action exempted from this procedure by approved service or staff office orders. All review periods shall run concurrently for a period of 10 workdays from the date of receipt. The 10-workday review period may be extended if necessary. Any requests for additional review time, information, or revision shall be directed to the appropriate service or staff office program official. All comments shall be forwarded to the Central Office program official for preparation of a consolidated response to the region. The Commissioner, Public Building Service, shall reconcile any differences concerning the need for additional information or revision that may arise between the program officials and other reviewing officials, except that final approval for legal sufficiency shall be the responsibility of the General Counsel or the General Counsel's designee. The assessment shall be attached to a negative declaration. Unless otherwise notified within the review period, the concerned Central Office program official and/or regional official shall assume the environmental assessment and negative declaration are adequate and may proceed with the action.

(2) Document the files with the negative declaration and environmental assessment, which shall be available for public inspection upon request.

(3) Continue development of the action, and, in the spirit of environmental enhancement, monitor the action for any subsequent development which may necessitate the preparation of an environmental impact statement.

c. The Commissioner, Public Buildings Service, shall reconcile any differences concerning the decision to prepare an environmental impact statement that may arise between the program officials and other reviewing officials.

5. *Environmental impact statement format.*

a. Draft and final environmental impact statements shall be prepared in clear black type.

b. A cover page containing all essential information to facilitate subsequent identification and retrieval shall be prepared for each statement.

c. The format of the summary sheet accompanying each statement is specified in appendix I of the Guidelines.

6. *Draft environmental impact statement preparation and content.*

a. The draft shall describe in detail the environmental implications of a proposed GSA action and shall satisfy the substantive requirements of the final statement to the fullest extent possible. The minimum content requirements of an environmental impact statement are listed in subparagraph 3b(3) of the transmittal order and explained in detail in § 1500.8 of the Guidelines.

b. Preparation of the draft environmental impact statement shall include input from all relevant disciplinary areas. Specialists to be consulted may include urban planners, land-use planners, space planners, landscape architects, transportation experts, interior designers, design architects, engineers, geologists, chemists, toxicologists, sociologists, economists, psychologists, statisticians, or any other experts, public or private, deemed necessary for full consideration of all relevant environmental factors. The solicitation of expert assistance from any public or private entity during the preparation of a GSA environmental impact statement does not detract from GSA the responsibility for scope and content of the statement and the judgment relevant to GSA actions on the project.

c. Each statement shall show that the particular economic and technical benefits of the proposed action have been assessed against the environmental effects.

d. When the head of a service or staff office or Regional Administrator deems it appropriate, public meetings shall be held during the course of development of the action, either in the form of public information or factfinding meetings before the draft statement is prepared or in the form of public hearings at least 15 calendar days following issuance of the draft statement. The agency's decision to hold a public hearing shall be based on the magnitude of the action, the complexity of the issue and the extent of previous public involvement and interest. The head of a service or staff office or Regional Administrator shall determine the best method of notifying the public that a public hearing is to be held.

e. When the service or staff office or regional office has completed the preliminary draft statement, it shall be transmitted in accordance with appropriate service or staff office orders to the central office program official for review and comment. Copies shall also be forwarded to the Office of General Counsel (L) and the Assistant Commissioner, Office of Space Management (PR). All review periods shall run concurrently for a period of 15 workdays from the date of receipt. The 15-workday review period may be extended if necessary. Any requests for additional review time, information, or revision shall be directed to the appropriate service or staff office program official. All comments shall be forwarded to the central office program official for preparation of a consolidated response to the region. The Commissioner, Public Buildings Service, shall reconcile any differences concerning the need for additional information or revision that may arise between the program officials and other reviewing officials, except the final approval for legal sufficiency shall be the responsibility of the General Counsel or the General Counsel's designee. Unless otherwise notified within the review period, the concerned regional or central office official shall assume the statement is adequate, or the statement shall be revised according to their comments and distributed as indicated in paragraph 7 by the head of the appropriate service or staff office or Regional Administrator.

f. The head of a service or staff office or Regional Administrator shall determine the extent of newspaper coverage and select the newspaper(s) which would most adequately inform the reading public in the area that a GSA draft environmental impact statement has been prepared. Notice should be published at least once and should include how and where copies of the statement may be obtained. The paper(s) may be issued weekly and may be very local in nature. If the action is not local in character, the head of a service or staff office or Regional Administrator shall determine the best method of publicizing the availability for review of the environmental impact statement. The Director of Information in the central office and the Regional Administrators in the regions shall clear notices regarding any GSA activity under their jurisdictions as provided in the GSA Administrative Manual, chapter 8-2 (OAD P 5410.1).

7. *Distribution of draft environmental impact statements.* In accordance with service or staff office orders, the service or staff office or regional office responsible for the preparation of the draft statement shall distribute the statement. The following shall always be included in the distribution:

a. The Governor and Senators from the affected State, the Member of the House of Representatives from the affected district, and any other appropriate officials;

b. The Environmental Protection Agency (10 copies);

c. The relevant A-95 clearinghouse, appropriate elected officials, and all State and local agencies that would be interested in the action;

d. Federal agencies directly related to the specific action;

e. All other Federal agencies competent to comment owing to legal jurisdiction or special expertise (for reference, see appendix II of the Guidelines);

f. Any group or individual that requests a copy of the environmental statement; and

g. Any entity, group, or individual that the Assistant Commissioner, Office of Space Management, decides should be included.

8. *Commenting period.* The service or staff office or regional office preparing the statement shall establish a time limit of not less than 45 calendar days for comments on each draft. In establishing this time limit, the service or staff office or regional office should keep in mind the magnitude and complexity of the statement and the extent of citizen interest in the proposed action. For the purpose of establishing the minimum review period, the impact statement received by EPA during a given week (Monday through Friday) shall be recorded as filed with EPA on the Friday of the following week. Upon request, GSA may extend the commenting period for up to 15 calendar days, whenever practicable. It may be assumed that entities that have not responded by the close of the commenting period do not wish to comment.

9. *Consideration of comments.* The service or staff office or regional office shall carefully reconsider its action in relation to the relevant and substantive comments received on the draft environmental impact statement and, to the fullest extent possible but consistent with basic statutory responsibilities governing its program operations, shall make every attempt to reconcile its action with respect to any divergent recommendations by:

a. Altering its current plan of action;

b. Working with the commenting entities to develop mutually acceptable plans or workable compromises; and

c. Working with any additional entities or private groups to initiate additional projects or programs designed to mitigate environmental impacts.

If in the opinion of the Commissioner, Public Buildings Service (P), a substantial environmental consideration was not adequately dealt with in the draft statement, the draft shall be considered incomplete, and consideration shall be given to issuing a supplementary statement as provided in paragraph 13 or to issuing a new draft statement.

10. *Final environmental impact statement preparation and content.*

a. The final statement shall consist of all the information in the draft statement and information on any developments that arise subsequent to the filing of the draft. All substantive comments made on the draft statement shall be attached to the final statement, insofar as feasible, and the substantive comments must be addressed in the text through revisions and additions or by direct reference. Additionally, wherever a conflict exists, efforts to reconcile differences shall be described, including the activities listed in paragraph 9.

b. When completed, the preliminary final statement shall, in accordance with appropriate service or staff office orders, be transmitted to the central office program official for review and comment. Copies shall also be forwarded to the Office of General Counsel (L) and the Assistant Commissioner, Office of Space Management. All review periods shall run concurrently for a period of 15 workdays from the date of receipt. The 15-workday review period may be extended if necessary. Any requests for additional review time, information, or revision shall be directed to the appropriate service or staff office program official.

All comments shall be forwarded to the Central Office program official for preparation of a consolidated response to the region. The Commissioner, Public Buildings Service, shall reconcile any differences concerning the need for additional information or revision that may arise between the program officials and other reviewing officials, except that final approval for legal sufficiency shall be the responsibility of the General Counsel or the General Counsel's designee. Unless otherwise notified within the review period, the concerned regional or central office official shall assume the statement is adequate, or the statement shall be revised in accordance with their comments. The head of the appropriate service or staff office or Regional Administrator who prepared the statement shall then distribute the statement as indicated in paragraph 11.

11. *Distribution of the final environmental impact statement.*

a. Copies of the final statement shall be sent simultaneously and free of charge to:

(1) All entities that offered substantive comments on the draft;

(2) The Environmental Protection Agency (10 copies);

(3) The relevant A-95 clearinghouse; and

(4) The principal whose project is the subject of the statement.

b. All members of the public who request a copy shall receive one if feasible. When it is not feasible to comply with requests for copies, the Office of Space Management (PR) shall consult with EPA in devising alternative arrangements. Under no circumstances shall a charge be affixed greater than the cost of reproduction.

12. *Moratorium period.* The services and staff offices and regional offices shall take no administrative action in prosecution of any phase of the subject action within 90 calendar days of the commencement of the review period on the draft (see par. 8) or within 30 calendar days of EPA's receipt of the final statement. The above 90- and 30-day periods may run concurrently to the extent that they overlap. The Commissioner, Public Buildings Service, or Regional Administrator shall receive all requests for reducing the minimum time requirements. If after weighing all considerations the Commissioner or Regional Administrator deems the request justified, the Commissioner or Regional Administrator shall instruct the Office of Space Management (PR) to consult with the Environmental Protection Agency in arriving at alternative arrangements.

Each organization shall be responsible for defining in its orders what actions will not constitute "an administrative action in prosecution of the action" for each of its typical classes of action for which environmental impact statements are often prepared.

13. *Supplementary statements.* The service or staff office or regional office shall supplement or amend draft and final statements when substantial changes are made in the proposed action (unless these changes are made to decrease the environmental impact), when changes are made which significantly increase the adverse environmental impact, or when significant new information becomes available concerning the environmental impact of the action. The service or staff office or regional office shall distribute these supplements or amendments pursuant to paragraph 11, and the Office of Space Management (PR) shall consult with EPA regarding the necessity of reestablishing appropriate commenting or review periods.

14. *Recommendations or favorable reports on proposals for legislation.*

a. If GSA makes a recommendation or favorable report on a legislative proposal the subject of which is the primary responsibility of GSA, then GSA must determine the environmental impact of that proposal. If in the opinion of the head of a service or staff office, the Assistant Commissioner, Office of Space Management, or the Commissioner, Public Buildings Service, the proposal may have significant environmental impact, an environmental impact statement shall be prepared on the proposal consistent with the provisions of § 1500.12(b) of the Guidelines.

b. Where possible, the final statement shall be available to the Congress, EPA, and the public at the time the legislation is submitted to the Congress. If time is a constraint, the draft statement may be used.

15. *Early notice system.*

a. Each service and staff office and regional office shall keep available for public inspection a current list of its contemplated actions for which environmental impact statements are being prepared. A copy of the current list shall be transmitted to the Office of Space Management (PR) on the last workday prior to March 9, June 9, September 9, and December 9 of each year.

b. Each service and staff office and regional office shall also maintain for public inspection a current list of its actions for which negative declarations have been made and shall transmit them pursuant to a. above.

c. The Office of Space Management (PR) shall compile the lists and transmit composite agency lists for the previous quarter for publication in the FEDERAL REGISTER by March 15, June 15, September 15, and December 15 of each year.

d. The Office of Space Management (PR) shall promptly notify EPA if any action is listed as one for which an environmental impact statement is being prepared, and at a later date a decision is made that only a negative declaration is needed.

16. *Commenting on environmental impact statements prepared by other agencies.* Upon receipt in GSA of a draft statement prepared by another agency, the Office of Space Management (PR) shall forward the statement to those GSA offices competent to comment on it. Those offices shall then provide comments for the Office of Space Management's official reply. Comments shall be specific, substantive, and factual, following the format of the draft statement. Within GSA's areas of jurisdiction by law or special expertise, GSA will assess the degree of environmental impact and the acceptability of that impact. GSA may recommend modifications or alternatives to a project. (See § 1500.9e of the Guidelines.)

17. *Supplementary guidelines.* The CEQ Guidelines, upon which this order is based, may be supplemented as required by CEQ. The Guidelines became effective on January 28, 1974, and are effective for all draft and final impact statements filed after that date.

[FR Doc. 78-31809 Filed 11-9-78; 8:45 am]

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[6820-38-M]

[Temporary Regulation F-476]

SECRETARY OF DEFENSE

Federal Property Management Regulations; Delegation of Authority

Subject: Delegation of authority.

1. *Purpose.* This regulation delegates authority to the Secretary of Defense to represent the interests of the executive agencies of the Federal Government in a telephone rate proceeding.

2. *Effective date.* This regulation is effective immediately.

3. *Delegation.*

a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, particularly sections 201(a)(4) and 205(d) (40 U.S.C. 481(a)(4) and 486(d)), authority is delegated to the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government before the New Mexico Corporation Commission involving changes in the rates and charges of Mountain States Telephone & Telegraph Co. for business telephone service.

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration, and shall be exercised in cooperation with the responsible officers, officials, and employees thereof.

JAY SOLOMON,
Administrator of General Services.

OCTOBER 26, 1978.

[FR Doc. 78-31774 Filed 11-9-78; 8:45 am]

[4110-35-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Care Financing Administration

PRIVACY ACT OF 1974

System of Records—Program Integrity Case Files

AGENCY: Department of Health, Education, and Welfare, Health Care FinancingAdministration.

ACTION: Notice of system of records, new routine use, and minor technical amendments.

SUMMARY: The Health Care Financing Administration (HCFA) is publishing a notice of a system of records for program integrity case files, including a new routine use and minor technical amendments. The Social Security Administration (SSA) published a notice for this system, but following the reorganization of HEW, SSA inadvertently deleted it from the 1977 annual publication of Privacy Act notices in the FEDERAL REGISTER. This notice also replaces the former HCFA health insurance program review team case files system notice, (09-70-2001), which simply referred to certain of the records kept in program integrity case files. HEW last published the notice for system No. 09-70-2001 in the FEDERAL REGISTER of September 27, 1978, at page 44231.

DATES: The notice of the system of records, the minor technical amendments, and the merging of the two systems notices shall take effect as proposed without further notice on November 13, 1978 and the new routine use will take effect as proposed without further notice on December 13, 1978, unless HCFA receives comments which would result in a contrary determination.

ADDRESS: The public should address comments to Acting Director, Fair Information Practice Staff, Department of Health, Education, and Welfare, 200 Independence Avenue SW., Washington, D.C. 20201. Comments will be available for inspection in Room 526-F, Hubert H. Humphrey Building, at the above address.

FOR FURTHER INFORMATION CONTACT:

James W. Phipps, Acting Chief, Directives Management and Reports Branch, Office of Management and Budget, Health Care Financing Administration, Room 5078, Mary E. Switzer Building, 330 C Street SW., Washington, D.C. 20201, or call 202-245-0728.

SUPPLEMENTARY INFORMATION: On March 8, 1977, the Department of Health, Education, and Welfare reorganized, and created the Health Care Financing Administration (HCFA) to administer the medicare and medicaid programs. In order to monitor payment of benefits, and prevent fraud and abuse, HCFA created an office of program integrity, based on the program integrity staff which performed this function when the Social Security Administration administered the medicare program.

Until June 29, 1977, the program integrity case files which HCFA now maintains were covered by the Social Security Administration's systems notice 09-60-0097, but SSA inadvertently deleted reference to those files from the annual FEDERAL REGISTER publication for 1977, before HCFA had published a separate notice for the files. This notice reflects the transfer of the system to HCFA, with minor technical amendments to bring the terminology into conformity with the reorganization of HEW.

In addition, this systems notice replaces and incorporates portions of the health insurance program review team case files systems notice (09-70-2001). That notice simply reflected a particular use of certain fully developed abuse case files, which were part of the general program integrity case file system, and which HCFA referred to program review teams. Since Pub. L. 95-142 (the medicare-medicaid antifraud and abuse amendments) eliminated those teams, and because there is actually only one system of records, a separate notice is unnecessary.

HCFA is publishing the new routine use pursuant to sections 7 and 13 of Pub. L. 95-142, which requires that HEW transmit information on convicted practitioners (i.e. practitioners who have been convicted by a Federal or State court) to State or local licensing authorities for disciplinary action. In addition, the new routine use allows HEW to disclose information on practitioners to professional standards review organizations and other professional bodies for consultation purposes during the abuse case development process. The new routine use also authorizes HEW to disclose information on practitioners to State or local licensing authorities for review for possible disciplinary action where there is a strong indication of unethical practices or unprofessional conduct.

Dated: November 6, 1978.

FREDERICK M. BOHEN,
Assistant Secretary for Management and Budget.

09-70-2002

System name:

HCFA Program Integrity Case Files.

Security classification:

None.

System location:

HCFA, Office of Program Integrity, 6401 Security Boulevard, Baltimore, Md. 21235, or Office of Program Integrity Regional Office locations (see app. C.2, FEDERAL REGISTER, Volume 43, No. 188, September 27, 1978, page 44218).

Categories of individuals covered by the system:

Persons or entities alleged to have violated the provisions of the Social Security Act where substantial basis for criminal prosecution exists, defendants in criminal prosecution cases, or persons or entities alleged to have rendered unnecessary services to medicare beneficiaries, overutilization of services, improper billing procedures,

or breach of the assignment agreement.

Categories of records in the system:

Information maintained in each record includes the identity of the suspect, the nature of the alleged offense, documentation of the investigation into the alleged offense (including identification of beneficiaries and witnesses, statements, medical records, payment records, or complaints from beneficiaries and others, correspondence and forms, documentation of complaints, and reports of medical review committees or consultants (including professional standards review organizations)), and the disposition of the case by the office of program integrity, or the U.S. Attorney.

Authority for maintenance of the system:

Sections 205, 1106, 1107, 1815, 1816, 1833, 1842, 1872, 1874, 1876, and 1877 of the Social Security Act.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The office of program integrity staff routinely uses material in this system of records to determine if a violation of provisions of the Social Security Act or related penal or civil provisions of the United States Code has been committed. They also use this material to determine if HEW has made proper payments as prescribed under section 1815 and 1833 of title XVIII of the Social Security Act and to determine whether the medicare program has been abused.

HCFA uses such material as the basis for referral of the case to the office of the Inspector General or the Department of Justice for consideration of criminal prosecution or civil action or to State or local licensing authorities, professional standards review organizations, peer review groups, medical consultants, or other professional associations for possible administrative action.

HCFA discloses some such information to officers or employees of State governments as well as the civilian health and medical program of the Uniformed Services (CHAMPUS) program for use in conducting or directing investigations of possible fraud or abuse against the title XIX or CHAMPUS programs, as well as State attorneys in connection with State programs involving the Health Care Financing Administration.

HCFA also uses the material to determine the direction of investigation of potential fraud or abuse situations, which includes contact with third parties for the purpose of establishing or negating a violation. HCFA discloses cases involving fraudulent tax returns or forgery of medicare checks to the Treasury Department, to the postal authorities, and to appropriate law enforcement agencies. HCFA may make disclosures to a congressional office from the record of an individual in response to an inquiry which the congressional office makes at the request of that individual.

In the event of litigation where one of the parties is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party, provided such disclosure is compatible with the purpose for which the records were collected.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper files maintained in locked file cabinets.

Retrievability:

The staff indexes and retrieves records by case number or by the name of the subject of the investigation. The information in this record system pertains to persons or entities suspected of having violated the criminal provisions of the Social Security Act (or related provisions of the United States Code) or of rendering unnecessary services to medicare beneficiaries, overutilization of services, improper billing procedures, or breach of the assignment agreement. Cases may move through several levels of the Social Security Administration or health care financing administration organizations at the district, regional, and/or central office locations during the course of documenting a suspected program fraud or abuse situation.

Safeguards:

HCFA keeps the file cabinets locked, in a room that is locked after office hours. No one has access to the files except office of program integrity staff or other authorized personnel on a need to know basis.

Retention and disposal:

HCFA places the records in an inactive file after final action on the case. It closes out the inactive file at the end of the calendar year in which final action was taken, holds it 2 additional years, transfers it to the Federal Records Center, who destroys it after 3 additional years.

System manager(s) and address:

Director, Office of Program Integrity HCFA, 6401 Security Boulevard, Baltimore, Md. 21235; or Office of Program Integrity Regional Office locations (see Appendix C.2, FEDERAL REGISTER, Volume 43, No. 188, September 27, 1978, p. 44218).

Notification procedures:

An individual can determine if this system contains a record pertaining to him by requesting such information in writing. He should direct inquiries to HCFA, Office of Program Integrity, 6401 Security Boulevard, Baltimore, Md. 21235 or the appropriate office of Program Integrity Regional Office (see app. C.2). An individual who requests notification of or access to a medical record shall, at the time he makes the request, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

These notification procedures are in accordance with Department regulations (45 CFR, sec. 5b.6, FEDERAL REGISTER, October 8, 1975, p. 47411).

Records access procedures:

Same as notification procedures. Requestors should also reasonably specify the record contents they seek. Under 5 United States Code 522a(k)(2), certain records (the original program integrity case files, but not the program review team case files) in this system are exempt from access by the individual named in the records. However, access to information which is a matter of public record or documents which the individual furnished will be permitted. These access procedures are in accordance with Department regulations (45 CFR, sec. 5b.5(a)(2), FEDERAL REGISTER, October 8, 1975, p. 47410).

Contesting record procedures:

Contact the appropriate official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested. (These procedures are in accordance with department regulations—45 CFR, sec. 5b.7, FEDERAL REGISTER, October 8, 1975, p. 47411).

Source categories:

The information contained in this record system is the result of a criminal or program abuse investigation and may be derived from such sources as the suspect, beneficiaries, witnesses,

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professional standards review organizations, professional or peer review committees, medical consultants, title XIX State agencies, or Social Security Administration, health care financing administration, carrier or intermediary employees with a knowledge of the case.

System exempted from certain provisions of the Act:

HEW claims exemption of certain records (the original program integrity case files, but not the program review team case files) in this system from the access provisions under 5 U.S.C. 522a(k)(2) inasmuch as these records are investigatory materials compiled for program (law) enforcement in anticipation of a criminal or administrative proceeding. (See page 47413 of FEDERAL REGISTER of 10/8/75, Vol. 40, 196, pt. V).

[FR Doc. 78-31794 Filed 11-9-78; 8:45 am]

[4110-39-M]

National Institute of Education

PANEL FOR THE REVIEW OF LABORATORY AND CENTER OPERATIONS

Corrected Meeting

In FR Doc. 78-31227 appearing on page 51144 in the issue of Thursday, November 2, 1978, the first paragraph should show that the next meeting of the Panel for the Review of Laboratory and Center Operations will be held on November 18-19.

Dated: November 7, 1978.

GRADY MCGONAGILL,
Staff Director, Panel for the Review of Laboratory and Center Operations.

[FR Doc. 78-31823 Filed 11-9-78; 8:45 am]

[4110-08-M]

National Institutes of Health

NATIONAL HEART, LUNG, AND BLOOD INSTITUTE; COOLEY'S ANEMIA RESEARCH AND TREATMENT

Meeting

Notice is hereby given of the meeting with pediatric hematologists; basic scientist; a population geneticist; and family health, public health, and nurse practitioners who have had experience with Cooley's anemia patients and their families, to assess the state-of-the-art in Cooley's anemia research and treatment, in compliance with the intent of Congress, as stated in the report of the House Committee on Appropriations (95th Congress). This meeting is sponsored by the National Heart, Lung, and Blood Institute—Monday, December 11, 1978, at the Ramada Inn, 1900 North Fort Meyer Drive, Arlington, Va., in conference room Shenandoah A.

This meeting will be open to the public on December 11, 1978 from 10 a.m. to adjournment to consider the dimension of the problem; the public and private resources for the diagnosis of, screening for, and research on Cooley's anemia; and the most fruitful areas for future research. Attendance by the public will be limited to space available.

Mr. John B. Lyons, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, Building 31, Room 4A-21, Bethesda, Md: 20014, 301-496-3533 will provide additional information.

Dated: October 31, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer, NIH.

[FR Doc. 78-31771 Filed 11-9-78; 8:45 am]

[4110-08-M]

NATIONAL INSTITUTE OF CHILD HEALTH AND HUMAN DEVELOPMENT; MENTAL RETARDATION RESEARCH COMMITTEE

Changed Meeting

Notice is hereby given of a change in the December 11-13, 1978, meeting of the Mental Retardation Research Committee, National Institute of Child Health and Human Development, which was published in the FEDERAL REGISTER on October 31, 1978, 43 FR 50743.

The open portion of the meeting was originally scheduled to begin at 9 a.m. and end at 11 a.m. on December 11. This has now been changed and the open portion of the meeting will be from 12 noon to 2 p.m. on December 11.

Dated: November 6, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer, NIH.

[FR Doc. 78-31772 Filed 11-9-78; 8:45 am]

[4110-08-M]

NATIONAL CANCER INSTITUTE ADVISORY COMMITTEE

Meetings for the Review of Contract Proposals and Grant Applications

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of committees advisory to the National Cancer Institute.

These meetings will be open to the public to discuss administrative details or other issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, United State Code and section 10(d) of Pub. L. 92-463, for the review, discussion, and evaluation of individual contract proposals and grant applications, as indicated. These proposals and applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposals and applications.

Mrs. Marjorie F. Early, Committee Management Officer, NCI, Building 31, Room 4B43, National Institutes of Health, Bethesda, Md. 20014, 301-496-5708, will furnish summaries of the meetings and rosters of committee members, upon request. Other information pertaining to the meeting can be obtained from the Executive Secretary indicated. Meetings will be held at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Md. 20014, unless otherwise stated.

Name of committee: Large Bowel Subcommittee of the Large Bowel and Pancreatic Cancer Review Committee.
Dates and time: December 7-8, 1978; 7:30 p.m.
Place: Prudential Building, 1100 Holcombe Boulevard, Houston, Tex. 77025.
Times: Open: December 7, 7:30 p.m. to 8 p.m.; closed: December 7, 8 to 10:30 p.m.; closed: December 8, 8:30 a.m. to adjournment.
Closure reason: To review research grant applications.
Executive Secretary: Dr. Andrew Chiarodo, Westwood Building, Room 853, National Institutes of Health, 301-496-7194.

(Catalog of Federal Domestic Assistant Nos. 13.393, 13.394, 13.395, National Institutes of Health.)

Name of committee: Cause and Prevention Scientific Review Committee.
Date and time: December 8, 1978; 9 a.m.
Place: Landow Building, Conference Room A, 7910 Woodmont Avenue, Bethesda, Md. 20014.
Times: Open: December 8, 9 to 9:30 a.m. : closed: December 8, 9:30 a.m. to adjournment.
Closure reason: To review research contract proposals.
Executive Secretary: Dr. Maurice L. Guss, Landow Building, Room 9A10, National Institutes of Health, 301-496-4533.

(Catalog of Federal Domestic Assistant No. 13.393, National Institutes of Health.)

Name of committee: Tumor Immunology Committee.
Date and time: December 13, 1978; 1:30 p.m.
Place: Westwood Building, Room 803, 5333 Westbard Avenue, Bethesda, Md. 20016.
Times: Open: December 13, 1:30 to 2 p.m.; closed: December 13, 2 p.m. to adjournment.
Closure reason: To review research contract proposals.
Executive Secretary: Dr. David L. Joftes, Westwood Building, Room 803, National Institutes of Health, 301-496-7903.

(Catalog of Federal Domestic Assistant No. 13.395, National Institutes of Health.)

Name of committee: Clinical Cancer Program Project Review Subcommittee of the Clinical Cancer Program Project and Cancer Center Support Review Committee.
Dates and time: December 14-16, 1978; 8:30 a.m.
Place: Building 31C, Conference Room 6, National Institutes of Health.
Times: Open: December 14, 8:30 to 10:30 a.m.; closed: December 14, 10:30 a.m. to 5 p.m.; closed: December 15, 8:30 a.m. to 5:30 p.m.; closed: December 16, 8:30 a.m. to adjournment.
Closure reason: To review research grant applications.
Executive Secretary: Dr. Louise G. Thomson, Westwood Building, Room 809, National Institutes of Health, 301-496-7925.

(Catalog of Federal Domestic Assistant No. 13.397, National Institutes of Health.)

Dated: November 1, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer, National Institute of Health.

[FR Doc. 78-31770 Filed 11-9-78; 8:45 am]

[4110-08-M]

PLENARY SESSION CLEARINGHOUSE ON ENVIRONMENTAL CARCINOGENS

Canceled Meeting

Notice is hereby given of the cancellation of the meeting of the Plenary Session of the Clearinghouse on Environmental Carcinogens, National Cancer Institute, National Institutes of Health, November 30, 1978, which was published in the FEDERAL REGISTER on September 28, 1978 (43 FR 44569). For further information, please contact Dr. James M. Sontag, Executive Secretary, Building 31, Room 3A16, National Institutes of Health, Bethesda, Md. 20014, 301-496-5108.

Dated: October 30, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer, NIH.

[FR Doc. 78-31769 Filed 11-9-78; 8:45 am]

[4110-02-M]

Office of Education

NATIONAL ADVISORY COUNCIL ON INDIAN EDUCATION

Meeting

AGENCY: National Advisory Council on Indian Education.

ACTION: Notice.

SUMMARY: The notice sets forth the schedule and proposed agenda of the forthcoming full council meeting of the National Advisory Council on Indian Education. It also describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act (5 U.S.C. App. I, Sec. 10(a)(2)). This document in intended to notify the general public of their opportunity to attend.

DATES: Full council meeting: November 30, 1978, 3 to 9 p.m., closed, and December 1, 1978, 10 a.m., to 5 p.m., open, and December 2, 1978, 8 to 10 a.m., closed, and December 2, 1978, 10 a.m. to 5 p.m., open.

ADDRESS: Sheraton Inn-Airport, 2201 North 77th East Avenue, Tulsa, Okla., November 30, 1978, and Bacone College, C. C. Harmon Nursing Building, Muskogee, Okla., December 1, 2, 1978.

FOR FURTHER INFORMATION CONTACT:

Stuart A. Tonemah, Executive Director, National Advisory Council on Indian Education, Suite 326, 425 13th Street NW., Washington, D.C. 20004, 202-376-8882.

The National Advisory Council on Indian Education is established under section 442 of the Indian Education Act, Title IV of Pub. L. 92-318 (20 U.S.C. 1221g).

The Council is directed to: (1) Submit to the Commissioner of Education a list of nominees for the position of Deputy Commissioner of the Office of Indian Education/OE;

(2) Advise the Commissioner of Education with respect to the administration (including the development of regulations and of administrative practices and policies) of any program in which Indian children or adults participate from which they can benefit, including title III of the Act of September 30, 1950 (Pub. L. 81-874) and section 810, title VIII of the Elementary and Secondary Education Act of 1965 (as added by title IV of Pub. L. 92-318 and amended by Pub. L. 93-380), and with respect to adequate funding thereof;

(3)Review applications for assistance under title III of the Act of September 30, 1950 (Pub. L. 81-874), section 810 of title VIII of the Elementary and Secondary Education Act of 1965 as amended and section 314 of the Adult Education Act (as added by title IV of Pub. L. 92-318), and make recommendations to the Commissioner with respect to their approval;

(4) Evaluate programs and projects carried out under any program of the Department of Health, Education, and Welfare in which Indian children or adults can participate or from which they can benefit, and disseminate the results of such evaluations;

(5) Provide technical assistance to local educational agencies and to Indian educational agencies, institutions, and organizations to assist them in improving the education of Indian children;

(6) Assist the Commissioner of Education in developing criteria and regulations for the administration and evaluation of grants made under section 303(b) of the Act of September 30, 1950 (Pub. L. 81-874) as added by title IV, part A, of Pub. L. 92-318;

(7) Submit to Congress not later than June 30 of each year a report on its activities, which shall include any recommendations it may deem necessary for the improvement of Federal education programs in which Indian children and adults participate, or from which they can benefit, which report shall include a statement of the Council's recommendations to the Commissioner with respect to the funding of any such program; and

(8) Be consulted by the Commissioner of Education regarding the definition of the term "Indian," as follows:

Section 453 (Title IV, Pub. L. 92-318). For the purposes of this title, the term "Indian" means any individual who: (1) Is a member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940, and those recognized now or in the future by the State in which they reside, or who is a descendant, in the first or second degree, of any such member, or (2) is considered by the Secretary of the Interior to be an Indian for any purpose, or (3) is an Eskimo or Aleut or other Alaska Native, or (4) is determined to be an Indian under regulations promulgated by the Commissioner, after consultation with the National Advisory Council on Indian Education which regulations shall further define the term "Indian."

The full council meeting of the National Advisory Council on Indian Education will be open to the public beginning at 10 a.m. and ending 5 p.m. each day, except as otherwise noted in the next paragraph of this notice. The sessions on December 1 and 2, 1978, will be held at the C. C. Harmon Nursing Building, Bacone College campus, Muskogee, Okla.

The proposed agenda includes:

(1) Executive Director's report,

(2) Action on previous meeting minutes,

(3) Executive Director's Search Committee report,

(4) Committee discussions and reports,

(5) Review NACIE fiscal year 1979 budget,

(6) Special reports,

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V 43 / 219 NOV 13 1978 UMI

(7) Plans for future NACIE activities, and

(8) Regular Council business.

The sessions on Thursday, November 30, 1978, from 3 to 9 p.m., and Saturday, December 2, 1978, from 8 to 10 a.m., will be closed to the public to review applications for the position of Executive Director of the National Advisory Council on Indian Education that must be held in confidence, under the authority of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C., App. I) and the exemptions in 5 United States Code, section 552B(c) (2) and (6). This discussion will include consideration of the qualifications and fitness of the candidates for the position and will touch upon many matters which would constitute a serious invasion of privacy if conducted in open session.

Records shall be kept of all Council proceedings and shall be available for public inspection at the Office of the National Advisory Council on Indian Education, located at 425 13th Street NW., Suite 326, Washington, D.C. 20004. A summary of activities at the closed sessions and related matters which are informative to the public and consistent with the policy of 5 United States Code 552b will be available to the public within 14 days of the meeting.

For further information call Stuart A. Tonemah, Executive Director, National Advisory Council on Indian Education, 202-376-8882.

Dated: October 20, 1978, signed at Washington, D.C.

STUART A. TONEMAH,
Executive Director National Advisory Council on Indian Education.

[FR Doc. 78-31775 Filed 11-9-78; 8:45 am]

[4110-02-M]

NATIONAL ADVISORY COUNCIL ON WOMEN'S EDUCATIONAL PROGRAMS

Meeting

AGENCY: Office of Education, National Advisory Council on Women's Educational Programs.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Women's Educational Programs and its executive; Federal policy, practices and programs; civil rights; WEEA program; and public information committees. It also describes the functions of the Council. Notice of the meeting is required pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463). This document is intended to notify the general public of their opportunity to attend.

DATE: November 30, 8:30 a.m. to 5 p.m.; December 1, 9 a.m. to 5 p.m.; December 2, 8:30 a.m. to 12 noon. The Executive Committee will meet November 29, 7:30 to 9:30 p.m.

ADDRESS: The Albert Pick Motor Inn, 320 Murfreesboro Road, Nashville, Tenn.; Legislative Plaza, Room 16, Nashville, Tenn.

FOR FURTHER INFORMATION CONTACT:

Laura Summers, National Advisory Council on Women's Educational Programs, 1832 M Street NW., Room #821, Washington, D.C. 20036, 202-653-5846.

The National Advisory Council on Women's Educational Programs is established pursuant to Pub. L. 93-380, section 408(f)(1). The Council is mandated to: (a) Advise the Commissioner with respect to general policymatters relating to the administration of the Women's Educational Equity Act of 1974; (b) advise and make recommendations to the Assistant Secretary for Education concerning the improvement of educational equity for women; (c) make recommendations to the Commissioner with respect to the allocation of any funds pursuant to section 408 of Pub. L. 93-380, including criteria developed to insure an appropriate distribution of approved programs and projects throughout the Nation; (d) make such reports to the President and the Congress on the activities of the Council as it determines appropriate; (e) develop criteria for the establishment of program priorities; and (f) disseminate information concerning its activities under section 408 of Pub. L. 93-380.

The meeting of the Executive Committee will take place on November 29, 1978 from 7:30 to 9:30 p.m. at the Albert Pick Motor Inn, 320 Murfreesboro Road, Nashville, Tenn. The agenda will include discussion of personnel policies, fiscal report, plans for meeting, and future plans.

The meetings of the Federal Policy, Practices and Program Committee, the Civil Rights Committee, the WEEA Program Committee, and the Public Information Committee will take place on November 30, 1978 from 8:30 a.m. to 5 p.m. at the Albert Pick Motor Inn, 320 Murfreesboro Road, Nashville, Tenn.

The agenda for the Federal Policy, Practices, and Programs Committee will include discussion on programs in the new ESEA that relate to the Committee's priorities. The Committee will review program guidelines in areas of teacher training, community education, and educational media programs.

The agenda for the Civil Rights Committee will include discussion of matters concerning Title IX, 1972 Educational Amendment and Title IV 1964 Civil Rights Act.

The agenda for the Public Information Committee will include plans for the annual report.

The agenda for the Program Committee will include an overview of the evaluation design for fiscal year 1978 and discussion of the proposed regulations for the new WEEA.

The meeting of the National Advisory Council on Women's Educational Programs will take place from 9 a.m. to 12 p.m. on December 1, 1978 at the Legislative Plaza, Room 16. The agenda will include reports of the Executive Director and the Women's Program Staff and recommendations of standing Committees. A public hearing on progress and problems of women in higher education in Tennessee will be held from 2 to 5 p.m. December 1, 1978 at the Legislative Plaza, Room 16.

The meeting of the National Advisory Council on Women's Educational Programs will reconvene on December 2, 1978 from 8:30 a.m. to 12 p.m. at the Albert Pick Motor Inn, 320 Murfreesboro Road, Nashville, Tenn. The agenda will include Committee reports, annual report plans and future activities.

The meetings of the Council and the committees will be open to the public. Records will be kept of the proceedings and will be available for public inspection at the Council offices at 1832 M Street NW., Suite 821, Washington, D.C.

Signed at Washington, D.C., on November 7, 1978.

JOY R. SIMONSON,
Executive Director.

[FR Doc. 78-31778 Filed 11-9-78; 8:45 am]

[4110-02-M]

Office of Education

NATIONAL ADVISORY COUNCIL ON ADULT EDUCATION

Meeting

AGENCY: National Advisory Council on Adult Education.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Program Effectiveness and Evaluation Committee of the National Advisory Council on Adult Education. This notice also describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92-463, Sec. 10(a)(2)).

DATE: November 29, 1978, 9 a.m. to 4 p.m.

ADDRESS: National Advisory Council on Adult Education, 425 13th Street NW., Suite 323, Washington, D.C. 20004.

FOR FURTHER INFORMATION CONTACT:

Dr. Gary A. Eyre, Executive Director, National Advisory Council on Adult Education, 425 13th Street NW., Washington, D.C. 20004, 202-376-8892.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Adult Education is established under Section 311 of the Adult Education Act (80 Stat. 1216.20 U.S.C. 1201). The Council is directed to:

Advise the Commissioner in the preparation of general regulations and with respect to policy matters arising in the administration of this title, including policies and procedures governing the approval of State plans under section 306 and policies to eliminate duplication, and to effectuate the coordination of programs under this title and other programs offering adult education activities and services.

The Council shall review the administration and effectiveness of programs under this title, make recommendations with respect thereto, and make annual reports to the President of its findings and recommendations (including recommendations for changes in this title and other Federal laws relating to adult education activities and services). The President shall transmit each such report to the Congress together with his comments and recommendations.

The meeting of the Committee shall be open to the public.

The proposed agenda includes: Council 311(d) Evaluation Design; RFP 78-119 Assessment; Assessment Publication—NACAE; USOE Report Form Process; Committee Responsibilities.

Records shall be kept of all Council proceedings, and shall be available for public inspection at the Office of the National Advisory Council on Adult Education, 425 13th Street NW., Suite 323, Washington, D.C. 20004.

Signed at Washington, D.C. on November 6, 1978.

GARY A. EYRE,
Executive Director, National Advisory Council on Adult Education.

[FR Doc. 78-31807 Filed 11-9-78; 8:45 am]

[4310-84-M]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-6646-A and AA-6646-EE]

ALASKA NATIVE CLAIMS SELECTION

Reconsideration

Notice of the decision to issue conveyance to Natives of Akhiok, Inc., was published in the November 17, 1977, issue of the FEDERAL REGISTER (42 FR 59422).

On January 12, 1978, Akhiok filed, with the Alaska State Director, a request for reconsideration of the easements reserved pursuant to section 17(b)(3) of the Alaska Native Claims Settlement Act.

The easements were reconsidered and no modifications or revisions were made. The decision stands as published, as to the section 17(b) easement reservations, with the addition of the following:

These reservations have not been conformed to the Departmental easement policy announced March 3, 1978. Conformance is contingent upon resolution of the litigation *Calista, et al.* v. *Andrus* and implementation of the Secretary's new easement policy.

This notice is being published once in the FEDERAL REGISTER in accordance with the agreement dated November 12, 1976, between the Secretary of the Interior; Natives of Akhiok, Inc.; and Koniag, Inc.

SUE WOLF,
Chief,
Branch of Adjudication.

[FR Doc. 78-31808 Filed 11-9-78; 8:45 am]

[4310-84-M]

[NM 35179]

NEW MEXICO

Application

NOVEMBER 2, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Sundance Oil Co. has applied for one 2-inch natural gas pipeline right-of-way across the land:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 7 S., R. 31 E.,
Sec. 33, SE¼NW¼, W½SW¼.

This pipeline will convey natural gas across 0.604 of a mile of public land in Chaves County, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, N. Mex. 88201

RAUL E. MARTINEZ,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-31776 Filed 11-9-78; 8:45 am]

[4310-84-M]

OREGON-WASHINGTON WILDERNESS INVENTORY

Commencement and Availability of Handbook

NOVEMBER 3, 1978.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice announces the commencement of wilderness inventory on public lands in the States of Oregon and Washington, by the Bureau of Land Management and the availability of the Wilderness Inventory Handbook to guide the wilderness inventory process. The inventory, to identify the roadless areas of 5,000 acres or more of contiguous public land or roadless islands with wilderness characteristics as wilderness study areas, is the first step in the wilderness review process. The next step of the review process will be studies to determine which of these areas and islands will be recommended as suitable or nonsuitable for wilderness designation by Congress as part of the National Wilderness Preservation System. The wilderness inventory handbook is available on request from the Oregon State Office of the Bureau of Land Management.

ADDRESS: The Oregon State Office address is: State Director (912), 729 Northeast Oregon Street, P.O. Box 2965, Portland, Oreg. 972088.

FOR FURTHER INFORMATION CONTACT:

Bill Keil at the above Portland, Oreg., address or call 503-231-6273.

E. J. PETERSON,
Associate State Director.

[FR Doc. 78-31777 Filed 11-9-78; 8:45 am]

[4310-84-M]

OUTER CONTINENTAL SHELF (OCS)

Qualified Joint Bidders

As a convenience to the public, and pursuant to his authority under 43

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CFR 3300, the Director of the Bureau of Land Management hereby publishes a list of all persons who have timely filed a sworn statement of production in accordance with 43 CFR 3302.3-2(a). These statements have qualified the filers to bid jointly at OCS oil and gas lease sales during the bidding period of November 1, 1978, through April 30, 1979. This publication is not required by law or regulations; it includes the names of all possible bidders whose statements have been received in this office by the dates this notice was prepared.

The following persons or companies have filed sworn statements of production as required by 43 CFR 3302.3-2(a) attesting to average daily production not in execss of 1.6 million barrels of crude oil, natural gas, and liquefied pertoleum products during the production period of January 1, 1978, through June 30, 1978:

A. G. Hill
AGT Exploration Corp.
Al-Aquitaine Exploration, Ltd.
Alaskco U.S.A., Ltd.
Allied Chemical Corporation
ALMINEX U.S.A., INC.
AMAX Petroleum Corporation
Amerada Hess Corporation
American Independent Oil Company
American Natural Gas Production Company
American Petrofina Company of Texas
American Petrofina Exploration Company
Aminoil Development, Inc.
Aminoil USA, Inc.
Anadarko Production Company
Apache Corporation
Arrowhead Propane Corporation
Ashland Exploration, Inc.
Ashland Oil, Inc.
Atlantic Distributors Exploration Co.
Atlantic Richfield Company
Belco Petroleum Corporation
Bethlehem Steel Corporation
Brooklyn Union Gas Company
C&K Marine Production Company
C&K Offshore Company
C&K Petroleum Inc.
Cambridge Royalty Company
Canadian Occidental of California, Inc.
Canadian Superior Oil (U.S.) Ltd.
Caroline Hunt Schoellkopf
Caroline Hunt Trust Estate
Case-Pomeroy Oil Corporation
Central Hudson Gas & Electric Corporation
Challenger Minerals Inc.
Champlin Petroleum Company
Chansior-Western Oil and Development Company
Cities Service Company
CNG Producing Company
Columbia Gas Development Corporation
Columbia Gas of New York, Inc.
Consolidated Edison Company of New York, Inc.
Continental Group, Inc. (The)
Continental Oil Company
Corning Natural Gas Corporation
Corpus Christi Oil and Gas Company
Cotton Petroleum Corporation
CRA Oil Exploration Company
Crown Central Petroleum Corporation
Depco, Inc.
Diamond Shamrock Corporation
Dow Chemical Company
Eason Oil Company
ECEE, INC.
Elf Aquitaine, Inc.
Elizabethtown Gas Company
El Paso Natural Gas Company
Emmet C. Wilson
Energy Development Corporation
Energy Reserves Group, Inc.
Energy Resources Corporation
Energy Venture, Inc.
Enserch Exploration, Inc.
Entex Petroleum, Inc.
Equity Oil Company
Era North America, Inc.
Exchange Oil and Gas Corporation
Exeter Exploration Company
Farmland Industry, Inc.
Felmont Oil Corporation
Finadel, Incorporated
Florida Gas Exploration Company
Fluor Oil and Gas Corporation
Forest Oil Corporation
Four M Properties, Ltd.
Freeport Oil Company
Freeport Petroleum Company
Fuel Resources Inc.
Furth Oil Co.
Gas Producing Enterprises, Inc.
General American Oil company of Texas
General Crude Oil Company
Getty Oil Company
Golden Eagle Refining Company, Inc.
Greenbrier Operating Co.
H. W. Bass & Sons, Inc.
Hamilton Brothers Exploration Company
Hamilton Brothers Oil Company
Hamilton Brothers Oil and Gas Corporation
Haraldson L. Hunt, Jr. Trust Estate
Hassie Hunt Exploration Company
Hassie Hunt, Incorporated
Hassie Hunt Trust
Hematite Petroleum (U.S.A.) Inc.
Highland Resources, Inc.
Houston Oil & Minerals Corporation
Hudbay Exploration, Inc.
Hunt Energy corporation
Hunt Industries
Hunt Investment Corporation
Hunt Oil Company
Hunt Petroleum Corporation
Husky Oil Company
ICI Delaware Inc.
Idemitsu Alaska Oil Development Corporation
Inexco Oil Company
Jenney Oil Company
John R. Conolly
Kerr-McGee Corporation
Kevin C. Foster
Knob Hill Oil & Gas Company, Inc.
Koch Industries, Inc.
L. A. McNeil
Lamar Hunt
Lamar Hunt Trust Estate
Long Island Lighting Company
Louisiana Land and Exploration company
Louisiana Land Offshore Exploration Company, Inc.
Marathon Oil Company
Margaret Hunt Trust Estate
Maruzen Oil of Alaska, Inc.
McMoRan Exploration Co.
McMoRan Offshore Exploration Co.
Merrimack Valley Exploration Corporation
Mesa Petroleum Co.
Mitchell Energy Offshore Corporation
Mono Power Company
Monsanto Company
Murphy Oil Corporation
N. B. Hunt
National Exploration Company
National Fuel Gas Distribution Corporation
Natomas Offshore Exploration, Inc.
NESCO INCORPORATED
Nelson Bunker Hunt Trust Estate
Nepco Exploration Corporation
New England Energy Incorporated
Newmont Oil Company
New York State Electric & Gas Corporation
Niagra Mohawk Power Corporation
NICOR Exploration Company
North Oil Inc.
Northern Michigan Exploration Company
Northern Natural Gas Company
Northwestern Mutual Life Insurance Company
Ocean Oil & Gas Company
Ocean Production Company
Offshore Company (The)
Ogle Development Corporation
Ogle Petroleum Inc.
Oil Development Company of Texas
Orange and Rockland Utilities, Inc.
Oxy Petroleum, Inc.
PanCanadian Petroleum Company
Pan Eastern Exploration Company
PAN ENERGY Resources, Inc.
Paragon Petroleum Inc.
Paul R. Haas
Pavilion Natural Gas Company (The)
Pelto Oil Company
Pennzoil Company
Pennzoil Louisiana and Texas Offshore, Inc.
Pennzoil Oil and Gas, Inc.
Pennzoil Producing Company
Phillips Petroleum Company
PINTO, Inc.
Pioneer Production Corporation
Placid Oil Company
Pogo Producing Company
Primary Fuels, Inc.
Propel Energy Company
Prosper Energy Corporation
Pursue Energy Corporation
Pursue Offshore, Inc.
Quintana Offshore, Inc.
Reading & Bates Petroleum Co.
Reserve Oil, Inc.
Resource Production, Inc.
Rhode Island Development and Exploration Company
Rochester Gas and Electric Corporation
Rosewood Corporation (The)
Rowan Petroleum, Inc.
Rutherford Oil Corporation
Sabine Production Company
Salomon Brothers
Samedan Oil Corporation
Santa Fe Minerals Co.-U.S.
Sonat Exploration Company
South Coast Corporation
Southern Natural Gas Company
Southland Royalty Company
St. Lawrence Gas Company, Inc.
Sun Oil Company (Delaware)
Superior Oil Company, (The)
Syracuse Suburban Gas Company, Inc.
Tenneco Exploration, Ltd.
Tenneco Exploration II, Ltd.
Tenneco OCS Company, Inc.
Tenneco OCS Limited Partnership
Tenneco Offshore Company
Tenneco Oil Company
Terra Resources, Inc.
Texas Eastern Exploration Co.
Texas Gas Exploration Corporation
Texasgulf, Inc.
Texas Pacific Oil Company, Inc.
Texas Production Company
Texfel Petroleum Corporation
Total Petroleum Inc.
Transco Exploration Company
TransOcean Oil, Inc.
Union Oil Company of California
United Gas Pipe Line Company
United States Steel Corporation
VSEA, Inc.
W. H. Hunt
Weeks Petroleum Corporation
William Herbert Hunt Trust Estate
Willians Exploration Company

In addition, statements of production have been received from nine companies which produced a daily average of 1.6 million barrels or more of crude oil, natural gas, and liquified petroleum products during the previously mentioned production period, and therefore are restricted from bidding jointly with each other during the bidding period of November 1, 1978, through April 30, 1979. This list appeared in the FEDERAL REGISTER of October 25, 1978, cited as 43 FR 49856.

ARNOLD E. PETTY,
Acting Associate Director,
Bureau of Land Management.

NOVEMBER 7, 1978.

[FR Doc. 78-31783 Filed 11-9-78; 8:45 am]

[4310-84-M]

OUTER CONTINENTAL SHELF, CENTRAL AND WESTERN GULF OF MEXICO

Outer Continental Shelf Leasing Systems, Sale No. 51

Sec. 8(a)(8) (43 U.S.C. 1337(a)) of the Outer Continental Shelf Lands Act, as amended, requires that, at least 30 days before any lease sale, a notice be submitted to the Congress and published in the FEDERAL REGISTER:

(A) Identifying the bidding systems to be used and the reasons for such use; and

(B) Designating the tracts to be offered under each bidding system and the reasons for such designation.

This notice is published pursuant to these requirements.

Bidding systems to be used. In OCS Lease Sale No. 51, a system employing a cash bonus bid with a constant royalty fixed at 16⅔ percent will be used on 88 tracts. This system is authorized by Sec. 8(a)(1)(A) of the OCS Lands Act, as amended. A system employing a cash bonus bid with a royalty established according to a semi-logarithmic sliding scale will be used on 59 tracts. This system is authorized by Sec. 8(a)(1)(C) of the OCS Lands Act, as amended. The use of the sliding scale royalty system was first introduced in OCS Lease Sale No. 43 and used again in OCS Lease Sales No. 45 and No. 65, as part of the commitment by the Department of the Interior and the Department of Energy to develop and test new bidding systems.

The sliding scale is designed to establish higher royalty rates for larger reservoirs with higher production rates. This is intended to reduce bonuses, which may improve competition for leases. This would also tend to reduce the likelihood of production losses that could result if royalty rates are set by other means, such as royalty bidding at levels so high that production is made uneconomic.

The sliding scale used in recent lease sales (Sales No. 43 and No. 45) was linear in form. Although this form is simple to depict, it has the disadvantage of creating an incentive to slow down production on very large reservoirs. The sliding scale to be tested in Sale No. 51 is semi-logarithmic in form and is intended to avoid incentives for slow downs of production which may exist in other bidding systems.

The fixed sliding scale formula operates in the following way: When the quarterly value of production, adjusted for inflation, is less than or equal to $13.236229 million, a royalty of 16.66667 percent in amount or value of production saved, removed or sold will be due on the unadjusted value or amount of production. When the adjusted quarterly value of production is equal to or greater than $13.236230 million, but less than or equal to $1662.854082 million, the royalty percent due on the unadjusted value or amount of production is given by the formula

$$R_i = b(\mathrm{Ln}\,(V_i/S))$$

where

R_i = the percent royalty that is due and payable on the unadjusted amount or value of all production saved, removed or sold in quarter $_i$

$b = 10.0$

V_i = the value of production in quarter $_i$, adjusted for inflation, in millions of dollars

$S = 2.5$

When the adjusted quarterly value of production is equal to or greater than $1662.854083 million, a royalty of 65.00000 percent in amount or value of production saved, removed or sold will be due on the unadjusted quarterly value of production. Thus, in no instance will the quarterly royalty due exceed 65.00000 percent in amount or value of quarterly production saved, removed or sold.

The form of the sliding scale royalty schedule is illustrated in figure 1. Note that the effective quarterly royalty rate depends upon the inflation adjusted quarterly value of production. However, this rate is applied to the unadjusted quarterly value of production to determine the royalty payments due.

In adjusting the quarterly value of production for use in calculating the percent royalty due on production during the quarter, the actual value of production will be adjusted to account for the effects of inflation by dividing the actual value of production by the following inflation adjustment factor. The inflation adjustment factor used will be the ratio of the GNP fixed weighted price index for the calendar quarter preceding the quarter of production to the value of that index for the quarter preceding the issuance of the lease. The GNP fixed weighted price index is published monthly in the Survey of Current Business by the Bureau of Economic Analysis, U.S. Department of Commerce. The percent royalty will be due and payable on the actual amount or value of production saved, removed, or sold as determined pursuant to 30 CFR 250.64 and Sec. 6(b) of the lease form. Table 1 provides hypothetical examples of quarterly royalty calculations using the sliding scale formula under two different values for the quarterly price index.

[4310-84-C]

Figure 1
Form of the Sliding Royalty Schedule

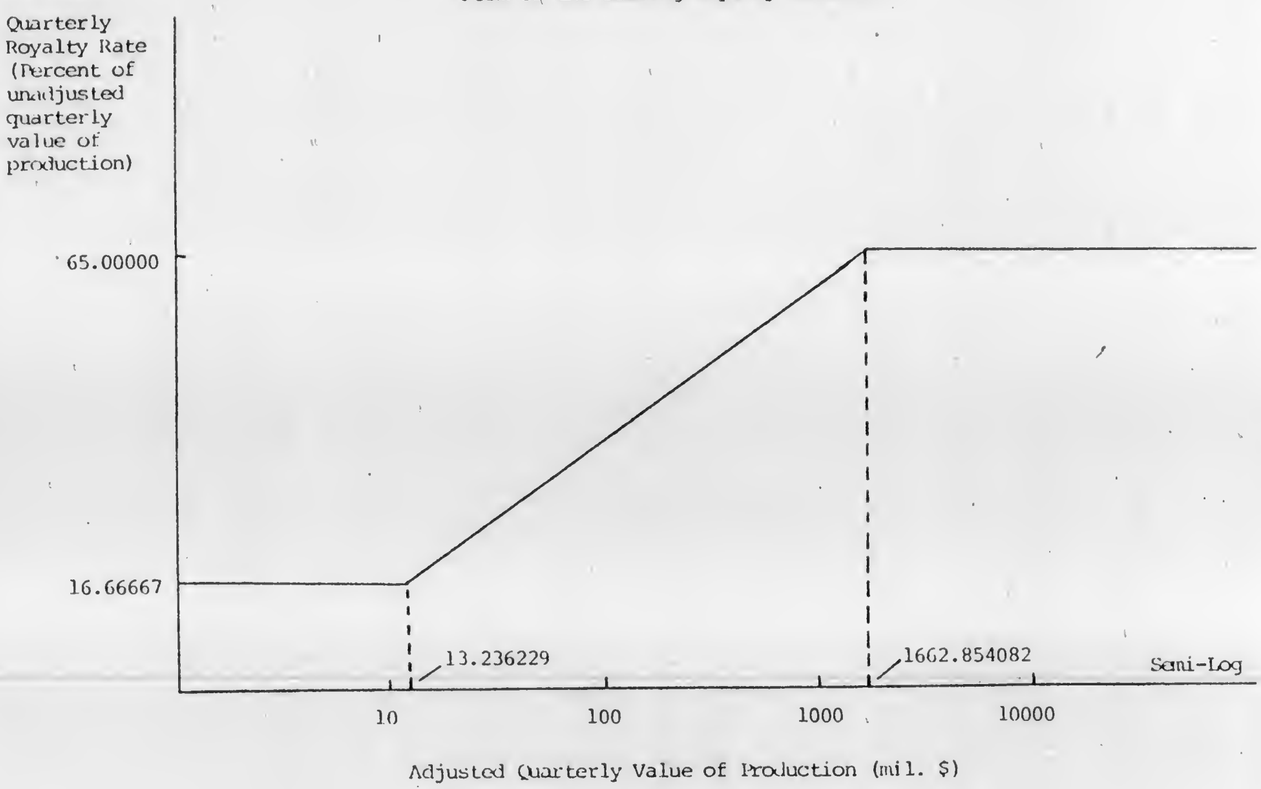


TABLE 1 HYPOTHETICAL QUARTERLY ROYALTY CALCULATIONS

(1) Actual Value of Quarterly Production (Millions of Dollars)	(2) GNP Fixed Weighted Price Index	(3) Inflation Factor[a]	(4) Adjusted Value of Quarterly Production[b] (V_j, Millions of $)	(5) Percent Royalty Rate (R_j)	(6) Royalty Payment[c] (Millions of Dollars)
10.000000	200.0	4/3	7.500000	16.66667	1.666667
30.000000	200.0	4/3	22.500000	21.47225	6.591675
90.000000	200.0	4/3	67.500000	32.98847	29.662533
270.000000	200.0	4/3	202.500000	43.90449	118.650123
810.000000	200.0	4/3	607.500000	54.93061	444.937941
10.000000	250.0	5/3	6.000000	16.66667	1.666667
30.000000	250.0	5/3	18.000000	19.74081	5.922243
90.000000	250.0	5/3	54.000000	30.76693	27.654237
270.000000	250.0	5/3	162.000000	41.71306	112.625262
810.000000	250.0	5/3	486.000000	52.69918	426.863358

a Column (2) divided by 150.0 (assumed value of GNP fixed weighted price index at time leases are issued).

b Column (1) divided by Inflation Factor.

c Column (1) times Column (5). All values are rounded for display purposes only.

The system employing cash bonus bids with a constant fixed royalty has been used extensively since the passage of the OCS Lands Act in 1953. Its use in Sale No. 51 will provide data with which to compare the data from use of the sliding scale royalty system. The use of the two bidding systems in Sale No. 51 is consistent with the requirements of Sec. 8(a)(5)(B) of the OCS Lands Act, as amended.

Tracts to be Offered for Bonus Bidding With a Fixed Sliding Scale Royalty

51-1, 51-2, 51-3, 51-4, 51-5, 51-6, 51-7, 51-9, 51-10, 51-23, 51-24, 51-25, 51-26, 51-27, 51-28, 51-29, 51-30, 51-31, 51-35, 51-36, 51-37, 51-38, 51-39, 51-40, 51-44, 51-45, 51-72, 51-73, 51-75, 51-76, 51-80, 51-86, 51-87, 51-88, 51-89, 51-90, 51-91, 51-92, 51-93, 51-98, 51-99, 51-105, 51-107, 51-108, 51-109, 51-111, 51-119, 51-125, 51-127, 51-128, 51-129, 51-131, 51-132, 51-135, 51-136, 51-137, 51-142, 51-144, and 51-145.

Tracts To Be Offered for Bonus Bidding With a Fixed Constant Royalty

Bids on the remaining tracts to be offered at this sale must be on a cash bonus basis with a fixed royalty of 16⅔ percent.

The selection of tracts to be offered under the sliding scale royalty system was made for the following reasons:

1. A sufficient number of tracts was needed to provide data for valid statistical analysis while limiting the risk of losses caused by unforeseen problems which could arise in the use of any new bidding system. A sample size of approximately 40 percent or 59 tracts was determined to be appropriate.

2. The range and distribution of the characteristics of sliding scale royalty tracts were to match, as closely as possible, the range and distribution of the characteristics of the tracts being offered in the sale. Such characteristics include estimated resources, water depth, structure depth, favorable vs. unfavorable location of tracts on structures, and the distribution of tracts across trends.

ARNOLD E. PETTY,
Acting Associate Director,
Bureau of Land Managment.

Approved: November 6, 1978.

JAMES A. JOSEPH,
Acting Secretary
of the Interior.

[FR Doc. 78-31781 Filed 11-9-78; 8:45 am]

[4310-84-M]

OUTER CONTINENTAL SHELF WESTERN AND CENTRAL GULF OF MEXICO

Oil and Gas Lease Sale No. 51

DECEMBER 19, 1978.

1. *Authority.* This notice is published pursuant to the Outer Continental Shelf (OCS) Lands Act of 1953 (43 U.S.C. 1331), as amended by the OCS Lands Act Amendments of 1978, and the regulations issued thereunder (43 CFR Part 3300).

2. *Filing of bids.* Sealed bids will be received by the Manager, New Orleans OCS Office, Bureau of Land Management Hale Boggs Federal Building, 500 Camp Street, Suite 841, New Orleans, La. 70130. Bids may be delivered, either by mail or in person, to the above address until 4:15 p.m., c.s.t., December 18, 1978; or by personal delivery to the Grand Ballroom, Royal Sonesta Hotel, 300 Bourbon Street, New Orleans, La. 70130, between the hours of 8:30 and 9:30 a.m., c.s.t., December 19, 1978. Bids received by the Manager later than the times and dates specified above will be returned unopened to the bidders. Bids may not be modified or withdrawn unless written modification or withdrawal is received by the Manager prior to 9:30 a.m., c.s.t., December 19, 1978. All bids must be submitted and will be considered in accordance with applicable regulations, including 43 CFR Part 3300. The list of restricted joint bidders which applies to this sale was published in 43 FR 49856, October 25, 1978.

3. *Method of bidding.* A separate bid in a sealed envelope, labeled "Sealed Bid for Oil and Gas Lease (insert number of tract), not to be opened until 10 a.m., c.s.t., December 19, 1978," must be submitted for each tract. A suggested form appears in paragraph 17 of this notice. Bidders are advised that tract numbers are assigned soley for administrative purposes and are not the same as block numbers found on official protraction diagrams or leasing maps. All bids received shall be deemed submitted for a numbered tract. Bidders must submit with each bid one-fifth of the cash bonus in cash or by cashier's check, bank draft, certified check, or money order payable to the order of the Bureau of Land Management. No bid for less than a full tract as described in paragraph 13 will be considered. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places, as well as submit a sworn statement that the bidder is qualified under 43 CFR Part 3302. The suggested form for this statement to be used in joint bids appears in paragraph 18. Other documents may be required of bidders under 43 CFR 3302.4. Bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

4. *Bonus bidding with a fixed sliding scale royalty.* Bids on tracts 51-1, 51-2, 51-3, 51-4, 51-5, 51-6, 51-7, 51-9, 51-10, 51-23, 51-24, 51-25, 51-26, 51-27, 51-28, 51-29, 51-30, 51-31, 51-35, 51-36, 51-37, 51-38, 51-39, 51-40, 51-44, 51-45, 51-72, 51-73, 51-75, 51-76, 51-80, 51-86, 51-87, 51-88, 51-89, 51-90, 51-91, 51-92, 51-93, 51-98, 51-99, 51-105, 51-107, 51-108, 51-109, 51-111, 51-119, 51-125, 51-127, 51-128, 51-129, 51-131, 51-132, 51-135, 51-136, 51-137, 51-142, 51-144, and 51-145 must be submitted on a cash bonus bid basis with the percent royalty due in amount or value of production saved, removed or sold fixed according to the sliding scale formula described below. This formula fixes the percent royalty at a level determined by the value of lease production during each calendar quarter. For purposes of determining the percent royalty due on production during a quarter, the value of production during the quarter will be adjusted for inflation as described below. The determination of the value of the production on which royalty is due will be made pursuant to 30 CFR 250.64 and section 6(b) of the lease form.

The fixed sliding scale formula operates in the following way: when the quarterly value of production, adjusted for inflation, is less than or equal to $13.236229 million, a royalty of 16.66667 percent in amount or value of production saved, removed or sold will be due on the unadjusted value or amount of production. When the adjusted quarterly value of production is equal to or greater than $13.236230 million, but less than or equal to $1662.854082 million, the royalty percent due on the unadjusted value or amount of production is given by

$$R_j = b[Ln\,(V_j/S)]$$

where

R_j = the percent royalty that is due and payable on the unadjusted amount or value of all production saved, removed or sold in quarter j;
b = 10.0;
Ln = natural logarithm;
V_j = the value of production in quarter j, adjusted for inflation, in millions of dollars; and
S = 2.5.

When the adjusted quarterly value of production is equal to or greater than $1662.854083 million, a royalty of 65.00000 percent in amount or value of production saved, removed or sold will be due on the unadjusted quarterly value of production. Thus, in no instance will the quarterly royalty due exceed 65.00000 percent in amount or value of quarterly production saved, removed or sold.

In determining the quarterly percent royalty due, R_j, the calculation will be carried to five decimal places (for example, 20.17329 percent). This calculation will incorporate the adjusted quarterly value of production, V_j, in millions of dollars, rounded to the sixth digit, i.e., to the nearest dollar

(for example, 15.392847 millions of dollars).

The form of the sliding scale royalty schedule is illustrated in Figure 1. Note that the effective quarterly royalty rate depends upon the inflation adjusted quarterly value of production. However, this rate is applied to the unadjusted quarterly value of production to determine the royalty payments due.

In adjusting the quarterly value of production for use in calculating the percent royalty due on production during the quarter, the actual value of production will be adjusted to account for the effects of inflation by dividing the actual value of production by the following inflation adjustment factor. The inflation adjustment factor used will be the ratio of the GNP fixed weighted price index for the calendar quarter preceding the quarter of production to the value of that index for the quarter preceding the issuance of the lease. the GNP fixed weighted price index is published monthly in the Survey of Current Business by the Bureau of Economic Analysis, U.S. Department of Commerce. The percent royalty will be due and payable on the actual amount or value of production saved, removed, or sold as determined pursuant to 30 CFR 250.64 and section 6(b) of the lease form. The timing of procedures for inflation adjustments and determinations of the royalty due will be specified at a later date. Table 1 provides hypothetical examples of quarterly royalty calculations using the sliding scale formula just described under two different values for the quarterly price index.

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Figure 1
Form of the Sliding Royalty Schedule

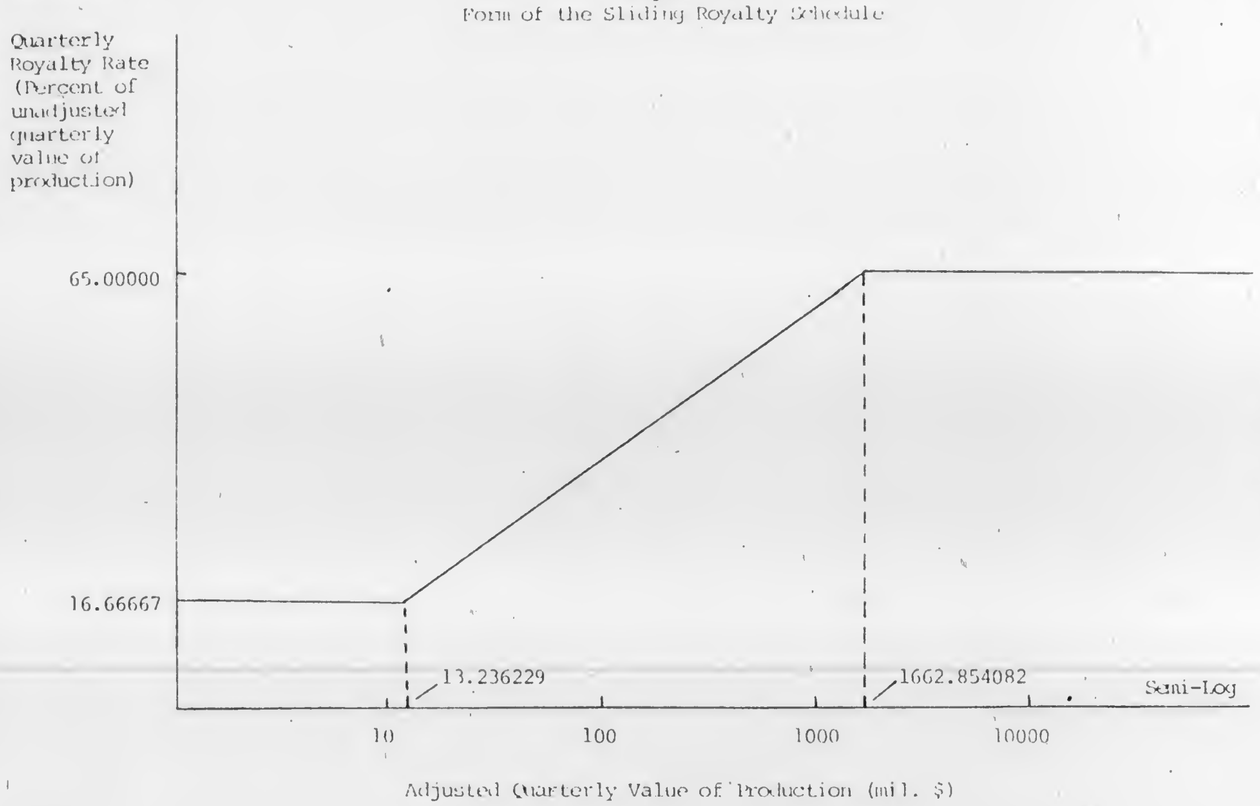


TABLE 1. HYPOTHETICAL QUARTERLY ROYALTY CALCULATIONS

(1) Actual Value of Quarterly Production (Millions of Dollars)	(2) GNP Fixed Weighted Price Index	(3) Inflation Factor[a]	(4) Adjusted Value of Quarterly Production[b] (V_j, Millions of $)	(5) Percent Royalty Rate (R_j)	(6) Royalty Payment[c] (Millions of Dollars
10.000000	200.0	4/3	7.500000	16.66667	1.666667
30.000000	200.0	4/3	22.500000	21.97225	6.591675
90.000000	200.0	4/3	67.500000	32.95837	29.662533
270.000000	200.0	4/3	202.500000	43.94449	118.650123
810.000000	200.0	4/3	607.500000	54.93061	444.937941
10.000000	250.0	5/3	6.000000	16.66667	1.666667
30.000000	250.0	5/3	18.000000	19.74081	5.922243
90.000000	250.0	5/3	54.000000	30.72693	27.654237
270.000000	250.0	5/3	162.000000	41.71306	112.625262
810.000000	250.0	5/3	486.000000	52.69918	426.863358

a Column (2) divided by 150.0 (assumed value of GNP fixed weighted price index at time leases are issued).

b Column (1) divided by Inflation Factor.

c Column (1) times Column (5). All values are rounded for display purposes only.

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Leases awarded on the basis of a cash bonus bid with fixed sliding scale royalty will provide for a yearly rental or minimum royalty payment of $3 per acre or fraction thereof.

Bidders for these tracts should recognize that the Department of Energy is authorized, under section 302 (b) and (c) of the Department of Energy Organization Act, to establish production rates for all Federal oil and gas leases.

5. *Bonus bidding with a fixed constant royalty.* Bids on the remaining tracts to be offered at this sale must be on a cash bonus basis with a fixed royalty of 16⅔ percent. Leases which may be issued will provide for a yearly rental payment or minimum royalty payment of $3 per acre or fraction thereof. A suggested cash bonus bid form is shown in paragraph 17.

6. *Equal opportunity.* Each bidder must have submitted by 9:30 a.m., c.s.t., December 19, 1978, the certification required by 41 CFR 60-1.7(b) and Executive Order No. 11246 of C September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form 1140-8 (November 1973), and the Affirmative Action Representation Form, Form 1140-7 (December 1971).

7. *Bid opening.* Bids will be opened on December 19, 1978, beginning at 10 a.m., c.s.t., at the address stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing and recording bids received and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight, December 19, 1978, that bid will be returned unopened to the bidder, as soon thereafter as possible.

8. *Deposit of payment.* Any cash, cashier's checks, certified checks, bank drafts, or money orders submitted with a bid may be deposited in a suspense account in the Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

9. *Withdrawal of tracts.* The United States reserves the right to withdraw any tract from this sale prior to issuance of a written acceptance of a bid for that tract.

10. *Acceptance or rejection of bids.* The United States reserves the right to reject any and all bids for any tract. In any case, no bid for any tract will be accepted and no lease for any tract will be awarded to any bidder unless:

(a) The bidder has complied with all requirements of this notice and applicable regulations;

(b) The bid is from the highest responsible, qualified bidder; and

(c) The amount of the bid has been determined to be adequate by the Secretary of the Interior.

No bid will be considered for acceptance unless it offers a cash bonus in the amount of $25 or more per acre or fraction thereof.

11. *Successful bidders.* Each person who has submitted a bid accepted by the Secretary of the Interior will be required to execute copies of the lease specified below, pay the balance of the cash bonus bid together with the first year's annual rental and satisfy the bonding requirements of 43 CFR 3304.1 within the time provided in 43 CFR 3302.5.

12. *Protraction diagram/leasing maps.* Tracts offered for lease may be located on the following leasing maps/protraction diagram which are available from the Manager, New Orleans Outer Continental Shelf Office at the address stated in paragraph 2.

(a) Outer Continental Shelf leasing maps—Texas Nos. 1 through 8. These maps are arranged in two sets, Nos. 1 through 4 (7 maps), which sell for $5 per set, and Nos. 5 through 8 (9 maps), which sell for $7 per set.

(b) Outer Continental Shelf leasing maps—Louisiana Nos. 1 through 12. This is a set of 27 maps which sells for $17.

(c) Outer Continental Shelf official protraction diagram: NH 16-7, Viosca Knoll, which sells for $2.

13. *Tract descriptions.* The tracts offered for bid are as follows:

NOTE.—The numbers of the tracts listed are not in sequence. One of the blocks identified in the final environmental statement is not included in this notice.

[4310-84-C]

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OCS LEASING MAP, SOUTH PADRE ISLAND AREA, TEXAS MAP NO. 1
(Approved July 16, 1954)

Tract	Block	Description	Acreage
51-139	1041	All	5760

OCS LEASING MAP, NORTH PADRE ISLAND AREA, EAST ADDITION, TEXAS MAP NO. 2A
(Approved May 6, 1965)

Tract	Block	Description	Acreage
51-1	A-1	All	5760
51-2	A-2	All	5760

OCS LEASING MAP, MUSTANG ISLAND AREA, EAST ADDITION, TEXAS MAP NO. 3A
(Approved January 23, 1967)

Tract	Block	Description	Acreage
51-3	A-51	All	5065.10
51-4	A-52	All	5098.74
51-5	A-53	All	5132.21
51-6	A-65	All	5760
51-7	A-66	All	5760
51-8	A-96	All	5760
51-9	A-174	All	5760
51-10	A-175	All	5760

OCS LEASING MAP, MATAGORDA ISLAND AREA, TEXAS MAP NO. 4
(Approved July 16, 1954)

Tract	Block	Description	Acreage
51-11	518	1/	5675
51-12	(519	1/	3457
	(520	1/	352
51-13	526	1/	1355
51-14	527	1/	5100
51-15	557	1/	5620

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MATAGORDA ISLAND AREA, TEXAS MAP NO. 4 (cont'd.)

Tract	Block	Description	Acreage
51-16	(558	1/	1180
	(565	1/	4563
51-140	657	8/	5071.18
51-141	666	All	5760
51-17	673	All	5760

OCS LEASING MAP, BRAZOS AREA, TEXAS MAP NO. 5
(Approved July 16, 1954)

Tract	Block	Description	Acreage
51-18	374	1/	1177
51-19	436	All	5760
51-20	437	All	5760
51-21	(438	1/	4125
	(439	1/	930
51-22	451	All	5760
51-23	A-19	All	5760
51-24	A-22	All	5760
51-25	A-23	All	5760
51-26	A-24	All	5760

OCS LEASING MAP, BRAZOS AREA, SOUTH ADDITION, TEXAS MAP NO. 5B
(Approved September 24, 1959)

Tract	Block	Description	Acreage
51-27	A-46	All	5760
51-28	A-47	All	5760
51-29	A-48	All	5760
51-30	A-71	All	5760
51-31	A-106	All	5760

OCS LEASING MAP, GALVESTON AREA, TEXAS MAP NO. 6
(Approved July 16, 1954)

Tract	Block	Description	Acreage
51-32	213	1/	4730
51-33	222	1/	5525

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GALVESTON AREA, TEXAS MAP NO. 6 (cont'd.)

Tract	Block	Description	Acreage
51-34	242	All	5760
51-35	283	All	5760
51-36	284	All	5760
51-37	324	All	5760
51-38	350	All	5760
51-39	351	All	5760
51-40	352	All	5760
51-144	389	All	5760

OCS LEASING MAP, GALVESTON AREA, SOUTH ADDITION,
TEXAS MAP NO. 6A
(Approved September 24, 1959)

Tract	Block	Description	Acreage
51-41	A-221	All	5760

OCS LEASING MAP, HIGH ISLAND AREA, TEXAS MAP NO. 7
(Approved July 16, 1954; Revised August 1955)

Tract	Block	Description	Acreage
51-42	33	1/	4740
51-43	107	All	5760

OCS LEASING MAP, HIGH ISLAND AREA, SOUTH ADDITION, TEXAS MAP NO. 7B
(Approved September 24, 1959)

Tract	Block	Description	Acreage
51-44	A-416	All	5760
51-45	A-461	All	5760
51-46	A-523	All	5760
51-47	A-552	All	5760
51-48	A-574	All	5760

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OCS LEASING MAP, HIGH ISLAND AREA, EAST ADDITION, SOUTH EXTENSION, TEXAS MAP NO. 7C
(Approved September 24, 1959)

Tract	Block	Description	Acreage
51-49	A-284	All	5760
51-50	A-308	All	5760
51-51	A-344	All	5760
51-52	A-345	All	5760
51-53	A-378	All	5760
51-54	A-385	All	5760
51-55	A-397	All	5760

OCS LEASING MAP, SABINE PASS AREA, TEXAS MAP NO. 8
(Approved March 7, 1977)

Tract	Block	Description	Acreage
51-56	17	8/	2041.91

OCS LEASING MAP, SABINE PASS AREA, LOUISIANA MAP NO. 12
(Approved March 7, 1977)

Tract	Block	Description	Acreage
51-57	3	2/	1316.62
51-58	(5	2/	211.29
	(6	2/	4771.91
51-59	7	All	5000
51-60	8	All	5000
51-61	9	All	4254.39
51-62	10	All	3144.37
51-63	13	All	5000

OCS LEASING MAP, WEST CAMERON AREA, LOUISIANA MAP NO. 1
(Approved June 8, 1954; Revised July 22, 1954)

Tract	Block	Description	Acreage
51-64	23	2/	3323.64
51-65	42	All	5000
51-66	92	All	5000
51-67	109	All	5000

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WEST CAMERON AREA, LOUISIANA MAP NO. 1 (cont'd.)

Tract	Block	Description	Acreage
51-68	136	All	5000
51-69	194	S½	2500
51-70	204	All	5000
51-71	239	All	5000
51-72	282	All	5000

OCS LEASING MAP, WEST CAMERON AREA, WEST ADDITION, LOUISIANA MAP NO. 1A
(Approved November 15, 1955; Revised January 30, 1957)

Tract	Block	Description	Acreage
51-73	312	All	5000
51-145	328	All	5000
51-74	412	All	5000

OCS LEASING MAP, WEST CAMERON AREA, SOUTH ADDITION, LOUISIANA MAP NO. 1B
(Approved September 8, 1959)

Tract	Block	Description	Acreage
51-75	477	All	5000
51-76	478	All	5000
51-77	542	All	5000
51-78	569	All	5050.37
51-79	597	All	5000
51-80	645	All	5000

OCS LEASING MAP, EAST CAMERON AREA, LOUISIANA MAP NO. 2
(Approved June 8, 1954; Revised August 1, 1973)

Tract	Block	Description	Acreage
51-81	9	3/	203.62
51-82	9	4/	884.30
51-83	11	All	5000
51-84	51	All	5000
51-85	104	All	5000
51-86	108	All	5000

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EAST CAMERON AREA, LOUISIANA MAP NO. 2 (cont'd.)

Tract	Block	Description	Acreage
51-87	(109	All	2170.10
	(110	All	2114
51-88	111	All	5000
51-89	125	All	5000
51-90	126	All	5000
51-142	143	All	5000
51-146	235	All	1384.67

OCS LEASING MAP, VERMILION AREA
LOUISIANA MAP NO. 3
(Approved June 8, 1954: Revised June 25, 1954; July 22, 1954)

Tract	Block	Description	Acreage
51-91	54	All	5000
51-92	57	N½	2500
51-93	75	All	5000
51-94	79	All	5000
51-95	83	All	5000
51-96	104	SE¼; N½; E½SW¼; E½W½SW¼	4687.50
51-97	202	All	5148.72

OCS LEASING MAP, VERMILION AREA, SOUTH ADDITION,
LOUISIANA MAP NO. 3B
(Approved September 8, 1959)

Tract	Block	Description	Acreage
51-98	263	All	5000
51-99	264	All	5000
51-100	330	All	5000
51-101	337	All	5000
51-102	375	All	5000

OCS LEASING MAP, SOUTH MARSH ISLAND AREA, NORTH ADDITION,
LOUISIANA MAP NO. 3D
(Approved April 16, 1971; Revised January 18, 1972)

Tract	Block	Description	Acreage
51-103	264	All	5000

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OCS LEASING MAP, SOUTH MARSH ISLAND AREA, LOUISIANA MAP NO. 3A
(Approved August 7, 1959)

Tract	Block	Description	Acreage
51-104	19	All	5000

OCS LEASING MAP, SOUTH MARSH ISLAND AREA, SOUTH ADDITION,
LOUISIANA MAP NO. 3C
(Approved September 8, 1959)

Tract	Block	Description	Acreage
51-105	75	All	5000
51-106	126	All	2806.27
51-107	139	All	5000

OCS LEASING MAP, EUGENE ISLAND AREA, LOUISIANA MAP NO. 4
(Approved June 8, 1954; Revised July 22, 1954)

Tract	Block	Description	Acreage
51-108	44	All	5000
51-109	45	All	5000
51-110	71	All	5000
51-111	79	All	5000
51-112	190	All	5000
51-113	191	All	5000

OCS LEASING MAP, EUGENE ISLAND AREA, SOUTH ADDITION,
LOUISIANA MAP NO. 4A
(Approved September 8, 1959)

Tract	Block	Description	Acreage
51-114	278	All	5000
51-147	279	All	5000
51-115	290	All	5000

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OCS LEASING MAP, SHIP SHOAL AREA, LOUISIANA MAP NO. 5
(Approved June 8, 1954)

Tract	Block	Description	Acreage
51-116	148	All	5000
51-117	153	All	5000
51-118	182	W½	2500
51-119	187	All	5004.46

OCS LEASING MAP, SHIP SHOAL AREA, SOUTH ADDITION,
LOUISIANA MAP NO. 5A
(Approved September 8, 1959)

Tract	Block	Description	Acreage
51-120	295	All	5000

OCS LEASING MAP, SOUTH TIMBALIER AREA, LOUISIANA MAP NO. 6
(Approved June 8, 1954; Revised July 22, 1954; Revised December 9, 1954)

Tract	Block	Description	Acreage
51-138	11	7/	1248.13
51-121	27	SE¼; S½SW¼	1875
51-122	53	All	5000
51-123	173	All	5000

OCS LEASING MAP, GRAND ISLE AREA, LOUISIANA MAP NO. 7
(Approved June 8, 1954)

Tract	Block	Description	Acreage
51-124	33	All	5000

OCS LEASING MAP, GRAND ISLE AREA, SOUTH ADDITION,
LOUISIANA MAP NO. 7A
(Approved September 8, 1959; Revised March 7, 1961)

Tract	Block	Description	Acreage
51-125	90	All	5000

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OCS LEASING MAP, WEST DELTA AREA, LOUISIANA MAP NO. 8
(Approved June 8, 1954)

Tract	Block	Description	Acreage
51-126	46	All	5000
51-143	47	All	5000
51-127	87	S½	2500
51-128	88	All	5000

OCS LEASING MAP, MAIN PASS AREA, LOUISIANA MAP NO. 10
(Approved June 8, 1954; Revised July 22, 1954)

Tract	Block	Description	Acreage
51-137	59	6/	319.85
51-129	61	5/	1217.96
51-130	111	All	4994.55
51-131	128	All	4994.55
51-132	129	All	4994.55

OCS LEASING MAP, MAIN PASS AREA, SOUTH & EAST ADDITION,
LOUISIANA MAP NO. 10A
(Approved September 8, 1959)

Tract	Block	Description	Acreage
51-133	312	All	4999.96
51-134	314	All	4999.96

OCS OFFICIAL PROTRACTION DIAGRAM, VIOSCA KNOLL NH 16-7
(Approved October 10, 1972; Revised February 15, 1973; Revised
August 1, 1973; Revised December 2, 1976)

Tract	Block	Description	Acreage
51-135	69	All	5760
51-136	113	All	5760

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[1]That portion of the lease block seaward of the Three-Marine-League line.

[2]That portion of the lease block which is more than 3 geographical miles seaward from the line described in the supplemental decree of the U.S. Supreme Court, June 16, 1975 (*United States* v. *Louisiana*, 422 U.S. 13).

[3]That portion of the south half of the lease block which is more than 3 geographical miles seaward from the line described in the supplemental decree of the U.S. Supreme Court, June 16, 1975 (*United States* v. *Louisiana*, 422 U.S. 13) to the zone 1 line as that zone is defined in the interim agreement (October 12, 1956) between the United States and State of Louisiana.

[4]W½SW¼and that portion of the north half of the lease block which is more than 3 geographical miles seaward from the line described in the supplemental decree of the U.S. Supreme Court, June 16, 1975.

[5]That portion of the lease block located landward of the line three geographical miles seaward from the line described in the supplemental decree of the U.S. Supreme Court, December 13, 1965 (*United States* v. *Louisiana*, 382 U.S. 288).

[6]That portion of the lease block located seaward of the third supplemental decree line (404 U.S. 388, December 20, 1971).

[7]That portion of the lease block described as follows: Beginning at the southeast corner of said block which is described by coordinates x=2,264,446.02, y=127,591.99; thence westerly along the south boundary of the block, 15,600.00 ft. to coordinates x=2,248,846.02, y=127,591.99; thence northerly along the west boundary of the block 6,645.35 ft. to coordinates x=2,248,846.02, y=134,237.34; thence N. 76°17'04" E., 499.25 ft. to coordinates x=2,249,331.04, y=134,355.71; thence S. 65°53'32" E., 16,559.30 ft. to coordinates x=2,264,446.02, y=127,591.99, the point of beginning.

[8]That portion of the lease block seaward of the Three-Marine-League line measured from the historic shoreline described in the *United States* v. *Louisiana*, No. 9 original (394 U.S. 836).

14. *Lease terms and stipulations.* All leases issued as a result of this sale will be for an initial term of 5 years. Leases issued will be on form 3300-1 (September 1978), available from the Manager, New Orleans Outer Continental Shelf Office, at the address stated in paragraph 2. Section 6 of the lease form will be amended for tracts offered on a cash bonus basis with a fixed sliding scale royalty, listed in paragraph 4, as follows:

Sec. 6 *Royalty on production.* (a) To pay the lessor a royalty of that percent in amount or value of production saved, removed or sold from the leased area as determined by the sliding scale royalty formula as follows. When the quarterly value of production, adjusted for inflation, is less than or equal to $13.236229 million, a royalty of 16.66667 percent in amount or value of production saved, removed or sold will be due on the unadjusted value or amount of production. When the adjusted quarterly value of production is equal to or greater than $13.236230 million, but less than or equal to $1662.854082 million, the royalty percent due on the unadjusted value or amount of production is given by

$$R_j = b[\mathrm{Ln}\ (V_j/S)]$$

where

R_j = the percent royalty that is due and payable on the unadjusted amount or value of all production saved, removed or sold in quarter j;
b = 10.0;
Ln = natural logarithm;
V_j = the value of production in quarter j, adjusted for inflation, in millions of dollars; and
S = 2.5.

When the adjusted quarterly value of production is equal to or greater than $1662.854083 million, a royalty of 65.00000 percent in amount or value of production saved, removed or sold will be due on the unadjusted quarterly value of production. Thus, in no instance will the quarterly royalty due exceed 65.00000 percent in amount or value of quarterly production saved, removed or sold.

In determining the quarterly percent royalty due, R_j, the calculation will be carried to five decimal places (for example, 20.17329 percent). This calculation will incorporate the adjusted quarterly value of production, V_j, in millions of dollars, rounded to the sixth digit, i.e., to the nearest dollar (for example, 15.392847 millions of dollars) • • •.

Except as otherwise noted, the following stipulations will be included in each lease resulting from this sale. In the following stipulations the term Supervisor refers to the Gulf of Mexico Area Oil and Gas Supervisor for Operations of the Geological Survey and the term Manager refers to the Manager of the New Orleans OCS Office of the Bureau of Land Management.

STIPULATION No. 1

If the Supervisor, having reason to believe that a site, structure or object of historical or archaeological significance hereinafter referred to as "cultural resource", may exist in the lease area, gives the lessee written notice that the lessor is invoking the provisions of this stipulation, the lessee shall upon receipt of such notice comply with the following requirements:

Prior to any drilling activity or the construction or placement of any structure for exploration or development on the lease, including but not limited to, well drilling and pipeline and platform placement, hereinafter in this stipulation referred to as "operation", the lessee shall conduct remote sensing surveys to determine the potential existence of any cultural resource that may be affected by such operations. All data produced by such remote sensing surveys as well as other pertinent natural and cultural environmental data shall be examined by a qualified marine survey archaeologist to determine if indications are present suggesting the existence of a cultural resource that may be adversely affected by any lease operation. A report of this survey and assessment prepared by the marine survey archaeologist shall be submitted by the lessee to the Supervisor and to the Manager for review.

If such cultural resource indicators are present the lessee shall: (1) Locate the site of such operation so as not to adversely affect the identified location; or (2) establish, to the satisfaction of the Supervisor, on the basis of further archaeological investigation conducted by a qualified marine survey archaeologist or underwater archaeologist using such survey equipment and techniques as deemed necessary by the Supervisor, either that such operation will not adversely affect the location identified or that the potential cultural resource suggested by the occurrence of the indicators does not exist.

A report of this investigation prepared by the marine survey archaeologist or underwater archaeologist shall be submitted to the Supervisor and the Manager for review. Should the Supervisor determine that the existence of a cultural resource which may be adversely affected by such operation is sufficiently established to warrant protection, the lessee shall take no action that may result in an adverse effect on such cultural resource until the Supervisor has given directions as to its preservation.

The lessee agrees that if any site, structure, or object of historical or archaeological significance should be discovered during the conduct of any operations on the leased area, he shall report immediately such findings to the Supervisor, and make every reasonable effort to preserve and protect the cultural resource from damage until the Supervisor has given directions as to its preservation.

STIPULATION No. 2

(To be included only in those leases resulting from this sale for tracts 51-8 and 51-78):

Operations within the circle with a radius of 5820 meters around point A, located by X=2,720,700, Y=736,500 (Texas Lambert System) and within the circle with a radius of 7,000 meters around point B located by X=3,775,400, Y=153,280 (Texas Lambert System) shall be restricted as specified in either (a) or (b) below, at the option of the lessee:

(a) All drill cuttings and drilling fluids must be disposed of by shunting the material to the bottom through a downpipe that terminates an appropriate distance, but not more than six meters, from the bottom.

(b) The operator (lessee) shall submit a monitoring plan as part of the exploration and development and production plans. The monitoring plan will be designed to assess the effects of oil and gas exploration, development, and production operations on the biotic communities of South Baker Bank and 29 Fathom Bank.

The monitoring program shall indicate that the monitoring investigations will be conducted by qualified independent scientific personnel and that these personnel and all required equipment will be available at the time of operations. The monitoring team will submit its findings to the Supervisor on a schedule established by the Supervisor, or immediately in case of imminent danger to the biota of the bank resulting directly from drilling or other operations. If it is decided that surface disposal of drilling fluids or cuttings presents no danger to the bank, no further monitoring of that particular well or platform will be required. If, however, the monitoring program indicates that the biota of the bank is being harmed, or if there is a great likelihood that operation of that particular well or platform may cause harm to the biota of the bank, the Supervisor shall require shunting as specified in (a) above or other appropriate operational restrictions.

STIPULATION No. 3

a. (To be included only in the leases resulting from this sale for tract 51-55):

No structures, drilling rigs, or pipelines will be allowed within the aliquots established for the West Flower Garden Bank as follows: High Island area, east addition, south extension, block A-397: W½W½NW¼; W½NW¼SW¼; NW¼SW¼SW¼.

b. (To be included only in the leases resulting from this sale for tracts 51-54 and 51-55):

Exploration, development and production operations are permitted within the aliquots described below with the following restrictions:

All drill cuttings and drilling fluids must be disposed of by shunting the material to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom; however, if the shunting method is not adequate, as determined by the monitoring program proceedings outlined in this stipulation, to protect the unique character of the subject area, then the material must be transported a minimum of ten miles from any 50-meter isobath surrounding live reef-building coral before disposal. Disposal sites must be approved by the Supervisor.

No garbage, untreated sewage, or other solid waste shall be disposed of from vessels (workboats, crew-boats, supply boats, pipelaying vessels) during exploration, development and production operations. The use of halogenated phenol bactericides in any phase of exploration, development and production is prohibited.

No drilling permits shall be issued by the Supervisor until he has found that the lessee's exploration plan, and development and production plan, filed under 30 CFR 250.34 are adequate to insure that exploration, development and production operations in the leased area will have no significant adverse effect on the biotic communities associated with the high value reef sites on the Flower Garden Banks. As a part of the exploration plan and the development and production plan, a reef monitoring program must be included.

The monitoring program will be designed to assess the effects of oil and gas exploration, development and production operations on the viability of the coral reefs and associated communities. The monitoring plan shall indicate that the monitoring investigations will be conducted by qualified independent scientific personnel and that program personnel and equipment will be available at the time of operations. The monitoring team will submit its findings to the Supervisor on a regular schedule established by the Supervisor, or immediately in case of imminent danger to the biota of the bank resulting directly from drilling or other operations.

The affected aliquots are as follows: High Island area, east addition, south extension, block A-385: SW¼NW¼NW¼; SW¼NW¼; W½SW¼; W½E½SW¼; HIGH ISLAND AREA, EAST ADDITION, SOUTH EXTENSION, BLOCK A-397: W½E½NW¼; E½W½NW¼; NW¼NE¼SW¼; E½NW¼SW¼.

c. (To be included only in the leases resulting from this sale for tracts 51-53, 51-54, and 51-55):

Exploration, development and production operations are permitted within the aliquots described below with the following restrictions:

All drill cuttings and drilling fluids must be disposed of by shunting the material to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

No garbage, untreated sewage, or other solid waste shall be disposed of from vessels (workboats, crew-boats, supply boats, pipelaying vessels) during exploration, development and production operations.

The use of halogenated phenol bactericides in any phase of exploration, development and production is prohibited.

No drilling permits shall be issued by the Supervisor until he has found that the lessee's exploration plan, and development and production plan filed under 30 CFR 250.34 are adequate to insure that exploration, development and production operations in the leased area will have no significant adverse effect on the biotic communities associated with the high value reef sites on the Flower Garden Banks.

The affected aliquots are as follows: High Island area, east addition, south extension, block A-378; NW¼SW¼NW¼; S½S½NW¼; SW¼; NW¼NW¼SE¼; S½NW¼SE¼; SW¼SE¼; W½SE¼SE¼; High Island Area, east addition, south extension, block A-385: E½; E½E½W½; W½E½NW¼; E½NW¼NW¼; NW¼NW¼NW¼; High Island area, east addition, south extension block A-397: E½; E½E½W½; SW¼NE¼SW¼; NE¼; SW¼SW¼; S½SW¼SW¼; W½SE¼SW¼.

STIPULATION No. 4

(To be included in any leases resulting from this sale for the sliding scale royalty tracts listed in paragraph 4 of this notice.)

(a) The royalty rate on production saved, removed or sold from this lease is subject to consideration for reduction under the same authority that applies to all other oil and gas leases on the Outer Continental Shelf (30 CFR 250.12(e)). The Director, Geological Survey, may grant a reduction for only 1 year at a time. Reduction of royalty rates will not be approved unless production has been underway for 1 year or more.

(b) Although the royalty rate specified in section 6(a) of this lease or as subsequently modified in accordance with applicable regulations and stipulations is applicable to all production under this lease, not more than 16⅔ percent of the production saved, removed or sold from the lease area may be taken as royalty in amount, except as provided in section 15(d) of this lease; the royalty on any portion of the production saved, removed or sold from the lease in excess of 16⅔ percent may only be taken in value of the production saved, removed or sold from the lease area.

STIPULATION No. 5

(To apply only to the leases resulting from this sale for tracts 51-1, 51-2, 51-3, 51-4, 51-5, 51-6, 51-7, 51-8, 51-9, 51-10, 51-139, 51-140, and 51-141.)

Whether or not compensation for such damage or injury might be due under a theory of strict or absolute liability or otherwise, the lessee assumes all risks of damage or injury to persons or property, which occur in, on, or above the Outer Continental Shelf, to any persons or to any property of any person or persons who are agents, employees or invitees of the lessees, its agents, independent contractors, or subcontractors doing business with the lessee in connection with any activities being performed by the lessee in, on, or above the Outer Continental Shelf, if such injury or damage to such person or property occurs by reason of the activities of any agency of the U.S. Government, its contractors or subcontractors, or any of their officers, agents or employees, being conducted as a part of, or in connection with the programs and activities of the Naval Air Station, Corpus Christi, Tex.

Notwithstanding any limitation of the lessee's liability in section 14 of the lease, the lessee assumes this risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors or subcontractors, or any of their officers, agents, or employees. The lessee further agrees to indemnify and save harmless the United States against and to defend at its own expense the United States against all claims for loss, damage, or injury sustained by the lessee, and to indemnify and save harmless the United States against, and to defend at its own expense the United States against, all claims for loss, damage, or injury sustained by the agents, employees, or invitees of the lessee, its agents, or any independent contractors or subcontractors doing business with the lessee in connection with the programs and activities of the aforementioned military installations, whether the same be caused in whole or in part by the negligence or fault of the United States, its contractors, or subcontractors, or any of their officers, agents, or employees and whether such claims might be sustained under a theory of strict or absolute liability or otherwise.

The lessee agrees to control his own electromagnetic emissions and those of his agents, employees, invitees, independent contractors or subcontractors emanating from individual designated defense warning areas in accordance with requirements specified by the commander of the appropriate onshore military installation, i.e., Naval Air Training Command, Naval Air Station, Corpus Christi, Tex., to the degree necessary to prevent damage to, or unacceptable interference with, Department of Defense flight, testing or operational activities, conducted within individual designated warning areas. Necessary monitoring control, and coordination with the lessee, his agents, employees, invitees, independent contractors or subcontractors, will be affected by the commander of the appropriate onshore military installation conducting operations in the particular warning area; provided, however, that control of such electromagnetic emissions shall in no instance prohibit all manner of electromagnetic communication during any period of time between a lessee, its agents, employees, invitees, independent contractors or subcontractors and onshore facilities.

The lessee, when operating or causing to be operated on its behalf boat or aircraft traffic into the individual designated warning areas shall enter into an agreement with the commander of the appropriate onshore military installation, i.e., Naval Air Training Command, Naval Air Station, Corpus Christi, Tex., utilizing an individual designated warning area prior to commencing such traffic. Such agreement will provide for positive control of boats and aircraft operating into the warning areas at all times.

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15. *Information to lessees.* The Department of the Interior will seek the advice of the States of Texas, Louisiana, Mississippi, and Alabama and other Federal agencies, to identify areas of special concern which might require appropriate protective measures for live bottom areas and areas which might contain cultural resources.

If it is determined that live bottom areas might be adversely impacted by the proposed activities then the Supervisor, in consultation with the Regional Director, Fish and Wildlife Service (FWS), the Manager, BLM and the States, will require the lessee to undertake any measures deemed economically, environmentally, and technologically feasible to protect live bottom areas.

On September 18, 1978, the OCS Lands Act Amendments of 1978 was enacted. Some sections of current regulations applicable to OCS leasing operations are inconsistent with this new legislation, and the legislation requires the issuance of some new regulations. The inconsistencies will be corrected by rulemakings and the new regulations will be issued as soon as possible. Nevertheless, bidders are notified that provisions of the new OCS Lands Act Amendments shall apply to all leases offered at this lease sale and shall supersede all inconsistent provisions in current regulations applicable to OCS Leasing operations.

Some of the tracts offered for lease may fall in areas which may be included in fairways, precautionary zones, or traffic separation schemes. Corps of Engineers permits are required for construction of any artificial islands, installations and other devices permanently or temporarily attached to the seabed located on the Outer Continental Shelf in accordance with section 4(f) of the Outer Continental Shelf Lands Act of 1953 as modified by the 1978 Amendments.

Bidders are advised that the Departments of the Interior and Transportation have entered into a memorandum of understanding dated May 6, 1976, concerning the design, installation, operation and maintenance of offshore pipelines. Bidders should consult both Departments for regulations applicable to offshore pipelines.

Bidders are also advised that in accordance with section 16 of each lease offered at this sale the lessor may require a lessee to operate under a unit, pooling or drilling agreement and that the lessor will give particular consideration to requiring unitization in instances where one or more reservoirs underlie two or more leases with either a different royalty rate or a royalty rate based on a sliding scale.

16. *OCS orders.* Operations on all leases resulting from this sale will be conducted in accordance with the provisions of all Gulf of Mexico orders, as of their effective date, and any other applicable OCS order as it becomes effective.

17. *Suggested bid form.* It is suggested that bidders submit their bids to the Manager, New Orleans Outer Continental Shelf Office, in the following form:

OIL AND GAS BID

The following bid is submitted for an oil and gas lease on the tract of the Outer Continental Shelf specified below:

Tract No. _____
Total amount bid _____
Amount per acre _____
Amount of cash bonus submitted with bid _____

PROPORTIONATE INTEREST OF COMPANY(S) SUBMITTING BID

Qualification No. _____
Percent interest _____
Company _____
Address _____
Signature _____
(Please type signer's name under signature.)

18. *Required joint bidder's statement.* In the case of joint bids, each joint bidder is required to execute a joint bidder's statement before a notary public and submit it with his bid. A suggested form for this statement is shown below.

JOINT BIDDER'S STATEMENT

I hereby certify that _____ (entity submitting bid) is eligible under 43 CFR 3302 to bid jointly with the other parties submitting this bid.

Signature _____
(Please type signer's name under signature.)

Sworn to and subscribed before me this —— day of —— 19—.

Notary Public _____
State of _____
County of _____

* * * * *

ARNOLD E. PETTY,
Acting Associate Director,
Bureau of Land Management.

Approved: November 7, 1978.

JAMES A. JOSEPH,
Acting Secretary of the Interior.

[FR Doc. 78-31780 Filed 11-9-78; 8:45 am]

[4310-05-M]

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

PROPOSED DECISION TO APPROVE COAL MINING AND RECLAMATION PLAN WITH STIPULATIONS—ENERGY FUELS NO. 2 FEDERAL COAL LEASE C-20900

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior Department.

ACTION: Proposed Decision to Approve Coal Mining and Reclamation Plan with Stipulation—Energy No. 2 Mine, Federal Coal Lease C-20900.

SUMMARY: Pursuant to Section 211.5 of Title 30, Code of Federal Regulations, notice is hereby given that the office of Surface Mining has performed a technical review of a mining and reclamation plan submitted by Energy Fuels Corp. (Box G, Steamboat Springs, Colo. 80477) to mine up to 40 acres by surface methods and to otherwise disturb up to 300 acres on a lease area of about 420 acres. The lease tract is located at the site of the existing Energy No. 2 Mine in Routt County, Colo. (T5N, R86W, section 19, S½NE¼, N½SE¼, SE¼NW¼, NE¼ SW¼, Lots 6 and 7, and T5N, R87W, section 25, Lots 1, 2, 3, and 4). It is estimated that the coal will be mined from the C-20900 lease area in less than 2.5 years.

Energy Fuels submitted on October 31, 1978 additional information which essentially satisfied the State of Colorado, Mined Land Reclamation Division and the Department of the Interior, Office of Surface Mining requirements for complete information for the C-20900 lease area. Two additional items were submitted on November 2, 1978 for review and approval by the Colorado Mined Land Reclamation Division and the Department of the Interior, Office of Surface Mining. These data are laboratory analyses of soils and overburden cores for the C-20900 lease areas. The mining and reclamation plan will not be approved unless these data are adequate and require no changes in the plan. It is the Department's tentative finding that since surrounding overburden materials have limited toxic materials, that the new data for the C-20900 mine area do not indicate unusual problems. It is also the Department's tentative finding that the site-specific soils data confirm that adequate soils exist in the area to facilitate reclamation and that they will be properly removed, the A and B horizons segregated, and reapplied.

The purpose of this notice is to inform the public that the Regional Director, Region V, Office of Surface Mining, has recommended, based on staff and other reviews: Including those of the Colordao Mined Land Reclamation Division, the Bureau of Land Management, and the Geological Survey; approval with stipulations. Any person having an interest which is or may be adversely affected, may, in writing, request a public meeting to discuss their views regarding this mining and reclamation plan.

DATES: All requests for public meetings must be made within 20 days from the date of publication of this notice. No decision on the mine plan will be made by the Assistant Secretary, Energy and Minerals, prior to the expiration of the 20-day period or prior to the approval of the soolls and overburden data and development of any appropriate stipulations on the operations necessary if the analysis are considered to require additional stipulations.

ADDRESSES: The stipulations are available for review in the Region V Office of Surface Mining upon request. Requests for public meetings must include the name and address of the requestor and must be submitted to the Regional Director, Region V, Office of Surface Mining, Room 217, 1823 Stout Street, Denver, Colo. 80202.

FOR FURTHER INFORMATION CONTACT:

John Hardaway, Office of Surface Mining Reclamation and Enforcement, Region V, 1823 Stout Street, Denver, Colo. 80202.

PAUL L. REEVES,
Acting Director, Office of Surface Mining, Reclamation and Enforcement.

[FR Doc. 78-31954 Filed 11-9-78; 8:45 am]

[4310-70-M]

National Park Service

CRAFTS OF NINE STATES, INC.

Intention To Negotiate Concession Contract

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that thirty (30) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Crafts of Nine States, Inc., authorizing it to continue to provide concession facilities and services for the public within the Blue Ridge Parkway for a period of five (5) years from January 1, 1979, through December 31, 1983.

An analysis of the environmental impact of this proposed action has been made and it has been determined that it will not significantly affect the quality of the environment, and that it is not a major Federal action having a significant impact on the environment under the National Environment Policy Act of 1969. The environmental analysis may be reviewed in the Regional Office, 1895 Phoenix Boulevard, Atlanta, Ga. 30349.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1978, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract. This provision, in effect, grants Crafts of Nine States, Inc., as the present satisfactory concessioner, the right to meet the terms of responsive proposals for the proposed new contract and a preference in the award of the contract, if, thereafter, the proposal of Crafts of Nine States, Inc., is subtantially equal to others received. In the event a responsive proposal superior to that of Crafts of Nine States, Inc., (as determined by the Secretary) is submitted, Crafts of Nine States, Inc., will be given the opportunity to meet the terms and conditions of the superior proposal the Secretary considers desirable, and, if it does so, the new contract will be negotiated with Crafts of Nine States, Inc. The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be submitted within thirty (30) days after the publication date of this notice to be considered and evaluated.

Interested parties should contact the Chief, Division of Concessions Management, National Park Service, Washington, D.C. 20240, for information as to the requirements of the proposed contract.

Dated: November 1, 1978.

DANIEL J. TOBIN, Jr.,
Associate Director,
National Park Service.

[FR Doc. 78-31791 Filed 11-9-78; 8:45 am]

[7020-02-M]

INTERNATIONAL TRADE COMMISSION

[AA1921-Inq.-23]

TITANIUM DIOXIDE FROM BELGIUM, FRANCE, THE UNITED KINGDOM, AND THE FEDERAL REPUBLIC OF GERMANY

Inquiry and Hearing

The U.S. International Trade Commission (Commission) received advice from the Department of the Treasury (Treasury) on October 30, 1978, that during the course of determining, in accordance with section 201(c) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(c)), whether to institute an investigation with respect to titanium dioxide from Belgium, France, the United Kingdom, and the Federal Republic of Germany, Treasury has concluded from the information available to it that there is substantial doubt that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of this merchandise into the United States. Therefore, the Commission on November 6, 1978, instituted inquiry No. AA1921-Inq.-23, under section 201(c)(2) of the act, to determine whether there is no reasonable indication that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

Treasury advised the Commission as follows—

Dear Mr. Chairman: In accordance with section 201(c) of the Antidumping Act of 1921, as amended, an antidumping investigation is being initiated with respect to titanium dioxide from Belgium, France, the United Kingdom, and the Federal Republic of Germany. Pursuant to section 201(c)(2) of the act, you are hereby advised that the information developed during our preliminary investigation has led me to the conclusion that there is a substantial doubt that an industry in the United States is being, or is likely to be, injured by reason of the importation of this merchandise into the United States.

The bases for my determination are summarized in the attached copy of the Antidumping Proceeding Notice in this case. Additional information will be provided by the U.S. Customs Service.

Some of the information involved in this case is regarded by Treasury to be of a confidential nature. It is therefore requested that the Commission consider all the information provided for its investigation to be for the official use of the ITC only and not to be disclosed to others without prior clearance from the Treasury Department.

Sincerely,

ROBERT H. MUNDHEIM.

Hearing.—A public hearing in connection with the inquiry will be held at 11 a.m. on Wednesday, November 15, 1978, in the Hearing Room, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. All parties will be given an opportunity to be present, to produce evidence, and to be heard at such hearing. Requests to appear at the public hearing should be received in writing in the office of the Secretary to the Commission not later than noon Tuesday, November 7, 1978.

Written statements.—Interested parties may submit statements in writing in lieu of, or in addition to, appearance at the public hearing. A signed original and nineteen true copies of such statements should be submitted. To be assured of their being given due consideration by the Commission, such

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statements should be received no later than Wednesday, November 13, 1978.

By order of the Commission.

Issued: November 7, 1978.

KENNETH R. MASON,
Secretary.

[FR Doc. 78-31871 Filed 11-9-78; 8:45 am]

[4510-29-M]
[4830-01-M]

DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

Internal Revenue Service

DEPARTMENT OF THE TREASURY

[Prohibited Transaction Exemption 78-17]

ENGINEERS JOINT PENSION FUND, LOCAL UNIONS 17, 106, 410, 463, 545, AND 832 OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS

Grant of Individual Exemption

AGENCIES: Department of Labor, Department of the Treasury/Internal Revenue Service.

ACTION: Grant of individual exemption.

SUMMARY: This exemption enables the Engineers Joint Pension Fund, Local Unions 17, 106, 410, 463, 545, and 832 of the International Union of Operating Engineers (the Plan) to purchase a parcel of improved real property from the 4325 South Salina Street Corp., (the Corporation).

FOR FURTHER INFORMATION CONTACT:

Jay S. Neuman of the Plan Benefits Security Division, Office of the Solicitor, Department of Labor, 202-523-6855 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: On July 14, 1978, notice was published in the FEDERAL REGISTER (43 FR 30371) of the pendency before the Internal Revenue Service and the Department of Labor (the Agencies) of an exemption from the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1)(A) of the Code, and from the provisions of section 406(a) and 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act), for a transaction described in an application submitted by the Plan. The notice set forth a summary of the facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The applications has been available for public inspection at the Agencies, in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department of Labor (the Department). In addition, the notice stated that any interested person might submit a written request that a hearing be held relating to this exemption. No public comments and no requests for a hearing were received by the Department.

GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, that a fiduciary discharge his duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act, nor does the fact that the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406 (b)(1) and (b)(3) of the Act and section 4975(c)(1) (E) and (F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) This document does not meet the criteria for significant regulations set forth in paragraph 8 of the proposed Treasury directive appearing in the FEDERAL REGISTER for Wednesday, May 24, 1978 (43 FR 22319).

EXEMPTION

In accordance with section 4975(c)(2) of the Code and section 408(a) of the Act and the procedures set forth in Rev. Proc. 75-26, 1975-1 C.B. 722, and ERISA Proc. 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Agencies make the following determinations: (a) The exemption is administratively feasible; (b) it is in the interests of the Plan and of its participants and beneficiaries; and (c) it is protective of the rights of participants and beneficiaries of the Plan.

Accordingly, the following exemption is hereby granted under the authority of section 4975(c)(2) of the Code and section 408(a) of the Act and in accordance with the procedures set forth in Rev. Proc. 75-26 and ERISA Proc. 75-1.

The taxes imposed by section 4975 (a) and (b) of the Code by Reason of section 4975(c)(1)(A) of the Code and the restrictions of section 406(a) and 406 (b)(2) of the Act shall not appply to the purchase of the improved real property described in the application by the Plan from the Corporation for $402,000 in cash, provided that this amount is not more than the fair market value of such property.

The availability of this exemption is subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 3d day of November 1978.

FRED J. OCHS,
Director, Employee Plans Division, Internal Revenue Service.

IAN D. LANOFF,
Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration.

[FR Doc 78-31519 Filed 11-9-78; 8:45 am]

[4510-43-M]

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-78-35-M]

FRONTIER SPAR CORP.

Petition for Modification of Application of Mandatory Safety Standard

The Frontier Spar Corp., P.O. Box 235, Salem, Ky. 42078, has filed a petition to modify application of 30 CFR 57.11-55 (escapeways) to its Babb-Barnes Mine in Crittenden County, Ky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of the petition is as follows:

(1) The present escapeway is equipped with 10-foot offset ladders with cleated walkways every 10 feet.

(2) The mine has a 3-year life expectancy. The cost of installing an emergency hoist facility for that period would be prohibitive.

(3) The petitioner states that the present escapeway provides no less safety to miners than the standard.

REQUEST FOR COMMENTS

Persons interested in this petition may furnish written comments on or before December 13, 1978. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Va. 22203. Copies of the petition are available for inspection at that address.

Dated: November 6, 1978.

ROBERT B. LAGATHER,
Assistant Secretary for Mine Safety and Health.

[FR Doc. 78-31864 Filed 11-9-78; 8:45 am]

[4510-28-M]

Office of the Secretary

[TA-W-3679]

ANTONELLO FASHIONS, INC., PROSPECT PARK, N.J.

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3679: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on May 8, 1978 in response to a worker petition received on April 28, 1978 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' blazers at Antonello Fashions, Inc., Prospect Park, N.J.

The Notice of Investigation was published in the FEDERAL REGISTER on May 26, 1978 (43 FR 22793). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Antonello Fashions, Inc., its customers (manufacturers), the U.S. Department of Commerce, the U.S. International Trade Commission, the National Cotton Council of America, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or subdivision have contributed importantly to the total or partial separation, or threat thereof, and to the absolute decline in sales or production.

The Department surveyed the principal manufacturers for which Antonello Fashions, Inc. worked in 1977 and 1978. None of the manufacturers who responded to the survey purchased imported ladies' blazers during the survey period. These same manufactuers had increasing sales during the period under investigation.

CONCLUSION

After careful review, I determine that all workers of Antonello Fashions, Inc., Prospect Park, N.J., are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 3d day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-31836 Filed 11-9-78; 8:45 am]

[4510-28-M]

[TA-W-3680]

ARJAN, INC., SUSSEX, N.J.

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3680: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on May 8, 1978 in response to a worker petition received on April 28, 1978 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' raincoats and ladies' winter coats at Arjan, Inc., Sussex, N.J.

The Notice of Investigation was published in the FEDERAL REGISTER on May 26, 1978 (43 FR 22793). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Arjan, Inc., its customers (manufacturers), the U.S. Department of Commerce, the U.S. International Trade Commission, the National Cotton Council of America, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

U.S. imports of women's, misses', and children's coats and jackets increased from 2,252 thousand dozen in 1976 to 2,723 thousand dozen in 1977. The ratio of imports to domestic production increased from 48.3 percent in 1976 to 54.9 percent in 1977. Imports declined from 590 thousand dozen in the first quarter of 1977 to 572 thousand dozen in the first quarter of 1978.

U.S. imports of women's, misses' and children's raincoats decreased from 261,000 dozen in 1976 to 242,000 dozen in 1977. The ratio of imports to domestic production decreased from 45.0 percent in 1976 to 40.3 percent in 1977. Imports increased from 84,000 dozen in the first quarter of 1977 to 129,000 dozen in the first quarter of 1978.

Subsequent to the earliest impact date which could be set under law, April 25, 1977, there were no significant layoffs until December 1977 when the layoffs typical to the firm and the industry occurred. Employment at Arjan increased in the first 5 months of 1978 compared with the same period of 1977.

CONCLUSION

After careful review, I determine that all workers of Arjan, Inc., Sussex, N.J. are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 6th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-31837 Filed 11-9-78; 8:45 am]

[4510-28-M]

[TA-W-4024]

BEDFORD CLOAK & SUIT, BOSTON, MASS.

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4024: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on August 2, 1978, in response to a worker petition received on July 28, 1978, which was filed on behalf of workers and former workers producing women's clothing at the Bedford Cloak & Suit Co., Boston, Mass. The investigation revealed that the correct

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name of the company is Bedford Cloak & Suit and the plant produces women's blazers.

The Notice of Investigation was published in the FEDERAL REGISTER on August 11, 1978 (43 FR 35759). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Bedford Cloak & Suit, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision has contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The U.S. Department of Labor contacted the two manufacturers Bedford has sewn for during the last 2 years in order to determine whether these firms reduced the amount of work given to Bedford and increased the utilization of imported sources. Both manufacturers responded that they do not purchase imported women's blazers. One of these manufacturers increased its volume with Bedford in 1977 compared to 1976 and in the first half of 1978 compared to like period in 1977. The other company also increased its volume with Bedford in 1977 compared to 1976 but decreased its volume with Bedford in the first half of 1978. This was attributed to increased reliance upon its own production facilities and other domestic contractors.

CONCLUSION

After careful review, I determine that all workers of Bedford Cloak & Suit, Boston, Mass., are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 3d day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-31838 Filed 11-9-78; 8:45 am]

[4510-28-M]

[TA-W-3272]

C. P. CLARE & CO., CHICAGO, ILL.

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA—W—3272: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on March 1, 1978, in response to a worker petition received on February 21, 1978, which was filed by the International Brotherhood Electrical Workers on behalf of workers and former workers producing electromechanical relays at the Chicago, Ill., plant of C. P. Clare & Co. The investigation revealed that the plant primarily produces mercury and reed capsules.

The Notice of Investigation was published in the FEDERAL REGISTER on March 14, 1978 (43 FR 10649). No public hearing was requested and none was held.

The determination was based upon informtion obtained principally from officials of C. P. Clare & Co., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles or directpetitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to absolute decline in sales or production.

Production of reed capsules at the Chicago, Ill., plant of C. P. Clare & Co. increased in 1977 compared to 1976 and increased in the first 3 months of 1978 compared to the same period of 1977.

Production of mercury capsules which constituted a nagligible proportion of plant production in 1976 declined from 1976 to 1977 as the result of a management decision to transfer production to another company facility in Fairview, N.C. Production of mercury capsules was terminated at the Chicago plant at the end of 1977.

CONCLUSION

After careful review, I determine that all workers of the Chicago, Ill., plant of C. P. Clare & Co. are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 3d day of November 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-31839 Filed 11-9-78; 8:45 am]

[4510-28-M]

[TA-W-4143]

CRICKET SPORTSWEAR, INC., BOSTON, MASS.

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4143: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on September 14, 1978, in response to a worker petition received on September 13, 1978, which was filed on behalf of workers and former workers producing ladies' pants, skirts, and sportswear articles at Cricket Sportswear, Inc., Boston, Mass.

The Notice of Investigation was published in the FEDERAL REGISTER on September 26, 1978 (43 FR 43588). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Cricket Sportswear, Inc., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That sales or production, or both of such firm or subdivision have decreased absolutely.

Cricket Sportswear began production in the first quarter of 1977. As a contractor, Cricket Sportswear's sales and production are equal. Sales at Cricket Sportswear increased in value in the March-August period of 1978 compared to the same period of 1977. Sales increased in value in each month of 1978 when compared to the same month in 1977.

CONCLUSION

After careful review, I determine that all workers of Cricket Sportswear, Inc., Boston, Mass., are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 3d day of November 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-31840 Filed 11-9-78; 8:45 am]

[4510-28-M]

[TA-W-3277]

FREELAND SHIRT CO., FREELAND, PA.

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3277: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on March 1, 1978 in response to a worker petition received February 21, 1978 which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of all workers and former workers producing men's and ladies' outerwear at the Freeland Shirt Co., Inc., Freeland, Pa. The investigation revealed that the company also manufactures women's sportswear.

The Notice of Investigation was published in the FEDERAL REGISTER on March 14, 1978 (43 FR 10649). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Freeland Shirt Co., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threats thereof, and to the absolute decline in sales or production.

The Department conducted a survey of some of the customers of Freeland Shirt Co. None of the respondents reported reduced purchases from the Freeland Shirt Co. and increased purchases of imports in 1977 compared to 1976.

CONCLUSION

After careful review I determine that all workers of Freeland Shirt Co., Freeland, Pa. are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 6th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-31841 Filed 11-9-78; 8:45 am]

[4510-28-M]

[TA-W-3332]

G & H MANUFACTURING CO., FREDERICKSBURG, VA.

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3332: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on March 9, 1978 in response to a worker petition received on February 21, 1978 which was filed by the Amalgamated Clothing and Textile Workers of America on behalf of workers and former workers producing men's tailored clothing at G & H Manufacturing Co., Fredericksburg, Va., owned by Grief & Co., Inc.

The Notice of Investigation was published in the FEDERAL REGISTER on March 24, 1978 (43 FR 12401). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Grief & Co., Inc., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That sales or production, or both, of the firm or subdivision have decreased absolutely.

The production process is integrated among the five plants. Total company sales and production increased in every quarter from the first quarter of 1977 to the second quarter of 1978 compared to the same quarter of the previous year.

CONCLUSION

After careful review, I determine that all workers of G & H Manufacturing Co., Fredericksburg, Va. are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 3d day of November 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-31842 Filed 11-9-78; 8:45 am]

[4510-28-M]

[TA-W-3329]

GREIF & CO., INC., BALTIMORE, MD.

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3329: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on March 9, 1978 in response to a worker petition received on February 21, 1978 which was filed by the Amalgamated Clothing and Textile Workers of America on behalf of workers and former workers producing men's tailored clothing at Greif & Co., Inc., Baltimore, Md.

The Notice of Investigation was published in the FEDERAL REGISTER on March 24, 1978 (43 FR 12401). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Greif & Co., Inc., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That sales or production, or both, of the firm or subdivision have decreased absolutely.

The production process is integrated among the five plants. Total company sales and production increased in

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every quarter from the first quarter of 1977 to the second quarter of 1978 compared to the same quarter of the previous year.

CONCLUSION

After careful review, I determine that all workers of Greif & Co., Inc., Baltimore, Md. are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 3d day of November 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-31843 Filed 11-9-78; 8:45 am]

[4516-28-M]

[TA-W-4130]

H. D. LEE CO., INC., STEVENSON, ALA.

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the result TA-W-4130: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on August 31, 1978 in response to a worker petition received on August 28, 1978 which was filed on behalf of workers and former workers producing denim blue jeans and hunting jackets for men at the Stevenson, Ala., plant of the H. D. Lee Co. The investigation revealed that the plant primarily produces denim blue jeans.

The Notice of Investigation was published in the FEDERAL REGISTER on September 12, 1978 (43 FR 40576). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of the H. D. Lee Co., Inc., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That sales or production, or both, of the firm or subdivision have decreased absolutely.

Production of denim blue jeans at the Stevenson, Ala., plant of the H. D. Lee Co. increased in the January-September period of 1978 compared to the same period in 1977. During the last 9 months of 1977, production either increased each quarter over the previous quarter or showed no significant decrease. The plant does not make sales to retail customers, but ships production to distribution centers. Therefore sales approximate production. Sales of the H. D. Lee Co. overall increased in 1977 compared to 1976.

CONCLUSION

After careful review, I determine that all workers of the H. D. Lee Co., Inc., Stevenson, Ala. are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 3d day of November 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-31844 Filed 11-9-78; 8:45 am]

[4510-23-M]

[TA-W-3915]

HECLA MINING CO., WALLACE, IDAHO

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3915: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on June 27, 1978 in response to a worker petition received on June 23, 1978 which was filed on behalf of workers and former workers providing administrative and other support services for the Lakeshore Mine at the corporate headquarters of the Hecla Mining Co., Wallace, Idaho. The investigation was expanded to include employees engaged in research and development activities at the Wallace, Idaho office of Hecla Mining Co. and the Gem Medical Research Laboratory, Gem, Idaho, as well as employees at Hecla's outside exploration offices in Denver, Colo.; Reno, Nev.; and Casa Grande, Ariz.

The notice of investigation was published in the FEDERAL REGISTER on July 7, 1978 (43 FR 29364). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from the Hecla Mining Co., the U.S. Department of the Interior, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of refined copper increased from 147 thousand short tons in 1975 to 384 thousand short tons in 1976 and to 391 thousand short tons in 1977. Imports increased to 150 thousand short tons in the first quarter of 1978 compared to 66 thousand short tons in the same quarter of 1977.

The imports to domestic production ratio for refined copper increased from 8.6 percent in 1975 to 21.0 percent in 1976, and then increased in 1977 to 22.2 percent.

Workers at Hecla Mining Co.'s corporate headquarters, field offices, and the Gem Medical Research Laboratory, the subjects of this investigation, were adversely affected by the closing of Hecla's Lakeshore Mine. The Hecla Mining Co.'s share of production at this mine accounted for a major portion of total company sales during 1976 to 1977. In addition, the Lakeshore Mine accounted for a substantial share of all general and administrative service costs incurred by the Wallace office and charged to the Company's individual mining operations. Production ceased at the Lakeshore Mine on September 15, 1977. Workers separated from employment at the Mine were certified as eligible to apply for trade adjustment assistance (TA-W-2484) in a determination by the Department of Labor on January 10, 1978, which stated that increases of U.S. imports of refined copper had contributed importantly to the separation of workers and to the decline in sales and production at the Lakeshore Mine of the Hecla Mining Co.

Layoffs of salaried workers at the corporate office of the Hecla Mining Co. in Wallace, Idaho began in September 1977 following the closing of the Lakeshore facility. Layoffs of hourly workers at the corporate office began during June and July 1978 as a result of the Company's continued financial difficulties and its decision on June 2, 1978 to place the Lakeshore Mine on a custodial basis. Workers employed by Hecla at the Gem, Idaho Medical Research Laboratory and at the Denver, Colo.; Reno, Nev.; and Casa Grande, Ariz. field offices were laid off for the first time following Hecla's June 2, 1978 decision regarding the Lakeshore Mine.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with refined copper produced at the Lakeshore Mine of the Hecla Mining Co. contributed importantly to the total or partial separation of all workers, except those in the safety and training departments, at the Company's corporate headquarters in Wallace, Idaho, to the total or partial separation of hourly workers employed by Hecla at the Gem, Idaho Medical Research Laboratory, and to the total or partial separation of salaried workers at Hecla's Reno, Nev.; Denver, Colo.; and Casa Grande, Ariz. field offices. In accordance with the provisions of the Act, I make the following certifications:

All salaried workers at the corporate headquarters of the Hecla Mining Co., Wallace, Idaho, except those in the safety and training departments, who became totally or partially separated from employment on or after September 3, 1977 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

All hourly workers employed by the Hecla Mining Co. at the corporate headquarters in Wallace, Idaho and at the Gem Medical Research Laboratory, Gem, Idaho who became totally or partially separated from employment on or after May 20, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

All salaried workers at the Reno, Nev.; Denver, Colo.; and Casa Grande, Ariz. field offices of the Hecla Mining Co. who became totally or partially separated from employment on or after May 20, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 3d day of November 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-31845 Filed 11-9-78; 8:45 am]

[4510-28-M]

[TA-W-3792]

HERCULES TROUSER CO., FORDYCE, ARK.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3792: investigation regarding certification of elegibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 31, 1978, in response to a worker petition received on May 25, 1978 which was filed by the Amalgamated Clothing and Textile Workers' Union on behalf of workers and former workers producing men's dress pants at the Fordyce, Ark. plant of the Hercules Trouser Co.

The Notice of Investigation was published in the FEDERAL REGISTER on June 25, 1978 (43 FR 26497). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of the Hercules Trouser Co., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. The investigation has revealed that all of the requirements have been met.

Imports of men's and boys' dress and sport trousers and shorts increased, in absolute terms, from 1975 to 1976, increased from 1976 to 1977 and increased in the first 6 months of 1978 compared to the first 6 months of 1977.

The Department's survey of customers of Hercules which decreased their purchases of men's dress pants and suits (pant sales are not separately identifiable) from 1976 to 1977 revealed that many customers had increased their purchases of imported men's dress pants during the same period of time.

Pant production and average employment at the Fordyce plant decreased in the second quarter of 1978 compared to the second quarter of 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's dress pants produced at the Fordyce, Arkansas plant of the Hercules Trouser Company contributed importantly to the decline in sales or production and to the total or partial separation of workers of that plant. In accordance with the provisions of the Act, I make the following certification:

All workers at the Fordyce, Ark. plant of the Hercules Trouser Co. who became totally or partially separated from employment on or after June 25, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 6th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management Administration and Planning.

[FR Doc. 78-31846 Filed 11-9-78; 8:45 am]

[4510-28-M]

[TA-W-3789, 3790, 3791]

HERCULES TROUSER CO., HILLSBORO, OHIO, MANCHESTER, OHIO, WELLSTON, OHIO

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3789, 3790, 3791: investigations regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigations were initiated on May 31, 1978 in response to worker petitions received on May 25, 1978 which were filed by the Amalagated Clothing and Textile Workers' Union on behalf of workers and former workers producing men's dress pants at three Hercules Trouser Co. plants: Hillsboro, Ohio (TA-W-3789); Manchester, Ohio (TA-W-3790); and Wellston, Ohio (TA-W-3791).

Notices of Investigation were published in the FEDERAL REGISTER on June 20, 1978 (43 FR 26497). No public hearing was requested and none was held.

The determinations were based upon information obtained principally from officials of the Hercules Trouser Company, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

With respect to workers producing men's dress pants at the Manchester, Ohio plant and the Wellston, Ohio plant without regard to whether any of the other criteria have been met, the following criterion has not been met:

That sales or production, or both, of the firm or subdivision have decreased absolutely.

Plant production at the Manchester and Wellston, Ohio plants, respectively, increased in the first 6 months of 1978 compared to the first 6 months of 1977.

With respect to workers producing dress pants at the Hillsboro, Ohio plant, all the group eligibility requirements of section 222 of the Act have been met.

Imports of men's and boys' dress and sport trousers and shorts increased, in absolute terms, from 1975 to 1976, increased from 1976 to 1977 and increased in the first 6 months of 1978 compared to the first 6 months of 1977.

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The Department's survey of customers of Hercules which decreased their purchases of men's dress pants and suits (pant sales are not separately identifiable) from 1976 to 1977 revealed that many customers had increased their purchases of imported men's dress pants during the same period of time.

Pant production and average employment at the Hillsboro plant decreased in the first 6 months of 1978 compared to the first 6 months of 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's dress pants produced at the Hillsboro, Ohio plant of the Hercules Trouser Company contributed importantly to the decline in sales or production and to the total or partial separation of workers of that plant. In accordance with the provisions of the Act, I make the following certification:

All workers at the Hillsboro, Ohio plant of the Hercules Trouser Co. who became totally or partially separated from employment on or after June 25, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

I further determine that workers engaged in employment related to the production of men's dress pants at the Manchester, Ohio plant and Wellston, Ohio plant of the Hercules Trouser Co. are denied eligibility to apply for adjustment assistance.

Signed at Washington, D.C. this 6th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management Administration and Planning.

[FR Doc. 78-31847 Filed 11-9-78; 8:45 am]

[4510-28-M]

[TA-W-2901]

HILTON COAT & SUIT CO., BURLINGTON, N.J.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2901: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on January 11, 1978, in response to a worker petition received on December 29, 1977, which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing women's sportswear and outergarments at Hilton Coat and Suit Co., Burlington, N.J. The investigation revealed that the company produced women's slacks and skirts, blouses and vests and jackets.

The Notice of Investigation was published in the FEDERAL REGISTER on January 27, 1978 (43 FR 3776). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Hilton Coat and Suit Co., its manufacturers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of women's, misses' and children's slacks and shorts increased from 1975 to 1976 and from 1976 to 1977. During the first quarter of 1978 imports increased compared to the first quarter of 1977.

U.S. imports of women's, misses' and children's blouses and shirts increased from 1975 to 1976 and from 1976 to 1977. During the first quarter of 1978 imports increased compared to the first quarter of 1977.

U.S. imports of women's, misses' and children's skirts increased from 1975 to 1976 and then decreased from 1976 to 1977. During the first quarter of 1978 imports increased compared to the first quarter of 1977.

U.S. imports of women's, misses' and children's coats and jackets increased from 1975 to 1976 and increased from 1976 to 1977. During the first quarter of 1978 imports decreased compared to the first quarter of 1977.

A Departmental survey of Hilton Coat and Suit manufacturers revealed that one of the subject firm's manufacturers which accounted for a substantial percent of the subject firm's sales in 1976 reduced its purchases to zero in 1977.

This manufacturer contracted work with foreign sources and imported finished women's sportswear in 1976 and 1977. Moreover, this manufacturer increased its imports of finished women's sportswear during the first quarter of 1978 compared to any full year since 1975.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with women's sportswear and outergarments produced at Hilton Coat and Suit Co., Burlington, N.J. contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Hilton Coat and Suit Co., Burlington, N.J. who became totally or partially separated from employment on or after June 24, 1977 and before April 7, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 6th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-31848 Filed 11-9-78; 8:45 am]

[4510-28-M]

[TA-W-3439]

LARGE POWER TRANSFORMER PLANT, MUNCIE, IND., OF THE WESTINGHOUSE ELECTRIC CORP.

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3439: investigation regarding certification of eligibility to apply for adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on March 28, 1978 in response to a worker petition received on March 15, 1978 which was filed by the International Union of Electrical, Radio and Machine Workers on behalf of workers and former workers producing large power transformers and shunt reactors at the Large Power Transformer plant, Muncie, Ind. of the Westinghouse Electric Corp.

The notice of investigation was published in the FEDERAL REGISTER on April 11, 1978 (43 FR 15205). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Westinghouse Electric Corp., the U.S. International Trade Commission, U.S. Department of Commerce, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met. The investigation has revealed that without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or subdivision have contributed importantly to the separations, or

threats thereof, and to the absolute decline in sales or production.

Imports of large power transformers (over 10,000 KVA) decreased in absolute terms, from 1975 to 1976 and increased 15.4 percent from 1976 to 1977. The ratio of imports to domestic shipments decreased from 5.3 percent in 1976 to 5.1 percent in 1977. The ratio of imports to domestic consumption remained constant at 5.5 percent from 1976 to 1977. Data for imports and domestic shipments represents power transformers shipped into the country or to the customer, respectively. Due to the length of production time (from three to twelve months per transformer) and transportation lags, the number of units shipped in a given year reflects, to a large extent, production performed during the previous year. Foreign and domestic production of large power transformers in 1977 and the first quarter of 1978 will be reflected in shipments of large power transformers in 1978 and 1979; data not currently available to the Department.

Westinghouse's Large Power Transformer plant fabricates large power transformers for the electrical generation industry. Business is procurred through competitive bid contracting.

Orders by U.S. electric power systems and industrial plants to foreign suppliers for large power transformers increased in 1976, 1977 and in the first quarter of 1978 compared to the same period the previous year. Nonetheless, orders to domestic suppliers increased consistently over the same period. In terms of MVA, foreign orders placed remained less than 3 percent of domestic orders placed over the three-year period, 1975 through the first quarter of 1978.

The legislative history of the Trade Act of 1974 provides that separations which would have occurred regardless of the level of imports, e.g., those resulting from domestic competition, seasonal, cyclical or technological factors were not intended to be covered by the program. Market conditions in the large power transformer industry have been generally depressed since 1973. Domestic demand for power transformers depends primarily on the maintenance and expansion programs of electric utility companies. Since 1973 there has been a decline in the long-term growth rate of electricity use in the U.S., caused partly by higher energy costs and partly by a decrease in new construction of residential and office buildings. In addition, the large number of equipment orders made when electricity use was high has created overcapacity in the utility industry since the 1974-1975 recession. In 1976 and 1977, therefore, electric utility companies reduced capital spending on new and replacement equipment, causing demand for power transformers to decline.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that all workers at the Large Power Transformer plant, Muncie, Ind., of the Westinghouse Electric Corp. are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 6th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-31849 Filed 11-9-78; 8:45 am]

[4510-28-M]

[TA-W-3331]

LION MANUFACTURING CO., EVERETT, PA.

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3331: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on March 9, 1978 in response to a worker petition received on February 21, 1978 which was filed by the Amalgamated Clothing and Textile Workers of America on behalf of workers and former workers producing men's tailored clothing at Lion Manufacturing Co., Everett, Pa., owned by Greif & Co., Inc.

The Notice of Investigation was published in the FEDERAL REGISTER on March 24, 1978 (43 FR 12401). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Greif & Co., Inc., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That sales or production, or both, of the firm or subdivision have decreased absolutely.

The production process is integrated among the five plants. Total company sales and production increased in every quarter from the first quarter of 1977 to the second quarter of 1978 compared to the same quarter of the previous year.

CONCLUSION

After careful review, I determine that all workers of Lion Manufacturing Co., Everett, Pa. are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 3d day of November 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-31850 Filed 11-9-78; 8:45 am]

[4510-28-M]

[TA-W-3234]

MAGNECRAFT ELECTRIC CO. (MAGNECRAFT OF RAPID CITY), RAPID CITY, S. DAK.

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3234: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on February 23, 1978, in response to a worker petition received February 9, 1978, which was filed on behalf of workers and former workers producing mercury displacement relays at Magnecraft of Rapid City, Rapid City, S. Dak.

The Notice of Investigation was published in the FEDERAL REGISTER on March 14, 1978 (43 FR 10650). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Magnecraft Electric Co., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met. With respect to workers producing mercury displacement relays, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or subdivision have contributed importantly to the separations, or

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threats thereof, and to the absolute decline in sales or production.

The Rapid City facility produced primarily mercury displacement relays, a type of electrical relay. The plant was shut down in September 1977 and all production was shifted to Magnecraft Electric Co.'s North Lynch Avenue plant in Chicago, Ill. Production of relays at the North Lynch Avenue plant in Chicago, Ill., increased 38 percent in 1977 compared to 1976. Eighty percent of the mercury displacement relays produced at Rapid City, S. Dak., were for export.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that all workers at the Rapid City, S. Dak., plant of Magnecraft of Rapid City, Magnecraft Electric Co. are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 6th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-31851 Filed 11-9-78; 8:45 am]

[4510-28-M]

[TA-W-3034]

MARATHON MANUFACTURING CORP., MANUFACTURING DIVISION, PHOENIX, ARIZ.; ROLLING MILL DIVISION, TEMPE, ARIZ.

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3034: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on February 6, 1978, in response to a worker petition received on January 10, 1978, which was filed by the United Steelworkers of America on behalf of workers and former workers producing reinforcing bars at the Phoenix plant of the Marathon Steel Corp., Phoenix, Ariz. The investigation revealed that the Phoenix, Ariz., plant houses the Manufacturing Division and primarily produces structural shapes and that the Tempe, Ariz., plant houses the Rolling Mill Division and primarily produces concrete reinforcing bars. The investigation was expanded to include both plants.

The Notice of Investigation was published in the FEDERAL REGISTER on February 17, 1978 (43 FR 7064). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of the Marathon Steel Corp., the United Steelworkers of America, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. With respect to workers producing structural shapes at the Manufacturing Division of the Marathon Steel Corp., Phoenix, Ariz., without regard to whether any of the other criteria have been met, the following criterion has not been met:

That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated.

Both union and company officials stated that there were no significant layoffs of workers due to lack of work at the Manufacturing Division in 1977 or the first 6 months of 1978.

With respect to workers producing concrete reinforcing bars at the Rolling Mill Division of the Marathon Steel Corp., Tempe, Ariz., without regard to whether any of the other criteria have been met, the following criterion has not been met:

The sales or production, or both, of the firm or subdivision have been decreased absolutely.

Sales and production of concrete reinforcing bars at the Rolling Mill Division of the Marathon Steel Corp. increased in 1977 compared to 1976 and in the first 6 months of 1978 compared to the same period of 1977.

CONCLUSION

After careful review, I determine that all workers of the Manufacturing Division of the Marathon Steel Corp., Phoenix, Ariz., and the Rolling Mill Division of the Marathon Steel Corp., Tempe, Ariz., are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 6th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-31852 Filed 11-9-78; 8:45 am]

[4510-28-M]

[TA-W-4112]

MARION DYERS, GAFFENY, S.C.

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4112: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on August 24, 1978, in response to a worker petition received on August 21, 1978, which was filed on behalf of workers and former workers producing dyed yarn at Marion Dyers, Gaffeny, S.C., a division of the Marion Manufacturing Co.

The Notice of Investigation was published in the FEDERAL REGISTER on September 5, 1978 (43 FR 39457). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Marion Dyers, its customers, the Marion Manufacturing Co., the U.S. Department of Commerce, the U.S. International Trade Commission, Industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or subdivision have contributed importantly to the total or partial separation, or threat thereof, and to the absolute decline in sales or production.

The Department conducted a survey of the principal customers who purchased dyed yarn from Marion Dyers in 1976 and 1977. Customers that accounted for a significant portion of sales in 1976 and 1977 did not purchase any imported yarn in 1976, 1977, or 1978. Only one customer purchased any imported yard during the period under investigation. This customer represented less than 1 percent of Marion Dyers sales in 1976 and 1977.

CONCLUSION

After careful review, I determine that all workers of Marion Dyers, Gaffeny, S.C., are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 3d day of November 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-31853 Filed 11-9-78; 8:45 am]

[4510-28-M]

[TA-W—3817]

McCARTHY SOLE & LEATHER CO., INC., BOSTON, MASS.

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3817: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on June 7, 1978, in response to a worker petition received on June 5, 1978, which was filed on behalf of workers and former workers producing rubber soles and heels and leather soles at McCarthy Sole and Leather Co., Inc., Boston, Mass.

The Notice of Investigation was published in the FEDERAL REGISTER on June 20, 1978 (43 FR 26499). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of McCarthy Sole and Leather Co., Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

McCarthy Sole and Leather is engaged in the purchase and resale of crepe rubber sheets and the production of rubber soles and heels and leather soles. Customers who were surveyed who reduced purchases of rubber sheet or soles and heels did not increase purchases of imports of such products. The crepe rubber sheets, purchased form foreign sources, are sold to shoe manufacturing firms for use in the production of heels and soles. Sheet sales accounted for the majority of company sales in 1977 and in the first half of 1978.

Sales declines at McCarthy Sole and Leather in 1977 and in the first half of 1978 were primarily attributable to declines in sales of imported crepe rubber sheets. Since McCarthy Sole and Leather is primarily involved in the purchase for resale of imported crepe rubber sheets, increased import competition could have little influence on sales by the firm.

CONCLUSION

After careful review, I determine that all workers of McCarthy Sole and Leather Co., Inc., Boston, Mass., are denied eligibilty to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 6th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-31854 Filed 11-9-78; 8:45 am]

[4510-28-M]

[TA-W-3333]

MIDDLEBURG MANUFACTURING CO., HANOVER, PA.

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3333. Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on March 9, 1978, in response to a worker petition received on February 21, 1978, which was filed by the Amalagamated Clothing and Textile Workers of America on behalf of workers and former workers producing men's tailored clothing at Middleburg Manufacturing Co., Hanover, Pa., owned by Greif and Company, Inc.

The Notice of Investigation was published in the FEDERAL REGISTER on March 24, 1978 (43 FR 12401). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Greif and Company, Inc., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determinations and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That sales or production, or both, of the firm or subdivision have decreased absolutely.

The production process is integrated among the five plants. Total company sales and production increased in every quarter from the first quarter of 1977 to the second quarter of 1978 compared to the same quarter of the previous year.

CONCLUSION

After careful review, I determine that all workers of Middleburg Manufacturing Co., Hanover, Pa., are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 3d day of November 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-31855 Filed 11-9-78; 8:45 am]

[4510-28-M]

[TA-W-3841]

NEW ENGLAND HIGH CARBON WIRE CORP., MILLBURY, MASS.

Certificotion Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3841: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on June 14, 1978, in response to a worker petition received on June 9, 1978, which was filed by the United Steelworkers of America on behalf of workers and former workers of the New England High Carbon Wire Corp., Millbury, Mass. The investigation revealed that these workers produce carbon and alloy steel wire products.

The Notice of Investigation was published in the FEDERAL REGISTER on June 27, 1978 (43 FR 27924). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of the New England High Carbon Wire Corp., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

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In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met. U.S. imports of high carbon steel round wire increased from 1976 to 1977 and in the first half of 1978 compared to the first half of 1977. U.S. imports of alloy steel round wire increased from 1976 to 1977 and in the first half of 1978 compared to the first half of 1978.

A survey conducted by the Department revealed that customers who decreased purchases from the New England High Carbon Wire Corp. in the first half of 1978 compared with the same period in 1977 increased purchases of imported steel wire during the same period.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with carbon and alloy steel wire products produced at New England High Carbon Wire Corp. contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of the New England High Carbon Wire Corp., Millbury, Mass., who became totally or partially separated from employment on or after January 1, 1978, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 3rd day of November 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-31856 Filed 11-9-78; 8:45 am]

[4510-28-M]

[TA-W-2909]

NORSTAN INDUSTRIES, INC., NEW YORK, N.Y., AND ATLANTA, GA.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-2909: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on January 11, 1978, in response to a worker petition received on December 27, 1977, which was filed on behalf of workers and former workers producing junior's and misses' sportswear at the New York, N.Y., and Atlanta, Ga., facilities of Norstan Industries, Inc. The investigation revealed that jeans, skirts, dresses, jackets, and blouses were produced.

The Notice of Investigation was published in the FEDERAL REGISTER on January 27, 1978 (43 FR 3776). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Norstan Industries, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, the National Cotton Council of America, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

United States imports of women's misses', and children's slacks and shorts increased absolutely and relative to domestic production in 1977 and during the first quarter of 1978.

Imports of women's, misses', and children's blouses and shirts increased in 1977 and in the first quarter of 1978.

Imports of women's, misses', and children's coats and jackets increased absolutely and relative to domestic production in 1977, but decreased in the first quarter of 1977 compared to the same quarter of 1978.

Imports of women's, misses', and children's skirts decreased absolutely and relative to domestic production in 1977 but during the first quarter of 1978 increased compared to the same quarter of 1977.

United States imports of women's, misses', and children's dresses decreased absolutely and relative to domestic production in 1977 but during the first quarter of 1978 imports increased compared to the same quarter of 1977.

Norstan Industries began contracting with foreign contractors during the last quarter of 1977. The company plans for approximately 50 percent of total production to be produced by foreign contractors in 1978. The use of foreign contractors reduced Norstan Industries' sales and employment at both the New York, N.Y., and Atlanta, Ga., facilities.

A survey of Norstan Industries' customers revealed that customers increased purchases of imports in 1977 or 1978 while decreasing purchases of sportswear from the Norstan Industries.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with the junior's and misses' sportswear produced at the New York, N.Y., and Atlanta, Ga., facilities of Norstan Industries, Inc., contributed importantly to the declines in sales and to the total or partial separations of workers of those plants. In accordance with the provisions of the act, I make the following certification:

All workers at the New York, N.Y., facility of Norstan Industries, Inc., who became totally or partially separated from employment on or after December 16, 1977, and all workers at the Atlanta, Ga., facility of Norstan Industries, Inc., who became totally or partially separated from employment on or after July 1, 1977, are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 3rd day of November 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-31857 Filed 11-9-78; 8:45 am]

[4510-28-M]

[TA-W-3795]

SHUTZER INDUSTRIES, INC., LAWRENCE, MASS.

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Correction

In FR Doc. 78-30458 appearing on page 50266 in the FEDERAL REGISTER of October 27, 1978, the second paragraph of the Conclusion should be corrected to read as follows:

All workers at Shutzer Industries, Inc., Lawrence, Mass., engaged in employment related to the production of leather coats by Shutzer Manufacturing Co., Inc., Lawrence, Mass., who became totally or partially separated from employment on or after May 12, 1977, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 6th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-31858 Filed 11-9-78; 8:45 am]

[4510-28-M]

[TA-W-3810]

VAN HOUTEN COAT CO., PATERSON, N.J.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3810: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on June 5, 1978 in response to a worker petition received on May 26, 1978 which was filed on behalf of workers and former workers producing women's coats at Van Houten Coat Co., Paterson, N.J.

The Notice of Investigation was published in the FEDERAL REGISTER on June 20, 1978 (43 FR 26498-99). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Van Houten Coat Co., its customers (manufacturers), the National Cotton Council of America, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met. It is concluded that all of the requirements have been met.

U.S. imports of women's coats increased from 2,252,000 dozen units in 1976 to 2,723,000 dozen units in 1977. Imports decreased from 590,000 dozen units in the first 6 months of 1977 to 572,000 units in the first 6 months of 1978. The ration of imports to domestic production increased from 48.3 percent in 1976 to 54.9 percent in 1977.

The Department conducted a survey of the principal manufacturers for which the Van Houten Coat Co. worked in 1976 and 1977. Manufacturers that accounted for a majority of sales in 1975 reduced purchases from Van Houten Coat Co. and increased purchases of imported women's coats in 1976 compared to 1975. Manufacturers that accounted for a majority of sales in the first 6 months of 1976 reduced purchases from Van Houten Coat Co. and increased purchases of imported women's coats in the first 6 months of 1977 compared to 1976.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increased imports of articles like or directly competitive with the women's coats produced at Van Houten Coat Co., Paterson, N.J., contributed importantly to the decline and to the separation of workers at that plant. In accordance with the provisions of the Act, I make the following certification:

All workers of the Van Houten Coat Co., Paterson, N.J., who became totally or partially separated from employment on or after May 23, 1977 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 3d day of November 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-31859 Filed 11-9-78; 8:45 am]

[4510-28-M]

[TA-W-3330]

VERONA MANUFACTURING CO., VERONA, VA.

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3330: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on March 9, 1978, in response to a worker petition received on February 21, 1978, which was filed by the Amalgamented Clothing and Textile Workers of America on behalf of workers and former workers producing men's tailored clothing at Verona Manufacturing Co., Verona, Va., owned by Grief and Co., Inc.

The Notice of Investigation was published in the FEDERAL REGISTER on March 24, 1978 (43 FR 12401). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Greif and Co., Inc., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That sales or production, or both, of the firm or subdivision have decreased absolutely.

The production process is integrated among the five plants. Total company sales and production increased in every quarter from the first quarter of 1977 to the second quarter of 1978 compared to the same quarter of the previous year.

CONCLUSION

After careful review, I determine that all workers of Verona Manufacturing Co., Verona, Va. are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 3rd day of November 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-31860 Filed 11-9-78; 8:45 am]

[4510-28-M]

CERTAIN FISHING TACKLE

On September 21, 1978, the International Trade Commission (ITC) determined that increased imports of "Artificial Baits and Flies" are a substantial cause of serious injury, or the threat thereof, to the domestic industry. The ITC further determined that increased imports of "Fishing Reels, Fishing Rods, and Snelled Fishhooks" are not a substantial cause of serious injury, or the threat thereof, to the respective domestic industry for purposes of the import relief provisions of the Trade Act of 1974 (43 FR 44573).

Section 224 of the Trade Act directs the Secretary of Labor to initiate an industry study whenever the ITC begins an investigation under the import relief provisions of the Act. The purpose of the study is to determine the number of workers in the domestic industry petitioning for relief who have been or are likely to be certified as eligible for adjustment assistance and the extent to which existing programs can facilitate the adjustment of such workers to import competition. The Secretary is required to make a report of this study to the President and also make the report public (with the exception of information which the Secretary determines to be confidential).

The U.S. Department of Labor has concluded its report on "Certain Fishing Tackle." The report found as follows:

1. Since April 3, 1975, the effective date of the adjustment assistance program, the U.S. Department of Labor has received three petitions for certification of eligibility for adjustment assistance from workers engaged in the production of fishing tackle. The first and third petitions involved artificial baits and flies; the second both rods and reels. The Department certified all three cases. As of July 31, 1978, 313 workers employed in plants producing fishing tackle had received $286,289 in the form of trade readjustment allowances.

2. Employment of workers producing artificial baits and flies remained relatively unchanged in 1977 and increased slightly in the first four months of 1978. There may be some decline in employment in the coming

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months due to the apparent weakening of demand and the relatively high level of inventories held by domestic producers. Most of the presently or potentially separated workers should be eligible to apply for trade adjustment assistance; seasonality of employment, however, may make some workers ineligible to actually receive benefits.

Employment of production workers producing fishing reels declined in 1977 and the first four months of 1978. However, employment is expected to remain relatively constant in the near future. Employment of workers producing fishing rods increased in 1977 but declined in the first four months of 1978. Employment is expected to become more stable in the coming months. Employment of workers producing snelled fishhooks is relatively small and is expected to decline further as imports continue to increase their share of the domestic market. Separated workers should be eligible to apply for trade adjustment assistance, although some workers in the fishing rods and snelled fishhooks industries may be ineligible to actually receive benefits due to the seasonality of employment.

3. Local unemployment rates and available vacancy data indicate reemployment prospects for separated workers in the artificial baits and flies, fishing reels, fishing rods, and snelled fishhooks industries appear to be at best fair.

4. An examination of the level of enrollment and the level of accrued expenditures relative to the planned levels for CETA sponsors indicates that while adequate funding and client openings existed for many of the CETA programs during fiscal year 1978, some programs may have had difficulty from either a funding and/or slot availability viewpoint in meeting the training needs of eligible workers in the fishing tackle industry.

A comparison of the worker characteristics in the fishing tackle industry and CETA client characteristics indicates there are significant differences in age and sex distribution. Therefore CETA training opportunities may be limited for displaced workers in the fishing tackle industry. For displaced workers not covered by CETA programs, however, the Department has the authority, within funding limitations, to purchase specific training programs.

Copies of the Department report containing nonconfidential information developed in the course of the 6-month investigation may be purchased by contacting the Office of Trade Adjustment Assistance, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210, phone 202-523-7665.

Signed at Washington, D.C. this 2nd day of November 1978.

HOWARD D. SAMUEL,
Deputy Under Secretary
International Affairs.

[FR Doc. 78-31861 Filed 11-9-78; 8:45 am]

[4510-28-M]

INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 27, 1978.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 27, 1978.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C., this 2d day of November 1978.

MARVIN M. FOOKS,
Director, Office of
Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Aspen Skiwear (workers)	Pueblo, Colo	Oct. 31, 1978	Oct. 27, 1978	TA-W-4,326	Ski jackets and T-shirts.
TRW, Inc., Dot Division (workers)	Cheshire, Conn	do	Oct. 8, 1978	TA-W-4,327	Button snaps, rivets, and burrs.
Victor Comptometer Corp., Worthington Golf Ball Plant (IAM & AW).	Elyria, Ohio	Oct. 27, 1978	Oct. 23, 1978	TA-W-4,328	Golf balls and solid balls.

[FR Doc. 78-31862 Filed 11-9-78; 8:45 am]

[4510-23-M]

NATIONAL ADVISORY COMMITTEE FOR WOMEN

MEETING

NOTE.—This document originally appeared in the FEDERAL REGISTER for Wednesday, November 8, 1978. It is reprinted in this issue at the request of the Department of Labor.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463 as amended), notice is hereby given of a meeting of the National Advisory Committee for Women.

Date and time: November 20 and 21, 1978, 10 a.m. to 5 p.m. each day.

Place: Conference room N4437, Nov. 20, Conference room S4215, Nov. 21, Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Purpose: This is a regular meeting of the Advisory Committee.

The Committee will meet with the President of the United States to discuss the Committee's response to the Carter administration's status report on International Women's Year resolution prior to the meeting of the Committee. The agenda for the meeting will focus on the projected activities of the Committee's Action Work Groups.

The reason for not publishing this notice within the 15-day period prior to a meeting, as required by OMB Circular A63, revised, is due to the difficulty coordinating the date requested for a meeting with the President.

Dated: November 6, 1978.

ELLEN MCGOVERN,
Executive Director.

[FR Doc. 78-31701 Filed 11-9-78; 8:45 am]

[7510-01-M]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 78-57]

NASA ADVISORY COUNCIL, AERONAUTICS ADVISORY COMMITTEE, SUBCOMMITTEE ON AVIATION SAFETY REPORTING SYSTEM (ASRS)

Meeting

The above named subcommittee will meet November 29-30, 1978, at the NASA Ames Research Center, Moffett Field, CA, in the committee room of the administration building. The meeting will be open to the public on a first-come, first-served basis, up to the seating capacity of the room (about 25 persons). All visitors must report to the Ames Research Center receptionist in the administration building.

The subcommittee, which serves in an advisory capacity only, reviews ASRS operations and NASA actions taken in response to subcommittee recommendations. The subcommittee consists of 11 members, the chairman is John J. Winant.

For further information, contact Gene Lyman, 202-755-2380, Executive Secretary of the Subcommittee, NASA Headquarters, Washington, D.C. 20546.

NOVEMBER 29, 1978

8:30 a.m.—Chairman's opening remarks.
8:45 am.m—Executive secretary's report.
9 a.m.—Status report (administrative matters).
10 a.m.—Technical report (special studies).
1 p.m.—Evaluation planning (subcommittee formulation of ASRS evaluation plan).

NOVEMBER 30, 1978

8:30 a.m.—Continue evaluation planning discussion.
11:30 a.m.—Discussion and recommendation on future ASRS directions.
12 noon—Adjournment.

ARNOLD FRUTKIN,
Acting Associate Administrator
for External Relations.

NOVEMBER 6, 1978.

[FR Doc. 78-31762 Filed 11-9-78; 8:45 am]

[7510-01-M]

[Notice 78-56]

NASA ADVISORY COUNCIL (NAC) SPACE SCIENCE ADVISORY COMMITTEE

Meeting

The NAC Space Science Advisory Committee (SSAC) will meet at the National Aeronautics and Space Administration headquarters on November 27-29, 1978. The meeting will be open to the public. The meeting will take place from 9 a.m. to 5:30 p.m. on November 27 and 28 and from 9 a.m. to 12:30 p.m. on November 29, 1978, in Room 5026 of Federal Office Building 6, 400 Maryland Avenue SW., Washington, D.C. 20546.

The NAC Space Science Advisory Committee consults with, and advises the Council as a whole and NASA on plans for work in progress on, and accomplishments of, NASA's Space Science programs. Topics under discussion at this meeting will include an update of NASA's Office of Space Science activities and an indepth review and discussion of the Office of Space Science's Spacelab program.

NOVEMBER 27, 1978

9 a.m.—Chairman's welcome and report.
9:30 a.m.—Associate Administrator's report, fiscal year 1979 budget, atmosphere program status.
10 a.m.—Grants/contracts.
10:30 a.m.—Recent advisory and study activities.
11:15 a.m.—Spacelab session—Program overview.
1:15 p.m.—Transition of .PI-class instruments to facilities.
2:15 p.m.—Spacelab management approach.
3:15 p.m.—PI view of spacelab.
4:30 p.m.—Mission specialist/payload specialist

NOVEMBER 28, 1978

9 a.m.—Spacelab—space platform.
10 a.m.—User view of the space platform.
10:30 a.m.—PI/multiuser instruments program balance.
11:30 a.m.—Size of spacelab program.
1:30 p.m.—Subcommittee reports on peer review procedures and role of in-house scientists.
3 p.m.—Foreign collaborations—how should they be arranged?
3:30 p.m.—Writing period.

NOVEMBER 29, 1978

9 a.m.—Ad Hoc subgroups.
10:30 a.m.—Report on space telescope institute and relativity committee meetings.
11 a.m.—Report on IUE results.
12:30 p.m.—Adjourn.

For further information regarding this meeting, please contact Dr. Adrienne F. Timothy, Executive Secretary, telephone 202-755-3653, National Aeronautics and Space Administration, Washington, D.C. 20546.

ARNOLD W. FRUTKIN,
Acting Associate Administrator
for External Relations.

NOVEMBER 6, 1978.

[FR Doc. 78-31761 Filed 11-9-78; 8:45 am]

[7555-01-M]

NATIONAL SCIENCE FOUNDATION

ADVISORY COMMITTEE FOR APPLIED SCIENCE AND RESEARCH APPLICATIONS POLICY

Open Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Applied Science and Research Applications Policy.
Date: November 29 and 30, 1978.
Place: 1800 G Street NW., Washington, D.C., Room 540.
Type of meeting: Open.
Contact person: Ms. Darleen F. Morano, executive secretary, Advisory Committee on Applied Science and Research Applications Policy, Room 537, National Science Foundation, Washington, D.C., 20550, telephone 202-632-7424.
Summary minutes: Committee Management Coordination Staff, Division of Financial and Administrative Management, Room 248, National Science Foundation, Washington, D.C. 20550.
Purpose of advisory meeting: To provide recommendations concerning the status and plans of the NSF Applied Science and Research Applications Directorate.
Agenda: Will include:

November 29

9:00—Introductory remarks.
9:30—Structure of the ASRA Advisory Committee and its subcommittees.
11:00—Discussion of assignment to ad hoc task group 1: long-range planning and the impact of current economic projections on ASRA programs.
11:30—Discussion of assignment to ad hoc task group 2: the appropriate technology report to the Congress.
12:00—Discussion of assignment to ad hoc task group 3: innovation and programs for university/industry coupling.
12:30—Discussion of assignment to ad hoc task group 4: procedures for criteria for phase in and phase out of NSF support for projects and programs.
1:00—Lunch.
2:00—Meetings of new ad hoc task groups.
5:00—Adjourn.

November 30

9:00—Report from ad hoc TG 1.
10:00—Report from ad hoc TG 2.
11:00—Report from ad hoc TG 3.
12:00—Report from ad hoc TG 4.
1:00—Lunch.
2:00—Discussion and summary.

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4:00—Adjourn.

M. REBECCA WINKLER,
Committee Management Coordinator.

NOVEMBER 7, 1978.

[FR Doc. 78-31819 Filed 11-9-78; 8:45 am]

[7555-01-M]

SUBCOMMITTEE FOR APPLIED SOCIAL AND BEHAVIORAL SCIENCES OF THE ADVISORY COMMITTEE FOR APPLIED SCIENCE AND RESEARCH APPLICATIONS POLICY

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Subcommittee for Applied Social and Behavioral Sciences of the Advisory Committee for Applied Science and Research Applications Policy.
Date and time: December 4 and 5, 1978—9 a.m. to 5 p.m. each day.
Place: Room 338, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550.
Type of meeting: Closed.
Contact person: Dr. L. Vaughn Blankenship, Director, Division of Applied Research, Room 1126, National Science Foundation, Washington, D.C. 20550, telephone 202-634-6260.
Purpose of subcommittee: To provide advice and recommendations concerning support for applied research in the social and behavioral sciences.
Agenda: To review and evaluate proposals as part of the selection process for awards.
Reason for closng: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.
Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Acting Director, NSF, on February 18, 1977.

M. REBECCA WINKLER,
Committee Management Coordinator.

NOVEMBER 7, 1978.

[FR Doc. 78-31821 Filed 11-9-78; 8:45 am]

[7555-01-M]

SCIENCE FOR CITIZENS PROGRAM

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Science for Citizens of the Advisory Committee on Science and Society.
Date, time and place: November 30, 9 a.m. to 5 p.m., Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Md. December 1, 9 a.m. to 5 p.m., 5225 Wisconsin Avenue NW., Washington, D.C., Room 651.
Contact person: Ms. Jean Albert, acting assistant program manager, Science for Citizens Program, Office of Science and Society, National Science Foundation, Washington, D.C. 20550, telephone 202-282-7770.
Type of meeting: Open.
Purpose of meeting: To provide advice and recommendations concerning the development of the Science for Citizens program.
Agenda: November 30—Joint meeting of the 1978 Planning Studies project directors and the SFC Advisory Subcommittee to discuss current projects and procedures for implementing public service science centers or networks in the future. December 1—Meeting of the subcommittee to discuss future directions and evaluation plans for the program.
Summary of minutes: May be obtained from the Committee Management Coordination Staff, Division of Personnel and Management, Room 248, Washington, D.C. 20550.

M. REBECCA WINKLER,
Committee Management Coordinator.

NOVEMBER 7, 1978.

[FR Doc. 78-31820 Filed 11-9-78; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS, SUBCOMMITTEE ON FLUID DYNAMICS

Meeting

The ACRS Subcommittee on Fluid Dynamics will hold a meeting on Nov. 28, 29, and 30, 1978, at the Barrett Motor Hotel, 501 Post Street, San Francisco, Calif., to discuss and review the design basis and construction of the mark II Boiling Water Reactor (BWR) Containment System. The Mark II load definition, load acceptance criteria, and load combination methods will be discussed. Notice of this meeting was published September 21 and October 20, 1978 (43 FR 42826 and 49081, respectively).

In accordance with procedures outlined in the FEDERAL REGISTER, Oct. 4, 1978 (43 FR 45926), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows:

Tuesday, Wednesday, and Thursday, November 28, 29, and 30, 1978—8:30 a.m. until the conclusion of business each day.

The Subcommittee may meet in Executive Session, with any of its consultants who may be present, to explore and exchange their preliminary opinons regarding matters which should be considered during the meeting and to formulate a report and recommendations to the full Committee.

At the conclusion of the Executive Session, the Subcommittee will hear presentations by and hold discussions with representatives of the NRC Staff, the General Electric Co., the Mark II Owners Group, and their consultants, pertinent to the above topics. The Subcommittee may then caucus to determine whether the matters identified in the initial session have been adequately covered and whether the project is ready for review by the full Committee.

In addition, it may be necessary for the Subcommittee to hold one or more closed sessions for the purpose of exploring matters involving proprietary information. I have determined, in accordance with Subsection 10(d) of Pub. L. 92-463, that, should such sessions be required, it is necessary to close these sessions to protect proprietary information (5 U.S.C. 553b(c)(4)).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time alloted therefore can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Dr. Andrew L. Bates, telephone 202-634-3267, between 8:15 a.m. and 5 p.m., EST.

Dated: November 6, 1978.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc. 78-31900 Filed 11-9-78; 8:45 am]

[8025-01-M]

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 1541]

IOWA

Declaration of Disaster Loan Area

The following three counties and adjacent counties within the State of Iowa constitute a disaster area as a result of natural disasters as indicated:

County	Natural disaster(s)	Date(s)
Jasper	Tornado, high winds, hail, rain, and flooding	Sept. 16, 1978.
Marshall	do	Do.
Poweshiek	do	Do.

Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on May 3, 1979, and for economic injury until the close of business on August 3, 1979, at:

Small Business Administration, District Office, 210 Walnut Street, Des Moines, Iowa 50309.

Or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: November 3, 1978.

PATRICIA M. CLOHERTY,
Acting Administrator.

[FR Doc. 78-31752 Filed 11-9-78; 8:45 am]

[8025-01-M]

[License No. 05/05-0099]

NORTH STAR VENTURES, INC.

Filing of an Application for Approval of a Conflict of Interest Transaction

Notice is hereby given that North Star Ventures, Inc. (North Star), Suite 2303, Northwestern Financial Center, 7900 Xerxes Avenue South, Minneapolis, Minn. 55431, a Federal licensee under the Small Business Investment Act of 1958, as amended (Act), has filed an application pursuant to § 107.1004 of the regulations governing small business investment companies (13 CFR 107.1004(1978)) for an exemption from the provisions of the conflict of interest regulation.

The exemption, if granted, will permit North Star to provide a $200,000 financing to Rauenhorst, Bellows & Associates, Inc. (RBA), evidenced by 10½ percent convertible debentures.

Mr. Gerald A. Rauenhorst is a director in RBA and the president, director, and sole shareholder of North Star. In addition, Mrs. Robert Rauenhorst, sister-in-law of Mr. Gerald Rauenhorst, owns 18 percent of RBA's common stock.

Pursuant to paragraph (f) of the definition of "Associate of a Licensee" in § 107.3 of the regulations, RBA is considered to be an associate of North Star. As such, the transaction will require an exemption pursuant to § 107.1004(B)(1) of the regulations.

Notice is hereby given that any person may, no later than November 28, 1978, submit to the Small Business Administration, in writing, relevant comments on the proposed transaction. Any such communications should be addressed to: Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Minneapolis and Olivia, Minn.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: November 6, 1978.

PETER F MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-31755 Filed 11-9-78; 8:45 am]

[8025-01-M]

[Declaration of Disaster Loan Area No. 1542]

OKLAHOMA

Declaration of Disaster Loan Area

The following 57 counties and adjacent counties within the State of Oklahoma constitute a disaster area as a result of natural disasters as indicated:

County	Natural disaster(s)	Date(s)
Atoka	Drought	Jan. 1 to Sept. 1, 1978.
Bryan	do	Do.
Carter	do	Do.
Choctaw	do	Do.
Coal	do	Do.
Comanche	do	Do.
Cotton	do	Do.
Garvin	do	Do.
Greer	do	Do.
Harmon	do	Do.
Haskell	do	Do.
Jackson	do	Do.
Jefferson	do	Do.
Johnston	do	Do.
Kiowa	do	Do.
Latimer	do	Do.
LeFlore	do	Do.
Love	do	Do.
Marshall	do	Do.
McCurtain	do	Do.
Murray	do	Do.
Pittsburg	do	Do.
Pontotoc	do	Do.
Pushmataha	do	Do.
Sequoyah	do	Do.
Stephens	do	Do.
Tillman	do	Do.
Beaver	do	Jan. 1 to Sept. 15, 1978
Beckham	do	Do.
Blaine	do	Do.
Caddo	do	Do.
Canadian	do	Do.
Cimarron	do	Do.
Cleveland	do	Do.
Creek	do	Do.
Custer	do	Do.
Dewey	do	Do.
Ellis	do	Do.
Grady	do	Do.
Harper	do	Do.
Hughes	do	Do.
Lincoln	do	Do.
Logan	do	Do.
McClain	do	Do.
McIntosh	do	Do.

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County	Natural disaster(s)	Date(s)
Muskogee	do	Do.
Okfuskee	do	Do.
Oklahoma	do	Do.
Okmulgee	do	Do.
Pottawatomie	do	Do.
Roger Mills	do	Do.
Seminole	do	Do.
Texas	do	Do.
Washita	do	Do.
Woods	do	Do.
Woodward	do	Do.
Kingfisher	do	Do.

Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on May 3, 1979, and for economic injury the close of business on August 3, 1979, at:

Small Business Administration, District Office, 200 Northwest 5th Street, Suite 670, Federal Building, Oklahoma City, Okla. 73102.

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program No. 59002 and 59008.)

Dated: November 3, 1978.

PATRICIA M. CLOHERTY,
Acting Administrator.

[FR Doc. 78-31753 Filed 11-9-78; 8:45 am]

[8025-01-M]

[License No. 10/13-0011]

SMALL BUSINESS INVESTMENT CO. OF AMERICA

Filing of Application for Transfer of Control

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to § 107.701 of the regulations governing Small Business Investment Companies (13 CFR 107.701 (1978)) for transfer of control of the Small Business Investment Co. of America (SBICA), 1910 Fairview East, Seattle, Wash. 98102, a Federal licensee under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 et seq.). The proposed transfer of control of SBICA, which was licensed November 16, 1961, is subject to the prior written approval of SBA.

Pursuant to an agreement dated June 30, 1978, between Mr. Harold T. Wosepka and all of the shareholdcrs of SBICA, Mr. Wosepka has offered to purchase all of the outstanding capital stock of SBICA for $275,000 cash and all the shareholders of SBICA have accepted the offer.

Assuming consummation of the proposed transfer of control, the new management and sole stockholder of SBICA will be:

Harold T. Wosepka, President, director, and sole stockholder, 3209 Northeast 78th Street, Vancouver, Wash. 98665.

Sharon Grubb, secretary and director, 3209 Northeast 78th Street, Vancouver, Wash. 98665.

Richard A. Harrison, treasurer and director, 11215 Northeast 10th Avenue, Vancouver, Wash. 98665

In addition, SBICA's paid-in capital and paid-in surplus will be increased from $327,695 to $500,005 and its office will be relocated at 3211 Northeast 78th Street, Vancouver, Wash.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed new owner and management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness, in accordance with the Act and regulations.

Notice is further given that any person may, not later than November 28, 1978, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

A copy of this notice will be published in a newspaper of general circulation in Seattle and Vancouver, Wash.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: November 6, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc.78-31756 Filed 11-9-78; 8:45 am]

[8025-01-M]

[Application No. 04/04-5157]

TENNESSEE EQUITY CAPITAL CORP.

Application for a License To Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 et seq.) has been filed by Tennessee Equity Capital Corp. (applicant) with the Small Business Administration pursuant to 13 CFR 107.102 (1978).

The officers and directors are as follows:

Richard Kantor, president and director, 5268 Laurie Lane, Memphis, Tenn. 38117.
Walter S. Cohen, secretary/treasurer and director, 403 W. Hillwood Drive, Nashville, Tenn. 37205.

The applicant will maintain its principal office at 711 Union Street, Nashville, Tenn. 37219. it will begin operations with private capital of $502,000 derived from the sale of 5,000 shares of common stock to a partnership composed of Richard Kantor and Walter S. Cohen.

The applicant will conduct its operations in the State of Tennessee.

As a small business investment company under section 301(d) of the Act, the applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended, from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the applicant include the general business reputation and character of the proposed owners and management and the probability of successful operation of the applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA rules and regulations.

Notice is hereby given that any person may, not later than November 28, 1978, submit to SBA written comments on the proposed applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Nashville, Tenn.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: November 6, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-31757 Filed 11-9-78; 8:45 am]

[8025-01-M]

[Declaration of Disaster Loan Area No. 1540]

WASHINGTON

Declaration of Disaster Loan Area

Douglas County and adjacent counties within the State of Washington constitute a disaster area as a result of natural disasters as indicated:

County	Natural disaster(s)	Date(s)
Douglas	Drought	Jan. 1, 1978 to Aug. 31, 1978.
Do	Excessive Rainfall	Aug. 10, 1978 to Oct. 3, 1978.

Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on May 3, 1979, and for economic injury until the close of business on August 3, 1979, at:

Small Business Administration, District Office, 915 Second Avenue, Federal Building, Room 1744, Seattle, Wash. 98174.

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: November 3, 1978.

PATRICIA M. CLOHERTY,
Acting Administrator.

[FR Doc. 78-31754 Filed 11-9-78; 8:45 am]

[4710-02-M]

DEPARTMENT OF STATE

Agency for International Development

[Redelegation of Authority No. 99.1.96]

PRINCIPAL AID OFFICERS, AFRICA

Redelegation of Authority Regarding Operational Program Grants

Pursuant to the authority delegated to me under redelegation of authority No. 99.1 (38 FR 12836), as amended, from the Assistant Administrator for Program and Management Services, I hereby redelegate to the principal AID officer at AID posts in Africa, authority to execute operational program grants (OPG's) as defined in appendix 7A, chapter 7, of AID Handbook 3, Project Assistance, on the following basis:

(1) Such OPG's shall not exceed $500,000 for the life of the project;
(2) Each OPG shall constitute assistance; and
(3) The post must be advised by AID/W, prior to signing the OPG, that Congress has been notified and funds have been allotted.

Until such time as they achieve the status of an AID mission, in addition to the above requirements, the following posts must obtain concurrence from the designated REDSO or USAID as indicated below:

a. Mauritania, Guinea-Bissau, and Cape Verde, Director, REDSO/WA.
b. Sudan, Somalia, Djibouti, Rwanda, and Burundi, Director, REDSO/EA.
c. Sierre Leone, Director, USAID/Monrovia.
d. Guinea and Gambia, Director, USAID/Dakar.
e. Togo and Benin, Director, REDSO/WA.
f. Central African Empire, Director, USAID/Cameroon.

Upon achieving the status of an AID mission, it will not be necessary for the principal AID officer at such above mentioned posts to obtain the concurrence of the REDSO or USAID indicated.

This authority shall be exercised in accordance with the procedures of chapter 4 of AID Handbook 13, Grants, and with other regulations, procedures, and policies promulgated within AID in effect at the time this authority is exercised.

The authority herein delegated may be exercised by duly authorized persons performing the functions of the principal AID officer in and acting capacity. The authority may not be further redelegated.

Actions within the scope of this redelegation taken by the officials designated herein on or after September 27, 1977, are hereby ratified and confirmed.

This redelegation of authority is effective immediately.

Dated: November 1, 1978.

HUGH L. DWELLEY,
Director, Office of Contract Management.

[FR Doc. 78-31813 Filed 11-9-78; 8:45 am]

[4710-07-M]

Office of the Secretary

[Public Notice No. CM-8/126]

SHIPPING COORDINATING COMMITTEE'S SUBCOMMITTEE ON SAFETY OF LIFE AT SEA

Meeting

The panel on bulk cargoes of the Working Group on Subdivision and Stability—a component of the Shipping Coordinating Committee's Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 10 a.m. on Wednesday, December 13, 1978, at the Steamship Trade Association, 32 South Street, Baltimore, Maryland 21201.

The purpose of the meeting will be to prepare for the bulk cargoes items on the agenda of the twentieth session of the IMCO Subcommittee on Containers and Cargoes.

For further information, contact: Mr. Edward H. Middleton, U.S. Coast Guard (G-MM/82), Washington, D.C. 20590, telephone 202-426-2170; or Captain S. Fraser Sammis, National Cargo Bureau, Inc., Suite 2757, One World Trade Center, New York, N.Y. 10048, telephone 212-432-1280.

The Chairman will entertain comments from the public as time permits.

RICHARD K. BANK,
Chairman, Shipping Coordinating Committee.

NOVEMBER 1, 1978.

[FR Doc. 78-31825 Filed 11-9-78; 8:45 am]

[4910-62-M]

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Notice No. 78]

SURFACE TRANSPORTATION ADMINISTRATION

Draft Proposal to Establish

AGENCY: Department of Transportation.

ACTION: Notice of Draft Proposal to establish a Surface Transportation Administration.

SUMMARY: The Department of Transportation has developed a Draft Proposal to establish a Surface Transportation Administration (STA) through consolidation of the Federal Highway Administration and the Urban Mass Transportation Administration and the Urban Mass Transportation Administration. The Department has initiated a consultative process, to solicit comments and suggestions from interested parties, before developing a formal proposal for submission to the President and Congress early in 1979. Public participation is invited.

ADDRESS: Copies of the Proposal can be obtained from, and comments should be submitted to, Mr. Joseph Leo, U.S. Department of Transportation, Office of the Secretary.

ATTENTION: STA Working Group, Room 10324, Nassif Building, Washington, D.C. 20590.

DATES: The Proposal will be released and the consultative process will begin on November 9, 1978. The consultative process will end on, and all comments should be received by December 31, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Joseph Leo, 202-426-4494.

Issued in Washington, D.C., on November 8, 1978.

RAYMOND J. SANDER,
Director of Management Planning.

[FR Doc. 78-31943 Filed 11-9-78; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

[Notice No. 739]

ASSIGNMENT OF HEARINGS

NOVEMBER 7, 1978.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be pub-

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lished only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the official docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

Correction

MC 2890 (Sub-54F), AMERICAN BUSLINES, INC., now being assigned for hearing on January 15, 1979 (1 week), at El Centro, Calif., instead of Los Angeles, Calif. in a hearing room to be later designated.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-31829 Filed 11-9-78 8:45 am]

[7035-01-M]

[Notice No. 740]

ASSIGNMENT OF HEARINGS

NOVEMBER 7, 1978.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the official docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

Correction [1]

MC 143249 (Sub-2), MID EASTERN TRANSPORTATION, INC., common carrier application is assigned for hearing November 29, 1978, at Nashville, TN and will be held at Room 651 U.S. Court House, 801 Broadway.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-31830 Filed 11-9-78; 8:45 am]

[7035-01-M]

[Notice 738]

ASSIGNMENT OF HEARINGS

NOVEMBER 7, 1978.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the official docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested. No amendments will be entertained after the date of this publication.

MC 123048 (Sub-395F), Diamond Transportation System, Inc., MC 114211 (Sub-367F), Warren Transport, Inc.,

MC 119641 (Sub-150F), Ringle Express, Inc., now being assigned for hearing on December 5, 1978, at the office of the Interstate Commerce Commission, Washington, D.C.

MC 144288F, Evans Reliable Messenger, Inc., now being assigned for hearing on February 7, 1979 (3 days), at New Haven, Conn. in a hearing room to be later designated.

MC 144225, Jadeel Trucking, Inc, now being assigned for hearing on February 12, 1979 (1 day), at Boston, Mass., in a hearing room to be later designated.

MC 113651 (Sub-269F), Indiana Refrigerator Lines, Inc., now being assigned for hearing on February 13, 1979, (2 days), at Boston, Mass. in a hearing room to be later designated.

MC 25869 (Sub-141F), Nolte Bros. Truck Line, Inc., now being assigned for hearing of November 29, 1978, (1 day) at Chicago, Ill. in Room 1319, Everett McKinley Dirksen Building, 219 South Dearborn Street.

MC 139923 (Sub-42F), Miller Trucking Co., Inc., now being assigned for hearing on November 30, 1978, (2 days) at Chicago, Ill. in Room 1319, Everett McKinley Dirksen Building, 219 South Dearborn Street.

MC 133689 (Sub-187F), Overland Express, Inc., now being assigned for prehearing conference on November 27, 1978, at Chicago, Ill, will be held in Room 1319, Everett McKinley Dirksen Building, 219 South Dearborn Street.

MC 139577 (Sub-12F), Adams Transit, Inc., now being assigned for hearing on November 29, 1978 (1 day), at Chicago, Ill. will be held in Room 1319, Everett McKinley Dirksen Building, 219 South Dearborn Street.

MC 102616 (Sub 948F), Coastal Tank Lines, Inc., now being assigned for hearing on December 4, 1978 (2 days), at Chicago, Ill. will be held in Room 1319, Everett McKinley Dirksen Building, 219 South Dearborn Street.

MC 36969, *Procter and Gamble Manufacturing v. Chicago and Northwestern Transportation Company*, now being assigned for hearing on December 6, 1978 (3 days), at Chicago, Ill., will be held in Room 417, Everett McKinley Dirksen Building, 219 South Dearborn Street.

MC 119619 (Sub-127F), Distributors Service Co., a corporation, MC 140024 (Sub-119F), J. B. Montgomery, Inc., now being assigned for hearing on February 15, 1979 (2 days), at Boston, Mass. in a hearing room to be later designated.

MC 119991 (Sub-18), Young Transport, Inc., now assigned January 8, 1979, at Washington, D.C., at the offices of the Interstate Commerce Commission.

MC 119991 (Sub-22F), Young Transport, Inc., now assigned January 8, 1979, at Washington, D.C. at the Offices of the Interstate Commerce Commission.

MC 126822 (Sub-48F), Westport Trucking Co. now assigned January 8, 1979, at Washington, D.C. at the offices of the Interstate Commerce Commission.

MC 111231 (Sub-227), Jones Truck Lines, Inc., now assigned October 31, 1978, at Little Rock, Ark. is postponed indefinitely.

MC 2202 (Sub-551), Roadway Express, Inc., now assigned November 7, 1978, at Dallas, Tex. (3 days), is canceled and application dismissed.

MC 15859 (Sub-10F), The Hine Line now assigned January 8, 1979, at Washington, D.C. at the offices of the Interstate Commerce Commission.

MC 117883 (Sub-222), Subler Transfer, Inc., is assigned for continued hearing December 19, 1978, at Washington, D.C. at the offices of the Interstate Commerce Commission.

MC 134922 (Sub-249), B. J. McAdams, Inc., now assigned November 6, 1978 (1 day), at Dallas, Tex., is canceled and application dismissed.

MC 109533 (Sub-104F), Overnite Transportation now assigned November 13, 1978, is canceled and transferred to Modified Procedure.

MC 87103 (Sub-24F), Miller Transfer and Rigging Co., now assigned November 21, 1978, at Columbus, Ohio, is canceled and transferred to modified procedure.

MC 133233 (Sub-58F), Clarence L. Werner d.b.a. Werner Enterprises now assigned November 29, 1978, at Dallas, Tex. is canceled and transferred to modified procedure.

MC 142059 (Sub-30F), Cardinal Transport, Inc., now assigned December 5, 1978 at Chicago, Ill., is canceled and transferred to modified procedure.

MC-F-13378, Georgia Highway Express, Inc., purchase A. Earley & Associates, d.b.a. Mainline Transportation System, and MC 58923 (Sub-48), Georgia Highway Express, Inc., now assigned January 10, 1979, at Los Angeles, Calif., is canceled and transferred to modified procedure.

MC-C-10073, *88 Transit Lines, Inc. v. Fullington Auto Bus Company, Inc.*, now assigned December 5, 1978, at Pittsburgh, Pa., is canceled and transferred to Modified Procedure.

H.G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-31831 Filed 11-9-78; 8:45 am]

[7035-01-M]

[Ex Parte No. 357]

Increased Freight Rates and Charges, Nationwide—8 Percent

Authority To File Master Tariff

Decided: November 6, 1978.

By petition and verified statements filed November 1, 1978, U.S. railroads, and certain water and motor carriers having joint rates with those railroads, seek authority to increase freight rates and charges generally by 8 percent within and between Eastern, Southern, and Western Territories. Rate adjustments above and below the general level of 8 percent are proposed on a number of commodities, affecting about one-third of all freight revenue. These exceptions and holddowns are intended to result in a revenue yield 8.3 percent above present levels. A copy of the petition and verified statements may be obtained from Charles C. Rettberg, Jr., 527 American Railroads Building, 1920 "L" Street NW., Washington, D.C. 20036.

Petitioners seek permission to make the proposed increases effective December 15, 1978, subject to the condition that refunds shall be made in the event that, after any investigation that the Commission deems necessary, no increase or a lesser increase than that requested is authorized. Petitioners also seek entry of a decision modifying all outstanding Commission decisions to the extent necessary to enable the railroads to file and make effective the proposed increased rates and charges. We are also requested to allow the entry of appropriate decisions under former sections 4 and 6 of the Interstate Commerce Act. (49 U.S.C. § 10726 and 10761-65.)

The petitioners have filed and served 36 verified statements constituting their evidential case pursuant to the requirements set forth in ex parte No. 290, Procedures Governing Rail Carrier General Increase Proceedings, 49 CFR 1102, effective January 1, 1978. Petitioners have also submitted data of the type called for in ex parte No. 290 (Sub-No. 1), Procedures—Rail Car General Increase Proceedings, 349 ICC 22 (1974), namely detailed information on estimated revenues which would have been obtained had the last authorized increase been fully applied, and the actual total increase in revenues realized by application of the last authorized general increase.

The petitioners have given notice of the petition and have furnished data to the public in compliance with ex parte No. 286, Notice of Increases in Freight Rates and Passenger Fares, 349 ICC 741 (1975), and with section 5b of the Interstate Commerce Act.

The petitioners have also submitted information of the type called for in ex parte No. 55 (Sub-No. 4), Revised Guidelines for the Implementation of the National Environmental Policy Act of 1969, 352 ICC 451 and 49 CFR 1108, namely a supplemental evaluation of environmental considerations with regard to the petitioners' increased rate proposal. The petitioners contend that the requested increases will have no significant adverse effects upon the movement of the traffic or transportation of recyclable commodities by rail. Any person or persons believing that the requested increases, if authorized, would have a significant impact upon the quality of the human environment are invited to comment upon this matter in verified statements authorized to be filed pursuant to this decision. Environmental matters and the requirements of the National Environmental Policy Act of 1969 will be considered by this Commission in any subsequent action on the merits of the requested general increases.

The petitioners have not separately submitted information relating to energy efficiency and energy consumption as required by the Commission's regulations adopted in ex parte No. 55 (Sub-No. 22), Implementation of the Energy Policy and Conservation Act of 1975, 357 ICC 599 (1978), and codified at 49 CFR 1106. Section 1106.7(a) governs the reporting requirements for this proceeding. Petitioners are directed to submit the required information within 10 days of the service date of this decision.

The petitioners contend that the proposed increases do not violate the voluntary wage and price guidelines recently announced by President Carter. They have submitted a separate verified statement on this issue. We regard this as an important issue in this proceeding. Parties are invited to comment upon this matter in their verified statements, and we will consider it in our subsequent decision on the merits of the requested increases.

It is ordered:

1. All common carriers by railroad are made respondents to this proceeding.

2. Under the special permission authority granted in conjunction with this decision, the tariff schedules shall be published and filed upon not less than 30 days' [1] notice effective not earlier than December 15, 1978, nor later than February 1, 1979, *subject to protest and possible suspension.* These schedules are to contain an appropriate refund provision.

3. Any person opposing or wishing to comment on the proposed increase in rates and charges shall file and serve verified statements, as provided below, on or before November 28, 1978.[2]

(a) The verified statements shall contain all relevant evidence which the parties desire to have considered by the Commission as a basis for a decision on the merits. Any submission on asserted environmental and energy impacts shall be segregated under an appropriate subheading.

(b) Verified statements may include arguments in support of an affiant's position, but arguments shall be segregated in a separate section of the document containing the verified statement or contained in a separate document simultaneously filed and served.

(c) Each verified statement shall be signed in ink by affiant and verified (notarized) in the manner provided by rule 48 and form No. 6 of the Commission's rules of practice (see 49 1100.48 and app. B, form No. 6, to 49 CFR 1100). The post office address of affiant or his counsel shall be shown.

(d) Verified statements and arguments shall be filed and served as follows:

The original and 20 copies of each document for the use of the Commission shall be addressed to the Secretary, and sent to the office of proceedings, Room 5342, Interstate Commerce Commission, Washington, D.C. 20423, except that a lesser number of copies may be filed upon a showing of good cause. All documents filed with the Commission in this matter shall contain the following notation on the envelope: Ex Parte No. 357.

One copy shall be served upon the representative of the petitioning railroads, Charles C. Rettberg, Jr., 527 American Railroads Building, 1920 "L" Street NW., Washington, D.C. 20036, which service shall constitute service upon all respondents. However, all parties able to do so shall serve 20 copies upon the railroads' representative. In all cases, where service is made by mail, the document shall be mailed in time to be received by the respective due dates.

(e) Each verified statement shall contain a certificate of service stating that it has been timely served on opposing parties.

(f) Verified statements and arguments by persons opposed to the proposed increases in rates and charges shall include all matters which they desire the Commission to consider with respect to statutory suspension of the rates pending completion of the investigation, as well as evidence relevant to the ultimate decision.

4. On or before December 1, 1978, the respondents shall file with the Commission and serve upon opposing parties their replies to protests or other pleadings and rebuttal evidence. Rebuttal evidence shall be filed in accordance with the regulations published in 49 CFR 1102, governing opening statement, except that replies and rebuttal evidence need be served only upon the party (and his counsel if known) to whose evidence the reply or rebuttal is directed. However, replies or rebuttal statements proposing changes in the tariff shall be served on all parties. All such statements shall

[1] This notice corrects title for No. MC 143249 (Sub-No. 2).

[1] In the event the tariff is not filed prior to November 20, 1978, the due date specified for the filing of protests and verified statements will be extended to a date 20 days prior to the effective date, and the reply date will be correspondingly extended.

[2] Section 10707(c) of the Interstate Commerce Act specifically requires the filing of verified complaints seeking suspension of proposed rate changes.

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be furnished to interested parties upon request.

5. The Commission plans to act upon these proposed increases sufficiently in advance of their effective date to give parties proper notice.

6. The request for fourth-section relief will be considered following the filing of verified statements and replies.

By special permission order No. 79-400 served in conjunction with this decision, the Commission is authorizing the filing of tariff schedules increasing rates and charges sought in the petition. These tariff schedules are to become effective upon not less than 30 days' notice to the Commission and the general public, subject to protest and possible suspension as provided by the Interstate Commerce Act. All documents filed with the Commission in this matter shall contain the following notation on the envelope: Ex Parte No. 357.

SPECIAL PERMISSION No. 79-400

It is ordered:

1. All United States railroads, and water and motor carriers to the extent they have joint rates with the railroads, and their tariff-publishing agents, are authorized to depart from the Commission's tariff publishing rules in tariff circular No. 20 (49 CFR 1300), when publishing and filing tariffs, and tariff amendments, to become effective upon not less than 30 days' notice to the Commission and the public but not earlier than December 15, 1978, nor later than February 1, 1979, providing for increased rates and charges as set forth in the petition.

(a) By publishing and filing a master tariff of increased rates and charges, and supplements to the master tariff, providing increases by means of conversion tables of rates and charges, which shall include, and maintain in effect, a refund provision reading as follows:

In the event any increases resulting from the application of this tariff exceed the increases subsequently approved or prescribed by the Interstate Commerce Commission, the carriers will refund the difference between the increases resulting from the application thereof and any increases which may subsequently be approved or prescribed by the Interstate Commerce Commission with——percent interest.[3]

In the event any increase resulting from the application of the tariff is disapproved by the Commission and no increase is authorized, the carriers will refund the full amount of the increase collected with——percent interest.[4]

The master tariff shall be conditioned to expire on a date not more than 1 year after the effective date, and all relief granted in this decision expires with that date, which may not be extended or canceled except upon specific authorization of this Commission. Respondents are placed on notice that they must comply with the regulations in 49 CFR 1300.32 governing the transfer of railroad general increases from master tariffs. The master tariff must initially contain all provisions necessary to permit application of every aspect of this proposal. Subsequently, provisions other than those of a general character may be cancelled and transferred to the particular tariff affected upon a common effective date with appropriate notation to that effect in the master tariff.

By publication and filing of a connecting link supplement to each tariff to be made subject to the master tariff, connecting such tariffs with the master. Such supplements may be blanket supplements (a common supplement issued to two or more tariffs).

(c) The master tariff and connecting link supplements issued and filed under this decision shall not provide for nonapplication on interstate traffic competitive with intrastate traffic between the same points unless the interstate rates and routes are specifically identified in the connecting link supplements.

(d) By publication and filing of tariffs or amendments to tariffs effective concurrently with the master tariffs and upon the same notice which provide specifically increased rates and charges but which do not result in an increase in charges for transportation and other services greater than those specified in the petition, provided all such publication is identified in the tariffs and made subject to a refund clause worded substantially as in paragraph 1(a) above.

(e) By publication of provisions in tariffs or amendments subjecting rates and charges to the provisions of the master tariff, subject to the restriction in (c) above.

2. Master tariff rules 5 and 7(a), governing the application of authorized general increases, shall be hereby revised as set forth in this paragraph.

Rule 5 is revised to read as follows:

Rates made by addition or deduction of arbitraries or differentials.

Where a through rate for line-haul transportation is made by the addition or deduction of an arbitrary and where:

(a) Both the rate and the arbitrary (or differential) are subject to this tariff, the addition or deduction of such arbitrary (or differential) shall be made before applying the provisions of this tariff;

(b) The rate is subject to this tariff but the arbitrary (or differential) is not subject to this tariff, the provisions of this tariff shall first be applied to the rate before the addition or deduction of such arbitrary; and

(c) The rate is not subject to this tariff but the arbitrary (or differential) is subject to this tariff, the provisions of this tariff shall first be applied to the arbitrary (or differential) before the addition or deduction of such arbitrary (or differential).

Arbitraries and differentials are amounts added to or deducted from some rate base, to make a through joint rate. This is the historic understanding of arbitraries or differentials. Historically, the arbitrary or differential has not had standing as an independent rate factor, and based on numerous Commission decisions, it is added to (or deducted from) the rate base before applying increases. The problem is that, in recent years, arbitraries in particular have been published in such a manner that they are actually treated as a separate rate factor. As a result, when the line-haul rate is subject to the master tariff and the arbitrary (or differential) is not (or vice versa), the total sum may be incorrectly increased to the same level as if both factors *had* been subject to the master tariff. The revised rule 5 removes this problem by returning to the historic, and correct, understanding of arbitraries and differentials.

Rule 7 shall be revised to read as follows:

Rates composed of two or more separately-stated rates.

(a) Subject to (b) through (c) of this rule, where:

(i) a through rate for line-haul transportation is composed of two or more rates; or where:

(ii) the applicable through rate is made by combining separately-stated rates (either in the absence of a single-factor through rate, or by tariff provisions for application of the aggregate of intermediate rates in lieu of a higher single-factor through rate):

the separately-stated rates shall first be totaled without reference to the increases or nonincreases provided in this tariff. The resulting sum shall then be increased (or not increased, as the case may be) as provided in this tariff, as if that sum were published as a single-factor through rate applying from origin to destination of the shipment.

Paragraph (f) of rule 7 shall also be revised to correspond with the above revision.

The problem with the present rule 7 is that a through rate composed of separately-stated rates, when its individual factors are increased prior to totaling their sum, is often subjected to a total increase much higher than would apply to a corresponding single-factor rate. In Increased freight rates, 1960, 313 ICC 471, the Commission held that such results would not only disrupt competitive rate relationships, but would be unreasonable. The revised rule 7 corrects this problem.

3. (a) The master tariff, as amended, and all other tariffs and amendments to tariffs, that employ the shortform methods authorized herein shall bear the notation: Form of publication authorized, ICC permission No. 79-400.

(b) Tariffs or amendments to tariffs publishing specifically increased rates or charges hereunder shall bear a notation reading: Publication made in accordance with ICC permission No. 79-400.

4. Connecting-link supplements authorized here shall be exempted from the Commission's tariff-publishing rules governing the number of supplements and the volume of supplemental matter permissible.

5. The master tariff filed under this decision shall not be amended except to correct errors and to comply with findings and orders of the Commission, without specific authorization. The terms of rule 9(e) (40 CFR 1300.9(e) are not waived as to supplements to the master tariff.

6. Tariff publishing agents must furnish a copy of the master tariff to subscribers of all tariffs which are governed by the master tariff. This must be done not later than the date that copies are sent to the Commission. When there is more than one tariff of a subscriber governed by the master tariff, only one copy of the master tariff need be furnished to the subscriber unless additional copies are requested.

7. Outstanding decisions of the Commission are hereby modified only to the extent necessary to permit the filing of tariff publications containing the proposed increases, and all tariff publications filed shall be subject to protest and possible suspension and rejection. In that regard, we direct petitioners' attention to our admonitions in prior general increase proceedings concerning maintenance and preservation of existing port relationships. See, for example, Increased freight rates and charges, 1972, 341, ICC 288, 336, and increased freight rates, 1970 and 1971, 339 ICC 125, 188.

Notice of the filing of a railroad general increase petition will be given by sending a copy of this decision to each party to the ex parte No. 349 proceeding, to the Governor and public utility regulatory body of each State, the Environmental Protection Agency, the Special Assistant to the President for Consumer Affairs, and by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register for publication in the FEDERAL REGISTER.

By the Commission. Chairman O'Neal, Vice Chairman Christian, Commissioners Brown, Stafford, Gresham, and Clapp.

H. G. HOMME, JR.,
Acting Secretary.

[FR Doc. 78-31828 Filed 11-9-78; 8:45 am]

[3]The interest rate to be inserted in the refund provision shall be equal to the average yield (on the date such schedule is filed) of marketable securities of the United States which have a duration of 90 days. See sec. 10707(d) of the Interstate Commerce Act.

[4]See footnote 3.

[7035-01-M]

[Notice No. 204]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

OCTOBER 25, 1978.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC, and also in the ICC field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

MC 5623 (Sub-42TA), filed September 14, 1978. Applicant: ARROW TRUCKING CO., P.O. Box 7280, Tulsa, OK 74105. Representative: J. G. Dail, Jr., P.O. Box 567, McLean, VA 22101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Machinery, equipment, materials, and supplies* used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and byproducts, and (2) *machinery, materials, equipment, and supplies* used in, or in connection with, the construction, operation, repair, servicing, maintenance, and dismantling of pipelines, including the stringing and picking up thereof, between points in Natrona County, WY, on the one hand, and, on the other, points in CO, ID, MT, NE, ND, SD, UT, and WY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): There are approximately 27 statements of support attached to this application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies of which may be examined at the field office named below. Send protests to: Connie Stanley, Transportation Assistant, Room 240, Old Post Office and Courthouse Building, 215 Northwest Third, Oklahoma City, OK 73102.

MC 8771 (Sub-42TA), filed September 15, 1978. Applicant: SAW MILL SUPPLY, INC., 1018 Saw Mill River Road, Yonkers, NY 10710. Representative: John R. Sims, Jr., 915 Pennsylvania Building, 425 13th Street NW., Washington, DC 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pollution control devices*, from the facilities of Van Huffel Tube, at Warren, OK, to Charlevoix, MI, and Sutherland, NE, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Van Huffel Tube Corp., Dietz Road, Warren, OH 44482. Send protests to: Maria B. Kejss, Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, NY 10007.

MC 25798 (Sub-335TA), filed September 15, 1978. Applicant: CLAY HYDER TRUCKING LINES, INC., 502 East Bridgers Avenue, P.O. Box 1186, Auburndale, FL 33823. Representative: Tony G. Russell, P.O. Box 1186, Auburndale, FL 33823. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Confectionery* (except in bulk), from the facilities of M & M/Mars at Hackettstown, NJ, and Elizabethtown, PA, to New Orleans, LA, for 180 days. There is no environmental impact involved in this application. Applicant has also filed an underlying ETA seeking up to 90 days

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of operating authority. Supporting shipper(s): M & M/Mars, High Street, Hackettstown, NJ. Send protests to: Donna M. Jones, Transportation Assistant, Interstate Commerce Commission, Monterey Building, Suite 101, 8410 Northwest 53d Terrace, Miami, FL 33166.

MC 26396 (Sub-201TA), filed September 15, 1978. Applicant: POPELKA TRUCKING CO., d.b.a. THE WAGGONERS, P.O. Box 990, Livingston, MT 59047. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cement*, from ports of entry on the international boundary line between the United States and Canada located in ID, MT, and ND, to points in the State of Utah, and from Livingston, MT, to points in CO, MN, NE, NM, ND, SD, UT, and WY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Sturdi Bilt Homes, Inc., P.O. Box 1179, Livingston, MT 59047. Send protests to: Paul J. Labane, District Supervisor, Interstate Commerce Commission, 2602 First Avenue North, Billings, MT 59101.

MC 59117 (Sub-59TA), filed September 15, 1978. Applicant: ELLIOTT TRUCK LINE, INC., P.O. Box 1, Vinita, OK 74301. Representative: Tom B. Kretsinger, 20 East Franklin, Liberty, MO 64068. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry bulk fertilizer and fertilizer materials*, from Atlas, MO, to AR, KS, IA, IL, OK, NE, and TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): W. R. Grace & Co., Agricultural Chemicals Group, 100 North Main Building, Memphis, TN 38103. Send protests to: Connie Stanley, Transportation Assistant, Room 240, Old Post Office and Courthbuse Building, 215 Northwest 3d, Oklahoma City, OK 73102.

MC 106401 (Sub-51TA), filed September 15, 1978. Applicant: JOHNSON MOTOR LINES, INC., 2426 North Graham Street, Charlotte, NC 28206. Representative: Thomas G. Sloan, P.O. Box 31577, Charlotte, NC 28231. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except in bulk), in vehicles equipped with mechanical refrigeration, from the facilities owned or utilized by J. H. Filbert, Inc., in Clayton, Cobb, De Kalb, Douglas, and Fulton Counties, GA, to points in KY, MD, NC, OH, SC, TN, VA, WV, and DC, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): J. H. Filbert, Inc., 3701 Southwestern Boulevard, Baltimore, MD 12229. Send protests to: Terrell Price, District Supervisor, 800 Briar Creek Road, Room CC516, Mart Office Building, Charlotte, NC 28205.

MC 108382 (Sub-29TA), filed September 25, 1978. Applicant: SHORT FREIGHT LINES, INC., P.O. Box 357, 459 South River Road, Bay City, MI 48707. Representative: Richard L. Poirer (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pig iron*, in dump vehicles, between Bay City, MI, on the one hand, and points in MI on the other hand, restricted to foreign traffic having a prior movement by rail or water, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Hickman, Williams and Co., 100 Renaissance Center, Suite 1875, Detroit, MI 48243.

MC 113828 (Sub-260TA), filed September 15, 1978. Applicant: O'BOYLE TANK LINES, INC., P.O. Box 30006, Washington, DC 20014. Representative: William P. Sullivan, 1320 Fenwick Lane, Silver Spring, MD 20910. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sulfuric acid*, in bulk, in tank vehicles, from Savannah, GA, to points in Florida and SC, for 180 days. Supporting shipper(s): American Cyanamid Co., Bound Brook, NJ 08805. Send protests to: T. M. Esposito, Transportation Assistant, 600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 114552 (Sub-179TA), filed September 15, 1978. Applicant: SENN TRUCKING CO., P.O. Box Drawer 220, Newberry, SC 29108. Representative: Frank A. Graham, Jr., 707 Security Federal Building, Columbia, SC 29201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Composition board*, from plantsite MacMillan Bloedel Building Materials at Ashtabula, OH, to AL, DE, FL, GA, KY, MD, NJ, NY, NC, PA, SC, TN, VA, WV, and DC, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): MacMillan Bloedel Building Materials, 6540 Powers Ferry Road, Suite 200, Atlanta, GA 30339. Send protests to: E. E. Strotheid, District Supervisor, Interstate Commerce Commission, Room 302, 1400 Building, 1400 Pickens Street, Columbia, SC 29201.

MC 115162 (Sub-429TA), filed September 15, 1978. Applicant: POOLE TRUCK LINE, INC., P.O. Drawer 500, Evergreen, AL 36401. Representative: Robert E. Tate, P.O. Drawer 500, Evergreen, AL 36401. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cross ties*, from Birmingham and Brierfield, AL, to points in Iowa, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Stringfellow Lumber Co., P.O. Box 1117, Birmingham, AL 35201. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 115654 (Sub-113 TA), filed September 15, 1978. Applicant: TENNESSEE CARTAGE CO., INC., P.O. Box 23193, Nashville, TN 37202. Representative: Henry E. Seaton, 929 Pennsylvania Building, 425 13th Street NW., Washington, DC 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from the facilities of Fox De Luxe Pizza Co. at Joplin, MO, and the facilities of the Pillsbury Co., at or near Joplin and Carthage, MO, to points in AR, IL, IN, KY, LA and TN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Totino's Frozen Foods Division of The Pillsbury Co., 7350 Commerce Lane, Fridley, MN 55432. Send protests to: Joe Tate, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Suite A-422, U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 115654 (Sub-114 TA), filed September 15, 1978. Applicant: TENNESSEE CARTAGE CO., INC., P.O. Box 23193, Nashville, TN 37202. Representative: Henry E. Seaton, 929 Pennsylvania Building, 425 13th Street NW., Washington, DC 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Infant formula, pharmaceutical products, and related plastic and rubber articles, moving in mechanically refrigerated equipment*, from Columbus and Cincinnati, OH, and Nashville and Memphis, TN, to points in KY (including Louisville and its commercial zone), Evansville, IN, and its commercial zone, and points in TN, restricted to traffic originating at the facilities utilized by Ross Laboratories at the above origins, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Ross Laboratories, 625 Cleveland Avenue, Columbus, OH 43216. Send protests to: District Supervisor, Bureau of Operations, Interstate Commerce Commission, Suite A-422, U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 116254 (Sub-214 TA), filed September 15, 1978. Applicant: CHEMHAULERS, INC., P.O. Box 339, Florence, AL 35630. Representative: Randy C. Luffman, P.O. Box 339, Florence, AL 35630. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sulphuric acid*, in bulk, from Pascagoula, MS, to points in AL, FL and GA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Thompson-Hayward Chemical Co., 5200 Speaker Road, Kansas City, KS 66106. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 117119 (Sub-703TA), filed September 15, 1978. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., P.O. Box 188, Elm Springs, AR 72728. Representative: L. M. McLean, P.O. Box 188, Elm Springs, AR 72728. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic and rubber housewares; lawn and garden accessories; and display racks*, from the facilities of Rubbermaid, Inc., at Wooster, OH, to points in AZ, CA, CO, ID, MT, NV, OR, UT and WA, for 180 days. Supporting shipper(s): Rubbermaid Inc., 1147 Akron Road, Wooster, OH 44691. Send protests to: Willism H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 117507 (Sub-14TA), filed September 15, 1978. Applicant: CHEMICAL LEAMAN TANK LINES, INC., 520 East Lancaster Avenue, Downingtown, PA 19335. Representative: Thomas J. O'Brien (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid argon, liquid nitrogen, liuid oxygen, in specially designed trailers*, furnished by the shipper, from East Chicago, IN, to points in KY, MI and OH, and from Ashtabula and Lorain, OH, to points in IN, KY and MI, under a continuing contract or contracts with Union Carbide Corp., for 180 days of operating authority. Supporting shipper(s): Union Carbide Corp., 270 Park Avenue, New York, NY 10017. Send protests to: T. M. Esposito Transportation Assistant, 600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 118142 (Sub-186TA), filed September 29, 1978. Applicant: M. BRUENGER & CO., INC., 6250 North Broadway, Wichita, KS 67219. Representative: Brad T. Murphree, 814 Century Plaza Building, Wichita, KS 67202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen boxed beef*, from facilities of Del Pero Mondon Meat Co. at or near Marysville, CA, to Phoenix, AZ; Albuquerque, NM, and Wichita, KS, restricted to traffic originating at the point of origin and destined the named destinations, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Del Pero Mondon Meat Co., 1109 Chestnut, Marysville, CA 95901. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, 101 Litwin Building, Wichita, KS 67202.

MC 118202 (Sub-92TA), filed September 15, 1978. Applicant: SCHULTZ TRANSIT, INC., P.O. Box 406, 323 Bridge Street, Winona, MN 55987. Representative: Robert S. Lee, 100 First National Bank Building, Minneapolis, MN 55402. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cheese*, from Green Bay and Portage, WI, to Lubbock, TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Topco Associates, Inc., 77711 Gross Point Road, Skokie, IL 60077. Send protests to: Delores A. Poe Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building and U.S. Courthouse, 110 South 4th Street, Minneapolis, MN 55401.

MC 118779 (Sub-11TA), filed September 15, 1978. Applicant: PENNSYLVANIA TRUCK LINES, INC., 49th Street and Parkside Avenue, P.O. Box 8116, Philadelphia, PA 19101. Representative: S. Berne Smith, 100 Pine Street, P.O. Box 1166, Harrisburg, PA 17108. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Diesel locomotive engines and component parts*, between Cleveland, OH, and Jacksonville, FL, under a continuing contract or contracts, with Consolidated Rail Corp., Philadelphia, PA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Consolidated Rail Corp., 1528 Walnut Street, Philadelphia, PA 19102. Send protests to: T. M. Esposito, Transportation Assistant, 600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 121664 (Sub-39TA), filed September 15, 1978. Applicant: HORNADY BROTHERS TRUCK LINE, P.O. Box 846, Drewery Road, Monroeville, AL 36460. Representative: W. E. Grant, 1702 1st Avenue South, Birmingham, AL 35233. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber and lumber products*, from Maplesville, AL, and Centerville, AL, to points in GA, TN, KY, IL, IN, OH, and MI, for 180 days. Supporting shipper(s): Southern Forest Products, Division of Hammermill Paper Co., 417 Medical Center Parkway, Selma, AL 36701. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 125506 (Sub-29TA), filed September 15, 1978. Applicant: JOSEPH ELETTO TRANSFER, INC., 33 West Hawthorne Avenue, Valley Stream, NY 11580. Representative: Bruce J. Robbins, Robbins & Newman, 118-21 Queens Boulevard, Forest Hills, NY 11375. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by retail specialty shops dealing primarily in wearing apparel, and store furniture, fixtures and advertising and display materials, between the facilities of Saks Fifth Avenue of New York, NY, on the one hand, and, on the other, the facilities of Saks Fifth Avenue located at Cleveland, OH, under a continuing contract or contracts, with Saks Fifth Avenue, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Saks Fifth Avenue, 555 Tuckahoe Road, Yonkers, NY 10710. Send protests to: Maria B. Kejss, Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, NY 10007.

MC 126305 (Sub-97TA), filed September 15, 1978. Applicant: BOYD BROTHERS TRANSPORTATION CO., INC., Route 1, Box 18, Clayton, AL 36016. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Surplus iron and steel articles and used equipment and machinery*, between Birmingham, AL, on the one hand, and, on the other, points in the United States (except AK and HI), for 180 days. Supporting shipper(s): Red Stewart Supply Co., 2821 29th Avenue North, Birmingham, AL 35207. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 126736 (Sub-107TA), filed September 15, 1978. Applicant: FLORIDA ROCK & TANK LINES, INC., 155 East 21st Street, P.O. Box 1559, Jacksonville, FL 32201. Representative: L.

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H. Blow, P.O. Box 1559, Jacksonville, FL 32201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum lubricating oil*, in bulk, in tank vehicles, from Jacksonville, FL, to points in TN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Sun Petroleum Products, Co., 3101 Talleyrand Avenue, Jacksonville, FL. Send protests to: G. H. Fauss, Jr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 127030 (Sub-6TA), filed September 15, 1978. Applicant: MATTHEW J. DePALMA, INC., 1700 Orthodox Street, Philadelphia, PA 19124. Representative: Leonard W. Becker (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Raw sugar*, in bulk, in dump vehicles, from Camden, NJ, to Yonkers, NY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Philipp Brothers, 1221 Avenue of the Americas, New York, NY 10020. Send protests to: T. M. Esposito Transportation Assistant, 600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 134755 (Sub-157TA), filed September 29, 1978. Applicant: CHARTER EXPRESS, INC., 1959 E. Turner Street, P.O. Box 3772, Springfield, MO 65804. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, (except commodities in bulk), from the facilities of American Home Foods, Milton, Northumberland County, PA, to La Porte, IN, and Chicago, IL, and its commercial zone, and points in Ohio, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): American Home Foods, New York, NY. Send protests to: John V. Barry District Supervisor, Interstate Commerce Commission, Room 600, 911 Walnut Street, Kansas City, MO 64106.

MC 134781 (Sub-4TA), filed September 5, 1978. Applicant: FAST FREIGHT TRANSFER, INC., 1075 West 21st Street, Hialeah, FL 33013. Representative: J. B. Curasi, Suite 858, Barnett Bank Building, Tallahassee, FL 32301. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by discount and variety stores, (except commodities in bulk and perishable commodities), between all points and places in the State of FL, restricted to shipments having a prior or subsequent movement by interstate rail or truck, under a continuing contract or contracts, with the K-Mart Corp., for 180 days. Supporting shipper(s): K-Mart Corp., 3100 West Big Beaver Road, Troy, MI 48084. Send protests to: G. H. Fauss, Jr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 134806 (Sub-52TA), filed September 29, 1978. Applicant: B-D-R TRANSPORT, INC., P.O. Box 1277, Brattleboro, VT 03501. Representative: Francis J. Ortman, 7101 Wisconsin Avenue, Suite 605, Washington, DC 20014. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such materials* as are used in the manufacture of jet engines, from points in CA, to points in CT, under a continuing contract, or contracts, with Pratt & Whitney Aircraft Group, United Technologies Corp., for 180 days. Supporting shipper: Pratt & Whitney Aircraft Group, United Technologies Corp., 400 Main Street, East Hartford, CT 06108. Send protests to: David A. Demers, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 87 State Street, Room 303, Montpelier, VT 05602.

MC 135797 (Sub-147TA), filed September 26, 1978. Applicant: J. B. HUNT TRANSPORT, INC., U.S. Hwy 71, P.O. Box 200, Lowell, AR 72745. Representative: Paul R. Bergant, P.O. Box 200, Lowell, AR 72745. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are used in the manufacture of sporting goods and recreational equipment, (except commodities in bulk), from points in MO, WI, PA, MI, OH, IL, NJ, TN, and TX, to the facilities of Gym-Dandy, Inc., located at Bossier City, LA, for 180 days. Supporting shipper: Gym-Dandy, Inc., P.O. Box 5637, Bossier City, LA 71111. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 136268 (Sub-14TA), filed September 15, 1978. Applicant: WHITEHEAD SPECIALTIES, INC., 1017 Third Avenue, Monroe, WI 53566. Representative: Wayne W. Wilson, 150 East Gilman Street, Madison, WI 53703. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, lumber products, posts, and ties*, from Janesville, WI, to points in IL, IN, IA, MI, MN, MO, and OH, for 180 days. Supporting shipper: Quality Wood Treating Co., Inc., P.O. Box 367, Prairie du Chien, WI 53821. Send protests to: Ronald A. Morken, District Supervisor, Interstate Commerce Commission, 212 East Washington Avenue, Room 317, Madison, WI 53703.

MC 138567 (Sub-1TA), filed September 5, 1978. Applicant: R. L. PAQUETTE, INC., Box 162, R.F.D. No. 1, Middlebury, VT 05753. Representative: Roger Paquette, Jr., Dog Team Road, New Haven, VT 05472. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plastic bristles*, (12' x 4" diameter hanks of synthetic fiber at 20 lbs each) between Middlebury, VT, on the one hand, and, on the other, Chicago, IL, under a continuing contract, or contracts, with Polymers, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Polymers, Inc., Route 116, Middlebury, VT 05753. Send protests to: David A. Demers, District Supervisor, Interstate Commerce Commission, P.O. Box 548, 87 State Street, Montpelier, VT 05602.

MC 139420 (Sub-43TA), filed September 5, 1978. Applicant: ART GREENBERG, d.b.a. GLACIAL TRANSPORT, P.O. Box 428, Grand Forks, ND 58201. Representative: James B. Hovland, 414 Gate City Building, P.O. Box 1680, Fargo, ND 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Mustard and mustard products and blends and mixes thereof*, from Grand Forks, ND, to points in the United States, (except AK and HI); and (2) *materials and supplies* used in the manufacture of mustard and mustard products and blends and mixes thereof, from Baltimore, MD, St. Clair, MI, Hammond, IN, and Chicago, IL, to Grand Forks, ND, restricted to the transportation of traffic originating at or destined to the facilities of Baltimore Spice Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): The Baltimore Spice Co., P.O. Box 1354, Grand Forks, ND 58201. Send protests to: Ronald R. Mau, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 268 Federal Building and U.S. Post Office, 657 Second Avenue North, Fargo, ND 58102.

MC 141138 (Sub-13TA), filed September 15, 1978. Applicant: STEVE SCHRANZ TRUCKING, INC., 350 Honeysuckle Lane, Belleville, IL 62221. Representative: Ernest A. Brooks II, 1301 Ambassador Building, St. Louis, MO 63101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cottonseed meal*, in bulk, in auger unloading vehicles, from points in AR and MS, to Princeton, IL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Leo N. Brown, coordinator, Ralston Purina Co., Checkerboard Square, St. Louis, MO 63188. Send protest to: Charles D. Little, District Supervisor, Interstate Commerce Commission, 414 Leland Office Building, 527 East Capitol Avenue, Springfield, IL 62701.

MC 141921 (Sub-21TA), filed September 15, 1978. Applicant: SAV-ON TRANSPORTATION, INC., 143 Frontage Road, Manchester, NH 03103. Representative: John A. Sykas, 143 Frontage Road, Manchester, NH 03108. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned and preserved foodstuffs*, from the facilities of Heinz U.S.A., at or near Pittsburgh, PA, to points in CT, ME, MA, NH, RI, and VT, and that part of NY on and north of NY Hwy 17 and east of NY Hwy 30, for 180 days. Supporting shipper(s): Heinz U.S.A., Division of H. J. Heinz Co., P.O. Box 57, Pittsburgh, PA 15230. (Attention: Joseph H. Janeda, coordinator, district planning) Send protests to: Ross J. Seymour, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 3, Loudon Road, Concord, NH 03301.

MC 141931 (Sub-3TA), filed September 15, 1978. Applicant: A. L. COWELL TRUCKING, INC., Route 3, Morrilton, AR 72110. Representative: Thomas B. Staley, 1550 Tower Building, Little Rock, AR 72201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wood chips, shavings, sawdust and other dry wood residual products*, from the facilities of B. G. Wilson Lumber Co. at or near Hot Springs, AR, to Kansas City, MO, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): B. G. Wilson Lumber Co., Route 6, Box 515, Hot Springs, AR 71901. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 142207 (Sub-22TA), filed September 15, 1978. Applicant: BRANNAN SYSTEMS, INC., 18950 Chef Menteur Hwy 7, P.O. Box 29487, New Orleans, LA 70189. Representative: Mr. Richard N. Tettelbaum, Serby & Mitchell, Fifth Floor, Lenox Towers South, 3390 Peachtree Road NE., Atlanta, GA 30326. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, lumber and wood products, and building materials*, (except commodities in bulk), from Galveston, TX, and its commercial zone, to points in AR, LA, MN, MS, MO, NE, OK, and TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): R. W. Smity & Co., Inc., 1017 U.S. National Bank Building, Galveston, TX 77550. Send protests to: Connie A. Guillory, District Supervisor, Interstate Commerce Commission, Bureau of Operations, T-9038 U.S. Postal Service Building, 701 Loyola Avenue, New Orleans, LA 70113.

MC 142629 (Sub-1TA), filed September 15, 1978. Applicant: ED HOPSON PRODUCE CO., INC., 211 Meadow Avenue, Oxford, AL 36201. Representative: Ronald L. Stichweh, 727 Frank Nelson Building, Birmingham, AL 35203. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Rugs, carpets, carpeting, and any materials and supplies used in carpet manufacturing*, from the facilities of Venture Carpets at or near Calhoun, GA, and Pawhuska, OK, to Pawhuska, OK, and points located in NV and CA, restricted to transportation services performed, under a continuing contract or contracts with Venture Carpets, for 180 days. Supporting shipper(s): Venture Carpets, P.O. Box 209, Calhoun, GA 30701. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 142672 (Sub-34TA), filed September 14, 1978. Applicant: DAVID BENEUX PRODUCE & TRUCKING, INC., P.O. Box 232, Mulberry, AR 72947. Representative: Daniel C. Sullivan, 10 South LaSalle Street, Suite 1600, Chicago, IL 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in or distributed by manufacturers of power transmission machinery, bearings, chains, gears, conveyors and elevators (except commodities in bulk), from the facilities of the FMC Corp. at Indianapolis, IN, to Fresno, CA, and Portland, OR, for 180 days. Supporting shipper(s): FMC Corp., 200 East Randolph Street, Chicago, IL 60601. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 143775 (Sub-17TA), filed September 5, 1978. Applicant: PAUL YATES, INC., 6601 West Orangewood, Glendale, AZ 85301. Representative: Edward N. Button, 1329 Pennsylvania Avenue, Hagerstown, MD 21740. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Rubber tires, rubber tubes and accessories*, from Huntsville, AL, Kansas City, MO, Buffalo, NY, Dayton, OH, Oklahoma City, OK, and Conshohocken, PA, and points in their respective commercial zones, to points in AZ, CA, CO, ID, NV, NM, OR, UT, WA and WY, restricted to traffic handled for the account of or consigned to J. N. Ceazan Co., for 180 days. Applicant has also filed on underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): J. N. Ceazan Co., 1113 East 230th Street, Carson, CA 90745. Send protests to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, Room 2020 Federal Building, 230 North First Avenue, Phoenix, AZ 85025.

MC 143787 (Sub-7TA), filed August 23, 1978. Applicant: ADMIRAL TRANSPORT CORP., 821 Pulliam Avenue, Worland, WY 82401. Representative: Truman A. Stockton, Jr., The 1650 Grant Street Building, Denver, CO 80203. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Nonalcoholic beverages*, from the facilities of Seven Up Bottling Co., Salt Lake City, UT, to points in ID, NV, AZ, CO, and WY; and (2) *container and ends for containers, pallets and materials, equipment and supplies* used in the manufacture of nonalcoholic beverages, from points in ID, NV, AZ, CO and WY, to the facilities of Seven Up Bottling Co., Salt Lake City, UT, under a continuing contract, or contracts, with Seven Up Bottling Co., of Salt Lake City, UT, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Seven Up Bottling Co., of Salt Lake City, 959 South 800 West, Salt Lake City, UT 84104. Send protests to: Paul A. Naughton, District Supervisor, Interstate Commerce Commission, Room 105 Federal Building and U.S. Courthouse, 111 South Wolcott Street, Casper, WY 82601.

MC 143815 (Sub-2TA), filed September 15, 1978. Applicant: R. & D. TRUCKING CO., INC., Church Road, Lauderdale Industrial Park, Florence, AL 35630. Representative: Roland M. Lowell, 618 United American Bank Building, Nashville, TN 37219. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Heating equipment, fireplaces, stoves, incinerators, parts and accessories therefor*, from the facilities of Martin Industries, Inc., located at or near Huntsville and Athens, AL, and Americus, GA, to points in CA, IL, IN, MI, MN, MO, OH, TX and WI, under a continuing

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contract or contracts, with Martin Industries, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Martin Industries, Inc., P.O. Box 128, Florence, AL 35630. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 144622 (Sub-22TA), filed September 18, 1978. Applicant: GLENN BROS. TRUCKING, INC., P.O. Box 9343, Little Rock, AR 72219. Representative: Phillip Glenn, P.O. Box 9343, Little Rock, AR 72219, and Theodore Polydoroff, Suite 301, 1307 Dolley Madison Boulevard, McLean, VA 22101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned goods* (except frozen and in bulk), from the facilities of the Joan of Arc Co., at or near Belledeau and St. Francisville, LA, and Turkey, NC, to points in ME, MA, MI, NH, NY, NJ, OH, PA, RI, VT, WI, CT, and IL, for 180 days. Supporting shipper: Joan of Arc Co., 2231 West Altorfer Drive, Peoria, IL 61614. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 145344 (Sub-1TA), filed September 22, 1978. Applicant: WILLIAMS TRUCKING INC., Route 1, 1396 Hwy 13 North, Friendship, WI 53934. Representative: Velma J. Williams, Route 1, 1396 Hwy 13 North, Friendship, WI 53934. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Natural stone*, from WI to IL, under a continuing contract, or contracts, with Roxan Mineral & Mining Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Roxan Mineral & Mining Co., 570 Fern Avenue, Elmhurst, IL 60126. Send protests to: Ronald A. Morken, District Supervisor, 212 East Washington Avenue, Room 317, Madison, WI 53703.

MC 145376TA filed September 11, 1978. Applicant: TOM BAKER EXPRESS, INC., P.O. Box 220284, Charlotte, NC, 28222. Representative: Joe T. Millsaps, 1719 Wachovia Center, 400 South Tryon Street, Charlotte, NC 28285. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Household and commercial appliances, new or used, crated or uncrated, and materials and supplies used for installation thereof*, from Charlotte, NC to all counties in SC (except Abbeville, Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkely, Charleston, Colleton, Dorchester, Edgefield, Hampton, Jasper, McCormick, and Oconee), under a continuing contract, or contracts, with Whirlpool Corp., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Whirlpool Corp., 1531 Tar Heel Road, Charlotte, NC 28208. Send protests to: Terrell Price, District Supervisor, 800 Birar Creek Road, Room CC516, Mart Office Building, Charlotte, NC 28205.

MC 145419TA, filed September 12, 1978. Applicant: ALAN COSSAR, 20 South Shore Road, Salem, NH 03079. Representative: George A. McLaughlin Jr., 44 School Street, Boston, MA 02108. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *No. 2 fuel oil*, between points in MA and NH, located within 75 miles of Methuen, MA, under a continuing contract, or contracts, with Automatic Heating Service, Inc., for 180 days. Supporting shipper(s): Automatic Heating Service, Inc., 56 Union Street, Methuen, MA 01844. Send protests to: Ross J. Seymour, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 3, 6 Loudon Road, Concord, NH 03301.

MC 145426 (Sub-1TA), filed September 11, 1978. Applicant: ODELL RITTER, INC., 940 Hwy 99 North, Eugene, OR 97402. Representative: Robert R. Hollis, 400 Pacific Building, Portland OR 97204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber and lumber products*, between points in OR and WA, and from points in OR and WA, to points in CA, NV, ID, UT, WY, CO, and AZ, for 180 days. Supporting shipper(s): (1) Laminated Timber Components, Medford, OR 97501. (2) Roof Structures, Inc., San Jose, CA 95125. (3) Western Empire Forest Products, Eugene, OR 97440. Send protests to: A. R. Odoms, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 114 Pioneer Courthouse, 555 Southwest Yamhill Street, Portland, OR 97204.

MC 145427 (Sub-1TA), filed September 14, 1978. Applicant: GENTRY FIELDS, INC., 6647 Kenwood, St. Louis, MO 63121. Representative: Harry F. Horak, 5001 Brentwood Stair Road, Suite 115, Fort Worth, TX 76112. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Adhesive, paste, and related products* (except in bulk), and *materials and supplies* used in the manufacture and sale of adhesive, paste, and related products (except in bulk), between Bloomfield, NJ, on the one hand, and, on the other, points in IL, TX, TN, GA, FL, CA, MO, MI, OH, MN, AZ, KS, NM, OK, WV, IN, and PA, under a continuing contract, or contracts, with Roman Adhesives, Inc., for 180 days. Supporting shipper(s): Roman Adhesives, Inc., 5 Lawrence Street, Bloomfield, NJ. Send protests to: P. E. Binder, Acting District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 1465, 210 North 12th Street, St. Louis, MO 63101.

MC 145442TA, filed September 12, 1978. Applicant: COSSAIR MARINE, INC., 10761 Burbank Boulevard, Suite B, North Hollywood, CA 91601. Representative: Elizabeth I. Abreu, Knapp, Stevens, Grossman & Marsh, 707 Wilshire Boulevard, Suite 1800, Los Angeles, CA 90017. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Boats, supplemental equipment, and accessories*, between Los Angeles and Orange Counties, CA, on the one hand, and, on the other, OR, WA, MN, WI, IL, IN, MI, OH, NY, RI, PA, ME, VT, NH, CT, FL, NJ, DE, VA, NC, SC, GA, AL, MS, LA, TX, MA, and MD, for 180 days. Supporting shipper(s): (1) Jensen Marine, 200-A Kalamus Drive, Costa Mesa, CA 92626. (2) Capital Yachts, Inc., 25914 President Avenue, Harbor City, CA 90710. Send protests to: Irene Carlos Transportation Assistant, Interstate Commerce Commission, Room 1321 Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

MC 145445TA, filed September 22, 1978. Applicant: RITCHIE L. HOWE, d.b.a. HOWE TRUCKING, 13650 Southwest, 24th Street Fort Lauderdale, FL 33325. Representative: Ritchie L. Howe, 13650 Southwest 24th Street, Fort Lauderdale, FL 33325. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Printing paper goods, carton, and skids*, from Mobile, AL, to various points in the State of FL, for 180 days. There is no environmental impact involved in this application. Supporting Shipper(s): Virginia Paper Co., Box 520008, 1601 Northwest 72d Avenue, Miami, FL 33152. Send protests to: Donna M. Jones, Transportation Assistant, Interstate Commerce Commission, Monterey Building, Suite 101, 8410 Northwest 53d Terrace, Miami, FL 33166.

MC 145446TA, filed September 28, 1978. Applicant: TRADE FURNITURE DELIVERY, INC., 18 Thames Street, Brooklyn, NY 11206. Representative: Ronald Shapes, 450 Seventh Avenue, New York, NY 10001. Authority sought to operate as a *common Carrier*, by motor vehicle, over irregular routes, transporting: *Uncrated used furniture*, between New York, NY, on the one hand, and, on the other, points in NY, NJ, and CT, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): (1) Trojan Reupholstery Co., Inc., 159 West 33d Street, New York, NY 10001. (2) Homecraft Industries, Inc., 159 West 33d Street, New York, NY 10001. Send protests to: Maria B. Kejss, Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, NY 10007.

MC 145447TA, filed September 7, 1978. Applicant: NEW HAMPSHIRE CONTINENTAL EXPRESS, INC., P.O. Box 4956, Manchester, NH 03108. Representative: Jack N. Sarkisian, P.O. Box 4956, Manchester, NH 03108. Authority sought to operate as a *contract Carrier*, by motor vehicle, over irregular routes, transporting: *Various types of used X-ray films and the materials and supplies* used in the processing thereof, from all points in the United States (except AK and HI), to the facilities of Keltek Processing, Inc., at or near Warwick, RI, under a continuing contract, or contracts, with Keltek Processing, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Keltek Processing, Inc., 33 Graystone Street, Warwick, RI 02886. Attention: William Pedder, Manager, Raw Materials Purchasing). Send protests to: Ross J. Seymour, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 3, 6 Loudon Road, Concord, NH 03301

MC 145448 TA, filed September 12, 1978. Applicant: WALKERS, INC., Route 1, Box 86, Greenville, FL 32331. Representative: Felix A. Johnston, Jr., 1030 East Lafayette Street, Suite 112, Tallahassee, FL 32301. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, chips, shavings, sawdust, and similar wood by-products*, between points in GA and FL, for 180 days. Supporting shipper: (1) Clark Lumber Co., Inc., P.O. Box 754, Perry, FL 32347. (2) W. A. Gooch Lumber Co., Inc., 105 North Oak Street, P.O. Box 36, Valdosta, GA 31601. (3) Metcalf Lumber Co., P.O. Box 241, Route 4, Thomasville, GA 31792. (4) Balfour Lumber Co., Inc., P.O. Box 1337, Thomasville, GA 31792. Send protests to: G. H. Fauss, Jr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, 35008, 400 West Bay Street, Jacksonville, FL 32202.

PASSENGER CARRIER

MC 145444 TA, filed September 8, 1978. Applicant: SJP LIMOUSINE SERVICE, INC., 65 Donald Place, Waldwick, NJ 07463. Representative: Bert Binder, 24 Wyckoff Avenue, Waldwick, NJ 07463. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage* (limited to not more than sixteen (16) passengers in any one vehicle) between the Meadowlands Hilton Hotel, Harmon Plaza, Secaucus, NJ, and the Borough of Manhattan, City and State of New York with three (3) stops in said borough, over regular routes as follows: (1) Meadowlands Hilton Hotel to New York City, (a) Start at Hotel (2 Harmon Plaza, Secaucus, NJ) and proceed east on Harmon Plaza; (b) then north along Meadowlands Parkway; (c) to Route 3 easterly (still in Secaucus); (d) along Route 3 east through Secaucus, North Bergen, Union City and Weehawken, NJ, to and through the Lincoln Tunnel into New York City; (3) upon leaving the tunnel, travel would be toward 42d Street, at which point a right turn would be made and the vehicle would proceed easterly; (f) to the Avenue of the Americas where a left (northbound) turn would be made; (g) the first stop would be on the said Avenue of the Americas at No. 1335, the New York Hilton Hotel (near West 53d Street); (h) after discharging passengers, the vehicle would continue northerly on the Avenue of the Americas to West 54th Street and make a right thereon traveling easterly to; (i) Lexington Avenue where the vehicle would turn right and proceed southerly to the Lexington Avenue entrance of the Waldorf Astoria Hotel and discharge passengers; (j) after leaving the Waldorf, the vehicle would continue southerly thereon to; (k) 33d Street where a right turn would be made and the vehicle would proceed westerly to; (1) Seventh Avenue, turn left (southerly) and discharge the remaining passengers at the Statler Hilton Hotel (401 Seventh Avenue). (2) New York City to Meadowlands Hilton Hotel (a) Starting at the Statler Hilton Hotel and after taking on passengers, the vehicle would proceed south, one (1) block to; (b) 32d Street, turn left thereon and proceed easterly to; (c) Park Avenue, turn left thereon and continue northerly until stopping at the Park Avenue entrance of the; (d) Waldorf Astoria Hotel (301 Park Avenue) between 19th and 50th Streets where additional passengers would board; (e) the vehicle would then continue to; (f) 51st Street, take a left and proceed westerly to; (g) the Avenue of the Americas, proceeding northerly thereon to No. 1335, the; (h) New York Hilton Hotel where the last passengers would board; (i) upon leaving the New York Hilton Hotel, the vehicle would continue north to 55th Street, make a left thereon and proceed west to; (j) Ninth Avenue, take a left thereon and proceed southerly to; (k) 41st Street, take a right thereon and proceed westerly into and through the Lincoln Tunnel to; (1) Route 3 West to; (m) Meadowlands Parkway (in Secaucus), proceed southerly thereon to, (n) Harmon Plaza, take a right, proceed westerly back to the Meadowlands Hilton Hotel (2 Harmon Plaza), for 180 days. Supporting shipper(s): Meadowlands Hilton Hotel, 2 Harmon Plaza, Secaucus, NJ 07094. Send protests to: Joel Morrows District Supervisor, Interstate Commerce Commission, 9 Clinton Street, Newark, NJ 07102.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-31834 Filed 11-9-78; 8:45 am]

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[Notice No. 205]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

OCTOBER 25, 1978.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC, and also in the ICC Field Office to which protests are to be transmitted.

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MOTOR CARRIERS OF PROPERTY

MC 28088 (Sub-39TA), filed September 15, 1978. Applicant: NORTH & SOUTH LINES, INC., 2710 South Main Street, Harrisonburg, VA 22801. Representative: John R. Sims, Jr., 915 Pennsylvania Building, 425-13th Street NW., Washington, DC 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from the facilities of Pet, Inc., located at Allentown and Chambersburg, PA, to points in FL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Pet, Inc., P.O. Box 392, St. Louis, MO 63166. Send protests to: Interstate Commerce Commission, Bureau of Operations, P.O. Box 210, Roanoke, VA 24011.

MC 32882 (Sub-101TA), filed September 15, 1978. Applicant: MITCHELL BROS., TRUCK LINES, 3841 North Columbia Boulevard, P.O. Box 17039, Portland, OR 97217. Representative: Edward G. Rawle, 1229 Blue Gum Avenue, Anaheim, CA 92806. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Corrugated steel pipe and accessories*, from the facilities of Pacific Corrugated Pipe Co., at/or near Sacramento and Fontana, CA, to points in NE and UT, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Pacific Corrugated Pipe Co., 13680 Slover Avenue, Fontana, CA 92335. Send protests to: R. V. Dubay, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 114 Pioneer Courthouse, Portland, OR 97204.

MC 48017 (Sub-10TA), filed July 25, 1978, and published in the FEDERAL REGISTER issue of October 4, 1978, and republished as corrected this issue. Applicant: CAMEL TRUCKING, INC., 143 Addison Street, East Boston, MA 02128. Representative: Wesley S. Chused, 15 Court Square, Boston, MA 02108. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Detroit Metropolitan Airport, Detroit, MI, and John F. Kennedy International Airport, New York, NY, restricted the transportation of shipments having an immediately prior or subsequent movement by air, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Seaboard World Airlines, Seaboard World Airlines Building, 260 John F. Kennedy Airport, Jamaica, NY 11430. Send protests to: Max Gorenstein, District Supervisor, Interstate Commerce Commission, 150 Causeway Street, Boston, MA 02114. The purpose of this republication is to show MC 48017 (Sub-10TA) in lieu of MC 48107 as previously published.

MC 59583 (Sub-167TA), filed September 15, 1978. Applicant: THE MASON AND DIXON LINES, INC., Eastman Road, P.O. Box 969, Kingsport, TN 37664. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Avenue, Washington, DC 20014. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Birmingham, AL, and points within 15 miles of Birmingham, and Mobile, AL, and points within 10 miles of Mobile, over U.S. Hwy 31, serving all intermediate points and the off-route points of Kilby, Prattville, and Siluria, AL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): There are approximately (59) statements of support attached to this application which may be examined at the Interstate Commerce Commission in Washington, DC. or copies thereof which may be examined at the field office named below. Send protests to: Joe J. Tate, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Suite A-422 U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 70917 (Sub-5TA), filed September 15, 1978. Applicant: A.F.D., INC., P.O. Box 517, Route 94, Florida, NY 10921. Representative: Piken & Piken, One Lefrak City Plaza, Flushing, NY 11368. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Printing paper on rolls*, from the rail siding of Conrail located at or near Fair Oaks, NY, to the facilities utilized by Watchtower Farm Factory, a division of Watchtower Bible & Tract Society at or near Pine Bush, NY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): A. T. Clayton & Co., Inc., 10 East 40th Street, New York, NY 10016. Send protests to: Maria B. Kejss, Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, NY 10007.

MC 106398 (Sub-836TA), filed September 19, 1978. Applicant: NATIONAL TRAILER CONVOY, INC., 525 South Main, P.O. Box 3329, Tulsa, OK 74103. Representative: Irvin Tull, 525 South Main, Tulsa, OK 74103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Buildings complete, knocked-down, or in sections*, from the facilities of the Brinkley Co. in Warrenton, MO, to points in CO, ID, MT, ND, OR, OK, TX, UT, and WY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Brinkley Co., Main and Elm Streets, Warrenton, MO 63383. Send protests to: Connie Stanley, Transportation Assistant, Room 240 Old Post Office and Court House Building, 215 Northwest Third Street, Oklahoma City, OK 73102.

MC 109351 (Sub-6TA), filed September 15, 1978. Applicant: G & E TRUCKING CO., 1230 Taylor NE., Grand Rapids, MI 49505. Representative: George A. Pendleton, P.O. Box 51, 5116 Brookgate NW., Comstock Park, MI 49321. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Finished paper box board*, from Childsdale, MI, to points in IN (except Elkhart, IN, and points in IN, in the Chicago, IL, Commercial Zone, as defined by the Commission), to points in IL (except points in the Chicago, IL, Commercial Zone, as defined by the Commission), to Lexington, Louisville and Owensboro, KY, and to Appleton, Green Bay, Milwaukee, Sheboygan, Racine, Fond du Lac and Jefferson, WI; (2) *Scrap paper*, from points in IN, (except points in Lake and Porter Counties, IN, and those points which are within the Chicago, IL, Commercial Zone, as defined by the Commission), from points in IL (except from points in Cook, Du Page, Henry, Kane, Kankakee, Kendall, Lake, and Will Counties, IL), from Lexington, Louisville, and Owensboro, KY, and from Appleton, Green Bay, Milwaukee, Sheboygan, Racine, Fond du Lac, and Jefferson, WI, to Childsdale, MI, and (3) with authorization to return rejected, damaged or refused commodities as described in I and II above. Restriction: The authority sought is to be limited to a transportation service to be performed, under a continuing contract, or contracts, with Rockford Paper Mills, Inc., of Childsdale, MI, which has approximately 2 miles southwest of Rockford, MI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Rockford Paper Mills, Inc., 7734 Childsdale Avenue, Rockford, MI 49091. Send protests to: C. R. Flemming District Supervisor, Bureau of Operations, Interstate Commerce Commission, 225 Federal Building, Lansing, MI 48933.

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MC 109692 (Sub-66TA), filed July 24, 1978 and published in the FEDERAL REGISTER issue of September 29, 1978, and republished as corrected this issue. Applicant: GRAIN BELT TRANSPORTATION CO., Route 13, Kansas City, MO 64161. Representative: Warren H. Sapp, P.O. Box 16047, Kansas City, MO 64112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, lumber products, lumber mill products, and veneered lumber mill products*, from the facilities of Weyerhaeuser Co. at or near West Memphis, AR, to points in CO, IL, IN, IA, KS, MI, MN, MO, NE, NM, OK, SD, TX, and WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Weyerhaeuser Co., 100 South Wacker Drive, Chicago, IL 60606. Send protests to: Vernon V. Coble, District Supervisor, Interstate Commerce Commission, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106. The purpose of this republication is to show New Mexico (NM) in lieu of Minnesota (MN) as previously published.

MC 110012 (Sub-48TA), filed September 15, 1978. Applicant: ROY WIDENER MOTOR LINES, INC., 707 North Liberty Hill Road, Morristown, TN 37814. Representative: John R. Sims, Jr., 915 Pennsylvania Building, 425-13th Street NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned and preserved foodstuffs*, from Pittsburgh, PA, to the facilities of Heinz U.S.A., division of H. J. Heinz Co., at or near Greenville, SC, for 180 days. Supporting shipper(s): Heinz U.S.A., division of H. J. Heinz Co., P.O. Box 57, Pittsburgh, PA 15230. Send protests to: Joe Tate District Supervisor, Bureau of Operations, Interstate Commerce Commission, Suite A-422, U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 111375 (Sub-100TA), filed September 18, 1978. Applicant: PIRKLE REFRIGERATED FREIGHT LINES, INC., P.O. Box 3358, Madison, WI 53704. Representative: Charles E. Dye, P.O. Box 3358, Madison, WI 53704. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Foodstuffs;* (2) *Pharmaceutical materials, supplies and products;* (3) *Chemicals;* (4) *Alcoholic beverages;* (5) *Tobacco products;* (6) *Pet foods;* (7) *Such commodities as are dealt in by distribution or consolidation warehouses* for the commodities described in (1), (2), (3), (4), (5), and (6), when moving in the same vehicle at the same time as the commodities described in (1) through (6); (8) *Exempt commodities* when moving with regulated commodities; in vehicles equipped with mechanical refrigeration. (A) From the plantsites and warehouse facilities utilized by Beatrice Foods Co. and its subsidiaries (except Samsonite Corp.); Acme Delivery Service, Inc.; Colorado-Denver Warehouse Delivery, Inc.; Imperial Distribution Services; Craig's Distributing and Consolidation Co.; Ellis Foods Corp.; Mile-Hi Fruit and Vegetable Co.; Stapleton Drug Co.; Nobel, Inc.; and Leprino Cheese Co.; at Denver, CO to points in the United States in and west of MN, IA, MO, AR and LA (except AK and HI). (B) From points in the United States in and west of MN, IA, MO, AR, and LA (except AK and HI), to the plantsites and warehouse facilities utilized by Beatrice Foods Co. and its subsidiaries; Acme Delivery Service, Inc.; Colorado-Denver Warehouse Delivery, Inc.; Imperial Distribution Services; Craig's Distributing and Consolidation Co.; E. B. Millar Coffee Co.; Ellis Foods Corp.; Mile-Hi Fruit and Vegetable Co.; Stapleton Drug Co.; Nobel, Inc.; King Soopers; and Leprino Cheese Co., at Denver, CO for 180 days. Restrictions: (1) Restricted against the transportation of commodities in bulk, and to traffic originating at and destined to points in and west of MN, IA, MO, AR and LA. (2) The operations in part (A) are restricted to the transportation of shipments either (a) originating at the plantsite and warehouse facilities named therein or (b) moving from intransit storage at such plantsite and warehouse facilities. The operation in part (B) are restricted to the transportation of shipments either (a) destined to the plantsite and storage facilities named therein or (b) moving to intransit storage at such plantsite and warehouse facilities. Supporting shipper(s): Beatrice Foods Co., P.O. Box 260, Watertown, WI 53094. Acme Delivery Service, P.O. Box 5693, Denver, CO 80217. Send protests to: District Supervisor Ronald A. Morken, Interstate Commerce Commission, 212 East Washington Avenue, Room 317, Madison, WI 53703.

MC 111812 (Sub-589TA), filed September 19, 1978. Applicant: MIDWEST COAST TRANSPORT, INC., P.O. Box 1233, Sioux Falls, SD 57101. Representative: David Peterson, P.O. Box 1233, Sioux Falls, SD 57101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts, foodstuffs and articles distributed by meat packing plants* (except hides and commodities in bulk) from the facilities of Geo. A. Hormel & Co. at Huron, SD and Austin, MN to all points in WV, for 180 days. Supporting shipper: Geo. A. Hormel & Co., P.O. Box 800, Austin, MN 55912. Send protests to: Mr. James L. Hammond, District Supervisor, Bureau of Operations and Compliance, Interstate Commerce Commission, 455 Federal Building, Pierre, SD 57501.

MC 112184 (Sub-63TA), filed September 16, 1978. Applicant: MANFREDI MOTOR TRANSIT CO., 11250 Kinsman Road, Newbury, OH 44065. Representative: David A. Turano, 100 East Broad Street, Columbus, OH 43215. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Tomato paste*, (in bulk, in tank vehicles), from the facilities of Hunt-Wesson Foods, Inc., at or near Rossford, OH, to Austin, IN and Duluth, MN, restricted to service performed under a continuing contract or contracts, with Hunt-Wesson Foods, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Hunt-Wesson Foods, Inc., 1645 West Valencia Drive, Fullerton, CA 92634. Send protests to: Interstate Commerce Commission, 731 Federal Building, 1240 East Ninth Street, Cleveland, OH 44199.

MC 112304 (Sub-151TA), filed September 5, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, 100 East Broad Street, Columbus, OH 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Ferro alloys, silico manganese, silicon metal and scrap metal*, (except in bulk, in dump vehicles), from Mayfield, KY, to points in AL, AR, CT, DE, IA, IL, IN, KA, LA, MD, MI, MO, NJ, NY, OH, PA, SC, TN, TX, WV and WI; and (2) *scrap metals and ferro alloy fines, and returned shipments* of the commodities specified in (1) above, (except in bulk, in dump vehicles), from points in the States named in (1) above, to Mayfield, KY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Airco Alloys, a Division of Airco, Inc., Calvin W. Lamb, manager—Distribution and Traffic, 3801 Highland Avenue, Niagara Falls, NY 14305. Send protests to: Paul J. Lowry, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 5514-B Federal Building, 550 Main Street, Cincinnati, OH 45202.

MC 113106 (Sub-62TA), filed September 15, 1978. Applicant: THE BLUE DIAMOND CO., 4401 East Fairmount Avenue, Baltimore, MD 21224. Representative: Chester A. Zyblut, 366 Executive Building, 1030 15th Street, NW., Washington, DC 20005. Authority sought to operate as a *common car-*

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rier, by motor vehicle, over irregular routes, transporting: *Glass containers and carton material in straight or mixed shipments*, from the facilities of Thatcher Glass Manufacturing Co., Division of Dart Industries, Inc., at Elmira, NY and Wharton, NJ, to Eden, NC, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): James Rehr, assistant GTM, Thatcher Glass Manufacturing Co., P.O. Box 165, Elmira, NY 14902. Send protests to: William L. Hughes, District Supervisor, Interstate Commerce Commission, 1025 Federal Building, Baltimore, MD 21201.

MC 114273 (Sub-417TA), filed July 21, 1978, and published in the FEDERAL REGISTER issue of September 27, 1978, and republished as corrected this issue. Applicant: CRST, INC., P.O. Box 68, 3930 16th Avenue, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Adhesives* (except in bulk) in vehicles equipped with mechanically heated and/or refrigeration from Camden, NJ, to points in IL, IN, IA, KS, MN, MO, ND, NE, SD, OK, and WI, for 180 days. Supporting shipper(s): General Felt Industries, Park 80 West, Saddlebrook, NJ 07662. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309. The purpose of this republication is to add Nebraska (NE) to the territorial description as previously omitted.

MC 114273 (Sub-471TA), filed September 15, 1978. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glassware, chinaware, earthenware, pottery and plastic articles*, (except in bulk, in tank vehicles), from Lancaster, OH, to Chariton and Cherokee, IA, for 180 days. Supporting shipper(s): Anchor Hocking Corp., 109 North Broad Street, Lancaster, OH 43130. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 114273 (Sub-472TA), filed September 15, 1978. Applicant: CRST, INC., 3930 16th Avenue, P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Automotive parts and materials and supplies* used in the manufacture of automotive parts (except in bulk, in tank vehicles), between the facilities of Ford Motor Co. in the State of MI, on the one hand, and, on the other, St. Louis and Kansas City, MO, Norfolk, VA, and St. Paul, MN, for 180 days. Supporting shipper(s): Ford Motor Co., One Parklane Boulevard, Parklane Towers-East, Suite 200, Dearborn, MI 40126. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 115654 (Sub-109TA), filed September 15, 1978. Applicant: TENNESSEE CARTAGE CO., INC., P.O. Box 23193, Nashville, TN 37202. Representative: Henry E. Seaton, 929 Pennsylvania Building, 425 Thirteenth Street NW., Washington, DC 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such articles* as are dealt in by wholesale and retail grocery houses (except commodities in bulk, in vehicles equipped with mechanical refrigeration), from the facilities of the Kroger Co. at or near Columbus, OH, and Cincinnati, OH, to Kroger warehouse distribution centers at or near Atlanta, GA, Dallas and Houston, TX, Little Rock, AR, Memphis and Nashville, TN, and St. Louis, MO, for 180 days. Supporting shipper(s): The Kroger Co., 1014 Vine Street, Cincinnati, OH 45201. Send protests to: Glenda Kuss, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, Suite A-422, U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 121168 (Sub-7TA), filed September 15, 1978. Applicant: BOOTH TRANSFER, INC., 4684 Leavenworth, Omaha, NE 68106. Representative: M. M. McMahon, P.O. Box 6076, Omaha, NE 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts, and articles distributed by meat packinghouses*, as described in sections A and C of appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766, (except hides and commodities in bulk), from Omaha, NE, to points in KS, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: David A. Kousgaard, traffic consultant, Palamera Beef Corp., 25th and Z Streets, Omaha, NE 68127. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 121664 (Sub-38TA), filed September 15, 1978. Applicant: HORNADY BROS. TRUCK LINE, P.O. Box 846, Monroeville, AL 36460. Representative: W. E. Grant, 1702 First Avenue South, Birmingham, AL 35233. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber and lumber products*, from Newport, AR, and Memphis, TN, to points in the United States in and east of TX, OK, KS, NE, NC, and SC, for 180 days. Supporting shipper: Steel City Lumber Co., 3100 Lorna Road, Hoover, AL. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 121664 (Sub-40TA), filed September 15, 1978. Applicant: HORNADY BROS. TRUCK LINE, P.O. Box 846, Monroeville, AL 36460. Representative: W. E. Grant, 1702 First Avenue South, Birmingham, AL 35233. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Unfinished hardwood plywood*, from Cuthbert, GA, to points in the United States in and east of TX, OK, KS, NE, ND, and SD; and (2) *materials and supplies* used in the manufacture of commodities named in (1) above, from points in the United States in and east of TX, OK, KS, NE, ND, and SD, to Cuthbert, GA, for 180 days. Supporting shipper: Day Companies, Inc., Cuthbert, GA. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 123061 (Sub-102TA), filed September 19, 1978. Applicant: LEATHAM BROTHERS, INC., P.O. Box 16026, 46 Orange Street, Salt Lake City, UT 84104. Representative: Harry D. Pugsley, 310 South Main, Salt Lake City, UT 84101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Insulation and material* used in the manufacture of insulation, between points in Cache County, UT, on the one hand, and, on the other points in CA, OR, WA, NV, ID, MT, UT, WY and CO, for 180 days. Supporting shipper: Mountain Fiber Co., 1100 Anvil Road, Hyrum, UT 84319, (Bruce D. Allsop, owner). Send protests to: District Supervisor, L. D. Helfer, Interstate Commerce Commission, 5301 Federal Building, Salt Lake City, UT 84138.

MC 124078 (Sub-867TA), filed September 15, 1978. Applicant: SCHWERMAN TRUCKING CO., 611 South 28 Street, Milwaukee, WI 53215. Representative: Richard H. Prevette (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Ground slag*, (in bulk), from Neville Island, PA, to points in IL, IN, KY, OH, TN, VA, and WV, for 180 days. Supporting shipper(s): Dravo Corp., One Silver Plaza, 18th Floor, Pittsburgh, PA 15222 (Vernon D. Schauble). Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 125146 (Sub-7TA), filed September 26, 1978. Applicant: BOB WHITAKER & SON, INC., P.O. Box 65, Roswell, NM 88201. Representative: Edwin E. Piper, Jr., 1115 Sandia Savings Building, Albuquerque, NM 87102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts, and articles distributed by meat packinghouses*, from the facilities of Farmland Foods, Inc., at or near Garden City, KS, to points in AZ, NV, CA, UT, WA, OR, CO, TX, and OK, for the account of Farmland Foods, Inc., Garden City, KS, under a continuing contract or contracts, with Farmland Foods, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Farmland Foods, Inc., P.O. Box 957, Garden City, KS 67846. Send protests to: District Supervisor, Interstate Commerce Commission, 1106 Federal Office Building, 517 Gold Avenue SW., Albuquerque, NM 87101.

MC 126198 (Sub-17TA), filed September 19, 1978. Applicant: MICHAUD TRUCKING, INC., 133 Birch Street, Kingsford, MI 49801. Representative: William J. Bolognesi, 116 East Brown Street, P.O. Box 705, Iron Mountain, MI 49801. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages with empty containers on return, and related advertising equipment* when shipped therewith, in insulated closed van trailer, from Peoria, IL, to points and places in the Upper Peninsula of MI, and to Aurora, WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Pabst Brewing Co., 917 West Juneau Avenue, Milwaukee, WI 53201. Send protests to: C. R. Flemming, District Supervisor, Interstate Commerce Commission, 225 Federal Building, Lansing, MI 48933.

MC 128273 (Sub-319TA), filed September 15, 1978. Applicant: MIDWESTERN DISTRIBUTION, INC., P.O. Box 189, Fort Scott, KS 66701. Representative: Elden Corban, P.O. Box 189, Fort Scott, KS 66701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper boxes and pulpboard*, (except commodities in bulk, in tank vehicles), between facilities of Potlatch Corp. at or near Fort Wayne, IN, and Sikeston, MO, restricted to traffic originating at and destined to the above-named points, for 180 days. Supporting shipper(s): Potlatch Corp., P.O. Box 1016, Lewiston, ID 83501. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, 101 Litwin Building, Wichita, KS 67202.

MC 129643 (Sub-14TA), filed September 15, 1978. Applicant: GEORGE SMITH, d.b.a. GEORGE SMITH TRUCKING CO., 433 Mountain Avenue, Winnipeg, MB, Canada. Representative: George Smith, 433 Mountain Avenue, Winnipeg, MB, Canada. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen potato products*, from Hermiston, OR, to port of entry on the international boundary line between the United States and Canada, located at or near Eastport, ID, restricted to traffic destined to MB, Canada, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Carnation Foods Co., Ltd., P.O. Box 70, Carberry, MB, Canada ROK OHO. Send protests to: Ronald R. Mau, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 268, Federal Building and U.S. Post Office, 657 Second Avenue North, Fargo, ND 58102.

MC 129788 (Sub-14TA), filed July 31, 1978, and published in the FEDERAL REGISTER issue of October 6, 1978, and republished as corrected this issue. Applicant: NASS TRUCK LINES, INC., Box "H", Wenona, IL 61377. Representative: E. Stephen Heisley, Suite 805, 666 Eleventh Street NW., Washington, DC 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages and related advertising materials*, from Detroit, MI to Decatur, Springfield, Champaign and Jacksonville, IL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): (1) Starr Brothers, Inc., 300 Singer Avenue, Springfield, IL 62703. (2) Michael N. Maurer, president, Maurer Distributing Co., 2802 Woodford Street, Decatur, IL 62526. (3) Gary R. Mraz, general manager, Pierson Distributors, 234 East Court, Jacksonville, IL 62650. (4) James J. McNabney, president, Van Pickerett-Champaign Ltd., 606 East Kenyon, Champaign, IL 61820. Send protests to: Lois Stahl, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 219 South Dearborn Street, Room 1386, Chicago, IL 60604. The purpose of this republication is to show MC 129788 (Sub-14TA) in lieu of MC 129788 as previously published.

MC 133689 (Sub-226TA), filed September 15, 1978. Applicant: OVERLAND EXPRESS, INC., 719 First Street, Southwest, New Brighton, MN 55112. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Solution, distilled water and intravenous, administration and patient kits, and supplies* used in the administrative and care of patient, from Rocky Mount, NC, and Altavista, VA, to St. Louis and Kansas City, MO, and Plymouth, MN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Abbott Laboratories, 14th and Sheridan Road, North Chicago, IL 60064. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building and U.S. Court House, 110 South Fourth Street, Minneapolis, MN 55401.

MC 134300 (Sub-32TA), filed September 19, 1978. Applicant: TRIPLE R. EXPRESS, 498 First Street Northwest, New Brighton, MN 55112. Representative: Samuel Rubenstein, 301 North Fifth Street, Minneapolis, MN 55403. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Packaged sugar*, from Brooklyn, NY to points in IL, IN, MI, and OH, for 180 days. Supporting shipper: American Sugar Division, Amstar Corp., 1251 Avenue of the Americas, New York, NY 10020. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building and U.S. Court House, 110 South Fourth Street, Minneapolis, MN 55401.

MC 134890 (Sub-9TA), filed September 15, 1978. Applicant: MARION TRANSFER, INC., 4524 South 13th Street, Milwaukee, WI 53221. Representative: Carlo Benvenuto (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Chemical or tanning extracts or chemicals* other than bulk for tanning with protective service, from points in NY, PA, MA, NJ, CT, RI, and NH, to the plantsite of Gebhardt Vogel Tanning Co., Milwaukee, WI, under a continuing contract or contracts, with Gebhardt Vogel Tanning Co., of Milwaukee, WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Gebhardt Vogel Tanning Co.,

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1228 West Bruce Street, Milwaukee, WI 53204. Send protests to: Gail Daugherty Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 135469 (Sub-7TA), filed September 15, 1978. Applicant: HAWKEYE TRANSPORT CO., 601 East Front Street, Stanwood, IA 52337. Representative: Carl E. Munson, 469 Fischer Building, Dubuque, IA 52001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer and fertilizer materials*, (in bulk), from the facilities of Land O'Lakes Agricultural Division at or near Mason City, IA, to points in NE, ND, MN, SD, and WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Land O'Lakes Agricultural Services Division, Distribution Control Specialist, 2827 8th Avenue South, Fort Dodge, IA 50501. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 136828 (Sub-27TA), filed September 14, 1978. Applicant: COOK TRANSPORTS, INC., 214 South 10th Street, Birmingham, AL 35233. Representative: Robert M. Pearce, P.O. Box 1899, Bowling Green, KY 42101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles, pipe, hydrants, valves, and fittings*, except commodities in bulk, from points in AL on and north of U.S. Hwy 80 to points in the U.S. except AK and HI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: There are approximately 6 statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies thereof which may be examined at the field office named below. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operations, ICC, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 138054 (Sub-27TA), filed September 5, 1978. Applicant: CONDOR CONTRACT CARRIERS, INC., 656 Wooster Street, Lodi, OH 44254. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Saline solutions, blood derivatives, plastic articles and equipment, materials, and supplies* used in the testing, collection, distribution, transfusion, and injection of blood and blood derivatives, (a) from Memphis, TN, to Round Lake, IL; Edison, NJ; Mansfield, MA; Morrow and Atlanta, GA; Grand Prairie, TX; and Los Angeles, Buena Park and Costa Mesa, CA; (b) from Los Angeles, Buena Park and Costa Mesa, CA, to Mansfield, MA; Grand Prairie, TX; and Memphis, TN; and (c) from Waukegan and Morton Grove, IL, to Atlanta, GA, and Los Angeles, CA, restricted against the transportation of commodities in bulk, in tank vehicles, and further restricted to a transportation service to be performed, under a continuing contract, or contracts, with Hyland Division of Travenol Laboratories, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Hyland Division of Travenol Laboratories, Inc., 3300 Hyland Avenue, Costa Mesa, CA 92626. Send protests to: James Johnson, District Supervisor, Interstate Commerce Commission, 181 Federal Building, 1240 East 9th Street, Cleveland, OH 44199.

MC 138826 (Sub-3TA), filed September 7, 1978. Applicant: JERALD HEDRICK, d.b.a. HEDRICK & SON TRUCKING, Rural Route No. 1, Warren, IN 46792. Representative: Robert A. Kriscunas, 1301 Merchants Plaza, Indianapolis, IN 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Soybean meal* (in bulk), from the facilities of Cargill, Inc., at or near Sidney, OH, to the States of IL, KY, MI, NC, TN, WI and all States north and east thereof, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Cargill, Inc., 2400 Industrial Drive, Sidney, OH 45365. Send protests to: J. H. Gray, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 343 West Wayne Street, Suite 113, Fort Wayne, IN 46802.

MC 138882 (Sub-155TA), filed September 15, 1978. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O. Drawer 707, Troy, AL 36081. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Perlite board*, from the Johns-Manville Corp., Natchez, MS, to the plantsite of the Celotex Corp., Elizabethtown, KY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): The Celotex Corp., 1500 North Dale Mabry, Tampa, FL 33607. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 141795 (Sub-3TA), filed September 25, 1978. Applicant: A & B EXPRESS CO., INC., P.O. Box 567, Fairlawn, NJ 07410. Representative: A. David Milner, Michael R. Werner, P.O. Box 1409, 167 Fairfield Road, Fairfield, NJ 07006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Citrus products*, (except commodities in bulk), canned and bottled non-alcoholic beverages concentrates, between the facilities of Tropicana Products, Inc., at Kearny, NJ, on the one hand, and, on the other, points in CT, DE DC, ME, MD, NH, NJ, MA, NY, PA, RI and VT, under a continuing contract or contracts, with Tropicana Products, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Tropicana Products, Inc., P.O. Box 338, Bradenton, FL 33506. Send protests to: Joel Morrows District Supervisor, Interstate Commerce Commission, 9 Clinton Street, Newark, NJ 07102.

MC 142508 (Sub-38TA), filed September 25, 1978. Applicant: NATIONAL TRANSPORTATION, P.O. Box 37465, 10810 South 144th Street, Omaha, NE 68137. Representative: Joseph Winter, 29 South LaSalle Street, Suite 903, Chicago, IL 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Motor vehicle parts and supplies* (except commodities in bulk), (2) *Storage cabinets*, and; (3) *such commodities* as are dealt in by wholesale and retail hardware, department, and agricultural supply stores, and wholesale, retail and chain grocery and food business houses (except commodities in bulk), from the facilities of the Washoe County Shippers Association at Reno, NV, to Eugene and Portland, OR, and Seattle and Tacoma, WA. Restriction: The above authority is restricted to traffic moving on bills of lading of a shippers association exempt from regulation under part IV of the Interstate Commerce Act, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Larry J. Motter, Jr., Operations Manager, Washoe County Shippers Association, P.O. Box 12096, Reno, NV 89510. Send protests to: Carroll Russell District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 144057 (Sub-3TA), filed August 3, 1978, and published in the FEDERAL REGISTER issue of October 16, 1978, and republished as corrected this issue. Applicant: WHITEHALL TRANSPORT, INC., 1200 Main Street, P.O. Box 387, Whitehall, WI 54773. Representative: Ronald V. Dreckman, P.O. Box 162, Whitehall, WI 54773. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Machinery, equipment, corn cribs, grain bins, feed boxes, watering troughs, parts and attachments* used in farming and agricultural industries, from plantsite and storage facilities of Sioux Steel Co., at or near Hull, IA; Lennox and Sioux Falls, SD to points in MT, ND, SD, IA, IL, NE, KS, MO, MN, CO, and WI. *Materials, supplies and equipment* used in the conduct of business by Sioux Steel from MT, ND, SK, IA, IL, NE, KS, MO, MN, CO, and WI, to plantsites and storage facilities of Sioux Steel at or near Hull, IA; Lennox and Sioux Falls, SD, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Sioux Steel Co., 1961/2 East 6th Street, Sioux Falls, SD 57102. Send protests to: Ronald A. Morken, District Supervisor, Interstate Commerce Commission, 212 East Washington Avenue, Room 317, Madison, WI 53703. The purpose of this republication is to show MC 144057 (Sub-3TA) in lieu of MC 144057 as previously published.

MC 144246 (Sub-6TA), filed September 15, 1978. Applicant: LARSEN TRUCKING, INC., 6015 South 30th Street, Omaha, NE 68107. Representative: Kenneth P. Weiner, 408 Executive Building, Omaha, NE 68102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fresh meats and packinghouse products*, (except commodities in bulk and hides), from Omaha, NE, to St. Louis, MO, and its commerical zone restricted to shipments originating at the plantsite of B. C. Dressed Beef, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Delbert W. Long Transportation Manager, Armour & Co., 5025 South 33d Street, Omaha, NE 68107. Send protests to: Carroll Russell District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 144636 (Sub-1TA), filed July 26, 1978, and published in the FEDERAL REGISTER issue of October 16, 1978, and republished as corrected this issue. Applicant: VICTOR & SON TRUCKING, INC., 15855 East Edna Place, Irwindale, CA 91706. Representative: Milton W. Flack, 4311 Wilshire Boulevard, Suite 300, Los Angeles, CA 90010. Authority sought to operate as *contract carrier*, by motor vehicle, over irregular routes, transporting: *Bidets*, from the facilities of Rusco American Bidet Corp. at Burbank, CA, to points in the United States (except AK an HI), for 180 days. Supporting shipper(s): Rusco American Bidet Corp., 3000 North San Fernando Boulevard, Burbank, CA 91504. Sent protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321 Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012. The purpose of this republication is to show MC 144636 (Sub-1TA) in lieu of MC 144636 as previously published.

MC 144948 (Sub-1TA), filed September 15, 1978. Applicant: BILLY WAYNE HUDSON, d.b.a. BILL HUDSON, 860 Nicholas Street, Carlinville, IL 62626. Representative: Robert T. Lawley, 300 Reisch Building, Springfield, IL 62701. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from Carlinville, IL, to points in AL, IN, MO, OK, TN, and TX, for the account of Central Illinois Steel Co., Inc., and *Steel pipe and tubing, steel pipe fittings*, from Carlinville, IL, to points in IN, IA, MO, MN, and WI, for the account of Valley Steel Products Co., a division of Valley Industries, Inc., for 180 days. Supporting shipper(s): Daniel Millard, President, Central Illinois Steel, Inc., P.O. Box 75, Carlinville, IL 62626. (2) Richard C. Davis, Transportation Manager, Valley Steel Products Co., P.O. Box 429, Centralia, IL 62801. Send protests to: Charles D. Little, District Supervisor, Interstate Commerce Commission, 414 Leland Office Building, 527 East Capitol Avenue, Springfield, IL 62701.

MC 145026 (Sub-1TA), filed September 15, 1978. Applicant: NORTHEAST CORRIDOR EXPRESS, INC., Railroad Avenue, Federalsburg, MD 21632. Representative: James W. Patterson, 1200 Western Savings Bank Building, Philadelphia, PA 18107. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foodstuffs*, from the facilities of the Green Giant Co. at Vineland, NJ, to points in CT, RI, MA, VT, NH, and ME, restricted to traffic originating at the named origin and destined to points in the named destination States, for 180 days. Supporting shipper: Robert F. Rohde, Manager, Motor Transportation, Green Giant Co., Le Sueur, MN 56058. Send protests to: William L. Hughes, District Supervisor, Interstate Commerce Commission, 1025 Federal Building, Baltimore, MD 21201.

MC 145102 (Sub-1TA), filed August 4, 1978, and published in the FEDERAL REGISTER issue of October 16, 1978, as MC 142874, and republished as corrected this issue. Applicant: FREY-MILLER TRUCKING, INC., P.O. Box 188, Shullsburg, WI 53586. Representative: Mark C. Ellison, P.O. Box 872, Atlanta, GA 30301. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cheese and cheese products* from Kahoka, MO; Nauvoo and Minonk, IL; Luana and St. Olaf, IA; Hillsboro, La Farge, Sherry, and Argyle, WI and their commercial zones to Atlanta, GA; Atlantic City, NJ; Boston, MA; Chicago, IL; Cincinnati and Cleveland, OH; Denver, CO; Detroit and Grand Rapids, MI; Houston, TX; Hyde Park and Logan, UT; Kansas City, MO; Los Angeles, CA; Miami, FL; New York, NY; Philadelphia, PA; and Washington, DC and their commercial zones, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: C. M. O. Co., 10010 Cheviot Drive, Los Angeles, CA 90064. Send protests to: Ronald A. Morken, Interstate Commerce Commission, 212 East Washington Avenue, Room 317, Madison, WI 53703. The purpose of this republication is to show MC 145102 (Sub-1TA) in lieu of MC 142874 as previously published.

MC 145131 (Sub-1TA), filed September 15, 1978. Applicant: O. E. PONDER, d.b.a. PONDER FARM SUPPLY, P.O. Box 100, Bremen, AL 35033. Representative: James R. Knight, Griffith Building, Cullman, AL 35055. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Dry fertilizer*, in bulk and in bags, from the facilities of Gold Kist, Inc., at Hanceville, AL, to Gold Kist Associations in Georgia and Jackson and Gadsden Counties, FL, and from Tyner, TN, to Gold Kist Associations in AL and GA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Gold Kist, Inc., P.O. Box 2210, Atlanta, GA 30301. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 145163 (Sub-2TA), filed September 15, 1978. Applicant: DONALD MULDER, d.b.a. DON MULDER TRUCKING, 1735 North 50th Street, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in or used by manufacturers and distributors of printed matter (except in bulk), between the facilities of Mid-American Webpress, Inc., at or near Lincoln, NE, on the one hand, and, on

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the other, points in the United States (except AK, HI, and NE), for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Mid-America Webpress, Inc., Larry Gilsdorf Traffic Manager, 3700 NW., 12th Street, Lincoln, NE. Send protests to: Max Johnston District Supervisor, Interstate Commerce Commission, 285 Federal Building and U.S. Court House, 100 Centennial Mall North, Lincoln, NE 68508.

MC 145253 TA, filed August 14, 1978, and published in the FEDERAL REGISTER issue of October 12, 1978, and republished as corrected this issue. Applicant: GEORGE MARKOTA, d.b.a. GEORGE MARKOTA TRUCKING, 7540 Salem-Warren Road, Berlin Center, OH 44401. Representative: Michael Spurlock, 275 East State Street, Columbus, OH 43215. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Lumber*, from the facilities of National Industrial Lumber Co., located at North Jackson, OH and Columbus, OH, to points in PA, on and west of U.S. Hwy 219, points in WV, on and north of a line extending eastwardly from KY-WV State border along I-64 to its junction with WV State Route 4, then northeast along State Route 4 to U.S. Hwy 19 to the PA-WV border, and points in IN, on and east of U.S. Hwy 31, under a continuing contract or contracts with National Industrial Lumber Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: National Industrial Lumber Co., North Jackson, OH. Send protests to: Interstate Commerce Commission, 731 Federal Building, 1240 East Ninth Street, Cleveland, OH 44199. The purpose of this republication is to complete the destination point.

MC 145281 (Sub-1TA), filed September 15, 1978. Applicant: JAMES P. KEEGAN CO., INC., P.O. Box 426, Kinderhook, NY 12106. Representative: Frank T. Meehan, P.O. Box 426, Kinderhook, NY 12106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, lumber products, and roofing materials*, from Rennselaer, NY, to points in MA (West of U.S. 91) and VT (MA, points Adams, Ft. Barrington, Lee, Lenox, North Adams, Pittsfield, and Sheffield), VT, points Arlington, Barre, Bennington, Burlington, Cavendish, Danvy, Johnson, Manchester, Middlebury, Newport, North Hero, Richford, Rutland, and Vergennes, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Shepard & Morse Lumber Co., Box 600, Riverside Office Park, Weston, MA 02193. Send protests to: Robert A. Radler, District Supervisor, P.O. Box 1167, Albany, NY 12201.

MC 145360 (Sub-1TA), filed September 7, 1978. Applicant: THOM'S TRANSPORT CO., INC., Box 405, Blackshear, GA 31516. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber*, from Blackshear, GA, Dudley, GA; and Maxville, FL, to points in FL, GA, SC, NC, VA, WV, MD, OH, IN, IL, MO, KY, TX, AR, MS, AL, LA and TN, for 180 days. Supporting shipper(s): Gilman Paper Co., P.O. Box 520, St. Marys, GA 31558. Send protests to: G. H. Fauss, Jr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 145372 (Sub-1TA), filed September 19, 1978. Applicant: E. Z. TRAIL, INC., Route 133 East, Arthur, IL 61911. Representative: Robert T. Lawley, 300 Reisch Building, Springfield, IL 62701. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Brooms*, from Arcola, IL, to points in AR, GA, IN, KY, KS, MD, MO, MA, MI, MN, NJ, NY, OH, OK, PA, TX, VA, WV and WI; and (2) *Supplies* used in the manufacture of brooms, from Wichita, KS, Ruston, LA; Westbury, NY, Conroe, TX and Middlebury, VT, to Arcola, IL, for the account of Libman Broom Co., Inc., Arcola, IL, for 180 days. Applicant has also filed an an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): William Libman, Treasurer, Libman Broom Co., Inc., 220 North Sheldon Street, Arcola, IL 61910. Send protests to: Charles D. Little, District Supervisor, Interstate Commerce Commission, 414 Leland Office Building, 527 East Capitol Avenue, Springfield, IL 62701.

MC 145443TA, filed September 8, 1978. Applicant: STERLING RANCH WHOLESALE SUPPLY, INC., 216 Oak, Sterling, CO 80751. Representative: Mckie and Warner, 50 South Steele Street, Suite 650, Denver, CO 80209. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *General commodities, meat, meat products, meat by-products, and articles distributed by meat packinghouses*, (except hides and commodities in bulk and tank vehicles), from the facilities of Sterling Colorado Beef Co. in the Sterling, CO, commercial zone, to the commercial zones of Jonesboro, Little Rock and Fort Smith, AR; Chicago, Springfield, Aurora, Rockford and Kankakee, IL; Indianapolis, Muncie and Gary, IN; Webster City, Davenport, Sioux City and Fort Madison, IA; Wichita, Emporia and Kansas City, KS; Covington, Louisville and Lexington, KY; Detroit and Warren, MI; St. Paul, Duluth, MN, and Moorehead, MN; St. Joseph, St. Louis and Kansas City, MO; Dakota City, Omaha, Lincoln, Crete and Schyular, NE, New York City area, NY; Fargo, ND; Akron, Sandusky, Mansfield, Cleveland, Cincinnati, Columbus and Dayton, OH; Tulsa and Oklahoma City, OK; Philadelphia, Sharon, Scranton, Pittsburgh and Sundbury, PA; Sioux Falls, SD; Nashville, TN; Dallas, Fort Worth, Wichita Falls and Amarillo, TX; Milwaukee, Madison, Jefferson and Kenosha, WI; and New York City area, NJ, restricted to shipments which originate at the facilities of Sterling Colorado Beef Co. in Sterling, CO, for 180 days. Supporting shipper(s): Sterling Colorado Beef Co., P.O. Box 1728, Sterling, CO 80751. Send protests to: Roger L. Buchanan, District Supervisor, Interstate Commerce Commission, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-31835 Filed 11-9-78 8:45 am]

[1505-01-M]

[Notice No. 177]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

Correction

In FR Doc. 78-27509 appearing at page 45504 in the issue for Monday, October 2, 1978, make the following corrections:

(1) In the third column of page 45505, in the fifteenth line of MC 117686 (Sub-215TA), the abbreviation "MI" should have read "MS".

(2) In the first column of page 45507, in the thirteenth line of MC 139495 (Sub-370TA), the abbreviation "ID" should have read "IA".

[1505-01-M]

[Notice No. 181]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

Correction

In FR Doc. 78-27888 appearing at page 45934 in the issue for Wednesday, October 4, 1978, in the first column of page 45936, "MC 128246 (Sub-29TRA)" should have read "MC 128246 (Sub-29TA)".

[1505-01-M]

[Notice No. 180]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

Correction

In FR Doc. 78-27889 appearing at page 45938 in the issue for Wednesday, October 4, 1978, under MC 145064 (Sub-1TA) which begins at the bottom of page 45940 and is continued on page 45941, make the following change:

In the fourth line from the top of the first column of page 45941, the abbreviation "MI" should have read "MS".

[1505-01-M]

[Notice No. 190]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

Correction

In FR Doc. 78.29166 appearing at page 47642 in the issue for Monday, October 16, 1978, make the following changes:

(1) In the first column of page 47643, under MC 57239 (Sub-39TA), in the eighth line, the word "irregular" should have read "regular".

(2) In the third column of page 47647, "MC 14436TA" should have read "MC 144636TA".

[7035-01-M]

[Notice No. 203]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

OCTOBER 25, 1978.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

MC 7840 (Sub-6TA), filed August 30, 1978. Applicant: ST. LAWRENCE FREIGHTWAYS, INC., 650 Cooper Street, Watertown, NY 13601. Representative: Roy D. Pinsky, Attorney at Law, 345 South Warren Street, Syracuse, NY 13202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Paper and paper products* from the facilities of Newton Falls Paper Co., Inc., at Newton Falls, NY, to New York, NY, commercial zone and points in NJ; and (2) *material, equipment, and supplies* used and useful in manufacture and shipping of paper and paper products from New York, NY, commercial zone and points in NJ to Newton Falls Paper Co., Inc., at Newton Falls, NY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Newton Falls Paper Co., Inc., Newton Falls, NY 13666. Send protests to: Interstate Commerce Commission, U.S. Courthouse and Federal Building, 100 South Clinton Street, Room 1259, Syracuse, NY 13260.

MC 21259 (Sub-1TA), filed August 3, 1978. Applicant: GERTSEN CARTAGE CO., INC., 3000 Hirsch Street, Melrose Park, IL 60602. Representative: James R. Madler, 210 West Madison Street, Chicago, IL 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of usual value, classes A and B explosives, household goods defined by the Commission and commodities in bulk) restricted to shipments in water or rail demountable containers, between rail and water facilities in the Chicago, IL, commercial zone as defined by the Commission, on the one hand, and, on the other, points in IL, IN, IA, MI, MO, NE, OH, and WI, for 180 days. Supporting shipper(s): There are approximately five statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies thereof which may be examined at the filed office named below. Send protests to: Lois M. Stahl, Transportation Assistant, Interstate Commerce Commission, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 35706 (Sub-16TA), filed August 30, 1978. Applicant: ATSL, INC., 10) Oregon Avenue, Building A, Philadelphia, PA 19148. Representative: Steven M. Tannenbaum, 135 North 4th Street, Philadelphia, PA 19106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Ladies apparel wear and store supplies*, except in bulk, from the facilities of the Miller-Wohl Co., Inc., at Secaucus, NJ to the facilities of or utilized by the Miller-Wohl Co., Inc., at or near Cleveland, OH and Detroit, MI and their commercial zones, from the facilities of or utilized by the Miller-Wohl Co., Inc., at or near Cleveland, OH and its commercial zone to facilities of or utilized by the Miller-Wohl Co., Inc., at or near Detroit, MI and its commercial zone, for 180 days. Supporting shipper(s): The Miller-Wohl Co., Inc., 915 Secaucus Road, Secaucus, NJ 07094. Send protests to: T. M. Esposito, Transportation Assistant, 600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 37896 (Sub-28TA), filed August 30, 1978. Applicant: YOUNGBLOOD TRUCK LINES, INC., P.O. Box 778, Fletcher, NC 28732. Representative: Charles Ephraim, Suite 600, 1250 Connecticut Avenue NW., Washington, DC 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Stoves and/or stove parts* from Mitchell County, NC to points in the United States, except AK and HI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Smoky Mountain Enterprises, Inc., 116 Woodfin Avenue, Asheville, NC 28804. Send protests to: District Supervisor Terrell Price, 800 Briar Creek Road, Room CC516, Mart Office Building, Charlotte, NC 28205.

MC 51148 (Sub-639TA), filed August 30, 1978. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: John R. Patterson, 2480 East Commercial Boulevard, Fort Lauderdale, FL 33308. Authority sought to operate as a *common carrier*, by motor vehicle over irregular routes, transporting: *Preserved foodstuffs* from Pittsburgh, PA to points in IL, IN, KY, MI and those points in OH on and south of In-

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terstate 70 and on and west of Interstate 77, for 180 days. Supporting shipper: Heinz U.S.A., Division of H. J. Heinz Co., P.O. Box 57, Pittsburgh, PA 15230 (William L. Reeder). Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee WI 53202.

MC 52704 (Sub-181TA), filed August 30, 1978. Applicant: GLENN McCLENDON TRUCKING CO., INC., P.O. Drawer H, Opelika Highway, Lafayette, AL 36862. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Paper and paper products*, from the facilities of Union Camp Corp., at or near Tifton, GA to points in the United States (except AK and HI), and (2) *materials, equipment and supplies* used in the manufacture or distribution of paper and paper products (except commodities in bulk), from points in the United States (except AK and HI), to the facilities of Union Camp Corp., at or near Tifton, GA, for 180 days. Supporting shippers(s): Union Camp Corp., 1600 Valley Road, Wayne, NJ 07470. Send protests to: Mabel E. Holston, Transportation Assistant, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 69492 (Sub-68TA), filed August 11, 1978. Applicant: HENRY EDWARDS d.b.a. HENRY EDWARDS TRUCKING CO., P.O. Box 97, Clinton, KY 47301. Representative: Mr. Ronald M. Lowell, 618 United American Bank Building, Nashville, TN 37219. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages, related advertising materials, packing materials, containers and pallets*, between St. Louis, MO and its commercial zone, on the one hand, and, on the other, Hopkinsville, KY and its commercial zone and Owensboro, KY and its commercial zone, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Quality Beers Distributing Co., Inc., 1010 East 6th Street, Owensboro, KY 42301. P. & E. Distributing Co., Bradshaw Pike at Gainsboro Boulevard, Hopkinsville, KY 42240. Send protests to: Mr. Floyd A. Johnson, District Supervisor, Interstate Commerce Commission, 100 North Main Building—Suite 2006, 100 North Main Street, Memphis, TN 38103.

MC 70832 (Sub-23TA), filed August 14, 1978. Applicant: NEW PENN MOTOR EXPRESS, INC., P.O. Box 630, Lebanon, PA 17042. Representative: S. Harrison Kahn, Suite 733 Investment Building, Washington, DC 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, except those of unusual value, class A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, between Reading, PA and Philadelphia, PA, serving all intermediate points; from Reading, PA over U.S. Hwy 422 to Philadelphia, PA, and return over the same route. Serving all points in the Commonwealth of Pennsylvania as off-route points within 35 miles of Philadelphia, PA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Send protests to: Charles F. Myers, District Supervisor, Interstate Commerce Commission, P.O. Box 869 Federal Square Station, Harrisburg, PA 17108.

NOTE.—This authority was applied for to eliminate the gateway of Allentown, PA acquired under Docket No. MC-F-13208, New Penn Motor Express, Inc., Purchase—Eagle Truck Transport Inc. Service date: March 28, 1978. No new service is involved.

MC 103798 (Sub-18TA), filed August 30, 1978. Applicant: MARTEN TRANSPORT LTD., Route 3, Mondovi, WI 54755. Representative: Robert S. Lee, 1000 First National Bank Building, Minneapolis, MN 55402. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cheese* from St. Olaf, IA to Topeka and Wichita, KS; Joplin and Kansas City, MO; Lincoln, NE and Oklahoma City, OK, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Mississippi Valley Milk Producers, Association, Inc., P.O. Box 4493, Davenport, IA 52808. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building and U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 106074 (Sub-66TA), filed September 18, 1978. Applicant: B AND P MOTOR LINES, INC., P.O. Box 727, Shiloh Road, Forest City, NC 28043. Representative: William E. Collier, 447 Calumet Place, San Antonio, TX 78209. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, except in bulk, from Fullerton and Salinas, CA to Cambridge, MD and Jackson, OH, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipping(s): RJR Foods, Inc., P.O. Box 3037, Winston-Salem, NC 27102. Send protests to: District Supervisor Terrell Price, Interstate Commerce Commission, 800 Briar Creek Road, Room CC516, Charlotte, NC 28205.

MC 107403 (Sub-1116TA), filed August 25, 1978. Applicant: MATLACK, INC., 10 West Baltimore Avenue, Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr. (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lead oxide*, in bulk, in tank vehicles, from Stowe, PA to Winston-Salem, NC, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Hammond Lead Products, Inc., 10 South Grosstown Road, Stowe, PA 19464. Send protests to: T. M. Esposito, Transportation Assistant, 600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 111170 (Sub-249TA), filed August 30, 1978. Applicant: WHEELING PIPE LINE, INC., P.O. Box 1718, 2811 North West Avenue, El Dorado, AR 71730. Representative: Tom E. Moore (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bromine*, in bulk, in tank vehicles from the facilities of Dow Chemical U.S.A. in Columbia County, AR to points in the United States on and east of U.S. Hwy 85, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Dow Chemical U.S.A., 14955 Sprague Road, P.O. Box 36000, Strongsville, OH 44136. Send protests to: District Supervisor William H. Land, Jr., 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201

MC 113434 (Sub-110TA), filed September 18, 1978. Applicant: GRA—BELL TRUCK LINE, INC., 679 Lincoln Avenue, Holland, MI. Representative: Miss Wilhelmina Boersma, 1600 First Federal Building, Detroit, MI 48226. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs and synthetic rubber* (except in bulk) moving in vehicles equipped with mechanical refrigeration between the facilities of Louisville Freezer Center, Jefferson County, KY, on the one hand, and, on the other, points in IL, IN, MI, MO, OH, PA, TN, WV, WI and that part of NY on and west of I-81, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Louisville Freezer Center, 2000 South Nine Street, Louisville, KY 40208. Send protests to: C. R. Flemming, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 225 Federal Building, Lansing, MI 48933.

MC 116063 (Sub-152TA), filed September 7, 1978. Applicant: WESTERN-COMMERCIAL TRANSPORT, INC., P.O. Box 270, 2929 West 5th Street, Fort Worth, TX 76101. Representative: W. H. Cole (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Animal fats, vegetable oils and blends and products thereof*, in bulk, in tank vehicles, from Dallas, TX to points in FL, GA, KY, NC, SC, TN and UT, for 180 days. Supporting shipper(s): The Proctor & Gamble Manufacturing Co., Cincinnati, OH 45201. Send protests to: Robert J. Kirspel, District Supervisor, Room 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

MC 116763 (Sub-435TA), filed August 30, 1978. Applicant: CARL SUBLER TRUCKING, INC., North West Street, Versailles, OH 45380. Representative: H. M. Richters (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except in bulk, in tank vehicles), from Chelsea, MI, to points in the States of PA, NJ and NY, for 180 days. Supporting shipper(s): Chelsea Milling Company, Clarence L. Athanson, General Traffic Manager, Chelsea, MI 48118. Send protests to: Paul J. Lowry, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 5514-B Federal Building, 550 Main Street, Cincinnati, OH 45202.

MC 117786 (Sub-30TA), filed July 31, 1978. Applicant: RILEY WHITTLE, INC., P. O. Box 19038, Phoenix, AZ 85009. Representative: Thomas F. Kilroy, Suite 406, Executive Building 6901 Old Keene Mill Road Springfield, VA 22150. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Merchandise, equipment and supplies, sold, used or distributed* by a manufacturer of cosmetics, from the facilities of Avon Products, Inc., in Springdale, Ohio, to Kansas City, Mo., for 180 days. Supporting shipper(s): Avon Products, Inc., 175 Progress Place, Springdale, Ohio. 45426. Send protests to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, Room 2020 Federal Building, 230 North First Avenue, Phoenix, AZ 85025.

MC 117786 (Sub-32TA), filed July 31, 1978. Applicant: RILEY WHITTLE, INC., P.O. Box 19038, Phoenix, AZ 85009. Representative: Thomas F. Kilroy, Suite 406, Executive Building, 6901 Old Keene Road, Springfield, VA 22150. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Merchandise, equipment, and supplies sold, used or distributed by a manufacturer of cosmetics*, from the facilities of Avon Products, Inc., in Springdale, OH to Atlanta, GA, for 180 days. Supporting shipper(s): Avon Products, Inc., 175 Progress Place, Springdale, OH 45426. Send protests to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, Room 2020 Federal Building, 230 North First Avenue, Phoenix, AZ 85025.

MC 117786 (Sub-33TA), filed July 31, 1978. Applicant: RILEY WHITTLE, INC., P.O. Box 19038, Phoenix, AZ 85009. Representative: Thomas F. Kilroy, Suite 406, Executive Building, 6901 Old Keene Road, Springfield, VA 22150. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Merchandise, equipment, and supplies*, sold, used, or distributed by a manufacturer of cosmetics, from the facilities of Avon Products, Inc., in Springdale, OH, to the facilities of Avon Products, Inc., in Monrovia and Pasadena, CA, for 180 days. Supporting shipper(s): Avon Products, Inc., 175 Progress Place, Springdale, OH 45426. Send protests to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, Room 2020, Federal Building, 230 North First Avenue, Phoenix, AZ 85025.

MC 119496 (Sub-12TA), filed August 30, 1978. Applicant: THE JAMES GIBBONS CO., 1700 Sutton Avenue, Baltimore, MD 21227. Representative: L. C. Major, Jr., Suite 400, Overlook Building, 6121 Lincolnia Road, Alexandria, VA 22312. Authority sought to operate as a *common carrier*, motor vehicle, over irregular routes, transporting: *Top tar*, in bulk, in tank vehicles, from the plant facilities of Uss Chemical Co, Clairton, PA, to the plant facilities of Baltimore Tar Corp., Baltimore, MD, for 180 days. Supporting shipper(s): J. D. Murphy, Vice President, Baltimore Tar Corp., 8143 Beachwood Road, P.O. Box 9052, Baltimore, MD 21222. Send protests to: William L. Hughes, District Supervisor, Interstate Commerce Commission, 1025 Federal Building, Baltimore, MD 21201.

MC 119551 (Sub-4TA), filed September 7, 1978. Applicant: MORGAN PIPE HAULERS, INC., P.O. Box 424 (U.S. Hwy 421 West), Greensboro, NC 27402. Representative: A. W. Flynn, Jr., Attorney, Harris, Flynn and Rightsell, 314 South Eugene Street, P.O. Box 180, Greensboro, NC 27402. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cast iron pipe and cast iron pipe fittings* from Radford, VA, to Newport News and Norfolk, VA, for further shipment by boat to points outside the continental United States, for 180 days. Supporting shipper(s): Lynchburg Foundry Co., P.O. Box 411, Lynchburg, VA 24505. Send protests to: Mr. Archie W. Andrews, District Supervisor, Interstate Commerce Commission, 624 Federal Building, 310 New Bern Avenue, P.O. Box 26896, Raleigh, NC 27611.

MC 121336 (Sub-4TA), filed September 7, 1978. Applicant: SUPERIOR FAST DRAYAGE, d.b.a. SUPERIOR EXPRESS, Terminal Annex 90060, P.O. Box 60100, 611 North Mission Road, Los Angeles, CA 90033. Representative: Michael J. Stecher, 256 Montgomery Street, San Francisco, CA 94104. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, livestock, commodities in bulk, household goods as defined by the Commission, and commodities requiring special equipment), moving on bills of lading of freight forwarders operating pursuant to part IV of the Interstate Commerce Act, between points in CA, on the one hand, and, on the other, points in OR, WA, and ID, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Superior Fast Freight, 611 North Mission Road, P.O. Box 60100, Terminal Annex, Los Angeles, CA 90060. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321, Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

MC 124306 (Sub-47TA), filed September 7, 1978. Applicant: KENAN TRANSPORT CO., INC., P.O. Box 2729, Chapel Hill, NC 27514. Representative: W. David Fesperman, P.O. Box 2729, Chapel Hill, NC 27514. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry plastics* (other than expanded), *and dry polyester resin*, in bulk, in tank or hopper-type vehicles from the plantsite of Hoechst Fibers Industries, at Spartanburg, SC, to Front Royal, VA, for 180 days. Applicant has also an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Hoechst Fibers Industries, P.O. Box 5887, Spartanburg, SC 29304. Send protests to: Mr. Archie W. Andrews, District Supervisor, Interstate Commerce Commission, 624 Federal Building, 310 New Bern Avenue, P.O. Box 26896, Raleigh, NC 27611.

MC 124393 (Sub-3TA), filed August 30, 1978. Applicant: FRANK POTTER TRUCKING CO., INC., 215 Main Street, Boonville, MO 65233. Representative: Tom B. Kretsinger, Kretsinger & Kretsinger, 20 East Franklin,

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Liberty, MO 64068. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Wax*, in tank vehicles, from Kalamazoo, MI, to Boonville, MO, under a continuing contract or contracts with Huebert Fiberboard Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Huebert Fiberboard Inc., P.O. Box 167, East Morgan Street, Boonville, MO 65233. Send protests to: Vernon V. Coble, District Supervisor, Interstate Commerce Commission, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

MC 124411 (Sub-20TA), filed August 15, 1978. Applicant: SULLY TRANSPORT, INC., P.O. Box 185, Sully, IA 50251. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer and fertilizer materials in bulk*, from the facilities of Land O'Lakes Agricultural Services Division, at or near Mason City, IA, to MN, NE, ND, SD, and WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Land O'Lake Agricultural Services Division, 2827 Eighth Avenue South, Fort Dodge, IA 50501. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 124896 (Sub-67TA), filed September 7, 1978. Applicant: WILLIAMSON TRUCK LINES, INC., Thorne and Ralston Streets, P.O. Box 3485, Wilson, NC 27893. Representative: Jack H. Blanshan, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bananas*, for Turbana Banana Corp., from Tampa, FL, to points in IL, IN, MI, MO, OH, PA, TN, WV, and WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Turbana Banana Corp., 2701 Lejeune Road, Coral Gables, FL 33134. Send protests to: Mr. Archie W. Andrews, District Supervisor, Interstate Commerce Commission, 624 Federal Building, 310 New Bern Avenue, P.O. Box 26896, Raleigh, NC 27611.

MC 125368 (Sub-36TA), filed September 7, 1978. Applicant: CONTINENTAL COAST TRUCKING CO., INC., P.O. Box 26, Holly Ridge, NC 28445. Representative: C.W. Fletcher (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass tubing and rubber articles*, between the facilities of Becton, Dickinson & Co., at Sumter, SC, on the one hand, and, on the other, Broken Bow, Columbus, and Holdrege, NE, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Becton, Dickinson & Co., Rutherford, NJ 07070. Send protest to: Mr. Archie W. Andrews, District Supervisor, Insterstate Commerce Commission, 624 Federal Building, 310 New Bern Avenue, P.O. Box 26896, Raleigh, NC 27611.

MC 125535 (Sub-6TA), filed September 7, 1978. Applicant: JOHN SHARP TRUCKING CO., INC., 346 Central Avenue; Woodburg, NJ 08097. Representative: Donald S. Helm (same as above). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Copper, copper products, insulated tubing*, and (2) *commodities used in the manufacture and distribution of the commodities in (1) above* (except commodities in bulk, in tank vehicles), between the facilities of Cerro Copper Products Co., at or near East St. Louis, IL, on the one hand, and, on the other, points in the United States in and east of KS, NE, ND, OK, SD, and TX, under a continuing contract or contracts with Cerro Copper Products, Co., P.O. Box 681, East St. Louis, IL 62202. Send protests to: John P. Lynn, Transportation Spectalist, Interstate Commerce Commission, 428 East State Street, Room 204, Trenton, NJ 08608.

MC 125689 (Sub-2TA), filed September 7, 1978. Applicant: BEATTYVILLE TRANSPORT, INC., P.O. Box 357, Catlettsburg, KY 41129. Representative: Oakie G. Ford, Secretary-Treasurer, (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products*, from Ironton, OH, to points in KY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Mr. Robert B. Tanner, Secretary-Treasurer, Tanner Oil Co., P.O. Box 105, Ironton, OH 45638. Send protests to: Mrs. Linda H. Sypher, District Supervisor, Interstate Commerce Commission, Louisville, KY 40202.

MC 135874 (Sub-139TA), filed September 14, 1978. Applicant: LTL PERISHABLES, INC., 550 East Fifth Street South, South St. Paul, MN 55075. Representative: K. O. Petrick, (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods* (except commodities in bulk), from the facilities of Fox Deluxe Pizza Co., at Joplin, MO, and the facilities of the Pillsbury Co., at or near Joplin and Carthage, MO, to points in SD, MN, CO, KS, IA, IL, IN, MI, KY, and TN. Restricted to traffic originating at the facilities of Fox Deluxe Pizza Co., and the Pillsbury Co., at Joplin and Carthage, MO, and destined to points in the named States, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Tortino's Frozen Foods Division, The Pillsbury Co., 7350 Commerce Lane, Fridley, MN 55432. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building and U.S. Courthouse, 110 South Fourth Street, Minneapolis, MN 55401.

MC 138469 (Sub-82TA), filed August 31, 1978. Applicant: DONCO CARRIERS, INC., 2025 South Nicholas, P.O. Box 75354, Oklahoma City, OK 73107. Representative: Jack H. Blanshan, Attorney at Law, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture*, from the facilities of Fox Manufacturing Co., Inc., at or near Rome, GA, to points in AR, KS, MO, OK, and TX, restricted to shipments originating at the named origin and destined to the named destinations, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Fox Manufacturing Co., Inc., P.O. Drawer A, Rome, GA 30151. Send protests to: Connie Stanley, Transportation Assistant, Room 240, Old Post Office and Courthouse Building, 215 Northwest Third, Oklahoma City, OK 73102.

MC 139587 (Sub-11TA) filed August 17, 1978. Applicant: BROWN REFRIGERATED EXPRESS, INC., P.O. Box 603, Fort Scott, KS 66701. Representative: Wilburn L. Williamson, 280 National Foundation Life Building, 3535 Northwest 58th Street, Oklahoma City, OK 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages and related advertising materials*, from Jefferson County, CO, to points in MO and WA, and *empty containers and materials and supplies*, used in connection with the production and distribution of malt beverages (except in bulk), from MO and WA to Jefferson County, CO, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Adolph Coors Co., Golden, CO 80401. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, 101 Litwin Building, Wichita, KS 67202.

MC 139858 (Sub-30TA), filed September 7, 1978. Applicant: AMSTAN TRUCKING, INC., 1255 Corwin Avenue, Hamilton, OH 45015. Representative: Chandler L. Van Orman, 1729 H Street NW., Washington, DC 20006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Steel doors and hardware*, used in their framing and installation and related equipment and supplies, from Cincinnati, OH, to points in the United States (except AK and HI), for 180 days. Restriction: The operations described above, if authorized, are subject to the following conditions: (1) The product description does not include commodities which because of their size or weight require the use of special equipment; (2) said operations are limited to transportation service to be performed under a continuing contract or contracts with American Standard Inc., New Brunswick, NJ. Supporting shipper(s): American Standard Inc., Gregory J. Decker, Manager—Rates. P.O. Box 2003, New Brunswick, NJ 08903. Send protests to: Paul J. Lowry, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 5514-B Federal Building, 550 Main Street, Cincinnati, OH 45202.

MC 140186 (Sub-29TA), filed August 30, 1978. Applicant: TIGER TRANSPORTATION, INC., P.O. Box 2248, Missoula, MT 59801. Representative: David A. Sutherland, Fulbright & Jaworski, 1150 Connecticut Avenue NW., Suite 400, Washington, DC 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, lumber products, wood, and wood products*, from points in ID and MT to points in IL, IA, KS, MN, MO, MT, NE, ND, SD, and WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: There are approximately 20 statements of support attached to the application which may be examined at the Interstate Commerce Commission at Washington, DC, or copies thereof which may be examined at the field office named below. Send protests to: Paul J. Labane, District Supervisor, Interstate Commerce Commission, 2602 First Avenue North, Billings, MT 59101.

MC 142231 (Sub-3TA), filed August 30, 1978. Applicant: TRI-L CONTRACT CARRIER, INC., 2400 Tower Place, 3340 Peachtree Road NE., Atlanta, GA 30326. Representative: Richard M. Tettelbaum, Serby & Mitchell, P.C., Fifth Floor, Lenox Towers S., 3390 Peachtree Road NE., Atlanta, GA 30326. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Wire impregnated iron or steel pipe, and iron and steel articles*, and (2) *such commodities* as are used by or are useful in the manufacture, distribution or sale of wire impregnated iron or steel pipe and iron or steel articles (except commodities in bulk and commodities which because of size or weight require special equipment), between the facilities of Oxylance Corp. and its wholly owned subsidiary, U.S. Tube, Inc., in Jefferson County, AL, on the one hand, and, on the other, points in the U.S. for 180 days. Restriction: The operations authorized herein are limited to a transportation service to be performed under a continuing contract or contracts with Oxylance Corp. and its wholly owned subsidiary, U.S. Tube, Inc.

NOTE.—Applicant is a wholly owned contract carrier subsidiary of Oxylance Corp. created in 1976 to replace Oxylance's private carriage operations. Pursuant to its (Sub-1) permit and former temporary authorities, applicant has handled virtually all of Oxylance's traffic moving between that shipper's present facility in Fulton County, GA, on the one hand, and, on the other, points in the U.S. Oxylance will remove its facility from Fulton County, GA to Jefferson County, AL in September, 1978, and create a wholly owned subsidiary, U.S. Tube, Inc., to also ship and receive at that location. Supporting shipper(s): Oxylance Corp. and U.S. Tube, Inc., 2400 Tower Place, 3340 Peachtree Road NE., Atlanta, GA 30326. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 West Peachtree Street NW., Room 300, Atlanta, GA 30309.

MC 142271 (Sub-4TA), filed August 30, 1978. Applicant: WAYNE E. WATKINS, d.b.a. WATKINS REFRIGERATED DISTRIBUTING SERVICE, 36316 85th Street East, Littlerock, CA 93543. Representative: Milton W. Flack, 4311 Wilshire Boulevard, Suite 300, Los Angeles, CA 90010. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Solar equipment or products, electrical or mechanical, and parts thereof*, from (1) Pleasantville, NJ; Kingsport, TN; and Princeton, WI, to the facilities of Grumman Energy Systems, Inc., located at Cocoran, CA; and (2) from the facilities of Grumman Energy Systems, Inc., located at Cocoran, CA, to the facilities of Grumman Energy Systems, Inc., located at Fort Worth, TX; Sturgis, MI; Wyandanch, NY; and Milledgeville, GA, for 180 days. Restriction: Said operations are limited to a transportation service to be performed under a continuing contract or contracts with Grumman Energy Systems, Inc. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Grumman Energy Systems, Inc., 4175 Veterans Memorial Highway, Ronkonkoma, NY 11779. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321 Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

MC 142300 (Sub-3TA), filed August 9, 1978. Applicant: F. A. F., INC., 5824 Lone Pine Road, Jacksonville, FL 32216. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. Authority sought to operate as a *contract carrier*, by motor vehicle over irregular routes, transporting: *Pharmaceutical drugs and related items, uncrated* from Jacksonville, FL to points in Mississippi, with no transportation for compensation on return except as otherwise authorized, for 180 days. Restriction: The service authorized herein is subject to the following conditions: The operations authorized herein are limited to a transportation service to be performed under a continuing contract, or contracts, with Lawrence Pharmaceuticals, Inc., of Jacksonville, FL. The operations authorized herein are restricted against the transportation of any article weighing more than 35 pounds and each article shall be considered as a separate and distinct shipment; and the operations authorized are restricted to service from one consignor at one location to one consignee at one location on any one day and shall be limited to the transportation of articles weighing in the aggregate less than 500 pounds. Supporting shipper(s): Lawrence Pharmaceuticals, Inc., 6100 Phillips Highway, Jacksonville, FL 32217. Send protests to: District Supervisor G. H. Fauss, Jr., Interstate Commerce Commission, Bureau of Operations, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 142516 (Sub-19TA), filed September 11, 1978. Applicant: ACE TRUCKING CO., INC., 1 Hackensack Avenue, South Kearny, NJ 07032. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Wire, nails, staples and stapling machines and materials, equipment and supplies* used in the manufacture or sale of the foregoing commodities, except commodities in bulk, from Long Island City, NY and Rolling Meadows, IL, to points in CA, FL, AL, TN, GA, TX, IL and NC, under a continuing contract or contracts with Spotnails, Inc., Long Island City, NY, for 180 days. Interstate authority to service IL is required due to export, import and stop off shipments in combined state operations. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Spot-

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nails, Inc., 43-34 32d Place, Long Island City, NY 11101. Send protests to: Robert E. Johnston, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 9 Clinton Street, Room 618, Newark, NJ 07102.

MC 142516 (Sub-20TA), filed September 11, 1978. Applicant: ACE TRUCKING CO., INC., 1 Hackensack Avenue, South Kearny, NJ 07032. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Titanium dioxide, materials and supplies* used in the manufacture and sale of Titanium Dioxide, except commodities in bulk, between the facilities of Titanium Pigment Division/NL Industries, Inc., Sayreville, NJ, on the one hand, and on the other points in the United States, except AK and HI, under a continuing contract or contracts with Titanium Pigment Division/NL Industries, Inc., Sayreville, NJ, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Titanium Pigment Division/NL Industries, Inc., 100 Chevalier Avenue, South Amboy, NJ 08879. Send protests to: District Supervisor Robert E. Johnston, Interstate Commerce Commission, Bureau of Operations, 9 Clinton Street, Room 618, Newark, NJ 07102.

MC 142672 (Sub-33TA), filed August 24, 1978. Applicant: DAVID BENEUX PRODUCE AND TRUCKING, INC., P.O. Drawer F, Mulberry, AR 72947. Representative: Don Garrison, 324 North Second Street, Rogers, AR 72756. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum and petroleum products in packages*, from the facilities of Texaco, Inc., at or near Jefferson County, TX, to points in IL, IN, MO, OH and TN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Texaco, Inc., 1111 Rusk, Houston, TX 77052. Send protests to: District Supervisor William H. Land, Jr., 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 143236 (Sub-20TA), filed September 11, 1978. Applicant: WHITE TIGER TRANSPORTATION, 40 Hackensack Avenue, South Kearny, NJ 07032. Representative: Jay Schiffres, 1001 Connecticut Avenue NW., Washington, DC 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Stack corrosion and emission control inhibitors* (except commodities in bulk) in vehicles equipped with mechanical refrigeration, and (2) *equipment, machinery, parts and supplies* used in conjunction with the commodities in (1) above from the facilities of Apollo Chemical Co., located at or near Whippany, NJ, on the one hand, and, on the other, points in VA, MO, OH, MN, GA, AR, CO and TN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Apollo Chemical Corp., 35 South Jefferson Road, Whippany, NJ 07981. Send protests to: Robert J. Johnston, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 9 Clinton Street, Room 618, Newark, NJ 07102.

MC 144709 (Sub-2TA), filed September 19, 1978. Applicant: MINERAL CARRIER, INC., 183 East Main Street, Bridgewater, NJ 08807. Representative: Paul J. Keeler, P.O. Box 253, South Plainfield, NJ 07080. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Calcium chloride* in dump vehicles, from Solvay, NY, to Paterson, NJ, restricted to a transportation service to be performed, under a continuing contract or contracts, with Para Industries, Inc., of Paterson, NJ, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Para Industries, Inc., 101 Oliver Street, P.O. Box 1888, Paterson, NJ 07509. Send protests to: Robert E. Johnston, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 9 Clinton Street, Room 618, Newark, NJ 07102.

MC 144888 TA, filed June 13, 1978. Applicant: BIL-RIC TRANSPORT SYSTEMS, INC., 92 East Main Street, Somerville, NJ 08876. Representative: Joel J. Nagel, 19 Back Drive, Edison, NJ 08817. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Sodium bicarbonate, sodium carbonate, and cleaning, scouring, and washing compounds* (except commodities in bulk), in boxes, bags, either loose or on pallets, from the plantsite and storage facilities of Church & Dwight Co., Inc., located at or near Syracuse, NY, to points in AL, FL, GA, NC, and SC, under a continuing contract or contracts with Church & Dwight Co., Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Church & Dwight Co., Inc., P.O. 369, Piscataway, NJ 08854. Send protests to: Robert E. Johnson, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 9 Clinton Street, Room 618, Newark, NJ 07102.

MC 145271 (Sub-1TA), filed September 6, 1978. Applicant: SCHULTZ CARRIERS, INC., 6038 Linden Lane, Dallas, TX 75230. Representative: Lawrence A. Windle, Winkle and Wells, Suite 1125 Exchange Park, P.O. Box 45538, Dallas, TX 75245. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bagged lime* from Manitowoc County, WI to points in TX, OK, LA and AR, for 180 days. Supporting shipper(s): Rockwell Lime Co., Route 2, Box 124, Manitowoc, WI 54220. Send protests to: Ms. Opal Jones, Transportation Specialist, Interstate Commerce Commission, Room 13 C 12, 1100 Commerce Street, Dallas, TX 75202.

MC 145311 (Sub-1TA), filed August 31, 1978. Applicant: ROADRUNNER TRANSPORTATION, INC., 8406 Mosley Road, Houston, TX 77075. Representative: William D. Lynch, P.O. Box 912, Austin, TX 78767. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Commodities* the transportation of which because of their size or weight require the use of special equipment or handling, between points in Harris and Matagorda Counties, TX, on the one hand, and, on the other, points in Rapides and Iberville Parrishes, LA, when moving from or to the facilities at which Brown and Root is the prime contractor, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Brown and Root, Transportation Department 0-6, 3302 Richardson Street, Houston, TX 77020. Send protests to: District Supervisor, John F. Mensing, 8610 Federal Building, 515 Rusk Avenue, Houston, TX 77002.

MC 145322TA, filed August 30, 1978. Applicant: WATSON TRUCKING, INC., Route 1, Old Dunbar Road, Byron, GA 31008. Representative: J. Michael May, Suite 508, 1447 Peachtree Street, NE., Atlanta, GA 30309. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Sand, gravel, road building, and construction aggregates*, in bulk in dump vehicles, from the facilities of Clyde Owens Sand & Gravel, Inc., in Hardin County, TN, to Yellow Creek Dam project in Tishomingo County, MS, under a continuing contract or contracts with Clyde Owens Sand & Gravel, Inc., located at Collierville, TN. Temporary authority sought for 180 days; emergency temporary authority application also filed. Supporting shipper: Clyde Owens Sand & Gravel , Inc., P.O. Box 190, Collierville, TN 38017. Send protests to: Sara K. Davis, Transportation Assistant, ICC, 1252 West Peachtree Street, NW., Atlanta, GA 30309

MC 145329TA, filed September 7, 1978. Applicant: LARRY L. SMITH, Box 74, Geff, IL 62842. Representative: Robert T. Lawly, 300 Reisch Building, Springfield, IL 62701. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Wood chips*, from Olney and Ramsey, IL, to Terre Haute, IN, and (2) *unfinished lumber*, from Olney and Ramsey, IL, to Evansville, Indianapolis, Jasper, and Logansport, IN, for the account of Paul Hites, d.b.a. Paul E. Hites & Son, Olney, IL, under a continuing contract or contracts with Paul E. Hites & Son, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Paul E. Hites & Son, Rural Route 2, Olney, IL 62450. Send protests to: Charles D. Little, District Supervisor, Interstate Commerce Commission, 414 Leland Office Building, 527 East Capitol Avenue, Springfield, IL 62701.

MC 145449 TA, filed September 15, 1978. Applicant: AGRA OVERSEAS CORP., 5400 Northwest 32nd Court, Miami, FL. 33142. Representative: Theodore Zelman, 3300 Rice Street, Suite 7, Coconut Grove, FL 33133. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, in cargo containers, from company's warehouse in Miami, to and from the Port of Palm Beach via the most direct routes possible, also from the Port of Miami to the Port of Palm Beach, all in FL under a continuing contract, or contracts, with Suncoast Shipping, Ltd., for 180 days. There is no environmental impact involved in this application. Supporting shipper(s): Suncoast Shipping, Ltd., 5400 Northwest 32nd Court, Miami, FL 33142. Send protests to: Donna M. Jones, Transportation Assistant, Interstate Commerce Commission, Monterey Building, Suite 101, 8410 Northwest, 53d Terrace, Miami, FL 33166.

MC 145450 TA, filed September 15, 1978. Applicant: H. D. EDGAR TRUCKING CO., INC., Route 1, Box 48, Opp, AL 36467. Representative: Chester A. Zyblut, 366 Executive Building, 1030 15th Street NW., Washington, DC 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wheeled toys, juvenile furniture, and outdoor playground equipment*, from Dothan, AL to points in CA, WA, OR, NE, UT, ID, MO, CO, NM, WY, and AR , for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Hedstrom Co., Louise Street, Dothan, AL 36301. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 145451 TA, filed September 22, 1978. Applicant: R. M. S., INC., P.O. Box 249, Route 2, County Trunk F, Edgerton, WI 53534. Representative: James A. Spiegel, Olde Towne Office Park, 6425 Odana Road, Madison, WI 53719. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, from Detroit, MI, to Cleveland, Pewaukee, Racine, Spring Green, and Wisconsin Dells, WI. for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): There are approximately five (5) statements of support attached to this application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies thereof which may be examined at the field office named below. Send protests to: Ronald A. Morken, District Supervisor, Interstate Commerce Commission, 212 East Washington Avenue, Room 317, Madison, WI 53703.

MC 145508TA, filed August 15, 1978. Applicant: A M & M INC., P.O. Box 1627, Jackson, TN 38301. Representative: Mr. R. Connor Wiggins, Jr., 100 North Main Building, Suite 909, Memphis, TN 38103. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plastic pipe*, from Jackson, TN, to points in NC, VA, and WV, under a continuing contract or contracts with Johns-Manville Sales Corp., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Johns-Manville Sales Corp., 2222 Kensington Court, Oak Brook, IL 60521. Send protests to: Mr. Floyd A. Johnston, District Supervisor, Interstate Commerce Commission, 100 North Main Building, Suite 2006, 100 North Main Street, Memphis, TN 38103.

Passenger Carriers

MC 2060 (Sub-11TA), filed September 12, 1978. Applicant: PINE HILL-KINGSTON BUS CORP., 495 Broadway, Kingston, NY 12401. Representative: Bruce E. Mitchell, Serby & Mitchell, P.C., Fifth Floor, Lenox Towers I, 3390 Peachtree Road, Atlanta, GA 30326. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Express and newspapers*, in the same vehicle with passengers, (1) between Oneonta, NY, and New York, NY, from Oneonta over NY Hwy 28 to Mount Tremper, NY, then over NY Hwy 212 to Woodstock, NY, then over NY Hwy 375 to junction NY Hwy 28, then over NY Hwy 28 to Kingston, NY (also from Oneonta over NY Hwy 28 via Mount Tremper to Kingston, NY), then over NY Hwy 9W to Newburgh, NY, then over NY Hwy 32 to junction NY Hwy 17, then over NY Hwy 17 via Harriman, NY, to the NY-NJ State line (also from Kingston over NY State Thruway to Suffern, NY, then over NY Hwy 17 to the NY-NJ State line), then over NJ Hwy 17 to junction NJ Hwy 3, then over NJ 3 to junction depressed highway leading to the Lincoln Tunnel, then over depressed highway and via the Lincoln Tunnel to New York, NY, and return over the same route. Restriction: Service (a) to intermediate points is limited: (1) To those points between Oneonta and a point 1 mile west of the westerly city line of Kingston, NY, or (2) to the transportation of express and newspapers, the entire movement of which begins at intermediate point between Oneonta and a point 1 mile west of the westerly city line of Kingston, NY, and ends at intermediate point on carrier's presently authorized service routes in NJ, or vice versa, and (b) is restricted against the movement of express and newspapers the entire movement of which begins at New York, NY, and ends at any point in NJ, or vice versa. (2) Between Cooperstown, NY, and Oneonta, NY, serving the intermediate points of Index, Hartwick, Seminary, Milford, Portlandville, Milford Center, and Colliersville, NY, from Cooperstown over NY Hwy 28 to Oneonta, and return over the same route. (3) Serving Kingston, NY, as an intermediate point for the purpose of interlining express and newspapers only, in connection with carrier's presently authorized regular route operations between Oneonta and New York, NY. (4) Express and newspapers, in connection with carrier's authorized regular route operations, serving no intermediate points, and serving junction NY Hwy 17 and Interstate Hwy 87 and junction Interstate Hwy 95 and NJ Hwy 3 for purposes of joinder only, between junction NY Hwy 17 and Interstate Hwy 87 at or near exit 15 of Interstate Hwy 87, and junction Interstate Hwy 95 and NJ Hwy 3 at or near exit 17 of Interstate Hwy 95, from junction NY Hwy 17 and Interstate Hwy 87 over Interstate Hwy 87 to junction Garden State Parkway at or near exit 14A of Interstate Hwy 87, then over Garden State Parkway to junction Interstate Hwy 80, then over Interstate Hwy 80 to junction Interstate Hwy 95, then over Interstate Hwy 95 to junction NJ Hwy 3, and return over the same route, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): There are approximately six (6) statements of support attached

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to the application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies thereof which may be examined at the field office named below. Send protests to: Robert A. Radler, District Supervisor, P.O. Box 1167, Albany, NY 12201.

MC 145493TA, filed August 28, 1978. Applicant: LONGVIEW LIMOUSINE SERVICE, Clarence E. Ray, Jr. and Sam Curnutt, 906 South 12th Street, Longview, TX 75602. Representative: Billy R. Reid, P.O. Box 9093, Fort Worth, TX 76107. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Passengers and baggage*, when carried in same vehicle with passengers, limited to the transportation of not more than 11 passengers in any one vehicle, not including driver between Longview, TX, and Shreveport Regional Airport, Shreveport, LA, over Interstate Hwy 20, serving no intermediate points, for 180 days. Restriction: Restricted to transportation of passengers and baggage having an immediate prior or subsequent movement by air. Supporting shipper(s): Texas Eastman Co./division of Eastman Kodak, P.O. Box 7444, Longview, TX 75602. Jackson Travel Agency, 310 South Fredonia, P.O. Box 3126, Longview, TX 75601. Harris Corp./Antenna Division, Kilgore, P.O. Box 1277, Kilgore, TX 75662. Marathon LeTourneau Co., Longview Division, 2300 South McArthur Street, Longview, TX 75602. Send protests to: Opal M. Jones, Transportation Assistant, Interstate Commerce Commission, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

By the Commission.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 78-31710 Filed 11-9-78; 8:45 am]

[7035-01-M]

[Notice No. 202]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

OCTOBER 25, 1978.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application. A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

MC 2253 (Sub-84TA), filed September 12, 1978. Applicant: CAROLINA FREIGHT CARRIERS CORP., P.O. Box 697, Cherryville, NC 28021. Representative: J. S. McCallie, P.O. Box 697, Cherryville, NC 28021. Authority sought to operate as a *common carrier*, by motor vehicle, over a regular route, transporting: *Bicycle parts and accessories* serving the facilities of Cycle Products Co. at Emigsville, PA as an off-route point in connection with carrier's regular route operations. Restriction: Restricted to the transportation of traffic originating at or destined to points in Ohio. For 180 days applicant has also filed an underlying ETA seeking up to 90 days of operating authroity. Supporting shipper(s): Cycle Products Co. Aberdeen Road, Emigsville, PA 17318. Send protests to: District Supervisor Terrell Price, 800 Briar Creek Road, Rm. CC516, Mart Office Building Charlotte, NC 28205.

MC 3252 (Sub-104TA), filed September 11, 1978. Applicant: MERRILL TRANSPORT CO., 1037 Forest Avenue, Portland, ME 04104. Representative: Francis E. Barrett, Jr., 10 Industrial Park Road, Hingham, MA 02043. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Caustic soda*, in bulk, from Searsport, ME to Gilman, VT, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Georgia-Pacific Corp., 800 Summer Street, Stamford, CT 06901. Send protests to: Interstate Commerce Commission, Bureau of Operations, Room 305, 76 Pearl Street, Portland, ME 04111.

MC 4687 (Sub-21TA), filed July 20, 1978. Applicant: BURGESS AND COOK, INC., 21 North 2d Street, P.O. Box 458, Fernandina Beach, FL 32034. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, GA 32202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Insulation and insulation materials* except in bulk from Leeds, AL to points in FL and GA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Rock Wool Manufacturing Co., P.O. Box 3332A, Birmingham, AL 35205. Send protests to: District Supervisor G. H. Fauss, Jr., ICC, Bureau of Operations, Box 35008, 400 West Bay Street, Jacksonville FL 32202.

MC 41960 (Sub-7TA), filed September 12, 1978. Applicant: JUNG TRANSPORTATION CO., INC., 8901 West Flagg Avenue, Milwaukee, WI 53225. Representative: Donald S. Mullins, 4704 West Irving Park Road, Chicago, IL 60641. Authority sought for 180 days to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise as is dealt in by wholesale and retail drug, grocery, and food business houses, including equipment, materials, and supplies normally used in the conduct of such business*, from Bedford Park and Elk grove Village, IL, and Milwaukee, WI, to Menominee, MI, and points in the following Wisconsin counties: Adams, Brown, Calumet, Columbia, Dane, Dodge, Door, Fond du Lac, Green, Green Lake, Jefferson, Juneau, Kenosha, Kewaunee, Langlade, Lincoln, Manitowoc, Marathon, Marinette, Marquette, Menominee, Milwaukee, Oconto, Oneida, Outagamie, Ozaukee, Portage, Racine, Rock, Sauk, Shawano, Sheboygan, Walworth, Washington, Waukesha, Waupaca, Waushara, Winnebago and Wood. Supporting shipper(s): Bristol Myers Co., 345 Park Avenue, New York, NY 10022 (I.M. Ross). Warner Lambert Co., Morris Plains, NJ 07850 (Leonard J. Baker). Send protests to: Gail Daughterty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 52460 (Sub-220TA), filed September 12, 1978. Applicant: ELLEX TRANSPORTATION, INC., 1420 West 35th Street, Tulsa, OK 74107. Representative: Wilburn L. Williamson, 280 National Foundation Life Building, Oklahoma City, OK 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except in bulk) in vehicles equipped with mechanical refrigeration. From facilities of Morton Frozen Foods Division, ITT Continental Baking Co. Inc., at Russellville, AR and Searcy, AR to points in AL, points in FL on and west of FL Hwy 65, GA, KY, LA, MS and TN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Morton Frozen Foods, Division of ITT, Continental Baking Co., Inc., 1 Morton Drive, Charlottesville, VA 22906. Send protests to: Connie Stanley, Transportation Assistant, Room 240 Old Post Office and Court House Building, Oklahoma City, OK 73102.

MC 59135 (Sub-34TA), filed September 11, 1978. Applicant: RED STAR EXPRESS LINES OF AUBURN, INC., d.b.a. RED STAR EXPRESS LINES, 24-50 Wright Avenue, Auburn, NY 13021. Representative: Donald G. Hichman, 24-50 Wright Avenue, Auburn, NY 13021. Authority sought to operate as a *common carrier*, by motor vehicle, transporting: *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, those requiring special equipment, livestock, and those injurious or contaminating to other lading), serving the facilities of Bata Shoe Co., at Belcamp, MD, as an off-route point in connection with applicant's presently authorized regular route service, for 180 days. Supporting shipper: Breece Comer, General Traffic Manager, Bata Shoe Co., Inc., Belcamp, MD 21017. Send protest to: Interstate Commerce Commission, U.S. Courthouse and Federal Building, 100 South Clinton Street, Room 1259 Syracuse, NY 13260.

MC 61396 (Sub-359TA), filed September 12, 1978. Applicant: HERMAN BROS, INC., 2565 St. Marys Avenue P.O. Box 189, Omaha, NE 68101. Representative: Duane L. Stromer, 2565 St. Marys Avenue, P.O. Box 189, Omaha, NE 68101. Authority sought to operate as a *common carrier*, by motor vehicle over irregular routes, transporting: *Liquid fertilizer*, in bulk, in tank vehicles, from the facilities of Terra Chemicals International, Inc., at or near Blair, NE, to points in IA, MN, SD, WI and IL, for 180 days. Supporting shipper(s): James A. Frady, Traffic Coordinator, Terra Chemicals International, Inc., P.O. Box 1828, Sioux City, IA 51102. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 94265 (Sub-282TA), filed September 11, 1978. Applicant: BONNEY MOTOR EXPRESS, INC., P.O. Box 305—Route 460 West, Windsor, VA 23487. Representative: John J. Capo, Suite 212, 5299 Roswell Road NE., Atlanta, GA 30342. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except in bulk) in temperature controlled vehicles from the facilities owned and/or utilized by J. H. Filbert, Inc. located in Fulton, Clayton, Dekalb, Cobb and Douglass Counties,-GA, to points in KY, MD, NC, OH, SC, TN, VA, WV and DC; for 180 days. Supporting shipper: J. H. Filbert, Inc., 3701 Southwestern Boulevard, Baltimore, MD. Send protests to: Paul D. Collins, District Supervisor, Interstate Commerce Commission, 10-502 Federal Building, 400 North Eighth Street, Richmond, VA 23240.

MC 95540 (Sub-1040TA), filed September 11, 1978. Applicant: WATKINS MOTOR LINES, INC., 1144 West Griffin Road, P.O. Box 1636, Lakeland, FL 33802. Representative: Benjy W. Fincher, 1144 West Griffin Road, P.O. Box 1636, Lakeland, FL 33802. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods* (except commodities in bulk, in tank vehicles) from Louisville, KY to points in NC, SC TN, and MS, for 180 days. Supporting shipper(s): Louisvill Freezer Center, 2000 South 9th Street, Louisville, KY 40208. Send protests to: Donna M. Jones, Transportation Assistant, Interstate Commerce Commission-BOp, Monterey Building, Suite 101, 8410 Northwest 53rd Terrace, Miami, FL 33166.

MC 95540 (Sub-104TA), filed September 11, 1978. Applicant: WALKINS MOTOR LINES, INC., 1144 West Griffin Road, P.O. Box 1636, Lakeland, FL 33802, Representative: Benjy W. Fincher, 1144 West Griffin Road, P.O. Box 1636, Lakeland, FL 33802. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except commodities in bulk, in tank vehicles) from Atlanta, GA to points in AL, FL, KY, LA, MS,. NC, SC, TN, VA and WV, for 180 days. There is no environmental impact involved in this application. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Munford Refrigerated Warehouse, Division of Munford, Inc., 6150 Xavier Drive SW. Atlanta, GA 30336. Send protests to: Donna M. Jones, Transportation Assistant, Interstate Commerce Commission-BOp, Monterey Building, Suite 101, 8410 Northwest 53rd Terrace, Miami, FL 33166.

MC 106920 (Sub-77TA), filed September 11, 1978. Applicant: RIGGS FOOD EXPRESS, INC., an Ohio corporation, P.O. Box 26—West Monroe Street, New Bremen, OH 45896. Representative: Betty Kominsk, P.O. Box 26, New Bremen, OH 45896. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Spaghetti and macaroni*, from C.F. Mueller Co., at Jersey City, NJ, to points in OH, MI, IL and WI, for 180 days. Supporting shipper(s): C.F. Mueller Co., 180 Baldwin Avenue, Jersey City, NJ 07306. Send protests to: Keith D. Warner, District Supervisor, Bureau of Operations-ICC, 313 Federal Office Building, 234 Summit Street, Toledo, OH 43604.

MC 107478 (Sub-36TA), filed September 12, 1978. Applicant: OLD DOMINION FREIGHT LINE, INC., 1791 Westchester Drive, P.O. Box 2006, High Point, NC 27261. Representative: C. G. Pusey (same as above). Authority sought to operate as a *common carrier*, by motor vehicle over irregular routes, transporting: *Empty metal cans*, from Tampa, FL, to Charlotte, NC, for 180 days. Supporting shipper: Shasta Beverage Co., P.O. Box 5447, Charlotte, NC 28225. Send protests to: Archie Andrews, District Supervisor, Interstate Commerce Commission, 624 Federal Building, 310 New Bern Avenue, P.O. Box 26896, Raleigh, NC 27611.

MC 107912 (Sub-20TA), filed September 11, 1978. Applicant: REBEL MOTOR FREIGHT, INC., P.O. Box 9384, 3060 Gill Road, Memphis, TN 38109. Representative: Mr. James N. Clay III, 2700 Sterick Building, Memphis, TN 38103. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment) to serve the facilities of Parker Hannifin Corp., at or near Como, MS as an off-route point in conjuction with its other authorized regular routes, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Parker Hannifin Corp., P.O. Box 780, Batesville, MS 38606. Send protests to: Mr. Floyd A. Johnson, District Supervisor, Interstate Commerce Commission, 100 North Main Street, 100 North Main Building—Suite 2006 Memphis, TN 38103.

NOTE.—Applicant intends to tack the authority here applied for to authority held by it in MC-107912, and further intends to interline with other carriers at Memphis, TN who presently serve that gateway and at Jackson, MS.

MC 113666 (Sub-138TA), filed September 11, 1978. Applicant: FREE-

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PORT TRANSPORT, INC., 1200 Butler Road, Freeport, PA 16229. Representative: D.R. Smetanick, Vice President, 1200 Butler Road., Freeport, PA 16229. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Basketball backboards, crib bottoms and cut-to-size hardboard or fibre board* in an unfinished condition, form Frankfort, IN to Hallam and Elverson, PA and Milwaukee, WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Harmeson Manufacturing Co., Inc., 509 West Barner, Frankfort, IN 46041. Send protests to: John J. England, District Supervisor, Interstate Commerce Commission, 2111 Federal Building, 1000 Liberty Avenue. Pittsburgh, PA 15222.

MC 114334 (Sub-36TA), filed September 12, 1978. Applicant: BUILDERS TRANSPORTATION CO., 3710 Tulane Road, Memphis, TN 38116. Representative: Mr. Dale Woodall, 900 Memphis Bank Building, Memphis, TN 38103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Precast and prestressed concrete products* from the plantsite of Featherlight Corp., Memphis, TN to Homer and Talullah, LA, for 180 days. Supporting shipper(s): Featherlight Corp., 2615 Channel Avenue, Memphis TN 38113. Send protests to: Mr. Floyd A. Johnson, District Supervisor, Interstate Commerce Commission, 100 North Main Building—Suite 2006, 100 North Main Street, Memphis, TN 38103.

MC 114632 (Sub-182TA), filed September 11, 1978. Applicant: APPLE LINES, INC., 212 Southwest Second Street, P.O. Box 287, Madison, SD 57042. Representative: Michael L. Carter, 212 Southwest Second Street, P.O. Box 287, Madison, SD 57042. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except commodities in bulk), from the facilities of Continental Freezers of IL at or near Chicago, IL to points in IN, KY, MI, MO, OH, and WI, for 180 days. Supporting shipper(s): Continental freezers of Illinois, 4220 South Kildare Boulevard, Chicago, IL 60632, Roger H. Shay, Traffic Manager. Send protests to: J. L. Hammond, District Supervison Interstate Commerce Commission, Bureau of Operations, Room 455, Federal Building, Pierre, SD 57501.

MC 115322 (Sub-147TA), filed September 11, 1978. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, FL 32809. Representative: L. W. Fincher, P.O. Box 426, Tampa, FL 33601. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned and preserved foodstuffs* between the facilities of National Fruit Products Co., Inc. located at Martinsburg, WV, Winchester, VA, Temberville, VA and Lincolnton, NC, for 180 days. Supporting shipper(s): National Fruit Products Co., Inc., 550 Fairmont Avenue, Winchester, VA 22601. Send protests to: District Supervisor G. H. Fauss, Jr., ICC, Bureau of Operations, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 115322 (Sub-148TA), filed September 11, 1978. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, FL 32809. Representative: L. W. Fincher, P.O. Box 426, Tampa, FL 33601. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned and preserved foodstuffs* from the facilities of National Fruit Product Co., at or near Lincolnton, NC to points in AL, GA, FL, LA, MS, TN, SC, and VA for 180 days. Supporting shipper(s): National Fruit Products Co., Inc., 550 Fairmont Avenue, Winchester, VA 22601. Send protests to: District Supervisor G. H. Fauss, Jr., ICC, Bureas of Operations, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 115904 (Sub-127TA), filed September 12, 1978. Applicant: GROVER TRUCKIN CO., 1710 West Broadway, Idaho Falls, ID 83401. Representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. Authority sought to operate in interstate or foreign commerce as a *common carrier* by motor vehicle, over irregular routes, transporting: (1) *Flatglass*, from the facilities of Guardian Industries located at or near Kingsburg, CA to points in the United States in and west of the States of OH, KY, TN, and AL (except AK and HI); (2) *Flatglass*, from the facilities of Guardian Industries at or near Kingsburg, CA to the ports of entry located on the international boundary line between the United States and Canada located in WA, ID, and MT. Restricted to traffic destined in foreign commerce to the Provinces of BC, AB, and SK; and (3) *Materials, equipment, and supplies* used in the manufacture and distribution of flat glass from points in the United States in and west of OH, KY, TN, and AL (except AK and HI) to the facilities of Guardian Industries at or near Kingsburg, CA. Restricted in (3) above against the transportation of commodities which because of their size and weight require the use of special equipment, commodities described in Mercer Extension Oil Field Commodities 74 MCC 459 and acids and chemicals in bulk for 180 days. Applicant has filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Guardian Industries Corp., 14600 Romine Road, Carleton, MI 48117. Send protests to: Barney L. Hardin, District Supervisor, Interstate Commerce Commission, 1471 Shoreline Drive, Suite 110, Boise, ID 83706.

MC 116947 (Sub-59TA), filed September 8, 1978. Applicant: SCOTT TRANSFER CO., INC., 920 Ashby Street, SW., Atlanta, GA 30310. Representative: William Addams, Suite 212, 5299 Rosewell Road, NE., Atlanta, GA 30342. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Metal containers, metal container ends, pallets, paper shrouds, chipboard, decorated tin plate in sheets, bottle caps, and materials and supplies* (except commotities in bulk) used in the manufacture and distribution of metal containers (1) between the facilities of Crown Cork & Seal Co. in GA, MD, LA, NJ, SC and TX; (2) and between the facilities named in (1) above on the one hand, and points in FL, NC, PA, WV, TN, AL, MS, AR, TX and LA on the other, under a continuing contract or contracts with Crown Cork & Seal Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Crown Cork & Seal Co. Inc., 9300 Ashton Road, Philadelphia, PA 19136. Send protests to: Transportation Assistant Sara K. Davis, Interstate Commerce Commission, 1251 West Peachtree Street NW., Room 300, Atlanta, GA 30309. (Hearing site: Atlanta, GA.)

MC 119726 (Sub-142TA), filed September 12, 1978. Applicant: N.A.B. TRUCKING CO., INC., 1644 West Edgewood Avenue, Indianapolis, IN 46217. Representative: James L. Beattey, 130 East Washington Street, Suite 1000, Indianapolis, IN 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages, related advertising materials, and empty malt beverage containers.* between Duval County, FL, and Columbus, GA. Restricted to traffic orginating at or destined to the facilities of B & B Beverage Co., located at Columbus, GA, and further restricted against the transportation of commodities in bulk, in tank vehicles, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): B & B Beverage Co., 6103 Bud Drive, Columbus, GA 31904. Send protests to: Beverly J. William, Transportation Assistant, Interstate Commerce Commission, Federal Building and U.S. Courthouse, 46 East Ohio Street, Room 429, Indianapolis, IN 46204.

MC 123383 (Sub-85TA), filed September 12, 1978. Applicant: BOYLE BROTHERS, INC., RD 2, Box 329C, Medford, NJ 08055. Representative: Morton E. Kiel, Suite 6193, 5 World Trade Center, New York, NY 10048. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Composition board*, from Ashtabula, OH to points in NJ, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: MacMillan Bloedel Building Materials Division of MacMillan Bloedel, Inc., 6540 Powers Ferry Road, Atlanta GA 30390. Send protests to: John P. Lynn, Transportation Specialist, Interstate Commerce Commission, 428 East State Street, Room 204, Trenton, NJ 08608.

MC 124174 (Sub-121TA), filed September 11, 1978. Applicant: MOMSEN TRUCKING CO., 13811 "L" Street, Omaha, NE 68137. Representative: Karl E. Momsen, 13811 "L" Street, Omaha, NE 68137. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fibreboard pulpboard, boxes, containers or cartons, corrugated flat or folded flat, loose or in packages*, from the plantsite or storage facilities of Tri-Wall Containers, Inc., at or near Butler, IN to Alcester, SD; Kearney and Valley, NE; Fairfield, IA; Mankato, MN; Hutchinson, KS, and Whiteman Air Force Base, MO, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Tri-Wall Containers, Inc., Patrick Tyler, Traffic Manager, P.O. Box 8, County Road 71, Butler, IN 46721. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, NE 68120.

MC 125335 (Sub-30TA), filed September 11, 1978. Applicant: GOODWAY, P.O. Box 2283, York, PA 17405. Representative: Walter J. Seelig, P.O. Box 2283, York, PA 17405. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Prunes, prune extract, and prune juice in containers* from the facilities of Diamond/Sunsweet Inc., at or near Bordentown, NJ and Burlington, NJ to points in FL for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Diamond/Sunsweet Inc., P.O. Box 1727, Stockton, CA 95201. Send protests to: Charles F. Myers, District Supervisor, Interstate Commerce Commission, P.O. Box 869 Federal Square Station, Harrisburg, PA 17108.

MC 126118 (Sub-97TA), filed September 11, 1978. Applicant: CRETE CARRIER CORP., P.O. Box 81228, Lincoln, NE 68501. Representative: Duane W. Acklie, P.O. Box 81228, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Wine and alcoholic beverages* (except commodities in bulk, in tank vehicles), (2) *non-alcoholic beverages* when moving in mixed loads with (1) above (except commodities in bulk, in tank vehicles), from points in CA, to points in CT, DE, IL, IN, IA, KS, KY, MD, MI, MN, MO, NE, NH, NJ, NY, OH, OK, PA, RI, TN, VA, WV, WI, and DC, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: There are approximately 22 statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies thereof which may be examined at the field office named below. Send protests to: Max H. Johnston, District Supervisor, 285 Federal Building and Courthouse, 100 Centennial Mall North, Lincoln, NE 68508.

NOTE.—Common control may be involved.

MC 126243 (Sub-26TA), filed September 12, 1978. Applicant: ROBERTS TRUCKING CO., INC., U.S. Highway 271 South, P.O. Drawer G, Poteau, OK 74953. Representative: Prentiss Shelley, P.O. Drawer G, Poteau, OK 74953. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass containers*, from the plantsite and storage facilities of Midland Glass Co. at or near Henryetta, OK to Eden, NC and Martinsville, VA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Midland Glass Co., Inc., P.O. Box 557, Clifford, NJ 07721. Send protests to: District Supervisor William H. Land, Jr., 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 126473 (Sub-33TA), filed September 11, 1978. Applicant: HAROLD DICKEY TRANSPORT, INC., Packwood, IA 52580. Representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, IA 52501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products, foodstuffs, and articles* distributed by meat packing plants (except hides and commodities in bulk), from the facilities of Geo. A Hormel & Co., at or near Austin, MN and Fort Dodge, IA to all points in AL, FL, GA, NC, SC and TN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Geo. A. Hormel & Co., P.O. Box 800, Austin, MN 55912. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 127187 (Sub-42TA), filed September 12, 1978. Applicant: FLOYD DUENOW, INC., 1728 Industrial Park Boulevard, P.O. Box 492, Fergus Falls, MN 56537. Representative: James B. Hovland, 414 Gate City Building, P.O. Box 1680, Fargo, ND 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer and fertilizer material*, in bulk, from the facilities of Land O' Lakes Agricultural Services Division at or near Mason City, IA, to points in MN, WI, ND, SD and NE, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Land O' Lakes Agricultural Services Division, 2827 8th Avenue South, Fort Dodge, IA 50501. Send protests to: Ronald R. Mau, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 268 Federal Building and U.S. Post Office, 657 2d Avenue North, Fargo, ND 58102.

MC 128527 (Sub-125TA), filed September 12, 1978. Applicant: MAY TRUCKING CO., P.O. Box 400, Payette, ID 83661. Representative: Timothy R. Stivers, Registered Practitioner, P.O. Box 162, Boise, ID 83701. Authority sought to operate in interstate commerce as a *common carrier*, by motor vehicle, over irregular routes, transporting, for 180 days. *Such merchandise* as is dealt in by retail department stores, and *materials and supplies* used in the conduct of such business, from the facilities of the Bon Marche Distribution Center in Seattle, WA, to Boise, Idaho Falls, Nampa, Pocatello, and Twin Falls, ID; Great Falls and Missoula, MT; and Ogden, UT, and (2) carriers and containers second-hand, From Great Falls and Missoula, MT to Spokane, WA. Applicant has filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Bon Marche Co., 17000 Southcenter Parkway, Tukwila, WA 98188. Send protests to Barney L. Hardin, District Supervisor, Interstate Commerce Commission, 1471 Shoreline Drive, Suite 110, Boise, ID 83706.

MC 128527 (Sub-126TA), filed September 12, 1978. Applicant: MAY TRUCKING CO., P.O. Box 400, Payette, ID 83661. Representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from the facilities of Chef Francisco at or near Eugene, OR to points in IA, IL, IN, KS, LA, MI, MN, MO, NE, ND, OK, SD, TX, and WI, for 180 days. Appli-

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cant has filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Chef Francisco, Inc., 1400 Cross Street, Eugene, OR. Send protests to Barney L. Hardin, District Supervisor, Interstate Commerce Commission, 1471 Shoreline Drive, Suite 110, Boise, ID 83706.

MC 129032 (Sub-54TA), filed September 12, 1978. Applicant: TOM INMAN TRUCKING, INC., 6015 South 49th West Avenue, Tulsa, OK 74107. Representative: David R. Worthington (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods* from the facilities of Fox De Luxe Pizza Co. at Joplin, MO and the facilities of the Pillsbury Co. at or near Joplin and Carthage, MO to points in CO, IL, IN, OK, KS, TX and UT. For 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Totino's Frozen Foods Division, The Pillsbury Co., 7350 Commerce Lane, Fridley, MN 55432. Send protests to: Connie Stanley, Transportation Assistant, Room 240, Old Post Office and Court House Building, 215 NW 3d, Oklahoma City, OK 73102.

MC 129537 (Sub-25TA), filed September 8, 1978. Applicant: REEVES TRANSPORTATION CO., Route 5, Dews Pond Road, Calhoun, GA 30701. Representative: John C. Vogt, Jr., 406 North Morgan Street, Tampa, FL 33602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Carpets and rugs* from all points in Hamilton County, TN to Gordon County, GA, for purpose of tacking said authority to applicant's existing authority, a portion of which originates in Gordon County, GA, for 180 days. Supporting shipper(s): L. B. Sewell Corp., 1405 Second Avenue, Tampa FL 33602. Send protests to: Transportation Assistant Sara K. Davis, Interstate Commerce Commission, 1252 West Peachtree Street NW., Room 300, Atlanta, GA 30309.

MC 133326 (Sub-3TA), filed September 12, 1978. Applicant: DIVERSIFIED AUTO FREIGHT, INC., P.O. Box 3045, Lake Charles, LA 70601. Representative: Mr. Gordon I. Herzog, 314 North Broadway, Suite 700, St. Louis, MO 63102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Automobiles and parts thereof when moving in mixed loads with automobiles, in secondary movements in truckway service* (1) from Argentine, KS and Houston, TX to points in KS, NE, AR, and MO; and (2) between points in KS, NE, AR, and MO, under a continuing contract or contracts with Volkswagen Mid-America, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Volkswagen Mid-America, 8825 Page Boulevard, St. Louis, MO 63114. Send protests to: Connie A. Guillory, Interstate Commerce Commission, Bureau of Operations, T-9038 U.S. Postal Service Building, 701 Loyola Avenue, New Orleans, LA 70113.

MC 133655 (Sub-122TA), filed September 11, 1978. Applicant: TRANSNATIONAL TRUCK, INC., P.O. Box 31300, Amarillo, TX 79120. Representative: Warren L. Troupe, 2480 East Commercial Boulevard, Fort Lauderdale, FL 33308. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), when moving on bills of lading of Texas Shippers Association from Chicago, IL to Dallas, Houston, San Antonio, Amarillo, Lubbock, and Laredo, TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days operating authority. Supporting shipper: Texas Shippers Association, Inc., 23111 Butler Street, Dallas, TX 75235 (G. J. Miller). Send protests to: Haskell E. Ballard, District Supervisor, Interstate Commerce Commission, Herring Plaza, Box H-4395, Amarillo, TX 79101.

MC 134286 (Sub-76TA), filed September 11, 1978. Applicant: ILLINI EXPRESS, INC., P.O. Box 1564, Sioux City, IA 51102. Representative: Charles M. Williams, Suite 530, Capitol Life Center, 1600 Sherman Street, Denver, CO 80203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic film and plastic articles* (except in bulk), *and materials, equipment, and supplies* used in the manufacture and distribution of the above commodities (except commodities in bulk), in vehicles equipped with mechanical refrigeration devices, from the storage facilities utilized by the Resinite Department, Borden Chemical Division of Borden, Inc., at or near Dallas, TX, to points, in IA, NE, MO, KS, AR, LA, OK, CO, and NM, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Resinite Department, Borden Chemical Division of Borden, Inc., W. T. "Tom" Willcox, Manager, Distribution and Materials, 1 Clark Street, North Andover, MA 08145. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Omaha, NE 68102.

MC 134286 (Sub-77TA), filed September 11, 1978. Applicant: ILLINI EXPRESS, INC., P.O. Box 1564, Sioux City, Iowa 51102. Representative: Charles M. Williams, Kimball, Williams, & Wolfe, P.C., 350 Capitol Life Center, 1600 Sherman Street, Denver, CO 80203, 303-839-5856. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic film and plastic articles* (except in bulk), *and materials equipment, and supplies* used in the manufacture and distribution of the above commodities (except commodities in bulk), in vehicles equiped with mechanical refrigeration devices, from the storage facilities utilized by the Resinite Department, Borden Chemical, Division of Borden, Inc. at or near Elk Grove Village, IL, to points in OH, IN, MI, WI, IA, MO, MN, KS, NE, SD, ND, CO, WY, and MT, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Resinite Department, Borden Chemical Division of Borden, Inc., W. T. "Tom" Willcox, Manager, Distribution and Materials, 1 Clark Street, North Andover, MA 01845. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 135152 (Sub-27TA), filed September 12, 1978. Applicant: CASKET DISTRIBUTORS, INC., R.R. No. 2, P.O. Box 327, West Harrison, IN 45030. Representative: J. D. Campbell, R.R. No. 2, P.O. Box 327 West Harrison, IN 45030. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Apples, in boxes, dried.* (Item 77020 NMFC). From Wenatchee, WA, to IL, PA, NJ, and RI. For 180 days. Supporting shipper(s): Drackett Co., 5020 Spring Grove Avenue, Cincinnati, OH 45232. Send protests to: Beverly J. Williams, Transportation Assistant, Interstate Commerce Commission, Federal Building and U.S. Courthouse, 46 East Ohio Street, Room 429, Indianapolis, IN 46204.

MC 135873 (Sub-6TA), filed September 11, 1978. Applicant: K.S.S. TRANSPORTATION CORP., P.O. Box 3052, North Brunswick, NJ 08902. Representative: Daniel C. Sullivan, Esq., 10 South LaSalle Street, Chicago, IL 60603. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are manufactured, used or dealt in by manufacturers or distributors of printed matter, paper, and paper products, between East Greenville, PA, on the one hand, and, on the other, points in the States

of CT, DE, FL, GA, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, NB, NH, NJ, NY, NC, OH, OK, PA, RI, SC, TN, TX, VT, VA, WV, and WI under a continuing contract or contracts with Brown Printing, Inc., for 180 days. Supporting shipper(s): Brown Printing Co., Highway 14 West, Waseca, MN 56093. Send protests to: Robert E. Johnston, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 9 Clinton Street, Room 618, Newark, NJ 07102.

MC 138000 (Sub-39TA), filed September 12, 1978. Applicant: ARTHUR H. FULTON, INC., P.O. Box 86, Stephens City, VA 22655. Representative: Edward N. Button, 1329 Pennsylvania Avenue, P.O. Box 1417, Hagerstown, MD 21740. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Synthetic fabrics*, from Edinburg, VA and its commercial zone to Bridgeton, NJ and its commercial zone, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Aileen, Inc., P.O. Box 8, Woodstock, VA 22664. Send protests to: T. M. Esposito, Transportation Assistant, 600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 138505 (Sub-8TA), filed September 11, 1978. Applicant: METROPOLITAN CONTRACT SERVICES, INC., 710 North Post Oak Road, Suite 110 Houston, TX 77024. Representative: John H. Lewis, The 1650 Grant Street Building, Denver, CO 80203. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in by retail department stores between Denver, CO, and Billings, MT, restricted to shipments both originating at and terminating at the facilities of the Denvery Dry Goods Co. under a continuing contract or contracts with the Denver Dry Goods Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): The Denver Dry Goods Co., 16th and California Denver, CO. Send protests to: District Supervisor John F. Mansing, 8610 Federal Building, 515 Rusk Avenue, Houston, TX 77002.

MC 138635(Sub-62TA), filed September 11, 1978. Applicant: CAROLINA WESTERN EXPRESS, INC., Box 3961, Gastonia, NC 28052. Representative: Eric Meierhoefer Suite 423, 1511 K Street NW., Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment) which are at the time moving on bills of lading of freight forwarders operating pursuant to part IV of the Interstate Commerce Act*, between VA and DC on the one hand, and on the other, CA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Universal Carloading & Distributing Co.,, Inc., 11591 North Shore Drive, Reston, VA 22090. Send protests to: Terrell Price, District Supervisor, 800 Briar Creek Road, Room CC-516, Mart Office Building, Charlotte, NC 28205.

MC 141084 (Sub-11TA), filed September 11, 1978. Applicant: NATIONAL FREIGHT LINES, INC., 13023 Arroyo Avenue, San Fernando, CA 91341. Representative: Bill D. Gardner, 13023 Arroyo Avenue, San Fernando, CA 91341. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals*, except in bulk, (1) from points in AL, CT, DE, FL, GA, IL, IA, IN, KS, KY, LA, MD, MA, MI, MS, MO, NH, NJ, NY, NC, OH, PA, SD, SC, TN, TX, WV, and WI, to points in AZ, CA, CO, ID, MT, NV, OR, UT, WA, and WY and (2) from Denver and Grand Juction, CO; Carlsbad, NM, Green River and Upton, WY, to points in AZ, CA, ID, MT, NV, OR, UT and WA, under a continuing contract or contracts with McKesson Chemical Co., for 180 days. Supporting shipper(s): McKesson Chemical Co., 9040 Telegraph Road, Downey, CA 90240. Send protests to: Irene Carlos Transportation Assistant, Interstate Commerce Commission, Room 1321 Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

MC 141804(Sub-135TA), filed September 12, 1978. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative Frederick J. Coffman, P.O. Box 3488, Ontario, CA 91761. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except meats, meat products, and meat by-products; fresh, frozen or preserved dairy products, and articles distributed by meat packinghouses as described in sections A, B, and C of appendix I to the report in descriptions in Motor Carrier Certificates, 61 MCC 209 and 766; fresh or frozen foodstuffs; commodities in bulk; those requiring specialized equipment for their loading, unloading, or transportation and except explosives), restricted to those commoditics which are at the time moving under the provisions of bills of lading of freight forwarders of part IV of the Interstate Commerce Act, between Terre Haute, IN and Los Angeles, CA, and their respective commercial zones, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Westransco Freight Co., 1041 Richmond Street, Los Angeles, CA 90033. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321 Federal Building, 300 North Los Angeles CA 90012.

MC 142189 (Sub-34TA), filed September 12, 1978. Applicant: C. M. BURNS d.b.a. WESTERN TRUCKING, 521 Lincoln Avenue, Baker, MT 59313. Representative: C. M. Burns, P.O. Box 980, Baker, MT 59313. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, lumber products, wood and wood products* from ID and OR to points in IN, KS, MO, MI and OH, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): C. H. Jim Tripp, Secretary, Ferguson Lumber Sales, Inc., P.O. Box 8538, Missoula, MT 59807. Larry J. Schroeder, Transportation Analyst, Potlatch Corp., P.O. Box 1016, Lewiston, ID 83501. Send protests to: District Supervisor Paul J. Labane, ICC, 2602 First Avenue North, Bilings, MT 59101.

MC 142766 (Sub-9TA), filed September 11, 1978. Applicant: WHITE TIGER TRANSPORTATION, INC., 40 Hackensack Avenue, South Kearny, NJ 07032. Representative: Jay Schiffres, 1001 Connecticut Avenue NW., Washington, DC 20036. Authority sought to operate as a *contract carrier*, over irregular routes, transporting: (1) *Plastic articles and school supplies* and (2) *supplies, equipment and materials* used in the manufacture and sale of the commodities named in (1) above (except commodities in bulk), between the facilities of Sterling Plastics, Division of Borden Chemical, Borden, Inc., located at Mountainside, NJ on the one hand, and on the other, points in OH, IN, MI, GA, TN, AR, NE, CO, WI, MO, and TX under a continuing contract, or contracts, with Sterling Plastics, Division of Borden Chemical, Borden, Inc., of Mountainside, NJ, under a continuing contract or contracts with Sterling Plastics, Division of Borden Chemical, Borden, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Sterling Plastics, Division of Borden Chemical, Borden, Inc., 253 Sheffield Street, Mountainside, NJ. Send protests to: Robert E. Johnston, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 9 Clin-

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ton Street, Room 618, Newark, NJ 07102.

MC 144330 (Sub-40TA), filed September 11, 1978. Applicant: UTAH CARRIERS, INC., P.O. Box 1218 Freeport Center, Clearfield, UT 84016. Representative: Rick J. Hall, P.O. Box 2465, Salt Lake City, UT 84110. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cereal binders, sealing compounds, corn flour, industrial flour, industrial starches and processes grain products*, from McPherson, KS, to points in UT, CA, WA, and NV, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Chemstar Products Co., Box 19086, Minneapolis, MN 55419, (Paul F. Werier, president) Send protests to: District Supervisor L. D. Helfer, Interstate Commerce Commission, 5301 Federal Building, Salt Lake City, UT 84138.

MC 144411 (Sub-2TA), filed September 8, 1978. Applicant: TRANSPORT SERVICE CORP., Venner Street, P.O. Box 6033 - Myers Branch, Charleston, SC 29405. Representative: William P. Jackson, Jr., P.O. Box 1240, Arlington, VA 22210. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, class A and B explosives, household goods as defined by the Commission, and commodities in bulk), having an immediately prior or subsequent movement by water between points in the Charleston, SC commercial zone, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Evergreen/Hendt Corp., P.O. Box 606, Charleston, SC 29042. Send protests to: E. E. Strotheid, District Supervisor, ICC, Room 302, 1400 Building, 1400 Pickens T., Columbia, SC 29201.

MC 144930 (Sub-1TA), filed September 12, 1978. Applicant: EKLEBERRY TRUCKING, INC., 400 West Mary Street, Bucyrus, OH 48820. Representative: Gerald P. Wadkowski, Attorney at Law, 85 East Gay Street, Columbus, OH 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry fertilizer and dry fertilizer ingredients*, in bulk, between points in OH on the one hand and on the other hand, points in IN and MI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Agrico Chemical Co., Cairo, OH. Send protests to: Keith D. Warner, District Supervisor, Bureau of Operations, ICC, 313 Federal Office Building, 234 Summit Street, Toledo, OH 43604.

MC 145228 (Sub-1TA), filed September 8, 1978. Applicant: AUGUST D. BADALI, JR., d.b.a., A. & M. CARTAGE, 17401 Odell Street, Tinley Park, IL 60477. Representative: Philip A. Lee, 120 West Madison Street, Chicago, IL 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Ash*, from Chicago, IL to Birmingham, AL and from Gary, IN and Hammond, IN to Niles, Kalamazoo, Benton Harbor and Detroit, MI, under a continuing contract or contracts with American Admixtures Corp., for 180 days. Supporting shipper(s): American Admixtures Corp., Cathy Hordecky, manager/customer services, 5909 North Rogers Avenue, Chicago, IL 60646. Send protests to: Lois M. Stahl, Transportation Assistant, Interstate Commerce Commission, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 145276 (Sub-1TA), filed September 12, 1978. Applicant: MINNESOTA EXPRESS, INC., Box 427, Willmar, MN 56201. Representative: F. H. Kroeger, 1745 University Avenue, St. Paul, MN 55104. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fresh meat* from Howard, SD to St. Cloud, MN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Howard Beef Processors, Inc., Box 606, Howard, SD 57349. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building and U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 145397TA, filed August 21, 1978. Applicant: P. A. JOHNSON & CO., 1220 Monroe Avenue, River Forest, IL 60305. Representative: John F. Kelly (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, for the National Starch & Chemical Corp., to include commodities that require protection from freezing, not to include commodities in bulk, from the facilities of National Starch & Chemical Corp. at Chicago, IL, to points in the States of IN, IA, MI and WI, as shown in attached map, restriction above authority restricted to seasonal operation, November through April, under a continuing contract, or contracts, with National Starch & Chemical Corp., for 180 days. Supporting shipper(s): National Starch & Chemical Corp., Henry G. Kavanagh, traffic director, P.O. Box 6500, Bridgewater, NJ 08817. Send protests to: Lois M. Stahl, Transportation Assistant, Interstate Commerce Commission, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

By the Commission.

H. G. Homme, Jr.,
Secretary.

[FR Doc. 78-31711 Filed 11-9-78; 8:45 am]

N 0 1 3 7 8 UMI

sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409), 5 U.S.C. 552b(e)(3).

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[6351-01-M]

1

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10 a.m., November 14, 1978.

PLACE: 2033 K Street NW., Washington, D.C., 5th floor hearing room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Proliferation of Interest-Rate Futures Contract.
Expedited Adjudicatory Proceedings.

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254-6314.

[S-2281-78 Filed 11-8-78; 11:40 am]

[6351-01-M]

2

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11 a.m., November 14, 1978.

PLACE: 2033 K Street NW., Washington, D.C., 5th floor hearing room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Revocation of registration of an associated person of a futures commission merchant; private investigation.

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254-6314.

[S-2282-78 11-8-78; 11:40 am]

[6715-01-M]

3

FEDERAL ELECTION COMMISSION.

DATE AND TIME: Wednesday, November 15, 1978, at 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Audit Reports, Compliance, Personnel.

* * * * *

DATE AND TIME: Thursday, November 16, 1978, at 10 a.m.

STATUS: Portions of this meeting will be open to the public and portions will be closed.

MATTERS TO BE CONSIDERED:

Portions open to the public:

Setting of dates for future meetings.
Correction and approval of minutes.
Advisory Opinions: AO 1978-35, AO 1978-39, AO 1978-56, and AO 1978-81.
Appropriations and budget.
Pending legislation.
Pending litigation.
Liaison with other Federal agencies.
Classification actions.
Routine administrative matters.

Portions of the meeting closed to the public:

Any matters not concluded on November 15, 1978.

* * * * *

DATE AND TIME: Friday, November 17, 1978, at 10 a.m.

MATTERS TO BE CONSIDERED: Any matters not concluded on November 15, 1978, and November 16, 1978.

PERSON TO CONTACT FOR INFORMATION:

Mr. David Fiske, Press Officer, telephone 202-523-4065.

Marjorie W. Emmons,
Secretary to the Commission.

[S-2287-78 Filed 11-8-78; 3:24 pm]

[6740-02-M]

4

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 51750, published November 6, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m. November 8, 1978.

CHANGE IN THE MEETING: The following items have been added:

Item No., Docket No., and Company

ER-4. ER76-90 and ER77-558, Boston Edison Co.
CP-1. CP77-1, CP76-297, CP76-274, CP76-121, CP75-271, and CP74-92, McCulloch Interstate Gas Co. CP76-494, CP74-62, Colorado Interstate Gas Co. CP76-259, CP74-64, Mountain Fuel Supply Co. CI77-163 and CI77-164, McCulloch Gas Processing Co.

Kenneth F. Plumb,
Secretary.

[S-2277-78 Filed 11-8-78; 11:11 am]

[6720-01-M]

5

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: 2 p.m., November 15, 1978.

PLACE: 1700 G Street NW., sixth floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION:

Franklin O. Bolling, 202-377-6677.

MATTERS TO BE CONSIDERED:

Consideration of Termination of Bank Membership.—The Peoples Savings & Loan Co., Flushing, Ohio.
Considertion of Termination of Bank Membership—The Ormonde Savings & Loan Co., Cincinnati, Ohio.
Application for Bank Membership—Banco Financiero de Ahorro de Ponce, Ponce, P.R.
Limited Facility Application—First Federal Savings & Loan Association of Brunswick, Brunswick, Ga.
Consideration of Request for a Commitment to Insure Accounts—Heritage Savings & Loan Association, Elk City, Okla.
Branch Office Application—Gem Federal Savings & Loan Association of Norwood, Norwood, Ohio.
Branch Office Application—Capitol Federal Savings & Loan Association, Topeka, Kans.
Branch Office Application—Valley Federal Savings & Loan Association, Van Nuys, Calif.

Merger Application—First Federal Savings & Loan Association of Mount Vernon, Mount Vernon, Wash., into Washington Federal Savings & Loan Association of Seattle, Seattle, Wash.
Branch Office Application—Talman Federal Savings & Loan Association, Chicago, Ill.
Extension of Time Application—Redding Savings & Loan Association, Redding, Calif.
Application for Retroactive Approval to Retain Control of Modern Savings & Loan Association, Pasadena, Tex.—Modern Savings & Loan Association Shareholders' Agreement.
Branch Office Application—Sandusky County Federal Savings & Loan Association, Fremont, Ohio.
Branch Office Application—Midland Federal Savings & Loan Association, Denver, Colo.
Application for Bank Membership—Banco de Ahorro del Oeste, Mayaquez, P.R.
Application for Permission to Organize a New Federal—E. E. Hartenstine, et al., Denham Springs, La.
Applications for Bank Membership and Insurance of Accounts—First Public Savings & Loan Association, Los Angeles, Calif.
Branch Office Application—Skokie Federal Savings & Loan Association, Skokie, Ill.
Extension of Time Application—United First Federal Savings & Loan Association, Sarasota, Fla.
Branch Office Application—San Francisco Federal Savings & Loan Association, San Francisco, Calif.
Applications for Bank Membership and Insurance of Accounts—Security First Savings & Loan Association, Cheyenne, Wyo.
Application for Permission to Organize a Federal Association—John Wesley Sparrow, et al., Lake City, S.C.
Concurrent Consideration of (1) Application for Permission to Organize a New Federal—Guido A. Aguilera, et al., Coral Gables, Fla.; and (2) Limited Facility Application—Financial Federal Savings & Loan Association, Miami Beach, Fla.
Consideration of proposed regulation relating to stock option and stock purchase.
Consideration of regulation regarding mortgage-futures transactions.
Consideration of uniform guidelines for enforcement of regulation Z.

No. 196, November 8, 1978.

RONALD A. SNIDER,
Assistant Secretary.

[S-2284-78 Filed 11-8-78; 3:24 pm]

[6820-12-M]

6

NOVEMBER 8, 1978.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 10 a.m., November 8, 1978.

PLACE: Room 600, 1730 K Street NW., Washington, D.C. 20006.

STATUS: This meeting will be open.

MATTER TO BE CONSIDERED: The Commission will consider and act upon the following additional agenda item:

United Mine Workers of America v. Andrus, Carbon Fuel Co., No. 76-1208, D.C. Cir., May 9, 1978 (Issuance of Order To Show Cause).

It was determined by unanimous vote of all five Commissioners that Commission business required that this item be added on the November 8 agenda and that no earlier announcement of the change was possible.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Philip Paschall, 202-653-5610.

[S-2288-78 Filed 11-8-78; 3:59 pm]

[6820-12-M]

7

NOVEMBER 8, 1978.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 10 a.m., November 15, 1978.

PLACE: 1730 K Street NW., Room 600, Washington, D.C. 20006.

STATUS: This meeting will be open.

MATTERS TO BE CONSIDERED: The following will be considered and acted upon by the Commission. If necessary, they will be carried over to the next regularly scheduled meeting.

1. Kaiser Steel Corp., Docket No. DENV 77-13-P.
2. Sewell Coal Co., Docket No. HOPE 78-529-P (Petition for Discretionary Review).
3. Report on proposed regulations implementing the Sunshine Act.
4. Staff briefing on *United Mine Workers of America* v. *Cecil D. Andrus, Carbon Fuel Co.*, No. 76-1208, D.C. Cir May 9, 1978.

CONTACT PERSON FOR MORE INFORMATION:

Philip Paschall, 202-653-5610.

[S-2289-78 Filed 11-8-78; 3:59 pm]

[6210-01—M]

8

FEDERAL RESERVE SYSTEM.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Sent to Federal Register on November 3, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Monday, November 13, 1978.

CHANGES IN THE MEETING: Cancellation of the open portion:

Information on pricing of Federal Reserve service to be submitted to the Congress for consideration in connection with pending legislation dealing with fair competition among financial institutions and soundness of the commercial banking system.

This item will be rescheduled for an open meeting on Friday, November 17, 1978 at 10 a.m.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board, 202-452-3204.

Dated: November 8, 1978.

THEODORE E. ALLISON,
Secretary of the Board.

[S-2283-78 Filed 11-8-78; 2:06 pm]

[6350-01-M]

9

FEDERAL TRADE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 50985, published November 1, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Friday, November 3, 1978

CHANGES IN THE AGENDA: The Federal Trade Commission has canceled its previously announced closed meeting of Friday, November 3, 1978, and rescheduled this meeting for Wednesday, November 29, 1978, 2 p.m.

[S-2278-78 Filed 11-8-78; 11:11 am]

[6750-01-M]

10

FEDERAL TRADE COMMISSION.

TIME AND DATE: 9 a.m., Wednesday, November 15, 1978.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

STATUS: Open.

MATTERS TO BE CONSIDERED: Oral presentation to the Commission by designated group representatives on proposed trade regulation rule governing labeling and advertising of home insulation.

CONTACT PERSON FOR MORE INFORMATION:

Ira J. Furman, Office of Public Information, 202-523-3830. Recorded Message: 202-523-3806.

[S-2279-78 Filed 11-8-78; 11:11 am]

[7545-01-M]

11

NATIONAL LABOR RELATIONS BOARD.

TIME AND DATE: 3 p.m., Tuesday, November 14, 1978.

PLACE: Board Conference Room, sixth floor, 1717 Pennsylvania Avenue NW., Washington, D.C. 20570.

STATUS: Closed to public observation.

MATTER TO BE CONSIDERED: Consideration of applicant qualified for appointment to Administrative Law Judge.

CONTACT PERSON FOR MORE INFORMATION:

William A. Lubbers, Executive Secretary, Washington, D.C. 20570, telephone 202-254-9430.

Dated, Washington, D.C., November 8, 1978.

By direction of the Board.

GEORGE A. LEET,
Associate Executive Secretary.

[S-2280-78 Filed 11-8-78; 11:11 am]

[4910-58-M]

12

NATIONAL TRANSPORTATION SAFETY BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 52092, November 8, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9 a.m. Thursday, November 9, 1978 [NM-78-38].

CHANGE IN MEETING: A majority of the Board has determined by recorded vote that the business of the Board requires revising the agenda of this meeting and that no earlier announcement was possible. The agenda as now revised is set forth below.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Railroad Accident Report—Derailment of Atlanta & St. Andrews Bay Railway Co. freight trains, Youngstown, Fla., February 26, 1978.
2. Aircraft Accident Report—National Airlines, Inc., Boeing 727, N4744, Pensacola, Fla., May 8, 1978.
3. Discussion of party status of Aviation Consumer Action project in the hearing into the Pacific Southwest Airlines Boeing 727/Cessna 172 midair collision over San Diego, Calif., September 25, 1978.

CONTACT PERSON FOR MORE INFORMATION:

Sharon Flemming, 202-472-6022.

[S-2286-11 Filed 11-8-78; 3:24 pm]

[7910-01-M]

13

RENEGOTIATION BOARD.

DATE AND TIME: Monday, December 4, 1978; 2 p.m.

PLACE: Conference Room, 4th floor, 2000 M Street NW., Washington, D.C. 20446.

STATUS: Closed to public observation.

MATTER TO BE CONSIDERED: Howard P. Foley Co., fiscal year ended March 31, 1969.

CONTACT PERSON FOR MORE INFORMATION:

Kelvin H. Dickinson, Assistant General Counsel-Secretary, 2000 M Street NW., Washington, D.C. 20446, 202-254-8277.

Dated: November 8, 1978.

GOODWIN CHASE,
Chairman.

[S-2285-78 Filed 11-8-78; 3:24 pm]

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MONDAY, NOVEMBER 13, 1978
PART II



federal register

DEPARTMENT OF LABOR

Employment Standards Administration

■

MINIMUM STANDARDS FOR FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION

General Wage Determination Decisions

V 4 3 / 2 1 9

[4510-27-M]

DEPARTMENT OF LABOR

Employment Standards Administration

MINIMUM WAGES FOR FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION

General Wage Determination Decisions

General Wage Determination Decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed in construction activity of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1. (Including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, (37 FR 21138) and of Secretary of Labor's Orders 12-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General Wage Determination Decisions are effective from their date of publication in the FEDERAL REGISTER without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

MODIFICATIONS AND SUPERSEDEAS DECISIONS TO GENERAL WAGE DETERMINATION DECISIONS

Modifications and Supersedeas Decisions to General Wage Determination Decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the Modifications and Supersedeas Decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 13-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing General Wage Determination Decisions, as hereby modified, and/or supersedes shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and Supersedeas Decisions are effective from their date of publication in the FEDERAL REGISTER without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Office of Special Wage Standards, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Wage Determination Decision.

NEW GENERAL WAGE DETERMINATION DECISIONS

Alabama.—AL78-1094.

MODIFICATIONS TO GENERAL WAGE DETERMINATION DECISIONS

The numbers of the decisions being modified and their dates of publication in the FEDERAL REGISTER are listed with each State.

Maryland:	
MD78-3020	Apr. 14, 1978.
Massachusetts:	
MA78-2088	Sept. 22, 1978.
Pennsylvania:	
PA77-3078	June 4, 1977.
PA78-3012	Apr. 28, 1978.
PA78-3013	Apr. 14, 1978.
PA78-3014	Mar. 24, 1978.
PA78-3015; PA78-3043	May 12, 1978.
PA78-3067	Sept. 22, 1978.
PA78-3078	Oct. 20, 1978.
West Virginia:	
WV78-3018	June 9, 1978.

SUPERSEDEAS DECISIONS TO GENERAL WAGE DETERMINATION DECISIONS

The numbers of the decisions being modified and their dates of publication in the FEDERAL REGISTER are listed with each State.

Supersedeas Decision numbers are in parentheses following the numbers of the decisions being superseded.

Illinois:	
IL78-2031 (IL78-2117)	Mar. 17, 1978.
IL78-2044 (IL78-2140)	Mar. 24, 1978.
Ohio:	
OH78-2002 (OH78-2148)	Feb. 10, 1978.
OH78-2055 (OH78-2147); OH78-2057 (OH78-2153); OH78-2058 (OH78-2154).	May 12, 1978.
Wisconsin:	
WI77-2124 (WI78-2149)	Aug. 19, 1978.

CANCELLATION OF GENERAL WAGE DETERMINATION DECISIONS

None.

Signed at Washington, D.C., this 3rd day of November 1978.

DOROTHY P. COME,
Assistant Administrator,
Wage and Hour Division.

N 0 1 3 7 8 UMI

MODIFICATIONS P. 1

DECISION #MD78-3020 - Mod. #6
(42 FR 16045 - April 14, 1978)
Counties of Anne Arundel (excluding the D. C. Training School), Baltimore and Baltimore City, Maryland and for Harford & Howard Counties, Maryland

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Ironworkers:					
Ironworkers, finishers, rodmen, pre-cast, & pre-stress erectors	10.24	.90	1.91		.06
Fence erectors	9.89	.90	1.91		.06
Sheeters	10.49	.90	1.91		.06

[4510-27-C]

NEW DECISION

STATE: Alabama
DECISION NO.: AL 78-1094
DESCRIPTION OF WORK: Residential Construction consisting of single family homes and garden type apartments up to and including 4 stories.

COUNTY: *See below
DATE: Date of Publication

* Counties: Autauga, Bullock, Butler, Chilton, Clarke, Conecuh, Coosa, Crenshaw, Dallas, Elmore, Lowndes, Monroe, Montgomery, Pike and Wilcox Counties, Alabama.

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Air conditioning mechanic	5.69				
Bricklayers	6.13				
Carpenters	4.50				
Cement masons	4.50				
Drywall finishers	4.55				
Drywall hangers	4.50				
Electricians	8.53				
Laborers	3.07				
Painters, brush	5.35				
Plumbers and pipefitters	5.87				
Roofers	7.00				
Soft floor layers	3.25				
Tile setters	4.94				
POWER EQUIPMENT OPERATORS:					
Backhoe	4.00				
Bulldozers	4.36				
Loaders	4.00				
Motor grader	4.00				

MODIFICATIONS P. 2

DECISION NO. MA78-2086- Mod #1
(43 FR 43189- September 22, 1978)
Middlesex County, Massachusetts

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
All work, including demolition, repair & alteration of any existing structure which is intended for predominantly residential use:					
Bricklayers, stonemasons:					
Acton, Ashby, Ayer, Bedford, Billerica, Boxboro, Carlisle, Chelmsford, Dracut, Dunstable, Pt. Devens, Groton, Littleton, Lowell, No.Acton, Pepperell, Shirley, So.Acton, Tewksbury, Townsend, Tyngsboro, West Acton, Westford & Willmington	$9.52	.90	.70		.09
Bricklayers:					
Belmont, Burlington, Concord, Lexington, Lincoln, Stoneham, Sudbury, Waltham, Wayland, Weston, Winchester, Woburn	9.39	.75	1.00		.09
Carpenters & soft floor layers:					
Bedford, Concord, Dover, Lincoln, Natick, Newton, Sudbury, Waltham, Watertown, Wayland, Weston, Acton, Billerica, Boxboro, Carlisle, Chelmsford, Dracut, Dunstable, Littleton, Lowell, Tewksbury, Tyngsboro, Westford	9.14	.90	1.00		.07
Electricians:					
Bedford, Billerican, Boxboro, Burlington, Carlisle, Chelmsford, Dracut, Dunstable, Littleton, Lowell, Tewksbury, Tyngsboro, Westford, and Wilmington	9.31	.85	3%+.30		.02
Laborers	7.01	.60	.75		.10
Painters:					
Bedford, Billerica, Burlington, Carlisle, Chelmsford, Dracut, Dunstable, Littleton, Lowell, Tewksbury, Tyngsboro, Westford, & Wilmington	8.59	1.18	.80		.04

MODIFICATIONS P. 3

DECISION NO. MA78-2086- Mod #1
(Continued)

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
All work, including demolition, repair & alteration of any existing structure which is intended for predominantly residential use:					
Plumbers:					
Acton, Ayer (except portion lying west of the Greenvile Branch of the Boston & Main RR), Bedford, Billerica, Boxboro, Burlington, Carlisle, Chelmsford, Dracut, Dunstable, Graniteville, Hudson, Littleton, Lowell, Pepperell, Tewksbury, Tyngsboro, Westford, & Wilmington	$9.79	1.10	.60		.02
Ashland, Belmont, Concord, Framington, Holliston, Hopkington, Lexington, Lincoln, Marlboro, Maynard, Natrick, Sherborn, Stow, Sudbury, Waltham, Wayland, and Weston	9.75	1.23	.85		.05
Truck Drivers: Building, Heavy, and Highway Construction:					
Class I	8.515	.75	.80	a&b	
Class II	8.665	.75	.80	a&b	
Class III	8.715	.75	.80	a&b	
Class IV	8.815	.75	.80	a&b	
Class V	8.915	.75	.80	a&b	
Class VI	9.165	.75	.80	a&b	
Class VII	9.415	.75	.80	a&b	

MODIFICATIONS P. 4

DECISION #PA77-3078 - Mod. #8
(42 FR 32478 - June 4, 1977)
Lawrence & Mercer Counties, Pennsylvania

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Sheet Metal Workers	$11.60	.95	1.33		.14
Lawrence County					
Boilermakers	11.785	7.5%	7%		.01

DECISION #PA78-3012 - Mod. #7
(43 FR 18476 - April 28, 1978)
Clinton, Centre, Huntingdon, Fulton & Mifflin Counties, Pennsylvania

Change:					
Glaziers	$10.44	.82	.92	1.08	.01
Zone 1					
Ironworkers	12.105	1.14	1.36		.03
Zone 2					

DECISION #PA78-3013 - Mod. #5
(43 FR 16097 - April 14, 1978)
Bedford, Cambria, Cameron, Clarion, Clearfield, Jefferson, Crawford & Venango Counties, Pennsylvania

Change:					
Asbestos Workers	$12.47	.85	.90		
Zone 1					
Boilermakers	11.785	7.5%	7%		.01
Glaziers	10.44	.82	.92	1.08	.01
Zone 1					
Sheet Metal Workers	11.60	.95	1.33		.14
Zone 3					

MODIFICATIONS P. 5

DECISION #PA78-3014 - Mod. #5
(43 FR 12603 - March 24, 1978)
Armstrong, Allegheny, Beaver, Butler, Fayette, Indiana, Washington & Westmoreland Counties, Pennsylvania

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Sheet Metal Workers	$11.60	.95	1.33		.14
Asbestos Workers	12.47	.85	.90		
Glaziers	10.44	.82	.92	1.08	.01
Terrazzo Workers	11.66	.60	.85		
Zone 1					
Boilermakers	11.785	7.5%	7%		.01

DECISION #PA78-3015 - Mod. #4
(43 FR 20697 - May 12, 1978)
Greene, Somerset & Potter Counties, Pennsylvania

Change:					
Sheet Metal Workers	11.60	.95	1.33		.14
Zone II					
Asbestos Workers	12.47	.85	.90		
Zone I					
Glaziers	10.44	.82	.92	1.08	.01
Zone I					
Terrazzo Workers	11.66	.60	.85		
Zone II					
Boilermakers	11.785	7.5%	7%		.01
Zone II					

MODIFICATIONS P. 6

DECISION #PA78-3043 - Mod. #3
(43 FR 20707 - May 12, 1978)
Elk, Forest, McKean & Warren Counties, Pennsylvania

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Asbestos Workers					
Zone 1 - Elk County	12.47	.85	.90		
Glaziers					
Zone 3 - Elk County	10.44	.82	.92	1.08	.01
Boilermakers	11.785	7.5%	7%		.01

DECISION #PA78-3067 - Mod. #1
(43 FR 43232 - September 22, 1978)
Adams & York Counties, Pennsylvania

Change:					
Sheet Metal Workers	10.47	1.40	1.18		.13
Ironworkers	12.105	1.14	1.36		.03
Carpenters					
York County	9.89	.65	.45		
Soft Floor Layers					
York County	9.89	.65	.45		
Millwrights					
York County	10.39	.65	.45		

DECISION #PA78-3078 - Mod #1
(43 FR 49205 - October 20, 1978)
Allegheny County, Pennsylvania

Change:					
Bricklayers	11.90	.75	1.40		

MODIFICATIONS P. 7

DECISION #WV78-3018 - Mod. #3
(43 FR 25278 - June 9, 1978)
State of West Virginia, excluding the Counties of Berkeley, Jefferson and Morgan

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Boilermakers:					
Area 1	$10.70	1.05	1.10		.02
Bricklayers, Stone Masons, Marble Masons, Terrazzo Workers, & Tile Layers:					
Area 6					
Bricklayers & Stone Masons	11.25	.60			
Marble Masons, Terrazzo Workers & Tile Layers	10.75	.60			
Carpenters & Piledrivermen:					
Area 3					
Carpenters	10.75	.92	.95		.02
Area 5					
Carpenters	11.36	.40	.25		.02
Piledrivermen	11.61	.40	.25		.02
Area 6					
Carpenters	10.67	.55	1.00		.03
Piledrivermen	10.96	.55	1.00		.03
Area 7					
Carpenters	11.92	.50	.50		.02
Piledrivermen	12.17	.50	.50		.02
Area 8					
Carpenters	12.07	.50	.35		.02
Piledrivermen	12.32	.50	.35		.02
Area 9					
Carpenters	11.92	.50	.50		.02
Piledrivermen	12.17	.50	.50		.02
Cement Masons & Plasterers:					
Area 2	11.10				
Glaziers:					
Area 2	11.30		.80		
Ironworkers - Structural, Ornamental, & Reinforcing:					
Area 5	10.05	.70	.75		.03
Laborers:					
Area 2					
Group 1	8.66	.40	.40		.03
Group 2	8.96	.40	.40		.03
Group 3	9.31	.40	.40		.03
Area 6					
Group 1	8.80	.40	.40		.03

MODIFICATIONS P. 8

DECISION #WV78-3018

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Laborers:					
Area 6 cont'd					
Group 2	9.10	.40	.40		.03
Group 3	9.45	.40	.40		.03
Lathers:					
Area 6	10.78		.15		.01
Painters:					
Area 6:					
New Construction:					
Brush	9.36		.30		.01
Roller	9.62		.30		.01
Spray & Blast	10.38		.30		.01
Potmen	10.38		.30		.01
Commercial Repaint:					
Brush	7.94		.30		.01
Roller	8.22		.30		.01
Paperhanger	9.36		.30		.01
Drywall	9.81		.30		.01
Spray & Potmen	10.38		.30		.01
Paper & Vinyl Hangers	9.36		.30		.01
Open Structural Steel	9.71		.30		.01
Drywall Pointers & Tapers	9.81		.30		.01
Liquid Tile Brush	10.13		.30		.01
Stacks, vent pipes, flag poles, electrical, radio, and T.V. towers, and tanks over 30' high	10.31		.30		.01
Hydroject, steam cleaning, & glove work	10.38		.30		.01
Operating mechanical taping machines	10.81		.30		.01
Power Equipment Operators:					
Group 1	12.02	.50	.60		.04
Group 2	11.52	.50	.60		.04
Group 3	11.12	.50	.60		.04
Group 4	10.72	.50	.60		.04
Group 5	10.02	.50	.60		.04
Sheet Metal Workers:					
Area 2	11.80	1.07	.725		.085
Soft Floor Layers:					
Area 1	10.75	.92	.95		.02
Area 2	10.67	.55	1.00		.03
Area 3	11.92	.50	.50		.02
Area 4	12.07	.50	.35		.02
Area 6	10.96	.40	.25		.02

MODIFICATIONS P. 9

DECISION #WV78-3018

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Truck Drivers:					
Area 7					
Group 1	8.38	.80	1.05		
Group 2	8.53	.80	1.05		
Group 3	8.73	.80	1.05		
Group 4	8.92	.80	1.05		
Group 5	9.16	.80	1.05		
Add:					
Upshur County to Area 5 for Sheet Metal Workers:					

SUPERSEDEAS DECISION

STATE: Illinois
DECISION NUMBER: IL78-2117
COUNTIES: Madison & St. Clair
DATE: Date of Publication
Supersedeas Decision No. IL78-2031, dated March 17, 1978 in 43 FR 11406
DESCRIPTION OF WORK: Building (Including Residential), Construction

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$12.63	.80	.97		
BOILERMAKERS	11.45	.95	1.20		.03
BRICKLAYERS:					
Madison County:					
Alton, Granite City & Vicinities					
Bricklayers; Stonemasons; Paniters-Caulkers & Cleaners	11.78	.70	.75		
Residential	9.82		.75		
Edwardsville, Marine, Highland & Troy					
Bricklayers; Stonemasons, Marble-Tile-Terrazzo Workers, Pointers, Cleaners & Caulkers	9.95	.50	.75	1.00	
St. Clair County:					
E. St. Louis & Vicinity					
Bricklayers; Stonemasons; Marble-Tile-Terrazzo Workers Caulkers-Cleaners-Pointers	9.95	.50	.75	1.00	
Belleville & Vicinity					
Bricklayers & Stonemasons	11.00		.30	1.00	
CARPENTERS:					
Madison County					
Carpenters; Millwrights; Soft Floor Layers & Piledrivermen: Building	11.985	.60	.80		
Residential-Up to 4 Family Apartments	11.585	.60	.80		
St. Clair County					
Carpenters; Millwrights; Soft Floor Layers & Piledrivermen	11.11	.60	.90		.06
CEMENT MASONS	11.555	.90	.62		
ELECTRICIANS:					
Alton & Vicinity in Madison Co.	12.35	.50	3%+.65	6%	.3 of 1%
St. Clair Co. & the Remainder of Madison Co.	12.73	4%	3%+.65	6%	.25%

DECISION NO. IL78-2117

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELEVATOR CONSTRUCTORS:	$10.96	.745	.56	a+b	.025
Constructors	70%JR	.745	.56	a+b	.025
Helpers	50%JR				
Helpers (Prob.)	11.95	.88	1.58	13.2%	.01
GLAZIERS	12.10	.55	1.05		
IRONWORKERS					
LABORERS:					
Madison County					
Alton					
Common	10.50	.80	.60		.035
Laying sewer & all sewer work	10.60	.80	.60		.035
Well digging; gunnite machine; gunnite nozzle opr.; rip-rapping	10.75	.80	.60		.035
Wood River					
Common	10.85		1.00		.035
Laying sewer & all sewer work	10.95		1.00		.035
Well digging; gunnite machine & nozzle operator	11.10		1.00		.035
Granite City, Madison, Venice, Nameoki & Mitchell					
Common	10.50	.55	.80		.035
Open Well	11.00	.55	.80		.035
Cutting, Burning & Welding	10.775	.55	.80		.035
Plasterers' & Brickmason Tenders	11.00	.55	.80		.035
Dynamite & Powdermen	11.025	.55	.80		.035
Collinsville					
Common	10.55		.50		.035
Mason & Plasterer Tenders	11.05		.50		.035
Dynamite Men	11.85		.50		.035
Edwardsville					
Common	11.60		.25		.035
Men working in main sewer ditch	11.70		.25		.035
Plaster & Mason Tenders	12.10		.25		.035
Dynamite & Powder Men	13.125		.25		.035

DECISION NO. IL78-2117

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS (CONT'D)					
Glen Carbon					
Common	$10.90		1.00		.035
Mason & Plasterer Tenders	11.40		1.00		.035
Dynamite Men	12.50		1.00		.035
Highland					
Common	11.20		.60		.035
Mason & Plasterers Tenders	11.70		.60		.035
Workmen cutting & burning w/a torch	11.45		.60		.035
Livingston					
Common	11.30		.50		.035
Working on the Bootom of Sewer	11.55		.50		.035
Mason and Plasterer Tenders	11.80		.50		.035
Marine					
Common	11.60		.20		.035
Mason & Plasterer	12.10		.20		.035
Working on the Bottom of Sewer	11.85		.20		.035
Troy					
Common	10.80		1.00		.035
Mason & Plasterer Tenders	11.30		1.00		.035
Working on the bottom of sewer	11.05		1.00		.035
St. Jacob					
Common	11.20		.60		.035
Mason & Plasterer Tenders	11.70		.60		.035
Working in Sewer Trenches	11.45		.60		.035
LABORERS:					
St. Clair County					
E. St. Louis of Vicinity					
Laborers	10.50	.55	.80		.035
Plasterer Tender	11.00	.55	.80		.035
Dynamite Men	12.025	.55	.80		.035
Bellville & Vicinity					
Laborers	10.00	.45	.60		.035
Dynamite Men & Powder Men	11.50	.45	.60		.035
Hod Carriers & Plast. Tenders	10.80		.25	1.20	
O'Fallon, Mascoutah, Scott AFB, Shilo & Lebannon & Vicinity					
Laborers	10.45		.60		.035
Bottom Men on Sewer Work	10.70		.60		.035
Dynamite Men	11.30		.60		.035

DECISION NO. IL78-2117

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS (CONT'D)					
Freeburg & Vicinity					
Laborers	$10.00	.50	.60		.035
All Sewer Work	10.05	.50	.60		.035
Mason & Plaster Tenders	10.25	.50	.60		.035
Dynamite Men	11.60	.50	.60		.035
New Athens & Vicinity					
Laborers	10.70	.50	.60		.035
Bottom Men on Sewer Work	10.95	.50	.60		.035
Mason & Plaster Tenders	11.20	.50	.60		.035
LATHERS	12.835			.65	.01
PAINTERS:					
Residential - Commercial	11.05	.55	.35		
Industrial	11.30	.55	.35		
Bridges; Grain Elevators, Water Radio & TV Towers; Stacks Spray, Sand & Water Blasting; Steam Cleaning - additional 1.00 per hour	11.35	.55	.35		
PLASTERERS	12.94				
PLUMBERS & STEAMFITTERS:					
Alton & Northern part of Madison Co., North of Mitchell	13.20	.48	.96		.05
Granite City; Southern ½ of Madison Co., & E. St. Louis & Vic. in St. Clair Co.	11.50	.69	.81	.58	.03
Belleville & Vicinity	12.20	.40	1.00		
ROOFERS:					
Composition-Slate-Tile	10.95	.67	.55		.03
SHEET METAL WORKERS	11.23	.55	.40	6%	.02
SPRINKLER FITTERS	12.10	.75	1.05		.08
WELDERS - recieve rate prescribed for craft performing operation to which welding is incidental.					

DECISION NO. IL78-2117

PAID HOLIDAYS (WHERE APPLICABLE)
A-New Year's Day; B- Memorial Day; C-Independence Day; F-Labor Day; E-Thanksgiving Day; F-Day after Thanksgiving; G-Christmas Day

FOOTNOTE:

a. Employer contributes 8% of regular hourly rate to Vacation Pay Credit for employee who has worked in business more than 5 years and 6% of regular hourly rate for employee who has worked in business more than 5 years.

b. 7 paid Holidays: A through G

c. Nine paid holidays, A through F plus Washington's Birthday, Good Friday and Christmas Eve, providing employee has worked 45 full days during the 120 calendar days prior to the holiday, and the regular scheduled work day immediately preceding and following the holiday

DECISION NO. IL78-2117

ILL-2-PEO-1-2

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	$11.52	.87	1.51		.05
GROUP II	10.19	.87	1.51		.05
GROUP III	9.54	.87	1.51		.05
GROUP IV	9.46	.87	1.51		.05
GROUP V	9.19	.87	1.51		.05
GROUP VI					
a.	13.67	.87	1.51		.05
b.	13.97	.87	1.51		.05
c.	11.29	.87	1.51		.05
d.	11.79	.87	1.51		.05

POWER EQUIPMENT OPERATORS:

GROUP I Cranes, draglines, shovels, skimmer scoops, clamshells or derrick boats, pile drivers, crane-type backhoes, asphalt plant opers. plant opers., ditching machines or backfillers (requiring oilers), dredges, asphalt spreading machines, heavy duty mechanic, ass't. master mechanic, all locomotives, cableways or tower machines, hoists 2 drum or more (where oiler or fireman is required), hoists-2 drum or more (where oiler or firemen is not required) Hydraulic backhoes, ditching machines or backfiller (not required oilers) Cherry pickers, overhead cranes, roller (Steam or gas) concrete pavers, excavators, concrete breakers, concrete pumps, bulk cement plants, cement pumps, derrick-type drills, mixers (over 3 bags) and boad opre., (25' & over), Motor gradere or pushcats, scoops or tournapulls, Bulldozers, endloaders or fork-lifts, power blade or elevating graders, winch cats, boom tractors, and pipe wrapping or painting machines, Drills (other than derrick type) 1-drum-hoists, mud jacks, mixers (2 or 3 bags), conveyors (2), air compressors (2), water pumps regardless of size (2), welding machines (2) siphons or jets (2), winch heads or apparatuses (2) and light plants (2), Mixers (under 2 bags), all tractors regardless of size (Straight tractor only), firemen on stationary boilers, automatic elevators, form grading machines, finishing machines, power-sub-greder or ribbon machine, longitudinal floats, boats opre., (under 25', conveyors (4), distribution opre., on trucks, siphones or jets (1) winch heads or apparatuses (1), light plant (1) mixers (under 2 bags)

GROUP II Air Compressor (1), water pumps regardless of size (1) welding machines (1)

GROUP III Firemen and asphalt spreader oilers

GROUP IV Heavy equipment oilers (truck cranes, dredges, monigans, large cranes, etc.)

GROUP V Oilers

GROUP VI
a. Engineers operating under air pressure
b. Engineers operating in air over 10 lbs pressure
c. Oilers operating under air pressure
d. Oilers operating in air over 10 lbs pressure

DECISION NO. IL78-2117

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	$10.125	.65	a31.00		
GROUP II	10.525	.65	a31.00		
GROUP III	10.725	.65	a31.00		

TRUCK DRIVERS

GROUP I: - Drivers on 2 axle trucks hauling less than 9 tons, air compressor and welding machine including those pulled by separate units, truck driver helpers, warehouseman, mechanic helpers, greasers & tiremen, pick-up trucks when hauling materilas, tools, or men to and From and on the jobs site; Fork lifts up to 6,000 lbs., capacity

GROUP II: - 2 or 3 axle trucks hauling more than 9 ton, but hauling less than 16 tons; A-frame winch trucks, hydrolifts trucks, or similar equipment when used for transportation purposes; Fork lifts over 6,000 lb. capacity; winch trucks; 4-axle combination units; ticket writers

GROUP III: - 2,3 or 4 axle trucks, hauling 16 ton or more, drivers on oil distributores, water pulls, mechanics & working foreman; 5-axle or more combination units; dispatcher

FOOTNOTES

a. Per week Per Employee

SUPERSEDEAS DECISION

STATE: Illinois

COUNTIES: Ford, Grundy, Iroquois, Kankakee, LaSalle, Livingston, McLean, Marshall, Putnam and Woodford

DECISION NUMBER: IL78-2140

DATE: Date of Publication

Supersedes Decision No. IL78-2044, dated March 24, 1978 in 43 FR 12549

DESCRIPTION OF WORK: Heavy and Highway Construction

ILL-HH-3

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS:					
Iroquois and Kankakee Counties; (N. of Garver and Guthrie) in Ford County	$11.88	.65	.80		.01
Remainder of Ford County	11.715	.45	1.00		.08
Woodford County	12.01	.40	.50		.05
Marshall and Putnam Counties; (Peru, Ottawa and Streator and Vicinities in LaSalle County)	11.75	.75	.70		.03
Grundy County; Marseilles and Vicinity in LaSalle County	12.73	.75	.85		.04
McLean County	11.76	.50	.75		.05
Livingston County	11.76	.50	.75		.05
CEMENT MASONS:					
LaSalle and Putnam Counties	11.85		1.00		
Livingston and McLean Counties; E. of Roanoke in Woodford Co.	12.53	.55			
Marshall County, and remainder of Woodford County	11.30	.80	.90		.05
Iroquois and Kankakee Counties	11.70	.80	.75		
Ford County	12.075	.45			.025
Grundy County	11.02	.65	1.28		.05
ELECTRICIANS:					
Townships of Fountain Creek, Love Joy and Prairie Green in Iroquois County	12.27	.50	3%+.50		.25%
Kankakee County; Remainder of Ford and Iroquois Counties	12.42	.88	3%+.70		.2 of 1%
Grundy County; Northern half of Central Southern part of LaSalle County; Walnut, Ohio, MaHoille, Clarion, Bureay, Dover, Berlin and Westville Townships in Buresu County	13.93	.88	3%+.70		.2 of 1%

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS: (Cont'd)					
Vicinity of LaSalle S.W. part of County; Remainder of Putnam County; Townships of Arispe, Concord, Fairfield, Gold, Greenville, Hall, Indiantown,, Leepertown, Macon, Manilus, Mllo, Mineral, Neposet, Princeton, Selby, Wheatland and Wyanet in Bureau County	$12.30	.50	3%+.30		.25%
Areas west of Bell Plaine and Roberts Townships in Marshall County; Area West of but not including Linn, Kansas, Palestine, Roanoke, Cazenovis and Metamora Townships in Woodford County	12.32	.50	3%+.75		1%
Livingston County; Vicinity of Streator - S.E. part of County south of Eden in LaSalle County; Magnolia Townships in Putnam County; Area east of Cazenovia and Metromora Townships including Linn, Clayton, Minak Roanoke, Green and Panola Townships in Woodford County; Area south of Roberts Township in Ford County; Townships of Artesia, Pigeon Grove and Loda in Iroquois County; Cropsey, Anchor, Cheney Grove and Belle Flower Townships in McLean County	12.45	.50	3%+.40		.3%
Remainder of McLean County; (Townships of Elpaso, Kansas and Palestine - S.E. corner) Woodford County	11.95	.50	3%+.55		.002
IRONWORKERS:					
Iroquois and Kankakee Counties	12.50	.75	.75		.05
Grundy County	12.00	2.65	.525		.02
Ford County; Livingston County; Eastern part of McLean County	11.55	.65	1.00		.08

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
IRONWORKERS: (Cont'd)					
Woodford County: S.W. corner of Marshall County	$11.975	.65	.925		
LaSalle and Putnam Counties; Remainder of Marshall County	13.19	.65	.375		.02
LINEMEN:					
Iroquois County:					
Linemen, Groundman Equipment Operator	12.12	.50	3%+.50		.5%
Groundman Truck Driver:					
W/winch	9.86	.50	3%+.50		.5%
WO/winch	9.22	.50	3%+.50		.5%
Groundman	8.73	.50	3%+.50		.5%
Kankakee County:					
Linemen, Equipment Operators	12.16	7.5%	6.5%	7.5%	.25%
Groundman	9.45	7.5%	6.5%	7.5%	.25%
Grundy County:					
Linemen and Equipment Operators	12.47	.50	1%+.50		.2%
Cable Splicer	13.83	.50	3%+.50		.2 of 1%
Ford, LaSalle, Livingston, McLean, Marshall, Putnam, and Woodford Counties:					
Linemen	12.39	.45	3%		.5%
Groundman Equipment Operator Class 1	11.56	.45	3%		.5%
Groundman Truck Drivers:					
W/winch	8.65	.45	3%		.5%
WO/winch	8.24	.45	3%		.5%
Groundman Class "A"	7.86	.45	3%		.5%
PAINTERS:					
Putnam County; Townships of Mandota, Ogelsby, Utica and Peru in LaSalle County:					
Industrial and Structural Steel Brush	9.50	.55	.45		
Spray and Sandblasting	10.50	.55	.45		
Remainder of LaSalle County:					
Industrial; Structural Steel and Bridges					
Brush	11.00	.55	.50		
Spray	13.00	.55	.50		
McLean County:					
Brush	11.20	.55			.08
Structural Steel & Spray	11.70	.55			.08

DECISION NO. IL78-2140

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS: (Cont'd)					
Grundy County:					
Bridges w/butt plates and hand rails only	$10.45	.76	.55		.04
Bridges w/o superstructures	10.95	.76	.55		.04
Bridges w/superstructures and Lift type	11.45	.76	.55		.04
Kankakee and Iroquois Counties:					
Brush and Roller	10.85	.55	.50		
Spray	12.35	.55	.50		
Marshall and Woodford Counties:					
Brush	11.30	.55	.30		.03
Structural Steel, Bridge & Spray	11.95	.55	.30		.03
TRUCK DRIVERS:					
Grundy, Remainder of Livingston and Woodford Counties:					
2-3 Axle Trucks	10.65	a29.00	a33.00		
4 Axle Trucks	10.80	a29.00	a33.00		
5 Axle Trucks	11.00	a29.00	a33.00		
6 Axle Trucks	11.20	a29.00	a33.00		
Kankakee & Iroquois Counties					
2-3 Axle Trucks	10.525	a29.50	a31.00		
4 Axle Trucks	10.725	a29.50	a31.00		
5 Axle Trucks	10.925	a29.50	a31.00		
6 Axle Trucks	11.075	a29.50	a31.00		

FOOTNOTES:
A-per week per employee

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS:					
LaSalle and Putnam Counties:					
Unskilled	$10.07	.45	.60		.035
Semi-skilled	10.27	.45	.60		.035
Skilled	10.47	.45	.60		.035
Ford, Livingston, Iroquois, Kankakee, Marhall and Woodford Counties:					
Unskilled	10.03	.45	.60		.035
Semi-skilled	10.23	.45	.60		.035
Skilled	10.43	.45	.60		.035
McLean County:					
Unskilled	9.93	.45	.60		.035
Semi-skilled	10.13	.45	.60		.035
Skilled	10.33	.45	.60		.035

UNSKILLED: Common Laborer; Carpenter Tenders; Tool Cribmen; Firemen or Salamander Tenders; Flagmen; Gravel Box Men; Dumpmen and Spotters; Form Handlers; Material Handlers; Fencing Laborers; Cleaning Lumber; Pit Men; Material Checkers; Dispatchers; Landscapers; Unloading explosives; Laying of sod; Planting of trees; Asphalt Plant Laborers; Wrecking Laborers; Writer of scale trickets; Fire Shop Laborers; Fireproofing Laborers; Janitors; Wrecking-dismantling buildings; Wallmen and Housemovers; Driving of stakes; Stringlines for all machinery

SEMI-SKILLED: Handling of materials treated with oil, creosote, asphalt or and other foreign material, Track Laborers; Cement Handlers; Chloride Handlers; the Unloading and Laborers w/steel workers and rebars; Concrete workers (wet); Tunnel Helpers in free air; Batch Dumpers; Mason and Plasterer Tenders and Material Wheelers; Kettlemen and Tarmen; Tank Cleaners; Plastic Installers; Scaffold Workers; Motorized Buggies or Motorized Units used for wet concrete of handling of building materials; Laborers w/dewatering systems; All sewer workers plus depth; Rod and Chainmen with Land Surveyors; Vibrator Operators; Mortar Mixer Operator; Cement Silica, Clay, Fly Ash, Lime and Plasters; Handlers (bulk or bag); Cofferdam Workers plus depth; (on concrete paving) placing, cutting and trying or reinforcing; Deck Hand; Dredge Hand and Shore Laborers; Bankmen on floating plant; Asphalt Workers w/machine; Asphalt Raker; Grade Checker

SKILLED: Dynamite Man or Blasters; Caisson Workers plus depth; Gunnite Nozzle Men; Leadman on sewer work; Welders; Cutters; Burners; Torchmen; Chain Saw Operator; Jackhammer and Drill Operators; Layout Man; Steel Form Setters (street and highway); Air Tamping Hammerman; Signal Man on crane, concrete saw operator; Screenman on asphalt pavers; Laborers tending Masons w/hot materials are used; Multiple Concrete Duck-Leadmen; Lutemen; Curb Asphalt Machine Operator; Ready-mix Sclaemen; Portable or temporary plant; Laborers handling masterplate or similar mateirals; Laser Beam Operator; Coring Machine Operator

DECISION NO IL78-2140

ILL-9-LAB-1-2-3

LABORERS:	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1 Common Laborers, Plasterer Laborers, Pumps for DeWatering & other Unclassified Laborers	$ 9.20	.57	1.10		
CLASS 2 Cement Gun Laborers	9.275	.57	1.10		
CLASS 3 Scaffold Laborers & Chimney Laborers over 40'	9.30	.57	1.10		
CLASS 4 Windless & Cement Gun Nozzle Laborers - Gunnite	9.30	.57	1.10		
CLASS 5 Stone Handlers & Derrickmen	9.40	.57	1.10		
CLASS 6 Jackhammermen	9.425	.57	1.10		
CLASS 7 Concrete Vibrator, Plumbers' Laborer & Chain Saw Operator	9.45	.57	1.10		
CLASS 8 Firebrick & Boiler Setters' Laborers	9.52	.57	1.10		
CLASS 9 Chimney Laborers on Firebrick, Caisson Diggers & Well Point System Men	9.55	.57	1.10		
CLASS 10 Boiler Setter Plastic Laborers	9.65	.57	1.10		
CLASS 11 Jackhammer on Firebrick Only	9.755	.57	1.10		

DECISION NO IL78-2140

ILL-10-PEO-2-3

POWER EQUIPMENT OPERATORS: LaSALLE, GRUNDY, KANKAKEE, LIVINGSTON COS; E. OF THE ILL. RIVER IN PUTNAM CO.	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	App. Tr.
CLASS I	$12.20	1.00	1.00	.50	.05
CLASS II	11.65	1.00	1.00	.50	.05
CLASS III	10.90	1.00	1.00	.50	.05
CLASS IV	9.80	1.00	1.00	.50	.05
CLASS V	8.80	1.00	1.00	.50	.05

POWER EQUIPMENT OPERATORS:

CLASS I Asphalt plant, asphalt heater & planer combination, asphalt spreader, autograde, belt loader, caisson rigs, central redimix plant, concrete breaker (truck mounted), concrete conveyor, concrete paver over 27S cu. ft., concrete placer, concrete tube float, cranes, all attachments, cranes, Linden, Peco & machines of a like nature, derricks, traveling, dredges, euclid loader, elevating type, gradall, & machines of a like nature, derricks, all, derrick boats, derricks, travelling, dredges, euclid loader, elevating type, gradall, and machines of a like nature, grader, elevating hoists, 1,2 & 3 drum, locomotives, all, mucking machine, 1 cu. yd. & over, mucking machine, under 1 cu. yd., pile drivers & skid rig, pre-stress machine, pump cretes dual ram (requiring frequent lubrication & water), rock drill crane type, slip form paver, straddle buggies, tractor w/boom, tractaire w/ attachments, trenching machine, underground boring &/or mining machine under 5 ft., wheel exactor widener (Apsco)

CLASS II Mechanic-welder, batch plant, bituminous mixer, bulldozer, combination backhoe front endloader machine, concrete breaker or hydro-hammer, concrete grinding machine, concrete mixer or paver 7S Series to & including 27 cu. ft., concrete spreader, concrete curing machine, burlap machine, belting machine & sealing machine, finishing machine, concrete grader, motor patrol auto patrol, form grader, pull grader, subgrader, highlift shovels or front endloader, hydraulic boom trucks (all attachments), locomotives, dinky, pump cretes; Squeeze cretes; screw type pumps Gypsum bulker & pump, rock drill (self-propelled), roto-tiller, seaman, etc. self-propelled scoops; tractor drawn, self-propelled compactor, spreader, chipstone, etc., scraper. tank car heater, tractor, push, pulling sheeps foot, disc., compactor, etc. tug boats

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POWER EQUIPMENT OPERATORS (CONT'D)

CLASS III Boilers, boiler & throttle valve, brooms, all power propelled, cement supply tendor, compressor & throttle valve, concrete mixer (2 bags & over) conveyor, portable, fireman on boiler, forklift trucks, greaser engineer, grouting machine hoists, automatic, hoists, all elevators, hoists, tugger, single drum, jeep diggers, pipe power saw, concrete, power-driven, pug mills, rollers, all, steam generators, stone crushers, stump machine, winch trucks with "A" frame, work boats, tamper, form motor driven

CLASS IV Air Compressors, all, generators, heaters, mechanical, light plants, all (1 through 5), pumps, all, pumps well points, tractaire, welding machines (2 through 6)

CLASS V Oilers

DECISION NO. IL78-2140

ILL-20-PEO-2-3

POWER EQUIPMENT OPERATORS: REMAINDER OF COUNTIES:	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	$12.22	.45	.80		.05
GROUP 2	12.02	.45	.80		.05
GROUP 3	11.17	.45	.80		.05
GROUP 4	10.90	.45	.80		.05
GROUP 5	9.46	.45	.80		.05

POWER EQUIPMENT OPERATORS:

Group 1: Crane, hydro crane, shovels, crane type backfiller, tower cranes-mobile and crawler and stationary derricks and hoist (3-drum); Dragline, Dragline, Drott Yumbo and similar types considered as cranes, backhoe, derrick boats, pile driver and skid rigs, clam shells, locomotive cranes, road pavers - single drum, dual drum and tri batcher, motor patrols and power blades - Dumore, elevating similar types, mechcnics central concrete mixing plant operator, blacktop plant operators and plant engineers, gradall, caisson rigs - requires oiler, skimmerscoopkerhing scooper, dredges (all types) hop-toe-crane-type (require oiler), Escalated rate on crane and derricks booms, $.01 par hour, per ft., over 80' including jib all cherry pickers, cherry pickers (over 15 tons require oiler), work boat, Ross carrier, helicopter, dozen and tournadozer

Group 2: Asphalt heater and planter combination (used to plant streets), trench machines, pump crete - belt crete - seqeeze crete - screw type pumps and gysum, bulker and pump, dinkeys, tournapulls-all, and similar types, multiple unit earth movers, $.25 per hour for each scoop over one scoops (all sizes), pushcats, endloaders (all types), side booms, P-H one-pass soil cement machines and similar types, wheel tractors (industrial or farm-type with dozer hoe - end loader or other attachments, backfillers, asphalt surfacing machines euclid loader, fork lifts, formless finishings, jeep w/ditching machine or other ettachments, tuneluger, rock crusher, automatic cement and gravel batching mobile drills (soil testing) and similar types, pugmill with pump, flaherty spreader or similar types (require oiler), heavy equipment greaser (top greaser on spread), power launches, boring machine, C.M.I. and similar types (require oiler), all (1) and (2) drum hoists, dewatering system, straw blower, hydro-seeder, boring machine, hydro-boom, starting engineer on pipeline, F.W.D. and similar types

DECISION NO. IL78-2140

POWER EQUIPMENT OPERATORS: (CONT'D)

Group 3: Apaco spreader or similar types, tractors (track-type) without power units pulling rollers, rollers on asphalt - breck or macadam, concrete breakers, concrete spreaders, center stripper, cement finishing machines, vibro tampers (all similar types) self-propelled, mechanical bull floats, mixers over three bag to 27E, winch and boom trucks, tractor pulling power blade or elevating grader, Porter Rex rail, Clary screed, mule pulling rollers, pugmill without pump, Barber Greene or similar loaders, track-type tractors with power unit attached (minimum fireman, screed man on laydown machine, and spray machine on paving

Group 4: Power subgrader, oil distributor, straight tractor, tract-air (without attachments), curb machines, paver ditch machines, truck crane oiler, and truck type hoptoe oilers

Group 5: Herman Nelson Heater, Dravo, Warner, Silent glo and similar types, one engineer will operate 1-3 and after 3, two operators will be required, self-propelled concrete saws, assistant heavy equipment greaser crawler crane and skid oilers, rollers 5 ton and under on earth and gravel, form graders, pump (1) or (2), light plant (1) or (2), generator (1) or (2), conveyor (1) or (2), welding machine (1) or (2) mixer 3 bags and under, and bulk cement plant

DECISION NO. IL78-2140 ILL-82-TD-1-2-3

TRUCK DRIVERS: LaSALLE, McLEAN, FORD, PUTNAM COS; LONG POINT, NEWTON, READING & SUNBURY TOWNSHIPS IN LIVINGSTON COUNTY	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	$10.125	.65	a31.00		
GROUP II	10.525	.65	a31.00		
GROUP III	10.725	.65	a31.00		

TRUCK DRIVERS

GROUP I: - Drivers on 2 axle trucks hauling less than 9 tons, air compressor and welding machine including those pulled by separate units, truck driver helpers, warehouseman, mechanic helpers, greasers & tiremen, pick-up trucks when hauling materials, tools, or men to and from and on the jobs site; Fork lifts up to 6,000 lbs., capacity.

GROUP II: - 2 or 3 axle trucks hauling more than 9 tons, but hauling less than 16 tons; A-frame winch trucks, hydrolifts trucks, or similar equipment when used for transportation purposes; Fork lifts over 6,000 lb. capacity; winch trucks; 4-axle combination units; ticket writers

GROUP III: - 2, 3 or 4 axle trucks hauling 16 tons or more, drivers on oil distributores, water pulls, mechanics & working foreman; 5-axle or more combination units; dispatchers

FOOTNOTES

a. Per week Per Employee

SUPERSEDEAS DECISION

STATE: NEW YORK COUNTY: DUTCHESS
DECISION NO.: NY78-3091 DATE: DATE OF PUBLICATION
Supersedes Decision No. NY77-3118 dated September 3, 1977 in 42 FR 34461
DESCRIPTION OF WORK: Building Construction, (excluding single family homes and garden type apartments up to and including 4 stories), Heavy and Highway Construction

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$14.09	.82	1.64		
BOILERMAKERS	13.19	5%	15%	7%	
BRICKLAYERS, CEMENT MASONS, PLASTERERS, POINTERS, CAULKERS, CLEANERS, MARBLE MASONS, TILE SETTERS AND TERRAZZO WORKERS:					
Building	9.30	2.00	2.00		.06
Light commercial where the general contract does not exceed $300,000 and masonry contract including labor and material does not exceed $50,000	8.30	1.50	1.25	a	
Heavy and Highway	9.80	2.00	2.00	b	.06
CARPENTERS:					
Wappinger Falls, New Hackensack, Pawling and Beacon:					
Building, Heavy and Highway	11.18	1.00	.78	c	.10
Remainder of County:					
Building, Heavy and Highway	10.97	.90	.80	1.00+d	.10
ELECTRICIANS:					
Portion south of a line following the Fishkill/Wappinger Twp. line east from the Hudson River to state Hwy 82, Northeast on 82 to the New York-New Haven, Hartford Freight line at Hopewell Junction, east on the railroad to Stonehouse southeast of State Hwy 55 from Stonehouse to Pawling and south on the State Hwy 22 to the Putnam County line but excluding Stonehouse and Pawling	11.75	7.1%	3%+.90	.60+e	4%
Remainder of County:	10.30	.75	3%+1.10	7%%+f	4%
ELEVATOR CONSTRUCTORS	11.75	.745	.56	g+h	.025
ELEVATOR CONSTRUCTORS' HELPERS	8.225	.745	.56	g+h	.025
ELEVATOR CONSTRUCTORS' HELPERS (PROB)	5.875				
GLAZIERS	11.20	.66	1.66	.67	.01
IRONWORKERS, STRUCTURAL, ORNA. & REINFORCING	9.85	1.55	2.37	1.60	

DECISION NO. NY78-3091	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LATHERS	10.80		.15		.01
LEAD BURNERS	10.75	.40	.25	i	.01
MARBLE, TILE AND TERRAZZO FINISH FINISHERS:					
Marble and Terrazzo Finishers	9.65	1.85			
Tile Finishers	9.05	1.85			
Rehabilitation work on all projects and commercial work where the general contract shall not exceed $300,000 and the masonry contract shall not exceed $10,000	7.00	1.85			
MILLWRIGHTS	11.80	1.50	1.78	.85	.04
PAINTERS:					
Brush	10.08	.78	.50	.43+j	
Bridges, towers, fire escapes, smoke stacks, flag poles, exposed areas 15 ft. or more in height, swing stage, window jacks, boat swain chair, safety belts and stpay, structural steel	11.08	.78	.50	.43+j	
PILEDRIVERMEN AND DOCK & WHARF BUILDERS	11.70	1.50	1.78	.91	.04
PLUMBERS AND STEAMFITTERS	10.60	1.90	.90	1.30	.08
ROOFERS:					
Cold Tar Pitch, Mopping and Dipping, Application or Ripping Off	11.20	1.00	1.80		.35
Asphalt Built-up, Asbestos Tile, Tile, Ceramic Tile, Slate, Tectum, All forms of Spray Roofing and Insulation	10.70	1.00	1.80	k	.35
Cold Process and Resaturation, Asphalt Shingle	8.20	1.00	1.80	k	.35
Pitch	8.70	1.00	1.80	k	.35
SHEET METAL WORKERS	10.97	1.645	2.28	1.04	.12
SPRINKLER FITTERS	12.31	.75	1.05		.08
WELDERS - receive prescribed for craft performing operation to which welding is incidental					

DECISION NO. NY78-3091

PAID HOLIDAYS: A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

a. Employees receive 2 hours off with pay on election day for the purpose of voting.

b. Paid Holidays: A through F; Washington's Birthday; Good Friday; Columbus Day; Veteran's Day and November Election Day.

c. Paid Holidays: A through F; and 2 hours off on election day for the purpose of voting.

d. Paid Holidays: A through F providing the employee works 7 days before and after the holiday.

e. Paid Holidays: A through F Washington's Birthday, Veteran's Day and Presidential Election Day.

f. Paid Holidays: A through F provided the employee is on the payroll 2 weeks prior to the holiday.

g. Paid Holidays: Although F, plus day after Thanksgiving.

h. Employer contributes 6% of the basic hourly rate for 6 months to 5 years of service or 8% of the basic hourly rate for 5 years or more of service as vacation pay credit.

i. Paid Holidays: A through F; Washington's Birthday; Good Friday and Christmas Eve providing the employee has worked 30 full days during the 90 calendar days prior to the holiday, and the regular scheduled work days immediately preceeding and following the holiday.

j. Paid Holidays: Independence Day providing the employee works within the period of June 20 to July 4th.

k. Employee receives 2 hours off with pay on Election Day for the purpose of voting provided the employee has received 4 hours pay that day.

DECISION NO. NY78-3091

Line Construction

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Electricial Overhead and Underground Distribution Work:					
Lineman and Technicians	$10.00	1.00	3%+.75	a	3%
Cable Splicers	12.87	1.00	3%+.75	a	3%
Groundman Digging Machine Operator and Groundman Dynamiteman	9.00	1.00	3%+.75	a	3%
Groundman Mobile Equipment Operator, Mechanic 1st Class, Groundman Truck Driver (tractor trailer units)	8.00	1.00	3%+.75	a	3%
Groundman Truck Driver, Driver-Mechanic, Groundman (experienced)	7.50	1.00	3%+.75	a	3%
All Overhead Transmission Line Work and Lighting For Athletic Fields:					
Lineman and Technicians	11.25	1.00	3%+.75	a	3%
Groundman Digging Machine Operator, Groundman Dynamiteman	10.125	1.00	3%+.75	a	3%
Groundman Mobile Equipment Operator, Mechanic 1st Class, Groundman Truck Driver (tractor trailer unit)	9.00	1.00	3%+.75	a	3%
Groundman Truck Driver, Driver-Mechanic, Groundman (experienced)	8.4375	1.00	3%+.75	a	3%
All Pipe Type Cable Installations:					
Lineman and Groundman Equipment Operator	11.70	1.00	3%+.75	a	3%
Cable Splicer	12.87	1.00	3%+.75	a	3%
Groundman Truck Driver, Groundman (experienced)	8.775	1.00	3%+.75	a	3%

NOTICES

DECISION NO. NY78-3091

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION (CONT'D):					
Sub-station, Switching Structures (when not part of the line), Traffic Signals, Street Lighting and Electrical, Telephone or CATV Commercial Work:					
Linemen and Technicians	$11.70	1.00	3%+.75	a	3%
Cable Splicers	12.87	1.00	3%+.75	a	3%
Groundman Digging Machine Operator, Mechanic 1st Class, Groundman Truck Driver (tractor-trailer unit)	9.36	1.00	3%+.75	a	3%
Groundman Truck Driver, Driver-Mechanic, Groundman (experienced	8.775	1.00	3%+.75	a	3%
Telephone and other Communication Systems, both overhead and underground:					
Linemen and Installer Repairmen	8.34	.40	3%+.25	a	1%
Splicers	8.89	.40	3%+.25	a	1%
Groundman Digging Machine Operator	7.73	.40	3%+.25	a	1%
Groundman	5.72	.40	3%+.25	a	1%
Groundman Truck Driver	6.82	.40	3%+.25	a	1%
Groundman Dynamiteman	6.60	.40	3%+.25	a	1%

Paid Holidays: A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day F-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

a. Paid Holidays: A through F, Washington's Birthday, Good Friday, and Election Day for President of the United States and Governor of New York State, provided the employee works the day before and after the holiday.

DECISION NO. NY78-3091

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS: BUILDING					
General laborers, mason tender, carpenter tender, labor stripping, cleaning forms, labor sweepers, cleaners, grading, digging ditches	$ 8.48	.96	1.60	a+.40	
Hod Carriers, plasterers tenders, scaffold builders (padlock and self supporting scaffold 14 feet or under all runways), mortar mixers (machine and hand), concrete mixers (by machine under 21 E), vibrators, form setters, pipelayers, asphalt rakers, handling rein-forcement rods, drillers, jackhammer operator, signalman, gunniting, motorbugs, water pump 2" or under, barco machine, wreckers, paving breakers, power saw operators, other machine operators	8.73	.96	1.60	a+.40	
Blasters, laser beam operator	8.88	.96	1.60	a+.40	

FOOTNOTES:

a. Two hours off with pay on Election Day.

NOTICES

DECISION NO. NY78-3091

HEAVY AND HIGHWAY CONSTRUCTION

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Laborers:					
General laborers	8.65	.96	1.65	a	
Concrete men, signal man, mason tender, pipe layer, riprap and dry stone layers, asphalt workers, screed bar operator, steel rod carrier, jackhammer-man, wagon driller, airtrack operator, nippers, powder man, high scalers, power buggy operator, vibratory operator compactor, wrecking laborers, gunite and sandblasting, coal passer, water pumps 2" or under	8.90	.96	1.65	a	
Concrete finisher on Highways, blaster, form setter, laser beam operator	9.25	.96	1.65	a	

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

a. Holidays: A through F and Lincoln's Birthday, Columbus Day, Good Friday, Washington's Birthday, Veteran's Day and November Day Election provided the employee works (7) calendar days before or after the holiday.

DECISION NO. NY78-3091

POUGHKEEPSIE AND SOUTH THEREOF:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS, BUILDING:					
GROUP I	$14.105	6%+1.00	10%+b	a	1½%
GROUP II	13.19	6%+1.00	10%+b	a	1½%
GROUP III	13.0475	6%+1.00	10%+b	a	1½%
GROUP IV	12.905	6%+1.00	10%+b	a	1½%
GROUP V	11.7625	6%+1.00	10%+b	a	1½%
GROUP VI					
A	15.08	6%+1.00	10%+b	a	1½%
B	14.6175	6%+1.00	10%+b	a	1½%
C	9.9925	6%+1.00	10%+b	a	1½%
D	13.6175	6%+1.00	10%+b	a	1½%
E	12.3325	6%+1.00	10%+b	a	1½%
F	13.19	6%+1.00	10%+b	a	1½%
G	18.3325	6%+1.00	10%+b	a	1½%
H	11.7625	6%+1.00	10%+b	a	1½%
I	18.0475	6%+1.00	10%+b	a	1½%
J	16.105	6%+1.00	10%+b	a	1½%
K	17.105	6%+1.00	10%+b	a	1½%
L	14.605	6%+1.00	10%+b	a	1½%
M	15.105	6%+1.00	10%+b	a	1½%
GROUP VII	14.3325	6%+1.00	10%+b	a	1½%

POWER EQUIPMENT OPERATORS - BUILDING CONSTRUCTION

GROUP I

Backhoe Oliver 88, Fordson, dynahoe, dual purpose & similar machine, Barber Green loader-euclid loader or similar type, cherry picker (cableway), compressor (steel erection), conway or similar mucking machines, dragline, gradall, shovel, backhoe, etc., (crawler or truck), front end loaders, hydraulic boom, Jersey spreader, Letourneau or Tournapull (scrapers over 20 yds. struck), mucking machines, pavement breaker (air ram), paver (concrete), pulsemeter, push button (buzz box) elevator, road boring machine, road mix machines, Ross carrier & similar machines, post hole digger, shovel (tunnels), side boom, spreader (asphalt), scoopmobile-tractor-shovel over 1-½ yds., trenching machines, tractor type demolition equipment, winch truck "A" Frame

b

DECISION NO. NY78-3091

POWER EQUIPMENT OPERATORS - BUILDING CONSTRUCTION (CONT'D)

GROUP II

Compactor self-propelled, grader, bulldozer D7 & similar tractors with a draw bar horsepower of 100 & over maintenance engineer, mechanic (outside) all types, welder, scraper-20 yds. struck & under, machine pulling sheep's foot roller, etc., roller 4 ton and over, vib. roller

GROUP III

Asphalt plant, boiler (high pressure), bulldozer D6 & similar tractors with a draw bar horsepower less than 100, compressor, compressor plant, concrete mixing plants, concrete pump, conveyor belt machine-irrespective of motor size, fireman, forklift, forklift (electric), joy drill or similar tractor drilling machine, loader-1-½ yds., & under, lighting unit (portable & generator), locomotive (all aizes), mixer concrete-21E & over, portable asphalt plant, portable batch plant, portable crusher, quarry master, stone crusher, welding machine (steel erection excavation), well drilling machine, well point system

GROUP IV

Air tractor drill, batch plant, bending machine, concrete breaker, concrete spreader, compressor to 125 cu. ft., curb cutter machine, dust collector, farm tractor (all types), finishing machine concrete, material hooper-sand-stone-cement, mixer-concrete-under 21E, Muching grass spreader, heater-all types, pump, pump station (water & sewer), pump-gypsum, etc., concrete, pump-plasterer roller under 4 ton, spreading & fine grading machine, steam Jenny, steel Jenny, steel cuting machine, sweeper, syphon pump air steam, tar joint machine, Turbo jet burner or similar equipment vibrator (1 to 5) fine grading machine

GROUP V

Concrete saw, mechanic's helper, oiler (fuel truck), oiler (grease truck), paint compressor, welder's helper

GROUP VI

A. Master mechanic
B. Helicopter hoist op.
C. Oiler, asphalt paver, utility man
D. Welder - certified
E. SEcond engineer on cranes 30 ton and over
F. Cable splicer
G. Helicopter pilot
H. Helicopter signalman
I. Engineer, all tower cranes, all climbing cranes and all cranes of 100 ton and regardless of how the same is rigged (except for pile rigs)

b

DECISION NO. NY78-3091

POWER EQUIPMENT OPERATORS - BUILDING CONSTRUCTION (CONT'D)

GROUP VI (CONT'D)

J. Cranes (crawlers or truck) 100 ft. but less than 149 ft
K. Cranes (crawlers or truck) 149 ft. and over
L. Loaders op. (over 5 yd. capacity)
M. Shovel op. (over 4 yd. capacity)

GROUP VII

Concrete-portable hoist, crane & hoist engineer-steel (concrete, material, super structure, sub-structure), derrick (stone-steel), elevator & cage, engineer-pile driver, overheadcrane, power house plant, telephies, whirly, hoist (single, double or triple drum), hoist (portable mobile unit), hoist engineer-concrete (crane, derrick, mine hoist), hoist engineer material

FOOTNOTES:

a. Holidays: New Year's Day, Lincoln's Birthday, Washington's Birthday, Good Friday, Memorial Day, Independence Day, Labor Day, Columbus Day, November Election Day, Veteran's Day, Thanksgiving Day and X-Mas Day.

b. Employer contributes $2.00 per day to an Annuity Fund.

DECISION NO. NY78-3091

(Rehabilitation work on residential structures over 4 stories defined to include demolition, alteration and repair on any existing structure which is intended for predominantly residential use)

REMAINDER OF COUNTY:

POWER EQUIPMENT OPERATORS:

GROUP 1: Oilers

GROUP 2: Firemen and heavy duty greasers, all boilers and steam generators

GROUP 3: Pumps, vibrators, concrete mixers, spreaders, concrete finishing machines, mortar mixers, air compressors, dust collectors, welding machines well points, two or more Herman Nelson and like heaters, batch and plant op., seed and mulching machines, generators, temporary light plants, concrete pump, beltcrete power pac (beltcrete system), electric submersible pump 4" and over

GROUP 4: Dinkey locomotives, Barber Greene loaders, loaders and conveyors, tractors, scoopmobiles, bulldozers, road rollers, form fine graders, power brooms and sweepers

GROUP 5: Black top spreaders, black top rollers, high lifts, fork lifts, one drum hoist or hod hoists, post hole diggers, traxcavators, core and well well drillers (one drum), economobile and similar type machines, elevators, A-L frame winches, power hoisting (single drum)

GROUP 6: LeTourneau graders or scrapers, trenching machines, push cart

GROUP 7: Tractor road pavers, cranes, power road graders, shovels, backhoes, draglines, pile drivers, hoists two or more drums, three drum engines, hysters, two drum and swinging engines, three drum swinging engine, locomotive cranes, gradalls, hydrocrane, model CHB Vibrotamp or similar, Murphy type diesel generator-beltcrete system, side booms, hydro hammer, tractor mounted drill (quarry master), euclid loaders, concrete pumps, all CMI equipment, concrete central mix plant, automated asphalt, concrete central plant, derrick, whirlies, tower cranes, cableways, hydraulic cranes, power hoisting (2 drum and over), mucking machine

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
GROUP 1	$ 7.40	.95	1.05	a	.15
GROUP 2	7.45	.95	1.05	a	.15
GROUP 3	7.55	.95	1.05	a	.15
GROUP 4	7.71	.95	1.05	a	.15
GROUP 5	7.98	.95	1.05	a	.15
GROUP 6	8.10	.95	1.05	a	.15
GROUP 7	8.26	.95	1.05	a	.15

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:
a. Holidays: A through F.

DECISION NO. NY78-3091

REMAINDER OF COUNTY:

BUILDING CONSTRUCTION - POWER EQUIPMENT OPERATORS:

GROUP 1: Oilers

GROUP 2: Firemen and heavy duty greasers, all boilers and steam generators

GROUP 3: Pumps, vibrators, concrete mixers, spreaders, concrete finishing machines, mortar mixers, air compressors, dust collectors, welding machines well points, two or more Herman Nelson and like heaters, batch and plant op., seed and mulching machines, generators, temporary light plants, concrete pump, beltcrete power pac (beltcrete system), electric submersible pump 4" and over

GROUP 4: Dinkey locomotives, Barber Greene loaders, loaders and conveyors, tractors, scoopmobiles, bulldozers, road rollers, form fine graders, power brooms and sweepers

GROUP 5: Black top spreaders, black top rollers, high lifts, fork lifts, one drum hoist or hod hoists, post hole diggers, traxcavators, core and well well drillers (one drum), economobile and similar type machines, elevators, A-L frame winches, power hoisting (single drum)

GROUP 6: LeTourneau graders or scrapers, trenching machines, push cart

GROUP 7: Tractor road pavers, cranes, power road graders, shovels, backhoes, draglines, pile drivers, hoists two or more drums, three drum engines, hysters, two drum and swinging engines, three drum swinging engine, locomotive cranes, gradalls, hydrocrane, model CHB Vibrotamp or similar, Murphy type diesel generator-beltcrete system, side booms, hydro hammer, tractor mounted drill (quarry master), euclid loaders, concrete pumps, all CMI equipment, concrete central mix plant, automated asphalt, concrete central plant, derrick, whirlies, tower cranes, cableways, hydraulic cranes, power hoisting (2 drum and over), mucking machine

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
GROUP 1	$10.58	.95	.75	a	.15
GROUP 2	10.65	.95	.75	a	.15
GROUP 3	10.78	.95	.75	a	.15
GROUP 4	10.99	.95	.75	a	.15
GROUP 5	11.35	.95	.75	a	.15
GROUP 6	11.52	.95	.75	a	.15
GROUP 7	11.73	.95	.75	a	.15

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:
a. Holidays: A through F.

DECISION NO. NY78-3091

POUGHKEEPSIE AND SOUTH THEREOF

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS, HEAVY & HIGHWAY					
GROUP I	$11.75	6%+1.00	9⅓%+.25	a	2%
GROUP II	10.96	6%+1.00	9⅓%+.25	a	2%
GROUP III	10.825	6%+1.00	9⅓%+.25	a	2%
GROUP IV	10.70	6%+1.00	9⅓%+.25	a	2%
GROUP V	9.70	6%+1.00	9⅓%+.25	a	2%
GROUP VI	11.95	6%+1.00	9⅓%+.25	a	2%
GROUP VII	11.325	6%+1.00	9⅓%+.25	a	2%
GROUP VIII	9.70	6%+1.00	9⅓%+.25	a	2%
GROUP IX	11.625	6%+1.00	9⅓%+.25	a	2%
GROUP X	10.70	6%+1.00	9⅓%+.25	a	2%
GROUP XI	10.575	6%+1.00	9⅓%+.25	a	2%
GROUP XII					
A	10.7875	6%+1.00	9⅓%+.25	a	2%
B	9.575	6%+1.00	9⅓%+.25	a	2%
C	8.75	6%+1.00	9⅓%+.25	a	2%
D	15.45	6%+1.00	9⅓%+.25	a	2%
E	12.20	6%+1.00	9⅓%+.25	a	2%
F	15.20	6%+1.00	9⅓%+.25	a	2%
G	12.95	6%+1.00	9⅓%+.25	a	2%

POWER EQUIPMENT OPERATORS - HEAVY AND HIGHWAY

GROUP I
Auger, auto grader, backhoe Oliver 88, Fordson, dynahoe, dual purpose and simila machines, barber green loader-euclid loader or similar type, central mix plant operator, cherry picker (cableway), compactor with blade, concrete portable hoist C.M.I. or similar Conway or similar mucking machines, crane (crawler or truck) dragline, gradall, shovel backhoe, etc., derrick (stone-steel), elevator & cage, front end loaders, hoist single, double, triple drum, hoist portable mobile unit, hoist engineer-concrete (crane-derrick-mine hoist), hoist engineer-material, hydraulic boom, LeTourneau or Tournapull (scrapers over 20 yards struck), mucking machines, overhead crane, paver (concrete), power house plant, pulsometer, push button (buzz box) elevator, road mix machines, Ross carrier and similar machines, shovel (tunnels), side boom, spreader (Asphalt), scoopmobile-tractor-shovel over 1½ yards, trenching machines, telephies, tractor type demolition equipment, whirly, winch truck "A" Frame

DECISION NO. NY78-3091

POWER EQUIPMENT OPERATORS - HEAVY AND HIGHWAY (CONT'D)

GROUP II
Compactor self-propelled, grader, bulldozer D7 and similar tractors with a draw bar horsepower of 100 and over, maintenance engineer, mechanic (outside) all typ welder, scrapers 20 yards struck and under, shop foreman, vibratory roller, etc. roller 4 ton and over

GROUP III
Asphalt plant, boiler (high pressure), bulldozer D6 and similar tractors with a draw bar horsepower less than 100, compressor plant, concrete pump, conveyor bel machine-irrespective of motor size, firemen, forklift, forklift (electric), joy drill or similar tractor drilling machine, loader-1½ yds. and under, locomotive (all sizes), machine pulling sheeps foot roller, mixer concrete-21E and over, portable asphalt plant, portable batch plant, portable crusher, quarry master, stone crusher, well drilling machine, well point system

GROUP IV
Air tractor drill, batch plant, bending machine, concrete breaker, concrete spreader, curb cutter machine, farm tractor (all types), finishing machine-concrete, material hopper-sand-stone-cement, mulching grass spreader, roller under 4 ton, shop mechanic (not employed on job site), spreading & fine grading machine, steel cutting machine, sweeper, syphon pump-air-steam, tar joint machine Turbo jet burner or similar equipment, fine grading machine

GROUP V
Concrete saw, mechanic's helper, oiler, oiler (fuel truck), oiler (grease truck)

GROUP VI
Hoist engineer-steel, sub-struct., engineer-pile driver

GROUP VII
Welder-certified crawlers or truck: 100 ft. but less than 149 ft. $2.00 per hour additional crawlers or truck: 149 ft. and over $3.00 per hour additional loader operators: Over 5 cu. yd. capacity $.50 per hour additional shovel operators: Over 4 cu. yd. capacity $1.00 per hour additional

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POWER EQUIPMENT OPERATORS - HEAVY AND HIGHWAY (CONT'D)

GROUP VIII
Stockroom or stockroom attendant, paint compressor, pump under 4" or any combination not equal to 4" roller motorized (walk behind, welder's helper

GROUP IX
Compressor (steel erection)

GROUP X
Compressor, lighting unit (portable and generator), welding machine (steel erection excavation)

GROUP XI
Compressor to 125 cu. ft., dust collector, mixer-concrete under 21E, heater-all types, pump 4" and over, pump station (water and sewer), pump-gypsum, etc., pump-plasterer, steam jenny syphon pump-air-steam, tar-joint machine, vibrator (1 to 5)

GROUP XII
A. Jersey spreader, pavement breaker (air ram), post hole digger
B. Safety man 60 ton crane & over, helicopter signalman
C. Oiler asphalt paver, utility man
D. Helicopter pilot
E. Helicopter hoist operator
F. Engineer, tower crane, 3900 monitowac or over or similar (rail, truck, or crawler mounted
G. Master mechanic

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgivin Day and F-Christmas Day.

FOOTNOTE:
a. Holidays: A through F; Lincoln's Birthday; Washington's Birthday; Good Fri Columbus Day; November Election Day and Veteran's Day.

DECISION NO. NY78-3091

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Apr. Tr.
POWER EQUIPMENT OPERATORS: HEAVY & HIGHWAY CONSTRUCTION					
REMAINDER OF COUNTY:					
GROUP I	$10.03	.95	1.05	a	.15
GROUP II	10.47	.95	1.05	a	.15
GROUP III	9.46	.95	1.05	a	.15
GROUP IV	8.56	.95	1.05	a	.15

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:
a. Paid Holidays: A through F, providing the employee works the day before and the dat after the holiday.

POWER EQUIPMENT OPERATORS: HEAVY AND HIGHWAY CONSTRUCTION

Group I - Automated concrete spreader (CMI), automatic fine grader, backhoe (except tractor mounted, rubber tired), belt placer (CMI type), blacktop plant (automated), cableway, caisson auger, central mix concrete plant (automated), cherry picker (over 5 tons capacity), concrete pump (8" or over), crane, cranes & derricks (steel erection), dragline, dredge, dual drum paver, excavator (all purpose-hydraulically operated, (gradall or similar), fork lift (factor rated 15 ft. and over), front end loader 4 c.y. and over), head tower (sauerman or equal) hoist (2 or 3 drum), mine hoist, mucking machine or mole, over head crane (gantry or straddle type), piledriver, power grader, quarry master (or equivalent), scraper, shovel, sideboom, slip form paver (if second man is needed, he shall be an oiler), tractor drawn belt type loader, truck crane, tunnel shovel.

Group II - Backhoe (tractor mounted, rubber tired), bituminous spreader and mixer, blacktop plant (non-automated), blast or rotary drill truck or tractor mounted), boring machine, cage-hoist, central mix plant (non-automated and all concrete batching plants), cherry picker (5 tons capacity and under), compressors (4 or less) exceeding 2000 C.F.M. combined capacity concrete paver (over 16S), concrete pump (under 8"), crusher, diesel power unit, drill rigs (tractor mounted), front end loader (under 4 c.y.), hi-pressure - boiler (15 lobs. and over), hoist (one drum) Kolman plant loader and similar type loaders (if another man is required to clean screen or to maintain the equipment, he shall be an oiler), locomotive maintenance/engineer/greaseman/welder, mixer (for stablized base self-propelled), monorail machine, plant engineer, pump crete, ready mix concrete plant, refrigeration equipment (for soil stabilization), road widener, roiler (all above subgrade), tractor with dozer and/or pusher, trencher, tugger-hoist, winch, winch cat.

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POWER EQUIPMENT OPERATORS: HEAVY AND HIGHWAY CONSTRUCTION CONT'D.

Group III - A-frame truck, compressors (4 not to exceed 2000 C.F.M. combined capacity or 3 or less with more than 1200 C.F.M. but not to exceed 2000 C.F.M.), compressors (any size but subject to other provisions for compressors), dust collectors, generators, pumps, welding machines (4 of any type of combination), concrete pavement spreaders and finishers, conveyor, drill-core, drill-well, electric pumps used in conjunction with well point system, farm tractor with accessories, fine grade machine, fork lift (under 15 ft.), gunite machine, hammers (hydraulic-self-propelled), post hole digger and post driver, power sweeper, roller (grade and fill), submersible electric pump (when used in lieu of well point system), tractor with towed accessories, vibratory compactor, vibro tamp, well point.

Group IV - Aggregate plant, boiler (used in conjunction with production), cement and bin operator, compressors (3 or less not to exceed 1200 C.F.M. combined capacity), compressor (any size, but subject to other provisions for compressors) dust collectors, generator pumps, welding machines (3 or less of any type or combination), concrete paver or mixer (16S and under), concrete saw (self-propelled), fireman, form tamper, hydraulic pump (jacking system), lighting plants, mulching machine, oiler parapet- (concrete or pavement grinder), power broom (towed), power heaterman, revinius widener, shell winder, steam cleaner, tractor.

DECISION NO. NY78-3091

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS					
Drivers on LeTourneau tractors, double barrel Euclids, Athey wagon and similar equipment (except when hooked to scrapers), low beds, I-Bean, pole trailers, road oil distributors, tire trucks tractors and trailers with 5 axle and over	10.00	.95	.95	a+b	
Equipment 25 yards and over up to and including 30 yard bodies cable dump trailers, powder and dynamite trucks	9.90	.95	.95	a+b	
Equipment up to and including 24 yards bodies, mixer trucks, dump crete trucks and similar types of equipment, fuel trucks and all other tractor trailers	9.70	.95	.95	a+b	
Ten wheelers, grease trucks and tiller men	9.60	.95	.95	a+b	
Straight trucks	9.50	.95	.95	a+b	
Pick-up trucks used for hauling material parts escort man over the road	9.50	.95	.95	a+b	
Helpers	9.40	.95	.95	a+b	

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day and F-Christmas Day

FOOTNOTE:
a. Holidays: A through F; Washington's Birthday; Election Day; Veteran's Day, Lincoln's Birthday, Election Day, Good Friday.

b. 3 day bereavement pay (spouse, mother, father, mother in law, father in law, grandmother, grandfather, sister, brother, children, grandchildren.

NOTICES

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SUPERSEDEAS DECISION

STATE: Ohio
DECISION NO.: OH78-2147
COUNTIES: Fulton & Lucas
DATE: Date of Publication
Supersedes Decision No. OH78-2055, dated May 12, 1978 in 43 FR 20671
DESCRIPTION OF WORK: Building and Residential Construction

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$13.13	.50	1.30		.04
BOILERMAKERS	13.575	1.075	1.00		.03
BRICKLAYERS; Marble Setters; & Stonemasons:					
Fulton (Twps. of Amboy, Swan Creek & Fulton); & Lucas Cos.	12.425	1.06	1.30		.01
Fulton Co. (Remainder of Co.):					
Commercial	11.22	1.06	.50		
Residential	8.97	1.06	.50		
CARPENTERS; Millwrights; & Piledrivermen	12.99	1.06	.75		.05
CEMENT MASONS	14.14	.60			.02
ELECTRICIANS:					
Commercial	13.80	.65	3%+.55		.1%
Residential	7.59	.65	3%+.55		.1%
ELEVATOR CONSTRUCTORS:					
Elevator Constructors	12.355	.745	.56	a+b	.035
Helpers	70%JR	.745	.56	a+b	.035
Helpers (Prob.)	50%JR				
GLAZIERS	11.825	.55	1.00		.01
IRONWORKERS	12.86	1.06	1.22		.05
LATHERS	13.05	1.06	.10		.01
LINE CONSTRUCTION:					
Linemen	14.26	.50	3%	c	½%
Cable Splicers	14.51	.50	3%	c	½%
PAINTERS:					
Commercial:					
Brush; Drywall Tapers; Paperhangers	11.28	1.06	1.10		
Bridge; Railings; Powerhouse; Refinery Tanks	11.53	1.06	1.10		
Sandblasting; Spray; Pressure Cleaning	11.83	1.06	1.10		
Residential Work	10.14	1.06	1.10		
PLASTERERS	13.80	.60			.01
PLUMBERS; Steamfitters; Pipefitters	13.63	.80	.85		.09
ROOFERS	12.63	1.06	1.00		.02
SHEET METAL WORKERS	12.655	1.06	1.36		.045

DECISION NO. OH78-2147

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
SOFT FLOOR LAYERS:	$11.32	1.06	.75		.04
Commercial	10.30	1.06	.75		.04
Residential	12.75	.75	1.05		.08
SPRINKLER FITTERS	12.48	1.06	.50		
TERRAZZO WORKERS; Tile Setters					
TERRAZZO WORKERS' FINISHERS; & Tile Setters' Finishers	11.00	1.06	.40	.50	

DECISION NO. OH78-2147

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; & P-Christmas Day

FOOTNOTES:

a. Seven paid holidays: A through F, & Day after Thanksgiving
b. Employer contributes 8% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 years. Employer contributes 6% of regular hourly rate to vacation pay credit for employee who has worked in business less than 5 years.
c. Ten paid holidays: A through F, Good Friday, Day after Thanksgiving Day, Christmas Eve, & New Year's Eve.

	Basic Hourly Rates Bldg.	Basic Hourly Rates Resid.	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS:						
Fulton County:						
Unskilled laborers	$9.27	$ 7.97	.70	.70		.10
Mason tenders; Gunite pot men	9.39	8.09	.70	.70		.10
All power driven tools & buggies; burners; Torchmen; Nozzlemen for concrete pump	9.42	8.12	.70	.70		.10
Plasterers' tenders	9.445	8.145	.70	.70		.10
Nozzle operators for gunite work	9.92	8.62	.70	.70		.10
Bellmen; Bottom men; Brick expeditor	9.505	8.205	.70	.70		.10

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS:					
Lucas County:					
Unskilled laborers	$10.86	.70	.70		.11
Mason Tenders	10.99	.70	.70		.11
Gunnite pot men; Mortar mixers	11.06	.70	.70		.11
Concrete pump nozzle men; All power driven tools; Power buggies	11.015	.70	.70		.11
Pipe layers; Bellmen; Bottom men for fire brick work only	11.115	.70	.70		.11
Nozzle operators for gunnite work	11.77	.70	.70		.11
Plasterers' Tenders	10.88	.70	.70		.11

DECISION NO. OH78-2147

POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP A	$12.89	.66	1.00		.11
GROUP B	12.73	.66	1.00		.11
GROUP C	12.38	.66	1.00		.11
GROUP D	11.57	.66	1.00		.11
GROUP E	11.24	.66	1.00		.11
GROUP F	9.28	.66	1.00		.11

GROUP A - A-frames; rotary drills used on caisson work for foundations and sub-structure work; boiler or compressor operator mounted on crain (piggyback operation); boom truck (all types); cableways; cherry pickers; combination concrete mixer and tower; concrete pumps; cranes (all types); derricks (all types); draglines; dredge (dipper, clam or suction) 3 man crew; elevating grader or euclid loader; floating equipment; gradalls, helicopter operator and helicopter winch operator when hoisting builders materials; hoes (all types); hoisting engines (two or more drums); lift slab or panel jack operator; locomotives (all types); maintenance engineer (mechanic or welder); mixers paving (multiple drum); mobile concrete pumps with boom; panelboard (all types on site); pile driver; power shovels; side booms; slip form pavers; straddle carriers (building construction on site); hammerhead tower cranes; trench machines (over 24" wide); tug boat.
GROUP B - Asphalt paver; bulldozer; C.M.I type equipment; endloaders; Kohlman type loaders (dirt loading); lead greaseman; mucking machines; power grader; power scoops; power scrapers; push cat.
GROUP C - Air compressor (pressurizing shafts or tunnels); asphalt rollers; fork lifts; hoist (one drum); house elevators; man lift; power boilers (over 15 lbs. pressure); pump operators installing well points or other type of dewatering system; pumps (4" and over discharge); submersible pumps (4" and over discharge); trenchers 24" and under.
GROUP D - Compressors on building construction; conveyors (building material) generators; gunnite machines; mixers (capacity more than one bag); mixers (one bag capacity, side loader); post driver; post hole digger; pavement breaker (hydraulic or cable); road widening trencher; rollers; welder operator.
GROUP E - Backfillers & tampers; batch plant; bar and joint installing machines; bullfloats; burlap and curing machines; clefplanes; concrete spreading mach.; crushers; deck hands; drum firemen (asphalt); farm type tractors pulling attachments; finishing machines; form trenchers; high pressure pumps over ½" discharge; hydro seeders; self-propelled power spreader; self-propelled subgrader; tire repairmen; tractors pulling sheeps foot roller or grader; vibratory compactors (with integral power)
GROUP F - Oiler; helper; signalman; inboard & outboard motor boat launch; light plant operator; power driven heaters (oil fired); power boilers (less than 15 lbs. pressure; pumps under 4" discharge' submersible pumps under 4" discharge.

SUPERSEDEAS DECISION

STATE: Ohio
DECISION NO.: OH78-2148
Supersedes Decision No. OH78-2002, dated February 10, 1978 in 43 FR 5989
DESCRIPTION OF WORK: Building and Residential Conatruction

COUNTIES: MAHONING & TRUMBULL
DATE: Date of Publication

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$10.74	.45	.70		.02
BOILERMAKERS	12.68	.90	1.20		.03
BRICKLAYERS:					
Mahoning Co. (Smith Twp.)	11.44	.95	.70		.01
Mahoning Co. (Rem. of co.)	11.49	.75	1.00		.02
Trumbull Co.	11.99	.75	.50		.02
CARPENTERS:					
Commercial Building	10.74	1.17	1.10		.05
Residential	9.67	1.17	1.10		.05
CEMENT MASONS:					
Mahoning & Trumbull (Twps. of Hubbard & Liberty) Cos.	11.80	.60	.50		.05+d
Trumbull (Rem. of Co.) Co.	11.12	.40			.05
ELECTRICIANS:					
Mahoning (Milton twp.) & Trumbull (Excluding Hubbard & Liberty Twps.) Cos.	13.39	.60	7%		.7%
Mahoning (Austintown, Beaver, Berlin, Broadman, Canfield, Ellsworth, Coitsville, Goshen, Green, Jackson, Poland, Springfield, & Youngstown twps.) & Trumbull (Hubbard & Liberty Twps.) Cos.	13.03	.59	7%		.3%
Mahoning (Smith twp.) Co.:					
Commercial Building	11.90	.40	3%+.40		.3%
Residential (4 units only)	8.30	.40	3%+.30		.3%
ELEVATOR CONSTRUCTORS:					
Elevator constructors	11.75	.745	.56	a+b	.035
Helpers	70%JR	.745	.56	a+b	.035
Helpers (Prob.)	50%JR				
IRONWORKERS:					
Ornamental; Reinforcing; & Structural	12.03	.40	1.30		.07
Sheeters	12.53	.40	1.30		.07
Bucker-up	12.155	.40	1.30		.07

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS:					
Building & Conatruction	8.95	.55	.40		.05
Jackhammer op. (all machine driven tools, electric, gas or air & gas buggies)	9.08	.55	.40		.05
Mortar mixers (hand or machine)	9.07	.55	.40		.05
Trenching & shaft excavations (7' or more)	9.13	.55	.40		.05
Jackhammer op. in trench & shaft excavation (7' or more)	9.07	.55	.40		.05
Power & dynamite & sewer pipe-layers	9.27	.55	.40		.05
Scrap iron burning	9.05	.55	.40		.05
Gunnite scaffold man (over 25')	9.35	.55	.40		.05
Gunnite nozzlemen; Gunnite gunman	9.53	.55	.40		.05
Plasterers hod carriers	9.15	.55	.40		.05
LEADBURNERS	10.75	.40		c	.01
LINE CONSTRUCTION:					
Mahoning (excluding Smith Twp.) & Trumbull Cos.: Linemen; Cable Splicer; Operator - pole digging equipment	14.07	.45	3%		4%
Mahoning Co. (Smith Twp.):					
Linemen; Cable Splicer	11.90	.40	3%+.40		4%
Line equipment oprs.	10.60	.40	3%+.40		4%
MARBLE SETTERS; TERRAZZO WORKERS; Tile Setters:					
Mahoning Co.	12.305				
MARBLE SETTERS' FINISHERS; Terrazzo workers' finishers; & Tile setters' finishers:					
Mahoning (exluding Smith Twp.)	11.455				
MILLWRIGHTS; Piledrivermen	11.53	1.17	1.10		.05

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS:					
Brush; Dipping; Hydro jet cleaning; Paperhnagers; Roller; Steamcleaning; wall washing; & Waterproofing	$11.25	.75	1.00		
Spray; Epoxy-mastic (Brush & Roller)	11.75	.75	1.00		
Dry wall taping	11.40	.75	1.00		
Open Structural steel	11.46	.75	1.00		
PLASTERERS:					
Mahoning Co. (Smith Twp.)	11.44	.95	.70		.01
Mahoning Co. (Rem. of Co.):					
Commercial	12.11	.60			.03
Residential	9.08	.60			.03
Trumbull Co.:					
Commercial	11.24	.60			.03
Residential	8.43	.60			.03
PLUMBERS; Steamfitters:					
Mahoning & Trumbull (Hubbard & Liberty Twps.) Cos.	12.29	1.37	.50		.03
Trumbull Co.	12.60	.97	.90		.03
ROOFERS	11.21	.60	.70		.01
SHEET METAL WORKERS	12.26	.75	.79		.04
SOFT FLOOR LAYERS:					
Commercial Building	10.20	1.17	1.10		.05
Residential	9.18	1.17	1.10		.05
SPRINKLER FITTERS	12.75	.75	1.05		.08

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTES:
a. Seven paid holidays: A through F, & Day after Thanksgiving
b. Employer contributes 8% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 years, and 6% for employee in business less than 5 years.
c. Nine paid holidays: A through F, Washington's Birthday; Good Friday; & Christmas Eve providing employee has worked 45 full days during the 120 calendar days prior to the holiday, and the regular scheduled work days immediately preceding and following the holiday.
d. $25.00 per employee per year

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POWER EQUIPMENT OPERATORS COMMERCIAL BUILDING	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	$12.01	.65	.80		.14
CLASS II	11.32	.65	.80		.14
CLASS III	10.68	.65	.80		.14
CLASS IV	10.27	.65	.80		.14
CLASS V	10.17	.65	.80		.14
CLASS VI	12.28	.65	.80		.14
RESIDENTIAL					
CLASS I	10.51	.95	1.00		.16
CLASS II	9.82	.95	1.00		.16
CLASS III	9.18	.95	1.00		.16
CLASS IV	8.77	.95	1.00		.16
CLASS V	8.67	.95	1.00		.16
CLASS VI	10.78	.95	1.00		.16

CLASS I - Asphalt planer heater; Austin western & similar type; Backhoe; Batch plant-central mix; Batch plant-portable concrete; Berm builder-automatic; Backfiller w/drag attachment; Boat derrick; Boat-tug; Boring mach. attached to tractor; Bullclam; Bulldozer; C.M.I. road builder & similar types; Cable placer & layer; Carrier-straddle; Carryall - scraper or scoop; Chicago boom; Compactor w/blade attached; Concrete spreader finisher comb., Crane; Crane-stationary or climbing; Crane--electric overhead; Crane-side boom; Crane truck; Crane-tower; Derrick-boom; Derrick-car; Diggers-wheel (not trencher or road widener); Double nine; Drag line; Dredge; drill-Kenny or similar type; Electromatic; Fork lift; Frankie pile; Gradall; Grader-power; Gurry; Gurry-self-propelled; High lift; Hoist-monorail; Hoist-stationary & mobile tractor; Hoist-2 or 3; Jackall; Jumbo mach.; Kocal or Kuhlman; land-seagoing vehicle; Loader - Elevating; Loader-front end; Locomotive; Mechanic as welder; Metro clip harvester w/boom; Mucking mach.; Paver-asphalt finishing mach.; Paver-road concrete; Paver-slip form; Place crete mach; Post driver; Power driven hydraulic pumps & jacks; pump crete machine; Regulator-ballast; Reigs-drilling; Shovels; Spikemaster; Stonecrusher; Tie puller & loader; tie tamper;-Tractor-double boom; tractor w/attachments; Trucks-boom; Truck-tire-assigned to job; Trench mach.; Tunnel machine (Mark 21 Java or similar); Whiley

CLASS II - Asphalt plant; bending machine; Boring mach.; Chip harvester w/o boom; cleaning mach.- pipeline type; Coating Mach-pipeline type; Concrete belt placer; concrete finisher; Concrete planer or asphalt; Concrete spreader; Elevator; Fork lift walk behind; form line mach.; Grease truck op.; Grout pump; Gunnite mach.; Huck bolting Mach.; Hydraulic scaffold; Paving breaker; Pipe dream; Pot firemen; Power broom; Refrigeration plant; Sasgen derrick; Seeding Mach.; Self-propelled mobile vibrator compactor or roller; Hoist-single drum; Soil stabilizer (pump type); Spray cure Mach.-Self propelled; Straw blower mach.; Sub-grader; Tube Finisher or broom C.M.I. or similar type; Tugger Hoist

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POWER EQUIPMENT OPERATORS (CONT'D)

CLASS III - Batch plant-job related; Boiler op.; Compressor (125 CFM or over); Curb builder (self-propelled); Generator-steam; Jack-hydraulic driven; Mixer-concrete; Mulching Mach.; Pin puller; Pulverizer; Pump; Road finishing mach. (pulltype); roller; Saw-concrete-self propelled; signal man; spray cure mach.-motor powered; Spreador (side driver shoulder attachment); Tractor; Trencher-form; Water Blaster
CLASS IV - Drake man; Compressor under 125 CFM; Conveyor; Conveyor 12 feet or under other than servicing bricklayers; Deck hand; Drill wagon; fireman; Generator sets; Heaters-portable power (2 to 5); Helper-mechanic, Jacks Hydraulic (railroad); Ladavator; Roller (walk behind 1 ton or over); Steam jenny; Syphons; Vibrator-gasoline; Welding machines (2) (fuel burning)
CLASS V - Oiler
CLASS VI - Rigs-pile driving or caisson type

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS:					
Dump; Flat bottom; Stake body; Batch; Water wagons; & Pickups	$9.435	.40	$22.00a		
Semis; Tandems; Mixers; Semi-water wagons; Fuel trucks; & Distributor trucks	9.655	.40	22.00a		
Euclid wagon; DW 10 caterpillars or equipment; Carry-all	9.905	.40	22.00a		
Tractor trailer (low boy)	10.005	.40	22.00a		
FOOTNOTE:					
a. per week per employee					

SUPERSEDEAS DECISION

STATE: OHIO COUNTIES: *SEE BELOW
DECISION NUMBER: OH78-2153 DATE: Date of Publication
Supersedes Decision No. OH78-2057, dated May 12, 1978 in 43 FR 20685
DESCRIPTION OF WORK: Building & Residential Construction

*ASHTABULA, CUYAHOGA, LAKE, LORAIN, PORTAGE, STARK, & SUMMIT

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS:					
Ashtabula (Cities of Ashtabula & Geneva), Cuyahoga, Lake, & Lorain Cos.	$14.78				
Ashtabula (Rem. of Co.)	10.74	.45	.70		.02
Remaining Cos.	12.135	.55	.80		.02
BOILERMAKERS	12.68	.90	1.20		.03
BRICKLAYERS; Stonemasons:					
Ashtabula Co.	11.21	.95	.70		
Cuyahoga Co.	12.65	1.05	1.20		.01
Lake Co.	13.02	.60	1.00		
Lorain Co.	12.85		.60	a	.01
Portage & Summit Cos.:					
Commercial Construction	12.31	.88	.55		.02
Residential Construction	10.31	.88	.55		.02
Stark Co.	11.44	.95	.70		.01
CARPENTERS; Millwrights; Piledrivermen; Soft Floor Layers;					
Ashtabula, Cuyahoga, & Lake Cos.					
Carpenters; Soft Floor Layers	12.87	.85	1.25		.03
Millwrights	12.60	.85	1.52		.03
Piledrivermen	12.10	.77	1.25		.03
Portage & Summit Cos.:					
Carpenters	12.20	.50	.90		.02
Millwrights	12.60	.85	1.52		.03
Piledrivermen	12.10	.77	1.25		.03
Soft Floor Layers	10.40	.40	.70		
Stark Co.:					
Carpenters	11.08	.55	.60		.02
Millwrights; Piledrivermen	10.76	.50	.50		.02
Soft Floor Layers	10.11	.50	.50		.02
Lorain Co.:					
Carpenters; Soft Floor Layers	11.59	.85	1.00	b	.06
Millwrights; Piledrivermen	11.59	.85	1.00	b	.06
CEMENT MASONS:					
Ashtabula Co.	11.21	.95	.70		
Cuyahoga Co.	14.58				
Lake Co.	13.02	.60	1.00		
Lorain Co.	12.85		.60	a	.01
Portage, Stark, & Summit Cos.:					
Commercial Construction	11.54	.60	.75		.02
Residential Construction (excluding Stark Co.)	10.57	.60	.75		.02

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS:					
Cuyahoga & Lorain (Twp. of Columbia) Cos.	$13.75	.55	3%+.48		.02
Lake Co.:					
Commercial Construction	13.13	.70	3%+.70		.3%
Residential Construction	6.50	.70	3%		1%
Lorain (Except Columbia Twp.):					
Commercial Construction	12.95	.60	3%+.80		.1%
Residential Construction	7.38	.60	3%		.1%
Portage (Twps. of Atwater, Aurora, Brimfield, Deerfield, Franklin, Mantua, Randolph, Ravenna, Rootstown, Shelbyville, Streetsboro, & Suffield), & Summit Cos.:					
Commercial Construction	12.38	.74	3%+.65		.2%
Residential Construction	7.88	.74	3%		.2%
Portage (Rem. of Co.) & Stark Co.:					
Commercial Construction	11.90	.40	3%+.40		.3%
Residential Construction	8.30	.40	3%+.30		.3%
Ashtabula Co. (Twps. of Colebrook, Wayne, Williamsfield, Orwell, & Windsor)	13.39	.60	7%		.7%
Ashtabula Co. (Rem. of Co.):					
Commercial Construction	13.05	.90	3%+.85		.2%
Residential Construction	6.60		3%		.002%
ELEVATOR CONSTRUCTORS:					
Ashtabula Co.:					
Elevator Constructors	11.04	.745	.56	c+d	.035
Helpers	70%JR	.745	.56	c+d	.035
Helpers (Prob.)	50%JR				
Cuyahoga, Lake, & Lorain Cos.:					
Elevator Constructors	12.79	.745	.56	c+d	.035
Helpers	70%JR	.745	.56	c+d	.035
Helpers (Prob.)	50%JR				
Portage, Stark, & Summit Cos.:					
Elevator Constructors	12.02	.745	.56	c+d	.035
Helpers	70%JR	.745	.56	c+d	.035
Helpers (Prob.)	50%JR				
GLAZIERS:					
Ashtabula, Cuyahoga, Lake, & Lorain Cos.	13.68	.55	.65		.01
Portage, Stark & Summit Cos.:					
Commercial	10.94	.71	1.01		
Residential	6.79	.64	.52		

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
IRONWORKERS:					
Ashtabula (NE ¼ of Co.)	$11.59	1.86	1.01		.15
Ashtabula (except NE ¼ of Co.), Cuyahoga, Lake, Lorain, Portage (excluding Ravenna Ordnance Depot), & Summit Cos.	12.72	1.05	1.30		.03
Portage (Ravenna Ordnance Depot) Co.:					
Ornamental; Reinforcing; & Structural	12.03	.40	1.30		.07
Bucker-up	12.155	.40	1.30		.07
Sheeter	12.53	.40	1.30		.07
Stark Co.:					
Ornamental; Reinforcing; & Structural	11.68	.80	.95		.05
Bucker-up	11.805	.80	.95		.05
Sheeter-side	11.93	.80	.95		.05
Sheeter-roof	12.18	.80	.95		.05
LATHERS:					
Ashtabula, Cuyahoga, Lake, Lorain (Eastern portion), & Summit (No. part of Co.) Cos.	13.38		1.50		.01
Lorain (Rem. of Co.)	13.30				.01
Portage & Summit (So. part of Co.) Cos.	11.01	.57	.15		.01
LINE CONSTRUCTION:					
Ashtabula Co. (Twps. of Colebrook, Orwell, Wayne, Williamsfield, & Windsor); Portage Co. (Twps. of Charleston, Edinburgh, Freedom, Hiram, Nelson, Palmyra, Paris, & Windom)					
Cable splicer op.; Linemen; Pole digging equipment op.	14.07	.45	3%		½%
Groundmen:					
Over 3 yrs.	11.26	.45	3%		½%
3rd yr.	10.55	.45	3%		½%
2nd yr.	9.85	.45	3%		½%
2nd 6 mos.	8.44	.45	3%		½%
1st 6 mos.	7.035	.45	3%		½%

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION (CONT'D):					
Ashtabula Co. (Rem. of Co.):					
Cable splicer; Equipment Op.; Line Truck Driver; Linemen	$13.05	.90	3%+.85		½%
Groundmen:					
Over 12 mos.	9.80	.90	3%+.85		½%
6 - 12 mos.	8.50	.90	3%+.85		½%
0 - 6 mos.	7.20	.90	3%+.85		½%
Cuyahoga & Lorain (Columbia Twp.) Cos.:					
Cable Splicers; Equipment Ops.; Linemen	13.11	.50	3%		½%
Beginning Truck Driver Groundmen	6.17	.50	3%		½%
Advanced Truck Driver (winch) Groundman over 2 yrs.' experience	6.57	.50	3%		½%
Lake Co.:					
Equipment Operators; Linemen	12.88	.70	3%+.70		½%
Lorain (Rem. of Co.) Co.:					
Cable Splicers; Equipment ops.; & Linemen	12.95	.60	3%+.80		½%
Portage (Twps. of Atwater, Aurora, Brimfield, Deerfield, Franklin, Mantua, Randolph, Ravenna, Rootstown, Shalersville, Streetsboro, & Suffield), & Summit Cos.:					
Linemen	12.38	.74	3%+.65		½%
Cable Splicers	13.18	.74	3%+.65		½%
Groundmen; Truck Drivers	6.19	.74	3%+.65		½%
Equipment Operators	9.29	.74	3%+.65		½%
Stark Co.:					
Cable Splicers; Linemen	11.90	.40	3%+.40		½%
Truck Drivers	7.95	.40	3%+.40		½%
Groundmen:					
Over 1 yr's experience	7.50	.40	3%+.40		½%
Under 1 yr's experience	7.05	.40	3%+.40		½%
Line Equipment Ops.	10.60	.40	3%+.40		½%
MARBLE SETTERS:					
Ashtabula Co.	11.21	.95	.70		
Cuyahoga Co.	12.65	1.05	1.20		.01
Lake Co.	13.02	.60	1.00		
Lorain Co.	12.85		.60	a	.01
Portage & Summit Cos.	11.27	.81	.50		

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
MARBLE SETTERS' FINISHERS:					
Cuyahoga, Lake & Lorain Cos.	$11.76		1.50		
Portage & Summit Cos.	$10.77	.81	.50		
PAINTERS:					
Ashtabula, Cuyahoga, Lake, Portage (No. of East West Turnpike), & Summit (No. of East West Turnpike), Lorain (NE part):					
Brush; Rollers; Paperhangers	12.21	.67	1.00		.05
Swing Stage; Window Jack	12.51	.67	1.00		.05
Tapers	12.91	.67	1.00		.05
Lorain (Except NE part):					
Commercial Construction:					
Brush	9.70			e	
Roller; Taping	9.95			e	
Residential Construction:					
Brush	9.35			e	
Taping	9.60			e	
Portage (Rem. of Co.), & Summit (Rem. of Co.) Cos.:					
Brush; Rollers; Paperhangers	9.40	.62	.60		
Drywall finisher & taper; Spray	9.90	.62	.60		
Structural steel	9.65	.62	.60		
Stark Co.: (Commercial)					
Brush; Roller	10.31	.93	.60		.02
Paperhangers	10.41	.93	.60		.02
Drywall	10.71	.93	.60		.02
Spray	10.81	.93	.60		.02
Drywall with machines	11.06	.93	.60		.02
Stark Co.: (Residential)					
Brush; Rollers	9.87	.93	.60		.02
Paperhangers	9.97	.93	.60		.02
Spray	10.37	.93	.60		.02
Drywall	10.27	.93	.60		.02
Drywall with machines	10.62	.93	.60		
PIPEFITTERS:					
Ashtabula, Cuyahoga, Lake, & Lorain Cos.	12.45	1.22	1.30		.05

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FEDERAL REGISTER, VOL. 43, NO. 219—MONDAY, NOVEMBER 13, 1978

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLASTERERS:					
Ashtabula Co.	$11.21	.95	.70		
Cuyahoga Co.	14.88				.01
Lake Co.	13.02	.60	1.00		
Lorain Co.	12.85		.60	a	.01
Portage & Summit Cos.	11.41	.60	.75		.01
Stark Co.	11.44	.95	.70		.01
PLUMBERS:					
Ashtabula, Cuyahoga, Lake, & Summit (No. of Rte. #303) Cos.	12.88	.90	1.10		.02
Lorain Co.	13.23	.60	.88		.05
Portage & Summit (So. of Rte. #303) Cos.	12.15	.85	1.00		.05
Stark Co.	12.12	.50	.70	f	.05
ROOFERS:					
Ashtabula, Cuyahoga, Lake, & Lorain Cos.	14.03	.25	.50		
Portage, Stark, & Summit Cos.	11.18	.73	.55		.02
SHEET METAL WORKERS:					
Ashtabula, Cuyahoga, & Lake Cos.	12.85	.60	1.33		.04
Lorain Co.	13.00	.85	.88		.04
Portage, Stark, & Summit Cos.	10.91	.61	.84		.05
SPRINKLER FITTERS:					
Ashtabula, Cuyahoga, Lake, & Lorain Cos.	12.45	1.22	1.30		.05
Lake, Portage, Stark, & Summit Cos.	12.75	.75	1.05		.08
STEAMFITTERS:					
Lorain Co.	13.23	.60	.88		.05
TERRAZZO WORKERS:					
Ashtabula Co.	11.21	.95	.70		
Cuyahoga Co.	12.65	1.05	1.20		.01
Lake Co.	13.02	.60	1.00		
Lorain Co.	12.85		.60	a	.01
Portage & Summit Cos.	11.27	.81	.50		
TERRAZZO WORKERS' FINISHERS:					
Cuyahoga, Lake, & Lorain Cos.	12.62		1.20		
Portage & Summit Cos.	10.77	.81	.50		

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TILE SETTERS:					
Ashtabula Co.	$11.21	.95	.70		
Cuyahoga Co.	12.905		1.50		
Lake Co.	13.02	.60	1.00		
Lorain Co.	12.85		.60	a	.01
Portage & Summit Cos.	11.27	.81	.50		
TILE SETTERS' FINISHERS:					
Cuyahoga, Lake, & Lorain Cos.	12.29		1.50		
Portage & Summit Cos.	10.77	.81	.50		

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day
E-Thanksgiving Day; & F-Christmas Day

FOOTNOTES:
a. 2 paid holidays: C & D
b. 2 paid holidays: B & D
c. 7 paid holidays: A through F, & Day after Thanksgiving
d. Employer contributes 8% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 years. Employer contributes 6% of regular hourly rate to vacation pay credit for employee who has worked in business less than 5 years.
e. 2 paid holidays: C & D
f. 1 paid holiday: D providing the employee has worked 5 consecutive days before and after the holiday.

LABORERS (Ashtabula County):						
Sheeting & Shoring Men; Ashphalt Rakers & Tampers; Dumpmen (Batch Truck); Signalmen; Concrete Workers; Building Wreckers; Tool Checkers; Carpenters' Tenders; Construction Laborers; All work not mentioned in classifications below to be paid at the rate of construction laborers	$10.45					

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DECISION NO. OH78-2153

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS (CONT'D):					
Spreader Box Men (asphalt); Stone Masons' Assistant; Plasterers or Mortar Mixers; Squeegee man	10.60				
Air & Machine Driven Tool op.; Industrial Sewer Cleaning; Sewer Pipe Layers; Bottom Men (6' & over); Power Driven Wheelbarrows & Sweepers; Brick Batter & Droppers; Burning & Cutting Torches; Mud Jacking of floors	10.65				
Stackmen; Swinging Scaffold men	10.75				
Tunnel Laborers	10.85				
Gunnite ops.	10.95				
Power Blasters	11.00				
LABORERS (Cuyahoga County):					
Construction	10.52	1.37	1.40		
Sewer & Utility; Power Driven Tools & Vibrators	10.67	1.37	1.40		
Jackhammer; Acetylene Burners; Muckers	10.72	1.37	1.40		
Swinging Scaffolds	10.77	1.37	1.40		
Gunnite ops.; Blasters; Shooters; Caisson; Well Cylinders; Mine Workers w/o air; & Cofferdams	10.84	1.37	1.40		
Topman on free standing radial stack	11.02	1.37	1.40		
LABORERS (Lake County):					
Building & Construction	10.65	.55	.40		
Gunite op.; Blasters & Shooters; Caisaons; Wells; Cylinder cofferdams; Mine Workers w/o air; Swing Scaffolds; Acetylene Burners; Vibrators; Top man on free standing radial stacks; Slip forms higher than 30'; Fire Brick Tenders	10.90	.55	.40		

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS (Lorain County):					
Building & Construction; Signalmen; Flagmen; Tool Crib; Carpenter Tender; Finisher Tender; Concrete Handler; Guard Rail Erector	$10.08	.70	.70		.10
Bottom Men; Scaffold Builder; Tunnel Laborers; Pipelayers; Air & Power Driven Tools; Burner on demolition work; Swinging Scaffold; Mucker; Caisson Worker; Cofferdam Worker; Powder Men & Dynamite Blasters; Creosote Workers; Mortar Mixers; Form Setter; Mason Tender; Plasterers' Tenders; Hod Carrier; Laser Beam set up man	10.28	.70	.70		.10
Gunnite Operator	10.68	.70	.70		.10
LABORERS (Portage & Summit Cos.)					
Residential Construction	9.07	.65	.40		.16
Common Laborers; Welders' Helpers; Carpenters' Tenders; Landscape Laborers; Mason Tender; Concrete Bucket Tender	11.12	.65	.40		.16
Air Driven Boring Machine; Tamper ops.; Asphalt Raker; Paving Bed Maker; Material Mixer; Wire Mesh Handler; Hook-up man on demolition work; Scaffold Erector; Structural Precast Erector; Power Tools-Air, Gas, or electric	10.82	.65	.40		.16
Pipe Layers; Rock Drillers; Muckers--Tunnel; Burners; Form Setters; Power Saws; Jackhammer; Barco Type Tampers; Bottom man; Hod Carrier; Power Buggy or Power Wheelbarrow	10.77	.65	.40		.16

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS (CONT'D)					
Gunite Nozzlemen; Tunnel Miners; Water Line Caulkers; Dynamite Men; Pump Hose Nozzlemen	$10.62	.65	.40		.16
LABORERS (Stark County):					
Building & Construction; Signalmen; Flagmen; Tool Cribman; Carpenters' Tenders; Finisher Tenders; Concrete Handler; Utility Construction Laborer; Guard Rail Erector	8.96	.70	.70		.10
Bottom Men; Scaffold Builder; Tunnel Laborers; Pipe Layers; Air & Power Driven Tools; Burner on demolition; Swinging Scaffold; Mucker; Caisson Worker; Cofferdam Worker; Powder Men & Dynamite Blaster; Creosote Workers; Mortar Mixers; Form Setter; Mason Tender; Plasterers' Tenders; Hod Carrier; Laser Beam Set-Up Men	9.16	.70	.70		.10
Gunnite Operator	9.56	.70	.70		.10
POWER EQUIPMENT OPERATORS:					
Ashtabula, Cuyahoga, Lake, & Lorain Cos.:					
GROUP A	13.17	.66	1.00		.11
GROUP B	13.02	.66	1.00		.11
GROUP C	12.67	.66	1.00		.11
GROUP D	11.89	.66	1.00		.11
GROUP E	11.57	.66	1.00		.11
GROUP F	9.64	.66	1.00		.11
Portage, Stark, & Summit Cos.:					
GROUP A	12.89	.66	1.00		.11
GROUP B	12.73	.66	1.00		.11
GROUP C	12.38	.66	1.00		.11
GROUP D	11.57	.66	1.00		.11
GROUP E	11.24	.66	1.00		.11
GROUP F	9.28	.66	1.00		.11

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GROUP A - A-Frames; All rotary drills used on caisson work for foundations & sub-structure work; Boiler op. or compressor op. when compressor or boiler is mounted on crane (piggyback operation); Boom trucks (all types); Cableways; cherry pickers; Combination concrete mixer & tower; Concrete pumps; Cranes (all types); Derricks (all types); Draglines; Elevating grader or Euclid loader; Floating equipment; Gradalls; Helicopter op. (hoisting builders materials); Helicopter winch op.;(hoisting builders materials); Hoes (all types); Hoisting engines (two or more drums); Lift slab or panel jack ops.; Locomotives (all types); Maintenance engineer (mechanic or welder); Mixer paving (multiple drum); Mobile concrete pumps with boom; Panelboard (all types on site); Pile driver; Power shovels; Side booms; Slip form pavers; Straddle carriers (building construction site); Tower derricks; Trench machines (over 24" wide)

GROUP B - Asphalt paver; Bulldozer; CMI type equipment; Endloaders; Kohlman type loaders (dirt loading); Mucking machines; Power graders; Power scoops; Power scrapers; Push cats

GROUP C - Air compressor (pressurizing shafts or tunnels); All asphalt rollers; Fork lifts; Hoist (one drum); House elevators; Man lift; Power boiler (over 15 lbs., pressure); Pump op. installing or operating well points or other type of dewatering system; Pumps (4" & over discharge); Submersible pumps (4" & over discharge); Trenchers (24" & under)

GROUP D - Compressors on building construction; Conveyors (building material); Gunite machines; Mixers (cap., more than one bag); Mixers (one bag cap., side loader); Post driver; Post hole digger; Pavement breaker (hydraulic or cable); Road widening trencher; Rollers; Welder operator

GROUP E - Backfillers and tampers; Batch plant; Bar & joint installing machine; Bull floats; Burlap & curing machines; Clefplanes; Concrete spreading machines; Crushers; Drum fireman (asphalt); Farm type tractors (pulling attachments); Finishing machines; Form trenchers; High pressure pumps (over 4" discharge); Hydro seeders; Self-propelled power spreader; Self-propelled subgrader; Tractors (pulling sheep foot roller or grader); Tire repairman; Vibratory compactors (with integral power)

GROUP F - Oiler; Helpers; Signalman; Light plant op.; Power driven heaters (oil fired); Power boilers (less than 15 lbs. pressure); Submersible pumps (under 4" discharge); Pumps (under 4" discharge)

SUPERSEDEAS DECISION

STATE: OHIO
COUNTIES: *SEE BELOW
DECISION NO.: OH78-2154
DATE: Date of Publication
Supersedes Decision No. OH78-2058, dated May 12, 1978 in 43 FR 20691
DESCRIPTION OF WORK: Building Construction (Does not include single family homes and garden type apartments up to and including 4 stories).

*ASHLAND, CARROLL, COLUMBIANA, COSHOCTON, HOLMES, MEDINA, TUSCARAWAS, & WAYNE

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS:					
Ashland, Coshocton, Holmes, Medina, Tuscarawss & Wayne Cos	$12.135	.55	.80		.02
Carroll & Columbiana Cos.	10.74	.45	.70		.02
BOILERMAKERS:					
Ashland Co.	13.575	1.075	1.00		.03
Carroll, Coshocton, Holmes, Medina, Tuscarawss, & Wayne Cos.	12.68	.90	1.20		.03
Columbiana Co.	11.785	7.5%	7%		.01
BRICKLAYERS; Marble Setters; Stonemasons; Terrazzo Workers; & Tile Setters:					
Ashland, Holmes & Wayne (except Milton & Chippewa Twps.) Cos.	11.48	.60	1.00		.02
Carroll, Columbiana (Twps. of Knox, Butler, West & Hanover), & Tuscarawas Cos.:					
Bricklayers; Stonemasons	11.44	.95	.70		.01
Columbiana (Twps. of Center, Elk Run, Fairfield, Middletown, New Waterford, Perry, Salem, & Unity) Co.:					
Bricklayers; Stonemasons Marble Setters; Terrazzo Workers; & Tile Setters	11.49	.75	1.00		.02
	12.305				
Columbians (Rem. of Co.) Co.	11.15	.60	.50		
Coshocton Co.	10.70	.60	.90		.10
Medina (Twps. of Hinckley, Grander, Brunswick, Medina, Liverpool, Montville, & York) Co.:					
Bricklayers; Marble setters; Stonemasons; & Terrazzo Workers	12.65	1.05	1.20		.01
Tile Setters	12.905		1.50		

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Medina (Twps. of Wadsworth, Guilford, Westfield, Lafayette, & Sharon) & Wayne (Chippewa & Milton Twps.) Cos.:					
Bricklayers; Stonemasons Marble Setters; Terrazzo Workers; & Tile Setters	$12.31	.88	.55		.02
	11.27	.81	.50		
Medina (Twps. of Litchfield, Chatham, Harrisville, Homer, & Spencer) Co.	12.85		.60	a	.01
CARPENTERS; Millwrights; Piledrivermen; & Soft Floor Layers:					
Ashland Co.:					
Carpenters; Soft Floor Layers	11.59	.85	1.00	b	.06
Millwrights	12.60	.85	1.52		.03
Piledrivermen	12.10	.77	1.25		.03
Carroll, Tuscarawas, & Wayne Cos.:					
Carpenters	11.08	.55	.60		.02
Millwrights; Piledrivermen	10.76	.50	.50		.02
Soft Floor Layers	10.11	.50	.50		.02
Columbiana Co.:					
Carpenters	10.75	.92	.95		.02
Millwrights	11.73	.50	6%	5%	.02
Piledrivermen	11.85	5.5%	10%		.5%
Coshocton & Holmes Cos.:					
Carpenters; Soft Floor Layers	10.79	.58	.85		.04
Millwrights	11.44	.58	.85		.04
Piledrivermen	11.44	.58	.85		.04
Medina Co.:					
Carpenters	12.20	.50	.90		.02
Millwrights	12.60	.85	1.52		.03
Piledrivermen	12.10	.77	1.25		.03
CEMENT MASONS; Plasterers:					
Ashland Co.:					
Cement Masons	10.80	.60			
Plasterers	10.95				
Carroll & Tuscarawas Cos.	11.44	.95	.70		.01

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Columbiana Co.:					
Cement Masons	$11.80	.60	.50		.05+f
Plasterers:					
Twps. of Knox, Butler, West, & Hanover	11.44	.95	.70		.01
Remainder of Co.	12.11	.60			.03
Coshocton Co.:					
Cement Masons	10.70	.60	.90		.10
Holmes & Wayne (except Chippewa & Milton Twps.) Cos.	12.03		1.00		.02
Medina Co. (exclusive of Twps. of Homer, Harrisville, Chatham, Litchfield, & Spencer)					
Cement Masons	11.54	.60	.75		.02
Plasterers	11.41	.60	.75		.01
Medina Co. (Rem. of Co.):					
Cement Masons; Plasterer	12.85		.60	a	.01
ELECTRICIANS:					
Ashland Co.	12.30	.45	3%+.50		.1%
Carroll (N ½ incl. Fox, Harrison, Rose & Washington Twps.), Columbiana (Knox Twp.), Holmes, Tuscarawas (N. of Auburn, Clay, Rush, & York Twps.), & Wayne (S. of Baughman, Chester, Green, & Wayne Twps.) Cos.	11.90	.40	3% + .40		.3%
Carroll (Rem. of Co.) Co.	12.95	6%	9%	8%	½%
Columbiana (Twps. of Center, Elk Run, Franklin, Hanover, Liverpool, Madison, Middleton, St. Clair, Washington, Wayne, West, & Yellow Creek) Co.	11.90	.95	3% + .48		.07
Columbiana (Twps. of Butler, Fairfield, Perry, Salem, & Unity) Co.	13.03	.59	7%		.3%
Coshocton & Tuscarawas (Auburn, York, Jefferson, Clay, Rush, Oxford, Washington, Salem, Perry, & Bucks Twps.) Cos.	11.40	.40	3% + .60		.03
Medina (Twps. o Litchfield, & Liverpool) Co.	12.95	.60	3% + .80		.1%
Medina (Rem. of Co.), & Wayne (N½ of Co.)	12.38	.74	3% + .65		.2%

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELEVATOR CONSTRUCTORS:					
Ashland, Coshocton, Holmes, & Tuscarawas Cos.:					
Elevator Constructors	$11.705	.745	.56	c+d	.035
Helpers	70%JR	.745	.56	c+d	.035
Helpers (Prob.)	50%JR				
Carroll Co.:					
Elevator Constructors	11.08	.745	.56	c+d	.035
Helpers	70%JR	.745	.56	c+d	.035
Helpers (Prob.)	50%JR				
Columbiana Co.:					
Elevator Constructors	11.75	.745	.56	c+d	.035
Helpers	70%JR	.745	.56	c+d	.035
Helpers (Prob.)	50%JR				
Medina & Wayne Cos.:					
Elevator Constructors	12.02	.745	.56	c+d	.035
Helpers	70%JR	.745	.56	c+d	.035
Helpers (Prob.)	50%JR				
GLAZIERS:					
Carroll, Coshocton, Holmes, Medina (S ½), Tuscarawas, & Wayne Cos.	10.94	.71	1.01		
Medina (N ½) Co.	13.68	.55	.65		.01
IRONWORKERS:					
Ashland, Carroll, Coshocton, Holmes, Tuscarawas, & Wayne Cos.:					
Ornamental; Reinforcing; & Structural	11.68	.80	.95		.05
Sheeter-roof	12.18	.80	.95		.05
Sheeter-side	11.93	.80	.95		.05
Bucker-up	11.805	.80	.95		.05
Columbiana Co.:					
Ornamental; Reinforcing; & Structural	12.03	.40	1.30		.07
Sheeters	12.53	.40	1.30		.07
Bucker-up	12.155	.40	1.30		.07
Medina Co.	12.72	1.05	1.30		.03
LATHERS:					
Wayne Co.	11.01	.57	.15		.01

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
MARBLE SETTERS' FINISHERS; Terrazzo Workers' Finishers; & Tile Setters' Finishers:					
Ashland, & Medina (exclu. Twps. of Wadsworth, Guilford, Westfield, Lafayette, & Sharon) Cos.:					
Marble Setters' Finishers	11.76		1.50		
Terrazzo Workers' Finishers	12.62		1.20		
Tile Setters' Finishers	12.29		1.50		
Columbiana Co.	11.455				
Medina (Rem. of Co.) & Wayne (Twps. of Milton & Chippewa)	10.77	.81	.50		
PAINTERS:					
Ashland Co.:					
Brush; Roller; Washer; Cleaner	9.30		.50		
Drywall; Paperhanger; Wall Coverer; Pot Tenders	10.05		.50		
Structural Steel Tanks & Towers; Hazardous Materials incl. epoxy or any 2 component materials	9.80		.50		
Spray; Riggers & helpers on scaffolding over 30' above base level	10.05		.50		
Sign & Pictorial	10.15		.50		
Sandblaster Cleaner	10.45		.50		
Carroll, Holmes, Tuscarawas, & Wayne Cos.:					
Brush; Roller	10.31	.93	.60		.02
Paperhanger	10.41	.93	.60		.02
Spray	10.81	.93	.60		.02
Drywall	10.71	.93	.60		.02
Drywall with machines	11.06	.93	.60		.02
Columbiana Co.:					
Brush; Rollers; Waterproofing; Paperhanging; Wallwashing; Hydro-jet cleaning; Steam cleaning	11.25	.75	1.00		
Spray; Epoxy-mastic (brush or roller)	11.75	.75	1.00		
Swing; Interior scaffold (over 30 ft.); Window jacks & safety belts	11.42	.75	1.00		

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Drywall taping	$11.40	.75	1.00		
Open structural steel	11.46	.75	1.00		
Dipping (when permitted)	11.60	.75	1.00		
Epoxy-mastic (spray)	12.25	.75	1.00		
Paperhangers (furnishing own tools)	12.50	.75	1.00		
Coshocton Co.:					
Brush; Paperhangers; Wall washers; Wallpaper cleaners; & Drywall tapers	6.00				
Spray	6.50				
Swing stage; Scaffold & removal of wallpaper	6.25				
Medina Co.:					
Brush; Rollers; & Paperhangers	9.40	.62	.60		
Spray; Drywall finisher & taper	9.90	.62	.60		
Structural steel	9.65	.62	.60		
PIPEFITTERS; Sprinkler fitters; Medina (No. of State Rte. #18)	12.45	1.22	1.30		.05
PLUMBERS; Steamfitters:					
Ashland Co.	13.23	.60	.88		.05
Carroll (Twps. of Ross, Monroe, Union, Lee, Orange, Perry, & Loudon), Coshocton, Holmes, & Tuscarawas Cos.	12.60	.45	.60		.08
Carroll (Rem. of Co.), & Wayne Cos.	12.12	.50	.70	e	.05
Columbiana (Washington & Yellow Creek Twps., & Liverpool Twps. Secs. 35 & 36 - West of County Rd. #427)	12.61	.50	8%	8%	.12
Columbiana (Rem. of Co.)	12.29	1.37	.50		.03
Medina (N. Of St. Rte. 18 & Smith Rd. incl. city of Medina) Co.:					
Plumbers	12.88	.90	1.10		.02
Medina (Rem. of Co.) Co.:					
Plumbers	12.15	.85	1.00		.05
ROOFERS	11.18	.73	.55		.02
SHEET METAL WORKERS:					
Ashland, Carroll, Coshocton, Holmes, Medina, Tuscarawas, & Wayne Cos.	10.91	.61	.84		.05
Columbiana Co.	12.26	.75	.79		.04
SPRINKLER FITTERS (Excluding Medina Co. (No. of State Rte 18)	12.75	.75	1.05		.08

PAID HOLIDAYS:
A-New year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; & F-Christmas Day

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FOOTNOTES:
a. 2 paid holidays: C & D
b. 2 paid holidays: B & D
c. 7 paid holidays: A through F, & Day after Thanksgiving
d. Employer contributes 8% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 years. Employer contributes 6% of regular hourly rate to vacation pay credit for employee who has worked in business less than 5 years.
e. 1 paid holiday: D providing the employee has worked 5 consecutive days before and after the holiday.
f. $25.00 per year

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS:					
Ashland Co.:					
General laborer; Carpenter tender; Concrete handler	8.96	.70	.70		.10
Mason & Plasterers' tenders; Air & power driven tools; Pipelayers; Dynamite blaster; Mortar mixer; & formsetter	9.16	.70	.70		.10
Gunnite operator	9.56	.70	.70		.10
Carroll Co.:					
Building & construction; Signalmen; Flagmen; Tool crib-man; Carpenters' tenders; Finisher tenders; Concrete handler; Utility construction laborer; Guard rail erector	8.96	.70	.70		.10
Bottom men; Scaffold builder; Tunnel laborers; Pipelayers; Air & power driven tools; Burner on demolition; Swing-ing scaffold; Mucker; Caisson worker; Cofferdam worker; Powder men & dynamite blaster; Creosote workers; Mortar mixers; Form setter; Mason tender; Plasterers' tenders; Hod carrier; Laser beam set-up men	9.16	.70	.70		.10
Gunnite operator	9.56	.70	.70		.10

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Columbiana Co.:					
General laborers; Carpenters' tenders	$ 8.70	.70	.70		.10
Brick & cement mason tenders; Plasterers' tenders; Mortarmen	8.865	.70	.70		.10
Pipelayers; Air tool & power tool operators; Jackhammer ops.	8.90	.70	.70		.10
Coshocton, Holmes, & Tuscarawas Cos.:					
Laborers; Carpenters' tenders; Concrete handlers; Finisher tenders; Guard rail erector	8.81	.70	.70		.10
Bottom men scaffold builders; Air & power driven tools; Burners; Pipelayers; Mason & plasterers' tenders; Hod carriers; Laser beam set up men; Blasters & Dynamite man	9.01	.70	.70		.10
Gunnite operators	9.41	.70	.70		.10
Medina Co.:					
Common laborers; Welders helpers; Carpenters' tenders; Landscape laborers; Mason tender; Concrete bucket tender	11.12	.65	.40		.16
Air driven boring machine; Tamper ops.; Asphalt raker; Paving bed maker; Material mixer; Wire mesh handler; Hook-up man on demolition work; Scaffold erector; Structural precast erector; Power tools-air, gas, or electric	10.82	.65	.40		.16
Pipe layers; Rock drillers; Muckers--Tunnel; Burners; Form setters; Power saws; Jackhammer; Barco type tampers; Bottom man; Hod carrier; Power buggy or Power wheelbarrow	10.77	.65	.40		.16
Gunite nozzlemen; Tunnel miners; Water line caulkers; Dynamite men; Pump hose nozzlemen	10.62	.65	.40		.16

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Wayne Co.:					
Building & Construction; Signalmen; Flagmen; Tool crib-man; Carpenters' tenders; Finisher tenders; Concrete handler; Utility construction laborers; Guard rail erector	$ 8.96	.70	.70		.10
Bottom men; Scaffold builder; Tunnel laborers; Pipe layers; Air & power driven tools; Burner on demolition; Swing-ing scaffold; Mucker; Caisson worker; Cofferdam worker; Powder men & dynamite blaster; Creosote workers; Mortar mixers; Form setters; Mason tender;					
Plasterers' tenders; Hod carrier; Laser beam set-up men	9.16	.70	.70		.10
Gunnite operator	9.56	.70	.70		.10
POWER EQUIPMENT OPERATORS:					
Ashland, Carroll, Coshocton, Holmes, Tuscarawas, & Wayne Cos.:					
Group A	12.89	.66	1.00		.11
Group B	12.73	.66	1.00		.11
Group C	12.38	.66	1.00		.11
Group D	11.57	.66	1.00		.11
Group E	11.24	.66	1.00		.11
Group F	9.28	.66	1.00		.11
Medina Co.:					
Group A	13.17	.66	1.00		.11
Group B	13.02	.66	1.00		.11
Group C	12.67	.66	1.00		.11
Group D	11.89	.66	1.00		.11
Group E	11.57	.66	1.00		.11
Group F	9.64	.66	1.00		.11

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GROUP A - A-frames, air compressor on steel erection, rotary drills used on caisson work for foundations and sub-structure work, boiler or compressor operator mounted on crain (piggyback operation), boom trucks (all types), cableways, cherry pickers, combination concrete mixer and tower, concrete pumps, cranes (all types), derricks (all types), draglines, dredge (dipper, clam or suction) 3 man crew, elevating grader or euclid loader, floating equipment, gradalls, helicopter operator and helicopter winch operator when hoisting builders materials, hoes (all types), hoisting engines (two or more drums), lift slab or panel jack operator, locomotives (all types), maintenance engineer (mechanic or welder), mixer paving (multiple drum), mobile concrete pumps with boom, panelboard (all types on site), pile driver, power shovels, side booms, slip forms pavers, straddle carriers (building construction on site), hammerhead tower cranes, trench machines (over 24"wide), tug boat

GROUP B - Asphalt paver, bulldozer, C.M.I. type equipment , endloaders, Kohlman type loaders (dirt loading), lead greaseman, mucking machines, power grader, power scoops, power screpers, push cat.

GROUP C - Air compressor (prassurizing shafts or tunnels), asphalt rollers, fork lifts, hoist (one drum), house elevators, man lift, power boilers (over 15 lbs. pressure), pump operators installing well points or other type of dewatering system, pumps (4" and over discharge), Submersible pumps (4" and over discharge), trenchers 24" and under

GROUP D - Compressors on building construction, conveyors (building material), generators, gunnite machines, mixers, (capacity more than one bag), mixers (one bag capacity; side loader), post driver, post hole digger, pavement breaker (hydraulic or cable),road widening trencher rollers,welder operator

GROUP E - Backfillers & tampers, batch plant, bar and joint installing machines, bull floats, burlap and curing machines, clefplanes, concrete spreading mach., crushers, deck hands, drum fireman (asphalt), farm type tractors pulling attachments, finishing machines, form trenchers, high pressure pumps over 4" discharge, hydro seeders, self propelled power spreader, self propelled sub-grader, tire repairman, tractors pulling sheeps foot roller or grader, vibratory compactors (with integral power)

GROUP F - Oiler, helpers, signalman, inboard & outboard motor boat launch, light plant operator, power driven heaters (oil fired), power boilers (less than 15 lbs. presssure, pumps under 4" discharge, submerisble pumps under 4" discharge

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POWER EQUIPMENT OPERATORS
Columbiana Co.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	$12.01	.65	.80		.14
CLASS II	11.32	.65	.80		.14
CLASS III	10.68	.65	.80		.14
CLASS IV	10.27	.65	.80		.14
CLASS V	10.17	.65	.80		.14
CLASS VI	12.28	.65	.80		.14

CLASS I - Asphalt planer heater; Austin western & similar type; Backhoe; Batch plant-central mix; Batch plant-portable concrete; Berm builder-automatic; Backfiller w/drag attachment; Boat derrick; Boat-tug; Boring mach. attached to tractor; Bullclam; Bulldozer; C.M.I. road builder & similar types; Cable placer & layer; Carrier-straddle; Carryall - scraper or scoop; Chicago boom; Compactor w/blade attached; Concrete spreader finisher comb., Crane; Crane-stationary or climbing; Crane-electric overhead; Crane-side boom; Crane truck; Crane-tower; Derrick-boom; Derrick-car; Diggers-wheel (not trencher or road widener); Double nine; Drag line; Dredge; drill-Kenny or similar type; Electromatic; Fork lift; Frankie pile; Gradall; Grader-power; Gurry; Gurry-self-propelled; High lift; Hoist-monorail; Hoist-stationary & mobile tractor; Hoist-2 or 3; Jackall; Jumbo mach.; Koal or Kuhlman; land-seagoing vehicle; Loader - Elevating; Loader-front end; Locomotive; Mechanic as welder; Metro clip harvester w/boom; Mucking mach.; Paver-asphalt finishing mach.; Paver-road concrete; Paver-slip form; Place crete mach; Post driver; Power driven hydraulic pumps & jacks; pump crete machine; Regulator-ballast; Reigs-drilling; Shovels; Spikemaster; Stonecrusher; Tie puller & loader; tie tamper; Tractor-double boom; tractor w/attachments; Trucks-boom; Truck-tire-assigned to job; Trench mach.; Tunnel machine (Mark 21 Java or similar); Whiley

CLASS II - Asphalt plant; bending machine; Boring mach.; Chip harvester w/o boom; cleaning mach.- pipeline type; Coating Mach-pipeline type; Concrete belt placer; concrete finisher; Concrete planer or asphalt; Concrete spreader; Elevator; Fork lift walk behind; form line mach.; Grease truck op.; Grout pump; Gunnite mach.; Huck-bolting Mach.; Hydraulic scaffold; Paving breaker; Pipe dream; Pot firemen; Power broom; Refrigeration plant; Saugen derrick; Seeding Mach.; Self-propelled mobile vibrator compactor or roller; Hoist-single drum; Soil stabilizer (pump type); Spray cure Mach.-Self propelled; Straw blower mach.; Sub-grader; Tube Finisher or broom C.M.I. or similar type; Tugger Hoist

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CLASS III - Batch plant-job related; Boiler op.; Compressor (125 CFM or over); Curb builder (self-propelled); Generator-steam; Jack-hydraulic driven; Mixer-concrete; Mulching Mach.; Pin puller; Pulverizer; Pump; Road finishing mach. (pulltype); roller; Saw-concrete-self propelled; signal man; spray cure mach.-motor powered; Spreader (side driver shoulder attachment); Tractor; Trencher-form; Water Blaster

CLASS IV - Brake man; Compressor under 125 CFM; Conveyor; Conveyor 12 feet or under other than servicing bricklayers; Deck hand; Drill wagon; fireman; Generator sets; Heaters-portable power (2 to 5); Helper-mechanic, Jacks Hydraulic (railroad); Ladavator; Roller (walk behind 1 ton or over); Steam jenny; Syphons; Vibrator-gasoline; Welding machines (2) (fuel burning)

CLASS V - Oiler

CLASS VI - Rigs-pile driving or caisson type

	Basic Hourly Rates	Fringe Benefits Payments			
LINE CONSTRUCTION:		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Ashland Co.:					
Equipment operators; Linemen	$12.30	.45	3% + .50		½%
Line truck drivers	8.00	.45	3% + .50		½%
Groundman	7.38	.45	3% + .50		½%
Carroll (S. of Fox, Harrison, Rose, & Washington Twps.) Co.:					
Linemen; Line equipment ops.; & truck drivers	12.95	6%	9%	8%	½%
Groundman	8.42	6%	9%	8%	½%
Cable splicer	13.35	6%	9%	8%	½%
Carroll (Rem. of Co.), Columbiana (Knox Twp.), Holmes, Tuscarawas (N. of Auburn, Clay, Rush, & York Twps.), & Wayne (S. of Baughman, Chester, Green, & Wayne Twps.) Cos.:					
Cable splicers; Linemen	11.90	.40	3% + .40		½%
Line equipment operators	10.60	.40	3% + .40		½%
Groundmen:					
Under 1 yr's experience	7.05	.40	3% + .40		½%
Over 1 yr's experience	7.50	.40	3% + .40		½%
Truck drivers	7.95	.40	3% + .40		½%

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION: (CONT'D)					
Columbiana Co. (Rem. of Co.):					
Linemen; Heavy Equipment Operator	$11.03	8%	7%		½%
Groundmen; Truck Drivers	9.97	8%	7%		½%
Cable Splicers	11.43	8%	7%		½%
Columbiana (Butler, Fairfield, Perry, Salem, & Unity Twps.) Co.:					
Linemen; Cable splicers; Operator - pole digging equipment	14.07	.45	3%		½%
Groundman 1st 6 mos.	7.035	.45	3%		½%
Groundman 2nd 6 mos.	8.44	.45	3%		½%
Groundman 2nd yr.	9.85	.45	3%		½%
Groundman 3rd yr.	10.55	.45	3%		½%
Groundman over 3 yrs.	11.26	.45	3%		½%
Coshocton Co.:					
Linemen; Cable splicers; Equipment Ops.	13.11	.50	3%		½%
Beginning Truck Driver Groundmen	6.17	.50	3%		½%
Advanced Truck Driver (winch) Groundman over 2 yrs' experience	6.57	.50	3%		½%
Tuscarawas (Rem. of Co.) Co.:					
Cable splicers; Linemen; Equipment ops.	12.13	.50	3%		½%
Groundmen:					
0 - 6 mos.	6.17	.50	3%		½%
After 6 mos.	6.57	.50	3%		½%
After 12 mos.	7.02	.50	3%		½%
After 18 mos.	7.44	.50	3%		½%
Medina (NW part) Co.:					
Linemen; Cable splicers; Equipment ops.	12.95	.60	3%+.80		½%
Beginning truck driver groundman; Beginning groundman	5.96	.60	3%+.80		½%
Advanced truck driver (winch) groundman; Groundman (over 2 years' experience)	7.04	.60	3%+.80		½%
Medina (Rem. of Co.), & Wayne (N ½ of Co.):					
Linemen	12.38	.74	3%+.65		½%
Cable splicer	13.18	.74	3%+.65		½%
Truck drivers; Groundmen	6.19	.74	3%+.65		½%
Equipment operators	9.29	.74	3%+.65		½%

SUPERSEDEAS DECISION

STATE: Wisconsin COUNTY: Racine
DECISION NO.: WI78-2149 DATE: Date of Publication
Supersedes Decision No. WI77-2124, dated August 19, 1977 in 42 FR 42181
DESCRIPTION OF WORK: Building and Residential Construction

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$11.90	.85	.90	1.00	.07
BOILERMAKERS	11.30	.85	1.00		.02
BRICKLAYERS & STONEMASONS	11.75	.60	.60		.05
CARPENTERS (West of Hwy. #75)					
Carpenters and Soft Floor Layers	10.90	.50	.60		.10
Millwrights	11.42	.50	.60		.10
Carpenters (Residential) West of Hwy. #75	7.54	.50	.60		.10
CARPENTERS (Balance of County)					
Carpenters and Soft Floor Layers	10.80	.60	.85		.05
Millwrights	11.05	.60	.85		.05
Piledrivermen	10.88	.60	.85		.05
CEMENT MASONS	10.09	.60	.50	.85	
ELECTRICIANS (Burlington)	12.75	.51	3%	.45	3/4%
Electricians (Burlington) Residential	7.30	.50	3%		3/4%
ELECTRICIANS (Blance of county)	13.14	.55	3%		
ELEVATOR CONSTRUCTORS:					
Constructors	11.715	.895	.56	a+b	.025
Helpers	8.61	.895	.56	a+b	.025
Helpers (Prob.)	50%JR				
IRONWORKERS	10.96	1.20	.90	1.19	.15
LABORERS:					
Laborers	9.05	.60	.85	.20	
Air Tool Operators (Jackhammer)	9.37	.60	.85	.20	
Mason Tender, Mortar Mixer and Plasterers' Tender	9.18	.60	.85	.20	
Vibrator Operator	9.37	.60	.85	.20	
PAINTERS:					
Brush	9.75	.40	.80		.05
Structural Steel	9.90	.40	.80		.05
Spray	10.50	.40	.80		.05
PLASTERERS	10.07	.50	.50		.02
PLUMBERS AND STEAMFITTERS	11.81	.60	.85	.96	.02
ROOFERS	10.62	.60	.35		
PILEDRIVERMEN (West of Hwy #75)	11.05	.50	.60		.10

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NOTICES

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
SHEET METAL WORKERS	$11.05	.60	.88	1.25	.06
SPRINKLER FITTERS	12.10	.75	1.05		.08
TERRAZZO WORKERS	10.78	1.07	.90		
TILE SETTERS	10.28	.60	.60		.05

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:
a. Holidays: A through F.

b. Employer contributes $.98 per hour of regular hourly rate to Vacation Pay Credit for employee who has worked in business more than 5 years. Employer contributes $.74 per hour of regular hourly rate to Vacation Pay Credit for employee who has worked in business less than 5 years.

c. Holidays, A thru F plus Washington's Birthday, Good Friday and Christmas Eve, providing employee has worked 45 full days during the 120 calendar days prior to the Holiday, and the regularly scheduled work days immediately preceding and following the holidays.

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POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	10.67	.75	.90		.10
GROUP II	10.42	.75	.90		.10
GROUP III	10.12	.75	.90		.10
GROUP IV	10.02	.75	.90		.10
GROUP V	9.81	.75	.90		.10
GROUP VI	9.57	.75	.90		.10

GROUP I - Cranes, Shovels, Draglines, Backhoes, Clamshells, Derricks, Caisson rigs, Pile driver, skid rigs, derrick operator and traveling crane (Bridge type), Concrete paver (over 27E), Concrete spreader and distributor
GROUP II - Material hoists, Tractor or truck mounted hydraulic backhoe Tractor or truck mounted hydraulic crane (5 tons or under), Manhoist, tractor (over 40 h.p.), Bulldozer (over h.p.), Endloader (over 40 h.p.), Forklift (25' and over), Motor patrol, Scraper operator, Sideboom, Straddle carrier, Mechanic and welder, Bituminous plant and paver operator, Roller (over 5 tons), Rotary drill operator and blaster, Trencher (wheel type or chain type having over 8-inch bucket)
GROUP III - Concrete and grout pumps, Backfiller, Concrete auto breaker (large), Concrete finishing machine (Road type), Roller (rubber tire), Concrete batch hopper, Concrete conveyor systems, Concrete mixers (14S or over), Screw type pumps, and gypsum pumps, tractor, Bulldozer, Endloader (under 40 h.p.), Pumps (well points), Trencher (chain type having bucket 8-inch and under), Industrial locomotives, roller (under 5 tons) and firemen (pile drivers and derricks)
GROUP IV - Hoists (automatic), Forklift (12' to 25'), Tampers-compactors riding type), Assistant engineer, "A" frame and winch trucks, concrete auto breaker, hydro-hammer (small), Booms and sweeper, Hoists (tuggers), stump chipper (large), Boats, safety Work, Barges and launch)
GROUP V - Shouldering machine operator, Screed operator, Farm or industrial tractor mounted equipment, Post hole diggers, Stone crushers and Screening plants, Firemen (asphalt plants), air compressor (300 CFM or over)
GROUP VI - Generators over 15 KW, Pumps over 3" Augers (vertical and horizontal), combination small equipment operator, Air, electric Hydraulic jacks (slip form), Compressors (under 300 CFM); Welding machines, Heaters (mechanical), Prestress machines, Bobcats, Generators (under 150 KW), operators (temporary heat), Rotary drill helpers, Conveyor, Forklift (12' and under)

[FR Doc. 78-31493 Filed 11-9-78; 8:45 am]

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Federal Register

MONDAY, NOVEMBER 13, 1978
PART III



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

■

GRANTS TO STATE EDUCATIONAL AGENCIES

Migratory Children

V 43 N 219 NOV 13 1978 UMI

[4110-02-M]

Title 45—Public Welfare

CHAPTER I—OFFICE OF EDUCATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 116d—GRANTS TO STATE EDUCATIONAL AGENCIES TO MEET THE SPECIAL EDUCATIONAL NEEDS OF MIGRATORY CHILDREN

Educationally Deprived Children

AGENCY: Office of Education, HEW.

ACTION: Final regulations.

SUMMARY: These final regulations are required by section 503 of the Education Amendments of 1972 and establish the rules governing the allocation, distribution, and use of grants under section 122 of title I of the Elementary and Secondary Education Act of 1965. These grants are awarded to State educational agencies to conduct programs and projects designed to meet the special educational needs of migratory children of migratory agricultural workers or migratory fishers.

EFFECTIVE DATE: These regulations are expected to take effect 45 days after they are transmitted to Congress. Regulations are usually transmitted to Congress several days before they are published in the FEDERAL REGISTER. The effective date is changed by statute if Congress disapproves the regulations or takes certain adjournments. If you want to know the effective date of these regulations, call or write the Office of Education contact person.

FOR FURTHER INFORMATION CONTACT:

Mr. Vidal A. Rivera, Jr., Chief, Migrant Branch, Division of Education for the Disadvantaged, U.S. Office of Education, 400 Maryland Avenue SW. (Room 3523, ROB-3), Washington, D.C. 20202, telephone 202-245-2427.

SUPPLEMENTARY INFORMATION:

BACKGROUND

A notice of proposed rulemaking published in the FEDERAL REGISTER on July 8, 1975 (40 FR 28622), proposed to amend title 45 of the Code of Federal Regulations by adding a new part 116d. This would govern the program authorized by section 122 of title I of the Elementary and Secondary Education Act, as amended by Pub. L. 93-380 (Education Amendments of 1974) (20 U.S.C. 241c-2).

Interim final regulations were published in the FEDERAL REGISTER on July 13, 1977 (42 FR 36076). These included a discussion of the comments received in response to the notice of proposed rulemaking. The preamble to these interim final regulations (which took effect on September 5, 1977) announced that, in addition to conducting five public hearings, the Office of Education would accept written comments on the interim final regulations through August 29, 1977.

A subsequent FEDERAL REGISTER notice on October 27, 1977 (42 FR 56608), announced that three additional hearings would be held, and that the comment period would be extended through December 9, 1977.

As reorganized, Part 116 (published in the FEDERAL REGISTER on September 28, 1976 at 41 FR 42894) contains provisions applicable to all title I programs. Therefore, part 116, part 116d, and the applicable provisions of 45 CFR Parts 100, 100a, 100b, and 100c (the Office of Education General Provisions Regulations) constitute all of the regulations governing Title I programs conducted by State educational agencies for migratory children of migratory agricultural workers or migratory fishers.

These regulations do not implement the changes in the title I, migrant program that will be made by the Education Amendments of 1978, expected to be enacted in the near future. Instead, these final regulations are being published now in response to the large amount of public comment received on the 1977 interim final regulations and to implement the Department's Operation Common Sense. These regulations clarify apparent misinterpretations of the interim final regulations and, where desirable, make many of the regulatory changes requested by the public. It is also believed that, thus improved, these regulations are consistent as far as possible with the intent of Congress in enacting the Education Amendments of 1978. Broad public participation will again be sought in implementing the changes necessitated by the 1978 amendments. Therefore, a notice of proposed rulemaking that reflects both the 1978 amendments and additional administrative experience may be anticipated in the near future.

SECTION 503—PROCEDURES AND EFFECT

Section 503 of the Education Amendments of 1972 requires the Commissioner to: (a) Study all rules, regulations, guidelines, or other published interpretations or orders issued by him or her or the Secretary after June 30, 1965, in connection with, or affecting, the administration of Office of Education programs; (b) report to the Committee on Labor and Public Welfare (now the Committee on Human Resources) of the Senate and the Committee on Education and Labor of the House of Representatives concerning this study; and, (c) publish in the FEDERAL REGISTER these rules, regulations, guidelines, and orders with an opportunity for public hearings on the published matters.

These regulations reflect the results of this study as it pertains to programs authorized under section 122 of title I of the Elementary and Secondary Education Act, as amended. At present, there are no guidelines relating to part 116d.

CITATION OF LEGAL AUTHORITY

As required by section 431(a) of the General Education Provisions Act, as amended (20 U.S.C. 1232(a)), a citation of statutory or other legal authority for each section of these regulations has been placed in parentheses on the line following the text of the section.

SUMMARY OF CHANGES FROM THE INTERIM FINAL REGULATIONS

The final regulations have been written according to the principles of the Department's Operation Common Sense. The purpose of Operation Common Sense is to produce readable and understandable regulations that reflect Congressional intent and that do not unnecessarily regulate recipients of Federal funds, including State and local governments. Therefore, numerous changes in wording have been made to promote clarity and ease of understanding. In response to public comment and further program experience, some provisions have been added to the final regulations, some provisions of the interim final regulations have been clarified, and some have been deleted.

Most importantly, these final regulations:

(1) Clarify and expand the definitions of "agricultural activity," "currently migratory child," and "formerly migratory child";

(2) Strengthen the requirement that an eligible child will not be prevented from benefiting fully from title I migrant education services because of limited English language skills;

(3) Strengthen the requirements for parental involvement and require parent advisory councils at both the State and operating agency levels;

(4) Clarify that the Commissioner does not require a State to obtain documentary evidence of eligibility or civil status from a migratory child or his or her parent or guardian;

(5) Clarify the conditions under which the Commissioner or a State educational agency (SEA) may enter into a special arrangement with a public or nonprofit private agency;

(6) Delete the requirement that a State obtain annually the signature of the parent or guardian of each participating formerly migratory child;

(7) Clarify a State's obligation to identify and recruit all eligible migratory children; and

(8) Clarify the extent to which a State must utilize the migrant student record transfer system.

The vast majority of the changes in the final regulations do not, however, effect a substantive change in the title I migrant education program. The following list of sections of the final regulations summarizes in greater detail the substantive changes made from the interim final regulations. Specific responses to comments received on the interim final regulations are published in the appendix to these final regulations.

§ 116d.1 No change.

§ 116d.2 The definition of "agricultural activity" has been clarified and expanded to include "any activity directly related to the cultivation or harvesting of trees."

For clarity, a new definition of "formerly migratory child" has been added. This provides that a formerly migratory child is one "who: (a) Was eligible to be counted and served as a currently migratory child within the past 5 years, but is not now a currently migratory child; (b) lives in an area served by a title I migrant education project; and (c) has the concurrence of his or her parent or guardian to continue to be considered a migratory child."

Also, a definition of the term "operating agency" has been added, which includes both local educational agencies and other public and nonprofit private agencies.

§ 116d.3 No change.

§ 116d.4 This is a new section. However, it merely restates § 116d.3(c) of the interim final regulations.

§ 116d.5 No change. However, this section has been reworded to clarify that in conducting a State program, an SEA may act in one or more of three ways. First, the SEA may act directly. Second, it may make a subgrant to an LEA or a group of these agencies. Third, it may enter into a special arrangement with a public or nonprofit private agency.

§ 116d.6 Several changes have been made. Under this section the application of an operating agency must now include a description of how the operating agency will comply with the requirements for soliciting parental involvement and for establishing and consulting with a parent advisory council. The operating agency must also describe how it will assure that eligible children are not prevented from benefiting fully from the project because of limited English language skills.

The requirement in § 116d.6(b) of the interim final regulations that SEA's routinely forward to the Commissioner copies of the applications of operating agencies has been deleted. Section 116d.6(b) now requires SEAs to forward only those applications that are requested by the Commissioner.

§§ 116d.7 through 116d.11 No change.

§ 116d.12 Section 116d.12 has been rewritten to clarify that an SEA or operating agency must make a written record of the basis on which eligibility has been determined for each child who is counted or served.

Additional language has been added to clarify that a State is not required to obtain documentary proof of eligibility or civil status from the child or his or her parents or guardian. Instead, the State may rely on credible information provided by the child or his or her parents or guardian.

§§ 116d.21 through 116d.23 No change.

§ 116d.24 This is a new section. It states the conditions under which an SEA may enter into a special arrangement with a public or nonprofit private agency to conduct a project. These conditions parallel those under which the Commissioner may make a special arrangement under § 116d.25.

§ 116d.25 This section establishes the conditions under which the Commissioner may enter into a special arrangement. It restates § 116d.24 of the interim final regulations, and the conditions follow those provided in section 122(a)(2) of the Act. This section also provides that the Commissioner may not enter into a special arrangement until after the affected SEA has had notice and been given an opportunity for a hearing.

§ 116d.26 This is a new section. It clarifies that § 116.6(b), pertaining to complaint resolution procedures, applies to an SEA's administration of the State program. It also requires the SEA to develop appropriate complaint resolution procedures for projects that last fewer than 60 days.

This section clarifies that the Commissioner may review an SEA's resolution of a complaint and, when necessary, issue additional orders or enter into a special arrangement.

§ 116d.31 This section merely restates § 116d.31(a) of the interim final regulations.

§ 116d.32 This section, which replaces § 116d.31(b) of the interim final regulations, makes several changes. It requires that a State application contain:

(a) A description of the State's efforts to identify and recruit all eligible migratory children;

(b) An appropriate explanation, if the State proposes to serve fewer than the number of identified eligible school-aged migratory children;

(c) A description of the measures the SEA will take to assure that an eligible child is not prevented from benefiting fully from program services because of limited English language skills; and

(d) An assurance that the SEA will transfer the educational records of participating children in accordance with the Family Educational Rights and Privacy Act of 1974.

In addition, this section provides some examples of intrastate and interstate coordination in connection with the requirement that an SEA take steps to provide continuity in the education of participating migratory children.

§ 116d.33 No change. This section restates § 116d.31a of the interim final regulations.

§ 116d.34 No change. This section restates § 116d.32 of the interim final regulations.

§ 116d.35 This section deletes the requirements, imposed by § 116d.35(c) of the interim final regulations, that the eligibility of each formerly migratory child must be supported by the signature of a parent or guardian—as proof of parental concurrence for the child's participation—and that this signature must be secured annually.

§ 116d.36 No change.

§ 116d.37 Several changes have been made. This section now provides that "each SEA shall take the necessary steps to assure effective parental involvement throughout the State program."

It also requires parent advisory councils at both the State and operating agency levels. States may establish parent advisory councils at the operating agency level now, for operations during fiscal year 1979. In any event, § 116d.37 shall apply to SEA applications submitted for fiscal year 1980 funds.

Finally, it provides that a majority of the membership of both State and operating agency advisory councils must be comprised of parents of children served.

§ 116d.38 A change has been made. This section deletes § 116d.38(c) of the interim final regulations, which stated the types of information that an SEA must include in its application in support of its request to use title I migrant education funds to provide day care services.

The new section, however, maintains the requirement that the Commissioner's specific approval for this type of expenditure of program funds is needed, and it does not alter the criteria by which the Commissioner will evaluate these requests.

§ 116d.39 Two changes have been made. First, the final regulations require that the Commissioner determine, before approving a State application, that the "SEA has made every

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reasonable effort to identify and recruit all eligible currently and formerly migratory children."

Second, this section clarifies that full utilization of the migrant student record transfer system, which is required of all States, includes "the transfer of the most current academic and health information available for the children served."

§§ 116d.40 and 116d.41 No change.

After consideration of the comments received, part 116d of title 45 of the Code of Federal Regulations is amended to read as follows.

(Catalog of Federal Domestic Assistance No. 13.429, Educationally Deprived Children—Migrants.)

Dated: September 25, 1978.

JOHN ELLIS,
Acting U.S. Commissioner of Education.

Approved: October 30, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary of Health, Education, and Welfare.

Title 45 of the Code of Federal Regulations is amended by revising part 116d as set forth below:

Subpart A—General

Sec.
116d.1 Applicability of regulations.
116d.2 Definitions.

Subpart B—Managerial Responsibilities of State Educational Agencies

116d.3 State applications.
116d.4 Annual program plans.
116d.5 Designation of operating agencies.
116d.6 Participation of operating agencies.
116d.7 Supervision of State programs.
116d.8 Amendments to applications.
116d.9 Title and control of property.
116d.10 Sources of funds for State administration.
116d.11 Adjustment of funds not needed by an operating agency.
116d.12 Child eligibility.
116d.13-116d.20 [Reserved]

Subpart C—Amounts Available for Grants and Payments

116d.21 Total amount available for grants.
116d.22 Entitlements.
116d.23 Payments.
116d.24 Special arrangements with the State educational agency.
116d.25 Special arrangements with the Commissioner.
116d.26 Complaint resolution procedures.
116d.27-116d.30 [Reserved]

Subpart D—Program Requirements

116d.31 Use of program funds.
116d.32 Contents of State applications.
116d.33 Programs of instruction for preschool migratory children.
116d.34 State budgets.
116d.35 Services to formerly migratory children.
116d.36 Comparable access to State and locally funded educational facilities and services.
116d.37 Parental involvement.
116d.38 Supporting services.
116d.39 Criteria for the approval of State applications.
116d.40 Cooperative programs.
116d.41 Disapproval of State applications.

AUTHORITY: Sec. 101(a)(2)(E), Pub. L. 93-380, 88 Stat. 492 (20 U.S.C. 241c-2), unless otherwise noted.

Subpart A—General

§ 116d.1 Applicability of regulations.

These regulations govern programs and projects to meet the special educational needs of migratory children of migratory agricultural workers or migratory fishers. Section 122 of title I of the Elementary and Secondary Education Act of 1965 ("the Act") authorizes the Commissioner to award grants to State educational agencies (SEA's) to support these programs and projects. Unless otherwise noted, these grants are also subject to the provisions of two other parts of this chapter: Part 116, general requirements that apply to all title I programs, and the applicable provisions of parts 100, 100a, 100b, and 100c, relating to fiscal, administrative, property management, and other matters.

(20 U.S.C. 241c-2.)

§ 116d.2 Definitions.

"Agricultural activity" means:

(a) Any activitiy directly related to the production or processing of crops, dairy products, poultry, or livestock for initial commercial sale or as a principal means of personal subsistence;

(b) Any activitiy directly related to the cultivation or harvesting of trees; or

(c) Any activity directly related to fish farms.

"Currently migratory child" means a child:

(a) Whose parent or guardian is a migratory agricultural worker or a migratory fisher; and

(b) Who has moved within the past twelve months from one school district to another—or, in a State that is comprised of a single school district, has moved from one school administrative area to another—to enable the child, the child's guardian, or a member of the child's immediate family to obtain temporary or seasonal employment in an agricultural or fishing activity. This definition includes a child who has been eligible to be served under the requirements in the preceding sentence, and who, without the parent or guardian, has continued to migrate annually to enable him or her to secure temporary or seasonal employment in an agricultural or fishing activity.

"Day care services" means the custodial care of children or infants that satisfies the standards of applicable State law.

"Fishing activity" means any activity directly related to the catching or processing of fish or shellfish for initial commercial sale or as a principal means of personal subsistence.

"Formerly migratory child" means a child who:

(a) Was eligible to be counted and served as a currently migratory child within the past 5 years, but is not now a currently migratory child;

(b) Lives in an area served by a title I migrant education project; and

(c) Has the concurrence of his or her parent or guardian to continue to be considered a migratory child.

NOTE.—There is a total of 6 years of program eligibility—a 1-year status as a "currently migratory child" and up to 5 additional years as a "formerly migratory child."

For the purpose of this definition, "area served by a title I migrant education project" means any portion of the geographic area that is within the legally prescribed boundaries of a local educational agency (LEA) or a combination of these agencies, and within whose boundaries there are currently or formerly migratory children who are receiving title I migrant education services or who will receive these services within the current program period.

"Guardian" means:

(a) A person who has been appointed to be the legal guardian of the child through formal proceedings in accordance with State law; or

(b) A person who the SEA determines would be appointed to be the legal guardian of the child under the law of the child's domiciliary State if formal guardianship proceedings were undertaken; or

(c) A person standing in the place of a parent to the child.

"Migratory agricultural worker" means a person who has moved from one school district to another—or, in a State that is comprised of a single school district, from one school administrative area to another—within the past 12 months to enable him or her to obtain temporary or seasonal employment in an agricultural activity.

"Migratory fisher" means a person who has moved from one school district to another—or, in a State that is comprised of a single school district, from one school administrative area to another—within the past 12 months to enable him or her to obtain temporary or seasonal employment in a fishing activity.

"Operating agency" means an LEA to which an SEA makes a subgrant of title I migrant education funds, or a public or nonprofit private agency with which an SEA makes a special arrangement to carry out a title I migrant education project.

"Project" means one or a set of activities that:

"(a) Is composed of instructional services, or supporting services as explained in § 116d.38, or both;

(b) Is provided by an SEA directly, though an LEA, or through a public or nonprofit private agency to migratory children living in a particular area of a State; and

(c) Is designed to meet the objectives of a State program under § 116d.32(e).

"State program" means an overall plan for services, activities, personnel, and materials included in an SEA's application for a grant under § 116d.3 to meet the special educational needs of migratory children.

(20 U.S.C. 241c-2.)

Subpart B—Managerial Responsibilities of State Educational Agencies

§ 116d.3 State applications.

(a) *General.* To receive a grant, an SEA shall submit to the Commissioner an application that:

(1) Is in the form required by § 100a.43 of this chapter;

(2) Is signed by the chief executive officer of the SEA or by his or her designated representative;

(3) Contains all the assurances and other information required by §§ 116d.5, 116d.7, 116d.8, 116d.32, 116d.34, and 116d.36 of this part and by part 116 of this chapter; and

(4) Requests approval to use, during the fiscal year covered by the application, any title I migrant education funds made available to the SEA for the preceding fiscal year, but not yet obligated by it.

(b) *Receipt of applications.* The Commissioner may decline to consider applications that are received after the date established for their receipt.

(20 U.S.C. 241c-2; 1232c(b).)

§ 116d.4 Annual program plans.

An application that is submitted under § 116d.3 constitutes the annual program plan as required by section 434(b) of the General Education Provisions Act and must conform to the requirements of that section.

(20 U.S.C. 241c-2; 1232c(b).)

§ 116d.5 Designation of operating agencies.

An SEA shall identify in its application the agency or agencies that it has designated to operate the State program. If all or part of a State program is to be operated directly by the SEA, the State shall identify in its application its personnel and other resources, including any resources that will be made available to it by contract or other arrangement, that will be employed to conduct the State program. If all or part of a State program is to be operated through one or more LEA's as subgrantees or through one or more special arrangements with public or nonprofit private agencies, the SEA shall identify them in its application.

(20 U.S.C. 241c-2; 1232c(b).)

§ 116d.6 Participation of operating agencies.

(a) If all or part of a State program is to be conducted through one or more operating agencies, the SEA shall require each of them to submit to it an application that includes:

(1) A description of the project to be carried out by the operating agency;

(2) An explanation of the relationship between the project and the State program;

(3) The objectives to be achieved for each grade group;

(4) The estimated number of eligible migratory children living in the area to be served by the project, and the estimated number of these children who will be served. If the operating agency proposes to provide migrant education program services, other than the identification and recruitment of children and the transfer of records, to fewer eligible school-aged migratory children than the number of these eligible children living in the area, it shall explain why;

(5) A description of each service to be provided and its estimated cost;

(6) The types and number of staff to be employed;

(7) A description of how the operating agency will comply with § 116d.37(a); and

(8) A description of how the operating agency assures that eligible migratory children will benefit fully from the project's services even if they do not speak English or have limited English language skills.

(b) The SEA shall review the applications of operating agencies and approve only those that comply with these regulations and conform to the State program approved by the Commissioner. The SEA shall send a copy of any approved applications (including any amendments) that are requested by the Commissioner, within ten days of the request.

(c) Each operating agency shall maintain records of all financial transactions relating to the project for the period of time required by section 434(a) of the General Education Provisions Act. Each operating agency shall also provide timely financial reports (including the financial status report prescribed by § 100b.403 of this chapter) to the SEA.

(d) An operating agency may not obligate, within the meaning of § 100b.55(c) of this chapter, title I migrant education funds before:

(1) The effective date of the SEA's approved application; or

(2) The date on which the operating agency's application is submitted to the SEA in substantially approvable form, whichever is later.

(20 U.S.C. 241c-2; 1232c(b).)

§ 116d.7 Supervision of State programs.

Each SEA shall describe in its application the procedures and resources that it will use to assure that projects are carried out in accordance with its State application as approved by the Commissioner.

(20 U.S.C. 241c-2; 1232c(b).)

§ 116d.8 Amendments to applications.

Under the following circumstances, an SEA shall submit to the Commissioner an amendment to its application—including an application to use funds made available for the previous fiscal year, but not yet obligated—that is signed by that agency's chief executive officer or his or her designated representative:

(a) When the SEA materially changes its administration of the approved State program, including its organization, policies, or operations;

(b) As soon as any information becomes available that is required by these regulations, but was not previously submitted; or

(c) If changes are made in the laws, such as appropriation laws governing the approved State program, and the Commissioner indicates that an amendment is required because of those changes.

(20 U.S.C. 241c-2; 1232c(b).)

§ 116d.9 Title and control of property.

(a) Except as provided by paragraph (b) of this section, an SEA shall maintain title to and control over all property that is acquired with its Title I migrant education funds.

(b) If a State law requires that an agency of the State other than the SEA maintain title to, or administrative control over, property that is acquired with title I migrant education funds, the SEA shall arrange for these functions to be carried out by the appropriate State agency. That State agency shall then be responsible for the proper exercise of these functions. However, the SEA shall retain the right to use, move, or otherwise dispose of this property in a manner designed to carry out most effectively the State program.

(20 U.S.C. 241c-2; 1232c(b).)

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§ 116d.10 Sources of funds for State administration.

(a) *State administrative funds.* In administering title I programs for migratory children, the SEA shall use funds provided under section 143(b) of the Act to perform only those functions that are the same or similar to the administrative functions carried out by the SEA in connection with programs and projects under parts 116a, 116b, and 116c of this chapter. These functions include the:

(1) Preparation of the SEA's application to be submitted to the Commissioner;

(2) Design, publication, and distribution to operating agencies of the application, evaluation, performance, and financial report forms, and the appropriate instructions;

(3) Provision of technical assistance to operating agencies in developing their applications;

(4) Review of applications and reports from operating agencies;

(5) Monitoring of projects for compliance with the State program;

(6) Design, publication, and final preparation of the evaluation, performance, and financial reports that the SEA submits to the Commissioner;

(7) Maintenance of fiscal control and fund accounting; and

(8) Dissemination of information.

(b) *Program funds.* The SEA shall use title I funds made available for programs and projects under section 122 of the Act to perform only those functions that are unique to the title I migrant education program, or that are the same or similar to the functions performed by LEA's in the State under part 116a of this chapter. These functions include the:

(1) Statewide identification and recruitment of eligible migratory children;

(2) Intrastate and interstate coordination of programs and projects;

(3) Coordination of programs, and projects with other public and private agencies;

(4) Operation of the migrant student record transfer system;

(5) Processing of reports that are submitted by operating agencies under § 116d.6;

(6) Maintenance of inventories of property that is acquired with title I migrant education funds;

(7) Negotiation and awarding of contracts; and

(8) Evaluation activities of the State program, other than the design of evaluation report forms and the final preparation of the SEA's evaluation report to the Commissioner.

(20 U.S.C. 241c-2; 241g; 1232c(b).)

§ 116d.11 Adjustment of funds not needed by an operating agency.

(a) Each SEA that receives a title I migrant education grant shall issue to operating agencies a set or rules that prohibits the imprudent, wasteful, or extravagant expenditure of these funds. To promote the efficient administration of the State program, the SEA shall include in these rules a provision that permits the SEA to make appropriate adjustments to its subgrants and special arrangements to avoid paying funds to an operating agency in excess of its actual needs.

(b) These adjustments shall be based on periodic reports of the operating agency's actual expenditures. Following an adjustment, the SEA may increase the funding of one or more other operating agencies that demonstrate a need for additional funds. Each operating agency affected by an adjustment shall amend its project application to reflect that adjustment and shall note the adjustment in its final financial report.

(20 U.S.C. 241c-2; 1232c(b).)

§ 116d.12 Child eligibility.

An SEA or an operating agency shall not count a child under § 116d.21 or provide program services to that child until the agency has:

(a) Determined that the child is either a currently or formerly migratory child, as defined under § 116d.2; and

(b) Made a written record of the basis on which the child's eligibility was determined.

In determining eligibility, SEA or an operating agency may rely on credible information from any source, including that provided by the child or his or her parent or guardian. An SEA is not required to obtain documentary proof of either the child's eligibility or civil status from the child or his or her parent or guardian.

(20 U.S.C. 241c-2; 1232c(a), 1232c(b).)

§§ 116d.13–116d.20 [Reserved]

Subpart C—Amounts Available for Grants and Payments

§ 116d.21 Total amount available for grants.

The Commissioner determines for each fiscal year the total amount of the title I migrant education grant for which the SEA in each State (including the District of Columbia, Puerto Rico, Guam, American Samoa, the Virgin Islands, Wake Island, the northern Mariana Islands and the Trust Territory of the Pacific Islands) may apply according to sections 122(b), 124, and 125 of title I of the Act and section 843(d) of Pub. L. 93-380. The Commissioner determines these total amounts on the basis of the number of eligible migratory children in each State as shown by the migrant student record transfer system or by any other system that the Commissioner believes most accurately reflects the actual number of eligible migratory children.

(20 U.S.C. 241c-2; 241c-4; 241-5.)

§ 116d.22 Entitlements.

(a) *Entitlement based on the estimated cost of the program.* The SEA of each State is entitled to receive a title I migrant education grant in the amount that the Commissioner determines necessary to carry out its approved State program. Except as provided by paragraph (d) of this section, this amount may not exceed the total amount available to that State as determined by the Commissioner under § 116d.21.

(b) *Informational basis for determining the amount of entitlement.* The Commissioner determines the amount of the title I migrant education grant that an SEA is entitled to receive on the basis of the current information available to the Commissioner at the time that the application is approved. This includes information about the number of children to be served and the nature and scope of the State program. The Commissioner may adjust this amount later in the fiscal year on the basis of additional information available then.

(c) *Consideration of the cost of past and future activities and the amount of funds available.* The information on which the Commissioner determines the amount of the title I migrant education grant to which an SEA is entitled includes:

(1) The total amount for which the SEA may apply as determined under § 116d.21;

(2) The cost of completed program activities under previous grants, and the number of children who were served;

(3) The estimated cost of activities not yet begun under the preceding grant, and the number of children who will be served;

(4) In the case of a request for an increase in the grant amount previously determined by the Commissioner to be needed to carry out the State program, the estimated cost of providing additional program services before the end of the grant period and the number of children who would receive additional services; and

(5) The unused amount of the SEA's preceding title I migrant education grant.

(d) *Reallocation of excess funds.* If the Commissioner determines that the total amount for which an SEA may apply, as determined under § 116d.21, exceeds the amount that is determined under this section to be needed to carry out its State program, the Commissioner may allocate some or all of this excess to one or more other SEA's whose total amounts under § 116d.21 would otherwise be insufficient to serve the eligible migratory children in those States.

(20 U.S.C. 241c-2; Sen. Rep. No. 634, 91st Cong., 2d Sess. 12-13 (1970).)

§ 116d.23 Payments.

The Commissioner shall make all payments of title I migrant education funds based on the requirements of subpart E of part 100b of this chapter. The amount of these payments to an SEA may not exceed the amount to which the Commissioner determines that the SEA is entitled under § 116d.22, nor may it exceed the amount obligated under § 100b.55(c) of this chapter during the period covered by the application.

(20 U.S.C. 241c-2; 1232c(b).)

§ 116d.24 Special arrangements with the State educational agency.

An SEA may make a special arrangement with a public or nonprofit private agency or agencies to carry out a project if the SEA determines that:

(a) An LEA is unable or unwilling to conduct a project as defined in § 116d.2;

(b) The arrangement would result in more efficient and economic administration of the State program; or

(c) The arrangement would add substantially to the welfare or educational attainment of the migratory children who are eligible to be served.

(20 U.S.C. 241c-2.)

§ 116d.25 Special arrangements with the Commissioner.

(a) The Commissioner may make a special arrangement with a public or nonprofit private agency or agencies to carry out the purposes of section 122 of title I of the Act, if the Commissioner determines that:

(1) An SEA is unable or unwilling to conduct educational programs for the migratory children who are eligible to be served;

(2) The arrangement would result in more efficient and economic administration of these programs and projects; or

(3) The arrangement would add substantially to the welfare or educational attainment of the migratory children who are eligible to be served.

(b) The Commissioner may use all or part of the total amount of the title I migrant education grant as determined under § 116d.21, and which otherwise would have been made available to the affected SEA, to enter into one or more special arrangements.

(c) The Commissioner may not enter into a special arrangement until after the affected SEA has had reasonable notice and an opportunity for a hearing.

(20 U.S.C. 241c-2.)

§ 116d.26 Complaint resolution procedures.

(a) An SEA shall comply with § 116.6(b) of this chapter regarding complaint resolution procedures. In addition, an SEA shall establish an appropriate accelerated procedure for resolving complaints regarding title I migrant education projects that operate for fewer than 60 days.

(b) The Commissioner may review an SEA's resolution of a complaint. After the review the Commissioner may, when appropriate:

(1) Issue an order to the SEA prescribing additional actions to be taken by that agency to resolve the complaint; or

(2) Implement a special arrangement under § 116d.25.

(20 U.S.C. 241c-2.)

§§ 116d.27–116d.30 [Reserved]

Subpart D—Program Requirements

§ 116d.31 Use of program funds.

An SEA shall use title I funds made available for programs and projects under section 122 of the Act only to perform the functions described in § 116d.10(b) and to support projects.

(20 U.S.C. 241c-2; 1232c(b).)

§ 116d.32 Contents of State applications.

Each SEA shall include the following in its application:

(a) A list of the areas within the State where eligible currently migratory children are expected to live and eligible formerly migratory children are living. This list shall include the estimated dates on which the currently migratory children will arrive in and depart from these areas;

(b) Estimates of the number of eligible currently and formerly migratory children, by category, expected to live, or living, in the State. The SEA shall support these estimates by explaining how it arrived at them and by describing its efforts to identify and recruit all eligible currently and formerly migratory children;

(c) The number of eligible currently and formerly migratory children, by category, expected to be served. If the SEA expects to provide migrant education program services—other than the identification and recruitment of children and the transfer of records—to fewer eligible school-aged migratory children than the numbers estimated in the preceding paragraph, it shall explain why;

(d) A summary of the information—including information from other SEA's and from the migrant student record transfer system—that the SEA has regarding the special educational needs of the migratory children expected to live or living in the State during the period covered by the application. This summary must demonstrate that the SEA has obtained an accurate assessment of the cultural and linguistic backgrounds of these children and must include a description of the measures that the SEA will take to assure that a migratory child is not prevented from benefiting fully from the services provided by the title I migrant education program because he or she does not speak English or has limited English language skills;

(e) A detailed statement of the objectives, including performance criteria, of the state program, and how these objectives will be achieved. This statement must include:

(1) A description of each service to be provided and the estimated number of children by age and anticipated grade placement—including eligible children that are or will be enrolled in private schools—expected to receive each service;

(2) A description of any inservice training required, including the types of training, the types and number of staff members who will participate, and the frequency of their participation; and

(3) An estimate of the types and number of staff to be employed, as well as the facilities and materials to be used.

(f) A statement of how the effectiveness of the State program will be evaluated as required by § 116.43;

(g) A description of how the SEA will comply with § 116d.37(b);

(h) An explanation of the steps the SEA will take to assure the most continuity practicable in the education of the migratory children to be served, such as the exchange of course credits, both within and among States, and the intrastate and interstate sharing of program planning, evaluation, curriculum, and staff training materials. This explanation must also include a description of the information that the SEA will pass on to other SEA's regarding the migratory children, other than through the migrant student record transfer system;

(i) A description of the functions and staff salaries that the SEA proposes to charge to administrative funds under § 116d.10(a);

(j) A description of how the SEA proposes to comply with the requirements of § 116.45 of this chapter concerning the dissemination of public information; and

(k) An assurance that the SEA will transfer the educational records of the

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migratory children participating in the State program in accordance with the Family Educational Rights and Privacy Act of 1974 and part 99 of this chapter (Privacy Rights of Parents and Students).

(20 U.S.C. 241c-2; 1232c(b); 1232g(b).)

§ 116d.33 Programs of instruction for preschool migratory children.

Instructional services designed to meet the special educational needs of preschool migratory children—as distinguished from day care or other supporting services under § 116d.38—are:

(a) Limited to children who are under the age at which public elementary education is provided under State law;

(b) Comprised primarily of activities designed to increase the children's readiness for instruction in the basic academic skills, and not primarily designed for custodial purposes; and

(c) Conducted by or under the direct supervision of a person who is qualified under State law to conduct the activities referred to in subsection (b).

(20 U.S.C. 241c-2.)

§ 116d.34 State budgets.

The SEA shall include in its application a detailed budget in the form prescribed by the Commissioner showing:

(a) The estimated total cost of meeting the SEA's objectives, including the estimated cost of each service, as described in § 116d.32(e).

(b) An estimate of the unobligated funds available from the preceding fiscal year's appropriation; and

(c) The amount of funds requested from the current fiscal year's appropriation.

(20 U.S.C. 1232c(b).)

§ 116d.35 Services to formerly migratory children.

A formerly migratory child may participate in a project that includes currently migratory children or may participate in a project developed solely for formerly migratory children, provided that the participation of formerly migratory children in the State program will not prevent the participation of currently migratory children or dilute the effectiveness of the State program for currently migratory children.

(20 U.S.C. 241c-2.)

§ 116d.36 Comparable access to State and locally funded educational facilities and services.

(a) *Assurances by the SEA.* Each SEA that applies for a grant shall include in its application an assurance that it will not conduct the State program through an LEA that does not provide migratory children with access to State and locally funded educational facilities and services comparable to those ordinarily provided to nonmigratory children living in the attendance area in which migratory children are being served. If, however, the project is conducted during a time of the year when the LEA is not providing State or locally funded educational facilities and services to nonmigratory children, the LEA is not required to provide them for the migratory children.

(b) *Relation to other requirements.* The provisions of paragraph (a) of this section do not modify the requirements of § 116.40 of this chapter, relating to supplanting State and local funds and services that the applicant is required by law to provide to all children or specifically to migratory children, or § 116a.26 (g) and (h) of this chapter, relating to the maintenance of comparability in school attendance areas where projects funded under part 116a of this chapter, and which serve migratory children, are being conducted.

(c) *Definition of comparable access.* The requirements of paragraph (a) of this section are satisfied only if migratory children have access to all State and locally funded instructional, health, nutrition, transportation, and other services on the same basis as provided by the LEA to nonmigratory children residing in the attendance area where migratory children are being served.

(20 U.S.C. 241c-2; 241e(a).)

§ 116d.37 Parental involvement.

Each SEA shall take the necessary steps to assure effective parental involvement throughout the State program. As a minimum, each SEA shall demonstrate in its application that:

(a) It will require each operating agency to solicit actively parental involvement in the planning, operation, and evaluation of its projects, and to establish a parent advisory council whose views will be considered concerning the operation and evaluation of the present project, and the planning of future projects. This advisory council must be composed of people who know the needs of migratory children. A majority of the advisory council members must be parents of children who were, are being, or will be served by that project.

NOTE.—An operating agency that provides services on a statewide basis need not create a separate advisory council, but must consult the State parent advisory council required by subsection (b).

(b) It has actively solicited parental involvement in the planning, operation, and evaluation of its State program, and has established a State parent advisory council whose views will be considered concerning the operation and evaluation of the present State program, and the planning of future State programs. This State parent advisory council must be composed of people who know the needs of migratory children. A majority of the advisory council members must be parents of children who were, are being, or will be served by the State program.

(20 U.S.C. 241c-2; 241e(a); 1231d.)

§ 116d.38 Supporting services.

(a) *General.* An SEA or an operating agency may provide health, welfare, or other supporting services with title I migrant education funds, but only if these services are necessary to enable eligible migratory children to participate effectively in instructional services.

(b) *Day care services.* Day care services for eligible migratory children may be provided only as a supporting service to eligible preschool and school-aged migratory children and only with the specific approval of the Commissioner. Each SEA desiring to use program funds for day care services shall include a request in its application, or in an amendment to that application, and shall provide adequate information to allow the Commissioner to determine that the proposed day care services are:

(1) Not available from any other source;

(2) Necessary to enable eligible migratory children to receive instructional services supported by title I; and

(3) Not extravagant in relation to the cost, the number of children who would receive day care, and the effect that the availability of the day care services would have on the participation of eligible migratory children in instructional services supported by title I funds.

(20 U.S.C. 241c-2.)

§ 116d.39 Criteria for the approval of State applications.

The Commissioner approves a State application only if it contains the information and assurances required by § 116d.3 and complies with all applicable requirements of parts 100, 100a, 100b, 100c, and 116 of this chapter. The Commissioner also determines that:

(a) Payments will be used to carry out the State program and to fund projects—including the acquisition of equipment and, where necessary, the construction of school facilities—that are designed to meet the special educational needs of eligible migratory children. These programs and projects must also be coordinated with similar programs and projects in other States,

including the transfer of the school records of these migratory children;

(b) Projects to be funded are of sufficient size, scope, and quality to hold reasonable promise of making substantial progress toward meeting the special educational needs of the migratory children to be served, particularly any need for improvement in the basic academic subjects;

(c) Projects designed to meet the special educational needs of preschool migratory children will be provided only if, considering the amount of funds available, these projects will not detract from the operation of projects for school-aged migratory children;

(d) The State program is planned and will be operated in coordination with programs administered under section 303 of the Comprehensive Employment and Training Act of 1973;

(e) In planning the State program, the SEA has consulted with other SEA's that conduct title I programs for migratory children and with other agencies that provide services for migratory children and that are knowledgeable of their needs;

(f) The SEA's plan for assuring continuity in the education of migratory children includes appropriate procedures for coordinating its State program with programs in other States and for utilizing fully the migrant student record transfer system, including the transfer of the most current academic and health information available for the children served; and

(g) The SEA has made every reasonable effort to identify and recruit all eligible currently and formerly migratory children.

(20 U.S.C. 241c-2.)

§ 116d.40 Cooperative programs.

Two or more SEA's may submit an application for a joint program or project to serve migratory children living in more than one State. With the Commissioner's approval, one agency may administer such a cooperative program under an appropriate interagency agreement.

(20 U.S.C. 241c-2; 1232c(b).)

§ 116d.41 Disapproval of State applications.

The Commissioner does not finally disapprove the application of an SEA until after reasonable notice and an opportunity for a hearing has been provided to that agency.

(20 U.S.C. 241c-2.)

APPENDIX

SUMMARY OF COMMENTS AND RESPONSES

The following is a summary of the comments received on the interim final regulations. Each comment is followed by a response that indicates any changes made or why no change was considered necessary. Specific comments are arranged in the order of the regulatory sections to which they pertain.

§ 116d.2 *Definitions.*

Comment. One commenter recommended that the definition of "agricultural activity" be made more specific with respect to the occupations included. Fifteen commenters recommended that this definition be extended to include a number of other migratory activities that are agriculturally related, but that fail to qualify under the present definition because of no direct involvement in the production or processing of a food crop for "human consumption."

Response. A change has been made. The definition has been expanded and clarified. It now provides for the eligibility of workers involved in the cultivation or harvesting of trees. Also, the term "human consumption," used in connection with the "production or processing of dairy products, poultry, or livestock," was not intended to be limited to human dietary consumption. For clarity, the term has been deleted.

It is not possible for the Commissioner to publish as part of these regulations an exhaustive list of all qualifying occupations.

Comment. Two commenters recommended that agricultural work for personal subsistence (self-employment) be included under the definition of "agricultural activity."

Response. A change has been made. The definition now includes the production or processing of crops, dairy products, poultry, or livestock "as a principal means of personal subsistence."

Comment. Six commenters recommended that the children of all families involved in occupationally-induced migration, whether or not the occupations involve agriculture or fishing, be eligible for program services.

Response. No change has been made. The requirement for involvement in agriculture or fishing is statutory.

Comment. Seven commenters recommended that the Commissioner formulate a standard Federal definition of "migratory child."

Response. No change has been made. The definitions of "currently migratory child" and "formerly migratory child" in these regulations are derived from statutory requirements that differ from the statutory requirements of other programs.

Comment. Twenty commenters recommended that the definitions of "currently migratory child," "migratory agricultural worker," and "migratory fisher" be revised to provide that moving from one school attendance area to another qualifies a child or worker as migratory. It was pointed out that children and workers may move from place to place within very large school districts.

Response. No change has been made. This recommendation has not been adopted for the same reason cited in the preamble to the interim final regulations (42 FR 36078). Pertinent legislative history indicates that Congress generally intended the program to serve children who migrate from school district to school district (Conference Report No. 93-1026, 93d Cong., 2d Sess. 142-143). However, the definitions do continue to cover children and workers who migrate from one school administrative area to another in States that are comprised of a single school district.

Comment. Seventeen commenters recommended that the definition of "currently migratory child" include migratory children of nonmigratory parents; six commenters recommended including nonmigratory children of nonmigratory seasonal farmworker parents.

Response. A change has been made. The definition of "currently migratory child" now includes "a child who has been eligible to be served (under the primary definition of "currently migratory child"), and who, without the parent or guardian, has continued to migrate annually • • •." In other words, once a child has qualified as a "currently migratory child" because both the child and the parent or guardian have migrated, that child may continue to be counted and served as a "currently migratory child" after the parent or guardian ceases to migrate, provided that the child continues to migrate annually. However, once the child ceases to migrate, that child may be counted and served only as a "formerly migratory child."

Furthermore, in order to be counted and served as either a "currently migratory child" or a "formerly migratory child," the child must have qualified at some previous point on the basis of being a migratory child of a migratory agricultural worker or a migratory fisher. The Commissioner has no authority to serve children who have never migrated or who have never had a parent or guardian who migrated.

Comment. Four commenters recommended that the period of program eligibility of a "currently migratory child" be extended from 12 months to 24 months.

Response. No change has been made. The Commissioner believes that migration within a 12-month period is a reasonable basis on which to qualify children as currently migratory because these children are suffering the

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ill effects of current disruptions in their education. Furthermore, children may be counted and served as formerly migratory for up to 5 years after the first 12-month period.

Comment. Three commenters requested clarification with respect to the actual calendar time of program eligibility of formerly migratory children.

Response. A change has been made. The definition of "formerly migratory child" clarifies that there is actually a total of 6 years of program eligibility—a 1 year status as a "currently migratory child" and up to 5 additional years as a "formerly migratory child." As an example, a child whose last qualifying move took place on January 1, 1978, would qualify as a "currently migratory child" through and including December 31, 1978. On January 1, 1979, the child would change status to a "formerly migratory child" (provided that the concurrence of the parent is secured) and would be eligible for program services up to and including December 31, 1983.

Furthermore, if the formerly migratory child in this example is enrolled in a project that commences prior to January 1, 1984, that child may continue to participate in those specific project services until they are completed. At the termination of that specific project, however, that child may not be reenrolled unless another qualifying move occurs to reestablish the child as currently migratory.

With respect to the priority of services to formerly migratory children, § 116d.35 of these regulations provides that "a formerly migratory child may participate in a project • • • provided that the participation of formerly migratory children in the State program will not prevent the participation of currently migratory children or dilute the effectiveness of the State program for currently migratory children."

Comment. Five commenters recommended that the period of eligibility for a "formerly migratory child" be changed. The recommended time changes were 3, 7, and 8 years. Two commenters recommended maintaining the period of eligibility for a "formerly migratory child" at 5 years.

Response. No change has been made. The eligibility of a child as a "formerly migratory child" for up to 5 years is statutory.

Comment. One commenter recommended that the Commissioner formulate a standard Federal definition of "guardian."

Response. No change has been made. The Commissioner has no authority to establish a standard Federal definition of "guardian" for use by other agencies. However, the definition that applies for this program is quite broad and rarely, if ever, will result in precluding a person who is considered to be a "guardian" under another program.

Comment. Seven commenters recommended that the term "guardian," as used in the definition of "currently migratory child," be interpreted to include "crew leaders" who assume responsibility for transporting children to agricultural work sites or processing plants, arranging for their employment at those sites, and supervising them while they are there.

Response. No change has been made. The recommendation has not been adopted for the same reason cited in the preamble to the interim final regulations (42 FR 36077). "Crew leaders" who have custody of children for the primary purpose of supervising their employment are not considered to be persons standing in the place of a parent. Furthermore, to include persons other than those already included in the definition of "guardian" could result in counting and serving children not considered to be within the category of children that Congress intended to cover. For example, children of nonfarm families who join "crew leaders" only for summer agricultural employment could be counted.

However, the fact that a child is accompanied by a "crew leader" and not by a parent or guardian will not disqualify him or her if it is shown that the child's parent or guardian, as defined, is a migratory agricultural worker or migratory fisher, or that the child has been eligible to be served (under the primary definition of "currently migratory child") and has continued to migrate annually without the parent or guardian.

Comment. Three commenters recommended that a guardian should not be required to present a legal document certifying his or her guardianship status.

Response. No change has been made. The regulations do not require the presentation of a legal guardianship document.

Comment. Three commenters recommended that an individual who serves in a temporary parental capacity should be considered a guardian.

Response. No change has been made. The definition of "guardian" already includes a "person standing in the place of a parent to the child."

Comment. Three commenters recommended that "day haul" agricultural workers be included under the definition of "migratory agricultural worker."

Response. No change has been made. "Day haul" agricultural workers maintain a residence to which they return daily. Because they do not actually "move" across school district lines in the sense of establishing a new residence, they are not considered migratory.

Comment. One commenter requested a clarification of the term "personal subsistence," as used in the definition of "fishing activity."

Response. No change has been made. However, for clarification, "personal subsistence" means that the fish or shellfish are caught for direct consumption by the fisher or his or her family, rather than caught for wages or other income. A similar definition applies to "personal subsistence," as used in the revised definition of "agricultural activity.

Comment. Two commenters recommended that the definitions of "migratory fisher" and "currently migratory child" include those fishers and children who move from a school district to international waters and return to the same school district.

Response. No change has been made for the same reason cited in the preamble to the interim final regulations (42 FR 36078). The Commissioner interprets the law as not covering these fishers and their children. The legislative history of Pub. L. 93-380 indicates that only those fishers and their children who migrate from one school district to another school district are considered migratory (Conference Report No. 93-1026, 93d Cong., 2d Sess. 142-143).

Comment. Two commenters recommended a clarification of the definition of "project area."

Response. A change has been made. The definition of "formerly migratory child" now includes language to clarify "area served by a title I migrant education project." That language explains that the "area served by a title I migrant education project" is any area within the boundaries of an LEA, or a combination of LEA's, where there are migratory children who are receiving title I migrant education program services or who will receive these services within the current program period.

§ 116d.3 *State applications.*

Comment. Two commenters recommended that the standard application form be revised. One of these commenters recommended reducing the form's requirements for information. The other commenter recommended an application form that would require more information.

Response. No change has been made. The standard application form is prescribed by Attachment M of OMB Circular No. A-102 of September 12, 1977 (Uniform Administrative Requirements for Grants-In-Aid to State and Local Governments).

Comment. One commenter recommended that annual State applications not be required.

Response. No change has been made. The requirement for an annual State application is statutory.

Comment. One commenter recommended that the budget format of the standard application form be revised to parallel the budget format used by State and local educational agencies.

Response. No change has been made. The budget format is standard, as prescribed by Attachment M of OMB Circular No. A-102. However, the Commissioner is authorized by that circular to eliminate any requirements for budget entries that are not needed for program management. SEA's have been notified of these deletions.

Comment. Two commenters recommended that applicants be strictly required to submit all information with the initial application, including an identification of all operating agencies.

Response. No change has been made. Although an SEA is required to submit all the required information that is available at the time of submission of the application, it is permitted to amend its application "as soon as any information becomes available that is required by these regulations, but was not previously submitted • • •." (§ 116d.8(b).) Because of the unpredictable movement patterns of migrants, it would be unreasonable to enforce a stricter requirement regarding the inclusion of information in the State application.

Comment. Two commenters recommended a specific reference to the requirement for applicant agencies to comply with title VI of the Civil Rights Act of 1964.

Response. No change has been made. The regulations indicate that title I migrant education programs are also subject to the provisions of the Office of Education General Provisions Regulations. Section 100b.262 of those regulations requires compliance with the provisions of title VI of the Civil Rights Act of 1964 and 45 CFR Part 80 (Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Health, Education, and Welfare Effectuation of title VI of the Civil Rights Act of 1964). It is not the intent of the title I migrant education program regulations to repeat general requirements that are found in the General Provisions Regulations. Furthermore, the standard application form prescribed by Attachment M of OMB Circular No. A-102 requires an assurance that the applicant will comply with title VI.

Comment. Six commenters recommended a specific requirement for providing migratory children with access to State and local facilities and services.

Response. No change has been made. Section 116d.36(a) of the final regulations already requires each SEA to provide an assurance that it will not conduct the State program through an LEA "that does not provide migratory children with access to State and locally funded educational facilities and services comparable to those ordinarily provided to nonmigratory children • • •."

§ 116d.6 *Participation of operating agencies.*

Comment. Three commenters recommended that SEA's not be required to submit the approved applications of operating agencies.

Response. A change has been made. The requirement in § 116d.6(b) of the interim final regulations that SEA's routinely forward copies of the applications of operating agencies has been deleted. Section 116d.6(b) now requires SEA's to forward only those applications that are requested by the Commissioner.

Comment. Three commenters recommended that SEA's be required to consult with teachers and migratory children with respect to the planning of programs and projects.

Response. No change has been made. Section 116d.37 requires each SEA to consult with parents and to consider their views in connection with planning the State program. this section also requires each SEA to establish a State parent advisory council which "shall be composed of people who know the needs of migratory children." These councils may include teachers and migratory children. Section 116d.32(g) requires each SEA to explain in its application how it will comply with § 116d.37(b).

Furthermore, §116d.37(a) also requires each operating agency to establish and consult a similar council. That council may also include teachers and migratory children.

Comment. One commenter recommended that applicants be required to assure the "size, scope, and quality" of projects.

Response. No change has been made. Section 116d.39(b) of these regulations provides that a State application will be approved only if the Commissioner determines that "projects to be funded are of sufficient size, scope, and quality to hold reasonable promise of making substantial progress toward meeting the special educational needs of the migratory children to be served • • •."

Comment. One commenter recommended that the information required in the application of an SEA and an operating agency be similar.

Response. A change has been made. Section 116d.6(a) regarding the contents of operating agency applications and § 116d.32 regarding the contents of State applications now share a number of common requirements. There are some differences, however, because of the different roles played by SEA's and operating agencies in the title I migrant education program.

Comment. One commenter recommended permitting an operating agency to carry over funds from one year to another rather than requiring the return to the SEA of all unobligated funds.

Response. No change has been made. Section 412 of the General Education Provisions Act (20 U.S.C. 1226) permits an SEA to carry funds over for 1 year after the fiscal year for which they were appropriated. However, Section 434(b) of the General Education Provisions Act (20 U.S.C. 1232c(b)) and 45 CFR 100b.18(b)—as well as § 116d.3(a)(4) of these regulations—require an SEA to, in effect, reapply with respect to the use of carryover funds.

The title I migrant education program is a State-operated program. Each year the SEA conducts a statewide needs assessment and designs a State program to meet those needs. However, because the children to be served are migratory, the needs of particular areas in the State may vary greatly from year to year. LEA's are not entitled to receive title I migrant education funds. Rather, an LEA is selected to participate in the State program solely because the SEA has determined that, through the participation of the LEA, the current needs of the State's migratory children may be most effectively met.

§ 116d.8 *Amendments to applications.*

Comment. One commenter recommended that amendments to applications not be permitted because they weaken the application procedure.

Response. No change has been made. It would be unreasonable, because of the mobility of the eligible migratory children, to expect a State never to have need to revise its program plan. The provisions for amending applications in § 116d.8 of the final regulations do not weaken the application procedure. In fact, all amendments undergo the same review process as initial applications.

§ 116d.9 *Title and control of property.*

Comment. One commenter recommended a stronger requirement with respect to the maintenance of an equipment inventory by the SEA.

Response. No change has been made. Property management is regulated by the Office of Education General Provisions Regulations and 45 CFR 116.42. Under 45 CFR 100b.215(d), an SEA that receives title I migrant education funds is required to maintain accurate property records and to conduct physical inventories of all nonexpendable personal property at least every 2

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years. "Nonexpendable personal property" is defined in 45 CFR 100.1 as "tangible personal property, including equipment, having a useful life of more than 1 year and an acquisition cost of $300 or more per unit."

Comment. Four commenters recommended permitting the use of program-purchased equipment by nonmigratory children.

Response. No change has been made. Title I migrant education program funds may be used to purchase equipment essential to the effective implementation of this program only. Although nonmigratory children may happen to be present when services involving the use of migrant education program equipment are being provided to migratory children, any benefits that the nonproject children derive from these services must be incidental. Program-purchased equipment may not be used directly with non-migratory children, however. If program-purchased equipment is used for nontitle I purposes, that equipment was either not needed for the title I project, or it should have been purchased with State or local funds.

§ 116d.10 *Sources of funds for State administration* (formerly, *Allocation of funds to administrative and program functions*).

Comment. Two commenters recommended an increase in the amount of funds provided under section 143(b) of title I of the Act for State administration.

Response. No change has been made. The amount of funds provided for State administration is statutory. However, the statute does not specify what portion of the funds authorized under section 143(b) is to be used for each of the various title I programs. Because the SEA both administers and carries out its program for migratory children, it may also perform a number of administrative-type activities, such as those listed in § 116d.10(b), that are performed by local educational agencies (LEA's) under part 116a or by State agencies under part 116b and 116c. These activities may be charged to program funds even though they are "administrative" in nature.

Comment. Six commenters requested a clarification of the division of "administrative" and "program" functions.

Response. A change has been made. Section 116d.10 has been revised to provide clearer guidance on this matter. However, the regulations retain the basic criteria for determining which activities are to be charged to section 143(b) funds and which are to be charged to migrant education program funds.

Section 116d.10 no longer refers to the two types of activities as "administrative" functions and "program" functions. All of the functions are in some sense "administrative." However, some functions are to be charged to State title I administrative funds; others are to be charged to migrant education program funds. A full discussion of this issue may be found in the preamble to the interim final regulations (42 FR 36077–8, July 13, 1977).

Comment. One commenter recommended including parents under § 116d.10(b) with respect to the use of program funds for inservice training.

Response. A change has been made. Inservice training is no longer listed as an "administrative" function to be charged to program funds. Instead, inservice training is regulated by § 116.36 of the general title I regulations. Parents who serve on an advisory council or who volunteer to provide a service to the project are eligible for inservice training paid for with migrant education program funds.

Comment. Two commenters recommended setting minimum and maximum amounts of funds to be used to support each administrative-type function.

Response. No change has been made. An SEA must adequately perform, according to its needs, each necessary administrative function. Furthermore, an SEA must use these funds reasonably, in accordance with part 100b, subpart G ("Cost Principles"), of the Office of Education General Provisions Regulations.

§ 116d.12 *Child eligibility* (formerly *Child eligibility and evidence of child eligibility*).

Comment. Twenty-one commenters contested the authority of the Office of Education to require a migratory child or his or her parent or guardian to provide sufficient documentation to establish the child's eligibility as migratory.

Response. A change has been made. Section 116d.12 has been revised to clarify that a migratory child or his or her parent or guardian is not required to provide documentary proof of the child's eligibility. It is the responsibility of the SEA or the operating agency to determine that a child is either a currently or formerly migratory child, as defined under § 116d.2, and to make a written record upon which the child's eligibility is determined. In determining eligibility, an SEA or an operating agency may rely on credible information provided by the child or his or her parent or guardian.

Comment. Six commenters recommended that the regulations clearly state that proof of American citizenship or legal alien status is not required of a migratory child or his or her parent or guardian.

Response. A change has been made. Section 116d.12 now states that an SEA or an operating agency is not required to obtain documentary proof of the child's civil status from either the child or his or her parent or guardian.

§ 116d.21 *Total amount available for grants.*

Comment. Two commenters requested a clarification of the formula that is used to determine the total amount of the title I migrant education grant for which an SEA may apply.

Response. No change has been made. Section 116d.21 provides a general explanation of how the total grant amount available to an SEA is determined. However, for clarification, a more detailed explanation of how State grant amounts are determined is provided here.

(1) A State accumulates one residency day for each day (during the calendar year period) that a migratory child resides in that State. Residency days for each migratory child are determined on the basis of that child's enrollment data in the migrant student record transfer system.

(2) A State's total of accumulated residency days is divided by 365 (each group of 365 accumulated residency days equals one full-time equivalent (FTE) migratory child).

(3) A State's total FTE of migratory children is then multiplied by 40 percent of the State's per pupil expenditure rate (adjusted to not less than 40 percent of 80 percent nor more than 40 percent of 120 percent of the national average per pupil expenditure rate).

The computed amount becomes the total amount available to that State for its title I migrant education grant, unless that State's computed amount results in an amount less than the State received in the prior fiscal year. Section 125 of title I of the Act provides that no State agency program shall receive in any fiscal year less than 100 percent of the amount that it received in the prior fiscal year.

Furthermore, the Commissioner is authorized by section 122(a)(2) of title I of the Act to use all or part of the amount available to an SEA to make special arrangements with other agencies for services to migratory children. Since fiscal year 1969, the Commissioner has withheld a proportionate amount of each State's entitlement to fund the migrant student record transfer system. The remaining amount is then made available to each SEA.

Comment. Fifty commenters recommended that the funding formula be expanded with respect to the age range of migratory children who are eligible to be counted.

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Response. No change has been made. The funding formula (including the counting of only those migratory children aged 5-17) is statutory.

Comment. Four commenters recommended maintaining the full-funding for the migrant education program "off-the-top" of the total title I appropriation.

Response. No change has been made. Under Section 144 of the title I statute, all title I State agency programs (including the migrant education program) are fully-funded "off-the-top" of the total title I appropriation.

Comment. Two commenters recommended that the formula used in determining the grant amount to be made available to a SEA should use the child count from the same year as the grant award, and not the child count for the prior calendar year period.

Response. No change has been made. Because the title I program is "advance-funded"—i.e., funds are appropriated in 1 fiscal year for obligation by the Federal Government and use by the recipient in the following fiscal year—it is impossible to calculate the grant amount available to a State under the title I migrant education program on the child count from the same year as the grant award period.

However, the formula does use the child count from the most recent full calendar year period that is available. Thus, the size of a grant made available to a State for fiscal year 1979 is determined on the basis of the count of migratory children in that State during the period of January 1-December 31, 1977.

Comment. One commenter recommended the use of a "block grant" to State and local educational agencies instead of categorical aid for programs such as the title I migrant education program.

Response. No change has been made. The Act requires that title I migrant education funds be used for services to migratory children only.

Comment. Three commenters recommended that the Commissioner develop a procedure through which a State would be permitted to use a certain portion of "prospective" grant funds while final negotiations were being carried out with the Office of Education regarding the approval of its application.

Response. No change has been made. The obligation of funds by a grantee is regulated by the Office of Education General Provisions Regulations. Section 100b.35(d) states that funds shall not be obligated prior to the effective date of the approved State application. Section 116d.6(d) of the final regulations clarifies that an operating agency may not obligate funds before the effective date of the SEA's approved application or the date on which the operating agency's application is submitted to the SEA in substantially approvable form, whichever occurs later.

§ 116d.24 *Special arrangements with the State educational agency and § 116d.25 Special arrangements with the Commissioner* (formerly, *Special arrangements by the Commissioner to conduct migrant programs*).

Comment. A number of commenters made recommendations concerning special arrangements for services on the part of the Office of Education and participating SEAs. Eight commenters recommended that individuals and public and nonprofit private agencies be provided with a specific mechanism to petition the Office of Education for a special arrangement for services. Similarly, two commenters recommended that the regulations provide a specific procedure by which individuals and public and nonprofit private agencies may petition an SEA for a special arrangement for services.

In addition, five commenters specifically suggested that the regulations provide a procedure by which migratory parents could petition an SEA or the Office of Education for a special arrangement.

Response. A change has been made. Section 116d.24 has been rewritten to clarify that an SEA may make special arrangements with public or nonprofit private agencies to carry out a project. Section 116d.25 describes the Commissioner's authority to make special arrangements to carry out the purposes of section 122 of the Act. The conditions under which an SEA may make a special arrangement are essentially identical to those under which the Commissioner may make a special arrangement, and they follow the language of section 122(a)(2) of the Act.

Also, Section 116d.26 (*Complaint procedures*) has been rewritten. It makes clear that a participating SEA must establish a procedure by which it will resolve the complaints (alleging statutory or regulatory violations of the title I migrant education program) of parents and other individuals and organizations within an appropriate period of time, not normally to exceed 60 days. Moreover, § 116d.26(b) provides that the Commissioner may review an SEA's resolution of a complaint and take appropriate steps, including "implement[ing] a special arrangement under § 116d.25."

The Commissioner does not believe that the creation of distinct and possibly restrictive petition procedures are warranted. The existing complaint procedure is flexible enough to serve as an effective means by which a request for a special arrangement may be made.

Comment. Ten commenters requested that the regulations be more specific in terms of the conditions under which an SEA or the Commissioner may employ a special arrangement.

Response. No change has been made. The three conditions stated in § 116d.25, as those under which the Commissioner may make a special arrangement, follow the statutory language of section 122(a)(2) of the Act. Corresponding conditions in § 116d.24 govern an SEA's discretion to make a special arrangement. The language of the Act indicates that Congress intended to allow the Commissioner and each SEA considerable discretion in evaluating the need for a special arrangement.

§ 116d.31 *Use of program funds* (formerly titled *Use of funds*).

Comment. Five commenters recommended that the regulations permit a more liberal use of program funds for projects that involve a capital outlay, such as the construction of school facilities.

Response. No change has been made. The regulations permit appropriate use of Title I migrant education funds for construction; § 116d.39(a) provides that these funds may be used for the construction of school facilities "where necessary." This restrictive standard is imposed by section 122(a)(1)(A) of the Act. In addition, § 116.32, which is applicable to all title I programs, contains more specific guidance on the use of program funds for construction.

Comment. Three commenters requested that the regulations clarify the requirement that title I migrant education funds be used to supplement and not to supplant State and local funds.

Response. No change has been made. Section 141(a)(3) of the Act and § 116.40(a) require that title I funds be "used to supplement, and to the extent practical, increase the level of State and local funds that would, in the absence of such Federal funds be made available • • • [and] will not be used to supplant State and local funds • • •." (At the present time, the Office of Education is preparing additional interpretive guidance on these provisions.)

Comment. Three commenters requested a clarification of the phrase "imprudent, wasteful, or extravagant" as used in § 116d.11.

Response. No change has been made. These regulations (§ 116d.11) require that each SEA that "receives a title I migrant education grant shall issue to operating agencies a set of rules that prohibits the imprudent, wasteful, or extravagant expenditure of these funds."

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As noted in the preamble to the interim final regulations (42 FR 36078), this standard is regarded as workable. Given the numerous possible circumstances, it is not possible to define more precisely what expenditures are reasonable and appropriate.

Comment. Seven commenters recommended permitting the use of title I migrant education funds as stipends to encourage school attendance.

Response. No change has been made. Section 122(a)(1) provides that title I migrant education funds must be used "to establish or improve • • • programs of education for migratory children • • •." Section 122(a)(1)(A) requires that these programs be "designed to meet the special educational needs of migratory children • • •." Standing alone, of course, the payment of money to a migratory child has no educational content and does not directly address his or her educational needs. To be permitted, any payment would have to be integrally related to a program of educational services—such as a work/study project—designed to meet the child's special educational needs. In this case, the payment of money may be said to have educative content in its own right.

In addition, any payment would have to be "necessary to enable eligible migratory children to participate effectively in instructional services," and would be subject to the requirement that the expenditure be "necessary and reasonable" within the meaning of part 1(C)(a) of appendix B ("Cost Principles for State and Local Governments"), which applies to the title I migrant education program under 45 CFR 100b.81. Under these standards, for example, title I funds could not be used to pay stipends to migratory children to encourage them to attend educational programs that they are required to attend under State law.

Comment. Two commenters requested a more liberal use of funds for professional conferences, workshops, and in-service training.

Response. No change has been made. Depending upon the needs in an individual State, these activities may be supported with title I migrant education funds. Section 116.36 provides guidance concerning the appropriate use of these funds for pre-service and in-service training. These expenditures are also subject to the cost principles stated in Appendix B to 45 CFR Part 100, including the requirement that expenditures from program funds be "necessary and reasonable."

Comment. Two commenters recommended that the regulations encourage stronger fiscal and fund accounting controls.

Response. No change has been made. The present requirements assure effective fiscal control at the SEA and operating agency levels without imposing unnecessary burdens upon participating agencies. For example, § 116d.6(a)(5) requires an operating agency to describe each service it will provide and the estimated cost in its annual application to the SEA. Section 116d.6(c) requires an operating agency to maintain records of all financial transactions relating to a title I migrant education project for a period generally of 5 years and to provide timely financial reports to the SEA.

Section 116d.11 requires each SEA to issue to its operating agencies rules that prohibit the "imprudent, wasteful, or extravagant" expenditure of title I funds and requires operating agencies to reflect in their financial reports adjustments made to their subgrants.

Section 116d.34 provides that a State application must be accompanied by a budget "including the estimated cost of each service" to be provided as part of the State program. In addition, § 116d.10(a) provides that an SEA may use funds made available under section 143(b) of the Act to maintain "fiscal control and fund accounting" with respect to the State program.

Comment. Eight commenters suggested that a portion of each State's allocation of title I migrant education funds be earmarked for identification and recruitment of eligible migratory children, or, alternatively, that the regulations require an SEA to conduct recruitment efforts. Ten commenters recommended that the regulations require that all identified eligible migratory children in the State receive program services.

Response. A change has been made. Section 116d.39(g) of these regulations provides that a State application may not be approved by the Commissioner unless it demonstrates that "the SEA has made every reasonable effort to identify and recruit all eligible currently and formerly migratory children." Section 116d.32(b) requires an SEA to describe its recruitment efforts in its State application. In addition, as under the interim final regulations, § 116d.10(b) provides that an SEA may use program funds to identify and recruit eligible migratory children.

On the other hand, it is neither realistic nor appropriate to require that an SEA serve every identified eligible migratory child in the State. Some children may not exhibit special educational needs. Some may be served appropriately by other supplementary programs. And, it may not be feasible for the SEA to serve some children, especially those living in very remote areas.

However, § 116d.32(c) requires that if an SEA expects to serve fewer eligible school-aged migratory children than the number it has identified in its State application, it must explain why. Section 116d.6(a)(4) imposes a similar requirement on operating agencies.

Comment. A commenter recommended that these regulations more clearly indicate that in the title I migrant education program, the grantees are State, not local, educational agencies.

Response. A change has been made. Section 116d.1 clearly states that grants are awarded to SEA's. As § 116d.5 indicates, an SEA may conduct programs and projects directly, may make subgrants to one or more LEA's, or may enter into special arrangements with one or more public or nonprofit private agencies.

The definition of "operating agency" in § 116d.2 further clarifies that an LEA participates in the program as a subgrantee.

§ 116d.32 *Contents of State applications* (formerly § 116d.31(b) *Information in State applications*, and § 116d.39 *Criteria for approval of State applications*).

Comment. Five commenters recommended that these regulations require an individualized educational plan for each participating migratory child.

Response. No change has been made. Section 141(b) of the Act does not authorize the Commissioner to require an individualized written educational plan for each child. However, § 116.47 provides that "a State educational agency shall encourage where feasible applicant agencies • • • to provide for the development for each child participating in an approved program or project under • • • title I, an individualized written educational plan • • • agreed upon jointly by the applicant agency, a parent or guardian of the child, and when appropriate, the child."

Comment. Two commenters suggested requiring programs to include activities—beyond basic instructional programs—such as nutrition education, guidance counseling, or home-school coordination. Another commenter said these regulations should encourage the provision of enrichment, and not just compensatory services to migrant children. Still another suggested emphasizing specific disciplines such as language skills, mathematics, science, and music.

Response. No change has been made. The title I migrant education program is a supplementary, compensatory educational program intended to address the special educational needs of participating migratory children. If the eligible migratory children exhibit special needs in the basic academic

subjects, title I services must be fashioned to meet those needs.

Section 116d.39(b) provides that projects must be "of sufficient size, scope, and quality to hold reasonable promise of making substantial progress toward meeting the special educational needs of the migratory children to be served, particularly any need for improvement in the basic academic subjects." Of course, the determination of the special educational needs of the migratory children who will participate is a responsibility of each SEA (see § 116d.32(d)), as is the design of the programs and projects to meet those needs.

Comment. One commenter recommended that the concept of basic skills as used in § 116d.39(b) be amplified by the words "readiness, developmental, and remedial."

Response. No change has been made. As the preamble to the interim final regulations noted (at 42 FR 36079), the Office of Education lacks the authority to require all of these concepts to be implemented in every State program.

Comment. Two commenters requested a clarification of the requirement that projects show "reasonable promise" of meeting the "special educational needs" of the participating migratory children. Several other commenters requested examples of "special educational needs."

Response. No change has been made. Under § 116d.39(b), the Commissioner determines that projects to be funded are of "sufficient size, scope, and quality to hold reasonable promise of making substantial progress toward meeting the special educational needs of the migratory children to be served • • •."

This provision implements section 141(a)(1)(B) of the Act, and although it is rewritten, it does not alter the substance of § 116d.39(b) of the interim final regulations.

The terms "reasonable promise" and "special educational needs" are statutory and are not otherwise defined in the Act. Still, the Commissioner believes that these terms are sufficiently clear in the regulations to provide the needed guidance and that a more detailed definition might unnecessarily restrict their application. Congress evidently intended the concept of "special educational needs" to have a broad applicability. This is consistent with the statutory framework that places responsibility on the SEA for diagnosing the particular needs of migratory children and for designing effective compensatory projects.

Comment. Six commenters recommended that these regulations encourage the provision of "summer-term" projects.

Response. No change has been made. The title I statute and these regulations make clear that each SEA is charged with the responsibility to determine the special educational needs of the eligible migratory children and to design appropriate programs and projects to meet those needs.

Section 122(a)(3) of the Act and § 116d.35 of these regulations establish a service priority that places currently migratory children before formerly migratory children. In some instances this may necessitate the use of summer-term projects.

Comment. One commenter suggested that each operating agency should be required to state its project objectives by "grade" as opposed to "grade group."

Response. No change has been made. As the preamble to the interim final regulations noted (42 FR 36077), uncertainties may exist as to the migratory children who will actually be present when a project is conducted. Reporting by grade group rather than by grade recognizes this uncertainty and is intended to provide flexibility to operating agencies.

Comment. A number of commenters recommended that bilingual and multicultural instructional services be required by the regulations when the linguistic circumstances of the children to be served warrant these services.

More specifically, 14 commenters said that bilingual or multicultural instruction should be required; two commenters recommended requiring classroom use of bilingual instructional materials; 9 commenters recommended requiring staff development activities to include bilingual and multicultural instructional program training; and 22 commenters recommended that the regulations require the employment of bilingual or multicultural teachers and other staff members.

Response. A change has been made. Section 116d.32(d) of these regulations requires a State application to demonstrate "that the SEA has obtained an accurate assessment of the cultural and linguistic backgrounds of (the eligible migratory children living or expected to live in the State)." It also requires each SEA to include in its application "a description of the measures that the SEA will take to assure that a migratory child is not prevented from benefiting fully from the services provided by the title I migrant education program because he or she does not speak English or has limited English language skills."

Similarly, § 116d.6(a)(8) requires an operating agency application to contain "a description of how the operating agency assures that eligible migratory children will benefit fully from the project's services even if they do not speak English or have limited English language skills."

The Act, however, does not authorize, and section 432 of the General Education Provisions Act (20 U.S.C. 1232a) forbids the Office of Education to require any particular type of curriculum, program of instruction, or staff. Certainly, bilingual or multicultural modes of instruction may be appropriate when the children to be served have particular linguistic needs; however, other curricular responses may also be appropriate.

It is an SEA's responsibility under § 116d.32(d) to evaluate the linguistic needs of the children to be served and to devise an educational program appropriate to those needs.

Comment. Six commenters recommended that the Office of Education closely regulate the minimum qualifications of migrant educators. Two commenters said these regulations should require the use of community outreach workers. Another commenter said these regulations should require that a minimum percentage of staff aides be migrants themselves.

Response. No change has been made. The Office of Education has no authority to regulate the qualifications of migrant educators, or the type or composition of the staff connected with a State program. It is the responsibility of an SEA to develop a State program appropriate to the needs of the migratory children living or expected to live in the State.

Comment. Two commenters requested that teachers paid with title I migrant education funds be permitted to participate in regular supervisory activities that benefit the entire school population. Another commenter suggested that teachers should be permitted to work with migrant children within the regular classroom setting.

Response. No change has been made. Neither the Act nor these regulations permit the use of title I migrant education funds to provide services to children other than those who are eligible to receive them. However, neither the Act nor these regulations prohibit an SEA or operating agency from providing title I-funded services to eligible migratory children while sharing an institutional setting with other, noneligible children. The requirement is that the services be sharply focused on, and tailored to, the needs of the eligible migratory children.

Reason requires, of course, that genuinely trivial variations from these principles, which do not diminish the effectiveness of program services to eligible migratory children, be permitted.

Comment. Sixteen commenters recommended encouraging services at the secondary school level with an emphasis on dropout prevention. Similarly,

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three other commenters requested a secondary school emphasis specifically in the areas of career and vocational education.

Response. No change has been made. It is the responsibility of an SEA to design a State program that meets the needs of the migratory children living in the State.

Comment. Twelve commenters said the regulations should require extensive interagency coordination at the operating agency level with other programs providing services to migratory children. One commenter requested specific criteria for evaluating the extent of interagency program coordination.

Response. No change has been made. Section 116d.10(b) provides that an SEA may use funds made available under section 122 of the Act to "coordinat[e] • • • programs and projects with other public and private agencies." Section 116d.39(e) provides that before a State application may be approved, the Commissioner must determine that "in planning the State program, the SEA has consulted with other SEA's that conduct title I programs for migratory children and with other agencies that provide services for migratory children and that are knowledgeable of their needs." Both of these provisions are contained in the interim final regulations (see §§ 116d.10(b)(2) and 116d.39(e)) although worded slightly differently.

In addition, § 116.41(a) provides, in part, that "each application by (an SEA) for a grant under title I shall demonstrate that, in the development of such application, the applicant has taken into consideration benefits which are or may be available through other public and private agencies • • •. Such applications shall also demonstrate that the applicant has considered suggestions and offers of assistance which have been timely made by such agencies and which may aid in carrying out or making more effective the program or project for which application is made."

Additional regulations, such as the prescribing of criteria, applicable in all situations, are not warranted.

Comment. Eight commenters said these regulations should clearly require participation in and use of the migrant student record transfer system, including specifying the minimum health and education information that must be entered for each participating migrant child.

Response. A change has been made. Like the interim final regulations, § 116d.39(f) of the final regulations requires, as a condition of approval of a State application, that the SEA, in carrying out the State program, "utiliz[e] fully the migrant student record transfer system."

However, the following phrase has been added in the final regulations in order to clarify this requirement: "including the transfer of the most current academic and health information available for the children served."

In addition, § 116d.32(h) requires an SEA to include in its application "a description of the information about the migratory children that the SEA will pass on to other SEA's, other than through the migrant student record transfer system."

Comment. Nine commenters made general recommendations to foster improvement in the exchange among title I programs of general information and information about exemplary projects. Six commenters said these regulations should require that all migrant parents be fully informed concerning the State program, including the dissemination of bilingual program information, if necessary. Another suggested that all program documents be available to the public.

Response. No change has been made. Section 116d.32(j) requires that a State application contain a description of how the SEA proposes to comply with 45 CFR 116.45. Section 116.45 provides, in part, that an SEA must develop plans for "disseminating information concerning the provisions of title I, and the (SEA's) past and present title I programs—including evaluations of such programs—to parents and to the general public." It also requires each SEA to make available "such • • • documents as may be reasonably necessary to meet the needs of • • • parents or other members of the public for information related to the comprehensive planning, implementation, and evaluation of the title I program, but not including information relating to the performance of identified children and teachers."

Under this "reasonably necessary" standard, of course, SEA's are required to accommodate the needs of parents and others who possess limited English language skills.

Also, 45 CFR 116.44 provides, in part, that a State application must contain a description of the methods the SEA will employ "for reviewing, selecting, and disseminating to teachers and educational administrators significant information on the latest developments and most recent experiments in education so that such information will be available for use in program planning and operation. These methods may include • • • reports on the organization, operation, and outcome of projects under title I."

Furthermore, under § 116d.10(a)(8), an SEA may use administrative funds to support the dissemination of such information.

Comment. Nine commenters said these regulations should require each SEA to establish a separate complaint procedure for its title I migrant education program. Two commenters suggested that a private agency should be able to register a complaint.

Response. A change has been made. Section 116d.26 ("Complaint resolution procedures") specifically incorporates 116.6(b), which requires each SEA to establish procedures for investigating and resolving the complaints of "parents and other individuals and organizations" alleging violations of the title I Act or regulations.

Recognizing that title I migrant education projects are frequently of short duration, the final regulations call for an "appropriate accelerated procedure for resolving complaints regarding • • • projects that operate for fewer than 60 days."

Comment. A number of commenters made recommendations concerning the provision of services to preschool children. Twenty-two commenters said these regulations should encourage States to provide program services at the preschool level. Two commenters expressed concern because the definition of "preschool" varies from State to State. One commenter requested a clarification of the difference between "instructional" and "custodial" services.

Response. No change has been made. As in the interim final regulations, § 116d.39(c)—which provides, in part, that "projects designed to meet the special educational needs of preschool migratory children will be provided only if, considering the amount of funds available, these projects will not detract from the operation of projects for school-aged migratory children"—establishes a service priority in favor of school-aged migratory children. This follows the priority stated in section 122(a)(1)(D) of the Act.

In addition, as the preamble to the interim final regulations indicated (42 FR 36079), because preschool children do not generally generate funds under the statutory formula, school-aged migratory children are considered to take priority over preschool children.

Each State, of course, is free to establish the age at which free public education commences. The Act does not define the term "preschool"; however, 45 CFR 100.1 defines the term as "the educational level from a child's birth to the time at which elementary education is provided as determined under State law."

With respect to the distinction between "instructional" and "custodial" services for preschool children, § 116d.33(b), as did the interim final regulations, defines preschool instructional services as "comprised primarily of activities designed to increase the children's readiness for instruction in the basic academic skills, and not primarily designed for custodial purposes." This definition is believed to be sufficiently precise.

§ 116d.35 *Services to formerly migratory children.*

Comment. A number of commenters objected to the secondary service priority of formerly migratory children. Some commenters said formerly migratory children should not be required to live in a project area in order to receive services.

Response. No change has been made. Section 116d.35 provides that a "formerly migratory child may participate in a project • • • provided that the participation of formerly migratory children in the State program will not prevent the participation of currently migratory children or dilute the effectiveness of the State program for currently migratory children." This secondary priority is required by section 122(a)(3) of the Act, which provides that currently migratory children "shall be given priority in consideration of programs and activities contained in (State application)."

Similarly, § 116d.2, which includes as part of the definition of a formerly migratory child that he or she "lives in an area served by a title I migrant education project," merely follows the statutory definition of such a child as stated in section 122(a)(3) of the Act: A "migratory child • • • shall be deemed to continue to be such a child for a period, not in excess of 5 years, during which he resides in the area served by the agency carrying on a program or project • • •."

Comment. Two commenters indicated that parental concurrence should not be required to establish a child's eligibility as a formerly migratory child. Five commenters said the regulations should not require the signature of a parent as evidence of concurrence. Two commenters objected to the interim final regulations' requirement of an annual parent signature as evidence of concurrence.

Response. A change has been made. Section 122(a)(3) of the Act requires parental concurrence as a condition of a child's eligibility as a formerly migratory child. Therefore, the definition of formerly migratory child in § 116d.2 requires "the concurrence of (the child's) parent or guardian to continue to be considered a migratory child."

However, § 116d.35 no longer requires the SEA or an operating agency to obtain the signature of a parent or guardian as evidence of concurrence. Of course, under § 116d.12 of the final regulations, an SEA or operating agency must still make for each child counted or served "a written record of the basis on which the child's eligibility was determined." As part of this written record, it may require a parental signature as evidence of concurrence.

§ 116d.37 *Parental involvement.*

Comment. A number of commenters suggested that these regulations should enlarge the scope of parental involvement in the title I migrant education program. Twenty-five commenters specifically recommended that parent advisory councils be required at the operating agency level. One commenter said the Office of Education should not approve a State application that fails to document council establishment.

Response. A change has been made. Section 116d.37 now requires parent advisory councils to be established and consulted at both the SEA and operating agency levels. These councils, which are to be consulted by the SEA and the operating agencies, must be composed of people "who know the needs of migratory children." Furthermore a majority of the members of the advisory councils at both the State and operating agency levels must be parents.

Comment. Sixteen commenters suggested that program funds should be provided for parent council activities. Five commenters said the regulations should include a detailed list of reimbursable parent council activities.

Response. No change has been made. As noted in the preamble to part 116 (41 FR 42896) and in the preamble to the interim final regulations for part 116d (42 FR 36079), the applicable standards for determining which parent council expenditures may be paid from program funds are stated in appendix B to part 100 of this chapter. (See 45 CFR 100b.81.)

Comment. Numerous commenters said the Office of Education should regulate extensively with respect to the composition, functioning, and duties of parent councils. Nine commenters said the councils should have "sign-off" authority on applications. Six commenters said parents should be permitted to appoint representatives when absent from meetings. three commenters said migratory children should be required within the membership of parent councils.

Two commenters recommended that parents of currently migratory children be given preference as members. Four commenters said the regulations should require direct communications between parent councils and the SEA. Four commenters said communication to parents on these councils should be bilingual, if necessary.

Response. A change has been made. As noted previously, § 116d.37 requires "effective parental involvement throughout the State program." In addition, § 116d.37 (a) and (b) require the establishment of parent advisory councils at both the SEA and operating agency levels. These councils which are consulted by the SEA and the operating agencies, must have parents as a majority of their members. Furthermore, these councils must be composed of people "who know the needs of migratory children."

However, the types of parental involvement and the design and operation of the parent advisory council are left to the SEA and the operating agencies which can best evaluate the particular needs of that State's or a local area's migrant population and structure an appropriate mechanism for parental participation.

It is expected, of course, that the views of these councils will be given serious consideration. These regulations require effective parental involvement. If this cannot be achieved without the use of bilingual communications, they must be employed.

Comment. Five commenters recommended a national parent advisory council.

Response. No change has been made. Title I migrant education grants are awarded to State educational agencies for programs designed at that level.

§ 116d.38 *Supporting services.*

Comment. Eight commenters requested a clarification of the circumstances under which support services may be provided.

Response. No change has been made. As under the interim final regulations, § 116d.38(a) provides that, in general, "health, welfare, or other supporting services [may be provided] with title I migrant education funds, but only if these services are necessary to enable eligible migratory children to participate effectively in instructional services." The instructional services referred to need not be funded by title I.

However, the more restrictive conditions under which title I migrant education funds may be used to support day care services are stated in § 116d.38(b).

The Commissioner believes that § 116d.38(a) establishes a simple, workable standard. It is not possible to describe every circumstance in which title I-funded support services may be provided.

Comment. Eight commenters said these regulations should permit a more liberal use of title I funds to support day care services.

Response. No change has been made. As the preamble to the interim final regulations noted (42 FR 36079), the title I statute establishes the migrant program as an "educational" program, which the Office of Education interprets as a program of instruction. Therefore, support services, including day care services, are permitted only

to the extent that they are necessary to support attendance in an instructional program. In the case of day care services, the instructional services must be supported by title I.

Section 116d.38(b) does not alter the conditions under which title I supported day care services may be provided. However, these final regulations delete § 116d.38(c) of the interim final regulations. Given the criteria stated in § 116d.38(b), the types of information which an SEA must provide in its State application are self-evident.

§ 116d.40 *Cooperative programs.*

Comment. Thirty-two commenters recommended strengthening the requirement for interstate coordination of programs and projects. Six commenters said the regulations should encourage the interstate exchange of academic credits. Three commenters suggested requiring SEA's to share needs assessments and other program documents. Four commenters encouraged interstate reciprocity in the certification of migrant educators. One commenter requested examples of interstate coordination.

Response. A change has been made. These final regulations contain a suggested list of interstate and intrastate cooperative efforts intended to foster continuity in the education of migratory children. Thus, § 116d.32(h)—which otherwise is substantially similar to § 116d.31(b)(7) of the interim final regulations—provides that a State application must contain an "explanation of the steps the SEA will take to assure the most continuity practicable in the education of the migratory children to be served, such as the exchange of course credits, both within and among States, and the intrastate and interstate sharing of program planning, evaluation, curriculum, and staff training materials." This explanation must also describe "the information that the SEA will pass on to other SEA's, regarding the migratory children, other than through the migrant student record transfer system."

As in the interim final regulations, § 116d.39(f) provides that one criterion for approval of a State's application is that the SEA's "plan for assuring continuity in the education of migratory children includes appropriate procedures for coordinating its State program with programs in other States. * * *" Also, § 116d.10(b) clearly indicates that the intrastate and interstate coordination of programs and projects is a permissible use of title I migrant education funds.

A program assisted by these funds is designed by an SEA in response to the special educational needs of the migratory children who live in that State. Accordingly, it is felt that each SEA is best able to devise the precise means of effectively coordinating its programs with other programs and projects so as to provide continuity in the education of migratory children.

The Office of Education has no authority to regulate with respect to the licensing or certification of migrant educators.

Comment. Seven commenters said that the regulations should contain a section on the privacy and information rights of participating children and their parents.

Response. A change has been made. Section 116d.32(k) requires that a State application contain an assurance that the SEA will "transfer the educational records of the migratory children participating in the State program in accordance with the Family Educational Rights and Privacy Act of 1974 and part 99 of this chapter (Privacy Rights of Parents and Students)."

GENERAL

Comment. One commenter recommended that these regulations include a statement of philosophy and intent for the program.

Response. No change has been made. A general statement of program philosophy would not be sufficiently precise to provide guidance and is not appropriate for regulations. The purposes of the title I migrant education program are clearly expressed in section 122 of the Act and in these regulations.

Comment. Several commenters suggested that these regulations should include the sections of the general title I regulations (part 116), the General Education Provisions Act, and the Office of Education General Provisions Regulations that apply to the title I migrant education program, or that are incorporated by these regulations.

Response. No change has been made. The purpose of part 116 and the Office of Education General Provisions Regulations is to avoid unnecessary repetition of regulatory provisions that apply to a variety of Federal education programs.

Comment. Two commenters requested that these regulations be written in simpler language. One commenter recommended that these regulations include examples, when helpful, to clarify individual requirements.

Response. A change has been made. These final regulations have been prepared according to the Department of Health, Education, and Welfare's Operation Common Sense. Where appropriate, examples have been included.

Comment. One commenter recommended that the requirement for financial and performance reports be deleted.

Response. No change has been made. The reports required by subparts P and Q of part 100b are authorized by section 434(b) of the General Education Provisions Act and OMB Circular No. A-102. They are necessary to maintain proper accountability.

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The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR notice 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
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CSA	CSC		CSA	CSC
	LABOR			LABOR
	HEW/FDA			HEW/FDA

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

NOTE: As of August 14, 1978, Community Services Administration (CSA) documents are being assigned to the Monday/Thursday schedule.

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Revision of sampling procedure for new animal antibiotic drugs 41195; 9-15-78

List of Public Laws

This is a continuing listing of public bills that have become law, the text of which is not published in the FEDERAL REGISTER. Copies of the laws in individual pamphlet form (referred to as "slip laws") may be obtained from the U.S. Government Printing Office.

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H.R. 13650 ..... Pub. L. 95-604
"Uranium Mill Tailings Radiation Control Act of 1978." (Nov. 8, 1978; 92 Stat. 3021). Price: $1.10.

S. 2774 ..... Pub. L. 95-605
To extend the boundaries of the Toiyabe National Forest in Nevada, and for other purposes. (Nov. 8, 1978; 92 Stat. 3044). Price: $.60.

S. 2727 ..... Pub. L. 95-606
"Amateur Sports Act of 1978." (Nov. 8, 1978; 92 Stat. 3045). Price: $.90.

S. 2981 ..... Pub. L. 95-607
To amend section 5 of the Department of Transportation Act, relating to rail service assistance, and for other purposes. (Nov. 8, 1978; 92 Stat. 3059). Price: $.80.

S. 1214 ..... Pub. L. 95-608
"Indian Child Welfare Act of 1978." (Nov. 8, 1978; 92 Stat. 3069). Price: $.80.

S. 3083 ..... Pub. L. 95-609
"Quiet Communities Act of 1978."

S. 274 ..... Pub. L. 95-610
To amend title 10, United States Code, to prohibit union organization of the armed forces, membership in military labor organizations by members of the armed forces, and recognition of military labor organization by the Government, and for other purposes. (Nov. 8, 1978; 92 Stat. 3085). Price: $.60.

H.R. 10898 ..... Pub. L. 95-611
To amend the Regional Rail Reorganization Act of 1973 to authorize appropriations for the United States Railway Association for fiscal year 1979. (Nov. 8, 1978; 92 Stat. 3089). Price: $.60.

S. 2093 ..... Pub. L. 95-612
To provide that the Exchange Stabilization Fund shall not be available for payment of administrative expenses; and for other purposes. (Nov. 8, 1978; 92 Stat. 3091). Price: $.60.

S. 2522 ..... Pub. L. 95-613
To extend the programs of assistance under title X and part B of title XI of the Public Health Service Act. (Nov. 8, 1978; 92 Stat. 3093). Price: $.60.

S. 553 ..... Pub. L. 95-614
To amend the boundary of the Cibola National Forest, designate an intended wilderness area, and for other purposes. (Nov. 8, 1978; 92 Stat. 3095). Price: $.60.

H.R. 9251 ..... Pub. L. 95-615
"Tax Treatment Extension Act of 1977." (Nov. 8, 1978; 92 Stat. 3097). Price: $.90.

H.R. 2329 ..... Pub. L. 95-616
"Fish and Wildlife Improvement Act of 1978." (Nov. 8, 1978; 92 Stat. 3110). Price: $.70.

H.R. 4018 ..... Pub. L. 95-617
"Public Utility Regulatory Policies Act of 1978." (Nov. 9, 1978; 92 Stat. 3117). Price: $1.90.

H.R. 5263 ..... Pub. L. 95-618
"Energy Tax Act of 1978." (Nov. 9, 1978; 92 Stat. 3174). Price: $1.40.

H.R. 5037 ..... Pub. L. 95-619
"National Energy Conservation Policy Act." (Nov. 9, 1978; 92 Stat. 3206). Price: $2.10.

H.R. 5146 ..... Pub. L. 95-620
"Powerplant and Industrial Fuel Use Act of 1978." (Nov. 9, 1978; 92 Stat. 3289). Price: $1.90.

H.R. 5289 ..... Pub. L. 95-621
"Natural Gas Policy Act of 1978." (Nov. 9, 1973; 92 Stat. 3350). Price: $1.90.

S. 2450 ..... Pub. L. 95-622
To amend the Community Mental Health Centers Act to revise and extend the programs under that Act, to amend the Public Health Service Act to revise and extend the programs of assistance for libraries of medicine, the programs of the National Heart, Lung, and Blood Institute, and of the National Cancer Institute, and the program for National Research Service Awards, to establish the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research, and for other purposes. (Nov. 9, 1978; 92 Stat. 3412). Price: $1.30.

S. 2466 ..... Pub. L. 95-623
"Health Services Research, Health Statistics, and Health Care Technology Act of 1978." (Nov. 9, 1978; 92 Stat. 3443). Price: $.90.

S. 3151 ..... Pub. L. 95-624
"Department of Justice Appropriation Authorization Act, Fiscal Year 1979." (Nov. 9, 1978; 92 Stat. 3459). Price: $.70.

rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

[1620-01-M]

Title 4—Accounts

CHAPTER III—COST ACCOUNTING STANDARDS BOARD

PART 331—CONTRACT COVERAGE

AGENCY: Cost Accounting Standards Board.

ACTION: Final rule.

SUMMARY: This rule exempts contracts and subcontracts awarded to foreign concerns from Cost Accounting Standards except Standards 401 and 402. It also exempts contracts and subcontracts awarded to foreign governments and their agencies from all standards and rules of the Board. Certain of these amendments are being made in the interest of sound contracting practices and will continue to assure that necessary information about contracting is available. The exemptions will remove impediments to efficient and successful contracting with foreign concerns and governments.

DATE: These amendments are effective immediately.

FOR FURTHER INFORMATION CONTACT:

Noah Minkin, General Counsel, Cost Accounting Standards Board, 441 G Street NW., Washington, D.C. 20548, 202-275-5940.

SUPPLEMENTARY INFORMATION: The Cost Accounting Standards Board is today promulgating amendments to its regulations dealing with exemptions for contracts and subcontracts performed by foreign governments and foreign concerns. On July 31, 1978, the Cost Accounting Standards Board published a proposal under which contracts or subcontracts with foreign concerns could be exempted from certain individual standards if an authorized official of a relevant Federal agency determines that application of the standards to such contracts or subcontracts is inappropriate. The Board received 12 comments on the proposal.

One commentator opposed the proposal as unnecessary because the Board itself has authority to grant exemptions when such action is appropriate and asserted that delegation is undesirable because such decisions are too important to be delegated. The Board agrees that decisions concerning exemptions are important and has carefully considered the proposed action in the light of all comments and other available information. Based on that consideration the Board has concluded that it should grant a specific categoric exemption. Consequently no delegations are needed. Moreover because of the categoric exemption, the need to amend individual standards is obviated.

One government agency to whom delegation of authority was proposed noted that in implementing the delegation, one of the factors it would consider in determining whether the application of an individual standard is appropriate is the matter of sovereignty. Because of the action being taken today, there is no need to comment on the appropriate weight to be assigned to that factor.

Another commentator also discussed sovereignty and suggested that the United States has no legal right to impose the requirements of its laws and regulations on foreign contracts. To support this assertion, the commentator cited an official of the Department of Defense who attributed some of the difficulties in foreign procurements to the insistence upon contracts rather than general agreements. Whether a contract or some other instrument is used is something to be decided by other agencies of the Government and not by the CASB. The Board has long recognized that its Standards are not applicable to noncontractual arrangements and agrees with the suggestion that if the procuring agencies used some noncontractual arrangement to transact business with foreign contractors, CAS would be inapplicable to the transaction. However, when the parties agree to use a negotiated national defense contract or subcontract as the vehicle for transacting business, the agreement must include the standards, rules, and regulations of the Board.

One commentator expressed the opinion that no substantial benefit would accrue to the United States under the limited exemption originally proposed but that a complete exemption from all Cost Accounting Standards Board requirements would be beneficial. Instead of the proposed exemption and delegation, that commentator recommended that all contracts and subcontracts with foreign firms and governments be exempt from all CAS requirements. The Board does not agree that a limited exemption would produce no significant benefits but that a complete exemption would. Significant benefits accrue to the United States Government from all standards, in part because each standard enhances the likelihood of achieving the goal of uniformity and consistency set forth in Pub. L. 91-379. The Board believes that by exempting foreign contracts from some standards there is a detriment rather than a benefit insofar as the public law itself is concerned. Nonetheless the Board has been advised that the requirement to apply some standards has become a significant impediment to efficient, successful contracting with foreign concerns and foreign governments.

The exemption being granted today will remove that impediment while continuing to provide protection through the application of CAS 401 and 402. In addition, foreign concerns will still be required to file Disclosure Statements.

The requirements of CAS 401 and 402 are fundamental to any sound cost accounting program. In the Board's view application of these standards is essential to provide some assurance that a contractor's cost accounting practices are sufficient to provide reliable information on which to base the negotiation, administration, and settlement of contracts. Similarly, the requirement for disclosure which is also being continued unchanged, serves to assure that necessary information about cost accounting practices is available to the Government.

Several commentators recommended that in addition to contracts with foreign contractors, the Board should exempt contracts with foreign governments. The Board has concluded that this recommendation has merit and the exemption being promulgated today has been amended accordingly. Because the exemption established in 1972 for the Canadian Commercial Corp., an agency of the Canadian Government, is included in today's exemption action, the 1972 exemption is being withdrawn.

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One commentator suggested a need to define "foreign concerns" and another recommended that "performance" be defined. The term "foreign concern" has already been defined by the Board in § 331.30(c)(2).

As to what constitutes "performance," the Board believes that in general it encompasses the contractor's activity under the contract up to the point of inspection and acceptance of the items called for by the contract. However, because of the complexity and variety of contracts, the Board believes that the contracting agency can best determine whether a specific contract is to be performed outside the United States.

A number of commentators suggested various changes in the delegation procedures proposed by the Board. Since the Board is withdrawing the delegation, there is no need to consider these suggestions.

One commentator suggested that the reference in § 331.30(c) to the Assistant Secretary of Defense (Installations and Logistics) be changed to reflect organizational changes in the Department of Defense. This revision has been made.

Accordingly 4 CFR Part 331 is amended as follows:

1. Change § 331.30(b) by deleting § 331.30(b)(5) as presently stated and substitute the paragraph set forth below.

2. Revise § 331.30(c) (1) and (2) to read as set forth below.

§ 331.30 Applicability, exemption, and waiver.

* * * * *

(b) * * *

(5) Any contract or subcontract awarded to a foreign government or an agency or instrumentality of such government or, insofar as the requirements of Cost Accounting Standards 403 (4 CFR Part 403) or any subsequent standards are concerned, any contract or subcontract awarded to a foreign concern.

(NOTE.—This exemption does not relieve foreign concerns of any obligation to comply with the Cost Accounting Standards set forth in 4 CFR Parts 401 and 402 and to submit a Disclosure Statement.)

* * * * *

(c)(1) Upon request of the Secretary of Defense, the Deputy Secretary of Defense, an Under Secretary of Defense, or the Deputy Under Secretary of Defense, Research and Engineering (Acquisition Policy), or outside the Department of Defense, of officials in equivalent positions, the Cost Accounting Standards Board may waive all or any part of the requirements of paragraph (a) of this section with respect to a contract or subcontract to be performed within the United States, or a contract or subcontract to be performed outside the United States by a domestic concern. A domestic concern is an incorporated concern incorporated in the United States or an unincorporated concern having its principal place of business in the United States. (In the context of this subparagraph, "concern" refers to a prospective or actual contractor. Thus, a contract with a foreign subsidiary or foreign branch or business office of a U.S. corporation would not be a contract with a domestic concern. Conversely, a contract executed by a foreign salesman or agency on behalf of a domestic concern would nevertheless be a contract with a domestic concern since the basic contractual and legal responsibility resides with the domestic concern.) Any request for a waiver shall describe the proposed contract or subcontract for which waiver is sought and shall contain (i) an unequivocal statement that the proposed contractor or subcontractor refuses to accept a contract containing all or a specified part of the Cost Accounting Standards clause and the specific reason for that refusal, (ii) a statement whether the proposed contractor or subcontractor has accepted any prime contract or subcontract with any Federal department or agency containing the Cost Accounting Standards clause, (iii) the amount of the proposed award and the sum of all awards by the department or agency requesting the waiver to the proposed contractor or subcontractor in each of the preceding 3 years, (iv) a statement that no other source of the supplies or services being procured is available to satisfy the needs of the agency on a timely basis, (v) a statement of any alternative methods of fulfilling the project or program needs and the agency's reasons for rejecting such alternatives, (vi) a statement of the steps being taken by the procuring agency to establish other sources of supply for future procurements of the products or services for which a waiver is being requested, and (vii) any other information that may aid the Board in evaluating the requested waiver.

(2) Upon request of the Secretary of Defense, the Deputy Secretary of Defense, an Under Secretary of Defense, or the Deputy Under Secretary of Defense, Research and Engineering (Acquisition Policy), or outside the Department of Defense, of officials in equivalent positions, the Cost Accounting Standards Board may waive all or any part of the requirements of paragraph (a) of this section with respect to a proposed contract or subcontract to be performed outside the United States by a foreign concern. A foreign concern is a concern that is not a domestic concern, as defined in paragraph (c)(1) of this section. Any request for a waiver shall describe the proposed contract or subcontract for which waiver is sought and shall contain (i) the amount of the proposed award and the sum of all awards by the department or agency requesting the waiver to the proposed contractor or subcontractor in each of the preceding three years, (ii) a statement that no other source of the supplies or services being procured is available to satisfy the needs of the agency on a timely basis, (iii) a statement of any alternative methods of fulfilling the project or program needs and the agency's reasons for rejecting such alternatives, (iv) a statement of the steps being taken by the procuring agency to establish other sources of supply for future procurements of the products or services for which a waiver is being requested, and (v) any other information that may aid the Board in evaluating the requested waiver.

(34 Stat. Sec. 103 (50 U.S.C. app. 2168).)

ARTHUR SCHOENHAUT,
Executive Secretary.

[FR Doc. 78-32030 Filed 11-13-78; 8:45 am]

[6325-01-M]

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 713—EQUAL OPPORTUNITY

Remedial Action

AGENCY: Civil Service Commission.

ACTION: Final regulation.

SUMMARY: The Civil Service Commission has amended its equal opportunity regulations to provide that a complainant is entitled to retroactive relief when there is a finding of discrimination, unless the record contains clear and convincing evidence that the complainant would not have been hired or promoted in the absence of discrimination.

EFFECTIVE DATE: November 14, 1978. The regulation shall apply to cases which are pending before an agency or court on November 14, 1978, or in which a final adminstrative decision was issued within 30 days prior to November 14, 1978.

FOR FURTHER INFORMATION CONTACT:

Lydia Parnes, Trial Attorney, Office of the General Counsel, U.S. Civil Service Commission, Room 6H31, 1900 E Street NW., Washington, D.C. 20415, 202-632-4600.

SUPPLEMENTARY INFORMATION: On August 1, 1978, a document was published in the FEDERAL REGISTER proposing to amend Civil Service Commission regulations to provide for an award of retroactive remedial relief to an EEO complainant unless the record contains clear and convincing evidence that the complainant would not have been hired or promoted in the absence of discrimination. Interested persons were invited to participate by submitting their views and statements to Joyce L. Evans, Acting Deputy General Counsel, Office of the General Counsel, U.S. Civil Service Commission.

Comments received were generally supportive of the proposal. Principal objections concerned retention of the existing provision on priority consideration. Those objecting to the provision stated that if the record contains clear and convincing evidence that the complainant would not have been hired or promoted in the absence of discrimination, the complainant has not been injured and should not be entitled to any remedy. Other revisions in the part 713 regulations were also suggested. However, after considering these comments, the Commission determined that any further revisions in the regulations should be a matter for separate consideration.

One participant noted that the regulation as amended required a minor revision to avoid confusion as to when a complainant is entitled to retroactive relief and when he or she is entitled to priority consideration. Specifically § 713.271(b) states that when an agency finds that a complainant has been discriminated against and "as a result of that discrimination" was denied an employment benefit, the agency shall take remedial action including retroactive promotion and priority consideration. To avoid any possible confusion, the Commission has deleted this phrase.

Accordingly, 5 CFR 713.271 is amended as set forth below:

1. The first sentences of paragraphs (a) (1) and (2) are revised;

2. Introductory paragraph (b) is revised;

3. The first sentences of paragraphs (b) (1) and (2) are revised as follows.

§ 713.271 Remedial actions.

(a) *Remedial action involving an applicant.* (1) When an agency, or the Commission, finds that an applicant for employment has been discriminated against, the agency shall offer the applicant employment of the type and grade denied him or her, unless the record contains clear and convincing evidence that the applicant would not have been hired even absent discrimination. * * *

(2) When an agency, or the Commission finds that discrimination existed at the time the applicant was considered for employment but also finds clear and convincing evidence that the applicant would not have been hired even absent discrimination, the agency nevertheless shall consider the individual for any existing vacancy of the type and grade for which he or she was considered initially and is qualified before considering other candidates. * * *

* * * * *

(b) *Remedial action involving an employee.* When an agency, or the Commission, finds that an employee of the agency was discriminated against, the agency shall take remedial actions which shall include one or more of the following, but need not be limited to these actions:

(1) Retroactive promotion, with backpay computed in the same manner prescribed by § 550.804 of this chapter, unless the record contains clear and convincing evidence that the employee would not have been promoted or employed at a higher grade, even absent discrimination. The backpay liability may not accrue from a date earlier than 2 years prior to the date the discrimination complaint was filed, but, in any even, not to exceed the date the employee would have been promoted. * * *

(2) Consideration for promotion to a position for which the employee is qualified before consideration is given to other candidates, if the record contains clear and convincing evidence that, although discrimination existed at the time selection for promotion was made, the employee would not have been promoted even absent discrimination. * * *

* * * * *

(42 U.S.C. Section 2000e-16(b)).

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-31913 Filed 11-13-78; 8:45 am]

[6210-01-M]

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. Z; FC-0157]

PART 226—TRUTH IN LENDING

Official staff interpretations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Official staff interpretation(s).

SUMMARY: The Board is publishing the following official staff interpretation of regulation Z, regarding the proper method of disclosure of premiums for certain credit life and disability insurance programs. The agency is taking this action in response to a request for interpretation of this regulation.

EFFECTIVE DATE: On or after November 14, 1978.

FOR FURTHER INFORMATION CONTACT: Dolores Smith, Section Chief, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, 202-452-2412.

SUPPLEMENTARY INFORMATION: (1) Identifying details have been deleted to the extent required to prevent a clearly unwarranted invasion of personal privacy. The Board maintains and makes available for public inspection and copying a current index providing identifying information for the public subject to certain limitations stated in 12 CFR 261.6.

(2) An opportunity for public comment on an official staff interpretation may be provided upon request of interested parties and in accordance with 12 CFR 226.1(d)(2)(ii). As provided by 12 CFR 226.1(d)(3) every request for public comment must be in writing, should clearly identify the number of the official staff interpretation in question, should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, and must be post marked or received by the Secretary's office before the effective date of the interpretation. The request must also state the reasons why an opportunity for public comment would be appropriate.

(3) Authority: 15 U.S.C. 1640(f).

§ 226.8(b)(3)—Premium amounts for cancelable credit life and disability insurance that are computed on the outstanding indebtedness and decline over term may be included in schedule and total of payments even though they are part of neither amount financed nor finance charge. (Rescinds P.I. Letters 735, 833, and 850.)

OCTOBER 25, 1978.

This is in response to your letter of * * *, in which you requested an interpretation of § 226.8(b)(3) of regulation Z regarding the proper method of disclosure of premiums for certain credit life and disability insurance programs. An answer to your request had been deferred pending a rulemaking proceeding by the Board on this and other issues. That proceeding was completed on August 23 and resulted in an amendment of regulation Z. During the proceeding, it was decided that the question you raised would be answered by an official staff interpretation.

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Your inquiry relates to closed end loans in which the customer is scheduled to remit an equal amount to the creditor each payment period. The amount of each scheduled payment includes a credit insurance premium and a finance charge, both of which are computed on the outstanding indebtedness and therefore decline in each succeeding payment period. Under this plan, the premium for credit life and disability insurance is a part of neither the finance charge (because the creditor complies with § 226.4(a)(5) of the regulation) nor the amount financed (since the premiums are not financed by the creditor, but instead accrue on the outstanding indebtedness and are paid periodically by the customer). Further, the insurance is cancelable at any time by the customer, without any obligation beyond the payment of accrued premiums.

You asked whether the premium amount for such insurance may be included in the payment amount and the "total of payments scheduled to repay the indebtedness" required to be disclosed under § 226.8(b)(3).

In the staff's opinion, the premium amount for such insurance may be included in the payment amount and total of payments disclosed under § 226.8(b)(3). The staff believes that such a disclosure provides the customer with significant information about the payment schedule, i.e., the actual amount the customer has agreed to pay the creditor each month. To prohibit inclusion of the premiums in the payments disclosed on the ground that they are not a part of the indebtedness, while meeting the technical requirements of the regulation, would result in a variable payment disclosure that would not reflect what the customer has agreed to pay.

A creditor also has the option of excluding the premium amounts from the schedule of payments disclosed under § 226.8(b)(3). Please note, however, that in transactions where the premiums decline while the principal and finance charge component remain constant, such exclusion will result in a schedule of varying periodic payments, and the creditor must disclose accordingly.

The staff has issued a number of public information letters on this subject that in some respects contradict each other and the opinions expressed herein. For that reason, the staff hereby rescinds Public Information Letters 735, 833, and 850.

Other staff interpretations take the general position that the total of payments should equal the amount financed plus the finance charge. The opinion stated in this letter, that certain insurance premiums may be included in the schedule and total of payments, although included in neither the amount financed nor the finance charge, provides a limited exception to that position. In addition to disclosing the cost of the insurance as required by § 226.4(a)(5), creditors may want to include the premium on the Truth in Lending disclosure statement as additional information—in sequence with the amount financed and the finance charge to enable customers to tally the total of payments disclosed.

Nothing in this letter should be interpreted as affecting the calculation and disclosure of the annual percentage rate under §§ 226.5 and 226.8(b)(2). The annual percentage rate must be calculated on the basis of the payment amounts exclusive of the declining insurance premium amounts.

This is an official staff interpretation of regulation Z issued pursuant to § 226.1(d)(2). It will become effective 30 days after publication in the FEDERAL REGISTER unless a request for public comment, made in accordance with the Board's procedures, is received and granted. We will notify you if the effective date of the interpretation is suspended because such a request has been received.

Sincerely,

NATHANIEL E. BUTLER,
Associate Director.

Board of Governors of the Federal Reserve System, November 6, 1978.

JOHN M. WALLACE,
Assistant Secretary of the Board.

[FR Doc. 78-31944 Filed 11-13-78; 8:45 am]

[6210-01-M]

[Reg. Z; FC-0158]

PART 226—TRUTH IN LENDING

Official Staff Interpretations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Official staff interpretation(s).

SUMMARY: The Board is publishing the following official staff interpretation of regulation Z, concerning the relationship between New York law regarding preservation of claims and defense and the provisions of the Fair Credit Billing Act and regulation Z. The agency is taking this action in response to a request for interpretation of this regulation.

EFFECTIVE DATE: On or after November 14, 1978.

FOR FURTHER INFORMATION CONTACT:

Glenn E. Loney, Section Chief, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, 202-452-3867.

SUPPLEMENTARY INFORMATION: (1) Identifying details have been deleted to the extent required to prevent a clearly unwarranted invasion of personal privacy. The Board maintains and makes available for public inspection and copying a current index providing identifying information for the public subject to certain limitation stated in 12 CFR 261.6.

(2) An opportunity for public comment on an official staff interpretation may be provided upon request of interested parties and in accordance with 12 CFR 226.1(d)(2)(ii). As provided by 12 CFR 226.1(d)(3) every request for public comment must be in writing, should clearly identify the number of the official staff interpretation in question, should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, and must be postmarked or received by the Secretary's office before the effective date of the interpretation. The request must also state the reasons why an opportunity for public comment would be appropriate.

(3) Authority: 15 U.S.C. 1640(f).

§ 171 Act—New York law regarding preservation of claims and defenses is not inconsistent with or preempted by credit billing provisions of Act and regulation Z.

§ 226.6(b)—New York law regarding preservation of claims and defenses is not inconsistent with or preempted by credit billing provisions of Act and regulation Z.

226.7(a)—Fair Credit Billing Act disclosures should not be deleted or modified to reflect New York Law regarding preservation of claims and defenses.

226.7(d)—Fair Credit Billing Act disclosures should not be deleted or modified to reflect New York Law regarding preservation of claims and defenses.

NOVEMBER 2, 1978.

This is in response to your letter of • • •, requesting an official staff interpretation of § 226.6(b) and § 226.13(i) of regulation Z, Truth in Lending.

You enclose a copy of a recent amendment to the New York personal property law. As you interpret the law, a credit card issuer will be subject to all claims and defenses of a cardholder against a seller arising out of the sale of goods or services purchased by use of a credit card. The card issuer's liability shall not exceed the amount owing to it at the time the claim or defense is asserted according to the new law.

On the other hand, § 226.13(i) of regulation Z states that tort claims may not be asserted against a card issuer and limits assertion of claims and defenses against a card issuer to situations in which the cardholder has made a good faith attempt to resolve whatever problems exist with the seller that honored the card, the amount of the transaction in dispute exceeds $50, and certain geographic limitations are met. In addition, regulation Z limits the amount of a claim or defense to no more than the amount of credit outstanding with respect to the transaction which gave rise to the claim or defense when the customer first notifies the seller or the card issuer of the claim or defense. The regulation furnishes a detailed description of how to determine the amount of credit outstanding at that time.

You inquire whether the New York statute is inconsistent with these provisions of the regulation and, if not, whether changes are necessary in the disclosures of rights under the Fair Credit Billing Act required by § 226.7(a)(9) and § 226.7(d)(5) of regulation Z to properly reflect the effect of the New York law.

Your question is answered by reference to § 226.6(b) of the regulation and § 171 of the Act. Section 171(a) of the Act provides that the Board may not determine that any State law relating to credit billing practices is inconsistent with any provision of the Federal law if the State law offers greater protection to the consumer. The Board implemented this statutory standard in § 226.6(b)(2) of regulation Z by providing that State laws of this type are not inconsistent with the Federal law if a creditor can comply with the State law without violating the Federal law.

Assuming, without deciding, that the New York law does in fact apply to credit card issuers, it appears that the law may be more protective of consumers in some respects than the Federal law. For instance, under the New York law, it appears that cardholders can assert claims or defenses without meeting the threshold requirements of § 226.13(i) of regulation Z (i.e., a good faith attempt at resolution with the party honoring the card and the dollar and geographic limits). To that extent, the New York statute would not be inconsistent with the provisions of the Federal Act and regulation Z and, therefore, would not be preempted.

On the other hand, there are questions regarding a card issuer's liability for claims and defenses which are answered by the Federal law but which are not specifically addressed in the New York statute. For example, the New York law does not indicate whether or to what extent cardholders may withhold payment in the event of a dispute. Neither does the New York law specify how cardholders may assert their claims or defenses (by notice to the card issuer? by court action? by either?). In addition, there is no indication in the New York law of whether cardholders can assert their claims or defenses in any manner against persons who honored their credit cards and, thereby, establish the "amount owing" for purposes of determining the card issuer's liability. There is such a provision in the Federal law. Furthermore, while regulation Z specifies how to allocate payments and credits to determine in monetary terms the extent of a cardholder's claim or defense (the "amount of credit outstanding" as delineated in § 226.13(i)(2)), the New York law does not provide the same guidance with respect to determining the "amount owing" which is the measure of the card issuer's liability under that law. In sum, while the New York law appears more protective of consumers than the Federal law in some respects, it also appears that the Federal law addresses situations that are not specifically covered by the New York law.

The staff is of the opinion that a creditor can comply with the New York law without violating the Federal law. Therefore, the Federal law does not preempt the New York law in any respect. Of course, should the questions not specifically addressed by the New York statute be answered through interpretation of the law by the appropriate authorities (e.g., the courts of the State of New York) in such a way that the New York law becomes less protective of consumers than the Federal law, the staff's position would have to be reevaluated.

Given the staff's opinion regarding the viability of both the New York and the Federal law, it is also the staff's view that a card issuer should provide the Fair Credit Billing Act disclosures required by § 226.7(a)(9) and § 226.7(d)(5) without any deletions or modifications, since those disclosures are only designed to reflect accurately the provisions of the Federal law.

In accordance with your request, this is an official staff interpretation of regulation Z, issued pursuant to § 226.1(d)(2) of the regulation and limited to the facts and issues discussed herein. It will become effective 30 days after publication in the FEDERAL REGISTER unless a request for public comment, made in accordance with the Board's procedures, is received and granted. We will notify you if the effective date of the interpretation is suspended because such a request is received.

Finally, it should be noted that although it is the staff's position that the New York law discussed above is not inconsistent with the Federal law, supplement V to regulation Z (a copy of which is enclosed) prescribes a procedure whereby a State may apply to the Board, through specified State officials, for a determination that a State law is not inconsistent with and not preempted by the Federal law. This procedure is, of course, fully available to the State of New York.

Sincerely,

NATHANIEL E. BUTLER,
Associate Director.

By order of the Board of Governors, November 6, 1978.

JOHN M. WALLACE,
Assistant Secretary of the Board.

[FR Doc. 78-31945 Filed 11-13-78; 8:45 am]

[6320-01-M]

Title 14—Aeronautics and Space

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER A—ECONOMIC REGULATION

[Regulation ER-1079; Amendment No. 47]

PART 221—CONSTRUCTION, PUBLICATION, FILING AND POSTING OF TARIFFS OF AIR CARRIERS AND FOREIGN AIR CARRIERS

Veteran's Day

NOVEMBER 7, 1978.

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: This amendment of the tariff filing requirements reflects the change of Veteran's Day to November 11.

DATES: Adopted: November 7, 1978. Effective: November 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Richard B. Dyson, Civil Aeronautics Board, Office of the General Counsel, 1825 Connecticut Avenue NW., Washington, D.C. 20428, 202-673-5442.

SUPPLEMENTARY INFORMATION: Pub. L. 94-97, 5 U.S.C. 6103(a) moved Veteran's Day from the fourth Monday in October to November 11, effective January 1, 1978. This action is being taken to bring into conformity the rule governing when tariffs may be filed with the Board.

Accordingly, effective immediately, 14 CFR 221.161 is amended to read as follows:

§ 221.161 Delivering tariff publications to Board.

• • • • • •

Veteran's Day (November 11)

• • • • • •

(Section 204(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 49 U.S.C. 1324.)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-32002 Filed 11-13-78; 8:45 am]

[8010-01-M]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-15292]

PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

Division of Investment Management's Interpretative Positions Relating to Rule 13f-1 and Related Form 13F

AGENCY: Securities and Exchange Commission.

ACTION: Interpretative release.

SUMMARY: The Securities and Exchange Commission today authorized the issuance of a release reflecting the views of the Division of Investment Management regarding the reporting obligation and filing requirement of certain institutional investment managers under the Commission's recently implemented institutional disclosure program. Since the program's implementation was announced, on June 15, 1978, the Division of Investment Management has received requests for interpretations with respect to various aspects of its requirements. This interpretative release is intended to assist interested persons in their understanding of, and compliance with, that program.

EFFECTIVE DATE: November 2, 1978.

FOR FURTHER INFORMATION CONTACT:

Michael S. Lichtenthal, Esq., 202-755-9034, or W. Scott Cooper, Esq., 202-755-1792, Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

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SUPPLEMENTARY INFORMATION: Section 13(f) of the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78a et seq. as amended by Pub. L. No. 94-29 (June 4, 1975)) was adopted by Congress as part of the Securities Acts Amendments of 1975. Generally, section 13(f) (15 U.S.C. 78m(f)) empowers the Commission to adopt rules which would create a reporting and disclosure system to collect specific information concerning section 13(d)(1) (15 U.S.C. 78m(d)(1)) equity securities held in accounts over which certain institutional investment managers exercise investment discretion. The reporting system required by section 13(f) is intended to create in the Commission a central repository of historical and current data about the investment activities of institutional investment managers.

On June 15, 1978, the Commission announced the adoption of rule 13f-1 (17 CFR 240.13f-1) and related form 13F (17 CFR 249.325) in Exchange Act release No. 14852, effective July 31, 1978 (43 FR 26700, June 22, 1978), implementing the basic institutional disclosure program mandated by section 13(f). Under the rule, as adopted, an institutional investment manager exercising investment discretion (as defined in section 3(a)(35) of the Exchange Act (15 U.S.C. 78(c)(a)(35)) with respect to accounts having more than $100,000,000 or more in exchange-traded or NASDAQ-quoted equity securities on the last trading day of any of the 12 months of a calendar year must file annually with the Commission, and, if a bank, with the appropriate banking agency, within 45 days after the last day of such calendar year, form 13F, beginning with the calendar year 1978. The form requires the reporting of the name of the issuer, and the title of class, CUSIP number, number of shares, or principal amount in the case of convertible debt, and aggregate fair market value of each such equity security held. The form also requires information concerning the nature of investment discretion and voting authority possessed.[1]

Since the adoption of the rule, the Commission's Division of Investment Management (Division) has received requests for interpretations with respect to various provisions under the rule and the related form. In order to assist other persons in their understanding of, and compliance with, the rule, the Commission has authorized the publication of this interpretative release setting forth the current views of the Division.

The following are intented to supplement the explanation and analysis of rule 13f-1 and related form 13F set forth in Exchange Act release No. 14852, and reflect the views of the Division as of the date of this release.

1. Reporting Requirements—Who Is Required To Report?

Question. If a natural person or company advises an account, but does not have de jure or de facto investment discretion over the account, is it required to report in respect of such account?

Answer. No. The reporting requirements apply to persons who have "investment discretion" as defined in section 3(a)(35) of the Exchange Act.[2] Note, however, that, by rule, investment discretion is deemed to exist with respect to all accounts over which any person under the control of such natural person or company (such as subsidiaries) exercises invesment discretion.

Questions. When a managed account is an institutional account such as a pension or endowment fund, when is investment discretion "sole" and when is it "shared"?

Answer. It depends on which most accurately reflects the nature of investment discretion possessed by the manager. If the manager makes all decisions, then of course he has sole investment discretion. If he merely makes recommendations to internal managers of the account, which make their own decisions, then he does not have investment discretion at all.[3] If the decisionmaking can best be described as joint decisionmaking, then investment discretion should be reported as shared.

Question. Does the foregoing answer also apply if the managed account is an investment company or separate account of an insurance company?

Answer. Yes.

Question. If, following the above, an investment adviser has sole investment discretion over portfolio securities of an investment company, does the investment company have any reporting obligations regarding such securities, including that of filing an information statement?

Answer. No. Again, reporting obligations relate to the possession of investment discretion.

Question. In determining whether investment discretion is sole, shared or none, is the determination (and response) to be given in terms of particular securities within an account, or as to the account as a whole?

Answer. The account as a whole, reflecting the statutory provision (sec. 13(f)) itself.

Question. In the case of a pension fund placed in an entity such as a master trust which is divided into segments for the purposes of investment management, each segment being assigned to a separate manager, what is the "account" with respect to each such separate manager: Is it the entire pension fund or the segment assigned to the manager?

Answer. It is the segment assigned to the manager.

Question. In the foregoing situation, if there is one manager assigned the role of reviewing and approving the decisions of the various separate managers and which receives a fee for this activity (in addition to a fee for any administrative duties), would this manager report as having "shared" investment discretion?

Answer. It is most probable that this activity, for which a fee is received, is a form of shared investment discretion.

Question. Could a natural person investing for his own account be subject to the reporting requirements?

Answer. No, section 13(f)(5) of the Exchange Act (15 U.S.C. 78m(f)(5)) excludes natural persons investing for their own accounts from the definition of "institutional investment manager."

Question. If a natural person (e.g., a trustee) has investment discretion over an account having at least $100 million in 13(f) securities of another person (as defined in section 3(a)(9) of the Exchange Act (15 U.S.C. 78(c)(a)(9)) to include a "natural person, company, government, or political subdivision, agency, or instrumentality of a government"), would the natural person be subject to the reporting requirements?

Answer. Yes; section 13(f)(5) of the Exchange Act includes natural persons in the definition of "institutional investment manager" when such persons exercise investment discretion over the account of any other person. Note that a natural person investing for his or her own account and managing the accounts of other persons could be required to report if the accounts of the other persons have in the aggregate at least $100 million in 13(f) securities, although the value of the securities in the account of the natural person would not be included in determining whether the natural person met the $100 million threshold. Similarly, in the case of a partnership which exercises investment discretion over various accounts, the personal investments of the individual partners would not be aggregated with the holdings or advisory accounts of the partnership.

Question. Does a person who exercises investment discretion with respect to an account organized by or under the auspices of a governmental authority (e.g., a municipal pension fund) have to report, assuming the basic reporting criteria are met?

Answer. Yes.

Question. Would the parent of a corporate complex with five subsidiaries be required to report if none of the subsidiaries had at least $100 million in 13(f) securities?

Answer. Yes; if in the aggregate its subsidiaries had investment discretion over $100 million or more of section 13(f) securities. Under rule 13f-1(b) (17 CFR 240.13f-1(b)) an institutional investment manager would be deemed to exercise investment discretion over all accounts with respect to which any person under its control exercises investment discretion. In addition, under special instruction v to form 13F the parent would be deemed to have shared investment discretion with each of its subsidiaries with respect to the specific 13(f) securities under their respective control. However, since none of the subsidiaries would have investment discretion over at least $100 million in 13(f) securities they would not have to be named in item 7 of form 13F.

2. Mechanics of Reporting

Question. In the situation described in the immediately preceding question, how would the reporting be accomplished?

Answer. If none of the subsidiaries individually had investment discretion over $100 million in 13(f) securities, then, as explained above, only the parent corporation would have a filing obligation. Therefore, the parent would simply aggregate the holdings of its subsidiaries and check shared investment discretion under item 6(b) without naming the subsidiaries either on the cover page or in item 7.

Question. What if one or more such subsidiary did have investment discretion over $100 million in 13(f) securities?

Answer. If one or more of the subsidiaries were to have investment discretion over $100 million in 13(f) securities, then it too would have a reporting obligation. As such, there would then exist two possible reporting persons. However, under general instructions B to form 13F only one manager could include information with respect to a given security. Thus, if the parent were to file the report for both, it would list separately the holdings of the subsidiary with the reporting obligation, and the holdings of its other subsidiaries, which it would report in the aggregate. The parent corporation would check item 6(b) (indicating shared investment discretion) for all of the entries on the form, but would only name the subsidiary having a reporting obligation in response to item 7. Pursuant to special instruction i that subsidiary would also be named on the cover page of the form filed by the parent corporation. In addition, that subsidiary would file a cover page and a separate statement indicating that its parent would be filing on its behalf.

If, in the above situation, the subsidiary with a reporting obligation were to file on its own behalf, then it too would check item 6(b) for all entries and name its parent in item 7. The parent would then include a statement with its report indicating that the subsidiary would be filing on behalf of the parent.

Question. For purposes of item 6(b) of the form, would investment discretion be deemed shared if a subsidiary exercises investment discretion without interference from its parent?

Answer. Yes; subsection 13f-1(b) states: "An institutional investment manager shall also be deemed to exercise 'investment discretion' with respect to all accounts over which any person under its control exercises investment discretion."

Question. Can item 6(b) and item 6(c) both be checked with respect to the same securities?

Answer. Yes. This would be appropriate where, for example, a parent was reporting in respect of a subsidiary (6(b)) which shares investment discretion with another person (such as a cotrustee—6(c)).

Question. How would holdings be reported by a parent for a multitiered corporate structure where the parent, its midlevel subsidiary, and lower level subsidiary are all reporting persons?

Answer. The securities over which the lower level subsidiary exercises investment discretion would be listed separately, and item 6(b) would be checked to indicate shared investment discretion. In item 7, both the midlevel subsidiary and the lower level subsidiary would be named in accordance with the instructions to indicate that they have shared investment discretion with the parent. Any additional securities with respect to which the midlevel subsidiary exercises investment discretion would be reported in a similar manner, noting in item 7 that investment discretion is shared with the parent. Of course, the parent would indicate that it is filing on behalf of the two subsidiaries on the cover page, and each subsidiary would file an information statement indicating that its parent would be filing on its behalf.

By the Commission.

George A. Fitzsimmons,
Secretary.

November 2, 1978.

[FR Doc. 78-31946 Filed 11-13-78; 8:45 am]

[1] The release announcing the adoption of the rule sought comments concerning the usefulness and costs associated with quarterly, as opposed to annual, reporting. The Division is presently reviewing the numerous comments it has received concerning that matter and will be in a position to make a recommendation to the Commission in the near future.

[2] Sec. 3(a)(35) states: A person exercises "investment discretion" with respect to an account if, directly or indirectly, such person: (A) is authorized to determine what securities or other property shall be purchased or sold by or for the account, (B) makes decisions as to what securities or other property shall be purchased or sold by or for the account even though some other person may have responsibility for such investment decisions, or (C) otherwise exercises such influence with respect to the purchase and sale of securities or other property by or for the account as the Commission, by rule, determines, in the public interest or for the protection of investors, should be subject to the operation of the provisions of this title and the rules and regulations thereunder.

[3] Unless he otherwise possesses the authority (contemplated by sec. 3(a)(35)(A) of the Exchange Act) to determine purchases and sales.

[4110-03-M]

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER B—FOOD FOR HUMAN CONSUMPTION

[Docket No. 75N-0318]

PART 105—FOODS FOR SPECIAL DIETARY USE

Label Statements; Correction

AGENCY: Food and Drug Administration.

ACTION: Correction.

SUMMARY: This document corrects a final order that revised label statements for special dietary foods for weight control. It deletes the specific type size requirements for "low calorie" claims inadvertently left in the regulation.

EFFECTIVE DATE: September 22, 1978.

FOR FURTHER INFORMATION CONTACT:

Taylor M. Quinn, Bureau of Foods (HFF-300), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-245-1243.

SUPPLEMENTARY INFORMATION: In FR Doc. 78-26623 appearing at page 43248 of the Federal Register for Friday, September 22, 1978, the Commissioner of Food and Drugs is correcting the regulation concerning label statements on special dietary foods for weight control by deleting the specific type size requirements for "low calorie" claims inadvertently left in

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§ 105.66 (21 CFR 105.66). As stated in paragraph 15 of the preamble to the final order (43 FR 43252), the Commissioner agreed with the exceptions made to the tentative final order concerning type size requirements and decided to delete the specific type size requirements from paragraph (c)(1)(iii) and other paragraphs in § 105.66. Inadvertently, the deletion was not made in § 105.66(c)(1)(iii). As stated in the preamble to the final order (43 FR 43252), the general requirements concerning type size in § 101.2 (21 CFR 101.2) apply to these label statements on special dietary foods.

Accordingly, § 105.66(c)(1)(iii) is corrected to read as follows:

§ 105.66 Label statements relating to usefulness in reducing or maintaining caloric intake or body weight.

* * * * *

(c) * * *

(1) * * *

(iii) The food bears on its principal display panel the term "low calorie," "low in calories," or "a low calorie food."

* * * * *

Dated: November 1, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 78-31623 Filed 11-13-78; 8:45 am]

[4110-03-M]

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

Pyrantel Pamoate Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The regulations are amended to reflect approval of a new animal drug application filed by Ralston Purina Co. providing for the safe and effective use of pyrantel pamoate tablets for the removal and control of large roundworms and hookworms in dogs.

EFFECTIVE DATE: November 14, 1978.

FOR FURTHER INFORMATION CONTACT:

Henry C. Hewitt, Bureau of Veterinary Medicine (HFV-112), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3430.

SUPPLEMENTARY INFORMATION: Ralston Purina Co., Checkerboard Square, St. Louis, Mo. 63188, filed an NADA (101-331V) providing for the safe and effective use of pyrantel pamoate tablets for the removal and control of large roundworms (ascarids) (*Toxocara canis* and *Toxascaris leonina*), and hookworms (*Ancylostoma caninum* and *Uncinaria stenocephala*), in dogs. Approval of this application is based upon data and information contained in Pfizer's NADA 100-237V and included herein by reference.

In accordance with the freedom of information regulations and § 514.11(e)(2)(ii) of the animal drug regulations (21 CFR 514.11(e)(2)(ii)), a summary of the safety and effectiveness data and information submitted to support this approval is released publicly. The summary is available for public examination at the office of the Hearing Clerk (HFA-305), Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.83), part 520 is amended by adding new § 520.2024 to read as follows:

§ 520.2042 Pyrantel pamoate tablets.

(a) *Specifications.* Each tablet contains pyrantel pamoate equivalent to 22.7, 45.4, or 113.5 milligrams of pyrantel base.

(b) *Sponsor.* See No. 017800 in § 510.600(c) of this chapter.

(c) *Conditions of use.* It is used for dogs as follows:

(1) *Amount.* For dogs weighing over 5 pounds, use at least 2.27 milligrams of pyrantel base per pound of body weight; for dogs weighing 5 pounds or less, use at least 4.54 milligrams of pyrantel base per pound of body weight.

(2) *Indications for use.* For removal and control of large roundworms (ascarids) (*Toxocara canis* and *Toxascaris leonina*), and hookworms (*Ancylostoma caninum* and *Uncinaria stenocephala*).

(3) *Limitations.* Administer orally directly or in a small amount of food. Do not withhold food prior to or after treatment. The presence of these parasites should be confirmed by laboratory fecal examination. A followup fecal examination should be conducted 2 to 4 weeks after first treatment to determine the need for retreatment. Consult your veterinarian for assistance in the diagnosis, treatment, and control of parasitism.

Effective date. November 14, 1978.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360(i)).)

Dated: November 2, 1978

LESTER M. CRAWFORD,
Director, Bureau of Veterinary Medicine.

[FR Doc. 78-31621 Filed 11-13-78; 8:45 am]

[4110-03-M]

PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

Procaine Penicillin G-Novobiocin for Intramammary Infusion

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The animal drug regulations are amended to reflect approval of a supplemental new animal drug application (NADA) filed by the Upjohn Co., providing for two additional label claims for the use of procaine penicillin G-novobiocin for intramammary infusion in lactating cows.

EFFECTIVE DATE: November 14, 1978.

FOR FURTHER INFORMATION CONTACT:

Richard E. Miller, Bureau of Veterinary Medicine (HFV-125), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3134.

SUPPLEMENTARY INFORMATION: The Upjohn Co., Kalamazoo, Mich. 49001, has filed a supplemental NADA (55-072) providing for the safe and effective use of procaine penicillin G-novobiocin for intramammary infusion for treatment of mastitis due to *Streptococcus dysgalactiae* and *Streptococcus uberis*. The drug has previously been approved for use in treatment of mastitis due to *Staphylococcus aureus* and *Streptococcus agalactiae*.

In accordance with the freedom of information regulations and § 514.11(e)(2)(ii) of the animal drug regulations (21 CFR 514.11(e)(2)(ii)), a summary of the safety and effectiveness data and information submitted to support approval of this application is released publicly. The summary is available for public examination at the office of the Hearing Clerk (HFA-305), Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512 (i) and (n), 82 Stat. 347-351 (21 U.S.C. 360b (i) and (n)), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.83), the Director is amending § 540.874f by revising paragraph (c)(3)(i) to read as follows:

§ 540.874f Procaine penicillin G-novobiocin for intramammary infusion.

* * * * *

(c) * * *

(3) *Conditions of use.* (i) Use for treating lactating cows for mastitis caused by susceptible strains of *Staphylococcus aureus, Streptococcus agalactiae, Streptococcus dysgalactiae,* and *Streptococcus uberis.*

* * * * *

Effective date: November 14, 1978.

(Sec. 512 (i) and (n), 82 Stat. 347-351 (21 U.S.C. 360b (i) and (n)).)

Dated: October 30, 1978.

LESTER M. CRAWFORD,
Director, Bureau of Veterinary Medicine.

[FR Doc. 78-31620 Filed 11-13-78; 8:45 am]

[4110-03-M]

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Lasalocid Sodium

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The regulations are amended to reflect approval of a supplemental new animal drug application (NADA) filed by Hoffmann-La Roche, Inc., providing for the use of a 20-percent lasalocid sodium premix, in addition to the currently approved 15 percent lasalocid premix, to be used in making complete chicken feeds. The regulations are also amended to include the current assay requirements for the premix of 100 to 120 percent, which shall apply to the new premix level.

EFFECTIVE DATE: November 14, 1978.

FOR FURTHER INFORMATION CONTACT:

Adriano R. Gabuten, Bureau of Veterinary Medicine (HFV-149), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4313.

SUPPLEMENTARY INFORMATION: Hoffmann-La Roche, Inc., Nutley, N.J. 07110, filed a supplemental NADA (96-298V) providing for the use of a 20-percent lasalocid sodium premix in addition to the currently approved 15 percent premix. In accordance with the current animal drug regulations, these premixes are used to make complete chicken feeds containing 68 to 113 grams per ton of lasalocid for the prevention of certain forms of coccidiosis. In addition, the premix assay requirement of 100 to 120 percent will apply to the new premix level. The regulations are amended to reflect the new premix level and the previously unpublished assay requirements.

The provisions of this supplement will not result in an expanded use of lasalocid. Accordingly, approval of this supplement does not constitute reaffirmation of the safety of residues resulting from use of this drug.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.83), part 558 is amended in § 558.311 by revising paragraphs (b) and (c) to read as follows:

§ 558.311 Lasalocid sodium.

* * * * *

(b) *Approvals.* Premix levels of 68 and 90.7 grams per pound of lasalocid sodium activity are granted to No. 000004 in § 510.600(c) of this chapter.

(c) *Assay limits.* Complete feed, 75 to 125 percent of labeled amount. Premix, 100 to 120 percent of labeled amount.

* * * * *

Effective date: November 14, 1978.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)).)

Dated: November 1, 1978.

TERENCE HARVEY,
Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 78-31619 Filed 11-14-78; 8:45 am]

[4110-03-M]

[Docket No. 75N-0140]

PART 809—IN VITRO DIAGNOSTIC PRODUCTS FOR HUMAN USE

PART 820—GOOD MANUFACTURING PRACTICE FOR MEDICAL DEVICES: GENERAL

Regulations Establishing Good Manufacturing Practices for the Manufacture, Packing, Storage, and Installation of Medical Devices; Correction

AGENCY: Food and Drug Administration.

ACTION: Correction of a final rule.

SUMMARY: This document corrects a final rule that was published in the FEDERAL REGISTER of Friday, July 21, 1978, by correcting certain text and deleting two items from the Guideline List of Critical Devices appearing in the preamble.

EFFECTIVE DATE: July 21, 1978.

FOR FURTHER INFORMATION CONTACT:

John A. Richards, Federal Register Writer (HFC-11), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-2994.

SUPPLEMENTARY INFORMATION: In FR Doc. 78-19885 appearing at page 31508 in the FEDERAL REGISTER of Friday, July 21, 1978, the following corrections are made:

1. On page 31512, first column, in the Guideline List of Critical Devices, delete item "16. Catheter, Embolectomy." and item "18. Catheter, Septostomy." and mark them "[Reserved]". These items were included in the list due to a computer entry error.

2. On page 31521, third column, the second line in paragraph 104 is changed to read: "that in the device history record, a".

3. On page 31522, in the center column, in the fourth complete paragraph, the second sentence is corrected to read as follows: "The Commissioner has decided that this regulation should not apply to persons who only distribute devices, as is stated in § 820.3(k), the definition of 'Manufacturer'."

Dated: October 31, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 78-31622 Filed 11-13-78; 8:45 am]

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[4410-01-M]

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF JUSTICE

[Order No. 807-78]

PART 45—STANDARDS OF CONDUCT

Prohibition Against Suggesting Payment of Fee to a Particular Charity

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The standards-of-conduct regulation of the Department of Justice contains provisions prohibiting department employees from accepting compensation for speeches or writings related to their official duties. This order adds a provision prohibiting Department employees from suggesting that such compensation be given to a particular charity or other third party.

EFFECTIVE DATE: November 3, 1978.

FOR FURTHER INFORMATION CONTACT:

John M. Harmon, Assistant Attorney General, Office of Legal Counsel, Department of Justice, Washington, D.C. 20530, 202-633-2041.

By virtue of the authority vested in me by 28 U.S.C. 509, 510 and 5 U.S.C. 301, § 45.735-12 of part 45 of Title 28, Code of Federal Regulations, is amended by addition of the following subsection:

§ 45.735-12 Speeches, lectures, and publications.

• • • • • •

(d) When an employee is prohibited by this section from accepting compensation for an activity, he is also prohibited from suggesting that the person offering such compensation donate it to a particular charity or other third party.

Dated: November 3, 1978.

GRIFFIN B. BELL,
Attorney General.

[FR Doc. 78-31937 Filed 11-13-78; 8:45 am]

[6560-01-M]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

[FRL 990-1]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

California Plan Revision: Shasta County Air Pollution Control District

AGENCY: Environment Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to approve and, where appropriate, disapprove or take no action on changes to the Shasta County Air Pollution Control District (APCD) portion of the California State implementation plan (SIP) submitted by the Governor's designee. The intended effect of this action is to update rules and regulations and to correct certain deficiencies in the SIP.

EFFECTIVE DATE: December 14, 1978.

FOR FURTHER INFORMATION CONTACT:

Allyn M. Davis, Director, Air and Hazardous Materials Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, Calif. 94105, Attn.: Wallace Woo, 415-556-7388.

SUPPLEMENTARY INFORMATION: On March 23, 1978, EPA published a notice of proposed rulemaking for revisions to the Shasta County APCD'S rules and regulations submitted on October 13, 1977, by the California Air Resources Board for inclusion in the California SIP.

The State also submitted regulations concerning new source review which will be addressed in a separate FEDERAL REGISTER notice.

The changes contained in the above mentioned submittal that are being acted upon by this notice include the following:

(a) Definition amendments;

(b) Agricultural and open burning amendments;

(c) Various rules concerning hearing board fees, and petitions for variances; and

(d) Specific air contaminant and organic solvent amendments.

The notice of proposed rulemaking for this submittal was published on March 23, 1978 (43 FR 12047) and provided a 30-day comment period. The only comments received were from the Shasta County APCD.

The county commented on the proposed disapproval of the definition of "modification" in rule 1:2. They stated that the term "facility" as used in the definition is sufficiently clear. However, because rule 1:2 includes definitions for the terms "affected facility," "institutional facility," and "loading facility," the term "facility" should be defined to avoid confusion in the definition of "modification." The confusion could be eliminated if the term "affected facility" were substituted in the definition of "modification" since that term is already defined in rule 1:2. Because of this confusion the definition of "modification" is disapproved.

The county commented on the disapproval of certain sections of rule 2:6. They questioned the need for a control strategy demonstration in order for EPA to approve the open burning exemptions for burning wastes above 3,000 feet and agricultural burning in general, above 6,000 feet elevation. 40 CFR 51.12 and 51.13 require a control strategy demonstration be submitted to show that the SIP will attain and maintain the national ambient air quality standards (NAAQS). A revision to the SIP, which has the potential to relax the SIP requirements, must be accompanied by a control strategy demonstration to show that the NAAQS will continue to be attained and maintained. Since these additional exemptions to rule 2:6, have the potential to increase emissions, and might result in an interference with the attainment and maintenance of the NAAQS, and no control strategy demonstration was submitted to show otherwise, they are disapproved. EPA could approve these sections if an adequate control strategy demonstration were submitted in accordance with the specific requirements of 40 CFR 51.13(e).

The county also commented on the disapproval of sections (2)(c), (3)(f), and (4)(e) of rule 2:6. They stated that the wording "except as otherwise authorized" in these sections, is necessary to provide flexibility in specifying methods for burning such plants as blackberries, which the county says, will cause more pollution if burned as the current rule now specifies. While this may be true, the sections nonetheless allow the air pollution control officer (APCO) unlimited discretion to reduce drying times without any other qualifications. Since these revisions could allow increased emissions, and no control strategy demonstration has been submitted to show that they would not interfere with the attainment and maintenance of the NAAQS, they are disapproved. EPA could approve these sections if they were revised to specify that exceptions could be authorized by the APCO if such exceptions resulted in equivalent control or a reduction of emissions.

Under section 110 of the Clean Air Act, as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove regulations as SIP revisions.

It is the purpose of this notice to approve all of the revisions contained in the October 13, 1977, submittal, and incorporate them into the California SIP, with the exception of those rules not being acted upon and those rules being disapproved as discussed below.

Rule 3:4, Industrial use of organic solvents, is approved and Shasta County is rescinded from 40 CFR 52.254.

Rule 1:2, Definitions, is approved with the exception of the definition for "modification" which is disapproved. The term "facility" as used in the definition is not defined. The lack of an adequate definition has the potential to render unenforceable any rules using the word "modification."

No action will be taken on the definition of "person" in rule 1:2, since the Federal Government is not included in that definition as required in section 118 of the Clean Air Act. Action will be taken in a separate FEDERAL REGISTER notice.

Sections (1)(b)(iii) (a), (b), and (d); (1)(c)(viii); and (5) (c) and (d) of rule 2:6, Agricultural burning, are disapproved since these sections allow exemptions to the burning prohibitions. No control strategy has been submitted to show that the additional emissions will not interfere with the attainment and maintenance of the NAAQS. Sections (2)(c), (3)(f), and (4)(e) are disapproved since they allow the air pollution control officer unlimited discretion to reduce the amount of drying time in preparing wood waste. This could interfere with the attainment and maintenance of the NAAQS and has the potential to make the burning regulations unenforceable. The previously approved rule 2:6 sections (2)(c), (3)(f), and (4)(e) submitted on July 19, 1974, remain in effect.

No action will be taken on sections (1)(b)(iii)(c), (1)(c)(vii), and (5)(a) of rule 2:6, which allow burning on a no-burn day in the threat of imminent and substantial economic loss. Action will be taken on these sections in a separate FEDERAL REGISTER notice.

Sections (2)(e), (3)(d), and (4)(d), of rule 2:6, are nuisance rules and are not appropriate for inclusion in the SIP under section 110 of the Clean Air Act. No action will be taken on these rules. The remainder of rule 2:6 is approved.

Rule 2:8, Exceptions to open burning, is disapproved since it would allow more exemptions to the open burning rule and no control strategy has been submitted to show that these exemptions will not interfere with the attainment and maintenance of the NAAQS. The previously approved rule 2:8, submitted on July 19, 1974, and July 22, 1975, remains in effect.

No action will be taken on rule 2:11, Fees, and rule 4:4, Hearing board fees, since these rules exempt any government agency from permit and variance fees. Action on these rules will be taken in a separate FEDERAL REGISTER notice.

No action will be taken on parts VI and VII of table II; and the explanatory notes 6 and 7 for table II of rule 3:2, Specific air contaminants. These sections deal with total reduced sulfur which is not a criteria pollutant under NAAQS and therefore is not appropriate for inclusion in the SIP. The remainder of rule 3:2 is approved.

The California Air Resources Board has certified that the public hearing requirements of 40 CFR 51.4 have been satisfied.

(Secs. 110 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7410 and 7601(a)).)

Dated: October 31, 1978.

DOUGLAS M. COSTLE,
Administrator.

Subpart F of part 52 of chapter I, title 40, of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. Section 52.220 is amended by adding paragraph (c)(41)(xii) as follows:

§ 52.220 Identification of plan.

• • • • • •

(c) • • •

(41) • • •

(xii) Shasta County APCD.

(A) New or amended rules 1:2 (with the exception of the definition of "person"); 2:6(1)(a), (1)(b), (i-ii), (1)(b)(iii), (a, b, and d), (1)(b), (iv-vii), (1)(c), (i-vi and viii), (1) (d and e), (2) (a-d and f), (3) (a-c and e-g), (4) (a-c and e-i), (5) (b-d); 2:7, 2:8; 3:2 (except part VI and VII of table II, and explanatory notes 6 and 7); 3:4, 4:1, 4:5, 4:6, 4:14, and 4:19.

• • • • • •

2. Section 52.236 is amended by adding paragraph (e)(2)(i) and (3)(i) as follows:

§ 52.236 Rules and regulations.

• • • • • •

(e) • • •

(2) Sacramento Valley intrastate region.

(i) Shasta County APCD.

(A) Rule 1:2, Definitions, the definition of "modification" submitted on October 13, 1977, is disapproved.

(3) Northeast Plateau intrastate region.

(i) Shasta County APCD.

(A) Rule 1:2, Definitions, the definition of "modification" submitted on October 13, 1977, is disapproved.

• • • • • •

3. Section 52.254 is amended by adding paragraph (a)(3)(iii) as follows:

§ 52.254 Organic solvent usage.

• • • • • •

(a) • • •

(3) • • •

(iii) Shasta County APCD.

• • • • • •

4. Section 52.273 is amended by adding paragraphs (a)(1)(viii), (a)(9)(i), (b)(4)(ii), and (b)(9)(i) as follows:

§ 52.273 Open burning.

• • • • • •

(a) • • •

(1) • • •

(viii) Shasta County APCD.

(A) Rule 2:6, Agriculutral burning, sections (1)(b)(iii) (a, b, and d), (1)(c)(viii), (2)(c), (3)(f), (4)(e), (5) (c and d); are disapproved and the previously approved rule 2:6 sections (2)(c), (3)(f), and (4)(e), submitted on July 19, 1974, remain in effect.

• • • • • •

(9) • • •

(i) Shasta County APCD.

(A) Rule 2:6, Agricultural burning, sections (1)(b)(iii), (a, b, and d), (1)(c)(viii), (2)(c), (3)(f), (4)(e), 5 (c and d), are disapproved and the previously approved rule 2:6 sections (2)(c), (3)(f), and (4)(e), submitted on July 19, 1974, remain in effect.

• • • • • •

(b) • • •

(4) • • •

(ii) Shasta County APCD.

(A) Rule 2:8, Exceptions to open burning, is disapproved and the previously approved rule 2:8 submitted on July 19, 1974, and July 22, 1975, remains in effect.

• • • • • •

(9) • • •

(i) Shasta County APCD.

(A) Rule 2.8, Exceptions to open burning, is disapproved and the previously approved rule 2:8 submitted on

July 19, 1974, and July 22, 1975, remains in effect.

• • • • •

[FR Doc. 78-31885 Filed 11-13-78; 8:45 am]

[6560-01-M]

[FRL 978-7]

PART 65—DELAYED COMPLIANCE ORDERS

Approval of a Delayed Compliance Order Issued by State of Idaho Department of Health and Welfare to FMC Corp.

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby approves a delayed compliance order issued by the State of Idaho Department of Health and Welfare to the FMC Corp. The order requires the company to bring air emissions from its elemental phosphorus plant at Pocatello, Idaho, into compliance with certain regulations contained in the federally-approved Idaho State Implementation Plan (SIP). Because of the Administrator's approval, FMC Corp.'s compliance with the order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violation(s) of the SIP regulations covered by the order during the period is in effect.

DATES: This rule takes effect on November 14, 1978.

FOR FURTHER INFORMATION CONTACT:

John Pfander, EPA, Idaho Operations Office, 422 West Washington, Boise, Idaho 83702, 208-384-1450.

ADDRESS: A copy of the delayed compliance order, any supporting material, and any comments received in response to a prior FEDERAL REGISTER notice proposing approval of the order are available for public inspection and copying during normal business hours at: EPA, Region 10, 1200 Sixth Avenue, Seattle, Wash. 98101, Library, 11th Floor.

SUPPLEMENTARY INFORMATION: On July 28, 1978, the Regional Administrator of EPA's Region 10 Office published in the FEDERAL REGISTER, 43 FR 32827 (July 28, 1978), a notice proposing approval, of a delayed compliance order issued by State of Idaho Department of Health and Welfare to the FMC Corp. The notice asked for public comments by August 28, 1978 on EPA's proposed approval of the order. No public comments were received in response to the proposed notice.

Therefore, the delayed compliance order issued to FMC Corp. is approved by the Administrator of EPA pursuant to the authority of section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The order places FMC Corp. on a schedule to bring its furnace stack scrubbers, the burden level and ore crusher at Pocatello, Idaho into compliance as expeditiously as practicable with regulations E and F of the rules and regulations for the Control of Air Pollution in Idaho, a part of the federally-approved Idaho State Implementation Plan. The order also imposes emission monitoring and reporting requirements. If the conditions of the order are met, it will permit FMC Corp. to delay compliance with the SIP regulations covered by the order until July 1, 1979. The company is unable to immediately comply with these regulations.

Because the order has been approved by EPA, compliance with its terms will preclude Federal enforcement action under section 113 of the Act for violations of the SIP regulations covered by the order during the period the order is in effect. Citizen suits under section 304 of the Act are similarly precluded. If the Administrator determines that FMC Corp. is in violation of a requirement contained in the order, one or more of the actions required by section 113(d)(9) of the Act will be initiated. Publication of this notice of final rulemaking constitutes final Agency action for the purposes of judicial review under section 307(b) of the Act.

EPA has determined that its approval of the order shall be effective upon publication of this notice because of the need to immediately place FMC Corp. on a schedule which if effective under the Clean Air Act for compliance with the applicable requirement(s) of the Idaho State Implementation Plan.

(AUTHORITY: 42 U.S.C. 7413(d), 7601.)

Dated: October 31, 1978.

DOUGLAS M. COSTLE,
Administrator.

In consideration of the foregoing, Chapter 1 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. By amending the table in § 65.171 by adding the following entry:

§ 65.171 EPA Approval of State delayed compliance orders issued to major stationary sources.

• • • • •

Source	Location	Order No.	SIP regulation(s) involved	Date of FR proposal	Final compliance date
FMC Corp	Pocatello, Idaho	101	Reg. E & F	July 28, 1978	July 1, 1979.

[FR Doc. 78-31612 Filed 11-13-78; 8:45 am]

[FRL 991-4]

PART 65—DELAYED COMPLIANCE ORDERS

Delayed Compliance Order for Campbell Soup Co., Napoleon, Ohio

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: By this rule, the Administrator of EPA issues a delayed compliance order to the Campbell Soup Co. The order requires the Campbell Soup Co. to bring air emissions from its boilers at Napoleon, Ohio, into compliance with certain regulations contained in the federally approved Ohio State Implementation Plan (SIP). Campbell Soup Co.'s compliance with the order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violations of the SIP regulations covered in the order.

DATES: This rule takes effect November 14, 1978.

FOR FURTHER INFORMATION CONTACT:

Linda Buell, Attorney, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Ill. 60604, Telephone 312-353-2082.

SUPPLEMENTARY INFORMATION: On July 17, 1978, the Acting Regional Administrator of EPA's Region V Office published in the FEDERAL REGISTER (42 FR 30581) a notice setting out the provisions of a proposed Federal delayed compliance order for Campbell Soup Co. The notice asked for public comments and offered the opportunity to request a public hearing on the proposed order. No public comments and no request for a public hearing were received in response to the notice.

Therefore, a delayed compliance order effective this date is issued to Campbell Soup Co. by the Administrator of EPA pursuant to the authority of section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The order places Campbell Soup Co. on a schedule to bring its two coal-fired boilers at Napoleon, Ohio, into compliance as expeditiously as practicable with regulation AP-3-07 and AP-3-11, a part of the federally approved Ohio State Implementation Plan. Campbell Soup Co. is unable to immediately comply with these regulations. The order also imposes interim requirements which meet sections 113(d)(1)(C) and 113(d)(7) of the Act, and emission monitoring and reporting requirements. If the conditions of the order are met, it will permit Campbell Soup Co. to delay compliance with the SIP regulations covered by the order until July 1, 1979.

Compliance with the Order by Campbell Soup Co. will preclude Federal enforcement action under section 113 of the Act for violations of the SIP regulations covered by the order. Citizen suits under section 304 of the Act to enforce against the source are similarly precluded. Enforcement may be initiated, however, for violations of the terms of the order, and for violations of the regulations covered by the order which occurred before the order was issued by EPA or after the order is terminated. If the Administrator determines that Campbell Soup Co. is in violation of a requirement contained in the order, one or more of the actions required by section 113(d)(9) of the Act will be initiated. Publication of this Notice of final rulemaking constitutes final Agency action for the purposes of judicial review under section 307(b) of the Act.

The provisions of the Order will be summarized, as set forth below, in 40 CFR 65. The provisions of 40 CFR Part 65 will be promulgated by EPA soon, and will contain the procedure for EPA's issuance, approval, and disapproval of an order under section 113(d) of the Act. In addition, part 65 will contain sections summarizing orders issued, approved, and disapproved by EPA. A prior notice proposing regulations for part 65, published at 40 FR 149876 (April 2, 1975), will be withdrawn, and replaced by a notice promulgating these new regulations.

EPA has determined that the Order shall be effective upon publication of this notice because of the need to immediately place Campbell Soup Co. on a schedule for compliance with the Ohio State Implementation Plan.

(Authority: 42 U.S.C. 7413(d), 7601.)

Dated: October 31, 1978.

DOUGLAS M. COSTLE,
Administrator.

1. In consideration of the foregoing, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDERS

By amending the table in § 65.400 to add the following entry:

§ 65.400 Federal delayed compliance orders issued under section 113(d) (1), (3), and (4) of the Act.

• • • • •

Source	Location	Order No.	Date of FR proposal	SIP regulation involved	Final compliance date
Campbell Soup Co	Napoleon, Ohio	EPA-5-78-A-23	July 17, 1978.	AP-3-07, AP-3-11.	July 1, 1979.

2. The text of the order is as follows:

U.S. ENVIRONMENTAL PROTECTION AGENCY

In the matter of Campbell Soup Co., Napoleon, Ohio, proceeding under sections 113 (a), (d) Clean Air Act, as amended, order No. EPA-5-78-A-23.

ORDER

The following order is issued this date pursuant to sections 113 (a) and (d) of the Clean Air Act, as amended, 42 U.S.C. sections 7413 (a) and (d), (hereinafter referred to as "the Act"). The order contains a compliance schedule with increments of progress, interim emission reduction requirements, and emission monitoring and reporting conditions. Final compliance is required as expeditiously as practicable, but no later than July 1, 1979. Public notice, opportunity for a public hearing and notice to the State of Ohio have been provided pursuant to section 113(d) (1) of the Act.

On November 18, 1977, James O. McDonald, Director, Enforcement Division, Region V, U.S. Environmental Protection Agency (hereinafter referred to as "USEPA"), pursuant to authority duly delegated to him by the Administrator of USEPA, issued a notice of violation to the Campbell Soup Co. (hereinafter referred to as the "the Company") stating that the Company's facility, located in Napoleon, Ohio, was found to be in violation of the applicable Ohio implementation plan, as defined in section 110(d) of the Act. The notice cited the Company's boilers 11-A (otherwise known as boiler B-001) and 11-B (otherwise known as boiler B-002) for violation of Ohio regulation AP-3-11. A copy of said notice was sent to the State of Ohio Environmental Protection Agency. After the notice was received by the Company, USEPA found boiler 11-B (B-002) in violation of Ohio regulation AP-3-07.

Pursuant to section 113(a)(4) of the Act, opportunity to confer with the Administrator's delegates was duly given to the Company. On December 28, 1977, a conference was held in Chicago, Ill., to discuss the November 18, 1977, notice of violation mentioned above. At this conference, the Company was notified that boiler 11-B (B-002) was found to be in violation of AP-3-07.

USEPA has determined that said violations have continued beyond the thirtieth day after the date of the Enforcement Director's notification.

After a review of information submitted at the conference and a thorough investigation of all relevant facts, including public comment, it has been determined that the Company is presently unable to comply with Ohio regulations AP-3-07 and AP-3-11, that the schedule hereinafter set forth requires compliance as expeditiously as practicable, and that the terms of this order comply with 113(d) of the Act.

Therefore, it is hereby ordered that:

I. The Company shall achieve compliance with Ohio regulations AP-3-07 and AP-3-11 in accordance with the following schedule:

Increment and date
Issue all necessary purchase orders, April 15, 1978.
Submission of engineering report, June 15, 1978.
Initial delivery of equipment, May 1, 1979.
Begin construction, May 15, 1979.
Cease operation of boilers 11-A (B-001) and 11-B (B-002) for tie-in of control equipment, June 30, 1979.
Complete tie-in and commence operation of boilers 11-A (B-001) and 11-B (B-002) and control equipment in compliance with AP-3-07 and AP-3-11, August 15, 1979.
Submission of test results and demonstration of compliance with AP-3-07 and AP-3-11, September 15, 1979.

II. This schedule provides for final compliance with Ohio regulations AP-3-07 and AP-3-11 by July 1, 1979, as required by section 113(d)(1)(D) of the Act. Final compliance will occur on this date when operation of boilers 11-A (B-001) and 11-B (B-002) will cease; operation of these boilers will not begin again until pollution controls have been installed.

III. This schedule is protected by section 113(d)(10) against Federal enforcement action and citizen suits under section 304 until July 1, 1979. After July 1, 1979, this schedule is covered by section 113(a).

IV. Nothing herein shall affect the responsibility of the Company to comply with other Federal, State or local regulations.

V. The Company shall notify USEPA as soon as the Company is aware that it may not meet the requirements specified in paragraph I in a timely manner. The Company

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shall submit reports to the USEPA detailing progress made with respect to each requirement of this order. Such reports shall be submitted within ten (10) days of the completion of such requirement. In addition, no later than September 15, 1979, the Company shall certify to the USEPA that the Napoleon facility is in final compliance with AP-3-07 and AP-3-11.

VI. Nothing herein shall be construed to be a waiver by the Administrator of any rights or remedies under the Clean Air Act, including, but not limited to, section 303 of the Act, 42 U.S.C. section 7503.

VII. Pursuant to section 113(d)(7) of the Act, during the period of this order, until completion of the program set out in paragraph I herein, the Company shall use the best practicable systems of emission reduction so as to minimize particulate matter emissions and shall further comply with the requirements of the applicable implementation plan insofar as it is able to.

VIII. The Company shall install and maintain, no later than the final date for compliance set forth in paragraph I above, a continuous opacity monitor on each stack. These continuous monitoring systems shall be installed, calibrated, maintained and operated in accordance with the procedures set forth in appendix B of 40 CFR Part 60. Pursuant to section 114 of the Act, monitor data shall be retained by the Company for at least two (2) years subsequent to recording. Quarterly reports of emission excesses shall be sent to USEPA.

IX. The Campbell Soup Co. is hereby notified that its failure to achieve final compliance by July 1, 1979, may result in a requirement to pay a noncompliance penalty under section 120. In the event of such failure, the Campbell Soup Co. will be formally notified, pursuant to section 120(b)(3) and any regulations promulgated thereunder, of its noncompliance.

X. Nothing herein shall be construed to be a waiver by the Campbell Soup Co. of its rights to challenge any regulations promulgated under section 120, as authorized by section 307(b)(1) of the Act.

XI. All submissions and notifications to USEPA, pursuant to this order, shall be made to the Air Compliance Section, Enforcement Division, USEPA, Region V, 230 South Dearborn Street, Chicago, Ill. 60604, 312-353-2090. A copy of all submissions and notifications shall be made to the Ohio EPA, Northwest District, 1035 Deviac Grove Drive, Bowling Green, Ohio 43402.

Dated: October 31, 1978.

DOUGLAS M. COSTLE,
Administrator.

XII. Campbell Soup Co. has reviewed this order, consents to the terms and conditions of this order, and believes it to be a reasonable means by which the Napoleon, Ohio, facility can achieve final compliance with Ohio regulations AP-3-07 and AP-3-11.

Dated: September 5, 1978.

W. W. DREYER,
Plant Manager,
Campbell Soup Co., Napoleon, Ohio.

[FR Doc. 78-31882 Filed 11-13-78; 8:45 am]

[6560-01-M]

[FRL 982-5]

PART 65—DELAYED COMPLIANCE ORDERS

Delayed Compliance Orders for American Maize Products, Hammond, Ind.

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: By this rule, the Administrator of EPA approves a delayed compliance order to the American Maize Products Co. (American Maize). The order requires the company to bring air emissions from its No. 3 starch ring dryer, in Hammond, Ind., into compliance with certain regulations contained in the federally approved Indiana State implementation plan (SIP). Company compliance with the order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violations of the SIP regulations covered by the order.

DATES: This rule takes effect on November 14, 1978.

FOR FURTHER INFORMATION CONTACT:

Louise C. Gross, Attorney, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Ill. 60604, telephone 312-353-2082.

SUPPLEMENTARY INFORMATION: On May 22, 1978, the Acting Regional Administrator of EPA's Region V Office published in the FEDERAL REGISTER (43 FR 21902) a notice setting out the provisions of a proposed Federal delayed compliance order for American Maize. The notice asked for public comments and offered the opportunity to request a public hearing on the proposed order. No public comments and no request for a public hearing were received in response to the proposed notice.

Therefore, a delayed compliance order effective this date is issued to American Maize by the Administrator of EPA pursuant to the authority of section 113(d)(1) of the Clean Air Act, 42 U.S.C. 7413(d)(1). The order places American Maize on a schedule to bring its No. 3 starch ring dryer at Hammond, Ind., into compliance as expeditiously as practicable with regulation APC-19, a part of the federally approved Indiana State implementation plan. American Maize is unable to immediately comply with these regulations. The order also imposes interim requirements which meet sections 113(d)(1)(C) and 113(d)(7) of the Act, and emission reporting requirements. If the conditions of the order are met, it will permit American Maize to delay compliance with the SIP regulations covered by the order until September 21, 1978.

Compliance with the order by American Maize will preclude Federal enforcement action under section 113 of the Act for violations of the SIP regulations covered by the order. Citizen suits under section 304 of the Act to enforce against the source are similarly precluded. Enforcement may be initiated, however, for violations of the terms of the order, and for violations of the regulation covered by the order which occurred before the order was issued by EPA or after the order is terminated. If the Administrator determines that American Maize is in violation of a requirement contained in the order, one or more of the actions required by section 113(d)(9) of the Act will be initiated. Publication of this notice of final rulemaking constitutes final Agency action for the purpose of judicial review under section 307(b) of the Act.

The provisions of the order will be summarized, as set forth below, in 40 CFR 65. The provisions of 40 CFR Part 65 will be promulgated by EPA soon, and will contain the procedure for EPA's issuance, approval, and disapproval of an order under section 113(d) of the Act. In addition, part 65 will contain sections summarizing orders issued, approved, and disapproved by EPA. A prior notice proposing regulations for part 65, published at 40 FR 149876 (April 2, 1976), will be withdrawn, and replaced by a notice promulgating these new regulations.

EPA has determined that the order shall be effective upon publication of this notice because of the need to immediately place American Maize on a schedule for compliance with the Indiana State implementation plan.

(Authority: 42 U.S.C. 7413(d), 7601.)

Dated: October 31, 1978.

DOUGLAS M. COSTLE,
Administrator.

In consideration of the foregoing, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

1. By amending the table in § 65.190 by adding the following entry:

Section 65.190 Federal delayed compliance orders issued under section 113(d) (1), (3), and (4) of the Act.

Source	Location	Order No.	Date of EPA proposal	SIP regulation involved	Final compliance date
American Maize Products Co.	Hammond, Ind....	EPA-5-78-A-20...	May 22, 1978.	Indiana APC-19.	Sept. 21, 1978.

[FR Doc. 78-31611 Filed 11-13-78; 8:45 am]

[4110-86-M]

Title 42—Public Health

CHAPTER I—PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER D—GRANTS

PART 51b—GRANTS FOR DISEASE CONTROL

Grants for Influenza Immunization Programs

AGENCY: Center for Disease Control (CDC), PHS, HEW.

ACTION: Interim final regulation.

SUMMARY: This regulation is applicable to the award of grants to State and local government health agencies to assist them in carrying out programs to immunize persons in high-risk groups against influenza. Influenza immunization grants are authorized by section 317 of the Public Health Service Act. A Notice of Proposed Rulemaking (NPRM) was published in the FEDERAL REGISTER June 23, 1978. The notice contained proposed revisions of 42 CFR Part 51b, Grants for Disease Control, applicable to other grant programs authorized by sections 317 and 318. That NPRM included Subpart A (General Provisions), Subpart B (Grants for Childhood Immunization Programs), Subpart C (Grants for Urban Rat Control Programs), and Subpart D (Grants for Venereal Disease Control Programs). Proposed rules governing influenza immunization grants (Subpart E) had not been finalized at that time. Issuance of a regulation governing influenza grants is necessary so that the grant application, review, and award process can proceed quickly when funds are appropriated to undertake the program.

EFFECTIVE DATE: November 14, 1978.

COMMENTS: Further comments are invited within 30 days after publication of this Interim Final Regulation and will be considered in any revision.

ADDRESS: Written comments should be sent to the Center for Disease Control, Attention: Director, Bureau of State Services, 1600 Clifton Road NE., Atlanta, Ga. 30333. Comments received will be available for public inspection during regular business hours in Building 1, Room 2047, at the same address.

FOR FURTHER INFORMATION CONTACT:

Dr. J. Donald Millar, Director, Bureau of State Services, Center for Disease Control, Atlanta, Ga. 30333, telephone 404-329-3771, or FTS: 236-3771.

SUPPLEMENTARY INFORMATION: As indicated in the NPRM published in the FEDERAL REGISTER June 23, 1978, the revision of Part 51b implements changes made by several public laws enacted since this part was previously issued. The revision incorporates programs authorized by sections 317 and 318 of the Public Health Service Act, including programs of childhood immunizations, urban rat control, and venereal disease control. Section 317(g)(1)(C) authorizes appropriations for grant programs directed toward all other diseases and conditions addressed by the legislation, including influenza. This regulation will logically become a subpart of Part 51b.

The issuance of Subpart E as an Interim Final Regulation without prior publication of a Notice of Proposed Rulemaking is necessitated by the severe time constraint imposed by the approaching 1978-79 influenza season. It is essential that grants be awarded as quickly as possible to avoid undue delay. Issuance of this regulation in final form is further justified by the groundwork already performed during formulation of grant guidelines and this regulation. Draft guidelines describing the grant award procedures and the operation of influenza immunization project grant programs were circulated for comment on May 5, 1978, to State and local health agencies. In addition, representatives from the HEW regional offices reviewed the draft guidelines with CDC staff on May 15. All of the issues of concern to interested parties were considered during this development process. Most of the comments received were related to technical issues. However, all comments and suggestions have been considered, and provisional guidelines consistent with this proposed regulation have been prepared and are available on request. HEW regional offices, state and local health agencies, and the general public have been represented in the decisionmaking process leading to the development of this regulation.

Subpart A contains general provisions applicable to all grant programs addressed in Part 51b. The subpart is reproduced here as it is expected to appear in the final rule. Two significant changes to Subpart A have been incorporated since its publication on June 23. The first is the inclusion of the influenza immunization program under § 51b.101. The second change clarifies the authority under § 51b.108 for the Secretary to impose additional conditions governing the use of information or consent forms.

In accordance with the foregoing, the Secretary has determined pursuant to 5 U.S.C. 553 and Department policy that it would be impracticable and contrary to the public interest to follow proposed rulemaking procedures or to delay the effective date of these regulations.

Notwithstanding the omission of the proposed rulemaking procedures, interested persons are invited to submit written comments relating to these regulations to the Director of the Bureau of State Services at the address given above. As indicated above, all relevant comments received will be considered in any revision.

Accordingly, the existing Part 51b is redesignated Subpart B, new Subparts A and E are added to Part 51b, and editorial changes are made in Part 51b as set forth below. The amendments will be effective on November —, 1978.

Dated: August 31, 1978.

JULIUS B. RICHMOND,
Assistant Secretary for Health.

Approved: November 6, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary.

1. The part heading of Part 51b, title 42, CFR, is amended as follows:

PART 51b—GRANTS FOR DISEASE CONTROL

2. The existing text of Part 51b is redesignated as Subpart B. The subpart heading shall read as follows:

Subpart B—Grants for Communicable Disease Control

3. Sections 51b.1-51b.17 of the new Subpart B are renumbered §§ 51b.201-51b.217.

4. Part 51b is amended by adding the following new Subparts A and E.

[As amended, Part 51b reads as follows:]

Subpart A—General Provisions

Sec.
51b.101 Applicability

Sec.
51b.102 Definitions.
51b.103 Grantee accountability.
51b.104 Grant payments.
51b.105 Nondiscrimination.
51b.106 Publications and copyright.
51b.107 Records and reports.
51b.108 Additional conditions.
51b.109 Voluntary participation.
51b.110 Applicability of 45 CFR Part 74.
51b.111 Review of applications under Title XV of the Public Health Service Act.

Subpart C [Reserved]

Subpart D [Reserved]

Subpart E—Grants for Influenza Immunization Programs

51b.501 Applicability.
51b.502 Definitions.
51b.503 Eligibility.
51b.504 Application.
51b.505 Description of program.
51b.506 Grant evaluation and award.
51b.507 Use of grant funds.

AUTHORITY: Sections 317 and 318, Public Health Service Act (42 U.S.C. 247b and 247c).

Subpart A—General Provisions

§ 51b.101 Applicability.

The regulations of this part apply to grants authorized for childhood immunization, influenza immunization, and urban rat control programs under section 317 of the Public Health Service Act (42 U.S.C. 247b) and to grants authorized for venereal disease prevention and control under section 318(c) (42 U.S.C. 247c(c)).

§ 51b.102 Definitions.

As used in these regulations:

"Act" means the Public Health Service Act, as amended.

"Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of the Department to whom the authority involved has been delegated.

"State" means one of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

§ 51b.103 Grantee accountability.

(a) *Accounting for grant award payments.* All payments made by the Secretary shall be recorded by the grantee in accounting records separate from the records of all other funds, including funds derived from other grant awards. With respect to each approved program, the grantee shall account for the total of all amounts paid out by presenting or otherwise making available evidence, satisfactory to the Secretary, of expenditures for direct and indirect costs meeting the requirements of this part. However, when the amount awarded for indirect cost was based on a predetermined fixed percentage of estimated direct costs, the amount allowed for indirect costs shall be computed on the basis of such predetermined fixed percentage rates applied to the total, or a selected element thereof, of the reimbursable direct costs incurred.

(b) *Accounting for grant related income—Interest.* Pursuant to section 203 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4213), a State will not be held accountable for interest earned on grant funds pending their disbursement for grant purposes. A State, as defined in section 102 of the Intergovernmental Cooperation Act, means any one of the several States, the District of Columbia, Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a state, but does not include the governments of the political subdivisions of the State. All grantees other than a State, as defined in this subsection, must return all interest earned on grant funds to the Federal Government.

(c) *Grant Closeout—(1) Date of final accounting.* A grantee shall render with respect to each approved program a full accounting, as provided herein, as of date of the termination of grant support. The Secretary may require other special and periodic accounting. (2) *Final settlement.* There shall be payable to the Federal Government as final settlement with respect to each approved project the total sum of:

(i) Any amount not accounted for pursuant to paragraph (a) of this section;

(ii) Any credits for earned interest pursuant to paragraph (b) of this section;

(iii) Any other amounts due pursuant to Subparts F, M, and O of 45 CFR Part 74.

Such total sum shall constitute a debt owed by the grantee to the Federal Government and shall be recovered from the grantee or its successors or assignees by setoff or other action as provided by law.

§ 51b.104 Grant payments.

(a) The Secretary shall from time to time make payments to a grantee of all or a portion of any grant award. These payments may be made either in advance or by way of reimbursement for expenses incurred or to be incurred in the performance of the program. The payments shall be made as the Secretary determines necessary to promote prompt initiation and advance of the approved program.

(b) The Secretary may reduce the payment under a grant by the amount of the fair market value of any supplies (including vaccines and other preventive agents) or equipment furnished a grant recipient, when it is furnished at the request of the recipient. The Secretary also may reduce the payment under a grant by the amount of the pay, allowances, travel expenses, and any other costs in connection with the detail of any officer or employee of the Government to the recipient, when the detail is at the request of the recipient. The amount the grant is reduced shall be available for payment by the Secretary of the costs incurred in furnishing the supplies or equipment, or in detailing the official, and shall, for the purpose of these regulations, be deemed to have been paid to the recipient.

§ 51b.105 Nondiscrimination.

Recipients of grants under this part are advised that in addition to complying with the terms and conditions of these regulations, the following laws and regulations are applicable:

(a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and its implementing regulation, 45 CFR Part 80 (prohibiting discrimination in Federally assisted programs on the ground of race, color, or national origin).

(b) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and its implementing regulation, 45 CFR Part 84 (prohibiting discrimination in federally assisted programs on the basis of handicap).

§ 51b.106 Publications and copyright.

Unless otherwise provided under the terms and conditions of the award, the grantee may copyright without prior approval any publications, films, or similar materials resulting from a grant under these regulations. This authorization is subject to a royalty-free, nonexclusive, and irrevocable right in the Government to reproduce, translate, publish, use, disseminate, and dispose of the materials and to authorize others to do so.

§ 51b.107 Records and reports.

The grantee shall maintain such progress and fiscal records and file with the Secretary such progress, fiscal, and other reports relating to the conduct and results of grant activities as the Secretary may find necessary to carry out the purposes of this part.

§ 51b.108 Additional conditions.

The Secretary may impose additional conditions, including conditions governing the use of information or consent forms, when in his judgment they are necessary to advance the approved program, the interest of the public health, or the conservation of grant funds.

§ 51b.109 Voluntary participation.

Nothing in these regulations shall be construed to require any State or any political subdivision of a State to have a disease control program which would require any person who objects to treatment to be treated under the program.

§ 51b.110 Applicability of 45 CFR Part 74.

The provisions of 45 CFR Part 74, which establish uniform administrative requirements and cost principles, apply to all grantees under this part.

§ 51b.111 Review of applications under Title XV of the Public Health Service Act.

The application shall contain evidence satisfactory to the Secretary that it has been reviewed, commented upon, or approved by the appropriate planning agency designated by regulations implementing the National Health Planning and Resources Development Act (42 U.S.C. 300k-1, Pub. L. 93-641).

Subpart E—Grants for Influenza Immunization Programs

§ 51b.501 Applicability.

The regulations in this subpart apply to the award of grants under section 317 of the Act for programs to immunize persons in high-risk groups against influenza.

§ 51b.502 Definitions.

As used in this subpart: "High-risk groups" means those groups of persons at highest risk of serious illness or death due to influenza and its complications, as specified in grant guidelines.

§ 51b.503 Eligibility.

An applicant must be a State agency or an agency of a political subdivision of a State which has legal responsibility for disease control under the laws of a State.

§ 51b.504 Application.

(a) An applicant for a grant under these regulations shall submit an application to the appropriate Public Health Service Regional Health Administrator.[1] The application shall contain a full description of the program objectives, plans, and activities as described in section 51b.505.

(b) The application shall be signed by an individual authorized by the applicant to assume the obligations imposed by these regulations and any additional conditions of the grant.

§ 51b.505 Description of program.

The application shall contain or include a description of the following:

(a) Background and need for grant support including:

(1) An overview of the public, private, and voluntary health care delivery systems in the project area which are or will be available to conduct the program.

(2) The extent of current influenza immunization services provided in the public and private sectors with specific information concerning the purchase, distribution, use of vaccine, and the populations served.

(3) Estimates of the number of persons in the high-risk groups.

(b) Long-term and short-term objectives which are specific, measurable, and realistic, and which relate to the National Program Goals, as specified in grant guidelines.

(c) A detailed description of the method for carrying out the following program activities:

(1) Delivery of influenza vaccinations to high-risk populations through cooperative efforts with public health and private health care providers and voluntary organizations serving high-risk groups.

(2) Detecting and reporting outbreaks of influenza, including laboratory and epidemiologic surveillance.

(3) Monitoring illnesses or injuries which occur subsequent to vaccination.

(4) Dissemination of influenza information to health care providers and high-risk individuals to create awareness of the need for vaccination and to encourage active participation in the program.

(5) Assuring accountability for all vaccines stored, distributed, and administered.

(6) Other activities which will promote the achievement of program objectives.

(d) A budget and justification for grant funds requested.

(e) Assurance that no one will be denied services because of inability to pay and that the services are provided in a manner which preserves human dignity and maximizes acceptance.

§ 51b.506 Grant evaluation and award.

(a) Within the limits of funds available, the Secretary may award grants to assist in meeting part of the cost of an influenza immunization program. Before awarding a grant to a political subdivision of a State, the Secretary will consult with the State health authority.

(b) Priorities for funding will be based on the extent to which:

(1) The proposed activities are likely to result in a balanced program of vaccine delivery, detection and reporting of influenza outbreaks, monitoring of vaccine reactions, and information dissemination to health care providers and high-risk individuals.

(2) The plan of operation is likely to supplement rather than replace vaccinations given in the public or private sector.

(3) Project objectives are specific, measurable, realistic, and related to the national program goals.

(4) Budget requests and the proposed use of grant funds are appropriate and reasonable for a balanced program.

(5) There are plans for the coordination of activities with related programs and the effective use of volunteer groups and other community resources.

(6) The described methods of evaluation are likely to be effective in measuring the achievement of program objectives.

(c) A grant award shall be in writing. It shall set forth the amount of funds granted and the period for which support is recommended.

(d) The approval of a grant application or the award of funds shall not obligate the United States to make supplemental, continuation, or other award to a grantee. The grantee must apply separately for continuing support.

§ 51b.507 Use of grant funds.

(a) Grant funds may be used for costs of planning and establishing influenza immunization delivery services, for the purchase of influenza vaccine, and for the implementation of other approved program activities.

(b) Vaccine purchased with grant funds may be provided to private practitioners who agree not to charge for the vaccine, although charge for vaccine administration may be permitted.

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[1] Application forms, manuals, program guidelines, and instructions for preparing grant applications may be obtained from the PHS Regional Health Administrator of the Department of Health, Education, and Welfare for the region in which a program is to be conducted.

[3510-22-M]

Title 50—Wildlife and Fisheries

CHAPTER VI—FISHERY CONSERVATION AND MANAGEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 611—FOREIGN FISHING

Part 672—GROUNDFISH OF THE GULF OF ALASKA

Final Regulations

AGENCY: National Oceanic and Atmospheric Administration (NOAA)/Commerce.

ACTION: Final regulations.

SUMMARY: Final regulations are promulgated to implement the fishery management plan for groundfish of

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the Gulf of Alaska under the Fishery Conservation and Management Act of 1976. The regulations are applicable to vessels of the United States and foreign nations fishing for groundfish in the fishery conservation zone in the Gulf of Alaska and supersede the regulations implementing the preliminary fishery management plan (PMP) for the Gulf of Alaska trawl fishery, as amended, and that portion of the PMP for sablefish of the Bering Sea and northeastern Pacific Ocean, as amended, applicable to the Gulf of Alaska (50 CFR 611.92 and 611.94).

EFFECTIVE DATE: December 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Harry Rietze, Director, Alaska Region, National Marine Fisheries Service, Box 1668, Juneau, Alaska 98802, telephone 907-586-7221.

SUPPLEMENTARY INFORMATION:

A. HISTORY OF THE PLAN

A fishery management plan (FMP) for groundfish of the Gulf of Alaska has been prepared by the North Pacific Fishery Management Council (the Council) pursuant to the Fishery Conservation and Management Act of 1976, as amended (16 U.S.C. section 1801 et seq., "the Act"). The FMP contains conservation and management measures applicable to foreign and U.S. vessels fishing for cod, pollock, flounders, Pacific Ocean perch, other rockfish, sablefish, Atka mackerel, squid and all other stocks of finfish (except that it does not pertain to fishing by U.S. vessels for salmon, steelhead trout, and Pacific halibut) in the Fishery Conservation Zone (FCZ) in the Gulf of Alaska.

The FMP was the subject of extensive analysis and comment by fishermen, other representatives of the fishing industry, interested State and Federal agencies, governments of several foreign nations and members of the public. Public hearings on the FMP were conducted by the Council at the following locations: Seattle, Wash. (August 5-6, 1977), Petersburg, Alaska (August 3, 1977), Anchorage, Alaska (August 22, 1977), Sand Point, Alaska (August 23, 1977), and Kodiak, Alaska (August 24, 1977). After consideration of the information available to it, the Council approved the FMP on September 23, 1977, and submitted it to the Secretary of Commerce for review pursuant to section 304(b) of the Act.

On February 24, 1978, the Assistant Administrator for Fisheries, acting pursuant to a delegation of authority from the Secretary of Commerce and the Administrator of the NOAA, determined that the FMP was consistent with the national standards, the Act, and other applicable law, and approved the FMP. The FMP was published for public comment on April 21, 1978 (43 FR 17242) and proposed regulations to implement the FMP were also published for public comment (43 FR 17013 and 43 FR 17242).

An amendment (amendment one) of the FMP, which was adopted by the Council and approved by the Assistant Administrator, was published on August 7, 1978 along with proposed changes in the implementing regulations, for public comment (43 FR 34825). The amendment extended the specifications of optimum yield (OY), domestic capacity, total allowable level of foreign fishing (TALFF) and reserves from December 31, 1978 through October 31, 1979.

On August 28, 1978, the Council submitted another amendment (amendment 2) to the FMP. This amendment increased the amount of pollock held in reserve to 133,800 metric tons, with appropriate increases in the reserves of species taken incidental to fishing for pollock. The purpose of the amendment was to assure that an adequate supply of fish is available for harvest by U.S. vessels in potential joint venture operations involving sale of U.S.-caught fish to foreign processing vessels at sea. The amendment superseded the specifications of OY, TALFF, domestic capacity and reserve established by amendment one, but retained a fishing year ending October 31, 1979. The amendment was approved by the Assistant Administrator on September 22, 1978, and proposed changes in the implementing regulations were published for public comment on October 6, 1978 (43 FR 46349).

A third amendment (amendment 3) was also submitted by the Council and approved by the Assistant Administrator. The amendment, with proposed changes in the implementing regulations, was published for public comment on October 13, 1978 (43 FR 47222). This amendment would allow foreign vessels using longline gear to harvest the entire Chirikoff fishing area TALFF, when fishing for Pacific cod in the area west of 157° W. longitude.

The final regulations published below implement the management measures contained in the FMP and incorporate those portions of amendment 1 which are not superseded by amendment 2. The regulations are effective on December 1, 1978. Prior to December 1, these regulations may be republished to incorporate any regulations implementing amendments 2 and 3.

B. MANAGEMENT MEASURES ESTABLISHED

The management measures established in the FMP were developed by the Council to achieve the following conservation and management objectives (with priorities in the order listed):

(1) Rational and optimal use, in both the biological and socioeconomic sense, of the region's fishery resources as a whole;

(2) Protection of the Pacific halibut resource, currently in a state of decline;

(3) Orderly development by the U.S. of domestic groundfish fisheries, consistent with (1) and (2) above; and

(4) Foreign participation in the fishery consistent with (1), (2), and (3) above, to take that portion of the optimum yield not harvested by domestic fishermen.

In order to develop a management scheme reasonably calculated to achieve these competing objectives, the Council has imposed season, gear, area and catch restrictions (as well as reporting and other requirements) on both foreign and U.S. vessels. The Council has also employed two management techniques (reserves and in-season adjustments) which have not been used in other FMP's, in order to assure that the balance achieved among the objectives will not be upset by unexpected events occurring during the fishing season.

The FMP recognizes the disparities which exist between foreign and U.S. vessels as to size, harvest capability, type of fishing gear and other equipment, and fishing priorities. As a result, some of the management measures applicable to foreign vessels vary from those applicable to U.S. vessels, although the purpose of the provisions may be the same.

The Council also recognized the need for further information and research on several groundfish species. Where complete information is lacking, the best scientific information available was used, and necessary assumptions made on the basis of that information have generally favored protection of the resource over other competing policy objectives.

The basis and purpose of specific management measures are set out in the FMP. If a provision was the subject of public comment, additional discussion of the provisions can be found in heading C (Major Issues; Modifications from Proposed Regulations) of this preamble.

The basic management scheme encompassed by these regulations divides the FCZ of the Gulf of Alaska into five fishing areas. In each area, limits are set upon the amount of each species which may be harvested.

After determining the amount of fish which will be harvested by U.S. vessels, the FMP places a certain portion of the remaining fish in reserve against the contingency of unexpectedly high U.S. harvests. The remaining amount of fish is made available to vessels of foreign nations in the form of a TALFF for each species in each fishing area. Allocations from TALFF will be made to individual nations by the Department of State.

Fishing in appropriate fishing areas and for appropriate species is prohibited when vessels of a nation harvest a national allocation, or if a nation receives notice that an applicable catch limitation is reached. The regulations prohibit fishing by vessels of foreign nations in certain portions of the Gulf of Alaska, impose gear and effort restrictions during the winter months and impose reporting requirements.

Vessels of the United States are required to obtain permits, submit reports, and are subject to effort and additional catch limitations during the winter months. Regulations applicable to U.S. vessels include a provision authorizing the Regional Director to prohibit fishing during the season for reasons relating to conservation of groundfish or halibut stocks.

C. MAJOR ISSUES; MODIFICATIONS FROM PROPOSED REGULATIONS

1. RESPONSE TO COMMENTS

Comments on the proposed regulations were received from a variety of sources including foreign nations, Department of State, U.S. Coast Guard, and the North Pacific Fishery Management Council. Many of the comments related to the approved FMP, others to the proposed regulations. The comments have been summarized by issue or by regulation and are presented below with responses.

A. *Comments on 50 CFR 611.92 (regulations applicable to vessels of foreign nations).* (1) *FMP specifications of optimum yield (see 50 CFR 672.20(a), table I).* Optimum yield represents the maximum amount of any species of fish which may be harvested by vessels of all nations in the Gulf of Alaska (FMP, section 7. The basis for the specifications of OY is found in section 6 of the FMP.

The following comments were received:

A. Insufficient evidence has been presented to justify substantial deviation from maximum sustainable yield (MSY) for OY's for Pacific Ocean perch, sablefish and flounders.

B. The OY for squid is arbitrary and capricious in that it is based only on "intuitive" belief.

C. The OY for flounders violates national standard 5 (section 301(a)(5) of the Act).

D. Economic analyses of OY's are incomplete (e.g., benefits from fees paid for additional fish, for example, might provide more overall benefit to the Nation).

E. The OY for sablefish is overly conservative and the relationship between equilibrium yield (EY) and OY for sablefish appears arbitrary.

F. The OY is at low end of MSY or below with low probabilities of low end being the true figure; thus there is no biological justification for the OY's.

G. There is no need to be conservative in species like pollock with high natural mortality and stable resource conditions.

Response: These comments are similiar to (or the same as) the comments received by the North Pacific Fishery Management Council and were considered by the Council at the time of its approval of the FMP. The Assistant Administrator also considered these comments during review of the FMP before approval. Because no new evidence was presented that would justify a change in the OY's, the findings on approval of the FMP remain unchanged.

National standard 5 requires that management measures, where practicable, promote efficiency in the utilization of fishery resources. National standard 1, and the specific requirement of the FMP that OY not be exceeded for any reason, are intended to protect the resource. The interest of protection of the resource overrides the interest of efficiency in this situation.

(2) *Catch limitations by fishing area.* Catch limitations are imposed in each of five fishing areas in the Gulf of Alaska for the purpose of avoiding overfishing of localized stocks (see 50 CFR 611.92(b) and 50 CFR 672.20(a), table I). The following comments were received on the issue of separate specification of OY, TALFF and reserve in each fishing area:

A. The fishing areas are arbitrary and capricious in that there is no biological basis for catch limitation by fishing area.

B. Past catches are not a good indicator of present distribution because biomass location can vary from year to year.

C. Quotas by fishing area may result in underutilization of available resources.

D. National standard 3 (section 301(a)(3) of the Act) requires that a stock be managed as a unit throughout its range.

E. Because of their length, longlines may overlap fishing areas.

F. Efficiency will be reduced and operating costs raised.

G. Operations would be shut down on the basis of catches earlier in the year.

H. Fishery effort will adjust to stock density, therefore there is no need for catch limitations by fishing area.

I. Most species, except Pacific Ocean perch, migrate widely beyond individual fishing areas.

J. Depth limits and closed areas, combined with individual fishing areas, unduly inhibit foreign fishing opertions.

Response: As stated in the response to (1) above, these comments were made previously and present no new information. Although there is some uncertainty with regard to the evidence of localized populations of various species, the interest of conservation of the resource in this situation allows the conservative assumption that stocks are localized and follow general patterns from year to year unless there is strong evidence to the contrary. Recognizing that fishing by fishing area involves some additional inconvenience and possibility of underutilization, this alternative is considered preferable to the risk of localized overfishing.

Section 301(a)(3) of the Act requires that "To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination." The FMP is consistent with this standard. A single plan manages groundfish stocks which intermingle in the Gulf of Alaska, and are likely to be caught in conjunction with each other. The in-season adjustment provision (§ 672.22(b)) allows close coordination with the State of Alaska in imposition of conservation measures, applicable to U.S. fishing vessels, to protect stocks which may occur both in the FCZ and territorial waters. Although specifications of OY, TALFF and reserve vary from area to area depending upon relative concentration of stocks and other factors stated in the FMP and other referenced material, management measures applicable in each fishing area are similar and are designed to achieve the same priorities and objectives in each fishing area.

(3) *Reserve provision.* The reserve provision (§§ 611.92(b) and 672.20(c)) sets aside a stated amount of fish, to be apportioned to TALFF during the fishing season depending on the extent of harvest by U.S. vessels. The purpose of the reserve is to allow foreign and U.S. vessels to fish concurrently while still assuring that: (a) OY will not be exceeded; (b) resources are available to domestic fishermen to the extent of their capacity to harvest, and; (c) optimum use will be made of fishery resources to the extent U.S. vessels will not harvest these resources. The provision furthers the objectives expressed in national standards 1, 5 and 6 (section 301(a) (1), (5) and (6) of the Act). The following comments were received:

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A. The reserve is contrary to the applicable governing international fishery agreement (GIFA) which requires TALFF to be determined at the start of the year.

B. Adequate provision for expansion of domestic fishing has been made in the specification of domestic annual harvest (DAH) capacity.

C. Reserves should be apportioned at the earliest possible date. If domestic catch is less than DAH, the remaining amount of fish must be allocated to foreign nations.

D. Procedures must be developed for apportionment of the reserve. The uncertainty of the operation of the reserve provision could act to inhibit domestic fishermen.

E. The reserve is discriminatory to foreign fishermen because DAH is overestimated.

F. The 20 percent reserve should not be applied to all species.

G. Foreign countries will have difficulty in adjusting to mid-year reallocation of reserve, thus leaving some portion of stocks unharvested.

H. DAH should be reviewed in midyear for appropriate reallocation to foreign nations.

Response: The reserve provision and the level of reserves set aside will be modified based on new information and proposed new procedures. The amendment to the plan modifying the reserve was published October 6, 1978 (43 FR 46349), with proposed regulations establishing procedures for apportionment of that reserve. Additional comments are solicited.

(4) *Closure of a fishing area when the amount of an OY, a TALFF or a national allocation for any species of groundfish is reached.* The proposed regulations provided that fishing for all species in a fishing area was prohibited when the OY, TALFF or a national allocation for any species in that area is reached. The following comments were received:

A. Section 201(d) of the Act, states that the amount of OY which will not be harvested by U.S. vessels shall be made available for harvest by foreign nations.

B. Longliners should be exempted.

C. The regulation discriminates against foreign vessels. The suggested alternative is to deduct excess catch from future allocations to that nation.

D. Operationally, fish will be left unutilized because of severity of the regulations.

E. Unwarranted. There should be flexibility to allow continued fishing by gear types which would not result in incidental catch of species concerned.

F. The OY closure provision is unreasonable in that any U.S. fishermen can close down an area by catching 400 mt of squid.

G. It is unreasonable for one country to be able to shift the responsibility and consequences of exceeding its catch quota to other countries. It was suggested that excess catch be deducted from particular countries' allocations for the succeeding year.

H. Unwarranted. Need flexibility.

Response: Comments A, D. The amount of fish which will not be harvested by U.S. vessels will be made available for harvest by foreign vessels under this FMP. The purpose of the closure provisions is to assure that fish in excess of available amounts will not be harvested. Given a choice between allowing some stocks to be underutilized and allowing others to be harvested in excess of applicable catch limitations, the protection of the resource receives first priority. This position is consistent with national standard 1 (section 301 of the Act) and the requirements of the FMP.

Comments B, E, H: These regulations implement a plan provision (section 7.0) which states that OY "shall not, for any reason, be exceeded by the all-nation fishery". The regulations were considered necessary because to permit additional incidental catch of a species for which an applicable catch limitation had been reached would lead to fishing in excess of OY and therefore violate the intent of the plan. Incidental catch of a species in excess of applicable catch limitations appeared unavoidable, and is still considered unavoidable by vessels fishing with trawl gear. In their comments on the regulations, however, the Council indicated that the intent of the FMP was to exempt vessels using longline gear from certain catch limitation provisions, except where the limit applied to sablefish or Pacific cod. The basis for the distinction is that longline gear can be used in such a way as to avoid catch of other species. The comments of Japan also made this point.

NOAA concurs in the conclusion that longline gear is more species-specific than trawl gear. The regulations therefore implement the intent of the Council to the extent allowed by the wording of the FMP (see FMP sections 7.0, 8.3.4.3(A), and 8.3.2.1(B)). The regulations exempt vessels using longline gear from the OY and TALFF closure provisions, except when the applicable limitation for sablefish or Pacific cod is reached. Exemptions from other closure provisions for longline vessels will have to be accomplished by amendment to the FMP. At its July, 1978 meeting, the Council voted to consider appropriate amendments.

Comments C, G. Deducting excess catch from future allocations was considered impraticable because the amount of future allocations, and the nations to whom the allocations will be given, is uncertain. This method would also involve the risk of localized overfishing. No other comments suggested other methods by which the resource could be protected from overfishing.

Comment F. The closure provisions are intended to protect the resource. Harvest by foreign vessels of 400 mt of squid could also result in closure of a fishing area to U.S. vessels.

(5) *Only 25 percent of catch of total allocations may be caught during the winter.* The limitation that a foreign nation may take only 25 percent of its total catch during the December 1–May 31 "winter fishing season", and the provision limiting incidental catches in the winter for domestic vessels (50 CFR 611.92(b) and 50 CFR 672.20(e) were established because of the greater incidental catches of halibut in the winter.

The following comments were received:

A. The same purpose can be served by limiting incidental catch of halibut.

B. This regulation is beyond the authority of the Secretary of Commerce under the Act.

C. Because 40 percent of Japanese longline catch is harvested in winter and because incidental catch of halibut is minimal, longliners should be exempt from provisions.

D. Incidental catch of halibut is declining. Halibut are being amply protected via existing regulations.

E. Japanese trawl catch is 50 percent of annual catch during winter season. It is not practical to take 75 percent of the quota during summer. This regulation would lead to nonutilization of available resources.

F. This regulation would be tantamount to a ban on operations.

G. Because domestic restrictions are considerably milder, this regulation is discriminatory.

Response: Although the same purpose might be served by limiting the incidental catch of halibut (comment A), total effort in the winter season would be restricted to about the same level because the incidental catch would be quickly reached. Moreover, the enforcement costs of the incidental catch provision would make it impracticable to apply this provision to foreign vessels. This regulation, which is an important component of the FMP, does not go beyond the authority of the Secretary of Commerce under the Act (comment B). Sections 303(b) (2) and (3) allow such a regulation. The Council and others have seriously considered exempting the longliners from these provisions (comment C) but the approved FMP does not allow such flexibility and must be amended by the Council before the regulations can be changed. The FMP indicates that there will be additional protection of halibut as a result of the limit on winter catch, thereby indicating that halibut may not be amply protected by existing regulations (comment D). Although this regulation will impact foreign operations negatively (comments E and F), the FMP is intended to and does protect halibut. Domestic restrictions on incidental take of halibut are very severe and may be more restrictive than the foreign regulations (comment G). Further experience with winter catch limitations will allow more accurate comparison of the relative advantages and disadvantages of these management measures.

(6) *Closure of Davidson Bank to all foreign fishing.* The following comments were received on the prohibition against fishing by foreign vessels in the Davidson Bank area (see 50 CFR 611.92(d)(1)(iv)):

A. This regulation is a de facto extension of territoriality.

B. The regulation benefits a select and privileged local group of fishermen, thereby favoring one group of fishermen over another, a discrimination which is forbidden by FCMA.

C. Opening Davidson Bank to longliners would pose little threat to U.S. fisheries.

D. Closing Davidson Bank would not help sablefish stocks because the quota in the area is already set at a level to allow for rebuilding these stocks.

E. Because the Davidson Bank is a significant portion of the Shumagin statistical area, it would be difficult to take the total allocation in the Shumagin area.

F. Segmentation of no-fishing areas will increase operating costs for foreign longliners.

G. The United States mounts no effective sablefish operation in the above areas. Therefore, the areas should not be closed to longliners.

Response: The purpose of this regulation is to preserve as a sanctuary an area with healthy concentrations of several groundfish species for developing U.S. fisheries. This regulation is not considered an extension of territoriality (comment A) but rather a means of allowing the development of domestic fishing for Alaska groundfish, which is an objective of the Act and the FMP (comment C). The closing of the Bank will avoid gear conflicts which in the past have inhibited U.S. fishermen from fishing in these areas (comments C and G). The intent of closing the Davidson Bank is not to help sablefish stocks (comment D) but to avoid gear conflicts. Closing the Davidson Bank will probably increase operating costs to longliners and may make it more difficult for foreign vessels to take the total allocation in the Shumagin area (comments E and F), however, the interest of encouraging development of U.S. fishing by avoiding gear conflicts with foreign vessels outweighs this objection.

(7) *Winter fishing with pelagic trawls only.* Section 611.92(e)(1) provides that only pelagic trawls may be used between December 1 and June 1. The purpose of this provision is to protect juvenile halibut. The following comments were received:

A. The regulation is discriminatory because U.S. fishermen fishing in the same area are not as severely restricted.

B. Japan has not yet developed pelagic trawl gear for use in a groundfish fishery. The provision would make it totally unfeasible for the groundfish fleet to conduct operations at all.

C. Even off-bottom trawls are effective only for hake and pollock.

Response: This regulation is not considered discriminatory (comment A) because there are separate and severe restrictions on winter fishing by U.S. fishermen in the form of off-bottom trawl requirements, a limit on the total incidental catch of halibut, and the requirement of 1-hour tows. The information available indicates that the Japanese vessels do have pelagic trawl gear (comment B), and that it is effective (comment C). In developing different management measures to achieve the same objective, consideration was given to relative ability of U.S. and foreign vessels to tow a pelagic trawl.

(8) *Closure of the area between 3 and 12 miles, between 169° and 170° W. longitude.* Section 611.92(c) prohibits fishing by vessels of foreign nations within 12 nautical miles from the baseline used to measure the U.S. territorial sea. The following comments were received on this provision:

A. A uniform 12-mile wide zone is not necessary for this area because very little domestic fishing occurs there; therefore, there will be no gear conflicts.

B. This area is a traditional fishing ground for foreign longliners because waters outside 12 miles are too deep for longlining.

C. This area has been open under earlier bilateral fishing agreements.

D. Opening this area would eliminate other hardships.

Response: This area has been open to foreign fishing under previous bilaterals. The approved plan is quite specific (sections 8.3.2.1(d)(a)) in prohibiting fishing by vessels of foreign nations landward of 12 miles. A plan amendment would be required to change this regulation. At the July, 1978 meeting, the Council voted to consider appropriate amendment.

(9) *Other comments on foreign regulations.* A. Relaxation of the 500-meter isobath restriction east of 157° W. longitude by 100 or 200 meters would alleviate other problems caused by the FMP.

Response: This measure protects juvenile sablefish which have not reached their "critical size" from being taken and also prevents incidental catch of juvenile halibut. Relaxation of the restriction would jeopardize the purpose of the provision.

B. The special limitation on total catch of Pacific cod west of 157° W. longitude should be lifted.

Response: The Assistant Administrator has approved an amendment to the FMP to allow all of the Pacific cod TALFF in the Chirikoff fishing area to be taken in the portion of the fishing area west of 157° W. longitude. Proposed regulations were published in the FEDERAL REGISTER on October 12, 1978. Comments are solicited.

C. The Regional Director, Alaska Region, should not be delegated the power to make in-season adjustments to seasons and areas.

Response: The Administrator has redelegated this limited authority to the Regional Director subject to the restrictions and procedures set out in the final regulations, and subject to advance notification to the Assistant Administrator before action is taken. This provision does not apply to vessels of foreign nations.

B. *Comments on Part 672 (Regulations Applicable to Vessels of the United States).* The following comments were received on Part 672:

(1) *The in-season adjustment provision authority should include opening as well as closing seasons.*

Response: The change has been made (see § 672.22 (a) and (b)).

(2) *The requirement for net-sondes should be deleted; the requirement that pelagic trawl foot ropes not be in contact with the seabed for more than 10 percent of any tow, should be deleted.*

Response: The changes have been made. The FMP did not require these measures for U.S. fishermen, because U.S. vessels are not equipped with pelagic trawls.

(3) *The regulations should be written to assure fishermen that observer information will not be used for civil or criminal prosecution (see § 672.27).*

Response: Providing such an assurance is beyond the authority of the Assistant Administrator. Moreover, it is the position of NOAA that persons committing acts against observers, for which penalties are provided, should be prosecuted. The question as to civil penalties is whether the NOAA has the power to, or should as a matter of policy, prohibit use of observer reports within the NOAA for the purposes of enforcement of violations of the Act by individual vessels or persons.

Aside from scientific research, observers are considered essential to

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count incidental catch of halibut in order to enforce § 672.20(e) of the regulations. This function can only be performed at sea, since halibut is a prohibited species (see § 672.20(d)). Since protection of the halibut resource is an important objective of the FMP, there is no inconsistency in adopting a policy which gives priority to this enforcement objective over others. However, the implications of such a decision require further detailed consideration of the Act and other applicable law. The Assistant Administrator is not prepared to decide this policy matter at this time.

(4) *The phrase in the in-season adjustment provision "groundfish or halibut" should be deleted to provide flexibility to act for reasons relating to other species (see § 672.22(b)).*

Response: The phrase has been retained because groundfish and halibut are the only species about which the FMP provides sufficient information on which to base in-season action. Section 8.2.1 of the FMP indicates that conservation of these stocks is the purpose of the in-season adjustment provision.

(5) *The reporting requirements should be modified to allow the buyers to submit a ADF and G "fish ticket", (see § 672.5).*

Response: This modification has been made. The Assistant Administrator has determined that an option is necessary to protect confidentiality as required by section 303(d) of the Act. He has also determined that additional reporting requirements, applicable to U.S. vessels delivering to foreign processors at sea, are unnecessary because adequate reports will be submitted by the processor and by observers on foreign processing vessels.

(6) *Amend the permit requirements to allow for the fact that the FMP is being implemented in mid-year.*

Response: Any appropriate changes have been made (see § 672.4).

(7) *The section on closure of a fishing area to all domestic fishing when OY is reached (§ 672.20) should be modified to allow some discretion on the part of the Regional Director.*

Response: The section has been rewritten to allow continued longlining for sable fish by U.S. vessels if the sablefish OY has not been reached.

(8) *The section on quarterly allocation of reserve should be made permissive.*

Response: This section has been changed as a result of an amendment to the FMP (43 FR 46349). Comments on new proposed regulations are solicited.

(9) *A new section should be added to make it clear that trawl-caught halibut are prohibited species and should be returned to the sea with a minimum of injury.*

Response: Section 672.20(d) clarifies this point.

C. *New fishing year.* One comment was also received on the proposed regulation to extend the FMP to 1979 (43 FR 34825). The commentor stated that the amendment did not adequately consider the possibility that joint venture arrangements may raise the level of U.S. harvest during 1979.

Response: The FMP was amended on October 6 (43 FR 46349) to establish a level of reserve which takes into account the possibility of increased joint venture harvests. Comments are solicited on these proposed regulations.

II. MODIFICATIONS FROM PROPOSED REGULATIONS

Certain other modifications to the regulations have been made. These modifications generally relate to procedures, and were made for the sake of clarity, procedural fairness to affected parties, and to facilitate enforcement. Minor changes in wording for the sake of clarity are not discussed.

A. *Modifications to section 611.92.* (1) Section 611.92(b)(2) has been modified to be consistent with 50 CFR 611.15. Foreign nations are responsible for requiring vessels fishing for allocations of that nation to cease fishing in a fishing area when an allocation of that nation is reached. When other catch limitations are reached, notification will be issued pursuant to the procedures of § 611.15(c) before fishing is prohibited.

(2) Section 611.92(f) (Reporting Requirements) has been clarified.

(3) Proposed amendments to 50 CFR Part 611, subparts A, B, and G have been deleted because proposed amendments to 50 CFR Part 611, subparts A, B, and G as a whole have been published in the FEDERAL REGISTER for public comment (43 FR 51053; November 2, 1978). The proposed regulations include modifications applicable to vessels of foreign nations fishing for groundfish in the Gulf of Alaska, including new species codes.

Table I of § 611.20 will be issued when this § 611.92 is republished.

B. *Modifications to section 672.* (1) *Format.* The proposed regulations applicable to U.S. vessels have been placed in a new format to ensure clarity and facilitate enforcement. The format was developed after consultation with the Regional officials of NMFS, the Department of State and the U.S. Coast Guard. U.S. fishermen are now able to locate, in a single section of the Code of Federal Regulations, all of the requirements, restrictions and other information applicable to fishing for groundfish in the Gulf of Alaska. Definitions taken from the Act and the proposed regulations, as well as uniform definitions of commonly used terms, have been included in a single subsection. The relation of the section to other law is explained. Permit requirements are made more precise. Applicable prohibitions and sanctions are stated, and provisions to facilitate enforcement are included. With the exception of § 672.20(c) which is reserved for insertion of the provision relating to specification and apportionment of reserves (amendment two to the FMP), the reserved sections are for types of management measures which are not yet applicable to the Gulf of Alaska groundfish fishery (e.g., vessel identification requirements and landing limitations).

(2) *Prohibited species (§ 672.20(d)).* This section was added to clarify the relationship of the regulations in this section to other applicable law. In contrast to vessels of foreign nations which, under the Act, may not harvest any fish for which the nation does not have an allocation, vessels of the United States may harvest any fish unless prohibited by the Act or other applicable law. Section 672.20(d) was added to emphasize this distinction and to assure that fishermen are aware that halibut and Tanner crab are regulated by other applicable law. Fishermen or vessels subject to the laws of the State of Alaska may be further restricted while fishing for groundfish. (See, for example, Alaska law regulating Steelhead trout and salmon).

(3) *Closure procedures (§ 672.22(a)).* This section was modified to assure that adequate notice is provided before fishing is prohibited during the season. No comments were received on inadequacy of the notice procedures in this section. A requirement that fishermen appoint on-shore agents, a possibility raised in the preamble to the proposed regulations, was therefore considered unnecessary.

(4) *In-season adjustments (§ 672.22(b)).* This section has been redrafted to assure that the public has sufficient opportunity to comment on actions taken during the fishing season. No comments were received on the procedures proposed to implement this section.

The purpose of this provision is to implement national standards 1, 3, and 6 (section 301(a) (1), (3), and (6) of the Act). The provision is designed to: (a) provide a mechanism to prevent overfishing should a determination be made that the specification of optimum yield was overestimated; (b) allow coordination with the State of Alaska, to the extent practicable, in conservation measures to protect halibut or groundfish stocks; and (c) provide management flexibility in situation where variations in availability of groundfish (or halibut) stocks, or other contingencies make in-season action necessary to protect the resource. The regulation envisions that action will be taken by amendment of section 672 (under the authority of section 305(g) of the Act), but will not require amendment of the FMP itself, since action under the in-season adjustment provision is a management measure which was authorized by the FMP and implemented pursuant to the procedures of section 305 (a) and (c) of the Act.

It was determined that the provision could be implemented most effectively if authority to take action was redelegated to the Regional Director. This redelegation has been made, and the Assistant Administrator has retained the right to be informed before action is taken.

It was also determined that procedures for public participation in the decisionmaking process should be clearly delineated, so that parties who wish to comment on the action will know where and how to do so. The section provides for compliance with the procedures of section 553 of title 5 of the United States Code (the Administrative Procedure Act), and also requires a 15-day comment period, after action is taken, in situations where, for good cause, no opportunity for advance public comment is provided. The data on which the action is based will be available to the public. If comments are received, the action will be reconsidered at the end of the fifteen day period.

The in-season adjustment provision is a management technique which has not been used in other fishery management plans. It is anticipated that the provision may be refined as the Council and NOAA gain experience in its operation. In section 9 of the FMP the Council indicates its intention to maintain a continuing review of the fisheries managed under the FMP, and to conduct public hearings "• • • to hear testimony on the effectiveness of the management plans and requests for change." Continuing public input, and Council reevaluation, of this and other management measures is clearly contemplated.

C. *Timing of implementation.* Section 305(c) of the Act requires that "• • • to the extent practicable, • • • regulations[s] shall be put into effect in a manner which does not disrupt the regular fishing season • • •." The preamble to the proposed regulations solicited practical suggestions for timing of implementation. The following comments were received:

1. The new specifications of OY and TALFF, and the addition of new regulations make efficient planning impossible. Implement January 1, 1979.

2. Midseason closure of Davidson Bank requires major readjustment in fishing plans.

3. Foreign fisheries operate on the basis of carefully developed trawl plans governing each type of fishery and individual vessel, therefore midseason changes are disruptive and would cause economic difficulties.

4. Because the allocations by fishing area would not be proportional to relative (biological) productivity, operations in some would be terminated because of catch conditions during the first part of the season.

5. Because vessels are at sea it will be difficult to provide guidance to the fleet to assure compliance.

6. Article IV of the United States-Japanese GIFA provides for "adjustments as may be necessitated by unforeseen circumstances affecting the stocks"; there are no "unforseen circumstances affecting the stocks" which would justify changes in regulations.

After consideration of these comments and review of catch reports, which indicated that in-season implementation would result in the closure of several fishing areas to vessels of several nations, the conclusion was reached that the most reasonable solution would be to implement the FMP for a new fishing year. This approach was chosen for the following reasons: (a) The objections raised by the comments would be met and foreign nations would have ample time to prepare for implementation; (b) the fishing year could begin during that period of the year when fishing activity was lowest; (c) beginning "fishing years" at various times throughout the calendar year more evenly distributes the administrative workload of the NOAA and the Council; and (d) several management measures in the FMP became operative in November. A fishing year beginning at that time would make the regulations more understandable.

The Council concurred in this conclusion. After reevaluating available data, the FMP was amended to extend specifications of OY, TALFF, domestic capacity and reserve through October 31, 1979. A fishing year from November to November was contemplated.

Implementation will again be delayed because of amendment two (see heading "History of the Plan" of this preamble). It is essential that the FMP and amendments one and two be implemented together to avoid the uncertainty and disruption which would result from changing the specifications of OY, TALFF and reserve after the first month of the fishing year. The following implementation schedule will therefore be followed:

(a) The regulations published below are effective December 1, 1978;

(b) Before December 1, 1978, the regulations published below will be reprinted, incorporating final regulations, implementing amendments 2 and 3;

(c) All sections of the reprinted final regulations will be effective on December 1, 1978 (the 30-day "cooling off period" required by 5 U.S.C. section 553 for amendment 2 will be reduced for the reasons stated in this preamble), except the sections implementing amendment 3 (see § 611.92(b) table 1, note 3 and § 611.92(b)(2)(ii)(D)), which will be effective on January 1, 1979.

The Assistant Administrator for Fisheries, under delegation of authority from the Secretary of Commerce, has determined that these regulations and the FMP for groundfish of the Gulf of Alaska are consistent with the national standards, the other provisions of the act, and other applicable law and, do not require a regulatory impact analysis under Executive Order 12044. An environmental impact statement for this FMP has been filed with the Environmental Protection Agency.

(16 U.S.C. 1801 et seq.)

Signed at Washington, D.C., this 7th day of November 1978.

WINFRED H. MEIBOHM,
Acting Executive Director, National Marine Fisheries Service.

50 CFR 611, Subpart G is amended. Section 611.92 is amended to read as follows:

§ 611.92 Gulf of Alaska groundfish fishery.

(a) *Purpose and scope.* (1) This section regulates foreign fishing for groundfish in the Gulf of Alaska, which includes that portion of the North Pacific Ocean, exclusive of the Bering Sea, between 132°40' W. longitude and 170°00' W. longitude.

(2) For regulations governing fishing for groundfish in the Gulf of Alaska by vessels of the United States, see 50 CFR Part 672.

(3) Unless any subsection of this section states otherwise, the management measures in this section shall be effective on December 1, 1978, and shall remain in effect until amended, modified, or rescinded. The specifications of optimum yield (OY), total allowable level of foreign fishing, and reserves shall be effective from December 1, 1978, through October 31, 1979, unless amended, revised or modified.

(b) *Authorized fishery.*—(1) *TALFF's, national allocations and reserves.* The total allowable level of foreign fishing (TALFF) and the amounts of fish set aside as a reserve in each fishing area are set forth in table I of this section.

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TABLE I.—*Gulf of Alaska Groundfish Fishery: TALFF and Reserve [1] by Species and Fishing Area for 1978–79*

[Specifications of TALFF and Reserve—Reserved]

Species		FISHING AREAS [2] Shumagin	Chirikof	Kodiak	Yakutat	Southeast	Total
Pollock	TALFF						
	Reserve						
Pacific cod [3]	TALFF						
	Reserve						
Flounders	TALFF						
	Reserve						
Pacific Ocean perch (POP)	TALFF						
	Reserve						
Other rockfishes [4]	TALFF						
	Reserve						
Sablefish	TALFF						
	Reserve			[Reserved]			
Atka Mackerel	TALFF						
	Reserve						
Squid	TALFF						
	Reserve						
Other species [5]	TALFF						
	Reserve						

[1] The TALFF's specified in this table may be modified during the year if reserves are apportioned to TALFF.
[2] See fig. 3 of app. II to § 611.9 for description of fishing areas.
[3] Of the total Pacific cod TALFF (including any apportioned reserve), only [reserved] metric tons may be caught west of 157° W. longitude.
[4] The category "other rockfishes" includes all rockfishes other than Pacific Ocean perch.
[5] The category "other species" includes all species of fish except (A) the other fish listed in the table; and (B) shrimp, scallops, salmon, steelhead trout, Pacific halibut, herring, and Continental Shelf fishery resources.

(i) In any fishing area where the TALFF for any species listed in table I of this section is "0" (zero), any catch of that species in that fishing area shall be considered catch of a "prohibited species" and treated in accordance with the provisions of § 611.13.

(ii) Reserves. [Reserved]

(2) *Fishing permitted.* (i) The catching and retention of any groundfish for which a nation has an allocation is permitted, except in the following circumstances:

(A) When vessels of a nation have caught the amount of the allocation of that nation for any groundfish species (or species group, e.g., "other rockfish") in any fishing area, fishing for groundfish in that fishing area by vessels of that nation is prohibited, even if (*1*) allocations of other species for that nation in that fishing area have not been reached, or (*2*) the nation has not received a notice issued pursuant to § 611.15(c) prohibiting fishing by vessels of that nation in that fishing area; or

(B) On the effective date of a notice of closure issued by the regional director pursuant to the procedures of § 611.15(c), fishing by vessels of that nation is prohibited for the groundfish species (or species groups), in the fishing areas and during the periods stated in the notice; or

(C) As otherwise prohibited by this section.

(ii) The regional director shall issue a notice of closure, pursuant to the procedures of § 611.15(c), prohibiting fishing for the applicable species of groundfish, in the applicable fishing area during the applicable periods, as listed in paragraphs (b)(2)(ii) (A) through (E) below, when he determines that one or more of the following catch limitations will be reached:

(A) Optimum yield for any groundfish species, or species group, in a fishing area: The regional director shall issue a notice prohibiting fishing using trawl gear for groundfish in that fishing area by vessels subject to this section, until November 1, except that if the optimum yield for sablefish or Pacific cod in a fishing area will be reached, the regional director shall prohibit fishing for groundfish in that fishing area by all vessels subject to this section until November 1 (see table I of 50 CFR 672 for OY amounts by fishing area);

(B) Total allowable level of foreign fishing (TALFF) for any groundfish species, or species group in a fishing area: The regional director shall issue a notice prohibiting fishing using trawl gear for groundfish in that fishing area, except that if the TALFF for sablefish or Pacific cod in a fishing area will be reached, the regional director shall prohibit fishing for groundfish in that fishing area by all vessels subject to this section until November 1.

(C) The allocation of a nation for any groundfish species, or species group, in a fishing area: The regional director shall issue a notice prohibiting fishing for groundfish in that fishing area by all vessels of that nation until November 1.

(D) [Reserved] metric tons of Pacific cod caught west of 157° W. longitude by vessels subject to this section: The regional director shall issue a notice prohibiting fishing for groundfish in the area west of 157° W. longitude, by all vessels subject to this section until November 1.

(E) 25 (twenty-five) percent of the total allocation (all groundfish species) of a nation caught during the period between December 1 and June 1: The regional director shall issue a notice prohibiting fishing for groundfish in the Gulf of Alaska by all vessels of that nation until June 1.

(iii) When a notice has been issued pursuant to this subsection prohibiting fishing, vessels of a nation subject to this section may resume fishing in a fishing area: (*1*) On the effective date of a notice issued pursuant to § 611.15(c) rescinding the notice of closure previously issued; or (*2*) when the time period stated in the notice of closure expires.

(c) *Open areas.* Except as prohibited in paragraph (d) below, foreign fishing for groundfish is permitted in the Gulf of Alaska beyond 12 nautical miles from the baseline used to measure the U.S. territorial sea.

(d) *Closed areas.*—(1) *All fishing.* Foreign fishing for groundfish is prohibited in the following areas:

(i) Cape Edgecumbe-Salisbury Sound: Between 56°53′ N. latitude and 57°24′ N. latitude east of 137°00′ W. longitude.

(ii) Cross Sound Gully: Between 57°50′ N. latitude and 58°12′ N. latitude east of 137°25′ W. longitude.

(iii) Fairweather Gully: The area bounded by rhumb lines connecting the following coordinates in the order listed:

North latitude	*West longitude*
58°28′	140°00′
58°48′	138°50′
58°10′	139°11′
58°28′	140°00′

(iv) "Davidson Bank": Between 163°04′ W. longitude and 166°00′ W. longitude north of 53°00′ N. latitude.

(2) *Fishing with trawl gear.* Trawling for groundfish by vessels regulated by this section is prohibited in the following areas during the periods specified:

(i) 140° W. longitude to 147° W. longitude from November 1 to February 16.

(ii) 147° W. longitude to 157° W. longitude from February 16 to June 1.

(iii) Six "Kodiak Gear Areas" from August 10 to June 1. These areas, bounded respectively by rhumb lines connecting in each of the following groups the coordinates in the order listed, are described as follows:

(A) *North latitude*	*West longitude*
57°15′	154°51′
56°57′	154°34′
56°21′	155°40′
56°26′	155°55′
57°15′	154°51′
(B) *North latitude*	***West longitude***
56°27′	154°06′
55°46′	155°27′
55°40′	155°17′
55°48′	155°00′
55°54′	154°55′
56°03′	154°36′
56°03′	153°45′
56°30′	153°45′
56°30′	153°49′
58°27′	154°06′
(C) *North latitude*	***West longitude***
56°30′	153°49′
56°30′	153°00′
56°44′	153°00′
56°57′	153°15′
56°45′	153°45′
56°30′	153°49′
(D) *North latitude*	***West longitude***
57°05′	152°52′
56°54′	152°52′
56°46′	152°37′
56°46′	152°20′
57°19′	152°20′
57°05′	152°52′
(E) *North latitude*	***West longitude***
57°35′	152°03′
57°11′	151°14′
57°19′	150°57′
57°48′	152°00′
57°35′	152°03′
(F) *North latitude*	***West longitude***
58°00′	152°00′
58°00′	150°00′
58°12′	150°00′
58°19′	151°29′
58°00′	152°00′

(iv) Three "Kodiak Halibut areas" from 5 days prior to 5 days after the first opening of the U.S. halibut fishing season, if the first opening of that fishing season occurs after May 26 (as established by regulations of the International Pacific Halibut Commission).

(A) The three "Kodiak Halibut areas" bounded respectively by rhumb lines, are described as follows:

(*1*) 58°30′ N. lat. to 59°30′ Nat. lat., between 147°40′ W. long. and 150°20′ W. long.

(*2*) 57°40′ N. lat to 58°05′ N. lat., between 148°50′ W. long. and 150°30′ W. long.

(*3*) 55°30′ N. lat. to 56°25′ N. lat., between 155°45′ W. long. and 156°30′ W. long.

(B) The regional director shall give notification of the first opening date of the U.S. halibut fishing season to the designated representative of each foreign nation at least 48 hours before the U.S. halibut fishing season first opens.

(3) *Fishing with longline gear.* Foreign longline fishing for groundfish is prohibited in the following areas during the periods specified (for the purpose of this section 611.92, longline means a stationary, buoyed and anchored line with hooks or pots attached, or the taking of fish by means of such a device.):

(i) East of 140° W. longitude, at all times;

(ii) The area which is both landward of the 500 meter depth contour and between 140° W. longitude and 157° W. longitude, at all times;

(iii) The area which is both landward of the 500 meter depth contour and west of 157° W. longitude, at all times, except for longline fishing for Pacific cod; and

(iv) The area which is both landward of the 500 meter depth contour and west of 157° W. longitude, during the halibut fishing seasons as established by regulations of the International Pacific Halibut Commission. The regional director shall give notification of the opening and closing dates of the U.S. halibut fishing seasons to the designated representative of each foreign nation, at least 48 hours before the opening and closing dates of the U.S. halibut fishing seasons.

(4) Time periods begin and end at 0800 g.m.t. on the dates specified.

(e) *Gear restrictions.*—(1) *Vessels using trawl gear.* During the period from December 1 to June 1, vessels subject to this section shall not use trawls other than pelagic trawls (trawls in which neither the net nor the otter boards operate in contact with the seabed) equipped with recording net-sonde devices functioning properly during each tow.

(i) The footrope of the net shall not be in contact with the seabed for more than 10 percent of any tow, as indicated by the net-sonde readout.

(ii) Vessels subject to this section shall not attach to a pelagic trawl any protective device (such as chafing gear, rollers, or bobbins) which would make it possible to fish on the seabed.

(2) *Vessels using longline gear.* Vessels subject to this section shall not use gear other than longline gear when conducting a directed fishery for:

(i) Sablefish; or

(ii) Pacific cod in the area which is both west of 157° west longitude and landward of the 500 meter depth contour.

(f) *Additional statistical report—Annual.* In addition to the requirements of § 611.9 each nation whose fishing vessels fish subject to this section shall submit a written annual report to the regional director setting forth catch and effort statistics regarding fishing activities conducted under this section during the period from November 1 through October 31, by March 31 of the following year (e.g., statistics gathered between Nov. 1, 1978, and Oct. 31, 1979, must be submitted by Mar. 31, 1980).

(1) Foreign vessels fishing with trawl gear shall report:

(i) Effort in hours trawled and number of days fished, by vessel class, by gear type, by month, by ½° (lat.) x 1° (long.) fishing area;

(ii) Catch in metric tons, by vessel class, by gear type, by month, by ½° (lat.) x 1° (long.) fishing area, by the following species categories: Yellowfin sole, rock sole, flathead sole, arrowtooth flounder, other flounders, Pacific Ocean perch, other rockfish, Pacific cod, sablefish (blackcod), walleye (Alaska) pollock, Atka mackerel, squid, any other species taken in excess of 1,000 metric tons, and other fishes.

(2) Foreign vessels fishing with longline gear shall report:

(i) Effort, in number of longline units (300 fathoms of longline or groundline per unit) and number of hooks per unit, number of pots, duration of soaking time for longlines and pots, and number of days fished, by vessel class, by gear type, by month, by ½° (lat.) x 1° (long.) fishing areas; and

(ii) Catch in metric tons, by vessel class, by gear type, by month, by ½° (lat.) x 1° (long.) fishing area, by the species categories listed in subparagraph (1)(ii) of this subsection.

§ 611.94 [Superseded]

Section 611.94 is superseded by § 611.92. Fishing operations formerly regulated by § 611.94 are included in § 611.92.

Title 50, a new Part 672 is added as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

Subpart A—General

Sec.
672.1 Purpose and scope.
672.2 Definitions.

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672.3 Relation to other laws.
672.4 Permits.
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AUTHORITY: 16 U.S.C. 1801, et seq.

Subpart A—General

§ 672.1 Purpose and scope.

(a) Regulations in this part govern fishing for groundfish by vessels of the United States within that portion of the Gulf of Alsaka over which the United States exercises exclusive fishery management authority.

(b) For regulations governing fishing in the Gulf of Alaska groundfish fishery by fishing vessels other than vessels of the United States, see 50 CFR 611.92.

(c) These regulations implement the Gulf of Alaska groundfish fishery management plan developed by the North Pacific Fishery Management Council.

§ 672.2 Definitions.

In addition to the definitions in the Act, and unless the context requires otherwise, the terms used in this part shall have the following meanings (some definitions in the Act have been repeated here to aid understanding of the regulations):

Act means the Fishery Conservation and Management Act of 1976, 16 U.S.C. 1801-1882, as amended.

A.D.F. & G. means the Alaska Department of Fish and Game.

Assistant Administrator means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, or an individual to whom appropriate authority has been delegated.

Authorized officer means: (1) Any commissioned, warrant, or petty officer of the Coast Guard;

(2) Any certified enforcement or special agent of the National Marine Fisheries Service;

(3) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Commandant of the Coast Guard to enforce the provisions of the Act; or

(4) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (1) of this definition.

Fishery conservation zone (FCZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal states to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishing means any activity, other than scientific research activity conducted by a scientific research vessel, which involves:

(1) The catching, taking, or harvesting of fish;

(2) The attempted catching, taking, or harvesting of fish;

(3) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(4) Any operations at sea in support of, or in preparation for, any activity described in subparagraphs (1), (2), or (3) above.

Fishing area means any area of the FCZ seaward of the State of Alaska, previously established under the International North Pacific Fisheries Commission for the general purposes of research, reporting and/or regulation. The five fishing areas in the Gulf of Alaska are described as follows:

Area and Location
Shumagin between 170-159° West Longitude.
Chirikof between 159-154° West Longitude.
Kodiak between 154-147° West Longitude.
Yakutat between 147-137° West Longitude.
Southeastern between 137-132°40' West Longitude.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for: (1) Fishing, or (2) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation or processing.

Groundfish means pollock, cod, any species of flounder and sole, Pacific Ocean perch, other rockfish, sablefish, Atka mackerel, squid, and other finfish, except salmon, steelhead trout, and Pacific halibut. The scientific names of these species are as follows:

Pollock means *Theragra chalcogrammus.*
Cod means *Gadus macrocephalus.*
Arrowtooth flounder means *Atheresthes stomias.*
Other flounder means *Pleuronectiformes* (order) not specifically defined.
Rock sole means *Lepidopsetta bilineata.*
Flathead sole means *Hippoglossoides elassodon.*
Pacific ocean perch means *Sebastes alutus.*
Atka mackerel means *Pleurogrammus monopterygius.*
Other rockfish means *Scorpaenidae* (family) not specifically defined.
Sablefish means *Anoplopoma fimbria.*
Squid means *sepioid* and *teuthoid* squid.
Salmon means of the family *Salmonidae.*
Pacific halibut means *Hippoglossus stenolepis.*
Steelhead trout means *Salmo gairdneri.*

Gulf of Alaska means that portion of the fishery conservation zone in the North Pacific Ocean exclusive of the Bering Sea, between 132°40' W. longitude and 170°00' W. longitude seaward of the State of Alaska.

Landing means off-loading fish.

Longline means a stationary, buoyed, and anchored line with hooks or pots attached, or the taking of fish by means of such a device.

Off-bottom trawl means a trawl in which the otter boards may be in contact with the seabed but the ground rope of the net remains above the seabed.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means:

(1) Any person who owns that vessel in whole or in part;

(2) Any charterer of the vessel, whether bareboat, time, or voyage;

(3) Any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel; or

(4) Any agent designated as such by any person in subparagraph (1), (2), or (3).

Person means any individual (whether or not a citizen or national of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Regional director means Director, Alaska Region, National Marine Fisheries Service, Box 1668, Juneau, Alaska 99802, or an individual to whom appropriate authority has been delegated.

Vessel of the United States means: (1) A vessel documented or numbered by the Coast Guard under U.S. law; or

(2) A vessel, under 5 net tons, which is registered under the laws of any State.

§ 672.3 Relation to other laws.

(a) *Federal law.* For other regulations concerning the conservation of halibut see the regulations of the International Pacific Halibut Commission, or any regulations implementing any halibut fishery management plan approved under the Act. For other regulations concerning fishing for tanner crab see 50 CFR Part 671.

(b) *State law.* Certain data collection and enforcement activities under this part will be performed by personnel of the State of Alaska under the terms of an agreement with NOAA/NMFS and the U.S. Coast Guard.

(c) *Delegation.* The Assistant Administrator has delegated to the regional director authority to take actions pursuant to § 672.22 of this part, and to apportion reserves pursuant to § 672.20(c) of this part.

§ 672.4 Permits.

(a) *General.* No vessel of the United States may fish for groundfish in the Gulf of Alaska without first obtaining a permit issued under this Part. Permits shall be issued without charge.

(b) *Application.* An applicant may obtain a permit by submitting to the regional director a written request containing the following information:

(1) The applicant's name, mailing address, and telephone number;

(2) The name of the vessel;

(3) The vessel's U.S. Coast Guard documentation number or State registration number;

(4) The home port of the vessel;

(5) The type of fishing gear to be used; and

(6) The signature of the applicant.

(c) *Issuance.* (1) Upon receipt of a properly completed application, the regional director shall issue a permit.

(2) Upon receipt of an incomplete or improperly completed application, the regional director shall notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 10 days following the date of notification, the application shall be considered abandoned.

(d) *Notification of change.* Any person who has applied for and received a permit under this section shall give written notification of any change in the information provided under paragraph (b) of this section to the regional director within 30 days of the date of that change.

(e) *Duration.* A permit shall continue in full force and effect until it is revoked, suspended, or modified pursuant to 50 CFR Part 621 (Civil procedures).

(f) *Alteration.* No person shall alter, erase, or mutilate any permit. Any permit that has been intentionally altered, erased, or mutilated shall be invalid.

(g) *Transfer.* Permits issued under this part are not transferable or assignable. A permit shall be valid only for the vessel for which it is issued.

(h) *Inspection.* Any permit issued under this part must be carried aboard the vessel whenever the vessel is fishing for groundfish. The permit shall be presented for inspection upon request of any authorized officer.

(i) *Sanctions.* Subpart D of 50 CFR 621 (Civil procedures) shall govern the imposition of permit sanctions against a permit issued under this part. As specified in that subpart D, a permit may be revoked, modified, or suspended if the permitted vessel is used in the commission of an offense prohibited by the Act or these regulations; or if a civil penalty or criminal fine imposed under the Act and pertaining to a permitted vessel is not paid.

§ 672.5 Reporting requirements.

(a) The operator of any fishing vessel regulated by this part whose port of landing is in the State of Alaska shall, for each sale or delivery of groundfish, be responsible for the submission of an accurately completed State of Alaska fish ticket.

(b) At the election of the vessel operator, the fish ticket shall be either: (1) Submitted by the vessel operator directly to the A.D.F. & G. within 72 hours after such fish are sold or delivered; or (2) prepared, at the request of the operator, by the purchaser (i.e., any person who receives fish for a commercial purpose from a fishing vessel subject to this part) and submitted by the purchaser to the A.D.F. & G. within 72 hours after such fish are received by the purchaser. (A.D.F. & G. address: Director, Commercial Fish Division, Alaska Department of Fish and Game Headquarters, Subport Building, Juneau, Alaska 99801.)

(c) In addition to the requirements of paragraphs (a) and (b) of this section, each operator (or purchaser, if the fish ticket is submitted in accordance with paragraph (b)(2)) shall also accurately state on each such fish ticket: (1) Total time fished; (2) total number of hauls; and (3) quantity and type of gear used.

(d) The operator of any vessel of the United States subject to this part whose port of landing is in the United States but outside the State of Alaska shall comply with the provisions of this section by submitting a completed Alaska fish ticket, or an equivalent document containing all of the information required on an Alaska fish ticket, to the A.D.F. & G. within 72 hours after the date of each sale or delivery of any species of fish covered by these regulations. (For the address of the A.D.F. & G., see § 672.5(b).) (Sample alternative document reserved.)

§ 672.6 [Reserved]

§ 672.7 General prohibitions.

It shall be unlawful for any person to:

(a) Fish for groundfish with a vessel of the United States which does not have aboard a valid permit issued pursuant to this part;

(b) Possess, have custody or control of, ship, transport, import, export, offer for sale, sell, or purchase any fish taken or retained in violation of the Act, this part, or any other regulation or permit issued under the Act;

(c) Refuse to permit an authorized officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this Act, this part, or any other regulation or permit issued under the Act;

(d) Forcibly assault, resist, oppose, impede, intimidate, or interfere with any authorized officer in the conduct of any search or inspection described in paragraph (c) of this section;

(e) Resist a lawful arrest for any act prohibited by this part;

(f) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person knowing that such other person has committed any act prohibited by this part;

(g) Forcibly assault, resist, impede, intimidate, or interfere with an observer placed aboard a fishing vessel pursuant to this part;

(h) Violate any other provision of this part, the Act, or any regulation or permit issued under the Act.

§ 672.8 Enforcement.

(a) *General.* The owner or operator of any fishing vessel subject to these regulations shall immediately comply with instructions issued by an authorized officer to facilitate safe boarding and inspection of the fishing vessel, its gear, equipment, and catch for purposes of enforcing the Act and this part.

(b) *Signals.* Upon being approached by a Coast Guard cutter or aircraft, or other vessel or aircraft authorized to enforce the Act, the operator of a fishing vessel shall be alert for signals conveying enforcement instructions. The following signals extracted from the International Code of Signals are among those which may be used:

(1) "L" meaning "You should stop your vessel instantly,"

(2) "SQ3" meaning "You should stop or heave to; I am going to board you," and

(3) "AA AA AA etc." which is the call to an unknown station.

(c) *Boarding.* A vessel signaled to stop or heave to for boarding shall:

(1) Stop immediately and lay to or maneuver in such a way as to permit the authorized officer and his party to come aboard;

(2) If requested, provide a safe ladder for the authorized officer and his party;

(3) When necessary to facilitate the boarding, provide a man rope, safety line, and illumination for any ladder; and

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(4) Take such other actions as necessary to insure the safety of the authorized officer and his party and to facilitate the boarding.

§ 672.9 Penalties.

Any person or fishing vessel found to be in violation of this part will be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Act, and 50 CFR Parts 620 (Citations) and 621 (Civil Procedures), and other applicable law.

Subpart B—Management Measures

§ 672.20 General limitations.

(a) *Optimum yield.* (1) The optimum yield (OY) and reserves for species regulated under this part in the five fishing areas are set forth in table I. These specifications of OY and reserves are effective for a fishing year beginning on December 1, 1978, and ending on October 31, 1979. The OY of each species in table I is the maximum amount of that species which may be caught or harvested during the fishing year by vessels of the United States and foreign nations in each fishing area.

TABLE I.—*Optimum Yield and Reserves*

[Reserved amounts; Reserved]

Species		FISHING AREAS Shumagin	Chirikof	Kodiak	Yakutat	Southeast	Total
Pollock	OY	57,000	54,400	40,800	12,500	4,100	168,000
	Reserve						
Cod	OY	9,600	4,100	15,300	4,300	1,500	34,800
	Reserve						
Flounder	OY	10,400	2,700	12,000	6,400	2,000	33,500
	Reserve						
Pacific Ocean perch (POP)	OY	2,700	2,700	5,200	7,900	6,500	25,000
	Reserve						
Other rockfish	OY	300	200	600	3,400	3,100	7,600
	Reserve						
Sablefish	OY	2,100	1,400	2,400	3,400	3,700	13,000
	Reserve						
Atka mackerel	OY	4,400	3,600	15,800	1,000	0	24,800
	Reserve						
Squid	OY	400	400	400	400	400	2,000
	Reserve						
Other species*	OY	4,400	3,800	5,000	2,100	1,100	16,200
	Reserve						

* Includes all stocks of finfish except: (1) those listed above; and (2) salmon, steelhead trout and Pacific halibut.

(b) *Field orders.* (1) If the Regional Director determines that the OY for any species in any fishing area in table I of paragraph (a) will be reached, he shall issue a field order pursuant to § 672.22(a) prohibiting fishing for all species in that fishing area, except that the Regional Director shall not prohibit, under this section, fishing for sablefish by fishing vessels using longline gear unless he determines that the OY for sablefish in that fishing area will be reached.

(2) Fishing for species of groundfish by vessels of the United States in the applicable fishing area contrary to any field order issued under this paragraph is prohibited from the effective date of such field order except that fishing for sablefish with longline gear is not prohibited until the effective date of a field order prohibiting longline fishing for sablefish in that fishing area.

(c) [Reserved]

(d) *Prohibited species.* (1) Prohibited species, for the purpose of this part, means any species of fish caught while fishing for groundfish, the rentention of which is prohibited by other applicable law, including regulations implementing any fishery management plan for that species.

(i) Any catch of halibut by fishing vessels regulated by this part is catch of a prohibited species, unless retention is authorized by the regulations of the International Pacific Halibut Commission.

(ii) Any catch of Tanner crab (*C. bairdi* or *C. opilio*) by fishing vessels regulated by this part is catch of a prohibited species after the effective date of regulations implementing the Fishery Management Plan for Tanner crab off Alaska (see 50 CFR 671).

(2) Each vessel subject to this part shall minimize its catch of prohibited species.

(3) Each vessel shall sort its catch as soon as possible after retrieval of the catch and, after allowing for sampling by an observer (if any), shall return any catch of prohibited species or parts thereof to the sea immediately with a minimum of injury regardless of its condition.

(4) It shall be a rebuttable presumption that any prohibited species found onboard a fishing vessel regulated by this part was caught and retained in violation of this part.

(5) In any fishing area where the OY in table I of paragraph (a) for any species is "0" (zero), any catch of that species by a vessel regulated by this part in that fishing area shall be considered catch of a "prohibited species" and shall be treated in accordance with this paragraph.

(e) *Halibut.* (1) If, during the period between December 1 and May 31, the Regional Director determines that the estimated total catch of halibut in any fishing area by vessels regulated by this part will reach the amount listed below, he shall issue a field order pursuant to § 672.22(a) prohibiting, until June 1, groundfish fishing with trawl gear in that fishing area by vessels regulated by this part.

Fishing Area and Catch Amount

Shumagin—29 metric tons (mt).
Chirikof—18 mt.
Kodiak—34 mt.
Yakutat—17 mt.
Southeast—14 mt.

(2) Fishing for groundfish with trawl gear by vessels regulated by this Part in the applicable fishing area is prohibited from the effective date of any field order issued pursuant to this paragraph, until June 1.

§ 672.21 [Reserved]

§ 672.22 Time and area closures.

(a) *Field orders.* (1) Field orders issued by the Regional Director under this part shall include the following information: (i) A description of the area to be opened or closed; (ii) the effective date and any termination date of such opening or closure; and (iii) the reason for the opening or closure.

(2) No field order issued under this paragraph shall be effective until:

(i) It is filed for publication in the FEDERAL REGISTER;

(ii) It has been posted and otherwise made available to the public, in accordance with procedures customarily used by the A.D.F. & G. for the posting and publicizing of similar notices of closure, for 48 hours prior to its effective date; and

(iii) It has been broadcast at those time intervals, channels and frequencies customarily used by the A.D.F. & G. to broadcast similar notices of closure, for 48 hours prior to its effective date.

(3) Field orders issued pursuant to this section shall remain in effect until the earlier of the following dates:

(i) Any expiration date stated in the field order; or

(ii) The effective date of any field order which modifies, rescinds, or supercedes the initial field order.

(b) *Inseason adjustments.* (1) *General.* The Regional Director may, following consultation with the A.D.F. & G., prohibit fishing by vessels regulated by this part, for any species of groundfish in any portion of the Gulf of Alaska during the fishing year.

(2) *Determinations.* Any adjustment under this paragraph shall be based on a determination by the Regional Director that: (i) The condition of any groundfish or halibut stock in any portion of the Gulf of Alaska is substantially different from the condition anticipated at the beginning of the fishing year, and (ii) such differences reasonably support the need for inseason conservation measures to protect groundfish or halibut stocks.

(3) *Data.* Fishery and observer data reported inseason which relates to one or more of the following factors may be considered in making this determination:

(i) The effect of overall fishing effort within a fishing area;

(ii) Catch per unit of effort and rate of harvest;

(iii) Relative abundance of stocks within the area;

(iv) Amount of halibut being caught;

(v) Condition of stocks within the area; and

(vi) Any other factors relevant to the conservation and management of the groundfish or halibut resource.

(4) *Procedure.* (i) The Regional Director shall publish proposed adjustments in the FEDERAL REGISTER for public comment before they are made final, unless the Regional Director finds for good cause that such notice and public procedure are impracticable, unnecessary, or contrary to the public interest.

(ii) If the Regional Director decides, for good cause, that an adjustment is to be made without affording a prior oportunity for public comment, public comments on the necessity for, and extent of, the adjustment shall be received by the Regional Director for a period of 15 days after the effective date of the field order. (Address: Director, Alaska Region, National Marine Fisheries Service, Box 1668, Juneau, Alaska 99802.)

(iii) During any such 15-day period, the Regional Director shall make available for public inspection, during business hours, the aggregate data upon which an adjustment was based. (Address: National Marine Fisheries Service, Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska 99802.)

(iv) If comments are received during the 15-day period, the Regional Director shall reconsider the necessity for the adjustment and, as soon as practicable after that reconsideration, shall either: (A) publish in the FEDERAL REGISTER a notice of continued effectiveness of the adjustment, responding to comments received; or (B) modify or rescind the adjustment.

(5) *Notice of adjustments.* The Regional Director shall give notice of inseason adjustments by issuance of a field order in accordance with the procedures in paragraph (a) of this section.

(6) *Optimum yield.* No action which has the effect of raising the optimum yield for any species as specified in table I of § 672.20(a) is authorized under this paragraph.

(c) *Prohibition.* Any fishing contrary to a field order issued under this section is prohibited.

§ 672.23 [Reserved]

§ 672.24 Gear Limitations.

(a) *Trawl.* During the period from December 1 through May 31, only off-bottom trawls may be used by fishing vessels subject to this Part.

(b) [Reserved]

§ 672.25 Effort limitations.

The duration of individual tows of fishing vessels subject to this part using off-bottom trawls shall not exceed 1 hour.

§ 672.26 [Reserved]

§ 672.27 Observers.

All fishing vessels subject to this part must, when so requested by the Regional Director, take aboard an observer.

[FR Doc. 78-31958 Filed 11-13-78; 8:45 am]

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proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

[3410-08-M]

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

[7 CFR Part 401]

PROPOSED SOYBEAN ENDORSEMENT

AGENCY: Federal Crop Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: This notice proposes a revision of the regulations for insuring soybeans effective with the 1979 crop year to incorporate a previous amendment; amend the harvested guarantee; provide for more than one level of coverage on soybeans; and extend the end of the insurance period from December 10 to December 20 in certain States to conform with current farming practices regarding harvest period.

DATE: Written comments, data, and opinions must be submitted by December 4, 1978 to be sure of consideration.

ADDRESS: Written comments on the proposed rule must be sent to James D. Deal, Manager, Federal Crop Insurance Corporation, Room 4096 South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

SUPPLEMENTARY INFORMATION: Under the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), the Federal Crop Insurance Corporation proposes to revise and reissue the Soybean Endorsement as found in 7 CFR 401.134 (33 FR 8264, June 4, 1968), to include an amendment providing a formula for the downward adjustment in the production of soybeans to be counted because of poor quality due to insured causes which became effective for the 1975 crop year (39 FR 32127, September 5, 1974). In addition, the revised endorsement will contain a provision that the harvested guarantee will be shown on the actuarial table on file in the office for the county and that such guarantee will be reduced for any unharvested acreage. The current endorsement provides that the production guarantee as shown on the actuarial table shall be increased by 1.5 bushels for any acreage on which the amount harvested is 1.5 or more bushels per acre. The Corporation feels this provision will be more effective administratively. Further, the proposed Amendment No. 100 will provide for more than one coverage level on soybeans within a county. The change will allow the grower more flexibility in tailoring the insurance offered to meet his needs. It is anticipated that for the 1979 crop year, two coverage levels as well as three price elections will be offered to soybean growers. Finally, the current endorsement provides that the end of the insurance period shall be December 10 in some States. Present day farming practices in some of these States indicate that the harvest period comes later than December 10, and since soybean insurance protection terminates at harvest, this date had been changed in the proposed endorsement below to December 20 in such States to allow for such later harvest period.

The Federal Crop Insurance Corporation, in accordance with the provision of the Administrative Procedure Act (7 U.S.C. 553 (b) and (c)), relative to notice and public participation has determined that such regulations as are printed below shall be published in the FEDERAL REGISTER as a notice of proposed rulemaking. The public is invited to submit written comments, data, and opinions for consideration in connection with the proposed regulations to James D. Deal, Manager, Federal Crop Insurance Corporation, Room 4096 South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

The soybean crop insurance regulations must be placed on file in the Corporation's office for the county by not later than December 15 in order to be effective for the 1979 crop year. The Board of Directors of the Corporation has determined that there would not be enough time to follow the procedure for notice and public participation allowing the public 60 days to comment on the proposed regulation and still meet the deadline of December 15. Therefore, only 20 days for public comment will be available.

All written submissions must be delivered or postmarked not later than December 4, 1978, to be sure of consideration. All written submissions made pursuant to this notice will be available for public inspection at the Office of the Manager during regular business hours 8:15 a.m. to 4:45 p.m. Monday through Friday (7 CFR 1.27(b)).

PROPOSED RULE

Accordingly, the Federal Crop Insurance Corporation proposes to amend the Soybean Endorsement as found in CFR 401.134 effective with the 1979 crop year in its entirety to read as follows:

§ 401.134 The soybean endorsement

1. *Insured crop.* The crop insured shall be soybeans planted for harvest as beans, as determined by the Corporation. Unless otherwise provided on the county actuarial table, insurance shall attach only on acreage initially planted in rows far enough apart to permit cultivation, as determined by the Corporation; but, if such insured acreage is destroyed and is replanted, whether in the same manner or by broadcasting, drilling or in rows too close to permit cultivation, it shall be regarded as insured acreage and not as acreage put to another use. Insurance shall not attach on acreage on which it is determined by the Coporation that soybeans are planted for the development of hybrid seed, or planted in the same row or interplanted in rows with corn. Item (1) of the second sentence of subsection 2(c) of the policy shall not be applicable hereunder in Arkansas, Louisiana, and Mississippi.

2. *Production guarantee.* The production guarantee shall be in bushels per acre as shown on the county actuarial table and the guarantee for any unharvested acreage shall be decreased by the lesser of 3 bushels or 20 percent. Where applicable, at the time the application for insurance is made, the applicant shall elect a guarantee level from the guarantee levels shown on the actuarial table. If the insured has not elected a guarantee level, or the guarantee level elected is not one shown on the actuarial table, the guarantee level which shall be applicable, and which the insured will be deemed to have elected, shall be the guarantee level provided on the actuarial table for such purpose. The insured may, with the consent of the Corporation, elect a new guarantee level for any crop year any time before the closing date for filing applications for that year.

3. *Insurance period.* Insurance on insured acreage shall attach at the time the soybeans are planted and shall cease in the same calendar year as follows: The earliest of (1) final adjustment of a loss, (2) threshing or removal from the field, whichever occurs first, or (3) October 31 in North Dakota, December 20 in Alabama, Arkansas, Florida, Georgia, Louisiana, North Carolina, South Carolina, and Virginia, and December 10 in all other States.

4. *Claims for loss.* (a) Any claim for loss on an insurance unit shall be submitted to the Corporation on a form prescribed by the Corporation not later than 60 days after the time of loss. The Corporation reserves the right to provide additional time if it determines that circumstances beyond the control of either party prevent compliance with this provision. (b) It shall be a condition precedent to the payment of any loss that the insured (1) establish the production of the insured soybeans on the unit, and that such loss of production has been directly caused by one or more of the hazards insured against during the insurance period of the crop year for which the loss is claimed, and (2) furnish any other information regarding the manner and extent of loss as may be required by the Corporation, (c) Losses shall be determined separately for each unit. The amount of loss with respect to any unit shall be determined by (1) multiplying the insured acreage of soybeans on the unit by the applicable production guarantee per acre, which product shall be the production guarantee for the unit, (2) subtracting therefrom the total production to be counted for the unit, (3) multiplying the remainder by the applicable price for computing indemnities, and (4) multiplying the result obtained in step (3) by the insured share. *Provided,* That if the insured fails to report all of the insurable acreage or share for the unit, the amount of loss shall be determined with respect to all of the insurable acreage and share, and in such case, if the premium computed on the basis of the insurable acreage and share exceeds the premium computed on the acreage and share shown on the acreage report, or the acreage and share when determined by the Corporation under section 3 of the policy, the amount of loss shall be reduced proportionately.

(d) The total production to be counted for a unit shall be determined by the Corporation and, subject to the provisions hereinafter, shall include all harvested production and any appraisals made by the Corporation for unharvested or potential production, poor farming practices, uninsured causes of loss, or acreage abandoned or put to another use without the consent of the Corporation: *Provided,* That the total production to be counted shall be not less than the applicable guarantee for any acreage which is abandoned, put to another use without prior written consent of the Corporation, or damaged solely by an uninsured cause.

(e) Notwithstanding any other provision of this section for determining production to be counted, the production to be counted of any harvested soybeans which have in excess of 8 percent kernel damage, as defined in the "Official Grain Standards of the United States," due to insurable causes occurring within the insurance period shall be adjusted by (1) dividing the value per bushel of the damaged soybeans as determined by the Corporation, by the market price per bushel at the local market for soybeans grading No. 2 at the time the loss is adjusted, or if the damaged soybeans have been sold, by dividing the price per bushel received by the insured by the No. 2 price on the date of sale at the local market, and (2) multiplying the result thus obtained by the number of bushels of such damaged soybeans. If the soybeans do not have in excess of 8 percent kernel damage and it is determined that the production contains a moisture content of 15 percent or more, such production shall be reduced 1.2 percent for each full percent of moisture in excess of 14 percent.

5. *Meaning of terms.* For purposes of insurance on soybeans the term:

(a) "Harvest" means the mechanical severance from the land of matured soybeans for threshing.

6. *Cancellation and termination for indebtedness dates.* For each year of the contract, the cancellation date and termination date for indebtedness are the following applicable dates immediately preceding the beginning of the crop year for which the cancellation or the termination is to become effective:

State	Cancellation date	Termination date for indebtedness
Delaware, Illinois, Indiana, Iowa, Maryland, Michigan, Minnesota, Nebraska, Ohio, and Wisconsin.	Dec. 31	May 10
North Dakota	Dec. 31	Apr. 15
All other states	Dec. 31	Apr. 30

AUTHORITY: Secs. 506, 516, 52 Stat. 73, as amended, 77, as amended (7 U.S.C. 1506, 1516).

NOTE.—The reporting requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942 and OMB Circular No. 840.

Approved by the Board of Directors on November 7, 1978.

PETER F. COLE,
Secretary, Federal Crop Insurance Corporation.

[FR Doc. 78-31919 Filed 11-13-78; 8:45 am]

[3410-08-M]

[7 CFR Part 416]

PEA CROP INSURANCE

Regulations for the 1979 and Succeeding Crop Years

AGENCY: Federal Crop Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: This notice proposes regulations to prescribe procedures for insuring peas effective with the 1979 crop year. These regulations are proposed under the authority contained in the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions must be submitted not later than December 4, 1978, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to James D. Deal, Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT:

Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-3325.

SUPPLEMENTARY INFORMATION: Under the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C 1501 et seq.), it is proposed that there be hereby established a new Part 416 of Chapter IV in title 7 of the code of Federal Regulations to be known as 7 CFR Part 416, Pea Crop Insurance.

This part is entirely new and is issued by the Federal Crop Insurance Corporation to provide the regulations for insuring peas effective with the 1979 crop year. This part is subject to amendment from time to time in the light of insuring experience under the authority contained in the Federal Crop Insurance Act, as amended. Any such amendments will be published in the FEDERAL REGISTER and codified in title 7 of the code of Federal Regulations.

The proposed Part 416 Pea Crop Insurance outlined below supercedes all previous regulations for insuring peas. Such regulations were applicable to insuring dry peas as found in 7 CFR 401.131 The Dry Pea Endorsement (33 FR 8262, June 4, 1968), to insuring canning and freezing green peas only in Minnesota and Wisconsin as found in 7 CFR 401.146 The Canning and Freezing Pea Endorsement (Applicable only in Minnesota and Wisconsin) (39

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FR 41167, November 25, 1974), and to insuring canning and freezing green peas in all States except Minnesota and Wisconsin as found in 7 CFR 401.147 The Canning and Freezing Pea Endorsement (Applicable in all States except Minnesota and Wisconsin) (37 FR 25497, December 1, 1972).

The Corporation has determined that combining all previous regulations for insuring both dry peas and canning and freezing green peas would result in a program that is more effective administratively.

In combining all previous pea crop insurance regulations in the proposed Part 416, the corporation proposes to include two main functional changes in the endorsement. These are: (1) to change the acturial table guarantee in section 6 of the endorsement to a harvested basis with a 20 percent reduction for any unharvested acreage instead of a complicated formula dealing solely with unharvested acreage, and (2) to provide that pea crop insurance in Minnesota and Wisconsin will be offered on a price per pound selection instead of on a contract price per pound thus affording the grower a price selection for the purposes of computing indemnities that more nearly reflects the cost of production.

In establishing these regulations, the Corporation has determined that the cancellation date for all pea endorsements shall be December 31. Such regulations as are contained in this part, and any amendments thereto, must be placed on file in the Corporation's office for the county not later than 15 days prior to December 31 in any given crop year in order to be effective for that crop year.

The Federal Crop Insurance Corporation, in accordance with the provisions of the Administrative Procedure Act (7 U.S.C., 553 (b) and (c)), relative to notice and public participation, has determined that such regulations as are printed below in the proposed Part 416 shall be published in the FEDERAL REGISTER as a notice of proposed rule making. The public is invited to submit written comments, data, or views for consideration in connection with the proposed regulations for insuring peas. Such written comments should be submitted to James D. Deal, Manager, Federal Crop Insurance corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

All written submissions must be delivered or postmarked by not later than December 4, 1978 to be sure of consideration. All written submissions made pursuant to this notice will be available for public inspection at the Office of the Manager during regular business hours, 8:15 a.m. to 4:45 p.m., Monday through Friday (7 CFR 1.27(b)).

PROPOSED RULE

Accordingly, the Federal Crop Insurance Corporation proposes to delete and reserve 7 CFR 401.131, 401.146, and 401.147, incorporating all previous regulations for insuring peas into a new Part 416 in Chapter IV of Title 7 of the Code of Federal Regulations effective with the 1979 crop year as follows:

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), the Federal Crop Insurance Corporation hereby issues the provisions of this subpart which shall apply, until amended or superseded, to all pea crop insurance effective with the 1979 and succeeding crop years.

PART 416—PEA CROP INSURANCE

Subpart—Regulations for the 1979 and Succeeding Crop Years

Sec.

416.1 Availability of Pea Insurance.
416.2 Premium rates and amounts of insurance.
416.3 Application for insurance.
416.4 Public notice of indemnities paid.
416.5 Creditors.
416.6 Good faith reliance on misrepresentation.
416.7 The contract.
416.8 The policy.

AUTHORITY: Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.)

Subpart—Regulations for the 1979 and Succeeding Crop Years

§ 416.1 Availability of pea insurance.

Insurance shall be offered under the provisions of this subpart on peas in counties within limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation, from those approved by the Board of Directors of the Corporation. Before insurance is offered in any county, there shall be published by appendix to this section the name of the county and the crops on which insurance will be offered.

§ 416.2 Premium rates and amounts of insurance.

The Manager shall establish premium rates and amounts of insurance for the peas. Such premium rates and amounts of insurance shall be shown on the county actuarial table on file in the office for the county and may be changed from year to year.

§ 416.3 Application for insurance.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's insurable share in the pea crop as landlord, owner-operator, tenant, or sharecropper. The application shall be submitted to the Corporation at the office for the county on or before the applicable closing date set forth below preceding the first crop year for which insurance is to be in effect:

CLOSING DATES

April 15 in Minnesota and Wisconsin, March 15 in Oregon, and April 1 in all other States.

(b) The Corporation reserves the right to discontinue the acceptance of applications in any county upon its determination that the insurance risk involved is excessive, and also, for the same reason, to reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for acceptance of applications in any county by publishing a notice in the FEDERAL REGISTER upon his determination that no adverse selectivity will result during the period of such extension: *Provided, however,* That if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) Applications for initial insurance shall be made on the following form:

UNITED STATES DEPARTMENT OF AGRICULTURE

FEDERAL CROP INSURANCE CORPORATION

Application for Federal Crop Insurance for 19—— and succeeding crop years

....
(Name and Address) (Zip Code) (Contract Number)

....
(County) (State) (Identification Number)

A. The undersigned applicant, subject to the provisions of the regulations of the Federal Crop Insurance Corporation (herein called the "Corporation"), hereby applies to the Corporation for insurance on his share (for cotton, peanut and tobacco insurance, on his sharecropper or share tenant shares as specified in paragraph B below) in the crops stated below that are insurable crops planted on insurable acreage as shown on the applicable county actuarial table of the Corporation for the above-stated county. The applicant elects each plan of insurance, amount of insurance, or price at which indemnities shall be computed, shown below which in each case shall be an electable plan, amount, or price, as provided on the applicable county acturial table on file in the Corporation's office for the above county. The premium rates and production guarantees shall be those shown on the applicable county acturial table for each crop year.

....
Crops Elections (A) (P)

B. Applicable only to cotton, peanuts and tobacco:

If the applicant intends to insure only the shares of his sharecroppers or share tenants who have no insurance on the crop with the Corporation, "(SC-Int.)" shall be entered following the name of the crop. If the applicant intends to insure both his individual share and the shares of his sharecroppers or share tenants, "(Comb. Int.)" shall be entered following the name of the crop. Insurance for sharecroppers and share tenants shall be provided in accordance with the regulations of the Corporation (7 CFR-401.103(b)).

C. Upon acceptance of this application by the Corporation, the contract shall be in effect for the first crop year specified above, except on any crop on which the time for the filing of applications has passed at the time this application is filed, and shall continue for each succeeding crop year until canceled or terminated as provided in the contract. This application, the insurance policy, endorsements, and the county actuarial tables shall constitute the contract. Any changes in the contract shall be on file in the Corporation's office for the county at least 15 days prior to the applicable cancellation date.

D. This application, when executed by a person as an individual, shall not cover his share in a crop produced by a partnership or other legal entity.

The applicant is a ——————————
(Type of Entity)

All natural persons in whose behalf this application is made are over 18 years of age? (Yes or No) ——.

E. Premium note: In consideration hereof, the insured promises to pay to the order of the Corporation each crop year of the contract the annual premiums. It is agreed that any amount due the Corporation by the insured may be deducted from any indemnity payable to the insured and when not prohibited by law, from any loan or payment otherwise due the insured under any program administered by the United States Department of Agriculture.

.....
(Witness to Signature)

.....
(Signature of Applicant)

....., 19
(Date)

.....
Code

Address of Office for County:

——————————————————

Phone ——————————————
Location of Farm(s) or Headquarters:

——————————————————

Phone ——————————————

§ 416.4 Public notice of indemnities paid.

The Corporation shall provide for posting annually in each county at the county courthouse a listing of the indemnities paid in the county.

§ 416.5 Creditors.

An interest of a person other than the insured in an insured crop existing by virtue of a lein, mortgage, garnishment, levy, execution, bankruptcy, or any involuntary transfer shall not entitle the holder of the interest to any benefit under the contract except as provided in sections 13 and 14 of the policy set forth in § 414.8.

§ 416.6 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the insurance contract, whenever an insured person under any contract of crop insurance entered into under these regulations has suffered a loss to a crop which is not insured, or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, because of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation and the Board of Directors of the Corporation, or the Manager in cases involving not more than $5,000.00, finds (1) that an agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice, (2) that said insured person relied thereon in good faith, and (3) that to deny said insured's claim for indemnity would not be fair and equitable, such insured person shall be entitled to such indemnity the same as if otherwise entitled thereto.

§ 416.7 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the pea production which is provided in and covered by the policy when insurance is accepted on peas by the Corporation pursuant to a duly submitted application. The contract shall consist of the policy, the actuarial table as defined in the policy, and the application. Any changes made in the contract shall not affect the continuity from year to year.

§ 416.8 The policy.

The provisions of the Pea Insurance Policy for the 1979 and succeeding crop years are as follows:

U.S. DEPARTMENT OF AGRICULTURE

PEA INSURANCE POLICY

Federal Crop Insurance Corporation

Subject to the regulations of the Federal Crop Insurance Corporation (herein called "Corporation") and in accordance with the terms and conditions set forth in this policy, the Corporation upon acceptance of a person's application does insure such person's pea crop against unavoidable loss of production due to causes of loss insured against that are specified in this policy. No term or condition of the contract shall be waived or changed on behalf of the Corporation except in writing by a duly authorized representative of the Corporation.

TERMS AND CONDITIONS

1. *Meaning of terms.* For the purposes of insurance on peas the terms:

(a) "Actuarial table" means the forms and related material approved by the Corporation which are on file for public inspection in the office for the county, and which show the applicable amounts of insurance, premium rates, insurable acreage, and related information regarding pea insurance in the county.

(b) "Contract" means the accepted application, this policy, and the actuarial table.

(c) "County" means the county shown on the application and any additional insurable land located in a local producing area bordering on the county, as shown on the actuarial table.

(d) "Crop year" means the period within which peas are normally grown and shall be designated by the calendar year in which the peas are normally harvested.

(e) "Harvest" as to any green-pea acreage means the vining or combining and acceptance by the processor of the peas from such acreage. "Vining" or "combining" means separating the peas from the pods. "Harvest" as to any dry-pea acreage means combining peas which are or could be marketed as dry peas.

(f) "Insurable acreage" means the land classified as insurable by the Corporation and shown as such on the actuarial table.

(g) "Loss ratio" means the ratio of indemnity(ies) paid to premium(s) earned.

(h) "Office for the county" means the Corporation's office serving the county shown on the application for insurance or such office as may be designated by the Corporation.

(i) "Peas" means either (1) canning and freezing peas (herein called green peas) grown under a contract executed with a processor by the time the acreage to be insured is reported or (2) all spring-planted smooth green and yellow, and wrinkled varieties of dry peas and lentils (herein called dry peas).

(j) "Person" or "Insured" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

(k) "Share" means the share of the insured as landlord, owner-operator, or tenant in the insured peas at the time of planting as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect, and no other share shall be deemed to be insured: *Provided,* That for the purpose of determining the amount of indemnity, the insured share shall not exceed the insured's share at the earliest of (1) the date of beginning of harvest on the unit, (2) the calendar date for the end of the insurance period, or (3) the date the entire crop on the unit is destroyed, as determined by the Corporation.

(l) "Tenant" means a person who rents land from another person for a share of the pea crop or proceeds therefrom.

(m) "Unit" means all insurable acreage of any one of the types of green peas or varietal groups of dry peas as shown on the actuarial table in the county on the date of

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planting for the crop year (1) in which the insured has a 100 percent share, (2) which is owned by one person and operated by the insured, or (3) which is owned by the insured and rented to one tenant. Land rented for cash, a fixed commodity payment, or any consideration other than a share in the crop on such land shall be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in the office for the county or by written agreement between the Corporation and the insured. The Corporation shall determine units as herein defined when adjusting a loss notwithstanding what is shown on the acreage report, and has the right to consider any acreage and share reported by or for the insured's spouse or child or any member of the insured's household to be the bona fide share of the insured or any other person having the bona fide share.

2. *Causes of loss.* (a) Causes of loss insured against. The insurance provided is against unavoidable loss of production resulting from drought, earthquake, excessive rain, fire, flood, freeze, frost, hail, hurricane, insect infestation, lightning, plant disease, snow, tornado, wildlife, wind, winterkill, and any other unavoidable cause of loss due to adverse weather conditions occurring within the insurance period, subject, however, to any exceptions, exclusions, or limitations with respect to such causes of loss that are set forth on the actuarial table.

(b) Causes of loss not insured against. The contract shall not cover any loss of production due to (1) green-pea acreage not being timely harvested unless the Corporation determines that because of unusual weather conditions, a substantial percentage of such acreage in an area was ready for harvest at the same time (the uninsured loss of production resulting from failure to timely harvest will be appraised and counted as production with no adjustment for quality by the Corporation as pounds of peas which were available for timely harvesting), (2) the neglect or malfeasance of the insured, any member of his household, his tenants or employees, (3) failure to follow recognized good farming practices, (4) damage resulting from the backing up of water by any governmental or public utilities dam or reservoir project, or (5) any cause not specified as an insured cause in this policy as limited by the applicable actuarial table.

3. *Crop and acreage insured.* (a) Upon acceptance of an application for insurance, the pea crop insured shall be green or dry peas of a type or variety for which the actuarial table shows a guarantee and premium rate per acre.

(b) The acreage insured for each crop year shall be that acreage in the county planted to peas on insurable acreage, as shown on the actuarial table, and as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect: *Provided*, That insurance shall not attach or be considered to have attached as determined by the Corporation to any acreage (1) of green peas not grown under a processor contract or excluded from such contract for the crop year pursuant to the terms thereof, (2) which was planted to peas the previous 2 crop years, (3) where premium rates are established by farming practices on the actuarial table, and the farming practices carried out on any acreage are not among those for which a premium rate has been established, (4) not reported for insurance as provided in section 4 if such acreage is irrigated and an irrigated practice is not provided for such acreage, (5) which is destroyed and after such destruction, it was practical to replant to peas of the same type of green peas or the same varietal group of dry peas as shown on the actuarial table and such acreage was not replanted, (6) initially planted after the date established by the Corporation and placed on file in the office for the county as being too late to initially plant and expect a normal crop to be produced, (7) of volunteer peas, or (8) planted to a type or variety not established as adapted to the area or shown as noninsurable on the actuarial table.

(c) An instrument in the form of a "lease" under which the insured grower retains control of the acreage on which the insured peas are grown and which provides for delivery of the peas under certain conditions and at a stipulated price(s) shall, for the purpose of this contract, be treated as a processor contract under which the insured has the share in the peas.

4. *Responsibility of insured to report acreage and share.* (a) The insured shall submit to the Corporation at the office for the county, on a form prescribed by the Corporation, a report showing all acreage of peas planted in the county (including a designation of any acreage of peas to which insurance does not attach) in which the insured has a share and the insured's share therein at the time of planting. Such report shall be submitted each year not later than a date established by the Corporation and on file in the office for the county. If the insured does not have a share in any insured acreage in the county for any year, he shall submit a report so indicating. Any acreage report submitted by the insured shall be binding upon the insured and shall not be subject to change by the insured.

(b) If the insured does not submit an acreage report by the date established by the Corporation, the Corporation may elect to determine by insurance units the insured acreage and the share or declare the insured acreage on any insurance unit(s) to be "zero."

5. *Irrigated acreage.* (a) Where the actuarial table provides for insurance on acreage on which an irrigated practice is carried out, the insured shall report as irrigated only the acreage for which the insured has adequate facilities and water to carry out a good irrigation practice at the time of planting.

(b) Any loss of production caused by failure to carry out a good irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, shall be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities shall not be considered as a failure of the water supply from an unavoidable cause.

(c) Insurance shall not attach to peas seeded on any irrigated acreage the first year after a major leveling operation has been carried out, as determined by the Corporation.

6. *Production guarantees and prices for computing indemnities.* (a) For each crop year of the contract, the production guarantees and prices at which indemnities shall be computed are those shown on the actuarial table.

(b) The applicable production guarantee per acre shall be reduced 20 percent for any unharvested acreage.

(c) In counties where the actuarial table shows a guarantee for both green and dry peas the applicable guarantee for any acreage shall be determined by the type of green peas or varietal group of dry peas shown on the acreage report, except that if any acreage shown on the acreage report as green peas is harvested as dry peas, the guarantee for such acreage shall be reduced 40 percent.

(d) At the time application for insurance is made, the applicant shall elect a price from among those shown on the actuarial table at which indemnities shall be computed. If the insured has not elected a price or the price elected is not shown on the actuarial table for the crop year, the applicable price under the contract, and which the insured shall be deemed to have elected, shall be the price provided on the actuarial table for such purposes. The insured may, with the consent of the Corporation, change the price election for any crop year by the closing date for submitting applications for that year.

7. *Annual premium.* (a) The annual premium is earned and payable at the time of planting and shall be determined by multiplying the insured acreage times the applicable premium per acre, times the insured's share at the time of planting, and applying the premium adjustment herein provided.

(b) For premium adjustment purposes, only the years during which premiums were earned shall be considered.

(c) The premium shall be adjusted as shown in the following table:

Adjustments for Favorable Continuous Experience

	Number years continuous experience through previous crop year								
	0	1	2	3	4	5	6	7	8 or more
Loss ratio through previous crop year:	(Percentage adjustment factor for current crop year)								
0 to .49	100	100	95	95	90	85	80	75	70
.50 to .89	100	100	100	100	95	90	85	80	75
.90 to 1.09	100	100	100	100	100	100	100	100	100

Adjustments for Unfavorabe Insurance Experience

	Number of years indemnified through previous crop year									
	1	2	3	4	5	6	7	8	9	10 or more
Loss ratio through previous crop year:	(Percentage adjustment factor for current crop year)									
1.10 to 1.19	100	100	100	103	104	106	108	110	112	115

Adjustments for Unfavorabe Insurance Experience

	Number of years indemnified through previous crop year									
	1	2	3	4	5	6	7	8	9	10 or more
Loss ratio through previous crop year:	(Percentage adjustment factor for current crop year)									
1.20 to 1.39	100	100	103	106	109	112	116	120	125	130
1.40 to 1.69	100	102	105	109	113	118	124	130	137	145
1.70 to 1.99	100	103	107	112	118	124	132	140	150	160
2.00 to 2.49	100	104	109	115	122	130	140	150	162	175
2.50 to 3.24	100	105	111	118	127	136	148	160	175	190
3.25 to 3.99	100	106	113	121	131	142	156	170	187	205
4.00 to 4.99	100	107	115	124	136	148	164	180	200	220
5.00 to 5.99	100	108	117	127	140	154	172	190	212	235
6.00 up	100	110	120	130	145	160	180	200	225	250

(d) If there is no break in the continuity of participation, any premium adjustment applicable under subsection (c) of this section shall be transferred to: (1) The contract of the insured's estate or surviving spouse in case of death of the insured, (2) the contract of the person who succeeds the insured in operating only the same farm or farms, if such person had previously actively participated in the farming operation, or (3) the contract of the same insured who stops farming in one county and starts farming in another county.

(e) If there is a break in the continuity of participation, any reduction in the premium earned under subsection (c) of this section shall not thereafter apply; however, any increase in premium shall apply following a break in continuity.

(f) Any unpaid amount of premium due the Corporation by the insured may be deducted from any indemnity payable to the insured by the Corporation or from any loan or payment to the insured under any act of Congress or program administered by the U.S. Department of Agriculture, when not prohibited by law.

8. *Insurance period.* Insurance on insured acreage shall attach at the time the peas are planted and shall cease in the same calendar year as follows: The earliest of (1) final adjustment of a loss, (2) harvest, or (3) September 15: Provided, however, That if any acreage of green peas is not timely harvested, insurance shall be deemed to have ceased when the acreage should have been harvested, as determined by the Corporation.

9. *Notice of damage or loss.* Any notice of damage or loss shall be given in writing by the insured to the Corporation at the office for the county.

(a) Notice shall be given promptly if, during the period before harvest, the peas on any unit are damaged to the extent that the insured does not expect to further care for the crop or harvest any part of it, or wants the consent of the Corporation to put the acreage to another use. No insured acreage shall be put to another use until the Corporation has made an appraisal of the potential production of such acreage and consents in writing to such other use. Such consent shall not be given until it is too late to replant to peas of the same type or varietal group. Notice shall also be given when such acreage has been put to another use.

(b) Notice shall be given not later than 30 days after the earliest of (1) the date harvest is completed on the unit, (2) the calendar date for the end of the insurance period, or (3) the date the entire pea crop on the unit is destroyed, as determined by the Corporation. The Corporation reserves the right to provide additional time if it determines that circumstances beyond the control of the insured prevent compliance with this provision.

(c) In addition to the notices required in paragraphs (a) and (b) of this section, if an indemnity is claimed on any unit of green peas, notice shall be given (1) no later than 48 hours after harvesting of the peas has been discontinued on a unit, before all the acreage is harvested, or (2) before harvest would normally start if any acreage on a unit is not to be harvested. If such notice is not given, the Corporation shall appraise the pounds of unharvested production with no adjustment for quality and, if there is insufficient evidence upon which to base an appraisal, the appraisal on such acreage shall be the applicable guarantee.

(d) Any insured acreage which is not to be harvested shall be left intact until the Corporation makes an inspection.

(e) There shall be no abandonment to the Corporation of any insured peas.

(f) The Corporation shall reject any claim for indemnity if any of the requirements of this section are not met.

10. *Claim for indemnity.* (a) Any claim for indemnity on a unit shall be submitted to the Corporation on a form prescribed by the Corporation.

(b) It shall be a condition precedent to the payment of any indemnity that the insured (1) establish the total production of peas on the unit and that any loss of production has been directly caused by one or more of the causes insured against during the insurance period of the crop year for which the indemnity is claimed and (2) furnish any other information regarding the amount of production as may be required by the Corporation.

(c) Indemnities shall be determined separately for each unit. The amount of indemnity for any unit shall be determined by subtracting the dollar amount of production from the dollar amount of insurance and multiplying the remainder by the insured's share. The dollar amount of production is obtained by multiplying the total production to be counted by the price per pound elected. The dollar amount of insurance is obtained by multiplying the pound guarantee per acre times the determined acres times the price per pound elected: *Provided*, That if the premium computed on the determined acreage and share is more than the premium computed on the reported acreage and share, the amount of loss shall be computed on the determined acreage and share and then reduced proportionately.

(d) The total production to be counted for a unit shall be determined by the Corporation and shall include all harvested and appraised production. (1) All harvested green peas which are accepted by the processor and dry peas which are or could be marketed shall be counted as production. (2) Appraised production shall not be adjusted for quality and shall include (i) the greater of the appraised production or 40 percent of the applicable guarantee for any acreage which, with the consent of the Corporation, is planted in the current crop year to any other crop insurable on such acreage (*excluding small grains normally maturing for harvest in the following calendar year*) before the peas are harvested, or normally would be harvested and (ii) any appraisals made by the Corporation for unharvested or potential production, poor farming pratices, uninsured causes of loss, or acreage abandoned or put to another use without the consent of the Corporation. Appraisals shall not be less than the applicable guarantee for any acreage which is abandoned, put to another use without prior written consent of the Corporation, or damaged solely by an uninsured cause. (3) If the Corporation determines that any acreage of green peas was not timely harvested, and the insured received payment from the processor for such acreage, the pounds of production to count will be determined by dividing the processor payments by the processor price per pound for the applicable tenderometer reading or sieve size shown on the actuarial table.

(e) The pounds of the production to be counted for any harvested peas shall be determined as follows: (1) For *green peas*, the dollar value received from the processor shall be divided by the processor contract price per pound for the tenderometer reading or sieve size shown on the actuarial table. (2) For *dry peas*, any production which does not grade No. 3 or better, or lentils which do not grade No. 2 or better (determined in accordance with United States Standards for dry peas and lentils) because of poor quality due to insurable causes occurring within the insurance period shall be reduced by (i) dividing the value per pound of the damaged peas, as determined by the Corporation, by the price per pound for the same variety of peas grading No. 3 (No. 2 for lentils) and (ii) multiplying the result thus obtained by the pounds of such peas. The applicable price of No. 3 peas (No. 2 lentils) shall be the market price for such peas on the earlier of the day the loss is adjusted or the day the damaged peas were sold.

(f) If consent is given to put acreage to another use and the Corporation determines that any such acreage (1) is not put to another use before harvest of peas becomes general in the county, (2) is harvested, or (3) is further damaged by an insured cause before the acreage is put to another use, the indemnity for the unit shall be determined without regard to such appraisal and consent.

(g) In the event that any claim for indemnity under the provisions of the contract is denied by the Corporation, an action on such claim may be brought against the Corporation under the provisions of 7 U.S.C. 1508(c): *Provided*, That the same is brought within one year after the date notice of denial of the claim is mailed to and received by the insured.

11. *Payment of indemnity.* (a) Any indemnity will be payable within 30 days after a claim for indemnity is approved by the Corporation. However, in no event shall the Corporation be liable for interest or dam-

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ages in connection with any claim for indemnity whether such claim be approved or disapproved by the Corporation.

(b) If the insured is an individual who dies, disappears, or is judicially declared incompetent, or the insured entity is other than an individual and such entity is dissolved after the peas are planted for any crop year, any indemnity will be paid to the person(s) the Corporation determines to be beneficially entitled thereto.

12. *Misrepresentation and fraud.* The Corporation may void the contract without affecting the insured's liability for premiums or waiving any right, including the right to collect any unpaid premiums if, at any time, the insured has concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance shall be effective as of the beginning of the crop year with respect to which such act or omission occurred.

13. *Other insurance against fire.* (a) If the insured has other insurance against damage by fire during the insurance period, the Corporation shall be liable for loss due to fire only for the smaller of (1) the amount of the indemnity determined pursuant to this contract without regard to any other insurance or (2) the amount as determined by the Corporation by which the loss from fire exceeds the indemnity paid or payable under such other insurance.

(b) For purposes of this section, the amount of loss from fire shall be the difference between the fair market value of the production on the unit involved before and after the fire, as determined by the Corporation from appraisals made by the Corporation of the production and fair market value.

14. *Collateral assignment.* Upon approval of a form prescribed by the Corporation, the insured may assign to another party the right to an indemnity for the crop year and such assignee shall have the right to submit the loss notices and forms as required by the contract.

15. *Transfer of insured share.* If the insured transfers all or any part of the insured share during the crop year, upon approval by the Corporation, protection will continue to be provided according to the provisions of the contract to the transferee for such crop year on the transferred share, and the transferee shall have the same rights and responsibilities under the contract as the transferor for the current crop year. Any transfer shall be made on a form prescribed by the Corporation.

16. *Subrogation.* The insured (including any assignee or transferee) assigns to the Corporation all rights of recovery against any person for loss or damage to the extent that payment here under is made and shall execute all papers required and take appropriate action to secure such rights.

17. *Records and access to farm.* The insured shall keep or cause to be kept, for 2 years after the time of loss, records of the harvesting, storage, shipments, sale, or other disposition of all peas in the county in which the insured has a share, including separate records showing the same information for production from any uninsured acreage. Any persons designated by the Corporation shall have access to such records and the farm for purposes related to the contract.

18. *Forms.* Copies of forms referred to in the contract are available at the office for the county.

19. *Contract changes.* The Corporation reserves the right to change any terms and provisions of the contract from year to year. Any changes shall be mailed to the insured or placed on file and made available for public inspection in the office for the county at least 15 days prior to the applicable cancellation date, and such mailing or filing shall constitute notice to the insured. Acceptance of any changes will be conclusively presumed in the absence of any notice from the insured to cancel the contract as provided in section 20.

20. *Life of contract: Cancellation and termination.* (a) The contract shall be in effect for the crop year specified on the application, and may not be canceled for such crop year. Thereafter, either party may cancel insurance for any crop year by giving written notice to the other by the cancellation date shown in subsection (b) of this section.

(b) For each year of the contract, the cancellation date shall be December 31 and the termination dates for indebtedness shall be April 15 in Minnesota and Wisconsin, March 15 in Oregon and April 1 in all other states. These dates are those immediately preceding the beginning of the crop year for which the cancellation or the termination is to become effective.

(c) If the premium for any crop year is not paid by the termination date for indebtedness shown in subsection (b) of this section, the contract shall terminate: *Provided*, That the date of payment for premium (1) deducted from an indemnity claim shall be the date the insured signs such claim or (2) deducted from payment under another program administered by the U.S. Department of Agriculture shall be the date such payment was approved.

(d) The contract shall terminate if no premium is earned for three consecutive years.

(e) If the insured is an individual who dies or is judicially declared incompetent, or the insured entity is other than an individual and such entity is dissolved, the contract shall terminate as of the date of death, judicial declaration, or dissolution; however, if such event occurs after insurance attaches for any crop year, the contract shall continue in force through such crop year and terminate at the end thereof. Death of a partner in a partnership shall dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons shall dissolve the joint entity.

(f) In the absence of a notice from the insured to cancel, and subject to the provisions of subsections (b), (c), (d), and (e) of this section, the contract shall continue in force for each succeeding crop year.

(Secs. 506, 516, 52 Stat. 73, as amended, 77, as amended; 7 U.S.C. 1506, 1516)

NOTE.—The reporting requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942, and OMB Circular No. 840.

Dated: August 14, 1978.

PETER F. COLE,
Secretary, Federal Crop Insurance Corporation.

[FR Doc. 78-31940 Filed 11-13-78; 8:45 am]

[3410-02-M]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 917]

FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal would amend the qualification requirements for public members of commodity committees to permit nominations from a wider range of potential candidates. The Pear, Plum, and Peach Commodity Committees are established under Marketing Order 917.

DATE: Comments must be received on or before November 29, 1978.

ADDRESS: Send two copies of comments to the Hearing Clerk, U.S. Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250, where they will be available for public inspection during business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: The Pear, Plum, and Peach Commodity Committees are established under the marketing agreement, as amended, and order No. 917, as amended (7 CFR 917), which regulates the handling of fresh pears, plums, and peaches grown in California and is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The Control Committee (the agency established under the order to administer the terms and provisions) has recommended that section 917.122 of the rules and regulations (42 FR 3625), which sets forth the qualification requirements and nomination procedure for public members of commodity committees, be amended with respect to the qualification requirements.

Section 917.122(a) provides that public members shall not have a direct financial interest or be closely associated with production, processing, financing, or marketing (except as consumers) of California agricultural commodities. Thus, nomination of persons who have any interest in agriculture is precluded. The Control Committee has concluded that this requirement makes many persons ineligible for nomination who might otherwise be suitable. For example, a person with an interest in livestock would be ineligible for nomination as a public member on any of the commodity committees. The proposal would permit nomination for public member to be made from a wider range of potential candidates. To assure the character of the public member, the proposed amendment specifies that such members not have any financial interest in or association with the production, processing, financing, or marketing (except as consumers) of the commodities regulated under this part.

The amended § 917.122(a) would read as follows:

§ 917.122 Qualification requirements and nomination procedure for public members of Commodity Committees.

(a) Public members shall not have a financial interest in or be associated with the production, processing, financing, or marketing (except as consumers) of the commodities regulated under this part.

* * * * *

Dated: November 8, 1978.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 78-31935 Filed 11-13-78; 8:45 am]

[6750-01-M]

FEDERAL TRADE COMMISSION

[16 CFR Part 455]

SALE OF USED MOTOR VEHICLES

Publication of Staff Report on Proposed Trade Regulation Rule

AGENCY: Federal Trade Commission.

ACTION: Publication of staff report.

SUMMARY: The staff report, being placed on Public Record No. 215-54 today, summarizes and analyzes the material on the record in the above-captioned rulemaking proceeding and also makes recommendations as to the final action the Commission should take.

The staff report takes into account the Presiding Officer's findings of fact. Notice of the publication of the Presiding Officer's report in this proceeding appeared in the FEDERAL REGISTER, 43 FR 28521, June 30, 1978.

DATE: A 60-day comment period on both the staff report and the Presiding Officer's report begins today. Comments will be accepted for the public record if received on or before January 14, 1979.

ADDRESSES: Requests for copies of either report should be sent to: Public Reference Branch, Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580, telephone 202-523-3598.

Comments should be sent to: Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

Michael H. Wald, Attorney, Federal Trade Commission, Washington, D.C. 20580, telephone 202-523-1642.

SUPPLEMENTARY INFORMATION: The staff report was prepared pursuant to § 1.13(g) of the Commission's Rules of Practice.

Comments at this stage of the proceeding are received pursuant to § 1.13(h) of the Commission's Rules of Practice. Accordingly, comments must be confined to information already in the record; new evidence will not be accepted.

Comments should be submitted, when feasible, in four copies.

The staff report has not been reviewed or adopted by the Commission, and its publication should not be interpreted as reflecting the views of the Commission or any individual member thereof.

Approved: November 14, 1978.

ALBERT H. KRAMER,
Director, Bureau of Consumer Protection.

[FR Doc. 78-31934 Filed 11-13-78; 8:45 am]

[6351-01-M]

COMMODITY FUTURES TRADING COMMISSION

[17 CFR Part 30]

FRAUD IN CONNECTION WITH COMMODITY TRANSACTIONS

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission is proposing to adopt an expanded version of § 30.03 of its regulations, which makes unlawful fraudulent activities in connection with so-called leverage transactions in silver or gold bullion or bulk coins. The proposed rule reflects the enactment of the Futures Trading Act of 1978. Among other things, that Act expands the jurisdiction of the Commission to cover leverage transactions involving all commodities, in addition to gold and silver bullion and bulk coins.

DATES: Written comments on the proposed rule must be received by the Commission at its offices in Washington, D.C., by November 24, 1978.

ADDRESS: In order to be considered, written comments on the proposed rule must be submitted to: Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581.

FOR FURTHER INFORMATION CONTACT:

John P. Connolly, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, 202-254-5304.

SUPPLEMENTARY INFORMATION: Under section 2(a)(1) of the Commodity Exchange Act, 7 U.S.C. § 2 (1976), and section 217 of the Commodity Futures Trading Commission Act of 1974, 7 U.S.C. § 15a (1976), Congress granted the Commission exclusive jurisdiction over leverage contracts involving gold and silver bullion and bulk coins and broadly empowered the Commission to regulate the offer and sale of such leverage contracts. Section 217 basically provided that no person could offer to enter into, enter into, or confirm the execution of leverage transactions involving gold or silver bullion or bulk coins contrary to Commission rules and regulations designed to insure the financial solvency of those transactions or to prevent manipulation or fraud. In addition, section 217 provided that if the Commission determined that any gold or silver leverage transaction was a contract for future delivery within the meaning of the Commodity Exchange Act, that transaction should be regulated in accordance with the applicable provisions of that Act. Effective June 24, 1975, the Commission adopted a broad antifraud rule applicable to gold and silver leverage transactions.[1]

On September 30, 1978, the President signed into law the Futures Trading Act of 1978, section 23 of which added a new section 19 to the Commodity Exchange Act.[2] This section greatly expands the Commission's jurisdiction over leverage transactions. Among other things, section 19 prohibits leverage transactions involving those agricultural commodities specifically enuerated in section 2(a) of the Commodity Exchange Act prior to 1974,[3] incorporates the substantive provisions of section 217 of the Commodity Futures Trading Commission Act of 1974 concerning gold and silver leverage transactions, and grants the Commission new regulatory authority

[1] 40 FR 26504, 17 CFR 30.03 (1977); statutory authority citations amended, 43 FR 47722, Oct. 17, 1978.

[2] Pub. L. 95-405, 92 Stat. 865, 870-871.

[3] These commodities are as follows: Wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, Solanum tuberosum (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil, and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice.

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to prohibit or regulate leverage transactions involving all other commodities. In addition, section 19 broadens the Commission's jurisdiction to include not only standardized contracts commonly known to the trade as a margin account, margin contract, leverage account or leverage contract, but also "any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract." Specifically, the new section 19 of the Commodity Exchange Act provides:

"(a) No person shall offer to enter into, enter into, or confirm the execution of, any transaction for the delivery of any commodity specifically set forth in section 2(a) of this Act prior to the enactment of the Commodity Futures Trading Commission Act of 1974 under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract.

(b) No person shall offer to enter into, enter into, or confirm the execution of any transaction for the delivery of silver bullion, gold bullion, or bulk silver coins, or bulk gold coins, under a standardized contract described in subsection (a) of this section, contrary to any rule, regulation, or order of the Commission designed to insure the financial solvency of the transaction or prevent manipulation or fraud: *Provided*, That such rule, regulation, or order may be made only after notice and opportunity for hearing.

(c) The Commission may prohibit or regulate any transactions, under a standardized contract described in subsection (a) of this section, involving any other commodities under such terms and conditions as the Commission shall initially prescribe by October 1, 1979: *Provided*, That any such order, rule, or regulation may be made only after notice and opportunity for hearing: *Provided further*, That the Commission may set different terms and conditions for such transactions involving different commodities.

(d) If the Commission determines that any transaction under subsections (b) and (c) of this section is a contract for future delivery within the meaning of this Act, such transaction shall be regulated in accordance with the applicable provisions of this Act." [4]

Like the Commodity Futures Trading Commission Act of 1974, the new legislation also grants the Commission exclusive jurisdiction over these transactions, thus preempting the regulatory authority of the States in this area.[5] Significantly, however, section 15 of the Futures Trading Act of 1978 has added a new section 6d to the Commodity Exchange Act, which will now authorize the States, through their attorneys general, administrators of securities laws, or other duly designated officials, to bring an action in U.S. district courts to enforce compliance with the Commodity Exchange Act and the regulations the Commission promulgates thereunder. Thus, the States now have express statutory authority to enforce existing § 30.03 of the Commission's regulations and whatever additional regulations the Commission may adopt, including the expanded version of the Commission's leverage antifraud rule that it now proposes to adopt.[6] This new statutory authority will permit the States significantly to assist the Commission's enforcement efforts to control fraudulent activities in leverage transactions, as well as in other areas.

In view of these legislative developments, the Commission believes that it should act expeditiously to prevent a prolonged regulatory gap regarding leverage transactions in commodities other than gold and silver. Section 8a(5) of the Commodity Exchange Act broadly empowers the Commission "to make and promulgate such rules and regulations as, in the judgement of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of" the Act. The Commission is of the view, based on its study and monitoring of the offer and sale of leverage contracts in gold and silver and its experience with so-called London commodity options, that the proposed rule is a necessary first step to protect the public.

Under the proposed rule, fraudulent activity in connection with transactions in silver or gold bullion or bulk coins described in present § 30.03 will continue to be a violation of the Commission's regulations, as it has been since June 24, 1975. The proposed rule, employing the same standards contained in present § 30.03 [7], will also

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became the Futures Trading Act of 1978, explained that:

"The Conference substitute combines the provisions of the Senate bill and section 217 of the Commodity Futures Trading Act of 1974 [sic] into a new section 19 of the Commodity Exchange Act. The new section—

(i) Prohibits leverage transactions involving agricultural commodities enumerated in section 2(a) of the Commodity Exchange Act prior to 1974;

(ii) Requires the Commission to regulate leverage transactions (as defined in the Senate bill) involving gold or silver bullion or bulk coins;

(iii) Authorizes the Commission to prohibit or regulate leverage transactions involving all other commodities by October 1, 1979; and

(iv) Authorizes the Commission to regulate any leverage transactions as a futures contract if it determines the transaction to be a contract for future delivery under the Commodity Exchange Act."

S. Rep. No. 95-1239, 95th Cong., 2d Sess. 27 (1978).

[5] Prior to the enactment of the Futures Trading Act of 1978, section 2(a) of the Commodity Exchange Act granted the Commission exclusive jurisdiction over gold and silver leverage transactions which were the subject of section 217 of the Commodity Futures Trading Commission Act of 1974. Section 2 of the Futures Trading Act of 1978 replaced the reference to section 217 contained in section 2(a) of the Commodity Exchange Act with a reference to the new section 19. Thus, the Commission's exclusive jurisdiction continues over gold and silver leverage transactions and has been expanded to cover all leverage transactions.

[6] Of course, notwithstanding the Commission's exclusive jurisdiction, the States remain free to enforce their own civil or criminal antifraud and other statutes of general applicability. See section 6d(7) of the Act, 92 Stat. 872-73. *Cf. Commonwealth of Massachusetts* v. *Lloyd, Carr & Co.* [Current Binder], CCH Comm. Fut. L. Rep. ¶ 20,561 (Mass. Sup. Ct. 1978).

[7] Existing § 30.03 and the proposed section are patterned after the provisions of Securities and Exchange Commission Rule 10b—5, since the Commission intends that the broad remedial interpretations that have been accorded by the courts to rule 10b-5 with respect to securities transactions generally be applied in connection with the offer and sale of leverage contracts. It should be emphasized, however, that the Commission also intends that scienter—i.e., knowing or intentional misconduct—not be required to establish a violation of § 30.03 or the proposed section, when adopted. In this regard, the principle enunciated in *Ernst & Ernst* v. *Hochfelder*, 425 U.S. 185 (1976) has no effect on § 30.03 or the proposed section. In that case the Supreme Court, at least for purposes of private actions for damages, held that the words "manipulative or deceptive," when used in conjuction with "device or contrivance" in section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78j(b), pursuant to which rule 10b-5 was adopted, were intended to authorize the SEC to promulgate antifraud rules that only prohibited "knowing or intentional misconduct." 425 U.S. at 197. Unlike the SEC's authority under section 10(b), however, the rulemaking authority of the Commission contains no comparable limiting language. Section 19 of the Commodity Exchange Act, as amended, as did section 217 of the Commodity Futures Trading Commission Act of 1974, authorizes the Commission to adopt regulations concerning leverage transactions, among other things, "to prevent • • • fraud." As it has evolved in the areas of both securities and commodities, the term "fraud" has been held to be free of the restrictive concepts, such as requirements of intent and knowledge, which have traditionally been associated with fraud at common law. See *Securities and Exchange Commission* v. *Capital Gains Research*

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[4] The Conference Committee Report which accompanied S. 2391, the bill that

cover leverage transactions involving all other commodities, such as platinum, diamonds and other precious gems, over which the Commission has been given jurisdication pursuant to section 19 of the Commodity Exchange Act [8] and will also reflect the broadened jurisdiction over transactions contained in that section. Since Section 19 already prohibits leverage transactions involving those commodities enumerated in section 2(a) of the Act, the proposed rule does not cover those transactions.

In consideration of the foregoing, the Commission proposes to amend Part 30 of Chapter I of Title 17 of the Code of Federal Regulations by amending § 30.03 to read as follows:

§ 30.03 Fraud in connection with certain transactions in silver or gold bullion or bulk coins, or other commodities.

It shall be unlawful for any person, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly:

(a) To employ any device, scheme, or artifice to defraud,

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading, or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in, or in connection with (1) an offer to make or the making of, any transaction for the purchase, sale or delivery of silver bullion, gold bullion, bulk silver coins, bulk gold coins, or any other commodity pursuant to a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or pursuant to any contract, account, arrangement, scheme, or device that serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same fashion as such a standardized contract, or (2) the maintenance or carrying of any such contract.

The provisions of this section shall not apply to any transaction expressly prohibited by section 19(a) of the Act.

(Secs. 2(a), 8a, and 19 of the Commodity Exchange Act and secs. 2 and 23 of Pub. L. 95-405 (92 Stat. 865, 870-871); 7 U.S.C. 2 and 12a.)

Issued in Washington, D.C., on November 8, 1978.

WILLIAM T. BAGLEY,
Chairman, Commodity Futures Trading Commission.

[FR Doc. 78-31967 Filed 11-13-78; 8:45 am]

[4110-03-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Ports 16, 54, 71, 170, 171, 180, 310, 312, 314, 320, 330, 361, 430, 431, 510, 511, 514, 570, 571, 601, 630, 1003, and 1010]

[Docket No. 77N-0278]

OBLIGATIONS OF CLINICAL INVESTIGATORS OF REGULATED ARTICLES

Amendment of Proposal and Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Amendment of proposal and extension of comment period.

SUMMARY: As a result of a comment received on the proposal concerning obligations of persons who conduct clinical investigations of products regulated by the Food and Drug Administration (FDA), the agency is amending the proposal by withdrawing certain provisions of the conforming amendments governing the use of new animal drugs in clinical investigations. The agency is also extending the comment period on the proposal to allow interested parties more time to analyze related FDA proposals and provide more meaningful comments.

DATE: Written comments by December 6, 1978.

ADDRESS: Written comments to the Heaing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

Marilyn L. Watson, Bureau of Drugs (HFD-30), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3640.

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of August 8, 1978 (43 FR 35210), the Commissioner of Food and Drugs issued a proposal to clarify existing regulations concerning persons who conduct clinical investigations on new drug products and to extend those regulations to include persons who conduct clincial investigations on other products regulated by FDA. The regulations are intended to insure adequae protection of the rights and safety of subjects involved in clinical investigations and the quality and integrity of the resulting data submitted to FDA. Interested persons were given until November 6, 1978, to submit comments on the proposal.

The Commissioner has received four written requests for an extension of the comment period. Two comments requested an extension to coincide with the period provided for comment on the proposed regulations regarding Standards for Institutional Review Boards for Clinical Investigations, also published in the FEDERAL REGISTER of August 8, 1978 (43 FR 35186). One of these comments believed that because the two proposals are related, it is in the public interest to analyze and comment on them at the same time to provide more meaningful comments. The other comment requested the extension so as to be able to develop a response to both sets of regulations at an organizational meeting to be held November 30 through December 1, 1978. Two other comments requested a 30-day extension of the comment period. One of these requested the extension in order to discuss the proposed regulation at an association meeting on November 14, 1978. The other comment requested the extension because of the complexity of the issues involved in the proposed regulation. The Commissioner agrees that an extension of the comment period is in order.

As part of the proposed requirements concerning obligations of clinical investigators, the Commissioner proposed certain conforming amendments, including revisions to § 511.(b) (21 CFR 511.1(b)). On October 6, 1978, the Animal Health Institure, Suite 1009, 1717 K street NW., Washington, D.C. 20006, petitioned FDA to withdraw the proposed changes to 21 CFR

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Bureau, Inc., 375 U.S. 180, 195 (1963). *Cf. Commodity Futures Trading Commission* v. *J. S. Lore & Associates Options Ltd.*, 422 F. Supp. 652, 659-660 (S.D.N.Y. 1976). In addition, like § 30.03, the Commission's proposed section would also be promulgated pursuant to section 8a(5) of the Act, which broadly empowers the Commission to adopt regulations reasonably necessary to effectuate, *inter alia*, any of the "purposes" of the Act. One of those purposes in to insure fair and honest dealing with respect to commodity transactions, an aim which cannot be achieved if persons dealing in commodity transactions are not deterred from engaging in negligent or other conduct short of that encompassed under the concept of scienter.

[8] The Senate Report accompanying S. 2391, made clear that the Commission would have the "authority to regulate or ban leverage contracts on diamonds • • •." S. Rept. 95-850, 95th Cong., 2d sess. 27 (1978). In this connection, Senator Huddleston, in discussing S. 2391 as reported by the Conference Committee, observed that: "The media has recently disclosed the widespread potential for fraud in the marketing of leverage contracts in diamonds. The Commission under new section 19 of the Commodity Exchange Act, will have the authority to regulate or ban leverage transactions in diamonds, emeralds, or other commodities on which leverage transactions are offered. It is my hope that this new authority, coupled with the Commission's acquired experience over the past 3 years, will insure that the scandals with 'London' options will not be repeated with leverage transactions." 124 Cong. Rec. S16530 (daily ed., Sept. 28, 1978).

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Part 511 and, if such changes are to be proposed, to republish them as a separate docket in a separate proposed rulemaking proceeding. The petition contends that the revisions to part 511 are not conforming amendments but, rather, significant substantive changes which the agency has proposed without a summary of the facts and policy underlying the changes, and without references to all data and information on which the Commissioner relies The petition further contends that the proposed changes to part 511 revise the regulatory framework that must be followed by a sponsor in order to ship an animal drug legally for use in a clinical investigation, and that the proposed changes are therefore unrelated to the requirements of proposed part 54 (21 CFR Part 54), which deal with the responsibility of an investigator of a clinical investigation whether the investigation deals with animal drugs or any other article regulated by the agency.

The Commissioner has reconsidered the proposed revisions to part 511 in light of the petition and agrees that certain provisions are substantive and not applicable to this rulemaking. The Commissioner therefore concludes that the proposed revisions should be withdrawn and reproposed as a separate FEDERAL REGISTER document in the near future, except for the requirement set forth in proposed § 511.1 (b) (6) and (d) (2). The Commissioner concludes that the provision requiring a clinical investigation to be conducted in compliance with the requirements set forth in part 54 is relevant to this rulemaking. The Commissioner is therefore reproposing that requirement and advises that the extended comment period is applicable to that as amendment to § 511.1.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 406, 408, 409, 502, 503, 505, 506, 507, 510, 512-516, 518-520, 601, 701(a), 706, and 801, 52 Stat. 1049-1054 as amended, 1055, 1058 as amended, 55 Stat. 851, 59 Stat. 463 as amended, 68 Stat. 511-517 as amended, 72 Stat. 1785-1788 as amended, 74 Stat. 399-403 as amended, 76 Stat. 794 as amended, 82 Stat. 343-351, 90 Stat. 539-574 (21 U.S.C. 346, 346a, 348, 352, 353, 355, 356, 357, 360, 360b-360f, 360h-360j, 361, 371(a), 376, and 381)) and the Public Health Service Act (secs. 215, 351, 354-360F, 58 Stat. 690, 702 as amended, 82 Stat. 1173-1186 as amended (42 U.S.C. 216, 262, 263b-263n)) and under authority delegated to him (21 CFR 5.1), the Commissioner extends to December 6, 1978, the period for submitting comments on the August 8, 1978, proposal (43 FR 35210) and amends that proposal by revising proposed amendment No. 15 to read as follows:

• • • • •

PART 511—NEW ANIMAL DRUGS FOR INVESTIGATIONAL USE

15. In § 511.1, by adding new paragraph (b)(11), by redesignating paragraph (d)(2) as (d)(3), and by adding new paragraph (d)(2) to read as follows:

§ 511.1 New animal drugs for investigational use exempt from section 512(a) of the act.

• • • • •

(b) • • •

(11) The clinical investigation is conducted in compliance with the requirements set forth in part 54 of this chapter.

• • • • •

(d) • • •

(2) The clinical investigations are not being conducted in compliance with the requirements set forth in this part or in part 54 of this chapter; or

(3) The continuance of the investigation is unsafe or otherwise contrary to the public interest or the drug is being or has been used for purposes other than bona fide scientific investigation, he shall first notify the sponsor and invite his immediate correction. If the conditions of the exemption are not immediately met, the sponsor shall have an opportunity for a regulatory hearing before the Food and Drug Administration, pursuant to part 16 of this chapter, on whether the exemption should be terminated. If the exemption is terminated, the sponsor shall recall or have destroyed the unused supplies of the new animal drug.

• • • • •

Interested persons may, on or before December 6, 1978, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the hearing clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 6, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 78-31779 Filed 11-7-78; 11:22 am]

[4110-03-M]

[21 CFR Part 310]

[Docket No. 75N-0062]

ORAL HYPOGLYCEMIC DRUGS

Availability of Agency Analysis and Reopening of Comment Period on Proposed Labeling Requirements

AGENCY: Food and Drug Administration.

ACTION: Notice of availability of analysis of UGDP study and reopening of comment period on proposed rule.

SUMMARY: The Food and Drug Administration (FDA) announces the completion and availability of an agency analysis of the study on diabetes treatment regimens conducted by the university group diabetes program (UGDP) and reopens for 60 days the comment period on the oral hypoglycemic labeling revisions proposed in 1975. The analysis was conducted in light of questions raised by comments received in response to the 1975 proposal. The agency invites comments on the FDA analysis as well as on the 1975 proposal.

DATE: Comments by January 15, 1979.

ADDRESS: Comments to, and agency analysis on file at, the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857. Copies of the analysis available from Bureau of Drugs (HFD-30), Attn. Robert D. Bradley, Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

Robert D. Bradley, Bureau of Drugs (HFD-30), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-6490.

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of July 7, 1975 (40 FR 28587), the Commissioner of Food and Drugs proposed labeling requirements for oral hypoglycemic drugs and announced that an open public hearing would be held on August 20, 1975, so that interested persons could present their views on the proposed labeling. The hearing date was confirmed in the FEDERAL REGISTER of August 8, 1975 (40 FR 33459).

The document proposed to establish new § 310.510 (21 CFR 310.510) to require class labeling for oral hypoglycemic drugs that would reflect current scientific knowledge on their safety and effectiveness.

The proposal provided for labeling changes for both the sulfonylurea and biguanide categories of oral hypoglycemic drug products. The sulfonylurea category comprises tolbutamide, chlorpropamide, acetohexamide, and tolazamide. Phenformin is the only drug in the biguanide category.

Since the oral hypoglycemic labeling revisions were proposed, the Secretary of Health, Education, and Welfare, upon finding phenformin an imminent hazard due to its association with lactic acidosis, suspended new drug applications for the drug.

The proposed labeling changes were based primarily on a long-term study that began in 1961 and was conducted by the UGDP in 12 university medical centers to determine whether lowering blood sugar levels with oral hypoglycemic drugs had a beneficial effect on the long-term vascular complications of diabetes. The program initially had four treatment groups: (1) 1.5 grams of tolbutamide a day, (2) 10 to 16 units of insulin a day based on body area, (3) variable dose of insulin adjusted to control blood glucose, and (4) placebo. Eighteen months later a group was added in which the patients were given 100 milligrams of phenformin per day.

By 1969 the tolbutamide group showed an unexpected increase in cardiovascular mortality. The UGDP subsenquently discontinued use of tolbutamide because no benefit had been shown for those patients, and long-term use of the drug was associated with cardivoascular mortality. This study is discussed in greater detail in the preamble to the July 7, 1975 proposal.

Interested persons were invited to submit written comments regarding the proposal by September 5, 1975. In addition, an open hearing before the Director of the Bureau of Drugs was held on August 20, 1975. Interested persons were allowed to submit data, information, or views within 15 days after the open hearing of August 20, 1975; this date was later extended to October 22, 1975 in the FEDERAL REGISTER of September 22, 1975 (40 FR 43513).

There were 68 written comments on the proposed oral hypoglycemic labeling revisions and 17 presentations at the open hearing, including material submitted after the hearing. Comments were received from physicians, individuals, manufacturers, medical associations, consumer groups, medical schools, hospitals and clinics, interested professionals, and representatives of UGDP. Some of the comments questioned the UGDP design, its findings, the results of the Biometric Society's audit of the UGDP study and the fact that other studies, while not contradiction the UGDP study, do not support its results. In addition, statements were made at the open hearing to the effect that the data in the file of the coordinating center for the study had not been audited, and therefore, the possibility of error or misrepresentation had not been eliminated.

Because of these questions, FDA conducted an audit of both the UGDP study and the subsequent audit by the Biometrics Society Committee. This FDA audit was conducted by a team of FDA medical officers, statisticians, and field investigators that reported to the Director of the Bureau of Drugs. The purpose of the audit was to assess the validity of data transfer from case report forms, and other information provided by the clinics' physicians, from coding and computerization in the coordinating center to final publication of scientific reports, and to analyze the impact of any discrepancies on the conclusions of the study. The audit consists of a report with appendices containing extensive records furnished by UGDP and records generated by FDA.

A complete copy of the audit has been placed on public file in the office of the Hearing Clerk, FDA and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday. Because of the physical size of the audit and because much of it is contained within a computer program, requests should be sent directly to the Bureau of Drugs at the address shown earlier in this document.

The essential findings of the FDA audit team are set forth in a summary and conclusion section as follows:

Various objective paramcters (e.g., height, blood pressure, cholesterol, and assigned treatment) were audited. Meaningful error frequencies could be determined for 20 items, and these frequencies were quite low. For technical reasons meaningful error frequencies could not be determined for 13 items. These parameters could not be evaluated because of the records storage methods, but would seem to bear more on morbidity than on moratality.

Baseline electrocardiograms were obtained for all but 3 of the 150 patients audited and were read by an FDA expert using the Minnesota Code. Using the UGDP criteria for "significance" 17 cases were identified where the FDA reader and the UGDP reader differed in interpretation involving a "significant" abnormality. In five cases the FDA reading would change the classification from nonsignificant to significant, and in three cases the FDA reading would change the classification from significant to nonsignificant.

It was not the intention of this audit to make a judgment on the cause of death in each case, but rather to determine if there were obvious discrepancies or errors in listing the cause of death. In comparing the causes coded by the UGDP death committee with those published by UGDP, differences were found in three patients. In one case the committee listed myocardial infarction, but the publication listed sudden death, which did not change the cardiovascular classification. In two cases that did involve a change in cardiovascular/noncardiovascular classification, the causes of death initially assigned by the death committee were later changed by that committee, but the initial assignments rather than the corrected ones were published. If published as the death committee had intended, one death in the placebo group would have been classified as noncardiovascular rather than as cardiovascular, and one death in th IVAR group would have been classified as cardiovascular rather than as noncardiovascular.

The FDA audit was extended to include nine deaths not reported in the UGDP Publications to which this audit refers. It was found that the reports of these nine deaths were received by the coordinating center after the cutoff date for receipt of information to be analyzed for these particular publications had passed. The audit team has retabulated the deaths with inclusion of these nine late receipts and the two reclassifications in accord with death committee intent, and finds that the conclusions which may be drawn from the retabulated data do not differ from those which may be drawn from the published data.

Of the 150 patients audited a total of 44 were found to have changed hypoglycemic medication at some time during the course of the study. Twenty-seven of these were not on the originally assigned treatment in the last quarter observed. Because of this the audit team studied the methods used for recording treatment prescribed and patient adherence to the prescribed treatment. The team concluded that the UGDP decision to base their analysis of adherence upon the original randomly allocated therapy represents a conservative approach from the statistical point of view. This procedure would tend to minimize rather than exaggerate any effect associated with treatment regimen and thus lends credence to any positive effects found.

The audit team concludes that, while there are certain errors and discrepancies between the data file of the UGDP study and the published reports, none of these appears of sufficient frequency or magnitude to invalidate the finding that cardiovascular mortality was higher in the groups of patients treated with tolbutamide plus diet and phenformin plus diet compared to the groups treated with placebo or insulin.

The Commissioner is seeking comments regarding the audit report from interested parties. Comments may also be submitted during the same 60-day period regarding the oral hypoglycemic labeling proposed on July 7, 1975. The Commissioner would prefer that comments on the labeling be limited to issues newly arising as a result of the FDA analysis of the UGDP study. Comments previously submitted on the proposed labeling need not be resubmitted. In preparing a final order, the Commissioner will consider all comments received on the matter since the proposal of July 7, 1975.

The Food and Drug Administration has determined that this document does not contain an agency action covered by 21 CFR 25.1(b) and consideration by the agency of the need for preparing an enviromnetal impact statement is not required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 501, 502, 505, 512, 701(a), 52 Stat. 1040-1042 as amended, 1049-1051 as amended, 1052-1053 as amended by 76 Stat. 781-785, 52 Stat. 1055, 82 Stat. 343-351 (21 U.S.C. 321, 351, 352, 355, 360b, 371(a))) and under authority delegated to him (21 CFR 5.1) the Commissioner reopens the comment period on the July 7, 1975 proposal to establish labeling requirements for oral hypoglycemic drugs.

Interested persons may, on or before January 15, 1979, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, written comments regarding the FDA audit and the proposal discussed in this document. Four copies of all comments must be submitted, except that individuals may submit single copies of comments; all comments must be identified with Hearing Clerk Docket No. 75N-0062. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday

Dated: November 6, 1978.

DONALD KENNEDY,
Commissioner of Food and Drugs.

[FR Doc. 78-31694 Filed 11-7-78; 10:07 am]

[4830-01-M]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

[EE-102-78]

INCOME TAX

Minimum Funding Standards Asset Valuation; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to asset valuation for purposes of computing the minimum funding standard for pension plans.

DATES: The public hearing will be held on January 11, 1979, beginning at 10 a.m. Outlines of oral comments must be delivered or mailed by December 30, 1978.

ADDRESS: The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, D.C. The outlines should be submitted to the Commissioner of Internal Revenue, Attention: CC:LR:T (EE-102-78) Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

George Bradley or Charles Hayden of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, 202-566-3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 412(c)(2) of the Internal Revenue Code of 1954. The proposed regulations appeared in the FEDERAL REGISTER for Friday, August 25, 1978, at page 38027 (43 FR 38027).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and also desire to present oral comments at the hearing on the proposed regulations should submit an outline of the comments to be presented at the hearing and the time they wish to devote to each subject by December 30, 1978. Each speaker will be limited to 10 minutes for an oral presentation exclusive of time consumed by questions from the panel for the Government and answers to these questions.

Becuse of controlled access restriction, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the proposed Treasury Directive appearing in the FEDERAL REGISTER for Wednesday, May 24, 1978.

By direction of the Commissioner of Internal Revenue.

GEORGE H. JELLY,
Director, Employee Plans and Exempt Organizations Division.

[FR Doc. 78-31878 Filed 11-13-78; 8:45 am]

[4310-05-M]

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[30 CFR Parts 715 and 717]

SURFACE MINING RECLAMATION AND ENFORCEMENT PROVISIONS

Proposed Rules and Notice of Public Hearing

AGENCY: Office of Surface Mining Reclamation and Enforcement, (OSM), Department of the Interior.

ACTION: Proposed rules for interim regulatory program and announcement of hearing.

SUMMARY: The proposed regulations would establish design criteria for sedimentation ponds and head-of-hollow fills constructed during the interim regulatory program and invite comments on consultations between the Secretary and those who have designed head-of-hollow fills. The proposed regulations reflect the Secretary's reconsideration of the regulations for sediment ponds and head-of-hollow fills in light of the directives of the District Court of the District of Columbia.

DATES: The comment period on the proposed rules and other published information will extend until December 18, 1978. All written comments must be received at the address given below by 5 p.m. on December 18, 1978. Comments received after that hour will not be considered or be included in the administrative record for this rulemaking. The Office cannot insure that written comments received or delivered during the comment period to any other locations than specified above will be considered and included in the administrative record for this rulemaking.

A public hearing on the proposed regulations will be held on December 14, 1978, at 9:30 a.m. in Washington, D.C., Department of the Interior Auditorium, 18th and C Streets NW., Washington, D.C. 20240.

ADDRESSES: Written comments must be mailed to: Office of Surface Mining, U.S. Department of the Interior, South Building, Room 120, 1951 Constitution Avenue NW., Washington, D.C. 20040. All comments should be clearly marked as comments on the proposed rules for the interim regulatory program.

A public hearing on the proposed regulations will be held on December 14, 1978, at 9:30 a.m. in Washington, D.C., Department of the Interior Auditorium, 18th and C Streets NW., Washington, D.C. 20240

FOR FURTHER INFORMATION CONTACT:

Ron Drake, Special Assistant to the Director, Office of Surface Mining, Department of the Interior, Washington, D.C., 20240, 202-343-5371.

SUPPLEMENTARY INFORMATION:

1. Section 501(a) of the Surface Mining Control and Reclamation Act requires the Secretary to promulgate regulations establishing an interim regulatory program for surface coal mining operations. The interim regulations were promulgated on December 13, 1977, 42 FR 62639 (Dec. 13, 1977). On February 27, 1978, the Secretary adopted interim final rules modifying the interim regulations controlling the design of sediment ponds. 43 FR 8090-93.

Portions of the interim regulations, including the amended design critera for sediment ponds, were challenged by the coal industry pursuant to section 526 of the act in the District Court for the District of Columbia. As a result of that litigation, the Secretary was ordered to reconsider, in particular, 30 CFR Sections 715.17(e), 717.17(e) (sediment pond design criteria), 30 CFR Section 715.15(b), and 25 CFR Section 177.106(b) (head-of-hollow fills). See *In Re Surface Mining Regulation Litigation*, 452 F. Supp. 327 (1978); and *In Re Surface Mining Regulation Litigation*, Mem. Op. filed August 24, 1978.

The proposed regulations reflect the Secretary's reconsideration of the regulations for sediment ponds and head-of-hollow fills in light of the aforementioned directives of the District Court for the District of Columbia.

2. *Head-of-hollow fills.* In litigation contesting the interim regulatory program, the coal industry and the State of West Virginia challenged two specific provisions of § 715.15 concerning underdrains and compaction of spoil in valley fills. On August 24, 1978, the District Court for the District of Columbia kept the regulations in force, but at the same time remanded the regulations for reconsideration in light of the 1978 Skelly and Loy Report. See *Surface Mining Regulation Litigation*, Mem. Op. at 10 (August 24, 1978).

Pursuant to the court's order, the Secretary's reconsideration is to also include a disclosure of the substance of consultations the Department had prior to the December 13, 1977 regulations with individuals who have studied head-of-hollow fills. The Secretary is require to allow all interested people to comment on the substance of the consultations and consider such comments in the review of the regulations.

After preliminary reconsideration of the regulations, OSM has decided to propose a modification to the interim regulation for head-of-hollow fill construction. The new regulations would permit a modified West Virginia rock core system to be utilized at the discretion of the regulatory authority. The rock core would be designed to direct water falling on the surface of the fill to a central rock core which extends from the toe of the fill and from the base to the surface of the fill. As proposed, in no case may the rock core method be used where there is drainage from above the fill into the fill mass, except if such fills are associated with a montaintop removal operation and are located at or near the resultant ridge line, or in the case of contour mining if such fill is located at or near the mined seam of coal, and providing that such fill is not larger than 250,000 cubic yards. In the case of mountaintop removal operations the relatively flat disturbed area contiguous to the fill may be drained to the rock core. Thus, if such regulations are adopted during the interim regulatory program, head-of-hollow fills could be constructed in accourdance with the Secretary's December 13, 1978, requirements or, the modified West Virginia method.

Regarding consultations prior to the December 13, 1977 regulations, representatives of the Department spoke with representatives of the Skelly and Loy consulting firm to determine the scope and limitations of the 1977 Skelly and Loy Report on head-of-hollow fills. Skelly and Loy consultants confirmed the conclusions and recommendations at I-3-I-7 of the report. The substance of the key consultations with Skelly and Loy is reflected in Skelly and Loy's recommendations which follow:

a. A rock underdrainage system should be constructed along the hollow's natural drainway with lateral drains to each spring or seep.

(1) In fills containing less than 765,000 cubic meters or 1,000,000 cubic yards of predominantly sandstone, the main drain dimensions should be not less than 2.4 meters wide by 1.2 meters high (8 ft. by 4 ft.); if overburden is predominantly shale, the underdrain should be not less than 4.9 meters by 2.4 meters (16 ft. by 8 ft.).

(2) In fills containing more than 765,000 cubic meters of predominantly sandstone, the main drain dimensions should not be less than 4.9 meters by 2.4 meters (16 ft. by 8 ft.); if overburden is predominantly shale, the underdrain should not be less than 4.9 meters by 4.9 meters (16 ft. by 16 ft.). These underdrains (both main and lateral) should be designed by a qualified engineer based on assessment of site specific geologic and physical factors.

b. All underdrains should be of durable rock with no more than 10 percent of a size 0.3 meters (12 inches) and no material larger than 25 percent of the drain width.

c. All surface drainage should be diverted away from the fill site to diversion ditches constructed in undisturbed material—these ditches should be protected by riprap or other means in steep grades such as outslopes.

d. The preceding recommends criteria for the construction of environmentally stable head-of-hollow fill spoil disposal. It is emphasized, however, that these criteria should allow flexibility in the surface reclamation for sculpting and final landform to harmonize with the local environment and regional land-use plan.

Pursuant to the order of the District Court interested persons are invited to comment on the substance of the consultations and these comments will be considered in the review of the regulations.

As required by court order, the proposed regulations also reflect consideration of the 1978 Skelly and Loy Report entitled "Environmental Assessment of Surface Mining Methods: Head-of-Hollow Fill and Mountaintop Removal." Skelly and Loy said, "* * * each mine site is physically different and any adopted criteria should provide for alternative construction techniques considerate of these physical variations * * *" p. 11.

The following discusses in detail the basis and purpose of the proposed regulation:

Authority for these proposed sections is found in section 102, 201, 501, 502 and 515 of the Act.

Literature utilized in the preparation of these proposed regulations includes:

1. American Society of Civil Engineers, "Geotechnical Practice for Disposal of Solid Waste Materials"; A.S.C.E. Symposium-March 1977, Ann Arbor, Mich.

2. American Society of Civil Engineers, "Stability and Performance of Slopes and Embankments," August 1969. American Society of Civil Engineers, *Stability of Rock Cuts*, Edited by E. J. Cording, 1972.

3. American Society for Testing and Materials, "Instruments and Apparatus for Soil and Rock Mechanics," *Special Technical.*

4. American Society for Testing and Materials, 1976. Soil and rock; building stones; peat; part 19 AM. Soc. Test Matter.

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8. Cedergren, H. R., *Seepage, Drainage and Flow Nets*, John Wiley and Sons, Inc., 1967

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13. Curry, James A., 1977, *Surface Mining Coal on Steep Slopes Back-to-Contour Demonstration.* Fifth Symposium on Surface Mining and Reclamation NCA/BCR Coal Conf., Louisville, Ky.

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16. Department of Energy, Mines and Resources, Canada, *Pit Slope Manual—Chapter 9—Waste Embankments* CANMET Report 77-01; Mining Research Laboratories, 1977.

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19. Greer, M. R. "Disposal of Solid Wastes from Coal Mining in Washington, Oregon, and Montana," *IC8430* Bureau of Mines, U.S. Department of the Interior, 1960, 39 pages.

20. Greene, Benjamin C. and Raney, William B., 1975. West Virginia's Controlled Placement Third Symposium on Surface Mining and Reclamation. NCA/BCR Coal Conf. Louisville, KY.

21. Grim, E. C., and Hill, R.D., 1974, Environmental protection in surface mining of coal: U.S. Evironmental Protection Agency Report EPA-670/2-74-093, 277 p.

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50. U.S. Navy Bureau of Yards and Docks, "Soil Mechanics, Foundations and Earth Structures," DM-7, 1963.

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52. West Virginia Department of National Resources, 1975, Drainage handbook for surface mining: West Virginia Department of Natural Resources, Division of Reclamation, 75 p., 5 appendixes.

53. William, George P., Jr., 1973, *Changed spoil dump shape increases stability on contour strip mines*, in 1st Research and Applied Technology Symposium on Mined-Land Reclamation, Mar. 7-8, 1973, Pittsburgh, Pa., Proceedings, pp. 243-249: Monroeville, Pa., Bituminous Coal Research, Inc. (Reprint).

54. Wood, L. E., et al., "Guidelines for Compacted Shale Embankments," Purdue University, 1976.

Applicable State and Federal laws comparable to or containing similar requirements include but are not limited to:

1. 30 USC 801, MSHA regulations.
2. 33 USC 1151-75 Water Pollution Control Act.
3. Chapter 20, Article 6, *West Virginia Code*—"Surface Mining and Reclamation Control Act."
4. Chapter 20, Article 6C, *West Virginia Code*—"The Coal Refuse Disposal Control Act."
5. "Pennsylvania Clean Streams Law," 35 *Pa. Stat. Anno.*, Sec. 691.1 *et seq.*
6. "Solid Waste Management Act," 35 *Pa. Stat. Anno.*, Sec. 6001 *et seq.*
7. Title 25 *Pennsylvania Code*, Chs. 95, 97, 101, 125.
8. Ch. 20 Art. 5, *W.Va. Code*, "*Water Pollution Control Act.*"
9. 40 CFR 136. "Protection of the Environment."

Proposed §715.15(a) requires controlled placement utilizing current prudent engineering practices utilized in embankment construction for all types of permanent fills.

Maintaining stability protects the public and the environment from the adverse results of failure. Compatibility with surroundings and the approved postmining land use minimizes the adverse effects of mining as required in the Act. American Society of Civil Engineers, 1977; Tromson, 1972; DOE, 1977, 1978; Eliassen, 1969, Greer, 1960; Grin, 1974; National Coal Board, 1970; Skelly and Loy, 1977; Weight, 1966; West Virginia DNR, 1975; and Wood, 1976.

Proper engineering practices require that all organic material be removed to allow for proper foundation preparation before fill placement, and to prevent the existence of weak, unstable zones within the embankment. Topsoil must be stockpiled for later use as required by the American Society of Civil Engineers, 1977; American Society of Civil Engineers, 1972; Bishop, 1973; DOE, 1977; Greer, 1960; Havers, 1971; Huang, 1978; Kimble, 1974; Lambe, 1969; Leonards, 1962; National Coal Board, 1970; USSCS, 1969; Taylor, 1948; Terzaghi, 1967; USBOR, 1973; US Corps of Engineers, 1971; USDA (no date); USDOI, 1976; USN, 1963; West Virginia DNR, 1975; and Wood, 1976.

Slope protection and vegetation of all unprotected areas should be provided contemporaneously with construction, consistent with standard maintenance procedures for permanent structures under construction. Adams, et al., 1974; Bonny and Frein, 1973; Brundage, 1974; BOM, 1973; Capp, et al., 1975; Capp and Gilmore, 1974; Capp and Adams, 1971 Charmbury and Chubb, 1973; Coalgate et al., 1973; Czapowskyz and Writer, 1970; Czapowskyz and Sowa, 1973; Davidson, 1974; Dean, 1972; Dean and Havens, 1971; Department of Energy (Canada), 1972; D'Appolonia, 1975; Eigenbrod, 1971; Eliassen, 1969; James, 1966; Jones et al., 1973; Leroy, 1972; National ASN Association, 1972; National Coal Board, 1970; Peterson and Geshwind, 1973; Riley and Rinier, 1972; SCS, 1974; Sorrell, 1974; Spirik, 1973; Thompson and Hutnik, 1971; Welsh and Hutnik, 1972; White et al., 1973; and Wood and Thiegood, 1955.

The prohibition against depressions or impoundments is proposed to preserve the structural integrity of the fill by limiting sources of water introduced into the embankment.

Limiting the use of terraces to sites where approved by the regulatory authority as necessary to control erosion or enhance stability is proposed to maintain embankment outslopes compatible with the surroundings.

The use of keyway cuts and buttresses is intended to increase the stability of the embankment where steep foundation conditions necessitate special treatment to resist the sliding movement created by the weight of the fill. Bishop, 1973; Chirionis, 1972; Curry, 1977; DOE, 1977; Huang, 1978; Lambe, 1969; Leggett, 1962; National Coal Board, 1970; Skelly and Loy, 1977; SCS, 1969; Taylor, 1948; Terzaghi and Peck, 1967; USBOR, 1973; US Corps of Engineers, 1971; USN, 1963; Weigle, 1966; and Wood, 1976.

To monitor potentially hazardous changes effectively, frequent inspections are mandatory. The proposed inspection procedure is standard for embankment construction, both in content and frequency. The procedures for maintaining records of inspection, notification of the regulatory authority and certification of the construction by a registered professional engineer provides quality control records which indicate the close scrutiny necessary to provide for proper construction. (See 30 U.S.C. 77.215-3; WV Code; PA Code.)

Proposed subsection 715.15(a)(12) requires subdrain networks which allow for control of all ground water beneath a disposal area. Lack of control can result in ground water saturating portions of the fill and, as a consequence, endangering the structural integrity of the embankment. The rock underdrain fill construction is designed to keep water from infiltrating into the body of the fill.

The proposed subsection 715.15(a)(14) requires that the foundation be analyzed to assure the site is or can be utilized without danger of foundation problems during or after construction. Improper foundation treatment could lead to instability and variance from the purpose of the Act. American Society of Civil Engineers, 1969; Bishop, 1962; Department of Energy (Canada), 1972; D'Appolonia, 1975; Forrester and Whittaker, 1976; Hvorslev, 1948; Lambe et al., 1969; Leggett, 1962; Leonards, 1962; National Coal Board, 1970; Taylor, 1948; Terzaghi & Peck, 1967; Terzaghi, 1943; USDOI, 1976; USDOI, 1968; U.S. Navy Bureau of Yards and Docks, 1963; Wood et al., 1976; Thomson et al., 1972; and Department of Energy (Canada), 1977.

Proposed §715.15(b) requires that valley fills shall have a minimum static factor of safety of 1.5. Reduced factor of safety requirements for remote areas were considered as alternatives, but the size and variability of sites and the potential for significant environmental harm negated the validity of the alternative. The 1.5 safety factor was chosen over lower values to insure an adequate margin of safety. A 1.5 safety factor is standard engineering practice for structures located where failure could cause loss of life, property damage, or significant environmental harm. American Society of Civil Engineers, 1977; ASCE, 1969; Bishop, 1973; Bishop, 1955; DOE (Canada), 1972; D'Appolonia, 1975; Lambe and Whitman, 1969; National Coal Board, 1970; Taylor, 1948; Terzaghi & Peck, 1967; Terzaghi, 1943; USDOI, 1976; U.S. Navy, 1963; Wood, 1976; Thompson, et al., 1972; and DOE (Canada), 1977.

Proposed subsection 715.15(b)(2) outlines subdrain requirements. The main rock underdrain is constructed to provide passage for water infiltrating the fill. It is a common, accepted engineering and construction practice to allow surface water to infiltrate a soil mass and to minimize the hydrostatic pressure within the fill. Lateral interceptors insure collection and transport of all major sources of ground water beneath the disposal area.

The prerequisite for drains in areas of actual or projected seepage implements requirements in section 515(b)(22)(C) of the Act and parallels standard engineering requirements. American Society of Civil Engineers, 1977; American Society of Civil Engineers, 1972; Ceceigren, 1965; Chassie and Goughnour, 1976; Chironis, 1977; DOE, 1977; Green and Raney, 1975; Hopkins et al., 1975; Huang et al., 1975; Lambe and Whitman, 1969; Leggett, 1962; Leonards, 1972; National Coal Board, 1970; Skelly and Loy, 1977; SCS, 1969; SCS, 1974; SCS, 1975; Taylor, 1948; Terzaghi and Peck, 1967; Terzaghi, 1943; USBOR, 1973; U.S. Corps of Engineers, 1952; USN, 1963; Weigle, 1966; West Virginia, DNR, 1975; and Wood, 1976.

Filters must be provided which are compatible with the fill, the foundation, and each other. This is a standard engineering criterion which prevents the potential for blockage of drains by migration of fine materials.

The sizing criteria are derived from standard drain design in texts and publications, and from performance of actual drains in the field. American Society of Civil Engineers, 1977; American Society of Civil Engineers, 1972; Cedergren, 1967; Chassie, 1976; Chironis, 1977; DOE, 1977; Greene and Raney, 1975; Hopkins, et al., 1975; Huang, 1975; Huang, 1978; Lambe, 1969; Leggett, 1962; Leonards, 1962; National Coal Board, 1970; Skelly and Loy, 1977; SCS, 1969; SCS, 1974; SCS, 1975; Taylor, 1948; Terzaghi, 1967; Terzaghi, 1943; USBOR.

Subdrain material must be durable to prevent degradation which could lead to blockage and subsequent failure. This is a standard design criterion for drain design and construction. Astin, 1976; Cedergren, 1967; DOE, 1977; Lambe, 1969; Lambe, 1951; Leonards, 1962; SCS, 1969; SCS, 1975; Taylor, 1948; Terzaghi & Peck, 1967; USBOR, 1973; U.S. Corps of Engineers, 1952; USDA (no date); and USN, 1963.

The proposed 18-inch-lift requirement is based on additional information which has been gathered on the process of constructing earthfill structures in a series of horizontal lifts. This information shows that a variety of lift thicknesses was required for fill construction by different methods and contractors. The more conservative requirements allowed lifts only a few inches thick between compactions, the less conservative allowed up to 6 feet. Most authorities agreed that it was the compaction and removal of pore spaces that was important for fill stability. Because the agencies authorizing the construction of earthfill dams and groins, both of which have possible failure consequences similar to those of fills, require lift thicknesses of 3 to 8 inches and because the agencies have extensive experience and empirical evidence for their decisions, the

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Office has proposed an 18-inch rule on lift thickness, which varies from the previous interim program regulations which require 4-foot lifts. If the operator can show by continuous inplace density monitoring that the spoil density specified in the design certified by a registered professional engineer is being attained throughout each lift thickness employed, thicker lifts will be allowed not to exceed 4 feet in thickness. Under the proposed regulations end dumping would be prohibited. American Society of Civil Engineers, 1977; American Society of Civil Engineers, 1972; Astin (no date); Bishop and Henkel, Goughnour, 1976; Chironis, 1977; Thomson and Podon, 1972; Cummins et al., 1965; Curtis, 1973; Depaid, 1974; DOE, 1977; Denevich et al., 1976; Holtzgard Gibbs, 1956; Hvorslev, 1948; Huang et al., 1975; Huang, 1978; Kimble, 1974; Lambe, 1969; Lambe, 1951; May, 1963; Meyerhoff, 1970; Superfesky and Williams, 1978; Taylor, 1948; Terzaghi and Peck, 1967; Terzaghi, 1943; USBOR, 1973; U.S. Corps of Engineers, 1971; USN, 1963; Weigle, 1966; and Grim and Hill (1974); Skelly and Loy (1978).

Diversion of runoff is required to prevent erosion of which could decrease the overall stability of the site. A 6-hour duration storm was considered, but the 24-hour storm produces a peak substantially larger in total volume than the 6-hour hydrograph. American Society of Civil Engineers, 1969; U.S. Corps of Engineers, 1952; Department of Energy (Canada), 1972; D'Appolonia, 1975; Good et al., 1970; Leonards, 1962; Marks, 1975; SCS, 1969; SCS, 1975; Terzaghi, 1967; USDOI, 1976; U.S. Navy Bureau of Yards and Docks, 1963; and West Virginia Department of Natural Resources (no date); Brater and King, 1976; Chow, 1959; Davis and Sovenson, 1969; Department of Energy (Canada), 1972.

The proposal to allow terraces is intended to break the length of the slope thus allowing the water to maintain low, nonerosive velocities. All slope values proposed are standard slopes for fill construction which are flat enough to limit or retard erosion. American Society of Civil Engineers, 1972; Chironis, 1977; Aury, 1977; Eliassen, 1969; Greene, 1960; Greene, 1975; Grim, 1974; Kimble, 1974; SCS, 1969; USDA (no date); and West Virginia DNR, 1975.

A maximum 2:1, lv:2h outslope limitation is proposed, as also specified by MSHA in 30 CFR 77.214. This slope reflects combinations of accessibility and stability.

Proposed § 715.15(c) contains the requirement for placing spoil fills in the uppermost reaches of the drainage area to reduce the size of drainage areas necessary to be controlled. The rock core chimney drain allowance was based on the following course of events. On December 13, 1977, final rules were adopted for the interim surface mining reclamation and enforcement program developed pursuant to the Act. These rules covered the disposal of spoil from surface mining in areas other than mine workings of excavations, and specifically authorized the rock underdrain system of fill construction. Following adoption of rules, the Office received petitions for change of the Federal rules affecting head-of-hollow fills. The Office instituted an investigation of the allegations of the petitions, which result in these proposed revisions of the earlier rules.

Petitions from the State of West Virginia and from coal mine operators in that State alleged that the Office was being too narrow in defining only one construction method for building head-of-hollow fills. They claimed that the "rock core system" authorized in West Virginia provided as much, or more, protection as the "rock underdrain system" in the interim program. Several professional engineers have expressed concern with long-term clogging of the rock core by fine-grained sediment in the drainage and in some cases piping (internal erosion) caused by the flow of water within the fill which could lead to instability and potential failure of the fill. To date the Office is not convinced that rock core fills are potentially less stable than the rock underdrain fills.

Some engineers have expressed doubt that the rigorous West Virginia construction requirements could be adequately monitored in a State that was just beginning a strict inspection program and that inadequate engineering practices would be more likely to result in failure in the rock core system. It is critical that the rock core maintain its permeability throughout. If one impermeable section is placed or if a section become impermeable, the result could be disastrous. On the basis of the investigation, the Office is proposing a permanent program revision to the regulations permitting the rock core system of head-of-hollow fills to be used at the discretion of the regulatory authority with adequate inspection and supervision. At the same time, the Office is instituting a formal study through the National Academy of Engineering to investigate, in depth, the potential for failure of the types of head-of-hollow fills.

The rock core drain system is designed to direct water falling on the surface of the fill to a central rock core by means of surface grading. The rock core extends from the toe to the head of the fill and from the base to the surface of the fill. A system of lateral underdrains will dispose of water from seeps emerging beneath the fill. Filters are provided for the core and subdrains. A drainage pocket of less than 10,000 gallon capacity at the head of the fill is designed to handle surges from heavy runoff conditions.

The major advantage of the rock core construction appears to be its ability to cope with long-term differential settlement of the fill that results in a surface grade toward the center of the fill, where settlement is usually greatest. In areas where such settlement is unavoidable, the regulatory authority might specify rock core drains as the construction method; in other areas, diversion of the water from the fill might be the preferred construction method. Other criteria such as side hill conditions, shot spacing, or haulage methods could affect the design of the fill. For both cases, the key to preventing erosion is adequate design and construction of diversion and surface drainage systems. In all cases, only the precipitation that falls on a fill may run over it. The path such precipitation travels should be the one that minimizes erosion. Lateral interceptors insure collection and transport of all major sources of ground water beneath the disposal area. This is a standard design criterion for drains and may be found in numerous soil mechanics and engineering references. Greene and Raney, 1975; Skelly and Loy, 1977, 1978; and West Virginia DNR, 1975.

3. *Buffer zones.* Pursuant to the decision of the District Court for the District of Columbia, In re *Surface Mining Regulation Litigation*, Mem. Op. at 17 filed August 24, 1978, the Secretary is required to receive additional comments concerning the buffer zone requirements of § 715.17(d). The court reasoned that although the Secretary had pointed to ample support for the regulation, the sources relied upon in the Government's brief were not listed in the certified index in reference to § 715.17(d)(3). Therefore, the Secretary was directed to reconsider the regulation in light of additional comments received. Section 715.17(d)(3) reads as follows:

> (3) *Buffer zone.* No land within 100 feet of an intermittent or perennial stream shall be disturbed by surface coal mining and reclamation operations unless the regulatory authority specifically authorizes surface coal mining and reclamation operations through such a stream. The area not to be disturbed shall be designated a buffer zone and marked as specified in § 715.12.

It is generally recognized that a buffer zone or "filter strip" of undisturbed land located between a disturbed area and a stream acts to protect the stream from sediment-bearing water flowing from the disturbed area.

The vegetation and undisturbed soil within the filter strip has the effect of filtering significant amounts of polluted water before it directly enters the stream. Grim and Hill, 1974, Environmental Protection in Surface Mining of Coal, U.S. Environmental Protection Agency, p. 118.

The Grim and Hill publication expressly states that, at a minimum, a 100-foot filter strip should be retained between a disturbed area (such as a haul road) and a stream (p. 118):

> Experience has shown that a protective strip of absorbent undisturbed forest soil between the road and stream usually prevents muddy road water from reaching streams. This strip, often called a filter strip, should be wide enough to absorb all the muddy water that runs off road surfaces. A minimum distance of 100 feet (30.5 meters) is recommended between the road and stream. (Footnote omitted.)

An identical recommendation is contained in Guidelines for Construction of Mine Roads, Region 10, U.S. Environmental Protection Agency, which is included as appendix D to Grim and Hill at p. 255. In addition, in Weigle (1965), the author recommends a filter strip at least 50 feet wide if the slope is nearly level. If the slope is very steep, i.e., 70 percent grade, a 165-foot wide filter strip is recommended. For medium slopes, i.e., 40 percent grade, a minimum 105-foot filter strip is deemed appropriate. Moreover, at least two States presently require 100-foot wide buffer zones between disturbed areas and streams. Alabama Guidelines for Minimizing the Effects of Surface Mining on Water Quality, p. 2; Kentucky Revised Statues 350.085(4).

The Secretary's choice of the 100-foot buffer zone appears to be well supported by technical literature and State legislation in the field. In accordance with the court's order of August 24, 1978, the Office invites additional comments on the regulation and technical literature and State legislation supporting the requirement.

4. *The design criteria for sediment ponds.* In brief, the February 28, 1978, design criteria for sedimentation ponds required operators to: (a) Consider surface area in the design of ponds in order to achieve effluent limitations; (b) provide a sediment storage volume equal to 0.2 acre-feet per acre of disturbed area within the upstream drainage area unless the operator uses onsite or point-of-origin activities to reduce the required 0.2 acre-feet per acre of disturbed area storage volume; and (c) provide 24-hour theoretical detention time for inflow or runoff entering the pond(s) from a 10-year, 24-hour precipitation event. The 0.2 acre-feet per acre of disturbed area sediment storage volume requirement could also be reduced by the regulatory authority upon a showing that lesser sediment yields were appropriate. Additionally, a credit system was established to allow for the reduction of the 24-hour theoretical detention time.

On May 3, 1978, the District Court for the District of Columbia enjoined enforcement of the design criteria for sedimentation ponds contained at §§ 715.17(e) and 717.17(e) of the regulations until the Secretary considered comments on the interim final rules, published final rules and the court reviewed the merits of the rule. Based upon a prediction of imminent irreparable harm to plaintiffs coupled with a lack of an effective review remedy, the court found it necessary to stay the interim final rules to allow for adequate judicial review prior to making coal operators subject to the sediment pond design criteria.

Ten witnesses testified at a public hearing on the interim final rules on March 15, 1978, and 20 additional written comments were received by the close of the comment period on March 29, 1978.

The major issues raised at the hearing and in written comments can be summarized as follows:

(a) Commenters said sediment ponds are not always the "best technology currently available" to minimize disturbances to the prevailing hydrologic balance. According to commenters, operators should be allowed the discretion to use other methods to achieve effluent limitations. Commenters 1, 3, 4, 5, 10, 11, 16, 17, 20, 24, 27.

(b) Commenters said there are no data to support the sediment storage volume requirement for sedimentation ponds. According to commenters the sediment storage volume standard of 0.2 acre-feet per acre of disturbed area within the upstream drainage area is arbitrary and capricious as a national standard. They said it was derived from a 1974 study by Willie Curtis, "Sediment Yield From Strip-Mined Watersheds in Eastern Kentucky," which was undertaken on steep slope mining operations during the days of "shoot and shove" mining methods. Consequently, 0.2 acre-feet per acre sediment storage volume was not viewed as a proper design factor for sediment ponds in the eastern or western United States under more restrictive standards of the Surface Mining Act and regulations. Commenters 1, 3, 4, 11, 13, 14, 19, 20, 24.

(c) Commenters said OSM had interpreted the 0.2 acre-feet number as a sediment storage figure rather than its intended purpose as a guideline for total pond volume. According to commenters, in Curtis' work the 0.2 acre-feet per acre of disturbed area storage volume was not only sediment storage volume but also sufficient water storage to provide adequate retention time. Furthermore, commenters went on to say his study assumed no pond sediment removal. Commenters 1, 11, 20.

(d) Commenters said the 24-hour theoretical detention time for the design inflow or runoff entering sedimentation ponds for a 10-year, 24-hour precipitation event was arbitrary and capricious and lacked technical foundation. Commenters 1, 3, 10, 16, 20, 27.

Based upon consideration of comments submitted on the interim final rules and the following technical literature, the Office proposes to require sedimentation ponds in conjunction with other sediment control measures as "best technology currently available" to prevent to the extent possible additional contributions of suspended solids to streamflow or runoff outside the permit area. See section 515(b)(10) of the Act. It appears to be well established that sedimentation ponds used with other sediment control measures are "state of the art" for controlling sedimentation from surface coal mining operations. The Environmental Protection Agency (EPA) has undertaken a number of studies to determine the best methods for controlling sediment laden flow. EPA studies have concluded that sedimentation ponds are the key to controlling sediment. According to EPA, such ponds are "the most effective structures for trapping sediment." The conventional method for controlling sediment that reaches the periphery of the mining operations is through the construction of a sediment retention pond to intercept the surface runoff before it leaves the mining site. Erosion and Sediment Control—Surface Mining in the Eastern United States, at 65 (1976). Another EPA study indicates sediment ponds are the last line of defense (treatment) before the water leaves the mine area. Hill, Sedimentation Ponds—A Critical Review, at 2 (October 1976). According to one of the leading commentators in the field, sediment ponds should be located as close to the sediment source as possible and before drainageways reach the main stream. Grim and Hill, Environmental Protection in Surface Mining of Coal, EPA-670/2-74-093 at 103 (October 1974).

Also, several States, including West Virginia, Pennsylvania, Kentucky, and Montana now require sediment ponds as part of the mining operations. Hill, at 13 (1977).

Simply stated, sediment ponds are structures used to slow down water runoff in order to allow sediment particles to settle out. The ponds must provide sufficient water storage volume to detain the runoff long enough for particle settling. As the re-

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servior fills due to trapped sediment, the water storage capacity decreases. Therefore, additional sediment storage volume must be provided in order to prevent the total volume of the reservoir from falling below the volume required for particle settlement.

To draw out the water in the pond at a controlled rate so as to assure the required water detention time, a pipe is placed through the pond embankment. If the runoff overtops the embankment, erosion could occur which can ultimately lead to pond failure and hazards to life downstream. For this reason, sufficient discharge capacity must be provided from the pond in the form of an emergency spillway to eliminate the possibility of overtopping the embankment on rare precipitation events.

In mountainous areas several small ponds in series may be more desirable because of topographic constraints. Passing water from one pond to another can also improve detention time. Moreover, one small pond can be used to pretreat or remove the bulk of the large particles thus reducing the need to clean out a larger polishing pond. Hill, at 14 (1977).

The mechanics of sediment laden flow are complex. The major factors governing the efficiency of a sediment pond are the geometry of the basin, the inflow hydrograph, the inflow sediment graph, the outlet design, the hydraulic behavior of the flow within the basin, control devices within the basin which minimize short circuiting, turbulence, and resuspension, the characteristics of the sediment and the settling behavior of the suspended sediment particles and the detention time. Ward, Simulation of the Sedimentology of Sediment Detention Basins at 32 (1977); Oscanyan, Design of Sediment Basins for Construction Sites (1975).

In addition to a sediment pond, other sediment control measures which may be necessary to achieve and maintain applicable effluent limitations include the use of vegetative buffers, sediment traps, sand bags, straw bales, and log and pole structures. Grim and Hill, at 102 (1974); Erosion and Sediment Control Surface Mining in the Eastern United States, 60-65 (1976).

The Department proposes to allow operators and the regulatory authority to select the mix of sediment control measures to be used in conjunction with sediment ponds to achieve applicable water quality standards.

Legal authority: Sedimentation pond design criteria are supported by sections 102, 201(c), 501(b), 502, 515(b)(10), 515(b)(24) and 516 of the Act. See also Surface Mining Regulation Litigation, Civil Action No. 78-162 at 3 (Mem. Op. August 24, 1978).

Sediment storage volume. Subsections 715.17(e) and 717.17(e) (i) and (ii) of the proposed regulations provide methods for calculating the required sediment storage capacity to store the expected sediment accumulation in the reservoir during its useful life.

Two methods are used for making the computations and both are acceptable in this proposed regulation. First, the operator may use the universal soil loss equation (USLE), qully erosion rates and the appropriate sediment delivery ratios. The universal soil loss equation projects the sheet rill and qully erosion from disturbed areas as a function of rainfall energy, soil erodibility characteristics, length and steepness of slope, and the type of cover present. Proceedures for making the USLE predictions are well established and accepted by the engineering and scientific community. Meyer, Sediment Yields from Roadsides: An Application of the Universal Soil Loss Equation, at 289, (Dec. 1975); Boysens, A Procedure for Estimating Urban Sediment Yield, at 3, (Dec. 1975); Haan, Hydrology and Sediment Control from Surface Mined Areas, at 5.1 (1978); Wischmeir, Predicting Rainfall Erosion Losses from Cropland East of the Rocky Mountains, (1965); USDA, 1975, Procedure for Computing Sheet and Rill Erosion on Project Areas, SCS Technical Release No. 5 (Rev.); Heineman, Volume Weight of Reseroir Sediment, 181-197 (1962).

The sedimentation pond must be designed to store sediment volume from the drainage areas to the pond for a minimum of 3 years. This minimum design requirement is proposed to assure that ponds have sufficient sediment capacity to last the duration of the surface coal mining and reclamation operation. Hill, Sedimentation Ponds—A Critical Review, at 11 (1977). For some area mines the pond may need to collect sediment for more than 3 years. Therefore, it is expected that sediment storage volume will have to be increased to accommodate the additional sediment volume. Hill, at 11 (1977). Alternatively, adequate sediment storage volume may be maintained by more frequent removal of sediment.

The universal soil loss equation and the qully erosion rates must be used in conjunction with a delivery ratio because some of the sediment eroded from disturbed areas is deposited before reaching the reservoir by natural vegetation, stream channels, and mine pits. The gross erosion from the surface coal mining operation reduced by a delivery ratio quantifies this effect. Procedures for making these calculations are summarized in Haan, at 548 (1978); and USSCS National Engineering Handbook Section 3.

Alternatively, an operator may design the pond with a sediment storage volume of 0.1 acre-feet for each acre of disturbed area within the upstream drianage area. The basis for 0.1 acre-feet for each acre of disturbed area as an initial design requirement is a study by Curits, Sediment Yield from Strip mines Watersheds in Eastern Kentucky (1974). Five settling basins were studied in Breathitt County, Ky., to measure the sediment yield from surface mined watersheds. Data collected included disturbed area, storage area, sediment yield, and accumulated precipitation. According to the study, methods of mining and handling the overburden were the major factors controlling sediment yield. Likewise, reclamation measures, including prompt revegetation, were determined to be important to minimize the sediment yield. He then concluded that the design criterion of 0.2 acre-feet for each acre of expected disturbance be retained. This recommendation was qualified, however, to the extent that mining and reclamation methods were refined and improved.

One commenter has submitted updated unpublished data collected by Curtis at the same sites between 1973 and 1977. All the data collected by Curtis are now available for public comment and analysis. The data show considerable disparity in sediment yields depending upon the type of mining operation. A 0.2 acre-feet per acre of disturbed area storage volume requirement is probably justified for operations with poor onsite mining and reclamation methods. Curtis, at 99 (1974).

Based upon this data the Department proposes 0.1 acre-feet per acre of disturbed area as a starting point for determining required storage volume for sediment ponds. A 0.1 acre-feet per acre of disturbed area sediment storage volume standard appears justified based upon anticipated compliance with the interim mining and reclamation regulations. If the operator utilizes additonal onsite erosion and sediment control measures, such as prompt and progressive backfilling, prompt revegetation, adequate mulching, and sediment traps, the regulatory authority may approve a sediment storage volume not less than 0.035 acre-feet for each acre of disturbed area within the upstream drainage area. To obtain the reduction in sediment storage volume, the operator must show the sediment removed by other control methods is equal to the reduction in sediment storage volume. Thus 0.035 acre-feet for each acre of disturbed area is proposed as a nationwide minimum sediment storage volume for sedimentation ponds. Simpson, Westmoreland Resources, Comments on the Interim Final Rules, (March 23, 1978); National Coal Association, Comments and data on the proposed interim regulatory program, Oct. 1977. Robbins, Comments on the Interim Final Rules, (March 15, 1978).

Detention time. The pond must also be designed to detain sediment laden water for a period of time sufficient to allow the water to come to rest and clarify itself. This pond "theoretical detention time" is defined as the average time that the design flow is detained within the sediment pond. Haan, Hydrology and Sediment Control from Surface Mined Areas, at 6.6 (1978).

The Department proposes that each sediment pond provide a 24-hour theoretical detention time for the water inflow or run-off entering the ponds from a 10-year 24-hour precipitation event. The design storm event is based upon EPA regulations, 42 FR 21380 and the development document for interim final effluent limitation guidelines and new source performance standards (1976).

The regulatory authority is to determine runoff by considering soil type, ground cover, slope, moisture conditions, and other physical characteristics. A 24-hour theoretical detention time is a necessary starting point to capture sediment laden flow from surface coal mining operations. It appears that trap efficiencies greater than 90 percent will be required if water quality standards are to be maintained. Ward, at 30 (1978). Studies of actual pond detention time versus theoretical detention time have shown the actual detention time to be 30 to 70 percent theoretical detention time with most ponds falling into the lower category. Hill, at 11 (1977). Assuming sedimentation ponds are approximately 50 percent efficient, to obtain 94 percent removal efficiency, 12 hours actual detention time is necessary. Kathuria, at 56 (1976).

Sedimentation ponds designed with a 24-hour theoretical detention time are in use. For example, sedimentation ponds in Poland are typically designed with detention times of inflow from 1 to 5 days. A study of ponds in Poland show actual detention time to be two to four times less than the theoretical time. Janiak, Purification of Waters from Lignite Mines, at 59, May 1975.

The regulatory authority is authorized to approve a theoretical detention time not less than 10 hours when the person engaged in surface coal mining operations has demonstrated that the improvement in sedimentation removal efficiency is equivalent to the reduction in detention time as a result of pond design, size distribution of particles, or specific gravity of particles. The pond effluent must also be shown to achieve and maintain applicable effluent limitations. The 10-hour theoretical detention time specified is proposed as the minimum time necessary to separate by gravitational settling suspended particles that commonly occur from surface mined areas. Generally, single basins which provide an average detention time less than 10-hours, will not meet applicale effluent limitations. Hill (1977).

The Office proposes to allow the regulatory authority to approve a theoretical detention time less than 24 hours when the person has demonstrated to the regulatory authority that chemical treatment will achieve and maintain the applicable effluent limitations; is harmless to flora and fauna; is planned under the supervision of a registered professional engineer; and the treatment facility is operated by a qualified person. Chemical treatment or flocculants can be applied to the water to cause the particles to come together with each other or with a heavier chemical to facilitate settling. Fine silts and clays often carry a negative charge, which causes the particles to repel each other and stay in suspension for longer times. Chemical treatment is sometimes necessary to affect negatively charged colloidal articles causing them to become attracted to each other and form larger masses which settle out. Types of coagulant include metal salts (aluminum sulfate, ferrous sulfate, ferric chloride), metal hydroxides (aluminum hydroxide, calcium hydroxide), and synthetic polymers or polyelectrolytes (anionic, cationic, nonionic). Selection of the coagulant and the required dosage is an important factor in design of a chemical treatment system. Erosion and Sediment Control—Surface Mining in the Eastern United States, at 69 (1976).

The use of chemical flocculating agents is beginning to see more widespread use. In the past, polymer electrolytes and several other chemicals have been widely used in water treatment facilities. Flocculating agents provide an economic solution to meeting water quality goals on large surface mining areas. On three watersheds near Centralia, Wash., water quality was maintained within the applicable effluent limitations for an estimated cost of $10 per acre of runoff. Suppliers of chemical agents indicate they are now being widely used throughout the United States. Ward, at 24 (1978). See also Ward, at 59 (1977); Janiak at 67 (1975); Kathuria, at 5 (1976). See also H.R. Report No. 95-218 (1977).

In the domestic water treatment field, alum and ferric chloride have been used to reduce suspended sediment. In England, wire baskets filled with alum brickettes are placed in the inflow channels leading to sedimentation ponds. Hill, at 18, 19 (1977).

Dewatering. Subsection 715.17(e)(4) requires a nonclogging dewatering device (which can be a principal spillway) to achieve and maintain the required theoretical detention time. The dewatering device and the principal spillway are required to pass the runoff resulting from a 10-year 24-hour precipitation event without use of the emergency spillway. If the design flow passes through the emergency spillways, there is no practical way to detain it. Thus, the detention time would be inadequate. For this reason, flow through the emergency spillway is restricted to precipitation events exceeding the 10-year 24-hour event. Erosion and Sediment Control—Surface Mining in the Eastern United States, Vol. 2 at 55 (1976); Hill, at 17 (1977); Haan, at 6.1-6.27 (1978).

The sediment pond dewatering devices may be designed in a number of ways. One method is to place the inlet of the principal spillway (usually a pipe spillway) at the elevation of the required sediment storage. A second method would be to place the inlet elevation of the principal spillway at an elevation above the required sediment storage elevation. If this latter alternative is selected, sediment cleanout would not be necessary when sediment accumulates to 60 percent of the required sediment volume. However, the reduction in settling storage must not reduce the actual detention time below the theoretical detention time.

Short-circuiting. To assure that actual detention time approaches theoretical detention time, the Department proposes that sedimentation ponds shall be designed, constructed and maintained to prevent short-circuiting. Short-circuiting is caused by high velocity jet action of incoming water, wave action, inlet and outlet design. Hill, at 10 (1976). The shape of the pond has a major bearing on short-circuiting of flow. Teardrop and tooth-shaped ponds usually have less short-circuiting than elongated ponds perpendicular to the inlet. A long, narrow, snake-shaped pond would probably be the best shape. Hill, at 16 (1977). Methods of minimizing short-circuiting include baffles, partitioning the pond into chambers, maintaining a length-to-width ratio of 5 to 1, constructing an energy dissipator at the pond entrance, modifying the inflow, or adding two or more basins in series. Erosion and Sediment Control—Surface Mining in the Eastern United States, at 68 (1976). See also Ward, at 57 (1977); Janiak, at 59 (1975); Schiebe, Control of Water Retention Time in Small Reservoirs, ASAE Meeting (1977).

Sediment removal. Subsection 715.17(e)(8)(h) generally requires sediment removal when the volume of sediment accumulates to 60 percent of

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the required sediment storage volume. This requirement is necessary to assure that the pond has adequate sediment storage as a reserve for future precipitation events inasmuch as runoff events are not entirely predictable. Additionally, the remaining water volume (40 percent of required sediment volume) reduces the velocity inflows and decreases the change for scour and resuspension of previously settled sediment. When resuspension occurs, the concentration of suspended solids in the outflow has been shown to exceed the concentration of the inflow to the pond. Erosion and Sediment Control—Surface Mining in the Eastern United States, Vol. 2 at 53 (1976); Hill, at 11, 13, 14 (1976); Kathuria, Effectiveness of Surface Mine Sedimentation Ponds EPA 600/2-76-117 (1976); Haan, at 6.1-6.27 (1978); Oscanyan, Design of Sediment Basins for Construction Sites (1975).

General design requirements. A number of other standard design and construction requirements are proposed in the regulations. These include spillway design, required freeboard, allowance for settlement, minimum top width, required embankment side slopes, foundation preparation, fill materials and placing, spreading, and compaction requirements. These are general minimum requirements required in construction of similar sized ponds. USSCS, Practice Standard 378-Pond.

The sediment storage volume, and detention time requirements proposed are identical to requirements proposed for the permanent program regulations. 43 FR 41885 (Sept. 18, 1978). However, the Office proposes to allow the requirements to be relaxed for steep slope mining during the interim program. Under the proposed regulations the regulatory authority would be authorized to grant a limited waiver from the pond design criteria if the operator demonstrates that ponds constructed in accordance with the criteria would jeopardize public health or safety or result in contributions of suspended solids to streamflows in excess of the incremental sediment volume trapped in the sediment pond designed to fully comply with § 715.17(e) (1)-(22). Sediment released during the construction of the sediment pond should not be included in determining contributions of suspended solids in excess of the incremental sediment trapped.

The regulatory authority's discretion to relax the design criteria is carefully conditioned upon the operator implementing special control measures in conjunction with a sediment pond or series of sediment ponds which comply with the design criteria to the maximum extent possible.

Furthermore, to assure that such sediment control measures are an adequate substitute, the operator must submit a plan which includes a quantitative analysis demonstrating that onsite measures will achieve and maintain applicable effluent limitations. Moreover, the operator would be required to depict the location of all onsite control measures to facilitate inspection and enforcement.

The Office proposes this waiver from explicit design criteria for the interim program only. The Office believes the adaption of technology for sediment control can be advanced at a pace which will militate against the necessity for such a waiver in the permanent regulatory program. This position is based on the growing use of flocculants as a means to settle sediment.

Alternatives considered. The Office considered a number of alternatives to the design criteria proposed for sediment ponds. The Office weighed allowing coal operators to use any sediment control measures to achieve and maintain applicable effluent limitations and control sediment. However, based upon the literature in the field, it appears unlikely that water quality standards will be achieved and maintained without sediment ponds.

Second, the Office considered alternative sediment storage volumes, detention times and dewatering devices for sediment ponds. For example, 0.2 acre-feet per acre of disturbed area was considered as a national standard and preliminary rejected as unnecessary for all surface coal mining operations. Also a 10-hour theoretical detention time was rejected as inadequate for the initial design requirement for sediment ponds. In this regard, the literature appears to say that sediment ponds must be designed with trap efficiencies exceeding 90 percent to achieve and maintain water quality goals. Therefore the Office has proposed a 24-hour theoretical detention time corresponding to 94 percent efficiency. This initial design requirement can be reduced by appropriate control measures.

Dated: November 7, 1978.

JOAN M. DAVENPORT,
Assistant Secretary
Energy and Minerals.

Chapter VII of title 30 of the Code of Federal Regulations is amended as follows.

PART 715—GENERAL PERFORMANCE STANDARDS

A. 30 CFR § 715.15(a) and (b), is amended as follows:

1. Paragraphs (a) and (b) are revised.
2. New paragraph (c) is added.

§ 715.15 Disposal of spoil and waste materials in areas other than the mine workings or excavations.

(a) *Disposal of excess spoil: General requirements.*—(1) Spoil not required to achieve the approximate original contour shall be hauled or conveyed to and placed in designated disposal areas within a permit area other than mine working or excavations, only if the disposal areas are authorized for such purposes in the approved mining and reclamation permit and only in accordance with paragraphs (a)(c) of this section. The spoil shall be placed in a controlled manner to ensure—

(i) That leachate and surface runoff will not degrade surface or ground waters or exceed the effluent limitations of § 715.17.

(ii) Stability of the fill; and

(iii) That the land mass is suitable for reclamation and revegetation compatible with the natural surroundings.

(2) The fill shall be designed using recognized professional standards, certified by a registered professional engineer, and approved by the regulatory authority.

(3) All vegetative and organic materials shall be removed from the disposal area and the topsoil shall be removed, segregated and replaced under § 715.16 before spoil is proved by the regulatory authority, organic material may be used as mulch or may be included in the topsoil to control erosion to promote growth of vegetation, or to increase the moisture retention of the soil.

(4) Slope protection shall be provided to minimize surface erosion at the site. All disturbed areas including diversion ditches that are not riprapped shall be vegetated upon completion of construction.

(5) The disposal areas shall be located on the most moderately sloping and naturally stable areas available as approved by the regulatory authority. If such placement provides additional stability and prevents mass movement, fill matrials suitable for disposal shall be placed upon or above a natural terrace, bench, or berm.

(6) The spoil shall be hauled or conveyed and placed in a controlled manner, concurrently compacted as necessary to ensure mass stability and prevent mass movement, covered, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings, to insure long-term stability.

(7) The final configuration of the fill must be suitable for postmining land uses approved in accordance with § 715.13 except that no depressions or impoundments shall be allowed on the completed fill.

(8) Terraces shall not be constructed unless approved by the regulatory authority.

(9) Where the slope in the disposal area exceeds 1v:2.8h (36 percent), or such lesser slope as may be designated by the regulatory authority based on local conditions, keyway cuts (excavations to stable bedrock), or rock toe buttresses shall be constructed to stabilize the fill. The slope or original ground at the toe of the fill shall not exceed 1v:5h (20 percent).

(10) The fill shall be inspected for stability by a registered engineer or other professional specialist approved by the regulatory authority during critical construction periods and at least quarterly throughout construction to ensure removal of all organic material and topsoil, placement of underdrainage systems, proper installations of surface drainage systems, proper placement and compaction of fill materials, and proper revegetation. The registered engineer or other qualified professional specialist shall provide to the regulatory authority a certified report within two weeks after each inspection that the fill has been constructed as specified in the design approved by the regulatory authority, and a copy of the report shall be retained at the mine site by the person who conducts the surface mining activities.

(11) Coal processing wastes shall not be comingled with spoil and disposed in head-of-hollow fills, and may only be disposed in other excess spoil fills if such waste is—

(i) Demonstrated to be nontoxic and nonacid forming; and

(ii) Demonstrated to be consistent with the design stability of the fill.

(12) The disposal area shall not contain springs, natural watercourses, or wet-weather seeps unless lateral drains are constructed from the wet areas to the underdrains in a manner that prevents infiltration of the water into the spoil pile.

(13) If any portion of the fill interrupts, obstructs, or encroaches upon any natural drainage channel, the entire fill is classified as a valley or head-of-hollow fill and must be designed and constructed in accordance with the requirements of paragraphs (b) and (c) of this section respectively.

(14) The foundation and abutments of the fill shall be stable under all conditions of construction and operation. Sufficient foundation investigation and laboratory testing of foundation materials shall be performed in order to determine the design requirements for stability of the foundation. Analyses of foundation conditions shall include the effect of underground mine workings, if any, upon the stability of the structure.

(15) Excess spoil may be returned to underground workings only in accordance with a spoil disposal program approved by the regulatory authority under 30 CFR 784.14.

(b) *Disposal of excess spoil: Valley fills.*—Valley fills shall meet all of the requirements of paragraph (a) of this section and the additional requirements of this section.

(1) The fill shall be designed to attain a long-term static factor of safety of 1.5 based upon data obtained from subsurface exploration, geotechnical testing, foundation design, and accepted engineering analyses.

(2) A subdrainage system for the fill shall be constructed in accordance with the following:

A system of underdrains constructed of durable rock shall—

Total amount of fill material	Predominant type of fill material	Minimum size of drain, in feet	
		Width	Height
Less than 1,000,000 yd	Sandstone	10	5
Do	Shale	16	8
More than 1,000,000 yd	Sandstone	16	8
Do	Shale	16	16

(5) Rock used shall not have less than 50 percent wear in 500 revolutions in the Los Angeles Rattler Test (AASAHTO T-96-70), shall not have less than 15 percent weight loss in 5 cycles of the Sodium Sulfate Test (ASTM C088, AASHTO T-1-4), and shall not contain less than 30 percent by volume of clay or clay minerals as determined by standard petrologic analytical tests, and shall not be acid forming or toxic forming.

(6) Spoil shall be hauled or conveyed and placed in a controlled manner and concurrently compacted as specified by the regulatory authority in lifts no thicker than 18 inches in order to—

(i) Achieve the densities designed to ensure mass stability;

(ii) Prevent mass movement;

(iii) Avoid contamination of the rock underdrain or rock core; and

(iv) Prevent formation of voids.

(7) The person who conducts the surface mining activities may use lifts of greater thickness than required under paragraph (b)(6) of this section if he has demonstrated to the regulatory authority by density monitoring tests that the density throughout the thickness of the lift is equal to or greater than the density specified in the design referred to in paragraph (b)(1) of this section, except that in no event shall lift thickness exceed 4 feet.

(8) Surface water runoff from the area above the fill shall be diverted away from the fill and into stabilized diversion channels designed to pass safely the runoff from the 24-hour duration, 100-year frequency storm or larger event specified by the regulatory authority. Sediment control structures shall be provided at the discharge of the diversion ditch before entry into the natural watercourse in accordance with § 715.17. Surface runoff from the fill surface shall be diverted to stabilized channels off the fill which will safely pass runoff from a 24-hour duration, 100-year frequency storm. Diversion design shall comply with the requirements of § 715.17.

(9) The tops of the fill and any terrace constructed to stabilize the face shall be graded no steeper than 1v:20h (5 percent). The vertical distance between terraces shall not exceed 50 feet.

(10) Drainage shall not be directed over the outslope of the fill.

(11) The outslope of the fill shall not exceed 1v:2h (50 percent). The regulatory authority may require a flatter slope.

(c) *Disposal of excess spoil: Head-of-hollow fills.*—Disposal of spoil in the head-of-hollow fill shall meet all standards set forth in paragraphs (a) and (b) of this section and the additional requirements of this section.

(1) The fill shall be designed to completely fill the disposal site approved by the regulatory authority to the approximate elevation of the ridgeline. A

(i) Be installed along the natural drainage system;

(ii) Extend from the toe to the head of the fill; and

(iii) Contain lateral drains to each area of potential drainage or seepage.

(3) A filter system to insure the proper functioning of the rock underdrain system shall be designed and constructed using standard geotechnical engineering.

(4) In constructing the underdrains, no more than 10 percent of the rock may be less than 12 inches in size and no single rock may be larger than 25 percent of the width of the drain. Rock used in underdrains shall meet the requirements of paragraph (b)(5) of this section. The minimum size of the main underdrain shall be:

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rock core chimney drain may be utilized instead of the subdrain and surface diversion system required for valley fills. If the crest of the fill is not approximately at the some elevation as the low point of the adjacent ridge line, the fill must be designed as specified in paragraph (b) of this section with diversion of runoff around the fill except if such fills are associated with a mountaintop removal operation and are located at or near the resultant ridge line or in the case of a contour mining operation, such fill may be located at or near the mined seam of coal, providing that such fill is not larger than 250,000 cubic yards.

(2) The alternative rock core chimney drain system shall be designed and incorporated into the construction of head-of-hollow fills as follows:

(i) The fill shall have along the vertical projection of the main buried stream channel or rill a vertical core of durable rock at least 16 feet thick which shall extend from the toe of the fill to the head of the fill and from the base of the fill to the surface of the fill. A system of lateral rock underdrains shall connect this rock core to each area of potential drainage or seepage in the disposal area. Rocks used in the rock core and underdrains shall meet the requirements of paragraph (b) of this section.

(ii) A filter system to insure the proper functioning of the rock core shall be designed and constructed using standard geotechnical engineering methods.

(iii) The grading may drain surface water away from the outslope of the fill and toward the rock core. The maximum slope of the top of the fill shall be lv:33h (3 percent). Instead of the requirements of paragraph (a) of this section, a drainage pocket may be maintained at the head of the fill during and after construction to intercept surface runoff and discharge the runoff through or over the rock drain if stability of the fill is not impaired. In no case shall this pocket or sump have a potential for impounding more than 10,000 cubic feet of water. Terraces on the fill shall be graded with a 3 to 5 percent grade toward the fill and a 1 percent slope toward the rock core.

(3) The drainage control system shall be capable of safely passing the runoff from a 24-hour, 100-year storm, or larger event, as specified by the regulatory authority.

B. 30 CFR § 715.17(e) is amended as follows:

1. Paragraph (e) (1)-(e)(9) are revised.

2. New paragraphs (e) (10)-(23) are added.

§ 715.171 Protection of the Hydrologic system.

. . . . . .

(e) *Sedimentation ponds.*—(1) *General requirements.* Sedimentation ponds shall be used individually or in series and shall—

(i) Be constructed before any disturbance of the disturbed area to be drained into the pond;

(ii) Be located as near as possible to the disturbed area and out of perennial streams; and

(iii) Meet all the criteria of this section.

(2) *Sediment storage volume.* Sedimentation ponds shall provide a sediment storage volume equal to—

(i) The accumulated sediment volume from the drainage area to the pond for a minimum of three years. Sediment storage volume shall be determined using the universal soil loss equation, gully erosion rates, and sediment delivery ratio converted to sediment volume using the sediment density, or other empirical methods established by the regulatory authority and based upon actual sedimentation pond studies; or

(ii) 0.1 acre-foot for each acre of disturbed area within the upstream drainage area or a greater amount based upon sediment yield to the pond if required by the regulatory authority. The regulatory authority may approve a sediment storage volume of no less than 0.035 acre-foot for each acre of disturbed area within the upstream drainage area if the person who conducts the surface mining activities demonstrates that sediment removed by other sediment control measures is equal to the reduction in sediment storage volume.

(3) *Detention time.* Sedimentation ponds shall provide a 24-hour theoretical detention time for the water inflow or runoff entering the pond from a 10-year 24-hour precipitation event. Runoff diverted in accordance with paragraphs (c) and (d) of this section, away from the disturbed drainage areas and not passed through the sedimentation pond need not be considered in sedimentation pond design. In determining the runoff volume, the characteristics of the mine site, reclamation procedures, and onsite sediment control practices shall be considered.

(i) The regulatory authority may approve a theoretical detention time of not less than 10 hours, when the person who conducts the surface mining activities demonstrates that—

(A) The improvement in sediment removal efficiency is equivalent to the reduction in detention time as a result of pond design. Improvements in pond design may include but are not limited to pond configuration, inflow and outflow facility locations, baffles to decrease inflow velocity and short circuiting, and surface areas; and

(B) The pond effluent is shown to achieve and maintain applicable effluent limitations.

(ii) The regulatory authority may approve a theoretical detention time of not less than 10 hours when the person who conducts the surface mining activities demonstrates that the size distribution or the specific gravity of the suspended matter is such that applicable effluent limitations are achieved and maintained.

(iii) The regulatory authority may approve a theoretical detention time of less than 24 hours to any level of detention time when the person who conducts the surface mining activities demonstrates to the regulatory authority that the chemical treatment process to be used—

(A) Will achieve and maintain the effluent limitations;

(B) Is harmless to fish, wildlife, and related environmental values;

(C) Is planned under the supervision of a registered professional engineer; and

(D) Shall be operated by a qualified person.

(iv) The calculated theoretical detention time and all supporting documentation and drawings used to establish the required detention times under paragraphs (e)(3) (i)-(iii) of this section shall be included in the permit application.

(4) The water storage resulting from inflow shall be removed by a nonclogging dewatering device or a spillway approved by the regulatory authority, and shall have a discharge rate to achieve and maintain the required theoretical detention time. The dewatering device shall not be located at a lower elevation than the maximum elevation of the design sedimentation storage volume.

(5) Each person who conducts surface mining activities shall design, construct, and maintain sedimentation ponds to prevent short-circuiting.

(6) The design, construction, and maintenance of a sedimentation pond or other sediment control measures in accordance with this section shall not relieve the person from compliance with applicable effluent limitations.

(7) There shall be no overflow through the emergency spillway during the passage of the runoff resulting from the 10-year 24-hour precipitation event through the sedimentation pond.

(8) Sediment shall be removed from sedimentation ponds when the volume of sediment accumulates to 60 percent of the required sediment storage volume. With the approval of the regulatory authority, additional permanent water storage may be provided

above that required for sediment storage if the person who conducts the surface mining activities demonstrates that applicable effluent limitations will be achieved and maintained. Upon the approval of the regulatory authority for those cases where additional permanent water storage is provided above that required for sediment under paragraph (f) of this section, sediment removal may be delayed until the remaining volume of permanent storage has decreased to 40 percent of the required sediment storage provided the theoretical detention time is maintained.

(9) An appropriate combination of principal and emergency spillways shall be provided to discharge safely the runoff from a 25-year 24-hour precipitation event, or larger event as specified by the regulatory authority. The elevation of the crest of the emergency spillway shall be a minimum of 1.0 foot above the crest of the principal spillway. Emergency spillway grades and allowable velocities shall be as specified by the regulatory authority.

(10) The minimum elevation at the top of the settled embankment shall be 1.0 foot above the water surface in the reservoir with the emergency spillway flowing at design depth.

(11) The constructed height of the dam shall be increased a minimum of 5 percent over the design height to allow for settlement unless it has been demonstrated to the regulatory authority that the material used and the design will insure against all settlement.

(12) The minimum top width of the embankment shall not be less than the quotient of (H+35)/5 where H is the height of the embankment as measured from the upstream toe of the embankment.

(13) The upstream and downstream side slopes of the settled embankment shall not be less than lv:5h with neither slope steeper than lv:2h. Slopes shall be designed to be stable in all cases, even if flatter side slopes are required.

(14) The embankment foundation area shall be cleared of all organic matter, all surface sloped to no steeper than lv:1h, and the entire foundation surface scarified.

(15) The fill material shall be free of sod, large roots, other large vegetative matter, and frozen soil, and in no case shall coal-processing waste be used.

(16) The placing and spreading of fill material shall be started at the lowest point of the foundation and the fill brought up in horizontal layers of such thickness as required by the regulatory authority to facilitate compaction. Compaction shall be conducted as specified by the regulatory authority in order to achieve stability.

(17) If a sedimentation pond has an embankment that is more than 20 feet in height, as measured from the upstream toe of the embankment to the crest of the emergency spillway, or has a storage volume of 20 acre-feet or more, the following additional requirements shall be met:

(i) An appropriate combination of principal and emergency spillways shall be provided to safely discharge the runoff resulting from a 100-year 24-hour precipitation event, or a larger event if specified by the regulatory authority.

(ii) The embankment shall be designed and constructed with a static safety factor of at least 1.5 or such higher safety factor as designated by the regulatory authority to insure stability.

(iii) Appropriate barriers shall be provided to control seepage along conduits that extend through the embankment.

(18) Each pond shall be designed and inspected during construction under the supervision of, and certified after construction by, a registered professional engineer.

(19) The entire embankment including the surrounding areas disturbed by construction shall be graded, fertilized, seeded, and mulched in accordance with § 715.20 immediately after the embankment is completed, *Provided*, That the active, upstream face of the embankment where water will be impounded may be riprapped or otherwise stablized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated in accordance with § 715.20.

(20) All ponds, including those not meeting the size or other criteria of 30 CFR 77.216(a), shall be examined for structural weakness, erosion, and other hazardous conditions in accordance with the inspection requirements contained in 30 CFR 77.216-3. Each person who conducts surface mining activities shall deliver to the regulatory authority any report or notification required under 30 CFR 77.216-3 whether or not the pond meets the criteria of 30 CFR 77.216(a).

(21) Each sedimentation pond shall be removed and the affected land regraded and revegetated in accordance with § 715.14 and § 715.20, unless approved by the regulatory authority for retention as being compatible with the approved postmining land use. If the regulatory authority approves retention, the sedimentation pond shall meet all the requirements for permanent impoundments in paragraph (e)6 of this Section.

(22) (i) Where surface mining activities are proposed to be conducted on steep slopes, as defined in § 716.2 of this chapter, special sediment control measures may be followed if the person has demonstrated to the regulatory authority that a sedimentation pond (or series of ponds) constructed according to paragraph (e) of this section—

(A) Will jeopardize public health and safety; or

(B) Will result in contributions of suspended solids to streamflow in excess of the incremental sediment volume trapped by the additional pond size required.

(ii) Special sediment control measures shall include but not be limited to—

(A) Designing, constructing, and maintaining a sedimentation pond as near as physically possible to the disturbed area which complies with paragraphs (e)(1) through (e)(22) of this section to the maximum extent possible.

(B) A plan and commitment to employ sufficient onsite sedimentation control measures including bench sediment storage, filtration by natural vegetation, mulching, and prompt revegetation which, in conjunction with the required sediment pond, will achieve and maintain applicable effluent limitations. The plan submitted pursuant to this paragraph shall include a detailed description of all onsite control measures to be employed, a quantitative analysis demonstrating that onsite sedimentation control measures, in conjunction with the required sedimentation pond, will achieve and maintain applicable effluent limitations, and maps depicting the location of all onsite sedimentation control measures.

PART 717—UNDERGROUND MINING GENERAL PERFORMANCE STANDARDS

A. 30 CFR § 717.17(e) is amended as follows:

1. Paragraphs (e) (1)-(e)(9) are revised.

2. New paragraphs (e) (10)-(23) are added.

§ 717.171 Protection of the hydrologic system.

. . . . . .

(e) *Sedimentation ponds.* (1) General requirements: Sedimentation ponds shall be used individually or in series and shall—

(i) Be constructed before any disturbance of the disturbed area to be drained into the pond;

(ii) Be located as near as possible to the disturbed area and out of perennial streams; and

(iii) Meet all the criteria of this section.

(2) Sediment storage volume: Sedimentation ponds shall provide a sediment storage volume equal to—

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(i) The accumulated sediment volume from the drainage area to the pond for a minimum of 3 years. Sediment storage volume shall be determined using the universal soil loss equation, gully erosion rates, and sediment delivery ratio converted to sediment volume using the sediment density, or other empirical methods established by the regulatory authority and based upon actual sedimentation pond studies; or

(ii) 0.1 acre-foot for each acre of disturbed area within the upstream drainage area or a greater amount based upon sediment yield to the pond if required by the regulatory authority. The regulatory authority may approve a sediment storage volume of no less than 0.035 acre-foot for each acre of disturbed area within the upstream drainage area if the person who conducts the surface mining activities demonstrates that sediment removed by other sediment control measures is equal to the reduction in sediment storage volume.

(3) Detention time: Sedimentation ponds shall provide a 24-hour theoretical detention time for the water inflow or runoff entering the pond from a 10-year 24-hour precipitation event. Runoff diverted in accordance with paragraphs (c) and (d) of this section, away from the disturbed drainage areas and not passed through the sedimentation pond need not be considered on sedimentation pond design. In determining the runoff volume the characteristics of the mine site, reclamation procedures, and onsite sediment control practices shall be considered.

(i) The regulatory authority may approve a theoretical detention time of not less than 10 hours, when the person who conducts the surface mining activities demonstrates that—

(A) The improvement in sediment removal efficiency is equivalent to the reduction in detention time as a result of pond design. Improvements in pond design may include but are not limited to pond configuration, inflow and outflow facility locations, baffles to decrease inflow velocity and short circuiting, and surface areas; and

(B) The pond effluent is shown to achieve and maintain applicable effluent limitations.

(ii) The regulatory authority may approve a theoretical detention time of not less than 10 hours when the person who conducts the surface mining activities demonstrates that the size distribution or the specific gravity of the suspended matter is such that applicable effluent limitations are achieved and maintained.

(iii) The regulatory authority may approve a theoretical detention time of less than 24 hours to any level of detention time when the person who conducts the surface mining activities demonstrates to the regulatory authority that the chemical treatment process to be used—

(A) Will achieve and maintain the effluent limitations;

(B) Is harmless to fish, wildlife, and related environmental values;

(C) Is planned under the supervision of a registered professional engineer; and

(D) Shall be operated by a qualified person.

(iv) The calculated theoretical detention time and all supporting documentation and drawings used to establish the required detention times under paragraphs (e)(3) (i)-(iii) of this section shall be included in the permit application.

(4) The water storage resulting from inflow shall be removed by a noncloging dewatering device or a spillway approved by the regulatory authority, and shall have a discharge rate to achieve and maintain the required theoretical detention time.

The dewatering device shall not be located at a lower elevation than the maximum elevation of the design sedimentation storage volume.

(5) Each person who conducts surface mining activities shall design, construct, and maintain sedimentation ponds to prevent shortcircuiting.

(6) The design, construction, and maintenance of a sedimentation pond or other sediment control measures in accordance with this section shall not relieve the person from compliance with applicable effluent limitations.

(7) There shall be no outflow through the emergency spillway during the passage of the runoff resulting from the 10-year 24-hour precipitation event through the sedimentation pond.

(8) Sediment shall be removed from sedimentation ponds when the volume of sediment accumulates to 60 percent of the required sediment storage volume. With the approval of the regulatory authority, additional permanent water storage may be provided above that required for sediment storage if the person who conducts the surface mining activities demonstrates that applicable effluent limitations will be achieved and maintained. Upon the approval of the regulatory authority for those cases where additional permanent water storage is provided above that required for sediment under paragraph (f) of this section, sediment removal may be delayed until the remaining volume of permanent storage has decreased to 40 percent of the required sediment storage provided the theoretical detention time is maintained.

(9) An appropriate combination of principal and emergency spillways shall be provided to discharge safely the runoff from a 25-year 24-hour precipitation event, or larger event as specified by the regulatory authority. The elevation of the crest of the emergency spillway shall be a minimum of 1.0 foot above the crest of the principal spillway. Emergency spillway grades and allowable velocities shall be as specfied by the regulatory authority.

(10) The minimum elevation at the top of the settled embankment shall be 1.0 foot above the water surface in the reservoir with the emergency spillway flowing at design depth.

(11) The constructed height of the dam shall be increased a minimum of 5 percent over the design height to allow for settlement unless it has been demonstrated to the regulatory authority that the material used and the design will insure against all settlement.

(12) The minimum top width of the embankment shall not be less than the quotient of (H+35)/5 where H is the height of the embankment as measured from the upstream toe of the embankment.

(13) The upstream and downstream side slopes of the settled embankment shall not be less than 1v:5h with neither slope steeper than 1v:2h. Slopes shall be designed to be stable in all cases, even if flatter side slopes are required.

(14) The embankment foundation area shall be cleared of all organic matter, all surface sloped to no steeper than 1v:1h, and the entire foundation surface scarified.

(15) The fill material shall be free of sod, large roots, other large vegetative matter, and frozen soil, and in no case shall coal-processing waste be used.

(16) The placing and spreading of fill material shall be started at the lowest point of the foundation and the fill brought up in horizontal layers of such thickness as required by the regulatory authority to facilitate compaction. Compaction shall be conducted as specified by the regulatory authority in order to achieve stability.

(17) If a sedimentation pond has an embankment that is more than 20 feet in height, as measured from the upstream toe of the embankment to the crest of the emergency spillway, or has a storage volume of 20 acre-feet or more, the following additional requirements shall be met:

(i) An appropriate combination of principal and emergency spillways shall be provided to safely discharge the runoff resulting from a 100-year 24-hour precipitation event, or a larger event if specified by the regulatory authority.

(ii) The embankment shall be designed and constructed with a static safety factor of at least 1.5 or such higher factor as designated by the regulatory authority to insure stability.

(iii) Appropriate barriers shall be provided to control seepage along conduits that extend through the embankment.

(18) Each pond shall be designed and inspected during construction under the supervision of, and certified after construction by, a registered professional engineer.

(19) The entire embankment including the surrounding areas disturbed by construction shall be graded, fertilized, seeded, and mulched in accordance with § 717.20 immediately after the embankment is completed, *Provided*, that the active, upstream face of the embankment where water will be impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated in accordance with § 717.20.

(20) All ponds, including those not meeting the size or other criteria of 30 CFR 77.216(a), shall be examined for structural weakness, erosion, and other hazardous conditions in accordance with the inspection requirements contained in 30 CFR 77.216-3. Each person who conducts surface mining activities shall deliver to the regulatory authority any report or notification required under 30 CFR 77.216-3 whether or not the pond meets the criteria of 30 CFR 77.216(a).

(21) Each sedimentation pond shall be removed and the affected land regraded and revegetated in accordance with §§ 717.14 and 717.20, unless approved by the regulatory authority for retention as being compatible with the approved postmining land use. If the regulatory authority approves retention, the sedimentation pond shall meet all the requirements for permanent impoundments in paragraph (k) of this section.

(22) (i) Where surface mining activities are proposed to be conducted on steep slopes, as defined in § 716.2 of this chapter, special sediment control measures may be followed if the person has demonstrated to the regulatory authority that a sedimentation pond (or series of ponds) constructed according to paragraph (e) of this section—

(A) Will jeopardize public health or safety; or

(B) Will result in contributions of suspended solids to streamflow in excess of the incremental sediment volume trapped by the additional pond size required.

(ii) Special sediment control measures shall include but not be limited to—

(A) Designing, constructing, and maintaining a sedimentation pond as near as physically possible to the disturbed area which complies with paragraphs (e)(1) through (e)(22) of this section to the maximum extent possible.

(B) A plan and commitment to employ sufficient onsite sedimentation control measures including bench sediment storage, filtration by natural vegetation, mulching, and prompt revegetation which, in conjunction with the required sediment pond, will achieve and maintain applicable effluent limitations. The plan submitted pursuant to this paragraph shall include a detailed description of all onsite control measures to be employed, a quantitative analysis demonstrating that onsite sedimentation control measures, in conjunction with the required sedimination pond, will achieve and maintain applicable effluent limitations, and maps depiciting the location of all onsite sedimentation control measures.

[FR Doc. 78-31957 Filed 11-13-78; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 1005-6]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS—MASSACHUSETTS

Proposed Rulemaking: Approval of Use of Higher Sulfur Fuel at Crane & Co.'s Pioneer Mill, Dalton

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of a revision to the Massachusetts State implementation plan (SIP) which would allow Crane & Co.'s Pioneer Mill in Dalton, Mass. to burn higher sulfur content fuel than presently required by the federally-approved SIP. The revision is being proposed on the basis of a review of sulfur dioxide (SO_2) levels in the Dalton area, wind speed and direction data, and dispersion modeling results. The evaluation indicates that the national ambient air quality standards for SO_2 will be protected.

DATES: Comments must be received on or before December 14, 1978.

ADDRESSES: Copies of the Massachusetts submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Region I, Room 2113, J. F. K. Federal Building, Boston, Mass. 02203; Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460; and Department of Environmental Quality Engineering, Air and Hazardous Materials Division, Room 320, 600 Washington Street, Boston, Mass. 02111.

Comments should be submitted to the Regional Administrator, Region I, Environmental Protection Agency, Room 2203, J. F. K. Federal Building, Boston, Mass. 02203.

FOR FURTHER INFORMATION CONTACT:

David Stonefield, Air Branch, EPA Region I, Room 2113, J. F. K. Federal Building, Boston, Mass. 02203, 617-223-5609.

SUPPLEMENTARY INFORMATION: On August 31, 1978 the Commissioner of the Massachusetts Department of Environmental Quality Engineering (DEQE) submitted a State implementation plan (SIP) revision to allow Crane & Co.'s Pioneer Mill in Dalton to burn residual fuel oil with a sulfur content not to exceed 1.21 pounds per million Btu heat release potential (approximately equivalent to 2.2 percent sulfur content by weight). The mill is presently limited to use of residual fuel oil with a sulfur content not to exceed 0.55 pounds per million Btu heat release potential (approximately equivalent to 1.0 percent sulfur content by weight).

This source was previously evaluated as part of a SIP revision submitted by the DEQE on April 14, 1977, which proposed a relaxation of the sulfur in fuel limitation to 2.2 percent for all sources in the Berkshire air pollution control district (APCD). The SIP revision, which would bring the federally-approved SIP and DEQE regulations into conformance with chapter 353 of the Acts of 1974 (passed by the State Legislature on June 11, 1974), was approved by EPA in the FEDERAL REGISTER published on March 24, 1978 (43 FR 1234) with the exception of two sources. These sources, Kimberly-Clark's Columbia Mill and Crane & Co.'s Pioneer Mill, were predicted by computer dispersion modeling (Valley model) to cause violations of the national ambient air quality standards (NAAQS) for sulfur dioxide (SO_2) and thus had to be limited to the 1.0 percent sulfur content requirement of the original SIP.

The DEQE subsequently reevaluated the modeling results using actual air quality and meterological data collected at ambient monitoring stations established and operated by Crane & Co. The monitoring stations were selected by EPA and DEQE to measure SO_2 impacts in the area to the southeast of the source where the model predicted NAAQS violations and to provide an indication of population exposure to general SO_2 levels in the Dalton area. Meteorological data were recorded at the Pioneer Mill.

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SO_2 levels at the source-oriented site did not exceed 13 percent of the 3-hour secondary NAAQS of 0.5 ppm and 24 percent of the 24-hour primary standard of 0.14 ppm.

Analyses of these data demonstrate the conservativeness of the Valley model when it is applied in this particular location and support DEQE's conclusion that the burning of 2.2 percent sulfur oil at Crane & Co.'s Pioneer Mill will not jeopardize the NAAQS. The Valley model is judged to be overly conservative for the Dalton area, based on the following:

1. The maximum SO_2 Concentrations (3 hour: 0.067 ppm and 24 hour: 0.033 ppm) measured at the source-oriented site do not occur when the Pioneer Mill is upwind of the monitor. Maximum levels are associated with winds parallel to the valley. When the plant is upwind of this monitor (cross-valley winds), the SO_2 concentrations never exceed 0.020 ppm, 1-hour concentration.

2. The maximum SO_2 concentrations (3 hour: 0.106 ppm and 24-hour: 0.043 ppm) measured at the population-oriented site are associated with southwest winds which place both the source and urban Pittsfield upwind of the monitor. In fact, a large percentage of the elevated levels at both sites occur with southwest winds and during the same or overlapping time periods.

This SIP revision is not subject to the new requirements for prevention of significant deterioration (PSD) in 40 CFR 52.21. First, the source does not need a PSD permit because fuel changes are specifically excluded from the permit requirement; and second, the SIP revision, resulting in the increased emissions, does not consume increment because the original SIP revision for sources in the Berkshire APCD, proposing an increase in allowable emissions from 1.0 percent sulfur oil to 2.2 percent sulfur oil, was pending in the Regional Office on August 7, 1977 (40 CFR 52.21(b)(11)(i)).

The Administrator's decision to approve or disapprove the plan revision will be based on whether it meets the requirements of sections 110(a)(2) (A)-(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51. This revision is being proposed pursuant to sections 110(a) and 301 of the Clean Air Act, as amended (42 U.S.C. 7410 and 7601).

Dated: November 1, 1978.

WILLIAM R. ADAMS, Jr.,
Regional Administrator,
Region I.

[FR Doc. 78-31881 Filed 11-13-78; 8:45 am]

[6560-01-M]

[40 CFR Part 65]

[FRL 1005-5]

STATE AND FEDERAL ADMINISTRATIVE ORDERS PERMITTING A DELAY IN COMPLIANCE WITH STATE IMPLEMENTATION PLAN REQUIREMENTS

Proposed Approval of an Administrative Order Issued by the Puget Sound Air Pollution Control Agency To Seattle Steam Corp.

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve an administrative order issued by the Puget Sound Air Polution Control Agency (PSAPCA) to Seattle Steam Corp. The order requires the company to bring air emissions from its heating plant in Seattle, Wash. into compliance with certain regulations contained in the federally approved Washington state implementation plan (SIP) by July 1, 1979. Because the order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by EPA before it becomes effective as a delayed compliance order under the Clean Air Act (the Act). If approved by EPA, the order will constitute an addition to the SIP. in addition, a source in compliance with an approved order may not be sued under the federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the order. The purpose of this notice is to invite public comment on EPA's proposed approval of the order as a delayed compliance order.

DATE: Written comments must be received on or before December 14, 1978.

ADDRESSES: Comments should be submitted to Director, Enforcement Division, EPA, Region 10, 1200 Sixth Avenue, Seattle, Wash. 98101. The State order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT:

Mr. Kenneth D. Brooks, Environmental Protection Agency M/S 513, 1200 Sixth Avenue, Seattle, Wash. 98101, telephone 206-442-1387.

SUPPLEMENTARY INFORMATION: Seattle Steam Corp. operates a heating plant at Seattle, Wash.

The order under consideration addresses emissions from the Riley oil-fired boiler at the facility, which is subject to PSAPCA regulation I, section 9.03(b)(1). The source is unable to comply with the Washington SIP at this time. The regulation limits visual emissions and is part of the federally approved Washington State implementation plan. The order requires final compliance with the regulation by July 1, 1979 through testing to determine requirements to bring the boiler into compliance and implementing the selected schedule to meet final compliance. The source has consented to the terms of the order.

Because this order has been issued to a major source of visual emissions and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a delayed compliance order under section 113(d) of the Clean Air Act (the Act). EPA proposes to approve the order because it satisfies the appropriate requirements of this subsection.

In the matter of: Seattle Steam Corp., Seattle, Washington. Delayed compliance order No. 78-208-1.

Whereas, the Congress of the United States amended section 113(d) of the Federal Clean Air Act by 42 U.S.C. 7401, etc., to procure the attainment of emission standards by noncomplying sources in the United States and the procedure outlined is for the local air pollution control agencies to prepare a "Delayed Compliance Order" which would be reviewed and approved by the Department of Ecology and the Environmental Protection Agency, and

Whereas, the Seattle Steam Corp., Seattle, Wash., operates a Riley oil-fired boiler that is presently in noncompliance with the emission standards and this Order is being issued pursuant to section 113(d) of the Clean Air Act and RCW 70.94.141, RCW 70.94.155, RCW 70.94.211, RCW 70.94.221 and regulation I of the Puget Sound Air Pollution Control Agency, and

Whereas, this order, pursuant to the Federal Clean Air Act and State law, contains a schedule for compliance, interim requirements and reporting requirements, and

Whereas, Puget Sound Air Pollution Control Agency has issued public notice of this order and of a public hearing before the Board of Directors of the Agency to consider the order, pursuant to section 113(d) of the Federal Clean Air Act and the requirements of the Washington State implementation plan (WSIP), and

Whereas, the Board has considered the entire record and the statements made for and against the compliance order and the Board being fully advised in the premises; makes the following:

FINDINGS

I

On May 16, 1978, the U.S. Environmental Protection Agency issued a notice of violation pursuant to section 113(a)(1) of the Clean Air Act, to the Seattle Steam Corp. upon the finding that the Riley oil-fired boiler is in violation of section 9.03(b)(1) of the Puget Sound Air Pollution Control Agency, a part of the applicable WSIP, as defined in section 110(d) of the Act.

The observations of section 9.03(b)(1) of regulation I were made by air pollution inspectors employed by the Puget Sound Air Pollution Control Agency and said observations are of record and on file in the office of the Puget Sound Air Pollution Control Agency.

Based upon the above findings, the Board does hereby enter the following:

ORDER

It is hereby determined that the schedule for compliance is as expeditious as practicable and that the terms of this order are in compliance with section 113(d) of the Act and are in furtherance of the public health, safety and welfare of the inhabitants of the Puget Sound area. Therefore, it is hereby ordered:

1. That the Seattle Steam Corp. will comply with Puget Sound Air Pollution Control Agency regulation I, section 9.03(b)(1) in accordance with the following schedule on or before the dates specified therein:

a. Conduct testing of combustion conditions including but not limited to increasing stack temperature, using fuel additives, firing less polluting fuel mixtures, varying excess oxygen and investigating low excess air burners as scheduled below:

(1) Conduct combustion tests—completed November 9, 1978.

(a) October 17-22, 1978 test No. 1. Raise flue gas to 420° F, use fuel additive.

(b) October 23-27, 1978 test No. 2. Adjust flue gas and fuel additive depending on test No. 1 results.

(c) October 30, 1978 test No. 3. Fuel oil/natural gas firing.

(d) November 1-17, 1978. Test further combinations based on previous tests.

(2) Survey and investigate low excess air burners—completed November 9, 1978.

(3) Complete decision on method to meet compliance—December 31, 1978.

(4) Submit notice of construction as required—December 31, 1978.

(5) If compliance method selected is by combustion modification compliance shall be achieved by December 31, 1978.

b. If low excess air burners are selected to achieve compliance the following schedule applies:

(1) Submit notice of construction—December 31, 1978.

(2) Complete installation—June 31, 1979.

(3) Final compliance by July 1, 1979.

(4) Demonstrate compliance by November 30, 1979.

c. Quarterly progress reports:

Due date:	*Quarter ending*
(1) Jan. 15, 1979	Dec. 31, 1978.
(2) Apr. 15, 1979	Mar. 31, 1979.

2. That the Seattle Steam Corp. shall comply with the following interim requirements:

a. That the Seattle Steam Corp. shall take all precautions to minimize the emission of smoke and particulate matter from the subject's oil-fired boilers to the maximum degree practical.

b. During the time this order remains in effect the Seattle Steam Corp. shall comply with section 9.03 of regulation I at all times except when conducting tests outlined in section 1(a)(1) by using lower polluting fuels or such other measures deemed necessary.

These requirements are determined to be the best, reasonable and practicable interim system of emission reduction (taking into account the requirements of which compliance is ordered in section 1 above) and are necessary to avoid an imminent and substantial endangerment to the health of persons and to assure compliance with Puget Sound Air Pollution Control Agency regulation I, section 9.03(b)(1) insofar as the Seattle Steam Corp. is able to comply during the period this order is in effect.

3. That the Seattle Steam Corp. is not relieved by this order form compliance with any requirements imposed by the Washington State implementation plan and/or the courts pursuant to RCW 70.94.710 and RCW 70.94.715 during any period of imminent and substantial endangerment to the health of persons.

4. The Seattle Steam Corp. shall comply with the following reporting requirements specified below:

a. Monitoring. (1) Maintain existing system of opacity monitoring and recording.

b. Reporting requirements. (1) No later than 5 days after any date for achievement of an incremental of final compliance specified in section 1 of this order, Seattle Steam Corp. shall notify the Agency in writing of its compliance or noncompliance (state reasons for noncompliance) with the requirement. If delay is anticipated in meeting any requirement of this order, Seattle Steam Corp. shall immediately notify the Agency in writing of the anticipated delay and reason therefore. Notification to the Agency of any anticipated delay does not preclude the Agency taking enforcement action.

(2) The Agency shall be notified at least 24 hours in advance of each test specified in section 1 a(1).

(3) All submittals and reports pursuant to this Order shall be made to: Mr. A. R. Dammkoehler, Air Pollution Control Officer, Puget Sound Air Pollution Control Agency, 410 West Harrison Street, P.O. Box 9863, Seattle, Wash. 98109, 206-344-7330.

5. Nothing in this order is to be construed, in any way, as to prevent enforcement and/or abatement action for any violation of any applicable law, rule or regulation of any other governmental agency.

6. The Seattle Steam Corp. is hereby notified that its failure to achieve final compliance by July 1, 1979, may result in a requirement to pay a noncompliance penalty under section 120 of the Clean Air Act. In the event of such failure, the Seattle Steam Corp. will be formally notified by the U.S. Environmental Protection Agency or its delegate of its noncompliance pursuant to section 120(b)(3) of the Act and to any applicable regulation promulgated thereunder.

7. This order shall be terminated by the Board of Directors if it is determined on the record after notice and hearing that inability to comply with Puget Sound Air Pollution Control Agency regulation I, section 9.03(b)(1) no longer exists.

8. Failure to comply with any condition and/or complete any specific action by its related date without prior written approval of the Agency shall subject the Seattle Steam Corp. to appropriate penalties and/or legal remedies as provided in RCW 70.94 for any violation of regulation I: Provided further that this order does not prevent the Agency, during the term of the order, from issuing to Seattle Steam Corp. notices of violation of any violation of regulation I.

9. This order is issued by the Puget Sound Air Pollution Control Agency Board of Directors effective October 12, 1978, pursuant to Puget Sound Air Pollution Control Agency, regulation I, section 3.11 and RCW 70.94.141, RCW 70.94.155, RCW 70.94.211 and RCW 70.94.221 which are part of the Washington State implementation plan.

Passed and approved at a regular meeting of the Board of Directors of the Puget Sound Air Pollution Control Agency held this 12th day of October 1978.

Puget Sound Air Pollution Control Agency.

GENE LOBE,
Director.

Attest:

ARTHUR R. DAMMKOEHLER,
Air Pollution Control Office.

Approved as to Form:

KEITH D. MCGOFFIN,
Agency Attorney.

If the order is approved by EPA, source compliance with its terms would preclude Federal enforcement action under section 113 of the Act against the source for violations of the regulation covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provision of the Act (section 304) would be similarly precluded. If approved, the order would also constitute an addition to the Washington SIP.

All interested persons are invited to submit written comments on the proposed order. Written comments received by the date specified above will be considered in determining whether EPA may approve the order. After the public comment period, the Administrator of EPA will publish in the FEDERAL REGISTER the Agency's final action on the order on 40 CFR Part 65.

(42 U.S.C. 7413, 7601.)

Dated: November 2, 1978.

L. EDWIN COATE,
Acting Regional Administrator,
Region 10.

[FR Doc. 78-31883 Filed 11-13-78; 8:45 am]

[6560-01-M]

[40 CFR Part 65]

[FRL 993-3]

STATE AND FEDERAL ADMINISTRATIVE ENFORCEMENT OF IMPLEMENTATION PLAN REQUIREMENTS AFTER STATUTORY DEADLINES

Proposed Delayed Compliance Order for the City of Rye Municipal Incinerator, Rye, N.Y.

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The EPA proposes to issue an administrative order requiring The City of Rye, N.Y. ("the City") to bring emissions from its Municipal Incinerator into compliance with certain regulations contained in the federally-

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approved New York State Implementation Plan ("SIP"). The proposed order would, because of the inability of the source to comply with these regulations at this time, establish a schedule requiring final compliance at the Incinerator by no later than July 1, 1980. Source compliance with the terms of this order would preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act ("the Act") for violation of the SIP regualtions covered by the order. The purpose of this notice is to invite public comment and to offer an opportunity to request a public hearing on the EPA's proposed issuance of the order.

DATES: Written comments and request for a public hearing must be received on or before December 14, 1978.

All requests for a public hearing should be accompanied by a statement of why the hearing would be beneficial and a text or summary of any proposed testimony to be offered at the hearing. If there is significant public interest in a hearing, it will be held after thirty days prior notice of the date, time and place of the hearing has been given in this publication.

ADDRESSEES: Comments and requests for a public hearing should be submitted to the Director, Enforcement Division, Region II, USEPA, 26 Federal Plaza, New York, N.Y. 10007. Material supporting this order and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT:

Walter E. Mugdan, Esq., General Enforcement Branch, Enforcement Division, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, N.Y. 10007, 212-264-4434.

SUPPLEMENTARY INFORMATION: The city of Rye, N.Y. operates a Municipal Incinerator for the disposal of its solid waste. The proposed order addresses emissions from this source, which are subject to sections 201.2(b) and 222.3 of title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York, parts of the federally-approved New York SIP. The order requires the City to investigate alternative modes of solid waste disposal, as well as the upgrading of its existing Incinerator. Violative operation of the Incinerator must be terminated by March 15, 1979, unless the City can make certain specified showings, in which case such operation may continue until July 1, 1980.

The proposed order satisifes the applicable requirements of section 113(d) of the Act. If it is issued, source compliance with its terms would preclude further EPA enforcement action under section 113 of the Act for violations of the regulations covered by the order during the period it is in effect. Enforcement against the source under the citizen suit provisions of section 304 of the Act would be similarly precluded. Failure by a source to achieve final compliance by July 1, 1979, will result in a requirement to pay a noncompliance penalty under section 120 of the Act. In the event of such failure, formal notice, pursuant to section 120(b)(3) and any regulations promulgated thereunder, will be provided to such source.

Comments received by the date specified above will be considered in determining whether EPA should issue these orders. Testimony given at any public hearing concerning the orders will also be considered. After the public comment period and any public hearing, the Administrator of the EPA will publish in the FEDERAL REGISTER the Agency's final action on the order in 40 CFR Part 65.

The provisions of 40 CFR Part 65 will be promulgated by EPA soon,[1] and will contain the procedure for EPA's issuance, approval and disapproval of an order under section 113(d) of the Act. In addition, part 65 will contain sections summarizing orders issued, approved, and disapproved by EPA. A prior notice proposing regulations for part 65, published at 40 FR 14876 (April 2, 1975), will be withdrawn and replaced by a notice promulgating these new regulations.

(42 U.S.C. §§ 7413, 7601.)

Dated: October 12, 1978.

ECKARDT C. BECK,
Regional Administrator,
Region II.

In consideration of the foregoing, it is proposed to amend 40 CFR Chapter 1, as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. By amending the table in § 65.370, Federal delayed compliance orders issued under section 113(d) (1), (3), and (4) of the Act, to reflect approval of the following order:

[Order No. 60225]

U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION II

CONSENT ORDER, INDEX NO. 60225

In the matter of Rye Municipal Incinerator (Rye, N.Y.).

PRELIMINARY STATEMENT

On May 5, 1977, the United States Environmental Protection Agency ("EPA") Region II, issued an administrative Order to the City of Rye, pursuant to Section 113(a) of the Clean Air Act, 42 U.S.C. § 7413(a) ("the Act"), establishing a compliance schedule pursuant to which existing violations of applicable portions of the New York State Implementation Plan ("SIP") (approved by the Administrator of the EPA pursuant to Section 110 of the Act, 42 U.S.C. § 7410) at its Municipal Incinerator would be corrected.

The Order provided that the Incinerator must be in final compliance with Sections 201.2(b) and 222.3, Title 6, Official Compilation of codes, Rules and Regulations of the State of New York ("NYCRR"), by no later than July 1, 1981. This date reflected the then projected date of completion of the Grasslands Resource Recovery facility, to be built by the County of Westchester pursuant to its County Solid Waste Plan.

The Clean Air Act Amendments of 1977, which were enacted into law on August 7, 1977, provide that any administrative Orders issued pursuant to Section 113(a) shall become void one year after the enactment of those Amendments, unless they have by that time been modified to comply with the requirements of Section 113(d). (Section 113(d)(12).) Section 113(d) requires, inter alia, that administrative Orders issued thereunder may not permit delays in compliance with SIP regulations beyond July 1, 1979 or three years after the date for final compliance with the regulation(s) in question, whichever is later. (Section 113(d)(1)(D).) The effective final compliance date for 6 NYCRR §§ 201.2(b) and 222.3 in the New York portion of the New Jersey-New York-Connecticut Interstate Air Quality Control Region ("AQCR"), in which the rye Municipal Incinerator is located, was July 1, 1977, the date for attainment of the primary National Ambient Air Quality standards for particulate matter in that AQCR established pursuant to Section 110 of the Clean Air Act as amended in 1970. Thus, an administrative Order issued to the City of Rye with respect to that Incinerator may not, pursuant to Section 113(d) of the Clean Air Act as amended in 1977, extend compliance with the above-mentioned SIP regulations beyond July 1, 1980.

Pursuant to Section 113(d)(12), therefore, the above-mentioned administrative Order became void on August 7, 1978.

FINDINGS

1. The EPA finds that the Rye Municipal Incinerator is operating in violation of 6 NYCRR § 201.2(b), in that it does not have a valid certificate to Operate issued by the New York State Department of Environmental Conservation ("DEC"), and 6 NYCRR § 222.3, in that it emits smoke of a shade or opacity in excess of the limitations established in that section.

2. Such violations have continued beyond the 30th day after EPA's issuance to the city of Rye, on September 29, 1976, of a Notice of Violation (Index No. 60225), pursuant to Section 113(a)(1) of the Act.

3. The Grasslands Resource Recovery Facility, earlier anticipated by the Westchester County Solid Waste Plan to be completed by mid-1981, has not yet passed the planning stages, and cannot be expected to be built by that time.

4. The City of Rye has acted in good faith, and the City can, by meeting the terms of this Order, bring the emissions from its Municipal Incinerator into compliance with applicable SIP requirements prior to July 1, 1980. The EPA has determined that the schedule embodied herein will provide for such compliance as expeditiously as practicable.

5. The EPA has determined that there exist certain interim control measures, required pursuant to Paragraph (C) of the administrative Order issued to the City on May 5, 1977, the implementation of which can minimize air pollution emissions during the period of delayed compliance at the Incinerator permitted by the terms of this Order, and these measures are therefore included herein.

6. Public notice, opportunity for a public hearing, and thirty days notice to the State of New York have been provided.

ORDER

Based upon the foregoing, and pursuant to Section 113(d) of the Act, it is hereby *ordered:*

That the City of Rye (hereinafter "the City") complete the actions specified on or before the dates set forth in the following schedule:

I. (A) On or before August 1, 1978, the City shall commence a thorough study of the feasibility and advisability of installing a sewage and refuse-composting facility to replace its Municipal Incinerator, the construction of some other sort of resource-recovery refuse disposal system, or the upgrading of the Municipal Incinerator.

(B) On or before December 15, 1978, the City shall complete such study, and submit to the EPA a written report of its findings and recommendations. The study shall include projected time schedules for the implementation of the alternatives considered. The EPA will, by January 15, 1979, send to the City its written comments on the City's report required by this Paragraph.

(C) By February 15, 1979 the City may enter into a binding commitment to implement one of the various options studied, and submit an incremental compliance schedule to the EPA which would provide for such implementation as expeditiously as practicable.

(D) If the City enters into a binding commitment as contemplated in Paragraph (C), above, EPA will review the schedule submitted by the City pursuant thereto; if it is approved, it shall be incorporated into this Order by reference, and shall be fully enforceable as a portion hereof.

(E) Subject to the exceptions set forth in Paragraph (F), below, by March 15, 1979 the City of Rye shall terminate operation of its Municipal Incinerator (until such time, if ever, as the Incinerator has been brought into full compliance with all applicable emission limitations, and has received a valid Certificate to Operate from the New York State Department of Environmental Conservation, and all other necessary federal or State permits).

(F) On or before December 15, 1978 the City may, if it so chooses, submit to EPA a request for permission to continue operation at its Municipal Incinerator during the period of construction of a replacement refuse disposal facility (but not later than July 1, 1980). Such request will only be approved by EPA subject to the following conditions:

1. Receipt, on or before December 15, 1978, of a complete economic analysis demonstrating that such continued operation of the Incinerator during the period of construction (but not later than July 1, 1980) is of significant importance to the financial condition of the City; and

2. Entrance into a binding commitment, by the City, on or before February 15, 1979, to construct a facility which will enable resources to be recovered from the refuse being disposed of (such as the recovery of resources in the form of heat, fuel, or compost).

EPA's determination with respect to any such request from the City will be communicated in writing to the City by no later than January 1, 1979. If such request is approved, EPA's approval shall specify the date on which the Rye Municipal Incinerator must be closed, which will in no event be later than July 1, 1980. Such date, specified in such approval, will be incorporated into this Order by reference.

(G) If the City does not enter into a binding commitment as contemplated by Paragraph (C), above, or if EPA finds that the schedule submitted by the City pursuant to that Paragraph does not provide for implementation of the selected alternative as expeditiously as practicable, the City shall terminate operation of the Rye Municipal Incinerator on or before March 15, 1979 notwithstanding any prior approval by the EPA of a request by the City made pursuant to Paragraph (F), above. (Such termination shall continue until such time, if ever, as the Incinerator has been brought into full compliance with all applicable emission limitations, and has received a valid Certificate to Operate from the New York State Department of Environmental Conservation, and all other necessary federal or State permits.)

(H) Beginning on August 7, 1978, and continuing as long as the Rye Municipal Incinerator is in operation, the City shall comply with the following operating and maintenance procedures therefor in order to minimize excess emissions of air contaminants:

1. Inspect and repair the water sprays on a weekly basis.

2. Submit to EPA spray monitoring meter data on a monthly basis.

3. Maintain and calibrate opacity monitors, temperature gauges, and opacity recording equipment at regular intervals as prescribed by the manufacturers.

4. Submit to EPA on a monthly basis:

a. Furnace temperature and smoke opacity charts;

b. An explanation in writing of occasions upon which furnace temperatures are less than 1400 F. for 10 percent or more of the burning time; and

c. An explanation in writing of periods when opacity exceeds 20 percent.

5. When starting up its Incinerator, the City shall use only dry types of waste and exclude cardboard, paper and other such materials which tend to produce high fly-ash emissions.

6. An experienced operator must be stationed at the storage pit to segregate and prevent the charging of objectionable materials, such as tires, appliances and large metal objects.

7. The quantity of underfire air shall be strictly limited to the amount necessary to adequately support combustion and provide necessary cooling for the grates; overfire and secondary air should be adjusted to keep smoke emissions to a minimum.

8. The Incinerator shall be inspected weekly and necessary repairs on the refractory and grates made promptly.

9. A stockpile of replacement parts shall be maintained at all times.

II. (A) If compliance with any incremental step, required by the above Paragraphs, is not or cannot be achieved in a timely manner, the City shall submit to EPA in writing not later than five days after the date specified for completion of such step a full explanation for such failure (or expected failure) to comply. Notwithstanding any explanation for a delay (or anticipated future delay), any failure to meet the incremental steps by the dates specified hereinabove shall be deemed a violation of this Order and may subject the City to the remedies described in Section III, below.

(B) All submissions, notifications and reports to the EPA pursuant to the terms of this Order shall be made to Mr. Kenneth Eng, Chief, Air and Environmental Application Section, Status of Compliance Branch, Enforcement Division, U.S. Environmental Protection Agency, 26 Federal Plaza, New York, New York 10007.

III. Violation of any requirement of this Order may result in one or more of the following (to the extent such steps may be legally applicable):

(A) Enforcement of such requirement pursuant to Section 113 (a) (b) or (c) of the Act, including possible judicial action for an injunction and civil penalties, or criminal prosecution.

(B) Revocation of this Order, after notice and opportunity for a public hearing, and subsequent enforcement of 6 NYCRR §§ 201.2(b) and 222.3, in accordance with the preceding paragraph.

(C) If such violation continues beyond July 1, 1979, notice of noncompliance and subsequent action pursuant to Section 120 of the Act, 42 U.S.C. § 7420.

So ordered, effective immediately.

Dated: October 31, 1978.

DOUGLAS COSTLE,
Administrator, U.S.
Environmental Protection Agency.

CONSENT

The undersigned, having full authority to represent the City of Rye, has read the foregoing Order, believes it to be reasonable, and therefore consents to both its issuance and to its terms. The undersigned recognizes that the City of Rye is subject to all remedies provided in Section 113 of the Act for failure to comply with the terms of the foregoing Order, and explicitly waives any and all rights under any provision of law to challenge this Order.

Dated: September 25, 1978.

F. J. CULROSS,
for City of Rye.

[FR Doc. 78-31747 Filed 11-13-78; 8:45 am]

[1] Published at 43 FR 44522 (September 28, 1978).

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[6560-01-M]

[40 CFR Part 65]

[Docket No. 693; FRL 1005-2]

STATE AND FEDERAL ADMINISTRATIVE ORDERS PERMITTING A DELAY IN COMPLIANCE WITH STATE IMPLEMENTATION PLAN REQUIREMENTS

Proposed Approval of an Administrative Order Issued by the State of Connecticut's Department of Environmental Protection to E. I. du Pont de Nemours & Co.

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve an administrative order issued by the Connecticut Department of Environmental Protection to E. I. du Pont de Nemours & Co. The order requires the company to bring air emissions from its fabric coating plant in Fairfield, Conn., into compliance with certain regulations contained in the federally approved Connecticut State implementation plan (SIP) by December 5, 1978. Because the order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by EPA before it becomes effective as a delayed compliance order under the Clean Air Act (the Act). If approved by EPA, the order will constitute an addition to the SIP. In addition, a source in compliance with an approved order may not be sued under the Federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the order. The purpose of this notice is to invite public comment on EPA's proposed approval of the order as a delayed compliance order.

DATE: Written comments must be received on or before December 14, 1978.

ADDRESSES: Coments should be submitted to Director, Enforcement Division, EPA, Region I, Room 2103, John F. Kennedy Federal Building, Boston, Mass. 02203, Attn.: Air Compliance Clerk. The State order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT:

Wesley Marshall, attorney, 617-223-5600, at EPA, Region I, Room 2103, J. F. K. Building, Boston, Mass. 02203.

SUPPLEMENTARY INFORMATION: E. I. du Pont de Nemours & Co. operates a fabric coating plant at Fairfield, Conn. The order under consideration addresses emissions from tower No. 3 at the facility, which are subject to section 19-508-18(e) of the Connecticut regulations for the abatement of air pollution. The regulation limits the emissions of particulates, and is part of the federally approved Connecticut State implementation plan. The order requires final compliance with the regulation by December 5, 1978, through modification of the production process. The source has consented to the terms of the order.

Because this order has been issued to a major source of particulate emissions and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a delayed compliance order under section 113(d) of the Clean Air Act (the Act). EPA may approve the order only if it satisfies the appropriate requirements of this subsection.

If the order is approved by EPA, source compliance with its terms would preclude federal enforcement action under section 113 of the Act against the source for violations of the regulation covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provision of the Act (sec. 304) would be similarly precluded. If approved, the order would also constitute an addition to the Connecticut SIP. All interested persons are invited to submit written comments on the proposed order. Written comments received by the date specified above will be considered in determining whether EPA may approve the order. After the public comment period, the Administrator of EPA will publish in the FEDERAL REGISTER the Agency's final action on the order in 40 CFR Part 65.

(42 U.S.C. 7413, 7601.)

REBECCA W. HANMER,
Acting Regional Administrator,
Region I.

OCTOBER 26, 1978.

[FR Doc. 78-31749 Filed 11-13-78; 8:45 am]

[6560-01-M]

[40 CFR Part 65]

[FRL 991-6]

STATE AND FEDERAL ADMINISTRATIVE ORDERS PERMITTING A DELAY IN COMPLIANCE WITH STATE IMPLEMENTATION PLAN REQUIREMENTS

Proposed Delayed Compliance Order for the Town of Mars Hill, Maine

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to issue an administrative order to the town of Mars Hill, Maine. The order requires the town to bring air emissions from its open burning dump into compliance with certain regulations contained in the federally-approved Maine State Implementation Plan (SIP). Because the town is unable to comply with these regulations at this time, the proposed order would establish an expeditious schedule requiring final compliance by June 15, 1979. Source compliance with the order would preclude suits under the Federal enforcement and citizen suit provision of the Clean Air Act for violation of the SIP regulations covered by the order. The purpose of this notice is to invite public comment and to offer an opportunity to request a public hearing on EPA's proposed issuance of the order.

DATES: Written comments must be received on or before December 14, 1978, and requests for a public hearing must be received on or before November 29, 1978.

All requests for a public hearing should be accompanied by a statement of why the hearing would be beneficial and a text or summary of any proposed testimony to be offered at the hearing. If there is significant public interest in a hearing, it will be held after 21 days prior notice of the date, time, and place of the hearing has been given in this publication.

ADDRESSES: Comments and requests for a public hearing should be submitted to Director, Enforcement Division, EPA, Region I, Room 2103, John F. Kennedy Building, Boston, Mass. 02203, Attention: Air Compliance Clerk. Material supporting the order and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT:

Mr. Wesley Marshall, attorney, 617-223-5600, or Mr. Robert O'Meara, engineer, 617-223-5610, both at EPA, Region I, Room 2103, JFK Building, Boston, Mass. 02203.

SUPPLEMENTARY INFORMATION: The town of Mars Hill operates an open burning dump. The proposed order addresses emissions from the open burning dump which are subject to § 100.2.2 of the Maine Department of Environmental Protection Air Pollution Control Regulations. The regulation limits the emissions of particulate matter and carbon monoxide, and is part of the federally-approved Maine State Implementation Plan. The order requires final compliance with the regulation by June 15, 1979, and the source has consented to its terms.

The proposed order satisfies the applicable requirements of section 113(d) of the Clean Air Act (the Act). If the order is issued, source compliance with its terms would preclude further EPA enforcement action under section 113 of the Act against the source for violations of the regulation covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provisions of the Act (section 304) would be similarly precluded.

Comments received by the date specified above will be considered in determining whether EPA should issue the order. Testimony given at any public hearing concerning the order will also be considered. After the public comment period and any public hearing, the Administrator of EPA will publish in the FEDERAL REGISTER the Agency's final action on the order in 40 CFR Part 65.

The provisions of 40 CFR 65 will be promulgated by EPA soon,[1] and will contain the procedures for EPA's issuance, approval, and disapproval of an order under section 113(d) of the Act. In addition, part 65 will contain sections summarizing orders issued, approved, and disapproved by EPA. A prior notice proposing regulations for part 65, published at 40 FR 14876 (April 2, 1975), will be withdrawn, and replaced by a notice promulgating these new regulations.

(42 U.S.C. 7413, 7601.)

Dated; September 22, 1978.

WILLIAM R. ADAMS, JR.,
Regional Administrator,
Region I.

In consideration of the foregoing, it is proposed to amend 40 CFR Chapter 1, as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. By amending the table in § 65.240, Federal delayed compliance orders issued under Section 113(d) (1), (3), and (4) of the Act, to reflect approval of the following order:

[Order No. A-SS-78-649]

U.S. ENVIRONMENTAL PROTECTION AGENCY

REGION I

In the matter of town of Mars Hill, Mars Hill, Maine, proceedings under section 113 of the Clean Air Act, 42 U.S.C. § 7413, order No. A-SS-78-649.

This order is issued pursuant to section 113(d)(1) of the Clean Air Act, 42 U.S.C. § 7413(d)(1). This order contains a schedule for compliance, interim requirements, and reporting requirements. Public notice, opportunity for a public hearing, and 30 days notice to the State of Maine have been provided pursuant to section 113(d)(1) of the Act.

FINDINGS

1. Former § 100.2.2 of the Maine Air Pollution Control Regulations ("Regulations") stated, in pertinent part, as follows:

[1] Published at 43 FR 44522 (Sept. 28, 1978).

Open burning of waste of any kind shall be prohibited after July 1, 1974, except that municipalities qualifying for an extension under the Solid Waste Management Plan shall cease open burning as a means of solid waste disposal by July 1, 1975.

2. Section 100.2.2 of the regulations is part of the Maine implementation plan submitted to and approved by EPA pursuant to section 110 of the Act. Although Maine has revised § 100.2.2, EPA disapproved this revision. Therefore, the implementation plan remains unchanged and § 100.2.2 of the regulations is still a "requirement of an applicable plan," as that phrase is used in section 113(a)(1) of the Act.

3. The town of Mars Hill, Maine, owns and operates an open burning disposal site which receives refuse from the towns of Mars Hill, Blaine, Bridgewater, and East Plantation.

4. On August 10, 1978, the Regional Administrator of EPA issued a notice of violation, pursuant to section 113(a)(1) of the Act, to the town of Mars Hill alleging violation of the above-cited regulation. Information received from the town manager of Mars Hill in a letter dated August 28, 1978, discussing the town's open burning of refuse, served as the basis for the issuance of this notice.

5. Representatives of the town of Mars Hill were afforded an opportunity to confer with EPA concerning the alleged violation, in accordance with section 113(a)(4) of the Act. The conference was held on September 7, 1978.

6. Comments made by the town manager of Mars Hill at the September 1978 conference concerning the town's continued open burning indicate that the violation of § 100.2.2 of the regulations has continued more than 30 days beyond Mars Hill's receipt of the notice of violation.

ORDER

After a thorough investigation of all relevant facts, including public comment, it is determined that the schedule for compliance set forth in this order is as expeditious as practicable, and that the terms of this order comply with section 113(d) of the Act.

Definitions: For the purpose of this order:

1. "Solid waste facility" shall mean any land area or structure or combination of land area and structures, used for storing, salvaging, processing, reducing, or incinerating all solid waste projected to be generated by the town of Mars Hill. The system shall safisfy all applicable regulations and procedures prescribed by the Maine Department of Environmental Protection (DEP).

2. "Major system components" shall mean all components required for the proper operation of the solid waste facility. Such components shall include, but are not limited to: land, land disposal equipment, buildings, utilities, roadways, and fencing.

3. "Site location application" shall mean all information required for DEP Bureau of Solid Waste Management review of the proposed solid waste facility. Such information is specified in chapter IV, sections 406 and 407 of the DEP Solid Waste Management Regulations (Title 38, M.R.S.A. sec. 1304).

4. "Site preparation" shall mean all necessary physical modifications to the land disposal site in accordance with site engineering and design specifications that have been approved by the DEP.

5. "Progress report" means a written report outlining, as applicable, schedules for or progress toward: site approval by the Maine DEP, site preparation, and purchase and delivery of major system components.

It is hereby ordered:

I. That the town of Mars Hill will comply with the Maine implementation plan regulations in accordance with the following schedule for implementation of plans for a solid waste facility to dispose of the town's refuse on or before the dates specified:

(A) Submit a site location application to the DEP for approval not later than November 1, 1978.

(B) Submit a progress report to the Director of the Enforcement Division not later than May 1, 1979.

(C) Commence site preparation not later than May 15, 1979.

(D) Cease operation of the town's open burning dump in violation of all applicable state and federal emission limitations and commence operation of a solid waste facility not later than June 15, 1979.

II. That the town of Mars Hill shall comply with the following interim requirements which have been found to be reasonable and practicable and will avoid an imminent and substantial endangerment to the public health.

A. Burning shall be restricted to those times when wind conditions are favorable (considering residents living in the immediate area), and in no event shall exceed 3 days per week.

B. The Mars Hill dump shall be protected by a locked gate and a dump attendant on full-time duty.

III. That the town of Mars Hill is not relieved by this order from compliance with any requirement imposed by the Maine implementation plan, EPA, and/or the courts pursuant to section 303 during any period of imminent and substantial endangerment to the health of persons.

IV. That the town of Mars Hill shall comply with the following reporting requirements on or before the dates specified below:

A. Not later than 5 days after any date for achievement of an incremental step or final compliance specified in this order, the town of Mars Hill shall notify EPA in writing of its compliance, or noncompliance and reasons therefore, with the requirement. If delay is anticipated in meeting any requirement of this order, the town shall immediately notify EPA in writing of the anticipated delay and reasons therefore. Notification to EPA of any anticipated delay does not excuse the delay.

B. All submittals and notifications to EPA pursuant to this order shall be made to: Director, Enforcement Division, U.S. Environmental Protection Agency, J.F.K. Federal building, Room 2103, Boston, Mass. 02203, Attention: Air Compliance Clerk.

V. That while section 113(d)(1)(C) of the Act normally requires emission monitoring in an order, no reasonable system of emission monitoring for the town of Mars Hill's open burning dump site exists.

VI. The town of Mars Hill is hereby notified that failure to achieve final compliance by July 1, 1979, may result in a requirement to pay a noncompliance penalty under section 120 of the Act. In the event of such failure, the town will be formally notified, pursuant to section 120(b)(3) and any regulations promulgated thereunder, of its noncompliance.

VIII. This order shall be terminated in accordance with section 113(d)(8) of the Act if

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the Administrator determines on the record, after notice and hearing, that an inability to comply with § 100.2.2 of the regulations no longer exists.

IX. Violation of any requirement of this order shall result in one or more of the following actions:

A. Enforcement of such requirement pursuant to sections 113(a), (b), or (c) of the Act, including possible judicial action for an injunction and/or penalties and, in appropriate cases, criminal prosecution.

B. Revocation of this order, after notice and opportunity for a public hearing, and subsequent enforcement of § 100.2.2 of the regulations in accordance with the preceding paragraph.

C. If such violation occurs on or after July 1, 1979, notice of noncompliance and subsequent action pursuant to section 120 of the Act.

X. This order is effective upon publication in the FEDERAL REGISTER.

The town of Mars Hill, Maine, consents to the issuance of the subject order and acknowledges that it is a reasonable means to comply with the applicable regulations.

Dated: October 4, 1978.

THOMAS SAUCIER,
Authorized Source Signature.

Dated: October 31, 1978.

DOUGLAS M. COSTLE,
Administrator.

[FR Doc. 78-31748 Filed 11-13-78; 8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

[3410-34-M]

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

JAPANESE BEETLE

Availability of Final Environmental Impact Statement on the Control of the Japanese Beetle at Airports, Including Treatment of Aircraft Interiors Using Insecticides

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability of the final environmental impact statement on the control of the Japanese beetle at airports, including treatment of aircraft interiors using insecticides.

SUMMARY: This gives notice that the Department has prepared the final environmental impact statement (EIS) on the control of the Japanese beetle at airports, including treatment of aircraft interiors using insecticides. The EIS (USDA, APHIS, (ADM)-78-1-F) was sent to the Environmental Protection Agency (EPA) on November 13, 1978, pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, by the Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service.

ADDRESS: Requests for a copy of the EIS should be addressed to the Regulatory Support Staff, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, Hyattsville, Md. 20782.

Copies are available for public inspection at the following locations.

Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 302-E Administration Building, 14th Street and Independence Avenue SW., Washington, D.C. 20250.

Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 3505 25th Avenue, Gulfport, Miss. 39501.

Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 505 South Lenola Road, Blason II, First Floor, Moorestown, N.J. 08057.

Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 103, Building 2B, 620 Central Avenue, Alameda, Calif. 94501.

Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 2100 Boca Chica Boulevard, Suite 400, Brownsville, Tex. 78520.

FOR FURTHER INFORMATION CONTACT:
E. E. Crooks, 301-436-8249.

SUPPLEMENTARY INFORMATION: A notice of the Department's intent to prepare a draft environmental impact statement (DEIS) on the control of the Japanese beetle at airports, including treatment of aircraft interiors using insecticides, was published in the FEDERAL REGISTER (43 FR 17515) on April 25, 1978. After consideration of comments received in response to this notice, a preliminary DEIS was prepared and a notice of availability of the preliminary DEIS for review was published in the FEDERAL REGISTER (43 FR 21709) on May 19, 1978. Comments were invited from Federal, State, and local agencies and from members of the public.

All comments received were fully considered in the preparation of the draft environmental impact statement (DEIS) and the notice of availability of the DEIS for comment was published in the FEDERAL REGISTER (43 FR 26089) June 16, 1978. This provided a second opportunity for interested persons to participate in the preparation of the DEIS. Comments were due August 7, 1978.

All comments received pursuant to the notice of availability of the DEIS published June 16 were considered in the preparation of this document and the final EIS has been transmitted to the Environmental Protection Agency.

Done at Washington, D.C., this 9th day of November 1978.

THOMAS G. DARLING,
Acting Deputy Administrator, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service.

[FR Doc. 78-32158 Filed 11-13-78; 8:45 am]

[3410-15-M]

Rural Electrification Administration

DRAFT ENVIRONMENTAL IMPACT STATEMENT AND PUBLIC INFORMATION MEETINGS

Notice is hereby given that the Rural Electrification Administration (REA) intends to prepare an environmental impact statement in connection with a possible loan guarantee for East Kentucky Power Cooperative, P.O. Box 707, Winchester, Ky., 40391, (hereinafter referred to as "East Kentucky"), which would provide financing for construction of or otherwise acquiring generation facilities and associated transmission lines in the State of Kentucky. In connection with the proposed East Kentucky project, REA intends to hold public information meetings on December 5 and 6, 1978, to aid in the Federal decisionmaking process and formulation of issues to be addressed in the EIS.

East Kentucky has been and is exploring all viable alternatives and their environmental impacts for meeting the increasing power requirements of its member electric distribution cooperatives. Such studies are being conducted in consultation with and using input from Federal, State and local agencies and officials. East Kentucky has proposed the construction of two 600 MW coal-fired generating units and ancillary facilities at one of six new site locations in the State of Kentucky adequate for the installation of a minimum of two 600 MW class units.

In discussion among Federal agencies who may have responsibilities with respect to the proposed project, including REA, the U.S. Environmental Protection Agency, U.S. Army Corps of Engineers, and U.S. Fish and Wildlife Service, the Rural Electrification Administration has been tentatively identified as lead agency and the other agencies as cooperating agencies in the preparation of a joint Federal environmental impact statement in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969. REA will consider the need for additional generating capacity and the environmental effects of both structural and nonstructural alternatives. The environmental impact statement will consider the construction of two 600 MW generating units at a new location and, as is necessary to satisfy a cooperating agency's needs, the ultimate planned capacity at such location if it is adequate for the installation of additional units. East Kentucky has tentatively identified as preferred locations two site areas east of Beattyville; one area equidistant from Beattyville and Jackson; one area west of Jackson; one

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area west of Irvine; and one area equidistant from Winchester and Irvine, Ky.

Public information meetings will be held in order to receive public input and comments concerning the need for the project, finalist alternatives and sites proposed by east Kentucky, other potential alternatives, significant issues that should be addressed in the Federal environmental impact statement and other matters concerning the proposal. A representative of the Rural Electrification Administration will act as chairperson for said meetings, and other involved Federal and State agencies have been invited to send representatives. The schedule for the meetings is:

December 5, 1978, 7:30 p.m. at the Lee County Circuit Court Room, Court House, Main Street, Beattyville, Ky.

December 6. 1978, 7:30 p.m. at the Hargett Elemenatry School, Highway 89, Hargett, Ky.

The Rural Electrification Administration encourages the public to attend these meetings and provide their input. Any person, group, or governmental entity which desires to make its comments, questions, and/or recommendations in writing may do so either at the meeting or by submitting them to Mr. Richard F. Richter, Assistant Administrator-Electric, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250. A record will be made of each meeting and comments made will be responded to in the draft environmental impact statement. In addition, the records of the proceedings will be held open through January 1, 1979.

Any questions prior to the meetings concerning the nature of the project or meetings should be directed to East Kentucky at the address given above or by calling 606-744-4812.

Any loan or loan guarantee which may be made pursuant to this potential application will be subject to, and release of funds thereunder will be contingent upon, REA's reaching satisfactory conclusions with respect to environmental effects. Final action will be taken only after compliance with the environmental statement procedures required by the National Environmental Policy Act of 1969.

Dated at Washington, D.C., this 9th day of November, 1978.

JOSEPH VELLONE,
Acting Administrator, Rural Electrification Administration.

[3510-04]

DEPARTMENT OF COMMERCE

National Technical Information Service

GOVERNMENT-OWNED INVENTIONS

Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for domestic and possibly foreign licensing in accordance with the licensing policies of the agency-sponsors.

Copies of the patents cited are available from the Commissioner of Patents and Trademarks, Washington, D.C. 20231, for $.50 each. Requests for copies of patents must include the patent number.

Requests for licensing information on a particular invention should be directed to the address cited for the agency-sponsor.

DOUGLAS J. CAMPION,
Patent Program Coordinator, National Technical Information Service.

U.S. DEPARTMENT OF THE AIR FORCE, AF/JACP, Washington, D.C. 20314.

Patent 3,984,839: Low Height VLF Antenna System; filed May 15, 1975, patented October 5, 1976.

Patent 3,984,980: Intergral Heater Thermal Energy Storage Device; filed August 5, 1975, patented October 12, 1976.

Patent 3,985,398: Fluidic Antiskid Circuit; filed April 8, 1975, patented October 12, 1976.

Patent 3,985,420: Mechanical Step Scanner; filed October 10, 1975, patented October 12, 1976

Patent 3,985,579: Rib and Channel Vertical Multijunction Solar Cell; filed November 26, 1975, patented October 12, 1976.

Patent 3,986,082: Universal Temperature Controlled Reference Junction; filed February 14, 1975, patented October 12, 1976.

Patent 3,986,127: Integrated Feedback Active Filter/Integrator; filed May 27, 1975, patented October 12, 1976.

Patent 3,986,129: Generation of Submicrosecond Pulses in a Long Laser; filed July 25, 1972, patented October 12, 1976.

Patent 3,986,139: Isothermal Gas Dynamic Laser Nozzle; filed March 29, 1974, patented October 12, 1976.

Patent 3,986,139: Radioactively Preionized Electrical Discharge Laser; filed February 18, 1975, patented October 12, 1976.

Patent 3,988,241: In-Place Bearing Staking Device; filed November 18, 1975, patented October 19, 1976.

Patent 3,986,683: Jet Tab Steerable Missile; filed March 27, 1974, patented October 19, 1976.

Patent 3,986,690: Laser Defense and Countermeasure System for Aircraft; filed October 28, 1975, patented October 19, 1976.

Patent 3,987,016: Method for the Preparation of Polyarylene Sulfides Containing Pendant Cyano Groups by Polymerizing M-Benzenedithiol, Dibromobenzene, and 2, 4-Dichlorobenzonitrile; filed January 16, 1975, patented October 19, 1976.

Patent 3,987,288: Time Multiplexing Hybrid Sample Data Filter; filed April 22, 1975, patented October 19, 1976.

Patent 3,987,453: Balanced Exciter for Wideband Antenna Element; filed August 18, 1975, patented October 19, 1976.

U.S. DEPARTMENT OF THE NAVY, Assistant Chief for Patents, Office of Naval Research, Code 302, Arlington, Va. 22217.

Patent 3,970,791: Voice Controlled Disappearing Audio Delay Line; filed May 27, 1975, patented July 20, 1976.

Patent 3,978,444: Seafloor Mapping System; filed May 30, 1975, patented August 31, 1976.

Patent 3,978,483: Stable Base Band Adaptive Loop; Filed December 26, 1974, patented August 31, 1976.

Patent 3,980,395: Liquid Crystal Switch for Optical Waveguide; filed December 2, 1974, patented September 14, 1976.

Patent 3,981,561: Optically Activated Excilpiax Shutter/Attenuator, filed October 16, 1975, patented September 21, 1976.

Patent 3,986,003: Multi Position Solid State Touch Switch; filed March 21, 1975, patented October 12, 1976.

Patent 3,986,111: Inverted Voltage Gerdien Condenser; filed December 24, 1974, patented October 12, 1976.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, Assistant General Counsel for Patent Matters, NASA Code GP-2, Washington, D.C. 20546.

Patent 3,984,730: Method and Apparatus for Neutralizing Potentials Induced on Spacecraft Surfaces; patented October 5, 1976.

[FR Doc. 78-31890 Filed 11-13-78; 8:45 am]

[3510-04-M]

GOVERNMENT-OWNED INVENTIONS

Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for domestic and possibly foreign licensing in accordance with the licensing policies of the agency-sponsors.

Copies of the patents cited are available from the Commissioner of Patents and Trademarks, Washington, D.C. 20231, for $.50 each. Requests for copies of patents must include the patent number.

Requests for licensing information on a particular invention should be directed to the address cited for the agency-sponsor.

DOUGLAS J. CAMPION,
Patent Program Coordinator, National Technical Information Service.

U.S. DEPARTMENT OF THE AIR FORCE, AF/JACP, Washington, D.C. 20314

Patent 3,986,149: High Power Reciprocal Co-Planar Waveguide Phase Shifter; filed August 29, 1975, patented October 12, 1976.

Patent 3,986,688: Variable Effectiveness Stabilizing/Controlling Surface; filed June 16, 1975, patented October 19, 1976.

Patent 3,987,003: Thermally Stable Dioxo and Dithio-Benzisoquinoline Compositions and Process of Synthesizing Same; filed June 6, 1975, patented October 19, 1976.

U.S. DEPARTMENT OF ENERGY, Assistant General Counsel for Patents, Washington, D.C. 20545

Patent 3,949,596: Leak Test Fixture and Method for Using Same; filed December 11, 1974, patented April 13, 1976.

Patent 3,950,216: Falling Film Evaporator; filed January 18, 1974, patented April 13, 1976.

Patent 3,951,074: Secondary Lift for Magnetically Levitated Vehicles; filed September 27, 1974, patented April 20, 1976.

Patent 3,951,082: Countercurrent Flow Afterburner; filed April 22, 1975, patented April 20, 1976.

Patent 3,951,327: Ceramic to Metal Seal; filed January 28, 1975, patented April 20, 1976.

Patent 3,952,263: Fission Fragment Excited Laser System; filed October 4, 1974, patented April 20, 1976.

Patent 3,953,285: Nickel—Chromium—Silicon Brazing Filler Metal; filed April 25, 1973, patented April 27, 1976.

Patent 3,953,355: Preparation of uranium Nitride; filed May 29, 1974, patented April 27, 1976.

Patent 3,954,321: Miniature Electrical Connector; filed August 13, 1975, patented May 4, 1976.

Patent 3,955,150: Active-R Filter; filed January 15, 1975, patented May 4, 1976.

Patent 3,955,505: Detonating Apparatus; filed May 31, 1950, patented May 11, 1976.

Patent 3,955,509: Fuel-Air Munition and Device; filed March 21, 1969, patented May 11, 1976.

Patent 3,955,755: Closed Continuous-Flow Centrifuge Rotor; filed April 25, 1975, patented May 11, 1976.

Patent 3,956,039: High Explosive Compound; filed January 13, 1956, patented May 11, 1976.

Patent 3,957,197: Centrifuge Apparatus; filed April 25, 1975, patented May 18, 1976.

Patent 3,957,460: Oxidation of Coal—Water Slurry Feed to Hycrogasifier; filed September 9, 1975, patented May 18, 1976.

Patent 3,957,496: Molybdenum Sealing Glass-Ceramic Composition; filed September 23, 1975, patented May 18, 1976.

Patent 3,957,532: Method of Preparing an Electrode Material of Lithium—Aluminum Alloy; filed June 20, 1974, patented May 18, 1976.

Patent 3,960,083: Igniter Containing Titanium Hydride and Potassium Perchlorate; filed March 6, 1975, patented June 1, 1976.

Patent 3,961,016: Method of Removing Carbon Monoxide from Gases; filed April 26, 1974, patented June 1, 1976.

Patent 3,963,598: Flash Hydrogenation of Coal; filed October 15, 1974, patented June 15, 1976.

Patent 3,963,626: Fire Extinguishant for Fissionable Material; filed March 22, 1974, patented June 15, 1976.

Patent 3,963,826: Low Temperature, Low Pressure Hydrogen Gettering; filed March 21, 1975, patented June 15, 1976.

Patent 3,963,994: Slit Injection Device; filed January 15, 1975, patented June 15, 1976.

Patent 3,964,792: Explosive Fluid Transmitted Shock Method for Mining Deeply Buried Coal; filed January 28, 1975, patented June 22, 1976.

Patent 3,964,914: Electromarking Solution; filed August 16, 1974, patented June 22, 1976.

Patent 3,965,351: Differential Auger Spectrometry; filed October 30, 1974, patented June 22, 1976.

U.S. DEPARTMENT OF THE NAVY, Assistant Chief for Patents, Office of Naval Research, Code 302, Arlington, Va. 22217

Patent 3,925,648: Apparatus for the Generation of a High Capacity Chirp-Z Transform; filed July 11, 1974, patented December 9, 1975.

Patent 3,986,681: Cylindrical Manifold for EGD Channels of a Static Discharge System; filed September 15, 1975, patented October 19, 1976.

[FR Doc. 78-31891 Filed 11-13-78; 8:45 am]

[3510-04-M]

GOVERNMENT-OWNED INVENTIONS

Notice of Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for domestic and possibly foreign licensing in accordance with the licensing policies of the agency-sponsors.

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Requests for licensing information on a particular invention should be directed to the address cited for the agency-sponsor.

DOUGLAS J. CAMPION,
Patent Program Coordinator, National Technical Information Service.

U.S. DEPARTMENT OF THE AIR FORCE, AF/JACP, Washington, D.C. 20314

Patent 3,993,269: Toroidal Tail Structure for Tethered Aeroform Balloon. Filed December 18, 1975, patented November 23, 1976.

U.S. DEPARTMENT OF ENERGY, Assistant General Counsel for Patents, Washington, D.C. 20545

Patent 3,953,288: Gas Venting; filed May 24, 1970, patented April 27, 1976.

Patent 3,952,204: Film Holder for Radiographing Tubing; filed January 14, 1975, patented April 20, 1976.

Patent 3,953,922: Method of Eliminating the Training Effect in Superconducting Coils by Post-Wind Preload; filed February 24, 1975, patented May 4, 1976.

Patent 3,955,757: Ultracentrifuge for Separating Fluid Mixtures; filed September 28, 1960, patented May 11, 1976.

Patent 3,955,943: Diffusion Method of Separating Gaseous Mixtures; filed June 16, 1948, patented May 11, 1976.

Patent 3,958,096: Welding Arc Gap Ionization Device; filed December 23, 1974, patented May 18, 1976.

Patent 3,959,172: Process for Encapsulating Radionuclides; filed September 26, 1973, patented May 25, 1976.

Patent 3,961,197: X-ray Generator; filed August 21, 1974, patented June 1, 1976.

Patent 3,961,917: Method of Independently Operating a Group of Stages within a Diffusion Cascade; filed July 13, 1949, patented June 8, 1976.

Patent 3,962,082: Liquid Metal Cold Trap; filed March 28, 1975, patented June 8, 1976.

Patent 3,963,921: Method for Producing Uranium Atomic Beam Source; filed April 16, 1974, patented June 15, 1976.

Patent 3,964,667: Diffusion Bonding; filed January 19, 1966, patented June 22, 1976.

Patent 3,965,250: Separation of Sulfur Isotopes; filed July 3, 1974, patented June 22, 1976.

U.S. DEPARTMENT OF THE INTERIOR, Branch of Patents, 18th and C Streets, Washington, D.C. 20240

Patent 3,992,153: Dosimeter for Oxides of Nitrogen; filed May 20, 1976, patented November 16, 1976.

Patent 3,992,327: Catalysts and Adsorbents Having High Surface Area to Weight; filed November 1974, patented November 16, 1976.

Patent 3,993,517: Thin Cell Electromembrance Separator; filed October 31, 1975, patented November 23, 1976.

Patent 3,993,838: Wax or Plastic Coated Phosphor Grains; filed March 3, 1975, patented November 23, 1976.

U.S. DEPARTMENT OF THE NAVY, Assistant Chief for Patents, Office of Naval Research, Code 302, Arlington, Va. 22217.

Patent 3,976,274: Permanent Attachment for Suction Cups; filed May 27, 1975, patented August 24, 1976.

Patent 3,984,673: External Lighting System for Hypobaric and Hyperbaric Chambers; filed June 30, 1975, patented October 5, 1976.

Patent 3,989,475: Composite Superconductors; filed May 30, 1975, patented November 2, 1976.

TENNESSEE VALLEY AUTHORITY, Division of Law, Muscle Shoals, Ala. 35660

Patent 3,985,538: Pipe Reactor-Continuous Ammoniator Process for Production of Granular Phosphates; filed May 16, 1975, patented October 12, 1976.

Patent 3,991,225: Method for Applying Coatings to Solid Particles; filed December 12, 1974, patented November 9, 1976.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, Assistant General Counsel for Patent Matters, NASA Code GP-2, Washington, D.C. 20546

Patent 3,750,035: Frequency Discriminator and Phase Detector Circuit; patented July 31, 1973.

Patent 3,990,860: High Temperature Oxidation Resistant Cermet Compositions; patented November 9, 1976.

Patent 3,990,987: Smoke Generator; patented November 9, 1976.

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[3510-04-M]

GOVERNMENT-OWNED INVENTIONS

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Requests for licensing information on a particular invention should be directed to the address cited for the agency-sponsor.

DOUGLAS J. CAMPION,
Patent Program Coordinator, National Technical Information Service,

U.S. DEPARTMENT OF ENERGY, Assistant General Counsel for Patents, Washington, D.C. 20545

Patent 3,949,048: Separation by Solvent Extraction; filed July 24, 1950, patented April 6, 1976.
Patent 3,953,567: Exp 82 Sr—Exp 82 Rb Radioisotope Generator; filed September 27, 1974, patented April 27, 1976.
Patent 3,954,655: Method of Tagging Sand with Ruthenium 103 and the Resultant Product; filed December 27, 1974, patented May 4, 1976.
Patent 3,954,661: Calcination Process for Radioactive Wastes; filed September 19, 1974, patented May 4, 1976.
Patent 3,955,093: Targets for the Production of Radioisotopes and Method of Assembly; filed April 25, 1975, patented May 4, 1976.
Patent 3,955,860: Journal Bearing; filed February 7, 1949, patented May 11, 1976.
Patent 3,956,658: Low Impedance Switch; filed November 28, 1945, patented May 11,1976.
Patent 3,957,676: Chemical Digestion of Low Level Nuclear Solid Waste Material; filed September 22, 1972, patented May 18, 1976.
Patent 3,958,948: Dissolver Vessel Bottom Assembly; filed January 8, 1975, patented May 25, 1976.
Patent 3,960,468: Fluid Lubricated Bearing Assembly; filed July 16, 1946, patented June 1, 1976.
Patent 3,965,237: Dissolution Process for ZrO, sub 2—UO sub 2—OaO Fuels; filed April 11, 1975, patented June 22, 1976.

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, National Institutes of Health, Chief, Patent Branch, Weswood Building, Bethesda, Md. 20014

Patent 3,987,281: Method of Radiation Therapy Treatment Planning; filed July 29, 1974, patented October 19, 1976.

U.S. DEPARTMENT OF INTERIOR, Branch of Patents, 18th and C Streets, NW., Washington, D.C. 20240

Patent 3,991,367: Detection of Potential on High-Voltage Transmission Lines; filed January 20, 1976, patented November 9, 1976.
Patent 3,991,419: Receiver System for Locating Transmitters; filed January 26, 1976, patented November 9, 1976.
Patent 3,933,138: Fire Prevention System; filed April 24, 1975, patented November 23, 1976.
Patent 3,994,390: Intermediate Drive for Belt Conveyor with Center Vertebrae; filed November 18, 1975, patented November 30, 1976.

[FR Doc. 78-31893 Filed 11-13-78; 8:45 am]

[3510-04-M]

GOVERNMENT-OWNED INVENTIONS

Notice of Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for domestic and possibly foreign licensing in accordance with the licensing policies of the agency-sponsors.

Copies of the patents cited are available from the Commissioner of Patents and Trademarks, Washington, D.C. 20231, for $.50 each. Requests for copies of patents must include the patent number.

Requests for licensing information on a particular invention should be directed to the address cited for the agency-sponsor.

DOUGLAS J. CAMPION,
Patent Program Coordinator, National Technical Information Service.

U.S. DEPARTMENT OF ENERGY, Assistant General Counsel for Patents, Washington, D.C. 20545

Patent 3,948,735: Concentration and Purification of Plutonium or Thorium; filed June 1, 1973, patented April 6, 1976.
Patent 3,949,050: Method of Absorbing UF sub 6 from Gaseous Mixtures in Alkamine Absorbents; filed September 20, 1948, patented April 6, 1976.
Patent 3,951,573: Fluid Lubricated Bearing Construction; filed July 16, 1946, patented April 20, 1976.
Patent 3,955,753: Gas Centrifuge with Driving Motor; filed April 13, 1961, patented May 11, 1976.
Patent 3,957,577: Hydraulic Control Rod; filed June 23, 1955, patented May 18, 1976.
Patent 3,957,945: Chemical Isolation of exp 82 Sr from Protor-Irradiated Mo Targets; filed August 21, 1974, patented May 18, 1976.
Patent 3,957,956: Closed Cycle Ion Exchange Method for Regenerating Acids, Bases, and Salts; filed June 20, 1974, patented May 18, 1976.
Patent 3,958,699: Charging Machine; filed July 13, 1954, patented May 25, 1976.
Patent 3,959,069: Method of Preparing Gas Tags for Identification of Single and Multiple Failures of Nuclear Reactor Fuel Assemblies; filed June 5, 1974, patented May 25, 1976.
Patent 3,959,070: Method of Operating a Neutronic Reactor; filed November 18, 1952, patented May 25, 1976.
Patent 3,959,455: Labeling of Indocyanine Green with Carrier-Free Iodine-123; filed July 1, 1975, patented May 25, 1976.
Patent 3,962,114: Method for Solidifying Liquid Radioactive Wastes; filed April 11, 1975, patented June 8, 1976.
Patent 3,963,936: Neutronic Reactor Thermal Shield; filed March 14, 1955, patented June 15, 1976.
Patent 3,964,967: Tag Gas Capsule with Magnetic Piercing Device; filed February 24, 1975, patented June 22, 1976.

U.S. DEPARTMENT OF THE INTERIOR, Branch of Patents, 18th and C Streets NW., Washington, D.C. 20240

Patent 3,981,962: Decomposition Leach of Sulfide Ores with Chlorine and Oxygen; filed June 30, 1975, patented September 21, 1976.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, Assistant General Counsel for Patent Matters, NASA Code GP-2, Washington, D.C. 20546

Patent 3,994,128: Dual Output Variable Pitch Turbofan Actuation System; patented November 30, 1976.
Patent 3,995,476: Miniature Biaxial Strain Transducer; patented December 7, 1976.
Patent 3,995,644: Percutaneous Connector Device; patented December 7, 1976.
Patent 3,995,789: Reel Safety Brake; patented December 7, 1976.
Patent 3,995,877: Fifth Wheel; patented December 7, 1976.
Patent 3,996,064: Electrically Rechargeable Redox Flow Cell; patented December 7, 1976.
Patent 3,996,070: Thermocouple Installation; patented December 7, 1976.
Patent 3,996,464: Mass Spectrometer with Magnetic Pole Pieces Providing the Magnetic Fields for Both the Magnetic Sector and an Ion-Type Vacuum Pump; patented December 7, 1976.
Patent 3,996,468: Electron Microscope Aperture System; patented December 7, 1976.

[FR Doc. 78-31894 Filed 11-13-78; 8:45 am]

[3510-60-M]

National Telecommunications and Information Administration

FREQUENCY MANAGEMENT ADVISORY COUNCIL

Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), notice is hereby given that the Frequency Management Advisory Council will meet from 9:30 a.m. to 3:30 p.m. on December 1, 1978, in the Aspen Room at the National Telecommunications and Information Administration, 1325 "G" Street NW., Washington, D.C. (Public entrance to the building is on "G" Street, between 13th Street and 14th Street NW.)

The Council was established on July 19, 1965. The objective of the Council is to advise the Secretary of Commerce on radio frequency spectrum allocation matters and means by which the effectiveness of Federal Government frequency management may be enhanced. The council consists of 11 members whose knowledge of telecommunications is balanced in the functional areas of manufacturing, analysis and planning, operations, research, academia and international negotiations.

The principal agenda items for the meeting will be:

(1) Briefing on "INTELPOST, An International Electronic Message System";
(2) Report on results of the special meeting of the International Radio Consultative Committee (CCIR) preparatory to WARC 1979;
(3) Report on foreign coordination for WARC 1979;
(4) Discussion of a new study program in support of the FMAC advisory role to NTIA; and
(5) Briefing on "Radio Noise Emanating from Power Lines."

The meeting will be open to public observation; and a period will be set aside for oral comments or questions by the public which do not exceed 10 minutes each. More extensive questions or comments should be submitted in writing before November 29th. Other public statements regarding Council affairs may be submitted at any time before or after the meeting. Approximately 15 seats will be available for the public on a first-come first-served basis.

Copies of the minutes will be available on request.

Inquires may be addressed to the Council Control Officer, Mr. Charles L. Hutchison, National Telecommunications and Information administration, Room 298, 1325 "G" Street NW., Washington, D.C. 20005, telephone 202-724-3307.

Dated: November 7, 1978.

CLOYD C. DODSON,
Committee Liaison Officer, National Telecommunications and Information Administration.

[FR Doc. 78-31879 Filed 11-13-78; 8:45 am]

[3710-05-M]

DEFENSE COMMUNICATIONS AGENCY

SCIENTIFIC ADVISORY GROUP

Closed Meeting

The DCA Scientific Advisory Group will hold a closed meeting on December 6, 1978. The December 6 meeting will be at the Defense Communications Agency, Director's Management Information Center at Headquarters, Defense Communications Agency, 8th Street and South Courthouse Road, Arlington, Va.

The agenda will be the Report of the Defense Science Board Task Force on Command and Control Systems Management.

Any person desiring information about the Advisory Group may telephone (area code 202-692-1765) or write Chief Scientist—Associate Director, Technology, Headquarters, Defense Communications Agency, 8th Street and South Courthouse Road, Arlington, Va. 22204.

This meeting is closed because the material to be discussed is classified requiring protection in the interest of National Defense. (Freedom of Information Act, 5 U.S.C. 552b(c)(1).)

MARGARET E. ANDERSON,
Committee Management Officer.

Requisition No. 317H.

[FR Doc. 78-31918 Filed 11-13-78; 8:45 am]

[3910-01-M]

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF SCIENTIFIC ADVISORY BOARD

Meeting

NOVEMBER 6, 1978.

The USAF Scientific Advisory Board Ad Hoc Committee on Missile Basing Verification in Terms of SALT will hold meetings at the National Security Agency, Ft. Meade, Md. on December 7-8, 1978. The meetings will convene at 9 a.m. and adjourn at 5 p.m. each day.

The Committee will receive classified briefings and hold classified discussions in relation to reviewing the technical aspects of missile basing verification. The meetings will be closed to the public in accordance with Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof.

For further information contact the Scientific Advisory Board Secretariat at 202-697-4648.

Dated: November 6, 1978.

CAROL M. ROSE,
Air Force Federal Register Liaison Officer.

[FR Doc. 78-31895 Filed 11-13-78; 8:45 am]

[3710-08-M]]

DEPARTMENT OF DEFENSE

Department of the Army

ARMY SCIENCE BOARD

Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

NAME OF COMMITTEE: Army Science Board.

DATE OF MEETING: December 7, 1978.

PLACE: Fort Shafter, Hawaii (exact location can be determined by contacting LTC Persons at 808-438-1431.

TIME: 0800 to 1700 hours, December 7, 1978.

PROPOSED AGENDA: The ASB Standing Committee on Ballistic Missile Defense will hold classified discussions of briefings they have received on the threat and other studies done which relate to strategic issues in ICBM, and the offensive and defensive postures of the United States and other nations. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof. The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting.

ROBERT F. SWEENEY,
Lieutenant Colonel, GS, Executive Secretary, Army Science Board.

[FR Doc. 78-31948 Filed 11-13-78; 8:45 am]

[3810-71-M]

DEPARTMENT OF DEFENSE

Department of the Navy

NAVY RESALE SYSTEM ADVISORY COMMITTEE

Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Navy Resale System Advisory Committee will meet on November 13, 1978, at the Crystal Room, Plaza Hotel, New York, N.Y. The first session will commence at 9 a.m. and terminate at approximately 10 a.m. The second session will commence at 10 a.m. and terminate at approximately 12 noon. The second session of the meeting will be closed to the public.

The agenda will consist of an overview of the Navy Exchange Program, the Navy Commissary Program, the Navy Ships Store Program, and the Navy Lodge Program, highlighting sales and earnings.

The Secretary of the Navy has determined in writing that the public interest requires that the second session of the meeting, which will involve discussion of information relating solely to either internal agency personnel rules and practices or trade secrets, or confidential and privileged business information, be closed to the public. These matters fall within the exemptions listed in subsections 552 (c)(2)

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and (c)(4) of title 5, United States Code. The first session of the meeting, which will involve other non-privileged matters related to the Navy Exchange Resale System, will be open to the public.

FOR FURTHER INFORMATION CONCERNING THIS MEETING, CONTACT:

Commander J. D. Felt, USN, Navy Supply Systems Command, NAVSUP 09B, Room 801, Crystal Mall, Building No. 3, Arlington, VA 20376, telephone 202-695-5457.

Dated: November 9, 1978.

P. B. WALKER,
Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Administrative Law).

[FR Doc. 78-32092 Filed 11-13-78; 8:45 am]

[3810-70-M]

Office of the Secretary of Defense

DEFENSE INTELLIGENCE AGENCY SCIENTIFIC ADVISORY COMMITTEE

Closed Meeting

Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee will be held as follows: Friday, December 8, 1978, Pomponio Plaza, Rosslyn, Va. The entire meeting, commencing at 0830 hours is devoted to the discussion of classified information as defined in section 552d(c)(1), Title 5 of the United States Code and therefore will be closed to the public. Subject matter will be used in a study on current and projected DoD HUMINT collection activities.

November 7, 1978.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

[FR Doc. 78-31806 Filed 11-13-78; 8:45 am]

[3128-01-M]

DEPARTMENT OF ENERGY

NATIONAL PETROLEUM COUNCIL, COORDINATING SUBCOMMITTEE AND TASK GROUPS OF THE SUBCOMMITTEE ON REFINERY FLEXIBILITY

Meetings

Notice is hereby given that the Coordinating Subcommittee and the task groups of the Subcommittee on Refinery Flexibility of the National Petroleum Council will meet on Wednesday, November 15, 1978, at the following times and locations at the National Petroleum Council, 1625 K Street NW., Washington, D.C. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries. The Subcommittee on Refinery Flexibility will make an analysis of the factors affecting crude oil quality and availability and the ability of the refining industry to process such crudes, and will report its findings to the National Petroleum Council. Its analysis and findings will be based on information and data to be gathered by the task groups listed in this notice, whose efforts will be coordinated by the Coordinating Subcommittee. The Coordinating Subcommittee of the Committee on Refinery Flexibility will meet in suite 601 at 1 p.m. Its tentative agenda is as follows:

1. Introductory remarks by the Chairman and Government Cochairman.
2. Discussion of scope of the NPC Study on Refinery Flexibility.
3. Discussion of the study methodology to be employed in the study.
4. Discussion of the timetable of the study groups.
5. Discussion of any other matters pertinent to the overall assignment of the Coordinating Subcommittee.

The Task Groups will meet at the National Petroleum Council at the following times:

9:00 a.m.—Refinery Capability Task Group.
10:00 a.m.—Oil Supply, Demand and Logistics Task Group.

The agenda for the task groups sessions will be:

1. Introductory remarks.
2. Discussion of scope of the assignment of the task group.
3. Discussion of the study methodology of the task group.
4. Discussion of the timetable of the task group.
5. Discussion of any other matters pertinent to the overall assignment of the task group.

The meetings are open to the public. The chairmen of the Coordinating Subcommittee and task groups are empowered to conduct the meetings in a fashion that will, in their judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Coordinating Subcommittee or task groups will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Frank A. Verrastro, Office of Policy and Evaluation, 202-252-5688, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Transcripts of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room GA 152, DOE, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Any person may purchase a copy of the transcripts from the reporter.

Issued in Washington, D.C., November 8, 1978.

WILLIAM P. DAVIS,
Deputy Director of Administration.

[FR Doc. 78-32049 Filed 11-13-78; 8:45 am]

[3128-01-M]

Economic Regulatory Administration

[ERA Docket No. 78-008-NG]

ST. LAWRENCE GAS CO., INC.

Petition To Amend Order Authorizing Importation of Natural Gas

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of receipt of petition and invitation to submit petitions to intervene in the proceedings.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt of a petition of St. Lawrence Gas Co., Inc. (St. Lawrence), and an amendment thereto, to amend the Federal Power Commission's (FPC) Order of December 8, 1966, in FPC Docket No. G-17500. The St. Lawrence petition has been assigned ERA Docket No. 78-008-NG. The petition, as amended, requests that St. Lawrence be authorized to increase its imports of natural gas from Canada to a maximum daily volume of 30,000 Mcf and a maximum annual volume of 6,500,000 Mcf from the 23,000 Mcf daily and 5,519,987 Mcf annually as authorized by FPC. The increased maximum daily volume would be for the period through and including October 31, 1978, and the increased annual volume would be for the year ending December 31, 1978. Petitions to intervene are invited.

DATES: Petitions to invervene—Tenth day after date of publication of this notice in the FEDERAL REGISTER.

FOR FURTHER INFORMATION CONTACT:

Finn K. Neilsen, Director, Import/Export Division, 2000 M Street NW., Washington, D.C. 20461, telephone 202-254-9730.

SUPPLEMENTARY INFORMATION:

Background

On September 27, 1978, St. Lawrence Gas Co., Inc., 56-58 Main Street, Massena, N.Y., 13662, filed in Docket No. 78-008-NG (FPC Docket No. G-17500, now ERA Docket No. 77-005-NG) a petition to amend FPC Opinion No. 347 and Order of December 8, 1966, which authorizes the importation of a maximum daily volume of 23,000 Mcf and annual volumes of 5,519,987 Mcf of natural gas from Canada. St. Lawrence requests that the maximum daily volumes be increased to 30,000 Mcf for the period from and after the date of issuance of an order authorizing the requested increase, to and including October 31, 1978, and that the maximum annual imported volume be not more than 6,235,000 Mcf during the year ending December 31, 1978. St. Lawrence filed an amended petition on October 10, 1978, which changed the maximum annual volume requested from 6,235,000 Mcf to 6,500,000 Mcf during the year ending December 31, 1978.

St. Lawrence states that the additional supply is required to avoid unnecessary curtailment of interruptible customers, and that it has been advised by its sole supplier, Niagara Gas Transmission Ltd. (Niagara), that sufficient quantities of natural gas will be available to meet St. Lawrence's requirements.

Niagara has filed with the National Energy Board of Canada a request for an amendment to its Licence GL-6, which authorizes exportation of natural gas to St. Lawrence, the requested amendment would permit exportation of not more than 30,000 Mcf in any one day up to and including October 31, 1978, and not more than 6,500,000 Mcf for the 12-month period ending October 31, 1978. No increase in the maximum quantity of natural gas during the term of the licence was requested.

OTHER INFORMATION: The St. Lawrence petition and the amendment thereto in ERA Docket No. 78-008-NG are on file with the ERA and open to inspection in the Public Docket Room at 2000 M Street NW., Washington, D.C., Room B-110, between the hours of 8 a.m. to 5 p.m., Monday through Friday, except for Federal holidays.

The ERA is hereby inviting petitions for intervention in the proceedings. Such petitions are to be filed with the Economic Regulatory Administration, Room 6318, 2000 M Street NW., Washington, D.C. 20461, in accordance with the requirements of the rules of practice and procedure (18 CFR 157.10). Such petitions for intervention will be accepted for consideration if filed no later than 4:30 p.m. on the 10th day after the date of publication of this notice in the FEDERAL REGISTER.

Any person wishing to become a party to the proceeding or to participate as a party in any hearing which may be convened herein must file a petition to intervene. Any person desiring to make any protest with reference to the St. Lawrence petitions should file a protest with the ERA in the same manner as indicated above for petitions to intervene. All protests filed with ERA will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Pursuant to the authority contained in section 3 of the Natural Gas Act, as delegated to the ERA, in the Department of Energy Delegation Order Nos. 0204-4 (42 FR 60726, November 29, 1977) and 0204-25 (43 FR 47769, October 17, 1978), and the rules of practice and procedure, a formal hearing will not be held unless a motion for such hearing is made by any party or intervener and is granted by ERA, or if the ERA on its own motion believes that such a hearing is required. If such hearing is deemed required, due notice will be given.

Issued in Washington, D.C., on November 13, 1978.

BARTON R. HOUSE,
Assistant Administrator, Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 78-32012 Filed 11-13-78; 8:45 am]

[6740-02-M]

Federal Energy Regulatory Commission

[Docket No. ER79-36]

CENTRAL ILLINOIS LIGHT COMPANY

Notice of Filing

NOVEMBER 3, 1978.

Take notice that Central Illinois Light Company (CILCO) on October 26, 1978, tendered for filing proposed Modification No. 1 between CILCO and City of Springfield, Illinois. CILCO states that the Commission has previously designated the December 15, 1976, Agreement as Central Illinois Light Co. Rate Schedule FPC No. 21.

CILCO further states that Modification No. 1 provides for a proposed increase in the charges for maintenance, short-term firm and short-term non-firm power transactions between City of Springfield and CILCO.

CILCO proposes an effective date of November 1, 1978, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 13, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNTH F. PLUMB,
Secretary.

[FR Doc. 78-31976 Filed 11-13-78; 8:45 am]

[6740-02-M]

[Docket Nos. G-2712, et al.]

CITIES SERVICE CO. (SUCCESSOR TO CITIES SERVICE OIL CO.), ET AL.

Notice of Redesignation

NOVEMBER 6, 1978.

On February 13, 1978, as amended May 11, 1978, an application was filed by Cities Service Co. (Applicant), as successor in interest to all oil and gas properties owned by Cities Service Oil Company throughout the United States, to amend the certificates held by Cities Service Oil Co. by substituting Applicant as certificate holder, and to redesignate the related rate schedules in the name of the Applicant, all as more fully set forth in the Appendix hereto.

Effective January 1, 1978, Cities Service Oil Co. assigned its remaining interests in real property, equipment, and facilities associated with the processing of natural gas and casinghead gas to Applicant.[1]

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before November 15, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties

[1] Prior assignments dated 4-1, 7-1, and 10-1-77, transferred the bulk of Cities Service Oil Co.'s properties to Applicant.

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to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

APPENDIX

New: Cities Service Co. FERC gas rate schedule No.	Certificate docket No.	Old: Cities Service Oil Co. FERC gas rate schedule No.	Purchaser
42	G-4579	42	Cities Service Gas Co.
43	G-4579	43	El Paso Natural Gas Co.
105[1]	G-13450	[1]105	Do.
213[2]	CI61-1332	[2]213	Transwestern Pipeline Co.
214	CI65-561	214	Natural Gas Pipeline Co. of America.
216[1]	G18279	[1]216	Kansas-Nebraska Natural Gas Co.
320[2]	CI70-691	[2]320	Tennessee Gas Pipeline Co.
321[2]	CI70-691	[2]321	Do.
324	CI69-168	324	Montana-Dakota Utilities Co.
352[2]	G-2712	[2]352	United Gas Pipe Line Co.
390[1]	CI61-1094	[2]390	Do.

[1](Operator).
[2](Operator) et al.

[FR Doc. 78-31977 Filed 11-13-78; 8:45 am]

[6740-02-M]

[Docket No. ER78-610]

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

Notice of Filing of Tariff

NOVEMBER 3, 1978.

Take notice that Consolidated Edison Company of New York, Inc. ("Con Edison") on October 23, 1978 tendered for filing a rate schedule for the sale to Central Hudson Gas and Electric Corporation ("Central Hudson") of capability and associated energy during the 1975-1976 winter capability period.

Con Edison requests waiver of the Commission's notice requirements to allow for an effective date of October 26, 1975.

Copies of the filing were served upon Central Hudson and the New York Public Service Commission, according to Con Edison.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 13, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31978 Filed 11-13-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-38]

CONSUMERS POWERS COMPANY

Notice of Proposed Tariff Change

NOVEMBER 3, 1978.

Take notice that Consumers Powers Company (Consumers Power) on October 27, 1978, tendered for filing Supplement Agreement No. 11 to the Interconnection Agreement dated September 1, 1973 between Consumers Powers and Northern Michigan Electric Cooperative, Inc., Wolverine Electric Cooperative, Inc., city of Grand Haven, Michigan, and city of Traverse City, Mich., collectively denoted the MMCPP members. Consumers Power states that the Interconnection Agreement is designated Consumers Power Rate Schedule FERC No. 34.

Consumers Power further states that Supplemental Agreement No. 11 provides for the establishment of a sixth interconnection point between the electric systems of Consumers Power and the MMCPP members, and is dated March 1, 1978. Consumers Power indicates that construction of the facilities needed to effect the interconnection was completed on April 7, 1978.

Consumers Power further indicates that Supplemental Agreement No. 11 does affect the rates charged for electric energy interchanged under the terms of the Interconnection Agreement. Consumers Power states that it does provide, however, that Wolverine Electric Cooperative, Inc., will pay to Consumers Power annual charges consisting of annual carrying on the capital cost of certain facilities to be provided and owned by Consumers Power and annual operation and maintenance expense of these facilities.

Consumers Power proposes an effective date of August 18, 1978, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said Supplemental Agreement No. 11 should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 13, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31979 Filed 11-13-78; 8:45 am]

[6740-02-M]

[Docket No. CP78-530]

FLORIDA GAS TRANSMISSION CO.

Notice of Application

NOVEMBER 3, 1978.

Take notice that on September 19, 1978,[1] Florida Gas Transmission Company (Applicant), P.O. Box 44, Winter Park, Fla. 32790, filed in Docket No. CP78-530 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of up to 12,500 MMBtu equivalent of natural gas per day for Southern Natural Gas Company (SNG), all as more fully set forth in the application on file with the Commission and open to public inspection.

It is indicated that SNG has contracted with Union Oil Company of California for the purchase of natural gas from the Vermilion Area, offshore Louisiana, and needs to transport the gas to its pipeline facilities and, thence, to its customers. Under the transportation arrangement proposed herein, Transcontinental Gas Pipeline Corporation (Transco) would deliver to Applicant for SNG's account up to 12,500 MMBtu equivalent of natural gas per day at the flange or weld connecting Applicant's existing facilities with those of Transco in Vermilion Parish, La. Applicant would then redeliver equivalent volumes on a Btu basis to SNG at the existing interconnection of Applicant's and SNG's facilities in Washington Parish, Louisiana, or at any other mutually agreeable existing point of interconnection, it is indicated.

Pursuant to a transportation agreement dated August 16, 1978, SNG would pay Applicant 11.1 cents per MMBtu for each MMBtu redelivered at the point of redelivery, it is stated. Applicant indicates that the rate is composed of a facility charge (8.6 cents per MMBtu), and a service charge (2.5 cents per MMBtu).

Any person desiring to be heard or to make any protest with reference to said application should on or before November 27, 1978, file with the Federal Energy Regulatory, Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission, or its designee, on this application if no petition to interyene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc 78-31980 Filed 11-13-78; 8:45 am]

[1]The application was initially tendered for filing on September 19, 1978. However, the fee required by Section 159.1 of the Regulations under the Natural Gas Act (18 CFR 159.1) was not paid until October 23, 1978. Thus, the filing was not completed until the latter date.

[6740-02-M]

Docket No. RI77-22

HENRY GRACE PRODUCTION CO.

Notice of Amended Petition for Special Relief

NOVEMBER 6, 1978.

Take notice that on September 5, 1978, Henry Grace Production Co. (Grace), 813 City National Bank Building, Wichita Falls, Tex. 76301, filed an amended petition for special relief in Docket No. RI77-23, requesting authorization to charge the lower rate of $1.105 MMBTU for the sale of gas from the following producing propeties: A. R. King and A. R. King D. Leases, Lipscomb County, Tex.; and W. J. Godwin Lease, Cimarron County, Okla. The pipeline purchaser is Transwestern Pipeline Co. Originally, Grace requested a special relief rate of $1.52 per MMBTU.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before November 15, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31981 Filed 11-13-78; 8:45 am]

[6740-02-M]

[Docket No. CP75-104 et al.]

HIGH ISLAND OFFSHORE SYSTEM

Notice of Petition To Amend

NOVEMBER 3, 1978.

Take notice that on October 19, 1978[1], High Island Offshore System (Petitioner), One Woodward Avenue, Detroit, Mich. 48226, filed in Docket No. CP75-104, et al., a petition to amend the order of June 4, 1976, as amended, issued in the instant docket (55 FPC)[2] pursuant to section 7(c) of the Natural Gas Act so as to authorize Petitioner to render, within the limits of its present facilities, interruptible overrun service in excess of its present certificated firm capacity of 988, Mcf per day, all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

It is indicated that pursuant to the order of June 4, 1976, Petitioner was granted authorization to construct, own, and operate a system to transport natural gas from the High Island Area, offshore Texas, to a point of interconnection at West Cameron Island Area, offshore Louisiana, with the facilities of U-T Offshore System (U-TOS) and Michigan Wisconsin Pipe Line Co. (Michigan Wisconsin) and to transport up to an aggregate of 988,000 Mcf per day of natural gas for Michigan Wisconsin, Natural Gas Pipeline, Co. of American (Natural), Texas Gas Transmission Corp. (Texas Gas), Transcontinental Gas Pipe Corp. (Transco) and United Gas Pipe Line Co. (United). It is further indicated that pursuant to the order of June 12, 1978, Petitioner gas granted, inter alia, blanket authorization to transport, within the limits of its certificated capacity (988,000 Mcf per day), natural gas for shippers was affiliated with Petitioner. Pursuant to such authorization, Petitioner has excecuted transportation agreements with the following nonaffiliated shippers: Columbia Gas Transmission Corp., Consolidated Gas Supply Corp., Tennessee Gas Pipeline Co., a Division of Tenneco, Inc., El Paso Natural Gas Co., Trunkline Gas Co., Northern Natural Gas Co. and National Fuel Gas Supply Corp., it is said.

Petitioner states that all of its shipper (both affiliated and nonaffiliated) have requested firm capacity in the Petitioner system which, in aggregate, substantially exceeds the certificated firm capacity of 988,000 Mcf per day. It is stated that pursuant to the provisions of the shippers' transportation agreements with Petitioner, the currently effective contract demand of each has been reduced below that which was originally requested. It is anticipated that, in the near future, the gas supply available to Petitioner

[1]The application was initially tendered for filing on October 19, 1978; however, the fee required by § 159.1 of the regulations under the Natural Gas Act (18 CFR 159.1) was not paid until October 25, 1978; thus, filing was not completed until the latter date.

[2]This proceeding was commenced before the FPC. By joint regulation of October 1, 1977, (10 CFR 1000.1), it was transferred to the FERC.

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shippers from the High Island area would exceed the presently certificated firm capacity of 988,000 Mcf per day, it is said.

Petitioner states that in view of this, it is undertaking a study of the need for an expansion of its presently certificated firm capacity. In the meantime, Petitioner, through the instant Petition proposes, as an interim measure, to transport, on an interruptible overrun basis, volumes in excess of 988,000 per day, to the extent that its existing facilities will permit.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before November 27, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31982 Filed 11-13-78; 8:45 am]

[6740-02-M]

[Docket No. RI78-78]

LIBERTY OIL & GAS CORP.

Notice of Amended Petition for Special Relief

NOVEMBER 6, 1978.

Take notice that on September 26, 1978, Liberty Oil & Gas Corp. (Petitioner), Suite 809, 234 Loyola Building, New Orleans, La. 70112, filed an amended petition for special relief in the above-captioned docket which amends its previous petition for special relief filed July 11, 1978 and noticed on September 26, 1978. In its previous petition Petitioner sought authorization to charge United Gas Pipeline Co. a total rate of $2.10 per Mcf at 15.025 psia for gas produced from the Simoneaux No. 9 Well, Bayou Des Allemands Field, St. Charles Parish, La. Now Petitioner seeks authorization to sell its gas at the reduced total rate of $2.02 per Mcf at 15.025 psia to the above-named purchaser.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before November 15, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31983 Filed 11-13-78; 8:45 am]

[6740-02-M]

[Docket No. RI79-2]

LOGUE AND PATTERSON

Notice of Petition for Relief From Refund Obligation

NOVEMBER 3, 1978.

Take notice that on October 4, 1978, Logue and Patterson (L and P), 1300 One Energy Square, Dallas, Tex. 75206, filed a petition for relief from its obligation to make refunds to Tennessee Gas Pipe Line Co. of moneys collected for sales of gas produced in West Taft Field, San Patricio County, Tex., which were in excess of the area rate for the sale of gas established in Texas-Gulf Coast Area Rate Proceeding, Docket Nos. AR64-2, et al. L and P state that the refund obligation is approximately $35,000 in principal and $38,000 in interest to date. L and P further state that it has incurred a net loss of $208,000 for these sales of gas to Tennessee Gas Pipe Line Co. and should therefore be relieved of this refund obligation.

Any person desiring to be heard or to make any protest with reference to said petition should on or before November 27, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any party wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31984 Filed 11-13-78; 8:45 am]

[6740-02-M]

[Docket No. RP78-77]

MISSISSIPPI RIVER TRANSMISSION CORP.

Notice of Extension of Time

NOVEMBER 6, 1978.

On October 18, 1978, Commission Staff Counsel filed a motion for an extension of time to file top sheets as required by the Commission order of July 31, 1978 in this proceeding. The motion states that additional time is needed because of certain questions related to storage losses and because technical staff analysis has been delayed for various reasons. The motion further states that Mississippi River Transmission Corp. has no objection to be requested extension.

Upon consideration, notice is hereby given that an extension of time is granted to and including December 15, 1978 for staff to file top sheets in this proceeding.

KENNETH F. PLUMB,
Secretary.

[6740-02-M]

[Docket Nos. ER78-460, ER78-483]

POTOMAC EDISON CO.

Notice of Filing

NOVEMBER 3, 1978.

Take notice that Potomac Edison Co. on October 25, 1978, tendered for filing:

(1) Monthly billing determinants, by customer, during Period II under the present and proposed rate.

(2) A summary of cost of service (Statement N) showing the effect of the wholesale revenues under the proposed rates and its effect on the cost of service.

(3) Explanation of the apparent discrepancy in wholesale Kwhr sales for Period II.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before November 13, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31986 Filed 11-13-78; 8:45 am]

[6740-02-M]

[Docket Nos. ER76-149, E-9537]

PUBLIC SERVICE CO. OF INDIANA, INC.

Notice of Intent To Act

NOVEMBER 3, 1978.

On October 4, 1978, Public Service Co. of Indiana filed a Motion for Order On Remand in Docket Nos. ER76-149 and E-9537. On October 19, 1978, the Indiana Municipal Electric Association Cities filed a reply to this motion. These pleadings raise issues which the Commission will decide in a forthcoming order in this docket. Therefore, the motions shall not be denied under section 1.12(e) of the Commission's Rules.

By Direction of the Commission.

KENNETH F. PLUMB,
Secretary

[FR Doc. 78-31987 Filed 11-13-78; 8:45 am]

[6740-02-M]

[Project No. 663]

PUERTO RICO WATER RESOURCES AUTHORITY

Notice of Issuance of Annual License(s)

NOVEMBER 6, 1978.

On July 5, 1978, Puerto Rico Water Resources Authority, Licensee for the Rio Blanco Project No. 663, located on the Blanco River in Maguabo municipality, Puerto Rico, filed a request for extension of time to file an application for a new license pursuant to the Federal Power Act and Commission Regulations thereunder.

The license for Project No. 663 was issued effective November 7, 1928, for a period ending November 6, 1978. In order to authorize the continued operation and maintenance of the project, pending Commission action on Licensee's application, it is appropriate and in the public interest to issue an annual license to Puerto Rico Water Resources Authority.

Take notice that an annual license is issued to Puerto Rico Water Resources Authority for the period November 7, 1978, to November 6, 1979, or until the issuance of a new licensee for the project, whichever comes first, for the continued operation and maintenance of the Rio Blanco Project No. 663, subject to the terms and conditions of the original license. Take further notice that if issuance of a new license does not take place on or before November 6, 1979, a new annual license will be issued each year thereafter, effective November 7 of each year, until such time as a new license is issued, without further notice being given by the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31988 Filed 11-13-78; 8:45 am]

[6740-02-M]

[Docket No. CP79-42]

SEA ROBIN PIPELINE CO., TRANSCONTINENTAL GAS PIPE LINE CORP.

Notice of Application

NOVEMBER 3, 1978.

Take notice that on October 25, 1978, Sea Robin Pipeline Co. (Sea Robin), P.O. Box 1478, Houston, Tex. 77001, and Transcontinental Gas Pipe Line Corp. (Transco), P.O. Box 1396, Houston, Tex. 77001 (Applicants) filed in Docket No. CP79-42 a joint application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction, ownership and operation of certain pipeline facilities, all as more fully set forth in the application to file with the Commission and open to public inspection.

Applicants state that they have acquired the right to purchase natural gas supplies produced in Eugene Island Area, Blocks 261 and 262, offshore Louisiana (Eugene Island 261 Field). The following table is said to list the producers having interests in the Eugene Island 261 Field, said producers' respective percentage interests, and the pipeline purchasers which have acquired the right to purchase gas attributable to such producers' interests:

Block	Producers	Pipeline purchasers	Percent interest
Eugene Island blocks 261 and 262.	POGO Producing Co	Sea Robin	9.99
	Pennzoil Oil & Gas, Inc	do	6.67
	Pennzoil Louisiana & Texas Offshore, Inc	do	16.67
	Louisiana Land & Exploration Co	Transcontinental Gas Pipe Line Corp.	20.00
	Diamond Shamrock Corp	Uncommitted	13.33
	Mobil Oil Corp	Sea Robin Pipeline Co	33.34
		Total	100.00

Applicants are requesting authorization herein to construct, own and operate approximately 2.7 miles of 12-inch pipeline and related facilities (block 261 lateral) to connect the Eugene Island 261 Field to a sub-sea tap in Block 273, Eugene Island Area, on Sea Robin's 24-inch pipeline. It is stated that Sea Robin would own 80 percent of said facilities, which facilities are acquired in order to transport reserves in Eugene Island 261 Field to Sea Robin's offshore system for further transportation. Applicants estimate the cost of constructing the proposed facilities to be $3,884,400, which facilities would be financed by Applicants from funds on hand.

The application states that proved and potential reserves in the Eugene Island 261 Field are presently estimated to be some 69,018,000 Mcf with maximum daily deliverability from the Eugene Island 261 Field estimated to be some 80,000 Mcf, and that initial deliveries from the Eugene Island 261 Field are scheduled to commence in January 1979. It is indicated that the proposed block 261 lateral would be constructed by Sea Robin, owned jointly by Applicants and operated by Sea Robin pursuant to a construction, ownership and operating agreement between the two companies, which agreement is being negotiated at this time. The cost, ownership and capacity entitlements of the proposed facilities would be based on the individual ownership percentages, it is said.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 27, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and sub-

ject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will de duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31989 Filed 11-13-78; 8:45 am]

[6740-02-M]

[Docket No. RI78-32]

SOUTHLAND ROYALTY CO.

Notice of Amended Petition for Special Relief

NOVEMBER 6, 1978.

Take notice that on September 13, 1978, Southland Royalty Co. (Petitioner), 1000 Fort Worth Club Tower, Forth Worth, Tex. 76102, filed an amended petition for special relief requesting permission to charge the lower rate of $1.625 per Mcf for the sale of gas produced from the Hofferber No. 1 Well located in Texas County, Okla. In its original petition for special relief in this proceeding, petitioner requested authorization to charge $2.9627 per Mcf for the sale of the subject gas. Petitioner's original Petition for special relief was noticed on March 3, 1978. Panhandle Eastern Pipeline Co. is purchaser of the subject gas.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before November 15, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31990 Filed 11-13-78; 8:45 am]

[6740-02-M]

[Docket No. CP79-34]

SOUTH TEXAS NATURAL GAS GATHERING CO., COASTAL STATES GAS PRODUCING CO.

Notice of Application

NOVEMBER 3, 1978.

Take notice that on October 16, 1978, South Texas Gas Gathering Co. (South Texas), and Coastal States Gas Producing Co. (Coastal States), Five Greenway Plaza East, Houston, Tex. 77046 (Applicants), filed in Docket No. CP79-34 a joint application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the transportation service rendered by South Texas for Coastal States and the exchange of gas between Applicants, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicants indicate that pursuant to FPC Opinion No. 683 and order issued Janury 14, 1974, Applicants filed on March 13, 1974, a joint application requesting authorization to cover the transportation of natural gas from the Santellana Field, Texas, to a point near Falfurrias, Tex., which transportation is covered by a transportation agreement dated January 1, 1973. An amendment dated September 18, 1967, provided for an exchange of volumes, it is said.

It is stated that pursuant to the order Affirming and Adopting Initial Decision issued September 14, 1976, which order affirmed the initial decision of December 20, 1974, by which the FPC granted South Texas certificate authorization in Docket No. CP74-258 to transport 15,600 Mcf of natural gas per day for Coastal States from a point on the South Texas line near the Santellana Field, Tex., to a point near Falfurrias, Tex., at a rate of one cent per Mcf per 100 miles for the volume of gas transported under an agreement providing for interruptible service subordinate to South Texas' existing contracts to provide firm service to Natural Gas Pipeline Company of America and to Transcontinental Gas Pipe Line Corp. It is stated that the said order also authorized the continuation of service which had been provided for years by South Texas by means of its existing facilities. It is further stated that the gas which was delivered to South Texas at the Santellana delivery point was produced by Texaco Inc. and sold by that company to Tennessee Gas Pipeline Co., a Division of Tenneco Inc. (Tennessee), and that Coastal States processed the gas at Falfurrias. After processing, the gas was delivered to Tennessee for Texaco Inc.'s account, it is said.

The application states that on March 21, 1978, Applicants discontinued the transportation service authorized in Docket No. CP74-258 because of the discontinuance of the processing of this volume of gas by Coastal States. Tennessee now receives the Texas Santellana Field volume of gas at its delivery point in the Santellana Field, it is said. Applicants state that the gas processing agreement covering this volume of gas was cancelled by a letter agreement dated September 15, 1978. It is indicated that the transportation agreement, dated January 1, 1963, and amended September 18, 1967, between South Texas and Coastal States was cancelled effective August 1, 1978 by a letter agreement dated September 15, 1978.

Any person desiring to be heard or to make any protest with reference to said application should no or before November 27, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31991 Filed 11-13-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-37]

SOUTHERN CALIFORNIA EDISON CO.

Notice of Filing

NOVEMBER 3, 1978.

Take notice that on October 27, 1978, Southern California Edison Co. (Edison) tendered for filing an Agreement, dated October 17, 1978, with Portland General Electric Co. (Portland), Oregon, which Agreement is entitled "Edison-Portland 1978-1981 Exchange Agreement". Edison states that under the terms of this Agreement, Edison will make available 225 Mw of firm capacity and associated energy to Portland during the period October 15, 1978 through January 15, 1979. Edison further states that Portland will take a minimum of 170 million kWh during this period. Edison indicates during the period June 1, 1981 through September 30, 1981, Portland then will make available to Edison 225 Mw of firm capacity and an amount of associated energy equal to 1.27 times the amount of energy provided by Edison in 1978.

Edison requests an effective date of October 15, 1978, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Portland and the Public Utilities Commission of the State of California, according to Edison.

Any person desiring to be heard or to protest this application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 13, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31992 Filed 11-13-78; 8:45 am]

[6740-02-M]

[Project No. 405]

THE SUSQUEHANNA POWER CO., PHILADELPHIA POWER CO.

Notice of Application for Change in Land Rights

NOVEMBER 2, 1978.

Public notice is hereby given that an application was filed on August 17, 1978, under the Federal Power Act, 16 U.S.C. sections 791a-825r, by the Susquenhanna Power Co. and the Philadelphia Electric Power Co. (Applicants) (Correspondence to: Mr. Edward G. Bauer, Vice President and General Counsel, Philadelphia Electric Co., 2301 Market Street, Philadelphia, Pa. 19101; and Mr. Peyton G. Bowman III and Mr. Brian J. McManus, Reid and Priest, 1701 K Street NW., Washington, D.C. 20006) for a change in land rights at Project 405 known as the Conowingo Project. The project is located on the Susquehanna River in Harford and Cecil Counties, Md. and York, Lancaster, Montgomery, Chester, and Delaware Counties, Pa.

The Applicants request Commission approval of an agreement executed by the Susquehanna Power Co. and its wholly owned subsidiary, the Susquehanna Electric Co. (SEC) with the Mayor and City Council of Harve de Grace, Md. (Harve de Grace). The agreement provides for the sale of two contiguous tracts of project land of 6.945 acres, located within the city's limits, to the city of Harve de Grace. The land to be sold contains certain improvements (principally a lockhouse and canal locks) built on part of the Susquehanna and Tidewater Canal. The lockhouse is listed on the National Register of Historic Places. Harve de Grace intends to maintain the lockhouse as a museum. The rest of the property will be maintained as part of an existing park.

The Applicants also request Commission Approval of an agreement executed by SEC with the Arundel Corp. (Arundel). The agreement would grant an easement to Arundel across project property between the Conowingo Dam and Harve de Grace. Approval of the easement would provide Arundel access to the Susquehanna River to facilitate the loading of crushed or sized stone from a quarry on Arundel property outside the project boundary. The project lands to be leased to Arundel are situated on the westerly side of the Susquehanna River at the distance of approximately 1,000 feet northwest of the Baltimore and Ohio RR. bridge extending northwestwardly approximately 5,000 feet.

Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1977). In determining the appropriate action to take, the Commission will consider all protests filed, but a person who merely files a protest does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's rules. Any protest or petition to intervene must be filed on or before December 15, 1978. The Commission's address is: 825 North Capitol Street NE., Washington, D.C. 20426.

The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31993 Filed 11-13-78; 8:45 am]

[6740-02-M]

[Docket No. RP75-73 (AP No. 78-3)]

TEXAS EASTERN TRANSMISSION CORP.

Notice of Further Extension of Time

NOVEMBER 6, 1978.

On October 24, 1978, Texas Eastern Transmission Corp. filed a motion for suspension of the procedural schedule in this proceeding as established in Commission's order of September 1, 1978, and modified by notices of October 5 and 24, 1978. The motion states that it is anticipated that a settlement agreement resolving all outstanding issues will be finalized by December 23, 1978, and that Staff concurs in the motion.

Upon consideration, an extension of time is granted to and including December 27, 1978, for Texas Eastern to file its case-in-chief Staff shall file its statement of position on or before February 8, 1979. Since neither the settlement agreement nor case-in-chief will be filed before late December, the Chief Administrative Law Judge has advised the Secretary that the designation of a Presiding Judge will be made at a later date.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31994 Filed 11-13-78; 8:45 am]

V43N220 NOV 14 78 UMI

V 43/220 NOV 14 1978 UMI

[6740-02-M]

[Docket No. RP75-30]

UNITED GAS PIPE LINE CO.

Notice of Extension of Time

NOVEMBER 3, 1978.

On November 1, 1978, United Gas Pipe Line Co. filed a motion for extension of time for all parties to file initial and reply comments on the settlement agreement in this proceeding as established in the notice issued October 6, 1978. United states that it has discussed possible modifications of the settlement agreement with Commission Staff Counsel and that additional time is necessary for parties to comment on the modifications prior to submittal of comments on the settlement.

Upon consideration, notice is hereby given that an extension of time is granted to and including November 14, 1978, for receipt by the Commission of initial comments. Reply comments shall be received by the Commission on or before December 5, 1978.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31995 Filed 11-13-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-35]

VIRGINIA ELECTRIC & POWER CO.

Notice of Cancellation

NOVEMBER 3, 1978.

Take notice that Virginia Electric & Power Co. (Vepco) on October 16, 1978, tendered for filing a Notice of Cancellation of service to its Catawaba Delivery Point (FERC Rate Schedule No. 78-5 dated January 13, 1969).

Vepco requests an effective date of September 12, 1978, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 13, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31996 Filed 11-13-78; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1005-7]

ADMINISTRATOR'S TOXIC SUBSTANCES ADVISORY COMMITTEE

Open Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of open meeting.

SUMMARY: There will be a meeting of the Administrator's Toxic Substances Advisory Committee from 9 a.m. to 4:30 p.m. on Thursday, November 30, 1978. The meeting will be held in room 3906, Waterside Mall, EPA, 401 M Street SW., Washington, D.C., and will be open to the public.

FOR FURTHER INFORMATION CONTACT:

Ms. Susan Vogt, Executive Secretary, Administrator's Toxic Substances Advisory Committee, Office of Toxic Substances (TS-793), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, telephone 202-755-4880.

SUPPLEMENTAL INFORMATION: The purpose of this meeting is to discuss matters related to EPA's implementation of the Toxic Substances Control Act (Pub. L. 94-469). The agenda includes:

1. EPA procedures concerning risk assessment;
2. Proposed section 5 premanufacture notification rules;
3. Reports from work groups;
4. Other matters concerning the implementation of the Toxic Substances Control Act.

The meeting will be open to the public. Any member of the public wishing to attend or present an oral or written statement should contact Ms. Susan Vogt at the address or phone number listed above.

Dated: November 7, 1978.

STEVEN D. JELLINEK,
Assistant Administrator for Toxic Substances.

[FR Doc. 78-31880 Filed 11-13-78; 8:45 am]

[6560-01-M]

[FRL 1006-5]

RECEIPT OF ENVIRONMENTAL IMPACT STATEMENTS

President Carter's Reorganization Plan No. 1 (see President's Message of July 15, 1977) transferred certain functions from the Council on Environmental Quality (CEQ) to the Environmental Protection Agency (EPA). Some of these functions relate to operational duties associated with the administrative aspects of the environmental impact statement (EIS) process. In Memorandum of Agreement No. 1 entered into between CEQ and EPA, dated March 29, 1978, it was agreed that EPA would be the official recipient of EIS's and would publish the availability of each EIS received on a weekly basis. This is the duty formerly carried out by CEQ pursuant to § 1500.11(c) of the CEQ Guidelines.

Review periods for draft and final EIS will be computed as follows: the 45 day review period for draft EIS's will be computed from the Friday following the week which is being reported; the 30 day wait period for final EIS's will be computed from the date of receipt of the EIS by EPA and commenting parties.

The following is a list of environmental impact statements received by the Environmental Protection Agency from October 30, 1978 through November 3, 1978; the date of submission of comments on draft EIS's as computed from November 10, 1978 is December 25, 1978.

Copies of individual statements are available for review from the originating agency. Back copies are also available at 10 cents per page from the Environmental Law Institute, 1346 Connecticut Avenue, Washington, D.C. 20036.

Dated: November 8, 1978.

PETER L. COOK,
Acting Director, Office of Federal Activities.

DEPARTMENT OF AGRICULTURE

Contact: Mr. Barry Flamm, Coordinator, Environmental Quality Activities, U.S. Department of Agriculture, Room 359A, Washington, D.C. 20250, 202-447-3965.

FOREST SERVICE

Draft

Vegetation management with herbicides, several counties, Oct. 31: Proposed is the use of herbicides on national forest system lands in the eastern region of the Forest Service which includes the States of Illinois, Indiana, Maine, Michigan, Minnesota, Missouri, New Hampshire, New York, Ohio, Vermont, Pennsylvania, West Virginia and Wisconsin. It is estimated that approximately 45,000 acres of land will be involved annually in chemical vegetation control activities. Vegetation management will aid in the management of roads and trails, grazing areas, recreation development, special use areas, timber management, and wildlife activities. (USDA-FS-R9-FES-ADM-77-10.) (EPA Order No. 81182.)

Quartz Mountain Land Management Plan, Bonner County, Idaho, Pend Oreille County, Wash., Oct. 31: Proposed is a land management plan for the Quartz Mountain Planning Unit of the Kaniksu National Forest within the Idaho Panhandle National Forests located in Bonner County, Idaho and Pend Oreille County, Wash. The plan contains a preferred alternative with a mix of land uses with emphasis on timber management, wildlife, recreation, and esthetic values. The plan will only effect the 64,920 acres of national forest lands within the unit. (USDA-FS-R1(04)-DES-ADM-79-02.) (EPA Order No. 81181.)

Ashland land management plan, Rosebud and Powder River Counties, Mont., October 31: Proposed is the selection and implementation of a land management plan for the Ashland Division Planning Unit, Custer National Forest, Rosebud and Powder River Counties, Mont. The planning unit contains 502,152 acres of Federal and other owned land. Six management alternatives are considered, which in addition to consideration of population, provide emphasis on: (1) partial accomodation of local livestock range demand with restriction of other resources; (2) national and local demands for beef and timber output; (3) population increase; (4) roadless and undeveloped areas; (5) energy and population growth; and (6) livestock range, recreation and timber management (R1-79-01) (EPA Order 81179).

Bridger-Teton National Forest timber management plan, several counties, Utah, November 3: Proposed is a timber management plan for the Bridger-Teton National Forest in Lincoln, Sublette, Teton, Fremont, and Park Counties, Wyo. The plan will encompass approximately 3,423,412 acres and replaces 2 existing plans approved in the mid-sixties. Seven alternatives are considered. The preferred alternative includes: (1) timber management and production; (2) wilderness area management; (3) maintenance of rural communities; and (4) reduction of losses from insects, disease, and fire (USDA-FS-DES-(ADM)-R4-79-1) (EPA Order 81195).

Final

Silvies-Malheur unit, Malheur/Ochoco National Forest, several counties, Oreg., November 2: Proposed is a land management plan for the Silvies-Malheur planning unit in the Malheur and Ochoco National Forests. Approximately 57 percent of the unit is in Harney County, 43 percent in Grant County, and 5 percent in Baker County, with the remainder in Crook and Malheur Counties. The preferred alternative calls for the allocation of land for purposes of resource management, recreation, and optimum resource management with timber and range emphasis. The plan will involve 958,890 acres of land (USDA-FS-R6-FES-(ADM)-77-6). Comments made by: AHP, FPC, USDA, COE, DOI, HUD, EPA, State agencies, groups, individuals, and businesses (EPA Order 81191).

Ashley National Forest timber management plan, several counties, Utah and Wyoming, November 3: Proposed is a timber management plan for the 1,377,000-acre Ashley National Forest located in Daggett, Duchesne, Summit, Uintah, and Wasatch Counties, Utah, and Sweetwater County, Wyo. while the proposed plan is based on the 1969-72 multiple use plans, it is consistent with management decisions in two land-use plans being developed, and the vernal land-use plan approved in 1974. By component, the potential yield is: Standard, 15.78 million board feet; special, 2 million board feet; and marginal, 8.08 million board feet for a total of 25.86 million board feet (USDA-FS-FES-(ADM)-R4-77-4). Comments made by: EPA, USDA, DOI, AHP, State agencies, groups (EPA Order 81194).

SOIL CONSERVATION SERVICE

Draft

Salt Lick Creek Watershed, Bath and Menifee Counties, Ky., November 2: Proposed are several plans for watershed protection, flood prevention, and recreation with the Salt Lick Creek Watershed in Bath and Menifee Counties, Ky. The planned project will consist of land treatment on about 1,865 acres of cropland, 1,340 acres of Grassland, and 1,555 acres of forest. Structural measures include five floodwater retarding structures and one multiple-purpose structure. Recreational opportunities for bank fishing and small boat use will be made available at a 40-acre lake located at the multiple-purpose structure (USDA-SCS-EIS-WS-(ADM)-78-1(D)-KY) (EPA Order 81188).

Big Sandy Creek Watershed, several counties, Tex., October 30: Proposed is a watershed plan for the Big Sandy Creek Watershed in Clay, Jack, Montague, Tarrant and Wise Counties, Tex. The plan, which is partially completed, includes: (1) 57 floodwater retarding structures, (2) 31 grade stabilization structures, (3) land treatment measures on upland soils, (4) land stabilization measures or area land treatment measures on 2,925 acres of privately owned land, and (5) stabilization measures on 1,450 acres of the JBL national grasslands (USDA-SCS-EIS-WS-(ADM)-78-4-(D)-TX) (EPA Order 81174).

Final

Muzingo Creek Watershed, Nudaway County, Mo., October 31: This statement concerns the Muzingo Creek Watershed located in Nudaway County, Mo. The proposed plan calls for accelerated land treatment along with the one multiple-purpose structure and four grade-stabilization structures. In addition, 70 gully beaches will be treated with grade stablization structures. The watershed is 18 miles long, ranges in width from one to 3.5 miles, and includes an area of 23,988 acres, 19,415 of which will be adequately protected at the end of the installation period. Comments made by: DOI, USA, HEW, EPA, USDA, FERC, State, and local agencies (EPA Order 81183).

U.S. ARMY CORPS OF ENGINEERS

Contact: Dr. C. Grant Ash, Office of Environmental Policy, ATTN: DAEN-CWR-P, Office of the Chief of Engineers, 1000 Independence Avenue SW., Washington, D.C. 20314, 202-693-6795.

Final

Cleveland Harbor navigation project, Cuyahoga County, Ohio, November 3: Proposed is the Cleveland Harbor navigation project, Cleveland, Ohio. Project plans involve widening and deepening the east basin, and creating an east basin lake approach and entrance channel. Adverse effects include disturbance of benihic habitat and associated biota resulting from dredging new navigation channels and deepening existing channels (Buffalo District). Comments made by: HEW, DUT, DOC, DOI, USCG, State, and local agencies, businesses (EPA order 81193).

Draft supplement

Hartwell Lake, 5th unit installation, Savannah River, several counties, Georgia and South Carolina, October 30: Proposed is the installation of a 80,000 kilowatt fifth generating unit at Hartwell Lake Dan in Hart County, Ga. and Anderson County, S.C. The installation would include modification and additions to the existing power intake and powerhouse structures and a transformer and transformer deck pull-off tower to carry the electrical transmission line to the switchyard. The area potentially affected extends from the damsite into Elbert and Hart Counties, Ga. and Abbeville and Anderson Counties, S.C. (Savannah District) (EPA Order 81177).

FEDERAL ENERGY RESEARCH COMMISSION

Contact: Dr. Jack M. Heinemann, Advisor on Environmental Quality, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, 202-275-6569.

Final

Western LNG project, construction and operation, Alaska, November 3: Proposed is the construction and operation of facilities to collect and liquefy natural gas; the transportation of liquefied natural gas (LNG) in interstate commerce, and the sale of natural gas to Pacific Gas Co. and Electric Co., and to Southern California Gas Co. Natural gas would be purchased from gas fields in the Cook Inlet region of Alaska and transported through a 291.6-mile pipeline to a proposed LNG plant in the Nikiski industrial complex. A receiving terminal for the LNG is proposed at Point Conception, Calif. Construction of the Point Conception area facility will result in the loss of ancient and sacred Indian burial and spiritual grounds. (FERC/EIS-0002F). Comments made by: AHP, COE, HUD, USCG, USDA, DOC, DOI, EPA, State, and local agencies, groups, individuals, and businesses (EPA Order 81196).

DEPARTMENT OF HUD

Contact: Mr. Richard H. Broon, Director, Office of Environmental Quality, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, 202-755-6308.

Draft

Memorial Chase Subdivision, Harris County, Tex., Nov. 3: Proposed is the issuance of home mortgage insurance for the memorial chase subdivision, Harris County, Tex. The subdivision will encompass approximately 209 acres. The development plan for the project provides for the construction of approximately 825 single family units on 206 acres and 3 acres of recreational area. (HUD-R06-EIS-78-46D.) (EPA Order No. 81192.)

V 43 I 220 NOV 14 1978 UMI

Final

Southbridge Subdivision, Housing, Harris County, Tex., Oct. 31: The proposed action is for the Department of Housing and Urban Development to accept for HUD-FHA home mortgage insurance purposes some 224 acres of land located in the city of of Houston, Harris County, Tex. It is proposed that this tract of land be developed into a subdivision composed primarily of single family dwellings to provide approximately 1,000 units for an expected population of some 3,500 people. (HUD-R06-EIS-78-36-F.) Comments made by: AHP, DOT, EPA, DOI, COE, USDA State agencies groups. (EPA Order No. 81180.)

Silver Firs-Snohomish Cascade Masier Plan, Snohomish County, Wash, Nov. 2: The proposed project concerns the Silver Firs-Snohomish Cascade Residential Development in Snohomish County, Wash. The development consist of 500 acres in Silver Firs, approximately 1,300 acres of the Snohomish Cascade area and will provide a full range of housing, recreation, schools, community business and service facilities. The project when completed, within 20 to 30 years, will provide approximately 6,000 housing units. In addition to a no-build alternative, lower and higher density alternatives are considered. (HUD-R1O-EIS-78-5F.) Comments made by: COE, USDA, EPA, AHP, DOI, State and local agencies. (EPA Order No. 81189.)

SECTION 104H(H)

The following are community development block grant statements prepared and circulated directly by applicants pursuant to section 104(H) of the 1974 Housing and Community Development Act. Copies may be obtained from the office of the appropriate local executive. Copies are not available from HUD.

Draft

Chinatown Redevelopment Project, Los Angeles County, Calif., Nov. 3: Proposed as a development and rehabilitation project for the Chinatown area of the city and county of Los Angeles, Calif. The project will involve approximately 303 acres of the Chinatown area. Some of the actions considered are: (1) Revitalization of old and development of new residential and commercial structures. (2) development of community facilities and open space, and (3) improvement of the local street system. (EPA Order No. 81190.)

Navy Yard City, Bremerton, Kitsap County, Wash., Oct. 30: Proposed is the rehabilitation of existing housing and improvement of public services in and around Navy Yard City, Kitsap County, Wash. The project will include: (1) Improvement/resurfacing of streets along WA-3, (2) construction of sidewalks, (3) installation of a storm drainage system, (4) improvement of coverage of the sanitary sewer system, (5) construction of a new fire station, (6) construction of a covered play area, and (7) rehabilitation of existing housing. (EPA Order No. 81176.)

Final

Corcoran Fringe Wastewater Facilities, Kings county, Calif. October 30, 1978: Proposed is the release of Federal funds by HUD for the construction of the Corcoran Fringe Wastewater Facility in Kings County, Calif. Three alternatives are under consideration as follows: (1) Construction of a community collection system and connection to the existing facility, (2) construction of a community collection system and a treatment facility which would be independent of the existing city facility, and (3) rehabilitation of individual disposal systems and implementation of a maintenance district (no-project). (HUD-R09). Comments made by: DOI, State and local agencies, and individuals (EPA Order No. 81175).

Bristol, Pa.-Golf Ranch/Centennial Industrial Park, Bucks County, Pa. October 31, 1978: Proposed is the borough of Bristol's use of $428,000 from the 1975-76 and 1976-77 community development block grant program for the acquisition of leasehold interests in the borough-owned property generally known as the Gulf Ranch. The intent is to terminate existing long-term leases in order to make the land available for the proposed development of the site as an industrial park; the site is approximately 94 acres in size. Comments made by: DOI, EPA, HUD, State and local agencies, groups and businesses (EPA Order No. 81185).

INTERSTATE COMMERCE COMMISSION

Contact: Mr. Richard I. Chais, Chief, Section of Energy and Environment, Room 3373, 12th and Constitution Avenue NW., Washington, D.C. 20423 202-275-7692.

Final

Southern Pacific, discontinuance of operation, San Mateo, Santa Clara, and San Francisco Counties. October 31, 1978: The Southern Pacific Transportation Co. proposes to discontinue its passenger train service between San Francisco, San Francisco County, through San Mateo County to San Jose, Santa Clara County, Calif., a distance of 47 miles. If discontinuance is authorized, the primary inter-urban mass transportation system in the west bay corridor of northern California will be eliminated. The Southern Pacific serves 24 intervening communities along peninsula route. This petition does not consider the elimination of freight service. Comments made by: EPA, DOI, HUD, DOT, AHP, State and local agencies (EPA Order No. 81184).

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590. 202-426-4357.

FEDERAL AVIATION ADMINISTRATION

Draft

Bloomington-Normal Airport, McLean County, Ill. November 1, 1978: Proposed is a development program for the Bloomington-Normal Airport located in Bloomington, McLean County, Ill. Several parcels of land will be acquired for development of the proposed runway 3R-2IL, including the clear zones and land within areas where the noise level will exceed 85DB(A). Approximately 360 acres will be purchased, construction of the runway will also include installation of runway end identification lights and medium intensity runway lighting. (EPA Order No. 81187).

FEDERAL HIGHWAY ADMINISTRATION

Final

Maryland Route 404 (Denton by-pass) Caroline County, Md. October 30, 1978: Proposed is the relocation and/or reconstruction of Maryland 404 to provide a multilane highway facility around Denton, Md., from 1.2 miles east of Maryland 328 to Maryland 16, south of Denton. When on new locations, a four-lane freeway with a wide median section is envisioned. The freeway will have full control of access. Where the alternate follows the existing road, the construction will be a four-lane expressway with a lesser median width. (FHWA-MD-EIS-77-02-F). Comments made by: COE, DOI, EPA, USDA, DOC, USCG, State and local agencies, groups (EPA Order No. 81178).

NC 24-27 (Albemarle Road), SR 3128-NC 51, Mecklenburg County, N.C. November 1, 1978: Proposed is the improvement of the existing two-lane NC 24-27 (Albemarle Road) to a multilane facility from SR 3128 (Lawyers Road) to NC 51 (Blair Road). The proposed project is approximately 5.9 miles in length. Subject to the alternate selected, project implementation will require the relocation of 14 families and 12 Businesses, and the land uses which are presently within the 70 DBA contour will experience a 3 to 7 DBA increase from the projected traffic noise. (region 4) (FHWA-NC-EIS-77-01-F). Comments made by: USCG, USDA, COE, DOI, EPA, HEW, HUD, State and local agencies (EPA Order No. 81186).

NOTICE OF OFFICIAL RETRACTIONS

It has recently came to EPA's attention that the following draft EIS was not made available to the Federal agencies. The applicant filed the draft EIS with EPA on July 18, 1978 and EPA published notice of availability in the FEDERAL REGISTER dated July 31, 1978. The EPA will reissue this notice upon notification by the applicant that complete distribution has been made.

DEPARTMENT OF HUD

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-6308.

Draft

Eagle-Market Street Development Project (UDAG), Buncombe County, N.C. This proposal concerns an application for HUD funding through the urban development action grant program by the city of Asheville, Buncombe County, N.C. The renewal plan as drafted includes project details such as land acquisition, relocation; land use, public works improvements, site plans, and financing. The purpose of this project is to attract private investment in an attempt to solve problems of migration and declining tax base. (EPA Order No. 80777).

It has also come to EPA's attention that the following final EIS, filed with EPA on September 14, 1978 and published in the September 25, 1978 FEDERAL REGISTER was not distributed to commenting parties until October 20, 1978. Therefore the 30-day review period is calculated from October 20, 1978.

U.S. ARMY CORPS OF ENGINEERS

Contact: Dr. C. Grant Ash, Office of Environmental Policy Department, attention: DAEN-CEW-P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 1000 Independence Avenue SW., Washington, D.C. 20314, 202-693-6795.

Final

Santa Ana R. Main Stem and Santiago Creek, Orange, Riverside, and San Bernadino Counties, Calif. October 20, 1978: The project includes the construction of a new reservior upstream of Prado Dam; modification and expansion of the existing Prado Reservior; improvement of the existing Santa Ana River channel; improvement of the Lower Santiago Creek channel; development of water conservation, recreational and wildlife enhancement facilities in and along the above; acquisition and protection of natural amenities in Santa Ana Canyon; and acquisition and preservation of a 92 acre salt marsh area. (Los Angeles district). Comments made by: DOC, EPA, HEW, DOI, USDA, USCG, HUD, State and local agencies (EIS Order No. 81002).

NOTICE OF OFFICIAL CORRECTIONS

The following final EIS was received by the EPA on October 27, 1978, and inadvertently omitted from the notice published in the November 6, 1978 FEDERAL REGISTER. Notice of availability is hereby published with calculation of the 30-day review period beginning November 6, 1978.

GENERAL SERVICES ADMINISTRATION

Contact: Mr. Andrew E. Kauders, Executive Director, Environmental Affairs Division, General Services Administration, 18th and F Streets NW., Washington, D.C. 20405. 202-566-0405.

Final

Mount Vernon Campus Square, University of DC, District of Columbia. October 27, 1978: The proposal discussed concerns the granting of funds to the University of the District of Columbia. The university is presently housed in 14 buildings in various sections of the District. Plans are being prepared by the university to consolidate the programs in new facilities located in downtown Washington, D.C. The new campus would accomodate 6,517 full time equivalent students and would be located on four blocks directly north of Mount Vernon Square in the northwest section of the city. (EDC-78005) (EPA Order No. 81173).

The following final EIS, published in October 25, 1978, FEDERAL REGISTER notice, was printed and distributed by the FHWA with the incorrect agency reference number. Please note that the correct number is FHWA-NC-EIS-76-07-F.

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590. 202-426-4357.

Title

Southward extension of Dawson and McDowell Streets and related improvements to Wilmington and South Sanders Streets from Cabarrus Street to the U.S. 70-401 interchange, Raleigh, Wake County, N.C. (EPA No. 81104).

[FR Doc. 78-32013 Filed 11-13-78; 8:45 am]

[6730-01-M]

FEDERAL MARITIME COMMISSION

AGREEMENTS FILED

The Federal Maritime Commission hereby giyes notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street NW., Room 10218; or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, La.; San Francisco, Calif.; Chicago, Ill.; and San Juan, P.R. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before December 4, 1978. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreements. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

Agreement No.: T-2640-12.

Filing party: H. H. Wittren, Manager, Waterfront Real Estate, Port of Seattle, P.O. Box 1209, Seattle, Wash. 98111.

Summary: Agreement No. T-2640-12, between the Port of Seattle (Port) and American President Lines, Ltd. (APL) modifies the parties' basic agreement which provides for the 20-year lease to APL of Terminal 25 in Seattle, Wash. The purpose of the modification is to change the amortization schedule of payments contained in Agreement No. T-2640-10 from 224 months to 225 months. The parties also desire to provide for the Port's reimbursement to APL, in an amount not to exceed $196,800 of costs expended by APL for certain additions and modifications to the Reefer Outlet System at Terminal 25. Total monthly rent for land, cranes and other improvements is increased to $123,465.98 and the lease bond will increase to $1,482,000.00.

Agreement No.: T-3740.

Filing party: W. L. Hann, Assistant Director of Operations Port Services, Georgia Ports Authority, P.O. Box 2406, Savannah, Ga. 31402.

Summary: Agreement No. T-3740, between the Georgia Ports Authority (Port) and United States Lines, Inc. (USL), provides for the Port's 5-year lease to USL (with renewal options) of a portion of container berth No. 60 storage area, Garden City Terminal, Chatham County, Ga., to be used for the storage and handling of containers, including trailers and chassis used to transport containers. As compensation, USL shall pay Port a fixed monthly rental charge of $9,029.16 plus wharfage charges according to the Port's tariff, subject to a guaranteed minimum of 150,000 short tons. For tonnage generated by USL during any 365-day guarantee period in excess of 150,000 short tons, USL shall pay wharfage to Port at a reduced rate as outlined in the agreement. USL shall pay Port dockage and all others charges incurred according to the Ports tariff.

Agreement No. 8240-14.

Filing party: Mr. Wade S. Hooker, Jr., Burlingham Underwood & Lord, One Battery Park Plaza, New York, N.Y. 10004.

Summary: Agreement No. 8240-14, entered into among the member lines of the Atlantic and Gulf-Singapore, Malaya and Thailand Conference, amends Article 8 of the basic agreement to read as follows (was insertions indicated by underlining):

"8. There shall be no absorption of wharfage, storage or other charges against the cargo and no absorption at loading or discharge ports of rail, truck or water freights, except as authorized by the Conference."

By Order of the Federal Maritime Commission.

Dated: November 8, 1978.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-31949 Filed 11-13-78; 8:45 am]

[6730-01-M]

SECURITY FOR THE PROTECTION OF THE PUBLIC; INDEMNIFICATION OF PASSENGERS FOR NONPERFORMANCE OF TRANSPORTATION

Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Pub. L. 89-777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Phaidon Navegacion S.A., c/o Chandris, Inc., 666 Fifth Avenue, New York, N.Y. 10019.

Dated: November 8, 1978.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-31951 Filed 11-13-78; 8:45 am]

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[6730-01-M]

SECURITY FOR THE PROTECTION OF THE PUBLIC; FINANCIAL RESPONSIBILITY TO MEET LIABILITY INCURRED FOR DEATH OR INJURY TO PASSENGERS OR OTHER PERSONS ON VOYAGES

Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on voyages pursuant to the provisions of section 2, Pub. L. 89-777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR 540):

Phaidon Navegacion S.A., c/o Chandris Inc., 666 Fifth Avenue, New York, N.Y. 10019.

Dated: November 8, 1978.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 31950 Filed 11-13-78; 8:45 am]

[6210-01-M]

FEDERAL RESERVE SYSTEM

CITIZENS BAN-CORPORATION

Acquisition of Bank

Citizens Ban-Corporation, Rock Port, Mo., has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 95.31 percent of the voting shares of Farmers and Merchants Bank of Elmo, Elmo, Mo. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than December 7, 1978. Any comment on an application that requests a hearing must be sent to the Secretary's Office on or before December 14, 1978, and must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 7, 1978.

JOHN M. WALLACE,
Assistant Secretary of the Board.

[FR Doc. 78-31923 Filed 11-13-78; 8:45 am]

[6210-01-M]

FIRST CITY BANCORP. OF TEXAS, INC.

Acquisition of Bank

First City Bancorporation of Texas, Inc., Houston, Tex., has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares (less directors' qualifying shares) of First City Bank—Bear Creek, Harris County, Tex., a proposed new bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than December 4, 1978. Any comment on an application that requests a hearing must be sent to the Secretary's Office on or before December 14, 1978, and must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 3, 1978.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc. 78-31924 Filed 11-13-78; 8:45 am]

[6210-01-M]

LOCKNEY BANCSHARES, INC.

Formation of Bank Holding Company

Lockney Bancshares, Inc., Lockney, Tex., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of First National Bank in Lockney, Lockney, Tex. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842 (c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received no later than November 29, 1978. Any comment on an application that requests a hearing must be sent to the Secretary's Office on or before December 14, 1978, and must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 7, 1978.

JOHN M. WALLACE,
Assistant Secretary of the Board.

[FR Doc. 78-31926 Filed 11-13-78; 8:45 am]

[6210-01-M]

MARSH INVESTMENTS, N.V., ET AL.

Formation of Bank Holding Companies

Marsh Investments, N.V., Curacao, Netherlands Antilles, Marsh Investments, B.V., Rotterdam, The Netherlands, and M.F.G. Investments, Inc., Hialeah, Fla., have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring 80 percent or more of the voting shares of First National Bank of Greater Miami, Hialeah, Fla. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than December 6, 1978. Any comment on an application that requests a hearing must be sent to the Secretary's Office on or before December 14, 1978, and must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 6, 1978.

JOHN M. WALLACE,
Assistant Secretary of the Board.

[FR Doc. 78-31925 Filed 11-13-78; 8:45 am]

[6210-01-M]

NORTHWEST OHIO BANCSHARES, INC.

Acquisition of Bank

Northwest Ohio Bancshares, Inc., Toledo, Ohio, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 80 percent or more of the voting shares of the Willard United Bank, Willard, Ohio. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reseve Bank of Cleveland. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than December 7, 1978. Any comment on an application that requests a hearing must be sent to the Secretary's Office on or before December 14, 1978, and must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 7, 1978.

JOHN M. WALLACE,
Assistant Secretary of the Board.

[FR Doc. 78-31927 Filed 11-13-78; 8:45 am]

[6210-01-M]

SOUTHWEST FLORIDA BANKS, INC.

Acquisition of Bank

Southwest Florida Banks, Inc., Fort Myers, Fla., has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares of Charlotte County National Bank, Charlotte County, Fla. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than December 5, 1978. Any comment on an application that requests a hearing must be sent to the Secretary's Office on or before December 14, 1978, and must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 6, 1978.

JOHN M. WALLACE,
Assistant Secretary of the Board.

[FR Doc. 78-31928 Filed 11-13-78; 8:45 am]

[1610-01-M]

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Notice of Receipt of Report Proposals

The following requests for clearance of reports intended for use in collecting information from the public were received by the Regulatory Reports Review Staff, GAO, on November 7, 1978. See 44 U.S.C. 3512(c) and (d). The purpose of publishing this notice in the FEDERAL REGISTER is to inform the public of such receipt.

The notice includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed CFTC and ICC requests are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed requests, comments (in triplicate) must be received on or before December 4, 1978, and should be addressed to Mr. John M. Lovelady, Assistant Director, Regulatory Reports Review, U.S. General Accounting Office, Room 5106, 441 G Street NW., Washington, D.C. 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

COMMODITY FUTURES TRADING COMMISSION

The CFTC requests clearance of a new "Futures Commission Merchant Form, CFTC-145." This report will be required to be filed monthly by futures commission merchants who qualify, in accordance with the provsions of 32.12 of the CFTC's regulations, to offer to sell options on physicals (so-called dealer options) to option customers in the United States and are actually offering or selling such options to option customers. The CFTC will require the first monthly reports in January 1979, covering data for December 1978. The reports will be due by the 10th business day of the month following the month covered by the report. The CFTC estimates respondents will number approximately 9 but may eventually number more than 10 and that reporting burden will average 4 hours per report.

INTERSTATE COMMERCE COMMISSION

The ICC requests an extension without change clearance of form OSB, quarterly Report of Revenue Traffic, required to be filed by 42 class I railroads, pursuant to section 20 of the Interstate Commerce Act. The report form collects data on freight revenue, passenger revenue, freight tonnage, passengers carried and related statistics. Data collected by form OSB are used for economic regulatory purposes. The ICC states that no change is made in the data requirements. The ICC estimates reporting burden averages 68 hours per report. Reports are mandatory and available for use by the public.

NORMAN F. HEYL,
Regulatory Reports Review Officer.

[FR Doc. 78-32001 Filed 11-13-78; 8:45 am]

[4110-88-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Alcohol, Drug Abuse, and Mental Health Administration

EMPLOYEES OF SOUTHERN METHODIST UNIVERSITY

Research on Mental Health; Authorization of Confidentiality

Under the authority vested in the Secretary of Health, Education, and Welfare by section 303(a) of the Public Health Service Act (42 U.S.C. 242a(a)) all persons who:

1. Are employed by Southern Methodist University, Dallas, Tex., and

2. Have, in the course of their employment, access to information which would identify individuals who are the subjects of the research on mental health which is asssisted by the Department of Health, Education, and Welfare grant numbered RO1 MH 31711 titled "The Attrition-of-Justice in Rape/Sexual Assault Cases"

are hereby authorized to protect the privacy of the individuals who are the subjects of that research by withholding their names and other identifying characteristics from all persons not connected with the conduct of that research.

As provided in section 303(a) of the Public Health Service Act (42 U.S.C. 242a(a)):

Persons so authorized to protect the privacy of such individuals may not be compelled in any Federal, State, or local civil, criminal, administrative, legislative, or other proceedings to identify such individuals.

V 4 3 / 2 2 0

This authorization does not authorize employees of Southern Methodist University to refuse to reveal to qualified personnel of the Department of Health, Education, and Welfare for the purpose of management or financial audits or program evaluation, the names or other identifying characteristics of individuals who are the subjects of the research conducted pursuant to the Department of Health, Education, and Welfare grant numbered RO1 MH 31711. Such personnel will hold any identifying information so obtained strictly confidential in accordance with 45 CFR 5.71.

This authorization is applicable to all information obtained pursuant to Department of Health, Education, and Welfare grant numbered RO1 MH 31711 which would identify individuals who are subjects of the research conducted under the grant.

Dated: October 23, 1978.

THOMAS F. PLAUT,
Deputy Director, National Institute of Mental Health.

Dated: October 23, 1978.

KARST BESTEMAN,
Acting Director, National Institute on Drug Abuse.

Dated: October 22, 1978.

DAVID F. KEFAUVER,
Acting Deputy Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 78-31915 Filed 11-13-78; 8:45 am]

[4110-03-M]

Food and Drug Administration

ADVISORY COMMITTEES

Filing of Annual Reports

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Under section 13 of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), the annual reports required by the act for Food and Drug Administration advisory committees have been filed with the Library of Congress.

FOR FURTHER INFORMATION CONTACT:

Richard L. Schmidt, Committee Management Office (HFA-27), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-2765.

SUPPLEMENTARY INFORMATION: Copies of the annual reports are available for public inspection at (1) the Library of Congress, Special Forms Reading Room, Main Building, First Street and Independence Avenue SE., Washington, D.C. 20540 (2) the Department of Health, Education, and Welfare Library, Room 1436, 330 Independence Avenue SW., Washington, D.C. 20201, on weekdays between 9 a.m. and 4:30 p.m.; and (3) the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 3, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 78-31615 Filed 11-13-78; 8:45 am]

[4110-03—M]

PATIENT PACKAGE INSERTS

Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration announces the Conference on Patient Package Inserts—Content and Format, to be held December 11 and 12, 1978, at the Shoreham Americana Hotel in Washington D.C. The purpose of the meeting is to consider what and how information in patient package inserts (PPI's) should be designed for the most benefit to the patient.

DATES: December 11, 1978: 8 a.m. to 5 p.m. December 12, 1978: 9 a.m. to adjournment.

ADDRESS: The Shoreham Americana Hotel, 2500 Calvert Street NW., Washington D.C. 20008.

FOR FURTHER INFORMATION CONCERNING ATTENDANCE OR REGISTRATION, CONTACT:

Ann Myers, Bureau of Drugs (HFD-107), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4893.

SUPPLEMENTARY INFORMATION: Workshops and speakers will discuss drafting PPI's for five specific classes of drugs, including minor tranquilizers, antihypertensives, anitbiotics, antiinflammatories and antidepressants. Input from health professionals, consumers, and all interested parties will be solicited. There is no registration fee and the conference is open to the public. However, participation in the workshops on the afternoon of December 11 is limited to space available and preregistration is encouraged.

Dated: November 7, 1978.

WILLAM F. RANDOLPH,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 78-31886 Filed 11-13-78; 8:45 am]

[4110-03-M]

WALNUT GROVE PRODUCTS

Rootin' Iron Blocks (Ferrous Fumarate); Withdrawal of New Animal Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Director of the Bureau of Veterinary Medicine withdraws approval of a new animal drug application (NADA) providing for use of Rootin' Iron Blocks (ferrous fumarate) for the prevention of iron deficiency anemia in baby pigs. The sponsor, Walnut Grove Products, requested this action.

EFFECTIVE DATE: November 14, 1978.

FOR FURTHER INFORMATION CONTACT:

David N. Scarr, Bureau of Veterinary Medicine (HFV-214), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-1846.

SUPPLEMENTARY INFORMATION: Walnut Grove Products, Division of W. R. Grace & Co., 201 Linn Street, Atlantic, Iowa 50022, is sponsor of NADA 31-513, which provides for the use of Rootin' Iron Blocks (ferrous fumarate) for the prevention of iron deficiency anemia in baby pigs. By letter of June 5, 1978, the firm requested that approval of NADA 31-513 be withdrawn because the product had not been marketed for several years.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))), under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 Withdrawal of approval of applications (21 CFR 514.115), notice is given that approval of NADA 31-513 and all supplements for Rootin' Iron Blocks is hereby withdrawn, effective November 14, 1978.

Dated: November 3, 1978.

TERENCE HARVEY,
Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 78-31758 Filed 11-13-78; 8:45 am]

N 0 1 4 7 8 UMI

[4110-03-M]

[NADA 39-862V]

WALNUT GROVE PRODUCTS

Tylosin Premix; Withdrawal of Approval of New Animal Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Director of the Bureau of Veterinary Medicine withdraws approval of a new animal drug application (NADA) providing for manufacture of a tylosin premix. The sponsor, Walnut Grove Products, has requested this action.

EFFECTIVE DATE: November 14, 1978.

FOR FURTHER INFORMATION CONTACT:

Andrew J. Beaulieu, Bureau of Veterinary Medicine (HFV-214), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3183.

SUPPLEMENTARY INFORMATION: Walnut Grove Products, division of W. R. Grace & Co., 201 Linn Street, Atlantic, Iowa 50022, is sponsor of NADA 39-862V, which provides for manufacture of a 2-gram-per-pound tylosin premix for subsequent use in the manufacture of a complete swine feed. The premix bears indications for increased rate of weight gain and improved feed efficiency. The Food and Drug Administration originally approved the application by letter of August 8, 1969. In a letter dated August 1, 1977, Walnut Grove Products requested that approval of the NADA be withdrawn because the product is no longer being marketed, and waived opportunity for a hearing.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))), under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.84) and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 39-862V and all supplements thereto for Walnut Grove "4X4" Automatic A-V Booster Mix-T Medicated is hereby withdrawn, effective November 14, 1978.

Dated: November 3, 1978.

TERENCE HARVEY,
Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 78-31887 Filed 11-13-78; 8:45 am]

[4110-84-M]

Health Services Administration

ADVISORY COMMITTEE

Meeting

In accordance with section 10(a)(2) of the Federal Advisory committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of December 1978:

Name: Interagency Committee on Emergency Medical Services.

Date and Time: December 13, 1978—9 a.m. to 4 p.m.

Place: Conference Rooms G and H, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857.

Open for entire meeting.

Purpose: the Committee provides for the communicaton and exchange of information necessary to maintain the coordination and effectiveness among such Federal programs and activities and makes recommendations to the Secretary respecting the administration of grants and contracts under Title XII, including making regulations for the emergency medical services systems program.

Agenda: Proposed agenda items for this meeting include a status report on the National Registry for: (1) EMTs, (2) Paramedic Recertification, and (3) National Park Service. Also discussed will be an update of Combined Federal Funding, Poison Control Information, Proposed Federal Aviation Administration Air Ambulance Standards, Report on the National EMS symposium—February 20-23, 1979, and discussion on a standard EMS logo.

The meeting is open to the public for observation. Anyone wishing to attend, obtain the roster of members, minutes of meeting, or other relevant information should contact Mr. Lee Shuck, Division of Emergency Medical Services, Bureau of Medical Services, Suite 11-64D, 6525 Belcrest Road, Hyattsville, Md. 20782, telephone 301-436-6295. Public seating is limited to forty (40). Please contact at least 72 hours before the meeting.

Agenda items are subject to change as priorities dictate.

Dated: November 3, 1978.

WILLIAM H. ASPDEN, Jr.,
Associate Administrator for Management.

[FR Doc. 78-31899 Filed 11-13-78; 8:45 am]

[4110-84-M]

ANNUAL REPORTS OF FEDERAL ADVISORY COMMITTEES

Filing

Notice is hereby given that pursuant to section 13 of Pub. L. 92-463, the Annual Report for the following Health Services Administration Federal Advisory Committee has been filed with the Library of Congress:

Indian Health Advisory Committee

Copies are available to the public for inspection at the Library of Congress, Special Forms Reading Room, Main Building, or weekdays between 9 a.m. and 4:30 p.m. at the Department of Health, Education, and Welfare, Department Library, North Building, Room 1436, 330 Independence Avenue SW., Washington, D.C. 20201, telephone 202-245-6791. Copies may be obtained from Mr. Mose E. Parris, Room 5A-43, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857, telephone 301-443-1104.

Dated: November 3, 1978.

WILLIAM H. ASPDEN, Jr.,
Associate Administrator for Management.

[FR Doc. 78-31898 Filed 11-13-78; 8:45 am]

[4110-08-M]

National Institutes of Health

REPORT ON BIOASSAY OF 1,2-DIBROMOETHANE FOR POSSIBLE CARCINOGENICITY

Availability

1,2-Dibromoethane (CAS 106-93-4) has been tested for cancer-causing activity with rats and mice in the Bioassay Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary. A bioassay for possible carcinogenicity of technical-grade 1,2-dibromoethane was conducted using Osborne-Mendel rats and B6C3F1 mice. Applications of the chemical include use as a gasoline additive and fumigant. 1,2-Dibromoethane in corn oil was administered by gavage, at either of two dosages, to groups of 50 male and 50 female animals of each species.

Under the conditions of this bioassay, 1,2-dibromoethane was carcinogenic to Osborne-Mendel rats and B6C3F1 mice. The compound induced squamous-cell carcinomas of the forestomach in rats of both sexes, hepatocellular carcinomas in female rats, and hemangiosarcomas in male rats. In mice of both sexes the compound induced squamous-cell carcinomas of the forestomach and alveolar/bronchiolar adenomas.

Single copies of the report are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Md. 20014.

(Catalog of Federal Domestic Assistance Program No. 13.393, Cancer Cause and Prevention Research.)

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Dated: November 6, 1978.

DONALD S. FREDRICKSON,
Director, National Institutes of Health.

[FR Doc. 78-31765 Filed 11-13-78; 8:45 am]

[4110-02-M]

Office of Education

NATIONAL ADVISORY COUNCIL ON EXTENSION AND CONTINUING EDUCATION

Correction

The FEDERAL REGISTER notice (4110-02-M) on Friday, October 20, 1978 (Vol. 43, No. 204, pages 49056 and 49057) of the meeting of the National Advisory Council on Extension and Continuing Education indicates that the meeting of the Committee on International Dimensions of Continuing Education will be held on Thursday, November 16 in the Council's office: 425 Thirteenth Street NW., Suite 529, Washington, D.C. 20004.

Due to unanticipated changes in the schedules of Council members, the meeting of the Committee on International Dimensions of Continuing Education has been rescheduled for Tuesday, November 28, 1978, in the Council's office.

The meeting is open to the public. However, because of limited space, those interested in attending should inform the Council's office no later than November 17 by calling 202-376-8888.

Dated: November 8, 1978.

WILLIAM G. SHANNON,
Executive Director.

[FR Doc. 78-31953 Filed 11-13-78; 8:45 am]

[1505-01-M]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

WETLAND-RIPARIAN AREA PROTECTION AND MANAGEMENT

Policy and Protection Procedures—Interim Guidelines

Correction

In FR Doc. 78-31601 appearing at page 52179 in the issue of Wednesday, November 8, 1978, first column, the comment date should read "January 8, 1979".

[4310-09-M]

Bureau of Reclamation

[INT FES 78-32]

McGEE CREEK PROJECT, OKLAHOMA

Availability of Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a final environmental statement for the authorized McGee Creek Project, Oklahoma.

The environmental statement concerns a water supply to meet expanding municipal and industrial water needs of Oklahoma City and parts of south-central Oklahoma. Flood control, fish and wildlife, and environmental enhancement are other project purposes. McGee Creek dam would be located on McGee Creek in Atoka County, Okla.

Copies are available for inspection at the following locations:

Office of Environmental Affairs, Room 7620, Bureau of Reclamation, Department of the Interior, Washington, D.C. 20240, 202-343-4991.
Division of Engineering Support, Technical Services, and Publications Branch, E. & R. Center, Denver Federal Center, Denver, Colo. 80225, 303-234-3006.
Office of the Regional Director, Bureau of Reclamation, Herring Plaza, Box H-4377, Amarillo, Tex. 79101, 806-376-2401.
Planning Office, Bureau of Reclamation, P.O. Box 495, Oklahoma City, Okla. 73101, 405-231-4515.
City of Atoka Library, Atoka, Okla.
Central State University Library, Edmond, Okla.
East Central Oklahoma State University Library, Ada, Okla.
Murray State College Library, Tishomingo, Okla.
Oklahoma Baptist University Library, Shawnee, Okla.
University of Oklahoma Library, Norman, Okla.
Southeastern Oklahoma State University Library, Durant, Okla.

The following libraries in Oklahoma City, Okla.:

Oklahoma County Library System.
Oklahoma Christian College Library.
Oklahoma City University Library.
Oklahoma State University Technical Institute Library.
University of Oklahoma—Health Science Center Library.
Southwestern College Library.

Single copies of the final environmental statement may be obtained on request to the Commissioner of Reclamation, Regional Director, or Oklahoma City Planning Officer. Please refer to the statement number above.

Dated: November 8, 1978.

LARRY E. MEIEROTTO,
Deputy Assistant Secretary of the Interior.

[FR Doc 78-31916 Filed 11-13-78; 8:45 am]

[4310-03-M]

Heritage Conservation and Recreation Service

NATIONAL REGISTER OF HISTORIC PLACES

Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the Heritage Conservation and Recreation Service before November 3, 1978. Pursuant to § 60.13(a) of 36 CFR part 60, published in final form on January 9, 1976, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the Keeper of the National Register, Office of Archeology and Historic Preservation, U.S. Department of the Interior, Washington, D.C. 20240. Written comments or a request for additional time to prepare comments should be submitted by November 24, 1978.

WILLIAM J. MURTAGH,
Keeper of the National Register.

CONNECTICUT

New London County

Groton Vicinity, *Yeomans, Edward, House,* E of Groton on Brook St.

GEORGIA

Baldwin County

Milledgeville vicinity, *Borrowville,* E of Milledgeville on GA 22/24.

Dougherty County

Albany, *U.S. Post Office and Courthouse, 337 Broad Ave.*

Jasper County

Monticello, *Monticello High School,* College St.

Lumpkin County

Dahlonega, *Fields Place-Vicery House,* W. Main St. and Vickery Dr.

Rabun County

Clayton, *Second Rabun County Courthouse, Bleckley House,* Warwoman Rd.

ILLINOIS

Cook County

Evanston, *Dryden, George B., House,* 1314 Ridge Ave.

Kane County

Wayne, *Oaklawn Farm,* Army Trail and Durham Rds.

Monroe County

Columbia, *Gundlach-Grosse House,* 625 N. Main St.
Waterloo vicinity, *Fountain Creek Bridge,* off IL 156.

Peoria County

Peoria, *Central National Bank Building,* 103 SW. Adams St.

Sangamon County

Springfield, *Brinkerhoff, George M., House,* 1500 N. 5th St.

KENTUCKY

Bath County

Sharpsburg vicinity, *Springfield Presbyterian Church,* S of Sharpsburg on Springfield Rd.

Daviess County

Maceo vicinity, *Archeological Site 15 Da 39,* W of Maceo.

Fayette County

Lexington, *McCracken-Wilgus House,* 327 Wilgus St.

Gallatin County

Sparta vicinity, *Turley, Benjamin F., House,* 2.5 mi. N of Sparta on KY 35.

Jefferson County

Louisville, *Eclipse Woolen Mill,* 1044 E. Chestnut St.
Louisville, *Presentation Academy,* 861 S. 4th St.

Menifee County

Frenchburg, *Frenchburg School Campus,* U.S. 460.

NEBRASKA

Jefferson County

Powell vicinity, *District No. 10 School,* W of Powell.

Sarpy County

Bellevue vicinity, *McCarty-Lilley House,* W of Bellevue on Quail Dr.

NEW MEXICO

Otero County

Tularosa, *Tularosa Original Townsite District,* U.S. 54/70.

NEW YORK

New York County

New York, *Gilsey Hotel,* 1200 Broadway.
New York, *Queensboro Bridge,* 59th St. (also in Queens County).

Richmond County

Staten Island, *New Brighton Village Hall,* 66 Lafayette Ave.

NORTH DAKOTA

Renville County

Tolley vicinity, *McKinney Cemetery,* N of Tolley.

RHODE ISLAND

Providence County

Central Falls, *Valley Falls Mill Complex,* 1359-1363 Broad St. (boundary increase).
Pawtucket, *Art's Auto,* 5-7 Lonsdale Ave.

TEXAS

Dickens County

Dickens, *Dickens County Courthouse and Jail,* Public Sq.

Dimmit County

Carrizo Springs, *Dimmit County Courthouse,* Public Sq.

Harrison County

Jonesville vicinity, *Locust Grove,* NW of Jonesville of TX 134.

Jasper County

Jasper, *Jasper County Courthouse,* Public Sq.

Jefferson County

Beaumont, *Sanders House,* 479 Pine St.

Kendall County

Boerne, *Kendall County Courthouse and Jail,* Public Sq.

McLennan County

Waco, *McLennan County Courthouse,* Public Sq.

Wharton County

Wharton, *Wharton County Courthouse,* Public Sq.

Wilbarger County

Odell vicinity, *Doan's Adobe House,* E of Odell off U.S. 283.

UTAH

Emery County

Castle Dale vicinity, *Buckhorn Wash Rock Art District,* 22 mi. SE of Castle Dale.

Morgan County

Morgan, *Heiner, Daniel, House,* 543 N. 700 East.

Salt Lake County

Salt Lake City, *Immanuel Baptist Church,* 401 E. 200 South.
Salt Lake City, *Irving Junior High School,* 1179 E. 2100 South.
Salt Lake City, *Whipple, Nelson Wheeler, House,* 564 W. 400 North.

Sevier County

Richfield vicinity, *Jenson, Jens Larson Lime Kiln,* 2 mi. N of Richfield.
Salina vicinity, *Sudden Shelter,* E of Salina on UT 4.

Wasatch County

Heber City, *Fisher, David, House,* 124 E. 400 South.
Heber City, *Heber Second Ward Meetinghouse,* 1st West and Center Sts.

Weber County

Ogden, *Maguire, Don, Duplex,* 549-551 25th St.

VERMONT

Rutland County

Rutland, *Rutland Downtown Historic District,* roughly bounded by State, Elm, Washington, Strongs, and Pine Sts.

WISCONSIN

Iowa County

Dodgeville, *Old Rock School,* 914 Bequette St.

La Crosse County

La Crosse vicinity, *Overhead Site,* S of La Crosse.

Langlade County

Antigo, *Antigo Public Library and Deleglise Cabin,* 404 Superior St.

Oconto County

Oconto, *Jones, Huff, House,* 1345 Main St.

Ozaukee County

Cedarburg, *Hilgen and Wittenberg Woolen Mills,* Bridge Rd.

Waupaca County

Waupaca, *Cresent Roller Mills,* 213 Oborn St.

Winnebago County

Oshkosh, *Hooper, Jessie Jack, House,* 1149 Algoma Blvd.

WYOMING

Natrona County

Arminto, *Big Horn Hotel,* Main St.

[FR Doc. 78-31785 Filed 11-13-78; 8:45 am]

[4310-05-M]

Office of Surface Mining Reclamation and Enforcement

PROPOSED DECISION TO APPROVE COAL MINING AND RECLAMATION PLAN WITH STIPULATIONS, BLACK BUTTE FEDERAL COAL LEASE NO. W-6266

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Proposed Decision to Approve Coal Mining and Reclamation Plan With Stipulations—Black Butte Mine, Federal Coal Lease No. W-6266.

SUMMARY: Pursuant to section 211.5 of Title 30, Code of Federal Regulations, notice is hereby given that the Office of Surface Mining has performed a technical review of a mining and reclamation plan submitted by Black Butte Coal Co. (P.O. Box 98, Point of the Rocks, Wyo. 82942) to disturb up to 13,842 acres of a total permit area of 38,616 acres comprised of federally owned and privately owned coal. The mine is located about 25 miles east of Rock Springs, Wyo. and south of Point of the Rocks, Wyo.

V 4 3 / 2 2 0

(T)9N, R100W, sections 8, 9, 10, 11, 13, 14, 15, 16, 17, 19, 21, 22, 23, 24, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36; T19N, R101W, sections 24, 25, 36; T18N, R100W, sections 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 15, 16 (in part), 17, 19, 20 (in part), 21, 22, 23, 27, 28, 29, 30, 31, 32, 33; T18N R101W, sections 1, 11, 12, 13, 14, 23, 24, 25, 26, 27, 35). It is proposed to mine this, and perhaps adjacent, coal over a period of about at least 26 years.

The purpose of this notice is to inform the public that the Regional Director, Region V, Office of Surface Mining, has recommended, based on staff and other reviews; including those of the Wyoming Department of Environmental Quality, the Bureau of Land Management, and the Geological Survey; approval of the mining and reclamation plan with stipulations. Any persons having an interest which is or may be adversely affected may, in writing, request a public meeting to discuss their views regarding this mining and reclamation plan.

This particular mine was the subject of a site-specific analysis of impacts and alternatives in an Environmental Impact Statement, titled "Development of Coal Resources in Southwestern Wyoming". The Final Environmental Statement was submitted on September 17, 1978.

DATES: All requests for public meeting must be made on or before the date of publication of this notice. No decision on the mine plan will be made by the Assistant Secretary, Energy and Minerals, prior to the expiration of the 20-day period.

ADDRESSES: The stipulations are available for review in the Region V Office of Surface Mining upon request. Requests for a public meeting must include the name and address of the requestor and must be submitted to the Regional Director, Region V, Office of Surface Mining, Room 217, 1823 Stout Street, Denver, Colo. 80202.

FOR FURTHER INFORMATION CONTACT:

John Hardaway, Office of Surface Mining, Region V, 1823 Stout Street, Denver, Colo. 80202.

PAUL L. REEVES,
Acting Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 78-31955 Filed 11-13-78; 8:45 am]

[4410-01-M]

DEPARTMENT OF JUSTICE

Antitrust Division

U.S. V. EVEREST & JENNINGS INTERNATIONAL, ET AL.

Written Comments Upon Consent Judgment and Department of Justice Response Thereto

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, the following written comments on the proposed judgment filed with the U.S. District Court in the Central District of California in Civil Action No. 77-1648-R, *United States of America* v. *Everest & Jennings International; Everest & Jennings, Inc., and The Jennings Investment Co.*, were received by the Department of Justice and are published herewith, together with Justice's response to the comments.

Dated: November 6, 1978.

CHARLES F. B. MCALEER,
Special Assistant for Judgment Negotiations.
SEPTEMBER 22, 1978.

ANTITRUST DIVISION,
U.S. DEPARTMENT OF JUSTICE,
Washington, D.C. 20530.

Attention: Douglas E. Rosenthal, Esquire, Chief, Foreign Commerce Section.

Re: *United States* v. *Everest & Jennings International*

GENTLEMEN: We are writing on behalf of the Paralyzed Veterans of America, Inc. ("PVA") and the California Association of the Physically Handicapped ("CAPH"), pursuant to section 5 of the Clayton Act, as amended by the Antitrust Procedure and Penalties Act (15 U.S.C. § 16(b)-(h)) ("APPA")[1], to comment on the proposed consent judgment [2] in *United States* v. *Everest & Jennings International*, Civ. No. 77-1648-R, C.D. Cal.

I. STATEMENT OF INTEREST

Both PVA and CAPH are vitally interested in the subject matter of the proposed decree. The price, durability, innovativeness, and diversity of wheelchairs sold in the United States—all adversely affected by the long-standing wheelchair monopoly charged against defendants by the Justice Department—determine, in large measure, the personal mobility and the way of life of hundreds of thousands of paralyzed or disabled Americans. PVA and CAPH represent many of those persons.

PVA is a nonprofit, national organization whose membership consists of approximately 12,000 paralyzed individuals who have performed military service. CAPH is a nonprofit organization with over 4,000 physically handicapped members. Defendants' wheelchair monopoly has caused direct and serious injury to members of both PVA and CAPH, as well as innumerable other wheelchair users.

As a result of the monopoly, wheelchairs sold in the United States are extremely expensive—far more expensive than they would be in a competitive market. For example, we understand that defendants' former British joint venture has, in the recent past, sold virtually the same wheelchair in the United Kingdom as defendants' U.S.-manufactured wheelchair for one-third the U.S. price. And, according to the Department's own contentions, defendant's gross profit margins—substantially above 50 percent for premium wheelchairs and over 100 percent on accessories and parts—are the highest in the industry.[3] Moreover, this monopoly has financed extremely high salaries and returns on equity to defendants' corporate officers and certain shareholders.[4]

Monopolistic prices alone impose a heavy burden on both private and public purchasers of wheelchairs, accessories, and spare parts. But there are other, equally grave, consequences of defendants' monopoly that are visited upon wheelchair users.

Wheelchair design innovation and basic product durability affect the daily lives of PVA and CAPH members. Design innovation means increased personal mobility for handicapped people in ways that enhance their ability to perform at work and to interact socially. Wheelchair durability is similarly crucial to a handicapped person's work performance and social activities because needless breakdowns frustate personal mobility.

Here too, defendants' monopoly has produced clear injury. Defendants' West German subsidiary (formerly a joint venture), which often manufactured a higher quality wheelchair than the comparable product made by defendants in the United States, was intentionally precluded from exporting its superior wheelchair to the United States.[5] Likewise, in 1962, defendants eliminated a potential Canadian competitor from the U.S. market by acquiring it and then prohibiting it from exporting to the United States.[6] At that time, the Canadian firm, a likely competitor in the eastern United States, manufactured high quality wheelchairs incorporating features superior to those of defendants' products.[7]

It is also noteworthy that defendants have been able to hold their enormous market and submarket shares without the benefit of an existing, significant wheelchair patent.[8] Additionally, we understand that defendants' monopoly has permitted it to manufacture wheelchairs without regard to basic engineering standards—a deficiency resulting in extremely poor durability characteristics of certain components which lead to frequent breakdowns and expensive, time-consuming repairs.

Finally, PVA and CAPH members, along with other wheelchair users, have been harmed by the absence of wheelchair alternatives, the natural result of defendants' exclusion of foreign and domestic competition. Defendants' highly successful exclusionary efforts have resulted in overwhelming market dominance. Defendants admit they are the only manufacturer of custom wheelchairs in the world and claim to have sold 90 percent of first-line wheelchairs to U.S. veterans.[9] Defendants have a 90-percent share of the wheelchair submarkets most crucial to the well-being of long-term disabled persons (premium, custom, prescription wheelchairs).[10] The exclusion of foreign and domestic competition is the principal reason that PVA and CAPH members have been forced to select wheelchairs suitable for long-term disabled users from submarkets in which defendants' products are the overwhelming if not the only "choice."

Against this background of actual injury to their members and other wheelchair users, PVA and CAPH wish to present their views about the inadequacy of the proposed consent decree.

II. SUMMARY OF POSITION

In bringing its lawsuit, the Government charged that defendants, several entities comprising the world's largest wheelchair manufacturer, had monopolized or attempted to monopolize the U.S. wheelchair market and its submarkets for over 20 years. Yet, the proposed decree neither ends the monopoly nor eliminates its effects.

The proposed decree focuses solely on defendants' exclusion of foreign competition from the U.S. wheelchair market, particularly competition from their own joint ventures or subsidiaries. The major premise of the decree is that if foreign competition increases, defendants' monopoly will end and competitive benefits will be achieved in the marketplace. Even if this premise is correct, it is unreasonable to believe that the proposed decree will bring about increased foreign competition with the U.S. parent.

The Government apparently believes that requiring the defendants to direct their foreign subsidiaries actively to seek export opportunities in the United States will increase foreign competition. This belief is unreasonable for several reasons. First, the proposed decree contains only amorphous, unenforceable export obligations; it fails to impose any substantive obligations on the subsidiaries to compete in the U.S. wheelchair market. Second, and most importantly, it is wholly unrealistic to believe that the defendants' foreign subsidiaries will actively seek to sell wheelchairs in the United States, contrary to the long-standing and well-known desire of defendants, when successful entry into the United States market can only come at the expense of the latter's profitability.

Accordingly, the inescapable conclusion is that nothingless than divestiture of the defendants' Canadian and West German subsidiaries, those most capable of exporting wheelchairs to the United States, will end the monopoly and its effects.

In sum, unless the proposed decree is modified to require divestiture of the Canadian and West German subsidiaries, it will not terminate defendants' monopoly and its effects, and the public interest will not be served.

III. ECONOMIC AND LEGAL BACKGROUND

The proposed consent decree is properly viewed against the economic background of Everest & Jennings,[11] dominance of the wheelchair market in North America and Europe for over two decades. Legal proceedings in the monopolization suit brought by the United States against defendants in 1977 are also important. Although the relief proposed in the decree can only be assessed against that background, the relevant facts that were developed during the Government's discovery and that are essential to a comprehensive assessment have been withheld.

Three factors have stifled access to the basic evidentiary and other materials generated in the Government's lawsuit. First, we have been informed that all or virtually all of the depositions and answers to interrogatories in that action are sealed pursuant to a Stipulated Protective Order of Confidentiality entered by the District Court.[12]

Second, although the APPA requires that the Jusitice Department place on the public record, at the time it publishes a proposed consent decree, all materials and documents "considered determinative in formulating" the decree,[13] no documents were made available in this instance. The conclusory reason given by the Department was that no materials or documents were considered determinative.[14]

Finally, an attempt by a Washington-based public interest organization to obtain relevant factual and documentary information under the Freedom of Information Act ("FOIA"), 5 U.S.C. 552, has, to date, proved entirely unsuccessful.[15]

Consequently, the "meaningful public comment" contemplated by the APPA [16] has been severely frustrated. The discussion herein is necessarily limited to information that can be gleaned from the pleadings and related materials available for public scrutiny. But, even with these stringent limitations on available information, it is clear that the proposed decree and its attempted justification in the Department's Competitive Impact Statement [17] are on their face grossly inadequate to provide relief from the violations alleged.

A. THE ECONOMIC BACKGROUND

In 1954, Everest and Jennings, which had been a major manufacturer of wheelchairs since the 1930's, lost the protection afforded by a U.S. patent covering the single most important feature of its wheelchairs—a cross brace located underneath the seating platform which allowed a wheelchair to be folded and to negotiate small obstacles in outdoor settings. When its patent expired in that year, Everest & Jennings embarked on a two-decade long pattern of anticompetitive conduct having grave consequences for competition in the U.S. wheelchair market and for handicapped individuals who must buy or rent wheelchairs.

In 1955, shortly after the patent expired, Everest & Jennings entered into two joint ventures with Franklin I. Saemann, who owned the Orthopedic Equipment Co., a major American manufacturer of fracture and rehabilitation equipment. Everest & Jennings and Saemann established joint venture companies to manufacture wheelchairs and rehabilitation equipment in the United Kingdom (Zimmer Orthopedic Ltd.) and West Germany (Orthopedia GmbH). Saemann in the 1950's was a potential competitor of Everest & Jennings in the manufacture and sale of wheelchairs both in North America and in Europe.

Within several years after their formation, the British and West German joint venture companies had become the largest volume wheelchair manufacturers in Europe, and have had the highest export volume of wheelchairs in the world.[18] Everest & Jennings, however, prevented them from exporting wheelchairs into the United States or Canada from 1956 until 1975, when litigation between Everest & Jennings and Saemann resulted in Saemann's full ownership of the smaller British company and Everest & Jennings' acquiring control of the West German company. Subsequently, Everest & Jennings established a new British wheelchair company, Everest & Jennings, Ltd., which has not exported wheelchairs to the United States.

If the Government's case had gone to trial, according to its pretrial statement, it would have contended that Everest & Jen-

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[1] Due to the length of this submission, we have provided a brief outline of our comments, as follows:
I. Statement of interest.
II. Summary of position.
III. Economic and legal background.
IV. Objectives of the proposed decree.
V. Inadequacies of the proposed decree.
VI. Divestiture is the only adequate relief.
Conclusion.

[2] Filed May 10, 1978, 43 FR 21740 (May 19, 1978) (hereinafter referred to in text as "decree" or "proposed decree", and cited as "Decree").

[3] Plaintiff's Memorandum of Contentions of Fact and Law Pursuant to Local Rule 9(e), dated January 29, 1978, at 36 (hereinafter "Plaintiff's Memorandum").

[4] *Id.* at 35-36.

[5] *Id.* at 21.

[6] *Id.* at 27.

[7] *Id.* at 27.

[8] *See* Everest & Jennings International Annual Report, Form 10-K, Securities and Exchange Commission, file No. 2-28577, December 25, 1977, at 3 (hereinafter "Annual Report").

[9] Plaintiff's Memorandum at 32.

[10] *Id.* at 30.

[11] "The defendants in the Government action are Everest & Jennings International, Everest & Jennings, Inc. and the Jennings Investment Co. These business entities are referred to collectively as "Everest & Jennings" or "defendants," and are indistinguishable for purposes of the Government's suit. Plaintiff's Memorandum at 5. Defendant's corporate structure is as follows: Everest & Jennings, International owns 100 percent of Everest & Jennings, Inc., which in turn owns 100 percent of the Jennings Investment Co.; Everest & Jennings, Inc. owns 100 percent of one foreign subsidiary, E & J Canadian, Ltd., the leading Canadian wheelchair manufacturer; and the other foreign subsidiaries are owned by the Jennings Investment Co., including 100 percent of the voting rights and 91 percent of the equity of Ortopedin Kiel, a large wheelchair manufacturer in West Germany, 100 percent of Everest & Jennings, Ltd., a wheelchair manufacturer in Great Britain, and the controlling interest in Arva-Everest & Jennings, the dominant wheelchair manufacturer in Mexico. *Id.* at 4-5. Defendant's foreign subsidiaries are not parties to the instant suit.

[12] See also Affidavit of Carl A. Cira, Jr. Dated July 5, 1978, at 1-2.

[13] 15 U.S.C. § 16(b).

[14] Competitive Impact Statement, filed May 10, 1978, at 15. 43 FR 21743, 21745 (May 19, 1978) (hereinafter "CIS").

[15] Rather than expeditiously supplying information subject to disclosure under the FOIA, the Department cited administrative backlogs as causing an indeterminate delay in response to a request for documents pertaining to the proposed decree made by the Disability Rights Center, Inc. Letter from Department of Justice to Deborah Kaplan, dated June 12, 1978. A FOIA action brought by that organization to compel disclosures has not resulted in release of a single document to date. *Disability Rights Center, Inc.* v. *Dept. of Justice*, Civ. No. 78-1194 (D.D.C. filed June 28, 1978).

[16] 15 U.S.C. § 16(c)(iii).

[17] 43 FR 21743-45. Except as otherwise stated, the information in section III. A. and B. below is contained in the CIS.

[18] Plaintiff's Memorandum at 22.

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nings (wheelchairs) and Saemann (fracture and rehabilitation equipment) entered into an agreement in 1955 that they would not compete against each other in their respective product areas, as evidenced by the failure of the joint ventures to export wheelchairs to the United States or Canada and Saemann's failure to manufacture wheelchairs in the United States. To support this contention the Government had evidence of a written admission by defendants' attorney that the sole and singular purpose of [commencing foreign wheelchair manufacturing in 1955 was] * * * to prevent some other manufacturers, based in Europe, from exporting wheelchairs to the United States, in competition with those made by Everest & Jennings, Inc.[18]

The Government would also have contended that Everest & Jennings entered into the two joint venture agreements with Saemann in order to prevent him from entering the U.S. market with wheelchairs manufactured in the United States or abroad, as part of an illegal territorial allocation scheme. Moreover, the Government planned to prove that defendants' intent to monopolize the U.S. wheelchair market was demonstrated by an acquisition plan in effect as late as 1976.[20]

As a result of Everest & Jennings' 1955 European joint ventures, today it owns the largest wheelchair manufacturers in both Europe and North America. Its West German subsidiary, over which Everest & Jennings gained full control after the 1975 legal settlement, has continued to refuse to export to the United States.

During the 1960's, Everest & Jennings' exclusionary conduct was further evidenced by two acquisitions in North America. It acquired Canada's only wheelchair manufacturer in 1962 for the purpose of monopolizing the manufacture and sale of wheelchairs in Canada.[21] The acquired company, which became Everest & Jennings Canadian, Ltd., has not sold any wheelchairs in the United States.

The second acquisition involved the takeover in 1969 of the only significant wheelchair manufacturer in Mexico, again for the purpose of monopolizing the manufacture and sale of wheelchairs in Mexico.[22] That company, now named Arva-Everest & Jennings S.A. de D.V., has not exported any wheelchairs to the United States.

By creating or acquiring four major foreign wheelchair manufacturers in the 1950's and 1960's and excluding their wheelchairs from the U.S. market, Everest & Jennings preserved its position as the dominant U.S. wheelchair manufacturer. Defendants' share of the total U.S. wheelchair market (dollar volume sales) during those years was approximately 70 percent. From 1970–75 its share of the total U.S. wheelchair market was approximately 60 percent. In 1976, Everest & Jennings had about 61 percent of the total wheelchair market revenue in the United States.[23] In that year the next largest manufacturer in terms of dollar sales had significantly less than half Everest & Jennings' share of the U.S. market. The six other U.S. manufacturers of wheelchairs had a combined total of only about 15 percent of the U.S. market. Foreign wheelchair sales in the United States are a negligible part of the market since there is only one seller, a British manufacturer selling a small number of highly specialized, motorized wheelchairs.

Most significant from the standpoint of PVA and CAPH is the fact that Everest & Jennings' 90 percent [24] share of the premium, custom, or prescription wheelchair submarket—those wheelchairs used by long-term disabled individuals—has not declined during the 1970's. Thus, while Everest & Jennings remains dominant in the overall U.S. wheelchair market, it completely dwarfs its few competitors in the premium, custom, or prescription wheelchair submarkets.

Everest & Jennings' dominance of the overall wheelchair market and these submarkets is based upon its entrenched position with major medical dealers who sell wheelchairs in the United States. Moreover, the source of its power in the submarkets for premium, custom, and prescription wheelchairs is its marketing activity aimed at dealer, doctor, and therapist indoctrination. Defendants' entrenched wheelchair marketing position continues at present.

3. THE LEGAL BACKGROUND

The United States brought suit against Everest & Jennings in May 1977. The complaint alleged that defendants had violated section 2 of the Sherman Act, 15 U.S.C. 2, by monopolizing and attempting to monopolize the manufacture and sale of wheelchairs and wheelchair submarkets in the United States since 1955. (¶ 12)

The complaint further alleged that defendants' violations had the following effects: (1) Competition in the sale of wheelchairs between Everest & Jennings and Zimmer Orthopedic Ltd., Orthopedia GmbH, and Saemann had been restrained; (2) wheelchair imports into the United States had been restricted; (3) a monopoly of wheelchair and wheelchair submarket sales in the United States was achieved and maintained, (4) wheelchair purchasers were denied the benefits of a free and competitive market, and (5) innovation and improvement in the manufacture and sale of wheelchairs was restrained and suppressed. (¶ 13)

Following discovery, a Pretrial Conference Order was signed by the District Court and filed on February 13, 1978, but before the case went to trial a proposed settlement was reached.

IV. OBJECTIVES OF THE PROPOSED DECREE

The Justice Department has submitted a proposed consent decree which it states will substantially achieve the objective of its lawsuit. The CIS states that the objectives of the proposed decree are to dissipate the effects of Everest & Jennings' anticompetitive conduct and to insure that Everest & Jennings' foreign subsidiaries, "as well as other domestic and foreign wheelchair manufacturers, can compete freely in the United States." [25] The CIS further explains that the principal means of accomplishing these objectives is "to encourage and enable Everest & Jennings' independently managed foreign subsidiaries to actively compete in the United States." [26] A major premise of the CIS is that the proposed decree "should serve the public interest by providing additional alternatives to United States wheelchair purchasers." [27]

The proposed decree attempts to accomplish its objectives through three categories of provisions. Section V prohibits agreements between Everest & Jennings and other persons which: (1) Limit wheelchair imports into the United States, (2) allocate customers, territory or product markets in the United States, or (3) prevent sales to certain customers or territories in the United States.[28]

Section VI focuses on unilateral action. It prohibits Everest & Jennings from preventing or inhibiting its foreign subsidiaries from exporting wheelchairs to the United States or selling wheelchairs to any person for shipment to the United States.[29]

Section VII requires Everest & Jennings to adopt and communicate several policies to its foreign subsidiaries in a letter set forth as an attachment to the decree.[30] The policies, which need remain in effect no more than 10 years, state that: (1) Export sales by those subsidiaries to the United States are not be be restricted, (2) any arrangements giving the parent, Everest & Jennings, exclusive U.S. distribution rights for the subsidiaries' wheelchairs are terminated and banned, (3) opportunities to export wheelchairs to the United States by the subsidiaries are to be sought actively, (4) the subsidiaries have full discretion concerning the prices and terms of export sales to the United States, (5) the subsidiaries have discretion to designate U.S. dealers and distributors, (6) the subsidiaries may use trademarks other than those owned by Everest & Jennings for U.S. sales, and (7) the policies are to be communicated to the subsidiaries' officers and personnel. In the Department's view, the most significant provision of section VII is the policy that the foreign subsidiaries are to actively seek opportunities to export to the United States.[31]

The remaining sections of the proposed decree provide for an annual report of U.S. sales by the foreign subsidiaries (section VIII), prohibit Everest & Jennings from discouraging U.S. wheelchair dealers from carrying its competitors' wheelchairs (section IX), require Everest & Jennings to give a list of its U.S. dealers to anyone requesting it for 1 year (section X), enjoin Everest & Jennings from acquiring an interest in other wheelchair manufacturers without advance Justice Department approval (section XI), and require Everest & Jennings to send a copy of the decree to its dealers (section XII), its subsidiaries, and all Veterans Administration hospitals.[32]

Remarkably, the decree also prohibits the Department from recommending to other Federal agencies the filing of additional antitrust lawsuits based on the allegations of the complaint (section XIII).[33] This prohibition includes the Veterans Administration, a major purchaser of wheelchairs. In section XIV, the Justice Department receives visitation rights to obtain defendants' documents or information,[34] and agrees to limited dissemination of the information it obtains. Finally, the decree's coverage expires automatically in 10 years (section XVI).[35]

[18] Id. at 25, quoting from letter of James B. Rives, Esq., to the Internal Revenue Service, dated December 11, 1967.
[20] Id. at 35.
[21] Id. at 27.
[22] Id. at 28.
[23] Id. at 37.
[24] Id. at 30.
[25] CIS at 6, 43 FR at 21744.
[26] Id.
[27] Id.
[28] Decree at 3–4, 43 FR at 21741–742.
[29] Id. at 4, 43 FR at 21742.
[30] Id. at 4–5, 43 FR at 21742.
[31] CIS at 8, 43 FR at 21744.
[32] Decree at 5–7, 43 FR at 21742.
[33] Id. at 7, 43 FR at 21742.

V. INADEQUACIES OF THE PROPOSED DECREE

The proposed decree assertedly will bring about an end to the monopoly and its effects principally by increasing foreign competition in the United States from defendants' foreign subsidiaries.[36] It is unclear, however, why the Government has preliminarily agreed to this novel,[37] but patently unreasonable and ineffective form of relief.

A. It is unreasonable to believe that defendants' foreign subsidiaries will enter and compete in the U.S. market when the proposed decree contains only amorphous obligations, the subsidiaries' parents have long expressed a firm desire to exclude the subsidiaries' wheelchairs, and profits garnered by subsidiaries in the U.S. market will largely be at their parents' expense.

The proposed decree fails to insure that foreign competition in the U.S. wheelchair market will increase. This deficiency stems from the Government's groundless assumption that defendants' foreign subsidiaries will enter and compete in the U.S. market in the face of compelling disincentives to do so.

First, the proposed decree requires defendants to direct their foreign subsidiaries to seek actively wheelchair export opportunities to the United States.[38] As noted, this form of relief is viewed by the Justice Department as one which may "serve as a precedent in future cases where dominant U.S. firms have ownership interests in potential competitors abroad." [39] Yet this is an undefined, amorphous "obligation" for which there can be no effective enforcement mechanism.

Plainly the concept of "actively seeking export opportunities" to the United States is not a usable standard either for the subsidiaries or for enforcement purposes. The foreign subsidiaries are given no guidance as to their export obligations. And the degree of effort or expenditures called for by a requirement to "actively seek export opportunities" logically stretches across a broad spectrum of corporate responses. The concept is so vague as to be unenforceable because there is no objective way to determine in advance what constitutes an "active" export marketing program.

Moreover, the Department's construction of this obligation as being one "to actively compete" [40] in the United States is not literally called for by the language of the decree. Actively seeking export opportunities, the language used in the decree, does not necessarily imply an obligation to "compete"—i.e., meeting competitors' pricing, marketing, distribution, and service practices in order to obtain a share of a market. Thus, the foreign subsidiaries might satisfy the direction of their parents by making wheelchairs available for export to the United States under terms and conditions that are not competitive. This uncertainty highlights the vagueness of the obligation which the Justice Department identifies as the best hope for restoring competition in this important industry.

Aside from the fundamentally vague obligation to seek export opportunities, another basic problem with this aspect of the decree is the apparent uncertainty about defendants' legal authority to direct their foreign subsidiaries to take such action. In the Pretrial Conference Order, filed February 13, 1978, at 119–20, defendants listed among the issues of law to be litigated the question "[w]hether a parent that has effective control of a subsidiary can direct the subsidiary where to sell its products." Defendants apparently hold the position that they lack legal authority to give their subsidiaries the direction contained in the proposed decree. Although the Justice Department surely holds a contrary view, the nature of defendants' commitment must be deemed questionable.

Another crucial factor bearing on the efficacy of competition from defendants' foreign subsidiaries under the proposed decree is simply the background against which it was created. For over two decades, defendants successfully excluded foreign-made wheelchairs from entering the U.S. market. Defendants' opposition to entry into the U.S. market by its subsidiaries has been well-known to its subsidiaries. It is, therefore, patently unreasonable to assume that the foreign subsidiaries' management will perceive the decree's direction to seek exports to the United States as a valued policy of their parent corporations, warranting their full support and cooperation.

This natural reluctance can only be reinforced by the practical effect of the subsidiaries' U.S. market entry on defendants. If the foreign subsidiaries compete effectively with defendants' U.S. manufacturer, any gains will come largely at the expense of their parents' profits.

Hence, in view of the limited duration of the non-exclusionary policy mandated by the decree, the foreign subsidiaries, as well as defendants, have every reason to do nothing more than is required by a narrow reading of the proposed decree and to delay their entry into the U.S. market in every way.

In sum, the proposed decree fails to provide any assurance that the monopoly and its effects will cease as it does not mandate any significant effort by defendants' foreign subsidiaries to enter and compete in the U.S. market.

B. Everest & Jennings' grip on its loyal dealers is not dissipated or weakened by the decree.

As noted earlier, the Government also contended that key factors in maintaining Everest & Jennings' market strength are its grip on loyal medical equipment dealers and its concentrated marketing effort to indoctrinate dealers, doctors, and therapists who advise consumers on wheelchair purchases. The proposed decree, however, includes little relief in these areas. Furthermore, the relief proposed is wholly ineffective.

Under section XII of the decree defendants must send a copy of the judgment to its dealers, its subsidiaries, and to V.A. hospitals. Defendants must also provide for a period of 1 year a dealer list to any person making such a request under section X. Finally, defendants are prohibited from preventing U.S. dealers from carrying wheelchairs made by any competitor, conduct that is illegal in any event. Together with the unenforceable obligation to "actively seek" export opportunities, this is the sum of the relief granted to break down the core of defendants' dominant U.S. market position.

The proposed relief marginally, if at all, affects defendant's relationship with its dealers. Sending dealers a document which briefly describes in legal terminology défendants' obligations under the consent decree, in the face of 20 years or more of marketing indoctrination, does not make it reasonably likely that entrenched patterns will be abandoned and new avenues of wheelchair supply will be explored. The decree fails to give dealers any incentive to modify their sales patterns, such as providing them access to information about foreign manufacturers' prices, designs (including technical advancements), availability of wheelchairs and parts, and repair service.

The CIS assumes apparently that *possession* of a copy of the decree by dealers and V.A. hospitals alone will work to create new wheelchair supply possibilities. It states that such possession "ensures that the Final Judgment's provisions will be known to the trade, to doctors and therapists, and to volume purchasers and that those most likely to be interested in exploring purchases of wheelchairs from Everest & Jennings' foreign subsidiaries will be alerted to the possibility." [41]

In fact, it is hard to see how any such procompetitive result is "ensured." The only doctors, therapists, and mass purchasers who would receive the decree are those at V.A. hospitals. Doctors, therapists, and mass purchasers in the private sector, and those associated with State or local government entities, would not receive it. Nor would individual wheelchair purchasers receive the decree. The principal recipients of a copy of the decree are, instead, the loyal dealers upon whom defendants' market strength has depended. Thus, it is not reasonable to assume that so little relief will offset effectively the entrenched position of defendants in U.S. wheelchair markets and submarkets.

C. Unless the proposed decree is modified, the monopoly and its effect will continue.

As demonstrated above, the proposed decree does not contain adequate relief to end the monopoly and its effects. The decree appears to contemplate an enforcement mechanism initiated by annual Justice Department monitoring of sales or lack of sales in the U.S. market by the foreign subsidiaries. It is unclear, however, what purpose the annual reports will serve because there is no affirmative standard of U.S.

[34] It appears, however, that visitation rights regarding defendants' foreign subsidiaries are not provided in section XIV.
[36] Decree at 9, 43 FR at 21742.
[36] CIS at 6, 43 FR at 21744.
[37] The Department states that: "[t]his is an innovative form of relief which should serve as a precedent in future cases where dominant U.S. firms have ownership interests in potential competitors abroad." Id. Notwithstanding the possible merits of such relief under different factual conditions, the misapplication of this relief to the eggregious anticompetitive violations of this case would create a disastrous precedent.
[38] Section VII of the decree states in part that:
3. Opportunities to export wheelchairs manufactured by each [foreign subsidiary] to the United States shall actively be sought by the management of each [foreign subsidiary] * * *.
[39] CIS at 6, 43 FR at 21744.
[40] Id.
[41] CIS at 9, 43 Fed. Reg. at 21744.

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market entry to be met. Even if the Department attempts to apply the concept of "actively seeking export opportunities," the main thrust of the decree—to bring about U.S. market competition by the foreign subsidiaries—is unlikely to be accomplished for the reasons described in section V. A. above. The decree also will have little or no effect on defendants' grip on its loyal dealers. In these circumstances, the proposed decree provides no assurances that the monopoly, the related exclusionary practices, or their harmful effects will end.

VI. The modifications proposed by PVA and CAPH are essential to attainment of the decree's objectives because divestiture is the only form of relief that guarantees an independent opportunity for defendant's foreign subsidiaries to enter and compete in the U.S. wheelchair market.

The basic objectives of the proposed decree are to put an end to the defendants' monopoly position in the U.S. wheelchair market and to dissipate the effects of the monopoly, most importantly, lack of price competition and the stiffling of wheelchair innovation and improvement. As discussed above, the proposed decree fails to accomplish these objectives. Only prompt and effective divestiture will satisfy the public interest.

Few circumstances more strongly warrant divestiture, described as the "most drastic, but the most effective" of the antitrust remedies.[42] Everest & Jennings' intentional monopolization of the U.S. wheelchair industry over several decades, and the entrenched monopoly position it has obtained, as outlined in the Government's pre-trial papers, are the kind of extreme anticompetitive activities which justify the most serious remedy. Compounding defendants' violations is the unique nature of the products monopolized and the actual injury caused to thousands of wheelchair users. Plainly, these circumstances demand nothing less than the "most effective" relief—divestiture.

Only divestiture will create a realistic possibility that defendants' monopoly will end. To achieve that goal in the context of a litigated decree or a consent decree that satisfies the public interest, "the objects of the decree * * *[that is,] to extirpate practices that have caused or may hereafter cause monopolization, and to restore workable competition in the market",[43] must be carried out in a reasonable manner. In failing to provide divestiture, the proposed decree does not meet that test.

The Government's rationale for entering into a consent decree that does not include divestiture depends primarily on the assumption that the decree will result in wheelchair sales in the United States by defendants' foreign subsidiaries.[44] Arguing from that assumption with reference to possible divestiture of the Canadian subsidiary, the CIS states that the proposed decree comes "much closer to assuring new competition from abroad" because "divestiture would not have carried any guarantee that the divested company would enter the American market."[45]

[42] *United States* v. *E. I. duPont de Nemours & Co.*, 366 U.S. 316, 326 (1961).

[43] *United States* v. *United Shoe Machinery Corp.*, 110 F. Supp. 295, 346-47 (D. Mass. 1953), *aff'd per curiam*, 347 U.S. 521 (1954).

[44] CIS at 11, 14-15, 43 Fed. Reg. at 21744-745.

[45] CIS at 15, 43 Fed. Reg. at 21745.

We have demonstrated above, however, that, because of reinforcing disincentives, it is unreasonable to believe that defendants' foreign subsidiaries will sell wheelchairs in the United States as long as they remain tied to defendants. Lack of concrete obligations to do so in the proposed decree, the long-standing, well-known desire of the parent corporations that the foreign subsidiaries refrain from U.S. exports, and the probability that effective entry by the subsidiaries would come only at the expense of their parents' profits are compelling reasons for the foreign subsidiaries to delay entry into the U.S. market by every available means.

Nonetheless, the sole reason given by the CIS for the supposed superiority of the proposed decree over divestiture is that the divested companies could choose not to enter the U.S. market.[46] Even if that speculation is correct, it does not support superiority of the approach adopted by the consent decree because, for the reasons stated, it is unreasonable to assume that defendants' foreign subsidiaries will enter the U.S. market in any event as long as they are tied to defendants.

On the contrary, there are strong reasons suggesting that the major foreign subsidiaries, if divested, would hasten to enter the U.S. wheelchair market, the world's largest. The Canadian subsidiary which, according to the CIS, produces wheelchairs equal in quality to defendants' and is located much closer to most major U.S. population centers than defendants' U.S. manufacturing facility,[47] would, if divested, have every conceivable incentive to make U.S. wheelchair sales. And the Canadian subsidiary, if divested, would be capable of producing wheelchairs that are price competitive in the United States with defendants' wheelchairs.[48] In addition, as the Government has suggested,[49] wheelchairs made by defendants' West German subsidiary may be technically superior to defendants' wheelchairs and thus have a competitive advantage that would make U.S. sales attractive to a divested, independent German company.

Hence, it is clear that divested subsidiaries would most likely enter the U.S. market. The Canadian subsidiary is suitable for divestiture because it has a large manufacturing capacity and would be able to make an immediate, effective U.S. market entry. The West German company is also suitable because of its large export capacity and superior product. Although that company may face currency and transportation barriers, it should be able, once independent, to overcome them by marketing an extremely high quality wheelchair. Because defendants have stifled the supply of innovative and high quality wheelchair products, it is most fitting that the West German subsidiary also be divested.

Divestiture of these subsidiaries, and divestiture alone, will foster actual competition in the U.S. wheelchair market, the only result which satisfies the public interest.[50]

[46] Id.

[47] CIS at 14, 43 Fed. Reg. at 21745.

[48] *Id.*

[49] Plaintiff's Memorandum at 21.

[50] Moreover, it is vital theat the Government pursue divestiture since it appears that private parties may not be entitled to seek such relief in this Circuit. *Bosse* v. *Crowell Collier and MacMillan*, 565 F. 2d 602, 607 (9th Cir. 1977); *Calnetics Corp.* v. *Volkswagen of America, Inc.*, 532 F. 2d 674, 692 (9th Cir.), *cert. denied*, 429 U.S. 940 (1976); *International Telephone and Telegraph Corp.* v. *General Telephone & Electronic Corp.*, 518 F. 2d 913, 920 (9th Cir. 1975).

CONCLUSION

In sum, because defendants' foreign subsidiaries will not realistically enter the U.S. market under the proposed decree, the only adequate relief is divestiture. Accodingly, the Government cannot uphold the public interest in ending the monopoly it has alleged and its injurious effects, unless it obtains divestiture of the defendants' major foreign subsidiaries—most appropriately, the Canadian and the West German companies, PVA and CAPH contend that this conclusion follows inevitable from an analysis of the terms of the Government's proposed decree and CIS.

Because entry of the proposed decree will effectively bar the possibility of divestiture and handicapped users of wheelchairs face continued injury from the effects of monopolization, the closest reexamination of the proposed decree is warranted. We strongly urge the Department to reconsider its acceptance of the decree and to withdraw consent to any decree which does not include the divestitures outlined here.

Respectfully submitted,

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U.S. DEPARTMENT OF JUSTICE,
ANTI-TRUST DIVISION,
Washington, D.C. 20530.

SEPTEMBER 18, 1978.

Attention: Douglas E. Rosenthal, Esquire, Chief, Foreign Commerce Section.

Re: *United States* v. *Everest & Jennings International, et. al.* Civ. No. 77-1648-R (C.D.Cal).

These comments are submitted pursuant to section 5 of the Clayton Act, as amended by the Anti-Trust Procedures and Penalties Act (15 U.S.C. § 16 (b)-(h)), concerning the proposed consent judgment in the above-titled action.

The Disability Rights Center (D.R.C.) was founded to conduct reearch, disseminate information, and represent the views of disabled persons with respect to the implementation of Federal and State legislation intended to protect the employment rights of disabled persons, to promote accessible mass transportation for the disabled and elderly and to protect consumers of medical devices and equipment. D.R.C.'s activities in these areas include conducting research on the implementation of legislation by Federal departments and agencies; providing general advice to disabled persons in the United States concerning their substantive and procedural rights; publishing reports; summarizing research and making recommendations for reform; testifying before Congressional Committees and Federal agencies; and providing backup services to attorneys engaged in litigation involving D.R.C.'s areas of expertise.

When D.R.C. was founded in 1976, the Center began extensive research in the area of consumer protection for users of medical devices, including wheelchairs, and medical equipment. In December 1976, D.R.C. published a report entitled "Medical Devices and Equipment for the Disabled: An Examination," which included a survey of wheelchair consumers. Responses to the survey focused upon criticisms of the high cost and low quality of wheelchairs available on the market, as well as complaints concerning inadequate servicing and repair work by manufacturers and distributors. Many of the critical comments identified Everest & Jennings as the chief offender in the marketing of high-priced, yet low-quality wheelchairs. The Center's chief concern in commenting on the proposed consent decree is the effect that it will have on the lives of wheelchair consumers, and whether it will lessen their forced dependence on a company that has time and again shown a callous disregard for their needs and complaints.

The Disability Rights Center has been interested in the proposed consent judgment since it was published in the FEDERAL REGISTER on May 19, 1978. After reviewing it and the included Competitive Impact Statement, the Center decided that more information would be necessary regarding how the proposed consent judgment was developed and how the case had progressed in general before the Center could prepare meaningful and informed comments.

The Competitive Impact Statement does not provide sufficient information upon which to properly assess and evaluate the proposed consent judgment. It fails to reveal information about market shares, market and submarket structure, patents that are held, or knowledge that could be made available to other manufacturers. Therefore, we filed a request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552(a)(b)(A)(i), the Department of Justice informed us that it would not process our request for an unspecified period of time. Because the comment period on this proposed consent judgment was initially scheduled to expire on July 18, 1978, we determined that an extension of the comment period would be desirable, in order to have sufficient time to receive and review the requested documents and then to write informed comments. After requesting such an extension from the Department of Justice, which was denied, we filed suit against the Department on June 28, 1978, in the United States District Court for the District of Columbia, *Disability Rights Center* v. *Department of Justice, et al.*, Civil Action No. 78-1194 (D.D.C.) seeking: (1) to enjoin the wrongful withholding of the background documents sought under the FOIA; (2) to enjoin the Department of Justice from continuing to violate the Anti-Trust Procedures and Penalties Act (APPA), (5 U.S.C. § 16(b)), by failing to make public any of the documents which were determinative in formulating the proposed decree, and (3) to enjoin the close of the comment period pending the resolution of D.R.C.'s claims that it is entitled to access to background records under the FOIA and the APPA. The District Court by oral order of July 13, 1978, denied D.R.C.'s motion, finding that the Federal District Court in the Central District of California, where the Department of Justice's case is now pending, was a more appropriate forum to consider whether an extension of the comment period is warranted. We have filed the appropriate papers with that Court and are awaiting its decision.

However, the litigation over DRC's entitlement to the background documents is proceeding in the District Court in the District of Columbia. Rather than allowing the merits of D.R.C.'s claims to be promptly adjudicated, the Department of Justice has devised and implemented a strategy designed to forestall resolution of those claims by refusing to even process D.R.C.'s FOIA request, resisting the most routine discovery, and repeatedly asking for stays of the proceeding. It is not difficult to see that the Department intends to stall resolution of this case until the consent judgement is final, thereby cutting off any chance the D.R.C. and other groups representing wheelchair consumers may have had to review crucial documents before filing comments in this action which has the potential of bringing about much needed reform.

In responding to the request for documents made by the Center, and in legal briefs responding to our legal action, the Department of Justice has displayed an alarmingly cynical and arrogant attitude. The Department has reacted as though the Disability Rights Center were a large anti-trust law firm attempting to capitalize on the action against Everest and Jennings, refusing to recognize our long standing interest in protecting the rights of disabled persons. The Department has responded that it knows best what is in the public interest; this stance is the height of arrogance. The Department has refused to consider the views of organizations with long standing and legitimate ties to the disabled community, who have asserted that this proposed judgement is certainly not in *their* interest.

It is distressingly clear that the Department of Justice never intended to take this case to trial. It is clear that the Department of Justice intends to settle this case regardless of what the disabled community and its anti-trust analysts say in their comments.

Unfortunately, this is not a unique isolated instance, but is part of a pattern of false promises made to disabled citizens by an Administration that has shown an overall lack of true concern. The hopes of disabled people were raised when the Department of Justice filed its complaint in this case against Everest & Jennings. The need for reform and relief against this monopolist had long been established in their minds. Now they have discovered that they have been made the butt of a cruel joke, and that they will have to look else where for a champion.

Another alarming aspect of the Department of Justice's conduct in this matter is that the Department had made representations in a previous lawsuit that it would seek to extend the comment period in cases where the entitlement to documents is in dispute. In *Kramer* v. *Antitrust Division*, No. 75-2095 (D.D.C.) *aff'd* No. 76-1895 (D.C. Cir. June 7, 1977) the Department of Justice was involved in a dispute for documents relating to another proposed consent decree. The case was dismissed as moot because the Department eventually released the requested documents to the plaintiff one day after the comment period had elapsed and the decree had been entered. The Department's position in its briefs, arguing that the case was moot, was that in future cases revolving around similar issues the Department would seek for an extension of the comment period if it were requested. Perhaps the Department would be wise to release the documents that the D.R.C. is seeking *two* days after entry of the judgment in this case, lest their actions in evading legitimate requests for documents relating to consent decrees suggest a pattern.

D.R.C.'s substantive comments on the merits of the proposed consent judgment will unfortunately be brief, since we had not had access to documents that would provide us with background information that would be helpful to assess the proposed terms or suggest others in any detail. Basically we believe that the proposed consent judgement amounts to little more than a slap on the wrist, a prohibition against breaking the law again, and a mandate for action that is vague and unenforceable.

We have considerable doubts that the Department of Justice will actually commit the necessary staff time to monitor and oversee the terms of this proposed judgment, even if its terms were measurable or enforceable. A naive reader might get the impression that Department of Justice investigators will be constantly vigilant in searching for infractions; however, judging by the amount of effort the Department has put into ensuring that his case will be settled and thereby disposed of, we are not so impressed.

We have compared the terms of the proposed decree with the five effects that were listed as resulting from the defendants' alleged violations of the Sherman Act in the complaint that the Department of Justice filed against Everest & Jennings.

The first effect was that competition in the sale of wheelchairs between Everest & Jennings and Zimmer Orthopedic Ltd., Orthopedia GmbH, and Saemann had been restrained. Section V and VI of the proposed consent judgment address this concern by prohibiting the making of agreements to restrict competition and prohibiting Everest & Jennings' from preventing or inhibiting its foreign subsidiaries from exporting wheelchairs to the United States or selling wheelchairs to any person for shipment to the United States. Of course, the Sherman Act already prohibits such activities, which were engaged in nonetheless.

The second effect was that wheelchair imports into the United States had been restricted. Again, section V and VI address this concern. Section VII addresses it by requiring Everest & Jennings to communicate several policies to its foriegn subsidiaries in a letter set forth as an attachment to the decree, the main thrust of which is that subsidiaries are to actively seek opportunities to export wheelchairs to the United States. Section VIII requires Everest & Jennings to submit a yearly report to the Department of Justice on the progress of implementation of section VII and other information.

Unfortunately the major requirement of the proposed consent judgment depends on the phrase, "actively seek opportunities to export wheelchairs to the United States", which is too vague to measure or enforce. The foreign subsidiaries are given no definite instructions as to their export obligations. The degree of effort of expense required to comply with this mandate can be extremely negligible. Far less can be done that will fit into that requirement than anything that comes close to actually competing, in the sense of meeting competitors' pricing, marketing, distribution and service

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practices in order to attract the United States market. There is also, apparently, some question regarding the legal authority of Everest & Jennings to direct such action from their foreign subsidiaries. See Pre-trial Conference Order, filed February 13, 1978, at 119-20. Defendants listed among the issues of law to the litigated, "whether a parent that has effective control of a subsidiary can direct the subsidiary where to sell its products."

The third effect of the alleged anti-trust violations listed in the complaint was the achievement and maintenance of a monopoly of wheelchair and wheelchair submarket sales in the United States. Amazingly the proposed consent decree may have no impact on this concern. Any inroads on Everest & Jennings' monopoly would have to come by way of a vague obligation on foreign subsidiaries, discussed above, or on a prohibition against Everest & Jennings' discouraging United States Wheelchair dealers from carrying its competitors' wheelchairs (Section IX), or on requiring Everest & Jennings to send a copy of the decree to dealers, its subsidiaries, and all Veterans' Administration (V.A.) hospitals. This, we feel, is not enough.

We favor the remedy of divestiture to break-up the Everest & Jennings monopoly, and also to remedy the fourth effect listed in the complaint, that wheelchair purchasers have been denied the benefits of a free and competitive market. Because it is unreasonable to expect that defendants' foreign subsidiaries will sell wheelchairs in the United States, it is much more probable that divestiture will achieve that goal. If all ties with Everest & Jennings are severed, it is very likely that the present foreign subsidiaries, especially those close to the United States, would have a very strong incentive to enter into what is a lucrative market.

The fifth effect listed in the complaint was the restraint and suppression of innovation and improvement in the manufacture and sale of wheelchairs. To remedy this problem, which the proposed consent judgment only peripherally addresses if at all, we recommend two requirements of Everest & Jennings.

The first is that Everest & Jennings be required to expend a certain fixed percent of its profits on research and development. While we cannot recommend a specific percentage due to lack of information about current practices and expenditures, we believe it should reflect a substantial investment into research and development and should be comparable to a large research and development budget in comparable industries.

The second is that Everest & Jennings pay a court appointed master, who will arrange for an expert consultant from outside of the industry to prepare and distribute a useable descriptive survey of foreign-made wheelchairs so that wheelchair consumers, medical personnel, and dealers are informed of actual alternatives. This will broaden the choices available to consumers, and should eventually serve to stimulate competition and innovation.

For the above-stated reasons, the Disability Rights Center is opposed to the proposed consent judgment unless substantial modifications, as discussed, are adopted.

Sincerely,

DEBORAH KAPLAN,
Director.

To: Douglas E. Rosenthal, Chief, Foreign Commerce Section, Antitrust Division, U.S. Department of Justice, Washington, D.C. 20530.

From: Marilyn Holle, Legal Director, Western Law Center for the Handicapped, Eastern Columbia Building, 849 South Broadway, Suite 1201, Los Angeles, Calif. 90014.

Re: *United States* v. *Everest & Jennings International, et al.*, Civ. No. 77-1648—$ (C.D. Cal.). Comments on proposed consent judgment pursuant to section 5 of the Clayton Act, as amended by the Antitrust Procedure and Penalties Act, 15 U.S.C. section 16 (b)-(h).

The Western Law Center for the Handicapped opposes the proposed consent judgment in the above-captioned case because the Center believes it is not in the public interest in that the remedies therein will not expeditiously dissipate the effect of Everest & Jennings' monopolization on disabled wheelchair users.

The Western Law Center is a non-profit public interest law firm representing persons with disabilities with respect to legal problems related to those disabilities. The Center is also one of the counsel representing purchasers of Everest & Jennings wheelchairs and wheelchair parts who are seeking to recover for themselves and for others similarly situated the differential between the inflated monopoly price they paid and the price they would have paid in a free and competitive market. For instance, while the 1976 price in England of a Zimmer Premier adult model chair was U.S. $161, the price in the United States for a comparable Everest & Jennings chair was $496.

In the Federal court case—*Good et al.*, v. *Everest & Jennings International, et al.*, Civ. No. 77-3890-$ (C.D. Cal.)—the Center sought to have certified a Rule 23(b)(2), F. R. Civ. P., class of Everest & Jennings wheelchair users, a class distinct from wheelchair and wheelchair parts purchasers. We argued that people who used wheelchairs, regardless of who purchased them, were directly and proximately injured and subject to threat of continuing and recurring monopoly injury and therefore such persons were entitled to injunctive relief under section 16 of the Clayton Act, 15 U.S.C. section 26. The injuries complained of resulted from the lack of a free and competitive wheelchair market: Disabled wheelchair users have not choice—9 out of 10 wheelchairs used by disabled persons are Everest & Jennings; there has been no incentive to design and manufacture wheelchairs which will not break down with regularity; there has been no incentive to manufacture a chair needing minimum maintenance; there has been no incentive to develop a repair and parts delivery system responsive to the needfs of disabled persons who live in their chairs; there has been no incentive for innovation in wheelchair design. See attached Exhibit "A".

The Honorable Manuel L. Real, in denying certification of a (b)(2) class, indicated that the forum for securing appropriate relief for disabled wheelchair users was via the proposed consent judgment. (page 3, line 14, through page 4, line 17, transcript of March 20, 1978, hearing on class certification). However, the consent judgment, as proposed, does not address the continuing effects of the monopoly on disabled wheelchair users, nor—by its rejection of divestiture—does it effectively foster a free and competitive market so that in the future the disabled will not have to pay a monopoly premium for wheelchairs and wheelchair parts, and so that in the future there will be an incentive for the marketplace to address the disabled wheelchair user and purchaser's need for a wheelchair that will hold up under normal usage with a minimum of maintenance and repair, and with a repair delivery system responsive to the needs of the nonhousebound disabled wheelchair user.

A. *The nature of the monopolized product and the need it serves magnify the consumer injury resulting from Everest & Jennings' anticompetitive conduct.*

For the disabled person there is no mobility alternative to the wheelchair. For the mobility impaired disabled, the wheelchair is a necessity. The alternative to the wheelchair is simply not being able to get around, being held a prisoner by one's physical limitations, being denied access to work, being stuck in bed, stuck in one's house.

Because there is no real competition in the market of wheelchairs for permanently disabled persons, disabled wheelchair users are literally and figuratively a captive of Everest & Jennings. The lack of competition for wheelchair customers has meant that the disabled cannot buy a chair that holds up under normal use by a disabled person who takes himself and his chair out of the house. One San Francisco user had his Premier Everest & Jennings chair break apart four times in the 18 months following purchase, with one break pitching him out onto the street. Users uniformly report that the back, arm rests and seat have to be replaced after less than a year's use. Another user reports that the balance on her chair was so poor that it would tip over going over sidewalk cracks.

Wheelchair users consistently complain of the long delays in securing wheelchair parts and the unreasonably high price of the parts. For instance, the retail price of a Cinch-Jones connector sold by Everest & Jennings is $16.25; that same item can be secured at an electronics retail outlet for under $2. Everest & Jennings' retail price for one motor plug is $6; that same item can be purchased at an electronic retail outlet for about a dollar. A pair of Everest & Jennings power transistors retail for $103.50; comparable power transistors are available at about $20 a pair retail. Power transistor failure is probably one of the most common types of electronic failure in powered wheelchairs. Only a tiny minority of wheelchair users have the technical expertise to search out substitute parts. On the problems of delay in securing parts, one San Joaquin Valley user reports she lost 2 weeks of work and was trapped in her house for that same period because it took 2 weeks for the needed part to come the 500 miles from Los Angeles despite repeated phone calls to Everest & Jennings.

B. *An evidentiary hearing, or perhaps further discovery, is required because the parties do not know enough about the monopoly injuries to be able to fashion a remedy to dissipate the effects of Everest & Jennings' anticompetitive conduct on the market and on wheelchair users and purchasers.*

The pretrial papers make apparent that liability issues were the focus of discovery and would have been the focus of any litigation. Pretrial papers virtually ignore the impact of the monopoly on the consumer. Indeed, looking at the papers, it would appear that the parties had contemplated a bifurcation of the litigation between the liability and remedy phase, with further discovery needed before embarking on the remedy portion once liability was established.

The Competitive Impact Statement (CIS) focuses on dissipating "the effect of Everest & Jennings' anticompetitive conduct to ensure that Everest & Jennings' [foreign] subsidiaries, as well as other domestic and foreign wheelchair manufacturers, can compete freely in the United States." (CIS, page 6) That objective is belied by the CIS rejection, after a cursory treatment of the remedy with the best potential for expeditiously opening up the market: divestiture. (CIS, pages 13-14) Indeed, the CIS considers only divestiture of the Canadian company; the Center believes that divestiture of *both* the Canadian and the West German companies is required if the present generation of disabled wheelchair users and purchasers is to have the benefit of a free and competitive market. Under the consent judgment as proposed, the next generation of disabled wheelchair users perhaps may have access to a free and competitive market.

In addition, until the parties understand the impact of the monopoly on wheelchair purchasers and users, they will be unable to set out criteria to measure whether or not the effect of Everest & Jennings' anticompetitive conduct is in fact being dissipated. Unless such criteria are set out in the proposed settlement judgment itself, the reports requested and access to records provided become meaningless.

Further, wheelchair users continue to suffer substantial injury from the effects of Everest & Jennings' monopolization. The parties should explore whether and what relief might be fashioned to expedite the dissipation of the monopoly injury presently being borne by wheelchair users. This is not a monopoly like most monopolies. The target of the monopoly, wheelchair users and purchasers, need relief that will come to them within the foreseeable future.

There are a number of remedy possibilities that should be considered in addition to those incorporated in the proposed consent settlement and in addition to divestiture of the West German and Canadian subsidiaries, which latter remedy the Center believes essential to any consent judgment in this case:

(a) Requiring Everest & Jennings to undertake informational advertising about all the wheelchairs available to consumers on a scope comparable to Everest & Jennings; advertising of its own wheelchairs;

(b) Requiring independent preparation of comparative specifications on all American and foreign-made wheelchairs and distribution of such information to professionals;

(c) Requiring Everest & Jennings to act as the distributor in the United States for previously excluded chairs and parts;

(d) Requiring Everest & Jennings sales and field personnel to distribute information about competitive chairs wherever they distribute information about their own chairs.

In addition, there are remedy possibilities that would assist the dissipation of the monopoly effects on wheelchair users:

(a) Requiring independent preparation of and distribution to Everest & Jennings' wheelchair users and purchasers detailed specifications on their chair and information about alternate sources of parts;

(b) Imposing repair and part replacement warrantees on Everest & Jennings' wheelchairs used by disabled persons to the extent necessary to enable the Everest & Jennings wheelchair user to have, in effect, the benefit of a wheelchair as durable as those produced by Orthopedia GmbH;

(c) Requiring the introduction of maintenance reducing features, as lifetime ball bearings.

C. *Conclusion.*

The Western Law Center for the Handicapped urges the United States to withdraw its consent to the proposed final judgment on the ground that its entry is not in the public interest particularly in that the judgment as proposed does not provide for divestiture of the West German and Canadian companies.

EXHIBIT "A"

Excerpt from the deposition of Eunice Fiorito for the American Coalition of Citizens with Disabilities, Inc., one of the plaintiffs in *Good et al.*, v. *Everest & Jennings, et al.*, Civ. No. 77-3890 (Central District of California), in which Eunice Fiorito explains why the ACCD became involved in the Everest & Jennings wheelchair litigation:

"[T]he reasons [for becoming involved] were that disabled people felt and feel that they have no option. They have no choice. That there is but one concern that sells, manufactures and sells, repairs wheelchairs, and you know, it's not like going to the supermarket and being able to select from ten different cans of soup. And secondly, the service is abominable with people having to wait months with no guarantees, and thirdly, that when the wheelchairs were "repaired" and returned, they were often not done so correctly or not functional, and they had to send the chairs back. The long wait for repair. The long wait for ordering. The high cost, and the perils that people were put through in not being able to get a chair reasonably repaired in any reasonable length of time, and being deprived and often in situations of being unable to go to work, or having to buy a second chair so that you can go to work, or that you can go to school, or you can just not have to lay in bed, and in some situations even of not having to go into hospitals.

"*Question.* Were each of these complaints that you have just mentioned all connected to and directed toward Everest & Jennings?

"Answer. Yes, sir.

"*Question.* You have mentioned that one of them was that there was no choice or basically one concern. To your knowledge, are there members of the American Coalition or individuals who are members of organizations that are members of the American Coalition that are in wheelchairs that are not manufactured by Everest & Jennings?

"Answer. Sir, I have been in this business for almost eight years, and consider myself to be one of the most knowledgeable people about the different disabilities and their needs, physical, social, and to some degree medical, and very openly and veryu honestly, and I worked in a hospital for eight years before that, and up until yesterday was the first time that I knew there were other wheelchair manufacturers" (pp. 53 and 54).

Excerpt from the deposition of plaintiff Margaret Caufield in *Good et al.* v. *Everest & Jennings, et al., supra:*

"This [chair I am sitting in] is a custom-made chair, and that each time I have ordered brake assemblies, and the experience with the axle, they just didn't seem to have • • • a correct diagram or schematic of this chair to refer to, because each time that I have ordered brake assemblies, one little piece has been wrong, so that they are not usable. They have to be returned.

"Last May Pledge Medical took a photograph of my brake assembly as it is on the chair in order to assure that I got the correctly constructed piece • • •" (pp. 39-40).

Excerpt from the deposition of plaintiff Louis Rigdon II in the same case:

"I felt • • • that wheelchairs usually are made for [and] the concept of wheelchairs is oriented toward people who are attached to an institution, like a hospital or something, rather than for people who are not attached to an institution but use them to get around like cars are used to get around, like shoes are used to get around. And consequently they have to be built of a better quality, more durable quality and a cheaper price made available to more people who wanted to live independently" (p. 70).

PENN ACRES SOUTH,
New Castle, Del.,
August 3, 1978.

JUSTICE DEPARTMENT,
ANTI-TRUST DIVISION,
Todd Building, Washington, D.C.

GENTLEMEN: I am a quadriplegic dependent upon an electric wheelchair for maneuverability and independence. Being familiar with the wheelchair market, I am quite dismayed at the recent settlement of an anti-trust suit against Everest & Jennings with just apparently just a slap on the wrist.

Everest & Jennings monopolizes the wheelchair market, especially the electric wheelchair sector. This monopoly has resulted in unjustifiable high prices that have cost the public millions of dollars. The burden of these high prices has placed financial strains on many handicapped individuals and their families. Often, individuals who have no maneuverability without an electric wheelchair, cannot afford to purchase one.

This monopoly also effects the taxpaying public, which purchases electric wheelchairs through various governmental agencies for individuals. These purchases of an overpriced product places an additional burden on a public already fed-up with high taxes.

An example of these rip-off prices is the Power Drive 3P Electric Wheelchair put out by Everest & Jennings. This chair costs just over $2,000, batteries included. The batteries in this new chair are made only by Everest & Jennings, which increases your dependence upon them. Previously, in other electric wheelchairs manufactured by Everest & Jennings, automobile batteries could be used, which enabled the consumer to shop around when a new battery is needed and possibly, buy one on sale. Now, when you need a battery for this 3P Electric Wheelchair, you have to buy one from an Everest & Jennings dealer, who have only one price, "High".

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Besides batteries, you also have to buy your tires from Everest & Jennings when you need a replacement. The tires for this chair (picture enclosed)[1] are $100 per tire for the rear and $20 per tire for the front. Tires for this wheelchair are available only from Everest & Jennings. Older model chairs manufactured by Everest & Jennings could use a bicycle tire on the rear at a cost of only $5.00. Therefore, Everest & Jennings is increasing its monopoly at the expense of the handicapped public. Tires for a wheelchair should not cost more than a steel belted radial tire for an automobile and electric wheelchairs should not cost more than most used cars.

I sincerely hope you will do something to correct this situation, a situation which the hancicapped individual finds himself again "Trapped".

Sincerely,

ED BAKER.

DEPARTMENT OF MICROBIOLOGY,
THE MOUNT SINAI HOSPITAL,
New York, N.Y., June 8, 1978.

DOUGLAS E. ROSENTHAL,
Chief, Foreign Commerce Section, Antitrust Division, U.S. Department of Justice, Washington, D.C. 20530

Re: Civil No. 77-1648-R, *United States v. Everest & Jennings International, et al.*

DEAR MR. ROSENTHAL: I have thoroughly studied the proposed final Judgment and Competitive Impact Statement involving the defendants Everest & Jennings International, *et al.* As a handicapped (paraplegic) consumer and citizen, I would like to comment on this consent agreement, particularly since I have and continue to be a victim of past and present violations of the Sherman Antitrust Act by the defendants.

I am totally opposed to the proposed consent agreement for the following reasons:

(1) Sections V through XIV of the proposed Final Judgment purport to foster competition and pricing in the manufacture and sale of wheelchairs. In fact, the effect will be directly the opposite because the agreement does not require the divestiture of any of the divisions or subdivisions of Everest & Jennings International. Instead, the Department of Justice requires that Everest & Jennings International and its wholly-owned corporations, Everest & Jennings, Inc. and the Jennings Investment Corporation, including any of their foreign subsidiaries, act independently in the sale, manufacture, pricing, distribution, and export of wheelchairs to the U.S. Will this foster true competition in the wheelchair industry? The obvious answer is "No!" For it matters not that the defendants are required to act independently. The fact is that they are, and will continue to be, part of one corporation, Everest & Jennings International. Thus, even if some subsidiaries prosper and grow while other subsidiaries suffer and lose a share of their markets, the wheelchair monopoly will still remain in the hands of Everest & Jennings International by virtue of the fact that it already owns all the corporations that will be involved in the manufacture and sale of wheelchairs. It will still be impossible for independent corporations to enter the wheelchair market or to compete with the various E&J interests. Eventually, at the end of 10 years when Section VII of the proposed Final Judgment expires, the defendants will still be part of E&J International and the exclusive monopoly this corporation now holds on the wheelchair industry will revert back to it and will, in all probability, have grown rather than diminished.

(2) Only Section XI of the proposed Final Judgment, which enjoins the defendants and their subsidiaries "• • • from the acquisition of any financial, equity or management interest in any other person manufacturing or selling wheelchairs in the United States, Canada, Western Europe or the British Isles without the prior approval of the plaintiff" has any merit as bonafide antitrust legislation.

(3) As it stands, the proposed settlement is an obvious soft-handed, "slap-on-the-hand" approach toward criminal acts and will only serve to erode and undermine public confidence in the law. It is time to put an end to corporate crimes against the consumer. The public no longer accepts the argument that a corporation, unlike an individual, is a nonentity and is, alas, out of the reach of the law. If the courts continue to encourage corporations to hide behind this smoke screen, they the public's faith and trust in equal justice, already sorely tried during the past decade or so, may be irrevocably destroyed. Legislation must be enacted to hold corporate executives (the "decision makers") accountable for a corporation's crimes against the consumer but, in the interim, existing laws designed to protect the public must be enforced.

(4) No more plea-bargaining with criminals, be they individuals or corporations! The proposed Final Judgment is tantamount to a plea-bargaining arrangement in which the defendants, Everest & Jennings International, *et al.*, have, in effect, been allowed to plead "nolo contendere." In return, the U.S. Dept. of Justice agrees not to take the defendants to trial. By so doing, the Dept. of Justice denies its mandate to protect the public and to sue for damages on behalf of the consumer where evidence warrants it.

(5) No monetary damages have been assessed on the corporate offenders involved in this case, despite clear and documented evidence of the defendants' illegal activities against the American consumer. I, and countless others have been bilked millions of dollars since 1955. We demand that Everest & Jennings pay back what they stole and pay treble damages to boot as a deterrent to future crimes against the consumer.

In sumary, the proposed Final Judgement is a mockery of justice and an example of the public-bedamned attitude. It is based on the principle, now pervasive among government and business, that corporations must be punished lightly, if at all, because corporations produce our nation's wealth and employ our nation's laborers. We are afraid to punish corporations severely because we are afraid that this will have a deleterious effect on our economy. But can our society survive at all as a democratic entity if a double standard is allowed to permeate our thinking and our concept of what we know to be right and wrong? Can we let corporations get away with fixing prices, giving (or taking) bribes to foreign and domestic agents, creating and using illegal slush funds, making illegal political payments, resorting to corporate spying, etc., and at the same time expect our citizens to obey the laws? It seems to me that when we tamper with justice and show partiality or favoritism in our laws, i.e., when we create unequal justice, then we are destroying the very basis of a true democracy. In the final analysis then, the case involving Everest & Jennings International does not merely concern wheelchairs and monopolistic enterprise—the ramifications and significance of this case concern our very existence as a democratic nation and so merits careful and serious attention.

Sincerely yours,

NICHOLAS MIHALAKIS, Ph. D.

Encl.

P.S. I would like to request to have the enclosed letter be made part of the record and that it be published in the FEDERAL REGISTER as being pertinent to the above case.

CROMWELL, CONN.
May 22, 1978.

Attorney General GRIFFIN BELL,
Washington, D.C.

DEAR MR. BELL: I have recently read that you are considering settling the case against Everest & Jennings out of court. I would like to urge you to continue a solid case against the E&J Company. In my work as a Physical Therapist I am well aware of the monopoly that the E&J Company has had on handicapped products. Their wheelchair costs have almost doubled in the past few years—however quality and responsibility on their part has not. The handicapped of the U.S. deserve better quality and care. Thank you.

Sincerely yours,

MRS. JEAN ZIMMERMAN, RPT.

ASSOCIATION FOR THE SUPPORT OF HUMAN SERVICES, INC.
Westfield, Mass., June 6, 1978.

Mr. DOUGLAS E. ROSENTHAL,
Chief, Foreign Commerce Section, Antitrust Division, Department of Justice, Washington, D.C. 20530

DEAR MR. ROSENTHAL: In reference to notification on page 21740 of the Friday, May 19, 1978, FEDERAL REGISTER entitled "United States v. Everest & Jennings International, Everest & Jennings, Inc., and the Jennings Investment Co.", the Association endorses such judicial decisions.

It has been our observation that no major innovations have been made in either wheelchair design or adaption. Perhaps this ruling by the United States District Court, Central District of California will encourage individual design initiative which will eventually benefit those citizens bound to wheelchairs, temporarily or otherwise.

Sincerely yours,

RICHARD W. ELLIOTT,
Executive Director.

CARL A. CIRA, JR.,
RICHARD E. GRIMM,
O. RUSSEL MURRAY,
Antitrust Division, U.S. Department of Justice, Washington, D.C. 20530, telephone 202-633-4712.

CAROLYN D. WULFSBERG,
Antitrust Division, U.S. Department of Justice, 3101 Federal Building, 300 North Los Angeles Street, Los Angeles, Calif. 90012, telephone 213-798-1449.

Attorneys for Plaintiff.

U.S. DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

United States of America, *Plaintiff*, v. Everest & Jennings International; Everest & Jennings, Inc.; and The Jennings Investment Co., *Defendants:* Civil No. 77-1648-R.

PLAINTIFF'S RESPONSE TO COMMENTS ON PROPOSED FINAL JUDGMENT RECEIVED PURSUANT TO THE ANTITRUST PROCEDURES AND PENALTIES ACT, 15 U.S.C. 16 (b)-(h)

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V. Comments Suggesting Additional Forms of Relief.
VI. Conclusion.

I. INTRODUCTION

This responds to all of the comments received on the proposed Final Judgment in *United States* v. *Everest & Jennings International, et al.*, as required by the Antitrust Procedures and Penalties Act (APPA), 15 U.S.C. 16(b)-(h).

The complaint in this action was filed on May 6, 1977, charging the Everest & Jennings group of companies with monopolization and attempted monopolization, under Section 2 of the Sherman Act, 15 U.S.C. 2, of the manufacture and sale of wheelchairs in the United States. The principal restraint of trade alleged was that Everest & Jennings, from 1955 to 1975, had understandings with its half-owned European joint venture affiliates, Zimmer Orthopedic Ltd. of Britain (Zimmer) and Ortopedia GmbH of West Germany (Ortopedia), and with its joint venture partner, Franklin I. Saemann, barring the joint ventures from selling wheelchairs in the United States. Secondly, we alleged that defendants secured Saemann's agreement not to manufacture or sell wheelchairs in the United States. In 1975 in an agreed settlement of differences between Everest & Jennings and Saemann, full control of Zimmer was given to Saemann and full control of Ortopedia was given to Everest & Jennings. Everest & Jennings also has smaller subsidiaries manufacturing wheelchairs in Canada and Mexico. Recently it formed a new company in England to produce wheelchairs in competition with Zimmer.

Intensive investigation, discovery under the Federal Rules of Civil Procedure, and preparation for trial were undertaken by the Justice Department. Shortly before the scheduled trial date, a proposed Final Judgment (or decree) was agreed upon by the parties. On May 10, 1978, the decree and the Department's Competitive Impact Statement were filed with the Court as required by the APPA. The decree forbids every kind of anticompetitive activity alleged in the complaint and also provides for affirmative relief.

The public comment period mandated by the APPA originally was to expire in July. However, due to the failure of the Los Angeles Herald Examiner to print a legal notice about the decree, the period ran an additional sixty days, until September 24. Comments on the proposed decree were received from the Western Law Center for the Handicapped (WLCH), the Disability Rights Center, Inc. (DRC), the Association for the Support of Human Services, Inc., Dr. Nicholas Mihalakis, Edward J. Baker, Jr., Mrs. Jean Zimmerman, and, in a joint submission, Paralyzed Veterans of America, Inc. and the California Association of the Physically Handicapped (PVA/CAPH). The Department of Justice has given these comments careful attention. We have concluded that prompt entry of the decree would be in the public interest.

The common thread in most of the comments that are critical of the decree is the suggestion that it should have provided that Everest & Jennings divest one or more of its remaining foreign subsidiaries. We address this suggestion and others in detail after briefly discussing certain procedural questions that have been raised under the APPA.

II. COMMENTS RELATING TO PROCEDURES UNDER THE ANTITRUST PROCEDURES AND PENALTIES ACT

Disability Rights Center, Inc., suggests in its comments that the public comment period be re-opened. Recently DRC petitioned the Court to extend the comment period and to intervene in the suit in order to oppose entry of the decree. Hon. Manuel L. Real, United States District Judge, denied this request in his order of October 16, 1978. The public comment period in effect ran for more than double the sixty days required by the APPA. Every person wishing to comment on the decree has had an adequate opportunity to do so.

PVA/CAPH and DRC criticize the Justice Department for not filing, as provided by the APPA, any document the Department considers was determinative in reaching its agreement with defendants on the proposed decree. PVA/CAPH maintains that our decision that there was no such document was "conclusory." Any such determination is necessarily conclusory since the statute asks the Justice Department to make a subjective assessment of the impact, if any, of particular documents on its own thinking about whether to settle a lawsuit. In this instance, our decision was not difficult. No particular document or documents convinced us to settle the case rather than proceed to trial.

DRC and PVA/CAPH also assert that background information pertaining to the lawsuit is unavailable to the public. DRC has filed a request with the Justice Department under the Freedom of Information Act (FOIA), 5 U.S.C. 552b, for documents pertaining to the case. The request is being processed at DRC already has reviewed about fifteen thousand pages of documents, nearly all the documents to which it may be given access under the FOIA and without violating the Protective Order entered by the Court. DRC's Director, Deborah Kaplan, also has had access to discovery and investigation material in two private class action antitrust lawsuits against Everest & Jennings in which she has been counsel of record. The Justice Department has also made the more than forty depositions taken in the case available for inspection by any person. As required by the APPA, we have publicly published and distributed a Competitive Impact Statement explaining the proposed decree. We have also expressed our willingness to meet with any person wishing to discuss the decree and we have met with representatives of PVA/CAPH.

III. COMMENTS RELATING TO EVEREST & JENNINGS' FOREIGN SUBSIDIARIES

Substantive criticism of the proposed decree by several commentators focuses on Section VII, which requires Everest & Jennings to direct its foreign subsidiaries to seek export opportunities into the United States. Section VII, it should be noted, is only one among a number of provisions in the decree providing affirmative and injunctive relief. It supplements the prohibition of Section VI of the decree that enjoins Everest & Jennings from preventing its subsidiaries from exporting to the United States. Most commentators, including DRC, WLCH, and PVA/CAPH, claim that divestiture of the foreign subsidiaries would be preferable to the agreed upon relief. We dispute this assertion, but, even if it were so, we believe for the reasons stated below and in the Competitive Impact Statement that the agreed formula is a reasonable compromise.

Although Everest & Jennings is the dominant firm in the wheelchair industry, it presently has only about a 60 percent dollar share of the overall U.S. wheelchair market as defined by the Justice Department. While there is no precise legal formulation of what minimum market share percentage in necessary to sustain a charge of monopolization under Section 2 of the Sherman Act, 60 percent is on the low side, particularly where there has been a decline from former levels. For example, in *United States* v. *Aluminum Co. of America*, 148 F. 2d 416, 424 (2d Cir. 1945), Judge Learned Hand expressed the view that 60 percent of a market was a "doubtful" indication of monopoly power. Defendants contend that their share is substantially less, about 49 percent. Only one commentator has offered an independent estimate. WLCH asserts that "9 out of 10 wheelchairs used by disabled persons" are made by defendants. This figure is unsubstantiated.

Defendants' overall market share has declined since the 1950's and 1960's, the period in which most acts evidencing the alleged restraints occurred. We could not be certain, given the decline to the present 60 percent market share, that the Court either would sustain a finding of monopolization under the Sherman Act or would grant divestiture. See *United States* v. *International Harvester Company*, 274 U.S. 693, 709 (1927).

Although we have also contended that Everest & Jennings has a 90 percent share of the high-price premium, custom, and prescription wheelchair submarkets, discovery and investigation have convinced us that there are definitional and other problems that would make it difficult to prove that these submarkets are sufficiently distinct as a matter of law to sustain a finding of monopolization or attempted monopolization under the antitrust laws. For example, many of the features that used to be available only on high-priced wheelchairs are now available in various manufacturers' lower-priced lines. Furthermore, it is no longer true, as asserted by PVA/CAPH, that Everest & Jennings is the only domestic company making custom wheelchairs.

The proposed decree's treatment of the foreign subsidiaries is preferable to divestiture in the factual situation presented in this case. The foreign subsidiaries are not directly before the Court in this litigation except insofar as they are subject to direction by Everest & Jennings. Thus, were the subsidiaries to be divested they would be

[1] Picture filed as part of the original document.

under no obligation to sell into the United States, nor would the Justice Department be able to ascertain under the decree to what extent they did so. This is to be contrasted with divestiture of a firm's American subsidiary. In such an event there is no question that a new competitor in the domestic market would be created.*

This case also differs from divestiture of a foreign subsidiary that already exports to the United States. In the *Alcoa* litigation divestiture of Alcoa's Canadian subsidiary was premised on the company's having become "an important factor in the [United States] domestic economy." *United States* v. *Aluminum Co. of America*, 91 F. Supp. 333, 392 (S.D.N.Y. 1960). Everest & Jennings' foreign subsidiaries might presently be disinclined to seek export opportunities were they not directed to do so by their parent and were their efforts not to be monitored by the Department of Justice and the Court.

It is believed that Everest & Jennings Canadian Ltd. and Ortopedia can find commercially feasible sales opportunities in this country. However, prevailing United States tariffs and international currency exchange rates would have some effect on whether they presently would initiate the process on their own were they to be divested.

Under Section VII of the decree all of Everest & Jennings' subsidiaries would have an affirmative obligation to seek opportunities to export into the United States. Certain commentators criticize this obligation as too vague. More precise requirements, however, such as imposing specific export quotas or requiring Everest & Jennings to act as distributor for the subsidiaries, would be undesirable, because they would interfere unduly with free market forces. The seriousness of the subsidiaries' obligation is underscored by supplemental provisions in Section VII, including those forbidding exclusive dealing arrangements with the parent company, giving the subsidiaries full discretion over prices and terms of export sales, and giving them full discretion to select and employ trademarks different from Everest & Jennings trademarks. The proposed Final Judgment goes further than merely enjoining Everest & Jennings from preventing its subsidiaries' exporting to the United States In circumstances similar to those in this case, relief has been limited after trial to an injunction against an American parent company preventing its foreign subsidiaries from entering into competition in the United States. *United States* v. *General Electric Co.*, 115 F. Supp. 835 (D. N.J. 1953). The affirmative action required by the decree is subject to reporting and policing provisions specified in Sections VII and XIV.

A significant factor ignored by commentators advocating divestiture is that Everest & Jennings already has divested its interest in Zimmer of Britain. We are convinced from our investigation that Franklin I. Saemann, owner of Zimmer since 1975, is not bound by any residual restraint in competing with Everest & Jennings. Zimmer has taken initial steps to market its wheelchairs in competition with Everest & Jennings in the United States.

Finally, a common theme in the arguments of those commentators calling for divestiture is that Everest & Jennings must be "punished." This lawsuit did not charge criminal violations of the antitrust laws. Restoration and encouragement of competition rather than punishment, therefore, is the relevant consideration. In *United States* v. *Timken Roller Bearing Co.*, 341 U.S. 593 (1951), the Supreme Court stated, in overturning a trial court's order divesting Timken's interests in two foreign firms:

> [D]ivestiture is a remedy to restore competition and not to punish those who restrain trade, it is not to be used indiscriminately, without regard to the type of violation or whether other effective methods, less harsh, are available. [341 U.S. at 603]

IV. COMMENTS RELATING TO ALLEGED INDICATIONS OF EVEREST & JENNINGS' MONOPOLY POWER AND OTHER ALLEGED ABUSES BY DEFENDANTS

The WLCH submission and others emphasize alleged design, construction, and repair defects in wheelchairs manufactured by Everest & Jennings. Several commentators, including Mr. Baker, Mrs. Zimmerman and WLCH are critical of the high cost of Everest & Jennings wheelchairs and wheelchair parts and of the allegedly high profits made by defendants. WLCH, Mr. Edward J. Baker, Jr., and other commentators also point out that many wheelchair users complain about inconvenience and high costs in getting their Everest & Jennings wheelchairs repaired. However, none of these allegations are related to issues that would have been presented at trial.

V. COMMENTS SUGGESTING ADDITIONAL FORMS OF RELIEF

DRC suggests that the decree should make defendants reveal their "knowledge that could be made available to other manufacturers." Discovery does not support the contention that Everest & Jennings' market position is protected by its patents. Nor would competiton be promoted by Everest & Jennings sharing technology with other manufacturers. However, Section X of the proposed decree does require defendants to share their list of independent dealers with any person requests it. This provision already had generated a number of inquiries. In addition, Section IX of the decree provides that Everest & Jennings shall not agree with any dealer that it carry Everest & Jennings products exclusively.

WLCH suggests that Everest & Jennings be required to distribute wheelchairs produced by its foreign subsidiaries and be required to advertise and disseminate literature on all competing manufacturers' wheelchairs. To give Everest & Jennings this task would not be consistent with maintenance and development of competition; nor would Everest & Jennings' competitors likely wish to entrust promotion of their products to their major competitor.

WLCH recommends that the Final Judgment require defendants to give customers stronger warranties and to incorporate improved design features such as lifetime ball bearings in their wheelchairs. Such matters are better left to the market place and, in any event, do not reflect issues that would have been raised at a trial of this case.

DRC recommends that Everest & Jennings be required to expend a fixed percentage of its profits on research and development. This suggestion is outside the scope of the issues in this lawsuit. WLCH and DRC suggest independent preparation and dissemination of specifications describing foreign and domestic wheelchairs so that those buying and using wheelchairs may be better informed. An antitrust consent decree is not the appropriate vehicle for such an initiative. Specifications for wheelchair brands now sold in the United States are currently available in catalogs and other literature, including test reports published by the Veterans Administration.

VI. CONCLUSION

In sum, the suggested revisions to the decree either are ill-advised from the standpoint of encouraging competition, are unrelated to the issues of this lawsuit, or reflect drastic solutions that may not be attainable if this case were tried. It has been suggested to us by attorneys for PVA/CAPH that the Department of Justice should not support this settlement with Everest & Jennings unless we are convinced that our case would be dismissed at trial. This unrealistic position must be rejected. The public interest here is best served by the two basic objectives of the decree. First, it enjoins every kind of anticompetitive understanding alleged in the complaint. Second, it provides Court-supervised affirmative relief reasonably likely to promote competition.

In light of the charges of the complaint, the state of the evidence and the condition of the relevant market, entry of the proposed Final Judgment is in the public interest.

Dated: November 3, 1978

Respectfully submitted,
CARL A. CIRA, JR.,
RICHARD E. GRIMM,
O. RUSSEL MURRAY,
CAROLYN D. WULFSBERG,
Attorneys, Antitrust Divison, Department of Justice, Washington, D.C. 20530.

[FR Doc 78-31896 Filed 11-13-78; 8:45 am]

[4410-18-M]

Law Enforcement Assistance Administration

NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE

Solicitation

The National Institute of Law Enforcement and Criminal Justice announces a competitive research grant program aimed at producing new knowledge about the comparative processing of the adult female offender through the criminal justice system. Specifically, the goal of the program is to determine whether the administration of criminal justice discriminates against women.

The solicitation asks for the submission of concept papers rather than full proposals. Full proposals will be requested following reviews of concept papers. In order to be considered, a concept paper must be received by the National Institute no later than February 1, 1979. One grant will be awarded under this announcement. A maximum of $165,000 will be awarded for a project to run for 15 to 18 months. Because this is a research grant program,

profitmaking organizations are prohibited by LEAA policy from receiving funding support.

Additional information and copies of the solicitation can be obtained by contacting Dr. Patrick A. Langan, Center for the Study of Crime Correlates and Determinants of Criminal Behavior, NILECJ, 633 Indiana Avenue NW., Washington, D.C., 20531, 301-492-9126.

BLAIR G. EWING,
Acting Director, NILECJ.

[FR Doc. 78-31947 Filed 11-13-78; 8:45 am]

[4510-30-M]

DEPARTMENT OF LABOR

Employment and Training Administration

STATE FUNDING ALLOCATIONS FOR MIGRANT AND SEASONALLY EMPLOYED FARMWORKERS PROGRAMS

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: Pursuant to 29 CFR 97.204 and 97.211 the Employment and Training Administration must announce State funding allocations for programs sponsored under Title III, Section 303 of the Comprehensive Employment and Training Act (CETA) of 1973, as amended.

FOR FURTHER INFORMATION CONTACT:

Harry Kranz, Acting Director, Office of Farmworker Programs, 601 D Street, NW., Room 6308, Washington, D.C. 20213, Telephone: 202-376-6128.

SUPPLEMENTARY INFORMATION: State planning estimates for Program Year 1978-79 were published in the August 8, 1978, FEDERAL REGISTER (43 FR 35124). The total amount available to fund section 303 programs has since been increased to $48,809,400 by action of Congress. Certain State allocations are changed due to this increase and as a result of the use of social security records for 1975, the most current year for which records are available. The data base remains social security records of employees of agricultural establishments who earned less than $3,000 while employed in agriculture. Grantees affected by the changes in allocations should prepare proposals based on the allocations published herein. Where this is not practical, changes in the proposals will be negotiated to comply with the new allocations. The allocations of the States affected are as follows: Alaska, $2,200; Arizona, $682,000; Arkansas, $844,900; California, $8,931,500; Colorado, $549,600; Connecticut, $322,400; Florida, $3,011,000; Idaho, $789,400; Illinois, $1,407,200; Kansas, $848,000; Louisiana, $771,100; Maine, $414,600; Massachusetts, $266,900; Michigan, $893,900; Mississippi, $813,900; Montana, $494,500; Nebraska, $752,700; Nevada, $79,500; New Hampshire, $61,200; New Jersey, $525,100; North Dakota, $377,900; Ohio, $881,600; Oklahoma, $500,700; Oregon, $810,800; Pennsylvania, $1,225,900; Utah, $248,600; Washington, $1,738,800; Wyoming, $205,800.

The planning estimates published on August 8 for all other States remain unchanged.

Signed at Washington, D.C., this 1st day of November, 1978.

LAMOND GODWIN,
Administrator, Office of National Programs.

[FR Doc. 78-32003 Filed 11-13-78; 8:45 am]

[4510-29-M]

Pension and Welfare Benefit Programs

PROPOSED REVISION OF SCHEDULE B (ACTUARIAL INFORMATION) AND PROPOSED PERMANENT WAIVER OF CERTAIN ACTUARIAL INFORMATION

Hearing

By notice published in the FEDERAL REGISTER (43 FR 43696, Sept. 26, 1978), the Department of Labor announced proposed revisions of schedule B (actuarial information), which must be filed as an attachment to the annual return/report by certain employee benefit pension plans subject to the minimum funding standards of the Employee Retirement Income Security Act of 1974 (ERISA). The Department also announced that if certain proposed changes to the schedule B are adopted, the Department contemplates issuing a permanent waiver from the requirements of section 103(d)(6) of ERISA. That section provides that the actuarial statement required by section 103(d) must include the present value of the plan's liabilities for nonforfeitable pension benefits allocated by the termination priority categories set forth in section 4044 of ERISA.

The Department received a number of comments concerning the proposals.

A hearing will be held on the proposals on Monday, November 20, 1978, beginning at 10 a.m. in the Department of Labor Auditorium, New Department of Labor Building, 200 Constitution Avenue NW., Washington, D.C. Any interested person who desires to present oral comments at the hearing may schedule an oral presentation in advance of the hearing by notifying Mervyn Schwedt, 202-523-8769 (not a toll free number) by telephone no later than 3:30 p.m. e.s.t., Friday, November 17, 1978. In addition, an opportunity to schedule an oral presentation will be provided at the hearing itself. All oral comments will be limited to 10 minutes. Oral comments may be supplemented by written comments submitted at the hearing.

An agenda will be prepared containing the order of presentation of oral comments and the time allotted to each commentator. The public hearing will be transcribed.

Persons making oral comments should be prepared to answer questions relating to the proposals and their comments.

DATE: The hearing will be held on Monday, November 20, 1978, beginning at 10 a.m. e.s.t.

ADDRESSES: The hearing will be held in the Department of Labor Auditorium, New Department of Labor Building, 200 Constitution Avenue NW., Washington, D.C.

All written comments will be available for public inspection at the Public Documents Room, Pension and Welfare Benefit Programs, Department of Labor, Room N-4077, 200 Constitution Avenue NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT:

Mervyn Schwedt, Pension and Welfare Benefit Programs, U.S. Department of Labor, Washington, D.C. 20216, 202-523-8769. This is not a toll free number.

Signed at Washington, D.C., this 13th day of November 1978.

IAN D. LANOFF,
Administrator of Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 78-32214 Filed 11-13-78; 11:40 am]

[6820-35-M]

LEGAL SERVICES CORPORATION

GRANTS AND CONTRACTS

NOVEMBER 6, 1978.

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996*l*, as amended, Pub. L. 95-222 (December 28, 1977). Section 1007(f) provides: "At least 30 days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly * * * such grant, contract, or project."

The Legal Services Corporation hereby announces publicly that it is

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considering the grant application submitted by:

Petersburg Legal Aid Society in Petersburg, Va., to serve the counties of Charles City and Prince George and cities of Hopewell, Petersburg, and Colonial Heights.

Interested persons are hereby invited to submit written comments or recommendations concerning the above application to the regional office of the Legal Services Corporation at: Legal Services Corporation, Northern Virginia Regional Office, 1730 North Lynn Street, Suite 600, Arlington, Va. 22209.

THOMAS EHRLICH,
President.

[FR Doc. 78-31889 Filed 11-13-78; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-373 and 374]

AVAILABILITY OF THE FINAL ENVIRONMENTAL STATEMENT FOR LASALLE COUNTY NUCLEAR POWER STATION, UNIT NOS. 1 AND 2

Pursuant to the National Environmental Policy Act of 1969 and the U.S. Nuclear Regulatory Commission's regulations in 10 CFR Part 51, notice is hereby given that the Final Environmental Statement (FES) (NUREG-0486) prepared by the Commission's Office of Nuclear Reactor Regulation, related to the operation of LaSalle County Nuclear Power Station, Unit Nos. 1 and 2, in LaSalle County, Ill., is available for inspection by the public in the Commission's Public Document Room at 1717 H Street NW., Washington, D.C., and in the Illinois Valley Community College Library, Rural Route No. 1, Oglesby, Ill. The FES is also being made available at the State Clearinghouse, Bureau of the Budget, 103 State Street, Springfield, Ill. 62706.

The notice of availability of the Draft Environmental Statement (DES) for the LaSalle County Nuclear Power Station, Unit Nos. 1 and 2, and request for comments from interested persons was published in the FEDERAL REGISTER on April 21, 1978 (43 FR 17047). The comments received from Federal, State, and local agencies and interested members of the public have been included as an appendix to the FES.

Copies of the FES (Document No. NUREG-0486) may be purchased, at current rates, from the National Technical Information Service, Springfield, Va. 22161 (printed copy: $9.25; microfiche: $3).

Dated at Bethesda, Md., this 7th day of November 1978.

For the Nuclear Regulatory Commission.

RONALD L. BALLARD,
Chief, Environmental Projects Branch 1, Division of Site Safety and Environmental Analysis, Office of Nuclear Reactor Regulation.

[FR Doc. 78-31902 Filed 11-13-78; 8:45 am]

[7590-01-M]

EXPORTATION OF NUCLEAR FACILITIES OR MATERIALS

Applications for Licenses

Pursuant to 10 CFR 110.70, "Public Notice of Receipt of an Application," please take notice that the Nuclear Regulatory Commission has received the following applications for export licenses. A copy of each application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street NW., Washington, D.C.

Dated this day November 6, 1978, at Bethesda, Md.

For the Nuclear Regulatory Commission.

GERALD G. OPLINGER,
Assistant Director, Export/Import and International Safeguards, Office of International Programs.

Name of applicant, date of application, date received, and application No.	Special Nuclear material in kilograms				Country of ultimate destination
	Material type	Total element	Total isotope	End-use	
Transnuclear October 19, 1978, October 19, 1978, XSNMO1393.	Enriched uranium	37.160	1.007	Reload fuel for Brunsbuttel	West Germany.
Transnuclear, October 19, 1978, October 19, 1978, XSNMO1394.	do	18.961	635.034	Reload fuel for Stade	Do.
Transnuclear, October 13, 1978, October 16, 1978, XSNMO1389.	do	802	484.408	Reload fuel for KNK-II reactor	Do.
Transnuclear, October 13, 1978, October 16, 1978, XSNMO1390.	do	15.038 50.125	13.594 35.288	For safety related irradiation experiments in BR-2, HFR and KNK-II.	Do.
Transnuclear, October 13, 1978, October 16, 1978, XSNMO1391.	do	113.182	105.599	Fuel for BR-2 Reactor	Belgium.

[FR Doc. 78-31906 Filed 11-13-78; 8:45 am]

[7590-01-M]

[Docket Nos. 50-250 and 50-251]

FLORIDA POWER & LIGHT CO.

Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 38 and 31 to Facility Operating Licenses Nos. DPR-31 and DPR-41, respectively, issued to Florida Power and Light Company which revised Technical Specifications for operation of the Turkey Point Nuclear Generating Units Nos. 3 and 4, located in Dade County, Fla. The amendments are effective as of the date of issuance.

The amendments change the Technical Specifications for Turkey Point Unit Nos. 3 and 4 in connection with the refueling of Unit 4 Cycle 5 operation and authorize the operation of Turkey Point Unit Nos. 3 and 4 with up to an average of 25 percent of the tubes in the three steam generators in each unit in a plugged condition. In addition, the steam generators in Turkey Point Unit 4 have been inspected by FPL and reported on September 6, 1978. The steam generators have been found satisfactory by the NRC for an additional 6 equivalent months.

The operating limits regarding the steam generators for Unit 4, which were previously governed by NRC Orders for Modification of License dated August 3 and 11, 1977 and March 3, 1978, are superseded by this amendment.

The requirements of the NRC Order for Modification of Licenses dated June 7, 1978 are satisfied by the licensee's submittal dated August 9, 1978 and supplemented on September 13, 1978. The augmented surveillance procedures in the April 10, 1978 letter from FPL and incorporated in the June 7, 1978 order will no longer be required.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of the steam generator inspection was not required since the amendments do not involve a significant hazards consideration. Notice of Proposed Issuance of Amendments to Facility Operating License in connection with the Unit 4 Cycle 5 reload and the 25 percent steam generator tube plugging was published in the FEDERAL REGISTER on August 9, 1978 (43 FR 35406). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the application for amendments dated June 19, 1978, supplemented on July 10 and 20, August 9 and 16 and September 13, 1978; (2) Amendment Nos. 38 and 31 to Licenses Nos. DPR-31 and DPR-41 and; (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Environmental and Urban Affairs Library, Florida International University, Miami, Fla. 33199. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 22nd day of September, 1978.

For the Nuclear Regulatory Commission.

A. SCHWENCER,
Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.

[FR Doc. 78-31903 Filed 11-13-78; 8:45 am]

[7590-01-M]

[Docket No. 50-263]

NORTHERN STATES POWER CO.

Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 37 to Provisional Operating License No. DPR-22 issued to Northern States Power Co. (NSP) (the licensee) which revised the Technical Specifications for operation of the Monticello Nuclear Generating Plant (the facility) located in Wright County, Minn. The amendment is effective as of its date of issuance.

This amendment: (1) authorizes operation with a fuel type (8x8R) not previously used in the Monticello plant, (2) incorporated revised MCPR limits in response to plant specific analyses of the new (cycle 7) operating cycle, (3) imposes conditions for continued plant operation in the event of misloaded bundle indication, (4) incorporates new MAPLHGR limits in response to plant specific LOCA analyses, and (5) incorporates new limits on safety/relief valve setpoints to improve simmer margin.

The applications for the amendment comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Notice of Proposed Issuance of Amendment to Provisional Operating License in connection with item (1) above was published in the FEDERAL REGISTER on July 10, 1978 (43 FR 29633). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action. Prior public notice of items (2) through (5) above was not required since they do not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the applications for amendments dated March 21, 1978, as supplemented August 10 and September 28, 1978, and applications dated September 30, 1977 and August 16, 1978, (2) Amendment No. 37 to License No. DPR-22, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the Environmentl Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minn. 55401. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md. this 6th day of November 1978.

For the Nuclear Regulatory Commission.

THOMAS A. IPPOLITO,
Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc. 78-31904 Filed 11-13-78; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION ISSUANCES

Availability of Semiannual Hardbound Volume

The Nuclear Regulatory Commission hs issued Volume 6, Pages 1-524, of the Nuclear Regulatory Commission Issuances, covering the period July 1, 1977, to September 30, 1977. This publication is a semiannual compilation of adjudicatory decisions and other issuances of the Commission, the Atomic Safety and Licensing Appeal Boards, and the Atomic Safety and Licensing Boards.

A copy of Volume 6, Pages 1-524, is available for inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. This publication, designated Nuclear Regulatory Commission Issuances, Volume 6, Pages 1-524, Opinions and Decisions, July 1, 1977, to September 30, 1977, may also be purchased at a cost of $9.25 from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The GPO Stock number is 052-010-005006.

Dated at Bethesda, Md. this 6th day of November 1978.

For the Nuclear Regulatory Commission.

JOSEPH M. FELTON,
Director, Division of Rules and Records, Office of Administration.

[FR Doc. 78-31907 Filed 11-13-78; 8:45 am]

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[7590-01-M]

[Docket No. 50-344SP]

PORTLAND GENERAL ELECTRIC CO., ET AL. (TROJAN NUCLEAR PLANT)

Order Regarding Conclusion of Evidentiary Hearing on Interim Operation

NOVEMBER 6, 1978.

Pursuant to notice (43 FR 48090), an evidentiary hearing on the issue of interim operation of the Trojan nuclear facility was held in Salem, Oreg., October 23-25 and October 30-November 3, 1978.[1] All testimony offered by any party to this proceeding was heard by the Licensing Board before the hearing was adjourned, and all exhibits were received and ruled upon.

The Licensee, PGE, presented the testimony of Richard C. Anderson; George Katanics; Theodore E. Johnson; William H. White; Myle J. Holley, Jr.; Boris Bresler; S.R. Christensen; Donald J. Broehle; Bart D. Withers and John Frewing. The State of Oregon offered the testimony of Harold I. Laursen. The Staff presented the testimony of Robert T. Dodds, James E. Knight, Kenneth S. Herring and Charles Trammell, III. All of these witnesses were cross-examined by the other parties, and they were interrogated by the Board. The Intervenors participated in cross-examination by counsel or pro se, although they offered no direct testimony.[2]

Only one issue was excepted from cross-examination at this evidentiary hearing, on the grounds that the analysis had not been completed and all direct testimony filed 15 days in advance of the session of the hearing at which the testimony was to be presented. This issue relates to the analysis and review by the Licensee of all safety-related components, piping, and systems in the Control-Auxiliary-Fuel Building Complex, to confirm that they are qualified to original FSAR criteria under the new STARDYNE floor response spectra. A further response to the NRC Staff technical questions was prepared by the Bechtel Power Corporation and served by hand on all parties by the Licensee on October 27, 1978. The Staff filed additional questions relating to floor response spectra and equipment qualifications on October 31, 1978. On November 2, 1978, the Licensee filed its response to these additional Staff questions.

On the last day of the evidentiary hearing (November 3, 1978), the Licensee presented testimony regarding this new floor response spectra by the witnesses S.R. Christensen and William H. White. The Board questioned these witnesses extensively on their testimony. All of the other parties elected not to cross-examine on this issue or testimony, because they had not had sufficient time to analyze this evidence or prepare cross-examination. Accordingly, such cross-examination or testimony related thereto will be taken at the conclusion of the evidentiary hearing commencing December 11, 1978. All such direct written testimony shall be filed and served upon the Board and parties at least 15 days prior to December 11, 1978 (November 25, 1978).

The Staff is granted leave, as requested, to extend time to respond to interrogatories filed by Intervenor Columbia Environmental Council to and including November 10, 1978.

The parties are requested to file proposed findings of fact and conclusions of law on the evidentiary record to date with the Board by November 20, 1978. If the parties can agree to complete the evidence regarding the excepted matter, the new floor response spectra and equipment qualifications, by means of depositions prior to the December 11, 1978 concluding hearing on interim operation, they are granted leave to do so.

Please take notice that the concluding session of the evidentiary hearing concerning interim operation of the Trojan facility will commence on December 11, 1978 at 9 a.m., local time, at the State Capitol, Hearing Room A, Court Street, Salem, Oreg. 97310.

It is so ordered.

Dated at Bethesda, Md. this 6th day of November 1978.

For the Atomic Safety and Licensing Board.

MARSHALL E. MILLER,
Chairman.

[FR Doc. 78-31905 Filed 11-13-78; 8:45 am]

[1] A hearing to receive limited appearances, oral or written, was also held in Portland, Oreg., on October 26-27, 1978.

[2] Nina Bell on behalf of the Consolidated Individual Intervenors offered a written exhibit (Section 6., "Earthquakes", taken from NUREG CR-0-400), which was admitted into evidence.

[8010-01-M]

SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

FOOD FAIR, INC.

Notice of Suspension of Trading

NOVEMBER 6, 1978.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the securities of Food Fair, Inc., being traded on a national securities exchange or otherwise is required in the public interest and for the protection of investors;

Therefore, pursuant to section 12(k) of the Securities Exchange Act of 1934, trading in such securities on a national securities exchange or otherwise is suspended, for the period from 9:45 a.m., e.s.t., on November 6, 1978, through November 15, 1978.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-31929 Filed 11-13-78; 8:45 am]

[8010-01-M]

[Release No. 34-15297; File No. SR-DTC-78-14]

SELF-REGULATORY ORGANIZATIONS

The Depository Trust Co.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C 78s (b)(1), as amended by Pub. L. No. 94-298, 16 (June 4, 1975), notice is hereby given that on October 27, 1978, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

STATEMENTS OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

The proposed rule change modifies the administration of The Depository Trust Co.'s (DTC) Conditional Deliver Order service by expanding it to enable participants to conditionally borrow securities to cover urgent withdrawals of securities from their DTC accounts (COD's). Participant Operating Procedures are attached as Exhibit 2 to DTC's filing on Form 19b-4A, File No. SR-DTC-78-14.

STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule change are as follows:

The purpose of the proposed rule change is to enable DTC Participants to use the already existing Conditional Deliver Order service to conditionally borrow securities to assure timely completion of their urgent withdrawals of securities (COD's). Conditional Deliver Orders have previously been used by Participants to conditionally borrow securities to assure timely completion of their deliveries in the Institutional Delivery (ID) System. Securities borrowed by Conditional Deliver Order are automatically returned to the lender if they turn out not to be needed.

The proposed rule change would carry out the purposes of Section 17A of the Securities Exchange Act of 1934 (the Act) by increasing the opportunities of using DTC's Conditional Deliver Order Service, which reduces unnecessary costs to persons facilitating

transactions by and acting on behalf of investors and facilitates the prompt and accurate clearance and settlement of transactions in securities by decreasing the number of fails-to-deliver between broker/dealers and their institutional customers.

The proposed modification to expand the Conditional Deliver Order service was publicized in DTC's August 1978 newsletter. No written comments were received from participants. The substance of oral comments was that the expanded service will be useful for expediting physical deliveries versus payment to institutions not participating in depositories.

DTC perceives no burden on competition by reason of the proposed rule change.

The foregoing rule change has become effective, pursuant to section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before December 5, 1978.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

NOVEMBER 3, 1978.

[FR Doc 78-31930 Filed 11-13-78; 8:45 am]

[8010-01-M]

[Release No. 34-15294; File No. SR-PHLX-78-21]

SELF-REGULATORY ORGANIZATIONS

Philadelphia Stock Exchange, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. 94-29, 16 (June 4, 1975), notice is hereby given that on October 23, 1978, the above mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Statement of the terms of substance of the proposed rule change.

The Philadelphia Stock Exchange, Inc., proposes to amend rule 1049 with respect to advertisements, market letters, and sales literature relative to options to provide specific uniform standards, developed by the options exchanges, in approving and commenting upon options related advertisements and sales literature. The proposed rule follows: (Brackets indicate deletions; italics indicate new material.)

SALES COMMUNICATIONS

Rule 1049. *(a) Approval by Registered Options Principal. All advertisements and sales literature issued by a member or member organization pertaining to options shall be approved in advance by a general partner or officer of the member organization who is a Registered Options Principal, and copies thereof, together with the names of the persons who prepared the material and, in the case of sales literature, the source of any recommendations contained therein shall be retained by the member or member organization and be kept readily available for examination by the Exchange for a period of three years.*

(b) Standards of Approval. No advertisement or sales literature shall be approved under paragraph (a) of this Rule which:

(i) contains any untrue statement or omission of a material fact or is otherwise false or misleading;

(ii) contains promises of specific results, exaggerated or unwarranted claims, opinions for which there is no reasonable basis or forecasts of future events which are unwarranted or which are not clearly labeled as forecasts;

(iii) contains hedge clauses or disclaimers which are not easily identifiable, which attempt to disclaim responsibility for the content of such literature or for opinions expressed therein, or which are otherwise inconsistent with such advertisement or sales literature;

(iv) fails to meet general standards of good taste, judgment and truthfulness common to the securities industry;

(v) would constitute a prospectus as that term is defined in the Securities Act of 1933, unless it meets the requirements of Section 10 of said Act.

(c) Exchange Approval Required for Options Advertisements. In addition to the approval by a Registered Options Principal required by paragraph (a) of this Rule, every advertisement of a member or member organization pertaining to options shall be submitted to the Committee on Business Conduct of the Exchange at least ten days prior to use (or such shorter period as the Committee may allow in particular instances) for approval and, if changed or expressly disapproved by the Exchange, shall be withheld from circulation until any changes specified by the Exchange have been made and further, in the event of disapproval, until the advertisement has been resubmitted for, and has received, Exchange approval. The requirements of this paragraph shall not be applicable to:

(i) advertisements submitted to and approved by another self-regulatory organization having identical requirements regarding approval of advertisements pursuant to an arrangement approved by the Exchange;

(ii) advertisements in which the only reference to options is contained in a listing of the services of a member organization; and

(iii) advertisements approved within the last six months.

(d) Except as otherwise provided in the Commentary hereunder, no written materials respecting options may be disseminated to any person without prior or contemporaneous dissemination to such person of a current prospectus of the Options Clearing Corporation.

(e) Definitions. For purposes of this Rule, the following definitions shall apply:

(i) The term "advertisement" shall include any material that reaches a mass audience through public media such as newspapers, periodicals, magazines, radio, television, telephone recording, motion picture, audio or video device, billboards, signs or through letters designed for customer mailing not accompanied or preceded by a current prospectus of The Options Clearing Corporation.

(ii) The term "sales literature" shall include any communication for distribution to customers or the public (or which may be made accessible to customers or the public) which contains any analysis, report, recommendation, opinion, prediction or comment with respect to options, underlying securities or market conditions, or any seminar text which pertains to options and which is communicated to customers or the public at seminars, lectures or similar such events, or any exchange-produced materials pertaining to options.

Commentary

.01 The special risks attendant to options transactions and the complexities of certain options investment strategies shall be reflected in any ad-

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vertisement or sales literature which purports to discuss the uses or advantages of options. In the preparation of communications respecting options, the following guidelines should be observed:

A. Any statement referring to the opportunities or advantages presented by options should be balanced by a statement of the corresponding risks. The risk statement should reflect the same degree of specificity as the statement of opportunities, and broad generalities should be avoided. Thus, a statement such as "with options, an investor has an opportunity to earn profits while limiting his risk of loss", should be balanced by a statement such as "Of course, an options investor may lose the entire amount committed to options in a relatively short period of time".

B. It should not be suggested that options are suitable for most investors or for small investors. Indeed, it is strongly suggested that there be included in all literature discussing the use of options a warning to the effect that options are not for everyone.

C. Statements suggesting the certain availability of a secondary market for options should not be made.

.02 Advertisements pertaining to options shall conform to the following standards:

A. Advertisements may only be used (and copies of the advertisements may be sent to persons who have not received a prospectus of The Options Clearing Corporation) if the material meets the requirements of Rule 134 under the Securities Act of 1933, as that Rule has been interpreted as applying to options. Under Rule 134, advertisements must be limited to general descriptions of the security being offered and of its issuer. Advertisements under this Rule shall state the name and address of the person from whom a current prospectus of The Options Clearing Corporation may be obtained. Such advertisements may have the following characteristics:

(i) The text of the advertisement may contain a brief description of such options, including a statement that the issuer of every such option is The Options Clearing Corporation. The text may also contain a brief description of the general attributes and method of operation of the exchange or exchanges on which such options are traded and of The Options Clearing Corporation, including a discussion of how the price of an option is determined on the trading floor(s) of such exchange(s);

(ii) The advertisement may include any statement required by any State law or administrative authority;

(iii) Advertising designs and devices, including borders, scrolls, arrows, pointers, multiple and combined logos and unusual type spaces and lettering as well as attention-getting headlines and photographs and other graphics may be used, provided such material is not misleading.

B. The use of performance figures, including annualized rates of return, are not permitted in any advertisement pertaining to options.

.03 Sales literature pertaining to options must be preceded or accompanied by a current prospectus of The Options Clearing Corporation and shall conform to the following standards:

A. Such literature may contain projected performance figures (including projected annualized rates of return in connection with covered call option writing programs) provided that:

(i) no suggestion of certainty of future performance is made;

(ii) parameters relating to such performance figures are clearly established (e.g., to indicate exercise price of option, purchase price of the underlying stock and its market price, option premium, anticipated dividends, etc.);

(iii) commissions, transaction costs and interest charges (if applicable with regard to margin transactions) are included in all calculations; and such returns are plausible and are intended as a source of reference or a comparative device to be used in the development of a recommendation;

(iv) any assumptions made in such calculations are clearly identified (e.g., "assume option expires", "assume option unexercised", "assume option exercised", etc.); and

(v) further provided, in the case of literature relating to annualized rates of return, that such returns are not calculated on any more than four (4) consecutive three-month option periods; any formulas used in making calculations are clearly displayed; and a statement is included to the effect that the annualized returns cited might be achieved only if the parameters described can be duplicated.

B. Sales literature featuring records and statistics concerning past recommendations shall include the date of each initial recommendation, the price(s) of such security at that date and at the end of the period when liquidation of the security position(s) was suggested, and the trend of the market during that period. Records and statistics must be confined to a specific "universe"; e.g., (i) the work of one research analyst for a period of at least one year; (ii) the work of an entire firm for a period of at least one year; (iii) the results of all accounts under management for a period of at least one year; or (iv) some other clearly definable area which can be fully isolated and circumscribed. All such sales literature shall state that the results persented should not and cannot be viewed as an indicator of future performance.

C. All sales literature shall state that supporting documentation for any claims, comparisons, recommendations, statistics or other technical data will be supplied upon request.

STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the proposed rule change is to amend PHLX Rule 1049 "Advertisements, Market Letters and Sales Literature Relating to Options", to conform with similar proposals of other options exchanges and to reflect uniform policies and standards applicable to options sales communications directed to public investors by Exchange members and member organizations.

As used herein, communications with the public involving options include, in a broad sense, both advertisements and sales literature (as those terms are defined in paragraph (e) of proposed Rule 1049). Basically, a communication which meets the standards of an advertisement may be disseminated to the public without a prospectus; sales literature, however, must be preceded or accompanied by a prospectus.

The proposed rule sets forth the several procedures and standards which member firms must follow in preparing (and obtaining approval, where required) of options related advertisements and sales literature. In part, the rule incorporates traditional standards of truthfulness and good taste required of non-options marketing material and clarifies certain specific requirements pertaining to exchange-traded options.

While all options exchanges presently have rules similar to PHLX Rule 1049, the exchanges have sought to further refine such rules in light of experiences gained since the establishment of their respective options program. In recognition of the need for uniformity in the area of communications with the public relating to exchange-traded options, representatives of the AMEX, CBOE, MSE, PSE and PHLX have conducted, during the past several months, an in-depth review of present rules. Two of the objectives of the review were: (1) to prepare rule changes which would reflect uniform policies and standards applicable to communications with the public concerning options; and (ii) to prepare an industry-wide publication which would amplify on such rules and assist firms in their preparation of such communications.

In addition to retaining certain specific requirements (such as general standards of truthfulness and good taste discussed above) the proposed rule seeks to: (1) expand the definitions of the terms "advertising" and "sales literature" (see Rule 1049(e); (2) eliminate, in the case of dual members, the need for approval of advertisements by more than one exchange and permit a firm to submit advertisements to any one exchange in which it maintains a membership for necessary pre-publication approval (see Rule 1049(c); and (3) establish uniform standards to be used in discussion of rates of return, annualized returns, recommendations and performance figures (see Rule 1049: Commentary .02 and .03).

Following Commission approval of the proposed rule change, the options exchanges intend to jointly publish a booklet, tentatively entitled "Guidelines for Options Communications" (see draft of booklet attached as Exhibit II) which is designed to assist member firms in maintaining proper standards in their preparation of communications with the public. The booklet will also serve to explain and amplify upon exchange rules relating to option sales communications and ensure a uniform reference source applicable to all firms who communicate with the public respecting options.

The basis for the proposed rule change is found in Section 6(b)(5) of the Securities Exchange Act of 1934, as amended, which provides, in pertinent part, that the rules of the Exchange be designated to prevent fraudulent and manipulative acts and to protect investors and the public interest.

Comments were neither solicited nor received.

The PHLX has determined that the proposed amendment will not impose any burden on competition.

Within 35 days of the November 14, 1978, publication of this notice in the FEDERAL REGISTER (on or before December 19, 1978), or within such longer period (i) as the Commission may designate up to 90 days of such date (by February 12, 1978) if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before January 15, 1978.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

NOVEMBER 3, 1978.

[FR Doc. 78-31931 Filed 11-13-78; 8:45 am]

[8025-01-M]

SMALL BUSINESS ADMINISTRATION

[Proposed License No. 06/06-0206]

CADDO CAPITAL CORPORATION

Notice of Application for a License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1978)), under the name of Caddo Capital Corp., 214 Huntington Office Park, Pines Road and Buncome Road, Shreveport, La. 71109, for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (the Act), and the Rules and Regulations promulgated thereunder.

The proposed officers, directors and shareholders are as follows:

Harvey D. McLean, Jr., President, Director, 100% shareholder, 911 Delaware Street, Shreveport, La. 71106.

Thomas L. Young, Jr., Secretary, General Manager, Director, 4731 Fairfield, Shreveport, La. 71106.

James A. McDaniel, Director, 724 Coachlight Road, Shreveport, La. 71106.

There is to be only one class of stock with 10,000 shares of common stock authorized. Mr. Harvey D. McLean, Jr. will be the sole stockholder.

The Applicant-Licensee proposes to commence operations with private capital of $510,000. Applicant proposes to conduct its operations principally within the State of Louisiana.

Applicant will make loans to, and investments in, qualified small businesses with no concentration in any particular industry.

Matters involved in SBA's consideration of the application include the general business reputation and character of shareholders and management, and the probability of successful operation of the new company in accordance with the Act and Regulations.

Notice is further given that any person may, not later than November 29, 1978, submit to SBA, in writing, comments on the proposed licensing of this company. Any such communications should be addressed to: Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

A copy of this notice shall be published by the Applicant in a newspaper of general circulation in Shreveport, Louisiana.

(Catalog Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: November 6, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-31960 Filed 11-13-78; 8:45 am]

[8025-01-M]

[License No. 04/04-0150]

CORPORATE CAPITAL, INC.

On September 19, 1978, a Notice was published in the FEDERAL REGISTER (43 FR 42053) stating that an application had been filed by Corporate Capital, Inc., 2001 Broadway, Riviera Beach, Fla. 33404, with the Small business Administration, pursuant to § 107.102 of the Regulations governing small business investment companies (SBIC).

Interested parties were given until the close of business October 4, 1978, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, the SBA issued License No. 04/04-0150 to Corporate Capital, Inc., to operate as an SBIC.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.

Dated: November 7, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-31961 Filed 11-13-78; 8:45 am]

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[8025-01-M]

[License No. 09/09-0223]

MONTGOMERY STREET PARTNERS CORPORATION

Notice of Issuance of Small Business Investment Company License

On September 22, 1978, a Notice of application for a license as a small business investment company was published in the FEDERAL REGISTER (Vol. 43, No. 185) stating that an application had been filed with the Small Business Administration pursuant to Section 107.201 of the Regulations governing small business investment companies (13 C.F.R. 107.102 (1978)), for a license to operate as a small business investment company by Montgomery Street Partners Incorporated, 44 Montgomery Street, San Francisco, Calif. 94104.

Interested parties were given until the close of business on October 10, 1978, to submit their comments. No comments were received.

Notice is hereby given that pursuant to section 301(c) of the Small Business Investment Act of 1948, as amended, after having considered the application and all other pertinent information and facts with regard thereto, SBA issued License No. 09/09-0223, to Montgomery Street Partners Incorporated on October 30, 1978.

(Catalog of Federal Assistance Program No. 59011, Small Business Investment Companies.)

Dated: November 7, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-31962 Filed 11-13-78; 8:45 am]

[8025-01-M]

[License No. 04/04-0145]

MOUNTAIN VENTURES, INC.

Application for a License as a Small Business Investment Company (SBIC)

Notice is hereby given of the filing of an application with the Small Business Administration, pursuant to § 107.102 of the Regulations (13 CFR 107.102 (1978)), under the name of Mountain Ventures, Inc., 911 North Main Street, London, Ky. 40741, for a license to operate in the Commonwealth of Kentucky and areas of Tennessee and West Virginia as an SBIC under the provisions of the Small Business Investment Act of 1958 (Act), as amended (15 U.S.C. 661 et seq.)

The proposed officers, directors and stockholders are as follows:

Name, Title, and Percentage

Frederick J. Beste III, Route 5, Box 204, Berea, Ky. 40403, President, none.
David R. Schroder, 147 Lorraine Court, Berea, Ky. 40403, Vice President, none.
Robert H. Nice, Route 1, Berea, Ky. 40403, Treasurer, none.
Iris L. widener, Route 3, Box 515, Corbin, Ky. 40701, Secretary, none.
Thomas F. Miller, Route 5, 220, Berea, Ky. 40403, Director, none.
Joseph M. Frye, Jr., 100 Bridge Avenue, Berea, Ky. 40403, Director, none.
W. Wayne Stewart, Lewis Street, Mount Vernon, Ky. 40456, Director, none.
William Singleton, 223 Wildwood Place, Frankfort, Ky. 40601, Director, none.
Harvey E. Hensley, 123 Town Square, Manchester, Ky. 40962, Director, none.
Robert L. Druin, Route 1, Box 133, Albany, Ky. 42602, Director, none.
John E. Bertam, Route 2, Albany, Ky. 42602, Director, none.
Kentucky Highlands Investment Corp. (KHIC), 90.87 percent.
Cooperative Assistance Funds (CAF), 9.13 percent.

KHIC, a Community Development Corporation funded under Title VII of the Community Services Act of 1974 (CSA), as amended (a Federal agency) has no beneficial stockholders.

CAF is funded from various foundations.

The Applicant will begin operations with a capitalization of $1,300,000. One million dollars of this capitalization will be from a Federal grant received by KHIC from CSA, $195,000 from KHIC of which $45,000 is a grant received by KHIC from the Edna McConnell Clark Foundation and $105,000 from CAF. These funds will be a source of equity-oriented (common stock and long term subordinated indebtedness) for qualified small concerns in a wide range of industries.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, including adequate profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than fifteen (15) days from the date of publication of this Notice, submit written comments on the proposed company to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

A copy of this Notice shall be published in a newspaper of general circulation in London, Ky.

(Catalog of Federal Domestic Assistance Program, No. 59.011, Small Business Investment Companies)

Dated: September 13, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-31963 Filed 11-13-78; 8:45 am]

[8025-01-M]

[License No. 01/02-0218]

NUTMEG CAPITAL CORP.

Notice of Filing of Application for Transfer of Control of Licensed Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to 13 CFR 107.701 (1978) for transfer of control of Nutmeg Capital Corp. (Nutmeg) a Connecticut corporation, and a Federal Licensee under the Small Business Investment Act of 1958, as amended (ACT), with its office presently located at 35 Elm Street, New Haven, Conn. 06510.

Pursuant to an agreement entered into between John R. Gamm and Lawrence M. Liebman as Trustees (Purchaser) and the present holders of Capital Stock of Nutmeg (Shareholders), the Purchaser has agreed to purchase, and the Shareholders have agreed to sell to the Purchaser, all of the issued and outstanding shares of Capital Stock of Nutmeg.

The Purchaser intends to make a private offering of Nutmeg's shares of Capital Stock the proceeds of which, less related expenses, will be utilized for the purpose of paying the entire purchase price of Nutmeg's shares of Capital Stock from the present Shareholders, and increasing Nutmeg's paid-in capital and paid-in surplus from $333,300 to at least $500,000.

Upon completion of the foregoing transactions, it is proposed that the Officers and Directors of Nutmeg will be:

Lawrence M. Liebman, Chairman, 49 Tumblebrook Road, Woodbridge, Conn. 06525.
John R. Gamm, President and Director, 149 Santa Fe Avenue, Hamden, Conn. 06517.
Donald L. Pelroth, Treasurer and Director, 24 Abby Lane, Hamden, Conn. 06514.
Hyman Hyatt, Vice President, Director and General Manager, 11 Tumblebrook Road, Woodbridge, Conn. 06525.

Matters involved in SBA's consideration of the Application include the general business reputation and character of the proposed new Officers and Directors, and the probability of a successful operation of Nutmeg under their control in accordance with the ACT and Regulations promulgated thereunder.

Notice is hereby given that any person may, not later than (15 days after the date of publication of this Notice), submit written comments on this Application to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

A copy of this Notice shall be published by the Purchaser in a newspaper of general circulation in New Haven, Conn.

(Catalog of Federal Domestic Program No. 59.011, Small Business Investment Companies.)

Dated: November 6, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-31964 Filed 11-13-78; 8:45 am]

[8025-01-M]

[License No. 09/14-0085]

OCEANIC CAPITAL CORP.

Notice of Filing of Application for Approval of Conflict of Interest Transaction Between Associates

Notice is hereby given that Oceanic Capital Corp. (Oceanic), 300 Montgomery Street, Suite 908, San Francisco, Calif. 94104, a Federal Licensee under the Small Business Investment Act of 1958, as amended, has filed an application pursuant to § 107.1004 of the regulations governing small business investment companies (13 CFR 107.1004 (1978)), for approval of a conflict of interest transaction.

On June 10, 1977, Oceanic invested $50,000 in Barbara Colvin & Co. (BCC), a limited partnership. The General Partner, Colvin-Hoopes, Inc., is a corporation wholly-owned by Mr. Spencer Hoopes and Mrs. Barbara Colvin Hoopes, his wife. On June 23, 1977, Oceanic loaned $100,000 to BCC, and committed an additional $100,000. On July 1, 1977, Mr. Hoopes became an employee of The Merchants Group Limited, an associate of Oceanic. Therefore, Mr. Hoopes became an Associate of Oceanic, as defined by § 107.3 of the SBA Regulations. As a result, Oceanic's financing of BCC falls within the purview of § 107.1004(b)(1) of the SBA Regulations. Oceanic's investment in BCC requires the written approval of SBA.

Notice is hereby given that any person may not later than (15 days from date of publication of this Notice) submit written comments to SBA on the transaction. Any such comments should be addressed to Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

(Catalog of Federal Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: November 6, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-31965 Filed 11-13-78; 8:45 am]

[8025-01-M]

SAVINGS VENTURE CAPITAL CORP.

[License No. 06/06-0200]

Notice of Issuance of License To Operate as a Small Business Investment Company

On May 23, 1978, a notice was published in FEDERAL REGISTER (43 FR 22121) stating that Savings Venture Capital Corp. 6001 Financial Plaza, Shreveport, La. 71130, had filed an application with the Small Business Administration (SBA), pursuant to § 107.102 of the Rules and Regulations governing small business investment companies (13 C.F.R. 107.102 (1978)) for a license to operate as a small business investment company (SBIC).

The public was given to the close of business June 7, 1978, to submit written comments to SBA. No comments were received.

Notice is hereby given that, having considered the application and all other information, SBA has issued License No. 06/06-0200 to Savings Venture Capital Corp., pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended. The effective date of the license is October 24, 1978.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 7, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-31966 Filed 11-13-78; 8:45 am]

[8025-01-M]

[Declaration of Disaster Loan Area No. 1457; Amendment No. 11]

TEXAS

Declaration of Disaster Loan Area

The above numbered Declaration (See 43 FR 16584), Amendment No. 1 (See 43 FR 20070), Amendment No. 2 (See 43 FR 24641), Amendment No. 3 (See 43 FR 26511), Amendment No. 4 (See 43 FR 29205), Amendment No. 5 (See 43 FR 30634), Amendment No. 6 (See 43 FR 33984), Amendment No. 7 (See 43 FR 35777), Amendment No. 8 (See 43 FR 37294), Amendment No. 9 (See 43 FR 40583) and Amendment No. 10 (See 43 FR 48750) are amended by a change in the incidence period for Bowie County, Tex. from Jan. 11-13, 1977 to Jan. 11-13, 1978 for excessive sleet and ice. All information remains the same, i.e., the termination dates for filing applications for physical damage is close of business on November 13, 1978, and for economic injury until the close of business on January 11, 1979.

Dated: November 3, 1978.

PATRICIA M. CLOHERTY,
Acting Administrator.

[FR Doc. 78-31959 Filed 11-13-78; 8:45 am]

[4810-22-M]

DEPARTMENT OF THE TREASURY

Office of the Commissioner of Customs

[T.D. 425]

REIMBURSABLE SERVICES

Excess Cost of Preclearance Operations

NOVEMBER 6, 1978.

Notice is hereby given that pursuant to § 24.18(d), Customs Regulations (19 CFR 24.18(d)), the biweekly reimbursable excess costs for each preclearance installation are determined to be as set forth below and will be effective with the pay period beginning November 19, 1978.

Installation	Biweekly excess cost
Montreal, Canada	$14,935
Toronto, Canada	29,191
Kindley Field, Bermuda	5,454
Freeport, Bahama Islands	12,563
Nassau, Bahama Islands	17,483
Vancouver, Canada	8,261
Calgary, Canada	5,614
Winnipeg, Canada	1,664

JACK T. LACY,
Assistant Commissioner of Customs (Administration).

[FR Doc. 78-31997 Filed 11-14-78; 8:45 am]

[4910-06-M]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA 511-78-1]

COAL LINE PROJECT

Extension of Comment Period

The Federal Railroad Administration ("FRA"), Department of Transportation, hereby extends for an additional 60 days (from November 13, 1978, to January 12, 1978) the public comment period published in the notice of receipt of the coal line project application, 43 FR 41126 (September 14, 1978), which notice presented a detailed description of the project. The application was filed by the Chicago and North Western Transportation Co. ("C&NW") and its wholly-owned subsidiary, Western Railroad Properties, Inc. ("WRPI") for $532 million in loan guarantees under section 511 of the Railroad Revitalization and Regulatory Reform Act of 1976, 45 U.S.C. 831.

Because large portions of the application have been claimed to be confi-

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dential business information by the C&NW, and public inspection of the application has been delayed by Freedom of Information Act proceedings (5 U.S.C. 552 et seq.), the comment period is hereby extended for 60 days to afford a fair opportunity for comments on the application.

Written comments may be submitted to the Associate Administrator for Federal Assistance, Federal Railroad Administration, 400 Seventh Street SW., Washington, D.C. 20590, not later than the comment closing date of January 12, 1978. Submissions shall indicate the docket number shown on this notice and state whether the commenter supports or opposes the application and the reasons therefor.

To the extent permitted by law, the application will be made available for inspection during normal business hours in room 5415 at the above address of the FRA in accordance with the regulations of the Office of the Secretary of Transportation set forth in Part 7 of Title 49 of the Code of Federal Regulations. The FRA has neither approved nor disapproved this application nor has it passed upon the accuracy or adequacy of the information contained therein.

(Sec. 511 of the Railroad Revitalization and Regulatory Reform Act of 1976 (Pub. L. 94-210), as amended.)

Issued in Washington, D.C., on November 8, 1978.

Comment closing date: January 12, 1978.

CHARLES SWINBURN,
Associate Administrator for Federal Assistance, Federal Railroad Administration.

[FR Doc. 78-31998 Filed 11-13-78; 8:45 am]

[4910-06-M]

[Docket No. FRA 511-78-1]

COAL LINE PROJECT

Intent To Prepare an EIS

The Federal Railroad Administration ("FRA"), Department of Transportation, hereby gives notice of its intent to prepare an environmental impact statement ("EIS") for a proposed project involving 625 miles of rail rehabilitation and construction in Wyoming and Nebraska.

The Chicago and North Western Transportation Co. ("C&NW") and its wholly-owned subsidiary, Western Railroad Properties, Inc. ("WRPI") are seeking approximately $532 million in loan guarantees under section 511 of the Railroad Revitialization and Regulatory Reform Act of 1976, 45 U.S.C. 831, to finance the proposed project. The primary purpose of the project is to provide additional efficient transportation for low-sulfur coal from the Southern Powder River Basin in Converse and Campbell counties in Wyoming to electric generating plants in other areas of the country. The coal is presently moving on the Burlington Northern ("BN") line and the proposed C&NW line will provide additional transportation capacity as well as direct competition to the BN.

The project involves two elements: (1) C&NE's share of the construction of a new 106 mile line, to be shared with the BN, extending southward from Coal Creek Junction (approximately 20 miles southeast of Gillette) to Shawnee, Wyo. (in January, 1976 construction of this line was approved by the Interstate Commerce Commission in Finance Docket No. 27579 (348 I.C.C. 388) and despite ongoing litigation the line has been under construction by the BN since 1976); and (2) rehabilitation of 519 miles of existing trackage owned by C&NW between Shawnee, Wyo., and Fremont, Nebr. From Fremont, the coal would be moved to various points of consumption in the Midwest, Southwest and Southeast via Omaha and Kansas City gateways and proposed rail to water transfer points.

After reviewing the environmental assessments provided by the C&NW, the Office of National Freight Assistance Programs of the FRA has concluded that the proposed project would be a major Federal action significantly affecting the quality of the human environment, and that therefore section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(c), and Department of Transporation Order No. 5610.1B (39 FR 35234 (September 30, 1974)) require the preparation and filing of a detailed EIS.

The FRA invites comments from all interested parties on the environmental impacts of the proposed project, or alternatives thereto, and especially on the scope and depth of analysis desirable for the draft EIS. Commenters will have an additional opportunity to comment on environmental impacts after the draft EIS is prepared.

The project will affect roughly 82,000 people in 50 communities along the right of way, including Fremont, Chadron, and Norfolk. There are 770 highway-rail grade crossings and 436 bridges involved. The present density of 2 trains/day would increase to 33 trains/day by the year 1990. Some potential adverse effects from the project include: noise and vibration impacts, traffic disruption, fire hazards, ecological impacts, and secondary impacts such as the effects of coal distribution beyond the C&NW line. A primary potential benefit is that the project promises to make an important contribution to the national environmental effort of meeting the country's electrical demand through use of a greater proportion of low sulfur, clean burning coal.

Written comments may be submitted to the Associate Administrator for Federal Assistance, Federal Railroad Administration, 400 Seventh Street SW., Washington, D.C. 20590. Such submission should indicate the docket number shown on the notice.

To the extent permitted by law, the C&NW application will be made available for inspection during normal business hours in room 5415 at the above address of the FRA in accordance with the regulations of the Office of the Secretary of Transportation set forth in Part 7 of Title 49 of the Code of Federal Regulations.

Comments received by December 4, 1978 will be taken into consideration by the FRA in preparing the draft EIS. Comments received after December 4, 1978 will be considered to the extent practicable. Formal acknowledgement of the comments will not be provided.

This notice is issued in furtherance of section 102(2)(c) of the National Environmental Quality Act of 1969, 42 U.S.C. 4332(c); the Department of Transportation Order No. 5610.1B (39 FR 35234 (Sept. 30, 1974)); the Council on Environmental Quality proposed guidelines (43 FR 25232 (June 9, 1978)); the FRA proposed Procedures for Considering Environmental Impacts (42 FR 5171 (Jan. 27, 1977)).

Issued in Washington, D.C. on November 1, 1978.

CHARLES SWINBURN,
Associate Administrator for Federal Assistance, Federal Railroad Administration.

[FR Doc. 78-31897 Filed 11-13-78; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

[Decisions Volume No. 44]

DECISION-NOTICE

Decided: October 24, 1978.

The following applications are governed by Special rule 247 of the Commission's rules of practice (49 CFR § 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date notice of the application is published in the FEDERAL REGISTER. Failure to file a protest, on or before December 14, 1978, will be considered as a waiver of opposition to the application. A protest under these rules should comply with Rule 247(e)(3) of the rules of practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding (as specifically noted below), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. A protestant should include a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describe in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named. If the protest includes a request for oral hearing, such request shall meet the requirements of section 247(e)(4) of the special rules and shall include the certification required in that section.

Section 247(f) provides, in part, that an applicant which does not intend timely to prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. Broadening amendments will not be accepted after the date of this publication.

Any authority granted may reflect administratively acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

We find: With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the public convenience and necessity, that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the national transportation policy; and that each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of the Interstate Commerce Act and the Commission's regulations. This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

It is ordered: In the absence of legally sufficient protests, filed on or before December 14, 1978 (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain conditions which may be noted in the publication and certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, such duplication shall not be construed as conferring more than a single operating right.

By the Commission, Review Board Number 2, Members Boyle, Eaton, and Liberman (Review Board Member Boyle not participating).

H. G. HOMME, Jr.,
Acting Secretary.

MC 8535 (Sub-62F), filed September 20, 1978. Applicant: GEORGE TRANSFER & RIGGING CO., INC., P.O. Box 500, Parkton, MD 21120. Representative: John Guandolo, 1000 Sixteenth Street NW., Washington, DC 20036. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from the facilities of Wheeling-Pittsburgh Steel Corp., at (a) Canfield, Mingo Junction, Martins Ferry, Steubenville, and Yorkville, OH, (b) Beechbottom, Benwood, Follansbee, and Wheeling, WV, and (c) Allenport and Monessen, PA, to points in Al, AR, FL, GA, LA, MS, NC, OK, SC, TN, and TX. (Hearing site: Pittsburgh, PA, or Washington, DC.)

MC 11207 (Sub-448F), filed September 8, 1978. Applicant: DEATON, INC., a Delaware Corporation, 317 Avenue W, P.O. Box 938, Birmingham, AL 35201. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Avenue, Washington, DC 20014. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Steel doors, steel door frames, and hardware*, from the facilities of Ceco Corp., at or near Milan, TN, to points in FL, GA, MS, NC, SC, and TN. (Hearing site: Nashville, TN, or Birmingham, AL.)

MC 11207 (Sub-449F), filed September 8, 1978. Applicant: DEATON, INC., a Delaware corporation, 317 Avenue W, P.O. Box 938, Birmingham, AL 35201. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Avenue, Washington, DC 20014. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Building materials*, and (2) *materials* and *supplies* used in the manufacture of building materials, between Meridian, MS, on the one hand, and, on the other, points in AL, AR, FL, GA, KY, LA, MO, NC, OK, SC, TN, TX, VA, and WV. (Hearing site: Meridian, MS, or Birmingham, AL.)

MC 11207 (Sub-450F), filed September 8, 1978. Applicant: DEATON, INC., a Delaware corporation, 317 Avenue W, P.O. 938, Birmingham, AL 35201. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Avenue, Washington, DC 20014. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, (except commodities which because of size or weight require the use of special equipment), from the facilities of Mc-B Steel, Inc., at or near Birmingham, AL, to points in VA, WV, and TX. (Hearing site: Birmingham, AL, or Washington, DC.)

MC 23618 (Sub-37F), filed October 10, 1978. Applicant: McALISTER TRUCKING CO., A corporation, d.b.a. MATCO, P.O. Box 2377, Abilene, TX 79604. Representative: E. Larry Wells, Suite 1125 Exchange Park, P.O. Box 45538, Dallas, TX 75245. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Materials and supplies* used in the manufacture and installation of oil well drilling masts and derricks, between the facilities of Lee C. Moore Corp. at or near Neville Island, PA, and, points in TX, OK, and LA, restricted to the transportation of traffic originating at and destined to the named points. (Hearing site: Pittsburgh, PA or Dallas, TX.)

MC 27817 (Sub-144F), filed September 6, 1978. Applicant: H.C. GABLER, INC., R.D. 3, P.O. Box 220, Chambersburg, PA 17201. Representative: Christian V. Graf, 407 North Front Street, Harrisburg, PA 17101. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned and preserved foodstuffs*, from the facilities of Heinz U.S.A. Division of H.J. Heinz Co., at Pittsburgh, PA, to points in NC and VA, restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations. (Hearing site: Washington, DC, or Harrisburg, PA.)

MC 28088 (Sub-42F), filed October 11, 1978. Applicant: NORTH & SOUTH LINES, INC., 2710 South Main Street, Harrisonburg, VA 22801. Representative: John R. Sims, Jr., 915 Pennsylvania Building, 425 13th Street NW, Washington, DC 20004. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from Harrisonburg, VA, to points in DE, MD, NC, NJ, PA, and DC. (Hearing site: Roanoke, VA, or Washington, DC.)

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NOTE.—Dual operations may be at issue in this proceeding.

MC 32882 (Sub-98F), filed August 8, 1978. Applicant: MITCHELL BROS. TRUCK LINES, P.O. Box 17039, 3841 North Columbia Boulevard, Portland, OR 97217. Representative: Edward G. Rawle, 1229 North Blue Gum Avenue, Anaheim, CA 92806. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Blades, edges*, and *accessories* for blades and edges (except commodities in bulk); and (2) *equipment, materials*, and *supplies* used in the manufacture, distribution, and installation of the commodities in (1) above (except commodities in bulk), between West Jordan, UT, and Bucyrus, OH, on the one hand, and, on the other, points in ND, SD, NE, KS, OH, NM, MI, IN, IL WI, MN, IA, CO, KY, TN, AL, MS, LA, AR, TX, OK, MO, and UT, restricted to the transportation of traffic originating at or destined to the facilities of Chromalloy Farm & Industrial Equipment Co.—Shunk Blade Division, at West Jordan, UT, and Bucyrus, OH. (Hearing site: Salt Lake City, UT, or Denver, CO.)

MC 40971 (Sub-2F), filed August 29, 1978. Applicant: UTAH-WYOMING FREIGHT LINE, INC., 2818 West 2700 South, Salt Lake City, UT 84119. Representative: William S. Richards, P.O. Box 2465, Salt Lake City, UT 84110. To operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Rock Springs, WY, and Rawlins, WY, over Interstate Hwy. 80, serving all intermediate points. (Hearing site: Salt Lake City, UT, or Rawlings, WY.)

MC 42487 (Sub-883F), filed September 5, 1978. Applicant: CONSOLIDATED FREIGHTWAYS CORP. OF DELAWARE, a Delaware corporation, 175 Linfield Drive, Menlo Park, CA 94025. Representative: H. P. Strong, P.O. Box 3062, Portland, OR 97208. To operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving Cynthiana, KY, as an off-route point in connection with applicant's otherwise authorized regular-route operations. (Hearing site: Louisville, KY, or Chicago, IL.)

MC 48948 (Sub-9F), filed October 6, 1978. Applicant: THE HOCKING CARTAGE CO., A corp., R.R. No. 2, P.O. Box 373, Logan, OH 43138. Representative: James M. Burtch, Jr., 100 East Broad Street, Columbus, OH 43215. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *clay sewer pipe, drain tile, flue liners, and wall coping*, from points in Hocking County, OH, to those points in MD west of the Susquehanna, River, those points in NY west of Interstate Hwy 81, and DC. (Hearing site: Columbus, OH, or Washington, DC).

MC 55896 (Sub-89F), filed August 21, 1978. Applicant: R-W SERVICE SYSTEM, INC., 20225 Goddard Road, Taylor, MI 48180. Representative: George E. Batty (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Automobile parts*, between Cadillac, Lyons, Ludington, Grand Rapids, and Spring Lake, MI, on the one hand, and, on the other, St. Louis, MO, and Belvidere, IL. (Hearing site: Lansing or Detroit, MI.)

NOTE.—The person or persons who appear to be engaged in common control between applicant and another regulated carrier must either file an application under section 5(2) of the Interstate Commerce Act, or submit an affidavit indicating why such approval is unnecessary.

MC 58549 (Sub-25F), filed October 10, 1978. Applicant: GENERAL MOTOR LINES, INC., P.O. Box 13727, Roanoke, VA 24034. Representative: Jerry D. Beard (same address as applicant). To operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Ridgeway, VA, and the junction of U.S. Hwy 601 and NC Hwy 268, from Ridgeway over U.S. Hwy 220 to junction NC Hwy 770, then over NC Hwy 770 to junction NC Hwy 704, then over NC Hwy 704 to junction NC Hwy 89, then over NC Hwy 89 to junction U.S. Hwy 601, then over U.S. Hwy 601 to junction NC Hwy 268, and return over the same route, (2) between Stuart, VA, and junction NC Hwys 8 and 704, from Stuart over VA Hwy 8 to the VA-NC State line, then over NC Hwy 8 to junction NC Hwy 704, and return over the same route, (3) between junction of VA Hwys 8 and 103 and the junction of NC Hwy 103 and U.S. Hwy 601, from junction VA Hwy 8 and 103 over VA Hwy 103 to the VA-NC State line, then over NC Hwy 103 to junction U.S. Hwy 601, and return over the same route, (4) between junction VA Hwys 103 and 773, near Claudville, VA, and junction NC Hwy 104 and U.S. Hwy 601, from junction VA Hwys 103 and 773 over VA Hwy 773 to the VA-NC State line, then over NC Hwy 104 to junction U.S. Hwy 601, and return over the same route, (5) between Pulaski, VA, and junction U.S. Hwy 601 and U.S. Hwy 52, from Pulaski over VA Hwy 100 to junction U.S. Hwy 221, then over U.S. Hwy 221 to junction U.S. Hwy 52, then over U.S. Hwy 52 to junction U.S. Hwy 601; and return over the same route, (6) between Galax, VA, and junction U.S. Hwy 601 and NC Hwy 89, from Galax over VA Hwy 89 to the VA-NC State line, then over NC Hwy 89 to junction U.S. Hwy 601, and return over the same route, (7) between junction NC Hwys 89 and 18 and West Jefferson, NC, from junction NC Hwys 89 and 18 over NC Hwy 18 to junction NC Hwy 88, then over NC Hwy 88 to junction NC Hwy 16, then over NC Hwy 16 to junction U.S. Hwy 221, then over U.S. Hwy 221 to West Jefferson, and return over the same route, (8) between Independence, VA, and the junction of NC Hwy 16 and U.S. Hwy 221, (a) over U.S. Hwy 221, and (b) from Independence over U.S. Hwy 58 to junction VA Hwy 16, then over VA Hwy 16 to the VA-NC State line, then over NC Hwy 16 to junction U.S. Hwy 221, and return over the same route, serving all intermediate points on routes (1) through (8) above, and serving points in Ashe, Alleghany, Surry, and Stokes Counties, NC, as off-route points. (Hearing site: Roanoke, VA.)

MC 59135 (Sub-36F), filed September 22, 1978. Applicant: RED STAR EXPRESS LINES OF AUBURN, INC., d.b.a. RED STAR EXPRESS LINES, 24-50 Wright Avenue, Auburn, NY 13021. Representative: Donald G. Hichman (same address as applicant.) To operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Bata Shoe Co., Inc., at Belcamp, MD, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Baltimore, MD, or Syracuse, NY.)

MC 61396 (Sub-356F), filed August 21, 1978. Applicant: HERMAN BROS., INC., 2565 St. Marys Avenue, P.O. Box 189, Omaha, NE 68101. Representative: John E. Smith, II (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cement*, from Clarksville, MO, to points in NE. (Hearing site: Omaha, NE, or St. Louis, MO.)

NOTE.—The person or persons who appear to be engaged in common control of applicant and another regulated carrier must either file an application under section 5(2) of the Interstate Commerce Act, or submit an affidavit indicating why such approval is unnecessary.

MC 63417 (Sub-171F), filed September 6, 1978. Applicant: BLUE RIDGE TRANSFER CO., INC., P.O. Box 13447, Roanoke, VA 24034. Representative: William E. Bain (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Plumbing supplies, vanities, and vanity cabinets*, (except commodities in bulk), from the facilities of Peerless Pottery, Inc., and Peerless Plastics Industries, at Evansville, IN, and the facilities of Rockport Sanitary Pottery, Inc., at Rockport, IN, to points in the United States (except AL, AK, GA, HI, KY, MD, MS, NC, SC, TN, VA, WV, and DC), restricted to the transportation of traffic originating at the named origin facilities; and (2) *materials and supplies* used in the manufacture of the commodities in (1) above, (except commodities in bulk), from points in the United States (except AK and HI), to the facilities of Peerless Pottery, Inc. and Peerless Plastics Industries, at Evansville, IN, and the facilities of Rockport Sanitary Pottery, Inc., at Rockport, IN, restricted to the transportation of traffic destined to the named destination facilities. (Hearing site: Evansville, IN, or Roanoke, VA.)

MC 66886 (Sub-66F), filed July 31, 1978. Applicant: BELGER CARTAGE SERVICE, INC., 2100 Walnut Street, Kansas City, MO 64108. Representative: Frank W. Taylor, Jr., Suite 600, 1221 Baltimore Avenue, Kansas City, MO 64105. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Tanks, bins, conveyors, bag houses, coolers, and mixers*, and (2) *parts, attachments, and accessories for the commodities named in (1) above* between the plantsite of Standard Havens, Inc., at or near Glasgow, MO, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Kansas City, MO.)

MC 69281 (Sub-46F), filed August 28, 1978. Applicant: THE DAVIDSON TRANSFER & STORAGE CO., a Corporation, 698 Fairmount Avenue, Towson Plaza, Baltimore, MD 21204. Representative: Henry J. Bouchat, P.O. Box 58, Baltimore, MD 21203. To operate as a *common carrier*, by motor vehicle over regular routes, transporting: *General commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving Dillsburg, PA, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Washington, DC.)

MC 78228 (Sub-93F), filed October 6, 1978. Applicant: J MILLER EXPRESS, INC., an Ohio corporation, 962 Greentree Road, Pittsburgh, PA 15220. Representative: Henry M. Wick, Jr., 2310 Grant Building, Pittsburgh, PA 15219. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Alloys*, from the facilities of Chemetals Corp., at Kingwood, WV, to points in CT, IL, IN, KY, MD, MI, NJ, NY, and PA. (Hearing site: Washington, DC, or Pittsburgh, PA.)

MC 82079 (Sub-66F), filed October 6, 1978. Applicant: KELLER TRANSFER LINE, INC., 5635 Clay Avenue SW., Grand Rapids, MI 49508. Representative: Edward Malinzak, 900 Old Kent Building, Grand Rapids, MI 49503. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Confectionery*, in vehicles equipped with mechanical refrigeration, from the facilities of M. & M./Mars, Inc., at Chicago, IL, to points in MI, restricted to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. (Hearing site: Lansing or Detroit, MI.)

MC 82841 (Sub-235F), filed August 22, 1978. Applicant: HUNT TRANSPORTATION, INC., 10770 I Street, Omaha, NE 68127. Representative: Donald L. Stern, 610 Xerox Building, 7171 Mercy Road, Omaha, NE 68106. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Materials, equipment, and supplies* used in the manufacture of bulk handling equipment (except commodities in bulk), from points in GA, IA, IL, IN, KS, MO, and OR, to York, NE. (Hearing site: Omaha, NE.)

MC 95084 (Sub-126F), filed August 21, 1978. Applicant: HOVE TRUCK LINE, a corporation, Stanhope, IA, 50246. Representative: Kenneth F. Dudley, 611 Church Street, P.O. Box 279, Ottumwa, IA 52501. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Agricultural and industrial equipment, and agricultural implements*, (2) *parts and accessories* for the commodities in (1) above, and (3) *materials, equipment, and supplies* used in the manufacture, sale, or distribution of the commodities in (1) and (2) above, between Graettinger, IA, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Des Moines, IA, or Chicago, IL.)

MC 98327 (Sub-31F), filed August 28, 1978. Applicant: SYSTEM 99, a corporation, 8201 Edgewater Drive, Oakland, CA 94621. Representative: Michael J. O'Neill (same address as applicant.) To operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Arcata, CA and the junction of Interstate Hwy 5 and OR Hwy 58, near Eugene, OR: over U.S. Hwy 101 to junction U.S. Hwy 199, then over U.S. Hwy 199 to junction OR Hwy 99 to junction Interstate Hwy 5, then over Interstate Hwy 5 to junction OR Hwy 58 and return over the same route, serving no intermediate points, and serving the termini for purposes of joinder only, as an alternate route for operating convenience only. (Hearing site: San Francisco, CA, or Portland, OR.)

MC 102567 (Sub-213F), filed September 8, 1978. Applicant: McNAIR TRANSPORT, INC., 4295 Meadow Lane, P.O. Drawer 5357, Bossier City, LA 71111. Representative: Joe C. Day, 2040 North Loop West, Suite 208, Houston, TX 77018. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals*, in bulk, in tank vehicles, from the facilities of Union Carbide Corp., at or near Texas City, TX, to points in AL, AR, CA, CO, CT, FL, GA, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NJ, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, UT, VA, WV, WI, and WY, restricted to the transportation of traffic originating at the named origin facilities. (Hearing site: Houston, TX.)

MC 105566 (Sub-180F), filed August 31, 1978. Applicant: SAM TANKSLEY TRUCKING, INC., P.O. Box 1120, Cape Girardeau, MO 63701. Representative: Thomas F. Kilroy, Suite 406 Executive Building, 6901 Old Keene Mill Road, Springfield, VA 22150. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Resin impregnated paper*, in vehicles equipped with mechanical refrigeration, from Sunset Whitney Ranch, CA, to Cincinnati, OH. (Hearing site: Cincinnati, OH.)

MC 105733 (Sub-66F), filed September 6, 1978. Applicant: H. R. RITTER TRUCKING CO., INC., 928 East Hazelwood Avenue, Rahway, NJ 07065. Representative: Chester A. Zyblut, 366 Executive Building, 1030 Fifteenth Street NW., Washington, DC 20005. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products*, in bulk, from New Haven, CT, to points in MA, NY, and RI. (Hearing site: Boston, MA.)

MC 106398 (Sub-840F), filed October 2, 1978. Applicant: NATIONAL TRAILER CONVOY, INC., 525 South Main, Tulsa, OK 74103. Representative: Irvin Tull (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular

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routes, transporting: *Lumber, lumber mill products, gypsum products, and building materials,* from the facilities of Temple Industries, at (a) Monroeville, AL, (b) West Memphis, AR, and (c) Pineland and Diboll, TX, to those points in the United States in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Houston, TX.)

NOTE.—In view of the findings in MC 106398 (Sub-741), of which official notice is taken, the certificate to be issued in this proceeding will be limited to a period expiring 3 years from its effective date, unless prior to its expiration (but not less than 6 months prior to its expiration) application files a petition for the extension of said certificate and demonstrates that it has been conducting operations in full compliance with the terms and conditions of its certificate and with the requirements of the Interstate Commerce Act and applicable Commission regulations.

MC 106398 (Sub-841F), filed October 3, 1978. Applicant: NATIONAL TRAILER CONVOY, INC., 525 South Main, Tulsa, OK 74103. Representative: Irvin Tull (same address as applicant). To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Pipe, and* (2) *pipe fittings and valves,* from the facilities of United States Pipe & Foundry Co., at (a) Birmingham and Bessemer, AL, and (b) Chattanooga, TN, to points in AZ, CO, ID, KS, MI, MT, NE, NM, ND, OK, SD, TX, UT, and WY. (Hearing site: Birmingham, AL.)

NOTE.—In view of the findings in MC 106398 (Sub-741), of which official notice is taken, the certificate to be issued in this proceeding will be limited to a period expiring 3 years from its effective date unless, prior to its expiration (but not less than 6 months prior to its expiration) applicant files a petition for the extension of said certificate and demonstrates that it has been conducting operations in full compliance with the terms and conditions of its certificate and with the requirements of the Interstate Commerce Act and applicable Commission regulations.

MC 106398 (Sub-842F), filed October 3, 1978. Applicant: NATIONAL TRAILER CONVOY, INC., 525 South Main, Tulsa, OK 74103. Representative: Irvin Tull (same address as applicant). To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Paneling, lumber, and lumber mill products,* from Boston, MA, and Bridgeport, CT, to points in the United States (except AK and HI). (Hearing site: Boston, MA.)

NOTE.—In view of the findings in MC 106398 (Sub-741), of which official notice is taken, the certificate to be issued in this proceeding will be limited to a period expiring 3 years from its effective date unless, prior to its expiration (but not less than 6 months prior to its expiration) applicant files a petition for the extension of said certificate and demonstrates that it has been conducting operations in full compliance with the terms and conditions of its certificate and with the requirements of the Interstate Commerce Act and applicable Commission regulations.

MC 106644 (Sub-266F), filed August 16, 1978. Applicant: SUPERIOR TRUCKING COMPANY, INC., P.O. Box 916, Atlanta, GA 30301. Representative: Frank Hall, Suite 713, 3384 Peachtree Road NE., Atlanta, GA 30326. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Commodities* which because of size or weight require the use of special equipment, (2) *self-propelled articles,* each weighing 15,000 pounds or more, (3) *general commodities* (except articles of unusual value, household goods as defined by the Commission, classes A and B explosives, commodities in bulk, and those requiring special equipment), when moving in mixed shipments with the commodities in (1) or (2) above, and (4) *machinery and parts thereof,* between points in MI, on the one hand, and, on the other, points in AL, AR, FL, GA, KS, KY, LA, MS, MO, NC, OK, SC, TN, VA, WV, and TX. (Hearing site: Washington, DC, or Atlanta, GA.)

MC 106674 (Sub-333F), filed August 22, 1978. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, Remington, IN 47977. Representative: Jerry L. Johnson (same address as applicant). To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Petroleum products,* in containers, from the facilities of Texaco, Inc., in Jefferson County, TX, to points in IL, IN, KY, MI, OH, TN, WV, and WI. (Hearing site: Chicago, IL, or Indianapolis, IN.)

MC 106674 (Sub-334F), filed August 21, 1978. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, Remington, IN 47977. Representative: Jerry L. Johnson (same address as applicant). To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Chemicals,* in containers, (1) from Rosenberg, TX, to points in LA, and (2) from Old Bridge, NJ, to Rosenberg, TX. (Hearing site: Chicago, IL, or Indianapolis, IN.)

MC 106674 (Sub-335F), filed August 21, 1978. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, Remington, IN 47977. Representative: Jerry L. Johnson (same address as applicant.) To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Iron and steel articles,* from Middletown, OH, to those points in TN on and west of Interstate Hwy 65 and those points in IL on and south of Interstate Hwy 70. (Hearing Site: Chicago, IL or Indianapolis, IN.)

MC 107496 (Sub-1153F), filed July 18, 1978. Applicant: RUAN TRANSPORT CORP., 666 Grand Avenue, Des Moines, IA 50309. Representative: E. Check, P.O. Box 855, Des Moines, IA 50304. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia,* in bulk, from the port of entry on the international boundary line between the United States and Canada, at Port Huron, MI, to points in MI and NY, restricted to the transportation of traffic originating at Sarnia, ON, Canada. Condition: Prior receipt from applicant of an affidavit setting forth its complementary Canadian authority or explaining why no such Canadian authority is necessary. (Hearing site: Chicago, IL, or Des Moines, IA.)

NOTE.—The restriction and conditions contained in the grant of authority in this proceeding are phrased in accordance with the policy statement entitled "Notice to Interested Parties of New Requirements Concerning Application for Operating Authority to Handle Traffic to and from points in Canada" published in the FEDERAL REGISTER on December 5, 1974, and supplemented on November 18, 1975. The Commission is presently considering whether the policy statement should be modified, and is in communication with appropriate Canadian officials regarding this issue. If the policy statement is changed, appropriate notice will appear in the FEDERAL REGISTER and the Commission will consider all restrictions or conditions which were imposed pursuant to the prior policy statement, regardless of when the condition or restriction was imposed, as being null and void and having no force or effect.

MC 107496 (Sub-1161F), filed August 21, 1978. Applicant: RUAN TRANSPORT CORP., 666 Grand Avenue, Des Moines, IA 50309. Representative: E. Check, P.O. Box 855, Des Moines, IA 50304. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Lactic acid,* in bulk, from Texas City, TX, to Grandview, MO; and (2) *liquid chemicals,* in bulk, in tank vehicles, from Marshall, TX, to points in the United States (except AK and HI). (Hearing site: Kansas City, MO, or Milwaukee, WI.)

MC 107515 (Sub-117F), filed September 25, 1978. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, 5th Floor-Lenox Towers South, 3390 Peachtree Road NE, Atlanta, GA 30326. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Steel grinding balls, and grinding and polishing pebbles,* from the facilities of The Carborundum Co., Pangborn Division, at Butler, PA, to points in AL, FL, GA, LA, MS, NC, SC, TN, and TX. (Hearing site: Pittsburgh, PA, or Washington, DC.)

NOTE.—Dual operations are involved in this proceeding.

MC 107515 (Sub-1178F), filed September 25, 1978. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, 5th Floor-Lenox Towers South, 3390 Peachtree Road NE., Atlanta, GA 30326. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in by drug stores, and cosmetic dealers, (except commodities in bulk), (1) from the facilities of Clairol, Inc., at Stamford, CT, to Chicago, IL, Dallas, TX, Cleveland and Columbus, OH, Indianapolis, IN, Louisville, Lexington, and Scottsville, KY, Camarillo and LaMirada, CA, Portland, OR, and points in FL, GA, and NC, (2) from the facilities of Clairol, Inc., at Atlanta, GA, to points in FL, and (3) from the facilities of Clairol, Inc., at Camarillo, LaMirada, and Los Angeles, CA, to Dallas, TX, Chicago, IL, Stamford, CT, and Atlanta, GA. (Hearing site: New York, NY.)

NOTE.—Dual operations are involved in this proceeding.

MC 107515 (Sub-1179F), filed September 21, 1978 Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, Fifth Floor, Lenox Towers South, 3390 Peachtree Road NE., Atlanta, GA 30326. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in by grocery and food business houses, (except commodities in bulk, in tank vehicles), in vehicles equipped with mechanical refrigeration, from the facilities of Kraft, Inc., at Detroit, MI, to points in KY, OH, WV, and those in PA on and west of U.S. Hwy 15, restricted to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. (Hearing site: Detroit, MI.)

NOTE.—Dual operations are involved in this proceeding.

MC 107743 (Sub-50F), filed September 5, 1978. Applicant: SYSTEM TRANSPORT, INC., P.O. Box 3456 T.A., Spokane, WA 99220. Representative: J. Michael Alexander, 136 Wynnewood Professional Building, Dallas, TX 75224. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Collapsible plastic bins,* from Dawson Springs, KY, and Liberty Center, OH, to points in CA, OR, WA, ID, NV, AZ, UT, MT, WY, CO, NM, and TX. (Hearing site: Dallas, TX, or Seattle, WA.)

MC 109064 (Sub-34F), filed August 22, 1978. Applicant: TEX-O-KAN TRANSPORTATION CO., INC., 3301 East Loop 820 South, Box 8367, Fort Worth, TX 76112. Representative: Thomas F. Sedberry, 1102 Perry-Brooks Building, Austin, TX 78701. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Iron and steel articles, and accessories* used in the installation of iron and steel articles, from points in Houston County, TX, to points in OK, LA, and AR. (Hearing site: Dallas or Houston, TX.)

MC 110563 (Sub-239F), filed September 7, 1978. Applicant: COLDWAY FOOD EXPRESS, INC., P.O. Box 747, State Route 29 North, Sidney, OH 45365. Representative: Joseph M. Scanlan, 111 West Washington Street, Chicago, IL 60602. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting *Frozen prepared foods,* from the facilities of Durkee Foods, Division of SCM Corp., in Gloucester County, NJ, to points in OH, IN, MI, IL, WI, MN, IA, MO, KY, KS, CO, NE, ND, and SD, restricted to the transportation of traffic originating at the named origin facilities. (Hearing site: Philadelphia, PA, or Washington, DC.)

MC 111611 (Sub-36F), filed August 28, 1978. Applicant: NOERR MOTOR FREIGHT, INC., 205 Washington Avenue, P.O. Box 786, Lewistown, PA 17044. Representative: William D. Taylor, 100 Pine Street, Suite 2550, San Francisco, CA 94111. To operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in by retail shoe stores, from the facilities of Kinney Shoe Corp., at or near Camp Hill and Mechanicsburg, PA, to points in AZ and CA. (Hearing site: San Francisco, CA, or Harrisburg, PA.)

MC 112223 (Sub-115F), filed September 5, 1978. Applicant: QUICKIE TRANSPORT CO., a corporation, 1700 New Brighton Boulevard, Minneapolis, MN 55413. Representative: Earl Hacking (same address as applicant). To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Fertilizer and fertilizer materials,* in bulk, from the facilities of Land O'Lakes Agricultural Services Division, at or near Mason City, IA, to points in MN, WI, ND, SD, and NE. (Hearing site: Minneapolis or St. Paul, MN.)

MC 112304 (Sub-150F), filed August 16, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., a corporation, 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: David A. Turano, 100 East Broad Street, Columbus, OH 43215. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Fabricated metal articles,* from the facilities of Brown-Minneapolis Tank & Fabricating Co., at Minneapolis, MN, to those points in the United States in and east of ND, SD, NE, KS, OK, and TX; (2) *materials and supplies* used in the manufacture and construction of fabricated metal articles, and *materials and supplies* used in the manufacture of construction equipment and supplies, from points in the United States in and east of ND, SD, NE, KS, OK, and TX, to the facilities of Brown-Minneapolis Tank & Fabricating Co., at Minneapolis, MN; and (3) *construction equipment and supplies* between those points in the United States in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Washington, DC.)

MC 112713 (Sub-220F), filed August 30, 1978. Applicant: YELLOW FREIGHT SYSTEM, INC., P.O. Box 7270, 10990 Roe Avenue, Shawnee Mission, KS 66207. Representative: Leonard R. Kofkin, 39 South LaSalle Street, Chicago, IL 60603. To operate as a *common carrier,* by motor vehicle, over regular routes, transporting: *General commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Keene and Portsmouth, NH, from Keene over NH Hwy 101 to junction NH Hwy 101A, then over NH Hwy 101A to junction NH Hwy 111, then over NH Hwy 111 to junction NH Hwy 101, then over NH Hwy 101 to Portsmouth, and return over the same route, serving all intermediate points, (2) between the MA-NH State line at or near Salem Depot, NH, and Littleton, NH over Interstate Hwy 93 serving all intermediate points, (3) between Westmoreland Station and Rochester, NH, from Westmoreland Station over NH Hwy 12 to junction NH Hwy 10, then over NH Hwy to junction NH Hwy 9, then over NH Hwy 9 to junction U.S. Hwy 202, then over U.S. Hwy 202 to Rochester, serving all intermediate points, (4) between the VT-NH State line at or near Cold River, NH, and junction NH Hwys 123 and 101, over NH Hwy 123, serving all intermediate points, (5) between Portsmouth, NH, and junction U.S. Hwys 4 and 202 over U.S. Hwy 4, serving all intermediate points, (6) between the VT-NH State line at or near Lebanon, NH, and Nashua, NH, from the VT-NH State line over Interstate Hwy 89 to junction Interstate Hwy 93, then over Interstate Hwy 93 to junction U.S. Hwy 3, and then over U.S. Hwy 3 to Nashua, and return over the same route, serving all intermediate points, (7) between the NH-VT State line at or near West Claremont, NH, and Concord, NH, from the NH-VT State line over NH Hwy 103 to junction Interstate Hwy 89, then over Interstate Hwy 89 to Concord, and return over the same route, serving all intermediate points, (8) between junction Interstate Hwy 93 and U.S. Hwy 3, near Tilton, NH, and Rochester,

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NH, from junction Interstate Hwy 93 and U.S. Hwy 3 over U.S. Hwy 3 to junction NH Hwy 11, then over NH Hwy 11 to Rochester, and return over the same route, serving all intermediate points; and serving all points in NH (except those points south and west of a line beginning at the VT-NH State line and extending along NH Hwy 9 to junction NH Hwy 12, at Keene, NH, and then along NH Hwy 12 to the NH-MA State line), as off-route points in connection with the routes in (1) through (8). Conditions: (1) The regular-route authority granted here shall not be severable, by sale or otherwise, from applicant's retained pertinent irregular-route authority. (2) Applicant must request, in writing, the imposition of restrictions on its underlying irregular-route authority precluding service between any two points authorized to be served here pursuant to regular-route authority. (Hearing site: Boston, MA, or Washington, DC.)

NOTE: The purpose of this application is to convert a portion of applicant's existing irregular-route authority to regular-route authority.

MC 114211 (Sub-371F), filed August 28, 1978. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, IA 50704. Representative: Adelor J. Warren (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, lumber mill products, forest products, and wood products* from points in Douglas County, NV, to points in AL, AZ, AR, CO, GA, IL, IN, IA, KS, KY, LA, MI, MN, MO, MS, NE, NM, OH, ND, OK, SD, TN, TX, UT, WI, and WY. (Hearing site: Albuquerque, NM.)

MC 114273 (Sub-469F), filed September 8, 1978. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same as above). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles, paper products, plaster articles, aluminum articles, electrical parts and hardware, trolleys, and paint*, (except commodities in bulk, in tank vehicles), from the facilities of UNISTRUT, at or near Wayne, MI, to Omaha, NE, Davenport, IA, and Minneapolis, MN. Condition: In view of the findings in MC 114273 (Sub-147 and Sub-252), of which official notice is taken, the certificate to be issued herein shall be limited in point of time to a period expiring 2 years from its date of issue, unless, prior to its expiration), applicant files a petition for permanent extension of the certificate showing that it has been in full compliance with applicable regulations. (Hearing site: Chicago, IL, or Washington, DC.)

MC 114273 (Sub-470F), filed September 11, 1978. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products and meat byproducts, dairy products, and articles distributed by meat-packing houses*, as described in sections A, B, and C of appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766, (except commodities in bulk and hides), from the facilities of Swift & Co., at or near Rochelle and St. Charles, IL, to points in NY and WV. Condition: In view of the findings in No. MC 114273 (Sub-147 and 252), of which official notice is taken, the certificate to be issued here shall be limited in point of time to a period expiring 2 years from its date of issue, unless, prior to its expiration (but not less than 6 months prior to its expiration), applicant files a petition for permanent extension of the certificate showing that it has been in full compliance with applicable regulations. (Hearing site: Chicago, IL, or Washington, DC.)

MC 114569 (Sub-249F), filed October 10, 1978. Applicant: SHAFFER TRUCKING, INC., P.O. Box 418, New Kingstown, PA 17072. Representative: N. L. Cummins (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Heating and air conditioning equipment, and parts and accessories* for heating and air conditioning equipment (except commodities the transportation of which because of size and weight require the use of special equipment), from Nashville, TN, to points in IL, IN, MD, MI, NJ, NY, OH, and PA. (Hearing site: Nashville, TN, or Washington, DC.)

NOTE: Dual operations may be involved in this proceeding.

MC 115001 (Sub-6F), filed August 28, 1978. Applicant: WESTERN OIL TRANSPORTATION CO., INC., P.O. Box 1183, 2000 South Post Oak, Houston, TX 77001. Representative: Mike Cotten, P.O. Box 1148, Austin, TX 78767. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Crude oil*, in bulk, in tank vehicles, between points in TX on and east of U.S. Hwy 281, and points in LA. (Hearing site: Houston or Dallas, TX.)

MC 115311 (Sub-297F), filed August 24, 1978. Applicant: J & M TRANSPORTATION CO., INC., P.O. Box 488, Milledgeville, GA 31061. Representative: Kim G. Meyer, P.O. Box 872, Atlanta, GA 30301. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cast iron products, and materials and supplies* used in the manufacture and distribution of cast iron products, (except commodities in bulk), between Lynchburg, VA, on the one hand, and on the other, points in OH, IN, MI, IL, WI, MN, IA, ND, SD, NE, TX NM, CO, WY, MT, ID, UT, AZ, CA, NV, OR, WA, ME, VT, NH, MA, RI, and CT. (Hearing site: Roanoke, VA, or Houston, TX.)

MC 115491 (Sub-137F), filed August 29, 1978. Applicant: COMMERCIAL CARRIER CORP., P.O. Drawer 67, Auburndale, FL 33823. Representative: Tony G. Russell, (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles, and concrete forming systems*, between points in Florida. (Hearing site: Tampa, FL.)

MC 115523 (Sub-176F), filed September 7, 1978. Applicant: CLARK TANK LINES, a corporation, P.O. Box 1895, 1450 North Beck Street, Salt Lake City, UT 84110. Representative: William S. Richards, P.O. Box 2465, Salt Lake City, UT 84101. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Soda ash*, from points in Sweetwater County, WY, to points in the United States (including AK, but excluding HI). (Hearing site: Salt Lake City, UT.)

MC 115904 (Sub-118F), filed August 14, 1978. Applicant: GROVER TRUCKING CO., a corporation, 1710 West Broadway, Idaho Falls, ID 83401. Representative: Irene Warr, 430 Judge Building, Salt Lake City, UT 84111. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, lumber mill products, forest products, and wood products*, (1) from points in ID, MT, OR, and WA, to points in IL, IN, IA, KS, MI, MN, MO, NE, NM, ND, OH, SD, and WI; and (2) from points in CA to points in IL, IN, IA, KS, MI, MN, MO, NE, NM, OH, and WI. (Hearing site: Portland, OR.)

MC 115904 (Sub-119F), filed August 21, 1978. Applicant: GROVER TRUCKING CO., a corporation, 1710 West Broadway, Idaho Falls, ID 83401. Representative: Irene Warr, 430 Judge Building, Salt Lake City, UT 84111. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Iron and steel articles*, from points in the United States (except AK and HI) to the facilities of Piper Industries, Planet Jr. Division, at or near Clearfield, UT; and (2) *agricultural implements, and parts and accessories* for agricultural implements, from the facilities of Piper Industries, Planet Jr. Division, at or near Clearfield, UT, to points in the United States (except AK and HI). (Hearing site: Salt Lake City, UT, or Washington, DC.)

MC 115931 (Sub-66F), filed August 24, 1978. Applicant: BEE LINE TRANSPORTATION, INC., P.O. Box 3987, Missoula, MT 59801. Representative: Gene P. Johnson, P.O. Box 2471, Fargo, ND 58102. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Plastic pipe*, and (2) *fittings and accessories* for the commodities named in (1) above, from Footville, WI, to those points in the United States in and west of MN, IA, IL, MO, AR, and TX (except AK and HI). (Hearing site: Chicago, IL.)

MC 116077 (Sub-396F), filed August 11, 1978. Applicant: DSI TRANSPORTS, INC., 4550 Post Oak Place Drive, P.O. Box 1505, Houston, TX 77001. Representative: Pat H. Robertson, 500 West Sixteenth Street, P.O. Box 1945, Austin, TX 78767. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Chemicals, petroleum, and petroleum products* (except liquefied petroleum gases), in bulk, in tank vehicles, from points in LA and those in Bee, Brazoria, Calhoun, Cameron, Chambers, Fort Bend, Galveston, Goliad, Hardin, Harris, Jackson, Jasper, Jefferson, Jim Wells, Kenedy, Kleberg, Liberty, Matagorda, Montgomery, Nueces, Orange, Refugio, San Patricio, Victoria, Wharton, and Willacy Counties, TX, to points in the United States (except AK and HI); and (2) *bulk; commodities in bulk*, in tank vehicles, from points in the United States (except AK and HI), to points in AR, LA, MS, NM, OK, and TX. (Hearing site: Atlanta, GA, or Houston, TX.)

MC 116273 (Sub-216F), filed September 5, 1978. Applicant: D. & L. TRANSPORT, INC., 3800 South Laramie Avenue, Cicero, IL 60650. Representative: William R. Lavery (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid chemicals*, (1) from the facilities of Gage Products Co., at Ferndale, MI, to Fenton, MO, Belvidere and Chicago, IL, Louisville, KY, Newark, DE, Lorain, OH, and Mahwah, NJ; and (2) from Doe Run, KY, Kingsport, TN, Sewaren, NJ, and Wood River, IL, to Detroit, MI. (Hearing site: Detroit, MI, or Chicago, IL.)

MC 117344 (Sub-277F), filed August 22, 1978. Applicant: THE MAXWELL CO., a corporation, 10380 Evendale Drive, Cincinnati, OH 45215. Representative: James R. Stiverson, 1396 West Fifth Avenue, Columbus, OH 43212. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic pellets*, in bulk, in tank vehicles, from Owensboro, KY, to points in MS. (Hearing site: Columbus, OH.)

MC 117574 (Sub-317F), filed August 4, 1978. Applicant: DAILY EXPRESS, INC., P.O. Box 39, 1076 Harrisburg Pike, Carlisle, PA 17013. Representative: James W. Hagar, P.O. Box 1166, 100 Pine Street, Harrisburg, PA 17108. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Steel reinforcing bars and accessories* for steel reinforcing bars, from the facilities of Bethlehem Steel Corp. at Clearing, IL, to points in IN, IA, KY, MI, MN, MO, OH, and WI, restricted to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. (Hearing site: Chicago, IL, or Washington, DC.)

MC 118838 (Sub-34F), filed September 29, 1978. Applicant: GABOR TRUCKING, INC., R.R. No. 4, Box 124B, Detroit Lakes, MN 56501. Representative: Richard P. Anderson, 502 First National Bank Building, Fargo, ND 58102. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Gypsum and gypsum products*, and (2) *materials and supplies* used in the manufacture, installation, and distribution of gypsum and gypsum products, between the facilities of Georgia-Pacific Corp., Gypsum Division, at Cuba, MO, on the one hand, and, on the other, points in the United States (including AK, but excluding HI). (Hearing site: Philadelphia, PA, or Washington, DC.)

MC 119634 (Sub-28F), filed August 14, 1978. Applicant: DICK IRVIN, INC., 218 12th Avenue North, P.O. Box F, Shelby, MT 59474. Representative: Joe Gerbase, 100 Transwestern Building, 404 North 31st Street, Billings, MT 59101. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Agricultural chemicals*, in containers, from Great Falls, MT, to (1) points in NE, IA, MO, CO, NM, KS, WI, ND, SD, WA, and OR, and (2) to those ports of entry on the international boundary line between the United States and Canada in ID and MT, and restricted in part (2) above to the transportation of traffic destined to the Canadian Provinces of BC, AB, and SK. Condition: Prior receipt from applicant of an affidavit setting forth its complementary Canadian authority or explaining why no such Canadian authority is necessary. (Hearing site: Great Falls or Billings, MT.)

NOTE.—The restriction and conditions contained in the grant of authority in this proceeding are phrased in accordance with the policy statement entitled Notice to Interested Parties of New Requirements Concerning Applications for Operating Authority to Handle Traffic to and from points in Canada published in the Federal Register on December 5, 1974, and supplemented on November 18, 1975. The Commission is presently considering whether the policy statement should be modified, and is in communication with appropriate officials of Canada regarding this issue. If the policy statement is changed, appropriate notice will appear in the Federal Register and the Commission will consider all restrictions or conditions which were imposed pursuant the prior policy statement, regardless of when the condition or restriction was imposed, as being null and void and having no further force or effect.

MC 119726 (Sub-141F), filed August 21, 1978. Applicant: N.A.B. TRUCKING CO., INC., 1644 West Edgewood Avenue, Indianapolis, IN 46217. Representative: James L. Beattey, 130 East Washington Street, Suite One Thousand, Indianapolis, IN 46204. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pulpboard, fibreboard, and corrugated boxes*, from the facilities of Container Corporation of America, at or near Fernandina Beach, FL, to those points in the United States in and east of ND, SD, NE, CO, OK, and TX. (Hearing site: Chicago, IL, or Indianapolis, IN.)

MC 119741 (Sub-109F), filed August 28, 1978. Applicant: GREEN FIELD TRANSPORT CO., INC., 1515 Third Avenue, NW., P.O. Box 1235, Fort Dodge, IA 50501. Representative: D. L. Robson (same address as applicant). To operate as a *common carrier* by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except in bulk, in tank vehicles), from the facilities of Miami Margarine Co., at or near Albert Lea, MN, to points in CO, IL, IA, KS, MO, NE, ND, OK, SD, and TX, restricted to the transportation of traffic originating at the named origin and destined to the named destinations. (Hearing site: Minneapolis, MN, or Cincinnati, OH.)

MC 119988 (Sub-154F), filed August 24, 1978. Applicant: GREAT WESTERN TRUCKING CO., INC., P.O. Box 1384, Lufkin, TX 75901. Representative: Clayte Binion, 1108 Continental Life Building, Fort Worth, TX 76102. To operate as a *common carrier* by motor vehicle, over irregular routes, transporting: (1) *Expanded plastic articles*, from the facilities of Huntsman Container Corp., at or near Memphis, TN, to those points in the United States in and west of OH, KY, TN, and AL (except AK and HI); and (2) *agricultural supplies, horticultural supplies, molded pulp and peat packing materials*, between the facilities of Keyes Fiber Co., at or near New Iberia, LA, on the one hand, and, on the other, those points in the United States in and west of OH, KY, TN, and AL (except AK and HI). (Hearing site: Dallas, TX, or Washington, DC.)

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MC 120092 (Sub-4F), filed July 21, 1978. Applicant: JENNEY FREIGHT LINE, INC., 1224 North Main Avenue, Tucson, AZ 85705. Representative: Donald E. Fernaays, 4040 East McDowell Road, Suite 320, Phoenix, AZ 85008. To operate as a *common carrier,* by motor vehicle, over regular routes, transporting: (A) *General commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Tucson, AZ, and Douglas, AZ: (1) From Tucson over Interstate Hwy 10 to Benson, AZ, then over U.S. Hwy 80 to Douglas, and (2) from Tucson over Interstate Hwy 10 to junction AZ Hwy 90, then over AZ Hwy 90 to junction U.S. Hwy 80, then over U.S. Hwy 80 to Douglas, and return over the same route, serving all intermediate points, and the off-route points of Curtis, AZ and those in that portion of Cochise County, AZ on and south of a line extending from the Santa Cruz and Cochise County boundary line along AZ Hwy 82 to junction U.S. Hwy 80, then along U.S. Hwy 80 to Tombstone, then along unnumbered Hwy via Gleeson and Courtland to junction U.S. Hwy 666, then along U.S. Hwy 666 to McNeal, then along unnumbered Hwy east and south to the United States-Mexico boundary at Douglas, AZ; and (B) *general commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, those requiring special equipment and cement), between Sierra Vista, AZ, and Tucson, AZ: From Sierra Vista over AZ Hwy 90 to junction AZ Hwy 82, then over AZ Hwy 82 to junction AZ Hwy 83 at Sonoita, AZ, then over AZ Hwy 83 to junction Interstate Hwy 10 at Mt. View, then over Interstate Hwy 10 to Tucson, and return over the same route, serving all intermediate points. Special condition for issuance of a certificate: prior or coincidental cancellation at applicant's written of request of its Certificate of Registration in MC 120092 (Sub-1). (Hearing site: Tucson or Douglas, AZ.)

MC 120257 (Sub-47F), filed September 1, 1978. Applicant: K. L. BREEDEN & SONS, INC., P.O. Box 207, Ore City, TX 75683. Representative: Bernard H. English, 6270 Firth Road, Fort Worth, TX 76116. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Dry fertilizer,* in containers, and (2) *pesticides,* in containers, in mixed loads with the commodity in (1) above, from the facilities of Swift Agricultural Chemicals Corp., at or near Shreveport, LA, to points in MS. (Hearing site: Dallas, TX, or Shreveport, LA.)

NOTE.—The person or persons who appear to be engaged in common control must either file an application under section 5(2) of the Interstate Commerce Act, or submit an affidavit indicating why such approval is unnecessary.

MC 123329 (Sub-39F), filed October 2, 1978. Applicant: H. M. TRIMBLE & SONS, LTD., P.O. Box 3500, Calgary, AB, Canada T2P 2P9. Representative: Ray F. Koby, 314 Montana Building, Great Falls, MT 59401. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Dimethylamine,* in bulk, from Pace, FL, to ports of entry on the International boundary line between the United States and Canada in ND, restricted to the transportation of traffic destined to points in the Provinces of Alberta, Saskatchewan, and Manitoba, Canada. Condition: Any certificate issued in this proceeding shall be limited in point of time to a period expiring 5 years from the date of issuance of the certificate. (Hearing site: Great Falls, MT.)

NOTE.—The restriction contained in the grant of authority in this proceeding is phrased in accordance with the policy statement entitled Notice to Interested Parties of New Requirements Concerning Applications for Operating Authority to Handle Traffic to and from points in Canada published in the FEDERAL REGISTER on December 5, 1974, and supplemented on November 18, 1975. The Commission is presently considering whether the policy statement should be modified, and is in communication with appropriate officials of the Provinces of AB, SK, and MB regarding this issue. If the policy statement is changed, appropriate notice will appear in the FEDERAL REGISTER and the Commission will consider all restrictions or conditions which were imposed pursuant to the prior policy statement, regardless of when the condition or restriction was imposed, as being null and void and having no force or effect.

MC 124606 (Sub-6F), filed August 14, 1978. Applicant: FORD TRUCK LINE, INC., 240 East Trigg, P.O. Box 529, Memphis, TN 38101. Representative: Daniel C. Sullivan 10 South LaSalle Street, Chicago, IL 60603. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *General commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Memphis, TN and Jackson, MS, over U.S. Hwy 51, serving all intermediate points between the northernmost junction of MS Hwy 7 and U.S. Hwy 51, (b) from Memphis over U.S. Hwy 78 to Hamilton, AL, then over AL Hwy 17 to junction Interstate Hwy 20, then over Interstate Hwy 20 to Jackson, and return over the same route, serving Meridian, MS, and points on AL Hwy 17 as intermediate points and the off-route point of Haleyville, AL, (c) from Memphis over U.S. Hwy 61 to junction Interstate Hwy 20, then over Interstate Hwy 20 to Jackson, MS, and return over the same route, serving the intermediate points of Cleveland, Boyle, Shaw, Indianola, and Vicksburg, MS, (2) between Winona, MS and junction U.S. Hwy 82 and U.S. Hwy 61, over U.S. Hwy 82, serving all intermediate points, and (3) between Jackson, MS and New Orleans, LA, over U.S. Hwy 51, serving the intermediate points of Amite and Hammond, LA. (Hearing site: Memphis, TN, or Jackson, MS.)

MC 124692 (Sub-233F), filed August 9, 1978. Applicant: SAMMONS TRUCKING, a corporation, P.O. Box 4347, Missoula, MT 59806. Representative: J. David Douglas (same address as applicant). To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Wood* and *hardboard,* from the facilities of Weyerhaeuser Corp., at or near Denver, CO, to points in SD. (Hearing site: Denver, CO.)

MC 124692 (Sub-234F), filed August 9, 1978. Applicant: SAMMONS TRUCKING, a corporation, P.O. Box 4347, Missoula. MT 59806. Representative: J. David Douglas (same address as applicant). To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Steel articles,* from Kansas City, KS, to points in AZ, CO, IL, MI, MN, AND WI. (Hearing site: Kansas City, KS.)

MC 127042 (Sub-224F), filed August 14, 1978. Applicant: HAGEN, INC., P.O. BOX 98—Leeds Station, Sioux City, IA 51108. Representative: Robert G. Tessar (same address as applicant). To operate as a *common carrier,* by motor vehicle. over irregular routes, transporting: *Meats, meat products,* and *meat byproducts,* and *articles* distributed by meat-packing houses, as described in sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766, (except hides and commodities in bulk, in tank vehicles), from National Stock Yards, IL, to points in IA, KS, MN, NE, ND, SD, and WI. (Hearing site: St. Louis, MO.)

MC 127274 (Sub-49F), filed August 21, 1978. Applicant: SHERWOOD TRUCKING, INC., 1517 Hoyt Avenue, Muncie, IN 47302. Representative: Donald W. Smith, P.O. Box 40659, Indianapolis, IN 46240. To operate as a *common carrier,* over irregular routes, transporting: *Paper, paper products, and woodpulp,* from the facilities of Bowater Southern Paper Corp. at or near Calhoun, TN, to points in OH, KY, and points in that part of IN on and south of U.S. Hwy 40. (Hearing site: Memphis, TN, or Washington, DC.)

MC 127598 (Sub-5F), filed October 4, 1978. Applicant: HARRY M. MOWREY, 5865 Pleasant Hill Road, Milford, OH 45150. Representative: Harry M. Mowrey (same address as applicant). To operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: (1) *Dairy products* (except frozen poultry and poultry products), (2) *dairy pland equipment* (except articles which because of size or weight require the use of special equipment), and (3) *materials and supplies* used in the manufacture and distribution of dairy products, between Lousiville, KY, on the one hand, and, on the other, St. Louis, MO, those points in IL on and south of Interstate Hwy 74, and those points in MO on, east, and north of a line beginning at the IL-MO State line and extending along U.S. Hwy 60 to junction U.S. Hwy 67, then along U.S. Hwy 67 to the MO-IL State line, under continuing contract(s) with Beatrice Foods, of Lousiville, KY. (Hearing site: Louisville, KY, or Cincinnati, OH.)

MC 128021 (Sub-32F), filed August 21, 1978. Applicant: DIVERSIFIED TRUCKING CORP., 309 Williamson Avenue, Opelika, AL 36801. Representative: Robert E. Tate, P.O. Box 517, Evergreen, AL 36401. To operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: (1) *Unfrozen foodstuffs* (except dairy products, meats, meat products, meat byproducts, and articles distributed by meat packinghouses), in containers, from Cedar Rapids, IA, to points in the United States (except AK and HI), and (2) *Equipment, materials, and supplies* used in the manufacture of unfrozen foodstuffs (except commodities in bulk, in tank vehicles, dairy products, meats, meat products, meat byproducts, and articles distrbtuted by meat packinghouses), in containers, from points in the United States (except AK and HI), to Cedar Rapids, IA, under continuing contract(s) with the National Oats Co., Inc., of Cedar Rapids, IA. (Hearing site: Chicago, IL or Washington, DC.)

NOTE.—Dual operations are at issue in this proceeding.

MC 128021 (Sub-33F), filed August 21, 1978. Applicant: DIVERSIFIED TRUCKING CORP., 309 Williamson Avenue, Opelika, AL 36801. Representative: Robert E. Tate, P.O. Box 517, Evergreen, AL 36401. To operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Floor scrubbing machines, vacuum cleaner bags, vacuum cleaner belts, pressure washers, and such commodities* as are dealt in by cleaning compound manufactures, from French Lich, IN, and points in Marion County, IN, to points in the United States (except AK and HI); and (2) and equipment, materials, and supplies used in the manufacture and distribution of commodities named in (1) above, from the destinations named in (1) above to the origins named in (1) above, under a continuing contract(s) with Earl Grissmer Co., of Indianapolis, IN. (Hearing site: Indianapolis, IN, or Washington, D.C.)

NOTE: Dual operations are at issue in this proceeding.

MC 128273 (Sub-317F), filed September 1, 1978. Applicant: MIDWESTERN DISTRIBUTION, INC., P.O. Box 189, Fort Scott, KS 66701. Representative: Elden Corban (same address as applicant). To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *paper boxes* (except corrugated, knocked down, and folded flat paper boxes), (1) between the facilities of Potlatch Corp. at or near Fort Wayne, IN, and Skiesston, MO, and (2) from the facilities of Potlatch Corp. at or near Fort Wayne, IN, and Skieston, MO, to points in AZ, CA, NV, and UT, restricted to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. (Hearing site: Seattle, WA.)

MC 129414 (Sub-5F), filed August 10, 1978. Applicant: BELL & MOONEY, INC., P.O. Box 925, Gillette, WY 82716. Representative: J. Max Harding, P.O. Box 82028, Lincoln, NE 68501. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Asphalt and residual fuel oil,* in bulk, in tank vehicles, (1) between points in CO and WY, and (2) from points in CO and WY to points in NE on and west of U.S. Hwy 183, and points in SD on and west of a line beginning at the NE-SD State line, then along U.S. Hwy 83 to junction Interstate Hwy 90, then north along U.S. Hwy 83 to the SD-ND State line. (Hearing site: Denver, CO.)

MC 133095 (Sub-198F), filed September 21, 1978. Applicant: TEXAS CONTINENTAL EXPRESS, INC., P.O. Box 432, Euless, TX 76039. Representative: Kim G. Meyer, P.O. Box 872, Atlanta, GA 30301. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Containers,* from Clarion, PA, to points in LA. (Hearing site: Chicago, IL, or Dallas, TX.)

MC 133453 (Sub-16F), filed September 1, 1978. Applicant: TROJAN TRANSPORTATION, INC., 1616 Walnut Street, 24th Floor, Philadelphia, PA 19103. Representative: Richard M. Ochroch, 316 South 16th Street, Philadelphia, PA 19103. To operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Non-alcoholic beverages,* in containers, and (2) *equipment, materials, and supplies* used in the manufacture and distribution of non-alcoholic beverages, between Philadelphia, PA, and Pennsauken, NJ, on the one hand, and, on the other, points in CO, MA, NY, OH, PA. RI, and VA, under a continuing contract(s) with Boulevard Beverage Co. of Philadelphia, PA. (Hearing site: Philadelphia, PA, or Washington, DC.)

MC 133566 (Sub-121F), filed August 18, 1978. Applicant: GANGLOFF & DOWNHAM TRUCKING CO., INC., P.O. Box 479, Logansport, IN 46947. Representative: Charles W. Beinhauer, Suite 4959, One World Trade Center, New York, NY 10048, To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat byproducts,* as described in section A of appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766, (except hides and commodities in bulk), in vehicles equipped with mechanical refrigeration, between the facilities of Lykes Bros., Inc., at or near Albany, GA, and points in CT, MA, NJ, NY, OH, and PA. (Hearing site: Atlanta, GA, or New York, NY.)

MC 134224 (Sub-13F), filed July 17, 1978. Applicant: HAUSER TRUCKING CORP., Box 241, Cobleskill, NY 12043. Representative: Neil D. Breslin, 600 Broadway, Albany, NY 12043. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Shale aggregate,* from Cohoes, NY, to points in MD; (2) *ferro alloys,* from Albany, NY, to Providence, Cranston, and Phillipsdale, RI, Bridgeport, CT, and Reading, PA; and (3) *scrap materials,* from Boston, Greenfield, Tewksbury, and Worcester, MA, Albany, Syracuse, Chili, and Buffalo, NY, Newark, NJ, Williamsport, and Reading, PA, and New Haven and North Haven, CT, to those ports of entry on the international boundary line between the United States and Canada in NY and VT, restricted in part (3) above to the transportation of traffic destined to Laprairier, Quebec, Canada. Condition: Prior receipt from applicant of an affidavit setting forth its complementary Canadian authority or explaining why no such Canadian authority is necessary. (Hearing site: Albany, NY.)

NOTE.—The restriction and condition contained in the grant of authority in this proceeding are phrased in accordance with the policy statement entitled Notice to Interested Parties of New Requirements Concerning Applications for Operating Authority to Handle Traffic to and from points in Canada published in the FEDERAL REGISTER on December 5, 1974, and supplemented on November 18, 1975. The Commission is presently considering whether the policy statement should be modified, and is in communication with appropriate Canadian officials regarding this issue. If the policy statement is changed, appropriate notice will appear in

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the FEDERAL REGISTER and the Commission will consider all restrictions or conditions which were imposed pursuant to the prior policy statement, regardless of when the condition or restriction was imposed, as being null and void and having no further force or effect.

MC 134531 (Sub-12F), filed August 28, 1978. Applicant: AGGREGATE HAULERS, INC., Route 2, Box 559-A, West Columbia, SC 29169. Representative: Eric Meierhoefer, Suite 423, 1511 K Street NW., Washington, DC 20005. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Aggregates, sand, gravel, crushed stone, and concrete products*, from points in SC, to points in NC, GA, and TN. (Hearing site: Columbia, SC.)

MC 135152 (Sub-26F), filed August 9, 1978. Applicant: CASKET DISTRIBUTORS, INC., Rural Route No. 2, P.O. Box No. 327, West Harrison, IN 45030. Representative: Jack B. Josselson, 700 Atlas Bank Building, 524 Walnut Street, Cincinnati, OH 45202. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Toys, games, and children's vehicles*, from the facilities of Louis Marx & Co. at (1) Girard, PA, (2) Glendale, WV, and (3) Columbus, OH, to those points in the United States in and east of MT, WY, CO, and NM; and (2) *equipment, materials, and supplies* used in the manufacture of toys, games, and children's vehicles, from El Paso, TX, to the facilities of Louis Marx & Co. at (1) Girard, PA, (2) Glendale, WV, and (3) Columbus, OH. (Hearing site: Washington, DC.)

MC 135208 (Sub-3F), filed October 5, 1978. Applicant: GEORGE L. BIGELOW TRUCKING, INC., P.O. Box 421, 135 Wright Street, Delavan, WI 53115. Representative: Richard A. Westley, 4506 Regent Street, Suite 100, Madison, WI 53705. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sheet steel*, between the facilities of Dalco Metal Products, Inc., at or near Walworth, WI, on the one hand, and, on the other, points in IL, IN, IA, MI, MN, and NE. (Hearing site: Milwaukee, WI or Chicago, IL.)

NOTE.—Dual operations are at issue in this proceeding.

MC 135283 (Sub-44F), filed September 5, 1978. Applicant: GRAND ISLAND MOVING & STORAGE CO., INC., P.O. Box 2122, 432 South Stuhr Road, Grand Island, NE 68801. Representative: Gailyn L. Larsen, 521 South 14th Street, P.O. Box 81849, Lincoln, NE 68501. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products and meat byproducts, and articles distributed by meat-packing houses*, as described in sections A and C of appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 MCC 209 and 766 (except hides and commodities in bulk), from the facilities of Swift & Co., at or near Grand Island, NE, to points in KS. (Hearing site: Chicago, IL or Lincoln, NE.)

MC 135568 (Sub-1F), filed October 6, 1978. Applicant: CHRISTIE RIGGING & TRUCKING CO., a corporation, 182 Oakwood Drive, Glastonbury, CT 06033. Representative: Paul F. Sullivan, 711 Washington Building, Washington, DC 20005. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fabricated steel enclosures*, between the facilities of Industrial Welding Co., at Hartford, CT, on the one hand, and, on the other, points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the above named facilities. (Hearing site: Hartford, CT.)

MC 136318 (Sub-55F), filed September 29, 1978. Applicant: COYOTE TRUCK LINE, INC., a Delaware corporation, P.O. Box 756, Thomasville, NC 27360. Representative: David R. Parker, 717 17th Street, Suite 2600, Denver, CO 80202. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are used or dealt in by home furnishing stores, between points in the United States (except AK and HI), under continuing contract(s) with the Wickes Corp. of San Diego, CA. (Hearing site: Chicago, IL.)

MC 136318 (Sub-56F), filed October 3, 1978. Applicant: COYOTE TRUCK LINE, INC., a Delaware corporation, P.O. Box 756, Thomasville, NC 27360. Representative: David R. Parker, 717 17th Street, Suite 2600, Denver, CO 80202. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *New furniture, new furnishings, and accessories* for new furniture and new furnishings, (1) from points in AL, GA, MS, NC, SC, TN, TX, and VA, to points in AZ, CA, CO, IL, IN, IA, MD, MI, MN, MO, NV, NY, OH, OK, OR, PA, VA, and TX, and (2) from points in CA to those points in the United States in and east of MN, IA, MO, AR, and LA, under continuing contract(s) with Montgomery Ward, of Chicago, IL. (Hearing site: Chicago, IL.)

MC 136408 (Sub-43F), filed October 6, 1978. Applicant: CARGO CONTRACT CARRIER CORP., a New Jersey corporation, P.O. Box 206, U.S. Highway 20, Sioux City, IA 51102. Representative: William J. Hanlon, 55 Madison Avenue, Morristown, NJ 07960. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Chemicals* (except in bulk, in tank vehicles), (a) from Riverside, PA, to points in AR, CA, IL, IN, IA, KS, MI, MN, MO, NE, OK, OH, TX, and WI, (b) from Rahway, NJ, to points in ID, TN, and TX, and (c) from Marsing, ID, and Sioux Falls, SD, to points in MO and TN; and (2) *plastic containers*, from Kansas City, MO, to Marsing, ID, under continuing contract(s) with Merck & Co. of Rahway, NJ. (Hearing site: Washington, DC.)

NOTE.—Dual operations are at issue in this proceeding.

MC 136553 (Sub-1F), filed September 1, 1978. Applicant: ART PAPE TRANSFER, INC., 1080 East 12th Street, Dubuque, IA 52001. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Fertilizer and fertilizer materials*, in bulk, from the facilities of Land O'Lakes Agricultural Services Division, at or near Mason City, IA, to points in MN, NE, ND, SD, and WI, and (2) *fertilizer*, from Prairie du Chien, WI, to MN. (Hearing site: Minneapolis, MN.)

MC 136803 (Sub-8F), filed September 11, 1978. Applicant: SIOUX CITY BULK FEED SERVICE, INC., 3324 Highway 75 North, Sioux City, IA 51105. Representative: Edward A. O'Donnell, 1004 29th Street, Sioux City, IA 51104. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Feed ingredients*, between Magnolia, MN, on the one hand, and, on the other, points in IA, NE, and SD, restricted to the transportation of traffic originating at or destined to the named points. (Hearing site: Sioux City, IA or Omaha, NE.)

MC 136818 (Sub-39F), filed September 13, 1978. Applicant: SWIFT TRANSPORTATION COMPANY, INC., 335 West Elwood Road, P.O. Box 3902, Phoenix, AZ 85030. Representative: Donald E. Fernaays, Suite 320, 4040 East McDowell Road, Phoenix, AZ 85008. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, and meat byproducts*, as described in section A of appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 MCC 209 and 766 (except commodities in bulk), from Searcy, AR, to points in AZ, CA, CO, NM, NV, and UT. (Hearing site: Chicago, IL or Phoenix, AZ.)

NOTE.—Dual operations are at issue in this proceeding.

MC 138144 (Sub-34F), filed August 9, 1978. Applicant: FRED OLSON CO., INC., 6022 West State Street, Milwaukee, WI 53213. Representative: William D. Brejcha, 10 South LaSalle Street, Chicago, IL 60603. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Plastic pipe* and (2) *accessories for plastic pipe*, from points in Geneva County, AL, to those points in the United States in and east of MN, IA, MO, OK, and TX; and (3) *materials, equipment, and supplies* used in the manufacture or distribution of the commodities in (1) and (2) above (except commodities in bulk), from those points in the United States in and east of MN, IA, MO, OK, and TX, to points in Geneva County, AL. (Hearing site: Mobile, AL or Chicago, IL.)

NOTE.—Dual operations are involved in this proceeding.

MC 138438 (Sub-33F), filed October 6, 1978. Applicant: D. M. BOWMAN, INC., Route 2, Box 43A1, Williamsport, MD 21795. Representative: Edward N. Button, 1329 Pennsylvania Avenue, P.O. Box 1417, Hagerstown, MD 21740. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Building materials*, from Manassas, VA, to points in MD, PA, WV, and DC. (Hearing site: Washington, DC.)

NOTE.—Dual operations are at issue in this proceeding.

MC 138469 (Sub-83F), filed September 18, 1978. Applicant: DONCO CARRIERS, INC., P.O. Box 75354, Oklahoma City, OK 73107. Representative: Jack H. Blanshan, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture*, from the facilities of Fox Manufacturing Co., Inc., at or near Rome, GA, to points in AR, KS, MO, OK, and TX, restricted to the transportation of traffic originating at the named origin and destined to the named destinations. (Hearing site: Atlanta, GA or Montgomery, AL.)

MC 138882 (Sub-128F), filed August 3, 1978. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O. Box 707, Troy, AL 36081. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) (a) *Iron and steel articles, pipe, pipe fittings, valves, and hydrants*, and (b) *parts and accessories* for the commodities in (1) (a) above, from Birmingham, AL, to those points in the United States in and east of ND, SD, NE, KS, OK, and NM; and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (1) (a) and (b) above, (except commodities in bulk), from the destinations in (1) (a) and (b) above, to Birmingham, AL. (Hearing site: Birmingham, AL.)

MC 138882 (Sub-129F), filed August 8, 1978. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O. Box 707, Troy, AL 36081. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plumbing fixtures, plumbing equipment, plumbing materials, and plumbing supplies*, from the facilities of Artesin Industries, at or near Shelby, OH, to points in KY, WV, VA, TN, SC, NC, LA, MS, AL, GA, and FL. (Hearing site: Mansfield, OH or Montgomery, AL.)

MC 139577 (Sub-27F), filed September 6, 1978. Applicant: ADAMS TRANSIT, INC., P.O. Box 338, Friesland, WI 53935. Representative: Wayne W. Wilson, 150 East Gilman Street, Madison, WI 53703. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Foodstuffs* (except commodities in bulk), and (2) *materials, equipment, and supplies* used in the manufacture and distribution of foodstuffs (except commodities in bulk), between points in WI, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Madison or Milwaukee, WI.)

MC 140024 (Sub-125F), filed August 22, 1978. Applicant: J. B. MONTGOMERY, INC., a DE corporation, 5565 East 52nd Avenue, Commerce City, CO 80022. Representative: Jeffrey A. Knoll (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Clay products and brick*, from the facilities of Bowerston Shale Co., at or near (a) Bowerston and (b) Hanover, OH, to points in CO, IL, IA, KS, MO, NE, and WI, restricted to the transportation of traffic originating at the named origins and destined to the named destinations. (Hearing site: Cincinnati or Columbus, OH.)

MC 140033 (Sub-66F), filed September 8, 1978. Applicant: COX REFRIGERATED EXPRESS, INC., 10606 Goodnight Lane, Dallas, TX 75220. Representative: D. Paul Stafford, Suite 1125, Exchange Park, P.O. Box 45538, Dallas, TX 75245. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Bakery goods*, from Marietta, OK, to points in AZ, CA, CO, CT, GA, ID, KS, KY, LA, AR, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NM, NY, OH, OR, PA, RI, TX, UT, VT, VA, WA, WI, and WY, and (2) *materials and supplies* used in the production of bakery goods (except commodities in bulk, in tank vehicles), from points in LA, TX, MI, WI, NJ, IL, MO, NY, and PA, to Marietta, OK. (hearing site: Dallas, TX.)

NOTE.—Dual operations are at issue in this proceeding.

MC 140871 (Sub-4F), filed August 23, 1978. Applicant: THOMAS S. BIANCO, 2300 North 16th Street, Springfield, IL 62702. Representative: Robert T. Lawlery, 300 Reisch Building, Springfield, IL 62701. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Fabricated railroad grade crossings*, from Springfield, IL, to points in the United States (except AK and HI); and (2) *materials and supplies* used in the manufacture and installation of fabricated railroad grade crossings, between Springfield, IL, and Middlefield, OH, under continuing contracts in (1) and (2) above with Structural Rubber Products Co., of Springfield, IL. (Hearing site: Chicago, IL, or St. Louis, MO.)

MC 141804 (Sub-122F), filed August 9, 1978. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., a Nevada corporation, P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Hair care products, skin care products, and toilet preparations*, (except commodities in bulk, in tank vehicles), and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk, in tank vehicles), (a) between points in Ventura, Los Angeles, Orange, San Bernardino, and Riverside Counties, CA, on the one hand, and, on the other, points in CT, DE, IL, IN, ME, MD, MA, MI, NH, NJ, NY, OH, PA, RI, VT, VA, WV, NC, SC, AL, GA, MS, TN, FL, LA, AR, OK, TX, and DC, and (b) between Florence, KY, on the one hand, and, on the other, points in CT, DE, IL, IN, ME, MD, MA, MI, NH, NJ, NY, OH, PA, RI, UT, VA, WV, NC, SC, GA, FL, AL, MS, LA, AR, OK, TX, KS, NM, ND, SD, NE, IL, and DC. (Hearing site: Los Angeles or San Francisco, CA.)

MC 141804 (Sub-126F), filed August 14, 1978. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., a Nevada corporation, P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Electrical appliances* and (2) *parts and accessories* for electrical appliances, from Ashboro, NC, to Tukwila, WA, San Leandro and Garden Grove, CA, and Grand Prairie, TX. (Hearing site: Los Angeles or San Francisco, CA.)

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MC 141804 (Sub-129F), filed August 22, 1978. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., a Nevada corporation, P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman, P.O. Box 3488, Ontario, CA 91761. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Electric storage batteries, parts for electric storage batteries, battery fluid, battery boxes, battery covers, and battery vents*, between the facilities of Gould, Inc., at or near Bowling Green, KY, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Los Angeles or San Francisco, CA.)

MC 141961 (Sub-1F), filed August 24, 1978. Applicant: CARMAN CARRIERS, INC., P.O. Box 2139, Clarksville, IN 47130. Representative: Donald W. Smith, P.O. Box 40659, Indianapolis, IN 46240. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Bulk conveying equipment, feeding equipment, pressure vessels, tank lining, pipe fittings, and synthetic rubber coating for metals;* and (2) *materials and equipment* used in the manufacture of the commodities named in (1) above, between the facilities of Construction Machinery Corp., Acme Fisher Tank Linings Division of Broadway Rubber Corp., and Roark Mechanical Contractors, Inc., at Louisville, KY, on the one hand, and, on the other, points in the United States (except AK and HI), under continuing contract(s) with Roark Mechanical Contractors, Inc., Construction Machinery Corp., and Acme Fisher Tank Linings Division of Broadway Rubber Corp., all of Louisville, KY. (Hearing site: Louisville, KY, or Indianapolis, IN.)

MC 142292 (Sub-2F), filed August 4, 1978. Applicant: RICHARD WARREN WHITLEY, 53 Wilson Avenue, Belleville, ON, Canada K8N 5A2. Representative: William J. Hirsch, Suite 1125, 43 Court Street, Buffalo, NY 14202. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Precast and prestressed concrete structural products*, from ports of entry on the international boundary line between the United States and Canada, in MI and NY, to points in CT, DE, IL, IN, KY, ME, MD, MA, NH, NJ, MC, PA, RI, TN, VT, VA, WV, and DC, under continuing contract(s) with (1) Stanley Structures Ltd., of Belleville, ON, Canada, and (2) Pre-Con Co., Division of St. Mary's Cement Ltd., of Brampton, ON, Canada, restricted in both (1) and (2) above to the transportation of traffic originating at points in the province of ON, Canada. Condition: Prior receipt from applicant of a affidavit setting forth its appropriate Canadian authority, or explaining why no such authority is necessary.

NOTE.—The restrictions and conditions contained in the grant of authority in this proceeding are phrased in accordance with the policy statement entitled "Notice to Interested Parties of New Requirements Concerning Applications for Operating Authority to Handle Traffic" to and from points in Canada published in the FEDERAL REGISTER on December 5, 1974, and supplemented on November 18, 1975. The Commission is presently considering whether the policy statement should be modified, and is in communication with appropriate Canadian officials regarding this issue. If the policy statement is changed, appropriate notice will appear in the FEDERAL REGISTER and the Commission will consider all restrictions or conditions which were imposed pursuant to the prior policy statement, regardless of when the condition or restriction was imposed, as being null and void and having no force or effect. (Hearing site: Buffalo, NY.)

MC 142672 (Sub-24F), filed August 7, 1978. Applicant: DAVID BENEUX PRODUCE & TRUCKING, INC., P.O. Drawer F, Mulberry, AR 72947. Representative: Don Garrison, 324 North Second Street, Rogers, AR 72756. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Such commodities* as are used or dealt in by grocery and food business houses, from the facilities of the Kroger Co., at Cincinnati, and Columbus, OH, to Little Rock, AR, Los Angeles, CA, Memphis, TN, and Dallas and Houston, TX. (Hearing site: Cincinnati, OH, or Little Rock, AR.)

NOTE.—Dual operations are at issue in this proceeding.

MC 142672 (Sub-27F), filed August 7, 1978. Applicant: DAVID BENEUX PRODUCE & TRUCKING, INC., P.O. Drawer F, Mulberry, AR 72947. Representative: Don Garrison, 324 North Second Street, Rogers, AR 72756. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Television sets, radios, phonographs, stereo systems, recorders players, speaker systems, and audio equipment;* and (2) *accessories and parts* for the commodities named in (1) above, from Bloomington and Indianapolis, IN, to points in AZ, AR, CO, FL, IL, IA, KS, LA, MN, MO, NE, NM, ND, OK, TX, and WI. (Hearing site: Indianapolis, IN, or Little Rock, AR.)

NOTE.—Dual operations are at issue in this proceeding.

MC 143031 (Sub-7F), filed August 31, 1978. Applicants: LLOYD PAUL MURPHY, JAMES EDWARD MURPHY, TIMOTHY PAUL MURPHY, AND EDWARD STEWART MURPHY, dba MURPHY & SONS, Route 2, Box 139, Spring City, TN 37381. Representative: Stan Guthrie, Suite 100, MacLellan Building, Chattanooga, TN 37402. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Crated new household refrigerators*, from the facilities of Columbus Products, at Columbus, OH, to the facilities of Magic Chef, Inc., at Cleveland, TN, under continuing contract(s) with Magic Chef, of Cleveland, TN. (Hearing site: Chattanooga or Nashville, TN.)

MC 143968 (Sub-2F), filed October 2, 1978. Applicant: DONAHUE TRUCKING, INC., 2211 Steward Street, Des Moines, IA 50317. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Brick*, from Utica, MO, and Sheffield, IA, to those points in MN on the south of a line beginning at the SD-MN State line and extending along U.S. Hwy 212 to junction U.S. Hwy 12, then along U.S. Hwy 12 to the MN-WI State line, under continuing contract(s) with Sheffield Brick & Tile Co., of Sheffield, IA. (Hearing site: St. Paul, MN.)

MC 144027 (Sub-5F), filed September 5, 1978. Applicant: WARD CARTAGE AND WAREHOUSING, INC., Route No. 4, Glasgow, KY 42121. Representative: Walter Harwood, P.O. Box 15215, Nashville, TN 37215. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tobacco, tobacco products, and cigarette making kits*, between Louisville, KY, and Chicago, IL. (Hearing site: Louisville, KY.)

MC 144122 (Sub-25F), filed August 14, 1978. Applicant: CARRETTA TRUCKING, INC., South 160, Route 17, North Paramus, NJ 07652. Representative: Joseph Carretta (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between New York, NY and Chicago, IL. (Hearing site: New York, NY, or Chicago, IL.)

NOTE.—Dual operations are at issue in this proceeding.

MC 144622 (Sub-13F), filed August 14, 1978. Applicant: GLENN BROS. MEAT CO., INC., P.O. Box 9343, Little Rock, AR 72219. Representative: Phillip Glenn (same address as applicant). to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned pet food and canned tuna*, from San Diego, CA, to points in AL, IN, GA, FL, IL, IA, MI, MN, OH, and TN. (Hearing site: San Diego, CA.)

NOTE.—Dual operations are at issue in this proceeding.

MC-145234-F, filed August 16, 1978. Applicant: GEORGE E. FRISBEE, d.b.a. SEACOAST TRUCKING & MOVING CO., 105 Bartlett Street, Box 1283, Portsmouth, NH 03801. Representative: Robert J. Gallagher, 1000 Connecticut Avenue NW., Suite 1200, Washington, DC 20036. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used household goods* as defined by the Commission, restricted to the transportation of shipments having a prior or subsequent movement beyond the points authorized, and further restricted to the performance of pickup and delivery service in connection with the packing, crating, and containerization, or unpacking, uncrating, and decontainerization of such shipments, between points in York County, ME, points in Belknap, Carroll, Strafford, Rockingham, Merrimack, and Hillsborough Counties, NH, and points in Middlesex and Essex Counties, MA. (Hearing site: Portsmouth, NH.)

MC-145262-F, filed August 7, 1978. Applicant: M. H. HEATON, INC., 19 Ashwood Road, Salem, NH 03079. Representative: Frank M. Cushman, 36 South Main Street, Sharon, MA 02067. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Motorcycles*, in crates, and (2) *parts, and accessories* for motorcycles, in crates from points in Bergen, Camden, and Middlesex Counties, NJ, and Albany County, NY, to points in ME, MA, NH, and VT. (Hearing site: Washington, DC.)

NOTE.—Dual operations are at issue in this proceeding.

MC 145425F, filed September 25, 1978. Applicant: DAN'S MOVING & STORAGE, INC., 222 Lake Shore Drive West, Dunkirk, NY 14048. Representative: William J. Hirsch, 43 Court Street, Suite 1125, Buffalo, NY 14202. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used household goods*, unaccompanied baggage, and personal effects, between points in Chautauqua, Cattaraugus, Orleans, Erie, Niagara, Allegany, Wyoming, and Genesee Counties, NY, restricted to the transportation of traffic having a prior or subsequent movement, in containers, beyond the points authorized, and further restricted to the performance of pickup and delivery service in connection with packing, crating, and containerization, and unpacking, uncrating, and decontainerization of such traffic. (Hearing site: Buffalo, NY.)

MC 145488F, filed October 2, 1978. Applicant: RANDALL R. VAUGHT, d.b.a. WEST PLAINS MOTOR LINES, P.O. Box 274, West Plains, MO 65775. Representative: Thomas A. Stroud, 2008 Clark Tower, 5100 Poplar Avenue, Memphis, TN 38137. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Mountain Home, AR, and West Plains, MO, from Mountain Home over AR Hwy 5 to the MO-AR State Line, then over MO Hwy 5 to junction U.S. Hwy 160, then over U.S. Hwy 160 to West Plains, and return over the same route, (2) between Mountain Home, AR, and junction U.S. Hwy 160 and MO Hwy 101, from Mountain Home over U.S. Hwy 62 to junction AR Hwy 101, then over AR Hwy 101 to the AR-MO State line, then over MO Hwy 101 to junction U.S. Hwy 160, and return over the same route, (3) between Bakersfied, MO and West Plains, MO, from Bakersfield over MO Hwy 142 to junction MO Hwy 17, then over MO Hwy 17 to West Plains, and return over the same route, (4) between Moody, MO, and South Fork, MO, over County Road E, (5) between West Plains, MO and Lanton, MO, over MO Hwy 17, (6) between Mountain Home, MO and Flippin, AR, over U.S. Hwy 62, serving all intermediate points in routes (1) through (6) above. (Hearing site: West Plains, MO, or Mountain Home, AR.)

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MC 130528F, filed September 13, 1978. Applicant: DORIS GOLDSTEIN, d.b.a. ART JOURNEYS, 345 East 56th Street, New York, NY 10022. Representative: Doris Goldstein (same address as applicant). To engage in operations, in interstate or foreign commerce, as a *broker*, at New York, NY, in arranging for the transportation, by motor vehicle, of: *Passengers and their baggage*, in round-trip special and charter operations, beginning and ending at New York, NY, and extending to points in CT, DE, MA, NJ, PA, and DC. (Hearing site: New York, NY).

NOTE.—Applicant is cautioned that arrangements for charter parties or groups should be made in conformity with the requirements set forth in Tauck Tours, Inc., Extension—New York, NY, 54 MCC 291 (1952).

[FR Doc. 78-31973 Filed 11-13-78; 8:45 am]

[7035-01-M]

[Decisions Volume No. 45]

DECISION-NOTICE

Decided: October 31, 1978.

The following applications are governed by special rule 247 of the Commission's *Rules of Practice* (49 CFR § 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date notice of the application in published in the FEDERAL REGISTER. Failure to file a protest, on or before December 14, 1978, will be considered as a waiver of opposition to the application. A protest under these rules should comply with rule 247(e)(3) of the Rules of Practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding, (as specifically noted below), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. A protestant should include a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describe in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named. If the protest includes a request for oral hearing, such request shall meet the requirements of section 247(e)(4) of the special rules and shall include the certification required in that section.

Section 247(f) provides, in part, that an applicant which does not intend timely to prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administratively acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

We find:

With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its pro-

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posed service is required by the public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the national transportation policy. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of the Interstate Commerce Act and the Commission's regulations. This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a protestant, that the proposed dual operations are consistent with the public interest and the national Commission which is hereby expressly reserved to impose such find necessary to insure that applicant's operations shall conform to the provisions of section 210 of the Interstate Commerce Act.

It is ordered:

In the absence of legally sufficient protests, filed on or before December 14, 1978 (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, such duplication shall not be construed as conferring more than a single operating right.

Applicants must comply with all specific conditions set forth within 90 days after the service of the notification of the effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied. By the Commission, Review Board Number 3, Members Parker, Fortier, and Hill.

H. G. HOMME, Jr.,
Secretary.

MC 2860 (Sub-173F), filed August 25, 1978. Applicant: NATIONAL FREIGHT, INC., 71 West Park Avenue, Vineland, NJ 08360. Representative: W. Randall Tye, Suite 1400, Candler Building, Atlanta, GA 30303. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities as are dealt in and used by producers or distributors of alcoholic beverages* (except commodities in bulk, in tank vehicles), between the facilities of Heublein, Inc., at or near Paducah, KY, on the one hand, and, on the other, points in AL, AR, FL, GA, IL, IN, LA, MI, MS, MO, NC, OH, PA, SC, TX, VA, WV, and WI. (Hearing site: Washington, DC, or Philadelphia, PA.)

MC 4405 (Sub-581F), filed September 18, 1978. Applicant: DEALERS TRANSIT, INC., 522 South Boston Avenue, Tulsa, OK 74103. Representative: Alan Foss, 502 First National Bank Building, Fargo, ND 58102. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Pipe couplings, pilings, well casings and well screens, and tubing*, from the facilities of Stanron Supply, Inc., at or near Lubbock, TX, to points in the United States (except AK and HI), (2) *pipe, piling, and well screens and well casings*, from Fontana and Long Beach, CA, Valley, NE, Pueblo, CO, Houston, TX, and the ports of entry on the international boundary line between the United States and Canada at points in MT and ND, to points in the United States (except AK and HI), and (3) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) and (2) above (except commodities in bulk, in tank vehicles), from points in the United States (except AK and HI), to the facilities of Stanron Supply, Inc., at or near Lubbock, TX. (Hearing site: Lubbock or Amarillo, TX.)

MC 8535 (Sub-61F), filed September 26, 1978. Applicant: GEORGE TRANSFER AND RIGGING CO., INC., P.O. Box 500, Parkton, MD 21120. Representative: John Guandolo, 1000 Sixteenth Street NW., Washington, DC 20036. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from the facilities of Feralloy Corp., at New Castle, DE, to points in SC. (Hearing site: Wilmington, DE, or Philadelphia, PA.)

MC 47583 (Sub-74F), filed September 6, 1978. Applicant: TOLLIE FREIGHTWAYS, INC., 1020 Sunshine Road, Kansas City, KS 66115. Representative: D. S. Hults, P.O. Box 225, Lawrence, KS 66044. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Glass containers, closures for glass containers, and fiberboard boxes*, from the facilities of Owens Illinois, at or near Waco, TX, to points in CO, NM, and OK, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (1) above, in the reverse direction. (Hearing site: Kansas City, MO.)

MC 49368 (Sub-103F), filed October 12, 1978. Applicant: COMPLETE AUTO TRANSIT, INC., East 4111 Andover Road, Bloomfield Hills, MI 48013. Representative: Eugene C. Ewald, 100 West Long Lake Road, Suite 102, Bloomfield Hills, MI 48013. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Motor vehicles*, in initial movements, in truckaway service, from the facilities of General Motors Corp., at Flint, MI, to points in AL, FL, GA, MN, NC, and SC, under a continuing contract or contracts with General Motors Corp., of Warren, MI. (Hearing site: Detroit, MI, or Washington, DC.)

NOTE.—Dual operations are at issue in this proceeding.

MC 51146 (Sub-630F), filed August 21, 1978. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: John R. Patterson, 2480 E. Commercial Boulevard, Fort Lauderdale, FL 33308. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Cleaning compounds and fabric softeners*, from Lima, OH, to points in IL (except points in Will, Lake, Cook, Kane, DuPage, and Kendall Counties), IA, WI, MN, and ND, and (2) *equipment, materials, and supplies* used in the manufacture and distribution of the commodities named in (1) above (except commodities in bulk), in the reverse direction. (Hearing site: Chicago, IL.)

MC 51146 (Sub-631F), filed August 22, 1978. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: John R. Patterson, 2480 E. Commercial Boulevard, Fort Lauderdale, FL 33308. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in or used by manufacturers and distributors of doors, between Green Bay, WI, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Chicago, IL.)

MC 56244 (Sub-60F), filed August 22, 1978. Applicant: KUHN TRANSPORTATION CO., INC., P.O. Box 98, R.D. No. 2, Gardners, PA 17324. Representative: John M. Musselman, 410 North Third Street, P.O. Box 1146, Harrisburg, PA 17108. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by grocery and food business houses (except commodities in bulk, and frozen foods), from points in York County, PA, to points in CT, IL, IN, KY, ME, MA, MI, NH, OH, RI, VT, WV, and those points in PA on and west of U.S. Hwy 15. (Hearing site: Harrisburg, PA or Washington, DC.)

MC 56244 (Sub-61F), filed August 22, 1978. Applicant: KUHN TRANSPORTATION CO., INC., P.O. Box 98, R.D. No. 2, Gardners, PA 17324. Representative: John M. Musselman, P.O. Box 1146, 410 North Third Street, Harrisburg, PA 17108. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pet foods*, from Zanesville, OH, to Camden, NJ. (Hearing site: Harrisburg, PA, or Washington, DC.)

MC 56244 (Sub-62F), filed August 22, 1978. Applicant: KUHN TRANSPORTATION CO., INC., P.O. Box 98, R.D. No. 2, Gardners, PA 17324. Representative: John M. Musselman, P.O. Box 1146, 410 North Third Street, Harrisburg, PA 17108. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by grocery and food business houses (except commodities in bulk, and frozen foods), from the facilities of Libby, McNeill & Libby, Inc., at Kokomo, IN, to points in MD, PA, and DC. (Hearing site: Harrisburg, PA, or Washington, DC.)

MC 56244 (Sub-64F), filed August 22, 1978. Applicant: KUHN TRANSPORTATION CO., INC., P.O. Box 98, R.D. No. 2, Gardners, PA 17324. Representative: John M. Musselman, P.O. Box 1146, 410 North Third Street, Harrisburg, PA 17108. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Animal feed, feed ingredients, additives, and materials and supplies* used in the manufacture and distribution of animal feed (except commodities in bulk), between the facilities of Kal Kan Foods, Inc., at or near Mattoon, IL, on the one hand, and, on the other, points in NY, NJ, PA, MD, DE, VA, OH, IN, and DC, restricted to the transportation of traffic originating at or destined to the facilities of Kal Kan Foods, Inc., at or near Mattoon, IL. (Hearing site: Harrisburg, PA, or Washington, DC.)

MC 61592 (Sub-425F), filed August 11, 1978. Applicant: JENKINS TRUCK LINE, INC., P.O. Box 697, Jeffersonville, IN 47130. Representative: E. A. DeVine, P.O. Box 737, Moline, IL 61265. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fiberboard containers* and *pulpboard containers* (except commodities in bulk), from the facilities of Sonoco Products Co., at or near Alpha, OH, Henderson, KY, Houston, TX, St. Louis, MO, Chicago, IL, and Henderson, TN, to points in the United States (except AK and HI). (Hearing site: Atlanta, GA.)

MC 65941 (Sub-57F), filed August 30, 1978. Applicant: TOWER LINES, INC., 3rd and Warwood Avenue, Box 6010, Wheeling, WV 26003. Representative: K. Edward Wolcott, Post Office Box 872, Atlanta, GA 30303. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Granulated slag*, from the facilities of H. B. Reed & Co., Inc., at or near Cresap, WV, to points in DE, IL, IN, KY, MD, NC, NJ, NY, OH, PA, VA, and DC. (Hearing site: Wheeling, WV, or Washington, DC.)

MC 70832 (Sub-24F), filed August 3, 1978. Applicant: NEW PENN MOTOR EXPRESS, INC., P.O. Box 630, Lebanon, PA 17042. Representative: S. Harrison Kahn, Suite 733 Investment Building, Washington, DC 20005. To operate as a *common carrier*, by motor vehicle, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Reading, PA and Philadelphia, PA, over U.S. Hwy 422, serving all intermediate points and serving points in PA within 35 miles of Philadelphia, PA, as off-route points. (Hearing site: Harrisburg, PA.)

MC 71296 (Sub-1F), filed August 18, 1978. Applicant: FORT TRANSPORTATION & SERVICE CO., INC., 1600 Janesville Avenue, Fort Atkinson, WI 53538. Representative: Wayne W. Wilson, 150 East Gilman Street, Madison, WI 53703. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Automobile parts, truck parts, and tractor parts*, and (2) *materials, equipment, and supplies* used in the manufacture, sale, and distribution of the commodities named in (1) above (except commodities in bulk, in tank vehicles), between Edgerton and Janesville, WI, on the one hand, and, on the other, points in IL (except Chicago), IN, MI, OH, PA, MO, and KY. (Hearing site: Madison, WI, or Fort Wayne, IN.)

MC 78118 (Sub-39F), filed October 12, 1978. Applicant: W. H. JOHNS, INC., a Delaware corporation, 35 Witmer Road, Lancaster, PA 17602. Representative: Christian V. Graf, 407 North Front Street, Harrisburg, PA 17101. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass fiber roving, glass fiber yarn, glass fiber strand, glass fiber mat or matting, glass fiber fabric, and glass fiber reinforced rigid polypropylene sheets*, from Lexington and Shelby, NC, to points in NJ, MD, PA, OH, and the Lower Peninsula of MI, restricted to the transportation of traffic originating at the named origins and destined to the indicated destinations. (Hearing site: Washington, DC, or Harrisburg, PA.)

MC 82841 (Sub-236F), filed August 30, 1978. Applicant: HUNT TRANSPORTATION, INC., 10770 "I" Street, Omaha, NE 68127. Representative: Donald L. Stern, 610 Xerox Building, 7171 Mercy Road, Omaha, NE 68106. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Light poles* and *light pole accessories*, from the facilities of K W Industries, Inc., at Houston, TX, to points in the United States (except AK and HI), restricted to the transportation of traffic originating at the named facilities. (Hearing site: Houston, TX.)

MC 83539 (Sub-509F), filed October 11, 1978. Applicant: C & H TRANSPORTATION CO., INC., P.O. Box 270535, Dallas, TX 75227. Representative: Thomas E. James (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *parts and attachments for tractors*, (2) *fabricated steel products*, and (3) *equipment, parts and attachments* used in the logging, forestry and construction industries, from the facilities of Medford Steel Division of C.S.C., Inc., at or near Medford, OR, to points in the United States (except AK and HI). (Hearing site: Portland, OR, or Dallas, TX.)

MC 83835 (Sub-152F), filed September 15, 1978. Applicant: WALES TRANSPORTATION, INC., P.O. Box 6168, Dallas, TX 75222. Representative: J. Michael Alexander, 136 Wynnewood Professional Building, Dallas, TX 75224. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pipe and materials, equipment, and supplies* used in the manufacture of pipe, between the facilities of Maverick Tube, at or near Union, MO, on the one hand, and, on the other, points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the named facilities. (Hearing site: St. Louis, MO, or Dallas, TX.)

MC 85255 (Sub-63F), filed September 18, 1978. Applicant: PUGET SOUND TRUCK LINES, INC., P.O. Box 24526, Seattle, WA 98124. Representative: Clyde H. MacIver, 1900 Peoples National Bank Building, 1415 Fifth Avenue, Seattle, WA 98171. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pulpboard, in rolls*, between the facilities of Western Kraft Paper Group, at or near Millersburg, OR, and Wheeler, WA. (Hearing site: Seattle, WA, or Portland, OR.)

NOTE.—The person or persons it appears may be engaged in common control must either file an application under section 5(2) of the Interstate Commerce Act, or submit an affidavit indicating why such approval is unnecessary.

MC 85934 (Sub-82F), filed August 22, 1978. Applicant: MICHIGAN TRANSPORTATION CO., 3601 Wyoming,

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Dearborn, MI 48120. Representative: Edwin M. Snyder, 22375 Haggerty Road, P.O. Box 400, Northville, MI 48167. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Soda ash*, in bulk, in hopper vehicles, from the facilities of BASF Wyandotte Corp., at Wyandotte, MI, to Tucker, GA. (Hearing site: Washington, DC, or Chicago, IL.)

MC 98952 (Sub-57F), filed August 10, 1978. Applicant: GENERAL TRANSFER CO., a DE corporation, 1880 North Woodford Street, Decatur, IL 62526. Representative: Paul E. Steinhour, 918 East Capitol Avenue, Springfield, IL 62701. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Animal feed, feed ingredients, and additives, materials, and supplies* used in the manufacture and distribution of animal feeds (except commodities in bulk), between the facilities of Kal Kan Foods, Inc., at or near Mattoon, IL, and Columbus, OH, on the one hand, and, on the other, those points in the United States on and east of U.S. Hwy 85, restricted to the transportation of traffic originating at or destined to the above named facilities. (Hearing site: Springfield or Chicago, IL.)

MC 105733 (Sub-67F), filed September 12, 1978. Applicant: H. R. RITTER TRUCKING CO., INC., 928 East Hazelwood Avenue, Rahway, NJ 07065. Representative: Chester A. Zyblut, Executive Building, 1030 Fifteenth Street NW., Washington, DC 20005. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Gasoline, kerosene, lubricating oils, and jet fuel*, in bulk, from Providence, RI, to points in CT, ME, MA, NH, VT, and NY, and (2) *gasoline and fuel oils*, in bulk, from Boston, MA, to points in CT, ME, NH, RI, and VT. (Hearing site: Boston, MA.)

MC 105886 (Sub-31F), filed August 23, 1978. Applicant: MARTIN TRUCKING, INC., East Poland Avenue, Bessemer, PA 16112. Representative: Henry M. Wick, Jr., 2310 Grant Building, Pittsburgh, PA 15219. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Ground slag*, in bulk, from Neville Island, PA, to points in IL, IN, KY, MD, NY, OH, TN, VA, and WV. (Hearing site: Washington, DC, or Pittsburgh, PA.)

MC 106398 (Sub-845F), filed October 13, 1978. Applicant: NATIONAL TRAILER CONVOY, INC., 525 South Main, Tulsa, OK 74103. Representative: Irvin Tull (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Buildings*, complete, knocked-down, or in sections, from the facilities of Childers Manufacturing Co., at Houston, TX, to points in the United States (including AK, but excluding HI). (Hearing site: Houston, TX.)

NOTE.—The certificate to be issued shall be limited to 3 years from its date of issue, unless, prior to its expiration (but not less than 6 months nor more than 9 months prior to its expiration), application files a petition for permanent extension of the certificate.

MC 106644 (Sub-265F), filed August 17, 1978. Applicant: SUPERIOR TRUCKING CO., INC., P.O. Box 916, Atlanta, GA 30301. Representative: Frank Hall, Suite 713, 3384 Peachtree Road NE., Atlanta, GA 30326. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Commodities* which because of size or weight, require the use of special equipment or special handling, (2) *self-propelled articles*, each weighing 15,000 pounds or more, (3) *commodities* which because of size or weight do not require the use of special equipment or special handling when transported as part of the same shipment as the commodities in (1) or (2) above, and (4) *machinery and parts of such machinery*, between points in WV, on the one hand, and, on the other, points in AL, AR, FL, GA, KS, KY, LA, MS, MO, NC, OK, SC, TN, VA, WV, and TX. (Hearing site: Atlanta, GA, or Washington, DC.)

MC 107496 (Sub-1157F), filed August 24, 1978. Applicant: RUAN TRANSPORT CORP., 666 Grand Avenue, Des Moines, IA 50309. Representative: E. Check, P.O. Box 855, Des Moines, IA 50304. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Cement*, in bulk, from Clarksville, MO, to points in NE, and (2) *ground aluminum scrap*, in bulk, from Henrietta, MO, to Channelview, TX. (Hearing site: Des Moines, IA, or Kansas City, MO.)

MC 107743 (Sub-51F), filed September 11, 1978. Applicant: SYSTEM TRANSPORT, INC., P.O. Box 3456 T.A., Spokane, WA 99220. Representative: J. Michael Alexander, 136 Wynnewood Professional Building, Dallas, TX 75224. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel tubing*, between Salt Lake City, UT, on the one hand, and, on the other points in OR and WA, restricted to the transportation of traffic originating at or destined to the facilities of Keystone Tubular Service at Salt Lake City, UT. (Hearing site: Salt Lake City, UT, or Denver, CO.)

MC 107818 (Sub-93F), filed July 7, 1978, previously noticed in the FEDERAL REGISTER issue of September 7, 1978. Applicant: GREENSTEIN TRUCKING CO., a corporation, 280 NW. 12th Avenue, P.O. Box 608, Pompano Beach, FL 33061. Representative: Martin Sack, Jr., 1754 Gulf Life Tower, Jacksonville, FL 32207. To operate as a *Common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except in bulk), from Albert Lea, MN, to points in AL, FL, GA, KY, and TN, restricted to the transportation of traffic originating at the named origin. (Hearing site: Cincinnati, OH.)

NOTE.—This republication shows TN in lieu of TX as the correct destination State.

MC 107839 (Sub-178F), filed October 13, 1978. Applicant: DENVER-ALBUQUERQUE MOTOR TRANSPORT, INC., 2121 East 67th Avenue, P.O. Box 16106, Denver, CO 80216. Representative: Edward T. Lyons, Jr., 1600 Lincoln Center Building, 1660 Lincoln Street, Denver, CO 80216. To operate as a *Common carrier*, by motor vehicle, over irregular routes, transporting: *Tea*, from Houston and Galveston, TX, to Denver, CO. (Hearing site: Denver, CO.)

MC 108119 (Sub-103F), filed October 13, 1978. Applicant: E. L. MURPHY TRUCKING CO., a corporation, P.O. Box 43010, St. Paul, MN 55164. Representative: Andrew R. Clark, 1000 First National Bank Building, Minneapolis, MN 55402. To operate as a *Common carrier*, by motor vehicle, over irregular routes, transporting: *Road construction equipment*, from Minneapolis, MN, to points in the United States (except AK and HI). (Hearing site: Minneapolis, MN.)

MC 108676 (Sub-130F), filed August 24, 1978. Applicant: A. J. METLER HAULING & RIGGING, INC., 117 Chicamauga Avenue, Knoxville, TN 37917. Representative: Louis J. Amato, P.O. Box E, Bowling Green, KY 42101. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, veneer, and particleboard*, from points in CA, OR, and WA, to points in OK. (Hearing site: Oklahoma City, OK.)

MC 109689 (Sub-339F), filed October 13, 1978. Applicant: W. S. HATCH CO., a corporation, P.O. Box 1825, Salt Lake City, UT 84110. Representative: Mark K. Boyle, Suite 400, 10 W. Broadway Building, Salt Lake City, UT 84101. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bentonite clay*, from points in Phillips County, MT, and Crook County, WY, to points in AZ, CA, CO, ID, KS, MT, NE, NV, NM, ND, OK, OR, SD, TX, UT, WA, and WY. (Hearing site: Salt Lake City, UT.)

MC 110563 (Sub-240F), filed September 13, 1978. Applicant: COLDWAY FOOD EXPRESS, INC., P.O. Box 747, State Route 29 North, Sidney, OH 45365. Representative: Joseph M. Scanlan, 111 West Washington Street, Chicago, IL 60602. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except in bulk), in vehicles equipped with mechanical refrigeration, from the facilities of Miami Margarine Company, Inc., at Albert Lea, MN, to points in AL, FL, GA, KY, LA, MS, NC, OH, TN, VA, and WV, restricted to the transportation of traffic originating at the named origin facilities. (Hearing site: St. Paul, MN, or Washington, DC.)

MC 110683 (Sub-131F), filed September 11, 1978. Applicant: SMITH'S TRANSFER CORP., P.O. Box 1000, Staunton, VA 24401. Representative: Francis W. McInerny, 1000 16th Street NW., Washington, DC 20036. To operate as a *common carrier*, by motor vehicle, transporting: *General commodities* (except those of unusual value, household goods as defined by the Commission, classes A and B explosives, commodities in bulk, and those requiring special equipment), Route 1: Between Richmond, VA and Raleigh, NC, from Richmond over Interstate Hwy 95 to Petersburg, then over Interstate Hwy 85 to Henderson, NC; then over U.S. Hwy 1 to Raleigh, and return over the same route, Route 2: Between Richmond, VA and Rocky Mount, NC, from Richmond, VA, over U.S. Hwy 95 to Rocky Mount, NC, then over U.S. Hwy 64 to Raleigh, NC, and return over the same route, Route 3: Between Henderson, NC and Durham, NC, over U.S. Hwy 85, Route 4: Between Rocky Mount, NC and the intersection of Interstate Hwy 95 and U.S. Hwy 74, near Lumberton, NC, over U.S. Hwy 95, Route 5: Between Monroe, NC and Wilmington, NC, over U.S. Hwy 74, Route 6: Between Wilson, NC and Wilmington, NC, over U.S. Hwy 117, Route 7: Between Raleigh, NC and Rockingham, NC, over U.S. Hwy 1, Route 8: Between Rocky Mount, NC and Wilmington, NC, from Rocky Mount over U.S. Hwy 64 to its intersection with U.S. Hwy 13 at or near Bethel, then over U.S. Hwy 13 to Greenville, NC; then over U.S. Hwy 11 to Kinston, NC, then over U.S. Hwy 258 to its intersection with U.S. Hwy 17 at or near Jacksonville, NC; then over U.S. Hwy 17 to Wilmington, and return over the same route, as alternate routes in 1-8 above, for operating convenience only, serving no intermediate points. (Hearing site: Washington, DC.)

MC 111045 (Sub-157F), filed September 18, 1978. Applicant: REDWING CARRIERS, INC., P.O. Box 426, Tampa, FL 33601. Representative: L. W. Fincher (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid resin solution*, in bulk, in tank vehicles, from the facilities of *U.S.S. Polyester*, at or near Bartow, FL, to points in AL, AR, GA, LA, NC, SC, and TN. (Hearing site: Tampa, FL, or Washington, DC.)

MC 111383 (Sub-46F), filed August 14, 1978. Applicant: BRASWELL MOTOR FREIGHT SYSTEM, INC., P.O. Box 7270, Shawnee Mission, KS 66207. Representative: John M. Records, (same address as applicant). To operate as a *common carrier*, by motor vehicle, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of the The Cabot Corp., at or near Tate Cove and Cabot, LA, as off-route points in connection with carrier's otherwise authorized regular route authority. (Hearing site: Boston, MA, or Washington, DC.)

MC 112822 (Sub-462-F), filed August 14, 1978. Applicant: BRAY LINES INC., P.O. Box 1191, 1401 North Little Street, Cushing, OK 74023. Representative: Dudley G. Sherrill, (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *malt beverages* (except commodities in bulk, in tank vehicles), from points in Jefferson County, CO, to points in MO. (Hearing site: Denver, CO.)

MC 113855 (Sub-451F), filed September 25, 1978. Applicant: INTERNATIONAL TRANSPORT, INC., a North Dakota corporation, 2450 Marion Road SE., Rochester, MN 55901. Representative: Alan Foss, 502 First National Bank Building, Fargo, ND 58102. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *tractors*, (2) *construction equipment*, (3) *agricultural equipment*, and (4) *accessories and parts* for the commodities in (1), (2), and (3) above, from Baltimore, MD, to points in the United States (including AK, but excluding HI). (Hearing site: Washington, DC.)

MC 114211 (Sub-369F), filed August 28, 1978. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, IA 50704. Representative: Adelor J. Warren (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in or used by dealers and manufacturers of agricultural, industrial, and construction equipment, metal products, building materials, building supplies, lumber mills, and lumber yards, between points in Black Hawk County, IA, on the one hand, and, on the other, points in the United States (including AK but excluding HI), restricted to the transportation of traffic originating at or destined to Black Hawk County, IA. (Hearing site: Waterloo, IA.)

MC 114211 (Sub-373F), filed August 29, 1978. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, IA 50704. Representative: Adelor J. Warren (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *heating and cooling machinery*, and *heating and cooling equipment*, (2) *attachments, parts, and accessories* for the commodities named in (1) above (except commodities in bulk), from Omaha, NE, to points in the United States (including AK, but excluding HI); and (3) *equipment, materials, and supplies* used in the manufacture and distribution of the commodities named in (1) and (2) above (except commodities in bulk), in the reverse direction. (Hearing site: Omaha, NE.)

MC 114569 (Sub-250F), filed October 10, 1978. Applicant: SHAFFER TRUCKING, INC., P.O. Box 418, New Kingstown, PA 17072. Representative: N. L. Cummins (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *canned and bottled foodstuffs*, (except frozen), from the facilities of Wm. Underwood Co., at or near Hannibal, MO, to Great Falls, MT; Los Angeles and San Jose, CA; Phoenix, AZ; Portland, OR; Salt Lake City, UT; Seattle, WA; El Paso, TX; and Denver, Co., restricted to the transportation of traffic originating at the named origin, and (2) *equipment, materials, and supplies* used in the manufacture and sale of the commodities in (1) above, from Marion, AL, to the facilities of Wm. Underwood Co., at or near Hannibal, MO, restricted to the transportation of traffic destined to the named destination. (Hearing site: Boston, MA, or Washington, DC.)

NOTE.—Dual operations may be at issue in this proceeding.

MC 114569 (Sub-251F), filed October 10, 1978. Applicant: SHAFFER TRUCKING, INC., P.O. Box 418, New Kingstown, PA 17072. Representative: N. L. Cummins (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in by hardware stores, discount stores, department stores, and supermarkets (except commodities in bulk), from the facilities of Action Industries, Inc., at or near Pittsburgh and Cheswick, PA, to those points in the United States in and west of MI, OH, KY, TN, GA, and FL (except AK and HI), restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations. (Hearing site: Pittsburgh, PA, or Washington, DC.)

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NOTE.—Dual operations may be at issue in this proceeding.

MC 115826 (Sub-339F), filed August 16, 1978. Applicant: W. J. DIGBY, INC., a Nevada corporation, 6015 East 58th Avenue, Commerce City, CO 80022. Representative: Howard Gore (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *plastic products*, (2) *such commodities* as are dealt in or used by manufacturers and convertors of paper and paper products, and (3) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (1) and (2) above, from the facilities of Continental Bondware, at or near Los Angeles, CA, to points in AZ, ID, MT, NM, NV, OK, OR, TX, UT, and WA. (Hearing site: Denver, CO.)

MC 115826 (Sub-340F), filed August 17, 1978. Applicant: W. J. DIGBY, INC., a Nevada corporation, 6015 East 58th Avenue, Commerce City, CO 80022. Representative: Howard Gore (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *plastic products*, (2) such commodities as are dealt in or used by manufacturers and converters of paper and paper products, and (3) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (1) and (2) above (except commodities in bulk), from the facilities of the Continental Group, Inc., Bondware Division, at or near Fort Worth, TX, to points in AZ, CA, CO, ID, MT, NM, NV, OR, UT, and WA; (4) *plastic beads* (except commodities in bulk), from the facilities of the Continental Group, Inc., Bondware Division, at or near Saginaw, TX, to the facilities of the Continental Group, Inc., Bondware Division, at or near San Pedro and La Mirada, CA; and (5) *containers*, from the facilities of the Continental Group, Inc., Bondware Division, at or near San Pedro and La Mirada, CA, to the facilities of the Continental Group, Inc., Bondware Division, at or near Saginaw, TX. (Hearing site: Denver, CO.)

MC 115826 (Sub-342F), filed August 21, 1978. Applicant: W. J. DIGBY, INC., a Nevada corporation, 6015 East 58th Avenue, Commerce City, CO 80022. Representative: Howard Gore (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *pet foods*, in containers, from the facilities of Kal Kan Foods, Inc., at or near Columbus, OH, to those points in the United States on and east of U.S. Hwy 85. (Hearing site: Denver, CO.)

MC 115826 (Sub-343F), filed August 18, 1978. Applicant: W. J. DIGBY, INC., a Nevada corporation, 6015 East 58th Avenue, Commerce City, CO 80022. Representative: Howard Gore (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *such commodities* as are dealt in by retail paint stores (except commodities in bulk), from the facilities of Standard T Chemical Co., at or near Chicago Heights, IL, to Kansas City and Leavenworth, KS, and points in MO, restricted to the transportation of traffic originating at the named origin facilities. (Hearing site: Denver, CO.)

MC 115826 (Sub-345F), filed August 28, 1978. Applicant: W. J. DIGBY, INC., a Nevada corporation, 6015 East 58th Avenue, Commerce City CO 80022. Representative: Howard Gore (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Animal feed and animal feed ingredients*, (except commodities in bulk), from the facilities of Kal Kan Foods, Inc., at or near Vernon, CA, to points in AZ. (Hearing site: Los Angeles, CA, or Denver, CO.)

MC 116325 (Sub-77F), filed September 18, 1978. Applicant: JENNINGS BOND, d.b.a. Bond Enterprises, P.O. Box 8, Lutesville, MO 63762. Representative: Ernest A. Brooks II, 1301 Ambassador Building, St. Louis, MO 63101. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from Sterling and Rock Falls, IL, to points in CO, KS, OK, AR, LA, MS, TN, KY, IA, NE, and AL. (Hearing site: St. Louis, MO.)

MC 116763 (Sub-427F), filed July 31, 1978, and previously published in the FEDERAL REGISTER issue of September 19, 1978. Applicant: CARL SUBLER TRUCKING, INC., North West Street, Versailles, OH 45380. Representative: H. M. Richters (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Paper and paper products*, from the facilities of Bowater Southern Paper Corp., at or hear Calhoun, TN, to points in CT, IA, ME, MA, MN, NH, NJ, NY, PA, RI, and VT, and (2) *equipment, materials, and supplies* used in the manufacture and distribution of paper and paper products (except commodities in bulk, in tank vehicles), in the reverse direction. (Hearing site: Chattanooga, TN.)

NOTE.—This republication includes RI in part (1) of the destination points and adds "except commodities in bulk, in tank vehicles" to the commodities in part (2).

MC 116763 (Sub-437F), filed September 8, 1978. Applicant: CARL SUBLER TRUCKING, INC., North West Street, Versailles, OH 45380. Representative: H. M. Richters (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Foodstuffs* (except in bulk, in tank vehicles), from Cobb, DeForest, Merrill, Oconomowoc, Poynette, and Waunakee, WI, to those points in the United States in and east of ND, SD, NE, CO, and NM, and (2) *equipment, materials, and supplies* used in the manufacture and distribution of foodstuffs, and *foodstuffs* (except in bulk, in tank vehicles), in the reverse direction. (Hearing site: Chicago, IL.)

MC 117119 (Sub-704F), filed October 13, 1978. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., P.O. Box 188, Elm Springs, AR 72728. Representative: M. M. Geffon, P.O. Box 338, Willingboro, NJ 08046. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from Hartford, CT, to those points in the United States in and west of WI, IL, MO, TN, AR, and TX (except AK and HI), restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations. (Hearing site: New York, NY, or Washington, DC.)

MC 117416 (Sub-61F), filed August 24, 1978. Applicant: NEWMAN AND PEMBERTON CORP., 2007 University Avenue NW., Knoxville, TN 37921. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Felspar* (except in bulk), from Monticello, GA, to points in IL, IN, KY, MI, OH, and TN. (Hearing site: Washington, DC.)

MC 117815 (Sub-296F), filed September 18, 1978. Applicant: PULLEY FREIGHT LINES, INC., 405 Southeast 20th Street, Des Moines, IA 50317. Representative: Dewey Marselle (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Frozen foodstuffs* (except commodities in bulk, in tank vehicles), and (2) *inedible frozen meats and meat byproducts* (except commodities in bulk, in tank vehicles), from the facilities of Wiscold, Inc., at or near Beaver Dam and Milwaukee, WI, to points in IL, IN, IA, KS, MI, MN, MO, and NE, restricted to the transportation of traffic originating at the above named origins and destined to the indicated destinations. (Hearing site: Chicago, IL, or Milwaukee, WI.)

MC 118959 (Sub-180F), filed October 10, 1978. Applicant: JERRY LIPPS, INC., 130 South Frederick Street, Cape Girardeau, MO 63701. Representative: Edward G. Bazelon, 39 South LaSalle Street, Chicago, IL 60603. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic containers*, from points in Kent County, MI, to points in the United States (except AK and HI). (Hearing site: Chicago, IL.)

NOTE.—Dual operations may be at issue in this proceeding.

MC 118959 (Sub-183F), filed October 13, 1978. Applicant: JERRY LIPPS, INC., a Florida corporation, P.O. Drawer F, Cape Girardeau, MO 63701. Representative: Hazel Seabaugh (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Paper, paper products, cellulose products*, and *textile softeners* (except commodities in bulk), and (2) *equipment, materials, and supplies* used in the manufacture of the commodities in (1) above (except commodities in bulk), between Green Bay, WI, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Cape Girardeau or St. Louis, MO.)

MC 119631 (Sub-29F), filed August 21, 1978. Applicant: DEIOMA TRUCKING CO., a corporation, P.O. Box 3315, Mt. Union Station, Alliance, OH 44601. Representative: Lawrence E. Lindeman, 425 13th St. NW., Suite 1032, Washington, DC 20004. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting (1) *buffing pads, cleaning cloths, polishing compounds, cleaning compounds, tools, putty, and paint* (except in bulk), (2) *parts and accessories* for polishing and cleaning machinery, from Canton, OH, to points in CT, DE, IL, IN, KY, MA, MD, ME, MI, NH, NJ, NY, PA, RI, VT, VA, WI, WV, and DC; and (3) *materials and supplies* used in the manufacture and distribution of the commodities named in (1) and (2) above (except commodities in bulk), from the destination territory named above to Canton, OH. (Hearing site: Cleveland, OH, or Pittsburgh, PA.)

MC 119689 (Sub-18F), filed October 12, 1978. Applicant: PEERLESS TRANSPORT CORP., a DE corporation, 2701 Railroad Street, Pittsburgh, PA 15222. Representative: William J. Lavelle, 2310 Grant Building, Pittsburgh, PA 15219. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting (1) *chemicals* (except in bulk), from the facilities of National Starch & Chemical Corp., at or near Meredosia, IL, to points in PA, and (2) *equipment, materials and supplies* used in the manufacture and distribution of chemicals (except commodities in bulk), in the reverse direction. (Hearing site: Chicago, IL, or Washington, DC.)

MC 119789 (Sub-523F), filed October 12, 1978. Applicant: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 226188, Dallas, TX 75266. Representative: James K. Newbold, Jr. (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *meats, meat products and meat byproducts, and articles distributed by meat packinghouses*, as described in sections A and C of appendix I to the report in "Descriptions in Motor Carrier Certificates," 61 MCC 209 and 766 (except hides in commodities in bulk), from the facilities of Thies Packing Co., at Great Bend, Topeka, and Wichita, KS, to points in AL, FL, GA, KY, MS, NC, SC, and TN. (Hearing site: Wichita, KS.)

MC 123054 (Sub-21F), filed August 23, 1978. Applicant: R&H CORP., a DE corporation, 295 Grand Avenue, Box 469, Clarion, PA 16214. Representative: William J. Lavelle, 2310 Grant Building, Pittsburgh, PA 15219. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *foodstuffs* (except commodities in bulk), from Canajoharie, NY, to points in KY, OH, WV, and those points in PA on and west of U.S. Hwy 219. (Hearing site: Pittsburgh, PA, or Washington, DC.)

MC 123383 (Sub-84F), filed September 13, 1978. Applicant: BOYLE BROTHERS, INC., RD 2, Box 329C, Medford, NJ 08055. Representative: Morton E. Kiel, Suite 6193, 5 World Trade Center, New York, NY 10048. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *composition board*, from Ashtabula, OH, to points in NJ. (Hearing site: Atlanta, GA.)

MC 123681 (Sub-35F), filed August 29, 1978. Applicant: WIDING TRANSPORTATION, INC., P.O. Box 03159, Portland, OR 97203. Representative: David C. White, 2400 SW. Fourth Avenue, Portland, OR 97201. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *alcoholic beverages*, in bulk, in tank vehicles, from points in CA to points in OR. (Hearing site: Portland, OR.)

MC 123778 (Sub-42F), filed October 12, 1978. Applicant: JALT CORP., d.b.a. UNITED NEWSPAPER DELIVERY SERVICE, 802 Raritan Center, Edison, NJ 08817. Representative: Morton E. Kiel, 5 World Trade Center, Suite 6193, New York, NY 10048. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting *magazine parts, sections and inserts, paper, and paper products*, from East Greenville, PA, to Old Saybrook, CT, Edison, NJ, and Glenn Dale, MD, under continuing contract(s) with Time, Inc., of New York, NY. (Hearing site: New York, NY.)

MC 124078 (Sub-889F), filed October 12, 1978. Applicant: SCHWERMAN TRUCKING CO., a corporation, 611 South 28th Street, Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, WI 53201. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *magnetile*, from the facilities of Reiss Viking Corp., at or near Monongah, WV, to points in MD. (Hearing site: Milwaukee, WI. or Chicago, IL.)

MC 124078 (Sub-890F), filed October 13, 1978. Applicant: SCHWERMAN TRUCKING CO., a corporation, 611 South 28th Street, Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, WI 53201. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *slag*, in bulk, (1) from the facilities of the Calumite Co., at or near Warner, Bucks County, PA, to points in GA, MA, NJ, NY, PA, VA, and WV, and (2) from Middletown, OH, to Lakeland, FL, Hapeville, GA, Alton and Streator, IL, New Orleans, LA, Charlotte, MI, and Midway, Davidson County, NC. (Hearing site: Pittsburgh, PA.)

MC 124144 (Sub-20F), filed August 10, 1978. Applicant: ROBERT N. TOOMEY TRUCKING CO., a MD corporation, 1516 South George Street, York, PA 17403. Representative: Charles E. Creager, 1329 Pennsylvania Avenue, Hagerstown, MD 21740. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting *chain, attachments and hardware for chain, cable, wire rope, and equipment* used in the manufacture of chain, from York, PA, to points in FL, GA, NC, SC, AR, AL, TN, MO, KS, LA, and MS, under a continuing contract or contracts with the Campbell Chain Co., of York, PA. (Hearing site: York, PA.)

NOTE.—Dual operations are involved in this proceeding.

MC 124236 (Sub-91F), filed August 8, 1978. Applicant: CHEMICAL EXPRESS CARRIERS, INC., 1200 Simons Building, Dallas, TX 75201 Representative: Sam Hallman, 4555 First National Bank Building, Dallas, TX 75202. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *cement*, from points in Comal County, TX, to points in AL, AR, AZ, CO, FL, GA, KS, LA, MO, MS, NM, OK, TN, and TX. (Hearing site: Dallas or San Antonio, TX.)

MC 124328 (Sub-123F), filed October 16, 1978. Applicant: BRINK'S, INC., a DE corporation, Thorndal Circle, Darien, CT 06820. Representative: Richard H. Streeter, 1729 H Street NW., Washington, DC 20006. To operate as a *contract carrier*, by motor ve-

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hicle, over irregular routes, transporting *precious metals*, between Rochester, MN, Cudahy, WI, Elk Grove Village, IL, Fairfield, CT, and El Monte, CA, on the one hand, and, on the other, points in the United States (except AK and HI), under continuing contract(s) with Handy & Harman, of Fairfield, CT. (Hearing site: Washington, DC.)

MC 125023 (Sub-67F), filed September 11, 1978. Applicant: SIGMA-4 EXPRESS, INC., P.O. Box 9117, Erie, PA 16504. Representative: Richard C. McGinnis, 711 Washington Building, Washington, DC 20005. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1)(a) *Glass containers and accessories for glass containers*, and (b) *materials, equipment and supplies* used in the manufacture and distribution of the commodities named in (1)(a) above, from the facilities of Brockway Glass Co., Inc., in Jefferson and Clearfield Counties, PA, to points in Alamance, Caswell, Forsyth, Guilford, Rockingham, Stokes, and Vance Counties, NC, and Halifax, Henry, and Pittsylvania Counties, VA, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (1)(a) above, in the reverse direction. (Hearing site: Washington, DC.)

MC 126679 (Sub-7F), filed October 10, 1978. Applicant: DENNIS TRUCK LINES, INC., P.O. Box 189, Vidalia, GA 30474. Representative: Ariel V. Conlin, 53 Sixth Street NE., Atlanta, GA 30308. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Lumber*, (a) from points in Duvall and Clay Counties, FL, to those points in GA on and north of U.S. Hwy 80, and (b) from points in GA, to points in Shelby County, TN; and (2)(a) *sawdust and wood chips*, and (b) *bark* otherwise exempt from economic regulation under section 203(b)(6) of the Interstate Commerce Act when moving in mixed loads with sawdust and wood chips, between those points in GA on, south, and east of a line beginning at the SC-GA State line and extending along Interstate Hwy 85 to Atlanta, then along Interstate Hwy 75 to the GA-FL State line, on the one hand, and, on the other, those points in FL north of a line beginning at the GA-FL State line and extending along Interstate Hwy 75 to junction FL Hwy 10, then along FL Hwy 10 to junction FL Hwy 100, then along FL Hwy 100 to the Atlantic Ocean, and those in SC east of U.S. Hwy 1. (Hearing site: Atlanta, GA, or Jacksonville, FL.)

MC 127303 (Sub-47F), filed September 1, 1978. Applicant: ZELLMER TRUCK LINES, INC., P.O. Box 343, Granville, IL 61326. Representative: Elizabeth A. Purcell, 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, DC 20001. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Malt beverages*, from Milwaukee, WI, to points in WA, OR, ID, MT, WY, CO, ND, SD, KS, MN, IA, IL, MI, IN, KY, and OH, and (2) *used malt beverage containers and pallets*, in the reverse direction. (Hearing site: Milwaukee, WI.)

MC 128273 (Sub-318F), filed September 13, 1978. Applicant: MIDWESTERN DISTRIBUTION, INC., P.O. Box 189, Fort Scott, KS 66701. Representative: Elden Corban (same address as applicant). to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Paper and paper products*, (except commodities in bulk, in tank vehicles), from the facilities of International Paper Co., at or near Pittsburg, KS, to points in the United States (except AK and HI), and (2) *equipment, materials, and supplies*, used in the manufacture and distribution of paper and paper products (except commodities in bulk, in tank vehicles), in the reverse direction, restricted to the transportation of traffic originating at or destined to the facilities of International Paper Co., at or near Pittsburg, KS. (Hearing site: New York, NY.)

MC 129631 (Sub-63F), filed June 19, 1978, previously noticed in the FEDERAL REGISTER of August 15, 1978, as MC 129621 (Sub-63F). Applicant: PACK TRANSPORT, INC., 3975 South 300 West, Salt Lake City, UT 84107. Representative: G. D. Davidson (same address as applicant). Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Building and construction materials*, between points in ID, MT, and WY, on the one hand, and, on the other, points in UT. (Hearing site: Missoula, MT.)

NOTE.—The purpose of this republication is to indicate the carrier's correct MC number.

MC 133189 (Sub-16F), filed October 10, 1978. Applicant: VANT TRANSFER, INC., 5075 Northeast Mulcare Drive, Minneapolis, MN 55421. Representative: John B. Van de North, Jr., 2200 First National Bank Building, Saint Paul, MN 55101. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Metal culverts, steel piling, steel posts, and steel fencing slats* (1) from the facilities of Wheeler Division, St. Regis Paper Co., at Shakopee and Bemidji, MN to points in IA, NE, SD, and WI, and (2) from Des Moines and Sioux City, IA, to the facilities of Wheeler Division, St. Regis Paper Co., at Shakopee and Bemidji, MN. (Hearing site: Minneapolis, MN or Des Moines, IA.)

MC 134286 (Sub-71F), filed August 23, 1978. Applicant: ILLINI EXPRESS, INC., a Nebraska corporation, P.O. Box 1564, Sioux City, IA 51102. Representative: Charles J. Kimball, 350 Capitol Life Center, 1600 Sherman Street, Denver, CO 80203. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Foodstuffs* (except commodities in bulk) and (2) *fibreboard boxes* (except commodities in bulk), from the facilities of Ocean Spray Cranberries, Inc., at or near (a) Kenosha, WI, and (b) North Chicago, IL, to points in KS, OR, and TX. (Hearing site: Chicago, IL or Sioux City, IA.)

NOTE.—The person or persons who appear to be engaged in common control must either file an application under section 5(2) of the Interstate Commerce Act, or submit an affidavit indicating why such approval is unnecessary.

MC 134286 (Sub-72F), filed August 23, 1978. Applicant: ILLINI EXPRESS, INC., a Nebraska corporation, P.O. Box 1564, Sioux City, IA 51102. Representative: Charles M. Williams, 350 Capitol Life Center, 1600 Sherman Street, Denver, CO 80203. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Slab zinc, zinc oxide, zinc dust, zinc dross, and metallic cadmium* (except commodities in bulk), from the facilities of St. Joe Zinc Co., in Beaver County, PA, to points in AL, CO, CT, FL, GA, IA, IL (except Chicago), IN, KY, MA, MO (except St. Louis), MI, MN, NE, NJ, NY, OH, OK, and RI, restricted to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. (Hearing site: Pittsburgh, PA or Sioux City, IA.)

NOTE.—The person or persons who appear to be engaged in common control must either file an application under section 5(2) of the Interstate Commerce Act, or submit an affidavit indicating why such approval is unnecessary.

MC 134404 (Sub-39F), filed July 31, 1978. Applicant: AMERICAN TRANSFREIGHT, INC., P.O. Box 796, Manville, NJ 08835. Representative: Eugene M. Malkin, Suite 6193, 5 World Trade Center, New York, NY 10048. To operate as a *contract carrier*, by vehicle, over irregular routes, transporting: *Cleaning compounds, cleaning articles, toilet preparations, and nutritional foods* and (2) *materials, equipment, and supplies*, used in the manufacture or distribution of the commodities in (1) above (except commodities in bulk), (1) from East Stroudsburg, PA, and Franklin, KY, to Columbus, Fostoria, and Cincinnati, OH, and (2) from Urbana, Oh, to Pittsburgh, PA, Dallas, TX, Bedford Park, Chicago and Peoria, IL, Denver, CO, St. Louis, MO, and Kansas City, KS, under a continuing contract with Drackett Products, Co., Division of Bristol-Meyers Co. of Cincinnati, OH. (Hearing site: New York, NY.)

NOTE.—Dual operations are involved in this proceeding.

MC 135861 (Sub-36F), filed August 28, 1978. Applicant: LISA MOTOR LINES, INC., P.O. Box 4550, Fort Worth, TX 76106. Representative: BILLY R. REID, P.O. Box 9093. Fort Worth, TX 76107. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Drugs*, from New Brunswick and South Plainfield, NJ, to Mission, KS, under a continuing contract with E. R. Squibb & Sons, Inc., of New Brunswick, NJ. (Hearing Site: Dallas, TX.)

MC 136605 (Sub-71F), filed September 26, 1978. Applicant: DAVIS BROS. DIST., INC., P.O. Box 8058 Missoula, MT 59807. Representative: Allen P. Felton (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Metal building covering* and (2) *parts, components, and accessories*, used in the installation of the commodities in (1) above, from the facilities of Gifford-Hill and Co., at or near Brooklyn Park and Hopkins, MN, to points in the United States in and west of WI, IL, MO, OK, AND TX (except AK and HI). (Hearing site: Minneapolis, MN.)

MC 136714 (Sub-2F), filed August 10, 1978. Applicant: TENNESSEE EXPRESS, INC., 22 Stanley Street, Nashville, TN 37210. Representative: George M. Catlett, 708 McClure Building, Frankfort, KY 40601. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Materials, equipment, and supplies*, used in the construction and maintenance of communications systems, between Nashville, TN, and points in Bedford, Coffee, Franklin, Giles, Hickman, Humphreys, Lawrence, Lewis, Lincoln, Marshall, Maury, Moore, Perry, Warren, and Wayne Counties, TN, under a continuing contract or contracts with Western Electric Co., Inc., of Greensboro, NC. (Hearing site: Nashville, TN or Atlanta, GA.)

NOTE.—Dual operations are involved in this proceeding.

MC 138469 (Sub-85F), filed October 13, 1978. Applicant: DONCO CARRIERS, INC., P.O. Box 75354, Oklahoma City, OK 73107. Representative: E. Larry Wells, P.O. Box 45538, Dallas, TX 75245. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Kitchen cabinets and vanities*, from the facilities of Triangle Pacific, at or near McKinney, TX, to points in AZ, AR, CA, LA, MS, NV, NM, OK, and TN. (Hearing site: Dallas TX.)

MC 138484 (Sub-19F), filed June 2, 1978, previously noticed in the FEDERAL REGISTER issue of July 25, 1978. Applicant: EDWARDS BROS., INC., P.O. Box 1684, Idaho Falls, ID 83401. Representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by grocery and food business houses (except commodities in bulk, in tank vehicles), (1) from the facilities of Kraft, Inc., at or near Pocatello, ID, to points in AZ, CA, CO, MT, NV, OR, UT, WA, and WY, and (2) from points in CA, MT, UT, and WA, to the facilities of Kraft, Inc., at or near Pocatello, ID, restricted to the transportation of traffic originating at the indicated origins and destined to the indicated destinations. (Hearing site: Boise, ID.)

NOTE.—This republication amends the destination territory in part (1) by including OR.

MC 138875 (Sub-107F), filed September 26, 1978. Applicant: SHOEMAKER TRUCKING CO., a corporation, 11900 Franklin Road, Boise, ID 83705. Representative: F. L. Sigloh (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Brick and adhesives* (except in bulk), from the facilities of H. B. Fuller Co., at or near Palatine, IL, to points in CA, ID, MT, OR, UT, and WA, restricted to the transportation of traffic originating at the named origins. (Hearing site: Chicago, IL or Washington, DC.)

MC 139482 (Sub-65F), filed August 18, 1978. Applicant: NEW ULM FREIGHT LINES, INC., County Road 29 West, New Ulm, MN 56073. Representative: Samuel Rubenstein, 301 North Fifth Street, Minneapolis, MN 55403. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, in vehicles equipped with mechanical refrigeration, from the facilities of Hershey Chocolate Co., in Derry Township, Dauphin County, PA, to points in MI.(Hearing site: Minneapolis or St. Paul, MN.)

NOTE.—Dual operations are at issue in this proceeding.

MC 139495 (Sub-385F), filed September 14, 1978. Applicant: NATIONAL CARRIERS, INC., 1501 East Eighth Street, P.O. Box 1358, Liberal, KS 67901. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Tile, clay, earthenware, bathroom fixtures, and adhesives* and (2) *materials and supplies*, used in the installation of the commodities in (1) above, from the facilities of American Olean Tile Co., at or near (a) Olean, NY, (b) Quakertown and Lansdale, PA, (c) Lewisport and Cloverport, KY, and (d) Jackson, TN, to points in AR, AL, AZ, CA, CO, FL, GA, IA, ID, IL, IN, KS, KY, LA, MI, MN, MO, MS, MT, NE, NV, NM, ND, NY, OH, OK, OR, SD, SC, TX, TN, UT, WI, WA, and WY. (Hearing site: Washington, DC.)

MC 139495 (Sub-386F), filed September 18, 1978. Applicant: NATIONAL CARRIERS, INC., 1501 East Eighth Street, P.O. Box 1358, Liberal, KS 67901. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Printing paper*, from the facilities of Fitchburg Paper Co., at or near Fitchburg, MA, to points in CA, CO, GA, IL, IN, KS, MI, MO, OH, SC, TN, TX, VA, and WA. (Hearing site: Washington, DC.)

MC 139495 (Sub-387F), filed September 21, 1978. Applicant: NATIONAL CARRIERS, INC., 1501 East Eighth Street, P.O. Box 1358, Liberal, KS 67901. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Supplies and materials*, dealt in and distributed by janitorial and building maintenance supply houses (except commodities in bulk, in tank vehicles), from Chicago, IL, to points in CO, KS, NE, OK, and TX. (Hearing site: Washington, DC.)

MC 139495 (Sub-389F), filed September 25, 1978. Applicant: NATIONAL CARRIERS, INC., 1501 East Eighth Street, P.O. Box 1358, Liberal, KS 67901. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Floor coverings and wall coverings* and (2) *materials and supplies*, used in the installation and distribution of the commodities in (1) above (except commodities in bulk, in tank vehicles), from points in AR, GA, IL, NJ, and PA, to points in KS and MO. (Hearing site: Washington, DC.)

MC 139526 (Sub-7F) filed August 18, 1978. Applicant: HARRY LINDBERY CO., INC., 6901 Maloney Avenue, Hopkins, MN 55343. Representative: Robert D. Gisvold, 1000 First National Bank Building, Minneapolis, MN 55402. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Poles and pilings*, between points in MN, on the one hand, and, on the other, points in IA, IL, MN, ND, SD, and WI. (Hearing site: St. Paul, MN.)

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MC 140364 (Sub-3F), filed August 21, 1978. Applicant: ARMOUR FOOD EXPRESS CO., a DE corporation, 222 South 72d Street, Omaha, NE 68114. Representative: W. L. McCracken, Suite 1614, 111 West Clarendon Avenue, Phoenix, AZ 85077. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Such merchandise*, as is dealt in by grocery and food business houses (except commodities in bulk), from the facilities of Hunt-Wesson Foods, Inc., at (a) Davis, (b) Fullerton, (c) Hayward, and (d) Oakdale, CA, to points in WA, OR, and ID; and (2) *meats, meat products and meat by-products, dairy products*, and *articles distributed by meat-packing houses*, as described in sections A, B, and C of appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 MCC 209 and 766 (except hides and commodities in bulk), from the facilities of Armour Food Co. at Nampa, ID, to points in CA, NV, WA, and OR, under a continuing contract or contracts in (1) above with Hunt-Wesson Foods, Inc., of Fullerton, CA, and in (2) above with Armour Food Co. (a division of Armour & Co. of Amarillo, TX). (Hearing site: Los Angeles, CA or Phoenix, AZ.)

MC 140968 (Sub-5F), filed October 13, 1978. Applicant: VALLEY TRANSPORT, INC., P.O. Box 68, Drayton, ND 58225. Representative: Gene P. Johnson, P.O. Box 2471, Fargo, ND 58108. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Sugar*, from Drayton, ND, to points in MN, under a continuing contract or contracts with American Crystal Sugar Co. of Moorhead, MN. (Hearing site: Fargo, ND or Minneapolis, MN.)

MC 141402 (Sub-18F), filed August 17, 1978. Applicant: LINCOLN FREIGHT LINES, INC., Box 427, Lapel, IN 46051. Representative: Norman R. Garvin, 1301 Merchants Plaza, Indianapolis, IN 46204. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Glass containers*, from Joliet, IL, to points in OH, and PA, under a continuing contract(s) with Universal Glass-National Bottling Corp., of Philadelphia, PA. (Hearing site: Indianapolis, IN or Chicago, IL.)

MC 141599 (Sub-7F), filed July 10, 1978, and previously noticed in the FEDERAL REGISTER issue of August 22, 1978. Applicant: MOUNTAIN PACIFIC TRANSPORT, LTD. d.b.a. SHADOW LINES, 241 Schoolhouse Street, Coquitlam, BC, Canada V3K 4X9. Representative: R. Reid (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wall board*, between ports of entry on the international boundary line between the United States and Canada at or near Blaine, Lynden, and Sumas, WA, on the one hand, and, on the other, points in Whatcom, Skagit, Snohomish, King, and Pierce Counties, WA, restricted to the transportation of traffic moving in foreign commerce from or to points in BC, Canada. Condition: Prior receipt from applicant of an affidavit setting forth its complementary Canadian Authority or explaining why no such Canadian authority is necessary. (Hearing site: Seattle, WA.)

NOTE.—The restriction and conditions contained in the grant of authority in this proceeding are phrased in accordance with the policy statement entitled Notice to Interested Parties of New Requirements Concerning Applications for Operating Authority to Handle Traffic to and from points in Canada published in the FEDERAL REGISTER on December 5, 1974, and supplemented on November 18, 1975. The Commission is presently considering whether the policy statement should be modified, and is in communication with appropriate Canadian officials regarding this issue. If the policy statement is changed, appropriate notice will appear in the FEDERAL REGISTER and the Commission will consider all restrictions or conditions which were imposed pursuant to the prior policy statement, regardless of when the condition or restriction was imposed, as being null and void and having no force or effect.

NOTE.—The purpose of this republication is to show the addition of points in Snohomish County.

MC 141773 (Sub-6F), filed September 12, 1978. Applicant: THERMO TRANSPORT, INC., 156 East Market Street, Indianapolis, IN 46204. Representative: Donald W. Smith, P.O. Box 40659, Indianapolis, IN 46240. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Fruit juices and fruit drink* (except canned and frozen fruit juices and fruit drink), from the facilities of Maplehurst Farms, Inc., Indianapolis, IN, to points in OH, PA, MO, KY, TN, NE, MI, IA, and IL, and (2) *materials, equipment, and supplies*, used in the manufacture and distribution of the commodities named in (1) above, from points in OH, PA, MO, KY, TN, NE, MI, IA, IL, and FL, to the facilities of Maplehurst Farms, Inc., at Indianapolis, IN, under a continuing contract or contracts with Maplehurst Farms, Inc., Indianapolis, IN. (Hearing site: Indianapolis, IN.)

MC 142059 (Sub-49F), filed October 10, 1978. Applicant: CARDINAL TRANSPORT, INC., a Delaware corporation, 1830 Mound Road, Joliet, IL 60436. Representative: Jack Riley, 1830 Mound Road, Joliet, IL 60436. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen potatoes and potato products*, from the facilities of American Potato Co., at or near Plover and Beaver Dam, WI, to points in the United States (except points in AK, HI, ID, IA, MN, MT, NE, ND, SD, WI, WY, and the Upper Peninsula of MI), restricted to the transportation of traffic originating at the named origins and destined to the indicated destinations. (Hearing site: San Francisco, CA.)

MC 142513 (Sub-5F), filed September 11, 1978. Applicant: BIRK TRANSFER, INC., 360 Wheatland Avenue, Conemaugh, PA 15909. Representative: William A. Gray, 2310 Grant Building, Pittsburgh, PA 15219. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Iron and steel articles*, from the facilities of Bethlehem Steel Corp., at or near Johnstown, PA, to points in NC and SC, and (2) *wire carriers*, from points in NC and SC, to the facilities of Bethlehem Steel Corp., at or near Johnstown, PA. (Hearing site: Pittsburgh, PA or Washington, DC.)

MC 142559 (Sub-60F), filed October 10, 1978. Applicant: BROOKS TRANSPORTATION, INC., 3830 Kelley Avenue, Cleveland, OH 44114. Representative: John P. McMahon, 100 East Broad Street, Columbus, OH 43215. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs, equipment, materials, and supplies* used by manufacturers and distributors of foodstuffs (except commodities in bulk), between Lowell, MA and Detroit, MI, on the one hand, and, on the other those points in the United States in and east of MN, IA, MO, AR, and TX. (Hearing site: Columbus, OH or Washington, DC.)

NOTE.—Dual operations may be at issue in this proceeding.

MC 143205 (Sub-2F), filed September 25, 1978. Applicant: DAVE HAAS, INC., 203 East Birch Street, Thorp, WI 54771. Representative: Michael J. Wyngaard, 150 East Gilman Street, Madison, WI 53703. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Metal articles, materials, equipment, and supplies* used in the manufacture, sale, and distribution of metal articles, between the facilities of Industrial Fabricators, Inc., at Thorp, WI, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Madison, WI or Chicago, IL.)

MC 143478 (Sub-2F), filed October 13, 1978. Applicant: G. P. THOMPSON ENTERPRISES, INC., P.O. Box 146, Midway, AL 36053. Representative: Terry P. Wilson, 420 South Lawrence Street, Montgomery, AL 36104. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities*, as are dealt in or used by restaurant chains (except commodities in bulk), between Jacksonville, FL, on the one hand, and, on the other, points in the United States (except AK and HI), under continuing contract(s) with Henry's Poultry Co., Inc., of Jacksonville, FL. (Hearing site: Jacksonville, FL or Montgomery, AL.)

MC 143552 (Sub-5F), filed August 8, 1978. Applicant: CELEWEND ASSOCIATES, INC., 1 Whitfield Street, Caldwell, NJ 07006. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Washing, cleaning, and scouring compounds* (except commodities in bulk), *fabric and textile softeners, and cellular and expanded plastic sheets*, from points in NJ, to Los Angeles, CA, Tacoma, WA, Dallas, TX, Denver, CO, New Orleans, LA, Atlanta, GA, Auburndale, FL, Salem and Roanoke, VA, Bristol, PA, Boston, MA, Toledo, OH, St. Louis, MO, Chicago, IL, and St. Paul, MN, under a continuing contract or contracts with Purex Corp., of Carson, CA. (Hearing site: Los Angeles, CA.)

MC 143786 (Sub-6F), filed August 24, 1978. Applicant: HAL MAST TRUCKING CO., INC., Route 1, Box 259, Sugar Grove, NC 28679. Representative: William P. Farthing, Jr., 301 South McDowell Street, 1100 Cameron-Brown Building, Charlotte, NC 28204. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Upholstered furniture*, from Boone, NC, to points in CA, CT, FL, GA, IL, IN, MA, MD, MI, MN, NJ, NY, OH, PA, TX, WI, and DC, under continuing contract(s) with Investments and Innovative Concepts, Inc., of Boone, NC. (Hearing site: Charlotte or Boone, NC.)

MC 143794 (Sub-9F), filed August 22, 1978. Applicant: EAST-WEST MOTOR FREIGHT, INC., P.O. Box 525, Selmer, TN 38375. Representative: Bruce M. Mitchell, Fifth Floor-Lenox Towers I, 3390 Peachtree Road, Atlanta, GA 30326. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between the facilities of ITT Grinnell Corp., at or near (1) Clito, GA, (2) Henderson, TN, (3) Indianapolis, IN, (4) Princeton, KY, (5) Temple, TX, (6) Warren, OH, (7) Wrightsville, Columbia, and Lancaster, PA, and (8) Elmira, NY, on the one hand, and, on the other, points in the United States (except AK and HI), under a continuing contract or contracts with ITT Grinnell Corp., of Providence, RI. (Hearing site: Atlanta, GA or Washington, DC.)

MC 143912 (Sub-2F), filed August 7, 1978. Applicant: WESTERN CONTAINER TRANSPORT, INC., 95 Market Street, Oakland, CA 94607. Representative: David J. Marchant, One Maritime Plaza, Suite 300, San Francisco, CA 94111. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, (except classes A and B explosives), in ocean containers or ocean roll-on and ocean roll-off trailers, restricted to the transportation of traffic having an immediately prior or subsequent movement by water, between ports in CA, OR, WA, TX, and LA, on the one hand, and, on the other, points in AZ, CA, CO, ID, LA, MT, NV, NM, OR, TX, UT, WA, and WY. (Hearing site: San Francisco, CA.)

MC 144371 (Sub-1F), filed August 28, 1978. Applicant: PEERLESS WIRE GOODS CO., INC., 2702 Ferry Street, Lafayette, IN 47902. Representative: Norman R. Garvin, 1301 Merchants Plaza, Indianapolis, IN 46204. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Enamel products and frit* (except commodities in bulk), from Frankfort, IN, to points in AL, IA, IL, KY, MI, MO, OH, PA, TN, and WI; and (2) *materials, equipment, and supplies* used in the manufacture, sale, and distribution of the commodities named in (1) above (except commodities in bulk) in the reverse direction, under a continuing contract or contracts in (1) and (2) above with Ingram-Richardson Co., of Frankfort, IN. (Hearing site: Indianapolis, IN, or Chicago, IL.)

MC 144622 (Sub-12F), filed August 16, 1978. Applicant: GLENN BROS. MEAT CO., INC., P.O. Box 9343, Little Rock, AR 72219. Representative: Phillip Glenn (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fatty-acid esters, breadmaking compounds*, and *buffing compounds*, (1) from Forest Park, IL, to Williamsport, PA, and (2) from Williamsport, PA, to points in TN, NC, SC, GA, FL, AL, MS, AR, LA, TX, NM, AZ, UT, NV, CA, OR, WA, CO, ID, MT, and WY. (Hearing site: Hartford, CT, or Washington, DC.)

NOTE.—Dual operations are at issue in this proceeding.

MC 144645 (Sub-2F), filed September 26, 1978. Applicant: ROBERT C. HANSEN, d.b.a. ROBERT HANSEN TRUCKING, Route 5, Box 282, Delavan, WI 53115. Representative: Daniel R. Dineen, Suite 412, Empire Building, 710 North Plankinton Avenue, Milwaukee, WI 53203. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Electrical copper wire*, from the facilities of Techbestos, Inc., at or near Moonachie, NJ, to points in IL, IN, KY, MI, MN, OH, and WI, under a continuing contract with Techbestos, Inc., of Moonachie, NJ. (Hearing site: Milwaukee, WI, or Chicago, IL.)

MC 144872 (Sub-1F), filed August 7, 1978. Applicant: RICE TRUCK LINES, a corporation, P.O. Box 2644, Great Falls, MT 59403. Representative: Ray F. Koby, 314 Montana Building, Great Falls, MT 59401. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Such commodities* as are dealt in or used by hardware stores, (3) *scrap metals*, and (4) *hides* and *pelts*, (a) between the facilities of Pacific Hide & Fur Depot, at or near Billings, Bozeman, Butte, Glasgow, Great Falls, Havre, Helena, Kalispell, Miles City, Missoula, Lewistown, and Sidney, MT, Kennewick, Spokane, and Tacoma, WA, Mills, Riverton, Worland, and Gillette, WY, Salmon, Nampa, Sandpoint, Lewiston, and Twin Falls, ID, and Portland, OR, and (b) between the points named in (a) above, on the one hand, and, on the other, Wilton, IA, Denver, Loveland, and Pueblo, CO, Omaha and Norfolk, NE, Minneapolis and St. Paul, MN, Whitehall, MI, Cambridge City and Gary, IN, St. Louis, MO, Laredo, TX, and points in CA, IL, MT, OR, UT, WA, and WY, under a continuing contract with Pacific Hide & Fur Depot, of Great Falls, MT. (Hearing site: Great Falls or Billings, MT.)

NOTE.—Dual operations are at issue in this proceeding.

MC 144934F, filed June 15, 1978, previously noticed in the FEDERAL REGISTER issue of August 22, 1978. Applicant: BERGER TRANSPORTATION, INC., 2700 Sheffield Avenue, Hammond, IN 46320. Representative: Marshall D. Becker, 7171 Mercy Road, Suite 610, Omaha, NE 68106. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Commercial sewing machines, fertilizer spreaders, fertilizer applicators, metal tanks, metal conveyors, and parts for commercial sewing machines, fertilizer spreaders, fertilizer applicators, metal tanks, and metal conveyors*, between Humboldt, Red Oak, and Dakota City, IA, on the one hand, and, on the other, points in the United States (except AK and HI); (2) *automobile parts, and equipment used in the installation of automobile parts*, from Columbus, NE, Marianna, AR, Cleveland, MS, Red Oak, IA, Carrollton, Columbus, and Newnan, GA, Phenix City, AL, and Milan, TN, to (a)

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MO, and (b) those points in the United States in and east of WI, IL, KY, TN, and MS; (3) *equipment, materials, and supplies used in the manufacture of automobile parts,* (a) between Columbus, NE, Marianna, AR, Cleveland, MS, Red Oak, IA, Carrollton, Columbus, and Newnan, GA, Phenix City, AL, and Milan, TN, and (b) from points in MO and those points in the United States in and east of WI, IL, KY, TN, and MS, to Columbus, NE, Marianna, AR, Cleveland, MS, Red Oak, IA, Carrollton, Columbus, Newnan, and Tucker, GA, Phenix City, AL, and Milan, TN; (4) *Sprayers, spray equipment, and conveyor systems, and equipment, materials, and supplies used in the manufacture of sprayers, spray equipment, and supplies used in the manufacture of sprayers, spray equipment, and conveyor systems* (except commodities in bulk, in tank vehicles), from Humboldt and Dakota City, IA, to points in the United States (except AK and HI); and (5) *iron and steel articles,* from points in AL, to Columbus, GA, under a continuing contract(s) with Douglas & Lomason Co., of Farmington, MI. (Hearing site: Chicago, IL, or Omaha, NE.)

NOTE.—This republication amends the destination territory in part (2)(b) by changing IN to IL and the origin territory in part (3)(b) by changing IN to IL.

MC 144942 (Sub-2F), filed August 10, 1978. Applicant: RWC TRUCKING, INC., 59 Lamoille Avenue, Haverhill, MA 01830. Representative: John Richard Barker, One Farragut Square South, Washington, DC 20006. To operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Coin, currency, securities, food stamps, negotiable* and *non-negotiable instruments, commercial papers,* and *business records,* between points in Strafford, Belknap, Merrimack, Hillsborough, and Rockingham Counties, NH, and Kittery, ME, on the one hand, and, on the other, points in Essex, Middlesex, and Suffolk Counties, MA, and that portion of Norfolk County, MA surrounded by Suffolk and Middlesex Counties, MA, under a continuing contract with banks, financial institutions, and other businesses. (Hearing site: Haverhill or Lawrence, MA.)

MC 145149 (Sub-4F), filed October 5, 1978. Applicant: MATADOR SERVICE, INC., P.O. Box 2256, Wichita, KS 67201. Representative: Clyde N. Christey, Kansas Credit Union Building, 1010 Tyler, Suite 110L, Topeka, KS 66612. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia,* in bulk, from the facilities of the Mapco Pipeline Terminal near Mocane, OK, to points in KS and TX.

MC 145285 (Sub-2F), filed September 11, 1978. Applicant: CLICK DELIVERY SERVICE, INC., 3710 Robertson Street, P.O. Box 683, Metairie, LA 70004. Representative: Kim G. Meyer, P.O. Box 872, Atlanta, GA 30301. To operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in or used by cosmetic manufacturers, from Gulfport, MS, and Baton Rouge and New Orleans, LA, to points in MS in and south of Jefferson, Lincoln, Lawrence, Jefferson Davis, Covington, Jones, and Wayne Counties, and those in LA in and east of Pointe Coupee, Iberville, Assumption, and Terrebonne Parishes, under a continuing contract with Avon Products, Inc., of Atlanta, GA. (Hearing site: New Orleans, or Houston, TX.)

MC 145301F, filed August 31, 1978. Applicant: R.E.M. TRANSPORT CO., INC., Raritan Center, Building 431, Edison, NJ 08817. Representative: Brian S. Stern, 2425 Wilson Boulevard, Suite 327, Arlington, VA 22201. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Flat glass* and *automotive glass,* from Tulsa, OK, to points in AL, AZ, AR, CA, CO, DE, GA, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, NE, NJ, NM, NY, NC, ND, OH, PA, SC, SD, TN, TX, VA, WV, WI, and DC. (Hearing site: Detroit, MI, or Washington, DC.)

NOTE.—Dual operations may be at issue in this proceeding.

MC 145319 (Sub-20F), filed October 12, 1978. Applicant: DALE BRADBURY and BILL BRADBURY, a partnership, d.b.a. BRADBURY BROS., P.O. Box 194A, Ft. Scott, KS 66701. Representative: Clyde N. Christey, Kansas Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, KS 66612. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Coal,* from the facilities of Bill's Coal Co., Inc., near Garland and Fulton, KS, to rail facilities near Stotesbury, MO, restricted to the transportation of traffic having a subsequent movement by rail. (Hearing site: Kansas City, MO.)

MC 145345 (Sub-1F), filed September 25, 1978. Applicant: WATSON TRUCKING, INC., Route 1, Old Dunbar Rd., Byron, GA 31008. Representative: J. Michael May, Suite 508, 1447 Peachtree Street NE., Atlanta, GA 30309. To operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Sand, gravel, and construction aggregates,* in bulk, in dump vehicles, from the facilities of Clyde Owens Sand & Gravel, Inc., in Hardin County, TN, to points in MS on and north of U.S. Hwy 82 and those in AL on, north, and west of U.S. Hwys 82, 11, and 231, under a continuing contract with Clyde Owens Sand & Gravel, Inc., of Collierville, TN. (Hearing site: Memphis, TN, or Atlanta, GA.)

MC 145353F, filed September 11, 1978. Applicant: WAYNE O. NELSON, d.b.a. NELSON TRANSPORT, Box 251, Willmar, MN 56201. Representative: James T. Flescher, 1745 University Avenue, St. Paul, MN 55104. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *General commodities* (except classes A and B explosives, used household goods, and liquid commodities in bulk), between points in IL, IN, IA, MI, MN, MO, MT, NE, ND, SD, and WI, restricted to the transportation of traffic having a prior or subsequent movement by rail. (Hearing site: St. Paul or Minneapolis, MN.)

MC 145435F, filed September 18, 1978. Applicant: WESTERN AG-INDUSTRIES, INC., 2750 North Parkway, Fresno, CA 93771. Representative: Miles L. Kavaller, 315 South Beverly Drive, Suite 315, Beverly Hills, CA 90212. To operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting (1) *carpet and carpet padding,* from points in GA, to points in AZ, CA, OR, and NV, and (2) *congoleum resilient,* from points in NJ, to points in AZ, CA, OR, and NV, under a continuing contract with La Salle Deitch Co., Inc., of Tustin, CA. (Hearing site: Los Angeles, CA.)

MC 145455F, filed September 26, 1978. Applicant: BULK TRANSPORTATION, a corporation, 415 Lemon Avenue, Walnut, CA 91789. Representative: Melvin G. Thurman (same address as applicant). To operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting *liquid animal feed preparations, supplements, and additives,* in bulk, in tank vehicles, from points in CA, to points in AZ, under continuing contracts with Snow Commodities Co., Inc., of South Pasadena, CA, Pacific Kenyon Corp., of Long Beach, CA, and Baker Commodities, Inc., of Los Angeles, CA. (Hearing site: Los Angeles, CA.)

NOTE.—Dual operations are at issue in this proceeding.

BROKER AUTHORITY

MC 12895 (Sub-2F), filed September 18, 1978. Applicant: HARMON TRAVEL SERVICE, INC., P.O. Box 7727, Boise, ID 83707. Representative: Randall Wallis, P.O. Box 1253, Boise, ID 83701. To engage in operation, in interstate or foreign commerce, as a *broker,* at Boise, Pocatello, Idaho Falls, Twin Falls, Lewiston, and Coeur d'Alene, ID, in arranging for the transportation, by motor vehicle, of *passengers and their baggage,* in the same vehicle with passengers, in special or charter operations, in round-trip, and one-way all expense tours, between points in the United States (including AK and HI). (Hearing site: Boise or Twin Falls, ID.)

NOTE.—Applicant is cautioned that arrangements for charter parties or groups should be made in conformity with the requirements set forth in *Tauck Tours, Inc., Extension—New York, NY,* 54 MCC 291 (1952).

MC 130512F, filed July 7, 1978, and previously published in the FEDERAL REGISTER issue of September 19, 1978. Applicant: PERCIVAL TOURS, INC., Continental Bank Building, Fort Worth, TX 76102. Representative: Harold E. Mesirow, 1220 Nineteenth Street NW., Washington, DC 20036. To engage in operations, in interstate or foreign commerce, as a *broker,* at Fort Worth, TX, in arranging for the transportation by motor vehicle, of *passengers and their baggage,* in the same vehicle with passengers, in special and charter operations, between points in the United States (including AK and HI, but excluding IL, IN, IA, KY, MI, MN, ID, NE, ND, OH, SD, and WI). (Hearing site: Fort Worth, TX, or Washington, DC.)

NOTE.—(1) Applicant is cautioned that arrangements for charter parties or groups should be made in conformity with the requirements set forth in *Tauck Tours, Inc., Extension*—New York, NY, 54 M.C.C. 291 (1954). (2) This republication deletes in round-trip.

[FR Doc. 78-31972 Filed 11-13-78; 8:45 am]

[7035-01-M]

FOURTH SECTION APPLICATIONS FOR RELIEF

NOVEMBER 8, 1978.

These applications for long-and-short-haul relief have been filed with the Interstate Commerce Commission.

Protests are due at the ICC on or before November 29, 1978.

FSA No. 43623, Southwestern Freight Bureau, Agent's No. B-781, rates on cement and related articles, from origins in the Southwest, to points in Southern Territory, in Supp. 19 to its Tariff SW/S-327-1, ICC 5292, to become effective December 11, 1978. Grounds for relief—market competition and revised rate structure.

FSA No. 43624, Uni-Pacific Container Lines, Ltd., No. 1, intermodal rates on general commodities in containers, between rail carriers' terminals on the U.S. Atlantic and Gulf Coast and ports in the Far East, in its Tariffs Nos. 5 and 6, ICC Nos. 2 and 3 respectively, to become effective December 10, 1978. Grounds for relief—water competition.

FSA No. 43625, Seatrain International, S.A., No. 24, intermodal rates on general commodities in containers, between rail carrier's terminals on the U.S. Pacific Coast and ports in Venezuela and the Caribbean, in its Tariffs 716-A and 717-A, ICC Nos. 42 and 43, respectively, to become effective December 18, 1978. Grounds for relief—water competition.

FSA No. 43626, Southwestern Freight Bureau, Agent's No. B-778, rates on wrought iron and steel pipe and kindred articles, from Ft. Collins and Minnequa, CO, to Lone Star, TX, in Supp. 172 to its Tariff 259-F, ICC 5080, to become effective December 5, 1978. Grounds for relief—market competition and rate relationship.

FSA No. 43627, Southwestern Freight Bureau, Agent's No. B-784, rates on clay, from Warren, MT, to points in Southwestern Territory, in Supplement 8 to its Tariff 329-E, ICC 5297, to become effective December 14, 1978. Grounds for relief—rate relationship.

By the Commission.

H. G. HOMME, JR.,
Secretary.

[FR Doc. 78-31968 Filed 11-13-78; 8:45 am]

[7035-01-M]

IRREGULAR-ROUTE MOTOR COMMON CARRIERS OF PROPERTY

Elimination of Gateway Applications

NOVEMBER 7, 1978.

The following application to eliminate gateways for the purpose of reducing highway congestion, alleviating air and noise pollution, minimizing safety hazards, and conserving fuel have been filed with the Interstate Commerce Commission under the Commission's Gateway Elimination Rules (49 CFR 1065(d)(2)), and notice thereof to all interested persons is hereby given as provided in such rules.

Carriers having a genuine interest in an application may file an original and three copies of *verified statements* in opposition with the Interstate Commerce Commission on or before December 14, 1978. (This procedure is outlined in the Commission's report and order in "Gateway Elimination," 119 MCC 530.) A copy of the verified statement in opposition must also be served upon applicant or its named representative. The verified statement should contain all the evidence upon which protestant relies in the application proceeding including a detailed statement of protestant's interest in the proposal. No rebuttal statements will be accepted.

MC 106497F (Sub-156G), filed October 23, 1978. Applicant: PARKHILL TRUCK CO., a corporation, P.O. Box 912, Joplin, MO 64801. Representative: A. N. Jacobs, P.O. Box 113, Joplin, MO 64801. Authority to operate as a *common carrier,* by motor vehicle, over irregular routes, in the transportation of (1): *commodities* which by reason of size or weight require the use of special equipment; and (2) *self-propelled articles,* each weighing 15,000 pounds or more, and *related machinery, tools, parts, and supplies* moving in connection therewith, between points in UT, on the one hand, and, on the other, points in NM, WY, OR, and WA, restricted in (2) to commodities which are transported on trailers. (Hearing site: Salt Lake City, UT.)

NOTE.—The purpose of this application is to eliminate the gateways in CO and WY.

Office of Proceedings

IRREGULAR-ROUTE MOTOR COMMON CARRIERS OF PROPERTY—ELIMINATION OF GATEWAY LETTER NOTICES

Notice

NOVEMBER 7, 1978.

The following letter-notices of proposals to eliminate gateways for the purpose of reducing highway congestion, alleviating air and noise pollution, minimizing safety hazards, and conserving fuel have been filed with the Interstate Commerce Commission under the Commission's Gateway Elimination Rules (49 CFR 1065), and notice thereof to all interested persons is hereby given as provided in such rules.

An original and two copies of protests against the proposed elimination of any gateway herein described may be filed with the Interstate Commerce Commission within 10 days from the date of this publication. A copy must also be served upon applicant or its representative. Protests against the elimination of a gateway will not operate to stay commencement of the proposed operation.

Succesively filed letter-notices of the same carrier under these rules will be numbered consecutively for convenience in identification. Protests, if any, must refer to such letter-notices by number.

The following applicants seek to operate as a *common carrier,* by motor vehicles, over irregular routes.

MC 96324 (Sub-E29), filed February 9, 1976. Applicant: GENERAL DELIVERY INC., P.O. Box 1816, Fairmont, WV. Representative: Harold G. Hernly, Jr., Esq., 118 North Street Asaph Street, Alexandria, VA 22314. *Glass containers and pottery containers,* from those points in PA on and north and west of a line beginning at the PA-OH State line, and extending along U.S. Hwy 22 to junction U.S. Hwy 219, then north along U.S. Hwy 219 to the PA-NY State line. (Gateways eliminated: Harrison County, and Short Gap, WV.)

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MC 96324 (Sub-E52), filed February 9, 1976. Applicant: GENERAL DELIVERY INC., P.O. Box 1816, Fairmont, WV. Representative: Harold G. Hernly, Jr., Esq., 118 North Street Asaph Street, Alexandria, VA 22314. *Containers and closures for containers*, from points in Preston County, WV, to points in NC east of Surrey, Wilkes, Alexander, Catawba, Lincoln, and Cleveland Counties, NC. (Gateways eliminated: Short Gap, WV, and points in WV within the Cumberland, MD, commercial zone.)

MC 107515 (Sub-E671), filed December 20, 1976. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 33050. Representative: Alan E. Serby, Fifth Floor, Lenox Towers I-3390 Peachtree Road NE., Atlanta, GA 30326. *Fresh and cured meats, and such commodities* as are classified as dairy products in the appendix to the report in Modification of Permits—Packing House Products, 46 MCC 23, and *fresh fruits and vegetables* (except in bulk), in vehicles with mechanical refrigeration, (1) from points in SC on, north or west of I Hwy 85 and Gaffney, SC, to points in Ga on or west of I Hwy 75 (except Macon, GA); (2) from points in SC on, south or east of a line beginning at Charleston, SC, and extending alone U.S. Hwy 78 to junction U.S. Hwy 178, then along U.S. Hwy 178 to junction U.S. Hwy 601, then along U.S. Hwy 601 to junction U.S. Hwy 378, then along U.S. Hwy 378 to junction I Hwy 95, then along I Hwy 95 to the NC-SC State line to points in GA on, north or west of a line beginning at the AL-GA State line and extending along Alternate U.S. Hwy 27 to junction GA Hwy 85, then along Ga Hwy 85 to junction I Hwy 285, then east along I Hwy 285 to junction I Hwy 75, then along I Hwy 75 to junction U.S. Hwy 411, then along U.S. Hwy 411 to the TN-GA State line, and points in Henry, Gwinnett, Fulton, DeKalb, and Rockdale Counties, GA; (3) from points in Richland, Sumter, Lee, Darlington, Florence, Marion, Horry, Calhoun, Lexington, Orangeburg, Aiken, Lexington, and Barnwell Counties, SC, to points in the territory in (2) above; (4) from points in SC to points in Fulton, DeKalb, Cobb, Rockdale, Henry, Gwinnett, Douglas, and Paulding Counties, GA. Restriction: The authority granted herein shall be subject to the right of the Commission, which is hereby expressly reserved, to impose such terms, conditions, or limitations in the future as it may find necessary in order to insure that carrier's operations shall conform to the provisions of section 210 of the act. (Gateway eliminated: Doraville (Atlanta) GA.)

MC 107515 (Sub-E672), filed December 20, 1976. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 33050. Representative: Alan E. Serby, Fifth Floor, Lenox Towers I-3390 Peachtree Road NE., Atlanta, GA 30326. (I) *Fresh and cured meats and such commodities* as are classified as dairy products in the appendix to the report in Modification of Permits—Packing House Products, 46 MCC 23, *frozen foods and fresh fruits and vegetables* (except in bulk), in vehicles equipped with mechanical refrigeration, (1) from points in that part of NC on, south or east of a line beginning at the SC-NC State line, and extending along U.S. Hwy 301 to junction NC Hwy 41, then along NC Hwy 41 to junction NC Hwy 87, then east along NC Hwy 87 to junction U.S. Hwy 76, then east along U.S. Hwy 76 to the Atlantic Ocean at or near Wilmington, NC, to points in WI, MN, IA, MO, NE, KS, OK, AR, TX, IL, and points in TN on or west of a line beginning at the TN-GA State line, and extending along TN Hwy 74 to junction TN Hwy 60, then along TN Hwy 60 to junction TN Hwy 30, then along TN Hwy 30 to junction TN Hwy 111, then along TN Hwy 111 to junction U.S. Hwy 70, then along U.S. Hwy 70 to junction TN Hwy 56, then along TN Hwy 56 to the KY-TN State line; points in KY on or west of a line beginning at the KY-TN State line and extending along KY Hwy 87 to junction U.S. Hwy 31E, then along U.S. Hwy 31E to junction KY Hwy 90, then along KY Hwy 90 to junction U.S. Hwy 31W, then along U.S. Hwy 31W to junction KY Hwy 1638, then along KY Hwy 1638 to junction KY Hwy 79, then along KY Hwy 79 to the KY-IN State line; and points in that part of IN on or west of a line beginning at the IN-KY State line, and extending along IN Hwy 135 to junction U.S. Hwy 150, then along U.S. Hwy 150 to junction IN Hwy 37, then along IN Hwy 37 to junction IN Hwy 46, then along IN Hwy 46 to junction U.S. Hwy 231, then along U.S. Hwy 231 to junction I Hwy 65, then along I Hwy 65 to junction U.S. Hwy 231, then along U.S. Hwy 231 to the IL-IN State line, and Bloomington, IN.

(2) From points in NC on or east of U.S. Hwy 301, to points in TX, AR, OK, MO, KS, NE, IA, MN, that part of WI on or west of a line beginning at the IA-WI State line, and extending along U.S. Hwy 61 to junction U.S. Hwy 53, then along U.S. Hwy 53 to Lake Superior at or near Superior, WI; points in IL on or west of a line beginning at the IL-IN State line, and extending along I Hwy 64 to junction IL Hwy 1, then along IL Hwy 1 to junction IL Hwy 130, then along IL Hwy 130 to junction U.S. Hwy 50, then along U.S. Hwy 50 to junction IL Hwy 127, then along IL Hwy 127 to junction U.S. Hwy 66, then along U.S. Hwy 66 to junction IL Hwy 29, then along IL Hwy 29 to junction IL Hwy 88, then along IL Hwy 88 to junction IL Hwy 78, then along IL Hwy 78 to the WI-IL State line; Evansville, IN; and points in that part of KY on or west of a line beginning at the KY-TN State line, and extending along U.S. Hwy 231 to junction U.S. Hwy 70, then along U.S. Hwy 70 to junction TN Hwy 68, then along TN Hwy 68 to junction U.S. Hwy 27, then along U.S. Hwy 27 to junction TN Hwy 60, then along TN Hwy 60 to the GA-TN State line.

(3) From points in NC on or east of I Hwy 85 to points in TX, AR, OK, MO, KS, NE, points in MN on, west or north of a line beginning at the IA-MN State line, and extending along U.S. Hwy 63 to the Mississippi River at or near Lake City, MN, points in IA on or west of a line beginning at the IL-IA State line, and extending along IA Hwy 38 to junction U.S. Hwy 30, then along U.S. Hwy 30 to junction IA Hwy 150, then along IA Hwy 150 to junction U.S. Hwy 52, then along U.S. Hwy 52 to junction IA Hwy 9, then along IA Hwy 9 to junction U.S. Hwy 63, then along U.S. Hwy 63 to the IA-MN State line; points in IL on or west of a line beginning at the IA-IL State line, and extending along IL Hwy 92 to junction IL Hwy 192, then along IL Hwy 192 to junction U.S. Hwy 67, then along U.S. Hwy 67 to junction IL Hwy 140, then along IL Hwy 140 to junction U.S. Hwy 40, then along U.S. Hwy 40 to junction U.S. Hwy 51, then along U.S. Hwy 51 to junction U.S. Hwy 50, then along U.S. Hwy 50 to junction U.S. Hwy 45, then along U.S. Hwy 45 to junction IL Hwy 1, then along IL Hwy 1 to the KY-IL State line; points in KY on or west of a line beginning at the KY-IL State line, and extending along KY Hwy 91 to junction U.S. Hwy 68, then along U.S. Hwy 68 to junction U.S. Hwy 431, then along U.S. Hwy 431 to the KY-TN State line; and points in TN on or west of a line beginning at the KY-TN State line, and extending along TN Hwy 109 to junction TN Hwy 25, then along TN Hwy 25 to junction U.S. Hwy 231, then along U.S. Hwy 231 to junction U.S. Hwy 70, then along U.S. Hwy 70 to junction TN Hwy 111, then along TN Hwy 111 to junction TN Hwy 30, then along TN Hwy 30 to junction TN Hwy 60, then along TN Hwy 60 to the TN-GA State line.

(4) From points in that part of NC on or east of a line beginning at the NC-SC State line, and extending along I Hwy 85 to junction U.S. Hwy 52, then along U.S. Hwy 52 to the VA-NC State line, to points in TX, AR, OK, KS, NE, MO; points in MN on or west of a line beginning at the MN-IA State line and extending along I Hwy 35 to junction U.S. Hwy 14, then along U.S. Hwy 14 to junction U.S. Hwy 71, then along U.S. Hwy 71 to junction I Hwy 94, then along I Hwy 94 to junction U.S. Hwy 59, then along U.S. Hwy 59 to the international boundary line; points in IA on or west of a line beginning at the IA-MN State line, and extending along U.S. Hwy 65 to junction U.S. Hwy 30, then along U.S. Hwy 30 to junction U.S. Hwy 63, then along U.S. Hwy 63 to junction U.S. Hwy 34, then along U.S. Hwy 34 to the IL-IA State line; points in IL on or west of a line beginning at the IL-IA State line, and extending along IL Hwy 94 to junction U.S. Hwy 24; then along U.S. Hwy 24 to junction IL Hwy 125, then along IL Hwy 125 to junction U.S. Hwy 66, then along U.S. Hwy 66 to junction IL Hwy 140, then along IL Hwy 140 to junction IL Hwy 127, then along IL Hwy 127 to junction IL Hwy 15, then along IL Hwy 15 to junction IL Hwy 142, then along IL Hwy 142 to junction IL Hwy 1, then along IL Hwy 1 to the IL-KY State line; points in Marshall, Calloway, McCracken, Graves, Hickman, Carlisle, and Ballard Counties, KY; points in TN on or west of a line beginning at the KY-TN State line, and extending along U.S. Hwy 641 to junction TN Hwy 69, then along TN Hwy 69 to junction I Hwy 40, then along I Hwy 40 to junction TN Hwy 96, then along TN Hwy 96 to junction Alternate U.S. Hwy 41, then along Alternate U.S. Hwy 41 to junction TN Hwy 55, then along TN Hwy 55 to junction TN Hwy 8, then along TN Hwy 8 to junction U.S. Hwy 127, then along U.S. Hwy 127 to junction TN Hwy 30, then along TN Hwy 30 to junction TN Hwy 60, then along TN Hwy 60 to the TN-GA State line.

(5) from points in NC on, east or south of a line beginning at the NC-TN State line, and extending along U.S. Hwy 64 to junction U.S. Hwy 441, then along U.S. Hwy 441 to junction U.S. Hwy 70, then along U.S. Hwy 70 to junction I Hwy 77, then along I Hwy 77 to VA-NC State line, to points in TX, AR, OK, KS, NE; that part of IA on and west of a line beginning at the IA-IL State line, and extending along U.S. Hwy 136 to junction U.S. Hwy 218, then along U.S. Hwy 218 to junction U.S. Hwy 34, then along U.S. Hwy 34 to junction U.S. Hwy 63, then along U.S. Hwy 63 to junction IA Hwy 163, then along IA Hwy 163 to junction IA Hwy 117, then along IA Hwy 117 to junction I Hwy 80, then along I Hwy 80 to junction IA Hwy 141, then along IA Hwy 141 to junction U.S. Hwy 59, then along U.S. Hwy 59 to the IA-MN State line; points in MO on, north or west of a line beginning at the MO-AR State line, and extending along U.S. Hwy 67 to the Mississippi River at or near Barnhart, MO; points in TN on or west of U.S. Hwy 45 and U.S. Hwy 45E.

(6) From all points in NC to points in AR, OK, TX, KS, NE; points in IA on or west of a line beginning at the IA-MN State line, and extending along U.S. Hwy 71 to junction U.S. Hwy 20, then along U.S. Hwy 20 to junction U.S. Hwy 169, then along U.S. Hwy 169 to junction U.S. Hwy 30, then along U.S. Hwy 30 to junction U.S. Hwy 63, then along U.S. Hwy 63 to the IA-MO State line; points in that part of MO on or west of a line beginning the MO-IA State line, and extending along MO Hwy 15 to junction U.S. Hwy 36, then along U.S. Hwy 36 to junction U.S. Hwy 61, then along U.S. Hwy 61 to junction MO Hwy 94, then along MO Hwy 94 to junction MO Hwy 47, then along MO Hwy 47 to junction U.S. Hwy 67, then along U.S. Hwy 67 to the AR-MO State line; and that part on or west of U.S. Hwy 45 and U.S. Hwy 45E.

(II) *Meats, meat products and meat by-products* as described in section A of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 MCC 209 and 766 (except commodities in bulk), in vehicles equipped with mechanical refrigeration, (1) from Goldsboro, NC to points in TX, AR, OK, MO, KS, NE, IA, MN, that part of WI on or west of a line beginning at the IA-WI State line, and extending along U.S. Hwy 61 to junction U.S. Hwy 53, then along U.S. Hwy 53 to Lake Superior at or near Superior, WI; points in IL on or west of a line beginning at the IL-IN State line, and extending along I Hwy 64 to junction IL Hwy 1, then along IL Hwy 1 to junction Il Hwy 130, then along IL Hwy 130 to junction U.S. Hwy 50, then along U.S. Hwy 50 to junction IL Hwy 127, then along IL Hwy 127 to junction U.S. Hwy 66, then along U.S. Hwy 66 to junction IL Hwy 29, then along IL Hwy 29 to junction Il Hwy 88, then along IL Hwy 88 to junction IL Hwy 78, then along IL Hwy 78 to the WI-IL State line; Evansville, IN; and points in that part if KY on or west of U.S. Hwy 231; points in TN on or west of a line beginning at the KY-TN State line, and extending along U.S. Hwy 231 to junction U.S. Hwy 70, then along junction U.S. Hwy 70 to junction TN Hwy 68, then along TN Hwy 68 to junction U.S. Hwy 27, then along U.S. Hwy 27 to junction TN Hwy 60, then along TN Hwy 60 to the GA-TN State line.

(2) From Siler City, NC to points in TX, AR, OK, MO, KN, NE; points in MN on, west or nothe of a line beginning at the IA-MN State line, and extending along U.S. Hwy 63 to the Mississippi River at or near Lake City, MN; points in IA on west of a line beginning at the IL-IA State line, and extending along IA Hwy 38 to junction U.S. Hwy 30, then along U.S. Hwy 30 to junction IA Hwy 150, then along IA Hwy 150 to junction U.S. Hwy 52, then along IA Hwy 52 to junction IA Hwy 9, then along IA Hwy 9 to junction U.S. Hwy 63, then along U.S. Hwy 63 to the IA-MN State line; points in IL on or west of a line beginning at the IA-IL State line, and extending along IL Hwy 92 to junction IL Hwy 192, then along IL Hwy 192 to junciton U.S. Hwy 67, then along U.S. Hwy 67 to junction IL Hwy 140, then along IL Hwy 140 to junction U.S. Hwy 40, then along U.S. Hwy 40 to junction U.S. Hwy 51, then U.S. Hwy 51 to junction U.S. Hwy 50, then along U.S. Hwy 50 to junction U.S. Hwy 45, then along U.S. Hwy 45 to junction IL Hwy 1, then along IL Hwy 1 to the KY-IL State line; points in KY on or west of a line beginning at the KY-IL State line, and extending along KY Hwy 91 to junction U.S. Hwy 68, then along U.S. Hwy 68 to junction U.S. Hwy 431, then along U.S. Hwy 431 to the KY-TN State line; and points in TN on or west of a line beginning at the KY-TN State line, and extending along TN Hwy 109 to junction TN Hwy 25, then along TN Hwy 25 to junction U.S. Hwy 231, then along U.S. Hwy 231 to junction U.S. Hwy 70, then along U.S. Hwy 70 to junction TN Hwy 111, then along TN Hwy 111 to junction TN Hwy 30, then along TN Hwy 30 to junction TN Hwy 60, then along TN Hwy 60 to the TN-GA State line.

(3) From Salisbury, NC, to points in TX, AR, OK, MO, KS, NE, IA, MN, that part of WI on or west of a line beginning at the IA-WI State line, and extending along U.S. Hwy 61 to junction U.S. Hwy 53, then along U.S. Hwy 53 to Lake Superior at or near Superior, WI; points in IL on or west of a line beginning at the IL-IN State line, and extending along I Hwy 64 to junction IL Hwy 1, then along IL Hwy 1 to junction IL Hwy 130, then along IL Hwy 130 to junction U.S. Hwy 50, then along U.S. Hwy 50 to junction IL Hwy 127, then along IL Hwy 127 to junction U.S. Hwy 66, then along U.S. Hwy 66 to junction IL Hwy 29, then along IL Hwy 29 to junction IL Hwy 88, then along IL Hwy 88 to junction IL Hwy 78, then along IL Hwy 78 to the WI-IL State line; Evansville, IN; and points in that part of KY on or west of U.S. Hwy 231; points in TN on or west of a line beginning at the KY-TN State line, and extending along U.S. Hwy 231 to junction U.S. Hwy 70, then along U.S. Hwy 70 to junction TN Hwy 68, then along TN Hwy 68 to junction U.S. Hwy 27, then along U.S. Hwy 27 to junction TN Hwy 60, then along TN Hwy 60 to the GA-TN State line.

(III) *Foodstuffs* (except in bulk), in vehicles equipped with mechanical refrigeration, (1) from Charlotte, NC, to points in TX, AR, OK, MO, KS, NE; points in MN on, west or north of a line beginning at the IA-MN State line, and extending along U.S. Hwy 63 to the Mississippi River at or near

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Lake City, MN; points in IA on or west of a line beginning at the IL-IA State line, and extending along IA Hwy 38 to junction U.S. Hwy 30, then along U.S. Hwy 30 to junction IA Hwy 150, then along IA Hwy 150 to junction U.S. Hwy 52, then along U.S. Hwy 52 to junction IA Hwy 9, then along IA Hwy 9 to junction U.S. Hwy 63, then along U.S. Hwy 63 to the IA-MN State line; points in IL on or west of a line beginning at the IA-IL State line, and extending along IL Hwy 92 to junction IL Hwy 192, then along IL Hwy 192 to junction U.S. Hwy 67, then along U.S. Hwy 67 to junction IL Hwy 140, then along IL Hwy 140 to junction U.S. Hwy 40, then along U.S. Hwy 40 to junction U.S. Hwy 51, then along U.S. Hwy 51 to junction U.S. Hwy 50, then along U.S. Hwy 50 to junction U.S. Hwy 45, then along U.S. Hwy 45 to junction IL Hwy 1, then along IL Hwy 1 to the KY-IL State line; points in KY on or west of a line beginning at the KY-IL State line, and extending along KY Hwy 91 to junction U.S. Hwy 68, then along U.S. Hwy 68 to junction U.S. Hwy 431, then along U.S. Hwy 431 to the KY-TN State line; and points in TN on or west of a line beginning at the KY-TN State line, and extending along TN Hwy 109 to junction TN Hwy 25, then along TN Hwy 25 to junction U.S. Hwy 231, then along U.S. Hwy 231 to junction U.S. Hwy 70, then along U.S. Hwy 70 to junction TN Hwy 111, then along TN Hwy 111 to junction TN Hwy 30, then along TN Hwy 30 to junction TN Hwy 60, then along TN Hwy 60 to the TN-GA State line, and points in AL, LA, MS, and points in FL on, south, or west of a line beginning at the FL-GA State line, and extending along FL Hwy 53 to junction FL Hwy 51, then along FL Hwy 51 to junction U.S. Hwy 19, then along U.S. Hwy 19 to junction FL Hwy 44, then along FL Hwy 44 to junction FL Hwy 48, then along FL Hwy 48 to junction FL Hwy 469, then along FL Hwy 469 to junction FL Hwy 50, then along FL Hwy 50 to junction U.S. Hwy 27, then along U.S. Hwy 27 to junction U.S. Hwy 441, then along U.S. Hwy 441 to junction I Hwy 95, then along I Hwy 95 to junction FL Hwy 706, then along FL Hwy 706 to the Atlantic Ocean at or near Jupiter, FL.

(IV) *Fresh and cured meats, and such commodities* as are classified as Dairy Products in the report in Modification of Permits—Packing House Products, 46 MCC 23, and fresh fruits and vegetables (except in bulk), in vehicles equipped with mechanical refrigeration, (1) from points in NC on and west of U.S. Hwy 25 to points in GA on or west of a line beginning at the GA-AL State line, and extending along GA Hwy 20 to junction I Hwy 75, then along I Hwy 75 to junction I Hwy 16, then along I Hwy 16 to junction U.S. Hwy 23, then along U.S. Hwy 23 to junction FL-GA State line;

(2) From points in NC on or east of U.S. Hwy 17 to points in GA on or west of U.S. Hwy 19; (3) from points in NC on or east of U.S. Hwy 301 to points in GA on or west of a line beginning at the GA-FL State line, and extending along U.S. Hwy 27 to junction GA Hwy 45, then along GA Hwy 45 to junction GA Hwy 41, then along GA Hwy 41 to junction GA Hwy 85, then along GA Hwy 85 to junction US. Hwy 41, then along U.S. Hwy 41 to the TN-GA State line; (4) from points in NC on or east of U.S. Hwy 29 to points in GA on and north of U.S. Hwy 29 and on and west of U.S. Hwy 41; (5) from points in NC on or west of U.S. Hwy 29 to points in GA on and south of U.S. Hwy 29 and on and west of I Hwy 75; (6) from all points in NC to points in DeKalb, Clayton, Fulton, Cobb, Paulding, Douglas Counties, and points in Gwinnett County south of GA Hwy 20.

(V) *Pizza, salads, and sandwich spreads* (except in bulk), in vehicles equipped with mechanical refrigeration, from Greensboro, NC, to points in TX, AR, OK, MO, KS, NE; points in MN on, west or north of a line beginning at the IA-MN State line, and extending along U.S. Hwy 63, then along U.S. Hwy 63 to the Mississippi River at or near Lake City, MN, points in IA on or west of a line beginning at the IL-IA State line, and extending along IA Hwy 38 to junction U.S. Hwy 30, then along U.S. Hwy 30 to junction IA Hwy 150, then along IA Hwy 150 to junction U.S. Hwy 52, then along U.S. Hwy 52 to junction IA Hwy 9, then along IA Hwy 9 to junction U.S. Hwy 63, then along U.S. Hwy 63 to the IA-MN State line; points in IL on or west of a line beginning at the IA-IL State line, and extending along IL Hwy 92 to junction IL Hwy 192, then along IL Hwy 192 to junction U.S. Hwy 67, then along U.S. Hwy 67 to junction IL Hwy 140, then along IL Hwy 140 to junction U.S. Hwy 40, then along U.S. Hwy 40 to junction U.S. Hwy 51, then along U.S. Hwy 51 to junction U.S. Hwy 50, then along U.S. Hwy 50 to junction U.S. Hwy 45, then along U.S. Hwy 45 to junction IL Hwy 1, then along IL Hwy 1 to the KY-IL State line; points in KY on or west of a line beginning at the KY-IL State line, and extending along KY Hwy 91 to junction U.S. Hwy 68, then along U.S. Hwy 68 to junction U.S. Hwy 431, then along U.S. Hwy 431 to the KY-TN State line; and points in TN on or west of a line beginning at the KY-TN State line, and extending along TN Hwy 109 to junction TN Hwy 25, then along TN Hwy 25 to junction U.S. Hwy 231, then along U.S. Hwy 231 to junction U.S. Hwy 70, then along U.S. Hwy 70 to junction TN Hwy 111, then along TN Hwy 111 to junction TN Hwy 30, then along TN Hwy 30 to junction TN Hwy 60, then along TN Hwy 60 to the TN-GA State line. Restriction: The authority granted herein shall be subject to the right of the Commission, which is hereby expressly reserved, to impose such terms, conditions, or limitations in the future as it may find necessary in order to insure that carrier's operations shall conform to the provisions of Section 210 of the Act. (Gateway eliminated: Doraville (Atlanta) GA.)

MC 112304 (Sub-E617) (correction), filed July 11, 1978, published in the FEDERAL REGISTER issue of September 20, 1978, and republished, as corrected, this issue. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Structural steel and iron and steel angles, bars, channels, conduit, lath, piling, pipe, posts, rails, rods, roofing, tubing and wire in coils*, between points in Venango County, PA, on the one hand, and, on the other, points in VA. Limitation: The Certificate in MC 112304 (Sub-65) shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Clarksburg, WV and 50 miles within Clarksburg, WV.)

NOTE.—The purpose of this republication is to correct the commodity description.

MC 114868 (Sub-E35), filed August 1, 1975. Applicant: NEWLON'S TRANSFER & STORAGE, 1511 North Nelson Street, Arlington, VA 22201. Representative: H. E. Newlon, Jr. (same as above.) *Household goods*, (1) Between points in NY east of a line begining at the NY-PA State line extending along NY Hwy 17 to junction NY Hwy 30, then along NY Hwy 30 to junction NY Hwy 85, then along NY Hwy 85 to junction NY Hwy 156, then along NY Hwy 156 to junction NY Hwy 146, then along NY Hwy 146 to junction U.S. Hwy 4, then along U.S. Hwy 4 to the NY-VT State line, on the one hand, and, on the other, points in IL south and west of a line beginning at the IL-IN State line extending along I Hwy 74 to junction IL Hwy 8, then along IL Hwy 8 to junction U.S. Hwy 34, then along U.S. Hwy 34 to the Mississippi River. (Gateway eliminated: Washington, DC, and points in KY within 125 miles of Nashville), (2) Between points in NY east of a line beginning at the NY-PA State line extending along I Hwy 81 to junction NY Hwy 7, then along NY Hwy 7 to junction NY Hwy 30, then along NY Hwy 30 to junction NY Hwy 8, then along NY Hwy 8 to junction U.S. Hwy 9, then along U.S. Hwy 9 to the United States-Canada international boundary line, on the one hand, and, on the other, points in OH south of I Hwy 70.

(Gateway eliminated: Washington, DC). (3) Between points in NY east of a line beginning at the NY-PA State line extending along NY Hwy 328 to junction NY Hwy 17, then along NY Hwy 17 to junction NY Hwy 13, then along NY Hwy 13 to junction I Hwy 81, then along I Hwy 81 to junction NY Hwy 173, then along NY Hwy 173 to junction NY Hwy 5, then along NY Hwy 5 to junction NY Hwy 46, then along NY Hwy 46 to junction NY Hwy 365, then along NY Hwy 365 to junction NY Hwy 26, then along NY Hwy 26 to the United States-Canada international bounday line, on the one hand, and, on the other, points in MO south of a line at the MO-IL State line extending along U.S. Hwy 60 to junction U.S. Hwy 65, then south along U.S. Hwy 65 to junction MO Hwy 14, then along MO Hwy 14 to junction U.S. Hwy 60, then along U.S. Hwy 60 to the MO-OK State line. (Gateways eliminated: Washington, DC and points in KY within 125 miles of Nashville.) (4) Between points in NY, on the one hand, and, on the other, points in NC. (Gateways eliminated: Washington, DC, points in TN and KY within 125 miles of Nashville.) (5) Between points in NY south of a line beginning at the NY-PA State line extending along NY Hwy 52 to junction U.S. Hwy 209 to junction I Hwy 87, then along I Hwy 87 to junction I Hwy 90, then along I Hwy 90 to the NY-MA State line, on the one hand, and, on the other, points in IN. (Gateways eliminated: Washington, DC, and points in KY within 125 miles of Nashville.) (6) Between points in NY, on the one hand, and, on the other, points in KY. (Gateways eliminated: Washington, DC and points in KY within 125 miles of Nashville.) (7) Between points in NY, on the one hand, and, on the other, points in MD east of a line beginning at the MD-WV State line extending along MD Hwy 34 to junction MD Hwy 66, then along MD Hwy 66 to the MD-PA State line. (Gateway eliminated: Washington, DC.)

MC 114868 (Sub-E43) filed August 1, 1975. Applicant: NEWLON'S TRANSFER & STORAGE, 1511 North Nelson Street, Arlington, VA 22201. Representative: H. E. Newlon, Jr. (same as above.) *Household goods*, (1) between points in TN, on the one hand, and, on the other, points in CT (Gateways: points in TN and KY within 125 miles of Nashville, and Washington, DC); (2) between points in TN, on the one hand, and, on the other, points in Washington, DC (Gateways: points in TN within 125 miles of Nashville); (3) between points in TN, on the one hand, and, on the other, points in DE (Gateway: points in TN within 125 miles of Nashville); (4) between points in TN, on the one hand, and, on the other, points in GA (Gateway: points in AL); (5) between points in TN, on the one hand, and, on the other, points in IL (Gateways: points in TN and KY within 125 miles of Nashville); (6) between points in TN, on the one hand, and, on the other, points in IN (Gateways: points in TN and KY within 125 miles of Nashville); (7) between points in TN, on the one hand, and, on the other, points in MD (Gateway: points in TN within 125 miles of Nashville); (8) between points in TN, on the one hand, and, on the other, points in MA (Gateways: points in TN and KY within 125 miles of Nashville); (9) between points in TN, on the one hand, and, on the other, points in MI (Gateway: points in KY within 125 miles of Nashville); (10) between points in TN, on the one hand, and, on the other, points in MN (Gateways: points in TN and KY within 125 miles of Nashville); (11) between points in TN, on the one hand, and, on the other, points in MS (Gateway: points in TN within 125 miles of Nashville); (12) between points in TN, on the one hand, and, on the other, points in NY (Gateways: points in TN and KY within 125 miles of Nashville); (13) between points in TN, on the one hand, and, on the other, points in NJ (Gateway: points in TN within 125 miles of Nashville); (14) between points in TN, on the one hand, and, on the other, points in OH (Gateway: points in TN within 125 miles of Nashville); (15) between points in TN, on the one hand, and, on the other, points in RI (Gateway: points in KY within 125 miles of Nashville and Washington, DC); (16) between points in TN, on the one hand, and, on the other, points in OK (Gateway: points in TN within 125 miles of Nashville); (17) between points in TN, on the one hand, and, on the other, points in SC (Gateway: points in TN within 125 miles of Nashville); (18) between points in TN, on the one hand, and, on the other, points in PA (Gateway: points in TN within 125 miles of Nashville); (19) between points in TN, on the one hand, and, on the other, points in TX (Gateway: points in TN within 125 miles of Nashville); (20) between points in TN, on the one hand, and, on the other, points in VA (Gateway: points in TN within 125 miles of Nashville); (21) between points in TN, on the one hand, and, on the other, points in WV (Gateway: points in TN within 125 miles of Nashville); (22) between points in TN, on the one hand, and, on the other, points in WI (Gateway: points in TN within 125 miles of Nashville).

MC 117574 (Sub-E119) (partial correction), filed July 16, 1975, published in the FEDERAL REGISTER issue of September 20, 1978, and partially republished, as corrected, this issue. Applicant: DAILY EXPRESS, INC., P.O. Box 39, Carlisle, PA 17013. Representative: E. S. Moore, Jr. (same as above). *Agricultural implements, agricultural machinery, tractors*, with or without attachments, *cranes, industrial and processing machinery*, and *attachments, accessories*, and *parts* of all of the above-described commodities, which are also heavy machinery or contractors equipment, and are also machinery, commodities which, because of size or weight, require the use of special equipment or special handling (except boats), or *self-propelled articles*, each weighing 15,000 pounds or more (when transported on trailers), • • • (14) between points in the NC counties of Durham, Granville, and Person, on the one hand, and, on the other, points in CA, ID, MT, NV, OR, ND, UT, WA, WY, and those points in AZ, on, north and west of a line beginning at the International Boundary line between United States and Mexico, at Nogales, AZ, and extending along U.S. Hwy 89, then north along U.S. Hwy 89 to junction AZ Hwy 77, then along AZ Hwy 77 to junction U.S. Hwy 666, then along U.S. Hwy 666 to the AZ-NM State line, points in CO on and northwest of a line beginning at the NM-CO State line along I Hwy 25, then north along I Hwy 25 to junction I Hwy 80, then east along I Hwy 80 to the CO-NE State line; points in NM on and northwest of a line beginning at the AZ-NM State line along I Hwy 40, then east along I Hwy 40 to junction U.S. Hwy 85, then northeast along U.S. Hwy 85 to junction U.S. Hwy 64, then northeast along U.S. Hwy 64 to junction I Hwy 25, then north along I Hwy 25 to the NM-CO State line; points in OH described in (10) above; points in AZ, MN, NE, and SD described in (13) above. (Gateways eliminated: Waynesboro and Stitz, PA.)

NOTE.—The purpose of this partial republication is to add the parts of the destination State of AZ, previously omitted. The remainder of this letter-notice remains as previously published.

MC 123407 (Sub-E625), filed July 25, 1978. Applicant: SAWYER TRANSPORT INC., South Haven Square, U.S. Hwy 6, Valparaiso, IN 46383. Representative: Richard L. Loftus (same as above). *Compostion board, materials and accessories used in the installation of composition board, and ceiling tile* (except lumber, commodities in bulk, and commodities requiring special equipment), in containers or in trailers, having an immediately prior or subsequent movement by water, or by water-rail or air, from points in WA to points in ME, NH, VT, MA, RI, CT, NY, NJ, WV, MD, DE, DC, VA, NC, and SC. (Gateway eliminated: Dubuque, IA.)

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MC 123407 (Sub-E626), filed July 25, 1978.

Applicant: SAWYER TRANSPORT INC., South Haven Square, U.S. Hwy 6, Valparaiso, IN 46383. Representative: Richard L. Loftus (same as above). *Plastic pipe and plastic products* (except commodities in bulk and commodities requiring special equipment), in containers or in trailers, having an immediately prior or subsequent movement by water, water-rail, or by air, from points in UT and points in NV north of I Hwy 80, to points in KS on and east of a line beginning at the KS–NE State line extending along U.S. Hwy 81 to Wichita, than along I Hwy 35 to the KS–OK State line, and points in OK on and east of I Hwy 35. Restriction: The authority granted herein is restricted against the transportation of oilfield commodities as *described in Mercer Extension—Oilfield Commodities*, 74 M.C.C. 459, and further restricted against the transportation of pipe incidental to, used in, or in connection with (a) the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, (b) the completion of holes or wells drilled, (c) the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and (d) the injection or removal of commodities into or from holes or wells. (Gateway eliminated: Hastings, NE.)

MC 123407 (Sub-E627), filed July 25, 1978. Applicant: SAWYER TRANSPORT INC., South Haven Square, **U.S. Hwy 6, Valparaiso, IN 46383.** Representative: Richard L. Loftus (same as above). *Composition board, materials and accessories used in the installation of composition board and ceiling tile* (except lumber, commodities in bulk and commodities requiring special equipment), in containers or in trailers having an immediately prior or subsequent movement by water, or by water-rail or by air, from points in OR to points in ME, NH, VT, MA, RI, CT, NY, NJ, DE, MD, DC, WV, VA, NC and SC. (Gateway eliminated: Dubuque, IA.)

MC 123407 (Sub-E628), filed July 25, 1978. Applicant: SAWYER TRANSPORT INC., South Haven Square, U.S. Hwy 6, Valparaiso, IN 46383. Representative: Richard L. Loftus (same as above). *Plastic pipe and plastic products* (except commodities in bulk and commodities requiring special equipment) in containers or in trailers, having an immediately prior or subsequent movement by water, or by water-rail, or by water, from points in CA south of I Hwy 80, to points in KS on and west of a line beginning at the KS–NE State line extending along U.S. Hwy 183 to Stockton, then along U.S. Hwy 24 to junction U.S. Hwy 81, then along U.S. Hwy 81 to Salina, then along I Hwy 70 to the KS–MO State line. Restriction: The authority granted herein is restricted against the transportation of oilfield commodities as described in *Mercer Extension—Oilfield Commodities*, 74 M.C.C. 459, and further restricted against the transportation of pipe incidental to, used in, or in connection with (a) the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, (b) the completion of holes or wells drilled, (c) the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and (d) the injection or removal of commodities into or from holes or wells. (Gateway eliminated: Hastings, NE.)

MC 123407 (Sub-E629), filed July 25, 1978. Applicant: SAWYER TRANSPORT INC., South Haven Square, U.S. Highway 6, Valparaiso, IN 46383. Representative: Richard L. Loftus (same as above). *Windows, doors, building woodwork, and materials and accessories used in the installation thereof* (except commodities in bulk and commodities because of size or weight require the use of special equipment or special handling), in containers or in trailers, having an immediately prior or subsequent movement by water, or by water-rail, or by air, from points in Scotland, Adair, Linn, Livingston, Carroll, Ray, and Jackson Counties MO, to points in MI, NY, VT, NH, ME, MA, CT, RI and PA. (Gateway eliminated: Dubuque, IA.)

By the Commission.

H.G. Homme, Jr.,
Acting Secretary.

[FR Doc. 78-31969 Filed 11-13-78; 8:45 am]

[7035-01-M]

[Notice No. 207]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

OCTOBER 25, 1978.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connnection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

MC 11722 (Sub-58TA), filed September 14, 1978. Applicant: BRADER HAULING SERVICE, INC., P.O. Box 655, Zillah, WA 98901. Representative: Charles C. Flower, 303 E. "D" Street, Suite 2, Yakima, WA 98901. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Empty cans, can ends and can manufacturing materials and supplies*, from Richmond, CA to Bellevue, Seattle, Spokane, Tumwater and Vancouver, WA, and Portland, OR, for 180 days. Applicant has **also filed an underlying ETA seeking** up to 90 days of operating authority. Supporting shipper: Crown Cork & Seal Co., Inc., 9300 Ashton Road, Philadelphia, PA 19136. Send protests to: R. V. Dubay, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 114 Pioneer Courthouse, Portland, OR 97204.

MC 13250 (Sub-141TA), filed September 18, 1978. Applicant: J. H. ROSE TRUCK LINE, INC., 2800 North Loop West, P.O. Box 16190, Houston, TX 77022. Representative: Robert J. Birnhaum, 500 West Sixteenth Street, P.O. Box 1945, Austin, TX 78767. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (A)(1) *Water pollution control equipment*, (2) *irrigation equipment*, (3) *parts and accessories* for (1) and (2) above, and (4) *materials, equipment and supplies* used in the installation of the commodities named in (1), (2) and (3) above, from the facilities of Davco-Defiance, Division of Davis Water and Waste Industries, Inc., at or near Thomasville, GA to all points in the United States (except AK and HI); (B) Equipment, materials and supplies

(except in bulk) used in the manufacture and distribution of commodities named in (A) above from all points within the United States (except AK and HI) to the facilities of Davco-Defiance, Division of Davis Water and Waste Industries, Inc., at or near Thomasville, GA, for 180 days. Supporting shipper: Davco-Defiance Div. of Davis Water & Waste Industries, Inc., 1828 Metcalf Avenue, Thomasville, GA 31792. Send protests to: District Supervisor John F. Mensing, 8610 Federal Building, 515 Rusk Avenue, Houston, TX 77002.

MC 30618 (Sub-15TA), filed September 18, 1978. Applicant: HENRY V. RABOUIN, Richmond Road, Hancock, MA 01237. Representative: Sherwood Guernsey, II, 57 Wendell Avenue, Pittsfield, MA 01201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Talc Tailings* in bulk from West Windsor, Ludlow and Gassetts, VT to points in NJ, that portion of PA south of Interstate Route 76 and east of Route 15, that portion of NY south of Interstate Route 84 and that portion of CT west of Interstate Route 91, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Windsor Minerals, Inc., P.O. Box 680 Windsor, VT 05089. Send protests to: David M. Miller, District Supervisor, 436 Dwight Street, Room 338, Springfield, MA 01103.

MC 51146 (Sub-642TA), filed September 18, 1978. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: John R. Patterson, 2480 E. Commercial Boulevard, Fort Lauderdale, FL 33308. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cheese, cheese products, including synthetic cheeses, and materials, equipment and supplies* used in their manufacture from points in WI to points in Barry, Jasper, Lawrence and Newton Counties, MO and points in OK and TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days operating authority. Supporting shipper: L. D. Schreiber Cheese Co., Inc., P.O. Box 610, Green Bay, WI 54305 (Robert Buchberger). Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 E. Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 51146 (Sub-643TA), filed September 18, 1978. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: John R. Patterson, 2480 E. Commercial Boulevard, Fort Lauderdale, FL 33308. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic containers* from Kentwood and Grand Rapids, MI to Dothan, AL; Abilene, San Antonio, Houston, Corpus Christi and Longview, TX; New Orleans, LA; Norfolk, NE; and Sterling, CO, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days operating authority. Supporting shipper: Continental Plastics Industries, 633 Third Avenue, New York, NY 10017 (LaVerne W. Myers). Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 E. Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 52704 (Sub-182TA), filed September 14, 1978. Applicant: GLENN MCCLENDON TRUCKING CO. INC., P.O. Drawer H, Lafayette, AL 36862. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid cleaning and bleaching compounds* (except in bulk), from the facilities of National Marketing Associates, Inc., at or near New Orleans, LA to Birmingham and Montgomery, AL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: National Marketing Associates, Inc., P.O. Box 1554 Gretna, LA 70053. Send protests to: Mabel E. Hoston, Transportation Assistant, Bureau of Operations, I.C.C., room 1616, 2121, Birmingham, AL 35203.

MC 59856 (Sub-83TA), filed September 18, 1978. Applicant: SALT CREEK FREIGHTWAYS, P.O. Box 39, 3333 W. Yellowstone Hwy, Casper, WY 82601. Representative: John R. Davidson, Room 805 Midland Bank Building, Billings, MT 59101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Gypsum products, materials and supplies* used in the installation thereof, from Heath, MT, including the plant site of U.S. Gypsum Co. at Heath, MT to all points in the State of CO, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: United States Gypsum Co., 525 South Virgil Avenue, Los Angeles, CA 90020. Send protests to: District Supervisor Paul A. Naughton, Interstate Commerce Commission Room 105 Federal Building and Court House, 111 South Wolcott, Casper, WY 82601.

MC 61231 (Sub-131TA), filed September 19, 1978. Applicant: EASTER ENTERPRISES, INC., d.b.a. ACE LINES, INC., P.O. Box 1351, Des Moines, IA 50305. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glazed tile* from East Canton, OH to points in IA, KS, MO, NE, ND and SD and points in IL located west of U.S. Hwy 51, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Sioux City Brick & Tile, 222 Commerce Building, Sioux City, IA 51102. Building Products Division, S-G Metals Industries, Inc., Kansas City, KS 66110. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 66807 (Sub-6TA), filed September 14, 1978. Applicant: MANUFACTURERS EXPRESS, INC., 294 Kimberly Avenue, New Haven, CT 06519. Representative: Gerald A. Joseloff, 80 State Street, Hartford, CT 06103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages* (except in bulk), from Merrimack, NH to West Haven, CT, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Dichello Distributors, 11 Frontage Road, West Haven, CT. Send protests to: J. D. Perry, Jr., Interstate Commerce Commission, 135 High Street, Room 324, Hartford, CT 06101.

MC 91306 (Sub-17TA), filed September 18, 1978. Applicant: JOHNSON BROTHERS TRUCKERS, INC., P.O. Box 530, Elrin, NC 28621. Representative: William E. Butner, 27 1st Avenue, NE, Hickory, NC 28601. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture and furniture parts and returned furniture shipments* from the stated destinations to the stated origins from NC, to points in CT, MA, RI, VT, NH, and ME, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: There are approximately 7 statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies thereof which may be examined at the field office named below. Send protests to: District Supervisor Terrell Price, Interstate Commerce Commission, 800 Briar Creek Road, Room CC516, Charlotte, NC 28205.

MC 112801 (Sub-210TA), filed September 14, 1978. Applicant: TRANS-

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PORT SERVICE CO., 2 Salt Creek Lane, Hinsdale, IL 60521. Representative: Gene Smith, 2 Salt Creek Lane, Hinsdale, IL 60521. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid propellant*, in bulk, in tank vehicles, from the facilities of Phillips Petroleum Co., at East Chicago, IN to Butler, PA and Franklin, KY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Phillips Petroleum Co., 222 East Ogden Avenue, Hinsdale, IL 60521, Paul H. Green-Regional Distribution Director. Send protest to: Lois M. Stahl, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, Everett McKinley Dirksen Building, Room 1386, 219 South Dearborn Street, Chicago, IL 60604.

MC 115162 (Sub-428TA), filed September 14, 1978. Applicant: POOLE TRUCK LINE, INC., P.O. Drawer 500, Evergreen, AL 36401. Representative: Robert E. Tate, P.O. Drawer 500, Evergreen, AL 36401. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Woodpulp*, in bulk, in tank vehicles, from Monroe County, AL to Mobile, AL in interstate or foreign commerce, for 180 days. Supporting shipper: Alabama River Pulp Co., P.O. Box 628, Monroeville, AL 36406. Send protest to: Mabel E. Holston, Transportation Assistant Bureau of Operations, I.C.C., Room 1616, 2121 Building, Birmingham, AL 35203.

MC 115311 (Sub-310TA), filed September 18, 1978. Applicant: J & M TRANSPORTATION CO., INC., P.O. Box 488, Milledgeville, GA 31061. Representative: Mark C. Ellison, P.O. Box 872, Atlanta, GA 30301. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Limestone*, from Anderson TN to Atlanta, GA and (2) *Fluorspar* from Rosiclare, IL to Atlanta, GA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Armstron Glass Co., 1320 Elmsworth, Atlanta, GA. Send protest to: Sara K. Davis, Transportation Assistant, Interstate Commerce Commission, 1252 W. Peachtree Street, N.W. Room 300, Atlanta, GA 30309.

MC 115730 (Sub-55TA), filed September 14, 1978. Applicant: THE MICKOW CORP., 531 SW 6th Street, Des Moines, IA 50306. Representative: Cecil L. Goettsch, 1100 Des Moines Building, Des Moines, IA 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Iron and steel articles*, from Union, MO to points in CO, IA, IL, IN, MI, MN, NE, ND and SD. (2) *Materials, equipment and supplies* used in the manufacture and processing of iron and steel articles from points in CO, IA, IL, IN, MI, MN, NE, ND and SD to Union, MO, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Maverick Tube Corp., 311 North Lindbergh, St. Louis, MO 63141. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 116254 (Sub-213TA), filed September 14, 1978. Applicant: CHEM-HAULER, INC., P.O. Box 339, Florence, AL 35630. Representative: Hampton M. Mills, 118 E. Mobile Plaza, Florence, AL 35630. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass containers, glassware and glass cullet*, from Lancaster, OH, Jacksonville, FL, Connellsville, PA and Winchester, IN to points in and east of MN, IA, MO, AR, and LA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Anchor Hocking Corp., 109 North Broad Street, Lancaster, OH 43130. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operations, I.C.C., Room 1616, 2121 Building, Birmingham, AL 35203.

MC 118806 (Sub-66TA), filed September 18, 1978. Applicant: ARNOLD BROS. TRANSPORT, LTD., 200 Lagimodiere Boulevard, Winnipeg, Manitoba, Canada R2J 3K 4. Representative: Bernard J. Kompare, 10 South LaSalle Street, Suite 1600, Chicago, IL 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pesticides* (consisting of agricultural insecticides, fungicides and/or herbicides) from WY and Rockford, IL, to the ports of entry on the International Boundary Line between the U.S. and Canada at or near Pembina, ND and Noyes, MN, restricted to traffic moving in foreign commerce destined to points in the Canadian provinces of Manitoba, Saskatchewan and Alberta, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Mobay Chemical Corp., Chemagros Agricultural Chemical Div., P.O. Box 4913, Hawthorn Road, Kansas City, MO 64120. Send protests to: Ronald R. Mau, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 268, Federal Building and U.S. Post Office, 657 2nd Avenue North, Fargo, ND 58102.

MC 118959 (Sub-178TA), filed September 18, 1978. Applicant: JERRY LIPPS, INC., 130 South Frederick Street, Cape Girardeau, MO 63701. Representative: Robert M. Pearce, P.O. Box 1899, Bowling Green, KY 42101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic and plastic articles, tin and tin articles, iron and steel articles, rubber and rubber articles, resins* (except commodities in bulk), Between the facilities of Standard Container Co. at or near Homerville, GA, Longwood, FL, Jacksonville, FL, Valdosta, GA and Picayune, MS, on the one hand, and on the other, points in NC, GA, FL, NJ, KY, IA, TN, OH, IN, PA, SC, TX, AL, IL, CT, RI, MO, MS, NB, OK, KS, WV, VA, MA, AR, AZ, MI and MN, for 180 days. Supporting shipper: Standard Container Co., Hwy 84, West, Homerville, GA 31634. Send protests to: Acting District Supervisor P. E. Binder, Interstate Commerce Commission, Bureau of Operations, Room 1465, 210 N. 12th Street, St. Louis, MO 63101.

MC 119789 (Sub-518TA), filed September 18, 1978. Applicant: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 226188, Dallas, TX 75266. Representative: Lewis Coffey, P.O. Box 226188, Dallas, TX 75266. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Drugs and medicines*, from New Brunswick, Somerset and South Plainfield and North Brunswick, NJ to Chicago, IL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: E. R. Squibb & Sons, Inc., Georges Road, New Brunswick, NJ 08903. Send protests to: Opal M. Jones, Transporting Assistant, Interstate Commerce Commission, 1100 Commerce St., Rm. 13C12, Dallas, TX 75242.

MC 119988 (Sub-160TA), filed September 18, 1978. Applicant: GREAT WESTERN TRUCKING CO., INC., P.O. Box 1384, Lufkin, TX 75901. Representative: Clayte Binion, 1108 Continental Life Building, Ft. Worth, TX 76102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Gas and electrical appliances and parts, materials supplies and equipment* used in the manufacture distribution or repair thereof, from the facilities of Whirlpool Corporation at Evansville, IN to points in OK, AR, TX, LA, MS, AL, GA, FL, SC and NC, for 180 days. Supporting shipper: Whirlpool Corp., U.S. 33, North, Benton Harbor, MI 49022. Send protests to: District Supervisor, John F. Mensing, 8610 Federal Building, 515 Rusk Avenue, Houston, TX 77002.

MC 120618 (Sub-No. 14TA), filed September 14, 1978. Applicant: SCHALLER TRUCKING CORP., 5700 West Minnesota Street, Indianapolis, IN 46241. Representative: John R. Bagileo, 700 World Center Building, 918 16th Street NW., Washington, DC 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Commercial paper, documents, records, and written instruments* (except currency and negotiable instruments) as are usual in the business of banks, banking institutions, data processors, financial institutions, and insurance companies, between points located in Allen, Clark, Crawford, Daviess, Dubois, Elkhart, Floyd, Gibson, Greene, Harrison, Howard, Jackson, Jefferson, Knox, Lawrence, Madison, Martin, Morgan, Orange, Perry, Pike, Posey, Scott, Spencer, St. Joseph, Sullivan, Switzlerland, Vanderburg, Vigo, Warrick, and Washington Counties, IN, and the commercial zone of Louisville, KY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Federal Reserve Bank of St. Louis, P.O. Box 442, St. Louis, MO 63166. Farmers State Bank, Sullivan, IN. The American National Bank, Vincennes, IN. Peoples Trust Co., Linton, IN, Dubois County Bank, Jasper, IN. Send protests to: Beverly J. Williams, Transportation Assistant, Interstate Commerce Commission, Federal Building and U.S. Courthouse, 46 East Ohio Street, Room 429, Indianapolis, IN 46204.

MC 121569 (Sub-1TA), filed August 11, 1978, and published in the FEDERAL REGISTER issue of October 12, 1978, and republished as corrected this issue. Applicant: GATOR FREIGHTWAYS, INC., 114 W. Madison St., Starke, FL 32901. Representative: James E. Wharton, Suite 811, Metcalf Bldg., 100 S. Orange Ave., Orlando, FL 32801. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment over regular routes as follows: Between Jacksonville and FL-GA State line via State Road 15 (U.S. 1) and State Road 5 (U.S. 170 serving all intermediate points) Between Jacksonville and Miami via State Road (U.S. 1) serving all intermediate points and the off-route points in Allenhurst, Artesia, Canaveral, Canaveral Beach, Canaveral Harbor, Cocoa Beach, Courtney Felismere, Georgiana, Indiatlantic, Jesen Beach, Lotus, Melbourne Beach, Patrick Air Force Base, Port Canaveral, Shiloh, Titusville Beach, Tropic, and Wilson. Between Bunnell and Flagler Beach via State Road 100 serving intermediate points and the off-route points of the Lehigh Portland Cement Co., Inc., Bunnell to junction of State Road 11 and U.S. 92 and Deland via State Roads 11 and 15. Between West Palm Beach and the junction of State Roads 7 and 84 west of Ft. Lauderdale via State Roads 80 and 7. Between Ft. Lauderdale and Miami via State Roads 84 and 7. Between Miami and Deerfield Beach via State Roads 7 and 810. Between Deerfield Beach and West Palm Beach on State Roads 808 and 809 (200) as an alternate to State Road 5. Between Daytona Beach and St. Petersburg via State Road 600 or U.S. 92 by way of Deland, Sanford, Orlando, Kissimmee, Haines City, Lakeland, Tampa, and Gandy Bridge. Between Tampa and St. Petersburg by way of Safety Harbor on State Roads 580 and 593 and U.S. 19. Between Orlando and Indian River City over State Road 50. Between Orlando and Kissimmee via State Road 527 as an alternate route, Between Orlando, Mount Dora, Tavares, Eustis, Leesburg, Groveland, C Clermont, Winter Garden and Orlando over U.S. 441 and State Roads 19, 44, 33 and 50. Between Orlando and Geneva via State Roads 418 and 426. Between Kissimmee and Melbourne via State Road 500. Between Haines City and Auburndale via State Road 544 to Winter Haven and 559 to Auburndale serving Eagle Lake and Eloise as off-route points to Winter Haven. Between Tampa and Plant City via State Road 574 as an alternate route. Between Lakeland and Haines City by way of Bartow via U.S. 98, State Road 60 and U.S. 27, serving intermediate points, including route between Tampa and Clearwater via State Road 60 by way of Davis Causeway. Between Tampa, St. Petersburg and Pass-A-Grille via States Roads 580, 584, 590, 55, 689, 694, 699 and County Roads to Dunedin, Largo, Pasedna, Gulport, Pass-A-Grille and Pinellas Park. Between Tampa and Mantee via State Road 43 (U.S.41) serving intermediate points and the off-routes points of Wimouma. Between Tampa and Sarasota via State Road 45 (U.S. 41) serving the intermediate and off-route points of Ruskin, Sun City Gillett, Palmetto, Gibsonton, Piney Point, Terra Ceia, Rubonia, Palma Sola, Bradenton, Cortez, Bradenton Beach, Oneco, Gates City, Fruitville, Willow Station, and Ellenton. Over East Sand Lake Road Running Westerly from a junction with U.S. 17 approximately 4 miles south of Orlando to Doctor Phillips, serving intermediate points between the junction of U.S 17 and East Sand Lake Road through and including Doctor Phillips, Florida. Between Haines City and Lake Placid via State Road 17, serving Lake Hamilton, Dundee, Lake Wales, Frostproof, Avon Park, and Sebring. Between Tampa and Arcadia via State Roads 60 and 33 (U.S. 17) serving Brandon, Hopewell, Mulberry, Pierce, Bradley Junction, Bartow, and Pembroke. Between Winter Haven and Dundee via State Road 542 with service to the off-route of Alturas, and Connersville. Between Haines City and Lake Placid via State Road 25. Between Lake Wales and Junction of State Road 60 and the Kissimmee River via State Road 60, serving all intermediate points and off-route points within 4 miles of said junction; also from Frostproof to the intersection of State Roads 630 and 60 via State Road 630, serving all intermediate points including Indian Lake Estates. Serving the General Portland Cement Co. located nineteen (19) miles west of Miami, on Krome Avenue, 3½ miles south of Tamiami Trail, and the Lehigh Portland Cement Co., located approximately seven (7) miles west of Miami International Airport and 2 miles north of Tamiami Trail as off-route points in connection with the carrier's authority to serve Miami, FL. Serving Pratt and Whitney Division of United Aircraft, located approximately 8 miles west of Jupiter as an off-routes point in connection with the carrier's present authority. Alternate route between Okeechobee and Jupiter via State Roads Nos. 7 to and 706 by way of Indiantown; also, between Indiantown and U.S. 1 via extention of State Road 710. Between Sarasota and Naples, using U.S. Hwy 41, serving no intermediate points and using Interstate 95 and FL State Road 84 as an alternate route for operating convenience only, with right of joinder (or tacking) to all points in Connecticut with presently authorized routes. Between Miami on the one hand and Florida City on the via U.S.Hwy 1, State Road 826, and FL Turnpike, serving all intermediate points and also serving all points on and east of State Road 27 as off-route points. The following described authority shall be for closed dpor and operating convenience only, as follows: Between Lebannon Station and Dunedin via State Road 55 (U.S. 19), with closed doors. Between junction of State Road 55 (U.S. 19), State Road 700 and Brooksville via State Road 700 with closed doors. From junction of U.S. 1 and State 1 and State Road A1A near Jupiter, over State Road A1A to Lake Park; then from Lake Park and also from intersection of county roads with State Road A1A over county roads to intersection with State S-809 and then over State Road S-809 to intersection with State Road 80 (at a point about 4 miles west of West Palm

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Beach) and return over same routes as an alternate route for operating convenience serving no intermediate points. From the intersection of State Road 60 and the Kissimmee River via State Road 60 to Vero Beach and return over the same route, serving no intermediate points, as an alternate route for operating convenience.

(a) Between Jacksonville and Deland via U.S. 17. (b) Between Bunnell and Lake City via State Road 100. (c) Between Holopaw and Miami via U.S. 441 and U.S. 27 by way of South Bay. (d) Between West Palm Beach and Belle Glade via State Road 80. (e) Between Tampa and Waldo via U.S. 301. (f) Between Lakeland and Dade City via U.S. 98. (g) Between Leesburg and Inverness via State Road 44. (h) Between Okahumpka and Floral City via State Road 48. (i) Between Leesburg and Williston via U.S. 27. (j) Between Williston and Lebanon Station via State Road 121, with closed doors at all intermedate points and Belle Glade, Dade City, Floral City, Inverness, and Waldo. Between Cocoa and junction of State Roads 50 and 520 (near Bithlo) via State Road 520 as an alternate route for operating convenience only. Between junction of State Roads 24 and 121 (near Gainesville, FL) via State Road 121 to Williston, FL, and return over the same route, serving no intermediate points. Between Canal Point and junction of U.S. 98 and U.S. 441 via U.S. 98, serving no intermediate points and for operating convenience only. Between Okeechobee, FL, and Sebring, FL, via U.S. 98 to junction with U.S. 27; then via U.S. 27A to Sebring, serving no intermediate points and return over the same route. Between Avon Park, FL, via State Road 64 to junction with U.S. 301, serving no intermediate points, and return over the same route. Between Starke, FL, and Tampa, FL, via State Road 24, from Starke to Archer and State Road 45 (U.S. 41) from Archer to Tampa, serving no intermediate points, and return over the same route, as an alternate route for operating convenience only, and with right of joinder at all points in connection with presently authorized routes. Between Miami, FL and Parrish, FL, via U.S. 41 to junction with State Road 29, then via State Road 29 to junction with State Road Alternate 29 to junction with State Road 29 (north of Immokalee); then via State Road 29 to junction with State Road 82; then via State Road 82 to junction with unnumbered road (near Ft. Myers), then via unnumbered road to Tice, FL, then from Tice via State Road 80 to junction with State Road 31; then via State Road 31 to Arcadia, FL; then via State Road 70 to junction with State Road 675; then via State Road 675 to junction with U.S. 301 at Parrish, FL, and return over same route, as an alternate route for operating convenience only. Between South Bay and Lake Placid, FL, via U.S. 27 and between west Frostproof, FL, and Fort Meade, via U.S. 98 as alternate routes for operating convenience only. Between Harrisburg, FL, and Punta Gorda, and return over same route, as an alternate route for operating convenience only. Between junction U.S. 27 and State Road 70 (near Childs) to junction State Road 72 and U.S. 41 (near Sarasota) via State Road 70 to Arcadia and State Road 72 to junction with U.S. 41 by way of Arcadia, serving Harrisburg, State Road 72 to junction with U.S. 41 by way of Arcadia serving Harrisburg, Bermont, Arcadia, junction U.S. 27 and State Road 70; junction State Road 70 and State Road 31, junction State Road 72 and U.S. 41, in connection with the above described routes for purpose of joinder only. No duplicating authority sought. Alternate route between Brooksville and Groveland over State Road 50. Service not authorized at intermediate points and serving Brooksville, FL, for purpose of joinder only, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): There are approximately 33 statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies thereof which may be examined at the field office named below. Send protests to: District Supervisor, G. H. Fauss, Jr., ICC, Bureau of Operations, P.O. Box 35008, 400 West Bay Street, Jacksonville, FL 32202. The purpose of this republication is to complete the territorial description as previously omitted.

MC 123254 (Sub-4TA), filed September 20, 1978. Applicant: PITZER BROTHERS, Box 633, Jeanette, PA 15644. Representative: Jeremy Kahn, Attorney-at-Law, Kahn and Kahn, Suite 733, Investment Building, 1511 K Street NW., Washington, DC 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *malt and brewed beverages*, in containers, from Latrobe, PA to points in WV. Applicant has also filed *eta seeking up to 90 days of operating authority*. Supporting shippers: Latrobe Brewing Co., P.O. Box 350, Latrobe, PA 15650; J.C. Mensore Distributor, Inc., 134 North Bridge Street, New Martinsville, WV 26155; B & R Distributing Co., Commercial Street, Hinton, WV 25951; Block Diamond Distributing Co., Inc., 209 Dry Hill Road, Beckley, WV 25801; Golley Distributing Co., 420 4th Avenue, Parkersburg, WV 26101; Waldorf Distributing Co. Inc., 514 Main Street, Follansbee, WV; and Elkhorn Valley Grocery Co., North Fork, WV. Send protests to District Supervisor, John J. England, Interstate Commerce Commission, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

MC 124078 (Sub-870TA), filed September 18, 1978. Applicant: SCHWERMAN TRUCKING CO., 611 South 28th Street, Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, WI 53201. Authority sought to operate as a *common carrier*, by motor vehicle over irregular routes transporting: *Fertilizer & Fertilizer Materials* in bulk from the facilities of Land O'Lakes Agricultural Services Division, at or near Mason City, IA to points in MN, NE, ND, SD, and WI for 180 days. Supporting shipper: Land O'Lakes Agricultural Services Division, 2827 8th Avenue, South, Fort Dodge, IA 50501. Sue Johnson. Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202. Applicant has also filed an underlying ETA seeking up to 90 days operating authority.

MC 124078 (Sub-873TA), filed September 18, 1978. Applicant: SCHWERMAN TRUCKING CO., 611 South 28th Street, Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, WI 53201. Authority sought to operate as a *common carrier*, by motor vehicle over irregular routes, transporting: *Slag*, (1) From the facilities of Calumite Co. at or near Warner, (Bucks Co.) PA to North Bergen, NJ; Mansfield, MA; Brockport and South Volney, NY, Fairmont, WV, Clarion PA, Hapeville, GA; (2) From Middletown, OH to Alton and Streator, IL and Charlotte, MI, Midway, NC, Hapeville, GA, Lakeland, FL, New Orleans, LA for 180 days. Supporting shipper: Owens-Illinois, Inc., 405 Madison Avenue, Toledo, OH 43666, Donald R. Krause. Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 124211 (Sub-341TA), filed September 18, 1978. Applicant: HILT TRUCK LINE, INC., P.O. Box 988 DTS, Omaha, NE 68101. Representative: Thomas L. Hilt, P.O. Box 988 DTS, Omaha, NE 68101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic and rubber articles; lawn and garden accessories; and display racks*, from the facilities of Rubbermaid, Inc., at Wooster, OH to all points in the States of

AZ, CA, CO, ID, MT, NM, NV; OR, TX, UT, WA, and WY, for 180 days. Supporting shipper: Joseph J. Catalano, Traffic Manager (Home Products Div.), Rubbermaid Inc., 1147 Akron Road, Wooster, OH 44691. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 127651 (Sub-39TA), filed September 14, 1978. Applicant: EVERETT G. ROEHL, East 29th Street, P.O. Box 7, Marshfield, WI 54449. Representative: Richard A. Westley, 4506 Regent Street, Suite 100, Madison, WI 53705. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fiberboard*, from Marinette, WI to Adrian, MI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Merillat Industries, Inc., 2075 West Beecher Road, Adrian, MI 49221. Send protests to: Ronald A. Morken, District Supervisor, Interstate Commerce Commission, 212 East Washington Avenue, Room 317, Madison, WI 53703.

MC 129991 (Sub-2TA), filed September 18, 1978. Applicant: JENSEN TRUCKING CO., INC., P.O. Box 402, American Fork, UT 84003. Representative: Jack L. Jensen, P.O. Box 402, American Fork, UT 84003. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Barite and refractories*, from Salt Lake City, UT, and Battle Mountain, NV, to points in UT, ID, MT, WA, OR, CA, NV, AZ, NM, TX, OK, CO and WY, under a continuing contract or contracts with Rocky Mountain Refractories, for 180 days. Supporting shipper: Rocky Mountain Refractories, 2436 West Andrew Avenue, Salt Lake City, UT 84104 (Craig A. Ostler, Secretary). Send protests to: District Supervisor, L. D. Helfer, Interstate Commerce Commission, 5301 Federal Building, Salt Lake City, UT 84138.

MC 133221 (Sub-37TA), filed September 18, 1978. Applicant: OVERLAND CO., INC., 1991 Buford Highway, Lawrenceville, GA 30245. Representative: Alvin Button, 1644 Tullie Circle, NE., Suite 102, Atlanta, GA 30329. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Aluminum Stampings, plate or sheet*, from Palestine, TX to points in the United States (except AK & HI), for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Fibreboard Corp., 55 Francisco Street, San Francisco, CA 94133. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 West Peachtree Street, NW., Room 300, Atlanta, GA 30309.

MC 134142 (Sub-15TA), filed September 18, 1978. Applicant: BROWN REFRIGERATED EXPRESS, INC., P.O. Box 603, 21st and Sidney Street, Fort Scott, KS 66701. Representative: Wilburn L. Williamson, 280 National Foundation Life Building, Oklahoma City, OK 73112. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from Jasper County, MO to points in AR, CO, IA, IL, IN, KS, KY, LA, MI, MN, NE, OK, TN, TX and UT, for 180 days. Restriction: The operations herein are limited to a transportation service to be performed under a continuing contract or contracts with The Pilsbury Co. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Totino's Frozen Foods Division, The Pillsbury Co., 7350 Commerce Lane, Fridley, MN 55432. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, 101 Litwin Building, Wichita, KS 67202.

MC 134599 (Sub-166TA), filed September 18, 1978. Applicant: INTERSTATE CONTRACT CARRIER CORP., 2156 West 2200 South, Salt Lake City, UT 84125. Representative: Richard A. Peterson, P.O. Box 81849, Lincoln, NE 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Crated office furniture, parts of office furniture, and related advertising, sales and promotional materials*, from the facilities of Steelcase, Inc., at or near Tustin, CA, to points in the United States (except AK, CA, HI, OR, and WA), under a continuing contract or contracts with Steelcase, Inc., for 180 days. Appliant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper (s): Steelcase, Inc., 11500 36th Street SE, Grand Rapids, MI 49508 (Phillip T. Catalano, Manager, Traffic Department.). Send protests to: District Supervisor, L. D. Helfer, Interstate Commerce Commission, 5301 Federal Building, Salt Lake City, UT 84138.

MC 134755 (Sub-155TA), filed September 18, 1978. Applicant: CHARTER EXPRESS, INC., 1959 East Turner Street, Springfield, MO 65804. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tires, tubes, flaps, rubber products and materials* (except commodities in bulk), from Conshohocken, Frazer, Montgomeryville, Norristown and Royersford, PA, to points in AZ, AR, CO, ID, IA, MS, MO, NE, NM, OK, OR, TX and WA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Lee Tire & Rubber Co., Conshohocken, PA 19428. Send protests to: District Supervisor, John V. Barry, Room 600, 911 Walnut Street, Kansas City, MO 64106.

MC 135213 (Sub-15TA), filed September 18, 1978. Applicant: JOE GOOD d.b.a. GOOD TRANSPORTATION, P.O. Box 335, Lovell, WY 82431. Representative: John T. Wirth, 2310 Colorado State Bank Building, 1600 Broadway, Denver, CO 80202. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Buildings, including prefabricated buildings, and building materials, equipment and supplies, including component parts and attachments*, between points in CO, ID, MT, SD, UT, and WY, for 180 days. Restrictions: (1) Restricted against the transportation of commodities in bulk, and (2) restricted to a transportation service to be performed under a continuing contract or contracts with Albert D. Wardell Supply Co. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Albert D. Wardell Supply Co., Box 349, Basin, WY 82410. Send protests to: Paul A. Naughton, Transportation Specialist, Interstate Commerce Commission, 105 Federal Building and Post Office, 111 South Wolcott, Casper, WY 82601.

MC 136343 (Sub-152TA), filed September 18, 1978. Applicant: MILTON TRANSPORTATION, INC., R.D. 1, Milton, PA 17847. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Printing paper*, from the facilities of Howard Paper Mills, Inc., at Dayton and Urbana, OH, to points in ME, VT, and VA, for 180 days. Restricted to the transportation of shipments originating at the named origins and destined to the named destinations. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Howard Paper Mills, Inc., West Church Street, Urbana, OH 43078. Send protests to: Charles F. Myers, District Supervisor, Interstate Commerce Commission, P.O. Box 869, Federal Square Station, Harrisburg, PA 17108.

MC 136782 (Sub-3TA), filed September 18, 1978. Applicant: R. A. N. Trucking CO., P.O. Box 367, Wheatland, PA 16161. Representative: Daniel C. Sullivan, 10 South LaSalle Street, Chicago, IL 60603. Authority sought

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to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat by-products* as described in appendix I to the report in "Descriptions in Motor Carrier Certificates," 61 MCC 209 and 766 (except commodities in bulk), from the facilities of Dinner Bell Meats, Inc. at Cleveland, OH, to points in PA, NY, CT, RI, MA, VT, NJ, DE, MD, WV, VA, NC, SC, GA, and DC, for 180 days. Supporting shipper: Dinner Bell Meats, Inc., Transportation Manager, 2699 East 51st Street, Cleveland, OH. Send protests to: John J. England, District Supervisor, Interstate Commerce Commission, 12th and Constitution Avenue, NW, Washington, DC 20423.

MC 136818 (Sub-41TA), filed September 18, 1978. Applicant: SWIFT TRANSPORTATION CO., INC., 335 West Elwood Road, P.O. Box 3902, Phoenix, AZ 85030. Representative: Donald Fernaays, 4040 East McDowell Road, Phoenix, AZ 85008. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, except Class A and B explosives, in containers, from Los Angeles, harbor zone, to Phoenix, AZ, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Baskets International, P.O. Box 38663, Phoenix, AZ 85069. Send protests to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, 2020 Federal Building, North First Avenue, Phoenix, AZ 85025.

MC 138157 (Sub-91TA), filed September 18, 1978. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREIGHT, 2931 South Market Street, Chattanooga, TN 37410. Representative: Patrick E. Quinn, P.O. Box 9596, Chattanooga, TN 37412. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Carpet strip, molding, staples, tools, nails, adhesives, sealants, solvents, stains, wood preservatives and materials, equipment and supplies* used in the manufacture, sales, and distribution of the above, from the facilities of Roberts Consolidated Industries, at Los Angeles County, CA, to points in and east of ND, SD, NE, KS, OK, and TX. Restriction: Restricted to traffic originating at the facilities of Roberts Consolidated Industries, Inc. at Los Angeles County, CA, for 180 days. Supporting shipper: Roberts Consolidated Industries, 600 North Baldwin Park Boulevard, City of Industry, CA 91749. Send protests to: Joe J. Tate, District Supervisor, Interstate Commerce Commission, A-422 Federal Building, 801 Broadway, Nashville, TN 37203. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority.

MC 140033 (Sub-69TA), filed September 18, 1978. Applicant: COX REFRIGERATED EXPRESS, INC., 10606 Goodnight Lane, Dallas, TX 75220. Representative: D. Paul Stafford, , Winkle and Wells, Suite 1125, Exchange Park, Dallas, TX 75235. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Candy and confectionery items* from the facilities of Liaf Confectionery, Inc., located at or near Chicago, IL, to Boston, MA, Baltimore, MD, New York, NY, Washington, DC, Buffalo, NY, Philadelphia, PA, Pittsburgh, PA, Cleveland, OH, Columbus, OH, Cincinnati, OH, and Hershey, PA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Leaf Confectionery, Inc., 1155 North Cicero Avenue, Chicago, IL 60651. Send Protests to: Opal M. Jones, Transportation Assistant, Interstate Commerce Commission, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

MC 140665 (Sub-38TA), filed September 18, 1978. Applicant: PRIME, INC., Rt. 1, Box 115-B, Urbana, MO 65767. Representative: Clayton Geer, P.O. Box 786, Ravenna, OH 44266. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals, plastic or plastic materials, and materials and supplies* used in the production or marketing of the above commodities (except commodities in bulk), from Harris County, TX, to points in AZ, CA, CO, MN, NM, OR, WA, UT, WY, NV, and ID, for 180 days. Supporting shipper: Diamond Shamrock Corp., 1100 Superior Avenue, Cleveland, OH 44114. Send protests to: District Supervisor, John V. Barry, Room 600, 911 Walnut, Kansas City, MO 64106.

MC 141124 (Sub-28TA), filed September 18, 1978. Applicant: EVANGELIST COMMERCIAL CORP., P.O. Box 1790, Wilmington, DE 19899. Representative: Boyd B. Ferris, 50 West Broad Street, Columbus, OH 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products, and commodities* used or useful in the manufacture and converting of paper and paper products (except in bulk), between Morris and St. Charles, IL, on the one hand, and, on the other, points in OH, KY, TN, GA, FL, SC, NC, VA, WV, MD, DC, DE, PA, NJ, RI, CT, MA, NH, VT, and ME, for 180 days. Supporting shipper: Diamond International, 733 Third Avenue, New York, NY 10017. Send protests to: T. M. Esposito, Transportation Assistant, 600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 141443 (Sub-6TA), filed September 18, 1978. Applicant: JOHN LONG TRUCKING, INC., 1030 Denton Street, Sapulpa, OK 74066. Representative: Dean Williamson, 280 National Foundation Life Building, 3535 NW. 58th Street, Oklahoma City, OK 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wine*, from points in CA to Oklahoma City, OK, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Hirst Imports, Inc., 1140 NW. 4th Street, Oklahoma City, OK 73106. Send protests to: Connie Stanley, Transportation Assistant, Room 240, Old Post Office and Courthouse Building, 211 NW. 3rd, Oklahoma City, OK 73102.

MC 141575 (Sub-13TA), filed September 18, 1978. Applicant: TFS, INC., Box 126, Rural Route 2, Grand Island, NE 68801. Representative: Gailyn L. Larsen, Peterson, Bowman, Larsen & Swanson, 521 South 14th Street, P.O. Box 81849, Lincoln, NE 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Pepperoni*, from San Francisco, CA, to Salina, KS, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days operating authority. Supporting shipper: Oxford Cheese Corp., Roy Mitchell, President, North Hwy 46, Box 68, Oxford, NE. Send protests to: Max Johnston, District Supervisor, Interstate Commerce Commission, 285 Federal Building and U.S. Courthouse, 100 Centennial Mall North, Lincoln, NE 68508. Under a continuing contract or contracts with Oxford Cheese Corp.

MC 142559 (Sub-55TA), filed September 18, 1978. Applicant: BROOKS TRANSPORTATION, INC., 3830 Kelley Avenue, Cleveland, OH 44114. Representative: John P. McMahon, 100 East Broad Street, Columbus, OH 43215. Temporary authority for 180 days sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper products and equipment, materials and supplies used in the manufacture and distribution of paper and paper products* (except commodities in bulk) between Rittman and Mentor, OH, on the one hand, and, on the other, Kansas City, KS, and points in and east of MN, IA, MO, AR, and LA. Supporting shipper: Packaging Corp., Industrial St., Rittman, OH 44270. Send protests to: Interstate Commerce Commission, 731 Federal Building, 1240 East Ninth Street, cleveland, OH 44199.

MC 144041 (Sub-22TA), filed September 18, 1978. Applicant: DOWNS TRANSPORTATION CO., INC., 2705 Canna Ridge Circle NE., Atlanta, GA 30345. Representative: Kim G. Meyer, Watkins & Daniell P.C., Suite 1200, Peachtree Center Gas Light Tower, 235 Peachtree Street NE., Atlanta, GA 30303. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lighting fixtures* from the facilities of Lithonia Lighting Division of National Service Industries, Inc., at Conyers and Cochran, GA, to points in and east of ND, SD, NE, KS, OK, TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Lithonia Lighting Division of National Service Industries, Inc., P.O. Box H, 1400 Lester Road, Conyers, GA 30207. Send protests to: Sara K. Davis, Transportation Assistant, 1252 West Peachtree Street NW., Room 300, Interstate Commerce Commission, Atlanta, GA 30309.

MC 144682 (Sub-6TA), filed September 18, 1978. Applicant: R. R. STANLEY, P.O. Box 95, Mesquite, TX 75149. Representative: Richard T. Churchill, Suite 106, 5001 South Hulen Street, Fort Worth, TX 76132. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bakery goods*, NOI; prepared dough, not frozen; cakes, cookies, rolls, frozen; icing paste, from plantsite of the Pillsbury Co., Denison, TX, to points in the States of NV, OR, and WA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): The Pillsbury Co., 3400 Texoma Drive, Denison, TX. Send protests to: Opal M. Jones, Transportation Assistant, Interstate Commerce Commission, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

MC 145041 (Sub-37TA), filed September 18, 1978. Applicant: INTERMOUNTAIN TRANSPORT, INC., 1940 West Pacific Coast Highway, Long Beach, CA 90810. Representative: Milton W. Flack, 4311 Wilshire Boulevard, Los Angeles, CA 90010. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Common lime*, except in bulk from the facilities of the U.S. Lime Division, the Flintkote Co., located in Henderson, NV, to points in CA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): U.S. Lime Division, the Flintkote Co., 4700 Ramona Boulevard, Monterey Park, CA 90030. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321 Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

MC 145059 (Sub-4TA), filed September 19, 1978. Applicant: SPINELLI BROS. TRUCKING, INC., 55 South Wade Boulevard, Millville, NJ 08332. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foodstuffs* (except commodities in bulk) from the facilities of the Green Giant Co. at Vineland, NJ, to points in CT, MA, ME, NH, NY, PA, RI, and VT for 180 days. Supporting shipper(s): Green Giant Co., Le Sueur, MN 56058. Send protests to: John P. Lynn, Transportation Specialist, Interstate Commerce Commission, Room 204, 428 East State Street, Trenton, NJ 08608.

MC 145145 (Sub-1TA), filed September 18, 1978. Applicant: MATADOR SERVICE, INC., P.O. Box 2256, Wichita, KS 67201. Representative: Clyde N. Christey, Suite 110L, Kansas Credit Union Building, 1010 Tyler, Topeka, KS 66612. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia*, in bulk from facilities of the Mapco Pipeline Terminal near Mocane, OK, to points in KS and TX, for 180 days. Supporting shipper: Olin Corp., P.O. Box 991, Little Rock, AR 72203. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, 101 Litwin Building, Wichita, KS 67202.

MC 145363 (Sub-1TA), filed September 18, 1978. Applicant: TRANSWORLD TRANSPORT, 6065 Roswell Road NE., Suite 712 (P.O. Box 76876), Atlanta, GA 30328. Representative: Phillip C. Herrin, 6065 Roswell Road NE., Suite 712 (P.O. Box 76876), Atlanta, GA 30328. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Hollow core prestressed concrete slabs* between points in AL, GA, NC, SC, and TN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: HDW Houdaille, 1655 Noah's Ark Road, Jonesboro, GA 30236. Send protests to: Sara K. Davis, Transportation Assistant, 1252 West Peachtree Street NW., Room 300, Interstate Commerce Commission, Atlanta, GA 30309.

MC 145381 (Sub-1TA), filed September 18, 1978. Applicant: S & P TRUCKING CO., INC. P.O. Box 1058, Fletcher, NC 28732. Representative: Eric Meierhoefer, Suite 423, 1511 K Street NW., Washington, DC 20005. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Dialysis supplies and equipment*, except in bulk, from (1) Cinnaminson and Delran, NJ, to Denver CO; Houston and Dallas, TX; New Orleans, LA; and points in CA and (2) from McAllen, TX, to Cinnaminson and Delran, NJ, and points in CA under a continuing contract or contracts with Erika, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Erika, Inc., 1 Erika Place, Rockleigh, NJ 07647. Send protests to: District Supervisor Terrell Price, Interstate Commerce Commission, 800 Briar Creek Road, Room CC516, Charlotte, NC 28205.

MC 145390TA, filed September 18, 1978. Applicant: WILLIAM SMITH, d.b.a. ALCOTT TRUCKING CO., 59 Alcott Road, Mahwah, NJ 07430. Representative: Joseph R. Siegelbaum, Esq., 17 Academy Street, Newark, NJ 07102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages and containers* used in the manufacture and distribution thereof from Newark, NJ, and Cranston, RI, to Malone, NY, and Plattsburgh, NY, under a continuing contract or contracts with Malone Beverage, Inc., Lapans & Sons, for 180 days. Supporting shipper: Malone Beverage, Inc., 2 Boyer Avenue, Malone, NY 12953, Lapans & Sons, Beekmantown Road, Plattsburgh, NY. Send protest to: Joel Morrows, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 9 Clinton Street, Room 618, Newark, NJ 07102.

MC 145396TA, filed September 18, 1978. Applicant: BOYCE HOWARD, d.b.a. BOYCE HOWARD TRUCKING, P.O. Box 165, Newport, AR 72112. Representative: Thomas J. Presson, Lot 27, River Bend Estates, Redfield, AR 72132. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Steel borings or turnings in bulk in dump trailers*, from Batesville and Pocohontas, AR, to all points and places in KY, TN, AL, MS, LA, TX, OK, KS, MO, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Donnie Bryant Machine & Tool Co., P.O. Box 2011, Batesville, AR 72501. Send protests to: District Supervisor William H. Land, Jr., 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 145412 (Sub-1TA), filed September 20, 1978. Applicant: LEE RAY FARNSWORTH, d.b.a. FARNSWORTH TRUCKING, 765 East 1600 North, Orem, UT 84097. Representative: Harry D. Pugsley, Watkess & Campbell, 310 South Main Street, No. 1200, Salt Lake City, UT 84101. Authority sought to operate as a *contract*

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carrier, by motor vehicle, over irregular routes, transporting: *Dairy products* (moving in shipper's own refrigerated trailers) from Orem and Salt Lake City, UT, to Reno, NV; paper cartons from Reno, NV, to Oren and Salt Lake City, UT, under a continuing contract or contracts with Meadow Gold Dairies, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Meadow Gold Dairies, Division of Beatrice Foods Co., 1030 South Main, P.O. Box 2490, Salt Lake City, UT 84110 (Bill R. Terrill, General Manager). Send protests to: District Supervisor L. D. Helfer, Interstate Commerce Commission, 5301 Federal Building, Salt Lake City, UT 84138.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-31974 Filed 11-13-78; 8:45 am]

[7035-01-M]

[Notice No. 206]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

OCTOBER 25, 1978.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

MC 2900 (Sub-341TA), filed September 18, 1978. Applicant: RYDER TRUCK LINES, INC., P.O. Box 2408, Jacksonville, FL 32203. Representative: S. E. Somers, Jr., 2050 Kings Road, Jacksonville, FL 32216. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, except those of unusual value, classes A and B Explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment. Between New Orleans, LA and Albertville, AL; from New Orleans over U.S. Hwy 90 to Mobile, AL, thence over U.S. Hwy 31 to Birmininghamm, thence over AL Hwy 75 to Albertville, and return. Between Meridian, MS and Columbus, GA over U.S. Hwy 80. Between Laurel, MS and Bainbridge, GA over U.S. Hwy 84. Between Meridian, MS and Pensacola, FL; from Meridian over U.S. Hwy 45 to Mobile, AL, thence over U.S. Hwy 90 to Pensacola and return. Between Eutaw, AL and Pensacola, FL; from Eutaw over U.S. Hwy 43 to Mobile, AL; thence over U.S. Hwy 98 to Pensacola and return. Between Huntsville, AL and Marianna, FL; from Huntsville over U.S. Hwy 231, thence over U.S. Hwy 90 to Marianna and return. Between Huntsville and Dothan, AL over U.S. Hwy 431. Between Safford and Clanton, AL over AL Hwy 22. Between Harpersville and Thomasville, AL; from Harpersville over AL Hwy 25 to junction of AL Hwy 5, thence over AL Hwy 5 to Thomasville and return. Between Tallahassee and Uniontown, AL; from Tallahassee over AL Hwy 14 to Greensboro, thence over AL Hwy 61 to Uniontown and return. Between Cuthbert, GA and Tuscaloosa, AL over U.S. Hwy 82. Between Seale and Troy, AL; from Seale over AL Hwy 26 to junction of U.S. Hwy 82, thence U.S. Hwy 82 to junction of U.S. Hwy 29, thence U.S. Hwy 29 to Troy and return. Between Midway and Brundidge, AL; from Midway over AL Hwy 51 to Clio, thence over AL Hwy 10 to Brundidge and return. Between Gadsden and Birmingham over U.S. Hwy 411. Between Anniston and Sylacauga, AL; from Anniston over AL Hwy 21 to the junction to Alternate U.S. Hwy 231, thence over Alternate U.S. 231 to Sylacauga and return. Between Selma and Atmore, AL; from Selma over AL Hwy 41 to junction AL Hwy 21, thence over AL 21 to Atmore and return. Between Arab and Guntersville, AL over AL Hwy 69. Serving all intermediate points and serving all commercial zone points, and all points within 1 mile of the routes named, for 180 days. Supporting shipper(s): There are approximately 224 statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies thereof which may be examined at the filed office named below. Send protests to: District Supervisor, G. H. Fauss, Jr., ICC Bureau of Operations, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 2960 (Sub-22TA), filed September 18, 1973. Applicant: ENGLAND TRANSPORTATION CO. OF TEXAS, 2301 McKinney Street, Houston, TX 77023. Representative: E. Larry Wells, Winkle and Wells, Suite 1125, Exchange Park, P.O. Box 45538, Dallas, TX 75245. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* except those of unusual value, classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment to Houston, TX, from Shreveport, LA and from points in TX on and east of U.S. Hwy 277 and U.S. Hwy 87 in Bowie Cass, Red River, Navarro, Kaufman, Rockwall, Grayson, Collin, Dallas, Ellis, Johnson, Tarrant, Wise, Cooke, Hood, Parker, Palo Pinto, Jack, Archer, Baylor, Haskell, Throckmorton, Young, Denton, Stevens, Shackleford, Jones, Taylor, Callahan, Eastland, Coleman, Runnels, Concho, Cole, Tom Green, McCulloch, San Saba, Llano, Mason, Gillespie, Kendall and Morris Counties, TX, for 180 days. Restricted to traffic having a prior or subsequent movement by water. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): There are approximately 18 statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies thereof which may be examined at the filed office named below. Send protests to: District Supervisor, John F. Mensing 8610 Federal Building, 515 Rusk Ave, Houston, TX 77002.

MC 20992 (Sub-49TA), filed September 14, 1978. Applicant: DOTSETH TRUCK LINE, INC., Knapp, WI 54749. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dust collectors, cyclone or drum, 19 gauge or thicker, and screen, chest or bag type and parts accessories and attachments* thereof, from Baldwin, WI to points in the United States (AK, HI and WI), for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority.

Supporting shipper: Donaldson Co., Inc., P.O. Box 1299, Minneapolis, MN 55440. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building and U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 47583 (Sub-75TA), filed September 20, 1978. Applicant: TOLLIE FREIGHTWAYS, INC., 1020 Sunshine Road, Kansas City, KS 66115. Representative: D. S. HULTS, P.O. Box 225, Lawrence, KS 66044. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Borate*, from Trona, Boron, and Dunn, CA, to points in OK and TX, for 180 days. Restricted against the transportation of commodities in bulk. Also restricted to traffic originating at the named origins and destined to the named destination states. Supporting shipper: Metro Chemical Co., 159 E. Freeport, Broken Arrow, OK 74102. Send protests to: Vernon V. Coble, District Supervisor, Interstate Commerce Commission 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

MC 59531 (Sub-111TA), filed September 20, 1978. Applicant: WALDO E. STEWART d.b.a. AUTO CONVOY CO., 3020 South Haskell Avenue, Dallas, TX 75223. Representative: Eugene C. Ewald, Attorney, 100 West Long Lake Road, Suite 102, Bloomfield Hills, MI 48013. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New imported agricultural tractors, with or without attachment*, weighing less than 5,000 pounds, from Houston, TX, and from points in Grayson County, TX, to points in TX, OK, AR, LA, MS, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Hinsmoto Tractor Sales U.S.A., Inc., P.O. Box 42564, Houston, TX 77042. Send protests to: Opal M. Jones, Transportation Assistant, Interstate Commerce Commission, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

MC 60186 (Sub-55TA), filed September 20, 1978. Applicant: NELSON FREIGHTWAYS, INC., 47 East Street, Rockville, CT 06066. Representative: Clifford J. O. Nelson, 47 East Street, Rockville, CT 06066. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Commodities of the type dealt in by retain home improvement and home furnishings and lumber store* (except in bulk), between points in CT, DE, DC, ME, MD, MA, NH, NJ, NY, OH, PA, RI, VT, VA, WV, for 180 days. Restricted to shipments destined to the facilities of the Wickes Corp. Supporting shipper: Wickes Lumber, Division of the Wickes Corp., 515 North Washington Avenue, Saginaw, MI 48607. Send protests to: J. D. Perry, Jr., District Supervisor, Interstate Commerce Commission, 135 High Street, Room 324, Hartford, CT 06103.

MC 66101 (Sub-5TA), filed September 20, 1978. Applicant: AFT SERVICES, INC., 303 South Street, Newark, NJ 07114. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Authority granted to operate as a *common carrier*, over irregular routes, transporting *General commodities*, except those of unusual value, and except dangerous explosives, livestock, household goods (when transported as a separate and distinct service in connection with so-called "household movings"), commodities requiring dump or tank trucks, and those injurious or contaminating to other lading, between the facilities of Emery Air Freight Corp, at Stewart Field, Newburg, NY and Monticello Airport, Monticello, NY, on the one hand, and, on the other Newark, NJ. Restricted to shipments having prior or subsequent movement by air for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Emery Air Freight, 100 Port Newark International Airport, Newark, NJ. Send protests to: District Supervisor, Joel Morrows, Interstate Commerce Commission, 9 Clinton Street, Newark, NJ 07102. (Hearing site: Newark, NJ or New York NY.)

MC 82492 (Sub-203TA), filed September 20, 1978. Applicant: MICHIGAN & NEBRASKA TRANSIT CO., INC., 2109 Olmstead Road, P.O. Box 2853, Kalamazoo, MI 49003. Representative: William C. Harris, Executive Vice-President, 2109 Olmstead Road, P.O. Box 2853, Kalamazoo, MI 49003. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods* from the facilities of Fox De Luxe Pizza Co. at Joplin, MO and the facilities of the Pillsbury Co. at or near Joplin and Carthage, MO to points in SD, NE, KS, IA, MN, IL, IN, MI, KY, and TN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Totino's Frozen Foods Division, the Pillsbury Co., 7350 Commerce Lane, Fridley, MN 55432. Send protests to: C. R. Flemming, District Supervisor, Interstate Commerce Commission, Room 225 Federal Building, Lansing, MI 48933.

MC 115496 (Sub-104TA), filed September 14, 1978. Applicant: LUMBER TRANSPORT, INC., P.O. Box 111, Hwy 23, Cochran, GA 31014. Representative: Virgil H. Smith, Suite 12, 1587 Phoenix Boulevard, Atlanta, GA 30349. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles* from Georgetown County, SC to points in PA, OH, IN, IL, MI, MO, KY, TN, FL, GA, AL, NC, VA, WV and MD, for 180 days. Supporting shipper: Andrews Wire Division of Georgetown Steel, P.O. Box 3, Andrews, SC 29510. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 West Peachtree Street NW., Room 300, Atlanta, GA 30309.

MC 115826 (Sub-349TA), filed September 20, 1978. Applicant: W. J. DIGBY, INC., 1960 31st Street, P.O. Box 5088, Denver, CO 80217. Representative: Howard Gore, W. J. Digby, Inc., 1960 31st Street, P.O. Box 5088, Denver, CO 80217. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products, plastic products, and products manufactured and distributed by manufacturers and converters of paper and paper products, and materials, equipment, and supplies* used in the manufacture and distribution of the above-named commodities (except in bulk), from the facilities of The Continental Group, Inc., Bondware Division at or near Shelbyville, Hodgkins, and Chicago, IL, to points in IA, KS, MO, CO, OK, and NE, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: The Continental Group, Inc., Bondware Division, 800 East Northwest Hwy, Palatine, IL 60067. Send protests to: District Supervisor, Herbert C. Ruoff, Interstate Commerce Commission, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 115826 (Sub-350TA), filed September 20, 1978. Applicant: W. J. DIGBY, INC., 1960 31st Street, P.O. Box 5088, Denver, CO 80217. Representative: Howard Gore, W. J. Digby, Inc., 1960 31st Street, P.O. Box 5088, Denver, CO 80217. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products, plastic products, and products manufactured and distributed by manufacturers and converters of paper and paper products, and materials, equipment, and supplies* used in the manufacture and distribution of the above-named commodities (except in bulk), from the facilities of The Continental Group, Inc., Bondware Division at or near San Pedro and La Mirada, CA, to points in OR, WA, ID, MT, NV, UT and AZ, for 180 days. Supporting shipper: The Continental Group, Inc., Bondware Division, 800 East North-

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west Highway, Palatine, IL 60067. Send protests to: Herbert C. Ruoff, District Supervisor, ICC, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 115841, (Sub-646TA), filed September 14, 1978. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., 9041 Executive Park Drive, Suite 110, Building 100, Knoxville, TN 37919. Representative: D. R. Beeler, 9041 Executive Park Drive, Suite 110, Building 100, Knoxville, TN 37919. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuff* from Fresno, Los Angeles, Monterey, Santa Barbara, Santa Cruz, Stanislaus and Ventura Counties, CA, to points in AL, AR, CT, DE, FL, GA, IA, IL, IN, KS, KY, LA, MA, MD, MI, MN, MO, MS, NC, NE, NJ, NY, OH, OK, PA, SC, TN, TX, VA, WI, AND WV. There are 12 supporting shippers. Send protest to: Glenda Kuss, Transportation Assistant, ICC, Suite A-422 U.S. Court House, 801 Broadway, Nashville, TN 37203. For 180 days.

MC 117815 (Sub-295TA), filed September 14, 1978. Applicant: PULLEY FREIGHT LINES, INC., 405 S.E. 10th Street, Des Moines, IA 50317. Representative: Dewey Marselle, 405 S.E. 10th Street, Des Moines, IA 50317. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foodstuffs*, (except commodities in bulk) from the facilities of Fox De Luxe Co. at Joplin, MO and from the facilities of the Pillsbury Co. at or near Joplin and Carthage, MO, to points in IL, IN, IA, KS, KY, MI, MN, NE and TN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Totino's Frozen Foods Division, The Pillsbury Co., 7350 Commerce Lane, Fridley, MN 55432. Send protest to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 118838 (Sub-31TA), filed September 14, 1978. Applicant: GABOR TRUCKING, INC., Rural Route No. 4, Box 124B, Detroit Lakes, MN 56501. Representative: Richard P. Anderson, 502 First National Bank Building, Fargo, ND 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Activated clay* (except in bulk, in tank vehicles) from the ports of entry between the United States and Canada located at or near Pembina, ND, and Noyes, MN to Culbertson, MT, Dixon, CA, Seattle and Spokane, WA, and Portland, OR, for 180 days. Restriction: Restricted to the transportation of traffic originating at the facilities of Pembina Mountain Clay at or near Winnipeg, Manitoba, Canada. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Pembina Mountain Clay, 945 Logan, Winnipeg, Manitoba, Canada R3E 1P3. Send protest to: Ronald R. Mau, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 268 Federal Building and U.S. Post Office, 657 2nd Avenue North, Fargo, ND 58102.

MC 118838 (Sub-32TA), filed September 20, 1978. Applicant: GABOR TRUCKING, INC., Rural Route No. 4, Box 124B, Detroit Lakes, MN 56501. Representative: Richard P. Anderson, 502 First National Bank Building, Fargo, ND 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Gypsum, gypsum products and materials and supplies*, (except in bulk, in tank vehicles), used in the manufacture, installation and distribution of gypsum and gypsum products between the facilities of Georgia-Pacific Corp., Gypsum Division, located at Cuba, MO, on the one hand, and, on the other, all points in the United States (except AK and HI), for 180 days. Supporting shipper: Georgia-Pacific Corp., 1062 Lancaster Avenue, Rosemont, PA 19010.

MC 119700 (Sub-46tA), filed September 19, 1978. Applicant: STEEL HAULERS, INC., 306 Ewing Avenue, Kansas City, Missouri 64125. Representative: Frank W. Taylor, Jr., Suite 600, 1221 Baltimore Avenue, Kansas City, MO 64105. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles* from the facilities of Maverick Tube Corp. at or near Union, MO to points in AL, AR, CO. IL, IN, KS, LA, MI, MN, MS, OH, OK, TX and WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Maverick Tube Corp., P.O. Box 696, Union, MO 63084. Send protests to: Vernon V. Coble, District Supervisor, Interstate Commerce Commission, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

MC 121060 (Sub-77TA), filed September 14, 1978. Applicant: ARROW TRUCK LINES, INC., Post Office Box 1416, Birmingham, AL 35201. Representative: William P. Jackson, Jr., 3426 North Washington Boulevard, Post Office Box 1240, Arlington, VA 22210. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pipe and fittings*, from the facilities of Charlotte Pipe & Foundry Co., at Charlotte and Bakers, NC, to points in the United States in and east of ND, SD, NE, KS, OK, and TX, for 180 days. Supporting shipper: Charlotte Pipe & Foundry Co., Post Office Box 4430, Charlotte, NC, 28204. Send protests to: Clifford W. White, District Supervisor, Interstate Commerce Commission, Room 1616, 2121 Building, 2121 8th Avenue, North, Birmingham, AL, 35203. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority.

MC 121223 (Sub-2TA), filed September 20, 1978. Applicant: GEORGE HALLDEN SONS CO., 313 Woods Street, Youngstown, PA 44503. Representative: Henry M. Wick, Jr., 2310 Grant Building, Pittsburgh, PA 15219. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Roofing and roofing materials*, from the facilities of Koppers Co., Inc. in Youngstown, Wickliffe and Heath, OH to IN, KY, MI, NY, PA and WV, for 180 days. Supporting shipper: Koppers Co., Inc., 850 Koppers Building, Pittsburg, PA 15219. Send protests to: Interstate Commerce Commission, 731 Federal Building, 1240 East Ninth Street, Cleveland, OH 44199.

MC 123061 (Sub-103TA), filed September 19, 1978. Applicant: LEATHAM BROTHERS, INC., P.O. Box 16026 46 Orange Street, Salt Lake City, UT 84104. Representative: Harry D. Pugsley, 310 South Main, Salt Lake City, UT 84101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Salt and salt products and animal and poultry feed mixtures*, from Newark, CA, to Story, Washoe, Ormsby Counties, NV, and points in UT, for 180 days. Supporting shipper: Leslie Foods, Inc., P.O. Box 364, Newark, CA 94560 (Jim Steele, Customer Service and Traffic Mgr.). Send protests to: District Supervisor L.D. Helfer, Interstate Commerce Commission, 5301 Federal Building, Salt Lake City, UT 84138.

MC 124078 (Sub-871TA), filed September 20, 1978. Applicant: SCHERMAN TRUCKING CO., 611 South 28th Street, Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, WI 53201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foundry sand additives*, in bulk, from Waterloo, IA to Aberdeen, SD for 180 days. Supporting shipper: American Colloid C., P.O. Box 228, Skokie, IL 60077, Robert N. Garity. Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building & Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority.

MC 124160 (Sub-23TA), filed September 20, 1978. Applicant: SAVAGE BROS., INC., 585 South 500 East, American Fork, UT 84003. Representative: Lon Rodney Kump, 333 East Fourth South, Salt Lake City, UT 84111. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Soda ash*, from points in Sweetwater County, WY, to, at, or near El Reno, OK, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: FMC CORP., P.O. Box 87, Green River, WY 82935. Send protests to: District Supervisor L. D. Helfer, Interstate Commerce Commission, 5301 Federal Building, Salt Lake City, UT 84138.

MC 124839 (Sub-35TA), filed September 20, 1978. Applicant: BUILDERS TRANSPORT, INC., P.O. Box 7057, Savannah, GA 31408. Representative: R. M. Shirley, P.O. Box 7057, Savannah, GA 31408. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products and materials, equipment, and supplies* used in the sale and distribution of paper and paper products (except in bulk) from Tifton, GA, to points in TN, under a continuing contract or contracts with Union Camp Corp., for 180 days. Supporting shipper: Union Camp Corp., 1600 Valley Road, Wayne, NJ 07470. Send protests to: District Supervisor G. H. Fauss, Jr., Interstate Commerce Commission, Bureau of Operations, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 124896 (Sub-70TA), filed September 19, 1978. Applicant: WILLIAMSON TRUCK LINES, INC., Corner Thorne and Ralston Streets, P.O. Box 3485, Wilson, NC 27893. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 60309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry spaghetti and macaroni products* from the facilities of C. F. Mueller Co., at or near Jersey City, NJ, to points in FL, GA, NC, and SC, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: C. F. Mueller Co., 180 Baldwin Avenue, Jersey City, NJ 07306. Send protests to: Mr. Archie W. Andrews, District Supervisor, Interstate Commerce Commission, P.O. Box 26896, 310 New Bern Avenue, 624 Federal Building, Raleigh, NC 27611.

MC 125254 (Sub-47TA), filed September 20, 1978. Applicant: MORGAN TRUCKING CO., P.O. Box 714, Muscatine, IA 52761. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic bottles and containers*, from Vandalia, IL to Minneapolis-St. Paul, MN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Send protests to: Mr. Herbert Allen, District Supervisor, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309. Supporting shipper: Imco Container Co., 75th and Cleveland, Kansas City, MO 64312.

MC 125368 (Sub-38TA), filed September 20, 1978. Applicant: CONTINENTAL COAST TRUCKING CO., INC., P.O. Box 26, Holly Ridge, NC 28445. Representative: C. W. Fletcher, P.O. Box 26, Holly Ridge, NC 28445. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* from the facilities of Campbell Soup Co. at or near Milford and Clayton, DE; and Salisbury, Pocomoke City, and Baltimore, MD to points in FL, GA, NE and TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Campbell Soup Co., West Road and Isabella Street, Salisbury, MD. Send protests to: Mr. Archie W. Andrews, District Supervisor, Interstate Commerce Commission, 624 Federal Building, 310 New Bern Avenue, P.O. Box 26896, Raleigh, NC 27611.

MC 126844 (Sub-55TA), filed September 14, 1978. Applicant: R.D.S. TRUCKING CO., INC., 1713 North Main Road, Wineland, NJ 08360. Representative: Terrence D. Jones, 2033 K Street, NW, Washington, DC 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products, and ariticles* distributed by meat packinghouses, as described in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Geo. A. Hormel & Co., P.O. Box 800, Austin, MN 55912. Send protests to: John P. Lynn, Transportation Specialist, Interstate Commerce Commission, 428 East State Street, Room 204, Trenton, NJ 08608.

MC 128007 (Sub-128TA), filed September 20, 1978. Applicant: HOFER, INC., P.O. Box 583, Pittsburgh, KS 66762. Representative: Larry E. Gregg, 641 Harrison, Topeka, KS 66603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Equipment materials and supplies* used in the fabrication of metal buildings and metal products, from Chicago, IL, Toledo, Cleveland and Youngstown, OH, Columbia, SC, Birmingham, AL, Houston and Dallas, TX, and St. Louis, MO to points in Labette County, KS, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Ajax Atlas Mfg. Corp. P.O. Box 99, Oswego, KS 67356. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission 101 Litwin Building, Wichita, KS 67202.

MC 129387 (Sub-80TA), filed September 20, 1978. Applicant: PAYNE TRANSPORTATION, INC., P.O. Box 1271, Huron, SD 57350. Representative: Scott E. Daniel, P.O. Box 82028, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, except in bulk, from the facilities of Sanna Division, Beatrice Foods Co., located at or near Menomonie, Vesper, Cameron, Eau Claire and Wisconsin Rapids, WI to points in AZ, CA, CO, ID, MT, NV, NM, ND, OR, SD, UT, WA, and WY. Restriction: Restricted to the transportation of traffic originating at the named origins and destined to the named destinations, for 180 days. Supporting shipper: Sanna Division, Beatrice Foods Co., 2801 West Beltline Highway, P.O. Box 1587, Madison, WI 53701. Send protests to: James L. Hammond, District Supervisor, Interstate Commerce Commission, Room 455 Federal Building, Pierre, SD 57501. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority.

MC 129526 (Sub-6TA), filed September 20, 1978. Applicant: FACTOR TRUCK SERVICE, INC., A corporation, 2607 Old Rodgers Road, Bristol, PA 19007. Representative: Robert B. Einhorn, Esq., 3220 P.S.F.S. Building, 12 South 12th Street, Philadelphia, PA 19107. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: A. *Toys, bicycles, sporting goods, and infant furniture* to the facilities of Marand Distributors, Inc. in Philadelphia, PA from points in the states of ME, NH, VT, MA, RI, CT, NY, NJ, DE, MD, DC, VA, WV, NC, SC, AL, GA, FL, TN, KY, AR, MS, LA, TX, OK, OH, IN, IL, MI, IA, WI, MN, and KS. B. *Corrugated containers for agricultural products*, from the facilities of Multipack, Inc. in Bristol Township, Bucks County, PA, to points in the states of ME, NH, VT, MA, RI, CT, NY, NJ, DE, MD, VA, WV, NC, SC, GA, TN, FL, OH, IN, IL, MI, WI, KY, MO, AL, MS, LA, AR, IA, MN, and TX. *Materials* used in the construction

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of corrugated containers for agricultural products, from Meriden, CT, Newark, DE, Baltimore, MD, and Hanover, MD, to facilities of Multipack, Inc. in Bristol Township, Bucks County, PA. C. *Fluorescent lighting fixtures and parts and accessories thereof,* from the facilities of Crescent Lighting Corp. and its division, Creslite Products, at Pennsauken, NJ, to points in the United States (except Alaska and Hawii). *Plastic sheets and extrusions,* from Xenia, OH, St. Louis, MO, Washington, IN, Santa Anna, CA, Carson, CA, Fallsington, PA, Columbus, OH, Sheffield, MA, Dallas, TX, Chicago, IL, Brooklyn, NY, and Long Island City, NY, to the facilities of Crescent Lighting Corp., in Pennsauken, NJ, *fluorescent lamps,* from Lynn, MA, Bucyrus, OH, Fairmont, WV, and Salina, KS, to the facilities of Crescent Lighting Corp., in Pennsauken, NJ, *glass,* from Rochester, NY to the facilities of Crescent Lighting Corp., in Pennsauken, NJ, *electrical transformers,* from Chicago, IL, Monroe, WI, Madisonville, KY, Danville, IL, and Mendenhall, MS to the facilities of Crescent Lighting Corp., in Pennsauken, NJ, under a continuing contract or contracts with Crescent Lighting Corp., Marand Distributors, Inc., Multipack, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Crescent Lighting Corp., and its division, Creslite Products, 16657 John Tipton Boulevard, P.O. Box 240, Pennsauken, NJ 08110. Marand Distributors, Inc., State Road and Rhawn Street, Philadelphia, PA 19136, Multipack, Inc., 6400 Bristol Pike, Levittown, PA 19057. Send protests to: T. M. Esposito, Transportation Assistant, 600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 133735 (Sub-6TA), filed September 20, 1978. Applicant: AUDUBON TRANSPORT, INC., Wever, IA 52658. Representative: Richard D. Howe, 600 Hubbell Building, Des Moines, IA 50309. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Corn products,* in bulk, from the facilities of Hubinger Co. at or near Keokuk, IA, to points in IL, MO, KS, NE, SD, MN, WI, IN, and PA; and (2) *corn products and soybean meal,* in bulk, from points in Macon County, IL, to the facilities of Hubinger Co. at or near Keokuk, IA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Hubinger Co., 601 Main Street, Keokuk, IA 52632. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 134064 (Sub-11TA), filed September 18, 1978. Applicant: INTERSTATE TRANSPORT, INC., 1820 Atlanta Highway, Gainesville, GA 30501. Representative: Charles M. Williams, Kimball, William & Wolfe, P.C., 350 Capitol Life Center, 1600 Sherman Street, Denver, CO 80203. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Canned and preserved foodstuffs,* from Pittsburgh, PA, to points in FL, GA, SC, and TN, restricted to traffic originating at the facilities utilized by Heinz U.S.A., Division of the H. J. Heinz Co., at or near Pittsburgh, PA and destined to the named States, for 180 days. Supporting shipper(s): Heinz U.S.A, Division of H. J. Heinz Co., P.O. Box 57, Pittsburgh, PA 15230. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 West Peachtree Street, NW, Room 300, Atlanta, GA 30309.

MC 134286 (Sub-78TA), filed September 14, 1978. Applicant: ILLINI EXPRESS, INC., P.O. Box 1564, Sioux City, IO 51102. Representative: Charles M. Williams, Kimball, Williams, & Wolfe, P.C., 350 Capitol Life Center, 1600 Sherman Street, Denver, CO 80203. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Plastic film and plastic articles* (except in bulk), *and materials, equipment, and supplies* used in the manufacture and distribution of the above commodities (except commodities in bulk), in vehicles equipped with mechanical refrigeration devices, from the plantsites and storage facilities of Resinite Department, Borden Chemical, Division of Borden, Inc., at or near Carson, CA, to points in NV, OR, WA, ID, UT, AZ, and CO, and points in MT, WY, and NM on and west of the Continental Divide, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days operating authority. Supporting shipper: W.T. "Tom" Willcox, Manager, Distribution and Materials, Resinite Department, Borden Chemical Division of Borden, Inc., 1 Clark Street, North Andover, MA 08145. Protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 134286 (Sub-79TA), filed September 14, 1978. Applicant: ILLINI EXPRESS, INC., P.O. Box 1564, Sioux City, Iowa 51102. Representative: Charles M. Williams, KIMBALL, WILLIAMS, & WOLFE, P.C., 350 Capitol LIfe Center, 1600 Sherman Street, Denver, CO 80203. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Plastic film and plastic articles* (except in bulk), *and materials, equipment, and supplies,* used in the manufacture and distribution of the above commodities (except commodities in bulk), in vehicles equipped with mechanical refrigeration devices, from the plantsites and storage facilities of Resinite Department, Borden Chemical, Division of Borden, Inc., at or near Illiopolis, IL, to points in MN, WI, IN, and IA, and to Cockeysville, MD; Dallas, TX; and Cleveland, OH; and points in their respective commercial zones, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days operating authority. Supporting shipper: W. T. "Tom" Willcox, Manager, Distribution and Materials, Resinite Department, Borden Chemical Division of Borden, Inc., 1 Clark Street, North Andover, MA 08145. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 134405 (Sub-51TA), filed September 14, 1978. Applicant: BACON TRANSPORT CO., P.O. Box 1134, Ardmore, OK 73401. Representative: O. G. Bacon III, P.O. Box 1134, Ardmore, OK 73401. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia,* in bulk, in tank vehicles, from the facilities of the Mapco Pipeline Terminal at or near Mocane, OK to points in KS, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Olin Corp., P.O. Box 991, Little Rock, AR 72203. Send protests to: Connie Stanley, Transportation Assistant, Room 240, Old Post Office and Court House Building, 215 Northwest Third, Oklahoma City, OK 73102.

MC 134405 (Sub-52TA), filed September 14, 1978. Applicant: BACON TRANSPORT CO., P.O. Box 1134, Ardmore, OK 73401. Representative: O. G. Bacon III, P.O. Box 1134, Ardmore, OK 73401. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Asphalt,* in bulk, in tank vehicles, from Wynnewood, OK to Johnson, Avoca, Jenny Lind, and Alma, AR, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Tosco Corp., Lion Oil Division, Lion Oil Building, El Dorado, AR 71730. Send protests to: Connie Stanley, Transportation Assistant, Room 240, Old Post Office and Court House Building, 215 Northwest Third, Oklahoma City, OK 73102.

MC 134638 (Sub-1TA), filed September 14, 1978. Applicant: MID-WEST TRUCK LINES, LTD., 1216 Fife Street, Winnipeg, MB, Canada. Representative: James E. Ballenthin, 630 Osborn Building, St. Paul, MN 55102. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Pet foods and animal feed,* from the plantsite and facilities of Tuffy's, Division of Star-Kist Foods, Inc., at or near Perham, MN, to the United States-Canada border at or near Pembina, ND, and Noyes, MN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Tuffy's Division of Star-Kist Foods, Inc., P.O. Box 190, Perham, MN 56573. Send protests to: Ronald R. Mau, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 268, Federal Building and U.S. Post Office, 657 Second Avenue North, Fargo, ND 58102.

MC 136899 (Sub-30TA), filed September 20, 1978. Applicant: HIGGINS TRANSPORTATION, LTD., P.O. Box 192, Highway 14 East, Richland Center, WI 53581. Representative: Wayne W. Wilson, 150 East Gilman Street, Madison, WI 53703. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Such merchandise,* as is dealt in by discount and variety stores (except commodities bulk), from the facilities of K Mart Corp., at Lawrence, KS, to the facilities of K Mart Corp., in IA, ND, and SD. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Authority sought for 180 days. Supporting shipper: K Mart Corp., 3100 West Big Beaver, Troy, MI 48084. Send protests to: District Supervisor, Mr. Ronald A. Morken, Interstate Commerce Commission, 212 East Washington Avenue, Room 317, Madison, WI 53703.

MC 138018 (Sub-44TA), filed September 14, 1978. Applicant: REFRIGERATED FOODS, INC., 3200 Blake Street, Denver, CO 80205. Representative: Joseph W. Harvey, 3200 Blake Street, Denver, CO 80205. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Meats and packinghouse products* (except in bulk), from the facilities of Sigman Meat Co. at Brush, CO, to ports of entry located on the boundary between the United States and Canada located at or near Noyes, MN, for 180 days. Restriction: To traffic destined to Winnipeg, MB, Canada. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. No tack or intertying. Supporting shipper: Sigman Meat Co., Inc., 800 South Railroad Avenue, Brush, CO 80723. Send protests to: District Supervisor, Roger L. Buchanan, Interstate Commerce Commission, 721 19th Street, 492 U.S. Customs House, Denver, CO 80202.

MC 138181 (Sub-6TA), filed September 14, 1978. Applicant: TRANSPORT EXPRESS, INC., P.O. Box 663, Dodge City, KS 67801. Representative: Clyde N. Christey, Kansas Credit Union Building, 1010 Tyler, Suite 110L, Topeka, KS, 6612. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia,* in bulk, from the facilities of the Mapco Pipeline Terminal near Mocane, OK, to points in KS and TX, for 180 days. Supporting shipper: Olin Corp., P.O. BOx 991, Little Rock, AR 72203. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, 101 Litwin Building, Wichita, KS 67202.

MC 14118 (Sub-6TA), filled September 20, 1978. Applicant: S.T.L. TRANSPORT, INC., 1000 Jefferson Road, Rochester, NY 14623. Representative: S. Michael Richards/Raymond A. Richards, P.O. Box 255, Webster, NY 14580. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Paper and paper products,* from Lansdale, North Wales, Philadelphia, and Port Providence, PA to all points in NY, under a continuing contract or contracts with Container Corp. of America, 5000 Flat Rock Road, Philadelphia, PA 19128, for 180. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Send protests to: Interstate Commerce Commission, U.S. Courthouse and Federal Building, 100 South Clinton Street, Room 1259, Syracuse, NY 13260.

MC 141205 (Sub-10TA), filed September 20, 1978. Applicant: HUSKY OIL TRANSPORTATION CO., a Delaware corporation, 600 South Cherry Street, Denver, CO 80222. Representative: F. Robert Reeder, Parsons, Behle & Latimer, 79 South Street, P.O. Box 11898, Salt Lake City, UT 84111. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Crude oil, scrubber oil, and condensate,* from Mesa, Garfield, and Delta Counties, CO, to Rangely Pipeline Injection Station, in or around Rangely, CO, under a continuing a contract or contracts with Husky Oil Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Husky Oil Co., 600 South Cherry Street, Denver, CO 80222. Send protests to: Herbert C. Ruoff, District Supervisor, ICC, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 141216 (Sub-4TA), filed September 19, 1978. Applicant: Darrel K. Oakley, d.b.a. OAKLEY ENTERPRISES, 3502 Elm Avenue, Rapid City, SD 57101. Representative: J. Maurice Andren, 1734 Sheridan Lake Road, Rapid City, SD 57701. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Concrete pipe, manholes, culverts, cattle guards, and prestressed beams,* from Rapid City, SD to points in WY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: South Dakota Concrete Products, Box 1158, Rapid City, SD 57709, Arthur L. Erickson, Superintendent. Send protests to: J. L. Hammond, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 455, Federal Building, Pierre, SD 57501.

MC 141871 (Sub-11TA), filed September 14, 1978. Applicant: WNI, INC., 8700 Southwest Elligsen Road, Wilsonville, OR 97070. Representative: Warren L. Troupe, 2480 East Commercial Boulevard, Fort Lauderdale, FL 33308. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Foodstuffs,* from Buena Park, CA to Spokane, Seattle, and Tacoma, WA; Portland, Eugene, and Medford, OR; Boise and Pocatello, ID; Las Vegas, NV; and Salt Lake City, Provo, Ogden, American Fork, and Orem, UT, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Nabisco, Inc., East Hanover, NJ 07936 (Richard Von Thun). Send protests to: A. E. Odoms, Bureau of Operations, Interstate Commerce Commission, 114 Pioneer Courthouse, 555 Southwest Yamhill Street, Portland, OR 97204.

MC 141914 (Sub-45TA), filed September 20, 1978. Applicant: FRANK & SONS, INC., Route 1, Box 108A, Big Cabin, OK 74332. Representative: Kathrena J. Franks, Route 1, Box 108A, Big Cabin, OK 74332. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Rubber and plastic products and raw material,* used in the manufacture thereof, between Irving, TX, on the one hand, and, on the other, points in the United States (except AK and HI), restricted to traffic originating at or destined to the plantsite of Entek Corp. of America at or near Irving, TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Entek Corp. of America, P.O. Box 61048, Dallas, TX 75261. Send protests to: Connie Stanley, Transportation Assistant, Room 240, Old Post Office and Court House, 215 Northwest Third Street, Oklahoma City, OK 73102.

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MC 143002 (Sub-4TA), filed September 20, 1978. Applicant: C. D. B., Inc., 5170 36th Street, Southeast, Grand Rapids, MI 49508. Representative: Karl L. Gotting, Loomis, Ewert, Ederer, Parsley, Davis & Gotting, 1200 Bank of Lansing Building, Lansing, MI 48933. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plastic resin pellets*, from the facilities of Koenig & Sons, Inc., at (i) Trenton, NJ, to various points in the lower peninsula of MI and (ii) Houston, TX, to San Francisco and Los Angeles, CA, for 180 days, under a continuing contract or contracts with Koenig & Sons, Inc. Hearing site: Lansing, MI; Grand Rapid, MI. Supporting shipper: Koenig & Sons, Inc., P.O. Box 1810, Trenton, NJ 08607. Send protest to: C. R., Flemming, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 225 Federal Building, Lansing, MI 48933.

MC 143328 (Sub-9TA), filed September 14, 1978. Applicant: EUGENE TRIPP TRUCKING, P.O. Box 2730, Missoula, MT 59801. Representative: David A. Sutherlund, Fulbright & Jaworski, 1150 Connecticut Avenue, NW, Suite 400, Washington, DC 20036. Authjority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, from Seattle, WA, to points in Utah and (2) *Empty containers*, from points in Utah to Seattle, WA, for 180 days. Supporting shipper: Rainier Brewing Co., 3100 Airport Way South, Seattle, WA 98134. Send protest to: Paul J. Labane, District Supervisor, Interstate Commerce Commission, 2602 First Avenue North, Billings, MT 59101.

MC 143616 (Sub-12TA), filed September 14, 1978. Applicant: M & S TRANSPORT LINES, INC., P.O. Box 417, Sultana, CA 93666. Representative: Dwight L. Koerber, Jr., 666 11th Street, Northwest, Suite 805, Washington, DC. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Adhesives, in containers*, from New Philadelphia, OH, to points in the United States in and west of MN, IA, MO, AR, and LA (except Portland, OR; Oklahoma City and Tulsa, OK; San Jose, Santa Clara, and San Leandro, CA; and El Paso and Lubbock, TX), under a continuing contract or contracts with Miracle Adhesives Corp., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Miracle Adhesives Corp., P.O. Box 466, New Philadelphia, OH 44663. Send protest to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321, Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

MC 143758 (Sub-4TA), filed September 18, 1978. Applicant: KNOWLES TRANSPORT, INC., 4215 Thurman Road, Conley, GA 30027. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned and preserved foodstuffs*, from the facilities of Heinz U.S.A., Division of H. J. Heinz Co., at or near Pittsburgh, PA, to points in AL, GA, and SC, restricted to traffic originating at the named facilities and destined to the named States, for 180 days. Supporting shipper: Heinz U.S.A., Division of H. J. Heinz Co., P.O. Box 57, Pittsburgh, PA 15230. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 West Peachtree Street NW., Room 300, Atlanta, GA 30309.

MC 145071 (Sub-3TA), filed September 14, 1978. Applicant: EATON BROS., INC., 1020 West Brady, Clovis, NM 88101. Representative: Edward A. O'Donnell, 1004 29th Street, Sioux City, IA 51104. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products, and articles distributed by meat packinghouses*, as described in sections A and C of appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766 (except commodities in bulk, in tank vehicles), from the facilities of Hatch Packing Co., Portales, NM, to points in AZ, CA, CO, FL, IA, NE, KS, NY, OR, TX, and WI, under a continuing contract or contracts with Hatch Packing Co., Portales, NM for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Hatch Packing Co., Highway 70, Portales, NM 88130. Send protests to: District Supervisor, Interstate Commerce Commission, 1106 Federal Office Building, 517 Gold Avenue SW., Albuquerque, NM 87101.

MC 145172TA, filed September 8, 1978. Applicant: ROBERT L. WELBORN AND WANDA S. WELBORN, d.b.a. ORIENT EXPRESS, 4322 West Greenway Road, Glendale, AZ 85306. Representative: A. Michael Bernstein, 1441 East Thomas Road, Phoenix, AZ 85014. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Foodstuffs*, in vehicles equipped with mechanical refrigeration, and (2) *merchandise, supplies, and equipment*, when moving in the same vehicle with foodstuffs, between points in Los Angeles and Orange Counties, CA, and the Phoenix, AZ, commercial zone, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: There are approximately (10) statements of support attached to the application which may be examined at the Interstate Commerce Commission, in Washington, DC, or copies thereof which may be examined at the field office named below. Send protests to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, Room 2020, Federal Building, 230 North First Avenue, Phoenix, AZ 85025.

MC 145347 (Sub-1TA), filed September 20, 1978. Applicant: R. CHARBONNEAU & SONS, INC., 124 West Third Street, Logan, IA 51546. Representative: Ralph L. Charbonneau, 124 West Third Street, Logan, IA 51546. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Crushed limestone, rip rap stone, and limestone aggregates*, originating from any point within a 5-mile radius of the Fort Calhoun Stone Quarries at Fort Calhoun, NE, to construction sights within the boundaries of the State of Iowa, under a continuing contract or contracts with Fort Calhoun Stone Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Jess H. Wright, President, Fort Calhoun Stone Co., 1255 South Street, Blair, NE 68005. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 145379TA, filed September 19. 1978. Applicant: WALTER A. JUNGE, INC., 3818 Southwest 84th Street, Tacoma, WA 98491. Representative: George R. LaBissoniere, 1100 Norton Building, Seattle, WA 98104. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products*, from Wauna, OR to points in CA and NV and from Gilroy, CA, to points in OR and WA, under a continuing contract or contracts with Crown Zellerbach Corp., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Crown Zellerbach Corp., 1500 Southwest First Avenue, Portland, OR 97201. Send protests to: Hugh H. Chaffee, District Supervisor, Bureau of Operations, ICC, 858 Federal Building, Seattle, WA 98174.

MC 145384TA, filed September 20, 1978. Applicant: ROSE-WAY, INC., 1914 East Euclid, Des Moines, IA 50313. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Plastic pipe and pipe fittings*, from the facilities of R & G Sloane Manufacturing Co., Inc., at or near Bakersfield, Santa Ana, and Sun Valley, CA, to points in IA, IL, IN, MI, MN, MO, NE, OH, and WI; and (2) *plastic granules*, in bags, from Louisville, KY, Avon Lake, OH, and Neal, WV, to the facilities of R & G Sloane Manufacturing Co., Inc., at or near Bakersfield, Santa Ana, and Sun Valley, CA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: R & G Sloane Manufacturing Co., Inc., 7606 North Clybourn, Sun Valley, CA 91352. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 145386TA, filed September 20, 1978. Applicant: Robert L. McMahon, d.b.a. ROBERT McMAHON CONSTRUCTION, 1105 South Maple Street, Staunton, IL 62088. Representative: Robert L. McMahon, 1105 South Maple Street, Staunton, IL 62088. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Steel tubing and pipe, and flat steel*, between the plantsite of Livingston Pipe and Tube, Inc., at Staunton, IL, on the one hand, and, on the other, points in AR, AL, GA, IA, IN, KS, KY, LA, MO, MN, MS, NE, NC, OH, OK, PA, TN, TX, VA, WI, and WV, under a continuing contract or contracts with Livingston Pipe and Tube, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Michael L. Favre, President, Livingston Pipe and Tube, Inc., P.O. Box 289, Mt. Olive, IL 62069. Send protests to: Charles D. Little, District Supervisor, Interstate Commerce Commission, 414 Leland Office Building, 527 East Capitol Avenue, Springfield, IL 62701.

By the Commission.

H. G. Homme, Jr.,
Acting Secretary.

[FR Doc. 78-31975 Filed 11-13-78; 8:45 am]

Each application (except as otherwise specifically noted) contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application.

Protests against approval of the application, which may include a request for oral hearing, must be filed with the Commission on or before December 14, 1978. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest must be served upon applicants representative(s), or applicants (if no such representative is named), and the protestant must certify that such service has been made.

Unless otherwise specified, the signed original and six copies of the protest shall be filed with the Commission. All protests must specify with particularity the factual basis, and the section of the Act, or the applicable rule governing the proposed transfer which protestant believes would preclude approval of the application. If the protest contains a request for oral hearing, the request shall be supported by an explanation as to why the evidence sought to be presented cannot reasonably be submitted through the use of affidavits.

The operating rights set forth below are in synopses form, but are deemed sufficient to place interested persons on notice of the proposed transfer.

MC-FC-77740, filed June 27, 1978. Transferee: CANYON DISTRIBUTORS LTD., 5919 Fifth Street Southeast, Calgary, AB, Canada. Transferor: Herrett Trucking Co., Inc., P.O. Box 1436, Yakima, WA 98907. Representative: George H. Hart, attorney at law, 1100 IBM Building, Seattle, WA 98101. Authority sought for purchase by transferee of a portion of the operating rights of transferor, as set forth in MC 30092 Sub-19 and Sub-21 issued December 27, 1971, and October 30, 1973, respectively. (1) Bananas, and (2) agricultural commodities exempt from economic regulation under section 203(b)(6) of the Interstate Commerce Act, when transported in mixed loads with bananas, from Long Beach, CA, and Seattle, WA, to ports of entry on the United States-Canada boundary line, located in WA, ID and MT, with no transportation for compensation on return except as otherwise authorized; (3) meats, meat products, and meat by-products, and articles distributed by meat packinghouses, as described in sections A and C of appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 MCC 209, 766 (except hides and commodities in bulk), between ports of entry on the United States-Canada boundary line in WA, on the one hand, and, on the other, points in AZ, CA, CO, ID, IL, IN, IA, KS, MO, MN, MT, NE, NV, ND, OR, SD, TX, UT, WA, and WI; between ports of entry on the United States-Canada boundary line in ID and MT, on the one hand, and, on the other, points in AZ, CA, CO, ID, IL, IN, IA, KS, MO, MN, MT, NE, NV, ND, OR, SD, TX, UT, WA, and WI: between ports of entry on the United States-Canada boundary line in ND and MN, on the one hand, and, on the other, points in CO, ID, IL, IN, IA, KS, MN, MO, MT, NE, ND, OR, SD, TX, UT, WA, and WI; from points in AZ, CA, and NV to ports of enty on the United States-Canada boundary line in ND and MN, with no transportation for compensation on return except as otherwise authorized. Restriction: The authority herein is restricted (a) to the transportation of shipments originating at or destined to points in Canada, and (b) against the transportation of shipments between the Province of Manitoba, Canada, on the one hand, and, on the other, points in SD, NE, KS, MN, IA, MO, WI, and IL. Application has been filed for temporary authority under section 210a(b)

MC-FC-77747, filed July 6, 1978. Transferee: READY TRUCKING, INC., 4722 Lake Mirror Place, Forest Park, GA 30050. Transferor: Bass Transportation Co., Inc., P.O. Box 391, Flemington, NJ 08822. Representative: Lavern R. Holdeman, of Peterson, Bowman, Larsen, & Swanson, 521 South 14th Street, P.O. Box 81849, Lincoln, NE 68501. Authority sought for transfer of the operating rights as set forth in MC 135684 (Sub-16), paragraphs 6 (portion) and 7, issued March 9, 1978, as follows: (6) *Household cleaning products*, water purifying compounds, and dry acids (except in bulk), from Atlanta, GA, to Savannah, GA, and points in AL, FL, and that part of TN, on and east of a line beginning at the TN-KY State line and extending along U.S. Hwy 31-E to Nashville, TN, and thence along U.S. Hwy 31 to the TN-AL State line, with no transportation for compensation on return except as otherwise authorized. (7) *Materials and supplies*, used in the manufacture, sale, or distribution of household cleaning products, water purifying compounds, and dry acids (except in bulk), from Savannah, GA, and points in AL, FL, and that part of TN on and east of a line beginning at the TN-KY State line and extending along U.S. Hwy 31 to Nashville, TN, and thence along U.S. Hwy 31 to the TN-AL State line, to Atlanta, GA, with no transportation for compensation on return except as otherwise authorized. Transferee presently holds authority from this Commission in MC 144688. Application for temporary authority under section 210a(b) has

[7035-01-M]

[Notice No. 127]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

The following publications include motor carrier, water carrier, broker, and freight forwarder transfer applications filed under section 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act.

V 43 / 220 NOV 14 78 UMI

been filed and is pending before the Commission.

MC-FC-77756 filed July 12, 1978. Transferee: C & H BUS LINES, INC., Route No. 1, Harrison, GA 31035. Transferor: National Bus Service, Inc., 746 Wheaton Street, Savannah, GA 31401. Representative: George L. Cullens, Route No. 1, Harrison, GA 31035. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in MC 114957, issued June 27, 1961, as follows: Passengers and their baggage, and express and mail, in the same vehicle with passengers, between Savannah, GA and Savannah Beach, GA. Transferee presently holds no authority from this Commission. Application has been filed for temporary authority under section 210a(b).

MC-FC-77772, filed July 19, 1978. Transferee: AMEX RIGGING CORP., 120 Newton Street, Brooklyn, NY 11222. Transferor: Experienced Machinery Movers, Inc., 120 Newton Street, Brooklyn, NY 11222. Representative: Domenic La Rosa, Esq., 150 Broadway, New York, NY 10038. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in MC 105673, issued March 12, 1968, as follows: Household goods, between New York, NY on the one hand, and, on the other points in NY, NJ, and CT. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under section 210a(b).

MC—FC-77783, filed July 26, 1978. Transferee: CABANO TRANSPORT, LTD., 365 Temiscouata Street, Riviere-du-Loup, Temiscouata County, PQ. Canada G5R 3Y8. Transferor: Transport Amedee Cayer, Inc., P.O. Box 470 La Pocatiere, Kamouraska County, PQ, Canada GOR 1Z0. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in MC 134337 Sub-5, issued December 27, 1974, as follows: (1) *Lumber*, from ports of entry on the United States-Canada boundary line located at ME, NH, VT, and NY to points in ME, NH, VT, MA, CT, RI, NY, NJ, PA, DE, MD, VA, OH, MI, IL, IN, and DC subject to restriction of traffic originating at specified counties in PQ, Canada and (2) *lumber, wood laths and wood shingles*, from ports of entry on the United States-Canada boundary line at or near Jackman and Coburn Gore, ME, Derby Line, Norton Mills and St. Albans, VT and Rouses Point, NY, to points in ME, NH, VT, MA, RI, CT, NY, NJ, PA, and DE subject to restriction of traffic originating at specified counties in PQ, Canada.

MC-FC-77849, filed September 15, 1978. Transferee: INTERCOASTAL LINES, LDT., 200 Foxhunt Crescent, Syosset, NY 11791. Transferor: J & M Carriers Corp., 43-06 54th Road, Maspeth, NY 11378. Representative: Morton E. Kiel, Suite 6193, 5 World Trade Center, New York, NY 10048. Authority sought for purchase by transferee of operating rights of transferor as set forth in MC 116858 Sub-16, issued July 1, 1977, as follows: *Pharmaceutical* and *medical products* (except in bulk) from Kenilworth and Union, NJ, to San Leandro and Lyoth, CA. Transferee presently holds no authority from this Commission. Application for temporary authority under section 210a(b) has been filed.

MC-FC-77875, filed September 28, 1978. Transferee: HARKEMA EXPRESS LINES, INC., 265 Rutherford Road South, Brampton, ON, Canada L6W 1V9. Transferor: Hare Cartage, Inc., 7400 East McNichols Road, Detroit, MI 48234. Representative: S. Harrison Kahn, Suite 733, Investment Building, 1511 K Street NW., Washington, DC 20005. Authority sought for purchase of the operating rights set forth in MC 96134, issued July 6, 1962, as follows: General commodities, between Detroit, MI and points within 8 miles of Detroit. Transferee holds no authority from this Commission. Application has not been filed for section 210a(b) authority.

MC 77876, filed September 29, 1978. Transferee: P. J. Moeller, Schleswig, IA 51461. Transferor: Schleswig Transfer, Inc., Schleswig, IA 51461. Authority sought for purchase by transferee of operating rights of transferor as set forth in MC 96375 issued September 12, 1972, as follows: Feed, seeds, straw, agricultural implements and parts, coal, petroleum products, in containers, fence, fencing materials, lumber, and building materials from Omaha, NE to Schleswig, IA and points within 10 miles of Schleswig, and livestock between Schleswig, IA and points within 10 miles of Schleswig on the one hand, and, on the other, Omaha, NE. Transferee presently holds no authority from this Commission. Application for temporary authority under section 210a(b) has not been filed.

MC-FC-77877, filed September 29, 1978. Transferee: JONES MOTOR CO., INC., Bridge Street and Schuylkill Road, Spring City, PA 19475. Transferor: ALLEGHANY CORP., d.b.a. JONES MOTOR, (same address as transferee). Representatives: M. Lauck Walton, Esquire, Donovan, Leisure, Newton & Irvine, 30 Rockefeller Plaza, New York, NY 10020. Roland Rice, Esquire, Rice, Carpenter & Carraway, 501 Perpetual Building, 1111 East Street NW., Washington, DC 20004. On November 6, 1978, the Motor Carrier Board approved the transfer of operating authority set forth in Certificates Nos. 4963 and subs thereunder, issued March 10, 1971, and on subsequent dates as follows: General commodities with the usual exceptions over irregular and specified regular routes serving points in MA, ME, NH, RI, CT, VT, NY, PA, NJ, DE, MD, VA, NC, OH, WV, MI, IL, IN, IA, MO, SC, TN, and DC. Petitions for reconsideration may be filed within 20 days from the date this notice is published. Send petitions to: The Secretary, Interstate Commerce Commission, Washington, DC 20423.

MC-FC-77889, filed October 16, 1978. Transferee: JO-DI TRUCKING, INC., U.S. 421 North, Harrells, NC 28444. Transferor: HARRY MARSHBURN BURGESS AND RICHARD NORWOOD PATE, a partnership, d.b.a. PATE TRANSFER, 900 Raleigh Road, Clinton, NC 28328. Authority sought for purchase by transferee of operating rights of transferor as set forth in Certificate No. MC 63540, issued April 3, 1956, in the name of the transferor, as follows: Lumber from Clinton and Roseboro, NC, to points in VA; feed, seed, and flour from specified points in VA, Baltimore, MD, and Wilmington, NC, to Clinton, NC, and points in NC within 75 miles of Clinton; seed and flour from Lynchburg, VA, to points in Sampson County, NC; seeds from points in Sampson County, NC, to Lynchburg, VA; canned goods from Wilmington, NC, to points in NC within 75 miles of Clinton; general commodities, with exceptions, from Richmond and Norfolk, VA, and Wilmington, NC, to points in Sampson County, NC; store fixtures, ice cream, salt, etc., from Baltimore and Sparrows Point, MD, to points in Sampson County, NC; and apple products and vinegar from Inwood, WV, and Winchester, VA, to points in Sampson County, NC. Transferee presently holds authority in MC 129952. Application for temporary authority under section 210a(b) has not been filed.

MC-FC-77892, filed October 11, 1978. Transferee: MELVIN SALES CO., 901 North Vermilion, Streator, IL 61364. Transferor: INTERSTATE EXPRESS, INC., P.O. Box 349, Gothenburg, NE 69138. Representative: Paul J. Maton, 10 South La Salle Street, Suite 1620, Chicago, IL 60603. Authority sought for a portion of the operating rights set forth in Certificate MC 140280, issued May 25, 1978 as follows: *Glass bottles*, between points in La-Salle County, IL on the one hand, and, on the other, Clinton, Davenport, Muscatine, Burlington, Fort Madison, and Keokuk, IA, and points in that part of IN on and north of U.S. Hwy 24, and on and west of U.S. Hwy 31. Transferee holds no authority from this Commission. Application has not been filed for section 210a(b) authority.

MC-FC-77901, filed October 18, 1978. Transferee: CHIPMAN CORP., 1717 Fairway Drive, San Leandro, CA 94577. Transferor: Frank's Trucking, 2575 Williams Street, San Leandro, CA 94577. Representative: Daniel W. Baker, 100 Pine Street, Suite 2550, San Francisco, CA 94111. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate of Registration MC 99871 (Sub-2), issued September 29, 1977, as follows: *General commodities* between points in a described area identified as the San Francisco territory and between points within 10 miles of specified routes. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under section 210a(b).

MC-FC-77906, filed October 23, 1978. Transferee: TRANSAMERICAN CARRIER CO., Route 1, Box 28, Winthrop, MN 55396. Transferor: Donald W. Cole, Route 1, Box 28, Winthrop, MN 55396. Representative: Bradford E. Kistler, Attorney at Law, P.O. Box 82028, Lincoln, NE 68501. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate MC 140660 (Sub.-2), issued August 18, 1976, as follows: *Liquid fertilizer solutions and liquid feeds*, in bulk, in tank vehicles, from the facilities of Na-Churs Plant Foods Co., located at or near Red Oak, IA to points in WI, IL, MO, MN, KS, NE, SD, ND, CO, WY, MT (excepted against service to St. Louis and points in its commercial zone) and return of *ingredients* with the general exception of service from Louisiana, St. Louis and points in its commercial zone, Omaha, NE, Pake and Jefferson Counties, MO and dry ingredients from MN and SD. Transferee presently holds authority in MC 134552 (Sub.-3). Application has not been filed for temporary authority under section 210a(b).

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 78-31970 Filed 11-13-78; 8:45 am]

[7035-01-M]

[Notice No. 126]

MOTOR CARRIER TRANSFER PROCEEDINGS

NOVEMBER 13, 1978.

Application filed for temporary authority under section 210a(b) in connection with transfer application under section 212(b) and Transfer Rules, 49 CFR Part 1132:

MC-FC 77913. By application filed October 26, 1978, L & E FREIGHT LINE, INC., d.b.a. LIGHTNING EXPRESS FREIGHT LINES, INC., 2950 Blake Street, Denver, CO 80205, seeks temporary authority to transfer the operating rights of DONALD R. WILLIS, an individual, d.b.a. TWEEDY TRANSFER, P.O. Box 7, Elbert, CO 80106, under section 210a(b). The transfer to L & E FREIGHT LINE, INC., d.b.a. LIGHTNING EXPRESS FREIGHT LINES, INC., of the operating rights of DONALD R. WILLIS, an individual, d.b.a. TWEEDY TRANSFER, is presently pending.

MC-FC-77914. By application filed November 1, 1978, AMERICAN TANK TRANSPORT, INC., 6350 Ordnance Point Road, Baltimore, MD 21225, seeks temporary authority to transfer a portion of the operating rights of SECON SERVICE SYSTEM, INC., 460 12th Avenue, New York, NY 10014, under section 210a(b). The transfer to AMERICAN TANK TRANSPORT, INC., of a portion of the operating rights of SECON SERVICE SYSTEM, INC., is presently pending.

By the Commission.

H. G. HOMME, Jr.,
Secretary.

[FR Doc 78-31971 Filed 11-13-78; 8:45 am]

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sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409), 5 U.S.C. 552b(e)(3).

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[6320-01-M]

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[M-176, Amdt. 1]

CIVIL AERONAUTICS BOARD.

Notice of cancelation of the November 9, 1978, board meeting.

TIME AND DATE: 10 a.m., November 9, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: See M-176, dated November 2, 1978.

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: Member Schaffer is on personal leave and will not be able to attend the November 9, 1978, meeting. Member O'Melia is attending negotiations and will not be able to attend the meeting. Having two of the Members not present at the Board meeting leaves the Board without a quorum so the November 9, 1978, meeting has been canceled. Accordingly, the following Members have voted that agency business requires the cancellation of the November 9, 1978, meeting and that no earliers announcement of this change was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

NOTE.—Some of the items for the November 9, 1978, meeting will be scheduled for the next Board meeting.

[S-2290-78 Filed 11-9-78; 11:08 am]

[6712-01-M]

2

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Thursday, November 9, 1978.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Correction for November 9th Special Open Meeting.

MATTER TO BE CONSIDERED: The Federal Communications Commission announced on November 2, a schedule for a special open meeting on Nobember 9, 1978. Item 2 renewal erroneously indicates that WPHL-TV is one of three stations in Philadelphia having a petition to deny filed against it. Renewal No. 2 should include WPVI-TV in lieu of WPHL-TV.

This meeting may be continued the following workday to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from the FCC Public Information Office, telephone 202-632-7260.

Issued: November 8, 1978.

[S-2291-78 Filed 11-9-78; 11:08 am]

[6714-01-M]

3

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of change in subject matter of agency meeting.

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 10 a.m. on November 8, 1978, the Corporation's Board of Directors voted, on motion of Acting Chairman John G. Heimann, seconded by Director William M. Isaac (Appointive), to withdraw from consideration the following item from consideration:

Memorandum proposing the approval of an "Additional Space Agreement" in connection with the Corporation's lease of space for the San Francisco, Calif., Regional Office.

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter of the meeting was practicable.

Dated: November 8, 1978.

FEDERAL DEPOSIT INSURANCE CORPORATION,
ALAN R. MILLER,
Executive Secretary.

[S-2292-78 Filed 11-9-78; 11:08 am]

[6714-01-M]

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FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of change in subject matter of agency meeting.

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 10:30 a.m. on November 8, 1978, the Corporation's Board of Directors voted, on motion of Acting Chairman John G. Heimann, seconded by Director William M. Isaac (Appointive), to withdraw from consideration a memorandum regarding the liquidation of assets acquired by the Corporation from Franklin National Bank, New York, N.Y.

The Board of Directors further determined, on motion of Acting Chairman Heimann, seconded by Director Isaac, that Corporation business required the addition to the agenda for this meeting, on less than 7 days' notice to the public, of memorandums regarding the liquidation of assets acquired by the Corporation from United States National Bank, San Diego, Calif., and Northern Ohio Bank, Cleveland, Ohio; that the public interest did not require consideration of the memorandums in a meeting open to public observation; and that the memorandums could be considered in a meeting closed to public observation by authority of subsections (c)(9)(B) and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(9)(B) and (c)(10)).

The Board also determined, by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable.

Dated: November 8, 1978.

FEDERAL DEPOSIT INSURANCE CORPORATION,
ALAN R. MILLER,
Executive Secretary.

[S-2293-78 Filed 11-9-78; 11:08 am]

[6740-02-M]

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NOVEMBER 8, 1978.

FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: 10 a.m., November 15, 1978.

PLACE: 825 North Capitol Street NE., Washington, D.C., Room 9306.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

NOTE.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth F. Plumb, Secretary, telephone 202-275-4166.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda. However, all public documents may be examined in the Office of Public Information.

GAS AGENDA—207TH MEETING, NOVEMBER 15, 1978, REGULAR MEETING (10 A.M.)

CAG-1. Docket No. RP73-114, Tennessee Gas Pipeline Co.
CAG-2. Docket Nos. AR64-2 et al., AR67-1, et al., G-18841, RP65-59, RP69-13, RP70-29, RP72-98, and RP74-41, Texas Eastern Transmission Corp.
CAG-3. Docket No. RP73-63, Natural Gas Pipeline Co. of America, and Napeco, Inc.
CAG-4. Docket No. RI62-542, Joseph P. Mueller.
CAG-5. Docket No. RI77-25, Woods Exploration and Producing Co., et al.
CAG-6. Docket No. RI77-108, John P. Booth & Associates; Docket No. RI78-48, Sun Oil Co.; Docket No. RI78-62, Atlantic Richfield Co.
CAG-7. Docket No. RI78-39, Texasgulf, Inc.
CAG-8. Docket No. RI78-40, Gas Rock Corp.
CAG-9. Docket No. RI78-44, PDC Co.
CAG-10. Docket No. RI78-47, Sun Oil Co.
CAG-11. Docket No. RI78-83, Sidwell Oil & Gas, Inc.
CAG-12. Docket Nos. CS71-844, et al., Donald A. Beadle and Macero Minerals, Inc., et al.
CAG-13. Docket No. CS77-614, Imperial-American Energy, Inc.
CAG-14. Docket No. CI76-578, et al., Southern Union Supply Co.
CAG-15. Docket No. CI78-539, et al., Sun Oil Co.
CAG-16. Docket No. CI76-349, Energy Reserves Group, Inc.
CAG-17. Docket No. CP76-305, Arkansas Louisiana Gas Co.
CAG-18. Docket No. CP78-479, Trunkline Gas Co., Consolidated Gas Supply Corp.
CAG-19. Docket Nos. CP74-260 and CP75-269, Natural Gas Pipeline Co. of America.
CAG-20. Docket No. CP75-125, Michigan Wisconsin Pipe Line Co.
CAG-21. Docket No. CP78-352, Alabama-Tennessee Natural Gas Co.; Docket No. CP78-491, Tennessee Gas Pipeline Co.
CAG-22. Docket No. CP77-508, Northern Natural Gas Co.
CAG-23. Docket No. CP77-295, Texas Eastern Transmission Corp.
CAG-24. Docket No. CP78-198, Colorado Interstate Gas Co.; Docket No. CP78-210, Montana-Dakota Utilities Co.
CAG-25. Docket No. CP78-422, Tennessee Gas Pipeline Co., a division of Tenneco, Inc., Transcontinental Gas Pipeline Corp.
CAG-26. Docket No. CP78-186, Natural Gas Pipeline Co. of America, Southwestern Gas Pipeline, Inc.
CAG-27. Docket No. CP78-515, United Gas Pipe Line Co., Michigan-Wisconsin Pipe Line Co.
CAG-28. Docket No. CP78-504, Natural Gas Pipe Line Co. of America.
CAG-29. Docket No. CP78-199, Colorado Interstate Gas Co., Northern Natural Gas Co.
CAG-30. Docket No. CP78-474, Arkansas Louisiana Gas Co.
CAG-31. Docket No. CP78-450, Northwest Pipeline Corp.
CAG-32. Docket No. CP78-292, Colorado Interstate Gas Co.
CAG-33. Docket No. CP78-438, Sea Robin Pipeline Co.
CAG-34. Docket No. CP78-409, Florida Gas Transmission Co.
CAG-35. Docket No. CP78-513, Cities Service Gas Co.
CAG-36. Docket No. CP78-391, et al., Great Plains Gasification Associates.
CAG-37. Docket No. RP74-41, Texas Eastern Transmission Corp.
CAG-38. Docket No. RP75-73 (AP79-1), Texas Eastern Transmission Corp.
CAG-39. Docket No. CP78-134, Michigan Wisconsin Pipe Line Co.
CAG-40. Docket Nos. RP65-47 and RP71-101, Mid Louisiana Gas Co.
CAG-41. Docket Nos. RP74-86 and RP76-97, Gulf Energy & Development Corp.
CAG-42. Docket No. RP77-139, Texas Gas Transmission Corp.
CAG-43. Docket No. CP78-429, Texas Gas Transmission Corp.
CAG-44. Docket No. CP70-185, Tennessee Gas Pipeline Co., a division of Tenneco Inc.
CAG-45. Docket No. CP78-453, Transcontinental Gas Pipe Line Corp.
CAG-46. Docket No. CP76-267, Texas Gas Transmission Corp.
Docket No. CP78-509, Texas Eastern Transmission Corp.
CAG-47. Docket No. CP78-494, United Gas Pipe Line Co.
CAG-48. Docket No. CP78-284, Southern Natural Gas Co.
Docket No. CP78-295, United Gas Pipe Line Co.
CAG-49. Docket No. CP78-463, Transcontinental Gas Pipe Line Corp.
Docket No. CP78-482, Northern Natural Gas Co.

I. PIPELINE RATE MATTERS

RP-1 Docket Nos. RP73-102, RP73-14, Michigan Wisconsin Pipe Line Co.
RP-2. Docket No. RP71-11 (PGA76-1), Tennessee Natural Gas Lines Inc.
Docket No. RP76-71, *Tennessee Public Service Commission*, Complainant v. *Tennessee Natural Gas Lines, Inc.*, Respondent.
Docket Nos. RP71-15 and RP75-28 (PGA76-1) (DCA76-1), East Tennessee Natural Gas Co.
Docket No. RP76-70, *Tennessee Public Service Commission*, Complainant v. *East Tennessee Natural Gas Company*, Respondent.
RP-3. Docket Nos. CP74-289, et al., El Paso Natural Gas Co.

II. PRODUCER MATTERS

CI-1. FERC Gas Rate Schedule Nos. 111 and 150, Ashland Exploration, Inc. (Successor to Ashland Oil, Inc.).
CI-2. Docket No. RI77-104 Kennedy & Mitchell, Inc
CI-3. Docket No. RI61-308, et al., Cabot Corp.
CI-4. Docket No. AR64-2, et al., Area Rate Proceeding, et al. (Texas Gulf Coast Area).
CI-5. Docket No. CI75-45, Tenneco Oil Co.
Docket No, CI75-107 and CI75-684, Shell Oil Co.
CI-6. Docket No. CP73-184, Colorado Interstate Gas Co.
Docket No. CI73-485, CIG Exploration, Inc.
CI-7. Docket Nos. CI75-586 and CI77-41, Mobil Oil Corp.
CI-8. Docket No. CI78-677, R. Lacy, Inc.
CI-9. Docket No. RI78-80, ADA Resources, Inc., et al.

III. PIPELINE CERTIFICATE MATTERS

A. Pipeline certificates

CP-1. Docket Nos. CP76-462, CP77-77, CP77-220, Southern Union Gas Co. et al.
Docket No. CP77-565, Western Gas Interstate Co.
Docket No. G-18545, Cities Service Gas Co.
CP-2. Docket No. CP78-136, Transcontinental Gas Pipe Line Co.
CP-3. Docket No. CP73-340, Colorado Interstate Gas Co.
Docket No. CP74-243, Northern Natural Gas Co.
Docket No.CI74-430, Colorado Oil & Gas Corp. and Gas Producing Enterprises, Inc.
CP-4. Transcontinental Gas Pipe Line Corp.
CP-5. Docket No. CP76-87, El Paso Natural Gas Co.
CP-6. Reserved.
CP-7. Reserved.
CP-8. Reserved.

B. Curtailment

CP-9. Docket No. RP75-79, *Lehigh Portland Cement Company* v. *Florida Gas Transmission Company.*
CP-10. Docket No. RP78-16, Southern Natural Gas Co.
CP-11. Docket No. RP77-137-1, South Georgia Natural Gas Co. (Great Southern Paper Co.)
CP-12. Docket Nos. RP77-141, RP77-132, RP77-133-1, and RP77-134, Tennessee Gas Pipleline Co., a division of Tenneco Inc.
CP-13. Reserved.
CP-14. Reserved.

C. Liquefied natural gas

CP-15. Docket Nos. CP75-140, Pacific Alaska LNG Co. et al.
Docket Nos. CP74-160, et al., Pacific Indonesia LNG Co., et al.
Docket Nos. CI78-453, Pacific Lighting Gas Development Co.
Docket No. CI78-452, Pacific Simpco Partnership.

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MISCELLANEOUS AGENDA—207TH MEETING, NOVEMBER 15, 1978, REGULAR MEETING

CAM-1. Department of Energy's Proposed Rulemaking on International Petroleum Products Allocation.
CAM-2. Union Electric Co.
CAM-3. Tampa Electric Co.
CAM-4. Public Service Co. of New Hampshire.
CAM-5. The Empire District Electric Co..
CAM-6. Equitable Gas Co.
CAM-7. Baltimore Gas & Electric Co.
CAM-8. Illinois Power Co.
CAM-9. The Virginia Electric & Power Co.
M-1. Docket No. RM78-17, Procedures for Review by the Federal Energy Regulatory Commission of Adjustment Request Denials by the Secretary of Energy.
M-2. Docket No. RA79-2, Commonwealth Oil Refining Co.
M-3. Docket No. RM78- , Procedure for Amendment of Certificates to Conform to Actual Construction.
M-4. Docket No. RM74-16, Natural Gas Companies' Annual Report of Proved Domestic Gas Reserves: FPC Form No. 40; Further Extension of Filing Deadlines.

POWER AGENDA—207TH MEETING, NOVEMBER 15, 1978, REGULAR MEETING

CAP-1. Docket Nos. ER78-35, ER78-82, ER78-94, ER78-131, ER78-133, ER78-138, and ER78-153, Connecticut Light & Power Co. and Hartford Electric Light Co.
CAP-2. Project No. 632, Monroe City, Utah.
CAP-3. Project No. 2580, Consumers Power Co.
CAP-4. Project No. 2168, Lower Valley Power & Light, Inc.
CAP-5. Project No. 1097, Leonard Lundgren.
CAP-6. Docket No. ER78-565, South Carolina Electric & Gas Co.
CAP-7. Docket No. ER79-26, Niagara Mohawk Power Corp.
CAP-8. Docket No. ER78-44, New England Power Co.
CAP-9. Docket Nos. ER76-205,. Southern California Edison Co. Docket No. E-7777 (Phase II), Pacific Gas & Electric Co. Docket No. E-7796, Pacific Gas & Electric Co.

I. ELECTRIC RATE MATTERS

ER-1. Docket Nos. ER78-566, ER78-567, and ER78-19, et al., Florida Power & Light Co.
ER-2. Docket Nos. E-9469 and ER76-377, Lockhart Power Co.
ER-3. Docket Nos. ER78-337 and ER78-338, Public Service Co. of New Mexico.
ER-4. Docket No. E-9454, Public Service Co. of New Mexico.
ER-5. Docket No. ER78-517, the Connecticut Light & Power Co.
ER-6. Docket No. E-7777, Pacific Gas & Electric Co. Docket No. E-7796, Pacific Power & Light Co.
ER-7. Docket No. E9520, Illinois Power Co.
ER-8. Docket No. E8851, Alabama Power Co.
ER-9. Docket No. E-6454, City of Centralia.
ER-10. Docket No. ER77-278, Arkansas Power & Light Co.
ER-11. Docket Nos. ER76-39, ER76-340 and ER76-363, Kansas Power & Light Co.
ER-12. Docket No. E8570, Southern California Edison Co.
ER-13. Docket No. E8624, Arizona Public Service Co.
ER-14. Docket No. ID-1823, Robert P. Reuss.
ER-15. Docket No. ID-1709, Willis C. Fitkin. Docket No. ID-1710, William Cyrus Macinnes.
ER-16. Docket No. ID-1758, Charles T. Fisher, III. Docket No. ID-1759, Richard C. Gerstenberg.
ER-17. Docket No. E-7398, Alcoa Generating Corp., Long Sault, Inc., Tapoco, Inc., Yadkin, Inc. Docket No. ER78-18, *Town of Highlands, N.C. v. Aluminum Company of America, et al.* Docket No. ER76-828, Nantahala Power & Light Co.

II. LICENSED PROJECT MATTERS

P-1. Project No. 5, the Montana Power Co.
P-2. Project No. 2599. Consumers Power Co.

KENNETH F. PLUMB,
Secretary.

[S-2294-78 Filed 11-9-78; 11:08 am]

[8120-01-M]

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[Meeting No. 1200]

TENNESSEE VALLEY AUTHORITY.

TIME AND DATE: 10:30 a.m., Thursday, November 16, 1978.

PLACE: Conference Room B-32, West Tower, 400 Commerce Avenue, Knoxville, Tenn.

STATUS: Open.

MATTERS FOR DISCUSSION:

1. Removal of TVA surface mine reclamation provisions from coal contracts.
2. Study of nuclear spent fuel storage alternatives.
3. Preliminary rate review.

MATTERS FOR ACTION:

NEW BUSINESS

Consulting and personal service contracts

1. Renewal of consulting contract with Dr. Ulrich C. Luft, Albuquerque, N. Mex., for pulmonary function studies, requested by the Division of Medical Services.
2. Renewal of consulting contract with Lawrence K. Cecil, Champaign, Ill., for evaluation of research projects, requested by the Office of Power.

Purchase awards

1. Req. No. 823810—Metal siding panels and accessories, including installation, for Hartsville and Phipps Bend Nuclear Plants.
2. Amendment to Contract 77K72-821399 with Atlas Machine & Iron Works, Inc., for structural steel for fuel building for Hartsville and Phipps Bend Nuclear Plants.
3. Req. No. 824528—Insulation, including installation, for Kingston Steam Plant.
4. Req. No. 823919—Structural steel for office and service buildings for the Hartsville and Phipps Bend Nuclear Plants.
5. Req. No. 150882—Spare high and intermediate-pressure rotors for Colbert Steam Plant.
6. Rejection of bids received in response to Invitation No. 823481 for fire alarm systems for Hartsville and Phipps Bend Nuclear Plants.
7. Req. No. 823695—Requirements contracts for protective coatings (paints) for concrete and related materials and services for Hartsville and Phipps Bend Nuclear Plants.

Project authorizations

1. No. 3386—Distribution automation and load management demonstration in cooperation with the Department of Energy and Tennessee Valley Public Power Association.

Power items

1. New power contract with 4-County Electric Power Association.
2. New power contract with the city of Scottsboro, Ala.
3. Interchange agreement with Georgia Power Co.
4. Supplement to Contract No. TV-369144 with Battelle-Columbus Laboratories, Columbus, Ohio, for technical assistance to the Office of Power.

Real property transactions

1. Grant of permanent easement to Georgia Mountain Fair, Inc., for public recreation and fairground, affecting 44.2 acres of Chatuge Reservoir land in Towns County, Ga.—Tract XTCHR-25RE.
2. Sale at public auction of 13.93 acres of land on White Bridge Road in Davidson County, Tenn., acquired by TVA for a power service center site—Tract XNVSC-8.
3. Sale at public auction of 16.8 acres of Melton Hill Reservoir land in the Eagle Bend Industrial Park in Anderson County, Tenn.—Tract XMHR-42.
4. Filing of condemnation suits.

Unclassified

1. Semiannual notice of agenda of significant regulations under development or review.

Dated: November 9, 1978.

CONTACT PERSON FOR MORE INFORMATION:

John Van Mol, Director of Information, or a member of his staff can respond to requests for information about this meeting. Call 615-632-3257, Knoxville, Tenn. Information is also available at TVA's Washington Office, 202-566-1401.

[S-2295-78 Filed 11-9-79; 4:00 pm]

federal register

TUESDAY, NOVEMBER 14, 1978
PART II

THE NATIONAL ARCHIVES OF THE UNITED STATES • 1934 •

ENVIRONMENTAL PROTECTION AGENCY

AIR POLLUTION CONTROL: MOTOR VEHICLE CERTIFICATION AND FUEL ECONOMY STANDARDS

Technical Amendments; Corrections

V 4 3 / 2 2 0

[6560-01-M]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

[FRL-951-5]

PART 86—CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES CERTIFICATION AND TEST PROCEDURES

PART 600—FUEL ECONOMY OF MOTOR VEHICLES

Technical Amendments; Corrections

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This action is a publication of several technical and clerical amendments to part 86 of the motor vehicle certification regulations and to part 600 of the fuel economy regulations. The amendments correct errors and clarify ambiguities introduced into the regulations by a variety of prior regulatory actions. This action also publishes as final a number of minor amendments to the fuel economy regulations (Part 600) that were proposed on September 12, 1977, for the 1979 model year. The amendments are described in the table below.

DATE: These amendments are effective November 14, 1978.

FOR FURTHER INFORMATION CONTACT:

Paul A. J. Wilson, Regulatory Management Staff, Office of Mobile Source Air Pollution Control (AW-455), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, 202-755-0596.

SUPPLEMENTARY INFORMATION: This rulemaking contains several kinds of amendments to parts 86 (emissions testing regulations) and 600 (fuel economy regulations): (1) Clerical amendments—such as corrections to incorrect citations or restoration of material that had been previously published in the regulations but which had been inadvertently omitted in the republication of sections of the regulations; (2) technical amendments—these amendments do not require public comment and provide additional explanation or detail, without substantially changing the meaning or requirements of the regulation, in order to clarify a current requirement or practice. These amendments also reflect changes needed to make the regulations internally consistent; (3) minor amendments—these were proposed by EPA for comment on September 12, 1977 (42 FR 45641) and are being published as final in this rulemaking.

The minor provisions that were proposed by the Agency on September 12, 1977, were published on an interim-final basis for 1978 and proposed for the 1979 model year because some appeared to be more significant than mere technical amendments. No comments were received in response to the NPRM, and thus these provisions are being adopted as proposed except as affected by other technical or clerical amendments. These provisions are described below:

1. In the certification vehicle definition, the section reference was changed to reflect applicability to light-duty vehicles and light-duty trucks only (§ 600.002);

2. The requirement was added that all vehicles used to generate fuel economy data must be certified before the data are used in any calculations (§ 600.007);

3. The round-off procedures for calculating fuel economy values for a vehicle configuration and for a model type are clarified (§ 600.206 and 600.207);

4. The schedule concerning a manufacturer's request for a general label have been clarified and the requirement that a manufacturer must notify the Administrator of the date on which he plans to introduce a vehicle for sale has been added (§ 600.313);

5. The schedule concerning submittal of the manufacturer's average fuel economy value is clarified. The term "public introduction date" has been changed to "date of the availability of the initial range of fuel economy values of comparable automobiles." The data to be included in the preliminary calculations are clarified and the precision of the sales fraction to be used in the calculation has been defined (§ 600.506);

6. The fuel economy data from vehicles tested for determining part 86 compliance of running changes are included in the determination of average fuel economy. The word "annual" is used in place of "model year" for passenger automobile production data. The conversion factor for converting gallons of diesel fuel to equivalent gallons of gasoline is revised to 1.0 from 0.96. The precision in the manufacturer's average calculation has been clarified and revised (§ 600.510).

By issuing the following technical and clerical amendments directly as a final rule, EPA is foregoing the prior issuance of a notice of proposed rulemaking (NPRM) and the opportunity for public comment on the proposal provided by the NPRM. Such a curtailed procedure is permitted by 5 U.S.C. 553(b) when the issuance of a proposal and public comment on it would be unnecessary and contrary to the public interest. EPA finds good cause to dispense with notice and public comment proceedings in this case because the technical and clerical amendments merely correct errors and ambiguities in the regulations and otherwise amend EPA procedures in a manner that does not adversely affect any interested party. Because some of the regulations herein promulgated are to take effect in the 1979 model year, which has already begun, EPA has determined that these regulations should become effective upon publication.

The individual changes made to the regulations and the reasons for each change are given in the table that follows.

NOTE.—The Environmental Protection Agency has determined that this document is not a "significant" regulation and does not require preparation of a regulatory analysis under Executive Order 12044.

Dated: October 4, 1978.

DOUGLAS M. COSTLE,
Administrator.

SUMMARY AND EXPLANATION TABLE

Section	Change	Reason
1. § 86.080-2	Change vehicle "configuration" to vehicle "construction" in the definition of body style.	Correction.
2. § 86.080-24 (a)(2)(vi)	Add tolerance on (valve) port area size for the purposes of engine family classification.	Inadvertently omitted in the Sept. 12, 1977, publication.
(a)(2)(vii), and (ix).	Delete the phrase "gasoline-fueled vehicles and engines only" when referring to thermal reactor and catalytic converter characteristics for the purpose of engine family classification.	The wording was correct in the Sept. 8, 1977, publication but was inadvertently changed by the Sept. 12, 1977, publication.
(a)(2)(x)	Add "type of air inlet cooler" for heavy-duty diesel engines for the purpose of engine family classification.	Inadvertently omitted in the Sept. 12, 1977 publication.
(b)(ii), and (iii).	Add evaporative emission design and type of fuel system for the purpose of engine family classification.	Do.

SUMMARY AND EXPLANATION TABLE—Continued

Section	Change	Reason
(b)(1)(vi)	86.078-23 corrected to read 86.079-23	Correction of erroneous citation.
(b)(3)(ii)	86.079-26 corrected to read 86.080-26	Do.
(c)(2)(i)	Delete second sentence referring to durability engine selection based upon the largest projected sales.	This criterion was deleted for the 1979 model year but was inadvertently reinserted in an earlier publication applicable to the 1980 model year.
(c)(3)(i)	86.079-26 corrected to read 86.080-26	Correction of erroneous citation.
(d)	do	Do.
(e) (5) and (6).	Correct the sales figure for gasoline-fueled and diesel heavy-duty engines used to determine eligibility for a reduction in the number of test vehicles (or engines) required for certification.	Correction.
3. § 86.079-26(b)(1)(ii).	Correct the subpart reference	Incorrectly depicts the optional subpart in an earlier publication.
4. § 86.080 26	Revise paragraph (b) pertaining to heavy-duty vehicles and delete par. (c). Correct numerous references.	These changes were made in the Sept. 8, 1977, publication but were incorrectly published in the Sept. 12 publication. This change restores the section to its intended construction.
5. § 86.079-35(f)	40 CFR 568 corrected to read 49 CFR 568	Correction of erroneous citation.
6. § 86.078-36	Paragraph (a) revised by relieving manufacturers of light-duty vehicles and light-duty trucks of requirement to submit vehicle identification numbers within 60 days of date of manufacture of a vehicle covered by a certificate of conformity. Vehicle identification numbers now required to be submitted only upon request of Administrator. Par. (b) amended to identify the information set forth in § 86.078-37, necessary for the Administrator to identify those vehicles covered by a certificate of conformity.	Routine reporting of vehicle identification numbers no longer necessary, therefore reporting obligation is removed from manufacturer. *Note:* This amendment in no way affects the reporting requirements set forth in § 86.078-37.
7. § 86.079-36	(Same as item 6 above)	(Same as item 6 above), this amendment in no way affects the reporting requirements of § 86.079-37.
8. § 86.113-79(a)(3).	86.077-21 corrected to read 86.079-21	Correction of erroneous citation.
9. § 86.114-79(a)(7).	Add a paragraph permitting the use of proportional blending devices to make analytical gases.	This provision is permitted in § 86.114-78. Its omission from § 86.114-79 was due to clerical error.
10. § 86.115-78(b)(1).	Divide par. (b)(1) into subparagraphs and change 86.128 to read 86.132.	Clarification and correction of erroneous citation.
11. § 86.128-79	Adds new section	Brings requirement of regulation regarding vehicle operation during acceleration into conformity with § 86.115-78. Clarifies requirement of regulation that manual transmission equipped vehicles are to be tested with representative shift patterns. Change will also permit manufacturers to recommend shift patterns other than those with which the vehicle was tested to consumers, e.g., for better fuel economy.
12. § 86.129-79 (b)(3)	Specify that road load power for air conditioning will be determined on an engine family basis instead of a car line basis as stated.	It was proposed for 1979 that the increased hp for air conditioning would be determined on a car line basis. This requirement was intended to be delayed until 1980.
(c)(4)	86.078-24 corrected to read 86.079-24	Correction of erroneous citation.
13. § 86.129-80 (b)(3)	86.078-24 corrected to read 86.080-24	Do.
(c)(4)	do	Do.
14. § 86.130-78	State that the measurement temperature must be representative of the temperature experienced by the test vehicle.	Clarification.
15. § 86.136-78 (c)(1)	86.077-25 corrected to read 86.078-25	Correction of erroneous citation.
(c)(2)	do	Do.
16. § 86.140-78	Span and zero analyzer for each range	Clarification to insure measurement accuracy.
(b) and (e)	State that span gases must have concentrations of at least 70 pct of the analyzer range and that analyzer response during sampling must be within 20 to 100 pct of scale.	Do.
17. § 86.144-78(c)(1), (c)(4).	Correct density of HC and CO^2 in the regulations pertaining to calculation of emissions..	Correction.
18. § 86.312-79 (c)(1)(i)	Add requirements for a muffler in the exhaust system of heavy-duty engines.	The requirements for a muffler were inadvertently omitted. These requirements are not new as they existed as previous test procedures and serve only to clarify the intent of 86.312(c).
(iii) and (iv)	Add details to the exhaust sample probe location for catalyst and noncatalyst equipped heavy-duty engines.	Clarification.
19. § 86.437-78 (a)(2)(ii)	Insert the word "production" to describe the period referred to in the certification language.	Inadvertently omitted in the Jan. 5, 1977, regulation.
(b)(3)	Add commas, delete the word "when" and add the word "also." Does not affect meaning, only clarity.	Corrections to the Oct. 28, 1977, publication.
20. § 86.544-78(c)..	Correct density of HC and CO^2 in the regulations pertaining to calculation of emissions.	Correction.
21. Appendix	Change the speeds for small portions of the first portion of the driving cycle.	The speed versus time trace for the urban driving cycle was misprinted.
22. Citation of Authority.	Change the U.S.C. section references	42 U.S.C. sections were recently renumbered.
23. § 600.002-79 (15)	Section reference changed to 86.079-24(b)(1) to restrict to light-duty vehicles and light-duty trucks.	This change published interim-final for 1978 is being adopted here with no adverse comment.
(33)	Change vehicle "configuration" to vehicle "construction" in the definition of body style.	Clerical correction.
(41)	42 CFR 523.5 is corrected to read 49 CFR 523.5	Correction of erroneous citation.
(42)	42 CFR 533.5 is corrected to read 49 CFR 533.5	Do.
24. § 600.002-80 (15)	Reference changed to 86.080-24(b)(1). See explanation under § 600.002-79(15).	See explanation given under item No. 23, § 600.002-79(15).
(22)	"Transmission Class" definition	The definition of "transmission class" for the 1980 model year was inadvertently published as the 1978 definition.
(23)	Change "inertia weight" to "inertia weight class" in the definition of base level.	The term "inertia weight" has been dropped from the regulations for 1980 and later model years.
(33)	Change vehicle "configuration" to vehicle "construction" in the definition of body style.	Correction.

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SUMMARY AND EXPLANATION TABLE—Continued

Section	Change	Reason
(41)	42 CFR 523.5 is corrected to read 49 CFR 523.5	Correction of erroneous citation.
(42)	42 CFR 533.5 is corrected to read 49 CFR 533.5	Do.
25. § 600.007-77		
(b)(1)	Delete requirement for advanced approval of component changes and to change "Engine components" to vehicle/engine components.	Remove the unnecessary restriction of prior approval by the Administrator.
(6)	Require that each fuel economy data vehicle represent a certified vehicle.	To insure that all fuel economy data are from certified vehicles. This has been EPA policy but is expressly being included in the regulations for clarification.
26. § 600.007-80		
(a)	86.079-24 is corrected to read 86.080-24	Correction of erroneous citation.
(b)(1)	Delete requirement for advanced approval of component changes and to change "Engine components" to vehicle/engine components.	Remove an unnecessary restriction and for clarification.
(b)(3)	86.077-26 is corrected to read 86.079-26	Correction of erroneous citation.
(4)	86.077-28 is corrected to read 86.079-28	Do.
(e)(1)	86.077-37 is corrected to read 86.079-37	Do.
27. § 600.010-77	Include in the vehicle test requirements addition of models after certification and running change vehicles.	This change is being made to correct an oversight in the original regulations. The use of running change data is specified in subpt. F of this part for use in the calculation of a manufacturer's average fuel economy value. However, these data must be accepted under subpt. A, and to do so requires that the manufacturer generate city and highway data for each vehicle. This change to the regulations reflects current practice.
28. § 600.111-78(h)(6).	Change "13 seconds" to "17 seconds" to specify the time between the end of the preconditioning cycle and the beginning of the Highway Fuel Economy Test.	Clerical correction.
29. § 600.111-80		
(g)(2)	86.077-25 is changed to read 86.079-25	Correction of erroneous citation.
(h)(6)	Change "13 seconds" to "17 seconds" to specify the time between the end of the preconditioning cycle and the beginning of the Highway Fuel Economy Test.	Clerical correction.
30. § 600.113-78(c)	Specify that the precision of the emission levels used in the carbon balance equation be consistent with the official certification test values.	Clarification.
31. § 600.207-78		
(a)(2)(iii)	86.007-21 is changed to read 86.078-21	Correction of erroneous citation.
(a)(3)(iii)	86.078-23 is changed to read 86.078-32, 86.078-33, or 86.078-34	Do.
32. § 600.309-80	Delete § 600.309-80	To permit the use of the optional labeling format requirements published on July 25, 1977.
33. § 600.313-78(c)(6).	Specify that the provisions of this paragraph (25 day leadtime for fuel economy data approval) apply only to model types offered for sale at the beginning of the model year.	Clarification.
34. § 600.313-79(d).	Add § 600.313-79, including new paragraph (d)	Require that a manufacturer notify EPA of the introduction dates of each model type. Change necessary to implement provisions of regulation regarding manufacturer submission of sufficient information to enable the Administrator to determine general or specific fuel economy values.
35. § 600.315-78(g)(2) (h).	Add paragraph (g)(2) through (h)(2)(i) pertaining to the calculation of hatchback cargo volume and submission of required data.	Section inadvertently omitted in Sept. 12, 1977, publication. This is a clerical change only.
36. § 600.506-78(b)(2)(ii).	86.077-23 is changed to read 86.078-32, 86.078-33 or 86.078-34	Correction of erroneous citation.
37. § 600.506-79		
(a)(1)	The term "public introduction date" has been changed to "date of the availability of the initial range of fuel economy values of comparable automobiles" and the precision of the sales fraction to be used in the calculation has been defined.	This publishes as final some minor amendments proposed on Sept. 12, 1977, for which no comments were received.
(b)(2)(ii)	86.077-23 is changed to read 86.079-32, 86.079-33 or 86.079-34	Correction of erroneous citation.
38. § 600.507-78(a).	86.077-23 is changed to read 86.078-32, 86.078-33, 86.078-34	Do.
39. § 600.507-79		
(a)	86.077-23 is changed to read 86.079-32, 86.079-33, or 86.079-34	Do.
(b)(1)	do	Do.
40. § 600.507-80		
(a)	do	Do.
(b)(1)	do	Do.
41. § 600.508-78(b).	Add parenthesis	Clerical correction.
42. § 600.510-79		
(b)(2)(iii)	Change the diesel fuel/gasoline equivalence factor from 0.96 to 1.0	This change was proposed on Sept. 12, 1977, and is being published as final.
(a)(3), (vi), (d)(2).	Substitute the phrase "4-wheel drive general utility vehicles" for the term "jeep-type vehicle.".	To maintain consistency between EPA and DOT regulations.
(e)	Add prefix "non"	Clerical correction.
43. § 600.510-80		
(b)(2)(iii)	Change the diesel/fuel gasoline equivalence factor from 0.96 to 1.0	This change was proposed on Sept. 12, 1977, and is being published as final.
(a)(3), (b)(2)(vi), (d)(2).	Substitute the phrase "4-wheel drive general utility vehicles" for the term "jeep-type vehicle.".	To maintain consistency between EPA and DOT regulations.
(e)	Add prefix "non"	Clerical correction.
(2)	Add word "not"	Do.
44. § 600.512-78(c)(7).	Revise this section to empower any officer of the corporation to sign the production data report.	Reduces unnecessary regulatory requirement.
45. § 600.512-79		
(c)(7)	Revise this section to empower any officer of the corporation to sign the production data report.	Do.
(e)(8)	Substitute the phrase "4-wheel drive general utility vehicles" for the term "jeep-type vehicle," and change reference to CFR 533.4..	To maintain consistency between EPA and DOT regulations and clerical correction.

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Part 86 of chapter I, title 40 of the Code of Federal Regulations is hereby amended as follows:

1. By amending § 86.080-2 to read as follows:

§ 86.080-2 Definitions.

• • • • •

"Body style" means a level of commonality in vehicle construction as defined by number of doors and roof treatment (e.g., sedan, convertible, fastback, hatchback).

• • • • •

2. By amending § 86.080-24 to read as follows:

§ 86.080-24 Test vehicles and engines.

(a) • • •

(2) • • •

(v) The location of intake and exhaust valves (or ports) and the valve (or port) sizes (within a ⅛-inch range on the valve head diameter or within 10 percent on the port area).

• • • • • •

(viii) Catalytic converter characteristics.

(ix) Thermal reactor characteristics.

(x) Type of air inlet cooler (e.g., intercoolers and after-coolers) for diesel heavy-duty engines.

• • • • •

(6) • • •

(ii) Basic canister design.

(iii) Fuel system.

• • • • •

(b) • • •

(1) • • •

(vi) The Administrator may combine testing requirements for any vehicle selected under paragraph (b)(1)(v) or (b)(1)(vii)(D) of this section with the testing requirements for any similar vehicle in the same engine-system combination selected under paragraph (b)(1) (ii), (iii), or (iv) of this section or any similar vehicle in the same engine-system, evaporative emission family evaporative emission control system combination selected under paragraph (b)(1)(vii) (A) or (B) of this section. The testing requirements may be combined by the Administrator by requiring a vehicle selected for testing under paragraphs (b)(1) (ii), (iii), (iv), (vii)(A), or (vii)(B) of this section to be modified (if necessary) after mileage accumulation and emission testing for the purpose of demonstrating compliance with § 86.079-23(c)(1)(ii).

• • • • •

(3) • • •

(ii) Engines of each engine family will be divided into groups based upon exhaust emission control system. One engine of each engine-system combination shall be run for smoke emission data and gaseous emission data as prescribed in § 86.080-26(c)(3). Either the complete gaseous emission test or the complete smoke test may be conducted first. Within each combination, the engine that features the highest fuel feed per stroke, primarily at the speed of maximum rated torque and secondarily at rated speed, will usually be selected. If there are military engines with higher fuel rates than other engines in the same engine-system combination, then one military engine shall also be selected. The engine with the highest fuel feed per stroke will usually be selected.

• • • • •

(c) • • •

(2) • • •

(i) A durability-data engine will be selected by the Administrator to represent each engine-system combination.

• • • • •

(3) • • •

(i) One engine from each engine-system combination shall be tested as prescribed in § 86.080-26(c)(3)(ii). At each test point, either the complete gaseous emission test or the complete smoke test may be conducted first. Within each combination, the engine which features the highest fuel feed per stroke, primarily at rated speed and secondarily at the speed of maximum rated torque, will usually be selected for durability testing. In the case where more than one engine in an engine-system combination has the highest fuel feed per stroke, the engine with the highest maximum rated horsepower will usually be selected for durability testing. If an engine system combination includes both military and nonmilitary engines, then the nonmilitary engine with the highest maximum rated horsepower will usually be selected for durability testing.

• • • • •

(d) For purposes of testing under § 886.080-26 (a)(9), (b)(9) or (c)(11), the Administrator may require additional emission-data vehicles (or emission-data engines) and durability-data vehicles (or durability-data engines) identical in all material respects to vehicles (or engines) selected in accordance with paragraphs (b) and (c) of this section: *Provided*, That the number of vehicles (or engines) selected shall not increase the size of either the emission-data fleet or the durability-data fleet by more than 20 percent or one vehicle (or engine), whichever is greater.

(e) • • •

(5) 2,000 gasoline-fueled heavy-duty engines, or

(6) 2,000 diesel heavy-duty engines, may request a reduction in the number of test vehicles (or engines) determined in accordance with the foregoing provisions of this section. The Administrator may agree to such lesser number as he determines would meet the objectives of this procedure.

• • • • •

3. By amending § 86.079-26 to read as follows:

§ 86.079-26 Mileage and service accumulation; emission measurements.

• • • • •

(b) • • •

(11) • • •

(ii) The test procedure (subparts D or H of this part for gasoline-fueled engines, and subparts I and D or I and J of this part for diesel engines) will be followed by the Administrator. The Administrator will test the engines at each test point. Maintenance may be performed by the manufacturer under such conditions as the Administrator may prescribe.

• • • • •

4. By revising § 86.080-26 to read as follows:

§ 86.080-26 Mileage and service accumulation; emission measurements.

(a) (1) Paragraph (a) of this section applies to light-duty vehicles and light-duty trucks.

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(2) The procedure for mileage accumulation will be the durability driving schedule as specified in appendix IV to this part. A modified procedure may also be used if approved in advance by the Administrator. Except with the advance approval of the Administrator, all vehicles will accumulate mileage at a measured curb weight which is within 100 pounds of the estimated curb weight. If the loaded vehicle weight is within 100 pounds of being included in the next higher inertia weight class as specified in § 86.129, the manufacturer may elect to conduct the respective emission tests at the test weight corresponding to the higher loaded vehicle weight.

(3) *Emission-data vehicles.* Unless as otherwise provided for in § 86.079-23(a), emission-data vehicles shall be operated and tested as follows:

(i) *Gasoline-fueled.* (A) Each gasoline-fueled emission-data vehicle shall be driven 4,000 miles with all emission control systems installed and operating. Complete exhaust emission tests shall be conducted at zero and 4,000 miles on those vehicles selected under § 86.080-24 (b)(1)(ii) through (b)(1)(v). Complete exhaust and evaporative emission tests shall be conducted at zero miles and 4,000 miles on those vehicles selected under § 86.080-24(b)(1)(vii). The manufacturer may at his option test the vehicles selected under § 86.080-24(b)(1)(vii) up to three times at the 4,000-mile test point as long as the ±250-mile test tolerance is adhered to. The administrator may determine under § 86.080-24(f) that no testing is required.

(B) The emission-data vehicle(s) selected for testing under § 86.080-24 (b)(1)(v) or (b)(1)(vii)(D) shall be driven 6,436 kilometers (4,000 miles) at any altitude. Emission tests shall be conducted at zero kilometers (zero miles) at any altitude and 6,436 kilometers (4,000 miles) under high-altitude conditions.

(C) The emission-data vehicle(s) selected for testing under § 86.080-24 (b)(1)(v) or (b)(1)(vii)(D) and permitted to be tested for purposes of § 86.079-23(c)(1)(ii) under the provisions of § 86.080-24(b)(1)(vi) shall be driven 6,436 kilometers (4,000 miles) at low altitude. Emission tests shall be conducted at zero kilometers (zero miles) at low altitude and 6,436 kilometers (4,000 miles) under both low- and high-altitude conditions. For the purposes of this subparagraph, "low altitude" means any elevation less than 549 meters (1,800 feet).

(ii) *Diesel.* (A) Each diesel emission-data vehicle shall be driven 6,436 kilometers (4,000 miles) with all emission control systems installed and operating. Emission tests shall be conducted at zero kilometers (zero miles) and 6,436 kilometers (4,000 miles).

(B) The emission-data vehicle(s) selected for testing under § 86.080-24(b)(1)(v) shall be driven 6,436 kilometers (4,000 miles) at any altitude. Emission tests shall be conducted at zero kilometers (zero miles) at any altitude and 6,436 kilometers (4,000 miles) under high-altitude conditions.

(C) The emission-data vehicle(s) selected for testing under § 86.080-24(b)(1)(v) and permitted to be tested for purposes of § 86.079-23(c)(1)(ii) under the provisions of § 86.080-24(b)(1)(vi) shall be driven 6,436 kilometers (4,000 miles) at low altitude. Emission tests shall be conducted at zero kilometers (zero miles) at low altitude and 6,436 kilometers (4,000 miles) under both low- and high-altitude conditions. For the purpose of this subparagraph "low altitude" means any elevation less than 549 meters (1,800 feet).

(4) *Durability-data vehicles.* Unless as otherwise provided for in § 86.079-23(a), durability-data vehicles shall be operated and tested as follows:

(i) *Gasoline-fueled.* Each gasoline-fueled durability-data vehicle selected by the Administrator or elected by the manufacturer under § 86.080-24(c)(1) shall be driven, with all emission control systems installed and operating, for 50,000 miles or such lesser distance as the Administrator may agree to as meeting the objective of this procedure. Complete exhaust emission tests shall be made on all durability-data vehicles selected by the Administrator or elected by the manufacturer under § 86.080-24(c) at the following mileage points: 0; 5,000; 10,000; 15,000; 20,000; 25,000; 30,000; 35,000; 40,000; 45,000; 50,000. The Administrator may determine under § 86.080-24(f) that no testing is required.

(ii) *Diesel.* Each diesel durability-data vehicle shall be driven, with all emission control systems installed and operating, for 50,000 miles or such lesser distance as the Administrator may agree to as meeting the objectives of the procedure. Complete emission tests (see §§ 86.106 through 86.145) shall be made at the following mileage points: 0; 5,000; 10,000; 15,000; 20,000; 25,000; 30,000; 35,000; 40,000; 45,000; 50,000.

(5) All tests required by this subpart to be conducted after every 5,000 miles of driving for durability-data vehicles and 4,000 miles for emission-data vehicles must be conducted at any accumulated mileage within 250 miles of each of those test points.

(6)(i) The results of each emission test shall be supplied to the Administrator immediately after the test. The manufacturer shall furnish to the Administrator explanation for voiding any test. The Administrator will determine if voiding the test was appropriate based upon the explanation given by the manufacturer for the voided test. If a manufacturer conducts multiple tests at any test point at which the data are intended to be used in the calculation of the deterioration factor, the number of tests must be the same at each point and may not exceed three valid tests. Tests between test points may be conducted as required by the Administrator. Data from all tests (including voided tests) shall be air posted to the Administrator within 24 hours (or delivered within 3 working days). In addition, all test data shall be compiled and provided to the Administrator in accordance with § 86.079-23. Where the Administrator conducts a test on a durability-data vehicle at a prescribed test point, the results of that test will be used in the calculation of the deterioration factor.

(ii) The results of all emission tests shall be rounded, using the "rounding off method" specified in ASTM E29-67, to the number of places to the right of the decimal point indicated by expressing the applicable emission standards of this subpart to three significant figures.

(7) Whenever the manufacturer proposes to operate and test a vehicle which may be used for emission or durability data, he shall provide the zero-mile test data to the Administrator (except for those vehicles for which the zero-mile test requirement has been waived under § 86.079-23(a)(2)) and make the vehicle available for such testing under § 86.079-29 as the Administrator may require before beginning to accumulate mileage on the vehicle. Failure to comply with this requirement will invalidate all test data submitted for this vehicle.

(8) Once a manufacturer begins to operate an emission-data or durability-data vehicle, as indicated by compliance with paragraph (a)(7) of this section, he shall continue to run the vehicle to 4,000 miles or 50,000 miles, respectively, and the data from the vehicle will be used in the calculations under § 86.079-28. Discontinuation of a vehicle shall be allowed only with the written consent of the Administrator.

(9) (i) The Administrator may elect to operate and test any test vehicle during all or any part of the mileage accumulation and testing procedure. In such cases, the manufacturer shall provide the vehicle(s) to the Administrator with all information necessary to conduct this testing.

(ii) The test procedures in §§ 86.106 through 86.145 will be followed by the Administrator. The Administrator will test the vehicles at each test point. Maintenance may be performed by the manufacturer under such conditions as the Administrator may prescribe.

(iii) The data developed by the Administrator for the engine-system combination shall be combined with any applicable data supplied by the manufacturer on other vehicles of that combination to determine the applicable deterioration factors for the combination. In the case of a significant discrepancy between data developed by the Administrator and that submitted by the manufacturer, the Administrator's data shall be used in the determination of deterioration factors.

(10) Emission testing of any type with respect to any certification vehicle other than that specified in this part is not allowed except as such testing may be specifically authorized by the Administrator.

(11) This section does not apply to testing conducted to meet the requirements of § 86.079-23(b)(2).

(b)(1) Paragraph (b) of this section applies to heavy-duty engines.

(2)(i) For gasoline-fueled engines, the dynamometer service accumulation schedule will consist of several operating conditions which give the percent loads and the modes as specified in the following chart. The percentage of time in each mode must be held within the limits specified. The maximum observed torque for each mode in the service accumulation cycle must be determined at the rpm at which the mode is being conducted. The percent load for that mode will be determined from the maximum torque at the rpm at which the mode is being conducted.

Mode	Observed torque (percentage of maximum observed)	Percentage of time
Idle	Idle	23 (22 to 24).
CT	CT	14 (13 to 15).
PTD	10	6 (5 to 7).
Cruise	25	31 (30 to 32).
PTA	55	15 (14 to 16).
FL	90	11 (10 to 12).

(ii) The equivalent control parameter for engine loading will be manifold vacuum, manifold pressure, or torque. Usage of one of the three parameters will require approval in advance by the Administrator. The control parameter values that correspond to the appropriate percent loads as specified in the emission test cycle will be initially determined at the zero-hour point or after an appropriate break-in procedure. The control parameter values determined initially will be used for the entire service accumulation schedule. If at any time during the service accumulation, the 90 percent torque value cannot be attained, the engine shall be operated at wide-open throttle.

(iii) The average speed shall be between 1,650 and 1,700 rpm. Subject to the requirements as to average speed, there must be operation at speeds in excess of 3,200 rpm (but not in excess of governed speed for governed engines or rated speed for nongoverned engines) for a cumulative maximum of 0.5 percent of the actual cycle time, excluding time in transient conditions. Maximum cycle time shall be 15 minutes. A cycle approved in advance by the Administrator shall be used.

(3)(i) For diesel engines, the following criteria must be met before service accumulation can begin. Failure to comply with these requirements shall invalidate all test data submitted for an engine.

(A) Each engine shall produce at least 95 percent of the maximum horsepower, corrected to rating conditions, at 95 to 100 percent of the rated speed.

(B) The fuel rate at maximum horsepower shall be within manufacturer's specifications.

(ii) During service accumulation, hours can be credited toward the required service accumulation hours when the following criteria are met. If these criteria cannot be met, engine operation shall be discontinued and the Administrator shall be notified immediately. (Adjustments to the fuel rate can be approved under the provisions of § 86.079-25.)

(A) Each engine shall produce at least 95 percent of the maximum horsepower, at 95 to 100 percent of the rated speed, observed at the zero-hour point. Horsepower values shall be corrected to the rating conditions.

(B) The engine shall be operated at 75 percent of the inlet and exhaust restrictions specified in § 86.879-3 except that the tolerance will be ±3 inches of water and ±0.5 inch of Hg respectively.

(C) During each emission test the inlet and exhaust restrictions shall be as specified in § 86.879-8.

(4) If a break-in procedure is used, the procedure must be the same as recommended to the ultimate purchaser. Prior approval by the Administrator is required for use of any break-in procedure. The hours accumulated during the break-in procedure will not be counted as part of the service accumulation.

(5) Emission-data engines: Each emission-data engine shall be operated for 125 hours with all emission control systems installed and operating. An emission test shall be conducted at 125 hours. A zero-hour emission may be performed after the engine has been approved by the Administrator to begin service accumulation. Evaporative emission controls need not be connected provided normal operating conditions are maintained in the engine induction system.

(6) Durability-data engines: Each gasoline-fueled durability-data engine shall be operated, with all emission control systems installed and operating, for 1,500 hours. Each diesel durability-data engine shall be operated for 1,000 hours. Emission measurement, as prescribed, shall be made at 125-hour intervals beginning at 125 hours of operation. A zero-hour emission test may be performed after the engine has been approved by the Administrator to begin service accumulation. Evaporative emission controls need not be connected provided normal operating conditions are maintained in the engine induction system.

(7) All tests required by this subpart to be conducted after 125 hours of operation or at any multiple of 125 hours may be conducted at any accumulated number of hours within 8 hours of 125 hours or the appropriate multiple of 125 hours respectively.

(8) (i) Data from all emission tests (including voided tests) shall be air posted to the Administrator within 72 hours (or delivered within 5 working days). The manufacturer shall furnish to the Administrator an explanation for voiding any test. The Administrator will determine if voiding the test was appropriate based upon the explanation given by the manufacturer for the voided test. If a manufacturer conducts multiple tests at any test point at which the data are intended to be used in the calculation of the deterioration factor, the number of tests

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must be the same at each point and may not exceed 3 valid tests. Tests between test points may be conducted as required by the Administrator. In addition, all test data shall be compiled and provided to the Administrator in accordance with § 86.079-23. Where the Administrator conducts a test on a durability-data engine at a prescribed test point, the results of that test will be used in the calculation of the deterioration factor.

(ii) The results of all emission tests shall be recorded and reported to the Administrator using two places to the right of the decimal point. These numbers shall be rounded in accordance with the "Rounding Off Method" specified in ASTM E 29-67.

(9) Whenever the manufacturer proposes to operate and test an engine which may be used for emission or durability data, he shall provide such information concerning components used on the engine as the Administrator may require and make the engine available for such testing under § 86.079-29 as the Administrator may require, before beginning to accumulate hours on the engine. Failure to comply with this requirement will invalidate all test data later submitted for this engine.

(10) Once a manufacturer begins to operate an emission-data or durability-data engine, as indicated by compliance with paragraph (b)(9) of this section, he shall continue to run any emission-data engine to 125 hours, any gasoline-fueled durability-data engine to 1,500 hours, and any diesel durability-data engine to 1,000 hours. The data from the engine will be used in the calculations under § 86.345. Discontinuation of an engine shall be allowed only with the prior written consent of the Administrator.

(11)(i) The Administrator may elect to operate and test any test engine during all or any part of the service accumulation and testing procedure. In such cases the manufacturer shall provide the engine(s) to the Administrator with all information necessary to conduct the testing.

(ii) The test procedures (Subpart D of this part for gasoline-fueled engines, and Subparts D and I of this part for diesel engines) will be followed by the Administrator. The Administrator will test the engines at each test point. Maintenance may be performed by the manufacturer under such conditions as the Administrator may prescribe.

(iii) The data developed by the Administrator for the engine-system combination shall be combined with any applicable data supplied by the manufacturer on other engines of that combination to determine the applicable deterioration factors for the combination. In the case of a significant discrepancy between data developed by the Administrator and that submitted by the manufacturer, the Administrator's data shall be used in the determination of deterioration factors.

(12) Emission testing of any type with respect to any certification engine other than that specified in this subpart is not allowed except as such testing may be specifically authorized by the Administrator.

. . . . . .

5. By amending Section 86.079-35 to read as follows:

§ 86.079-35 Labeling.

. . . . . .

(f) The manufacturer of any incomplete vehicle shall notify the purchaser of such vehicle of any curb weight, frontal area, or gross vehicle weight rating limitations affecting the emissions certificate applicable to that vehicle. This notification shall be transmitted in a manner consistent with National Highway Traffic Safety Administration safety notification requirements published in 49 CFR part 568.

. . . . . .

6. By amending § 86.078-36 to read as follows:

§ 86.078-36 Submission of vehicle identification numbers.

(a) Upon request of the Administrator, the manufacturer of any light-duty vehicle or light-duty truck covered by a certificate of conformity shall, within 30 days, identify by vehicle identification number, the vehicle(s) covered by the certificate of conformity.

(b) The manufacturer of any light-duty vehicle or light-duty truck covered by a certificate of conformity shall provide to the Administrator, within 60 days of the issuance of a certificate of conformity, an explanation of the elements in any vehicle identification coding system in sufficient detail to enable the Administrator to identify those vehicles which are covered by a certificate of conformity.

. . . . . .

7. By amending § 86.079-36 to read as follows:

§ 86.079-36 Submission of vehicle identification numbers.

(a) Upon request of the Administrator, the manufacturer of any light-duty vehicle or light-duty truck covered by a certificate of conformity shall, within 30 days, identify by vehicle identification number, the vehicle(s) covered by the certificate of conformity.

(b) The manufacturer of any light-duty vehicle or light-duty truck covered by a certificate of conformity shall provide to the Administrator, within 60 days of the issuance of a certificate of conformity, an explanation of the elements in any vehicle identification number coding system in sufficient detail to enable the Administrator to identify those vehicles which are covered by a certificate of conformity.

. . . . . .

8. By amending § 86.113-79 to read as follows:

§ 86.113-79 Fuel specifications.

(a) • • •

(3) The specification range of the gasoline to be used under paragraph (a)(2) of this section shall be reported in accordance with § 86.079-21(b)(3).

. . . . . .

9. By amending § 86.114-79 to read as follows:

§ 86.114-79 Analytical gases.

(a) • • •

(7) The use of proportioning and precision blending devices to obtain the required analyzer gas concentration is allowable provided their use has been approved in advance by the Administrator.

. . . . . .

10. By amending § 86.115-78 to read as follows:

§ 86.115-78 EPA urban dynamometer driving schedule.

. . . . . .

(b)(1) The dynamometer driving schedule is prescribed in appendix I. The speed tolerance at any given time for this schedule, or for a driver's aid chart approved by the Administrator, when conducted to meet the provisions of § 86.137 are:

(i) The upper limit is 2 mph (3.2 km/h) higher than the highest point on the trace within 1 second of the given time.

(ii) The lower limit is 2 mph (3.2 km/h) lower than the lowest point on the trace within 1 second of the given time.

(iii) Speed variations greater than the tolerances (such as may occur during gear changes) are acceptable provided they occur for less than 2 seconds on any occasion.

(iv) Speeds lower than those prescribed are acceptable provided the vehicle is operated at maximum available power during such occurrences.

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(v) When conducted to meet the requirements of § 86.132, the speed tolerance shall be as specified above, except the upper and lower limits shall be 4 mph (6.4 km/h).

. . . . . .

11. By adding a new § 86.128-79 to read as follows:

§ 86.128-79 Transmissions.

(a) All test conditions, except as noted, shall be run according to the manufacturer's recommendations to the ultimate purchaser, Provided that: Such recommendations are representative of what may reasonably be expected to be followed by the ultimate purchaser under in-use conditions.

(b) Vehicles equipped with free wheeling or overdrive, except as noted, shall be tested with these features operated according to the manufacturer's recommendations to the ultimate purchaser.

(c) Idle modes shall be run with automatic transmission in "Drive" and the wheels braked; manual transmissions shall be in gear with the clutch disengaged, except first idle (see §§ 86.136 and 137).

(d) The vehicle shall be driven with minimum accelerator pedal movement to maintain the desired speed.

(e) Accelerations shall be driven smoothly following representative shift speeds and procedures. For manual transmissions, the operator shall release the accelerator pedal during each shift and accomplish the shift with minimum time. If the vehicle cannot accelerate at the specified rate, the vehicle shall be operated at maximum available power until the vehicle speed reaches the value prescribed for that time in the driving schedule.

(f) The deceleration modes shall be run in gear using brakes or accelerator pedal as necessary to maintain the desired speed. Manual transmission vehicles shall have the clutch engaged and shall not change gears from the previous mode. For those modes which decelerate to zero, manual transmission clutches shall be depressed when the speed drops below 15 mph (24.1 km/h), when engine roughness is evident, or when engine stalling is imminent.

(g)(1) In the case of test vehicles equipped with manual transmissions, the transmission shall be shifted in accordance with procedures which are representative of shift patterns that may reasonably be expected to be followed by vehicles in use, in terms of such variables as vehicle speed or percent rated engine speed. At the Administrator's discretion, a test vehicle may also be shifted according to the shift procedures recommended by the manufacturer to the ultimate purchaser, if such procedures differ from those which are reasonably expected to be followed by vehicles in use.

(2) A manufacturer may recommend to the ultimate purchaser shift procedures other than those used in testing by the EPA, Provided that: All shift procedures (including multiple shift speeds) which the manufacturer proposes to supply to the ultimate purchaser are provided to the Administrator as part of the manufacturer's application for certification, or as an amendment to such application, under §§ 86.079-32, -33, or -34.

(h) Downshifting is allowed at the beginning of or during a power mode in accordance with the shift procedure determined in paragraph (g)(1) above.

12. By amending § 86.129-79 to read as follows:

§ 86.129-79 Road load power, test weight and inertia weight determination.

. . . . . .

(b) • • •

(3) Where it is expected that more than 33 percent of an engine family will be equipped with air conditioning per § 86.079-24(g)(2), the road load power listed above or as determined in paragraph (b)(2) of this section shall be increased by 10 percent, up to a maximum increase of 1.4 horsepower, for testing all test vehicles representing that car line within that engine-system combination if those vehicles are intended to be offered with air conditioning in production. The above increase for air conditioning shall be added prior to rounding off as instructed by notes 2 and 3 of the table.

. . . . . .

(c) • • •

(4) Where it is expected that more than 33 percent of an engine family will be equipped with air conditioning, per § 86.079-24(g)(2), the road load power as determined in paragraph (c)(2) or (3) of this section shall be increased by 10 percent, up to a maximum increment of 1.4 horsepower, for testing all test vehicles of that engine family if those vehicles are intended to be offered with air conditioning in production. This power increment shall be added to the indicated dynamometer power absorption setting prior to rounding off of this value.

13. By amending § 86.129-8 to read as follows:

. . . . . .

§ 86.129-80 Road load power, test weight and inertia weight class determination.

. . . . . .

(b) • • •

(3) Where it is expected that more than 33 percent of a car line within an engine-system combination will be equipped with air conditioning per § 86.080-24(g)(2), the road load power listed above or as determined in paragraph (b)(2) of this section shall be increased by 10 percent, up to a maximum increase of 1.4 horsepower, for testing all test vehicles representing that car line within that engine-system combination if those vehicles are intended to be offered with air conditioning in production. The above increase for air conditioning shall be added prior to rounding off as instructed by notes 2 and 3 of the table.

. . . . . .

(c) • • •

(4) Where it is expected that more than 33 percent of a car line within an engine-system combination will be equipped with air conditioning, per § 86.080-24(g)(2), the road load power as determined in paragraph (c)(2) or (3) of this section shall be increased by 10 percent up to a maximum increment of 1.4 horsepower, for testing all test vehicles of that car line within that engine-system combination if those vehicles are intended to be offered with air conditioning in production. This power increment shall be added to the indicated dynamometer power absorption setting prior to rounding off this value.

14. By amending § 86.130-78 to read as follows:

§ 86.130-78 Test sequence; general requirements.

The test sequence shown in figure B78-10 shows the steps encountered as the test vehicle undergoes the procedures subsequently described to determine conformity with the standards set forth. Ambient temperature levels encountered by the test vehicle shall not be less than 68° F (20° C) nor more than 86° F (30° C). The temperatures monitored during testing must be representative of those experienced by the test vehicle. The vehicle shall be approximately level during all phases of the test sequence to prevent abnormal fuel distribution.

15. By amending § 86.136-78 to read as follows:

§ 86.136-78 Engine starting and restarting.

. . . . . .

(c) • • •

(1) If a failure to start occurs during the cold portion of the test and is caused by a vehicle malfunction corrective action of less than 30 minutes duration may be taken (according to § 86.078-25), and the test continued. The sampling system shall be reactivated at the same time cranking

begins. When the engine starts, the driving schedule timing sequence shall begin. If failure to start is caused by vehicle malfunction and the vehicle cannot be started, the test shall be voided. The vehicle removed from the dynamometer, and corrective action may be taken according to § 86.078-25. The reasons for the malfunction (if determined) and the corrective action taken shall be reported.

(2) If a failure to start occurs during the hot start portion of the test and is caused by vehicle malfunction, the vehicle must be started within 1 minute of key on. The sampling system shall be reactivateted at the same time cranking begins. When the engine starts, the driving schedule timing sequence shall begin. If the vehicle cannot be started within 1 minute of key on, the test shall be voided, the vehicle removed from the dynamometer, corrective action taken, (according to § 86.078-25), and the vehicle rescheduled for testing. The reason for the malfunction (if determined) and the corrective action taken shall be reported.

. . . . . .

16. By amending § 86.140-78 to read as follows:

§ 86.140-78 Exhaust sample analysis.

The following sequence of operations shall be performed in conjunction with each series of measurements. The analyzer shall be "zeroed" and "spanned" for each range which is to be used for sample analysis.

. . . . . .

(b) Introduce the span gases and set instrument gains. In order to avoid corrections, span and calibrate at the same flow rates used to analyze the test sample. Span gases shall have concentrations of at least 70 percent of full scale. If gain has shifted significantly on the analyzers, check the calibrations. Show actual concentrations on the chart.

. . . . . .

(e) Measure HC, CO, CO_2, and NO_x concentrations of samples. Select an analyzer range such that the analyzer response is within 20 percent to 100 percent of full scale except when using the most sensitive analyzer range.

. . . . . .

17. By amending § 86.144-78(c) (1) and (4) to read as follows:

§ 86.144-78 Calculation; exhaust emissions.

. . . . . .

(c) Meaning of symbols:

(1) HC_{mass} = Hydrocarbon emissions, in grams per test phase.

$Density_{HC}$ = Density of hydrocarbons is 16.33 g/ft³ (0.5768 kg/m³), assuming an average carbon to hydrogen ratio of 1:1.85, at 68° F (20° C) and 760 mm Hg (101.3 kPa) pressure.

HC_{conc} = Hydrocarbon concentration of the dilute exhaust sample corrected for background, in ppm carbon equivalent, i.e., equivalent propane × 3.

$HC_{conc} = HC_e - HC_d(1-1/DF)$

Where:

HC_e = Hydrocarbon concentration of the dilute exhaust sample or, for Diesel, average hydrocarbon concentration of the dilute exhaust sample as calculated from the integrated HC traces, in ppm carbon equivalent.

HC_d = Hydrocarbon concentration of the dilution air as measured, in ppm carbon equivalent.

. . . . . .

(4) CO_{2mass} = Carbon dioxide emissions, in grams per test phase.

$Density CO_2$ = Density of carbon dioxide is 51.81 g/ft³ (1.830 kg/m³), at 68° F (20° C) and 760 mm Hg (101.3 kPa) pressure.

CO_{2conc} = Carbon dioxide concentrations of the dilute exhaust sample corrected for background, in percent.

$CO_{2conc} = CO_{2e} - CO_{2d}(1-1/DF)$

Where:

CO_{2d} = Carbon dioxide concentration of the dilution air as measured, in percent.

. . . . . .

18. By amending § 86.312-79(c)(i), (iii) and (iv) to read as follows:

§ 86.312-79 Dynamometer and engine equipment specifications.

. . . . . .

(c) • • •

(1) • • •

(i) A chassis-type exhaust system including muffler(s) shall be used. The exhaust system must have a single tail pipe. For engines designed for a dual exhaust system, a standard or specially fabricated "Y" pipe may be used. The "Y" pipe may be located upstream of a single muffler or downstream of a single muffler or downstream of dual mufflers. The potential increase in backpressure due to the use of a single tail pipe instead of dual pipes may be compensated for by using larger than standard exhaust system components downstream of the "Y" pipe. For systems with the "Y" pipe upstream of the muffler, the backpressure at the exhaust manifold exit with the single exhaust system must be comparable to the standard dual exhaust system under the test conditions specified in § 86.335.

. . . . . .

(iii) For catalyst systems, the probe shall be located in the single exhaust pipe and from 2 to 10 feet downstream of the catalyst(s) and at least 2 feet downstream of the "Y" intersection of any "Y" pipe (if used).

(iv) For noncatalyst systems, the probe shall be located in the single exhaust pipe downstream of the muffler(s) and from 3 to 20 feet downstream from the exhaust manifold flange or turbocharger exit flange. The probe shall also be at least 2 feet downstream of the "Y" intersection of any "Y" pipe (if used).

. . . . . .

19. By amending § 86.437-78(a)(2)(ii) and (b)(3) to read as follows:

§ 86.437-78 Certification.

(a) • • •

(2) • • •

(ii) Such certificate will be issued for such period not to exceed 1 model year as the Administrator may determine and upon such terms as he may deem necessary to assure that any new motorcycle covered by the certificate will meet the requirements of the act and of this subpart. Each such certificate shall contain the following:

This certificate covers only those new motorcycles which conform, in all material respects, to the design specifications that applied to those vehicles described in the application for certification and which are produced during the —— model year production period of the said manufacturer, as defined in 40 CFR § 86.402.

It is a term of this certificate that the manufacturer shall consent to all inspections described in 40 CFR 86.441 which concern either the vehicle certified, or any production vehicle covered by this certificate, or any production vehicle which when completed will be claimed to be covered by this certificate. Failure to comply with all the requirements of § 86.441 with respect to any such vehicle may lead to revocation or suspension of this certificate as specified in 40 CFR 86.442. It is also a term of this certificate that this certificate may be revoked or suspended for the other reasons stated in § 86.442.

. . . . . .

(b) • • •

(3) Such certificate will be issued for such a period not to exceed 1 model year as the Administrator may determine and upon such terms as he may deem necessary to assure that any new motorcycle covered by the certificate will meet the requirement of the Act and of this subpart. Each such certificate shall contain the following language:

This certificate covers new motorcycles, as described in the application for certification and the records required in 40 CFR 86.416, manufactured by —— whose total U.S. sales are less than 10,000 units for the —— model

year production period as defined in 40 CFR 86.402.

It is a term of this certificate that the manufacturer shall consent to all inspections described in 40 CFR 86.441 which concern either the vehicle certified, or any production vehicle covered by this certificate, or any production vehicle which when completed will be claimed to be covered by this certificate. Failure to comply with all the requirements of § 86.441 with respect to any such vehicle may lead to revocation or suspension of this certificate as specified in 40 CFR 86.442. It is also a term of this certificate that this certificate may be revoked or suspended for the other reasons stated in § 86.442. It is also a term of this certificate that no changes which may reasonably be expected to affect emissions shall be made to the vehicles covered by this certificate unless the manufacturer conducts appropriate emission testing to demonstrate that such changes will not cause the test vehicle's emissions to exceed the applicable emission standards as set forth in 40 CFR Part 86.

. . . . . .

20. By amending § 86.544-78(c) to read as follows:

§ 86.544-78 Calculations; exhaust emissions.

. . . . . .

(c) Meaning of symbols:

HCmass = Hydrocarbon emissions, in grams per test phase.

DensityHC = Density of hydrocarbon in the exhaust gas, 0.5768 kg/m³/carbon atom (16.33 g/ft³/carbon atom), assuming an average carbon to hydrogen ratio of 1:1.85, at 20° C (68° F) and 101.325 kPa (760 mm Hg) pressure.

HCconc = Hydrocarbon concentration of the dilute exhaust sample corrected for background, in ppm carbon equivalent, i.e., equivalent propane X3.

HCconc = HCe-HCd (1-1/DF).

Where:

HCe = Hydrocarbon concentrations of the dilute exhaust sample as measured, in ppm carbon equivalent. (propane ppm x 3.)

HCd = Hydrocarbon concentration of the dilution air as measured, in ppm carbon equivalent. (Propane ppm x 3.)

NOxmass = Oxides of nitrogen emissions, in grams per test phase.

Density NO2 = Density of oxides of nitrogen in the exhaust gas, assuming they are in the form of nitrogen dioxide, 1,913 kg/m³ (54.16 g/ft³), at 20° C (68° F) and 101.325 kPa (760 mm Hg) pressure.

NOxconc = Oxides of nitrogen concentration of the dilute exhaust sample corrected for background, in ppm.

NOxconc = NOxe-NOxd (1-1/DF).

Where:

NOxe = Oxides of nitrogen concentration of the dilute exhaust sample as measured, in ppm.

NOxd = Oxides of nitrogen concentration of the dilution air as measured, in ppm.

COmass = Carbon monoxide emissions, in grams per test phase.

Density CO = Density of carbon monoxide, 1.164 kg/m³ (32.97 g/ft³), at 20° C (68° F) and 101.325 kPa (760 mm Hg) pressure.

COconc = Carbon monoxide concentration of the dilute exhaust sample corrected for background, water vapor, and CO_2 extraction, ppm.

COconc = COe-COd (1-1/DF).

Where:

COe = Carbon monoxide concentration of the dilute exhaust sample volume corrected for water vapor and carbon dioxide extraction, in ppm. The calculation assumes the carbon to hydrogen ratio of the fuel is 1:1.85.

$COe = (1-0.01925CO2e-0.000323R)\ COem.$

Where:

COem = Carbon monoxide concentration of the dilute exhaust sample as measured, in ppm.

CO2e = Carbon dioxide concentration of the dilute exhaust sample, in mole percent.

R = Relative humidity of the dilution air, in percent (see § 86.542.78(n)).

COd = Carbon monoxide concentration of the dilution air corrected for water vapor extraction, in ppm.

$COd = (1-0.000323R)\ COdm.$

Where:

COdm = Carbon monoxide concentration of the dilution air sample as measured, in ppm.

NOTE.—If a CO instrument, which meets the criteria specified in § 86.511 is used and the conditioning column has been deleted, COem can be substituted directly for COd.

CO2mass = Carbon dioxide emissions, in grams per test phase.

Density CO2 = Density of carbon dioxide, 1.830 kg/m³ (51,81 g/ft³), at 20° C (68° F) and 101.325 kPa (760 mmHg) pressure.

CO2conc = carbon dioxide concentration of the dilute exhaust sample corected for background, in percent.

$CO2conc = CO2e-CO2d\ (1-1/DF)\ 10^{-4}$.

Where:

CO2d = Carbon dioxide concentration of the dilution air as measured, in ppm.

$DF = 13.4/[(CO_{2e}+(HC_e+CO_e)10^{-4}]$.

Vmix = Total dilute exhaust volume in cubic metres per test phase corrected to standard conditions (293.15° K (528° R) and 101.325 kPa (760 mm Hg)).

Vmix = VoXN [(Pb-Pi) (293.15° K)]/[(101.325 kPa) (Tp)].

Where:

Vo = Volume of gas pumped by the positive displacement pump, in cubic metres per revolution. This volume is dependent on the pressure differential across the positive displacement pump. (See calibration techniques in 86.519-78.)

N = Number of revolutions of the positive displacement pump during the test phase while samples are being collected.

Pb = Barometric pressure in kPa.

Pi = Pressure depression below atmospheric measured at the inlet to the positive displacement pump.

Tp = Average temperature of dulute exhaust entering positive displacement pump during test while samples are being collected, in degrees Kelvin.

Kh = Humidity correction factor.

Kh = 1/[1-1-0.0329 (H-10.71)].

Where:

H = Absolute humidity in grams of water per kilogram of dry air.

H = [(6.211) Ra X Pd]/[Pb-(Pd X Ra/100)].

Ra = Relative humidity of the ambient air, in percent.

Pd = Saturated vapor pressure, in kPa at the ambient dry bulb temperature.

. . . . . .

21. By amending appendix I to read as follows:

V 4 3 / 2 2 0 N 0 1 4 7 8 UMI

APPENDIX I

EPA URBAN DYNAMOMETER DRIVING SCHEDULE
(Speed versus Time Sequence)

Time (sec.)	Speed (m.p.h.)	Time (sec.)	Speed (m.p.h.)	Time (sec.)	Speed (m.p.h.)	Time (sec.)	Speed (m.p.h.)
0	0.0						
1	0.0	51	21.3	101	30.7	151	0.0
2	0.0	52	19.0	102	30.9	152	0.0
3	0.0	53	17.1	103	31.0	153	0.0
4	0.0	54	15.8	104	30.9	154	0.0
5	0.0	55	15.8	105	30.4	155	0.0
6	0.0	56	17.7	106	29.8	156	0.0
7	0.0	57	19.8	107	29.9	157	0.0
8	0.0	58	21.6	108	30.2	158	0.0
9	0.0	59	23.2	109	30.7	159	0.0
10	0.0	60	24.2	110	31.2	160	0.0
11	0.0	61	24.6	111	31.8	161	0.0
12	0.0	62	24.9	112	32.2	162	0.0
13	0.0	63	25.0	113	32.4	163	0.0
14	0.0	64	24.6	114	32.2	164	3.3
15	0.0	65	24.5	115	31.7	165	6.6
16	0.0	66	24.7	116	28.6	166	9.9
17	0.0	67	24.8	117	25.3	167	13.2
18	0.0	68	24.7	118	22.0	168	16.5
19	0.0	69	24.6	119	18.7	169	19.8
20	0.0	70	24.6	120	15.4	170	22.2
21	3.0	71	25.1	121	12.1	171	24.3
22	5.9	72	25.6	122	8.8	172	25.8
23	8.6	73	25.7	123	5.5	173	26.4
24	11.5	74	25.4	124	2.2	174	25.7
25	14.3	75	24.9	125	0.0	175	25.1
26	16.9	76	25.0	126	0.0	176	24.7
27	17.3	77	25.4	127	0.0	177	25.0
28	18.1	78	24.0	128	0.0	178	25.2
29	20.7	79	24.0	129	0.0	179	25.4
30	21.7	80	25.7	130	0.0	180	25.8
31	22.4	81	26.1	131	0.0	181	27.2
32	22.5	82	26.7	132	0.0	182	26.5
33	22.1	83	27.5	133	0.0	183	24.0
34	21.5	84	28.6	134	0.0	184	22.7
35	20.9	85	29.3	135	0.0	185	19.4
36	20.4	86	29.8	136	0.0	186	17.7
37	19.8	87	30.1	137	0.0	187	17.2
38	17.0	88	30.4	138	0.0	188	18.1
39	14.9	89	30.7	139	0.0	189	18.6
40	14.9	90	30.7	140	0.0	190	20.0
41	15.2	91	30.5	141	0.0	191	22.2
42	15.5	92	30.4	142	0.0	192	24.5
43	16.0	93	30.3	143	0.0	193	27.3
44	17.1	94	30.4	144	0.0	194	30.5
45	19.1	95	30.8	145	0.0	195	33.5
46	21.1	96	30.4	146	0.0	196	36.2
47	22.7	97	29.9	147	0.0	197	37.1
48	22.9	98	29.5	148	0.0	198	39.1
49	22.7	99	29.8	149	0.0	199	40.5
50	22.6	100	30.3	150	0.0	200	42.1

APPENDIX I—Continued

EPA URBAN DYNAMOMETER DRIVING SCHEDULE
(Speed versus Time Sequence)

Time (sec.)	Speed (m.p.h.)	Time (sec.)	Speed (m.p.h.)	Time (sec.)	Speed (m.p.h.)	Time (sec.)	Speed (m.p.h.)
201	43.5	251	55.1	301	48.6	351	14.2
202	45.1	252	54.6	302	48.1	352	17.3
203	46.0	253	54.2	303	47.2	353	20.0
204	46.8	254	54.0	304	46.1	354	22.5
205	47.5	255	53.7	305	45.0	355	23.7
206	47.5	256	53.6	306	43.8	356	25.2
207	47.3	257	53.9	307	42.6	357	26.6
208	47.2	258	54.0	308	41.5	358	28.1
209	47.0	259	54.1	309	40.3	359	30.0
210	47.0	260	54.1	310	38.5	360	30.8
211	47.0	261	53.8	311	37.0	361	31.6
212	47.0	262	53.4	312	35.2	362	32.1
213	47.0	263	53.0	313	33.8	363	32.8
214	47.2	264	52.6	314	32.5	364	33.5
215	47.4	265	52.1	315	31.5	365	34.5
216	47.9	266	52.4	316	30.6	366	34.6
217	48.5	267	52.0	317	30.5	367	34.9
218	49.1	268	51.9	318	30.0	368	34.8
219	49.5	269	51.7	319	29.0	369	34.5
220	50.0	270	51.5	320	27.5	370	34.7
221	50.6	271	51.6	321	24.8	371	35.5
222	51.0	272	51.8	322	21.5	372	36.0
223	51.5	273	52.1	323	20.1	373	36.0
224	52.2	274	52.5	324	19.1	374	36.0
225	53.2	275	53.0	325	18.5	375	36.0
226	54.1	276	53.5	326	17.0	376	36.0
227	54.6	277	54.0	327	15.5	377	36.0
228	54.9	278	54.9	328	12.5	378	36.1
229	55.0	279	55.4	329	10.8	379	36.4
230	54.9	280	55.6	330	8.0	380	36.5
231	54.6	281	56.0	331	4.7	381	36.4
232	54.6	282	56.0	332	1.4	382	36.0
233	54.8	283	55.8	333	0.0	383	35.1
234	55.1	284	55.2	334	0.0	384	34.1
235	55.5	285	54.5	335	0.0	385	33.5
236	55.7	286	53.6	336	0.0	386	31.4
237	56.1	287	52.5	337	0.0	387	29.0
238	56.3	288	51.5	338	0.0	388	25.7
239	56.6	289	51.5	339	0.0	389	23.0
240	56.7	290	51.5	340	0.0	390	20.3
241	56.7	291	51.1	341	0.0	391	17.4
242	56.5	292	50.1	342	0.0	392	14.5
243	56.5	293	50.0	343	0.0	393	12.0
244	56.5	294	50.1	344	0.0	394	8.7
245	56.5	295	50.0	345	0.0	395	5.4
246	56.5	296	49.6	346	0.0	396	2.1
247	56.5	297	49.5	347	1.0	397	0.0
248	56.4	298	49.5	348	4.3	398	0.0
249	56.1	299	49.5	349	7.6	399	0.0
250	55.8	300	49.1	350	10.9	400	0.0

APPENDIX I—Continued

EPA URBAN DYNAMOMETER DRIVING SCHEDULE
(Speed versus Time Sequence)

Time (sec.)	Speed (m.p.h.)	Time (sec.)	Speed (m.p.h.)	Time (sec.)	Speed (m.p.h.)	Time (sec.)	Speed (m.p.h.)
401	0.0	451	13.2	501	10.3	551	3.3
402	0.0	452	16.5	502	7.2	552	0.0
403	2.6	453	19.8	503	4.0	553	0.0
404	5.9	454	23.1	504	1.0	554	0.0
405	9.2	455	26.4	505	0.0	555	0.0
406	12.5	456	27.8	506	0.0	556	0.0
407	15.8	457	29.1	507	0.0	557	0.0
408	19.1	458	31.5	508	0.0	558	0.0
409	22.4	459	33.0	509	0.0	559	0.0
410	25.0	460	33.6	510	0.0	560	0.0
411	25.6	461	34.8	511	1.2	561	0.0
412	27.5	462	35.1	512	3.5	562	0.0
413	29.0	463	35.6	513	5.5	563	0.0
414	30.0	464	36.1	514	6.5	564	0.0
415	30.1	465	36.0	515	8.5	565	0.0
416	30.0	466	36.1	516	9.6	566	0.0
417	29.7	467	36.2	517	10.5	567	0.0
418	29.3	468	36.0	518	11.9	568	0.0
419	28.8	469	35.7	519	14.0	569	3.3
420	28.0	470	36.0	520	16.0	570	6.6
421	25.0	471	36.0	521	17.7	571	9.9
422	21.7	472	35.6	522	19.0	572	13.0
423	18.4	473	35.5	523	20.1	573	14.6
424	15.1	474	35.4	524	21.0	574	16.0
425	11.8	475	35.2	525	22.0	575	17.0
426	8.5	476	35.2	526	23.0	576	17.0
427	5.2	477	35.2	527	23.8	577	17.0
428	1.9	478	35.2	528	24.5	578	17.5
429	0.0	479	35.2	529	24.9	579	17.7
430	0.0	480	35.2	530	25.0	580	17.7
431	0.0	481	35.0	531	25.0	581	17.5
432	0.0	482	35.1	532	25.0	582	17.0
433	0.0	483	35.2	533	25.0	583	16.9
434	0.0	484	35.5	534	25.0	584	16.6
435	0.0	485	35.2	535	25.0	585	17.0
436	0.0	486	35.0	536	25.6	586	17.1
437	0.0	487	35.0	537	25.8	587	17.0
438	0.0	488	35.0	538	26.0	588	16.6
439	0.0	489	34.8	539	25.6	589	16.5
440	0.0	490	34.6	540	25.2	590	16.5
441	0.0	491	34.5	541	25.0	591	16.6
442	0.0	492	33.5	542	25.0	592	17.0
443	0.0	493	32.0	543	25.0	593	17.6
444	0.0	494	30.1	544	24.4	594	18.5
445	0.0	495	28.0	545	23.1	595	19.2
446	0.0	496	25.5	546	19.8	596	20.2
447	0.0	497	22.5	547	16.5	597	21.0
448	3.3	498	19.8	548	13.2	598	21.1
449	6.6	499	16.5	549	9.9	599	21.2
450	9.9	500	13.2	550	6.6	600	21.4

APPENDIX I—Continued

EPA URBAN DYNAMOMETER DRIVING SCHEDULE
(Speed versus Time Sequence)

Time (sec.)	Speed (m.p.h.)	Time (sec.)	Speed (m.p.h.)	Time (sec.)	Speed (m.p.h.)	Time (sec.)	Speed (m.p.h.)
601	22.0	651	14.0	701	14.6	751	27.5
602	22.4	652	15.3	702	16.4	752	26.0
603	22.5	653	17.5	703	16.7	753	25.5
604	22.5	654	19.6	704	16.5	754	23.5
605	22.5	655	21.0	705	16.5	755	21.5
606	22.7	656	22.2	706	18.2	756	19.0
607	23.7	657	23.3	707	19.2	757	16.5
608	25.1	658	24.5	708	20.1	758	14.9
609	26.0	659	25.3	709	21.5	759	12.5
610	26.5	660	25.6	710	22.5	760	9.4
611	27.0	661	26.0	711	22.5	761	6.2
612	26.1	662	26.1	712	22.1	762	3.0
613	22.8	663	26.2	713	22.7	763	1.5
614	19.5	664	26.2	714	23.3	764	1.5
615	16.2	665	26.4	715	23.5	765	0.5
616	12.9	666	26.5	716	22.5	766	0.0
617	9.6	667	26.5	717	21.6	767	3.0
618	6.3	668	26.0	718	20.5	768	6.3
619	3.0	669	25.5	719	18.0	769	9.6
620	0.0	670	23.6	720	15.0	770	12.9
621	0.0	671	21.4	721	12.0	771	15.8
622	0.0	672	18.5	722	9.0	772	17.5
623	0.0	673	16.4	723	6.2	773	18.4
624	0.0	674	14.5	724	4.5	774	19.5
625	0.0	675	11.6	725	3.0	775	20.7
626	0.0	676	8.7	726	2.1	776	22.0
627	0.0	677	5.8	727	0.5	777	23.2
628	0.0	678	3.5	728	0.5	778	25.0
629	0.0	679	2.0	729	3.2	779	26.5
630	0.0	680	0.0	730	6.5	780	27.5
631	0.0	681	0.0	731	9.6	781	28.0
632	0.0	682	0.0	732	12.5	782	28.3
633	0.0	683	0.0	733	14.0	783	28.9
634	0.0	684	0.0	734	16.0	784	28.9
635	0.0	685	0.0	735	18.0	785	28.9
636	0.0	686	0.0	736	19.6	786	28.8
637	0.0	687	0.0	737	21.5	787	28.5
638	0.0	688	0.0	738	23.1	788	28.3
639	0.0	689	0.0	739	24.5	789	28.1
640	0.0	690	0.0	740	25.5	790	28.3
641	0.0	691	0.0	741	26.5	791	28.2
642	0.0	692	0.0	742	27.1	792	27.6
643	0.0	693	0.0	743	27.6	793	27.5
644	0.0	694	1.4	744	27.9	794	27.5
645	0.0	695	3.3	745	28.3	795	27.5
646	2.0	696	4.4	746	28.5	796	27.5
647	4.5	697	6.5	747	28.6	797	27.5
648	7.8	698	9.2	748	28.3	798	27.5
649	10.2	699	11.3	749	28.2	799	27.6
650	12.5	700	13.5	750	28.0	800	28.0

APPENDIX I—Continued

FPA URBAN DYNAMOMETER DRIVING SCHEDULE
(Speed versus Time Sequence)

Time (sec.)	Speed (m.p.h.)	Time (sec.)	Speed (m.p.h.)	Time (sec.)	Speed (m.p.h.)	Time (sec.)	Speed (m.p.h.)
A01	28.5	A51	26.6	901	26.6	951	16.9
A02	30.0	A52	26.6	902	26.5	952	13.6
A03	31.0	A53	26.8	903	26.5	953	10.1
A04	32.0	A54	27.0	904	26.5	954	7.0
A05	33.0	A55	27.2	905	26.3	955	3.7
A06	33.0	A56	27.8	906	26.2	956	0.4
A07	33.6	A57	28.1	907	26.2	957	0.0
A08	34.0	A58	28.8	908	25.9	958	0.0
A09	34.3	A59	28.9	909	25.6	959	0.0
A10	34.2	A60	29.0	910	25.6	960	2.0
A11	34.0	A61	29.1	911	25.9	961	5.0
A12	34.0	A62	29.0	912	25.8	962	8.6
A13	33.9	A63	28.1	913	25.5	963	11.0
A14	33.6	A64	27.5	914	24.6	964	15.2
A15	33.1	A65	27.0	915	23.5	965	17.5
A16	33.0	A66	26.8	916	22.2	966	18.6
A17	32.5	A67	25.0	917	21.6	967	20.0
A18	32.0	A68	24.5	918	21.6	968	21.1
A19	31.9	A69	24.8	919	21.7	969	22.0
A20	31.6	A70	25.1	920	22.6	970	23.0
A21	31.5	A71	25.5	921	23.4	971	24.5
A22	30.6	A72	25.7	922	24.0	972	26.3
A23	30.0	A73	26.2	923	24.2	973	27.9
A24	29.9	A74	26.9	924	24.4	974	28.1
A25	29.9	A75	27.5	925	24.9	975	28.4
A26	29.9	A76	27.8	926	25.1	976	28.5
A27	29.9	A77	28.4	927	25.2	977	28.5
A28	29.6	A78	29.0	928	25.3	978	28.5
A29	29.5	A79	29.2	929	25.5	979	27.7
A30	29.5	A80	29.1	930	25.2	980	27.5
A31	29.3	A81	29.0	931	25.0	981	27.2
A32	28.9	A82	28.9	932	25.0	982	26.8
A33	28.2	A83	28.5	933	25.0	983	26.5
A34	27.7	A84	28.1	934	24.7	984	26.0
A35	27.0	A85	28.0	935	24.5	985	25.7
A36	25.5	A86	28.0	936	24.3	986	25.2
A37	23.7	A87	27.6	937	24.3	987	24.0
A38	22.0	A88	27.2	938	24.5	988	22.0
A39	20.5	A89	26.6	939	25.0	989	21.5
A40	19.2	A90	27.0	940	25.0	990	21.5
A41	19.2	A91	27.5	941	24.6	991	21.8
A42	20.1	A92	27.8	942	24.6	992	22.5
A43	20.9	A93	28.0	943	24.1	993	23.0
A44	21.4	A94	27.8	944	24.5	994	22.8
A45	22.0	A95	28.0	945	25.1	995	22.8
A46	22.6	A96	28.0	946	25.6	996	23.0
A47	23.2	A97	28.0	947	25.1	997	22.7
A48	24.0	A98	27.7	948	24.0	998	22.7
A49	25.0	A99	27.4	949	22.0	999	22.7
A50	26.0	900	26.9	950	20.1	1000	23.5

APPENDIX I—Continued

FPA URBAN DYNAMOMETER DRIVING SCHEDULE
(Speed versus Time Sequence)

Time (sec.)	Speed (m.p.h.)	Time (sec.)	Speed (m.p.h.)	Time (sec.)	Speed (m.p.h.)	Time (sec.)	Speed (m.p.h.)
1001	24.0	1051	0.0	1101	0.1	1151	4.1
1002	24.6	1052	0.0	1102	0.6	1152	0.8
1003	24.8	1053	1.2	1103	1.6	1153	0.0
1004	25.1	1054	4.0	1104	3.6	1154	0.0
1005	25.5	1055	7.3	1105	6.9	1155	0.0
1006	25.6	1056	10.6	1106	10.0	1156	0.0
1007	25.5	1057	13.9	1107	12.8	1157	0.0
1008	25.0	1058	17.0	1108	14.0	1158	0.0
1009	24.1	1059	18.5	1109	14.5	1159	0.0
1010	23.7	1060	20.0	1110	16.0	1160	0.0
1011	23.2	1061	21.8	1111	18.1	1161	0.0
1012	22.9	1062	23.0	1112	20.0	1162	0.0
1013	22.5	1063	24.0	1113	21.0	1163	0.0
1014	22.0	1064	24.8	1114	21.2	1164	0.0
1015	21.6	1065	25.6	1115	21.3	1165	0.0
1016	20.5	1066	26.5	1116	21.4	1166	0.0
1017	17.5	1067	26.8	1117	21.7	1167	0.0
1018	14.2	1068	27.4	1118	22.5	1168	0.0
1019	10.9	1069	27.9	1119	23.0	1169	2.1
1020	7.6	1070	28.3	1120	23.8	1170	5.4
1021	4.3	1071	28.0	1121	24.5	1171	8.7
1022	1.0	1072	27.5	1122	25.0	1172	12.0
1023	0.0	1073	27.0	1123	24.9	1173	15.3
1024	0.0	1074	27.0	1124	24.8	1174	18.6
1025	0.0	1075	26.3	1125	25.0	1175	21.1
1026	0.0	1076	24.5	1126	25.4	1176	23.0
1027	0.0	1077	22.5	1127	25.8	1177	23.5
1028	0.0	1078	21.5	1128	26.0	1178	23.0
1029	0.0	1079	20.6	1129	26.4	1179	22.5
1030	0.0	1080	18.0	1130	26.6	1180	20.0
1031	0.0	1081	15.0	1131	26.9	1181	16.7
1032	0.0	1082	12.3	1132	27.0	1182	13.4
1033	0.0	1083	11.1	1133	27.0	1183	10.1
1034	0.0	1084	10.6	1134	27.0	1184	6.8
1035	0.0	1085	10.0	1135	26.9	1185	3.5
1036	0.0	1086	9.5	1136	26.8	1186	0.2
1037	0.0	1087	9.1	1137	26.8	1187	0.0
1038	0.0	1088	8.7	1138	26.5	1188	0.0
1039	0.0	1089	8.6	1139	26.4	1189	0.0
1040	0.0	1090	8.8	1140	26.0	1190	0.0
1041	0.0	1091	9.0	1141	25.5	1191	0.0
1042	0.0	1092	8.7	1142	24.6	1192	0.0
1043	0.0	1093	8.6	1143	23.5	1193	0.0
1044	0.0	1094	8.0	1144	21.5	1194	0.0
1045	0.0	1095	7.0	1145	20.0	1195	0.0
1046	0.0	1096	5.0	1146	17.5	1196	0.0
1047	0.0	1097	4.2	1147	16.0	1197	0.2
1048	0.0	1098	2.6	1148	14.0	1198	1.5
1049	0.0	1099	1.0	1149	10.7	1199	3.5
1050	0.0	1100	0.0	1150	7.4	1200	6.5

APPENDIX I—Continued

FPA URBAN DYNAMOMETER DRIVING SCHEDULE
(Speed versus Time Sequence)

Time (sec.)	Speed (m.p.h.)	Time (sec.)	Speed (m.p.h.)	Time (sec.)	Speed (m.p.h.)	Time (sec.)	Speed (m.p.h.)
1201	9.8	1251	0.0	1301	29.0	1351	22.4
1202	12.0	1252	1.0	1302	29.1	1352	22.0
1203	12.9	1253	1.0	1303	29.0	1353	21.6
1204	13.0	1254	1.0	1304	28.0	1354	21.1
1205	12.6	1255	1.0	1305	24.7	1355	20.5
1206	12.8	1256	1.0	1306	21.4	1356	20.0
1207	13.1	1257	1.6	1307	18.1	1357	19.6
1208	13.1	1258	3.0	1308	14.8	1358	18.5
1209	14.0	1259	4.0	1309	11.5	1359	17.5
1210	15.5	1260	5.0	1310	8.2	1360	16.5
1211	17.0	1261	6.3	1311	4.9	1361	15.5
1212	18.6	1262	8.0	1312	1.6	1362	14.0
1213	19.7	1263	10.0	1313	0.0	1363	11.8
1214	21.0	1264	10.5	1314	0.0	1364	8.8
1215	21.5	1265	9.5	1315	0.0	1365	5.2
1216	21.8	1266	8.5	1316	0.0	1366	2.5
1217	21.8	1267	7.6	1317	0.0	1367	0.0
1218	21.5	1268	8.8	1318	0.0	1368	0.0
1219	21.2	1269	11.0	1319	0.0	1369	0.0
1220	21.5	1270	14.0	1320	0.0	1370	0.0
1221	21.8	1271	17.0	1321	0.0	1371	0.0
1222	22.0	1272	19.5	1322	0.0	1372	0.0
1223	21.9	1273	21.0	1323	0.0		
1224	21.7	1274	21.8	1324	0.0		
1225	21.5	1275	22.2	1325	0.0		
1226	21.5	1276	23.0	1326	0.0		
1227	21.4	1277	23.6	1327	0.0		
1228	20.1	1278	24.1	1328	0.0		
1229	19.5	1279	24.5	1329	0.0		
1230	19.2	1280	24.5	1330	0.0		
1231	19.6	1281	24.0	1331	0.0		
1232	19.8	1282	23.5	1332	0.0		
1233	20.0	1283	23.5	1333	0.0		
1234	19.5	1284	23.5	1334	0.0		
1235	17.5	1285	23.5	1335	0.0		
1236	15.5	1286	23.5	1336	0.0		
1237	13.0	1287	23.5	1337	0.0		
1238	10.0	1288	24.0	1338	1.5		
1239	8.0	1289	24.1	1339	4.8		
1240	6.0	1290	24.5	1340	8.1		
1241	4.0	1291	24.7	1341	11.4		
1242	2.5	1292	25.0	1342	13.2		
1243	0.7	1293	25.4	1343	15.1		
1244	0.0	1294	25.6	1344	16.8		
1245	0.0	1295	25.7	1345	18.3		
1246	0.0	1296	26.0	1346	19.5		
1247	0.0	1297	26.2	1347	20.3		
1248	0.0	1298	27.0	1348	21.1		
1249	0.0	1299	27.8	1349	21.9		
1250	0.0	1300	28.3	1350	22.1		

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22. By revising the citation of authority for issuance of 40 CFR part 86 to read as follows:

AUTHORITY: Secs. 202, 206, 207, 208, 301(a) of the Clean Air Act, as amended (42 U.S.C. 7521, 7525, 7541, 7542, 7601(a)).

* * * * *

Part 600 of chapter I, title 40 of the Code of Federal Regulations is hereby amended as follows:

23. By amending § 600.002-79 to read as follows:

§ 600.002-79 Definitions.

* * * * *

(15) "Certification vehicle" means a vehicle which is selected under § 86.079-24(b)(1) and used to determine compliance under § 86.079-30 for issuance of an original certificate of conformity.

* * * * *

(33) "Body style" means a level of commonality in vehicle construction as defined by number of doors and roof treatment (e.g., sedan, convertible, fastback, hatchback) and number of seats (i.e. front seat, second, or third seat) requiring seat belts pursuant to National Highway Traffic Safety Administration safety regulations. Station wagons and light trucks are identified as car lines.

* * * * *

(41) "Nonpassenger automobile" means an automobile that is not a passenger automobile as defined by the Secretary of Transportation at 49 CFR 523.5.

(42) "Four-wheel drive general utility vehicle" means a four-wheel drive, general purpose automobile capable of off-highway operation that has a wheelbase not more than 110 inches and that has a body shape similar to a 1977 Jeep CJ-5 or CJ-7, or the 1977 Toyota Land Cruiser, as defined by the Secretary of Transportation at 49 CFR 533.4.

* * * * *

24. By amending § 600.002-80 to read as follows:

§ 600.002-80 Definitions.

(a) * * *

(15) "Certification vehicle" means a vehicle which is selected under § 86.080-24(b)(1) and used to determine compliance under § 86.079-30 for issuance of an original certificate of conformity.

* * * * *

(22) "Transmission class" means a group of transmissions having the following common features: Basic transmission type (manual, automatic, or semi-automatic), number of forward speeds (e.g., manual four-speed, three-speed automatic, two-speed semiautomatic), and other characteristics determined to be significant by the Administrator (e.g., "creeper" first gear, overdrive final gear ratio, or overdrive unit) considering factors such as the manufacturer's recommendation for use and/or the numerical gear ratios.

(23) "Base level" means a unique combination of basic engine inertia weight class and transmission class.

* * * * *

(33) "Body style" means a level of commonality in vehicle construction as defined by number of doors and roof treatment (e.g., sedan, convertible, fastback, hatchback) and number of seats (i.e. frontseat, second, or third seat) requiring seat belts pursuant to National Highway Traffic Safety Administration safety regulations. Station wagons and light trucks are identified as car lines.

* * * * *

(41) "Nonpassenger automobile" means an automobile that is not a passenger automobile, as defined by the Secretary of Transportation at 49 CFR 523.5.

(42) "Four-wheel drive general utility vehicle" means a four-wheel drive, general purpose automobile capable of off-highway operation that has a wheelbase not more than 110 inches and that has a body shape similar to a 1977 Jeep CJ-5 or CJ-7, or the 1977 Toyota Land Cruiser, as defined by the Secretary of Transportation at 49 CFR 553.4.

* * * * *

25. By amending § 600.007-77 to read as follows:

§ 600.007-77 Vehicle acceptability.

* * * * *

(b) * * *

(1) A fuel economy data vehicle may have accumulated not more than 10,000 miles. A vehicle will be considered to have met this requirement if the engine and drivetrain have accumulated 10,000 or fewer miles. The components installed for a fuel economy test are not required to be the ones with which the mileage was accumulated, e.g., axles, transmission types and tire sizes may be changed. The Administrator will determine if vehicle/engine component changes are acceptable.

* * * * *

(6) Any vehicle tested for fuel economy purposes must be representative of a vehicle which the manufacturer intends to produce under the provisions of a certificate of conformity.

* * * * *

26. By amending § 600.007-80 to read as follows:

§ 600.007-80 Vehicle acceptability.

(a) All certification vehicles and other vehicles tested to meet the requirements of part 86 (other than those chosen per § 86.080-24(c) are considered to have met the requirements of this section.

(b) * * *

(1) A fuel economy data vehicle may have accumulated not more than 10,000 miles. A vehicle will be considered to have met this requirement if the engine and drivetrain have accumulated 10,000 or fewer miles. The components installed for a fuel economy test are not required to be the ones with which the mileage was accumulated, e.g., axles, transmission types, and tire sizes may be changed. The Administrator will determine if vehicle/engine component changes are acceptable.

* * * * *

(3) The mileage on a fuel economy data vehicle must be, to the extent possible, accumulated according to § 86.079-26(a)(2).

(4) Each fuel economy data vehicle must meet the same exhaust emission standards as certification vehicles of the respective engine-system combination during the test in which the city fuel economy test results are generated. The deterioration factors established for the respective engine-system combination per 86.079-28 will be used.

* * * * *

(e) * * *

(1) The Administrator may, under the provisions of § 86.079-37(a) request the manufacturer to submit production vehicles of the configuration(s) specified by the Administrator for testing to determine to what extent emission noncompliance of a production vehicle configuration or of a group of production vehicle configurations may actually exist.

* * * * *

27. By amending § 600.010-77 to read as follows:

§ 600.010-77 Vehicle test requirements.

(a) For each certification vehicle defined in this part, and for each vehicle required by the Administrator to be tested pursuant to the emission test

procedures in part 86 for approval of an addition of a model after certification (86.077-32) or, approval of a running change (86.077-33):

* * * * *

28. By amending § 600.111-78 to read as follows:

§ 600.111-78 Test procedures.

* * * * *

(h) * * *

(6) When the vehicle reaches zero speed at the end of the preconditioning cycle, the driver has 17 seconds to prepare for the emission measurement cycle of the test. Reset and enable the roll revolution counter.

* * * * *

29. By amending § 600.111-80 to read as follows:

§ 600.111-80 Test procedures.

* * * * *

(g) * * *

(2) False starts and stalls during the preconditioning cycle must be treated as in paragraphs (d) and (e) of § 86.136 of this chapter. If the vehicle stalls during the measurement cycle of the highway fuel economy test, the test is voided, corrective action may be taken according to § 86.079-25 of this chapter, and the vehicle may be rescheduled for test. The person taking the corrective action shall report the action so that the test records for the vehicle contain a record of the action.

(h) * * *

(6) When the vehicle reaches zero speed at the end of the preconditioning cycle, the driver has 17 seconds to prepare for the emission measurement cycle of the test. Reset and enable the roll revolution counter.

30. By amending § 600.113-78 to read as follows:

§ 600.113-78 Fuel economy calculations.

* * * * *

(c) Calculate the city fuel economy and highway fuel economy from grams/mile values for HC, CO, and CO_2. The emission values (obtained per paragraph (a) or (b) as applicable) used in each calculation of this section shall be rounded in accordance with § 86.079-26(a)(6)(ii). The CO_2 values (obtained per paragraph (a) or (b) of this section as applicable) used in each calculation in this section are rounded to the nearest gram/mile.

* * * * *

31. By amending § 600.207-78 to read as follows:

§ 600.207-78 Calculation and use of fuel economy values for a model type.

(a) * * *

(2) * * *

(iii) The requirements of this section may be satisfied by providing an amended application for certification, as described in § 86.078-21 of this chapter

(3) * * *

(iii) If the Administrator has not accepted fuel economy data derived from the testing of a certification vehicle (or a vehicle tested for running changes approved under §§ 86.078-32, 86.078-33, or 86.078-34 for at least one vehicle configuration within each base level, the manufacturer shall submit on or before the date that the manufacturer requests the Administrator to calculate the respective general label values) data as specified in § 600.006. The fuel economy data submitted shall be for the vehicle configuration with the largest projected sales within the respective base level.

* * * * *

§ 600.309-80 [Deleted]

32. By deleting § 600.309-80.

33. By amending § 600.313-78 to read as follows:

§ 600.313-78 Timetable for data and information submittal and review.

* * * * *

(c) * * *

(6) The manufacturer should submit any request for approval of data in response to paragraph (c)(1)(i) at least 25 working days before he desires the Administrator's response. This should allow the Administrator sufficient time to conduct any additional testing required.

* * * * *

34. By adding a new § 600.313-79 which is identical to 600.313-78 except for the new paragraph (d). As amended, the section reads as follows:

§ 600.313-79 Timetable for data and information submittal and review.

(a) The Administrator will notify the manufacturer of the classification of each of the manufacturer's car lines after the manufacturer makes a request for such determination.

(b) Each fuel economy label format which the manufacturer intends to use must be approved by the Administrator before the manufacturer requests the Administrator to determine fuel economy values for use on that type of label. For example, a California general label format must be approved by the Administrator before the manufacturer requests California general label fuel economy values.

(c) If a manufacturer requests and submits sufficient information, the Administrator will determine, according to subpart C, general label or specific label fuel economy values based upon information submitted by the manufacturer.

(1) A manufacturer must submit sufficient information to determine general label fuel economy values within the following time constraints:

(i) For model types initially offered for sale on or before the date of the availability of the initial range of fuel economy values of comparable automobiles, the submission must be made prior to the date established by the Administrator.

(ii) For model types initially offered for sale after the date of the availability of the initial range of fuel economy values of comparable automobiles, the submission must be made no later than thirty calendar days before the date that the model is initially offered for sale.

(2) As of the date of the request, the manufacturer may not submit additional information pertaining to this request except as required by the Administrator.

(3) After receipt of a manufacturer's request for computation of label values, the Administrator will review, according to § 600.008, the fuel economy submission received from the manufacturer and notify the manufacturer of approval or request further data, information, or vehicles in accordance with the approval procedure specified in subpart A.

(4) After receipt of a manufacturer's data, information, or vehicles in response to paragraph (c)(3), the Administrator will conduct any testing and complete data review required under subparagraph (3), and notify the manufacturer of the results of this testing and review.

(5) After completion of any testing or review of the data which satisfy the requirements of paragraph (c)(3), the Administrator will provide the manufacturer with general label and/or specific label (as requested under this paragraph) fuel economy values, annual fuel cost estimates, and a range of fuel economy of comparable automobiles (when a range is available) as calculated from approved data. After receipt of approved fuel economy label values, the manufacturer may use these data in the labeling of his automobiles.

(6) The manufacturer should submit any request for approval of data in response to paragraph (c)(1)(i) at least 25 working days before he desires the Administrator's response. This should allow the Administrator sufficient time to conduct any additional testing required.

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(d) The manufacturer shall notify the Administrator of the date that each model type will initially be offered for sale.

35. By revising § 600.315-78 to read as follows:

§ 600.315-78 Classes of comparable automobiles.

(a)(1) The Administrator will classify passenger automobiles by car line into one of the following comparable classes, based on interior volume index or seating capacity:

(i) *Two Seaters.* A car line shall be classed as "Two Seaters" if the majority of the vehicles in that car line have no more than two designated seating positions as such term is defined in the regulations of the National Highway Traffic Safety Administration, Department of Transportation, 49 CFR 571.3.

(ii) *Minicompact cars.* Interior volume index less than 85 cubic feet.

(iii) *Subcompact cars.* Interior volume index greater than or equal to 85 cubic feet but less than 100 cubic feet.

(iv) *Compact cars.* Interior volume index greater than or equal to 100 cubic feet but less than 120 cubic feet.

(v) *Mid-size cars.* Interior volume index greater than or equal to 110 cubic feet but less than 120 cubic feet.

(vi) *Large cars.* Interior volume index greater than or equal to 120 cubic feet.

(vii) *Small station wagons.* Station wagons with interior volume index less than 130 cubic feet.

(viii) *Mid-size station wagons.* Station wagons with interior volume index greater than or equal to 130 cubic feet but less than 160 cubic feet.

(ix) *Large station wagons.* Station wagons with interior volume index greater than or equal to 160 cubic feet.

(2) The Administrator will classify nonpassenger automobiles into the following categories: Small pickup trucks, standard pickup trucks, vans, and special purpose trucks. Pickup trucks will be separated by car line on the basis of gross vehicle weight rating (GVWR). For pickup truck car lines with more than one GVWR, the GVWR of the pickup truck car line is the arithmetic average of all distinct GVWR's less than or equal to 6,000 pounds available for that car line.

(i) *Small pickup trucks.* Pickup trucks with a GVWR less than 4,500 pounds.

(ii) *Standard pickup trucks.* Pickup trucks with a GVWR of 4,500 pounds up to and including 6,000 pounds.

(iii) *Vans.*

(iv) *Special purpose trucks.* All nonpassenger automobiles with GVWR less than or equal to 6,000 pounds which do not meet the requirements of subparagraph (2) (i), (ii), or (iii) of this paragraph.

(3) Once a certain car line is classified by the Administrator, the classification will remain in effect for the model year.

(b) Interior volume index—passenger automobiles.

(1) The interior volume index shall be calculated for each car line, which is not a "Two Seater" car line, in cubic feet rounded to the nearest 0.1 cubic feet. For car lines with more than one body style, the interior volume index for the car line is the arithmetic average of the interior volume indices of each body style in the car line.

(2) For all body styles except station wagons and hatchbacks with more than one seat (e.g., with a second or third seat) equipped with seat belts as required by DOT safety regulations, interior volume index is the sum, rounded to the nearest 0.1 cubic feet, of the front seat volume, the rear seat volume, if applicable, and the luggage capacity.

(3) For all station wagons and hatchbacks with more than one seat (e.g., with a second or third seat) equipped with seat belts as required by DOT safety regulations, interior volume index is the sum, rounded to the nearest 0.1 cubic feet, of the front seat volume, the rear seat volume and the cargo volume index.

(c) All interior and cargo dimensions are measured in inches to the nearest 0.1 inches. All dimensions and volumes shall be determined from the base vehicles of each body style in each carline and do not include optional equipment. The dimensions H61, W3, W5, L34, H63, W4, W6, L51, H201, L205, L210, L211, H198, and volume V1 are to be determined in accordance with the procedures outlined in Motor Vehicle Dimensions SAE J1100a (Report of Human Factors Engineering Committee, Society of Automotive Engineers, approved September 1973 and last revised September 1975) except as noted herein:

(1) SAE J1100a(2.3) Cargo Dimensions—all dimensions measured with the front seat positioned the same as for the interior dimensions and the second seat for station wagons and hatchbacks, in the upright position. All head restraints shall be in the stowed position and considered part of the seat.

(2) SAE J1100a(8). Luggage Capacity—Total of volumes of individual pieces of standard luggage set plus H-boxes stowed in the luggage compartment in accordance with the procedure described in 8.2. For passenger automobiles with no rear seat or with a rear seat with no rear seat belts, the luggage compartment shall include the area to the rear of the front seat, with the rear seat (if applicable) folded, to the height of a horizontal plane tangent to the top of the front seatback.

(3) SAE J1100a(7) Cargo Dimensions.

(i) *L210—Cargo length at second seatback height—hatchback.* The minimun horizontal dimension from the "X" plane tangent to the rearmost surface of the second seatback to the inside limiting interference of the hatchback door on the zero "Y" plane.

(ii) *L211—Cargo length at floor—second—hatchback.* The minimun horizontal dimensions at floor level from the rear of the second seatback to the normal limiting interference of the hatchback door on the vehicle zero "Y" plane.

(iii) *H198—Second seatback to load floor height.* The dimension measured vertically from the horizontal tangent to the top of the second seatback to the undepressed floor covering.

(d) The front seat volume is calculated in cubic feet by dividing 1728 into the product of three terms listed below and rounding the quotient to the nearest 0.001 cubic feet:

(1) H61—Effective head room—front. (In inches, obtained according to paragraph (c)),

(2) (i) (W3+W5+5)/2—Average of shoulder and hip room—front, if hip room is more than 5 inches less than shoulder room. (In inches, W3 and W5 are obtained according to paragraph (c) of this section), or

(ii) W3—Shoulder room—front, if hip room is not more than 5 inches less than shoulder room. (In inches, W3 is obtained according to paragraph (c) of this section), and

(3) L34—Maximum effective leg room—accelerator. (In inches obtained according to paragraph (c) of this section). Round the quotient to the nearest 0.001 cubic feet.

(e) The rear seat volume is calculated in cubic feet, for vehicles with a rear seat equipped with rear seat belts (as required by DOT) by dividing 1,728 into the product of three terms listed below and rounding the quotient to the nearest 0.001 cubic feet:

(1) H63—Effective head room—second. (Inches obtained according to paragraph (c) of this section),

(2) (i) (W4+W6+5)/2=Average of shoulder and hip room—second, if hip room is more than 5 inches less than shoulder room. (In inches, W4 and W6 are obtained according to paragraph (c) of this section), or

(ii) W4—Shoulder room—second, if hip room is not more than 5 inches less than shoulder room. (In inches, W3 is obtained according to paragraph (c) of this section), and

(3) L51—Minimum effective leg room—second. (In inches obtained according to paragraph (c) of this section.)

(f) The luggage capacity of V1, the usable luggage capacity obtained according to paragraph (c) of this section. For passenger automobiles with no rear seat, or with a rear seat but no rear seat belts, the area to the rear of the front seat shall be included in the determination of V1, usable luggage capacity, as outlined in paragraph (c) of this section.

(g) Cargo volume index:

(1) For station wagons the cargo volume index V2 is calculated in cubic feet, by dividing 1,728 into the product of three terms and rounding the quotient to the nearest 0.001 cubic feet:

(i) W4—Shoulder room—second. (In inches obtained according to paragraph (c) of this section.)

(ii) H201—Cargo height. (In inches obtained according to paragraph (c) of this section), and

(iii) L205—Cargo length at belt—second. (In inches obtained according to paragraph (c) of this section.)

(2) For hatchbacks, the cargo volume index V3 is calculated in cubic feet, by dividing 1728 into the product of three terms:

(i) Average cargo length, which is the arithmetic average of:

(*A*) L208—Cargo length at second seatback height—hatchback. (In inches obtained according to paragraph (c)) and,

(*B*) L209—Cargo length at floor—second—hatchback. In inches obtained according to paragraph (c));

(ii) W4—Shoulder room—second. (In inches obtained according to paragraph (c)) and;

(iii) H197—Second seat back to load floor height. (In inches obtained according to paragraph (c).) Round the quotient to the nearest 0.001 cubic foot.

(h) The following data must be submitted to the Administrator no later than the time of a general label request. Data shall be included for each body style in the carline covered by that general label.

(1) For all passenger automobiles:

(i) Dimensions H61, W3, L34 determined in accordance with paragraph (c).

(ii) Front seat volume determined in accordance with paragraph (d).

(iii) Dimensions H63, W4, L51 (if applicable) determined in accordance with paragraph (e).

(iv) Rear seat volume (if applicable) determined in accordance with paragraph (e).

(v) The interior volume index determined in accordance with paragraph (b) for:

(*A*) Each body style and,

(*B*) The car line.

(vi) The class of the car line as determined in paragraph (a).

(2) For all passenger automobiles except station wagons and hatchbacks with more than one seat (e.g., with a second or third seat) equipped with seat belts as required by DOT safety regulations:

(i) The quantity and letter designation of the pieces of the standard luggage set installed in the vehicle in the determination of usable luggage capacity V1 and,

(ii) The usable luggage capacity V1, determined in accordance with paragraph (f).

(3) For station wagons with more than one seat (e.g., with a second or third seat) equipped with seat belts as required by DOT safety regulations:

(i) The dimensions H201 and L205 determined in accordance with paragraph (c) and,

(ii) The cargo volume index V2 determined in accordance with paragraph (g)(1).

(4) For hatchbacks with more than one seat (e.g., with a second or third seat) equipped with seat belts as required by DOT safety regulations:

(i) The dimensions L208, L209, and H107 determined in accordance with paragraph (c) and,

(ii) The cargo volume index V3 determined in accordance with paragraph (g)(2).

(5) For Pickup trucks:

(i) All GVWR's of less than or equal to 6,000 pounds available in the car line.

(ii) The arithmetic average GVWR for the car line.

36. By amending § 600.506-78 to read as follows:

§ 600.506-78 Preliminary determination of manufacturer's average.

. . . . . .

(b) * * *

(2) * * *

(ii) Fuel economy data from all vehicles tested for running changes approved under §§ 86.078-32, 86.078-33 or 86.078-34.

. . . . . .

37. By amending § 600.506-79 to read as follows:

. . . . . .

§ 600.506-79 Preliminary determination of manufacturer's average.

(a) The manufacturer shall submit, for approval by the Administrator, a determination of his preliminary average fuel economy value.

(1) The average must be submitted within 10 days after the date of the availability of the initial range of fuel economy values of comparable automobiles (ref § 600.314(d)(1) or within 30 days after the date the manufacturer's first model type is initially offered for sale, whichever is later.

(2) The deadline for submission of the preliminary average may be waived upon petition by the manufacturer to the Administrator if the Administrator finds good cause. The Administrator will set a new reporting date if a waiver is granted.

(b) The preliminary average fuel economy value will be calculated according to the procedures in § 600.510 except that:

(1) Sales projections will be used for the calculations in place of the production values, and must be updated at the time of the preliminary calculation.

(2) The fuel economy data used in the calculation shall be that approved by the Administrator as of the date of the preliminary average calculations including:

(i) All fuel economy data from original certification vehicles and fuel economy data vehicles as required by § 600.207,

(ii) Fuel economy data from all vehicles tested for running changes approved under §§ 86.079-32, 86.079-33 or 86.079-34,

(iii) Fuel economy data required by paragraph (d), and

(iv) Other fuel economy data accepted by the Administrator under Subpart A of this part.

(c) Minimum data requirements will be established under paragraph (d) of this section for each base level with a sales fraction of 0.0100 or greater (known as a significant base level).

(1) The sales to be used in this determination are those in paragraph (b)(1) of this section.

(2) For the purposes of this section, the sales fraction for a base level shall be the quotient (rounded to the nearest 0.0001), of the projected sales of passenger automobiles (where projected sales are calculated according to § 600.511), nonpassenger automobiles, or category of nonpassenger automobiles, as appropriate, except that projected sales are used in place of production values.

(d) For each significant base level identified in paragraph (c) of this section the manufacturer shall submit prior to the submission of the preliminary calculation, fuel economy data for those vehicle configurations, taken in order of decreasing sales (according to the projection submitted in paragraph (b)(1) of this section, whose sales total a minimum of 90 percent of the sales of that base level. For all other base levels, the minimum data requirements of § 600.207(a)(3)(iii) must be met.

(e) All fuel economy data submitted under this subpart must:

(1) Be determined by the test procedures specified in Subpart B or an approved analytical method as permitted under § 600.006(e), and

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(2) Be accepted by the Administrator under the requirements of Subpart A.

(f) *For nonpassenger automobiles,* the Administrator may require additional testing to be conducted in a nonpassenger automobile base level if he determines that the vehicle configurations comprising that base level can reasonably be expected to exhibit an unacceptably large range in combined fuel economy. The Administrator will make that determination based upon the data submitted at the time of the preliminary calculation.

38. By amending § 600.507-78 to read as follows:

§ 600.507-78 Running change data requirements.

(a) The manufacturer will be required to submit additional running change fuel economy data for any running change approved under §§ 86.078-32, 86.078-33 or 86.078-34 which creates a new vehicle configuration in a significant base level originally identified for minimum data under § 600.506(c), or subsequently identified in § 600.508(b), unless exempted by the Administrator.

* * * * *

39. By amending § 600.507-79 to read as follows:

* * * * *

§ 600.507-79 Running change data requirements.

(a) The manufacturer will be required to submit additional running change fuel economy data for any running change approved under §§ 86.079-32, 86.079-33 or 86.079-34 which creates a new vehicle configuration in a significant base level originally identified for minimum data under § 600.506(c), or subsequently identified in § 600.508(b), unless exempted by the Administrator.

* * * * *

(b) * * *

(1) Within each base level identified in paragraph (a) of this section, fuel economy data shall be submitted for the new vehicle configuration created by the running change, with the greatest projected sales. Unless that configuration was specified and tested under §§ 86.079-32, 86.079-33 or 86.079-34, the Administrator will specify the road load horsepower for the test vehicle.

* * * * *

40. By amending section 600.507-80 to read as follows:

§ 600.507-80 Running change data requirements.

(a) The manufacturer will be required to submit additional running change fuel economy data for any running change approved under §§ 86.079-32, 86.079-33 or 86.079-34 which creates a new vehicle configuration in a significant base level originally identified for minimum data under § 600.506(c), or subsequently identified in § 600.508(b), unless exempted by the Administrator.

* * * * *

(b) * * *

(1) Within each base level identified in paragraph (a) of this section, fuel economy data shall be submitted for the new vehicle configuration, created by the running change, with the greatest projected sales. Unless that configuration was specified and tested under §§ 86.079-32, 86.079-33 or 86.079-34, the Administrator will specify the road load horsepower and test weight for the test vehicle.

* * * * *

41. By amending § 600.508-78 to read as follows:

§ 600.508-78 Addition of a base level—data requirements.

* * * * *

(b) If a new base level being added has a sales fraction of 0.0100 or greater (as defined in § 600.506(c)(2)) using sales updated as of the date of receipt of approval to add the base level, the manufacturer shall, within 30 days of receipt of the approval:

* * * * *

42. By amending § 600.510-79 to read as follows:

§ 600.510-79 Calculation of average fuel economy.

(a) * * *

(3) An average fuel economy calculation will be made either for all nonpassenger automobiles or for each category of nonpassenger automobile (four-wheel drive general utility vehicles and all other nonpassenger automobiles) in accordance with the preference indicated by the manufacturer in § 600.512.

* * * * *

(b) * * *

(2) * * *

(iii) The fuel economy value of diesel powered model types will be multiplied by the factor 1.0 to correct gallons of diesel fuel to equivalent gallons of gasoline;

* * * * *

(vi) If a model type is comprised of vehicles that are four-wheel drive general utility vehicles and vehicles that are not, as defined at 42 CFR 553.4 by the Secretary of Transportation, and if the manufacturer has indicated in § 600.512(c)(8) that average fuel economy will be calculated separately for four-wheel drive general utility vehicles, then separate model type calculations will be made for those vehicles that are jeep-type vehicles and those that are not.

* * * * *

(d) * * *

(2) In the case where a manufacturer elects to calculate a separate average fuel economy for each category of nonpassenger automobile (four-wheel drive general utility vehicles and all other nonpassenger automobiles), for each category divider.

* * * * *

(e) An average fuel economy value will be calculated for the nondomestically produced and imported component of each category of automobile identified in § 600.510(e) as specified below.

* * * * *

43. By amending § 600.510-80 to read as follows:

§ 600.510-80 Calculation of average fuel economy.

* * * * *

(a) * * *

(3) An average fuel economy calculation will be made either for all nonpassenger automobiles or for each category of nonpassenger automobile (four-wheel drive general utility vehicles and all other nonpassenger automobiles) in accordance with the preference indicated by the manufacturer in § 600.512.

(b) * * *

(2) * * *

(iii) The fuel economy value of diesel powered model types will be multiplied by the factor 1.0 to correct gallons of diesel fuel to equivalent gallons of gasoline;

* * * * *

(vi) If a model type is comprised of some vehicles that are four-wheel drive general utility vehicles and some that are not as defined at 42 CFR § 553.4 by the Secretary of Transportation, and if the manufacturer has indicated in § 600.512(c)(8) that average fuel economy will be calculated separately for four-wheel drive general utility vehicles, then separate model type calculations will be made for those vehicles that are jeep-type vehicles and those that are not.

* * * * *

(d) * * *

(2) In the case where a manufacturer elects to calculate a separate average fuel economy for each category of nonpassenger automobile (four-wheel drive general utility vehicles and all other nonpassenger automobiles), for each category divide:

(e) An average fuel economy value will be calculated for the non-domestically-produced-and-imported component of each category of automobile identified in § 600.510(e) as specified below.

* * * * *

(2) A sum of terms, each of which corresponds to a model type that is not domestically produced and is imported and is a fraction determined by dividing:

* * * * *

44. By amending § 600.512-78 to read as follows:

§ 600.512-78 Model year report.

* * * * *

(c) * * *

(7) Production data, the authenticity and accuracy of which must be attested to by the corporation, and which shall bear the signature of an officer (a corporate executive of at least the rank of vice-president) designated by the corporation. Such attestation shall constitute a representation by the manufacturer that the manufacturer has established reasonable, prudent procedures to ascertain and provide production data that are accurate and authentic in all material respects and that these procedures have been followed by employees of the manufacturer involved in the reporting process. The signature of the designated officer shall constitute a representation by the officer that the corporation has made the required attestation.

* * * * *

45. By amending § 600.512-79 to read as follows:

§ 600.512-79 Model year report.

* * * * *

(c) * * *

(7) Production data, the authenticity and accuracy of which must be attested to by the corporation, and which shall bear the signature of an officer (a corporate executive of at least the rank of vice-president) designated by the corporation. Such attestation shall constitute a representation by the manufacturer that the manufacturer has established reasonable, prudent procedures to ascertain and provide production data that are accurate and authentic in all material respects and that these procedures have been followed by employees of the manufacturer involved in the reporting process. The signature of the designated officer shall constitute a representation by the officer that the corporation has made the required attestation.

(8) A statement that indicates the manner in which four-wheel drive general utility vehicles will be included in the average fuel economy calculation for nonpassenger automobiles in accordance with the options established by the Secretary of Transportation at 49 CFR 553.5.

* * * * *

(Sec. 301, Pub. L. 94-163, 89 Stat. 901 et seq. (15 U.S.C. 2001, 2003, 2005, 2006).)

[FR Doc. 78-29437 Filed 11-13-78; 8:45 am]

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TUESDAY, NOVEMBER 14, 1978
PART III



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

federal

FEDERAL OLD-AGE, DISABILITY, DEPENDENTS' AND SURVIVORS' INSURANCE BENEFITS

V 43 / 220 NOV 14 1978 UMI

[4110-07-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

[20 CFR Part 404]

[Regulations No. 4]

FEDERAL OLD-AGE, DISABILITY, DEPENDENTS' AND SURVIVORS' INSURANCE BENEFITS

Proposed Rulemaking

AGENCY: Social Security Administration, HEW.

ACTION: Proposed rulemaking.

SUMMARY: We are proposing another rules revision under the Department of Health, Education, and Welfare's "Operation Common Sense." This proposal revises the rules on what is required to be entitled to social security benefits. The rules are being revised to make them easier to understand. The proposal also updates the regulations to include changes made by the 1977 Amendments to the Social Security Act and changes made by two court decisions interpreting the Act.

DATE: Your comments will be considered if we receive them no later than December 14, 1978.

ADDRESS: Send your written comments to: Social Security Administration, Department of Health, Education, and Welfare, P.O. Box 1585, Baltimore, Md. 21203.

Copies of all comments we receive can be seen at the Washington Inquiries Section, Office of Information, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 4146, 330 Independence Avenue SW., Washington, D.C. 20201

FOR FURTHER INFORMATION CONTACT:

Ray Worley, 4-G-9, West High Rise Building, 6401 Security Boulevard, Baltimore, Md. 21235, 301-594-5744.

SUPPLEMENTARY INFORMATION: The proposed Subpart D explains what is required to become entitled to social security benefits, when benefits begin and end, and how the benefit amounts are determined. It also contains basic definitions and rules on how we decide what family relationship a person has to the worker, which were previously set out in Subpart L of Part 404. The recodified subpart does not include the requirements for becoming entitled to supplemental security income payments or to black lung benefits. Those requirements are set out in Part 416 and Part 410 respectively.

The revised rules restate existing regulations in clearer and simpler language. Further simplifications will be made in the final rules. In addition, the current regulations have been updated to reflect two changes in the law which occurred as a result of the 1977 Amendments to the Social Security Act and two changes which have occurred as a result of court decisions interpreting the Act. Section 336 of the Amendments permits widows and widowers who remarry at age 60 or later to receive full widow's or widower's benefits after remarriage instead of only half the full benefits. This change is reflected in § 404.337 of the proposed regulations. Section 337 of the 1977 statutory amendments permits divorced spouses to qualify for spouses' or surviving spouse's benefits if they were married to the worker for at least 10 years rather than 20 years. This change is reflected in §§ 404.330 and 404.335. Both of these changes in the law are effective beginning January 1979.

Sections 404.330 through 404.343 also reflect the June 1976 court decision in *Oliver* v. *Califano* that requires husband's benefits to be provided to divorced husbands under the same rules as wife's benefits are provided for divorced wives under current law. Sections 404.723 and 404.780 in Subpart H regarding evidence for husband's benefits are amended to include conforming changes. Section 404.361 reflects the June 1977 court decision in *Mathews* v. *Lucas* that stated a worker's natural children who could inherit his or her property under State law should be assumed dependent upon the worker even though the children were born out of wedlock. The changes arising from the two court decisions apply as of the dates of the decisions.

(Catalog of Federal Domestic Assistance program Nos. 13.802 Social Security Disability Insurance; 13.803 Social Security-Retirement Insurance; 13.804 Social Security-Special Benefits for Persons Aged 72 and Over; 13.805 Social Security Survivors' Insurance.)

Dated: September 6, 1978.

DON WORTMAN,
Acting Commissioner of Social Security.

Approved: November 1, 1978.

JOSEPH A. CALIFANO, JR.,
Secretary of Health, Education, and Welfare.

Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

Subpart L [Deleted]

1. Subpart L is deleted and reserved.

2. Subpart D is revised to read as follows:

Subpart D—Old-Age, Disability, Dependent's and Survivor's Insurance Benefits

GENERAL

Sec.
404.301 Introduction.
404.302 Other regulations related to this subpart.
404.303 Definitions.
404.304 General rules on benefit amounts.
404.305 When you may not be entitled to benefits.

OLD-AGE AND DISABILITY BENEFITS

404.310 Who is entitled to old-age benefits.
404.311 When entitlement to old-age benefits begins and ends.
404.312 Old-age benefit amounts.
404.315 Who is entitled to disability benefits.
404.316 When entitlement to disability benefits begins and ends.
404.317 Disability benefit amounts.
404.320 Who is entitled to a period of disability.
404.321 When a period of disability begins and ends.
404.322 When you may apply for a period of disability after a delay due to a physical or mental condition.

BENEFITS FOR SPOUSES AND DIVORCED SPOUSES

404.330 Who is entitled to wife's or husband's benefits.
404.331 When wife's and husband's benefits begin and end.
404.332 Wife's and husband's benefit amounts.
404.335 Who is entitled to widow's or widower's benefits.
404.336 When widow's and widower's benefits begin and end.
404.337 Widow's and widower's benefit amounts.
404.340 Who is entitled to mother's or father's benefits.
404.341 When mother's and father's benefits begin and end.
404.342 Mother's and father's benefit amounts.
404.344 Your relationship by marriage to the insured.
404.345 Your relationship as wife, husband, widow, or widower under State law.
404.346 Your relationship as wife, husband, widow, or widower based upon a deemed valid marriage.
404.347 "Living in the same household" defined.
404.348 When is a child living with you "in your care."
404.349 When is a child living apart from you "in your care."

CHILD'S BENEFITS

404.350 Who is entitled to child's benefits.
404.351 Who may be reentitled to child's benefits.
404.352 When child's benefits begin and end.
404.353 Child's benefit amounts.
404.354 Your relationship to the insured.
404.355 Who is the insured's natural child.
404.356 Who is the insured's legally adopted child.
404.357 Who is the insured's stepchild.
404.358 Who is the insured's grandchild or stepgrandchild.
404.359 Who is the insured's equitably adopted child.
404.360 When is a child dependent upon the insured person.
404.361 When is a natural child dependent.
404.362 When is a legally adopted child dependent.
404.363 When is a stepchild dependent.
404.364 When is a grandchild or stepgrandchild dependent.
404.365 When is an equitably adopted child dependent.
404.366 "Contributions for support," "one-half support," and "living with" the insured defined.
404.367 When are you a "full-time student."
404.368 When may you be considered a full-time student during a period of nonattendance.

PARENT'S BENEFITS

404.370 Who is entitled to parent's benefits.
404.371 When parent's benefits begin and end.
404.373 Parent's benefit amounts.
404.374 Parent's relationship to the insured.

SPECIAL PAYMENTS AT AGE 72

404.380 General.
404.381 Who is entitled to special age 72 payments.
404.382 When special age 72 payments begin and end.
404.383 Special age 72 payment amounts.
404.384 Reductions, suspensions, and nonpayments of special age 72 payments.

LUMP-SUM DEATH PAYMENT

404.390 General.
404.391 Who is entitled to the lump-sum death payment as a widow or widower.
404.392 Who is entitled to the lump-sum death payment when there is no eligible widow or widower.
404.393 Who is entitled to the lump-sum death payment when burial expenses are paid from the deceased's funds.
404.394 Who is not entitled to the lump-sum death payment.

AUTHORITY: Subpart D is issued under sections 202, 205, 216, 227, 228, 1102 of the Social Security Act, 49 Stat. 623, 53 Stat. 1368, 64 Stat. 492, 79 Stat. 379, 80 Stat. 67, 49 Stat. 647; Section 5, Reorganization Plan No. 1 of 1953, 67 Stat. 631; 42 U.S.C. 402, 405, 416, 427, 428, and 1302; and 5 U.S.C. Appendix.

Subpart D—Old-Age, Disability, Dependent's and Survivors' Insurance Benefits

GENERAL

§ 404.301 Introduction.

This subpart sets out what requirements you must meet to qualify for social security benefits, how your benefit amounts are figured, when your right to benefits begins and ends, and how family relationships are determined. These benefits are provided by title II of the Social Security Act. They include—

(a) *For workers,* old-age and disability benefits and benefit protection during periods of disability;

(b) *For a worker's dependents,* benefits for a worker's wife, divorced wife, husband, divorced husband, and child;

(c) *For a worker's survivors,* benefits for a worker's widow, widower, divorced wife, child, and parent, and a lump-sum death payment; and

(d) *For uninsured persons age 72 or older,* special payments.

§ 404.302 Other regulations related to this subpart.

This subpart is related to several others. Subpart H sets out what evidence you need to prove you qualify for benefits. Subpart P describes what is needed to prove you are disabled. Subpart E describes when your benefits may be reduced or stopped for a time. 42 CFR Part 405 describes when you may qualify for hospital and medical insurance if you are aged, disabled, or have chronic kidney disease. Part 410 describes when you may qualify for black lung benefits. Part 416 describes when you may qualify for supplemental security income.

§ 404.303 Definitions.

As used in this subpart:

"Apply" means to sign a form or statement that the Social Security Administration accepts as an application for benefits under the rules set out in Subpart G.

"Eligible" means that a person would meet all the requirements for entitlement to benefits for a period of time but has not yet applied.

"Entitled" means that a person has applied and has proven his or her right to benefits for a period of time.

"Insured person" or "the insured" means someone who has enough earnings under social security to permit payment of benefits on his or her earnings record. He or she is "fully insured," "transitionally insured," "currently insured," or "insured for disability" as defined in Subpart B.

"Permanent home" means the true and fixed home (legal domicile) of a person. It is the place to which a person intends to return whenever he or she is absent.

"We" or "Us" means the Social Security Administration.

"You" means the person who has applied for benefits or the person for whom someone else has applied.

§ 404.304 General rules on benefit amounts.

This subpart describes the highest monthly benefit amount you ordinarily could qualify for under each type of benefit. All monthly benefit amounts are based upon the insured's "primary insurance amount" which is computed under the rules in Subpart C. If you are the insured person, the primary insurance amount is the highest old-age or disability benefit payable based upon your social security earnings. If you are the insured person's dependent, your monthly benefit amount is computed as a percentage of the primary insurance amount used to compute the insured's benefits. If the insured has died, your monthly benefit amount as his or her survivor is computed as a percentage of the primary insurance amount the insured could have had based upon his or her earnings up to the time he or she died. However, the highest monthly benefit amount you could qualify for may not be the amount that you actually are paid each month. In a particular month, your benefit amount may be reduced or not paid at all under the circumstances described in § 404.401. Under other circumstances, your benefit amount may be increased. The most common reasons for a change in the amount of your benefit payments are listed below:

(a) *Reductions based on age or earnings.* As explained in §§ 404.410–404.413, your old-age, wife's, husband's, widow's, or widower's benefits may be reduced if you choose to receive them before age 65. Also, as explained in §§ 404.415–404.417, deductions may be made from your benefits if your earnings or the insured person's earnings go over certain limits.

(b) *Cost-of-living increases.* As explained in § 404.221, your benefits are automatically increased to keep up with yearly rises of 3 percent or more in the cost-of-living.

(c) *Overpayments and underpayments.* Your benefits may be increased or decreased for a time to make up for any previous overpayment or underpayment that was made on the insured person's record. For more information about this, see Subpart F.

(d) *Sole survivors.* Your benefits may be increased up to the minimum primary insurance amount payable on any earnings record if you are the only survivor of the insured entitled to benefits on his or her record.

(e) *Family maximum.* As explained in § 404.403, there is a maximum amount set for each insured person's earnings record that limits the total benefits payable on that record. If you are entitled to benefits as the insured's dependent or survivor, your benefits may be reduced to keep total benefits payable to the insured's family within these limits.

(f) *Government pension offset.* If you are entitled to wife's, husband's, mother's, father's, widow's or widower's benefits and receive a Government pension for work that is not covered under social security, your benefits may be reduced by the amount of that pension. Special age 72 payments are also reduced by the amount of a Government pension. for more information about this, see § 404.408(a) which

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covers benefits and § 404.384(c) which covers special age 72 payments.

§ 404.305 When you may not be entitled to benefits.

In addition to the situations described in § 404.304 when you may not receive a benefit payment, there are special circumstances when you may not be entitled to benefits. These circumstances are—

(a) *Waiver of benefits.* If you have waived benefits on religious grounds as described in § 404.1086, no one may become entitled to any benefits or payments on your earnings record and you may not be entitled to benefits on anyone else's earnings record; and

(b) *Insured's death by homicide.* You may not become entitled to any survivor's benefits or payments on the earnings record of a person if you were finally convicted of a felony for intentionally causing his or her death.

OLD-AGE AND DISABILITY BENEFITS

§ 404.310 Who is entitled to old-age benefits.

You may become entitled to old-age benefits if—

(a) You are at least 62 years old;

(b) You have enough social security earnings to be "fully insured" as defined in § 404.109; and

(c) You apply; or you are entitled to disability benefits up to the month you become 65 years old. At age 65, your disability benefits automatically become old-age benefits.

§ 404.311 When entitlement to old-age benefits begins and ends.

Your are entitled to old-age benefits beginning with the first month covered by your application in which you meet all the other requirements for entitlement. Your entitlement to benefits ends with the month before the month of your death.

§ 404.312 Old-age benefit amounts.

If your old-age benefits begin at age 65, your monthly benefit is equal to the primary insurance amount—the highest benefit payable based upon your average earnings. How this amount is figured is explained in Subpart C. If your old-age benefits begin after you become 65 years old, your monthly benefit is your primary insurance amount plus an increase for retiring after age 65. See § 404.282 for a description of these increases. If your old-age benefits begin before you become 65 years old, your monthly benefit amount is the primary insurance amount minus a reduction for each month you are entitled before you become 65 years old. These reductions are described in §§ 404.410-404.413.

§ 404.315 Who is entitled to disability benefits.

You may become entitled to disability benefits while disabled before age 65 if—

(a) You have enough social security earnings to be "insured for disability," as described in § 404.116;

(b) You apply;

(c) You have a disability, as defined in § 404.1501, or you are not disabled, but you had a disability that ended within the 12-month period before the month you applied; and

(d) You have been disabled for 5 consecutive months. This 5-month waiting period begins with a month in which you were both insured for disability and disabled. Your waiting period can begin no earlier than the 17th month before the month you apply—no matter how long you were disabled before then. No waiting period is required if you were previously entitled to disability benefits or to a "period of disability" under § 404.320 anytime within 5 years of the month you again became disabled.

§ 404.316 When entitlement to disability benefits begins and ends.

You are entitled to disability benefits beginning with the first month covered by your application in which you meet all the requirements for entitlement. If a waiting period is required, your benefits cannot begin earlier than the first month following that period. Your disability benefits end with the earliest of these months: the month before you become 65 years old; the second month after the month your disability ends; or the month before the month of your death.

§ 404.317 Disability benefit amounts.

Your monthly benefit is equal to the primary insurance amount. This amount is computed under the rules in Subpart C as if it were an old-age benefit, and as if your were 62 years old at the beginning of the 5-month waiting period mentioned in § 404.315(d). If the 5-month waiting period is not required because of your previous entitlement, your primary insurance amount is figured as if you were 62 years old when you become entitled to benefits this time. your monthly benefit amount may be reduced if you receive workmen's compensation payments before you become 62 years old as described in § 404.408. Your benefits may also be reduced if you were entitled to other retirement-age benefits before you became 65 years old.

§ 404.320 Who is entitled to a period of disability.

(a) *General.* A period of disability is a continuous period of time during which you are disabled. if you become disabled, you may apply to have our records show how long your disability lasts. you may do this even if you do not qualify for disability benefits. If we establish a period of disability for you, the months in that period of time will not be counted in figuring your average earnings. If benefits payable on your earnings record would be denied or reduced because of a period of disability, the period of disability will not be taken into consideration.

(b) *Who is entitled.* You are entitled to a period of disability if you meet all of the following conditions:

(1) You have or had a disability as defined in § 404.1501(b).

(2) You are "insured for disability", as defined in § 404.116 in the calendar quarter in which you became disabled, or in a later calendar quarter in which you were disabled.

(3) You file an application while disabled, or no later than 12 months after the month in which your period of disability ended. If you were unable to apply within the 12-month period after your period of disability ended because of a physical or mental condition as described in § 404.322, you may apply not more than 36 months after the month your disability ended.

(4) At least 5 consecutive months go by from the month in which your period of disability begins and before the month in which it would end.

§ 404.321 When a period of disability begins and ends.

Your period of disability begins at the start of the first calendar quarter in which you were both disabled and insured for disability. Your period of disability may not begin after you become 65 years old. Your period of disability ends on the last day of the month before the month in which you become 65 years old or, if earlier, the last day of the second month following the month which your disability ended.

§ 404.322 When you may apply for a period of disability after a delay due to a physical or mental condition.

If because of a physical or mental condition you did not apply within 12 months after your period of disability ended, you may apply not more than 36 months after the month in which your disability ended. Your failure to apply within the 12-month time period will be considered due to a physical or mental condition if during this time—

(a) Your physical condition limited your activities to such an extent that you could not complete and sign an application; or

(b) You were mentally incompetent.

BENEFITS FOR SPOUSES AND DIVORCED SPOUSES

§ 404.330 Who is entitled to wife's or husband's benefits.

(a) *General.* You may be entitled to benefits as the wife or husband of an insured person who is entitled to old-age or disability benefits if—

(1) You are the insured's wife or husband based upon a relationship described in §§ 404.345-404.346 and one of the following conditions is met:

(i) Your relationship to the insured as a wife or husband has lasted as least 1 year;

(ii) You and the insured are the natural parents of a child; or

(iii) In the month before you married the insured you were entitled to, or if you had applied and been old enough you could have been entitled to, any of these benefits or payments: Wife's, husband's, widow's, widower's, or parent's benefits; disabled child's benefits; or annuity payments under the Railroad Retirement Act for widows, widowers, parents, or children 18 years old or older;

(2) You apply;

(3) You are 62 years old or older; or you are the insured's wife and have "in your care", as defined in §§ 404.348-404.349, his child who is entitled to benefits on his earnings record and the child is either under 18 years old or disabled; and

(4) You are not entitled to an old-age or disability benefit based upon a primary insurance amount that is equal to or larger than the full wife's or husband's benefit.

(b) *Entitlement to benefits as a divorced wife or divorced husband.*

You may be entitled to wife's or husband's benefits as the divorced wife or divorced husband of an insured person who is entitled to old-age or disability benefits if—

(1) You are the insured's divorced wife or divorced husband and—

(i) You were validly married to the insured under State law as described in § 404.345; and

(ii) You were married to the insured for at least 20 years immediately before your divorce became final, or for benefits beginning January 1979 or later, for at least 10 years immediately before your divorce became final;

(2) You apply;

(3) You are not married;

(4) You are 62 years old or older; and

(5) You are not entitled to an old-age or disability benefit based upon a primary insurance amount that is equal to or larger than the full wife's or husband's benefit.

§ 404.331 When wife's and husband's benefits begin and end.

You may be entitled to wife's or husband's benefits beginning with the first month covered by your application in which you meet all other requirements for the benefits. Your entitlement to benefits ends with the month before the month in which one of the following events first occurs:

(a) You become entitled to an old-age or disability benefit based upon a primary insurance amount that is equal to or larger than the full wife's or husband's benefit.

(b) You are the wife or husband and are divorced from the insured person unless you then meet the requirements for benefits as a divorced wife or divorced husband as described in § 404.330(b).

(c) You are the divorced wife or divorced husband and you remarry—unless you marry someone entitled to benefits as a widow, widower, father, mother, parent, or disabled child. If you do marry someone entitled to benefits as a disabled child and those benefits end because he or she recovers from the disability, your benefits will end with the same month his or her benefits end.

(d) If you are under 62 years old, the child who was in your care is no longer entitled to child's benefits.

(e) The insured person dies or is no longer entitled to old age or disability benefits.

(f) If your benefits are based upon a deemed valid marriage, you marry someone other than the insured or someone else becomes entitled to the same benefits as described in § 404.346.

(g) You die.

§ 404.332 Wife's and husband's benefit amounts.

Your wife's or husband's full monthly benefit is equal to one-half the insured person's primary insurance amount.

§ 404.335 Who is entitled to widow's or widower's benefits.

(a) *General.* You may be entitled to benefits as the widow or widower of a person who was fully insured when he or she died. You may be entitled to these benefits if—

(1) You are the insured's widow or widower based upon a relationship described in §§ 404.345-404.346, and one of the following conditions is met:

(i) Your relationship to the insured as a wife or husband lasted for at least 9 months immediately before the insured died.

(ii) Your relationship to the insured as a wife or husband ended in less than 9 months because of his or her death and—

(A) The insured's death was an accidental death. The term "accidental death" means that death was due to bodily injuries received solely through violent, external, and accidental means and occurred not later than 3 months after the day on which the bodily injuries were received. The term "accident" means an event the deceased had not planned for or expected. An intentional and voluntary suicide will not be considered to be a death by accident;

(B) The death of the insured occurred in the line of duty while he or she was serving on active duty as a member of the uniformed services as defined in § 404.1013(f) (2) and (3); or

(C) At the time of the insured's death, you were remarried to the insured and had been previously married to him or her for at least 9 months.

(iii) You and the insured were the natural parents of a child; or you were married to the insured when either of you adopted the other's child or when both of you adopted a child and the child was then under 18 years old.

(iv) In the month before you married the insured you were entitled to, or if you had applied and been old enough could have been entitled to, any of these benefits or payments: widow's, widower's, father's, mother's, wife's, parent's, or disabled child's benefits; or annuity payments under the Railroad Retirement Act for widows, widowers, parents, or children 18 years old or older;

(2) You apply, except that you need not apply again if—

(i) In the month before the insured died you were at least 65 years old and entitled to mother's benefits; or

(ii) In the month before the insured died you were at least 65 years old, or you were 62 to 64 years old but not entitled to old-age or disability benefits, and were entitled to wife's or husband's benefits;

(3) You are at least 60 years old; or you are at least 50 years old and have a disability as defined in § 404.1501(a) and—

(i) The disability started not later than 7 years after the insured died or 7 years after you were last entitled to mother's or father's benefits or to widow's or widower's benefits based upon a disability (whichever occurred last); and

(ii) Your disability has lasted for 5 full consecutive months, not counting months earlier than: The 17th month before you applied: the 5th month before the insured died; or if you were previously entitled to mother's, father's, widow's, or widower's benefits, the 5th month before your previous entitlement to benefits ended; however, your disability does not have to last for this 5-month period if you were previously entitled to widow's or widower's benefits based upon a disability;

(4) You are not entitled to an old-age benefit that is equal to or larger than the insured person's primary insurance amount; and

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(5) You are unmarried unless you are a widow who has remarried after you became 60 years old; or if you are the widower, you have not remarried since the insured's death unless you remarried after you became 60 years old.

(b) *Entitlement to benefits as a surviving divorced wife.* You may be entitled to widow's benefits as the surviving divorced wife of a person who was fully insured when he died. You may be entitled to these benefits if—

(1) You are the insured's surviving divorced wife and—

(i) You are validly married to the insured under State law as described in § 404.345(a); and

(ii) You were married to the insured for a total of at least 20 years immediately before your divorce became final, or for benefits beginning January 1979 or later, for a total of 10 years immediately before your divorce became final;

(2) You apply, except that you need not apply again if—

(i) In the month before the insured died you were at least 65 years old and entitled to mother's benefits; or

(ii) You were at least 65 years old, or you were 62 to 64 years old but not entitled to old-age or disability benefits, and were entitled to wife's benefits;

(3) You are at least 60 years old; or you are at least 50 years old and have a disability as defined in § 404.1501(b) and—

(i) The disability started not later than 7 years after the insured died or 7 years after you were last entitled to mother's benefits or to widow's benefits based upon a disability, whichever occurred last; and

(ii) Your disability has lasted for 5 full consecutive months, not counting months earlier than: The 17th month before you applied; the 5th month before the insured died; or if you were previously entitled to mother's or widow's benefits, the 5th month before your previous entitlement to benefits ended; however your disability does not have to last for this 5-month period if you were previously entitled to widow's benefits based upon a disability;

(4) You are not entitled to an old-age benefit that is equal to or larger than the insured person's primary insurance amount; and

(5) You are unmarried.

§ 404.336 When widow's and widower's benefits begin and end.

You may become entitled to widow's or widower's benefits beginning with the first month covered by your application in which you meet the requirements for entitlement. Your entitlement to benefits ends at the earliest of the following times:

(a) The month before the month in which you remarry except your benefits will not end if—

(1) You are the widow or widower and remarry when you are 60 years old or older; or

(2) You marry someone entitled to these benefits: Wife's, widow's, widower's, father's, mother's, parent's, or disabled child's benefits. However, if you are the widow or surviving divorced wife and marry a person entitled to disabled child's benefits and his disabled child's benefits and because he recovers from his disability, your benefits will end with the same month his benefits end.

(b) The month before the month in which you become entitled to an old-age benefit that is equal to or larger than the insured's primary insurance amount.

(c) If your widow's or widower's benefit is based upon a disability, the month before the third month after you recover from your disability (unless you are 65 years old then and would still be eligible by meeting the other requirements for these benefits).

(d) If you are entitled to benefits based upon a deemed valid marriage, the month before the month in which another person becomes entitled to the same benefits as described in § 404.346.

(e) The month before the month in which you die.

§ 404.337 Widow's and widower's benefits amounts.

Your monthly widow's or widower's benefit before any reduction is equal to the insured person's primary insurance amount. Besides the benefit reductions for getting benefits before you are 65 years old (see § 404.410 and 404.413), the following additional reductions may be made in your benefit amount:

(a) If the insured person had been entitled to old-age benefits that were reduced for age because he or she chose to receive them before he or she was 65 years old, the widow's or widower's benefit may also be reduced. In this instance, your benefit is reduced, if it would otherwise be higher, to either the amount the insured would have been entitled to if still alive or 82½ percent of his or her primary insurance amount, whichever is larger.

(b) If you are entitled to benefits as the widow or widower (and not the surviving divorced wife) and you remarry when you are 60 years old or older, your benefit amount is reduced for months before January 1979. Your reduced benefit equals one-half the insured's primary insurance amount or $84.50 reduced for months before age 62 that you were entitled to benefits, whichever is greater. However, there is no reduction if you marry a person entitled to wife's, widow's, widower's, father's, mother's, parent's, or disabled child's benefits. Beginning January 1979, if you are the widow or widower your remarriage at age 60 or later will not affect your benefit amount at all.

§ 404.340 Who is entitled to mother's or father's benefits.

(a) *General.* You may be entitled as the widow or widower to mother's or father's benefits on the record of someone who was fully or currently insured when he or she died. You may become entitled to these benefits if—

(1) You are the widow or widower of the insured and meet the conditions described in § 404.335(a)(1);

(2) You apply for these benefits; or you were entitled to wife's benefits for the month before the insured died;

(3) You are unmarried;

(4) You are not entitled to widow's or widower's benefits, or to an old-age benefit that is equal to or larger than the full mother's or father's benefit; and

(5) You have "in your care" the insured's child who is entitled to child's benefits because he or she is under 18 years old or is disabled. Sections 404.348 and 404.349 describe when a child is "in your care."

(b) *Entitlement to benefits as a surviving divorced wife.* You may be entitled to mother's benefits as the surviving divorced wife of someone who was fully or currently insured when he died. You may become entitled to these benefits if—

(1) You were validly married to the insured under State law as described in § 404.345(a) but the marriage ended in a final divorce and—

(i) You are the mother of the insured's child; or

(ii) You were married to the insured when either of you adopted the other's child or when both of you adopted a child and the child was then under 18 years old;

(2) You apply for these benefits; or you were entitled to wife's benefits for the month before the insured died;

(3) You are unmarried;

(4) You are not entitled to widow's benefits, or to an old-age benefit that is equal to or larger than the full mother's benefit; and

(5) You have "in your care" the insured's child who is entitled to child's benefits because he or she is under age 18 or disabled and this child is your natural or adopted child who is entitled to child's benefits on the insured person's record. Sections 404.358 and 404.359 describe when a child is "in your care."

§ 404.341 When mother's and father's benefits begin and end.

You are entitled to mother's or father's benefits beginning with the first

month covered by your application in which you meet all the other requirements for entitlement. Your entitlement to benefits ends with the month before the month in which one of the following events first occurs:

(a) You become entitled to a widow's or widower's benefit or to an old-age benefit that is equal to or larger than the full mother's or father's benefit.

(b) The child in your care is no longer entitled to child's benefits.

(c) You remarry, unless you marry someone entitled to these benefits: Old-age, disability, wife's, widow's, widower's, father's, mother's, parent's, or disabled child's benefits. However, if you marry someone entitled to disability benefits or to disabled child's benefits and those benefits and because he or she recovers from the disability, your benefits will end with the same month your spouse's benefits end.

(d) If you are entitled to benefits based upon a deemed valid marriage, another person becomes entitled to benefits as the widow or widower as described in § 404.346(d).

(e) You die.

§ 404.342 Mother's and father's benefit amounts.

Your mother's or father's full benefit amount is equal to 75 percent of the insured's primary insurance amount.

§ 404.344 Your relationship by marriage to the insured.

You may be eligible for benefits if you are related to the insured person as a wife, husband, widow, or widower. To decide your relationship to the insured, we look first to State laws. The State laws that we use are discussed in § 404.345. If your relationship cannot be established under State law, you may still be eligible for benefits if your relationship as the insured's wife, husband, widow, or widower is based upon a "deemed valid marriage" as described in § 404.346.

§ 404.345 Your relationship as wife, husband, widow, or widower under State law.

To decide your relationship as the insured's wife, husband, widow, or widower, we look to the laws of the State where the insured had a permanent home when you applied for wife's or husband's benefits; or where the insured had a permanent home when he or she died if you apply for widow's, widower's, mother's, or father's benefits. If the insured's permanent home is not or was not in one of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa, we look to the laws of Washington, D.C. For a definition of permanent home, see § 404.303. If you and the insured were validly married under State law at the time you apply for wife's or husband's benefits or at the time the insured died if you apply for widow's, widower's, mother's, or father's benefits, the relationship requirement will be met. The relationship requirement will also be met if under State law you would be able to inherit a wife's, husband's, widow's, or widower's share of the insured's personal property if he or she were to die without leaving a will.

§ 404.346 Your relationship as wife, husband, widow or widower based upon a deemed valid marriage.

If your relationship as the insured's wife, husband, widow, or widower cannot be established under State law as explained in § 404.345, you may be eligible for benefits based upon a deemed valid marriage. You will be deemed to be the wife, husband, widow, or widower of the insured if, in good faith, you went through a marriage ceremony with the insured that would have resulted in a valid marriage except for a legal impediment. A legal impediment means only that there was a defect in the procedure followed in connection with the ceremony, or that a previous marriage of the insured had not ended at the time of the ceremony. For example, a defect in the procedure may be found where a marriage was performed through a religious ceremony in a country that requires a civil ceremony for a valid marriage. Good faith means that at the time of the ceremony you did not know that a legal impediment existed, or if you did know, you thought that it would not prevent a valid marriage. To be entitled to benefits as the result of a deemed valid marriage, you and the insured must have been living in the same household (see § 404.347) at the time the insured died, or if the insured is living, at the time you apply for benefits. If at the time you apply another person is or has been entitled to benefits as the wife, husband, widow, or widower of the insured, and such person's relationship to the insured was determined under State law as explained in § 404.345, you will not be entitled to benefits. Also, if after your entitlement, we find that another person is the wife, husband, widow, or widower of the insured under State law as explained in § 404.345, your entitlement will end with the month before the month in which this determination is made.

§ 404.347 "Living in the same household" defined.

You may be eligible for benefits as a wife, husband, widow, or widower because your relationship to the insured is based upon a deemed valid marriage, as described in § 404.346, only if you and the insured were living in the same household at the time you apply for wife's or husband's benefits or at the time the insured died if you apply for widow's, widower's, mother's, or father's benefits. Living in the same household means that you and the insured customarily lived together as husband and wife in the same residence. You may still be considered to be living in the same household although one of you is temporarily absent from the residence. Someone's absence will be considered temporary if it was due to his or her service in the U.S. Armed Forces; or it is less than 6 months and neither you nor the insured were outside of the United States during this time and the absence was due to business or employment; or to confinement in a hospital, nursing home, other medical institution, or a penal institution. An absence due to other reasons will not be considered temporary unless you and the insured could have reasonably expected to live together in the near future.

§ 404.348 When is a child living with you "in your care".

To become entitled to wife's benefits before you become 62 years old or to mother's or father's benefits, you must have the insured's child "in your care." A child who has been living with you for at least 30 days is in your care unless—

(a) The child is in active military service;

(b) The child is 18 years old or older and not disabled;

(c) The child is 18 years old or older with a mental disability, but you do not actively supervise his or her activities and you do not make important decisions about his or her needs, either alone or with help from your spouse; or

(d) The child is 18 years old or older with a physical disability, but it is not necessary for you to perform personal services for him or her. Personal services are services such as dressing, feeding, and managing money that the child cannot do alone because of a disability.

§ 404.349 When is a child living apart from you "in your care".

(a) *Not in your care.* A child living apart from you is not in your care if—

(1) The child is in active military service;

(2) The child is living with his or her natural parent;

(3) The child is removed from your custody and control by a court order;

(4) The child is 18 years old or older, is mentally competent, and either has been living apart from you for 6 months or more, or begins living apart

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from you and is expected to be away for more than 6 months;

(5) You gave your right to have custody and control of the child to someone else; or

(6) You are mentally disabled.

(b) *In your care.* A child living apart from you is in your care if—

(1) The child lived apart from you for not more than 6 months, or the child's current absence from you is not expected to last over 6 months;

(2) The child is under 18 years old, you supervise his or her activities and make important decisions about his or her needs, and one of the following circumstances exist:

(i) The child is living apart because of school but spends at least 30 days vacation with you each year unless some event makes having the vacation unreasonable; and if you and the child's natural parent are separated, the school looks to you for decisions about the child's welfare;

(ii) The child is living apart because of your employment but you make regular and substantial contributions to his or her support; see § 404.366(a) for a definition of "contributions for support";

(iii) The child is living apart because of a physical disability that the child has or that you have; or

(3) The child is 18 years old or older, and is mentally disabled but you supervise his or her activities, make important decisions about his or her needs, and help in his or her upbringing and development.

CHILD'S BENEFITS

§ 404.350 Who is entitled to child's benefits.

You may be entitled to child's benefits on the earnings record of an insured person who is entitled to old-age or disability benefits or who has died if—

(a) You are the insured person's child, based upon a relationship described in §§ 404.355–404.359;

(b) You are dependent on the insured, as defined in §§ 404.360–404.365;

(c) You apply;

(d) You are unmarried;

(e) You are under age 18; or you are 18 years old or older and have a disability that began before you became 22 years old; or you are under age 22 and a full-time student, as defined in § 404.367; or you became 22 years old in a month when you had not received a degree from a 4-year college or university and were completing a semester or a quarter as a full-time student.

§ 404.351 Who may be reentitled to child's benefits.

If your entitlement to child's benefits ended before you became 18 years old, or later, you may be reentitled on the same earnings record if you have not married and if you apply for reentitlement. Your reentitlement may begin with—

(a) The first month in which you are a full-time student and either you have not become 22 years old, or you became 22 years old in a month when you had not received a degree from a 4-year college or university and were completing a semester or a quarter as a full-time student;

(b) The first month in which you are disabled, if your disability began before you became 22 years old; or

(c) The first month you are under a disability which began before the end of the 84th month following the month in which your benefits had ended because an earlier disability had ended.

§ 404.352 When child's benefits begin and end.

You may be entitled to child's benefits beginning with the first month covered by your application in which you meet all the other requirements for the benefits. Your entitlement ends with the month before the month in which any one of the following events first occurs:

(a) You become 18 years old, unless you are disabled or a full-time student. If you become 18 years old and you are disabled, your entitlement ends with the second month following the month in which your disability ends. If you become 18 years old and you are a full-time student, your entitlement ends with the last month you are a full-time student or, if earlier, the month before the month you become age 22. If you become age 22 in a month in which you are a full-time student and you have not completed the requirements for, or received a degree from a 4-year college or university, your entitlement will end with the month in which the quarter or semester in which you are enrolled ends; or if the school you are attending does not have a quarter or semester system, the month you complete the course, or if earlier, the first day of the third month following the month in which you become 22 years old.

(b) You marry unless you are 18 years old or older, disabled, and you marry a person entitled to child's benefits based on disability or a person entitled to old-age, divorced wife's, divorced husband's, widow's, widower's, mother's, father's, parent's, or disability benefits. If you are a woman entitled to child's benefits based on disability and you marry a man entitled to either child's benefits based on disability or disability benefits, your entitlement will end with the same month your husband's entitlement ends, if his entitlement ends for a reason other than death or entitlement to old-age benefits.

(c) The insured's entitlement to old-age or disability benefits ends for a reason other than death or the attainment of age 65.

(d) You die.

§ 404.353 Child's benefit amounts.

(a) *General.* Your full benefit is equal to one-half of the insured's primary insurance amount if he or she is alive and three-fourths of the primary insurance amount if he or she has died.

(b) *Entitlement to more than one benefit.* If you are entitled to a child's benefit on more than one person's earnings record, you may receive only the benefit payable on the record with the highest primary insurance amount unless your benefit before any reduction would be larger on the earnings record with the lower primary insurance amount and no other person entitled to benefits on that record would receive a smaller benefit as a result of your entitlement. If you are entitled to a child's benefit and to other dependent's or survivor's benefits, you can receive only the highest of the benefits.

§ 404.354 Your relationship to the insured.

You may be related to the insured person in one of several ways and be entitled to benefits as his or her child—as a natural child, legally adopted child, stepchild, grandchild, stepgrandchild, or equitably adopted child. To decide your relationship to the insured, we look to the laws of the State where the insured had a permanent home when you applied, or where the insured had a permanent home when he or she died if you apply after his or her death. If the insured's permanent home is not or was not in one of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa, we will look to the laws of Washington, D.C. For a definition of permanent home see § 404.303. The State laws we use are the ones the courts would use to decide whether you could inherit a child's share of the insured's personal property if he or she were to die without leaving a will. If these laws would not permit you to inherit the insured's personal property as his or her child, you may still be eligible for child's benefits if you are related to the insured in one of the other ways described in §§ 404.355–404.359.

§ 404.355 Who is the insured's natural child.

You may be eligible for benefits as the insured's natural child if one of the following conditions is met:

(a) You could inherit the insured's personal property as his or her natural child under State inheritance laws as described in § 404.354.

(b) Before your birth, your mother or father entered into a deemed valid marriage with the insured as described in § 404.346.

(c) Your mother has not married the insured but the insured is your father and he has either acknowledged in writing that you are his child, been decreed by a court to be your father, or been ordered by a court to contribute to your support because you are his child.

(d) Your mother has not married the insured, but you have evidence other than the evidence described in paragraph (c) of this section to show that the insured is your natural father. Additionally, you must have evidence to show that the insured was either living with you or contributing to your support at the time you applied for benefits. See § 404.366 for an explanation of the terms "living with" and "contributing to your support". If the insured is not alive at the time of your application, you must have evidence to show that the insured was either living with you or contributing to your support when he died.

§ 404.356 Who is the insured's legally adopted child.

You may be eligible for benefits as the insured's child if you were legally adopted by the insured. If you were legally adopted after the insured's death by his or her surviving spouse you may also be considered the insured's legally adopted child.

§ 404.357 Who is the insured's stepchild.

You may be eligible for benefits as the insured's stepchild if, after your birth, your natural or adopting parent married the insured. The marriage between the insured and your parent must be a valid marriage under State law or a deemed valid marriage as described in §§ 404.345–404.346. If the insured is alive when you apply, you must have been his or her stepchild for at least 1 year immediately preceding the day you apply. If the insured is not alive when you apply, you must have been his or her stepchild for at least 9 months immediately preceding the day the insured died. This 9-month requirement will not have to be met if one of these conditions is met:

(a) The insured's death was an accidental death. The term "accidental death" means that the death was due to bodily injuries received solely through violent, external, and accidental means and occurred not later than 3 months after the day on which the bodily injuries were received. The term "accident" means an event which the deceased had not planned for or expected. An intentional and voluntary suicide will not be considered to be a death by accident.

(b) The insured's death occurred while he or she was serving on active duty as a member of the uniformed services, as defined in § 404.1013(f) (2) and (3).

(c) At the time of the insured's death, your parent was remarried to the insured and the previous marriage between your parent and the insured had lasted for at least 9 months.

§ 404.358 Who is the insured's grandchild or stepgrandchild.

You may be eligible for benefits as the insured's grandchild or stepgrandchild if you are the natural child, adopted child, or stepchild of a person who is the insured's child as defined in §§ 404.355–404.357, or § 404.359. Additionally, your natural or adoptive parents must have been either deceased or under a disability, as defined in § 404.1501(a), at the time your grandparent or step-grandparent became entitled to old-age or disability benefits or died; or if your grandparent or stepgrandparent or stepgrandparent became entitled to old-age or disability benefits or died; or if your grandparent or stepgrandparent had a period of disability that continued until he or she became entitled to benefits or died, at the time the period of disability began. See § 404.356 if you are the insured's grandchild or stepgrandchild and you have been legally adopted after the insured's death by his or her surviving spouse.

§ 404.359 Who is the insured's equitably adopted child.

You may be eligible for benefits as an equitably adopted child if the insured had agreed to adopt you as his or her child but the adoption did not occur. The agreement to adopt you must be one that would be recognized under State law so that you would be able to inherit a child's share of the insured's personal property if he or she were to die without leaving a will. The agreement must be in whatever form, and you must meet whatever requirements for performance under the agreement, that State law directs. If you apply for child's benefits after the insured's death, the law of the State where the insured had his or her permanent home at the time of his or her death will be followed. If you apply for child's benefits during the insured's life, the law of the State where the insured has his or her permanent home at the time of your application will be followed.

§ 404.360 When a child is dependent upon the insured person.

One of the requirements for entitlement to child's benefits is that you be dependent upon the insured. The evidence you need to prove your dependency is determined by how you are related to the insured. To prove your dependency you may be asked to show that at a specific time you lived with the insured, that you received contributions for your support from the insured, or that the insured provided at least one-half of your support. These dpenedency requirements, and the time at which they must be met, are explained in §§ 404.361–404.365. The terms "living with", "contributions for support," and "one-half support" are defined in § 404.366.

§ 404.361 When is a natural child dependent.

If you are the insured's natural child, as defined in § 404.355, you are considered dependent upon him or her unless you were legally adopted by someone else during the insured's lifetime. After an adoption, you are considered dependent upon your natural parent only if he or she lived with you or contributed to your support at one of these times—

(a) When you applied;

(b) When your natural parent died; or

(c) If your natural parent had a period of disability that lasted until he or she died or became entitled to disability or old-age benefits, at the beginning of the period of disability or at the time he or she became entitled to benefits.

§ 404.362 When is a legally adopted child dependent.

(a) *General.* If you are legally adopted by the insured before he or she became entitled to old-age or disability benefits, you are considered dependent upon him or her. If you were legally adopted by the insured after he or she became entitled to old-age or to disability benefits and you apply for child's benefits during the life of the insured, you must meet the dependency requirements stated in paragraph (b) of this section. If you were legally adopted by the insured after he or she became entitled to old-age or disability benefits and you apply for child's benefits after the death of the insured, you are considered dependent upon him or her. If you were adopted after the insured's death by his or her surviving spouse, you may be considered dependent upon the insured only under the conditions described in paragraph (c) of this section.

(b) *Adoption by the insured after he or she became entitled to benefits.*

(1) *General.* If you are legally adopted by the insured after he or she became entitled to benefits and you are not the insured's natural child, stepchild, grandchild, or stepgrandchild, you are considered dependent upon the insured during his or her lifetime only if—

(i) Your adoption took place in the United States;

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(ii) You began living with the insured before you became 18 years old; and

(iii) You were living with the insured in the United States and receiving at least one-half of your support from him or her for the year before he or she became entitled to benefits or became entitled to a period of disability that continued until entitlement to benefits began. If you were born within this 1-year period, the insured must have lived with you and provided at least one-half of your support for "substantially all" of the period that begins on the date of your birth. The "substantially all" requirement will be met if, at the time of the insured's entitlement, he or she was living with you and providing at least one-half of your support, and any period during which he or she was not living with you or providing one-half of your support did not exceed the lesser of 3 months or one-half of the period beginning with the month of your birth.

(2) *Grandchild of the insured or the insured's spouse.* If you are legally adopted by the insured after he or she became entitled to benefits and you are the insured's grandchild or the grandchild of the insured's spouse, you are considered dependent upon the insured during his or her lifetime only if—

(i) Your adoption took place in the United States;

(ii) You began living with the insured before you became 18 years old; and

(iii) You were living with the insured in the United States and receiving at least one-half of your support from him or her for either the 1-year period before the month you applied or for one of the periods described in paragraph (b)(1)(iii) of this section. If you were born within this 1-year period, the insured must have lived with you and provided one-half of your support for "substantially all" of the period that begins on the date of your birth. The term "substantially all" is defined in paragraph (b)(1)(iii) of this section.

(3) *Natural child and stepchild.* If you were legally adopted by the insured after he or she became entitled to benefits and you are the insured's natural child or stepchild, you are considered dependent upon the insured.

(c) *Adoption by the insured's surviving spouse.*

(1) *General.* If you are legally adopted by the insured's surviving spouse after the insured's death, you are considered dependent upon the insured as of the date of his or her death if—

(i) You were living in the insured's household at the time of his or her death;

(ii) You were not receiving regular contributions for your support from someone other than the insured or his or her spouse, or from any public or private welfare organization at the time of the insured's death; and

(iii) The insured had started adoption proceedings before he or she died; or if the insured had not started the adoption proceedings before he or she died, his or her surviving spouse began and completed the adoption within 2 years of the insured's death.

(2) *Grandchild or stepgrandchild adopted by the insured's surviving spouse.* If you are the grandchild or stepgrandchild of the insured and any time after the death of the insured you are legally adopted by the insured's surviving spouse, you are considered the dependent child of the insured as of the date of his or her death if—

(i) Your adoption took place in the United States;

(ii) At the time of the insured's death, your natural, adopting or stepparent was not living in the insured's household and making regular contributions toward your support; and

(iii) You meet the dependency requirements stated in § 404.364.

§ 404.363 When is a stepchild dependent.

If you are the insured's stepchild, as defined in § 404.357, you are considered dependent upon him or her if you lived with or received at least one-half of your support from him or her at one of these times—

(a) When you applied;

(b) When the insured died; or

(c) If the insured had a period of disability that lasted until his or her death or entitlement to disability or old-age benefits, at the beginning of the period of disability or at the time the insured became entitled to benefits.

§ 404.364 When is a grandchild or stepgrandchild dependent.

If you are the insured's grandchild or stepgrandchild, as defined in § 404.358, you are considered dependent upon the insured if—

(a) You began living with the insured before you became 18 years old; and

(b) You were living with the insured in the United States and receiving at least one-half of your support from him for the year before he or she became entitled to old-age or disability benefits or died; or if the insured had a period of disability that lasted until he or she became entitled to benefits or died, for the year immediately before the month in which the period of disability began. If you were born during the 1-year period, the insured must have lived with you and provided at least one-half of your support for "substantially all" of the period that begins on the date of your birth. The term "substantially all" is defined in § 404.362(b)(1)(iii).

§ 404.365 When is an equitably adopted child dependent.

If you are the insured's equitably adopted child, as defined in § 404.359, you are considered dependent upon him or her if you lived with or received contributions for your support from the insured at the time of his or her death. If your equitable adoption is found to have occurred after the insured became entitled to old-age or disability benefits, your dependency cannot be established during the insured's life. If your equitable adoption is found to have occurred before the insured became entitled to old-age or disability benefits, you are considered dependent upon him or her if you lived with or received contributions for your support from the insured at one of these times—

(a) When you applied; or

(b) If the insured had a period of disability that lasted until he or she became entitled to old-age or disability benefits, at the beginning of the period of disability or at the time the insured became entitled to benefits.

§ 404.366 "Contributions for support," "one-half support," and "living with" the insured defined.

To be eligible for child's or parent's benefits, you must be dependent upon the insured at a particular time or be assumed dependent upon him or her. What it means to be a dependent child is explained in §§ 404.360–404.365 and what it means to be a dependent parent is explained in § 404.370(f). Your dependency upon the insured may be based upon whether at a specified time you were receiving "contributions for your support" or "one-half of your support" from the insured, or whether you were "living with" him or her. These terms are defined in paragraphs (a)–(c) of this section.

(a) *"Contributions for support".* The insured makes a contribution for your support if he or she gives some of his or her own cash or goods to help support you. The value of any goods the insured contributes is the same as the cost of the goods when he or she gave them for your support. If the insured provides services for you that you would otherwise have to pay for, the cash value of his or her services may be considered a contribution for your support. An example of this would be work the insured does to repair your home. However, routine household services that the insured does when he or she lives in the same household with you would not be considered a contribution for your support. The insured person is considered to be making a contribution for your support if you receive an allotment, allowance, or benefit based upon his or her military pay, veterans' pension or compensation, or social security earings. Contributions must be made regularly and must be large enough to pay an important part of your ordinary living costs. Ordinary living costs are the costs for your food, shelter, routine medical care, and similar necessities. If the insured person only provides gifts or donations once in a while for special purposes, they will not be considered contributions for your support. Although the insured's contributions must be made on a regular basis, temporary interruptions caused by circumstances beyond the insured person's control, such as illness or unemployment, will be disregarded unless during this interruption someone else takes over responsibility for supporting you on a permanent basis.

(b) *"One-Half Support".* The insured person provides one-half of your support if he or she makes regular contributions for your support and the amount of these contributions exceeds one-half of your ordinary living costs as defined in paragraph (a) of this section. A contribution may be in cash, goods, or services. The insured is not providing at least one-half of your support unless he or she has done so for a reasonable period of time. Ordinarily, we consider a reasonable period to be the 12-month period immediately preceding the time when the one-half support requirement must be met under the rules in §§ 404.362–404.364 (for child's benefits) or in § 404.370(f) (for parent's benefits). A shorter period will be considered reasonable under the following circumstances:

(1) At some point within the 12-month period, the insured person started providing at least one-half of your support on a permanent basis and this was a change in the way you had been supported up to then. In these circumstances, the time from the change, when the insured started providing one-half or more of your support, up to the end of the 12-month period may be considered a reasonable period. The chane in your source of support must be permanent and not temporary. Changes caused by seasonal employment or customary visits to the insured's home are considered temporary.

(2) The insured provided one-half or more of your support for at least 3 months of the 12-month period, but was forced to stop or reduce contributions because of circumstances beyond his or her control, such as illness or unemployment, and no one else took over the responsibility for providing at least one-half of your support on a permanent basis. Any support you received from a public assistance program is not considered as a taking over of responsibility for your support by someone else. Under these circumstances, a reasonable period is that part of the 12-month period before the insured was forced to reduce or stop providing at least one-half of your support.

(c) *"Living with" the insured.* You are living with the insured if you ordinarily live in the same home with the insured and he or she is exercising parental control and authority over your activities. You are living with the insured during temporary separations if you and the insured expect to live together in the same place after the separation. Temporary separations may include the insured's absence because of active military service or imprisonment if he or she still exercises parental control and authority. However, you are not considered to be living with the insured if you are in active military service or in prison.

§ 404.367 When are you a "full-time student".

You may be eligible for child's benefits if you are a full-time student and you have not become 22 years old. A full-time student means a person who is in full-time attendance at an educational institution. You will be considered a full-time student if each of the following conditions are met:

(a) You attend an educational institution that is a school (including a technical, trade, or vocational school), junior college, college, or university that meets any one of the following conditions:

(1) It is operated or directly supported by the United States, or by any State, local government or by a political subdivision of any State or local government.

(2) It is approved by a State agency or subdivision of the State or accredited by a State or nationally-recognized accrediting body. A national recognized accrediting body is one determined to be such by the U.S. Commissioner of Education. A State-recognized accrediting body is one designated or recognized by a State as the proper authority for accrediting schools, colleges, or universities. Approval by a State agency or subdivision includes approval of a school, college, or university as an educational institution, or approval of one or more of the courses offered by a school, college or university.

(3) It is a nonaccredited school, college, or university, but its credits are accepted by at least three educational institutions that have been accredited by a State or nationally recognized accrediting body.

(b) You are enrolled in a noncorrespondence course and carrying a subject load that is considered full-time for day students under the practices and standards of the educational institution. If you are enrolled in a junior college, college, or university, your course of study must last at least 13 weeks. If you ar enrolled in any other educational institution, your course of study must last at least 13 weeks and your scheduled attendance must be at least 20 hours a week. If your full-time attendance either begins or ends in a month, you will be considered a full-time student for that month. You will not be considered a full-time student in the month you graduate if you completed your course of study and stopped carrying a full-time subject load in a month before the month preceding the month you graduate.

(c) You are not being paid while attending the educational institution by an employer who has requested or required that you attend the educational institution.

§ 404.368 When may you be considered a full-time student during a period of nonattendance.

If you are a full-time student at an educational institution, your eligibility may continue during a period of nonattendance (including part-time attendance) if the following conditions are met:

(a) The period of nonattendance is 4 consecutive months or less.

(b) You show us that you intend to resume your studies as a full-time student at the end of the period; or at the end of the period you are a full-time student.

(c) The period of nonattendance is not due to your expulsion or suspension from the educational institution.

PARENT'S BENEFITS

§ 404.370 Who is entitled to parent's benefits.

You may be entitled to parent's benefits on the earnings record of someone who has died and was fully insured. You may become entitled to these benefits if all the following conditions are met:

(a) You are related to the insured person as his or her parent in one of the ways described in § 404.374.

(b) You are at least 62 years old.

(c) You have not married since the insured person died.

(d) You apply.

(e) You are not entitled to an old-age benefit equal to or larger than the parent's benefit amount.

(f) You were receiving at least one-half of your support from the insured at the time he or she died, or at the beginning of any period of disability he or she had that continued up to death. See § 404.366(b) for a definition of "one-half support." If you were receiving one-half of your support from the insured at the time of the insured's death, you must give us proof

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of this support within 2 years of the insured's death. If you were receiving one-half of your support from the insured at the time his or her period of disability began, you must give us proof of this support within 2 years of the month in which the insured filed his or her application for the period of disability. You must file the evidence of support even though you may not be eligible for parent's benefits until a later time. There are two exceptions to the 2-year filing requirement:

(1) If there is a good cause for failure to provide proof of support within the 2-year period, we will consider the proof you give us as though it were provided within the 2-year period. Good cause does not exist if you were informed of the need to provide the proof within the 2-year period and you neglected to do so or did not intend to do so. Good cause will be found to exist if you did not provide the proof within the time limit due to—

(i) Circumstances beyond your control, such as extended illness, mental or physical incapacity, or a language barrier;

(ii) Incorrect or incomplete information we furnished you;

(iii) Your efforts to get proof of the support without realizing that you could submit the proof after you gave us some other evidence of that support; or

(iv) Unusual or unavoidable circumstances that show you could not reasonably be expected to know of the 2-year time limit.

(2) The Soldiers' and Sailors' Civil Relief Act of 1940 provides for extending the filing.

§ 404.371 When parent's benefits begin and end.

You may become entitled to parent's benefits beginning with the first month covered by your application in which you meet the requirements for entitlement. Your entitlement of benefits ends with the month in which one of the following events first occurs:

(a) You become entitled to an old-age benefit equal to or larger than the parent's benefit.

(b) You marry, unless your marriage is to someone entitled to wife's widow's, widower's, mother's, father's, parent's, or disabled child's benefits. If you marry a person entitled to these benefits, the marriage is disregarded unless you are a woman and marry someone entitled to disabled child's benefits, in which instance your benefits will end with the same month your spouse's benefits end should he recover from his disability.

(c) You die.

§ 404.373 Parent's benefit amounts.

Your parent's monthly benefit amount before any reduction or increase that may be required under the rules in § 404.304 is figured in one of the following ways:

(a) *One parent entitled.* Your full parent's benefit is 82½ percent of the insured's primary insurance amount if you are the only parent entitled to benefits on his or her earnings record.

(b) *More than one parent entitled.* Your full parent's benefit is 75 percent of the insured's primary insurance amount if there is another parent entitled to benefits on his or her earnings record. However, if one parent becomes entitled to the 82½ percent benefit amount for any month and later another parent becomes entitled to benefits for that same month based upon an application filed after that month, the second parent's benefit amount for that month will be the difference between the 82½ percent benefit and 150 percent of the insured's primary insurance amount.

§ 404.374 Parent's relationship to the insured.

You may be eligible for benefits as the insured person's parent if—

(a) You are the mother or father of the insured and would be considered his or her parent under the laws of the State where the insured has a permanent home when he or she died;

(b) You are the adoptive parent of the insured and legally adopted him or her before the insured person became 16 years old; or

(c) You are the stepparent of the insured and you married the insured's parent or adoptive parent before the insured became 16 years old. The marriage must be considered valid under the laws of the State where the insured had his or her permanent home when he or she died. See § 404.303 for a definition of "permanent home".

Special Payment at Age 72

§ 404.380 General.

Some older persons had little or no chance to become fully insured for regular social security benefits during their working years. For those who became 72 years old several years ago but are not fully insured, a "special payment" may be payable as described in the following sections.

§ 404.381 Who is entitled to special age 72 payments.

You are entitled to a special age 72 payment if—

(a) You became 72 years old before 1968 or you have credit for at least 3 quarters of social security work for each calendar year between 1966 and the year you became 72 years old (see Subpart B for a description of these work credits);

(b) You reside in the 50 states, District of Columbia, or the Northern Mariana Islands;

(c) You apply; and

(d) You are a U.S. citizen or a citizen of the Northern Mariana Islands; or you are an alien who was legally admitted for permanent residence in the United States and who has resided here continuously for 5 years. Residence in the United States includes residence in the North Mariana Islands, Guam, American Samoa, Puerto Rico, and the Virgin Islands.

§ 404.382 When special age 72 payments begin and end.

Your entitlement to the special age 72 payment begins with the first month covered by your application in which you meet all the other requirements for entitlement and ends with the month before the month of your death.

§ 404.383 Special age 72 payment amounts.

If both you and your spouse are entitled to the payment, the husband's payment amount is $83.70 and the wife's payment amount is $41.90. If you are entitled to the special payment but your spouse is not, your payment amount is $83.70. The special payment amounts of $83.70 and $41.90 are payable for months after May 1978; these amounts will increase because of cost-of-living increases that occur after 1978. The special payment may be reduced, suspended, or not paid at all as explained in § 404.384.

§ 404.384 Reductions, suspensions, and nonpayments of special age 72 payments.

(a) *General.* Special age 72 payments may not be paid for any month you receive public assistance payments. The payment may be reduced if you or your spouse are eligible for a government pension. In some instances, the special payment may not be paid while you are outside the United States. The rules on when special payments may be suspended, reduced, or not paid are provided in paragraphs (b)–(d) of this section.

(b) *Suspension of special age 72 payments when you receive public assistance payments.* You cannot receive the special payment if supplemental security income or aid to families with dependent children (AFDC) payments are payable to you, or if your needs are considered in setting the amounts of these assistance payments made to someone else. However, if public assistance payments are stopped, you may receive the special payment beginning with the last month the assistance payments were paid.

(c) *Reduction of special age 72 payments when you or your spouse are eligible for a government pension.* Special payments are reduced for any regular government pension (or lump-sum payment given instead of a pension) that you or your spouse are entitled to, or would be eligible for, at retirement. A government pension is any annuity, pension, or retirement pay from the Federal Government, a State government or political subdivision, or any organization wholly owned by the Federal or State government. Also included as a government pension is any social security benefit. However, the term government pension does not include workmen's compensation payments or Veterans Administration payments for a service-connected disability or death. If your spouse is eligible for a government pension but is not entitled to the special payment, your special payment is reduced by the difference between the pension amount and the special payment amount due a wife. This is in addition to any reduction to be made in your payment if you are also entitled to, or eligible for, a government pension. If both you and your spouse are entitled to the special payment, each one's payment is first reduced by the amount of his or her own government pension (if any). Then, the wife's special payment is reduced by the amount that the husband's government pension exceeds the husband's special payment. The husband's special payment is also reduced by the amount that the wife's government pension exceeds the wife's special payment.

(d) *Nonpayment of special age 72 payments when you are not residing in the United States.* No special payment is due you for any month you are not a resident of the 50 States, District of Columbia, or the Northern Mariana Islands. Also, payment to you may not be permitted under the rules in § 404.463 if you are an alien living outside the United States.

Lump-Sum Death Payment

§ 404.390 General.

If a person is fully or currently insured when he or she dies, a lump-sum death payment of $255 may be paid to the widow or widower of the deceased if he or she was living in the same household with the deceased at the time of his or her death. If the insured is not survived by a widow or widower who meets this requirement, all or part of the $255 payment may be made to someone else as described in § 404.392.

§ 404.391 Who is entitled to the lump-sum death payment as a widow or widower.

You may be eligible for the lump-sum death payment if you are the widow or widower of the deceased insured individual based upon a relationship described in §§ 404.345 and 404.346. You must apply for this payment within two years after the date of the insured's death unless, in the month prior to the death of the insured, you were entitled to wife's or husband's benefits on his or her earnings record. You must also have been living in the same household with the insured at the time of his or her death. The term "living in the same household" is defined in § 404.347.

§ 404.392 Who is entitled to the lump-sum death payment when there is no eligible widow or widower.

If the deceased individual is not survived by a widow or widower who meets the requirements of § 404.391, the lump-sum death payment shall be paid as follows:

(a) If all or part of the burial expenses of the deceased incurred by a funeral home remain unpaid, the funeral home may receive the lump-sum death payment to the extent of the unpaid expenses if—

(1) A person who has assumed the responsibility for paying these expenses applies for the lump-sum death payment within 2 years of the insured's death, asking that the payment be made to the funeral home; or

(2) At least 90 days have gone by since the death of the insured, no person has assumed responsibility for paying the burial expenses, and the funeral home director or other official of the funeral home applies for the payment.

(b) If all the burial expenses of the insured that were incurred by a funeral home have been paid, and any part of the lump-sum death payment remains, it may be paid to a person who paid these burial expenses and who applies for the payment within 2 years of the insured's death.

(c) If the body of the deceased is not available for burial, but expenses were incurred in connection with a memorial service or any other item for which expenses are customarily incurred in connection with disposing of a deceased's remains, the lump-sum death payment may be paid to a person who paid the expenses and applies for the payment within 2 years of the insured's death.

(d) If any part of the lump-sum death payment remains after payments have been made under paragraphs (a), (b), and (c) of this section, that part of the payment may be made to a person who applies within 2 years of the insured's death and who has paid other expenses of a burial in the following order of priority—

(1) Expenses of opening and closing the grave;

(2) Expenses of providing the burial plot; and

(3) Any remaining expenses in connection with the burial.

§ 404.393 Who is entitled to the lump-sum death payment when burial expenses are paid from the deceased's funds.

If funds of a deceased person were used to pay any of the burial expenses for which payment of the lump-sum can be made under the rules in § 404.392, the deceased person's estate may be entitled to the lump-sum death payment. If you apply for the payment on behalf of a person's estate, you must show you are the legal representative (administrator or executor) of the estate. If there is no legal representative and none will be appointed, you must agree to divide the payment among those who have a right to it under State law, or under foreign law, that applies where the deceased had his or her permanent home at death. We may also require that you get written approval to receive the payment from any of the deceased's closest relatives who are available. A person's closest relatives follow this order: widower or widow; children and the children of any deceased children; parents; brothers and sisters and the children of any deceased brothers and sisters; and other relatives by blood or adoption.

§ 404.394 Who is not entitled to the lump-sum death payment.

The following persons and organizations are not entitled to the lump-sum payment even if they take care of the burial or pay burial expenses—

(a) The U.S. Government, a foreign government, or any government organization;

(b) Any person who has received or will receive repayment from any other source for the burial expenses he or she paid;

(c) Persons and organizations who are required by a contract to pay the burial expenses except for a tax-exempt, nonprofit home for the sick or aged that paid for burial of a deceased resident or guest or a tax-exempt, nonprofit fraternal organization that paid a member's burial expenses not covered by an express contract;

(d) An employer or organization that paid burial expenses of an employee or member under a plan, system, or general practice other than a home for the sick or aged or a fraternal organization mentioned in paragraph (c) of this section; and

(e) A person or organization providing burial goods or services directly except for a funeral director who provided burial goods or services for either a close relative or for some other relative who was living in the funeral director's household when he or she died; a tax-exempt nonprofit charitable, religious, educational, or similar organization; or a State or political subdivision of a State.

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Subpart H [Amended]

3. Subpart H is amended by adding the phrase "or divorced husband" to the first sentences of §§ 404.723 and 404.728(a) so as to read as follows:

§ 404.723 When evidence of marriage is required.

If you apply for benefits as the insured person's husband or wife, widow or widower, divorced wife or divorced husband, we will ask for evidence of the marriage and where and when it took place.* * *

§ 404.728 Evidence a marriage has ended.

(a) *When evidence is needed that a marriage has ended.* If you apply for benefits as the insured person's divorced wife or divorced husband, you will be asked for evidence of your divorce.* * *

4. Subpart H is further amended by revising the first sentence of section 404.780(a) so as to read as follows:

§ 404.780 Evidence of "good cause" for exceeding time limits on accepting proof of support or application for a lump-sum death payment.

(a) *When evidence of "good cause" is needed.* We may ask for evidence that you had "good cause" (as defined in § 404.370(f)) for not giving us sooner proof of the support you received from the insured as his or her parent. We may also ask for evidence that you had "good cause" (as defined in § 404.621(b)) for not applying sooner for the lump-sum death payment. You may be asked for evidence of "good cause" for these delays if—* * *

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SOCIAL SECURITY ADMINISTRATION
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
BALTIMORE, MARYLAND 21203

WHAT DO YOU THINK ABOUT THESE RULES?

We need your help. We are trying to make all social security rules as clear and easy for the public to understand as possible. The rules published here are part of our first efforts to reach this goal. You can help by filling out the questionnaire below or by writing to us. Tell us whether these rules are easy or difficult to understand and how they can be improved. Your ideas will help us decide how to improve these rules and other rules we will be publishing in the future.

1. Do you think the rules are clear and easy to understand? ☐ YES ☐ NO ☐ DON'T KNOW

2. Are any of the rules confusing or difficult to follow? ☐ YES ☐ NO ☐ DON'T KNOW

If so, which one(s)? _____

_____

3. How could these rules be improved? _____

_____

_____

_____

4. Do you have any other comments about these rules? _____

_____

_____

_____

(If you need more space for your answer, you can use the back of this page.)

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SOCIAL SECURITY ADMINISTRATION
DEPARTMENT OF HEALTH, EDUCATION,
AND WELFARE
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[FR Doc. 78-31909 Filed 11-13-78; 8:45

federal register

TUESDAY, NOVEMBER 14, 1978
PART IV



DEPARTMENT OF LABOR

Occupational Safety and Health Administration

■

OCCUPATIONAL EXPOSURE TO LEAD

Final Standard

federal

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[4510-26-M]

Title 29—Labor

CHAPTER XVII—OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Occupational Exposure to Lead

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Final Standard for Occupational Exposure to Lead.

SUMMARY: This final standard limits occupational exposure to lead to 50μg/m³ (micrograms per cubic meter) based on an 8 hour time-weighted average. The basis for this action is evidence that exposure to lead must be maintained below this level to prevent material impairment of health or functional capacity to exposed employees.

Provisions for environmental monitoring, recordkeeping, employee education and training, medical surveillance, medical removal protection, hygiene facilities, and other requirements are also included in the standard.

DATES: Effective date: February 1, 1979. Startup dates for individual provisions which are different than the effective date are in paragraph (r) of the regulation.

FOR FURTHER INFORMATION CONTACT:

Gail Brinkerhoff, OSHA Office of Compliance Programs, U.S. Department of Labor, Room N-3112, Washington, D.C. 20210, telephone 202-523-8034. For additional copies of this regulation, contact: OSHA Office of Publications, U.S. Department of Labor, Room N-3423, Washington, D.C. 20210, telephone 202-523-8677.

SUPPLEMENTARY INFORMATION:

I. Introduction

The statement of reasons accompanying this regulation (the preamble) is divided into six parts, numbered I through VI. The following table sets forth the contents of the preamble:

I. Introduction.
II. Pertinent legal authority.
III. Executive summary:
A. Health effects of lead exposure.
B. Permissible exposure limit.
C. Medical removal protection.
D. Feasibility of compliance.
IV. Explanation of the standard.
V. Authority and signature.
VI. Attachments:
A. Health effects of lead exposure.
B. Permissible exposure limit.
C. Medical removal protection.
D. Feasibility.

Part VI of the preamble is divided into four attachments (A-D) (to be published separately in the FEDERAL REGISTER on or about November 21, 1978) which provide a detailed, complex, and technical discussion of the evidence and OSHA's conclusions on most of the major issues raised in the rulemaking. Part III is a brief, nontechnical summary of these attachments and is intended for the reader who wishes to understand the basis for OSHA's conclusions in this standard without having to examine the more technical attachments.

Part IV is a provision-by-provision discussion of the regulation in lettered paragraphs corresponding to the lettered paragraphs of the regulation. It provides a brief summary of each provision and the evidence and rational supporting it. This is followed by part V, which in turn is followed by the regulation and its appendices.

References to the rulemaking record in the text of the preamble are in parentheses, and the following abbreviations have been used:

1. Ex.: Exhibit number.
2. Tr.: Transcript page number.
3. Ref.: Reference number.
4. Att.: Attachment number or letter.
5. App.: Appendix number or letter.

This permanent occupational safety and health standard is issued pursuant to sections 6(b) and 8(c) of the Occupational Safety and Health Act of 1970 (the Act) (84 Stat. 1593, 1599, 29 U.S.C. 655, 657), the Secretary of Labor's Order No. 8-76 (41 FR 25059) and 29 CFR Part 1911. It amends Part 1910 of 29 CFR by adding a new § 1910.1025, entitled "Lead," and by deleting the reference to "lead and its inorganic compounds" in Table Z-2 of 29 CFR 1910.1000. The standard applies to employment in all industries covered by the Act except construction and agriculture.

Pursuant to section 4(b)(2) of the Act, OSHA has determined that this standard is more effective than the corresponding standards now applicable to the maritime industries currently contained in Subpart B of Part 1910, and Parts 1915, 1916, 1917, and 1918 of Title 29, CFR. Therefore, those corresponding standards are superceded by the new lead standard in § 1910.1025. A new paragraph (g) is added to § 1910.19 to clarify the applicability of this new lead standard to the maritime industries.

A. BACKGROUND

Lead (Pb) occurs naturally in the Earth's crust and is also found in the atmosphere and hydrosphere. It has been used for thousands of years because of its availability and desirable properties. Even in early times, there was recognition of health hazards associated with its use, both as a metal or in a compound form. Thus it was found that lead could be absorbed by inhalation and ingestion and that lead absorption was responsible for loss of movement in printers' fingers exposed to heated lead type and for "dry grippes" in pottery and glass workers.

By the early 20th century, studies revealed that the absorption of excessive quantities of lead (lead intoxication or plumbism) caused diseases of the kidney and peripheral and central nervous systems. For example, an analysis of death rates in the United Kingdom in 1921 (Ex. 5(1)) and 1931 (Ex. 5(2)) showed a considerable excess of deaths due to nephritis and cerebrovascular disease in plumbers and painters.

In excess of 1 million tons of lead are consumed yearly by industries in the United States. Potential occupational exposure to lead and its compounds occur in at least 120 occupations, including lead smelting, the manufacture of lead storage batteries, the manufacture of lead pigments and products containing pigments, solder manufacture, shipbuilding and ship repairing, auto manufacturing, and printing.

B. HISTORY OF THE REGULATION

Although the prevalence of lead intoxication in ancient times has been the subject of some speculation, it seems likely that there was a lack of appreciation of the hazards of lead and preventive methods of limiting exposure until recent times. Modern tests for estimating lead exposures, such as measurements of urinary and blood lead levels, urinary coproporphyrin and delta-aminolevulinic acid (ALA), have been generally used to establish acceptable air lead levels and thereby to control occupational lead intoxication. At one time, an airborne exposure limit value of 500 μg/m³ was generally accepted. Based on a recommendation of the U.S. Public Health Service in 1933, however, a value of 150 μg/m³ was a common goal in industry in the 1940's.

150 μg/m³ continued to be the most often accepted until 1957, when the American Conference of Governmental Industrial Hygenists (ACGIH) increased the value to 200 μg/m³. In 1971, however, ACGIH recommended lowering this exposure limit back to 150 μg/m³. (Ex. 5(3).)

The present occupational safety and health standard for "lead and its inorganic compounds" is found in Table Z-2 of 29 CFR 1910.1000 and was adopted in 1971 pursuant to section 6(a) of the act. The permissible exposure limit, which is 200 μg/m³ as determined on the basis of an 8-hour time-

weighted average, was based on a national consensus standard of the American National Standards Institute (Z37.11-1969). When the consensus standard was originally adopted, no rationale was provided for the level selected.

In January 1973, pursuant to section 22(d) of the Act, the Director of the National Institute for Occupational Safety and Health (NIOSH) submitted to the Secretary of Labor a criteria document for inorganic lead, which recommended, among other things, lowering the existing permissible exposure limit for lead from 200 μg/m³ to 150 μg/m³. (Ex. 1.)

On August 4, 1975, the Director of NIOSH forwarded a letter to the Deputy Assistant Secretary of Labor for Occupational Safety and Health which revised the recommendations in the criteria document. In it, he recommended that the permissible exposure limit for airborne concentrations lead be reduced from 150 μg/m³ to lower ranges. This letter followed a joint effort by the staffs of both OSHA and NIOSH to analyze and review scientific data not available or relied upon in the original criteria document and which resulted in a reevaluation of earlier recommendations.

On October 3, 1975, OSHA proposed a new occupational safety and health standard for occupational exposure to lead (40 FR 45934) (Ex. 2). The proposal included a permissible exposure limit of 100 μg/m³ combined with provisions for environmental monitoring, medical surveillance, employee training and other protective measures. The notice requested submission of written comments, data, and opinions.

In a notice published on January 4, 1977 (42 FR 808) (Ex. 21), OSHA announced the availability of the preliminary technological feasibility and economic impact statements prepared by John Short Associates. It also gave notice that an informal hearing would begin in Washington, D.C. on March 15, 1977. On February 15, 1977 (42 FR 9190). (Ex. 25) notice was given that the final economic impact statement was available to the public and that the economic impact had been certified pursuant to Executive Order 11821.

In publishing the proposal, OSHA noted its intention to prepare an Environmental Impact Statement to assess the effect of the proposed standard on the human environment. Interested parties were invited to submit comments that would be useful in preparing a draft of the Environmental Impact Statement. On February 25, 1977, the availability of OSHA's draft for the Environmental Impact Statement on the Proposed Lead standard was announced by the Council on Environmental Quality (42 FR 11036) (Ex. 30).

In a FEDERAL REGISTER notice on March 8, 1977, OSHA announced that in addition to the March 15, 1977 hearing in Washington, D.C., two regional hearings would be held (42 FR 13025). The first regional hearing began on April 26, 1977, in St. Louis, Mo., and the second regional hearing began on May 3, 1977, in San Francisco, Calif. During the hearing in Washington, D.C., which lasted 7 weeks, OSHA presented 15 expert witnesses from around the world to discuss various aspects of the proposal. In addition to witnesses invited by OSHA, NIOSH, and approximately 50 public participants testified. In St. Louis, 9 public parties testified; in San Francisco, 13.

The hearing record was reopened by OSHA on September 16, 1977, for the purpose of taking additional evidence on the issue of medical removal protection. A FEDERAL REGISTER notice was published giving notice that a hearing would be held on November 1, 1977 (42 FR 46547) (Ex. 353). A hearing was held (November 1 through 11, and December 22, 1977) and additional exhibits were added to the record including an OSHA-sponsored study on labor costs for implementation of medical removal protection (Ex. 439).

Final certification of the hearing record was completed on August 8, 1978, by Administrative Law Judges Julius J. Johnson and Garvin Lee Oliver.

II. PERTINENT LEGAL AUTHORITY

The primary purpose of the Act is to assure, so far as possible, safe and healthful working conditions for every working man and woman. One means prescribed by Congress to achieve this goal is the authority vested in the Secretary of Labor to set mandatory safety and health standards. The standards setting process under section 6 of the Act is an integral part of an occupational safety and health program in that the process permits the participation of interested parties in consideration of medical data, industrial processes and other factors relevant to the identification of hazards. Occupational safety and health standards mandate the requisite conduct or exposure level and provide a basis for insuring the existence of safe and healthful workplaces.

The Act provides that:

> The Secretary in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life.
>
> Development of standards under this subsection shall be based on research, demonstrations, experiments, and other such information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws (Sec. 6(b)(5)).

Sections 2(b)(5) and (6), 20, 21, 22, and 24 of the Act show that Congress recognizes that conclusive medical or scientific evidence including causative factors, epidemiological studies or dose-response data, may not exist for many toxic materials or harmful physical agents. Nevertheless, final standards cannot be postponed because definitive medical or scientific evidence is not currently available. Indeed, while standards are to be based on by the best available evidence, the legislative history clearly shows that "it is not intended that the Secretary be paralyzed by debate surrounding diverse medical opinion." House Committee on Education and Labor (Rept. No. 91-1291, 91st Cong., 2d sess., p. 18 (1970)). This Congressional judgment is supported by the courts which have reviewed standards promulgated under the Act. In sustaining the standard for occupational exposure to vinyl chloride (29 CFR 1910.1017), the U.S. Court of Appeals for the Second Circuit stated that "it remains the duty of the Secretary to act to protect the working man, and to act even in circumstances where existing methodology or research is deficient. *Society of the Plastics Industry Inc.* v. *Occupational Safety and Health Administration*, 509 F. 2d 1301, 1308 (2nd Cir. 1975), cert. den. sub nom., *Firestone Plastics Co.* v. *United States Department of Labor*," 95 S. Ct. 1998, 4 L. Ed. 2d 482 (1975).

A similar rationale was applied by the U.S. Court of Appeals for the District of Columbia Circuit in reviewing the standard for occupational exposure to asbestos (29 CFR 1910.1001). The Court stated that:

> Some of the questions involved in the promulgation of these standards are on the frontiers of scientific knowledge, and consequently, as to them insufficient data is presently available to make a fully informed factual determination. Decisionmaking must in that circumstance depend to a greater extent upon policy judgments and less upon purely factual judgments. *Industrial Union Department, AFL-CIO* v. *Hodgson*, 499 F. 2d 467, 474 (D.C. Cir. 1974).

In setting standards, the Secretary is expressly required to consider the feasibility of the proposed standards. Senate Committee on Labor and Public Welfare (S. Rept. No. 91-1282, 91st Cong., 2d sess., p. 58 (1970.) Nevertheless, considerations of technological feasibility are not limited to de-

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vices already developed and in use. As discussed more fully in the section on feasibility, standards may require improvements in existing technologies or require the development of new technology. *Society of the Plastics Industry, Inc.* v. *Occupational Safety and Health Administration*, supra at 1309; *American Iron & Steel Institute* v. *OSHA*, 577 F. 2d 825 (3rd Cir. 1978).

Where appropriate, the standards are to include provisions for labels or other forms of warning to apprise employees of hazards, suitable protective equipment, control procedures, monitoring and measuring of employee exposure, employee access to the results of monitoring, and appropriate medical examinations. Standards may also prescribe recordkeeping requirements where necessary or appropriate for enforcement of the Act or for developing information regarding occupational accidents and illnesses (section 8(c)). The permanent standard for lead was developed on the basis of the above legal considerations.

III. Executive Summary

The following is a summary of the health effects, permissible exposure limit, medical removal protection, and feasibility sections of the final standard. A brief description of OSHA's decisions in the final standard and their rationale is set forth in this summary. A more detailed discussion of each of these sections appears as Attachments A-D.

A. Health Effects

The record demonstrates that lead has profoundly adverse effects on the health of workers in the lead industry. Inhalation, the most important source of lead intake, and ingestion result in damage to the nervous, urinary, and reproductive systems and inhibit synthesis of the molecule heme, which is responsible for oxygen transport in living systems. The adverse health effects associated with exposure to lead range from acute, relatively mild, perhaps reversible stages such as inhibition of enzyme activity, reduction in motor nerve conduction velocity, behavioral changes, and mild central nervous system (CNS) symptoms, to permanent damage to the body, chronic disease, and death.

The signs and symptoms of severe lead intoxication which occur at blood lead levels of 80 μg/100g and above are well documented. The symptoms of severe lead intoxication are known from studies carried out many years ago and include loss of appetite, metallic taste in the mouth, constipation, nausea, pallor, excessive tiredness, weakness, insomnia, headache, nervous irritability, muscle and joint pains, fine tremors, numbness, dizziness, hyperactivity, and colic. In lead colic, there may be severe abdominal pain, such that abdominal surgery mistakenly has occasionally been performed.

Damage to the central nervous system in general and the brain (encephalopathy) in particular is the most severe clinical form of lead intoxication. The most severe, often fatal, form of encephalopathy may be preceded by vomiting, apathy progressing to drowsiness and stupor, poor memory, restlessness, irritability, tremor, and convulsions. It may arise precipitously with the onset of intractable seizures, followed by coma, cardiorespiratory arrest and death. There is a tendency toward the occurrence of weakness of extensor muscle groups, that is motor impairment. This weakness may progress to palsy, often observed as a characteristic "wrist drop" or "foot drop" and is a manifestation of a disease to the peripheral nervous system (peripheral neuropathy). Lead intoxication also results in kidney damage with few, if any, symptoms appearing until extensive and most likely permanent kidney damage has occurred. NIOSH testified that:

> Of considerable concern are the effects resulting from long-term lead exposure. There is evidence that prolonged exposure can increase the risk of nephritis, mental deficiency, premature aging, and high blood pressure (Ex. 84, p. 6).

Exposure to lead results in decreased libido, impotence and sterility in men and decreased fertility, abnormal menstrual and ovarian cycles in women. The course of pregnancy is adversely affected by exposure to lead. There is conclusive evidence of miscarriage and stillbirth in women who were exposed to lead or whose husbands were exposed. Children born of parents either of whom were exposed to lead are more likely to have birth defects, mental retardation, behavioral disorders or die during the first year of childhood.

During the past 10 years there have been many new observations and research on the health effects of lead at levels heretofore thought to be inconsequential. This research has been stimulated by the availability of many new methods for detecting and measuring the degree of impairment caused by lead exposure. These techniques measure a variety of biochemical, physiological and psychological disturbances. The methods are highly sensitive and reveal earlier changes indicative of adverse effects in workers exposed to lead.

The main research topics which have been addressed are early biochemical changes in the synthesis of the respiratory pigment heme; and early effects on the nervous system including behavioral and peripheral nerve effects. Included are studies on the involvement of lead in kidney disease, on effects on reproductive capacity of male and female workers, and on the relation between exposure to lead in air and resulting blood lead concentration.

Although the toxicity of lead has been known for 2,000 years the complex relationship between lead exposure and human response is still imperfectly understood. OSHA believes that while incapacitating illness and death represent one extreme of a spectrum of responses, other biological effects such as metabolic or physiological changes are precursors or sentinels of disease which should be prevented. This disease process can be subdivided according to Bridbord (Tr. 1976-02) into five stages: normal, physiological change of uncertain significance, pathophysiological change, overt symptoms (morbidity), and mortality. Within this process there is no sharp distinction, but rather there is a continuum of effects. Boundaries between categories overlap due to the variation of individual susceptibilities and exposures in the working population. OSHA believes that the standard adopted must prevent pathophysiologic changes from exposure to lead. Pathophysiologic changes indicate the occurrence of important health effects. Rather than revealing the beginnings of illness the standard must be selected to prevent an earlier point of measurable change in the state of health which is the first significant indicator of possibly more severe ill health in the future. The basis for this decision is twofold—first, pathophysiologic changes are early stages in the disease process which would grow worse with continued exposure and which may include early effects which even at early stages are irreversible, and therefore represent material impairment themselves. Secondly, prevention of pathophysiologic changes will prevent the onset of the more serious, irreversible and debilitating manifestations of disease.

The evidence in this record demonstrates that prevention of adverse health effects from exposure to lead throughout a working lifetime requires that blood (PbB) lead levels be maintained at or below 40 μg/100 g. OSHA concludes that workers exposed to lead leading to blood lead levels in excess of 40 μg/100 g will develop physiological and pathophysiological changes which will grow progressively worse and increase the risk of more severe disease. OSHA believes the standard must prevent these changes from occurring since this would provide greater assurances of health protection. Feasibility constraints prevent OSHA from establishing a standard which would eliminate all physiological changes, reproductive effects or

mild signs and symptoms but the agency believes the vast majority of workers will be protected by this standard. These considerations formed the basis upon which OSHA evaluated the health effects evidence in the record. The remainder of this summary will address the health effects evidence in each system: heme synthesis inhibition, and damage to the nervous, urinary, and reproductive systems. In addition, the air lead to blood lead relationship will be addressed.

1. *Heme Synthesis Inhibition.* Heme is a complex molecule which has two functions in the body. First, heme is a constituent of hemoglobin, a protein present in red blood cells whose primary function is to transport oxygen to the tissues. Interference with the formation of heme, if sufficient, results in decreased hemoglobin and ultimately anemia. Anemia is characterized by weakness, pallor and fatigability as a result of decreased oxygen carrying capacity in the blood.

Heme is also a constituent of another group of extremely important proteins, the cytochromes, which are present in every cell of the body. The function of heme in the cytochromes is to allow the cell to utilize oxygen. Heme may therefore be described as the "respiratory pigment" for the entire body. Interference with heme formation leads to interference in the respiration of every cell in the body. This is the most important effect of heme synthesis impairment. Piomelli has suggested that heme impairment in the cells would lead to a condition in each cell similar to that which would occur if the lungs of an individual did not function well. The central nervous system is particularly sensitive to the lack of oxygen and neurological damage could conceivably occur prior to anemia as a result of heme synthesis impairment in the brain. For example, Piomelli testified that "It is very well known that the human being cannot stop breathing for more than 2 or 3 minutes without developing irreversible brain damage." (Tr. 460) This effect would be expected to occur from impaired respiration resulting from impaired heme synthesis. In other words, heme synthesis impairment could potentially affect every cell through reduced respiration.

The effects of lead exposure on heme synthesis have been studied extensively by the scientific community. Nevertheless, there is considerable debate over certain issues concerning the health effects of lead on this system. The Agency found three major issues particularly important in evaluating the health effects of lead in reference to heme synthesis.

(1) What is the meaning of the enzyme inhibition and physiological changes known to occur in this system at low lead levels, and should these effects be considered as per se impairment of health in the establishment of a permissible level of worker exposure to lead. (2) At what blood lead (PbB) level does a lowering of hemoglobin leading to anemia begin to occur? (3) To what extent are lead effects on heme synthesis in the blood forming system indicative of changes in heme synthesis in other tissues?

The earliest demonstrated effect of lead involves its ability to inhibit the formation of heme. Scientific evidence has established that lead inhibits at least two enzymes of the heme synthesis pathway at very low PbB levels. Inhibition of delta aminolevulinic acid dehydrogenase (ALAD), an enzyme responsible for the synthesis of a precursor to heme, is observed at PbB levels below 20 μg/100 g. At a PbB level of 40 μg/100 g more than 20 percent of the population would have 70 percent inhibition of ALA-D. In the human body when an enzyme system is inhibited two effects are often seen: First, the molecule upon which the enzyme would act accumulates because it cannot undergo chemical reaction to produce the desired product and second, the desired product therefore decreases. Significant urinary excretion of the products of ALAD inhibition, such as delta aminolevulinic acid (ALA), occurs at this PbB level; 11 percent of adult males are excreting more than 10 μg/l.

The build-up of another product of impairment indicating inhibition of another enzyme, ferrochelatase, also occurs at low PbB levels. At a PbB level of 50 μg/100 g a larger proportion of the population would suffer these effects and the effects would be more extreme. At a PbB level of 50 μg/100 g, 70 percent of the population would have 70 percent inhibition of ALA-D, 37 percent would have urinary ALA (ALA-U) values larger than 10 μg/l and 80 percent of men and 100 percent of women would have increased free erythrocyte protoporphyrin (FEP), which is the product of inhibition of ferrochelatase. (Ex. 294 E.) Industry representatives argued that these effects are the manifestation of the body attempting to maintain a stable internal environment to lead. OSHA believes that it is inappropriate and simplistic to describe these changes as biochemical adjustments. The depression of heme synthesis in all cells of the body is an effect of potentially far reaching proportion and prevention of enzyme effects is the key to the prevention of more serious clinical effects of lead toxicity, which become more obvious as the exposure continues. These measurable effects are a direct result of lead exposure and are considered by the agency to indicate the occurrence of disruptions of a fundamental and vital subcellular process, heme synthesis. These processes are not only essential to the process of hemoglobin synthesis, they are also vital to the function of all cells since heme is ubiquitous in the human.

OSHA believes the evidence indicates a progression of health effects of lead exposure starting with inhibition of enzymes, continuing through effects indicating measurable disruption of subcellular processes, such as the buildup of the products of impaired heme synthesis and eventually developing into the overt symptoms of lead poisoning as manifested by disorders in the nervous, renal, and blood forming system. Biological variability among individuals will alter the PbB level at which a particular person will move through each stage in this disease continuum. Therefore, at each higher PbB level a greater proportion of the population will manifest each given effect. Given this understanding of the progressive stages of lead effects, OSHA has concluded that enzyme effects indicative of the disruption of heme synthesis are early stages of a disease process which eventually results in the clinical symptoms of lead poisoning. OSHA agrees with Piomelli who concluded, "It is the responsibility of preventive medicine to detect those alterations (in heme synthesis) which may precede frank symptomatology and to prevent the occurrence of these symptoms" (Tr. 456).

OSHA believes that good health is not limited to the narrow definition of "absence of clinical symptoms." The early steps of the progression to disease cannot be considered as an attempt by the body to merely adjust and stabilize the internal environment to exposure to lead: They are early indications of signifcant physiological disruption. Whether or not the effects have proceeded to the later stages of clinical disease, disruption of these processes over a working lifetime must be considered as material impairment of health. As was previously discussed, at a PbB level of 40 μg/100 g and above, a significant proportion of the population would manifest extensive inhibition of ALA-D, elevations of ALA-U and of protoporphyrin levels. The agency believes that PbB levels should ideally be kept below 40 μg/100 g to minimize these effects.

Anemia is one of the established symptoms of lead poisoning. The symptoms of anemia are weakness, tiredness, pallor, waxy, sallow complexion, headache, irritability, and other symptoms characteristic of the increased load on the cardiac system. The clinical symptoms of anemia due to lead are often indistinguishable from those of chronic anemias with a

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variety of other causes. Anemia due to lead is often seen in association with acute abdominal colic. The occurrence of anemia, as a result of lead exposure, is known to occur above PbB levels of 80 μg/100 g. The occurrence of this symptom at PbB levels below 80 was debated during the hearings.

OSHA believes that the debate concerning the occurrence of this symptom can better be comprehended within the context of an understanding of the full disease process which eventually results in anemia. The evidence concerning the mechanisms of this disease process indicates that the effect of lead on the hematopoietic system is subtle and complex. In evaluating the disease mechanisms of anemia, it was found that lead is an insidious poison which attacks, not one, but many of the physiolgical processes within the cell.

Because anemia is the result of a complex of different lead effects, there is considerable room for individual variability in the PbB level at which anemia will occur. Hemoglobin level is a continuous variable which may cause individuals to have a problem to a greater or lesser degree at any particular blood lead level. Anemia should be viewed as a late step in a complicated progression of lead effects.

Since anemia is a consequence of lowered hemoglobin (the protein in red cells responsible for respiration) OSHA has carefully analyzed those studies which reported reduced hemoglobin. Studies have associated PbB levels as low as 50 μg/100 g with lowered hemoglobin (Hb) levels (Ex.6(37); 146-A; 5(9)). In particular, Tola's study, which showed a lowering of Hb over time during lead exposure of 50 μg/100 g, is considered by OSHA as an example of lead affecting Hb levels at this low PbB range. In addition studies by the Mt. Sinai group (Ex. 24(14)), and Wolfe (Ex. 146(A)) also demonstrated lowered anemia in lead exposed workers.

Based on evidence that indicates decreases in Hb levels with blood leads above 50 μg/100 g, OSHA has concluded that a lowering of Hb level to a measurable degree will occur at PbB levels as low as 50 μg/100 g. The degree to which Hb is lowered at this PbB range may be undetected since symptoms may be mild and are not likely to be so large as to require treatment for anemia. However, these changes must not be evaluated only as short-term effects alone but rather as changes that would occur over prolonged times. This implies that with reduced hemoglobin in an asymptomatic or mildly symtomatic individual there is a lifetime alteration in the oxygen carrying capacity of the blood, in the blood viscosity and in particular, in the cardiac work load. These alterations are distinct from the frank symptoms of anemia but are far more insidious and may be deleterious to the worker over the long term. Lastly, the data does support the view that lead induced anemia is clinically apparent at PbB's as low as 50 μg/100 ml.

> In evaluating the effects of lead on heme synthesis, Piomelli suggested that hematopoietic effects such as anemia are not the most significant clinical effect of heme synthesis disruption • • •." A much more important fact is that the alteration of the mechanism of heme synthesis reflects the general toxicity of lead in the entire body. (Tr. 458)

Evidence indicates that there is disruption of heme synthesis in other tissues of the body besides blood, and that this disruption results in alteration of the oxygen transport into the cells of the body. Enzyme (ALA-D) inhibition due to lead exposure has been found in the liver at PbB levels below 40 μg/100 g (Ex. 5(22)). Electron microscope studies have revealed mitochondrial changes associated with lead exposure such as lead granules in rat liver mitochondria (TR. 459, ref. Walton in Nature 243, 1973) and broken distorted mitochondria in the renal cells of a lead-exposed worker. The mitochondria is that portion of the cell responsible for extracting nutrients and oxygen and in turn providing the energy needed elsewhere in the cell for performing cellular functions. (Cramer et al. Brit. J. Ind. Med. 1974.) Some of these studies related changes in heme synthesis in the blood forming tissues to changes in other tissues. Secchi (Ex. 5(22)) found a direct correlation of levels of ALA-D inhibition in the blood and in the liver. Millar found parallel decreases in ALA-D activity in the blood and in the brain at PbB levels above 30. (Ex. 23(68)), ref. Millar. This evidence supports Piomelli's suggestions that changes in heme synthesis in the blood forming (hematopoietic) system reflect changes that occur in other tissues. The work of Fishbein et al. related levels of products of enzyme inhibition, a measure of heme synthesis disruption in the hematopoietic system, to various signs and symptoms of lead exposure including central nervous system symptoms, muscle and joint pain, weight loss, and lead colic at blood lead levels well below 80 μg/100 ml (mean PbB was approximately 60 μg/100 ml). (Ex. 105D). Fishbein also noted anemia in 37 percent of these same workers, 17 percent of whom had blood lead levels below 60 μg/100 ml.

While the evidence relating lead effects of heme synthesis to symtoms throughout the body is not complete, the evidence is extensive enough and the issue is important enough to warrant very serious consideration with reference to the establishment of the standard. OSHA believes this evidence demonstrates that one early stage of lead disease in various tissues is the disruption of heme synthesis and that these effects in other lead-sensitive tissues parallel the measurable effects of heme synthesis disruption in the hematopoietic system and occur at comparably low PbB levels (below 40 μg/100 g). The heme effect is clearly not the only mechanism by which lead exerts it toxicological effect but it is one mechanism which we have substantial understanding of, can measure, and therefore must utilize in an effort to prevent the more severe symptoms in the individual.

In reference to the hematopoietic system, OSHA believes that the effects of lead are a complex progression from various biochemical changes through to the onset of clinical symptoms. At increasingly higher PbB levels an increasing proportion of the population will suffer more extreme effects. At a PbB level of 40 μg/100 g or above, a sizable proportion of the population would show measurable effects of the disruption of heme synthesis. A comparable degree of disruption of heme synthesis would most likely occur in other cells in the body.

Piomelli gave an excellent summary of the importance of lead's effects on heme synthesis stating:

> It is my understanding that regulations have the purpose of preventing "material impairment of health." Alterations in heme synthesis do not produce subjective evidence of impairment of health, unless they reach the extreme depression in severe lead intoxication, when marked anemia occurs and the individual feels weak. However, it is not any longer possible to restrict the concept of health to the individuals subjective lack of feeling adverse effects. This is because we know that individuals may get adjusted to suboptimal health, if changes occur slowly enough and also because we now have the ability to detect functional impairments by appropriate tests, much before the individual can perceive any adverse effect. In fact, it is the responsibility of preventive medicine to detect those alterations which may precede frank symptomatology, and to prevent its occurrence. The alterations in heme synthesis caused by lead fulfill, in my opinion, the criteria for material adverse effects on health and can be used to forecast further damage. The depression of heme synthesis in all cells of the body is an effect of far reaching proportion and it is the key to the multiple clinical effects of lead toxicity, which become obvious as the exposure continues. (Ex. 57, p. 21).

This does not in any way suggest that the lead effect on heme is the only mechanism of lead disease, but it does suggest that this effect is at least one of the important mechanisms in lead disease. An understanding of this spectrum of effects from subcellular to clinical symptoms is relevant not only to the occurrence of anemia but will also be the expected pattern in lead induced neurological and renal disease.

OSHA believes that there is evidence demonstrating the impairment of heme synthesis and mitochondrial disruption in tissues throughout the body, and that these effects are the early stages of lead disease in these various tissues. The disruption of heme synthesis measured at low PbB levels is not only a measure of an early hematopoietic effect, it is also a measure which indicates early disease in other tissues. The Agency believes that such a pervasive physiological disruption must be considered as a material impairment of health and must be prevented. PbB levels greater than 40 μg/100 g should, therefore, be prevented to the extent feasible.

2. *Neurological effects.* There is extensive evidence accumulated in both adults and children which indicates that toxic effects of lead have both central and peripheral nervous system manifestations. The effects of lead on the nervous system range from acute intoxication, coma, cardiorespiratory arrest and fatal brain damage to mild symptoms, subtle behavioral and electrophysiologic changes associated with lower level exposures. Although the severe effects of lead have been known for some time, only in the last several years has evidence accumulated which demonstrates neurologic damage at low blood lead levels. All of this data reinforces a disturbing clinical impression that nervous system damage from increased lead absorption occurs early in a worker's tenure, at low blood lead levels and is only partially reversible if at all. It is now understood that the location and degree of neurological damage depends on dose and duration of exposure.

The record in this rulemaking demonstrated that damage occurs in both the central and peripheral nervous systems at blood lead levels lower than previously recognized. In particular, Lilis et al. (Ex. 24, (10)) has demonstrated central nervous system symptoms (tiredness, fatigue, nervousness, sleepnessness or somnolency, or anxiety) in 56 percent of workers with blood lead levels below 80 μg/100 ml. The mean blood level was approximately 60 μg/100 ml. This same study reported symptoms of muscle and joint pain and/or soreness in 39 percent of the workers. It is extremely important to note that many of these subjects had been exposed less than a year. They also were able to demonstrate behavioral changes which were correlated with enzyme inhibition products from heme synthesis. Given this data, the authors cautioned that blood lead levels should not be allowed to exceed 60 μg/100 ml. and should be maintained around 40 μg/100 ml. Lilis testified that about 60μg/100 ml. "one may expect florid lead poisoning, full blown lead poisoning" (Tr. 2700). She proceeded to state:

"Since ZPP starts to go up at around levels of 40 or 45, that means that at those levels you already find something going wrong in the body" (Tr. 2702). Repko has carried out behavioral tests and demonstrated adverse effects in visual reaction time, as well as deficits in hearing among workers having a mean blood lead level of 46 μg/100 ml. Valciukas et al. and Haenninen et al. have also demonstrated impaired psychological performance among workers with low exposure to lead. Haenninen's work is particularly significant insofar as no single blood lead concentration had *ever* exceeded 70 μg/100 ml.

Based on the rulemaking record, OSHA has concluded that the earliest stages of lead-induced central nervous system disease first manifest themselves in the form of behavioral disorders and CNS symptoms. These disorders have been documented in numerous sound scientific studies and these behavioral disorders have been confirmed in workers whose blood lead levels are below 80 μg/100 g. Given the severity and potential non-reversibility of central nervous system disease, OSHA must pursue a conservative course of action. OSHA concludes that a blood lead level of 40 μg/100 g must be considered to be a threshold level for behavioral changes and mild CNS symptoms in adults, and to protect against long-term neurological effects, blood levels should never exceed 60 μg/100g.

Some of the most extensive evidence in the rulemaking record is the data presented which confirms the existence of the early stages of lead induced damage to the peripheral nervous system in workers exposed to lead levels below 70 μg/100 g. Damage to the peripheral nervous system is named peripheral neuropathy and the distinguishing feature of it is the predominance of motor involvement as opposed to sensory damage. Three forms are noted. In the first, patients with acute abdominal colic may also complain of very severe pain and tenderness in the trunk muscles, as well as pain in the muscles of the extremity. As the pain and tenderness subside, weakness may emerge, with very slow recovery over the ensuing several months. In the second, more common form of peripheral neuropathy due to lead poisoning, the neuropathy is described as painless, peripheral weakness occurring either after termination of excessive exposure or after long, moderately increased exposure. This suggests that neuropathy of sufficient severity may cause irreversible impairment of peripheral nerve function.

The third form is seen in subjects with no obvious clinical signs of lead poisoning and is manifested by a slowing of motor nerve conduction velocity. The latter effect represents the earliest sign of neurological disease of the peripheral nerves. OSHA believes prevention of this stage is necessary to prevent further development of the disease and its associated forms which are likely to be irreversible.

The work of Catton, Oh, Landigran, Feldman, Behse Mostafa et al., Geraid et al., Guadriglic et al., Araki, W. R. Lee, Repko, Lilis, Fischbein et al., and Seppalainen all demonstrate statistically significant loss of motor nerve conduction velocity in lead-exposed workers. Seppalainen was able to determine a dose-response relationship for the slowing of NCV compared with blood lead levels. It is apparent that slowing occurs in workers whose PbB levels are 50 μg/100 g and above but, whether there are effects as low as 40 μg/100 g is, as yet, undetermined. The 38 lead experts who participated in the Second International Workshop on Permissible Exposure Levels for Occupational Exposure to Inorganic Lead also reached this conclusion in their final report:

> It is not known whether the maximum blood lead concentration or the integrated average concentration is the determining factor in the development of changes in nerve conduction velocity. However, the Group concluded from the data presented by Seppalainen et al. and the data reported in the literature that changes in nerve conduction velocity occur in some lead workers at blood levels exceeding 50 μg/100ml. It was thought that no conclusion could be drawn from the one case in the blood lead range 40-49 μg/100ml.
>
> It is not possible to decide what any given measured small deficit means in terms of specific nervous damage. However, it is generally recognized that a clear deficit in the nerve conduction velocity of more than one nerve is an early stage in the development of clinically manifest neuropathy. There is no evidence that these changes progress. Reversibility should be studied. Although slight changes may be measured in persons experiencing no symptoms, it was the consensus of the group that such changes should be regarded as a critical effect. (Ex. 262, p.64.) (Critical effect is a defined point in the relationship between dose and effect in the individual, namely the point at which an adverse effect occurs in cellular function of the critical organ.)

These conclusions by recognized experts in the field were based largely on the work of Seppalainen and her coworkers. This work has been described by an industry spokesman, Dr. Malcolm, as being "immaculate." (Tr. 2073) Based on the extensive evidence in the record from Seppalainen and others, OSHA has concluded that exposure to lead at low levels causes peripheral neuropathy at exposure levels previously thought to be of relatively

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little consequence. Seppalainen has stated:

> Of course, in terms of health, the importance of slight subclinical neuropathy can be questioned, too, and we did not find any evidence that the well-being of these workers was influenced by the neuropathy, apart from a few complaints of numbness of the arms. Thus, the term "poisoning," in its orthodox sense, cannot be applied to these disorders. But neuropathy, no matter how slight, must be regarded as a more serious effect than the quite reversible alterations in heme synthesis, because the nervous system has a poor regenerative capacity, and the acceptability of such a response must be judged from that point of view. Since the entire question belongs to the diffuse "gray area" between health and disease, it is more than probable that opinions will diverge. We think, however, that no damage to the nervous system should be accepted, and that, therefore, present concepts of safe and unsafe PbB levels must be reconsidered (Ex. 5(12), p. 183).

Recovery from the effects of chronic lead poisoning may be feasible in some cases, if the worker is removed from the source of exposure and therapy is initiated immediately. There are instances, however, when complete recovery is impossible and the pathology is fixed. Even if the worker is removed from the source and therapy initiated, the worker may still experience impairment. In a recent paper describing his results Dr. R. Baloh, a neurologist at UCLA, questioned the reversibility of nervous system damage:

> Although there are isolated reports of significant improvement in lead-induced motor neuron disease and peripheral neuropathy after treatment with chelation therapy, most studies have not been encouraging, and in the case of motor neuron disease, death has occurred despite adequate chelation therapy.
>
> All of this data reinforces a disturbing clinical impression that nervous system damage from increased lead absorption is only partially reversible, if at all, with chelation therapy and/or removal from further exposure. This is not particularly surprising, however, since experience with other heavy metal intoxication has been similar. Nervous system damage from arsenic and mercury responds minimally to chelation therapy. Apparently, irreversible changes occur once the heavy metal is bound by nervous tissue. Although further study is clearly needed, the major point I would like to make this morning is that there is strong evidence to suggest the only reliable way to treat nervous system damage from increased lead absorption is to prevent its occurrence in the first place (Ex. 27(7), p. 55).

OSHA agrees with these concerns regarding irreversibility of neurological disease expressed by Dr. Baloh and therefore must establish a standard which will prevent the development of nervous system pathology at its earliest stages.

In order to prevent peripheral neuropathy as evidenced by slowing in NCV's Seppalainen testified that "to be safe, I would say 50 μg/100 g blood" is the necessary level (Tr. 147). Dr. Seppalainen further recommended that studies be performed to determine "the safety at the level of 50 μg/100 ml" (Tr. 153). OSHA agrees that the current evidence demonstrates that nerve conduction velocity reduction occurs at PbB levels of 50 μg/100 g and above. Therefore, a necessary goal of a standard for occupational lead exposure must be to assure that blood lead levels are maintained below 50μg/100 g in order to provide an adequate margin of safety.

3. *Renal system.* One of the most important contributions to the understanding of adverse health effects associated with exposure to inorganic lead was the elucidation of evidence on kidney disease during the hearings. It is apparent that kidney disease from exposure to lead is far more prevalent than previously believed. In the past, the number of lead workers with kidney disease in the United States was thought to be negligible, but the record indicates that a substantial number of workers may be afflicted with this disease. Wedeen, a nephrologist (kidney specialist), who testified at the hearings for OSHA stated that a minimal estimate of the incidence of this disease (nephropathy) would be 10 percent of lead workers. "According to this estimate, there may be 100,000 cases of preventable renal disease in this country. • • • If only 10 percent of these hundred thousand workers with occupational nephropathy came to chronic hemodialysis (kidney machines) the cost to medicare alone would be about 200 million dollars per year." (Tr. 1741-42.)

The hazard here is compounded by the fact that, unlike the hematopoietic system, routine screening is ineffective in early diagnosis. Renal disease may be detected through routine screening only after about two-thirds of kidney function is lost or when manifestation of symptoms of renal failure are present. By the time lead nephropathy can be detected by usual clinical procedures, irreparable damage has most likely been sustained. When symptoms of renal failure are present, it is simply too late to correct or prevent the disease and "progression to death or dialysis is likely." (Tr. 1732.) The research of Wedeen and his co-workers, the health hazard evaluation by NIOSH at Eagle Picher Industries, Inc., and the research in secondary smelters by Lilis, Fishbein, et al. demonstrated that lead exposure is a key etiologic agent in the development of kidney disease among occupationally exposed workers. Clearly, too little attention has been given to lead-induced renal disease in recent years, and while OSHA recognizes that further research is required to understand fully the disease mechanism, it is also necessary to protect the thousands of workers who are potentially in danger of developing renal disease. The record indicates that blood lead is an inadequate indicator or renal disease development. Dr. Bridbord questioned Dr. Wedeen on the issue of chronicity of exposure and blood lead levels:

> Dr. Bridbord: Well, looking at a group of workers, currently employed, having a blood lead level on that worker and having some information, that to the best of our knowledge thare were no major changes in that particular plant during the past number of years. Would that not be a somewhat better index of what the blood lead levels might have been in the past. Considering too, that these workers are currently employed.
>
> Dr. Wedeen: Sure I think that the blood level measured close to the time of exposure is probably more reflective. I worry very much, that this may occur after a few months of exposure and the blood lead level may remain the same for the next 20 years, despite the fact that the individual is continually accumulating lead in the body.
>
> Dr. Bridbord: Would you think that the chronicity of lead exposure, apart from precisely whether the blood lead was above or below 80 or above or below 60 for example, might be an important factor in determining the eventual development of renal disease in lead workers?
>
> Dr. Wedeen: Yes; that is just what I meant, that the accumulative effects and the cumulative body burden may be very different from the blood lead level at any moment in time.
>
> In other words, one could certainly imagine that a blood lead level of 80, for two years, may be very similar to a blood lead level of 40, for four years. I don't have that data, but something like that may well exist in terms of the danger of the different levels of exposure.
>
> Dr. Bridbord: Alright.
>
> Particularly, in view of that, and given the requirements of the Occupational Safety and Health Act, that sets standards which protect during the working lifetime, Would you have some reservations about a blood lead maximum standard, even at 60?
>
> Dr. Wedeen: I certainly would. And I think I just expressed the basis for it. You will note that in my recording of these patients, very very few of them had blood lead levels over 60. I just feel that while the blood lead level is maybe better than nothing, it may be very practical. It probably doesn't do the job we are trying to do and certainly not from the physician's point of view, who has seen the individual patient, who may or may not be a current exposure at the level that got his disease (Tr. 1765-1766).

The lead standard must therefore be directed towards limiting exposure so that occupational lead nephropathy is prevented. The Agency agrees with the views of Wedeen:

> I have reported today 19 lead workers who have lost 30 to 50 percent of their kidney function. Since they showed no symptoms and had no routine laboratory evidence of kidney disease, it may be asked why this kidney function loss should be viewed as material damage. Lead nephropathy is important because the worker has lost the functional reserve, the safety, provided by two normal kidneys. If one kidney becomes damaged, the normal person has another to rely upon. The lead worker with 50 percent loss of kidney function has no such security. Future loss of kidney function will normally occur with increasing age, and may be accelerated by hypertension or infection. The usual life processes will bring the lead worker to the point of uremia, while the normal individual still has considerable renal functional reserve. Loss of a kidney is therefore more serious than loss of an arm, for example. Loss of an arm leads to obvious limitations in activity. Loss or a kidney or an equivalent loss of kidney function means the lead worker's ability to survive the biologic events of life is severely reduced. By the time lead nephropathy can be detected by usual clinical procedures, enormous and irreparable damage has been sustained. The lead standard must be directed towards limiting exposure so that occupational lead nephropathy does not occur (Tr. 1747-1750).

And OSHA agrees with Dr. Richard Wedeen, that "40 μg/100 ml is the upper acceptable limit" (TR. 1771). That is, while PbB levels are an inadequate measure of occupational exposure (though most agree the best available single measurement) they nonetheless provide a basis for determining body burden when measured over an extended period of time. OSHA believes that maintenance of PbB levels at or below 40 μg/100 ml will reduce the overall dose to the worker, decrease the body burden of lead and prevent sufficient buildup of lead in the kidney to effect renal damage.

4. *Repoductive effects.* Exposure to lead has profoundly adverse effects on the course of reproduction in both males and females. In male workers exposed to lead there is evidence of decreased sexual drive, impotence, decreased ability to produce healthy sperm, and sterility. During the hearings there was considerable discussion of the evidence submitted by Lancranjan et al. which demonstrated that the reproductive ability of men occupationally exposed to lead is interfered with by altered sperm formation. Lancranjan et al. reported a significant increase in malformed sperm (teratospermia) among lead-poisoned workmen (blood lead mean 74.5 μg/100 ml) and workmen with moderately increased absorption (blood lead mean 52.8 μg/100 ml). Decreased number of sperm (hypospermia) and decreased motility (athenospermia) were observed not only in the preceding roups but also in those with only slightly increased absorption (blood lead mean 41 μg/100 ml). The authors concluded that these alterations were produced by a direct toxic effect on the male gonads, and that a dose response relationship exists with respect to teratospermia. The other parameters measured, hypospermia and athenospermia, do not show as strong a relationship but are significantly altered over controls. This work is consistent with other earlier literature quoted by Lancranjan.

> "Epidemiologic studies have pointed out previously both the reduction of number of offsprings in families of workers occupationally exposed to lead and increase of the miscarriage rate in women whose husbands were exposed to lead. Experimental investigations have also shown both a reduction in the number of offspring of laboratory animals and reduced birthweight and survival of progenies of animals fed with diets containing lead." (Ex. 23 (Lancranjan et al.), p. 400.)

In their paper entitled "Review paper: Susceptibility of adult females to lead; effects on reproductive function in females and males" Zielhuis and Wibowo criticized the study by Lancranjan et al., and there was considerable critical discussion of it during the hearings. OSHA has concluded that methodological problems in the study do not negate the overall validity of the study especially when viewed in the context of other research in the literature. The Lancranjan study is strongly indicative of adverse effects on male reproductive ability at low lead levels, and there is evidence indicating a dose-response relationship with respect to teratospermia in these lead exposed workers. In OSHA's view altered spermatogenesis represents impaired reproductive capacity of the male given that sterility is the likely outcome. OSHA believes that this evidence and other studies support the conclusion that lead exerts markedly adverse effects on the reproductive ability of males.

Germ cells can be affected by lead which may cause genetic damage in the egg or sperm cells before conception and which can be passed on to the developing fetus. The record indicates that genetic damage from lead occurs prior to conception in either father or mother. The result of genetic damage could be failure to implant, miscarriage, stillbirth, or birth defects.

The record indicates that exposure of women to lead is associated with abnormal ovarian cycles, premature birth, menstrual disorders, sterility, spontaneous miscarriage, and stillbirths. Infants of mothers with lead poisoning have suffered from lowered birth weights, slower growth, and nervous system disorders, and death was more likely in the first year of life.

There is conclusive evidence in the record that lead passes through the placental barrier. Multiple studies have established that the fetus is exposed to lead because of the passage of lead through the placental membrane. This evidence was uncontroverted during the hearings. The lead levels in the mother's blood are comparable to concentrations of lead in the umbilical cord blood at birth. Transplacental passage becomes detectable at 12-14 weeks of gestation and increases from that point until birth.

Numerous parties at the hearings raised the issue of whether the fetus is the most sensitive organism requiring protection from exposure to lead. Bridbord, for example, argued that the immaturity of the blood brain barrier in the newborn raises additional concern about the presence of lead in fetal tissues.

There is little direct data on damage to the fetus from exposure to lead but there are extensive studies which demonstrate neurobehavioral effects at blood leads of about 30 μg/100 ml and above in children. OSHA believes that the fetus and newborn would be at least as susceptible to neurological damage as would older children and therefore data on children is relevant to the fetus, although acknowledging the duration of exposure may be more limited in the fetus. OSHA asserts that damage to the fetus represents impairment of the reproductive capacity of the parent and must be considered material impairment of functional capacity under the OSH Act.

The proposed lead standard raised the possibility that "the risk of the fetus from intrauterine exposure to high levels of lead in the mother's blood is maximal in the first trimester of pregnancy when the condition of pregnancy may not be known with certainty" (Ex. 2, p. 45936; Ex. 95). OSHA agrees with Dr. Vilma Hunt who testified that "the first trimester has not been shown to be the period of highest vulnerability for the fetus." (Ex. 59). OSHA has concluded that the fetus is at risk from exposure to lead throughout the gestation period, and therefore protection must be afforded throughout pregnancy.

Exposure to lead would be expected to adversely affect heme biosynthesis and the nervous system earliest and most profoundly in the fetus. Early enzyme inhibition in the heme forming system has been well documented, and the central nervous system has its most significant growth during gestation and the first 2 years following birth.

Lead is capable of damaging both the central and peripheral nervous systems of children. At high exposures to lead (80 μg/100 ml and above) the central nervous system may be severely damaged resulting in coma, cardiorespiratory arrest and death. Symptoms of acute encephalopathy similar to those in adults have been reported in young children with a markedly higher incidence of severe symptoms and deaths occurring in them than in adults. In children once acute encephalopathy occurs there is a high probability of permanent, irreversible

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damage to the CNS. There is data that demonstrates permanent damage to CNS has occurred in children exposed at low lead levels and in whom no overt symptoms were in evidence. Children whose blood lead levels were 50 μg/100 ml and above have demonstrated mild CNS symptoms including behavioral difficulties. Behavioral disturbances in children such as hyperactivity have been associated with blood lead levels between 25 and 55 μg/100 ml. Animal studies have confirmed these findings. Beattie demonstrated an increased probability of mental retardation in children exposed to lead via maternal ingestion of lead in water. Elevated blood lead levels were found in the retarded children compared to the control group. There appeared to be a significant relationship between blood lead concentration and mental retardation. Mean blood lead for the retarded children was 25.5 μg/100 ml. Water lead concentrations in the maternal home during pregnancy also correlated with the blood leads from the mentally retarded children.

Motor nerve conduction velocity (NCV) decrements indicating early peripheral neuropathy have been reported in children. Early studies showed NCV decrements in children whose blood lead levels were 40 μg/100 g and above.

While a critical review of the literature leads to the conclusion that blood lead levels of 50 to 60 μg/100 ml are likely sufficient to cause significant neurobehavioral impairments, there is evidence of effects such as hyperactivity as low as 25 μg/100 g. Given the available data OSHA concludes that in order to protect the fetus and newborn from the effects of lead on the nervous system, blood lead levels must be kept below 30 μg/100 g. In general, 30 μg/100 g appears to be reasonably protective insofar as it will minimize enzyme inhibition (ALAD and FEP) in the heme biosynthetic pathway and should minimize neurological damage. OSHA agrees with the Center for Disease Control (Ex. 2(31)), the National Academy of Sciences (Ex. 86M), and the EPA (FEIS (92)) that the blood lead level in children should be maintained below 30 μg/100 g with a population mean of 15 μg/100 g. Levels above 30 μg/100 g should be considered elevated.

In general OSHA believes that the evidence overwhelmingly indicates the blood lead level of workers who wish to plan pregnancies should be maintained below 30 μg/100 in order to prevent adverse effects from lead on the worker's reproductive abilities. To minimize the risk of genetic damage, menstrual disorders, interference with sexual function, lowered fertility, difficulties in conception, damage to the fetus during pregnancy, spontaneous miscarriage, stillbirth, toxic effects on the newborn, and problems with the healthy development of the newborn or developing child blood lead levels should be kept below 30 μg/100 g in both males and females exposed to lead who wish to plan pregnancies.

During the hearings there was considerable testimony on reproductive effects in relation to the PEL and equal employment opportunity considerations. No topic was covered in greater depth or from more vantage points than the subject of women in the lead industry. More than a dozen witnesses testified on this issue; many others offered their views in response to questions; over 400 pages of the transcript of these proceedings were devoted to this issue. Ms. Hricko testified that women of childbearing age had been excluded from employment because "the response of industry has been to "protect women workers from lead's reproductive hazards by refusing to hire them or by forcing them to prove that they can no longer bear children." (Ex. 60 (a)(ii)). However, there was also testimony which demonstrates that women have and do work in production areas of battery manufacturing (Tr. 1245, 4057, 4506, 4855, 5529, 5898). In its proposal OSHA raised the issue of whether "certain groups of adult workers may have greater susceptibility to lead intoxication than the general worker population. One such group is female employees of childbearing age." (Ex. 2, p. 45936). The LIA argued in its post hearing brief that OSHA is not obligated to set a health standard which would insure equal employment for all persons. That is, a standard should not be promulgated which would be based on protection of the fetus and the pregnant female since that would require a lower PEL which would have correspondingly greater costs of compliance. Industry testimony further suggests that women of childbearing potential could be "protected" by excluding them from employment in many parts of the lead industry.

Other parties to the hearings argued that given the data on male reproductive abilities and potential genetic effects in males and females, fertile men were equally at risk as women of childbearing age; therefore, the standard should be designed to protect all exposed workers, male and female.

Dr. Stellman testified as follows:

> In summary, it can be stated that there is no scientific justification for placing all women of childbearing age into a category of a susceptible subgroup of the working population. There is sufficient data available to show that a significant proportion of the population is at risk from the effects of exposure to lead, and hence can also be deemed susceptible. Further, if the intent of the OSHA standard is to protect workers from reproductive effects, there is still justification for treating women separately from men. (Tr. 1161-62)

This view was supported by other witnesses (Ex. 92; Ex. 343; Ex. 59; 60A). Dr. Hunt, for example, stated:

> There is no evidence to allow a conclusion that women of childbearing age themselves are more susceptible to the adverse effects of lead. The susceptible population is made up firstly of the fetus in utero, actually present in the work environment and secondly the offspring of male and female workers with blood lead levels high enough to alter their genetic integrity. (Ex. 59, p. 26.)

Based on the entire record, OSHA has reached the following conclusions regarding the reproductive effects of lead exposure.

A. Lead has profoundly adverse effects on the reproductive ability of male and female workers in the lead industry.

B. Lead exerts its effects prior to conception through genetic damage (germ cell alteration), effects on menstrual, and ovarian cycles and decreased fertility in women, decreased libido and decreased fertility in men through altered spermatogenesis.

C. During pregnancy, the result of lead exposure may include spontaneous abortion, stillbirth, and damage to the fetus.

D. Following birth the child of lead exposed parents may exhibit birth defects, neurological damage and the chances of death within the first year may be increased.

E. To protect against the adverse effects of lead exposure to persons planning pregnancies (or pregnant) the blood lead level should be maintained below 30 μg/100 g. Although there is no evidence for a "no effect" level, OSHA believes the risk of reproductive effects would be minimized at this level.

In conclusion, the record in this rulemaking demonstrates conclusively that workers exposed to lead suffer material impairment of health at blood lead levels far below those previously considered hazardous. Inhibition of the heme biosynthesis pathway, early stages of peripheral and central nervous system disease, reduced renal function and adverse reproductive effects are all evidence of adverse health effects from exposure to lead in workers at blood lead levels of 40 μg/100 g and above. Based on this record OSHA has concluded that blood lead levels should be maintained at or below 40 μg/100 g and even lower for workers who wish to plan pregnancies.

5. *Air to blood relationship.* The proposed lead standard reduced the permissible exposure limit from 200 μg/m³ to an 8-hour time-weighted average concentration, based on a 40-hour workweek of 100 micrograms of lead per cubic meter of air (100 μg/m³).

The Lead Industries Association (LIA) recommended that OSHA adopt a biological enforcement limit instead of using a specific airlead number for all industries and operations. One of the key questions raised by LIA in justifying a biological standard was the purported lack of a relationship between air lead levels and blood lead measurements. The purpose of this section is to address the air lead level to blood lead level relationship.

Based upon the evidence in the record OSHA has concluded that a relationship between air lead levels and population-average blood lead levels unquestionably exists and OSHA is confident that a permissible exposure limit based upon measurement of air lead levels will accomplish the intended goal of protecting worker health.

In order to accurately predict the effects on blood lead levels over time produced by changes in air lead levels, it was necessary to construct a model that takes into account the important factors which affect blood lead levels. The adaptation of the physiological model originally developed by S. R. Bernard by the Center for Policy Alternatives (CPA) combines experimentally observed properties of mammalian lead transport and metabolism, including considerations of the dynamics of blood lead response to long term exposure, with observed physical properties of airborne particulates encountered in the workplace, in order to produce a complete and accurate picture of the response of blood lead levels to particulate lead exposure. The Bernard model is an example of one of the most common types of models used to describe the transport and metabolism of drugs or foreign substances in the body, known as a multicompartment mammillary model. Such models postulate that the substance in question first appears in the blood, and then is transported or diffused into a number of different compartments from the blood, corresponding to the different organ systems in the body. Transfer is assumed to occur only between the blood and the organ compartments, not between organ compartments. The rate of transfer into and out of the blood stream from the various compartments depends upon a number of factors, such as whether or not that particular organ specifically takes up or metabolizes the substance in question. In general, especially in the case of substances which are not metabolized, the rate of transfer between compartments is linearly related to the concentration of the substances in the compartments. This is consistent with the basic physical principles of chemical kinetics that would govern the transfer of a substance across an inert membrane in the absence of any other driving force. The relatively few exceptions to the linear transfer principle tend to occur only in cases where an organ specifically sequesters or metabolizes the substance in question.

In designing a model and calculating the rate of transfer between compartments, the experimenter has many guidelines as to how to proceed. First, one can simply follow total body excretion to ascertain the number of compartments that are individually taking up and excreting lead after an initial dose. The more exponential terms required to fit the data, the more compartments. Second, the investigator can actually follow the rate of uptake and release of the substance from the various tissues by autopsy or biopsy, and measure the rate of release. This latter approach is impossible, of course, in the study of human subjects. After observing the rates of release of the substance in question from the whole body and/or tissues, the investigator is left with a series of exponential retention equations which relate amount of lead left in each compartment after a given time to the initial dose. Using rather complicated but well-developed mathematical techniques, this set of equations can be solved subject to the constraint that all of the ingested substance is accounted for, to yield the rate constants for transfer between compartments. The CPA study also included specific consideration of particle size and individual variability in response to air lead, which is necessary in predicting the response of large populations of workers to changes in air lead exposure. OSHA has determined that the Center for Policy Alternatives (CPA) application of the Bernard Model accurately predicts the effects on blood leads over time produced by changes in air lead levels.

OSHA considers that both the basic construction of the Bernard Model of physiological lead transport and the application of the Bernard Model for prediction of blood lead levels represents a unique accomplishment heretofore unseen in attempts to establish air level to blood level relationships. Insofar as this model takes into account particle size and job tenure it has avoided the serious weaknesses of earlier studies. The findings of those previous studies were incorporated into the development of the model. The final model represents a synthesis of the best available evidence in the record with CPA application of the Bernard Model of physiological lead transport.

Participants in the hearings argued that total reliance be placed upon air sampling or biological monitoring to the exclusion of the other. OSHA will require use of both measures to maximize protection of the lead worker population in general and the individual worker in particular. However, in the enforcement context OSHA will place primary reliance on air lead level measurements to determine compliance with the permissible exposure limit. Further discussion of the permissible exposure limits is found in that section.

In order to establish the correlation between air lead levels and the corresponding blood lead levels OSHA relied in its proposal on the work of Williams et al. (Ex. 5(32)) which was the most comprehensive reported study of its kind at that time. OSHA, in this final standard, has evaluated the findings of a series of subsequent studies which became available during the rulemaking process.

Almost all of the studies, whether based on observation of general or occupational populations, attempt to relate measurements of blood lead values to observed air lead values by means of linear regression techniques. Regression analysis is a technique used to study the change of the mean value of one variable (average blood lead) as the other variable (air lead) changes. There are a number of practical and theoretical difficulties in the design and execution of experiments of this type which should be considered before attempting to discuss and compare the results of the various studies in question. The limitations of the studies in the record include:

The contribution of lead from unmeasured long term air lead exposures to current blood lead level is not properly considered. When the simple regression equation:

$$\text{Current Blood-Lead} = a(\text{Current Air Lead}) + b + \text{Individual error}$$

(a = slope of the line; b = blood lead at zero air lead)

is used to model the data, the blood lead contributed by the exchange of lead in bone and tissue to blood is not taken into consideration. This has the consequence that the intercept at zero current air lead exposure ("b" in the regression equation above) is biased high and the blood lead-air lead slope ("a" in the regression equation) is biased low relative to the slope which would be found if the relationship were redefined in terms of long term average blood lead level and long term average air lead exposure. This has the practical effect of incorrectly predicting that the mean PbB level at 200 μg/m³ will be close to that at 100 μg/m³, which was a criticism made by LIA during the hearings. To the degree that the contribution of prior exposure to curent blood lead levels differs for different workers in the sample, the "individual error" term will also be increased.

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The regression equation does not explicitly incorporate terms relating to particle size. If, as suggested by some data in the record, workers at high air lead exposure levels are exposed to a larger proportion of poorly-absorbed large particulates than workers at low air lead exposure levels, then this will cause an additional upward bias to the "b" zero occupational exposure intercept and a downward bias to the "a" blood lead-air lead slope coefficient. This creates an impression that the rate at which blood lead changes relative to the air lead would be less than it actually would be.

Measurement errors of different kinds affect the results in different ways. Any errors in measuring blood lead level will add to the "individual error" term. However, errors in measuring air lead levels (arising either from inevitable imprecision in sampling or analysis or from unrepresentativeness of the short sample period relative to true average exposure) will usually systematically bias the "a" blood lead-air lead slope downward. This is a particularly serious source of bias in one of the major studies, the Buncher analysis (Ex. 285) of the Delco-Remy data, where single air lead measurements were paired with blood level determinations made within a month of the air sampling. All other major studies of air lead-blood lead relationships used averages of several independent air lead measurements (generally ten or more measurements) for assessments of individual worker air lead exposures.

None of the studies made measurements of work-load or total worker respiration on the job. To the degree that workers differ from each other in gross ventilation, the individual error term is larger than it might have been. To the degree that populations of workers in different plants or in different industries differ in average respiration rate, potentially controllable or avoidable discrepancies in the results of different studies may have been produced.

Viewed in this context, the fact that there are differences in the blood lead-air lead regressions derived from short term observations on different populations is hardly surprising. It is also understandable that many of the studies find unreasonably high values of the intercept at zero exposure ("b"). From studies of general populations with no occupational lead exposure, it is clear that the true "b" intercept is certainly under 25 μg/100g, and is very probably under 20 μg/100g for most areas.

The following table summarizes the results of the regression analyses developed from the studies in the hearing record. This table also compares the studies to the model and demonstrates that even given the limitations of the studies the results are similar.

TABLE 1.—*Suggested air lead/blood lead relationships*

LINEAR RELATIONSHIPS

Blood Lead=a(Air Lead)+b

Source of Relationship	b	a	Non-Linear
King: Smelting (3)	52	0.053	
Battery (1)	46	.032	
Pigments (2a)	30	.07	
Pigments (Quadratic fit)			(1)
Globe-Union	39.7	.1229	
ASARCO (El Paso)	32	.185	
Williams	30.1	.201	
Delco-Remy (Buncher)	37.45	.0628	
Azar/Hammond			(2)
CPA: Bernard model and assumption C			
Job tenure (years)			
0.95	25.80	.1521	
3.4	28.30	.2062	
9.0	29.80	.2404	
16.0	30.64	.2604	
28.5	31.46	.2778	

[1] Blood Lead=26+.12 (Air lead)+.000098 (Air Lead)[3]

[2] Log(Blood Lead)=1.3771+.153 log 40(Air)+128÷168

The available studies also have some individual limitations which should be borne in mind when considering the results:

The King studies (Ex. 234(22)) included many workers exposed at very high (300-900 μg/m³) air lead exposure levels. There is reason for concern that (1) because of particle size and absorption effects, the blood lead-air slope at very high air lead levels may not accurately reflect the slope in the air lead exposure region of interest for standard-setting (25-200 μg/m³), and that (2) there is risk that selection effects may have biased the observed air lead slope low; some workers who show high blood lead levels in response to a given air lead level may be absent from the high air lead exposure groups because of medical transfer to lower or no exposure jobs.

The Globe Union study (Ex. 150A) is based on a relatively small sample, although many of the sample points are of better quality than the points of other studies because they are based on averages of many air lead and blood lead determinations over a relatively long time (6 months or more).

The ASARCO El Paso (Ex. 142 D) and Williams (Ex. 2(32)) studies each measured air lead and blood lead levels over a quite brief period (2 weeks). Additionally, the use of a control group of plastics workers at low air lead exposure levels in the Williams study has been criticized on the ground that the particulate air lead of the plastics workers' exposures may have been qualitatively (particle size, solubility) different from the exposures of the battery workers at higher air lead exposure levels.

The Azar/Hammond relationship (Ex. 54) is an extrapolation of data from non-occupational exposures far below the exposure range of occupational situations. Use of a logarithmic model for such extrapolation is without theoretical justification.

As summarizations of available data on different populations, the existing studies are reasonably valid. It is one thing to say, however, that a linear relationship was observed between the blood lead levels and air lead exposure at a given level of statistical significance, for a given sample or workers, and another thing entirely to use the observed relationship to predict the effect of lowering air lead exposure on even that same sample of workers, let alone to generalize to other samples. Generally, data obtained at a given point in time, should be used conservatively when attempting to predict effects over time. Rarely will all other factors be held constant.

Recognizing these limitations by no means should be taken to imply that the data are useless or that no reliable relationship exists between long term air lead exposures and blood lead levels. To the extent that the likely systematic errors in the short term studies are understood (e.g., overestimation of the blood lead-air lead slope coefficient and overprediction of the intercept at zero occupational exposure), the observed regressions can be used to bound estimates of the true long-term relationships of blood lead to occupational air lead exposure. To the extent that the sources of uncontrolled variation within and between studies are understood, estimates of the likely effects of such factors can be explicitly incorporated into a more comprehensive description of the general system.

Because of the deficiencies in observational studies of air lead-blood lead relationship, it is useful to supplement the empirical air lead-blood lead correlations with relationships derived from physiological models of lead transport in the body. As previously stated the weight of the evidence demonstrates that the model developed by the Center of Policy Alternatives (CPA) is an accurate tool for assessing the blood lead level response to alternative air lead exposures.

In order to predict the numbers of workers who will be above a given blood level at any one time, it is necessary to have an estimate of the spread of individual workers' blood lead levels about a population mean. Observed variability in a worker population will have three basic components:

(1) Individual differences in the long term (years) average blood level response to a given air lead level;

(2) Individual differences resulting from true short term (days or weeks) fluctuations in blood lead level; and

(3) Apparent short term variability from measurement error.

Based on an analysis of data from the Delco-Remy battery plant, it is estimated that true long term blood lead variability corresponds to a standard deviation of approximately 5.5 μg/100g. This is likely to be an underestimate of true long term differences in blood lead resulting from a constant air lead exposure because a single plant over a limited time is unlikely to include as large a diversity in the many factors producing long term variability as would prevail in a random sample of all lead-using industries. The value of 9.5 μg/100g, used in the previous CPA work as an upper bound on true long term variability, appears to be the best mid-range estimate of total (short and long term) true variability. A high range estimate for total variability (including measurement error) suggested in the record is approximately 15 μg/100g. OSHA has used a standard deviation 9.5 μg/100g in calculating the distribution of blood lead levels at particular air lead levels. This distribution has then been utilized to calculate the incremental benefits of the permissible exposure limit over the other alternatives of 40 μg/m³, 100 μg/m³ and 200μg/m³. The results are found in the benefits subsection of the PEL section.

B. PERMISSIBLE EXPOSURE LIMIT

1. *General considerations.* The final standard establishes a permissible exposure limit (PEL) of 50 μg/m³ averaged over an eight hour period. The decision to establish this PEL was based on consideration of the health effects associated with exposure to lead, feasibility issues, and the correlation of airborne concentrations of lead with blood lead levels that are in turn associated with adverse effects and symptoms of lead exposure.

At the time the proposal was issued, OSHA stated that "in order to provide the appropriate margin of safety, as well as to provide significant protection against the effects, clinical or subclinical, and the mild symptoms which may occur at blood lead levels below 80 μg/100 g it is necessary to set an airborne level which will limit blood lead (PbB) levels to 60 μg/100 g. A maximum blood lead level of 60 μg/100 g corresponds to a mean blood lead level of about 40 μg/100 g" (Ex. 2, p. 45938). Based upon the extensive evidence of adverse health effects associated with exposure to lead, OSHA has determined that in order to provide necessary protection against the effects of lead exposure, the blood lead level of lead workers must be kept below 40 μg/100 g.

In establishing 40 μg/100 g as the maximum blood lead level which the protection of employees and prudence permits, OSHA is mindful of the requirement of the Act that "no employee will suffer material impairment of health or functional capacity . . . for the period of his working life." OSHA has concluded that maintenance of blood lead levels below 40 μg/100 g by engineering and work practice controls of airborne lead will provide protection of workers throughout their working lifetimes. There is a substantial amount of evidence which indicates that the blood lead level of workers, both men and women, who wish to plan pregnancies should be maintained at less than 30 μg/100 g during this period, and this knowledge forms the basis for the action level of 30 μg/m³ established in this final standard which the agency believes will maintain the majority of blood lead levels below 30 μg/100 g.

OSHA recognizes that a PEL of 50 μg/m³ will not achieve the goal of maintaining the blood lead levels in all occupationally exposed workers below 40 μg/100 g. Based on the calculations using the CPA adaptation of the Bernard model, OSHA predicts 0.5 percent of worker blood leads will exceed 60 μg/100 g; 5.5 percent of the workers will have a PbB between 50-60 μg/100 g; 23.3 percent will be between 40-50 μg/100 g; and overall, 29.3 percent of exposed lead workers will have PbB above 40 μg/100 g at any one time when uniform compliance with 50 μg/m³ PEL is achieved. However, this represents a substantial improvement over current industry conditions. The current blood lead level distribution assuming compliance with 200 μg/m³ is approximately (1) greater than 60 μg/100 g, 22.4 percent; (2) 50-60 μg/100 g, 32.6 percent; (3) 40-50 μg/100 g, 28.7 percent; (4) The total above 40 μg/100 g, 83.8 percent.

In establishing 40 μg/100 g as a maximum desirable blood lead level, the Agency is conscious of the fact that the OSHA Act mandates that a standard be set which meets the test of feasibility. OSHA has determined that 50 μg/m³ represents the lowest level for which there is evidence of feasibility for primary and secondary smelting, SLI battery manufacturing, pigment manufacturing, and brass/bronze foundries. The 50 μg/m³ exposure limit is the level which properly balances the questions of feasibility and health effects of lead exposure and most adequately assures, to the extent feasible, the protection or workers exposed to lead. Compliance with this level will provide a dramatic reduction in the number of workers whose blood lead levels are currently greater than 40 μg/100 g, and will virtually eliminate all blood lead levels above 60 μg/100 g.

This level of 50 μg/m³ is achievable almost entirely through engineering and work practice controls, the preferable control strategy. The exposure limit is based upon what can be achieved by the affected industries taken as a whole, using presently available technology or, in some industries, technology looming on the horizon. The industries which will face the greatest difficulties in the implementation of engineering controls will be primary and secondary smelters, pigment manufacturing, brass/bronze foundries and SLI battery manufacturers. For this reason, the requirement for engineering and work practice controls will be phased-in with extended periods of time allotted for compliance in these industries. OSHA has determined that the standard is feasible, and that the PEL of 50 μg/m³ represents the best intersection between maximization of health benefits and feasibility.

2. *Health effects.* In the proposal, OSHA questioned whether both clinial and subclinical effects of exposure should be considered in establishing a standard for lead. OSHA believes the original terms, clinical and subclinical, represent vast over-simplifications of a disease process and, therefore, have avoided their use in this final standard. The subclinical effects described in the health effects section are, in reality, the early to middle stages in a continuum of disease development process. It is axiomatic that the chronic, irreversible stage is preceded initially by an early, relatively mild, and apparently reversible stage of disease. This earliest stage is characterized by varying subjective and/or objective symptoms which may not at first alarm the victim, or present a physician with a clear-cut diagnosis. Nevertheless, this early developmental stage of disease is a pathologial state, and OSHA finds persuasive the arguments for adopting a lead regulation which protects workers from this early consequence of lead exposure. OSHA believes these early stages of the disease process characteized by central nervous system symptoms, behavioral changes, psychological impairment, peripheral nerve damage, anemia, reduced kidney function and adverse reproductive effects represent material impairment of the worker and should be prevented in order to eliminate further development of disabling disease and death.

OSHA must promulgate a standard which prevents occupational disease resulting from both acute and prolonged or chronic exposure to lead; it must likewise guard against the onset, progression or severity of chronic degenerative diseases of aging workers.

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The degree of protection to be provided must extend over the full span of a working life and must cover the more susceptible, as well as the more robust members of the exposed group. Since the objective is to limit the latent effects of exposure, as well a immediate illness, the mere absence of illness, or lack of severe clinical signs will not constitute adequate health protection. The PEL must be chosen such that is protects the worker not only from the most overt symptoms of illness, but also from the earliest indications of the onset of disease. The usual medical signs for disturbance, therefore, are wholly inadequate to provide employee protection. These considerations formed the basis of OSHA's interpretation of the health effects data in the record for purposes of establishing a PEL.

a. *Inhibition of heme synthesis.* In establishing the PEL, OSHA evaluated the health effects of lead on heme synthesis. Scientific evidence has established that very low levels of lead inhibits at least two enzymes (ALA-D and ferrochelatase) in the heme synthesis pathway. ALA-D inhibition is observed at PbB levels below 20 μg/100 g. At 40 μg/100 g significant excretion of the substrate of one enzyme, ALA-D, occurs at this PbB level. The build-up of protoporphyrin levels indicates that inhibition of the enzyme; ferrochelatase, also occurs at low PbB levels. Some have argued that these effects are the manifestation of the human body's adjustment to lead. OSHA believes that it is inappropriate and simplistic to describe these changes as internal adjustments. These measurable effects are considered by the agency to indicate the occurrence of disruptions of a fundamental and vital subcellular process, heme synthesis. such processes are not only essential to the production of hemoglobin, they are also vital to the mitochondrial function of all cells.

OSHA believes the evidence indicates a progression of lead's effects starting with the inhibition of specific enzymes, continuing to the measurable disruption of subcellular processes, such as the measurable build-up of heme synthesis products, and eventually developing into the overt symtoms of lead poisoning. Biological variability between individuals will necessarily cause differences in the PbB level at which a particular person will experience each stage in this disease continuum; therefore, at each higher PbB level a greater proportion of the population will manifest each given effect. Given this understanding of the progressive stages of lead's effect, OSHA has concluded that enzyme inhibition indicative of the disruption of heme synthesis is an early stage of a disease process.

Anemia is one of the established symptoms of lead poisoning. That lead-induced anemia occurs above PbB levels of 80 μg/100 g is well established; however, the occurrence of this symptom at PbB levels below 80 has been debated. In evaluating the disease mechanisms of anemia, it was found that lead is an insidious poison which attacks not one, but many, of the subcellular physiological processes. The effects of lead on heme synthesis are considered to play a part in the development of anemia. Studies have associated PbB levels as low as 50 μg/100 g with lowered Hb levels. In particular, Tola's study, which showed a lowering of hemoglobin (Hb) over the length of lead exposure to 50 μg/100 g, and the work of the Mt. Sinai group in secondary smelters which demonstrated reduced Hb in 39 percent of the workers studied whose PbB levels ranged from 40 to 80 μg/100 ml, is considered by OSHA as strong evidence that lead does effect reduced Hb levels at this low PbB range. This implies that there is a lifetime alteration in the oxygen carrying capacity of the blood, in the blood viscosity and potentially in the cardiac work load.

In evaluating the effects of lead on heme synthesis, Piomelli suggested that effects on the blood forming system, such as anemia, are not the most significant clinical effects of heme synthesis disruption nor the earliest. He stated that "a much more important fact is that the alteration of the mechanism of heme synthesis reflects the general toxicity of lead in the entire body." (TR, 458)

Evidence indicates that there is disruption of heme synthesis in other tissues of the body following exposure to lead, and that this disruption results in alteration of the process of respiration. While this evidence relates lead's effects on heme synthesis to symptoms throughout the body is far from complete, it is, however, extensive enough to warrant very serious consideration with respect ot the establishment of the standard. OSHA believes this evidence demonstrates that one stage of early lead disease is the disruption of heme synthesis and that the measurable effect of this disruption on the hematopoietic system parallels that which is known to occur in all body tissues at comparably low PbB levels, (below 40 μg/100 g). The disruption of heme synthesis is clearly not the only mechanism by which lead exerts its toxicological effect, but is one mechanism of which we have substantial understanding and can measure.

In reference to the blood forming system, OSHA believes that the effects of lead are a complex progression which begins with discrete biochemical changes and proceeds to overt clinical symptoms. At increasingly higher PbB levels, a significant proportion of the population will suffer more extreme effects. At a PbB level of 40 μg/100 g, a sizable proportion of the population would show measurable effects of the disruption of heme synthesis in the hematopoietic system. A comparable degree of disruption of heme synthesis in the mitochondria would occur. OSHA believes the occurrence of such effects is an unacceptable health impairment.

Piomelli gave an excellent summary of the importance of lead's effects on heme synthesis stating:

> It is my understanding that regulations have the purpose of preventing "material impairment of health". Alterations in heme synthesis do not produce subjective evidence of impairment of health, unless they reach the extreme depression in severe lead intoxication, when marked anemia occurs and the individual feels weak. However, it is not any longer possible to restrict the concept of health to the individual's subjective lack of feeling adverse effects. This is because we know that individuals may get adjusted to suboptimal health, if changes occur slowly enough and also because we now have the ability to detect functional impairments by appropriate tests, much before the individual can perceive any adverse effect. In fact, it is the responsibility of preventive medicine to detect those alterations which may precede frank symptomatology, and to prevent its occurrence. The alterations in heme synthesis caused by lead fulfill, in my opinion, the criteria for material adverse effects on health and can be used to forecast further damage. The depression of heme synthesis in all cells of the body is an effect of far reaching proportion and it is the key to the multiple clincial effects of lead toxicity, which become obvious as the exposure continues (Ex. 57, p. 21).

This does not in any way suggest that the lead effect on heme is the only mechanism of lead disease, but it does suggest that this effect is at least one of the important mechanisms in lead disease. An understanding of the spectrum of effects from subcellular to clinical symptoms is relevant not only to the occurrence of anemia but will also be the expected pattern in lead-induced neurological and renal disease.

OSHA believes that there is evidence demonstrating the impairment of heme synthesis and mitochondrial disruption in tissues throughout the body, and that these effects are the early stages of lead disease in these various tissues. The disruption of heme synthesis measured at low PbB levels is not only a measure of an early hematopoietic effect, it is also a measure which indicates early disease in other tissue. The Agency believes that such a pervasive physiological disruption must be considered as a material impairment of health and must be prevented. PbB levels greater than 40 μg/100 g should, therefore, be prevented to the extent feasible.

b. *Neurological system.* There is extensive evidence accumulated in both adults and children which indicates that the toxicity of lead is manifested in both the central and peripheral nervous systems. The neurologic manifestations of lead intoxication are variable, ranging from acute, chronic, or low level to massive. The location and degree of neurological damage depends on the dose and duration of exposure.

The record in this rulemaking clearly demonstrates that damage occurs in both the central and peripheral nervous systems at blood lead levels lower than previously recognized. Based on this record, OSHA has concluded that the earliest stages of central nervous system disease are recognizable as subjective CNS symptoms and behavioral disorders. These disorders have been documented in numerous scientifically sound investigations. Current information does not provide an indication of a no-effect level. In adults, there is evidence of a dose-response relationship, but the no-effect level remains to be determined. Given the severity and potential nonreversibility of central nervous system disease, OSHA must pursue a conservative course of action. A blood lead of 40 μg/100 g must be considered to be a threshold level for behavioral changes in adults, and to protect against long-term behavioral effects, blood levels should never exceed 60 μg/100 g.

Some of the best and most extensive evidence in the rulemaking record are the data presented which confirm the existence of the early stages of peripheral neuropathy in workers exposed to lead levels below 70 μg/100 g. The evidence demonstrates that there is a statistically significant loss of motor nerve conduction velocity (MNCV) in lead-exposed workers. A dose-response relationship for the slowing of MNCV has been determined, and it is apparent that this slowing occurs in workers whose PbB levels are 50 μg/100 g and above. Whether there are effects as low as 40 μg/100 g is as yet undetermined, although Repko does indicate a slowing of MNCV in the forties. Recently published research indicates edema appears to develop at the same time of onset of degeneration of myelin sheaths of nerve fibers which show reduced MNCV. This pathophysiologic state will grow progressively worse with continued exposure even at PbB levels in the fifties. OSHA believes a clear deficit in the conduction velocity of more than one nerve is an early stage in the development of clinically manifest peripheral nerve damage and disease (neuropathy).

In order to prevent peripheral neuropathy as evidenced by a slowing in NCV's, it is necessary to maintain PbB's below 50 μg/100 g, although if there is to be any margin of safety, a value less than this should be established. This is consistent with OSHA's overall goal of maintaining blood leads below 40 μg/100 g.

Recovery from the effects of chronic lead poisoning may be feasible in some cases if the worker is removed from the source of exposure and therapy is initiated immediately. There are instances, however, when complete recovery is impossible and the pathology is fixed. Even if the worker is removed from the source and therapy initiated, the worker may still experience impairment (Ex. 95 Ref. Cantarow p. 135). In a recent paper describing his results, Dr. R. Baloh, a neurologist at UCLA, questioned the reversibility of nervous system damage:

> Although there are isolated reports of significant improvement in lead induced motor neuron diseases and peripheral neuropathy after treatment with chelation therapy, most studies have not been encouraging, and in the case of motor neuron disease, death has occurred despite adequate chelation therapy.
>
> All of this data reinforces a disturbing clinical impression that nervous system damage from increased lead absorption is only partially reversible, if at all, with chelation therapy and/or removal from further exposure. This is not particularly surprising, however, since experience with other heavy metal intoxication has been similar. Nervous system damage from arsenic and mercury responds minimally to chelation therapy. Apparently, irreversible changes occur once the heavy metal is bound by nervous tissue. Although further study is clearly needed, the major point I would like to make this morning is that there is strong evidence to suggest the only reliable way to treat nervous system damage from increased lead absorption is to prevent its occurrence in the first place. (Ex. 27(7) p. 55.)

OSHA agrees with these concerns regarding irreversibility of neurological disease expressed by Dr. Baloh and therefore must establish a standard which will prevent the development of nervous system pathology at its earliest stages.

c. *Renal system.* During the hearings, one of the most important contributions to the understanding of the adverse health effects associated with exposure to inorganic lead was the elucidation of evidence on kidney disease. In particular, the research of Wedeen and his coworkers, the health hazard evaluation by NIOSH at Eagle Picher Industries, Inc., and the work of the Mt. Sinai group demonstrated that lead exposure is a key etiologic agent in the development of kidney disease among workers occupationally exposed to lead. Unlike the hematopoietic system where changes in heme formation can be detected at early stages, renal disease may only be detected through routine screening after serious damage has occurred. Elevated BUN and S-creatinine are measurable only after two-thirds of kidney function is lost, or upon manifestation of symptoms of renal failure. OSHA agrees with the conclusions of Wedeen: "By the time lead nephropathy can be detected by usual clinical procedures, enormous and irreparable damage has been sustained. The lead standard must be directed towards limiting exposure so that occupational lead nephropathy does not occur." (Tr. 1750) since in this situation "progression to death or dialysis is likely." (Tr. 1732). The record indicates that blood lead is an inadequate indicator of kidney disease development, since rather than being a complete measure of body burden, it is merely a measure of absorption when sampled close to the time of exposure.

Given these conclusions, OSHA must approach the prevention of kidney disease by recognizing the limited usefulness of certain biological parameters. Therefore, OSHA believes any standard established for lead must provide some margin of safety and agrees with Dr. Wedeen that:

> It is therefore the subclinical renal effects, and by subclinical, I mean effects that are not readily detected by the patient or the physician, it is therefore the subclinical effects of lead which should be detected and prevented, since this represents a material loss of functional capacity which has serious adverse health implications. (Tr. 1732) 40 μg/100 ml is the upper acceptable limit to prevent development of a hazardous body burdens lead. (Tr. 1771)

d. *Reproductive system.* The record clearly demonstrates that lead has profoundly adverse effects on the course of reproduction. Prior to conception exposure to lead is responsible for menstrual and ovarian cycle abnormalities in women, decreased libido, impotence and altered sperm formation in men, and lowered fertility and genetic damage in both males and females. Genetic damage may result in spontaneous miscarriage, stillbirth, or in a disease or birth defects in a live born child. There is data which documents that miscarriage and stillbirth may be caused by maternal lead esposure during pregnancy. In fact, lead has been used as a abortifacient. In women exposed to lead, Fhim has reported that the mothers of premature babies had significantly higher mean blood leads than did mothers with normal pregnancies.

There is conclusive evidence that lead crosses the placenta of pregnant women and enters the fetal tissues; lead levels in the mother's blood are comparable to concentrations in the umbilical cord blood at birth. A survey of fetal tissue demonstrated that the transplacental passage of lead becomes detectable at 12 to 14 weeks of gestation, and increases from that point to birth. Therefore, early in pregnancy the fetus may be adversely

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affected by maternal lead exposure. Some investigators have suggested that the fetus is most vulnerable to lead during the first trimester. OSHA disagrees with this assertion, but rather believes the fetus is highly vulnerable whatever the stage of development. The fetus is particularly susceptible to neurological damage. In addition, there may also be heme synthesis impairment and renal damage in the fetus. In the newborn child, exposure to lead may continue through the secretion of lead in the mother's milk.

There is little direct data on damage to the fetus from exposure to lead but there are extensive studies which demonstrate neurobehavioral effects in children. OSHA believes that the fetus would be at least as susceptible to heme inhibition and neurological damage as would older children and therefore data on children is relevant to the fetus.

Behavioral disturbances, such as hyperactivity, have been associated with blood lead levels in children as low as 25 μg/100 ml. In general, mild CNS symptoms, behavioral problems, and other neurological signs and symptoms occur around 50 μg/100 ml, but there is evidence of adverse effects at lower PbB levels.

An analysis of the data suggest that in order to protect against lead's adverse effects on the course of reproduction, blood lead levels should be maintained at or below 30 μg/100 ml. The Center for Disease Control, the Toxicology Committee of the National Academy of Sciences and the Environmental Protection Agency recommend that blood lead levels of children be kept below 30 μg/100 ml. Certainly the fetus and newborn should be similarly protected. OSHA recognizes that the PEL of 50 μg/m³ acting alone will not maintain blood lead levels of persons planning pregnancies or pregnant women below 30 μg/100 ml. When compliance is achieved, the mean blood lead level for a population of lead workers uniformly exposed to the 50 μg/m³ PEL will be approximately 35 μg/100 ml. OSHA believes that damage to the fetus represents impairment of the reproductive capacity of the lead exposed parent. While OSHA believes that a standard should be set which protects all persons affected—male and female workers, and the fetus—the agency is limited by the requirement that a standard be feasible. However, the standard minimizes adverse reproductive effects from lead by a variety of means including (1) establishing a 30 μg/m³ action level which will initiate biological and air monitoring, (2) utilizing the provisions of the medical surveillance section, including fertility testing, physician reviews, and medical removal protection to identify and perhaps remove workers who may wish to plan pregnancies or who are pregnant, and (3) insuring through the education and training provisions of the standard that workers are fully informed of the potential hazards from exposure to lead on their reproductive ability, during pregnancy and following birth. Compliance with these provisions of the standard should effectively minimize any risk to the fetus and newborn child, and thereby protect the reproductive systems of both parents.

The record in this rulemaking is clear that male workers may be adversely effected by lead as well as women. Male workers may be rendered infertile or impotent, and both men and women are subject to genetic damage which may affect both the course and outcome of pregnancy. Given the data in this record, OSHA believes there is no basis whatsoever for the claim that women of childbearing age should be excluded from the workplace in order to protect the fetus or the course of pregnancy. Effective compliance with all aspects of these standard will minimize risk to all persons and should therefore insure equal employment for both men and women. There is no evidentiary basis, nor is there anything in this final standard, which would form the basis for not hiring workers of either sex in the lead industry.

During the hearings, industry representatives argued that lead exposed workers will not suffer material impairment of health if blood lead levels are below 80μg/100 g. OSHA finds this argument to be unsubstantiated by scientific or medical evidence, and has concluded that it represents an incorrect assertion. It is not based on the sound evidence in the record which demonstrates adverse health effects as low as 40 μg/100 g. The record indicates that adverse signs and symptoms have been observed in workers who were exposed to lead for less than a year.

During the public hearings the vast majority of the physicians who testified supported the view that blood lead levels should be maintained at or below 40 μg/100 g in order to protect against the onset of the early manifestations of disease previously described as subclinical effects. The following physicians supported a PbB level of 40 μg/100 g: Dr. Lillis (Tr. 2700-01), Dr. Needleman (Tr. 1085-86; 1106-07); Dr. Epstein (Tr. 1051-52, 1058-65, 1067-68, 1072, 1073-74, 1104-05); Dr. Lancrajan (Tr. 1771), Dr. Wolfe (tr. 4140), Dr. Teitlebaum (Tr. 374-78), Dr. Bridbord (Tr. 1976-02), Dr. Fishbein (Tr. 2660-61, 2669) and Dr. Piomelli (Tr. 467).

In addition OSHA has carefully scrutinized the extensive evidence compiled by the Environmental Protection Agency (EPA) which led that Agency to establish a national ambient air quality standard of 1.5 μg/m³ designed to address the problem of lead in the urban environment. The EPA standard was based on the following considerations:

> In establishing the final standard, "EPA determined that of the general population, young children (age 1-5 years) are the most sensitive to lead exposure. In 1970, there were 20 million children in the U.S. under 5 years old, of whom 12 million lived in urban areas and 5 million lived in center cities where lead exposure is the highest. The standard is based on preventing children in the U.S. from exceeding a blood level of 30 micrograms lead per deciliter of blood. Blood lead levels above 30 micrograms are associated with an impairment in cell function which EPA regards as adverse to the health of chronically exposed children. There are a number of other adverse health effects associated with blood lead levels above 30 micrograms in children as well as in the general population, including the possibility that nervous system damage may occur in children even without overt symptoms of lead poisoning." (EPA Press Statement, September 29, 1978.)

These conclusions are consistent with the testimony in this record including the policy statements of the Center for Disease Control (Ex. 2 (15)) and the National Academy of Sciences. These conclusions on exposure limits in the general population and children in particular are relevant to OSHA's final standard for a working population. The testimony of Dr. H. Needleman of Harvard University is relevant here.

> I am one of those who believe that a substantial body of evidence is accumulating that the threshold for significant health effect depends on the avidity, sensitivity and sophistication with which we pursue it and that the lowering of acceptable body burdens in children and adults is scientifically and economically sound.
>
> With the passage of time, the defined acceptable blood level for a child under six has moved from 60—when I began my training in pediatrics not too long ago—to 50 to 40 micrograms per deciliter. The CDC now begins to talk about 20 as the threshold for undue lead exposure. And Professor Zielhuis at the Amsterdam meeting in 1972 recommeded an individual limit of 35 micrograms per deciliter and a group average of 20 micrograms per deciliter for children.
>
> There are important differences during the time that the blood brain barrier is being laid down, in that certain enzymes are being induced, but I think that the point that I was trying to generate in that argument, was that in my pediatric experience, when I started training in pediatrics, we said that children with blood leads over 80 were at high risk for the lead poisoning, and now we have been talking about children of 30, 45 or 40, and I think that same argument, deriving out of sharp and clinical and experimental evidence, would apply to the worker that is, that if you look more carefully for evidence of impairment, you are going to find it.
>
> The fact that an adult worker will spill aminolevulinic acid in his urine, at a blood lead of 40, to me says, that this is a clinical effect of significance. (Tr. 1078, 1106-07.)

The Agency agrees with the conclusions of Dr. Needleman and emphasizes that overt symptoms of lead toxicity occur below 80 μg/100 g and in fact below 60 μg/100 g. OSHA is convinced by the record that large numbers of workers whose blood lead levels are above 40 μg/100 g and whose health will in all probability grow progressively worse, must be identified and protected.

e. *Air to blood relationships.* In order to establish a permissible exposure limit, OSHA was first required to determine the blood levels associated with adverse effects and symptoms of lead exposure, and to correlate these blood lead levels with airborne concentrations of lead. During the hearings, industry representatives steadfastly maintained that blood lead levels cannot be correlated with, nor predicted from, air-lead concentrations. Based on the record evidence, OSHA has concluded to the contrary. While many studies in the record have limitations, these limitations by no means imply that the data are useless or that no reliable relationship exists between long term air lead exposures and blood lead levels. Given the extent to which the likely systematic errors in the short term studies in the record are understood, the observed equations can be used to bound estimates of the true long term relationships of blood lead to occupational air lead exposure. To the extent that the sources of uncontrolled variation within and between studies are understood, estimates of the likely effects of such factors could be explicity incorporated into a more comprehensive description of the general system.

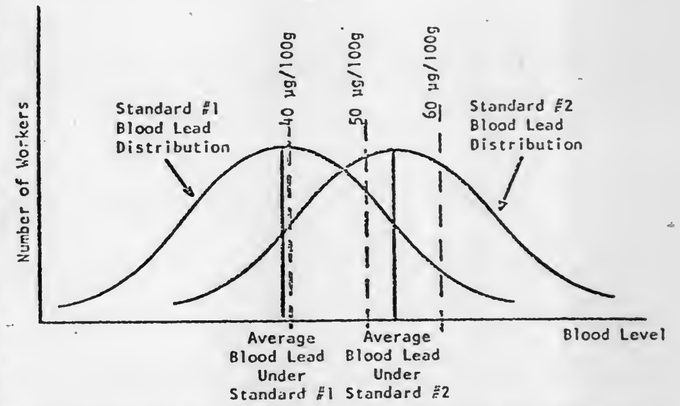
In order to accurately predict the effect on blood lead levels which would be caused by long term exposure to various levels of air lead, it was necessary to construct a model that takes into account the important factors which affect blood lead levels. The physiological model originally developed by S. R. Bernard and adapted by the Center for Policy Alternatives (CPA) combines experimentally observed properties of mammalian lead transport and metabolism, including consideration of the dynamics of blood lead response to long term exposure. The model also accounts for the observed physical properties of airborne particulates encountered in the workplace, in order to produce a complete and accurate picture of the response of blood lead levels to particulate lead exposure. Furthermore, the CPA study includes a specific consideration of individual variability in response to air lead, which is necessary in predicting the responses of large populations of workers to changes in air lead exposure. OSHA believes this model represents the best approximation of the true air lead to blood lead relationship to date. It is superior to the short term studies in the record, insofar as it incorporates the best aspects of the studies in the model and also addresses the particular weaknesses of these studies, such as job tenure and particle size. OSHA has utilized the model in calculating the predicted blood lead distributions at various air lead levels and has determined the incremental benefits of the PEL to be discussed in the next section.

3. *Benefits of the PEL.* The dramatic reduction in the number of workers with blood lead levels over 40, 50 and 60 μg/100 g, is a measure of the incremental benefit derived from a PEL of 50 μg/m³. Ideally, it is desirable to express the benefits of a standard in terms of decreases in the incidence and severity of the various adverse health effects of lead exposure (e.g., neurological damage, kidney damage, etc.). However, the available data does not allow a meaningful quantitative estimation of the degree of prevention of damage which is likely to be achieved by lowering worker exposures and blood leads to specific levels. The record evidence allows estimates to be made of the blood lead levels which are likely to result from compliance with alternative air standards. In the absence of better epidemiologically determined morbidity and mortality data, the best judgment of the relative health benefits achievable under the different PEL's which have been considered is based on the expected reduction in the number of workers with dangerously high blood lead levels.

The results are expressed in terms of the number of workers expected to fall into a particular blood lead range at any one time, after the establishment of long-term equilibrium, and without consideration of medical removal provisions. OSHA believes that this model will provide the best comparison of different assumed compliance levels. However, there are a number of inherent limitations in this approach which need to be clearly appreciated.

First, it should be understood that a change in air lead exposure causes a shift in the entire distribution of blood lead levels in the population:

FIGURE 1



Although the incremental benefits of standard No. 1 over standard No. 2 may be expressed in terms of the decrease in the number of workers (area under the curve) falling in each blood lead level range, the "benefits" of the standard are not really limited to workers who move across the lines drawn at 40, 50, and 60 μg/100g. Under the lower exposure standard, all of the workers are expected, to some degree, to have lower blood lead levels, and therefore possibly some lower level of health risk. It should be noted that the comparison of differences in mean blood lead levels will markedly underestimate the benefits to a population of workers.

Second, it should be stressed that the measurement of benefits chosen represents a continuous "flow," not a "stock." As time passes and workers move into and out of employment in lead-related industries, the differences between compliance with various PEL's continuously generate differences in the population of newly exposed workers. If two standards differ by 1,000 in the number of workers expected to be over 60 μg/100g at any one time, over a period of 10 years, the

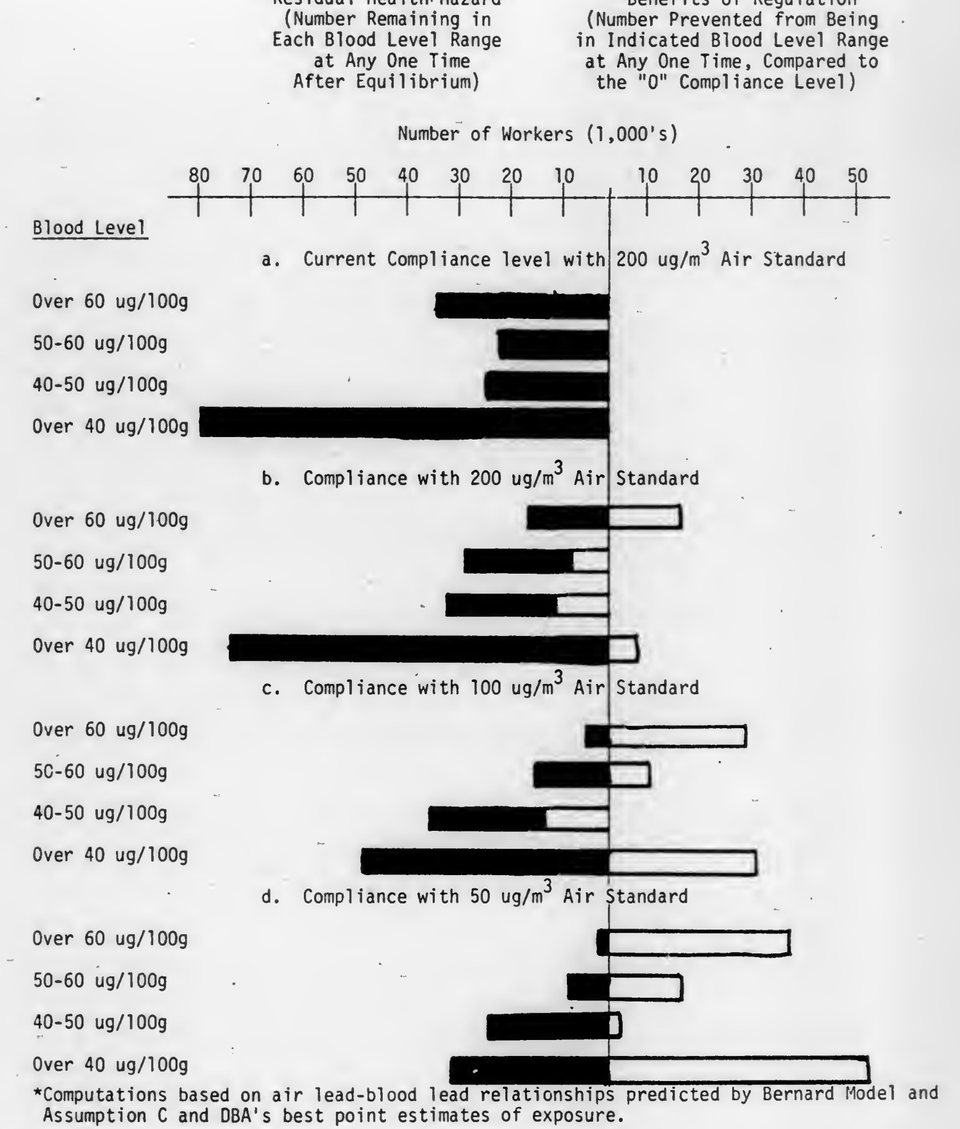
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difference is clearly 10,000 person-years at the higher blood lead level. This figure depends on the labor turnover in the industries concerned, the frequency with which workers change jobs (and hence exposures) within the industry, as well as other factors.

D. B. Associates has presented rough estimates of lead exposure in many industries. OSHA bases its assessments of the incremental benefits of the air lead standard on this data, as it is the most comprehensive compilation of exposure estimates. OSHA estimates based on DBA figures and other record evidence that overall, approximately 41,622 workers are currently exposed to time-weighted-average air lead levels of over 100 $\mu g/m^3$, and an additional 55,885 workers are exposed to air lead levels between 50 and 100 $\mu g/m^3$.

The following results are obtained by multiplying the appropriate exposure estimates by the estimates of the percentages of population expected to have blood levels in each range at any one time, following the establishment of long-term equilibrium. (See figure 2 and table 2.)

BEST POINT ESTIMATES OF ULTIMATE EQUILIBRIUM BENEFITS OF REDUCING AIR LEAD EXPOSURES UNDER DIFFERENT BLOOD LEAD LEVEL VARIABILITY ASSUMPTIONS*
Blood Level Standard Deviation = 9/5 ug/100g



*Computations based on air lead-blood lead relationships predicted by Bernard Model and Assumption C and DBA's best point estimates of exposure.

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BEST POINT ESTIMATES OF ULTIMATE EQUILIBRIUM BENEFITS OF REDUCING AIR LEAD EXPOSURES

Blood Level Standard Deviation = 9.5 ug/100g

Long Term Average Air Lead Exposure	Total Number of Workers	≥ 60 ug/100g	50-60 ug/100g	40-50 ug/100g	Total ≥40 ug/100g
		a. Current Compliance Level			
> 100 ug/m^3	41,622	27,652	8,508	4,166	40,326
50-100 ug/m^3	55,885	5,125	14,379	19,732	39,243
	97,507	32,777	22,887	23,898	79,569
		b. Compliance with 200 ug/m^3			
> 100 ug/m^3	41,622	9,340	13,569	11,958	34,867
50-100 ug/m^3	55,885	5,125	14,379	19,732	39,243
	97,507	14,465	27,948	31,690	74,110
		c. Compliance with 100 ug/m^3			
> 50 ug/m^3	97,507	2,562	14,041	32,870	49,475
		d. Compliance with 50 ug/m^3			
< 50 ug/m^3	97,507	498	5,373-	22,729	28,599
		Incremental Benefits			
b over a		18,312	-(5,061)	-(7,792)	5,459
c over a		30,215	8,846	-(8,972)	30,094
d over a		32,279	17,514	1,169	50,970
c over b		11,903	13,907	-(1,180)	24,635
d over b		13,967	22,575	8,961	45,511
d over c		2,064	8,668	10,141	20,876

The figure summarizes the best point estimates of the ultimate effects of achieving various air lead compliance levels (a-d). The left side of the figure shows the results of parallel computations of the number of workers in the various blood lead level ranges. The right side of the figure shows the incremental benefits (reduction of the number of workers in each blood level range) of the "b", "c" and "d" compliance levels, compared to the baseline "a" compliance level which reflects the current distribution in the lead industry.

Assuming compliance with the present standard (the "a" compliance level), large numbers of workers could be expected to have potentially hazardous blood levels. At any one time, we anticipate that 32,777 workers would have blood lead levels over 60 μg/100 g, and 79,569 would have blood levels over 40 μg/100 g, in the absence of other remedial measures. Achievement of the "b" compliance level would reduce the number of workers over 60 μg/100 g, but would leave the number of workers in the 50-60 μg/100 g and 40-50 μg/100 g range substantially unchanged. Achievement of the "c" compliance level would be expected to reduce to about 2,500 the number of workers over 60 μg/100 g, and would be expected to produce reduction in the numbers of workers in the 50-60 μg/100 g blood lead level range to 14,000. The "d" compliance level would reduce the total number of workers over 40 μg/100 g to under 28,599, as compared to over 79,569 for the "a" scenario.

The incremental benefit of "d" over "a" in terms of the number of workers over 40 μg/100 g would be 50,970; for workers whose PbB levels would be over 60 μg/m³, the benefit would be 32,279. These are clearly substantial reductions in the number of workers with excessive blood lead levels and would represent marked benefits to lead-exposed workers.

4. *Alternatives to the final PEL.* During this rulemaking process, various parties advanced serious alternatives to the proposed OSHA standard. Since OSHA has adopted a PEL different from the proposal, this section will also discuss the proposed PEL of 100 μg/m³ as an alternative to the final one of 50 μg/m³. There were four alternatives proposed:

(a) *The LIA proposal.* Adopt a standard which emphasizes biological indices and medical surveillance and which establishes an enforcement procedure directly utilizing these indices.

OSHA has decided to place primary reliance on a PEL which is based on environmental monitoring of air lead levels rather than relying on biological indices for the following reasons:

1. Evaluation of the industrial environment by proven industrial hygiene techniques is a direct measure of the sources of lead exposure, adequacy of control technology, progress in implementation of engineering controls, and in general represents a continual check on lead exposure. Since OSHA believes that control of an air contaminant should be accomplished at the source, environmental monitoring then is a direct measure of the control of lead exposure. Biological monitoring is designed to ascertain problems in individual workers and is an indirect measure of the control of lead. In this regard environmental monitoring is better suited to serve as a basis for enforcement.

2. Biological monitoring for compliance purposes is not feasible since there is no discrete value which could serve as the basis for citation. OSHA believes that based on consideration of health effects a PbB of 80, 70, or 60 μg/100 g would be excessive and would not protect workers' health adequately. It is infeasible to require controls to maintain blood lead levels for all workers at the desired 40 μg/100 g and below. Rather, when all controls have been implemented, 30 percent of all workers' PbB will range from 40 to 60 μg/100 g. Given the distribution of blood lead levels when compliance is achieved in a worker population, there is no discrete value which could serve as a maximum PbB. That is, OSHA believes that a PbB above 60 μg/100 g is excessive but a PbB between 40 to 50 μg/100 g may be the result of excessive exposure or it may represent the individual variation within a well controlled environment. Air lead determinations would differentiate between the two situations.

3. A biological standard is not only infeasible it would provide inadequate protection of workers. Excessive exposure to lead would not immediately effect excessive blood lead levels. In fact, some workers' blood leads might not rise to excessive levels for years, if at all, although their body burden would be increasing. Workers should not be expected to wait for protection until their blood leads become excessive. Air monitoring pinpoints overexposures immediately. This technique is preferable, therefore, for compliance purposes.

4. Worker groups uniformly and vehemently oppose biological monitoring for compliance purposes. OSHA views this opposition seriously since workers would be the subjects of a compliance program based upon biological monitoring and their voluntary participation in such an invasive process would be crucial to its success.

5. Industry's arguments that biological monitoring is preferred due to lack of an air lead-blood lead relationship are unsubtantiated. OSHA believes there is no doubt that an air to blood relationship exists and is best described in the CPA application of the Bernard model.

6. Although both biological and air monitoring are subject to errors, OSHA believes that the uncertainties associated with either measurement are not a sufficient basis for choosing one technique over the other. OSHA recognizes there are errors associated with air sampling, but nonetheless believes that evaluation of the plant environment is best and most directly accomplished through a comprehensive industrial hygiene survey as compared to biological sampling.

7. The record indicates that there are currently a significant number of industries which carry out biological monitoring. Given the current distribution of high blood lead levels throughout industry and the admitted lack of compliance with the current air standard OSHA has concluded there is little or no basis for accepting the asserted success of an enforcement mechanism based on future biological monitoring.

8. OSHA is concerned that a biological standard could impact negatively on workers with high blood leads and extended job tenure. Employers might terminate employment of these individuals to avoid citations for overexposure to lead. In addition, an employer could attempt to circumvent the standard by using respirators rather than implementing engineering controls. The use of respirators is not a satisfactory method for compliance. Indiscriminate use of respirators would be a confounding factor in ascertaining successful compliance with the standard.

Based on these considerations, OSHA will rely on determination of air lead level to ascertain compliance with the PEL.

b. *The Proposal—100 μg/M³.* The proposal would have established a PEL for airborne concentrations of lead at 100 μg/m³ as determined on an 8-hour time weighted average.

Based upon a thorough evaluation of the record, OSHA has reached the following conclusions which form the basis for establishing a PEL of 50 μg/m³ instead of 100 μ100g/m³. The health effects data indicates that, to the extent feasible, blood lead levels should be kept at or below 40 μg/100 g. This contrasts with the proposal which set 40 μg/100 g as a mean, with 60 μg/100 g as a maximum. While feasibility limitations inhibit complete achievement of the goal of 40 μg/100 g as a maximum for all employees this goal can generally be achieved by setting the PEL at 50 μg/m³. Nevertheless, it forms an important foundation for OSHA's decision to reduce the PEL

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to 50 μg/m³. The CPA application of the Bernard model predicts a mean blood lead level of 34.6 μg/100 g at 50 μg/m³ when compliance with the standard is achieved, compared to a mean PbB level of 40.2 μg/100 g at 100 μg/m³

The number of workers whose PnB levels were initially greater than 60 μg/100 g will be substantially reduced from 32,777 to 498 with compliance at 50 μg/m³. For 100 μg/m³, the benefits are also substantial, 32,777 to 2,562 with the incremental benefit for 50 μg/m³ over 100 μg/m³ being 2,064. There are 22,887 workers whose PbB are between 50 and 60 μg/100 g. Compliance with 50 μg/m³ would reduce that number by 17,514, whereas at 100 μg/m³, the number would be 8,846 with incremental benefit of 8,668 for 50 versus 100 μg/m³. Between 40 and 50 μg/100 g there are 23,898 and compliance with 50 and 100 μg/m³ results in a decrease at 50 μg/m³ of 10,141 and increase at 100 μg/m³ of 8,972 with a benefit of 50 versus 100 μg/m³ of 10141. Lastly, there are 9,569 workers whose PbB levels are above 40 μg/100 g. Compliance with 50 μg/m³ and 100 μg/m³ respectively would reduce the numbers to 28,599 and 49,475 with an incremental benefit of 20,876 for 50 vs 100 μg/m³.

SUMMARY

Incremental Benefit (by number of workers) 50 μg/m³ vs 100μg/m³

Number of Workers removed:

>60 μg/100 g	2,064
50–60 μg/100 g	8,668
40–50 μg/100 g	10,141
>40 μg/100 g	20,876

In summary, OSHA finds that 50 μg/m³ will provide significantly increased protection to exposed employees over what would be achieved at 100 μg/m³, and within the limits of feasibility provides substantial incremental benefits toward achieving a maximum of 40 μg/100 g.

(c) *The LIA Second Alternative—200 μg/m³.* The LIA has proposed that if OSHA decides to retain a single air lead exposure limit as opposed to a standard with primary reliance on biological monitoring, the limit should not be lower than 200 μg/m³.

The evidence of adverse health effects cited in the proposed lead standard and in this final standard demonstrates that a PEL of 200 μg/m³ does not nor will not protect the worker in the lead industry from "material impairment of health or functional capacity." A PEL of 200 μg/m³ would yield blood levels well above that which is deemed safe by OSHA in terms of both short and long-term exposure duration. Frank signs and symptoms of disease would be expected to occur at this level. The industry has argued that OSHA should not reduce the PEL from its current level of 200 μg/m³ until compliance has been achieved at that level and medical evaluation has determined whether or not it is protective. OSHA believes the evidence already exists which demonstrates that 200 μg/m³ is not protective and a delay in promulgating a new standard would place workers at severe risk to disease.

The benefits of compliance with 50 μg/m³ versus the current level of compliance with 200 μg/m³ were described in the benefits section and are substantial. The number of workers whose PbB levels are greater than 40 μg/100 g would be reduced from 79,569 to 28,599 and the number of workers whose PbB levels would be reduced below 40 μg/100 g is 50,970. To summarize:

Incremental Benefit of 50 μg/m³ vs. 200 μg/m³

Number of workers removed:

>60 μg/100 g	32,270
50–60 μg/100 g	17,514
40–50 μg/100 g	1,169
>40 μg/100 g	50,970

It is important to note that the correct method of determining benefits is to compare a shift in the distribution of blood lead levels in the entire population. Comparison of the differences in average blood lead levels is irrelevant to an accurate understanding of the impact of the standard.

OSHA concludes that there are substantial benefits to be achieved from the promulgation of a 50 μg/m³ standard and that the arguments set forth in favor of a 200 μg alternative are not compelling.

(d) 40 μg/m³.

The United Steel Workers of America proposed 40 μg/m³ as an alternative to 100 μg/m³ in the proposal.

OSHA has calculated the equilibrium distribution of blood lead levels assuming rigorous compliance with 40 μg/m³ and has compared these results to a similar calculation for 50 μg/m³. The results are as follows:

BLOOD LEAD DISTRIBUTION (IN PERCENT)

	>40 μg/100g	40–50 μg/100g	50–60 μg/100g	>60 μg/100g
40 μg/m³ (24.2%)	19.9%	4%	0.3%	
50 μg/m³ (29.3%)	23.3%	5.5%	0.5%	

OSHA has determined that the incremental benefit of 40 μg/m³ versus 50 μg/m³ is negligible and in fact may be within the error of the measurements. While OSHA agrees with the goal that blood lead levels should be kept below 50 μg/100 g where possible, and in fact preferably below 40 μg/100 g, the levels required to achieve the latter value are clearly infeasible in the foreseeable future. Based on the conclusions OSHA believes the considerations which form the final standard are valid and the PEL of 50 μg/m³ will be maintained.

C. MEDICAL REMOVAL PROTECTION

1. *Introduction.* The final standard includes provisions entitled Medical Removal Protection. Medical Removal Protection, or MRP, is a protective, preventive health mechanism integrated with the medical surveillance provisions of the final standard. MRP provides temporary medical removals for workers discovered through medical surveillance to be at risk of sustaining material impairment to health from continued exposure to lead. MRP also provides temporary economic protection for those removed. Temporary medical removal is mandated for any worker having an elevated blood lead level at or above 60 μg/100 g of whole blood, or at or above 50 μg/100 g of whole blood averaged over the previous 6 months. These two ultimate blood lead level removal triggers are gradually phased in over a period of 4 years. Upon the effective date of the standard, temporary medical removal is also mandated for any worker found by a medical determination to be at risk of sustaining material impairment to health. In most temporary medical removals, the worker must be removed from any exposure to lead at or above the 30 μg/m³ action level, with return of the employee to his or her former job status when the temporary medical removal is no longer needed to protect the worker's health. During the period of removal, the employer must maintain the worker's earnings, seniority and other employment rights and benefits as though the worker had not been removed.

2. *Importance of temporary medical removals.* A central element of MRP is the temporary medical removal of workers at risk of sustaining material impairment to health from continued exposure to lead. This preventive health mechanism is especially well suited to the lead standard due to the reversible character of the early stages of lead diseases, and to the relative ease with which a worker's body may be biologically monitored for the presence of harmful quantities of lead. Temporary medical removal protects worker health both by severely limiting subsequent occupational exposure to lead, and by enabling a worker's body to naturally excrete previously absorbed lead which has accumulated in various tissues.

Temporary medical removal is an indispensable part of the lead standard for two significant reasons. Little margin for safety is provided by the final standard's 50 μg/m³ permissible exposure limit, thus it is highly likely that some small fraction of workers

(much less than 6 percent will not be adequately protected even if an employer complies with all other provisions of the standard. Temporary medical removal will be the only means of protecting these workers. Many years will be needed for some segments of the lead industry to completely engineer out excessive plant air lead emissions. During this time heavy reliance will have to be placed on respiratory protection—a frequently inadequate means of worker protection. Again, temporary medical removal is essential for those inadequately protected. Temporary medical removal is a crucial element of the inorganic lead standard because it is the only control mechanism which can serve the two preceding functions. Temporary removal is not an alternative means for an employer to control worker lead exposure, however, but rather is a fall-back mechanism to protect individual workers in circumstances where other protective mechanisms were insufficient.

3. *MRP as a means of effectuating the medical surveillance sections of the lead standard.* Temporary medical removals depend on voluntary and meaningful worker participation in the standard's medical surveillance program. Medical surveillance, a major element of the Act's integrated approach to preventive health, can only function as intended where workers (1) voluntarily seek medical attention when they feel ill, (2) fully cooperate with examining physicians to facilitate accurate medical diagnoses, and (3) refrain from efforts to conceal their true health status. No one can coerce these qualities of worker participation—they will occur only where no major disincentives to meaningful worker participation exist. Absent these qualities of worker participation, medical surveillance cannot serve to identify those workers who need temporary medical removals, and consequently the overall protection offered by the lead standard will be diminished.

Participation in medical surveillance offered under the lead standard will sometimes prompt the temporary medical removal of a worker. Absent some countervailing requirement, removal could easily take the form of a transfer to a lower paying job, a temporary lay off, or even a permanent termination. The possibility of these consequences of a medical removal present a dramatic and painful dilemma to many workers exposed to inorganic lead. A worker could fully participate in the medical surveillance program and risk losing his or her livelihood, or resist participating in a meaningful fashion and thereby lose the many benefits that medical surveillance and temporary medical removals can provide. Convincing evidence presented during the lead proceeding established that many workers will either refuse or resist meaningful participation in medical surveillance unless economic protection is provided.

Much of the evidence in the lead proceeding documents the extent to which worker participation is adversely affected by the fear that adverse employment consequences will result from participation in medical surveillance programs. This problem was emphasized by the testimony of many workers and worker representatives. The problem was seen as widespread throughout industry, and as having already seriously affected participation in medical surveillance programs under several prior OSHA health standards which lack MRP benefits. Evidence concerning the issue of worker of fear impeding participation was not confined to testimony from worker representatives, but was verified by a wide variety of experts and industry representative as well. Current industry practices are such that genuine economic disincentives to participation exist. These disincentives will be intensified by the new lead standard, particularly as a result of the temporary medical removal provisions. Finally, OSHA's adoption of MRP as a means of effectuating medical surveillance has been significantly influenced by experience gained under the Black Lung Medical Surveillance and Transfer Program created by Section 203 of the Federal Coal Mine Health and Safety Act of 1969. Experience under this progam reveals the extent to which economic disincentives adversely affect participation even in medical surveillance programs where job transfer and limited economic protection are guaranteed. For all of the preceding reasons, MRP was included in the final standard as a means of maximizing meaningful participation in medical surveillance provided to lead-exposed workers.

4. *MRP as a means of allocating the costs of temporary medical removals.* Temporary medical removal is fundamentally a protective, control mechanism, as is the elimination of air lead emissions through the use of engineering controls. The use of a temporary removal carries the possibility of dislocation costs to an employer through the temporary loss of a trained and experienced employee. And, a removed worker might easily lose substantial earnings or other rights or benefits by virtue of the removal. These costs are a direct result of the use of temporary medical removal as a means of protecting worker health. MRP is meant to place these costs of worker protection directly on the lead industry rather than on the shoulders of individual workers unfortunate enough to be at risk of sustaining material impairment to health due to occupational exposure to lead. The costs of protecting worker health are appropriate cost of doing business since employers under the Act have the primary obligaton to provide safe and healthful places of employment.

One beneficial side-effect of MRP will be its role as an economic incentive for employers to comply with the final standard. Increasing public attention has been focused on the desirability of governmental regulations incorporating economic incentives to compliance, and though not adopted specifically to serve this purpose, MRP will nonetheless strengthen the protection afforded by the lead standard due to its inevitable impact on compliance. Employers who make good faith attempts to comply with the lead standard should experience only small numbers of temporary medical removals—removals which can be absorbed by available transfer alternatives. Employers who make only cursory attempts to comply with the cental provisions of the standard will find that the greater the degree of noncompliance, the greater the number of temporary medical removals and associated MRP costs. MRP will serve as a strong stimulus for employers to protect worker health, and will reward employers who through innovation and creativity devise new ways of protecting worker health not explicitly contemplated by the formal standard.

5. *Alternatives to MRP considered by OSHA.* Before deciding to include MRP in the final lead standard, OSHA considered and rejected several possible alternatives. Mandating that employers compel all employees to participate in medical surveillance offered under the standard was rejected in part due to the fact that this step could not possibly assure the voluntary and meaningful worker participation upon which success of the standard's medical surveillance program depends. Mere participation is not an end in and of itself. For example, no degree of compulsion can prevent workers form obtaining and misusing chelating agents so as to yield apparently low blood lead level results. No degree of compulsion can force workers to reveal subtle, subjective symptoms of lead poisoning which a physician needs to know as part of an adequate medical history.

In addition, OSHA declined to mandate worker participation in medical surveillance due to the substantial personal privacy and religious concerns involved in health care matters. Governmental coercion in this sensitive area would prove counterproductive to the goal of meaningful worker participation. Finally, the foregoing arguments against mandatory participa-

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tion arise irrespective of whether or not MRP benefits are provided to removed workers. Thus, mandatory worker participation with MRP is no more satisfactory an alternative than mandatory worker participation without MRP.

A second alternative rejected by OSHA was to mandate that temporary medical removals occur only at the election of individual workers at risk of sustaining material impairment. Workers under this condition should have no reluctance to participate in medical surveillance since they would control the consequences of participation. This alternative would merely inform workers of their health status without providing affirmative protection to those who needed it. Workers who should be removed would far too often choose not to be in the absence of MRP economic benefits, and employers would even be prevented from utilizing removal in situations where it was imperative. These results are inconsistent with the preventive purposes of the Act, and thwart the level of health protection which temporary medical removals can provide.

A third alternative rejected by OSHA was to permit the use of respiratory protection in lieu of temporary medical removal. OSHA rejected this alternative because of the inherent limitations of respiratory protection. The need to temporarily remove a worker from lead exposure is a matter of medical necessity. Relying on a respirator to protect a worker from exposure beyond such a point is unacceptable in light of the numerous inadequacies of respiratory protection. OSHA does not intend, however, to preclude the use of respirators where appropriate as one means (in conjuction with other industrial hygiene measures) of seeking to assure in advance that no worker need ever be removed. The need to temporarily remove a worker due to medical reasons will rarely arise without advance warning, thus providing an advance opportunity to use respiratory protection where appropriate. If respiratory protection proves effective in practice, then there will be no need to temporarily remove a worker.

6. *Feasibility.* MRP as structured in the final standard is a feasible regulatory device. Elevated blood lead levels will in practice be the primary basis for the temporary medical removal of workers. Blood lead level removal triggers are phased in over a 4-year period as follows: (1) Beginning upon the effective date of the standard, the temporary medical removal of employees having blood lead levels at or above 80 μg/100 g of whole blood; (2) beginning 1 year after the effective date of the standard, the temporary medical removal of those having blood lead levels at or above 70 μg; (3) beginning 2 years after the effective date of the standard, the temporary medical removal of those having blood lead levels at or above 60 μg; and (4) beginning 4 years after the effective date of the standard, the temporary medical removal of those having average blood lead levels over the past 6 months at or above 50 μg. This 4-year phasing in process has been designed such that employers will have a reasonable opportunity to reduce their current employees' blood lead levels before particular blood lead level removal triggers come into effect.

Employers who comply with the new standard should experience few temporary medical removals, and thus a minimal economic impact from MRP. The gradual phasing in schedule will enable employers to structure their production operations so that transfer opportunities are provided to all removed workers. Four years will allow collective bargaining relationships to be altered if necessary so that all removals can be smoothly accommodated. Once MRP has been fully phased in and employers are fully in compliance with the new standard, only a small percentage of the exposed work force (much less than 6 percent should need temporary medical removals at any point in time. With experience, employers should acquire the ability to preclude even most of these temporary medical removals by removing sources of lead exposure which are causing the blood lead levels of particular workers to climb toward a removal trigger.

OSHA anticipates no substantially greater impact of MRP upon small employers than upon large employers. The lead record rejects any suggestion that small companies by virtue of size are incapable of protecting worker health. And, the level of health protection an employer provides, not size, will be the prime determinant of an employer's MRP costs.

7. *Temporary medical removal and return criteria.* The ultimate blood lead level removal criteria derive from the conclusion that long-term blood lead levels in excess of 40 μg/100 g of whole blood must be avoided. Removal at a blood lead level of 60 μg is mandatory since this level will invariably represent numerous months of a blood lead level in excess of 40 μg during the overall period of absorption up to 60 μg and excretion down below 40 μg. Removal when an average blood level over the past 6 months is at or above 50 μg is required since this long-term average indicates a worker's blood lead level is either steadily increasing above 40 μg or has stabilized appreciably above 40 μg. Blood lead level measurements have a significant inherent measurement variability. To reduce the impact of this factor, both the temporary removal and return of workers due to elevated blood lead levels are based on the combined results of at least two independent measurements.

The standard provides that the return of a worker removed due to an elevated blood lead level to his or her former job status is also governed by the worker's blood level. During the years that the ultimate removal criteria are being phased in, the return criteria have been set to assure that a worker's blood lead level has substantially declined during the period of removal. A worker removed due to a blood lead level at or above 80 μg must be returned when his or her blood lead level is at or below 60 μg/100 g of whole blood; if removed due to a level at or above 70 μg, return shall follow when a level of 50 μg/100 g of whole blood is achieved. Once the ultimate removal criteria have been phased in, return depends on a worker's blood lead level declining to 40 μg/100 g of whole blood.

The standard requires that an employee be temporarily removed from lead exposure whenever a final medical determination results in a medical finding, opinion or recommendation that the employee has a detected medical condition which places the employee at increased risk of material impairment from exposure to lead. The term "final medical determination" refers to the outcome of the multiple physician review mechanism, or alternative medical determination mechanism, used pursuant to the medical surveillance provisions of the standard. Temporary removal based on medical determinations is included in MRP as a necessary complement to removal based on elevated blood lead levels. During the phasing in of MRP, workers experiencing adverse health effects from lead absorption deserve a temporary medical removal despite the fact that their blood lead levels do not yet require a removal. Even after MRP has been fully phased in, situations may arise where lead poisoning occurs in a worker having a blood lead level below the removal criteria, or a worker may acquire a temporary nonwork-related medical condition which is worsened by lead exposure. In addition, temporary medical removal may in particular cases be needed for workers desiring to parent a child in the near future or for particular pregnant employees. Some males may need a temporary removal so that their sperm can regain sufficient viability for fertilization; some women may need a temporary removal to slightly lower their blood lead levels so that prior lead exposure will not harm the fetus.

A worker removed as a result of a physician determination must be provided reasonable follow-up medical surveillance during the period of removal. The worker must be returned to his or her former job status when a final medical determination indicates that the employee no longer has a medical condition which places the employee at increased risk of material impairment to health from exposure to lead. The standard does not explicitly define the phrase "material impairment to health" due to the innumerable contexts in which the temporary medical removal of a particular worker might be appropriate. Application of this phrase in a manner consistent with sound medical practice will result from the standard's physician determination mechanisms.

8. *Removal from work at or above the action level.* In most cases where a worker is removed due to an elevated blood lead level or a medical determination, the standard provides that removal be from work having an exposure to lead at or above the 30 μg/m^3 action level. Work having an exposure to lead at or above the action level refers to the worker's daily 8-hour time weighted average (TWA) exposure to lead. As in all cases where the term "action level" is used, exposure is to be computed without regard to the use of respirators. This job placement limitation for most removals was based first on the need to assure that a worker not be removed to work having lead exposure high enough to further increase risks to health. The second reason for this limitation was to assure that a worker be removed to work having lead exposure low enough to enable the gradual excretion of excess lead so as to permit return of the worker to his or her former job.

During the first year following the effective date of the standard, however, workers removed due to blood lead levels at or above 80 μg need only be removed from work having a daily eight hour TWA exposure to lead at or above 100 μ/m^3. During the second year following the effective date of the standard, workers removed due to blood lead levels at or above 70 μg need only be removed from work having a daily eight hour TWA exposure to lead at or above 50 μ/m^3. These criteria were chosen consistent with the goal of effecting moderate worker blood lead level declines during the first 2 years of the standard's effect, while at the same time providing employers an opportunity to comply with the new lead standard and thereby avoid substantial MRP costs.

OSHA recognizes that situations may arise where removal to lead exposure just below the action level is inadequate to protect worker health. These situations can and should be dealt with on an individual basis in the course of a thorough medical examination conducted pursuant to the standard. The standard implies no unnecessary restriction on a physician's ability to recommend individual actions more protective than the standard's requirements. The standard does, however, embody the judgment that, at a minimum, all removed workers must be removed from work having an exposure to lead at or above the action level.

9. *Return of an employee to his or her former job status.* The standard provides that once a period of removal or limitation has ended, an employee must be returned to his or her former job status. Former job status refers to the position the worker would likely be occupying if he or she had never been removed. If, but for a temporary medical removal, a worker would now be working at the same position held just before removal, then the employer may return the worker to that job. Otherwise, the employer may return the worker consistent with whatever job assignment discretion the employer would have had if no removal had occurred.

10. *The implementation of temporary medical removals.* It is OSHA's intention that employers implement each temporary medical removal in a manner consistent with existing collective bargaining agreements. MRP is meant to override existing contractual obligations only to the extent that specific contract provisions directly conflict with the terms of MRP. MRP has been structured to guarantee maximum employer flexibility in effectuating MRP while minimizing the possibility of conflicts with existing collective bargaining agreements or other relationships. The standard does not specify what an employer must do with a removed worker; practically any action is permissible provided the worker is not exposed to lead at or above the action level. In most cases OSHA expects that a removed worker will be transferred to a low lead exposure position during the period of removal. OSHA intends that these transfers be to work that the employee is capable of performing and which is located in the same geographical area as the employee's normal job. Alternatively, the worker might work shorter hours at his or her normal job such that the time weighted average exposure is below the action level. The worker might even be temporarily laid off or arrangements might be made for the removed worker to temporarily perform comparable work at a nonlead-related facility. OSHA's intention is that the choice between these or other alternatives be a prerogative of the employer unless this flexibility is altered by some countervailing obligation. A removed worker is provided no automatic right to veto an employer choice which meets the standard, but similarly, the standard provides no right for an employer to simply override existing contractual commitments to either removed employees or to other employees.

Arguments have been made that MRP poses major conflicts with existing collective bargaining relationships. To the extent conflicts exist, they should be easily resolved during the lengthy phasein period for MRP. Worker transfer programs with economic protection have had longterm use throughout industry in a variety of contexts. These many programs have apparently melded quite well with collective bargaining relationships, and there is no evidence which suggests that the implementation of MRP will proceed any differently.

The mechanics of each temporary medical removal is a matter for the employer, the removed employee, and his or her collective bargaining representative, if any work out in the context of existing relationships. Some employers and unions may decide to modify their contractual agreements to specify how each removal will be accomplished, and the 4-year period during which MRP is phased in will provide ample opportunity for modifications to be made.

11. *Employer flexibility pending a final medical determination.* In some instances a dispute may arise between an initial physician, chosen by an employer, and a second physician, chosen by the employee, as to the appropriateness of removing or returning a particular worker. Pending the outcome of the standard's physician review mechanism, the standard provides that an employer may act in a manner consistent with the medical findings, opinions or recommendations of any of the physicians who have examined the employee, with two exceptions. First, if an employee was removed or limited as to exposure to lead due to a final medical determination which differed from the opinion of the examining physician chosen by the employer, then the return of the worker (or the removal of limitations placed upon the worker) must be delayed until after a final medical determination has been reached on these issues. The second exception applies to situations where an employee has been on removal status for the preceding 18 months due to an elevated blood lead level, and a medical determination is being obtained as to continued removal of the worker. In this very limited instance the standard requires that the employer maintain the status quo—i.e., removal—until the full physician review mechanism has had an opportunity to form a final medical determination concerning the employee.

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12. *Definition of MRP benefits.* The standard requires an employer to provide MRP benefits to a worker on each occasion that a worker is removed from exposure to lead or otherwise limited. This requirement is defined as meaning that the employer must maintain the earnings, seniority and other employment rights and benefits of a worker as though the worker had not been removed or otherwise limited. In most cases this will simply mean that an employer must maintain the rate of pay of a worker transferred to a low-lead-exposure job. The standard, however, uses the all-encompassing phrase "earnings, seniority and other employment rights and benefits" to assure that a removed worker suffers neither economic loss nor loss of employment opportunities due to the removal. The standard explicitly requires that an employer maintain the seniority of a removed worker due to the crucial role that seniority rights might play in defining a worker's economic benefits. In addition, the standard by implication rejects industry suggestions that the provision of MRP benefits should be contingent upon the employer's ability to locate an available transfer position. Such an available position precondition would end MRP's role as a means of effectuating meaningful participation in medical surveillance.

13. *Duration of MRP benefits.* The standard requires that up to 18 months of MRP benefits be provided to a worker on each occasion that he or she is removed from exposure to lead. The prime determinant of this figure is the rate at which workers will naturally excrete lead once removed from significant exposure. The vast majority of removals will be of far shorter duration than 18 months, but some longterm leadworkers will likely require 18 months of removal.

14. *Employees whose blood lead levels do not adequately decline within 18 months of removal.* The standard establishes special procedures to apply in those rare situations where an employee's blood lead level has not adequately declined during 18 months of removal. A medical examination must be made available to obtain a final medical determination as to whether or not the worker may be returned to his or her former job status. In some situations, continued removal may serve no major purpose since the damage done to the worker's body is beyond the point of correction. In this event a physician might permit return of the worker to his or her former job status provided the worker's blood lead level remains fairly constant. In other situations a physician might recommend several additional months of removal where a worker's blood lead level is continuing to decline toward an acceptable level. In rare situations a physician might determine after 18 months that a worker's body burden of lead is so high that the worker will never be able to safely return to prior exposure. All of the preceding situations can best be evaluated and resolved by a final medical determination obtained pursuant to the standard.

Where the worker may not yet be returned to his or her former job status, the employer must continue to provide MRP benefits until either the worker is returned to former job status, or a final medical determination is made that the employee is incapable of ever safely returning to his or her former job status. The standard also provides that if a final medical determination returns a worker to his or her former job status despite what would otherwise be an unacceptable blood lead level, then any subsequent questions concerning removing the worker again are to be decided solely by a final medical determination. Automatic temporary medical removal due to an elevated blood lead level is no longer afforded to such a worker.

15. *Follow-up medical surveillance during the period of employee removal or limitation.* The standard provides that during the period of time that an employee is removed from exposure to lead or otherwise limited, the employer may condition the provision of MRP benefits upon the employee's participation in reasonable follow-up medical surveillance. The standard does not mandate worker participation in follow-up medical surveillance, but rather permits the denial of economic protection to those unwilling to participate in procedures necessary for MRP's smooth operation.

16. *MRP and workers' compensation claims.* In rare situations, a removed worker might be eligible for temporary partial or total disability workers' compensation payments for lost wages. Existing industry practices formed the basis for provisions responsive to these situations. If a removed worker files a claim for workers' compensation payments for a lead-related disability, and an award is made to the worker for earnings lost during the period of removal, then the employer's MRP benefits obligation is reduced by that amount. MRP benefits must be provided pending disposition of any filed claim subject to a credit or payback once an award is finally made.

17. *Other credits.* An employer should not have to provide MRP benefits which duplicate compensation which a removed worker is receiving from other sources for earnings lost during the period of removal. Accordingly, the standard explicitly provides that the employer's obligation to provide MRP benefits to a removed worker shall be reduced to the extent that the worker receives compensation for earnings lost during the period of removal either from a publicly or employer-funded compensation program, or from employment with another employer made possible by virtue of the removal.

18. *Voluntary removal or limitation of an employee.* A final element of the standard with respect to MRP provides that where an employer, although not required to do so, removes an employee from exposure to lead, or otherwise places limitations on an employee due to the effects of lead exposure on an employee's medical condition, the employer shall provide MRP benefits to the employee. The purpose of this requirement is to avoid the possibility that some employers will attempt to evade the MRP program by voluntarily removing workers (without economic protection) shortly before the standard would mandate removal.

19. *Legal authority for MRP.* The Occupational Safety and Health Act contains ample legal authority for the adoption of MRP as a preventive health mechanism. OSHA's legal authority to adopt MRP was perhaps the greatest source of controversy during the lead proceeding, with industry representatives uniformly arguing that no legal authority for MRP exists. It is true that the Occupational Safety and Health Act contains no language which either explicitly requires or expressly authorizes the inclusion of MRP in OSHA health standards. The legislative history of the Act reveals no evidence that Congress gave any consideration to the appropriateness of MRP as a protective health mechanism. Though these factors are important, they are by no means dispositive of the legal authority question. The Act does not constitute a rigid congressional codification of the only permissible devices OSHA can employ to reduce occupational injury and disease. Rather, the structure and specifics of the Act reflect the congressional decision to create an expert administrative agency with broad regulatory powers to fashion reasonable protective regulations concerning occupational injury and disease in light of agency experience and expertise. The legal authority issue depends on the purposes to be served by MRP, the extent to which MRP is a reasonable response to a genuine problem, and the extent to which MRP is consistent with the Act's grants of and limitations on rulemaking authority by OSHA.

As previously explained, MRP is a protective, preventive health mechanism carefully structured to (1) maximize meaningful participation in the standard's medical surveillance program, (2) facilitate the use of temporary medical removals, and (3) appropriately allocate the costs of temporary medical removals. These functions are all directly related to the Act's purpose articulated in section 2(b) "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions • • •." MRP responds to genuine occupational health problems and substantially adds to the level of overall worker protection afforded by the final lead standard.

MRP flows directly from and is fully consistent with the Act's express language. Section 6(b) authorizes broad OSHA discretion in the promulgation of each occupational health standard, defined by section 3(8) as a "standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment." MRP meets this definition, and further satisfies the dictate of section 6(b)(5) that occupational health standards be based on "experience gained under this and other health and safety laws." MRP is also a regulatory device which addresses the Congressional directive in section 2(b)(5) that healthful working conditions be provided "by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems." OSHA's adoption of MRP is a direct result of the proven value of this protective mechanism, and by adopting MRP, OSHA is following the Congressional mandate in section 2(b)(4) that worker health be provided "by building upon advances already made through employer and employee initiative for providing safe and healthful working conditions." MRP is needed to meet section 6(b)(5)'s requirement that health standards be set to protect all workers over entire working lifetimes because without temporary medical removals, it is doubtful that compliance with the remainder of the lead standard could achieve this mandated level of protection. MRP is also needed to achieve the benefits of medical surveillance envisioned by section 6(b)(7), and section 8(g)(2)'s grant of general rulemaking authority provides additional support for MRP's adoption. The preceding statutory provisions demonstrate that Congress indended OSHA to have broad flexibility in mandating remedial measures, and that MRP resides well within the scope of the flexibility Congress afforded.

The legal sufficiency of MRP's adoption is strengthened by comparable medical removal and economic provisions contained in the Federal Coal Mine Health and Safety Act of 1969, amended by the Federal Mine Safety and Health Amendments Act of 1977. MRP was not considered by Congress during the passage of the OSH Act, but this is hardly surprising in view of the Act's expansive coverage of practically every industry in the country. Congress established a broad regulatory framework without attempting to identify and respond to individual problems of specific industries. The 1969 Coal Act, however, represents the culmination of decades of intense Congressional attention to one extremely hazardous industry—coal mining. The 1969 Coal Act was a comprehensive response to coal mine hazards, including thirty statutory pages of specific health and safety regulations as detailed as any existing OSHA standard. In the context of its comprehensive review of coal mining, Congress considered the appropriateness of an MRP-type program with regard to coal mine workers pneumoconiosis. Congress went beyond merely authorizing the adoption of MRP in this context to explicitly mandate the adoption of a MRP program. Authorization to adopt MRP with regard to other forms of mining was provided by Congress in the 1977 amendments to the Coal Act. Thus, in both of the instances where Congress has considered the appropriateness of MRP in an occupational safety and health statute, Congress voiced approval of MRP. This clear Congressional approval of MRP programs is indicative of how Congress likely would have acted had MRP been considered during passage of the Occupational Safety and Health Act.

Contrary to various suggested arguments, MRP does not violate section 4(b)(4)'s mandate that health standards not act "to supersede or in any manner affect any workmen's compensation law or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, diseases, or death of employees arising out of, or in the course of employment." Section 4(b)(4) was addressed in the legislative history, and has been applied in case law to date, only as a means of either preventing private causes of action under the OSH Act, preventing federalization of state workmen's compensation law, preventing duplication of federal regulations, or preserving state regulatory authority over safety and health matters. MRP is unrelated to all of these policies, including the policy against federalization of state workmen's compensation law. MRP neither intends nor operates to define or expand state law in this area. To the contrary, if MRP as a preventive health mechanism succeeds as intended, there hopefully will be no occupational lead disease left for state workmen's compensation law to address. To the extent such a result constitutes a conflict with state law, it is fully intended by the Act.

Various legal arguments were also presented in the lead proceeding to the effect that MRP somehow impermissibly conflicts with federal labor law, and with the Equal Pay provisions of the Fair Labor Standards Act. Having researched and considered these arguments, OSHA finds them to be without merit.

D. FEASIBILITY

In setting standards for toxic substances, the Secretary is required to give due regard to the question of feasibility. Section 6(b)(5) of the Act mandates that the Secretary shall set the standard which most adequately assures employees' safety and health "to the extent feasible, on the basis of the best available evidence." Additionally, in the development of occupational safety and health standards, "considerations shall be the latest available scientific data in the field, experience gained under this and other health and safety laws."

OSHA has developed a rulemaking record which has enabled OSHA to promulgate a final lead standard which it can confidently state is feasible for all affected industries. The final standard has a PEL of 50 $\mu g/m^3$ as an 8-hour TWA, which, within 90 days, must be met by any combination of engineering controls, work practices (including administrative controls), and personal protective equipment. Compliance with the PEL exclusively by engineering controls and administrative controls including work practices is required to be phased-in over time according to an implementation schedule. The schedule varies by industry on the basis of technological and economic limitations on each industry's ability to comply, and for five industries whose compliance period in the schedule exceeds 1 year, includes an interim exposure limit of 100 $\mu g/m^3$.

The rulemaking record is comprised of studies and assessments of technological feasibility, cost data on various items of compliance, and economic impact assessments from the public participants as well as OSHA consultants. Most of the evidence assessed the feasibility of compliance with the proposed 100 $\mu g/m^3$ standard although various alternatives received attention. On the basis of this information, OSHA has constructed a compliance scheme designed to provide optimal protection to workers, to allow for necessary technological change, and to

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encourage long run, cost-effective solutions to compliance problems.

In establishing the requirements of this standard and evaluating whether compliance is feasible, OSHA has identified affected industries and investigated potential compliance methods including the available technology in those industries. It has attempted to estimate the length of time necessary to implement the technology required, taking into account firms' need to plan, construct, test, and refine their efforts.

The implementation schedule also takes economic factors into account in that it incorporates time periods which OSHA expects will enable firms in each industry to comply with the standard without serious economic repercussions to the industry as a whole. Where specific costs of compliance could be assessed they are presented in the industry summaries.

1. *Technological considerations.* In general, inquiry into technological feasibility is only relevant to compliance with the exposure limits in the standard. It is clear that compliance with the 50 $\mu g/m^3$ PEL will be immediately feasible insofar as the standard permits respirators to be used where the required engineering and administrative controls including work practices are not sufficient. The primary issue is whether the PEL and interim level can be achieved in the time set forth in the implementation schedule solely by engineering and work practices. OSHA has concluded that compliance in this manner is possible through the use of presently available process and control technology or foreseeable technological developments.

Testimony and comments from most of the engineers and industrial hygienists in addition to OSHA's past experience with other standards for toxic substances has led OSHA to conclude that rigorous and innovative application of known, conventional techniques for isolating workers from the sources of exposure to toxic substances will, in almost all cases, enable employers to comply with the standard. Compliance in this manner is predicted to be completed in 1 to 5 years depending upon the complexity and extent of change required.

In some cases where accurate identification of exposure sources is difficult or where conventional control techniques are ineffective, reliance on new technology (e.g., new types of control or process equipment or alterations to the production process itself) may be necessary.

OSHA has attempted to be sensitive to the complexities and various aspects of the process of technological change in its attempt to incorporate new technology into its compliance scheme for this standard. This has facilitated prediction of the kinds of technology likely to arise in response to the standard and the time period within which they can be expected, thus allowing OSHA to know, in general terms, what is feasible. It has also suggested different options as alternatives in designing the standard so as to achieve optimal compliance strategies in terms of protective capability and compliance cost.

The following is a summary of the discussion of the technological factors considered in the major industries affected by the standard. Attachment D to the preamble (feasibility) contains a full discussion of these factors including a process-by-process analysis of the problems raised and the range of possible technical solutions to those problems in the most impacted industries.

a. *Primary smelting and refining.* The primary lead industry ranks fifth (after iron, aluminum, copper, and zinc) in tonnage of metals produced in this country. Four companies—ASARCO, St. Joe Minerals, Amax and Bunker Hill—own the seven facilities that smelt and refine primary lead. Western smelters date from the early part of this century; smelters for the Missouri lead belt were built during the 1960's. An estimated 3,055 employees in the primary smelting sector are exposed to lead. (Ex. 26, p. 5-3.)

Primary smelting involves three basic steps—sintering, smelting, and refining. In sintering, a concentrate of galena ore (PbS) is mixed with fluxes and roasted to drive off sulfur dioxide. This operation produces "sinter," a mixture of lead, lead oxide, and slag, which is smelted by a blast furnace at temperatures above 2,000° F. The blast furnace reduces the constituents of the charge (coke, fluxes, and recycled slag sinter) into molten lead and slag. Fifteen ton ladles on overhead bridge cranes transport the molten lead to open drossing kettles about 14 feet in diameter. These kettles rest in firebrick settings that keep the lead at the temperatures needed (700° to 1,200° F.) for drossing. During drossing, the molten lead from the blast furnace is stirred, and the impurities (dross) are skimmed. The impurities in lead ores vary. Colorado ore, unlike Missouri ore, has a high copper content. The lead is further refined through a softening process that removes antimony and other metals.

Because pyrometallurgy (the extraction of metal from ores by heat) requires extreme heat at variable temperatures, control of emissions in primary smelting has been difficult. For example, material that splashes or drips during transfer of molten lead collects and freezes at the rim and pouring lip of the ladle. These thick, lumpy accretions can interfere with a tight fit between hood and vessels. Ore with significant amounts of copper produces copper matte, which corrodes iron, steel, and most steel alloys.

Thus, the corrosive property of the molten metal has prompted the use of open vessels and crude mechanical methods. The nature and scale of primary smelting have made the application of standard engineering techniques difficult. While the problems are difficult, the hearing record indicates that, with new techniques and methods, they are surmountable.

After reviewing the record, OSHA has concluded that in all operations except perhaps maintenance work and where process upsets occur, the 100 $\mu g/m^3$ level is feasible within the 3-year time period in the implementation schedule through retrofitting and some modification of existing processes. This conclusion is not in agreement with the conclusions of DBA and lead industry representatives. (Ex. 355, pp. 122-123.) After reviewing all the exhibits and testimony, OSHA is convinced that the reason for this disagreement is not so much a matter of differing professional judgment in what could be achieved, but in the interpretation of the term "feasibility." Industry representatives' and DBA's claims of infeasibility of the 100 $\mu g/m^3$ level (and even the present 200 $\mu g/m^3$ standard) are, in part, based on the view that for an exposure level to be feasible it must be attainable immediately at all work stations at all times. (Tr. 3971-72; 796, 797.) This interpretation was rejected in *SPI* v. *OSHA.* (Vinyl chloride) and *AISI* v. *OSHA* (coke ovens). DBA and industry representatives also limited their considerations to retrofit technology only and did not generally consider technological change unless it had been proved successful and could be implemented immediately. (Tr. 5793; Tr. 796-97; Tr. 872-73; Ex. 26, pp. 4-5, 4-8; Ex. 29(29A).) Long-run technological solutions were not considered, even those which may be more cost-effective. This creates an a priori limitation on the gamut of possible approaches to compliance.

OSHA has concluded that compliance with the PEL may require up to 10 years for this industry. Primary smelting is not generally regarded as innovative. Dr. First characterizes the history of technological change in this industry as conservative and having "a strong bent to make changes very slowly and in small steps." (Ex. 270, p. 17.) Other limitations on the rate of change are the size and complexity of the hot metal operations in these plants.

Further, the degree of technological change necessary to achieve 50 $\mu g/m^3$ may require development and implementation of innovative technology, possibly including alternatives to pyrometallurgy. OSHA believes that the 10 years provided in the implementation schedule represent maximum flexibility for compliance by an industry which may need to rebuild in part or in whole to achieve a healthful workplace.

Hydrometallurgical production methods are likely to be commercially viable within the 10-year limit; however, less comprehensive forms of process redesign and/or adaptation of developmental projects discussed in the feasibility attachment on specific operations may prove to be sufficient. (Tr. 1463.)

Witnesses at the hearing were optimistic about the development of new processes for primary smelting. Knowlton Caplan, president of IHE, while skeptical about the current technological feasibility of a 100 $\mu g/m^3$ standard, expressed faith in the future development of "more effective and less costly engineering systems." (Tr. 5723)

Frank Block, research director at the Reno Metallurgy Research Center for the Bureau of Mines, described one such potential development, a hydrometallurgical method for recovering lead from galena concentrate. (Ex. 128; Tr. 3386-34-17.) This process does not involve any sintering or smelting and may require no refining. It leaches galena concentrate in a hot solution of ferric chloride to produce lead chloride, which, in turn, is electrolyzed to produce metallic lead. The new process generates no sulfur dioxide. It would be more economical than current techniques and could operate at smaller capacity. It could also be used with Missouri or Western concentrates.

b. *Secondary smelting and refining.* Secondary smelters produce much of the lead used in the United States. The industry, however, is poorly defined. The estimated number of plants, for example, has ranged from 40 to 140 (Ex. 138D, p. 1). Secondary smelters recycle lead from discarded batteries and other waste materials. This recycling involves two phases: smelting of the old material to recover crude lead and, in some operations, refining of the crude lead to produce pure lead and alloys for reuse.

Secondary lead smelting plants take scrap lead material from many sources, but the majority (61 percent) comes from scrapped lead-acid batteries. Lead cable covers, linotype, and recovered fume and drosses are other major sources. Some scrap is reprocessed to remove lead from other materials. Battery plates and terminals, for example, are mechanically separated, and lead-copper cables are heated to melt off the lead. Materials containing lead oxide may be processed through a blast furnace to reduce the proportion of oxide to lead metal. Lead from the blast furnace and scrap containing lead metal may be melted in refining kettles and treated by drossing to remove copper and other impurities.

Following the drossing, the lead may be "softened" by removing antimony that has been previously added to give the lead hardness and strength. This removal is done by air oxidation in a reverberatory furnace or by oxidative slagging with sodium dioxide or sodium nitrate fluxes. Once the lead has been refined to a desired composition, it is cast into various shapes or fabricated into wires, pipes, sheets, or solders. (Ex. 26, p. 5-29.)

Approximately 4,400 workers in the industry are exposed to lead. (Ex. 26, p. 2-13) Exposure levels vary among different operations, with the highest occurring in blast furnace areas. DBA analyzed OSHA compliance data and found that prior to August 1976, 83 of 171 air lead samples exceeded 200 $\mu g/m^3$. Data after this date showed 102 of 129 air lead levels above 100 $\mu g/m^3$ and 87 of 129 above 200 $\mu g/m^3$. (Ex. 26, pp. 2-17, 2-18.)

The rulemaking record contains uncontroverted evidence that exposures in secondary smelting operations can be controlled below the 100 $\mu g/m^3$ interim level. Based upon its study of seven representative smelters, Dr. Thomas Smith testified for DBA that compliance by secondary smelters with a standard of 100 was technologically feasible. (Tr. 798) One company, Keystone Resources, which operates four secondary smelters across the country commented that "our controls are such that we feel we could also meet the action level (50 $\mu g/m^3$) specifications" (Ex. 3(39)). Before the implementation of engineering controls, average air lead at Keystone Resources was 1,036 $\mu g/m^3$. The controls reduced the average to 126 $\mu g/m^3$. (Ex. 452, p. A-137) The results of a recent OSHA inspection at another secondary smelter indicate that it is presently in compliance with the 100 $\mu g/m^3$ level. (Ex. 26, p. 5-38; Tr. 956.)

Attaining these levels, however, may in a few instances require extensive modifications of current processes. IHE, in a study for the Lead Industries Association, analyzed one plant in detail and concluded that conventional engineering techniques alone could not control battery breaking or scrap and slag handling to 100 $\mu g/m^3$ airborne lead. (Ex. 138D, p. 8) DBA doubted that manual battery breaking, slag and scrap handling, and some maintenance operations could be controlled without process redesign. (Ex. 26, p. 5-29)

The rulemaking record describes new approaches that may be necessary to comply with the PEL. Michael Varner, corporate manager for ASARCO's Department of Environmental Sciences, and Melvin First, a professor of environmental health engineering at Harvard, discussed the possibility of innovations in drossing, such as continuous vacuum drossing. (Tr. 2387-80; Tr. 6530-31.) Svend Bergsoe, president of Paul Bergsoe and Son of Glostrup, Denmark, described in detail his new technique for smelting scrap lead products. (Tr. 5142-5204.) His process eliminates one of the hardest to control processes, battery breaking, by using a new type of furnace that not only digests the entire battery, but also use the battery cases to supply 50 to 80 percent of the fuel required to run the furnace. (Tr. 5194.) In addition a flash furnace agglomerates the flue dust, and the process is entirely enclosed.

With the possible exceptions of installing afterburner and agglomeration systems on existing furnaces (Tr. 5177, 5192), the Bergsoe process would require construction of an entirely new smelting plant, estimated to cost $2.5 million for a 20,000-ton-per-year production, and would take 2 years for construction (Tr. 5192). This cost includes the scrap handling facility (Tr. 5199), furnace, afterburner, baghouse, refinery, and even canteen and washing facilities.

c. *Battery manufacturing.* The battery industry is the largest single user of lead in the United States. The industry produces both SLI (starting-lighting-ignition) batteries and industrial batteries, although the latter accounts for only 7 percent of the industry's production. 138 firms operate 200 plants, which vary tremendously in size and capacity. On one hand, the seven largest firms operate nearly 70 plants and account of over 90 percent of the batteries sold. On the other, 95 battery plants employ fewer than 20 people. Of the 16,000 persons employed by the industry, approximately 12,800, or 77 percent, are exposed to lead. (Ex. 26 p., 5-42.)

Manufacture of batteries begins with production of lead oxide, either by the Barton process, which oxidizes lead in the molten state, or more often, by the ball mill process, in which frictional heat generated by tumbling lead pigs or balls produces lead oxide. Lead oxide powder is mixed into a paste and pressed onto grids cast from lead. The pasted plates are cured, stacked by hand or machine, and connected with molten lead ("burned") into groups that form the individual cells of a battery.

All these processes, especially loading and unloading at each step, generate contamination. The racks that carry the pasted plates from one operation to another are additional sources

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of lead dust. Dust forms as well during reclamation of rejected grids, parts, and pasted plates, and during removal of plate groups from defective batteries.

The record indicates that in the battery industry available methods can control employee air levels of lead below 50 $\mu g/m^3$, as an 8-hour TWA, for all major processes. Indeed, more than 40 percent of employees exposed to lead in this industry may already have TWA exposures of less than 50 $\mu g/m^3$. (Ex. 26, p. 5-45.)

Meier Schneider, an experienced industrial hygiene engineer testified that "with proper engineering control coupled with good maintenance and good work practices, proper design of process to minimize emissions, and education of workers and good hygiene that we can, today, achieve levels in the (work room) atmosphere of less than 50 micrograms per cubic meter of air. (TR. 2065-2066) In his study of 17 plants, Bill Thomas of CAL-OSHA concluded that "the general use of respirators should not be needed in a well-designed and managed lead storage battery plant." (Ex. 101A) Similarly, Caplan, testifying on a detailed study of 12 plants IHE did for the Battery Council International ("BCI"), concluded that "technically, if all the things that we recommend were done and well done, it is our opinion that we would be able to control to 100."

It is OSHA's judgment that these systems proposed by IHE, when combined with good work practices and administrative controls will be effective to control exposure below the PEL, primarily because they provide total control of the process and minimize the opportunity for fugitive emissions. As Dr. First stated, "The application of good control methods almost always results in air concentrations far lower than the standard for which they were designed". (Ex. 270, p. 19.)

IHE's specifications are designed primarily for larger operations. They assume that production is continous and that operators remain at each work operation for a full shift, assumptions that do not hold for small plants. Thus, the engineering controls designed by IHE will be effective but may not be appropriate for small plants. The record suggests that less complex controls may be feasible and effective for small plants. Good housekeeping appears especially important. Both Meier Schneider and Albert Stewart, an industrial hygienist who formerly conducted lead inspections for OSHA, testified that control costs might be held down by approaching problems on a case-by-case basis and by emphasizing the use of good housekeeping and techniques for handling materials along with imaginative engineering to minimize the need for ventilation. (Tr. 2057-2077.) Dr. Mirer, the UAW's industrial hygienist, noted that of 30 plants surveyed by the UAW, the one with the lowest lead exposures had only nine workers. (Tr. 1007.)

Testimony from operators of small battery plants also stressed good housekeeping and work practices. For example, Don Hull, president of Dynolite Corp., a plant that employs fewer than 20 people, testified that he gives priority to housekeeping and personal hygiene. (Tr. 1246; see also Tr. 3561.) When OSHA took a series of readings in his plant at the stations for grid casting, stacking, element assembly, battery assembly, and battery filling, only one reading at one location, element stacking, exceeded 100 $\mu g/m^3$, and its was just slightly over, 110 $\mu g/m^3$. (Tr. 1247-48.)

Some operations with high exposures are done only intermittenly in small plants. Small battery plants, for example, may paste plates only once or twice a week. (Tr. 3465; Tr. 1259) To meet the PEL as an 8-hour time weighted average, such plants may not need the same controls as a plant that pastes plates all day every day. In fact, alteration of production schedules or employee rotation may be effective. Employees in small plants do not work exclusively at one station. As Stuart Manix of Lancaster Battery Co. explained, "most people try to do a little bit of everything." (Tr. 3465.) Thus, rotation of employees to positions with higher exposures for less than 8 hours per shift may also reduce 8 hour TWA averages. That is, four employees could each work 2 hours pasting plates.

New approaches may also offer small plants an alternative to IHE's engineering controls. Two firms, APSEE, Inc., and Kermatrol, Inc., testified that they could provide the technology for compliance at sharply reduced costs.

The new approaches might aid large as well as small plants in meeting the 50 $\mu g/m^3$ standard. Some operations in either large or small operations will quickly be able to achieve the 50 $\mu g/m^3$ standard. The UAW asserted that aggressive implementation of such conventional control techniques as enclosure, ventilation, and process redesign can achieve the 50 $\mu g/m^3$ level. (Tr. 5278.) At the same time, the UAW recognized that until innovative processes are introduced, some operations will require respirators as well as ventilation to meet the 50 $\mu g/m^3$ standard. (Tr. 5053.)

d. *Brass and bronze foundries.* The lead content of copper based alloys, i.e. brass and bronze, may amount to as much as 20 percent by weight of the metal core. (Tr. 2786) The lead content of copper based ingots averages 5 percent. (Ex. 26, p. 5-73.) Over 1620 foundries cast brass and bronze at least occasionally; in approximately 770 foundries brass and bronze are the primary raw materials. Most of these foundries are small, 75 percent employing fewer than 50 people. Although small, most of these foundries make a diverse range of products of varying price, size, and composition. (Ex. 26, p. 5-73.) An estimated 26,000 employees are exposed.

Exposure to airborne lead results from insufficient control of fumes from the melting or pouring of alloys. In copper-base alloy foundries, approximately 15 percent of the particulate matter in furnace stack gases from the melting of red and yellow brass is lead oxide, and up to 56 percent of the particulate matter has been shown to be lead oxide when the alloy has a high lead content. Any workers in the vicinity of the melting or pouring operation as well as employees working to operate or maintain baghouse dust collectors may be subject to inhalation of these lead containing fumes. Sources of airborne lead may also include areas where castings are cut or finished and areas where scrap is received or stored. Levels of exposure are highly variable and depend on the amount of general local ventilation, the lead content of the alloy, the type of furnace, and the quality of housekeeping procedures. (Ex. 26, pp. 5-73, 5-75.)

The hearing record indicates that brass and bronze foundries can achieve an exposure level of 100 $\mu g/m^3$ within one year. DBA concluded that feasible engineering controls are available to met this level. (Ex. 26, p. 5-73, Tr. 800.) They found that most plants do not at present have enough control in effect. Significant improvements are necessary for compliance with the proposed standard. For example, half the plants currently do not use baghouses and the majority do not provide heated make-up air. Gary Mosher, representing the American Foundrymens Society, explained that "exhaust systems have been devised and designed that will close capture • • • fumes right at the ladle and the furnace." He further testified that such methods are effective in bringing exposure below 200 $\mu g/m^3$, but did not express an opinion as to whether such techniques are effective in bringing exposure below 100 $\mu g/m^3$. (Tr. 2801).

OSHA, however, has concluded that conventional technology in the industry has been shown effective for lowering exposures from melting and pouring to 100 $\mu g/m^3$. Refinement and development of these technological changes should permit, over time, compliance with the PEL. Examples of these controls include: (1) The adoption of electrical induction furnaces

with local exhaust ventilation installed during the initial furnace installation; (2) covered ladles; (3) segregated melts; (4) use of the Hawley Trav-L-Vent; and (5) increased use of dilution ventilation and directional ventilation during pouring. Compliance will, of course, also require comprehensive housekeeping, maintenance employee training, work practices, and personal hygiene. Further, administrative controls such as worker rotation may prove effective in reducing exposures in many small firms.

e. *Pigment manufacturing.* Of the 114 plants that manufacture pigments in the United States, approximately 25 produce pigments containing lead. Pigment products include red lead (or, litharge), lead sulfates, lead carbonates, lead silicates, lead oxides and lead chromates. Inorganic pigments are a prime component in surface coatings and important components in other products such as linoleum, rubber and plastics, inks, ceramics, and paper coatings. Litharge is used principally in the manufacture of products other than paint, i.e., ceramic glazes, batteries, glasses, and vitreous enamels. (Ex. 26, p. 5-92.) The number of production employees in lead pigment manufacturing is estimated to be 2,000. DBA's survey of several plants indicated that 90 percent of the workers were exposed to levels of lead above 100 $\mu g/m^3$. (Ex. 26, p. 5-93.)

The manufacture of pigments involves a number of different processes. Only pulverizing and grinding processes for reducing the particle size are common to all members in the class. Inorganic pigment manufacture is a combination of chemical-physical processes involving both wet and dry reactions, including precipitation, filtering, washing, fusing, calcining, etc. The processes may be carried out as a batch system, as continuous production, or as a combination of the two.

Pig lead is often the basic raw material in inorganic lead pigment. Litharge and other lead forms, however, are sometimes used. Because litharge is a powder, it presents the potential for lead exposures at every transfer point. Filtering, drying, grinding, sizing, grading, blending, and bagging are all considered to be areas of potential exposure to lead. Cross contamination between operations also occurs.

Most pigment plants are old. All but five plants visited by DBA were at least 50 years old. One plant was said to be 129 years old. (Ex. 26, p. 5-95.) Because of the age of the facilities, retrofitting may not achieve levels below 100 $\mu g/m^3$, although such methods have reduced air-lead levels to 200 $\mu g/m^3$. However, redesign of the process, including "total enclosure of certain steps and/or automation" is expected to be able to reduce levels to a 100 $\mu g/m^3$ level. (Ex. 26, p. 5-98.) The same conclusion applies to the 50 $\mu g/m^3$ PEL. As Dr. First explained, "every operation that can be mechanized and automated is capable of being enclosed by tight physical barriers and placed under slight negative pressure to prevent outleakage of dust or fume-laden air to the workroom." (Ex. 270, pp. 29-30.) While such technology may require time and money to install, it is available and adaptable to the pigment industry.

Using substitutes for lead pigments, such as organic pigments, would eliminate exposures. While substitutes may not exhibit all the properties of lead, such as resistance to corrosion and weathering, they would nonetheless be adequate in many cases. Such substitution would also reduce or eliminate exposures in all the industries that involve lead pigment—wallpaper manufacturing, glove manufacturing, pottery manufacturing, ink manufacturing, paint manufacturing, shipbuilding, and automobile manufacturing.

f. *Other industries.* For the 11 other industries that were discussed in the DBA report or its supplement (Ex. 65-B), technological considerations are detailed in the feasibility attachment. OSHA found the PEL to be generally feasible within 1 year from the effective date by use of engineering and administrative controls. For a few operations, particularly in the shipbuilding and automotive manufacturing industries, airline hoods or other supplementary personal protective equipment may be necessary on a periodic basis.

Other industries were assessed for technological feasibility in the Short report (Ex. 22). They were generally found to have very low lead exposure and any compliance activities will only require very simple engineering controls.

2. *Economic considerations.* OSHA has attempted to determine, for all affected industries, the costs of compliance of the final standard and to assess the economic impacts in terms of plant closures, industry competition, product prices, employment, and other economic factors. In many respects accurate and reliable cost estimates were difficult to determine for several reasons. OSHA and industry consultants who performed economic impact analyses found it difficult to avoid various forms of "double counting" of costs. Almost all of the information came from the regulated industries unverified by objective sources, and financial data, necessary to analyze the impacts, were not made available by individual firms.

In attachment D to the preamble, OSHA has made a detailed examination of the cost estimates of its contractor (DBA) and those of the principal industry consultants (CRA). Differences in estimates are discussed and reconciled where possible. In several instances, OSHA has reduced the estimates where obvious methodological errors required that such revisions be made. It should be noted that both of these studies attempted only to assess the cost of reducing exposures, by means of retrofit technology, from current levels to the proposed 100 $\mu g/m^3$ standard.

OSHA has concluded that the record contained adequate cost information for most industries. In addition, review of the record revealed that compliance with levels below 100 $\mu g/m^3$ might, in several industries, require extensive technological development for which long periods of implementation time would be required, thus precluding meaningful quantification of cost. However, the record was sufficient to predict that compliance within the times given would not result in undue economic hardship on those industries. This impact analysis is based on the record evidence concerning the financial and technical resources available to the various industries, the certainty of product and factor (production inputs) markets, and the availability of most cost-effective alternative methods of compliance.

The implementation schedule, itself, represents a merging of both economic and technological factors used to evaluate feasibility. Firms can choose from an array of technical solutions over a time frame sufficient for long run economic optimization. Since all firms in each industry face the identical PEL and time constraints, the process of the internalization of the cost of compliance acts on the decision-making process of the firm and the industry in the same manner as any other market signal. Depending on how firms judge a number of long-run factors including product demand, amount of investment sunk in the existing physical plant and managerial expertise, and alternative rates of return available on the necessary capital, some firms may choose to exit the market and invest in alternative ventures. Of course, other firms with different long-run expectations may choose to enter the market.

A brief review of the major affected industries follows:

a. *Primary smelting and refining.* In all operations, except perhaps maintenance work and where process upsets occur, compliance with the 100 $\mu g/m^3$ level by engineering controls and work practices is feasible within the 3 year implementation period through the use of conventional control techniques as well as some modification of existing processes. Attainment of the PEL may require the development and im-

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plementation of substantial technological change, possibly including alternatives to pyrometallurgy which are now in the experimental stage. Ten years for this goal is considered by OSHA to be sufficient to encourage commercially viable technological solutions for this industry.

Given the earlier discussion about the unreliability of cost estimates, OSHA has determined that the capital expenditure to meet the 100 $\mu g/m^3$ interim level is in a range between $32 million and $47 million (in 1976 dollars). The total annualized cost at the 100 $\mu g/m^3$ level is estimated to range between $11.927 and $15.641 million. After-tax cost, figured on the corporate rate of 48 percent, should then be between $6.202 and $8.133 million. Based on total 1975 industry production, this would be equivalent to $0.004 to $0.006 per pound. OSHA has reached the following conclusions regarding economic impact in this industry:

(1) The primary smelting companies will probably be able to raise the price of refined lead as much as 1¢ per pound in order to pass compliance costs to consumers of its product. This increase will be sufficient to cover the incremental costs of meeting the 100 $\mu g/m^3$ interim level. DBA and CRA concluded that it would not be possible for firms to increase the price of lead. CRA attributes this to the high elasticity of foreign supply (Ex. 127, pp. 2-51 to 2-56), and DBA concludes that high elasticity of the demand for lead will have the same effect (Ex. 26, p. 6-25). CRA's and DBA's conclusion is somewhat doubtful for several reasons. First, given OSHA's revision of estimated costs to the industry, the necessary price increase would be smaller than predicted by CRA and DBA. Second, the demand for lead in the long-run, as well as in the short-run, will most likely be price inelastic, and finally, the foreign supply of refined lead will probably be relatively inelastic in the short-run, the significant period in which domestic producers could recapture a substantial portion of compliance costs. As to the long-run, several factors can and may operate to make the foreign response to changes in U.S. price indeterminate.

The demand for lead will probably be substantially price inelastic in the long run. CRA's studies over the past 10 years, Dr. Burrows' (of CRA) repudiation of Heineke's work (the basis of the DBA analysis), and OSHA's evaluation of Heineke's conclusions support this. Therefore, demand factors should not play a significant role in the industry's pricing decisions. With respect to supply, the factors affecting the long-run behavior of firms are numerous. The increasing cost of producing lead (absent new discoveries) may impact on foreign producers sufficiently in the short run to reduce the incentive to shift production to the U.S. market. Foreign governments may follow the U.S. lead and compel similar environmental and occupational health constraints on their industry. Trade barriers or trade agreements limiting foreign imports may be adopted.

These factors affecting supply are highly speculative and no firm conclusions can be drawn other than that foreign supply is probably price inelastic in the short run, thereby allowing a short-run price increase, and possibly inelastic in the long run if one or more of several possible factors materialize.

At least one major producer, Amax, is confident that the industry will be able to pass costs forward. They stated that the costs of the standard "would certainly add to the price of our final product which in turn will have to be passed on to the consumer." (Ex. 3(67), p. 5.)

(2) Compliance costs can, in part, be shifted backward to suppliers of ore. CRA concluded that costs could be shifted, in part, backward onto suppliers through a reduction in the price paid for ores and concentrates (Ex. 127, Exec. Summ., pp. 8-10). DBA did not evaluate backward shifting of costs. The extent to which this could be accomplished minimizes the cost impact on the primary producers. OSHA has concluded that the limits on the backward shifting of costs are not as sever as indicated in the CRA analysis. The increasing price of lead has improved the marginal conditions attributed to several mines by CRA. Further, the incentive to ship abroad depends on foreign costs maintaining their present relationship to U.S. costs excluding OSHA impacts, a questionable assumption. Finally, OSHA believes that the differential can rise somewhat above the cost of transporting the ore to foreign smelters because of the obvious advantages of adequate U.S. smelting and refining capacity to the domestic mines.

(3) The industry has the ability to pass costs forward or backward sufficient not only to recover the cost of the 100 $\mu g/m^3$ interim level, but to assure that any likely cost associated with the PEL will not jeopardize long-run profitability. In the assessment of market power, OSHA disagrees with the conclusion in the CRA report. The difference is most apparent in the analyses of the non-Missouri operations of ASARCO. (Ex. 127, pp. 2-79 through 2-84.) CRA calculates the annual compliance cost of the proposed standard to these operations at $3.7 million or approximately 1 cent per pound of refined lead. They are aware that ASARCO had announced its intention to spend $55.2 million at El Paso and $32.2 million at East Helena to control air quality problems associated with lead productions. These capital costs, when annualized, produce an additional 6.2-cents-per-pound expense to the company, almost one-third of the market price of lead used in the analysis. The CRA cost pass-back analysis limits ASARCO's recovery from the mines to a maximum of 2 cents per pound. Their elasticity analyses preclude any long-run price increase. They conclude that the incremental OSHA costs seriously jeopardize continuing operation of the ASARCO Western smelters and refinery since the air quality controls would seem to cost ASARCO 4 cents per pound out of profit. They attribute ASARCO's willingness to continue in business to the externalities of custom smelters which extract "metals such as silver, cadmium, bismuth, and selenium as well as the slag processing which improves the flexibilty of the ASARCO system." (Ex. 127, p. 2-84) CRA makes no attempt to document this claim. It is obvious that ASARCO was willing to risk an enormous sum of money. Either they anticipated an ability to recover that long-run expense in terms of price increases or cost pass backs or some combination of both.

OSHA concludes that the segment of the primary industry claimed to be in the most financial trouble, the Western custom smelters, have sufficient market power to survive enormous increases in costs. The money scheduled to be spent on air quality problems may alleviate some occupational lead problems as well. More important, it is the most impressive possible statement of the perception of the long-run viability of the industry by the largest producer. Since ASARCO announced these commitments, the price of lead has nearly doubled.

(4) If primary smelting firms were forced to absorb all the costs of compliance in the short run, they would nevertheless remain profitable and competitive. To the extent that increased costs cannot be passed back to suppliers or forward to consumers, the primary lead producers must absorb them internally, i.e., pay for them out of profits. From the record evidence as a whole, it appears that each of the affected firms can shift or absorb compliance costs of the interim level and remain profitable and competitive. Of all the primary producers, only Bunker Hill's profitability is in question and the cost impact should be such that OSHA costs alone would not threaten the company's economic viability.

DBA's conclusions regarding Bunker Hill are misleading because its calculations are based upon cost estimates that are significantly overstated. The cost estimates it used for the Bunker Hill smelter show the impact on Gulf Resources to be a reduction in the rate of return on total assets from 13.34 percent to 6.28 percent. (Ex. 26, p. 6-13.) This, however, is based on compliance costs at least double those which OSHA has determined to be reasonable. Similarly, the percentage decrements for the other firms, St. Joe (1.56 percent), ASARCO (1 percent), and Amax (0.3 percent) would be even smaller if adjustments were made using the revised cost estimates. The same is true in the percentage decrements predicted for value of the firms' common shares. The result is that DBA's conclusion that Bunker Hill would have to shoulder an inordinate compliance burden compared to the other firms is weakened. Gulf Resources' return on assets will decrease more than the other firms', but it will still have a rate higher than ASARCO and Amax.

The steelworkers asserted that each of the four firms could pay for all the capital improvements estimated by CRA out of 1976 profits alone. (Ex. 343, p. 172.) Their calculations showed that compliance costs as a percentage of 1976 profits were as follows:

Company	Capital costs (percent)	Annual costs (percent)
ASARCO	45.6	11.3
Amax	5.4	1.7
St. Joe	15.4	4.5
Gulf Resource	54.3	15.9

CRA evaluated each firm's profitability and their ability to shift costs back to suppliers of ore. They concluded that Bunker Hill, with the heaviest costs of compliance and little chance to shift cost back to suppliers, might prove uneconomical for Gulf Resources to continue to operate. Initially, production at Bunker Hill is expected to increase (Ex. 343, p. 173), thereby lowering the cost per pound, but more important, the cost attributable to the OSHA standard is less than 1 cent per pound. (0.95 cent by CRA's calculations.) This is only 0.23 cent in excess of the 0.72 cent per pound that CRA estimates Bunker Hill can pass back to the mines under the best conditions. (Ex. 127, p. 2-73.) Under the worst conditions, the differences would be 0.8 cent (Ex. 127, p. 2-74). The firm would have to absorb between $0.579 to $2.016 million in compliance costs.

Looking then at profitability, CRA concluded that if Bunker Hill was forced to absorb between $2.3 to $3.9 million, the consequences would be "severe." However, Bunker Hill's 1975 profit was $6.2 million. Its average profit between 1970 and 1975 was $10.664 million overall and about $5.332 million from lead operations. Absorbing costs of $0.579 to $2.016 million will cut into profits, but those costs are only 5 to 19 percent of the firm's average profits. This mitigates CRA's conclusion.

In fact, the decision of the management of Gulf Resources on whether or not to make the investment required at Bunker Hill will be determined by its assessment of the long-run profitability of the industry. Profits in 1975 were reduced because of production restrictions related to air quality problems since alleviated. Also, as noted earlier, the price of lead is almost double its 1975 level.

(5) If compliance costs reduced the profitability of Bunker Hill to a point where Gulf Resources decided to close its lead operations, the competitive structure of the primary sector would be largely unaffected. DBA stated it this way (Ex. 26, p. 6-26):

> If one or more producers of primary refined lead should be forced to shut down lead refining operations, concentration in primary refined lead production could increase substantially. Such an event would no doubt facilitate cooperative behavior among the surviving primary lead producers. However, this probably would not affect significantly the nature of competition in refined lead.
>
> The degree of concentration in primary refined lead production is already potentially high enough to achieve a joint monopolistic result as a consequence of the mutually recognized interdependence of the four large producers. This could occur without the necessity of resorting to overtly collusive conduct.
>
> That this result is not presently attained is due to forces being exerted from outside the primary lead segment of the market, viz., from secondary lead, refined lead imports, and the threat of entry. These forces would still be operating no matter what the degree of concentration in primary refined lead. Thus the competitive situation probably would not be significantly affected even if the imposition of the proposed occupational lead exposure standard leads to a reduction of the number of firms engaged in primary lead production.

(6) The compliance schedule for meeting the 50 $\mu g/m^3$ standard assures economic viability.

The 10-year period set forth in the methods of compliance section is based primarily on technological factors. This time should be sufficient for any firm to completely rebuild an existing smelter (Ex. 3(103), p. 5) or to construct new capacity.

This extended compliance period also assures economic viability of the PEL. Production efficiencies may arise from new processes, such as hydrometallurgy, sufficient to offset EPA and OSHA costs. Retrofit technology may be refined that will effect control greater than now envisioned for existing equipment and thus lower long-run costs of compliance. DBA stated that "we can expect to see new, innovative and cost-effective compliance methods being introduced as a result of enforcement of the standard." (Ex. 26, p. 2-16.)

The 10-year compliance time constitutes a planning horizon sufficient to allow all firms maximum flexibility in capital planning. OSHA believes the long-run outlook for the industry is favorable and there exists some combination of engineering controls and work practices, including administrative controls, which will permit all four firms to remain in the market. Because the economic and environmental conditions of the western smelters vary widely from those in Missouri and among themselves, OSHA has established a time frame designed to maximize the technological and economic options for the industry. This compliance period is sufficient to allow each firm the opportunity to assess the likely state of the market and to raise the capital necessary for conversions required by air and water quality standards, other OSHA standards, and the 50 $\mu g/m^3$ lead standard. OSHA has concluded that this flexibility is necessary for achieving the most cost-effective solution for the industry consistent with necessary worker protection.

(b) *Secondary smelting and refining.* Compliance with the interim level in 3 years and PEL in 5 years appears feasible since extensive process modification as well as refinement of recent technological developments may be necessary for some firms. In addition, the Bergsoe smelting process, a cleaner, more fuel efficient smelting technology used for many years outside the United States, is available for either partial adaptation to existing facilities or total adaptation if new facilities are built. Construction of new plants employing this technology would take 2 to 3 years and may provide a more cost-effective alternative to present technology.

Capital costs for compliance by means of retrofit controls with the interim level have been estimated to range from $34.1 to $51.1 million. Pretax annualized costs associated with these estimates are $18.9 million and $28.5 million, respectively. After taxes, the figures range from $9.8 to $14.8 million. The annual cost of the best estimate is equal to $0.013 per pound of 1975 production.

The cost of attaining the PEL of 50 $\mu g/m^3$ cannot be ascertained precisely because the industry faces several options for long-run compliance. However, an upper limit (the cost of completely rebuilding the industry with the latest available technology) is determinable. To completely rebuild with the Bergsoe process would cost

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approximately $90.6 million excluding land costs.

OSHA has concluded that compliance with neither the 100 μg/m³ nor the final PEL of 50 μg/m³ is likely to have severe impacts in this industry. This is in general accordance with the views of CRA and DBA. Both predicted some closures from high-cost marginal operations but expected no drastic impact on the structure of this industry. DBA seemed to be somewhat more pessimistic about closure than the industry study. DBA noted that although concentration has been increasing (Ex. 26, pp. 6-6, 6-7), production within the industry is still not highly concentrated, primarily as a result of low entry barriers. Sources of scrap can be easily acquired and initial capital requirements are low. (Ex. 127, p. 1-29.) As a result, secondary producers have little control over prices, even in the short run, essentially following the market. (Ex. 26, p. 6-10.) They will be able to shift compliance costs forward onto product prices only if primary producers raise prices. OSHA has determined that the DBA impact assessment is faulty in two respects. First, DBA did not consider the possibility that primary smelters might be able to pass through some of the compliance costs and secondary smelters would benefit accordingly. More importantly, DBA did not analyze the ability of secondary firms to pass cost back to scrap dealers. CRA anticipates that the average compliance cost will be passed back and thus only firms whose costs exceed the average would have to absorb any compliance cost even absent a price rise.

These estimates make no allowance for the use of administrative controls which should bring further reduction from these estimates. Firms will be able to increase prices to the extent that the primary producers do so. However, at least the average compliance costs can be passed back to the scrap dealers. Thus only the highest cost marginal firms are likely to face a decision on whether or not to cease operations.

(c) *Battery manufacturing.* Control of lead exposure for the more than 12,000 exposed employees in accordance with the implementation schedule for this industry is feasible through the use of conventional engineering and industrial hygiene techniques, although significant modifications may be required in the production process. Less complex, and less expensive compliance solutions appear to be possible for small producers, including the use of employee rotation.

OSHA estimates the capital cost of meeting the 100 μg/m³ interim level to be in the range of $205.1 to $230 million with annualized costs of $25 to $28.1 million.

The battery industry is essentially an oligopolistic industry with a fringe of small independent producers who compete in regional or specialty markets (Ex. 26, p. 6-37). It is comprised of 138 companies who operate a total of 200 plants, but the 5 largest companies, who operate 55 plants having 78 percent of the total industry capacity, dominate the market. (Ex. 26, pp. 6-33, 6-37.) The seven largest companies operate 70 plants and sell 90 percent of all the batteries sold (Ex. 26, p. 5-42). It is also an industry that has been in the process of consolidation for many years. In the past 20 years the number of firms in the industry has steadily decreased from over 300 in 1954 (Ex. 127, p. 3-4) to just 138 in 1972 (Ex. 26, p. 6-33).

The questionable assumptions underlying the IHE report (the engineering which provided the basis for the cost estimates) lead to the conclusions drawn by DBA and CRA that approximately 100 small battery manufacturers would exit the industry as a result of the proposed standard. (Ex. 127, p. 3-53; Ex. 26, p. 6-24.) OSHA does not believe that the approximately 100 small plants will have to assume the magnitude of cost used by DBA and CRA because of the overestimation of costs by IHE, because the lead quantity in small plants is lower (Ex. 349, pp. 16-18), and because of several available low-cost compliance alternatives, discussed earlier, which are uniquely suited to small plants. In addition, some small manufacturers might take advantage of economies of scale by increasing production, e.g., expanding a one-shift operation to a two- or three-shift operation.

Some of these small firms will probably exit the market irrespective of the OSHA standard. There has been a trend in recent years of very small firms (95 firms have less than 20 employees and a total of 2 percent of the market) leaving the industry because of unprofitability. These firms have discovered shrinking markets for their products, and an inability to compete with larger companies because size is related to production efficiency. Most of the new plants in the industry have been quite large. (Ex. 127, pp. 3-6.) These factors are expected to continue to put severe stress on the small battery manufacturer without respect to additional costs due to OSHA regulations, and the consolidation trend is expected to continue.

OSHA has concluded that even if the questionable DBA and CRA prediction that approximately 100 small manufacturers would exit the market were true, the standard is nonetheless feasible for the battery industry.

Closure of 100 small businesses would have a minimal impact on the competitive structure of the industry. Thirty firms operating 100 plants will remain, and the capacity of the 7 largest firms, now 90 percent of industry capacity, will increase a few percent. Competition from the smaller firms has little or no effect on the price of batteries, which is set by the major producers, except in those "interstices of the market which the major producers do not choose to capture." (Ex. 349, p. 19; Ex. 26, p. 6-42; Ex. 127, pp. 3-7 through 3-9.) The small producers may set prices in small local markets where they supply retailers directly and take, in price, the equivalent of distributor markups or where special services (picking up old batteries, fast delivery, etc.) to the retailer allow price increases. (Ex. 127, p. 3-8.)

Battery prices will increase as a result of the passthrough of compliance cost. The industry price setters, the five major producers, will have compliance costs of about $0.74 per battery, with an industry average of $1.11. (Ex. 127, p. 3-35.) CRA has estimated that a cost passthrough of $0.74 will result in a retail price increase, due to markups in the distribution chain, of about $1.75 per battery. (Ex. 127, Exec. Summ., p. 37.) This will allow small producers who enter the distribution chain at advanced stages to pass through costs of about $1.04 per battery (Ex. 127, Exec. Summ, p. 37.) except where they are not in competition with the major firms.

Closing of 100 plants employing 10 persons each would mean the loss of approximately 1,000 jobs. Compliance activities require additional manhours, however, and it is estimated that the net gain in employment, if production remains at the prestandard level, would be approximately 2,000 employees. Productivity, therefore, would decrease by just over 9 percent. The impact on wages would be small. (Ex. 26, p. 6-43 and 6-44.)

OSHA's evaluation of the technology available to the battery industry indicates that compliance with the PEL may be achieved by the same types of technological changes required to achieve the interim level of 100 μg/m³, although further refinement, additions, and modifications may also be necessary. The compliance schedule requiring engineering controls and work practices to be used to reach 100 μg/m³ in 2 years and the PEL in 5 years is based on the time it should take to implement the relatively conventional control methods required. Large manufacturers should have little problem meeting the costs involved, especially since they will be able to pass on all of the increased costs of production to consumers. For smaller manufacturers, OSHA has concluded that simple and inexpensive approaches can be effective in many situations, thereby drastically decreasing their inordinately excessive estimates of compliance cost. Where capital acquisition problems are encountered in meeting the implementation schedule, the flexibility in the compliance scheme for the standard should, under certain conditions, enable employers to spread compliance costs over 5 years.

(d) *Brass and Bronze Foundries.* Compliance with the interim level of 100 μg/m³ in 1 year is feasible in this industry with presently available technology, while compliance with the PEL may require some further development and refinement of the same technology.

Cost estimates for compliance with the interim level are $161 million for capital expenditures and $41.2 million in after-tax annualized cost. Costs of compliance will be passed on to the purchasers of castings, and DBA estimates that price increase would be equivalent to about $0.16 per pound of casting. This assumes that industry profit rates will be maintained since it is double the price necessary for full cost recovery. Some small firms with higher than average costs of compliance may leave the industry thereby reducing competition, and since substitutes for brass and bronze castings exist for some uses total industry output may fall. The industry association which testified at the hearings did not plead economic hardship.

(e) *Pigment manufacturing.* Control of employee exposure in pigment plants to comply with the implementation schedule will probably require extensive modification of the present production processes. Substitution of other materials for lead is also possible for some uses of pigment.

Cost estimates for this industry for the interim level are between $17.6 million and $21.1 million and $6.4 million in annualized costs. These costs are for retrofit technology which may not be adequate to comply with the PEL. If compliance with the PEL requires the redesign of the production process, the capital costs for the industry may be in the area of $109 million with after-tax annualized costs of $21.8 million.

DBA concluded that almost all costs of production would be passed on to the consumers, and competition in the industry would decrease slightly as marginal firms exit. The DBA analysis was based on estimates of the cost of totally rebuilding the industry ($109 million—capital; $14.8 million—annual). Given the product substitution option, OSHA doubts that such estimates would ever be realized. However, if such sums are ever spent, they would be expended to comply with the PEL over a 5-year period. OSHA's revised estimates of the cost to achieve the 100 μg/m³ interim level would require a price increase of 1.7-3.7 percent instead of the DBA prediction of 16.6-21.6 percent. This would substantially mitigate the impact on marginal firms.

(f) *Other industries.* At least 33 other industries have been identified as having some lead exposure. In almost all cases control of lead levels below the PEL should be feasible within 1 year using conventional methods, but in some operations, such as solder grinding and paint spraying, elaborate personal protective equipment may be necessary to comply with the PEL.

(g) *Aggregate economic impacts.* While the costs of compliance are significant for some industries and the employment impacts may have regional significance, the aggregate impacts are minimal. The effect of costs associated with the interim level is estimated to increase the Consumer Price Index by only 0.02 to 0.03 percent.

IV. Summary and Explanation of the Standard

The following sections discuss the individual requirements of the standard. Each section includes an analysis of the record evidence and the policy considerations underlying the decisions adopted pertaining to specific provisions of the standard. To the extent appropriate, the requirements in this standard are similar to requirements in other OSHA health standards and reflect OSHA's regulatory policy for comprehensive health protection of workers.

Each provision is an integral part of the comprehensive health program contained in this standard and as such provides a discrete but necessary contribution to the overall objective of the standard. Because of this, the benefits attributable to any specific provision can not be quantified and compared to its costs. For example, the training and education provision provides an essential function in assisting workers to recognize hazards and to minimize lead absorption by means within their control, i.e., better hygiene and work practices. This provision does not, however, provide any quantifiable benefits apart from the complex of other provisions which also minimize absorption because the contribution of poor hygiene or work practices, as percentage of total absorption, varies among individuals and is thus not determinable.

On the other hand, OSHA has assessed the costs of individual provisions (see Ex. 26; Ex. 22; Ex. 127) and has minimized costs to the extent possible without compromising the level of health protection and the integrity of the standard. OSHA has accomplished this by decreasing the frequency of periodically recurring requirements (e.g., air monitoring) or by providing a certain condition at which the obligation begins (e.g., an action level, the PEL, or a minimum duration of exposure).

In many cases, the standard does not create new costs for employers because the obligations already preexisted the final standard (e.g., current OSHA standards for respirators, personal protective equipment, hygiene facilities, engineering controls (29 CFR Part 1910)) or because employers have voluntarily instituted them as part of a comprehensive industrial hygiene program. OSHA thus believes the standard has been constructed in the most cost efficient manner and that the cost burdens imposed on employers are reasonable.

A. Scope and Application: Paragraph (a)

This standard for occupational exposure to lead is applicable to all employment and places of employment over which OSHA has statutory jurisdiction and in which lead, in any amount, is present in an occupationally related context. Exposure of employees to the ambient environment which may contain small concentrations of lead is not subject to this standard; however, where the source of lead is employment related, all exposure to lead is covered by the standard. The lead to which this standard applies is defined to include metallic lead, all inorganic lead compounds, and organic lead soaps. All of these substances are covered within the scope of a single standard because they generally react in a chemically and toxicologically similar manner in the human body. On the other hand, most organic lead compounds, except for organic lead soaps, have varying degrees of toxicity or have toxicological properties different than the inorganic group,[1] and thus are excluded from the scope of this standard. Some of these excluded compounds are covered by existing OSHA standards,[2] and others will be treated in separate standards to be developed in the future.

Some covered compounds may be covered by this and one or more other OSHA standards. Lead chromate, for example, is covered under this comprehensive standard for lead as well as

[1] E.g., tetraethyl and tetramethyl lead are absorbed through the skin, unlike the inorganic compounds. See *Documentation of the Threshold Limit Values for Substances in Workroom Air*, American Conference of Governmental Industrial Hygienists, 3rd ed., 1971, 3rd printing, 1976, pp. 251-54.

[2] Tetraethyl lead has a permissible exposure limit of 0.075 mg (as Pb)/m³ and tetramethyl lead a permissible exposure limit of 0.07 mg (as Pb)/m³, both as an 8-hour TWA. 29 CFR 1910.1000, Table Z-1.

under the permissible exposure limit for chromic acid and chromates in Table Z-2 of S1910.1000, 29 CFR. Lead arsenate is covered under this standard and the standard for inorganic arsenic, S1910.1018. The requirements of each standard would apply to the extent applicable.

It should be recognized that although this standard may have general applicability to a particular employer or workplace, almost all of the obligations in the standard are predicated on an initial determination of certain minimum lead exposure conditions. For example, the requirements for periodic environmental monitoring and medical surveillance apply only if employees are exposed to airborne lead in excess of the action level (30 $\mu g/m^3$); employers whose employees are exposed below the action level are not required to conduct periodic monitoring or medical surveillance or to comply with most other provisions of the standard. This distinction is made in order to differentiate between more hazardous and less hazardous work operations and impose obligations commensurate to the degree of hazard present. For a more complete discussion of each particular requirement, see following paragraphs (C) through (R).

The notice of proposed rulemaking stated that the standard would apply to all industries covered by the Act, including general industry, construction and maritime and that corresponding standards for maritime and construction industries in Parts 1915–1918 and 1926 and in Subpart b of Part 1910, 29 CFR, would be superceded if they were determined to be not as effective as the final standard.

Several parties to the rulemaking contended that the construction industry should be exempt from coverage of the standard or that the standard should have special provisions for the construction industry because of the inherently different nature of construction employment as compared to industrial employment. (Ex. 3(30); 3(64); 3(98); 3(130); and 381A; Tr. 7290–7341.)

The primary reasons cited to support exemption of the construction industry are the infeasibility (technical and economic) of compliance with certain provisions of the standard and the apparent purposelessness of others given the facts that the nature of construction work (1) often exposes employees to lead for very brief periods of time; (2) requires the employee and his tools to move from place to place, resulting in varying exposure conditions; and (3) has a high number of temporary employees.[3] These factors are claimed to impact on the construction industry's ability to comply with the standard's provisions in the following ways:

1. *Exposure determinations and environmental monitoring.* Environmental monitoring is not claimed to be infeasible other than where the length of the job could be shorter than the time it could take for air samples to be taken and analyzed (Tr. 7293; 7309–10; Ex. 3(64), p. 3).[4] It is claimed, however, that the mobility of the worker and the impermanence of the worksite renders the environmental monitoring requirements useless in the construction context because the value of air monitoring, beyond use as a historical record of exposure, is primarily based upon "the degree to which the results of the monitored activity can be related to some future repetition of that activity." (Ex. 3(30), p. 3.) In a construction environment, the contaminant source and exposure levels are often unique in any given task at any given time, and the air monitoring data derived can not serve its primary purpose of evaluating the need and efficiency of engineering controls and other protective measures triggered by the result of air monitoring.

2. *Methods of compliance.* Engineering controls are contended to be inherently not feasible for certain construction activities, such as abrasive blasting or certain mobile activities. It is also claimed that on short-term jobs amortization of some controls, e.g., a conditioned-air ventilation system, would not be economically feasible. Technological and cost considerations aside, the time to design, procure and install such a system might exceed the entire time to complete the whole construction job. (Ex. 3(64), p. 4; Ex. 3(30), p. 4–6.)

3. *Hygiene facilities.* On remote construction sites, minimal amounts of water may be available, and the use of mobile, self-contained facilities providing lockers, change rooms, showers, etc. would probably be economically prohibitive, especially for short duration jobs. (Ex. 3(64), p. 7.)

4. *Medical surveillance and MRP.* Medical monitoring, medical removal and MRP requirements are also claimed to be unworkable. Because initial medical surveillance and periodic follow-up is predicated upon air monitoring results, the shortcomings of air monitoring for the construction industry, as discussed above, undermines the medical programs' effectiveness. The temporary worker may thus not get a medical exam or blood test until after the lab results of air sampling return, and follow-ups may be due long after he leaves the job. The need to protect the worker who begins employment with elevated blood lead levels may then only be ascertained after employment has been terminated. Also, high turnover rates and minimum medical personnel in remote and nonurban areas tend to aggravate the time problem.

OSHA has considered all the evidence in the rulemaking record on this issue and has concluded that there is insufficient evidence to satisfactorily resolve all the issues raised with respect to applicability of this standard to the construction industry. Construction is a diverse activity about which no valid generalizations can be drawn concerning the nature of lead exposure, the duration of a project, or the the duration of an employer-employee relationship, and the record does not support drawing rational distinctions between groups that can feasibly be covered by the standard and groups that cannot. OSHA's own contractor on the EIS suggested that "the feasibility of applying the various provisions of the standard should be examined before including the construction industry in the scope of the standard." (Ex. 65B, p. 31.) Accordingly, OSHA intends to utilize the expertise of the Construction Advisory Committee and will request that it review the rulemaking record and make recommendations on the most appropriate way the lead standard can be applied to the construction industry. These recommendations will then become the basis for a proposed modification to part 1926.

OSHA has determined that the final lead standard would be more effective than corresponding standards for the maritime industries because, as a comprehensive health standard integrating air monitoring, medical surveillance, training and other requirements, it would provide greater protection to employees exposed to lead than that provided by the current maritime standards. Unlike the construction industry, representatives from the maritime industries who participated in the rulemaking did not claim that the standard should not be applicable to maritime activities. In fact, the Shipbuilders Council of America, and industry trade association, stated that compliance with the proposed standard was feasible even though it objected to specific provisions. (Ex. 230.)

Specifically, the new standard would supercede references to the 1970 TLV's in sections 1915.11, 1915.21, and 1917.11. The TLV for lead in 1970 was 200 $\mu g/m^3$ and to not supercede the current maritime standard would clearly allow a less protective, and hence less effective, standard to apply to the maritime industry. In addition, there are general standards for the maritime industries which, while not specifically applicable to lead exposure, would apply when lead exposure occurs in those industries. Where provisions in those standards clearly conflict with the new standard, the provisions of the new standard are intended to apply (e.g., s1915.23(a)(4)); however, where the present maritime standards are more specific or require additional protective action, they shall not be superceded. Examples of the latter case are in 1915.31(c), which deals with welding, cutting, or heating of toxic metals and sets forth specific work practices when these activities are performed. These sections would still apply, along with the new lead standard, but only to the extent they do not conflict with the new standard.

Finally, this standard does not apply to agricultural operations, standards for which are found in Part 1928, since OSHA had not proposed to cover agricultural operations and no comments were received on the issue.

[3] Construction work has a high turnover rate (300–600 percent (Tr. 7292; Ex. 3(30), p. 11), and construction subcontractors commonly hire local craftsmen through local unions for brief, specified periods. (Tr. 7297, 7301.)

[4] The Council of Construction Employers states that "large construction companies use air monitoring techniques to determine toxic concentrations of airborne contaminants. There is no doubt that such techniques are available and can readily provide useful information . . ." (Ex. 3(64), p. 2)

B. DEFINITIONS: PARAGRAPH (b)

The final standard has deleted, as unnecessary, two definitions contained in the proposal. The definition of action level has been added to the final standard.

C. PERMISSIBLE EXPOSURE LIMIT (PEL): PARAGRAPH (c)

The final standard has a permissible exposure limit of 50 $\mu g/m^3$ as an 8-hour, time-weighted average.[5] This is the highest level of lead in air to which an employee may permissibly be exposed, exposure being defined as the actual concentration of airborne lead in an employee's breathing zone. Thus, the methods by which the employer chooses to reduce an employee's exposure to lead are not relevant to a determination of whether the PEL has been exceeded. The standard requires that the PEL be complied with immediately and at all times whether by engineering controls, work practices (including administrative controls), or respirators. A second obligation exists in the "Methods of Compliance" provision, paragraph (e) of the regulation, which requires engineering and work practices controls to be implemented according to a schedule to attain compliance with the PEL, and a violation of this paragraph may exist if the required means are not used to achieve permissible limits.

The PEL is an eigth-hour average of exposure for any work day. If respiratory protection is permissibly being used to comply with the PEL and all of the requirements relating to selection, fitting, and maintenance of respirators are met, the employee needs to wear the respirator only for a period of time that, when averaged with periods of time the respirator is not worn, will result in a TWA exposure below permissible limits. For this purpose, the employee's exposure level when a respirator is worn may be considered to be the airborne concentration, without regard to the respirator, divided by the protection factor of the respirator. For example, if an employee is exposed to 100 $\mu g/m^3$ for 8 hours without a respirator, he would have to wear a respirator with a protection factor of 10 for about 4.4 hours or with a protection factor of 60 for about 4.1 hours, in order to comply with the PEL.

Of course, a class of respirator more protective than required by paragraph (f) may be selected, and if selected, would reduce the amount of time a respirator would need to be worn.

OSHA recognizes that workshifts can extend beyond the regular 8-hour period as the result of overtime or other alterations of the work schedule. This extension of worktime also extends the time during which the employee is exposed. The effects of this additional exposure time must be considered in arriving at a permissible level of exposure. For the purpose of calculating such a level, the relationship of concentration and length of time of exposure has been assumed to be linear. As the exposure time increases, the factor of concentration multiplied by time ($C \times T$) should remain constant. As a result, it is believed that by equating exposure with the 8-hour time-weighted average, reasonable assurance of maintaining a safe exposure level is retained.

The final standard contains a formula by which adjustments to the permissible exposure limit can be made due to overtime. For example, if an employee is exposed to lead for 10 hours, the permissible limit, as a 10 hour average, would be 400/10 or 40 $\mu g/m^3$.

The proposed standard expressed the PEL as an 8-hour, time-weighted average "based on a 40-hour week." This has been deleted to avoid ambiguity since it was misconstrued by some commenters as a conversion of the PEL to a 40-hour average.

Information was also presented during the rulemaking proceeding regarding the variation in solubility and toxicity of different lead compounds. (Ex. 3 (4), (57), (59), (67), (103), (107); Ex. 80; Ex. 234(16); Ex. 234(22); Ex. 247 A and B; Ex. 311A.) The key issue which emerged is whether the final standard should differentiate between different lead compounds in the establishment of permissible exposure limits.

Stanley D. Koremus, Deputy Assistant Secretary of the Interior, advocated the tolerance of some lead compounds at higher airborne concentrations. Koremus pointed out that some lead compounds, particularly lead sulfide which is common to the majority of lead ores, are virtually insoluble in biological tissue. He calls it "inconsistent" to institute the same low exposure limits for lead compounds which "would not result in excess blood lead" (Ex. 3(57), p. 2) as the others which would result in elevated blood leads.

D.A. Bissonnette, corporate industrial hygienist for PACCAR, Inc., advanced precisely the same complaints about the proposed lead standard. Bissonnette said the standard failed to take into account the different degrees of toxicity of lead in its different forms, citing the availability of the lead ion for absorption, the physical characteristics of the compound, and the route of absorption as distinguishing characteristics. (Ex. 3 (59).)

Bissonnette pointed specifically to the paint industry where the lead compounds used in paint pigments are "relatively insoluble." When paint is sprayed, the lead is "suspended and encapsulated in the paint mist" rendering it much less toxic than lead fumes or dust, according to Bissonnette. He stated that this explains why painters highly exposed to lead still exhibit normal blood lead levels. (Ex. 3(59), p. 1.)

Most of the other arguments presented on this point reflected the view expressed by St. Joe Minerals Corp. that lead sulfide is absorbed little by man, if at all. St. Joe's D. H. Berlsterm claimed that lead sulfide "does not pose a significant adverse health problem and should be specifically exempted" from the lead standard. (Ex. 3 (107), p. 1.)

After evaluating industry claims that solubility and other factors of lead toxicity should be incorporated into the PEL, OSHA does not believe that the final standard poses what Bissonnette called "an unnecessary administrative and economic burden" on the less toxic lead compound industries. (Ex. 3(59), p. 2.) Several factors lead to this conclusion. Decreasing the airborne exposure reduces the amount of lead available for ingestion. Second, with the exception of lead sulfide, almost all lead to which employees covered by this standard will be exposed (e.g., lead fume, lead oxides) is relatively soluble. Most employees exposed to lead sulfide are mine and mill workers who fall under the jurisdiction of the Mine Safety and Health

[5] The rationale for choosing this level as the PEL is discussed in part III and Attachment B of this preamble.

Administration and are not covered by OSHA standards. Only the few employees involved in the handling of ore and concentrates at lead smelters will be exposed to lead sulfide and many of them may also be exposed to other, more soluble forms of lead such as recycled flue dusts, drosses, etc. (Ex. 26, p. 5-3.) With regard to paint, not enough is known about the biological response to paint particulates (Tr. 1203) for OSHA to assume that exposure to lead-based paints are less toxic. Bissonnette's suggestion that painters' blood lead levels are normal despite high air lead levels because of lower toxicity is perhaps better explained by the fact that painters always wear respirators as protection from toxic vapors of solvents in the paint. (Tr. 1200.)

Another factor suggested by participants is the particle size of the lead aerosol. Particle size affects the respirability and hence absorption of lead into the blood. However, nonrespirable particles may also be absorbed into the blood through direct ingestion or from swallowing nonrespired particles trapped on the mucous membranes in the respiratory tract. (Ex. 439A, p. 3-12.) The rate of absorption in the gut is clearly different than in the lung. OSHA agrees that particle size is relevant to the determination of a PEL and accounted for particle size in developing its air-lead to blood-lead relationship.

D. EXPOSURE MONITORING: PARAGRAPH (d)

The monitoring requirements of the final standard are imposed pursuant to section 6(b)(7) of the Act which mandates that standards promulgated under section 6(b) shall, where appropriate, "provide for monitoring or measuring of employee exposure at such locations and intervals, and in such manner as may be necessary for the protection of employees." The primary purpose of monitoring is to identify the sources of lead emission and to determine the extent of employee lead exposure. This will enable the employer to select proper control methods and to evaluate the effectiveness of the selected methods. Additionally, monitoring enables employers to notify employees when their exposure levels exceed permissible limits, as required by section 8(c)(3) of the Act, and provides information necessary to the examining physician.

Paragraph (d) of the regulation contains provisions for monitoring employee exposure to airborne lead without regard to the use of respirators. The final standard is essentially unchanged from the proposal except for three differences: (1) the initial determination of employee exposure must be based, at least in part, on air sampling and analysis, (2) periodic monitoring must include full-shift personal samples, and (3) the monitoring frequency is reduced.

The proposed standard would have required all employers to make an initial determination of whether any employee might be exposed to lead in excess of the action level. The basis of this determination for most employers did not include exposure monitoring. Only employers in certain industries known to have high lead exposure would have been required to monitor. The purpose of this requirement was to minimize the burden on employers where limited exposure to lead existed.

OSHA has reassessed this provision and decided that employers in all industries where lead is present in an occupational context should perform a minimal amount of exposure monitoring because it is the only precise method of determining lead-in-air concentrations and because it cannot be confidently predicted that lead exposures exceed the action level in only certain industries.

In its criteria document on lead, NIOSH identified 113 occupations or trades in which exposure to inorganic lead is possible. (Ex. 1, p. x-3.) The preliminary technological feasibility and economic impact anaylsis identified and collected information on 46 industries, representing at least 57 SIC codes, where employee exposure to lead is believed to occur. (Ex. 22.) However, because of the changing usage of lead in industry and the widely varied trades where exposure occurs, there is no reporting system in the United States to analyze the prevalence of lead poisoning and no precise measure of the extent of lead exposure. (Ex. 1, p. III-1.) For these reasons, it is important for each employer in whose workplace lead is present or used in an occupational context to make an initial determination of potential employee exposure based on a reliable and accurate method. To exclude all employers except those in traditionally high exposure industries from initial monitoring (as the proposed standard would have done) is to fail to recognize the need to accurately identify and measure all occupational sources of lead exposure.

The initial monitoring requirement is minimal in that it only requires monitoring of a repesentative sample of the employees believed to have the highest exposure levels. If these measurements indicate exposure below the action level, no further monitoring is required except where subsequent process or control changes would trigger a redetermination pursuant to paragraph (d)(7). If any employee is determined to be at or above the action level, then full-scale representative monitoring for all exposed employees is required.

In conducting the monitoring of employee exposures, the standard does not require that each individual employee's exposure level be measured. Although individual measurement is the ultimate indicator of an employee's exposure, OSHA believes that a requirement for individual measurement may be too burdensome, and that representative monitoring will adequately insure that the worker's exposure is maintained within the requirements of this standard. In establishments having more than one work operation involving the use of lead, in order for monitoring to be representative, it must be performed for each type of employee exposure within each operation. It should be noted that the requirement for representative monitoring does not preclude an employer from taking individual exposure measurements of each of his employees; individual measurements are certainly considered to be representative; however, representative monitoring merely establishes the minimum that the employer must meet.

OSHA disagrees with testimony which suggests that little or no confidence can be placed in determinations of employee exposure which are not based on an actual measurement of the exposure of each individual employee. (Tr. 6073.) If the representative employee chosen is, in fact, representative and a sampling protocol utilizing full-shift samples is used, OSHA believes this will be adequate in ascertaining employee exposure without being unduly burdensome. (Tr. 91-92.)

Accordingly, the standard requires that the measurements be made by monitoring which is representative of each employee's exposure to lead over a full shift period without regard to the use of respirators. A full-shift sample is considered to be at least 7 hours long; this provides a sufficiently long sampling period while allowing time for equipment set-up and calibration. (Ex. 3 (12), p. 4; Tr. 3626)

The objective of environmental monitoring is twofold: first, full shift personal sampling will enable the employer to determine an individual employee's exposure to airborne concentrations of lead.[6] Individual monitoring information combined with biological monitoring data and clinical evaluation form the basis for ascertaining the lead-related health status of an individual worker.

[6] OSHA recognizes that there will be day-to-day variability in airborne lead exposure experienced by a single employee. The permissible exposure limit is a maximum allowable value which is not to be exceeded; hence exposure must be controlled to an average value well below the permissible exposure limit in order to remain in compliance. This consideration forms the basis for OSHA's 95 percent confidence level requirements. (Ex. 314; Ex. 235; Ex. 150 A, pp. 30-32.)

For example, if a worker had high blood lead level but a low air lead exposure as determined by individual sampling, other sources of lead exposure (ingestion, non-occupational sources, etc.) would be suspected. The physician could make use of this information to ascertain and correct the associated problem.

Second, thorough environmental monitoring also enables the employer to determine the source of lead emission, the efficacy of control technology, and progress achieved during implementation of controls. In industries with high lead exposure, a comprehensive industrial hygiene survey may be required to determine the nature and extent of the lead exposure problem. This survey may require far more than a single full shift personal sample. Multiple area and personal samples may be necessary and a variety of sampling times may be needed to determine precisely the source of emission. Short-term samples may determine ceiling values in a markedly fluctuating environment, whereas continuous area sampling may be required in relatively stable situations.

Thus environmental monitoring serves two different but related functions. The monitoring requirements of this section reflects these different goals. The requirement of full shift personal sampling is mandatory for two reasons: First, it enables the employer to determine whether he is in compliance with the action level and/or the PEL, and second, to obtain data on the individual employee which may be used in conjunction with biological monitoring to better insure that an individual suffer no loss of health from other sources of lead.

The standard also requires that air monitoring data obtained to define the sources of emission and to assist in the development of the compliance plan be contained in the compliance plan. This data is necessary in order to determine what environmental controls will be required to achieve compliance and will enable OSHA to fully evaluate the proposed compliance plan.

The final standard reduces the frequency of periodic monitoring from monthly to quarterly when the PEL is exceeded and from quarterly to semi-annually when the action level is exceeded. This was favored by both industry (Ex. 3 (125)) and labor (Ex. 343, pp. 83-84) representatives. OSHA believes that accurate and representative sampling can be achieved by this schedule while reducing the economic costs of sampling between 50 percent and 66 percent.

Finally, the standard requires that the initial determination be made within 30 days of the effective date and the initial monitoring to be conducted and the results obtained within 90-days of the effective date of the standard. OSHA believes that these periods, in addition to the 90 day delayed effective date, is sufficient to enable employers to secure sampling equipment, take sufficient samples and obtain the results. Moreover, the standard permits employers, who have monitored within the last year as many have (Ex. 26, pp. 5-9, 5-35, 5-67), to utilize these measurements for purposes of compliance with the initial monitoring requirements, provided that the sampling and analytical method used mects the accuracy and confidence levels of this standard and provided that the employer maintains a record of these measurements and notifies employees of their exposure levels.

E. METHODS OF COMPLIANCE: PARAGRAPH (e)

The final standard requires employers to institute engineering controls and work practices, including administrative controls, according to a specific implementation schedule to reduce employee exposure to lead below the PEL. For some industries, interim levels are established which the employer must achieve solely by means of engineering and work practice controls. During the interim period before full compliance with the PEL in this manner is required and thereafter where engineering controls and work practices are not sufficient to comply with the PEL, they must be supplemented with appropriate respiratory protection. The standard also requires the employer whose initial monitoring reveals that employee exposure exceeds the PEL to develop a written compliance plan which is intended to promote rational planning and implementation of the employer's compliance efforts within the time permitted. The written plan also will enable OSHA and affected employees and their representatives to monitor the employer's progress toward compliance. Finally, if mechanical ventilation or administrative controls are used, some specific requirements are set forth.

In order to comply with the PEL, an employer will need to conduct an industrial hygiene survey, including environmental sampling, to identify sources of lead exposure and then devise methods to reduce exposure to within permissible limits. Employees covered by this standard are generally exposed to airborne lead particulate either when it is generated or released into the air directly from a production process or work operation or when it is dispersed after settling on floors, rafters, or other surfaces, including the worker's body and clothes. Methods commonly employed by industrial hygienists to control these exposures fall into three basic categories: engineering controls, work practice controls, including administrative controls, and personal protective equipment.

Several comments, including one from California's Occupational Safety and Health Administration, suggested that the terms "engineering controls," "work practice controls" and "administrative controls" are not understood by many employers and employees and need definition. (Ex. 3(31), p. 1.) These terms admittedly do not have precise meaning and often overlap, and the following is an attempt to set forth the meanings of these terms as they are commonly understood in the industrial hygiene community and used in this regulation.

"Engineering controls" employ mechanical means or process redesign to eliminate, contain, divert, dilute, or collect lead emissions at their source. Examples of this type of control include process isolation or enclosure; employee isolation (excluding respirators) or enclosure; closed material handling systems; product substitution or process redesign to eliminate the contaminant; and dilution or exhaust ventilation. "Work practice controls" or "work practices" accomplish the same results as engineering controls, but rely upon employees to repeatedly perform certain activities in a specified manner so that airborne lead concentrations are eliminated or reduced. This may be accomplished as simply as instructing employees to keep lids on containers, to clean up spills immediately, or to observe required hygiene practices. Good work practices are often required in conjunction with engineering controls; for example, where employees perform an operation under an exhaust hood, they must perform their work in such a way as to maximize the efficiency of the ventilation equipment.

Work practices also incorporate administrative controls within their scope. Administrative controls simply involve moving the employee to a place of lower exposure or reducing his work hours so that his daily, time-weighted average exposure is reduced. This type of control method does not act in any way on the source of the emissions.

Finally, personal protective equipment is a method of exposure control that isolates the employee from the emission source. Respirators are the primary type of personal protective equipment used when the concern is protection from an inhaled air contaminant.

The priority of control methods required by this standard, i.e., use of res-

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piratory protection only as a supplement to engineering controls and work practices or as an interim measure while engineering controls and work practices are being implemented, is supported by evidence from the record and is consistent with the policy approach taken in all prior air contaminant standards promulgated by OSHA. Almost all representatives of the lead industries, including LIA and BCI, concurred with this approach provided engineering and work practice controls were feasible. (Ex. 342, p. 6; Ex. 355; Ex. 341, p. 12). The rationale behind this approach is based primarily on two principles. One is that protection of the employee is most effectively attained by elimination or minimization of the hazard at its source, which work practices and engineering controls are both designed to do, and the other is that methods which depend upon the vagaries of human behavior are inherently less reliable than well-maintained mechanical methods. The validity of these generalizations has been borne out by agency experience obtained throughout OSHA's existence and has been reiterated by many professional industrial hygienists for the lead record. (Tr. 2068.)

Engineering control is unquestionably the best method for effective and reliable control of employee exposure to lead. (Tr. 1366; Ex. 270, p. 20.) It acts on the source of the emission and eliminates or reduces employee exposure without reliance on the employee to take self-protective action. This method encompasses product substitution, process or equipment redesign, process or equipment enclosure, exhaust or dilution ventilation, and employee isolation (e.g., a standby pulpit, but not personal protective equipment). Once it is implemented, it protects the employee permanently, subject only, in some cases, to periodic preventive maintenance. Work practices also act on the source of the emission, but rely upon employee behavior, which in turn relies upon supervision, motivation, and education to make them effective. For this reason, work practices are not as desirable a method as engineering controls, but because the two methods often must be employed together to make either one effective (Ex. 270, pp. 22-23; Tr. 2069) and because they are the only methods that act to eliminate or reduce the hazard at its source, they have been given equal status in the compliance priorities of the final lead standard.

Administrative control, as a type of work practice, is also included in the group of primary methods of exposure control that must be used before respiratory protection. This modifies the approach in the proposed standard in which engineering controls were to be given priority over work practices, and reference to administrative controls was omitted. The approach in the final standard is primarily a result of recognizing the important role of work practices and clarifying the definition of the term "work practices" to include "administrative controls." These terms have been somewhat ambiguous in that the term "work practices" has been commonly thought to include employee rotation or other administrative types of control. However, OSHA's policy has generally been to denigrate the use of administrative controls (while still approving of other work practices) because they not only fail to eliminate the hazard but they expose more workers to the contaminant, albeit for shorter periods of time. The latter reason makes administrative controls unacceptable when the contaminant is one for which no effect levels are unknown, e.g., carcinogens. (See preamble to standard for occupational exposure to inorganic arsenic, 43 FR 19617, May 5, 1978.). In the case of lead, however, the PEL is based on dose-response data and although administrative controls do not eliminate or reduce the hazard as engineering controls and other work practices do, they can be a relatively safe and effective means of maintaining TWA levels below permissible limits.

Respiratory protection is relegated to the bottom of the compliance priority list because it is an ineffective, unreliable, and unsafe method of reducing employee exposure. The Council on Wage and Price Stability (Ex. 224) and some industry representatives (e.g., Ex. 3(107)) suggested a control strategy which would permit employers to place principal reliance on respiratory protection where employers determined that it was a "less costly method of achieving the same level of worker health." (Ex. 224, p. 14.) It is true that respirators are usually less costly than engineering controls, hence CWPS's and employers' eagerness to prefer them as the solution to control problems, but it is also true that respirators are not comparable alternatives to engineering controls, work practices, and administrative controls because they do not eliminate the source of the exposure, are generally not capable of providing the protection required, and create additional hazards by interfering with vision, hearing, and mobility. (Tr. 1967; 1462.) Some employees develop skin rashes where the facepiece makes contact with the skin, and some employees with cardiopulmonary impairment, otherwise able to work, cannot safely work with a respirator placing stress on their breathing. It may be difficult to fit female employees or employees with unusual facial configurations since respirators are manufactured with males as standards. (Tr. 1360.) The OSH Act places the primary burden of compliance on the employer, and to shift it to the employee, as respirators do, is, according to NIOSH, inappropriate (Tr. 1462) and is contrary to established OSHA policy. (See preamble to cotton dust standard, 43 FR 27384 (June 23, 1978).)

Respirators do, however, serve a useful function where engineering and work practice controls are inadequate by providing supplementary, interim, or short-term protection, provided they are properly selected for the environment in which the employee will be working, properly fitted to the employee, maintained and cleaned periodically, and worn by the employee when required.

It is clear from the discussion on feasibility (attachment D) that compliance with the PEL solely by means of engineering controls and work practices is feasible in all the affected industries, although in certain ones major process and control modifications may be required. The steelworkers noted that "the question of feasibility is basically one of length of time necessary for any plant to achieve compliance. . . ." (Tr. 4634.) Dr. First also agreed that "stringent limits for lead exposure should be treated as goals to be reached over reasonable time periods." (Ex. 270, p. 19.) The Court of Appeals for the Third Circuit in its review of the asbestos standard also recognized the need to allow "sufficient time to permit an orderly industry-wide transition. . . ." *IUD v Hodgson*, 499 F. 2d 467, 479 (3d Cir 1974).

The time necessary to implement these modifications will vary from industry to industry according to the magnitude of the modification required, but essentially it is based on the time necessary to plan, design, acquire, install, and test them. OSHA has taken these factors into account by developing an implementation schedule for compliance solely by the use of engineering controls and work practices. This schedule represents OSHA's best estimate of when each industry as a whole can feasibly come into compliance. This approach was what the third circuit apparently expected when it remanded the asbestos standard for clarification of why inter-industry distinctions were not recognized in establishing the effective date for the two fiber PEL. (499 F. 2d at 479-81.) The rationale for the times chosen for each industry is contained in the discussion of feasiblity in attachment D.

The language of paragraph (e)(1) is intended to impose on the employer the affirmative obligation to comply with the implementation schedule

solely by means of engineering and work practice controls. This obligation has been determined to be feasible (see attachment D) and thus the obligation in the proposal to implement only "feasible" controls has been deleted in the final standard. OSHA's intent is to preclude individual employers from raising and proving the defense of infeasibility of compliance in an enforcement action and having citations vacated. OSHA has established industrywide feasibility and does not believe that any individual employer should be able to escape obligations that the industry as a whole can meet. On the other hand, OSHA will take individual claims of infeasibility into account through abatement programs tailored to meet the needs of individual firms and their employees. In addition, where an employer needs more time to comply with the implementation schedule and a temporary variance under section 6(b)(6)(A) of the Act is appropraite, it should be sought. Similarly, the mandatory nature of these requirements is not intended to discourage or inhibit the development of different, equally effective means of providing the required protection. The variance provisions of section 6(d) of the Act, and the implementing regulations in Part 1905 of this title, provide a mechanism for employers to obtain variances from the provisions of this section where the employer has developed alternative procedures which are as "safe and healthful as" those required by this section. The variance provisions of the Act permit the flexibility which contributes to efficient compliance with the standard. OSHA encourages interested employers to utilize the variance provisions of the Act where equally safe and healthful protective means are available.

Additionally, since the standard has been deemed to be feasible in all industry segments, the standard establishes an employer's failure to meet the exposure levels in accordance with the implementation schedule as a prima facie violation of paragraph (e)(1). However, the preamble recognizes that engineering and work practice controls may not be adequate or appropriate at certain times (e.g., unexpected process upsets) or for some job task which are performed in locations which are not predeterminable (e.g., repair, non-routine maintenance) or inaccessible (e.g., lead burning in ship hulls). In these and other cases, it should properly be the employer's burden to prove impossibility or technological infeasibility of compliance. The employer is familiar with his workplace and the production processes and control technology available to his industry and should properly bear the responsibility of proving an inability to comply.

The standard also has a requirement for the development and implementation of a written compliance plan where the employer has employees exposed to lead, without respect to respiratory protection, in excess of the PEL. The plan should be a written strategy for achieving compliance with the implementation schedule solely through the use of engineering and work practice controls, and must incorporate all relevant information that relates to those goals so that in an examination of the plan, one could determine whether the employer reasonably analyzed the problems and their solutions, including alternatives and implemented the plan in accordance with its schedules.

This plan is required primarily to promote systematic and rational compliance by employers and to assist OSHA in its enforcement function by enabling compliance personnel to monitor employers' compliance activities.

The standard requires the employer to have the written plan completed and made available at the worksite according to a schedule determined by the compliance implementation schedule in table I of paragraph (e)(1). OSHA considers 6 months to be a sufficient planning period when the total compliance time is 1 year and the compliance effort is not complex. For those industries where compliance will require between 2 and 5 years, 1 year for planning and preparation of the plan is deemed adequate; for the primary lead production industry which has 10 years to comply with the PEL, as much as 5 years may be needed so as to incorporate the latest developments in emerging technology.

Upon examining the employer's compliance plan, the Secretary will determine whether the plan's schedule for implementation of engineering and work practice controls is designed to and will achieve compliance with the PEL by the required date. OSHA will take enforcement action in cases where the compliance program does not project the implementation of these controls by that date, or where it appears that the schedule for implementation is extended such as to render completion by the required date unlikely. In addition the employer who has developed an adequate plan for reducing employee exposure below the PEL but does not meet the scheduled implementation dates in the plan will be subject to citation.

These written plans must be furnished upon request for examination and copying to representatives of the Assistant Secretary and the Director and to affected employees and their designated representatives. They must be reviewed and updated periodically at least every 6 months to reflect the current status of exposure control. OSHA views the requirement for written plans as an essential part of the compliance program since it will form the basis for determining the employer's ability to achieve the controls and provide the necessary documentation to OSHA of the compliance methods chosen, the extent to which controls have been instituted, and of the plans to institute further controls.

The inclusion of the 200 $\mu g/m^3$ level in the schedule is simply intended to continue the present standard, which has been in effect since 1971. This level will continue to be enforced until compliance with a lower level is required. For the five named industries, compliance with 100 $\mu g/m^3$ by engineering and work practice controls will be enforced at the times indicated as an interim milestone until ultimate compliance with the PEL is achieved. The time allowed for each industry to comply is based on record evidence of the nature of the action required in each industry and the time reasonably necessary to accomplish it. Since ultimate compliance in several industries will take as much as five or more years, compliance with 100 $\mu g/m^3$ as an intermediate milestone is required because it will assure a greater measure of employee protection than might otherwise be provided if no intermediate goal were specified. OSHA recognizes that in some limited cases ultimate compliance with the PEL may require action that is inconsistent with action that would be required to reduce levels to the 100 $\mu g/m^3$ interim level. This is meant to cover the situation where the allocation of technical or economic resources to compliance with the interim level would divert resources from the final goal and clearly preclude compliance with the PEL, which would otherwise be attainable, by the required time. An example of where this situation may arise is where compliance with the interim level could be achieved by retrofitting an antiquated production process with expensive dust control devices, but only removal of those devices and costly redesign and modernization of the process could achieve compliance with the PEL. If the employer's compliance program contemplates achieving the PEL within the schedule, and the employer can demonstrate why compliance with the interim level is incompatible with compliance with the PEL, the employer must conform the compliance plan accordingly and notify the OSHA Area Director nearest the workplace. This notification requirement is intended to alert OSHA that an employer intends to bypass the interim level and to initiate an in-

spection of the compliance plan if appropriate.

The final standard retains the requirement that where mechanical ventilation is used, quarterly measurements of the system's effectiveness must be made. Some parties claimed that this was too costly, but OSHA believes that periodic checks are absolutely necessary to insure the integrity of a ventilation system. It should be noted that the three measurements listed in the regulation are only examples. Any measurement which assures the system's effectiveness will comply with the standard. In addition, because of the cost and minimal utility, the requirement that a record of these measurements be kept has been deleted.

The proposed standard prohibited the recirculation of workspace air. However, as Dr. First explained during the hearings, "energy conservation by recirculation of industrial exhaust ventilation air is a highly desirable goal" if "a system of that type would be sufficiently reliable given the general degree of maintenance and repair of air control equipment that we see in industry." (Tr. 2320; Tr. 5310)

The weight of the evidence from the hearing is that safe recirculation is technologically feasible and economically desirable for dry particulate dusts. The post-hearing brief of the Steelworkers concluded from the hearings that "it is now possible for plants to operate recirculation systems safely with the advent of sophisticated back up equipment." (Ex. 343, p. 126) The Battery Council International agreed. (Ex. 342, p. 7) The LIA suggested that "since the outdoor ambient air in the vicinity of a lead plant often contains a relatively high air-lead concentration, properly designed recirculation systems may furnish the workplace with air that is in fact lower in lead concentration than the air which would otherwise be drawn in through conventional air systems." (Ex. 335) Similarly, Caplan of IHE stated that "a well-designed recirculation system could provide a healthier working environment than would a conventional exhaust and make-up air system . . . If you would permit recirculation, again and always with adequate safeguards, then the designer and the owner and operator can afford to be more generous with the amount of air handled in the exhaust hoods and dust control hoods, and therefore achieve better results." (Tr. 3719)

In its report for the BCI, IHE described a safe design for recirculation. (Ex. 29(29A), pp. 6-7) The system would consist of a self-cleaning fabric filter as the first air cleaning devices followed by a second or high-efficiency backup filter of the HEPA type. This second filter can be tested in place to assure its proper functioning, and there are no moving parts to reduce the efficiency of such a filter bank. Other controls can easily be installed to monitor the concentration of lead oxide dust in the air, and to bypass the recirculation systems automatically if it fails. Schneider also described a safeguard system used in the beryllium industry. (Tr. 2075-76) Based on the availability of these designs, OSHA believes that safe recirculation of air is technologically feasible and can be sufficiently protective. Recirculation is also fuel efficient and economically desirable because tempering of additional make-up air would not be required and additional air quality systems may not be necessary. (Ex. 342, p. 7) IHE performed cost calculations with and without recirculation in its cost study of 12 battery plants to illustrate the fuel savings. (Ex. 29(29A).) Caplan testified that the capital cost of installing a safe recirculation system can be recovered in one year by the savings in fuel. (Tr. 3718-19) OSHA thus has permitted recirculation of air under conditions which will provide cost savings to employers and fuel efficiency with adequate protection of employee health.

Finally, the fiscal standard requires that when administrative controls are used to lower employee exposure, a rotation schedule is to be kept and followed and made a part of the written compliance plan. This will enable OSHA and affected employees to determine the effectiveness of the administrative control program.

F. RESPIRATORY PROTECTION: PARAGRAPH (f)

This section contains specific requirements for the usage, selection, maintenance, and fitting of respirators. It is, in essence, unchanged from the proposal except certain provisions have been added to account for the possibility that substantial reliance may be placed on respirators to achieve permissible limits while engineering and work practice controls are being implemented. As a general matter, few objections to the proposed respirator provision were made; specific ones are discussed below.

The final standard, like the proposal, requires that respirators be used during the time period necessary to install or implement engineering and work practice controls, when engineering and work practice controls are not sufficient to reduce exposure to the permissible exposure limit, or whenever an employee requests a respirator. This last requirement is to provide protection for those employees who wish to reduce their lead burden below that which is required by the standard. For example, male and female workers whose blood lead levels are in the 30-50 $\mu g/100g$ range may desire increased protection, especially if they intend to parent in the near future.

While respirators are the least satisfactory means of exposure control, they are capable of providing protection if properly selected, fitted, maintained, replaced when they cease to provide adequate protection, and worn when required. While it is theoretically possible for all of these conditions to be met, it is often the case that they are not, and as a consequence, the protection of employees by respirators is not considered effective. Further, employees with impaired respiratory function may not be able to wear certain types of respirators, such as those operating in the negative pressure mode.

Several witnesses addressed the difficulty in obtaining a proper fit in some employees. Robert Schutz, of NIOSH's Testing and Certification Branch, noted that respirators have traditionally been designed to fit men and only recently has NIOSH proposed regulations to amend Subpart K of Part 11, 30 CFR, for dust, fume and mist respirators, to include a test panel composed of women test subjects. (Tr. 1360)

Edward Baier, Deputy Director of NIOSH, further emphasized that while respirators are not suited to women's faces, they are also not suitable for persons wearing a beard or mustache or even persons with a scar. (Tr. 1459). Many other participants elaborated on other problems associated with respirator fit. (Ex. 91, Tr. 1240-1; Tr. 6433; Tr. 6476; Ex. 155A).

There are more problems associated with respirator use than those of fit. Fatigue and reduced efficiency occur more rapidly among workers wearing respirators due to increased breathing resistance, hearing stress and reduced vision. (Ex. 91; Tr. 6476) Safety problems presented by respirators must be considered. (Ex. 91) Respirators may limit vision, which is a significant factor where numerous physical hazards exist and the employee's ability to see is important. Speech is also limited. (Ex. 91) Voice transmission through a respirator can be difficult, annoying and fatiguing. (Tr. 5871, 6616) Communication may make the difference between a safe, efficient operation and a hazardous operation, especially in dangerous jobs. Entanglement of hoses of air respirators as well as limited mobility due to hose lengths, are problems in heavy industrial environments. (Ex. 91, Tr. 4014) Self-contained breathing apparatus have the double problem of restriction of motion and necessity for carrying around heavy weight. (Ex. 91)

Despite the inherent difficulties associated with respirator use, they remain the only viable form of protection when engineering and work practice controls are not adequate to achieve permissible limits. Witnesses for NIOSH, labor and industry agreed that respirators are only acceptable as an interim measure (Tr. 1459; Tr. 2594-95; Tr. 6455; Tr. 6476; Tr. 1313; Tr. 1561; Tr. 1240-41; Tr. 1966; Tr. 5812; Tr. 5821; Tr. 5508), and OSHA emphatically agrees that respirators are not to be used as a primary method of control. However, because of the lengthy compliance periods required by some industries to implement engineering controls and work practices, respirators will be necessary in the interim as the only available protective method.

A daily limit on duration of respirator usage (e.g., Tr. 1459; Tr. 5801-11; Ex. 343, p. 118) has been considered by OSHA, especially for those industry segments which presently have high lead exposure and will require a year or more to reduce levels to permissible limits. In most cases respirators will not be required to be worn for a full day; the respirator will only be required to be worn for a period of time which, when averaged with the period the respirator is not worn, does not exceed the PEL. For example, if environmental monitoring shows that an employee's exposure level without regard to a respirator is 100 $\mu g/m^3$, the respirator need be worn only a little more than 4 hours. (See paragraph (c)(3) of the regulation and discussion in paragraph C of the Summary and Explanation.)

The evidence in the record on the inadequacy, discomfort, and hazards associated with respirator usage support some limitation of full-shift wearing of respirators for long periods of time. (Ex. 155, p. 9) Four industries (secondary lead production, battery manufacturing, pigment manufacturing, and nonferrous foundries) are not required to meet the PEL for five years; one industry (primary lead production) is not required to meet it for 10 years. OSHA has concluded that for these industries the time for compliance with the interim level of 100 $\mu g/m^3$ should begin a limitation for respirator usage for employees. Accordingly, the final standard limits to 4.4 hours the amount of time an employee may be required to wear a respirator after 3 years in primary smelting, secondary smelting, and pigment manufacturing; after 2 years in battery manufacturing and after 1 year in nonferrous foundries. The time limit is based on the maximum amount of time an employee would have to wear a respirator (assuming a protection factor of 10) if the employer has complied with the interim level, and as such, imposes no additional burden on the employer. If the interim level of 100 $\mu g/m^3$ is not achieved within the compliance dates specified, the employee will not be required to wear respirators more than 4.4 hours per day, and the employer will be required to use other means, for example, worker rotation, to achieve compliance with the PEL of 50 $\mu g/m^3$. OSHA anticipates that some firms will not attempt to achieve the interim 100 $\mu g/m^3$ PEL but will develop a compliance plan which by-passes the interim level. OSHA believes this is an acceptable method of compliance, but the agency does not believe the employee should be required to bear the burden of the continued high lead levels by being required to wear respirators 8 hours per day. OSHA has attempted to provide a great deal of flexibility in the methods of compliance in order to reduce the burden to the employer without compromising the health of the employee. The employees cannot be expected to accept these more flexible compliance provisions if they are to bear the brunt of the effects of that flexibility by being required to wear respirators continuously. Worker antipathy toward respirators is well documented in the rulemaking records of this and other OSHA standards and in addition the agency is concerned that respirator use for 8 hours over an extended period of time may constitute a health risk to individual employees, especially those with cardio-respiratory disorders.

Because of the discomfort and hazards associated with negative pressure respirators, coupled with the possibility of long-term use in some industries, OSHA has required employers to provide powered, air purifying (positive pressure) respirators (PAPR) to employees who request one, so long as it will provide adequate protection against the hazard for which a respirator is worn. Powered positive-pressure respirators provide greater protection to individuals (Tr. 1556), especially those who cannot obtain a good face fit on a negative pressure respirator (Ex. 155, p. 8), and will provide greater comfort when a respirator needs to be worn for long periods of time. OSHA believes employees will have a greater incentive to wear respirators if discomfort is minimized.

The standard requires the employer to select respirators in accordance with Table II from those approved by MSHA or NIOSH. The respirator selection table will enable the employer to provide the type of respirator which affords the proper degree of protection based on the airborne concentration of lead. While the employer must select the appropriate respirator from the table on the basis of the airborne concentration of lead, he may always select a respirator providing greater protection, that is, one prescribed for higher concentration of lead than present in his workplace. The respirator table is based on the NIOSH recommendation presented during the March 1977 hearing. (Ex. 86I, 86J, 87, 88, 89, 90, 91)

Similar to the proposal, single use respirators are not permitted to be used by the final standard. The 3M Company criticized the exclusion of the single use respirator from the respiratory selection table. (Ex. 3(36)) The original exclusion of single use respirators was based primarily on the inadequate protection factor, the fact that lead is a systemic poison, and the current provisions of 30 CFR Part 11 for approving single use respirators.

OSHA is particularly concerned about the penetrability of the single use respirator in a lead environment, which raises doubts about the protection factor of 5. OSHA will request that NIOSH study the efficacy of single use respirators in the future and make their findings known to the Agency. OSHA has reviewed the basis of its original decision concerning the protection afforded by a single use respirator and accepts the respirator decision logic in eliminating single use respirators for use with systemic poisons.

The standard further requires that the employer institute a respiratory protection program in accordance with 29 CFR 1910.134. This section contains basic requirements for proper selection, use, cleaning and maintenance of respirators.

The standard also requires that respirators be properly cleaned and filters replaced when necessary. (Tr. 5565, Ex. 91, Chapters 8 and 9)

The employer is also required to assure that the respirator facepieces fit. Proper fit of the respirator is critical. (Ex. 91; Tr. 1828, 4724) As a negative pressure is created within the facepiece when the wearer breathes, unfiltered air may enter the facepiece if gaps exist. (Ex. 91) Obtaining a proper fit on each employee may require the employer to provide two or three different mask styles.

In order to insure that the employee's respirator fits properly and that facepiece leakage is minimized, there was agreement by industry, government and labor that fit testing should be done. (Tr. 1554, 1556, 1966, 2311, 3203-04, 4721, 4935, 6480, 2401, 2311; Ex. 91) A quantitative fit test on negative pressure respirators is required by the standard because it is more accurate and provides greater assurance that the respirator is providing proper protection to the employee than any other type of fit testing. (Tr. 3203-4; 1554-56; 2311; 4721; 1966) Whereas the qualitative fit test is subjective, relying upon the employee's sense of smell, the quantitative fit test uses instrumentation inside the facepiece to determine the integrity of the seal.

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One type of quantitative fit test involves using a simple hood, sodium chloride vapor, and automated instrumentation. It can be performed rapidly and easily. The cost of the quantitative fit testing equipment is substantial, but since the standard only requires it to be done twice a year and since some employees will be wearing respirators for extended periods of time, OSHA has concluded that good respirator fit must be assured and that the benefit of quantitative fit testing far outweighs the costs involved. NIOSH confirmed the feasibility of such testing (Tr. 1556), and the costs for small employers can be minimized because the testing equipment is mobile and could be brought to the workplace on a fee basis. (Tr. 1555; 4722)

In addition, the standard requires that employees be properly trained in the use of respirators. (Ex. 91) The employee must be properly trained to wear the respirator, to know why the respirator is needed and to understand the limitations of the respirator. (Tr. 4010, 4011, 4085; Ex. 91) An understanding of the hazard involved is necessary to enable the employee to take steps for his or her own protection. The respiratory protection program implemented by the employer must conform to the program set forth in 29 CFR 1910.134.

The standard requires that the employer shall provide respirators at no cost to the employee. This has been added to make explicit what was implicit before and has been common practice in all industries. Allocation of respirator costs to the employer was made in the EIS (Ex. 26).

G. PROTECTIVE CLOTHING AND EQUIPMENT: PARAGRAPH (g)

This paragraph contains requirements that the employer provide employees with protective clothing and equipment that are appropriate for the hazard. The purposes are to protect employees from lead compounds which may cause skin or eye irritation (e.g., lead arsenate, lead azide) and, for employees who are exposed to lead above the PEL, to assure that clothing, shoes, and equipment on which lead dust can accumulate during the work shift are not worn home or in the lunchroom. Wearing contaminated clothing outside the work area where exposure controls are operating will lengthen the duration of exposure through both inhalation and ingestion routes. In addition, lead dust will accumulate in employees' cars and homes exposing other family members to the hazard. (Tr. 4146)

These provisions generally met with approval by all participants to the rulemaking, and, in fact, most employers presently provide clothing and equipment at no cost to employees. (Ex. 26, pp. 5-11, 5-35, 5-68; Tr. 2215, 3788, 4078, 4147, 5055, 5263, 5554, 5656, 6156, 6256, 6257, 6287, 6300, 6310, 6393).

The proposal did not specify the frequency with which work clothing must be provided. OSHA has determined that if clean work clothing is provided at least weekly to employees whose exposure levels are above the PEL and daily for those above 200 $\mu g/m^3$, adequate protection will be afforded and unnecessary costs minimized.

The final standard also emphasizes the need to assure that contaminated clothing is stored, cleaned, or disposed of in a safe manner. It requires that contaminated clothing be stored in sealed containers prior to laundering or disposal so that contamination in the change room is minimized and that employees who later handle the clothing are protected. The latter group are further protected by the requirements to put warning labels on the containers and to provide written warning of the hazards of lead. These practices commonly occur in the lead industries today and thus do not impose significantly new obligations on employers. (Tr. 1253, 1656)

Some confusion arose over the language in the proposal that "the employer shall launder, maintain, and dispose of all protective clothing." (Paragraph (h)(2)) This was interpreted by some employers as requiring the employer to operate his own laundry facilities. This was not OSHA's intent, and the final standard attempts to make clear that the employer may utilize commercial laundries by stating that the "employer shall provide for the cleaning, laundering, or disposal. * * *" Some witnesses testified that discarded and dirty uniforms should never leave the plant (e.g., Dr. Teitlebaum, Tr. 530), but OSHA believes that the labelling and warning requirements of the standard will minimize exposure outside the plant.

H. HOUSEKEEPING: PARAGRAPH (h)

The final standard requires that all surfaces be maintained as free as practicable of accumulation of lead dust. This is to be accomplished primarily by vacuuming of floors, rafters, and other surfaces or by methods equally effective in preventing the dispersal of lead into the workplace. This is an exceptionally important provision because it minimizes additional sources of exposure that engineering controls are generally not designed to control. All participants to the rulemaking agreed to the need for scrupulous housekeeping. (Ex. 335, p. A-9; Ex. 270) Donald Hull, president of a small battery manufacturing company, testified that he attributed the success of his industrial hygiene program to a primary emphasis on housekeeping. (Tr. 1246)

The proposed language for this provision required "surfaces to be maintained free of accumulation of lead which, if dispersed, would result in airborne concentrations above the permissible exposure limit." (Paragraph (i)(7)) This requirement would be very difficult for the employer to comply with and OSHA to enforce because it would be nearly impossible to objectively determine when the condition in the standard would occur. (Ex. 3(71), p. 13) OSHA's view is that a rigorous housekeeping program is absolutely necessary to keep airborne lead levels below permissible limits but that the obligation should be measured by a standard of practicability. (Tr. 5747) This contemplates a regular housekeeping schedule based on exposure conditions at a particular plant and the capability for emergency cleanup of spills or other unexpected sources of exposure.

Vacuuming is considered by all experts to be the most reliable method of cleaning surfaces on which dust accumulates (Tr. 2379; 2069) but equally effective methods may be used, for example, a wet floor scrubber. (Tr. 2922) Dry or wet sweeping, shoveling, or blowing with compressed air may not be used except where vacuuming or other equally effective methods have been tried and do not work. (Tr. 2196-99; 2379)

I. HYGIENE FACILITIES: PARAGRAPH (i)

This provision requires employers to provide hygiene facilities and to assure employee compliance with basic hygiene practices which are recognized industrial hygiene tools for minimizing additional sources of lead absorption from inhalation or ingestion of lead that accumulates on a worker's clothes or body. No later than one year from the effective date of the standard, the employer must provide adequate shower and washing facilities, clean rooms for changing clothes, and filtered air lunchrooms for employees who have exposure above the PEL. In addition, employers must assure that employees use the facilities as required by the standard as well as observe prohibitions on tobacco, food, and cosmetics in contaminated areas. OSHA expects that strict compliance with these provisions will virtually eliminate several sources of lead exposure which substantially contribute to increased lead absorption.

Several of these facilities and practices are presently required under current OSHA standards for General Environmental Controls in Subpart J of 29 CFR Part 1910. For example, § 1910.141(e) requires the employer to provide change rooms with separate storage facilities for street and work clothing, and section 1910.141(g) requires the employer to prohibit the consumption of food and beverages in areas where there is exposure to toxic substances. The provisions of this standard are intended to augment Subpart J with additional requirements which are specifically applicable to lead exposure and to consolidate all related provisions under one standard.

Many firms affected by this standard have already instituted facilities similar to those required in the final standard. (Tr. 1231; 2176; 2905; 2943; 3655; 3785; 4395; 4397; 4844; 4875; 5651; 5655; 6154; 6209; 6270) Employee usage of these facilities has been limited in some cases because, absent mandatory obligations, employers have not been successful in encouraging such usage. (Tr. 2567, 4875, 6318, 6453-54) The standard does not impose mandatory obligations on employees, as some employers have suggested, because employers are in a better position to impose and enforce work rules or practices. OSHA does however believe that employees have a responsibility to act consistent with the objectives of the standard and to comply with all reasonable work rules designed to implement them.

Employers generally conceded the authority to impose and enforce reasonable work rules or make compliance with them a condition of employment. (Tr. 2070; 2943) Labor union officials have offered to assist industry in enforcing equitable hygiene practices. (Tr. 1038, 2943, 2969) OSHA's experience has been that if employees understand the need for these provisions and if the hygiene rules are imposed in a fair and equitable manner, employers will experience a minimal lack of cooperation from employees.

The final standard requires employers to prohibit smoking, eating, applying cosmetics and the presence of tobacco products, food stuffs, or cosmetics in all work areas except those designated. (Tr. 6459) This prohibition will prevent unnecessary contamination of food or tobacco products caused by exposure to lead dust or fumes within the work area. It also decreases the likelihood of lead absorption in employees due to ingestion or inhalation of products contaminated with lead within the work environment.

The standard reiterates specifications in section 1910.141 pertaining to the type of change room an employer must provide. OSHA believes it is essential that employees have separate storage areas for street and work clothing to prevent cross-contamination between the two. This provision coupled with showering and the prohibition on wearing work clothing home will minimize employee exposure to lead after the work shift ends because it reduces the period in which work clothes coated with lead dust may be worn.

Employers are also required to assure that employees exposed to lead during their work shift shower before leaving the plant and do not leave wearing work clothing. Showering reduces the worker's period of exposure to lead and removes lead particles which accumulate on the skin and hair. Employees are not permitted to leave the plant wearing any work clothes, including shoes and underwear, because this practice would negate any advantage gained by showering.

During the hearings, some employers protested that this provision is impractical because it would require close supervision of employees, but none challenged the provision as unnecessary. In fact, many industries maintain shower facilities and advise their employees to shower at the end of their shift. Some companies require that workers shower. (Tr. 5658, 6259) OSHA believes showering is a necessary practice providing protection to employees and their families which far outweighs the limited burden placed on employers.

The final standard requires employers to provide persons working in lead areas with filtered air lunchrooms which are readily accessible. Employers must also assure that employees wash their hands and face prior to eating or smoking and do not enter the lunchroom wearing protective clothing, unless cleaned beforehand. OSHA feels it is imperative that employees have a clean place to eat, free from the toxic substance with which they work all day. Filtered air lunchrooms will shield employees from the dangers of food which would otherwise become contaminated by lead dust, mist or fume. (Tr. 2074) Employees are required to wash before eating to further minimize the possibility of food contamination and reduce the likelihood of additional lead absorption from contaminated food, beverages or tobacco. To further insure minimal food contamination, protective clothing must either be removed or cleaned before entering the lunchroom (Tr. 2074). Instead of requiring any particular method, employers are given discretion to choose any method for removing surface lead dust which does not disperse the dust into the air.

The hygiene provisions in the final standard are necessary and appropriate to protect employees within affected industries from unwarranted and dangerous exposure to lead not necessary to job performance. Few, if any, participants in the rulemaking denied the benefits afforded by these provisions.

J. MEDICAL SURVEILLANCE: PARAGRAPH (j)

The medical surveillance program is part of this standard's comprehensive approach to prevention of lead-related disease. Its purpose is to supplement the standard's primary mechanisms of disease prevention, the elimination or reduction of airborne concentrations of lead and sources of ingestion, by facilitating the early detection of medical effects associated with exposure to lead. Control of airborne lead below the permissible exposure limit will protect most workers from the adverse effects of lead exposure, but may not be satisfactory to protect individual workers (1) who have high body burdens of lead acquired over many years working in the lead industries, (2) who have additional, uncontrolled sources of lead exposure (e.g., non-occupational), (3) who exhibit abnormal variation in lead absorption rates, or (4) who have specific medical conditions which could be aggravated by lead exposure (e.g., renal disease, anemia). In addition, control systems may fail or hygiene and respirator programs may be inadequate, and periodic medical surveillance of individual workers may help detect those failures.

The proposed standard contained provisions for a medical surveillance program which combined periodic biological monitoring with preplacement and followup medical examinations. In general, the proposal met with approval from all interested parties although there was disagreement on specific issues such as the content of the medical exam and the frequency of biological monitoring. OSHA has reviewed all the rulemaking evidence on this subject and has concluded that the final standard, while similar to the proposal, contains a medical program that is reasonably necessary and appropriate for the early detection of the effects associated with overexposure to lead. OSHA has deleted the unnecessary or objectionable aspects of the proposal and supplemented it with only those medical tests and procedures which the lead record documents are necessary to identify early indications of lead-related disease in the affected systems. The final standard also contains provisions which will maximize voluntary and willing participation and will foster employee confidence in the program, both of which are often lacking in current industrial medical programs (Ex. 343).

The employer's obligation to commence a medical surveillance program for an employee is triggered by a determination that the employee's exposure exceeds the action level for more than 30 days a year. Some firms in the primary smelting industry claimed that all employees working with lead should be subject to periodic medical surveillance without regard to air lead

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levels. (Ex. 3(67); Ex. 3(103), p. 59; Ex. 3(71), p. 15.) This may be desirable for lead industries where lead exposure is so pervasive, but the OSHA standard applies to many industries in which lead exposure is relatively low, infrequent, or incidental. OSHA believes there is no need or justification for employees whose TWA exposure levels are below the action level, or above the action level for less than 30 days a year, to undergo medical surveillance or for their employers to bear the related costs.

Upon completion of initial air monitoring, the employer must begin the medical surveillance program for all covered employees. The standard does not make participation in the medical surveillance program mandatory for the employee. The employer's obligation is to "provide" and "make available" the medical tests and procedures as required. Where employee confidence in the medical program exists, refusal to participate should be minimal. (See discussion of mandatory medical examinations in the MRP Attachment.)

Initial biological monitoring and medical examinations must be completed no later than 180 days from the effective date thus allowing 90 days from the completion of air monitoring. (See paragraph (r) of the regulation.) In most cases, this extended startup date should compensate for the predicted short-run unavailability of medical and technical personnel, and OSHA believes the problems will be minimal since some type of medical surveillance program is commonplace in most industries where lead is handled, even in the smallest firms.

The standard requires that priority for medical surveillance be given to employees who are at the greatest risk from continued exposure. This determination should be made on the basis of the air monitoring results, along with any other information the employer may possess, such as past medical or air monitoring records, employees' job tenure in the lead industries, etc. This should assure that those employees most in need of medical surveillance obtain it as soon as possible so that remedial action may be taken if necessary.

Biological monitoring required by the final standard is somewhat different than that in the proposal. The proposal would have combined blood lead level monitoring (PbB) with monitoring of urine lead levels (PbU) or urine ALA levels (ALAU); urine measurements have been deleted and replaced by monitoring of zinc protoporphyrin (ZPP) levels. The preamble to the proposal expressed the medical community's doubt about the usefulness of urine monitoring; with a few exceptions (Tr. 4358), the consensus in the record was in favor of deleting urine measurements and adding ZPP monitoring. (Tr. 1309, 1311-12, 2656, 2732, 2771, 2877, 4358, 4735.) PbB's have been the traditional means of biological monitoring in the lead industries. It is a relatively accurate measurement of current lead absorption, and almost all dose-response studies of lead-related disease have used PbB's as an index of exposure dosage. (Tr. 1311.) Hence, OSHA has had to rely on PbB's to establish the PEL and now retains PbB's as an essential part of the biological monitoring program. (Ex. 284A, p. G1.) However, the advent of simplified ZPP monitoring through the use of the hematofluorometer has convinced OSHA that ZPP monitoring, in concert with PbB's, will provide, at minimal cost, a greatly improved biological monitoring program over PbB's alone. PbB measures only absorption of lead; ZPP gives an indication of the biological effect of absorption on heme synthesis.

Heme is the basic component of both hemoglobin, which functions in the transport of oxygen from the lungs to the body cells, and the cytochromes, which function in the respiration of the individual cells. Therefore, any interference with heme synthesis may create a considerable adverse effect on the body. (Tr. 429.) Lead is one substance known to produce such interference, causing changes, not only in heme production, but also in the level of some of the circulation intermediate metabolites formed during heme synthesis. These metabolites include delta-amino-levulinic acid dehydratase (ALAD), delta-aminolevulinic acid (ALA), coproporphyrin, and zinc protoporphyrin (ZPP). (Ex. 275.) Zinc protoporphyrin is actually the result of the inhibition of an enzyme, ferrochelatase, which catalyzes the insertion of an iron molecule into the protoporphyrin molecule, which then becomes heme. If iron is not inserted into the molecule, then zinc, having a great affinity for protoporphyrin, takes the place of the iron, thus forming ZZP. (Tr. 435.) Whereas the heme molecule serves in a very necessary body funciton, ZPP is useless to the body, but it is the most easily measured heme metabolite. (Tr. 436; Ex. 343.)

Measuring the level of ZPP in the blood is one means of determining the internal toxic effect of lead absorption, relative to heme synthesis impairment. In fact, the level of ZPP is a far superior indicator of lead toxicity than the level of blood lead itself, which actually only measures the level of individual exposure. (Ex. 343) Furthermore, an elevation in the level of circulating ZPP may occur at a very low blood lead, i.e., 20-30 μg/100 g in some workers. (Ex. 262.)

Once the blood lead level has reached 40 μg/100 g, however, there is a precipitous rise in the ZPP value from its normal range of less than 100 μg/100 g whole blood. (Ex. 105E) As the evidence within the record indicates, there is a strong correlation between elevations in these two biological parameters, blood lead and ZPP. In fact, it has been shown that after the blood lead level reaches 40 μg/100 g, any arithmetical increase in blood lead will correspond to an exponential increase in ZPP. (Ex. 105E; Ex. 23(39); Tr. 439.) It is possible that the ZPP test is one of the earliest and most reliable means of monitoring chronic lead absorption in workers. (Ex. 105E; Ex. 309; Tr. 465; Ex. 99B; Ex. 343.)

An elevation in ZPP may be the key to the multiple clinical effects of lead toxicity on several body systems, which become apparent as the exposure continues. (Tr. 466; Tr. 2432.) Substantiation for this is demonstrated by the correlation between elevated ZPP and other measureable biological parameters, including blood lead. For instance, it is reasonable to expect a lowered hemoglobin level as ZPP values increase, and significant correlations have been found between reduced hemoglobin and elevated ZPP. (Ex. 118C; Ex. 105E; Ex. 23(39).) Elevations in blood urea nitrogen (BUN) and serum creatinine (S-Creat) have also been found to correlate well with increased ZPP levels. Since both BUN and S-Creat are biological indicators of kidney damage, the monitoring of ZPP may serve as an early herald of renal toxicity. (Ex. 23(39).) There is also some evidence available that elevated ZPP values are found in workers with peripheral neuropathy and CNS symptoms. (Ex. 23(14); Tr. 2432; Ex. 23(39).)

The accumulation of ZPP in the red blood cells quite clearly indicates a chronic interference by lead with heme synthesis. (Ex. 24(2).) In practice, the monitoring of ZPP on a bimonthly basis will provide an index of lead effect, as well as lead exposure. (Tr. 1312.) Moreover, in contrast to blood lead, the ZPP test is a quick, efficient, economic and safe means of monitoring workers. By utilization of the hematofluorometer, the ZPP test can be conducted at the worksite, and the workers can almost instantly see accurate test results. (Ex. 343; Tr. 433, 662.)

Finally, as the result of the variability of lead absorption and its subsequent distribution within the body, blood lead levels fluctuate over short time spans, whereas ZPP levels remain relatively stable. (Ex. 343; Tr. 2445.) For example, ZPP, once it becomes the heme substitute has been shown to remain there for the lifetime of the red blood cell (about 120 days). The

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rate of production of ZPP is, however, a function of the concentration of lead within the bone marrow—the primary site not only of heme synthesis, but of the blood cells themselves. (Tr. 2445.)

During their testimony NIOSH discussed some of the weaknesses of the ZPP method:

> One of the major problems with ZPP is that this is a very recently developed test and only limited data are available on blood lead-ZPP correlations. Further, ZPP may present calibration problems, and careful attention must also be given to quality control procedures. Under these circumstances, it would seem wise to develop a biologic screening approach which incorporates ZPP or an equivalent screening test with blood lead determinations. (Ex. 84)

OSHA agrees with these concerns but believes the utility of the ZPP method outweighs its drawbacks. In order to eliminate any uncertainties associated with the method OSHA will request NIOSH to carry out a careful evaluation of the ZPP technique especially with respect to quality control requirements and report their findings to OSHA at a later date.

If the employee's airborne lead exposure is above the action level at least 30 days a year, then, routine monitoring of an employee's blood lead and ZPP levels is to be made available at least every 6 months after the initial tests. If the PbB exceeds 40 μg/100 g the monitoring frequency must be increased to at least every 2 months and not reduced until two consecutive PbB's are below 40 μg/100 g. If PbB levels exceed the removal criteria under paragraph (k)(1)(i), a second PbB must be provided within 2 weeks to confirm the accuracy of the results. This followup is intended to assure that no unnecessary removals occur.

Since the goal of this standard is to maintain PbB's below 40 μg/100 g, individuals with higher levels should be monitored periodically to detect further unacceptable elevations. OSHA believes that every 2 months is a reasonable and adequately protective monitoring frequency for employees above 40 μg/100 g. For those below 40 μg/100 g but above the action level, semiannual monitoring is sufficient to detect elevated levels if they occur.

During the hearings there was considerable testimony which questioned the accuracy of blood lead determinations and suggested there were significant discrepancies in blood lead results depending on the source of testing. (Ex. 343; Tr. 1647, 1675, 1311-12.) A graphic illustration of the difficulties in measuring blood levels was provided by NIOSH in their submission of a report on the blood lead proficiency testing program of the Center for Disease Control which demonstrated that only 33 percent of the laboratories achieved an acceptable score (Ex. 86F). An acceptable score was based on the following criteria:

1. The accuracy required is 15 percent or 6 μg/100 ml, whichever. is greater

2. Grade=Number of responses within acceptable range/number of challenges × 100.

An annual grade of 75 is considered satisfactory.

Blood lead level determinations have a crucial role in this standard with respect to their use to protect the health of the individual worker. The impact of blood lead levels is especially important in terms of medical removal protection. Inaccurate PbB could increase costs to the employer and fail to protect the employee. Testimony in the record reflects the participants' concern that OSHA insure that blood lead levels are determined accurately. LIA stated: "Laboratory control and certification procedures are essential," (Ex. 335, p. 88) and similarly, the USWA argued:

> Testimony at the hearings strongly suggests significant discrepancies in blood lead results depending on who is conducting the biological monitoring. While it is impossible to police all biological monitoring, some further beefing up of the "Accuracy" language is warranted to cut down on any attempts at cheating. Accordingly, we suggest that, at a minimum, blood lead samples be analyzed in established laboratories which are certified by the Center for Disease Control. (Ex. 452, pp. 52, 61.)

In addition, testimony from the Motor Vehicle Manufacturers Association (Ex. 402, p. 10), Drs. Wolfe (Tr. 8005-07) and Teitlebaum (Tr. 390-92) and the Amalgamated Clothing and Textile Workers Union (Tr. 7280) supported the recommendation that laboratory certification should be required. OSHA is concerned about the evidence which demonstrates the inadequacies in the proficiency records in blood lead determinations, and therefore based on the recommendations cited in the record will require blood lead samples be analyzed in laboratories which are licensed by the Center for Disease Control or which have received satisfactory grades in proficiency testing by CDC in the previous year. The accuracy requirements in the proposal will be adjusted to coincide with the accuracy requirements of CDC, i.e. 15 percent or 6 μg/100 ml, whichever is greater.

The standard requires medical examinations to be provided to an employee initially (for new workers, prior to assignment to a job where lead exposure would exceed the action level, and for current employees, within 180 days of the completion of air monitoring) and annually thereafter if the employee's blood lead level exceeded 40 μg/100 g at any time during the preceding year. Initial examinations are necessary to provide information to establish a baseline to which subsequent data can be compared. (Tr. 1405-06; 1501; 4358.) They will also be helpful in identifying individuals who would be at increased risk from lead exposure. (Tr. 1405-06; 1501.) Followup exams will document the continuing effect of lead exposure on individual workers and will facilitate a medical evaluation of whether continuing exposure is advisable.

The required examination includes a work history and medical history; a physical examination; determinations of blood lead level (PbB), hematocrit, hemoglobin, peripheral smear morphology and red cell indices; (Tr. 6562); levels of zinc protoporphyrin (ZPP), routine urinalysis (specific gravity, sugar, protein determinations, and microscopic examination), blood urea nitrogen (BUN), and serum creatinine (S-Creat). (Ex. 284A, p. E1.) This is similar to the requirement in the proposed standard except that mandatory pregnancy testing has been deleted and ZPP, BUN, and serum creatinine tests have been added. BUN and serum creatinine, although late indicators of kidney disease, are the best available routine diagnostic tests for kidney function and have been included for that reason. (Tr. 6562-63.) They can also be performed from the single blood sample taken for the other tests. Measurement of glomerula filtration rates or creatinine clearance would provide earlier indications of decreased renal function, but those tests are more in the nature of research techniques, are expensive, and would be clearly impractical for almost all employers to provide.

Medical consultations, with examinations as appropriate, are required to be provided upon request by an employer (1) whenever an employee has developed symptoms commonly associated with lead-related disease, (2) when an employee desires advice concerning the effects of lead on reproductive capacity, and (3) when an employee has demonstrated difficulty in breathing when wearing a respirator. Additional examinations must be made available when an employee is removed from exposure or otherwise limited under paragraph (k) of the regulation. The content and frequency of these examinations is to be at the discretion of the physician. Upon request of an employee, however, a pregnancy test or male fertility test (at a minimum analyzing sperm number, motility, and morphology) must be provided. These tests will facilitate the protection of reproductive capacity.

The medical surveillance provisions of the final standard contain a multiple physician review mechanism which gives workers an opportunity to obtain a second and possibly third opinion regarding the medical determinations

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made pursuant to the standard. An employee may designate a second physician to review any findings, determinations or recommendations of an initial physician chosen by the employer. Efforts are to be made to resolve any disagreement which may arise between the two physicians. Should they be unable to agree, a third physician they select will resolve the disagreement. OSHA's reasons for the provision of this review process are twofold: first, to broaden and strengthen the basis for medical determinations in situations where a worker questions the results of the initial examination or consultation; and second, to assure employee confidence in the soundness of medical determinations made pursuant to the standard. OSHA views the multiple physician review mechanism as an important element of the lead standard's medical surveillance program both due to the importance attached to medical surveillance by the Act, and due to the crucial role medical surveillance will play in the operation of the standard's medical removal protection program.

Medical surveillance pursuant to section 6(b)(7) of the Act must be provided by employers without cost to employees. Since the multiple physician review mechanism will be one means by which medical surveillance is provided to an employee, employers must bear the expense of this mechanism when it is used. In practice, the costs of this mechanism will not be burdensome, particularly since employers will have substantial control over the frequency of its use. Where employers carefully structure and administer medical surveillance programs which engender, merit and maintain worker confidence, workers will see no need to seek a second medical opinion.

OSHA's first reason for the provisions of a physician review opportunity is to strengthen and broaden the basis for medical determinations made under the standard in situations where a worker questions the results of an initial medical examination or consultation. The education and training provisions of the lead standard should assure that workers become knowledgeable in the nature and symptoms of the numerous lead-related diseases. Thus, when a worker disputes the results of an initial medical examination or consultation conducted by an employer-retained physician, adequate justification will exist for seeking a second medical opinion.

Two medical doctors testified in the lead proceeding that multiple physician review is a desirable diagnostic device as a general matter (Tr. 7375-7376; 7978-7980) for such reasons as the inherent biological variability of disease. (Tr. 7393-7394) The Black Lung medical surveillance and transfer program of the 1969 Coal Act includes multiple physician review of X-rays in all cases to improve the quality of medical diagnosis. (Tr. 7361-7362, 7386-7387, 7392-7393; Ex. 379A(2), p. 31) In light of the major shortage of trained and experienced occupational physicians in this country, and the number and varied nature of lead-related diseases, no one medical specialty is uniquely suited to provide error-free diagnoses under the lead standard. Accurate medical determinations under this standard are vital due to the interdependence between medical surveillance and the preventive medical removal protection program. Additionally, the facts that the standard's PEL is not a completely safe exposure level, that many lead workers have years of substantial prior exposure to lead, and that some lead-related diseases are reversible if detected at an early stage, support a conclusion that physician review would be appropriate in all cases of medical surveillance under the lead standard.

Rather than mandate additional opinions in all cases, however, OSHA has limited the opportunity for physician review to situations where a worker questions the findings, determinations or recommendations of the initial physician. OSHA's choice of a multiple physician review mechanism, as opposed to some other mechanism, is based on the common and increasing use of multiple physician participation in the formation of medical determinations. A formal physician review process is incorporated not only in the Coal Act program but in at least two other federal programs. A multiple physician review mechanism appears in physical qualifications and examinations regulations concerning motor vehicle drivers subject to the Federal Motor Carrier Safety Act. (Tr. 8098; Physical Qualifications and Examinations, 49 CFR sections 391.41-391.49 (1977)) A similar review process operates under medical care and supervision regulations of the Longshoreman's and Harbor Workers' Compensation Act. (Medical Care and Supervision, 20 CFR sections 702.401-702.422 (1977)) In addition, recent congressional attention has been focused on the benefits to be gained from review as to the advisability of surgical procedures. (Quality of Surgical Care: Hearings before the Subcommittee on Oversight and Investigations of the House Committee on Interstate and Foreign Commerce, 95th Cong., 1st sess. (1977).) The Department of Health, Education, and Welfare strongly promotes the use of second medical opinions in this regard (Hearings before the Subcommittee on Oversight and Investigation, supra, pp. 227-232 (statement of Hale Champion, Department of Health, Education, and Welfare Undersecretary)), and in recent weeks has launched a national campaign to urge patients to get a second doctor's opinion before surgery. (Washington Post, Sept. 14, 1978, p. A17, col. 2)

Multiple physician review mechanisms are also widely used in the private sector. This mechanism frequently appears in conjunction with physical examination requirements contained in collective bargaining agreements (Ex. 365, p. 37), and commonly occurs in the determination of a worker's eligibility for a disability pension. (Tr. 7652, 7664-7666; Ex. 416C, pp. 11-12) The lead record contains some twenty specific examples of multiple physician review mechanisms. (Tr. 8224; Ex. 157, pp. 10-11; Ex. 158, p. 75; Ex. 368, pp. 15-16; Ex. 369, p. 15; Ex. 379A, Att. 1; Ex. 404B (D-1), p. 4; Ex. 404B (D-2), pp. 16-17; Ex. 404B (D-4), pp. 26-27; Ex. 404B (D-5), p. 53; Ex. 404B (D-7), p. 13; Ex. 404B (D-9), p. 132; Ex. 415A. p. 23; Ex. 415B, p. 74; Ex. 426, pp. 18-19; Ex. 427, p. 59; Ex. 430C-2; Ex. 430C-3; Ex. 430D(4b), Sections 78-79; Ex. 430 D(15), Art. 27; Ex. 430H, pp. 64-65) The multiple physician review mechanism adopted by the lead standard incorporates characteristics common to many of these private sector and federal programs: The worker has an opportunity to select a second examining physician if dissatisfied with the results of the first examination, and if the two physicians disagree, they choose a third physician to resolve the differences of opinion. OSHA is convinced that the use of this multiple physician review mechanism will significantly improve the quality of the medical determinations provided under the lead standard.

OSHA's second reason for the provision of a physician review opportunity is to assure employee confidence in the soundness of the medical determinations made pursuant to the standard. Considerable evidence in the lead record documents the fact that workers question the objectivity of some employer-retained physicians. Furthermore, since there is documentation in the lead record of specific abuses by a portion of employer-retained physicians, OSHA has concluded that the problem cannot be ignored in the context of this standard.

Attachment C to the standard concerning Medical Removal Protection discusses the major importance of meaningful worker participation in the medical surveillance program created by this standard. The standard's ability to prevent material impairment to worker health and functional capacity—particularly with respect to reproductive health, and the health of the long term lead worker—will significantly depend on workers trusting and confiding in examining physicians. OSHA adopted the multiple physician review mechanism as a means of providing workers with an opportunity to obtain independent review of the determinations of physicians they do not trust. More importantly, use of this review mechanism should serve to engender worker trust and confidence in the employer-retained physician where merited. If workers distrust a company doctor and the diagnoses of a second physician on several occasions proves there is no basis for distrust, then workers will be much more likely to trust the company doctor in the future. If the choice of a second and third physician repeatedly results in medical determinations greatly at variance with that of the employer-retained physician, then the multiple physician review mechanism will have served the beneficial purposes of (1) correcting inadequate medical determinations, and (2) exposing a major deficiency in the employer's medical surveillance program.

A substantial body of testimony in the lead proceeding focused on the lack of worker trust and confidence in some company doctors. (Tr. 2210-2211, 4254, 4261-4262, 4284, 4852, 5088-5090, 6026-6029, 6049, 7262, 7623, 7691-7692, 7976-7978, 8053, 8096, 8221-8223, 8241-8245; Ex. 167, pp. 2-4; Ex. 343, pp. 91-97, 103-104; Ex. 393, p. 6, Ex. 450B, pp. 3-5; Ex. 452, p. 66. The company doctor is often viewed as simply a paid agent of the employer, not as a neutral physician maintaining a close doctor-patient relationship with the employee. (Tr. 4284, 4780-4782, 4851, 5088-5090, 6032-6033, 7276-7279, 7623, 8053, 8223, 8240, 8245-8247; Ex. 393, p. 6; Ex. 450B, pp. 3-5.) The company doctor is sometimes viewed as an employer representative charged with minimizing the costs of successful workers' compensation claims, therefore at odds with devotion to worker health. (Tr. 4284, 4809-4811, 7276-7279, 8096; Ex. 379A, p. 12; Ex. 411B(4), pp. 5-6.) The lead record contains numerous reports of employer physicians refusing to divulge to an employee his or her blood lead level (Tr. 2569, 4757, 4773-4774, 4854-4855, 8076; Ex. 167, pp. 2-4; Ex. 450B, p. 5; See also, Tr. 4811), as well as numerous reports of employer physicians making gross misrepresentations of the toxic properties of lead—for example, statements to the effect that one is not lead—poisoned until one's teeth fall out, or Blacks are not susceptible to high blood lead elevations, or one is not lead-poisoned until irreversible nervous system damage occurs. (Tr. 533-535, 2169-2172, 4178-4179, 4757-4759, 4773-4774, 4806-4807, 5094-5095; Ex. 167, pp. 2-4.) Additionally, there was testimony of employer physicians reporting the results of medical examinations not to the worker, but directly to the employer such that the worker learned of his or her health status from a company official, not from the physician. (Tr. 4833, 8096.) Finally, evidence in the record points to a practice of some employer physicians failing to report crucial adverse health effects information either to affected employees or to the broader medical community. (Tr. 5007-5008, 5644-5647; EX. 379B, p. 4.)

In addition to the above, the lead record documents numerous instances of the practice by employers of prophylactic chelation, a grossly improper medical procedure dependent upon the active participation of the employer-retained physician. (Tr. 222, 226-240, 530-532, 1111-1112, 1272-1273, 2169-2172, 2200-2201, 2537-2539, 2542, 2676-2681, 2983(13)-2983(17), 4998-5002, 5022, 5102, 6026, 6043-6045, 6878-6879, 6881; Ex. 20; Ex. 84, p. 9; Ex. 86H; Ex. 117A; Ex. 118D; Ex. 166; Ex. 167, pp.; 5-7; Ex. 246A.) The practice has been condemned for several decades by the LIA itself (Tr. 3242-3245; Ex. 335, p. 88), though they note that the practice continues. (Tr. 3242-3245.) This practice vividly demonstrates that there are some physicians examining lead-exposed workers who fail to accord protection of worker health the priority it deserves. The multiple physician review mechanism is designed to check the influence of these physicians, and assure employees that no matter what the practices of the initial physician, the standard contains a mechanism whereby competent and impartial medical determinations can be achieved.

A final source of evidence indicating the need for a physician review opportunity comes from the ongoing debate within the occupational medical community. (Tr. 8241, 8247.) For example, the Journal of Occupational Medicine has in recent years carried numerous articles concerning worker confidence in employer-retained physicians. (Ex. 413A-413H.) Widely divergent opinions have been expressed in these articles, but a substantial portion of this professional commentary verifies the existence of a crisis of confidence. As one employer representative in the lead proceeding remarked:

> I would like to assure you that the competent occupational health physicians that I know are as concerned and frustrated as you about the existence of poor practitioners of occupational medicine in the profession. (Tr. 5137.)

There is general recognition that a significant problem exists, and OSHA has adopted the multiple physician review mechanism in part to assure that the problem does not obstruct successful operation of the standard's medical surveillance program.

The preceding paragraphs explain in some detail OSHA's reasons for the inclusion of a multiple physician review mechanism since this is a relatively new component of OSHA health standards. (See, Medical Requirements, 40 FR 37650, 37658 (July 22, 1977), 29 CFR, § 1910.411(f); *Taylor Diving and Salvage Co.*, v. *Department of Labor*, Civ. No. 77-2875 (5th Cir., filed Sept. 16, 1977.)) The discussion concerning and the inclusion of this mechanism, however, is not implicit criticism of the general medical community. Based on the lead record, OSHA has no cause to conclude that a majority of employer-retained physicians are not sincerely devoted to worker protection. Even worker representatives most critical of some "company doctors" agree that there are many competent and concerned corporate physicians. (Tr. 4281, 5088-90.) The multiple physician review opportunity contained in the final standard addresses problems presented by a minority of physicians. OSHA is convinced that there are situations where employer-retained physicians have a close doctor-patient relationship with lead exposed employees, and the employees have confidence in the physician's abilities and devotion. In those circumstances, there will seldom be any use of the multiple physician review mechanism. Where this close relationship of trust and confidence does not exist, however, an opportunity for a second medical opinion is appropriate.

The multiple physician review mechanism operates in a simple and straightforward fashion. It is important initially to stress that this mechanism is meant to apply to all forms of medical surveillance provided under the standard. If an employee's past, present, or future exposure to lead is a relevant consideration in the examination or consultation being provided, then the opportunity for an additional medical opinion must be provided.

The multiple physician review mechanism commences after an initial medical examination or consultation provided by a physician chosen by the employer. OSHA recognizes the value to employers and employees alike of the mechanism operating in an expeditious fashion, and thus has established explicit criteria for the beginning of the process. After an initial physician conducts an examination or consultation pursuant to the standard, the employer must promptly notify the employee of his or her right to seek a second medical opinion. This notification need be no more than an oral reminder of the existence and content of this multiple physician review mechanism. After this notification has been given, an employer may condition its participation in, and payment for, the

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mechanism upon the employee acting within 15 days after receipt of the foregoing notification, or receipt of the physician's written opinion, whichever is later. Before or within this 15-day period the employee must inform the employer (orally or otherwise) that the employee intends to seek a second medical opinion. The employee must also initiate steps within this time to make an appointment with a second physician. These steps would include actually making an appointment, or contacting a physician with the request that a referral to a specialist be arranged.

The standard contains no more limitation upon an employee's choice of a second physician than the standard places on an employer's choice of the initial physician. The second physician, like the initial physician, need only be licensed to practice medicine. There is no subspecialty of medicine solely concerned with lead-related diseases, and since lead-related diseases affect numerous systems of the body, it would not be appropriate to limit the choice of doctors to any one specialty. It is certainly to an employee's advantage to choose a competent physician, thus OSHA relies on this self-interest to assure the value of the second opinion. For example, where am employee's difference with the initial physician revolves around a particular body system—e.g., nervous system—it is likely that the employee will choose a specialist in that body system—e.g., a neurologist. Where, however, the dispute revolves around several body systems, or the employee cannot identify one specific system, the employee will likely choose the general practitioner or internist most familiar with the employee's medical history or current health status.

The standard provides that the second physician shall review any findings, determinations or recommendations of the initial physician, and may conduct such examinations, consultations and laboratory tests as the second physician deems necessary to facilitate this review. An additional provision in the standard requires the employer to supply the same information to the second physician upon request that must be supplied to an initial physician. The second physician, therefore, is provided an opportunity to fully assess the employee's health status with access to the same background information supplied to the initial physician.

If the second physician's findings, determinations, and recommendations are the same as those of the initial physician, then the multiple physician review process comes to an end. If, however, the opinions of the two physicians are in conflict, then the standard provides that the employer and the employee shall assure that efforts are made for the two physicians to resolve any disagreement. OSHA expects that the two physicians would as a general professional matter communicate with each other to resolve their differences, but the standard makes this expectation explicit. This professional interaction among peers should in most cases resolve any differences between the two physicians. The preceding elements of the multiple physician review mechanism assure that if differences of opinion remain, these differences are likely to be genuine and substantial.

Where the first two physicians have been unable to quickly resolve any differences of opinion with respect to an employee, then it is necessary for a third qualified physician to resolve the dispute. It is important that this third physician be competent to resolve the dispute, thus the standard provides that the third physician shall be designated by the employer and the employee jointly through their respective physicians. It is the responsibility of the employer and the employee to assure that a third physician is selected, but the selection is to be made by the two prior physicians. Since the third physician is chosen by the joint endorsement of the two prior physicians, the professional competence of the third physician will be assured.

The standard provides the third physician a full opportunity to review the findings, determinations, and recommendations of the prior physicians by conducting such examinations, consultations, and laboratory tests as the third physician deems necessary. The standard incorporates the expectation that the third physician will consult with the two prior physicians, and upon request the employer must supply the same information to the third physician given to the initial physician. The third physician is required to provide a written medical opinion to the employer, which will operate to resolve the disagreement between the earlier physicians. The standard finally requires the employer to act in a manner consistent with the findings, determinations, and recommendations of the third physician, unless the employer and the employee reach an agreement which is otherwise consistent with the recommendations of at least one of the three physicians. This requirement, however, is not intended to preclude an employer from establishing and implementing legitimate general medical criteria for its employees which may in special cases result in medical determinations even more conservative than the outcome of the multiple physician review process. The possibility of such a case arising, though, is extremely remote since there is no evidence that any employer using lead currently employs general protective medical criteria for its employees which are more restrictive than the final standard's requirements.

As with many of the provisions of the final lead standard, the success of the multiple physician review mechanism will largely depend upon employers and employees acting in a reasonable manner and with good faith. There are means by which an employer could attempt to frustrate the operation of this physician review process—for example, by instructing the initial physician to refuse to agree on the selection of a third physician. Such actions, however, would constitute a deliberate violation of the standard since the regulation necessarily implies that the employer will act in a manner calculated to effectuate the multiple physician review mechanism. Operation of the multiple physician review mechanism also depends on the cooperation and good faith of the employee. In most cases, good faith on the part of the employee will be assured, since it is the employee who is seeking to reverse the initial medical determination. The employee will be eager for the review mechanism to proceed as quickly and efficiently as possible. This will especially be so since the medical removal protection provisions of the standard provide that in most situations, the employer may act consistent with the opinion of the initial physician pending the final medical determination of the multiple physician review mechanism. In some cases, however, an employee might act in a manner clearly calculated to delay or otherwise prevent the review process from operating in an orderly manner. In this regard it is important to note that this physician review process is voluntary on the part of the employee, and the employee can terminate or abandon the review process at any time. Where an employee clearly acts to frustrate the operation of the multiple physician review mechanism, the employer may safely assume that the employee no longer desires the peer review process to continue.

Employer representatives raises in the lead proceeding a wide variety of objections to the multiple physician review mechanism. (Tr. 7461-7462, 7481-7482, 7527-7528, 7543-7546; Ex. 354(F), p. 3; Ex. 354(H), p. 3; 354(O), pp. 3-4; Ex. 354(V), p. 4; Ex. 354(W), p. 1; Ex. 354(Y), p. 5; Ex. 354(AA), pp. 13-15; Ex. 354(FF), p. 3; Ex. 354(GG), p. 2; Ex. 354(HH), p. 7; Ex. 385, pp. 13-14; Ex. 396A, pp. 4-5; Ex. 453, pp. 32-36; Ex. 457, pp. 35-36; but see, Tr. 8460-8461; Ex. 354(P), p. 3; Ex. 354(II), p. 3; See also, Ex. 354(M), p. 2) Worker representatives, with one exception, strongly endorsed adoption of the

mechanism. (Tr. 7202-7205, 7246-7247, 7264, 7609-7610, 7691-7692, 7976-7980, 8072-8074, 8224-8226; Ex. 354(D), p. 5; Ex. 372, pp. 8-9; Ex. 374, pp. 139-140; Ex. 378, pp. 4-5; Ex. 450B, pp. 3-10; Ex. 452, pp. 63-68; contra, Ex. 395, p. 3; See also, Ex. 464B, p. 2) Many of the employer objections have been dealt with by the preceding paragraphs explaining the justifications for, and operation of, the multiple physician review mechanism. The thrust of most employer objections was that this review process is unworkable and unduly burdensome. Were the physician review process adopted by the final standard a completely new and untried concept, then it would be appropriate for OSHA to discuss at greater length each specific criticism. As discussed earlier, however, the multiple physician review mechanism as adopted by this standard is currently in widespread use in a variety of contexts. No evidence was offered suggesting that any of these existing mechanisms have proven unworkable or overly burdensome. In view of this, OHSA rejects employer criticisms of the final standard's peer review process as being mere allegations unsupported by concrete evidence—evidence which employers could easily have brought forward had it existed. OSHA is convinced that the multiple physician review mechanism can and will substantially add to the health protection afforded workers by this lead standard, and thus included this mechanism in the final standard.

The medical surveillance section of the standard includes a provision stating that the employer and employee or authorized employee representative may agree upon the use of any expeditious alternate physician determination mechanism in lieu of the multiple physician review mechanism. The only condition is that the alternate mechanism otherwise satisfy the standard's requirements. OSHA's inclusion of this alternate mechanism provision follows the recommendation of the United Steelworkers of America. (Ex. 452, pp. 63, 68) The lead record indicates that some employers and unions are negotiating on special medical determination procedures which are not founded upon an employer's unilateral choice of the examining physician. (Tr. 8243-8244, 8271-8272; Ex. 430C-2; Ex. 452, p. 68) For example, the parties might decide in cases of dispute for an employee to go directly from an initial physician chosen by the employer to an agreed upon final physician—thus dispensing with the need for a second physician. Alternately, a final physician might be used in the first instance without recourse to other physicians. Or, an employee might be given the opportunity to choose this final physician. OSHA desires to encourage employers and employees to adopt medical determination procedures in which all parties have trust and confidence. The standard includes an explicit provision embodying this intention.

A major issue addressed in the proposed standard and throughout the rulemaking was chelation. The final standard prohibits prophylactic chelation of any employee by any person the employer employs, retains, supervises, or controls, and requires the employer to assure that any therapeutic or diagnostic chelation, if administered, is done under the supervision of a licensed physician in a clinical setting with thorough and appropriate medical monitoring.

Moreover, in cases where the examining physician determines that chelation is appropriate, the employee must be notified of this fact before such treatment. This should serve the purposes of informing the employee of a potentially harmful treatment, and affording the employee the opportunity to seek the review of this determination by another physician (see multiple physician review, above) thereby possibly acting as a check on an overly broad definition of "therapeutic" chelation by the examining physician.

A considerable body of testimony was presented concerning the use and abuse of chelation therapy in the treatment of lead poisoning. Experience accumulated by the medical and scientific communities over 20 years has largely confirmed the effectiveness of this type of therapy for the treatment of lead poisoning. It has also been established that there can be important adverse side effects associated with the use of chelating agents. The medical community has balanced the advantages and disadvantages resulting from the use of chelating agents in various circumstances establishing when the use of these agents is or is not acceptable. The general consensus of these professionals is that therapeutic chelation is acceptable but prophylactic chelation is not. Unfortunately, testimony given by lead workers has indicated that prophylatic chelation is occurring. Given that there is a glaring contradiction between theory and practice with regards to this issue, it is useful and necessary to review the health effects of chelation.

Blejer has described the development and functioning of the various chelating agents, stating:

> A chelating agent is a chemical substance which will bind lead and certain other metals into a metal-chelate complex so as to make them biochemically and toxicologically inactive or unavailable. Chelation therapy in modern medicine had its inception during the First World War when dimercaprol, a heavy metal antagonist, was developed as an antidote for a lethal, arsenic-containing war agent called Lewisite. Thus, another name for dimercaprol is British antilewisite, or BAL for short. In the early 1950's a chelating agent began to be used: Ethylene-diamine-tetraacetate, or just EDTA. However, an adverse, very serious side of EDTA was that it chelated calcium in the blood and body tissues and that, when severe enough, this removal or chelation of calcium—an essential metal in human muscular biochemistry and function—could produce potentially fatal tetany. Consequently, other EDTA compounds which contain calcium in the molecule were developed. One of these and currently the most widely used, is calcium disodium edetate—also called Calcium EDTA, CaEDTA, Calcium Disodium Versenate, or Versenate. The calcium in CaEDTA is readily displaced by heavy metals, such as lead, to form stable complexes with the metallic ion locked or sequestered in the EDTA molecule. Following intravenous or intramuscular injections of Versenate, the chelate form is excreted in the urine with about 50% appearing in the first hour after administration.
>
> In recent years another chelating agent called d-penicillamine, also known as penicillamine or Cuprimine, was developed for the treatment of excess copper in patients with a rare condition called Wilson's disease and also for the reduction of excess of cystine excretion in cystinuria, another rare condition. Judging from the California State reporting experience (Ex. 6(26)) in the last five or six years many physicians have begun to use pencillamine extensively and instead of Versanate or CaEDTA, either in the treatment of lead poisoning, or to reduce increased levels of lead absorption—as measured by elevated blood lead concentration—among occupationally lead-exposed workers.
>
> The route and mode of administration of these three chelating agents vary: BAL is administered by intramuscular injection only and, to my knowledge, it is very seldom used to treat occupationally lead-exposed workers. CaEDTA, on the other hand, is commonly used by physicians among these workers: It can be administered by mouth, intramuscular injection or intravenous infusion. The third therapeutic compound, penicillamine or Cuprimine, is given orally only. (Ex. 53, p. 7, 8, 9)

The possible adverse side effects of the various possible chelating agents were reviewed by several experts. Blejer stated:

> The main adverse effect of dimercaprol or BAL are nervousness, nausea, a feeling of pressure in the chest, and a transient rise in blood pressure. Currently, the use of BAL is recommended in conjunction with CaEDTA for severe lead poisoning with acute encephalopathy in children only. According to Hamilton and Hardy (Ex. 23(30)), BAL is contra-indicated in adult lead poisoning because, although it increases lead excretion, it may increase lead toxicity by forming a BAL-lead complex which is more toxic than the lead per se. Further, in lead workers concurrently occupationally exposed to cadmium, iron or selenium, such as occurs in some primary nonferrous smelters, BAL is contraindicated because the BAL-metal complexes are more toxic especially to the kidneys, than any of the metals by itself.

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Penicillamine or Cuprimine also has some very serious adverse effects which include the nephrotic syndrome and aplastic anemia. • • • (T)he drugs should not be given to patients allergic to penicillin because of cross-sensitivity between penicillin and penicillamine. Penicillamine has a plethora of other adverse effects which are detailed in the package insert which comes with capsules of Cuprimine. In part, that insert warns against its use during pregnancy because of penicillamine's affinity for metals and cystine and its effect on collagen. Also, it advises performing routine urinalyses, white and differential blood counts, hemoglobin determinations and direct platelet counts as well as frequent liver and kidney function tests during therapy. Penicillamine causes allergic skin reactions, including urticaria and may cause eye cataracts. Other adverse reactions that have been reported include hepatic dysfunction, tinnitus, falling hair, throbocytopenia, thrombotic thrombocytopenic purpura, bone marrow hypoplasia, leukopenia and granulocytopenia ranging in severity from asymptomatic and reversible to agranulocytosis with fatalities. Thrombophlebitis, pancreatitis, cheilosis, glossitis, gingivostomatitis, sometimes with ulceration of the mucous membrane; polymyositis; mammary hyperplasia; peptic ulcer; myasthenia; elastosis perforans serpiginosa have been reported but are unusual. A syndrome closely resembling disseminated lupus erythematosus and pemphigus have occurred, as well as severe and ultimately fatal glomerulonephritis and intraalveolor hemorrhage (Goodpasture's syndrome). Iron deficiency may develop, especially in menstruating women and in children. Reversible optic neuritis and cheilosis, possibly connected with pyridoxine (vitamin B6) deficiency, have been reported.

In fact, some of the above warnings, precautions and adverse reactions pertain to long-term uses of penicillamine and many of the adverse effects occur rarely. Nevertheless, one still wonders why many physicians are using this drug in the so-called prophylaxis of increased lead absorption, or even in the treatment of lead poisoning among lead workers.

One is even more puzzled about such uses, especially because penicillamine has not been approved by the U.S. Food and Drug Administration for the treatment of lead poisoning either in children or adults. As stated by the Commissioner of FDA in a related memorandum dated May 28, 1976, to the Director of NIOSH, "Penicillamine is a certified antibiotic drug which was approved in 1974 for Wilson's disease and cystinuria. At the present time it is also being studied under investigational new drug exemptions for its use in rheumatoid arthritis and chronic lead poisoning in children. There are currently nine active individual investigators (approved) for the study of the use of penicillamine in chronic lead poisoning in children." (Ex. 53, pp. 9-13)

Bridbord and Blejer, in a review article extensively discussed effects of CaEDTA, stated:

A number of studies suggest that oral EDTA increases the absorption of lead from the gastrointestinal tract in instances where exposure to lead continues to occur.

Other studies have observed T-wave changes in the electrocardiograms of patients given chelation therapy. Studies also suggest that the metabolism of trace metals other than lead may be affected by long-term chelation therapy.

The effects of lead and of EDTA on the kidneys were evaluated in two recent papers. Lead-poisoned rats were given injections of EDTA IP. Inclusion bodies (lead-protein complexes believed to possibly protect against lead effects) in renal cell nuclei were found in various stages of dissolution and migration out of the nucleus. Cytoplasmic vacuoles were observed which contained material that resembled portions of intact nuclear inclusions. Inclusion bodies have not been observed in renal biopsies of male workers occupationally exposed to lead who have been repeatedly treated with chelating agents. Excretion of lead through the kidneys appears to be less in older men compared to younger men who have nuclear inclusion bodies in their renal tuble lining cells. These data suggest that chelation therapy reduces the ability of the kidneys to protect themselves against the toxic effects of lead by virtue of the action of chelating agents in removing the lead-induced inclusion bodies. This conclusion is further supported by observations that renal tubula dysfunction may follow EDTA-administration in lead poisoned children". (Ex. 86H, p. 7, 8)

Lilis and Fishbein, in their review, also evaluated the effects of CaEDTA. They noted the side effects associated with the use of this drug but concluded that most of these effects could be avoided if the drug was used appropriately. They stated:

Edetate disodium calcium has been shown, in terms of lead elimination and excretion, to be superior to both dimercaprol and penicillamine. The metal mobilizes as a nonionizable complex, and the maximum effect is reached six hours after intravenous administration, when 95% to 98% of the total amount has been excreted. When the therapeutic dosages of 50 mg/kg/day are not exceeded, the rate of administration is less than 20 mg/min, and the course of therapy restricted to five to seven days, practically no adverse side effects are observed.

Renal damage is the most important side effect associated with edetate disodium calcium chelation therapy; a small number of cases of acute tubular necrosis were described in the early days of edetate disodium calcium therapy. Most of these were due to very large doses, rapid administration, or severe preexisting renal disease (such as hypercalcemia and multiple myeloma) . . .

Various mucocutaneous lesions have been described in patients after prolonged administration of disodium edetate and edetate disodium calcium; one possible explanation considered was zinc depletion.

Treatment of lead poisoning with edetate disodium calcium given intravenously in five-day courses, with dosage and rate of administration not exceeding those previously mentioned and repeated if necessary after a free interval of two to five days, has been successful and has not been associated with clinically significant side effect. (Ex. 118D)

Wedeen concurred with Lilis' and Fishbein's conclusions concerning the acceptability and appropriateness of chelation therapy when administered therapeutically for treatment of lead poisoning. (Tr. 1745-1746)

The decision to use chelating agents involves a weighing of the risks of the adverse effects of use against the benefits of use. The medical community has defined three separate circumstances under which chelation might be used and has generally established what is acceptable practice in each. "Therapeutic" chelation is the use of chelating agents for the treatment of the frank symptoms of lead poisoning. "Diagnostic" chelation is the use of chelating agents to assist in making the diagnosis of lead poisoning or lead induced disease. "Prophylactic" chelation was defined by Bridbord and Blejer "both as the routine use of chelating or similarly acting drugs to prevent elevated blood lead levels in workers who are occupationally exposed to lead or as the use of these drugs to routinely lower blood lead levels to predesignated concentrations believed to be 'safe.'" (Ex. 86H, p. 20)

OSHA agrees with this definition and emphasizes that an employer who hospitalizes an asymptomatic worker and has chelation carried out by a physician solely to reduce the worker's blood lead level will be performing prophylactic chelation. The use of a hospital and a physician is not the definition of therapeutic chelation. Routine chelation to reduce blood lead level is unacceptable whatever the setting.

The risks and benefits vary with the circumstances of use. Thus, in different circumstances the use of chelating agents might or might not be considered medically appropriate. With reference to therapeutic chelation, Bridbord and Blejer stated in their review that: "Most authorities agree that chelating or similarly acting agents have a proper place in the therapy of the acute symptomatology of severe lead intoxication, a condition accompanied by pronounced gastroenteric, neurologic and other symptoms and signs." (Ex. 86H p. 1)

Those who testified were generally in agreement with this statement though there was some variation in what witnesses felt was the degree of severity of symptoms necessary for instituting chelation therapy. It was also generally agreed that chelation must be done only under careful medical supervision involving specific monitoring to minimize the risks involved.

Blejer testified extensively concerning the circumstances under which therapeutic chelation should occur:

The therapeutic use of chelating agents on occupationally lead-exposed adults is warranted only when there is frank and, in my opinion, severe symptomatology of lead poisoning, such as the now-rare lead encephalopathy and the still-common lead colic. In most cases, it is my professional opinion that the health risks of administering chelating agents far outweigh the benefits of relieving mild to moderate symptomatology. In such cases, "natural deleading," i.e., removal from exposure, plus symptomatic/supportive treatment will achieve the same end results more safely and probably just as quickly.

Moreover, as demonstrated and published recently by Dr. Richard P. Wedeen, Professor of Medicine and a specialist in nephrology at the New Jersey Medical School in Newark, N J, there is a state where golmerular filtration dysfunction due to lead may be reversible by intravenous administration of CaEDTA. In my opinion, for such purposes, in expert hands and in appropriate clinical facilities, chelation therapy could therefore be used in the absence of overt symptomatology. In all of these instances, however, the affected worker must be monitored clinically by physicians expert or competent in the treatment of lead poisoning, with the treatment administered in appropriate clinical facilities and, in the case of intravenous CaEDTA administration, on an in-patient basis. Needless to add, any such treatment would be thoroughly unproductive and essentially wasted if the worker is allowed to return to an uncontrolled lead exposure at the work place. As stated previously—and it bears repetition often—such treatment still constitutes secondary rather than primary prevention." (Ex. 53, p. 13, 14)

Fishbein took a position similar to Blejer's stating:

Chelation therapy should be resorted to only in cases of acute exacerbations in the course of chronic lead poisoning, such as encephalopathy, lead colic, or rapid and threatening increase of blood lead levels, and should always be done under careful medical supervision and after cessation of lead exposure. (Tr. 2643)

The use of chelation agents as a test for the existence of lead induced kidney disease as described by Wedeen, is a new and experimental diagnostic use of chelating agents. Blejer discussed a more conventional use of these agents for diagnostic purposes and suggested that in many cases diagnosis is possible without resort to the risks of chelation. (Ex. 53, p. 12-13) OSHA concurs in the view that in appropriate circumstances chelation may be used for therapeutic and diagnostic purposes.

The third type of use of chelating agents is "prophylactic" use. Prophylactic chelation is prohibited by the standard.

There was a remarkable degree of consensus in the testimony concerning this aspect of the proposal. Condemnation of prophylactic chelation was virtually universal. (Ex. 343, p. 91; Ex. 335, p. 88; Tr. 3242, 3683; Ex. 86H, pp. 8, 10, 11; Ex. 82, p. 12; Ex. 284A, p. 577; Ex. 53, p. 14)

The health effects related to the use of chelating agents have been described above in some detail. With reference to the prophylactic use of these drugs, it is important to note certain particular effects. While the PbB levels are lowered by chelation, various authors have noted that in prophylactic chelation "effect" measures are not lowered to a comparable degree. Selander (Ex. 118D, ref. 12) noted that oral CaEDTA had little effect on ALA-U levels. The results of Fishbein et al. suggested that prophylactic chelation did not lower ZPP levels to a degree comparable to PbB levels. The study results of Fishbein et al. also suggested that workers who had been chelated prophylactically were not protected from neuropathy or lead colic effects. Thus they concluded that "without such cessation of exposure, chelating drugs may be ineffective, or even deleterious." (Ex. 105 D)

Similarly, Dr. Finklea has stated that:

We in the National Institute for Occupational Safety and Health also strongly oppose this practice. Prophylactic treatment of workers with chelating agents while failing to control the source of lead exposure in effect places workers in double jeopardy, by virtue of the potential harmful effects of long term versenate therapy particularly on the kidneys combined with continued excess exposure to lead, a known renal toxin. (Ex. 246A)

Blejer testified that:

Prophylactic administration of $CaNa_2$ EDTA by whatever route under conditions of continued lead exposure is judged to be particularly hazardous. Use of chelating agents is not an adequate substitute for engineering controls and proper industrial hygiene practices. Both lead and $CaNa_2$ EDTA in sufficient dosages are established to be toxic to the kidneys. Prophylactic chelation may decrease the ability of the kidneys to protect themselves against the toxic effects of lead. A recent mortality study of workers exposed to lead conducted by Cooper and Gaffey, (Ex. 5(28)), for example, demonstrated an increase in deaths from end stage renal disease. In conclusion, prophylactic use of chelation to control lead absorption represents an unacceptable medical practice that cannot be condoned. (Ex. 6(19), p. 20)

Lilis and Fishbein reviewed the effects of prophylactic chelation and similarly concluded that:

Oral prophylactic treatment with chelating agents such as edetate disodium calcium or penicillamine is contraindicated for the prevention of lead poisoning in workers exposed to lead. Among the reasons are the poor absorption of edetate disodium calcium from the gastrointestinal tract, the concomitant possible increased absorption of ingested lead, and the unsatisfactory effect of oral administration of edetate disodium calcium on blood lead, urinary coproporphyrin, and -amino levulinic acid indicating a failure to prevent adverse metabolic lead effects. These constraints explain the repeated failures of oral chelation therapy with symptomatic lead poisoning developing in some workers in spite of the prophylactic treatment.

Further, the effect of long-term chelation therapy on serum iron, copper, magnesium, and zinc levels and the probable interference with metal-dependent enzymatic activity adds to the disadvantage of this treatment, as do the side effects of penicillamine, such as renal damage, leukopenia, agranulocytosis, eosinophilla, and decreased serum iron levels.

Finally, it may not be unimportant that alteration of biological measurements used to estimate the current extent of absorption of lead by individuals occupationally exposed occurs and is bound to make the clinical management of lead disease more difficult and confused.

Adequate control of occupational lead exposure cannot and should not be replaced by inappropriate and potentially hazardous attempts at prophylactic treatment. (Ex. 118D)

Moreover the membership of the American Occupatjonal Medical Association at a general session in 1976 approved and adopted a statement of ethics which in essence stated that "the use of chelating agents as a prophylactic measure to prevent lead intoxication among workers in place of environmental controls would be considered as unethical practice of medicine and the subject physician would be subject to censure." (Tr. 251)

In his testimony Blejer expressed his opinion that routine administration of chelating agents constitutes "prophylactic" chelation: "Routine administration of chelating agents amounts to essentially prophylaxis, meaning you are just treating the blood leads or the symptomatology and you are sending the individual back to the exposure, • • • to be re-exposed." (Tr. 243) These views were supported by Epstein (Tr. 1112) and Finklea. (Ex. 246A)

In view of the strong criticisms that have been made against prophylactic chelation and in view of the fact that such warnings have a twenty year history, it is tragic that any major instances of prophylactic chelation should have occurred. Nevertheless, extensive testimony was presented which did demonstrate that prophylactic chelation has occurred and is occurring in workplaces throughout the country (Tr. 5631, 5634, 6125); hence the necessity for prohibiting any chelation which falls within the Blejer and Bridbord definition of "prophylactic".

Various workers and their union officials testified concerning their direct experiences with prophylactic chelation.

George Becker of the United Steelworkers of America, (USWA) testified concerning his personal experience with prophylactic chelation. (Tr. 4991-4992) He also testified that one worker told a NIOSH investigator in 1973 that he took as many as 250 versenate pills a week "to make sure that he didn't become leaded." (Tr. 4992)

In addition, union testimony reinforced the experience of Becker. Givens, Teamsters (Tr. 2171), Mirer, UAW (Tr. 446), Beliczky, Rubber

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Workers (Tr. 2537-39; Ex. 38c, p. 4), all discussed the indiscriminant use of prophylactic chelation.

One of the most thoroughly studied cases of prophylactic chelation presented were the combined cases of the NL and Quemetco smelters studied by Fishbein et al. Becker described his initial contacts with the problems at these plants through USWA Local 5554:

> Employees from each smelter had complained to the company doctor of nausea, stomach cramps, headaches and fatigue. Chelation was still practiced, although under different circumstances. Oral chelation had been halted at the NL smelter. Instead, employees were receiving EDTA administered solution intravenous IV treatments at the local hospital on an outpatient basis * * *.
>
> The situation at Quemetco smelter appeared to be even worse. Oral chelation, pills of the cuprimine variety were being distributed by the company doctor. In response to my expressed concern about this form of chelation I was told by Quemetco's doctor that, "They are absolutely safe and if I had my way they would be handed out to the lead workers like salt." (Tr. 4999)

The study of Fishbein et al. gives a more detailed description of what was occuring in these smelters:

> The 47 workers in Plant 1 and 24 in Plant 2 had had at least one course of chelation therapy, but 45 (24 in Plant 1 and 21 in Plant 2) had had it repeatedly (up to 10 times) (Table 16). The fact that there were more workers with repeated courses of chelation therapy in Plant 2 is consistent with the longer duration of employment of these workers.
>
> Over the years, histories given indicated that several patterns of chelation therapy had been followed. For example, the duration of courses of intravenous versenate varied from 3 days to 10 days. The prevailing practice in one plant had been to administer chelating agents in most cases without removing the worker from his usual lead exposure. Under such circumstances, it was not surprising that chelation therapy had to be used frequently, since the deleading effect of the chelating agent would be counterbalanced by continuous exposure and absorption of lead.
>
> Most workers were given chelation therapy on an ambulatory basis. However, 14 had had hospital admissions for lead poisoning over the years, for what seemed to have been acute episodes (colic) in the course of their chronic lead poisoning. Change in job assignment, to areas of lesser lead-exposure, was reported by only 23 of the examined workers. The fact that chelation therapy had been used to a much larger extent than had removal from exposure might have been due to the existence of rather homogeneous air lead levels in the plants, which had large open workspaces. (105 F, pp. 30, 31)

Frequency of Chelation Therapy in Secondary Lead Smelter Workers

	Total number examined	Chelation therapy		Repealed courses of chelation therapy	
		No.	Pct.	No.	Pct.
Plant 1.....	113	47	42	24	20
Plant 2.....	45	24	53	21	44
Total.....	158	71	45	45	27

(Ex. 105F, Table 16)

The California State Occupational Disease report data . . . as well as the results of the Indianapolis, Indiana, and Vernon, California, clinical field surveys—conducted by the Environmental Sciences Laboratory, Mt. Sinai School of Medicine, City University of New York, as reported in May 1976 and January 1977, respectively—all indicate that not only is such chelation therapy with CaEDTA and/or penicillamine quite prevalent, but also that so has been the practice of administering CaEDTA intravenously on ambulatory, nonhospitalized basis, such as in a physician's office or even in a plant's dispensary or first-aid room. Moreover, in practically all of these cases there were not available data to indicate that the occupationally lead-exposed workers being thus medicated were being monitored for any of the untoward or adverse effects or oral penicillamine and/or CaEDTA or of intravenous CaEDTA administration. Although it is true that in many cases such lead-exposed workers were being medicated by physicians other than those retained full or part-time by the plant, it is also true that some of these workers were thus medicated by company-designated and/or employed physicians sometimes, as already stated, right in the physician's office or even at the work place itself. (Ex. 53, p. 18)

In summary, the use of chelating agents is known to involve certain health risks. These risks are minimized when the drug is administered under a strictly controlled setting with appropriate medical monitoring, over a short period of time, and in appropriate dosages. The use of such agents prophylactically is considered inappropriate. The repeated use of such compounds is not at all appropriate when an alternative such as controlling employee exposure is possible.

OSHA believes that chelating agents, such as calcium disodium edetate (EDTA), and penicillamine, are useful in the therapy of acute overexposure to lead. Such therapy should be done under the supervision of a licensed physician in a clinical setting with thorough and appropriate medical monitoring of the patient. Medical experts were not uniformly in agreement concerning the circumstances under which therapeutic chelation should be used, and OSHA can not define appropriate medical practice for the individual patient. Such decisions must be made by the physician, exercising sound medical judgment after an evaluation of all the relevant factors.

The testimony given by workers and health professionals which clearly indicated that prophylactic chelation has occurred and continues to occur in spite of the well established body of medical knowledge opposing it is of grave concern to OSHA. OSHA believes that the record indicates a need for extensive education both of health professionals and of workers concerning the circumstances of use and abuse of chelating agents and a mandatory prohibition in the standard of improper use of chelating agents.

The final standard requires, under the authority of section 6(b)(7), that the employer pay the costs of medical surveillance and make all the tests or procedures available to employees at a reasonable time and manner. The proposed standard required medical surveillance to be provided during the employee's normal working hours, but as was pointed out by several parties (e.g., Ex. 3(31)), medical personnel would probably not be available outside the regular daytime hours. Thus, employees who worked night shifts could not have examinations during their regular working hours. OSHA's concern is that medical surveillance is provided at a time and in a manner so as not to discourage employees from participating in the program. A standard of reasonableness should accomplish this goal.

K. MEDICAL REMOVAL PROTECTION: PARAGRAPH (K)

See summary in Part III and full exposition in Attachment C.

L. EMPLOYEE INFORMATION AND TRAINING: PARAGRAPH (L)

The final standard requires the employer to provide an information and training program for all employees exposed to lead above the action level. Information and training are an essential aspect of the overall protection of employees who can do much to protect themselves if they are informed of the nature of the hazards in the workplace. To be effective an employee education system must apprise the employee of the specific hazards associated with his work environment, protective measures which can be taken, and his rights under the standard. The need to train employees was agreed upon by virtually all of the participants in the rulemaking proceeding, and a training requirement was included in both the NIOSH Criteria Document (Ex. 1) and the proposed standard.

In addition, OSHA will require that materials provided to the employer by OSHA be made readily available to all affected employees. This requirement was not included in the proposal which only specified that the standard and its appendices be available. There was testimony which suggested OSHA "track employer compliance with the educational requirements very closely." (Ex. 343, p. 106.) While OSHA believes employer compliance with this provision is essential, the agency considers it important to assist in this process by providing both written and audio visual materials to the employer for use in training. OSHA intends to develop, in the future, specific safety and health training and education materials on lead for distribution and presentation to employees by employers in addition to the training requirements in this regulation. These materials will inform employees of the hazards of exposure to lead and appropriate protective measures as discussed in this preamble and final regulation. Where these materials are designated by the Assistant Secretary, the employer will be required to include them as part of his education and training program.

Although the emphasis of education and training is for the worker subject to exposure at or above the action level, training requirements exist which must be observed even if the initial monitoring or determination indicates that exposures are below the action level. Specifically, the final standard's accessibility of information requirements extend to all employees. The employer must also inform all employees, including those below the action level, of the contents of Appendices A and B of the regulation, when published.

The training program for employees subject to exposure to lead at or above the action level or for whom the possibility of skin/eye irritation exists, is generally in keeping with the proposal. During the hearings there was considerable testimony on the need to inform workers, both male and female, of the severe effects on the reproductive system from exposure to lead. (Tr. 657, 694, 4511, Ex. 343, p. 106.) For example, Andrea Hricko stated:

> Employee and job applicants must be informed that excessive exposures to lead have resulted in reproductive difficulties, including fertility problems, menstrual disorders, stillbirths, miscarriages and other hazardous effects so that they understand the significance of blood, sperm, and pregnancy testing (Tr. 694).

OSHA is in complete agreement with this view and therefore will require the employer to develop an education program which addressed the danger of exposure to lead on the reproductive system, and on employee options as part of the medical surveillance program, e.g., fertility and pregnancy testing. OSHA believes this is a crucial provision of the standard. A worker, whether male or female, who is fully informed of the hazards of lead will be better able to avoid the adverse reproductive effects documented in the preamble. The knowledge of the hazard in this instance is crucial since there is concern that workers whose blood leads do not exceed the 30 μg/100 g level may still be at risk especially if they have extended tenure in a lead industry.

The training program is required to be completed for employees initially covered by the standard within 180 days of the effective date, thus allowing 90 days after the completion of initial monitoring, and for all new employees at the time of initial assignment to areas where there is a possibility of exposure over the action level. OSHA believes that it is important to train employees as soon as possible in order to maximize the benefits of the training program, and has acted accordingly.

The standard requires that the training program be provided at least annually. OSHA believes that an annual training program is both necessary and sufficient to re-inform the employees of the hazards and their rights and duties under the standard.

M. SIGNS: PARAGRAPH (M)

The final standard requires a sign to be posted in areas where lead exposure exceeds the PEL. The standard specifies the legend for these signs.

The proposal did not require the posting of signs, but raised the issue of whether signs or labels would be appropriate. However, it is important, and section 6(b)(7) of the Act requires, that appropriate forms of warning, as necessary, be used to apprise employees of the hazards to which they are exposed in the course of their employment. OSHA believes, as a matter of policy, that employees should be given the opportunity to make informed decisions on whether to work at a job under particular working conditions. Furthermore, when the control of potential safety and health problems involves the cooperation of employees, the success of such a program is highly dependent upon the worker's understanding of the hazards attendant to that job.

In light of the serious nature of the hazard of exposure to lead, OSHA believes that sign posting is needed as well as periodic training to adequately inform employees of the poisoning hazard. The appearance of the phrase "Poison" on the warning sign will serve as a daily reminder of the hazards and as an objective check on whether employees are actually being informed of this hazard. The warning signs will inform all employees entering such areas of the need to utilize respirators and other protective equipment which the employer is to provide. Additionally, the phrase "No Smoking or Eating" relates directly to requirements in the standard which limit activities within lead contaminated areas. (See discussion in paragraph on Hygiene Facilities and Practices.)

N. RECORDKEEPING: PARAGRAPH (N)

Section 8(c)(3) of the Act (29 U.S.C. 657) mandates the inclusion of provisions requiring employers to maintain accurate biological and environmental monitoring records of employee exposures to potentially toxic materials. It also provides that employees or their representatives have access to such records.

The final standard requires records of exposure measurements. The records required include name and job classification of employees measured, details of the sampling and analytic techniques, results, and type of respiratory protection worn. The standard also requires records of medical surveillance (biological monitoring & medical exam results). These include names of employees, the physician's written opinion, and a copy of the results of the examination. These records must be kept for 40 years or for at least 20 years after termination of employment, whichever is longer.

The final standard also contains a limited recordkeeping requirement concerning temporary medical removals effected pursuant to the medical removal protection program. The employer must establish and maintain an accurate record for each employee removed from current exposure to lead. The record is to contain four entries each time an employee is removed. First, the employee must be identified by name and social security number. Second, the date of removal and return must be stated. Third, the employer must briefly explain how each removal was or is being accomplished. This description need be no more detailed than such statements as "Employee X was transferred from position A to position B during the entire period of removal," or "Employee X was laid off for the entire period of removal," or "Employee X is currently working half shifts until a transfer opportunity becomes available." Fourth, the record must indicate whether or not the reason for the removal was an elevated blood lead level. If removal is due to a reason other than an elevated blood lead level, this precise reason should not be stated so as to prevent disclosure of confidential medical information.

The purpose of the foregoing recordkeeping requirement is to enable the Secretary, employees, and their authorized representatives to assess the operation of, and an employer's compliance with, the medical removal protection program. The limited but per-

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tinent information contained in these records will, in most cases, enable these assessments to be made without interviewing large numbers of employees or placing undue burdens on employers by requiring further time consuming and burdensome examinations of payroll, production, or confidential medical records—examinations which likely would be necessary in the absence of the standard's limited record-keeping requirement. Due to the limited purposes to be served by these records, the standard requires an employer to maintain each medical removal record only for so long as the duration of an employee's employment.

In the final standard, there have been deletions in two areas of record-keeping which OSHA has determined to be excessively costly and minimally effective: (1) mechanical ventilation measurements and (2) employee training. A third deletion has been made, specifically in the area of medical surveillance records. The proposal required that a signed copy of any employee's refusal to participate in the medical surveillance program be included among the other records. This provision has been removed. OSHA believes that the problem of employee refusal will be mitigated by the standard's Medical Removal Protection program, which will minimize disincentives to worker participation. Therefore, this provision has been deleted in the final standard.

The participants at the hearing generally agreed with the necessity for keeping records but objected to the length of the record retention period. The extended retention period is needed for several purposes. Lead is known to have both acute and chronic effects, depending on the level and duration of exposure. The onset of clinical symptoms may occur many years after exposure. OSHA requires these records be maintained to document the medical and exposure history of the worker in order to assist the physician in determining whether lead was an etiologic agent in a disease progression. For example, renal and neurological disease do not necessarily have early warning indicators which physicians might use for evaluation. The records will serve to aid the physician in determining the dose to the worker over his work tenure.

OSHA is also concerned that the physician be able to follow asymptomatic workers who have been exposed to low lead levels over long periods of time, in order to ascertain the long-term effects of low level exposure. In this regard, another important function the combined records serve is to provide a data base for much-needed scientific and epidemiological research into the effects of chronic low level lead exposure. Lastly, maintenance of records for 40 years will enable a future review of the adequacy of the standard.

The final standard requires that records be made available to the Director and Assistant Secretary, that environmental and biological monitoring records be available to employees and their authorized representatives, and medical records to an employee or to a physician or other person designated by an employee or former employee. These provisions carry out statutory requirements. In addition, it is necessary for the Assistant Secretary and Director to have access for enforcement and research purposes. Employees and their representatives need access to both environmental and blood lead level monitoring records to assess an employer's progress in (1) controlling worker exposure to lead, and (2) complying with the lead standard, particularly the medical removal protection provisions. Blood lead level records are particularly useful in this regard. Consistent with the current widespread dissemination of individual blood lead level results, and the need for employers and employees to have this data, the standard makes blood lead level results available to all employees and their representatives. In so deciding, the agency has carefully balanced the pressing need for worker access to this limited form of medical data against the confidentiality that would normally be afforded to most forms of laboratory test results.

The transfer provisions in the proposal have been left unchanged except that NIOSH is to be notified at the expiration of the retention period so that it can determine if the records are still needed for research purposes.

O. OBSERVATION OF MONITORING: PARAGRAPH (o)

Section 8(c)(3) of the Act requires that employers provide employees or their representatives with the opportunity to observe monitoring of employee exposures to toxic materials or harmful physical agents. In accordance with this section and consistent with the proposal and other OSHA standards, the standard contains provisions for such observation. To insure that this right is meaningful, observers are entitled to an explanation of the measurement procedure, to observe all steps related to the measurement procedure, and to record the results obtained. Since results will not normally be available at the time of monitoring, the standard has been clarified to indicate that the observers are entitled to receive the results of the monitoring when returned by the laboratory. The observer, whether an employee or designated representative, must be provided with, and is required to use, any personal protective devices required to be worn by employees working in the area that is being monitored, and must comply with all other applicable safety and health procedures.

P. EFFECTIVE DATE: PARAGRAPH (p)

The effective date is February 1, 1979. The approximate three month period between the issuance of the standard and its effective date is intended to provide sufficient time for employers and employees to become informed of the existence of the standard and its requirements.

Any petitions for administrative reconsiderations of this standard or for an administrative stay pending judicial review must be filed with the Assistant Secretary of Labor for Occupational Safety and Health within 45 days of the publication of this standard in the FEDERAL REGISTER. Any petitions filed after this date will be considered to be filed untimely. This requirement is considered essential to permit the Agency to give full consideration to each petition and respond in advance of the effective date of the standard.

Q. APPENDICES: PARAGRAPH (q)

The appendices included with the regulation are intended to provide information and are not intended to create any additional obligations not otherwise imposed.

R. STARTUP DATES: PARAGRAPH (r)

Startup dates for specific provisions have been extended from the proposal. This is based on OSHA's experience with other standards as to the time required for employers to complete air monitoring, and medical surveillance, and to obtain necessary equipment, respirators, and protective clothing. If there is no specific start up date set forth in the standard, then the startup date is the effective date of the standard. If the time period for meeting any of these startup dates cannot be met because of technical difficulties, any employer is entitled to petition for a temporary variance under § 6(b)(6)(A) of the Act.

V. AUTHORITY

This document was prepared under the direction of Eula Bingham, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Ave., NW, Washington, D.C. 20210.

Accordingly, pursuant to sections 4(b), 6(b) and 8(c) of the Occupational Safety and Health Act of 1970 (84 Stat. 1592, 1593, 1599; 29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 8-76 (41 FR 25059) and 29 CFR Part 1911, Part 1910 of Title 29, Code of Federal Regulations is hereby

amended by adding a new permanent standard for occupational exposure to inorganic lead at § 1910.1025 and by making consequential amendments to Table Z-1 of 29 CFR 1910.1000.

In addition, pursuant to the above authority, section 4(b)(2) of the Act (84 Stat. 1592; 29 U.S.C. 653) and the specific statutes referred to in section 4(b)(2), OSHA has determined that this new standard is more effective than the corresponding standards now in Subpart B of Part 1910, in Parts 1915, 1916, 1917, and 1918 of Title 29, Code of Federal Regulations, and also the safety and health standards promulgated under the Walsh-Healy Act (41 U.S.C. 35 et seq.), the Service Contract Act of 1965 (41 U.S.C. 351 et seq.), the Act of August 23, 1958 (33 U.S.C. 941), and the National Foundation on Arts and Humanities Act (20 U.S.C. 951 et seq.). Therefore, to the extent that these corresponding standards are inconsistent with this new standard, they are superseded by the new § 1910.1025.

The application of the new standard to the maritime industry is implemented by adding a new paragraph (g) to § 1910.19.

Signed at Washington, D.C., this 8th day of November, 1978.

EULA BINGHAM,
Assistant Secretary of Labor.

Part 1910 of Title 29 of the Code of Federal Regulations (CFR) is amended as follows:

1. A new paragraph (g) is added to § 1910.19 to read as follows:

§ 1910.19 Special provisions for air contaminants.

. . . . . .

(g) Section 1910.1025 shall apply to the exposure of every employee to lead in every employment and place of employment covered by §§ 1910.13, 1910.14, 1910.15, 1910.16, in lieu of any different standard on exposure to lead which would otherwise be applicable by virtue of those sections.

§ 1910.1000 [Amended]

2. Table Z-2 in § 1910.1000 is amended by deleting the following entry:

Lead and its inorganic compounds (Z37.11-1969)	0.2 mg/m³

3. A new § 1910.1025 is added to Part 1910 to read as follows:

§ 1910.1025 Lead.

(a) *Scope and application.* (1) This section applies to all occupational exposure to lead, except as provided in paragraph (a)(2).

(2) This section does not apply to construction work as defined in 29 CFR 1910.12(b) or to agricultural operations covered by 29 CFR Part 1928.

(b) *Definitions.* "Action level" means employee exposure, without regard to the use of respirators, to an airborne concentration of lead of 30 micrograms per cubic meter of air (30 μg/m³) averaged over an 8-hour period.

"Assistant Secretary" means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or designee.

"Director" means the Director, National Institute for Occupational Safety and Health (NIOSH), U.S. Department of Health, Education, and Welfare, or designee.

"Lead" means metallic lead, all inorganic lead compounds, and organic lead soaps. Excluded from this definition are all other organic lead compounds.

(c) *Permissible exposure limit (PEL).* (1) The employer shall assure that no employee is exposed to lead at concentrations greater than fifty micrograms per cubic meter of air (50 μg/m³) averaged over an 8-hour period.

(2) If an employee is exposed to lead for more than 8 hours in any work day, the permissible exposure limit, as a time weighted average (TWA) for that day, shall be reduced according to the following formula:

Maximum permissible limit (in μg/m³) = 400 ÷ hours worked in the day.

(3) When respirators are used to supplement engineering and work practice controls to comply with the PEL and all the requirements of paragraph (f) have been met, employee exposure, for the purpose of determining whether the employer has complied with the PEL, may be considered to be at the level provided by the protection factor of the respirator for those periods the respirator is worn. Those periods may be averaged with exposure levels during periods when respirators are not worn to determine the employee's daily TWA exposure.

(d) *Exposure monitoring* (1) *General.* (i) For the purposes of paragraph (d), employee exposure is that exposure which would occur if the employee were not using a respirator.

(ii) With the exception of monitoring under paragraph (d)(3), the employer shall collect full shift (for at least 7 continuous hours) personal samples including at least one sample for each shift for each job classification in each work area.

(iii) Full shift personal samples shall be representative of the monitored employee's regular, daily exposure to lead.

(2) *Initial determination.* Each employer who has a workplace or work operation covered by this standard shall determine if any employee may be exposed to lead at or above the action level.

(3) *Basis of initial determination.* (i) The employer shall monitor employee exposures and shall base initial determinations on the employee exposure monitoring results and any of the following, relevant considerations:

(A) Any information, observations, or calculations which would indicate employee exposure to lead;

(B) Measurements of airborne lead made in the preceding year if the sampling and analytical methods used meet the accuracy and confidence levels of paragraph (d)(9) of this section; and

(C) Any employee complaints of symptoms which may be attributable to exposure to lead.

(ii) Monitoring for the initial determination may be limited to a representative sample of the exposed employees who the employer reasonably believes are exposed to the greatest airborne concentrations of lead in the workplace.

(4) *Positive initial determination.* Where a determination conducted under paragraphs (d)(2) and (d)(3) of this section shows the possibility of any employee exposure at or above the action level, the employer shall conduct monitoring which is representative of the exposure for each employee in the workplace which is exposed to lead.

(5) *Negative initial determination.* Where a determination, conducted under paragraph (d)(2) and (d)(3) of this section is made that no employee is exposed to airborne concentrations of lead at or above the action level, the employer shall make a written record of such determination. The record shall include at least the information specified in paragraph (d)(3) of this section and shall also include the date of determination, location within the worksite, and the name and social security number of each employee monitored.

(6) *Frequency.* (i) If the initial monitoring reveals employee exposure to be below the action level the measurements need not be repeated except as otherwise provided in paragraph (d)(7) of this section.

(ii) If the initial determination or subsequent monitoring reveals employee exposure to be at or above the action level but below the permissible exposure limit the employer shall repeat monitoring in accordance with this paragraph at least every 6 months. The employer shall continue monitoring at the required frequency until at least two consecutive measurements, taken at least 7 days apart, are below the action level at which time the employer may discontinue monitoring for that employee except as otherwise provided in paragraph (d)(7) of this section.

(iii) If the initial monitoring reveals that employee exposure is above the permissible exposure limit the employ-

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er shall repeat monitoring quarterly. The employer shall continue monitoring at the required frequency until at least two consecutive measurements, taken at least 7 days apart, are below the PEL but at or above the action level at which time the employer may repeat monitoring for that employee at the frequency specified in paragraph (d)(6)(ii), except as otherwise provided in paragraph (d)(7) of this section.

(7) *Additional monitoring.* Whenever there has been a production, process, control or personnel change which may result in new or additional exposure to lead, or whenever the employer has any other reason to suspect a change which may result in new or additional exposures to lead, additional monitoring in accordance with this paragraph shall be conducted.

(8) *Employee notification.* (i) Within 5 working days after the receipt of monitoring results, the employer shall notify each employee in writing of the results which represent that employee's exposure.

(ii) Whenever the results indicate that the representative employee exposure, without regard to respirators, exceeds the permissible exposure limit, the employer shall incude in the written notice a statement that the permissible exposure limit was exceeded and a description of the corrective action taken or to be taken to reduce exposure to or below the permissible exposure limit.

(9) *Accuracy of measurement.* The employer shall use a method of monitoring and analysis which has an accuracy (to a confidence level of 95%) of not less than plus or minus 20 percent for airborne concentrations of lead equal to or greater than 30 $\mu g/m^3$.

(e) *Methods of compliance.* (1) *Engineering and work practice controls.* The employer shall implement engineering and work practice controls (including administrative controls) to reduce and maintain employee exposure to lead in accordance with the implementation schedule in Table I below. Failure to achieve exposure levels without regard to respirators is sufficient to establish a violation of this provision.

TABLE I.—*Implementation schedule*

Industry[1]	Compliance dates[2]		
	200 $\mu g/m^3$	100 $\mu g/m^3$	50 $\mu g/m^3$
Primary lead production	([3])	3	10
Secondary lead production	([3])	3	5
Lead-acid battery manufacturing	([3])	2	5
Nonferrous foundries	([3])	1	5
Lead pigment manufacturing	([3])	3	5
All other industries	([3])	0	1

[1] Includes ancillary activities located on the same worksite.

[2] Expressed as the number of years from the effective date by which compliance with the given airborne exposure level, as an 8-hour TWA, must be achieved.

[3] On effective date.

(2) *Respiratory protection.* Where engineering and work practice controls do not reduce employee exposure to or below the 50 $\mu g/m^3$ permissible exposure limit, the employer shall supplement these controls with respirators in accordance with paragraph (f).

(3) *Compliance program.*

(i) Each employer shall establish and implement a written compliance program to reduce exposures to or below the permissible exposure limit and interim levels if appropriate, solely by means of engineering and work practice controls in accordance with the implementation schedule in paragraph (e)(1).

(ii) Written plans for these compliance programs shall include at least the following:

(A) A description of each operation in which lead is emitted; e.g. machinery used, material processed, controls in place, crew size, employee job responsibilities, operating procedures and maintenance practices;

(B) A description of the specific means that will be employed to achieve compliance, including engineering plans and studies used to determine methods selected for controlling exposure to lead;

(C) A report of the technology considered in meeting the permissible exposure limit;

(D) Air monitoring data which documents the source of lead emissions;

(E) A detailed schedule for implementation of the program, including documentation such as copies of purchase orders for equipment, construction contracts, etc.;

(F) A work practice program which includes items required under paragraphs (g), (h) and (i) of this regulation;

(G) An administrative control schedule required by paragraph (e)(6), if applicable;

(H) Other relevant information.

(iii) Written programs shall be submitted upon request to the Assistant Secretary and the Director, and shall be available at the worksite for examination and copying by the Assistant Secretary, Director, any affected employee or authorized employee representatives.

(iv) Written programs shall be revised and updated at least every 6 months to reflect the current status of the program.

(4) *Bypass of interim level.* Where an employer's compliance plan provides for a reduction of employee exposures to or below the PEL solely by means of engineering and work practice controls in accordance with the implementation schedule in table I, and the employer has determined that compliance with the 100 $\mu g/m^3$ interim level would divert resources to the extent that it clearly precludes compliance, otherwise attainable, with the PEL by the required time, the employer may proceed with the plan to comply with the PEL in lieu of compliance with the interim level if:

(i) The compliance plan clearly documents the basis of the determination;

(ii) The employer takes all feasible steps to provide maximum protection for employees until the PEL is met; and

(iii) The employer notifies the OSHA Area Director nearest the affected workplace in writing within 10 working days of the completion or revision of the compliance plan reflecting the determination.

(5) *Mechanical ventilation.* (i) When ventilation is used to control exposure, measurements which demonstrate the effectiveness of the system in controlling exposure, such as capture velocity, duct velocity, or static pressure shall be made at least every 3 months. Measurements of the system's effectiveness in controlling exposure shall be made within 5 days of any change in production, process, or control which might result in a change in employee exposure to lead.

(ii) *Recirculation of air.* If air from exhaust ventilation is recirculated into the workplace, the employer shall assure that (A) the system has a high efficiency filter with reliable back-up filter; and (B) controls to monitor the concentration of lead in the return air and to bypass the recirculation system automatically if it fails are installed, operating, and maintained.

(6) *Administrative controls.* If administrative controls are used as a means of reducing employee's TWA exposure to lead, the employer shall establish and implement a job rotation schedule which includes:

(i) Name or identification number of each affected employee;

(ii) Duration and exposure levels at each job or work station where each affected employee is located; and

(iii) Any other information which may be useful in assessing the reliability of administrative controls to reduce exposure to lead.

(f) *Respiratory protection.*

(1) *General.* Where the use of respirators is required under this section, the employer shall provide, at no cost to the employee, and assure the use of respirators which comply with the requirements of this paragraph. Respirators shall be used in the following circumstances:

(i) During the time period necessary to install or implement engineering or work practice controls, except that

after the dates for compliance with the interim levels in table I, no employer shall require an employee to wear a respirator longer than 4.4 hours per day;

(ii) In work situations in which engineering and work practice controls are not sufficient to reduce exposures to or below the permissible exposure limit; and

(iii) Whenever an employee requests a respirator.

(2) *Respirator selection.*

(i) Where respirators are required under this section the employer shall select the appropriate respirator or combination of respirators from table II below.

TABLE II.—*Respiratory Protection for Lead Aerosols*

Airborne concentration of lead or condition of use	Required respirator[1]
Not in excess of 0.5 mg/m³ (10X PEL).	Half-mask, air-purifying respirator equipped with high efficiency filters.[2, 3]
Not in excess of 2.5 mg/m³ (50X PEL).	Full facepiece, air-purifying respirator with high efficiency filters.
Not in excess of 50 mg/m³ (1000X PEL).	(1) Any powered, air-purifying respirator with high efficiency filters; or (2) Half-mask supplied-air respirator operated in positive-pressure mode.[3]
Not in excess of 100 mg/m³ (2000X).	Supplied-air respirators with full facepiece, hood, helmet, or suit, operated in positive pressure mode.
Greater than 100 mg/m³, unknown concentration or fire fighting.	Full facepiece, self-contained breathing apparatus operated in positive-pressure mode.

[1] Respirators specified for high concentrations can be used at lower concentrations of lead.

[2] Full facepiece is required if the lead aerosols cause eye or skin irritation at the use concentrations.

[3] A high efficiency particulate filter means 99.97 percent efficient against 0.3 micron size particles.

(ii) The employer shall provide a powered, air-purifying respirator in lieu of the respirator specified in Table II whenever:

(A) An employee chooses to use this type of respirator; and

(B) This respirator will provide adequate protection to the employee.

(iii) The employer shall select respirators from among those approved for protection against lead dust, fume, and mist by the Mine Safety and Health Administration and the National Institute for Occupational Safety and Health (NIOSH) under the provisions of 30 CFR Part 11.

(3) *Respirator usage.*

(i) The employer shall assure that the respirator issued to the employee exhibits minimum facepiece leakage and that the respirator is fitted properly.

(ii) Employers shall perform quantitative face fit tests at the time of initial fitting and at least semiannually thereafter for each employee wearing negative pressure respirators. The test shall be used to select facepieces that provide the required protection as prescribed in table II.

(iii) If an employee exhibits difficulty in breathing during the fitting test or during use, the employer shall make available to the employee an examination in accordance with paragraph (j)(3)(i)(C) of this section to determine whether the employee can wear a respirator while performing the required duty.

(4) *Respirator program.* (i) The employer shall institute a respiratory protection program in accordance with 29 CFR 1910.134 (b), (d), (e) and (f).

(ii) The employer shall permit each employee who uses a filter respirator to change the filter elements whenever an increase in breathing resistance is detected and shall maintain an adequate supply of filter elements for this purpose.

(iii) Employees who wear respirators shall be permitted to leave work areas to wash their face and respirator facepiece whenever necessary to prevent skin irritation associated with respirator use.

(g) *Protective work clothing and equipment.*

(1) *Provision and use.* If an employee is exposed to lead above the PEL, without regard to the use of respirators or where the possibility of skin or eye irritation exists, the employer shall provide at no cost to the employee and assure that the employee uses appropriate protective work clothing and equipment such as, but not limited to:

(i) Coveralls or similar full-body work clothing;

(ii) Gloves, hats, and shoes or disposable shoe coverlets; and

(iii) Face shields, vented goggles, or other appropriate protective equipment which complies with § 1910.133 of this Part.

(2) *Cleaning and replacement.* (i) The employer shall provide the protective clothing required in paragraph (g)(1) of this section in a clean and dry condition at least weekly, and daily to employees whose exposure levels without regard to a respirator are over 200 $\mu g/m^3$ of lead as an 8-hour TWA.

(ii) The employer shall provide for the cleaning, laundering, or disposal of protective clothing and equipment required by paragraph (g)(1) of this section.

(iii) The employer shall repair or replace required protective clothing and equipment as needed to maintain their effectiveness.

(iv) The employer shall assure that all protective clothing is removed at the completion of a work shift only in change rooms provided for that purpose as prescribed in paragraph (i)(2) of this section.

(v) The employer shall assure that contaminated protective clothing which is to be cleaned, laundered, or disposed of, is placed in a closed container in the change-room which prevents dispersion of lead outside the container.

(vi) The employer shall inform in writing any person who cleans or launders protective clothing or equipment of the potentially harmful effects of exposure to lead.

(vii) The employer shall assure that the containers of contaminated protective clothing and equipment required by paragraph (g)(2)(v) are labelled as follows: CAUTION: CLOTHING CONTAMINATED WITH LEAD. DO NOT REMOVE DUST BY BLOWING OR SHAKING. DISPOSE OF LEAD CONTAMINATED WASH WATER IN ACCORDANCE WITH APPLICABLE LOCAL, STATE, OR FEDERAL REGULATIONS.

(viii) The employer shall prohibit the removal of lead from protective clothing or equipment by blowing, shaking, or any other means which disperses lead into the air, except as provided for in paragraph (i)(6) of this section.

(h) *Housekeeping.*

(1) *Surfaces.* All surfaces shall be maintained as free as practicable of accumulations of lead.

(2) *Cleaning floors.* (i) Floors and other surfaces where lead accumulates may not be cleaned by the use of compressed air.

(ii) Shoveling, dry or wet sweeping and brushing may be used only where vacuuming has been tried and found not to be effective.

(3) *Vacuuming.* Where vacuuming methods are selected, the vacuums shall be used and emptied in a manner which minimizes the reentry of lead into the workplace.

(i) *Hygiene facilities and practices.*

(1) The employer shall assure that in areas where skin or clothing may come in contact with fume, dust, mist, or liquids containing lead or where employees are exposed to lead above the PEL, without regard to the use of respirators, food or beverage is not present or consumed, tobacco products are not present or used, and cosmetics are not applied, except in change rooms, lunchrooms, and showers required under paragraphs (i)(2)–(i)(4) of this section.

(2) *Change rooms.* (i) The employer shall provide clean change rooms for employees who work in areas where their skin or clothing comes into contact with fume, dust, mist, or liquids containing lead or where their airborne exposure to lead is above the PEL, without regard to the use of respirators.

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(ii) The employer shall assure that change rooms are equipped with separate storage facilities for protective work clothing and equipment and for street clothes which prevent cross-contamination.

(3) *Showers.* (i) The employer shall assure that employees who work in areas where their skin or clothing comes into contact with fume, dust, mist, or liquids containing lead or where their airborne exposure to lead is above the PEL, without regard to the use of respirators, shower at the end of the work shift.

(ii) The employer shall provide shower facilities in accordance with § 1910.141 (a)(3) of this Part.

(iii) The employer shall assure that employees who are required to shower pursuant to paragraph (i)(3)(i) do not leave the workplace wearing any clothing or equipment worn during the work shift.

(4) *Lunchrooms.* (i) The employer shall provide lunchroom facilities for employees who work in areas where their skin or clothing comes into contact with fume, dust, mist, or liquids containing lead or where their airborne exposure to lead is above the PEL, without regard to the use of respirators.

(ii) The employer shall assure that lunchroom facilities have a temperature controlled, positive pressure, filtered air supply, and are readily accessible to employees.

(iii) The employer shall assure that employees who work in areas where their skin or clothing comes into contact with fume, dust, mist, or liquids containing lead or where their airborne exposure to lead is above the PEL without regard to a respirator wash their hands and face prior to eating, drinking, smoking or applying cosmetics.

(iv) The employer shall assure that employees do not enter lunchroom facilities with protective work clothing or equipment unless surface lead dust has been removed by vacuuming, downdraft booth, or other cleaning method.

(5) *Lavatories.* The employer shall provide an adequate number of lavatory facilities which comply with § 1910.141(d)(1) and (2) of this Part.

(6) *Effective date for construction plans.* Construction plans for changerooms, showers, lavatories and lunchroom facilities shall be completed no later than 6 months from the effective date and these facilities shall be constructed and in use no later than 1 year from the effective date.

(j) *Medical surveillance.* (1) *General.* (i) The employer shall institute a medical surveillance program for all employees who are or may be exposed above the action level for more than 30 days per year.

(ii) The employer shall assure that all medical examinations and procedures are performed by or under the supervision of a licensed physician.

(iii) The employer shall provide the required medical surveillance without cost to employees and at a reasonable time and place.

(2) *Biological monitoring.* —(i) *Blood lead and ZPP level sampling and analysis.* The employer shall make available biological monitoring in the form of blood sampling and analysis for lead and zinc protoporphyrin levels to each employee covered under paragraph (j)(1)(i) of this section on the following schedule:

(A) At least every 6 months to each employee covered under paragraph (j)(1)(i) of this section;

(B) At least every two months for each employee whose last blood sampling and analysis indicated a blood lead level at or above 40 μg/100 g of whole blood. This frequency shall continue until two consecutive blood samples and analyses indicate a blood lead level below 40 μg/100 g of whole blood; and

(C) At least monthly during the removal period of each employee removed from exposure to lead due to an elevated blood lead level.

(ii) *Follow-up blood sampling tests.* Whenever the results of a blood lead level test indicate that an employee's blood lead level exceeds the numerical criterion for medical removal under paragraph (k)(1)(i), the employer shall provide a second (follow-up) blood sampling test within two weeks after the employer receives the results of the first blood sampling test.

(iii) *Accuracy of blood lead level sampling and analysis.* Blood lead level sampling and analysis provided pursuant to this section shall have an accuracy (to a confidence level of 95 percent) within plus or minus 15 percent or 6 μg/100ml, whichever is greater, and shall be conducted by a laboratory licensed by the Center for Disease Control (CDC) or which has received a satisfactory grade in blood lead proficiency testing from CDC in the prior twelve months.

(iv) *Employee notification.* Within five working days after the receipt of biological monitoring results, the employer shall notify in writing each employee whose blood lead level exceeds 40 μg/100 g: (A) of that employee's blood lead level and (B) that the standard requires temporary medical removal with Medical Removal Protection benefits when an employee's blood lead level exceeds the numerical criterion for medical removal under paragraph (k)(1)(i) of this section.

(3) *Medical examinations and consultations.*—(i) *Frequency.* The employer shall make available medical examinations and consultations to each employee covered under paragraph (j)(1)(i) of this section on the following schedule:

(A) At least annually for each employee for whom a blood sampling test conducted at any time during the preceding 12 months indicated a blood lead level at or above 40 μg/100 g;

(B) Prior to assignment for each employee being assigned for the first time to an area in which airborne concentrations of lead are at or above the action level;

(C) As soon as possible, upon notification by an employee either that the employee has developed signs or symptoms commonly associated with lead intoxication, that the employee desires medical advice concerning the effects of current or past exposure to lead on the employee's ability to procreate a healthy child, or that the employee has demonstrated difficulty in breathing during a respirator fitting test or during use; and

(D) As medically appropriate for each employee either removed from exposure to lead due to a risk of sustaining material impairment to health, or otherwise limited pursuant to a final medical determination.

(ii) *Content.* Medical examinations made available pursuant to paragraph (j)(3)(i)(A)–(B) of this section shall include the following elements:

(A) A detailed work history and a medical history, with particular attention to past lead exposure (occupational and non-occupational), personal habits (smoking, hygiene), and past gastrointestinal, hematologic, renal, cardiovascular, reproductive and neurological problems;

(B) A thorough physical examination, with particular attention to teeth, gums, hematologic, gastrointestinal, renal, cardiovascular, and neurological systems. Pulmonary status should be evaluated if respiratory protection will be used;

(C) A blood pressure measurement;

(D) A blood sample and analysis which determines:

(*1*) Blood lead level;

(*2*) Hemoglobin and hematocrit determinations, red cell indices, and examination of peripheral smear morphology;

(*3*) Zinc protoporphyrin;

(*4*) Blood urea nitrogen; and,

(*5*) Serum creatinine;

(E) A routine urinalysis with microscopic examination; and

(F) Any laboratory or other test which the examining physician deems necessary by sound medical practice.

The content of medical examinations made available pursuant to paragraph (j)(3)(i)(C)–(D) of this section shall be determined by an examining physician and, if requested by an employee, shall include pregnancy testing or laboratory evaluation of male fertility.

(iii) *Multiple physician review mechanism.* (A) If the employer selects the initial physician who conducts any medical examination or consultation provided to an employee under this section, the employee may designate a second physician:

(*1*) To review any findings, determinations or recommendations of the initial physician; and

(*2*) To conduct such examinations, consultations, and laboratory tests as the second physician deems necessary to facilitate this review.

(B) The employer shall promptly notify an employee of the right to seek a second medical opinion after each occasion that an initial physician conducts a medical examination or consultation pursuant to this section. The employer may condition its participation in, and payment for, the multiple physician review mechanism upon the employee doing the following within fifteen (15) days after receipt of the foregoing notification, or receipt of the initial physician's written opinion, whichever is later:

(*1*) The employee informing the employer that he or she intends to seek a second medical opinion, and

(*2*) The employee initiating steps to make an appointment with a second physician.

(C) If the findings, determinations or recommendations of the second physician differ from those of the initial physician, then the employer and the employee shall assure that efforts are made for the two physicians to resolve any disagreement.

(D) If the two physicians have been unable to quickly resolve their disagreement, then the employer and the employee through their respective physicians shall designate a third physician:

(*1*) To review any findings, determinations or recommendations of the prior physicians; and

(*2*) To conduct such examinations, consultations, laboratory tests and discussions with the prior physicians as the third physician deems necessary to resolve the disagreement of the prior physicians.

(E) The employer shall act consistent with the findings, determinations and recommendations of the third physician, unless the employer and the employee reach an agreement which is otherwise consistent with the recommendations of at least one of the three physicians.

(iv) *Information provided to examining and consulting physicians.* (A) The employer shall provide an initial physician conducting a medical examination or consultation under this section with the following information:

(*1*) A copy of this regulation for inorganic lead including all Appendices;

(*2*) A description of the affected employee's duties as they relate to the employee's exposure;

(*3*) The employee's exposure level or anticipated exposure level to lead and to any other toxic substance (if applicable);

(*4*) A description of any personal protective equipment used or to be used;

(*5*) Prior blood lead determinations; and

(*6*) All prior written medical opinions concerning the employee in the employer's possession or control.

(B) The employer shall provide the foregoing information to a second or third physician conducting a medical examination or consultation under this section upon request either by the second or third physician, or by the employee.

(v) *Written medical opinions.* (A) The employer shall obtain and furnish an employee with a copy of a written medical opinion from each examining or consulting physician which contains the following information:

(*1*) The physician's opinion as to whether the employee has any detected medical condition which would place the employee at increased risk of material impairment of the employee's health from exposure to lead;

(*2*) Any recommended special protective measures to be provided to the employee, or limitations to be placed upon the employee's exposure to lead;

(*3*) Any recommended limitation upon the employee's use of respirators, including a determination of whether the employee can wear a powered air purifying respirator if a physician determines that the employee cannot wear a negative pressure respirator; and

(*4*) The results of the blood lead determinations.

(B) The employer shall instruct each examining and consulting physician to:

(*1*) Not reveal either in the written opinion, or in any other means of communication with the employer, findings, including laboratory results, or diagnoses unrelated to an employee's occupational exposure to lead; and

(*2*) Advise the employee of any medical condition, occupational or nonoccupational, which dictates further medical examination or treatment.

(vi) *Alternate Physician Determination Mechanisms.* The employer and an employee or authorized employee representative may agree upon the use of any expeditious alternate physician determination mechanism in lieu of the multiple physician review mechanism provided by this paragraph so long as the alternate mechanism otherwise satisfies the requirements contained in this paragraph.

(4) *Chelation.* (i) The employer shall assure that any person whom he retains, employs, supervises or controls does not engage in prophylactic chelation of any employee at any time.

(ii) If therapeutic or diagnostic chelation is to be performed by any person in paragraph (j)(4)(i), the employer shall assure that it be done under the supervision of a licensed physician in a clinical setting with thorough and appropriate medical monitoring and that the employee is notified in writing prior to its occurrence.

(k) *Medical Removal Protection.*

(1) *Temporary medical removal and return of an employee.*

(i) *Temporary removal due to elevated blood lead levels.*

(A) *First year of the standard.* During the first year following the effective date of the standard, the employer shall remove an employee from work having a daily eight hour TWA exposure to lead at or above 100 μg/m³ on each occasion that a periodic and a follow-up blood sampling test conducted pursuant to this section indicate that the employee's blood lead level is at or above 80 μg/100 g of whole blood;

(B) *Second year of the standard.* During the second year following the effective date of the standard, the employer shall remove an employee from work having a daily 8-hour TWA exposure to lead at or above 50 μg/m³ on each occasion that a periodic and a follow-up blood sampling test conducted pursuant to this section indicate that the employee's blood lead level is at or above 70 μg/100 g of whole blood;

(C) *Third year of the standard, and thereafter.* Beginning with the third year following the effective date of the standard, the employer shall remove an employee from work having an exposure to lead at or above the action level on each occasion that a periodic and a follow-up blood sampling test conducted pursuant to this section indicate that the employee's blood lead level is at or above 60 μg/100 g of whole blood; and,

(D) *Fifth year of the standard, and thereafter.* Beginning with the fifth year following the effective date of the standard, the employer shall remove an employee from work having an exposure to lead at or above the action level on each occasion that the average of the last three blood sampling tests conducted pursuant to this section (or the average of all blood sampling tests conducted over the previous six (6) months, whichever is longer) indicates that the employee's blood lead level is at or above 50 μg/100 g of whole blood; provided, however, that an employee need not be removed if the last blood sampling test indicates a blood lead level at or below 40 μg/100 g of whole blood.

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(ii) *Temporary removal due to a final medical determination.* (A) The employer shall remove an employee from work having an exposure to lead at or above the action level on each occasion that a final medical determination results in a medical finding, determination, or opinion that the employee has a detected medical condition which places the employee at increased risk of material impairment to health from exposure to lead;

(B) For the purposes of this section, the phrase "final medical determination" shall mean the outcome of the multiple physician review mechanism or alternate medical determination mechanism used pursuant to the medical surveillance provisions of this section.

(C) Where a final medical determination results in any recommended special protective measures for an employee, or limitations on an employee's exposure to lead, the employer shall implement and act consistent with the recommendation.

(iii) *Return of the employee to former job status.* (A) The employer shall return an employee to his or her former job status:

(*1*) For an employee removed due to a blood lead level at or above 80 μg/100 g, when two consecutive blood sampling tests indicate that the employee's blood lead level is at or below 60 μg/100 g of whole blood;

(*2*) For an employee removed due to a blood lead level at or above 70 μg/100 g, when two consecutive blood sampling tests indicate that the employee's blood lead level is at or below 50 μg/100 g of whole blood;

(*3*) For an employee removed due to a blood lead level at or above 60 μg/100 g, or due to an average blood lead level at or above 50 μg/100 g, when two consecutive blood sampling tests indicate that the employee's blood lead level is at or below 40 μg/100 g of whole blood;

(*4*) For an employee removed due to a final medical determination, when a subsequent final medical determination results in a medical finding, determination, or opinion that the employee no longer has a detected medical condition which places the employee at increased risk of material impairment to health from exposure to lead; and

(B) For the purposes of this section, the requirement that an employer return an employee to his or her former job status is not intended to expand upon or restrict any rights an employee has or would have had, absent temporary medical removal, to a specific job classification or position under the terms of a collective bargaining agreement.

(iv) *Removal of other employee special protective measure or limitations.* The employer shall remove any limitations placed on an employee or end any special protective measures provided to an employee pursuant to a final medical determination when a subsequent final medical determination indicates that the limitations or special protective measures are no longer necessary.

(v) *Employer options pending a final medical determination.* Where the multiple physician review mechanism, or alternate medical determination mechanism used pursuant to the medical surveillance provisions of this section, has not yet resulted in a final medical determination with respect to an employee, the employer shall act as follows:

(A) *Removal.* The employer may remove the employee from exposure to lead, provide special protective measures to the employee, or place limitations upon the employee, consistent with the medical findings, determinations, or recommendations of any of the physicians who have reviewed the employee's health status.

(B) *Return.* The employer may return the employee to his or her former job status, end any special protective measures provided to the employee, and remove any limitations placed upon the employee, consistent with the medical findings, determinations, or recommendations of any of the physicians who have reviewed the employee's health status, with two exceptions. If—I11(*1*) the initial removal, special protection, or limitation of the employee resulted from a final medical determination which differed from the findings, determinations, or recommendations of the initial physician; (*2*) the employee has been on removal status for the proceeding eighteen months due to an elevated blood lead level, then the employer shall await a final medical determination.

(2) *Medical removal protection benefits.*

(i) *Provision of medical removal protection benefits.* The employer shall provide to an employee up to eighteen (18) months of medical removal protection benefits on each occasion that an employee is removed from exposure to lead or otherwise limited pursuant to this section.

(ii) *Definition of medical removal protection benefits.* For the purposes of this section, the requirement that an employer provide medical removal protection benefits means that the employer shall maintain the earnings, seniority and other employment rights and benefits of an employee as though the employee had not been removed from normal exposure to lead or otherwise limited.

(iii) *Follow-up medical surveillance during the period of employee removal or limitation.* During the period of time that an employee is removed from normal exposure to lead or otherwise limited, the employer may condition the provision of medical removal protection benefits upon the employee's participation in follow-up medical surveillance made available pursuant to this section.

(iv) *Workers' compensation claims.* If a removed employee files a claim for workers' compensation payments for a lead-related disability, then the employer shall continue to provide medical removal protection benefits pending disposition of the claim. To the extent that an award is made to the employee for earnings lost during the period of removal, the employer's medical removal protection obligation shall be reduced by such amount. The employer shall receive no credit for workers' compensation payments received by the employee for treatment related expenses.

(v) *Other credits.* The employer's obligation to provide medical removal protection benefits to a removed employee shall be reduced to the extent that the employee receives compensation for earnings lost during the period of removal either from a publicly or employer-funded compensation program, or from employment with another employer made possible by virtue of the employee's removal.

(vi) *Employees whose blood lead levels do no adequately decline within 18 months of removal.* The employer shall take the following measures with respect to any employee removed from exposure to lead due to an elevated blood lead level whose blood lead level has not declined within the past eighteen (18) months of removal so that the employee has been returned to his or her former job status:

(A) The employer shall make available to the employee a medical examination pursuant to this section to obtain a final medical determination with respect to the employee;

(B) The employer shall assure that the final medical determination obtained indicates whether or not the employee may be returned to his or her former job status, and if not, what steps should be taken to protect the employee's health;

(C) Where the final medical determination has not yet been obtained, or once obtained indicates that the employee may not yet be returned to his or her former job status, the employer shall continue to provide medical removal protection benefits to the employee until either the employee is returned to former job status, or a final medical determination is made that the employee is incapable of ever safely returning to his or her former job status.

(D) Where the employer acts pursuant to a final medical determination which permits the return of the employee to his or her former job status despite what would otherwise be an unacceptable blood lead level, later questions concerning removing the employee again shall be decided by a final medical determination. The employer need not automatically remove such an employee pursuant to the blood lead level removal criteria provided by this section.

(vii) *Voluntary Removal or Restriction of An Employee.* Where an employer, although not required by this section to do so, removes an employee from exposure to lead or otherwise places limitations on an employee due to the effects of lead exposure on the employee's medical condition, the employer shall provide medical removal protection benefits to the employee equal to that required by paragraph (k)(2)(i) of this section.

(l) *Employee information and training.*

(1) *Training program.*

(i) Each employer who has a workplace in which there is a potential exposure to airborne lead at any level shall inform employees of the content of Appendices A and B of this regulation.

(ii) The employer shall institute a training program for and assure the participation of all employees who are subject to exposure to lead at or above the action level or for whom the possibility of skin or eye irritation exists.

(iii) The employer shall provide initial training by 180 days from the effective date for those employees covered by paragraph (1)(1) (ii) on the standard's effective date and prior to the time of initial job assignment for those employees subsequently covered by this paragraph.

(iv) The training program shall be repeated at least annually for each employee.

(v) The employer shall assure that each employee is informed of the following:

(A) The content of this standard and its appendices;

(B) The specific nature of the operations which could result in exposure to lead above the action level;

(C) The purpose, proper selection, fitting, use, and limitations of respirators;

(D) The purpose and a description of the medical surveillance program, and the medical removal protection program including information concerning the adverse health effects associated with excessive exposure to lead (with particular attention to the adverse reproductive effects on both males and females);

(E) The engineering controls and work practices associated with the employee's job assignment;

(F) The contents of any compliance plan in effect; and

(G) Instructions to employees that chelating agents should not routinely be used to remove lead from their bodies and should not be used at all except under the direction of a licensed physician;

(2) *Access to information and training materials.*

(i) The employer shall make readily available to all affected employees a copy of this standard and its appendices.

(ii) The employer shall provide, upon request, all materials relating to the employee information and training program to the Assistant Secretary and the Director.

(iii) In addition to the information required by paragraph (1)(1)(v), the employer shall include as part of the training program, and shall distribute to employees, any materials pertaining to the Occupational Safety and Health Act, the regulations issued pursuant to that Act, and this lead standard, which are made available to the employer by the Assistant Secretary.

(m) *Signs.*

(1) *General.* (i) The employer may use signs required by other statutes, regulations or ordinances in addition to, or in combination with, signs required by this paragraph.

(ii) The employer shall assure that no statement appears on or near any sign required by this paragraph which contradicts or detracts from the meaning of the required sign.

(2) *Signs.* (i) The employer shall post the following warning signs in each work area where the PEL is exceeded:

WARNING

LEAD WORK AREA

POISON

NO SMOKING OR EATING

(ii) The employer shall assure that signs required by this paragraph are illuminated and cleaned as necessary so that the legend is readily visible.

(n) *Recordkeeping.*

(1) *Exposure monitoring.* (i) The employer shall establish and maintain an accurate record of all monitoring required in paragraph (d) of this section.

(ii) This record shall include:

(A) The date(s), number, duration, location and results of each of the samples taken, including a description of the sampling procedure used to determine representative employee exposure where applicable;

(B) A description of the sampling and analytical methods used and evidence of their accuracy;

(C) The type of respiratory protective devices worn, if any;

(D) Name, social security number, and job classification of the employee monitored and of all other employees whose exposure the measurement is intended to represent; and

(E) The environmental variables that could affect the measurement of employee exposure.

(iii) The employer shall maintain these monitoring records for at least 40 years or for the duration of employment plus 20 years, whichever is longer.

(2) *Medical surveillance.* (i) The employer shall establish and maintain an accurate record for each employee subject to medical surveillance as required by paragraph (j) of this section.

(ii) This record shall include:

(A) The name, social security number, and description of the duties of the employee;

(B) A copy of the physician's written opinions;

(C) Results of any airborne exposure monitoring done for that employee and the representative exposure levels supplied to the physician; and

(D) Any employee medical complaints related to exposure to lead.

(iii) The employer shall keep, or assure that the examining physician keeps, the following medical records:

(A) A copy of the medical examination results including medical and work history required under paragraph (j) of this section;

(B) A description of the laboratory procedures and a copy of any standards or guidelines used to interpret the test results or references to that information;

(C) A copy of the results of biological monitoring.

(iv) The employer shall maintain or assure that the physician maintains those medical records for at least 40 years, or for the duration of employment plus 20 years, whichever is longer.

(3) *Medical removals.* (i) The employer shall establish and maintain an accurate record for each employee removed from current exposure to lead pursuant to paragraph (k) of this section.

(ii) Each record shall include:

(A) The name and social security number of the employee;

(B) The date on each occasion that the employee was removed from current exposure to lead as well as the corresponding date on which the employee was returned to his or her former job status;

(C) A brief explanation of how each removal was or is being accomplished; and

(D) A statement with respect to each removal indicating whether or not the reason for the removal was an elevated blood lead level.

(iii) The employer shall maintain each medical removal record for at

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least the duration of an employee's employment.

(4) *Availability.* (i) The employer shall make available upon request all records required to be maintained by paragraph (n) of this section to the Assistant Secretary and the Director for examination and copying.

(ii) Upon request, the employer shall make environmental monitoring, biological monitoring, and medical removal records available to affected employees, former employees or their authorized employee representatives for inspection and copying.

(iii) Upon request, the employer shall make an employee's medical records required to be maintained by this section available to the affected employee or former employee or to a physician or other individual designated by such affected employee or former employees for examination and copying.

(5) *Transfer of records.* (i) Whenever the employer ceases to do business, the successor employer shall receive and retain all records required to be maintained by paragraph (n) of this section.

(ii) Whenever the employer ceases to do business and there is no successor employer to receive and retain the records required to be maintained by this section for the prescribed period, these records shall be transmitted to the Director.

(iii) At the expiration of the retention period for the records required to be maintained by this section, the employer shall notify the Director at least 3 months prior to the disposal of such records and shall transmit those records to the Director if requested within the period.

(o) *Observation of monitoring.* (1) *Employee observation.* The employer shall provide affected employees or their designated representatives an opportunity to observe any monitoring of employee exposure to lead conducted pursuant to paragraph (d) of this section.

(2) *Observation procedures.* (i) Whenever observation of the monitoring of employee exposure to lead requires entry into an area where the use of respirators, protective clothing or equipment is required, the employer shall provide the observer with and assure the use of such respirators, clothing and such equipment, and shall require the observer to comply with all other applicable safety and health procedures.

(ii) Without interfering with the monitoring, observers shall be entitled to:

(A) Receive an explanation of the measurement procedures;

(B) Observe all steps related to the monitoring of lead performed at the place of exposure; and

(C) Record the results obtained or receive copies of the results when returned by the laboratory.

(p) *Effective date.* This standard shall become effective February 1, 1979.

(q) *Appendices.* The information contained in the appendices to this section is not intended by itself, to create any additional obligations not otherwise imposed by this standard nor detract from any existing obligation.

(r) *Startup dates.* All obligations of this standard commence on the effective date except as follows:

(1) The initial determination under paragraph (d)(2) shall be made as soon as possible but no later than 30 days from the effective date.

(2) Initial monitoring under paragraph (d)(4) shall be completed as soon as possible but no later than 90 days from the effective date.

(3) Initial biological monitoring and medical examinations under paragraph (j) shall be completed as soon as possible but no later than 180 days from the effective date. Priority for biological monitoring and medical examinations shall be given to employees whom the employer believes to be at greatest risk from continued exposure.

(4) Initial training and education shall be completed as soon as possible but no later than 180 days from the effective date.

(5) Hygiene and lunchroom facilities under paragraph (i) shall be in operation as soon as possible but no later than 1 year from the effective year.

(6) Respiratory protection required by paragraph (f) shall be provided as soon as possible but no later than the following schedule:

(A) Employees whose 8-hour TWA exposure exceeds 200 $\mu g/m^3$—on the effective date.

(B) Employees whose 8-hour TWA exposure exceeds the PEL but is less than 200 $\mu g/m^3$—150 days from the effective date.

(C) Powered, air-purifying respirators provided under (f)(2)(ii)—210 days from the effective date.

(7) Written compliance plans required by paragraph (e)(3) shall be completed and available for inspection and copying as soon as possible but no later than the following schedule:

(A) Employers for whom compliance with the PEL or interim level is required within 1 year from the effective date—6 months from the effective date.

(B) Employers in secondary smelting and refining, lead storage battery manufacturing lead pigment manfacturing and nonferrous foundry industries—1 year from the effective date.

(C) Employers in primary smelting and refining industry—1 year from the effective date for the interim level; 5 years from the effective date for PEL.

(D) Plans for construction of hygiene facilities, if required—6 months from the effective date.

(8) The permissible exposure limit in paragraph (c) shall become effective 150 days from the effective date.

[FR Doc. 78-31911 Filed 11-13-78; 8:45 am]

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Federal Register

TUESDAY, NOVEMBER 14, 1978
PART V



DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

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HOLDING OF BLOCKED FUNDS IN INTEREST-BEARING ACCOUNTS

Proposed Rulemaking

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[4810-25-M]

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

[31 CFR Part 500]

FOREIGN ASSETS CONTROL REGULATIONS

Holding of Blocked Funds In Interest-Bearing Accounts

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: The Office of Foreign Assets Control is proposing to amend its Foreign Assets Control Regulations by the addition of §§ 500.205 and 500.611. The purpose of § 500.205 is to require any person holding certain types of blocked property for a designated country or national thereof to hold such property in an interest-bearing account in a domestic bank. The need for the amendment is that in many instances interest has not been credited on such property, which includes funds in demand accounts, even though in the case of demand deposits the depositor has not had the right of withdrawal or of payment on demand by reason of the blocking. The effect of the amendment is that most of these types of blocked funds henceforth will be held in interest-bearing accounts, the continued holding of blocked funds in Non-interest-bearing status being prohibited.

The purpose of § 500.611 is to require persons subject to § 500.205 to report on the nature of blocked accounts affected thereby. The need for the amendment is that such information is not now readily available, and the amendment will have the effect of improving the administration and control of blocked assets by providing such information in simple, efficient, and useful form.

In addition, the Office of Foreign Assets Control proposes to revoke § 500.561 of the Regulations which contains a statement of licensing policy regarding transfers of abandoned property under State law. The need for the amendment is that the transfer of blocked assets to State administration may interfere with the effective regulation of blocked property by the Office. The effect of the amendment is that blocked assets will remain in the custody of the present holders, subject to direct Federal regulation and without being subject to the application of State abandoned property laws.

DATE: Comments must be received on or before December 14, 1978.

ADDRESS: Send comments to the Acting Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, Room 401, 1331 G Street NW., Washington, D.C. 20220.

FOR FURTHER INFORMATION CONTACT:

Dennis M. O'Connell, Acting Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, 202-376-0236.

SUPPLEMENTARY INFORMATION: Since these amendments involve a foreign affairs function, the provisions of the Administrative Procedure Act (5 (U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date are inapplicable. Nonetheless, because of the technical nature of the regulations, comments are being requested. However, the comment period has been limited to 30 days.

Information available to the Treasury Department indicates that, in certain cases, blocked bank accounts may have already been transferred at the owner's request from demand to interest-bearing status. In other cases, the depository institution may have already made such a transfer on its own initiative, in view of the inequity of continuing to hold the funds in demand status and earning income on the funds while the depositor has not had the effective power to demand withdrawal. However, a substantial amount of funds blocked under the regulations is still being held by banks and other persons in Non-interest-bearing status.

To clarify the situation, in the interest of preserving the assets, paragraph (a) of § 500.205 requires the holding of certain property identified in paragraph (g) in interest-bearing accounts in domestic banks. Any further holding of such blocked funds without crediting interest thereon is prohibited.

Paragraph (b) requires any person not presently holding funds in compliance with paragraph (a) to cause such funds to be held in interest-bearing accounts in any domestic bank within 5 days of the effective date of this section.

Paragraph (c) requires that any person holding checks or drafts which are presently blocked shall collect on these instruments and credit the proceeds to a blocked, interest-bearing account. All transactions by any person incident to the negotiation, processing, presentment, collection, or payment of such instruments are authorized.

Paragraphs (d) and (e) specify certain exceptions to the basic transfer directive and prohibition.

Paragraph (d) defers the immediate effect of the interest requirement as to the amount of any setoff claimed against the owner by the holder of the funds. For example, if a corporation holds blocked on its own books a debt of $500,000 owed to a blocked national, but is owed $100,000 by that national, paragraphs (d) exempts $100,000 from the transfer directive. The $100,000 against which the holder has a sctoff, as well as the $400,000 that must be transferred, remains blocked. However, any use of this exemption is subject to a duty to pay interest from the effective date of the regulation, if the setoff is ultimately determined (by any competent judicial, quasi-judicial or administrative body) to be without merit.

Institutions holding blocked funds include broker/dealers holding cash balances in customers' securities accounts. Paragraph (e) exempts such balances from transfer to domestic banks, provided interest is credited to the accounts by the holders.

Paragraph (f) defines the "interest-bearing account" in which the blocked funds must be held under paragraph (a), (b), and (c) of the regulation; namely, a blocked account earning interest at the current applicable market rate in the domestic bank where the account is held. It provides that in no event may the interest paid on such accounts be less than the minimum rate payable on the shortest time deposit available in the bank.

Paragraph (g) indentifies the types of property subject to the requirements of paragraphs (a) and (b); namely, currency; bank deposits and bank accounts; undisputed and either liquidated or matured debts, claims and obligations; and the proceeds of the negotiation of checks and drafts under paragraph (c).

Implementation of § 500.205 will enhance the value of the funds without affecting the owner's interest therein. Under the provisions of section 5(b) of the Trading With the Enemy Act, holders of blocked property subject to this regulation shall not be liable for anything done or omitted in good faith in reliance thereon.

Comments are particularly invited with respect to technical aspects of § 500.205, such as types of blocked funds subject to the regulation and the definition of "interest-bearing account." Treasury will be evaluating the need for, and the appropriate scope of, exceptions to the regulation. In this regard, persons who would be affected by the regulation should use the opportunity of the comment period to bring to Treasury's attention information on situations possibly meriting an exception, including the amount of blocked funds involved.

With respect to paragraph (c) of § 500.205, most of the blocked checks and drafts subject to the provision may be stale-dated and present special problems of collection. Treasury's objective is to accomplish either collection of such instruments or the identification of underlying blocked obligations in drawee banks. Such blocked obligations would be subject to the requirements of § 500.205. Holders of blocked assets should utilize the comment period to advise Treasury of practical and legal problems involved in the collection of blocked checks and drafts.

It should be noted that the requirements of § 500.205 apply to blocked funds held by governmental agencies or instrumentalities, as well as funds by private holders. These funds would include, for example, funds held by State abandoned property custodians and funds which have been paid into courts (e.g., funds of decedents' estates). Affected agencies should utilize the comment period to bring to the attention of Treasury and problems which may result from the imposition of the interest requirement with respect to blocked funds presently held by them.

With regard to the proposed revocation of § 500.561, containing the statement of licensing policy on transfers of abandoned property under State law, Treasury has notified States having licenses that the licenses are suspended pending a review of whether the policy will be continued. Among other matters, Treasury's reconsideration of the policy is prompted by information that the condition stated in § 500.561 that blocked assets be separately indexed and maintained has not been complied with by State abandoned property administrations to whom licenses have been issued. It is believed that effective control of the assets by the Office of Foreign Assets Control will be more readily maintained if the assets remain in the custody of private institutions such as banks and brokers than if they are transferred to State agencies.

State departments of abandoned property should utilize the comment period to make recommendations regarding the issue of whether the past policy of issuing licenses for the transfer of blocked property under State abandoned property laws should continue. Among other matters, States may wish to consider suggestions as to ways in which the administration of blocked assets under State administration could better conform to the requirements of existing licensing policy.

Section 500.611 requires that any person holding property subject to the requirements of § 500.205, including property with respect to which an exemption is claimed, must submit a report on form TFR-611.

It is believed that this form will provide Treasury with very useful data on blocked assets. It will provide Treasury with a check on the implementation of, and compliance with, the requirement to transfer blocked funds into interest-bearing status. Information on the amounts of funds subject to the regulation and the rate of interest being paid thereon is essential for an accurate determiniation for planning purposes of the amount of blocked assets at any time.

With respect to assets subject to the regulation which were reported during a prior census of blocked property, the new report may supply important information regarding changes in the amount, type, and holder of the assets since the relevant census. Furthermore, the reports may bring to the attention of Treasury blocked accounts not previously reported in any manner.

In addition, in light of the exemptions offered by paragraphs (d) and (e) from the provisions of paragraphs (a) and (b), the reporting requirement will provide a simple means of reviewing situations in which an exemption is being claimed.

The proposed draft of the form is reproduced after the text of the proposed regulations. Comments are particularly invited with respect to the scope and wording of questions. Recommendations as to how accurate and useful information can be derived with the least burden on reporters are encouraged. An attempt will be made to produce a final version of the form that wil ease the burden on the holders of providing the information as much as is reasonably possible consistent with Treasury's need for the information.

Suggestions will be considered for alternate methods of reporting of the required data including submission of printed output by data processing equipment and/or submission of data in machine-readable form (e.g., magnetic tape). Suggestions for standardizing such a method of submission by reporters are encouraged.

1. 31 CFR Part 500 is amended by the addition of § 500.205 as follows:

§ 500.205 Holding of certain types of blocked property in interest-bearing accounts.

(a) Except as provided by paragraphs (d) and (e) below, or as authorized by the Secretary of the Treasury or his delegate by specific license, any person holding any property included in paragraph (g) is prohibited from holding, withholding, using, transferring, engaging in any transactions involving, or exercising any right, power, or privilege with respect to any such property, unless it is held in an interest-bearing account in a domestic bank.

(b) Any person presently holding property subject to the provisions of paragraph (a) of this section which, as of the effective date of this section, is not being held in accordance with the provisions of that paragraph, shall transfer such property to, or hold such property or cause such property to be held in an interest-bearing account in any domestic bank within 5 days of the effective date of this section.

(c) Any person holding any checks or drafts subject to the provisions of § 500.201 is authorized and directed to negotiate or present for collection or payment such instruments and credit the proceeds to interest-bearing accounts. All transactions by any person incident to the negotiation, processing, presentment, collection or payment of such instruments and deposit of the proceeds into an interest-bearing account are hereby authorized: *Provided*, That:

(1) The transaction does not represent, directly or indirectly, a transfer of the interest of a designated national to any othe country or person; and,

(2) The proceeds are held in a blocked account indicating the designated national who is the payee or owner of the instrument.

(d) Property subject to the provisions of paragraphs (a) or (b) of this section, held by a person claiming a setoff against such property, is exempt from the provisions of paragraphs (a), (b), and (c) to the extend of the setoff: *Provided, however*, That interest shall be due from the effective date of this section if it should ultimately be determined that the claim to a setoff is without merit.

(e) Property subject to the provisions of paragraphs (a) an (b) of this section, held in a customer's account by a registred broker/dealer in securities, may continue to be held for the customer by the broker/dealer provided interest is credited to the account on any balance not invested in securities in accordance with § 500.513. The interest paid on such accounts by a broker/dealer who does not elect to hold such property for a customer's account in a domestic bank shall not be less than the minimum rate payable on the shortest time deposit available in any domestic bank in the jurisdiction in which the broker/dealer holds the account.

(f) For purposes of this section, the term "interest-bearing account" means a blocked account earning interest at the current applicable market which shall not in any event be less than the minimum rate payable on the shortest time deposit available in the demostic bank where the account is held.

(g) The following types of property are subject to paragraphs (a) and (b) above:

(1) Any currency, bank deposits, and bank accounts subject to the provisions of § 500.201;

(2) Any property subject to the provisions of § 500.201 which consists, in whole or in part, of undisputed and

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either liquidated or matured debts, claims, obligations, or other evidence of indebtedness, to the extent of any amount that is undisputed and either liquidated or matured; and

(3) Any proceeds resulting from the payment of an obligation under paragraph (c) above.

2. Section 500.561 is revoked as follows:

§ 500.561 Transfers of abandoned property under State law.

[Revoked]

3. Section 500.611 is added to read as follows:

§ 500.611 Reports concerning property subject to § 500.205.

(a) Any person holding property to which § 500.205 applies, including property as to which an exemption under § 500.205 (d) or (e) is claimed, is hereby required to submit a report on form TFR-611 concerning such property, containing the following information:

(1) The name of the person for whom or for whose benefit the property is being held;

(2) The nature of the interest of the designated country or national thereof in the property so held;

(3) The original amount and type of such property in each case;

(4) The location and other identifying information including account numbers, of such account;

(5) The rate of interest being paid thereon at the time of the report, the date from which interest was credited, and the rates of interest during different periods if changes were made prior to the report;

(6) The current balance in the account;

(7) The exemption claimed under § 500.205, if any; and,

(8) The date of any previous report concerning the property filed with the Office of Foreign Assets Control under § 500.610 (1970 Census of Chinese Assets).

(b) Reports required by paragraph (a) of this section shall be prepared in duplicate. On or before ————, 1978, both copies shall be sent in a set to Office of Foreign Assets Control, Treasury Department, Washington, D.C. 20220. Form TFR-611, with reporting instructions, can be obtained from the Office of Foreign Assets Control or from the Federal Reserve Bank of New York, 33 Liberty Street, New York, N.Y. 10045.

(c) Reports filed in accordance with this section are regarded as containing commercial and financial information that is privileged and/or confidential.

(Sec. 5, 40 Stat. 415, as amended; 50 U.S.C. App. 5, E.O. 9193, 7 FR 5205, 3 CFR, 1938-1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943-1948 Comp., p. 748)

Dated: November 1, 1978.

STANLEY L. SOMMERFIELD,
Acting Director.

Approved:

RICHARD J. DAVIS,
Assistant Secretary.

[4810-25-C]

TREASURY DEPARTMENT

APPROVAL OF THE OFFICE OF MANAGEMENT & BUDGET NOT REQUIRED

TFR-611 - REPORT OF BLOCKED PROPERTY

FORM TFR-611--Any person holding property subject to Section 500.205 of the Foreign Assets Control Regulations, Section 515.205 of the Cuban Assets Control Regulations or Section 520.05 of the Foreign Funds Control Regulations, including property as to which an exemption is claimed under paragraphs (d) or (e) are required to submit a report concerning such property on FORM TFR-611. This report is to be submitted in duplicate to the Office of Foreign Assets Control, Treasury Department, Washington, D.C. 20220. Additional copies of FORM TFR-611 and Reporting instructions may be obtained from the Office of Foreign Assets Control or the Foreign Assets Control Division, Federal Reserve Bank of New York, 33 Liberty Street, New York, New York 10045. Reports filed in accordance with this Section are regarded as containing commercial & financial information which is privileged and/or confidential and will be held in confidence.

BEFORE PREPARING THIS REPORT READ CAREFULLY SECTION 500.611, 515.611 or 520.611 of the Foreign Assets Control Regulations, Cuban Assets Control Regulations or the Foreign Funds Control Regulations respectively.

(Typewrite or print)

PART A.-INFORMATION CONCERNING NATIONAL FOR WHOM OR FOR WHOSE BENEFIT PROPERTY IS HELD.

1 Name _____
(Last Name) (First Name) (Middle Name)

2. Any aliases or variant spellings of name _____

3 Last known address _____
(Street) (City) (Country)

4 Nationality (Check one)

People's Republic of China	[ ]	C	East Germany	[ ]	G
North Korea	[ ]	K	Czechoslovakia	[ ]	Z
Viet-Nam	[ ]	V	Latvia	[ ]	L
Cambodia	[ ]	A	Lithuania	[ ]	I
Cuba	[ ]	U	Estonia	[ ]	E

5 Type of Person

Individual	[ ]	I	Unincorporated Association	[ ]	U
Corporation	[ ]	C	Government or Agency thereof	[ ]	R
Partnership	[ ]	P	Other (describe)_____	[ ]	O

6. Nature of the Interest of the Designated Country or National thereof in the Blocked Property:

Owner	[ ]	O	Mortgagor	[ ]	M
Claimant	[ ]	C	Other (Explain)_____	[ ]	O
Lien Holder	[ ]	L	_____		

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PART B.-SCHEDULE OF PROPERTY--REPORT VALUE AS OF DATE ON WHICH PROPERTY WAS ORIGINALLY BLOCKED.

1.	TYPE [Currency, Check, Draft, Debt to National]	VALUE	DATE

2. Did you report this property under any of the following:

Report	Date Filed	
China-Form TFR-603 (1951)		[ ] A
China-Form TFR-610 (1970)		[ ] B
Cuba-Form TFR-607 (1964)		[ ] C
World War II Reports		[ ] D

PART C.-EXEMPTION

1. An exemption from the interest requirements is claimed under the following:

subparagraph (d)-setoff
subparagraph (e)-broker/dealer accounts
other (specify)_____

2. Basis for exemption_____

3. Value of funds exempted_____

PART D.-INFORMATION REGARDING RATE OF INTEREST

For each account on which interest is being paid provide the following information.

	ACCOUNT NUMBER	PRESENT RATE	DATE RATE BEGAN	PRIOR RATES*	DATES FROM / TO	CURRENT BALANCE (_____, 1978)
a)					/	
b)					/	
c)					/	
d)					/	

* If more than one rate change has occurred with respect to an account, provide additional information on a blank sheet and attach it to this form.

PART E.-NAME OF PERSON HOLDING PROPERTY

Name _____ Business_____
Address_____

PART F.-CERTIFICATION

I, _____certify that I am the _____ of the _____
(State relationship of signatory person making this report) (Name of partnership, association corporation or other organization) making this report, that I am authorized to make this certification. To the best of my knowledge and belief the statements set forth in this report, including any papers attached hereto or filed herewith, are true and accurate and all material facts in connection with said report have been set forth therein.

_____ (Date)

_____ (Signature)

_____ (Address)

[FR Doc. 78-31921 Filed 11-13-78; 8:45 am]

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[4810-25-M]

[31 CFR Part 515]

CUBAN ASSETS CONTROL REGULATIONS

Holding of Blocked Funds in Interest-Bearing Accounts

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: The Office of Foreign Assets Control is proposing to amend its Cuban Assets Control regulations by the addition of sections 515.205 and 515.611. The purpose of section 515.205 is to require any person holding certain types of blocked property for a designated country or national thereof to hold such property in an interest-bearing account in a domestic bank. The need for the amendment is that in many instances interest has not been credited on such property, which includes funds in demand accounts, even though in the case of demand deposits the depositor has not had the right of withdrawal or of payment on demand by reason of the blocking. The effect of the amendment is that most of these types of blocked funds henceforth will be held in interest-bearing accounts, the continued holding of blocked funds in non-interest-bearing status being prohibited.

The purpose of section 515.611 is to require persons subject to section 515.205 to report on the nature of blocked accounts affected thereby. The need for the amendment is that such information is not now readily available, and the amendment will have the effect of improving the administration and control of blocked assets by providing such information in simple, efficient, and useful form.

In addition, the Office of Foreign Assets Control proposes to revoke section 515.554 of the regulations which contains a statement of licensing policy regarding transfers of abandoned property under State law. The need for the amendment is that the transfer of blocked assets to state administration may interfere with the effective regulation of blocked property by the Office. The effect of the amendment is that blocked assets will remain in the custody of the present holders, subject to direct Federal regulation and without being subject to the application of State abandoned property laws.

DATE: Comments must be received on or before December 14, 1978.

ADDRESS: Send comments to the Acting Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, Room 401, 1331 G Street NW., Washington, D.C. 20220.

FOR FURTHER INFORMATION CONTACT:

Dennis M. O'Connell, Acting Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, 202-376-0236.

SUPPLEMENTARY INFORMATION: Since these amendments involve a foreign affairs function, the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date are inapplicable. Nonetheless, because of the technical nature of the regulations, comments are being requested. However, the comment period has been limited to 30 days.

Information available to the Treasury Department indicates that, in certain cases, blocked bank accounts may have already been transferred at the owner's request from demand to interest-bearing status. In other cases, the depository institution may have already made such a transfer on its own initiative, in view of the inequity of continuing to hold the funds in demand status and earning income of the funds while the depositor has not had the effective power to demand withdrawal. However, a substantial amount of funds blocked under the Regulations is still being held by banks and other persons in non-interest-bearing status.

To clarify the situation, in the interest of preserving the assets, paragraph (a) of § 515.205 requires the holding of certain property identified in paragraph (g) in interest-bearing accounts in domestic banks. Any further holding of such blocked funds without crediting interest thereon is prohibited.

Paragraph (b) requires any person not presently holding funds in compliance with paragraph (a) to cause such funds to be held in interest-bearing accounts in any domestic bank within 5 days of the effective date of this section.

Paragraph (c) requires that any person holding checks or drafts which are presently blocked shall collect on these intruments and credit the proceeds to a blocked, interest-bearing account. All transactions by any person incident to the negotiation, processing, presentment, collection or payment of such instruments are authorized.

Paragraphs (d) and (e) specify certain exceptions to the basic transfer directive and prohibition.

Paragraph (d) defers the immediate effect of the interest requirement as to the amount of any set-off claimed against the owner by the holder of the funds. For example, if a corporation holds blocked on its own books a debt of $500,000 owed to a blocked national, but is owed $100,000 by that national, paragraph (d) exempts $100,000 from the transfer directive. The $100,000 against which the holder has a set-off, as well as the $400,000 that must be transferred, remains blocked. However, any use of this exemption is subject to a duty to pay interest from the effective date of the regulation, if the set-off is ultimately determined (by any competent judicial, quasi-judicial or administrative body) to be without merit.

Institutions holding blocked funds include broker/dealers holding cash balances in customers' securities accounts. Paragraph (e) exempts such balances from transfer to domestic banks, provided interest is credited to the accounts by the holders.

Paragraph (f) defines the "interest-bearing account" in which the blocked funds must be held under paragraphs (a), (b) and (c) of the regulation; namely, a blocked account earning interest at the current applicable market rate in the domestic bank where the account is held. It provides that in no event may the interest paid on such accounts be less than the minimum rate payable on the shortest time deposit available in the bank.

Paragraph (g) identifies the types of property subject to the requirements of paragraphs (a) and (b); namely, currency; bank deposits and bank accounts; undisputed and either liquidated or matured debts, claims and obligations; and the proceeds of the negotiation of checks and drafts under paragraph (c).

Implementation of § 515.205 will enhance the value of the funds without affecting the owner's interest therein. Under the provisions of section 5(b) of the Trading With the Enemy Act, holders of blocked property subject to this regulation shall not be liable for anything done or omitted in good faith in reliance thereon.

Comments are particularly invited with respect to technical aspects of § 515.205, such as types of blocked funds subject to the regulation and the definition of "interest-bearing account." Treasury will be evaluating the need for, and the appropriate scope of, exceptions to the regulation. In this regard, persons who would be affected by the regulation should use the opportunity of the comment period to bring to Treasury's attention information on situations possibly meriting an exception, including the amounts of blocked funds involved.

With respect to Paragraph (c) of § 515.205, most of the blocked checks and drafts subject to the provision may be stale-dated and present special problems of collection. Treasury's objective is to accomplish either collection of such instruments or the identi-

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fication of underlying blocked obligations in drawee banks. Such blocked obligations would be subject to the requirements of section 515.205. Holders of blocked assets should utilize the comment period to advise Treasury of practical and legal problems involved in the collection of blocked checks and drafts.

It should be noted that the requirements of section 515.205 apply to blocked funds held by governmental agencies or instrumentalities, as well as funds by private holders. These funds would include, for example, funds held by state abandoned property custodians and funds which have been paid into courts (e.g., funds of decedents' estates). Affected agencies should utilize the comment period to bring to the attention of Treasury any problems which may result from the imposition of the interest requirement with respect to blocked funds presently held by them.

With regard to the proposed revocation of section 515.554, containing the statement of licensing policy on transfers of abandoned property under State law, Treasury has notified States having licenses that the licenses are suspended pending a review of whether the policy will be continued. Among other matters, Treasury's reconsideration of the policy is prompted by information that the condition stated in § 515.544 that blocked assets be separately indexed and maintained has not been complied with by State abandoned property administrations to whom licenses have been issued. It is believed that effective control of the assets by the Office of Foreign Assets Control will be more readily maintained if the assets remain in the custody of private institutions such as banks and brokers than if they are transferred to State agencies.

State departments of abandoned property should utilize the comment period to make recommendations regarding the issue of whether the past policy of issuing licenses for the transfer of blocked property under state abandoned property laws should continue. Among other matters, States may wish to consider suggestions as to ways in which the administration of blocked assets under State administration could better conform to the requirements of existing licensing policy.

Section 515.611 requires that any person holding property subject to the requirements of § 515.205, including property with respect to which an exemption is claimed, must submit a report on form TFR-611.

It is believed that this form will provide Treasury with very useful data on blocked assets. It will provide Treasury with a check on the implementation of, and compliance with, the requirement to transfer blocked funds into interest-bearing status. Information on the amounts of funds subject to the regulation and the rate of interest being paid thereon is essential for an accurate determination for planning purposes of the amount of blocked assets at any time.

With respect to assets subject to the regulation which were reported during a prior census of blocked property, the new report may supply important information regarding changes in the amount, type, and holder of the assets since the relevant census. Furthermore, the reports may bring to the attention of Treasury blocked accounts not previously reported in any manner.

In addition, in light of the exemptions offered by paragraphs (d) and (e) from the provisions of paragraphs (a) and (b), the reporting requirement will provide a simple means of reviewing situations in which an exemption is being claimed.

The proposed draft of the form is reproduced after the text of the proposed amendment to the Foreign Assets Control Regulations. Comments are particularly invited with respect to the scope and wording of questions. Recommendations as to how accurate and useful information can be derived with the least burden on reporters are encouraged. An attempt will be made to produce a final version of the form that will ease the burden on the holders of providing the information as much as is reasonably possible consistent with Treasury's need for the information.

Suggestions will be considered for alternate methods of reporting of the required date including submission of printed output by data processing equipment and/or submission of data in machine-readable form (e.g., magnetic tape). Suggestions for standardizing such a method of submission by reporters are encouraged.

1. 31 CFR Part 515 is amended by the addition of section 515.205 as follows:

§ 515.205 Holding of certain types of blocked property in interest-bearing accounts.

(a) Except as provided by paragraphs (d) and (e) below, or as authorized by the Secretary of the Treasury of his delegate by specific license, any person holding any property included in paragraph (g) is prohibited from holding, withholding, using, transferring, engaging in any transactions involving, or exercising any right, power, privilege with respect to any such property, unless it is held in an interest-bearing account in a domestic bank.

(b) Any person presently holding property subject to the provisions of paragraph (a) of this section which, as of the effective date of this section, is not being held in accordance with the provisions of that paragraph, shall transfer such property to, or hold such property or cause such property to be held in, an interest-bearing account in any domestic bank within 5 days of the effective date of this section.

(c) Any person holding any checks or drafts subject to the provisions of section 515.201 is authorized and directed to negotiate or present for collection or payment such instruments and credit the proceeds to interest-bearing accounts. All transactions by any person incident to the negotiations, processing, presentment, collection or payment of such instruments and deposit of the proceeds into an interest-bearing account are hereby authorized, provided that:

(1) The transaction does not represent, directly or indirectly, a transfer of the interest of a designated national to any other country or person; and,

(2) The proceeds are held in a blocked account indicating the designated national who is the payee or owner of the instrument.

(d) Property subject ot the provisions of paragraphs (a) or (b) of this section, held by a person claiming a set-off against such property, is exempt from the provisions of paragraphs (a), (b) and (c) to the extent of the set-off, provided however, that interest shall be due from the effective date of this section if it should ultimately be determined that the claim to a set-off is without merit.

(e) Property subject to the provisions of paragraphs (a) and (b) of this setion, held in a customer's account by a registered broker/dealer in securities, may continue to be held for the customer by the broker/dealer provided interest is credited to the account on any balance not invested in securities in accordance with § 515.513. The interest paid on such accounts by a broker/dealer who does not elect to hold such property for a customer's account in a domestic bank shall not be less than the minimum rate payable on the shortest time deposit available in any domestic bank in the jurisdiction in which the broker/dealer holds the account.

(f) For purposes of this section, the term "interest-bearing account" means a blocked account earning interest at the current applicable market rate which shall not in any event be less than the minimum rate payable on the shortest time deposit available in th domestic bank where the account is held.

(g) The following types of property are subject to paragraphs (a) and (b) above:

(1) Any currency, bank deposits and bank accounts subject to the provisions of § 515.201;

(2) Any property subject to the provisions of § 515.201 which consists, in whole or in part, of undisputed and either liquidated or matured debts, claims, obligations or other evidences of indebtedness, to the extent of any amount that is undisputed and either liquidated or matured; and,

(3) Any proceeds resulting from the payment of an obligation under paragraph (c) above.

2. Section 515.554 is revoked as follows:

§ 515.554 Transfers of abandoned property under state law.

[Revoked]

3. Section 515.611 is added to read as follows:

§ 515.611 Reports concerning property subject to section 515.205.

(a) Any person holding property to which § 515.205 applies, including property as to which an exemption under § 515.205 (d) or (e) is claimed, is hereby required to submit a report on form TFR-611 concerning such property, containing the following information:

(1) The name of the person for whom or for whose benefit the property is being held;

(2) The nature of the interest of the designated country or national thereof in the property so held;

(3) The original amount and type of such property in each case;

(4) The location and other identifying information, including account numbers, of such accounts;

(5) The rate of interest being paid thereon at the time of the report, the date from which interest was credited, and the rates of interest during different periods if changes were made prior to the report;

(6) The current balance in the account;

(7) The exemption claimed under section 515.205, if any; and,

(8) The date of any previous report concerning the property filed with the Office of Foreign Assets Control under 31 CFR §§ 515.607 and 515.608 (1964) (1963 Census of Cuban Assets).

(b) Reports required by paragraph (a) of this section shall be prepared in duplicate. On or before, both copies shall be sent in a set to Office of Foreign Assets Control, Treasury Department, Washington, D.C. 20220. Form TFR-611, with reporting instructions, can be obtained from the Office of Foreign Assets Control or from the Federal Reserve Bank of New York, 33 Liberty Street, New York, N.Y. 10045.

(c) Reports filed in accordance with this section are regarded as containing commercial and financial information that is privileged and/or confidential.

(Sec. 5, 40 Stat. 415, as amended; 50 U.S.C. App. 5, sec. 620(a), 75 Stat. 445; 22 U.S.C. 2370(a); Proc. 3447, 27 FR 1085, 3 CFR, 1959-1963 Comp., E.O. 9193, 7 FR 5205, 3 CFR, Comp. Supp., p. 1174, E.O. 9989, 13 FR 4891, 3 CFR, 1943-1948 Comp., p. 748)

Dated: November 1, 1978.

STANLEY L. SOMMERFIELD,
Acting Director.

Approved:

RICHARD J. DAVIS,
Assistant Secretary.

[FR Doc. 78-31922 Filed 11-13-78; 8:45 am]

[4810-25-M]

[31 CFR Part 520]

FOREIGN FUNDS CONTROL REGULATIONS

Holding of Blocked Funds in Interest-Bearing Accounts

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: The Office of Foreign Assets Control is proposing to amend its Foreign Funds Control Regulations by the addition of §§ 520.05 and 520.611. The purpose of § 520.05 is to require any person holding certain types of blocked property for a designated country or national thereof whose property remains blocked under § 520.101 to hold such property in an interest-bearing account in a domestic bank. The need for the amendment is that in many instances interest has not been credited on such property, which includes funds in demand accounts, even though in the case of demand deposits the depositor has not had the right of withdrawal or of payment on demand by reason of the blocking. The effect of the amendment is that most of these types of blocked funds henceforth will be held in interest-bearing accounts, the continued holding of blocked funds in non-interest-bearing status being prohibited.

The purpose of § 520.611 is to require persons subject to § 520.05 to report on the nature of blocked accounts affected thereby. The need for the amendment is that such information is not now readily available, and the amendment will have the effect of improving the administration and control of blocked assets by providing such information in simple, efficient, and useful form.

DATE: Comments must be received on or before December 14, 1978.

ADDRESS: Send comments to the Acting Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, Room 401, 1331 G Street NW., Washington, D.C. 20220.

FOR FURTHER INFORMATION CONTACT:

Dennis M. O'Connell, Acting Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, 202-376-0236.

SUPPLEMENTARY INFORMATION: Since these amendments involve a foreign affairs function, the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rule making, the opportunity for public participation, and a delay in effective date are inapplicable. Nonetheless, because of the technical nature of the regulations, comments are being requested. However, the comment period has been limited to 30 days.

Information available to the Treasury Department indicates that, in certain cases, blocked bank accounts may have already been transferred at the owner's request from demand to interest-bearing status. In other cases, the depository institution may have already made such a transfer on its own initiative, in view of the inequity of continuing to hold the funds in demand status and earning income on the funds while the depositor has not had the effective power to demand withdrawal. However, a substantial amount of funds blocked under the regulations is still being held by banks and other persons in non-interest-bearing status.

To clarify the situation, in the interest of preserving the assets, paragraph (a) of section 520.05 requires the holding of certain property identified in paragraph (g) in interest-bearing accounts in domestic banks. Any further holding of such blocked funds without crediting interest thereon is prohibited.

Paragraph (b) requires any person not presently holding funds in compliance with paragraph (a) to cause such funds to be held in interest-bearing accounts in any domestic bank within 5 days of the effective date of this section.

Paragraph (c) requires that any person holding checks or drafts which are presently blocked shall collect on these instruments and credit the proceeds to a blocked, interest-bearing account. All transactions by any person incident to the negotiation, processing, presentment, collection or payment of such instruments are authorized.

Paragraphs (d) and (e) specify certain exceptions to the basic transfer directive and prohibition.

Paragraph (d) defers the immediate effect of the interest requirement as to the amount of any set-off claimed against the owner by the holder of the funds. For example, if a corporation

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holds blocked on its own books a debt of $500,000 owed to a blocked national, but is owed $100,000 by that national, paragraph (d) exempts $100,000 from the transfer directive. The $100,000 against which the holder has a set-off, as well as the $400,000 that must be transferred, remains blocked. However, any use of this exemption is subject to a duty to pay interest from the effective date of the regulation, if the set-off is ultimately determined (by any competent judicial, quasi-judicial or administrative body) to be without merit.

Institutions holding blocked funds include broker/dealers holding cash balances in customers' securities accounts. Paragraph (e) exempts such balances from transfer to domestic banks, provided interest is credited to the accounts by the holders.

Paragraph (f) defines the "interest-bearing account" in which the blocked funds must be held under paragraphs (a), (b) and (c) of the regulation; namely, a blocked account earning interest at the current applicable market rate in the domestic bank where the account is held. It provides that in no event may the interest paid on such accounts be less than the minimum rate payable on the shortest time deposit available in the bank.

Paragraph (g) identifies the types of property subject to the requirements of paragraphs (a) and (b); namely, currency; bank deposits and bank accounts; undisputed and either liquidated or matured debts, claims and obligations; and the proceeds of the negotiation of checks and drafts under paragraph (c).

Implementation of section 520.05 will enhance the value of the funds without affecting the owner's interest herein. Under the provisions of section 5(b) of the Trading With The Enemy Act, holders of blocked property subject to this regulation shall not be liable for anything done or omitted in good faith in reliance thereon.

Comments are particularly invited with respect to technical aspects of § 520.05 of the regulation such as types of blocked funds subject to the regulation and the definition of "interest-bearing account." Treasury will be evaluating the need for, and the appropriate scope of, exceptions to the regulation. In this regard, persons who would be affected by the regulation should use the opportunity of the comment period to bring to Treasury's attention information on situations possibly meriting an exception, including the amounts of blocked funds involved.

With respect to paragraph (c) of § 520.05, most of the blocked checks and drafts subject to the provision may be stale-dated and present special problems of collection. Treasury's objective is to accomplish either collection of such instruments or the identification of underlying blocked obligations in drawee banks. Such blocked obligations would be subject to the requirements of § 520.05. Holders of blocked assets should utilize the comment period to advise Treasury of practical and legal problems involved in the collection of blocked checks and drafts.

It should be noted that the requirements of section 520.05 apply to blocked funds held by governmental agencies or instrumentalities, as well as funds held by private holders. These funds would include, for example, funds held by State abandoned property custodians and funds which have been paid into courts (e.g., funds of decedents' estates). Affected agencies should utilize the comment period to bring to the attention of Treasury any problems which may result from the imposition of the interest requirement with respect to blocked funds presently held by them.

State departments of abandoned property should utilize the comment period to make recommendations regarding the issue of whether the past policy of issuing licenses for the transfer of blocked property under State abandoned property laws should continue. Among other matters, States may wish to consider suggestions as to ways in which the administration of blocked assets under State administration could better conform to the requirements of existing licensing policy.

Section 520.611 requires that any person holding property subject to the requirements of section 520.05, including property with respect to which an exemption is claimed, must submit a report on form TFR-611.

It is believed that this form will provide Treasury with very useful data on blocked assets. It will provide Treasury with a check on the implementation of, and compliance with, the requirement to transfer blocked funds into interest-bearing status. Information on the amounts of funds subject to the regulation and the rate of interest being paid thereon is essential for an accurate determination for planning purposes of the amount of blocked assets at any time.

With respect to assets subject to the regulation which were reported during a prior census of blocked property, the new report may supply important information regarding changes in the amount, type, and holder of the assets since the relevant census. Furthermore, the reports may bring to the attention of the Treasury blocked accounts not previously reported in any manner.

In addition, in light of the exemptions offered by paragraphs (d) and (e) from the provisions of paragraphs (a) and (b), the reporting requirement will provide a simple means of reviewing situations in which an exemption is being claimed.

The proposed draft of the form is reproduced after the text of the proposed amendment to the Foreign Assets Control Regulations. Comments are particularly invited with respect to the scope and wording of questions. Recommendations as to how accurate and useful information can be derived with the least burden on reporters are encouraged. An attempt will be made to produce a final version of the form that will ease the burden on the holders of providing the information as much as is reasonably possible consistent with Treasury's need for the information.

Suggestions will be considered for alternate methods of reporting of the required data including submission of printed output by data processing equipment and/or submission of data in machine-readable form (e.g., magnetic tape). Suggestions for standardizing such a method of submission by reporters are encouraged.

1. 31 CFR Part 520 is amended by the addition of section 520.05 as follows:

§ 520.05 Holding of certain types of blocked property in interest-bearing accounts.

(a) Except as provided by paragraphs (d) and (e) below, or as authorized by the Secretary of the Treasury or his delegate by specific license, any person holding any property included in paragraph (g) is prohibited from holding, withholding, using, transferring, engaging in any transactions involving, or exercising any right, power, privilege with respect to any such property, unless it is held in an interesting-bearing account in a domestic bank.

(b) Any person presently holding property subject to the provisions of paragraph (a) of this section, which as of the effective date of this section, is not being held in accordance with the provisions of that paragraph, shall transfer such property to, or hold such property or cause such property to be held in, an interest-bearing account in any domestic bank with 5 days of the effective date of this section.

(c) Any person holding any checks or drafts which remain blocked under the provisions of § 520.101(a) (1)-(5) is authorized and directed to negotiate or present for collection or payment such instruments and credit the proceeds to interest-bearing accounts. All transactions by any person incident to the negotiation, processing, presentment, collection or payment of such instruments and deposit of the proceeds into an interest-bearing account are hereby authorized, *Provided that:*

(1) The transaction does not represent, directly or indirectly, a transfer of the interest of a designated national to any other country or person; and,

(2) The proceeds are held in a blocked account indicating the designated national who is the payee or owner of the instrument.

(d) Property subject to the provisions of paragraphs (a) or (b) of this section, held by a person claiming a set-off against such property, is exempt from the provisions of paragraphs (a), (b), and (c) to the extent of the set-off, *Provided however,* That interest shall be due from the effective date of this section if it should ultimately be determined that the claim to a set-off is without merit.

(e) Property subject to the provisions of paragraphs (a) and (b) of this section, held in a customer's account by a registered broker/dealer in securities, may continue to be held for the customer by the broker/dealer provided interest is credited to the account on any balance not invested in securities in accordance with section 520.4. The interest paid on such accounts by a broker/dealer who does not elect to hold such property for a customer's account in a domestic bank shall not be less than the minimum rate payable on the shortest time deposit available in any domestic bank in the jurisdiction in which the broker/dealer holds the account.

(f) For purposes of this section, the term "interest-bearing account" means a blocked account earning interest at the current applicable market rate which shall not in any event be less than the minimum rate payable on the shortest time deposit available in the domestic bank where the account is held.

(g) The following types of property are subject to paragraphs (a) and (b) above:

(1) Any currency, bank deposits and bank accounts which remain blocked under the provisions of § 520.101(a) (1)-(5);

(2) Any property which remains blocked under the provisions of § 520.101(a) (1)-(5) and which consists, in whole or in part, of undisputed and either liquidated or matured debts, claims, obligations or other evidences of indebtedness, to the extent of any amount that is undisputed and either liquidated or matured; and,

(3) Any proceeds resulting from the payment of an obligation under subsection (c) above.

2. Section 520.611 is added to read as follows:

§ 520.611 Reports concerning property subject to § 520.05.

(a) Any person holding property to which section 520.05 applies, including property as to which an exemption under § 520.05 (d) or (e) is claimed, is hereby required to submit a report on form TFR-611 concerning such property, containing the following information:

(1) The name of the person for whom or for whose benefit the property is being held;

(2) The nature of the interest of the designated country or national thereof in the property so held;

(3) The original amount and type of such property in each case;

(4) The location and other identifying information, including account numbers, of such accounts;

(5) The rate of interest being paid thereon at the time of the report, the date from which interest was credited, and the rates of interest during different periods if changes were made prior to the report;

(6) The current balance in the account;

(7) The exemption claimed under section 520.05, if any; and,

(8) The date of any previous report concerning the property filed with the Treasury Department or the Office of Alien Property, Department of Justice.

(b) Reports required by paragraph (a) of this section shall be prepared in duplicate. On or before ————, both copies shall be sent in a set to Office of Foreign Assets Control, Treasury Department, Washington, D.C. 20220. Form TFR-611, with reporting instructions, can be obtained from the Office of Foreign Assets Control or from the Federal Reserve Bank of New York, 33 Liberty Street, New York, N.Y. 10045.

(c) Reports filed in accordance with this section are regarded as containing commercial and financial information that is privileged and/or confidential.

(Sec. 5, 40 Stat. 415, as amended; 50 U.S.C. App. 5; E.O. 8389, Apr. 10, 1940, 5 FR 1400, as amended by E.O. 8785, June 14, 1941, 6 FR 2897, E.O. 8832, July 26, 1941, 6 FR 3715, E.O. 8963, Dec. 9, 1941, 6 FR 6348, E.O. 8998, Dec. 26, 1941, 6 FR 6785, E.O. 9193, July 6, 1942, 7 FR 5205; 3 CFR, 1943 Cum. Supp.; E.O. 10348, Apr. 26, 1952, 17 FR 3769, 30 FR, 1949-1953 Comp., p. 871; E.O. 11281, May 13, 1966, 31 FR 7215, 3 CFR, 1966 Supp.)

Dated: November 1, 1978.

STANLEY L. SOMMERFIELD,
Acting Director.

Approved:

RICHARD J. DAVIS,
Assistant Secretary.

[FR Doc. 78-31920 Filed 11-13-78; 8:45 am]

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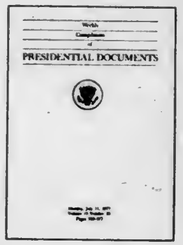
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(The items in this list were editorially compiled as an aid to FEDERAL REGISTER users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.)

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- Charter operators; modification of bond requirements; comments by 11-20-78 ..... 40880; 9-13-78

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National Oceanic and Atmospheric Administration—
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- Ambient air monitoring reference and equivalent methods for lead; comments by 11-20-78 ..... 46272; 10-5-78
- Control of air pollution from aircraft and aircraft engines; comments extended to 11-20-78 [originally published at 43 FR 12615, 3-24-78] 36978; 8-21-78
- Electric utility steam generating units, standards of performance for new stationary sources; comments by 11-20-78. 42154; 9-19-78
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- Proposed tolerance for the pesticide chemical O,O-Dimethyl S-[(4-oxo-1,2,3-Benzotriazin-3(4H)-yl)Methyl]Phosphorodithioate, comments by11-24-78 49547; 10-24-78

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- Mississippi River System; designation of second frequency for bridge-to-bridge operations in southern Louisiana section; reply comments by 11-20-78 . 45901; 10-4-78
- National spot sales; network representation of TV stations; request of Spanish National Network; comments by 11-20-78. 45895; 10-4-78
- Origination of solicitations for contributions by VHF translators and of emergency messages by TV and FM translators; reply 36981; comments by 11-22-78 .... 36981; 8-21-78
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- Licensing of production and utilization facilities, emergency plans for production; comments by 11-24-78 ..... 47978; 10-18-78

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- Resales of securities; safe harbors; comments by 11-20-78 ..... 43726; 9-27-78

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- Disaster loans, procedure for requesting disaster declarations and time limit for request; comments by 11-20-78 ..... 42016; 9-19-78

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NUCLEAR REGULATORY COMMISSION

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Office of the Secretary—
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Internal Revenue Service—
Income tax; income of foreign governments, Washington, D.C. 1-23-79 ..... 51648; 11-6-78

List of Public Laws

This is a continuing listing of public bills that have become law, the text of which is not published in the FEDERAL REGISTER. Copies of the laws in individual pamphlet form (referred to as "slip laws") may be obtained from the U.S. Government Printing Office.

[Last Listing: Nov. 14, 1978]

S. 791 ..... Pub. L. 95-625
"National Parks and Recreation Act of 1978." (Nov. 10, 1978; 92 Stat. 3467). Price: $2.10.

S. 2474 ..... Pub. L. 95-626
"Health Services and Centers Amendments of 1978." (Nov. 10, 1978; 92 Stat. 3551). Price: $1.80

S. 3085 ..... Pub. L. 95-627
"Child Nutrition Amendments of 1978." (Nov. 10, 1978; 92 Stat. 3603). Price: $1.10.

H.R. 7320 ..... Pub. L. 95-628
To revise miscellaneous timing requirements of the revenue laws, and for other purposes. (Nov. 10, 1978; 92 Stat. 3627). Price: $4.70.

S. 1829 ..... Pub. L. 95-629
To amend the Pennsylvania Avenue Development Corporation Act of 1972; to provide for the establishment of the San Antonio Missions National Historical Park; and for other purposes. (Nov. 10, 1978; 92 Stat. 3635). Price: $.70.

H.R. 14279 ..... Pub. L. 95-630
"Financial Institutions Regulatory and Interest Rate Control Act of 1978." (Nov. 10, 1978; 92 Stat. 3641). Price: $2.30.

S. 2796 ..... Pub. L. 95-631
To amend the Consumer Product Safety Act to extend the authorization of appropriations, and for other purposes. (Nov. 10, 1978; 92 Stat. 3742). Price: $.80.

S. 2899 ..... Pub. L. 95-632
"Endangered Species Act Amendments of 1978." (Nov. 10, 1978; 92 Stat. 3751). Price: $1.00.

S. 2399 ..... Pub. L. 95-633
"Psychotropic Substances Act of 1978." (Nov. 10, 1978; 92 Stat. 3768). Price: $.80.

Documents Relating to Federal Grants Programs

This is a list of documents relating to Federal grants programs which were published in the FEDERAL REGISTER during the previous week.

Rules Going Into Effect:

CSA—Grantee financial management; non-Federal share requirements for certain economic opportunity programs; effective 11-2-78 and 12-11-78... 52438; 11-9-78
HEW/HDSO—Juvenile delinquency programs and activities; deletion of grant-making provisions; effective 11-7-78 ..... 51785; 11-7-78
LSC—Allocation of resources by recipients; effective 12-7-78 ..... 51789; 11-7-78

Deadlines for Comments on Proposed Rules:

HEW/OE—National direct student loan, College Work-Study, and Supplemental Educational Opportunity Grant programs; comments by 12-7-78 ... 52128; 11-8-78

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HEW/ADAMHA—National Advisory Mental Health Council, Rockville, Md. (open), 12-4 and 12-5-78 ..... 51726; 11-6-78
NFAH—Expansion Arts Panel, Washington, D.C. (partially open), 11-28 through 11-30-78 ..... 52303; 11-9-78
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rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

[7590-01-M]

Title 10—Energy

CHAPTER I—NUCLEAR REGULATORY COMMISSION

PART 51—LICENSING AND REGULATORY POLICY AND PROCEDURES FOR ENVIRONMENTAL PROTECTION

AGENCY: Nuclear Regulatory Commission.

ACTION: Extension of the interim fuel cycle rule; conforming amendment.

SUMMARY: The Commission promulgated on March 14, 1977, an interim rule identifying the environmental impact values for the uranium fuel cycle which are to be included in environmental reports and environmental impact statements for individual light water nuclear power reactors. The interim rule was made effective for 18 months with the possibility of extension for good cause. The Commission found good cause to extend the effectiveness of the interim rule and by notice published in the FEDERAL REGISTER on September 18, 1978, extended the period of effectiveness of the interim rule through March 14, 1978. The amendment set forth below makes a conforming amendment to the Commission's regulation "Licensing and Regulatory Policy and Procedures for Environmental Protection" to change the effectiveness date of the interim fuel cycle rule from September 14, 1978, through March 14, 1979.

EFFECTIVE DATE: November 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Gerald L. Hutton, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone 301-492-7086.

SUPPLEMENTARY INFORMATION: The Commission promulgated on March 14, 1977 (42 FR 13803) an interim rule identifying the environmental impact values for the uranium fuel cycle which are to be included in environmental reports and environmental impact statements for individual light water nuclear power reactors. The interim rule was made effective for 18 months with the possibility of extension for good cause. The Commission found good cause to extend the effectiveness of the interim rule and by notice published in the FEDERAL REGISTER on September 18, 1978 (43 FR 41373) extended the period of effectiveness of the interim rule through March 14, 1979. The amendment set forth below makes a conforming amendment to 10 CFR Part 51 by changing the date in the last sentence of § 51.20(e) from "September 14, 1978" to "March 14, 1979".

Because this amendment relates solely to minor matters, good cause exists for omitting notice of proposed rulemaking, and public procedure thereon as unnecessary. Since the amendment of § 51.20(e) merely changes the date therein to conform with the new effectiveness date for the interim fuel cycle rule which was established by the Commission's notice on September 18, 1978, the Commission has found that good cause exists for making the amendment effective immediately without the customary 30-day notice.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of title 5 of the United States Code, the following amendment to title 10, chapter I, Code of Federal Regulations, part 51 is published as a document subject to codification.

§ 51.20 [Amended]

1. Section 51.20 of 10 CFR Part 51 is amended by deleting the words "September 14, 1978" in the last sentence of paragraph (e) and substituting therefor "March 14, 1979".

(Sec. 161, Pub. L. 83-703, 68 Stat. 948 (42 U.S.C. 2201); sec. 201, Pub. L. 93-438, 88 Stat. 1242 (42 U.S.C. 5841).)

Dated at Bethesda, Md., this 3d day of November 1978.

For the Nuclear Regulatory Commission.

LEE V. GOSSICK,
Executive Director for Operations.

[FR Doc. 78-31910 Filed 11-14-78; 8:45 am]

[3410-02-M]

Title 7—Agriculture

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

[Orange, Grapefruit, Tangerine, and Tangelo Reg. 2, Amdt. 3]

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Tangerine Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amendment to final rule.

SUMMARY: This amendment lowers the minimum diameter (size) requirement for Dancy variety tangerines from 2$^{9}/_{16}$ inches to 2$^{4}/_{16}$ inches for the period November 13 through November 19. This action would permit shipment of greater supplies of smaller size tangerines, temporarily available because of growing conditions in the production area and the current market demand for smaller tangerines in the interest of growers and consumers.

EFFECTIVE DATE: November 13, 1978, through October 14, 1979.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: *Findings.* (1) Pursuant to the marketing agreement and order No. 905, both as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act, of 1937, as amended (7 U.S.C. 601-674), and the recommendations of the committee established under the marketing agreement and order, and upon other available information, it is found that the regulation of shipments of Florida tangerines, as hereinafter provided, will tend to effectuate the declared policy of the act.

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(2) The minimum size requirements, herein specified, for domestic shipments reflect the Department's appraisal of the need for the amendment of the current regulation to permit handling of smaller size fresh Florida tangerines of the designated variety during the specified 1-week period based on greater supplies of such variety, temporarily available because of the lateness of the crop and growing conditions in the production area. The Dancy variety continues to size on the tree, and as the season progresses, more of such fruit is expected to meet the specified larger minimum sizes, on and after November 20, 1978. The establishment of the specified minimum size requirements for Dancy tangerines will tend to avoid disruption of the orderly marketing of Florida tangerines of the Robinson and Dancy varieties, which are both currently being shipped and the amendment is in the public interest.

The Citrus Administrative Committee, at an open meeting on November 7, 1978, based on the Florida Crop and Livestock Reporting Service's most recent tree samples, estimated that during the specified 1-week period, 11.5 percent of Dancy tangerines would meet at least the specified 2 1/16 inches minimum diameter (210 size). The committee indicated there is a current market demand for a portion of the crop of smaller size Dancy's. It did not recommend the reduction to the smaller minimum size, for the remainder of the season, because markets presently can absorb only a portion of the supply of such variety available for shipment from Florida.

The Department's Crop Reporting Board estimates the 1978-79 season's crop of all Florida tangerines at 3.8 million boxes (approximately 7.6 million cartons). Hence, the volume of the tangerine crops are comparable to those harvested last season.

The committee projected the market demand for all varieties of fresh tangerines, this season, as follows: Dancy (2,500 carlots); Robinson (1,500 carlots); Honey (2,100 carlots). Each carlot is equivalent to 1,000 cartons. The regulation, as amended, for Dancy tangerines relieves restrictions from those currently in effect, and amendment of such regulation, as hereinafter provided, will tend to avoid disruption of the orderly marketing of tangerines in the public interest.

It is concluded that the amendment of the size requirements hereinafter set forth, are necessary to establish and maintain orderly marketing conditions and to provide acceptable size fruit in the interest of producers and consumers pursuant to the declared policy of the act.

(3) It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this amendment is based and the effective date necessary to effectuate the declared policy of the act. Growers, handlers, and other interested persons were given an opportunity to submit information and views on the amendment at an open meeting, and the amendment relieves restrictions on the handling of Florida tangerines. It is necessary to effectuate the declared purposes of the act to make the regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

Accordingly, it is found that the provisions of § 905.302 (Orange, Grapefruit, Tangerine, and Tangelo Regulation 2; 43 FR 43013; 52197), should be and are amended by revising in table I paragraph (a), thereof, applicable to domestic shipments of Dancy variety tangerines to read as follows:

TABLE I

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
Tangerines:			
Dancy	Nov. 13 to Nov. 19, 1978	U.S. No. 1	2 1/16
Do	Nov. 20, 1978 to Oct. 14, 1979	do	2 1/16

(Secs. 1-19, 48 Stat. 31, as amended (7 U.S.C. 601-674).)

Dated: November 9, 1978, to become effective November 13, 1978.

CHARLES R. BRADER, *Deputy Director, Fruit and Vegetable Division. Agricultural Marketing Service.*

[FR Doc. 78-32154 Filed 11-14-78; 8:45 am]

[6320-01-M]

Title 14—Aeronautics and Space

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER A—ECONOMIC REGULATIONS

[Docket No. 33348; Order 78-11-31]

PART 250—OVERSALES

Advertising Disclosure of Noncompliance With Oversale Rules; Stay Order

AGENCY: Civil Aeronautics Board.

ACTION: Stay of effectiveness of ER-1078.

SUMMARY: The Board is staying the effectiveness of ER-1078. The stay is based on a petition for stay filed jointly by certain air carriers. The stay is granted so that the Board can reexamine the rule.

DATE: The effectiveness of ER-1078 is stayed until December 18, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard B. Dyson, Office of the General Counsel, 202-673-5442.

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 7th day of November 1978.

By ER-1078 (43 FR 50164, October 27, 1978) the Board adopted a rule requiring every carrier operating in foreign air transportation that has not filed a tariff implementing the Board's denied boarding rules to state in its advertisements that it is not following U.S. Government rules for consumer protection on oversold flights. A petition to stay the effectiveness of this rule was filed on November 3, 1978, jointly by Air Canada, Canadian Pacific, Lufthansa, Swiss Air and Swiss Air Transport, challenging the Board's jurisdiction over foreign air carriers outside the United States. The Board is granting the petition, so that it can reexamine the rule, and decide what action, if any, it will take.

Accordingly, the Board stays the effectiveness of ER-1078 until December 18, 1978.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,[1] *Secretary.*

[FR Doc. 78-32062 Filed 11-14-78; 8:45 am]

[1] All members concurred.

[4830-01-M]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER H—INTERNAL REVENUE PRACTICE

PART 601—STATEMENT OF PROCEDURAL RULES

Miscellaneous Amendments Relating to Reorganization of the Internal Revenue Service

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains miscellaneous amendments to the statement of procedural rules. The statement of procedural rules sets forth the procedural rules of the Internal Revenue Service for all taxes administered by the Service. These amendments are made necessary by the reorganization of the Internal Revenue Service and the Office of Chief Counsel.

DATE: These amendments are effective as of July 2, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert Waltuch of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attention CC:LR:T, 202-566-3328, not a toll-free number.

SUPPLEMENTARY INFORMATION:

BACKGROUND

This document contains amendments to the statement of procedural rules (26 CFR Part 601). The amendments are necessary to conform the statement of procedural rules to the changes made by the reorganization of the Internal Revenue Service and the Office of Chief Counsel effective on July 2, 1978. These amendments are issued under the authority contained in 5 U.S.C. §§ 301 and 552.

The principal changes made by the reorganization that are reflected in the amendments are: At each level of the IRS organization (national, regional and district), services to the public are separated from other functions in order to provide assistance to taxpayers independent of enforcement and other activities, and administrative and support services are centralized.

These amendments to the statement of procedural rules do not meet the Treasury criteria for a significant regulation under paragraph 8 of the proposed Treasury directive appearing in the FEDERAL REGISTER for Wednesday, May 24, 1978 (43 FR 22319).

RELATIONSHIP TO NOTICE OF ESTABLISHMENT OF SINGLE LEVEL OF APPEALS

These amendments are in addition to the amendments to the statement of procedural rules, relating to the establishment of a single level of appeals, that were published in the FEDERAL REGISTER on September 28, 1978 (43 FR 44484).

DRAFTING INFORMATION

The principal author of these amendments to the statement of procedual rules was Robert Waltuch of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service participated in developing the amendments, both on matters of substance and style.

ADOPTION OF AMENDMENTS TO THE STATEMENT OF PROCEDURAL RULES

Accordingly, 26 CFR Part 601 is amended as follows:

§ 601.105 (Amended).

Paragraph 1. Section 601.105 is amended as follows:

1. Paragraph (a) is amended by deleting the word "audit" wherever it appears and inserting in lieu there of the word "examination" and by deleting the phrase "Examination Divisions".

2. Paragraph (b)(1) is amended by deleting the word "audit" wherever it appears and inserting in lieu thereof the word "examination" and by deleting the phrase "Audit Division" and inserting in lieu thereof the phrase "Examination Division".

3. Paragraph (b)(2)(ii) is amended by deleting the word "audit" wherever it appears and inserting in lieu thereof the word "examination", by deleting the word "audits" from the third sentence and inserting in lieu thereof the word "examinations", and by deleting the word "Audits" from the fourth sentence and inserting in lieu thereof the word "Examinations".

4. The heading of paragraph (b)(3) is amended by deleting the word "audit" and inserting in lieu thereof the word "examination" and by deleting the word "audit" from paragraph (b)(3) and inserting in lieu thereof the word "examination".

5. The heading of paragraph (b)(4) is amended by deleting the word "audit" and inserting in lieu thereof the word "examination".

6. Paragraph (b)(4) is amended by deleting the word "audit" from the first sentence and inserting in lieu thereof the word "examination".

7. Paragraph (b)(5)(iii) (*c*) and (*d*) is amended by deleting the phrase "Chief, Audit Division" wherever it appears and inserting in lieu thereof the phrase "Chief, Examination Division".

8. Paragraph (b)(5)(iv) (*b*) and (c) is amended by deleting the phrase "Chief, Audit Division" wherever it appears and inserting in lieu thereof the phrase "Chief, Examination Division", and by deleting the phrase "Director, Audit Division" from the second to last sentence of paragraph (b)(5)(iv) (*c*) and inserting in lieu thereof the phrase "Director, Examination Division".

9. Paragraph (e)(2) is amended by deleting the phrase "Audit Division" and inserting in lieu thereof the phrase "Examination Division", and by deleting "$100,000' and inserting in lieu thereof "$200,000".

10. The heading of paragraph (f) is amended by deleting the word "audit" and inserting in lieu thereof the word "examination".

11. Paragraph (f) is amended by deleting the phrase "field audits" and inserting in lieu thereof the phrase "field examinations".

12. Paragraph (i) is amended by deleting the phrase "Audit Division" and inserting in lieu thereof the phrase "Examination Division".

13. Paragraph (j)(2) is amended by deleting the word "(Audit)" and inserting in lieu thereof the word "(Examination)".

§ 601.106 (Amended).

Par. 2. Section 601.106 is amended as follows:

1. Paragraph (a)(2)(ii) is amended by deleting the word "precession" and inserting in lieu thereof the word "presession".

2. Paragraph (d)(2)(ii) is amended by deleting the phrase ", or taxes under chapter 42 of the Internal Revenue Code of 1954,".

3. Paragraph (g)(1) is amended by deleting the phrase "or any tax imposed with respect to private foundations or pension plans under chapter 42 or 43,".

§ 601.107 (Amended).

Par. 3. Section 601.107 is amended as follows:

1. The heading of § 601.107 is amended by deleting the word "Intelligence" and inserting in lieu thereof the phrase "Criminal Investigation".

2. Paragraph (a) is amended by deleting the phrase "an Intelligence Division" from the first sentence and inserting in lieu thereof the phrase "a Criminal Investigation function."

3. Paragraph (b)(1) is amended by deleting the phrase "Intelligence Division" immediately before the word "investigation" and inserting the

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phrase "conducted by the Criminal Investigation Division" immediately after the word "investigation".

4. Paragraph (b)(2) is amended by deleting the phrase "district intelligence" and inserting in lieu thereof the phrase "district Criminal Investigation" and by deleting the phrase "Chief, Intelligence Division" and inserting in lieu thereof the phrase "Chief, Criminal Investigation Division".

5. Paragraph (c) is amended by deleting the phrase "Chief, Intelligence Division" and inserting in lieu thereof the phrase "Chief, Criminal Investigation Division".

§ 601.108 (Amended).

Par. 4. Paragraph (b) of § 601.108 is amended by deleting the word "Audit" and inserting in lieu thereof the word "Examination".

§ 601.202 (Amended).

Par. 5. Section 601.202 is amended as follows:

1. Paragraph (c)(4) is amended by deleting the word "(audit)" and inserting in lieu thereof the word "(examination)".

2. Paragraph (c)(5) is amended by deleting the phrase "(employee plans and exempt organizations)" and inserting in lieu thereof "(examination)".

§ 601.505 (Amended).

Par. 6. Paragraph (b) of § 601.505 is amended by deleting the phrase "Chief of Audit" wherever it appears and inserting in lieu thereof the phrase "Chief of Examination", and by deleting the phrase "Chief of Intelligence" wherever it appears and inserting in lieu thereof the phrase "Chief of Criminal Investigation".

§ 601.702 (Amended).

Par. 7. Section 601.702 is amended as follows:

1. Paragraph (b)(3)(ii) is amended as follows:

a. The phrase "Chief, Disclosure Staff" is deleted from the mailing address for the National Office and the phrase "Director, Disclosure Operations Division" is inserted in lieu thereof.

b. The phrase "One North Wacker Drive, Chicago, Ill. 60606" is deleted from the mailing address for the Midwest Region and the phrase "230 South Dearborn Street, Room 2896, Chicago, Ill. 60604" is inserted in lieu thereof.

c. The mailing address for the Central Region is amended by deleting "P.O. Box 2119" and inserting in lieu thereof "P.O. Box 1699".

d. The zip code "75202" is deleted from the mailing address for the Southwest Region and the zip code "75222" is inserted in lieu thereof.

2. Paragraph (c)(7)(i) is amended by deleting the phrase "Chief of the disclosure Staff" wherever it appears and inserting in lieu thereof the phrase "Director of the Disclosure Operations Division".

3. Paragraph (c)(8) is amended by deleting the phrase "Disclosure Division" wherever it appears and inserting in lieu thereof the phrase "Disclosure Litigation Division".

4. Paragraph (c)(9)(i)(C) is amended by deleting the phrase "Disclosure Division" and inserting in lieu thereof the phrase "Disclosure Litigation Division", and by deleting the phrase "Disclosure Staff" and inserting in lieu thereof the phrase "Disclosure Operations Division".

5. Paragraph (g) is amended by deleting the phrase "Chief of the Disclosure Staff" and inserting in lieu thereof the phrase "Director, Disclosure Operations Division", and by making the following changes:

a. The phrase "Chief, Disclosure Staff" is deleted from the mailing address for the National Office and the phrase "Director, Disclosure Operations Division" is inserted in lieu thereof.

b. The mailing address for the Burlington District in the North Atlantic Region is amended by deleting "11 Elwood Avenue" and inserting in lieu thereof "11 Elmwood Avenue".

c. The mailing address for the Hartford District in the North Atlantic Region is amended by deleting the zip code "06103" and inserting in lieu thereof the zip code "06115".

d. The mailing address for the Andover Service Center in the North Atlantic Region is amended by inserting the phrase ", Stop 111" immediately after the word "Street".

e. The mailing address and the walk-in-address for the Brookhaven Service Center in the North Atlantic Region are deleted and the following addresses are inserted in lieu thereof:

"Mailing address: Director, Brookhaven Service Center, Internal Revenue Service, Attention: Disclosure Officer, Freedom of Information Request, P.O. Box 400, Stop 650, Brookhaven, N.Y. 11719.

Walk-in-address: 1040 Waverly Avenue, Holtsville, N.Y. 11742".

f. The mailing address for the Newark District in the Mid-Atlantic Region is amended by inserting ", Room 1135" immediately after "P.O. Box 270".

g. The walk-in-address for the Newark District in the Mid-Atlantic Region is amended by inserting ", Room 1135" immediately after the word "Street".

h. The mailing address for the Philadelphia District in the Mid-Atlantic Region is amended by deleting "P.O. Box 12836" and inserting in lieu thereof "P.O. Box 12805".

i. The mailing address for the Pittsburgh District in the Mid-Atlantic Region is amended by deleting "P.O. 2488" and inserting in lieu thereof "P.O. Box 28".

j. The mailing address for the Richmond District in the Mid-Atlantic Region is amended by deleting "P.O. Box 10067" and inserting in lieu thereof "P.O. Box 10113".

k. The mailing address for the Wilmington District in the Mid-Atlantic Region is amended by deleting "P.O. Box 1205" and inserting in lieu thereof "P.O. Box 28".

l. The mailing address for the Atlanta District in the Southeast Region is amended by deleting "P.O. Box 737" and inserting in lieu thereof "P.O. Box 946".

m. The mailing address for the Birmingham District in the Southeast Region is amended by deleting "P.O. Box 715" and inserting in lieu thereof "2121 Eighth Avenue, North, Room 1232", by deleting the zip code "35201" and inserting in lieu thereof the zip code "35203", and by deleting the walk-in-address for the Birmingham District and inserting in lieu thereof the phrase "Same as mailing address".

n. The mailing address for the Greensboro District in the Southeast Region is amended by deleting the zip code "27402" and inserting in lieu thereof the zip code "27420", and by deleting the word "Place" from the walk-in-address for the Greensboro District and inserting in lieu thereof the word "Plaza".

o. The mailing address for the Jacksonville District in the Southeast Region is amended by deleting "P.O. Box 35010" and inserting in lieu thereof "P.O. Box 35045, Stop 100".

p. The mailing address for the Atlanta Service Center in the Southeast Region is amended by deleting the zip code "30341" and inserting in lieu thereof the zip code "30006".

q. The mailing address and the walk-in-address for the Memphis Service Center in the Southeast Region are deleted and the following new addresses are inserted in lieu thereof:

"Mailing address: Director, Memphis Service Center, Internal Revenue Service, Attention: Disclosure Officer, Freedom of Information Request, P.O. Box 30309, Airport Mail Facility, Memphis, Tenn. 38130.

Walk-in-address: 3131 Democrat Road, Stop 16A, Memphis, Tenn. 38130".

r. The walk-in-address for the Aberdeen District in the Midwest Region is amended by deleting "1154 Fourth Avenue SE." and inserting in lieu thereof "115 Fourth Avenue SE.".

s. The mailing address for the Chicago District in the Midwest Region is amended by deleting "P.O. Box 782" and inserting in lieu thereof "P.O. Box 1193".

t. The mailing address for the Des Moines District in the Midwest Region is amended by deleting "P.O. Box 327" and inserting in lieu thereof "P.O. Box 1337", and by deleting the zip code "50302" and inserting in lieu thereof the zip code "50305".

u. The mailing address for the Milwaukee District in the Midwest Region is amended by deleting "P.O. Box 1187" and inserting in lieu thereof "P.O. Box 495".

v. The mailing address for the Springfield District in the Midwest Region is amended by deleting "P.O. Box 5053" and inserting in lieu thereof "P.O. Box 1468".

w. The mailing address for the Regional Office, Central Region, is amended by deleting "550 Main Street" and inserting in lieu thereof "P.O. Box 1699", and by deleting the zip code "45202" and inserting in lieu thereof the zip code "45201".

x. The walk-in-address for the Regional Office, Central Region is amended by deleting the phrase "Same as mailing address" and inserting in lieu thereof the following new walk-in-address: "Federal Office Building, 550 Main Street, Cincinnati, Ohio 45201".

y. The mailing address for the Cincinnati District in the Central Region is amended by deleting "P.O. Box 476" and inserting in lieu thereof "P.O. Box 1818".

z. The mailing address for the Cleveland District in the Central Region is amended by deleting "P.O. Box 99182" and inserting in lieu thereof "P.O. Box 99181".

aa. The mailing address for the Detroit District in the Central Region is amended by deleting "P.O. Box 84" and inserting in lieu thereof "P.O. Box 32513", and by deleting the zip code "48224" and inserting in lieu thereof the zip code "48232".

bb. The walk-in-address for the Detroit District in the Central Region is deleted and the following new walk-in-address is inserted in lieu thereof: "Patrick V. McNamara Federal Building, 477 Michigan Avenue, Detroit, Mich.".

cc. The mailing address for the Indianapolis District in the Central Region is amended by deleting "P.O. Box 44242" and inserting in lieu thereof "P.O. Box 44687".

dd. The mailing address for the Louisville District in the Central Region is amended by deleting "P.O. Box 1735" and inserting in lieu thereof "P.O. Box 1146", and the walk-in-address for the Louisville District is amended by deleting the phrase "Third Floor".

ee. The mailing address for the Parkersburg District in the Central Region is amended by deleting "425 Juliana Street" and inserting in lieu thereof "P.O. Box 1388".

ff. The walk-in-address for the Parkersburg District in the Central Region is amended by deleting "Same as mailing address" and inserting in lieu thereof the following new walk-in-address: "425 Juliana Street, Parkersburg, W. Va. 26101".

gg. The mailing address for the Cincinnati Service Center in the Central Region is amended by deleting the zip code "41012" and inserting in lieu thereof the zip code "41019".

hh. The mailing address for the Austin District in the Southwest Region is amended by deleting "P.O. Box 1448" and inserting in lieu thereof "P.O. Box 250".

ii. The mailing address for the Dallas District in the Southwest Region is amended by deleting the zip code "75202" and inserting in lieu thereof the zip code "75242".

jj. The mailing address for the Denver District in the Southwest Region is amended by deleting "P.O. Box 1378" and inserting in lieu thereof "1050 17th Street", and by deleting the zip code "80201" and inserting in lieu thereof the zip code "80265".

kk. The walk-in-address for the Denver District in the Southwest Region is deleted and the phrase "Same as mailing address" is inserted in lieu thereof.

ll. The walk-in-address for the Little Rock District in the Southwest Region is amended by inserting the word "Avenue" immediately after the word "Capitol".

mm. The mailing address for the New Orleans District in the Southwest Region is amended by deleting "P.O. Box 30350" and inserting in lieu thereof "P.O. Box 30309".

nn. The walk-in-address for the New Orleans District in the Southwest Region is amended by deleting "600 South Street" and inserting in lieu thereof "500 Camp Street".

oo. The mailing address for the Boise District in the Western Region is amended by deleting "P.O. Box 041" and inserting ", Box 041" immediately after the word "Street".

pp. The mailing address for the Helena District in the Western Region is amended by deleting "Federal Building, Second Floor West" and inserting in lieu thereof "316 North Park Avenue".

qq. The mailing address for the Honolulu District in the Western Region is amended by deleting "P.O. Box 2810" and inserting in lieu thereof "P.O. Box 50084", and by deleting the zip code "96803" and inserting in lieu thereof the zip code "96850".

rr. The walk-in-address for the Honolulu District in the Western Region is amended by deleting "335 Merchant Street" and inserting in lieu thereof "300 Ala Moana".

ss. The mailing address for the Portland District in the Western Region is amended by deleting "P.O. Box 4185" and inserting in lieu thereof "P.O. Box 3341".

tt. The walk-in-address for the Salt Lake City District in the Western Region is amended by deleting "465 South 400 East" and inserting in lieu thereof "465 South Fourth East".

uu. The mailing address for the San Francisco District in the Western Region is amended by deleting "P.O. Box 36020" and inserting in lieu thereof "450 Golden Gate Avenue, Box 36040".

vv. The walk-in-address for the San Francisco District in the Western Region is deleted and the phrase "Same as mailing address" is inserted in lieu thereof.

ww. The mailing address for the Seattle District in the Western Region is amended by deleting "915 Second Avenue" and inserting in lieu thereof "P.O. Box 12887", and by deleting the zip code "98104" and inserting in lieu thereof the zip code "98174".

xx. The walk-in-address for the Seattle District in the Western Region is amended by deleting the phrase "Same as mailing address" and inserting in lieu thereof the following new walk-in-address: "915 Second Avenue, Seattle, Wash. 98104".

JEROME KURTZ,
Commissioner of Internal Revenue.

[FR Doc. 78-32157 Filed 11-14-78; 8:45 am]

[6560-01-M]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

[FRL 1005.8]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Air Pollution Control Pinal-Gila, Coconino, Yuma, and Mohave County Regulations, State of Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: It is the purpose of this action to promulgate final approval or disapproval of county air pollution control regulations in Pinal-Gila, Co-

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conino, Yuma, and Mohave Counties, submitted to EPA by the State of Arizona as a revision to the Arizona State implementation plan (SIP).

EFFECTIVE DATE: December 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Allyn M. Davis, Director, Air and Hazardous Materials Division, Attention: Robert Baker, Air Programs Branch, EPA, Region IX, 215 Fremont Street, San Francisco, Calif. 94105, telephone 415-556-8063.

SUPPLEMENTAL INFORMATION:

BACKGROUND

On July 14, 1977 (42 FR 36275) EPA proposed approval or disapproval of amendments to the rules and regulations for air pollution control adopted by Pinal-Gila, Coconino, Yuma and Mohave Counties. These revisions to the State implementation plan were submitted to EPA on July 1, 1975.

The proposed rulemaking notice provided for a 30-day public comment period. Information concerning the regulations proposed for approval and disapproval (the EPA evaluation report, the regulations under consideration, and a copy of the proposed rulemaking notice) was made available during the comment period at locations in Phoenix, Florence, Flagstaff, Yuma and Kingman, Ariz. and at the EPA offices in San Francisco, Calif. and Washington, D.C. as per the July 14, 1977 notice.

DISCUSSION OF ACTION

APPROVALS

Approval is being promulgated for the county regulations as follows:

COCONINO COUNTY AIR POLLUTION CONTROL REGULATIONS

12-1-1 (Legal Authority)
12-1-2 (Definitions)
12-1-3 (Air Pollution Prohibited)
12-2-2 (Operating Permits)
12-2-4 (Permit Fees)
12-2-5 (Permit Renewals)
12-2-7 (Testing of Installations)
12-2-8 (Compliance with Terms of Installation Permit)
12-2-9 (Notification of Denial of Permit)
12-2-10 (Appeals to the Hearing Board)
12-2-11 (Permits not Transferable)
12-2-12 (Expiration of Installation Permit)
12-2-13 (Posting of Permits)
12-3-3 (Reporting of Emissions)
12-3-5 (Monitoring Devices)
12-3-6 (Penalty for Violation)
12-4-1 (Shade, Density, or Opacity of Emissions)
12-4-2 (Dust Control)
12-4-3 (Processing of Animal or Vegetable Matter)
12-4-4 (Volatile and Odorous Materials)
12-4-5 (Storage and Handling of Petroleum Products)
12-5-1 (Permit Required)
12-5-2 (Performance Tests: Permit Tags)
12-5-3 (Emission Limitations)
12-5-4 (Authority of Other Public Agencies)
12-6-1 (Unlawful Open Burning)
12-6-2 (Exceptions Requiring no Permission)
12-6-3 (Exceptions Requiring Permission)
12-6-4 (Exceptions Under Special Circumstances)
12-7-1 (Misdemeanor: Penalty)
12-7-2 (Order of Abatement)
12-7-3 (Hearings on Orders of Abatement)
12-7-5 (Notice of Hearing; Publication; Service)
12-7-6 (Injunctive Relief)

MOHAVE COUNTY AIR POLLUTION CONTROL REGULATIONS

Sec. 1, Reg. 1 (Policy and Legal Authority)
Sec. 1, Reg. 2 (Definitions)
Sec. 1, Reg. 3 (Air Pollution Prohibited)
Sec. 1, Reg. 4 (Enforcement)
Sec. 2, Reg. 1 (Shade, Density or Opacity of Emissions)
Sec. 2, Reg. 2 (Particulate Matter)
Sec. 2, Reg. 3 (Reduction of Animal or Vegetable Matter)
Sec. 2, Reg. 4 (Evaporation and Leakage)
Sec. 2, Reg. 5 (Storage Tanks)
Sec. 3, Reg. 1 (Particulate Matter from Fuel Burning Installations)
Sec. 3, Reg. 2A and B (Particulate Matter from Other Sources)
Sec. 3, Reg. 6 (Incinerators)
Sec. 4, Reg. 1 and 2 (Responsibility and Requirements of Testing)
Sec. 5, Reg. 1 (Open Fires: Prohibition and Exceptions)
Sec. 6, Reg. 1 (Sulfur Dioxide)
Sec. 6, Reg. 2 (Non-Specific Particulate)
Sec. 6, Reg. 3 (Evaluation)
Sec. 7 (Violations)

YUMA COUNTY AIR POLLUTION CONTROL REGULATIONS

8-1-1.1 (Policy and Legal Authority)
8-1-1.2 (Definitions)
8-1-1.3A, B, C and D (Air Pollution Prohibited)
8-1-1.4 (Recordkeeping and Reporting)
8-1-1.5 (Enforcement)
8-1-2.1 (Non-Specific Particulate)
8-1-2.2 (Sulfur Dioxide)
8-1-2.3 (Non-Methane Hydrocarbons)
8-1-2.4 (Photochemical Oxidants)
8-1-2.5 (Carbon Monoxide)
8-1-2.6 (Nitrogen Dioxide)
8-1-2.7 (Evaluation)
8-1-2.10 (Emergency Episode Criteria)
8-1-3.1 (Visible Emissions; General)
8-1-3.2 (Fugitive Dust)
8-1-3.3A and B (Particulates—Incineration)
8-1-3.4 (Particulates—Wood Waste Burners)
8-1-3.5A, B, C, D and E (Particulates—Fuel Burning Equipment)
8-1-3.6A (Particulates—Process Industries)
8-1-4.2A and F (Fuel Burning Installations)
8-1-4.3 (Sulfur Emissions—Sulfite Pulp Mills)
8-1-4.4 (Sulfur Emissions—Sulfuric Acid Plants)
8-1-4.5 (Sulfur Emissions—Other Industries)
8-1-5.1 (Storage of Volatile Organic Compounds)
8-1-5.2 (Loading of Volatile Organic Compounds)
8-1-5.3 (Pumps and Compressors)
8-1-5.4 (Organic Solvents; Other Volatile Compounds)
8-1-6.1 (CO_2 Emissions—Industrial)
8-1-7.1 (NO_x Emissions—Fuel Burning Equipment)
8-1-7.2 (NO_x Emissions—Nitric Acid Plants)
8-1-8.1 (Open Burning—Prohibition)
8-1-8.2 (Open Burning—Exceptions)

PINAL-GILA COUNTIES AIR POLLUTION CONTROL REGULATIONS

7-1-1.1 (Policy and Legal Authority)
7-1-1.2 (Definitions)
7-1-1.3A and B (Air Pollution Prohibited)
7-1-2.2 (Permit Unit Description and Fees)
7-1-2.4 (Appeals to Hearing Board)
7-1-2.5 (Transfer: Posting: Expirations)
7-1-2.6 (Recordkeeping and Reporting)
7-1-2.7 (Enforcement)
7-1-4.1 and 7-1-4.2 (Orders of Abatement)
7-1-5.1A, B, and C (Classification and Reporting: Production of Records)
7-1-5.1E (Violation: Penalty)
7-1-5.2 (Special Inspection Warrant)
7-1-5.3 (Decisions of Hearing Boards: Subpoenas)
7-1-5.4 (Judicial Review: Grounds: Procedures)
7-1-5.5 (Notice of Hearing: Publication: Service)
7-1-5.6 (Injunctive Relief)
7-2-1.1 (Non-Specific Particulate)
7-2-1.2 (Sulfur Dioxide)
7-2-1.3 (Non-Methane Hydrocarbons)
7-2-1.4 (Photochemical Oxidants)
7-2-1.5 (Carbon Monoxide)
7-2-1.6 (Nitrogen Dioxide)
7-2-1.7 (Evaluation)
7-3-1.1 (Visible Emissions: General)
7-3-1.2 (Particulate Emissions—Fugitive Dust)
7-3-1.3 (Open Burning)
7-3-1.4A and B (Particulate Emissions—Incineration)
7-3-1.5 (Particulate Emissions—Wood Waste Burners)
7-3-1.6 (Reduction of Animal or Vegetable Matter)
7-3-1.7A, B, C, D, and E (Particulate Emissions—Fuel Burning Equipment)
7-3-1.8 (Particulate Emissions—Process Industries)
7-3-2.2 (SO_x Emissions—Fuel Burning Installations)
7-3-2.3 (, Emissions—Sulfite Pulp Mills)
7-3-2.4 (, Emissions—Sulfuric Acid Plants)
7-3-3.1 (Storage of Volatile Organic Compounds)
7-3-3.2 (Loading of Volatile Organic Compounds)
7-3-3.3 (Pumps and Compressors)
7-3-3.4 (Organic Solvents: Other Volatile Compounds)
7-3-4.1 (CO_2 Emissions—Industrial)
7-3-5.1 (NO_x Emissions—Fuel Burning Equipment)
7-3-5.2 (NO_x Emissions—Nitric Acid Plants)
7-3-6.1 (Policy and Legal Authority)

NITROGEN OXIDE EMISSIONS

Yuma County regulation 8.1.7.1 (Fuel Burning Equipment) was proposed for disapproval because it contained two different emission limitations for solid fossil fuel and none for liquid fossil fuel. The County has since corrected the deficiency and the regulation is now approved.

VISIBLE EMISSIONS

EPA had proposed to disapprove Coconino County regulation 12-4-1 (Shade, Density, or Opacity of Emissions), Mohave County regulation Sec. 2, Reg. 1 (Shade Density or Opacity of Emissions), Yuma County regulation 8-1-3.1 (Visible Emissions: General) and Pinal-Gila Counties regulation 7-3-1.1 (Visible Emissions: General). However, since 40 CFR 51.19(c) requires States to establish a system for detecting violations of rules and regulations through enforcement of "appropriate visible emission limitations" and since an EPA disapproval of these regulations would result in the absence of an enforceable visible emission limitation, EPA has decided to approve the above mentioned visible emission regulations.

CONFIDENTIALITY

EPA had proposed to disapprove Coconino County regulation 12-3-4 (Production of Records: Confidentiality) and Pinal-Gila Counties regulation 7-1-5.1D (Confidentiality of Records). However, EPA has since determined that these regulations are consistent with the Clean Air Act and for this reason are approved.

DISAPPROVALS

AIR POLLUTION PROHIBITED

Disapproval was proposed and is being promulgated for Mohave County regulation Sec. 3, Reg. 4 (Ground Level Concentrations), and Pinal-Gila Counties regulation 7-1-1.3C (Air Pollution Prohibited) because they may permit violations of ambient air quality standards in areas to which the general public has access.

Yuma County regulation 8-1-1.3 (Air Pollution Prohibited) was proposed for disapproval for the above cited reason. The Administrator now finds that paragraphs A through D of this regulation are approvable, and they are being approved in this action. Paragraph E, however, is to remain disapproved.

UPSET/BREAKDOWN

Disapproval was proposed and is being promulgated for Coconino County regulation 12-3-2 (Emission Standards), Mohave County regulation Sec. 3, Reg. 5 (Exceptions), Yuma County regulation 8-1-1.6 (Exceptions), and Pinal-Gila Counties regulation 7-1-2.8 (Exceptions). These regulations are being disapproved because they place the burden of proving the avoidability of the malfunction on the enforcing agency, thus making all emission limitations set forth in the regulations potentially unenforceable.

It is the EPA's position that the burden of proving that the malfunction was unavoidable be on the source. The enforcing agency would then be able to issue notices of violations for all episodes of excess emissions, whether due to malfunction or otherwise, and permit the source an opportunity to prove that the violation was due to an unavoidable malfunction.

Additionally, these malfunction regulations are being disapproved because they provide exceptions for routine or scheduled maintenance. Since routine maintenance is basically a predictable event, the source operator should be able to schedule his control equipment maintenance to coincide with maintenance on production equipment or other plant shutdowns. As such, the control equipment would always be available when the equipment it serves is operational. Consequently, no excess emissions should be allowed during periods of routine maintenance.

More detailed descriptions of EPA malfunction policy may be found in two recent EPA FEDERAL REGISTER actions; Utah SO_2 Control Strategy, April 27, 1977 (42 FR 21472), and Idaho SO_2 Control Strategy, November 8, 1977 (42 FR 58171).

PARTICULATE EMISSIONS

Disapproval was proposed and is being promulgated for Mohave County regulation Sec. 3, Reg. 2C (Particulate Matter from Other Sources), Yuma County regulations 8-1-3.3C (Incineration), 8-1-3.5F (Fuel Burning Equipment), and 8-1-3.6B (Process Industries), and Pinal-Gila Counties regulations 7-3-1.4C (Incineration) and 7-3-1.7F (Particulate Emissions—Fuel Burning Equipment) because the testing methods these regulations list may vary appreciably in particulate emissions measured, depending on method used, therefore making these regulations unenforceable. It is recommended that EPA approved methods be adopted so that measured particulate levels are comparable to those given in 40 CFR Part 51.

FUEL BURNING INSTALLATIONS

The Administrator, having originally proposed to disapprove Yuma County regulation 8-1-4.2 (Fuel Burning Installations), is instead disapproving paragraphs B, C, D, and E, that portion of the regulation addressing oil fired facilities. These paragraphs are being disapproved because they could allow an existing fuel oil fired power plant to use dispersion dependent techniques alone as a means of attaining and maintaining ambient standards, contrary to the requirements of section 110(a)(2)(B) and 123(a) of the Clean Air Act, as amended. The portion of this regulation applicable to the use of low sulfur fuel is disapproved because it is unenforceable without the other disapproved provisions. The Administrator is approving paragraphs A and F of this regulation which establish sulfur dioxide emission limits for coal fired powerplants because there is no previously approved regulation and a disapproval of these paragraphs would result in the absence of an enforceable sulfur dioxide emission limit for coal fired powerplants.

CONTINUOUS MONITORING

As proposed in the July 14, 1977, FEDERAL REGISTER, the Administrator is approving Coconino County regulations 12-3-3 (Reporting of Emissions), and 12-3-5 (Monitoring Devices), Yuma County regulation 8-1-1.4 (Recordkeeping and Reporting), and Pinal-Gila Counties regulations 7-1-5.1 A, B, and C (Classification and Reporting: Production of Records) and 7-1-2.6 (Recordkeeping and Reporting). Also as proposed, however, the plan disapprovals are not being rescinded, as the counties have failed to submit regulations that satisfy the EPA continuous monitoring requirements.

DEFERRED ACTION

No action was proposed and no action is currently being taken with regard to Coconino County regulations 12-2-1 (Installation Permits), 12-2-3 (Permit Applications), 12-2-6 (Denial of Permits), 12-7-4 (Conditional Permits), Mohave County regulation Sec. 3, Reg. 3 (Sulfur from copper smelters), Yuma County regulation 8-1-4.1 (Sulfur Emissions—Copper Smelters), Pinal-Gila Counties regulations 7-1-2.1 (Permits: Exceptions: Applications: Fees), 7-1-2.3 (Grant or Denial of Applications), 7-1-3.1 through 7-1-3.4 (Conditional Permits), and 7-3-2.1 (SO_x Emissions—Copper Smelters). These will be the subject of future FEDERAL REGISTER actions.

NO ACTION

ANTI-DEGRADATION

Coconino County regulation 12-3-1 (Ambient Air Quality Standards), Mohave County regulation Sec. 6, Reg. 4 (Anti-Degradation), Yuma County regulation 8-1-2.8 (Anti-Degradation), and Pinal-Gila Counties regulation 7-2-1.8 (Anti-Degradation) were proposed for approval on July 14, 1977. However, contrary to the proposed action, EPA is taking no action on these regulations. Since the counties have failed to submit specific regulations to prevent air quality degradation, EPA's previous disapproval and substitute regulations at 40 CFR 52.144 for the State remain in effect.

DISCUSSION OF MAJOR COMMENTS

One comment was received during the 30-day comment period in response to the July 14, 1977, FEDERAL

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REGISTER notice. It was from the Yuma County Health Department and confirmed that the typographical error in Yuma County regulation 8-1-7.1 (NO_2 Emissions—Fuel Burning Equipment) had been corrected. As a result we are rescinding our proposed disapproval of this regulation.

(Secs. 110, 301(a), Clean Air Act as amended, 42 U.S.C. 7410 and 7601(a).)

Dated: October 31, 1978.

DOUGLAS M. COSTLE,
Administrator.

Subpart D of part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

Subpart D—Arizona

1. Section 52.120, paragraph (c) is amended by the addition of subparagraph (18) as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(18) Air pollution control regulations for various counties submitted by the Governor on July 1, 1975, as follows:

(i) Coconino County Air Pollution Control Regulations.

12-1-1 (Legal Authority)
12-1-2 (Definitions)
12-1-3 (Air Pollution Prohibited)
12-2-2 (Operating Permits)
12-2-4 (Permit Fees)
12-2-5 (Permit Renewals)
12-2-7 (Testing of Installations)
12-2-8 (Compliance with Terms of Installation Permit)
12-2-9 (Notification of Denial of Permit)
12-2-10 (Appeals to the Hearing Board)
12-2-11 (Permits Not Transferable)
12-2-12 (Expiration of Installation Permit)
12-2-13 (Posting of Permits)
12-3-2 (Emission Standards)
12-3-3 (Reporting of Emissions)
12-3-4 (Production of Records: Confidentiality)
12-3-5 (Monitoring Devices)
12-3-6 (Penalty for Violation)
12-4-1 (Shade, Density, or Opacity of Emissions)
12-4-2 (Dust Control)
12-4-3 (Processing of Animal or Vegetable Matter)
12-4-4 (Volatile and Odorous Materials)
12-4-5 (Storage and Handling of Petroleum Products)
12-5-1 (Permit Required)
12-5-2 (Performance Tests: Permit Tags)
12-5-3 (Emission Limitations)
12-5-4 (Authority of Other Public Agencies)
12-6-1 (Unlawful Open Burning)
12-6-2 (Exceptions Requiring no Permission)
12-6-3 (Exceptions Requiring Permission)
12-6-4 (Exceptions Under Special Circumstances)
12-7-1 (Misdemeanor: Penalty)
12-7-2 (Order of Abatement)
12-7-3 (Hearings on Orders of Abatement)
12-7-5 (Notice of Hearing; Publication; Service)
12-7-6 (Injunctive Relief)

(ii) Mohave County Air Pollution Control Regulations.

Sec. 1, Reg. 1 (Policy and Legal Authority)
Sec. 1, Reg. 2 (Definitions)
Sec. 1, Reg. 3 (Air Pollution Prohibited)
Sec. 1, Reg. 4 (Enforcement)
Sec. 2, Reg. 1 (Shade, Density or Opacity of Emissions)
Sec. 2, Reg. 2 (Particulate Matter)
Sec. 2, Reg. 3 (Reduction of Animal or Vegetable Matter)
Sec. 2, Reg. 4 (Evaporation and Leakage)
Sec. 2, Reg. 5 (Storage Tanks)
Sec. 3, Reg. 1 (Particulate Matter from Fuel Burning Installations)
Sec. 3, Reg. 2 (Particulate Matter from Other Sources)
Sec. 3, Reg. 4 (Ground Level Concentrations)
Sec. 3, Reg. 5 (Exceptions)
Sec. 3, Reg. 6 (Incinerators)
Sec. 4, Reg. 1 and Reg. 2 (Responsibility and Requirements of Testing)
Sec. 5, Reg. 1 (Open Fires: Prohibition and Exceptions)
Sec. 6, Reg. 1 (Sulfur Dioxide)
Sec. 6, Reg. 2 (Non-Specific Particulate)
Sec. 6, Reg. 3 (Evaluation)
Sec. 7 (Violations)

(iii) Yuma County Air Pollution Control Regulations.

8-1-1.1 (Policy and Legal Authority)
8-1-1.2 (Definitions)
8-1-1.3 (Air Pollution Prohibited)
8-1-1.4 (Recordkeeping and Reporting)
8-1-1.5 (Enforcement)
8-1-1.6 (Exceptions)
8-1-2.1 (Non-Specific Particulate)
8-1-2.2 (Sulfur Dioxide)
8-1-2.3 (Non-Methane Hydrocarbons)
8-1-2.4 (Photochemical Oxidants)
8-1-2.5 (Carbon Monoxide)
8-1-2.6 (Nitrogen Dioxide)
8-1-2.7 (Evaluation)
8-1-2.10 (Emergency Episode Criteria)
8-1-3.1 (Visible Emissions: General)
8-1-3.2 (Fugitive Dust)
8-1-3.3 (Particulates—Incineration)
8-1-3.4 (Particulates—Wood Waste Burners)
8-1-3.5 (Particulates—Fuel Burning Equipment)
8-1-3.6 (Particulates—Process Industries)
8-1-4.2 (Fuel Burning Installations)
8-1-4.3 (Sulfur Emissions—Sulfite Pulp Mills)
8-1-4.4 (Sulfur Emissions—Sulfuric Acid Plants)
8-1-4.5 (Sulfur Emissions—Other Industries)
8-1-5.1 (Storage of Volatile Organic Compounds)
8-1-5.2 (Loading of Volatile Organic Compounds)
8-1-5.3 (Pumps and Compressors)
8-1-5.4 (Organic Solvents; Other Volatile Compounds)
8-1-6.1 (CO_2 Emissions—Industrial)
8-1-7.1 (NO_2 Emissions—Fuel Burning Equipment)
8-1-7.2 (NO_2 Emissions—Nitric Acid Plants)
8-1-8.1 (Open Burning—Prohibition)
8-1-8.2 (Open Burning—Exceptions)

(iv) Pinal-Gila Counties Air Pollution Control Regulations.

7-1-1.1 (Policy and Legal Authority)
7-1-1.2 (Definitions)
7-1-1.3 (Air Pollution Prohibited)
7-1-2.2 (Permit Unit Description and Fees)
7-1-2.4 (Appeals to Hearing Board)
7-1-2.5 (Transfer: Posting: Expirations)
7-1-2.6 (Recordkeeping and Reporting)
7-1-2.7 (Enforcement)
7-1-2.8 (Exceptions)
7-1-4.1 and 7-1-4.2 (Orders of Abatement)
7-1-5.1 (Classification and Reporting: Production of Records: Violation: and Penalty)
7-1-5.2 (Special Inspection Warrant)
7-1-5.3 (Decisions of Hearing Boards: Subpoenas)
7-1-5.4 (Judicial Review: Grounds: Procedures)
7-1-5.5 (Notice of Hearing: Publication: Service)
7-1-5.6 (Injunctive Relief)
7-2-1.1 (Non-Specific Particulate)
7-2-1.2 (Sulfur Dioxide)
7-2-1.3 (Non-Methane Hydrocarbons)
7-2-1.4 (Photochemical Oxidants)
7-2-1.5 (Carbon Monoxide)
7-2-1.6 (Nitrogen Dioxide)
7-2-1.7 (Evalution)
7-3-1.1 (Visible Emissions: General)
7-3-1.2 (Particulate Emissions—Fugitive Dust)
7-3-1.3 (Open Burning)
7-3-1.4 (Particulate Emissions—Incineration)
7-3-1.5 (Particulate Emissions—Wood-Waste Burners)
7-3-1.6 (Reduction of Animal or Vegetable Matter)
7-3-1.7 (Particulate Emissions—Fuel Burning Equipment)
7-3-1.8 (Particulate Emissions—Process Industries)
7-3-2.2 (SO_2 Emissions—Fuel Burning Installations)
7-3-2.3 (SO_2 Emissions—Sulfite Pulp Mills)
7-3-2.4 (SO_2 Emissions—Sulfuric Acid Plants)
7-3-3.1 (Storage of Volatile Organic Compounds)
7-3-3.2 (Loading of Volatile Organic Compounds)
7-3-3.3 (Pumps and Compressors)
7-3-3.4 (Organic Solvents: Other Volatile Compounds)
7-3-4.1 (CO_2 Emissions—Industrial)
7-3-5.1 (NO_2 Emissions—Fuel Burning Equipment)
7-3-5.2 (NO_2 Emissions—Nitric Acid Plants)
7-3-6.1 (Policy and Legal Authority)

2. Section 52.125 is amended by the addition of a new paragraph (e)(3) as follows:

§ 52.125 Control strategy and regulations: Sulfur oxides.

* * * * *

(e) * * *

(3) Paragraphs B through E of regulation 8-1-4.2 (Sulfur Emissions—Fuel Burning Installations) of the Yuma County Air Pollution Control Regulations are disapproved because they could allow existing facilities to use dispersion dependent techniques alone as a means of attaining and maintaining the National Ambient Air Quality Standards. This regulation does not assure the attainment and maintenance of the national standards in a manner which is consistent with the intent of sections 110(a)(2)(B) and 123(a)(2) of the Clean Air Act.

3. Section 52.126 is amended by the addition of a new paragraph (c) as follows:

§ 52.126 Control strategy and regulations: Particulate matter.

* * * * *

(c) The requirements of § 51.22 of this chapter are not met since the plan does not contain regulations for Mohave and Yuma Counties in the Clark-Mohave Intrastate Region or Pinal-Gila Counties in the Phoenix-Tucson Intrastate Region which provide enforceable and reproducable test procedures for the determination of compliance with the emission standards. Therefore paragraph C of section 3, regulation 2 (Particulates: Other Sources) of the Mohave County Air Pollution Control Regulations, paragraph B of regulation 8-1-3.6 (Particulates—Process Industries) of the Yuma County Air Pollution Control Regulations, and paragraph C of regulation 7-3-1.4 (Particulate Emissions—Incineration) and paragraph F of regulation 7-3-1.7 (Particulate Emissions—Fuel Burning Equipment) of the Rules and Regulations for Pinal-Gila Counties Air Quality Control District are disapproved.

4. Section 52.133 is amended by the revision of paragraph (a) and the addition of a new paragraph (d) as follows:

§ 52.133 Rules and regulations.

* * * * *

(a) Regulation 7-1-1.4(A) (Exceptions) of the Arizona Rules and Regulations for Air Pollution Control, regulations 12-3-2 (Emission Standards) of the Coconino County Rules and Regulations for Air Pollution Control, Sec. 3, Reg. 5 (Exceptions) of the Mohave County Air Pollution Control Regulations, regulation 8-1-1.6 (Exceptions) of the Yuma County Air Pollution Control Regulations, and regulation 7-1-2.8 (Exceptions) of the Rules and Regulations for Pinal-Gila Counties Air Quality Control District all provide for an exemption from enforcement action if the violation is attributable to certain events. These events are too broad in scope and the source can obtain the exemption merely by reporting the occurrence. Therefore, the above regulations are disapproved since these regulations make all approved emission limiting regulations potentially unenforceable.

* * * * *

(d) Section 3, regulation 4 (Ground Level Concentrations) of the Mohave County Air Pollution Control Regulations, paragraph E of regulation 8-1-1.3 (Air Pollution Prohibited) of the Yuma County Air Pollution Control Regulations, and paragraph C of regulation 7-1-1.3 (Air Pollution Prohibited) of the Rules and Regulations for Pinal-Gila Counties Air Quality Control District prohibits any person from causing ground level concentrations to exceed ambient standards outside the boundaries of his operation. These regulations could allow violations of ambient air quality standards to occur in areas to which the general public has access, contrary to the requirements of section 110(a)(1) of the Clean Air Act. Therefore, these regulations are disapproved.

[FR Doc. 78-32020 Filed 11-14-78; 8:45 am]

[6560-01-M]

[FRL 1006-1]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

California Plan Revision: Placer County Air Pollution Control District

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to approve and, where appropriate, disapprove or take no action on revisions to the Placer County Air Pollution Control District (APCD) portion of the California State Implementation Plan (SIP) submitted by the Governor's designee. The intended effect of this action is to update rules and regulations, and to correct certain deficiencies in the SIP.

DATES: Final rulemaking actions taken in this notice will be effective on December 15, 1978. Comments on rule 212 should be submitted no later than December 15, 1978. See SUPPLEMENTARY INFORMATION section for details.

ADDRESS: Comments on rule 212 should be sent to: Regional Administrator, Attention: Air and Hazardous Materials Division, Air Programs Branch, California SIP Section (A-4), U.S. Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, Calif. 94105.

FOR FURTHER INFORMATION CONTACT:

Allyn M. Davis, Director, Air and Hazardous Materials Division, U.S. Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, Calif. 94105, Attention: Wallace A. Woo, telephone 415-556-7288.

SUPPLEMENTARY INFORMATION: On January 20, 1978, EPA published a notice of proposed rulemaking (43 FR 2897) for revisions to the rules of the Placer County APCD submitted to EPA on October 13, 1977, by the California Air Resources Board (CARB) as an amendment to the California SIP.

The changes contained in the October 13, 1977, submittal that are being acted on in this notice include the following:

(a) Some definitions are amended.

(b) The list of exceptions to the visible emission control rule is amended.

(c) New rules are added to control pathological incineration, abrasive blasting, and equipment malfunction conditions.

(d) The emission standards for particulate matter are modified.

(e) Several rules for controlling open outdoor fires, including agricultural burning, are amended.

(f) New rules are adopted to implement the continuous monitoring program, to require source recordkeeping and reporting, and to provide for public availability of emission data.

(g) New rules are adopted to set the permit fees.

(h) Several administrative and procedural changes are made in the procedures before the hearing board.

(i) A new rule is added to authorize the air pollution control officer to issue orders for abatement.

(j) Minor wording changes, that do not affect the degree of control, are made to a number of rules.

(k) The sections of the California Health and Safety Code cited in the rules are renumbered to conform to the recodification of the Code.

(l) The language of the California Health and Safety Code is incorporated into a number of rules.

(m) A number of rules are renumbered.

A list of the rules considered in this notice was published as part of the January 20, 1978, notice of proposed rulemaking. The proposed rulemaking provided 30 days for public comments. No comments have been received.

Under section 110 of the Clean Air Act, as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove the submitted rules as SIP revisions. It is the purpose of this notice to approve all the revisions contained in the October 13, 1977, submittal, and incorporate them into the California SIP, with the exception of those rules not being acted upon and those rules being disapproved as discussed below.

Rule 203(D), Exceptions, exempts the use of experimental devices to research open burning from the visible emission limitations imposed by Rule 202, Visible Emissions. Since there is no control strategy analysis submitted

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by the APCD to demonstrate that this relaxation would not interfere with the attainment and maintenance of the national ambient air quality standards (NAAQS), this exemption should not be allowed. Thus rule 203(D) is disapproved.

No action is being taken on Rule 203(G), Exceptions; Rule 601, Permit Fees; and Rule 602, Hearing Board Fees, as these rules will be addressed in a future FEDERAL REGISTER notice.

Also, no action is being taken on Rule 205, Nuisance, and Rule 312, Wind Direction, because these rules are not specifically directed at the attainment and maintenance of the NAAQS, and thus are not appropriate for inclusion in the SIP.

Rule 211, Process Weight, revises the analogous Rule 61, Solid Particulate Matter-Weight, previously approved in the June 30, 1972, submittal, by narrowing the pollutant coverage from the more inclusive "particulate matter" to the less inclusive "dust and condensed fumes". Although the allowable emission rates contained in rule 61 have been made more stringent in rule 211, there is no analysis submitted by the APCD to demonstrate that the replacement of rule 61 by rule 211 would not cause any interference with the attainment and maintenance of the NAAQS. Therefore EPA is disapproving rule 211 in the October 13, 1977, submittal and retaining rule 61 in the June 30, 1972, submittal for Federal enforcement purposes.

No action is being taken on Rule 212, Storage of Petroleum Products, because EPA is now in the process of reevaluating the appropriateness of applying the vapor recovery programs specified in 40 CFR 52.255 and 40 CFR 52.256 to the districts within the area presently known as the Mountain Counties Air Basin. Preliminary information supplied by the Mountain Counties Air Basin Control Council indicates that existing ambient air quality standard excursions for ozone in the Mountain Counties Air Basin are due to transport from the Sacramento Valley and the San Joaquin Valley rather than to the emissions of hydrocarbons within the area. Thus, EPA, by this notice, is inviting public comments on this thesis for the purpose of promulgating final approval or disapproval of rule 212. Comments should be sent to the EPA region IX office at the address given above. Comments received on or before December 15, 1978, will be considered, and made available for public inspection at the EPA region IX office and the EPA Public Information Reference Unit. In addition, copies of the proposed rule and the preliminary analysis are available for public inspection during normal business hours at the EPA region IX office and at the following locations:

Placer County Air Pollution Control District, DeWitt Center, Auburn, Calif. 95603.
California Air Resources Board, 1709 11th Street, Sacramento, Calif. 95814.
Public Information Reference Unit, Room 2922 (EPA Library), 401 M Street SW., Washington D.C. 20460.

Rule 302(C), Regulated Open Burning, allows for the first time open burning of unsalable wood waste from property being developed for commercial or residential use, subject to requirements imposed by Rule 319, Open Burning of Wood Waste on Property Where Grown. Without any showing that this additional category of open burning would not cause any interference with the attainment and maintenance of the NAAQS, this relaxation in control should not be allowed. Thus both rule 302(C) and rule 319 are disapproved.

Rule 302(G), Regulated Open Burning, allows one additional category of open burning to be carried out, namely, open fires for the operation of a solid waste dump under a CARB extension. Without any demonstration of noninterference with the attainment and maintenance of the NAAQS, this relaxation in control should not be allowed. Therefore rule 302(G) is disapproved.

Rule 304 Exceptions to Rule 303, is disapproved because it exempts open burning of agricultural waste at altitudes above 3,000 feet mean sea level (msl) and agricultural burning in areas above 6,000 (msl) from permit requirements without an adequate control strategy analysis demonstrating noninterference with the attainment and maintenance of the NAAQS.

Rule 307, Exceptions to Rule 306, is disapproved because it grants five exceptions to the general rule that specifies no burning on days designated by the CARB as "no-burn days".

The most significant exception is set forth in 307(A)(1) which permits the air pollution control officer (APCO) to grant a special burning permit upon a showing of threatened economic loss. Economic factors are an impermissible basis upon which to condition the granting of an exception from emission limitations absent a showing that all other requirements of section 110 of the Clean Air Act as well as the NAAQS will be met. In addition, 307(A)(2) exempts the burning of empty pesticide sacks and containers; 307(B) exempts range burning between January and May; 307(C) exempts open burning of agricultural waste at altitudes above 3,000 feet (msl); and 307(D) exempts open burning at altitudes over 6,000 feet (msl) from the "no-burn day" requirements. All are disapproved because no analysis has been submitted by the District to demonstrate that these exemptions would not interfere with the attainment and maintenance of the NAAQS. 307(E) is also disapproved because it concerns the procedures for the issuing of burning permits for the above mentioned categories of open burning.

Rule 314, Exceptions to Rule 313, is disapproved because it authorizes the APCO to shorten the required minimum drying time set forth for materials to be burned in rule 313 upon a determination that "economic loss" is threatened by denial of a permit. As discussed in the critique of rule 307 above, economic factors are not a permissible basis for the granting of an exception without any showing that all other requirements of section 110 of the Clean Air Act as well as the NAAQS would be met.

Rule 322, Mechanized Burners, is disapproved because it exempts open outdoor fires in mechanized burners from "no-burn day" requirements. Although a visible emission limitation of Ringlemann No. 1 is set, there is no demonstration that this new exemption would not interfere with the attainment and maintenance of the NAAQS.

Rule 404, Upset Conditions, Breakdown or Scheduled Maintenance, is disapproved because it permits the automatic exemption of sources from the applicable emission limitations during equipment malfunction and scheduled maintenance, and therefore could render such limitations unenforceable. In addition, automatic exemption of sources could interfere with the attainment and maintenance of the NAAQS.

Rule 408, Source Recordkeeping and Reporting, is a new rule adopted to require the owner or operator of any stationary source of air pollution to maintain files and records of the nature and amounts of emissions, and report findings to the APCD. The rule is approved because it meets the requirements of 40 CFR 51.19(a). EPA, hereby, rescinds the disapproval notice in 40 CFR 52.234(a) and the associated substitute rule in 40 CFR 52.234(d) for the District.

Rule 409, Public Records, is a new rule adopted to provide for public availability of emission data furnished by source operators or owners. The rule is approved because it partially satisfies the requirements of 40 CFR 51.10(e). However, since the rule does not provide for the correlation of emission data with applicable emission limitations as required by § 51.10(e), paragraph (b)(4) of the federally promulgated regulation in 40 CFR 52.224, General Requirements, is retained and shall remain in effect for the District.

Rule 507, Provision of Sampling and Testing Facilities, is approved since it requires continuous monitoring for specified sources, and thereby partially fulfills the requirements of 40 CFR 51.19(e). It is noted, however, that rule 507 does not meet all of the requirements of 40 CFR 51.19(e) and appendix P of part 51.

Regulation VII revisions (which include rules 702, 703, 704, 706, 708, 709, 710, and 715) are approved as part of a procedure for the granting of variances. Each variance, however, must satisfy the requirements of section 110 of the Clean Air Act and 40 CFR Part 51 in order to be approved by EPA as a revision to the SIP.

Certification has been received from the CARB that the public hearing requirements of 40 CFR 51.4 have been satisfied.

(Secs. 110, 301(a) of the Clean Air Act as amended (42 U.S.C. 7410 and 7601(a)).)

Dated: October 31, 1978.

DOUGLAS COSTLE,
Administrator.

Subpart F of part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. Section 52.220, paragraph (c)(41)(x) is added as follows:

§ 52.220 Identification of plan.

* * * * * * *

(c) * * *
(41) * * *
(x) Placer County APCD.
(A) New or amended rules 101, 102, 103, 104, 203 (with the exception of (G)), 206, 207, 208, 210, 211, 213, 214, 301 to 311, 313 to 322, 401, 402, 404, 407, 408, 409, 507, 603 to 605, 702 to 704, 706, 708, 709, 710, 715, 801 to 804.

* * * * *

2. Section 52.224, paragraph (a)(2)(ii)(F) is added as follows:

§ 52.224 General requirements.

(a) * * *
(2) * * *
(ii) * * *
(F) Placer County APCD.

* * * * *

3. Section 52.234, paragraphs (a)(3)(v) and (e)(3)(v) are added as follows:

§ 52.234 Source surveillance.

(a) * * *
(3) * * *
(v) Placer County APCD.

* * * * *

(e) * * *
(3) * * *
(v) Placer County APCD.

* * * * *

4. Section 52.271, paragraph (a)(2)(vii)(B) is added as follows:

§ 52.271 Malfunction regulations.

(a) * * *
(2) * * *
(vii) Placer County APCD.
(B) Rule 404, Upset Conditions, Breakdown or Scheduled Maintenance, submitted on October 13, 1977.

* * * * *

5. Section 52.272, paragraph (a)(1)(iii) is added as follows:

§ 52.272 Research operations exemptions.

(a) * * *
(1) * * *
(iii) Placer County APCD.
(A) Rule 203(D), Exceptions, submitted on October 13, 1977.

* * * * *

6. Section 52.273, paragraph (a)(1)(vii) is added as follows:

§ 52.273 Open burning.

(a) * * *
(1) * * *
(vii) Placer County APCD.
(A) Rule 302 ((C) and (G)), Exceptions to Rule 301; Rule 304, Exceptions to Rule 303; Rule 307, Exceptions to Rule 306; Rule 314, Exceptions to Rule 313; Rule 319, Open Burning of Wood Waste on Property Where Grown; and Rule 322, Mechanized Burners, submitted on October 13, 1977.

* * * * *

7. Section 52.275, paragraph (b)(2)(v) is added as follows:

§ 52.275 Particulate matter control.

(a) * * *
(b) * * *
(2) * * *
(v) Placer County APCD.
(A) Rule 211, Process Weight, submitted on October 13, 1977, is disapproved; and the analogous Rule 61, Solid Particulate Matter—Weight, previously approved in the June 30, 1972, submittal is retained and shall remain in effect for Federal enforcement purposes.

* * * * *

[FR Doc. 78-32021 Filed 11-14-78; 8:45 am]

[FRL 996-2]

PART 65—DELAYED COMPLIANCE ORDERS

Delayed Compliance Order for PPG Industries, Inc.

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: By this rule, the Administrator of EPA issues a delayed compliance order to PPG Industries, Inc. The order requires the company to bring air emissions from its No. 12 boiler at Barberton, Ohio, into compliance with certain regulations contained in the federally approved State implementation plan (SIP). PPG Industries, Inc. compliance with the order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violations of the SIP regulations covered in the order.

DATES: This rule takes effect November 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Linda Buell, Attorney, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Ill. 60604, telephone 312-353-2082.

SUPPLEMENTARY INFORMATION: On June, 27, 1978, the Acting Regional Administrator of EPA's Region V Office published in the FEDERAL REGISTER (43 FR 27865) a notice setting out the provisions of a proposed Federal delayed compliance order for PPG Industries, Inc. The notice asked for public comments and offered the opportunity to request a public hearing on the proposed order. No public comments and no request for a public hearing were received in response to the notice.

Therefore, a delayed compliance order effective this date is issued to PPG Industries, Inc. by the Administrator of EPA pursuant to the authority of section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The order places PPG Industries, Inc., on a schedule to bring its No. 12 boiler at Barberton, Ohio, into compliance as expeditiously as practicable with regulation AP-3-07, a part of the federally approved Ohio State implementation plan. PPG Industries, Inc., is unable to immediately comply with these regulations. The order also imposes interim requirements which meets sections 113(d)(1)(C) and 113(d)(7) of the Act, and emission monitoring and reporting requirements. If the conditions of the order are met, it will permit PPG Industries, Inc., to delay compliance with the SIP regulations covered by the order until July 1, 1979.

Compliance with the order by PPG Industries, Inc., will preclude Federal enforcement action under section 113 of the Act for violations of the SIP regulations covered by the order. Citizen suits under section 304 of the Act to enforce against the source are similarly precluded. Enforcement may be initiated, however, for violations of the terms of the order, and for viola-

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tions of the regulations covered by the order which occurred before the order was issued by EPA or after the order is terminated. If the Administrator determines that PPG Industries, Inc., is in violation of a requirement contained in the order, one or more of the actions required by section 113(d)(9) of the Act will be initiated. Publication of this notice of final rulemaking constitutes final Agency action for the purposes of judicial review under section 307(b) of the Act.

EPA has determined that the order shall be effective upon publication of this notice because of the need to immediately place PPG Industries, Inc., on a schedule for compliance with the Ohio State implementation plan.

(42 U.S.C. 7413(d), 7601.)

Dated: October 31, 1978.

DOUGLAS M. COSTLE,
Administrator.

1. In consideration of the foregoing, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

By amending the table in § 65.400 to add the following entry:

§ 65.400 Federal delayed compliance orders issued under section 113(d)(1), (3), and (4) of the Act.

* * * * *

Source	Location	Order No.	Date of FR proposal	SIP regulation involved	Final compliance date
PPG Industries No. 12 Boiler.	Barberton, Ohio.	EPA-5-78-A-25...	June 27, 1978	AP-3-07.....	July 1, 1979.

2. The text of the order is as follows:

U.S. ENVIRONMENTAL PROTECTION AGENCY

In the matter of PPG Industries, Inc., Barberton, Ohio. Proceeding under section 113(d), Clean Air Act, as amended—Order No. EPA-5-78-A-25.

ORDER

The following order is issued this date pursuant to section 113(d) of the Clean Air Act, as amended, 42 U.S.C. section 7413(d), (hereinafter referred to as "the Act"). The order contains a compliance schedule with increments of progress, interim emission reduction requirements, and emission monitoring and reporting conditions. Final compliance is required as expeditiously as practicable, but no later than July 1, 1979. Public notice, opportunity for a public hearing, and notice to the State of Ohio have been provided pursuant to section 113(d)(1) of the Act.

On June 16, 1977, James O. McDonald, Director, Enforcement Division, Region V, U.S. Environmental Protection Agency (hereinafter referred to as "U.S. EPA"), pursuant to authority duly delegated to him by the Administrator of U.S. EPA, issued a notice of violation to PPG Industries, Inc. (hereinafter referred to as "the Company") stating that the Company's chlor-alkali plant, located in Barberton, Ohio, was found to be in violation of the applicable Ohio Implementation Plan, as defined in section 110(d) of the Act. The stack for boiler 12 was cited for violation of Ohio regulation AP-3-07. A copy of said notice was sent to the State of Ohio Environmental Protection Agency.

Pursuant to section 113(a)(4) of the Act, opportunity to confer with the Administrator's delegates was duly given to the Company. On July 27, 1977, a conference was held in Chicago, Ill., to discuss the June 16, 1977, notice of violation mentioned above.

U.S. EPA has determined that said violations have continued beyond the 30th day after the date of the Enforcement Director's notification.

After a review of information submitted at the conference, and a thorough investigation of all relevant facts, including public comment, it has been determined that the Company's boiler 12 is presently unable to comply with Ohio regulation AP-3-07 and that the schedule hereinafter set forth requires compliance as expeditiously as practicable, and that the terms of this order comply with section 113(d) of the Act.

Therefore, it is hereby ordered that:

I. The Company's boiler 12 at the Barberton chlor-alkali plant shall achieve compliance with Ohio regulation AP-3-07 in accordance with the following schedule:

Increment	*Date*
1. Submit Engineering Report to U.S. EPA	June 1, 1978.
2. Issue all necessary purchase orders	Oct. 15, 1978.
3. Begin installation	May 1, 1979.
4. Complete installation	June 15, 1979.
5. Submit test results to U.S. EPA and certify compliance of boiler 12 with AP-3-07	July 1, 1979

II. Nothing herein shall affect the responsibility of the Company to comply with other Federal, State or local regulations.

III. The Company shall notify U.S. EPA as soon as the Company is aware that it may not meet the requirement specified in paragraph I in a timely manner.

IV. The Company shall submit reports to U.S. EPA detailing progress made with respect to each requirement of this order. Such reports shall be submitted within ten (10) days of the completion of such requirement. In addition, no later than July 1, 1979, the Company shall certify to the U.S. EPA that the Barberton facility is in final compliance with AP-3-07.

V. Nothing herein shall be construed to be a waiver by PPG or the Administrator of any rights or remedies under the Clean Air Act.

VI. Pursuant to section 113(d)(7) of the Act, during the period of this order, until completion of the program set out in paragraph I herein, the Company shall use the best practicable system of emission reduction so as to minimize particulate matter emissions and shall further comply with the requirements of the applicable implementation plan insofar as it is able.

VII. The Company shall install and maintain, no later than the final date for compliance set forth in paragraph I above, a continuous opacity monitor on the stack for boiler 12. This continuous monitoring system shall be installed, calibrated, maintained, and operated in accordance with the procedures set forth in appendix B of 40 CFR Part 60. Monitoring data shall be retained by the Company for at least two (2) years subsequent to recording. Quarterly reports of emission excesses shall be sent to U.S. EPA pursuant to section 114.

VIII. PPG Industries, Inc. is hereby notified that its failure to achieve final compliance by July 1, 1979, may result in a requirement to pay a noncompliance penalty under section 120. In the event of such failure, PPG will be formally notified, pursuant to section 120(b)(3) and any regulations promulgated thereunder, of its noncompliance.

IX. All submissions and notifications to U.S. EPA, pursuant to this order, shall be made to the Air Compliance Section, Enforcement Division, U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Ill. 60604, 312-353-2090. A copy of all submissions and notifications shall be made to Ohio EPA, Northeast District, 2110 East Aurora Road, Twinsburg, Ohio 44087.

Dated: October 31, 1978.

DOUGLAS M. COSTLE,
Administrator.

PPG has reviewed this order, consents to the terms and conditions of this order, and believes it to be a reasonable means by which boiler 12 at the Barberton, Ohio facility can achieve final compliance with Ohio regulation AP-3-07.

Dated: August 24, 1978.

PPG INDUSTRIES, INC.,
G. J. LAMBILLOTTE,
Works Manager.

[FR Doc. 78-32024 Filed 11-14-8:45 am]

[4110-86-M]

Title 42—Public Health

CHAPTER I—PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER F—QUARANTINE, INSPECTION, LICENSING

Part 71—FOREIGN QUARANTINE

Subpart J—Importation of Certain Things

LATHER BRUSHES

AGENCY: Center for Disease Control, PHS, HEW.

ACTION: Final rule.

SUMMARY: This rule eliminates the requirement for routine testing for the presence of *Bacillus anthracis* in samples from all shipments of lather brushes into the United States. The rule authorizes selective sampling as necessary to prevent the introduction of cutaneous anthrax into the United States.

DATES: Effective date: January 15, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Joseph F. Giordano, Director, Quarantine Division, Bureau of Epidemiology, Center for Disease Control, PHS, HEW, Atlanta, Ga. 30333, phone 404-329-3674, or FTS: 236-3674.

SUPPLEMENTARY INFORMATION: On June 23, 1978, a notice of proposed rulemaking was published in the FEDERAL REGISTER (43 FR 27215) to revise 42 CFR Part 71, § 71.151, entitled "Lather Brushes." The proposal invited comments from the public to be considered before issuing the final rule. No comments were received.

Cutaneous anthrax is the disease against which existing regulations are designed to provide protection. The last case of cutaneous anthrax in the United States associated with lather brushes occurred in 1930. Since then, lather brush manufacturers have routinely sterilized the animal hair or bristle components of their products.

Current regulations provide that samples of imported lather brushes made from animal hair or bristles are to be bacteriologically examined for the presence of *Bacillus anthracis*. During the past 47 years of bacteriologic testing, every sample has been negative for *Bacillus anthracis*. From experience and cumulative data, the routine sampling requirement appears to be unnecessary and should be eliminated. This rule provides for selective sampling at the discretion of the Director, Center for Disease Control.

This rule also requires a certification by the manufacturer. The certification will state that the procedures and methods used in the manufacturing of the brushes prevent the contamination or recontamination with viable vegetative forms and spores of *Bacillus anthracis*.

Section 71.151 of part 71 of title 42, Code of Federal Regulations, is revised as set forth below.

Dated: October 11, 1978.

JULIUS B. RICHMOND,
Assistant Secretary for Health and Surgeon General.

Approved: November 8, 1978.

HALE CHAMPION,
Acting Secretary.

Subpart J—Importation of Certain Things

§ 71.151 Lather brushes.

(a) *Conditions for entry.* Shipments of lather brushes made from animal hair or bristles intended for sale, resale or other distribution shall be denied entry into any port or place under the control of the United States unless such shipments conform with the requirements of this section.

(b) *Identifying mark.* The handles of such brushes shall be permanently marked with the name of the country where the brushes were manufactured and the name of the manufacturer or an identifying symbol, word, device or other mark which is distinctly associated with the manufacturer.

(c) *Certification.* Each shipment of lather brushes shall be accompanied by a certification, to be submitted to the District Director of Customs, that the brushes have been treated and stored during and subsequent to manufacture in accordance with procedures and methods which prevent contamination or recontamination with viable vegetative forms and spores of *Bacillus anthracis*. The certification shall be in English; it shall identify the manufacturer and bear or describe in detail any identifying symbol, word, device, or other mark placed on the handle of the brush in accordance with paragraph (b) of this section; and it shall be signed by the manufacturer or an authorized representative.

(d) *Special requirements.* The Director, Center for Disease Control, may, as he considers necessary to prevent the introduction, transmission, or spread of communicable disease, deny entry of any shipment of lather brushes pending the laboratory examination of samples of the shipment to determine the presence or absence of viable vegetative forms and spores of *Bacillus anthracis*. If such examination indicates that the shipment is free from viable vegetative forms and spores of *Bacillus anthracis*, the Quarantine Officer in Charge shall furnish the District Director of Customs a certificate to that effect. If such examination indicates that the shipment is not free from viable vegetative forms and spores of *Bacillus anthracis*, the Quarantine Officer in Charge shall notify the District Director of Customs that the shipment shall be denied entry.

(e) *Disposal of shipments denied entry.* Shipments of brushes which are denied entry may be returned to the country of origin, within a reasonable period of time, as determined by the Quarantine Officer in Charge, at the expense of the manufacturer or shipper, or be destroyed.

[FR Doc. 78-32117 Filed 11-14-78; 8:45 am]

[1505-01-M]

Title 45—Public Welfare

SUBTITLE A—DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, GENERAL ADMINISTRATION

PART 95—GENERAL ADMINISTRATION—GRANT PROGRAMS (PUBLIC ASSISTANCE AND MEDICAL ASSISTANCE)

Conditions for Federal Financial Participation in the Cost of Automatic Data Processing

CORRECTIONS

In FR Doc. 78-27290 appearing at page 44851 in the issue for Friday, September 29, 1978, make the following changes:

1. On page 44851, second column, in the nineteenth line of the third paragraph and the fourth line of the fifth paragraph, the letters "CFT" should read "CFR".

2. On page 44855, second column, second line from the bottom of § 95.613, "gencies" should read "agencies".

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[6712-01-M]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[SS Docket No. 78-27; RM-2957; RM-2698]

PART 91—INDUSTRIAL RADIO SERVICES

Prohibiting the Operation of Base or Control Stations on Certain Frequencies by Noncentral Station Commercial Protection Entities Within 75 Miles of Urbanized Areas of 200,000 or Mare Population; Correction

AGENCY: Federal Communications Commission.

ACTION: Erratum.

SUMMARY: This erratum corrects footnote 1 in the report and order released October 30, 1978, in SS Docket 78-27, relating to frequencies allocated in the Business Radio Service for use by central station commercial protection facilities published at 43 FR 51018, Nov. 2, 1978.

EFFECTIVE DATE: November 29, 1978.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Eugene C. Bowler, Safety and Special Radio Services Bureau, 202-632-6497.

In the matter of amendment of § 91.554 of the Commission's rules to prohibit the operation of base or control stations on the frequencies 460.900/465.900, 460.925/465.925, and 460.950/465.950 MHz by noncentral station commercial protection entities within 75 miles of urbanized areas of 200,000 or more population (1960 U.S. Census), and to permit alarm signaling and other fixed point-to-point operations on a secondary basis for central station commerical protection entities on the frequencies 460.900/465.900, 460.925/465.925, 460.950/465.950, 460.975/465.975, and 461.000/466.000 MHz, SS Docket No. 78-27, RM-2957, RM-2698.

Footnote 1 of the Commission's report and order in the above-captioned matter (FCC 78-741, released October 30, 1978), is corrected to read as follows:

[1]Central station electrical protection companies provide electrical burglar and fire alarms, and protective service to customers from central monitoring stations which have been approved by one of the recognized rating agencies, such as the Underwriters' Laboratories, Inc.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-32027 Filed 11-14-78; 8:45 am]

[3510-22-M]

Title 50—Wildlife and Fisheries

CHAPTER VI—FISHERY CONSERVATION AND MANAGEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 651—ATLANTIC GROUNDFISH (COD, HADDOCK, AND YELLOWTAIL FLOUNDER)

Repromulgation of Emergency Regulations Corrections of Notice of Closures and Catch Limit Adjustments

AGENCY: National Oceanic and Atmospheric Administration Commerce.

ACTION: Emergency regulations and correction of notice of closure.

SUMMARY: The emergency regulations implementing the Atlantic Groundfish Fishery Management Plan are continued in effect until December 29, 1978, or until final regulations are promulgated. A recent Notice of closing some fisheries and reducing catch limits under these regulations is corrected.

EFFECTIVE DATES: The emergency regulations are extended until December 29, or the time when final regulations are promulgated, if sooner. The corrections to the November 9 FEDERAL REGISTER notice are effective on November 13.

FOR FURTHER INFORMATION CONTACT:

Mr. William G. Gordon, Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Gloucester, Mass 01930, telephone 617-281-3600.

SUPPLEMENTARY INFORMATION: On October 4, 1978, emergency regulations were published governing fishing for Atlantic groundfish (43 FR 45872). The regulations were to expire on November 14. Those regulations were also published as a proposed rulemaking to implement the Atlantic Groundfish Fishery Management Plan prepared by the New England Fishery Management Council.

The emergency regulations are hereby extended, effective November 14, in order to provide time to evaluate the public comment on the proposed regulations and prepare final regulations. Although the emergency regulations are continued for the full 45-day period allowed by law (Fishery Conservation and Management Act of 1976, sec. 305(e); 16 U.S.C. 1855(e)), it is anticipated that final regulations will be promulgated within a few weeks.

It has been determined that the emergency in this fishery, as described in 43 FR 45872, continues to exist.

On November 9, 1978, a Notice was published closing some Atlantic groundfish fisheries, and reducing weekly catch limits in others. Portions of this notice were in error. Because of some miscalculations in monitoring catches and landings, the Notice stated that the fixed gear fisheries for cod and haddock in the Gulf of Maine and haddock in Georges Bank and South were to be closed. More accurate information has indicated that the quarterly quota for these fisheries has not been taken. The Notice is therefore amended, and these fisheries remain open in accordance with the Revised Appendix B.

That Notice also indicated that all of the weekly catch limit adjustments, and closures for most vessel classes would be effective on November 12.

In order to provide adequate notice to fishermen, the Assistant Administrator for Fisheries, NOAA, had decided that these limitations and closurers should all be effective on November 19, Therefore, the November 9 Notice is corrected to make all actions therein effective on November 19.

A revised Appendix B to the Atlantic Groundfish Regulations as corrected by this Notice is printed below. This revision is effective on November 19.

Signed at Washington, D.C., this the 13th day of November 1978.

WINFRED H. MEIBOHM,
Acting Executive Director, National Marine Fisheries Service.

(16 U.S.C. 1801 et seq.)

APPENDIX B—CATCH LIMITATIONS
(Revised)

Vessel class	Gulf of Maine		Georges Bank and south	
	limits	overruns	limits	overruns
	Cod (pounds/week)			
0-60 GRT	2,500	1,500	2,500	1,500
61-125 GRT	5,000	1,500	9,800	3,500
Over 125 GRT	7,000	1,500	7,000	1,500

APPENDIX B—CATCH LIMITATIONS—Continued
(Revised)

Vessel class	Gulf of Maine		Georges Bank and south	
	limits	overruns	limits	overruns
	Haddock (pounds/week)			
Fixed gear	5,000	0	13,000	0
	Haddock (pounds/week)			
0-60 GRT	Closed Nov.19		Closed Nov. 19	
61-125 GRT	7,000	2,500	7,000	2,500
Over 125 GRT	5,000	1,500	Closed Nov. 19	
Fixed gear	5,000	0	8,000	-

Vessel class	West of 69° west	East of 69° west
	Yellowtail flounder[1]	
0-60 GRT	5,000	
61-125 GRT	5,000	
Over 125 GRT	5,000	

[1]Pounds per week or trip, whichever time period is longer. A vessel may land no more than 5,000 pounds, even if it fished on both sides of the 69° West line. No overruns are allowed.

[FR Doc. 78-32244 Filed 11-14-78; 8:45 am]

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proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

[6714-01-M]

FEDERAL DEPOSIT INSURANCE CORPORATION

[12 CFR Part 302]

DEVELOPMENT AND REVIEW OF FDIC RULES AND REGULATIONS

Proposed Rules

AGENCY: Federal Deposit Insurance Corporation (FDIC.)

ACTION: Proposed amendment of regulation.

SUMMARY: The FDIC proposes to revise and codify its rulemaking procedures. The purpose of the regulation is to describe the general procedures by which the FDIC develops and reviews its rules and regulations. This action is being taken in order to comply with the spirit and intent of Executive Order 12044 ("Improving Government Regulations") and in order to make the FDIC's rulemaking procedures more responsive to those whom it regulates and to the public at large.

DATE: Comments must be received no later than January 5, 1979.

ADDRESS: Interested persons are invited to submit written data, views or arguments regarding the proposed amendment to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, D.C. 20429. All written comments will be made available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT:

Alan J. Kaplan, Senior Attorney, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, D.C. 20429, telephone 202-389-4433.

SUPPLEMENTARY INFORMATION: On March 23, 1978, President Carter signed Executive Order 12044 ("Improving Government Regulations"). That order directs executive agencies to adopt procedures to improve existing and future regulations. Although by its own terms the order does not apply to regulations issued by independent regulatory agencies such as the FDIC, the President requested that these agencies initiate voluntary efforts to achieve similar procedural reforms. The FDIC has advised the President of its intention to apply the policy objectives of Executive Order 12044 to the development and review of FDIC regulations. These policy objectives are set out in section 1 of the order as follows:

Policy. Regulations shall be as simple and clear as possible. They shall achieve legislative goals effectively and efficiently. They shall not impose unnecessary burdens on the economy, on individuals, on public or private organizations or on State and local governments. To achieve these objectives, regulations shall be developed through a process which insures that:

(a) The need for and purposes of the regulation are clearly established;

(b) Heads of agencies and policy officials exercise effective oversight;

(c) Opportunity exists for early participation and comments by other Federal agencies, State and local governments, businesses, organizations and individual members of the public;

(d) Meaningful alternatives are considered and analyzed before the regulation is issued; and

(e) Compliance costs, paperwork and other burdens on the public are minimized.

To meet these objectives, and because present part 302 is not adequate to meet these goals, the FDIC proposes to revise and codify its rulemaking procedures. Under the revised procedures, part 302 of the FDIC's rules and regulations, currently captioned "Formulation and Promulgation of Rules and Regulations," would be recaptioned "Development and Review of FDIC Rules and Regulations." The following summary describes the proposed procedures:

1. *Purposes and scope.* Section 302.1 sets forth the purpose and scope of part 302. As stated, the purpose is to describe the general procedures by which the FDIC develops and reviews its rules and regulations. These procedures apply to any FDIC rule or regulation designated as such by the FDIC Board of Directors at the time of its issuance, but not to any general statement of policy.

2. *Development of regulations.* Section 302.2 describes the general procedures by which the FDIC develops its regulations. That section, while incorporating many of the procedures specified in Executive Order 12044, remains consistent with the rulemaking requirements of the Administrative Procedure Act (5 U.S.C. 553).

Under § 302.2, early in the development of a regulation the FDIC staff will submit to the Board of Directors for review a concise statement describing the regulation and pertinent information concerning its development. Although not expressly required, it is contemplated that the statement will be prepared and submitted when initial work on the regulation begins. In most cases, this would occur before substantial resources are devoted to drafting the regulation. However, it is expected that there will be instances in which the statement is not submitted to the Board of Directors until after the regulation has already been drafted. Even in these cases, however, the Board of Directors is usually aware that a regulation is being developed and is generally advised informally as to its substance.

In addition to this initial stage of review, the Board of Directors also reviews and approves all proposed regulations and final regulations before they are published in the FEDERAL REGISTER. In this way, the Board achieves the President's policy objective of effective oversight of regulation development by agency heads.

Typically, proposed regulations are published for comment in the FEDERAL REGISTER. The notice accompanying the published proposal will contain the information required by the Administrative Procedure Act plus, to the extent available, certain additional information specified in § 302.2(h). This information includes: the reasons why the regulation is needed; the effects of the regulation, including its effect on competition; the relationship, if any, of the regulation to other government regulations, programs, and activities; alternative approaches that were considered; an assessment of the reporting or recordkeeping requirements necessary to comply with the regulation; a cost-benefit analysis of the regulation, where feasible; and the name, address, title, and telephone number of a knowledgeable FDIC official who can answer questions about the regulation.

The comment period will be at least 30 days. For its more significant regulations, the FDIC often allows more time for public comment. In addition, the FDIC can, and does, extend the original comment period when it appears that the public response to a proposed regulation so warrants. In other cases where the Board of Directors determines that a comment period shorter than 30 days is necessary, the Board will state its reasons

for this determination in the published notice.

The Board of Directors may also direct that interested persons be permitted to present their views on a proposed regulation orally. The FDIC will determine on an ad hoc basis the manner in which oral presentation will be made. It is the FDIC's intention to hold informal hearings in those cases where a regulation under development is likely to have a major impact on the public.

In addition to soliciting public comment on proposed regulations, the FDIC will endeavor, in appropriate matters, to issue a press release and/or publish in the FEDERAL REGISTER an advance notice of proposed rulemaking, to afford the public an early opportunity to participate in the rulemaking process before a regulation is formally proposed.

After reviewing and analyzing the comments received and views presented on a proposed regulation, the FDIC will put the regulation into final form and will submit it to the Board of Directors for final action. With each regulation submitted to the Board, the staff will submit a report which generally contains all the information specified in § 302.2(h), including an analysis of the public comments received, an assessment of the reporting or recordkeeping requirements necessary to comply with the regulation, a cost-benefit analysis (where feasible), and a statement of the regulation's effects and the reasons why the regulation is needed. This information will also be included in the FEDERAL REGISTER notice when the final regulation is published.

FDIC Board of Directors approves all final regulations before they are published. Each final regulation is published in the FEDERAL REGISTER at least 30 days before its effective date, except in certain cases authorized by the Administrative Procedure Act. For example, the FDIC may dispense with the delayed effective date if the Board of Directors finds good cause to do so; however, even in these cases, the Board will publish its reasons for the finding.

Also, the FDIC will write its regulations in plain English and will include in each final regulation a concise general statement of its basis and purpose.

As indicated by § 302.2(i), a certain degree of flexibility has been retained to deal with certain special categories of regulations. For example, in developing regulations that are mandated by law and whose content is so prescribed, the information supporting or justifying the regulation may be less detailed that it would otherwise be, since the FDIC would have little, if any, discretion over the form or content of the regulation. Also, with respect to regulations developed jointly or in cooperation with other agencies, the FDIC may rely largely on information supplied by the other agencies. Where possible, the FDIC will note the source of the information.

The published FDIC procedures also recognize the provisions of the Administrative Procedure Act stating that an agency may dispense with the general notice and public participation requirements with respect to interpretative rules or rules of agency organization, procedure, or practice, or when it finds that notice and public procedure are impracticable unnecessary or contrary to the public interest. When this happens, the FDIC will include a statement of its reasons when it publishes the regulation.

3. *Regulation not acted upon.* Section 302.3 provides for automatic withdrawal of any proposed regulation on which final action by the Board of Directors has not been taken within 1 year from the date the regulation was last proposed. This provision is not found in Executive Order 12044, but has been included by the FDIC in order to relieve possible public confusion over the status of regulations that have been proposed but not adopted. It is intended that if the FDIC wishes to repropose any proposed regulation which has been automatically withdrawn under this provision, it must begin the regulatory process anew (i.e., republish in the FEDERAL REGISTER, resolicit public comments, etc.).

4. *Semiannual agenda of regulations.* Twice a year the FDIC will publish in the FEDERAL REGISTER an agenda of proposed regulations and existing regulations under review. The agenda will be approved by the Board of Directors before publication and will contain certain specified information about each listed regulation. The purpose of the agenda is to advise the public as to the status of outstanding proposed regulations and regulations under review.

5. *Review of existing regulations.* At least once every 5 years the FDIC will review each of its regulations to determine whether the regulation should be continued, revised, or eliminated. This review will most likely be staggered; that is, regulations will be reviewed at various times during the 5-year period, rather than all at once. The Executive Secretary is responsible for determining when each regulation is to be reviewed and for notifying the appropriate reviewing office.

Although the regulation does not so require, it is expected that the review of an existing regulation will follow procedures similar to those prescribed for the development of new regulations. Section 302.5 lists the factors that are to be considered in evaluating each regulation.

6. *Rulemaking petitions.* Section 302.6 continues the practice of permitting any person or organization to petition the FDIC in writing for the issuance, amendment, or repeal of a regulation. The petition should state the petitioner's interest in the subject matter and the reasons why the petition should be granted.

The subject amendment is being proposed under authority of section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819). It imposes no reporting or recordkeeping requirements on any person or organization. If adopted, it is expected that the amendment would have the effect of substantially achieving the policy goals stated in Executive Order 12044.

In developing this regulation, the following alternative approaches were also considered:

1. Issuing informal guidelines describing in general terms the FDIC's rulemaking procedures; or

2. Retaining the present part 302 substantially in its current form.

The first alternative was rejected because it was felt that a binding, formally promulgated regulation was necessary in order to reflect the FDIC's commitment to meaningful regulatory reform. The second alternative was rejected because it does not go far enough in insuring that the FDIC achieves the policy objectives set by the President.

Accordingly, the FDIC proposes to amend 12 CFR Part 302 by revising it to read as set forth below.

By direction of the Board of Directors dated November 8, 1978.

FEDERAL DEPOSIT INSURANCE CORPORATION,
ALAN R. MILLER,
Executive Secretary.

PART 302—DEVELOPMENT AND REVIEW OF FDIC RULES AND REGULATIONS

Sec.
302.1 Purpose and scope.
302.2 Development of regulations.
302.3 Regulations not acted upon.
302.4 Semiannual agenda of regulations.
302.5 Review of existing regulations.
302.6 Rulemaking petitions.

AUTHORITY: Sec. 9, 64 Stat. 881, 12 U.S.C. 1819.

§ 302.1 Purpose and scope.

(a) *Purpose.* The propose of this part 302 is to describe the general procedures by which the FDIC develops and reviews its rules and regulations.

(b) *Scope.* Part 302 applies to the development and review of FDIC regulations. The term "regulation" includes any FDIC rule or regulation so designated by the FDIC Board of Directors.

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but does not include a general statement of policy.

§ 302.2 Development of regulations.

(a) Early in the development of a regulation, the FDIC staff will prepare and submit to the Board of Directors for review a concise statement describing the regulation, its purpose and need, its legal basis, the issues that have been or will be considered, the alternative approaches that have been or will be explored, a tentative plan for obtaining comment from interested persons, and target dates for completion of the various stages of development.

(b) When appropriate, the FDIC will issue a press release and-or publish in the FEDERAL REGISTER an advance notice of proposed rulemaking, affording the public an early opportunity to participate in the rulemaking process before a regulation is formally proposed.

(c) The Board of Directors will review and approve all proposed regulations before publication in the FEDERAL REGISTER.

(d) The proposed regulation will be published for comment in the FEDERAL REGISTER. The published notice will include either the terms or substance of the proposed regulation or a description of the subjects and issues involved, the legal authority under which the regulation is proposed, and, where applicable, a statement of the time, place, and nature of public rulemaking proceedings. It will also include the information specified in § 302.2(h), to the extent known at the time. The comment period will be at least 30 days, unless the Board of Directors has detemined that a shorter period is necessary, in which case the published notice will state the Board's reasons.

(e) The Board of Directors may direct that interested persons be permitted to present their views on the proposed regulation orally.

(f) The FDIC staff will review and analyze the comments received and views presented before putting the regulations into final form.

(g) As provided in the Administrative Procedure Act (5 U.S.C. 553), the FDIC may dispense with the general notice and public participation requirements with respect to interpretative rules or rules of FDIC organization, procedure, or practice, or when it finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. When this happens, the published regulation will include the finding and a brief statement of the reasons for the finding.

(h) With each proposed regulation submitted to the Board for final action, the staff will submit a report which generally will contain the following information:

(1) The reasons why the regulations is needed;

(2) The effects for the regulation, including its effect on competition;

(3) The relationship, if any, of the regulation to other government regulations, programs, and activities;

(4) Alternative approaches that were considered;

(5) Analysis of the public comments received and views presented;

(6) An assessment of the reporting or recordkeeping requirements necessary to comply with the regulation;

(7) A cost-benefit analysis of the regulation (unless the staff advises the Board of the reasons why such an analysis is not feasible and the board agrees with that advice); and

(8) The name, address, title, and telephone number of a knowledgeable FDIC official to be included in the FEDERAL REGISTER notice that will accompany the published regulation.

(i) In developing regulations that are mandated by law and whose content is so prescribed, the items contained in § 302.2(h) may be discussed in summary fashion. In preparing the report called for in § 302.2(h) with respect to regulations developed jointly or in cooperation with other agencies, the FDIC may rely largely on information supplied by the other agencies.

(j) The Board of Directors will approve each final regulation before it is published in the FEDERAL REGISTER. Each final regulation will include a concise general statement of its basis and purpose and will be written in plain English. The published notice will also include the information listed in § 302.2(h).

(k) The final regulation will be published in the FEDERAL REGISTER at least 30 days before its effective date, unless (1) it is a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) it is an interpretative rule; or (3) the Board of Directors finds good cause to dispense with the delayed effective date, in which case the Board will publish its reasons for the finding.

§ 302.3 Regulations not acted upon.

Any proposed regulation with respect to which final action by the Board of Directors has not been taken within 1 year from the date the regulation was last proposed will be deemed to have been automatically withdrawn.

§ 302.4 Semiannual agenda of regulations.

(a) During March and September of each year, the FDIC will publish in the FEDERAL REGISTER an agenda of proposed regulations and existing regulations under review.

(b) The agenda will be approved by the Board of Directors before publication and will contain the following information with respect to each proposed regulation or existing regulation under review:

(1) A description;

(2) Its need and legal basis;

(3) The name, title, and telephone number of a knowledgeable FDIC official; and

(4) The status of all items listed on the last agenda on which final action has not been taken.

§ 302.5 Review of existing regulations.

The FDIC will review each regulation periodically (at least once every 5 years) for the purpose of determining whether the regulation should be continued, revised, or eliminated. The Executive Secretary will establish procedures for determining when each regulation is to be reviewed and will notify either the General Counsel or other appropriate FDIC official that it is time to conduct the review. The factors to be considered in determining whether the regulation should be continued, revised, or eliminated are:

(a) The continued need for the regulation;

(b) Alternative methods of accomplishing the purpose of the regulation;

(c) The type and number of complaints or suggestions received;

(d) The burdens imposed on those affected by the regulation;

(e) Possible simplification or clarification of the regulation;

(f) The need to eliminate overlapping and duplicative regulations or supervisory procedures; and

(g) The length of time since the regulation was last evaluated and the extent to which technology, economic conditions, and other factors have changed in the area affected by the regulation.

§ 302.6 Rulemaking petitions.

Any person or organization may petition the FDIC for the issuance, amendment, or repeal of any regulation by submitting a written petition to the Executive Secretary of the FDIC. The petition should include a complete and concise statement of the petitioner's interest in the subject matter and the reasons why the petition should be granted.

[FR Doc. 78-32118 Filed 11-14-78; 8:45 am]

[4830-01-M]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

[LR-66-76]

INCOME TAX

Exchanges Under the Final System Plan for ConRail; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to exchanges under the final system plan for the Consolidated Rail Corp.

DATES: The public hearing will be held on December 19, 1978, beginning at 11 a.m. Outlines of oral comments must be delivered or mailed by December 8, 1978.

ADDRESS: The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, D.C. The outlines should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-66-76), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

George Bradley or Charles Hayden of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, 202-566-3935, not a toll-free call.

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 354, 356, 358, 371, 372, 373, and 374 of the Internal Revenue Code of 1954. The proposed regulations appeared in the FEDERAL REGISTER for Wednesday, August 30, 1978, at page 38727 (43 FR 38727).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and also desire to present oral comments at the hearing on the proposed regulations should submit an outline of the comments to be presented at the hearing and the time they wish to devote to each subject by December 8, 1978. Each speaker will be limited to 10 minutes for an oral presentation exclusive of time consumed by questions from the panel for the Government and answers to these questions.

Because of controlled access restriction, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 10:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the proposed Treasury Directive appearing in the FEDERAL REGISTER for Wednesday, May 24, 1978.

By direction of the Commissioner of Internal Revenue.

ROBERT A. BLEY,
Director,
Legislation and Regulations Division.

[FR Doc. 78-32155 Filed 11-14-78; 8:45 am]

[6820-12-M]

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

[29 CFR Part 2700]

PROCEDURAL RULES

Hearing on Proposed Rulemaking

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Notice of hearing on proposed rules of procedure.

SUMMARY: The Federal Mine Safety and Health Review Commission will hold a hearing on its proposal, published on October 31, 1978 (43 FR 50712), to replace its interim rules of procedure and adopt new rules of procedure.

DATES: A public hearing will be held on Tuesday, December 5, 1978, at 10 a.m. Persons who desire to speak at the hearing must notify the Commission by letter no later than November 24, 1978. The notice must include an estimate of the amount of time needed for the speaker's remarks, as well as the speaker's business telephone number.

ADDRESS: The hearing will be held at the Commission's offices, Room 600, 1730 K Street NW., Washington, D.C. All communications should be addressed to: Donald F. Terry, Executive Director, Federal Mine Safety and Health Review Commission, 1730 K Street NW., 6th Floor, Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT:

Donald Terry, Executive Director, 202-653-5644.

SUPPLEMENTARY INFORMATION: On October 31, 1978, the Federal Mine Safety and Health Review Commission proposed the adoption of new rules of procedure to replace its interim rules of procedure. 43 FR 50712. The proposed rules are intended to reduce both paperwork and expense to the parties, as well as make Commission adjudications less complex and time consuming. The Commission has provided an opportunity to submit written comments on the rulemaking proposal.

The Commission has, therefore, decided to hold a hearing at the end of the written comment period at which interested persons and the general public are invited to present their views orally. Any person who wishes to speak at the hearing must notify the Executive Director by letter no later than November 24, 1978. This letter must state the speaker's telephone number in addition to the amount of time his or her remarks are expected to consume. If the request to appear can be accommodated, the Commission will notify the speaker of the time scheduled for his or her appearance. Because the Commission wishes to hear as many presentations as possible, presentations should be planned to not exceed 30 minutes.

Signed at Washington, D.C., this 9th day of November 1978.

JEROME R. WALDIE
Chairman, Federal Mine Safety and Health Review Commission.

[FR Doc. 78-32165 Filed 11-14-78; 8:45 am]

[3710-92-N]

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

[33 CFR PART 207]

RESTRICTED AREA, ST. JOHNS RIVER, FLA.

Navigation Regulations

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Corps of Engineers proposes to establish a restricted area in the waters adjacent to the U.S. Navy Fuel Depot Pier in the St. Johns River, Jacksonville, Fla. The restricted area is necessary to provide adequate safety and security for the fuel depot.

DATE: Comments must be received on or before December 19, 1978.

ADDRESS: Send comments to: Office of the Chief of Engineers Attn: DAEN-CWO-N, Washington, D.C. 20314.

FOR FURTHER INFORMATION CONTACT:

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Mr. Ralph T. Eppard at 202-693-5070.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the River and Harbor Act of August 8, 1917 (40 Stat. 266, 33 U.S.C. 1) the Corps of Engineers proposes to establish an area in the waters adjacent to the U.S. Navy Fuel Depot Pier that would be closed to all commercial or private vessels unless otherwise authorized by the officer in charge of the depot. The proposed regulation, 33 CFR part 207.167, is set forth below:

§ 207.167 U.S. Navy Fuel Depot Pier, St. Johns River, Jacksonville, Fla.; restricted area.

(a) *The area is described as:* (1) A line running at 238.5° true and paralleling the pier at 100 feet is extended from the eastern edge of the mooring platform No. 59 to the western edge of platform No. 65. From these points the boundaries are extended to the shoreline along lines running at 328.5°.

(2) The easterly waterward coordinate being: 30°23'58.0" N; 81°37'15.0" W.

(3) The westerly waterward coordinate being: 30°23'53.0" N; 81°37'24.4" W.

(b) *The regulations.* (1) The use of waters as previously described by private and/or commercial floating craft is prohibited with the exception of vessels that have been specifically authorized to do so by the officer in charge of the Navy Fuel Depot.

(2) This regulation shall be enforced by the officer in charge, U.S. Navy Fuel Depot, Jacksonville, Fla.

Dated: November 2, 1978.

THORWALD R. PETERSON,
Colonel, Corps of Engineers,
Executive Director, Engineer Staff.

[FR Doc. 78-32046 Filed 11-14-78; 8:45 am]

[4110-02-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Part 161j]

CORRECTION EDUCATION PROGRAM

Decision to Develop Regulations

AGENCY: Office of Education, HEW.

ACTION: Notice of decision to develop regulations.

SUMMARY: The Commissioner of Education proposes rules for the "Correction Education Demonstration Project Act of 1978." The Act authorized demonstration projects. The proposed regulations will:

(1) Define the eligible applicants and beneficiaries under the Act;

(2) Establish the focus of the program; and

(3) Establish specific funding criteria, and allowable costs. These regulations will provide improved educational services to the client offender populations. These regulations are policy significant.

FOR FURTHER INFORMATION CONTACT:

Dr. James M. Spillane, Room 2047, FOB No. 6, 400 Maryland Avenue SW., Washington, D.C. 20202. Telephone 202-245-7292.

Dated: November 3, 1978.

ERNEST L. BOYER,
Commissioner of Education.

[FR Doc. 78-32051 Filed 11-14-78; 8:45 am]

[6730-01-M]

FEDERAL MARITIME COMMISSION

[46 CFR Chapter IV]

[Docket 78-46]

AMENDMENT TO FINANCIAL REPORTS BY COMMON CARRIERS BY WATER IN THE DOMESTIC OFFSHORE TRADES

Advance Notice of Proposed Rulemaking

AGENCY: Federal Maritime Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission intends to publish substantive guidelines for determining what constitutes a just and reasonable rate of return or profit for common carriers by water in intercoastal commerce. The purpose of this advance notice is to solicit comments and information from the public on the issues which should be addressed by the proposed rules.

DATES: Comments must be submitted on or before December 15, 1978. Informal hearings will be held at the times and locations listed below.

ADDRESSES: Comments to: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, D.C. 20573.

FOR FURTHER INFORMATION CONTACT:

Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, D.C. 20573, telephone 202-523-5725.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Federal Maritime Commission regulates the activities of common carriers by water in domestic offshore commerce. The regulation of the rates charged by these carriers is an important aspect of the Commission's responsibility.

The Commission's authority to regulate rates in the domestic offshore trades has been altered by Pub. L. 95-475, an amendment to the Intercoastal Shipping Act of 1933. Pub. L. 95-475 has a twofold purpose. First, although it removes the Commission's authority to suspend general revenue rate increases of less than 5 percent, it provides that the Commission may investigate all general revenue rate increases, regardless of size, and order refunds to shippers if an increase should prove unwarranted. General revenue increases of more than 5 percent may be suspended by the Commission for a period of 180 days. Second, Pub. L. 95-475 expedites the decisionmaking process of the Commission as it relates to the regulation of rates in the domestic offshore trades. The following deadlines have been imposed on the Commission: Hearings must be completed within 60 days after the proposed effective date of the rates. The initial decision must be submitted to the Commission within 120 days and the Commission must reach a final decision within 180 days of the effective date. Under extraordinary circumstances, the Commission is authorized to extend the time period (and suspension period) by an additional 60 days. In order to properly implement Pub. L. 95-475, the Commission is directed to prescribe by regulation the guidelines for determining the justness and reasonableness of rates of return or profits for common carriers by water in intercoastal commerce.

The Commission's general order 11 is at present a reporting requirement and not a substantive guideline for the determination of just and reasonable rates of return or profits, and thus must be modified in order to serve as a substantive guideline.

The Commission's rules of practice and procedure also require modification, since they are presently clearly incompatible with the time constraints imposed by Pub. L. 95-475. Accordingly, the Commission will promulgate both substantive and procedural rules governing future general rate increases in the domestic offshore trades. However, modifications to the Commission's rules of practice and procedure will be the subject of a separate rulemaking proceeding.

Prior to publishing specific substantive rules, the Commission seeks, by this advance notice of proposed rulemaking, to solicit the views of governmental bodies, shippers and carriers regarding the nature, scope and feasibility of these regulations. Specific comments are sought on the following issues, as well as on any other matters thought to be relevant.

ISSUES UPON WHICH COMMENTS ARE REQUESTED

1. Should the present method of allocating assets and expenses to the trade be retained?

2. Are there any assets that should be considered in the rate base other than those designated in General Order 11?

3. What value should be assigned to the assets included in the rate base?

4. Should the Commission use the rate of return on rate base, rate of return on equity, or some other standard for evaluating the revenue need in rate cases?

5. What is the proper tax to assess against the trade operation?

6. How should deferred taxes and capital construction funds be treated for rate base purposes?

7. What operational data (sailing schedules, utilization of factors, etc.) should be considered in order to determine the carrier's need for revenue?

8. What uniform rules and standards of quality are needed in order to develop adequate revenue and expense projections?

9. Should there be different standards for evaluating the revenue needs of vessel operators and NVOCCs? If so, what should they be?

10. Can General Order 11 be adopted unchanged?

11. If a return on equity standard is adopted, whose equity ratio should be used where related company issues are involved?

12. If a return on equity standard is adopted, how should intercompany debts be treated? Should the time these debts have been outstanding affect the treatment?

13. What is the proper standard for evaluating the revenue needs of a carrier having little or no equity and/or assets?

14. Should carriers of small size or minor significance in the trade be exempted from the reporting requirements of any proposed rule?

The above issues are clearly not exhaustive nor are they meant to limit the subjects which may be commented upon. All responding parties are encouraged to fully discuss all issues which they believe to be relevant to the proposed rulemaking. All parties are urged to be as specific as possible in their comments.

In addition to this request for written comments, the Commission intends to solicit the comments of governmental bodies, shippers, and carriers at a series of informal hearings to be held in various cities throughout the country. These comments will become part of the rulemaking record in this proceeding. Commissioner Leslie Kanuk will act as the Presiding Officer during the informal hearing phase of this proceeding. The informal public discussions will be held in the following cities on the dates listed below:

Date, Location, and Contact Number

December 5, 1978; Los Angeles, Calif.; 415-556-5272.
December 6, 1978; San Francisco, Calif.; 415-556-5272.
December 11, 1978; Honolulu, Hawaii; 415-556-5272.
December 14, 1978; Washington, D.C.; 202-523-5725.
December 15, 1978; New York, N.Y.; 212-264-1430.
December 18, 1978; San Juan, P.R.; 809-753-4198.
December 19, 1978; St. Thomas, V.I.; 809-753-4198.

NOTE: the exact addresses of the hearings can be obtained by calling the appropriate number listed above.

All persons who wish to attend should register at least 1 week in advance by calling the appropriate telephone number listed above.

By the Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-32285 Filed 11-14-78; 8:45 am]

[3510-22-M]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[50 CFR Part 260]

STANDARDIZATION OF FISHERY PRODUCTS

Request for Information and Comments

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This advance notice of proposed rulemaking describes guidelines, standards, and procedures the National Marine Fisheries Service (NMFS) is considering for fishery products inspected by its programs. Since these guidelines, standards, and procedures will have an impact on voluntary fishery products inspection and certification, the comments of all concerned parties are invited.

DATE: Comments by February 13, 1979.

ADDRESS: Written comments should be directed to; Mr. Thomas J. Billy, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT:

Mr. James R. Brooker, Seafood Quality and Inspection Division, U.S. Department of Commerce, NOAA, National Marine Fisheries Service, Washington, D.C. 20235, 202-634-7458.

SUPPLEMENTARY INFORMATION: The National Marine Fisheries Service (NMFS) provides voluntary, fee-for-service fishery products inspection and grading programs to help the fishing industry maintain the quality of its products and to increase consumer confidence in seafoods.

Inspection is the examination and testing of fishery products to provide assurances that a product meet Federal requirements for quality, identity, wholesomeness, and labeling. Products which have been processed under certain requiste conditions and which meet specified requirements may bear the Federal inspection mark, "Packed Under Federal Inspection" (PUFI) on the label.

Grading is the inspection of those seafood products for which voluntary U.S. Standards for Grades have been promulgated in Title 50, Code of Federal Regulations, Parts 261 through 267. The level of quality of the product is determined and certified. Only products which have met Federal safety, wholesomeness, and identity requirements and have been processed under certain requisite conditions are eligible for grading. Products which meet these requirements and the designated quality provisions established in the standards may bear a U.S. Grade mark on the brand label. The variety of fishery products that may bear a U.S. Grade mark is limited to those for which U.S Standards for Grades are available.

All other nonstandardized fishery products that are inspected may bear the "Packed Under Federal Inspection" mark. Inspection of these nonstandardized fishery products may be performed on the basis of Federal, military, Veterans' Administration or other Government agency specifications, written contract specifications, or any written specification, instruction or guideline which is approved by NMFS.

U.S. STANDARDS FOR GRADES OF FISHERY PRODUCTS

The following guidelines are used in the development of U.S. Grade Standards:

1. Quality grade designations will follow a uniform nomenclature in descending order of quality of the product:

U.S. Grade A; U.S. Grade B; U.S. Grade C; and Substandard.

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The entire quality range of products being produced will be reflected by the various grades.

U.S. Grade A will represent those products which are in the "high quality" part of the total quality range. U.S. Grade B will represent the largest percentage of products which are in the middle part of the total quality range. U.S. Grade C will represent products that are in the low part of the total range of acceptable quality. "Substandard" will represent products that fall below acceptable standards of minimum quality but which remain safe and wholesome in accordance with the provisions of the Food, Drug, and Cosmetic Act as amended.

2. Standards for seafood products for retail sale will promote consumer confidence in the quality designations, be easily understood, and enable consumers to make value judgments.

3. Standards will take into consideration the significant attributes such as color, size, texture, flavor, workmanship defects, and consistency which affect the merchantability of the seafood product.

4. Standards will be as scientifically sound as possible, and will accommodate the major product forms, styles, types, and species.

5. Objective test methods will be developed and incorporated into grade standards as much as possible.

6. Procedures for applying grade standards will be as uniform as possible.

7. To the extent possible, standards will be designed for in-process application as well as for end-product evaluation.

8. Guidelines for applying quality standards will be prepared for use by both industry and government inspectors and should include drawings, models, illustrations of defects and other visual aids where possible.

9. There will be adequate testing of draft standards, including testing under commercial production conditions.

10. Comments on draft quality standards will be sought from both consumer and trade interests.

Comments and suggestions on these guidelines are invited. Suggestions of additional guidelines are also invited.

Inspection Specifications

Several fishery products may be inspected for which Federal quality standards or specifications have not been developed. Such "specialty products" are typically not appropriate for development of voluntary U.S. Standards for Grades, although similar products may be produced by several firms. However, inspectors often need information about quality criteria for these products to provide a uniform basis for inspection and certification.

NMFS is proposing to develop specifications for these specialty seafood products which:

1. Are not described by voluntary standards for grades, standards of identify, or federal specifications;

2. Do not warrant voluntary U.S. Standards for Grades;

3. Are produced by several firms and marketed under the same or similar product designations, creating the likelihood that the products will not be consistent between firms;

4. Are inspected on a contract or lot basis as a final product when a producer specification is not available.

An Inspection Specification will be used as the basis for inspection and certification of specialty seafood products and such products will be eligible to bear the "PUFI" mark on a product. Only one level of quality will be described in the specification and this level should reflect an average commercial product, and the quality should be above minimum suitability for human consumption.

When an Inspection Specification has been developed, it will be published in the Federal Register and given broad distribution.

NMFS is interested in the class of seafoods for which inspection specificatins are needed or desired. Suggestions are invited relating to the types and kinds of provisions that could be included in such specification.

Date Labeling for Perishable Fresh Fish and Fresh Fish Fillets

In comparing the qualities of competing products, freshness is important. This is especially true for perishable (shelf life of 30 days or less) fishery products. Some products have a shelf-life of only a few days before they begin to lose their color, taste, texture, and other inherent properties. Consumer knowledge of how long such products have been on the retail shelf and how well they have been stored (proper temperature, humdity, etc.) is important if they are to protect themselves from purchasing stale, low quality or spoiled fishery products.

Fresh fish and fresh fish fillets are examples of products with a potential problem. Whole and dressed fish, as well as fresh fish fillets of major species such as cod, haddock, sole, and ocean perch, are now eligible for voluntary inspection and grading when produced under NMFS inspection services. Those products meetng the requirements for specified grade levels are eligible to bear appropriate U.S. Grade and/or "Packed Under Federal Inspection" marks on the product label.

Based on various reports, NMFS believes the experience to date indicates that, for open-dating to be an effective tool for consumers buying perishable fishery products, it must be uniformly presented and easily understood. We believe an open-dating system for USDC inspected and/or graded fresh fish and fillets will benefit consumers and the fishing industry.

There are several types of date labeling as follows:

1. *Full date*—This is the last day the retail stores may sell the item as fresh. The date is designed to allow consumers a reasonable amount of time to store and use the product at home even if it is purchased on the pull date. How long the product should be offered for sale and how much home storage time is allowed are based on the knowledge of the product and its shelf life.

2. *Pack date*—This is the date of final packaging or processing. Although it is sometimes used, it may not be very helpful to shoppers who do not have the technical expertise to judge the shelf life of fish fillets.

3. *Quality date*—This shows how long the product should remain at peak quality. Some time after the "quality date" (and there will always be a cushion of time allowed), the fish or fillets will no longer be of optimum or stated quality. This does not mean that the product will be unacceptable for use; it means that consumers should use the product while it is at its peak.

Studies have shown that open dating which shows only one date, either the pack date or the pull date for products would not benefit consumers. Time alone is not the controlling factor in determining the quality and fresh fish and fish fillets, and the use of both dates would tend to confuse consumers.

A pack date is misleading to consumers because it does not indicate the expected shelf life of the fillets when stored properly. In addition, the date only describes the age of the product but does not indicate freshness because there is no assurance the product was stored properly. A pull date can also present problems for consumers. An accurate pull date depends on the handling and storage of the fillets.

NMFS believes that a quality date (date of quality duration) may be the most useful type of open date labeling for USDC inspected and graded fresh fish and fillets.

Interested persons are invited to express their views and comments on the following:

1. Should open date labeling be advocated and supported?

2. What type of date marking should be used?

3. What fishery products should be considered for date marking?

Comments and suggestions received relative to guidelines, standards, and

procedures will be reviewed, and consideration given to making changes in existing regulations. Any changes relative to guidelines, standards, and procedures that are considered to be beneficial and favorable will be published as a notice of proposed rulemaking in the Federal Register.

Dated: November 9, 1978.

Winfred H. Miebohm,
Acting Executive Director,
National Marine Fisheries Service.

[FR Doc. 78-32064 Filed 11-14-78; 8:45 am]

V 43 / 221 NOV 15 78 UMI

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

[3410-05-M]

DEPARTMENT OF AGRICULTURE

Office of the Secretary

ADVISORY COMMITTEE ON EXPORT SALES REPORTING

Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of the following Committee meetings:

Name: Advisory Committee on Export Sales Reporting.

Dates, times, and places: November 28, 1978—9 a.m. to 4 p.m., Sears Tower, 233 South Wacker Drive, Room 4600, Chicago, Ill.; November 29, 1978—9 a.m. to 4 p.m., The New Federal Building, 601 East 12th Street, Room 140, Kansas City, Mo.; November 30, 1978—9 a.m. to 4 p.m., The Federal Building, 1220 Southwest Third Avenue, Room 223, Portland, Oreg.; December 5, 1978—9 a.m. to 4 p.m., Sheraton Inn, Memphis Airport, Room Apollo 4, Memphis, Tenn.; December 6 1978—9 a.m. to 4 p.m., The New Federal Building, 1100 Commerce Street, Room 5B8, Dallas, Tex.; December 13, 1978—9 a.m. to 4 p.m., 26 Federal Plaza, Room 3105, New York, N.Y.

Type of meeting: Open.

Purpose: To obtain public comment concerning the mandatory export sales reporting requirements.

Contact person: Kelly Harrison, General Sales Manager, USDA, Washington, D.C. 20250, telephone 202-447-5173. Persons wishing to make comments at any of the above meetings should contact Dr. Harrison prior to the meeting. Written comments should also be submitted to Dr. Harrison. Copies of summary minutes of committee meetings may be obtained from the address shown above.

Dated: November 7, 1978.

KELLY HARRISON,
General Sales Manager and Executive Secretary, Advisory Committee on Export Sales Reporting.

[FR Doc. 78-32058 Filed 11-14-78; 8:45 am]

[3410-16-M]

Soil Conservation Service

BAYOU MALLET WATERSHED, LOUISIANA

Notice of Intent To Prepare an Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the Bayou Mallet Watershed, Acadia, and St. Landry Parishes, La.

The environmental assessment of this federally assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Alton Mangum, State Conservationist, has determined that the preparation and review of an environmental impact statement is needed for this project.

The project concerns a plan for watershed protection, flood prevention, and drainage. The planned works of improvement include the installation of 161 miles of channels and appurtenances, and eight water control structures (weirs).

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Soil Conservation Service invites participation of agencies and individuals with expertise or interest in the preparation of the draft environmental impact statement. The draft environmental impact statement will be developed by Mr. Alton Mangum, State Conservationist, Soil Conservation Service, 3737 Government Street, Alexandria, La. 71301, 318-448-3421.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program, Pub. L. 83-566, 16 U.S.C. 1001-1008.)

Dated: November 7, 1978.

JOSEPH W. HAAS,
Assistant Administrator for Water Resources, Soil Conservation Service, U.S. Department of Agriculture.

[FR Doc. 78-32033 Filed 11-14-78; 8:45 am]

[3410-16-M]

WEST FRANKLIN WATERSHED, LOUISIANA

Intent To Prepare an Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the West Franklin Watershed, Franklin Parish, La.

The environmental assessment of this federally assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Alton Mangum, State conservationist, has determined that the preparation and review of an environmental impact statement is needed for this project.

The project concerns a plan for watershed protection, flood prevention, and drainage. The planned works of improvement include the installation of 350 miles of channels and appurtenances, 10 grade stabilization structures, and 12 water control structures (weirs).

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Soil Conservation Service invites participation of agencies and individuals with expertise or interest in the preparation of the draft environmental impact statement. The draft environmental impact statement will be developed by Mr. Alton Mangum, State Conservationist, Soil Conservation Service, 3737 Government Street, Alexandria, La. 71301, 318-448-3421.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program, Pub. L. 83-566, 16 U.S.C. 1001-1008.)

Dated: November 7, 1978.

JOSEPH W. HAAS,
Assistant Administrator for Water Resources, Soil Conservation Service, U.S. Department of Agriculture.

[FR Doc. 78-32034 Filed 11-14-78; 8:45 am]

[3410-16-M]

NECK RIVER, CONN.

Authorization of Federal Assistance in the Installation of Works of Improvement

Federal assistance in the installation of works of improvement under the authority of the Watershed Protection and Flood Prevention Act (16 U.S.C. 1001-1008) has been authorized for the following watershed:

Neck River, Conn.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program, Pub. L. 83-566, 16 U.S.C. 1001-1008.)

Dated: November 7, 1978.

JOSEPH W. HAAS,
Assistant Administrator, for Water Resources, Soil Conservation Service, U.S. Department of Agriculture.

[FR Doc. 78-32032 Filed 11-14-78; 8:45 am]

[6320-01-M]

CIVIL AERONAUTICS BOARD

[Docket No. 28366; Order No. 78-11-32]

DENVER-ALASKA SERVICE INVESTIGATION

Order on Motions To Consolidate

Issued under delegated authority [1] November 7, 1978.

By Order 78-5-125, May 19, 1978, the Board instituted this investigation to consider nonstop authority in the Denver-Seattle / Fairbanks / Juneau / Ketchikan markets. The Board set 20 days for the filing of any additional applications and motions to consolidate. During that time applications, or amended applications, and motions to consolidate were filed by Alaska Airlines, Braniff Airways, Delta Air Lines, Frontier Air Lines, Western Air Lines, and Wien Air Alaska. Additionally, within the month of July, applications and motions to consolidate were filed late by Northwest Airlines, Ozark Air Lines, and Texas International Airlines. Finally, in the month of September there were two more late filings, by Continental Air Lines, Inc. (Docket 33378) and Aeroamerica, Inc. (Docket 33345).

By Order 78-10-102, served October 26, 1978, the Board expanded the scope of the issues to be considered in this proceeding.[2] Under the Order on Reconsideration the scope of this investigation is now defined as "whether the public convenience and necessity require the certification of an air carrier or air carriers to engage in air transportation between (i) Denver and the coterminal points Seattle and Portland, and (ii) Denver, on the one hand, and Anchorage, Fairbanks, Juneau, or Ketchikan on the other hand, either nonstop or via intermediate points at issue in this case: *Provided, however,* That all flights shall serve Denver." In this same order the Board then consolidated the applications of all the above-mentioned carriers, except Continental Air Lines and Aeroamerica. The Board took no action as to the applications and motions of the latter two air carriers, so their motions are still pending. The Board did direct, however, that "applications within the expanded scope of the case, and motions to consolidate, shall be filed within 20 days of the service date of this order, answers to those applications and motions shall be filed 7 days later." Thus, the original time period for filing applications and motions to consolidate was reopened.

Had the Board not reconsidered its instituting order herein and reopened the period for filings, the motions of Continental and Aeroamerica would surely have to be dismissed, since they were filed extremely late and good cause was not shown, in the undersigned's opinion. Rule 12(b) of the Board's Rules of Practice (14 CFR 302.12(b)). But, under Order 78-10-102 it would now appear that the applications and motions to consolidate of these carriers are timely. Since they request authority within the scope of the investigations, those motions will therefore be granted.

Accordingly, *It is ordered,* That:

The motions to consolidate the applications of Continental Air Lines, Inc. (Docket 33378) and Aeroamerica, Inc. (Docket 33345) into the investigation in Docket 28366 are granted, to the extent that they conform to the scope of the issues in this proceeding as expanded by Order 78-10-102.

Persons entitled to petition the Board for review of this order pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within 10 days after the service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period unless before that date a petition for review thereof is filed, or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

By John J. Mathias, Administrative Law Judge.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-32153 Filed 11-14-78; 8:45 am]

[1] Under the instituting order in this matter, Order 78-5-125, authority was delegated to the presiding administrative law judge to consolidate by order any applications which conform to the scope of this proceeding.

[2] Petitions for reconsideration had been filed by several air carriers, including Continental.

[6320-01-M]

[Dockets 33477, 28337, 28999, 32746; Order 78-9-90]

TEXAS/GREAT LAKES-EASTERN CANADA SERVICE CASE

Order Instituting Investigation; Correction

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 20th day of September 1978.

In the matter of applications of Braniff Airways, Inc. (Docket 28337), Allegheny Airlines, Inc. (Docket 28999), American Airlines, Inc. (Docket 32746).

On page 45422 in the issue of October 2, 1978, third column, the first full paragraph, a line was inadvertently dropped from the second sentence. The sentence should read as follows:

Allegheny (Docket 28999) seeks Cleveland-Montreal authority, while Braniff (Docket 28337 and American (Docket 32746) have applied for authority to serve Houston/Dallas/Ft. worth-Tronto/Montreal.

Dated. November 7, 1978.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-32152 Filed 11-14-78; 8:45 am]

[3510-07-M]

DEPARTMENT OF COMMERCE

Bureau of the Census

ANNUAL WHOLESALE TRADE

Consideration

Notice is hereby given that the Bureau of the Census is planning to conduct in 1979 the Annual Wholesale Trade Survey. This survey will be conducted under title 13, United States Code, sections 182, 224, and 225. This survey will be conducted to collect data covering year-end inventories and annual sales of firms engaged in wholesale trade. This survey, which would provide data for 1978, is the only source available on a comparable classificaiton basis for use as a benchmark for statistical estimates of wholesale trade.

Information and recommedations received by the Bureau of the Census indicate that the data will have significant application to the needs of the public, the distributive trades, and governmental agencies, and that the data are not publicly available from nongovernmental or other governmental sources.

Such a survey, if conducted, shall begin not earlier than December 31, 1978.

Reports will be required only from a selected sample of merchant wholesale firms operating in the United States with probability of selection based on

sales size. The sample will provide, with measurable reliability, statistics on the subject specified above.

Copies of the proposed forms and a description of the collection methods are available upon request to the Director, Bureau of the Census, Washington, D.C. 20233.

Any suggestions or recommendations concerning the subject matter of this proposed survey will receive consideration if submitted in writing to the Director, Bureau of the Census on or before December 31, 1978.

Dated: November 9, 1978.

MANUEL D. PLOTKIN,
Director,
Bureau of the Census.

[FR Doc. 78-32109 Filed 11-14-78; 8:45 am]

[3510-07-M]

SURVEY OF DISTRIBUTORS STOCKS OF CANNED FOODS

Determination

In conformity with title 13, United States Code, sections 182, 224, and 225, and due Notice of Consideration having been published October 10, 1978 (43 FR 46562), I have determined that year-end data on stocks of 30 canned and bottled products, including vegetables, fruits, juices, and fish, are needed to aid the efficient performance of essential government functions, that the data have signficant application to the needs of the public and industry, and that they are not publicly available from non-governmental or other governmental sources. This is a continuation of the survey conducted in previous years.

All respondents will be required to submit information covering their December 31, 1978 inventories of 30 canned and bottled vegetables, fruits, juices, and fish. Reports will not be required from all forms, but will be limited to a scientifically selected sample of wholesalers and retail multiunit organizations handling canned foods in order to provide, with measurable reliability, year-end inventories of the specified canned food items. These stocks will be maesured in terms of actual cases, with separate data requested for "all sizes smaller than No. 10" and for "sizes No. 10 or larger." (In addition, multiunit firms reporting separately by establishment will be requested to update the list of their establishments maintaining canned food stocks.)

Report forms will be furnished to firms covered by the survey. Copies of the forms are available on request to the Director, Bureau of the Census, Washington, D.C. 20233

I have, therefore, directed that this annual survey be conducted for the purpose of collecting these data.

Dated: November 9, 1978.

MANUEL D. PLOTKIN,
Director,
Bureau of the Census.

[FR Doc. 78-32110 Filed 11-14-78; 8:45 am]

[3510-26-M]

Office of the Secretary

METROPOLITAN STATISTICAL AREAS

Second Proposal for Changes in Criteria for Designation and Definition of Metropolitan Statistical Areas

Notice is hereby given of a public hearing on the second proposal for revising the criteria for establishing the metropolitan statistical areas (formerly known as Standard Metropolitan Statistical Areas). This revised proposal has been prepared by the Federal Committee on Standard Metropolitan Statistical Areas following the period of public review and comment on the first proposal which was published in the FEDERAL REGISTER for June 22, 1978. The criteria will be published for public comment in a later issue of the FEDERAL REGISTER and in the November 1978 issue of Statistical Reporter. Copies are also available from the Office of Federal Statistical Policy and Standards.

The hearing will be held at 9:30 a.m. on Friday, December 15, 1978, in Room B841, Main Commerce Building, 14th and Constitution Avenue NW., Washington, D.C. Persons wishing to be on the agenda should contact the Office of Federal Statistical Policy and Standards, U.S. Department of Commerce, Washington, D.C. 20230, telephone 202-673-7965, by December 13, 1978. Written statements may be presented in lieu of attendance at the hearing. Oral summaries of statements should be limited to 10 minutes.

JUANITA M. KREPS,
Secretary of Commerce.

[FR Doc. 78-32160 Filed 11-14-78; 8:45 am]

[3510-04-M]

National Technical Information Service

GOVERNMENT-OWNED INVENTIONS

Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for domestic and possibly foreign licensing in accordance with the licensing policies of the agency-sponsors.

Copies of the patents cited are available from the Commissioner of Patents and Trademarks, Washington, D.C. 20231, for $0.50 each. Requests for copies of patents must include the patent number.

Requests for licensing information on a particular invention should be directed to the address cited for the agency-sponsor.

DOUGLAS J. CAMPION,
Patent Program Coordinator,
National Technical Information Service.

U.S. DEPARTMENT OF THE AIR FORCE, AF/JACP, Washington, D.C. 20314.

Patent 3,998,050: Reverse Flow Aft Inlet Ramjet System; filed Mar. 11, 1975; patented Dec 21, 1976

Patent 3,998,386: Oscillating Liquid Nozzle; filed Feb. 23, 1976; patented Dec. 21, 1976.

Patent 3,999,281: Method for Fabricating a Gridded Schottky Barrier Field Effect Transistor; filed Jan. 16, 1976; patented Dec. 28, 1976.

Patent 4,000,024: Burning Rate Modifiers for Solid Propellants; filed Oct. 17, 1975; patented Dec. 28, 1976.

Patent 4,000,366: Adaptive Gray Scale Control Circuit for Television Video Signals; filed Mar 25, 1975; patented Dec. 28, 1976.

U.S. DEPARTMENT OF ENERGY, Assistant General Counsel for Patents, Washington, D.C. 20545.

Patent 3,953,556: Method for Preparing Uranium Nitride of Uranium Carbonitride Bodies; filed May 17, 1974; patented Apr. 27, 1976.

Patent 3,955,753: Gas Centrifuge with Driving Motor; filed Apr. 13, 1961; patented May 11, 1976.

U.S. DEPARTMENT OF THE INTERIOR, Branch of Patents, 18th and C Streets NW., Washington, D.C. 20240.

Patent 3,985,555: Decomposition of Chalcopyrite; filed Jan. 23, 1975; patented Oct. 12, 1976.

Patent 3,985,556 : Reduction of Laterite Ores; filed Mar. 22, 1976; patented Oct. 12, 1976.

Patent 3,985,855: Recovering Copper Values From Oxidized Ores; filed May 9, 1975; patented Oct. 12, 1976.

Patent 3,986,401: Composite Sampling Method and System; filed Oct. 14, 1975; patented Oct. 19, 1976.

Patent 3,987,667: Self-Contained Instrument for Measuring Subterranean Tunnel Wall Deflection; filed June 9, 1975; patented Oct. 26 1976.

Patent 3,998,240: Alternating Field Magnetic Separator; filed Apr. 5, 1973; patented Oct. 26 1976.

Patent 3,993,455: Removal of Mineral Matter including Pyrite from Coal; filed June 25, 1973; patented Nov. 23, 1976.

Patent 3,996,332: Synthesis of Rutile from Titaniferous Slags; filed Dec. 2 1975; patented Dec. 7, 1976.

Patent 3,997,332: Steelmaking by the Electroslag Process using Prereduced Iron or Pellets; filed Jan. 8, 1976; patented Dec. 14, 1976.

U.S. DEPARTMENT OF THE NAVY, Assistant Chief for Patents, Office of Naval Research, Code 302, Arlington, VA. 22217.

Patent 3,906,496: Signal Processor System; filed Jan. 10, 1974; patented Sept. 16, 1975.

Patent 3,929,508: Reserve Battery; filed Mar. 15 1974; patented Dec. 30, 1975.

Patent 3,944,117: Rollonet Assembly; filed Apr. 18 1975; patented Mar. 16 1976.

Patent 3,965,417: Coherent Component Magnitude Detector; filed June 26, 1975; patented June 22, 1976.

Patent 3,981,449: Exhaust Cooling System; filed Jan. 29, 1968; patented Sept. 21, 1976.

Patent 3,983,892: Explosive Valve; filed Dec. 6, 1974; patented Oct. 5, 1976.

Patent 3,986,910: Composite Propellants Containing Critical Pressure Increasing Additives; filed Apr. 12, 1974; patented Oct. 19, 1976.

Patent 3,990,034: Towable VLF Sonar Projector; filed Apr. 23 1975; patented Nov. 2, 1976.

Patent 3,992,123: Pipe End Machining Apparatus; filed Oct. 1, 1975; patented Nov. 16, 1976.

Patent 3,996,422: Multiple Channel Decommutator Accumulator; filed Oct. 22, 1975; patented Dec. 7, 1976.

Patent 4,000,025: Incorporating Ballistic Modifiers in Slurry Cast Double Base Containing Compositions; filed May 28, 1974; patented Dec. 28, 1976.

Patent 4,005,424: Simulator for Doppler Radar Returns from Precipitation; filed Oct. 24, 1975; patented Jan. 25, 1977.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, Assistant General Counsel for Patent Matters, NASA Code GP-2, Washington, D.C. 20546.

Patent 3,995,324: Actuator Device for Artificial Leg; patented Dec. 7, 1976.

Patent 3,995,552: Precision Alinement Apparatus for Cutting a Workpiece; patented Dec. 7, 1976.

Patent 3,995,621: Liquid Cooled Brassiere and Method of Diagnosing Malignant Tumors Therewith; patented Dec. 7, 1976.

Patent 3,995,960: Method and Apparatus for Background Signal Reduction in Opto-Acuoustic Absorption Measurement; patented Dec. 7, 1976.

Patent 3,996,067: Silicon Nitride Coated Plastic Covered Solar Cell; patented Dec. 7, 1976.

Patent 3,996,070: Thermocouple Installation; patented Dec. 7, 1976.

Patent 3,996,455: Two-Dimensional Radiant Energy Array Computers and Computing Devices; patented Dec. 7, 1976.

Patent 3,996,462: Solid-State Current Transformer; patented Dec. 7, 1976.

Patent 3,996,464: Mass Spectrometer with Magnetic Pole Pieces Providing the Magnetic Fields for Both the Magnetic Sector and an Ion-Type Vacuum Pump; patented Dec. 7, 1976.

Patent 3,996,468: Electron Microscope Aperture System; patented Dec. 7, 1976.

Patent 3,996,471: Method and System for In Vivo Measurement of Bone Tissue Using a Two Level Energy Source; patented Dec. 7, 1976.

Patent 3,996,506: Inrush Current Limiter; patented Dec. 7, 1976.

Patent 3,996,532: Phase Modulating with Odd and Even Finite Power Series of a Modulating Signal; patented Dec. 7, 1976.

Patent 3,997,848: Linear Phase Demodulator Including a Phase Locked Loop with Auxilliary Feedback Loop; patented Dec. 14, 1976.

[FR Doc. 78-32035 Filed 11-14-78; 8:45 am]

[3510-04-M]

GOVERNMENT-OWNED INVENTIONS

Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for domestic and possibly foreign licensing in accordance with the licensing policies of the agency-sponsors.

Copies of the patents cited are available from the Commissioner of Patents and Trademarks, Washington, D.C. 20231, for $0.50 each. Requests for copies of patents must include the patent number.

Requests for licensing information on a particular invention should be directed to the address cited for the agency-sponsor.

DOUGLAS J. CAMPION,
Patent Program Coordinator,
National Technical Information Service.

U.S. DEPARTMENT OF THE AIR FORCE, AF/JACP, Washington, D.C. 20314.

Patent 3,999,433: Mechanically Tuned Buffer Rod for Ultrasonic Temperature Sensor; filed Oct. 23, 1974; patented Dec. 28, 1976.

Patent 3,999,482: High Explosive Launcher System; filed July 9, 1975; patented Dec. 28, 1976.

U.S. DEPARTMENT OF AGRICULTURAL, Research Agreements and Patent Branch, General Service Division, Federal Building, Agricultural Research Service, Hyattsville, Md. 20782.

Patent 3,993,794: Method for Texturizing Proteins; filed Jan. 15, 1976; patented Nov. 23, 1976.

Patent 3,998,820: Method for Controlled Release on Fluoroketones; filed Apr. 9, 1970; patented Dec. 21, 1976.

Patent 4,002,774: Method for Removing Seeds from Papayas; filed Aug. 20, 1975; patented Jan. 11, 1977.

Patent 4,007,006: Modification of Wool; filed Sept. 4, 1975; patented Feb. 8, 1977.

U.S. DEPARTMENT OF TRANSPORTATION, Patent Counsel, 400 Seventh Street SW., Washington, D.C. 20590.

Patent 3,969,725: Distance Measuring Equipment; filed June 12, 1974; patented July 13, 1976.

Patent 3,969,730: Cross Slot Omnidirectional Antenna; filed Feb. 12, 1975; patented July 13, 1976.

Patent 4,006,078: Preparation of Soluble Edible Protein from Leafy Green Crops; filed Apr. 11, 1975; patented Feb. 1, 1977.

Patent 4,006,932: Inflatable Drag Reducer for Land Vehicles; filed July 21, 1975; patented Feb. 8, 1977.

Patent 4,010,357: Analog Visibility Computer; filed Dec. 8, 1975; patented Mar. 1, 1977.

U.S. DEPARTMENT OF ENERGY, Assistant General Counsel for Patents, Washington, D.C. 20545.

Patent 3,951,739: Positioning and Locking Device for Fuel Pin to Grid Attachment; filed July 15, 1974; patented Apr. 20, 1976.

Patent 3,956,063: Emergency Core Cooling System for a Fast Reactor; filed May 24, 1973; patented May 11, 1976.

Patent 3,957,575: Mechanical Design of a Light Water Breeder Reactor; filed April 16, 1974; patented May 18, 1976.

Patent 3,960,655: Nuclear Reactor for Breeding U exp 233; filed July 9, 1974; patented June 1, 1976.

Patent 3,960,994: Preparation of High Temperature Gas-Cooled Reactor Fuel Element; filed Nov. 26, 1974; patented June 1, 1976.

Patent 3,964,964: Identification of Failed Fuel Element; filed Oct. 15, 1974; patented June 22, 1976.

Patent 3,964,966: Molten Core Retention Assembly; filed Aug. 25, 1975; patented June 22, 1976.

Patent 3,964,969: Internal Core Tightener; filed June 20, 1974; patented June 22, 1976.

U.S. DEPARTMENT OF THE NAVY, Assistant Chief for Patents, Office of Naval Research, Code 302, Arlington, Va. 22217.

Patent 3,904,871: Target Locating Circuit Using a Lateral Photoelectric Diode; filed July 5, 1974; patented Sept. 9, 1975.

Patent 3,913,060: Thermooptic Sonar System; filed Mar. 4, 1974; patented Oct. 14, 1975.

Patent 3,915,219: Metal Forming Apparatus for Producing Metal Ribbon Fibers; filed May 1, 1974; patented Oct. 28, 1975.

Patent 3,922,034: Armored Headrest; filed Apr. 9, 1975; patented Nov. 25, 1975.

Patent 3,934,234: Photodichroic Readout Device Using Circularly Polarized Light; filed July 5, 1974; patented Jan. 20, 1976.

Patent 3,970,669: Low Power Driver; filed Mar. 3, 1975; patented July 20, 1976.

Patent 3,979,089: Vertical Sensing and Control System; filed Sept. 22, 1975; patented Sept. 7, 1976.

Patent 3,981,239: Fluidic Link Master/Slave Fuze System; filed Sept. 4, 1975; patented Sept. 21, 1976.

Patent 3,987,280: Digital-to-Bandpass Converter; filed May 21, 1975; patented Oct. 19, 1976.

Patent 3,987,292: Discrete Fourier Transform via Cross Correction Charge Transfer Device; filed June 2, 1975; patented Oct. 19, 1976.

Patent 3,990,035: Housing Configuration for High Resolution Sonar; filed Sept. 5, 1975; patented Nov. 2, 1976.

Patent 3,990,401: Marine Mammal Vaccum Recovery System; filed Mar. 31, 1975; patented Nov. 9, 1976.

Patent 3,991,486: Aircraft Landing Signal Officer Trainee; filed Nov. 7, 1975; patented Nov. 16, 1976.

Patent 3,992,573: Stereoscopic Viewer Power Supply; filed Nov. 19, 1975; patented Nov. 16, 1976.

Patent 3,999,174: Discontinuous Chromium Film for Memory Element; filed Sept. 19, 1975; patented Dec. 21, 1976.

Patent 4,000,471: TWT Grid Circuit Utilizing Feedback; filed Oct. 14, 1975; patented Dec. 28, 1976.

Patent 4,000,525: Ceramic Prosthetic Implant Suitable for a Knee Joint Plateau; filed Aug. 21, 1975; patented Jan. 4, 1977.

Patent 4,001,861: Double-Layer, Polysilicon, Two-Phase, Charge Coupled Device; filed Oct. 12, 1973; patented Jan. 4, 1977.

[FR Doc. 78-32036 Filed 11-14-78; 8:45 am]

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V 43 / 221 NOV 15 1978 UMI

[3510-04-M]

GOVERNMENT-OWNED INVENTIONS

Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for domestic and possibly foreign licensing in accordance with the licensing policies of the agency sponsors.

Copies of the patents cited are available from the Commissioner of Patents and Trademarks, Washington, D.C. 20321, for $0.50 each. Requests for copies of patents must include the patent number.

Requests for licensing information on a particular invention should be directed to the address cited for the agency sponsor.

DOUGLAS J. CAMPION,
Patent Program Coordinator, National Technical Information Service.

U.S. DEPARTMENT OF THE AIR FORCE, AF/JACP, Washington, D.C. 20314.

Patent 3,968,748: Target Discrimating Bomblet; filed Jan. 15, 1973; patented July 13, 1976.

Patent 3,998,088: Testing Apparatus for Incremental Shaft Encoder; filed Nov. 12, 1975, patented Dec. 21, 1976.

Patent 3,998,393: Supersonic Diffuser; filed Jan. 20, 1976; patented Dec. 21, 1976.

Patent 3,999,865: Method and Apparatus for Determining the Mechanism Responsible for Laser-Induced Damage; filed Dec. 9, 1974; patented Dec. 28, 1976.

Patent 4,000,477: Recirculation or Stirred Reactor Flow Laser; filed Feb. 13, 1974; patented Dec. 28, 1976.

U.S. DEPARTMENT OF AGRICULTURE, Research Agreements and Patent Branch, General Services Division, Federal Building, Agricultural Research Service, Hyattsville, Md. 20782.

Patent 4,001,032: Method of Making Nongelling Aqueous Cationic Dialcehyde Starch Compositions; filed Aug. 13, 1975; patented Jan. 4, 1977.

Patent 4,003,135: Specimen Holder and Technique Employed to Effect a Continuous Maximum Concentration Gracient in Critical Point Drying; filed June 13, 1975; patented Jan. 18, 1977.

Patent 4,005,040: Foamed and Solid Rubber-Starch Graft Coplomer Compositions and Method of Preparation; filed Nov. 10, 1975; patented Jan. 25, 1977.

Patent 4,005,556: Lightweight Truss-Framed House; filed Sept. 19, 1975; patented Feb. 1, 1977.

Patent 4,009,324: Photodegradable Polyolefin Composition Containing an N-Halo Lactam; filed Apr. 2, 1976; patented Feb. 22, 1977.

Patent 4,011,726: Delta Culvert; filed Nov. 5, 1975; patented Mar. 15, 1977.

U.S. DEPARTMENT OF TRANSPORTATION, Patent Counsel, 400 Seventh Street, SW., Washington, D.C. 20590.

Patent 4,000,564: Programmable Anthropomorphic Ariticulation; filed Jan. 7, 1976; patented Jan. 4, 1977.

U.S. DEPARTMENT OF ENERGY, Assistant General Counsel for Patents, Washington, D.C. 20545.

Patent 3,953,617: Method of Producing Encapsulated Thermonuclear Fuel Particles; filed Jan. 28, 1974; patented Apr. 27, 1976.

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, National Institutes of Health, Chief, Patent Branch, Westwood Building, Bethesda, Md. 20014.

Patent 3,990,434: Reversible Intravasal Occulusive Device; filed Feb. 18, 1975; patented Nov. 9, 1976.

U.S. DEPARTMENT OF THE NAVY, Assistant Chief for Patents, Office of Naval Research, Code 302, Arlington, Va. 22217.

Patent 3,891,960: Doppler Sonar System; filed Feb. 24, 1970; patented June 24, 1975.

Patent 3,901,075: Acoustic Velocimeter for Ocean Bottom Coring Apparatus; filed Jan. 10, 1974; patented Aug. 26, 1975.

Patent 3,933,042: Water Level Gauge; filed Apr. 5, 1974; patented Jan. 20, 1976.

Patent 3,962,485: Method for Forming Uniform Stress-Free Thin Films; filed Oct. 20, 1975; patented June 8, 1976.

Patent 3,976,369: Alpha Meter Attachment for Underwater Optical Systems; filed Sept. 27, 1975; patented Aug. 24, 1976.

Patent 3,978,334: Precision Laser Beam Deflection Detector; filed Sept. 24, 1975; patented Aug. 31, 1976.

Patent 3,978,813: Propeller-Driven Hydrophone Array Tensioning Device; filed Jan. 9, 1976; patented Sept. 7, 1976.

Patent 3,981,258: Waterski Sailboat; filed July 15, 1975; patented Sept. 21, 1976.

Patent 3,982,222: Deep Hydrophone String; filed Oct. 22, 1965; patented Sept. 21, 1976.

Patent 3,985,080: Two Selector Gate for Active-Passive Radio Proximity Fuzes; filed Oct. 30, 1967; patented Oct. 12, 1976.

Patent 3,986,115: Transient Direction Detector; filed Jan. 20, 1975; patented Oct. 12, 1976.

Patent 3,986,159: Air Dropped Sonobuoy; filed Sept. 2, 1975; patented Oct. 12, 1976.

Patent 3,987,708: Depth Insensitive Accumulator for Undersea Hydraulic Systems; filed Mar. 10, 1975; patented Oct. 26, 1976.

Patent 3,990,123: Inflatable Sonar Array; filed Sept. 22, 1975; patented Nov. 9, 1976.

Patent 3,990,386: Faired Multi-Strength Member Towcable and Associated Sequential Load Distribution System; filed May, 23, 1975; patented Nov. 9, 1976.

Patent 3,992,628: Countermeasure System for Laser Radiation; filed July 17, 1972; patented Nov. 16, 1976.

Patent 3,996,794: Differential Depth Indicator; filed Oct. 17, 1966; patented Dec. 14, 1976.

Patent 4,000,022: Fast-Burning Compositions of Fluorinated Polymers and Metal Powders; filed Oct. 17, 1974; patented Dec. 28, 1976.

Patent 4,001,291: 2, 2, 2-Fluorodinitroetanethiol and Method of Preparation; filed Mar. 11, 1976; patented Jan. 4, 1977.

Patent 4,003,083: Digital Data Recoding and Decoding; filed Apr. 15, 1975; patented Jan. 11, 1977.

Patent 4,003,291: Missile Launching Mine; filed May 20, 1964; patented Jan. 18, 1977.

Patent 4,003,641: Low Distortion High Energy Laser Mirror; filed July 25, 1975; patented Jan. 18, 1977.

Patent 4,003,876: Super Cooled M-Phenylene Diamine as a Curing Agent for Epoxy Resins; filed July 25, 1975; patented Jan. 18, 1977.

[FR Doc. 78-32037 Filed 11-14-78; 8:45 am]

[3510-04-M]

GOVERNMENT-OWNED INVENTIONS

Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for domestic and possible foreign licensing in accordance with the licensing policies of the agency sponsors.

Copies of the patents cited are available from the Commissioner of Patents and Trademarks, Washington, D.C. 20231, for $0.50 each. Requests for copies of patents must include the patent number.

Requests for licensing information on a particular invention should be directed to the address cited for the agency sponsor.

DOUGLAS J. CAMPION,
Patent Program Coordinator, National Technical Information Service.

U.S. DEPARTMENT OF THE AIR FORCE, AF/JACP, 1900 Half Street SW., Washington, D.C. 20324.

Patent 4,000,697: Mechanical Retention System for Use with Caseless Ammunition; filed Aug. 10, 1972; patented Jan. Jan. 4, 1977.

Patent 4,000,776: Heat Pipe System; filed Dec. 3, 1974; patented Jan. 4, 1977.

Patent 4,000,855: Bellcrank Assembly, Nozzle Actuator; filed Apr. 14, 1975; patented Jan. 4, 1977.

Patent 4,001,135: Fluorine Generating Solid Formulation for Use in Chemical Lasers; filed July 1, 1975; patented Jan. 4, 1977.

Patent 4,001,136: Fluorine Generating Formulation for Use in Chemical Lasers; filed July 1, 1975; patented Jan. 4, 1977.

Patent 4,001,821: High Power Microwave Radar Pulse Shaping System; filed June 16, 1975; patented Jan. 4, 1977.

Patent 4,003,658: Triangular Interferometric Light-Source Tracker; filed July 26, 1974; patented Jan. 18, 1977.

Patent 4,004,465; Optical Window Protective Shutter Mechanism; filed Jan. 20, 1976; patented Jan. 25, 1977.

U.S. DEPARTMENT OF AGRICULTURE, Research Agreements and Records Service, General Service Division, Federal Building, Agricultural Research Service, Hyattsville, Md. 20782.

Patent 4,009,325: Photodegradable Polyolefin Composition Containing an N-Halo Urethane; filed Apr. 2, 1976; patented Feb. 22, 1977.

Patent 4,011,752: Adaptive Speed and Direction Analyzer; filed Feb. 6, 1976; patented Mar. 15, 1977.

Patent 4,012,529: Control of Marine Borer Attack on Wood; filed Mar. 15, 1976; patented Mar. 15, 1977.

U.S. DEPARTMENT OF ENERGY, Assistant General Counsel for Patents, Washington, D.C. 20545.

Patent 3,952,246: Plasma Digital Density Determining Device; filed May 29, 1975; patented Apr. 20, 1976.

Patent 3,958,079: Real Time, TV Based, Point-Image Quantizer and Sorter; filed Apr. 25, 1975; patented May 18, 1976.

Patent 3,959,710: Method for Exciting Inductive-Resistive Loads with High and Controllable Direct Current; filed Dec. 31, 1974; patented May 25, 1976.

[FR Doc. 78-32038 filed 11-14-78; 8:45 am]

[3510-04-M]

GOVERNMENT-OWNED INVENTIONS

Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for domestic and possibly foreign licensing in accordance with the licensing policies of the agency-sponsors.

Copies of ther patents cited are available from the Commissioner of Patents and Trademarks, Washington, D.C. 20231, for $.50 each. Requests for copies of patents must include the patent number.

Requests for licensing information on a particular invention should be directed to the address cited for the agency-sponsor.

DOUGLAS J. CAMPION,
Patent Program Coordinator, National Technical Information Service.

INTELLECTUAL PROPERTY DIVISION, OTJAG, DEPARTMENT OF THE ARMY, PENTAGON ROOM 2D 444, WASHINGTON, D.C. 20314.

Patent 3,293,158: Anocic Spark Reaction Processes and Articles; filed Sept. 17, 1963, patented Dec. 20, 1966.

U.S. DEPARTMENT OF THE AIR FORCE, AF/JACP, 1900 HALF STREET SW., WASHINGTON, D.C. 20324

Patent 4,001,034: High Temperature Coatings Based on Poly (Zinc Phosphinated); filed Oct. 31, 1975, patented Jan. 4, 1977.

Patent 4,001,268: Substituted Phenyl-Benzimidazo Compounds; filed July 18, 1975; patented Jan. 4, 1977.

Patent 4,001,475: Ablative Surface Insulator; filed May 9, 1974; patented Jan. 4, 1977.

Patent 4,001,681: Vector Voltmeter; filed Jan. 28, 1976; patented Jan. 4, 1977.

Patent 4,001,767: Low Diffraction Loss-Low Spurious Response LiTa03 Substrate for Surface Acoustic Wave Devices; filed Nov. 18, 1975, patented Jan. 4, 1977.

Patent 4,001,829: High Average Power Millimeter Duplexer; filed Aug. 18, 1975; patented Jan. 4, 1977.

Patent 4,002,679: Preparation of Polybenzimidazoles; filed Mar. 27, 1975, patented Jan. 11, 1977.

Patent 4,004,342: Fabrication of Ion Implanted P-N Junction Devices; filed Feb. 23, 1976; patented Jan. 25, 1977.

Patent 4,004,667: Overload Clutch with Zerp Parasitic Torque; filed Sept. 24, 1974; patented Jan. 25, 1977.

Patent 4,005,142: Fluorocarbon Ether Bis(O-Aminophenol) Compounds; filed Sept. 4, 1975, patented Jan. 25, 1977.

U.S. DEPARTMENT OF ENERGY, ASSISTANT GENERAL COUNSEL FOR PATENTS, WASHINGTON, D.C. 20545.

Patent 3,952,246: Plasma Digital Density Determining Device; filed May 29, 1975; patented Apr. 20, 1976.

[FR Doc. 78-32039 Filed 11-14-78; 8:45 am]

[3510-04-M]

GOVERNMENT-OWNED INVENTIONS

Availability for Licensing

The Inventions listed below are owned by the U.S. Government and are available for domestic and possibly foreign licensing in accordance with the licensing policies of the agency-sponsors.

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Requests for licensing information on a particular invention should be directed to the address cited for the agency-sponsor.

DOUGLAS J. CAMPION,
Patent Program Coordinator, National Technical Information Service.

INTELLECTUAL PROPERTY DIVISION, OTJAG, DEPARTMENT OF THE ARMY, ROOM 2D 444, Pentagon, Washington, D.C. 20314.

Patent 3,573,755: Electrical Tablet for Graphic Input System; filed February 16, 1968, patented April 6, 1971.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, Assistant General Counsel for Patent Matters, NASA Code GP-2, Washington, D.C. 20546.

Patent 3,999,886: Hingeless Helicopter Rotor with Improved Stability; patented December 28, 1976.

Patent 4,000,682: Solid Propellant Rocket Motor and Method of Making Same; patented January 4, 1977.

Patent 4,001,552: Method and Apparatus for Measuring Web Material Wound on a Reel; patented January 4, 1977.

Patent 4,001,602: Electronic Analog Divider; patented January 4, 1977.

Patent 4,003,004: Frequency Modulated Oscillator; patented January 11, 1977.

Patent 4,003,084: Method of and Means for Testing a Tape Record/Player System; patented January 11, 1977.

Patent 4,005,574: Reverse Pitch Fan with Divided Splitter; patented February 1, 1977.

[FR Doc. 78-32040 Filed 11-14-78; 8:45 am]

[3510-04-M]

GOVERNMENT-OWNED INVENTIONS

Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for domestic and possibly foreign licensing in accordance with the licensing policies of the agency-sponsors.

Copies of the patents cited are available from the Commissioner of Patents and Trademarks, Washington, D.C. 20231, for $0.50 each. Requests for copies of patents must include the patent number.

Copies of the patent applications can be purchased from the National Technical Information Service (NTIS), Springfield, Va. 22161, for $4 ($8 outside North American Continent). Requests for copies of patent applications must include the PAT-APPL number. Claims are deleted from patent application copies sold to the public to avoid premature disclosure in the event of an interference before the Patent and Trademark Office. Claims and other technical data will usually be made available to serious prospective licensees by the agency which filed the case.

Requests for licensing information on a particular invention should be directed to the address cited for the agency-sponsor.

DOUGLAS J. CAMPION,
Patent Program Coordinator, National Technical Information Service.

U.S. DEPARTMENT OF THE AIR FORCE, AF/JACP, 1900 Half Steet SW., Washington, D.C. 20314.

Patent 4,079,594: Fusible Heat Sink for a Cryogenic Refrigerator; filed January 12, 1977; patented March 21, 1978; not available NTIS.

Patent application 875,664: Partial Swirl Augmentor for a Turbofan Engine; filed February 6, 1978.

Patent application 882,526: Centrifugal Aerosol Dispenser Assembly; filed March 1, 1978.

Patent application 898,067: Digital Hysteresis Circuit; filed April 20, 1978.

Patent application 900,949: Obturating Split Disc; filed April 28, 1978.

Patent application 900,950: Ribbed Flange Modified Seal; filed April 28, 1978.

Patent application 902,130: Frequency Selective Ferrimagnetic Power Limiter; filed May 2, 1978.

Patent application 902,131: Canted Spar with Intermediate Intercostal Stiffeners; filed May 2, 1978.

Patent application 902,132: Window Protection from Electron Magnetic Pulse Energy; filed May 2, 1948,

U.S. DEPARTMENT OF AGRICULTURE, Research Agreements and Patent Branch, General Services Division, Federal Building, Agricultural Research Service, Hyattsville, Md. 20782.

Patent application 911,080: Method and Apparatus for Watering Bees; filed May 31, 1978.

Patent application 918,892: Alkyd Resins Modified with Tetrafluoroethylene Adduct of Conjugated Triglycerides; filed June 26, 1978.

Patent 4,089,746: Method for Insolubilizing Enzymes on Chitosan; filed July 19, 1976; patented May 16, 1978; not available NTIS.

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U.S. DEPARTMENT OF COMMERCE, National Technical Information Service, 5285 Port Royal Road, Springfield, Va. 22161.

Patent application 848,176: Scanning Electron Microscope for Fabricating Same; filed November 3, 1977.

U.S. DEPARTMENT OF ENERGY, Assistant General Counsel for Patents, Washington, D.C. 20545.

Patent application 760,303: Temperature Sensing Device; filed January 18, 1977.
Patent 4,001,683: Automatic Range Selector; filed April 25, 1975; patented January 4, 1977; not available NTIS.
Patent 4,008,399: Gamma Compensated, Self Powered Neutron Detector; filed June 13, 1975; patented February 15, 1977; not available NTIS.
Patent 4,052,999: Bumper Wall for Plasma Device; filed July 15, 1975; patented October 11, 1977; not available NTIS.
Patent 4,053,355: Nuclear Reactor Remote Disconnect Control Rod Coupling Indicator; filed October 14, 1975; patented October 11, 1977; not available NTIS.
Patent 4,053,358: Modular Assembly for Supporting, Straining, and Directing Flow to a Core in a Nuclear Reactor; filed December 30, 1974; patented October 11, 1977; not available NTIS.
Patent 4,053,359: Nuclear Reactor; filed March 17, 1976; patented October 11, 1977; not available NTIS.
Patent 4,056,052: Method for Shearing Spent Nuclear Fuel Assemblies; filed April 29, 1976; patented November 1, 1977; not available NTIS.
Patent 4,061,921: Infrared Laser System; Filed May 2, 1974; patented December 6, 1977; not available NTIS.
Patent 4,062,515: Compact Gate Valve; filed May 13, 1976; patented December 13, 1977; not available NTIS.
Patent 4,063,190: CO Sub 2 Laser; filed December 13, 1977; not available NTIS.
Patent 4,064,029: Method of Making an Improved Superconducting Quantum Interference Device; filed February 8, 1977; patented December 20, 1977; not available NTIS.
Patent 4,065,217: Nose Tip Locking Device; filed November 24, 1976; patented December 27, 1977; not available NTIS.
Patent 4,065,351: Particle Beam Injection System; filed March 25, 1976; patented December 27, 1977; not available NTIS.
Patent 4,065,400: Nuclear Waste Solidification; filed April 8, 1976; patented December 27, 1977; not available NTIS.

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, National Institutes of Health, Chief, Patent Branch, Westwood Building, Bethesda, Md. 20014.

Patent 4,080,325: Synthesis of Methotrexate; filed November 17, 1976; patented March 21, 1978; not available NTIS.
Patent 4,081,356: Fecalator, an Apparatus and Method for Concentration of Parasite Eggs and Larvae; filed September 24, 1976; patented March 28, 1978; not available NTIS.

U.S. DEPARTMENT OF THE NAVY, Assistant Chief for Patents, Office of Naval Research, Code 302, Arlington, Va. 22217.

Patent application 875,831: Radar Signal Simulator; filed February 7, 1978.
Patent application 877,545: Mine Simulator Planting Rack and Release Mechanism; filed February 13, 1978.
Patent application 877,546: Underwater Search Coil; filed February 13, 1978.
Patent application 877,547: Flare Release System; filed February 13, 1978.
Patent application 890,872: Iron-Doped Indium Phosphide Semiconductor Laser; filed March 27, 1978.
Patent application 890,873: Explosively Actuated Opening Switch; filed March 27, 1978.
Patent application 892,580: Charge-Coupled Multiplying Digital-to-Analog Converter; filed April 3, 1978.
Patent application 896,075: Tapered Velocity Electro-Optical Waveguide Switch; filed April 13, 1978.
Patent application 896,946: Method and Apparatus for Injecting Gas into a Laser Cavity; filed April 17, 1978.
Patent application 897,995: High Precision Optical Alignment System; filed April 20, 1978.
Patent application 901,163: Degraining, a Three Step Process to Obtain Propellant Samples from Case Bonded Motors; filed April 28, 1978.
Patent 4,084,172: Highly Electronegative (SN) sub x Contacts to Semiconductors; filed June 10, 1977; patented April 11, 1978; not available NTIS.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, Assistant General Counsel for Patent Matters, NASA Code GP-2, Washington, D.C. 20546.

N78 27984 1: NASA Patent Abstracts Bibliography: A Continuing Bibliography. Supplement 12 Section 2: Indexes. January 1978.

[FR Doc. 78-32041 Filed 11-14-78; 8:45 am]

[3510-04-M]

GOVERNMENT-OWNED INVENTIONS

Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for domestic and possibly foreign licensing in accordance with the licensing policies of the agency-sponsors.

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Copies of the patent applications can be purchased from the National Technical Information Service (NTIS), Springfield, Va. 22161 for $4 ($8 outside North American Continent). Requests for copies of patent applications must include the patent application number. Claims are deleted from patent application copies sold to the public to avoid premature disclosure in the event of an interference before the Patent and Trademark Office. Claims and other technical data will usually be made available to serious prospective licensees by the agency which filed the case.

Requests for licensing information on a particular invention should be directed to the address cited for the agency-sponsor.

DOUGLAS J. CAMPION,
Patent Program Coordinator, National Technical Information Service.

U.S. DEPARTMENT OF ENERGY, Assistant General Counsel for Patent, Washington, D.C. 20545.

Patent 4,062,404: Method for in situ Combustion; filed Sept. 30, 1976; patented Dec. 13, 1977; not available NTIS.
Patent 4,063,090: Method for Isotope Separation by Photodeflection; filed Oct. 30, 1974; patented Dec. 13, 1977; not available NTIS.

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, National Institutes of Health, Chief, Patent Branch, Westwood Building, Bethesda, Md. 20014.

Patent application 885,340: Improved Procedure for the Preparation of 9-beta-D-Arabinofuranosyl-2-Fluoroadenine; Mar. 10, 1978.
Patent application 886,119: A Cobalt-Catalyzed One-Step Synthesis of Annulated Pyridines and Novel Products; filed Mar. 13, 1978.
Patent application 900,641: Scanning Flow Indicator for Rotameters; filed Apr. 25, 1978.
Patent application 916,209: Portable Instrument for Measuring Neutron Energy Spectra and Neutron Dose in a Mixed n-gama Field; filed June 16, 1978.
Patent application 928,155: Mutifinger Photocell Plethysmography System; filed July 26, 1978.
Patent 4,078,628: Double-Wheel Automotive Hand Control System; filed Aug. 16, 1976; patented Mar. 14, 1978; not available NTIS.
Patent 4,084,266: Artifical Implant with Fiber-Flocked Blood-Contacting Surface; filed Nov. 1, 1976; patented Apr. 18, 1978; not available NTIS.

U.S. DEPARTMENT OF THE NAVY, Assistant Chief for Patents, Office of Naval Research, Code 302, Arlington, Va. 22217.

Patent application 804,193: Method of Inhibiting Fungal Growth with Obtusastyrene; filed June 6, 1977.
Patent application 884,075: Automatic Electrical Load Matching Device for Wind Generators; filed Mar. 6, 1978.
Patent application 888,122: A Method of Lasing with 7-Hydroxy-Coumarin-8-Methyleneiminobisacetic Acid and Metal complexes Thereof; filed Mar. 20, 1978.
Patent application 903,464: Coal Liquefaction; filed May 8, 1978.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, Assistant General Counsel for Patent Matters, NASA Code GP-2, Washington, D.C. 20546.

Patent application 916,654: Supercritical Fuel Injection System; filed June 19, 1978.
Patent application 918,534: Apparatus for Measuring Semiconductor Device Resistance; filed June 23, 1978.
Patent application 928,133: Method of Fabricating a Photovoltaic of a Substantially Transparent Construction; filed July 26, 1978.
Patent application 928,137: A Signal Attenuator; filed July 26, 1978.

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Patent application 929,084: Method of Cold Welding Using Ion Beam Technology; filed July 28, 1978.
Patent application 929,086: Structural Wood Panels with Improved Fire Resistance; filed July 28, 1978.
Patent application 931,217: Redundant Motor Drive System; filed Aug. 4, 1978.
Patent 4,085,004: Control for Nuclear Thermionic Power Source; filed Nov. 21, 1975; patented Apr. 18, 1978; not available NTIS.
Patent 4,088,291: Rotary Leveling Base Platform; filed Nov. 2, 1976; patented May 9, 1978; not available NTIS.
Patent 4,088,951: Microcomputerized Electric Field Meter Diagnostic and Calibration System; filed Mar. 24, 1977; patented May 9, 1978; not available NTIS.
Patent 4,088,999: Rf Beam Center Location Method and Apparatus for Power transmission System; filed May 21, 1976; patented Mar. 9, 1978; not available NTIS.
Patent application 928,128: Driver for Solar Cell I-V Characteristic Plots; filed July 26, 1978.

[FR Doc. 78-32042 Filed 11-14-78; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1006-3]

SAFE DRINKING WATER ACT

Review of Variances and Exemptions

Notice is hereby given that pursuant to sections 1415(a)(1)(F) and 1416(d)(1) of the Safe Drinking Water Act, the Environmental Protection Agency has completed a comprehensive review of all variances and exemptions issued (and schedules prescribed pursuant thereto) during the period of January 24, 1977 through June 23, 1978, by the Arkansas Department of Health, the Louisiana Department of Health and Human Resources, the New Mexico Environmental Improvement Division, the Oklahoma Department of Public Health and the Texas Department of Health.

EPA found no instances of states abusing their discretion in the issuance of variances and exemptions during the stated review period, and received no comments concerning variances and or exemptions during the 30-day comment period.

ADLENE HARRISON,
Regional Administrator.

NOVEMBER 1, 1978.

[FR Doc. 78-32017 Filed 11-14-78; 8:45 am]

[6560-01-M]

[FRL 1006-6]

SCIENCE ADVISORY BOARD; ENVIRONMENTAL HEALTH ADVISORY COMMITTEE; STUDY GROUP ON PESTICIDE TOLERANCES

Open Meeting

Under Pub. L. 92-463, notice is hereby given that a 2-day meeting of the Study Group on Pesticide Tolerances of the Science Advisory Board's Environmental Health Advisory Committee will be held on December 4 and 5, 1978 in Conference Room A (room 1112), Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, Va. The meeting will start at 9 a.m. on December 4, 1978. Adjournment will be about 4 p.m. on December 5, 1978, possibly earlier.

The principal purpose of the meeting will be (1) to identify and discuss, scientific issues relating to EPA's tolerance setting system and (2) to develop a first draft of an overall critique of EPA's tolerance setting system. The agenda will also include followup presentations and briefings, items of current interest, and statements by members of the public. Followup presentations and briefings are to include such topics as (a) the applicability and implications of quantitative risk assessment to tolerance setting; (b) criteria and data bases for pesticide tolerance grouping; (c) EPA monitoring needs as regards tolerances; and (d) food consumption patterns.

Pertinent background information follows. In response to an Agency request to the Science Advisory Board, the Board's Environmental Health Advisory Committee established a Study Group on Pesticide Tolerances and charged it with assisting the Committee in an evaluation of the scientific basis of the Agency's system for establishing tolerances for pesticides residues in agricultural crops. This is the fifth meeting of the Study Group. At a meeting on April 5, 1978, the Study Group was briefed on and discussed various aspects of the legislative authority and mandate directly or indirectly relating to the Agency's tolerance setting system. At a meeting on May 11 and 12, 1978, the Study Group was briefed on and discussed scientific issues relating to estimates of exposure. At a meeting on June 27-28, 1978, the Study Group was briefed on and discussed scientific issues relating to toxicology data and hazard evaluation. At a subsequent meeting on October 23 and 24, 1978, the Study Group heard statements from members of the public, identified and discussed issues to be addressed in the Study Group's report to the Environmental Health Advisory Committee, and began to develop positions with regard to these issues. Further meeting of the Study Group will be scheduled as needed.

The meeting will be open to the public. Any member of the public wishing to attend or present or submit a paper should contact the Secretariat, Science Advisory Board (A-101), U.S. Environmental Protection Agency, Washington, D.C. 20460 by c.o.b. November 28, 1978. Please ask for Ms. Barbara Robinson or Mrs. Ilene Stein. The telephone number is 703-557-7720.

Dated: November 8, 1978.

RICHARD M. DOWD,
Staff Director, Science Advisory Board.

[FR Doc. 78-32018 Filed 11-14-78; 8:45 am]

[6560-01-M]

[(FRL 1006-2); PFT-32]

PESTICIDE PROGRAMS

Filing of Food Additive Petition

Rohm & Haas Co., Independence Mall West, Philadelphia, Pa. 19105, has submitted a petition (FAP 9H5199) to the Environmental Protection Agency (EPA) which proposes that 21 CFR 193 be amended by establishing a regulation permitting residues of the herbicide 2-cholor-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl) benzene and its metabolites containing the diphenyl ether linkage in connection with an experimental program involving the application of said herbicide to growing cotton with a tolerance limitation of 0.2 part per million (ppm) in cottonseed oil. Notice of this submission is given pursuant to the provisions of section 409(b)(5) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on this petition to the Federal Register Section, Program Support Division (TS-757), Office of Pesticide Programs, EPA, Room 401, East Tower, 401 M Street SW., Washington D.C. 20460. Inquiries concerning this petition may be directed to Product Manager (PM) 25, Registration Division (TS-767) Office of Pesticide Programs, at the above address, or by telephone at 202-755-2196. Written comments should bear a notation indicating the petition number. Comments may be made at any time while a petition is pending before the Agency. All written comments filed pursuant to this notice will be available for public inspection in the office of the Federal Register Section from 8:30 a.m. to 4 p.m. Monday through Friday.

Dated: November 7, 1978.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

[FR Doc. 78-32019 Filed 11-14-78; 8:45 am]

[6730-01-M]

FEDERAL MARITIME COMMISSION

[Docket No. 78-44]

PIERPOINT MANAGEMENT CO. AND RETLA STEAMSHIP CO. V. HOLT HAULING & WAREHOUSING SYSTEM, INC.

Filing of Complaint

Notice is hereby given that a complaint filed by Pierpoint Management Co. and Retla Steamship Co. against Holt Hauling & Warehousing System, Inc., was served November 8, 1978. The complaint alleges violation of sections 15, 16, and 17 of the Shipping Act, 1916, by virtue of an unapproved assignment of agreement No. T-3323 and by virtue of continuing in force of agreement No. T-3323 without modification.

Hearing in this matter, if any is held, shall commence on or before May 8, 1978. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-32080 Filed 11-14-78; 8:45 am]

[4110-08-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institutes of Health

BLADDER AND PROSTATIC CANCER REVIEW COMMITTEE (BLADDER SUBCOMMITTEE)

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Bladder Subcommittee of the Bladder and Prostatic Cancer Review Committee, National Cancer Institute, December 16, 1978, Sarasota Hyatt House, Sarasota, Fla. The meeting will be open to the public on December 16, 1978 from 8:30 to 9:00 a.m., to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on December 16, 1978, from 9 a.m. to adjournment, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information about individuals associated with the applications.

Mrs. Marjorie F. Early, Committee Management Officer, National Cancer Institute, Building 31, Room 4B43, National Institutes of Health, Bethesda, Md. 20014, 301-496-5708, will provide summaries of the meeting and rosters of committee members, upon request.

Dr. William Straile, Executive Secretary, National Cancer Institute, Westwood Building, Room 853, National Institutes of Health, Bethesda, Md. 20014 301-496-7194, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.393, 13.394, 13.395, National Institutes of Health.)

Dated: November 8, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-32056 Filed 11-14-78; 8:45 am]

[4110-08-M]

GENERAL RESEARCH SUPPORT REVIEW COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the General Research Support Review Committee, Division of Research Resources, December 6, 7, and 8, 1978. The meeting will be held on December 6, 1978, in the Pennsylvania Room at the Holiday Inn, 8130 Wisconsin Avenue, Bethesda, Md. 20014, and on December 7 and 8, 1978, in Conference Room 6, Building 31-C, National Institutes of Health, Bethesda, Md. 20014.

The meeting will be open to the public from 8 to 11 p.m., on December 6, and from 9 to 10 a.m., on December 7, to discuss administrative matters relating to the biomedical research support program and the biomedical research development program.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on December 7, 1978, from 10 a.m. to 5 p.m., and on December 8, from 9 a.m. to adjournment, for the review, discussion, and evaluation of individual grant applications submitted to the biomedical research development program. These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications.

Mr. James Augustine, Information Officer, Division of Research Resources, Building 31, Room 5B-13, National Institutes of Health, Bethesda, Md. 20014, 301-496-5545, will provide summaries of the meeting and rosters of the Committee members. Dr. Sidney A. McNairy, Jr., Executive Secretary of the General Research Support Review Committee, Building 31, Room 5B-31, National Institutes of Health, Bethesda, Md. 20014, 301-496-6743, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.337, National Institutes of Health.)

Dated: November 8, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-32055 Filed 11-14-78; 8:45 am]

[4110-08-M]

RESEARCH MANPOWER REVIEW COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Research Manpower Review Committee, National Heart, Lung, and Blood Institute, on December 7 and 8, 1978, Lobby Room, Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Md.

This meeting will be open to the public on December 7 and 8, 1978, from 8 a.m. to approximately 9 a.m., to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, United States Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on December 7 and 8, 1978, from 9 a.m. until adjournment, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal personal information concerning individuals associated with the applications.

Mr. York E. Onnen, Chief, Public Inquiries and Reports Branch, NHLBI, NIH, Room 5A03, Building 31, Bethesda, Md. 20014, phone 301-496-4236, will provide summaries of the meeting and rosters of the committee members.

Dr. Charles L. Turbyfill, Executive Secretary, NHLBI, NIH, Room 553, Westwood Building, Bethesda, Md. 20014, phone 301-496-7351, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, National Institutes of Health.)

Dated: November 8, 1978.

SUZANNE L. FREMEAU
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-35057 Filed 11-14-78; 8:45 am]

[4110-89-M]

Assistant Secretary for Education

COMMENTS ON COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

Pursuant to section 406(g)(2)(B), General Education Provisions Act, notice is hereby given as follows:

The U.S. Office of Education has proposed a collection of information and data acquisition activity which will request information from educational agencies or institutions.

The purpose of publishing this notice in the FEDERAL REGISTER is to comply with paragraph (g)(2)(B) of the "Control of Paperwork" amendment which provides that each educational agency or institution subject to a request under the collection of information and data acquisition activity and their representative organizations shall have an opportunity, during a 30-day period before the transmittal of the request to the Director of the Office of Management and Budget, to comment to the Administrator of the National Center for Education Statistics on the collection of information and data acquisition activity.

This data acquisition activity is subject to review by the HEW Education Data Acquisition Council and the Office of Management and Budget.

Description of the proposed collection of information and data acquisition activity follow below.

Written comments on the proposed activity are invited. Comments should refer to the specific sponsoring agency and form number and must be received on or before December 15, 1978, and should be addressed to Administrator, National Center for Education Statistics, Attention: Manager, Information Acquisition, Planning, and Utilization, Room 3001, 400 Maryland Avenue SW., Washington, D.C. 20202.

Further information may be obtained from Elizabeth M. Proctor of the National Center for Education Statistics, 202-245-1022.

Dated: November 8, 1978.

MARIE D. ELDRIDGE,
Administrator, National Center
for Education Statistics.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. TITLE OF PROPOSED ACTIVITY

Financial and Performance Reporting for BEH Discretionary Grant Programs.

2. AGENCY/BUREAU/OFFICE

U.S. Office of Education/Bureau of Education for the Handicapped.

3. AGENCY FORM NUMBER

OE Form 9037-1.

4. LEGISLATIVE AUTHORITY FOR THIS ACTIVITY

a. "The Commissioner is authorized to arrange by contract, grant, or otherwise * * * for the development and carrying out * * * of experimental preschool and early education programs for handicapped children * * *." (Pub. L. 91-230, Part C, Section 623; 20 U.S.C. 1423; 45 CFR Part 121d.)

b. "The Commissioner is authorized to make grants to State educational agencies to assist them in establishing and maintaining * * * programs for training personnel * * * as teachers of handicapped children or as supervisors of such teachers." (Pub. L. 91-230, Part D, Section 632; 20 U.S.C. 1432; 45 CFR Part 121f.)

c. "The Commissioner is authorized to make grants * * * for research and related purposes and to conduct research, surveys, or demonstrations, relating to education of handicapped children." (Pub. L. 91-230, Part E, Section 641; U.S.C. 1441; 45 CFR Part 121h.)

d. "The Commissioner is authorized to * * * provide by grant and contract for the conduct of research in the use of educational and traning films and other educational media for the handicapped * * * (Pub. L. 91-230, Part F, Sections 651 and 652 as amended by Pub. L. 93-380; U.S.C. 1451, 1452; 45 CFR Part 121i.)

e. "The Commissioner is authorized to make grants * * * for the development and operation of specially designed or modified programs of vocational, technical, postsecondary, or adult education for deaf or other handicapped persons." (Pub. L. 93-380, Part C, Section 625; U.S.C. 1424a.)

f. "The Commissioner is authorized to make grants * * * for projects for (1) encouraging * * * work in various fields of education of handicapped children and youth * * * or (2) disseminating information * * *." (Pub. L. 91-230, Part D, Section 633; 20 U.S.C. 1433; 45 CFR 121g.)

g. "Each Federal agency shall require grantees to report the status of funds for all nonconstruction projects or programs * * *." (ONB Circular A-102, Attachment H.)

h. Grantees shall submit a performance report for each grant * * *." (OMB Circular A-102, Attachment I.)

5. VOLUNTARY/OBLIGATORY NATURE OF RESPONSE

Required to obtain or maintain benefits.

6. HOW INFORMATION WILL BE USED

Program Management

Information received shall be used to monitor grantee fiscal and technical performance, as prescribed by OMB Circular A-102. Performance shall be monitored to assure that time schedules are being met and other performance goals are being achieved. The Federal agency shall compare actual accomplishments to expected goals and examine any discrepancies found. Financial information submitted shall be used to determine whether grantees have maintained an acceptable financial management system and to compare actual outlays with budgeted amounts.

7. DATA ACQUISITION PLAN

a. Method of Collection: Mail.
b. Time of Collection: At the end of the grant award period.
c. Frequency: Annual.

8. RESPONDENTS

a. State Education Agency grantees:
1. Number: Universe, 133.
2. Burden: 12.5 hours per grantee.
b. Local Education Agency grantees:
1. Number: Universe, 122.
2. Burden: 12.5 hours per grantee.
c. College and University grantees:
1. Number: 759.
2. Burden: 12.5 hours per grantee.
d. Nonprofit Organization grantees:
1. Number: Universe, 152.
2. Burden: 12.5 hours per grantee.
e. Profit Organization grantees:
1. Number: Universe, 7.
2. Burden: 12.5 hours per grantee.

9. INFORMATION TO BE COLLECTED

The information/data to be submitted is similar across all respondent categories; any differences in the type-quantity of information reported are due to the type of handicapped program. Where requirements are not applicable to all grant programs, a special note will be placed beside that requirement.

a. Financial Status Report:
1. Net outlays to date (CFDA 13.444 only).

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2. Non-Federal share of outlays (CFDA 13.444 only).
3. Total Federal share of outlays.
4. Federal share of unliquidated obligations.
5. Total Federal share of outlays and unliquidated obligations.
6. Cumulative amount of Federal funds authorized.
7. Unobligated balance of Federal funds.

b. Performance Report:

1. Accomplishments and milestones met.
2. Slippages in attainment and reasons for the slippages.
3. Unanticipated or anticipated spin-off developments (optional).
4. Relation of quantifiable output data to cost data (optional).
5. Persons served in demonstration/service activities.
6. Project Staff count.
7. Ancillary services provided.
8. Inservice/Preservice training data.
9. Placements of children (CFDA 13.444 only).

[FR Doc. 78-32065 Filed 11-14-78; 8:45 am]

[4110-92-M]

Office of Human Development Services

FEDERAL ALLOTMENT TO STATES FOR SOCIAL SERVICES EXPENDITURES PURSUANT TO TITLE XX OF THE SOCIAL SECURITY ACT

Promulgation for Fiscal Year 1980

Promulgation is made of the Federal allotment for Fiscal Year 1980 for purposes of grants to States under Title XX of the Social Security Act pursuant to section 2002(a)(2) of the act which provides that the Federal allotment shall be determined and promulgated in accordance with said section.

For fiscal year 1980, the allotment limits are based on the Bureau of the Census population statistics contained in its publication, "Current Population Reports" (Series P-25, No. 727, July 1978) which is the most recent satisfactory data, available from the Department of Commerce at this time as to the population of each State and of all States.

It is hereby promulgated, for purposes of grants to States for social services under title XX, that the Federal allotment to each of the 50 States and the District of Columbia for the fiscal year ending September 30, 1980, as determined pursuant to the act and on the basis of said population data, shall be as set forth below:

State	Federal allotment
Alabama	42,700,000
Alaska	4,450,000
Arizona	26,425,000
Arkansas	24,850,000
California	251,750,000
Colorado	29,975,000
Connecticut	36,025,000
Delaware	6,725,000
District of Columbia	7,950,000
Florida	97,325,000
Georgia	58,075,000
Hawaii	9,750,000
Idaho	9,925,000
Illinois	130,475,000
Indiana	61,975,000
Iowa	33,525,000
Kansas	26,775,000
Kentucky	39,850,000
Louisiana	45,325,000
Maine	12,525,000
Maryland	47,675,000
Massachusetts	67,200,000
Michigan	106,150,000
Minnesota	46,250,000
Mississippi	27,575,000
Missouri	55,625,000
Montana	8,675,000
Nebraska	18,050,000
Nevada	7,250,000
New Hampshire	9,850,000
New Jersey	85,025,000
New Mexico	13,675,000
New York	208,450,000
North Carolina	63,225,000
North Dakota	7,475,000
Ohio	124,500,000
Oklahoma	32,375,000
Oregon	27,625,000
Pennsylvania	137,150,000
Rhode Island	10,825,000
South Carolina	32,675,000
South Dakota	7,950,000
Tennessee	49,800,000
Texas	147,700,000
Utah	14,700,000
Vermont	5,625,000
Virginia	58,075,000
Washington	42,000,000
West Virginia	21,850,000
Wisconsin	54,150,000
Wyoming	4,675,000
Total	2,500,000,000

Dated: November 1, 1978.

ERNEST L. OSBORNE,
Commissioner,
Administration for Public Services.

Approved: November 3, 1978.

ARABELLA MARTINEZ,
Assistant Secretary
for Human Development Services.

[FR Doc. 78-32060 Filed 11-14-78; 8:45 am]

[4110-85-M]

Public Health Service

ESTABLISHMENT OF A NATIONAL TOXICOLOGY PROGRAM

The Department of Health, Education, and Welfare announces the establishment of a National Toxicology Program within the Public Health Service (PHS). The broad goal of this Program is to strengthen the Department's activities in the testing of chemicals of public health concern, as well as in the development and validation of new and better integrated test methods.

To accomplish this goal, the Program is established as a Department-wide effort to provide needed information to regulatory and research agencies and to strengthen the science base. The Program is at present comprised of the relevant PHS activities within the Food and Drug Administration (FDA), the National Cancer Institute (NCI), the Center for Disease Control/National Institute for Occupational Safety and Health (CDC/NIOSH), and the National Institute of Environmental Health Sciences (NIEHS). It will be planned, programmed, and carried out as a coordinated whole under the direction of Dr. David P. Rall who will continue to serve as Director, National Institute of Environmental Health Sciences, and for the purpose of this Program will report to the Assistant Secretary for Health and Surgeon General.

KEY FEATURES OF THE PROGRAM

1. An Annual Plan, which will include:

(a) Specification of the Program activities and resources to be managed by the Program Director:

1. Current toxicology testing capacity (i.e., dollars, positions, and space) and how that capacity is being utilized.
2. Amount of test capacity which may be available in the coming year.
3. Plans for test development and validation of test systems which take into account research opportunities and needs of the field.

(b) The compounds to be tested, the test procedures to be followed, and a schedule for the tests.

(c) The regulatory and scientific opportunities which were considered in the development of the plan.

The Plan will be approved by the Secretary.

2. An executive Committee which reviews and recommends approval of the Annual Plan; it also monitors the Annual Plan. The Executive Committee is composed of:

Commissioner of Food and Drugs, Food and Drug Administration;
Assistant Secretary for Occupational Safety and Health, Department of Labor;
Chairman, Consumer Product Safety Commission;
Administrator, Environmental Protection Agency;
Director, National Institute for Occupational Safety and Health;
Director, National Institutes of Health;
Director, National Cancer Institute;
Director, National Institute of Environmental Health Sciences;
Assistant Secretary for Health and Surgeon General (nonvoting).

3. A Toxicology Program Board of Scientific Counselors (a public advisory group), which is responsible for reviewing the scientific merit of the Program. The Board is composed of eight nongovernmental scientists selected by the Secretary.

4. A Program Director, who will develop the Annual Plan and manage the Program.

OPERATION OF THE PROGRAM

NCI, NIEHS, CDC/NIOSH, and FDA will dedicate Program resources to this Program. When agency resources are identified, memoranda of understanding will be prepared and signed by the head of each agency and the National Toxicology Program (NTP) Director. These memoranda will:

1. Specify those resources to be devoted to the Program.
2. Identify Program components by organizational title.
3. Identify supporting elements of participant agencies, and their responsibilities (e.g., technical services).

These memoranda will be updated upon approval of the Annual Plan to reflect shifts of dedicated resources into and out of the Program.

These memoranda will provide that the identified organizational elements in each agency shall be under the immediate direction of the NTP Director, subject to the concurrence of the agency head.

Additional information, including the implementation plan, may be obtained from Dr. David P. Rall, Director, National Toxicology Program, P.O. Box 12233, Research Triangle Park, N.C. 27709, 919-541-3201 (FTS: 629-3201).

Effective date. The establishment of this Program shall become effective ———.

Dated: November 6, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary.

[FR Doc. 78-32048 Filed 11-14-78; 8:45 am]

[4110-85-M]

PUBLIC HEALTH SERVICE (PHS) REGIONAL OFFICES

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HD [Public Health Service (PHS) Regional Offices] of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health, Education, and Welfare (39 FR 1468, January 9, 1974, as amended most recently at 42 FR 61326, December 2, 1977) is amended to delete all references to centralized procurement services being performed in the PHS Regional Offices.

Section HD-20 Functions is amended as follows:

1. *Under the Office of Regional Health Planning (HD*H)*, delete the "and" before item (18); in item (18), delete the words "and contracts"; after item (18), change the period to a semicolon and add "and (19) in cooperation with the Regional Administrative Support Center, develops scopes of work and evaluation criteria for contracts to support program requirements, evaluates technical proposals submitted by prospective contractors and makes recommendations as to their technical acceptability, monitors contractor' technical performance and their compliance with laws, regulations and policies, accepts deliverables and assists in contract closeout."

2. Delete the statement for "the *Office of Grants Management (HD*J)* and substitute the following:

*Office of Grants Management (HD*J).* The Office of Grants Management: (1) Serves as the focus for grants and loan management activities in the PHS Regional Office; (2) receives and refers grant and loan applications to the appropriate program; (3) maintains a control record of review process; (4) reviews grant and loan applications from a management point of view for conformity to laws, regulations, and policies; (5) identifies problem areas and collaborates with other staff in their resolution; (6) maintains central grant and loan files for the PHS Regional Office; (7) serves as loan authority for the PHS Regional Office; (8) issues grant awards; negotiates, computes, prepares, and signs award notices; (9) secures necessary clearances and distributes grant award statements; (10) provides continuing surveillance of financial and administrative aspects of grant supported activities through site visits to assure compliance with appropriate DHEW and PHS policies; (11) gives technical assistance, where indicated, to improve the management of grant and loan supported activities; (12) develops, implements, and manages regional grants and loan management procedures and policies; (13) provides for the collection and reporting of business management and programmatic data, and analyzes and monitors business management data on grants and loans; (14) provides for development, implementation, and monitoring of the annual Regional Health Administrator's regional work program including setting objectives responsive to national and regional priorities and assignment of office resources required to attain these objectives; (15) conducts studies and provides assistance to improve the operation of grantee management systems and grant review procedures; (16) responds to requests for grants and loan management information from headquarters and regional staffs and from the public; (17) develops business management methods to improve cost effectiveness and financial systems of PHS regional project grants; (18) implements business management aspects of Health Services Funding regulations and financial plans in all appropriate projects; and (19) performs regional loan management officer functions as specified in the PHS Loan Administration Manual.

3. *Under the Division of Health Care Systems (HD*N)*, item (9) should read "analyzes programmatic data, reviews and recommends action on grant and loan applications, and provides continuous programmatic monitoring of division grants for compliance with applicable laws, regulations, policies, and performance standards;" delete "and" before item 10; after item 10, change the period to a semicolon and add "and (11) in cooperation with the Regional Administrative Support Center, develops scopes of work and evaluation criteria for contracts to support program requirements, evaluates technical proposals submitted by prospective contractors and makes recommendations as to their technical acceptability, monitors contractors' technical performance and their compliance with laws, regulations and policies, accepts deliverables, and assists in contract closeout."

4. Under the *Division of Alcoholism, Drug Abuse, and Mental Health (HD*T)*, item (8) should read "analyzes programmatic data, reviews and recommends action on grant applications, and provides continuous programmatic montioring of division grants for compliance with applicable laws, regulations, policies, and performance standards; delete "and" before item (10); after item (10), change the period to a semicolon and add "and (11) in cooperation with the Regional Administrative Support Center, develops scopes of work and evaluation criteria for contracts to support program requirements, evaluates technical proposals submitted by prospective contractors and makes recommendations as to their technical acceptability, monitors contractors' technical performance and their compliance with laws, regulations and policies, accepts deliverables, and assists in contract closeout."

5. *Under Division of Preventive Health Services (HD*U)*, item (5) should read "analyzes programmatic data, reviews and recommends action on grant and loan applications, and provides continuous programmatic monitoring of division grants for compliance with applicable laws, regulations, policies, and performance standards; delete "and" before item (9); after item (9) change the period to a semicolon and add "and (10) in cooperation with the Regional Administrative Support Center, develops scopes of work and evaluation criteria for contracts to support program requirements, evaluates technical proposals submitted by prospective contractors and makes recommendations as to their technical acceptability, monitors contractors' technical performance and their compliance with laws, regua-

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tions and policies, accepts deliverables, and assists in contract closeout."

6. Under *Division of Health Services Delivery (HD*V)*, item (7) should read "analyzes programmatic data, reviews and recommends action on grant and loan applications, and provides continuous programmatic monitoring of division grants for compliance with applicable laws, regulations, policies, and performance standards; delete "and" before item (8); after item (8), change the period to a semicolon and add "and (9) in cooperation with the Regional Administrative Support Center, develops scope of work and evaluation criteria for contracts to support program requirements, evaluates technical proposals submitted by prospective contractors and makes recommendations as to their technical acceptability, monitors contractors' technical performance and their compliance with laws, regulations and policies, accepts deliverables, and assists in contract closeout."

Dated: October 31, 1978.

LEONARD D. SCHAEFFER,
Assistant Secretary for Management and Budget.

[FR Doc. 78-32168 Filed 11-14-78; 8:45 am]

[4310-02-M]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

ALASKA NATIVE CLAIMS SETTLEMENT

Determination of Population Figures for Various Land Selections and Allocations

Dated: October 31, 1978.

This decision is pursuant to authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 230 DM 2. It amends a decision dated January 19, 1977, entitled "Determined of Population Figures for Various Land Allocations Pursuant to the Alaska Native Claims Settlement Act," which was published in the FEDERAL REGISTER on February 2, 1977 (vol. 42, No. 22 at pp. 6419-6432). The amendments are to correct certain errors therein which were the subject of the following appeals to the Alaska Native Claims Appeal Board (ANCAB):

LS 77-2—Calista Corp. (Paimiut and Ohogamiut villages).
LS 77-30—Bristol Bay Native Corp. (Togiak Natives, Ltd.).
LS 77-31—Bristol Bay Natives Corp. (Togiak Natives, Ltd.).
LS 77-32—Cook Inlet Region, Inc.

By order of ANCAB dated May 23, 1978, the matter has been remanded to the BIA for appropriate action. Accordingly, the decision of January 19, 1977, is modified as follows:

Corrected Determination of Population Figures for Various Land Allocations Pursuant to the Alaska Native Claims Settlement Act

Village corporation and address	Corrected Native population	Corrected entitlement pursuant to sec. 14(a) (acres)	Serial No.
Ohog, Inc., Ohogamiut via Russian Mission, Alaska 99567.	29	69,120	F-14915
Paimiut Corp., Paimiut via Hooper Bay, Alaska 99690.	25	69,120	AA-9014
Togiak Natives, Ltd., Togiak, Alaska 99678	400	138,240	AA-6705

Regional corporation and address	Corrected Native population	Corrected sec. 12(b) percentile	Corrected initial 12(b) share (acres)	Corrected sec. 14(h) percentile
Ahtna, Inc., Drawer G, Copper Center, Alaska 99573.	1,090	1.811082495	33,324	1.415382218
Aleut Corp., 833 Gambell St., Anchorage, Alaska 99501.	3,361	5.584447952	102,754	4.364311591
Arctic Slope Region Corp., P.O. Box 129, Barrow, Alaska 99723.	3,911	6.498296917	119,569	5.078495279
Bering Straits Regional Corp., P.O. Box 1008, Nome, Alaska 99762.	6,919	11.496219988	211,530	8.984430795
Bristol Bay Native Corp., P.O. Box 198, Dillingham, Alaska 99576.	5,525	9.180028246	168,912	7.174299775
Calista Corp., 516 Denali St., Anchorage, Alaska 99501.	13,444	22.337791808	411,016	17.457246367
Chugach Natives, Inc., 912 East 15th Ave., Anchorage, Alaska 99501.	2,106	3.499210768	64,385	2.734674267
Cook Inlet Region, Inc., 1211 West 27th Ave., Anchorage, Alaska 99503.	6,277	10.429509013	191,903	8.150783654
Doyon, Ltd., Doyon Bldg., 1st and Hall Sts., Fairbanks, Alaska 99701.	9,244	15.359308797	282,611	12.003480022
Koniag, Inc., P.O. Box 746, Kodiak, Alaska 99615.	3,394	5.639278890	103,763	4.407162613
NANA Regional Corp., P.O. Box 49, Kotzebue, Alaska 99752.	4,914	8.164825122	150,233	6.380906623
Subtotal	60,185			
Sealaska Corp., 811 West 12th St., Juneau, Alaska 99801.	16,826	NA	NA	21.848826790
Total	77,011			

This decision is published in the FEDERAL REGISTER pursuant to 43 CFR 2650.8 to provide notice to interested parties of the population figures which pursuant to the Alaska Native Claims Settlement Act govern land selection entitlements. The figures contained in the decision are hereby declared final for purposes of the land selection entitlements described subject only to the appeal rights provided below. Any interested party, as defined in 43 CFR 4.902, may, on or before (30 days from date of publication in FEDERAL REGISTER) file an appeal in accordance with the provisions of 43 CFR part 4, subpart J, with the:

Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510.

Failure to respond on or before December 15, 1978, will constitute acceptance of the determination(s). Should an appeal be filed, the procedures found in 43 CFR part 4, subpart J, shall apply. A copy of an appeal must be served on Area Director, Bureau of Indian Affairs, P.O. Box 3-8000, Juneau, Alaska 99801, the Regional Solicitor's Office, 510 L Street, Suite 408, Anchorage, Alaska 99501, and each of the regional corporations listed in the decision. If an appeal is directed at a determination(s) for a village corporation, a copy of the appeal must be served on that village corporation.

CLARENCE ANTIOQUIA,
Area Director, Bureau of Indian Affairs, Juneau.

[FR Doc. 78-31917 Filed 11-14-78; 8:45 am]

[1505-01-M]

Bureau of Land Management

OUTER CONTINENTAL SHELF WESTERN AND CENTRAL GULF OF MEXICO

Oil and Gas Lease Sale No. 51

In FR Doc. 78-31780 appearing at page 52534 in the issue for Monday, November 13, 1978, the following corrections should be made:

1. In the first column on page 52548, the fourth paragraph should have the paranthetical phrase "(United States vs. Louisiana, 422 U.S. 13)" added before the final period.

2. In the middle column of page 52549 the next to the last line of Stipulation No. 3 should read "SW¼NE¼SW¼; NE¼SW¼SW¼."

[4310-84-M]

[NM 35375]

NEW MEXICO

Notice of Proposed Withdrawal and Reservation of Lands

NOVEMBER 7, 1978.

The U.S. Department of Energy filed an application, NM 35375 on October 13, 1978, for the withdrawal of approximately 17,200 acres of public lands from settlement, sale, location or entry under the General Land Laws, including the mining and mineral leasing laws and the Geothermal Steam Act of 1970.

The U.S. Department of Energy desires these lands for a waste isolation pilot plant. The applicant also requests that rights-of-way for road, railroad, powerline and water pipelines totaling approximately 51 miles be included in the subject withdrawal.

For the period of 30 days from the date of publication of this notice all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned authorized officer of the Bureau of Land Management.

Pursuant to section 204(h) of the Federal Land Policy and Management Act of 1976, notice is hereby given that an opportunity for a public hearing is afforded in connection with the proposed withdrawal. All interested persons who desire to be heard on the proposed withdrawal must submit a written request for a hearing to the State Director, Bureau of Land Management, at the address shown below, on or before December 17, 1978. Notice of the public hearing will be published in the FEDERAL REGISTER giving the time and place of such hearing. The public hearing will be scheduled and conducted in accordance with BLM Manual, sec. 2351.16B.

The Department of the Interior's regulations provide that the authorized officer of the BLM will undertake such investigations as are necessary to determine the existing and potential demands for the lands and their resources. He will also undertake negotiations with the applicant agency with the view of assuring that the area sought is the minimum essential to meet the applicant's needs, providing for the maximum concurrent utilization of the lands for purposes other than the applicant's and reaching agreement on the concurrent management of the lands and their resources.

The authorized officer will also prepare a report for consideration by the Secretary of the Interior who will determine whether or not the lands will be withdrawn and reserved as requested by the applicant agency. The determination of the Secretary on the application will be published in the FEDERAL REGISTER. The Secretary's determination shall, in a proper case, be subject to the provisions of section 204(c) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2752.

The below described lands are temporarily segregated from the operation of the public land laws, the mining laws, the mineral leasing laws and including leasing under the Geothermal Steam Act of 1970, to the extent that the withdrawal applied for, if and when effected, would prevent any form of disposal or appropriation under such laws. Current administrative jurisdiction over the segregated lands will not be affected by the temporary segregation. The segregative effect of the application shall terminate upon (1) rejection of the application by the Secretary; (2) withdrawal of the lands by the Secretary; or (3) expiration of two years from the date of publication of this notice.

The lands involved in the application are:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 22 S., R. 30 E.,
Sec. 12, SE¼Se¼;
Sec. 13, E½, SE¼NW¼ and E½SW¼;
Sec. 24, E½, E½NW¼ and SW¼;
Sec. 25.
T. 23 S., R. 30 E.,
Sec. 1, lot 1.
T. 22 S., R. 31 E.,
Sec. 7, lots 3, 4, NE¼NE¼, S½NE¼, SE¼NW¼, E½SW¼ and SE¼;
Secs. 8 and 9;
Sec. 10, SW¼NE¼, W½NW¼, SE¼NW¼ and S½;
Sec. 11, SW¼SW¼;
Sec. 14, SW¼NE¼, W½, NW¼SE¼ and S½SE¼;
Secs. 15 and 17 to 23, inclusive;
Secs. 26 to 31, inclusive;
Secs. 33 and 34;
Sec. 35, N½NE¼, SW¼NE¼, W½ and NW¼SE¼.
T. 23 S., R. 31 E.,
Sec. 3, lots 1, 2, 3, 4, S½N½, N½SW¼, SW¼SW¼ and NW¼SE¼;
Secs. 4 and 5;
Sec. 8, lots 1, 2, 3, 4, SE¼NE¼ and NE¼SE¼.

The areas described aggregate approximately 17,200 acres in Eddy County, New Mexico.

All communications in connection with this proposed withdrawal, except public hearing requests, should be addressed to the undersigned, Bureau of Land Management, Department of the Interior, P.O. Box 1449, Santa Fe, N. Mex. 87501.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-32251 Filed 11-14-78; 8:45 am]

[4310-84-M]

[U-29248]

UTAH

Proposed Withdrawal and Reservation of Lands

NOVEMBER 6, 1978.

The Bureau of Land Management has filed application No. U-29248 to withdraw from all forms of appropriation under the nondiscretionary public land laws, including mining under the general mining laws, subject to prior valid existing rights, the following described land:

SALT LAKE MERIDIAN, UTAH

T. 41 S., R. 14 W.,
Sec. 14, W½NW¼, NW¼SW¼;
Sec. 15, Lots 1-6, inclusive, W½E½, W½ (All);
Sec. 22, W½NE¼, NW¼, N½SW¼, NW¼SE¼.

The area segregates 1,125.60 acres in Washington County, Utah. The withdrawal of the land is necessary to preserve the land for The Red Cliffs Recreation Site.

For a period of 30 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, U.S. Department of Interior, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111.

The Department's regulations provide that the authorized officer of the Bureau of Land Management will un-

dertake such investigations as are necessary to determine the existing and potential demands for the lands and their resources.

The authorized officer will also prepare a report for consideration by the Secretary of the Interior, who will determine whether or not the land will be withdrawn as requested by the applicant agency.

Pursuant to section 204(b) of the Federal Land Policy and Management Act of 1976, notice is hereby given that an opportunity for a public hearing is offered in connection with the proposed withdrawal. All interested persons who desire to be heard on the proposed withdrawal must submit a written request for a hearing to the undersigned. Notice of the public hearing will be published in the FEDERAL REGISTER, giving the time and place of said hearing.

For a period of 2 years from date of publication of this notice in the FEDERAL REGISTER, the land will be segregated from entry as specified above, unless the application is rejected or the withdrawal is approved prior to that date. If the withdrawal is approved by the Secretary, it will be for a 20-year period and the land will remain segregated for the duration of the withdrawal.

All communications in connection with this proposed withdrawal should be addressed to the undersigned.

WILLIAM G. LEAVELL,
Associate State Director.

[FR Doc. 78-32043 Filed 11-14-78; 8:45 am]

[4310-55-M]

Fish and Wildlife Service

AVAILABILITY OF DRAFT MIGRATORY BIRD DISEASE CONTINGENCY PLAN

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Service has prepared a Migratory Bird Disease Contingency Plan. The plan primarily provides guidance to Service personnel in preventing migratory bird disease problems, and establishes guidelines for responding to disease outbreaks. The plan supersedes the Service's duck virus Enteritis Contingency Plan which dealt only with response to disease outbreaks caused by that virus. Public comment on the draft plan is invited.

DATE: Comments should be submitted on or before January 12, 1979.

ADDRESSES: Copies of the draft may be obtained from the Division of Wildlife Research, U.S. fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, telephone 202-343-7557. comments should be sent to the Associate Director—Wildlife Resources, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, telephone 202-343-5333.

FOR FURTHER INFORMATION CONTACT:

Dr. Charles W. Dane, Division of Wildlife Research, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, telephone 202-343-7557.

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service has the responsibility for protecting and managing migratory birds as authorized in the Migratory Bird Treaty Act, and other legislation and Executive orders. Prevention and control of migratory bird diseases is one aspect of this responsibility. Some disease loss is natural and inevitable; however, management can reduce the size of this loss and avoid the creation of habitat conditions that subject birds to a high risk of disease. While prevention is preferable, actions can be taken to minimize losses and to reduce spread of disease when outbreaks do occur.

Response to serious disease problems has demonstrated that migratory bird losses can be greatly reduced by timely, aggressive, well-planned, and coordinated control efforts. The key factors for reducing these losses are adequate preparation, early detection, rapid and accurate diagnosis, and rapid initiation of appropriate control activities.

The purpose of this plan is to provide guidance in preventing disease problems, and to establish guidelines for responding to disease outbreaks. the plan assigns specific responsibilities and establishes notification procedures for Service personnel. The procedures and information provided are designed for use in combating major migratory bird disease problems. Since disease outbreaks may also occur on non-Service lands, the plan provides guidelines for cooperation by Service personnel with other Federal agencies, the State and the private sector in responding to disease outbreaks. the Service will cooperate in the development of plans to deal with potential disease problem areas.

The following objectives will guide the Service's activities in preparing for and responding to migratory bird disease problems, to the degree possible and feasible:

1. Prevent the establishment of new or exotic diseases in native migratory bird populations.

2. Prevent excessive losses of migratory birds to diseases.

3. Avoid disease outbreaks where endangered or threatened species may be affected.

4. Reduce the potential for contagious diseases to spread from one population to others.

5. eliminate habitat conditions on Service-owned and controlled lands that are particularly conducive to large scale disease outbreaks.

6. Avoid creating habitat conditions on Service lands that will be conducive to the development of major disease problems.

This plan supersedes the Service's Duck Virus Enteritis Contingency Plan issued July 19, 1973, which dealt only with DVE. The present plan covers all disease problems of migratory birds, and accommodates the administrative reorganizations of the service that have occurred since 1973, including the development of the National Wildlife Health Laboratory at Madison, Wis. Additionally, this plan requires that a disease plan be prepared for each Fish and Wildlife Service Region and for designated National Wildlife Refuges.

AUTHORSHIP

The plan was prepared by U.S. Fish and Wildlife Service personnel assigned to the Migratory Bird Disease Contingency Plan Development Team.

The primary author of this notice is Charles W. Dane, Division of Wildlife Research.

Dated: November 9, 1978.

LYNN A. GREENWALT,
Director.

[FR Doc. 78-32161 Filed 11-14-78; 8:45 am]

[4310-31-M]

Geological Survey

CHIEF, CONSERVATION DIVISION

Delegation of Authority

The following material is a portion of the Geological Survey Manual and the numbering system is that of the Manual:

PART 220 SPECIAL REDELEGATIONS

220.2.4 Appeals to the Director.

The Chief, Conservation Division, is authorized, as hereinafter specified, to exercise the authority delegated by the Secretary of the Interior to the Director, Geological Survey, as set forth in 30 CFR 221.66, 30 CFR 250.81, and 30 CFR Part 290. The subject delegation to the Chief, Conservation Division, is limited to the following:

1. The issuance of rulings on motions for oral argument under 30 CFR 290.4.

2. The issuance of rulings on motions for extensions of time under 30 CFR 290.5.

3. The issuance of rulings on requests under 30 CFR 221.66 or 30 CFR 250.81 for suspension of compliance with an order or decision pending a decision by the Director on the appeal.

4. The issuance of orders affording appellants an opportunity to file additional documents in support of their appeals.

W. A. RADLINSKI,
Acting Director.

[FR Doc. 78-32083 Filed 11-14-78; 8:45 am]

[4310-31-M]

EARTHQUAKE STUDIES ADVISORY PANEL

Public Meeting

Pursuant to Pub. L. 92-463, effective January 5, 1973, notice is hereby given that an open meeting of the Earthquake Studies Advisory Panel will be held beginning at 8:30 a.m. (local time) on Friday, December 1, 1978, and continuing through Saturday, December 2, 1978. The Advisory Panel will meet in Topographic Building 3, Conference Room B, U.S. Geological Survey, Menlo Park, Calif. 94025.

(1) *Purpose.* The Advisory Panel was appointed to advise the Geological Survey on earthquake plans and programs which are conducted in cooperation with universities, industry, and other Federal and State government agencies in a coordinated national program for earthquake research.

(2) *Membership.* The Advisory Panel is chaired by Professor Nathan M. Newmark and is composed of persons drawn from the fields of geology, geophysics, engineering, rock mechanics, and socioeconomics, primarily from the academic community.

(3) *Agenda.* Review of the program activities for fiscal year 1979, and plans for fiscal year 1980.

For more detailed information about the meeting, please call Dr. Robert L. Wesson, Chief, Office of Earthquake Studies, Reston, Va. 22092, 703-860-6472.

J. R. BALSLEY,
Acting Director,
U.S. Geological Survey.

[FR Doc. 78-32084 Filed 11-14-78; 8:45 am]

[4310-17-M]

Office of the Secretary

FEDERAL RESERVE WATER RIGHTS WATER POLICY IMPLEMENTATION TASK FORCE

Public Participation

AGENCY: U.S. Department of the Interior, Office of the Secretary.

ACTION: Notice of opportunity for the public to participate in work of Task Force on Federal Reserved Water Rights to implement President's water policy.

SUPPLEMENTARY INFORMATION: A task force has been created to begin implementing that portion of the President's national water policy which instructs Federal agencies to work promptly and expeditiously to inventory and quantify non-Indian Federal reserved water rights; i.e., reserved water rights attendant to non-Indian Federal reservations administered by the Forest Service, National Park Service, Fish and Wildlife Service, Bureau of Land Management, the Department of Energy, and Department of Defense. This task force has as its goals: (1) Formulating a comprehensive and reasonable definition of Federal reserved water rights; (2) inventorying those rights; and (3) developing a methodology for quantifying those rights.

The President has asked this task force to place a high priority on the identification, establishment, and quantification of non-Indian Federal reserved water rights in areas "where water planning and management will be improved, where the protection of Federal water uses is of highest importance, and where it is essential to reduce uncertainty over future Federal assertions of right."

Mr. Leo M. Krulitz, Solicitor, Department of the Interior, has been designated chairman of this task force and he has, in turn, designated his Associate Solicitor for Energy and Resources to chair an interagency working group to coordinate the work of the Federal agencies involved.

It is intended that the above goals be met by having the task force work in close consultation and participation with the States and all other parties having an interest in this subject. In order to facilitate this public participation, all interested parties are asked to submit for the consideration and use of the task force their views and position regarding Federal reserved water rights with particular emphasis on the following issues:

1. What are the purposes for which reserved water rights may be claimed under Federal common law for the Federal reservations administered by the Federal agencies mentioned?

2. How can the Federal Government avail itself of the various State water law systems in both recognizing Federal reserved rights (including instream flows) and inventorying and quantifying those rights?

3. Is the procedure provided by the McCarran Act, 43 U.S.C. § 666, an adequate method for adjudicating and recognizing Federal reserved water rights, or is some legislative modification of that statute desirable?

4. What administrative or legislative proposals would expeditiously achieve the goals of this task force in greatest harmony with the various State water law systems and the competing water use interests involved in this process?

Any comments should be sent to: Mr. John Leshy, Associate Solicitor, Energy and Resources, Room 6312, U.S. Department of the Interior, Washington, D.C. 20240. Any questions should be directed to: Mr. Gary Fisher, Special Assistant to the Associate Solicitor for Energy and Resources, at 202-343-5757.

Meetings of the task force are open to the public. Meeting schedules are available from Mr. Leshy or Mr. Fisher at the above number.

Dated: November 8, 1978.

CECIL D. ANDRUS,
Secretary.

[FR Doc. 78-32078 Filed 11-14-78; 8:45 am]

[7020-02-M]

INTERNATIONAL TRADE COMMISSION

[603-TA-4]

CERTAIN REPLICA BLACK POWDER FIREARMS

Preliminary Investigation

Notice is hereby given that the U.S. International Trade Commission, pursuant to the provisions of section 603 of the Trade act of 1974 (19 U.S.C. 3483) on November 9, 1978, ordered a preliminary investigation to investigate the possible existence of unfair methods of competition and unfair acts with respect to the importation into the United States and sale of certain replica black powder firearms by Connecticut Valley Arms, Inc., Saybrook Road, Haddam, Conn., 06438 manufactured, in whole or in part, in Spain, and, the effects, if any, of such methods and acts.

KENNETH R. MASON,
Secretary.

CERTAIN REPLICA BLACK POWDER FIREARMS

PROVISIONAL ACCEPTANCE OF CONSENT DECREE BY U.S. INTERNATIONAL TRADE COMMISSION AND SOLICITATION OF PUBLIC COMMENTS

On November 9, 1978, the U.S. International Trade Commission decided in open session to provisionally accept and publish for public comment a proposed consent order agreement submitted by Connecticut Valley Arms, Inc. The authority for issuance of this proposed consent order is contained in section 337 of the Tarriff Act of 1930, as amended (19 U.S.C. 1337), and section 603 of the Trade Act of 1974 (19 U.S.C. 2482). A notice of preliminary investigation under section 603 is published above.

The order directs Connecticut Valley Arms, Inc., to cease and desist from labelling and advertising its "Mountain Rifle" and "Mountain Pistol" as "Made in USA" until such time that these articles are substantially manufactured in the United States. In determining final acceptance of this proposed consent order or in reviewing compliance therewith, the Commission shall consider all relevant factors in determining whether the subject articles are in fact "substantially manufactured in the United States." Compliance with this order is required after December 31, 1978, and a notarized affidavit which describes the extent and manner of compliance, must be filed with the Commission by Connecticut Valley Arms, Inc. by January 10, 1979. The affidavit will be reviewed by the Commission in order to determine whether further reporting is necessary. Failure to comply with the order may result in proceedings before the Commisison to determine what, if any, sanctions may issue, including a possible order of exclusion from entry pursuant to 19 U.S.C. 1337(d).

The consent order agreement defines and describes the parties which are signatories to, and have agreed to be bound by, the agreement, as well as the imported articles which are the subject matter of the preliminary investigation. Connecticut Valley Arms, Inc. has acceded to the Commission's jurisdiction, and has waived all procedural requirements under section 337, the right to judicial review of the consent order, or to otherwise challenge or contest the validity of the consent order.

Any interested member of the public is invited to submit written comments regarding the proposed consent order agreement which is set forth below. Such comments should be addressed to the Secretary of the U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, and should be received no later than December 11, 1978.

Dated: November 9, 1978.

KENNETH R. MASON,
Secretary.

CERTAIN REPLICA BLACK POWDER FIREARMS

CONSENT ORDER AGREEMENT

The U.S. International Trade Commission having instituted, on its own initiative and not upon complaint, a preliminary investigation, pursuant to its November 9, 1978, Notice of Preliminary Investigation, of certain acts and practices of Connecticut Valley Arms in the importation of Spanish firearm components, and it now appearing that Connecticut Valley Arms is willing to enter into an agreement containing an order to cease and desist from the acts and practices specified in the Consent Order incorporated herein.

It is hereby agreed by and between Connecticut Valley Arms, by its duly appointed officers; and the Commission investigative attorney, Louis S. Mastriani, that:

I. For the purpose of this Consent Order Agreement the following definitions apply:

1. "CVA" refers to Connecticut Valley Arms as well as its successors, assigns, and its officers and directors, as well as those agents, representatives, and employees acting pursuant to its directions.

2. "Commission" refers to the U.S. International Trade Commission.

3. "Replica firearms" refers to any black powder, muzzle-loading firearms, including, but not limited to, the "Mountain Rifle" and "Mountain Pistol," whether assembled or in kit form.

4. "Advertisement" refers to all media promotions and communications for the subject product to the public, whether achieved by television, radio, public and/or trade periodicals, and sales or promotional brochures. Oral representations by CVA pertaining to the product are also deemed to be included in the above definition.

5. "Made in U.S.A." refers to an article which is substantially manufactured in the United States.

6. "United States" includes the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and its territories and possessions.

7. "Manufacturer" refers to companies which produce replica firearms or components thereof.

8. "Exporter" refers to any company which sells replica firearms, or components thereof, for export to customers located in the United States.

9. "Importers" refers to any company which imports replica firearms, or components thereof, into the United States.

II. For the purpose of this Consent Order Agreement and the enforcement hereof, CVA, having appeared and voluntarily submitted to the personal jurisdiction of the Commission by agreeing to this Consent Order Agreement, admits that the Commission has jurisdiction over the subject included in the November 9, 1978, Notice of Preliminary Investigation.

III. This Consent Order Agreement is for settlement purposes only and does not constitute a finding by the Commission or an admission by CVA that section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) or any other statute of regulation, has been violated.

IV. CVA, in agreeing to the entry of this Consent Order, waives (1) further procedural requirements, including the requirement that the Commission make a determination under section 337(c) of the Tariff Act of 1930, as amended (19 U.S.C. 1337(c)), (2) judicial review of this Consent Order, (3) the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law, and (4) any other challenge or contest to the validity of this Consent Order.

V. This Consent Order Agreement contemplates that, if it is finally accepted by the Commission, the Commission may, without further notice to CVA, (1) issue its decision containing the following order to cease and desist in disposition of this investigation, and (2) make public information which is not "business confidential" as that term is defined in § 201.6 of the Commission's rules of practice and procedure.

VI. CVA has read the Order contemplated hereby, and it understands that once the Order has been issued, it will be required to file one or more compliance reports as therein specified, and the violation of the Order may result in proceedings before the Commission to determine what, if any, sanction should be applied to such violation including a possible order of exclusion from entry pursuant to 19 U.S.C. 1337(d).

ORDER

It is ordered, That—

I

Subsequent to December 31, 1978, Connecticut Valley Arms shall not advertise, nor otherwise affirmatively represent, its "Mountain Rifle," "Mountain Pistol," or any other replica firearm as "Made in U.S.A.," unless and until such time that each such article is substantially manufactured within the United States. Nor shall Connecticut Valley Arms induce, whether directly or indirectly, any manufacturer, importer, or exporter to engage in the foregoing proscribed activities.

II

Connecticut Valley Arms, by its chief executive officer, shall file a properly notarized affidavit covering the period from the date this order becomes final through December 31, 1978, containing therein a detailed statement describing the extent of compliance with this Consent Order Agreement. This affidavit and report shall be filed with the Commission by January 10, 1979. If Connecticut Valley Arms fails to file its report as required or if the Commission has sufficient reason to believe, on the basis of the foregoing report, that the terms of this Order have been violated, the Commission reserves the right to require such additional reports as are deemed necessary.

III

The reporting requirement of Paragraph II of this Order will be reviewed by the Commission after the report due in 1979 is received in order to ascertain whether further reporting by Connecticut Valley Arms is necessary, as provided in paragraph II.

IV

For the purpose of securing compliance with this Order and during the period ending December 31, 1979, or any further period of reporting resulting from a determination by the Commission that it has sufficient reason to believe that Connecticut Valley Arms is in violation of this Order or has failed to file its report as provided in paragraph II of this Order, duly authorized representatives of the Commission shall, upon written request and on reasonable notice to Connecticut Valley Arms mailed to its principal office, be permitted reasonable access, during the office hours of the company, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the company solely for the purpose of verifying any matter contained in the reports required under paragraph II of the Order. Duly authorized representatives of the Commission shall also be permitted to interview appropriate officers and employees of Connecticut Valley Arms, who may have counsel present, regarding any such matters. Such verification and interviews are subject to any recognized privilege under the laws of the United States and are also subject to the reasonable convenience of the company.

V

Confidential informaiton obtained by the means provided in paragraphs II, III, and IV, above, shall only be made available to the Commission or its representatives and shall not be divulged by any representative of the Commission, to any person other than a duly authorized representative of the Commission, except as required in the course of legal proceedings to which the Commission is a party for the purpose of securing compliance with this Order or as otherwise required by law, upon ten (10) days written notice to Connecticut Valley Arms.

This Order shall become effective November 15, 1978.

Signed this 31st day of August 1978.

CONNECTICUT VALLEY ARMS,
By DAVID L. SILK, *President.*
Saybrook Road, Haddam, Conn.

LOUIS S. MASTRIANI,
Commission Investigative Attorney.

[FR Doc. 78-32162 Filed 11-14-78; 8:45 am]

[4810-25-M]

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

ADVISORY COMMITTEE ON JOINT BOARD ACTUARIAL EXAMINATIONS

Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in Room 4125, U.S. Department of the Treasury, 15th Street and Pennsylvania Avenue NW., Washington, D.C. on December 11, 1978, beginning at 9:30 a.m. This meeting is subject to either cancellation or a change of date. A notice will appear in the FEDERAL REGISTER regarding any change which may occur.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion in the joint board's examinations in actuarial mathematics and methodology referred to in Title 29, United States Code, Section 1242(a)(1)(B)(C). In addition, administrative matters relative to the advisory committee will be handled.

A determination as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) has been made that the portion of the meeting dealing with the questions which may appear on the joint board's examinations falls within the exceptions to the open meeting requirement set forth in Title 5, United States Code, Section 552b(c)(9)(B), and that the public interest requires that such portion be closed to public participation.

The remainder of the meeting, i.e., those agenda items not pertaining to possible questions to be used on the Joint Board's examinations, will commence at approximately 9:30 a.m. and will be open to the public as space is available until the conclusion of those agenda items.

Dated: November 9, 1978.

LESLIE S. SHAPIRO,
Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 78-32075 Filed 11-14-78; 8:45 am]

[4410-01-M]

DEPARTMENT OF JUSTICE

[AAG/A Order No. 18-78]

PRIVACY ACT OF 1974

Notice of Amended System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a) notice is hereby given that the Criminal Division, Department of Justice, proposes to amend an existing system of records entitled the Weekly Statistical Report (JUSTICE/CRM-023).

The Weekly Statistical Report is a system of records for which public notice was published in 42 FR 53349 on September 30, 1977, consistent with the provisions of 5 U.S.C. 552a(e)(4). However the system will be amended to include the Criminal Division paralegal in the "categories of individuals covered by the system" and in the "categories of records in the system." The system notice has been revised to reflect these changes as well as corresponding changes to the "retrievability," "record source categories" and "access and contest" sections of the notice.

Title 5 U.S.C. 552a(e) (4) (11) provides that the public be provided a 30-day period in which to comment; the Office of Management and Budget (OMB), which has oversight responsibility under the provisions of the Act, requires a 60-day period in which to review the system before it is implemented. Therefore, the public, OMB, and the Congress are invited to submit written comments on this system. Comments should be addressed to the Administrative Counsel, Office of Management and Finance, Room 1118, Department of Justice, 10th and Constitution Avenue NW., Washington, D.C. 20530. If no comments are received from either the public, OMB, or the Congress within 60 days from the date of publication of this notice (December 15, 1978), the system will be implemented without further notice in the FEDERAL REGISTER. No oral hearings are contemplated.

Appropriate reports have been filed with the Congress and OMB.

Dated: November 3, 1978.

KEVIN D. ROONEY
Assistant Attorney General for Administration.

JUSTICE/CRM-023

System name:

Weekly Statistical Report.

System location:

U.S. Department of Justice, Criminal Division, 10th and Constitution Avenue NW., Washington, D.C. 20530.

Categories of individuals covered by the system:

Past or present attorneys and paralegals of the Criminal Division.

Categories of records in the system:

The system consists of weekly statistical reports submitted by each attorney and paralegal of the Criminal Division detailing the time expended on case and matter oriented activities and on noncase and nonmatter oriented activities. The system also includes periodic computer printout summaries.

Authority for maintenance of the system:

This system is established and maintained pursuant to 44 U.S.C. 3101.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Statistical compilations arranged by section and by division are submitted to the Congress and the Office of Management and Budget in connection with annual appropriations. There are no other uses of the records in this system outside of the Department of Justice.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress: Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of information to the National Archives and Records Service: A record from a system of records may be disclosed as a routine use to the Na-

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tional Archives and Records Service (NARS) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Original Weekly Statistical Reports are retained and the information contained therein is also stored in the Department's computer center. Summaries are also retained on computer printout paper. Records not at the computer center are stored in file cabinets in the Criminal Division.

Retrievability:

The record is retrieved by date, section, unit, and name of attorney or paralegal.

Safeguards:

The computer center is maintained by the Office of Management and Finance which has designated security procedures consistent with the sensitivity of the data. Materials related to the system maintained at locations other than the location of the computer center are protected and safeguarded in accordance with applicable departmental rules.

Retention and disposal:

Information as to individuals is destroyed at the computer center annually. Original weekly reports are destroyed approximately every 2 years. Statistical data and compilations are maintained indefinitely.

System manager(s) and address:

Assistant Attorney General, Criminal Division, U.S. Department of Justice, 10th and Constitution Avenue NW., Washington, D.C. 20530.

Notification procedure:

Same as above.

Record access procedures:

A request for access to a record from this system shall be made in writing with the envelope and the letter clearly marked "Privacy Act Request." Include in the request the name of the past or present attorney or paralegal employed by the Criminal Division. The requester shall also provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above.

Contesting record procedures:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

Record source categories:

Attorneys and paralegals of the Criminal Division.

Systems exempted from certain provisions of the act:

None.

[FR Doc. 78-32061 Filed 11-14-78; 8:45 am]

[4410-18-M]

Law Enforcement Assistance Administration

NATIONAL ADVISORY COMMITTEE FOR JUVENILE JUSTICE AND DELINQUENCY PREVENTION

Meeting

Notice is hereby given that the National Advisory Committee for Juvenile Justice and Delinquency Prevention (the Committee) will meet Thursday, Friday, and Saturday, November 30, December 1 and 2, 1978, at the Quality Inn, Pentagon City, Arlington, Va. The meeting will be open to the public.

On Thursday, November 30, the full Committee is scheduled to convene 9 a.m. At this time, a new member will be sworn in and the Executive Committee report will be heard. This session will also include a report by the Administrator of the Office of Juvenile Justice and Delinquency Prevention. The four subcommittees: Advisory Committee for the National Institute for Juvenile Justice and Delinquency Prevention; Advisory Committee on Standards for Juvenile Justice; Special Advisory Committee to the Administrator of the Office; Advisory Committee on the Concentration of Federal Effort, will meet at 11:30 a.m. Following a 12:30 p.m. luncheon recess, the subcommittees will reconvene at 1:30 p.m. in meetings for the remainder of the day.

On Friday, December 1, the full committee will reconvene at 10 a.m. At this session, the subcommittee reports will be heard. Following the luncheon recess, the full Committee will meet to continue presentation of these reports; included will be reconsideration of NAC positions taken on the Jurisdiction of Juvenile Courts over Status Offenders and on the Restriction of Waiver.

The full Committee will reconvene on Saturday, December 2, at 9 a.m. to consider the following items: Report of the Executive Committee on the Annual Report and the Work Plan; the Ad Hoc Committee Reports; and plans for the upcoming February meeting. The Committee is scheduled to adjourn at 12:30 p.m.

For further information, contact Mr. John Rector, Administrator, Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration, Department of Justice, 633 Indiana Avenue NW., Washington, D.C. 20531.

JOHN M. RECTOR,
Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 78-32059 Filed 11-14-78; 8:45 am]

[7510-01-M]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 78-58]

NASA ADVISORY COUNCIL (NAC) SPACE AND TERRESTRIAL APPLICATIONS ADVISORY COMMITTEE (STAAC)

Meeting

The Ad Hoc Informal Advisory Subcommittee on Weather, Climate and Oceans of the NAC-STAAC will meet on November 29, 1978, from 8:30 a.m. to 5 p.m. and on November 30, 1978, from 8 a.m. to 4:30 p.m. at the NASA Goddard Space Flight Center, Room 205, Building 26, Greenbelt, Md. Members of the public will be admitted to the meeting on both days at the times noted above on a first-come, first-served basis and will be required to sign a visitor's register. The seating capacity of the meeting room is for about 40 persons.

This subcommittee, comprised of 16 members of the NAC-STAAC including the chairman, Dr. John Firor, will review the 5-Year Plan in Environmental Observations.

The approved agenda for the meeting is as follows:

NOVEMBER 29, 1978

Time and Topic

8:30 a.m.—Chairman's remarks
9 a.m.—Program overview—5-year plan
10 a.m.—Climate program
11 a.m.—Global weather program
11:30 a.m.—Severe storm program
12 p.m.—Environmental quality program
1:30 p.m.—Ocean processes program (NOTE.—A discussion session will follow each of the presentations above.)
2:45 p.m.—Discipline working group sessions
5 p.m.—Adjourn

NOVEMBER 30, 1978

8 a.m.—Discipline working group sessions continued; reports by working group leaders on conclusions and recommendations
9:30 a.m.—Climate program
10 a.m.—Global weather program
10:30 a.m.—Severe storms program
11 a.m.—Environmental quality program
11:30 a.m.—Ocean processes program
1:30 p.m.—Summary and conclusions
2:30 p.m.—Special topics

4:30 p.m.—Adjourn

For further information regarding the meeting, please contact Louis B. C. Fong, Executive Secretary of the Subcommittee, Washington, D.C. 202-755-8601.

ARNOLD W. FRUTKIN,
Acting Associate Administrator for External Relations.

NOVEMBER 7, 1978

[FR Doc. 78-32053 Filed 11-14-78; 8:45 am]

[7510-01-M]

[Notice (78-59)]

NASA ADVISORY COUNCIL (NAC), SPACE SYSTEMS AND TECHNOLOGY ADVISORY COMMITTEE

Meeting

The Informal Ad Hoc Advisory Subcommittee on Shuttle Launched Entry Research Vehicles of the NAC Space Systems and Technology Advisory Committee will meet December 5-7, 1978, in Room 225, Building 1219, NASA Langley Research Center, Hampton, Va. The meeting will be open to the public up to the seating capacity of the room (approximately 50 persons including Subcommittee members and participants).

The Subcommittee was established to assist the NASA in identifying specific technologies which might be advanced through utilization of shuttle launched entry research vehicles, and to advise the NASA on the merits of proceeding with a study program to establish the need, feasibility, and cost of developing such vehicles and experiments. The Chairman is Prof. Robert M. Howe, and there are five members of the Subcommittee.

For further information contact Mr. William C. Hayes, Jr., Executive Secretary of the Informal Ad Hoc Subcommittee on Shuttle-Launched Entry Research Vehicles, Code RS-7, NASA Headquarters, Washington, D.C. 20546, 202-755-2243.

AGENDA

DECEMBER 5, 1978

9 a.m. Introductory remarks.
10 a.m. NASA field center assessments of future technology requirements.
3 p.m. Governmental agency (non-NASA) assessments of future technology requirements.

DECEMBER 6, 1978

9 a.m. Governmental agency (non-NASA) assessments of future technology requirements (continued).
12:30 p.m. Aerospace industry assessments of future technology requirements.

DECEMBER 7, 1978

9 a.m. Committee discussion and formulation of recommendations.
3 p.m. Adjourn.

ARNOLD W. FRUTKIN,
Acting Associate Administrator for External Relations.

NOVEMBER 7, 1978.

[FR Doc. 78-32029 Filed 11-14-78; 8:45 am]

[7537-01-M]

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

FEDERAL COUNCIL ON THE ARTS AND THE HUMANITIES, ARTS AND ARTIFACTS INDEMNITY PANEL

Meeting

NOVEMBER 7, 1978.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended) notice is hereby given that a meeting of the Arts and Artifacts Indemnity Panel of the Federal Council on the Arts and the Humanities will be held at 2401 E Street NW., Washington, D.C. 20506, in Room 1426, from 9:30 a.m. to 5:30 p.m. on November 28, 1978.

The purpose of the meeting is to review applications for certificates of indemnity submitted to the Federal Council on the Arts and the Humanities for exhibits beginning after February 1, 1979.

Because the proposed meeting will consider commercial and financial data and because it is important to keep values of objects, methods of transportation, and security measures confidential, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated April 16, 1978, I have determined that the meeting would fall within exemptions (4) and (9) of 5 U.S.C. 552b(c) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street NW., Washington, D.C. 20506, or call 202-724-0367.

STEPHEN J. MCCLEARY,
Advisory Committee Management Officer.

[FR Doc. 78-32079 Filed 11-14-78; 8:45 am]

[7537-01-M]

NATIONAL COUNCIL ON THI ARTS

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that a meeting of the National Council on the Arts will be held on December 1, 1978, from 9 a.m. to 5:30 p.m., December 2, 1978, from 9 a.m. to 5:30 p.m., and December 3, 1978, from 9 a.m. to 1 p.m., at the Organization of American States Building, 17th Street and Constitution Avenue NW., Washington, D.C.

A portion of this meeting will be open to the public on Friday, December 1, 1978, from 9 a.m. to 5:30 p.m.; and Saturday, December 2, 1978, from 9 a.m. to 5:30 p.m. Topics for discussion will be program policy and guidelines for the Visual Arts, Media Arts, and Expansion Arts programs; Community Arts Agency developments; reports from the Policy/Planning Committee and the Task Force on the Education, Training, and Development of Professional Artists and Arts Educators; Implementation of section 504 of the 1973 Rehabilitation Act, and other general reports.

The remaining sessions of this meeting on Sunday, December 3, 1978, from 9 a.m. to 1 p.m. are for the purpose of Council review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the FEDERAL REGISTER of March 17, 1977, these sessions may be closed to the public pursuant to subsections (c) (4), (6), and (9) (B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202-634-6070.

JOHN H. CLARK,
Director, Office of Council and Panel Operations, National Endowment for the Arts.

NOVEMBER 9, 1978.

[FR Doc. 78-32076 Filed 11-14-78; 8:45 am]

[7537-01-M]

VISUAL ARTS (WORKSHOPS/ALTERNATIVE SPACES) ADVISORY PANEL

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub.

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L. 92-463), as amended, notice is hereby given that a meeting of the Visual Arts (Workshops/Alternative Spaces) Advisory Panel to the National Council on the Arts will be held on December 4, 1978, from 9:30 a.m. to 5:30 p.m., and on December 5, 1978, from 9:30 a.m. to 5:30 p.m., in Room 1426, Columbia Plaza, 2401 E Street NW., Washington, D.C.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the FEDERAL REGISTER of March 17, 1977, these sessions will be closed to the public pursuant to subsection (c) (4), (6), and (9)(B) of section 552 of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202-634-6070.

JOHN H. CLARK,
Director, Office of Council and Panel Operations, National Endowment for the Arts.

NOVEMBER 9, 1978.

[FR Doc. 78-32077 Filed 11-14-78; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

[Docket Nos.: 50-237, 50-249, 50-254, 50-265; Amendments to Facility Operating License Nos. DPR-19, DPR-25, DPR-29, DPR-30]

COMMONWEALTH EDISION CO. (DRESDEN STATION, UNITS 2 AND 3, AND QUAD CITIES STATION, UNITS 1 AND 2)

Order

Before the Atomic Safety and Licensing Board:

Notice is hereby given that, pursuant to 10 CFR, 2.751a, a Special Prehearing Conference in the above-captioned proceeding will be held on Friday, December 15, 1978 at 10 a.m. in the courtroom of the U.S. District Court and Federal Post Office, 211 19th Street, Rock Island, Ill.

All parties to this proceeding and all persons who are petitioning to intervene as parties to this proceeding (petitioners) shall attend this prehearing conference. The purpose of the conference is to permit identification of the issue in the proceeding, consider petitions for leave to intervene in the proceeding, determine (as appropriate) who shall be parties to the proceeding, and establish a schedule for further action in the proceeding. Under the provisions of 10 CFR 2.714, each petitioner shall, no later than fifteen (15) days prior to the conference, file a list of the contentions which the petitioner seeks to have litigated in the proceeding, together with a statement setting forth with reasonable specificity the basis for each contention proposed. Parties and petitioners shall be prepared to discuss at the conference all issues raised by all the petitions and contentions which shall have been filed. Parties and petitioners are hereby directed to confer among themselves before the conference in order: (a) To agree, if possible, upon contentions which are mutually acceptable, and (b) to agree, if possible, upon an arrangement for making known the particular interest or affected members of petitoners Natural Resources Defense Council and Citizens for a Better Environment while implementing, if possible, the desire of these petitioners to prevent the identity of their members from becoming publicly known, and (c) to agree upon a schedule for future action in this proceeding.

Dated at Madison, Wis., November 9, 1978.

For the Atomic Safety and Licensing Board designated to rule on petitions for leave to intervene.

GARY L. MILHOLLIN,
Chairman.

[FR Doc. 70-32085 Filed 11-14-78; 8:45 am]

[7590-01-M]

[Docket No. 50-247]

CONSOLIDATED EDISON CO. OF NEW YORK, INC.

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 42 to Facility Operating License No. DPR-26, issued to Consolidated Edison Co. of New York, Inc. (the licensee), which revised Technical Specifications for operation of the Indian Point Nuclear Generating Unit No. 2 (the facility) located in Buchanan, Westchester County, N.Y. The amendment is effective as of the date of issuance.

The amendment changes the license to provide generalized provisions for sealed radioactive sources and changes the Technical Specifications to provide for standard surveillance requirements for these sources.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. [Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.]

The Commission had determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated March 21, 1978, (2) Amendment No. 42 to License No. DPR-26, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the White Plains Public Library, 100 Martine Avenue, White Plains, N.Y. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 17th day of October 1978.

For the Nuclear Regulatory Commission.

A. SCHWENCER,
Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.

[FR Doc. 78-32086 Filed 11-14-78; 8:45 am]

[7590-01-M]

[Docket Nos. 50-250 and 50-251]

FLORIDA POWER & LIGHT CO.

Issuance of Amendment to Facility Operating License and Negative Declaration

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 41 and 33 to Facility Operating License Nos. DPR-31 and DPR-41, issued to the Florida Power & Light Co., which revise the Appendix B Environmental Technical Specifications for operation of the Turkey Point Plant, Units 3 and 4 (the facilities) located in Dade County, Fla. These amendments are effective as of the date of issuance.

The amendments permit reductions in the environmental monitoring program based on data collected during 5 years of plant operation, deletion of seven generic or one-time special studies that have been completed, deletion of monitoring programs and limiting conditions for open-cycle operation, and several administrative changes.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has prepared an environmental impact appraisal for the revised Environmental Technical Specifications and has concluded that an environmental impact statement for this particular action is not warranted because there will be no environmental impact attributable to the action other than that which has already been predicted and described in the Commission's Final Environmental Statement for the facility dated July 1972.

For further details with respect to this action, see (1) the application for amendment dated September 7, 1976 as supplemented by letters dated October 5, 1976 and February 28, 1978, (2) Amendment Nos. 41 and 33 to DPR-31 and DPR-41, and (3) the Commission's environmental impact appraisal. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the Environmental and Urban Affairs Library, Florida International University, Miami, Fla. 33199. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md. this 6th day of November, 1978.

For the Nuclear Regulatory Commission.

A. SCHWENCER,
Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.

[FR Doc. 78-32087 Filed 11-14-78; 8:45 am]

[7590-01-M]

[Docket Nos. 50-275 OL, 50-323 OL]

PACIFIC GAS & ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2)

Order Relative to an Evidentiary Hearing

Before the Atomic Safety and Licensing Board:

The Board's Order of August 7, 1978, stated that an evidentiary hearing will commence at 9 a.m. (local time), Monday, December 4, 1978, but the location would be announced in a subsequent order.

The time and date remain the same, however, a change may be made if the NRC Staff does not issue Supplement 8 of the Safety Evaluation Report on November 15, 1978, as expected. The hearing will be held in the Cavalier Room, San Luis Bay Inn, Marre Ranch, Avila Beach, Calif.

In the three segments of the evidentiary hearing to date, there have been 193 limited appearance statements. All parties joined in requesting the Board to set a time certain for limited appearance statements so they can schedule their witnesses. The first 2 days of the hearing will be set aside for limited appearance statements of no longer than 5 minutes each. Written statements without limitation on length may also be submitted.

It is so ordered.

Dated at Bethesda, MD., this 7th day of November 1978.

For the Atomic Safety and Licensing Board.

ELIZABETH S. BOWERS,
Chairman.

[FR Doc. 78-32088 Filed 11-14-78; 8:45 am]

[7590-01-M]

[Docket No. 50-344]

PORTLAND GENERAL ELECTRIC CO., ET AL.

Issuance of Amendment to Facility Operating License and Negative Declaration

The U.S. Nuclear Regulatory Commission (the Commission) has, pursuant to the Initial Decisions of its Atomic Safety and Licensing Board dated October 5, 1978, issued amendment No. 34 to Facility Operating License No. NPF-1, issued to Portland General Electric Co., the city of Eugene, Oreg., and Pacific Power and Light Co., which revised the license and appended Technical Specifications for operation of the Trojan Nuclear Plant (the facility), located in Columbia County, Oreg. The amendment is effective as of its date of issuance.

The amendment permits modifications of the spent fuel storage pool which will increase the storage capacity from 280 fuel elements to a capacity of 651 fuel elements.

The Initial Decision is subject to review by an Atomic Safety and Licensing Appeal Board prior to its becoming final. Any decision or action taken by an Atomic Safety and Licensing Appeal Board in connection with the Initial Decision may be reviewed by the Commission.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Notice of Proposed Issuance of the Amendment was published in the FEDERAL REGISTER on February 14, 1977 (42 FR 9068). A hearing was requested by David B. McCoy; the State of Oregon, acting by and through its Department of Energy and its Energy Facility Siting Council; Susan M. Garrett, acting on her own behalf and as the representative of the Coalition for Safe Power; and Sharon S. McKeel. The hearing was held January 4-20, January 30-February 10, and April 17-26, 1978, and subsequently the above-referenced Initial Decision was issued October 5, 1978.

The Commission has prepared an Environmental Impact Appraisal dated November 11, 1977, and has concluded that an environmental impact statement for this particular action is not warranted because the actions authorized by this license amendment will not significantly affect the quality of the human environment.

For further details with respect to this action, see (1) the application for amendment dated January 6, 1977, as supplemented and amended April 26, August 29, September 27, October 4 and 10, November 8 and 10, December 15 and 21, 1977, and January 18, 1978; (2) Amendment No. 34 to License No. NPF-1; (3) the Commission's related Safety Evaluation and Environmental Impact Appraisal, both dated November 11, 1977; and (4) the Initial Decision of the Atomic Safety and Licensing Board dated October 5, 1978.

All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20555, and at the Columbia County Courthouse, Law Library, Circuit Court Room, St. Helens, Oreg. 97051. A single copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 3rd day of November, 1978.

For the Nuclear Regulatory Commission.

A. SCHWENCER,
Chief, Operating Reactors Branch #1, Division of Operating Reactors.

[FR Doc. 78-32089 Filed 11-14-78; 8:45 am]

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[7590-01-M]

[Docket No. 50-286]

POWER AUTHORITY OF THE STATE OF NEW YORK

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 18 to Facility Operating License No. DPR-64, issued to Power Authority of the State of New York (the licensee), which revised Technical Specifications for operation of the Indian Point Nuclear Generating Unit No. 3 (the facility) located in Buchanan, Westchester County, N.Y. The amendment is effective as of the date of issuance.

The amendment changes the Technical Specifications concerning the pressurizer heatup and cooldown rates to maintain thermal stresses in the pressurizer to allowable levels. Clarifying changes with respect to the procedure for reporting the results of steam generator tube inservice inspections, the definition of quadrant power tilt ratio, and the Technical Specification on out of service time for boric acid transfer pumps and storage system, are included in this amendment. The amendment also deletes a repetitive section of the Technical Specifications.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated November 2, 1977 (2) Amendment No. 18 to License No. DPR-64, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the White Plains Public Library, 100 Martine Avenue, White Plains, N.Y. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 6th day of November 1978.

For the Nuclear Regulatory Commission.

A. SCHWENCER,
Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.

[FR Doc. 78-32090 Filed 11-14-78; 8:45 am]

[7590-01-M]

REGIONAL LICENSING PROGRAM

The U.S. Nuclear Regulatory Commission published on February 6, 1978 (43 FR 4891), a description of its regional licensing program at Region III Office in Glen Ellyn, Ill.

The pilot program includes: (1) All licenses for medical use of radioisotopes, except teletherapy sources and nuclear powered pacemakers, and (2) licenses for industrial uses of gages and sources contained in gas chromatographs and x-ray fluorescence analyzers from the States of Illinois, Indiana, Iowa, Michigan, Ohio, and Wisconsin.

Effective December 1, 1978, the pilot program will include the States of Minnesota and Missouri. At that time, licensing actions will be facilitated if all inquiries or applications for new licenses, amendments, or renewals are sent to:

U.S. Nuclear Regulatory Commission, Region III, Radioisotopes Licensing Section, 799 Roosevelt Road, Glen Ellyn, Ill. 60137. Telephone 312-858-2660.

Dated at Silver Spring, Md., this 2d day of November 1978.

For the Nuclear Regulatory Commission.

NATHAN BASSIN,
Acting Chief, License Management Branch, Division of Fuel Cycle and Material Safety.

[FR Doc. 78-32116 Filed 11-14-78; 8:45 am]

[7590-01-M]

REGULATORY GUIDE

Issuance and Availability

The Nuclear Regulatory Commission has issued a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 1.125, Revision 1, "Physical Models for Design and Operation of Hydraulic Structures and Systems for Nuclear Power Plants," describes the detail and documentation of data and studies that an applicant should include in the Preliminary Safety Analysis Report to support the use of physical hydraulic model testing for predicting performance of safety-related hydraulic structures and systems for nuclear power plants. It also describes the coordination desired between an applicant and the NRC staff in the planning stage for a physical model. This guide was revised as a result of public comment and additional staff review.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of the latest revision of issued guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a).)

Dated at Rockville, Md. this 7th day of November 1978.

For the Nuclear Regulatory Commission.

ROBERT B. MINOGUE,
Director, Office of Standards Development.

[FR Doc. 78-32115 Filed 11-14-78; 8:45 am]

[7590-01-M]

[Docket No. 50-206]

SOUTHERN CALIFORNIA EDISON CO. AND SAN DIEGO GAS & ELECTRIC CO.

Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 37 to Provisional Operating License No. DPR-13, issued to Southern California Edison Co. and San Diego Gas & Electric Co. (the licensees), which amended the license and revised its appended Technical Specifications for operation of the San Onofre Nuclear Generating Station, Unit 1 (SO-1) located in San Diego County, Calif. The amendment is effective as of its date of issuance.

The amendment deletes License Conditions 3.E, 3.F(1) and 3.F(2) which relate to the steam generator inspection requirements and primary to the secondary leakage limit. In addition, the amendment incorporates provisions in the Technical Specifications required for operation of SO-1 with the refueled Cycle 7 core.

The application for the amendment comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4), an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the applications for amendment dated September 30, 1977, March 31, 1978, July 31, 1978, and August 18, 1978, and supplements thereto dated September 22, 1978 and October 24, 25, and 30, 1978. (2) Amendment No. 37 to License No. DPR-13, including the Commission's letter of transmittal, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the Mission Viejo Branch Library, 24851 Chrisanta Drive, Mission Viejo, Calif. 92676. A single copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 31st day of October 1978.

For the Nuclear Regulatory Commission.

DENNIS L. ZIEMANN,
Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc. 78-32091 Filed 11-14-78; 8:45 am]

[7590-01-M]

[Docket Nos. 50-445A, 50-446A, 50-498A, and 50-499A]

TEXAS UTILITIES GENERATING CO., ET AL. (COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2) AND HOUSTON LIGHTING & POWER CO., ET AL. (SOUTH TEXAS PROJECT, UNITS 1 AND 2)

Notice of Joint Conference With Counsel

NOVEMBER 8, 1978.

I

Please take notice that a joint conference with counsel in both of the above-entitled proceedings will be held at 2:30 p.m., local time, in the Nuclear Regulatory Commission Hearing Room, 5th floor, located at 4350 East-West Highway, Bethesda, Md. 20014, on December 5, 1978. The purpose of this joint conference is to hear counsel regarding any pending motions or requests to consolidate, in whole or in part, the above-entitled proceedings. Any briefs or memoranda of law shall be in the hands of the Board by November 27, 1978.

II

By an order dated July 13, 1978, a prehearing conference to consider the progress of discovery and trial preparations in the *South Texas* proceeding was scheduled for November 16, 1978. All counsel in that proceeding were reminded of this prehearing conference by the Board's letter of October 18, 1978.

By a letter to the Board dated October 20, 1978, counsel for Houston Lighting & Power Co. indicated that he and his associates were required to appear in the U.S. Court of Appeals for the District of Columbia Circuit on that date, and that other counsel were involved in trial in the U.S. District Court in Dallas, Tex. in related proceedings.

Good cause having been shown, the previously scheduled prehearing conference in *South Texas* will be rescheduled to 3 p.m. on December 5, 1978, immediately following the joint conference with counsel described in section I of this Order.

It is so ordered.

Dated at Bethesda, Md., this 8th day of November 1978.

For the Atomic Safety and Licensing Board.

MARSHALL E. MILLER,
Chairman.

[FR Doc. 78-32113 Filed 11-14-78; 8:45 am]

[7590-01-M]

[Docket No. 50-112]

UNIVERSITY OF OKLAHOMA

Proposed Renewal of Facility License

The U.S. Nuclear Regulatory Commission (the Commission) is considering renewal of Facility License No. R-53, issued to The University of Oklahoma (the licensee), for operation of the AGN-211 Reactor located on the licensee's campus in Norman, Okla.

The renewal would extend the expiration date of Facility License No. R-53 to December 29, 1998, in accordance with the licensee's timely application for renewal dated October 6, 1978.

Prior to renewal of Facility License No. R-53, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By December 15, 1978, the licensee may file a request for a hearing with respect to renewal of the subject facility license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the

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petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend his petition, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, the petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. by the above date. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for renewal dated October 6, 1978, as supplemented by future submittals, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C.

Dated at Bethesda, Md., this 2d day of November 1978.

For the Nuclear Regulatory Commission.

ROBERT W. REID,
Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.

[FR Doc. 78-31901 Filed 11-14-78; 8:45 am]

[7590-01-M]

[Docket Nos. 50-280 and 50-281]

VIRGINIA ELECTRIC & POWER CO.

Issuance of Amendment to Facility Operating License and Negative Declaration

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 45 and 45 to Facility Operating License Nos. DPR-32 and DPR-37, issued to Virginia Electric & Power Co. (the licensee), which revised Environmental Technical Specifications for operation of the Surry Power Station, Unit Nos. 1 and 2 (the facilities) located in Surry County, Va. The amendments are effective as of the date of issuance.

The amendments revise the Non-Radiological Environmental Monitoring Program Technical Specifications, §4.13 of Appendix A by (1) Deleting the biological monitoring program except for a low-intensity fish sampling program, and (2) reducing the programs for temperature, salinity, and impingement monitoring.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has prepared an environmental impact appraisal for the revised Technical Specifications and has concluded that an environmental impact statement for this particular action is not warranted because there will be no environmental impact attributable to the action other than that which has already been predicted and described in the Commission's Final Environmental Statement for the facility dated May 1972.

For further details with respect to this action, see (1) the application for amendment dated May 16, 1977, as supplemented February 6, April 17, May 18, and August 18, 1978; (2) Amendment Nos. 45 and 45 to License Nos. DPR-32 and DPR-37; and (3) the Commission's Environmental Impact Appraisal. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Swem College Library, College of William and Mary, Williamsburg, VA. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors, Office of Nuclear Reactor Regulation.

Dated at Bethesda, Md., this 6th day of November 1978.

For the Nuclear Regulatory Commission.

A. SCHWENCER,
Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.

[FR Doc. 78-32114 Filed 11-14-78; 8:45 am]

[7590-01-M]

[Docket Nos. 50-338A, 50-339A, 50-404A and 50-405A]

VIRGINIA ELECTRIC AND POWER CO., OLD DOMINION ELECTRIC COOPERATIVE AND NORTH CAROLINA ELECTRIC MEMBERSHIP CORP.

Receipt of Additional Antitrust Information: Time For Submission of Views on Antitrust Matters

Virginia Electric and Power Co., pursuant to section 103 of the Atomic Energy Act of 1954, as amended, filed on September 1, 1978, information requested by the Attorney General for antitrust review as required by 10 CFR, Part 50, Appendix L. The information concerns two additional ownership participants, Old Dominion Electric Cooperative and North Carolina Electric Membership Corp. for the North Anna Power Station, units 1, 2, 3, and 4 located on the south shore of Lake Anna in Louisa County, Va.

The information was filed in connection with the Virginia Electric and Power Co's applications for construction permits and operating licenses for the North Anna Power Station, units 1, 2, 3, and 4. Unit 1 of the station is operating and units 2, 3, and 4 are under construction. The information submitted be Virginia Electric and Power Co. is the first part of the application for amendments to the North Anna Power Station, unit 1 operating license and construction permits for Units 2, 3, and 4.

The original "Notice of Application for Construction Permit and Operating License," for the North Anna Power Station, units 1 and 2 included the antitrust aspects of the application and was published in the FEDERAL REGISTER on December 30, 1970 (35 FR 19805). The original antitrust portion of the application for units 3 and 4, "Notice of Receipt of Application for Construction Permit and Facility License; Time for Submission of Views on Antitrust Matters," was published in the FEDERAL REGISTER on October 28, 1971 (36 FR 20709).

A copy of the Virginia Electric and Power Co. letter, dated September 1, 1978, and above stated documents are available for public examination and copying for a fee at the Commission's Public Document Room at 1717 H Street NW., Washington, D.C. 20555 and at the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Va. 22901 and Office of the Board of Supervisors, Lousia County Courthouse, Main Street (P.O. Box 27), Louisa, Va. 23093.

Information in connection with the antitrust review of this application can be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, D.C., Attn.: Antitrust and Indemnity Group, Office of Nuclear Reactor Regulation.

Any person who wishes to have his views on the antitrust matters with respect to Old Dominion Electric Cooperative and North Carolina Electric Membership Corp. presented to the Attorney General for consideration should submit such views to the U.S. Nuclear Regulatory Commission: Washington, D.C. 20555, Attn: Chief, Antitrust and Indemnity Group, Office of Nuclear Reactor Regulation on or before January 2, 1979.

Dated at Bethesda, Md., this 23rd day of October 1978.

For the Nuclear Regulatory Commission.

OLAN D. PARR, *Chief,*
Light Water Reactors Branch No. 3, Division of Project Management.

[FR Doc. 78-30679 Filed 11-14-78; 8:45 am]

[3110-01-M]

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

LIST OF STAFF PHONE NUMBERS

Correction

In FR Doc. 78-30831, appearing on page 50977, in issue of November 1, 1978, the telephone numbers for the staff of the Office of Federal Procurement Policy, Office of Management and Budget, listed in the document, should all be Area Code 202 rather than 212.

Dated: November 3, 1978.

LESTER A. FETTIG,
Administrator.

[FR Doc. 78-32044 Filed 11-14-78; 8:45 am]

[8010-01-M]

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 10469, 812-4358]

AMERICAN NATIONAL BOND FUND, INC., ET AL.

Filing of Application for Order To Permit Certain Exchange Offers and for Exemption

NOVEMBER 6, 1978.

In the matter of American National Bond Fund, Inc., American National Growth Fund, Inc., American National Income Fund, Inc., and Securities Management & Research, Inc., Two Moody Plaza, Galveston, Tex. 77550 (812-4358).

Notice is hereby given that American National Bond Fund, Inc. ("Bond Fund"), American National Growth Fund, Inc. ("Growth Fund"), American National Income Fund, Inc. ("Income Fund"), (collectively referred to hereafter as "Funds"), open-end, management investment companies registered under the Investment Company Act of 1940 (the "Act"), and Securities Management & Research, Inc. ("SM&R"), each Fund's investment adviser and principal underwriter (SM&R and the Funds are collectively referred to hereafter as "Applicants") filed an application on August 28, 1978, and an amendment thereto on September 20, 1978, for an order of the Commission, pursuant to section 11(a) of the Act, permitting certain share transfers among the Funds on a basis other than their respective net asset value per share at the time of transfer and, pursuant to section 6(c) of the Act, exempting such transfers from the provisions of section 22(d) of the Act and Rule 22d-1 thereunder. All interested persons are referred to the application on file with the Commission for a statement of representations contained therein, which are summarized below.

SM&R, as principal underwriter for the Funds, maintains a continuous public offering of shares of each of the Funds at their respective net asset value plus a sales charge. Shares of Growth Fund and Income Fund are sold at their respective net asset value plus a sales charge of 8½ percent on purchases of less than $10,000, such sales charge being reduced for larger purchases. Bond Fund offered its shares at net asset value without any sales charge during an initial no-load offering period expiring September 29, 1978. Currently, Bond Fund shares are being offered for sale at net asset value plus a sales charge of 5 percent on purchases of less than $25,000, with reductions in the sales charge for larger purchases.

Currently, Growth Fund and Income fund each offer the shareholders of the other Fund the privilege of exchanging shares of one Fund for shares of the other on the basis of their respective net asset value without payment of an additional sales charge. Applicants now propose to include the shareholders of Bond Fund in such exchange privilege on the following basis:

(1) Shareholders of either Growth Fund or Income Fund will be permitted to exchange their shares for Bond Fund on the basis of their respective net asset value, without paying an additional sales charge; and

(2) Shareholders of Bond Fund will be permitted to exchange their shares of either Growth Fund or Income Fund, or both, on the basis of their respective net asset value plus a sales charge equal to the difference between the sale charge paid upon the purchase of Bond Fund shares and the sales charge which would have been paid with respect to the value of such shares at the time of the exchange as if that amount had been invested in Growth Fund or Income Fund shares originally. With respect to Bond Fund shareholders, the terms of the initial no-load offering period which expired on September 29, 1978, prohibit Bond Fund shareholders who purchased their shares during the initial no-load offering period from exchanging their shares for Growth Fund or Incomes Fund shares for a period of 180 days after purchase. It is proposed that after the expiration of such 180-day period, such Bond Fund shareholders will be permitted to exchange Bond Fund shares for either Growth Fund or Income Fund shares, or both, on the basis described above (i.e., Bond Fund shareholders who purchased their shares during the initial no-load offering period will be given credit for the sales charge which otherwise would have been applicable to such purchase).

Applicants state that the initial Bond Fund no-load offering period was designed to introduce a new fund, and that the no-load privilege encouraged investors to purchase shares in a new fund with no prior investment history. They also argue that the no-load privilege was itself justified because little or no sales effort was involved. Applicants contend that the shareholder who purchased his shares during the initial no-load offering period should be treated equally with shareholders who purchase Bond Fund shares after such period for purposes of the exchange privileges, at least after the expiration of the required 180-day holding period, because the holding period itself is sufficient to equalize the rights of Bond Fund shareholders as much as possible. Ap-

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plicants state that the 180-day holding period should not unduly penalize Bond Fund shareholders who purchased their shares during the initial no-load offering period, and, therefore, such shareholders should be given credit after the expiration of that 180-day period as if they had paid the applicable sales charge at the time of the initial purchase.

Applicants state that Fund shares purchased by the reinvestment of dividends and/or capital gains distributions will be entitled to identical exchange privileges as purchased shares. No sales or other commission will be paid by SM&R with respect to any exchange.

Applicants assert that the exchange privileges outlined above are in the best interests of the shareholders of each of the Funds because the imposition of no sales charge on the exchange of Growth Fund and Income Fund shares and the imposition of the differential sales charge on the exchange of Bond Fund shares for Growth Fund and/or Income Fund shares facilitates the exchange of shares to permit an investor to invest in shares of Funds having different investment objectives in order to meet the investor's changing needs. Applicants argue that applying either no sales charge or the differential sales charge, including the application of a sales charge credit on Bond Fund shares purchased at no-load, as the case may be, is warranted in light of the cost savings to SM&R because of the reduced sales effort involved and because no sales commission is paid by SM&R to brokers or registered representatives on any exchange. Finally, applicants contend that the imposition of the differential sales charge on exchanges of Bond Fund shares for shares of Growth Fund and/or Income Fund will discourage attempts to circumvent the higher sales charges which would have been applicable on the shares of either the Growth Fund or the Income Fund had those shares been purchased initially.

Section 11(a) of the Act provides, in pertinent part, that it shall be unlawful for any registered open-end investment company or any principal underwriter for such a company to make, or cause to be made, an offer to the holder of a security of such company or any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective security to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission.

Section 22(d) of the Act provides, in pertinent part, that no registered investment company or principal underwriter thereof shall sell any redeemable security issued by such company to any person except at a current offering price described in the prospectus. Rule 22d-1 permits certain variations in sales load, but Applicants state that none of such variations are applicable to the exchange privileges outlined above.

Seciton 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision of the Act or of any Rule or Regulation under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than November 30, 1978, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit, or in the case of an attorney-at-law by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-32139 Filed 11-14-78; 8:45 am]

[8010-01-M]

[Rel. No. 15300; SR-Amex-78-17]

AMERICAN STOCK EXCHANGE, INC.

Order Approving Proposed Rule Change

NOVEMBER 6, 1978.

In the matter of American Stock Exchange, Inc., 86 Trinity Place, New York, N.Y., 10006 (SR-Amex-78-17).

On August 21, 1978, the American Stock Exchange, Inc. (the "Amex") filed with the Commission, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and rule 19b-4 thereunder, copies of a proposed rule change which amends Amex Rule 6 to allow members to execute off-board agency transactions in listed bonds, other than in-house agency cross transactions.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-15126, September 1, 1978) and by publication in the FEDERAL REGISTER (43 FR 44945, September 29, 1978). All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552) were made available to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of section 6, and the rules and regulations thereunder. The proposed rule change limits application of the off-board trading restrictions in listed bonds of Amex Rule 6 and thus removes an impediment to a free and open market for the trading of bonds listed on the Amex.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-32140 Filed 11-14-78; 8:45 am]

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[8010-01-M]

[Rel. No. 10473; 812-4383]

CAPITOL LIFE INSURANCE CO. AND CAPITOL LIFE SEPARATE ACCOUNT A

Application for Order Approving Offer of Exchange and for Exemptions

NOVEMBER 7, 1978.

In the matter of The Capitol Life Insurance Co., and Capitol Life Separate Account A, 1600 Sherman Street, Denver, Colo. 80203 (812-4383).

Notice is hereby given that The Capitol Life Insurance Co. ("Capitol Life"), a Colorado Stock life insurer, and Capitol Life Separate Account A ("Separate Account"), a separate account of Capitol Life, which is registered as a unit investment trust under the Investment Company Act of 1940 ("Act") (hereinafter collectively referred to as "Applicants") filed an application on October 27, 1978, pursuant to section 11 of the Act for an order approving offer of exchange and pursuant to section 6(c) of the Act for exemption from the provisions of sections 26(a) and 27(c)(2) of the Act, to the extent noted below. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein which are summarized below.

Capitol Life is a wholly owned subsidiary of Providence Capitol Corp. and an indirect subsidiary of Gulf & Western Industries, Inc.

The Separate Account was established by Capitol Life pursuant to Colorado law in connection with the proposed issuance of certain group and individual combination fixed and variable annuity contracts (hereinafter, collectively "Contracts"). Assets of the Separate Account will be allocated among three series, invested, respectively in shares of Security First Legal Reserve Fund, Inc., Security First Variable Life Fund, Inc., or T. Rowe Price Growth Stock Fund, Inc. ("Funds"), each of which is a diversified open-end management investment company registered under the Act.

The principal investment objective of Security First Legal Reserve Fund, Inc. is to achieve the highest possible investment income consistent with preservation of principal. Its assets are invested exclusively in investments permitted to be held in the general account of an insurance company domiciled in Colorado. The investment objective of Security First Variable Life Fund, Inc. is growth of principal and a reasonable level of current income to be achieved through flexible and aggressive portfolio management to take advantage of opportunities for both growth of principal and income. The principal investment objective of T. Rowe Price Growth Stock Fund, Inc. is long-term growth of capital. Security First Legal Reserve Fund, Inc. and Security First Variable Life Fund, Inc. have contracted with Security First Investment Management Corporation ("Security Management") for administrative services. However, all investment advice is provided with respect to each of these two Funds by T. Rowe Price Associates, Inc. ("T. Rowe Price"), except advice and decisions provided by Security Management relating to investments in first lien real estate mortgages by Security First Legal Reserve Fund, Inc. In addition, T. Rowe Price also provides administrative services and investment advice and makes all investment decisions for T. Rowe Price Growth Stock Fund, Inc.

Security Management is affiliated with Security First Financial, Inc., principal underwriter for the Contracts, and both are affiliated with Providence Capitol Corp.

Four types of Contracts will be offered: Group Flexible Payment Contracts; Group Single Payment Contracts; Group Stipulated Payment Contracts; and Individual Single Payment Contracts. Under the Contracts, all purchase payments are initially allocated in their entirety to the general account of Capitol Life ("General Account") and, if so elected, a portion of the resulting General Account values may thereafter be systematically transferred to the Separate Account. There are no deductions for sales expenses from purchase payments when received in the General Account. However, transfers from the General Account to the Separate Account are treated as surrenders in the General Account, resulting in all cases in a 7 percent charge against General Account values under the Contracts. Specifically, upon transfer, General Account Accumulation Units are canceled, and 93 percent of the value of those Units is transferred to the Separate Account. However, Capitol Life will restore the difference, the 7 percent charge, with interest, in the General Account if all amounts transferred to the Separate Account are ultimately applied to provide annuity benefits. Applicants recognize that this 7 percent transfer charge may be deemed to be a sales charge because it represents a reduction of the amount paid by the purchaser prior to investment in the Separate Account.

Under Group and Individual Single Payment Contracts, only one transfer will be permitted with respect to any single purchase payment. The maximum amount of such transfer is 48 percent of the General Account value attributable to that purchase payment. The amount to be transferred must be paid into the Separate Account in equal monthly installments over a period of at least 48 months. Under Group Flexible Payment Contracts and Group Stipulated Payment Contracts, up to 50 percent of each periodic purchase payment may be transferred (after deduction of the 7 percent transfer charge) to the Separate Account. If no immediate transfer has been elected with respect to any purchase payment, a later transfer with respect to that purchase payment may be made in installments as described above with respect to Single Payment Contracts. Under all Contracts, amounts may also be transferred back from the Separate Account to the General Account, but only in connection with an election to apply both the resulting General Account values and any remaining Separate Account values to provide annuity benefits.

In the event that an individual has never made a partial termination in the Separate Account and elects to apply his entire Separate Account value to provide either fixed annuity payments or variable annuity payments under any available annuity option, Capitol Life will recompute the General Account value of his interest in the Contract. The recomputation will restore to him the General Account values which would have been credited (including interest which would have accumulated at rates which are used to determine the General Account annuity values) had the amounts previously transferred to the Separate Account not initially been treated as surrenders in the General Account.

A $10 conversion charge is imposed upon each election under the Contracts to make a transfer from the General Account to the Separate Account, or from the Separate Account to the General Account. Also, upon a transfer from the General Account to the Separate Account, Capitol Life reserves the right to deduct from the remaining General Account values an amount sufficient to pay any premium taxes relating to the transferred amount.

All amounts transferred to the Separate Account are allocated to one or more of the Separate Account Series in a proportion selected by the individual. The election by an individual to transfer to the Separate Account an amount of each periodic Purchase Payment under a Group Flexible Payment Contract or Group Stipulated Payment Contract, and the allocation of such payments among the Separate Account Series, may be changed or revoked at any time with respect to any future Purchase Payments by written notice to Capitol Life. Such changes are subject to a $10 charge, except under Group Flexible Payment Contracts.

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At the end of each Contract or Certificate year, and on the date an individual's account is canceled as a result of a complete redemption, Capitol Life will deduct an administrative charge equal to $17.50 plus $2.50 for each Series for which there are Accumulation Units included in the value of an individual's account. This annual charge will thus range from a minimum of $20 to a maximum of $27.50.

Section 11

Section 11(a) of the Act, as here pertinent, provides that it is unlawful for any registered open-end investment company (or its principal underwriter) to make an offer to the holders of its securities (or of the securities of any other open-end investment company), to exchange his shares for the shares of the same or another such company on any basis other than the relative net asset values of the respective securities, unless the terms of the offer have first been submitted to and approved by the Commission. Section 11(c) provides that section 11(a) is applicable, in any event, to any type of offer of exchange of the securities of registered unit investment trusts for the securities of any other investment company.

Applicants request an order pursuant to section 11 of the Act to permit Contract owners or participants under Group Contracts to convert Accumulation Units from one Separate Account Series to another, as provided in the Contracts. Upon receipt of an election to effect a conversion between Series under a Contract, Capitol Life will transfer the total amount to be converted at the close of business on the day such election is received, provided that no such conversion may take place later than the second valuation date preceding the date on which annuity payments are to begin. Each transfer will be based upon the value of the affected Series at the close of business on the day such transfer occurs. The amount converted must total at least $2,000. A $10 charge will be made against a Contact account or participant's individual account under a Group Contract each time a conversion is made.

Applicants allege that the right to change Series prior to the time annuity payments are to commence will afford Contract owners and participants under Group Contracts the opportunity to choose between shares of underlying mutual funds having different investment objectives. Applicants also allege that the $10 charge for effecting a conversion between Series will be uniformly applied only to those individuals electing a change in order to provide for the administrative costs involved, and therefore will not be discriminatory against those Contract owners or participants not making the election.

Sections 26(a) and 27(c)(2)

Section 26(a) of the Act, as here pertinent, provides, in substance, that a registered unit investment trust, and any depositor and underwriter for the trust, are prohibited from selling trust certificates unless the proceeds of all payments other than sales load are deposited with a qualified bank as trustee or custodian and held under an indenture or agreement containing specific provisions. Such agreement must provide, in part, that: (i) The custodian bank shall have possession of all the property of the unit investment trust and shall segregate and hold the same in trust; (ii) the custodian bank shall not resign until either the unit investment trust has been liquidated or a successor custodian has been appointed; (iii) the custodian may collect fees from the income and, if necessary, from the corpus of the trust for services performed and for reimbursement for expenses incurred; and (iv) that no payment to the depositor or principal underwriter shall be allowed the custodian bank as an expense, except a fee, not exceeding such reasonable amounts as the Commission may prescribe, as compensation for performing bookkeeping and other administrative expenses normally performed by the custodian. Although the assets of the Separate Account are held under a safekeeping agreement with the State Street Bank and Trust Company of Boston, Massachusetts ("Bank"), a bank having the qualifications described in section 26(a) of the Act, the agreement does not create a trust with respect to the assets of Separate Account because Capitol Life, as a life insurance company, must retain ownership of and control of the disposition of its property under Colorado law. Accordingly, an exemption is requested to the extent necessary, from the requirements that the assets be held in a trust.

In support of the requested exemption from the foregoing provisions of the Act, Applicants state that, under the custodian agreement, Capitol Life will pay the expenses for the safekeeping of Separate Account assets. Applicants also state that the ownership of Fund shares by Separate Account will be held in an open account so that the ownership of Fund shares by Separate Account will be indicated only on the books of the Fund and Separate Account and not evidenced by transferable stock certificates; and that, under the agreement, the assets of the Separate Account will be kept physically segregated by the Bank and held separate from the assets of any other firm, person or corporation. The Bank will maintain a record of all purchases and redemptions of Fund shares and will assist in the preparation of reports to the Commission.

Applicants further state that Capitol Life is subject to the extensive supervision and control by the Colorado Insurance Commissioner and the comparable official of each State in which it does business. Such supervision requires Capitol Life to file complete and detailed periodic reports. Applicants also state that the activities of Capitol Life are subject to review by the Colorado Insurance Department and its representatives at all times and are subject to comprehensive examinations periodically. Applicants allege that any substitution of an underlying Fund of the Separate Account can only take place by a majority vote of those having an interest in the Fund and with the prior approval of the Commission. Applicants finally state that Capitol Life maintains fidelity bonds covering its employees in the amount of $2,000,000.

Applicants contend that the foregoing laws, regulations and arrangements will provide substantial assurance that all obligations under the Contracts issued by Separate Account will be performed.

Applicants have consented that the foregoing requested exemption may be made subject to the following conditions: (1) That the charge under the Contracts for administrative services shall not exceed such reasonable amounts as the Commission shall prescribe, jurisdiction being reserved for such purpose, and (2) that the payment of sums and charges out of the assets of Separate Account shall not be deemed to be exempted from regulation by the Commission by reason of the requested order, provided that Applicants' consent to this condition shall not be determined to be a concession to the Commission of authority to regulate the payment of sums and charges out of such assets, other than the charges for administrative services, and Applicants reserve the right in any proceeding before the Commission, or in any suit or action in any court, to assert that the Commission has no authority to regulate the payment of such other sums and charges.

Section 6(c)

Section 6(c) of the Act provides, in part, that the Commission may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provisions of the Act or of any rule or regulation under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than November 29, 1978, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. As provided by rule O-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following November 29, 1978, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing, if ordered, and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-32141 Filed 11-14-78; 8:45 am]

[8010-01-M]

[Rel. No. 20761; 70-6223]

CONNECTICUT LIGHT & POWER CO., ET AL.

Proposal To Continue Current Authorizations To Incur Short-Term Unsecured Indebtedness; Order Authorizing Solicitation of Stockholders' Consent

NOVEMBER 3, 1978.

In the matter of The Connecticut Light & Power Co., Selden Street, Berlin, Conn. 06037, The Hartford Electric Light Co., Selden Street, Berlin, Conn. 06037, and Western Massachusetts Electric Co., 174 Brush Hill Avenue, West Springfield, Mass. 01089 (70-6223).

Notice is hereby given that The Connecticut Light & Power Co. ("CL&P"), The Hartford Electric Light Co. ("HELCO"), and Western Massachusetts Electric Co. ("WMECO"), electric utility subsidiaries of Northeast Utilities ("Northeast"), a registered holding company, have filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6(a), 7, and 12(e) of the Act and Rules 62 and 65 thereunder as applicable to the proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

The charters of CL&P and HELCO each provide for a class of preferred stock which may be issued from time to time in series, at such times and on such terms as their respective boards of directors determine. As of November 1, 1978, CL&P's charter authorizes 6 million shares of such preferred stock with a par value of $50 per share of which 3,900,00 shares are outstanding, HELCO's charter authorizes 3 million shares at a par value of $50 per share, of which 1,824,000 shares are outstanding, and WMECO's bylaws authorize 350,000 shares at a par value of $100 per share, of which 350,000 shares are outstanding.

The terms of the preferred stock of CL&P, HELCO, and WMECO provide that the amount of unsecured indebtedness of each company having maturities of less than 10 years which may be issued or assumed shall not exceed 10 percent of the sum of the principal amount of all bonds and other secured indebtedness and the capital stock, premium and surplus of the companies, and that all unsecured indebtedness issued or assumed shall not exceed 20 percent of such sum. Nevertheless, in 1971, and 1973, the companies each obtained the consent of a majority of their respective preferred stockholders to exceed the aforementioned 10 percent limitation, but not the aforementioned 20 percent limitation, provided that such excess short-term indebtedness be issued or assumed prior to February 10, 1979, and mature by February 10, 1980, in the case of WMECO, and be issued or assumed prior to March 31, 1979, and mature by March 31, 1980, in the case of CL&P and HELCO. (HCAR Nos. 16993 and 18213 (WMECO), 17077, and 18213 (CL&P), and 17073 and 18213 (HELCO)).

CL&P, HELCO, and WMECO now propose to continue their current authorization for a further 5 year period, subject to approval of their respective preferred stockholders, to issue or assume short-term unsecured indebtedness in excess of the 10 percent limitations provided: (i) Such indebtedness is issued or assumed on or prior to March 31, 1984, in the case of CL&P and HELCO, and February 10, 1984, in the case of WMECO; (ii) such indebtedness shall have a maturity not later than March 31, 1985, in the case of CL&P and HELCO, and February 10, 1985, in the case of WMECO; and, (iii) the 20 percent limitation on all unsecured indebtedness of each company shall remain in effect. The declaration states that the principal reason underlying the request to continue such authorization is to assist the three companies in the timing and planning of long-term financing, and that greater availability of short-term financing will permit the declarants more time and flexibility in meeting the coverage requirements of their respective mortgage indentures and preferred stock provisions.

CL&P, HELCO, and WMECO further propose to solicit the proxies from their respective preferred stockholders to be used at special meetings to be held on December 15, 1978, for the purpose of obtaining shareholder approval for the foregoing proposals. No proxies will be solicited from Northeast, the sole common stockholder of each of the companies. Approval of the proposals with respect to the short-term unsecured debt limitation requires the affirmative vote of a majority of the total number of outstanding shares of each company's respective preferred stocks voting as a class. The Certificates of Incorporation of CL&P and HELCO each further provide that if one third of the outstanding preferred stock of the company votes against such proposal, it will not be adopted. In connection with the solicitation of shareholder consent, CL&P, HELCO, and WMECO have filed the relevant proxy materials with the Commission and request accelerated Commission action thereon pursuant to Rule 62.

The fees, commissions and expenses incurred or to be incurred in connection with the proposed transactions are estimated at $11,167, $8,667, and $7,666 for CL&P, HELCO and WMECO, respectively. It is stated that no state commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given, that any interested person may, not later than December 1, 1978, request in writing that a hearing be held on such matter stating the nature of this interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be

granted effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

It appearing to the Commission that the declaration, insofar as it proposes the solicitation of the consents of the CL&P, HELCO, and WMECO preferred stockholders, should be permitted to become effective forthwith pursuant to Rule 62:

It is ordered that the declaration regarding the proposed solicitation of the consents of CL&P, HELCO, and WMECO preferred stockholders be, and it hereby is, permitted to become effective forthwith pursuant to Rule 62 and subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

FR Doc. 78-32143 Filed 11-14-78; 8:45 am]

[8010-01-M]

[Rel. No. 10467; 812-4384]

DREYFUS LIQUID ASSETS, INC.

Filing of Application for an Order of Exemption

NOVEMBER 3, 1978.

In the matter of Dreyfus Liquid Assets, Inc., 767 Fifth Avenue, New York, N.Y. 10022, 812-4384.

Notice is hereby given, That Dreyfus Liquid Assets, Inc. ("Applicant"), a no-load, open end diversified management investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on October 19, 1978, and amendments thereto on October 31, 1978, and November 3, 1978, pursuant to section 6(c) of the Act for an order of the Commission exempting Applicant from the provisions of Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit Applicant to compute its price per share for the purposes of sales and redemptions of its shares, to the nearest one cent on a share value of one dollar. In all other respects, portfolio securities held by the Applicant will be valued in accordance with the views set forth in Investment Company Act Release No. 9786 (May 31, 1977) ("IC-9786"). All interested persons are referred to the application on file with the Commission for a statement of representations contained therein, which are summarized below.

Applicant states that it is a "money market" fund whose investment policy is to maximize current income consistent with preservation of capital. The application states that its portfolio may be invested in a variety of money market instruments, including U.S. Government Securities, domestic bank certificates of deposit, and other money market instruments maturing in 1 year or less. Applicant asserts that since its inception in 1974, its portfolio has been invested largely in certificates of deposit of banks which are among the 100 largest commercial banks in the United States.

Applicant states that it has a fundamental investment policy limiting investments to instruments having a remaining maturity of 1 year or less. Applicant states that it values its portfolio at market and asserts that because of the short maturities of its portfolio, its net asset value per share has varied between $9.94 and $10.04 per share from its inception on February 28, 1974. Applicant states that it is proposed that Applicant split its common stock on a basis of approximately 10 new shares for each old share outstanding, so that after the split, each new share will have a net asset value of exactly $1. Applicant asserts that it expects that as a result of rounding the net asset value per share to the nearest $.01 on a $1 price, Applicant's price per share for the purpose of sales and redemptions should remain at $1.

Applicant states that its Board of Directors believes that this proposal will benefit Applicant and its shareholders. Applicant, designed as an investment vehicle for institutional and individual investors who seek liquidity for their investment, has as its investment objective the maximization of current income consistent with the preservation of capital. These investors, Applicant asserts, want the daily income dividends declared by Applicant to reflect income as earned, and the sales and redemption price not to change. Applicant represents that its Board of Directors has therefore reached the conclusion that stability of capital and a steady flow of investment income would be of benefit to existing shareholders and a helpful tool in attracting potential investors to Applicant. Applicant asserts that investors would have the convenience of being able to determine the value of their holdings simply by knowing the number of shares they own. Also, the task of maintaining an investment record would be made easier for Applicant's shareholders. Applicant also states that this proposal is expected to avoid the periodic $.01 changes in Applicant's net asset value per share as a result of which investors have realized nominal capital gains and losses upon redemption.

Rule 22c-1 adopted under the Act provides, in part, that no registered investment company issuing any redeemable security shall sell, redeem or repurchase any security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. Rule 2a-4 adopted under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution and redemption shall be determined with reference to current market value for portfolio securities with respect to which market quotations are readily available and for other securities and assets fair value as determined in good faith by the board of directors of the registered company. In IC-9786 the Commission issued an interpretation of Rule 2a-4 expressing its view that it was inconsistent with Rule 2a-4 for certain money market funds to "round off" calculations of their net asset value per share to the nearest one cent on a share value of $1, because such a calculation might have that effect of masking the impact of changing values of portfolio securities and therefore might not "reflect" its portfolio valuation as required by Rule 2a-4.

Section 6(c) of the Act provides, in part, that the Commission may, upon application, exempt any person, security or transaction or any class or classes of persons, securities or transactions, from any provision or provisions of the Act and rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant submits that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant asserts that a substantial number of money market funds now offer the public a $1 price for their shares. Applicant represents that, to the extent necessary, the Applicant's Board of Directors will consider the advisability of temporarily suspending payment of dividends, or making a capital gains distribution, to maintain a $1 price per share, if the net asset value per share declines to a value below $.997 or rises to a value of above $1.003, respectively. Applicant states that in order to attempt to assure the stability of Applicant's price it will also adhere to the following conditions:

1. Applicant's Board of Directors, in supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, undertakes—as a particular responsibility within its overall duty of care owed to the shareholders of Applicant—to assure to the extent reasonably practicable, taking into account current market conditions affecting Applicant's investment objectives, that Applicant's price per share as computed for the purpose of sales and redemptions, rounded to the nearest cent, will not deviate from one dollar.

2. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable price per share. Applicant will not purchase a portfolio security with a remaining maturity of greater than 1 year, nor will it maintain a dollar-weighted average portfolio maturity in excess of 120 days.

3. Applicant will invest in a portfolio of money market instruments consisting exclusively of marketable securities issued or guaranteed by the Government of the United States or its agencies or instrumentalities (whether or not subject to repurchase agreements), domestic bank certificates of deposit, bankers' acceptances and high grade commercial paper. Investments in bank certificates of deposit and bankers' acceptances are limited to domestic banks having total assets in excess of one billion dollars. Applicant will enter into repurchase agreements only with banks which are subject to regulation by the U.S. Government and with respect to securities of the U.S. Government or its agencies. The commercial paper purchased by Applicant will consist only of direct obligations (i) rated Prime-1 by Moody's Investors Service, Inc. or A-1 by Standard & Poor's Corporation, or (ii) issued by companies having an outstanding unsecured debt issue currently rated Aa or better by Moody's Investors Service, Inc. or AA or better by Standard & Poor's Corporation.

Notice is further given, That any interest person may, not later than November 28, 1978, at 5:30 p.m., submit to the Commission in writing a request for hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant(s) at the address(es) stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any potponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-32142 Filed 11-14-78; 8:45 am]

[8010-01-M]

[Release No. 34-15315; File No. SR-MSRB-78-5]

MUNICIPAL SECURITIES RULEMAKING BOARD

Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 2, 1978 the abovementioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

The Municipal Securities Rulemaking Board (the "Board") is filing a proposed amendment (hereafter referred to as the "proposed rule change") to proposed rule G-34 on product advertising. The text of the proposed rule change is as follows:

RULE G-34. PRODUCT ADVERTISING [1]

(a) *Product Advertising.* No broker, dealer, or municipal securities dealer shall publish or cause to be published any advertisement or similar communication concerning municipal securities *which such* [that is, to the knowledge of such] borker, dealer, or municipal securities dealer *knows or has reason to know is* materially false or misleading.

(b) No change.

STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule change is an follows:

[1] Italics indicate new language; [brackets] indicate deletions.

PURPOSE OF PROPOSED RULE CHANGE

Under proposed rule G-34, as filed with the Commission, a municipal securities professional in prohibited from publishing an advertisement concerning municipal securities that is, "to the knowledge" of the municipal securities professional, materially false or misleading. The proposed rule change substitutes a different standard of responsibility, "knows or has reason to know," for the actural "knowledge" standard currently contained in the proposed rule.

On reconsideration, the Board has determined that a "Knowledge" standard is inappropriate because a municipal securities professional would not have any responsibility under this standard for the accuracy or validity of an advertisement unless the professional has actual knowledge that the advertisement is misleading or false. The Board believes that a municipal securities professional should be required to exercise a reasonable degree of care and competence in preparing advertisements. The Board has therefore adopted the "knows or has reason to know" standard which is intended to impose such responsibility on municipal securities professionals. For example, this standard would require a municipal securities professional to vertify the accuracy and validity of a proposed advertisement if any facts come to the professional's attention which indicate that the advertisement may be misleading. Under this standard, a municipal securities professional would also be in violation of the rule if the municipal securities professional circulates an advertisement which a professional of reasonable competence could be expected to know is misleading.

BASIS UNDER THE ACT FOR PROPOSED RULE CHANGE

The Board has adopted the proposed rule change pursuant to section 15(b)(2)(c) of the Securities Exchange Act of 1934, as amended (the "Act"), which provides that the Board's rules shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade • • • and, in general, to protect investors and the public interest • • • .

COMMENTS RECEIVED FROM MEMBERS, PARTICIPANTS OR OTHERS ON PROPOSED RULE CHANGE

Proposed rule G-34 was originally issued as an exposure draft on October 18, 1977. In response to the exposure draft, the National Association of Securities Dealers, Inc. (the "NASD") recommended that the Board adopt a different standard of responsibility for the rule because in its view a "knowl-

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edge" standard would be inadequate in view of the subject matter of the rule. After the Board filed the proposed rule, the Commission staff expressed a similar concern. The proposed rule change reflects the Board's reconsideration of this point in light of the comments of the NASD and Commission staff.

BURDEN ON COMPETITION

The Board does not believe that the proposed rule change will impose any burden on competition.

By December 20, 1978, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and published its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted by December 6, 1978.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

NOVEMBER 7, 1978.

[FR Doc. 78-32149 Filed 11-14-78; 8:45 am]

[8010-01-M]

[Release No. 34-15316; File No. SR-MSRB-78-8]

MUNICIPAL SECURITIES RULEMAKING BOARD

Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 1, 1978, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

The Municipal Securities Rulemaking Board (the "Board") is filing a proposed amendment (hereafter referred to as the "proposed amendment") to proposed rule G-35 on arbitration. The text of the proposed amendment is as follows:

Rule G-35. Arbitration [1]

Sections 1-26. No change.

Section 27. Determination of Arbitrators.

All decisions and awards must be made by at least a majority of the arbitrators of a panel. [Notwithstanding the foregoing, a decision by an arbitration panel to refer a matter to an appropriate regulatory authority or organization for review must be made by the unanimous vote of the arbitrators of the panel.]

Sections 28-35. No change.

STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule change is as follows:

PURPOSE OF PROPOSED RULE CHANGE

Section 27 of proposed rule G-35 currently requires the unanimous vote of an arbitration panel before a matter may be referred to an appropriate regulatory agency for review. The Commission staff has raised an objection to the requirement for unanimity on the grounds that it may limit the power of an arbitration panel to act by majority vote in this area. In adopting this provision, the Board did not intend to impose a more stringent voting requirement than would otherwise govern under applicable law. The Board has therefore determined to delete this provision in order to avoid the possibility of the provision having such a result.

BASIS UNDER THE ACT FOR PROPOSED RULE CHANGE

The Board adopted the proposed amendment pursuant to sections 15B(b)(2)(C) and 15B(b)(2)(D) of the Act. Section 15B(b)(2)(C) provides in pertinent part that the Board's rules must—

be designed • • • to promote just and equitable principles of trade • • • to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest • • •.

Section 15B(b)(2)(D) states that the Board shall—

if the Board deems appropriate, provide for the arbitration of claims, disputes, and controversies relating to transactions in municipal securities: Provided, however, That no person other than a municipal securities broker, municipal securities dealer, or person associated with such a municipal securities broker or municipal securities dealer may be compelled to submit to such arbitration except at his instance and in accordance with section 29 of this title.

COMMENTS RECEIVED FROM MEMBERS, PARTICIPANTS OR OTHERS ON PROPOSED RULE CHANGES

Comments were not solicited or received on the proposed amendment. However, as noted above, the Commission staff raised an objection to the requirement for unanimity with respect to a decision by an arbitration panel to refer a matter to an appropriate regulatory authority or organization for review. Upon reconsideration in light of the concern expressed by the Commission staff, the Board determined to modify section 27 as set forth in this filing.

BURDEN ON COMPETITION

The Board does not believe that the proposed amendment will impose any burden on competition.

By December 20, 1978, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted by November 30, 1978.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

NOVEMBER 7, 1978.

[FR Doc. 78-32150 Filed 11-14-78; 8:45 am]

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[1] Brackets indicate deleted language.

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[8010-01-M]

[Rel; No. 20766; 70-5750]

NEW ENGLAND ELECTRIC SYSTEM

Proposed Extension of Bank Borrowing by Holding Company

NOVEMBER 7, 1978.

In the matter of New England Electric System, 20 Turnpike Road, Westborough, Mass., 01581 (70-5750).

Notice is hereby given that New England Electric System ("NEES"), a registered holding company, has filed with this Commission a post-effective amendment to its declaration previously filed and amended in this matter, pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6(a) and 7 of the Act and Rule 50(a)(2) promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration as further amended by said post-effective amendment, which is summarized below, for a complete statement of the proposed transaction.

By order dated December 1, 1975 (HCAR No. 19272), issued in this proceeding, NEES was authorized to issue or renew notes of a maturity less than 1 year evidencing short-term bank borrowings provided that the aggregate principal amount of such notes outstanding at any one time would not exceed $25,000,000.

By supplemental order dated May 23, 1977 (HCAR No. 20047), issued in this proceeding, NEES's borrowing authority was extended until December 31, 1978 and the authorized amount of borrowing was inceased from $25,000,000 to $52,500,000 subject to certain conditions stated in the order.

By post-effective amendment filed in this proceeding it is now proposed that the borrowing authority of NEES be extended until December 31, 1979, and that it be permitted to issue short-term notes to banks up to a maximum aggregate amount outstanding at any time not to exceed $25,000,000.

Although no formal commitments have made, NEES expects such borrowings will be effected from among the following banks:

Bank of America, North America Division, New York, N.Y.	$500,000
Brown Brothers, Harriman & Co. Boston, Mass.	500,000
Continental Illinois National Bank & Trust Co., Chicago, Ill.	4,500,000
Chase Manhattan Bank, N.A., New York, N.Y.	4,500,000
Chemical Bank, New York, N.Y.	500,000
Citibank, N.A., New York, N.Y.	4,500,000
Irving Trust Co., New York, N.Y.	4,500,000
Manfacturers Hanover Trust, New York, N.Y.	500,000
Morgan Guaranty Trust Company, New York, N.Y.	4,5000,000
The First National Bank of Chicago, Chicago, Ill.	500,000
	$25,000,000

•• The amounts that NEES may borrow from a particular bank may be increased or decreased, but at no time will the aggregate amount of short-term borrowings from all banks exceed the authorization requested.

NEES expects to make a capital contribution to its subsidiary, New England Power Co. (NEP), in December 1978 in the amount of $30 Million. This transaction is the subject of a separate filing with the Commission. Another subsidiary, New England Energy Inc. (NEEI), is completing arrangements for a bank credit agreement under which it proposes to borrow approximately $25 million in the fourth quarter of 1978, and use the proceeds to pay subordinated notes outstanding to NEES. This transaction by NEEI will likewise be the subject of a further filing with the Commission. The extension of NEE's authority to borrow from banks is requested in order to assure that NEES will be in a position (1) to make the capital contribution to NEP; and (2) to continue to make loans to NEEI in furtherance of its exploration for and development and production of fuel for use in System companies, on a timely basis in the event that consummation of NEEI's bank financing should be delayed.

Notice is further given that any interested person may, not later than December 4, 1978, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration, as further amended by said post-effective amendment, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as further amended by said post-effective amendment, or as it may be further amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority,

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.78-32138 Filed 11-14-78; 8:45am]

[8010-01-M]

[Rel. No. 20765; 70-6218]

NEW ENGLAND POWER CO. AND NEW ENGLAND ELECTRIC SYSTEM

Proposed Capital Contribution by Holding Company to Subsidiary

NOVEMBER 7, 1978.

In the matter of New England Power Co. and New England Electric System, 20 Turnpike Road, Westborough, Mass., 05181 (70-6218).

Notice is hereby given that New England Electric System ("NEES"), a registered holding company, and its electric utility subsidiary company, New England Power Co. ("NEPCO"), have filed with this Commission an application—declaration pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 9(a), 10, and 12 of the Act and Rules 42(a) and 45 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transaction.

NEES proposes to make a capital contribution to NEPCO of $30,000,000. NEPCO will use such contribution to repay $30,000,000 of short-term indebtedness held by NEES. As of August 31, 1978, NEPCO has $9,200,000 of short-term indebtedness outstanding and it is anticipated that such indebtedness will aggregate $40,000,000 at the time of the proposed capital contribution.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $2,500, including $500 of incidental services to be performed at cost, by New England Power Service Co., an affiliate of NEES. It is stated that no state commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than December 4, 1978, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Com-

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mission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above stated address and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-32137 Filed 11-14-78; 8:45 am]

[8010-01-M]

[Rel. No. 15298; SR-NYSE-78-48]

NEW YORK STOCK EXCHANGE, INC.

Order Approving Proposed Rule Change

NOVEMBER 3, 1978.

In the matter of New York Stock Exchange, Inc., 11 Wall Street, New York, N.Y., 10005 (SR-NYSE-78-48).

On August 21, 1978, the New York Stock Exchange, Inc. ("NYSE") filed with the Commission, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which (1) rescinds rules requiring minimum time of maturity for subordinated loan agreements for the purchase of a membership at maturity of the loan; (2) adopts specific rule provisions for inclusion in a-b-c agreements; and (3) rescinds holders respective financial interests in any membership financed by the member organization. Any dispute arising in connection with such an a-b-c agreement or such a subordinated loan agreement shall be arbitrated pursuant to Article VIII of the Constitution of the NYSE.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 15175, Sept. 19, 1978) and by publication in the FEDERAL REGISTER (43 FR 15175, Sept. 29, 1978). All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and (with the exception of those statements and communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552) were made available to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-32144 Filed 11-014-78; 8:45 am]

[8010-01-M]

[Rel. No. 10472; 812-4373]

NUVEEN TAX-EXEMPT BOND FUND—MULTI-STATE AND JOHN NUVEEN & CO., INC.

Filing of Application for Order of the Commission

NOVEMBER 7, 1978.

In the matter of Nuveen Tax-Exempt Bond Fund-Multi-State (Series 1 and Subsequent Series) and John Nuveen & Co., Inc., 209 South LaSalle Street, Chicago, Ill. 60604 (812-4373).

Notice is hereby given that Nuveen Tax-Exempt Bond Fund-Multi-State (Series 1 and Subsequent Series) ("Fund"), a unit investment trust registered under the Investment Company Act of 1940 ("Act"), and the Fund's Sponsor, John Nuveen & Co., Inc. ("Sponsor") (hereinafter the Sponsor and the Fund are collectively referred to as "Applicants"), filed an application on October 10, 1978, and an amendment thereto on October 30, 1978, pursuant to section 6(c) of the Act for an order of the Commission exempting the Applicants from the provisions of section 14(a) of the Act and exempting the frequency of capital gains distributions by the Fund from the provisions of Rule 19b-1 under the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Each series of the Fund will be governed by the provisions of a trust indenture and agreement ("Indenture") to be entered into by the Sponsor and a corporation organized and doing business under the laws of the United States or a State thereof, which is authorized under such laws to exercise corporate trust powers and having at all times an aggregate capital, surplus and undivided profits of not less than $5,000,000 ("Trustee"). It is contemplated that the United States Trust Company of New York will serve as Trustee for Series 1. A separate Indenture will be entered into each time a series is created and activated, and the Bonds which comprise the portfolio of each trust of such series (or delivery statements relating to contracts for the purchase of such Bonds, together with funds represented by an irrevocable letter of credit issued by a major commercial bank in the amount required for their purchase) are deposited with the trustee. Each series will be substantially identical except as to size, number of units, number of trusts and the individual bonds in the portfolio of each trust. The distinction among the separate trusts which will comprise each series of the Fund will be that each trust will have a portfolio consisting entirely of bonds which will be located in the same State.

Pursuant to the Indenture, the Sponsor will deposit with the trustee bonds which the Sponsor shall have accumulated for such purpose (or delivery statements relating thereto and funds for the purchase thereof as set forth above) in an amount at least equal to the aggregate principal amount of the units to be offered. Substantially concurrently, the Trustee will issue in the name of the Sponsor, or such other name or names as the Sponsor may direct, one or more certificates evidencing ownership of all of the undivided interests in the trust or trusts making up such series of the Fund. These units will be separately offered for sale to the public at prices based upon their then respective current net asset values, after the registration statement filed in regard thereto under the Securities Act of 1933 ("Securities Act") has become effective.

On the date of deposit, the maximum number of units in each trust of a series of the Fund and the Bonds which will comprise the respective portfolios are determined. No additional units can be issued; however, since the units are redeemable, the number of units outstanding may be reduced by redemptions. No additional Bonds can be deposited in any of the trusts except that under certain circumstances, refunding bonds issued in exchange and substituted for outstanding Bonds may be deposited with the Trustee. The Trustee may dispose of Bonds when events occur which

may affect their investment stability or when they are the subject of an advanced refunding and distribute the proceeds thereof in partial liquidation to certificate holders, and must sell Bonds if necessary for the payment of the redemption price of units tendered for redemption. The proceeds of Bonds which mature or are redeemed in accordance with their terms are distributed by the Trustee to certificateholders. Each trust is separate and the units therein are not interchangeable nor do such units represent an interest in any other trust of the series. Units representing an interest in one series of the Fund are not interchangeable with and do not represent any interest in any other series of the Fund.

The Fund's evaluator at the date of deposit of any particular series will be Standard & Poor's Corp. and thereafter will be John Nuveen & Co., Inc. Applicants represent that the objective of each of the Fund's series (Series 1 and Subsequent Series) will be to seek tax-exempt income and conservation of capital through an investment in tax-exempt bonds. All of such bonds will be obligations issued by or on behalf of States, counties, territories, or municipalities of the United States and authorities or political subdivisions thereof, the interest on which, in the opinion of counsel to the various issuers of such bonds, is exempt from all Federal income taxes under existing law.

Section 14(a)

Section 14(a) of the Act, in substance, provides that no registered investment company and no principal underwriter for such a company shall make a public offering of securities of which such company is the issuer unless (1) the company has a net worth of at least $100,000; (2) at the time of a previous public offering it had a net worth of $100,000; or (3) provision is made that a net worth of $100,000 will be obtained from not more than 25 responsible persons within 90 days, or the entire proceeds received, including sales charge, will be refunded.

Applicants represent that the Bonds for a portfolio of each trust of a series of the Fund (or delivery statements relating thereto and funds for the purchase thereof as set forth above) are delivered to the Trustee on the date of a deposit, and from that time on, except for the payment of limited amounts of expenses specified in the Indenture, such Bonds are held in the custody of the Trustee subject to the Indenture which, in substance, provides that the Trustee may dispose of the Bonds when, among other things, events occur which may affect their investment stability and distribute the proceeds thereof in partial liquidation to certificateholders. However, there is no provision permitting the Bonds to be pledged or subjected to any debt by Applicants.

The Sponsor has represented that no series of the Fund will be created which will contain in the portfolio of any trust thereof on the date of deposit, Bonds (or delivery statements relating thereto and funds for the purchase thereof) having a principal amount of less than $3,000,000. In the event the value of such trust should decrease to the greater of $1,000,000 or 20 percent of the amount of the Bonds initially deposited, for any reason, the Trustee may, and when so directed by the sponsor shall, terminate and liquidate such trust. Thus, Applicants represent that it is highly unlikely that, except during the course of liquidation, the net worth of any trust will ever decline to $100,000 or less.

As a further basis for the requested exemption, the Sponsor also represents that, in the event that the net worth of any trust of any series of the Fund should be reduced to less than $100,000 within 90 days after the registration statement under the Scurities Act becomes effective in respect of that series, the Sponsor will repurchase all units of such trust which have been sold prior to such date at the same price paid by the original purchaser, including sales charge.

In addition, on the day of the deposit of the Bonds comprising the portfolio of any trust of any series of the Fund (or delivery statements relating thereto and funds for the purchase thereof), the Sponsor will instruct the Trustee that, in the event the Sponsor as the owner of units of any such trust, which have not previously been sold to the public, shall tender such unsold units to the Trustee for redemption in an amount that will reduce the net worth of such trust to less than 40 percent of the principal amount of Bonds originally deposited therein, the Trustee shall terminate such trust in the manner provided in the Indenture relating thereto and the Sponsor will refund, on demand, to each purchaser of units of any such trust, the entire sales charge paid by such purchaser without any deduction whatsoever.

In light of these representations and undertakings, Applicants request that the Commission issue an order exempting all trusts of all series of the Fund from the provisions of section 14(a) of the Act subject to future trusts of future series being substantially identical in all mterial respects to Series 1 except as to size, number of units, number of trusts and identity of portfolio bonds.

Rule 19b-1

Rule 19b-1 provides in substance that no registered investment company which is a "regulated investment company" as defined in section 851 of the Internal Revenue Code shall distribute more than one capital gain dividend in any one taxable year. Paragraph (b) of the Rule contains a similar prohibition for a company not a "regulated investment company" but permits a unit investment trust to distribute capital gain dividends received from a "regulated investment company" within a reasonable time after receipt.

Each trust of each series of the Fund will be a registered investment company which is not a regulated investment company under the Code. From time to time, bonds in a portfolio of a trust of a series of the Fund may be redeemed by the issuer thereof or may be sold by the Trustee for the purpose of providing either investment stability, as described below, or funds for the redemption of units, or if such Bonds are the subject of advanced refunding. These transactions may give rise to a problem under Rule 19b-1 when the funds distributed from a Principal Account involve a long-term capital gain since in order to comply with the literal requirements of the Rule, a trust of a series of the Fund would be forced to hold any monies which would constitute capital gains upon distribution until the end of its taxable year. Applicants contend that such a practice would clearly be to the detriment of the certificateholders.

The Indenture establishes record and distribution dates for the distribution to certificateholders of their pro rata share of the cash balance of the Interest and Principal Accounts computed as of such record dates. Since the Trustee has no authority to reinvest funds received upon the disposition of Bonds, Applicants contend that it is in the best interests of certificateholders that it be permitted to distribute such funds as provided by the Indenture. Initially, it is contemplated that distributions will be made semiannually from the Principal Account and monthly, quarterly or semiannually from the Interest Account, depending upon the plan of distribution chosen by certificateholders.

Applicants state that distributions of principal constituting capital gains to certificateholders may arise in the following circumstances: (1) early retirement and advanced refunding of Bonds (as well as the sale of Bonds which are the subject of advanced refunding); and (2) sale of Bonds in order to provide funds necessary to meet redemptions by certificateholders. Applicants state that capital gains in most cases are not anticipated to arise from sales of Bonds made by the Trustee at the request of the Sponsor to provide stability, i.e., after default in payments of principal or in-

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terest on such Bonds or the occurrence of other market or credit factors which, in the opinion of the Sponsor, would make retention of such Bonds in the Fund detrimental to the interests of the certificateholders.

Since the primary objective of the Fund is tax-exempt income through an investment in tax-exempt bonds, in the case of normal distributions it is expected that virtually the entire amount will represent interest received on portfolio Bonds. Applicants state that when sums are distributed from the Principal Account, the amount thereof which represents long-term capital gains will be minimal in comparison to the total amount of the distribution, and will have been realized almost entirely as a result of activities of persons other than the Fund, the Sponsor or the Trustee. Accordingly, Applicants request that the Commission grant an exemption from the provisions of Rule 19b-1 to permit distributions to be made as proposed under the Indenture for trusts of Series 1 and for trusts of such additional series as may be created in the future, even though on occasion the distributions may include a long-term capital gain to the certificateholder since the dangers against which Rule 19b-1 is intended to guard do not exist in the situation at hand.

Section 6(c) of the Act provides, in pertinent part, that the Commission may, upon application, conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision of the Act or of any rule or regulation under the Act, if and to the extend such exemption is necessasry or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than November 30, 1978 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit, or in the case of an attorney-at-law by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued by the Commission as of course following said date, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-32145 Filed 11-14-78; 8:45 am]

[8010-01-M]

[Rel. No. 15304; SR-PSE-78-15]

PACIFIC STOCK EXCHANGE, INC.

Order Approving Proposed Rule Change

NOVEMBER 6, 1978.

In the matter of Pacific Stock Exchange Inc., 618 South Spring Street, Los Angeles, Calif. 90014 (SR-PSE-78-15).

On August 23, 1978, the Pacific Stock Exchange Inc. ("PSE") filed with the Commission, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which amends Rule VI, Section 11 to provide additional exceptions to the restrictions on trading out-of-the-money options. The rule change provides an exception from such restriction for spread orders in which both sides of the spread are not executed simultaneously, provided that any subsequent liquidation includes both sides. Further, the rule change permits investors to purchase out-of-the-money puts provided such transaction is offset by a long stock or convertible security position.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 15117, Aug. 31, 1978), and by publication in the FEDERAL REGISTER (43 FR 40092, Sept. 8, 1978). All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552) were made available to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of section 6, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-32146 Filed 11-14-78; 8:45 am]

[8010-01-M]

[Rel. No. 15299; SR-PHLX-78-17]

PHILADELPHIA STOCK EXCHANGE, INC.

Order Approving Proposed Rule Change

NOVEMBER 3, 1978.

In the matter of Philadelphia Stock Exchange, Inc., 17th Street and Stock Exchange Place, Philadelphia, Pa. 19103 (SR-PHLX-78-17).

On August 21, 1978, the Philadelphia Stock Exchange, Inc. (PHLX) filed with the Commission, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the Act) and rule 19b-4 thereunder, copies of proposed rule change which amended rule 1014 to provide for an additional commentary. The commentary provides that the week preceding the expiration date, the bid/ask differential for expiring options which are in-the-money may be no more than the lesser of (1) the bid/ask differential of the underlying security, or (2) one-quarter of $1 where the premium is less than $1, three-eights of $1 where the premium is less than $3, and one-half of $1 where the premium is less than $6.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-15114, Aug. 31, 1978) and by publication in the FEDERAL REGISTER (43 FR 40093, Sept. 8, 1978). All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552) were made available to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and in particular, the requirements of section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-32147 Filed 11-14-78; 8:45 am]

[8010-01-M]

[Rel. No. 10470; 811-1775]

PUTNAM MARINER FUND, INC.

Filing of Application for Order Declaring That Applicant Has Ceased To Be an Investment Company

NOVEMBER 6, 1978.

In the matter of Putnam Mariner Fund, Inc., 265 Franklin Street, Boston, Mass., 02110, (811-1775).

Notice is hereby given that Putnam Mariner Fund, Inc. (Applicant), an open-end, diversified management company registered under the Investment Company Act of 1940 (Act), filed an application on September 28, 1978, pursuant to section 8(f) of the Act and rule 8f-1 thereunder, for an order declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

On November 29, 1968, Applicant (then named Putnam Mayflower Fund, Inc.), a Massachusetts corporation, registered under the Act and filed a registration statement under the Securities Act of 1933 with respect to 2,500,000 shares of its common stock. Such registration statement never became effective and was subsequently withdrawn by order of the Commission on October 31, 1972. Applicant never offered its securities to the public. Applicant represents that on September 25, 1978, it was liquidated by statutory merger into Putnam Management Co., Inc., Applicant's investment adviser and sole security holder, and that as a result of the statutory merger it no longer exists under the State laws pursuant to which it was created.

Section 8(f) of the Act provides, in part, that when the Commission upon application finds that a registered investment company has ceased to be an investment company, it shall so declare by order and, upon the taking effect of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than December 1, 1978, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-32148 Filed 11-14-78; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 241; Rule 19; 52d Revised Exemption No. 901]

ABERDEEN & ROCKFISH RAILROAD CO. ET AL.

Exemption Under Mandatory Car Service Rules

It appearing, That certain of the railroads named below own numerous 50-foot plain boxcars; that under present conditions, there are substantial surpluses of these cars on their lines; that return of these cars to the owners would result in their being stored idle; that such cars can be used by other carriers for transporting traffic offered for shipments to points remote from the car owners; and that compliance with Car Service Rules 1 and 2 prevents such use of these cars, resulting in unnecessary loss of utilization of such cars; and

It further appearing, That there are substantial shortages of 50-foot plain boxcars throughout the country; that the carriers identified in this exemption by the symbol (%) have 150% or more of their ownership of these cars on their lines; and that such a disproportionate use of the total supply of such cars causes shippers served by other lines to be deprived of their proper share of such cars.

It is ordered, That, pursuant to the authority vested in me by Car Service Rule 19, 50-foot plain boxcars described in the Official Railway Equipment Register, ICC-RER No. 409, issued by W. J. Trezise, or successive issues therof, as having mechanical designation "XM," and bearing reporting marks assigned to the railroads named below, shall be exempt from provisions of Car Service Rules 1, 2(a), and 2(b).

Aberdeen & Rockfish Railroad Co.
Reporting Marks: AR
Atlanta & Saint Andrews Bay Railway Co.
Reporting Marks: ASAB
% The Baltimore & Ohio Railroad Co.
Reporting Marks: BO
% Bessemer & Lake Erie Railroad Co.
Reporting Marks: BLE
Camino, Placerville & Lake Tahoe Railroad Co.
Reporting Marks: CPLT
% The Chesapeake & Ohio Railway Co.
Reporting Marks: CO-PM
City of Prineville
Reporting Marks: COP
The Clarendon & Pittsford Railroad Co.
Reporting Marks: CLP
% Consolidated Rail Corp.
Reporting Marks: CR-DLW-EL-ERIE-LV-NH-NYC-P&E-PAE-PC-PCA-PRR-RDG-TOC
% Delaware & Hudson Railway Co.
Reporting Marks: DH
Duluth, Missabe & Iron Range Railway Co.
Reporting Marks: DMIR
East Camden & Highland Railroad Co.
Reporting Marks: EACH
% Florida East Coast Railway Co.
Reporting Marks: FEC
Genessee & Wyoming Railroad Co.
Reporting Marks: GNWR
% Grand Trunk Western Railroad Co.
Reporting Marks: GTW
Greenville & Northern Railway Co.
Reporting Marks: GRN
XX
*Lake Superior & Ishpeming Railroad Co.
Reporting Marks: LSI
Lenawee County Railroad Co., Inc.
Reporting Marks: LCRC
Louisiana Midland Railway Co.
Reporting Marks: LOAM
Louisville & Wadley Railway Co.
Reporting Marks: LW
Louisville, New Albany & Corydon Railroad Co.
Reporting Marks: LNAC
*Manufacturers Railway Co.
Reporting Marks: MRS
XXX

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*Addition.
XX Lake Erie, Franklin & Clarion Railroad Co. eliminated.
XXX McCloud River Railroad Co. eliminated.

Middletown & New Jersey Railway Co., Inc.
Reporting Marks: MNJ
Missouri-Kansas-Texas Railroad Co.
Reporting Marks: BKTY-MKT
New Orleans Public Belt Railroad
Reporting Marks: NOPB
% Norfolk & Western Railway Co.
Reporting Marks: ACY-N&W-NKP-WAB
• Oregon & Northwestern Railroad Co.
Reporting Marks: ONW
• Oregon, Pacific & Eastern Railway Co.
Reporting Marks: OPE
Pearl River Valley Railroad Co.
Reporting Marks: PRV
Peninsula Terminal Co.
Reporting Marks: PT
Providence & Worcester Co.
Reporting Marks: PW
Raritan River Rail Road Co.
Reporting Marks: RR
Sacramento Northern Railway
Reporting Marks: SN
St. Lawrence Railroad
Reporting Marks: NSL
Sierra Railroad Co.
Reporting Marks: SERA
Terminal Railway, Alabama State Docks
Reporting Marks: TASD
• The Texas Mexican Railway Co.
Reporting Marks: TM
Tidewater Southern Railway Co.
Reporting Marks: TS
Toledo, Peoria & Western Railroad Co.
Reporting Marks: TPW
Vermont Railway Inc.
Reporting Marks: VTR
WCTU Railway Co.
Reporting Marks: WCTR
% Western Railway of Alabama
Reporting Marks: WA
Youngstown & Southern Railway Co.
Reporting Marks: YS
Yreka Western Railroad Co.
Reporting Marks: YW

Effective November 1, 1978, and continuing in effect until further order of this Commission.

Issued at Washington, D.C., October 27, 1978.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc. 78-32100 Filed 11-14-78; 8:45 am]

[7035-01-M]

[Notice No. 741]

ASSIGNMENT OF HEARINGS

NOVEMBER 19, 1978.

Cases assigned for hearing, postponement, cancellation, or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 103051 (Sub-429F), Fleet Transport, Co., Inc., reassigned for oral hearing November 28, 1978 (1 day), at Nashville, TN, and will be held in Room 651, U.S. Court House, 810 Broadway. Modified procedure order is vacated.
MC 112223 (Sub-109F), Quickle Transport Co., MC 118569 (Sub-7F), Halberg Construction & Supply, Inc., d.b.a., Kirsher Transport Co., now being assigned for hearing on December 11, 1978 (5 days), at St. Paul, MN, in a hearing room to be later designated.
MC 130484 World Travel Service, Ltd., d.b.a., World Travel Service, now being assigned for hearing on February 7, 1979 (3 days), at Oklahoma City, OK, in a hearing room to be later designated.
MC 42405 (Sub-36F), Mistletoe Express Service, d.b.a., Mistletoe Express, now being assigned for hearing on February 12, 1979 (1 week), at Oklahoma City, OK, in a hearing room to be later designated.
MC 139482 (Sub-35F), New Ulm Freight Lines, Inc., now being assigned for hearing on January 23, 1979 (1 day), at Chicago, IL, in a hearing room to be later designated.
MC 12090 (Sub-3), Island Cartage Co., Inc., now being assigned for hearing on January 24, 1979 (3 days), at Chicago, IL, in a hearing room to be later designated.
MC 108859 (Sub-65F), Clairmont Transfer Co., now being assigned for hearing on January 29, 1979 (5 days), at Chicago, IL, in a hearing room to be later designated.
MC 144469F, Ole South Dixieland Tours, Ltd., now being assigned for hearing on February 7, 1979 (3 days), at Natchez, MS, in a hearing room to be later designated.
MC 114457 (Sub-399F), Dart Transit Co., a corporation, now being assigned for hearing on February 12, 1979 (1 day), at New Orleans, LA, in a hearing room to be later designated.
MC 139193 (Sub-74F), Roberts, & Oake, Inc., now being assigned for hearing on February 13, 1979 (1 day), at New Orleans, LA, in a hearing room to be later designated.
MC 116077 (Sub-395F), DSI Transports, Inc., now being assigned for hearing on February 14, 1979 (3 days), at New Orleans, LA, in a hearing room to be later designated.
MC 96324 (Sub-25F), General Delivery, Inc., now being assigned for hearing on January 10, 1979 at Washington, DC, is postponed indefinitely.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-32095 Filed 11-14-78; 8:45 am]

[7035-01-M]

[I.C.C. Order No. 75-A Under Revised Service Order No. 1252]

ASSOCIATION OF AMERICAN RAILROADS

Rerouting or Diversion of Traffic

Upon further consideration of I.C.C. Order No. 75, and good cause appearing therefor:

It is ordered:

I.C.C. Order No. 75, is vacated.

This order shall become effective October 27, 1978, and shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. A copy shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., October 27, 1978.

INTERSTATE COMMERCE COMMISSION.
JOEL E. BURNS,
Agent.

[FR Doc. 78-32101 Filed 11-14-78; 8:45 am]

[7035-01-M]

[I.C.C. Order No. 2 Under Service Order No. 1344]

THE BALTIMORE & OHIO RAILROAD CO.

Rerouting or Diversion of Traffic

In the opinion of Joel E. Burns, Agent, The Baltimore & Ohio Railroad Co. is unable to transport certain traffic over its line between Weverton, Md., and Hagerstown, Md., because of track conditions.

It is ordered:

(a) *Rerouting traffic.* The Baltimore & Ohio Railroad Co., being unable to transport certain traffic over its line between Weverton, Md., and Hagerstown, Md., because of track conditions, is hereby authorized to divert or reroute such traffic over any available route to expedite the movement. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing. the billing covering all such cars rerouted shall carry a reference to this order as authority for the rerouting.

(b) *Concurrence of receiving roads to be obtained.* The railroad rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification to shippers.* Each carrier rerouting cars in accordance with this order, shall notify each shipper at the time each shipment is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers, or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 11:59 p.m., October 31, 1978.

(g) *Expiration date.* This order shall expire at 11:59 p.m., November 15, 1978, unless otherwise modified, changed or suspended.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of the order shall be filed with the Director, Office of the Federal Register.

Replaces I.C.C. Order No. 6 issued under Service Order No. 1252.

Issued at Washington, D.C., October 31, 1978.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc. 78-32106 Filed 11-14-78; 8:45 am]

[7035-01-M]

[I.C.C. Order No. 8 Under Service Order No. 1344]

THE CHESAPEAKE & OHIO RAILWAY CO.

Rerouting or Diversion of Traffic

In the opinion of Joel E. Burns, Agent, The Chesapeake & Ohio Railway Co. is unable to transport traffic over its line between Ashland, Ky., and Lexington, Ky., because of congestion and accumulation of cars.

It is ordered:

(a) *Rerouting traffic.* The Chesapeake & Ohio Railway Co., being unable to transport traffic over its line between Ashland, Ky., and Louisville, Ky., because of congestion and accumulation of cars, is authorized to divert or reroute such traffic over any available route to expedite the movement. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing. The billing covering all such cars rerouted shall carry a reference to this order as authority for the rerouting.

(b) *Concurrence of receiving roads to be obtained.* The railroad rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification to shippers.* Each carrier rerouting cars in accordance with this order, shall notify each shipper at the time each shipment is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commissions and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers, or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 11:59 p.m., October 31, 1978.

(g) *Expiration date.* This order shall expire at 11:59 p.m., January 31, 1979, unless otherwise modified, changed or suspended.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of the order shall be filed with the Director, Office of the Federal Register.

Replaces ICC Order No. 69 issued under Revised Service Order No. 1252.

Issued at Washington, D.C., October 31, 1978.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc. 78-32098 Filed 11-14-78; 8:45 am]

[7035-01-M]

[Finance Docket No. 28892]

CHICAGO & NORTH WESTERN TRANSPORTATION CO.

Construction and Operation of a Line of Railroad Near Fremont, Dodge County, Nebr.

Chicago & North Western Transportation Co., 400 West Madison Street, Chicago, IL 60606, represented by Christopher A. Mills, General Attorney, Chicago & North Western Transportation Co., 400 West Madison Street, Chicago, IL 60606, hereby gives notice that on the 30th day of October 1978, it filed with the Interstate Commerce Commission at Washington, DC, an application under section 1(18) of the Interstate Commerce Act for a decision approving and authorizing the construction and operation of a line of railroad and appurtenant trackage totaling 8.4 miles in length to enable it to operate through trains, including unit coal trains, around rather than through the city of Fremont, NE, extending from milepost 31.9 on the Boone Subdivision, approximately 5.1 miles to the east of Fremont, and will terminate at milepost 6.7 on the West Point Subdivision, approximately 4.5 miles to the north of Fremont in Dodge County, NE, which application is assigned Finance Docket No. 28892. The line proposed to be constructed and operated is hereinafter referred to as the Fremont bypass. The Fremont bypass will connect with two existing lines of North Western's Iowa Division.

Applicant proposes to construct the Fremont bypass in order to enable through freight trains, particularly unit coal trains, to bypass the city of Fremont, NE (population: 26,000 according to recent estimates). Substantial numbers of unit coal trains of 100 or more cars each originating in the Powder River Basin of Wyoming are expected to pass through Fremont commencing in 1980: by 1985 a minimum of 10 unit coal trains in each direction will pass through Fremont daily. Construction of the Fremont bypass will shorten North Western's existing route between Wyoming and points east of Fremont by approximately 4.6 miles, will eliminate several heavy curves, will enable through trains to avoid a residential area of Fremont through which North Western's existing line passes, will reduce congestion in the area of an important interchange point between North Western and the Union Pacific Railroad, and will enable through trains to avoid traversing 12 busy public highway grade crossings in the Fremont area.

In the opinion of the applicant, the granting of the authority sought will constitute a major Federal action sig-

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nificantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. In accordance with the Commission's regulations (49 CFR 1108.8) in Ex Parte No. 55 (Sub-4), *Implementation—National Environmental Policy Act, 1969*, 352 I.C.C. 451 (1976), any protests may include a statement indicating the presence or absence of any effect of the requested Commission action on the quality of the human environment. If any such effect is alleged to be present, the statement shall indicate with specific data the exact nature and degree of the anticipated impact. *See Implementation—National Environmental Policy Act, 1969, supra*, at p. 487.

Pursuant to the provisions of the Interstate Commerce Act, as amended, the proceeding will be handled without public hearings unless comments in support or opposition on such application are filed with the Secretary, Interstate Commerce Commission, 12th and Constitution Avenue NW., Washington, DC 20423, and the aforementioned counsel for applicant, within 30 days after date of first publication in a newspaper of general circulation. Any interested person is entitled to recommend to the Commission that it approve, disapprove, or take any other specified action with respect to such application.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-32096 Filed 11-14-78; 8:45 am]

[7035-01-M]

[I.C.C. Order No. 7-A Under Service Order No. 1344]

FORT WORTH & DENVER RAILWAY CO.

Rerouting Traffic

Upon further consideration of I.C.C. Order No. 7 (Fort Worth & Denver Railway Co.), and good cause appearing therefor:

It is ordered:

I.C.C. Order No. 7 is vacated.

This order shall become effective November 5, 1978, and this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., November 3, 1978.

INTERSTATE COMMERCE COMMISSION.
JOEL E. BURNS,
Agent.

[FR Doc. 78-32102 Filed 11-14-78; 8:45 am]

[7035-01-M]

[ICC Order No. 7 Under Service Order No. 1344]

FORT WORTH & DENVER RAILWAY CO.

Rerouting or Diversion of Traffic

In the opinion of Joel E. Burns, Agent, the Fort Worth & Denver Railway Co. is unable to transport promptly all traffic offered for movement over its lines between Seymour, Tex., and Haskell, Tex., because of track damage from flooding.

It is ordered,

(a) *Rerouting traffic.* The Fort Worth & Denver Railway Co. being unable to transport promptly all traffic offered for movement over its lines between Seymour, Tex., and Haskell, Tex., because of track damage from flooding, that line is authorized to divert or reroute such traffic via any available route to expedite the movement. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing. The billing covering all such cars rerouted shall carry a reference to this order as authority for the rerouting.

(b) *Concurrence of receiving roads to be obtained.* The railroad rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification to shippers.* Each carrier rerouting cars in accordance with this order, shall notify each shipper at the time each shipment is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers, or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 11:59 p.m., October 31, 1978.

(g) *Expiration date.* This order shall expire at 11:59 p.m., November 30, 1978, unless otherwise modified, changed or suspended.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of the order shall be filed with the Director, Office of the Federal Register.

Replaces ICC Order No. 68 issued under Revised Service Order No. 1252.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc. 78-32104 Filed 11-14-78; 8:45 am]

[7035-01-M]

[ICC Order No. 9 Under Service Order No. 1344]

GRAND TRUNK WESTERN RAILROAD CO.

Rerouting or Diversion of Traffic

In the opinion of Robert S. Turkington, Agent, the Grand Trunk Western Railroad Co. is unable to transport traffic over its line between Muskegon, Mich., and Milwaukee, Wis., because of abandonment of operations.

It is ordered:

(a) *Rerouting traffic.* The Grand Trunk Western Railroad Co., being unable to transport traffic over its line between Muskegon, Mich., and Milwaukee, Wis., because of abandonment of operations, is authorized to divert or reroute such traffic over any available route to expedite the movement. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing. The billing covering all such cars rerouted shall carry a reference to this order as authority for the rerouting.

(b) *Concurrence of receiving roads to be obtained.* The railroad rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification to shippers.* Each carrier rerouting cars in accordance with this order shall notify each shipper at the time each shipment is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers, or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective November 1, 1978.

(g) *Expiration date.* This order shall expire at 11:59 p.m., November 30, 1978, unless otherwise modified, changed, or suspended.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of the order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., November 1, 1978.

INTERSTATE COMMERCE COMMISSION,
ROBERT S. TURKINGTON,
Agent.

[FR Doc. 78-32097 Filed 11-14-78; 8:45 am]

[7035-01-M]

[ICC Order No. 3 Under Service Order No. 1344]

MIDDLETOWN & HUMMELSTOWN RAILROAD CO.

Rerouting or Diversion of Traffic

In the opinion of Joel E. Burns, Agent, the Middletown & Hummelstown Railroad Co. is unable to transport traffic over its line, formerly operated by the Reading Co., because of track damage caused by flooding.

It is ordered,

(a) The Middletown & Hummelstown Railroad Co. being unable to transport traffic over its line because of track damage, that carrier is hereby authorized to reroute or divert such traffic via any available route to expedite the movement. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing. The billing covering all such cars rerouted shall carry a reference to this order as authority for the rerouting.

(b) *Concurrence of receiving roads to be obtained.* The railroad rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification to shippers.* Each carrier rerouting cars in accordance with this order shall notify each shipper at the time each shipment is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers, or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 11:59 p.m., October 31, 1978.

(g) *Expiration date.* This order shall expire at 11:59 p.m., January 31, 1979, unless otherwise modified, changed or suspended.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of the order shall be filed with the Director, Office of the Federal Register.

Replaces ICC Order No. 9 issued under Service Order No. 1252.

Issued at Washington, D.C., October 31, 1978.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc. 78-32094 Filed 11-14-78; 8:45 am]

[7035-01-M]

[Second Rev. S.O. No. 1332; Rev. Exception No. 2]

ST. LOUIS SOUTHWESTERN RAILWAY CO. AND SOUTHERN PACIFIC TRANSPRTATION CO.

Decided October 31, 1978.

By the Board.

Because of recent work stoppages on the St. Louis Southwestern Railway Co. (SSW) and on other connections of the Southern Pacific Transportation Co. (SP), and because of a major freight train derailment on the SSW in the vicinity of Gilmer, Tex., on October 20, 1978, the SP and the SSW are temporarily unable to forward all cars within 60 hours as required by section (a)(4)(i) of Second Revised Service Order No. 1332.

It is ordered, Pursuant to the authority vested in the Railroad Service Board by section (a)(1)(v) of Second Revised Service Order No. 1332, the SSW and the SP are required to forward loaded cars or empty foreign or private cars from the points named below within 72 hours.

SSW—Pine Bluff, Ark., XXX.

SP—Eugene, Oreg., Roseville, Calif., Los Angeles, Calif., West Colton, Calif.; XXX; San Antonio, Tex.; XXX; Houston, Tex.; XXX; XXX.

Effective October 31, 1978.

Expires 11:59 p.m., November 10, 1978.

JOEL E. BURNS,
Chairman,
Railroad Service Board.

[FR Doc. 78-32105 Filed 11-14-78; 8:45 am]

[7035-01-M]

[ICC Order No. 4 Under Service Order No. 1344]

SAN DIEGO & ARIZONA EASTERN RAILWAY CO.

Rerouting or Diversion of Traffic

In the opinion of Joel E. Burns, Agent, the San Diego & Arizona Eastern Railway Co. is unable to transport traffic over its line between El Centro, Calif., and San Diego, Calif., because of slides and washouts between milepost 94.4 and milepost 118.0.

It is ordered,

(a) The San Diego & Arizona Eastern Railway Co., being unable to transport traffic over its line between

XXX Shreveport, La., El Paso, Tex., Hearne, Tex., Beaumont, Tex., and Lafayette, La., eliminated.

El Centro, Calif., and San Diego, Calif., because of slides and washouts between milepost 94.4 and milepost 118.0, that carrier and its parent company, the Southern Pacific Transportation Co., are hereby authorized to reroute or divert such traffic via any available route to expedite the movement. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing. The billing covering all such cars rerouted shall carry a reference to this order as authority for the rerouting.

(b) *Concurrence of receiving roads to be obtained.* The railroad rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification to shippers.* Each carrier rerouting cars in accordance with this order shall notify each shipper at the time each shipment is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers, or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 11:59 p.m., October 31, 1978.

(g) *Expiration date.* This order shall expire at 11:59 p.m., March 31, 1979, unless otherwise modified, changed, or suspended.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of the order shall be filed with the Director, Office of the Federal Register.

Replaces ICC Order No. 10, issued under Service Order No. 1252.

Issued at Washington, D.C., October 31, 1978.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc. 78-32103 Filed 11-14-78; 8:45 am]

[7035-01-M]

[ICC Order No. 6 Under Service Order No. 1344]

SOUTHERN PACIFIC TRANSPORTATION CO.

Rerouting or Diversion of Traffic

In the opinion of Joel E. Burns, Agent, the Southern Pacific Transportation Co. is unable to transport traffic over its line between Jacksonville, Tex., and Lufkin, Tex., because of track conditions.

It is ordered.

(a) *Rerouting traffic.* The Southern Pacific Transportation Co. being unable to transport traffic over its line between Jacksonville, Tex., and Lufkin, Tex., because of track conditions, that line is authorized to divert or reroute such traffic via any available route to expedite the movement. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing. The billing covering all such cars rerouted shall carry a reference to this order as authority for the rerouting.

(b) *Concurrence of receiving roads to be obtained.* The railroad rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification to shippers.* Each carrier rerouting cars in accordance with this order shall notify each shipper at the time each shipment is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers, or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 11:59 p.m., October 31, 1978.

(g) *Expiration date.* This order shall expire at 11:59 p.m., January 31, 1979, unless otherwise modified, changed or suspended.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of the order shall be filed with the Director, Office of the Federal Register.

Replaces ICC Order No. 59 issued under Revised Service Order No. 1252.

Issued at Washington, D.C., October 31, 1978.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc. 78-32107 Filed 11-14-78; 8:45 am]

[7035-01-M]

[ICC Order No. 5 Under Service Order No. 1344]

WESTERN MARYLAND RAILWAY CO.

Rerouting or Diversion of Traffic

In the opinion of Joel E. Burns, Agent, the Western Maryland Railway Co. (WM), is unable to transport traffic over its lines east of Hagerstown, Md., because of bridge damage.

It is ordered,

(a) *Rerouting traffic.* The WM being unable to transport traffic over its lines east of Hagerstown, Md., because of bridge damage, that line is hereby authorized to reroute or divert such traffic via any available route. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing. The billing covering all such cars rerouted shall carry a reference to this order as authority for the rerouting.

(b) *Concurrence of receiving roads to be obtained.* The railroad rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification to shippers.* Each carrier rerouting cars in accordance with this order shall notify each shipper at the time each shipment is rerouted or diverted and shall furnish to

such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers, or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 11:59 p.m., October 31, 1978.

(g) *Expiration date.* This order shall expire at 11:59 p.m., March 31, 1979, unless otherwise modified, changed, or suspended.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of the order shall be filed with the Director, Office of the Federal Register.

Replaces ICC Order No. 31, issued under Service Order No. 1252.

Issued at Washington, D.C., October 31, 1978.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc. 78-32099 Filed 11-14-78; 8:45 am]

[3128-01-M]

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

CASES FILED

Week of October 20 Through October 27, 1978

Notice is hereby given that during the week of October 20, 1978, through October 27, 1978, the appeals and applications for exception or other relief listed in the appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under the DOE's procedural regulations, 10 CFR, Part 205, any person who will be aggrieved by the DOE action sought in such cases may file with the DOE written comments on the application within 10 days of service of notice, as prescribed in the procedural regulations. For purposes of those regulations, the date of service of notice shall be deemed to be the date of publication of this notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

MELVIN GOLDSTEIN,
Director, Office of Hearings, and Appeals.

NOVEMBER 7, 1978.

List of Cases Received by the Office of Hearings and Appeals

[Week of October 20 through 27, 1978]

Date	Name and location of applicant	Case No.	Type of submission
Oct.20, 1978	San Joaquin Refining Co., Newport Beach, Calif.	DXE-1977	Exception to the entitlements program. If granted: San Joaquin Refining Co. would receive an exception from its obligation to purchase entitlements under the provisions of 10 CFR 211.67.
Do	TOSCO Corp., Los Angles, Calif	DEX-0118	Supplemental order. If granted: The DOE would review the entitlements exception relief granted to TOSCO Corp. for a portion of its 1978 fiscal year in order to determine whether the level of relief accorded the firm was appropriate and whether additional exception relief should be granted.
Do	Young Refining Co., Washington, D.C	DXE-1978	Exception to the entitlements program. If granted: Young Refining Co. would receive an exception from its obligation to purchase entitlements under the provisions of the 10 CFR 211.67.
Oct. 23, 1978	Chevron, U.S.A., San Francisco, Calif.	DEE-1968	Price exception (section 212.73). If granted: Chevron, U.S.A. would be permitted to sell the crude oil produced from the Murphy Non-Unit, East Main Zone, located in Orange County, Calif., at upper tier ceiling prices.
Do	City of Long Beach, Long Beach, Calif	DMR-0034	Request for modification. If granted: The DOE's June 30, 1976, decision and order (Case No. FEE-2701) would be modified to permit the City of Long Beach to sell the crude oil produced from the Micellar-Polymer Project located in the Wilmington Oil Field at market prices rather than upper tier ceiling prices.
Do	Continental Oil Co., Houston, Tex	DEE-1979 and DST-1979.	Allocation exception (section 211.9). Request for temporary stay. If granted: Continental Oil Co. would be relieved of its gasoline supply obligations to inter-refinery customers of Continental's Denver, Colo., and Billings, Mont., refineries and would receive a temporary stay of its supply obligations pending a determination on its application for exception.
Do	D & R Service, Inc., Arlington, Mass	DEE-1972	Exception to reporting requirements. If granted: D & R Service, Inc. would not be required to file EIA form 79.
Do	Paul Davidson, New Brunswick, N.J	DFA-0236	Appeal of an information request denial. If granted: The DOE's September 26, 1978, information request denial would be rescinded and Paul Davidson would be granted access to certain data submitted to the DOE by the Gulf Oil Corp.
Do	Gulf Oil Corp., Houston, Tex	DXE-1973	Extension of relief granted in *Gulf Oil Corporation*, 2 DOE Par.——(June 16, 1978). If granted: Gulf Oil Corp. would be permitted to sell the crude oil produced from the Sidney A. Smith Lease, located in Liberty County, Tex., at upper tier ceiling prices.
Do	South Hampton Co	DED-0011	Motion for discovery. If granted: Discovery would be granted to South Hampton Co. with respect to the statement of objections which it filed in Case No. FEE-4778.
Do	Sydney Mark Taper, Beverly Hills, Calif	DEE-1980	Price exception (section 212.73). If granted: Sydney Mark Taper would be permitted to sell the crude oil produced from the Upper Terminal VI Reservoir, located in Long Beach, Calif., at upper tier ceiling prices.
Do	Unionville Tire & Supply, Baltimore, Md	DEE-1971	Exception to change supplier. If granted: Exxon Co., U.S.A. would be assigned as the base period supplier of motor gasoline to Unionville Tire & Supply instead of the Filippo Oil Co.

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List of Cases Received by the Office of Hearings and Appeals—Continued

[Week of October 20 through 27, 1978]

Date	Name and location of applicant	Case No.	Type of submission
Oct. 24, 1978	Atlantic Richfield Co., Los Angeles, Calif.	DEE-1981	Exception to terminate supply relationship. If granted: Atlantic Richfield Co. would receive an exception from the provisions of 10 CFR 211.9 which would relieve it of its obligation to supply motor gasoline to other refiners.
Do	Cooper & Brain, Inc., Washington, D.C.	DRH-0104 and DRD-0104.	Request for evidentiary hearing and motion for discovery. If granted: An evidentiary hearing would be convened in connection with a statement of objections submitted by Cooper & Brain, Inc. regarding a proposed remedial order which was issued to the firm by DOE region IX on August 28, 1978 (Case No. DRO-0104). In addition, Cooper & Brain, Inc. would be granted discovery with respect to the objections it has raised.
Do	Texaco, Inc., White Plains, N.Y.	DPI-0024	Exception from base fee requirements. If granted: Texaco, Inc. would be permitted to import residual fuel oil into Petroleum allocation district I on a fee-exempt basis from May 1, 1978, through April 30, 1979.
Do	Wallace B. Jayred, Houston, Tex	DEE-1974	Price exception (section 212.54). If granted: Wallace B. Jayred would be permitted to sell the crude oil produced from the Stella Field Operations located in Plaquemines Parish, La. at market prices.
Oct. 25, 1978	Gary Operating Co., Englewood, Colo.	DEE-1975	Price exception (section 212.73). If granted: Gary Operating Co. would be permitted to sell the crude oil produced from the Ranch Creek Unit, located in Powder River County, Mont., at upper tier ceiling prices.
Do	Giant Refining Co., Farmington, N. Mex.	DEE-1978	Exception to increase base period use. If granted: Giant Refining Co. would be granted an exception to increase its base period use of natural gasoline.

Notices of Objection Received

Date	Name and location of applicant	Case No.
Oct. 23, 1978	Hunt Industries, Dallas, Tex	DXE-1679.
Do	Standard Oil Co. (Indiana) Chicago, Ill	DXE-1524 through DXE-1529; DXE-1597 through DXE-1603; DXE-1655 through DXE-1663.
Oct. 24, 1978	Custer Gas Service, Custer, S. Dak	DEE-1077.
Do	Getty Oil Co., Los Angeles, Calif	DXE-1707 through DXE-1728, DXE-1776.
Do	O. B. Mobley, Jr., Shreveport, La	DEE-1021.
Oct. 23, 1978	John Galt, Inc., Hyattsville, Md	DEE-1033.
Oct. 25, 1978	Champion Petroleum Co., Santa Fe, N. Mex	DEE-1309.
Oct. 24, 1978	M.J. Mitchell, Dallas, Tex	DEE-1666
Oct. 26, 1978	Puerto Rico Olefins Co., Washington, D.C	DEE-1303.
Oct. 24, 1978	O. B. Mobley, Jr., Shreveport, La	DEE-1021.
Do	Gas Garden, Cucamonga, Calif	DEO-0139.

Proposed Remedial Order

Oct. 23, 1978	Zenith Oil Co., Inc., Minneapolis, Minn	DRO-0136.
Oct. 24, 1978	CNG Petroleum Co., Clarksburg, W. Va	DRO-0137.
Oct. 16, 1978	Meeker & Co., Washington, D.C	DRO-0138.

[FR Doc. 78-32011 Filed 11-14-78; 8:45 am]

[3128-01-M]

PUBLIC MEETINGS ON NATIONAL ENERGY PLAN

AGENCY: Department of Energy.

ACTION: Notice of public meetings on National Energy Plan.

SUMMARY: In accordance with section 801 of the Department of Energy (DOE) Organization Act (Pub. L. 95-91), The Department of Energy (DOE) is beginning to prepare a National Energy Plan (NEP-II), which will be submitted to the Congress not later than April 1, 1979. DOE desires to have the benefit of a broad range of public viewpoints in the development of NEP-II, and will hold a series of public meetings throughout the Nation to provide for the active participation by regional, State, and local agencies and instrumentalities, private organizations and groups, and citizens. For the purpose of stimulating and focusing discussion at these meetings, DOE has prepared and appends an outline for NEP-II.

A series of six public hearings will be held, in San Francisco, Calif., on December 5; Dallas, Tex., on December 6; Denver, Colo., on December 7; Omaha, Nebr., on December 12; Boston, Mass., on December 14; and Washington, D.C., on December 18, and, if necessary, 19.

In addition, during the week of November 27 through December 1, 1978, DOE will conduct six seminars in Washington D.C., each with representatives of a major constituency group concerned with energy policy—energy producers, consumers, regional, State, and local government agencies and instrumentalities, business (including small business) and large industrial users, environmental groups, and labor. Each of these meetings will be open to the public; participation on the panel will be by invitation.

FOR FURTHER INFORMATION CONTACT:

Washington meetings: Karl Conrad, 202-252-5877, Office of Consumer Affairs, Department of Energy, Washington, D.C. 20585.

Regional meetings: Liz Overstreet, 202-252-6090, Office of Consumer Affairs, Department of Energy, Washington, D.C. 20585.

SUPPLEMENTARY INFORMATION: *NEP-II.* The plan, which is required to be submitted to Congress by April 1, 1979, under the provisions of section 801 of the DOE Organization Act (Pub. L. 95-91), will address the broad range of the Nation's energy problems and may recommend legislative, budgetary, regulatory, or administrative initiatives designed to ameliorate those problems. The plan is to:

- Consider and establish energy production, utilization, and conservation objectives necessary to satisfy projected energy needs of the United States, paying particular attention to such needs as full employment, price stability, energy security, economic growth, environmental protection, nuclear nonproliferation, special regional needs, and the efficient use of public and private resources;
- Identify the strategies that should be followed and the resources that should be committed to achieve such objectives; and
- Recommend any appropriate Federal legislative and administrative actions.

In developing NEP-II, the DOE Organization Act further requires that the President shall:

> seek the active participation by regional, State, and local agencies and instrumentalities and the private sector through public hearings in cities and rural communities and other appropriate means to insure that the views and proposals of all segments of the economy are taken into account in the formulation and review of such proposed Plan.
>
> (Section 801(a)(2)); and shall
>
> insure that consumers, small business, and a wide range of other interests, including those of individual citizens who have no financial interest in the energy industry, are consulted in the development of the Plan.
>
> (Section 801(d)).

DOE has therefore determined to hold two sets of public meetings, pursuant to the requirements of the Act. First, during the week of November 27-December 1, 1978, DOE will conduct a series of six seminars in Washington, D.C. Each of these seminars will provide an opportunity for substantive policy discussions between DOE staff and invited representatives of one of the major constituency groups concerned with energy policy.

All of the seminars will be held in the Department of Energy Headquarters, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C.

Date, Time, Room, and Constituency

November 27; 3 p.m.; 7E069; Energy producers.
November 28; 9 a.m.; 7E069; Consumers.
November 29; 9 a.m.; 8E069; State and local government agencies and instrumentalities.
November 30; 9 a.m.; 8E069; Business (including small business) and large industrial users.
November 30; 3 p.m.; 7E069; Environmental groups.
December 1; 9 a.m.; 8E069; Labor.

DOE will then follow the seminars with a series of six public hearings on NEP-II in cities and rural communities throughout the United States. At each of these hearings, a half-day morning session on the goals of U.S. energy policy will include an overview of NEP-II, and a discussion by a panel of participants from the region, followed by comments from the floor. Selected topics of particular interest to the region will be addressed in the afternoon session with a similar panel-and-floor-discussion format. The balance of the afternoon and evening sessions will be reserved for formal presentations by individual citizens. At the Washington, D.C., hearing, an oral summary will be presented of public comment and discussion to date from the regional meetings, and the balance of the meeting devoted to individual formal presentations. Verbatim transcripts will be made of all sessions.

The topics being considered for the afternoon sessions are:

San Francisco, Calif.: (1) Opportunities for Conservation and Solar Energy; (2) Production and Transportation of Domestic Crude Heavy Oils.
Dallas, Tex.: (1) Crude Oil Pricing and Refinery Policies; (2) Key Regional Energy Issues.
Denver, Colo.: (1) Impacts of Energy Development; (2) Key Regional Energy Issues.
Omaha, Nebr.: (1) Agricultural and Rural Energy Issues; (2) Key Regional Energy Issues.
Boston, Mass.: (1) Alternatives for Oil Import Reduction; (2) Financial Needs and Energy Development.
Washington, D.C.: (1) Individual Citizen Presentations.

Listed below are the dates, location of the regional meetings, and regional contacts.

Date, Location, and *Regional Contact*

Dec. 5, 1978; Ballroom East, Hyatt on Union Square, 345 Stockton, San Francisco, Calif.; Bob Laffel, Department of Energy, 111 Pine Street, San Francisco, Calif. 94111, 415-556-7157.
Dec. 6, 1978; Adolphus Hotel, French Room, 1321 Commerce Street, Dallas, Tex.; Grace Morrison, Department of Energy, P.O. Box 35228, 2626 West Mockingbird Lane, Dallas, Tex. 75235, 214-749-7621.
Dec. 7, 1978; Main Auditorium, University of Denver, College of Law, 200 West 14th Avenue, Denver, Colo.; C. Dale Eriksen, Department of Energy, P.O. Box 26247, Belmar Branch, 1075 South Yukon Street, Lakewood, Colo. 80226, 303-234-2420.
Dec. 12, 1978; The Holiday Inn, Colony Room A & B, 3321 South 72d Street, Omaha, Nebr.; June Heard, Department of Energy, 324 East 11th Street, Kansas City, Mo. 64106, 816-374-5533.
Dec. 14, 1978; Room 208, John W. McCormack, P.O. and Courthouse, Post Office Square, Boston, Mass.; Roberta Walsh, Department of Energy, 150 Causeway Street, Boston, Mass. 02114, 617-223-5257.
Dec. 18, 1978; General Services, Administration Auditorium, 18th and F Streets, NW., Washington, D.C.; Karl Conrad, Department of Energy, Office of Consumer Affairs, Forrestal Building, Washington, D.C. 20585, 202-252-5877.

Procedures for written comment. Interested persons are invited to submit data, views or arguments by January 2, 1979, with respect to the next National Energy Plan in this notice to the address below:

William P. White, Department of Energy, Office of Policy and Evaluation, Forrestal Building, Washington, D.C. 20585.

"NEP-II" should be written on the outside of the envelope and on documents submitted.

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Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the confidential status of the information or data and to treat that information or data according to its determination.

Public hearings. Any person or representative of a group of persons may make a written or oral request for an opportunity to make an oral presentation. Such a request should be directed to the address given above for the appropriate Regional contact and in accordance with the request procedures set forth below. Requests must be received not later than three days before the appropriate Regional hearing. Written requests should be labeled "NEP-II" both on the document and on the envelope.

The person making the request should describe briefly the interest concerned; if applicable, state why she or he is a proper representative of the group having such an interest; and give a phone number where she or he may be contacted during working hours.

DOE reserves the right to select the persons to be heard at these meetings, to schedule their respective presentations, and to establish the procedures governing the conduct of the meetings. The length of each presentation may be limited, based on the number of persons requesting to be heard.

A presiding officer will be designated to conduct the hearings. These will not be judicial or evidentiary-type hearings. Questions may be asked only by those conducting the hearings, except during those periods when comments are requested from the floor. At the conclusion of all initial oral statements, and if time permits, each person who has made an oral statement will be given the opportunity, if he or she desires, to make a supplemental statement, to be given in the order in which the initial statements were made and subject to time limitations.

Any further procedural rules needed for the proper conduct of the hearings will be announced by the presiding officer.

Transcripts of the hearings will be made and the entire record of the meetings, including the transcript, will be retained by DOE and made available for inspection at the Freedom of Information Office, Room GA-152 Forrestal Building, 1000 Independence Avenue SW., Washington, D.C., between the hours of 8 a.m. and 4:40 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

Issued in Washington, D.C., on November 13, 1978.

ALVIN L. ALM,
Assistant Secretary, Policy and Evaluation.

PRELIMINARY OUTLINE AND APPROACH: NATIONAL ENERGY PLAN II

OCTOBER 16, 1978.

CHAPTER 1. THE CONTINUING NATIONAL ENERGY DILEMMA

This chapter will define the energy problem which the strategy and plan will have to address.

A. *The emerging domestic energy problem.* A description of past trends in energy production and consumption would highlight the historical growth in energy demand and focus on the peaking and decline of domestic production of oil and gas. It would describe trends from a retrospective point of view, but would not at this point go into projections.

B. *Forecasting the future.* new forecasts will be developed for this report. The forecasts will reflect congressional action on the National Energy Act and the profound uncertainties which characterize both the domestic and international energy situation.

The energy situation in the United States cannot be viewed in isolation from developments in the rest of the world; indeed, worldwide developments through the end of the century will exert profound influences on our domestic energy markets and on the choices which we can make. Thus, our forecasting must begin with an assessment of the worldwide energy picture.

After a long period of self-sufficiency, the United States is now, with many others, subject to the behavior of world oil markets. Imports carry with them prices which can rise or fluctuate, potential for disruption, and the certainty of balance of payments outflows. Many analyses of the domestic problem have made relatively simple or even naive assumptions concerning the future world oil situation. A central focus of the NEP II analysis will be an attempt to understand the range of future possibilities, and to understand both the forces which might shape those possibilities and the uncertainties which characterize them.

The future sources and uses of energy worldwide will be driven principally by three factors:

a. *Worldwide economic growth.* World economic growth rates since the 1973-74 embargo are not well understood. There are disputes whether structural changes have occurred and whether new demographic estimates foresee lower growth rates. We will employ a range to bound the current estimates.

b. *The availability and cost of resources.* This section will deal with availability and costs of resources throughout the world. A number of areas are of interest: The United States, the Organization of Petroleum Exporting Countries (OPEC), the North Sea, the Communist bloc, recent developments in less developed countries. For the longer term, there is also the question of the ultimate availability of resources.

c. *Government policy.* This section will address the success of both international conservation efforts and development policies.

The effects of these factors on the sources and uses of energy are often summarized in projections of world energy prices. The price of oil not only dominates international energy trade but also symbolizes a vast array of complex causes and effects.

Most analyses of the domestic energy situation have taken a single set of world oil prices as given. The NEP II analyses will derive several oil price trajectories based on the factors cited above.

This, then, will be the range of possible outcomes which form the context for forecasting the domestic market and with which domestic energy policy must cope. That policy must recognize the fundamental uncertainties which these ranges reflect.

Like the worldwide energy situation of which it is a part, the domestic energy situation is driven by three major forces in addition to the availability and cost of worldwide resources:

a. *Domestic economic growth.* The state of the U.S. economy will be influenced by its trading position with other economies and especially by the volume and price of energy imports, as well as by internal factors.

b. *The availability and cost of domestic resources.* The extent of domestic resources—and the cost of their development using existing technologies or those that might be developed by the end of the century—are highly uncertain.

c. *U.S. Government policy.* The base case projections will assume current policy as a point of departure for assessment of the Nation's energy future and development of a plan to deal with the remaining problems.

C. *Implications for U.S. energy futures.* The results of this work would be a final set of forecasts of the Nation's energy future, set in varied would contexts, and tied to new assumptions about the passage of the National Energy Act (NEA). The implications for economic growth, supply-demand balances, imports, balance of payments, and the like would be examined. More detail would be provided in subsequent chapters which address the sources and uses of energy in specific time frames.

Much will depend, of course, on factors that cannot be predicted with certainty; these uncertainties must be recognized in describing the future, and in proposing measures to deal with that future.

D. *The objectives of energy policy and the need for action.* The future, as seen through these projections, will seem unsatisfactory to different people for different reasons. Regardless of disagreements on specific policy instruments or on tradeoffs among policy objectives, there is general agreement on those objectives in broad terms. Those objectives are:

a. *Economic growth.* The United States has traditionally viewed real economic growth as a way of meeting higher national goals. We wish at a minimum to maintain and preferrably to enhance the material standard of living of each of our citizens. But, beyond that, we also want to use the dividends of economic growth to advance other national goals, including social equity Recently, growth has also been called on as a means of financing environmental goals and, in fact, energy policy goals.

Preliminary results suggest that under all world energy assumptions, there would be positive benefits to the Nation from reducing imports beyond the levels likely to result from the NEA as it emerges from Congress. The basic issue, which we address later, is the relationship of the benefits of the reduction to the costs of attaining it by

various means. Hence we observe that the objective of economic growth becomes equivalent in certain instances of a goal of reducing the expected level of imports, so long as the costs of the measures employed to do so do not exceed their benefits.

b. *Economic stability.* Large balance of payments outflows, the possibility of interruption of supplies, and the possibility of precipitate price rises, pose threats to the stability as well as the vigor of economic growth and hence, imperil our flexibility for international political action. Substantial costs to the economy are associated with the suddeness of any change in energy prices or flows; those costs may be in addition to the costs implicit in the levels of prices and quantities, because of the long lead times in adjusting capital stock and operating practices to the new price/quantity regimes.

c. *Protection, preservation, and enhancement of the environment.* This goal needs no explanation.

d. *Social equity.* The notion that energy policy should not discriminate on grounds of economic class, race, region, or whatever.

e. *Political objectives.* Energy policy should support the Nation's foreign policy objectives.

The forecasts which we develop are unlikely to portray a world which meets these objectives. The greatest violence is done to the objectives of stable and vigorous economic growth, and that violence is done by the level of imports and their likely prices and price fluctuations, which are likely to result, in turn, from worldwide resource uncertainties and imbalances. The effects for economic objectives are reflected in gross national product (GNP) and balance of payments (BOP).

These observations suggest the need for new energy policy directions.

E. *A National Strategy for Energy.* One of the reasons that a national energy policy has proved so elusive is the lack of consensus on the nature of the problem. Because the use of energy is so pervasive in our society, swings in quantities available and prices will reverbrate throughout the economy. Hence the uncertainties about energy demand, supply and prices are reflected in uncertainties over the overall health of the economy. Because the more abundant and less expensive resources have been depleted, the choices are hard and many policies painful. It is important, however, to establish two principles: Not to avoid taking those steps which are in the Nation's long-term interest merely because there may be costs in the short run; and to design the energy policy which is most efficient and effective in achieving the objectives.

The timing of choices

The structure of the next three chapters is based on the observation that problems—and in particular the potential solutions in the form of alternative policy instruments—differ for the different time periods.

NEP II will seek to predict, understand, and if necessary influence the investment and operating decisions of consumers and entrepreneurs in the different periods:

Short-term (1978-1985), chapter 2. Midterm (1985-2000), chapter 3. Long-term (2000 and beyond), chapter 4.

Each of the next three chapters will be of a similar format.

CHAPTER 2. THE NEAR-TERM ENERGY CHOICES (1978-1985)

A. *The near-term outlook.* These sections provide "snapshots" of the state of the energy systems in the relevant timeframe under each of the forecasted outcomes described earlier: Fuel balances and prices, and their implications for balance of payments and economic growth, give an appraisal of the extent of the problem to be addressed in this timeframe.

Analysis of energy sources: Liquid fuels; gaseous fuels; coal; nuclear power; electricity; and renewable supplies (solar—thermal, electric, wind, biomass, hydro, etc.) (geothermal).

Analysis of energy use sectors: Residential; commercial; industrial; transportation; and electricity.

In the period between now and 1985, the nation's energy supplies and uses will depend primarily on existing technologies and on capital investments which have already been made. The most important effects during this period will probably be the production levels of oil (and perhaps at the very end of the period, gas) from the North Slope of Alaska, but this will not be enough to reverse the overall decline in domestic hydrocarbon production. On the lower 48 States, the extent of tertiary recovery will be the most important determinant.

B. *Candidate options for the near-term.* These sections will inventory the policy instruments that might be employed to influence investment and operating decisions in these periods.

There are many policy tools which the government might, in principle, employ to influence energy supplies and uses. But there are important limitations on the potential scope of Federal action. These constraints must be considered both in choosing policy instruments and in evaluating their effectiveness.

Several perspectives must be considered in identifying the potential actions and in choosing which avenue to pursue:

The first will be based on the problem areas identified in the first section of the chapter, coupled with an assessment of the technologies and resources available to address those problems.

The second set of perspectives will be derived from an examination of the policy tools which government might adopt. These include: Legislative and regulatory measures relating to pricing and allocation.

Mandatory measures: Energy conservation; and Supply characteristics.

Financial incentives; Tax expenditures (credits) to encourage production or saving; Taxes to discourage consumption; Price supports; Guaranteed purchase; Loan guarantees; Grants; Cost-sharing and Buy-back guarantees.

Development of technologies and information: Support of research, development and demonstration and Collection and dissemination of information.

Management of resources and technologies under Federal ownership.

Import policies.

Measures to cope with a supply interruption should one occur: Stockpiles and Emergency powers to allocate and ration supplies.

A third set of perspectives will come from the evaluation of a variety of considerations which may be viewed limiting the flexibility of energy futures as well as policy choices. These constraints include: Existing capital stock; Existing laws and regulations and Policy objectives other than those related directly to energy.

Some of the constraints, traditionally viewed as impacts, contain public policy objectives themselves: Environment; Finance; Budget; Energy and the economy; Institutional factors and Competition.

A fourth set of perspectives will be derived from a distillation of the work of the several policy reviews currently underway in and outside the Department.

A final and extremely important set of perspectives will come from the outreach program, which should give rise to a number of suggestions. Formal mechanisms will be established to provide orderly input.

The choices useful for the near-term will be severely limited by existing technology and infrastructure. Accordingly, the policy instruments and technologies considered in this chapter will have potential for effect in the near term, and will not, for example, contain much R. & D. Some significant shifts in supply and use patterns are possible through pricing, regulatory, and tax changes involving economics, environmental standards, and transportation systems.

CHAPTER 3. THE MIDTERM ENERGY CHOICES (1985-2000)

The format of the midterm chapter will be much like the format of the short-term chapter. However, both the outlook for the period and the options will differ importantly.

Sometime during the period between 1985 and 2000, the world's conventional oil resources are likely to reach a production peak and begin to decline, as the Nation's did in 1970. We cannot predict with any degree of certainty when this will occur or what the specific characteristics of that transition will be, but the range of possibilities implied by our projections will suggest the nature of the problem and the extent of the requirements for further policy action. The restriction due to the character of the existing capital stock will be decreasingly important during this period. However, breakthroughs on a massive scale are unlikely, and the technologies and resources applicable to this period are likely to be those which have already reached, or at least closely approached, the demonstration stage.

Important technical and economic questions remain with respect to a number of these technologies. Thus, commercialization programs will become more important. There is still some time to generate additional information to influence investment decisions made late in the period.

CHAPTER 4. THE LONG-TERM ENERGY CHOICES (2000 AND BEYOND)

Although this chapter shares the format of its predecessors, the nature of the projections, and the nature of the policies which we consider for shaping energy markets in that era, will be markedly different.

The period beyond 2000 will be characterized by the continued decline of conventional oil and gas production. Alternative fossil fuel resources, inexhaustibles and renewables will provide the energy for the period. The capital stock now in place will be of limited relevance after the turn of the century, but that added during the midterm will be important. And, recalling that capital stock added in the midterm will use much of today's technology, there are limits to the

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flexibility in energy sources and uses even by the turn of the century. Much emphasis will necessarily be placed on technologies and resources not now developed, but we must not be beguiled by technological developments which cannot possibly be implemented on a massive scale at a reasonable cost.

We neither can nor should determine precisely the shape of the future we desire: we do not know enough to prejudge. Yet the policies we develop now should build the base of information on resources and technologies which will be required to make investment decisions after the turn of the century.

The overall product of these three chapters, then, will be a list of potential actions tailored to technologies and time frames.

CHAPTER 5. DESIGNING A NATIONAL ENERGY STRATEGY

This chapter steps back from individual actions policy tools, and the like, and attempts to develop some ways of putting actions together in coherent policy packages.

A. *Criteria for designing an energy strategy.* An energy strategy should be formed in furtherance of the objectives set forth in the final chapter. The strategy should address the specific problems identified for each energy source and use sector in each time frame.

A. *Criteria for designing an energy strategy.* An energy strategy should be formed in furtherance of the objectives set forth in the final chapter. The strategy should address the specific problems identified for each energy source and use sector in each time frame.

New analyses will be developed for NEP II. There will be explicit analyses of: Cost effectiveness; environmental impact and impact on competition in energy markets.

Other factors which must be considered include impacts on the ability to finance energy projects, on the budget, and on the economy.

B. *NEP II: An agenda for national action.* This section would describe in detail the Department's administrative, regulatory, legislative and budgetary actions to deal with the problems identified.

This is the essence of the legislative mandate for a plan which shall: "• • • (2) Identify the strategies that should be followed and the resources that should be committed to achieve such objectives, forecasting the level of production and investment necessary in each of the significant energy supply sectors and the level of conservation and investment necessary in each consuming sector, and outlining the appropriate policies and actions of the Federal Government that will maximize the private production and investment necessary in each of the significant energy supply sectors consistent with applicable Federal, State, and local environmental laws, standards, and requirements; and

(3) Recommend legislative and administrative actions necessary and desirable to achieve the objectives of such proposed plan, including legislative recommendations with respect to taxes or tax incentives, Federal funding, regulatory actions, antitrust policy, foreign policy, and international trade." (Sec. 801(b), Pub. L. 95-91).

A major feature of the chapter would be summary supply/demand balances and price trajectories assuming implementation of the recommended plan, and a comparison of those results with the base case forecasts. This assessment will provide a measure of how well the proposals meet the objectives set forth in chapter 1.

Appendices

The basic document is intended to be relatively short and readable. But the topics to be addressed are extremely broad in scope, and many readers will be interested in much more detail on specific analyses and issues. Such detail will be provided in a series of appendices, which will be closely tied to companion volumes.

Much of the work in the five chapters necessarily focused on the traditional energy market measures: supply, demand, imports and price. Chapter 5 would have summarized those impacts of the plan. The first appendices provide an important place for addressing in depth other major dimensions of the energy problem. In each case, the dimension is both constraint and impact. The analyses summarized here will have shaped those discussed in the main body of the report.

A. *Environment.* Appendix A would provide a brief capsule summary of the environmental impacts set forth in greater detail in the Environmental Impact Statement, discuss environment as a constraint on energy development and on the selection of policies, and describe those environmental monitoring and control actions which we propose to be part of NEP II.

B. *Finance.* A major issue in development of energy policy is the prospective ability to finance energy projects deemed to be in the national interest. This appendix will address capital requirements and availability with and without the plan.

C. *Competition.* This appendix will discuss the most significant impacts upon competition and the constraints imposed upon various strategies as a result of the impact on particular industries, or particular groups of firms within or across industry boundaries. The proposed actions will influence competitive behavior and to the extent possible, the actions ought to exert a positive influence on the market place. The impact of individual policies on the competitive environment will be addressed in the earlier chapters (see discussion under chapter 2); this appendix provides a place to summarize and focus on those impacts.

D. *Institutional factors.* A number of institutional considerations affect energy development. A host of regulations at Federal, State, and local levels profoundly influence the production and use of energy. Factors as diverse as energy facility siting, building codes, health and safety regulations, and freight rates for alternative transportation modes are important. This appendix will summarize these constraints; NEP II will also look carefully at the opportunities for actions to overcome those constraints.

E. *Budget.* This appendix will summarize the budget impacts of the proposed plan. Development of the plan will be closely coordinated with the development of the fiscal year 1980 budget.

F. *Energy and the economy.* This appendix will address the impact of the plan on inflation, economic growth, employment, regions, and income groups.

G. *Summary of public participation.* Solicitation of public views is a Departmental commitment as well as a legislative requirement.

"The President shall • • • seek the active participation by regional, State and local agencies and instrumentalities and the private sector through public hearings in cities and rural communities and other appropriate means to insure that the views and proposals of all segments of the economy are taken into account in the formulation and review of such proposed plan." (Pub. L. 95-91, sec. 801(a)(2).)

"The President shall insure that consumers, small business, and a wide range of other interests, including those of individual citizens who have no financial interest in the energy industry, are consulted in the development of the plan." (Pub. L. 95-91, sec. 801(d).)

This appendix will report what was done in soliciting public views and will summarize those inputs. The details of outreach planning will be set forth in a separate outline and plan.

H. *Analysis of energy futures.* The analyses in chapters 1 and 5 will have to be explained in far greater detail than would be possible in the basic report text. In addition, the DOE Organization Act requires that: "The President shall submit to the Congress with the proposed plan a report which shall include—(1) Whatever data and analysis are necessary to support the objectives, resource needs, and policy recommendations contained in such proposed plan;

(2) An estimate of the domestic and foreign energy supplies on which the United States will be expected to rely to meet projected energy needs in an economic manner consistent with the need to protect the environment, conserve natural resources, and implement foreign policy objectives;

(3) "An evaluation of current and foreseeable trends in the price, quality, management, and utilization of energy resources and the effects of those trends on the social, environmental, economic, and other requirements of the Nation • • •" (Pub. L. 95-91, sec. 804(c).)

I. *Analyses of policy options.* The analysis required for chapters 2, 3 and 4 will require far more detail than can be presented in the text.

Companion volumes

Some material will be bound separately.

Volume III. *Data and analysis.* In addition to the data and analysis required to support the basic thrust of the arguments provided in the text, we are required to provide additional data and analyses which should inform and guide the selection of policy initiatives.

Much of this material should be implicit—or even explicit—in the text and appendices. However, special detailed analyses may be required in several areas.

A. *Nonurban energy use.* "The President shall • • • include within the proposed Plan a comprehensive summary of data pertaining to all fuel and energy needs of persons residing in—(A) Areas outside standard metropolitan statistical areas; and

(B) "Areas within standard metropolitan statistical areas which are unincorporated or are specified by the Bureau of the Census, Department of Commerce, as rural areas." (Pub. L. 95-91, sec. 801(a)(3).)

B. *Review of existing programs.* The Act requires the President to submit with the proposed Plan a report which would include: " • • • a review and appraisal of the adequacy and appropriateness of technologies, procedures, and practices (including competitive and regulatory practices) employed by Federal, State, and local governments and nongovernmental entities to achieve the purposes of the plan." (Pub. L. 95-91, sec. 801(c)(5).)

Arguably, this is the burden of the whole report; an issue is to what extent this might require separate treatment.

Volume IV. *Federal R. & D. program inventory.* "The President shall • • • include • • • a summary of research and development efforts funded by the Federal Government to forestall energy shortages, to reduce waste, to foster recycling, to encourage conservation practices, and to otherwise protect environmental quality, including recommendations for developing technologies to accomplish such purposes." (Sec. 801(c)(4).)

Volume V. *Environmental impact statement.* An EIS will be prepared to accompany NEP II. It will follow the traditional outline, and its preparation will be thoroughly integrated with the NEP II process.

Volume VI. *Report on outreach activities.*

Additional materials. As appropriate, additional materials, such as draft legislation and budget justification documents, will be prepared in the traditional formats.

[FR Doc. 78-32289 Filed 11-14-78; 9:02 am]

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sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409), 5 U.S.C. 552b(e)(3).

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[6351-01-M]

1

COMMODITY FUTURES TRADING COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 52601, Monday, November 13, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m. November 14, 1978.

CHANGES IN THE MEETING: Delete proliferation of interest-rate futures contract.

[S-2306-78 Filed 11-13-78; 11:44 am]

[6355-01-M]

2

CONSUMER PRODUCT SAFETY COMMISSION.

DATE AND TIME: November 1, 1978, 9:30 a.m.

LOCATION: Third floor hearing room, 456 Westwood Towers Building, 5401 Westbard Avenue, Bethesda, Md.

STATUS: Partly open to the public/closed to the public.

MATTERS TO BE CONSIDERED:

AGENDA

A. Open to the public

1. Briefing on chain saw standards development. The staff will present a status report on the Chain Saw Manufacturers Association's development of a voluntary safety standard for chain saws. CPSC has been participating in this proceeding.

B. Closed to the public

2. Briefing on PPPA enforcement strategy. The staff and Commission will discuss enforcement policy issues under the Poison Prevention Packaging Act. (Meeting closed under exemption 9: Possible significant frustration of agency action.)
3. Recommendation to issue complaint under CPSA section 15 (OS No. 605). The Commission will consider a staff recommendation to initiate a substantial product hazard adjudicative proceeding under section 15 of the Consumer Product Safety Act, and simultaneously seek an injunction under section 15(g). (Meeting closed under exemption 9: Possible substantial frustration of agency action; and exemption 10: Civil action.)
4. Possible civil penalty matter (OS No. 604). The Commission will consider actions to be taken in a case involving possible violation of section 19(a)(4) of the Consumer Product Safety Act: Knowing violation of reporting requirements involving a substantial product hazard. (Meeting closed under exemption 10: Civil action.)

CONTACT PERSON FOR ADDITIONAL INFORMATION:

Sheldon D. Butts, Office of the Secretary, Suite 300, 1111 18th Street NW., Washington, D.C. 20207, telephone 202-634-7700.

[S-2301-78 Filed 11-13-78; 11:44 am]

[6355-01-M]

3

CONSUMER PRODUCT SAFETY COMMISSION.

DATE AND TIME: November 8, 1978, 10 a.m.

LOCATION: Third floor hearing room, Room 456, Westwood Towers Building, 5401 Westbard Avenue, Bethesda, Md.

STATUS: Open.

MATTERS TO BE CONSIDERED:

AGENDA

Open to the public

1. Briefing on unvented gas-fire space heaters. The staff will brief the Commission on regulatory options available to the Commission for further action concerning unvented gas-fired heaters. The staff is recommending that the Commission initiate the process to propose a standard addressing the hazard of CO poisoning and withdraw its February 14, 1978, proposal to ban unvented gas-fired space heaters.
2. Briefing on temporary program for financial compensation. The staff will brief the Commission on the temporary program for financial compensation of selected participants in CPSC Proceedings.
3. Preliminary briefing on upholstered furniture. The staff will show the Commission a film of mockup preparation and burn tests procedures using different fabrics.

CONTACT PERSON FOR ADDITIONAL INFORMATION:

Sheldon D. Butts, Office of the Secretary, 1111 18th Street NW., Suite 300, Washington, D.C. 20207, telephone 202-634-7700.

[S-2302-78 Filed 11-13-78; 11:44 am]

[6355-01-M]

4

CONSUMER PRODUCT SAFETY COMMISSION.

DATE AND TIME: November 9, 1978, 9:30 a.m.

LOCATION: Third floor hearing room, 1111 18th Street NW., Washington, D.C.

STATUS: Partly open to the public/closed to the public.

MATTERS TO BE CONSIDERED:

A. Open to the public

1. Petition on hot water scald burns, CP 78-15. The Commission will consider a petition from Gordon Vickery, Superintendent of Your Seattle City Light, requesting that the Commission issue a consumer product safety rule requiring that new residential water heaters have a maximum thermostat setting of 130° as well as a warning label describing the hazards of hot water and instructions for setting water heater temperatures. The petition was also signed by Seattle city officials, physicians, engineers and others.
2. Proposed revisions to guidelines for Federal Hazardous Substances Act labeling statements. The Commission will consider revisions to 16 CFR 1500121. which contains a number of general guidelines which manufacturers must meet to satisfy the labeling requirements of section 2(p)(2) of the Federal Hazardous Substances Act. The revisions concern the type size, placement and conspicuousness of labeling statements.
3. Draft PPPA statement of policy concerning Hazardous substances packages in large containers. The Commission will consider a draft FEDERAL REGISTER notice which states that the PPPA requirements for child-resistant packaging do not apply to hazardous substances packaged in containers with a capacity of 5 gallons or more since these substances in these large containers are not "household substances" as defined in the Act.
4. Request for enforcement relief: Kamco/Kayandess. The Commission will consider a request for enforcement relief from the lead-in-paint requirements for certain nursery lamps manufactured by Kamco/Kayandess.

B. Closed to the public

5. PPPA enforment case (OS No. 608). The Commission will consider possible enforcement action in a PPPA case.

CONTACT PERSON FOR ADDITIONAL INFORMATION:

Sheldon D. Butts, Assistant Secretary, Office of the Secretary, 1111 18th Street NW., Suite 300, Washington, D.C. 20207, telephone 202-634-7700.

[S-2303-78 Filed 11-13-78; 11:44 am]

[6355-01-M]

5

CONSUMER PRODUCT SAFETY COMMISSION.

DATE AND TIME: November 15, 1978, 10 a.m.

LOCATION: Room 456, Westwood Towers Building, 5401 Westbard Avenue, Bethesda, Md.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Briefing on asbestos in consumer products. The staff will brief the Commission on staff activities relating to asbestos in consumer products and will also report on the activities of other Federal agencies with regard to asbestos exposure from building surfaces. Staff will also discuss recommendations on Commission strategy for products formulated with asbestos. The briefing will focus on asbestos containing consumer products other than the already banned patching compounds and artificial emberizing materials.
2. Briefing on Christmas tree lights. On March 31, 1977, the Commission published a notice of proceeding to develop a consumer product safety standard for miniature Christmas tree lights. The staff will brief the Commission on various options available to the Commission at this time. Staff will also discuss recent developments on the voluntary standards for miniature Christmas tree lights.
3. Briefing on decorated glassware. The staff will brief the Commission on an Interagency Task Force Report on Lead and Cadmium in Decorated Glass Tumblers.
4. Briefing on definition of "glazed panels." The staff will brief the Commission on the glazed panel" definition of the Safety Standard for Architectural Glazing Materials. The briefing will include a discussion of two pending petitions requesting amendment to the "glazed panel" provisions of the standard (Elwood Buck-CP 78-10, National Glass Dealers Association, CP 78-18). Participating in the staff briefing will be representatives of the three model building code organizations.

CONTACT PERSON FOR ADDITIONAL INFORMATION:

Sheldon D. Butts, Assistant Secretary, Office of the Secretary, Suite 300, 1111 18th Street NW., Washington, D.C. 20207, telephone 202-634-7700.

[S-2304-78 Filed 11-13-78; 11:44 a.m.]

[6355-01-M]

6

CONSUMER PRODUCT SAFETY COMMISSION.

DATE AND TIME: November 16, 1978, 9 a.m.

LOCATION: Third floor hearing room, 1111 18th Street NW., Washington, D.C.

STATUS: Partly open to the public/closed to the public.

MATTERS TO BE CONSIDERED:

Open to the public

Unvented gas-fired space heaters. The Commission will consider regulatory options for further action on unvented gas-fired heaters. On February 14, 1978, the Commission proposed to ban certain unvented gas-fired space heaters. The staff is now recommending that the Commission initiate a process to propose a standard addressing the hazard of CO poisoning and withdraw its ban. A briefing on this matter is scheduled for November 8, 1978.

Closed to the public

4(g)(2) Post employment matter. The Commission will consider a request from a former Commission employee for an interpretation or waiver of section 4(g)(2) of the CPSA.

CONTACT PERSON FOR ADDITIONAL INFORMATION:

Sheldon D. Butts, Assistant Secretary, Office of the Secretary, Suite 300, 1111 18th Street NW., Washington, D.C. 20207, Telephone 202-634-7700.

[S-2305-78 Filed 11-13-78; 11:44 am]

[6712-01-M]

7

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Tuesday, November 14, 1978.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Open Commission meeting.

MATTERS TO BE CONSIDERED:

Agenda, Item No., and Subject

General—1—Temporary authorizations for ship stations in the Maritime Services.

General—2—Applications for review of a ruling of the Chief, Broadcast Bureau partially granting the Freedom of Information Act request filed jointly by Classical Radio for Connecticut, Inc., and the WTIC-FM Listeners Guild (FOIA Control No. 8-74).

General—3—Petitions for special relief filed by Citizens Communications Center requesting approval of reimbursement provisions contained in certain licensee-citizens group agreements.

General—4—Petition for partial reconsideration of the Commission's decision in Mid-Continent Telecasting, Inc. et al., filed by Gilmore Broadcasting Corp.

Safety and special radio services—1—Consolidation of Parts 89, 91, and 93 of the rules governing the private land mobile radio services into a new Part 90.

Safety and special radio services—2—Extension of waiting period for filing applications in the Safety and Special Radio Services after a denial, dismissal with prejudice or after a revocation.

Common carrier—1—American Telephone & Telegraph Co., Hawaiian Telephone Co., and all America Cables & Radio, Inc., revisions to tariffs to implement flow-through of Comsat rate reductions.

Common carrier—2—Application by A.T. & T. for authority to construct a domestic satellite earth station at the Goddard Space Flight Center, Greenbelt, Md. (file no. 652-DSE-P-77).

Common carrier—3—Western Union International, Inc., application for authority to lease and operate 14 56 kilobit circuits in the Westar and Intelsat satellite systems; construct and operate a domestic satellite earth station at each Andover, Maine, and Etam, W. Va.; designate the Goddard Space Flight Center (GSFC), Greenbelt, Md., as a limited purpose gateway; and use the requested facilities to provide leased 56 Kilobit leased channel service to the National Aeronautics and Space Administration (NASA) between GSFC and the Ascension Islands, Bermuda, Chile, Ecuador, and Spain et al. Communications Satellite Corp. applications requesting authority to construct and operate an 11 meter antenna and associated facilities at each Andover, Maine, and Etam, W. Va., and to use said facilities in conjunction with the Westar domestic satellites; to construct two Intelsat standard B antennas and associated facilities at the GSFC, Greenbelt, Md.

Renewal—1—Petition to deny renewal of KOIT Broadcasting, San Francisco, Calif., filed by Community coalition for Media Change.

Aural—1—Application for WOOZ(AM), Whiteville, N.C., filed by Waccamaw Broadcasting Co. et al.

Broadcast—1—Amendment of §§ 1.571(c) and 1.573(d) eliminating the publication of "cut-off" lists in the FEDERAL REGISTER.

Complaints and compliance—1—Request for a declaratory ruling concerning the meaning of the phrase "program or any part thereof" in section 325(a) of the Act.

This meeting may be continued the following workday to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from

the FCC Public Information Office, telephone 202-632-7260.

Issued: November 8, 1978.

[S-2299-78 Filed 11-13-78; 11:44 am]

[6714-01-M]

8

FEDERAL DEPOSIT INSURANCE CORPORATION.

TIME AND DATE: 10:30 a.m., November 17, 1978.

PLACE: Board room, Sixth floor, FDIC Building, 550 17th Street NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Applications for Federal deposit insurance:
First Security Bank & Trust Co., a proposed new bank to be located on the north side of U.S. Highway 80, immediately west of the entrance to Country Place Subdivision, Haughton, La., for Federal deposit insurance.
People's Bank & Trust Co. of Pickett County, a proposed new bank to be located on North Main Street on the northwest side of the Public Square in the Old Post Office Building, Byrdstown, Tenn., for Federal deposit insurance.
Application for consent to establish a branch:
The Western Saving Fund Society of Philadelphia, Haverford, Pa., for consent to establish a branch at 2601-05 South Broad Street, Philadelphia, Pa.
Applications for consent to merge and to establish branches:
Pan American Bank of Inverrary, Lauderhill, Fla., an insured State nonmember bank, for consent to merge under its charter, and with the title of "Pan American Bank of Broward," with Pan American Bank of Broward County, National Association, Oakland Park, Fla., and for consent to establish the sole office of Pan American Bank of Broward County, National Association, as a branch of the resultant bank.
The West Pensacola Bank, Pensacola, Fla., an insured State nonmember bank, for consent to merge under its charter, and with the title of "the West Florida Bank," with the Bank of West Florida, Pensacola, Fla., and for consent to establish the main office and only branch of the Bank of West Florida as branches of the resultant bank.
Applications for consent to merge, to redesignate the main office location, to establish a branch (facility), and to issue and retire capital notes:
Peoples Bank of Hawk Point, Hawk Point, Mo., an insured State nonmember bank, for consent to merge under its charter, and with the title of "Peoples Bank of Lincoln County," with Citizens Bank of Troy, Troy, Mo.; for consent to redesignate its main office location to the present site of the existing main office of Citizens Bank of Troy; for consent to establish the sole office of Peoples Bank of Hawk Point as a branch (facility) of the resultant bank; for consent to issue capital notes as an addition to capital; and for advance consent to retire capital notes.
Application for consent to purchase assets and assume liabilities, to establish branches, and to issue and retire capital notes:
Farmers and Merchants Bank & Trust of Watertown, Watertown, S. Dak., an insured State nonmember bank, for consent to purchase the assets of and assume the liability to pay deposits made in First Security Bank, Morristown, S. Dak.; for consent to establish the two offices of First Security Bank as branches of Farmers & Merchants Bank & Trust of Watertown; for consent to issue capital notes as an addition to capital; and for advance consent to retire capital notes.
Recommendations regarding liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator or liquidating agent of those assets:
Case No. 43,708-L—Franklin National Bank, New York, N.Y.
Memorandum re: Northern Ohio Bank, Cleveland, Ohio.
Recommendations with respect to the initiation or termination of cease-and-desist proceedings, termination-of-insurance proceedings, or suspension or removal proceedings against certain insured banks or officers or directors thereof:
Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).
Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:
Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

AGENCY HOLDING THE MEETING: Federal Deposit Insurance Corporation.

TIME AND DATE: 10 a.m., November 17, 1978.

PLACE: Board room, Sixth floor, FDIC Building, 550 17th Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Disposition of minutes of previous meetings.
Memorandum and resolution proposing amendments to the current delegations of authority relating to the manning table and to the budget of administrative expenses.
Memorandum and resolution proposing the adoption of a "Federal Deposit Insurance Corporation Investment Program."
Memorandum proposing the adoption of a Corporation policy for the acquisition of supplies and services.
Memorandum and resolution proposing the adoption of a liquidation graded salary plan.
Memorandum proposing the granting of a limited power of attorney in connection with a claim for refund of minimum tax assessments on tax preference items filed by the Corporation as Receiver of American Bank & Trust, Orangeburg, S.C.
Memorandum proposing the continuation of the Corporation's lease for Division of Bank Supervision Training Center lodging facilities and the related cleaning services contract.
Reports of committees and officers:
Minutes of the actions approved by the Committee on Liquidations, Loans and Purchases of Assets pursuant to authority delegated by the Board of Directors.
Reports of the Director of the Division of Bank Supervision with respect to applications or requests approved by him and the various Regional Directors pursuant to authority delegated by the Board of Directors.
Reports of security transactions authorized by the Acting Chairman.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Alan R. Miller, Executive Secretary of the Corporation, at 202-389-4446.

CONTACT PERSON FOR MORE INFORMATION:

Alan R. Miller, Executive Secretary, 202-389-4446.

[S-2296-78 Filed 11-13-78; 11:44 am]

[6210-01-M]

9

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

TIME AND DATE: 10 a.m., Friday, November 17, 1978. The closed portion of the meeting will commence at the conclusion of the open discussion.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Part of the meeting will be open; part will be closed.

MATTERS TO BE CONSIDERED:

Open portion:

1. Information on pricing of Federal Reserve services to be submitted to the Congress for consideration in connection with pending legislation dealing with fair competition among financial institutions and soundness of the commercial banking system.
2. Proposal by the Board's staff that consideration of further amendments to Regulation Z (Truth in Lending) be deferred until the Congress deals with pending simplification legislation.
3. Any agenda items carried forward from a previously announced meeting.

NOTE.—The open portion of this meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling 202-452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

Closed portion:

1. Proposed Systemwide facsimile network, including competitive procurement alternatives.
2. Proposed salary structure adjustments at Federal Reserve Banks.
3. Proposals relating to internal personnel procedures governing mandatory retirement for Federal Reserve System employees.
4. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
5. Any agenda items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board, 202-452-3204.

Dated: November 9, 1978.

THEODORE E. ALLISON,
Secretary of the Board.

[S-2297-78 Filed 11-13-78; 11:44 am]

[7020-02-M]

10

[USITC SE-78-57]

UNITED STATES INTERNATIONAL TRADE COMMISSION.

TIME AND DATE: 10 a.m., Tuesday, November 21, 1978.

PLACE: Room 117, 701 E Street NW., Washington, D.C. 20436.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions open to the public:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints (if necessary): (a) Wire nails (Docket No. 539).
5. Investigation 337-TA-48 (alternating pressure pads)—Suspension of hearing (see action jacket GC-78-112 (previously circulated).
6. Presentation of awards to certain staff mambers.
8. Any items left over from previous agenda.

Portions closed to the public:

7. Status report on Investigation 332-101 (MTN study), if necessary.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth R. Mason, Secretary, 202-523-0161.

[S-2308-78 Filed 11-13-78; 3:33 pm]

[7590-01-M]

11

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: Week of November 13, 1978.

PLACE: Commissioners Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE CONSIDERED:

THURSDAY, NOVEMBER 16

9:30 a.m.—1. Discussion of Memorandum of Understanding with EPA (approximately one-half hour, public meeting). 2. Discussion and vote on amendment to 10 CFR Part 9—Waiver or Reduction of Fees Under the Freedom of Information Act (approximately one-half hour, public meeting). 3. Discussion of personnel matter (approximately 1 hour, closed—exemption 6).
1:30 p.m.—1. Discussion of Export-Import licensing Review Procedures/General Administration Meeting (approximately 1 hour, rescheduled from November 8, 1978), public meeting). 2. Briefing on safeguards technical assistance and research contractual projects (approximately 1 hour, public meeting).

FRIDAY, NOVEMBER 17

9 a.m.—1. Briefing by executive branch on nonproliferation matters (approximately 1½ hours, closed—exemption 1). 2. Discussion of cross-examination of consultants to the ACRS at a licensing proceeding (approximately 1 hour, public meeting).
1:30 p.m.—1. Discussion of waste management program requirements (including IRG follow-up items; Hart Study; SECY-78-276A revision) (approximeately 1 hour, public meeting). 2. Briefing on policy concerning differing professional opinions (see Shearon Harris Order) (approximately 1 hour, public meeting).

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee, 202-634-1410.

WALTER MAGEE,
Office of the Secretary.

NOVEMBER 9, 1978.

[S-2298-78 Filed 11-14-78; 11:44 am]

[7715-01-M]

12

POSTAL RATE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 51750, November 6, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., November 9, 1978.

CHANGES IN THE MEETING: Re<scheduled for Tuesday, November 21, 1978, 10:30 a.m.

CONTACT PERSON FOR MORE INFORMATION:

Ned Callan, Information Officer, Postal Rate Commission, Room 500, 2000 L Street NW., Washington, D.C. 20268, telephone 202-254-5614.

[S-2307-78 Filed 11-13-78; 11:44 am]

[8010-01-M]

13

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 51897, November 7, 1978.

STATUS: Closed meetings.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

CHANGES IN THE MEETINGS: Additional items to be considered.

The following additional items were considered by the Commission at a closed meeting held on Wednesday, November 8, 1978, at 10 a.m.:

Access to investigative files by Federal, State, or self-regulatory authorities.
Chapter X proceeding.

The following item was considered by the Commission at a closed meeting held on Thursday, November 9, 1978, at 11:55 a.m.:

Formal order of investigation.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items considered at the closed meetings may be so considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A), and (10) and 17 CFR 200.402(a) (8), (9)(i), and (10).

Chairman Williams and Commissioners Evans and Pollack determined that Commission business required the above changes and that no earlier notice thereof was possible.

NOVEMBER 9, 1978.

[S-2300-78 Filed 11-13-78; 11:44 am]

[8240-01-M]

14

UNITED STATES RAILWAY ASSOCIATION.

TIME AND DATE: November 15, 1978, 9 a.m.

PLACE: Board Room, Room 2-500, fifth floor, 955 L'Enfant Plaza North SW., Washington, D.C. 20595.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED BY THE EXECUTIVE COMMITTEE OF THE BOARD OF DIRECTORS:

Portion open to the public (9 a.m.):

1. Consideration of D&H loan request.

CONTACT PERSON FOR MORE INFORMATION:

Alex Bilanow, 202-426-4250.

[S-2309-78 Filed 11-13-78; 3:33 pm]

V 43/221
NO 15 78
UMI

federal register

WEDNESDAY, NOVEMBER 15, 1978
PART II



DEPARTMENT OF STATE

federal register

FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976

Applications for Permits to Fish off the Coasts of the United States

V 43 / 221 NOV 15 1978 UMI

[4710-09-M]

DEPARTMENT OF STATE

[Public Notice 640]

FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976

Applications for Permits To Fish Off the Coasts of the United States

The Fishery Conservation and Management Act of 1976 (Pub. L. 94-265) as amended (the "Act") provides that no fishing shall be conducted by foreign fishing vessels in the Fishery Conservation Zone of the United States after February 28, 1977, except in accordance with a valid and applicable permit issued pursuant to section 204 of the Act.

The Act also requires that a notice of receipt of all applications for such permits, a summary of the contents of such applications, and the names of the Regional Fishery Management Councils that receive copies of these applications, be published in the FEDERAL REGISTER.

Applications have been received from the Governments of Cuba, the Republic of China, the German Democratic Republic, Italy, Japan, the Polish People's Republic, Spain, and the Union of Soviet Socialist Republics for fishing during 1978 and 1979, and are reproduced herewith. Individual vessel applications for fishing during 1978 and 1979 have been received from these foreign nations and are summarized herein.

If additional information regarding any applications is desired, it may be obtained from: Permits and Regulations Division (F37), National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20535, telephone 202-634-7265.

Dated: November 3, 1978.

JAMES A. STORER,
Director, Office of Fisheries Affairs.

NATION/VESSEL NAME/VESSEL TYPE	APPLICATION NO.	FISHERY	ACTIVITY
CUBA			
RIO SALADO LARGE STERN TRAWLER	CU-79-0104	NWA	1
OCEANO ANTARTICO CARGO/TRANSPORT VESSEL	CU-79-0107	NWA	3
OCEANO INDICO CARGO/TRANSPORT VESSEL	CU-79-0106	NWA	3
OCEANO PACIFICO CARGO/TRANSPORT VESSEL	CU-79-0109	NWA	3
OCEANO ATLANTICO CARGO/TRANSPORT VESSEL	CU-79-0110	NWA	3
LAS GUASIMAS TANKER FUEL/WATER	CU-79-0111	NWA	3
PLAYA COLORADA LARGE STERN TRAWLER	CU-79-0112	NWA	1
PLAYA GIRON LARGE STERN TRAWLER	CU-79-0114	NWA	1
PLAYA VARADERO LARGE STERN TRAWLER	CU-79-0115	NWA	1
RIO SAGUA LARGE STERN TRAWLER	CU-79-0117	NWA	1
RIO TOA LARGE STERN TRAWLER	CU-79-0120	NWA	1
RIO MAYARI LARGE STERN TRAWLER	CU-79-0127	NWA	1
GOLFO DE GUANAHCABIBES CARGO/TRANSPORT VESSEL	CU-79-0128	NWA	3
GOLFO DE GUACANAYABO CARGO/TRANSPORT VESSEL	CU-79-0133	NWA	3
RIO ZAZA LARGE STERN TRAWLER	CU-79-0134	NWA	1
RIO YATERAS LARGE STERN TRAWLER	CU-79-0135	NWA	1

[4710-09-C]

FISHERY CODES AND DESIGNATION OF REGIONAL COUNCILS WHICH REVIEW APPLICATIONS FOR INDIVIDUAL FISHERIES ARE AS FOLLOWS:

CODE	FISHERY	REGIONAL COUNCIL
ABS	Atlantic Billfishes and Sharks	New England Mid-Atlantic South Atlantic Gulf of Mexico Caribbean
BSA	Bering Sea and Aleutian Islands Trawl, Longline and Herring Gillnet	North Pacific
CRB	Crab (Bering Sea)	North Pacific
GOA	Gulf of Alaska	North Pacific
NWA	Northwest Atlantic	New England Mid-Atlantic
SMT	Seamount Groundfish (Pacific Ocean)	Western Pacific
SNL	Snails (Bering Sea)	North Pacific
WOC	Washington, Oregon, California Trawl	Pacific

ACTIVITY CODES SPECIFY CATEGORIES OF FISHING OPERATIONS APPLIED FOR AS FOLLOWS:

ACTIVITY CODE	FISHING OPERATIONS
1	Catching, processing, and other support.
2	Processing and other support only.
3	Other support only.

NATION/VESSEL NAME/VESSEL TYPE	APPLICATION NO.	FISHERY	ACTIVITY
CUBA			
RIO CONTRAMAESTRE LARGE STERN TRAWLER	CU-79-0136	NWA	1
RIO JIBACOA LARGE STERN TRAWLER	CU-79-0137	NWA	1
RIO MAYABEQUE LARGE STERN TRAWLER	CU-79-0138	NWA	1
GOLFO DE BATABANO CARGO/TRANSPORT VESSEL	CU-79-0139	NWA	3
OCEANO ARTICO CARGO/TRANSPORT VESSEL	CU-79-0140	NWA	3
CAMARON PATROL VESSEL (CARGO)	CU-79-0141	NWA	3
CAIBARIEN PATROL VESSEL (CARGO)	CU-79-0142	NWA	3
GERMAN DEM REP			
BREITLING CARGO/TRANSPORT VESSEL	GC-79-0012	NWA	3
WALTER DEHMEL LARGE STERN TRAWLER	GC-79-0023	NWA	1
EVERSHAGEN CARGO/TRANSPORT VESSEL	GC-79-0027	NWA	3
F. C. WEISKOPF LARGE STERN TRAWLER	GC-79-003C	NWA	1
ITALY			
ASSUNTA TONTINI MADRE LARGE STERN TRAWLER	IT-79-0001	NWA	1
TONTINI PESCA TERZO MEDIUM STERN TRAWLER	IT-79-0002	NWA	1
TONTINI PESCA QUARTO LARGE STERN TRAWLER	IT-79-0003	NWA	1
ITALY			
DE GIOSA T. MEDIUM STERN TRAWLER	IT-79-0004	NWA	1
AMORUSO SETTIMO MEDIUM STERN TRAWLER	IT-79-0005	NWA	1
MASCARETTI PRIMO MEDIUM STERN TRAWLER	IT-79-0006	NWA	1
AIRONE MEDIUM STERN TRAWLER	IT-79-0008	NWA	1
AMORUSO SESTO MEDIUM STERN TRAWLER	IT-79-0009	NWA	1
GABRIELLA C. MEDIUM STERN TRAWLER	IT-79-001C	NWA	1
CURRADO SECONDO LARGE STERN TRAWLER	IT-79-0012	NWA	1
ANTONIETTA MADRE MEDIUM STERN TRAWLER	IT-79-0013	NWA	1
AMORUSO QUARTO MEDIUM STERN TRAWLER	IT-79-0014	NWA	1
CARLO DI FAZIO MEDIUM STERN TRAWLER	IT-79-0015	NWA	1
DE GIOSA GIUSEPPE MEDIUM STERN TRAWLER	IT-79-0016	NWA	1
STANISLAVA LARGE STERN TRAWLER	IT-79-0019	NWA	1
MARIA C. MEDIUM STERN TRAWLER	IT-79-0021	NWA	1
JAPAN			
KAIYO MARU NO. 7 MEDIUM STERN TRAWLER	JA-79-0431	BSA	1
DAIKICHI MARU NO. 32 MEDIUM STERN TRAWLER	JA-79-0554	BSA	1

NATION/VESSEL NAME/VESSEL TYPE	APPLICATION NO.	FISHERY	ACTIVITY
JAPAN			
YOSHI MARU NO. 81 MEDIUM STERN TRAWLER	JA-79-0555	BSA	1
EIKYU MARU NO. 26 LONGLINE FISHING VESSEL	JA-79-0622	GOA/BSA/CRB	1
TAISEI MARU NO. 1 LONGLINE FISHING VESSEL	JA-79-1200	ABS	1
ZENKO MARU NO. 38 LONGLINE FISHING VESSEL	JA-79-1201	ABS	1
TAIYO MARU NO. 1 LONGLINE FISHING VESSEL	JA-79-1204	ABS	1
KYUWA MARU NO. 27 LONGLINE FISHING VESSEL	JA-79-1206	ABS	1
CHOSHO MARU NO. 21 LONGLINE FISHING VESSEL	JA-79-1207	ABS	1
CHOSHO MARU NO. 17 LONGLINE FISHING VESSEL	JA-79-1208	ABS	1
OTOSHIRO MARU NO. 15 LONGLINE FISHING VESSEL	JA-79-1209	ABS	1
OTORI MARU NO. 38 LONGLINE FISHING VESSEL	JA-79-1210	ABS	1
KOKEI MARU NO. 8 LONGLINE FISHING VESSEL	JA-79-1211	ABS	1
SHINYO MARU NO. 11 LONGLINE FISHING VESSEL	JA-79-1213	ABS	1
MATSUEI MARU NO. 11 LONGLINE FISHING VESSEL	JA-79-1214	ABS	1
MATSUEI MARU NO. 38 LONGLINE FISHING VESSEL	JA-79-1215	ABS	1
NASA MARU NO. 28 LONGLINE FISHING VESSEL	JA-79-1216	ABS	1
KUSHIN MARU NO. 28 LONGLINE FISHING VESSEL	JA-79-1217	ABS	1
JAPAN			
KUSHIN MARU NO. 8 LONGLINE FISHING VESSEL	JA-79-1218	ABS	1
DAI MARU NO. 35 LONGLINE FISHING VESSEL	JA-79-1219	ABS	1
DAI MARU NO. 37 LONGLINE FISHING VESSEL	JA-79-1220	ABS	1
FUKU MARU NO. 5 LONGLINE FISHING VESSEL	JA-79-1222	ABS	1
NANKAI MARU NO. 115 LONGLINE FISHING VESSEL	JA-79-1225	ABS	1
DAITO MARU NO. 18 LONGLINE FISHING VESSEL	JA-79-1227	ABS	1
DAITO MARU NO. 8 LONGLINE FISHING VESSEL	JA-79-1228	ABS	1
DAITO MARU NO. 5 LONGLINE FISHING VESSEL	JA-79-1229	ABS	1
DAITO MARU NO. 3 LONGLINE FISHING VESSEL	JA-79-1230	ABS	1
DAITO MARU NO. 2 LONGLINE FISHING VESSEL	JA-79-1231	ABS	1
AZUMA MARU NO. 37 LONGLINE FISHING VESSEL	JA-79-1232	ABS	1
KORYO MARU NO. 5 LONGLINE FISHING VESSEL	JA-79-1234	ABS	1
KORYO MARU NO. 51 LONGLINE FISHING VESSEL	JA-79-1235	ABS	1
SUMIYOSHI MARU NO. 86 LONGLINE FISHING VESSEL	JA-79-1236	ABS	1
SUMIYOSHI MARU NO. 52 LONGLINE FISHING VESSEL	JA-79-1237	ABS	1
SUMIYOSHI MARU NO. 73 LONGLINE FISHING VESSEL	JA-79-1238	ABS	1

NATION/VESSEL NAME/VESSEL TYPE	APPLICATION NO.	FISHERY	ACTIVITY
JAPAN			
SUMIYOSHI MARU NO. 68 LONGLINE FISHING VESSEL	JA-79-1239	ABS	1
SUMIYOSHI MARU NO. 55 LONGLINE FISHING VESSEL	JA-79-1240	ABS	1
SUMIYOSHI MARU NO. 71 LONGLINE FISHING VESSEL	JA-79-1242	ABS	1
SUMIYOSHI MARU NO. 75 LONGLINE FISHING VESSEL	JA-79-1243	ABS	1
SUMIYOSHI MARU NO. 16 LONGLINE FISHING VESSEL	JA-79-1244	ABS	1
SUMIYOSHI MARU NO. 81 LONGLINE FISHING VESSEL	JA-79-1245	ABS	1
SUMIYOSHI MARU NO. 65 LONGLINE FISHING VESSEL	JA-79-1246	ABS	1
SUMIYOSHI MARU NO. 3 LONGLINE FISHING VESSEL	JA-79-1248	ABS	1
SUMIYOSHI MARU NO. 58 LONGLINE FISHING VESSEL	JA-79-1249	ABS	1
KOYO MARU NO. 65 LONGLINE FISHING VESSEL	JA-79-1250	ABS	1
KOYO MARU NO. 6 LONGLINE FISHING VESSEL	JA-79-1251	ABS	1
MARUKYOBOSHI MARU NO. 58 LONGLINE FISHING VESSEL	JA-79-1252	ABS	1
DAIEI MARU NO. 12 LONGLINE FISHING VESSEL	JA-79-1254	ABS	1
KORYO MARU NO. 11 LONGLINE FISHING VESSEL	JA-79-1255	ABS	1
KOYO MARU NO. 15 LONGLINE FISHING VESSEL	JA-79-1256	ABS	1
CHOKO MARU NO. 68 LONGLINE FISHING VESSEL	JA-79-1261	ABS	1
JAPAN			
TAIKO MARU NO. 66 LONGLINE FISHING VESSEL	JA-79-1263	ABS	1
SHINMEI MARU NO. 58 LONGLINE FISHING VESSEL	JA-79-1264	ABS	1
ZENSEI MARU NO. 11 LONGLINE FISHING VESSEL	JA-79-1265	ABS	1
ZENSEI MARU NO. 23 LONGLINE FISHING VESSEL	JA-79-1266	ABS	1
JUNKO MARU NO. 6 LONGLINE FISHING VESSEL	JA-79-1267	ABS	1
DAIEI MARU NO. 32 LONGLINE FISHING VESSEL	JA-79-1268	ABS	1
KAISEI MARU NO. 18 LONGLINE FISHING VESSEL	JA-79-1269	ABS	1
OJI MARU NO. 1 LONGLINE FISHING VESSEL	JA-79-1271	ABS	1
TAISEI MARU NO. 2 LONGLINE FISHING VESSEL	JA-79-1272	ABS	1
OTORI MARU NO. 18 LONGLINE FISHING VESSEL	JA-79-1274	ABS	1
NADAYOSHI MARU NO. 20 LONGLINE FISHING VESSEL	JA-79-1275	ABS	1
KYOEI MARU NO. 3 LONGLINE FISHING VESSEL	JA-79-1276	ABS	1
YASU MARU NO. 8 LONGLINE FISHING VESSEL	JA-79-1277	ABS	1
TAKE MARU NO. 31 LONGLINE FISHING VESSEL	JA-79-1278	ABS	1
MASA MARU NO. 18 LONGLINE FISHING VESSEL	JA-79-1279	ABS	1
NAKA MARU NO. 38 LONGLINE FISHING VESSEL	JA-79-1280	ABS	1

NOTICES

NATION/VESSEL NAME/VESSEL TYPE	APPLICATION NO.	FISHERY	ACTIVITY
JAPAN			
SEISYU MARU NO. 17 LONGLINE FISHING VESSEL	JA-79-1281	ABS	1
DAITO MARU NO. 28 LONGLINE FISHING VESSEL	JA-79-1283	ABS	1
KATSUEI MARU NO. 18 LONGLINE FISHING VESSEL	JA-79-1284	ABS	1
AZUMA MARU NO. 18 LONGLINE FISHING VESSEL	JA-79-1291	ABS	1
AZUMA MARU NO. 82 LONGLINE FISHING VESSEL	JA-79-1292	ABS	1
CHOKYU MARU NO. 2 LONGLINE FISHING VESSEL	JA-79-1293	ABS	1
CHOKYU MARU NO. 25 LONGLINE FISHING VESSEL	JA-79-1294	ABS	1
FUJIURA MARU NO. 17 LONGLINE FISHING VESSEL	JA-79-1295	ABS	1
FUKUKYU MARU NO. 8 LONGLINE FISHING VESSEL	JA-79-1296	ABS	1
FUKUKYU MARU NO. 25 LONGLINE FISHING VESSEL	JA-79-1297	ABS	1
IIJIMA MARU NO. 8 LONGLINE FISHING VESSEL	JA-79-1298	ABS	1
ISOMAE MARU NO. 11 LONGLINE FISHING VESSEL	JA-79-1299	ABS	1
KOSHIN MARU NO. 2 LONGLINE FISHING VESSEL	JA-79-1300	ABS	1
KOCHI MARU NO. 66 LONGLINE FISHING VESSEL	JA-79-1301	ABS	1
KOTOSHIRO-MARU NO. 7 LONGLINE FISHING VESSEL	JA-79-1302	ABS	1
KOTOSHIRO-MARU NO. 15 LONGLINE FISHING VESSEL	JA-79-1303	ABS	1
JAPAN			
KOTOSHIRO-MARU NO. 38 LONGLINE FISHING VESSEL	JA-79-1304	ABS	1
KOYO MARU NO. 31 LONGLINE FISHING VESSEL	JA-79-1305	ABS	1
MARUKYOBOSHI MARU NO. 38 LONGLINE FISHING VESSEL	JA-79-1306	ABS	1
OTORI MARU NO. 8 LONGLINE FISHING VESSEL	JA-79-1307	ABS	1
SHOSHIN MARU NO. 82 LONGLINE FISHING VESSEL	JA-79-1308	ABS	1
TAISEI MARU NO. 3 LONGLINE FISHING VESSEL	JA-79-1309	ABS	1
TAIYO MARU NO. 32 LONGLINE FISHING VESSEL	JA-79-1310	ABS	1
TOEI MARU NO. 6 LONGLINE FISHING VESSEL	JA-79-1311	ABS	1
TOEI MARU NO. 8 LONGLINE FISHING VESSEL	JA-79-1312	ABS	1
TOEI MARU NO. 31 LONGLINE FISHING VESSEL	JA-79-1313	ABS	1
YUKO MARU NO. 18 LONGLINE FISHING VESSEL	JA-79-1314	ABS	1
ZENKO MARU NO. 63 LONGLINE FISHING VESSEL	JA-79-1315	ABS	1
ZENSEI MARU NO. 18 LONGLINE FISHING VESSEL	JA-79-1316	ABS	1
POLAND			
LEPUS LARGE STERN TRAWLER	PL-79-0001	WOC,GOA,BSA	1
LYRA LARGE STERN TRAWLER	PL-79-0002	WOC,GOA,BSA	1

NOTICES

NATION/VESSEL NAME/VESSEL TYPE	APPLICATION NO.	FISHERY	ACTIVITY
POLAND			
TUCANA LARGE STERN TRAWLER	PL-79-0003	WOC,GOA,BSA	1
PERSEUS LARGE STERN TRAWLER	PL-79-0004	WOC,GOA,BSA	1
DENEBOLA LARGE STERN TRAWLER	PL-79-0005	WOC,GOA,BSA	1
POLLUX LARGE STERN TRAWLER	PL-79-0006	WOC,GOA,BSA	1
GRINWAL LARGE STERN TRAWLER	PL-79-0007	NWA,WOC,GOA,BSA	1
GARNELA LARGE STERN TRAWLER	PL-79-0008	NWA,WOC,GOA,BSA	1
WALEN LARGE STERN TRAWLER	PL-79-0009	NWA,WOC,GOA,BSA	1
WLOCZNIK LARGE STERN TRAWLER	PL-79-0010	NWA,WOC,GOA,BSA	1
15 LARGE STERN TRAWLER	PL-79-0011	NWA,WOC,GOA,BSA	1
MUSTEL LARGE STERN TRAWLER	PL-79-0012	NWA,WOC,GOA,BSA	1
FOKA LARGE STERN TRAWLER	PL-79-0013	NWA,WOC,GOA,BSA	1
PLETWAL LARGE STERN TRAWLER	PL-79-0014	NWA,WOC,GOA,BSA	1
LANGUSTA LARGE STERN TRAWLER	PL-79-0015	NWA,WOC,GOA,BSA	1
SEJWAL LARGE STERN TRAWLER	PL-79-0016	NWA,WOC,GOA,BSA	1
KASZALOT LARGE STERN TRAWLER	PL-79-0017	NWA,WOC,GOA,BSA	1
HUMBAK LARGE STERN TRAWLER	PL-79-0019	NWA,WOC,GOA,BSA	1
POLAND			
KABRYL LARGE STERN TRAWLER	PL-79-0022	NWA,WOC,GOA,BSA	1
LODOWIK LARGE STERN TRAWLER	PL-79-0023	NWA	1
LASKARA LARGE STERN TRAWLER	PL-79-0024	NWA	1
LIKODYN LARGE STERN TRAWLER	PL-79-0025	NWA	1
KORWIN LARGE STERN TRAWLER	PL-79-0026	NWA	1
KASZUBY 2 CARGO/TRANSPORT VESSEL	PL-79-0027	WOC,GOA,BSA,NWA	3
MALNIAK CARGO/TRANSPORT VESSEL	PL-79-0029	WOC,GOA,BSA,NWA	3
LEWANTER CARGO/TRANSPORT VESSEL	PL-79-0030	WOC,GOA,BSA,NWA	3
POMORZE CARGO/TRANSPORT VESSEL	PL-79-0031	WOC,GOA,BSA,NWA	3
BURAN CARGO/TRANSPORT VESSEL	PL-79-0033	WOC,GOA,BSA,NWA	3
MARLIN LARGE STERN TRAWLER	PL-79-0034	NWA,WOC,GOA,BSA	1
ANTARES LARGE STERN TRAWLER	PL-79-0037	WOC,GOA,BSA	1
ARCTURUS LARGE STERN TRAWLER	PL-79-0038	WOC,GOA,BSA	1
KALMAR LARGE STERN TRAWLER	PL-79-0039	NWA,WOC,GOA,BSA	1
SAGITTA LARGE STERN TRAWLER	PL-79-0040	WOC,GOA,BSA	1
ZULAWY CARGO/TRANSPORT VESSEL	PL-79-0041	WOC,GOA,BSA,NWA	3

NATION/VESSEL NAME/VESSEL TYPE	APPLICATION NO.	FISHERY	ACTIVITY
POLAND			
COLUMBIA LARGE STERN TRAWLER	PL-79-0042	WOC,GOA,BSA	1
CENTAURUS LARGE STERN TRAWLER	PL-79-0043	WOC,GOA,BSA	1
CRATER LARGE STERN TRAWLER	PL-79-0044	WOC,GOA,BSA	1
TUNEK LARGE STERN TRAWLER	PL-79-0045	NWA,WOC,GOA,BSA	1
AMAREL LARGE STERN TRAWLER	PL-79-0046	NWA	1
FINWAL LARGE STERN TRAWLER	PL-79-0047	NWA,WOC,GOA,BSA	1
GEMINI LARGE STERN TRAWLER	PL-79-0048	WOC,GOA,BSA	1
GRYF POMORSKI CARGO/TRANSPORT VESSEL	PL-79-0049	WOC,GOA,BSA,NWA	3
KOLIAS LARGE STERN TRAWLER	PL-79-0050	NWA,WOC,GOA,BSA	1
LIKOWAL LARGE STERN TRAWLER	PL-79-0051	NWA	1
MANTA LARGE STERN TRAWLER	PL-79-0052	NWA,WOC,GOA,BSA	1
NARWAL LARGE STERN TRAWLER	PL-79-0053	NWA,WOC,GOA,BSA	1
TAZAR LARGE STERN TRAWLER	PL-79-0054	NWA,WOC,GOA,BSA	1
VEGA LARGE STERN TRAWLER	PL-79-0055	WOC,GOA,BSA	1
SPAIN			
CARVISO UNO SMALL STERN TRAWLER	SP-79-0004	NWA	1
SPAIN			
PEIXE DO MAR SIDE TRAWLER	SP-79-0005	NWA	1
RIBERA DEL ORBIGO SIDE TRAWLER	SP-79-0006	NWA	1
CAMPA DE TORRES MEDIUM STERN TRAWLER	SP-79-0008	NWA	1
ANUSKA SIDE TRAWLER	SP-79-0012	NWA	1
AREA OCVA SIDE TRAWLER	SP-79-0013	NWA	1
CONBAROYA II MEDIUM STERN TRAWLER	SP-79-0015	NWA	1
TORALLA MEDIUM STERN TRAWLER	SP-79-0016	NWA	1
PESCAPUERTA PRIKERO SIDE TRAWLER	SP-79-0019	NWA	1
PESCAPUERTA TERCERO MEDIUM STERN TRAWLER	SP-79-0020	NWA	1
PLAYA DE MOGOR MEDIUM STERN TRAWLER	SP-79-0021	NWA	1
XEITOSINO MEDIUM STERN TRAWLER	SP-79-0022	NWA	1
PUENTE MINOR MEDIUM STERN TRAWLER	SP-79-0023	NWA	1
MADROA SMALL STERN TRAWLER	SP-79-0024	NWA	1
CHICHA TOUZA MEDIUM STERN TRAWLER	SP-79-0025	NWA	1
PUXEIROS SIDE TRAWLER	SP-79-0028	NWA	1
MONTE FURADO MEDIUM STERN TRAWLER	SP-79-0029	NWA	1

NATION/VESSEL NAME/VESSEL TYPE	APPLICATION NO.	FISHERY	ACTIVITY
SPAIN			
CANTON DE CORA MEDIUM STERN TRAWLER	SP-79-0030	NWA	1
CORBA MEDIUM STERN TRAWLER	SP-79-0031	NWA	1
PESCAMAR UNO MEDIUM STERN TRAWLER	SP-79-0034	NWA	1
LAXE DOS PICOS MEDIUM STERN TRAWLER	SP-79-0035	NWA	1
CREALLO MEDIUM STERN TRAWLER	SP-79-0036	NWA	1
COSTA DE NORUEGA MEDIUM STERN TRAWLER	SP-79-0037	NWA	1
TITO MARQUEZ MEDIUM STERN TRAWLER	SP-79-0038	NWA	1
VIRIATOS MEDIUM STERN TRAWLER	SP-79-0039	NWA	1
MOUTA MEDIUM STERN TRAWLER	SP-79-0040	NWA	1
ALTAMAR SIDE TRAWLER	SP-79-0042	NWA	1
NUSKA MEDIUM STERN TRAWLER	SP-79-0043	NWA	1
PERCA MEDIUM STERN TRAWLER	SP-79-0045	NWA	1
FRAGANA MEDIUM STERN TRAWLER	SP-79-0046	NWA	1
CONBARCYA III MEDIUM STERN TRAWLER	SP-79-0047	NWA	1
NOGUEIROSA SIDE TRAWLER	SP-79-0048	NWA	1
NUEVO MUNDO MEDIUM STERN TRAWLER	SP-79-0050	NWA	1
SPAIN			
VILLA DE MARIN MEDIUM STERN TRAWLER	SP-79-0051	NWA	1
FUENTE TORALLA SMALL STERN TRAWLER	SP-79-0052	NWA	1
ZAMANES SIDE TRAWLER	SP-79-0053	NWA	1
COSTA DE NORMANDIA MEDIUM STERN TRAWLER	SP-79-0054	NWA	1
MAR DE GALILEA SMALL STERN TRAWLER	SP-79-0055	NWA	1
MANTXOPE MEDIUM STERN TRAWLER	SP-79-0056	NWA	1
ANA MARIA GANDON MEDIUM STERN TRAWLER	SP-79-0057	NWA	1
SUEMAR UNO MEDIUM STERN TRAWLER	SP-79-0059	NWA	1
MARU MEDIUM STERN TRAWLER	SP-79-0060	NWA	1
EGUNSENTIA MEDIUM STERN TRAWLER	SP-79-0062	NWA	1
IZAORA MEDIUM STERN TRAWLER	SP-79-0064	NWA	1
RIO VERDUGO MEDIUM STERN TRAWLER	SP-79-0065	NWA	1
PINEIRO CORREA MEDIUM STERN TRAWLER	SP-79-0066	NWA	1
ALTEAMAR UNO MEDIUM STERN TRAWLER	SP-79-0067	NWA	1
MANAMO SMALL STERN TRAWLER	SP-79-0068	NWA	1
CAPITAN JORGE SEGUNDO SIDE TRAWLER	SP-79-0069	NWA	1

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NATION/VESSEL NAME/VESSEL TYPE	APPLICATION NO.	FISHERY	ACTIVITY
SPAIN			
PEGAGO TERCERO MEDIUM STERN TRAWLER	SP-79-0070	NWA	1
M. GALLARDO MONTESINOS MEDIUM STERN TRAWLER	SP-79-0071	NWA	1
MAPOSA QUINTO MEDIUM STERN TRAWLER	SP-79-0072	NWA	1
MAYI CUATRO MEDIUM STERN TRAWLER	SP-79-0073	NWA	1
PUENTE DE GONDOMAR MEDIUM STERN TRAWLER	SP-79-0077	NWA	1
VILACHAN SMALL STERN TRAWLER	SP-79-0078	NWA	1
PENALBA SIDE TRAWLER	SP-79-0079	NWA	1
FLIPPER MEDIUM STERN TRAWLER	SP-79-0080	NWA	1
PUERTO DE ARRECIFE SIDE TRAWLER	SP-79-0081	NWA	1
ITXAS TXORI SIDE TRAWLER	SP-79-0082	NWA	1
PEVEGASA SEGUNDO MEDIUM STERN TRAWLER	SP-79-0083	NWA	1
VIEIRASA DOS SIDE TRAWLER	SP-79-0084	NWA	1
MAPOSA SEXTO SIDE TRAWLER	SP-79-0085	NWA	1
PORLAMAR SMALL STERN TRAWLER	SP-79-0086	NWA	1
MARUMA SMALL STERN TRAWLER	SP-79-0088	NWA	1
JUANCHO SIDE TRAWLER	SP-79-0089	NWA	1
SPAIN			
ANCORA D'OURO MEDIUM STERN TRAWLER	SP-79-0090	NWA	1
CIUDAD DE CRISTAL SIDE TRAWLER	SP-79-0092	NWA	1
PARPESCA CUARTO MEDIUM STERN TRAWLER	SP-79-0093	NWA	1
JOSE PUERTA PRADO SIDE TRAWLER	SP-79-0094	NWA	1
LA FLOR DE ABRIL SIDE TRAWLER	SP-79-0095	NWA	1
MAR DE ALTEA 1 SIDE TRAWLER	SP-79-0096	NWA	1
MASSO 34 SIDE TRAWLER	SP-79-0097	NWA	1
PEGAGO SEGUNDO SIDE TRAWLER	SP-79-0098	NWA	1
FUENTE DE LA RAKALLOSA SIDE TRAWLER	SP-79-0100	NWA	1
VALLE DE ASUA SIDE TRAWLER	SP-79-0102	NWA	1
VIEIRASA IV SIDE TRAWLER	SP-79-0103	NWA	1
KARABAL SIDE TRAWLER	SP-79-0104	NWA	1
FREIRE LOPEZ MEDIUM STERN TRAWLER	SP-79-0106	NWA	1
MANUEL NORES MEDIUM STERN TRAWLER	SP-79-0107	NWA	1
FEIXINC MEDIUM STERN TRAWLER	SP-79-0108	NWA	1
PUENTE LOURIDO MEDIUM STERN TRAWLER	SP-79-0109	NWA	1

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NATION/VESSEL NAME/VESSEL TYPE	APPLICATION NO.	FISHERY	ACTIVITY
SPAIN			
UR ERTZA MEDIUM STERN TRAWLER	SP-79-0110	NWA	1
CUDILLERO MEDIUM STERN TRAWLER	SP-79-0111	NWA	1
PESCAPLERTA SEGUNDO MEDIUM STERN TRAWLER	SP-79-0112	NWA	1
PLAYA DE FESMAR MEDIUM STERN TRAWLER	SP-79-0113	NWA	1
TASARTE MEDIUM STERN TRAWLER	SP-79-0114	NWA	1
ADISKIDE SIDE TRAWLER	SP-79-0115	NWA	1
ALVEDRO SIDE TRAWLER	SP-79-0116	NWA	1
ANDES MEDIUM STERN TRAWLER	SP-79-0117	NWA	1
ANGUIACHO MEDIUM STERN TRAWLER	SP-79-0118	NWA	1
SRIEDER SIDE TRAWLER	SP-79-0119	NWA	1
ARNOYA MEDIUM STERN TRAWLER	SP-79-0120	NWA	1
AVIOR MEDIUM STERN TRAWLER	SP-79-0121	NWA	1
BIBEY MEDIUM STERN TRAWLER	SP-79-0122	NWA	1
CAPITAN EMILIO SIDE TRAWLER	SP-79-0123	NWA	1
CRUNA MEDIUM STERN TRAWLER	SP-79-0124	NWA	1
DANTZARI MEDIUM STERN TRAWLER	SP-79-0125	NWA	1

NATION/VESSEL NAME/VESSEL TYPE	APPLICATION NO.	FISHERY	ACTIVITY
SPAIN			
ISLA ALEGRANZA MEDIUM STERN TRAWLER	SP-79-0126	NWA	1
ISLA GRACIOSA MEDIUM STERN TRAWLER	SP-79-0127	NWA	1
ISLA MONTANA CLARA MEDIUM STERN TRAWLER	SP-79-012E	NWA	1
JOLUMA SIDE TRAWLER	SP-79-0129	NWA	1
MACURO SMALL STERN TRAWLER	SP-79-0130	NWA	1
MARIA TERESA RODRIGUEZ MEDIUM STERN TRAWLER	SP-79-0131	NWA	1
MARRECA UNO SIDE TRAWLER	SP-79-0132	NWA	1
NACHE SIDE TRAWLER	SP-79-0133	NWA	1
OTZARI SIDE TRAWLER	SP-79-0134	NWA	1
PEVEGASA SIDE TRAWLER	SP-79-0135	NWA	1
PLAYA DE CADIZ MEDIUM STERN TRAWLER	SP-79-0136	NWA	1
PLAYA DE MENDUINA SMALL STERN TRAWLER	SP-79-0137	NWA	1
PUENTE PEDRINA SIDE TRAWLER	SP-79-0138	NWA	1
PUENTE SAN TELMO MEDIUM STERN TRAWLER	SP-79-0139	NWA	1
PIAZOR SIDE TRAWLER	SP-79-0140	NWA	1
RIO DAS PEDRAS SMALL STERN TRAWLER	SP-79-0141	NWA	1

NATION/VESSEL NAME/VESSEL TYPE	APPLICATION NO.	FISHERY	ACTIVITY
SPAIN			
RIO NEIRA SMALL STERN TRAWLER	SP-79-0142	NWA	1
SUEMAR DOS MEDIUM STERN TRAWLER	SP-79-0143	NWA	1
TARPON SMALL STERN TRAWLER	SP-79-0144	NWA	1
VILLA ANA SIDE TRAWLER	SP-79-0145	NWA	1
CARVISO DOS SMALL STERN TRAWLER	SP-79-0146	NWA	1
TOULA LARGE STERN TRAWLER	SP-79-0147	NWA	1
TAIWAN			
TAI CHANG NO. 1 MEDIUM STERN TRAWLER	TW-79-0001	BSA/GOA	1
HIGHLY NO. 301 MEDIUM STERN TRAWLER	TW-79-0002	BSA/GOA	1
HIGHLY NO. 302 MEDIUM STERN TRAWLER	TW-79-0003	BSA/GOA	1
GOLDEN DRAGON NO. 1 LARGE STERN TRAWLER	TW-79-0004	BSA/GOA	1
SHEN PAO NO. 36 LONGLINE FISHING VESSEL	TW-79-0006	GOA	1
SHEN PAO NO. 27 LONGLINE FISHING VESSEL	TW-79-0007	GOA	1
CHIEN HSIN NO. 121 POT FISHING VESSEL	TW-79-0008	BSA/GOA	1
SHANG MOU NO. 12 POT FISHING VESSEL	TW-79-0010	GOA	1
FENG BANG NO. 62 LONGLINE FISHING VESSEL	TW-79-0011	GOA	1

NATION/VESSEL NAME/VESSEL TYPE	APPLICATION NO.	FISHERY	ACTIVITY
TAIWAN			
FENG BANG NO. 61 LONGLINE FISHING VESSEL	TW-79-0012	GOA	1
TONG HONG NO. 3 POT FISHING VESSEL	TW-79-0013	GOA	1
TONG HONG NO. 2 POT FISHING VESSEL	TW-79-0014	GOA	1
KAO CHENG NO. 31 PAIR TRAWLER	TW-79-0015	BSA/GOA/SMT	1
SHANG MOU NO. 11 POT FISHING VESSEL	TW-79-0017	GOA	1
KAO CHENG NO. 21 LONGLINER/GILLNET	TW-79-0019	SMT/GOA/BSA	1
TONG HONG NO. 6 POT FISHING VESSEL	TW-79-0020	GOA	1
KAO CHENG NO. 22 LONGLINER/GILLNET	TW-79-0022	SMT/GOA/BSA	1
KAO CHENG NO. 32 PAIR TRAWLER	TW-79-0023	BSA/GOA/SMT	1
SHIN CHIEN CHUNG NO. 361 PAIR TRAWLER	TW-79-0046	BSA/GOA	1
SHIN CHIEN CHUNG NO. 362 PAIR TRAWLER	TW-79-0047	BSA/GOA	1
CHIEN CHUNG NO. 122 POT FISHING VESSEL	TW-79-0052	BSA/GOA	1
HIGHLY NO. 303 CARGO/TRANSPORT VESSEL	TW-79-0054	BSA/GOA	3
U.S.S.R.			
NADEZHDINSK LARGE STERN TRAWLER	UR-79-0002	BSA/GOA/WOC	1
ALEKSANDR KRAVEV LARGE STERN TRAWLER	UR-79-0003	BSA/GOA/WOC	1

NATION/VESSEL NAME/VESSEL TYPE	APPLICATION NO.	FISHERY	ACTIVITY
U.S.S.R.			
IVAN PANOV LARGE STERN TRAWLER	UR-79-0006	BSA,GOA,WOC	1
AKADEMIK BERG LARGE STERN TRAWLER	UR-79-0008	BSA,GOA,WOC	1
VOSKHOD LARGE STERN TRAWLER	UR-79-0009	BSA,GOA,WOC	1
SHTURMAN ELAGIN LARGE STERN TRAWLER	UR-79-0011	BSA,GOA,WOC	1
ARKOVO LARGE STERN TRAWLER	UR-79-0012	BSA,GOA,WOC	1
MYS LAZAREVA LARGE STERN TRAWLER	UR-79-0013	BSA,GOA,WOC	1
KATANGLY LARGE STERN TRAWLER	UR-79-0018	BSA,GOA,WOC	1
MYS YUDINA LARGE STERN TRAWLER	UR-79-0025	BSA,GOA,WOC	1
SURAZH MEDIUM STERN TRAWLER	UR-79-0029	BSA,GOA,WOC	1
BARABASH LARGE STERN TRAWLER	UR-79-0032	BSA,GOA,WOC	1
SEBEZH MEDIUM STERN TRAWLER	UR-79-0033	BSA,GOA,WOC	1
PRICZERSK LARGE STERN TRAWLER	UR-79-0038	BSA,GOA,WOC	1
NADEZHDA LARGE STERN TRAWLER	UR-79-0061	BSA,GOA,WOC	1
MATEMATIK LARGE STERN TRAWLER	UR-79-0068	BSA,GOA,WOC	1
TIRASPOL LARGE STERN TRAWLER	UR-79-0070	BSA,GOA,WOC	1
KONTAJKA LARGE STERN TRAWLER	UR-79-0076	BSA,GOA,WOC	1
U.S.S.R.			
UZBEKISTAN LARGE STERN TRAWLER	UR-79-0077	BSA,GOA,WOC	1
KLYUCHEVSKOY LARGE STERN TRAWLER	UR-79-0082	BSA,GOA,WOC	1
MYS GROTOVYI LARGE STERN TRAWLER	UR-79-0092	BSA,GOA,WOC	1
KULUNDA LARGE STERN TRAWLER	UR-79-0093	BSA,GOA,WOC	1
KOLUVAN LARGE STERN TRAWLER	UR-79-0095	BSA,GOA,WOC	1
MYS EGOROVA LARGE STERN TRAWLER	UR-79-0097	BSA,GOA,WOC	1
POSEYDON LARGE STERN TRAWLER	UR-79-0101	BSA,GOA,WOC	1
TAISHET LARGE STERN TRAWLER	UR-79-0102	BSA,GOA,WOC	1
PRIAMURIE LARGE STERN TRAWLER	UR-79-0108	BSA,GOA,WOC	1
MYS ERMAK LARGE STERN TRAWLER	UR-79-0109	BSA,GOA,WOC	1
SOYUZ-4 LARGE STERN TRAWLER	UR-79-0110	BSA,GOA,WOC	1
TRETJAKOVO LARGE STERN TRAWLER	UR-79-0111	BSA,GOA,WOC	1
ARALSK LARGE STERN TRAWLER	UR-79-0112	BSA,GOA,WOC	1
KALITVA LARGE STERN TRAWLER	UR-79-0113	BSA,GOA,WOC	1
KHAIRYUZOVO LARGE STERN TRAWLER	UR-79-0114	BSA,GOA,WOC	1
IVAN CHERNOPYATKO LARGE STERN TRAWLER	UR-79-0115	BSA,GOA,WOC	1

NATION/VESSEL NAME/VESSEL TYPE	APPLICATION NO.	FISHERY	ACTIVITY
U.S.S.R.			
KAZATIN LARGE STERN TRAWLER	UR-79-0116	BSA,GOA,WOC,WOC	1
SELETS MEDIUM STERN TRAWLER	UR-79-0134	BSA,GOA	1
SOKOLOVKA MEDIUM STERN TRAWLER	UR-79-0135	BSA,GOA,WOC	1
STOLIN MEDIUM STERN TRAWLER	UR-79-0136	BSA,GOA,WOC	1
SAKHALIN LARGE STERN TRAWLER	UR-79-0163	BSA,GOA,WOC	1
NICOLAI OSTROVSKY LARGE STERN TRAWLER	UR-79-0164	BSA,GOA,WOC	1
MYS SKALISTY LARGE STERN TRAWLER	UR-79-0168	BSA,GOA,WOC	1
MYS GRINA LARGE STERN TRAWLER	UR-79-0169	BSA,GOA,WOC	1
KAZALINSK LARGE STERN TRAWLER	UR-79-0171	BSA,GOA,WOC	1
TURKUL LARGE STERN TRAWLER	UR-79-0172	BSA,GOA,WOC	1
MYS GAMOVA LARGE STERN TRAWLER	UR-79-0173	BSA,GOA,WOC	1
MYS LOPATKA LARGE STERN TRAWLER	UR-79-0174	BSA,GOA,WOC	1
MYS BARANOVA LARGE STERN TRAWLER	UR-79-0177	BSA,GOA,WOC	1
MALKI LARGE STERN TRAWLER	UR-79-0179	BSA,GOA,WOC	1
LUCHEGORSK LARGE STERN TRAWLER	UR-79-0181	BSA,GOA,WOC	1
MYS GROZNY LARGE STERN TRAWLER	UR-79-0185	BSA,GOA,WOC	1
U.S.S.R.			
MYS PROKOFJEVA LARGE STERN TRAWLER	UR-79-0186	BSA,GOA,WOC	1
REVOLYUTSIONER LARGE STERN TRAWLER	UR-79-0187	BSA,GOA,WOC	1
TAMAN LARGE STERN TRAWLER	UR-79-0188	BSA,GOA,WOC	1
KALAR LARGE STERN TRAWLER	UR-79-0191	BSA,GOA,WOC	1
MYS VAIGACH LARGE STERN TRAWLER	UR-79-0196	BSA,GOA,WOC	1
UGOLNY LARGE STERN TRAWLER	UR-79-0197	BSA,GOA,WOC	1
LOTOS LARGE STERN TRAWLER	UR-79-0200	BSA,GOA,WOC	1
POIMA LARGE STERN TRAWLER	UR-79-0201	BSA,GOA,WOC	1
MYS ILMOVY LARGE STERN TRAWLER	UR-79-0204	BSA,GOA,WOC	1
ITELMEN LARGE STERN TRAWLER	UR-79-0205	BSA,GOA,WOC	1
FYODOR KRAIKOV LARGE STERN TRAWLER	UR-79-0206	BSA,GOA,WOC	1
ALEKSANDROVSK LARGE STERN TRAWLER	UR-79-0207	BSA,GOA,WOC	1
TIKHVIN LARGE STERN TRAWLER	UR-79-0213	BSA,GOA,WOC	1
MYS BELKINA LARGE STERN TRAWLER	UR-79-0214	BSA,GOA,WOC	1
KORENGA LARGE STERN TRAWLER	UR-79-0215	BSA,GOA,WOC	1
KUSHKA LARGE STERN TRAWLER	UR-79-0217	BSA,GOA,WOC	1

NATION/VESSEL NAME/VESSEL TYPE	APPLICATION NO.	FISHERY	ACTIVITY
U.S.S.R.			
MYS SINJAVINA LARGE STERN TRAWLER	UR-79-0227	BSA/GOA/WOC	1
OPALA LARGE STERN TRAWLER	UR-79-0228	BSA/GOA/WOC	1
MYS CHAIKOVSKOGO LARGE STERN TRAWLER	UR-79-0229	BSA/GOA/WOC	1
LESOGORSK LARGE STERN TRAWLER	UR-79-0230	BSA/GOA/WOC	1
KAMYSHIN LARGE STERN TRAWLER	UR-79-0231	BSA/GOA/WOC	1
ALEXEI MAKHALIN LARGE STERN TRAWLER	UR-79-0232	BSA/GOA/WOC	1
MARK RESHETNIKOV LARGE STERN TRAWLER	UR-79-0236	BSA/GOA/WOC	1
SULAK FACTORY SHIP	UR-79-0238	BSA/GOA/WOC	3
ESENTUKI TANKER FUEL/WATER	UR-79-0244	NWA	3
LIEPAYA TANKER FUEL/WATER	UR-79-0245	NWA	3
KASPIJSKOE MORE CARGO/TRANSPORT VESSEL	UR-79-0246	BSA/GOA/WOC	3
OKHOTSKOE MORE CARGO/TRANSPORT VESSEL	UR-79-0252	BSA/GOA/WOC	3
PROLIV LAPERUSA CARGO/TRANSPORT VESSEL	UR-79-0253	BSA/GOA/WOC	3
OSTROV LISYANSKOGO CARGO/TRANSPORT VESSEL	UR-79-0254	BSA/GOA/WOC	3
OSTROV KARAGINSKIY CARGO/TRANSPORT VESSEL	UR-79-0255	BSA/GOA/WOC	3
OSTROV SHMIDTA CARGO/TRANSPORT VESSEL	UR-79-0256	BSA/GOA/WOC	3

NATION/VESSEL NAME/VESSEL TYPE	APPLICATION NO.	FISHERY	ACTIVITY
U.S.S.R.			
OSTROV SHOKALSKOGO CARGO/TRANSPORT VESSEL	UR-79-0257	BSA/GOA/WOC	3
OSTROV USHAKOVA CARGO/TRANSPORT VESSEL	UR-79-0258	BSA/GOA/WOC	3
ALTAJSKIE GORY CARGO/TRANSPORT VESSEL	UR-79-0259	BSA/GOA/WOC	3
KAMCHATSKIE GORY CARGO/TRANSPORT VESSEL	UR-79-0260	BSA/GOA/WOC	3
SAKHALINSKIE GORY CARGO/TRANSPORT VESSEL	UR-79-0261	BSA/GOA/WOC	3
SAJANSKIE GORY CARGO/TRANSPORT VESSEL	UR-79-0262	BSA/GOA/WOC	3
ARKHIP KUINDGI CARGO/TRANSPORT VESSEL	UR-79-0263	BSA/GOA/WOC	3
ALMAZNY CARGO/TRANSPORT VESSEL	UR-79-0264	BSA/GOA/WOC	3
VASILIY VERESHCHAGIN CARGO/TRANSPORT VESSEL	UR-79-0265	BSA/GOA/WOC	3
VASILIY PEROV CARGO/TRANSPORT VESSEL	UR-79-0266	BSA/GOA/WOC	3
VIKTOR VASNETSOV CARGO/TRANSPORT VESSEL	UR-79-0267	BSA/GOA/WOC	3
GRANITNYY CARGO/TRANSPORT VESSEL	UR-79-0268	BSA/GOA/WOC	3
GORETS CARGO/TRANSPORT VESSEL	UR-79-0269	BSA/GOA/WOC	3
ZOLOTOY ROG CARGO/TRANSPORT VESSEL	UR-79-0270	BSA/GOA/WOC	3
IVAN KRAMSKOY CARGO/TRANSPORT VESSEL	UR-79-0271	BSA/GOA/WOC	3
MARSHAL MALINOVSKIY CARGO/TRANSPORT VESSEL	UR-79-0273	BSA/GOA/WOC	3

NATION/VESSEL NAME/VESSEL TYPE	APPLICATION NO.	FISHERY	ACTIVITY
U.S.S.R.			
MARSHAL ROKOSSOVSKY CARGO/TRANSPORT VESSEL	UR-79-0274	BSA/GOA/WOC	3
SIBIR CARGO/TRANSPORT VESSEL	UR-79-0275	BSA/GOA/WOC	3
KHUDOZNIK S. GERASIMOV CARGO/TRANSPORT VESSEL	UR-79-0277	BSA/GOA/WOC	3
VOLGOCHAEVSK CARGO/TRANSPORT VESSEL	UR-79-0279	BSA/GOA/WOC	3
VOLCHANSK CARGO/TRANSPORT VESSEL	UR-79-0286	BSA/GOA/WOC	3
OMSK TANKER FUEL/WATER	UR-79-0296	BSA/GOA/WOC	3
SURGUTNEFT TANKER FUEL/WATER	UR-79-0297	BSA/GOA/WOC	3
SIBIRNEFT TANKER FUEL/WATER	UR-79-0298	BSA/GOA/WOC	3
RADUZHNIY CARGO/TRANSPORT VESSEL	UR-79-0302	BSA/GOA/WOC	3
RECHITSA CARGO/TRANSPORT VESSEL	UR-79-0303	BSA/GOA/WOC	3
KOMSOMOLETS UKRAINY TANKER FUEL/WATER	UR-79-0304	BSA/BSA/GOA/WOC	3
SLAVGOROD TANKER FUEL/WATER	UR-79-0306	BSA/GOA/WOC	3
EGORJEVSK TANKER FUEL/WATER	UR-79-0307	BSA/GOA/WOC	3
MOSKALVO TANKER FUEL/WATER	UR-79-0308	BSA/GOA/WOC	3
KIVACH LARGE STERN TRAWLER	UR-79-0316	NWA	1
ZAKAVKAZJE LARGE STERN TRAWLER	UR-79-0318	NWA	1

NATION/VESSEL NAME/VESSEL TYPE	APPLICATION NO.	FISHERY	ACTIVITY
U.S.S.R.			
KOTELNICH LARGE STERN TRAWLER	UR-79-0321	NWA	1
AMBARCHIK LARGE STERN TRAWLER	UR-79-0326	NWA	1
KILDIN LARGE STERN TRAWLER	UR-79-0333	NWA	1
VALDAY LARGE STERN TRAWLER	UR-79-0343	NWA	1
VOLGOBALT LARGE STERN TRAWLER	UR-79-0344	NWA	1
PRIONEZJE LARGE STERN TRAWLER	UR-79-0346	NWA	1
BORIS SAFONOV CARGO/TRANSPORT VESSEL	UR-79-0350	NWA	3
VICTOR LYAGIN CARGO/TRANSPORT VESSEL	UR-79-0352	NWA	3
NEFTEKAMSK TANKER FUEL/WATER	UR-79-0354	NWA	3
POLYARNY KRUG CARGO/TRANSPORT VESSEL	UR-79-0355	NWA	3
KAPITAN NOKARIN CARGO/TRANSPORT VESSEL	UR-79-0356	NWA	3
BESSTRASHNYI CARGO/TRANSPORT VESSEL	UR-79-0357	NWA	3
GIGANT CARGO/TRANSPORT VESSEL	UR-79-0358	NWA	3
KOSMONAVT GAGARIN CARGO/TRANSPORT VESSEL	UR-79-0359	NWA	3
ALEKSEY VENETSIANOV CARGO/TRANSPORT VESSEL	UR-79-0363	NWA	3
KONSTANTIN OLSHANSKIY CARGO/TRANSPORT VESSEL	UR-79-0364	NWA	3

NATION/VESSEL NAME/VESSEL TYPE	APPLICATION NO.	FISHERY	ACTIVITY
U.S.S.R.			
SEVERNIY VETER CARGO/TRANSPORT VESSEL	UR-79-0365	NWA	3
NEFTEGORSK TANKER FUEL/WATER	UR-79-0366	NWA	3
VALENTIN SEROV CARGO/TRANSPORT VESSEL	UR-79-0367	NWA	3
DARNITSA TANKER FUEL/WATER	UR-79-0368	NWA	3
BORIS GORINSKY LARGE STERN TRAWLER	UR-79-0551	BSA/GOA/WOC	1
BASARGIN LARGE STERN TRAWLER	UR-79-0552	BSA/GOA/WOC	1
URGAL LARGE STERN TRAWLER	UR-79-0555	BSA/GOA/WOC	1
TAJIKISTAN LARGE STERN TRAWLER	UR-79-0557	BSA/GOA/WOC	1
SOVGAVANSKY KOMSOMOLETS LARGE STERN TRAWLER	UR-79-0560	BSA/GOA/WOC	1
PYOTR OVCHINNIKOV LARGE STERN TRAWLER	UR-79-0562	BSA/GOA/WOC	1
KAVALEROVO MEDIUM STERN TRAWLER	UR-79-0614	BSA/GOA/WOC	1
SARAPUL MEDIUM STERN TRAWLER	UR-79-0615	BSA/GOA/WOC	1
SANGAR MEDIUM STERN TRAWLER	UR-79-0616	BSA/GOA/WOC	1
16 SIEZD VLKSM LARGE STERN TRAWLER	UR-79-0617	BSA/GOA/WOC	1
YELSK TANKER FUEL/WATER	UR-79-0618	NWA	3
FLOTINSPEKTSIJA - 01 PATROL VESSEL (CARGO)	UR-79-0619	BSA/GOA/WOC	3
U.S.S.R.			
APZAMAS LARGE STERN TRAWLER	UR-79-0620	BSA/GOA/WOC	1
ILYA VOLYNKIN LARGE STERN TRAWLER	UR-79-0621	BSA/GOA/WOC	1
ILLARION RYABIKOV LARGE STERN TRAWLER	UR-79-0622	BSA/GOA/WOC	1
KORIFEY SIDE TRAWLER	UR-79-0623	BSA/GOA/WOC	1
MYS KRYLOVA LARGE STERN TRAWLER	UR-79-0624	BSA/GOA/WOC	1
NIKOLAY ZAYTSEV LARGE STERN TRAWLER	UR-79-0625	BSA/GOA/WOC	1
POLEVOD LARGE STERN TRAWLER	UR-79-0626	BSA/GOA/WOC	1
POSYET LARGE STERN TRAWLER	UR-79-0627	BSA/GOA/WOC	1
SEVKAR MEDIUM STERN TRAWLER	UR-79-0628	BSA/GOA/WOC	1
SVETLOGORSK MEDIUM STERN TRAWLER	UR-79-0629	BSA/GOA/WOC	1
UCHYONYI MEDIUM STERN TRAWLER	UR-79-0630	BSA/GOA/WOC	1
VIITAR LARGE STERN TRAWLER	UR-79-0631	BSA/GOA/WOC	1
YUNOST LARGE STERN TRAWLER	UR-79-0632	BSA/GOA/WOC	1
ZARUBINO LARGE STERN TRAWLER	UR-79-0633	BSA/GOA/WOC	1
ZELENOGRAD LARGE STERN TRAWLER	UR-79-0634	BSA/GOA/WOC	1
INGENER AGEEV TANKER FUEL/WATER	UR-79-0635	BSA/GOA/WOC	3

NATION/VESSEL NAME/VESSEL TYPE	APPLICATION NO.	FISHERY	ACTIVITY
U.S.S.R.			
ISPOLNITELNY CARGO/TRANSPORT VESSEL	UR-79-0636	BSA/GOA/WOC	3
JUGORSK TANKER FUEL/WATER	UR-79-0637	BSA/GOA/WOC	3
KAPITAN DOTSENKO TANKER FUEL/WATER	UR-79-0638	BSA/GOA/WOC	3
KAPITAN DYACHUK TANKER FUEL/WATER	UR-79-0639	BSA/GOA/WOC	3
KAPITAN IZOTOV TANKER FUEL/WATER	UR-79-0640	BSA/GOA/WOC	3
KAPITAN KOBETS TANKER FUEL/WATER	UR-79-0641	BSA/GOA/WOC	3
KAPITAN NEVEJKIN TANKER FUEL/WATER	UR-79-0642	BSA/GOA/WOC	3
KAPITAN SHVETSOV TANKER FUEL/WATER	UR-79-0643	BSA/GOA/WOC	3
RESHITELNYI CARGO/TRANSPORT VESSEL	UR-79-0644	BSA/GOA/WOC	3
ALEKSEY GMYREV LARGE STERN TRAWLER	UR-79-0645	NWA	1
ANDREY ANDREEV LARGE STERN TRAWLER	UR-79-0646	NWA	1
ANDREY MARKIN LARGE STERN TRAWLER	UR-79-0647	NWA	1
ALEKSEY KUZNETSOV LARGE STERN TRAWLER	UR-79-0648	NWA	1
BELOMORJE LARGE STERN TRAWLER	UR-79-0649	NWA	1
BURAN LARGE STERN TRAWLER	UR-79-0650	NWA	1
BOLSHEVIK LARGE STERN TRAWLER	UR-79-0651	NWA	1
U.S.S.R.			
DIKSON LARGE STERN TRAWLER	UR-79-0652	NWA	1
DERJAVSK LARGE STERN TRAWLER	UR-79-0653	NWA	1
ELBRUS LARGE STERN TRAWLER	UR-79-0654	NWA	1
GOLFSTRIM LARGE STERN TRAWLER	UR-79-0655	NWA	1
GRAD LARGE STERN TRAWLER	UR-79-0656	NWA	1
ILYA KATUNIN LARGE STERN TRAWLER	UR-79-0657	NWA	1
IVAN CHIGRIN LARGE STERN TRAWLER	UR-79-0658	NWA	1
KANDALAKSHA LARGE STERN TRAWLER	UR-79-0659	NWA	1
LUA LARGE STERN TRAWLER	UR-79-0660	NWA	1
MIR LARGE STERN TRAWLER	UR-79-0661	NWA	1
MYS ELIZAVETY LARGE STERN TRAWLER	UR-79-0662	NWA	1
MUROMSK LARGE STERN TRAWLER	UR-79-0663	NWA	1
NOKUEV LARGE STERN TRAWLER	UR-79-0664	NWA	1
POLESJE LARGE STERN TRAWLER	UR-79-0665	NWA	1
PARALLAKS LARGE STERN TRAWLER	UR-79-0666	NWA	1
PAVEL GOLOV LARGE STERN TRAWLER	UR-79-0667	NWA	1

NATION/VESSEL NAME/VESSEL TYPE	APPLICATION NO.	FISHERY	ACTIVITY
U.S.S.R.			
SHEREMETJEVO LARGE STERN TRAWLER	UR-79-0668	NWA	1
TUMAN LARGE STERN TRAWLER	UR-79-0669	NWA	1
VLADIMIR CAVRILOV LARGE STERN TRAWLER	UR-79-0670	NWA	1
VYSHGOROD LARGE STERN TRAWLER	UR-79-0671	NWA	1
VERKHOVINA LARGE STERN TRAWLER	UR-79-0672	NWA	1
VASILIY KISELEV LARGE STERN TRAWLER	UR-79-0673	NWA	1
ZELENETS LARGE STERN TRAWLER	UR-79-0674	NWA	1
ALEKSANDR IVANOV CARGO/TRANSPORT VESSEL	UR-79-0675	NWA	3
DOZORNYI CARGO/TRANSPORT VESSEL	UR-79-0676	BSA,GOA,WOC	3
FLOTINSPEKTSIJA 05 CARGO/TRANSPORT VESSEL	UR-79-0677	BSA,GOA,WOC	3
ERNEST TELMAN CARGO/TRANSPORT VESSEL	UR-79-0678	NWA	3
KHIBINSKIE GORY CARGO/TRANSPORT VESSEL	UR-79-0679	NWA	3
MATIAS TEZEN CARGO/TRANSPORT VESSEL	UR-79-0680	NWA	3
OTTO GROTEVOL CARGO/TRANSPORT VESSEL	UR-79-0681	NWA	3
RADIY TANKER FUEL/WATER	UR-79-0682	NWA	3
RAVA RUSSKAYA TANKER FUEL/WATER	UR-79-0683	NWA	3
YELNYA TANKER FUEL/WATER	UR-79-0684	NWA	3
ITALY			
GIOVANNI CEFALU MEDIUM STERN TRAWLER	IT-78-0022	NWA	1
KOREA			
ILL WOO NO. 58 CARGO/TRANSPORT VESSEL	KS-78-0091	GOA	3
MEXICO			
ALPES LARGE STERN TRAWLER	MX-78-0057	NWA	1
JAPAN			
KAIYO MARU NO. 8 CARGO/TRANSPORT VESSEL	JA-78-1137	BSA,GOA	3
ROMANIA			
POLAR I CARGO/TRANSPORT VESSEL	RO-78-0002	NWA	3
DORNA LARGE STERN TRAWLER	RO-78-0005	NWA	1
JIJIA LARGE STERN TRAWLER	RO-78-0024	NWA	1

THE UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

APPLICATION FOR VESSEL PERMITS TO FISH WITHIN THE FISHERY CONSERVATION ZONE OF THE UNITED STATES

No. _____

In accordance with the provisions of the Fishery Conservation and Management Act of 1976, the Government of the Republic of China hereby submits this application for permits for vessels under its jurisdiction to fish within the Fishery Conservation Zone of the United States, or beyond that zone for anadromous species or Continental Shelf fishery resources subject to the jurisdiction of the United States, during the year 1979.

Fishing Vessel Identification Forms will be submitted in support of this application. The fisheries, species, and catch contemplated for vessels of the Republic of China flag are as follows:

Fisheries	Target Species	Total Tonnage Requested For Each Species (MT)
Bering Sea and Aleutian Islands Trawl, Longline, and Herring Gillnet	Pollock	5,000
	Sablefish	1,000
Sablefish Gulf of Alaska Trawl	Sablefish	5,000
	Pollock	2,000
Seamount Groundfish	Alfonsin	800
	Armorhead	800
	Other Groundfish	200

Submitted: September 13, 1978
(Date)

C. K. Chen
Signature of Authorized Official

Vice Director, Dept of Agric. Plan
Title

THE UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

APPLICATION FOR VESSEL PERMITS TO FISH WITHIN THE FISHERY CONSERVATION ZONE OF THE UNITED STATES

No. _____

In accordance with the provisions of the Fishery Conservation and Management Act of 1976, the Government of the Republic of Poland hereby submits this application for permits for vessels under its jurisdiction to fish within the Fishery Conservation Zone of the United States, or beyond that zone for anadromous species or Continental Shelf fishery resources subject to the jurisdiction of the United States, during the year 1979.

Fishing Vessel Identification Forms will be submitted in support of this application. The fisheries, species, and catch contemplated for vessels of the Polish flag are as follows:

Fisheries	Target Species	Total Tonnage Requested For Each Species (MT)
[illegible]	[illegible]	[illegible]
	Silver hake	
	Short-finned squid	
	Other finfish	

Submitted: Sept. 28, 1978.
(Date)

[illegible]
Signature of Authorized Official

Deputy Director General
Title

THE UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

APPLICATION FOR VESSEL PERMITS TO FISH WITHIN THE
FISHERY CONSERVATION ZONE OF THE UNITED STATES

No. _____

In accordance with the provisions of the Fishery Conservation and Management Act of 1976, the Government of the REPUBLIC OF CUBA hereby submits this application for permits for vessels under its jurisdiction to fish within the Fishery Conservation Zone of the United States, or beyond that zone for anadromous species or Continental Shelf fishery resources subject to the jurisdiction of the United States, during the year 1979.

Fishing Vessel Identification Forms will be submitted in support of this application. The fisheries, species, and catch contemplated for vessels of the CUBAN flag are as follows:

Fisheries	Target Species	Total Tonnage Requested For Each Species (MT)
NORTHWEST ATLANTIC	SILVER HAKE	6160
	RED HAKE	2660
	MACKEREL	1680
	SQUID-LOLIGO	1120
	SQUID-ILLEX	420
	BUTTERFISH	280
	RIVER HERRING	280
	OTHER FINFISH	1400

Submitted: 25 September 1978
(Date)

Signature of Authorized Official
Elio López U
Sub-Director Pesca
Title

THE UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

APPLICATION FOR VESSEL PERMITS TO FISH WITHIN THE
FISHERY CONSERVATION ZONE OF THE UNITED STATES

No. _____

In accordance with the provisions of the Fishery Conservation and Management Act of 1976, the Government of The German Democratic Republic hereby submits this application for permits for vessels under its jurisdiction to fish within the Fishery Conservation Zone of the United States, or beyond that zone for anadromous species or Continental Shelf fishery resources subject to the jurisdiction of the United States, during the year 1979.

Fishing Vessel Identification Forms will be submitted in support of this application. The fisheries, species, and catch contemplated for vessels of the GDR flag are as follows:

Fisheries	Target Species	Total Tonnage Requested For Each Species (MT)
Northwest Atlantic	Illex	3000
	Lolligo	200
	Atlantic makerel	200
	Herring	100
	American butterfish	60
	Other finfish	50

Submitted: September 19, 1978
(Date)

Signature of Authorized Official
Director General
Title

NOTICES

THE UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

APPLICATION FOR VESSEL PERMITS TO FISH WITHIN THE
FISHERY CONSERVATION ZONE OF THE UNITED STATES

No. _____

In accordance with the provisions of the Fishery Conservation and Management Act of 1976, the Government of ITALY hereby submits this application for permits for vessels under its jurisdiction to fish within the Fishery Conservation Zone of the United States, or beyond that zone for anadromous species or Continental Shelf fishery resources subject to the jurisdiction of the United States, during the year 1979.

Fishing Vessel Identification Forms will be submitted in support of this application. The fisheries, species, and catch contemplated for vessels of the ITALIAN flag are as follows:

Fisheries	Target Species	Total Tonnage Requested For Each Species (MT)
NORTHWEST ATLANTIC	LONG FINNED SQUID	3,000
	SHORT FINNED SQUID	3,000
	BUTTERFISH	500
	MACKEREL	500
	OTHER FIFFISH	1,500

Submitted: October 13,1978
(Date)

Signature of Authorized Official
Luigi Costa di Sanseverino
First Secretary
Title

FISHERY CONSERVATION ZONE OF THE UNITED STATES

No. _____

In accordance with the provisions of the Agreement between the Government of the United States of America and the Government of Japan concerning Fisheries off the Coasts of the United States of America which entered into force on November 29, 1977, the Government of Japan hereby submits this application for permits for vessels under its jurisdiction to engage in fishing for living resources off the coasts of the United States, as defined in the said Agreement, during the year 1979.

Fishing Vessel Identification Forms will be submitted in support of this application. The fisheries, species, and catch contemplated for vessels of the Japanese flag are as follows:

Fisheries	Target Species	Total Tonnage Requested for Each Species (MT)
Bering Sea and Aleutian Islands Trawl, and Herring Gillnet	Pollock	1,000,000
	Pacific Cod	41,050
	Yellowfin Sole	70,530
	Other flounders	91,030
	Pacific Ocean Perch	26,300
	Sablefish	3,380
	Atka Mackerel	2,000
	Herring	5,800
	Squid	10,000
	Other species	71,315
Gulf of Alaska Trawl	Pollock	44,100
	Pacific Ocean Perch	13,950
	Other Rockfishes	4,100
	Flounders	21,370
	Pacific Cod	11,250
	Atka Mackerel	2,000
	Squid	500
	Other species	4,030
Sablefish	Sablefish	13,900
Crab	Tanner Crab	20,000
Snails	Snails	4,000
North West Atlantic	Long-finned Squid	10,000
	Short-finned Squid	11,200
	Butterfish	1,800
	Silver Hake	2,000
	Red Hake	50
	River Herring	50
	Atlantic Mackerel	200
	Other finfishes	2,476
Seamount Groundfish	Seamount Groundfish	1,000
Atlantic Billfish and Sharks	Billfish and Sharks	0

Submitted: October 24 1978
(Date)

(Signature of Authorized Official)

NOTICES

THE UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

APPLICATION FOR VESSEL PERMITS TO FISH WITHIN THE
FISHERY CONSERVATION ZONE OF THE UNITED STATES

No. _____

In accordance with the provisions of the Fishery Conservation and Management Act of 1976, the Government of Republic of Korea hereby submits this application for permits for vessels under its jurisdiction to fish within the Fishery Conservation Zone of the United States, or beyond that zone for anadromous species or Continental Shelf fishery resources subject to the jurisdiction of the United States, during the year 1979.

Fishing Vessel Identification Forms will be submitted in support of this application. The fisheries, species, and catch contemplated for vessels of the Korean flag are as follows:

Fisheries	Target Species	Total Tonnage Requested for Each Species (MT)
Bering Sea and Aleutian Islands Trawl, Longline and Herring Gillnet	Pollock	223,000
	Pacific Cod	18,800
	Pacific Ocean Perch	7,800
	Other Species	18,000
Gulf of Alaska	Pollock	27,000
	Pacific Cod	4,100
	Pacific Ocean Perch	4,100
	Other Species	5,300
Sablefish	Sablefish	8,400
Crab	Tanner Crab (opilio)	15,000

Submitted: September 19, 1978
(Date)

Hun Soo Kim
Signature of Authorized Official
Fisheries Attache,
Embassy of Korea
Title

THE UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

APPLICATION FOR VESSEL PERMITS TO FISH WITHIN THE
FISHERY CONSERVATION ZONE OF THE UNITED STATES

No. _____

In accordance with the provisions of the Fishery Conservation and Management Act of 976, the Government of the Polish People's Republic hereby submits this application for permits for vessels under its jurisdiction to fish within the Fishery Conservation Zone of the United States, or beyond that zone for anadromous species or Continental Shelf fishery resources subject to the jurisdiction of the United States, during the year 1979.

Fishing Vessel Identification Forms will be submitted in support of this application. The fisheries, species, and catch contemplated for vessels of the Polish flag are as follows:

For the Mrs. Pauls Kitchens - Poland joint venture

Fisheries	Target Species	Total Tonnage Requested For Each Species (MT)
Bering Sea and Aleutian Island Trawl x/	pollock	120.000 x/
	pacific cod	2.000 x/
	flounders (other)	1.000 x/
	atka mackrel	2.000 x/
	pacific ocean perch	2.000 x/
	sablefish	300 x/
	squid	200 x/
	yellowfin sole	2.000 x/
	herring	2.000 x/
	other species	5.000 x/

ubmitted: October 14, 78
(Date)

R.Pietraszek
Signature of Authorized Official
Commercial Counselor
Title

x/ Blocks from 120.000 tons of pollock will be sold to Mrs.Paul Kitchen. If these fishes not entirely available in the BSA, the balance should be applied to the pollock request for the GOA.

THE UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

APPLICATION FOR VESSEL PERMITS TO FISH WITHIN THE
FISHERY CONSERVATION ZONE OF THE UNITED STATES

No. _____

In accordance with the provisions of the Fishery Conservation and Management Act of 1976, the Government of Polish People's Republic hereby submits this application for permits for vessels under its jurisdiction to fish within the Fishery Conservation Zone of the United States, or beyond that zone for anadromous species or Continental Shelf fishery resources subject to the jurisdiction of the United States, during the year 1979.

Fishing Vessel Identification Forms will be submitted in support of this application. The fisheries, species, and catch contemplated for vessels of the Polish flag are as follows:

Fisheries	Target Species	Total Tonnage Requested For Each Species (MT)
Northwest Atlantic	squid loligo	2,000
	squid illex	8,000
	herring	5,000
	Mackeral	20,000
	silver hake	5,000
	red hake	100
	butterfish	300
	river herring	100
	other finfish	5,000
Gulf of Alaska Trawl	pollock	12,000
	atka mackerel	1,000
	pacific cod	1,000
	pacific ocean perch	1,000
	flounders	2,300
	squid	100
	other species	1,000
Washington, Oregon, California Trawl	Pacific hake	50,000
	jack mackerel	3,000

Submitted: _____
(Date)

_____
Signature of Authorized Official

_____
Title

THE UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

APPLICATION FOR VESSEL PERMITS TO FISH WITHIN THE
FISHERY CONSERVATION ZONE OF THE UNITED STATES

No. _____

In accordance with the provisions of the Fishery Conservation and Management Act of 1976, the Government of ROMANIA hereby submits this application for permits for vessels under its jurisdiction to fish within the Fishery Conservation Zone of the United States, or beyond that zone for anadromous species or Continental Shelf fishery resources subject to the jurisdiction of the United States, during the year 1979.

Fishing Vessel Identification Forms will be submitted in support of this application. The fisheries, species, and catch contemplated for vessels of the ROMANIA flag are as follows:

Fisheries	Target Species	Total Tonnage Requested For Each Species (MT)
Northwest Atlantic		

Submitted: _____
(Date)

_____
Signature of Authorized Official

Director of Marine Fishing Enterprise
Title

THE UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

APPLICATION FOR VESSEL PERMITS TO FISH WITHIN THE FISHERY CONSERVATION ZONE OF THE UNITED STATES

No. _____

In accordance with the provisions of the Fishery Conservation and Management Act of 1976, the Government of SPAIN hereby submits this application for permits for vessels under its jurisdiction to fish within the Fishery Conservation Zone of the United States, or beyond that zone for anadromous species or Continental Shelf fishery resources subject to the jurisdiction of the United States, during the year 1979.

Fishing Vessel Identification Forms will be submitted in support of this application. The fisheries, species, and catch contemplated for vessels of the Spanish flag are as follows:

Fisheries	Target Species	Total Tonnage Requested For Each Species (mt)
NORTH WEST ATLANTIC	Squid Loligo	8.500
	Squid Illex	4.020
	Mackerel	1.200
	Butterfish	2.000
	Other Finfishes	5.000
	Red Hake	500
	Silver Hake	1.500
	Herring	10

Note: In a letter apart we will specify a request for allocations for the Bering Sea and A tian Island Trawl fishery, Gulf of Alaska, and Washington Oregon California Trawl Fishery.

Submitted: 09.10.78
(Date)

Signature of Authorized Official

DIRECTOR GENERAL DE PESCA MARITIM
Title

THE UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

APPLICATION FOR VESSEL PERMITS TO FISH WITHIN THE FISHERY CONSERVATION ZONE OF THE UNITED STATES

No. _____

In accordance with the provisions of the Fishery Conservation and Management Act of 1976, the Government of USSR hereby submits this application for permits for vessels under its jurisdiction to fish within the Fishery Conservation Zone of the United States, or beyond that zone for anadromous species or Continental Shelf fishery resources subject to the jurisdiction of the United States, during the year 1979.

Fishing Vessel Identification Forms will be submitted in support of this application. The fishery plans, species, and catch contemplated for vessels of the USSR flag are as follows:

Fishery Plans	Target Species	Total Tonnage Requested For Each Species (MT)
NORTH WEST ATLANTIC	Silver Hake	50,000
	Red Hake	25,000
	Atlantic Mackeral	1,000
	Long-finned Squid	500
	Short-finned Squid	5,000
BERING SEA AND ALEUTIAN ISLANDS	Pollock	157,000
	Pacific Cod	17,500
	Yellowfin Sole	60,000
	Other Flounders	37,000
	Atka Mackerel	50,000
	Herring	15,000
	Pacific Ocean Perch	10,300
	Other Species	5,000
GULF OF ALASKA	Pollock	63,000
	Pacific Cod	4,200
	Flounders	2,000
	Pacific Ocean Perch	7,000
	Other Rockfishes	1,800
	Atka Mackerel	35,000
	Other Species	2,000
WASHINGTON, OREGON, CALIFORNIA	Hake	150,000
	Jack Mackerel	3,000

Submitted: September 20, 1978
Date

Signature of Authorized Official

[FR Doc. 78-31941 Filed 11-14-78; 8:45 am]

federal register

WEDNESDAY, NOVEMBER 15, 1978
PART III

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

PROCUREMENT LIST 1979

Notice of Establishment

V 43 / 221 NOV 15 1978 UMI

[6820-33-M]

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

PROCUREMENT LIST 1979

Notice of Establishment

The Committee for Purchase from the Blind and Other Severely Handicapped was established by Pub. L. 92-28, June 23, 1971 (85 Stat. 77, 41 U.S.C. 46-48) (hereinafter the Act) for the purpose of directing the procurement of selected commodities and services by the Federal Government to qualified workshops serving blind and other severely handicapped individuals with the objective of increasing the employment opportunities for these individuals. The committee is required to establish and publish in the FEDERAL REGISTER a procurement list of:

(1) Commodities produced by any qualified nonprofit agency for the blind or by any qualified nonprofit agency for other severely handicapped, and
(2) The services provided by any such agency

which the committee determines are suitable for procurement by the Government pursuant to the Act.

The Act further provides that any entity of the Government which intends to procure any commodity or service on the procurement list, shall procure such commodity or service, at the price established by the committee, from a qualified nonprofit agency for the blind or such agency for the other severely handicapped if the commodity or service is available within the normal period required by that Government entity. However, this requirement shall not apply to the procurement of any commodity which is available from Federal Prison Industries, Inc.

A Government entity is defined as any entity of the legislative branch or judicial branch, any executive agency or military department (as such agency and department are respectively defined by sections 102 and 105 of title 5, United States Code), the U.S. Postal Service, and any nonappropriated fund instrumentality under the jurisdiction of the Armed Forces.

Notice is hereby given pursuant to section 2 of the Act that Procurement List 1979 is established as set forth below. Procurement List 1979 supersedes Procurement List 1978, November 14, 1977 (42 FR 59016) and subsequent changes thereto through November 13, 1978.

Any proposed additions or deletions to Procurement List 1978 pending on this date shall be considered as pending and applicable to Procurement List 1979.

By the committee.

C. W. FLETCHER,
Executive Director.

ASSIGNMENT CODES

Central Nonprofit Agency	Code
National Industries for the Blind	IB
National Industries for the Severely Handicapped.	SH

COMMODITIES

Class 1005

Sling, Adjustable, Small Arms (IB), 1005-00-167-4336, 1005-00-312-7177.

Class 1095

Scabbard, Bayonet-Knife (IB), 1095-00-508-0339.

Class 1220

Case, Carrying (IB), 1220-00-765-5870, 1220-00-937-8286.

Class 1430

Circuit Card Assembly (SH), 1430-00-409-7997, 1430-00-471-5375, 1430-00-089-9251, 1430-00-403-5787, 1430-00-421-4036.

Class 1440

Circuit Card Assembly (SH), 1440-00-454-8574.

Class 1560

Wire Bundle Assemblies (SH), 1560-00-881-4215, 1560-00-884-0409, 1560-00-894-3991, 1560-00-934-0924, 1560-00-919-3706, 1560-00-883-4487, 1560-00-222-3876, 1560-00-826-7752, 1560-00-974-5275, 1560-00-974-5276, 1560-00-998-8594.

Class 1670

Message Dropper (SH), 1670-00-797-4495.

Class 1730

Chock Assembly, Wheel Unpainted (IB), 1730-00-294-3694, 1730-00-063-4095, 1730-00-294-3696, 1730-00-294-3695, 1730-00-945-8450, 1730-00-NIB-001A (2" x 4" x 8" (std)) 1730-00-NIB-001B (6" x 8" x 18" (std)), 1730-00-NIB-001C (6" x 8" x 76" (std)), 1730-00-NIB-001D (8" x 12" (U-shaped)), 1730-00-NIB-001E (10" x 20" (U-shaped)).

Chock Assembly, Wheel Painted (IB), 1730-00-294-3694, 1730-00-063-4095, 1730-00-294-3696, 1730-00-294-3695, 1730-00-945-8450, 1730-00-NIB-001A (2" x 4" x 8" (std)), 1730-00-NIB-001B (6" x 8" x 18" (std)), 1730-00-NIB-001C (6" x 8" x 76" (std)), 1730-00-NIB-001D (8" x 12" (U-shaped)), 1730-00-NIB-001E (10" x 20" (U-shaped)).

Chock Assembly, Wheel, Codit Reflecting (IB), 1730-00-294-3694, 1730-00-063-4095, 1730-00-294-3696, 1730-00-294-3695, 1730-00-945-8450, 1730-00-NIB-001A (2" x 4" x 8" (std)), 1730-00-NIB-001B (6" x 8" x 18" (std)), 1730-00-NIB-001C (6" x 8" x 76" (std)), 1730-00-NIB-001D (8" x 12" (U-shaped)), 1730-00-NIB-001E (10" x 20" (U-shaped)).

Chock Assembly, Wheel Reflective Tape (IB), 1730-00-294-3694, 1730-00-063-4095, 1730-00-294-3696, 1730-00-294-3695, 1730-00-945-8450, 1730-00-NIB-001A, (2" x 4" x 8" (std)), 1730-00-NIB-001B, (6" x 8" x 18" (std)), 1730-00-NIB-001C, (6" x 8" x 76" (std)), 1730-00-NIN-001D, (8" x 12" (U-shaped)), 1730-00-NIB-001E, (10" x 20" (U-shaped)).

Class 2540

Belt, Automobile, Safety (IB), 2540-00-894-1273, 2540-00-894-1275, 2540-00-894-1274, 2540-00-894-1276.
Cushion Assembly, Seat Back (SH), 2540-00-678-2965.

Class 3510

Net, Laundry (IB), 3510-00-273-9738, 3510-00-273-9739.

Class 3920

Safety Guard (SH), P.S. Item No. 01075B.
Truck, Hand (IB), 3920-00-847-1305.

Class 3990

Pallet, Material Handling (SH), 3990-00-555-0458 (Sharpe Army Depot, Lathrop, Calif. only).
Pallet, Wood (SH), 3990-00-366-6806, 3990-00-366-6821.
Skid, Wood (SH), 3990-00-366-6810, 3990-00-366-6814, 3990-00-366-6815, 3990-00-366-6816, 3990-00-366-6817, 3990-00-366-6819, 3990-00-366-6820.

Class 4910

Creeper, Mechanic's (SH), 4910-00-251-6981, 4910-00-106-7834.

Class 5140

Bag, Tool (IB), 5140-00-772-4142.

Class 5440

Stepladder (IB), 5440-00-514-4483 (regions 7, 8, 9, and 10), 5440-00-514-4485 (regions 7, 8, 9, and 10), 5440-00-514-4487 (regions 7, 8, 9, and 10).

Class 5510

Stakes, Wood, Location (SH), 5510-00-171-7701, 5510-00-171-7700, 5510-00-171-7734.
Stakes, Wood, Hub (SH), 5510-00-171-7733, 5510-00-171-7732.
Wedge, Wood (SH), 5510-00-640-9237.

Class 5660

Fencing, Wire and Wood Picket (SH), 5660-00-257-3860.

Class 5826

Circuit Card Assembly (SH), 5826-00-237-9949.

Class 5940

Adapter, Battery Terminal (SH), 5940-00-549-6583, 5940-00-549-6581.

Class 6150

Cable Assembly, Power (SH), 6150-00-935-8799, 6150-00-507-8852.

Class 6230

Flashlight (SH), 6230-00-643-3486, 6230-00-163-1856.
Lantern, Electric, Head (SH), 6230-00-643-3562.

Light, Desk (SH), 6230-00-299-7771 (regions 2, 3, 4, 5, 7, and 9), 6230-00-682-3423 (regions 2, 3, 5, 7, and 9).
Light, Marker, Distress (with pouch) (SH), 6230-00-067-5209.
Light, Marker, Distress (without pouch) (SH), 6230-00-938-1778.

Class 6505

Ammonia Inhalant Solution, Aromatic (SH), 6505-00-106-0875.
Iodine Ampoules, NF (SH), 6505-00-664-1408.
Thimerosal Tincture, NF (SH), 6505-00-664-6911.

Class 6515

Case, Ear Plug (SH), 6515-00-299-8287 (80 percent of Government requirement).
Kit, Shaving Surgical Preparation (IB), 6515-00-676-7372.
Tourniquet, Non-Pneumatic (IB), 6515-00-383-0565.

Class 6530

Cover, Litter (IB), 6530-00-784-1035, 6530-00-784-1250.
Drape, Surgical (IB), 6530-00-299-9608, 6530-00-299-9607, 6530-00-299-9605, 6530-00-299-9604.
Strap, Webbing Patient Securing (IB), 6530-00-784-4205.
Surgical Pack, Disposable (IB), 6530-00-103-6659.
Urinal, Incontinent (IB), 6530-01-004-8969, 6530-00-290-8292.
Wrapper, Sterilization (IB), 6530-00-299-9603, 6530-00-197-9223, 6530-00-197-9228, 6530-00-197-9283, 6530-00-926-4902, 6530-00-926-4903, 6530-00-926-4904, 6530-00-926-4905.

Class 6532

Cap, Operating, Surgical (IB), 6532-00-299-9614, 6532-00-299-9613, 6532-00-299-9612.
Cap, Operating, Surgical (SH), 6532-00-250-5042, 6532-00-083-6545, 6532-00-250-5041, 6532-00-122-0468.
Clothing, Operating Room (SH), 6532-00-261-9005, 6532-00-290-1887, 6532-00-172-3509, 6532-00-172-3507, 6532-00-172-3506, 6532-00-158-9890, 6532-00-009-7174.
Dress, Operating, Surgical (SH), 6532-00-149-0464, 6532-00-149-0465, 6532-00-149-0466, 6532-00-149-0467, 6532-00-149-0472, 6532-00-149-0473.
Gown, Hospital, Patient's Bedshirt (SH), 6532-01-005-8411, 6532-01-005-8412.
Gown, Operating, Surgical (SH), 6532-00-009-2034, 6532-00-009-2035.
Pillowcase, Disposable (IB), 6532-00-634-9828.
Robe, Dressing, Nomex (SH), 6532-00-003-3057, 6532-00-006-3482.
Shirt, Operating, Surgical (SH), 6532-00-149-0322, 6532-00-149-0323, 6532-00-149-0324, 6532-00-149-0325.
Smock, Man's Dental Operating (SH), 6532-00-159-4881, 6532-00-926-9964, 6532-00-926-9975, 6532-00-926-9976.
Suit, Convalescent (SH), 6532-00-512167, 6532-00-512168, 6532-00-512170, 6532-00-512171.
Trousers, Operating, Surgical (SH), 6532-00-149-0327, 6532-00-149-0328, 6532-00-149-0329, 6532-00-149-0330.

Class 6540

Case, Spectacles (IB), 6540-00-735-5157.

Class 6625

Test Set, Lead (SH), 6625-00-553-1442.

Class 6630

Micro Bleeder (IB), 6630-01-NIB-0002.
Tube, Bleeding (IB), 6630-01-NIB-0001.

Class 6645

Clock, Wall (IB), 6645-01-046-8848, 6645-01-046-8849.

Class 6695

Kit, Spectro Oil Analysis (IB), 6695-00-925-2982.
Sampling Kit, Spectrometric Oil Analysis (IB), 6695-01-045-9820.

Class 6840

Disinfectant, Detergent (IB), 6840-00-687-7904, 6840-00-584-3129, 6840-00-551-8346.

Class 6920

Circuit Card Assembly (SH), 6920-00-482-8335.

Class 7105

Frame, Picture (SH), 7105-00-053-0170, 7105-00-061-5834, 7105-00-052-8697, 7105-00-052-8695.
Mirror, Glass (SH), 7105-00-260-1390.

Class 7110

Blackboard (SH), 7110-00-132-6651 (60 percent of Government requirement), 7110-00-843-7916 (60 percent of Government requirement).
Bookcase, Wood, Executive (SH), 7110-00-290-0368, 7110-00-973-5127.
Tables, Steel (SH), 7110-00-113-0448, 7110-00-113-0454, 7110-00-149-2044, 7110-00-149-2045, 7110-00-149-2046, 7110-00-149-2047.

Class 7195

Bulletin Board (IB), 7195-00-989-2370, 7195-00-844-9036, 7195-00-989-2371, 7195-00-844-9037, 7195-00-989-2372, 7195-00-844-9038, 7195-00-990-0615, 7195-00-843-7938.
Costumer, Wood (SH), 7195-00-132-6642.

Class 7210

Bedspread (IB), 7210-00-728-0186, 7210-00-728-0187, 7210-00-728-0188, 7210-00-728-0189, 7210-00-728-0190, 7210-00-728-0191, 7210-00-728-0173, 7210-00-728-0175, 7210-00-728-0176, 7210-00-728-0177, 7210-00-728-0178, 7210-00-728-0179, 7210-00-408-2800.
Bedspring (IB), 7210-00-582-7540, 7210-00-582-0984, 7210-00-110-8104, 7210-00-582-7541, 7210-00-110-8105.
Cover, Mattress (IB), 7210-00-291-8419, 7210-00-205-3083, 7210-00-205-3082, 7210-00-067-7969, 7210-00-998-7745, 7210-00-883-8492, 7210-00-171-1091, 7210-00-935-6619, 7210-00-140-4231, 7210-00-230-1041, 7210-00-241-9718, 7210-00-140-4234, 7210-00-543-6001.
Mattress, Cotton-Felt (IB), 7210-00-139-6517, 7210-00-139-6555, 7210-00-139-6538.
Mattress, Foam (IB), 7210-00-682-6503, 7210-00-682-6504.
Mattress, Innerspring (IB), 7210-00-205-3585, 7210-00-139-6424, 7210-00-716-0706, 7210-00-139-6411, 7210-00-205-3534, 7210-00-139-6434, 7210-00-139-6428, 7210-00-110-8102, 7210-00-110-8103.
Mattress, Innerspring, Plastic-Coated (IB), 7210-00-995-1093, 7210-00-682-7146, 7210-00-529-3709.
Pad, Mattress (IB), 7210-00-227-1526, 7210-00-753-3042.
Pillow, Bed (IB), 7210-00-619-8261, 7210-00-205-3205 (regions 1 through 7 only), 7210-00-035-3342, 7210-00-894-1144.
Pillow, Passenger, Headrest (IB), 7210-00-682-6601.
Pillowcase (IB), 7210-00-170-5478, 7210-00-171-1100, 7210-00-205-3101 (not available), 7210-00-761-1472 (not available), 7210-00-054-7910, 7210-00-259-9005, 7210-00-259-9006, 7210-00-119-7356, 7210-00-231-2373, 7210-00-259-9004, 7210-00-259-8897, 7210-00-081-1380.
Protector, Hospital Bed, Mattress (IB), 7210-00-761-1471, 7210-00-761-1470.
Protector, Hospital Bed, Pillow (IB), 7210-00-958-9118.
Washcloth (IB), 7210-00-060-6008, 7210-00-082-2065.

Class 7220

Mat, Floor (IB), 7220-00-205-3099, 7220-00-224-6489, 7220-00-205-2807, 7220-00-205-2808, 7220-00-224-6490, 7220-00-224-6487, 7220-00-238-8852, 7220-00-224-6486, 7220-00-205-2805, 7220-00-238-8854, 7220-00-205-2806, 7220-00-165-7020.
Mat, Floor (SH), 7220-00-205-3192, 7220-00-205-3182.

Class 7230

Curtain, Shower (IB), 7230-00-205-1762, 7230-00-247-1280.

Class 7290

Cover, Ironing Board (IB), 7290-00-130-3271.

Class 7330

Pad, Bakery (IB), 7330-00-379-4439 (regions 3, 5, 6, and 8).
Tongs, Food Serving (SH), 7330-00-616-0997, 7330-00-616-0998, 7330-00-616-1000.

Class 7340

Flatware, Plastic, Heavy Duty (IB), 7340-00-022-1315, 7340-00-022-1316, 7340-00-022-1317, 7340-00-401-8041.
Spoon, Picnic, Plastic (IB), 7340-00-J19-1300.

Class 7360

Dining Packet (IB), 7360-00-935-6407.
Dining Packet, Inflight (IB), 7360-00-660-0526.
Flatware Set, Plastic (IB), 7360-00-834-4800.

Class 7430

Cover, Typewriter (SH), 7430-00-823-8080, 7430-00-823-8081, 7430-00-823-8082, 7430-00-823-8083, 7430-00-823-8084, 7430-00-823-8085, 7430-00-823-8090, 7430-00-823-8086, 7430-00-823-8087.

Class 7510

Binder, Awards Certificate (IB), 7510-00-115-3250 (60 percent of Government requirement), 7510-00-482-2994.
Binder, Looseleaf (IB), 7510-00-281-4309, 281-4314, 7510-00-582-4201, 7510-00-281-4310, 7510-00-281-4311, 7510-00-281-4313, 7510-00-281-4315, 7510-00-286-7792, 7510-00-286-7794, 7510-00-582-5488, 7510-00-286-7791, 7510-00-582-3807, 7510-00-782-2663, 7510-00-782-2664, 7510-00-409-8646, 7510-00-409-8647, 7510-00-984-5787.

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Binder, Looseleaf, Presentation (IB), 7510-00-582-5398 (regions 2, 3, and 4), 7510-00-582-5399 (regions 2, 3, and 4), 7510-00-582-5400 (regions 2, 3, and 4).
Binder, Note Pad (IB), 7510-00-286-6954, 7510-00-145-0296, 7510-00-728-8060, 7510-00-053-5591.
Board, Wall Calendar (IB), 7510-00-789-2455.
Calendar Pad (SH), 7510-00-021-3252 (1979), 7510-00-020-7521 (1980).
Clip, Paper (SH), 7510-00-161-4292.
Eraser, Mechanical (IB), 7510-00-865-5292, 7510-00-082-2665.
File Backer, Paper (IB), 7510-00-285-2567.
Pad, Typewriter (IB), 7510-00-257-2576, 7510-00-530-6412, 7510-00-849-1137.
Pencil (IB), 7510-00-286-5757, 7510-00-281-5234, 7510-00-281-5235.
Pencil, Woodcased, with Imprinting (IB), 7510——050-8LP, 050-8LP-201-6521.
Portfolio (IB), 7510-00-558-1572, 7510-00-616-7241, 7510-00-551-9813, 7510-00-558-1573, 7510-00-616-7239, 7510-00-558-1571, 7510-00-995-4856, 7510-00-995-4857, 7510-00-995-4854, 7510-00-995-4852, 7510-00-995-4853, 7510-00-995-4850, 7510-00-584-2489, 7510-00-584-2490, 7510-00-584-2491, 7510-00-584-2492.
Refill, Ballpoint Pen (IB), 7510-00-543-6792, 7510-00-543-6793, 7510-00-754-2687, 7510-00-543-6795, 7510-00-754-2688, 7510-00-754-2689, 7510-00-754-2690, 7510-00-754-2691.
Refill, List Finder, Automatic (SH), 7510-00-285-2800.

Class 7520

Arch Board File (IB), 7520-00-281-4848, 7520-00-240-5498, 7520-00-191-1074, 7520-00-191-1075, 7520-00-281-4845, 7520-00-255-7081.
Ballpoint Pen (IB), 7520-00-935-7136, 7520-00-935-7135, 7520-00-543-7149.
Ballpoint Pen, with Imprinting (IB), 7520——050-8LP, 050-8LP-201-6520.
Book Ends (IB), 7520-00-264-5479, 7520-00-139-6158.
Box, Filing (SH), 7520-00-285-3147 (all regions), 7520-00-285-3143 (all regions), 7520-00-285-3144 (region 1, 2, 3, 4, 5, 6, 7 and 8), 7520-00-285-3145 (region 1, 2, 3, 9 and 10), 7520-00-285-3146 (region 1, 2, 3, 9 and 10), 7520-00-285-3148 (region 1, 2, 3, 6, 7, 8, 9 and 10.
Case, Maintenance and Operational Manuals (IB), 7520-00-559-9618.
Clipboard, File (IB), 7520-00-281-5918, 7520-00-254-4610, 7520-00-240-5503, 7520-00-274-5496, 7520-00-281-5892.
Easel, Display and Training (IB), 7520-00-579-7013.
Holder, Desk Memorandum (IB), 7520-00-139-3802, 7520-00-290-6445.
Marker, Tube Type (IB), 7520-00-973-1059, 7520-00-973-1060, 7520-00-079-0285, 7520-00-973-1061, 7520-00-079-0286, 7520-00-079-0287, 7520-00-973-1062, 7520-00-079-0288, 7520-00-558-1501, 7520-00-904-1265, 7520-00-904-1268, 7520-00-935-0979, 7520-00-904-1267, 7520-00-935-0981, 7520-00-935-0982, 7520-00-904-1266, 7520-00-935-0980, 7520-00-051-5031, 7520-00-051-5035, 7520-00-116-2888, 7520-00-051-5036, 7520-00-116-2886, 7520-00-116-2889, 7520-00-051-5033, 7520-00-116-2887, 7520-00-904-4476.
Pen Set, Desk (IB), 7520-00-106-9840.
Pen, Stick-type (IB), 7520-01-058-9978, 7520-01-058-9977, 7520-01-058-9976, 7520-01-059-4125, 7520-01-060-5820, 7520-01-058-9975, 7520-01-060-8513, 7520-01-060-5821.
Pencil, Mechanical (IB), 7520-00-223-6672, 7520-00-223-6673, 7520-00-223-6674, 7520-00-268-9913, 7520-00-223-6675, 7520-00-223-6676, 7520-00-268-9912, 7520-00-577-4570, 7520-00-285-5826, 7520-00-285-5822, 7520-00-285-5823, 7520-00-205-1645, 7520-00-285-5817, 7520-00-161-5664, 7520-00-164-8950, 7520-00-268-9915, 7520-00-285-5818, 7520-00-268-9916, 7520-00-634-3475, 7520-00-724-5606.
Perforator, Paper, Desk (SH), 7520-00-139-4101, 7520-00-263-3425.
Stand, Calendar Pad (IB), 7520-00-162-6153, 7520-00-139-4341.
Tray, Desk (SH), 7520-00-232-6828, 7520-00-286-5801, 7520-00-285-5043.
Trimmer, Paper (IB), 7520-00-224-7621, 7520-00-282-2137.

Class 7530

Card, Guide, File (IB), 7530-00-989-0184, 7530-00-989-2425, 7530-00-988-6541, 7530-00-988-6542, 7530-00-988-6543, 7530-00-988-6549, 7530-00-988-6550, 7530-00-988-6551, 7530-00-988-6544, 7530-00-988-6545, 7530-00-988-6546, 7530-00-988-6547, 7530-00-988-6548, 7530-00-988-6515, 7530-00-988-6516, 7530-00-988-6520, 7530-00-988-6521, 7530-00-988-6517, 7530-00-988-6518, 7530-00-988-6522.
Card-Set, Guide, File (IB), 7530-00-989-0698, 7530-00-989-0697, 7530-00-989-0683, 7530-00-082-2635, 7530-00-989-0684, 7530-00-989-0686, 7530-00-989-0692, 7530-00-989-0694, 7530-00-989-0693, 7530-00-989-0695.
Folder, File, Military Personnel Records Jacket (IB), 7530—DA Form 201.
Folder, File (IB), 7530-00-889-3555, 7530-00-559-4512, 7530-00-281-5907, 7530-00-281-5908, 7530-00-926-8978, 7530-00-273-9845, 7530-00-926-8980, 7530-00-286-6924 (regions 1, 2, 4, 5, 6, 7, and 8).
Folder-Set, File (IB), 7530-00-281-5905, 7530-00-286-6923 (regions 1, 2, and 3).
Notebook, Stenographer's (IB), 7530-00-223-7939.
Pad, Writing Paper (IB), 7530-00-285-3090 (regions 1, 5, and 6), 7530-00-239-8479 (regions 1, 2, 4, 5, 6, 7, and 8), 7530-00-285-3088 (regions 1, 2, 3, 4, 5, 6, 7, and 8), 7530-00-285-3083 (regions 1, 3, 5, 6, 7, and 8) (Region 3 Franconia Depot only), 7530-00-285-3090 (GFM regions 1, 5, and 6), 7530-00-239-8479 (GFM regions 1, 2, 4, 5, 6, 7, and 8), 7530-00-286-6173 (regions 2 and 3).
Pad, Writing Paper (Easel) (IB), 7530-00-619-8880 (regions 2, 3, and 4).
Paper, Looseleaf, Blank (IB), 7530-00-286-5777, 7530-00-286-5778, 7530-00-286-5782, 7530-00-286-5780, 7530-00-286-5781, 7530-00-286-5779.
Paper, Looseleaf, Ruled (IB), 7530-00-286-6366, 7530-00-286-4332, 7530-00-286-4331, 7530-00-286-4333, 7530-00-286-4334, 7530-00-286-4335, 7530-00-198-6265, 7530-00-286-4336, 7530-00-286-4337, 7530-00-286-4338, 7530-00-286-4339.
Paper, Teletypewriter, Roll (IB), 7530-00-223-7966 (regions 4, 5, and 6).
Paper, Writing (IB), 7530-00-285-5836.
Refill, Appointment Book (SH), 7530-01-022-3568 (1979), 7530-01-022-3569 (1980).
Tape, Paper, Computing Machine (IB), 7530-00-286-9052, 7530-00-222-3455, 7530-00-286-9053, 7530-00-286-9054, 7530-00-238-8352, 7530-00-222-3456, 7530-00-286-9055.

Class 7690

Decalcomania NO SMOKING (SH), 7690-00-857-9662, 7690-00-857-9574, 7690-00-857-9700, 7690-00-857-9613, 7690-00-858-3403, 7690-00-858-3365, 7690-00-310-6627, 7690-00-311-7272, 7690-00-328-9517, 7690-00-329-0205.
Decalcomania U.S. ARMY (SH), 7690-00-857-9575, 7690-00-857-9663, 7690-00-857-9614, 7690——Code 600 USPSW, 7690——Code 607 USPSW, 7690-00-311-7276, 7690-00-329-0206, 7690-00-858-3405, 7690-00-858-3366, 7690-00-310-9208.
Decalcomania MAX SPEED (SH), 7690-00-857-9572, 7690-00-857-9660, 7690——Code 633 USPSW, 7690-00-857-9611, 7690-00-857-9698, 7690-00-328-9507, 7690-00-329-0204.
Decalcomania NO RIDERS (SH), 7690——Code 635 USPSW, 7690-00-857-9573, 7690——Code 636 USPSW, 7690-00-857-9612, 7690-00-857-9699.
Decalcomania LIFT HERE (SH), 7690——Code 622- L-USPSW.
Decalcomania FOR OFFICIAL USE ONLY (SH), 7690-00-329-0538.
Decalcomania TP (SH), 7690——Code 669- L-USPSW, 7690——Code 666- L-USPSW, 7690——Code 672- L-USPSW, 7690——Code 667- L-USPSW, 7690——Code 675- L-USPSW, 7690——Code 668- L-USPSW.
Decalcomania NUMBERS AND LETTERS (SH), 7690-00——1½", 7690——2", 7690-00-311-7128, 7690——4".

Class 7920

Broom, Push (IB), 7920-00-267-2967.
Broom, Upright (IB), 7920-00-292-4371, 7920-00-292-4375, 7920-00-292-4372, 7920-00-291-8305.
Broom, Whisk (IB), 7920-00-240-6350.
Brush, Chassis and Running Gear (IB), 7920-00-255-7536.
Brush, Cleaning, Aircraft (IB), 7920-00-051-4384.
Brush, Dusting (IB), 7920-00-178-8315.
Brush, Floor Sweeping (IB), 7920-00-243-3407, 7920-00-292-2363, 7920-00-292-2367, 7920-00-264-4638, 7920-00-292-2362, 7920-00-292-2365.
Brush, Sanitary (IB), 7920-00-772-5800, 7920-00-234-9317.
Brush, Scrub (IB), 7920-00-240-7174, 7920-00-951-8795, 7920-00-282-2470 (tampico fibers), 7920-00-282-2470 (styrene fibers), 7920-00-297-1511, 7920-00-324-2746, 7920-00-619-9162, 7920-00-061-0038.
Brush, Shoe and Stove (IB), 7920-00-852-8170.
Brush, Wire, Scratch (IB), 7920-00-291-5815, 7920-00-282-9246, 7920-00-246-8501, 7920-00-223-7649.
Brush, Wire, Stainless Steel (IB), 7920-00-958-1157.
Brush-Set, Shoe and Stove (IB), 7920-00-205-0200.
Cloth, Polishing (IB), 7920-00-205-1656, 7920-00-205-3170, 7920-00-664-0103.
Handle, Mop (IB), 7920-00-205-1168, 7920-00-267-1218, 7920-00-205-1167, 7920-00-550-9902, 7920-00-550-9911, 7920-00-550-9912, 7920-00-998-2485, 7920-00-998-2486, 7920-00-851-0140, 7920-00-851-0142, 7920-00-246-0930, 7920-00-205-1170.
Handle, Paint Roller (IB), 7920-00-682-6512.
Handle, Wood (IB), 7920-00-177-5106, 7920-00-141-5452, 7920-00-263-0328.
Mops, Dusting, Cotton, (IB), 7920-00-205-0481, 7920-00-205-0483, 7920-00-205-0484, 7920-00-245-8289.
Mop, Wet (IB), 7920-00-224-8726.

Mop, Wet, Cellulose, Complete (IB), 7920-00-432-7117, 7920-00-728-1167.
Mop, Wet, Cellulose, Sponge Refill (IB), 7920-00-471-2876.
Mophead, Dusting, Cotton (IB), 7920-00-634-0201, 7920-00-267-4921, 7920-00-998-2482, 7920-00-998-2483, 7920-00-998-2484, 7920-00-851-0141, 7920-00-205-0485, 7920-00-205-0487, 7920-00-205-0488.
Mophead, Wet (IB), 7920-00-205-0425, 7920-00-205-0426, 7920-00-141-5549, 7920-00-171-1148, 7920-00-141-5550, 7920-00-141-5547, 7920-00-141-5548, 7920-00-141-5544, 7920-00-141-5542, 7920-00-245-8290, 7920-00-141-5543, 7920-00-923-0448, 7920-00-141-5541, 7920-00-926-5492, 7920-00-926-5493, 7920-00-926-5494, 7920-00-926-5495, 7920-00-926-5496, 7920-00-926-5497, 7920-00-926-5498, 7920-00-926-5499, 7920-00-926-5500, 7920-00-926-5501, 7920-00-926-5502, 7920-00-926-5503, 7920-00-634-0202, 920-00-634-0203.
Pad, Scouring (IB), 7920-00-753-5242.
Scraper and Squeegee (IB), 7920-00-045-2556.
Sponge, Cellulose (IB), 7920-00-161-6219, 7920-00-633-9928, 7920-00-240-2559, 7920-00-884-1116, 7920-00-559-8462, 7920-00-559-8463, 7920-00-559-8464, 7920-00-884-1115, 7920-00-633-9905, 7920-00-240-2555, 7920-00-633-9906.
Squeegee (SH), 7920-00-224-8339.

Class 7930

Detergent, General Purpose (IB), 7930-00-926-5280, 7930-00-357-7386, 7930-00-068-1669, 7930-00-177-5243, 7930-00-985-6945, 7930-00-985-6946, 7930-00-530-8067, 7930-00-527-1207, 7930-00-527-1237.
Dishwashing Compound, Hand (IB), 7930-00-880-4454 Rgn 1, 2, 3, 5 and 10, 7930-00-899-9534 Rgn 1, 2, 3, 5 and 10.
Rinse Additive, Dishwashing (IB), 7930-00-619-9573 (100 percent Gvt rqmt) 7930-00-619-9575 (60 percent rqmt).
Wax, Floor (IB), 7930-00-205-2870 Rgn 1, 2, 3, 5 and 10, 7930-00-141-5888 Rgn 1, 2, 3, 5 and 10, 7930-00-205-2871 Rgn 1, 2, 3, 5 and 10.

Class 8105

Bag, Cloth (IB), 8105-00-282-8183.
Bag, Cotton (IB), 8105-00-183-6981, 8105-00-281-3924, 8105-00-183-6982, 8105-00-179-0089, 8105-00-271-1511, 8105-00-183-6985,8105-00-174-0336, 8105-00-6989, 8105-00-290-3360.
Bag, Lunch (SH), 8105-00-664-3715.
Bag, Motion Sickness (IB), 8105-00-835-7212.

Class 8115

Box, Set-Up, Mailing Dental (IB), 8115-00-511-5750.
Box, Wood (SH), 8115-00-935-6526, 8115-00-935-6527, 8115-00-935-6532.

Class 8120

Cap, Compressed Gas Cylinder (IB), 8120-00-178-9814, 8120-00-179-0076.

Class 8315

Sewing Kit (SH), 8315-00-889-3632, 8315-00-816-5905.

Class 8340

Pin, Tent, Aluminum (SH), 8340-00-261-9749.
Pin, Tent Wood (SH), 8340-00-261-9750, 8340-00-261-9751.

Class 8345

Case, Flag, Interment (IB), 8345-00-782-3010.
Flag, Signal (IB), 8345-00-935-0588, 8345-00-935-0589, 8345-00-935-0590, 8345-00-935-0591, 8345-00-935-0592, 8345-00-935-0594, 8345-00-935-0595, 8345-00-935-0597, 8345-00-935-0598, 8345-00-935-0599, 8345-00-935-0602, 8345-00-935-0604, 8345-00-935-0607, 8345-00-935-0608, 8345-00-935-0633, 8345-00-935-1840, 8345-00-935-0634, 8345-00-935-0638, 8345-00-935-0639, 8345-00-926-0640, 8345-00-926-9977, 8345-00-926-9216, 8345-00-926-9978, 8345-00-926-6804, 8345-00-926-6806, 8345-00-926-9979, 8345-00-926-6807, 8345-00-926-6809, 8345-00-926-9980, 8345-00-926-9219, 8345-00-935-0582, 8345-00-926-9984, 8345-00-926-6003, 8345-00-926-9985, 8345-00-935-0619, 8345-00-935-1839, 8345-00-935-0620, 8345-00-935-0623, 8345-00-935-0409, 8345-00-926-0624, 8345-00-935-0445, 8345-00-926-6803, 8345-00-935-0446, 8345-00-926-6805, 8345-00-935-0447, 8345-00-926-9987, 8345-00-935-0448, 8345-00-926-6810, 8345-00-926-9988, 8345-00-935-0450, 8345-00-935-0451, 8345-00-935-0453, 8345-00-935-6002, 8345-00-935-6814, 8345-00-935-0436, 8345-00-935-0437, 8345-00-935-0438, 8345-00-935-0408, 8345-00-935-0441, 8345-00-935-0442, 8345-00-935-0464, 8345-00-935-0465, 8345-00-935-0466, 8345-00-935-0467, 8345-00-935-0468, 8345-00-935-0470, 8345-00-935-0471, 8345-00-935-0473, 8345-00-935-0474, 8345-00-935-0475, 8345-00-935-0478, 8345-00-935-0480, 8345-00-935-0483, 8345-00-935-0484, 8345-00-935-0626, 8345-00-935-1838, 8345-00-935-0627, 8345-00-935-0407, 8345-00-935-0630, 8345-00-935-0631.
Flag, Signal, Vehicle, Danger Red (IB), 8345-00-260-2724.
Pennant, Signal, and Special Flags (IB), 8345-00-935-0420, 8345-00-935-0517, 8345-00-935-4755, 8345-00-825-1847, 8345-00-935-3201, 8345-00-935-4756, 8345-00-935-0522, 8345-00-914-6086, 8345-00-935-4753, 8345-00-935-4754, 8345-00-935-0404, 8345-00-935-0514, 8345-00-825-1868, 8345-00-935-0406, 8345-00-935-0509, 8345-00-926-5988, 8345-00-935-0512, 8345-00-921-4497, 8345-00-935-3199, 8345-00-825-1839, 8345-00-935-0526, 8345-00-914-6076, 8345-00-914-6080, 8345-00-914-6083, 8345-00-935-0524, 8345-00-926-5987, 8345-00-926-5989, 8345-00-935-0539, 8345-00-926-5991, 8345-00-825-1840, 8345-00-935-0521, 8345-00-914-6087, 8345-00-926-6026, 8345-00-935-0403, 8345-00-935-0536, 8345-00-926-9210, 8345-00-926-9213, 8345-00-926-6028, 8345-00-935-0508, 8345-00-935-0519, 8345-00-935-0415, 8345-00-914-6085, 8345-00-926-9215, 8345-00-935-0411, 8345-00-926-9212, 8345-00-914-7411, 8345-00-914-6079, 8345-00-914-6082, 8345-00-935-0523, 8345-00-935-0417, 8345-00-926-5990, 8345-00-935-0421, 8345-00-926-9207, 8345-00-935-0542, 8345-00-935-0520, 8345-00-935-0492, 8345-00-935-0493, 8345-00-926-9214, 8345-00-935-0513, 8345-00-935-0490, 8345-00-935-0495, 8345-00-926-9208, 8345-00-935-0518, 8345-00-935-0511, 8345-00-914-6084, 8345-00-935-0405, 8345-00-935-0410, 8345-00-935-0525, 8345-00-914-6075, 8345-00-914-6077, 8345-00-914-6081, 8345-00-935-0419, 8345-00-935-0416, 8345-00-935-0537, 8345-00-935-0538, 8345-00-935-0540, 8345-00-935-0541, 8345-00-926-9211, 8345-00-935-0499, 8345-00-935-0500, 8345-00-935-0501, 8345-00-825-1818, 8345-00-935-0497, 8345-00-935-0504, 8345-00-935-1841, 8345-00-935-0418, 8345-00-825-1819, 8345-00-926-1551, 8345-00-935-0503, 8345-00-935-0534, 8345-00-935-1843, 8345-00-926-1548, 8345-00-926-1549, 8345-00-926-1552.

Class 8405

Cover, Service Cap (IB), 8405-01-046-8544, 8405-01-046-8545.
Strap, Chin (SH), 8405-00-152-3952.

Class 8410

Havelock (IB), 8410-00-782-2782, 8410-01-013-9109.

Class 8415

Apron, Construction Worker's (IB), 8415-00-205-3895, 8415-00-257-4290.
Apron, Food Handling (IB), 8415-00-255-8577, 8415-00-634-0205, 8415-00-051-1173, 8415-00-045-0587.
Band, Helmet, Camouflage (IB), 8415-00-576-2873.
Cap, Food Handler's (IB), 8415-00-234-7677, 8415-00-234-7678, 8415-00-234-7679.
Cover, Helmet (IB), 8415-00-105-0605.
Traffic Safety Clothing (See Class 8465 also) (IB), 8415-00-177-4978, 8415-00-177-4974.

Class 8430

Footwear Cover (IB), 8430-00-890-2079.
Slide Fastener Unit, Laced Boot (IB), 8430-00-465-1888, 8430-00-465-1889, 8430-00-465-1890.

Class 8440

Neckerchief (IB), 8440-LL-L07-7000.
Necktie (IB), 8440-00-216-6130, 8440-00-316-2519, 8440-00-555-7194.

Class 8460

Kit Bag, Flyer's (IB), 8460-00-606-8366.
Suitcase, Coated Cloth (SH), 8460-00-391-0502, 8460-01-014-1972.

Class 8465

Bag, Barrack (IB), 8465-00-530-3692.
Bag, Duffel (IB), 8465-00-265-4928.
Bag, Laundry (SH), 8465-00-616-9576, 8465-00-656-0816.
Bag, Sleeping, Firefighter's (IB), 8465-00-081-0798 Rgn 9 and 10.
Bag, Soiled Clothes (SH), 8465-00-122-3869.
Bag, Soiled Clothes, Submarine (IB), 8465-00-762-7671.
Belt, Individual, Equipment, Nylon, LC-1 (IB), 8465-00-001-6488, 8465-00-001-6487.
Belt, M.P. (IB), 8465-00-527-8843.
Carrier, Intrenching Tool (IB), 8465-00-001-6474.
Case, Field, First Aid (IB), 8465-00-935-6814.
Case, Maintenance Equipment, Small Arms (IB), 8465-00-781-9564.
Clipboard, Pilot's (SH), 8465-01-012-9174.
Clothes Stop (IB), 8465-00-377-5701.
Club, Policeman's (IB), 8465-00-641-8551.
Cover, Water Canteen (IB), 8465-00-118-4956.
Cover, Water Canteen, Nylon (IB), 8465-00-860-0256, 30 percent Gvt rqmt.
Hood, Sleeping Bag (IB), 8465-00-518-2769.
Lanyard, Pistol (SH), 8465-00-262-5237, 8465-00-965-1705.
Necklace, Personnel, Identification (SH), 8465-00-261-6629.
Pocket, Ammunition Magazine, (IB), 8465-00-782-2239, 8465-00-261-4983.
Protector, Trousers, Pistol Holster (IB), 8465-00-682-6741.
Strap, Tie, Mail Carrier's, with buckle (IB), 8465—D-1216D, 8465—D-1216E, 8465—D-1216F.

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Strap, Webbing, Cargo, Tie-Down (IB), 8465-00-001-6477.
Suspenders,Individual Equipment Belt (IB), 8465-00-001-6471.
Traffic Safety Clothing (see Class 8415 also) (IB), 8465-00-177-4977, 8465-00-177-4976, 8465-00-177-4975.
Whistle, Ball, Plastic (IB), 8465-00-254-8803.

Class 8470

Headband, Ground Troop, Helmet Liner (IB), 8470-00-153-6671, Mechanicsburg, Pa. and Richmond, Va. only.
Neckband, G. T., Helmet Liner (IB), 8470-00-753-6166.
Strap, Soldier's Steel Helmet M-1 (IB), 8470-00-030-8003.
Suspension Assembly, Liner, Helmet (IB), 8470-00-880-8814.

Class 8520

Soap, Toilet (IB), 8520-00-228-0598, 8520-01-058-7463, 8520-00-141-2519.

Class 8940

Condiment Packet (Dietetic) (IB), 8940-00-177-4958, 8940-00-177-4959, 8940-00-177-4960, 8940-00-177-4961, 8940-00-177-4962, 8940-00-177-4963, 8940-00-935-6416, 8940-00-935-6417, 8940-00-935-6420, 8940-00-935-6421.

Class 8950

Condiment Packet (IB), 8950-00-935-6408, 8950-00-935-6409, 8950-00-935-6410, 8950-00-935-6411, 8950-00-935-6412, 8950-00-935-6413.

Class 9905

Plate, Marking, Blank (SH), 9905-00-473-6336.
Sign, U.S. Property-No Trespassing (IB), 9905-00-559-2971.
Sign-Kit, Vehicle (SH), 9905-00-565-6267.
Tag, Marker (SH), 9905-00-537-8955, 9905-00-537-8956, 9905-00-537-8957.

Class 9920

Ash Receiver, Tobacco (IB), 9920-00-682-6757.

MILITARY RESALE COMMODITIES

Procedures for ordering military resale commodities are contained in Section 51-5.6, Code of Federal Regulations, Title 41.

Stock No. and Item Name

450—Tennis racket, deluxe (IB).
452—Tennis racket, economy (IB).
500—Room Air Freshener (IB).
501—Deodorizer, toilet bowl (IB).
544—Scrubber, nylon net over polyurethane pad (IB).
554—Scrubber, nylon, rectangular (IB).
555—Scrubber, kitchen, 4⅜ × 3 1/16 × 1 3/16" (IB).
556—Scrubber, bathroom, 4⅜ × 3 1/16 × 1 3/16" (IB).
557—Scrubber, general household, 6⅜ × 3 1/16 × 1" (IB).
563—Scrubber, plastic, for teflon (IB).
574—Clothesline, plastic, rayon reinforced, 100-ft. (IB).
575—Sponge, cellulose, 5½ × 3⅜ × 1¼" (IB).
576—Sponge, cellulose, 7⅜ × 4 × 1¾" (IB).
577—Sponge, cellulose, 5½ × 3⅜ × 1" (IB).
578—Sponge, cellulose, 5½ × 3⅜ × ⅝" (IB).
588—Opener, pour and store (IB).
593—Sponge, bath, circular (IB).
594—Swatter, fly, plastic (IB).
596—Cutlery Set, plastic, heavy duty (8 ea. knives, forks, spoons) (IB).
597—Knives, plastic, heavy duty (IB).
598—Forks, plastic, heavy duty (IB).
599—Spoons, plastic, heavy duty (IB).
600—Trowel, transplanter (IB).
601—Trowel, regular (IB).
602—Cultivator (IB).
603—Weeder (IB).
604—Grass Shears (IB).
605—Pruning shears (IB).
718—Paint roller, frame assembly, 7" (IB).
719—Paint roller, frame assembly, 9" (IB).
720—Paint roller cover, polyester fiber, paper core, 7" (IB).
721—Paint roller cover, polyester fiber, paper core, 9" (IB).
722—Paint roller cover, polyester fiber, plastic core, 7" (IB).
723—Paint roller cover, polyester fiber, plastic core, 9" (IB).
724—Paint roller cover, polyester fiber, plastic core, 7" (IB).
725—Paint roller cover, polyester fiber, plastic core, 9" (IB).
726—Paint roller cover, polyester fiber, plastic core, 7" (IB).
727—Paint roller cover, polyester fiber, plastic core, 9" (IB).
728—Paint roller cover, dacron fiber, 7" (IB).
729—Paint roller cover, dacron fiber, 9" (IB).
730—Paint roller cover, dacron fiber, 9" (IB).
731—Paint roller cover, dacron fiber, 7" (IB).
732—Paint roller cover, mohair fiber, 7" (IB).
733—Paint roller cover, mohair fiber, 9" (IB).
735—Trimmer, paint roller, 3" (IB).
736—Refill, trimmer, paint roller, 3" (IB).
901—Broom, mixed fiber (IB).
902—Broom, push, indoor/outdoor, 54" handle (IB).
903—Broom, parlor, corn, medium weight (IB).
904—Broom, corn, plastic cap (IB).
905—Broom, plastic filament, flagged ends (IB).
907—Broom, plastic filament, angle cut (IB).
909—Broom, whisk, corn (IB).
910—Broom, whisk, plastic (IB).
911—Brush, floor, plastic filament, with handle (IB).
912—Brush, lint, plastic fialment (IB).
913—Brush, lint 2-row brass fialment (IB).
914—Brush, barbecue, with scraper (IB).
915—Brush, counter plastic (IB).
916—Brush, bowl, sanitary, nylon filament (IB).
918—Brush, scrub, household (IB).
919—Brush, scrub, plastic block, vinyl filament (IB).
920—Handle, mop, spring lever, for wet mop heads (IB).
922—Applicator, wax, foam block (IB).
923—Mop, automatic, block sponge (IB).
924—Mop, block sponge, with scrub strip brush (IB).
925—Mop, dusting, nylon (IB).
926—Mop, stick, orlon/rayon yarn, wet (IB).
928—Mop, stick, cotton yarn, wet (IB).
932—Refill, applicator, wax, foam block, for 922 (IB).
933—Refill, mop, automatic, block sponge, for 923 (IB).
934—Refill, mop, block sponge, for 924 (IB).
936—Mophead, orlon/rayon yarn, wet (IB).
937—Mophead, cotton yarn, wet (IB).
941—Cloth, dish, knitted cotton (IB).
945—Towel, kitchen, cotton (IB).
946—Potholder, quilted, cotton (IB).
949—Mitt, oven, quilted, cotton (IB).
950—Mop, dish and bottle, wood handle (IB).
951—Mop, glass and dish, plastic handle (IB).
952—Brush, percolator (IB).
955—Brush, vegetable/utility, plastic filament (IB).
956—Brush, bottle, nylon filament (IB).
957—Brush, dish and pan, nylon filament (IB).
959—Brush, pastry and basting (IB).
962—Cover, ironing board, silicone and pad, poly foam (IB).
964—Cover, ironing board, silicone, double coated (IB).
969—Cover, ironing board, teflon coated (IB).
970—Bag, washing machine, nylon with zipper (IB).
980—Cloth, all purpose, cotton (IB).
983—Cloth, dusting (IB).
986—Cloth, wash, face (IB).
995—Dustpan, plastic (IB).

SERVICES

These services are identified by industrial group number as provided in the Standard Industrial Classification Manual prepared by the Technical Committee on Industrial Classification, Statistical Policy Division, Office of Management and Budget.

SIC 0782

Grounds maintenance.
Bergstrom Air Force Base, Tex. for following AFRES units: Buildings: 1601, 4202, 4526, 4527, 4534, 4535, 4547, 4562 and Apron "D" (SH).
Edwards Air Force Base, California, for Chapel 2700; Hospital Areas 5500, 5510, and 5550; Recreation Fields 2201, 5201, 5208, and 5213; Buildings 1200, 1220, 1400, 2640, 2660, 2800, 3940, and P-1 (SH).
Federal Aviation Administration, Leesburg, Va. (SH).
Federal Aviation Administration, Air Route Traffic Control Center, Ronkonkoma, N.Y. (SH).
Fort Lawton, Wash. (SH)
Fort Lawton, Wash., Cemetery Grounds (includes opening and closing of graves) (SH).
Fort Ord, Calif., for Silas B. Hays Army Hospital; Fort Ord Officer's Open Mess; Headquarters Area and Welcome Center (SH).
Department of Energy, Morgantown Energy Research Center, Morgantown, W. Va.
Naval Air Station, Whidbey Island, Wash. (SH).
Naval Weapons Station, Yorktown, Va. for: Kirkpatrick Park; Administration Building No. 31 and Gate No. 1; Missile Park; Dispensary Area; Skiff Creek Area; Officer's Club Building 58; Building 380A, Building. 380B, Credit Union; and Industrial Areas.
Special Training Building and Complex, U.S. Secret service, Beltsville, Md. (SH).
State Line Park, West Point Lake, West Point, GA. (SH).

SIC 0851

Seedling harvesting.
USDA, Forest Service, Humboldt Nursery, McKinleyville, Calif. (SH).

SIC 5812

Catered noon meals
Armed Forces Examining and entrance Station, Seattle, Wash. (SH).

SIC 7218

Laundry.
Naval Training Center, Great Lakes, Ill. (SH).
U.S. Army Medical Material Agency, fort Detrick, Frederick, Md. (SH).

SIC 7331

Mailing.
Consumer Product Safety Commission, Wahington, D.C. (SH).
The Library of Congress, Washington, D.C. (SH).
President's Committee on Employment of the Handicapped, Wahington, D.C. (SH).
U.S. Department of Agriculture, Washington, D.C. (D.C. metropolitan area only, excluding Foreign Agriculture Services, Management Services Division) (SH).
U.S. Department of H.E.W., for following offices only: National Institutes of Health, Bethesda, Md. (SH), Alcohol, Drug Abuse, and Mental Health Administration, Rockville, Md. (SH), Food and Drug Administration, Rockville, Md. (SH), Health Resources Administration, Rockville, Md. (SH), Health Services Administration, Rockville, Md. (SH), Office of Assistant Secretary for Health, Rockville, Md. (SH),Office of the Secretary, Washington, D.C. (SH).
U.S. Department of H.U.D., Washington, D.C. (SH).
U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. (SH); Manpower Administration, Washington, D.C. (SH).

Tax Form Order Fullfillment

Internal Revenue Service, Buffalo, N.Y. (SII).

SIC 7349

Campground cleanup and trash removal.
U.S. Department of Agriculture, Forest Service, Pole Mountain and Centennial Areas, Laramie, Wyo. (SH).

Janitorial/Custodial

U.S. Army Reserve Centers in Massachusetts, at following locations; Belmont and Manley Street, Brockton; 915 West Chestnut Street, Brockton; John Williams Street, Attleboro; 675 American Legion Highway, Roslindale; 130 Eldridge Street, Taunton.
Bergstrom Air force Base, Tex., Buildings: 713 734, 2004, 2108 and 2600 (Chapel) (SH).
Bureau of Land Management District Building, Roseburg, Oreg. (SH).
Department of Energy, for the following: Morgantown Energy Research Center, Morgantown, W. Va. (SH). Offices at Rogers Hotel and Offices at First Street Building, Idaho Falls, Idaho, (SH).
Fairchild Air Force Base, Spokane, Wash. for: Alert Facility (Building 2080); Alert Trailers; Post Office (Building 644); Military Family Housing Office (Building 2451B); Audit Agency Office (Building 2245); 47th Air Division Headquarters (Building 2285); Civilian Personnel and NAF (Room 209 of Building 2245); Red Cross Office (Building 2245); Base Library (Building 716); Base Chapel (Building 4200); Base Education Center (Building 2365); Family Visitation Center (Building 2092) (SH).
Federal Aviation Administration, Tracon Facility, Stewart Avenue, Westbury, Long Island, N.Y. (SH).
Federal Building, 400 South Clinton, Iowa City, Iowa (SH).
Federal Building (U.S. Post Office and Courthouse), 330 Shawnee, Leavenworth, Kans. (SH).
Federal Building and Post Office, 202 Harlow Street, Bangor, Maine (SH).
Federal Building and Courthouse, 436 Dwight Street, Springfield, Mass. (SH).
Federal Building, Manchester, N.H. (SH).
Federal Building, Muskogee, Okla. (SH).
Federal Building and U.S. Courthouse, Lincoln, Nebr. (SH).
Lloyd Group Buildings, Portland, Oreg. (SH).
Naval Air Station Buildings: 12, 18, 100, 103, 108, 110, 113, 116, 124, 126, 243, 365, 369, 371, 374, 375, 376, 377, 380, 381, 385, 386, 960, 961, 975, 994, 2547, 2551 and Human Resources Spaces Building 119, Whidbey Island, Oak Harbor, Wash. (SH).
Pentagon Officers Athletic Center, The Pentagon, Washington, D.C. (SH).
U.S. Army Reserve Center, Camp Drum, Watertown, N.Y. (SH).
U.S. Courthouse and Federal Building, Rapid City, S. Dak. (SH).
Veterans Administration Building, 252 Seventh Avenue, New York, N.Y. (includes light fixture cleaning) (SH).

Janitorial/Elevator Operator

Federal Building, 201 Varick Street, New York, N.Y. (SH).
Veterans Administration Clinic Building, 17 Court Street, Boston, Mass. (SH).

SIC 7369

Food service attendant.
Seneca Army Depot, Romulus, N.Y. (SH).

SIC 7374

Keypunch and verification.
GSA Region 2, Federal Data Processing Division overflow requirements (SH).

SIC 7395

Film developing.
Photographic Processing for the GSA Self-Service Store No. 60, Denver Federal Center, Denver, Colo. (IB).

SIC 7399

Affix labels—U.S. Patent Documents.
U.S. Department of Commerce, Patent and Trademark Office, Crystal City, Arlington, Va. (SH).

Assembly

Number Belt, Trousers (IB).
Number Food Packet, Survival, General Purpose, Individual (8970-00-082-5665) (IB).
Number Food Packet, Survival, Abandon Ship (8970-00-299-1395) (IB). TPK-1 (Regular packing). TPK-2 (Weather-resistant packing).
Number Food Packet, Isolated Site (8 menus) (IB).
General Mechanic's Tool Kit (5180-00-177-7033), GSA Kansas City, Mo. (SH).

Bursting and Packaging of Commemorative Stamps

U.S. Postal Service, Washington, D.C. (SH).

Microfilming Contract Files

Department of the Navy, OICC Trident, Bremerton, Wash. (SH).

Packaging

Portsmouth Naval Shipyard, Portsmouth, N.H. (SH).

Sewing

Redstone Arsenal, Alabama (Provides specified end items produced through use of customized, heavy-duty sewing service) (SH).

Shrink Wrapping Gift Packages

U.S. Postal Service, Washington, D.C. (SH).

SIC 7538

Rebuilding automotive components.
GSA Interagency Motor Pool, New York, N.Y. (SH).

SIC 7641

Furniture rehabilitation.
Eielson Air Force Base, Alaska (SH).
Fairbanks, Alaska, plus 30-mile radius (SH).
Lackland Air Force Base, San Antonio, Tex. (SH).
Long Beach, Calif., plus 100-mile radius, excluding San Diego County and San Clemente (SH).
Monterey, Calif., plus 10-mile radius, including Fort Ord (SH).
Randolph Air Force Base, San Antonio, Tex. (SH).
Sacramento, Calif., plus 60-mile radius, excluding San Joaquin County (SH).
San Antonio, Tex., plus 40-mile radius, (SH).
San Francisco, Calif., and the counties of Alameda, Contra Costa, San Mateo, and Santa Clara (SH).
Seattle, Wash., plus 30-mile radius, (SH).
Spokane, Wash., plus 30-mile radius from city limits (SH).
Tacoma-Auburn, Wash., plus 30-mile radius, including McChord Air Force Base and Fort Lewis (SH).

Metal Furniture Rehabilitation

Cleveland, Ohio, plus 25-mile radius (SH).
Bremerton, Wash., plus 13-mile radius (SH).
Olympia, Wash., plus 13-mile radius (SH).
Seattle, Wash., plus 13-mile radius (SH).
Tacoma, Wash., plus 13-mile radius (including McChord Air Force Base and Fort Lewis) (SH).

SIC 7699

Mattress and box spring rehabiliatation (IB).
Orders for renovated mattresses may be arranged through GSA regional offices. IB will provide requirements for mattress and box spring renovation for GSA Regions 2, 3, 4, 5, 6, 7, and 8 only.

Repair and Maintenance of Electric Typewriters Only

Social Security Administration, Chicago, Ill. (SH).
Railroad Retirement Board, 844 North Rush Street, Chicago, Ill. (SH).
Health, Education and Welfare, 300 South Wacker Drive, Chicago, Ill. (SH).
Syracuse, N.Y., (including Onondage County) (SH).

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Repair and Maintenance of Manual Typewriters Only

Federal Court House Building, Syracuse, N.Y. (SH).

Repair and Maintenance of Electric and Manual Typewriters

Rochester, N.Y. (including Monroe County) (SH).
U.S. Customs, 6 World Trade Center, New York, N.Y. (SH).
U.S. Customs, Milwaukee, Wis. (SH).
U.S. Federal Office Building, Milwaukee, Wis. (SH).
Veterans Administration Center and Hospital, Wood, Wis. (SH).
Veterans Administration Regional Office, Milwaukee, Wis. (SH).
26 Federal Plaza, New York, N.Y. (SH).
32 Old Slip, New York, N.Y. (SH).
1515 Broadway, New York, N.Y. (SH).

[FR Doc. 78-32031 Filed 11-14-78; 8:45 am]

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federal register

WEDNESDAY, NOVEMBER 15, 1978
PART IV

THE NATIONAL ARCHIVES OF THE UNITED STATES
LITTERA SCRIPTA MANET
1934

ENVIRONMENTAL PROTECTION AGENCY

WASTEWATER TREATMENT PONDS

Suspended Solids Limitations

V 4 3 / 2 2 1

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[FRL-10064]

SECONDARY TREATMENT INFORMATION REGULATION

Suspended Solids Limitations for Wastewater Treatment Ponds

On October 7, 1977, the Environmental Protection Agency (EPA) published in the FEDERAL REGISTER (42 FR 54666) a final amendment to the secondary treatment information regulation applicable to the suspended solids limitations for certain municipal wastewater treatment ponds. The secondary treatment information regulation, 40 CFR 133, contains effluent limitations in terms of biochemical oxygen demand, suspended solids and pH which must be achieved by municipal wastewater treatment plants.

The amendment added a new paragraph (c) to § 133.103 of 40 CFR 133. This allows a case-by-case adjustment in suspended solids limitations for publicly owned waste stabilization ponds, if: The pond has a design capacity of 2 million gallons per day or less; ponds are the sole process for secondary treatment; and, the pond meets the biochemical oxygen demand limitations as prescribed by 40 CFR 133.102(a). Ponds that are not eligible for this adjustment include: Basins or ponds used as a final polishing step for other secondary treatment systems, and ponds which include complete-mix aeration and sludge recycle or return since these systems are in essence a variation of the activated sludge process. Aerated ponds without sludge recycle, however, are eligible for adjustments provided the other specific requirements are met.

The amended suspended solids limitations were determined by statistical analysis of available data. The acceptable limit was defined as that concentration achieved 90 percent of the time by waste stabilization ponds that are achieving the biochemical oxygen demand limitations of 40 CFR 133.102(a). Each State was considered separately as well as appropriate contiguous geographic areas within a State or group of States. The analysis was done by the States or the applicable EPA regional office in cooperation with the States.

A considerable amount of latitude was allowed in developing these values to account for varying conditions affecting pond use and performance across the country. Categorizations within States based on factors such as geographic location, seasonal variation and the type of pond were permitted. In some instances, the values presented below reflect these factors.

In accordance with the amended regulation, a single value corresponding to the concentration achievable 90 percent of the time may be used to establish the suspended solids limitations for ponds within a State. The concentration achievable 90 percent of the time has been generally accepted as corresponding to a 30 consecutive day average (or an average value over the period of discharge when entire duration of the discharge is less than 30 days). This interpretation is consistent with the analysis which was used as the basis for the other suspended solids and biochemical oxygen demand limitations contained in 40 CFR 133.

For this reason, a single suspended solid concentration has been listed below for ponds (or subcategory of ponds) within a State. In some cases, however, the States and EPA regional offices have agreed upon additional values, such as weekly averages or daily maximums, which will be used for compliance monitoring purposes within those States.

In some cases the data base for the analysis was quite limited and in all cases additional data are being collected. A periodic reevaluation of this expanding data base will be conducted and could result in further changes in the suspended solids limitations listed below. Several EPA regional offices have already indicated their intent to conduct a reevaluation within 2 years or less. Even though publication of these values is not a formal rulemaking procedure, public comments are welcome and will be considered in any revisions. Comments should be submitted to Director, Municipal Construction Division (WH-547), Environmental Protection Agency, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Sherwood Reed or Alan Hais, Municipal Construction Division (WH-547), Office of Water Program Operations, Environmental Protection Agency, Washington, D.C. 20460, 202-426-8976.

Dated October 27, 1978.

THOMAS C. JORLING,
Assistant Administrator for Water and Waste Management.

ENVIRONMENTAL PROTECTION AGENCY

SUSPENDED SOLIDS LIMITATIONS FOR WASTEWATER TREATMENT PONDS**

*Location and Suspended Solids Limit * (mg/l)*
Alabama—90.
Alaska—70.
Arizona—90.
Arkansas—90.
Californina—95.
Colorado
Aerated ponds—75.
All others—105.
Connecticut—N.C.
Delaware—N.C.
District of Columbia—N.C.
Florida—N.C.
Georgia—90.
Guam—N.C.
Hawaii—N.C.
Idaho—N.C.
Illinois—37.
Indiana—70.
Iowa
Controlled Discharge, 3 Cell and Case-by-Case but not Greater Than 80
All others—80.
Kansas—80.
Kentucky—N.C.
Louisiana—90.
Maine—45.
Maryland—90.
Massachusetts—N.C.
Michigan
Controlled seasonal discharge
Summer—70.
Winter—40.
Minnesota—N.C.
Mississippi—90.
Missouri—80.
Montana—100.
Nebraske—80.
North Carolina—90.
North Dakota.
North and east of Missouri River—60.
South and west of Missouri River—100.
Nevada—90.
New Hampshirc—45.
New Jersey—N.C.
New Mexico—90.
New York—70.
Ohio—65.
Oklahoma—90.
Oregon
East of Cascade Mountains—85.
West of Cascade Mountains—50.
Pennsylvania—N.C.
Puerto Rico—N.C.
Rhode Island—45.
South Carolina—90.
South Dakota—110.
Tennessee—100.
Texas—90.
Utah—N.C.
Vermont—55.
Virgina
East of Blue Ridge Mountains—60.
West of Blue Ridge Mountains—78.
Eastern Slope Counties: Loudoun, Fauquier, Rappahannock, Madison, Green, Albemarle, Nelson Amherst, Bedford, Franklin, Patrick and, *Case-by-Case application of 60/78 Limits*
Virgin Islands—N.C.
Washington—75.
West Virginia—80.
Wisconsin—60.
Wyoming—100.
Trust Territories and North Marianas—N.C.

NOTES.—N.C.—No change from existing criteria.

** The values set for Iowa and Virginia incorporate a specific case-by-case provisions; however, in accordance with 40 CFR 133.133.103(c), adjustments of the suspended solids limitations for individual ponds in all States are to be authorized on a case-by-case basis.

[FR Doc. 78-32022 Filed 11-14-78; 8:45 am]

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Federal Register

WEDNESDAY, NOVEMBER 15, 1978

PART V



DEPARTMENT OF AGRICULTURE

Office of the Secretary

SEMIANNUAL AGENDA OF REGULATIONS

[3410-90-M]

DEPARTMENT OF AGRICULTURE

Office of the Secretary

SEMIANNUAL AGENDA OF REGULATIONS

This decision calendar contains a listing of significant regulations and other actions being developed in the Department of Agriculture under the procedures described in the report "Improving USDA Regulations," 43 FR 50988 (Nov. 1, 1978). The listing contains both actions underway and to be initiated during the next 6 months. Actions are listed under the name of the responsible USDA agency.

This decision calendar is being published to provide an overview of pending major actions and estimated dates when further steps in their development should occur. It is intended as an aid to the public in its participation in the USDA decisionmaking process at the appropriate stages. We have attempted to list all significant actions pending at the time of the calendar but some may have been inadvertently missed. There is no legal significance to an item not appearing on this listing.

The dates shown for the various stages of each action are estimated and are not commitments to act on or by the date shown. The "prenotice" date, when given, is an indication the agency intends to seek public input prior to the "notice of proposed rulemaking." Anyone desiring further information on an action should write or call the agency contact listed for the action. Unless a different address is given, inquires should be addressed to: (Name of Agency Contact) (Agency Name), U.S. Department of Agriculture, Washington, D.C. 20250.

Additional information on USDA regulation and decisionmaking procedures may be obtained from: Linley E. Juers, Coordinator of Policy Analysis and Public Participation, Office of Budget, Planning and Evaluation, U.S. Department of Agriculture, Washington, D.C. 20250, phone 202-447-6667.

This decision calendar will be updated in 6 months in accordance with the President's Executive Order 12044, FEDERAL REGISTER, March 24, pages 12661-12665.

CAROL TUCKER FOREMAN
Acting Secretary.

NOVEMBER 9, 1978.

[3410-90-C]

AGRICULTURAL MARKETING SERVICE

1. **Calendar No:** AM 1081
2. **Title:** Beef Pricing Investigation
3. **Description:** Study of marketing, pricing of beef carcasses, and reporting services.
4. **Authority:** 7 U.S.C. 192 Investigation request by Secretary
5. **Projected Schedule**
   a. **Date of pre-notice:** 11/78
   b. **Date of proposal:** 12/78
   c. **Final Decision:** 11/79
6. **Contacts:**
   Agency: James Tuggle, Ext. (202) 447-5877
   Secretary's Office: Ted Moriak, Ext. (202) 447-6667

1. **Calendar No:** AM 1085
2. **Title:** Implementation of the Wheat and Wheat Foods Research and Nutrition Education Act.
3. **Description:** (Formal Rulemaking) A series of steps coordinated by the Dept. will be required to develop an appropriate Wheat and Wheat Foods Research and Nutrition Education order. A referendum of end product manufacturers (primarily wholesale bakers) would determine if the order is approved.
4. **Authority:** Wheat and Wheat Foods Research and Nutrition Education Act (Public Law 95-113, Section 1701-1719) Statutory
5. **Projected Schedule**
   a. **Date of pre-notice:** 10/78
   b. **Public hearing:** 3/79
   c. **Recommend Decision:** 7/79
   d. **Final Decision:** 10/79
6. **Contacts:**
   Agency: Ralph Tapp, Ext. (202) 447-3970
   Secretary's Office: Ted Moriak, Ext. (202) 447-6667

1. **Calendar No:** AM 1086
2. **Title:** Implementation of the amended Beef Research and Information (BRI) Act
3. **Description:** (Formal Rulemaking) A series of steps coordinated by the Dept. will be required to develop an appropriate BRI order. A referendum would determine if beef producers wish to assess themselves for the purpose of carrying out a BRI program.
4. **Authority:** Beef Research and Information Act (P.L. 94-294, May 29, 1976) as amended by the Agricultural Credit Act of 1978 (P.L. 95-334, August 4, 1978)
5. **Projected Schedule**
   a. **Date of pre-notice:** 4/79
   b. **Date of Hearing:** 8/79
   c. **Recommend Decision:** 12/79
   d. **Final Decision:** 3/80
6. **Contacts:**
   Agency: Ralph Tapp, Ext. (202) 447-3970
   Secretary's Office: Ted Moriak, Ext. (202) 447-6667

1. **Calendar No:** AM 1087

2. **Title:** Amendments to regulations under the Federal Seed Act

3. **Description:** Update and clarify provisions such as definition of variety rules for assigning variety names, add new kinds, add new rules for testing, amend standards for certified seed, and amend rules for sampling unusual containers. Last major revision of regulations was in 1973.

4. **Authority:** Federal Seed Act

5. Projected Schedule

   a. **Date of pre-notice:**
   b. **Date of proposal:** 3/78
   c. **Final Decision:** 7/79

6. **Contacts:**

   Agency: Clyde Edwards, Ext. (202) 447-9340

   Secretary's Office: Ted Moriak, Ext. (202) 447-6667

1. **Calendar No:** AM 1089

2. **Title:** Proposed revisions of U.S. Grade Standards for Feeder Cattle.

3. **Description:** The present standards are outdated due to changes in the cattle population and changes in beef standards in 1976.

4. **Authority:** Agricultural Marketing Act of 1946.

5. Projected Schedule

   a. **Date of pre-notice:**
   b. **Date of proposal:** 11/78
   c. **Final Decision:** 7/1/79

6. **Contacts:**

   Agency: W. Edmund Tyler, Ext. (202) 447-5679

   Secretary's Office: Ted Moriak, Ext. (202) 447-6667

1. **Calendar No:** AM 10812

2. **Title:** Proposed South Texas Melon Marketing Order

3. **Description:** Receive evidence from all interested persons regarding a proposed marketing agreement and order for melons grown in South Texas to include authority for minimum quality and container requirements.

4. **Authority:** Agricultural Marketing Agreement Act of 1937, as amended.

5. Projected Schedule

   a. **Notice of Hearing:** 10/27/78
   b. **Recommend Decision:** 2/28/79
   c. **Final Decision:** 4/20/79

6. **Contacts:**

   Agency: Charles Brader, Ext. (202) 447-6393

   Secretary's Office: Ted Moriak, Ext. (202) 447-6667

1. **Calendar No:** AM 10814

2. **Title:** Proposed New England Apple Marketing Agreement and Order

3. **Description:** Obtain evidence on requested program regarding research, promotion and minimum maturity provisions covering apples grown in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont.

4. **Authority:** Agricultural Marketing Agreement Act of 1937, as amended.

5. Projected Schedule

   a. **Notice of hearing:** 11/78
   b. **Public heating:** 12/78
   c. **Recommend Decision:** 3/79
   d. **Final Decision:** 6/79

6. **Contacts:**

   Agency: C. R. Brader, Ext. (202) 447-6393

   Secretary's Office: Ted Moriak, Ext. (202) 447-6667

1. **Calendar No:** AM 10819

2. **Title:** Administrative Rule for cranberries

3. **Description:** Establish a procedure governing the allocation of reserve base quantity to cranberry producers.

4. **Authority:** Order 929 - Cranberries - Section 929.48 requires that rules be established to issue reserve base quantity.

5. Projected Schedule

   a. **Date of pre-notice:**
   b. **Recommend Decision:** 12/78
   c. **Final Decision:** 1/79

6. **Contacts:**

   Agency: C. R. Brader, Ext. (202) 447-6393

   Secretary's Office: Ted Moriak, Ext. (202) 447-6667

1. **Calendar No:** AM 10821

2. **Title:** Quadrennial Referendum for California nectarines

3. **Description:** Section 916.64(e) requires the Secretary to conduct a quadrennial referendum to ascertain whether growers favor continuance of Order. The referendum will be conducted Dec. 1, 1978, through Feb. 15, 1979.

4. **Authority:** M. O. 916 - Nectarines Grown in California.

5. Projected Schedule

   a. **Date of pre-notice:**
   b. **Referendum Date:** 1/79
   c. **Final Decision:** 3/79

6. **Contacts:**

   Agency: C. R. Brader, Ext. (202) 447-6393

   Secretary's Office: Ted Moriak, Ext. (202) 447-6667

1. **Calendar No:** AM 10822

2. **Title:** Quadrennial Referendum for California peaches, pears and plums

3. **Description:** Section 917.61(e) requires the Secretary to conduct a quadrennial referendum to ascertain whether growers favor continuance of Order. Such referendum will be conducted Dec. 1, 1978, through Feb. 15, 1979.

4. **Authority:** M. O. 917 - Peaches, Pears, Plums Grown in California.

5. **Projected Schedule**
   a. **Date of pre-notice:**
   b. **Referendum Date:** 1/79
   c. **Final Decision:** 3/79

6. **Contacts:**

   Agency: C. R. Brader, Ext. (202) 447-6393

   Secretary's Office: Ted Moriak, Ext. (202) 447-6667

1. **Calendar No:** AM 10839

2. **Title:** Amend California Raisin Marketing Order No. 989

3. **Description:** Clarify intent and language of existing volume regulation provisions used to tailor supplies to needs. Also, classify oleate seedless raisins separate from water-dipped and soda-dipped raisins to maintain equity among sun-dried and water-dipped segments of the industry. Changes intended to improve order regulatory operations.

4. **Authority:** Agricultural Marketing Agreement Act of 1937.

5. **Projected Schedule**
   a. **Date of pre-notice:**
   b. **Date of proposal:**
   c. **Final Decision:** 11/78

6. **Contacts:**

   Agency: Charles Brader, Ext. (202) 447-6393

   Secretary's Office: Ted Moriak, Ext. (202) 447-6667

1. **Calendar No:** AM 10841

2. **Title:** Amendment of Greater Kansas City and Nebraska-Western Iowa Milk Orders

3. **Description:** Increase the funding rate for the advertising and promotion programs.

4. **Authority:** Agricultural Marketing Agreement Act of 1937.

5. **Projected Schedule**
   a. **Invite proposals:** 7/13/78
   b. **Public Hearing:** 10/23/78
   c. **Recommend Decision:** 11/28/78
   d. **Final Decision:** 1/9/79

6. **Contacts:**

   Agency: Maurice Martin, Ext. (202) 447-7183

   Secretary's Office: Ted Moriak, Ext. (202) 447-6667

1. **Calendar No:** AM 10842

2. **Title:** Amendment of New York-New Jersey Milk Order

3. **Description:** Change the procedure for classifying milk that is lost (shrinkage) during the handling and processing operations.

4. **Authority:** Agricultural Marketing Agreement Act of 1937.

5. **Projected Schedule**
   a. **Invite proposals:** 1975
   b. **Public Hearing:** 2/76
   c. **Recomend Decision:** 10/5/78
   d. **Final Decision:** 12/1/78

6. **Contacts:**

   Agency: Richard Glandt, Ext. (202) 447-4829

   Secretary's Office: Ted Moriak, Ext. (202) 447-6667

1. **Calendar No:** AM 10843

2. **Title:** Amendment of Greater Kansas City Milk Order

3. **Description:** Key proposals would change the pooling standards for supply plants.

4. **Authority:** Agricultural Marketing Agreement Act of 1937.

5. **Projected Schedule**
   a. **Invite proposals:** 7/13/78
   b. **Public hearing:** 10/30-31/78
   c. **Recommend Decision:** 2/20/79
   d. **Final Decision:** 4/16/79

6. **Contacts:**

   Agency: Maurice Martin, Ext. (202) 447-7183

   Secretary's Office: Ted Moriak, Ext., (202) 447-6667

1. **Calendar No:** AM 10844

2. **Title:** Amendment of Nebraska-Western Iowa Milk Order

3. **Description:** Key proposals would change the pooling standards for supply plants and increase the limit on the amount of milk that may be diverted from pool plants to nonpool plants for manufacturing. Another proposal would establish a late-payment charge on all over-due obligations of handlers that are payable to the market adminstrator. Other proposals would either reduce or increase the Class 1 price at certain locations by various amounts.

4. **Authority:** Agricultural Marketing Agreement Act of 1937.

5. **Projected Schedule**
   a. **Invite proposals:** 7/13/78
   b. **Public hearing:** 10/24-27/78
   c. **Recomend Decision:** 3/30/79
   d. **Final Decision:** 6/20/79

6. **Contacts:**

   Agency: Maurice Martin, Ext. (202) 447-7183

   Secretary's Office: Ted Moriak, Ext. (202) 447-6667

1. **Calendar No:** AM 10845

2. **Title:** Amendment of Texas Milk Order

3. **Description:** Key proposals would change the producer-handler definition and the classification of milk that is lost in the plant (shrinkage), disposed of as animal feed, or dumped.

4. **Authority:** Agricultural Marketing Agreement Act of 1937.

5. **Projected Schedule**
   - a. **Invite proposals:** 4/26/78
   - b. **Public hearing:** 6/13-14/78
   - c. **Recomend Decision:** 10/11/78
   - d. **Final Decision:** 12/1/78

6. **Contacts:**

   Agency: Robert Groene, Ext. (202) 447-4824

   Secretary's Office: Ted Moriak, Ext. (202) 447-6667

1. **Calendar No:** AM 10846

2. **Title:** Amendment of Middle Atlantic Milk Order

3. **Description:** Key proposals would change the pooling standards for distributing plants and would increase the limit on the amount of milk that may be diverted from pool plants to nonpool plants for manufacturing. Another proposal would require handlers to pay not less than the order's class prices for milk received from a cooperative association plant that is pooled under another Federal order.

4. **Authority:** Agricultural Marketing Agreement Act of 1937.

5. **Projected Schedule**
   - a. **Invite proposals:**
   - b. **Public hearing:** 10/3-4/78
   - c. **Recomend Decision:** 12/15/78
   - d. **Final Decision:** 2/1/79

6. **Contacts:**

   Agency: Clayton Plumb, Ext. (202) 447-6273

   Secretary's Office: Ted Moriak, Ext. (202) 447-6667

1. **Calendar No:** AM 10847

2. **Title:** Amendment of St. Louis-Ozarks Milk Order

3. **Description:** Key proposals would change the pooling standards for distributing plants and supply plants and would increase the funding rate for the advertising and promotion program.

4. **Authority:** Agricultural Marketing Agreement Act of 1937.

5. **Projected Schedule**
   - a. **Invite proposals:** 3/13/78
   - b. **Public hearing:** 6/21-22/78
   - c. **Recomend Decision:** 11/3/78
   - d. **Final Decision:** 1/3/79

6. **Contacts:**

   Agency: Robert Groene, Ext. (202) 447-4824

   Secretary's Office: Ted Moriak, Ext. (202) 447-6667

1. **Calendar No:** AM 10848

2. **Title:** Amendment of Tennessee Valley Milk Order

3. **Description:** The key proposal would change the pooling standards for supply plants.

4. **Authority:** Agricultural Marketing Agreement Act of 1937

5. **Projected Schedule**
   - a. **Invite proposals:** 7/17/78
   - b. **Public hearing:** 9/13/78
   - c. **Recomend Decision:** 12/5/78
   - d. **Final Decision:** 1/23/79

6. **Contacts:**

   Agency: Richard Glandt, Ext. (202) 447-4829

   Secretary's Office: Ted Moriak, Ext. (202) 447-6667

1. **Calendar No:** AM 10849

2. **Title:** New Federal Milk Order for Boise, Idaho, Area

3. **Description:** Establish a new Federal milk order covering 18 southwestern Idaho and 5 eastern Oregon counties. The principal cities in the proposed marketing area are Boise, Nampa, and Twin Falls, Idaho. The provisions of the order would be patterned after those commonly used in most other Federal orders.

4. **Authority:** Agricultural Marketing Agreement Act of 1937.

5. **Projected Schedule**
   - a. **Invite proposals:** 9/15/78
   - b. **Public hearing:** 12/5/78
   - c. **Recommend Decision:** 6/26/79
   - d. **Final Decision:** 9/7/79

6. **Contacts:**

   Agency: Maurice Martin, Ext. (202) 447-7183

   Secretary's Office: Ted Moriak, Ext. (202) 447-6667

1. **Calendar No:** AM 10850

2. **Title:** Amendment of 10 Southwestern Milk Orders (Texas, et al.)

3. **Description:** The key proposal would increase the funding rate for the advertising and promotion programs.

4. **Authority:** Agricultural Marketing Agreement Act of 1937.

5. **Projected Schedule**
   - a. **Invite proposals:** 2/10/78
   - b. **Public hearing:** 11/8/78
   - c. **Recomend Decision:** 1/5/798
   - d. **Final Decision:** 2/28/79

6. **Contacts:**

   Agency: Robert Groene, Ext. (202) 447-4824

   Secretary's Office: Ted Moriak, Ext. (202) 447-6667

1. **Calendar No:** AM 10851

2. **Title:** Amendment of Inland Empire Milk Order

3. **Description:** Increase the limit on the amount of producer milk that may be diverted from pool distributing plants to nonpool plants for manufacturing.

4. **Authority:** Agricultural Marketing Agreement Act of 1937.

5. **Projected Schedule**
   a. **Invite proposals:**
   b. **Public hearing:** 7/27/78
   c. **Recomend Decision:** 11/28/78
   d. **Final Decision:** 1/17/79

6. **Contacts:**

   Agency: Maurice Martin, Ext. (202) 447-7183

   Secretary's Office: Ted Moriak, Ext. (202) 447-6667

1. **Calendar No:** AM 10852

2. **Title:** Amendment of Iowa Milk Order

3. **Description:** Key proposals would change the pooling standards for distributing plants and supply plants, revise the basis for determining which dairy farmers may have their milk pooled under the order, and decrease the Class I price at certain locations in the market.

4. **Authority:** Agricultural marketing Agreement Act of 1937.

5. **Projected Schedule**
   a. **Invite proposals:** 7/31/78
   b. **Public hearing:** 9/20-21/78
   c. **Recommend Decision:** 12/22/78
   d. **Final Decision:** 2/14/79

6. **Contacts:**

   Agency: Martin Dunn, Ext. (202) 447-7311

   Secretary's Office: Ted Moriak, Ext. (202) 447-6667

1. **Calendar No:** AM 10853

2. **Title:** Marketing Policy Statement California-Arizona Grapefruit

3. **Description:** Set annual marketing policy for grapefruit in California and Arizona

4. **Authority:** Marketing Order 70 CFR - Part 909

5. **Projected Schedule**
   a. **Date of pre-notice:**
   b. **Date of proposal:**
   c. **Final Decision:** 12/78

6. **Contacts:**

   Agency: C. R. Brader, Ext. (202) 447-6393

   Secretary's Office: Ted Moriak, Ext. (202) 447-6667

1. **Calendar No:** AM 10854

2. **Title:** Marketing Policy Statement California-Arizona Valenicia Oranges

3. **Description:** Set annual marketing policy for Valenicia oranges in California and Arizona

4. **Authority:** Marketing Order 7 CFR - Part 908

5. **Projected Schedule**
   a. **Date of pre-notice:**
   b. **Date of proposal:**
   c. **Final Decision:** 3/79

6. **Contacts:**

   Agency: C. R. Brader, Ext. (202) 447-6393

   Secretary's Office: Ted Moriak, Ext. (202) 447-6667

1. **Calendar No:** AM 10855

2. **Title:** Marketing Policy Statement - Hops of Domestic Production

3. **Description:** Set annual marketing policy for Hops of domestic production

4. **Authority:** Marketing Order 7 CFR - Part 991

5. **Projected Schedule**
   a. **Date of pre-notice:**
   b. **Date of proposal:**
   c. **Final Decision:** 2/79

6. **Contacts:**

   Agency: C. R. Brader, Ext. (202) 447-6393

   Secretary's Office: Ted Moriak, Ext. (202) 447-6667

1. **Calendar No:** AM 10856

2. **Title:** Marketing Policy Statement - Cranberries

3. **Description:** Set annual marketing policy for cranberries

4. **Authority:** Marketing Order 7 CFR - Part 929

5. **Projected Schedule**
   a. **Date of pre-notice:**
   b. **Date of proposal:**
   c. **Final Decision:** 3/79

6. **Contacts:**

   Agency: C. R. Brader, Ext. (202) 447-6393

   Secretary's Office: Ted Moriak, Ext, (202) 447-6667

ANIMAL AND PLANT HEALTH INSPECTION SERVICE

1. **Calendar No:** AP 1081

2. **Title:** Revise Gypsy Moth and Brown-Tail Moth Quarantine and Regulations

3. **Description:** To redirect Gypsy Moth and Brown-Tail Moth programs by adopting a pest management concept based on pest risk.

4. **Authority:** 7 U.S.C. 161, 162, 150ee To reflect change in regulatory program.

5. **Projected Schedule**

   a. **Date of pre-notice:** None
   b. **Date of proposal:** 12/1/78
   c. **Final Decision:** 3/1/79

6. **Contacts:**

   Agency: H. V. Autry, Ext. (301) 346-8247

   Secretary's Office: Lynn Maish (202) 447-6667

1. **Calendar No:** AP 1089

2. **Title:** Revised Bird Quarantine Regulation

3. **Description:** Would add "smuggled birds" to definitions, and would provide for release when determined to be free of disease

4. **Authority:** 19 U.S. C. 1306; 21 U.S.C. 102-105, 111, 134a-c Provide method for quarantining "smuggled" birds

5. **Projected Schedule**

   a. **Date of pre-notice:** None
   b. **Date of proposal:** 2/1/79
   c. **Final Decision:** 5/1/79

6. **Contacts:**

   Agency: Dr. George Pierson Import/Export Staff Ext. (301) 346-8170

   Secretary's Office: Lynn Maish (202) 447-6667

1. **Calendar No:** AP 10810

2. **Title:** Revision of Export Livestock Handling Requirements

3. **Description:** Amendments will delete specific maximum length requirements for container pens for animals on ocean vessels and will relax restrictions on the type of roof which may be used to cover pens carrying animals on exposed decks aboard ocean vessels.

4. **Authority:** 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 612-614, 618; 46 U.S.C., 466a, 466b Research studies performed have shown that certain modifications in shipping practices will not result in relaxed humane handling standards or disease control measures.

5. **Projected Schedule**

   a. **Date of pre-notice:** None
   b. **Date of proposal:** 3/1/79
   c. **Final Decision:** 6/1/79

6. **Contacts:**

   Agency: Dr. Harold Waters, Ext. (301) 346-8383

   Secretary's Office: Lynn Maish (202) 447-6667

1. **Calendar No:** AP 10815

2. **Title:** Revised Bird Quarantine Regulation

3. **Description:** Would provide for approval of additional quarantine facilities for importation of birds if adequate manpower is available to service the facility.

4. **Authority:** 19 U.S.C. 1306; 21 U.S.C. 102-105, 111, 134a, 134b, 134c, and 134f To secure authority to allocate agency personnel resources for servicing privately owned and operated bird quarantine facilities.

5. **Projected Schedule**

   a. **Date of pre-notice:** None
   b. **Date of proposal:** Undetermined
   c. **Final Decision:** Undetermined

6. **Contacts:**

   Agency: Dr. George Pierson, Import/Export Staff, Ext. (301) 346-8170

   Secretary's Office: Lynn Maish (202) 447-6667

1. **Calendar No:** AP 10819

2. **Title:** Revision of Animal Exportation Regulations

3. **Description:** Adds Los Angeles, California, to and deletes port of San Francisco, California, from list of airports and ocean ports for export of animals.

4. **Authority:** 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 612-614, 618; 46 U.S.C. 466a, 466b Animal Export Inspection Facility at San Francisco no longer meets requirements for such facilities. Los Angeles facility does meet those requirements.

5. **Projected Schedule**

   a. **Date of pre-notice:** None
   b. **Date of proposal:** 12/1/78
   c. **Final Decision:** 3/1/79

6. **Contacts:**

   Agency: Dr. Harold Waters, Ext. (301) 346-8383

   Secretary's Office: Lynn Maish (202) 447-6667

1. **Calendar No:** AP 11826

2. **Title:** Pseudorabies Regulation

3. **Description:** This regulation will regulate the interstate movement of swine on the basis of their pseudorabies status.

4. **Authority:** 21 U.S.C. 111-113, 115, 117, 120, 121, 123-126, 134b, 134f To control and stop the escalating spread of pseudorabies.

5. **Projected Schedule**

   a. **Date of pre-notice:** None
   b. **Date of proposal:** 5/23/78
   c. **Final Decision:** 1/15/79

6. **Contacts:**

   Agency: Dr. J. A. Downard, Ext. (301) 346-8487

   Secretary's Office: Lynn Maish (202) 447-6667

1. **Calendar No:** AP 11827

2. **Title:** Revised Animal Welfare Transportation Standards

3. **Description:** Proposal will reduce both the minimum and the maximum allowable temperature for certain animals when transported in commerce and provide a new procedure for measuring such temperature.

4. **Authority:** Animal Welfare Act (7 U.S.C. 2131 et. seq. Proposed revisions are the result of various petitions for reconsideration received by the Department which made new facts and evidence available that appear to warrant such action.

5. **Projected Schedule**

   a. **Date of pre-notice:** None
   b. **Date of proposal:** 10/17/78
   c. **Final Decision:** 12/1/78

6. **Contacts:**

   Agency: Dr. R. D. Whiting, Ext. (301) 346-8271

   Secretary's Office: Lynn Maish (202) 447-6667

1. **Calendar No:** AP 11828

2. **Title:** Horse Protection Regulations - Part I (Designated Qualified Persons)

3. **Description:** Document would permit the certification and licensing of "designated qualified persons" (DQP) to assist the Department in the enforcement of the Horse Protection Act.

4. **Authority:** 15 U.S.C. 1821 et. seq. To incorporate provisions of the 1976 Amendments to the Horse Protection Act.

5. **Projected Schedule**

   a. **Date of pre-notice:** None
   b. **Date of proposal:** Done
   c. **Final Decision:** 12/1/78

6. **Contacts:**

   Agency: Dr. Dale F. Schwindaman, Ext. (301) 346-8271

   Secretary's Office: Lynn Maish (202) 447-6667

1. **Calendar No:** AP 11829

2. **Title:** Horse Protection Regulations - Part II

3. **Description:** Proposal would (1) add certain restrictions concerning the sale of horses at sales or auctions; (2) require procedures be established for detention and inspection of horses; (3) space and facilities for inspection be supplied by management of shows, sales, etc; and (4) revise certain definitions and record-keeping requirements.

4. **Authority:** 15 U.S.C. 1821 et. seq. To incorporate provisions of the 1976 Amendments to the Horse Protection Act.

5. **Projected Schedule**

   a. **Date of pre-notice:** None
   b. **Date of proposal:** Done
   c. **Final Decision:** 1/2/79

6. **Contacts:**

   Agency: Dr. Dale F. Schwindaman, Ext. (301) 346-8271

   Secretary's Office: Lynn Maish (202) 447-6667

1. **Calendar No:** AP 11830

2. **Title:** Marine Mammal Regulations

3. **Description:** Regulation amends standards for humane handling, care, treatment and transportation to include marine mammals.

4. **Authority:** Animal Welfare Act (7 U.S.C. 2131, et. seq.) Recommendations made to the Secretary of Agriculture that marine mammals be no longer exempted by regulations from the provisions of the Animal Welfare Act.

5. **Projected Schedule**

   a. **Date of pre-notice:** None
   b. **Date of proposal:** 9/19/78
   c. **Final Decision:** 2/16/79

6. **Contacts:**

   Agency: Dr. D. F. Schwindaman, Ext. (301) 346-8271

   Secretary's Office: Lynn Maish (202) 447-6667

1. **Calendar No:** AP 11831

2. **Title:** Schedule of Fees at the Harry S. Truman Animal Import Center (HSTAIC)

3. **Description:** Interim rulemaking amends the current regulations by adding a proposed schedule of costs and establishes the methods and due date of payment by importers using the facilities of HSTAIC.

4. **Authority:** 21 U.S.C. 111 and 135. To advise prospective importers of the proposed schedule of fees at HSTAIC.

5. **Projected Schedule**

   a. **Date of pre-notice:** None
   b. **Date of proposal:** None
   c. **Final Decision:** 12/1/78

6. **Contacts:**

   Agency: Dr. D. E. Herrick Ext. (301) 346-8170

   Secretary's Office: Lynn Maish (202) 447-6667

1. **Calendar No:** AS 1083

2. **Title:** 1979-Crop Upland Cotton

3. **Description:** Announce the target price, national program acreage, voluntary reduction percentage, set-aside requirement, diversion requirement and limitation on planted acreage.

4. **Authority:** Agricultural Act of 1949 as amended by the Food and Agriculture Act of 1977 and the Act of May 15, 1978.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 9/1/78
   c. **Final Decision:** by 12/15/78

6. **Contacts:**

   Agency: Charles V. Cunningham, Ext. (202) 447-7873

   Secretary's Office: W. Scott Steele, Ext. (202) 447-2095

AGRICULTURAL STABILIZATION & CONSERVATION SERVICE

1. **Calendar No:** AS 1085

2. **Title:** 1979-Crop Rice

3. **Description:** Announce the national acreage allotment, set-aside requirements, land diversion program, preliminary target price and loan and purchase rate for 1979-crop rice.

4. **Authority:** The Agricultural Act of 1949, as amended by the Food and Agriculture Act of 1977, and the Emergency Farm Credit Act of 1978.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 11/9/78
   c. **Final Decision:** 1/15/79

6. **Contacts:**

   Agency: George H. Schaefer, Ext. (202) 447-8480

   Secretary's Office: W. Scott Steele, Ext. (202) 447-2095

1. **Calendar No:** AS 1086

2. **Title:** 1980-Crop Wheat

3. **Description:** Proposed rulemaking for national program acreage, set-aside and diversion levels, voluntary reduction, target and loan levels, special grazing and hay program and acreage limitations for the 1980-crop of wheat.

4. **Authority:** Agricultural Act of 1949, as amended by the Food and Agriculture Act of 1977 Section 1001 of the Food and Agriculture Act of 1977, and the Act of May 15, 1978.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 5/15/79
   c. **Final Decision:** by 8/15/79

6. **Contacts:**

   Agency: Bruce R. Weber, Ext. (202) 447-7987

   Secretary's Office: W. Scott Steele, Ext. (202) 447-2095

1. **Calendar No:** AS 10813

2. **Title:** 1979 - Crop Soybeans

3. **Description:** Announce the loan and purchase program for 1979-crop soybeans.

4. **Authority:** Agriculture Act of 1949 as amended by the Food and Agriculture Act of 1977.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 8/26/78
   c. **Final Decision:** 12/1/78

6. **Contacts:**

   Agency: Harry A. Sullivan, Ext. (202) 447-7951

   Secretary's Office: W. Scott Steele, Ext. (202) 447-2095

1. **Calendar No:** AS 10819

2. **Title:** CRF - 1475 - Emergency Feed Program

3. **Description:** Amend regulations to: (1) Require forage from set-aside acres be utilized before program assistance is provided; (2) Limit assistance covering pasture loss to 50% of the pasture loss; (3) To provide that grain under loan is considered sold on the date the loan is disbursed.

4. **Authority:** Public Law 95-113 (9) Stat. 955

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 12/1/78
   c. **Final Decision:** 2/15/79

6. **Contacts:**

   Agency: Robert Cook, Ext. (202) 447-7997

   Secretary's Office: W. Scott Steele, Ext. (202) 447-2095

1. **Calendar No:** AS 10821

2. **Title:** Procurement of Processed Agricultural Commodities for P.L. 480 Title II Donation

3. **Description:** Modify procurement procedure with additional criteria which could override lowest landed cost as currently determined in bid analyses to include: timely delivery of commodity; availability of rail cars; delivery outturn and performance record; U.S. port congestion; and U.S. port facilities and conditions.

4. **Reason for Action:** Make procurement process more responsive to timely delivery at foreign port of destination and to reduce loss/damage of commodities.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 11/3/78
   c. **Final Decision:** 1/30/79

6. **Contacts:**

   Agency: Robert Stansberry, Ext. (202) 447-7561

   Secretary's Office: W. Scott Steele, Ext. (202) 447-2095

1. **Calendar No:** AS 10824

2. **Title:** 1979 Crop Peanuts - National acreage allotment and national poundage quota

3. **Description:** Establishes for 1979 crop peanuts a national acreage allotment which determines maximum planted acres, and a national poundage quota, which determines the quantity of peanuts eligible for loans at the domestic edible support level.

4. **Authority:** Agricultural Act of 1949, as amended, including amendments contained in Food and Agriculture Act of 1977.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 9/29/78
   c. **Final Decision:** by 12/1/78

6. **Contacts:**

   Agency: Kay Wygal, Ext. (202) 447-6761

   Secretary's Office: W. Scott Steele, Ext. (202) 447-2095

1. **Calendar No:** AS 10825

2. **Title:** 1979 Crop Peanuts - National average price support levels and general program provisions.

3. **Description:** Establishes a 1979 national average support level for quota peanuts at not less than $420 a ton; a national average support level for additional peanuts; and CCC sales policy for sales of additional peanuts for edible export use.

4. **Authority:** Agricultural Act of 1949, as amended, including amendments contained in the Food and Agriculture Act of 1977.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 11/30/78
   c. **Final Decision:** by 2/15/79

6. **Contacts:**

   Agency: Kay Wygal Ext. (202) 447-6761

   Secretary's Office: W. Scott Steele (202) 447-2095

1. **Calendar No:** AS 10827

2. **Title:** ACP Reform

3. **Description:** Develop criteria, guidelines and procedures to restrict assistance to measures and practices having conservation and pollution abatement benefits and that are not primarily production oriented.

4. **Authority:** FY 79 appropriations act provisions and Presidential directive.

5. **Projected Schedule**

   a. **Date of pre-notice:** 10/13/78
   b. **Date of proposal:** 11/14/78
   c. **Final Decision:** 12/26/79

6. **Contacts:**

   Agency: Alan Durick Ext. (202) 447-5295

   Secretary's Office: Arnold Miller Ext. (202) 447-3465

OFFICE OF ENERGY

1. **Calendar No:** EN 1081

2. **Title:** Rule to Certify Essential Agricultural Uses for Sec. 401, NGPA of 1978.

3. **Description:** Development of a set of essential agricultural uses and the amounts of natural gas required. Certify to Secretary of Energy and FERC for implementation within 120 days of enactment.

4. **Authority:** Statute requires Secretary of Agriculture to certify essential agricultural uses for noncurtailment of natural gas to Secretary of Energy and FERC.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 11/78
   c. **Final Decision:** 1/18/79

6. **Contacts:**

   Agency:

   Secretary's Office: Weldon Barton, Ext. (202) 447-2455

OFFICE OF ENERGY

1. **Calendar No:** EN 1082

2. **Title:** Industrial Hydrocarbons and Alcohols, Pilot Projects.

3. **Description:** Decisions regarding selection of pilot projects.

4. **Authority:** Section 1420 of Food and Agriculture Act of 1977 mandates Secretary of Agriculture, through CCC, to guarantee loans of up to $15 million for each of 4 pilot projects -- provided that economic and energy criteria are met.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:**
   c. **Final Decision:** 12/78

6. **Contacts:**

   Agency:

   Secretary's Office: Weldon Barton, Ext. (202) 447-2455

ECONOMICS, STATISTICS & COOPERATIVE SERVICE

1. **Calendar No:** ES 1081

2. **Title:** BLS Data Series

3. **Description:** The decision involves our adjustment to the new data series and evaluating its impact on our work in margins and cost components. Includes other possible sources of retail price data.

4. **Authority:** Bureau of Labor Statistics has dropped certain individual retail commodity price series and replace them by composites series.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** Fall 1978
   c. **Final Decision:** 12/79

6. **Contacts:**

   Agency: Bob Bohall, Ext. (202) 447-8229

   Secretary's Office: Lynn Maish, Ext. (202) 447-6667

1. **Calendar No:** ES 1082

2. **Title:** Cost of Production -- Methods, Procedures and Format

3. **Description:** Major crop and livestock cost of production estimates, their form, content, procedures and methods, dates of release, etc.

4. **Authority:** Need to establish a more satisfactory set of procedures and format for analyzing and publishing cost of production estimates.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** Underway
   c. **Final Decision:** 1/1/79

6. **Contacts:**

   Agency: Preston LaFerney, Ext. (202) 447-8860

   Secretary's Office: Lynn Maish, Ext. (202) 447-8860

ECONOMICS, STATISTICS & COOPERATIVE SERVICE

1. **Calendar No:** ES 1084

2. **Title:** Outside Participation in Cost of Production Studies

3. **Description:** Plans to have a Cost of Production Advisory Committee were thwarted. We are not getting informal input. Need to decide on a longer term solution.

4. **Authority:** P.L. 93-86 requires Cost of Production Study to be conducted in cooperation with farm organizations, land grant universities, and commodity organizations. (7 U.S.C. 1441a).

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** Underway
   c. **Final Decision:** 1/1/79

6. **Contacts:**

   Agency: Preston LaFerney, Ext. (202) 447-8860

   Secretary's Office: Lynn Maish, (202) 447-6667

1. **Calendar No:** ES 1086

2. **Title:** Energy Follow-on Survey; Census of Agriculture, Funding

3. **Description:** The decision would be to fund or not to fund the survey from USDA budget allocations.

4. **Authority:** Census has indicated to ESCS & DOE their funds not sufficient to conduct the Energy Follow-on Survey. Cost expected to range from $450,000 to $2,000,000.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 11/3/78
   c. **Final Decision:** 11/24/78

6. **Contacts:**

   Agency: O. Blaich, Ext. (202) 447-8116 and R. Reinsel, Ext. (202) 447-4943

   Secretary's Office: Lynn Maish, Ext. (202) 447-6667

1. **Calendar No:** ES 1089

2. **Title:** Futures Trading in Potatoes

3. **Description:** Determine scope of and identity of ESCS participation in a study for the U.S. Congress of potato marketing and futures trading in potatoes leading to any recommendations for legislation and/or regulation.

4. **Authority:** Mandated by the bill reauthorizing the CFTC for 4 years, P.L. 95-405, Sec. 27

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:**
   c. **Final Decision:** 10/79

6. **Contacts:**

   Agency: Allen Paul, Ext. (202) 447-8168

   Secretary's Office: Lynn Maish, Ext. (202) 447-6667

1. **Calendar No:** ES 10810

2. **Title:** Regulations on Reporting Agricultural Foreign Investments

3. **Description:** Within 90 days of effective date the Secretary must promulgate regulations relating to reporting of real estate transactions by foreign investors.

4. **Authority:** P.L. 95-460, The Agriculture Foreign Investment Disclosure Act, Signed October 14, 1978.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 11/15/78
   c. **Final Decision:** 12/15/78

6. **Contacts:**

   Agency: J. Peter DeBraal, Ext. (202) 447-9179

   Secretary's Office: Lynn Maish, Ext. (202) 447-6667

1. **Calendar No:** ES 10814

2. **Title:** Standby Authority for Mandatory Reporting of Data

3. **Description:** Determine possible ways industry could be required to submit monthly data and what legislation to propose

4. **Authority:** GAO Report to Congress on Food Prices recommends USDA develop legislation requiring firms to report data on margins.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 1/79
   c. **Final Decision:** 12/79

6. **Contacts:**

   Agency: Harry Harp, Ext. (202) 447-8489 and Rod Kite, Ext. (202) 447-8489

   Secretary's Office: Lynn Maish, Ext. (202) 447-6667

1. **Calendar No:** ES 10824

2. **Title:** Review of Cooperative Program

3. **Description:** Determine the scope and content of an outside review of the cooperative program, including the composition of the review group.

4. **Authority:** Need for guidance in the development of a more effective cooperative program within ESCS.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 11/1/78
   c. **Final Decision:** 11/30/78

6. **Contacts:**

   Agency: Ken Farrell, Ext. (202) 447-8104

   Secretary's Office: Lynn Maish, Ext. (202) 447-6667

FOREIGN AGRICULTURAL SERVICE

1. **Calendar No:** ES 10828

2. **Title:** USDA/Census Definition of A Farm

3. **Description:** USDA and Census in August 1975 announced adoption of a revised definition, increasing the minimum qualification to $1,000 in annual sales. Census now uses the new definition, but also shows some items under "previous definition." USDA has continued to use the old definition in "Farm Numbers" through 1977.

4. **Authority:** Need decision on definition of a farm before Crop Reporting Board issues annual "Farm Numbers" report on December 27, 1978.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 11/1/78
   c. **Final Decision:** 11/15/78

6. **Contacts:**

   Agency: J. W. Kirkbride, Ext. (202) 447-2122

   Secretary's Office: Lynn Maish, Ext. (202) 447-6667

1. **Calendar No:** FA 1083

2. **Title:** Proposed Establishment of Selected Area Agricultural Trade Offices

3. **Description:** On-the-spot surveys are being made where necessary; and financial, personnel and overseas position limitations are being explored with a view to establishing six trade offices by end of September 1979.

4. **Authority:** Agricultural Trade Act of 1978, Title IV

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:**
   c. **Final Decision:** by 9/30/79

6. **Contacts:**

   Agency: Jimmy Minyard, Ext. (202) 447-4761

   Secretary's Office: W. Scott Steele, Ext. (202) 447-2095

1. **Calendar No:** FA 10813

2. **Title:** Revision and updating of Dairy Import Regulation No. 1

3. **Description:** Revisions are planned on the administration of the import licensing system on certain dairy products and milk chocolate crumb quotas established under Section 22 of the Agricultural Adjustment Act, as amended to facilitate more complete use of Section 22 dairy import quotas and improve the Department's ability to prevent abuse of the import licensing system.

4. **Authority:** Section 22 of the Agricultural Act of 1933, as amended.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:**
   c. **Final Decision:** 11/15/78

6. **Contacts:**

   Agency: Bryant Wadsworth, Ext. (202) 447-5270

   Secretary's Office: W. Scott Steele, Ext. (202) 447-2095

FOREIGN AGRICULTURAL SERVICE

1. **Calendar No:** FA 10835

2. **Title:** Estimate annual U.S. imports of meats. Act of August 22, 1964; Public Law 88-482.

3. **Description:** The Secretary of Agriculture is required by Section 2 of the Act to make a quarterly estimate of meats, subject to the Act, which would be imported during 1979 and estimate the aggregate quantity of meat, subject to the Act, which may be imported during the year.

4. **Authority:** Public Law 88-482, The Meat Import Law.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:**
   c. **Final Decision:** 12/31/78

6. **Contacts:**

   Agency: Jon Falck, Ext. (202) 447-7868

   Secretary's Office: W. Scott Steele, Ext. (202) 447-2095

1. **Calendar No:** FA 10838

2. **Title:** Proposed designation of Agricultural Counselors

3. **Description:** Identify those positions in the field which should be upgraded from Attache to Counselor and submit to Department of State for concurrence.

4. **Authority:** Agricultural Trade Act of 1978, Title III

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:**
   c. **Final Decision:** 12/31/78

6. **Contacts:**

   Agency: Alexander Bernitz, Ext. (202) 447-3253

   Secretary's Office: W. Scott Steele, Ext. (202) 447-2095

1. **Calendar No:** FG 1081

2. **Title:** Export Shiploading Inspection Plans

3. **Description:** Review present export shiploading inspection plans and develop an alternative. The current "Uniform Shiploading Plan" is complicated and difficult to apply. The "10 Percent Plan" allows too much off grade grain to be loaded aboard ship.

4. **Authority:** U.S. Grain Standards Act, Section 5 and 7

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 11/79
   c. **Final Decision:** 2/1/80

6. **Contacts:**

   Agency: John Marshall, Ext. (202) 447-8497

   Secretary's Office: Ted Moriak, Ext. (202) 447-6667

1. **Calendar No:** FG 1082

2. **Title:** Weighing Handbook

3. **Description:** Develop and issue an interim instruction on the Supervision of Weighing for non-export grain. This must be done in two stages. First, an interim instruction to be available on 11/20/78. A final instruction will receive public review and comment.

4. **Authority:** U.S. Grain Standards Act, Section 7A

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:**
   c. **Final Decision:** 3/1/80

6. **Contacts:**

   Agency: George Lipscomb, Ext. (202) 447-4851

   Secretary's Office: Ted Moriak Ext. (202) 447-6667

1. **Calendar No:** FG 1083

2. **Title:** Dust Particle Size Standards

3. **Description:** Establish dust particle size standards as guidelines on the grain dust that should be removed from grain and the size dust particles that may be allowed to remain within the grain.

4. **Authority:** U.S. Grain Standards Act.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 2/80
   c. **Final Decision:** 7/80

6. **Contacts:**

   Agency: George Lipscomb, Ext. (202) 447-4851

   Secretary's Office: Ted Moriak, Ext. (202) 447-6667

1. **Calendar No:** FG 1084

2. **Title:** Regulations Under the United States Grain Standards Act

3. **Description:** Regulations to implement new and amended provisions of the Act which was extensively amended by Congress in Oct 1976 and Sept 1977. Subpart A for administering and enforcing the Act; Subparts C & D contain standards for inspection and weighing equipment and handling systems respectively. (Other subparts to be drafted separately)

4. **Authority:** U.S. Grain Standards Act of 1976. To implement the U.S. Grain Standards Act -- Subparts A, C, and D.

5. **Projected Schedule**

   a. **Date of pre-notice:** 7/31/78
   b. **Date of proposal:** 12/1/78
   c. **Final Decision:** 3/1/79

6. **Contacts:**

   Agency: J. T. Abshier, Ext. (202) 447-8262

   Secretary's Office: Ted Moriak Ext. (202) 447-6667

1. **Calendar No:** FG 1085

2. **Title:** Expansion of Duties of Official Inspection Agencies

3. **Description:** A proposed rulemaking requiring all official inspection agencies to provide, upon request, official protein testing services for all classes of wheat using only FGIS approved protein testing equipment effective 5/1/79. However, on 5/1/80 FGIS will specify that only NIR equipment will be approved for protein testing. Exemptions provided for agencies where little or no wheat is marketed.

4. **Authority:** U.S. Grain Standards Act, Section 7(b) and 7 (f)

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 11/17/78
   c. **Final Decision:** 12/29/78

6. **Contacts:**

   Agency: Neil Porter, Ext. (202) 447-8262

   Secretary's Office: Ted Moriak, Ext. (202) 447-6667

1. **Calendar No:** FG 1086

2. **Title:** Proposed Amendment to the Official U.S. Standards for Grain

3. **Description:** Presently the standards for various grains require varying sizes of samples used for determining infestation. We propose to provide uniform requirements as to sample size and procedures used; and to establish a zero tolerance on live insect infestation before certificates identify involved grain as infested.

4. **Authority:** Section 4 of U.S. Grain Standards Act.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 7/15/79
   c. **Final Decision:** 10/30/79

6. **Contacts:**

   Agency: James L. Driscoll, Ext. (202) 447-9329

   Secretary's Office: Ted Moriak Ext. (202) 447-6667

1. **Calendar No:** FG 1087

2. **Title:** Sub-chapter J, Safety and Health Standards, Regulation Under the U.S. Grain Standards Act.

3. **Description:** Establish official safety and health standards regarding the minimum workplace conditions under which official personnel will perform official services.

4. **Authority:** Executive Order 11807, 29 CFR 1960, and the U.S. Grain Standards Act.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 1/15/79
   c. **Final Decision:** 4/1/79

6. **Contacts:**

   Agency: E. K. (Gus) Bauman, Ext. (202) 447-8955

   Secretary's Office: Ted Moriak, Ext. (202) 447-6667

FARMERS HOME ADMINISTRATION

1. **Calendar No:** Fm 1081

2. **Title:** Review of thermal insulation standards for masonry construction

3. **Description:** Review of technical and economic date on the effect of building mass upon energy consumption to determine the optimum level of thermal performance which should be required in FmHA financed masonry homes.

4. **Authority:** Action by House-Senate conference committee on FY 79 Agriculture Apropriations Act.

5. **Projected Schedule**

   a. **Date of pre-notice:** 11/30/78
   b. **Date of proposal:** 1/11/79
   c. **Final Decision:** 3/11/79

6. **Contacts:**

   Agency: Daniel J. Ball, Ext. (202) 447-3394

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** Fm 1082

2. **Title:** Revision of Hillside Development Standards in FmHA Instructioo 424.5

3. **Description:** Revision of requirements for site develoment in areas which have steep slopes. Standards apply to streets, grading, drainage, and other aspects of residential sita development.

4. **Authority:** Requests by Appalachian Regional Commission, State agencies and FmHA field staff for more flexibility in standards.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 4/1/79
   c. **Final Decision:** 7/1/79

6. **Contacts:**

   Agency: Daniel J. Ball, Ext. (202) 447-3394

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** Fm 1083

2. **Title:** Solar Demonstration Retrofit

3. **Description:** Select 2 FmHA inventory houses in each of six regions for retrofit utilizing Wilke Solar collector and monitor system over 2 heating seasons. Houses similar in design and orientation - one as control, other for solar. Audio-visual aids for training and demonstration are planned.

4. **Authority:** Departmental Initiative to offset high cost of heating Sec. 502 housing through application of low-cost solar energy hardware.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 1/79
   c. **Final Decision:** 6/81

6. **Contacts:**

   Agency: Richard Slater, Ext. (202) 447-3394

   Secretary's Office: John Subat, (202) 447-2113

1. **Calendar No:** Fm 1084

2. **Title:** Change in FmHA 430.2 Exhibit F - Rural Rental Housing "Rent Increase"

3. **Description:** Change FmHA Procedure to require that before granting rent increases to RRH owners that are receiving interest credit, the owner must request Rental Assistance when a substantial number of tenants are paying more than 25% of their income for rent.

4. **Authority:** Departmental Initiative to enable RRH tenants who are paying more than 25% of their income for rent to receive Rental Assistance.

5. **Projected Schedule**

   a. **Date of pre-notice:** 11/78
   b. **Date of proposal:** 2/79
   c. **Final Decision:** 4/79

6. **Contacts:**

   Agency: Thomas Maxwell, Ext. (202) 447-7207

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** Fm 1086

2. **Title:** Revision of Rural Rental Housing (RRH) Procedures (FmHA 444.5)

3. **Description:** Clarify application and preapplication requirement for RRH projects, including requirements for previous participation, evaluation of the market survey of demand and need, and to make other policy changes to shore up possible misuse of the program. Also, this action will incorporate the Rural Cooperative Housing program.

4. **Authority:** Departmental Initiative to clarify procedure and to curb possible misuse of the program.

5. **Projected Schedule**

   a. **Date of pre-notice:** 11/78
   b. **Date of proposal:** 1/79
   c. **Final Decision:** 3/79

6. **Contacts:**

   Agency: Patrick Fitzgerald, Ext. (202) 447-7209

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** Fm 1087

2. **Title:** Procedure to Implement Section 525 of the Housing Act of 1949

3. **Description:** Draft procedures to implement Section 525 of the Housing Act of 1949 on technical and supervisory assistance. (Out reach)

4. **Authority:** Introduce a new program.

5. **Projected Schedule**

   a. **Date of pre-notice:** 6/78
   b. **Date of proposal:** 1/79
   c. **Final Decision:** 3/79

6. **Contacts:**

   Agency: John Pentecost, Ext. (202) 447-7207

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** Fm 10810

2. **Title:** Consideration of Limited Assistance Self Help Housing Approach

3. **Description:** Review the policy and procedure concerning the minimum hours of participation on self help projects. Ask public interest groups for comment concerning the advisibility of limiting the family's labor contribution.

4. **Authority:** Departmental Initiative

5. **Projected Schedule**

   a. **Date of pre-notice:** 11/78
   b. **Date of proposal:** 1/79
   c. **Final Decision:** 3/79

6. **Contacts:**

   Agency: Tom Gerlitz, Ext. (202) 447-7208

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** Fm 10814

2. **Title:** Coordinated Use of Loan and Grant Programs to Meet Low-Income Housing Needs

3. **Description:** Deny community program assistance in prescribed circumstances, and to accelerate repayment in certain instances when communities arbitrarily prohibit or restrict low-income

4. **Authority:** Departmental Initiative to prevent communities and groups from using FmHA Community Program resources and subsequently, and arbitrarily denying or restricting low-income housing.

5. **Projected Schedule**

   a. **Date of pre-notice:** 11/14/78
   b. **Date of proposal:** 1/15/79
   c. **Final Decision:** 5/1/79

6. **Contacts:**

   Agency: Art Collings, Ext. (202) 447-8448

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** Fm 10819

2. **Title:** Review of Present Priorities for B&I Loans

3. **Description:** Review will include consideration of lines of credit, small loans, limited partnerships, interim financing and other matters

4. **Authority:** Departmental Initiative

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:**
   c. **Final Decision:** 6/79

6. **Contacts:**

   Agency: Robert Butler, Ext. (202) 447-5243

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** Fm 10822

2. **Title:** Proposed change in B&I Program to broaden eligibility for foreign-owned applicants.

3. **Description:** Completed survey of states to determine significance of impact, published proposed change to permit foreign applicants if 85% of employees are U.S. citizens, and prepared option paper for decision.

4. **Authority:** Request by applicants, S/D, Vermont and general requests.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 8/78
   c. **Final Decision:** 1/79

6. **Contacts:**

   Agency: Robert Butlep, Ext. (202) 447-5243

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** Fm 10823

2. **Title:** Revise FmHA Instructions to permit certain energy producing projects to be funded under B&I Program

3. **Description:** Departmental Initiative to amend B&I regulations to permit certain energy projects to be approved.

4. **Authority:**

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 8/78
   c. **Final Decision:** 1/79

6. **Contacts:**

   Agency: Robert Butler, Ext. (202) 447-5243

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** Fm 10824

2. **Title:** Memorandum of understanding with Dept. of Transportation

3. **Description:** FRA has certain grant programs which when used in conjunction with CF loans can be more effectively utilized. Agreement will likely be a general cooperative agreement.

4. **Authority:** To coordinate Federal Railroad ADM,, DOT, and FmHA Community Facility loan programs in rural areas.

5. **Projected Schedule**

   a. **Date of pre-notice:** 1/79
   b. **Date of proposal:** 3/79
   c. **Final Decision:** 6/79

6. **Contacts:**

   Agency: John Bowles, Ext. (202) 447-7667

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** Fm 10826

2. **Title:** Community Facility loans for electric and telephone facilities

3. **Description:** Consider making FmHA loans for electric and telephone facilities to communities not eligible for REA assistance.

4. **Authority:** To provide a complete spectrum of loan assistance to rural communities in need.

5. **Projected Schedule**

   a. **Date of pre-notice:** 2/79
   b. **Date of proposal:** 3/79
   c. **Final Decision:** 6/79

6. **Contacts:**

   Agency: John Bowles, Ext. (202) 447-7667

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** Fm 10827

2. **Title:** Assistance to Energy Impacted Areas

3. **Description:** Provide grants for planning, land acquisition, and site development to energy impact areas

4. **Authority:** Powerplant and Industrial Fuel Use Act, Section 601

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 3/79
   c. **Final Decision:** 3/79

6. **Contacts:**

   Agency: Paul Kugler, Ext. (202) 447-2573

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** Fm 10828

2. **Title:** Small Communities Conferences

3. **Description:** A series of conferences under USDA leadership with several other departments cooperating, for the purpose of addressing the critical economic needs of small rural communities.

4. **Authority:** Section 603, Rural Development Act of 1972

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:**
   c. **Final Decision:** 12/1/78

6. **Contacts:**

   Agency: Carl Larson, Ext. (202) 447-7595

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** Fm 10829

2. **Title:** Small Farm Policy Development

3. **Description:** USDA agencies to develop coordinated small farm policy and priorities as followup to the small farms conferences held in 1978.

4. **Authority:** Section 603 Rural Development Act of 1972

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:**
   c. **Final Decision:** by 11/15/78

6. **Contacts:**

   Agency: Carl Larson, Ext. (202) 447-7595

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** Fm 10834

2. **Title:** Rural Transportation Cooperatives

3. **Description:** Analyze the appropriateness of using the REA model for rural transportation

4. **Authority:** Sec. 603 Rural Development Act, to attempt to find a method to stablize basic transportation in rural areas.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 12/15/78
   c. **Final Decision:** 4/1/79

6. **Contacts:**

   Agency: Ira Kaye, Ext. (202) 447-7367

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** Fm 10835

2. **Title:** Presidential Initiative on Rural Public Transit Coordination

3. **Description:** A series of presidential statements, OMB circulars, interagency agreements are contemplated to assure maximum feasible coordination of federal transit resources in towns and rural areas.

4. **Authority:** To carry out Congressional mandate in Surface Transportation Assistance Act of 1978 and complete IACC task force activities.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 12/15/78
   c. **Final Decision:** 1/15/79

6. **Contacts:**

   Agency: Ira Kaye, Ext. (202) 447-7367

   Secretary's Office: John Subat, Ext. (202) 447-2113

FARMERS HOME ADMINISTRATION

1. **Calendar No:** Fm 10838

2. **Title:** Study on Transportation and Communication Trade offs

3. **Description:** A series of phased contracts with National Research Council to develop the form and parameters of the study and then organize and conduct the study.

4. **Authority:** To resolve a growing conflict between two technologies addressing common problems in rural development

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 12/19/78
   c. **Final Decision:** 5/1/79

6. **Contacts:**

   Agency: Ira Kaye, Ext. (202) 447-7367

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** Fm 10840

2. **Title:** Use Community Based Organizations to enhance outreach and effectiveness of FmHA programs targeted to low-income and minorities.

3. **Description:** Identify and assess capabilities of rural community based organizations to assist FmHA in reaching targeted populations. Enter into agreements on a pilot basis.

4. **Authority:** Section 603 of Rural Development Act of 1972.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:**
   c. **Final Decision:** 2/28/79

6. **Contacts:**

   Agency: Craig Ahlbery, Ext. (202) 447-4488

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** Fm 10841

2. **Title:** Model of Joint Agreement to Cooperate between FmHA State Directors and Governors

3. **Description:** The model would be used to guide state directors as they negotiate cooperative agreements in support of state comprehensive rural development trageting strategies.

4. **Authority:** Rural Development Act of 1972, Section 603; FmHA Administrator's Policy Memorandum on Development Policy Goals, Sept. 18, 1978

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 11/30/78
   c. **Final Decision:** 12/15/78

6. **Contacts:**

   Agency: Craig Bigler, Ext. (202) 447-5941

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** Fm 10842

2. **Title:** Joint Memorandum of Agreement between FmHA and the Appalachian Regional Commission

3. **Description:** The Agreement will commit FmHA to follow the priorities set by local development districts and states, FmHA and ARC to jointly set priorities and establish and support compatible programs in rural development.

4. **Authority:** Rural Development Act of 1972, Section 603; FmHA Administrator's Policy Memorandum on Development Policy Goals, Sept. 18. 1978

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 11/3/78
   c. **Final Decision:** 11/17/78

6. **Contacts:**

   Agency: Craig Bigler, Ext. (202) 447-5941

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** Fm 10844

2. **Title:** Phase II, National rural Community Facilities Assessment Study.

3. **Description:** Major feasibility study currently underway with ABT Assoc. to determine the data requirements, collection and analysis plans for making the assessments. Performance criteria and types of communities to be included will be presented to FmHA prior to the initiation of Phase II. Supplemental study to be conducted by Agency.

4. **Authority:** Agency initiative to develop national and state assessments of the current status of community facilities relative to acceptable performance standards.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:**
   c. **Final Decision:** 1/15/79

6. **Contacts:**

   Agency: Lou Higgs, Ext. (202) 447-9296

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** Fm 10847

2. **Title:** Rural Development Progress Report (due to Congress 1/1/79)

3. **Description:** Appraise Congress of Executive actions to promote rural development

4. **Authority:** Required by Rural Development Act of 1972.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 12/27/78
   c. **Final Decision:** 1/21/79

6. **Contacts:**

   Agency: John Leslie, Ext. (202) 447-4550

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** Fm 10848

2. **Title:** Refine data gathering to aid state directors in development strategy.

3. **Description:** Identify, refine and gather data to supply state directors to assist State Directors in complying with the Administrator's memorandum on targeting FmHA programs.

4. **Authority:** Administrator's Policy Memorandum of Sept. 18, 1978

5. **Projectad Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 6/79
   c. **Final Decision:** 7/79

6. **Contacts:**

   Agency: Richard Long, Ext. (202) 447-5941

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** Fm 10849

2. **Title:** Review of Restructuring of FmHA Delivery System

3. **Description:** Review of regulations concerning the restructuring of FmHA state and county personnel system.

4. **Authority:** Section 4, Executive Order 12044. OMB Circular 116

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:**
   c. **Final Decision:** 3/31/79

6. **Contacts:**

   Agency: Neil Storms, Ext. (202) 447-4487

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** Fm 10853

2. **Title:** Business and Industrial Guaranteed Loan Program Evaluation

3. **Description:** Evaluation will include an analysis of institutional processing characteristics, loan portifolio characteristics and alternative types of assistance

4. **Authority:** Agency Initiative to evaluate the program

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 10/79
   c. **Final Decision:** 12/79

6. **Contacts:**

   Agency: Dick Ackley, Ext. (202) 447-6586

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** Fm 10856

2. **Title:** Needs Assessment Capability Study

3. **Description:** The Needs Assessment Component will be designed to be nationally applicable, to be used at the national level in assessing the relative needs of States, and within assessing the relative needs of counties.

4. **Authority:** Center for Census Use Studies has contracted to develop a Needs Assessment Component to help FmHA assess relative levels of need for its loan programs.

5. **Projected Schedule**

   a. **Date of pre-notice:** Completed
   b. **Date of proposal:** Completed
   c. **Final Decision:** 11/79

6. **Contacts:**

   Agency: Mark Nestle, Ext. (202) 447-6484

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** Fm 10858

2. **Title:** Weatherization Program - A change in emphasis

3. **Description:** Review alternative procedures available to improve effectiveness of programs.

4. **Authority:** Departmental Initiative to increase effectiveness of current programs to meet the President's energy program.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:**
   c. **Final Decision:** 4/79

6. **Contacts:**

   Agency: J. Maetzold, Ext. (202) 447-6586

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** Fm 10864

2. **Title:** Section 502 Loans

3. **Description:** Revise FmHA 444.1 to allow single family housing loans to FmHA employees.

4. **Authority:** Departmental Initiative

5. **Projected Schedule**

   a. **Date of pre-notice:** 7/1/78
   b. **Date of proposal:** 1/79
   c. **Final Decision:** 3/79

6. **Contacts:**

   Agency: Byron Fischer, Ext. (202) 447-4295

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** Fm 10865

2. **Title:** FmHA Inst. 1980-E B&I Loan Program

3. **Description:** To revise FmHA 1980.411(a) to encourage the financing of housing development sites when adequate sites are not available to low- and moderate-income families.

4. **Authority:** Departmental initiative to increase availability of building sites in rural American

5. **Projected Schedule**

   a. **Date of pre-notice:** 1/79
   b. **Date of proposal:** 3/79
   c. **Final Decision:** 5/79

6. **Contacts:**

   Agency: Eugene Carnette, Ext. (202) 447-4295

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** Fm 10866

2. **Title:** Section 502 Loans Income Limitations

3. **Description:** To adjust current limits for inflation.

4. **Authority:** Departmental Initiative.

5. **Projected Schedule**

   a. **Date of pre-notice:** 5/78
   b. **Date of proposal:** 1/79
   c. **Final Decision:** 3/79

6. **Contacts:**

   Agency: Byron Fischer, Ext. (202) 447-4295

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** Fm 10870

2. **Title:** Compensation for Construction Defects

3. **Description:** Revise FmHA Inst. 1924.1 To allow FmHA borrowers to collect damages for construction defects.

4. **Authority:** Departmental Initiative

5. **Projected Schedule**

   a. **Date of pre-notice:** 11/78
   b. **Date of proposal:** 1/79
   c. **Final Decision:** 3/79

6. **Contacts:**

   Agency: Elvon Spencer, Ext. (202) 447-4295

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** Fm 10883

2. **Title:** Small Business Enterprise Loans

3. **Description:** Issue regulations for implementation of program.

4. **Authority:** Section 304 of the Consolidated Farm and Rural Development Act.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 2/79
   c. **Final Decision:** 3/79

6. **Contacts:**

   Agency: Carl Opstad, Ext. (202) 447-4572

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** Fm 10886

2. **Title:** Account Servicing Policy Instruction

3. **Description:** To revise account servicing regulations to provide for consolidating, rescheduling, and deferring repayments on Farmer Program loans.

4. **Authority:** To incorporate provisions of H.R. 11504

5. **Projected Schedule**

   a. **Date of revision:** 10/23/78
   b. **Date of proposal:** 12/15/78
   c. **Final Decision:** 1/30/79

6. **Contacts:**

   Agency: Thomas Baden, Ext. (202) 447-2331

   Secretary's Office: John Subat, Ext. (202) 447-2113

FOOD AND NUTRITION SERVICE

1. **Calendar No:** FN 1182

2. **Title:** Part 226 Child Care Food Program Regulations, Part 226

3. **Description:** Regulations will implement the pending legislation initiating new procedures and requirements for States including methods of funding and reimbursement.

4. **Authority:** Currently P.L. 94-105 and legislation pending signature of President Carter.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 1/79
   c. **Final Decision:** 4/79

6. **Contacts:**

   Agency: Jordan Benderly, Ext. (202) 447-8211

   Secretary's Office: John Subat, Ext. (202) 447-2113

FOOD AND NUTRITION SERVICE

1. **Calendar No:** FN 1183

2. **Title:** Summer Food Service Program for Children Regulations - Part 225

3. **Description:** Proposed regulations modify the existing (1978) regulations. Provisions are included to stabilize administrative funding to States and contractual payments to food vendors, State responsibilities for training are expanded and the eligibility of migrant children is clarified.

4. **Authority:** P.L. 95-166 requires the Department to propose regulations by November 1 of each year and issue final regulations by January 1.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 10/31/78
   c. **Final Decision:** 12/78

6. **Contacts:**

   Agency: Jordan Benderly, Ext. (202) 447-8211

   Secretary's Office: John Subst, Ext. (202) 447-2113

1. **Calendar No:** FN 1184

2. **Title:** Summer Food Service Program for Children: Proposed Amendment - Part 225

3. **Description:** Amendment will provide Civil rights Regulations for State Agencies.

4. **Authority:** To fully implement the Department's Nondiscrimination Regulations (7 CFR Part 15) and Department of Justice (28 CFR sec. 42.401-15 and sec. 50.3) nondiscriminstion enforcement at the State Agency level.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 3/79
   c. **Final Decision:** 7/79

6. **Contacts:**

   Agency: Jordan Benderly, Ext. (202) 447-8211

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** FN 1185

2. **Title:** Proposed Amendment - Part 226 Child Care Food Program

3. **Description:** Amendment will provide Civil Rights Regulations for State Agencies

4. **Authority:** To fully implement the Department's Nondiscrimination Regulations (7 CFR Part 15) and Department of Justice (28 CFR sec. 42.401-15 and sec. 503.) nondiscrimination enforcement at the State Agency level.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 5/79
   c. **Final Decision:** 8/79

6. **Contacts:**

   Agency: Jordan Benderly, Ext. (202) 447-8211

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** FN 1186

2. **Title:** State Plan (210) for Child Nutrition Programs

3. **Description:** Amendment to regulations to clarify items to be included in the State Plan.

4. **Authority:** Departmental Initiative Court Order, FNS Depositions

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of reproposal:** 11/78
   c. **Final Decision:** 6/79

6. **Contacts:**

   Agency: Margaret Glavin, Ext. (202) 447-8130

   Secretary's Office: John Subst, Ext. (202) 447-2113

1. **Calendar No:** FN 1188

2. **Title:** School Breakfast Program: Grain-Fruit Product - Withdrawal of Approval, Part 220

3. **Description:** Elimination of formulated grain/fruit products from the Breakfast Program to promote development of good food habits in the furtherance of nutrition education through a well-balanced diet of conventional foods.

4. **Authority:** Departmental Initiative

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 8/12/77
   c. **Final Decision:** 1/80

6. **Contacts:**

   Agency: Margaret Glavin, Ext. (202) 447-8130

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** FN 1189

2. **Title:** Contracting and procurement Regulations for School Nutrition Programs

3. **Description:** Extension of procurement standards to local level. Currently regulations require that only State agencies must adhere to procurement standards under the National School Lunch Program.

4. **Authority:** OMB Circular A-102

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 1/13/78
   c. **Final Decision:** 1/79

6. **Contacts:**

   Agency: Margaret Glavin, Ext. (202) 447-8130

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** FN 11810

2. **Title:** Contracting and Procurement Regulations for School Nutrition Programs

3. **Description:** Regulations would require that contracts between School Food Authorities and food management companies contain provisions denying payments for meals not meeting nutritional requirements, sanctions for non-performance, and other provisions ensuring the best interest of school food service.

4. **Authority:** Departmental Initiative

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 1/13/78
   c. **Final Decision:** 1/79

6. **Contacts:**

   Agency: Margaret Glavin, Ext. (202) 447-8130

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** FN 11812

2. **Title:** State Administrative Expense Funds (235) For Child Nutrition Programs

3. **Description:** Regulations to amend Part 235 to specify the purpose and a formula for allocating SAE funds for fiscal years 1979 and 1980 at an amount above one percent to a State for the purpose of management, evaluation and improvement.

4. **Authority:** Statutory (P.L. 95-166)

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 1/79
   c. **Final Decision:** 5/79

6. **Contacts:**

   Agency: Margaret Glavin, Ext. (202) 447-8130

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** FN 11813

2. **Title:** Program Administrative Review System for School Nutrition Programs

3. **Description:** A series of regulatory amendments for management, evaluation and improvement designed to improve accountability. To assist State agencies, additional SAE funds will be provided.

4. **Authority:** Statutory (P.L. 95-166)

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 1/79
   c. **Final Decision:** 5/79

6. **Contacts:**

   Agency: Margaret Glavin, Ext. (202) 447-8130

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** FN 11815

2. **Title:** School Breakfast Program: Revision of Criteria for Determining Especially Needy Schools, Part 220

3. **Description:** To revise Part 220, School Breakfast Program regulations to change the designation of a school from "especially needy" to read "a school in severe need" and to revise the existing criteria for determining schools in severe need.

4. **Authority:** Legislation and Departmental Initiative

5. Projected Schedule

   a. Date of pre-notice:
   b. Date of proposal: 1/79
   c. Final Decision: 5/79

6. Contacts:

   Agency: Margaret Glavin, Ext. (202) 447-8130

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** FN 11817

2. **Title:** Eligibility of Indian Children for Free Meals and Milk in School Nutrition Programs

3. **Description:** Legislative changes to be drafted to allow USDA to reimburse at free meal rates those meals served to Indian children for whom BIA is responsible and who are enrolled in public schools.

4. **Authority:** Class action lawsuit Vigil vs. Kleppe, et al against USDA and Dept. of Interior

5. Projected Schedule

   a. Date of pre-notice:
   b. Date of proposal:
   c. Final Decision: 12/1/78

6. Contacts:

   Agency: Margaret Glavin, Ext. (202) 447-8130

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** FN 11819

2. **Title:** Civil Rights Regulations for School Nutrition Programs

3. **Description:** Proposed to ensure compliance with Title VI of the Civil Rights Act of 1964 in School Programs. This regulation will specify State agency and where applicable, FNS Regional Office and local school food authorities' responsibilities under the Agency's Civil Rights Instruction 113-1 and applicable Civil Rights regulations.

4. **Authority:** FNS Instruction 113-1 which was issued pursuant to Department of Justice regulations (28 CFR 42.401-15), and USDA Title 7 Regulations.

5. Projected Schedule

   a. Date of pre-notice:
   b. Date of proposal: 2/79
   c. Final Decision: 6/79

6. Contacts:

   Agency: Margaret Glavin, Ext. (202) 447-8130

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** FN 11820

2. **Title:** Civil Rights Data Collection in School Nutrition Programs

3. **Description:** Establishes a system for collection of data on race of applicants and permits states to allow local school systems to ask parents voluntarily to designate race on the free and reduced price application forms. The purpose of such data collection is to assure that program benefits are being equitably distributed without regard to race, color, or national origin.

4. **Authority:** Statutory Title VI of the Civil Rights Act of 1964

5. **Projected Schedule**

   a. Date of pre-notice:
   b. Date of proposal: 8/25/78
   c. Final Decision: 3/79

6. **Contacts:**

   Agency: Margaret Glavin, Ext. (202) 447-8130

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** FN 11824

2. **Title:** To Establish Controls on Sales of Competitive Foods (210) in Schools

3. **Description:** Regulations to implement that Section of P. L. 95-166 which requires that the Secretary approve those foods which may be sold in competition with the lunch and breakfast served under the National School Lunch and School Breakfast Programs, thereby placing controls on the sale of competitive foods at State and local levels.

4. **Authority:** Statutory (P.L. 95-166)

5. **Projected Schedule**

   a. Date of pre-notice: 12/78
   b. Date of reproposal: 3/79
   c. Final Decision: 7/79

6. **Contacts:**

   Agency: Margaret Glavin, Ext. (202) 447-8130

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** FN 11826

2. **Title:** Food Distribution Program: Review and republication of regulations (7 CFR Part 250)

3. **Description:** FDD to make a systematic review of regulations and recommend restructuring and consolidation;

4. **Authority:** Department's response to E.O. 12044 (Improving Government Regulations) designated Part 250 for review. The regulations date from 1958 and now include 41 amendments. Substantial portions have been obsolete owing to legislative and policy changes as well as realignment of responsibilities within FNS.

5. **Projected Schedule**

   a. Date of pre-notice: 5/59
   b. Date of proposal: 7/79
   c. Final Decision: 10/79

6. **Contacts:**

   Agency: Darrel Gray, Ext. (202) 447-8362

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** FN 11829

2. **Title:** Food Distribution Program: Civil Rights policies and procedures, Part 250

3. **Description:** A new section 250.14 will be added to food distribution regulations to set forth in detail nondiscrimination requirements for charitable institutions and nonprofit summer camps for children; other portions of the regulations will be amended to add germane provisions.

4. **Authority:** Title VI, Civil rights Act of 1964; Department of Justice regulations on nondiscrimination (28 CFR Part 42).

5. **Projected Schedule**

   a. Date of pre-notice:
   b. Date of proposal: 12/78
   c. Final Decision: 4/79

6. **Contacts:**

   Agency: Darrel Gray, Ext. (202) 447-8362

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** FN 11834

2. **Title:** Food Distribution Program: Commodity purchase dockets for domestic distribution

3. **Description:** (1) Develop purchase plans in order to provide required levels of food assistance for all eligible programs, in coordination with commodity and procuremnt divisions in FSQS and ASCS. (2) Arrange for allotment of funds to cover purchase, transportation and other costs. (3) Provide ASCS Kansas City Commodity Office with delivery orders and shipping schedules. (4) Prepare docket covering all purchases for following fiscal year.

4. **Authority:** FNS Instruction 101-6 assigns responsibilities for procurement of commodities under section 6 of National School Lunch Act and section 32 of P.L. 74-320.

5. **Projected Schedule**

   a. Date of pre-notice:
   b. Date of proposal:
   c. Final Decision: 9/30/79

6. **Contacts:**

   Agency: Darrel Gray, Ext. (202) 447-8362

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** FN 11838

2. **Title:** Salt in Commodities for Donation Under Food Distribution Program

3. **Description:** Develop issue paper to be followed with a study of acceptability of salt-reduced and salt-free canned commodities.

4. **Authority:** High levels of salt in the diet contribute to health problems; accordingly, USDA has been requested to reduce levels of salt in commodities.

5. **Projected Schedule**

   a. Date of pre-notice:
   b. Date of proposal:
   c. Final Decision: 10/79

6. **Contacts:**

   Agency: Arvid Dopson, Ext. (202) 447-9081

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** FN 11839

2. **Title:** Nutrition Education and Training Program Civil Rights Regulation 7 CFR Part 227

3. **Description:** Issue proposed regulations to inaure compliance with the Civil Rights Act of 1964 in the NET Program.

4. **Authority:** Title VI Civil Rights Act 1964 - Need to issue proposed regulations.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 1/79
   c. **Final Decision:** 5/79

6. **Contacts:**

   Agency: Arvid Dopson, Ext. (202) 447-9081

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** FN 11840

2. **Title:** Child Feeding Programs: Credit for Poultry frankfurter and luncheon meat in food service.

3. **Description:** Establish credit for poultry frankfurters and luncheon meats for use in Child Feeding Program, based on standards developed by FSQS.

4. **Authority:** NSLA authorizes the Secretary to prescribe regulations relating to nutritional requirements.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:**
   c. **Final Decision:** 6/79

6. **Contacts:**

   Agency: Arvid Dopson, Ext. (202) 447-9081

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** FN 11841

2. **Title:** Child Nutrition Programs: Crediting of frankfurters.

3. **Description:** Distribution of addendum to Food Buying Guide, PA-270, to correct yield data on frankfurters.

4. **Authority:** NSLA and CNA give the Secretary the authority to prescribe regulations relating to nutritional requirements.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:**
   c. **Final Decision:** 3/79

6. **Contacts:**

   Agency: Arvid Dopson, Ext. (202) 447-9081

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** FN 11842

2. **Title:** School Feeding Program: Definition of authorized milk products for use in food service.

3. **Description:** Develop definition for authorized milk products. This would clarify FNS policy pertaining to use of milkshakes. States are not interpreting requirement for "fluid" milk consistently as being synonymous with Class I dairy products.

4. **Authority:** NSLA and CNA give the Secretary the authority to prescribe regulations relating to nutritional requirements.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 2/15/79
   c. **Final Decision:** 6/1/79

6. **Contacts:**

   Agency: Arvid Dopson, Ext. (202) 447-9081

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** FN 11843

2. **Title:** Authorization of Cookies in Summer Food Service Program for Children

3. **Description:** Delete cookies as an allowable alternate for bread in the meal supplement (snack).).

4. **Authority:** The NSLA authorizes the Secretary to prescribe regulations relating to nutritional requirements.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:**
   c. **Final Decision:** 5/1/79

6. **Contacts:**

   Agency: Arvid Dopson, Ext. (202) 447-9081

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** FN 11845

2. **Title:** Summer Food Service Program for Children; Meal Requirements for Supplemental Food.

3. **Description:** Reduce the quantity of fruit/vegetable required in the meal supplement (snack) in the summer food service program.

4. **Authority:** The NSLA authorizes the Secretary to prescribe regulations relating to nutritional requirements.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 11/78
   c. **Final Decision:** 1/79

6. **Contacts:**

   Agency: Arvid Dopson, Ext. (202) 447-9081

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** FN 11846

2. **Title:** School Feeding Programs: Crediting of Peanuts

3. **Description:** Publish proposed regulatory change allowing partial credit to peanuts in meeting the meat/meat alternate requirement when accompanied by another recognized entree item.

4. **Authority:** NSLA and CNA give the Secretary authority to prescribe regulations relating to the service of food.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 2/79
   c. **Final Decision:** 6/79

6. **Contacts:**

   Agency: Arvid Dopson, Ext. (202) 447-9081

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** FN 11847

2. **Title:** Special Supplemental Food Program Civil rights Regulation (Amendment 3 to Part 246) - Proposed

3. **Description:** Regulatory amendment to strengthen the Civil Rights compliance activities in the Special Supplemental Food Program for Women, Infants, and Children.

4. **Authority:** Department of Justice regulations

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 11/78
   c. **Final Decision:** 2/79

6. **Contacts:**

   Agency: Jennifer Nelson, Ext. (202) 447-8206

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** FN 11852

2. **Title:** Special Supplemental Food Program Regulations.

3. **Description:** Interim regulations must be published within 120 days from President's signing of Bill. This is stipulated in the proposed legislation.

4. **Authority:** Proposed legislation will require significant changes; however certain changes need to be made to improve Program operations even if new legislation is delayed.

5. **Projected Schedule**

   a. **Date of pre-notice:** 11/78
   b. **Date of proposal:** 12/78
   c. **Final Decision:** 3/79

6. **Contacts:**

   Agency: Jennifer Nelson, Ext. (202) 447-8206

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** FN 11857

2. **Title:** Commodity Supplemental Food Program; Development of Standards for Clinical Testing of Non-commercial Products

3. **Description:** The legislation calls for the Secretary to set standards for testing noncommercial products. A procedure will need to be developed and promulgated.

4. **Authority:** Proposed legislation awaiting the President's signature.

5. **Projected Schedule**

   a. **Date of pre-notice:** 1/79
   b. **Date of proposal:** 2/79
   c. **Final Decision:** 5/79

6. **Contacts:**

   Agency: J. R. Nelson/A Dopson, Ext. (202) 447-9081

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** FN 11858

2. **Title:** Special Supplemental Food Program Policy on Reallocation of Funds

3. **Description:** A paper detailing several alternative procedures will be developed.

4. **Authority:** It will undoubtedly be necessary to reallocate unspent WIC funds and methodology needs to be selected.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 11/78
   c. **Final Decision:** 12/78

6. **Contacts:**

   Agency: Jennifer Nelson, Ext. (202) 447-8206

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** FN 11865

2. **Title:** Special Supplemental Food Program Administrative Funding Policy

3. **Description:** Proposal of an administrative funding methodology for the Special Supplemental Food Program for Women, Infants and Children (WIC) which conforms to the legislation.

4. **Authority:** Proposed legislation awaiting the President's signature.

5. **Projected Schedule**

   a. **Date of pre-notice:** None
   b. **Date of proposal:** 11/78
   c. **Final Decision:** 1/79

6. **Contacts:**

   Agency: Jennifer Nelson, Ext. (202) 447-8206

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** FN 11867

2. **Title:** Special Supplemental Food Program Regulations on Use of Commodities

3. **Description:** Review of commodities being made to see which will meet Program nutrient requirement. Authorized commodities and procedures for State agencies to use in ordering commodities will be published in new regulations.

4. **Authority:** Requirement in legislation awaiting President's signature as well as Department's desire to utilize such foods in the WIC Program.

5. **Projected Schedule**

   a. **Date of pre-notice:** 1/79
   b. **Date of proposal:** 2/79
   c. **Final Decision:** 4/79

6. **Contacts:**

   Agency: Jennifer Nelson, Ext. (202) 447-8206

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** FN 11868

2. **Title:** Commodity Supplemental Food Program, Food Package Changes

3. **Description:** Revision of authorized foods to be published in final regulations.

4. **Authority:** Participants' request for changes in certain foods offered; also a need for provision of certain types of infant formula.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 12/78
   c. **Final Decision:** 1/79

6. **Contacts:**

   Agency: Jennifer Nelson, Ext. (202) 447-8206

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** FN 11869

2. **Title:** Food Stamp Program: Regulations concerning administrative cost allocations for States

3. **Description:** Regulations concern the reimbursement to States for administrative costs incurred in operating the Food Stamp Program.

4. **Authority:** P.L. 95-113 implementation

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 12/78
   c. **Final Decision:** 3/79

6. **Contacts:**

   Agency: Ray Pugh, Ext. (202) 447-3546

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** FN 11870

2. **Title:** Food Stamp Program: Work Registration Joint Rulemaking

3. **Description:** Defines and assigns the responsibility for administering the food stamp work registration requirement including job search activities to the appropriate agencies within the Departments of Labor and Agriculture. Additionally the responsibilities and penalties for failure to comply with work requirements by participating households will be delineated.

4. **Authority:** P. L. 95-113 Implementation

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 2/79
   c. **Final Decision:** 5/79

6. **Contacts:**

   Agency: Nancy Snyder, Ext. (202) 447-8982

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** FN 11873

2. **Title:** Food Stamp Program: Regulations concerning the Performance Reporting System

3. **Description:** Regulations require that the existing system be continued and further refined to ensure that States assess themselves at the local level and report to the Department on their efficiency and effectiveness.

4. **Authority:** P. L. 95-113 Implementation

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 12/78
   c. **Final Decision:** 3/79

6. **Contacts:**

   Agency: Nancy Snyder, Ext. (202) 447-8982

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** FN 11874

2. **Title:** Food Stamp Program: Regulations concerning points, hours, outreach, State complaints.

3. **Description:** Establish requirements for State outreach activities, locations and hours of certification and issuance offices, and for State handling of complaints.

4. **Authority:** P.L. 95-113 Implementation

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 12/78
   c. **Final Decision:** 3/79

6. **Contacts:**

   Agency: Nancy Snyder, Ext. (202) 447-8982

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** FN 11875

2. **Title:** Food Stamp Program: Regulations concerning the participation of Indians.

3. **Description:** Regulations allow Indian participation in the Food Distribution Program and the Food Stamp Program; also will allow in certain cases capable tribes to operate those programs.

4. **Authority:** P.L. 95-113 Implementation

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 11/78
   c. **Final Decision:** 3/79

6. **Contacts:**

   Agency: Nancy Snyder, Ext. (202) 447-8982

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** FN 11876

2. **Title:** Food Stamp Program: Regulations concerning SSI joint processing

3. **Description:** Regulations allow SSI households and applicants to apply for food stamps at Social Security Offices.

4. **Authority:** P.L. 95-113 Implementation

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 1/78
   c. **Final Decision:** 4/79

6. **Contacts:**

   Agency: Nancy Snyder, Ext. (202) 447-8982

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** FN 11877

2. **Title:** Food Stamp Program: Regulations concerning State Plan of Operation

3. **Description:** Establish requirements for the State agency preparation and submittal of the State Plan of Operation which is the contract between States and the Department.

4. **Authority:** P. L. 95-113 Implementation

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 12/78
   c. **Final Decision:** 3/79

6. **Contacts:**

   Agency: Nancy Snyder, Ext. (202) 447-8982

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** FN 11878

2. **Title:** Food Stamp Program: Regulations concerning FNS and State steps to be taken in the case of natural disasters.

3. **Description:** Regulations describe how FNS and the States will react to natural disasters to insure continued benefits to participants and to the new group of people who may be eligible in the States following disasters.

4. **Authority:** P.L. 95-113 Implementation

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 1/79
   c. **Final Decision:** 3/79

6. **Contacts:**

   Agency: Nancy Snyder, Ext. (202) 447-8982

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. **Calendar No:** FN 11879

2. **Title:** Food Stamp Program: Regulations concerning State sanctions and liabilities

3. **Description:** Regulations define the situations and criteria to be used by FNS for taking fiscal sanctions against States when it has been determined that States have failed to comply with the Act, regulations or State Plans.

4. **Authority:** P.L. 95-113 Implementation

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 12/78
   c. **Final Decision:** 3/79

6. **Contacts:**

   Agency: Nancy Snyder, Ext. (202) 447-8982

   Secretary's Office: John Subat, (202) 447-2113

FOREST SERVICE

1. **Calendar No:** FS 1081

2. **Title:** National Forest System Land and Resource Management Planning

3. **Description:** Issue regulations to guide the land and resource planning process for the National Forest System

4. **Authority:** Forest and Rangeland Renewable Resource Planning Act of 1974 as amended by the National Forest Management Act of 1976.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 8/31/78
   c. **Final Decision:** 1/79

6. **Contacts:**

   Agency: Rex Hartgraves, Ext. (202) 447-5933

   Secretary's Office: John Fedkiw, Ext. (202) 447-7963

1. **Calendar No:** FS 1082

2. **Title:** Title V Regulations of Federal Land Policy and Management Act of 1976 (P.L. 94-579)

3. **Description:** Revise regulations governing "Special Uses" other than recreaction and rights-of-way to incorporate provisions of P.L. 94-579.

4. **Authority:** P.L. 94-579 (90 Stat. 2743), Sec. 310 requires that regulations be promulgated.

5. **Projected Schedule**

   a. **Date of pre-notice:** 11/4/77
   b. **Date of proposal:** 11/1/78
   c. **Final Decision:** 3/1/79

6. **Contacts:**

   Agency: William R. Boring, Ext. (703) 235-8107

   Secretary's Office: John Fedkiw, Ext. 447-7963

1. **Calendar No:** FS 1083

2. **Title:** Cost Recovery Policy Issue

3. **Description:** No uniform policy among Federal agencies on collecting costs incurred in processing applications for use of Federal lands. This is being brought to the attention of the Office of Management and Budget by U.S. Department of Agriculture for consideration in establishing a government-wide policy.

4. **Authority:** Federal Land Policy and Management Act of 1976, P.L. 94-579 (90 Stat. 2743), Secs. 304 and 504(g).

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:**
   c. **Final Decision:**

6. **Contacts:**

   Agency: R. M. Housley, Ext. (202) 447-7465

   Secretary's Office: John Fedkiw, Ext. (202) 447-7963

1. **Calendar No:** FS 1084

2. **Title:** RARE II Final Environmental Statement

3. **Description:** A Final Environmental Statement with decisions on roadless areas to be allocated to non-wildnernes uses and areas requiring further planning to determine wilderness or non-wilderness allocation and make recommendations to Congress for wilderness designation.

4. **Authority:** Determine National Forest share of National Wilderness Preservation System and which areas inventoried in RARE II should be allocated to non-wilderness and further planning.

5. **Projected Schedule**

   a. **Date of pre-notice:** In progress
   b. **Date of proposal:** 12/1/78
   c. **Final Decision:** 12/29/78

6. **Contacts:**

   Agency: R. K. Griswold, Ext. (202) 447-2956

   Secretary's Office: John Fedkiw, Ext. (202) 447-7963

1. **Calendar No:** FS 1085

2. **Title:** Implementation of P.L. 95-313, The Cooperative Forestry Assistance Act of 1978

3. **Description:** Update and clarify Forest Service Manual program guidelines and existing regulations.

4. **Authority:** P.L. 95-313 updates and reorganizes existing authorities for cooperative forestry programs.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:**
   c. **Final Decision:**

6. **Contacts:**

   Agency: John C. Barber, Ext. (202) 447-3331

   Secretary's Office: John Fedkiw, Ext. (202) 447-7963

1. **Calendar No:** FS 1086

2. **Title:** Draft 1980 RPA Assessment and Program

3. **Description:** The decision to release draft documents that assess the Nation's renewable resource situation and that describe Alternative Program Directions for the Forest Service for the next 50 years.

4. **Authority:** Forest and Rangeland Renewable Resources Act of 1974

5. **Projected Schedule**

   a. **Date of pre-notice:** 2/79
   b. **Date of proposal:** 9/79
   c. **Final Decision:** 11/79

6. **Contacts:**

   Agency: Lamar Beasley, Ext. (202) 447-5440

   Secretary's Office: John Fedkiw, Ext. (202) 447-7963

1. **Calendar No:** FS 1088

2. **Title:** Regulations for administering Forest Highways

3. **Description:** Revise definition - update selection criteria to reflect Federal interests in routes and projects.

4. **Authority:** Change in law. Gao Audit Report CED-77-130 B164497(3)

5. **Projected Schedule**

   a. **Date of pre-notice:** 11/78
   b. **Date of proposal:** 1/79
   c. **Final Decision:** 3/79

6. **Contacts:**

   Agency: Mike Hawlett, Ext. (703) 235-8035

   Secretary's Office: John Fedkiw, Ext. (202) 447-7963

1. **Calendar No:** FS 1089

2. **Title:** Public Participation Procedures

3. **Description:** Establishment by regulation to give the Federal, State & local governments and the public adequate notice and opportunity to comment upon the formulation of standards, criteria, and guidelines applicable to Forest Service programs.

4. **Authority:** Sec. 11 National Forest Management Act of 1976

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 11/78
   c. **Final Decision:** Spring 1979

6. **Contacts:**

   Agency: Robert M. Lake, Ext. (202) 447-3760

   Secretary's Office: John Fedkiw, Ext. (202) 447-7963

1. **Calendar No:** FS 10810

2. **Title:** Revised Regulations for Debarment of Timber Purchasers

3. **Description:** Revise regulations. Publish proposed and final regulations in Federal Register.

4. **Authority:** Current regulations are outdated and do not provide for consideration of recent legislation.

5. **Projected Schedule**

   a. **Date of pre-notice:** 10/78
   b. **Date of proposal:**
   c. **Final Decision:** 6/79

6. **Contacts:**

   Agency: Norm Gould, Ext. (202) 447-6893

   Secretary's Office: John Fedkiw, Ext. (202) 447-7963

1. **Calendar No:** FS 10811

2. **Title:** Secretary Review of Rate Redetermination for Alaska Lumber and Pulp Co. Sale

3. **Description:** Review, report, and recommendations from Board regarding rates for Alaska Lumber and Pulp Co. long term timber sale contract.

4. **Authority:** Request to Secretary by purchaser to appoint special Board to review rates redetermined by the Forest Service.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:**
   c. **Final Decision:** 11/78

6. **Contacts:**

   Agency: Norm Gould, Ext. (202) 447-6893

   Secretary's Office: John Fedkiw, Ext. (202) 447-7963

1. **Calendar No:** FS 10812

2. **Title:** Final Regulations for Special Salvage Timber Sale Program

3. **Description:** Regulations to detail guidelines for the program. Provide preferential sales to small concerns with 25 or fewer employees.

4. **Authority:** Implement set-aside program for small business firms with less than 25 employees.

5. **Projected Schedule**

   a. **Date of pre-notice:** 10/78
   b. **Date of proposal:**
   c. **Final Decision:** 12/78

6. **Contacts:**

   Agency: Norm Gould, Ext. (202) 447-6893

   Secretary's Office: John Fedkiw, Ext. (202) 447-7963

1. **Calendar No:** FS 10813

2. **Title:** Amendment to Regulation 36 CFR 222, Management of Wild Free-Roaming Horses and Burros

3. **Description:** Amendments in Regulations are needed to implement provisions of the Act including: Inventories, research, disposal of unadoptable animals, assigning of title of adopted animals. Regulations must be coordinated with efforts by U.S. Department of the Interior.

4. **Authority:** Public Rangelands Improvement Act of 1978

5. **Projected Schedule**

   a. **Date of pre-notice:** 12/15/78
   b. **Date of proposal:** 1/15/79
   c. **Final Decision:** 4/15/79

6. **Contacts:**

   Agency: William Evans, Ext. (703) 235-8139

   Secretary's Office: John Fedkiw, Ext. (202) 447-7963

1. **Calendar No:** FS 10814

2. **Title:** Amendment to Regulation 36 CFR 222, Grazing and Livestock Use on the National Forest System

3. **Description:** Regulation amendments are needed to implement provisions of the Public Rangelands Improvement Act of 1978 including: (1) Rangeland inventories and management, (2) grazing permits and leases, and (3) allotment management plans, Grazing Advisory Boards, and experiemtnal stewardship program. Efforts must be coordinated with U.S. Department of Interior.

4. **Authority:** Enactment of the Public, Rangelands Improvement Act of 1978.

5. **Projected Schedule**

   a. **Date of pre-notice:** 1/15/78
   b. **Date of proposal:** 3/15/79
   c. **Final Decision:** 7/1/79

6. **Contacts:**

   Agency: William Evans, Ext. (703) 235-8139

   Secretary's Office: John Fedkiw, Ext. (202) 447-7963

1. **Calendar No:** FS 10815

2. **Title:** Amend Grazing Fee Regulation; 36 CFR 222 Grazing and Livestock Use

3. **Description:** Write new grazing fee regulations to implement new legislation. Must be coordinated with Bureau of Land Management/Department of the Interior. Formal rulemaking procedures.

4. **Authority:** To conform with requirements of the Public Rangelands Improvement Act of 1978

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 11/9/78
   c. **Final Decision:** 2/9/79

6. **Contacts:**

   Agency: William Evans, Ext. (703) 235-8139

   Secretary's Office: John Fedkiw, Ext. (202) 447-7963

1. **Calendar No:** FS 10816

2. **Title:** Forest Service Manual 2351 Off-road Vehicle Management

3. **Description:** Promulgate revised Forest Service Manual direction to field units. Revisions based on recent activity review and task force help.

4. **Authority:** Current policy requires updating based on final rules published May 1978.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 3/79
   c. **Final Decision:** 6/79

6. **Contacts:**

   Agency: Tom Hoots, Ext. (202) 447-3706

   Secretary's Office: John Fedkiw, Ext. (202) 447-7963

FOOD SAFETY AND QUALITY SERVICE

1. **Calendar No:** FSQ 1083

2. **Title:** Voluntary Quality Control Regulations - Sanitation and Carcass Cleanliness.

3. **Description:** This proposal would permit firms to meet inspection requirements by implementing company-operated quality control programs. This would permit FSQS to shift more responsibility to industry with FSQS monitoring industry performance.

4. **Authority:** 21 U.S.C. 601 et seq.; 21 U.S.C. 451 et seq Additional information to improve system of inspection while holding down costs as outlined in report on Strengthening Meat and Poultry Inspection.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 5/15/79
   c. **Final Decision:** 12/18/79

6. **Contacts:**

   Agency: D. L. Houston, Ext. (202) 447-3473

   Secretary's Office: Lynn Maish, Ext. (202) 447-6667

FOOD SAFETY AND QUALITY SERVICE

1. **Calendar No:** FSQ 1084

2. **Title:** Poultry Chiller Water Regulation

3. **Description:** New regulation will permit plants to reduce volume of replacement water in poultry chilling tanks by 50 percent providing the plant adds chlorine to the water in the amount of 20 parts per million.

4. **Authority:** 21 U.S.C. 451 et seq. Additional information: This regulation will conserve water, reduce the energy necessary for chilling, and reduce work water pollution.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:**
   c. **Final Decision:** 11/21/78

6. **Contacts:**

   Agency: D. L. Houston, Ext. (202) 447-3473

   Secretary's Office: Lynn Maish, Ext. (202) 447-6667

1. **Calendar No:** FSQ 1086

2. **Title:** Revise $18,000 Limit on Retail Exemption from continuous inspection

3. **Description:** A retail store is currently exempt from continuous meat inspection provided its sales of meat items do not exceed $18,000 per year. The new regulation would raise the $18,000 limit to account for the inflation that has transpired since 1973, when this limit was fixed.

4. **Authority:** 21 U.S.C. 601 et. seq.; 21 U.S.C. 451 et. seq Further information: This action is in response to a petition from retail stores.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 3/16/79
   c. **Final Decision:** 10/16/79

6. **Contacts:**

   Agency: D. L. Houston, Ext. (202) 447-3473

   Secretary's Office: Lynn Maish, Ext. (202) 447-6667

1. **Calendar No:** FSQ 1087

2. **Title:** Regulatory Plan for Cured Pork Products

3. **Description:** 1) Cured pork products contain varying amounts of water that is introduced with the curing agents. The amount of added water is limited by regulation. The new regulatory plan would establish a standard for these products based on protein content rather than added water, and establish more effective enforcement procedures. The protein content standard should provide useful information to consumers.

4. **Authority:** 21 U.S.C. 601 et seq. Better method to enforce added water requirements.

5. **Projected Schedule**

   a. **Date of pre-notice:** 1/15/79
   b. **Date of proposal:** 3/15/79
   c. **Final Decision:** 10/15/79

6. **Contacts:**

   Agency: R. E. Engel, Ext. (202) 447-2326

   Secretary's Office: Lynn Maish, Ext. (202) 447-6667

1. **Calendar No:** FSQ 1088

2. **Title:** Work Week Prposal

3. **Description:** This proposal would modify existing regulations governing hours of operations for plants operating under meat and poultry inspection. It would provide a uniform policy regarding work schedules, eliminate many administrative and functional problems.

4. **Authority:** 21 U.S.C. 601 et seq. 21 U.S.C. 451 et seq.

5. **Projected Schedule**

   a. Date of pre-notice:
   b. Date of proposal: 1/16/79
   c. Final Decision: 7/17/79

6. **Contacts:**

   Agency: D. L. Houston, Ext. (202) 447-3473

   Secretary's Office: Lynn Maish, Ext. (202) 447-6667

1. **Calendar No:** FSQ 10811

2. **Title:** Quality Assurance program for the Procurement of Food by Federal Agencies.

3. **Description:** Congress has directed the Secretary of Agriculture to assume responsibility for the quality of the food items purchased by Federal agencies. USDA's quality assurance program will set forth food specifications and provide the means for seeing whether the food actually purchased by Federal agencies meets the specifications.

4. **Authority:** Office of Federal Procurement Policy memorandum to Secretary Bergland on July 29, 1977.

5. **Projected Schedule**

   a. Date of pre-notice:
   b. Date of proposal:
   c. Final Decision: 10/79

6. **Contacts:**

   Agency: Eddie Kimbrell, Ext. (202) 447-4016

   Secretary's Office: Lynn Maish, Ext. (202) 447-6667

1. **Calendar No:** FSQ 10812

2. **Title:** Studies on Uniform Grade Nomenclature

3. **Description:** Option paper, including background information, prepared & approved by Asst. Sec. Foreman in late Aug. 1978. Studies on the possibility to realign grade standards for eggs, butter, cheese, and nonfat dry milk are underway. Discussion with affected parties has begun.

4. **Authority:** 7 U.S.C. 1621 et seq. Requested by Assistant Secretary Carol Tucker Foreman.

5. **Projected Schedule**

   a. Date of pre-notice: 3/79
   b. Date of proposal: 7/79
   c. Final Decision: 1/80

6. **Contacts:**

   Agency: Eddie Kimbrell, Ext. (202) 447-4016

   Secretary's Office: Lynn Maish, Ext. (202) 447-6667

1. **Calendar No:** FSQ 10818

2. **Title:** Establish Microbiological Criteria for Meat & Poultry Products

3. **Description:** This proposal will establish limits on the amount of bacteria that may be present in selected meat and poultry products and will describe enforcement procedures.

4. **Authority:** 21 U.S.C. 601 et seq. 21 U.S.C. 451 et seq.

5. **Projected Schedule**

   a. Date of pre-notice:
   b. Date of proposal: 2/79
   c. Final Decision: 8/79

6. **Contacts:**

   Agency: R. E. Engel, Ext. (202) 447-2326

   Secretary's Office: Lynn Maish, Ext. (202) 447-6667

1. **Calendar No:** FSQ 10821

2. **Title:** Nitrosamine Monitoring

3. **Description:** This random monitoring program will test bacon for the presence of nitrosamine at confirmable levels. Bacon found out of compliance will be retained, and plants will be required to correct procedures to preclude nitrosamine formation at detectable levels.

4. **Authority:** 21 U.S.C. 601 et seq. Additional information: Nitrosamines have been found to be carcinogenic and are therefore adulterants under the Federal Meat Inspection Act.

5. **Projected Schedule**

   a. Date of pre-notice: 11/5/79
   b. Date of proposal:
   c. Testing Begins: 12/4/78

6. **Contacts:**

   Agency: R. E. Engel, Ext. (202) 447-2326

   Secretary's Office: Lynn Maish, Ext. (202) 447-6667

1. **Calendar No:** FSQ 10822

2. **Title:** Antibiotic Residues

3. **Description:** This is a cooperative program among the dairy industry, the drug industry, the Extension Service, and FDA to educate dairymen about the need to eliminate drug residues in meat. The program includes development and implementation of test procedures to detect residues.

4. **Authority:** 21 U.S.C. 601 et seq. Additional Information: Product containing excessive antibiotic residues is adulterated under the Federal Meat Inspection Act.

5. **Projected Schedule**

   a. Date of pre-notice: 1/1/79
   b. Date of proposal:
   c. Final Decision:

6. **Contacts:**

   Agency: R. E. Engel, Ext. (202) 447-2326

   Secretary's Office: Lynn Maish, Ext. (202) 447-6667

1. **Calendar No:** FSQ 10823

2. **Title:** Sulfonamides in Swine

3. **Description:** This is a program to attack a problem with residues of sulfonamides (antibacterial drugs added to swine feed to prevent disease) in pork. Currently, 10% of samples tested reveal excessive levels. The program will include intensive monitoring, Departmental research, producer education, and epidemiological studies aimed at eliminating these residues.

4. **Authority:** 21 U.S.C. 601 et seq.

5. **Projected Schedule**

   a. **Date of pre-notice:** 9/79
   b. **Date of proposal:**
   c. **Final Decision:**

6. **Contacts:**

   Agency: R. E. Engel, Ext. (202) 447-2326

   Secretary's Office: Lynn Maish, Ext. (202) 447-6667

1. **Calendar No:** FSQ 10830

2. **Title:** Proteolytic Enzyme Proposals

3. **Description:** This document would propose two regulatory changes. One will permit the use of protealytic enzymes to tenderize poultry meat. The other regulation will extent the current permission for the use of such enzymes in beef to other red meat species.

4. **Authority:** 21 U.S.C. 451 et seq. Additional Information: Request from poultry industry to use papain in fowl as tenderizer. Already permitted in beef.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 11/78
   c. **Final Decision:** 5/79

6. **Contacts:**

   Agency: L. L. Gast, Ext. (202) 447-8803

   Secretary's Office: Lynn Maish, Ext. (202) 447-6667

1. **Calendar No:** FSQ 10832

2. **Title:** Proposal on mechanically processed poultry product.

3. **Description:** This proposal would establish standards and labeling requirements for the product that results from the mechanical separation of meat tissue from bones. The safety of this product is now in the final stages of evaluation. Following this evaulation, the proposal will be published and public hearings held.

4. **Authority:** 21 U.S.C. 451 et seq.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 1/79
   c. **Final Decision:** 7/79

6. **Contacts:**

   Agency: L. L. Gast, Ext. (202) 447-8803

   Secretary's Office: Lynn Maish, Ext. (202) 447-6667

1. **Calendar No:** FSQ 10834

2. **Title:** Nitrates and Nitrites Regulation

3. **Description:** This regulation, if finalized as proposed, will allow the manufacture of traditionally cured (nitrite containing) products without the use of nitrite or with low levels of nitrite. Such products would be permitted to bear the traditional name (e.g. hot dog, bacon, or bologna).

4. **Authority:** 21 U.S.C. 601 et seq.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 4/27/78
   c. **Final Decision:** Undetermined

6. **Contacts:**

   Agency: L.L. Gast, Ext. (202) 447-8803

   Secretary's Office: Lynn Maish, Ext. (202) 447-6667

1. **Calendar No:** FSQ 10835

2. **Title:** Standard for Turkey Ham

3. **Description:** This regulation would establish the name ("Turkey Ham" is the proposed name) and labeling requirements for the product that consists of cured turkey thigh meat. The purpose of the regulation is to provide an accurate and identifiable description of this product for consumers.

4. **Authority:** 21 U.S.C. 451 et seq. Additional Information: The poultry industry has requested a standard. The red meat industry has petitioned for restriction of the term "ham" to leg of swine.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 6/2/78
   c. **Final Decision:** Undetermined

6. **Contacts:**

   Agency: L. L. Gast, Ext. (202) 447-8803

   Secretary's Office: Lynn Maish, Ext. (202) 447-6667

1. **Calendar No:** FSQ 10837

2. **Title:** U.S. Ungraded Proposal

3. **Description:** A National public opinion firm will conduct a survey to determine consumer perceptions of USDA quality grades, the USDA mark of inspection, and the possible use of the term, "U.S. Ungraded" on meat that is inspected but not graded. The survey will also include alternatives to the term "Ungraded" and provide the basis for decisions on whether to issue a proposal requiring the use of the term "Ungraded."

4. **Authority:** 21 U.S.C. 601 et seq. Additional Infdormation: A previous proposal on the "Ungraded" designation was published on January 23, 1978. The comments raised significant questions concerning consumer perception of this term.

5. **Projected Schedule**

   a. **Contract Selection:** 11/3/78
   b. **Survey Approval:** 12/18/78
   c. **Final Decision:** 3/15/79

6. **Contacts:**

   Agency: L. L. Gast, Ext. (202) 447-8803

   Secretary's Office: Lynn Maish, Ext. (202) 447-6667

1. **Calendar No:** FSQ 10842

2. **Title:** Proposal to Revise Meat Grade Standards and Regulations

3. **Description:** This action will make several changes in the system of grading determinations more accurate and uniform and less subject to fraudulent practices. The rules for deciding upon quality grades will become more objective.

4. **Authority:** Agricultural Marketing Act of 1946, 7 U.S.C. 1621 et seq. Additional information: Proposal will make major revisions in grading proposal as published in the January 23, 1978, Federal Register.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 12/1/78
   c. **Final Decision:** 5/1/79

6. **Contacts:**

   Agency: Jerry Goodall, Ext. (202) 447-4727

   Secretary's Office: Lynn Maish, Ext. (202) 447-6667

1. **Calendar No:** FSQ 10845

2. **Title:** Final Net Weight Regulation

3. **Description:** This action will make changes in net weight regulations to require that the net weight statements on meat and poultry products be accurate at all points in the distribution chain from processing plant to retail store.

4. **Authority:** 21 U.S.C. 601 et seq.; 21 U.S.C. 451 et seq. Additional Information: Proposal was in response to petition from State Weights and Measures Officials.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 12/77
   c. **Final Decision:** Awaiting comments on Consumer Fed. of American Econ. Study.

   Contacts:

   Agency: D, L, Houston, Ext. (202) 447-3473

   Secretary's Office: Lynn Maish, Ext. (202) 447-6667

1. **Calendar No:** OG 1081

2. **Title:** Report to the Congress on Export Sales Reporting

3. **Description:** Analyze the effectiveness of the export sales reporting provisions of Section 812 of the Agricultural Act of 1970 and submit through the Secretary of Agriculture a report of its findings, including recommendations for improving such reporting provisions.

4. **Authority:** Agricultural Trade Act of 1978 (95th Congress, 2nd Session), Title VI, Section 603.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:**
   c. **Final Decision:** 1/3/79

6. **Contacts:**

   Agency: Richard Finkbeiner, Ext. (202) 447-5651

   Secretary's Office: W. Scott Steele, Ext. (202) 447-2095

OFFICE OF GENERAL SALES MANAGER

1. **Calendar No:** OG 1082

2. **Title:** Intermediate Credit Program for Breeding Stock

3. **Description:** Development of a program concept; draft CCC Board Dockets, and obtain CCC Board approvals; obtain other necessary clearances; write, clear, and announce program rules and regulations.

4. **Authority:** Agricultural Trade Act of 1978, (95th Congress, 2nd Session), Title I.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:**
   c. **Final Decision:** 4/1/79

6. **Contacts:**

   Agency: Francis Woodling, Ext. (202) 447-3573

   Secretary's Office: W. Scott Steele, Ext. (202) 447-2095

1. **Calendar No:** OG 1088

2. **Title:** Report to Congress of Title IV of the Trade Act of 1974

3. **Description:** Analyze the effects on American Agriculture of Title IV of the Trade Act of 1974, including a recommendation as to whether the provisions of such Title should be repealed or amended.

4. **Authority:** Agricultural Trade Act of 1978 (95th Congress, 2nd Session), Title VI, Section 604

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:**
   c. **Final Decision:** by 4/30/79

6. **Contacts:**

   Agency: George Shanklin, Ext. (202) 447-4274

   Secretary's Office: W. Scott Steele, Ext. (202) 447-2095

RURAL ELECTRIFICATION ADMINISTRATION

1. **Calendar No:** RE 1082

2. **Title:** Electric Loan Policies and Application Procedures, Bulletin 20-2

3. **Description:** REA-financed electric systems will be required to provide REA with certain information annually that indicates the end uses of electric energy.

4. **Authority:** To help meet the Administration's energy conservation goals and obtain information needed to improve estimates of future power requirements.

5. **Projected Schedule**

   a. **Date of pre-notice:** 5/19/78
   b. **Date of proposal:** 9/29/78
   c. **Final Decision:** 1/79

6. **Contacts:**

   Agency: Richard Richter, Ext. (202) 447-6237

   Secretary's Office: Arnold Miller, Ext. (202) 447-3465

RURAL ELECTRIFICATION ADMINISTRATION

1. **Calendar No:** RE 1083

2. **Title:** Exhibit G to Bulletin 20-21:320-21; Floodplain and Wetlands Procedures

3. **Description:** Issue REA regulations to implement the mandate of E.O. 11988 (floodplain management) and E.O. 11990 (protection uf wetlands) for Federal agencies to design procedures to protect these two classes of areas.

4. **Authority:** Rural Electrification Act; NEPA; Executive Order 11988 and 11990

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 8/29/78
   c. **Final Decision:** 12/768

6. **Contacts:**

   Agency: Richard Richter, Ext. (202) 447-6237

   Secretary's Office: Arnold Miller, Ext. (202) 447-3465

1. **Calendar No:** RE 1084

2. **Title:** Energy Conservation and Future Service Requirement, Bulletin 120-2

3. **Description:** REA-financed electric systems will be required to have an energy conservation policy, a program designed to conserve energy in their own facilities, and a plan for assisting consumers to conserve energy.

4. **Authority:** To help meet the Administration's energy conservation goals and help assure that REA loan funds are limited to the financing of needed facilities.

5. **Projected Schedule**

   a. **Date of pre-notice:** 5/19/78
   b. **Date of proposal:** 10/3/78
   c. **Final Decision:** 1/79

6. **Contacts:**

   Agency: Richard Richter, Ext. (202) 447-6237

   Secretary's Office: Arnold Miller, Ext. (202) 447-3465

1. **Calendar No:** RE 1086

2. **Title:** Construction Methods and Purchase of Materialis and Equipment, Bulletin 40-6

3. **Description:** This change would permit REA borrowers to limit the contractor's liability for special and consequential damages under REA Form 200, "Construction Contract - Generating".

4. **Authority:** To establish a limit on the contractor's liability for special and consequential damages.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 6/20/78
   c. **Final Decision:** 2/28/79

6. **Contacts:**

   Agency: Richard Richter, Ext. (202) 447-6237

   Secretary's Office: Arnold Miller, Ext. (202) 447-3465

1. **Calendar No:** RE 1088

2. **Title:** Joint Use of REA Borrowers' Facilities by Electric and Telephone Systems, Bulletin 5-1:305-1

3. **Description:** The change would permit REA borrowers to enter into joint use agreements without REA approval; provided, that the agreement is executed on a standard REA contract form.

4. **Authority:** To eliminate requirement for REA approval of joint use agreements executed on REA standard forms.

5. **Projected Schedule**

   a. **Date of pre-notice:** 1/79
   b. **Date of proposal:** 2/28/79
   c. **Final Decision:** 8/31/79

6. **Contacts:**

   Agency: Richard Richter, Ext. (202) 447-6237

   Secretary's Office: Arnold Miller, Ext. (202) 447-3465

1. **Calendar No:** RE 1089

2. **Title:** National Environmental Policy Act, Bulletin 20-21:320-21

3. **Description:** Revise the bulletin so that REA formal required procedures fully reflect and implement Federal environmental statues, Federal environmental regulations and Executive Orders promulgated since issuance of the existing Bulletin 20-21:320-21

4. **Authority:** Rural Electrification Act; NEPA; CEQ NEPA regulations (when issued); and other Federal environmental statues, regulations and Executive Orders

5. **Projected Schedule**

   a. **Date of pre-notice:** 1/79
   b. **Date of proposal:** 3/79
   c. **Final Decision:** 6/79

6. **Contacts:**

   Agency: Richard Richter, Ext. (202) 4476237

   Secretary's Office: Arnold Miller, Ext. (202) 447-3465

1. **Calendar No:** RE 10819

2. **Title:** Sale of Property by Telephone Borrowers, Bulletin 415-1

3. **Description:** Revision of this bulletin will reduce paper work by borrowers and REA. Revision will permit sale of certain terminal equipment without prior REA approval.

4. **Authority:** To permit REA-financed telephone systems to sell certain terminal equipment to customers.

5. **Projected Schedule**

   a. **Date of pre-notice:** 11/15/78
   b. **Date of proposal:** 2/15/79
   c. **Final Decision:** 5/15/79

6. **Contacts:**

   Agency: C. R. Ballard, Ext. (202) 447-4305

   Secretary's Office: Arnold Miller, Ext. (202) 447-3465

SOIL CONSERVATION SERVICE

1. **Calendar No:** SC 1081

2. **Title:** 7 CFR Chapter VI, Part 624, and Watershed Memorandum No. 124, Emergency Flood Protection

3. **Description:** Review rules and regulations for Emergency Flood Protection under authority of Section 216, Public Law 81-516, 64 Stat 184.

4. **Authority:** Requested by the Secretary.

5. **Projected Schedule**

   a. **Date of pre-notice:** 11/20/78
   b. **Date of proposal:** 6/79
   c. **Final Decision:** 10/79

6. **Contacts:**

   Agency: James W. Mitchell, Ext. (202) 447-3527

   Secretary's Office: Arnold Miller, Ext. (202) 447-3465

1. **Calendar No:** SC 1082

2. **Title:** 7 CFR Chapter VI, Part 622, Watershed Projects

3. **Description:** Review rules and regulations for Watershed projects carried out under authority of Public Law 83-566, 68 Stat. 666, as amended

4. **Authority:** Selected pursuant to E. O. 12044, Improving Government Regulations

5. **Projected Schedule**

   a. **Date of pre-notice:** 5/79
   b. **Date of proposal:** 8/79
   c. **Final Decision:** 2/80

6. **Contacts:**

   Agency: Joseph W. Haas, Ext. (202) 447-4527

   Secretary's Office: Arnold Miller, Ext. (202) 447-3465

1. **Calendar No:** SC 1083

2. **Title:** Compliance with NEPA

3. **Description:** Revision of Rules (7CFR Part 650) to comply with new CEQ guidelines

4. **Authority:** Change in CEQ Guidelines

5. **Projected Schedule**

   a. **Date of pre-notice:** 3/79
   b. **Date of proposal:** 5/79
   c. **Final Decision:** 8/79

6. **Contacts:**

   Agency: Glen Loomis, Ext. (202) 447-3853

   Secretary's Office: Arnold Miller, Ext. (202) 447-3465

1. **Calendar No:** SC 1084

2. **Title:** SCS Public Participation Plan

3. **Description:** SCS will adopt a public participation plan that will guide future activities related to making decisions.

4. **Authority:** Required by Secretary's Memorandum 1955

5. **Projected Schedule**

   a. **Date of pre-notice:** 2/15/79
   b. **Date of proposal:** 6/15/79
   c. **Final Decision:** 10/15/79

6. **Contacts:**

   Agency: Victor Barry, Ext. (202) 447-7245

   Secretary's Office: Arnold Miller, Ext. (202) 447-3465

1. **Calendar No:** SC 10810

2. **Title:** Landrights, Water Rights and Construction Permits (7 CFR Part 651)

3. **Description:** SCS requires sponsors of projects to acquire all necessary landrights as a condition for receiving Federal financial assistance. This part sets forth the requirements for the acquisition of landrights.

4. **Authority:** Codify SCS Policy For Projects Receiving Federal Financial Assistance

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:** 11/15/78
   c. **Final Decision:** 2/1/79

6. **Contacts:**

   Agency: Leo Link, Ext. (202) 447-2177

   Secretary's Office: Arnold Miller, Ext. (202) 447-3465

1. **Calendar No:** SC 10812

2. **Title:** Final rules for the Surface Mining and Reclamation Act, P.L. 95-87

3. **Description:** The final rules on prime farmland must have the concurrence of the Secretary of Agriculture. The final rules are scheduled for publication on January 10, 1979.

4. **Authority:** The Secretary of Agriculture is responsible for the prime farmlands section of the regulations governing surface coal mining.

5. **Projected Schedule**

   a. **Date of pre-notice:** 11/17/78
   b. **Date of proposal:** 12/5/78
   c. **Final Decision:** 1/10/79

6. **Contacts:**

   Agency: James Newman, Ext. (202) 447-2324

   Secretary's Office: Arnold Miller, Ext. (202) 447-3465

1. **Calendar No:** SC 10813

2. **Title:** Plan for Completing Soil Mapping Nationwide

3. **Description:** Evaulate workload remaining to complete the onceover soil mapping and set target date for completing. Evaluate soil survey publication needs in survey areas having few individual landowners with the objective of reducing publication costs.

4. **Authority:** Soil mapping nationwide is about 67% completed. Need a plan for orderly completion of remaining areas.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:**
   c. **Final Decision:**

6. **Contacts:**

   Agency: V. G. Link, Ext. (202) 447-4931

   Secretary's Office: Arnold Miller, Ext. (202) 447-3465

1. **Calendar No:** SC 10814

2. **Title:** Aquaculture Activities

3. **Description:** Assess present program, inventory statutory authorities, and identify opportunities for new and expanded programs in aquaculture.

4. **Authority:** Request from the Secretary

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:**
   c. **Final Decision:**

6. **Contacts:**

   Agency: Dave Overholt, Ext. (202) 447-7145

   Secretary's Office: Arnold Miller, Ext. (202) 447-3465

1. **Calendar No:** SC 10815

2. **Title:** Great Plains Conservation Program (GPCP)

3. **Description:** Preparation of legislative proposal on the question of extending GPCP beyond 12/81 including identification of proposed changes in regulations.

4. **Authority:** GPCP authority expires 12/31/81

5. **Projected Schedule**

   a. **Date of pre-notice:** 6/79
   b. **Date of proposal:** 1/2/80
   c. **Final Decision:** 1/2/81

6. **Contacts:**

   Agency: Dave Overholt, Ext. (202) 447-7145

   Secretary's Office: Arnold Miller, Ext. (202) 447-3465

1. **Calendar No:** SC 10816

2. **Title:** Revision of SCS policy relating to Endangered Species.

3. **Description:** The current SCS policy 7 CFR 650.22 will be revised.

4. **Authority:** Compliance with NEPA.

5. **Projected Schedule**

   a. **Date of pre-notice:** 1/79
   b. **Date of proposal:** 6/79
   c. **Final Decision:** 9/79

6. **Contacts:**

   Agency: T. N. Shiflet, Ext. (202) 447-2587

   Secretary's Office: Arnold Miller, Ext. (202) 447-3465

1. **Calendar No:** SC 10817

2. **Title:** Revision of SCS Environmental Policy Memorandum, EVT #1

3. **Description:** Memorandum needs updating and review to ensure compatibility with legislation and Administration policy.

4. **Authority:** Compliance with NEPA

5. **Projected Schedule**

   a. **Date of pre-notice:** 3/79
   b. **Date of proposal:** 6/79
   c. **Final Decision:** 9/79

6. **Contacts:**

   Agency: Glen Loomis, Ext. (202) 447-3853

   Secretary's Office: Arnold Miller, Ext. (202) 447-3465

1. **Calendar No:** SC 10818

2. **Title:** Formulation of SCS Wetlands Protection Policy

3. **Description:** A new subsection, 7 CFR 650.26 Protection of Wetlands is being prepared.

4. **Authority:** Compliance with NEPA and E.O. 11990

5. **Projected Schedule**

   a. **Date of pre-notice:** 6/78
   b. **Date of proposal:** 9/78
   c. **Final Decision:** 2/79

6. **Contacts:**

   Agency: Glen Loomis, Ext. (202) 447-3853

   Secretary's Office: Arnold Miller, Ext. (202) 447-3465

1. **Calendar No:** SC 10819

2. **Title:** Formulation of SCS Flood Plain Management Policy

3. **Description:** A new subsection, 7 CFR 650.25 Management of Flood Plains is being prepared.

4. **Authority:** Compliance with NEPA and E.O. 11988

5. **Projected Schedule**

   a. **Date of pre-notice:** 6/78
   b. **Date of proposal:** 9/78
   c. **Final Decision:** 2/79

6. **Contacts:**

   Agency: Glen Loomis, Ext. (202) 447-3853

   Secretary's Office: Arnold Miller, Ext. (202) 447-3465

1. **Calendar No:** SC 10820

2. **Title:** Revision to comply with new Historic Preservation Regulations

3. **Description:** Current SCS rules will be revised to comply with new regulations to be published March 1, 1979.

4. **Authority:** Compliance with NEPA and National Historic Preservation Act.

5. **Projected Schedule**

   a. **Date of pre-notice:** 6/79
   b. **Date of proposal:** 8/79
   c. **Final Decision:** 1/80

6. **Contacts:**

   Agency: Glen Loomis, Ext. (202) 447-3853

   Secretary's Office: Arnold Miller, Ext. (202) 447-3465

FARMERS HOME ADMINISTRATION

1. **Calendar No:** Fm 10850

2. **Title:** Review of regulations and agreements on funding of rural development projects.

3. **Description:** Review of FmHA regulations, contracts and agreements with state and local governments which were intended to improve the affectiveness of FmHA programs through joint funding of rural development projects.

4. **Authority:** Section 4, Executive Order 12044. OMB Circular 116.

5. **Projected Schedule**

   a. **Date of pre-notice:**
   b. **Date of proposal:**
   c. **Final Decision:** 3/31/78

6. **Contacts:**

   Agency: Neil Storms, Ext. (202) 447-4487

   Secretary's Office: John Subat, Ext. (202) 447-2113

[FR Doc. 78-32093 Filed 11-14-78; 8:45 am]

[3410-01-M]

DEPARTMENT OF AGRICULTURE

CORRECTIONS TO DECISION CALENDAR

Certain corrections to the Decision Calendar[1] were received too late to be made prior to publication. They are incorporated in the following full text of each action containing a correction; with an asterik indicating the correction.

CAROL TUCKER FOREMAN,
Acting Secretary.

[FR Doc. 78-32295 Filed 11-14-78; 8:45 am]

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[1]FR Doc 78-32093, also published in this part of the issue.

1. Calendar No: FN 1182

2. Title: Part 226 Child Care Food Program Regulations, Part 226

3. Description: Regulations will implement the pending legislation initiating new procedures and requirements for States including methods of funding and reimbursement.

4. Authority: Currently P.L. 94-105 and legislation pending signature of President Carter.

5. Projected Schedule

   a. Date of pre-notice:
   b. Date of proposal: 1/79
   c. Final Decision: 5/79*

6. Contacts:

   Agency: Jordan Benderly, Ext. (202) 447-8211

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. Calendar No: FN 1186

2. Title: State Plan (210) for Child Nutrition Programs

3. Description: Amendment to regulations to clarify items to be included in the State Plan.

4. Authority: Departmental Initiative Court Order, FNS Depositions

5. Projected Schedule

   a. Date of pre-notice:
   b. Date of reproposal: 12/78*
   c. Final Decision: 6/79

6. Contacts:

   Agency: Margaret Glavin, Ext. (202) 447-8130

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. Calendar No: FN 1188

2. Title: School Breakfast Program: Grain-Fruit Product - Withdrawal of Approval, Part 220

3. Description: Elimination of formulated grain/fruit products from the Breakfast Program to promote development of good food habits in the furtherance of nutrition education through a well-balanced diet of conventional foods.

4. Authority: Departmental Initiative

5. Projected Schedule

   a. Date of pre-notice:
   b. Date of proposal: 8/12/77
   c. Final Decision: 6/79*

6. Contacts:

   Agency: Margaret Glavin, Ext. (202) 447-8130

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. Calendar No: FN 11817

2. Title: Eligibility of Indian Children for Free Meals and Milk in School Nutrition Programs

3. Description: *Decision needs to be made on whether legislative changes should be drafted to allow USDA to reimburse at free meal rates those meals served to Indian children for whom BIA is responsible and who are enrolled in public schools.

4. Authority: Class action lawsuit Vigil vs. Kleppe, et al against USDA and Dept. of Interior

5. Projected Schedule

   a. Date of pre-notice:
   b. Date of proposal:
   c. Final Decision: 12/78*

6. Contacts:

   Agency: Margaret Glavin, Ext. (202) 447-8130

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. Calendar No: FN 11845

2. Title: Summer Food Service Program for Children; Meal Requirements for Supplemental Food.

3. Description: *Decision is needed on whether to reduce the quantity of fruit/vegetable required in the supplemental food (snack) in the summer food service program.

4. Authority: The NSLA authorizes the Secretary to prescribe regulations relating to nutritional requirements.

5. Projected Schedule

   a. Date of pre-notice:
   b. Date of proposal: *
   c. Final Decision: 1/79

6. Contacts:

   Agency: Arvid Dopson, Ext. (202) 447-9081

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. Calendar No: FN 11858

2. Title: Special Supplemental Food Program Policy on Reallocation of Funds

3. Description: A paper detailing several alternative procedures will be developed.

4. Authority: It will undoubtedly be necessary to reallocate unspent WIC funds and methodology needs to be selected.

5. Projected Schedule

   a. Date of pre-notice:
   b. Date of proposal: *
   c. Final Decision: 12/78

6. Contacts:

   Agency: Jennifer Nelson, Ext. (202) 447-8206

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. Calendar No: FN 11867

2. Title: Special Supplemental Food Program Regulations on Use of Commodities

3. Description: Review of commodities being made to see which will meet Program nutrient requirement. Authorized commodities and procedures for State agencies to use in ordering commoditiea will be published in new regulations.

4. Authority: Requirement in legislation awaiting President's signature as well as Department's desire to utilize such foods in the WIC Program.

5. Projected Schedule

a. Date of pre-notice: 1/79
b. Date of proposal: 2/79
c. Final Decision: 6/79*

6. Contacts:

Agency: Jennifer Nelson, Ext. (202) 447-8206

Secretary's Office: John Subat, Ext. (202) 447-2113

1. Calendar No: FN 11868

2. Title: Commodity Supplemental Food Program, Food Package Changes

3. Description: Revision of authorized foods to be published in final regulations.

4. Authority: Participants' request for changes in certain foods offered; also a need for provision of certain types of infant formula.

5. Projected Schedule

a. Date of pre-notice:
b. Date of proposal: *
c. Final Decision: 1/79

6. Contacts:

Agency: Jennifer Nelson, Ext. (202) 447-8206

Secretary's Office: John Subat, Ext. (202) 447-2113

1. Calendar No: FN 11869

2. Title: Food Stamp Program: Regulations concerning administrative cost allocations for States

3. Description: Regulations concern the reimbursement to States for administrative costs incurred in operating the Food Stamp Program.

4. Authority: P.L. 95-113 implementation

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5. Projected Schedule

a. Date of pre-notice:
b. Date of proposal: 12/78
c. Final Decision: 4/79*

6. Contacts:

Agency: Ray Pugh, Ext. (202) 447-3546

Secretary's Office: John Subat, Ext. (202) 447-2113

1. Calendar No: FN 11873

2. Title: Food Stamp Program: Regulations concerning the Performance Reporting System

3. Description: Regulations require that the existing system be continued and further refined to ensure that States assess themselves at the local level and report to the Department on their efficiency and effectiveness.

4. Authority: P. L. 95-113 Implementation

5. Projected Schedule

a. Date of pre-notice:
b. Date of proposal: 12/78
c. Final Decision: 4/79*

6. Contacts:

Agency: Nancy Snyder, Ext. (202) 447-8982

Secretary's Office: John Subat, Ext. (202) 447-2113

1. Calendar No: FN 11874

2. Title: Food Stamp Program: Regulations concerning points, hours, outreach, State complaints.

3. Description: Establish requirements for State outreach activities, locations and hours of certification and issuance offices, and for State handling of complaints.

4. Authority: P.L. 95-113 Implementation

5. Projected Schedule

a. Date of pre-notice:
b. Date of proposal: 12/78
c. Final Decision: 4/79*

6. Contacts:

Agency: Nancy Snyder, Ext. (202) 447-8982

Secretary's Office: John Subat, Ext. (202) 447-2113

1. Calendar No: FN 11875

2. Title: Food Stamp Program: Regulations concerning the participation of Indians.

3. Description: Regulations allow Indian participation in the Food Distribution Program and the Food Stamp Program; also will allow in certain cases capable tribes to operate those programs.

4. Authority: P.L. 95-113 Implementation

5. Projected Schedule

a. Date of pre-notice:
b. Date of proposal: 12/10/78*
c. Final Decision: 3/79

6. Contacts:

Agency: Nancy Snyder, Ext. (202) 447-8982

Secretary's Office: John Subat, Ext. (202) 447-2113

1. Calendar No: FN 11876

2. Title: Food Stamp Program: Regulations concerning SSI joint processing

3. Description: Regulations allow SSI households and applicants to apply for food stamps at Social Security Offices.

4. Authority: P.L. 95-113 Implementation

5. Projected Schedule

   a. Date of pre-notice:
   b. Date of proposal: 1/79*
   c. Final Decision: 5/79*

6. Contacts:

   Agency: Nancy Snyder, Ext. (202) 447-8982

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. Calendar No: FN 11877

2. Title: Food Stamp Program: Regulations concerning State Plan of Operation

3. Description: Establish requirements for the State agency preparation and submittal of the State Plan of Operation which is the contract between States and the Department.

4. Authority: P. L. 95-113 Implementation

5. Projected Schedule

   a. Date of pre-notice:
   b. Date of proposal: 12/78
   c. Final Decision: 4/79*

6. Contacts:

   Agency: Nancy Snyder, Ext. (202) 447-8982

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. Calendar No: FN 11878

2. Title: Food Stamp Program: Regulations concerning FNS and State steps to be taken in the case of natural disasters.

3. Description: Regulations describe how FNS and the States will react to natural disasters to insure continued benefits to participants and to the new group of people who may be eligible in the States following disasters.

4. Authority: P.L. 95-113 Implementation

5. Projected Schedule

   a. Date of pre-notice:
   b. Date of proposal: 1/79
   c. Final Decision: 5/79*

6. Contacts:

   Agency: Nancy Snyder, Ext. (202) 447-8982

   Secretary's Office: John Subat, Ext. (202) 447-2113

1. Calendar No: FN 11879

2. Title: Food Stamp Program: Regulations concerning State sanctions and liabilities

3. Description: Regulations define the situations and criteria to be used by FNS for taking fiscal sanctions against States when it has been determined that States have failed to comply with the Act, regulations or State Plans.

4. Authority: P.L. 95-113 Implementation

5. Projected Schedule

   a. Date of pre-notice:
   b. Date of proposal: 12/78
   c. Final Decision: 4/79*

6. Contacts:

   Agency: Nancy Snyder, Ext. (202) 447-8982

   Secretary's Office: John Subat, (202) 447-2113

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Federal Register

WEDNESDAY, NOVEMBER 15, 1978
PART VI



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

Determination of Secretary Regarding Recommendation on Psychosurgery of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research

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[4110-88-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

DETERMINATION OF THE SECRETARY REGARDING THE RECOMMENDATION ON PSYCHOSURGERY OF THE NATIONAL COMMISSION FOR THE PROTECTION OF HUMAN SUBJECTS OF BIOMEDICAL AND BEHAVIORAL RESEARCH

AGENCY: Public Health Service, HEW.

ACTION: Notice of the Secretary's determination.

SUMMARY: The Notice announces the Secretary's determination that (1) the Department will assist leading professional organizations to form a Joint Committee on Psychosurgery to establish mechanisms for the voluntary regulation and reporting of psychosurgical procedures; (2) the Department will promulgate regulations covering any procedures supported by DHEW programs. These regulations will generally follow the Commission's recommendations but would ban use of the procedures with prisoners, children, involuntarily confined mental patients, legally incompetent patients, and any patient who, in the judgment of the attending physician, is not competent to give informed consent.

FOR FURTHER INFORMATION CONTACT:

Gerald Klerman, M.D., Administrator, Alcohol, Drug Abuse, and Mental Health Administration, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4797.

DETERMINATION

BACKGROUND: The legislative requirement for the study of psychosurgery by the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research was incorporated in Pub. L. 93-348 after widespread expression of public and Congressional concern about such surgery, including allegations that these procedures were (1) being carried out without adequate evidence of safety, (2) carried out without adequate procedural safeguards for protection of the rights of the patients, (3) were being used for "social control" of dissidents and violence-prone individuals, and (4) were performed disproportionately on members of minority populations. Pub. L. 93-348 defines psychosurgery as: (1) surgery on the normal brain tissue of an individual not suffering from physical disease for the purpose of changing or controlling behavior or (2) surgery on diseased brain tissue of an individual if the sole object of the surgery is to control, change, or affect behavioral disturbances.

The Commission, in addition to taking public testimony, sponsored a literature review, a survey of psychosurgical procedures conducted in the United States and other countries, and the independent evaluation of the patients of four psychosurgeons.

The Commission's survey found that there are about 400 procedures meeting the definition of psychosurgery being performed annually in the United States. These operations are performed by approximately 60 surgeons (48 percent of the procedures performed in 1973 were performed by four surgeons). The findings indicate that no significant psychological deficits are attributable to the psychosurgery in the patients evaluated and that psychosurgery was efficacious in more than half of the cases studied. The data presented did not indicate that the procedure had been used for social control or that the procedure had been applied disproportionately to minority or disadvantaged populations. Specifically, it was reported from correspondence with the most active psychosurgeons in the United States that out of a combined total of 600 patients, 1 was Black, 2 were Oriental Americans, and 6 were Hispanic Americans. Seven operations were reported to have been performed on children since 1970, and three prisoners underwent psychosurgery in Vacaville in 1972. Most psychosurgery patients were middle class individuals referred to neurosurgeons by psychiatrists and were about equally divided between male and female.

The Commission concluded (1) that the procedure did not constitute "accepted practice;" (2) that although the procedure was not actually used for "social control," it had the potential for such use; and (3) that it posed obvious problems with regard to the ability of individuals who were thought to be in need of psychosurgery to provide informed consent. It therefore made a number of recommendations to regulate psychosurgery in the United States.

Its recommendations would: (1) Set up stringent, procedural safeguards and criteria under which the procedure would be performed on adults; (2) provide additional special conditions for consent or authorization to perform the surgery on institutionalized adults and children; (3) establish a National Psychosurgery Board to determine if a specific psychosurgical procedure has demonstrable benefits for the treatment of a particular mental illness or behavior disorder; (4) establish a national registry of psychosurgery procedures; (5) encourage the Department to conduct research on psychosurgery; and (6) impose sanctions (including withholding of Federal funds) for failure to comply. In addition, the Commission recommended that the Congress take any necessary action to assure that psychosurgery is performed in compliance with these recommendations and that psychosurgery not be conducted by Federal agencies unless they are primarily concerned with health care or the conduct of biomedical or behavioral research.

DISCUSSION

It is clear that the Commission conducted a judicious study aimed at determining the risks and benefits of surgical treatment for psychiatric disorders. The recommendations of the Commission are a laudable attempt to ensure the rights and welfare of all classes of potential psychosurgery patients, with special safeguards for patients having limited capacity for informed consent, without unduly limiting access of patients with severe psychiatric disorders to this potentially therapeutic treatment modality.

The Commission's recommendations must be viewed in the perspective of a basic complexity of the psychosurgery issue: Virtually all psychosurgery performed in this country takes place in private medical practice. However, most of the technical and substantive questions about psychosurgery, such as its safety and efficacy, can be answered adequately only in a research context. This overlapping of the clinical practice and research environments poses a difficult problem for a Federal agency; on the one hand the DHEW, operating through the National Institute of Mental Health (NIMH) and the National Institute of Neurological and Communicative Disorders and Stroke (NINCDS), has a primary responsibility to study the efficacy and safety of therapeutic interventions including psychosurgery; on the other hand, these Federal agencies have no regulatory authority or process and therefore must avoid assuming such a role in the practice of psychosurgery.

It should be emphasized that the Commission found that psychosurgical treatment constitutes a miniscule proportion (estimated to be less than .001 percent) of psychiatric treatment in general. One survey conducted for the Commission suggests that only a little over 400 psychosurgical operations are performed in this country each year. In this survey, no evidence was found that any minority group, women, or members of any disadvantaged socioeconomic class were singled out for psychosurgery.

Not only did the studies supported by the Commission fail to find any widespread inappropriate use of psychosurgery, but they contained evidence suggestive that psychosurgical treatment can be relatively safe and effective for certain forms of long term and intractable severe psychiatric disorders. In some cases, use of these procedures is the only way to alleviate the suffering of patients who have exhausted other treatments. It is therefore incumbent upon the Department to attempt to further define and assess the potential role of psychosurgery as a therapeutic strategy in psychiatry. The recommendations of the Commission can provide a framework for the conduct of such an effort in which the combined requirements of high scientific quality and adequate protection of human subjects can be met.

APPROACH

In order to receive the widest range of advice concerning the Department's reply to the Commission's recommendations, members of my staff reviewed the public comment received as a result of the FEDERAL REGISTER publication of those recommendations and met with a diverse cross-section of public interest groups and professional organizations. Representatives of public interest groups expressed varying opinions concerning the beneficial effects of psychosurgery with the majority voicing clear disfavor toward the use of psychosurgery either as a treatment or in research involving human subjects. Their comments reflected grave concern that the consequences of psychosurgical procedures are irreversible and produce damaging side effects of a permanent debilitating nature. In addition to challenging the meaningfulness of the informed consent criterion for acceptance, these public advocates urged that psychosurgery be banned for minors or institutionalized persons involuntarily committed to State or private long term care facilities. No respondent submitted evidence contradicting the Commission's findings about the composition of the population of psychosurgery patients.

Representatives of the leading professional organizations proposed that a voluntary group be established through a cooperative effort of concerned professional organizations and specialty societies, in conjunction with and supported by DHEW. The basic function of such a group would be to oversee the voluntary implementation of the Commission's substantive recommendations.

SPECIFIC FUNCTIONS OF THE GROUP WOULD BE

To specify criteria for the composition of multidisciplinary local psychosurgery review panels, and develop guidelines for the review and evaluation of proposed psycho-surgical procedures. The criteria would include designation of experience or training requisite to assessment of psychosurgical procedures. Such local panels would review each proposed psychosurgical procedure at its institution to insure the competence of the surgeon, appropriateness of the procedure for that patient, and adequacy of informed consent. Where an existing Institutional Review Board has the requisite expertise, the institution may designate that Board to serve as the institution's psychosurgery review panel.

To collect data, with due protection of patient confidentiality, regarding the diagnosis, preoperative and postoperative conditions of patients, the type of operation and such further information as the group may deem appropriate and necessary to make determinations concerning the safety and efficacy of specific procedures.

To study the special informed consent issues in patients with limited capacity for such consent.

Concerning the need for further research, such a group would collaborate with DHEW staff in identifying psychosurgery research problems and opportunities. We would expect these experts to look at the evidence of safety and efficacy of psychosurgical procedures and advise us as to what research is required to establish such evidence for specific procedures.

CONCLUSIONS OF THE SECRETARY

Under present law, DHEW has no clear authority to regulate directly psychosurgical procedures currently being performed in this country. To the extent permitted by law, we can and will regulate any procedures supported by DHEW health programs. However, in view of the Commission's findings that the procedure is not in wide use, that it has positive results and rarely has negative side effects, that it is often treatment of the last resort and that it is not used disproportionately on minorities or for social control, we do not believe an effort to secure regulatory legislation would be warranted.

In lieu of regulatory legislation, we believe the Department should assist the leading professional organizations in forming a Joint Committee on Psychosurgery (JCP) to regulate voluntarily the procedures through the issuance of guidelines and the formation of local psychosurgical review panels as discussed above. While compliance with the guidelines would be voluntary, professional standards, peer pressure, and malpractice considerations should result in compliance.

In establishing the JCP, I have adopted the recommendations of the professional organizations for the following reasons:

There are serious questions concerning our authority under existing legislation for imposing requirements on the use of psychosurgery. Also, there are no existing Federal mechanisms for implementing the recommendations.

Unlike drugs and devices, there are no established procedures for determining the safety and efficacy of surgery. Though voluntary cooperation of the concerned professional associations with the Department, no additional legislative base need be sought, and no new Federal effort need be started.

We believe that, because of the specialized facilities required, only a limited number of psychosurgery review panels would be established at local institutions. Through the cooperation of the Joint Committee, the Department would have better knowledge of the nature and extent and psychosurgery and improved control over its use.

This course of action would implement most of the basic substantive recommendations made by the Commission and will represent a significant partnership between the private sector and the Federal Government. Psychosurgery will remain a last resort treatment available to patients who need it.

No psychosurgical procedures are being performed by PHS or with PHS support and few, if any, are being paid for by Medicaid or Medicare funds. Nevertheless, we will publish regulations covering procedures that might be so supported in the future by these programs. This will serve as a twofold purpose: (1) The regulations will provide a mechanism for assuring that these procedures are performed with appropriate safeguards, and (2) they will provide a model for State and local governments and for other concerned organizations (e.g., the JCP) to consider adopting.

The regulations will, in general follow the Commission's recommendations, but be more restrictive in the case of patients unable to provide informed consent. The Commission's own findings show that the procedure is very rarely performed on prisoners and children. In fact, the Commission indicated it did not review any data which would support performance of psychosurgery on children at this time. Hence, in view of the public concern, performance of the procedure on prisoners and children in PHS hospitals or with DHEW funds will be banned absolutely for the time being.

The question of how to deal with mentally incompetent adults is more complex. Some are confined to mental institutions (either voluntarily or involuntarily), some have been adjudi-

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cated legally incompetent, and others are not legally incompetent but lack the capacity, in fact, to make an informed judgment about psychosurgery. Informed voluntary consent in these situations is questionable, and yet, in a medical sense, these may be the persons who could most benefit by some type of psychosurgery.

Performance of the procedure on patients who are *involuntarily* confined or *legally incompetent* raises many of the same issues as are presented by prisoners and children. Accordingly, we will include these patients within the ban already discussed. In view of the fact that the procedures have given rise to so much public concern, the regulation will also bar performance of the procedure on any patient who, in the judgment of the attending physician, is not, in fact, competent, although he or she may not have been so adjudicated. The regulations will provide a mechanism through which the physician could obtain advice when he or she is uncertain as to the competency of an individual patient.

The regulations can be amended to lift the ban, if and when the safety and efficacy of the procedure is more clearly demonstrated and/or when the consent studies conducted by the JCP establish effective procedures for the protection of patients with presumed limited capacity for truly informed consent.

Regulations implementing this decision will appear in a future FEDERAL REGISTER as a Notice of Proposing Rulemaking.

SUMMARY

We believe that this course of action implements fully the spirit of the Commission's recommendations. Controls recommended by the Commission will be effected through organizations which are traditionally involved in governing medical practice. Regulations will be published covering psychosurgical procedures conducted or supported by DHEW programs. These regulations will also serve as a model for control of psychosurgery generally and will include a ban against use of the procedures on vulnerable groups. Legislation may be sought if this voluntary approach does not prove to be effective.

Dated: November 2, 1978.

CHARLES MILLER,
Acting Assistant Secretary for Health.

Approved: November 6, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary.

[FR Doc. 78-31804 Filed 11-14-78; 8:45 am]

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federal register

WEDNESDAY, NOVEMBER 15, 1978
PART VII

THE NATIONAL ARCHIVES OF THE UNITED STATES • 1934 •

SECURITIES AND EXCHANGE COMMISSION

DISCLOSURE OF PROJECTIONS OF FUTURE ECONOMIC PERFORMANCE AND SAFE-HARBOR RULE FOR PROJECTIONS

Final Revised Guides and Proposed Rules

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[8010-01-M]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-5992, 34-15305]

PART 231—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

Guides for Disclosure of Projections of Future Economic Performance

AGENCY: Securities and Exchange Commission.

ACTION: Final rule (publication of revised guides).

SUMMARY: The Commission is issuing a statement encouraging the disclosure of projections and has authorized publication of guides 62 and 5 of the guides for preparation and filing of registration statements under the Securities Act of 1933 and of the guides for the preparation and filing of reports and proxy and registration statements under the Securities Exchange Act of 1934, respectively. The guides relate to the voluntary public disclosure by an issuer of projections of its future economic performance, both with respect to documents filed pursuant to the requirements of the Federal securities laws and otherwise. The guides set forth the Division of Corporation Finance's views regarding significant considerations to be taken into account in the disclosure of projections. In a related action, to further encourage the voluntary disclosure of projections by public companies the Commission is proposing for comment a rule to the effect that registrants generally would not be held liable under the Federal securities laws for reasonably based projections made in good faith that are subsequently proven erroneous. See release No. 33-5993 under Proposed Rules in this part.

EFFECTIVE DATE: The guides will be followed by the Commission, November 15, 1978.

ADDRESS: The Commission is also proposing for comment a safe-harbor rule for projection disclosure (release No. 5993 published elsewhere in this part). Comment is also invited on the operation of the guides in conjunction with the proposed rule. Comments should refer to file No. S7-760 and should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT:

Steven J. Paggioli, Office of Disclosure Policy and Proceedings, Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 202-376-8090.

SUPPLEMENTARY INFORMATION: The Commission has issued a statement indicating that it encourages certain issuers of securities to publish projected financial information in filings with the Commission or otherwise. The Commission also has authorized publication of guides 62 and 5, "Disclosure of Projections of Future Economic Performance," of the guides for the preparation and filing of registration statements under the Securities Act of 1933 [1] (the "Securities Act") (15 U.S.C. 77a et seq.) and the guides for the preparation and filing of reports and proxy and registration statements under the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. 78a et seq.). The guides are not Commission rules nor do they bear the Commission's official approval; they represent practices followed by the Division of Corporation Finance in administering the disclosure requirements of the Securities Act and the Exchange Act.

In Securities Act release No. 33-5699, April 23, 1976, 41 FR 19986, the Commission expressed its general views on the inclusion of projections in Commission filings and authorized the publication for public comment of then proposed guides 62 and 4.[2] Although the guides were published for comment in release 5699, the Commission indicated that the division of Corporation Finance would follow the guides pending final action. The discussion which follows addresses certain issues raised in release No. 33-5699 and the comments received thereon. However, attention is directed to the text of the guides for a more complete understanding.

BACKGROUND AND PURPOSE

The issue of projections, economic forecasts, and other forward-looking information has been under active consideration by the Commission for several years.[3]

On November 1, 1972, the Commission announced a public rulemaking proceeding relating to the use, both in Commission filings and otherwise, of projections by issuers whose securities are publicly traded.[4] These hearings were ordered by the Commission for the purpose of gathering information relevant to a reassessment of its policies relating to disclosure of projected sales and earnings.

Information gathered at the hearings, held from November 10 to December 12, 1972, reinforced the Commission's observation that management's assessment of a company's future performance is of importance to investors, that such assessment should be comprehensible in light of the assumptions made and should be available, if at all, on an equitable basis to all investors. The hearings also revealed widespread dissatisfaction with the absence of guidelines or standards that issuers, financial analysts, or investors can rely on in issuing or interpreting projections.

On February 2, 1973, the Commission released a "Statement by the Commission on the Disclosure of Projections of Future Economic Performance." [5] In this statement, the Commission determined that on the basis of the information obtained through the hearings, staff recommendations, and its experience in administering the Federal securities laws, changes in its longstanding policy generally not to permit the inclusion of projections in registration statements and reports filed with the Commission would assist in the protection of investors and would be in the public interest. The Commission also set forth several conclusions regarding the manner in which projections should be made and announced that it had directed the division of corporation finance to prepare specific releases and rule and form changes to implement that Commission's plan to integrate projections into the disclosure system.

On April 25, 1975, the Commission published a series of rule and form proposals relating to projections of future economic performance.[6] These proposals would have established an elaborate disclosure system for companies choosing to make public projections.

Approximately 420 letters of comment were received on these proposals. Although the majority of commentators agreed that projection information is significant, virtually all of them opposed the proposed system because they felt that the proposals would inhibit rather than foster projection communications between management and the investment community.[7] Due to the important legal, disclosure policy, and technical issues raised by the commentators, the Commission on April 23, 1976, determined to withdraw all but one of the proposed rule and form changes regarding projections.[8]

The Commission did, however, express its general views in the April 1976 release on the inclusion of projections in Commission filings, and authorized the publication for comment of proposed guides for the disclosure of projections in Securities Act registration statements and Exchange Act reports.

RELEASE 33-5699 AND THE PROPOSED GUIDES

In its statement of general views in release 33-5699, the Commission indicated that it would not object to disclosure in filings with the Commission of projections which are made in good faith and have a reasonable basis: *Provided*, That they are presented in an appropriate format and accompanied by information adequate for investors to make their own judgments. The Commission also expressed its concern over the problem of selective disclosure of material nonpublic information regarding registrants and reminded issuers of their responsibilities under the Federal securities laws in connection with the dissemination of management's assessment of a company's future performance. The Commission noted that registrant's responsibilities to make full and prompt disclosure of material facts, both favorable and unfavorable, regarding their financial condition may extend to situations where management knows its previously disclosed assessments no longer have a reasonable basis.

ADVISORY COMMITTEE RECOMMENDATIONS

The Commission's disclosure policy on projections and other items of soft information was among the subjects considered by the Advisory Committee on Corporate Disclosure. In its final report, issued November 3, 1977, the advisory committee made several recommendations for significant changes in that policy.[9] Generally, the committee recommended that the Commission issue a public statement encouraging companies voluntarily to disclose management projections in their filings with the Commission and elsewhere. In making this recommendation, the advisory committee noted that its position on specific aspects of projection disclosure would permit wide latitude to companies issuing projections and stated that the Commission should review and monitor projection disclosure to determine the utility to investors of such information and the costs to issuers.

THE COMMISSION'S VIEWS

The Commission concurs in the advisory committee's recommendation and findings. As noted by the advisory committee, the availability of forward-looking and analytical information is important to an investor's assessment of a corporation's future earning power and may be material to informed investment decisionmaking.[10] Projections and other types of forward-looking information are generally available within the investment community and are obtained and used by investors and their advisers.[11]

In addition, a majority of the commentators on the guides proposed in release No. 5699 were in favor of a position that would permit the inclusion of projections in filings with the Commission by those issuers with the ability and willingness to make them.[12] Accordingly, in light of the significance attached to projection information and the prevalence of projections in the corporate and investment community, the Commission has determined to follow the recommendation of the advisory committee and wishes to encourage companies to disclose management projections both in their filings with the Commission and in general.[13] In order to further encourage such disclosure, the Commission has, in a separate release issued today, proposed for comment a safe-harbor rule for projection information whether or not included in Commission filings.[14] The Commission also has determined to authorize publication of revised staff guides to assist implementation of the advisory committee's recommendation. A summary of the recommendations of the advisory committee regarding particular aspects of projection disclosure, corresponding comments received on the guides as proposed in release No. 5699 and in response to release No. 5707,[15] and the position adopted in the final guides is set forth immediately below.

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[1] Securities Act Release No. 4936, December 9, 1968 (33 FR 18617) as amended, 17 CFR 231.4936, as amended.

[2] While proposed guides 62 and 4 as announced in release 33-5699 were pending, the Commission adopted new guide 4, "Integrated Reports to Shareholders," on June 17, 1977, Securities Exchange Act Release 13639, 42 FR 31780 (June 23, 1977). Accordingly, the amended guide under the Exchange Act is published today as guide 5.

[3] The accounting standards division of the American Institute of Certified Public Accountants published a statement of position on "Presentation and Disclosure of Financial Forecasts" in August 1975. The definitions of "financial forecast" and "financial projection" set forth there distinguish between a projection, which relates to "financial results based on assumptions which are not necessarily the most likely," and a forecast, which focuses on "the most probable financial position, results of operations and changes in financial position * * *." Although the semantic distinctions may become conformed over a period of time, the Commission emphasizes that in addressing the area of projections it envisions a concept which encompasses both forecasts and projections, as those terms were used by the AICPA. Thus, any statement by the issuer concerning future financial performance could be viewed as a projection subject to the guideline published herein, including those portions of the guide which require that the issuer have a reasonable basis for issuing such data; that the format and content of the projection not be susceptible of misleading inferences; and that the projection be presented in such a manner as will promote investor understanding. Also, see Report of the Advisory Committee on Corporate Disclosure to the SEC (hereinafter "Report"), House Committee on Interstate and Foreign Commerce, 95th Cong., 1st Sess., Committee Print 95-29 (2 vols.), November 3, 1977, Appendix X-A for a general discussion of the development of the Commission's practices relating to projections, at A-265.

[4] Securities Exchange Act Release No. 9844 (Nov. 1, 1972), 37 FR 23850.

[5] Securities Act Release No. 5362 (Feb. 2, 1973), 38 FR 7220.

[6] Securities Act Release No. 5581 (Apr. 25, 1975), 40 FR 20316. These proposals also dealt with more timely reporting of changes in control of a registrant on form 8-K. Amendments to the change in control disclosure requirement of form 8-K were adopted in Securities Exchange Act Release No. 13156, January 13, 1977, 42 FR 4424.

[7] See "Evaluation of SEC Policies and Practices Regarding Projections," in Report supra note 3, at A-265.

[8] Securities Act Release No. 5699 (April 23, 1976), 41 FR 19986. The adopted amendment deleted the phrase "predictions as to specific future earnings" from the items of information described in note (c) to rule 14a-9 under the Exchange Act (17 CFR 240.14a-9) as being possibly misleading.

[9] Report, supra note 3, at 344-79.

[10] Report, supra note 3, at 349-50.

[11] The advisory committee's survey of individual investors indicated that nearly half of the investors surveyed favored disclosure in annual reports of a company's projected earnings per share for a full year. Report at 290. Similarly, the advisory committee staff survey of equity analysts indicated that management's projections of company performance are considered vital information in the first instance rather than simply confirmatory of analysts' own projections. Report at 55-57.

[12] See comments collected in file No. S7-561.

[13] The advisory committee also recommended that the Commission encourage the disclosure of other items of "soft information," such as planned capital expenditures and financing, management plans and objectives, statements of dividend policies, and statements of capital structure policies. See report at 365-380. In this regard, guidelines for the disclosure of this information are being considered generally, as well as in connection with specific proposals to amend guides 22 (management analysis of the financial statements) and 26 (statement of dividend policy) to implement further the advisory committee's recommendations regarding soft information.

[14] Securities Act Release No. 5993, See Proposed Rules in this issue.

[15] In Securities Act Release No. 5707, May 18, 1976, 41 FR 21370, comments were solicited by the advisory committee on the following question: "Should the SEC require corporate filings to set forth more forward-looking and analytical information regarding the company's business operations?" (Please consider the legal liability and competitive problems associated with such a requirement and whether such information should be reviewed by auditors.)

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DISCUSSION OF THE STAFF'S GUIDES PUBLISHED HEREIN

VOLUNTARY VERSUS MANDATORY DISCLOSURE

In the proposed guides published in release No. 33-5699, the Division of Corporation Finance set forth its view that management should have the option to present in Commission filings its good faith assessment of a company's future performance. The advisory committee and the commentators are in accord with the view that a voluntary projection system is more appropriate than a mandatory system. The advisory committee noted that a mandatory system would require the adoption of specific disclosure rules and regulations and felt that the Commission did not yet have an appropriate basis for formulating such requirements. In addition, the committee did not believe that all companies should be required to sustain the expenses and burdens that might be associated with mandatory disclosure. Further, the committee was of the view that many companies would find it difficult to prepare adequate projections due to lack of operating history, general economic factors, or industry conditions and should not be compelled to subject themselves to possible risks of liability for inaccurate projections.[16]

In view of the advisory committee's recommendation and the comments received, the proposed guides continue to reflect the position that disclosure of projections and other items of forward-looking information in Commission filings is permitted but not required.

However, the concern expressed in release No. 53-5699 is reiterated regarding the selective disclosure of material nonpublic information; projection information should not be made available on a selective basis. Issuers have a further responsibility to make full and prompt disclosure of material facts regarding their financial condition, and this responsibility extends to situations where previously disclosed projections no longer have a reasonable basis.

REPORTING COMPANIES/NONREPORTING COMPANIES

The Commission's 1975 rule proposals included a 3-year Exchange Act reporting history and prior budgeting experience requirement in order to qualify for the safe harbor protection.[17] Several commentators took issue with this requirement, and suggested that projection information regarding new and promotional companies may be more significant in that forecast information may be most valuable regarding companies that do not have a history of public information.

Although the 1975 proposals were ultimately withdrawn, the guides proposed in release No. 5699 indicated the division's view that a history of operations or experience in projecting may be among the factors providing a reasonable basis for management's assessment of a company's future economic performance. Nevertheless, it would not appear that such history and experience would be necessary in all instances to provide reasonably based projections. Accordingly, the revised guides do not provide reporting, operating history, or other status criteria for those public companies desiring to make public projection disclosure.[18]

DISCLOSURE OF ASSUMPTIONS

In paragraph (c) of the proposed guides the division indicated its belief that investor understanding of the basis for and limitations of projections would be enhanced by disclosure of the assumptions which in management's opinion are significant to the projections or are the key factors upon which the financial results of the enterprise depend. The commentators generally were in accord with the position that disclosure of assumptions is perhaps the most significant factor in facilitating investor understanding. As noted by the advisory committee, such disclosure provides a framework for analysis of the projection and further reflects on management's planning capabilities. However, the advisory committee recommended that disclosure of assumptions be encouraged but not required, in order to make projecting more attractive to registrants, until there is more experience with projection disclosure.[19]

While the division believes that disclosure of assumptions would help investors to comprehend projections and assist in establishing a reasonable basis for projections disclosed, there may be instances where reasonably based and adequately presented projections would significantly add to the mix of information available to investors in the absence of disclosure of underlying assumptions. However, the division believes under certain circumstances the disclosure of underlying assumptions may be material to an understanding of the projected results. For example, where projected results are based to a significant degree upon the introduction of a new product or service meeting certain anticipated levels of sales and contribution to earnings, disclosure of the projection without this information might be misleading.

ITEMS TO BE PROJECTED

Paragraph (b) of the proposed guides indicated that traditionally projections have been given for three items generally considered to be of primary interest to investors: Sales or revenues, net income, and earnings per share. These items usually are presented together in order to avoid any misleading inferences that may arise when individual items reflect contradictory trends. Although these three items usually are the key elements in an appropriate presentation of a projection, the division recognizes that there may be circumstances when company management should be given flexibility in determining whether other or additional financial items should also be presented.[20]

THIRD PARTY REVIEW

The proposed guides suggested that additional support for projections could be furnished through an outside review. If such a review were to be included, disclosure of the reviewer's qualifications, the relationship of the reviewer to the registrant, and the extent of the review would be required. A reviewer would be deemed an expert and an appropriate consent would be required to be filed with a registration statement under the Securities Act, if the reviewed projection and report were included therein.[21]

A few commentators opposed outside review per se, suggesting that outside review could lend a false aura of greater credibility to projection information. It was further suggested that "shopping" for favorable reviews would be possible under the proposed guides and that only those persons who can clearly demonstrate independence from management should be permitted to review projections.

[16] Report, supra note 3, at 354-55.

[17] Securities Act Release No. 5581, April 28, 1975, 40 FR 20316.

[18] See Report, supra note 3, at 356. This result is consistent with the recommendations of the advisory committee.

[19] Report, supra note 3, at 358. The revised guides do not reflect the position that projections disclosed without assumptions are per se misleading. However, *Cf. Beecher* v. *Able*, 374 F. Supp. 341 (S.D.N.Y., 1974) wherein it was held that "* * * any assumptions underlying the projection must be disclosed if their validity is sufficiently in doubt that a reasonably prudent investor, if he knew of the underlying assumptions, might be deterred from crediting the forecast. Disclosure of such underlying assumptions is necessary to make * * * [the forecast] * * * not misleading." 374 F. Supp. at 348. However, it should be noted that the *Beecher* court went on to indicate that "[A]ll projections will be based on numerous assumptions, some of which are so reasonable and so likely to be borne out by the facts that they may be left unstated. Id. at n. 6.

[20] See Report, supra note 3, at 362. The revised guides do not require that any specific items be projected. However, selective projection of only favorable items may create misleading inferences.

[21] See Section 7 of the Securities Act of 1933. 15 U.S.C. 77g.

The advisory committee concurred with the position on outside review as set forth in the proposed guides without further comment or recommendation. The final guides do not change this position on outside review.

Although the division shares the expressed concern regarding relationship of reviewers to companies that make projections, it believes that outside review should be permitted, provided appropriate disclosures are made about relationships between reviewers and registrants.[22] In this regard, a person should not be named as an outside reviewer if he actively assisted in the preparation of the projection.

REVISION AND UPDATING OF PROJECTIONS

In release 33-5699, the Commission reminded issuers of their responsibility to make full and prompt disclosure of material facts, both favorable and unfavorable, regarding their financial condition, and that this responsibility may extend to situations where management knows its previously disclosed assessments no longer have a reasonable basis. In addition, the proposed guides recommended that investors be informed of management's intentions with respect to furnishing updated projections. Although the advisory committee concluded that periodic updating of projection information should not be required, it recommended that this position again be noted.[23]

The advisory committee also recommended that public companies be allowed to revise their projections while "in registration," and that current projections would be appropriately included in registration statements (updated as necessary) filed under the Securities Act.[24]

In release 33-5180,[25] "Guidelines for the Release of Information by Issuers Whose Securities are in Registration," the Commission stated that issuers in registration should avoid the issuance of forecasts, projections, or predictions relating but not limited to revenues, income, or earnings per share. Although an issuer in registration should carefully consider all facts and circumstances in determining whether a projection could be deemed to constitute an offer in violation of section 5 of the Act, to the extent the position expressed in release 33-5180 would prevent issuers in registration from making projections or including them in their filings that position is superseded.

TIME PERIOD FOR PROJECTIONS; DISCONTINUANCE AND RESUMPTION

The proposed guides did not suggest a specific time period that may be appropriately covered by a projection. Due to factors that vary among industries, companies disclosing projections should have the responsibility for selecting the most appropriate time period depending on all the facts and circumstances. The advisory committee concurred in the approach taken by the proposed guides and the final guides reflect this position.

The advisory committee was also of the opinion that the use of projections would be encouraged if companies were permitted to discontinue making projections. Changed business conditions may make sound projections possible in one year and impracticable in another. Accordingly, the final guides incorporate the advisory committee's recommendation, but indicate that companies should not discontinue or resume making projections in Commission filings without a reasonable basis for such action. In the view of the division, if the registrant were to furnish projections only when they are favorable and not when they are unfavorable, this pattern of disclosure might be viewed as misleading.

OTHER MATTERS

TAX SHELTERS

In a footnote to the proposed guides in release 33-5699,[26] it is stated that in view of the different considerations that apply to tax shelter investments, the guides would not apply to filings covering such securities. Meaningful projections for tax shelter investments may involve a much longer time period, with a correspondingly more limited accuracy and reliability; items to be projected other than those traditionally used, such as sales/revenues, net income, and earnings per share may be more relevant in considering these investments.

Accordingly, the guides as proposed and adopted have been formulated with regard to projections made outside the context of tax shelter investments. However, certain items may be capable of more accurate prediction in tax shelters (e.g., depreciation, amortization and debt service), and reasonably based and adequately presented projections of such items are not intended to be precluded.

PROJECTIONS REQUIRED BY REGULATORY AUTHORITIES

Frequently issuers are required to submit projection information to other Federal and State regulatory authorities. This information often is requested with respect to a lengthy time period, e.g., 10 years or more. This information may often be publicly available and may consist of material the accuracy of which might be questionable, in view of the length of time covered, when considered from the viewpoint of investors. Accordingly, issuers have raised questions regarding their obligations under the federal securities laws with respect to this information.

While the submission of this type of information to Federal or State regulatory authorities pursuant to their requirements under circumstances in which it would be publicly available would not in and of itself violate the Federal securities laws or require issuers to make corresponding public projections in filings with the Commission or otherwise, issuers should consider their obligation to assure that material facts concerning its financial condition are promptly and fully disclosed and that the information submitted does not become misleading by virtue of subsequent events.[27]

OPERATION OF THE GUIDES

As indicated above, publication of the amended guides is intended to implement the position of the Commission and of the advisory committee that the making of projections be encouraged. Because of the Commission's responsibility to protect investors and safeguard the public interest in connection with sales and purchases of securities, the encouragement of projection information is an experiment and the relaxation of the Commission's policy in this area will be monitored. Since the amended guides substantially have been the subject of public comment, the guides will be effective immediately November 15, 1978. However, since the Commission is also proposing for comment a safe-harbor rule for projection disclosure (see Securities Act Release No. 5993 in

[22] The guides, as published, call for disclosure of the qualifications of the reviewer, and the extent of the review in detail sufficient to indicate how the projection was analyzed and evaluated, and the basis for the conclusion reached. Disclosure is also required as to any other material factors concerning any aspect of the process by which any outside review was sought or obtained. Depending upon the facts, this provision might require disclosure of a registrant's unsuccessful efforts to obtain an outside review. Also, the auditing standards division of the AICPA currently has standards for review of projections under consideration.

[23] This recommendation is incorporated in the published guides.

[24] See *Report, supra* note 3, at 360-361.

[25] Securities Act Release No. 5180, August 16, 1971, 36 FR 16506.

[26] Securities Act Release No. 5699, supra note 7, at note 5.

[27] In this regard, issuers may wish to consider the appropriateness of clearly distinguishing such information from any projections already made, or clearly indicating that the information should not be considered as a projection for any purpose other than consideration by the requesting authority. In this connection, issuers may also wish to consider the appropriateness of filing a report on form 8-K, 17 CFR 249.308, under item 5, in which the furnishing of this information could be disclosed and the purpose of its submission and nature of its use clarified.

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this separate part), comment is also invited on the operation of the guides in conjunction with the proposed rule. Comments should refer to file No. S7-760 and should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. All comments will be available for public inspection.

Accordingly, 17 CFR Chapter II is amended as follows:

1. Part 231 is amended by adding Guide 62, "Disclosure of Projections of Future Economic Performance," to the guides for preparation and filing of registration statements under the Securities Act of 1933 to read as follows:

TEXT OF THE GUIDES

GUIDE 62, DISCLOSURE OF PROJECTIONS OF FUTURE ECONOMIC PERFORMANCE

PRELIMINARY NOTE

In furtherance of the Commission's policy of encouraging projections, as set forth in Securities Act Release No. 33-5992, this guide sets forth the views of the division of corporation finance on the voluntary disclosure of projections of future economic performance in registration statements filed under the Securities Act of 1933. The division encourages the use in registration statements of management's projections of future economics performance that have a reasonable basis and are presented in an appropriate format. The guidelines set forth herein represent the division's views on important factors to be considered in formulating such projections.

The guides are not rules of the Commission nor are they published as bearing the Commission's official approval; they represent practices followed by the Commission's division of corporation finance in administering the disclosure requirements of the Federal securities laws.

1. *Basis for projections.* The division believes that management should have the option to present in Commission filings its good faith assessment of a registrant's future performance. Management must, however, have a reasonable basis for such an assessment. Although a history of operations or experience in projecting may be among the factors providing a basis for management's assessment, the division does not believe that a company always must have had such a history or experience in order to formulate projections with a reasonable basis.

An outside review of management's projections may furnish additional support for having a reasonable basis for a projection. If management decides to include a report of such a review in the registration statement, there should also be disclosure of the qualifications of the reviewer, the extent of the review, the relationship between the reviewer and the registrant and any other material factors concerning the process by which any outside review was sought or obtained. Moreover, the reviewer would be deemed an expert and an appropriate consent must be filed with the registration statement.

2. *Format for projections.* In determining the appropriate format for projections include in Commission filings, consideration must be given to, among other things, the financial items to be projected, the period to be covered, and the manner of presentation to be used. Although traditionally projections have been given for three financial items generally considered to be of primary importance to investors (revenues, net income and earnings per share), projection information need not necessarily be limited to these three items. However, management should take care to assure that the choice of items projected is not susceptible of misleading inferences through selective projection of only favorable items.

Revenues, net income, and earnings per share usually are presented together in order to avoid any misleading inferences that may arise when the individual items reflect contradictory trends. There may be instances, however, when it is appropriate to present earnings from continuing operations, or income before extraordinary items in addition to or in lieu of net income. It generally would be misleading to present sales or revenue projections without one of the foregoing measures of income.

The period that may appropriately be covered by a projection depends to a large extent on the particular circumstances of the company involved. For certain companies in certain industries, a projection covering a 2- or 3-year period may be entirely reasonable. Other companies may not have a reasonable basis for projections beyond the current year. Accordingly, management should select the period most appropriate in the circumstances In addition, management in making a projection should disclose what in its opinion is the most probable specific amount or the most reasonable range for each financial item projected based on the selected assumptions. Ranges should not, however, be so wide as to make the disclosures meaningless. Moreover, several projections based on varying assumptions may be judged by management to be more meaningful than a single number or range. and would be permitted.

3. *Investor understanding.* When management chooses to include its projections in a Commission filing, the disclosures accompanying the projections should facilitate investor understanding of the basis for and limitations of projections. In this regard investors should be cautioned against attributing undue certainty to management's assessment, and the division believes that investors would be aided by a statement indicating management's intention regarding the furnishing of updated projections. The division also believes that investor understanding would be enhanced by disclosure of the assumptions which in management's opinion are most significant to the projections or are the key factors upon which the financial results of the enterprise depend, and encourages disclosure of assumptions in a manner that will provide a framework for analysis of the projection.

Management should also consider whether disclosure of the accuracy or inaccuracy of previous projections would provide investors with important insights into the limitations of projections. In this regard, consideration should be given to presenting the projections in a format that will facilitate subsequent analysis of the reasons for differences between actual and forecast results. An important benefit may arise from the systematic anaylsis of variances between projected and actual results on a continuing basis, since such disclosure may highlight for investors the most significant risk and profit-sensitive areas in a business operation.

With respect to previously issued projections, registrants are reminded of their responsibility to make full and prompt disclosure of material facts, both favorable and unfavorable, regarding their financial condition. This responsibility may extend to situations where management knows or has reason to know that its previously disclosed projections no longer have a reasonable basis.

Since a company's ability to make projections with relative confidence may vary with all the facts and circumstances, the responsibility for determining whether to discontinue or resume making projections is best left to management. However, the division encourages companies not to discontinue or resume projections in Commission filings without a reasonable basis.

2. Part 241 is amended by adding Guide 5, "Disclosure of Projections of Future Economic Performance," to the guides for the preparation and filing of reports and proxy and registration statements under the Securities Exchange Act of 1934 to read as follows:

GUIDE 5—GUIDES FOR THE PREPARATION AND FILING OF REPORTS AND PROXY AND REGISTRATION STATEMENTS UNDER THE SECURITIES EXCHANGE ACT OF 1934

DISCLOSURE OF PROJECTIONS OF FUTURE ECONOMIC PERFORMANCE

[The guide is identical to guide 62 except (1) the first sentence of the preliminary note refers to "registration statements, reports, and proxy statements filed under the Securities Exchange Act of 1934", and (2) the last sentence of the second paragraph under the caption "Basis for Projections" concerning the filing of a consent by the reviewer-expert would be omitted.]

AUTHORIZATION OF PUBLICATION FOR GUIDES

The Commission hereby authorizes publication of guides 62 and 5, pursuant to the Securities Act of 1933, particularly sections 7 and 10 thereof, and the Securities Exchange Act of 1934, particularly sections 12, 13, 15(d), and 23(a).

(Secs. 7, 10, 48 Stat. 78, 81; secs. 12, 13, 15(d), 23(a), 48 Stat. 892, 894, 895, 901; sec. 205, 48 Stat. 906; sec. 203(a), 49 Stat. 704; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; secs. 8, 202, 68 Stat. 685, 686; secs. 3, 4, 10, 78; secs. 1, 2, 28(c), 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 18, 89 Stat. 117, 118, 119, 155 (15 U.S.C. 77g, 77j, 78l, 78m, 78o(d), 78w(a)).)

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

NOVEMBER 7, 1978.

[FR Doc. 78-32163 Filed 11-14-78; 8:45 am]

[8010-01-M]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Parts 230, 240, 250, 260]

[Release Nos. 33-5993, 34-15306, 35-20764, 39-517]

SAFE-HARBOR RULE FOR PROJECTIONS

Proposed Rules

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Commission is proposing the adoption of a rule providing a "safe harbor" from liability under the Federal securities laws for management projections of revenues, income, and earnings per share. Under the rule as proposed (Version "A"), such projections would be deemed not to be false or misleading under the liability provisions of the Federal securities laws if they (1) Were prepared with a reasonable basis, and (2) were disclosed in good faith. The Commission is also requesting comments on an alternative version of the "safe harbor" rule recommended by the Advisory Committee on Corporate Disclosure (Version "B").

DATE: Comments should be submitted on or before December 29, 1978.

ADDRESS: Comments should refer to file No. S7-760 and should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. All comments will be available for public inspection.

FOR FURTHER INFORMATION CONTACT:

Steven J. Paggioli, Office of Disclosure Policy and Proceedings, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, 202-376-8090.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today proposed for comment a rule that is designed to provide a "safe harbor" from the liability provisions of the Federal securities laws for management statements of projections of company economic performance that have a reasonable basis and are disclosed in good faith. The Commission is also requesting comments on an alternative version of the "safe harbor" rule recommended by the Advisory Committee on Corporate Disclosure. In a separate release issued today,[1] the Commission published revised Guides 62 and 5, "Disclosure of Projections of Future Economic Performance," (the "Guides") under the Securities Act of 1933 (the "Act") (15 U.S.C. 77a et seq. as amended by Pub. L. No. 94-29) (June 4, 1975), and the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. 78a et seq. as amended by Pub. L. No. 94-29 (June 4, 1975). The Guides set forth the views of the Division of Corporation Finance regarding important factors to be considered in disclosing projections of future company economic performance. In release 33-5992, the Commission stated that it wished to encourage the making of projections by registrants both in Commission filings and in general, reflecting the recommendation of the Commission's Advisory Committee on Corporate Disclosure.[2] The "safe harbor" rule is proposed for the same reason. This release contains a discussion of the background and purpose of the proposed rule and a brief description thereof. Attention is directed to the text of the proposed rule for a more complete understanding.

BACKGROUND AND PURPOSE

In Securities Act release No. 5699,[3] the Commission published for comment proposed staff Guides 62 and 4 on Disclosure of Projections of Future Economic Performance. These proposals served as the basis for the revised staff Guides that are published today. In release 33-5699, the Commission stated its belief that reasonably based and adequately presented projections should not subject issuers to liability under the Federal securities laws, solely because the projected results did not materialize. In this regard, the Commission noted that even the most carefully prepared and thoroughly documented projections may prove inaccurate.

Several of the commentators on the proposed Guides[4] urged the adoption of a safe-harbor rule for projections made by issuers and reviewed by third parties, stating that the absence of a safe harbor rule may discourage the dissemination of projections.

While the proposed Guides were pending, the Commission's Advisory Committee on Corporate Disclosure considered the subject of "soft information" disclosure generally. In its final report, the Advisory Committee concurred with the Commission's views but recommended the adoption of a safe-harbor rule in order to encourage voluntary projection disclosure, noting that the law is not conclusively settled in this regard.[5]

Accordingly, the Commission is proposing for comment a "safe harbor" rule (Version "A") and is requesting comments on the rule recommended by the Advisory Committee in its final report[6] (Version "B").

The proposed rule (Version "A") provides that for purposes of the liability provisions of the Federal securities laws[7] a statement containing a

[1] Securities Act release No. 5992, Nov. 7, 1978. See release No. 5992 in this separate part. In this release, comment was also invited on the operation of the Guides in conjunction with the proposed safe-harbor rules. In addition, the proposed rules contain a preliminary note indicating that the Guides contain certain considerations to be taken into account in the disclosure of projections.

[2] Report of the Advisory Committee on Corporate Disclosure to the Securities and Exchange Commission, House Committee on Interstate and Foreign Commerce, 95th Cong., 1st sess. Committee Print 95-29, Nov. 3, 1977, at 344-79. See appendix X-A of that report for a discussion of Commission policies and practices regarding projections.

[3] Securities Act release No. 5699, 41 FR 19986, Apr. 23, 1976.

[4] See comments collected at file No. S7-561.

[5] See, e.g., *Marx* v. *Computer Sciences Corp.*, 507 F. 2d 485 (9th Cir. 1974); *Dolgow* v. *Anderson*, 53 F.R.D. 664 (EDNY 1971), aff'd per curiam 464 F. 2d 437 (2d Cir. 1972); *REA Express, Inc.* v. *Interway Corp.*, 410 F. Supp. 92 (SDNY, 1976); *Beecher* v. *Able*, 374 F. Supp. 341 (SDNY 1974); *Green* v. *Johnop, Inc.*, 358 F. Supp. 413 (D. Ore. 1973).

[6] Report, supra note 2, at 364-66. As noted infra, Version "A" of the "safe harbor" rule as proposed varies from that of the Advisory Committee in certain respects. Comment is specifically invited on whether the Advisory Committee's rule would be preferable. The text of that rule is as follows:

A statement of a management projection of future company ecnomic performance or a statement of management plans and objectives for future company operations shall be deemed not to be an untruc statement of material fact; a statement false or misleading with respect to any material fact; an omission to state a material fact necessary to make a statement not misleading; or the employment of a manipulative, deceptive, or fraudulent device, contrivance, scheme, transaction, act practice, course of business, or an artifice to defraud; as those terms are used in the Securities Act of 1933, the Securities Exchange Act of 1934, or the Public Utility Holding Company Act of 1935, or rules and regulations thereunder, unless such information:

(1) Was prepared without a reasonable basis; or

(2) Was disclosed other than in good faith.

As part of its accounting regulations, regulation S-X, the Commission already had adopted safe harbor provisions concerning the disclosure of replacement cost information (17 CFR 210.317(g) and future net revenues from the production of proved oil and gas reserves (17 CFR 210.3-18(k)(6)(v)). The disclosure of projections differs from these areas of disclosure in that projection disclosure is voluntary and some registrants may already have had experience in preparing projections. In addition, it is intended that the safe harbor rule concerning projections would apply to all projections, whether or not made in filings with the Commission; the rules concerning replacement cost data and future net revenues from the production of proved oil and gas reserves reach only such data as appears in filings with the Commission.

[7] See sects.11, 12, and 17 (15 U.S.C. 77 k, l, and g) of the Securities Act of 1933; secs. 10,

Footnotes continued on next page

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projection of revenues, income (loss), and earnings (loss) per share shall be deemed not to be an untrue statement of a material fact, a statement false or misleading with respect to any material fact, an omission to state a material fact necessary to make a statement not misleading, or the employment of a manipulative, deceptive, or fraudulent device, contrivance, scheme, transaction, act, practice, course of business, or an artifice to defraud as those terms are used in the applicable statutory provisions or any rules thereunder if the statement: (1) Was prepared with a reasonable basis; and (2) was disclosed in good faith.

The rule differs substantially from the Advisory Committee's proposed rule (Version "B"). The proposed rule (Version "A") protects statements made by or on behalf of the issuer and thus includes statements of an outside reviewer of management's projections, in response to suggestions made by commentators on release 33-5699.[8] The Advisory Committee recommended rule (Version "B") applies to "management" statements and does not specifically apply to statements by third party reviewers or define "management."

In addition, the rule as proposed is not limited to projections made in filings with the Commission. The Advisory Committee also recommended that the safe harbor provision be available for all management projection information,[9] whether or not set forth in a filing with the Commission.

The proposed rule (Version "A") is different from the Advisory Committee rule in one other respect. The Advisory Committee recommended that the Commission encourage disclosure of management's plans and objectives for future company operations, planned capital expenditures and financing, and statements of dividend and capital structure policies in addition to future economic performance. Guidelines for disclosure of these and other categories of soft information are being considered generally, as well as in connection with possible amendments to guides 22 (Management Analysis of the Financial Statements) and 26 (Statement of Dividend Policy) to implement the Advisory Committee's other recommendations regarding soft information. Accordingly, the proposed rule only relates to statements which include projections of: (1) revenues; (2) income (loss); (3) earnings (loss) per share; or (4) other financial items.

The Advisory Committee proposal (Version "B") also relates to statement[s] of management's plans and objectives for future company operations. When further proposals relating to other categories of forward looking information are published for comment, corresponding safe harbor rules will be considered.

The proposed rule (Version "A") applies to projections made by issuers (other than registered investment companies): (1) With a class of securities registered pursuant to section 12 of the Exchange Act; (2) the securities of which are exempt from that Act pursuant to section 12(g)(2)(G) thereof; or (3) which are subject to the reporting requirements of section 15(d) of the Exchange Act. The Advisory Committee proposal (Version "B") is not so limited. The Commission does not believe at this time that the benefits from encouraging projections of future economic performance by nonreporting companies outweighs the risks to investors, particularly since, in general, nonreporting companies may not have a history of projections, and other information about the company may not be publicly available.

In addition, the proposed rule as drafted does not apply to projections made by registered investment companies. In light of the different considerations that may apply to investment companies in this context, the Commission has determined at this time not to propose a safe harbor rule specific to projections made by such companies. However, comment is specifically invited as to whether a safe harbor rule for investment companies would be appropriate and whether Version A, Version B, or some other rule would be preferable for investment companies. Comment is also specifically invited as to whether distinctions should be made among different kinds of investment companies (e.g., open-end and closed-end, unit investment trust and management) for the purpose of encouraging projection disclosure and providing safe harbor protection.

Finally, and most significantly, the proposed rule (Version "A") differs from the Advisory Committee proposal (Version "B") in that Version A casts the burden of proof on the defendant to prove that the projection was prepared with a reasonable basis and was disclosed in good faith. The Advisory Committee proposal would place the burden of proof on the plaintiff to establish that the projection did not have a reasonable basis or was not made in good faith.

The Commission is proposing the rule in this manner since it is concerned that the burden imposed on a plaintiff—including the Commission—could be insurmountable. It would be extremely difficult to prove the absence of a reasonable basis or good faith, especially as to plaintiffs who would not have the Commission's investigatory procedures available and cannot engage in discovery prior to the filing of a complaint alleging a violation.

Moreover, Version A reflects the recognition that an issuer likely would be in a better position to prove that a projection was prepared with a reasonable basis and disclosed in good faith by virtue of its access to all the facts and circumstances surrounding the disclosure of a particular projection for which protection under the rule would be sought.[10] However, comment is specifically invited as to whether Version A or Version B would have significantly different impacts on the Commission's goal of encouraging the disclosure of projections.

The Commission has proposed the foregoing amendment pursuant to its authority under section 19(a) of the Securities Act of 1933 (15 U.S.C. 77s(a)), sections 3(b) and 23(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78c and 78w(a)(1), section 20 of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79t), and section 319(a) of the Trust Indenture Act of 1939 (15 U.S.C. 77sss(a)). In addition to the definitional authority provided therein, section 19(a) of the Securities Act, section 23(a)(1) of the Exchange Act, section 20(d) (15 U.S.C. 79t(d)) of the Holding Company Act, and section 319(c) of the Trust Indenture Act (15 U.S.C. 77sss(c)) provided that no liability under those Acts "shall apply to any act done or omitted in good faith in conformity" with any rule or regulation of the Commission notwithstanding that such rule or regulation may later be amended, rescinded, or determined invalid.

Pursuant to section 23(a)(2) of the Exchange Act (15 U.S.C. 78w(a)(2)) the Commission has considered the effect that the proposed amendment would have on competition and is not aware, at this time, of any burden that such amendment, if adopted, would impose on competition not necessary or appropriate in furtherance of the purposes of that Act. However, the Commission specifically invites comment as to the anticompetitive effects, if any, the proposed rule likely would engender.

All interested persons are invited to submit their views and comments on the foregoing proposal, in writing, to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, on or before December 29, 1978. Such communications should refer to file No. S7-760 and will be available for public inspection.

The text of the proposed rules (Version "A") is as follows.

Accordingly, it is proposed to amend title 17 of the Code of Federal Regulations by adding the following sections to parts 230, 240, 250, and 260:

Title 17—Commodity and Securities Exchanges, Chapter II, Securities and Exchange Commission is proposed to be amended as follows:

SECURITIES ACT OF 1933

§ 230.132A Projections by issuers of future economic performance.

PRELIMINARY NOTE

Securities Act Release No. 5992, "Guides for Disclosure of Projections of Future Economic Performance," contains the views of the Commission's Division of Corporation Finance regarding significant considerations to be taken into account in the disclosure of projections.

(a) A statement containing a projection of revenues, income (loss), earnings (loss) per share or other financial items shall be deemed not to be an untrue statement of a material fact, a statement false or misleading with respect to any material fact, an omission to state a material fact necessary to make a statement not misleading, or the employment of a manipulative, deceptive, or fraudulent device, contrivance, scheme, transaction, act, practice, course of business, or an artifice to defraud, as those terms are used in the Securities Act of 1933 or rules and regulations thereunder, if such statement (1) was prepared with a reasonable basis, and (2) was disclosed in good faith.

(b) This rule applies only to statements made by or on behalf of the issuer to which the statement relates if, at the time of such statement: (1) A class of securities of the issuer is registered pursuant to section 12(b) or 12(g) of the Securities Exchange Act of 1934; (2) the issuer is exempt from the requirements of section 12(g) of that Act by virtue of section 12(g)(2)(G) thereof; or (3) the issuer is subject to the reporting requirements of section 15(d) of the Securities Exchange Act of 1934; and (4) at the time the statement is made, the issuer has filed all the material required to be filed pursuant to sections 13, 14, or 15(d) of the Securities Exchange Act, as applicable: *Provided, however,* That this rule does not apply to statements made by or on behalf of an issuer which is an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 7Oa et seq.).

SECURITIES EXCHANGE ACT OF 1934

§ 240.3b-6 Projections by issuers of future economic performance.

(The text of the proposed rule is identical to that above, except that reference to the Securities Act of 1933 should read "Securities Exchange Act of 1934.")

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

§ 250.103A Projections by issuers of future ecoomic performance.

(The text of the proposed rule is identical to that above, except that reference to the Securities Act of 1933 should read "Public Utility Holding Company Act of 1935.")

TRUST INDENTURE ACT OF 1939

§ 260.0-11 Projections by issuers of future economic performance.

(The text of the proposed rule is identical to that above, except that reference to the Securities Act of 1933 should read "Trust Idenfure Act of 1939.")

The text of the proposed rules (Version B) is as follows:

SECURITIES ACT OF 1933

§ 230.132A Projections by issuers of future economic performance.

PRELIMINARY NOTE

(The preliminary note is identical to that in Version A.)

A statement of a management projection of future company economic performance or a statement of management plans and objectives for future company operations shall be deemed not to be an untrue statement of material fact; a statement false or misleading with respect to any material fact; an omission to state a material fact necessary to make a statement not misleading; or the employment of a manipulative, deceptive, or fraudulent device, contrivance, scheme, transaction, act, practice, course of business, or an artifice to defraud; as those terms are used in the Securities Act of 1933 or rules and regulations thereunder, unless such information: (1) Was prepared without a reasonable basis; or (2) was disclosed other than in good faith.

SECURITIES EXCHANGE ACT OF 1934

§ 240.3b-6 Projections by issuers of future economic performance.

(The text of the proposed rule is identical to that above, except the reference to the Securities Act of 1933 should read Securities Exchange Act of 1934.)

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

§ 250.103A Projections by issuers of future economic performance.

(The text of the proposed rule s identical to that above, except that the reference to the Securities Act of 1933 should read Public Utility Holding Company Act of 1935.)

TRUST INDENTURE ACT OF 1939

§ 260.0-11 Projections by issuers of future economic performance.

(The text of the proposed rule is identical to that above, except that reference to the Securities Act of 1933 should read "Trust Indenture Act of 1939.")

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

NOVEMBER 7, 1978.

[FR Doc. 78-32164 Filed 11-14-78; 8:45 am]

Footnotes continued from last page

18, and 20 (15 U.S.C. 78 j, r, and t) of the Securities Exchange Act of 1934; sec. 16 (15 U.S.C. 79p of the Public Utility Holding Company Act of 1935; and sec. 323 (15 U.S.C. 77 ssw) of the Trust Indenture Act of 1939.

[8] See comments collected in file No. S7-561.

[9] Report at 365.

[10] This position was also recognized by Congress in the course of drafting secs. 11 and 12 of the Securities Act of 1933. A passage from the House report on the bill which eventually was enacted would appear to have equal applicability in this context.

Every lawyer knows that with all the facts in the control of the defendant it is practically impossible for a buyer to prove a state of knowledge or a failure to exercise due care on the part of the defendant. Unless responsibility is to involve merely paper liability it is necessary to throw the burden of disproving responsibility for reprehensible acts of omission or commission on those who purport to issue statements for the public's reliance. The responsibility imposed is no more less than that of a trust. It is a responsibility that no honest banker and no honest business man should seek to avoid or fear. To impose a lesser responsibility would nullify the purposes of this legislation. To impose a greater responsibility, apart from constitutional doubts, would unnecessarily restrain the conscientious administration of honest business with no compensating advantage to the public.

H.R. Rept. No. 85, 73d Cong., 1st Sess. at 9-10.

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federal register

WEDNESDAY, NOVEMBER 15, 1978
PART VIII

THE NATIONAL ARCHIVES OF THE UNITED STATES
LETTERS PATENTS MARCH
1934

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

DISTRIBUTION OF REFUNDS

Proposed Administrative Procedures

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[3128-01-M]

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

[10 CFR Part 205]

ADMINISTRATIVE PROCEDURES AND SANCTIONS

Administrative Procedures for the Distribution of Refunds

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy (DOE) hereby gives notice of a proposal to amend its administrative procedure regulations by adding subpart V to 10 CFR Part 205. The purpose of the proposed amendments is to provide a general framework under which overcharges may be remitted to purchasers of covered products when enforcement officials are not able to readily identify the purchasers involved at the time a remedial order or consent order is issued. The Office of Hearings and Appeals will receive written and oral comments regarding this proposal.

DATES: Written comments by December 20, 1978, 4:30 p.m., requests to speak at public hearing by December 6, 1978, 4:30 p.m., witnesses notified December 8, 1978; statements by December 11, 1978, at noon; public hearing to be held at 9:30 a.m., December 12, 1978.

ADDRESS: Written comments (10 copies required), requests to speak (1 copy), and prepared statements (7 copies) should reference "Proposed Refund Procedures" and should be submitted to the following address: Office of Public Hearing Management, Box WD, 2000 M Street NW., Room 2313, Washington, D.C. 20461. The public hearing will be held at the same location in room 2105.

FOR FURTHER INFORMATION CONTACT:

George B. Breznay, Deputy Director, Office of Hearings and Appeals, 2000 M Street NW., Room 8014, Washington, D.C. 20461, 202-254-9681; or

Debra Kidwell, DOE Office of Public Hearing Management, Box WD, 2000 M Street NW., Room 2313, Washington, D.C. 20461, 202-254-5201.

SUPPLEMENTARY INFORMATION:

A. Background

These proposed regulations establish a general procedural framework under which overcharges described in a remedial order, remedial order for immediate compliance, order of disallowance or consent order may be remitted to affected purchasers of covered products. The procedures specified would be issued in those instances in which the DOE Special Counsel for Compliance or Office of Enforcement, after having identified a violation or issued a consent order, is unable to readily identify the particular persons who were overcharged. The Office of Hearings and Appeals will design and administer an appropriate refund procedure in these cases.

The need for these proposed regulations was highlighted by the submission on August 11, 1978, of a petition for special redress or other relief by the Office of Special Counsel for Compliance of the Department of Energy (OSC). In the petition OSC requested that the Office of Hearings and Appeals establish an "ad hoc adjudicatory procedure" for evaluating claims by purchasers of covered petroleum products from Gulf Oil Corp. The claims related to a proposed consent order that had been executed on July 26, 1978. 43 FR 34,185 (1978). In the consent order, Gulf had agreed to remit $42,240,000 as a settlement of a pending OSC compliance proceeding. However, because of the nature of the alleged violations under investigation, OSC was unable to determine the specific customers of Gulf that might have been overcharged or the amounts involved. OSC therefore requested that the Office of Hearings and Appeals promulgate and implement a method for adjudicating refund claims by purchasers of Gulf products.

In response to the OSC request, an interim decision and order establishing refund procedures in the Gulf case was issued on August 22, 1978. *Office of Special Counsel for Compliance*, 1 DOE Par. 82,586 (1978); 43 FR 38,548 (1978). Because the possibility exists of similar compliance actions by the OSC, we have determined that it would be desirable to establish a general procedural framework for situations involving refunds to individuals who cannot be readily ascertained at the time a remedial order or consent order is issued.

B. Proposed Regulations

The proposed regulations establish a framework under which the Office of Hearings and Appeals would administer the distribution of refunds to a class of unnamed purchasers. The OSC, the ERA Office of Enforcement or any other enforcement official of the Department may invoke the refund procedures by filing a petition to implement refund procedures. The petition should state that the enforcement official has been unable to readily ascertain either the identity of the purchasers who are entitled to refunds or the amount of the refund that certain purchasers are entitled to receive. The Office of Hearings and Appeals will then consider the petition and the record in the enforcement proceeding, and based on its analysis it will issue a decision and order establishing specific procedures and standards for evaluation designed to respond to the particular circumstances of each case. The decision and order will be published in proposed form in the FEDERAL REGISTER and an opportunity for public comment will be provided.[1] After reviewing the comments submitted, the Office of Hearings and Appeals will issue a final order and the refund proceeding will be commenced.

Notice of each refund proceeding will also be published in the FEDERAL REGISTER and in such other manner as is deemed appropriate by the Office of Hearings and Appeals. Where practicable, direct mailings to members of the class of purchaser concerned and to trade and consumer organizations will be utilized. The contents of an application for refund will be specified in the order implementing the refund procedures in each case. In general, applications must be in writing and signed by the applicant, and must contain a statement as to whether the applicant or any affiliated person has filed any other application for refund in connection with the proceeding. An applicant is also required to submit a sworn statement that all information contained in the application is true to the best of his knowledge and belief. Whenever possible, optional application forms will be provided in order to facilitate the filing of refund claims.

The Office of Hearings and Appeals may establish a reasonable deadline for the filing of claims. Late applications will not be considered and no one who has not filed a timely application shall be eligible for a portion of the refund amount. However, extensions of time may be granted for good cause shown upon written request submitted prior to the deadline.

The Office of Hearings and Appeals may under the proposed regulations appoint an administrator to assist in the evaluation of refund claims under guidelines promulgated by the Office of Hearings and Appeals. Compensation for the administrator will be paid from funds in the escrow account if he is not a federal government employee.

[1] An order under § 205.288 requiring a firm to establish an escrow account for the amount the firm must refund may, however, be issued without opportunity for public comment, thus making the funds available to earn interest for the benefit of claimants. This procedure will not adversely affect interested persons, since no funds will be disbursed from the escrow account until the order establishing specific procedures has been published for public comments and issued in final form.

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The Office of Hearings and Appeals also may solicit and consider information from any source and may convene a hearing if it believes a hearing will advance its evaluation of an application. A written order will be issued with respect to each application granting or denying the refund claim and setting forth the relevant facts and legal basis for the decision.

If the total dollar amount of approved claims in a proceeding exceeds the amount to be refunded, successful applicants may receive a pro rata refund. In those cases in which it appears to be possible that claims will exceed the total amount to be refunded, no refunds will be paid until all applications have been processed. Furthermore, if in a given case numerous refund applications are received that claim amounts less than the administrative costs associated with processing those applications, the Office of Hearings and Appeals may decline to process such applications. Refunds will not be paid to any entity that is currently or was during the relevant period owned or controlled by the person who was directed to place funds in escrow.

The Director of the Office of Hearings and Appeals or his designee is authorized to issue any interim or ancillary orders necessary to the proper and expeditious conduct of the refund proceedings.

C. Public Hearing and Comment Procedure

Any interested person may participate in this proceeding by submitting data, views or suggestions as to whether the proposed regulations should be modified or whether alternative procedures should be adopted. Comments should be submitted by 4:30 p.m., e.s.t., December 20, 1978, to the Office of Public Hearing Management at the address indicated above and should be identified on the outside envelope and on the document with the designation: "Proposed Refund Procedures". Ten copies should be submitted.

Any information or data considered to be confidential must be so identified and submitted in writing, one copy only. The DOE reserves the right to determine the confidential status of such information or data and to treat it according to our determination.

The DOE has scheduled a public hearing in order to receive oral comments on the effectiveness of the proposed regulations and suggestions regarding their possible modification. The hearing will be held on December 12, 1978, at 2000 M Street NW., Room 2105, Washington, D.C., at 9:30 a.m. Any person who wishes to make an oral presentation at the hearing should submit a request to speak, including the name and title and telephone number of the speaker, and the amount of time requested, to the Office of Public Hearing Management by December 6, 1978, at the address provided at the beginning of this notice. The Office of Hearings and Appeals reserves the right to limit the number of persons to be heard and to establish the procedures governing the conduct of the hearing. Those individuals selected to make oral presentations will be notified by December 8, 1978. The Director of the Office of Hearings and Appeals or his designee will preside at the hearing. Please submit 7 copies of the proposed statement by noon the day before the hearing and bring 100 copies of the statement to the hearing if possible.

If anyone wishes to ask a question of a person who has made an oral presentation at the hearing, he or she may submit the question, in writing, to the presiding officer. The presiding officer will determine whether the question is relevant and whether time limitations permit it to be presented for an answer. Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and may be purchased from the reporter. The DOE will retain the entire record of the hearing and will make it available for inspection at the Office of Hearings and Appeals Public Docket Room, Room B-120, 2000 M Street NW., Washington, D.C. 20461, between the hours of 1 and 5 p.m. Monday through Friday.

D. Other Procedural Requirements

As these proposed regulations do not affect the quality of the environment, the provisions of section 7(c)(1) of the Federal Energy Administration Act of 1974 (Pub. L. 93-275), as amended, have been determined to be inapplicable. Additionally, the DOE has determined that this document does not contain a major proposal requiring preparation of a regulatory analysis under Executive Order 12044.

Pursuant to the requirements of section 404(a) of the Department of Energy Organization Act (Pub. L. 95-91), this proposed rule has been referred, concurrently with the issuance hereof, to the Federal Energy Regulatory Commission for a determination whether the proposed rule would significantly affect any function within the Commission's jurisdiction.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, Pub. L. 94-332, Pub. L. 94-385, Pub. L. 95-70, Pub. L. 95-91; Energy Policy and Conservation Act, Pub. L. 94-163, as amended, Pub. L. 94-385, Pub. L. 95-70; Energy Conservation and Production Act, Pub. L. 94-385, as amended, Pub. L. 95-70, Pub. L. 95-91; Department of Energy Organization Act, Pub. L. 95-91; E.O. 11790, 39 Fed. Reg. 23185; E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, it is proposed to amend part 205, chapter II, title 10 of the Code of Federal Regulations, as set forth below.

Issued in Washington, D.C., November 8, 1978.

MELVIN GOLDSTEIN,
Director, Office of Hearings and Appeals.

1. The table of contents for part 205 is amended by adding subpart V, §§ 205.280 through 205.288, as follows:

. . . . . .

Subpart V—Special Procedures for Distribution of Refunds

. . . . . .

Sec.
205.280 Purpose and scope.
205.281 Petition for implementation of special refund procedures.
205.282 Evaluation of petition by the Office of Hearings and Appeals.
205.283 Applications for refund.
205.284 Processing of applications.
205.285 Effect of failure to file a timely application.
205.286 Restrictions of refunds.
205.287 Escrow accounts.
205.288 Interim and ancillary orders.

. . . . . .

2. Sections 205.280 through 205.288 are added as follows:

Subpart V—Special Procedures for Distribution of Refunds

§ 205.280 Purpose and scope.

This subpart establishes procedures under which refunds may be made to persons who have been overcharged in violation of the requirements specified by the Regulations of the Department of Energy. As a general rule, the procedures described in this subpart shall be applicable in those situations in which enforcement officials of the Department of Energy have been unable to readily ascertain the particular persons who are entitled to the refunds specified in a remedial order, a remedial order for immediate compliance, an order of disallowance or a consent order.

§ 205.281 Petition for implementation of special refund procedures.

(a) At any time subsequent to the issuance of a remedial order (including for purposes of this subpart a remedial order for immediate compliance and an order of disallowance), or a proposed consent order, the Special Counsel of the Department of Energy, the ERA Office of Enforcement, or any

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other enforcement official of the Department of Energy may file with the Office of Hearings and Appeals a petition for the implementation of special refund procedures.

(b) The petition shall state that the person filing it has been unable to readily ascertain either the identity of particualr purchasers who are entitled to refunds pursuant to a remedial order or a consent order, or that the person filing the Petition has been unable to readily ascertain the amount of the refunds that certain purchasers are entitled to receive, and shall contain a request that the Office of Hearings and Appeals institute appropriate proceedings under this subpart to distribute the funds referred to in the enforcement documents.

(c) The Petition shall contain a copy of each relevant enforcement document, shall be filed in duplicate during business hours in room 8014, 2000 M Street NW., Washington, D.C. 20461 and shall meet the requirements of § 205.9.

§ 205.282 Evaluation of petition by the Office of Hearings and Appeals.

(a) After considering the petition, the Director of the Office of Hearings and Appeals or his designee shall issue a proposed decision and order. The proposed decision and order shall generally describe the nature of the particular refund proceeding and shall set forth the standards and procedures that the Office of Hearings and Appeals intends to apply in evaluating refund claims.

(b) The proposed decision and order shall be published in the FEDERAL REGISTER together with a statement that any member of the public may submit written comments to the Office of Hearings and Appeals with respect to the matter. At least 30 days following publication in the FEDERAL REGISTER shall be provided for the submission of comments.

(c) After considering the comments submitted, the Director of the Office of Hearings and Appeals or his designee shall issue a final decision and order which shall govern the disposition of the refunds. The final decision and order shall also be published in the FEDERAL REGISTER.

(d) In the final decision and order, the Director shall set forth the standards and procedures that will be used in evaluating individual applications for refunds. Those standards and procedures shall be consistent with the provisions of this subpart.

(e) In establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of implementing refund procedure in an efficient, effective, and equitable manner as well as the desirability of implementing the refund procedures so as to resolve to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate rebuttable and irrebuttable presumptions.

§ 205.283 Applications for refund.

(a) Any person who believes that he is entitled to a refund pursuant to a final decision and order issued pursuant to § 205.282 may file an application for refund with the Office of Hearings and Appeals, Department of Energy, 2000 M Street NW., Washington, D.C. 20461. All applications must be signed by the applicant and specify the DOE order to which they pertain. Applications for refunds in excess of $100 must be filed in duplicate, and these applications be available for public inspection in the DOE public docket room at 2000 M Street NW., Washington, D.C. Any applicant who believes that his application contains confidential information must so indicate on the first page of his application and submit two additional copies of his application from which the information that the applicant claims is confidential has been deleted. A statement must also be provided specifying why any such information is privileged or confidential.

(b) The filing deadline and the contents of the application for refund shall be determined by the Director of the Office of Hearings and Appeals or his designee based on the facts of each case. The filing deadline shall be no less than 90 days after the date of publication in the FEDERAL REGISTER of the final decision and order referred to in § 205.282(c). The Director of the Office of Hearings and Appeals may appoint an administrator to evaluate applications under guidelines established by the Office of Hearings and Appeals. The administrator, if he is not a Federal Government employee, may be compensated from the refunds referred to in the remedial order or consent order. The administrator may design and distribute an optional application form for the convenience of the applicants.

(c) Each application shall be in writing and signed by the applicant, and shall indicate whether the applicant or any affiliated person has filed any other application concerning that particular refund proceeding. Each application shall also include a sworn statement by the applicant that all information in his application is true and correct to the best of his knowledge and belief.

§ 205.284 Processing of applications.

(a) The Office of Hearings and Appeals or its designee may initiate an investigation of any statement made in an application and may require verification of any document submitted in support of a claim. In evaluating an application, the Office of Hearings and Appeals or its designee may solicit and consider information obtained from any source and may on its own initiative convene a hearing or conference in its discretion if it determines that a hearing or conference will advance its evaluation of application.

(b) The Director of the Office of Hearings and Appeals or his designee shall conduct any hearing or conference that is convened with respect to an application for refund, and he shall specify the time and place for the hearing or conference and notify the applicant. The official conducting the hearing may administer oaths and affirmations, rule on the presentation of information, receive relevant information, dispose of procedural requests, determine the format of the hearing and otherwise regulate the course of the hearing. The provisions of § 205.8 which relate to subpenas and witness fees shall apply to any hearing convened with respect to an application for refund.

(c) Upon consideration of each application and other relevant information received or obtained during the course of a refund proceeding, the Director of the Office of Hearings and Appeals or his designee shall issue an order granting or denying the application. The order shall contain a concise statement of the relevant facts and the legal basis for the order. A copy of the order, with such modification as is necessary to insure the confidentiality of information protected from public disclosure by 18 U.S.C. 1905, shall be served on the applicant and any person who participated in the proceeding.

§ 205.285 Effect of failure to file a timely application.

(a) An application for refund must be filed no later than the date that the Office of Hearings and Appeals establishes pursuant to § 205.283(b). The Office of Hearings and Appeals or its designee may, however, grant extensions of time for good cause shown. Any request for an extension of time must generally be submitted in writing prior to the deadline.

(b) Any application not filed on a timely basis may be summarily dismissed, and the applicant shall not be entitled to any portion of the funds remitted pursuant to the relevant DOE order.

§ 205.286 Restrictions of Refunds.

(a) The aggregate amount of all refunds approved by the Office of Hearings and Appeals or its designee in a given case shall not exceed the amount to be remitted pursuant to the relevant DOE order, plus interest accured in the escrow account at the time of distribution, reduced by the amount of any administrative costs authorized by the Office of Hearings and Appeals. In the event that the aggregate amount of approved claims exceeds the aggregate amountof funds specified above, the Office of Hearings, and Appeals may award refunds to applicants on a pro rata basis. The Office of Hearings and Appeals may delay full payment of any refunds until all applications have been processed.

(b) The Office of Hearings and Appeals may decline to consider applications for refund amounts that, in view of the direct administrative costs associated with processing and paying a refund claim, are too small to warrant individual consideration.

(c) No entity shall be eligible for a refund if its is currently or was, during the period of time to which the remedial order or consent order applies, owned or controlled by the person who is the subject of the DOE enforcement order.

§ 205.287 Escrow accounts.

(a) In implementing the refund procedures specified in this subpart the Director of the Office of Hearings and Appeals or his designee may issue an order directing that a person subject to a refund obligation specified in a remedial order or consent order establish an escrow account into which the applicable funds shall be deposited. The terms of the escrow arrangement shall be subject to the approval of the Office of Hearings and Appeals and the escrow agent shall be designated by the Office of Hearings and Appeals. Only U.S. corporations with a record of successfully handling escrow accounts of similar magnitude may be selected as escrow agents by the Office of Hearings and Appeals.

(b) All refunds and costs authorized by the Office of Hearings and Appeals incurred in connection with the disposition of applications for refund and all charges of the escrow agent authorized by the Office of Hearings and Appeals shall be paid from funds, including interest, in the escrow account.

(c) Funds remaining in the escrow account at the conclusion of the refund proceedings, including any accumulated interest, shall be remitted to the U.S. Treasury or distributed in any other manner specified in the decision and order referred to in § 205.282(c).

(d) Funds shall be disbursed from the escrow account only by written order of the Office of Hearings and Appeals.

§ 205.288 Interim and ancillary orders.

The Director of the Office of Hearings and Appeals or his designee may issue any interim or ancillary orders, or make any rulings or determinations necessary to insure that refund proceedings, including the operations of the administrator and the escrow agent appointed in any given proceeding, are conducted in an appropriate manner and are not unduly delayed.

[FR Doc. 78-32159 Filed 11-13-78; 8:45 am]

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Federal Register

WEDNESDAY, NOVEMBER 15, 1978
PART IX



ENVIRONMENTAL PROTECTION AGENCY

CRITERIA FOR RADIOACTIVE WASTES

Recommendations for Federal Radiation Guidance

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[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 953-2]

CRITERIA FOR RADIOACTIVE WASTES

Invitation for Comment: Environmental Protection

AGENCY: U.S. Environmental Protection Agency.

ACTION: Recommendations for Federal radiation guidance.

SUMMARY: The Environmental Protection Agency seeks public comment on environmental protection criteria for storage and disposal of all forms of radioactive wastes. All substantive comments will be considered in forming final criteria which will be recommended to the President for approval as guidance to Federal agencies. The recommended criteria establish the basic principles which should be applied in the formulation of policies, plans, programs, and decisions involving management and disposal of radioactive waste. The recommended criteria also establish ground rules to be followed in the development of generally applicable standards for radioactive waste sources. These criteria: (a) Define radioactive wastes, indicate which types of wastes should be controlled, and give examples of where these wastes originate; (b) state the goal of radioactive waste control and define limitations on institutional and other controls over certain time periods; (c) discuss the factors to be considered in assessing risk to the general public and the general environment; (d) discuss the factors which would result in unacceptable risk for different methods of disposal; (e) require that the selection, design, and operation of a disposal site must enhance isolation of radioactive wastes; and (f) discuss the appropriateness of retrievability of waste and communication of waste disposal locations to future generations.

DATE: Comments should be received by January 15, 1979.

ADDRESS: Written comments to: Manager, Waste Environmental Standards Program (ANR-460), Office of Radiation Programs, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Dr. Harry J. Pettengill, 703-557-8927.

SUPPLEMENTAL INFORMATION: EPA is required to recommend radiation protection guidance for Federal agencies (42 U.S.C. 2021(h)). Accordingly, the Agency is developing environmental protection criteria which would be used by all Federal agencies that have responsibilities for managing or regulating radioactive wastes. This guidance, if approved by the President, will supersede any existing guidance concerning the disposal of radioactive wastes. Federal agencies would be required to comply with this guidance in carrying out their responsibilities.

Other agencies, besides EPA, which are actively involved in radioactive waste management, are the Department of Energy (DOE) and the Nuclear Regulatory Commission (NRC). The DOE is conducting research for different control technologies to store and dispose of high-level and transuranic wastes and will operate such disposal facilities. The NRC is preparing specific regulations for licensing of storage and waste disposal facilities. EPA is developing environmental protection standards for the various types of radioactive wastes. The proposed criteria will be used by all agencies in their respective programs. The schedules of the interrelated activities of EPA and other Federal agencies are being addressed by the Interagency Nuclear Waste Management Task Force established by the President on March 15, 1978, to recommend a comprehensive Federal program for the long-term management of nuclear waste.

The Agency has received considerable assistance from the public in developing these proposed criteria through participation in two public workshops and in a public forum. The proposed criteria have also been reviewed by a working group on radioactive waste, composed of Federal agencies that would carry out the guidance once approved by the President. The basis for the proposed criteria were developed in a background report which was made available to all workshop and forum participants and others on January 16, 1978 (43 FR 2223). Copies of the report are still being provided upon request. The background report will be revised to reflect the comments received from the public forum participants and on the criteria proposed herein.

DEFINITIONS

The following terms are defined for use in this notice:

Acute (radiation exposure).—A term used in reference to a single large dose of ionizing radiation or to a series of substantial doses in a short interval of time, as differentiated from chronic exposure;

Barrier.—Any medium which stops or significantly retards the movement of emplaced radioactive materials, such as a natural geologic medium or a container or solidified waste matrix engineered by humans;

Chronic (radiation exposure).—Continuous or intermittent exposure to small amounts of ionizing radiation over a long period of time, as differentiated from acute exposure;

Diffuse (waste containing naturally-occurring radioactivity).—Waste material containing naturally-occurring radioactivity in concentrations similar to that of many natural ore bodies;

Discrete (waste containing naturally-occurring radioactivity).—Waste material containing naturally-occurring radioactivity which is substantially concentrated relative to that of the virgin natural material;

Disposal.—The placement of radioactivity waste with no intent of recovery;

General environment.—The total terrestrial, atmospheric, and aquatic environments outside sites in which any radioactive waste management activities are conducted;

Institutional control.—Activities, devices, and combinations thereof which involve the performance of functions by human beings to limit contact between the waste and humans or the environment;

Isolation.—The placement of radioactive waste so that contact between the waste and humans or the environment will be highly unlikely for a chosen period of time;

Monitoring.—Measuring the quantity and type of discharges or migration of radioactive wastes from a waste management facility, or measuring changes in physical, chemical, or biological characteristics of the site and the surrounding site area;

Retrievability.—A designed capability to recover waste from an emplaced location, within a specified time;

Risk.—A general concept encompassing both the probability and the severity of adverse effects;

Site.—Any location under institutional control which has a boundary inside which radioactive wastes are handled, stored, or disposed of;

Storage.—Retention of radioactive waste at facilities with designed provisions for recovery within a defined time;

Waste management.—The range of activities for dealing with radioactive waste, including preparation, storage, and disposal.

BACKGROUND

Our responsibility to maintain environmental quality for future generations is well recognized. As enunciated in the National Environmental Policy Act of 1969 (NEPA), it is an important national goal to "fulfill the responsibilities of each generation as trustee of the environment for succeeding generations." In applying the above

NEPA principle, EPA notes that some radioactive waste materials are both long-lived and highly toxic. These materials may pose substantial health risks to both present and future generations. EPA believes that such materials should be properly controlled. Since no current waste management technology can be expected to be absolutely effective in isolating radioactive wastes from the biosphere (particularly over very long periods of time), decisions on radioactive waste management and control must assure that radioactive waste does not pose an unreasonable risk to human health and the environment.

Some of the issues which surfaced in EPA's deliberations about such waste control decisions were: (1) The types of materials to be categorized as radioactive wastes and subject to control; (2) the efficacy of engineered controls and natural barriers to isolate wastes; (3) the usefulness of social institutions in providing control, especially their viability over time; (4) the potential health risks of wastes (over various time intervals and with differing levels of control); (5) the unacceptability of various levels of risk; and (6) other considerations such as retrievability and communication of waste disposal sites to succeeding generations to assure continued isolation.

The Agency has developed a set of proposed criteria which address each of the above issue areas. The Agency intends to use the criteria as the basis for developing environmental standards for different radioactive waste sources. EPA will transmit the final criteria to the President for his approval and publication as Federal guidance. The promulgation of the criteria as Federal guides will foster continuity in Federal programs for the disposal of radioactive wastes. The Environmental Protection Agency has addressed the aforementioned issues in concert with other Federal and State agencies, radiation protection professionals, and the public. Thus, the proposed criteria which follow are designed to guide Federal agencies in making policy, programmatic operational, and standard setting decisions for radioactive wastes by setting forth in general terms those principles which should be applied in assuring protection of the public health.

The first criterion defines radioactive wastes, indicates which ones should be controlled, and gives source examples. The next criterion defines the fundamental goal of radioactive waste control and in that regard calls for the use of institutional and natural barriers to control wastes with long hazardous lifetimes. The third criterion states that risk is the primary basis for making radiation protection decisions for radioactive wastes and discusses what factors should be taken into account in assessing the risks to individuals and populations. The fourth, and possibly the most complex criterion, addresses the difficult subject of determining when risks from the disposal of radioactive wastes are unacceptable. The fifth recommends conditions which disposal locations should satisfy. The final criterion specifies several relevant supplemental control considerations which should be used if a net improvement in environmental protection can be achieved.

The Agency recognizes that there is substantial public debate regarding the desirability of establishing a moratorium on the production of additional nuclear wastes until such time as a National Radioactive Waste Policy has been adopted. These proposed criteria do not attempt to resolve this issue. In the Agency's view the quantity or quality of radioactive material which may be produced in the future should not be permitted to influence decisions on what levels of risk associated with such materials are regarded as acceptable or unacceptable. Curtailment of the production of certain types of radioactive waste could be determined to be an appropriate waste management control concept under the proposed criteria in certain circumstances. For example, to avoid unacceptable risk, either for current or future generations, control measures requiring extraordinary precautions for waste disposal might be judged necessary, if such control measures are feasible only for limited quantities of waste then policies to limit the total amount of wastes which are generated would be an essential element of an effective control program.

ENVIRONMENTAL PROTECTION CRITERIA

The criteria proposed herein should be used as a complete set and each should be satisfied for any radioactive waste that becomes subject to control in accordance with the first criterion. Certain exceptions are recognized and these are specifically stated. Unless circumstances are such that a given criterion can be waived because prescribed conditions for exceptions are satisfied, all criteria are to be followed for any given waste.

The following proposed criteria are under consideration for the Guidance of Federal Agencies in providing environmental and radiological protection for all forms of radioactive wastes:

PROPOSED CRITERION NO. 1

Radioactive materials should be considered radioactive wastes requiring control for environmental and public health protection if they have no designated product or resource value and: (a) Are human-produced by nuclear fission or activation, fabricated from naturally radioactive materials into discrete sources, or as a result of regulatory activities are prohibited from uncontrolled discharge to the environment; or (b) contain diffuse naturally-occurring radioactive materials that, if disposed into the biosphere, would increase exposure to humans above that which would occur normally in pathways due to the preexisting natural state of the area. Examples of radioactive waste materials that should be subject to environmental protection requirements are:

All radioactive materials associated with the operation and decommissioning of nuclear reactors for commercial, military, research, or other purposes and the supporting fuel cycles, including spent fuel if discarded, fuel reprocessing wastes, and radionuclides removed from process streams or effluents.

Artificially produced radioisotopes, including discrete radium sources, for medical, industrial, and research use and waste materials contaminated with them.

The naturally-radioactive residues of mining, milling, and processing of uranium and phosphate ores.

PROPOSED CRITERION NO. 2

The fundamental goal for controlling any type of radioactive waste should be complete isolation over its hazardous lifetime. Controls which are based on institutional functions should not be relied upon for longer than 100 years to provide such isolation; radioactive wastes with a hazardous lifetime longer than 100 years should be controlled by as many engineered and natural barriers as are necessary.

PROPOSED CRITERION NO. 3

Radiation protection requirements for radioactive wastes should be based primarily on an assessment of risk to individuals and populations; such assessments should be based on predetermined models and should examine at least the following factors:

a. The amount and concentration of radioactive waste in a location and its physical, chemical, and radiological properties;

b. The projected effectiveness of alternative methods of control;

c. The potential adverse health effects on individuals and populations for a reasonable range of future population sizes and distributions, and of uses of land, air, water, and mineral resources for 1,000 years, or any shorter period of hazard persistence;

d. Estimates of environmental effects using general parameters or of health effects based on generalized assumptions for as long as the wastes pose a hazard to humans, when such

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estimates could influence the choice of a control option;

e. The probabilities of releases of radioactive materials to the general environment due to failures of natural or engineered barriers, loss of institutional controls, or intrusion; and

f. The uncertainties in the risk assessments and the models used for determining them.

PROPOSED CRITERION NO. 4

Any risks due to radioactive waste management or disposal activities should be deemed unacceptable unless it has been justified that the further reduction in risk that could be achieved by more complete isolation is impracticable on the basis of technical and social considerations; in addition, risks associated with any given method of control should be considered unacceptable if:

a. Risks to a future generation are greater than those acceptable to the current generation;

b. Probable events could result in adverse consequences greater than those of a comparable nature generally accepted by society; or

c. The probabilities of highly adverse consequences are more than a small fraction of the probabilities of high consequence events associated with productive technologies which are accepted by society.

PROPOSED CRITERION NO. 5

Locations for radioactive waste disposal should be chosen so as to avoid adverse environmental and human health impacts and, wherever practicable, to enhance isolation over time.

PROPOSED CRITERION NO. 6

Certain additional procedures and techniques should also be applied to waste disposal systems which otherwise satisfy these criteria if use of these additional procedures and techniques provide a net improvement in environmental and public health protection. Among these are:

a. Procedures or techniques designed to enhance the retrievability of the waste; and

b. Passive methods of communicating to future people the potential hazards which could result from an accidental or intentional disturbance of disposed radioactive wastes.

DISCUSSION

ISSUE NO. 1: MATERIALS CONSIDERED RADIOACTIVE WASTES

The first issue that must be resolved in formulating criteria to govern the handling of radioactive wastes is just what materials are to be considered radioactive wastes within the scope of the criteria. For a given material, this judgment has two parts: Deciding that it is a "waste", and determining whether its degree of radioactivity is great enough to require that the waste material be disposed of in a way that protects against that radioactive hazard.

The primary factor in deciding that a material is a "waste" is the material's residual value. If it has no designated remaining value as a resource or a product, the material should be considered a waste. Because these criteria are addressed to the treatment of radioactive wastes, as opposed to other radioactive materials with current or possible future uses, materials which may have such uses would not be considered wastes subject to the criteria. Depending on the circumstances, the judgment of the material's remaining value will be made by the person or organization possessing or controlling it, or by a Government agency on behalf of the society as a whole. Once a material has been designated as a waste, whether or not it should be disposed of under these criteria depends on its radiological hazard.

A view expressed in the criteria development process was that EPA should set a minimum level of radioactive content below which any material should not be considered a radioactive waste. The Agency does not believe that this would be an appropriate course, primarily because no safe level of exposure to radioactivity can be established from the available evidence. As a result, EPA and other agencies concerned with radiation protection have followed a policy of requiring exposures to be reduced as much as practicable. This approach requires consideration of the circumstances surrounding any particular exposure source, and thus, precludes the establishment of any general "de minimus" level.

It does not appear feasible to formulate a criterion generally identifying those radioactive materials or exposure levels which pose so little hazard under any circumstances that they should not be considered radioactive wastes. Therefore, EPA has formulated a criterion that cites three broad classes of materials that should be considered radioactive wastes for disposal purposes: the first class consists of those materials produced artificially, either by nuclear fission, activation, or by fabrication from naturally radioactive materials into discrete sources. These materials are easily identified and described, and directly controllable.

A second class of substances which would be considered radioactive wastes under the proposed criterion are those containing diffuse naturally occurring radioactive material. However, these materials would be subject to the criterion only if they could result in exposures greater than those which would have occurred, through any pathway, if the material had not been disturbed by human activity.

The rationale underlying this distinction is that requiring the material to be treated as radioactive waste implies that its radioactivity is the decisive characteristic of the material. Yet if failure to treat the material as radioactive waste would not increase exposures over pre-existing levels, requiring disposal of the material as a radioactive waste seems unreasonable. If such an improvement is desirable, it should be for reasons other than that the material is a waste containing some natural radioactivity.

The final class of wastes which should be considered radioactive wastes for purposes of disposal under these criteria includes any retained waste materials which are prohibited by Government regulatory action from unrestricted discharge into the general environment due to their radioactive content. While this category of substances will obviously contain many wastes covered by the two previous classes, certain materials fall into neither category. Therefore, the Agency believes the restriction on discharge to the general environment is in itself sufficient basis for requiring any such material to be disposed of in accordance with these criteria. Examples of such materials could include those removed from effluent streams at nuclear reactors or phosphate fertilizer plants.

These principles have been used to formulate the following criterion for determining which materials are radioactive wastes requiring disposal under the remaining criteria. Proposed criterion No. 1 designates broad classes of materials that should be regarded as wastes whose radioactive content requires consideration in their disposal. Usual methods for control of waste materials may be used for radioactive wastes as well if such methods provide a degree of control consistent with these criteria. Other materials or classes of materials may be added to this criterion in accordance with the principles discussed above if information discovered in the future indicates a need for doing so. Therefore, the following criterion is recommended:

PROPOSED CRITERION NO. 1

Radioactive materials should be considered radioactive wastes requiring consideration for environmental and public health protection if they have no designated product or resource value and: (a) Are human-produced by nuclear fission or activation, fabricated from naturally radioactive materials into discrete sources, or as a result of regulatory activities are prohibited from uncontrolled discharge to the environment; or (b) contain diffuse naturally occurring radioactive materials that, if disposed into the biosphere, would increase exposure to humans above that which would normally occur in pathways (air, water, food) due to the pre-existing natural state of the area. Examples of radioactive waste materials that should be subject to environmental protection requirements are:

All radioactive materials associated with the operation and decommissioning of nuclear reactors for commercial, military, research, or other purposes and the supporting fuel cycles, including spent fuel if discarded, fuel reprocessing wastes, and radionuclides removed from process streams or effluents.

Artificially produced radioisotopes, including discrete radium sources, for medical, industrial, and research use, and waste materials contaminated with them.

The naturally-radioactive residues of mining, milling, and processing of uranium and phosphate ores.

ISSUE NO. 2: CONTROL OF RADIOACTIVE WASTE

The management of radioactive wastes represents potential exposure of individuals and populations and the possible contamination of the general environment. These potential impacts require definitive controls to be established. Further, because of the trustee responsibility each generation has to succeeding ones, contamination of the general environment should be avoided regardless of whether humans will actually contact the waste directly. It is important to prevent both human and environmental adverse impacts. Therefore, the fundamental goal for controlling any type of radioactive waste should be complete isolation over its hazardous lifetime.

Controls for radioactive wastes are of three general types: Engineered barriers, natural barriers, and institutional mechanisms. Engineered barriers such as containers or structures generally can be considered only as interim measures for containment, despite the fact that some structures have survived intact through the ages. Stable geologic media are an example of natural barriers. Institutional controls are those which depend on some social order to prevent humans from coming in contact with wastes, such as controlling site boundaries, guarding a structure, land use policies, recordkeeping, monitoring, etc.

It generally is accepted that long-term isolation should depend on stable natural barriers. Institutional mechanisms, which are essential in the early stages of management of any waste, are short-term processes because of practical limitations. Institutional means can be very effective in isolating radioactive wastes from humans if they can be maintained. Since society's basic structure and concern about waste may change, it is reasonable to rely on such controls for only limited periods.

The choice of a time period for relying on institutional controls is completely a matter of judgment, but is basic to a determination of when use of such controls is proper. During the developmental stages of this criteria document, it was proposed that 100 years should be the maximum time period for such controls to be depended upon with any degree of assurance. The public forum participants recommended deleting the time period because if appeared to be arbitrary; however, they left the issue unaddressed in any other form.

Because there are a number of current mechanisms for disposing of various types of wastes which are based on institutional care, the Agency believes that guidance is required to assure that institutional controls are relied upon only to the extent they are appropriate. There are numerous types of radioactive wastes of such hazard potential that they will require the adoption of stricter control methods than currently practiced and will require the development of new disposal technologies which will assure better isolation that afforded by institutional control mechanisms. For this reason, when disposal decisions are made they should recognize that institutional controls are only of limited use, and if the wastes will be hazardous longer than 100 years, other means of control will need to be found.

This means that in selecting control options for wastes whose hazards extend beyond 100 years decisions makers cannot rely on restrictions on customary uses of land and of ground or surface waters. This does not mean that institutional controls are required for 100 years, or that they must stop at that point if society can still maintain them; only that people making the initial disposal decision should not plan on their use to maintain protection beyond 100 years. The judgment that 100 years is the most appropriate time interval will be further examined throughout the public comment period.

In order to assure that these principles are achieved in controlling radioactive wastes, it is recommended that:

PROPOSED CRITERION NO. 2

The fundamental goal for controlling any type of radioactive waste should be complete isolation over its hazardous lifetime. Controls which are based on institutional functions should not be relied upon for longer than 100 years to provide such isolation; radioactive wastes with a hazardous lifetime longer than 100 years should be controlled by as many engineered and natural barriers as are necessary.

ISSUE NO. 3: RISK ASSESSMENT

Radioactive wastes pose a risk of potential exposure to people and to environmental contamination, both of which vary considerably with time. In a practical sense, risk considerations and control considerations are necessarily interrelated because each influences the other. Risks will be increased or decreased depending on the effectiveness of the control imposed, and controls to some extent will be chosen depending on the severity of the risk. Although the risks of different radioactive wastes ought to be ascertained at various levels of control, in the final analysis it is the risk a waste poses over time that primarily should determine the required controls. For this reason, risk determination is a pivotal part of any environmental and public health protection policy for radioactive wastes, and is the key consideration in deciding whether and how to store or dispose of the wastes.

Risk determinations rest on a number of factors, especially the total amount of waste material at a particular location, its persistence due to form and concentration, its potential to enter the biosphere and produce adverse effects on individuals and populations, the effectiveness of various controls, and the inherent uncertainties of many of the parameters. It is especially important that the period of time for which particular radioactive wastes remain hazardous be considered from two basic standpoints: how well the control alternatives will perform in reducing the risks over time and the probability of any containment being breached.

The factors discussed above have been generally recognized and accepted as essential to risk assessments, and there is some agreement about how to take them into account. The period over which such assessments should be performed is, however, more controversial. The main constraint on choosing a time period is the reliability of the results. Health effects estimates can be useful in making public policy decisions on radiation control; however, for many long-lived radioactive wastes, the models available are inadequate over very long intervals. Projections of population size, land use, and human factors beyond a few hundred years are suspect, but the physical parameters of source terms, environmental transport models, and geological conditions may be reasonably predictable for a few thousand years.

Because of the long duration of potential hazards from many of the

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wastes, it is appropriate to use an extended time period for estimation of health effects. In our judgment, health effects estimates can reasonably be made for periods up to about 1,000 years. Such a time period would provide consideration of both acute exposure risks and chronic exposure risks represented in many types of wastes containing both short- and long-lived fission products. A shorter time period, though less subject to speculation, may have the result of focusing control only on short-term risks that will soon disappear, when it would be equally appropriate to control the risks of long-lived components of the waste.

Some materials decay rapidly enough that virtually all their radioactivity is gone long before 1,000 years, in which case the estimation process is considerably more simple. On the other hand, some very significant waste materials persist well beyond 1,000 years, so it is important to account for this potential risk in deciding a form of control. In this case, it is desirable to have some means of comparing the potential impact on public health and the environment in order to choose the best control alternative. This can be done by physical parameters related to risk potential such as the quantity of various radionuclides entering environmental exposure pathways, their physical distribution, or the doses they may produce. Such comparisons can also be made with health effects estimates based on very general assumptions beyond 1,000 years. Although health effects estimates are desirable for these very long time periods, reasonable comparison of control alternatives can be made by other parameters such as curies released, calculated doses to assumed individuals, etc.

Impact assessments and the time periods for which they should be performed were discussed in developing the criteria. The public forum participants generally agreed that there is a need for risk assessments and that assessments should include, at least, those basic elements presented in the background report (43 FR 2223). However, the participants expressed considerable confusion about the meaning of the relationship between time and risk assessment, and recommended deletion of the time periods presented. Although the time periods chosen are based on judgment, the Agency believes it essential that meaningful estimates be made for the periods over which wastes represent potential hazards. In order to assess risks properly, it is recommended:

PROPOSED CRITERION NO. 3

Radiation protection requirements for radioactive wastes should be based primarily on an assessment of risk to individuals and populations; such assessments should be based on predetermined models and should examine at least the following factors:

a. The amount and concentration of radioactive waste in a location and its physical, chemical, and radiological properties;

b. The projected effectiveness of alternative methods of controls;

c. The potential adverse health effects on individuals and populations for a reasonable range of future population sizes and distributions, and of uses of land, air, water, and mineral resources for 1,000 years, or any shorter period of hazard persistence;

d. Estimates of environmental effects using general parameters or of health effects based on generalized assumptions for as long as the wastes pose a hazard to humans, when such estimates could influence the choice of controls;

e. The probabilities of releases of radioactive materials to the general environment due to failures of natural or engineered barriers, loss of institutional controls, or intrusion; and

f. The uncertainties in the risk assessments and the models used for determining them.

ISSUE NO. 4: UNACCEPTABILITY OF RISK

The term risk expresses a general concept encompassing both the probability of occurrence of adverse effects and their severity. Both aspects are basic to decisions on the adequacy of controls for radioactive waste. The most restrictive regulatory position to adopt would be to allow no additional risks whatever. No matter how desirable "zero risk" might be as a goal, it may not be technically or economically feasible. Moreover, society may have to forego some easily justified and beneficial activities to attain zero risk. Guidelines are required, therefore, for determining levels of risk other than zero that may be permitted. A difficulty in formulating such guidelines is that there is no generally accepted methodolgy for determining the risk that society would accept in a given set of circumstances.

Examination of risks for waste disposal systems in terms of the consequences of exposure and their probability of occurrence will result in values greater than zero which vary with the types of waste, the controls available, and the kinds and severity of events that can be postulated to disrupt isolation. Consequences may range over chronic and acute exposures of a few individuals or large groups, with probabilities ranging from very remote to near certainty over the long term for some waste types and controls.

All societies experience risks and have developed patterns of acceptance of various types of risks. For high-technology societies these patterns are difficult to discern, and they often change in relatively short time frames because such societies are continually creating new sources of risks. Thus, in the absence of established methodologies for determining acceptable risk, the Agency believes it is reasonable to state (in terms of consequence of exposure and probability of occurrence) certain unacceptable risks resulting from the disposal of radioactive wastes.

The apparent opinion regarding radioactive waste in the United States is that any risks resulting from the disposal of radioactive wastes now or in the future would not be acceptable unless more complete isolation were unreasonable. To be responsive to this public attitude, reasonable controls that are available and economically feasible should be applied. Also, because of the responsibility each generation has to succeeding ones, a key social consideration is that at a minimum the current generation should not pose larger risks to a future generation than it would be willing to accept for itself. This does not mean that the risk has to be the same in future generations, only that it would not be unacceptable to the current generation if imposed on it—even though the projected impact on the first few generations may be well below levels determined to be acceptable. Risk levels unacceptable to the current generation for a given set of circumstances would be generally precluded in formulating protection standards for the waste materials in question.

In general, risks are more readily acceptable to society if the consequences are common ones that are not highly dreaded, and are well understood situations which can be related to other common risks. On the other hand, generally beneficial circumstances which have high potential for harm appear to be acceptable to people if occurrence of the harm is virtually impossible; that is, the probability is very low. These interrelationships between probability of occurrence and consequence are not linear functions, and thus an unacceptable risk value cannot be chosen as a product of the two. Instead, one is compelled to state separately conditions of unacceptability for the consequence of quite likely adverse events, and for the probability of very harmful situations. Since a broad range of circumstances is possible for wastes, each of which has its own probability and consequence, one is dealing with a continuum of probability/consequence; thus, it is only possible to give general guidelines for

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deciding when various degrees of risk would be unacceptable. These are rooted in the basic concepts discussed above: Events likely to occur will be acceptable only if adverse consequences are low and are of a common type; events with high adverse consequence potential must be virtually certain not to occur.

In order to apply these principles, as stated in the proposed criterion, the following steps are required: First, the probabilities and consequences of possible events should be determined for different types and levels of control, and secondly, the results compared to other socially determined values for similar circumstances, if possible. The following paragraphs illustrate the second step.

High consequence events resulting from waste disposal can be compared to those associated with productive, shorter term technologies such as dams, dikes, and large stores of toxic or explosive chemicals. It is well recognized that productivity is associated with the creation of radioactive wastes. However, once wastes are created there is no further productivity directly associated with them. It is also important to note that the hazards many radioactive wastes pose are often much longer-lived than the explicitly productive aspects of other technologies. For radioactive wastes which pose long-term hazards, it seems reasonable that high consequence events should be considered unacceptable unless their probability is only a small fraction of that deemed acceptable for shorter term productive technologies.

Exposure situations which are likely to occur for certain kinds of wastes would be unacceptable, under the proposed criterion, unless predicted effects would be of questionable significance, even on a statistical basis. This means that if acute exposure is projected as a likely result of waste disposal, it should affect no more than a very few individuals randomly. If large groups are likely to be chronically exposed, the projected risks should be small and no greater than comparable risks that society has already willingly accepted.

Each Federal agency that is involved in establishing policy for radioactive waste disposal will be responsible for estimating the consequences of likely radiation exposure circumstances for wastes, and for determining whether they are unacceptable based on an examination of their consistency with other established social values that have evolved for comparable circumstances. Therefore, it is recommended that:

PROPOSED CRITERION NO. 4

Any risks due to radioactive waste management or disposal activities should be deemed unacceptable unless it has been justified that the further reduction in risk that could be achieved by more complete isolation is impracticable on the basis of technical and social considerations; in addition risks associated with any given method of control should be considered unacceptable if:

a. Risks to a future generation are greater than those acceptable to the current generation;

b. Probable events could result in adverse consequences greater than those of a comparable nature generally accepted by society; or

c. The probabilities of highly adverse consequences are more than a small fraction of the probabilities of high consequence events associated with productive technologies which are accepted by society.

ISSUE NO. 5 LOCATION AND WASTE ISOLATION

It is generally accepted that long-term isolation of radioactive wastes should depend on stable natural barriers to assure isolation from the biosphere over the period that a radiological hazard persists. Obviously, the site's effectiveness in attaining this goal is influenced by its location. Therefore, it is desirable to select sites if they are reasonably available where the action of natural forces over time such as erosion, sedimentation, and crystallization can be projected to improve, rather than reduce, isolation of the wastes over the time they may represent a potential hazard if they were to enter the biosphere. Similarly, if geological media are used, they should reduce the effect of potential interaction with water to the greatest extent possible. Therefore, it is recommended that:

PROPOSED CRITERIA NO. 5

Locations for radioactive waste disposal should be chosen so as to avoid adverse environmental and human health impacts and, whenever practicable, to enhance isolation over time.

ISSUE NO. 6 SUPPLEMENTARY PROTECTION GOALS

A number of other subjects pertinent to protection of the public from radioactive wastes were discussed in the development of the criteria. Among these, most attention centered on monitoring, provision of retrievability, and passive communication of the nature of the possible hazard to future generations. In general, it was determined that, while each has positive aspects for control of radiological hazards, their application might undermine the goal of providing permanent isolation for wastes. It is difficult to maintain retrievability or conduct a monitoring program without compromising the ability to provide isolation. Furthermore, in many disposal situations which will satisfy the five criteria discussed above, the residual risk will mainly be attributable to potential failure mechanisms involving eventual intrusion by humans. Passive methods of communicating the hazard, such as markers which call attention to the waste, may sometimes be judged to provide a net reduction of risk. Other passive methods, such as creating records describing the waste, or setting aside of the land title to the disposal site, have value in reducing the likelihood of intrusion for some limited time.

An example of a circumstance where land title transfer is reasonable is a current site that has been in use for some time where optimal environmental isolation is no longer a practicable alternative, such as an abandoned mill tailings site, a nuclear test facility site, etc. In these cases, Federal ownership of the land beyond the normal period of institutional control would be reasonable to minimize potential intrusion. Such decisions should be made on a case-by-case basis and provision for specifically treating such exceptions should be addressed in standards and regulations which are promulgated for these types of wastes.

It is not appropriate to depend upon methods such as these or other similar ones for long-term control; nonetheless, when such methods would enhance overall protection from wastes, it is prudent to use them. This is particularly the case for retrievability and passive communication. Monitoring was judged by the Public Forum participants to be generally a part of early institutional controls prior to completion of disposal, and thus it is not included in the following criterion for supplementary controls. Therefore, it is recommended:

PROPOSED CRITERION NO. 6

Certain additional procedures and techniques should also be applied to waste disposal systems which otherwise satisfy these criteria if use of these additional procedures and techniques would provide a net improvement in environmental and public health protection. Among these are:

a. procedures or techniques designed to enhance the retrievability of the waste, and

b. passive methods of communicating to future people the potential hazards which could result from an accidental or intentional disturbance of disposed radioactive wastes.

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IMPLEMENTATION AND FOLLOW-UP

It is expected that Federal agencies would use these criteria as a basis for developing detailed standards for radioactive wastes which are consistent with its particular requirements. The Agency, in cooperation with other Federal agencies, will follow the implementation of these recommendations, and will promote the coordination necessary to achieve an effective Federal waste management program. Periodically, the Agency will interpret and expand upon each of the recommendations as required to assure effective implementation by Federal agencies in accordance with new and changing information.

DOUGLAS M. COSTLE,
Administrator.

NOVEMBER 7, 1978.

[FR Doc. 78-32023 Filed 11-14-78; 8:45 am]

WEDNESDAY, NOVEMBER 15, 1978
PART X



FEDERAL ENERGY REGULATORY COMMISSION

■

THE NATURAL GAS POLICY ACT OF 1978

Proposed Regulations

Federal Register

[6740-02-C]

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

[18 CFR Parts 2, 157, 270, 271, 273, 274, 275, 276, 284]

[Docket No. RM79-3]

REGULATIONS IMPLEMENTING THE NATURAL GAS POLICY ACT OF 1978

AGENCY: Federal Energy Regulatory Commission

ACTION: Notice of Proposed Rulemaking

SUMMARY: The Natural Gas Policy Act of 1978 (NGPA), enacted November 9, 1978, takes effect with respect to certain first sales of natural gas delivered on or after December 1, 1978. The new statutory provisions relating to pricing of natural gas and other issues must, therefore, be implemented by regulation by that date. These proposed implementing regulations are being issued for a brief public comment period prior to promulgation of interim regulations. The Commission will then receive comments on the interim regulations for 60 days and will revise the interim regulations as appropriate.

DATE: Written comments by November 20, 1978.

ADDRESS: Office of the Secretary, Federal Energy Regulatory Commission, 825 N. Capitol St., N. E., Washington, D.C. 20426, (Reference Docket No. RM79-3).

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I. INTRODUCTION

On November 9, 1978, the Natural Gas Policy Act of 1978 (NGPA) was signed into law. By passage of the NGPA, Congress has mandated a new legislative framework for the regulation of most facets of the natural gas industry. The new law affects sales, transmission and distribution of natural gas. The previously controlling federal regulatory statute, the Natural Gas Act (NGA) has in many respects been limited, replaced or superseded by the NGPA.

A primary effect of the NGPA is the substitution of a series of specific statutory maximum price levels applicable to discrete types of "first sales" of natural gas for the previously established system of price regulation of interstate sales of natural gas which had been grounded in a cost-based methodology. An important distinction between producer regulation under the NGA and the NGPA is the expansion of the Federal Energy Regulatory Commission's (Commission) jurisdictional scope to encompass not only sales made in interstate but in intrastate commerce as well. Under the NGPA, all first sales of natural gas are controlled by the maximum statutory ceiling rates and as a result, it is unlawful for any person to sell natural gas at a price in excess of the statutory maximum regardless of whether the sale occurs in the inter- or intrastate market.

The Commission wishes to call specific attention to the provisions of section 101(b)(g) of the NGPA. The Congress, by that provision, emphasizes and makes clear that the maximum lawful prices under the NGPA are ceiling prices and do not supersede or nullify the effectiveness of any contractual agreement to pay a lower price. Therefore, the Commission cautions producers not to assume entitlement to any NGPA ceiling price which is higher than their contract prices.

The Commission is directed to administer essentially all of the NGPA and is authorized to perform any and all acts and to prescribe and issue such rules and orders as it finds necessary or appropriate to carry out its functions

under the NGPA. The proposed regulations, contained in this notice, mark the first step in carrying out the basic responsibilities for implementation and administration of the Act and provide a mechanism for transition from the NGA regulating regime to the NGPA scheme.

The NGPA is divided into six titles:

I. Pricing
   A. Price Controls Applicable to Sales of Natural Gas
   B. Decontrol of Certain Natural Gas Prices
II. Incremental Pricing
III. Additional Authorities and Requirements
   A. Emergency Authorities
   B. Other Authorities and Requirements
IV. Natural Gas Curtailment Policies
V. Administration, Enforcement, and Review
VI. Coordination with the Natural Gas Act, Effect on State Laws

The regulations proposed here do not implement all titles under the NGPA. Rather, the regulations propose to deal with those areas demanding the most expeditious treatment.

This first group of regulations is designed to set in motion the new scheme for pricing of first sales of natural

gas and to provide mechanisms for implementation of provisions of the NGPA covering certain arrangements for transportation of natural gas. However, before setting out in detail a full description of the specific regulations proposed, a summary of the most salient features of the NGPA, the effect on regulation under the NGA, and a capsule description of the implementing regulations and corollary modifications of regulations under the NGA, may be useful.

THE LEGISLATIVE SCHEME OF THE NGPA

The nature and scope of Commission regulation of producer sales under the NGPA has been substantially transformed from utility-type regulation of a limited market to what is essentially price regulation of an entire national market. Under the scheme set up by the NGPA, there exist two major categories of first sales: those requiring a prior determination of eligibility to be made by a jurisdictional federal or state agency before collection of the maximum lawful price and those not explicitly requiring such a determination. A decision as to whether a first sale falls into a category requiring a determination is fundamental. A decision to seek a determination triggers quite

different regulatory consequences than an opposite conclusion.

Although the Commission may be called upon to return to the cost-based, just and reasonable methodology within the meaning of the NGA in establishing rates in excess of the NGPA ceiling prices, the basic administration of the pricing provisions of the NGPA will be undertaken from an entirely different perspective. The Commission will no longer inquire into producer costs or set permissible rates of return for producers. Instead, the Commission's focus will center on whether geological information, production history, field records, prior contractual relationships and information of a similar nature support the categorization for pricing purposes claimed by producers.

Another crucial factor in anticipating what regulatory treatment will be accorded producer sales of natural gas is whether gas is "committed or dedicated" for purposes of NGA regulation. The limitations on NGA regulation as a result of enactment of the NGPA will be addressed in another section of this preamble. However, the distinction between gas which is deemed to be subject to continuing regulation under the Natural Gas Act and gas which falls solely within the

NGPA regulatory format is significant and affects both pricing and non-pricing regulation of producer matters.

For categories of gas requiring a prior determination by a federal or state agency, the Commission's function is more in the nature of an appellate body, reviewing, on a substantial evidence basis, the factual determinations of the appropriate jurisdictional agency with the right of disapproval in the event the initial determination is not adequately substantiated. The Commission rules reflect this role and prescribe the basic and minimum factual foundation necessary to meet its review responsibilities without directly interposing the Commission into the procedural functioning of the jurisdictional agency. The review process of initial determinations begins when notice is received of a jurisdictional agency's determination with the appropriate supporting material specified in Part 274 of the proposed regulations. In the absence of a reversal, the determination of the jurisdictional agency becomes final and no longer subject to review unless based on any untrue statement of material fact or upon any omission of material fact which omission was misleading.

Categories of first sales explicitly requiring that a determination as to qualification to collect the maximum lawful price be made by either a jurisdictional federal or state agency are:

- Section 102 which sets a maximum lawful price for first sales of new natural gas (gas produced from a new lease on the Outer Continental Shelf (OCS) or certain new onshore wells) and gas produced from any old OCS lease which was from a reservoir discovered after July 27, 1976;
- Section 103 which sets a maximum price for first sales of new onshore production wells;
- Section 107 which sets a maximum lawful price for first sales of high cost natural gas including gas produced from geopressurized brine, coal, seams, DeVonian shale or gas produced under other conditions the FERC determines to present "extraordinary"risks or costs; and
- Section 108 which sets the maximum lawful price for first sales of stripper well natural gas.

An essential element in the regulatory system established with respect to categories requiring a prior determination

is the provision for interim collection procedures by producers awaiting a final determination or the outcome of a review of such determination. The Commission has a concomitant power to require refunds from the producer if the gas eventually qualifies for a lower price. Section 503(e) sets out this collection and refunding procedure.

Part 273 of the regulations states the prerequisites for interim collection. First, the Commission has established a "transitional rule" to permit the collection by producers of the section 109 price if a producer files for a determination by March 1, 1979. Additional rules are established for interim collection pending and following a state or federal agency determination.

Those first sales of natural gas not requiring a prior determination to be made by a jurisdictional federal or state agency are tied to previously existing contractually set prices or price levels established by the Federal Power Commission or this Commission. First sales not requiring a prior determination under the NGPA are:

- Section 104 which incorporates by reference the just and reasonable rates establishes under the NGA for first sales of gas committed or dedicated to

interstate commerce on the day before the date of enactment of the NGPA;

- Section 105 which establishes maximum lawful prices for first sales under existing contracts of natural gas not previously committed or dedicated to interstate commerce; and
- Section 106 which establishes maximum lawful prices for first sales under interstate and intrastate rollover contracts;
- Section 109 which establishes the maximum lawful price for first sales of natural gas from the Prudhoe Bay in Alaska and categories of gas not otherwise covered by other sections of the NGPA.

The Commission has general administrative and enforcement authority under the NGPA and the NGA to order refunds in cases where the maximum lawful price level has been improperly exceeded.

EFFECT OF THE NGPA UPON CONTINUED NGA REGULATION

As stated previously, natural gas which remains committed or dedicated to interstate commerce on the day before the date of enactment of the NGPA or which is not specifically

exempted from the jurisdictional consequences of commitment or dedication by the NGPA, remains subject to all the non-price regulatory requirements of the NGA. An important aspect of continued NGA regulation is the requirement that a producer file an abandonment application with the FERC pursuant to section 7(b) of the NGA before terminating service to the interstate market or before abandonment of facilities used to render interstate service. Additionally, although price regulation of first sales by producers of gas committed or dedicated is now governed by the NGPA, sections 104 and 106(a) are grounded in previously established rates under the NGA. As a result, producers wishing to establish their right to collect under these sections will be required to make a filing under their rate schedules under the NGA. On November 16, 1978, the Commission intends to amend its previously existing filing requirements to provide new procedures governing these rate increase filings.

If gas is not committed or dedicated to interstate commerce as defined in section 2(18) or is exempted from the jurisdiction of the NGA under section 601(a)(1)(B) as high cost natural gas, new natural gas, or natural gas produced from any new onshore production well, the prior framework of

utility-type regulation under the NGA no longer applies.

If natural gas sales are freed from the requirements of the NGA, several adjuncts to NGA regulation are obviated. First, there is no longer any necessity for a producer to seek certification of the sale as serving the public convenience and necessity. The replacement for this requirement under the NGPA is limited to the state determination mechanism and the pricing limits established in the NGPA. New sales in interstate commerce no longer require certification as a prerequisite to commencement of deliveries. Nor does the requirement for abandonment authorization before termination of deliveries of natural gas exist with respect to natural gas no longer subject to NGA regulation. In the case of first sales of natural gas not previously committed or dedicated to interstate commerce or exempted from NGA regulation, tariff filings and rate increase applications are dispensed with. (Of course, specific requirements for filing to establish the right to collect the maximum lawful price levels exist under the regulations and annual reporting will be required under the NGPA in many instances. However, the nature of these filings, which are in many cases one-time notification type filings is quite different from the

rate filings previously required under the NGA.)

For natural gas which on the date of enactment was committed or dedicated but which is exempted from the NGA under section 601(a)(1) of the NGPA, there are substitute mechanisms for NGA section 7(b) abandonment authorization. These substitute provisions, intended to provide a degree of certainty to purchasers dependent upon a predictable natural gas supply, are found in section 315 of the NGPA. The Commission has not attempted to implement these sections in the initial implementing regulations. It is our intent to do so in the near future. That section gives the Commission dual authority to establish by rule or order the minimum duration of any contract (other than an existing contract) for the purchase of natural gas and to require by rule right of first refusal with respect to any gas committed or dedicated to interstate commerce before the date of enactment if such gas is high cost gas, new natural gas or natural gas produced from any new, onshore production well.

Indirectly, NGA regulation is affected by the operation of section 601(b) and (c) of the NGPA. Section 601(b) provides that any amount paid in any first sale of natural gas shall be deemed to be just and reasonable if such amount

does not exceed the maximum lawful ceilings established by the NGPA or if there is no maximum lawful price applicable by reason of elimination of price controls. Section 601(c), the guaranteed passthrough provision, states that the Commission may not deny, or condition the grant of any certificate under section 7 of the NGA based upon the amount paid in any sale of natural gas if the amount paid meets the standards of section 601(b) and is, therefore, by statutory fiat, just and reasonable. Additionally, the Commission may only deny the recovery by any interstate pipeline of any amount paid with respect to the purchase of natural gas under section 601(b) to the extent the Commission determines that the amount paid was excessive due to fraud, abuse, or similar grounds.

Finally, included in the implementing regulations are provisions covering certain transportation service by both interstate and intrastate pipelines. Provision is made for intrastate pipeline sales and for the assignment of natural gas excess to their requirements. Also, the Commission has revised its regulations previously applicable to emergency transactions and revised the procedure and the standards for emergency sales of natural gas for this winter's heating season.

GENERAL OUTLINE OF IMPLEMENTING REGULATIONS

The proposed regulations add two new subchapters to the Commission's regulations in Chapter I of Title 18. New Subchapter H (Parts 270 through 276) contains the new producer regulations under the NGPA. Part 270 sets forth general rules applicable to the entire subchapter. Maximum lawful prices under NGPA sections 102 through 109 are implemented in Part 271. Part 273 provides for interim collections and refunds, while determinations of eligibility by state and federal agencies and Commission review of those determinations are provided for under Parts 274 and 275. Finally, Part 276 covers reports.

New Subchapter I will cover regulations under the NGPA other than those relating to producer regulation. The current proposal includes only Part 284, which implements the Commission's authority under sections 311 (relating to certain pipeline sales and transportation of natural gas) and 312 (relating to assignment of intrastate pipeline's contractual right to receive surplus natural gas. Regulations relating to other authorities of the Commission will be added later under Subchapter I.

The proposed regulations would also delete sections 2.68, 157.22 and 157.29 of the Commission's regulations in Subchapters A and E, respectively, and add new provisions to cover emergency transactions for the current heating season.

To assist the reader and guide comment, a brief description of each part and subpart is included as a preamble to the text of the regulation. The statutory requirements that certain of our implementing regulations be fashioned and made effective on December 1, 1978, has not permitted the Commission to provide as full and detailed an explanation of its regulations as we would have liked. However, before any regulation is placed into effect (with or without modification) we expect to be able to add greater substance to the explanatory materials, guided by the written comments of interested parties received in response to this invitation for views.

II. SUMMARY OF PROPOSED REGULATIONS

PART 270

Part 270 prescribes rules and definitions that apply to Subchapter H. Subpart A contains the general rules and definitions. Subpart B contains special rules.

The general rules of § 270.101 relate to the application of maximum lawful pricing provisions of the NGPA. This section makes it unlawful for any person to sell natural gas at a first sale at a price which is greater than that permitted under Part 271. This section also sets out general provisions governing the determinations of eligibility to collect maximum lawful prices and describes the categories of natural gas for which prior determinations are to be made. In addition, this section makes it clear that the pricing provisions of Part 271 do not supersede or nullify contract provisions establishing prices below the applicable maximum lawful price. Finally, this section provides that any collection of maximum lawful prices is subject to refund obligations.

Section 270.102(a) provides that terms defined in the NGPA have the same meaning for purposes of these regulations unless further defined. Some terms used in individual sections or subparts are defined therein. Those used in more than one Subpart are defined in § 270.102(b). These

include "production in commercial quantities," "crude oil," "surface location," "intrastate contract," "successor to an existing intrastate contract," and "intrastate rollover contract." The term "jurisdictional agency" is defined in § 270.103, which includes a table of agencies by state.

The special rules of Subpart B apply to first sales of natural gas and the maximum lawful prices which apply to such sales. Section 270.201 provides that the maximum lawful price for a first sale of natural gas produced from multiple wells, properties or reservoirs which have different applicable maximum lawful prices will be the weighted average of the maximum lawful prices applicable to each well, property or reservoir.

Section 270.202 provides that a person who purchases natural gas at a first sale and subsequently resells the gas in a transaction which is also a first sale (a "reseller") is, with respect to maximum lawful prices, subject to the same restrictions, as modified by this section, as the initial first seller. In addition, these resellers are obligated to make and retain records respecting such sales.

Section 2(21)(B) of the NGPA states that a sale of natural gas by a pipeline or distribution company is not a first sale unless the sale is "attributable to volumes of natural gas produced" by such company. Section 270.203 delineates certain situations in which a sale of natural gas by these companies is not to be considered a first sale of gas attributable to volumes produced by the companies.

Finally, § 270.204 presents the technical information necessary to determine the number of British thermal units (Btu's) per unit volume of natural gas. This is necessary because maximum lawful prices for first sales of natural gas are stated in terms of dollars per million Btu's.

PART 271 - SUBPART A

Subpart A of Part 271 sets out, in summary tables, the pricing provisions applicable to certain categories of first sales of natural gas delivered in the months of December, 1978, and January, 1979. It also provides the method and the inflation adjustment factors to be used for calculating maximum lawful prices for those categories of gas for which prices cannot be derived from the summary tables. These latter categories are ones for which maximum lawful prices must be calculated by the seller.

Section 271.102 sets out the methodology by which maximum lawful prices are to be calculated. The procedure involves adjustment for inflation and requires only simple multiplication. The price for a given month is calculated by multiplying (1) the price which was allowed for the sale of natural gas delivered in the preceding month, by (2) a single adjustment factor which is published by the Commission. The adjustment factor, termed the "monthly equivalent of the annual inflation adjustment factor," is computed using the method of calculation prescribed under section 101(a) and (b) of the NGPA. These calculations will be made by the Commission and published at least 5 days before the beginning of any month for which the factor will apply.

The first price from which all maximum lawful prices are to be calculated is termed a "base price." This price varies according to the category of natural gas for which a calculation is to be made. Once this price is known the calculation can proceed, month-to-month, until the applicable monthly maximum lawful price is determined.

By way of example, assume that a calculation is to be made for natural gas subject to § 271.402(c)(1) for which a just and reasonable rate of $1.00 was in effect. The calculation is to be for the December, 1978, maximum lawful price. First an "applicable monthly price" for November, 1978 must be calculated. This calculation is done by taking the price for April, 1977 ($1.00) and subjecting it to monthly inflation adjustments for all months between April, 1977, and November, 1978. A price for May, 1977, is calculated by multiplying $1.00 by 1.00636, the applicable monthly equivalent of the annual inflation adjustment factor for May, 1977, as presented in the table accompanying § 271.102(c). The result, rounding to the nearest mill, is $1.006. This price is the base price which must then be multiplied by 1.00636, the applicable factor for June, and is again rounded to the nearest mill to reach a price of $1.012 which is then the price for June, 1977. This price, in turn, becomes the price for the month of July, 1977, and must then be multiplied by the monthly equivalent of the annual inflation adjustment factor for July, 1977 (1.00431);

and so on through the monthly iterations. The result should be a price of $1.115 for the month of November, 1978. At this point, the maximum lawful price applicable for deliveries made in December, 1978, can be determined. This is done by multiplying the November price of $1.115 by 1.00581, the factor which applies for December. The result is a maximum lawful price of $1.121 for that month.

This example is chosen to exhibit the calculation which § 271.402 will require of some sellers. Sellers subject to either the § 271.502 or § 271.602 pricing provisions will have prices based on the contract price per MMBtu on November 9, 1978, or in the case of rollover contracts, the month in which the rollover occurs. In either event, only a single multiplication need be made to determine the next month's maximum lawful price.

The monthly equivalents of the annual inflation adjustment factors are presented in the table accompanying this section. The change which occurs for each quarter up through the second quarter of 1978 reflects changes in the GNP implicit price deflator. The monthly factors calculated for both the third and fourth quarters of 1978 and the first month of the first quarter of 1979 are all the same because of the late publication of GNP implicit price deflators and the special provision of section 101(a)(3) of the NGPA to use

the latest figures available as of the date of the statute's enactment for the calculation of such factors.

PART 271 - SUBPART B

Subpart B of Part 271 implements section 102 of the NGPA which establishes a maximum lawful price for "new natural gas" and for "natural gas produced from a new OCS reservoir on an old OCS lease." These terms are defined by reference to the NGPA.

Section 271.204 contains a special rule for vertical measurement of the 1,000 foot distance between completion locations necessary for some determinations under this subpart. The rule clarifies the measurement methodology for completions made by perforation and for "open-hole" completions. In addition special rules are provided for the statutory terms "capable of producing in paying quantities" and "suitable facilities."

PART 271 - SUBPART C

Subpart C of Part 271 implements section 103 of the NGPA and applies to first sales of natural gas from new onshore production wells. Section 103(c) of the NGPA defines a new onshore production well as one spudded on or after February 19, 1977, which complies with any applicable well-spacing requirements. Wells which do not comply with well-spacing requirements or are drilled into existing proration units do not qualify for the new onshore production well prices unless they meet the requirements of the special rule set out in § 271.304.

The special rule is in two parts. The first part, paragraph (c), provides that for wells spudded on or after December 1, 1978, the proration unit requirement can only be satisfied if the jurisdictional agency finds that the well is necessary to effectively and efficiently drain a portion of a reservoir covered by the proration unit, which cannot be so drained by any existing well within the unit. Such a finding must involve a redefinition of the proration unit or alteration of or an exception to otherwise applicable well-spacing requirements.

Paragraph (d) of the rule recognizes that wells drilled between February 19, 1977 and December 1, 1978 may qualify for the price established in section 103. The rule permits such wells to qualify if the agency reviews its preexisting record and determines that it explicitly or implicitly made the same finding necessary for wells spudded after December 1, 1978.

The proposed special rule further provides that in the absence of either an explicit finding or a demonstration by the agency that such a finding was implicit in its authorization to drill the well, the application for a determination will be denied.

The Commission is particularly interested in obtaining comments on this special rule so that it may further consider whether the proposed approach is the best method of implementing section 103 of the Act.

PART 271 - SUBPART D

Subpart D of Part 271 implements sections 104 and 106(a) of the NGPA. These sections prescribe the maximum lawful price for the first sale of natural gas which was committed or dedicated to interstate commerce on November 8, 1978, and for which a just and reasonable rate under the Natural Gas Act was in effect. Under section 104, the maximum lawful price is the just and reasonable rate for each vintage of gas established by the Commission as of April 20, 1977, as adjusted monthly for inflation from that date forward. Just and reasonable rates established by the Commission after April 20, 1977, constitute the ceiling rates under section 104 and are not generally adjusted for inflation. Section 106(a) prescribes the maximum lawful price for rollover contracts executed after November 9, 1978.

The interim regulations set forth the maximum lawful price applicable to each vintage of gas and define the various vintages of gas established by the Commission's national or area rate opinions. Rules for calculating the maximum lawful price applicable to natural gas for which a non-vintage just and reasonable rate was not previously established under special relief and optional procedures are also included in this subpart.

Section 271.402(a) of Subpart D includes a table of maximum lawful prices for each vintage of previously committed or dedicated natural gas. Transition from the Natural Gas Act prices to the NGPA prices affects two of the prices included therein differently from other categories. First, the price established in section 106(a) of the NGPA for sales by small producers of rollover contract gas is less than the rate such producers would have received for the same category of gas under the Natural Gas Act. Pursuant to §157.40(c)(1) of this chapter, small producers were entitled, under the Natural Gas Act, to 130% of the maximum base rate established by the Commission for rollover contracts. Thus, for replacement contracts entered into prior to November 9, 1978, section 104 of the NGPA, which is keyed to the rates previously established by the Commission, prescribes a rate reflecting this 30% differential for sales by small producers. However, for contracts rolling over on or after November 9, 1978, section 106(a) prescribes a rate of 54 cents per MMBtu, as adjusted for inflation from April 20, 1977, for both large and small producers. As a result of this anomaly, a small producer who executed a rollover contract prior to November 9, 1978, would be entitled to a rate of 77.1 cents

per MMBtu as of December 1, 1978, whereas a small producer who executed a rollover contract on or after November 9, 1978, would be entitled, under section 106(a), to a rate of 60.3 cents per MMBtu.

In order to prevent a small producer from receiving a rate under the NGPA lower than that to which he would be entitled under the Natural Gas Act, the Commission finds it necessary to invoke our authority under section 106(c) of the NGPA. This section provides that the Commission may prescribe a maximum lawful price higher than would otherwise be applicable under section 106 if such higher rate is determined to be just and reasonable within the meaning of the Natural Gas Act. The Commission finds, pursuant to this section, that the rate previously established by the Commission for small producer replacement contract gas is just and reasonable within the meaning of the Natural Gas Act, and should be made applicable to small producer sales of rollover contract gas. The price so determined is 70.2 cents per MMBtu as of December 1, 1978. This price may be increased, in accordance with Opinion Nos. 770, et seq and Opinion Nos. 742, et seq., by an amount not to exceed 1.3 cents per MMBtu per annum commencing on January 1, 1979, and the first day of every year thereafter for the term of the contract dedicating the subject gas for sale in interstate commerce.

We note that this price is still not identical to the 77.1 cents per MMBtu price prescribed in the table for small producer sales of replacement contract gas. The price in the table was determined by adjusting for inflation the April 20, 1977, price of 70.2 cents per MMBtu established by the Commission for replacement contract gas. We invite the submission of data, views and arguments on or before December 15, 1978, regarding the question whether, under the standard set forth in section 106(a), the 70.2 cents per MMBtu rate applicable to small producer rollover contracts should be found not just and reasonable, and the just and reasonable rate should be raised to the 77.1 cents per MMBtu rate as adjusted for inflation in months following December 1978.

A second transition problem exists regarding the large producer rate for rollover contracts prescribed in section 106(a). Such rate is determined by applying the inflation adjustment factor to an April 1977 rate of 54 cents per MMBtu in order to arrive at a December 1, 1978, rate of 60.3 cents per MMBtu. However, the large producer rate for replacement contracts was 53 cents as of April 20, 1977, which when adjusted for inflation translates to a rate of 59.3 cents per MMBtu as of December 1, 1978. Again, we note that the only difference between a replacement contract and rollover contract is that the latter is executed on or after November 9, 1978. In view of this disparity in treatment for the same types of

sales of natural gas, we invite the submission of data, views and arguments on or before December 15, 1978, regarding the question whether, under the standard set forth in section 106(a), the large producer replacement contract rate of 59.3 cents per MMBtu should be found not just and reasonable, and the just and reasonable rate should be raised to the 60.3 cents per MMBtu rate for large producer rollover contracts.

Under § 271.402(c)(2) of these regulations any "just and reasonable" rate established by the Commission for a sale of natural gas after April 20, 1977, and prior to November 9, 1978, is the maximum lawful price applicable to such sale if higher than the otherwise applicable price prescribed in § 271.402 (a) or (c)(1). As to producer applications under the optional procedure regulation set forth in § 2.75 of this chapter, a "just and reasonable" rate is that rate established by the Commission in its final order on such applications.

Under § 271.403 of these regulations, we have provided a special rule regarding a carrying charge adjustment for advance payments. In Opinion No. 770-A , the Federal Power Commission recognized that capital generated through the advance payment program was no longer required to bring

additional gas supplies to the interstate market. The Commission noted that the rate level set forth in that opinion was designed to achieve the capital formation objective. Accordingly, the Commission found that as to additional advance payments made after the issuance of that opinion, it would be inequitable to require consumers also to pay the carrying charges on these amounts.

The Commission determined that producers who accept advance payments after the date of the opinion should reduce the rate prescribed therein for post-1974 gas which was committed under any further advance payments by the cost of the advances borne by consumers.

Because of these same considerations, we have provided in § 271.403 for the same adjustment in the rates charged by producers for post-1974 gas. Producers subject to this carrying charge rule would be required to reduce their rates by 83 cents per MMBtu for all deliveries made pursuant to the applicable advance payment agreement until the total amounts so deducted equal the amounts collected by the purchasing pipeline from its customers as a result of including the applicable advance payments in rate base.

PART 271 - SUBPART E

Subpart E of Part 271 implements section 105 of the NGPA by setting forth the procedure for determining the maximum lawful price for first sales of natural gas under existing, or successors to existing, intrastate contracts.

Although throughout the proposed regulations the reference is to intrastate contracts, it should be noted that these provision apply to contracts which govern the sale of natural gas which was not previously committed or dedicated to interstate commerce on November 8, 1978 (the day before the date of enactment of the NGPA). Included in this category is any gas which was sold in interstate commerce under an emergency sale, a limited term certificate, and certain direct sales for which specific transportation certificates had been issued by the Commission.

Under Subpart E of the proposed regulations the maximum lawful prices depend upon the relationship that existed on November 9, 1978, between the existing contract price and the new natural gas price. Under § 271.502(a), if the contract price is less than the new natural gas price, then the maximum lawful price will be, pursuant to section 105(b)(1) of the NGPA, the lower of the new natural gas price or the price under the terms of the existing contract on November 9,

1978, (as such price may be changed from time to time in accordance with contract terms in effect on November 9, 1978). Under § 271.502(b), if the existing contract price exceeded the new natural gas price on November 9, 1978, then the maximum lawful price will be the higher of the new natural gas price or the contract price limited to escalation by the monthly equivalent of the annual inflation adjustment factor.

The term "contract price" is defined in § 271.504 to mean the price per MMBtu charged for deliveries of natural gas occurring on November 9, 1978, or the price that would have been charged had deliveries occurred on that date.

Subpart E sets forth a special rule limiting the price effects of modifications of contract terms executed after November 9, 1978. Section 271.505(a) provides that no such modification may have the effect of requiring the purchaser to bear any greater costs than would have been borne under the terms of the existing contract. Section 271.505(b) stipulates that no such modification may provide for an earlier date for deliveries than provided for in the existing contract. While

non-price terms may be changed by such a modification, they may not result in a higher contract price.

The Commission is particularly interested in receiving comments on these special rules.

PART 271 - SUBPART F

Subpart F of Part 271 implements section 106(b) of the NGPA. Subpart F applies to first sales of natural gas under intrastate rollover contracts, and sets forth the procedure for determining the maximum lawful price applicable to such sales. Two tables are provided in the regulation: one for the prices permitted to be charged under section 106(b)(1), and the other for prices permitted to be charged under section 106(b)(2).

The maximum lawful price under Subpart F for first sales of natural gas under section 106(b)(1) of the NGPA is to be the higher of: (a) the maximum price under the expired contract in the month of expiration as escalated by the monthly equivalent of the annual inflation adjustment factor, or (b) $1.00 per MMBtu escalated from April, 1977 to be escalated by the same inflation adjustments.

The table in § 271.602(b) provides for the maximum lawful price for natural gas to which may be charged for certain State or Indian royalty natural gas production interests under section 106(b)(2) of the NGPA.

Subpart F also contains a special rule similar to § 271.505 regarding clauses in rollover contracts that have the effect of shifting production-related costs to the purchaser without a concomitant decrease in the sale price of natural gas. Section 271.605 mandates that a provision in a rollover contract that differs from the

comparable provision of the expired "existing contract" and which has the effect of shifting such production-related costs to the purchaser, shall be treated as if it is an increase in the first sale price. As in the case of § 271.505, the Commission invites comments and views on this special rule.

PART 271 - SUBPART G

Subpart G of Part 271 implements section 107 of the NGPA, which applies to first sales of natural gas from deep high-cost natural gas wells. It contains a special rule in § 271.704 clarifying the method of determining the depth of a well.

Section 107 of the Act authorizes the Commission to establish incentive prices for gas from geopressurized brine, occluded natural gas from coal seams, and gas from Devonian shale. It also authorizes the Commission to establish incentive prices for gas produced under other conditions as the Commission determines present extraordinary risks or costs.

The proposed regulation does not address the question of incentive prices for the three statutory categories mentioned above, nor does it address the questions of whether additional categories should be designated as "high cost gas." The Commission will address these issues in a separate public notice in which it will seek comments regarding what, if any, incentive price would be appropriate for each of these categories, and what additional gas is produced under conditions which present extraordinary risks or costs.

PART 271 - SUBPART H

Subpart H of Part 271 implements section 108 of the NGPA, which is applicable to first sales of natural gas produced from stripper wells. This subpart contains definitions of terms used in section 108, and prescribes several special rules intended to assist in the application of section 108.

Section 108 of the NGPA provides a maximum lawful price for stripper well natural gas, and prescribes a definition for stripper well gas. According to the general rule prescribed in section 108(b)(1) of the statute, a well is a stripper well if, during the 90-day production period ending within 120 days of the date on which the filing is made it produced nonassociated gas at a rate which did not exceed an average of 60 Mcf per production day, and if the well produced at its maximum efficient rate of flow during such 90-day period. Section 108(b)(2) also provides that a well may continue to qualify as a stripper well if production exceeds 60 Mcf per day during any 90-day production period, if the increased production was the result of the application of recognized enhanced recovery techniques.

Section 271.803 of Subpart H defines "recognized enhanced recovery techniques" and "nonassociated gas." The definition of "recognized enhanced recovery techniques" includes processes or equipment which increase the ultimate recovery of gas from a well and excludes techniques or equipment necessary for normal well maintenance, repair, or replacement.

The proposed definition of "nonassociated natural gas" would permit a stripper well to qualify under this subpart if it produces an average of no more than one barrel of oil per production day during the 90-day production period which is the basis of the determination of stripper well status. Because of the significance of this definition comments and suggestions on this question are specifically invited.

Section 271.804 sets forth special rules which interpret and apply terms used in the NGPA. Section 271.804(a) and (b) concern the methodology for measurement of production from a well. Section 271.804(a) states that the volumetric basis for determining the rate of production from a single well is the total volume of gas produced from all producing intervals of the well. Section 271.804(b) applies when the wells are not individually metered.

In this circumstance, jurisdictional agencies may average rates of production in order to determine whether particular wells are stripper wells. For example, six wells may be attached to a single meter. If the meter showed deliveries averaging 240 Mcf per production day or less during the relevant period, presumptively all wells would qualify. If, on the other hand, deliveries from the six wells averaged 370 Mcf per production day, then presumptively, none of the wells would qualify. In either case, alternative evidence may be offered in rebuttal to establish qualification or the lack of qualification.

Section 271.804(d) is a rule applying the statutory requirements with respect to "maximum efficient rate of flow" (MER). The proposed rule provides that a well is presumed to have produced at its MER during the 90-day production period if it produced an average volume of 60 Mcf or less per production day during a 12-month period ending concurrently with the 90-day production period which is the basis for the determination. There may, however, be situations in which a 12-month production history is not available. In such situations the jurisdictional agency may look to other types of evidence, such as flow tests, which would measure the production capability of a well, or

it may defer making the determination for a time necessary to acquire and submit a 12-month production history. If the agency defers the determination, the applicant would, if contractually entitled, be able to collect the stripper price subject to refund.

Section 271.804(e) is a special rule which permits wells to retain stripper status despite increases in production above the 60 Mcf per day level, provided the increase is attributable to seasonal fluctuations. Jurisdictional agencies may make the determination that a well is seasonally affected on the basis of production history over a 24-month period if production from the well has not and cannot reasonably be expected to exceed an average of 60 Mcf per day for any 12-month period.

Section 271.805 is a rule implementing section 108(b)(2) of the NGPA. The rule disqualifies wells which, subsequent to the jurisdictional agency determination, produce quantities of gas in excess of the amounts permitted by the law and this subpart.

The proposed rule provides for a reporting mechanism to monitor the continued qualification of the well. Both the operator of the well and the purchaser of the gas must report any increase in gas production above an average of 60 Mcf per production day for any 90-day production period. Unless the operator receives a determination from a jurisdictional agency that the increase was due to the application of recognized enhanced recovery techniques, or is determined to be seasonably affected, he may no longer collect the stripper price for the well. If the operator files a petition for a determination that the increase in production results from enhanced recovery techniques or seasonal fluctuation, continued, collection of the stripper well price shall be made subject to refund for deliveries made after the last day of the applicable 90-day or 12-month production period.

PART 271 - SUBPART I

Subpart I of Part 271 implements section 109 of the NGPA by setting a maximum lawful price for "other categories of natural gas," that is, for first sales of natural gas that are not covered by any maximum lawful price under any other subpart of Part 271. (emphasis supplied)

Section 109 of the NGPA presents an important question of interpretation. The portion of section 109(a) which precedes paragraph (1) limits section 109's application to "natural gas which is not covered by any maximum lawful price under any other section of this subtitle." [emphasis supplied] However, paragraph (1) of section 109(a) specifically includes natural gas "produced from any new well not otherwise qualifying for a higher maximum lawful price." (emphasis supplied) The question presented is whether the general language in section 109(a) is intended to limit the scope of the examples which follow (so that new wells which qualified for a lower price under another section of the NGPA would be excluded from section 109), or whether the specific examples override the general statement of the scope of section 109 (so that new wells otherwise subject to a maximum lawful price which is lower than the 109 price nonetheless be eligible for the higher 109 price.

In this regard, it should be noted that the portion of section 109(a) which precedes paragraphs (1) through (4) introduces those paragraphs with the word "including." Under general rules of construction therefore it would appear that paragraphs (1) through (4) are qualified and controlled by the general statement of applicability which limits 109 to first sales not covered by any maximum lawful price. For this reason, the Commission is tentatively of the view that the first interpretation is correct and has incorporated that interpretation in the regulations implementing Section 109. A special rule in § 271.904 provides that the maximum lawful price in this subpart applies to a first sale of natural gas described in paragraph (1), (2), (3), or (4) of section 109 (a) only if that first sale is not covered by any other maximum lawful price in the NGPA.

As noted above, the Commission is aware that section 109 is susceptible to an interpretation different from the one proposed in the special rule. Comments on the approach taken and suggested alternatives are specifically requested.

PART 271 - SUBPART K

Subpart K of Part 271 of the Commission's proposed regulations implements section 110 of the NGPA. That section permits a first sale price of natural gas to exceed the applicable maximum lawful price for that sale to the extent necessary to recover State severance taxes borne by the seller. It also permits the same treatment for certain production-related costs borne by the seller, if allowed by the Commission.

The treatment to be accorded the addition of State severance taxes to maximum lawful prices is set forth under § 271.1102. The definition of "State severance tax" in § 271.1101 is the definition set forth in the Act. Paragraph (b) of § 271.1101 precludes recovery of those severance taxes which were enacted on or after December 1, 1977, and which do not apply equally to natural gas produced for delivery to interstate commerce and gas produced but not so delivered.

Paragraph (b) of § 271.1102 acknowledges that the just and reasonable rates applicable to natural gas produced from the Permian Basin area included a specific allotment for State severance taxes and excludes those amounts from the provisions of the section.

The section contains a requirement that sellers retain records of transactions in which the maximum lawful price is exceeded as a result of the addition of severance taxes.

The treatment of production-related costs is set forth in § 271.1104. This section establishes a procedure under which the Commission will consider applications for addition to maximum lawful prices only for those production-related costs specified in this section.

Paragraph (b) of the section precludes the filing of any application under this section with respect to natural gas which, as of November 8, 1978, was committed or dedicated to interstate commerce and was subject to a just and reasonable rate in effect at that time. It also precludes applications with respect to natural gas subject to an existing contract, or successor to an existing contract, or a rollover contract.

The proposal provides, in paragraph (c), that applications to the Commission will be considered for costs of gathering, liquifaction or transportation only if those activities occur off-lease. This paragraph also provides that the Commission will consider applications for costs of compression.

Paragraph (d) sets out certain quality standards for natural gas. Only applications covering costs to bring

gas to a quality greater than that specified in the standards in the paragraph will be considered under this paragraph. It also provides an exception to this rule for transactions involving sales to end users.

Section 271.1100(b) excludes from the operation of both § 271.1104 and § 271.1105 relating to production-related costs, natural gas produced from the Prudhoe Bay Unit of Alaska and transported through the system approved under the Alaska Natural Gas Transportation Act of 1976 (ANGTA). Prudhoe Bay is a new and unique producing area for which there is no history of industry practice relative to the bearing of production-related costs. Therefore a separate rule under the provisions of ANGTA for natural gas from that producing area is required and will be promulgated by the Commission in the immediate future.

PART 273

The purpose of Part 273 is the establishment of procedures for the interm collections authorized by section 503(e) of the NGPA. That section permits interim collection, subject to refund, of those prices for certain categories of natural gas which must be authorized by a determination of well eligibility to be made by the jurisdictional state or federal agency and then reviewed by the Commission. These categories are new gas and certain OCS gas (as defined in section 102 of the NGPA), gas from new onshore production wells (section 103) high-cost natural gas (section 107) and stripper well gas (section 108).

Description of the regulations. Part 273 is divided into three subparts covering general provisions, the four separate provisions for interim and retroactive collections, and the procedures for refund guarantees and refund payments. Section 273.101 states that general authorization under these regulations to collect a maximum lawful price for a particular category of gas does not give a seller the right to collect a price which is higher than that permitted by the sales contract. Section 273.102 defines a "final determination" for purposes of this part as a determination of eligibility by the jurisdictional state or federal agency which is no longer subject to the

possibility of review and reversal by the Commission or the courts. It should be noted that under section 503(d)(1) of the NGPA a determination which has already become final can be reviewed and modified later if it was based in part on a factual statement which was untrue or materially misleading. Section 273.103 requires each seller to file an annual report of any collections and refunds under this part. Prior to the end of the first reporting period, on December 31, 1979, the Commission will issue a further rule specifying the form and scope of this report.

Subpart B of Part 273 provides the specific rules for interim collections and for retroactive collections where the maximum lawful price established by a final determination exceeds the price collected on an interim basis. Section 273.201 establishes a transitional rule for sales from new wells. It will expire on March 1, 1979. A seller may collect, subject to refund, the price specified in section 109 of the NGPA if an application for determination will be submitted to the jurisdictional agency by March 1, 1979. A seller may charge and collect the price determined under section 109 of the NGA and specified in paragraph (a) of § 273.201 ($1.630 per MMBtu for December 1978) after complying with the filing requirements of this section and until March 1, 1979. To qualify for this collection

authority, a seller must file with the Commission sworn statements that the sale is being made from a new well and is eligible for the price to be collected and that the seller has filed an application for determination with the jurisdictional agency or will do so by March 1, 1979.

After that application for determination has been filed, a seller may use the procedure established by § 273.202 to collect, subject to refund, the maximum lawful price for which the sale is believed to be eligible, for a period of up to eighteen months (or twelve months where collections under the section begin on or after May 1, 1979). To qualify for this interim collection authority, a seller must fulfill certain filing requirements, by submitting a sworn statement of eligibility, a duplicate of the NGPA form on which the application for determination has been submitted, and a statement certifying that a portion of the amounts collected under this procedure will be placed in escrow or secured by surety bond.

The authorization to make interim collections of the price for which the sale is believed to be eligible terminates on the date on which the Commission receives a notice that a determination of eligibility has been made or after

eighteen months (or twelve months where collections under the section begin on or after May 1, 1979) where no determination has been made. After such termination, the seller may not use this procedure again for this sale or any other sales from the same well. The seller will be limited to collection of the applicable maximum lawful price specified in Subparts D, E, F, or I of Part 271 until an initial determination is made, and § 273.203 can be used to collect the price established by that determination.

When the jurisdictional agency issues its determination of eligibility for the well from which the sale is being made, § 273.203 authorizes interim collection, subject to refund, of the price established by that initial determination. Within 15 days after interim collections begin under this section, a notice of collections must be filed with the Commission and served upon the purchasers. There are no other filing requirements under this section. The authority to collect the price established by the initial determination of eligibility ends 15 days after that determination has been reviewed and becomes final. If the Commission does not approve or reverse an initial determination, but makes a final finding that the determination should be remanded to the state or federal agency for further consideration, then the seller may continue to

collect the price established by the remanded determination for up to six months during reconsideration by the jurisdictional agency.

When a determination of well eligibility becomes final, a seller may immediately collect the price established there for all future sales from that well under the authority of the applicable section of Title I of the NGPA and Part 271 of these regulations. Section 273.204 of this part authorizes the retroactive collection of that finally-determined price for all first sales of gas delivered after the application for determination was filed. If this application is filed by March 1, 1979, then retroactive collections may be made for gas delivered on or after December 1, 1978. There are several qualifying conditions. A seller may not make retroactive collections for any first sale if the seller has not fully complied with all of the filing requirements and other provisions of these regulations for every first sale made by that seller. Similarly, a seller may not collect a retroactive amount from each purchaser for any sale until the seller has refunded to that purchaser all amounts which are then due to be refunded for the same sale or any other sale.

In some instances, the provisions of this part will be used to collect interim prices for first sales of natural

gas which was committed or dedicated to interstate commerce on November 8, 1978, the day before the date of enactment of the NGPA. Under section 601(a)(1) (B) of the NGPA, sales of committed or dedicated gas will be subject to the Commission's jurisdiction under the Natural Gas Act, particularly to the filing requirements for making a rate change, until a final determination that such gas qualifies as high-cost gas, new gas, or gas produced from a new onshore production well. The relationship between the filing requirements of these NGPA regulations and Part 154 of the regulations under the Natural Gas Act will be discussed in the Commission's final rule amending § 154.94(h) of Part 154 to be issued shortly in Docket No. RM79-4. Under the final rule, in the case of interim collections for first sales of gas which remain subject to the requirements of the Natural Gas Act, full compliance with the filing requirements of this part of the regulations under the NGPA will also satisfy the additional filing requirements under section 4(e) of the Natural Gas Act and Part 154 of the Commission's regulations. Thus, a seller which makes the filing required by § 273.203(c) may collect the price specified in the application for determination of eligibility without submitting the prior notice of rate change required

by § 154.94 of the Commission's regulations under the Natural Gas Act.

Subpart C of this part establishes procedures to assure that any interim collections will be refunded as necessary and for the actual payment of refunds with interest after a final determination that a first sale does not qualify for a price already collected under this part. Section 273.301 establishes a general obligation upon each seller to refund any collections which are not authorized by the NGPA and these regulations, if ordered to do so by the Commission at any time. For example, a determination can be reconsidered and modified after it becomes final, if it was based on an untrue or materially misleading statement of facts in the application for determination. As a result of that modification, additional refunds could be ordered even though the seller would have already discharged any specific refund obligations under § 273.302 and the prior final determination.

Section 273.302 sets out specific procedures for refund assurance and payment. A seller's potential liability to refund any interim collections must first be secured by the filing of a written undertaking to make refunds using one of the forms set out in § 273.302(b). A seller must file a series of refund undertakings covering collections for sales from the wells identified in an appendix to each

successive undertaking or one blanket undertaking which is a general agreement to make all refunds which may be required under the NGPA.

Interim collections that are made under § 273.202 pending an initial determination of eligibility and the proper price are subject to an additional requirement providing refund assurance. The seller is further required to secure surety bonds or to place in escrow the portion of the price collected under § 273.202 which exceeds the maximum lawful price determined under Section 109 of the NGPA (for sales from new wells) or the maximum lawful price under Sections 104, 105 or 106 of the NGPA (for sales from old wells).

Other provisions of § 273.302 require each seller to maintain full records of the amounts that are collected, subject to refund, and to make the actual refunds by cash or check within fifteen days after the applicable determination of eligibility becomes final. There is no provision for any other method to discharge a refund obligation, such as by work-offs, commitment of additional reserves to each purchaser, or reduction of the price charged for future deliveres. Permission to use an alternative refund method will be granted only in exceptional cases.

PARTS 274 AND 275

General. Under certain sections of the NGPA, eligibility for the maximum lawful price established by the Act is initially determined by the state and federal agency with regulatory jurisdiction over the production of natural gas. Jurisdictional agencies' determinations are subject to review by the Commission.

Jurisdictional agencies are authorized to make the determinations with respect to:

(1) new natural gas under section 102(c) of the NGPA;

(2) certain gas from the OCS under section 102(d);

(3) new onshore production, defined in section 103(c);

(4) high-cost natural gas defined in section 107(c); and

(5) stripper well natural gas defined in section 108(b).

The purpose of Subparts B, C, G, and H, of Part 271, is to reflect the statutory criteria for qualification for the maximum lawful prices for the categories of gas noted above and to propose rules necessary to clarify or implement those provisions. Subpart B of Part 274 of the proposal contains the filing requirements the Commission proposes to apply to applications for determinations filed with jurisdictional agencies. Other sections of the proposal apply to the procedures by which jurisdictional agencies

make initial determinations and give notice of determinations to the Commission (Part 274, Subpart A) and the method by which the Commission will review those determinations (Part 275, Subpart B). Each of these provisions is summarized below.

PART 274 - SUBPART A

Subpart A of Part 274 prescribes procedures by which jurisdictional agencies make determinations pursuant to and in accordance with the NGPA. This subpart provides that the procedures to be applied are those followed by the agency to make comparable determinations. In addition, this subpart contains a rule concerning the manner in which a jurisdictional agency must notify the Commission that it has made a final determination of eligibility.

Section 274.102 provides that a determination is made once it is "administratively final" before the jurisdictional agency. If, for example, a state agency's decisions are normally subject to rehearing under its usual procedures, the determination is not final until the period for rehearing expires or rehearing is sought and denied.

Section 274.104 provides that a jurisdictional agency must notify the Commission within 15 days after making a determination and prescribes the manner in which the jurisdictional agency shall give the notice. Section 274.105 provides an option to the procedures prescribed in § 274.104. If an agency chooses to adopt the § 274.105 option, it may file with the Commission a report in which it undertakes to make the necessary determinations and which includes a description of the

procedures which it would follow in making them. The jurisdictional agency would then be relieved of the obligation to describe its procedures in each case. The public, and more especially representatives of the various agencies involved, are invited to suggest revisions or alternatives to this subpart which would both preserve state procedures and provide the Commission with an adequate basis for fulfilling its review responsibilities.

PART 274 - SUBPART B

Subpart B of Part 274 prescribes the filing requirements which must be met by an applicant to obtain a determination for new natural gas from a jurisdictional agency.

Section 274.201 sets forth general rules applicable to all applications. Succeeding sections impose specific requirements depending on the nature of the determination sought. The general requirements include a provision that applicants give notice of applications to their purchasers. Jurisdictional agencies may prescribe additional filing requirements.

Section 274.202 sets forth filing requirements for a determination that gas qualifies as new natural gas under

section 102 of the NGPA. The regulations require an applicant to present evidence substantiating, to the extent practicable, each element of proof required for a determination of eligibility. Section 274.202(c)(1) is typical of other sections in this subpart in that the applicant must file certain specific documents as well as the oath statements. Each applicant filing for a new onshore well determination under § 274.202(c)(1), must file a location plat showing all wells within 2.5 miles of his own well. He must then demonstrate that none of these wells is a marker well. In order to meet this burden, an applicant must consult all available records which would indicate whether any of these wells produced in commercial quantities at any time during the period from January 1, 1970 to April 20, 1977. Rather than require an applicant to file all production records along with the application, however, the proposal requires the filing of a statement, under oath, describing his search of records, and attesting to the fact that none of these wells is a marker well. The applicant's description of his search of records will enable jurisdictional agencies to verify the applicant's conclusion. This regulation is similar to the others which impose filing requirements. It

attempts to strike a balance between the need to support each determination by substantial evidence and the potential for excessive burdens on applicants and jurisdictional agencies.

Applicants filing under § 274.202(d) for a new onshore reservoir determination must submit geological information which demonstrates that production is from a new onshore reservoir. These data are accompanied by an attestation similar to that required by paragraph (c). In all cases individual agencies may, if they wish, require the filings of all documents relied upon by the applicant. The Commission has taken a similar approach toward filing requirements under § 274.203.

Section 274.206 prescribes the filing requirements for applications for stripper well determinations. To a greater extent than other sections of this subpart, this section requires the submission of actual documents rather than oath statements. In addition to the documents, applicants must submit an affidavit attesting to the well's eligibility.

Section 274.207 entitled "Alternative filing requirements," acknowledges that due to differences in State records, some jurisdictional agencies may desire or need to resort to documents other than those required by these proposed regulations.

Under tnis section, a state agency may propose alternate filing requirements which might replace some or all of the requirements specifically provided elsewhere in Subpart B. If the Commission concludes that the alternative requirements are more appropriate for a particular state and will satisfy the evidentiary requirement it may approve the alternative requirements. Upon such approval, applicants for determinations would file according to the alternate plan rather than under Subpart B.

The Commission wishes to emphasize the need for public comment on this subpart. It is essential that filing requirements be practical and manageable from the standpoint of both the applicants and the jurisdictional agencies. It is also essential, however, that they provide the jurisdictional agencies and the Commission with substantial evidence on which to make and review determinations.

PART 274 - SUBPART C

Subpart C of Part 274 briefly prescribes the procedures by which a jurisdictional agency may execute an agreement to waive its authority to make NGPA determinations. It implements section 103(c)(2) of the NGPA.

In order for a jurisdictional agency to waive its authority, it must enter into an agreement with the Commission. Under § 274.302, an agency may submit a request for waiver to the Commission. Section 274.303, specifies the contents of such a request and requires an agency to state the reasons and the necessity for a waiver. If the Commission agrees to enter an agreement of waiver, it may do so on terms and conditions agreed to by the Commission and the jurisdictional agency. The provisions of § 274.303 specify the method of terminating the waiver agreement by either the Commission or the jurisdictional agency. Section 274.303 provides that the Commission shall give public notice of all agreements of waiver and that once a waiver agreement is executed, applicants should file for determinations with the Commission according to the filing requirements set forth in Subpart B of Part 274.

PART 275 - SUBPART B

Subpart B of Part 275 prescribes the procedures governing Commission review of determinations by jurisdictional agencies. The regulations are promulgated under the provisions of section 503 of the NGPA and the general rulemaking authority of section 501(a) of the Act.

Section 275.201 provides that upon receipt of the notice of determination from a jurisdictional agency, the Commission will give public notice of the determination in the Federal Register. In addition to identifying the specific proceeding, the notice will indicate that the record of the proceeding is available for inspection in the Commission's Office of Public Information.

Subparagraph (a)(1) of § 275.202 tracks section 503(b)(1) and (2) of the statute in setting forth the standards which govern Commission review. The Commission will reverse decisions not supported by substantial evidence and will remand decisions to the jurisdictional agency if there is evidence in the Commission's records which was not before the jurisdictional agency and which is inconsistent with the determination. Section 275.202(b) also contsins procedures under which the Commission will return determinations to jurisdictional agencies based on applications which

did not comply with applicable filing requirements. Unless a conforming application to the jurisdictional agency is made within 45 days, the applicant's right to any interim collection of the requested rate terminates.

Under § 275.203 any person may file a protest with the Commission within 15 days after the Commission publishes notice of receipt of a determination by a jurisdictional agency. Any person protesting a determination must indicate whether it is alleged that the determination is not supported by substantial evidence or that there is inconsistent information in the Commission's files. It should be noted that under § 275.203(b)(iii), a protestor may submit information for inclusion in the Commission's public records. Accordingly, the data or information on which the Commission may rely in remanding a determination need not have been in the Commission's records at the time the jurisdictional agency made the determination.

Section 275.202(d) provides for conferences with the Commission staff after issuance of a preliminary finding. While the NGPA does not require such a procedure, the Commission wishes to provide an opportunity to all parties,

including jurisdictional agencies, to present views concerning a determination. In addition, the conference procedure will assist the Commission in making a judgment on review.

Section 275.202(e), consistent with sections 503(b)(1)(B), and (b)(2)(B) provides that the Commission will issue a final order within 120 days after issuance of a preliminary finding. While the statute requires a final order only when the Commission wishes to reverse or remand a decision, the proposal provides that the Commission will issue such an order in any case in which a protest was filed and a preliminary reversal or remand was issued.

Under section 503(d), final determinations are binding unless based on an untrue statement of fact, or a record from which a statement of material fact was omitted. Section 275.205 of the proposal sets forth a procedure for reopening determinations on those grounds. The Commission may, at any time, on its own motion or in response to a petition, reopen a determination if it appears that the necessary grounds exist.

If the Commission does reopen a determination, it will give notice to the jurisdictional agency involved as well as to all persons who participated in the prior proceeding. Within 150 days of the Commission order reopening a determination the Commission will issue a final order after giving all persons who received notice an opportunity to express their views. If the Commission finds that the requisite grounds exist, it will vacate the determination and order remedies, including refunds, as it deems appropriate.

In conjunction with the substantive rules and the regulations concerning filing requirements, this subpart should provide an adequate basis for the exercise of review authority. In addition, this subpart is intended to open the review procedure to all interested persons to the extent possible within the time constraints imposed by the statute. The proposals in this subpart should be considered with these purposes in mind. The Commission is particularly interested in comments on this subpart.

PART 276 - SUBPART A

Subpart A of Part 276 sets forth reporting requirements applicable to first sales of natural gas sold under existing intrastate contracts, intrastate rollover contracts, and other categories of natural gas (Subparts E, F and I of Part 271).

In each case, certain information is required of the seller. If the purchaser of gas under section 105 or 106 of the NGPA is a pipeline, the purchaser must also file reports. Finally, in some instances, sellers of less than 10,000 MMcf of natural gas per year may elect to make oath filings instead of detailed reports.

A seller of natural gas under an existing intrastate contract must file annually a report setting forth detailed contract information as well as an oath filing that the information in the report is true, and that sales in the reporting period comply with the NGPA and Subpart E of Part 271. Successive annual reports need not restate previously reported information.

If the sale is to an interstate or intrastate pipeline, the pipeline, rather than the seller, is responsible for filing the detailed contract information, as well as an oath statement as to the accuracy of the information. If a pipeline purchaser makes the principal filing, the seller must still file a statement under oath that the sale complies with the NGPA and Subpart E of Part 271, and that the seller undertakes to retain records reflecting the detailed information.

Reports required with respect to sales under intrastate rollover contracts are essentially the same as for sales under existing intrastate contracts, with appropriate modifications, and are set forth in § 276.103.

The annual reports with respect to sales under Subpart I of Part 271 are set forth in § 276.104. This report, filed by the seller, is required to provide detailed information with respect to the sale and an oath statement that the gas does not qualify under any subpart of Part 271 which provides a maximum lawful price lower than that under Subpart I, and that if the gas was committed or dedicated to interstate commerce a notice of rate change has been filed pursuant to § 154.94. The oath filing must also contain a statement regarding compliance with the NGPA and Subpart I and the truth of the information.

Sellers who sell less that 10,000 MMcf per year may elect reduced reporting requirements with respect to sales to purchasers other than pipelines under Subparts E and F. These sellers may file, instead of detailed information

otherwise required an oath statement as to compliance with the NGPA and applicable regulations and as to an undertaking to retain books and records containing the requisite information.

PART 284

Part 284 implements sections 311 and 312 of the NGPA in four subparts. Subpart A (section 311(a)) covers transportation of natural gas by interstate pipelines. Subpart B (section 311(a)) covers transportation by intrastate pipelines. Subpart C (section 311(b)) is proposed to become effective to cover sales by intrastate pipelines occurring after this winter heating season. A modification of the Commission's existing 60-day emergency transaction rules is proposed for implementation on December 1. Subpart D (section 312) provides for the assignment by intrastate pipelines of the contractual right to receive surplus natural gas.

PART 284 - SUBPART A

Subpart A provides that interstate pipelines may without prior Commission approval transport gas on behalf of intrastate pipelines and local distribution companies. The rates must be just and reasonable. If the interstate pipeline has on file a rate schedule applicable to these transactions, it must use the rates contained therein. Otherwise, it may charge either (1) a rate based on the methodology for recovering the transmission component of its sales rates, or (2) a rate for comparable service under its transportation rate schedule. Revenues in excess of

1 cent per Mcf must be credited and flowed back except to the extent the revenues (or volumes) have already been taken into account for rate purposes.

Contracts must be conditioned upon available capacity and compliance with the regulations. The maximum duration is two years, with rights to apply for extensions for additional two-year periods.

Reports required are the initial report (30 days after service begins), a subsequent report whenever information in the initial report requires updating; an extension report (90 days before extension) and a final report (30 days after termination).

PART 284 - SUBPART B

Subpart B provides for transportation of natural gas without prior Commission approval by intrastate pipelines on behalf of interstate pipelines and local distribution companies served by interstate pipelines. Rates are required to be fair and equitable. An intrastate pipeline may charge either (1) a rate based on methodolody for recovering the transmission component of its effective sales rates, or (2) a rate contained in a transportation schedule for comparable service.

Transportation arrangements and extensions (permitted unless disapproved by the Commission) may not exceed two years. The Commission may impose appropriate terms and conditions. Reporting requirements are similar to those in Subpart A.

PART 284 - SUBPART C

Subpart C is proposed to implement section 311(b) of the NGPA which, when adopted after this winter, will among other things, replace the emergency transaction exemptions. The proposal in its present form would authorize sales by intrastate pipelines to interstate pipelines and local distribution companies without prior Commission approval, but such sales could be terminated upon complaint or the Commission's own motion if the Commission made certain determinations set forth in the NGPA. Rates would be required to be fair and equitable, providing reasonable compensation for services and a reasonable opportunity for profit, plus an adjustment for current costs incurred under prescribed circumstances due to the sale, in addition to the pipeline's current weighted average acquisition cost of gas.

The adjustment would be permitted for natural gas included in a sale by an intrastate pipeline if the gas is acquired under an existing contract, is in excess of volumes that the pipeline would acquire but for the sale, and is priced above the pipeline's current weighted average cost of natural gas. In this case, the price of gas in a sale pursuant to Subpart C would be adjusted upward so as to offset the increase that would otherwise occur in the weighted average acquisition cost of gas. The purpose of the adjustment is to remove any incentive for the intrastate pipeline to defer purchases of gas otherwise available to it while preventing an increase in the cost of gas supplied to the intrastate customers. An example of calculation of an adjustment follows in Table A.

TABLE A - SAMPLE CALCULATION OF ADJUSTMENT

1. Intrastate pipeline purchased 800,000 Mcf during most recent actual 12-month period at a total cost of $1.5 million for a weighted average cost of $1.88 per Mcf.

2. At the time that the sale was being negotiated the lower cost source of supply had escalated so that the total cost of gas was $1.6 million or $2.00 per Mcf.

3. Intrastate pipeline could make available on an interruptible basis up to 100,000 Mcf annually which would be purchased under a contract providing for a price of $2.00 per Mcf in which case there would be no adjustment to the average cost of gas.

4. Alternatively, interruptible volumes of up to 100,000 Mcf annually would be available at a price of $2.50 per Mcf. In this case it would be necessary to charge a $2.50 rate in order not to affect the cost of gas to the regular customers of the pipeline.

Base Period					Current Period				
Mcf		Price		Cost	Mcf		Price		Cost
100,000	x	1.00	=	100,000	100,000	x	2.00	=	200,000
200,000	x	1.50	=	300,000	200,000	x	1.50	=	300,000
300,000	x	2.00	=	600,000	300,000	x	2.00	=	600,000
200,000	x	2.50	=	500,000	200,000	x	2.50	=	500,000
800,000	x	1.88	=	1,500,000	800,000	x	2.00	=	1,600,000

Current Period Adjusted for Add: Sales

Assume Purchase @ $2.00					Assume Purchase @ $2.50				
Mcf		Price		Cost	Mcf		Price		Cost
100,000	x	2.00	=	200,000	100,000	x	2.00	=	200,000
200,000	x	1.50	=	300,000	200,000	x	1.50	=	300,000
400,000	x	2.00	=	800,000	300,000	x	2.00	=	600,000
200,000	x	2.50	=	500,000	300,000	x	2.50	=	750,000
900,000	x	2.06	=	1,800,000	900,000	x	2.06	=	1,850,000

1,850,000
- 1,800,000
50,000 + 100,000 Mcf = $.50

Average cost of gas = $2.00
Adjustment = .50
Total = $2.50

Sales would be subject to interruption if necessary for adequate setvice to the intrastate pipeline's other customers. Other terms and conditions could be imposed.

The proposed Subpart C is included in the Notice of Proposed Rulemaking to be issued simultaneously with these interim regulations, but is proposed to be adopted after this winter heating season so a smooth transition may be accomplished between implementation of the emergency exemption provisions of § 7(c) of the Natural Gas Act and implementation of section 312 of the NGPA. A revised version of the Commission's current emergency program, terminating Docket No. RM78-7 will be adopted to be effective this winter only. The interim rule for emergency transactions is discussed below.

PART 284 - SUBPART D

Subpart D implements section 312 of the NGPA, and requires prior Commission approval for certain assignments of an intrastate pipeline's contractual right to receive surplus gas. Assignments would be authorized only if the Commission determined them to be consistent with Subpart D and the NGPA, and necessary or appropriate in the public interest. An exception to the prior approval rule would cover assignments of rights to receive gas if it were priced at or below the new gas price. These would be self-executing, subject to terms and conditions imposed by the Commission, and to certain reporting requirements. If an assignment

is authorized, any intrastate pipeline could assign all or any portion of its contractual right to receive surplus natural gas to an interstate pipeline or local distribution company. The intrastate pipeline would have to furnish documentation of a determination by the state regulatory agency having jurisdiction over it that the gas involved was surplus.

EMERGENCY SALE EXEMPTIONS

Background

On April 7, 1978, the Commission issued a Request for Comments regarding its proposed review of the 60-day emergency provisions for the sale and transportation of natural gas in interstate commerce. Comments were received from parties representing a wide range of interests, including independent and associated producers, intrastate and interstate pipelines, distribution companies, industrial consumers and the public.

After the comments were reviewed and analyzed the Commission issued a Notice of Proposed Rulemaking on August 14, 1978, and again requested comments. The proposal would have substantially changed the existing regulations covering emergency transactions.

Summary of the Proposal

The existing regulations, 18 C.F.R. §§ 2.68, 157.22 and 157.29, create exemptions from the certificate requirements of section 7 of the Natural Gas Act for the transportation and sale of natural gas in interstate commerce. Under these provisions emergency supplies of natural gas were obtained in substantial quantities in past winter heating periods and during times of summer storage fill, at market prices in excess of otherwise applicable national or area rates governing jurisdictional sales. The existing regulations allow a pipeline to buy emergency gas for 60-day periods whenever lack of supplies forces it to curtail its service to any customer. Each pipeline has the option of either injecting the emergency gas into its general system supply and recovering the costs through the purchased gas adjustment accounts, or specifically assigning the supplies to the customers in need of them and charging those customers for the cost of the volumes they receive.

The proposal also would have allowed exemptions from the certificate requirements but would have imposed stricter criteria for participation in the transactions. Emergency supplies would have been made available only for certain high priority end users, not including large industrials which have alternate fuel facilities and alternate fuels available during severe supply emergencies. The sales

would have been allowed for 60 days only, without any extensions except under certain limited circumstances.

Pipelines would have been allowed to inject emergency gas into their system supply only when force majeure-type emergencies existed or for summer storage injection. Otherwise, the gas and its costs would have had to be directly assigned to the customer who requested it.

The proposal would have placed a restrictive standard on rates for emergency sales and transportation. Most importantly a rebuttable presumption of prudence was accorded only to producer sales in cases where the price was less than or equal to the current intrastate producer's sales of comparable location contract vintage as reported in FPC Form 45 and where the price was the lowest offer obtained as a result of inquiries with at least three qualified sellers.

The proposal also required additional reporting requirements to allow the Commission to monitor activities of emergency purchasers and sellers and to reduce the number of unnecessary emergency transactions.

Basis of this Amendment

The enactment of the NGPA on November 9, 1978, changed much of the statutory authority on which the proposed

emergency transaction exemptions were based. Title I of the Act establishes first sale price controls for interstate and intrastate natural gas. No longer are certificates required for new producer sales to the interstate market. Section 311 of the NGPA authorizes the Commission to allow intrastate pipelines to transport interstate gas without a certificate and allows interstate pipelines to transport gas on behalf of intrastate pipelines and local distribution companies. This authority has been implemented in Part 284 of the regulations. As a result, in large part, producer sales and pipeline transportation of intrastate gas in interstate commerce no longer require exemptions from the certificate requirements of the NGA.

Sales by an intrastate pipeline to interstate pipelines may be authorized pursuant the authority vested in the Commission by the NGPA subject to certain statutory conditions and requirements. Because such transactions are not first sales under Title I of the NGPA, intrastate pipeline sales would continue to be governed under the NGA unless and until the Commission exercises its authority under Section 311(o) of the NGPA.

Inasmuch as the winter heating season is already upon us and in light of the potential for confusion and complication as would result from any attempt to implement for

immediate application the section 311(b) authority, the Commission has determined to bring to conclusion its pending rulemaking and issue a rule which will largely leave the current emergency program in place for this winter. We therefore propose to notice for comment a proposed regulation implementing 311(b) but have suggested an effective date of March 31, 1979 - the conclusion of the current winter heating period.

Thus amendments to the existing regulations relating to emergency sales will terminate Docket No. RM78-7. This rule continues the 60-day emergency sales program, as modified, for this winter heating season and will eventually be replaced by regulations implementing the Commission's authority over sales under section 311(b) of the NGPA. The 60-day emergency program is temporarily implemented to permit a smooth transition from existing regulatory provisions to the regulations to be adopted pursuant to NGPA.

Comments

The comments received in Docket No. RM78-7, relating to producer sales, ceiling prices and pipeline transportation will not be discussed here. These issues have been resolved by the passage of the NGPA. Accordingly, our discussion is focused on those comments and issues which

remain relevant to this rulemaking including the definition of regulation of emergency; purchaser qualifications; methods of insuring complaince with the regulations; the duration of the transactions; price ceilings; reporting requirements; and the effective date of this rule.

The definition of emergency, in the proposal, required pipelines to focus on actual needs of end users rather than on the pipeline's curtailment. Many of the comments opposed such criteria. Because this rule is temporary only, and intended to operate during a transition period, the Commission has determined to adopt a definition of emergency that includes curtailment on a pipeline's system, a sudden unanticipated loss of supply or a situation where emergency gas is needed to protect life, health or physical property.

Purchaser qualification, in the proposal, allowed only distribution companies or interstate pipelines to purchase emergency supplies. Several of the commentators felt that qualified purchasers should be expanded to include direct industrials and all persons exempt from the provisions of the Natural Gas Act pursuant to section 1(c). The final rule does not enlarge the category of qualified purchasers. This rule will apply this winter only. The Commission points out, however, that the final rule like the proposal does permit direct assignment of emergency gas to industrial needs.

The methods of insuring compliance with the regulation caused concern among many of the commentators. Many felt that compliance with many of the requirements was beyond the control of each participant and that participants should be responsible only for those conditions which they could control. The Commission's intent behind insuring compliance is limited to guaranteeing that each participant fulfill the requirements applicable to his or her participation. Participants are responsible for the actions of other participants only to the extent explicitly described in the regulation.

The proposed duration of the transactions, which were limited to sixty days with extensions, did not draw significant comments. The Commission will adopt the 60-day limitation with extensions, as proposed.

The price ceilings aroused much concern among producers but no longer apply to them. Intrastate pipelines stated they should be allowed to charge all replacement costs rather than be limited to the weighted average system-wide costs with adjustments.

The reporting requirements were generally accepted. Some commentators stated that the requirements were unreasonably burdensome. Only two reports, however, are required. One is simply a notification with information

which may be briefly stated. The other requires more extensive information which should be readily available. Both requirements are necessary for the Commission to monitor emergency transactions.

Summary of the Emergency Exemptions Made Effective by this Rule

The emergency exemption rule deletes §§ 2.68, 157.22 and 157.29 from the regulations, and applies to emergency sales of gas by "qualified sellers," defined as any intrastate pipeline, interstate pipeline or local distribution company. "Qualified purchasers" are interstate pipelines and local distribution companies. Emergency sales are exempted from the certificate requirements of section 7 of the NGA so long as they meet the requirements of the emergency sale regulations.

Emergency supplies may be purchased only in cases of an emergency as defined in the regulations. Emergency transactions may not last more than 60 consecutive days unless the qualified purchaser has filed a petition requesting waiver for another 60 days and the Commission was not denied the petition. Emergency supplies may be injected into system supply or directly assigned to a pipeline customer. Sales by interstate pipelines shall be made at rates prescribed in their tariffs. Sales by

intrastate pipelines and distribution companies will be rebuttably presumed to be prudent if they do not exceed the maximum lawful price for new gas under § 271.202. Revenues in excess of 1 cent per Mcf must be credited and flowed back except to the extent the revenues (or volumes) have already been taken into account for rate purposes.

The interstate pipeline shall notify the Commission of any deliveries of emergency gas within 48 hours after commencement of the deliveries. They shall also submit reports each period in which emergency gas is delivered which will provide the Commission more extensive information.

Effective Date

The effective date of this rule is December 1, 1978. For the reasons stated with respect to the interim rules under the Natural Gas Policy Act of 1978, and because we are already in the midst of the winter heating season the Commission finds that good cause exists to waive publication of these amendments thirty days prior to their effective date.

III. PUBLIC PROCEDURE

Although the NGPA was not enacted until November 9, 1978, most of its provisions become effective on December 1, 1978. On that date, persons affected by the Act, including a large portion of the natural gas industry not previously regulated by the Federal government, will be subject to a comprehensive and complex new regulatory structure. For reasons set out more fully below, regulations implementing the Act must be effective on December 1, 1978, both for guidance to those regulated and to insure compliance with the new law.

When it became apparent that the period between final enactment of the law and its effective date would not provide sufficient time for the normal rulemaking procedures, the Commission established the following schedule and procedures.

The Commission has been meeting in public session since November 1, 1978, in order to discuss regulations drafted by the staff to implement the NGPA. Prior to the first meeting, the Commission made copies of the various proposals under consideration available to the public. As successive drafts were completed, these too were released prior to Commission discussion. During all of this period, certain members of the Commission staff were publicly designated as contact persons to answer legal and technical questions concerning the implementation of the Act.

The Commission intends to promulgate interim regulations on November 27, 1978. The interim regulations will be effective on December 1. A 60-day comment period will be afforded with respect to the interim regulations and public hearings will be held. The interim regulations will, after the 60-day period and after all views received since November 1, 1978, have been considered, be modified to the extent such comments and the Commission's experience under the interim regulations indicate that modification is appropriate.

The proposal published today provides for a comment period ending on November 20. The Commission is aware that in view of the significance and complexity of these regulations, comments will be extensive. To the extent possible, comments received before November 20 will be reviewed and appropriate changes incorporated into the interim regulations. As stated above, all comments will be retained and considered together with the additional comments received during the 60-day period afforded for comments on the interim regulations. The Commission believes that to the extent practicable, the procedures being followed with respect to these regulations are those best designed to insure maximum public participation prior to the time when the interim regulations must be effective.

In establishing this notice and comment procedure, the Commission has considered a number of factors. Most important, as stated above, is the fact that most of the Act's provisions become effective on December 1, 1978, including provisions establishing maximum lawful prices applicable to first sales of natural gas delivered after November 30, 1978. Some of the prices which may be charged for natural gas deliveries under the Act are established by reference to existing prices. For other categories, pricing determinations must be made by State or Federal agencies with regulatory authority over the production of natural gas. Unless the interim regulations are available on December 1, 1978, members of the public whose sales are governed by provisions of the Act will not be able to ascertain the applicable maximum lawful price governing their sales of natural gas. Indeed, some sellers and transporters of natural gas could unknowingly be in technical violation of the law. Purchasers may be uncertain whether prices requested exceed the prices permitted under the law. Similarly, agencies which must make determinations with respect to eligibility for prices established by the Act must be made aware of Commission requirements applicable to these determinations, including the manner in which the Commission will review such determinations.

After consideration of the problems associated with any delay in promulgating implementing regulations, the Commission has reached the conclusion that because the regulations must be effective by December 1, 1978 good cause exists to limit as described above notice and public procedure on this proposal. Full notice and public procedure on the proposal at this time, which as a practical matter would result in a delay of the effective date of the regulations beyond the effective date of the NGPA, are impractical and contrary to the public interest. It should be emphasized that all of the procedures described above will provide the fullest possible opportunity for public participation during the entire process leading to the promulgation of final regulations.

IV. WRITTEN COMMENTS

Interested persons are invited to submit written comments on the proposed regulations to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N. E., Washington, D. C. 20426. Comments should reference Docket No. RM79-3 on the outside of the envelope and on all documents submitted to the Commission. In view of the short comment period available on these proposed regulations, and in order that the Commission be able to take into account as many comments as possible, the Commission requests that persons submitting comments assist in three ways. First, persons should identify specifically the section or subpart they are addressing. Second, comments should clearly state whether they involve technical, policy or legal matters. Finally, where comments urge a different approach from one presented, specific alternative language should be proposed to the extent practicable.

Fifteen (15) copies should be submitted. To the extent possible, all comments and related information received by the Commission by November 20, 1978, will be considered prior to the promulgation of interim regulations on November 27, 1978. All comments will be retained and considered prior to the promulgation of final regulations.

(Natural Gas Act, as amended, 15 U.S.C. 717 et seq., Energy Supply and Environmental Coordination Act, 15 U.S.C. 791 et seq., Federal Energy Administration Act, 15 U.S.C. 761 et seq., Natural Gas Policy Act of 1978, P.L. _____, Department of Energy Organization Act, P.L. 95-91, E.O. 12009, 42 F.R. 46267)

In consideration of the foregoing, it is proposed to amend Chapter I of Title 18, Code of Federal Regulations, as set forth below.

By the Commission.
(S E A L)

Kenneth F. Plumb,
Secretary.

THIS IS CERTIFIED TO BE A TRUE COPY OF THE ORIGINAL

Kenneth F. Plumb

PART 2 - GENERAL POLICY AND INTERPRETATIONS

1. Part 2 is amended by deleting § 2.68 in its entirety.

PART 157 - APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

2. Part 157 is amended by deleting §§ 157.22 and 157.29 in their entirety and by adding new Subparts C (§§ 157.45 through 157.52) and D (§ 157.53), to read as follows:

SUBPART C -- EXEMPTION OF EMERGENCY SALE ARRANGEMENTS FOR NATURAL GAS FROM CERTIFICATE REQUIREMENTS

Sec.
157.45 Purpose.
157.46 Definitions.
157.47 Exemptions from certificate requirements.
157.48 Terms and conditions of emergency transactions.
157.49 Price ceilings for emergency transactions.
157.50 Treatment of revenues from assigned volumes.
157.51 Reporting requirements for emergency transactions.
157.52 Waiver of requirements for emergency transactions.

§ 157.45 Purpose.

(a) The purpose of this subpart is to prescribe the conditions under which certain emergency transactions involving the construction and operation of facilities or the sale or transportation of natural gas in interstate commerce are exempt from the requirements of section 7 of the Natural Gas Act. Requirements relating to certain arrangements for the transportation of natural gas, including transportation in emergency situations, are set forth in

Part 284 of this chapter. Requirements relating to certain arrangements for the transportation of emergency natural gas by interstate pipelines on behalf of another interstate pipeline are set forth in this subpart.

(b) It shall be the policy of the Commission to monitor emergency natural gas transactions to the extent necessary to assure compliance with the requirements of tnis subpart.

§157.46 Definitions.

For purposes of this subpart:

(a) "Emergency" means:

(1) a situation where the gas supply either available or expected to be available would require the interstate pipeline company or distribution company to impose curtailment on its system;

(2) a sudden unanticipated loss of natural gas supply; or

(3) a situation in which the pipeline purchaser, in good faith, determines that immediate action is required or is reasonably anticipatyed to be required for protection of life or health or for maintenance of physical property.

(b) "Qualified seller" means any intrastate pipeline, interstate pipeline, or distribution company.

(c) "Qualified purchaser" means a distribution company or interstate pipeline.

(d) "Interstate pipeline" means any natural gas company as defined in section 2(6) of the Natural Gas Act which is engaged in the transportation by pipeline of natural gas.

(e) "Distribution company" means any person (or governmental entity) who receives natural gas for local distribution and resale to natural gas users.

(f) "Intrastate pipeline" means any person (other than an interstate pipeline) engaged in the transportation by pipeline of natural gas.

(g) "Emergency natural gas" means natural gas sold or transported to alleviate an emergency in accordance with this subpart.

§ 157.47 Exemptions from certificate requirements.

(a) Any qualified seller or other person engaged in the sale of emergency natural gas, or in the construction and operation of facilities for the sale of emergency natural gas, is exempt from the requirements of section 7 of the Natural Gas Act, to the extent that (1) the sale of emergency natural gas or the construction or operation of facilities is necessary to alleviate an emergency and (2) the sale, construction or operation is conducted in accordance with the provisions of this subpart.

(b) Any interstate pipeline transportating emergency natural gas on behalf of any other interstate pipeline is exempt from any other requirement of section 7 of the Natural Gas Act if such transportation is in accordance with this subpart.

(c) Participation in any transaction described in paragraph (a) of this section shall not subject any person to the jurisdiction of the Commission under the Natural Gas Act except to the extent provided in this subpart.

§ 157.48 Terms and conditions of emergency transactions.

(a) General conditions.

(1) Qualified purchasers may purchase emergency natural gas in accordance with the provisions of this subpart but should make every reasonable attempt to conduct their operations in such a manner as to minimize or, if possible, to avoid continuing reliance upon emergency natural gas supplies.

(2) In applying the definition of emergency, flexibility will be accorded interstate pipelines and distribution companies to account for colder than normal winter weather and to accommodate operations under effective curtailment plans. A reasonable relationship should exist between volumes purchased under this subpart and the volumes which are anticipated to be needed during the emergency.

(3) When a distribution company purchases, or a direct sale customer or distribution company requests assignment of emergency natural gas, a responsible official of the distribution company or direct sale customer shall advise the interstate pipeline which will make the deliveries, before commencement of the deliveries, that the emergency exists or is imminent and shall provide the interstate pipeline with such information as may be required within sufficient time to enable the interstate pipeline to make the reports required in §157.51 of this subpart.

(4) After notice and opportunity for a hearing, the Commission may take appropriate action to insure compliance with this subpart. Upon a determination by the Commission that a person has engaged in emergency transactions and has failed to comply with the conditions of this subpart, the Commission may, in addition to any other remedies, declare the person ineligible to engage in further emergency natural gas transactions without prior Commission approval.

(b) Duration.

Emergency transporation under this subpart shall be limited to a period of not more than 60 consecutive calendar days, except in the following cases:

(1) In the event that the Commission determines that there is a natural gas emergency which is national or regional in scope, emergency transactions may continue for such period as the Commission may by order prescribe.

(2) Emergency transactions under this subpart may be continued for an additional period of not more than 60 consecutive days where (i) fifteen days prior to the end of the initial 60-day period, the qualified purchaser files a petition requesting a waiver so as to permit one additional 60 day period of exemptions describing fully the continued emergency, and (ii) the Commission does not, within the 15-day period, by order, prohibit continuation of the emergency transactions for such additional period.

(c) Cost of facilities.

No cost associated with facilities installed by interstate pipelines in connection with emergency transactions shall be included in the interstate pipeline's jurisdictional rates unless a certificate of public convenience and necessity has been issued authorizing such facilities.

(d) System supply and direct assignment of supplies.

(1) Interstate pipelines may purchase emergency natural gas for general system supply for an emergency.

(2)(i) Interstate pipelines may purchase emergency natural gas and directly assign volumes and costs associated with such gas, including transportation costs, to

its direct sale and distribution company customers faced with an emergency, if the customer or company complies with paragraph (a)(3) of this section.

(ii) An interstate pipeline, at its discretion, may choose to establish a separate account to cover the cost of all assigned emergency purchases and allocate costs in that account to the individual assignment customers on a weighted average cost basis. If an interstate pipeline purchases emergency gas supplies for direct assignment in quantities greater than related emergency requirements, then the balance may be used for general system supply. It is expected that such excess emergency natural gas volumes will be small and that pipelines will make every reasonable attempt to balance assignments with supplies. Interstate pipelines may also act as brokers or agents without compensation in acquiring and transporting emergency natural gas for distribution companies faced with an emergency and shall cooperate with these companies in arranging for such acquisition and transportation.

§ 157.49 Price ceilings for emergency transactions.

(a)(1) Rates for transportation by an interstate pipeline under this subpart shall be computed in accordance with subparagraph (2) of this paragraph. Sales by interstate

pipelines shall be made at rates prescribed in their tariffs, except that if the natural gas is purchased for assignment to particular direct customers or distribution companies, the natural gas will be priced to recover the cost of purchased gas plus transportation costs as provided in subparagraph (2) of this paragraph.

(2)(i) If an interstate pipeline has on file with the Commission a transportation rate schedule applicable to transportation arrangements under Subpart A of Part 284, the interstate pipeline shall use the rates contained in that schedule.

(ii) If an interstate pipeline does not have on file with the Commission a transportation rate schedule applicable to transportation arrangements under Subpart A of Part 284, the interstate pipeline may elect either:

(A) to base its rates upon the methodology and cost used in designing rates to recover the transmission and related storage costs included in its then effective sales rate schedules; or

(B) to use the rates contained in a transportation rate schedule on file with the Commission which the interstate pipeline determines covers service comparable to transportation service under Subpart A of Part 284.

(b) The Commission will examine the prudence of emergency purchases by interstate pipelines, except that a rebuttable presumption of prudence shall be accorded to the extent that the rates paid do not exceed the maximum lawful price specified in § 271.202 of this chapter.

§ 157.50 Treatment of revenues from assigned volumes.

An interstate pipeline purchasing emergency natural gas for assignment to particular direct customers or distribution companies shall credit the revenues attributable to the sale of the emergency gas less the cost of the purchased gas plus an allowance of 1.0 cent per Mcf for out-of-pocket costs except where the pipeline can show that:

(a) its currently effective rates are based upon billing determinants which include a representative level of sales associated with assigned volumes; or,

(b) its currently effective rates reflect a representative level of revenues associated with sales of assigned volumes which have been credited to the cost of service.

§ 157.51 Reporting requirements for emergency transactions.

(a) Within 48 hours after commencement of deliveries of emergency natural gas, the interstate pipeline shall notify the Commission by telegram of the sale, stating the specific

nature and duration of the emergency; the amount of emergency gency natural gas to be purchased or transported on a daily basis, the name of the seller, transporter, and any person to whom the emergency natural gas is to be assigned; and the price.

(b) For any period during which an interstate pipeline engages in any transaction for emergency natural gas, the interstate pipeline shall file with the Commission, within thirty days after the end of the calendar quarter, whether the transactions are completed or in progress, a sworn statement and four conformed copies thereof, which shall include the following information:

(1) identification of each emergency transaction completed or in progress;

(2) the volumes of emergency natural gas delivered during the quarter under each transaction;

(3) the total revenue or other compensation received by each seller for each emergency transaction during the quarter.

(4) the total amount of revenue or other compensation received for each emergency transaction during the quarter;

(5) the charges and the methods by which the pipeline determined compensation for the transportation of assigned emergency gas;

(6) information relied on to determine eligibility for each transaction;

(7) the volumes of emergency natural gas included in system supply for pipeline emergencies;

(8) a statement from a responsible company official attesting that the activities of the interstate pipeline were carried out in accordance with the requirements of this subpart and to the best of his or her knowledge, an emergency did exist or was reasonably anticipated, and a sworn statement from a responsible company official of each purchasing distribution company or each direct sale customer or distribution company which requested the assignment of mergency supplies describing the emergency circumstances as required by § 157.48(a)(3).

§ 157.52 Waiver of requirements for emergency transactions.

The Commission may by order waive the requirements of this subpart in connection with any emergency transaction to the extent required by the public interest.

SUBPART D - EXEMPTION OF NATURAL GAS SERVICE FOR DRILLING, TESTING, OR PURGING FROM CERTIFICATE REQUIREMENTS

§ 157.53 Drilling of gas or oil wells and testing or purging of new natural gas pipeline facilities.

(a) Construction and operation of facilities necessary to render direct natural gas service for use in the drilling of gas or oil wells or for the use in the testing and purging of new natural gas pipeline facilities are exempted from the certificate requirements of section 7(c) of the Natural Gas Act, when the construction and operation of such facilities are conducted in accordance with paragraph (b) of this section.

(b) Operations undertaken to render direct natural gas service shall be terminated upon the completion of the well or the purging or testing of the pipeline facilities. Persons undertaking any construction or operation of facilities or service under this section shall file an original and two copies of an annual statement, by February 1 of each year, describing their activities hereunder.

3. Chapter I of Title 18 is amended by adding new Subchapters H and I to read as follows:

SUBCHAPTER H - PRODUCER REGULATION UNDER NATURAL GAS POLICY ACT OF 1978

Part

270 - Rules generally applicable to producer regulation.
271 - Ceiling prices.
272 - [Reserved]
273 - Collection authority; refunds.
274 - Determinations by jurisdictional agencies.
275 - Commission determinations and review of jurisdictional agency determinations.
276 - Reports.

PART 270 - RULES GENERALLY APPLICABLE TO PRODUCER REGULATION

Subpart A - General Rules

Sec.

270.101 Application of ceiling prices to first sales of natural gas.
270.102 Definitions.
270.103 Jurisdictional agency.
270.104 Effective date.

§ 270.101 Application of ceiling prices to first sales of natural gas.

(a) Maximum lawful price. It is unlawful for any person to sell natural gas at a first sale price in excess of the highest maximum lawful price applicable to such gas under Part 271.

(b) Effect of maximum lawful price on contract price. If the price established under a contract for the first sale of natural gas does not exceed the applicable maximum lawful

price, then such maximum lawful price does not supersede or nullify the effectiveness of the price established under such contract.

(c) Maximum lawful prices requiring jurisdictional agency determinations. Except to the extent that a seller is authorized to make interim collection under Part 273, the prices specified in the following subparts of part 271 apply to a first sale of natural gas only if the jurisdictional agency determines, in accordance with Parts 274 and 275, that such gas qualifies under such subpart:

(1) Subpart B (relating to new natural gas and certain OCS gas)

(2) Subpart C (relating to new onshore production wells)

(3) Subpart G (relating to high cost natural gas) and

(4) Subpart H (relating to stripper well natural gas)

(d) Other categories of natural gas.

(1) The maximum lawful prices under Subpart D of Part 271 (relating to committed or dedicated gas) apply to a first sale to the extent provided in such subpart, if the applicable filing requirements under §§ 154.92 and 154.94 are met.

(2) The maximum lawful prices under Subparts E, F, and I of Part 271 (relating to existing intrastate contracts, intrastate rollover contracts, and certain other categories of natural gas) apply to first sales of natural gas without requirement of a prior determination by the Commission or a jurisdictional agency.

(e) Refund obligations. Any collection of a first sale price under this subchapter is subject to any refund obligation which may be applicable under Part 273.

§ 270.102 Definitions.

(a) NGPA definitions. Terms defined in the NGPA shall have the same meaning for purposes of this subchapter as they have under the NGPA, unless further defined in this subchapter.

(b) Subchapter H definitions. For purposes of this subchapter:

(1) "NGPA" means the Natural Gas Policy Act of 1978.

(2) "British thermal unit" or "Btu" means the quantity of heat required to raise the temperature of one pound avoirdupois of pure water from 58.5 degrees to 59.5 degrees Fahrenheit. For the purposes of this subchapter, the standard

for measuring the heat value of natural gas is Btu's per cubic foot saturated with water at 60 degrees Fahrenheit and 14.73 psia.

(3) "MMBtu" means million British thermal units.

(4) "Production in commercial quantities" means production of natural gas from a well or reservoir and either sold and delivered to one other than the operator, or retained by the operator or any owner of the production at severance for beneficial economic use, except that natural gas used for the testing of such wells or for other field uses which are production related shall not be considered produced in commercial quantities. Sale and delivery or production for the operator's or other owner's beneficial economic use may be evidenced by any of the following:

(i) payment of severance taxes;

(ii) payment of royalties;

(iii) production reports filed with a jurisdictional agency;

(iv) a sales contract together with verification by a purchaser that gas had been delivered and paid for under the contract; or

(v) any other substantial evidence that production has been sold and delivered or retained for the beneficial use of the operator or other owner of production at severance.

(5) "Crude oil" means a mixture of hydrocarbons that exists in the liquid phase in natural underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities.

(6) "Surface location" means the point on the earth's surface from which drilling of a well is commenced, except that in the case of a well drilled in permanent surface waters, surface location means the point of penetration of the earth's surface immediately below the water's surface, beneath a floating or fixed drilling structure.

(7) "OCS" means the Outer Continental Shelf as defined in Section 2(35) of the NGPA.

(8) "Existing intrastate contract" means any intrastate contract for the first sale of natural gas in existence on November 8, 1978. A contract is in existence on the date of enactment if on November 8, 1978, there is a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty.

(9) "Successor to an existing contract" means any intrastate contract, other than an intrastate rollover contract, entered into on or after November 9, 1978, for the first sale of natural gas which was previously subject to an existing contract, whether or not there is an identity of parties or terms with those of such existing contract. The term "successor to an existing contract" includes a contract the primary term of which has not expired but which has been assigned to a different party in interest. For the purposes of this subchapter "existing intrastate contract" includes "successors to an existing contract" and "successors to an existing intrastate contract".

(10) "Intrastate contract" means any contract applicable to the sale of natural gas which was not committed or dedicated to interstate commerce on November 8, 1978.

(11) "Intrastate rollover contract" means any contract, entered into on or after November 9, 1978, for the first sale of natural gas that was previously subject to an existing intrastate contract which expired at the end of a fixed term (not including any extension thereof taking effect on or after November 9, 1978), specified by the provisions of such existing contract, as such contract was

in effect on November 9, 1978, whether or not there is an identity of parties or terms with those of such existing contract.

§ 270.103 Jurisdictional agency.

(a) Definition. Except as provided in paragraph (b), "jurisdictional agency" means:

(1) With respect to a well on the OCS, the following offices of, the United States Geological Survey:

Area Oil & Gas Supervisor
Suite 336
3301 N. Causeway Blvd.
Metairie, LA 70010

Area Oil & Gas Supervisor
Atlantic OCS Operations
1725 K Street, NW, Suite 204
Wash., DC 20244

(2) With respect to a well on lands within the boundaries of a State (including offshore State lands and Federal lands), the agency specified in the following table:

State in which well is located	Jurisdictional Agency for wells on	
	Federal	Other lands
Alabama	Area Oil & Gas Supervisor Suite 204 1725 K St., NW Wash., DC 20244	Oil & Gas Supervisor State Oil & Gas Board, Drawer O University, AL 35486

State in which well is located	Jurisdictional Agency for wells on	
	Federal	Other lands
Alaska	Area Oil & Gas Supervisor P.O. Box 259 800 A Street Suite 109 Anchorage, AK 99510	Oil & Gas Conservation Division Department of Natural Resources 3001 Porcupine Drive Anchorage, AK 99504
Arizona	Area Oil & Gas Supervisor 7211 Federal Building 300 N. Los Angeles St. Los Angeles, CA 90012	Oil & Gas Conservation Commission 1645 W. Jefferson Suite 420 Phoenix, AZ 85007
Arkansas	Area Oil & Gas Supervisor 6136 E. 32nd Place Tulsa, OK 74135	Conservation & Commerce Oil and Gas Commission 314 East Oak El Dorado, AR 71730
California	Area Oil & Gas Supervisor 7211 Federal Building 300 N. Los Angeles St. Los Angeles, CA 90012	Department of Conservation Division of Oil & Gas 1416 Ninth St., Rm 1316 Sacramento, CA 95814
Colorado	Area Oil & Gas Supervisor P.O. Drawer 1857 Federal Building & U.S. Courthouse Richardson Ave. at 5th Street Roswell, NM 88201 AND Area Oil & Gas Supervisor P.O. Box 2859 2002 Federal Building & Post Office Casper, WY 82602	Oil & Gas Conservation Commission 1313 Sherman Street Room 721 Denver, CO 80203

State in which well is located	Jurisdictional Agency for wells on	
	Federal	Other lands
Florida	Area Oil & Gas Supervisor Suite 204 1725 K Street, NW Wash., DC 20244	Administrator of Oil & Gas Bureau of Geology Department of Natural Resources 903 W. Tennessee Street Tallahassee, FL 32304
Georgia	Area Oil & Gas Supervisor Suite 204 1725 K Street, NW Wash., DC 20244	Department of Natural Resources Geologic & Water Resources Division 19 Martin Luther King Drive, SW Atlanta, GA 30334
Idaho	Area Oil & Gas Supervisor 7211 Federal Bldg. 300 North Los Angeles Street Los Angeles, CA 90012	Idaho Public Utilities Commission Statehouse Mail Boise, ID 83720
Illinois	Area Oil & Gas Supervisor Suite 204 1725 K Street, NW Wash., DC 20244	Department of Mines and Minerals Oil and Gas Division 704 Stratton Office Building 400 S. Spring Street Springfield, IL 62706
Indiana	Area Oil & Gas Supervisor Suite 204 1725 K Street, NW Wash., DC 20244	Department of Natural Resources Oil and Gas Division 606 State Office Bldg. 100 N. Senate Avenue Indianapolis, IN 46204

State in which well is located	Jurisdictional Agency for wells on	
	Federal	Other lands
Kansas	Area Oil & Gas Supervisor 6136 East 32nd Place Tulsa, OK 74135	Corporation Commission State Office Building Topeka, KS 66612
Kentucky	Area Oil & Gas Supervisor Suite 204 1725 K Street, NW Wash., DC 20244	Department of Mines and Minerals Oil and Gas Division Box 680 Lexington, KY 40501
Louisiana	Area Oil & Gas Supervisor 6136 East 32nd Place Tulsa, OK 74135	Office of Conservation Box 44275 Baton Rouge, LA 70804
Maryland	Area Oil & Gas Supervisor Suite 204 1725 K Street, NW Wash., DC 20244	Energy and Coastal Zone Administration Department of Natural Resources Tawes State Office Bldg. Annapolis, MD 21404
Michigan	Area Oil & Gas Supervisor Suite 204 1725 K Street, NW Wash., DC 20244	Department of Natural Resources Box 30028 Lansing, MI 48909
Mississippi	Area Oil & Gas Supervisor Suite 204 1725 K Street, NW Wash., DC 20244	State Oil and Gas Board Box 1332 Jackson, MS 39205
Montana	Area Oil & Gas Supervisor P.O. Box 2859 2002 Federal Bldg. & Post Office Casper, WY 82602	Oil and Gas Conservation Division Department of Natural Resources and Conservation 15 Poly Drive Billings, MT 59101

State in which well is located	Jurisdictional Agency for wells on Federal	Other lands
Nebraska	Area Oil & Gas Supervisor P.O. Box 2859 2002 Federal Bldg. & Post Office Casper, WY 82602	Oil and Gas Conservation Commission Box 399 Sidney, NE 69162
Nevada	Area Oil & Gas Supervisor 7211 Federal Bldg. 300 North Los Angeles Street Los Angeles, CA 90012	Department of Conservation and Natural Division of Mineral Resources Capitol Complex, 201 S. Fall Street Carson City, NV 89710
New Mexico	Area Oil & Gas Supervisor P.O. Drawer 1857 Federal Bldg. & U.S. Courthouse Richardson Avenue at 5th Street Roswell, NM 88201	Department of Energy and Minerals Oil Conservation Div. Box 2088 Santa Fe, NM 87501
New York	Area Oil & Gas Supervisor Suite 204 1725 K Street, NW Wash., DC 20244	Department of Environmental Conservation Bureau of Mineral Resources 50 Wolf Road Albany, NY 12233
North Carolina	Area Oil & Gas Supervisor Suite 204 1725 K Street, NW Wash., DC 20244	Department of Natural Resources and Community Development 512 N. Salisbury Street Raleigh, NC 27611

State in which well is located	Jurisdictional Agency for wells on Federal	Other lands
North Dakota	Area Oil & Gas Supervisor P.O. Box 2859 2002 Federal Bldg. & Post Office Casper, WY 82602	Geological Survey University Station Grand Forks, ND 58202
Ohio	Area Oil & Gas Supervisor Suite 204 1725 K Street, NW Wash., DC 20244	Ohio Department of Natural Resources 1932 Belcher Drive Fountain Square Columbus, OH 43224
Oklahoma	Area Oil & Gas Supervisor 6136 East 32nd Place Tulsa, OK 74135	Corporation Commission Jim Thorpe Building Oklahoma City, OK 73105
Oregon	Area Oil & Gas Supervisor 7211 Federal Bldg. 300 North Los Angeles Street Los Angeles, CA 90012	Department of Geology & Mineral Industries 1069 State Office Bldg. Portland, OR 97201
Pennsylvania	Area Oil & Gas Supervisor Suite 204 1725 K Street, NW Wash., DC 20244	Department of Environmental Resources Division of Oil & Gas 1205 Kossman Bldg. 100 Forbes Avenue Pittsburgh, PA 15222
South Carolina	Area Oil & Gas Supervisor Suite 204 1725 K Street, NW Wash., DC 20244	South Carolina Public Service Commission P.O. Drawer 11649 Columbia, SC 29211

State in which well is located	Jurisdictional Agency for wells on Federal	Other lands
South Dakota	Area Oil & Gas Supervisor P.O. Box 2859 2002 Federal Bldg. & Post Office Casper, WY 82602	Geological Survey Science Center, University Vermillion, SD 57069
Tennessee	Area Oil & Gas Supervisor Suite 204 1725 K Street, NW Wash., DC 20244	Tennessee Department of Conservation G-5 State Office Bldg. Nashville, TN 37219
Texas	Area Oil & Gas Supervisor 6136 East 32nd Place Tulsa, OK 74135 AND Area Oil & Gas Supervisor P.O. Drawer 1857 Federal Bldg. & U.S. Courthouse Richardson Avenue at 5th Street Roswell, NM 88201	Railroad Commission Drawer 12967 Austin, TX 78711
Utah	Area Oil & Gas Supervisor P.O. Drawer 1857 Federal Bldg. & U.S. Courthouse Richardson Avenue at 5th Street Roswell, NM 88201 AND	Division of Oil, Gas and Mining Utah Department of Natural Resources 1588 West North Temple Salt Lake City, UT 84116

State in which well is located	Jurisdictional Agency for wells on Federal	Other lands
Utah (Cont.)	Area Oil & Gas Supervisor P.O. Box 2859 2002 Federal Bldg. & Post Office Casper, WY 82602	
Virginia	Area Oil & Gas Supervisor Suite 204 1725 K Street, NW Wash., DC 20244	Secretary of Commerce and Resources P.O. Box 1475 Richmond, VA 23212
Washington	Area Oil & Gas Supervisor 7211 Federal Bldg. 300 North Los Angeles Street Los Angeles, CA 90012	Oil and Gas Supervisor Department of Natural Resources Olympia, WA 98504
West Virginia	Area Oil & Gas Supervisor Suite 204 1725 K Street, NW Wash., DC 20244	Oil and Gas Division Department of Mines State Capitol Charleston, WV 25305
Wyoming	Area Oil & Gas Supervisor P.O. Box 2859 2002 Federal Bldg. & Post Office Casper, WY 82602	Oil and Gas Conservation Commission Box 2640 Casper, WY 82602

(b) Waiver. In the case of any determination to which a waiver under Subpart C of Part 274 is applicable, "jurisdictional agency" means the Commission.

§ 270.104 Effective date.

The provisions of this subchapter apply to deliveries of natural gas on or after December 1, 1978.

SUBPART B - SPECIAL RULES

Sec.
270.201 Firat sales of natural gas subject to differing maximum lawful prices.
270.202 Resales.
270.203 First sales of natural gas attributable to pipeline or distributor production.
270.204 Btu content per unit volume of natural gas.

§ 270.201 First sale of natural gas subject to differing maximum lawful prices.

In the case of a first sale of natural gas which is produced from wells, properties, or reservoirs which are subject to differing applicable maximum lawful prices, and which is sold at a single price, the maximum lawful price for such sale shall be the average of the maximum lawful price applicable to each of the wells, properties, or reservoirs (as the case may be) from which such gas is produced, weighted according to the respective volumes of gas from each such well, property, or reservoir.

§ 270.202 Resales.

(a) General rule. Unless a higher maximum lawful price is applicable under paragraph (b), the maximum lawful prices under this subchapter apply to first sales which are resales in the same manner as such maximum lawful prices apply to other first sales.

(b) Ceiling price based on prior sale. A reseller may collect a maximum lawful price for a first sale which is a resale, equal to:

(1) in the case of gas which when sold to the reseller was subject to a single maximum lawful price, the maximum lawful price applicable to the gas sold to the reseller, or

(2) in the case of gas which when sold to the reseller was subject to more than one maximum lawful price, the average of the maximum lawful price applicable to the gas sold to the reseller (weighted according to the volumes of the purchased gas that are subject to the different maximum lawful prices).

(c) Special rule for interim collections.

(1) If the price charged and collected for a sale to a reseller is charged and collected under the authority of Part 273 (relating to interim collection), then:

(i) the price authorized to be collected by Part 273 shall be treated as a maximum lawful price for purposes of paragraph (b), and

(ii) the price charged and collected by the reseller shall be subject to the same refund conditions as are imposed

on the person who sold the natural gas to the reseller under Part 273.

(2) The reseller is not obligated by Part 273 to make any filings with the Commission if the person who sold the natural gas to the reseller has made the filings required by Part 273.

(d) Allowances. A resale of natural gas shall not be considered to exceed any maximum lawful price established in paragraph (a) or (b) of this section if it exceeds such price to the extent necessary to recover State severance taxes or production-related costs approved by the Commission pursuant to Subpart K of Part 271.

(e) Adjustments. Pursuant to section 502(c) of the NGPA, any person may apply to the Commission for an adjustment of the maximum lawful price in paragraph (a) or (b) of this section on the grounds that such price results in special hardship, inequity or an unfair distribution of burdens.

(f) Definition. For purposes of this section, a "resale" of natural gas is the sale of natural gas, all or a portion of which was both purchased and resold in transactions which are first sales as defined in the NGPA.

A "reseller" of natural gas is the seller in a resale of such gas.

(g) Record retention. Resellers shall maintain such records as are sufficient to demonstrate that prices charged in connection with resales of natural gas do not exceed the maximum lawful prices prescribed in this section. Such records shall include:

(1) a record of each resale by the reseller, including the identity of the purchaser and the volume and price of such sale;

(2) a record of all volumes purchased by the reseller for resale and the prices paid for such volumes;

(3) a copy of each contract covering the purchase and sale of natural gas resold; and

(4) a record of the method by which the reseller computes the maximum lawful price applicable to each resale and the documents relied on to make the computations.

(h) Period for keeping records. Each reseller required to maintain records under this section shall maintain and preserve such records for at least three years after the date of the relevant transaction or event.

§ 270.203 First sales of natural gas attributable to pipeline or distributor production.

(a) Attribution rule. For purposes of applying section 2(21)(B) of the NGPA, a sale by a pipeline or distributor shall not be considered to be attributable to volumes of natural gas produced by such pipeline or distributor (or any affiliate thereof), if:

(1) such pipeline or distributor is subject to rate regulation by the Commission or by a state agency; and

(2) the Commission or state agency, in regulating the rates of such pipeline or distributor, either:

(i) regulates the costs of such volumes of gas on a cost-of-service basis, or

(ii) sets the price at which such pipeline or distributor sells such volumes by reference to the average cost of gas acquired by such pipeline or distributor, and allows the costs of such volumes of gas as purchased gas cost, or operating expenses, only to the extent that such costs do not exceed the applicable maximum lawful price under the NGPA.

(b) Definitions. For purposes of this section:

(1) "Pipeline or distributor" means an interstate pipeline, an intrastate pipeline, a local distribution company, or an affiliate of any of the above.

(2) "State agency" means a State, a political subdivision of a State, or an agency or instrumentality of either.

§ 270.204 Btu content per unit volume of natural gas.

For purposes of determining the number of Btu's per unit volume of natural gas, the Btu content of one cubic foot of natural gas is the number of Btu's produced by the combustion, at constant pressure, of the amount of gas which would occupy a volume of 1.0 cubic foot at a temperature of 60 degrees Fahrenheit, saturated with water vapor and under a pressure equivalent to that of 30.00 inches of mercury at 32 degrees Fahrenheit, and under standard gravitational force (980.665 centimeters per second squared) with air of the same temperature and pressure as the gas, when the products of combustion are cooled to the initial temperature of the gas and air and when the water formed by combustion is condensed to the liquid state.

PART 271 - CEILING PRICES

SUBPART A - SUMMARY TABLES AND CALCULATIONS

Sec.
271.101 Ceiling prices for certain categories of natural gas.
271.102 Calculation of inflation adjustment for certain maximum lawful prices.

§ 271.101 Ceiling prices for certain categories of natural gas.

(a) Subparts B through J of this part specify maximum lawful prices applicable to first sales of natural gas. Maximum lawful prices for Subparts B, C, G, H, and I, and for certain categories of natural gas to which Subparts D and F apply, are determined in accordance with price tables which appear in those subparts and which are summarized in the following tables:

Table I - Certain gas not committed or dedicated to interstate commerce on November 8, 1978.

(Prices in $/MMBtu)

Subpart A of Part 271	NGPA Section	Category of Gas	Month of Delivery: December 1978	Month of Delivery: January 1979
B	102	New Natural Gas, Certain OCS Gas	$2.078	$2.096
C	103	New Onshore Production Wells	1.969	1.980
G	107	High Cost (below 15,000 only)	2.078	2.096
H	108	Stripper	2.224	2.243
I	109	Not Otherwise Covered	1.630	1.639

Table II - Certain gas committed or dedicated to interstate commerce on November 8, 1978.

(Prices in $/MMBtu)

Subpart of Part 271	NGPA Section	Category of Natural Gas		Price for Month of Delivery: December 1978	Price for Month of Delivery: January 1979
D	104,				
D	109(a)(2)	Post-1974 gas	All producers	1.630	1.639
D	104	1973-1974 biennium gas	Small producer	1.379	1.387
			Large producer	1.058	1.064
D	106(a)	Rollover contract gas	Small producer	0.702	0.715
			Large producer	0.603	0.607
		Replacement contract gas or recompletion gas	Small producer	0.771	0.775
			Large producer	0.593	0.596
		Flowing gas	Small producer	0.393	0.395
			Large producer	0.332	0.334
D	104	Permian Basin gas	Small producer	0.462	0.465
			Large producer	0.405	0.407
		Rocky Mountain gas	Small producer	0.462	0.465
			Large producer	0.393	0.395
		Appalachian Basin gas (Large Producers only)	North subarea contracts dated prior to 10-8-69	0.344	0.346
			North subarea contracts dated after 10-7-69	0.368	0.370
			South subarea contracts dated after 10-7-69	0.344	0.346

(b) Caveat. The above tables are summaries of applicable maximum lawful prices and may not be relied upon to establish qualification for a particular price. The seller should examine the other provisions of this subchapter in order to ascertain whether the natural gas in question qualifies for the price appearing in the table or some other price.

§ 271.102 Calculation of inflation adjustment for certain maximum lawful prices.

(a) Monthly equivalent of the annual inflation adjustment factor. Maximum lawful prices for certain categories of natural gas to which Subparts D, E, and F apply are determined in accordance with the calculation method described in paragraph (b).

(b) Calculation.

(1) In order to determine the price for a month (after November, 1978) in which natural gas is delivered under a first sale, a calculation is made in the following manner:

(i) Determine the base price applicable in the base month.

(ii) For the month following the base month, multiply the inflation adjustment for such following month by the base price.

(iii) For each succeeding month (through the month of delivery), multiply the inflation adjustment for such succeeding month by the price calculated under this paragraph for the prior month.

(2) The price determined for each month under subparagraph (1) shall be rounded to the nearest mill (rounding to the next highest mill only that fraction which is one-half a mill or greater).

(c) Monthly equivalent of annual inflation adjustment factor. The following table contains the monthly equivalent of the annual inflation adjustment factor for each month beginning with May, 1977, and ending with January, 1979:

Table III - Monthly equivalent of the annual inflation adjustment factor.

Month of Delivery	Factor by which price in preceeding month is multiplied
1977	
May	1.00636
June	1.00636
July	1.00431
August	1.00431
September	1.00431
October	1.00463
November	1.00463
December	1.00463
1978	
January	1.00597
February	1.00597
March	1.00597
April	1.00889
May	1.00889
June	1.00889
July	1.00581
August	1.00581
September	1.00581
October	1.00581
November	1.00581
December	1.00581
1979	
January	1.00581

(d) Definitions. For purposes of this section,

(1) "base price" means:

(i) for maximum lawful prices to be calculated under § 271.402(c)(1) (relating to certain committed or dedicated gas), the just and reasonable rate for April 20, 1977;

(ii) for maximum lawful prices to be calculated under § 271.502(b)(2) (relating to certain existing intrastate contracts), the contract price per MMBtu on November 9, 1978;

(iii) for maximum lawful prices to be calculated under § 271.602(a)(1) (relating to certain rollover contracts), the contract price per MMBtu under the expired contract for the month in which the effective date of the rollover contract occurs.

(2) "base month" means:

(i) April, 1977, for maximum lawful prices under § 271.402(c)(1),

(ii) November, 1978, for maximum lawful prices under § 271.502(b)(2), and

(iii) the month in which the effective date of the rollover contract occurs, for maximum lawful prices under § 271.602(a)(1).

(3) "inflation adjustment" means the monthly equivalent of the annual inflation adjustment factor.

SUBPART B - NEW NATURAL GAS AND CERTAIN NATURAL GAS PRODUCED FROM THE OUTER CONTINENTAL SHELF

Sec.
271.201 Applicability.
271.202 Maximum lawful price.
271.203 Definitions.
271.204 Special rules.

§ 271.201 Applicability.

This subpart implements section 102 of the NGPA and applies to the first sale of:

(a) new natural gas; or

(b) natural gas produced from a new OCS reservoir on an old OCS lease.

§ 271.202 Maximum lawful price.

The maximum lawful price, per MMBtu, for natural gas to which this subpart applies shall be the amount determined in accordance with the following table:

If delivery occurred in the calendar month of:	The maximum lawful price is:
December 1978	$ 2.078
January 1979	$ 2.096

§ 271.203 Definitions.

For purposes of this subpart:

(a) "New natural gas" means natural gas which a jurisdictional agency has determined, in accordance with Parts 274 and 275, to be new natural gas (as defined in section 102(c) of the NGPA).

(b) "Natural gas from a new OCS reservoir on an old OCS lease" means natural gas which the jurisdictional agency determines, in accordance with Parts 274 and 275 and under section 102(d)(2), (3), (4) and (5) of the NGPA, to be natural gas produced from a reservoir which is on an old lease on the OCS and which was not discovered before July 27, 1976.

(c) "OCS lease" means a lease of submerged acreage which is entered into with the Secretary of the Interior under the Outer Continental Shelf Lands Act, as amended, (43 U.S.C. 1331, et seq.).

(d) "New OCS lease" means an OCS lease entered into by the Secretary of the Interior on or after April 20, 1977.

(e) "Old OCS lease" means an OCS lease other than a new OCS lease.

§ 271.204 Special rules.

(a) Special rule for vertical measurement of 1,000 feet between completion locations. For the purpose of determining under section 102(c)(1)(B)(ii) of the NGPA the vertical distance between the deepest marker well completion location and a new well completion location, for which a determination is sought, measurement shall be the true vertical depth from the highest perforation point of such marker well completion location to the highest perforation point in the new well completion location. In the case of any well which is an open-hole completion, measurement shall be from the highest elevation point of the reservoir being produced.

(b) Capable of producing in paying quantities. For purposes of section 102(d)(2)(B)(i) and (ii) of the NGPA, a reservoir is capable of producing in paying quantities if a well completed therein can reasonably be expected to produce natural gas in quantities sufficient to yield revenues in excess of operating costs.

(c) Commercially producible. For purposes of section 102(d)(2)(B)(iii) of the NGPA, a reservoir is commercially producible if a well completed therein can reasonably be expected to produce natural gas in commercial quantities as defined in § 270.102(b)(4).

(d) Suitable facilities. For purposes of section 102(c)(1)(C)(iii)(II) of the NGPA, suitable facilities for the production and delivery of natural gas described in section 102(c)(1)(C)(iii)(I) of the NGPA were in existence on April 20, 1977, if on that date facilities for the production and delivery of natural gas to a pipeline were:

(1) installed; or

(2) substantially installed and additional facilities necessary for such production and delivery were readily available.

SUBPART C - NEW ONSHORE PRODUCTION WELLS

Sec.
271.301 Applicability.
271.302 Maximum lawful price.
271.303 Definition of new, onshore production well.
271.304 Special rule.

§ 271.301 Applicability.

This subpart implements section 103 of the NGPA and applies to the first sale of natural gas produced from a new, onshore production well.

§ 271.302 Maximum lawful price.

The maximum lawful price, per MMBtu, for natural gas to which this subpart applies shall be the amount determined in accordance with the following table:

If delivery occurred in the calendar month of:	The maximum lawful price is:
December 1978	$ 1.969
January 1979	$ 1.980

§ 271.303 Definition of new, onshore production well.

For purposes of this subpart, the term "new, onshore production well" means a well which a jurisdictional agency has determined, in accordance with Parts 274 and 275, to be a new onshore production well (as defined in section 103(c) of the NGPA).

§ 271.304 Special rule.

(a) Applicability. This section applies to jurisditional agency determinations with respect to a new well drilled within an existing proration unit.

(b) Waivers. If a jurisdictional agency alters or grants a waiver of any applicable well-spacing requirements prior to the commencement of surface drilling of the well for which a determination is sought, the new well shall be deemed to satisfy any applicable Federal or State well-spacing requirements as required by section 103(c)(2) of the NGPA.

(c) Wells spudded after November 30, 1978. In order for natural gas from a well to qualify for the maximum lawful price under this subpart, the jurisdictional agency must find, prior to commencement of drilling, that the new well is necessary to effectively and efficiently drain a portion of the reservoir covered by the proration unit which cannot be effectively and efficiently drained by any existing well within the proration unit. Such finding must be explicit and must involve either a redefinition of the boundaries of the previously existing proration unit or an alteration of or exception to otherwise applicable spacing rules.

(d) Wells spudded between February 19, 1977 and November 30, 1978. Upon request of an applicant for a determination for a well subject to this paragraph, the jurisdictional agency shall review the record which was developed prior to the drilling of the well for which the determination is sought. In order for natural gas from such well to qualify for the maximum lawful price under this subpart the jurisdictional agency must demonstrate to the Commission that in proceedings before such agency prior to the commencement of drilling of the well, the jurisdictional agency:

(1) explicitly found that the drilling of the new well was necessary to effectively and efficiently drain a portion of the reservoir covered by the proration unit which could not be effectively and efficiently drained by any existing well within the proration unit; or

(2) in the absence of an explicit finding, implicitly found that the drilling of the new well was necessary to effectively and efficiently drain a portion of the reservoir covered by the proration unit which could not effectively and efficiently drained by any existing well within the proration unit.

(e) Notice of findings. If the jurisdictional agency makes a finding under paragraph (c) or (d)(1) of this

section it shall notify the Commission of such a determination in accordance with § 274.104. If the jurisdictional agency makes a finding under paragraph (d)(2) of this section, it must be based upon the record developed by the jurisdictional agency prior to the commencement of drilling which contains facts which would have supported an explicit finding that the new well was necessary to effectively and efficiently drain a portion of the reservoir covered by the proration unit which could not be effectively and efficiently drained by any existing well within the proration unit. Notice of such a determination shall be forwarded to the Commission in accordance with § 274.104.

SUBPART D - NATURAL GAS COMMITTED OR DEDICATED TO INTERSTATE COMMERCE

Sec.
271.401 Applicability.
271.402 Maximum lawful prices.
271.403 Special rule regarding carrying charge adjustment for advance payments.

§ 271.401 Applicability.

This subpart implements sections 104, and 106(a) of the NGPA and applies to the first sale of natural gas committed or dedicated to interstate commerce on November 8, 1978, and for which a just and reasonable rate under the Natural Gas Act was in effect on November 8, 1978 for the sale of such gas.

§ 271.402 Maximum lawful prices.

(a) Ceiling prices. Unless a higher rate is applicable under paragraph (c), the maximum lawful price for natural gas to which this subpart applies shall be the amount determined in accordance with the following table:

Table II - Certain gas committed or dedicated to interstate commerce on November 8, 1978.

Subpart of Part 271	NGPA Section	Category of Natural Gas		Price per MMBtu in Month of Delivery December 1978	January 1979
D	104	Post-1974 gas	All producers	1:630	1:639
	104	1973-1974 biennium gas	Small producer	1:379	1:387
			Large producer	1.058	1.064
	106(a)	Rollover contract gas	Small producer	0:702	0:715
			Large producer	0:603	0:607
		Replacement contract gas or recompletion gas	Small producer	0:771	0:775
			Large producer	0:593	0:596
	104	Flowing gas	Small producer	0:393	0:395
			Large producer	0:332	0:334
		Permian Basin gas	Small producer	0:462	0:465
			Large producer	0:405	0:407
		Rocky Mountain gas	Small producer	0:462	0:465
			Large producer	0:393	0:395
		Appalachian Basin gas (large producers only)	North subarea contracts dated prior to 10-8-69	0:344	0:346
			North subarea contracts dated after 10-7-69	0:368	0:370
			South subarea contracts dated after 10-7-69	0:344	0:346

(b) Definitions. For the purposes of this section:

(1) "Post-1974 gas" means natural gas to which this subpart applies which is produced from a well the surface drilling of which commenced on or after January 1, 1975.

(2) "1973-1974 biennium gas" means natural gas, to which this subpart applies, other than natural gas described in subparagraph (1)(ii), from a well the surface drilling of which commenced on or after January 1, 1973, and prior to January 1, 1975.

(3) "Interstate rollover gas" means

(i) natural gas to which this subpart applies; and

(ii) natural gas to which to this subpart applies which is sold under a contract which would have been a rollover contract but for the fact that the expiration of the previous contract occurred prior to November 9, 1978.

(4) "Replacement contract gas or recompletion gas" means natural gas to which this subpart applies which is:

(i) sold under a replacement contract which was executed on or after January 1, 1973, but prior to November 9, 1978, where the prior contract expired by its own terms prior to January 1, 1973; or

(ii) sold under a replacement contract executed prior to November 9, 1978, where the prior contract expired by its own terms after January 1, 1973; or

(iii) sold under a contract for the sale of natural gas from a well commenced prior to January 1, 1973, and not sold in interstate commerce prior to January 1, 1973,

(excluding gas sold prior to such date under §§ 2.68, 2.70, 157.22 or 157.29 of this chapter); or

(iv) produced as a result of a completion operation into a different formerly nonproductive reservoir, commenced on or after January 1, 1973, and produced through a well commenced prior to January 1, 1973.

(5) "Permian Basin gas" means natural gas (other than replacement contract or recompletion gas) to which this subpart applies and which is produced in the Permian Basin Area, as defined in FPC Opinion No. 662 (50 F.P.C. 390 at 400-401) and which is sold pursuant to a contract executed on or after October 1, 1968.

(6) "Rocky Mountain gas" means natural gas (other than replacement contract or recompletion gas) to which this subpart applies and which is produced in the Rocky Mountain Area, as defined in § 154.109(b) of this chapter and which is sold pursuant to a contract executed on or after October 1, 1968.

(7) "Appalachian Basin gas" means natural gas (other than replacement contract or recompletion gas) to which this subpart applies and which is produced in either the north subarea or the south subarea of the Appalachian Basin Area, as defined in § 154.107 of this chapter.

(8) "Flowing gas" means natural gas to which this subpart applies (other than natural gas described in the preceding

subparagraphs of this paragraph) produced from a well the surface drilling of which commenced prior to January 1, 1973.

(9) "Small producer" means an independent producer who is not affiliated with a Class A natural gas pipeline company and whose total sales for resale in interstate commerce on a nationwide basis, together with such sales by affiliated parties, did not exceed 10,000,000 Mcf at 14.73 psia during the preceding calendar year.

(10) "Independent producer" means a person who is engaged in the production or gathering of natural gas but who is not engaged in the transportation of natural gas by pipeline (other than gathering).

(11) "Large producer" means an independent producer other than a small producer.

(c) Applicable higher rates.

(1) Any just and reasonable rates applicable to a sale of natural gas higher than those established in paragraph (a) which has been established by the Commission prior to April 20, 1977, under §§ 2.56a(g), 2.56b(h), 2.76, or 2.77 of this chapter, plus the inflation adjustment from April 20, 1977, determined in accordance with § 271.102, shall be the maximum lawful price for such sale.

(2) Any just and reasonable rate for a sale of natural gas which was established by the Commission after April 20, 1977 and before November 9, 1978, shall be the maximum lawful price applicable to such sale if higher than the otherwise applicable rate prescribed under paragraph (a) or (c)(1).

(3) Any seller seeking to charge a rate in excess of the applicable maximum lawful price described in paragraphs (a), or (c)(1) or (c)(2) of this section must first file a petition seeking special relief pursuant to § 1.7(b) of this chapter fully justifying the relief sought. Such seller may not file a rate increase for, or charge or collect any rate in excess of the maximum lawful price otherwise applicable under this section unless the Commission grants its petition for special relief.

§ 271.403 Special rule regarding carrying charge adjustment for advance payments.

The rate prescribed in § 271.402 for post-1974 gas to which Opinion No. 770-A applies shall be subject to a deduction of 83 cents per MMBtu as a carrying charge adjustment if the seller has accepted advance payments on or after 1:00 p.m., EST, November 5, 1976, under an advance payments contract with an interstate pipeline company and such pipeline company has received rate base treatment of such advance payments made.

The resulting adjusted rate shall be employed in the discharge of the obligations of any advance payments after 1:00 p.m. EST, November 5, 1976, for all deliveries until an amount of natural gas has been delivered at the adjusted rate such that the total carrying charge credits equal the amounts lawfully collected by the jurisdictional pipeline company as a result of including the advance payments in rate base.

SUBPART E - SALES UNDER EXISTING INTRASTATE CONTRACTS.

Sec.
271.501 Applicability.
271.502 Maximum lawful prices.
271.503 Filing requirements.
271.504 Definition.
271.505 Special rule.

§ 271.501 Applicability.

This subpart implements section 105 of the NGPA and applies to the first sale of natural gas under an existing intrastate contract or under a successor to an existing contract. This subpart is not applicable to sales made under an intrastate rollover contract as defined in Subpart A.

§ 271.502 Maximum lawful prices.

(a) November 9, 1978, contract price at or below $2.060 per MMBtu. In the case of a first sale of natural gas to which this subpart applies, if the contract price applicable on November 9, 1978, was not more than $2.060 per MMBtu, the maximum lawful price for natural gas delivered in any month shall be the lower of:

(1) the contract price per MMBtu for such month under the terms of the existing intrastate contract in effect on November 9, 1978, or

(2) the maximum lawful price per MMBtu for such month under § 271.202 (relating to new natural gas).

(b) November 9, 1978, contract price greater than $2.060 per MMBtu. In the case of a first sale of natural gas to which this subpart applies, if the contract price applicable on November 9, 1978, was greater than $2.060 per MMBtu, the maximum lawful price for natural gas delivered in any month shall be the higher of:

(1) the maximum lawful price per MMBtu for such month under § 271.202 (relating to new natural gas); or

(2) the contract price per MMBtu on November 9, 1978, adjusted for inflation in accordance with § 271.102 of this subchapter.

§ 271.503 Filing requirements.

Any person who collects a price under this subpart shall file reports required by § 276.101.

§ 271.504 Definition.

For purposes of this subpart "contract price," when used with respect to any specific date and contract, means (a) the price paid per MMBtu under a contract for deliveries of natural gas occurring on that date; or (b) if no deliveries of natural gas occurred under such contract on that date, the price per MMBtu that would have been paid had such deliveries occurred on that date. If the contract contains a take-or-pay

clause, the contract price shall be determined as if volumes obligated to be taken were taken.

§ 271.505 Special rule.

For purposes of this subchapter:

(a) No modification of an existing contract or successor to an existing contract executed after November 9, 1978, may:

(1) alter the terms of the existing contract in a manner which has the effect of requiring the purchaser to bear any greater costs than the purchaser would have borne under the existing contract, or

(2) provide for an earlier date for deliveries than provided for under the existing contract.

(b) Except as provided in paragraph (a), any agreement or alteration of terms or legal obligations of the parties to an existing intrastate contract or to a successor to an existing contract may change the non-price terms from those in the existing contract or change the identity of the parties; but no such agreement or alteration may result in the alteration of the contract price from that of the existing contract so as to provide a higher contract price.

SUBPART F - INTRASTATE ROLLOVER CONTRACTS

Sec.
271.601 Applicability.
271.602 Maximum lawful price.
271.603 Filing requirements.
271.604 Special rule.

§ 271.601 Applicability.

This subpart implements section 106(b) of the NGPA and applies to the first sale of natural gas under an intrastate rollover contract.

§ 271.602 Maximum lawful price.

(a) The maximum lawful price for a first sale of natural gas under an intrastate rollover contract to which section 106(b)(1) of the NGPA applies shall be the higher of:

(1)(i) the maximum lawful price paid under the expired contract, per MMBtu, in the case of the month in which the effective date of such rollover contract occurs; and

(ii) in the case of any month thereafter, the maximum lawful price, per MMBtu, prescribed under this paragraph for the preceding month adjusted for inflation in accordance with § 271.102; or

(2) the amount determined under the following table:

If delivery occurs in:	The maximum lawful price per MMBtu is:
December, 1978	$1.121
January, 1979	1.128

(b) The maximum lawful price per MMBtu, for natural gas to which section 106(b)(2) of the NGPA (relating to certain State or Indian natural gas production interests) applies shall be the amount determined in accordance with the following table in lieu of the amount determined under the table under paragraph (a)(2):

If delivery occurs in the calendar month of:	The maximum lawful price is:
December 1978	$2.078
January 1979	2.096

§ 271.603 Filing requirements.

Any person who collects a price under this subpart shall file reports required by § 276.102.

§ 271.604 Special rule.

Except in the case of an increase in the contract price to the maximum lawful price specified in § 271.602(a)(2) or (b), for purposes of this subchapter, no intrastate rollover contract may:

(i) contain terms which differ from the terms of the expired contract and which have the effect of requiring the purchaser to bear any greater costs than the purchaser would have borne under the expired contract; or

(ii) provide for deliveries at an earlier date than would have been provided for under the existing contract.

SUBPART G - HIGH COST NATURAL GAS

Sec.
271.701 Applicability.
271.702 Maximum lawful price.
271.703 Definition of deep, high-cost natural gas.
271.704 Special rule.

§ 271.701 Applicability.

This subpart implements section 107(a) of the NGPA and applies to the first sale of natural gas produced from deep high-cost wells.

§ 271.702 Maximum lawful price.

The maximum lawful price, per MMBtu, for natural gas to which this subpart applies shall be the amount determined in accordance with the following table:

If delivery occurred in the calendar month of:	The maximum lawful price is:
December 1978	$ 2.078
January 1979	$ 2.096

§ 271.703 Definition of deep, high-cost natural gas.

For purposes of this subpart, natural gas is produced from a deep, high-cost well if a jurisdictional agency determines, in accordance with Parts 274 and 275, that such natural gas is produced from any well the surface drilling of which began on or after February 19, 1977,

if such production is from a completion location which is located at a depth of more than 15,000 feet.

§ 271.704 Special rule.

For purposes of determining depth under section 107(c)(1) of the NGPA, measurement shall be the true vertical depth from the surface of the ground to the highest perforation point in the completion location.

SUBPART H - STRIPPER WELL NATURAL GAS

Sec.
271.801 Applicability.
271.802 Maximum lawful price.
271.803 Definitions.
271.804 Special rules.
271.805 Continuing qualification.
271.806 Jurisdictional agency determinations and Commission review.

§ 271.801 Applicability.

This subpart implements section 108 of the NGPA and applies to any first sale of natural gas which a jurisdictional agency determines is produced from a stripper well.

§ 271.802 Maximum lawful price.

The maximum lawful price, per MMBtu, for natural gas to which this subpart applies shall be the amount determined in accordance with the following table:

If delivery occurred in the calendar month of:	The maximum lawful price is:
December 1978	$2.224
January 1979	$2.243

§ 271.803 Definitions.

For purposes of this subpart:

(a) "Recognized enhanced recovery techniques" means processes or equipment, or both, which when performed or installed, increase the ultimate recovery of gas from a well.

Processes qualifying as enhanced recovery techniques include mechanical as well as chemical stimulation of the reservoir formation. Equipment may include items installed in the well bore or on the surface. Normal well maintenance, repair, or replacement of equipment or facilities does not qualify as enhanced recovery techniques.

(b) "Nonassociated natural gas" means natural gas produced from a well which a jurisdictional agency determines produced an average of no more than one barrel of oil per production day during the production period upon which the determination is based.

§ 271.804 Special rules.

(a) Rate of production. For purposes of determining the rate of production from a well for which a stripper well determination is sought, the total volume of natural gas produced from the well shall constitute its daily production regardless of whether the well is completed in more than one interval or the production is separately metered from separate intervals.

(b) Averaging of production. If a determination of stripper well status is sought with respect to wells which are not individually metered, rates of production of natural gas and oil may, in the absence of other reliable evidence, be averaged equally among the non-metered wells.

(c) Applications for determinations. Applications under this subpart shall be based on a 90-day production period ending within 120 days prior to the date on which the application is filed.

(d) Maximum efficient rate of flow. (1) In the absence of applicable recognized conservation practices established by a jurisdictional agency for determining the maximum efficient rate of flow of wells producing natural gas, a well which has produced nonassociated natural gas at an average rate of 60 Mcf per day or less for a 90-day production period is presumed to have produced at its maximum efficient rate of flow if during the 12-month period ending concurrently with the 90-day production period which is the basis for the application under paragraph (c), such well produced nonassociated natural gas at a rate which did not exceed an average of 60 Mcf per production day; or

(2) If the production data described in subparagraph (1) of this paragraph are not available, the jurisdictional agency shall, if the well has produced nonassociated natural gas at an average rate of 60 Mcf or less for a 90-day production period:

(i) make the determination as to whether the well produced at its maximum efficient rate of flow based upon other substantial evidence such as flow tests which measure the capability of the well to produce natural gas under normal operating conditions; or

(ii) defer making an affirmative determination and designate a 12-month period during which the applicant can secure the data described in subparagraph (1) of this paragraph, allowing the applicant 30 days from the end of such period to submit the data.

(3) The jurisdictional agency shall make a negative determination as to eligibility and give notice thereof to the applicant, any identified purchasers and the Commission if:

(i) the applicant fails to submit production data pursuant to subparagraph (2)(ii) of this paragraph, within the time allowed; or

(ii) the production data submitted by the applicant indicate that for the 12-month period, the well produced nonassociated natural gas at a rate which exceeded an average of 60 Mcf per production day.

(4) Upon submission of an application which is to be considered pursuant to subparagraph (2)(ii) of this paragraph, the applicant, if permitted to do so by contract, may collect the maximum lawful price provided in § 271.802 from the date of filing until the date of a final determination pursuant to this subpart, subject to the interim collection requirements in Part 273.

(e) Seasonally affected wells. (1) If together with a petition for qualification as a stripper well, the applicant submits to the jurisdictional agency production reports for a period of at least 24 months ending concurrently with the 90-day production period which is the basis for the application under paragraph (c), and if such reports demonstrate that the well is subject to seasonal fluctuations which temporarily increase average production above 60 Mcf per production day, the jurisdictional agency may, upon request, designate the well as "seasonally affected." Such designation shall be granted by the jurisdictional agency only if it finds that the seasonal fluctuations have not and cannot reasonably be expected to increase production levels above an average of 60 Mcf per production day for any 12-month period.

(2) If at any time subsequent to a final determination of stripper well status, the operator acquires production reports for a period of 24 consecutive months which demonstrate that the well is seasonally affected, a petition may be filed with the jurisdictional agency for designation as a seasonally affected well unless the average rate of production exceeds 60 Mcf per production day for any 12-month period.

(3) If a well is designated as seasonally affected, the operator of such well and the purchaser of production

from such well are exempt from the filing requirements of § 274.805 unless the average rate of production exceeds 60 Mcf per day for a 12-month period.

§ 271.805 Continuing qualification.

(a)(1) Unless exempt under § 271.804(e)(3), the operator or any purchaser of natural gas shall give written notice if:

(A) such well produces nonassociated natural gas at a rate exceeding an average of 60 Mcf per production day for any 90-day production period; or

(B) such well which has been designated a seasonally affected well produces at an average rate in excess of 60 Mcf per day for a 12-month production period.

(2) Such notice shall, as appropriate, be given to the jurisdictional agency, the Commission, and any purchaser. Except as provided in paragraph (b) of this section, such notice shall terminate the right of any seller to continue the collection of the maximum lawful price set forth in § 271.802 for natural gas from the well identified in the notice.

(b) The operator may, at the same time the notice described in paragraph (a)(1) of this section is filed, file a petition with the jurisdictional agency for a determination under § 271.806 that the increased production of

nonassociated natural gas is the result of the application of enhanced recovery techniques or, if the well has not been designated as seasonally affected, the result of seasonal fluctuations. A copy of the petition shall be provided to the jurisdictional agency, the Commission, and the purchaser together with the notice under paragraph (a)(1) of this section.

(c) Any notice required by this section shall be made within 45 days after the last day of the 90-day or the 12-month production period in which the increased production of natural gas occurred.

(d) If the notice pursuant to paragraph (a)(1) of this section is filed by a purchaser, an operator shall have 30 days from the date of the notice within which to oppose the allegation or to seek a determination from the jurisdictional agency that the increase in production is the result of recognized enhanced recovery techniques or seasonal fluctuations. Unless the operator of a well, within 30 days of such notice, files a petition with a jurisdictional agency as provided in paragraph (b) of this section, a well for which notice is given under paragraph (a)(1) of this section shall immediately be disqualified as a stripper well and the right of any seller to collect the maximum lawful price set forth in § 271.802 shall terminate as of the last

day of the 90-day or the 12-month production period described in the notice.

(e) If an operator files a petition with a jurisdictional agency as pursuant to paragraphs (b) or (d) of this section, further collection of the maximum lawful price set forth in § 271.802 shall be made subject to refund from the last day of the 90-day or the 12-month production period described in the notice under paragraph (a)(1) of this section.

(f) If subsequent to the filing of a petition it is determined that an increase in production of natural gas is the result of recognized enhanced recovery techniques, neither the operator nor the purchaser shall be obligated to report average production levels above 60 Mcf per day during any 90-day production period unless the increased production results from a cause other than recognized enhanced recovery techniques determined to have been used.

§ 271.806 Jurisdictional agency determinations and Commission review.

(a) Upon receipt of a petition to designate a well as a seasonally affected well pursuant to § 271.804(c) or an application to determine that production in excess of an average of 60 Mcf per production day for any 90-day production period was due to enhanced recovery techniques, the

jurisdictional agency shall treat the petition or application as if it were an application for an initial determination and follow the applicable provisions of Subpart A of Part 274.

(b) Upon receipt of notice of a determination under paragraph (a), the Commission will review such a determination pursuant to the applicable provisions of Subpart B of Part 275.

(c) A jurisdictional agency, when making a determination under § 271.806 (relating to production in excess of 60 Mcf per production day resulting from the application of recognized enhanced recovery techniques), may seek a declaratory order from the Commission that a process (or type of process) or the installation of equipment (or type of equipment) qualifies as recognized enhanced recovery techniques as defined in § 271.803(a) of this subpart.

SUBPART I - OTHER CATEGORIES OF NATURAL GAS

Sec.
271.901 Applicability.
271.902 Maximum lawful price.
271.903 Filing requirements.
271.904 Special rule.

§ 271.901 Applicability.

This subpart implements section 109 of the NGPA and applies to a first sale of natural gas that is not covered by any maximum lawful price under section 102, 103, 104, 105, 106, 107, or 108 of the NGPA.

§ 271.902 Maximum lawful price.

The maximum lawful price, per MMBtu, for natural gas to which this subpart applies shall be the amount determined in accordance with the following table:

If delivery occurred in the calendar month of:	The maximum lawful price is:
December, 1978	$1.630
January, 1979	1.639

§ 271.903 Filing requirements.

Any person who collects a price under this subpart shall file reports required by § 276.103.

§ 271.904 Special rule.

This subpart applies to the following classes of first sales of natural gas only to the extent such first sales

are not covered by any maximum lawful price under section 102, 103, 104, 105, 106, 107, or 108 of the NGPA if such natural gas:

(a) is produced from any new well not otherwise qualifying for a higher maximum lawful price under this Title I of the NGPA;

(b) is committed or dedicated to interstate commerce on November 8, 1978, and for which a just and reasonable rate under the Natural Gas Act was not in effect on such date for the first sale of such natural gas;

(c) was not committed or dedicated to interstate commerce on November 8, 1978, and was not subject to an existing contract on such day; or

(d) is produced from the Prudhoe Bay Unit of Alaska and transported through the natural gas transportation system approved under the Alaska Natural Gas Transportation Act of 1976.

SUBPART J - [RESERVED]

SUBPART K - ADJUSTMENTS FOR STATE SEVERANCE TAXES AND CERTAIN PRODUCTION-RELATED COSTS

Sec.
271.1100 Scope and applicability.
271.1101 Definitions.
271.1102 State severance taxes.
271.1103 Record retention.
271.1104 Production-related costs.
271.1105 Adjustments.

§ 271.1100 Scope and applicability.

(a)(1) This subpart prescribes regulations under which a price for a first sale of natural gas shall not be considered to exceed the applicable maximum lawful prices set forth in Part 271 if such first sale price exceeds the maximum lawful price to the extent necessary to recover:

(1) State severance taxes; and

(2) production-related costs approved by order of the Commission.

(b) Sections 271.1104 and 271.1105 shall not apply to any natural gas produced from the Prudhoe Bay Unit of Alaska and transported through the natural gas transportation system approved under the Alaska Natural Gas Transportation Act of 1976.

§ 271.1101 Definitions.

(a)(1) Except as provided in subparagraph (2), the term "State severance tax" as used in this subpart means any severance, production, or similar tax, fee, or other levy imposed on the production of natural gas:

(i) by any State;

(ii) by any Indian tribe recognized as eligible for services provided by the Secretary of the Interior to Indians; or

(iii) by any political subdivision of a State if the authority to impose such tax, fee, or other levy is granted to such political subdivision under State law.

(2) The term "State severance tax" does not include any amount of tax which results from a provision of state law enacted on or after December 1, 1977, unless such provision of law is equally applicable to natural gas produced in such State and delivered in interstate commerce and to natural gas produced in such State and not so delivered.

(b) The term "production-related costs" as used in this subpart means costs of compressing, gathering, processing, treating, liquifaction, conditioning, or transporting natural gas, or other similar costs.

§ 271.1102 State severance taxes.

(a) Except as provided in paragraph (b) of this section, the price for any first sale of natural gas shall not be considered to have exceeded the maximum lawful price applicable to that sale as set forth in this part if such first sale price exceeds the maximum lawful price to the extent necessary to recover State severance taxes borne by the seller.

(b) The maximum lawful prices prescribed under this part for natural gas produced from the Permian Basin area include State severance taxes in the amount of 2.6 cents for large producers and 3.05 cents for small producers. To the extent maximum lawful prices are established by reference to the Permian Basin area rate, only amounts of State severance tax in excess of those amounts already included may be considered under paragraph (a) of this section.

§ 271.1103 Record retention.

A seller in a first sale in which the price includes State severance taxes permitted under this section shall retain a record of the sale which shall identify the seller, and shall retain such other records as are necessary to demonstrate that such seller has borne the amount of State

severance taxes included in the sale price. Such records shall be preserved for at least three years from the date on which the sale occurred.

§ 271.1104 Prodoction-related costs.

(a) General role. The Commission will entertain applications for a determination that the maximum lawful price applicable to a first sale of natural gas shall not be considered to be exceeded as a result of the addition to such price of an amount expended for production-related costs only as permitted by this section.

(b) Exclosion of certain natural gas.

Applications under paragraph (a) of this section will not be considered by the Commission if the natural gas for which the determination is sought:

(1) was committed or dedicated to interstate commerce on November 8, 1978, and is gas for which there was a just and reasonable rate in effect on that date; or

(2) is subject to an existing intrastate contract, an intrastate rollover contract or a successor to an existing contract.

(c) Costs for gathering; ligoifaction; transportation, and compression. Except as provided in paragraph (b) of this section, applications under paragraph (a) of this

section will be entertained by the Commission respecting costs incurred:

(1) compression; and

(2) gathering, liquification, or transportation if such activities take place off-lease.

(d) Other production-related costs.

(1) Except as provided in paragraph (b) of this section and in subparagraph (2) of this paragraph, the Commission will entertain applications under paragraph (a) of this section only with respect to production-related costs which exceed any amount expended to meet the following standards:

(i) total sulphur (grains per 100 cf.) 20
(ii) hydrogen sulphide (grains per 100 cf.) . . 1
(iii) water (pounds per MMcf) 7
(iv) carbon dioxide (percent by volume) 3
(v) impurities including oxygen, nitrogen, dust, dirt, gum, or other impurities in sufficient amounts to require the buyer to incur costs to eliminate such impurities to meet pipeline requirements.

(2) Subject to paragraph (b) of this section, the Commission will entertain applications for costs necessary to meet or exceed the standards in subparagraph (1) of this

paragraph with respect to first sales of natural gas to any person for use by such person.

(e) Applications. Applications made to the Commission pursuant to this section shall be under oath and shall include the following information:

(1) identification of the maximum lawful price applicable to the first sale of the natural gas under Part 271;

(2) documents supporting the identification of the applicable maximum lawful price, including copies of any determinations by a jurisdictional agency or the Commission or copies of applications made for such determinations;

(3) a summary of the contract provisions which contain the obligations of the parties with respect to production-related costs.

(4) to the extent that the applicant has purchased the natural gas which is the subject of an application under this paragraph, documentation of the price paid by the applicant for such gas;

(5) the specific costs sought to be recovered by the applicant and a description of the method used to compute such costs; and

(6) the circumstances which make it necessary for the applicant to collect any amount in excess of the maximum lawful price provided for under Part 271.

(f) Additional information. The Commission may, upon receipt of an application made under this section, require the submission of additional information and hold or cause to be held such other proceedings as it deems necessary or appropriate.

§ 271.1105 Adjustments.

Pursuant to section 502(c) of the NGPA, any person may apply to the Commission for an adjustment on the grounds that the operation of § 271.1103 results in special hardship, inequity, or an unfair distribution of costs to such person.

PART 273 - COLLECTION AUTHORITY; REFUNDS

SUBPART A - GENERAL PROVISIONS

Sec.
273.101 Private contractual rights.
273.102 Definition of final determination.
273.103 Annual report of collections and refunds.

§ 273.101 Private contractual rights.

Authorization by this part to collect a price for natural gas does not affect any person's contractual right to purchase natural gas at a lower price.

§ 273.102 Definition of final determination.

For purposes of this part, a determination by a jurisdictional agency of eligibility to collect a maximum lawful price under Subparts B, C, G, or H of Part 271 is final at such time as such determination is no longer subject to:

(a) remand or reversal (other than on grounds specified in section 503(d)(1)(A) or (B) of the NGPA) by the Commission under Part 275; or

(b) judicial review in the Court of Appeals under section 503(b)(4)(B) of the NGPA.

§ 273.103 Annual report of collections and refunds.

(a) General rule. A seller which makes any first sale of natural gas for which a price authorized by this part is charged or collected shall file an annual report of all collections and refunds under this part for all such first sales, beginning with the period from December 1, 1978 through December 31, 1979, and for each calendar year thereafter until all collections and refunds under this part for such first sales have been reported fully. An original and 14 copies of each annual report shall be filed with the Commission on or before April 1st of the next year.

(b) Contents. The annual report shall be filed in accordance with forms and instructions prescribed by the Commission and shall include:

(1) all collections for each first sale for which a price authorized by this part is charged or collected, identifying the well from which such sale is made and the application for or determination of eligibility for that well;

(2) the portions of such collections which are subject to the refund undertaking required by § 273.302(b) and those portions which were secured by surety bond or placed in escrow as required by § 273.302(c); and

(3) for each first sale, the amount of any refunds paid to each purchaser and the basis for computation of that amount, together with releases signed by each purchaser to indicate payment and full satisfaction of the seller's refund obligation or a statement that the purchaser did not sign such a release.

SUBPART B - INTERIM COLLECTION AUTHORITY

Sec.
273.201 Transitional rule for certain new wells.
273.202 Collection pending jurisdictional agency determination of eligibility.
273.203 Collection pending review of jurisdictional agency determination.
273.204 Retroactive collection after final determination.

§ 273.201 Transitional rule for certain new wells.

(a) General rule.

(1) The price determined under the following table may be charged and collected for any first sale of natural gas from a new well to which this section applies:

If delivery occured in the calendar montn of:	The price per MMBtu which may be charged and collected is:
December 1978	$ 1:630
January 1979	$ 1.639

(2) This section does not apply to a first sale if the seller is collecting a price under the authority of §§ 273.202 or 273.203.

(b) Period of collection. The price authorized by paragraph (a) may be charged and collected for natural gas deliveries:

(1) beginning on the date on which the seller first meets the requirements of paragraph (c); and

(2) ending March 1, 1979.

(c) Filing requirements. (1) Prior to making any collection under the authority of this section, the seller shall file with the Commission a statement under oath that:

(i) the natural gas for which the collection is made is produced from a new well;

(ii) the seller believes in good faith that such natural gas is eligible under the NGPA to be sold at a price not less than the price specified in paragraph (a); and

(iii) the seller has filed, or will file not later than March 1, 1979, an application with the jurisdictional agency for a determination of qualification under Subpart B, C, G, or H of Part 271.

(2) The statement shall include any well identification number assigned to the well by the jurisdictional agency, or if none has been assigned, other information sufficient to identify the well, and shall specify the extent to which such natural gas was "committed or dedicated to interstate commerce" (as defined in section 2(18) of the NGPA) on November 8, 1978, the maximum lawful price applicable to such gas on November 8, 1978, and any rate schedules for such gas on file with the Commission on November 8, 1978.

§ 273.202 Collection pending jurisdictional agency determination of eligibility.

(a) General rule. If an application has been filed with the jurisdictional agency for a determination of eligibility under Subpart B, C, G, or H of Part 271 (relating to new natural gas and certain OCS gas, gas from new onshore production wells, high cost natural gas or stripper natural gas), the price specified in § 273.201(a)(1) or the highest maximum lawful price which is specified in any of the subparts for which application is made may be charged and collected. No collection may be made under this section unless the jurisdictional agency to which the application is made has filed a report under § 274.105.

(b) Period of collection. The price authorized by paragraph (a) may be charged and collected for natural gas deliveries:

(1) beginning on the date on which the seller complies with the requirements of paragraph (c); and

(2) ending on the earlier of:

(i) 18 months after the first delivery for which collection is made under this section (12 months in the case of deliveries beginning on or after May 1, 1979); or

(ii) the date on which the Commission receives a notice of jurisdictional agency determination under § 275.201.

(c) Filing requirements. Prior to making any collection under the authority of this section with respect to a first sale of natural gas, the seller shall file with the Commission:

(1) a statement under oath that he believes in good faith that such natural gas is eligible under the NGPA and this subchapter for a maximum lawful price not less than that to be collected;

(2) a duplicate of the NGPA form submitted to the jurisdictional agency;

(3) a certificate of service of this filing upon any purchasers in the form required by §§ 1.17 and 1.51 of this chapter;

(4) a statement certifying that collections under this section will be placed in escrow or secured by a surety bond to the extent required by § 273.302(c); and

(5) A statement of the extent to which such natural gas was "committed or dedicated to interstate commerce" (as defined in section 2(18) of the NGPA) on November 8, 1978, the maximum lawful price applicable to such gas on November 8, 1978, and any rate schedules for such gas on file with the Commission on November 8, 1978.

(d) Filing limitation. Upon termination of the interim collection authority under this section for any sale, further filings under this section cannot be made for any sale from the same well.

§ 273.203 Collection pending review of jurisdictional agency determination.

(a) General rule. If the jurisdictional agency has determined in accordance with Part 274 that natural gas qualifies for a maximum lawful price under Subpart B, C, G, or H of Part 271, the seller may charge and collect such price during the period described in paragraph (b).

(b) Period of collection. The price authorized by paragraph (a) may be charged and collected for natural gas deliveries:

(1) beginning on the date on which the Commission receives notice under § 275.201 of a jurisdictional agency determination with respect to such gas; and

(2) ending 15 days after the jurisdictional agency's determination becomes final; or if the determination of the jurisdictional agency is remanded by final finding of the Commission, six months after the date of such remand.

(c) Filing requirements. No later than ten days after commencement of collection under this section, the seller shall file with the Commission a notice of interim collection of the applicable price established by a determination of the jurisdictional agency and a certificate of service of this notice upon any purchasers in the form required by §§ 1.17 and 1.51 of this chapter.

§ 273.204 Retroactive collection after final determination.

(a) General rule. If (1) a jurisdictional agency determination that first sales of natural gas from a well qualify for a maximum lawful price under Subpart B, C, G, or H of Part 271 becomes final, and (2) such maximum lawful price exceeds the price collected for deliveries of such gas for any period between the date of filing for the determination and the date on which the determination become final, then the seller may retroactively charge and collect for such period the amount of such excess. If the application for determination was filed by March 1, 1979, then the amount of such excess may be computed, charged and collected for first sales of natural gas delivered after November 30, 1978.

(b) Conditions. Collections may be made under this section only in accordance with the following conditions:

(1) Retroactive collections may be made only to the extent and in the manner specified by the applicable sales contract (or amendment thereto) and may not begin until 15 days after a determination of eligibility under Subpart B, C, G, or H of Part 271 becomes final pursuant to § 275.202.

(2) A seller may not make any collections under this section for any first sale unless the seller has fully complied with all requirements under this part and other regulations of the Commission applicable to each first sale made by such seller.

(3) A seller may not collect any amount under this section from any purchaser unless the seller has paid to such purchaser all amounts that are due to be refunded by the seller to such purchaser on or before any date on which retroactive collections are made.

(4) Within 15 days after retroactive collection begins for any first sale, the seller shall file with the Commission:

(i) a notice specifying the total amount to be collected;

(ii) a statement that the seller has paid all refunds then due to each purchaser; and

(iii) a statement of concurrence in the filing signed by each purchaser from whom retroactive collections are made.

(5) Carrying charges may be collected only to the extent agreed upon by the parties to the applicable sales contract (or amendment thereto). The rate of such charges may not exceed nine percent per annum.

SUBPART C - REFUND OBLIGATION

Sec.
273.301 General refund obligation.
273.302 Refunds of interim collections.

§ 273.301 General refund obligation.

Any price collected with respect to a first sale of natural gas to which this subchapter applies is collected subject to a general obligation promptly to refund any portion of such price which is in excess of the maximum lawful price or collection of which is not authorized by this subchapter. Compliance with the specific refund requirements of § 273.302 shall not terminate the general refund obligation under this section.

§ 273.302 Refunds of interim collections.

(a) Applicability. The provisions of this section apply to any interim collections made under the authority of Subpart B of this part.

(b) General undertaking.

(1) Except as provided for in subparagraph (2), any notice of collection which is filed with the Commission pursuant to Subpart B for a first sale of natural gas shall include an undertaking with respect to particular first sales in the following form:

AGREEMENT OF
(Name of Applicant) TO COMPLY WITH REFUND
PROVISIONS OF PART 273 OF THE COMMISSION'S REGULATIONS
UNDER THE NATURAL GAS POLICY ACT

(Name of Applicant) hereby agrees and undertakes to comply with the refund provisions of Part 273 of the Commission's Regulations under the Natural Gas Policy Act insofar as they are applicable to the collections for the wells identified in the annex to this agreement, and has executed and sealed this agreement or caused this agreement to be executed and sealed in its name by a duly authorized officer (of this corporation) or a duly authorized member (of this unincorporated association) on this _____ day of _____, 19__.

(Name of Respondent)

By_____

Attest:

_____

(2) In lieu of filing a general undertaking with respect to particular first sales as provided in subparagraph (1), a seller may elect to file a general undertaking applicable to all first sales made by the seller in the following form:

AGREEMENT OF
(Name of Applicant) TO COMPLY WITH REFUND
PROVISIONS OF PART 273 OF THE COMMISSION'S REGULATIONS
UNDER THE NATURAL GAS POLICY ACT AND PART 154
OF THE COMMISSION'S REGULATIONS UNDER THE
NATURAL GAS ACT

(Name of Applicant) hereby agrees and undertakes to comply with the refund provisions of Part 273 of the Commission's Regulations under the Natural Gas Policy Act insofar as they are applicable to any collections made by or for the applicant under these regulations and has executed and sealed this agreement or caused this agreement to be executed and sealed in its name by a duly authorized officer (of this corporation) or a duly authorized member (of this unincorporated association) on this _____ day of _____, 19__.

(Name of Respondent)

By_____

Attest:

_____

(3) Additional refund assurance may at any time be required by order of the Commission.

(c) Escrow. In the case of interim collections under § 273.202, the following additional requirements apply:

(1) Any amount (i) which is collected under § 273.202 and (ii) which (A) in the case of a new well, is in excess of the price specified in § 273.201(a)(1); or (B) in the case of any other well, is in excess of the otherwise applicable maximum lawful price, shall be secured by a surety bond or held in escrow.

(2) Any amount held in escrow under subparagraph (1) shall be deposited in a segregated interest-bearing account at a financial institution which is chartered and supervised by a state or federal agency and in which deposits are insured by a state or federal agency.

(d) Records. If any collection is made under Subpart B, the seller shall keep accurate accounts of all amounts so collected for each billing period and for each purchaser; the billing determinants of each sale to each such purchaser and resulting revenues as computed under the price being charged pursuant to this part; the price charged immediately prior to any interim collections; and the price prescribed by § 273.201 of this part (or any other maximum lawful price used to compute the amount bonded or escrowed under this paragraph), together with the differences in revenues so computed for each sale.

(e) Refund payment.

(1) Within 15 days after a determination that a first sale is not eligible for the price collected under this part becomes final, the seller shall refund to the purchaser by cash or check the refund amount computed under paragraph (g) together with interest at the rate of nine percent per annum on the excess charges that have been collected from the date of payment until the date of refund.

(2) No interest is required to be paid on any portion of a refund:

(i) which represents payments of royalties or taxes to federal or state governmental authorities, except to the extent that such authorities pay interest to the seller when refunding overpayments of royalties or taxes; or

(ii) which is paid from escrow (but interest which accrued in the escrow account on the amount required to be refunded shall be paid at the time of refund).

(f) Discharge of obligation. If a determination that natural gas is eligible for the price collected becomes final, then upon receipt of such final determination, the bond, escrow, or undertaking shall be discharged to the extent it applies to first sales from the well for which the determination was made. If any refunds required by this section are

made in conformity with the terms and conditions of the bond, escrow, or undertaking, the bond, escrow, or undertaking shall be discharged insofar as it applies to such refund obligation.

(g) Refund computation.

(1) Where the final determination that the sale is not eligible for the price collected under Subpart B also includes a final determination of the maximum lawful price for that sale, that finally determined price, to the extent permitted by the applicable sales contract, shall be used to compute the excessive interim collections and refund amount.

(2) In any other case, the appropriate maximum lawful price specified under Subpart D, E, F, or I of Part 271, to the extent permitted by the applicable sales contract, shall be used to compute the excessive interim collections and refund amount.

PART 274 - DETERMINATIONS BY JURISDICTIONAL AGENCIES

SUBPART A - GENERAL PROVISIONS

Sec.
274.101 Applicability.
274.102 Definition of determination.
274.103 Determinations by jurisdictional agencies.
274.104 Notice to the Commission.
274.105 Reports of determination process.

§ 274.101 Applicability.

This part applies to determinations of jurisdictional agencies (as defined in § 270.103) made under the following subparts of Part 271:

(a) Subpart B (relating to new natural gas and certain OCS gas);

(b) Subpart C (relating to new onshore production wells);

(c) Subpart G (relating to high cost gas); and

(d) Subpart H (relating to stripper well gas).

§ 274.102 Definition of determination.

For purposes of this part and Part 275, a determination has been made by a jurisdictional agency when such determination is administratively final before such agency.

§ 274.103 Determinations by jurisdictional agencies.

(a) A jurisdictional agency shall make determinations to which this part applies in accordance with procedures applicable to it under the law of its jurisdiction for making such determinations or for making comparable determinations.

(b) A jurisdictional agency determination is not effective if made with respect to an application which the Commission determines, within 45 days after the date on which the Commission received notice of the determination, does not comply with the filing requirements set forth in Subpart B of this part, or with the alternative requirements approved pursuant to § 274,207 of Subpart B.

§ 274.104 Notice to the Commission.

(a) Within 15 days after making a determination that natural gas qualifies for a maximum lawful price under this part, the jurisdictional agency shall give written notice of such determination to the Commission. Such notice shall include the following:

(1) a copy of the NGPA form filed by the applicant;

(2) a list of all participants in the proceeding as well as any persons who submitted or who sought an opportunity to submit written comment (whether or not such persons participated in the proceeding);

(3) a statement indicating whether the matter was opposed before the jurisdictional agency;

(4) the information set forth in § 274.105 as applied to the determination in question, unless the jurisdictional agency has on file with the Commission, a report describing its determination process under that section; and

(5)(i) if the application was opposed, the complete record of the proceeding resulting in the determination by the jurisdictional agency; or

(ii) if the application was unopposed, those records relied on by the jurisdictional agency in making the determination.

(b) Within 15 days after making a determination that natural gas does not qualify for a maximum lawful price under this part, the jurisdictional agency shall give written notice of such determination to the Commission. Such notice shall include the information specified in paragraph (a)(1) and (2) of this section; except that if the applicant or any aggrieved party so requests within the 15 days following the determination, the notice shall include all of the information specified in paragraph (a) of this section.

§ 274.105 Reports of determination process.

(a) A jurisdictional agency may file with the Commission a report which states that it will diligently undertake to consider and decide determinations to which this part applies describing the method by which such agency will make determinations to which this part applies. The report shall be in narrative form and shall include:

(1) any filing requirements, imposed by the jurisdictional agency in addition to those required by Subpart A of this part including specific forms; as well as any more specific identification of documents listed as minimum requirements as provided in Subpart B;

(2) the type of notice of filing that applicants will be required to give;

(3) the public or specific notice that will be given by the agency of filings, hearings, and determinations;

(4) the internal procedures applicable to such determinations, including specific references to the use of hearings, examiners, and formal consideration by the agency;

(5) the extent to which applicable rules permit interested parties to intervene, participate, or express views in proceedings before the agency;

(6) a description of the relevant data contained in the official records of the agency or contained in the official records of other agencies to which the jurisdictional agency has access; and

(7) a detailed explanation of the manner in which the agency will review applications including identification of the official records which will be examined to verify the information in applications.

(b) The jurisdictional agency shall give written notice to the Commission of any change in procedures described in the report filed pursuant to this section.

(c) Reports and any changes thereto filed by the jurisdictional agency will be placed in the public files of the Commission.

SUBPART B - REQUIREMENTS FOR FILINGS WITH JURISDICTIONAL AGENCIES

Sec.
274.201 General requirements.
274.202 New natural gas.
274.203 New reservoirs on old OCS leases.
274.204 New onshore production wells.
274.205 High cost gas.
274.206 Stripper gas.
274.207 Alternative filing requirements.

§ 274.201 General requirements.

(a) Filing requirements applicable if alternative requirements are not adopted. The provisions of §§ 274.201 through 274.206 this subpart apply to the extent not superseded by alternative filing requirements which have taken effect under § 274.207.

(b) Who may file. An application to which this subpart applies shall be filed with the jurisdictional agency by the person authorized by State law to make filings with respect to the well for which the application is made.

(c) Attestation. If the person filing an application under this part is an individual, the filing shall be signed and attested to by such individual, or in the case of a minor or other legally disabled person, his duly qualified legal representative. If the person making such filing is a

corporation, partnership, or trust, the filing shall be signed and attested to by a responsible officer of the corporation, a general partner of the partnership, or the trustee of the trust. An operator under a joint operating agreement may sign and attest to an application for a well covered by the operating agreement if notice of the application is given by the operator to all other parties participating in the particular well and that fact is certified in the application. In the case of any other legal entity, the operator of the well may sign and attest to the application.

(d) Additional information. The documents required by this subpart are the minimum required in support of a request for a determination. The jurisdictional agency may require additional support as it deems appropriate, and may more specifically identify the documents indicated as the minimum required.

(e) Notice to purchasers. Where an application for a determination is sought for natural gas for which the applicant has an identified purchaser, the application shall include a statement that the applicant has delivered or mailed, postage prepaid, a copy of the application to the purchaser.

§ 274.202 New natural gas.

(a) Applications for determination. A person seeking a determination for purposes of Subpart B of Part 271 that production from a well qualifies as new natural gas shall file an application with the jurisdictional agency for a determination that:

(1) such production is from a new OCS lease, in accordance with paragraph (b);

(2) such production is from a new onshore well, in accordance with paragraph (c); or

(3) such production is from a new onshore reservoir, in accordance with paragraph (d).

(b) New OCS lease. For purposes of demonstrating that natural gas is or is to be produced from a new OCS lease, the applicant shall file:

(1) NGPA Form No. 1;

(2) a statement by the applicant under oath:

(i) that he has made, or has caused to be made pursuant to his instructions, a diligent search of available public records including records maintained by the Department of Interior;

(ii) describing the search made, the records reviewed, the location of such records, and any records which he

believes may contain information relevant to the determination but which he has determined are not reasonably available to him;

(iii) that on the basis of the results of this search and examination, he has concluded that to the best of his information, knowledge and belief, the natural gas is, or is to be produced from a new OCS lease which is a lease of submerged acreage, entered into on or after April 20, 1977;

(iv) that he has no knowledge of any other information which is inconsistent with his conclusion; and

(3) if the jurisdictional agency so requires, certified copies of all records relied on by the applicant including copies of the agency's official files.

(c) New onshore wells. An application for a determination that a well is a new onshore well may be filed under subparagraph (1) or (2) of this paragraph, or both.

(1) 2.5 mile test. For purposes of demonstrating that a new onshore well is not within 2.5 miles of any marker well, the applicant shall file:

(i) NGPA Form No. 1;

(ii) the well completion report;

(iii) a location plat locating and identifying the well for which the determination is sought and all wells within the 2.5 mile radius;

(iv) the directional drilling survey, if the jurisdictional agency requires such a survey to be conducted;

(v) a statement by the applicant under oath:

(A) that he has made, or has caused to be made pursuant to his instructions, a diligent search of available public records including production, severance tax, and royalty records as well as any other records reasonably available to him;

(B) describing the search made, the records reviewed, the location of such records, and any records which he believes may contain information relevant to the determination but which he has determined are not reasonably available to him;

(C) that on the basis of the results of this search and examination, he has concluded that to the best of his information, knowledge and belief, there is no marker well within 2.5 miles of the well for which he seeks a determination; and

(D) that he has no knowledge of any other information which is inconsistent with his conclusion; and

(vi) if the jurisdictional agency so requires, certified copies of records relied on by the applicant including copies of the agency's official files.

(2) 1,000 feet deeper test. For purposes of demonstrating that the completion location of a new onshore well is at least 1,000 feet deeper than the deepest completion location of each marker well within a 2.5 mile radius of the well for which a determination is sought, the applicant shall file:

(i) NGPA Form No. 1;

(ii) the well completion report;

(iii) a location plat which locates and identifies the well for which the determination is sought and all wells within the 2.5 mile radius, including specific identification of all marker wells within the 2.5 mile radius;

(iv) a list of the deepest completion locations for all marker wells shown on the location plat;

(v) the directional drilling survey, if the jurisdictional agency requires such survey to be conducted;

(vi) a statement by the applicant, under oath:

(A) that he has made, or has caused to be made pursuant to his instructions, a diligent search of available public records including production, severance tax and royalty records as well as any other records reasonably available to him;

(B) describing the search made, the records reviewed, the location of such records, and any records which he believes may contain information relevant to the determination but which he has determined are not reasonably available to him;

(C) that on the basis of the results of this search and examination, he has concluded that to the best of his information, knowledge and belief, there is no marker well within 2.5 miles of the well for which he seeks a determination which has a completion location less than 1,000 feet above the completion location of the new well; and

(D) that he has no knowledge of any other information which is inconsistent with his conclusion; and

(vii) if the jurisdictional agency so requires, certified copies of records relied on by the applicant including copies of the agency's official files.

(d) New onshore reservoir.

(1) For purposes of demonstrating that production is from the new onshore reservoir, the applicant shall file:

(i) NGPA Form No. 1;

(ii) geological information sufficient to support a determination that the reservoir is a new onshore reservoir. Such information shall include to the extent reasonably available to the applicant at the time of the determination:

(A) well logs;

(B) bottom hole pressure surveys;

(C) well potential tests;

(D) formation structure maps;

(E) a subsurface cross-section chart; and

(F) a gas analysis;

(iii) the well completion report;

(iv) the directional drilling survey if the jurisdictional agency requires such survey to be conducted; and

(v) a statement by the applicant, under oath:

(A) that he has made or has caused to be made, pursuant to his instructions, a diligent search of available public records including production, severance tax, and royalty records as well as any other records reasonably available to him;

(B) describing the search made; the records reviewed; the location of such records; and a description of any records which are described in (ii) (or which he believes may otherwise contain information relevant to the determination) but which he has determined are not reasonably available to him;

(C) that on the basis of the results of this search and examination, he has concluded that to the best of his information, knowledge and belief the natural gas to be produced and for which he seeks a determination is from a new onshore reservoir; and

(D) that he has no knowledge of any other information which is inconsistent with his conclusion; and

(vi) if the jurisdictional agency so requires, certified copies of records relied on by the applicant including copies of the agency's official files.

(2) the applicant in his statement under oath shall also answer, to the best of his information, knowledge and belief and on the basis of the results of the search and examination, the following questions:

(i) Was natural gas produced in commercial quantities from the reservoir prior to April 20, 1977?

(ii)(A) Was the reservoir penetrated before April 20, 1977 by an old well from which natural gas or crude oil was produced in commercial quantities from any reservoir?

(B) If the question in clause (ii)(A) is answered in the affirmative, could natural gas have been produced in commercial quantities from the reservoir before April 20, 1977, from any old well described in clause (ii)(A)?

(C) If the natural gas is to be produced through an old well, were suitable facilities for the production and delivery to a pipeline of such natural gas in existence on April 20, 1977?

(D) If the applicant is unable to answer the questions in clauses (B) and (C) in the negative, the

applicant shall provide the information upon which he bases his conclusion that the natural gas for which he seeks a determination is to be produced from a new onshore reservoir.

§ 274.203 New reservoirs on old OCS leases.

A person seeking a determination for purposes of Subpart B of Part 271 that natural gas is produced from a new reservoir on an old OCS lease (as defined in § 271.203(b)), shall file an application with the jurisdictional agency which contains the following items:

(a) NGPA Form No. 1;

(b) the date the reservoir was penetrated;

(c) geological information sufficient to support a determination that the reservoir is a new reservoir on an old OCS lease. Such information shall include to the extent reasonably available to the applicant at the time of the determination:

(1) well logs;

(2) bottom hole pressure surveys;

(3) well potential tests;

(4) formation structure maps;

(5) a subsurface cross-section chart; and

(6) a gas analysis;

(d) the well completion report;

(e) if the date of penetration of the reservoir is prior to July 27, 1976:

(1) the results of any production test meeting the requirements of OCS Order No. 4 demonstrating that, as of the time of such test, the reservoir was not capable of producing in paying quantities;

(2) any production capability evidence meeting the requirements of OCS Order No. 4 demonstrating that, as of the time such evidence was obtained, the reservoir was not capable of producing in paying quantities; or,

(3) an induction-electric log, sidewall cores and core analysis, or a wire line formation test indicating that, as of the time of such tests, the reservoir was not capable of producing in commercial quantities;

(f) a statement by the applicant, under oath, that no such production tests were performed and that no evidence existed on the date the reservoir was penetrated that the reservoir was capable of producing in paying quantities;

(g) a statement by the applicant, under oath:

(1) that he has made, or has caused to be made pursuant to his instructions, a diligent search of available public records including production, severance tax, and royalty records, as well as any other records reasonably available to him;

(2) describing the search made, the records reviewed, the location of the records, and any records which he believes may contain information relevant to the determination but which he has determined are not reasonably available to him;

(3) that on the basis of the results of this search and examination, he has concluded that to the best of his information, knowledge and belief, the natural gas for which he seeks a determination is produced on an old lease on the OCS from a reservoir which was not discovered before July 27, 1976; and

(4) that he has no knowledge of any other information which is inconsistent with his conclusion; and

(h) if the jurisdictional agency so requires, certified copies of records relied on by the applicant including copies of the agency's official files.

§ 274.204 New onshore production wells.

A person seeking a determination for purposes of Subpart C of Part 271 that a well is a new, onshore production well, shall file an application with the jurisdictional agency which contains the following items:

(a) NGPA Form No. 1;

(b) the well completion report;

(c) a location plat which locates and identifies the well for which a determination is sought and all other wells within the proration unit in which the subject well is located; and

(d) a statement by the applicant, under oath:

(1) that he has made, or has caused to be made pursuant to his instructions, a diligent search of available public records including production, severance tax, and royalty records, as well as any other records reasonably available to him;

(2) describing the search made, the records reviewed, the location of the records, and any records he believes may contain information relevant to the determination but which he has determined are not reasonably available to him;

(3) that on the basis of this search and examination, he has concluded that to the best of his information, knowledge and belief the surface drilling of the well for which he seeks a determination was begun on or after February 19, 1977;

(4) that the well satisfies any applicable federal or state well-spacing requirements; and that the well is not within a proration unit:

(i) which was in existence at the time the surface drilling of the well began;

(ii) which was applicable to the reservoir from which natural gas is produced; and

(iii) which applied to any other well which either produced natural gas in commercial quantities or the surface drilling of which began on or after February 19, 1977, and
was thereafter capable of producing natural gas in commercial quantities; and

(iv) that he has no knowledge of any information which is inconsistent with his conclusions.

(e) if the jurisdictional agency so requires, certified copies of records relied on by the applicant including copies of the agency's official files.

§ 274.205 High-cost gas.

A person seeking a determination for purposes of Subpart G of Part 271 that natural gas is produced from a well which is a deep, high-cost well shall file an application with the jurisdictional agency which contains the following items:

(a) NGPA Form No. 1;

(b) all well completion reports for this well;

(c) well logs;

(d) directional drilling surveys if available; and

(e) a statement by the applicant, under oath, that the surface drilling of the well for which he seeks a determination began on or after February 19, 1977 and that the well completion location is below a true vertical depth of 15,000 feet; and that he has no knowledge of any information which is inconsistent with his conclusions.

§ 274.206 Stripper gas.

A person seeking a determination for purposes of Subpart B of Part 271 that a well either qualifies or continues to qualify as a stripper well shall file an application with the jurisdictional agency which contains the following items:

(a) Application for determination. For purposes of initially qualifying a stripper well, the applicant shall file:

(1) NGPA Form No. 1;

(2) a copy of the results of any test establishing the maximum efficient rate of flow for the well; and, if the maximum efficient rate of flow has not been previously established:

(i) production records, if available, and if not, tax records, if available, or verified copies of billing statements for the 12 months immediately preceding November 9, 1978, including any part of the 90-day

production period upon which the application is based, which demonstrate that the well produced nonassociated natural gas at a rate which did not exceed an average of 60 Mcf per production day during such period;

(ii) if the well for which a determination is sought, has produced nonassociated natural gas at an average rate not in excess of 60 Mcf per production day for a 90-day production period within 120 days of the date of filing, but such an average rate of production has not been experienced for a 12-month period, the applicant shall file, as soon as practicable but in no event later than 10 months after the date the application is filed with the jurisdictional agency, either production records, if available, and if not, tax records, if available, or verified copies of billing statements for the 12-month period, including any part of the 90-day production period upon which the application is based, which demonstrates that such well produced nonassociated natural gas at a rate which did not exceed an average of 60 Mcf per production day during such period; or

(iii) such other evidence as the applicant may submit upon which the jurisdictional agency could establish the maximum efficient rate of flow;

(3) production records, if available, and if not, tax records, if available, or verified copies of billing statements upon which the average production for the 90-day production period is based;

(4) a list of the dates natural gas was not produced during the 90-day production period and a description of the state law or conservation practice recognized or approved by the state agency having regulatory jurisdiction over the production of natural gas which prohibited production;

(5) a list of the dates not included in the 90-day production period and a statement of the reasons why each day was excluded except to the extent they are covered under subparagraph (4);

(6) the production records for oil produced from the well for the 12-month period immediately preceding the date of filing;

(7) an inventory of the lease and production equipment used for the well for the past 24 months or for such lesser period as the well has been in production prior to date of filing, as well as the identification of any enhancement equipment or processes used during the completion of the well or during production subsequent to the completion of the well but prior to the filing for a determination;

(8) a statement by the person signing the applica-

tion, under oath, that he has made, or has caused to be made pursuant to his instructions, a diligent search of available public records as well as any other records reasonably available to him; a description of the search made, the records reviewed, the results of this search and examination he has concluded that to the best of his information, knowledge and belief, the well qualifies as a stripper well; and that he has no knowledge of any other information which is inconsistent with his conclusion.

(9) if the jurisdictional agency so requires, certified copies of records relied on by the applicant including copies of the agency's official files.

(b) Notice by an operator or purchaser of an increase in production. For purpose of the notices required under § 271.805, the person filing shall include:

(1) the names and addresses of the operator and purchaser(s) with a designation of who is filing the notice;

(2) identification of the subject well and accurate record reference to the original determination qualifying the well as a stripper well;

(3) the monthly production reports, tax records or billing statements for the period of production in question;

(4) a statement of the average production per production day for the period in question; and

(5) a statement that all of the information contained in the notice is true to the best of his information, knowledge and belief; and that the notice has been served on the appropriate entities specified in § 271.805.

(6) if the jurisdictional agency so requires, certified copies of records relied on by the applicant including copies of the agency's official files.

(c) Determination of increased production resulting from enhanced recovery techniques. For purposes of a determination that increased production resulted from the use of enhanced recovery techniques, the applicant shall file:

(1) the names and addresses of the applicant and purchaser;

(2) an identification of the well and accurate record reference to the original determination qualifying the well as a stripper well and the notice, if any, filed by a purchaser pursuant to § 271.805;

(3) a description of all processes used or equipment installed together with all dates of use or installation; and

(4) a statement, under oath, that to the best of his information, knowledge and belief, the information supplied and the conclusions drawn are true; that the operator has

no knowledge of any information inconsistent with any of his conclusions; and that the notice has been served on the appropriate entities specified in § 271.805.

(5) if the jurisdictional agency so requires, certified copies of records relied on by the applicant including copies of the agency's official files.

(d) Designation that a well is seasonally affected. For purposes of a designation that a well is seasonally affected, applicant shall file:

(1) the names and addresses of the applicant and purchaser(s);

(2) an identification of the well and accurate record reference to the original determination qualifying the well as a stripper well and any notice filed by a purchaser pursuant to § 271.805;

(3) production records, tax records or billing statements for a period of 24 months, including the 90-day or 12-month production period which is the subject of the notice by the operator or the purchaser;

(4) a description of the nature of the seasonal fluctuations as inferred from the data supplied; and

(5) a statement, under oath, that the production records, tax records or billing statements are correct; that the operator is in possession of no knowledge of any information contrary to any conclusions drawn by him; and

that the notice has been served in the appropriate entities specified in § 271.805.

(6) if the jurisdictional agency so requires, certified copies of the records relied on by the applicant including copies of the agency's official files.

§ 274.207 Alternative filing requirements.

(a) General. Upon written application by a jurisdictional agency pursuant to this section, the Commission may approve filing requirements which differ from those in §§ 274.201 through 274.206 of this subpart.

(b) Contents of applications. Applications for approval of alternative filing requirements shall include:

(1) each requirement of this subpart for which an alternative is proposed;

(2) a description of the specific requirements which will replace the requirements in subparagraph (1), including copies of any forms to be used by the agency;

(3) the reasons for requesting approval of each alternative requirement, which may include the fact that such information is not available; and

(4) the basis for the belief that filings under the alternative requirements provide substantial evidence on which the jurisdictional agency may base a determination.

(c) Commission review of applications. Upon receipt of an application pursuant to this section, the Commission shall give public notice of such application and after review of any written comments, may issue an order approving the alternative requirements. The Commission will publish the order in the Federal Register.

(d) Effective date of alternative filing requirements. With respect to applications received by a jurisdictional agency after the effective date of approval of alternative filing requirements, such alternate requirements as are specified in the approval shall apply in lieu of the provisions of §§ 274.201 through 274.206 of this subpart.

(e) Termination of alternative filing requirements.

(1) A jurisdictional agency may, upon notice to the Commission, discontinue the use of any alternative filing requirements approved under this subpart.

(2) The Commission may, after public comment, give notice to a jurisdictional agency that the Commission has terminated its approval of alternative filing requirements, if it finds that the alternative filing requirements:

(i) are not sufficient to carry out the purpose of the NGPA; or

(ii) the jurisdictional agency is not requiring compliance with the alternative requirements.

(3) Applications for determinations received by jurisdictional agencies after notice of termination of the applicability of alternative filing requirements pursuant to this section shall be subject to the filing requirements set forth in §§ 274.201 through 274.206 of this subpart.

APPENDIX TO SUBPART B
NGPA Form No. 1
APPLICATION FOR DETERMINATION
(Secs. 102, 103, 107, 108 and 109)

1. API Well No.: _____
2. Applicant: _____
   Address: Street: _____
   City: _____ State: _____ Zip: _____
3. Well Name and No.: _____
4. Location of Well: _____
   Field County State
5. OCS Lands: _____ _____ _____ _____
   Lease Date OCS No. Block No. Area
6. Purchaser: _____
7. Contract Date: _____ 8. Est. Annual Prod. _____ MMcf
9. Contract Price on filing date:
   Base (¢/MBtu) _____
   Tax _____
   Other _____
   Total _____
10. Max. Lawful Price on filing date:
   Base (¢/MBtu) _____
   Tax _____
   Other _____
   Total _____
11. Reservoir: _____
12. Category of gas for which determination is sought:
   Section of NGPA _____
   Category: _____
   Depth of Completion Location _____
13. Remarks:

Name: _____ Title: _____
(Name and title of person responsible for application)

_____ _____ _____
Signature Date Phone No.

SUBPART C - WAIVERS

Sec.
274.301 Applicability.
274.302 Requests for waiver.
274.303 Termination or revocation of agreements.
274.304 Notice.

§ 274.301 Applicability.

This subpart contains the procedures by which jurisdictional agencies and the Commission may enter into agreements under which jurisdictional agencies waive to the Commission authority to make the determinations set forth in Subpart A of this part.

§ 274.302 Requests for waiver.

(a) General. A jurisdictional agency may file with the Commission a request to enter into a written agreement waiving, in whole or in part, the authority of the jurisdictional agency to make determinations pursuant to Subpart A of this part.

(b) Contents of requests. Requests filed pursuant to this section shall include:

(1) the name of the jurisdictional agency;

(2) each class of determination for which a waiver is sought;

(3) the reasons the jurisdictional agency believes a waiver is necessary; and

(4) the length of time any waiver is to remain in effect.

(c) Commission action on requests. After consideration of any request under this section, the Commission may execute a written agreement which shall provide:

(1) that upon written acceptance of the agreement by the jurisdictional agency, the Commission, in lieu of such agency, will make the determinations waived in the agreement, and

(2) any terms and conditions, including the date(s) on which the waiver shall terminate, the Commission deems should be applicable to such waiver; and

(3) the effective date of the waiver.

§ 274.303 Termination or revocation of agreements.

Agreements pursuant to this subpart shall remain in effect until the earlier of:

(a) the expiration of the period specified in the agreement of waiver;

(b) receipt by the Commission of written notice from the jurisdictional agency that such agency terminates the agreement and assumes the authority to make determinations under Subpart A of this part; or

(c) the date on which the Commission pursuant to a term or condition of the waiver agreement, gives public notice that it has revoked the agreement.

§ 274.304 Notice.

The Commission shall cause public notice to be made of agreements of waiver and of any termination or revocation of a waiver.

SUBPART D - DELEGATIONS TO STATE AGENCIES

§ 274.401 Delegation of reporting requirements for certain first sales under sections 105 and 106(b) of the NGPA.

(a) Applicability. Section 276.101(b) provides that the Commission may delegate to a state agency the authority to receive the reports required to be filed by an interstate pipeline listing all first sales made to the pipeline pursuant to sections 105 and 106(b) of the NGPA. The filing requirements for the intrastate pipeline are set forth in sections 276.102(e) and 276.103(e). This section delineates the conditions under which the delegation may occur.

(b) State agency. A delegation pursuant to this section may be made only to a state agency having rate regulatory jurisdiction over all the intrastate pipelines that would be making the required filing. A state agency having rate jurisdiction is defined as one with regulatory jurisdiction over the rates and charges of the intrastate pipelines.

(c) Terms of the delegation. Such delegation shall be contained in an agreement executed between the Commission and the state agency, and shall contain such terms and conditions as the parties deem appropriate. Notice of the delegation agreement will be published in the Federal Register.

PART 275 - COMMISSION DETERMINATIONS AND REVIEW JURISDICTIONAL AGENCY DETERMINATIONS

SUBPART A - [RESERVED]

SUBPART B - PROCEDURE FOR COMMISSION REVIEW OF JURISDICTIONAL AGENCY DETERMINATIONS

Sec.

275.201 Publication of notice from jurisdictional agency.
275.202 Commission review of final determinations.
275.203 Protests to the Commission.
275.204 Contents of protests to the Commission.
275.205 Procedure for reopening determinations.

§ 275.201 Publication of notice from jurisdictional agency.

Upon receipt of a notice of determination by a jurisdictional agency under § 274.104, the Commission shall publish notice of such determination in the Federal Register. Such notice shall include:

(a) the date on which the jurisdictional agency notice was received;

(b) the information contained in Part I of the appropriate NGPA form;

(c) a statement that the record on which such determination was made is available for inspection at the offices of the Commission; and

(d) a statement that persons objecting to the final determination may, in accordance with this subpart, file a protest with the Commission within 15 days of the publication.

§ 275.202 Commission review of final determinations.

(a) Review by Commission. Except as provided in paragraph (b) of this section, determinations submitted to the Commission by jurisdictional agencies shall become final 45 days after the date on which the Commission received notice of the determinations, unless within 45 days, the Commission:

(1) makes a preliminary finding that:

(i) the determination is not supported by substantial evidence in the record on which the determination was made; or

(ii) the determination is not consistent with information which is contained in the public records of the Commission and which was not part of the record on which the jurisdictional agency made the determination, and

(2) provides written notice of such preliminary finding to the jurisdictional agency which made the determination, to those parties identified in the notice of such determination, to the Commission, and to any persons who have filed a protest.

(b) Noncompliance with filing requirements. Within 45 days after receipt of notice of a determination by a jurisdictional agency, if the Commission finds that the

application to the jurisdictional agency on which the determination was based did not conform to the filing requirements of Part 274 or alternative filing requirements approved pursuant to § 274.207, it shall notify the jurisdictional agency that, because of such nonconformity, the determination is ineffective. Unless, within 45 days of such notification, the jurisdictional agency notifies the Commission that such agency has received a conforming application, the applicant's right to make interim collections under Part 273 shall terminate.

(c) Notice. Written notice by the Commission pursuant to paragraph (a)(2) of this section shall include the reasons for the preliminary finding.

(d) Procedures following notice of preliminary finding. The jurisdictional agency and persons receiving notice pursuant to paragraph (a)(2) may, within 20 days after issuance of the preliminary finding, submit written comments and request an informal conference with the Commission staff. All timely requests for conferences will be granted and notice given to, and attendance permitted by, those persons identified in § 275.202(a)(2).

(e) Commission review. In any case in which a protest was filed with the Commission pursuant to this subpart and a preliminary finding was issued, the Commission will issue a final order within 120 days after issuance of the preliminary finding, either affirming, reversing, or remanding the determination of the jurisdictional agency. Such order shall state the specific basis for the Commission's action. In the event that the Commission fails to issue a final order within such time, the determination of the jurisdictional agency shall become final.

§ 275.203 Protests to the Commission.

(a) Who may file. Any person may file a protest with the Commission with respect to a determination of a jurisdictional agency.

(b) Grounds. Protests may be based only on the grounds that the final determination is:

(1) not supported by substantial evidence;

(2) not consistent with information which is contained in the public records of the Commission and which was not part of the record on which the determination was made;

(3) not consistent with information submitted with the protest for inclusion in the public records of the Commission,

which information was not part of the record on which the determination was made; or

(4) not based on an application which complied with the filing requirements set forth in Subpart B of Part 274, or alternative filing requirements approved pursuant to § 274.207.

§ 275.204 Contents of protests to the Commission.

Each protest shall include:

(a) an identification of the determination protested;

(b) the name and address of the person filing the protest;

(c) a statement of whether or not the person filing the protest participated in the proceeding before the jurisdictional agency, and if not, the reason for his nonparticipation;

(d) a statement of the effect the determination will have on the protestor;

(e) a statement of the precise grounds under § 275.202 for the protest, and all supporting documents or references to any information relied on which is in or to be inserted in the public files of the Commission or in the record of the determination; and

(f) a statement that the protestor has served, in accordance with §§ 1.17 and 1.51 of this chapter a copy of the protest together with all supporting documents on the jurisdictional agency and all persons who participated in the proceeding before the juriadictional agency.

§ 275.205 Procedure for reopening determinations.

(a) Grounds. At any time subsequent to the time a determination becomes final pursuant to this subsection, the Commission, on its own motion, or in response to a petition filed by any person aggrieved or adversely affected by the determination, may reopen the determination if it appears that:

(1) in making the determination, the Commission or the jurisdictional agency relied on any untrue statement of material fact; or

(2) there was omitted a statement of material fact necessary in order to make the statements made not misleading, in light of the circumstances under which they were made to the jurisdictional agency or the Commission.

(b) Contents of petition. A petition to reopen the determination proceedings shall contain the following information, under oath:

(1) the name and address of the person filing the petition;

(2) the interest of the petitioner in the outcome of the determination proceeding;

(3) the statement of material fact that is alleged to be untrue or omitted;

(4) a statement explaining why the outcome of the determination proceeding would have been different had the statement or omission not occurred; and

(5) copies of all documents relied on by the petitioner, or references to such documents if they are contained in the public files of the Commission.

(c) Procedures after reopening. In the event the Commission reopens a determination pursuant to this section it shall:

(1) give notice to the jurisdictional agency and all persons who participated, before both that agency and the Commission, in the proceedings resulting in the determination in question;

(2) permit the jurisdictional agency and other persons receiving notice pursuant to subparagraph (1) to submit whatever documentary evidence such agency or persons deem relevant; and

(3) take such other action or hold or cause to be held such proceedings as it deems necessary or appropriate for a full disclosure of the facts.

(d) Final order of Commission. Within 150 days after issuance of the notice under paragraph (c)(1) of this section, the Commission shall issue a final order. If the Commission finds that the grounds referred to in paragraph (a) of this section exist, it shall vacate the determination, and order refund or other appropriate action, and the right to collect the previously determined maximum lawful price shall terminate.

PART 276 - REPORTS

SUBPART A - REPORTS FOR SALES OF NATURAL GAS UNDER SECTIONS 105, 106(b) AND 109, OF THE NGPA

Sec.

276.101 Reporting entities.
276.102 Existing intrastate contracts.
276.103 Intrastate rollover contracts.
276.104 Other categories of natural gas.
276.105 Elective filing for small producers.

§ 276.101 Reporting entities

(a) General rule. Except as provided in paragraph (b), any person who makes a first sale of natural gas with respect to which the maximum lawful prices under sections 105, 106(b) or 109 of the NGPA apply, shall file with the Commission reports in accordance with the provisions of this subpart.

(b) Exceptions. In the case of reports to be filed with respect to existing intrastate contracts and intrastate rollover contracts, any person who, in the 12 month period which began on December 1, 1977 and ended on November 30, 1978, sold less than a total of 10,000 MMcf of natural gas

(including the sales by any affiliate of such person and including all sales whether such sales occurred in inter- or intrastate commerce) may, in lieu of the reports otherwise required under this subpart, elect to file the oath statement and undertaking described in §276.105 of this subpart.

(2) In the case of a first sale under sections 105 and 106(b) of the NGPA to an interstate pipeline or an intrastate pipeline, the provisions of paragraphs (a) and (b)(1) of this section shall not apply and the reports required to be filed under §§ 276.102 and 276.103 of this subpart shall be filed by the purchasing interstate pipeline or intrastate pipeline. Such reports shall be filed with the Commission except in the case of a delegation of functions which has been made to a state regulatory agency pursuant to Subpart D of Part 274. With regard to such first sales, the person making the first sale must file an oath statement with the Commission in accordance with §§ 276.102(f) and 276.103(f).

§ 276.102 Existing intrastate contracts.

(a) Any person who makes a first sale of natural gas under an existing intrastate contract or a successor to an existing intrastate contract shall file with the Commission on

March 1, 1979 and annually thereafter a report which contains:

(1) NGPA Form No. _____;

(2) with respect to each existing intrastate contract and each successor to an existing intrastate contract under which first sales of natural gas occurred in the reporting period, a statement identifying;

(i) the date the existing intrastate contract or the successor to an existing intrastate contract was entered into;

(ii) the contract price as defined in Subpart E on November 8, 1978;

(iii) if the contract price on November 8, 1978, is less than $2.060 per MMBtu, a copy or summary of the contract price escalator terms, if any;

(iv) the duration of the contract;

(v) the identity of all purchasers under the contract;

(vi) the contract price on December 31, 1984, if such price is less than $1.00 per MMBtu; and

(3) a statement under oath to be filed by a responsible officer of such person that to the best of such officer's information, knowledge and belief;

(i) all information submitted in the report is true; and

(ii) any first sales of natural gas occurring in the reporting period were made in compliance with the maximum lawful prices specified in section 105 of the NGPA and the Commission's regulations under Subpart E of Part 271.

(b) In the case of a report filed with the Commission on March 1, 1979, the report shall include the volumes sold under each existing intrastate contract or successor contract in the months of December 1978 and January 1979 and, in the case of the annual reports beginning with the reports to be filed on March 1, 1980 the report shall include volumes sold under each existing intrastate contract or successor contract for the 12 month period ending on January 31 of the reporting year.

(c) Any person filing annual reports with the Commission under this subpart may exclude from his report any information which had been previously reported to the Commission under an earlier report filed by such person under paragraphs (a) or (b) of this section.

(d) For the purposes of the statement under paragraph (a)(3), the reporting period shall mean (1) in the case of the March 1, 1979 reporting period which begins on December 1, 1978 and ends on January 31, 1979, and (2) in the case of annual reports filed beginning with March 1, 1980, the period which begins on February 1 of the preceding calendar year and ending on January 31 of the reporting year.

(e) An interstate or intrastate pipeline purchasing natural gas under an existing intrastate contract shall file a report with the Commission or the appropriate state regulatory agency where a delegation of functions has been made to such state regulatory agency pursuant to Subpart D of Part 274. Such report shall contain all of the information required in this section for all purchases by the reporting pipeline under existing intrastate contracts except:

(1) in lieu of the oath filing required under subparagraph (a)(3), the reporting pipeline shall make a statement under oath by a responsible officer of such pipeline that to the best of such officer's information, knowledge and belief all of the information contained in the report is true; and

(2) paragraph (d) is not applicable.

(f) Any person who makes a first sale of natural gas to any interstate or intrastate pipeline under an existing intrastate contract shall file with the Commission by March 1, 1979 and annually thereafter a statement by a responsible officer of such person under oath which contains:

(1) a statement that to the best of such officer's information, knowledge and belief, any first sales of natural gas occurring in the reporting period under existing intrastate contracts were made in compliance with applicable maximum lawful prices specified in section 105 of the NGPA and the Commission's regulations under Subpart E of Part 271; and

(2) a statement that books and records kept and maintained by such person reflect all the information required to be reported by the purchasing and reporting pipeline under paragraph (e) of this section and that such person undertakes to retain such records for a period of 3 years after the expiration of any contract under which any first sales have occurred during the reporting period.

§ 276.103 Intrastate rollover contracts.

(a) Any person who makes a first sale of natural gas

under an intrastate rollover contract shall file with the Commission on March 1, 1979 and annually thereafter a report which contains:

(1) NGPA Form No. _____;

(2) with respect to each intrastate rollover contract under which first sales of natural gas occurred in the reporting period, a statement identifying:

(i) the effective date on which first sales began under the intrastate rollover contract;

(ii) identification of the expired contract;

(iii) the identity of all parties to the existing intrastate contract which expired and to the intrastate rollover contract;

(iv) a specification of all changes, if any, in price related terms in the intrastate rollover contract from those contained in the existing intrastate contract which expired;

(v) the contract price paid, or which would have been paid, under the existing intrastate contract for the month in which first sales began under the rollover contract;

(vi) the price charged for the month in which first sales began under the intrastate rollover contract; and

(3) A statement under oath to be filed by a responsible officer of such person that to the best of such officer's information, knowledge and belief:

(i) all information submitted in the report is true; and

(ii) any first sales of natural gas occurring in the reporting period were made in compliance with the maximum lawful prices specified in section 106(b) of the NGPA and the Commission's regulations under Subpart F of this part.

(b) In the case of a report filed with the Commission on March 1, 1979, the report shall include the volumes sold under each intrastate rollover contract in the months of December 1978 and January 1979 and, in the case of the annual reports beginning with the report to be filed on March 1, 1980, the report shall include volumes sold under each intrastate rollover contract for the 12 month period ending on January 31 of the reporting year.

(c) Any person filing annual reports with the Commission under this subpart may exclude from his report any information which had been previously reported to the Commission under an earlier report filed by such person under paragraphs (a) and (b).

(d) For the purposes of the statement under paragraph (a)(3), the reporting period shall mean (1) in the case of the March 1, 1979 reporting period which begins on

December 1, 1978 and ends on January 31, 1979, and (2) in the case of annual reports filed beginning with March 1, 1980, the period which begins on February 1 of the preceding calendar year and ending on January 31 of the reporting year.

(e) An interstate or intrastate pipeline purchasing natural gas under an intrastate rollover contract shall file a report with the Commission or the appropriate state regulatory agency where a delegation of functions has been made to such state regulatory agency pursuant to Subpart D of Part 274. Such report shall contain all of the information required in this section for all purchases by the reporting pipeline under intrastate rollover contracts except:

(1) in lieu of the oath filing required under paragraph (a)(3), the reporting pipeline shall make a statement under oath by a responsible officer of such pipeline that to the best of such officer's information, knowledge and belief all of the information contained in the report is true; and

(2) paragraph (d) is not applicable.

(f) Any person who makes a first sale of natural gas to any interstate or intrastate pipeline under an intrastate rollover contract shall file with the Commission by March 1,

1979 and annually thereafter a statement by a responsible officer of such person under oath which contains:

(1) a statement that to the best of such officer's information, knowledge and belief, any first sales of natural gas occurring in the reporting period under intrastate rollover contracts were made in compliance with applicable maximum lawful prices specified in section 106(b) of the NGPA and the Commission's regulations under Subpart E of this part; and

(2) a statement that books and records kept and maintained by such person reflect all the information required to be reported by the purchasing and reporting pipeline under paragraph (e) of this section and that such person undertakes to retain such records for a period of 3 years after the expiration of any contract under which any first sales have occurred during the reporting period.

§ 276.104 Other categories of natural gas.

(a) A person who makes a first sale of natural gas which qualifies under Subpart I of Part 271 shall file a report with the Commission on March 1, 1979 and annually thereafter which contains the following items:

(1) NGPA Form No. 1;

(2) the volumes of gas sold in the reporting period;

(3) a statement that:

(i) the natural gas sold in the reporting period was not committed or dedicated to interstate commerce on November 8, 1978; or if such as was so committed or dedicated, a just and reasonable rate was not in effect under the Natural Gas Act on such date for the natural gas (including the basis for such conclusion); and with respect to any natural gas sold in the reporting period which was not committed or dedicated to interstate commerce on November 8, 1978, the natural gas sold in the reporting period is not subject to an existing intrastate contract as defined in §271.504 or intrastate rollover contract as defined in §271.604;

(4) a statement that, to the best of his information, knowledge and belief, the natural gas does not qualify for a maximum lawful price under any Subpart of Part 271 that is lower than the maximum lawful price permitted under §271.902;

(5)(i) if the natural gas was committed or dedicated to interstate commerce on November 8, 1978, a statement that a notice of change in rate schedule pursuant to §154.94 of this chapter has been filed;

(ii) if the natural gas was not committed or dedicated to interstate commerce on November 8, 1978, a statement identifying the well, reservoir and acreage from which the natural gas is produced.

(6) a statement under oath to be filed by a responsible officer of such person that to the best of such officer's information, knowledge and belief:

(i) all information submitted in the report is true; and

(ii) any first sales of natural gas occurring in the reporting period were made in compliance with the maximum lawful prices specified in section 109 of the NGPA and the Commission's regulations under Subpart I of this part.

(b) For the purposes of the statement under paragraph (a)(6), the reporting period shall mean (1) in the case of the March 1, 1979 reporting period which begins on December 1, 1978 and ends on January 31, 1979, and (2) in the case of annual reports filed beginning with March 1, 1980, the period which begins on February 1 of the preceding calendar year and ending on January 31 of the reporting year.

§ 276.105 Elective filing for small producers.

(a) Any person described in paragraph (b)(1) of §276.101

who elects, in lieu of reports otherwise required under this Subpart under §276.102 and §276.103, to file a general oath statement of undertaking shall no later than March 1, 1979, and annually thereafter, file with this Commission a report containing the following:

(1) NGPA Form No. _____;

(2) a statement that such person in the 12 month period which began December 1, 1977 and ended on November 30, 1978, sold less than a total of 10,000 MMcf of natural gas (including the sales of any affiliate of such person and including all sales which occurred in either inter- or intrastate commerce);

(i) a statement under oath to be filed by a responsible officer of such person that to the best of such officer's information, knowledge and belief, any first sales of natural gas made or to be made will comply with applicable maximum lawful prices specified in sections 105 and 106(b) of the NGPA and the Commission's regulations under Subparts E and F of this part; and

(ii) a statement under oath to be filed by a responsible officer of such person that books and records kept and maintained by such person reflect all the information

required to be reported under §§ 276.102, 276.103 and 276.104 of this Subpart and that such person undertakes to retain such records for a period of 3 years after the expiration of any contract under which any first sales have occurred in the reporting period.

(b) In the case of a general oath statement filed with the Commission on March 1, 1979, such statement shall apply to the volumes sold under each existing contract, successor contract, or intrastate rollover contract in the months of December 1978 and January 1979 and, in the case of the annual statements beginning with the statements to be filed on March 1, 1980, the statement shall apply to volumes sold under each existing contract, successor contract, or intrastate rollover contract for the 12 month period ending on January 31 of the reporting year.

(c) Any person filing annual statements with the Commission under this Subpart may exclude from his report any information which had been previously reported to the Commission under an earlier statement filed by such person under paragraph (a) of this section.

(d) For the purposes of the statement under paragraph (a) of this section, the reporting period shall mean (1) in

the case of the March 1, 1979 reporting period which begins on December 1, 1978 and ends on January 31, 1979, and (2) in the case of annual reports filed beginning with March 1, 1980, the period which begins on February 1 of the preceding calendar year and ending on January 31 of the reporting year.

APPENDIX TO PART 276

NGPA CONTRACT SUMMARY FORM FOR SECTIONS 105 and 106(b)

1. Applicant: _____

   Address: Street: _____

   City: _____ State: _____ Zip: _____

2. Purchaser: _____

3. Contract Date: _____

4. Effective Date of Contract: _____

5. Estimated Annual Production: _____ (Mcf)

6. Duration of Contract: _____

7. Contract Price per MMBtu as of November 9, 1978: _____

Name: _____ Title: _____
(name and title of person responsible for application)

_____ _____ _____
Signature Date Phone No.

APPENDIX TO PART 276

For Pipeline Purchasers
Summary Report For Existing Sales Not Committed
or Dedicated on 11-8-78 (Section 276.102)

Producer	Contract Date	Effective Date of Contract	Duration of Contract	Estimated Annual Production (MMcf)	Contract Price as of 11-8-78 (¢/MMBtu) 1/	Contract Price on 12-31-84 (¢/MMBtu)

1/ If price is less than $2.060/MMBtu, include a copy or summary of contract price escalator terms.

APPENDIX TO PART 276

For Pipeline Purchasers
Summary Report For Intrastate Rollover Contracts
(Section 276.103)

Producer 1/	Date Sales Commenced Under Rollover Contract	Date of Expired Contract	Date of Rollover Contract	Last Price Under Expired Contract (¢/MMBtu)	Initial Price Under Rollover Contract (¢/MMBtu) 2/

1/ List all parties to the existing contract which expired and identify any change in parties.

2/ Identify all changes in price related terms from those in existing contract.

SUBCHAPTER I - OTHER REGULATIONS UNDER THIS NATURAL GAS POLICY ACT OF 1978

PART 280 - [RESERVED]
PART 281 - [RESERVED]
PART 283 - [RESERVED]

PART 284 - CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS

SUBPART A - CERTAIN TRANSPORTATION BY INTERSTATE PIPELINES

Sec.
284.101 Applicability.
284.102 Transportation by interstate pipelines.
284.103 Rates and charges.
284.104 Terms and conditions.
284.105 Extensions.
284.106 Reporting requirements.

§ 284.101 Applicability.

This subpart implements section 311(a)(1) of the NGPA and applies to the transportation of natural gas by interstate pipelines on behalf of:

(a) intrastate pipelines; and

(b) local distribution companies.

§ 284.102 Transportation by interstate pipelines.

(a) Subject to the provisions of this subpart, any interstate pipeline may, without prior Commission approval, transport natural gas on behalf of:

(1) any intrastate pipeline; and

(2) any local distribution company.

(b) Rates charged for transportation under this subpart may not exceed just and reasonable rates as provided in § 284.103.

(c) Transportation arrangements under this subpart shall be subject to terms and conditions as provided in § 284.104.

(d) Transportation arrangements under this subpart may be extended as provided in § 284.105.

(e) Interstate pipelines engaging in transportation arrangements under this subpart shall file reports as provided in § 284.106.

§ 284.103 Rates and charges.

(a) Rates and charges for transportation of natural gas by interstate pipelines under this subpart shall be determined as provided in paragraphs (b) through (d) of this section.

(b) If an interstate pipeline has on file with the Commission a transportation rate schedule applicable to transportation arrangements under this subpart, the interstate pipeline shall use the rates contained in that schedule.

(c) If an interstate pipeline does not have on file with the Commission a transportation rate schedule applicable to transportation arrangements under this subpart, the interstate pipeline may elect either:

(1) to base its rates upon the methodology and cost used in designing rates to recover the transmission and related storage costs included in its then effective sales rate schedules; or

(2) to use the rates contained in a transportation rate schedule on file with the Commission which the interstate pipeline determines covers service comparable to transportation service under this subpart.

(d) All revenues in excess of one cent per Mcf received for transportation rendered pursuant to an arrangement under this subpart shall be credited to Account No. 191 and flowed back to the interstate pipeline's customers except:

(1) to the extent revenues attributable to such services fall within representative levels which have been credited in arriving at a test period cost of service; or

(2) to the extent that volumes transported fall within representative levels which have been included in billing determinants for the purpose of establishing rates.

§ 284.104 Terms and conditions.

(a) Contracts for the transportation of natural gas pursuant to this subpart shall provide:

(1) that service under the contract shall be conditioned upon the availability of capacity sufficient to provide the service without detriment or disadvantage to the interstate pipeline's existing customers who are dependent on the pipeline's general system supply; and

(2) that the transportation arrangement complies with the provisions of this subpart.

(b) Transportation arrangements pursuant to this subpart may be for a period not exceeding two years and may be extended as provided in § 284.105.

(c) The Commission may, by rule or order, impose further terms and conditions as it deems appropriate and in the public interest.

§ 284.105 Extensions.

(a) Interstate pipelines seeking to extend transportation arrangements under this subpart shall file an extension report as required in § 284.106(c).

(b) The proposed extension may take effect unless the Commission, prior to the beginning of the proposed extension, after opportunity for the oral presentation of data, views and arguments, and for written comments, determines by order that the proposed extension is not approved or is approved as modified.

(c) Extensions may be for a period not exceeding two years unless otherwise ordered by the Commission.

§ 284.106 Reporting requirements.

(a) Initial report. Within 30 days of commencing transportation under this subpart, an interstate pipeline shall file with the Commission an initial report, under oath, signed by a senior official of the company, containing the following information:

(1) the exact legal name of the interstate pipeline and the name, title and mailing address of the person or persons to whom communications concerning the transportation arrangement pursuant to this subpart should be addressed;

(2) a description of the transportation service, including:

(i) the identity of the parties;

(ii) the dates of commencement and termination of the service;

(iii) the estimated total and daily volumes of natural gas to be transported;

(iv) the points between which the natural gas is to be transported; and

(v) the rate to be charged, and with respect to the rate:

(A) if the interstate pipeline is charging a rate contained in a rate schedule under § 284.103(b), the identity of the rate schedule;

(B) if the interstate pipeline is charging a rate computed pursuant to § 284.103(c)(1), an explanation of how the rate is computed; or

(C) if the interstate pipeline is charging a rate contained in a rate schedule under § 284.103(c)(2), a statement of the basis upon which the interstate pipeline determined that the rate schedule used was for comparable service;

(3) a statement that the contract provides that:

(i) service under the contract is conditioned upon the availability of capacity sufficient to provide the service without detriment or disadvantage to the interstate pipeline's existing customers who are dependent on the pipeline's general system supply; and

(ii) the transportation arrangement complies with the provisions of this subpart.

(b) Subsequent reports. If any significant change occurs with respect to the information filed under paragraph (a) of this section, the interstate pipeline shall file with the Commission, under oath, appropriate amendments

to its initial report, signed by a senior official of the company.

(c) Extension report. Not less than 90 days prior to the expiration of a contract for the transportation of natural gas pursuant to this subpart, an interstate pipeline seeking to extend the transportation arrangement beyond the initial two-year period or any period of extension shall file with the Commission an extension report, under oath, signed by a senior official of the company stating:

(1) current information with respect to any matters required to be reported under paragraph (a) of this section; and

(2) the proposed terms of the extension.

(d) Final report. Within 30 days after the termination of any transportation arrangement or extension under this subpart, the interstate pipeline shall file with the Commission a report, under oath, signed by a senior official of the company, stating:

(1) current information with respect to the matters required to be reported under paragraph (a) of this section;

(2) actual total and daily volumes of natural gas transported pursuant to the arrangement;

(3) total revenues received and a complete statement of the manner in which the revenues were treated.

SUBPART B - CERTAIN TRANSPORTATION BY INTRASTATE PIPELINES

Sec.
284.121 Applicability.
284.122 Transportation by intrastate pipelines.
284.123 Rates and charges.
284.124 Terms and conditions.
284.125 Extensions.
284.126 Reporting requirements.

§ 284.121 Applicability.

This subpart implements section 311(a)(2) of the NGPA and applies to the transportation of natural gas by intrastate pipelines on behalf of interstate pipelines and local distribution companies served by interstate pipelines.

§ 284.122 Transportation by intrastate pipelines.

(a) Subject to the provisions of this subpart, any intrastate pipeline may, without prior Commission approval, transport natural gas on behalf of:

(1) any interstate pipeline; and

(2) any local distribution company served by an interstate pipeline.

(b) Rates charged for transportation under this subpart may not exceed fair and equitable rates as provided in § 284.123.

(c) Transportation under this subpart shall be subject to terms and conditions as provided in § 284.124.

(d) Transportation arrangements under this subpart may be extended as provided in § 284.125.

(e) Intrastate pipelines engaging in transportation arrangements under this subpart shall file reports as required by § 284.126.

§ 284.123 Rates and charges.

(a) Rates and charges for transportation shall be fair and equitable as determined in accordance with paragraph (b) of this section.

(b) The intrastate pipeline may elect either:

(1) to base its rates upon the methodology and cost used in designing rates to recover the transmission and related storage costs included in its then effective firm sales rate schedules on file with the appropriate state regulatory agency; or

(2) to use the rates contained in a transportation rate schedule for intrastate service on file with the appropriate state regulatory agency which the intrastate pipeline determines covers service comparable to service under this subpart.

(c) The Commission presumes that all revenues received by an intrastate pipeline in connection with transportation arrangements pursuant to this subpart have been

or will be taken into account for purposes of establishing rates charged by the intrastate pipeline for service to intrastate customers.

§ 284.124 Terms and conditions.

(a) Transportation arrangements pursuant to this subpart may be for a period not exceeding two years and may be extended for periods not exceeding two years.

(b) The Commission may, by rule or order, impose further terms or conditions as it deems appropriate and in the public interest.

§ 284.125 Extensions.

(a) An intrastate pipeline seeking to extend a transportation arrangement under this subpart shall file an extension report as provided by §284.126(c).

(b) The proposed extension may take effect unless the Commission, prior to the beginning of the proposed extension, after opportunity for the oral presentation of data, views and arguments, and for written comments, determines by order that the proposed extension is not approved or is approved as modified.

§ 284.126 Reporting requirements.

(a) Initial report. Within thirty days of commencing

transportation service pursuant to this subpart as intrastate pipeline shall file with the Commission an initial report, under oath, signed by a senior official of the company, containing the following information:

(1) the exact legal name of the intrastate pipeline; and the name, title and mailing address of the person or persons to whom communications concerning the transportation arrangement pursuant to this subpart should be addressed;

(2) a general description of the intrastate pipeline's existing operations;

(3) a description of the transportation service, including:

(i) the identity of the parties;

(ii) the dates of commencement and projected termination of the service;

(iii) the estimated total and daily volumes of natural gas to be transported;

(iv) the points between which the gas is to be transported; and

(v) the rate to be charged, and with respect to the rate:

(A) if the intrastate pipeline is charging a rate computed pursuant to § 284.123(b)(1), an explanation of how the rate is computed; or

(B) if the intrastate pipeline is charging a rate contained in a rate schedule under § 284.123(b)(2), a statement of the basis upon which the intrastate pipeline determined that the service provided is comparable to service provided for under the rate schedule.

(b) Subsequent reports. If any significant change occurs with respect to the information filed under paragraph (a) of this section, the intrastate pipeline shall file with the Commission, under oath, appropriate amendments to its initial report, signed by a senior official of the company.

(c) Extension report. Not less than 90 days prior to the expiration of a contract for the transportation of natural gas pursuant to this subpart, an intrastate pipeline seeking to extend the transportation arrangement beyond the initial two-year period or any period of extension shall file with the Commission under oath, an extension report, signed by a senior official of the company stating:

(1) current information with respect to any matters required to be reported under paragraph (a) of this section; and

(2) the proposed terms of the extension.

(d) Final report. Within thirty days after the termination of any transportation arrangement or extension under this subpart, the intrastate pipeline shall file with the Commission and with the appropriate regulatory agency a report, under oath, signed by a senior official of the company, providing:

(1) current information with respect to any matters required to be reported under paragraph (a) of this section;

(2) actual total and daily volumes of natural gas transported;

(3) total revenues received and a complete statement of the manner in which such revenues were treated;

(4) the actual rate charged, and with respect to the rate:

(i) if the intrastate pipeline computed a rate pursuant to § 284.123(b)(1), the rate and an explanation of how it was computed; or

(ii) if the intrastate pipeline used a rate pursuant to § 284.123(b)(2), the rate and the basis upon which the

interstate pipeline determined that the service provided for under the rate schedule was comparable to service under this subpart; and

(5) a statement that the appropriate state regulatory agency has been notified that the Commission has presumed that all revenues received by an intrastate pipeline in connection with the transportation arrangement that is the subject of the report have been or will be taken into account by the appropriate state regulatory agency for purposes of establishing transportation rates for intrastate service.

SUBPART C - CERTAIN SALES BY INTRASTATE PIPELINES

Sec.
284.141 Applicability.
284.142 Sales by intrastate pipelines.
284.143 Definition.
284.144 Rates and charge.
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284.146 Extensions.
284.147 Terminations.
284.148 Reporting requirements.

§ 284.141 Applicability.

This subpart implements section 311(b) of the NGPA and applies to certain sales of natural gas by intrastate pipelines to:

(a) interstate pipelines; and

(b) local distribution companies served by interstate pipelines.

§ 284.142 Sales by intrastate pipelines.

Any intrastate pipeline may, without prior Commission approval, sell natural gas to any interstate pipeline or any local distribution company served by an interstate pipeline, in accordance with the provisions of this subpart.

§ 284.143 Definition.

"Weighted average acquisition cost of natural gas" means the cost of natural gas to an intrastate pipeline computed by:

(a) determining the actual volumes of natural gas purchased by the intrastate pipeline from each source of supply during a 12-month period ending no more than 90 days prior to the commencement of deliveries pursuant to the sale;

(b) multiplying the volume attributable to each source of supply by the price with respect to each source of supply on the last day of the 12-month period; and

(c) dividing the sum of the products computed under paragraph (b) by the sum of the volumes determined under paragraph (a).

§ 284.144. Rates and charges.

(a) Basic rate. The rates and charges by an intrastate pipeline pursuant to this subpart may not exceed:

(1) its weighted average acquisition cost of natural gas; plus

(2) an amount to recover the costs of gathering, treating and transporting the natural gas associated with the sale, based upon the methodology and costs used in designing rates to recover those costs under firm sales rate schedules in effect at the time of the sale; plus

(3) an adjustment as determined under paragraph (b).

(b) With respect to natural gas sold pursuant to this subpart which:

(1) is acquired under an existing contract;

(2) is in excess of volumes which the intrastate pipeline would otherwise acquire; and

(3) the price of which exceeds the intrastate pipeline's weighted average acquisition cost of natural gas, the intrastate pipeline may add to the basic rate under paragraph (a) an amount sufficient to offset the increase in its weighted average acquisition cost of natural gas.

§ 284.145 Terms and conditions.

(a) No sale pursuant to this subpart or extension thereof may be for a period exceeding two years.

(b) Any sale pursuant to this subpart shall be subject to interruption to the extent that natural gas subject to the sale is required by the intrastate pipeline to provide adequate service to the pipeline's customers at the time of the sale.

(c) No sale pursuant to this subpart may involve natural gas acquired by the intrastate pipeline solely or primarily for the purpose of resale pursuant to this subpart.

(d) The Commission may by rule or order impose other terms and conditions as it deems appropriate and in the public interest.

(e) The Commission presumes that the gathering, treating and transportation costs recovered under § 284.144 will be considered by the state regulatory authority in arriving at sales and transportation rates to enable the intrastate pipeline company to recover its gathering, treating and transportation costs and earn its allowed rate of return.

§ 284.146 Extensions.

(a) An intrastate pipeline seeking to extend a sale pursuant to this subpart shall file an extension report as provided by § 284.148(c).

(b) The proposed extension may take effect unless the Commission, prior to the beginning of the proposed extension, after opportunity for the oral presentation of data, views and arguments, and for written comments, determines by order that the proposed extension is not approved, or is approved as modified.

§ 284.147 Terminations.

(a) Upon complaint of any interested person or upon the Commission's own motion, the Commission may by order terminate a sale pursuant to this subpart.

(b) Prior to issuing an order under paragraph (a) of

this section, the Commission shall afford an opportunity for the oral presentation of data, views and arguments, and for written comments.

(c) A sale under this subpart may be terminated if the Commission determines that:

(1) the termination is required to enable the intrastate pipeline to provide adequate service to its customers at the time of the sale;

(2) the sale involves natural gas acquired by the intrastate pipeline solely or primarily for the purpose of resale pursuant to this subpart;

(3) the sale violates any provision of this subpart or any term or condition established by rule or order of the Commission applicable to the sale; or

(4) the sale circumvents or violates any provision of the NGPA.

(d) Upon complaint of any interested person or upon its own motion, the Commission may, prior to a hearing as provided in paragraph (b) of this section, suspend a sale pursuant to this subpart pending the hearing if it determines that any of the findings under paragraph (c) of this section is likely to be made following the hearing.

§ 284.148 Reporting requirements.

(a) Initial report. Within 30 days after commencing a sale pursuant to this subpart, an intrastate pipeline shall file with the appropriate state regulatory agency and with the Commission an initial report, under oath, signed by a senior official of the company, containing the following information:

(1) the exact legal name of the intrastate pipeline and the name, title and mailing address of the person or persons to whom communications regarding the sale pursuant to this subpart should be addressed;

(2) a description of the sale, including:

(i) the identity of the parties;

(ii) the dates of commencement and termination of the sale;

(iii) the estimated total and daily volumes of natural gas; and

(iv) the rate to be charged;

(3) the computation of the weighted average acquisition cost of natural gas under this subpart;

(4) the computation of any rate charged to recover the cost of gathering, treating and transporting the natural gas associated with the sale;

(5) The computation of adjustment, if any, under § 284.165(b), including:

(i) the basis for attributing certain additional acquisitions of natural gas to a sale pursuant to this subpart;

(ii) the identity of the existing contract under which the additional acquisitions are made and the price of natural gas purchased under the contract; and

(iii) each point of delivery of additional acquisitions of natural gas to the intrastate pipeline; and

(6) an affidavit that service pursuant to the sale is subject to interruption to the extent that natural gas subject to the sale under this subpart is required to enable the intrastate pipeline involved to provide adequate service to its customers at the time of the sale.

(b) Subsequent report. If any significant change occurs with respect to the information filed under paragraph (a) of this section, the intrastate pipeline shall file with the Commission and the appropriate state regulatory agency, under oath, appropriate amendments to its initial report, signed by a senior official of the company.

(c) Extension report. Not less than 90 days prior

to the expiration of a contract for the sale of natural gas pursuant to this subpart, an intrastate pipeline seeking to extend the sale beyond the initial two-year period or any period of extension shall file with the Commission and the appropriate state regulatory agency an extension report signed by a senior official of the company, under oath, stating:

(1) current information with respect to any matters required to be reported under paragraph (a) of this section; and

(2) the proposed terms of the extension.

(d) Final report. Within 30 days after the termination of any transportation arrangement or extension under this subpart, the interstate pipeline or local distribution company served by an interstate pipeline which purchased natural gas pursuant to this subpart shall file with the Commission and the appropriate state regulatory agency, under oath, a final report signed by a senior official of the company, stating:

(1) the actual volumes of natural gas purchased, on a daily and total basis;

(2) the actual rate charged and the total amount paid; and

(3) the points of delivery.

SUBPART D - ASSIGNMENT OF CONTRACTUAL RIGHTS TO RECEIVE SURPLUS NATURAL GAS

Sec.
284.161 Applicability.
284.162 General rule.
284.163 Special rule.
284.164 Terms and conditions
284.165 Filing requirements.

§ 284.161 Applicability.

This subpart implements section 312 of the NGPA and applies to assignment by any intrastate pipeline to any interstate pipeline or local distribution company of its contractual right to receive surplus natural gas.

§ 284.162 General rule.

(a) Except as provided in § 284.163, no assignment pursuant to this subpart may take place unless the Commission in its discretion authorizes by order an application for assignment filed in accordance with § 284.165(a) upon a determination that the assignment is consistent with the NGPA and this subpart and is necessary or appropriate in the public interest.

§ 284.163 Special rule.

An intrastate pipeline may assign, without compensation, to any interstate pipeline or local distribution company

all or any portion of its contractual right to receive surplus natural gas at any first sale without prior approval of the Commission, if:

(a) a state agency having regulatory jurisdiction over the intrastate pipeline which would be entitled to receive the natural gas in the absence of the assignment has determined that such natural gas exceeds the then current demands on such pipeline for natural gas;

(b) the price per MMBtu for the natural gas under the contract to be assigned does not and will not exceed the maximum lawful price per MMBtu prescribed under § 271.202; and

(c) the reports required under § 271.165(e) are filed with the Commission within 60 days of the commencement of deliveries under the assignment.

§ 284.164 Terms and conditions.

Upon approval under § 284.162 or compliance with § 284.163, an intrastate pipeline may assign, without compensation, to any interstate pipeline or local distribution company all or any portion of its contractual right to receive surplus natural gas at any first sale. Rates charged for any gathering, processing and transportation service in connection with an assignment under this sub-

part shall be computed in accordance with Subpart B of this part. The assignment shall be subject to any terms or conditions that the Commission determines by rule or order are appropriate and in the public interest.

(a) Upon receipt and review of reports required under § 284.165(e) for assignments without prior Commission approval, the Commission reserves the right to order termination of the assignment or compliance with any terms and conditions as it may determine by rule or order are appropriate and in the public interest.

§ 284.165 Filing requirements.

(a) An application for authorization of an assignment pursuant to this subpart shall be filed by the intrastate pipeline, under oath, with the Commission, and shall set forth the following information:

(1) a description of the proposed assignment, including:

(i) the identity of the parties;

(ii) the estimated volumes of natural gas, on a total and daily basis;

(iii) The price per MMBtu applicable to volumes to be delivered pursuant to the assignment and any other terms of the assignment relating to price; and

(iv) the point of delivery;

(2) a copy of the contract which covers the natural gas being assigned as surplus natural gas and any ancillary agreements;

(3) a copy of the determination by the state agency having regulatory jurisdiction over the intrastate pipeline that the quantity of natural gas to be assigned is in excess of the volume of natural gas available to the intrastate pipeline and needed to satisfy then current demands;

(4) a statement of the basis for assigning the right to receive particular supplies of natural gas, including an attestation that the particular supplies of natural gas were not committed or dedicated to interstate commerce on November 8, 1978; and

(5) the computation of any rates to be charged for gathering, processing or transportation services associated with the assigment.

(b) An interstate pipeline or local distribution company to which an intrastate pipeline would make an assignment under this subpart shall file, under oath, with the Commission a statement in support of the application under paragraph (a) that to the best of its knowledge, information and belief the price of the natural gas to

be assigned does not exceed the applicable maximum lawful price established under Part 271 of this chapter.

(c) An interstate pipeline to which an intrastate pipeline would make an assignment under this subpart shall file, under oath, with the Commission a statement in support of the application under paragraph (a) containing the following:

(1) the extent of curtailment, if any, anticipated to occur in the period in which the natural gas is to be delivered pursuant to the assignment;

(2) the effect which the price of the natural gas is expected to have on the interstate pipeline's average purchased gas cost in the period in which the natural gas is to be delivered pursuant to the assignment; and

(3) the reasons why in the opinion of the interstate pipeline the assigment should be authorized as necessary or appropriate in the public interest.

(d) The intrastate pipeline shall notify the appropriate state regulatory agency that the Commission has presumed that all revenues received in connection with gathering, processing or transporting the assigned natural gas have been or will be taken into account for purposes of establishing the intrastate pipeline's rates.

(e) Within 60 days of the commencement of deliveries under an assignment pursuant to § 284.163, the following information shall be filed, under oath, with the Commission:

(1) by the intrastate pipeline:

(i) a description of the proposed assignment, including:

(A) the identity of the parties;

(B) the estimated volumes of natural gas, on a total and daily basis;

(C) the price per MMBtu applicable to volumes to be delivered pursuant to the assignment and any other terms of the assignment relating to price; and

(D) the point of delivery;

(ii) a copy of the contract which covers the natural gas being assigned as surplus natural gas and any ancillary agreements;

(iii) a copy of the determination by the state agency having regulatory jurisdiction over the intrastate pipeline that the quantity of natural gas to be assigned is in excess of the volume of natural gas available to the intrastate pipeline and needed to satisfy then current demands;

(iv) a statement of the basis for assigning the right to receive particular supplies of natural gas, including an

attestation that the particular supplies of natural gas were not committed or dedicated to interstate commerce on November 8, 1978; and

(v) the computation of any rates to be charged for gathering, processing or transportation services associated with the assignment.

(2) by the interstate pipeline or local distribution company to which an intrastate pipeline is assigning the contract under this subpart shall file, under oath, with the Commission a statement in support of the assignment that to the best of its knowledge, information and belief the price of the natural gas to be assigned does not exceed the applicable maximum lawful price established under Part 271.202 of this chapter.

(3) by the interstate pipeline to which an intrastate pipeline would make an assignment under this subpart shall file, under oath, with the Commission a statement containing the following:

(i) the extent of curtailment, if any, anticipated to occur in the period in which the natural gas is to be delivered pursuant to the assignment;

(ii) the effect which the price of the natural gas is except to have on the interstate pipeline's average

purchased gas cost in the period in which the natural gas is to be delivered pursuant to the assignment; and

(iii) the reasons why in the opinion of the interstate pipeline the assignment is necessary or appropriate in the public interest.

(4) The intrastate pipeline shall notify the appropriate state regulatory agency that the Commission has presumed that all revenues received in connection with gathering, processing or transporting the assigned natural gas have been or will be taken into account for purposes of establishing the intrastate pipeline's rates.

[FR Doc. 78-32302 Filed 11-14-78; 10:04 am]

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Monday	Tuesday	Wednesday	Thursday	Friday
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NOTE: As of August 14, 1978, Community Services Administration (CSA) documents are being assigned to the Monday/Thursday schedule.

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[3195-01-M]

Title 3—The President

Executive Order 12098 • **November 14, 1978**

Physical Fitness and Sports

By the authority vested in me as President by the Constitution of the United States of America, and in order to amend the composition of the President's Council on Physical Fitness and Sports, Executive Order No. 11562, as amended by Executive Order No. 11945, is hereby further amended by revising Section 2(a) to read as follows:

"There is hereby established the President's Council on Physical Fitness and Sports, hereinafter referred to as the Council, which shall be composed of fifteen members appointed by the President. The Chairman shall be designated by the President from among the members. The Council shall meet at the call of the Chairman.".

Jimmy Carter

THE WHITE HOUSE,
November 14, 1978.

[FR Doc. 78-32500 Filed 11-15-78; 10:38 am]

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rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

[3410-07-M]

Title 7—Agriculture

CHAPTER XVIII—FARMERS HOME ADMINISTRATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER N—OTHER LOAN PROGRAMS

[FmHA Instruction 1980-E]

PART 1980—GUARANTEED LOAN PROGRAMS

Subpart E—Business and Industrial Loan Program

FORMS AMENDMENT

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) revises its regulations to remove the reference to Form FmHA 440-48, "Association and Organization Activity Report," and substitute Forms FmHA 2033-39 thru 2033-41. These forms are used internally to submit information concerning Business and Industry facilities from the field to the agency computer center. This revision is designed to facilitate and improve FmHA reporting requirements which will result in better service to program managers and ultimately to the general public.

EFFECTIVE DATE: November 16, 1978.

FOR FURTHER INFORMATION CONTACT:

Darryl Evans, Business and Industry Loan Division, telephone 202-447-3949.

SUPPLEMENTARY INFORMATION: The Farmers Home Administration (FmHA) amends § 1980.451, paragraph B.2 under the heading "administrative" of Subpart E of Part 1980, Chapter XVIII, Title 7, Code of Federal Regulations.

Section 1980.451, paragraph B.2 under the heading "administrative" is revised to eliminate Form FmHA 440-48, "Association Organization Activity Report", used for internal processing of information which is now obsolete. The agency is embarking on a new computer reporting system which will require the use of new forms in series 2033-38 through 41. These forms do not effect the general public in any way.

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This revision, however, is not published for proposed rulemaking since no substantive changes have been made which affect the public. Since the changes are procedural in nature, public participation is unnecessary. Accordingly, as revised § 1980.451, paragraph B.2 under the heading "administrative" reads as follows:

§ 1980.451 Filing and processing applications.

* * * * *

ADMINISTRATIVE

* * * * *

B. *The State Director*

1. * * *

2. Will prepare and submit Form FmHA 2033-37, "Rural Community Facility Applicant/Borrower Definition," Form FmHA 2033-38, "Rural Community Facility and Funding Data," Form FmHA 2033-39, "Rural Community Facility Status Detail," Form FmHA 2033-40, "Rural Community Fund Dispositions," and Form FmHA 2033-41, "Rural Community Facility Actual Verifications of Employment and Users," in accordance with FmHA Instruction 2033-F. (Available from any State Office or the National Office.) The Standard Industrial Classification (SIC) manual will be used in coding of projects.

* * * * *

AUTHORITY: 7 U.S.C. 1989; delegation by the Secretary of Agriculture; 7 CFR 2.23; delegation of authority by the Assistant Secretary of Agriculture for Rural Development, 7 CFR 2.70.

Dated: October 12, 1978.

GORDON CAVANAUGH,
Administrator,
Farmers Home Administration.

[FR Doc. 78-32229 Filed 11-15-78; 8:45 am]

[3410-02-M]

CHAPTER X—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; MILK) DEPARTMENT OF AGRICULTURE

[Milk Order No. 4; Docket No. AO-160-A55]

PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

Order Suspending Certain Provisions; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule; correction.

SUMMARY: An order suspending certain provisions of the Middle Atlantic order was issued on October 18, 1978, and published in the FEDERAL REGISTER on October 23, 1978 (43 FR 49285). The authority citation for this action was inadvertently omitted. This document is being published to show the proper authority citation.

EFFECTIVE DATE: The suspension order became effective on October 23, 1978.

FOR FURTHER INFORMATION CONTACT:

Clayton H. Plumb, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-6273.

SUPPLEMENTARY INFORMATION: The proper authority citation for the suspension cited above is:

(Sec. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.)

Signed at Washington, D.C. on: November 13, 1978.

JERRY C. HILL,
Deputy Assistant Secretary.

[FR Doc. 78-32230 Filed 11-15-78; 8:45 am]

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[3128-01-M]

Title 10—Energy

CHAPTERS II AND III—DEPARTMENT OF ENERGY

AMENDMENT OF THE TITLES FOR THE FEDERAL ENERGY ADMINISTRATION AND THE ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) hereby amends the titles of Chapters II and III of Title 10 of the Code of Federal Regulations to read "Department of Energy". The purpose of this action is to reflect the fact that the regulations contained in Chapters II and III of Title 10 are now administered by DOE, the successor agency of the Federal Energy Administration and the Energy Research and Development Administration.

EFFECTIVE DATE: Upon issuance.

FOR FURTHER INFORMATION CONTACT:

Kristina Clark (Office of General Counsel), Department of Energy, Room 5146, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461, 202-566-9565.

SUPPLEMENTARY INFORMATION: The Department of Energy was established by the Department of Energy Organization Act ("DOE Act", Pub. L. 95-91, August 4, 1977). By Executive Order 12009, issued September 13, 1977 (42 FR 46267, September 15, 1977), the President established the effective date of the Act as October 1, 1977.

The DOE Act consolidated in the DOE various energy functions previously performed by several Federal agencies. Section 301(a) of the Act generally transferred to and vested in the Secretary of Energy the functions of the former Federal Energy Administration (FEA) and the Energy Research and Development Administration (ERDA). Section 705 of the DOE Act provides that rules and regulations relating to functions transferred to the Department and in effect on the effective date of the Act shall continue in effect according to their terms until revoked or modified by the Department or other competent authority. Pursuant to these provisions, the Department since October 1, 1977 has been administering the regulations contained in Chapters II and III of Title 10 of the Code of Federal Regulations, which were previously administered by FEA and ERDA, respectively.

The Department has therefore determined to change the titles of Chapters II and III of Title 10 of the Code of Federal Regulations to reflect that the FEA and ERDA are no longer in existence, and that the Department is now administering the regulations contained therein. Thus, the titles of such Chapters II and III are hereby amended to read "Department of Energy."

The Department intends in the near future to reorganize the regulations contained within these two chapters, arranging them according to the offices, officers or other appropriate entities within the Department having responsibility to administer the regulations and simplifying, modifying or revoking regulations where appropriate. At that time, references to specific offices contained in existing particular regulations will be amended to reflect the appropriate offices or other entities within DOE which should be named.

It should be noted that not all regulations implementing other functions transferred to or vested in the DOE or entities within the DOE by the DOE Act are necessarily contained within present Title 10. The Department currently contemplates that the reorganization of regulations mentioned above will accomplish the consolidation of these other regulations in Title 10 where appropriate.

The Department has determined that the rule adopted herein concerns a matter of agency organization and procedure and does not require notice or a hearing under 5 U.S.C. 553. Thus, the provisions of Section 501 of the DOE Act are not applicable to the adoption of this rule.

(Department of Energy Organization Act, Pub. L. 95-91; E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, the titles of Chapters II and III of Title 10 of the Code of Federal Regulations are amended to read "Department of Energy."

Issued in Washington, D.C. on November 9, 1978.

WILLIAM P. DAVIS,
Deputy Director of Administration.

[FR Doc. 78-32173 Filed 11-15-78; 8:45 am]

[6210-01-M]

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

PART 250—MISCELLANEOUS INTERPRETATIONS

Operations Subsidiaries; Correction

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Correction.

SUMMARY: This document corrects § 250.141 in a previous document (FR Doc. 33-11813) which was published on August 21, 1968.

FOR FURTHER INFORMATION CONTACT:

Wanda Baldwin, Technical Editor, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, 202-452-3565.

On page 11813 in the issue for August 21, 1968, the reference to 12 CFR 222.122 in the last line of paragraph (f), should read "225.122". In paragraph (g), the reference in the tenth line to 12 CFR 222.104(e) should read "225.104(e)".

Board of Governors of the Federal Reserve System, November 7, 1978.

JOHN M. WALLACE,
Assistant Secretary of the Board.

[FR Doc. 78-32278 Filed 11-15-78; 8:45 am]

[6720-01-M]

CHAPTER V—FEDERAL HOME LOAN BANK BOARD

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

[No. 78-578]

AMENDMENTS RELATING TO NOW ACCOUNTS

OCTOBER 25, 1978.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: In partial implementation of the Financial Institutions Regulatory and Interest Rate Control Act of 1978, the Federal Home Loan Bank Board amends its regulations regarding transaction (or NOW) accounts by adding New York to the list of States in which financial depository institutions are permitted to offer such accounts.

EFFECTIVE DATE: November 10, 1978.

FOR FURTHER INFORMATION CONTACT:

Harry W. Quillian, Associate General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, D.C. 20552, 202-377-6440.

SUPPLEMENTARY INFORMATION: Present Bank Board regulations list only the New England States of New Hampshire, Massachusetts, Connecticut, Rhode Island, Maine, and Vermont, as States in which accountholders in financial depository institutions are permitted to withdraw funds from savings accounts by negotiable or transferable instruments for the purpose of making transfers to third parties. The Bank Board hereby amends 12 CFR 526.8, 12 CFR 545.4-1, and 563.7-3 by adding New York to the list of States contained in those sections in implementation of title XIII of the Financial Institutions Regulatory Interest Rate Control Act of 1978.

The Bank Board finds that: (1) Notice and public procedure are unnecessary under 5 U.S.C. § 553(b) and 12 CFR 508.11 because these amendments relieve restriction and immediate implementation of the Act is in the public interest; and (2) publication of the amendments for the 30-day period specified in 5 U.S.C. § 553(d) and 12 CFR 508.14 is unnecessary for the same reasons.

Accordingly, the Federal Home Loan Bank Board amends: (1) 12 CFR 526.8 by adding New York after Maine to the list of States in the introducing paragraph and paragraph (c) of the section; (2) 12 CFR 545.4-1 by adding New York after Maine to the list of States in subparagraph (a)(3); and (3) 12 CFR 563.7-3 by adding New York after Maine to the list of States in that section.

(Title XIII, Financial Institutions Regulatory and Interest Rate Control Act of 1978, sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464; secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended, 12 U.S.C. 1725, 1726, 1730; Pub. L. 93-100, as amended; Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., 1071.)

By the Federal Home Loan Bank Board.

J. J. FINN,
Secretary.

[FR Doc. 78-32290 Filed 11-15-78; 8:45 am]

[6720-01-M]

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

[No. 78-579]

PART 564—SETTLEMENT OF INSURANCE

Increase of Insurance of Accounts

OCTOBER 25, 1978.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: This amendment increases from $40,000 to $100,000 the maximum amount of insurance coverage for Individual Retirement Accounts (IRA) and Keogh accounts in institutions insured by the Federal Savings and Loan Insurance Corporation. This change reflects an increase in insurance coverage provided in the Financial Institutions Regulatory and Interest Rate Control Act of 1978.

EFFECTIVE DATE: November 10, 1978.

FOR FURTHER INFORMATION CONTACT:

Harry W. Quillian, Associate General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, D.C. 20552, 202-377-6440.

SUPPLEMENTARY INFORMATION: The Federal Home Loan Bank Board, as operating head of the Federal Savings and Loan Insurance Corporation, hereby amends § 563.10 of the Rules and Regulations for Insurance of Accounts (12 CFR 564.10) to increase from $40,000 to $100,000 the maximum amount of insurance coverage for accounts which qualify under section 401(d) or section 408(a) of the Internal Revenue Code of 1954. This change reflects amendment of section 405(d) of the National Housing Act by title XIV of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 to provide for such increased coverage.

Because this amendment relieves restriction and the Bank Board believes it is in the public interest that the statutory amendment be reflected in the regulations without delay, it finds that notice and public procedure with respect to the amendment is contrary to the public interest and unnecessary under the provisions of 12 CFR 508.11 and 5 U.S.C. § 553(b); the Bank Board also finds that publication of the amendment for the 30-day period specified in 12 CFR 508.14 and 5 U.S.C. § 553(d) prior to effective date is unnecessary for the same reason.

Accordingly the Bank Board hereby amends § 564.10 to read as follows:

§ 564.10 Trust Accounts and IRA and Keogh Accounts.

All trust estates for the same beneficiary invested in accounts established pursuant to valid trust arrangements created by the same settlor (grantor) shall be added together and insured up to $40,000 in the aggregate, separately from other accounts of the trustee of such trust funds or the settlor or beneficiary of such trust arrangements, except that all vested and ascertainable interests of the same benficiary which qualify under section 401(d) or section 408(a) of the Internal Revenue Code of 1954 shall be added together and insured up to $100,000 in the aggregate.

(Secs. 401, 402, 403, 405, 48 Stat. 1255, 1256, 1257, 1259, as amended; 12 U.S.C. 1724, 1725, 1726, 1728. Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071.)

Dated: October 25, 1978.

By the Federal Home Loan Bank Board,

J. J. FINN,
Secretary.

[FR Doc. 78-32297 Filed 11-15-78; 8:45 am]

[4910-13-M]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 17739; Amdt. 39-3350]

PART 39—AIRWORTHINESS DIRECTIVES

British Aircraft Corp., Viscount Models 744, 745D and 810 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires inspection and replacement as necessary of the gland nut and the associated locking plate/locking screw of the main landing gear shock absorber struts on British Aircraft Corporation Viscount Models 744, 745D, and 810 Series airplanes. The AD is prompted by reports of gland nuts becoming detached in serviced which have caused malfunctioning of the retraction/extension system as well as serious damage to associated main landing gear components.

DATES: Effective December 18, 1978. Compliance schedule—As prescribed in body of AD.

ADDRESSES: The applicable technical leaflets may be obtained from:

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British Aerospace, Inc., 13850 McLearen Rd., Herndon, Va., 20070, telephone: 703-435-9100. Copies of the technical leaflets are contained in the Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT:

D. C. Jacobsen, Chief, Aircraft Certification Staff, AEU-100, c/o American Embassy, Brussels, Belgium, telephone: 513.38.30.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring inspection and replacement as necessary of the gland nut and the associated locking plate/locking screw of the main landing gear shock absorber struts on British Aircraft Corporation Viscount Models 744, 745D and 810 Series airplanes was published in the FEDERAL REGISTER at 43 FR 15433 on April 13, 1978. The proposal was prompted by reports of gland nuts becoming detached in service, causing malfunctioning of the retraction/extension system as well as serious damage to associated main landing gear components.

Interested persons have been afforded an opportunity to participate in the making of the amendment. No objections were received. Accordingly, the proposal is adopted without change.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

BRITISH AIRCRAFT CORPORATION. Applies to Viscount Models 744, 745D, and 810 Series airplanes, certificated in all categories.

Compliance is required as indicated.

The following parts are affected by this AD:

	700 Series		800 Series
	10" Oleos	14" Oleos	
Gland Nut.....	70050-317	72450-69	81050-69
Locking Plate...		72450-71	81050-71
Locking Screw..	70050-259		

To insure the security of the gland nut and locking plate/locking screw combination and prevent detachment of the gland nut of the main landing gear shock absorber struts, accomplish the following:

(a) Within the next 25 landings after the effective date of this AD and thereafter at intervals not to exceed 25 landings from the last inspection until the inspection required by paragraph (c) of this AD is performed, visually inspect the gland nut and locking plate/locking screw combination as installed for security and satisfactory locking in accordance with paragraph 2.2 of the "Accomplishment Instructions" of British Aircraft Corporation Preliminary Technical Leaflet (PTL) No. 299 (700 Series) or PTL No. 168 (800 Series), as applicable, both at Revision 3, dated January 12, 1977, or an FAA-approved equivalent.

(b) If, during any of the inspections required by paragraph (a) of this AD, the gland nut is found to be loose or not adequately locked, before further flight, remove the gland nut and inspect the thread form in accordance with paragraph (c) of this AD.

(c) Within 500 landings after the effective date of this AD, unless already accomplished within the last 2,500 landings, and thereafter at intervals not to exceed 3,000 landings, remove the gland nut and inspect the condition of the threads in accordance with the criteria established in paragraph 2.2.2 of British Aircraft Corporation PTL No. 299 (700 Series) or PTL No. 168 (800 Series), as applicable, both at Revision 3, dated January 12, 1977, or an FAA-approved equivalent.

(d) If, during any inspection performed in accordance with paragraph (c) of this AD, the thread form of the gland nut is found unacceptable under the criteria referenced in paragraph (c) of this AD, before further flight, replace the gland nut with a serviceable part of the same part number found acceptable under those criteria.

(e) If, during any of the inspections required by this AD, a locking plate is found worn or fractured, before further flight, replace the locking plate with a servicable part of the same part number. Replacement locking plates may be installed with the shock absorber strut intact by parting the plate as illustrated in Figure 1 of British Aircraft Corporation PTL No. 299 (700 Series) or PTL No. 168 (800 Series), as applicable, both at Revision 3, dated January 12, 1977, or an FAA-approved equivalent.

This amendment becomes effective December 18, 1978.

[Secs. 313(a), 601 and 603, Federal Aviation Act of 1958, as amended, (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89]

Issued in Washington, D.C., on November 7, 1978.

J. A. FERRARESE,
Acting Director,
Flight Standards Service.

[FR Doc. 78-32070 Filed 11-15-78; 8:45 am]

[4910-13-M]

[Docket No. 18441; Amdt. 39-3349]

PART 39—AIRWORTHINESS DIRECTIVES

Let Blanik L-13 Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive which requires reinforcement of the No. 1 bulkhead where the tow release system countershaft bracket attaches on certain Let Model L-13 gliders. This AD is prompted by reports of bulkhead cracks at the tow release system countershaft bracket attach point which could result in failure of the tow release system to release.

DATES: Effective November 27, 1978. Compliance schedule—As prescribed in the body of this AD.

ADDRESSES: The applicable service bulletin may be obtained from Omnipol FTC, Washingtonova 11, Praha I, Czechoslovakia. A copy of the service bulletin is contained in the rules docket for this amendment in room 916, 800 Independence Avenue SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT:

Don C. Jacobsen, Chief Aircraft Certification Staff, AEU-100, Europe, Africa, and Middle East Region, Federal Aviation Administration, c/o American Embassy, Brussels, Belgium, telephone 513.38.30.

SUPPLEMENTARY INFORMATION: There have been reports of cracks in the No. 1 bulkhead where the tow release system countershaft bracket attaches on certain Let Model L-13 gliders. These cracks if not repaired could result in failure of the tow release to function. Since this condition is likely to exist or develop on other gliders of the same type design, and airworthiness directive is being issued which requires inspection of certain Let Blanik L-13 gliders for cracks in the No. 1 bulkheads, immediate reinforcement when cracking is found, and eventual reinforcement of all the No. 1 bulkheads.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

LET BLANIK. Applies to Model L-13 gliders, Serial Numbers 173205 through 174730, certificated in all categories.

Compliance is required as indicated, unless already accomplished.

To prevent tow release malfunction due to structural cracks at the attach point of the tow release system countershaft bracket, accomplish the following:

(a) Within the next 10-hours time in service after the effective date of this AD, inspect the No. 1 bulkhead for cracks at the attach points of the tow release system countershaft brackets in accordance with Let Mandatory Bulletin No. L13/047 dated January 11, 1978, and Note 2 in Bulletin No. L13/047 (Supplement), dated April 1, 1978, or an equivalent procedure approved by the Chief, Aircraft Certification Staff, FAA, Europe, Africa, and Middle East Region.

(b) If cracks are found during inspection in accordance with paragraph (a) of this AD, before further flight:

(1) Where cracks do not exceed 6 mm in length, repair and reinforce the No. 1 bulkhead in accordance with paragraph A, "Reinforcement of bulkhead No. 1" of Let Mandatory Bulletin No. L13/047 dated January 11, 1978, and Bulletin L13/047 (Supplement) dated Arpil 1, 1978, or equivalent approved by the Chief, Aircraft Certification Staff, FAA, Europe, Africa, and Middle East Region; or

(2) Where cracks exceed 6 mm in length, repair and reinforce the No. 1 bulkhead in accordance with the metal repair procedures, Section 3 of FAA Advisory Circular 43.13-1A, or equivalent approved by the Chief, Aircraft Certification Staff, FAA Europe, Africa, and Middle East Region.

(c) If no cracks are found during the inspection required by paragraph (a) of this AD, within the next 100-hours time in service after the effective date of this AD, reinspect, repair, and reinforce the No. 1 bulkhead as follows:

(1) If no cracks have developed, in accordance with the method specified in paragraph (b)(1) of this AD; or

(2) If cracks have developed, in accordance with the applicable method specified in paragraph (b) of this AD.

This amendment becomes effective November 27, 1978.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1978, as amendcd (49 U.S.C. 1454(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89).

Issued in Washington, D.C. on November 3, 1978.

J. A. FERRARESE,
Acting Director,
Flight Standards Service.

[FR Doc. 78-31914 Filed 11-15-78; 8:45 am]

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[4910-13-M]

[Docket No. 78-SW-16; Amdt. No. 39-3348]

PART 39—AIRWORTHINESS DIRECTIVES

Swearingen Aviation Corp. Models SA226T, SA226AT, and SA226TC Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) applicable to Swearingen Aircraft Corp. Models SA226T, SA226AT, and SA226TC airplanes by providing an alternate means of compliance involving engine nacelles modification.

DATES: Effective November 17, 1978. Compliance schedule—As prescribed in body of AD.

ADDRESSES:

The applicable service bulletins may be obtained from Swearingen Aviation Corp., P.O. Box 32486, San Antonio, Tex. 78284.

A copy of each of the service bulletins is contained in the Rules Docket, Room 916, 800 Independence Avenue SW., Washington, D.C. 20591, or Office of the Regional Counsel, Building 3B, Room 100, 4400 Blue Mound Road, Fort Worth, Tex.

FOR FURTHER INFORMATION CONTACT:

Jack W. Ligon, Systems and Equipment Section, Engineering and Manufacturing Branch, telephone 817-624-4911, extension 505, or Randy Whitlock, Propulsion Section, extension 526.

SUPPLEMENTARY INFORMATION: This airworthiness directive amends Amendment 39-2735, 41 FR 43713, AD 76-20-04 which requires inspection of the wheel wells every 50 hours for hydraulic and fuel leaks on Swearingen Aviation Corporation aircraft Models SA226T, SA226AT, and SA226TC airplanes. After issuing Amendment 39-2735, FAA determined a specific modification can be made to the engine nacelles which will enable discontinuance of the repetitive inspections required by Amendment 39-2735.

Based on this, a notice was issued in the FEDERAL REGISTER (43 FR 31939) which proposed to amend the existing AD by requiring engine nacelles modification.

Interested persons have been afforded an opportunity to participate in the making of the amendment.

Several commentors objected to the proposal being made mandatory. Primary reasons given for objection were: there have been no fires since issuance of the inspection AD; the existing inspection requirement is adequate to detect leaks and prevent a fire; the new hydraulic fluid would be too expensive and difficult to procure; additional hydraulic carts would be required; and cost of the modification and aircraft down time for incorporation of the modification is excessive.

Three commentors agreed with the proposal with exceptions. One commentor objected to the requirement for MIL-H-83282 hydraulic fluid; one objected to the 30-day compliance period and suggested it be changed to 300 hours; and one commented that more stringent manufacturing specifications for the hydraulic power pack should be required.

FAA concurs with the comments that no fires have occurred since issuance of Amendment 39-2735 and the inspection requirement specified in that Amendment is adequate to detect leaks and prevent a fire; therefore, the proposed AD Amendment is changed so the modification is an "optional" alternate means of compliance rather than mandatory.

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) Amendment 39-2735, 41 FR 43713, AD 76-20-04 is amended by adding the following paragraphs:

E. After the effective date of this AD and as an alternate means of compliance:

(1) If Swearingen Aviation Corp. Models SA226TC (applies to serial numbers TC-201 through TC-212), SA226T (applies to serial numbers T-201 through T-251, except T-249), and SA226AT (applies to serial numbers AT-001 through AT-033, except AT-025) airplanes are modified in accordance with Swearingen Aviation Corp. service bulletin SB 21-009 dated May 11, 1977, "Addition of Bleed Air Heat Exchangers;" and if Swearingen Aviation Corp. Models SA226TC (applies to serial numbers TC-201 through TC-228, except TC-227E and TC-228E), SA226T (applies to serial numbers T-201 through T-271), and SA226AT (applies to serial numbers AT-001 through AT-056) airplanes are modified in accordance with Swearingen Aviation Corp. service bulletin SB 54-003 dated April 28, 1977, "Improved Fire Resistance of the Fuel and Hydraulic Systems"; then the repetitive inspections specified in paragraphs A and B of this AD are no longer necessary.

(2) Or, if modifications are made to the above airplane models in a manner approved by the Chief, Engineering and Manufacturing Branch, ASW-210, Southwest Region, then the repetitive inspections called for in paragraphs A and B of this AD are no longer necessary.

This amendment becomes effective on November 17, 1978.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c); 14 CFR 11.85).

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Fort Worth, Tex. on November 2, 1978.

HENRY L. NEWMAN,
Director, Southwest Region.

[FR Doc. 78-31932 Filed 11-15-78; 8:45 am]

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[4910-13-M]

[Airspace Docket No. 78-EA-84]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Control Zone: Newburgh, N.Y.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the Newburgh, N.Y., control zone, over Stewart Airport, Newburgh, N.Y. This alteration will extend the operating hours of the control zone. This alteration arises out of a decision to operate the tower for additional hours.

EFFECTIVE DATE: 0901 GMT December 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Frank Trent, Airspace and Procedures Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Federal Building, J.F.K. International Airport, Jamaica, N.Y. 11430, telephone 212-995-3391.

SUPPLEMENTARY INFORMATION: The purpose of this amendment to Subpart F of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to alter the Newburgh, N.Y., control zone. On page 44548 of the FEDERAL REGISTER for September 28, 1978, the FAA published a proposed amendment to the subject control zone for full-time operation. Interested parties were given time in which to submit comments. No objections were received. The MTA has requested that the proposal be changed to hours of operation which are less than 24 hours daily for 7 days duration. The hours would be less than 24 for Saturday, Sunday, and Monday. Since the changes are less restrictive than the NPRM, notice and public procedure are unnecessary for those changes.

ADOPTION OF THE AMENDMENT

Accordingly pursuant to the authority delegated to me by the Administrator, Subpart F of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 GMT December 28, 1978, as follows:

§ 71.171 [Amended]

1. Amend § 71.171 of Part 71 of the Federal Aviation Regulations so as to amend the description of the Newburgh, N.Y., control zone by deleting all after "Poughkeepsie, N.Y., control zone.", and by inserting the following in lieu thereof; "This control zone is effective from 0000-2359 hours, local time, Tuesday through Friday; 0000-2300 hours, local time, Saturday; 0700-2300 hours, local time, Sunday; 0700-2400 hours, local time, Monday."

Section 307(a), and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(c)); section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69.

Issued in Jamaica, N.Y., on November 2, 1978.

WILLIAM E. MORGAN,
Director, Eastern Region.

[FR Doc. 78-32072 Filed 11-15-78; 8:45 am]

[4910-13-M]

[Airspace Docket Number 78-CE-24]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW POINT ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

Designation of Control Zone, Clinton, Iowa

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to designate a part-time control zone at Clinton, Iowa, to serve the Clinton, Iowa, Municipal Airport in order to provide additional controlled airspace protection for aircraft utilizing said airport.

EFFECTIVE DATE: February 22, 1979.

FOR FURTHER INFORMATION CONTACT:

Dwaine E. Hiland, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-537, FAA, Central Region, 601 East 12th Street, Kansas City, Mo. 64106, telephone 816-374-3408.

SUPPLEMENTARY INFORMATION: To enhance airport usage, a part-time control zone is being designated effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airman's Information Manual. The intended effect of this action is to insure segregation of aircraft operating under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

DISCUSSION OF COMMENTS

On pages 41408 and 41409 of the FEDERAL REGISTER dated September 18, 1978, the Federal Aviation Administration published a Notice of Proposed Rule Making which would amend § 71.171 of Part 71 of the Federal Aviation Regulations so as to designate a part-time control zone at Clinton, Iowa. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rule Making. Accordingly, Subpart F, § 71.171 of the Federal Aviation Regulations (14 CFR 71.171) as republished on January 3, 1978 (43 FR 355) is amended effective 0901 GMT February 22, 1979, by adding the following new control zone:

CLINTON, IOWA

That airspace extending upward from the surface within a 5-mile radius of the Clinton Airport (latitude 41°49'55"N; longitude 90°19'45"W) and within 3 miles each side of Davenport VORTAC; 044° radial, extending from the 5-mile radius area to the VORTAC; and within 3 miles each side of the Clinton NDB 327° bearing from the airport, extending from the 5-mile radius area to 8½ miles northwest; and within 2½ miles each side of the 030° bearing from the Clinton Airport, extending from the 5-mile radius area to 6 miles northeast. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airman's Information Manual.

Sec. 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655 (c)); § 11.61 of the Federal Aviation Regulations (14 CFR 11.61).

NOTE.—The FAA has determined that this document involves a proposed regulation which is not considered to be significant under the procedures and criteria prescribed by Executive Order 12044 and as implemented by interim Department of Transportation guidelines (43 FR 9582; March 8, 1978).

Issued in Kansas City, Mo., on November 3, 1978.

JOHN E. SHAW,
Acting Director, Central Region.

[FR Doc 78-32067 Filed 11-15-78; 8:45 am]

[4910-13-M]

[Airspace Docket No. 78-CE-23]

PART 71—DESIGNATION OF FEDERAL AIRWAYS; AREA LOW POINT ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

Designation of Transition Area, Oskaloosa, Iowa

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to designate a transition area at Oskaloosa, Iowa to provide controlled airspace for aircraft executing a new instrument approach procedure to the Oskaloosa, Iowa Municipal Airport based on the Ottumwa, Iowa VOR, a navigational aid.

EFFECTIVE DATE: February 22, 1979.

FOR FURTHER INFORMATION CONTACT:

Dwaine E. Hiland, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-537, FAA, Central Region, 601 East 12th Street, Kansas City, Mo. 64106, telephone 816-374-3408.

SUPPLEMENTARY INFORMATION: To enhance airport usage, a new instrument approach procedure to the Oskaloosa, Iowa Municipal Airport is being established based on the Ottumwa, Iowa VOR, a navigational aid. The establishment of an instrument approach procedure based on this navigational aid entails designation of a transition area at Oskaloosa, Iowa at and above 700 feet above the ground (AGL) within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

DISCUSSION OF COMMENTS

On pages 41409 and 41410 of the FEDERAL REGISTER dated September 18, 1978, the Federal Aviation Administration published a Notice of Proposed Rule Making which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a transition area at Oskaloosa, Iowa. Interested persons were invited to participate in this rule making proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rule Making.

Accordingly, Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 3, 1978 (43 FR 440), is amended effective 0901 GMT February 22, 1979, by adding the following new transition area:

OSKALOOSA, IOWA

That airspace extending upward from 700 feet above the surface within a six-mile radius of the Oskaloosa Municipal Airport (latitude 41°13'36"N; longitude 92°29'30"W) excluding the portion that overlies the Ottumwa, Iowa, transition area.

(Sec. 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); sec. 11.61 of the Federal Aviation Regulations (14 CFR 11.61).)

NOTE: The FAA has determined that this document involves a proposed regulation which is not considered to be significant under the procedures and criteria prescribed by Executive Order 12044 and as implemented by interim Department of Transportation guidelines (43 FR 9582; March 8, 1978).

Issued in Kansas City, Mo., on November 3, 1978.

JOHN E. SHAW,
Acting Director, Central Region.

[FR Doc. 78-32066 Filed 11-15-78; 8:45 am]

[4910-13-M]

[Airspace Docket No. 78-RM-21]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

Establishment of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment realines and redesignates the 1,200-foot transition area at Kalispell, Mont. Such action will provide controlled airspace for straight-in approaches to Glacier Park International Airport and additional controlled airspace for air traffic control purposes.

EFFECTIVE DATE: December 28, 1978, 0910 G.m.t.

FOR FURTHER INFORMATION CONTACT:

David M. Laschinger, Operations, Procedures and Airspace Branch, Air Traffic Division, ARM-500, Federal Aviation Administration, Rocky Mountain Region, 10455 East 25th Avenue, Aurora, Colo. 80010, telephone 303-837-3937.

HISTORY

On August 21, 1978, the FAA published for comment, a notice of proposed rulemaking (NPRM) to realine and redesignate the existing Kalispell, Mont., 1,200-foot transition area (43 FR 36972). No objections were received in response to this notice.

RULE

This amendment to part 71 of the Federal Aviation Regulations (FAR's) realines and redesignates the 1,200-foot transition area at Kalispell, Mont. This action is necessary to provide controlled airspace for straight-in approaches to Glacier Park International Airport and additional controlled airspace for air traffic control purposes. This amendment does not affect the existing 700-foot transition area at Kalispell.

DRAFTING INFORMATION

The principal authors of this document are David M. Laschinger, Operations, Procedures and Airspace Branch, Air Traffic Division, and Daniel J. Peterson, Office of Regional Counsel.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended effective 0901 G.m.t., December 28, 1978, as follows:

By amending subpart G, § 71.181 by designating the following 1,200-foot transition area:

KALISPELL, MONT.

That airspace extending upward from 1,200 feet above the surface bounded by a line beginning at 47°30'00" N., 113°30'00" W., to 48°30'00" N., 113°30'00" W., to 48°30'00" N., 115°00'00" W., to 48°12'00" N., 115°00'00" W., to 48°12'00" N., 115°30'00" W., to 47°30'00" N., 115°30'00" W., to the point of beginning.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c); and 14 CFR 11.69).)

NOTE:—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an economic impact statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Aurora, Colo., on November 6, 1978.

M. M. MARTIN,
Director, Rocky Mountain Region.

[FR Doc. 78-32239 Filed 11-15-78; 8:45 am]

[4910-13-M]

[Docket No. 18454; Amdt. No. 1124]

SUBCHAPTER F—AIR TRAFFIC AND GENERAL OPERATING RULES

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes standard instrument approach procedures (SIAP's) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the national airspace system, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air

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traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATE: An effective date for each SIAP is specified in the amendatory provisions.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

FOR EXAMINATION

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, D.C. 20591;

2. The FAA regional office of the region in which the affected airport is located; or

3. The flight inspection field office which originated the SIAP.

FOR PURCHASE

Individual SIAP copies may be obtained from:

1. FAA Public Information Center (APA-430), FAA Headquarters Building, 800 Independence Avenue SW., Washington, D.C. 20591; or

2. The FAA regional office of the region in which the affected airport is located.

BY SUBSCRIPTION

Copies of all SIAP's, mailed once every 2 weeks, may be ordered from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The annual subscription price is $135.

FOR FURTHER INFORMATION CONTACT:

William L. Bersch, Flight Procedures and Airspace Branch (AFS-730), Aircraft Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591, telephone 202-426-8277

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked standard instrument approach procedures (SIAP's). The complete regulatory description of each SIAP is contained in offical FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FAR's). The applicable FAA forms are identified as FAA forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAP's, their complex nature, and the need for a special format make their verbatim publication in the FEDERAL REGISTER expensive and impractical. Further, airmen do not use the regulatory text of the SIAP's but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAP's. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment of part 97 is effective on Nobember 16, 1978, and contains separate SIAP's which have compliance dates stated as effective dates based on related changes in the national airspace system or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a national flight data center (FDC) notice to airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAP's, an effective date at least 30 days after publication is provided.

Further, the SIAP's contained in this amendment are based on the criteria contained in the U.S standard for terminal instrument approach procedures (TERP's). In developing these SIAP's, the TERP's criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAP's and safety in air commerce, I find that notice and public procedure before adopting these SIAP's is unnecessary, impracticable, or contrary to the public interest and, where applicable, that good cause exists for making some SIAP's effective in less than 30 days.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking standard instrument approach procedures, effective at 0910Z on the dates specified, as follows:

1. By amending § 97.23 VOR-VOR/DME SIAP's identified as follows:

• • • *effective January 11, 1979.*

Belvidere, IL—Belvidere, LTD, VOR-A, Amdt. 1
Alexandria, IN—Alexandria, VOR Rwy 27, Amdt. 4
Bay City, MI—James Clements Municipal, VOR-A, Amdt. 5
Marshall, MI—Brooks Field, VOR Rwy 28, Amdt. 4
Standish, MI—Standish City, VOR-A, Amdt. 1
Laurel/Hattiesburg, MS—Pine Belt Regional, VOR Rwy 36, Amdt. 1
Elizabeth City, NC—Coast Guard Asirbase/Muni, VOR Rwy 1, Amdt. 4

• • • *Effective* December 28, 1978:

Gunnison, CO—Gunnison County, VOR-A, Amdt. 4
Paris, IL—Edgar County, VOR/DME-A, Original
Gaylord, MI—Otsego County, VOR Rwy 9, Amdt. 2
Gaylord, MI—Otsego County, VOR Rwy 27, Amdt. 6
Mason, MI—Mason Jewett Field, VOR-A, Original
Picayune, MS—Picayune-Pearl River, VOR-A, Amdt. 8
Scottsbluff, NE—Scotts Bluff County, VOR/DME Rwy 5, Original
Chesapeake, VA—Chesapeake Muni, VOR/DME Rwy 4, Original

• • • *Effective* November 30, 1978:

Wichita, KS—Cessna Aircraft Field, VOR/DME-C, Original

• • • *Effective* November 16, 1978:

Billings, MT—Billings Logan Int'l, VOR Rwy 9, Amdt. 16

2. By amending § 97.25 SDF-LOC-LDA SIAP's identified as follows:

• • • *Effective* December 28, 1978:

Waukegan, IL—Waukegan Memorial, LOC Rwy 23, Amdt. 3
Marquette, MI—Marquette County, LOC BC Rwy 26, Amdt. 4

• • • *Effective* December 14, 1978:

Portland, OR—Portland Int'l, LOC BC Rwy 10L, Amdt. 9

• • • *Effective* November 16, 1978:

Binghamton, NY—Broome County, LOC Rwy 16, Amdt. 1, canceled

• • • *Effective* October 30, 1978:

Milwaukee, WI—General Mitchell Field, LOC BC Rwy 1L, Original, canceled

NOTE.—The FAA published an amendment in docket No. 18348, Amdt. No. 1122 to part 97 of the Federal Aviation Regulations (vol. 43 FR No. 205 page 49302; dated October 23, 1978) under § 97.25 effective December 28, 1978, which is hereby amended as follows: Dayton, OH—James M. Cox Dayton International, LOC Rwy 24R Amdt. 1, remains in effect; disregard cancellation.

3. By amending § 97.27 NDB/ADF SIAP's identified as follows:

• • • *Effective* January 11, 1979:

Cheraw, SC—Cheraw Muni, NDB Rwy 25, Amdt. 1
Medford, WI—Taylor County, NDB Rwy 33, Amdt. 2

• • • *Effective* December 28, 1978:

Port Heiden, AK—Port Heiden, NDB Rwy 5, Amdt. 1
Port Heiden, AK—Port Heiden, NDB Rwy 13, Amdt. 1
Paris, IL—Edgar County, NDB Rwy 27, Amdt. 2
Salem, IL—Salem-Leckrone, NDB Rwy 18, Amdt. 6
Waukegan, IL—Waukegan Memorial, NDB Rwy 23, Amdt. 3
Cadillac, MI—Wexford County, NDB Rwy 7, Admt. 6
Cadillac, MI—Wexford County, NDB Rwy 25, Amdt. 1
Houghton Lake, MI—Roscommon County, NDB Rwy 27, Amdt. 5
Marquette, MI—Marquette County, NDB Rwy 26, Original
Sturgis, MI—Kirsch Municipal, NDB Rwy 18, Amdt. 1
Sturgis, MI—Kirsch Municipal, NDB Rwy 24, Amdt. 5
Black River Falls, WI—Black River Falls Area, NDB Rwy 8, Original
Black River Falls, WI—Black River Falls Area, NDB Rwy 26, Amdt. 1, canceled

• • • *Effective* December 14, 1978:

Cleveland, OH—Cuyahoga County, NDB Rwy 23, Original
Walla Walla, WA—Walla Walla City-County, NDB Rwy 20, Amdt. 3

• • • *Effective* November 30, 1978:

Pendleton, OR—Pendleton Muni, NDB-A, Amdt. 4

• • • *Effective* November 16, 1978:

Billings, MT—Billings Logan Int'l, NDB Rwy 9, Amdt. 17

4. By amending § 97.29 ILS-MLS SIAP's identified as follows:

• • • *Effective* January 11, 1979:

Laurel/Hattiesburg, MS—Pine Belt Regional, ILS Rwy 18, Amdt. 2

• • • *Effective* December 28, 1978:

Detroit, MI—Detroit-Metropolitan-Wayne County, ILS Rwy 3R, Amdt. 2
Medford, OR—Medford-Jackson County, ILS Rwy 14, Amdt. 9

• • • *Effective December 14, 1978:*

Walla Walla, WA—Walla Walla City-County, ILS Rwy 20, Amdt. 3

• • • *Effective November 30, 1978:*

Pendleton, OR—Pendleton Muni, ILS Rwy 25R, Amdt. 19

• • • *Effective November 16, 1978:*

Lewiston, ID—Lewiston-Nez Perce County, ILS Rwy 26, Amdt. 6
Billings, MT—Billings Logan Int'l, ILS Rwy 9, Amdt. 22
Binghamton, NY—Broome County, ILS Rwy 16, Original

NOTE.—The FAA published an Amendment in docket No. 18348, Amdt. No. 1122 to part 97 of the Federal Aviation Regulations (vol. 43 FR No. 205 page 49302; dated October 23, 1978) under § 97.29 effective December 28, 1978, which is hereby amended as follows: Dayton, OH—James M. Cox Dayton International, ILS Rwy 24R original is rescinded.

5. By amending § 97.31 RADAR SIAP's identified as follows:

• • • *Effective November 30, 1978:*

St. Louis, MO—Lambert-St. Louis Int'l, RADAR-1, Amdt. 21

• • • *Effective November 16, 1978:*

Billings, MT—Billings Logan Int'l, RADAR-1, Amdt. 4

6. By amending § 97.33 RNAV SIAP's identified as follows:

• • • *Effective January 11, 1979.*

Watertown, WI—Watertown Municipal, RNAV Rwy 5, Original

• • • *Effective December 28, 1978:*

Scottsbluff, NE—Scotts Bluff County, RNAV Rwy 12, Original

(Secs. 307, 313(a), 601, 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354(a), 1421, 1510); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Delegation: 25 FR 6489 and par. 802 of order FS P 1100.1, as amended Mar. 9, 1973.)

NOTE.—The FAA has determined that this document involves a regulation which is not significant under the procedures and criteria prescribed by Executive Order 12044 and implemented by interim Department of Transportation guidelines (43 FR 9582; Mar. 8, 1978).

Issued in Washington, D.C., on November 10, 1978.

JAMES M. VINES,
Chief, Aircraft Programs Division.

NOTE.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on May 12, 1969.

[FR Doc. 78-32240 Filed 11-15-78; 8:45 am]

[4810-22-M]

Title 19—Customs Duties

CHAPTER I—UNITED STATES CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

[T.D. 78-445]

PART 159—LIQUIDATION OF DUTIES

Countervailing Duties—Certain Textiles and Textile Products From Argentina

AGENCY: U.S. Customs Service, Treasury Department.

ACTION: Final Countervailing Duty Determination.

SUMMARY: This notice is to inform the public that a countervailing duty investigation has resulted in a determination that the Govenment of Argentina has given benefits which constitute bounties or grants within the meaning of the countervailing duty law on the manufacture, production or exportation of woolen wearing apparel. Deposited countervailing duties in the amount of these benefits will be required at the time of entry in addition to duties normally due on dutiable shipments of this merchandise.

Men's and boys' apparel consisting of fabrics other than wool and textile mill products of cotton, wool, and manmade fiber, however, are not considered to have benefited from either a bounty or grant.

EFFECTIVE DATE: November 16, 1978.

FOR FURTHER INFORMATION CONTACT:

James Lyons, Office of Tariff Affairs, U.S. Treasury Department, 15th Street and Pennsylvania Avenue NW., Washington, D.C. 20220, 202-566-8256.

SUPPLEMENTARY INFORMATION: On June 1, 1978, a "Preliminary Countervailing Duty Determination" was published in the FEDERAL REGISTER (43 FR 23781). The notice stated that it had been preliminarily determined that benfits had been received by Argentine manufacturers/exporters of men's and boys' apparel and textile mill products of cotton, wool and manmade fiber which may constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303) (hereinafter referred to as "the Act").

For purposes of this notice "textile mill products" include yarns, fabrics, household textiles, and miscellaneous products of textile mills and certified handloomed and folklore products, made of cotton, wool and manmade fibers, as specified in U.S. bilateral textile agreements and described by the Tariff Schedules of the United States Annotated (TSUSA) item numbers set forth in the appendix to the FEDERAL REGISTER notice published on October 13, 1978 (43 FR 47340). "Men's and boys' apparel" includes those items described by TSUSA numbers in the appendix to the above-cited FEDERAL REGISTER notice.

The preliminary countervailing duty notice stated that the programs under which these benefits were conferred included:

(1) Special tax and import benefits to all companies that locate in geographically designated sections of Argentina.

(2) Reduction in income taxes paid on export earnings by a deduction in taxable income derived from export sales.

The preliminary determination also stated that programs which appeared not to be a bounty or grant included:

(1) The remission of the value-added tax on export.

(2) Cash rebates (reembolsos) paid as a percentage of the value of the ex-

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ported merchandise. This rebate was believed to be more than offset by numerous indirect taxes, other than the value-added tax, that were considered as directly related to the final product exported. Included among these taxes were provincial level turnover taxes, export taxes, and a variety of national taxes assessed against the exported merchandise or components thereof on an AD VALOREM basis.

(3) Preferential short-term financing, that did not appear to be a bounty based on information that the interest rate charged was not less than that available commercially.

(4) Export credit insurance benefits which appeared not to be a bounty since the government-sponsored program was self-sustaining based on premiums assessed.

(5) Duty exemptions for imported raw materials used in exported articles in conformance with internationally accepted principles of "drawback".

Practices listed in the preliminary determination as not applicable or not utilized by the textile industry in Argentina included:

(1) Free Trade Zone. None exist in Argentina.

(2) Multiple Exchange Rates. Argentina currently operates only one exchange rate.

(3) Duty exemptions for imported capital equipment. This provision, once available, has been abolished.

The notice of the preliminary countervailing duty determination granted interested persons a 30-day period within which to submit relevant data, views or arguments.

After consideration of all information received, it has been decided that the reembolso paid with respect to woolen garments constitutes a bounty within the meaning of the Act. Data contained in a survey of 70 percent of the textile manufacturers/exporters supplied by the Government of Argentina indicate that some of the taxes previously considered in the preliminary determination to be offset against the reembolso on woolen garments are, in fact, labor-related taxes, calculated as a percentage of wages, or taxes, on real estate, credit to industrial corporations and automobile license plates which are not directly related to the production or exportation of the article. Disallowance of these potential offsets requires that a corresponding portion of the reembolso be determined to constitute a bounty. The Government of Argentina, however, is assembling additional information on the cost structure of the woolen garment industry which could result in a subsequent revision or elimination of the affirmative countervailing duty determination respecting this product.

The amount of reembolso paid on other textile products and wearing apparel composed of materials other than wool was less, and in most circumstances substantially less, than that granted on woolen apparel. Consequently, as the tax incidence of otherwise rebatable indirect taxes on these products was nearly equivalent to that experienced in the manufacture of wool garments, the reembolso was fully offset on these items. No bounty, therefore, exists with respect to them.

Other data received since the issuance of the preliminary determination indicate that the regional development incentive and the reduction in income taxes paid on export earnings have not been utilized by the textile industry and hence do not constitute a bounty or grant. Of the 12 textile manufacturers operating within the designated zones which qualify a company for receipt of the development incentive, none directly export their product. Moreover, balance sheets submitted by the major exporting textile manufacturers indicate that they have not availed themselves of the income tax reduction opportunities.

Accordingly, notice is hereby given that dutiable woolen garments, imported directly or indirectly from Argentina, if entered, or withdrawn from warehouse, for consumption on or after November 16, 1978, will be subject to payment of countervailing duties equal to the net amount of any bounty or grant determined or estimated to have been paid or bestowed.

In accordance with section 303 of the Act and until further notice, the net amount of such bounties or grants has been determined to be 3.23 percent of the f.o.b. price for export of woolen garments to the United States.

The dutiable woolen garments, determined to benefit from a bounty or grant, are identified by TSUSA number in Section II of the Appendix to the FEDERAL REGISTER notice published on October 13, 1978 (43 FR 47340). Men's and boys' apparel consisting of fabrics other than wool and the other textiles and textile products which are the subject of this investigation have been determined to be free from any benefit which might be considered to constitute either a bounty or a grant.

Effective on or after November 16, 1978, upon the entry, or withdrawal from warehouse, for consumption of the merchandise from Argentina which benefits from these bounties or grants, there shall be collected, in addition to any other duties estimated or determined to be due, countervailing duties in the amount ascertained in accordance with the above declaration. To the extent that it can be established to the satisfaction of the Commissioner of Customs that imports of the woolen garments involved are subject to a bounty or grant smaller than the amount which otherwise would be applicable under the above declaration, the smaller amount so established shall be assessed and collected.

Any merchandise subject to the terms of this order shall be deemed to have benefited from a bounty or grant if such bounty or grant has been or will be credited or bestowed, directly or indirectly, upon the manufacture, production or exportation of woolen garments manufactured in Argentina.

The table in § 159.47(f) of the Customs Regulations (19 CFR 159.47(f)) is amended by inserting under the column headed "Country" the name "Argentina", and inserting under the column headed "Commodity" the words "woolen garments", the number of this Treasury Decision in the column headed "Treasury Decision" and the words "Bounty Declared-Rate" in the column headed "Action".

(R.S. 251, as amended secs. 303, as amended, 624, 46 Stat. 687, 759 19 U.S.C. 66, 1303, 1624.)

This final determination is published pursuant to section 303(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1303(a)).

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department Order 190 Revision 15, March 16, 1978, the provisions of Treasury Department Order No. 165, Revised, November 2, 1954, and § 159.47 of the Customs Regulations (19 CFR 159.47), insofar as they pertain to the issuance of a final countervailing duty determination by the Commissioner of Customs, are hereby waived.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

NOVEMBER 7, 1978.

[FR Doc. 78-32181 Filed 11-15-78; 8:45 am]

[T.D. 78-446]

[4810-22-M]

PART 159—LIQUIDATION OF DUTIES

Countervailing Duties—Certain Textiles and Textile Products From Brazil

AGENCY: U.S. Customs Service, Treasury Department.

ACTION: Final countervailing duty determination.

SUMMARY: This notice is to inform the public that a countervailing duty investigation has resulted in a determination that the Government of Brazil has given benefits which constitute bounties or grants under the countervailing duty law on the manufacture, production, or exportation of certain textiles and textile products from Brazil. Both dutiable and duty-free merchandise are included in this determination. The case involving the duty-free merchandise is being referred to the International Trade Commission for an injury determination. Countervailing duties on dutiable items are being waived based on actions by the Brazilian Government to reduce their adverse effect.

EFFECTIVE DATE: November 16, 1978.

FOR FURTHER INFORMATION CONTACT:

Richard B. Self, Director, Office of Tariff Affairs, Department of Treasury, 15th and Pennsylvania Avenue NW., Washington, D.C. 20220, 202-566-8585.

SUPPLEMENTARY INFORMATION: On June 1, 1978, a "Preliminary Countervailing Duty Determination" was published in the FEDERAL REGISTER (43 FR 23783). The notice stated that it had been preliminarily determined that benefits had been received by Brazilian manufacturers/exporters of men's and boys' apparel and textile mill products of cotton, wool, and man-made fiber which may constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303) (referred to in this notice as "the Act").

For purposes of this notice "textile mill products" include yarns (except cotton yarn, item numbers 300.60 through 302.98 TSUSA, which was the subject of a previous countervailing duty investigation), fabrics, household textiles, miscellaneous products of textile mills, and certified handloomed and folklore products, made of cotton, wool and manmade fibers, as specified in U.S. bilateral textile agreements and described by the Tariff Schedules of the United States Annotated (TSUSA) item numbers set forth in the Appendix to the FEDERAL REGISTER notice published on October 13, 1978 (43 FR 47340). "Men's and boys' apparel" includes those items described by TSUSA item numbers in the Appendix to the above-cited FEDERAL REGISTER notice.

The men's and boys' apparel and textile mill products from Brazil which are classified under items 307.60, 705.30 and 791.76 are free of duty.

The preliminary determination stated that the programs under which benefits were conferred include the following:

1. Certificates granted by the Brazilian Government in the amount of the IPI/ICM tax which are in addition to the ordinary exemption on export of the value added tax.

2. Preferential financing for exports under Resolution 398.

3. Tax relief on equipment and earnings, in addition to grants to certain new industries and industries located in economically depressed areas under Law 1137.

4. Partial exemption from payment of IPI and import duties on machinery purchases.

5. Cash assistance given to certain enterprises under BEFIEX, a government agency.

Programs preliminarily determined not to be bounties or grants within the meaning of the Act included the following:

1. Exemption from the Industrial Products Tax (IPI), a value added tax, and the ICM tax, a provincial value added tax, on export transactions. The Department has consistently held that the nonexcessive rebate or remission of indirect taxes, directly related to an exported product, does not constitute a bounty or grant within the meaning of the law.

2. Exemption from the payment of import duties and the IPI tax on imports that are incorporated in finished products for export. This follows internationally recognized principles of drawback.

The notice offered interested parties an opportunity to submit any relevant data, views, or arguments in writing with respect to the preliminary determination on or before July 1, 1978.

Subsequent information derived from submission by the Government of Brazil revealed the following:

(1) Short-term financing provided by the Government under Resolution 398 resulted in a weighted average bounty of 6 percent based on a survey of those firms comprising a majority of Brazil's exports. The bounty is the difference in terms provided by the Government loans as compared to those available commercially.

(2) The duty-free treatment of imported machinery under Law 1189 is considered as a bounty or grant since the concept of drawback cannot be applied to imported capital items that subsequently would not be exported. The bounty derived from this benefit is computed by taking the amount of the duty saved over the useful life of the imported capital item.

(3) Only one of the exporters investigated was an eligible enterprise under the BEFIEX program. Benefits included the reduction in IPI taxes, as well as the forgiveness of a prior import deposit of customs duties on imported machinery. The benefit was calculated in a manner similar to that under Law 1189.

(4) None of the companies investigated were the recipient of tax breaks for locating facilities in specifically designated geographic areas of Brazil.

(5) While export earnings are exempted from the payment of income taxes and therefore a bounty, the possible benefits derived therefrom were not computed into the final bounty in view of the uncertainty of the overall tax effect of the IPI/ICM credits, which themselves are treated as income.

(6) The benefit derived from the IPI/ICM credits was computed by taking the total credits utilized by the firms representing a majority of Brazil's textile exports with the final amount of 30.3 percent reflecting a weighted average based on the firms' sales. It should be noted that all credits cannot be utilized to the extent that domestic tax obligations, for which these credits are used, have been exhausted by the end of a business year.

After consideration of all information received, it is hereby determined that textiles and textile mill products which are the subject of this investigation from Brazil are subject to bounties or grants within the meaning of section 303 of the Act. The bounties or grants are in the form of the IPI/ICM credits, preferential financing under resolution 398, remission of customs duties on imported capital equipment under Law 1189, and benefits received under the BEFIEX program. The net amount of the bounty or grant has been ascertained and determined to be 37.2 percent of the f.o.b. price for export to the United States of textiles and textile mill products from Brazil. The net bounty for leather wearing apparel has been ascertained and determined to be 34.8 percent of the f.o.b. price.

Effective on or after November 16, 1978, and until further notice, upon the entry, or withdrawal from warehouse, for consumption of such dutiable textile products imported directly or indirectly from Brazil, which benefit from these bounties or grants, there shall be collected, in addition to any other duties estimated or determined to be due, countervailing duties in the amount ascertained in accordance with the above declaration. To the extent that it can be established to the satisfaction of the Commissioner of Customs that imports of textiles and textile mill products from Brazil are benefitting from a bounty or grant smaller that the amount which otherwise would be applicable under the above declaration, the smaller amount so established shall be assessed and collected.

Any merchandise subject to the terms of this Order shall be deemed to have benefitted from a bounty or grant if such bounty or grant has been or will be credited or bestowed, directly or indirectly, upon the manufacturer, production, or exportation of textiles and textile mill products from Brazil.

Notwithstanding the above, a "notice of waiver of countervailing

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duties" is being published concurrently with this Order which covers textiles and textile mill products from Brazil subject to this investigation in accordance with section 303(d) of the Act. At such time as the waiver ceases to be effective, in whole or in part, a notice will be published setting forth the deposit of estimated countervailing duties which will be required at the time of entry, or withdrawal from warehouse, for consumption of each product then subject to the payment of countervailing duties.

Further, the textiles and textile mill products subject to this determination which are classified under item 307.60, 791.76 and 705.30 of the Tariff Schedules of the United States, Annotated (TSUSA), are entered duty-free pursuant to the U.S. Generalized System of Preferences, authorized by Title V of the Trade Act of 1974 (19 U.S.C. 2461-2465, 88 Stat. 2066-2071).

In accordance with section 303(a)(2) of the Tariff Act of 1930, as amended (19 U.S.C. 1303(a)(2)), countervailing duties may not be imposed upon any article of merchandise which is free of duty in the absence of a determination by the U.S. International Trade Commission that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such article or merchandise into the United States.

Accordingly, the U.S. International Trade Commission is being advised of this determination and the liquidation of entries, or withdrawals from warehouse, for consumption of the duty-free items subject to this investigation will be suspended pending the determination of the Commission.

Should the determination of the Commission be affirmative, the Treasury would consider it appropriate to waive countervailing duties under section 303(d) of the Act. The Government of Brazil is committed toward the removal of the effective net bounty derived from the IPI/ICM credits, preferential financing under resolution 398, and duty-free treatment of imported machinery under Law 1189. This action will be accomplished as follows:

(1) A 25 percent reduction in the net bounty of 37.2 percent by the imposition of an equivalent export tax on or before November 7, 1978;

(2) A further 25 percent reduction of the bounty on January 3, 1979;

(3) The remaining net bounty or grant of 18.6 percent would be eliminated by no later than January 1, 1980.

In addition the Government of Brazil has committed itself to active participation in the multilateral trade negotiations in Geneva, has agreed on a number of principles that should be included in a code governing the use of subsidies and countervailing duties and will endeavor, with the United States, to reach an agreement on that code during the negotiations in Geneva this month. In addition the Government of Brazil has agreed to make reductions in its overall export incentive program as a contribution to more discipline in international trade.

Effective on or after November 16, 1978, and until further notice, upon the entry for consumption of withdrawal from warehouse for consumption of such duty-free textile products, liquidation will be suspended pending the determination of the U.S. International Trade Commission.

The table in § 159.47(f) of the Customs Regulations (19 CFR 159.47(f)) is amended by inserting under the column headed "country", the name "Brazil", and inserting the words "dutiable textile products", in the column headed "commodity", the number of this Treasury Decision in the column headed "Treasury Decision", and the words "bounty declared-rate" in the column headed "action".

(R.S. 251, as amended, secs. 303, 624, 46 Stat. 687, as amended, 759 (19 U.S.C. 66, 1303), as amended, 1624).

Pursuant to Reorganization Plan #26 of 1950 and Treasury Department Order 190 (revision 15), March 16, 1978, and the provisions of the Treasury Department Order #165, Revised, November 2, 1954, and § 159.47 of the Customs Regulations (19 CFR 159.47), insofar as they pertain to the issuance of a countervailing duty determination by the Commissioner of Customs, are hereby waived.

ROBERT H. MUNDHEIM,
General Counsel
of the Treasury.

NOVEMBER 8, 1978.

[FR Doc. 78-32182 Filed 11-15-78; 8:45 am]

[4810-22-M]

[T.D. 78-444]

PART 159—LIQUIDATION OF DUTIES

Countervailing Duties—Certain Textile Products From Uruguay

AGENCY: U.S. Customs Service, Treasury Department.

ACTION: Final Countervailing Duty Determination.

SUMMARY: This notice is to inform the public that a countervailing duty investigation has resulted in a determination that the Government of Uruguay has given benefits which constitute bounties or grants under the countervailing duty law on the manufacture, production or exportation of certain textiles and textile products from Uruguay. Both dutiable and duty-free merchandise are included in this determination. Estimated countervailing duties in the amount of these benefits will be collected in addition to duties normally due on dutiable shipments of this merchandise. The case involving the duty-free merchandise is being referred to the International Trade Commission for an injury determination.

EFFECTIVE DATE: November 16, 1978.

FOR FURTHER INFORMATION CONTACT:

Michael Ready, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, 202-566-5492.

SUPPLEMENTARY INFORMATION: On June 1, 1978, a "Preliminary Countervailing Duty Determination" was published in the FEDERAL REGISTER (43 FR 23795). The notice stated that it had been preliminarily determined that benefits had been received by Uruguayan manufacturers/exporters of men's and boys' apparel and textile mill products of cotton, wool and manmade fibers which might constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303) (referred to in this notice as "the Act").

For purposes of this notice "textile mill products" include yarns, fabrics, household textiles, miscellaneous products of textile mills, and certified handloomed and folklore products made of cotton, wool and manmade fibers, as specified in U.S. bilateral textile agreements and described by the Tariff Schedules of the United States Annotated (TSUSA) item numbers set forth in the Appendix to the FEDERAL REGISTER notice published on October 13, 1978 (43 FR 47340). "Men's and boys' apparel" includes those items described by TSUSA item numbers in the Appendix to the above-cited FEDERAL REGISTER notice.

The textile mill products from Uruguay which are classified under item 307.60 of the TSUSA are free of duty.

A program of tax concessions and services for firms located within free ports and zones was determined not to be utilized by the investigated industry.

Programs found not to be bounties or grants include:

(1) Corporate tax holidays for new export-oriented businesses. It was found that qualifying new businesses receive the same tax exemption as already established businesses.

(2) Rebates of value-added taxes upon export of the goods. The Treasury has consistently held that the nonexcessive rebate or remission of indirect taxes directly related to the production of a good does not constitute a bounty or grant.

(3) Rebate of import duties paid on raw materials used in the production of goods for export.

Benefits found to constitute bounties or grants were conferred under the following programs:

(1) Corporate income tax exemptions on certain export related income. Under this program, companies may be exempted from the 25 percent income tax on the portion of their net income related to exports as long as the company contributed at least 15 percent of the value of the product.

(2) Short-term financing at preferential rates for export industries. The Government of Uruguay claims that the rate charged in their export financing program has been changed and is now equal to commercial rates of interest and, therefore, is not a bounty or grant. However, no documentation has been supplied to show the change or relate the new interest rate on export financing to existing commercial rates. The Treasury considers this program a bounty or grant at this time, but would revise this determination if appropriate documentation is provided.

(3) The granting of tax certificates, known as "reintegros", to manufacturers upon the exportation of goods. A number of offsets to the face value of the "reintegros" have been claimed by the Government of Uruguay, including the incomplete rebate of the Uruguayan value-added tax upon export, a number of export taxes and taxes on inputs and raw materials used in the manufacture of these products. Although a number of these offsets would be permissible, sufficient documentation has not been supplied at this time to permit the accurate calculation of the offset. Therefore, the Treasury considers the full value of the "reintegros" to be a bounty or grant at this time. If appropriate documentation is subsequently provided, a review of the size of the net bounty or grant would be undertaken.

The notice announcing the preliminary determination offered interested persons an opportunity to submit any relevant data, views, or arguments in writing with respect to the preliminary determination on or before July 1, 1978.

After consideration of all information received subsequent to the preliminary determination, it is hereby determined that exports of men's and boys' apparel and textile mill products of cotton, wool, and manmade fibers from Uruguay benefit from bounties or grants within the meaning of section 303 of the Act. The bounties or grants are in the form of corporate income tax exemptions, the granting of reintegros, and preferential export financing. Accordingly, notice is hereby given that the dutiable merchandise which is the subject of this determination, imported directly or indirectly from Uruguay, if entered, or withdrawn from warehouse, for consumption on or after November 16, 1978, will be subject to payment of countervailing duties equal to the net amount of any bounty or grant determined or estimated to have been paid or bestowed.

In accordance with section 303 of the Act and until further notice, the net amount of such bounties or grants has been estimated to be the following percentages of the f.o.b. price for export to the United States of the dutiable merchandise from Uruguay covered by this notice:

	Pct.
Yarns	16.8
Fabric	38.8
Apparel	42.8

Effective on or after November 16, 1978, and until further notice, upon the entry, or withdrawal from warehouse, for consumption of the dutiable merchandise from Uruguay which benefits from these bounties or grants, there shall be collected, in addition to any other duties estimated or determined to be due, countervailing duties in the amount estimated in accordance with the above declaration. To the extent that it can be established to the satisfaction of the Commissioner of Customs that imports of the dutiable merchandise in this investigation are subject to a bounty or grant smaller than the amount which otherwise would be applicable under the above declaration the smaller amount so established shall be assessed and collected.

Any merchandise subject to the terms of this order shall be deemed to have benefited from a bounty or grant if such bounty or grant has been or will be credited or bestowed, directly or indirectly, upon the manufacture, production or exportation.

The duty-free merchandise referred to in this notice is included in the above determination that bounties or grants were paid or bestowed within the meaning of section 303 of the Act. In accordance with section 303(a)(2) of the Act (19 U.S.C. 1303(a)(2)), countervailing duties may not be imposed upon any article or merchandise which is free of duty in the absence of a determination by the U.S. International Trade Commission that an industry in the United States is being, or is likely to be, injured, or is prevented from being established, by reason of the importation of such article or merchandise into the United States. Accordingly, the International Trade Commission is being advised of this determination, and the liquidation of enteries, or of withdrawals from warehouse, for consumption of the duty-free apparel in question will be suspended pending the determination of the Commission. Accordingly, effective on or after November 16, 1978, and until further notice, upon the entry, or withdrawal from warehouse, for consumption of such duty-free merchandise, liquidation will be suspended pending the determination of the U.S. International Trade Commission.

The table in § 159.47(f) of the Customs Regulations (19 CFR 159.47(f)) is amended by inserting under the column headed "Country" the word "Uruguay", inserting under the column headed "Commodity" the words "textile mill products and men's and boys' apparel", inserting under the column headed "Treasury Decision" the number of this Treasury Decision, and inserting under the column headed "Action" the words "Bounty Declared-Rate".

(R.S. 251, as amended, secs. 303, 624, 46 Stat. 687, as amended, 759, 19 U.S.C. 66, 1303, as amended 1624).

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department Order 190 (Revision 15), March 16, 1978, the provisions of Treasury Department Order 165, Revised, November 2, 1954, and § 159.47 of the Customs Regulations (19 CFR 159.47), insofar as they pertain to the issuance of a final countervailing determination by the Commissioner of Customs, are hereby waived.

ROBERT H. MUNDHEIM,
General Counsel
of the Treasury.

NOVEMBER 7, 1978.

[FR Doc. 78-32180 Filed 11-15-78; 8:45 am]

[4810-22-M]

[T.D. 78-447]

PART 159—LIQUIDATION OF DUTIES

Waiver of Countervailing Duties—Textiles from Brazil

AGENCY: Department of the Treasury, U.S. Customs Service.

ACTION: Waiver of Countervailing Duties.

SUMMARY: This notice is to inform the public that a determination has been made to waive countervailing duties that would otherwise be required by section 303 of the Tariff Act of 1930 on imports of textiles from Brazil. The waiver is issued based on actions by the Brazilian Government to reduce the adverse effects of the subsidy on these items. The waiver will expire on January 4, 1979, unless revoked earlier.

EFFECTIVE DATE: November 16, 1978.

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FOR FURTHER INFORMATION CONTACT:

Richard B. Self, Director, Office of Tariff Affairs, Department of the Treasury, 15th and Pennsylvania Avenue NW., Washington, D.C. 20220 202-566-8585.

SUPPLEMENTARY INFORMATION: In T.D. 78-446, published concurrently with this determination, it has been determined that bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303), are being paid or bestowed directly or indirectly upon the manufacture, production, or exportation of textiles from Brazil.

Section 303(d) of the Tariff Act of 1930, as amended by the Trade Act of 1974 (Pub. L. 93-618, January 3, 1975), authorizes the Secretary of the Treasury to waive the imposition of countervailing duties during the 4-year period beginning on the date of enactment of the Trade Act of 1974, if he determines that:

(1) Adequate steps have been taken to reduce substantially or eliminate during such period the adverse effect of a bounty or grant which he has determined is being paid or bestowed with respect to any article or merchandise;

(2) There is a reasonable prospect that under section 102 of the Trade Act of 1974, successful trade agreements will be entered into with foreign countries or instrumentalities providing for the reduction or elimination of barriers to or other distortions of international trade; and

(3) The imposition of the additional duty under this section with respect to such article or merchandise would be likely to seriously jeopardize the satisfactory completion of such negotiations.

Based upon analysis of all the relevant factors and after consultation with agencies and parties with direct interest in this proceeding, I have concluded that steps have been taken to reduce substantially the adverse effects of the bounty or grant. Specifically the Government of Brazil on November 7, 1978, acted to reduce the net bounty of 37.2 percent by 25 percent by the imposition of an equivalent export tax. A further reduction of 25 percent will be accomplished in a similar manner on or before January 3, 1979. The remaining bounty of 18.6 percent will be eliminated by no later than January 1, 1980. In addition the Government of Brazil has committed itself to active participation in the multilateral trade negotiations in Geneva, has agreed on a number of principles that should be included in a code governing the use of subsidies and countervailing duties and will endeavor, with the United States, to reach an agreement on that code during the negotiations in Geneva this month. In addition the Government of Brazil has agreed to make reductions in its overall export incentive program as a contribution to more discipline in international trade.

After consulting with appropriate agencies, including the Department of State, the Department of Labor, and the Office of the Special Representative for Trade Negotiations, I have further concluded:

(1) That there is a reasonable prospect that, under section 102 of the Trade Act of 1974, successful trade agreements will be entered into with foreign countries or instrumentalities providing for reduction or elimination of barriers to or other distortions of international trade; and

(2) That the imposition of countervailing duties on textiles from Brazil would be likely to seriously jeopardize the satisfactory completion of such negotiations.

Accordingly, pursuant to section 303(d) of the Tariff Act of 1930, as amended (19 U.S.C. 1303(d)), I hereby waive the imposition of countervailing duties on textiles from Brazil.

This determination may be revoked, in whole or in part, at any time and shall be revoked whenever the basis supporting such determination no longer exists. Unless sooner revoked or made subject to a resolution of disapproval adopted by either House of the Congress of the United States pursuant to section 303(e) of the Tariff Act of 1930, as amended (19 U.S.C. 1303(e)), this waiver of countervailing duties will in any event by statute, cease to have force and effect on January 4, 1979.

On or after the date of publication in the FEDERAL REGISTER of a notice revoking this determination, in whole or in part, the day after the date of adoption by either House of Congress of a resolution disapproving this "waiver of countervailing duties," or January 4, 1979, whichever occurs first, countervailing duties will be assessable on textiles imported directly or indirectly from Brazil in accordance with T.D. 78-446, published concurrently with this determination.

The table in § 159.47(f) of the Customs Regulations (19 CFR 159.47(f)) is amended by inserting after the last entry from Brazil under the commodity heading "textiles," the number of this Treasury decision in the column heading "Treasury Decision," and the words "imposition of countervailing duties waived" in the column headed "action."

(R.S. 251, secs. 303, as amended, 624; 46 Stat. 687, 759, 88 Stat. 2051, 2052 (19 U.S.C. 66, 1303), as amended, 1624.)

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

NOVEMBER 8, 1978.

[FR Doc. 78-32183 Filed 11-15-78; 8:45 am]

[6820-27-M]

Title 29—Labor

CHAPTER XVI—AUTOMOTIVE AGREEMENT ADJUSTMENT ASSISTANCE BOARD

Removal of CFR Chapter

EDITORIAL NOTE: The Automotive Agreement Adjustment Assistance Board was established by authority of section 302(k) of the Automotive Products Trade Act of 1965 (79 Stat. 1021), and Executive Order 11254, 30 FR 13569.

Regulations were published establishing chapter XVI at 31 FR 827, January 21, 1966, and redesignated at 33 FR 20049, December 31, 1968.

The Automotive Agreement Adjustment Assistance Board was terminated as of June 30, 1968, by the terms of section 302 of the Automotive Products Trade Act of 1965 (79 Stat. 1021).

Because the Automotive Agreement Adjustment Assistance Board is no longer in existence and because of the desire of the Office of the Federal Register to remove any regulations from the Code of Federal Regulations which are no longer in force and effect, pursuant to 1 CFR 8.2, Chapter XVI of Title 29 is hereby removed.

[4910-14-M]

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 77-228]

PORT SECURITY REGULATIONS UPDATE

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This amendment deletes portions of the current regulations issued under the authority of the Magnuson Act (50 U.S.C. 191) which pertain to the security of U.S. ports and the issuance of security credentials. Regulations requiring special validation of Merchant Mariner's Documents are deleted since this special validation is no longer utilized by the Coast Guard. In addition, this amendment corrects cross-references to reflect current citations.

EFFECTIVE DATE: December 18, 1978.

FOR FURTHER INFORMATION CONTACT:

Lieutenant (Junior Grade) David G. Dickman, Port Safety Branch (G-WLE-1/73), Room 7319, Department of Transportation, NASSIF Building, 400 Seventh Street SW., Washington, D.C. 20590, 202-426-1927.

SUPPLEMENTARY INFORMATION: No notice of proposed rulemaking is being published because these changes are rules of agency procedure and practice. (5 U.S.C. 533 (b)(3)(A).)

DRAFTING INFORMATION

The principal persons involved in drafting this rule are: Lieutenant (Junior Grade) David G. Dickman, USCG, Project Manager, Office of Marine Environment and Systems, and Lieutenant G. S. Karavitis, Project Attorney, Office of the Chief Counsel.

DISCUSSION OF THE NEW REGULATIONS

The special validation endorsements for emergency service for merchant marine personnel were issued under the Magnuson Act (50 U.S.C. 191) and served to screen applicants to protect the integrity and security of U.S. ports and harbors during times of national emergency. In recent years this special validation endorsement has become unnecessary. Thus, the special validation endorsement no longer appears on the Merchant Mariner's documents. For this reason, the entire 33 CFR Part 121 is no longer necessary and is being deleted. Also, any references to this special validation endorsement in other sections of these regulations are also being deleted. In addition, the reference to 46 CFR Part 146 in these regulations requires update. Most of 46 CFR Part 146 has been incorporated into 49 CFR Parts 170-189, 46 CFR Parts 146-148, and 46 CFR Parts 150-156. These regulations are therefore being corrected to reflect this change. This final regulation has been evaluated under the Department of Transportation Policies for Improving Government Regulations published on March 8, 1978 (43 FR 9582). The final evaluation is available for public review at the above address. In consideration of the foregoing, Chapter I to Title 33, Code of Federal Regulations is amended as follows:

PART 6—PROTECTION AND SECURITY OF VESSELS, HARBORS, AND WATERFRONT FACILITIES

§ 6.10-3 [Deleted]

1. By deleting entire § 6.10-3.

2. By revising § 6.12-1 to read as follows:

§ 6.12-1 General supervision and control

The Captain of the Port may supervise and control the transportation, handling, loading, discharging, stowage, or storage of hazardous materials on board vessels as covered by the regulations in 49 CFR Parts 170-189, 46 CFR Parts 150-156, 46 CFR Parts 146-148 and the regulations governing tank vessels (46 CFR Parts 30-39).

PART 121—SPECIAL VALIDATION ENDORSEMENT FOR EMERGENCY SERVICE FOR MERCHANT MARINE PERSONNEL [DELETED]

3. By deleting the entire part 121.

PART 125—IDENTIFICATION CREDENTIALS FOR PERSONS REQUIRING ACCESS TO WATERFRONT FACILITIES

4. By revising § 125.09(b) to read as follows:

§ 125.09 Identification credentials

* * * * * *

(b) Merchant Mariner's Document.

* * * * * *

5. By revising § 125.17(b) to read as follows:

§ 125.17 Persons eligible for Coast Guard Port Security Cards.

* * * * *

(b) A holder of a Merchant Mariner's Document shall not be issued a Port Security Card, unless his Merchant Mariner's Document is surrendered to the Coast Guard. In this connection, see § 125.09.

(40 Stat. 220, as amended (50 U.S.C. 191)).

NOTE: The Coast Guard has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

R. H. SCARBOROUGH,
Vice Admiral, U.S. Coast Guard, Acting Commandant.

NOVEMBER 2, 1978.

[FR Doc. 78-32063 Filed 11-15-78; 8:45 am]

[4910-14-M]

[CGD 11-78-08]

PART 165—SAFETY ZONES

Establishment of Safety Zone Around LPG Vessel "Cavendish" in Los Angeles Harbor

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This amendment to the Coast Guard Safety Zone Regulations establishes a safety zone around the LPG Vessel *Cavendish* during the period of its arrival, transit, mooring and cargo transfer of liquefied petroleum gas in the waters of Los Angeles Harbor. This zone has been instituted to provide an exceptional degree of safety and control for the duration of this operation from the estimated time of arrival on November 16, 1978, until approximately November 19, 1978.

EFFECTIVE DATE: This amendment becomes effective on November 16, 1978, and remains in effect until the vessel departs Los Angeles Harbor or until November 30, 1978 whichever is earlier.

FOR FURTHER INFORMATION CONTACT:

ENS J. T. Roosen, Vessel Management Officer, Captain of the Port, Los Angeles-Long Beach, 165 North Pico Avenue, Long Beach, Calif. 90802, 213-590-2315.

SUPPLEMENTARY INFORMATION: This safety zone is being enforced by representatives of the Captain of the Port Los Angeles-Long Beach, Calif. In addition, the Captain of the port will be assisted in enforcing this safety zone by the Los Angeles Harbor Department, Los Angeles Police Deprtment and Los Angeles Fire Department.

As provided in the General Safety Zone Regulations (33 CFR 165.20), no person or vessel may enter a safety zone unless authorized by the Captain of the Port or the District Commander. These general Regulations and other regulations in 33 CFR, part 165 apply to the safety zone established for the navigable waters within 1 nautical mile of the LPG Vessel *Cavendish* while it is anchored outside the middle breakwater or in Los Angeles Harbor.

An opportunity to comment on this safety zone as a proposed rule has not been provided and good cause exists for making the zone effective immediately. A determination has been made that to do otherwise would be both im-

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practicable and contrary to the public interest. In view of the imminent arrival of the LPG Vessel *Cavendish*, there is not sufficient time to allow an opportunity for public comment or to provide for a delayed effective date. Following these administrative procedures would prevent timely establishment of the safety zone and, thus would thwart the purpose of the zone.

DRAFTING INFORMATION

The principal person involved in drafting this rule is: ENS J. T. Roosen, Vessel Management Officer, Captain of the Port Los Angeles-Long Beach, Calif.

In consideration of the above, Part 165 of Title 33, Code of Federal Regulations, is amended by adding a § 165.110 to read as follows:

§ 165.110 11th Coast Guard District.

(a) The navigable waters within 1 nautical mile of the LPG Vessel *Cavendish* while it is anchored outside the middle breakwater in Los Angeles Harbor, or is transiting from anchorage to berth 120 Los Angeles Harbor, or departing from berth 120 until clear of Los Angeles Harbor. Vessels moored or anchored may remain so during the transit of the LPG Vessel *Cavendish* unless otherwise directed by the Captain of the Port Los Angeles-Long Beach or Los Angeles Harbor Department.

(b) The navigable waters within 100 yards of the LPG Vessel *Cavendish* while the vessel is moored at berth 120 Los Angeles, Calif.

(Port and Tanker Safety Act of 1978. Pub. L. 95-474, 92 Stat. 1471, 49 CFR 1.46(n)(4).)

Dated: November 9, 1978.

W. W. WHITE,
Captain, U.S. Coast Guard, Captain of the Port, Los Angeles-Long Beach.

[FR Doc. 78-32283 Filed 11-15-78; 8:45 am]

[7710-12-M]

Title 39—Postal Service

CHAPTER I—UNITED STATES POSTAL SERVICE

PART 257—PHILATELY

Revision and restatement of policies and procedures on philatelic sales and cancellations

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: All postal regulations concerning the sale of stamps and philatelic cancellations are being revised or restated. In general, this action is being taken to make existing philatelic regulations comply with changed postal operating requirements or to make them complete and clear because some of the regulations have, at times, been misunderstood by postal employees and the public.

EFFECTIVE DATE: December 15, 1978; except that § 257.6 became effective on August 4, 1978 (43 FR 29119).

FOR FURTHER INFORMATION CONTACT: Linda Whitehead, 202-245-4956.

SUPPLEMENTARY INFORMATION: On December 21, 1977, the Postal Service published for comment a proposed recodification of Part 257 of Title 39, Code of Federal Regulations, dealing with policies and procedures on philatelic sales and cancellations. (42 FR 63903.)

The Postal Service received a number of written comments. However, no comments were received concerning proposed § 257.6, which dealt with the copyright of philatelic designs. Since proposed § 257.6 would regulate the use of illustrations of philatelic designs, and since the Postal Service decided to copyright such designs, it was decided to adopt that section as a final rule even though the Postal Service was not yet ready to adopt the rest of the philatelic regulations. Section 257.6 was adopted in the July 6, 1978 FEDERAL REGISTER. 43 FR 29119.

Thirty-two individuals and four Government organizations commented on the remaining portions of the proposal. The comments, and the Postal Service response thereto, follow:

Four individuals objected to the limitation in proposed § 257.4(e)(3)(v) of 50 first day of issue cancellations per customer where the Postal Service is requested to affix the stamps; one individual stated that this restriction is unfair to small dealers. The objection is not well taken. First day cover service is designed to meet the needs of individual collectors. The rule will treat all persons equally by requiring that all customers submitting more than 50 covers for first day of issue cancellations buy and affix their own stamps. There will be no limitation on the number of covers canceled by the Postal Service when the customer submits already stamped covers. This practice has already received nearly universal acceptance in the philatelic trade.

Five persons suggested that the Postal Service permit first day cover collectors to provide a self-addressed stamped envelope for return of their canceled first day cover or alternatively to return covers in protective plastic wrappers. We did not adopt these suggestions. The first suggestion would seriously impede first day of issue cancellation operations by requiring that in the processing stream the cover(s) to be canceled be kept together with the customer's return envelope. This would prevent bulk canceling of covers and would slow down service while increasing postal costs. As to the use of protective wrappers, the Postal Service previously experimented with return of covers in protective plastic wrappers but determined it to be too costly measured against the benefits to be derived.

One person stated that collectors should be able to receive at least five unofficial first day cancellations at any post office on a handback basis. The rule (§ 257.4(b)(3)(i)) substantially provides the service requested since it permits customers who purchase newly issued postage stamps and stationery items at the official post office of issuance on their first day of sale to take them to any other post office for postmarking on that same day. Handback service may be obtained on 50 or fewer covers. One individual proposed that the Postal Service accept cash in payment of stamps to be affixed on first day covers. We discourage the mailing of cash because coins may damage canceling equipment and cash payments are subject to loss. Furthermore, accounting for coins slows processing of first day cover orders and makes processing more cumbersome since the coins must be individually removed from the envelopes and counted.

One person commented that the last sentence of proposed § 257.4(c)(5) is ambiguous since it is not clear from the wording that "obliterators" may be used for philatelic purposes if other postmarking devices are not available. We agree that the wording was ambiguous and in the final rule we have revised the sentence to read: "The following devices are obliterators and may be used for philatelic purposes in cases where none of the postmarks or postmarking devices described above is available." We also made several numbering changes in § 257.4(c) including numbering the above sentence as § 257.4(c)(2).

One commenter said that the reference to "nonmachineable covers" in proposed § 257.4(e)(3)(vi) is confusing. We agree. To correct this, we have revised the first sentence of the section to read: "Handstamped cancellations will be applied at the first day ceremony location, at the main post office windows of the first day post office and on covers which cannot be fully canceled by postal cancellation machines."

Three persons stated that handback service should be permitted on unaddressed covers canceled by machine. Handback service on unaddressed machine canceled covers was prohibited

in the proposal on the premise that most cancellation machines are not located in the immediate retail sales area and that to offer the service under those circumstances would be unduly disruptive of postal operations and an inconvenience to other postal customers. Because these conditions may not exist in all post offices, § 257.4(b)(3)(i) is amended to permit handback service on unaddressed machine canceled covers only where the cancellation equipment is readily accessible to the window clerk and where the providing of such service will not interfere with other sales or mail processing operations and will not inconvenience other customers.

One person expressed concern that the proposed rule will not allow the holding of mail for cancellation on a special date. This comment reflects an incorrect interpretation of the proposed regulations (§ 257.4(g)(4)) which, in fact, will allow post offices to hold mail for future cancellation on a specified date when the date of the event is certain and not subject to change.

One commenter suggested that envelopes which cannot be held for future cancellation be returned unserviced in an outer envelope with an explanation of why service cannot be provided rather than having the Postal Service provide an unwanted cancellation on the envelope, rendering it unusable in the future. The suggestion is accepted and § 257.4(g)(4) is amended to incorporate it.

Eight people objected to the proposed regulation in § 257.3(e) on plate blocks for stamps having denominations from 1 cent to 16 cents. They claimed that it would constitute an unreasonable burden on collectors. Under the proposal, clerks were to be permitted to break a pane of stamps to sell a plate block or other marginal marking only when they did not have broken panes of the same stamp. If clerks had a broken pane of the desired stamp that lacked the plate block or the marginal marking, customers would be required to make a minimum purchase of a full pane of stamps in order to buy the plate block or marking. Efficient operation of window retail facilities in post offices requires that broken panes of stamps be kept to a manageable level in order to avoid adverse effects on clerk accountability, to maintain stamp stocks in an orderly manner and to facilitate examinations and audits of clerks' accountable stocks and disposal of unsaleable stock. Nevertheless, to assist collectors who desire the plate block when there is a previously broken pane of stamps of that denomination or stamp subject from which the plate block has been removed, the regulations have been revised to permit clerks to sell, instead of the whole pane, one marginal strip of stamps (a strip of stamps two rows wide, including the plate block) for each stamp design. There will also be a maximum purchase limitation for each transaction of one strip of stamps for each stamp subject being sold by the clerk. When a pane of that denomination or stamp subject has been broken prior to the transaction, with the plate block or other marginal marking attached, the clerk will be permitted to sell the customer the stamps requested from the broken pane without a minimum purchase. The revised section will also prohibit clerks from removing plate blocks in advance. The Postal Service expects to evaluate the impact this change in policy has on its operations generally over a period from 12 to 18 months, and if the results show that efficient operations have been impeded a further revision of this policy will be considered.

One individual urged that postal clerks be instructed to tear stamps from the edge farthest from the plate block or other marginal markings first for sale to noncollectors to insure ample supplies of plate blocks for collectors. This proposal has merit and is incorporated into § 257.3(e)(2)(ii)(B) in the interest of serving a larger number of collectors by insuring that plate blocks are left intact for them.

One person suggested that local post offices be supplied with panes of stamps with all four corner positions of plate block numbers. This suggestion is not adopted. To accommodate collectors, the Postal Service supplies all philatelic centers (approximately 250 offices) with four-position stock. The distribution of such stock beyond these offices is made impractical by the uneven distribution of plate positions and by the costliness of hand selecting and packing that would be required.

One individual suggested that the Postal Service permit the sale of plate blocks of four or six postage due stamps. Operating efficiency requires that this suggestion not be adopted. Reducing the purchase requirement to four or six stamps to meet the needs of plate block collectors would require post offices to supply far more postage due stamps than they would otherwise need. The sales policy for plate blocks of postage due stamps is the same as that applicable to other postage stamps.

One individual disagreed with the provision (§ 257.3(c)(3)(vi)(A)) that prohibits the sale of stamps withdrawn from sale by the Philatelic Sales Branch. Post offices carry an inventory of 60 days' supply of commemorative stamps while philatelic outlets supply them for as long as they remain on sale at the Philatelic Sales Branch. This period is generally 1 year or longer. This provides collectors ample opportunity to obtain any stamps or other items they should need. Accountability and security considerations make it impractical to maintain inventories of older stamps in anticipation that a collector may want them. Permitting the sale of commemorative stamps for unlimited periods might lead post offices to requisition excessive supplies of some particularly popular commemorative or other stamps and might in turn discourage requisitioning of subsequent issues.

One person suggested that cancellations with red ink should be permitted. Section 257.4(b)(2) is revised to permit cancellations with red ink when that color is otherwise in use and the collector specifically indicates a preference for that color. One individual suggested that multiple cancellations be permitted on mailed in covers in addition to handed back covers when the customer encloses a self-addressed, stamped envelope for return of the covers. The suggestion is not adopted. Mail back service is not permitted for multiple cancellations because the appearance of envelopes in the mailstream bearing multiple postmarks, such as a cancellation for each day of an event, would impede the collection of data by the Postal Service used to measure mail delivery standards in its Origin Destination Information System (ODIS) program. Under ODIS procedures, the earliest postmark on mail which has more than one postmark and which is not forwarded or returned mail is recorded. In the case of multiple cancellation mail, this would cause the date of cancellation rather than the date of mailing to be recorded. As to returning the covers in a stamped self-addressed envelope, this will not be permitted because it would slow down postal operations if it were necessary for postal personnel to keep multiple cancellation covers together with a return envelope.

One person suggested that the Postal Service allow collection of cancellation service fees at the local post office when the service is provided. We did not adopt this suggestion because local administration increases the possibility of incorrect application of the regulations and of improper diversion of fees which are not evidenced by item sales.

One individual suggested that the Postal Service permit clerks at all post offices to break or open coils of stamps to enable collectors to purchase the line pairs. This suggestion is not adopted for it would disrupt retail operations at postal windows and would create large quantities of loose coil stamps. It would also render coil stamps unusable by an important seg-

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ment of mail users who desire to purchase full coils of stamps for affixing by machines. As an accommodation to collectors, philatelic outlets and the Philatelic Sales Branch will be permitted under § 257.3(e)(iii) to open coils of stamps to sell line pairs upon purchase of the specified number of stamps.

One commenter suggested that fractional value coiled stamps be sold in any multiple which reaches a full cent amount. The proposed rule overlooked the fact that fractional values can reach full cent amounts in multiples other than 10. Section 257.3(e)(3)(iii) is amended to correct this oversight.

One person stated that the Postal Service should make its special philatelic items more readily available to persons not attending the events at which they are placed on sale. The Postal Service agrees with the commenter and will distribute all special philatelic items to its principal philatelic outlets and to the Philatelic Sales Branch for mail order sales.

One individual requested that the Postal Service improve distribution of new stamps to post offices. We already endeavor to inform all post offices of new issues in advance. This effort will be continued in official postal publications to employees.

One person objected that the number of regular cancellations which will be provided to collectors will be reduced from 100 to 50. Philatelic services are designed primarily to meet the needs of individual stamp and postmark collectors. The Postal Service has concluded that individual requirements—as opposed to commercial or dealer requirements—for postmarks will be generally met by servicing (postmarking) fewer than 50 covers or other items. Quantities above this amount often require special arrangements, so the Postal Service will service more than 50 covers only when advance approval is granted by the Stamps Division.

One person objected to the return postage charge for mail back service on the ground that the customer has already paid postage on each canceled item and has received cancellation but not delivery service on them. The commenter requested that the canceled items be returned under penalty cover. Mail back service is provided for the convenience of the customer. While it is true that return postage has been paid by the customer on all individual items being mailed back, they could be dropped in the mail individually and not enclosed in another envelope. It is the customer who requests this additional service and protection for his mail. The Postal Service may not provide free postage for materials which do not constitute official postal business.

One person inquired whether "mailback" service is permitted on postal cards. Section 257.4(h)(2)(iii) is clarified to specify "mailback" service in bulk applies to submittal of postal cards.

One person contended that the Postal Service should permit imprints of precancel devices on blank pieces of paper. Postmarking devices and obliterators, including precanceling devices, are intended exclusively for the cancellation of postage stamps and, therefore, they may not be applied to blank pieces of paper.

One individual asserted that the Postal Service should allow the precancellation of postage due stamps. Postage due stamps are not valid for prepayment of postage and, therefore, are not precanceled in normal postal operations.

One person commented that the Postal Service should emphasize that postal employees should not cancel stamps by pen, illegible smudging, or unevenly or overly inked machines. Section 257.4(b)(2) is amended to direct clerks to avoid such cancellations. The protection of postal revenue will at times, however, necessitate pen cancellations and mail processing operations may render frequent checking of ink levels on cancellation machines impractical.

One person suggested that the Postal Service replace stamps that have been destroyed by unacceptable cancellations. The suggestion is not adopted because the Postal Service cannot accept liability for damage to items in its possession unless they have been insured or registered.

One commenter suggested that the Postal Service print and sell a special label to identify philatelic mail. The demand for this service is not believed to be so great as to warrant development, procurement, sale, and distribution of philatelic labels. In addition, the costs of identifying this mail for special handling where no special fee would be charged are prohibitive.

One person suggested that philatelic centers should be permitted to fill mail order requests in addition to the Philatelic Sales Branch so that service could be improved and handling fees and minimum orders avoided. The suggestion is based on the faulty assumption that the Postal Service would waive handling fees and minimum order amounts if it decentralized mail order sales. The complexity of mail order fulfillment is such that a single facility is most suited to offer the complete range of stamps and other philatelic items. Those who prefer to obtain stamps and other items locally may visit their local post office or philatelic center in person, avoiding handling fees and minimum orders.

One person suggested that § 352.54 of the Postal Service Manual on "Local Postmarks" be incorporated into Part 257, the philatelic regulations. Section 352.54 of the Postal Service Manual states that persons desiring local postmarks may use special lobby drops. Incorporation of this provision into Part 257 might mistakenly convey the impression that philatelic quality cancellations would be applied to mail deposited in special lobby drops. Because collectors could be misled, this suggestion will not be adopted.

One individual suggested that all post offices be required to have postmarking devices with which hand stamped cancellations can be provided. All post offices are currently supposed to have the rubber postmarking device with killer bars (Item 550) for canceling local holdout mail or for philatelic purposes. The Postal Service issued a reminder notice in the Postal Bulletin (P.B. 21143, April 20, 1978) that all post offices should have Item 550 available.

One person noted that the statement in the proposed rule that post offices may not order precancel devices solely to meet philatelic demand contradicts another statement of policy in Part 143 of the Postal Service Manual that directs post offices with 36 or more revenue units to acquire a precancel device solely to meet philatelic demand. We have resolved this conflict by amending Part 143 of the Postal Manual to state that philatelic demand alone does not warrent the securing of precancel devices by post offices. These devices should be obtained only by post offices which service the needs of precancel permit holders. Offices having operating needs for precancel devices will be authorized to precancel postage stamps for nonpermit holders for philatelic purposes.

One person said that the Postal Service should remove the current limitation in Part 143 of the Postal Service Manual on the number of precanceled stamps that a collector may purchase. The maximum purchase is now one pane of precanceled regular sheet stamps or one coil of precanceled stamps. The Postal Service agrees and has amended Part 143 of the Postal Manual to eliminate any maximum purchase limitation on precanceled regular or full coil postage stamps.

We also received numerous comments on subjects which were not directly addressed in the proposed rule. Because these comments were outside the scope of the proposed rule, they were not considered in this rulemaking.

The Postal Service will make the following additional changes in the proposed rule (1) to reflect a transfer of functional responsibility within the

Postal Service, (2) to correct oversights in the original text, and (3) to facilitate philatelic cancellation services at military post offices:

Section 257.2 is amended to include commemorative stationery in its description of the purpose and selection of commemorative stamps. The omission of commemorative stationery was unintentional in the original text.

The proposed rule stated in § 257.3 (a) and (b) that the Management Sectional Centers were responsible for distribution of philatelic products. Because not all Management Sectional Centers distribute philatelic products, references to the Management Sectional Centers are changed to refer to the Stamp Distribution Offices.

Section 257.3(b) is revised to continue the current practice of requiring accountable paper depositories to provide philatelic outlets with plate blocks of stamps only in denominations of $1 and above. The proposed rule, which would have permitted the tearing of stamps into marginal strips in values from 17 cents to 99 cents, might have imposed an unreasonable burden on the productive capacity of the accountable paper depositories at this time. A conforming amendment is made to § 257.3(c)(3)(vi)(A).

Section 257.3(c)(1) is amended to delete the parenthetical reference to Postiques and add the following language "Some philatelic outlets are referred to as Postiques. (Postique is a registered trademark of the U.S. Postal Service.)" The proposed section unintentionally conveyed the impression that all philatelic outlets are Postiques, whereas they constitute only one variety of philatelic center.

In order to avoid an interpretation that temporary philatelic stations are to be established only at occasions of public interest specifically mentioned in the regulation, the last sentence of § 257.3(c)(3)(i) has been revised to read "They are most frequently located at stamp shows, philatelic exhibitions, stamp dedications, State fairs, conventions, parades or at other occasions of significant public or philatelic interest."

The word "direct" has been deleted from the fourth sentence in § 257.3(c)(3)(ii) in order to dispel any inference that payment of indirect fees may be authorized below the headquarters level.

Proposed § 257.4(b) mentioned only envelopes in describing philatelic postmarking. This was unintentional and to correct the impression that other items are excluded the final two sentences of the section have been revised to specify that items in addition to envelopes are included.

Sections 257.4(e)(3)(iv) and (g)(3)(iv) are revised to specify that hand back service will not be provided on first day of issue covers presented after the first day of issuance.

Section 257.4(e)(3)(ii)(A) is amended to indicate that preferential service will be accorded to first day covers on which customers have affixed their own stamps as opposed to those covers on which the Postal Service must affix the stamps.

Section 257.4(e)(3)(ii)(B) is amended to indicate that first day cover orders containing checks in payment of stamps will be held until the checks have been cleared.

Section 257.4(f)(1) is amended to clarify current policy that special cachet and cancellation services for inaugural flights and other aviation events of national interest will be limited to mail actually carried on the flight. This will make clear the existing policy excluding service on items carried as luggage on board the flight but not dispatched as mail by postal authorities.

The proposed rule stated in § 257.4(f)(2) that the Air Transportation Division coordinated arrangements for the Postal Service for flight covers. This responsibility has been transferred to the Stamps Division. All references to the Air Transportation Division are changed to refer to the Stamps Division.

Section 257.4(f)(2) is further amended to indicate that backstamped postmarks on international flights to U.S. destinations will be applied only when the postal administration of the country of the flight's origin officially requests that the U.S. Postal Service provide philatelic treatment to mail carried on the flight.

This section is also amended to state that announcements of both official cachets and cancellation services for flight covers are published in the Postal Bulletin. The proposed rule inadvertently overlooked cancellation services.

The second sentence of § 257.4(f)(3) is modified by deleting the words "letter mail" and replacing them with the word "airmail." This change will make the section clearer.

Sections 257.4 (g)(3) and (h) have been revised to refer to both "cover servicers" and "dealers" since it was intended that the regulations govern both categories of customers. The first sentence of § 257.4(g)(5) is amended to state specifically the types of cancellations to which the 30 day request period for replacement applies. In addition, a new sentence has been inserted following the second sentence in § 257.4(g)(5) to clarify the current Postal Service policy of not providing replacements on envelopes that are marked on the back by letter sorting machine code numbers as they moved through the mail stream.

Section 257.4(g)(7) on "Military Post Offices" is amended to permit the postal chief at each installation to establish the maximum number of covers that individual collectors or dealers may submit. The provision for approval of quantities above that number and for the handling fee is deleted because of the difficulty of fairly administering this program at military post offices and because of the added burden of administration it would place on military post offices.

Section 257.5(b) on philatelic presentations is corrected in order to permit the use of canceled and uncanceled U.S. postage stamps, postal stationery and other philatelic products for official postal business purposes. The omission of this use in the proposal was an oversight. The Postal Service also made certain minor, editorial and technical changes and corrections.

In view of the considerations discussed above, the Postal Service hereby adopts, as amended, the following revision to 39 CFR part 257:

Part 257 is revised to read as follows:

PART 257—PHILATELY

Sec.
257.1 Policy.
257.2 Purpose and selection of commemorative stamps, postal stationery, and philatelic products.
257.3 Distribution and sale of stamps, stamped paper and philatelic products.
257.4 Cancellations for philatelic purposes.
257.5 Special philatelic services, products and programs.
257.6 Copyright of philatelic designs.

AUTHORITY: 39 U.S.C. 401, 404.

§ 257.1 Policy.

There shall be a single national policy governing the release, sale and discontinuance of postage stamps and stamped paper. The policy shall be established by the Customer Services Department, USPS Headquarters, Washington, D.C. 20260. The policy governing philatelic products shall be administered by the Philatelic Marketing Division. All other policies shall be administered by the Stamps Division. Uniform application of policies will provide a high degree of integrity to the entire program, and all post offices, postal employees and contractors shall comply with the policies set forth in part 257. The Postal Service will avoid the creation of philatelic rarities.

§ 257.2 Purpose and selection of commemorative stamps, postal stationery, and philatelic products.

(a) *Purpose of Commemorative Stamps and Postal Stationery* Commemorative stamps and postal stationery (postal cards, embossed stamped envelopes and aerogrammes) explain the cultural and historical heritage of

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the United States. They describe our Nation's achievements, portray the natural wonders of our country, instill pride in America, and focus attention on worthy causes, issues and interests that are of national concern. The Postal Service encourages the widespread use of these stamps and stationery items to promote our national ideals, progress and heritage. Commemorative stamps are not intended to replace regular stamps of the same class, but are provided upon request when available.

(b) *Selection of Commemorative stamps.* Subjects for commemorative postage stamps and postal stationery may be proposed by the public through correspondence to the Citizens' Stamp Advisory Committee. The Committee, which is composed of individuals from outside the Postal Service appointed by the Postmaster General, reviews suggestions and makes recommendations for commemorative stamps and postal stationery to the Postmaster General, who makes the final selections. Because the Committee works far in advance of actual stamp issuance, all proposals should be submitted at least two years prior to the desired issuance date. All suggestions should be forwarded to the Citizens Stamp Advisory Committee, U.S. Postal Service c/o Stamp Development Branch, 475 L'Enfant Plaza, SW., Washington, D.C. 20260.

(c) *Philatelic Products.* Philatelic products are produced and sold to expand interest in the hobby of stamp collecting by demonstrating both the fun and the informative value of stamps.

§ 257.3 Distribution and sale of stamps, postal stationery and philatelic products.

(a) *Distribution.* All post offices receive initial supplies of new issue commemorative stamps without requisition. Philatelic products such as Mint Sets, Stamp Collecting Kits, etc., are distributed automatically to Stamp Distribution Offices. Stamp Distribution Offices shall establish a program for the distribution of new philatelic products and the replenishment of existing philatelic products to associate post offices. Stamp Distribution Offices shall assure that less-than-bulk quantities of stamps are supplied to all post offices so they can be placed on sale in accordance with instructions issued in the Postal Bulletin. Stamp Distribution Offices requiring additional philatelic products should requisition them from the regional accountable paper depository. All other post offices shall requisition philatelic products from their Stamp Distribution Office or usual source of supply for less-than-bulk orders.

(b) *Requisitioning.* The accountable paper custodian or other individual in charge of the stamp stock at each post office is responsible for requisitioning and maintaining an adequate inventory of stamps, postal stationery and other philatelic products required for efficient and effective operation. This individual should periodically evaluate philatelic demand and, when necessary, forward a separate requisition to the normal source of supply for additional stock. All requisitioning shall be in accordance with the procedures in Section 520. Series F-1 Handbook, Financial and Cost Controls. Accountable paper custodians should, when necessary, reduce the quantity of stamps received automatically to preclude costly overstocking and subsequent destruction; this is done by memorandum to the Bureau of Engraving and Printing for bulk quantities or the Postal Data Center for less-than-bulk quantities. The Stamp Distribution Office accountable paper custodian should maintain a good working supply of stamps for sale in philatelic outlets including plate blocks of four of $1.00 to $5.00 stamps. Stamps Distribution Office accountable paper custodians can requisition plate blocks from $1.00 to $5.00 stamps directly from the regional accountable paper depository. The regional accountable paper depository is responsible for tearing stamps with a denomination higher than $1.00 blocks and disposing of partial sheets in accordance with Section 553, Series F-1 Handbook.

(c) *Retail Sales.* Stamps, postal stationery and philatelic products are sold at various types of postal retail facilities. Most of these facilities have regular stamp windows or have been designated as "Stamp Collecting Centers." "Stamp Collecting Centers" sell the current commemorative stamps and philatelic products. Other post offices provide specialized philatelic services and sell the full range of stamps and philatelic products offered by the Postal Service. These facilities, described below as well as the Philatelic Sales Branch, are referred to collectively as "philatelic outlets."

(1) *Philatelic Centers.* Philatelic Centers are retail selling areas or self-contained facilities separate from the lobby window positions. Some philatelic outlets are referred to as Postiques. (Postique is a registered trademark of the U.S. Postal Service.) They display and sell all current stamps and related philatelic products. The stamps and postal stationery stock offered for sale include commemorative stamps, definitive and regular issue stamps, coils, postage due stamps, air mail and special delivery stamps, booklets and booklet panes, packets of stamped embossed envelopes, postal cards, and message reply cards and aerogrammes. The Philatelic Sales Branch is a Philatelic Center.

(2) *Dedicated Philatelic Windows.* A Dedicated Philatelic Window is a lobby window designated to sell stamps and related philatelic products only. No other postal services are available at Dedicated Philatelic Windows, which are to be indentified so that customers desiring normal postal services are directed to other windows. The same items sold at Philatelic Centers are also sold at Dedicated Philatelic Windows.

(3) *Temporary Philatelic Stations*—(i) *Purpose of Participation.* Post offices establish special temporary stations to provide philatelic services, and to sell commemorative stamps and philatelic products. These stations may include specially constructed counters or mobile retail units. They are most frequently located at stamp shows, philatelic exibitions, stamp dedications, state fairs, conventions, parades or at other locations of activities of significant public or philatelic interest.

(ii) *Requests for Participation.* Requests for Postal Service participation at such events should be made by the sponsors or organizers to the local postmaster for initial action. Only request for first day of issue or other special support which must come from the national level should be directed to the Stamps Division. All first day ceremonies are conducted under the direction of the Stamps Division. The payment of fees for space may not be authorized below the Headquarters level. Once a postmaster has agreed to participate in an exibition, a unilateral withdrawal from such a commitment may not be made without the approval of the Regional Retail Branch based upon a showing of good cause.

(iii) *Authorization.* Temporary philatelic stations may be authorized by the postmaster with approval by the Regional Retail Manager. Postmasters are authorized to participate at events where admission fees are charged by sponsor, but in these cases the same cancellation used at the event must be available on request to those not attending the event.

(iv) *Ceremonies.* Postmasters and other local officials are encouraged to participate in opening ceremonies for stamp exibitions or other stamp ceremonies arranged by philatelic groups whether or not a temporary philatelic station has been authorized.

(v) *Announcement and Publicity*—(A) *Posters.* An announcement of the temporary philatelic station and any show cancellation must be posted on the main post office lobby bulletin board and may be posted in other post offices within a 10-mile radius of the event so that collectors will be advised

of the USPS's participation. In case of larger shows the posting may occur throughout the sectional center. Posters should be placed on display at least 15 days before the event but in no case more than 30 days before the event. All announcements must emphasize the temporary philatelic station. The announcements should mention the name of the stamp show, pictorial or standard cancellation (if any), the dates and hours open to the public, and the location. Promotional material for the show itself must not be incorporated.

(B) *Press Releases.* The postmaster should also announce through press releases to local newspapers the planned establishment of this station. The post office, however, must not distribute free flyers to homes, sell or distribute tickets, exchange ticket coupons, or authorize the use of post office facilities for direct show promotion.

(vi) *Arrangements.* Postmasters should insure that detailed planning begins well in advance of the show so that participation brings credit to the USPS and provides a wide range of stamps and philatelic products to collectors. Particular attention should be taken in selecting sales personnel who are knowledgeable about stamp collecting and who have retail experience. All clerks should be fully trained in philatelic sales and cancellation policies.

(A) *Stamp Stock.* The postmaster should secure a wide range of philatelic products and current postage, using the Philatelic Sales Branch stock list (PS Form 3300) as a guide. Consideration should be given to prepackaging sets of regular issues or postage dues for sale to collectors. No stamp which has been withdrawn from sale by the Philatelic Sales Branch may be sold by any philatelic station. Withdrawals are noted in the Postal Bulletin. Postmasters should requisition philatelic stock not already available in their post office from the Regional Accountable Paper Depository on Form 17, "Stamp Requisition," indicating the quantity required and the fact that it is a stamp show. For stamp shows, stamps with a denomination higher than $1.00 may be requisitioned in partial sheets or plate blocks of four as noted in § 257.3(b). At the conclusion of the show, excess philatelic stock, including remainders from commemorative sheets, should be sold at the regular windows for postage purposes.

(B) *Philatelic Products.* Postmasters should display and sell philatelic products such as Souvenir Mint Sets. "Stamps & Stories," and Stamp Collecting Kits.

(C) *Sales Restrictions.* The sales policies regarding plate number blocks, marginal markings and line markings on coil stamps are described in § 257.3(e)(3) (ii) and (iii).

(D) *Security and facilities.* Postmasters should insure that sufficient security for the stamp stock is provided at the show site and that all other facilities are adequate.

(E) *Appearance.* Postmasters should insure that the appearance of the temporary philatelic station brings credit to the Postal Service by utilizing attractive signs and having space for satisfactory service. The hours that the station is open should be posted.

(F) *Prompt Service.* At those exhibitions where a large number of collectors is expected, postmasters should consider utilizing a speedy line or customer numbers which can be distributed and announced so that customers will not have to wait to make their purchases.

(G) *Cancellation Service.* Cancellation service should be provided separately from stamp sales. A sufficient number of clerks should be available to provide speedy service. Clerks should be trained in advance how to provide handstamped postmarks of philatelic quality. Refer to § 257.4(c) for cancellation regulations.

(H) *Sales Report.* An exhibition sales report must be submitted to the Regional Retail Manager within 1 week of the close of every station showing both gross revenues and net revenues.

(d) *Mail Order Sales.* The Philatelic Sales Branch services mail orders for postage stamps of selected quality and other philatelic items. Customers may obtain an order form listing items available by writing to the Philatelic Sales Branch, U.S. Postal Service, Washington, D.C. 20265. Post offices may not fill mail orders for stamps and other philatelic items other than mail orders under the Stamps by Mail program and orders for local precancels. Customers must furnish a self-addressed stamped envelope for return of precanceled stamps. Postmasters may not order precancel devices solely to satisfy collector demands. Philatelic Centers and Dedicated Philatelic Windows may accept and fill mail orders for special cacheted envelopes with cancellations authorized under § 257.5(a). This section shall not affect procedures outlined in § 257.4(h)(3) for purchase of newly issued stamps by cover services from the first day of issue post office.

(e) *Sales Policies*—(1) *New Issues.* Only the post office or offices designated as the official first day of issue office(s) shall sell a new item on the first day of sale. New issues shall be placed on sale at all other offices on the day after the first day of sale.

(2) *Regular Stamp Windows and Stamp Collecting Centers*—(i) *Commemorative Stamps.* It is the Postal Service's intent that all commemorative stamps be sold and none destroyed. Offices shall place commemorative stamps on regular sale, holding aside only enough for the local philatelic demand. All supplies should be sold within 60 days after being placed on sale. After 60 days, clerks should sell all remaining commemorative stamps to customers in place of other sheet stamps. Commemorative stamps of local interest may remain on sale for a longer period but in no case after the date of withdrawal from sale announced in the *Postal Bulletin.*

(ii) *Plate Number Blocks and Marginal Markings for all Stamps*—(A) *Definition.* Plate number blocks are the stamps located on one corner of a pane of stamps with a plate number or numbers printed on the margin (selvage). The plate number blocks may include as few as four stamps where a single number appears, or as many as 20 where multiple floating numbers and other markings such as Mr. ZIP and notice of copyright appear.

(B) *Setting Aside Plate Number Blocks.* As a pane of stamps is broken for regular sale purposes, the clerk shall tear stamps first from the edge of the pane farthest from the plate number(s) or other marginal markings in order to preserve the plate block for collectors. Clerks shall set aside additional quantities of plate blocks or marginal markings as panes are broken, but may not set them aside in advance.

(C) *Minimum Purchase Requirements and Sales Limitations.* (1) When the clerk has a broken pane of stamps from which the plate block or other marginal marking has been sold, and when no plate block or other marginal marking has been set aside, the following minimum purchases must be made by a customer desiring the plate block or other marginal marking:

Denomination	*Minimum purchase*
1 to 50 cents	Full marginal strip of stamps (two rows deep having all marginal markings.)
51 to 99 cents	Half marginal strip.
$1 to $5	Block of four stamps.

(2) Exception. There are no minimum purchase requirements when a clerk has:

(*i*) Only full panes of the requested stamp in stock, or (*ii*) a broken pane that contains the plate block or other marginal marking.

(3) There are limitations to sales as follows: Each customer for whom a pane has been broken is limited to one marginal strip (1 to 50 cents); a half marginal strip (51 to 99 cents); or a block of four stamps ($1 to $5) for each stamp subject per day. It is necessary to place a limit on individual sales of plate blocks and other marginal markings so that the stamp stock available at post

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office windows may accommodate as many collectors as possible each day. Customers requesting more than the maximum permissible purchase in denominations of the first class rate and below should be asked to inquire on another day. Customers requesting more than the maximum permissible purchase in denominations higher than the first-class rate should be asked to inquire on another day, or should be referred to the Philatelic Sales Branch.

(D) *Return of Unsold Stamp Stock.* Broken panes of stamps without marginal strips and which exceed clerk requirements for regular stamp sales or use on parcel post, should be returned to the main stamp stock. To return stock, the clerk shall complete Form 17 in accordance with section 552 of Handbook F-1. The returned stock must be redistributed in the following priority: (*1*) to fulfill "Stamps by Mail" requests; (*2*) to be utilized in locally prepared stamp packages for vending machines; and (*3*) to be sold at other regular stamp windows. After 30 days, any stock remaining unsold at regular stamp windows is returned (using Form 17) to the main stamp stock, and handled in accordance with section 553 of Handbook F-1.

(E) *Exceptions to Sales Policies.* The Stamps Division may establish exceptions to the sales policies on selected stamp issues. Exceptions are announced in the *Postal Bulletin.*

(iii) *Coiled Stamps.* These offices may not open and break coils of stamps.

(iv) *Precanceled Stamps.* There is no limitation on the sale to collectors of sheet stamps or full coils of each of the precanceled denominations available. Purchases may be made in person or by mail by nonpermit holders for collection purposes only. Mail order requests must be accompanied by stamped, self-addressed envelopes for the return of the stamps purchased by the collector. Precanceled stamp policy is described in detail in Section 143 of the Postal Service Manual.

(3) *Philatelic Outlets.*—(i) *Commemorative Stamps.* These offices may keep an issue on sale until a notice of its removal from sales at the Philatelic Sales Branch is published in the *Postal Bulletin.*

(ii) *Plate Number Blocks and Marginal Markings for All Stamps.* The sales and disposition policies described in § 257.3(e)(iii) apply except as follows: Clerks may sell each customer one matched set of four marginal strips for any stamp in stock, and there is no limitation on the sale of plate blocks of stamps having denominations from $1 to $5. The Philatelic Sales Branch mail order section, however, may sell any quantity of marginal strips of stamps of issues having a face value above the first class letter rate; for issues having a face value at or below the first class letter rate, marginal strips will be sold only when full panes are ordered.

(iii) *Coiled Stamps.* These offices may open coils of stamps as requested, except that coils having fractional denominations can only be sold in multiples that reach full cent amounts. To guarantee receipt of "line pairs" or "line markings" on coils, the following minimum purchases are required: Bulk rate denomination (when fractional)—minimum of 30 stamps; $1—minimum of six stamps; and all other denominations—minimum of 25 stamps. (A "line marking" is the vertical line of color appearing at intervals of 25 stamps made by the joint or seam where printing plates meet on a rotary press. The "line pair" consists of the two coil stamps on either side of the "line marking." Line markings may not be visible on all coils.)

(iv) *Precanceled Stamps.* The sales policy described in § 257.3(e)(iv) applies except that coils of precanceled stamps may be opened for the sale of individual stamps to collectors.

(v) *Stamp Credit (Accountability).* Philatelic outlets should maintain a good working level of stamp stock, stationery and philatelic products to encourage philatelic interest and to meet the needs of collectors. Philatelic outlets are authorized stamp and stationery credits of $50,000 to $125,000, plus credits for the full range of current philatelic products. This paragraph does not apply to the Philatelic Sales Branch.

(vi) *Inventory of Available Items.* Updated lists (PS Form 3300) of items available at the Philatelic Sales Branch are periodically furnished to philatelic outlets to guide them in maintaining a current inventory for collectors. All listed stamps shall be maintained by permanent philatelic outlets unless sold out and not available by requisition.

(vii) *Stamp Packets.* Stamps withdrawn from sale which are incorporated in philatelic products such as Mint Sets or Collecting Kits may be sold by philatelic windows, Postal Stores, Stamp Collecting Centers, and the Philatelic Sales Branch.

(f) *Stamp Withdrawals.* Notices concerning stamp withdrawals are published in the *Postal Bulletin* and give effective dates for removing stamps from sale. On the effective withdrawal date, philatelic outlets must immediately return their supply of the withdrawn stamp to the main stamp stock, using a Form 17. The stock must then be redistributed to regular stamp windows for sale for a period of 30 days. After 30 days, any remaining stock is handled in accordance with section 553 of Handbook F-1.

§ 257.4 Cancellations for philatelic purposes.

(a) *Definition and Policy.* A postmark is a postal cancellation which contains the post office name, State, ZIP code and month, day and year the canceling post office accepted custody of the material except as provided in § 257.4(g) (1) and (4). Other postal markings are made by validators, obliterators or special purpose cancelers. The Postal Service shall endeavor to make all unusual postmarking services widely known to collectors through advance national publicity so as to avoid such postmarks being available only to small groups of people. It is the policy of the Postal Service to prohibit backdating of mail except:

(1) When postal operating requirements and public demand necessitate that cancellation commence prior to and continue after the date contained in the postmark;

(2) When replacements are being made of damaged, defective, or missing cancellations or covers; or

(3) When all requirements for cancellations were met by customers and cancellations were not applied because of errors of postal personnel.

(b) *Philatelic Postmarking*—(1) *General.* Postmarking for philatelic purposes is provided at the request of collectors or covers servicers for postmarking outside ordinary mail processing. This service requires special procedures and arrangements so that other postal operations and services are not interferred with or disrupted. It may involve handstamping requested either on a hand back or mail back basis and may entail the holding of mail for cancellation. Before this specialized service can be provided, all its conditions must be met. As a free service it is limited to transactions with fewer than 50 envelopes or other items. For 50 or more envelopes or other items, advance approval of the Stamps Division is required before service can be provided.

(2) *Cooperation with Collectors.* Employees should strive to furnish clear and legible postmarks to stamp collectors by insuring that cancellation machines and handstamp devices are properly inked. Postal employees shall give special attention to mail bearing an endorsement that is of philatelic value or to requests for light cancellations; and should avoid canceling stamps by pen or illegible smudging; however, stamps must be canceled sufficiently to protect postal revenue. The Postal Service cannot provide special attention to a philatelic cover if it has been routinely entered into the mailstream by the sender. Postmarking devices may be used only under the supervision of authorized postal personnel. All handstamped postmarks shall be made with black ink unless the customer specifically indicates a preference for the color otherwise in use. Employees should also exercise care in handling all philatelic covers to assure that they are not damaged in mail handling. These covers are generally indentifiable by a design printed on the left side of the envelope. Postal employees should assure that philatelic covers are not over-canceled, backstamped, marked "received this date" or otherwise defaced on front or back, used as a top piece in a bundle for destination package for labeling purposes or bent, folded, mutilated or damaged by rubber bands.

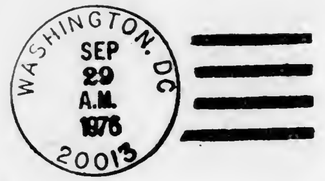
(3) *"Hand Back" and "Mail Back" Service.* Postmarks rather than other obliterations should be used to provide the following services whenever they are available:

(i) *"Hand Back" Service.* Post offices shall honor requests for "hand back" cancellation service where a customer personally presents an addressed or unaddressed envelope, postal card or other item described in § 257.(g) to a postal clerk for cancellation with the current day's postmark and immediate return or hand back to the customer. The envelope, card or other item does not enter the mailstream. All such materials must bear uncanceled postage at the applicable first class rate. So that service to other customers is not disrupted, there is a limit of 50 cancellations which can be provided for any single customer. This service may be provided for special die hub or regular machine cancellations only when the particular cancellation machine is readily accessible to the postal clerk, where the providing of such service will not interfere with other sales or mail processing operations and will not inconvenience other customers.

(ii) *"Mail Back" Service.* "Mail back" service refers to that service authorized by the Stamps Division for stamp dealers and cover servicers which permits envelopes, cards or other items submitted for cancellation to be returned in bulk through the mail. Conditions of service are further described in § 257.4(h)(3). This form of "mail back" service must be approved in writing in advance by the Stamps Division. Mail back service shall not be provided for special die hub or machine cancellations.

(c) *Permissible Cancellation Devices.* (1) The following postmark devices may be used to provide handstamped cancellations for collectors:

(A) Standard cancellation with killer bars (Item 550).



(B) Circular cancellation without killer bars. (Item 550 without killers bars.)



(C) First day of issue cancellation at the post office where an item s first issued.



(D) Bull's eye cancellation.



(E) Pictoral cancellation subject to conditions set forth in § 257.4(d)(2).



(2) The following devices are obliterators and may be used for philatelic purposes in cases where none of the postmarks or postmarking devices described above is available:

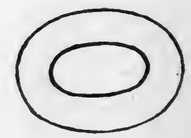
(A) Validator stamp (also known as a registry stamp or round dater—Item 570).



(B) Parcel post canceler (Item 502).



(C) Rubber oval stamp (Item 0-681).



(D) Receiving or dating stamp (Item 552).



(d) *Types of Postmarks or Cancellations*—(1) *First Day of Issue.* These cancellations are provided by the post office when a philatelic issue is first placed on sale and are dated to show that day. They include both machine and handstamp cancellations. The words "First Day of Issue" appear in the killer bars. Requests for first day cancellations must be postmarked no later than the date specified in the *Postal Bulletin* to qualify for service. Bull's eye cancellations are used when the conventional first day of issue postmark will not cancel all the unused stamps on an item presented for postmarking.

(2) *Pictorial Cancellations.* These cancellations are authorized to be used only at temporary philatelic stations and at other philatelic outlets. They shall not be used at regular stamp windows for special local celebrations. Cancellations used are generally handstamps except when volume requires the use of a machine cancellation. They may be used only during the operation of the temporary philatelic station. Requests for such cancellations must be at the post office offering the service no later than the date of the cancellation to qualify for service. A station may be authorized only one pictorial cancellation during its operation at an event. Different cancellations for each day of an event are authorized only for international philatelic exhibitions recognized by the Stamps Division and held in the United States.

(3) *Special Die Hub Cancellations.* Special die hub cancellations contain words relating to an event. These cancellations are applied by machine to

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live mail. Hand back service may be provided only as described in § 257.4(b)(3)(i). Mail back (return in bulk) service shall not be provided, but cancellations can be provided on addressed envelopes or postal cards which are delivered to the addressee or addressees through mail delivery. Cancellations of philatelic quality are often not possible.

(4) *Standard Cancellations.* Circular handstamped cancellations with or without killer bars may be provided upon request at post offices, stations and branches in conformance with Part 332, Postal Service Manual. They are available every day the office is open for business. No slogan or pictorial material may be included. Mail requests for these cancellations must be at the post office offering the service on the date of the cancellation to qualify for service.

(5) *Flight Cancellations.* Refer to § 257.4(f). These cancellations are made by regular cancellation equipment or by handstamp depending on volume.

(6) *Regular Machine Cancellations.* Post offices may not machine cancel mail with the regular postmark when the envelopes are unaddressed or when the customer requests hand back service except as described in § 257.4(b)(3)(i). Mail back (return in bulk) service shall not be provided, but cancellations can be provided on addressed envelopes or postal cards which are delivered to the addressee or addressees through mail delivery.

(e) *First Day of Issue—(1) First Day Sale.* A particular post office or postal facility is usually designated to have the exclusive sale of a new issue on the day it is issued. No other postal facility may begin general sale of the new issue until the following day. For purposes of this section, the word "issue" shall mean postage stamp, stamp booklet, or booklet pane, postal card, stamped envelope or aerogramme.

(2) *Notification.* New stamps and other philatelic issues are announced by notices displayed in post office lobbies, in the Postal Bulletin and through news releases distributed to the press and philatelic periodicals.

(3) *First Day Covers—(i) Definition.* A first day cover is an envelope, post card, or other item of reasonable dimension bearing a new stamp or booklet pane or a new postal card, a new stamped envelope or a new aerogramme canceled with a die reading "First Day of Issue" and showing place and date of first day sale.

(ii) *Procedures.* Customers who want first day cancellations of new stamps have two options:

(A) They may buy their stamps at their local post offices when the stamps are placed on sale and affix them to their own envelopes. The stamped envelopes are then mailed to the postmaster at the city of issuance for cancellation. Preferential service is accorded covers on which collectors have affixed their own stamps.

(B) They may submit their envelopes with proper remittance to cover the cost of the stamps desired. The Postal Service will affix and cancel the stamps except as indicated in subdivision (iv) of this subparagraph. Remittance should be made by money order or cashier's, certified or personal check made payable to the U.S. Postal Service. Orders containing personal checks will be held until the checks have cleared. Cash will not be accepted, nor will postage stamps or foreign coins and currency; any orders containing such remittance will be returned unserviced. All covers must bear addresses to the right side of the envelope and at least ⅝ of an inch up from the bottom of the envelope. Requests must be postmarked no later than the date specified in the announcement, which usually will be 15 calendar days from the date of issuance, to qualify for cancellation service. Covers must not be returned in outer envelopes even when furnished by collectors because to do so impedes operating efficiency.

(iii) *Requirements.* Envelopes submitted by collectors must be of ordinary letter size and must be properly addressed. Collectors should place a filler of postal card thickness in each envelope, and either turn in the flap or seal it. If applicable, collectors should put a pencil notation in the upper right corner of each cover to show the position and number of postage stamps to be placed there.

(iv) *Unacceptable Covers.* The issuing post office shall not provide cancellation service on covers submitted through the mail which are unaddressed, or bear stamps issued after the issue date and before the submittal cut-off date, or bear previously canceled stamps nor may the post office provide hand back service on any items presented after the first day of issuance. These restrictions can be waived only by written authorization of the Stamps Division.

(v) *Bulk Orders.* The post office servicing first day covers shall not accept from any one customer more than 50 envelopes requiring that stamps be affixed. When more than 50 envelopes are submitted, they must be returned unserviced to the customer, with a statement that service will be provided upon resubmittal of stamped envelopes of 50 or fewer envelopes. Care must be taken to prevent customers from avoiding this rule by placing multiple smaller orders. Customers desiring cancellations on more than 50 covers must buy and affix their own stamps to their envelopes.

(vi) *Handstamped Cancellations.* Handstamped cancellations will be applied at the first day ceremony location, at the main office windows of the first day post office, and on covers which cannot be fully canceled by postal cancellation machines. In all other cases, machine cancellations will be supplied, except as provided in § 257.4(h)(3).

(vii) *Hand Back Service.* Hand back service for first day cancellations is limited to the first day of issue. Material to be canceled must be presented to the main office window of the first day post office.

(viii) *Mail Orders for Mint Stamps.* The first day post office may not accept mail order requests for uncanceled stamps from customers outside their service area, except for cover servicers as provided in § 257.4(h)(3)(i).

(4) *Unofficial First Day Covers.* Stamps acquired at the first day post office may be canceled at any post office. Envelopes containing new stamps canceled on the first day of sale at a post office other than the issuing office are known as unofficial first day covers.

(f) *Flight Covers—(1) Definition.* The Postal Service authorizes special cachet and cancellation services for mail carried on inaugural flights and other aviation events of national interest. Flight covers generally bear official USPS cachets, the postmark of the city of origin and the backstamped postmark of the city of destination.

(2) *Authorization.* The Stamps Division may authorize cachet and cancellation service for (i) all stop points on a new airmail route; (ii) new stop points on an existing route; and (iii) other aviation events of national interest. Notices authorizing official cachets and cancellation services are published in the Postal Bulletin. This service will not be authorized for new aircraft used on an existing airmail route. Backstamped postmarks may be authorized where international airmail service is inaugurated to a stop point in the United States when the postal administration of the country of the flight's origin officially requests that the U.S. Postal Service provide philatelic treatment to mail carried on the flight.

(3) *Preparation of Covers.* Collectors must preaddress each cover to the right side of the envelope and at least ⅝ of an inch from the bottom of the envelope. Each envelope must bear postage at the applicable airmail rate. Each envelope should include a uniform enclosure of the approximate weight of a postal card to assure a good impression. A clear space 2½ inches by 2½ inches, on the lower portion of the envelope and to the left of

the address must be allowed for the cachet. An additional 1½ inches to the left of the innermost stamp must be provided to permit a clear postmark.

(4) *Submittal of Covers.* Collectors should send the envelopes for inaugural cachets under cover and endorsed "Flight Covers" to the post office or airport mail facility applying the cachet and postmark. A request to hold covers for the inaugural service should be enclosed, indicating the directional service and cachet desired.

(5) *Compliance With Collectors' Requests—(i) Direction Specified.* Post offices should comply with requests for dispatched in a particular direction to the greatest extent practicable unless otherwise specified by the Stamps Division. No directional service will be accorded for events of national aviation interest.

(ii) *Direction Not Specified.* In the absence of specific requests, post offices should dispatch covers on the actual first flight, regardless of direction.

(iii) *Incomplete Instructions.* If the collector's request is not clear, post offices should dispatch covers in accordance with the judgment of the dispatching office.

(iv) *Color of Ink Used for the Cachet.* The Stamps Division will determine the color of ink to be used on the cachet at each stop point. Requests from collectors for other ink colors must not be honored.

(v) *Position of Cachet.* Post offices should apply cachets legibly and neatly to the left side of the address side of the cover.

(6) *When Cachets Must Not Be Applied.* Cachets must not be applied to:

(i) Covers for immediate return to sender. All covers must be dispatched on the flight.

(ii) Covers bearing a previous official or unofficial cachet.

(iii) Covers lacking sufficient clear space for application of cachet without obscuring the address.

(iv) Aerogrammes and postal cards.

(v) Double postal or post cards intended for return reply purposes.

(vi) Covers received after the flight.

(vii) Covers on which postage is not fully prepaid.

(viii) Covers containing previously canceled postage stamps.

(ix) Anything other than a flight cover.

(7) *Backstamping.* All inaugural covers will be backstamped with machine or hand cancellation devices at the destination post office. Postage stamps are not required for the second cancellation. Requests for additional or special backstamping must not be honored.

(8) *Delay of Flight.* If, after postmarking of covers has begun, the flight is canceled or the scheduled date of departure is delayed to a subsequent date, the postmark dates already stamped on the flight covers will not be changed, replacement covers will not be issued, nor will any liability be accepted.

(g) *When and Where Philatelic Postmarking May Be Done—(1) Date and Place of Postmarking.* Postmarking provided for philatelic purposes may commence prior to the actual date of the cancellation requested and may continue after that date when demand, processing capability, or other requirements of the Postal Service dictate it. Under no circumstances may any postmarked materials be released before the date of the cancellation. The Regional Retail Branch may determine that local processing capability requires that philatelic cancellation services be performed at an office other than the post office whose cancellation is used; in these cases, however, all materials to be postmarked must be received at or deposited in the post office whose cancellation is being used, or at an office designated by the Regional Retail Branch or the Stamps Division.

(2) *Preparation Requirements.* Post cards, postal cards, and envelopes submitted through the mail must bear postage at the applicable rate and complete addresses, except as provided in § 257.4(h)(iv). Materials submitted for hand back service need not be addressed.

(3) *Special Types of Materials on Which Cancellations Are Requested.* The materials herein described may be canceled as indicated. These provisions do not apply to any arrangements made with cover servicers and dealers by the Stamps Division under § 257.4(h).

(i) *Plain Cards, Slips of Paper, and Blank Envelopes.* Postal employees may not place postmarks for customers on plain slips of paper, plain cards, or blank envelopes which do not bear unused postage in an amount equaling or exceeding the first class rate.

(ii) *Picture Post Cards (Maximum Cards).* Picture post cards with the stamp placed on the face of the card rather than on the address side are known as maximum cards. Postmasters may cancel these cards and hand them back to the person presenting them.

(iii) *Posters, Portfolios, and Other Memorabilia.* These items with the stamps placed thereon may be canceled when presented in person for hand back service. Submittal and return through the mail is not permitted.

(iv) *Already Canceled Stamps/Multiple Cancellations.* Items bearing previously canceled stamps and postmarks are acceptable for additional cancellations when presented for hand back service. First day of issue cancellations may not be provided on a hand back basis after the first day of issuance. Mint stamps to cover the first class rate must be affixed for each cancellation. Materials bearing multiple cancellations may not be submitted or returned through the mail in outer envelopes.

(v) *Currency.* Currency bearing unused postage stamps of first class value or items bearing currency with stamps affixed or adjacent thereto may be canceled when presented in person for hand back services. Submittal and return through the mail is not permitted. The Postal Service does not accept responsibility for currency in its possession in conjunction with philatelic services.

(vi) *Backs of Envelopes.* Post offices may cancel unused stamps when they are affixed to the reverse side of envelopes bearing already canceled stamps. This service is available only for envelopes presented for hand back service. They may not be returned through the mail even when outer envelopes are provided. Such a cancellation denotes only that the item was presented to the post office for postmarking on that date: it does not denote that the envelope was carried by the Postal Service and should be differentiated from flight covers described in § 257.4(f). This type of cover may be presented, for instance, in situations reenacting Pony Express routes, promoting special airline flights, balloon ascents, and the like, on which covers are carried outside the mail service.

(vii) *Foreign Postage Stamps.* Unused foreign postage stamps may be canceled with a U.S. Postal Service postmark only when unused U.S. postage of an appropriate rate is canceled with the same stroke.

(4) *Holding the Mail.* Post offices may hold mail to comply with customers' requests that the mail be postmarked on a specified date. Post offices may not, however, hold mail for an event where the date of occurrence is not certain or where it is subject to change or for cancellation on a day when the office will be closed, except as authorized by the Stamps Division. In these latter instances, the envelopes submitted should be returned unserviced in an outer envelope to the customer with a short note explaining why the requested service cannot be performed. There will be a limit of 50 covers per customer which can be held for cancellation. Except on first day covers where customers have affixed their own stamps, quantities above this number must receive the prior written authorization of the Stamps Division. The Stamps Division may also authorize the holding of mail for events of nationwide interest.

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(5) *Damaged or Missing Covers.* Requests for replacement of first day cancellations, pictorial cancellations, and standard cancellations may be accepted at the appropriate post office for a period of 60 days from the date of issuance for first day covers, or 30 days from the date of cancellation for pictorial and standard cancellations. Replacement cancellations will be made for poor quality of cancellation, damage to the envelope, or other similar defects. Replacements will not be made, however, in cases where envelopes were marked on the back by letter sorting machine code numbers as they moved through the mail system. The customer must return the unsatisfactory cover or covers to the appropriate post office for replacement. Replacement covers must be returned to the customer in a penalty envelope so that a stale postmark does not appear in the mail stream. Damaged covers should be disposed of in accordance with section 553, Series F-1 Handbook. The Postal Service will not replace missing or unsatisfactory standard machine cancellations, special die hub cancellations, or flight cancellations, as these cancellations are made in the course of live mail processing. All claims for nonreceipt of other covers submitted for servicing by the Postal Service must be sent to the appropriate post office no later than 60 days from the date of postmark or from the date cancellations were last applied. Claims for replacement cancellations filed after this time will not be honored and will be returned to the customer with a short explanation as to why the request cannot be honored. The Postal Service is not responsible for damage or loss of cacheted covers or of other items of value.

(6) *Special Requests.* Requests for cancellations at postal facilities that normally do not cancel mail must be made in writing to the Regional Retail Branch at least 60 days in advance to permit regional authorization and appropriate national publicity. These requirements also apply to requests for cancellations at offices which are inaccessible to the public or to requests for cancellations at any offices on dates when mail is not normally canceled (i.e., Sundays and holidays). Cover servicers, as described in § 257.4(h), must submit their requests for cancellations to the Stamps Division.

(7) *Military Post Offices.* Military post offices, including APO's and FPO's may handstamp covers both on a hand back basis and on mail order requests in conformance with all policies and in accordance with all conditions and procedures herein stated, except that: (i) the postal chief at each such installation may establish the maximum number of covers individual collectors or dealers may submit; and (ii) military post offices may not establish temporary philatelic stations or provide pictorial cancellations.

(h) *Cover Servicers and Dealers*—(1) *Definitions.* Cover servicers and dealers include those individuals, groups, or commercial enterprises that submit 50 or more envelopes or other items for cancellations, whether presented in one or more packages, and that request return in bulk.

(2) *Mail Back Service.* (i) Service subject to a service charge as indicated in § 257.4(h)(3) may be provided by postmasters only when the customer requesting it has received the prior written approval of the Stamps Division.

(ii) Mail back service or return under cover in bulk, is available to dealers only when return postage, registration if desired, and all other applicable fees such as special handling and special delivery are remitted to the postmaster at the place of postmarking. Such requests which do not include such payment will be held until the proper amount is received. In the event of overpayment by the cover servicer, the amount in excess of postage and fees required shall be returned separately in mint postage stamps. If the refund is $10 or more, it must be sent under registered mail.

(iii) Mail back service is generally permitted on first day of issue, pictorial or standard cancellations requested on the following materials: envelopes, postal cards, maximum cards and posters, portfolios or other memorabilia. The Postal Service will not accept covers for first day of issue cancellation which bear a stamp issued after the date of the postmark but before the expiration date for submittal.

(iv) Unless the cover servicer has received written Headquarters' approval for cancellation service, the envelopes will be returned to the cover servicer unserviced with a letter stating that advance approval from the Stamps Division must be obtained before the request can be honored.

(3) *Conditions of Service*—(i) *First Day of Issue Cancellations.* Customers recognized as first day cover servicers will be permitted, though not required, to purchase mint stamps by mail from the first day post office or from the Philatelic Sales Branch on the date of issuance. Machine cancellations will be provided to dealers free of charge only when stamp-affixed envelopes are submitted. All stamped envelopes must be returned for servicing within the prescribed time limit. Hand cancellations will be provided subject to a service charge established by the Stamps Division.

(ii) *Pictorial Cancellations.* These handstamped cancellations are provided subject to approval by and a service charge established by the Stamps Division, except for exhibition or convention sponsors as indicated in § 257.4(i)(5).

(iii) *Special Die Hub Machine Cancellations.* All envelopes must be addressed. They will be canceled free of charge on any quantity of envelopes submitted, but may not be returned in bulk.

(iv) *Standard Cancellations.* These handstamped cancellations may be applied on unaddressed covers and returned in bulk only when authorized by the Stamps Division. Orders are subject to a service charge established by the Stamps Division.

(v) *Flight Cancellations.* These covers must be addressed and service is subject to approval by the Stamps Division. A service fee is charged when handstamped cancellations are requested.

(i) *Cancellation Services at Temporary Philatelic Stations*—(1) *Approval.* Postmasters may request authority from the Regional Retail Branch to provide cancellation service at temporary philatelic stations. Only the standard circular cancellations shall be provided, unless the sponsors or organizers apply to the postmaster for use of a pictorial cancellations at least 10 weeks prior to the event. The sponsors or organizers must also propose a design and finished artwork for a pictorial cancellation. The cancellation service and design require the approval of the Postmaster, the District Manager, and the Regional Retail Manager.

(2) *Requirements.* All cancellations must carry the name of the exhibition or event, followed by the word "Station" or "Sta.," the city, State and ZIP code, and the month, day and year. The design of pictorial cancellations cannot carry a commercial message or endorsement, and may not directly refer to fraternal, political, religious or trade organizations. Overall dimensions cannot exceed 4 inches horizontally and 2 inches vertically.

(3) *Publicity.* The Regional Retail Manager must submit a reproducible copy of the pictorial cancellation (actual size) to the Stamps Division so that appropriate national publicity can be arranged. The use of standard cancellations at temporary philatelic stations must also be reported. All reports should include the dates the temporary philatelic stations will be open. Reports and copies of pictorial cancellations shall be submitted the first of each month for those cancellations authorized 2 months later (e.g., January 1 for March authorization; February 1 for April, etc.).

(4) *Equipment.* Pictorial and standard cancellations shall be applied by rubber handstamps purchased by the Region. If more than 100,000 pieces of mail are anticipated, the Region may apply to the Stamps Division at least 60 days in advance for purchase of a metal die for machine cancellation. These cancellations may only be provided for the duration of the temporary philatelic station. Special cancellations which are to be used for a longer time are governed by Part 258. Postal Service Manual.

(5) *Service Limitations.* Except for the exhibition or convention sponsor, handstamping as a free service will be limited to a maximum of 50 covers for any single individual or group. The sponsor may obtain any reasonable amount of hand backs free of service charge for its members, and special folders or programs prepared by the sponsor may be canceled and made available upon the opening of the show. Individuals or groups requiring more than 50 handstamped cancellations may obtain this service only by paying a special fee. Written application for this service must be made in advance to and authorized by the Stamps Division.

(6) *Use and Return of Equipment.* Philatelic cancellation handstamps, like other canceling devices, may be used only under the supervision of authorized postal personnel and must be returned by the postmaster to the Regional Retail Branch 65 days after close of the exhibition or convention, by which time all replacement requests will have been handled. The Regional Retail Manager shall destroy the cancellation device upon receipt.

§ 257.5 Special philatelic services, products and programs.

(a) *Postal Cacheted Envelopes.* Postal Service produced cachets or cacheted envelopes are permitted only for first flights and for major postal or aviation events, such as the opening of a new Philatelic Center or Dedicated Philatelic Window. All such cachets or cacheted envelopes must be approved by the appropriate Regional and Headquarters organizations, and their approval must be communicated to the Stamps Division at least 2 months prior to the event so that national publicity of their availability can be arranged.

(b) *Presentations.* The Postmaster General, the Assistant Postmaster General, Customer Services, and the Stamps Division General Manager are authorized to approve the use of canceled and uncanceled U.S. postage stamps, postal stationery, and other philatelic products for information and official postal business purposes and as official presentations of the U.S. Postal Service. All such presentations shall be approved in writing by one of the three authorized officials with a statement indicating the intended use. These presentations shall not be used as postage and will be restricted to those instances when the best interests of the Postal Service will be served.

(c) *Autographs.* Postal employees have the prerogative to accept or refuse requests for autographs. Employees should exercise fairness in handling such requests. Nothing of value may be accepted or requested in exchange for autographs.

§ 257.6 Copyright of philatelic designs.

(a) *Policy.* The designs of postage stamps, stamped envelopes, postal cards, aerogrammes, souvenir cards, and other philatelic items issued on or after January 1, 1978, have been copyrighted by the U.S. Postal Service in accordance with Title 17, United States Code.

(b) *Permission for use.* The use of illustrations of the designs covered by such copyrights is permitted as follows:

(1) In editorial matter in newspapers, magazines, journals, books, philatelic catalogs, and philatelic albums.

(2) In advertising matter, circulars, or price lists for the sale of the postal items illustrated.

(3) In advertising matter, circulars, or price lists for the sale of newspapers magazines, journals, books, philatelic catalogs, and philatelic albums containing illustrations of philatelic designs.

(4) In motion picture films, microfilms, slides, or electronic tape for projection upon a screen or for use in telecasting but not for use in advertising, other than for uses permitted in § 257.6(b) (2) and (3). No print or other reproduction from such films, slides, or tapes shall be made except for the uses permitted in § 257.6(b) (1), (2), and (3).

(c) *Reproduction of Designs.* Illustrations permitted by § 257.6(b) (1), (2), and (3) may be in color or in black and white and may depict philatelic items as uncanceled or canceled. When depicting uncanceled items in color, illustrations must be less than 75 percent or more than 150 percent, in linear dimension, of the size of the design of the philatelic items as issued. Color illustrations of canceled philatelic items and black and white illustrations of uncanceled and canceled philatelic items may be in any size.

(d) *Requests for Licenses.* The U.S. Postal Service may grant licenses for the use of illustrations of its copyright designs outside the scope of the above permission. Requests for such licenses should be addressed to the Chairman, Intellectual Property Rights Board, Office of Contracts, U.S. Postal Service, Washington, D.C. 20260.

(39 U.S.C. 401, 404.)

ROGER P. CRAIG,
Deputy General Counsel.

[FR Doc. 78-32081 Filed 11-15-78; 8:45 am]

[6560-01-M]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

[FRL 1007-1]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart YY—Wisconsin

AGENCY: Environmental Protection Agency.

ACTION: Technical Correction.

SUMMARY: The Environmental Protection Agency's approval of the compliance schedule affecting the Dairyland Power Cooperative in Alma, Wisconsin, was inadvertently excluded from publication in the Code of Federal Regulations (CFR). This notice implements certain CFR procedural requirements to reinstate the approval notice.

EFFECTIVE DATE: November 16, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert B. Miller, Air Programs Branch, Air & Hazardous Materials Division, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Ill. 60604, 312-353-2205.

SUPPLEMENTARY INFORMATION:

On May 14, 1973, (38 FR 12713), the U.S. Environmental Protection Agency approved a compliance schedule for the Alma Generating Station, owned by the Dairyland Power Cooperative of La Crosse, Wis., by promulgating § 52.2578(a) in Part 40. On June 20, 1973, (38 FR 16170), a notice that the Wisconsin State Implementation Plan did not meet the requirements of 40 CFR 51.15(c) was also promulgated at § 52.2578(a), thereby replacing the approved compliance schedule. On August 23, 1973, (38 FR 22752), this error was corrected by relettering the disapproval notice from §§ 52.2578(a) to 52.2578(b), but the compliance schedule approval was not reinstated. Today's action restores the Dairyland Power Cooperative compliance schedule to § 52.2578 under paragraph (d) to

be included in proper alphabetical order with other approved compliance schedules. Because this procedural corrective action does not affect the rights of any parties, it is immediately effective.

Part 52 of Chapter I, Title 40, Code of Federal Regulations is amended as follows:

Subpart YY—Wisconsin

1. Section 52.2578 is corrected by adding an additional compliance schedule to paragraph (d).

§ 52.2578 Compliance schedules.

* * * * *

(d) * * *

Source	Location	Regulation involved	Date schedule adopted	Final compliance date
	Buffalo County			
Dairyland Power Cooperative	Alma	NR 154.12(1).	Aug. 16, 1972.	May 1, 1974

(42 U.S.C. 7410.)

Dated: November 7, 1978.

JOHN MCGUIRE,
Regional Administrator.

[FR Doc. 78-32171 Filed 11-15-78; 8:45 am]

[6820-24-M]

Title 41—Public Contracts and Property Management

CHAPTER I—FEDERAL PROCUREMENT REGULATIONS

[FPR Amdt. 187]

PART 1-9—PATENTS, DATA, AND COPYRIGHTS

Institutional Patent Agreements

CROSS REFERENCE: For a document concerning observance of the new effective date for Federal Procurement Regulation Amendment 187 on Institutional Patent Agreements, see FR Doc. 78-32236 published in the Notices section of this issue. Refer to the table of contents under the General Services Administration for the correct page number.

[6820-23-M]

CHAPTER 5B—PUBLIC BUILDINGS SERVICE, GENERAL SERVICES ADMINISTRATION

[PBS P 2800.6A CHGE 3]

PART 5B-2—PROCUREMENT BY FORMAL ADVERTISING

Listing of Subcontractors; Correction

AGENCY: General Services Administration.

ACTION: Correction.

SUMMARY: This document corrects an error in a previously published regulation in the FEDERAL REGISTER regarding procurement by formal advertising listing of subcontractors. This regulation is keyed to the earlier document and the error is clearly identified for correction.

EFFECTIVE DATE: November 16, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Anthony Ratkus, Jr., of the Procurement Policy Review Staff, Office of Program Management, Public Buildings Service, General Services Administration, Washington, D.C. 20405, 202-566-1954.

In FR Doc. 78-25456 appearing at page 40227 in the FEDERAL REGISTER of Monday, September 11, 1978, paragraph (3) of § 5B-2.202-70(f)(e) appearing on page 40228 is corrected to read as follows:

(3) For all other categories, the contractor shall require each subcontractor named in the bid for an entire category or portion thereof to perform with personnel carried on the subcontractor's own payroll (other than operators of leased equipment) not less than 70 percent of the onsite work of that category or portion of category.

Dated: October 24, 1978.

JAMES B. SHEA, Jr.,
Commissioner, PRS.

[FR Doc. 78-32196 Filed 11-15-78; 8:45 am]

[7910-01-M]

Title 47—Telecommunications

CHAPTER II—OFFICE OF SCIENCE AND TECHNOLOGY POLICY AND NATIONAL SECURITY COUNCIL

AGENCY: Office of Science and Technology Policy.

ACTION: Chapter heading change.

SUMMARY: 47 CFR Chapter II is amended by retitling Chapter II as set forth below.

CHAPTER II—OFFICE OF SCIENCE AND TECHNOLOGY POLICY AND NATIONAL SECURITY COUNCIL

DATE: This amendment is effective on November 14, 1978.

FOR FURTHER INFORMATION CONTACT:

Col. Wayne Kay, 202-395-3272.

FRANK PRESS,
Director, Office of Science and Technology Policy.

[FR Doc. 78-32324 Filed 11-15-78; 8:45 am]

[4910-59-M]

Title 49—Transportation

CHAPTER V—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

[Docket No. 72-23; Notice 5]

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Seat Belt Assembly Anchorages

AGENCY: National Highway Traffic Safety Administration (NHTSA).

ACTION: Final rule.

SUMMARY: This notice amends Safety Standard No. 210, *Seat Belt Assembly Anchorages*, to eliminate the anchorage location requirements for passive seatbelt assemblies that meet the frontal crash protection requirements of Safety Standard No. 208. The purpose of the amendment is to give manufacturers wider latitude in passive belt design in order to facilitate the early introduction of passive restraints in existing passenger car designs. The amendment will allow manufacturers to experiment with various passive belt designs to help determine the optimum relationship between anchorage location and passive belt effectiveness in a variety of crash modes and their comfort and convenience. Anchorage location would still be indirectly controlled by the necessity for passive belts to comply with the Standard No. 208 requirements.

DATES: Effective date: November 16, 1978.

ADDRESSES: Petitions for reconsideration should refer to the docket number and notice number and be submitted to: Docket Section, Room 5108—Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT:

William Smith, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, Washington, D.C. 20590, 202-426-2242.

SUPPLEMENTARY INFORMATION: Safety Standard No. 210, *Seat Belt Assembly Anchorages* (49 CFR 571.210), specifies zones and acceptable ranges within which seatbelt anchorages must be located to insure that the anchorages are in the proper location for effective occupant restraint and specifies strength requirements to reduce the likelihood of their failure in a crash. In response to a petition from General Motors Corp., the NHTSA issued a proposal to delete these anchorage location requirements for passive belt systems that meet the dynamic frontal crash protection requirements of Safety Standard No. 208 (43 FR 22419, May 25, 1978).

The proposal noted that General Motors would like to use a passive belt design whose anchorages, in some vehicles, would lie outside the parameters specified in the standard. GM stated that the anchorage locations of this design are intended to insure the comfort and convenience of the passive belt so that it will not be disconnected by vehicle users who find current active belts lacking in these qualities. General Motors wanted to introduce this passive belt design prior to the effective date of the passive restraint requirements issued July 5, 1977 (42 FR 34289). As stated in the preamble of the proposal, the agency has determined manufacturers should be given wide latitude in passive belt design in order to facilitate the early introduction of passive systems, since they should save many lives and prevent hundreds to thousands of injuries. Although the current anchorage location requirements were developed primarily for active belt systems, passive belt systems such as the one used on the Volkswagen Rabbit have successfully complied with the anchorage location requirements and met the frontal injury criteria of Standard No. 208 as well. Nonetheless, manufacturers have said they can develop more effective and comfortable passive systems to comply with Standard 208. The agency thinks they should be given the opportunity. Nevertheless, it is the agency's view that research should be conducted to determine the optimum anchorage locations for the various passive belt designs in terms of both passive belt effectiveness and of comfort and convenience for vehicle occupants. Accordingly, the earlier notice proposed the deletion of the anchorage requirements for passive belts until appropriate requirements for these systems can be developed and incorporated in the standard.

Comments in support of the proposed change were received from Chrysler, British Leyland, American Motors, Ford, Volkswagen, General Motors, and the Association Peugeot-Renault. These commenters argued that manufacturers should not be restricted in passive belt design, so that manufacturers can determine which designs are the most effective and at the same time acceptable to the public. The Center for Auto Safety argued against the proposal, however, stating that elimination of the anchorage location requirements may degrade available occupant protection.

The Center for Auto Safety agreed that manufacturers should be allowed flexibility in passive belt design to facilitate the early introduction of passive restraints. However, it argued that elimination of the forward boundary for upper torso belt anchorages may "(1) seriously degrade occupant protection available by allowing the anchorages to be installed in areas likely to be struck by the occupant in a side impact and (2) may result in systems that do not sufficiently restrain the occupant from submarining or moving laterally under the belt." The Center's first concern is that side-impact head injuries will increase if passive belt retractors, buckles, and other hardware are permitted in areas likely to be struck by the occupant's head in a side collision. The comment noted that vehicles equipped with passive belts are not required to meet the lateral impact requirements of Standard No. 208 and that manufacturers would, therefore, have no incentive to design anchorages and other hardware to avoid injuries in nonfrontal collisions.

The Center's second concern is that elimination of the anchorage location requirements will allow passive belt designs that lead to more lateral occupant movement and "submarining" in side crashes, thereby increasing side impact injuries.

The Center also argued that it should be the responsibility of General Motors to demonstrate the safety consequences of moving passive belt anchorages outside the current range requirements, before the agency eliminates the requirements for passive belts. Finally, the Center is concerned that once the exemption is allowed, it might be years before new location requirements for passive belts are specified.

Regarding the Center's first concern, the present requirements do not prohibit the placement of hardware in areas where they could be struck by an occupant's head in a side collision. While manufacturers may not be constrained by present standards from placing hardware where it poses a danger to occupants in side impacts, all manufacturers are on notice that the agency is preparing to propose a side impact standard as delineated in the agency's rulemaking plan. Thus, in anticipation of the upgraded side impact requirements, manufacturers should design their passive belt systems in such a way that they will not compromise side impact protection.

The Center's concern about the potential for increased lateral movement and submarining in side crashes was not supported by any data. The NHTSA is also concerned about side impact injuries. However, the existing location requirements for belt anchorages were not specifically designed to address the problem of lateral occupant motion in nonfrontal collisions where the occupant is restrained by a single, diagonal passive upper torso restraint used with a knee bolster.

The notice of proposed rulemaking explicitly stated that the NHTSA intends to issue separate anchorage location requirements for passive belts following research to determine the optimum locations for passive belt effectiveness, comfort and convenience, and that the proposed exemption from the current requirements is only an interim measure. The NHTSA intends to conduct studies to look at the change in injury data resulting from displacement of the upper anchorage point of a single diagonal belt for various sizes of occupants. The research program includes testing that will investigate the "submarining" problem and, during frontal oblique impact simulations, the likelihood of excessive lateral movement. The agency will consider simulated side impact testing during this research program to evaluate potential degradation of occupant protection in this crash mode. The agency will also consider anchorage location during the upgrading of side impact protection requirements. As stated in the recent "Five Year Rulemaking Plan," the improvement of occupant protection in side impacts is one of the NHTSA's highest priorities.

The Center's suggestion that GM demonstrate the safety consequences of passive belt anchorages should be addressed by the NHTSA's intention to look with great care at manufacturers' compliance testing of all passive belt designs to assure that these new systems will, in fact, provide at least the level of overall protection now afforded by conventional restraint systems.

Finally, regarding the Center's concern that new location requirements for passive belt anchorages will not be specified for many years, the notice of proposed rulemaking and this notice make it clear that the exemption is only an interim measure to allow improvements in passive belt designs. It is consistent, however, with the attempt to make FMVSS 208 a performance standard to the greatest extent possible. Nevertheless, should any manufacturer produce passive belt

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hardware or systems that cause or exacerbate injuries that would not occur with active systems currently in production, the NHTSA's safety defect authority would permit the agency to investigate such systems for possible recall and correction. Manufacturers are hereby put on notice of that fact.

In summary, the NHTSA has concluded that manufacturers should be given wide latitude in passive belt design in order to aid the early introduction of passive restraints and to aid the development of optimum designs in terms of both effectiveness and comfort and convenience. The agency agrees that anchorage location requirements are important for passive belts, but believes that more effective requirements can be developed following further research specifically involving passive belts. To insure that safe and effective systems are being developed, the agency will be testing many of the new passive systems that will come on the market prior to the 1982 model year. In addition, the agency intends to ask manufacturers to supply data concerning the performance of passive systems in both compliance crash testing and in sled and crash testing in other modes.

The NHTSA has determined that this amendment will have no economic or environmental consequences.

The engineer and lawyer primarily responsible for the development of this notice are William Smith and Hugh Oates, respectively.

In consideration of the foregoing, Federal Motor Vehicle Safety Standard No. 210, *Seat Belt Assembly Anchorages* (49 CFR 571.210), is amended to add the following sentence at the end of the text of S4.3:

§ 571.210 Standard No. 210, seat belt assembly anchorages.

* * * * *

S4.3 *Location.* * * * Anchorages for passive belt systems that meet the frontal crash protection requirements of Standard No. 208 are exempt from the location requirements of this section.

* * * * *

(Sec. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.50.)

Issued on November 3, 1978.

JOAN CLAYBROOK,
Administrator.

[FR Doc. 78-32015 Filed 11-9-78; 9:56 am]

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

[3410-16-M]

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

[7 CFR Part 651]

LAND RIGHTS, WATER RIGHTS, AND CONSTRUCTION PERMITS

Policy on Requirements for Projects Receiving Federal Financial Assistance

AGENCY: Soil Conservation Service, U.S. Department of Agriculture.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish policy for acquiring landrights including water rights, mineral rights, and other subsurface rights for projects receiving Federal financial assistance under programs administered by the Soil Conservation Service.

DATE: Written comments should be submitted on or before January 15, 1979.

ADDRESS: All comments to: Verne M. Bathurst, Deputy Administrator for Administration, Soil Conservation Service, P.O. Box 2890, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT:

Lincoln F. Gallacher, Room 2203 Auditors Building, U.S. Department of Agriculture, P.O. Box 2890, Washington, D.C. 20013, telephone 202-447-4811.

SUPPLEMENTARY INFORMATION: Soil Conservation Service requires sponsors of projects to acquire all necessary landrights as a condition for receiving Federal financial assistance. This part sets forth the requirements for the acquisition of landrights under Soil Conservation Service programs. There will be no significant impact on the public due to the Soil Conservation Service implementation of program requirements as set out by specific Acts.

Dated: November 8, 1978.

VERNE M. BATHURST,
Deputy Administrator for Administration.

Title 7 CFR is proposed to be amended by adding a new Part 651 to read as follows:

PART 651—LAND RIGHTS, WATER RIGHTS, AND CONSTRUCTION PERMITS

Subpart A—General

Sec.
651.1 Purpose and scope.
651.2 Definitions.

Subpart B—Landrights not Authorized for Federal Financial Assistance

651.10 General.
651.11 Designation of sponsor responsible for landrights.
651.12 Duration of landrights.
651.13 Sponsors' responsibilities.
651.14 Responsibilities of SCS.

Subpart C—Landrights Authorized for Federal Financial Assistance

651.20 General.
651.21 Sponsors' responsibilities.
651.22 Responsibilities of SCS.

Subpart D—Conservation Operations

651.30 Responsibility for acquisition of landrights.
651.31 [Reserved]

Subpart E—Emergency Watershed Protection

651.40 Responsibility for acquisition of landrights.
651.41 [Reserved]

Subpart F—Great Plains Conservation Program

651.50 Responsibility for acquisition of landrights.
651.51 [Reserved]

AUTHORITY: 7 CFR 2.62

Subpart A—General

§ 651.1 Purpose and scope.

(a) This part sets forth the requirements for Federal financial assistance to projects under programs administered by the Soil Conservation Service (SCS) for:

(1) Acquisition of landrights including water rights and mineral or subsurface rights.

(2) Acquisition of installation permits.

(3) Acquisition of clearances required by Federal, State, and local statutes.

(4) Implementation of part 21 of this title as it relates to the acquisition of interests in real property.

(b) These regulations apply to measures installed under the following programs:

(1) Watershed Protection and Flood Prevention (W.P. & F.P.). See part 622 of this chapter.

(2) Flood Prevention (FP). See part 623 of this chapter.

(3) Resource Conservation and Development (R.C. & D.).

(4) Conservation Operations (CO). See part 610 of this chapter.

(5) Great Plains Conservation (GP). See part 631 of this chapter.

(6) Emergency Watershed Protection (EWP). See part 624 of this chapter.

(7) Specifically authorized projects.

(c) These regulations are to remain in force until they are superseded. Project measures in an existing project agreement are not affected by these regulations.

§ 651.2 Definitions.

Acquiring agency. Any agency or organization that has or acquires an interest in real property to carry out a project with Federal financial assistance under programs administered by SCS. In watershed projects and resource conservation and development areas, the acquiring agency must be a sponsor of the project.

Donated landright. A donated landright is a conveyance of real property or an interest in real property in which the only consideration paid is a pro forma amount such as $1 customarily cited as the consideration for a landright's conveyance.

Easement. An interest in land that entitles the easement holder to a specific limited use or enjoyment.

Induced flooding. Flooding caused by installation of a project measure.

Landrights. Any interests acquired or permission obtained to use land, buildings, structures, or other improvements classified or referred to generally as real property or as land, easements, and rights-of-way.

Landrights agreement. A fund obligating document that identifies the eligible landrights to be acquired and the amount of Federal financial assistance to be provided.

Land users. Those who individually or collectively use land as owners, lessees, occupiers, or by other arrangements which give them conservation planning or implementation concern and responsibility for the land involved.

Mineral right. An interest in minerals, including the right to exploit or develop that interest.

Permit. A permission or license issued by a person in authority or proprietary control empowering the permittee to do some act(s) not forbidden

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by law but allowable only with that permission or license.

Project agreement. A written agreement entered into between SCS and the sponsor(s) in which detailed working arrangements are established for the installation of works of improvement or for other related purposes.

Project measures. An undertaking for watershed protection; flood prevention; the conservation, development, utilization, and disposal of water; the conservation and proper utilization of land; or a combination thereof. The undertaking may consist of land treatment, nonstructural or structural measures or a combination thereof.

Sponsor. An agency or organization with authority to provide local responsibility for a Federal financially assisted local project under a program administered by SCS.

State conservationist. The SCS line officer responsible for SCS activities within a particular State, the Commonwealth of Puerto Rico, or the U.S. Virgin Islands.

Term easement. An easement in effect for a specified period of time, such as a term of years or months, or for the life of either the grantor or grantee.

Water right. Any interest acquired in, priority established for, or permission obtained for the use of water.

Subpart B—Landrights Not Authorized for Federal Financial Assistance

§ 650.10 General.

This subpart prescribes the regulations for the acquisition of landrights when Federal financial assistance for landrights is not authorized.

§ 651.11 Designation of sponsor responsible for landrights.

One or more sponsors are to be responsible for the acquisition of landrights needed for project measures. The responsible sponsors are to be designated in the program agreement along with their authority and sources of funds to acquire landrights.

§ 651.12 Duration of landrights.

(a) The sponsor must acquire the necessary landrights before the project agreement can be signed.

(b) The rights must extend through a reasonable period for planning and installation and (1) the evaluated life of the project measure, (2) the evaluated life of project measures that are economically evaluated as a unit, or (3) the useful life of project measures for land conservation or land use.

(c) Permits are sufficient for financially assisted project measures as follows:

(1) Project measures that do not require operation and maintenance.

(2) Project measures that are to be operated and maintained by the landowner.

(3) One-time operations within a project measure such as a survey, investigation, or spoil spreading.

(4) Subordination of the rights of utilities within a project measure area.

(d) Term or perpetual easements are required for financially-assisted project measures that require operation and maintenance by someone other than the landowner.

§ 651.13 Sponsors' responsibilities.

Sponsors are to: (a) Acquire those landrights, water rights, and permits needed for the investigation and survey, installation, inspection, operation, and maintenance of project measures to be installed with Federal financial assistance in conformance with SCS policy set forth in this part.

(b) Acquire the rights in accordance with Pub. L. 91-646 and the implementing regulations of the U.S. Department of Agriculture (USDA) (part 21 of this title).

(c) Be responsible for all costs associated with acquiring or failing to acquire landrights.

(d) Complete the acquisition of all landrights before entering into a project agreement to install the project measures.

(e) Submit the proposed landrights instruments for SCS approval.

(f) Submit proposed special provisions before they are included in landrights instruments.

(g) Provide certification of the legality and adequacy of the landrights acquired along with copies of the landrights instruments for SCS review.

§ 651.14 Responsibilities of SCS.

(a) The State conservationist is to determine for each project measure the minimum area for which landrights must be acquired. In making his determination, the State conservationist is to include all areas needed to comply with the criteria set forth below and such additional areas as, in his prudent judgment, are to be included because of present, proposed, or possible future land uses that will adversely affect the functioning of the project measure.

(1) *Dams.* Sponsors must acquire landrights for the area of the structure, reservoir, and spillway; areas adversely affected by changed waterflow including but not limited to areas for spillway discharge; areas for environmental and protective features; and other areas needed for activities, such as design, operation and maintenance, construction, spoil disposal, borrow, ingress and egress, and diversion of water. If the structure is designed with an emergency spillway, upstream landrights are required at a minimum for that area below the higher elevation of either the crest of the primary emergency spillway or the maximum elevation of the water surface attained during passage of the 100-year, 24-hour hydrograph through the structure. If the dam is not designed with an emergency spillway, minimum upstream landrights are to include all the area below the elevation of the top of the dam.

(2) *Channels.* The sponsor must acquire landrights for those areas within the channel's designed top width and the berm width necessary on each channel bank to insure stability of the channel, channel banks, and side slopes; the areas needed for installation, inspection, design, operation and maintenance, ingress and egress, disposal, and diversion of water; areas needed for environmental and protective features; and other areas adversely affected by changed streamflow characteristics or induced flooding.

(b) The State conservationist is to furnish the sponsor a landrights work map showing the specific areas on which landrights are to be obtained and the minimum interest that must be acquired in each area. As a minimum, the map is to show landmarks for location of area, acquisition elevations, flowage elevations, apparent tract ownerships, acreages and boundaries, location of the project measure, installations affected by construction such as roads, utility lines, pipelines, railroads, buildings, wells, springs, bridges, all right-of-way boundaries, routes of ingress and egress where essential, and other similar features.

(c) The State conservationist is to meet the following criteria before installing any structure that would result in flooding of railroads, highways, public roads, dwellings, buildings, water sources, public utilities, burial sites, and historic sites or monuments.

(1) Railroads that are to remain in use may not be flooded.

(2) Highways and public roads may not be flooded below the elevation of the flowage line unless:

(i) The highway or public road is closed for a brief period and there is an alternate all-weather route that can be used with a minimum of inconvenience.

(ii) A written right or permission to flood the highway or public road has been obtained from the State, county, or agency having jurisdiction over the highway or public road. The written right or permission may be an easement, court order, or, if those cannot legally be given, a permit. The written right or permission must be accompanied by a citation of the applicable State statute or a written opinion of the State attorney general stating that the State, county, or agency

granting the permission has legal authority to allow the road to be closed by flooding.

(iii) Dwellings are accessible by an all-weather road that will not flood more frequently than under preconstruction conditions. If a road providing the only access to a dwelling is at a lower elevation than the flowage line, an historical record of preconstruction flooding is to be developed and documented in the landrights file.

(d) The State conservationist may not allow dwellings, including basements, or any other buildings that contain valuable property or that may be used as permanent or seasonal living quarters to remain in the area requiring flowage rights unless they are floodproofed or otherwise protected from damage by the storm event used to establish the flowage right elevation. Before financial assistance is made available to a sponsor, the dwelling or building must be: (1) Demolished, (2) relocated, (3) raised, or (4) protected by a floodwall. If the dwelling or building is raised or protected by a floodwall, it must be done in such a manner that there will be adequate drainage and no unreasonable ponding of water.

(1) If formally requested by the sponsor and approved by the State conservationist, other buildings such as barns and garages may remain in the flowage easement area. Generally, approval for flooding buildings of this type will not be granted if the building is used for the storage of feed, perishable items, supplies, equipment, or other items that would be substantially damaged by flooding. This also applies to any building used for other purposes if flooding would cause an interruption or delay of operations carried on in the building or cause a hazard that may result in damage to the building's contents, injury or death.

(e) The State conservationist may not allow the flooding of water sources such as springs or wells until sponsors have complied with State laws, ordinances, and regulations relating to matters such as contamination.

(f) The State conservationist may not allow public utilities to be flooded unless the utility company has determined that the function of the facility will not be affected adversely and a subordination agreement has been obtained.

(g) The State conservationist may not allow burial sites such as private family plots, cemeteries, and graveyards to be flooded unless disinterment and reburial has been accomplished in accordance with State law.

(h) The State conservationist may not allow historical sites or monuments to be flooded unitl part 656 of this title has been complied with.

(i) The State conservationist is to assist the sponsor in obtaining permission to survey for and/or recover archeological or historical resources in accordance with part 656 of this title.

(j) The State conservationist is to identify apparent water rights needed and develop a procedure for the sponsor to document these rights under State laws.

(k) The State conservationist is to advise the sponsor of the importance of mineral rights to the project measure and review the findings on outstanding mineral rights against design criteria for the measure.

(l) Before landrights negotiations begin, the State conservationist is to review and approve all instruments to be used in acquiring landrights except for those used in condemnation proceedings.

(m) The State conservationist is to review all special provisions to be included in landrights instruments as a result of the negotiations for the landright.

(n) The State conservationist is to arrange for periodic inspections of the sponsor's records to see that relocation assistance, relocation assistance advisory services, and relocation payments are being provided and that the sponsor is complying with pledged assurances.

(o) The State conservationist is to determine the need for and provide necessary technical assistance to the sponsors as available.

Subpart C—Landrights Authorized for Federal Financial Assistance

§ 651.20 General.

This subpart supplements and modifies subpart B if a program agreement authorizes Federal financial assistance for landrights from SCS program funds.

§ 651.21 Responsibilities of sponsors.

(a) Fair market values for the landrights needed are to be established based on appraisals as provided by part 21 of this title and agreed to by the sponsor and the State conservationist.

(b) Sponsors are to enter into landrights agreements with SCS.

(c) The sponsor must obtain evidence of title for all fee simple interests for which Federal financial assistance is authorized. After SCS approves the preliminary title evidence, the sponsor may proceed to acquire the property. Federal financial assistance will not be provided until the property has been acquired and final title evidence has been approved.

§ 651.22 Responsibilities of SCS.

(a) The amount of Federal financial assistance shown in the landrights agreement is to be applied as follows:

(1) For negotiated landrights the SCS share is to be computed on the price paid by the sponsor or the fair market value jointly determined by the sponsor and SCS, whichever is the lesser amount.

(2) For landrights acquired by condemnation, SCS provides financial assistance computed on the amount of damages awarded by the court, except that, if SCS considers the court award excessive and the sponsor does not exercise an appeal that is considered necessary by SCS, the financial assistance is to be based on the fair market value determined by SCS.

(3) For landrights costs included in a project agreement or its equivalent, the SCS financial assistance is to be computed on the actual cost of the work incurred under the project agreement or its equivalent.

(b) SCS is to prepare a landrights agreement documenting the eligible landrights and the level of Federal financial assistance. The agreement is to be consistent with arrangements in the program agreement.

(c) SCS may provide financial assistance to perform joint appraisals in satisfying the requirements for appraisal and review prior to purchase under part 21 of this title.

(d) SCS is to arrange for the legal review of title evidence provided by the sponsor.

(e) SCS is to identify project areas that require fee simple title ownership by the sponsor.

Subpart D—Conservation Operations

§ 651.30 Responsibility for acquisition of landrights.

Land users who receive technical assistance on conservation practices are responsible for obtaining the landrights necessary to carry out the practice. Land users must indemnify and save the United States harmless from any infringements upon the rights of others or from any failure to comply with applicable laws or regulations.

§ 651.31 [Reserved]

Subpart E—Emergency Watershed Protection

§ 651.40 Responsibility for acquisition of landrights.

Sponsors are responsible for the acquisition of landrights needed for emergency measures. The responsible sponsor is to be designated in the plan of work for the emergency measures. The pertinent procedures set forth in subpart B of this part apply to these measures.

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§ 651.41 [Reserved]

Subpart F—Great Plains Conservation Program

§ 651.50 Responsibility for acquisition of landrights.

Responsibility for practices under the GPCP are contained in § 631.30 of this chapter.

§ 651.51 [Reserved]

[FR Doc. 78-32228 Filed 11-15-78; 8:45 am]

[4910-13-M]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 78-RM-28]

ALTERATION OF TRANSITION AREA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice of proposed rulemaking (NPRM) proposes to alter the Minot, N. Dak., Grand Forks, N. Dak., Bismarck, N. Dak. and Sioux Falls, S. Dak. 1,200 foot transition areas to provide controlled airspace within the delegated approach control boundaries and to allow approach control the flexibility to utilize all available airspace for air traffic control purposes.

DATES: Comments must be received on or before December 13, 1978.

ADDRESSES: Send comments on the proposal to: Chief, Air Traffic Division, Attn: ARM-500, Federal Aviation Administration, 10455 East 25th Avenue, Aurora, Colo. 80010.

A public docket will be available for examination by interested persons in the office of the Regional Counsel, Federal Aviation Administration, 10455 East 25th Avenue, Aurora, Colo. 80010.

FOR FURTHER INFORMATION CONTACT:

Joseph T. Taber/Pruett B. Helm, Airspace and Procedures Specialists, Operations, Procedures and Airspace Branch (ARM-537), Air Traffic Division, Federal Aviation Administration, Rocky Mountain Region, 10455 East 25th Avenue, Aurora, Colo. 80010; telephone 303-837-3937.

SUPPLEMENTARY INFORMATION:

COMMENTS INVITED

Interested persons may participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Division, Federal Aviation Administration, 10455 East 25th Avenue, Aurora, Colo. 80010. All communications received will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

AVAILABILITY OF NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling 202-426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

THE PROPOSAL

The Federal Aviation Administration is considering an amendment to subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the 1,200 foot transition areas at Minot, North Dakota, Grand Forks, North Dakota, Bismarck, North Dakota and Sioux Falls, South Dakota. The present transition areas are inadequate in size to contain the delegated approach control areas. It is proposed to alter the transition areas to allow approach control the flexibility to utilize all available delegated airspace for air traffic control purposes.

Accordingly, the Federal Aviation Administration proposes to amend subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

By amending supbart G, 71-181 so as to alter the following transition areas to read:

MINOT, N. DAK.

• • • that airspace extending upward from 1,200 feet above the surface within 54 mile radius of Minot AFB excluding the area north of latitude 49°00'00" N.

GRAND FORKS, N. DAK.

• • • and that airspace extending upward from 1,200 feet above the surface within a 39 mile radius of Grand Forks AFB, within the State of North Dakota.

BISMARCK, N. DAK.

• • • that airspace extending upward from 1,200 feet above the surface within a 41 mile radius of the Bismarck VORTAC excluding all Federal airways.

SIOUX FALLS, S. DAK.

• • • and that airspace extending upward from 1,200 feet above the surface within the State of South Dakota bounded on the west by longitude 97°50'00" W., and on the north by latitude 44°30'00" N., excluding all federal airways.

DRAFTING INFORMATION

The principal authors of this document are Joseph T. Taber/Pruett B. Helm, Air Traffic Division, and Daniel J. Peterson, office of the Regional Counsel, Rocky Mountain Region.

This amendment is proposed under authority of Section 307(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)), and of Section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A-107.

Issued in Aurora, Colorado on October 31, 1978.

ISSAC H. HOOVER,
Deputy Director,
Rocky Mountain Region.

[FR Doc. 78-31933 Filed 11-15-78; 8:45 am]

[4910-13-M]

[14 CFR Part 71]

[Airspace Docket No. 78-CE-27]

CONTROL ZONE AND TRANSITION AREA—MANHATTAN, KANS.

Proposed Alteration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rule Making (NPRM).

SUMMARY: This notice proposes to alter the 700-foot transition area at Manhattan, Kans. to provide additional controlled airspace for aircraft executing a new instrument approach procedure to Runway 21 at the Manhattan, Kans. Municipal Airport utilizing an existing VOR, a navigational aid. Also, it has been determined that while the Manhattan Control Zone is adequate for the new instrument approach procedure, a control zone extension to the northeast is no longer required due to an instrument approach procedure being cancelled. Therefore, the extension is being removed from the description.

DATES: Comments must be received on or before December 16, 1978.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Chief, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-530, 601 East 12th Street, Kansas City, Mo. 64106, telephone 816-374-3408.

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Mo.

An informal docket may be examined at the Office of the Chief, Operations, Procedures and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT:

Gary W. Tucker, Airspace Specialist, Operations, Procedures, and Airspace Branch, Air Traffic Division, ACE-538, FAA, Central Region, 601 East 12th Street, Kansas City, Mo. 64106, telephone 816-374-3408.

SUPPLEMENTARY INFORMATION:

COMMENTS INVITED

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Operations, Procedures and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Mo. 64106. All communications received on or before December 16, 1978, will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received: All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

AVAILABILITY OF NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Operations, Procedures and Airspace Branch, 601 East 12th Street, Kansas City, Mo. 64106 or by calling 816-374-3408. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

THE PROPOSAL

The FAA is considering amendments to Subpart F, § 71.171 of the Federal Aviation Regulations (14 CFR 71.171) and Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) by altering the control zone and 700-foot transition area at Manhattan, Kans. To enhance airport usage, a new instrument approach procedure has been developed for Runway 21 at the Manhattan, Kans. Municipal Airport utilizing an existing VOR, a navigational aid. Also, it has been determined that while the Manhattan Control Zone is adequate for the new instrument approach procedure, an extension to the control zone to the northeast is no longer required due to an instrument approach procedure being cancelled. Therefore, the extension is being removed from the control zone description. The establishment of the new instrument approach procedure entails alteration of the transition area at Manhattan, Kans. at and above 700 feet above ground level (AGL) within which aircraft are provided additional air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR). Accordingly, the Federal Aviation Administration proposes to amend Subpart F, § 71.171 of the Federal Aviation Regulations (14 CFR 71.171) as republished on January 3, 1978 (43 FR 355), by altering the following control zone:

MANHATTAN, KANS.

Within a five-mile radius of the Manhattan, Kans. Municipal Airport (latitude 39°08'28" N; longitude 96°40'10" W) and within 2 miles each side of the Manhattan, Kans., VOR 146° radial, extending from the five-mile radius zone to 11 miles Southeast of the VOR, and within two miles Northeast and three miles Southwest of the 126° bearing from the McDowell Creek RBN, extending from the 5-mile radius zone to 10 miles Southeast of the RBN, excluding the Fort Riley, Kans., control zone and the portion within R-3602. The control zone shall be effective during the times established by Notice to Airmen and published continuously in the Airman's Information Manual.

Additionally, the Federal Aviation Administration proposes to amend Subpart G, Section 71.181, of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 3, 1978, (43 FR 440), by altering the following transition area:

MANHATTAN, KANS.

That airspace extending upward from 700 feet above the surface, within a 7-mile radius of the Manhattan, Kans., Municipal Airport (latitude 39°08'28" N; longitude 96°40'10" W) and within 4 miles each side of the Manhattan, Kans. VOR 046° radial extending from the 7-mile radius area to 11 miles Northeast of the VOR, within 2 miles Northeast and 3 miles Southwest of the 126° bearing from the McDowell Creek RBN, extending from the RBN to 10 miles Southeast, within 6 miles South and 9 miles North of the Fort Riley VOR 059° radial extending from the VOR to 21 miles Northeast, within 2 miles each side of the Fort Riley VOR 222° radial extending from the VOR to 8 miles Southwest.

(Sec. 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); sec. 11.61 of the Federal Aviation Regulations (14 CFR 11.61).)

NOTE.—The FAA has determined that this document involves a proposed regulation which is not considered to be significant under the procedures and criteria prescribed by Executive Order 12044 and as implemented by interim Department of Transportation guidelines (43 FR 9582; March 8, 1978).

Issued in Kansas City, Mo., on November 3, 1978.

JOHN E. SHAW,
Acting Director, Central Region.

[FR Doc. 78-32068 Filed 11-15-78; 8:45 am]

[4910-13-M]

[14 CFR Part 71]

[Airspace Docket No. 78-CE-29]

TRANSITION AREA, WEST UNION, IOWA

Proposed Alteration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rule Making (NPRM).

SUMMARY: This notice proposes to alter the 700-foot transition area at West Union, Iowa to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the George L. Scott Municipal Airport, West Union, Iowa, which is based on a Non-Directional Radio Beacon (NDB) navigational aid being installed near the airport.

DATES: Comments must be received on or before December 16, 1978.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Chief, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-530, 601 East 12th Street, Kansas City, Mo. 64106, telephone 816-374-3408.

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Mo.

An informal docket may be examined at the Office of the Chief, Operations, Procedures and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT:

Dwaine E. Hiland, Airspace Specialist, Operations, Procedures, and Airspace Branch, Air Traffic Division, ACE-537, FAA, Central Region, 601 East 12th Street, Kansas City, Mo. 64106, telephone 816-374-3408.

SUPPLEMENTARY INFORMATION:

COMMENTS INVITED

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in duplicate to the Operations, Procedures and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Mo. 64106. All communications received on or before December 16, 1978, will be considered before action is taken on the proposed amdndment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

AVAILABILITY OF NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Operations, procedures and Airspace Branch, 601 East 12th Street, Kansas City, Mo. 64106 or by calling 816-374-3408. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

THE PROPOSAL

The FAA is considering an amendment to Subpart G, § 71.181 of the Federal Aviation Regualtions (14 CFR § 71.181) by altering the 700-foot transition area at West Union, Iowa. To enhance airport usage by providing additional instrument approach capability to the George L. Scott Municipal Airport, the City of West Union, Iowa is installing an NBD near the airport. This radio facility provides new navigational guidance for aircraft utilizing the airport. The establishment of a new instrument approach procedure based on this navigational aid entails alteration of the transition area at West Union, Iowa at and above 700-feet Above Ground Level (AGL) within which aircraft are provided additional air traffic control service. The intended effect of this action is to insure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

Accordingly, the Federal Aviation Administration proposes to amend Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 3, 1978 (43 FR 440), by altering the following transition area:

WEST UNION, IOWA

George L. Scott Municipal Airport, West Union, Iowa. That airspace extending upward from 700 feet above the surface within an eight-mile radius of the George L. Scott Municipal Airport (latitude 42°59'00" N, longitude 91°48'00" W). Within 3 miles each side of the 174° bearing from the George L. Scott Municipal Airport, extending from the eight-mile radius to 10.5 miles south of the airport.

(Sec. 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.61 of the Federal Aviation Regulations (14 CFR 11.61).)

NOTE.—The FAA has determined that this document involves a proposed regulation which is not considered to be significant under the procudures and criteria prescribed by Executive Order 12044 and as implemented by interim Department of Transportation guidelines (43 FR 9582; March 8, 1978).

Issued in Kansas City, Missouri, on November 3, 1978.

JOHN E. SHAW,
Acting Director,
Central Region.

[FR Doc. 78-32069 Filed 11-15-78; 8:45 am]

[4910-13-M]

[14 CFR Part 71]

[Airspace Docket No. 78-ASW-51]

TRANSITION AREA, PONCA CITY, OKLA.

Proposed Alteration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The nature of the action being taken is to propose alteration of the transition area at Ponca City, Okla. The intended effect of the proposed action is to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the Blackwell/Tonkawa Municipal Airport. The circumstances which created the need for this action were the proposed approaches using the Pioneer VORTAC for flight under instrument weather conditions to the airport. Coincident with this action the airport is changed from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR).

DATES: Comments must be received on or before December 18, 1978.

ADDRESSES: Send comments on the proposal to: Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101.

The official docket may be examined at the following location: Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Tex.

An informal docket may be examined at the Office of the Chief, Airspace and Procedures Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT:.

Ken Stephenson, Airspace and Procedures Branch, ASW-535, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101; telephone 817-624-4911, extension 302.

SUPPLEMENTARY INFORMATION: Subpart G 71.181 (43 FR 440) of FAR Part 71 contains the description of transition areas designated to provide controlled airspace for the benefit of aircraft conducting IFR activity. Alteration of the transition area at Ponca City, Okla., will neccessitate an amendment to this subpart.

COMMENTS INVITED

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101. All communications received on or before December 18, 1978, will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

AVAILABILITY OF NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submittng a request to the Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101, or by calling 817-624-4911, extension 302. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future

NPRMs should contact the office listed above.

THE PROPOSAL

The FAA is considering an amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the transition area at Ponca City, Okla. The FAA believes this action will enhance IFR operatons at the Blackwell/Tonkawa Municipal Airport by providing additional controlled airspace for aircraft executing proposed instrument approach procedures using the Pioneer VORTAC. Subpart G of Part 71 was republished in the FEDERAL REGISTER on January 3, 1978 (43 FR 440).

THE PROPOSED AMENDMENT

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations. (14 CFR Part 71) as republished (43 FR 440) by alterng the Ponca City, Okla., transition area by adding the following:

• • • within a 5-mile radius of the Blackwell/Tonkawa Airport (latitude 36°44'40" N., Longitude 97°20'58" W.); and 2 miles each side of the Pioneer VORTAC 269° radial, extending from the 5-mile radius to the VORTAC, and 2.5 miles each side of the 180° bearing from the Blackwell/Tonkawa Municipal Airport, extending from the 5-mile radius to 6 miles south of the Airport, and 2.5 miles each side of the 360° bearing from the Blackwell/Tonkawa Municipal Airport, extending from the 5-mile radius to 6 miles north of the Airport.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a); and Sec. 6(c), Department Transportation Act (49 U.S.C. 1655(c)).)

NOTE. The FAA has determined that this document involves a proposed regulation which is not considered to be significant under the procedures and criteria prescribed by Executive Order 12044 and as implemented by interim Department of Transportation guidelines (43 FR 9582; March 8, 1978).

Issued in Fort Worth, Tex., on November 2, 1978.

HENRY L. NEWMAN,
Director, Southwest Region.

[FR Doc. 78-32071 Filed 11-15-78; 8:45 am]

[4910-13-M]

[14 CFR Part 71]

[Airspace Docket No. 78-RM-29]

TRANSITION AREA

Proposed Alteration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice (NPRM) proposes to alter the Mohall, N. Dak., 700-foot transition area to provide controlled airspace for aircraft executing the new VOR/DME runway 31, amendment 1, Standard Instrument Approach Procedure, developed for the Mohall Municipal Airport, Mohall, N. Dak.

DATE: Comments must be received on or before December 18, 1978.

ADDRESS: Send comments on the proposal to: Chief, Air Traffic Division, Attn: ARM-500, Federal Aviation Administration, 10455 East 25th Avenue, Aurora, Colo. 80010. A public docket will be available for examination by interested persons in the office of the Regional Counsel, Federal Aviation Administration, 10455 East 25th Avenue, Aurora, Colo 80010.

FOR FURTHER INFORMATION CONTACT:

Mr. Joseph T. Taber/Mr. Pruett B. Helm, Airspace and Procedures Specialists, Operations, Procedures and Airspace Branch (ARM-530), Air Traffic Division, Federal Aviation Administration, Rocky Mountain Region, 10455 East 25th Avenue, Aurora, Colo. 80010; telephone 303-837-3937.

SUPPLEMENTARY INFORMATION:

COMMENTS INVITED

Interested persons may participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Division, Federal Aviation Administration, 10455 East 25th Avenue, Aurora, Colo. 80010. All communications received will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

AVAILABILITY OF NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling 202-426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

THE PROPOSAL

The Federal Aviation Administration is considering an amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the 700-foot transition area at Mohall, N. Dak. The present 700-foot transition area is inadequate to contain the new VOR/DME runway 31, amendment 1, Standard Instrument Approach Procedures, to the Mohall Municipal Airport, Mohall, N. Dak. It is proposed to make the transition area's alteration coincide with the effective date of the new standard instrument approach. Accordingly, the Federal Aviation Administration proposes to amend Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

By amending Subpart G, § 71.181 so as to alter the following transition area to read:

MOHALL, N. DAK.

That airspace extending upward from 700 feet above the surface within a 7.5 mile radius of the Mohall Municipal Airport (latitude 48°46'41" N., longitude 101°32'20" W.) and within 2.5 miles each side of the 161° bearing from the Mohall Municipal Airport, extending from the 7.5-mile-radius area to 9.5 miles southeast of the airport.

DRAFTING INFORMATION

The principal authors of this document are Mr. Joseph T. Taber/Mr. Pruett B. Helm, Air Traffic Division, and Daniel J. Peterson, Office of the Regional Counsel, Rocky Mountain Region.

This amendment is proposed under authority of section 307(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an economic impact statement under Executive Order 11821 and OMB Circular A-107.

Issued in Aurora, Colo., on November 6, 1978.

M. M. MARTIN,
Director,
Rocky Mountain Region.

[FR Doc. 78-32241 Filed 11-15-78; 8:45am]

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[6320-01-M]

CIVIL AERONAUTICS BOARD

[Special Regulations Docket 29165; SPDR-50D; Dated: November 9, 1978]

[14 CFR Part 380]

CONSUMER PROTECTIONS FOR CHARTER PARTICIPANT

Simplified Prospectus Filing Procedures

AGENCY: Civil Aeronautics Board.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This action extends for 30 days the filing date for comments in a rulemaking proceeding regarding refund provisions and disclosure requirements in charter packages, and simplified prospectus filing procedures, the extension was requested by the Federal Trade Commission.

DATES: Comments by December 13, 1978. Reply comments by December 28, 1978.

ADDRESSES: Comments should be sent to Docket 29165, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. Docket comments may be examined at the Docket Section, Civil Aeronautics Board, Room 711, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C. as soon as they are received.

FOR FURTHER INFORMATION CONTACT:

Mark Schwimmer, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428. 202-673-5442.

SUPPLEMENTARY INFORMATION: By notice of proposed rulemaking SPDR-50B (43 FR 39807, September 7, 1978) the Board proposed to amend the Public Charter regulation (14 CFR Part 380) to entitle charter participants to refunds when there are major changes, and to establish new requirements for advertising and for contracts between tour operators and participants. The proposed amendment also would simplify procedures for filing prospectuses, and requested comments on requiring operators to obtain permits. The comment closing date was October 23, 1978.

On October 19, 1978, for good cause shown by the American Express Co., supported by the National Air Carrier Association, the deadline date was extended to November 13, 1978.[1]

The Federal Trade Commission has requested an extension to December 13, 1978. The basis of this request was to give the Commission time to consolidate the findings of the internal bureaus into a comprehensive statement from the Commission which will take into account the individual bureau contributions and the results of the investigation by the Boston Regional Office.

Upon consideration of the above, the undersigned finds good cause to grant the extension of time for the preparation of views on the proposed rule.

Accordingly, pursuant to authority delegated in § 385.20(d) of the Board's Organization Regulations [14 CFR 385.20(d)], the time for filing comments is extended to December 13, 1978, and the time for reply comments is extended to December 28, 1978. The original target date of January 15, 1979 is extended to February 15, 1979, for adoption of a final rule.

(Sec. 204(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 49 U.S.C. 1324.)

RICHARD B. DYSON,
Associate General Counsel.

[FR Doc. 78-32299 Filed 11-15-78; 8:45 am]

[1] SPDR-50C, 43 FR 49994 Oct. 26, 1978.

[1505-01-M]

FEDERAL TRADE COMMISSION

[16 CFR Part 13]

[Docket No. 9078]

NATIONAL SYSTEMS CORP. AND NORTH AMERICAN CORRESPONDENCE SCHOOLS T/A NORTH AMERICAN SCHOOL OF CONSERVATION, ETC., ET AL.

Consent Agreement With Analysis To Aid Public Comment

Correction

In FR Doc. 78-30523 appearing at page 50446 in the FEDERAL REGISTER for Monday, October 30, 1978, make the following corrections:

(1) In the middle column of page 50446, in the last line of the first paragraph under "Supplementary Information", "(16 CFR 4.9 (b)(140)" should have read "(16 CFR 4.9 (b)(14)".

(2) In the middle column of page 50449, in the third line from the bottom of the page, "• • • all the lessons is the course • • •" should have read "• • • all lessons in the course • • •".

(3) In the third column of page 50451, in the eighth and ninth lines of paragraph 1. of Appendix A, the parenthesis should be closed around the word "(percentage)".

(4) In the third column of page 50454, in the fourth complete paragraph, the last sentence should read "If you fail to do so, you will be ineligible for a tuition adjustment."

[6351-01-M]

COMMODITY FUTURES TRADING COMMISSION

[17 CFR Part 1]

DELEGATION OF AUTHORITY TO DENY REGISTRATION

Proposed Rule

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission is proposing to adopt a new § 1.10e of Part 1 of its General Regulations under the Commodity Exchange Act. The purpose of the new section is primarily to delegate to the Commission's staff authority in certain circumstances to deny registration to an applicant where facts apparently exist upon the basis of which the applicant may be found unfit for registration and the applicant does not request a hearing to controvert those facts.

DATES: Written comments on the proposed rule must be received by the Commission at its offices in Washington, D.C., by December 1, 1978.

ADDRESS: In order to be considered, written comments on the proposed rule must be submitted to: Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581.

FOR FURTHER INFORMATION CONTACT:

Patricia A. Seaton, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 202-254-7566.

SUPPLEMENTARY INFORMATION: The Commodity Exchange Act requires registration with the Commission of futures commission merchants and persons associated therewith, commodity trading advisors, commodity pool operators and floor brokers. Pursuant to section 8a(2) of the Act, 7 U.S.C. 12a(2) (1976), the Commission may refuse to register a person in any of these capacities in certain enumerated circumstances and "for other good cause shown." [1]

At present the decision whether to institute proceedings that may lead to a refusal of registration to any person pursuant to Section 8a(2) is made by the Commission itself. This procedure has proven to be an unnecessary imposition upon the valuable time of Commission members, since, in most cases, a decision to institute proceedings to refuse registration to an applicant is based upon essentially indisputable facts showing unfitness for registration and the absence of any significant mitigating circumstances.

[1] The Commission may also deny, revoke or suspend registration of commodity trading advisors and commodity pool operators pursuant to Section 4n(6) of the Act, 7 U.S.C. 6n(6) (1976), as amended by Pub. L. 95-405, 92 Stat. 865, et seq.

The Commission has therefore determined to propose for adoption Regulation 1.10e, which would delegate to its staff the authority to handle routine denials of applications for registration in those circumstances in which any one of several specifically enumerated disqualifications exist and the applicant, after having been notified of the disqualifying factor, does not request a hearing. The staff will also be authorized, pursuant to section 8a(2)(A) of the Act, to refuse registration without a hearing to any person whose prior registration has been revoked or has been suspended, the period of suspension not having expired. The rule will also authorize the Commission's staff to notify an applicant where an apparent disqualification exists and require that the applicant confirm in writing that he nevertheless wishes to have his application given further consideration; if the applicant fails to respond to such a notification his application will be deemed to have been withdrawn.

Subsection (a) of the proposed Regulation provides a procedure by which it may be presumed that an applicant has withdrawn his application in the face of significant adverse information. Under its provisions, the Director or Deputy Director of Trading and Markets will be permitted to advise an applicant when facts have come to his attention upon the basis of which the applicant might be found unfit for registration. The standards to be applied are substantially those contained in Section 8a(2) of the Act and the Commission's release concerning good cause.[2] When those standards are met the applicant would be required to reconfirm in writing that he wishes to have his application given further consideration. Unless he does so, subsection (a) provides that his application will be deemed to have been withdrawn and will be given no further consideration.

Under subsection (b) an applicant may be informed by the Executive Director of the Commission not merely that information has come to the staff's attention of a possible basis for a finding of unfitness—which is the standard under subsection (a)—but that the Division of Trading and Markets and the Division of Enforcement allege and are prepared to prove the fact of the disqualifying circumstance. In this situation, unless the applicant wishes to challenge the alleged facts by requesting a hearing, his application for registration may be denied on the basis of the alleged facts, which will be deemed to be true for that purpose. Of course, the applicant must be fully informed of the consequences of failing to request a hearing before any adverse action may be taken.

If an applicant requests a hearing on the question of denial of his application after he has received the kind of letter authorized by subsection (b), an Administrative Law Judge will conduct a proceeding in accordance with the Commission's rules of practice, 17 CFR Part 10. If A hearing is to be held, however, the Division of Enforcement will be free to seek whatever additional forms of relief would be appropriate in the circumstances and, with leave of the Commission, will also be permitted to allege grounds for denial of registration in addition to those that the Executive Director had originally set forth in his letter.

If an applicant does not request a hearing in response to a letter written pursuant to subsection (b), subsection (d) differentiates between the procedure for handling applications for initial licenses and applications for renewal of a registration previously granted. Where an initial license is involved, the Executive Director will be delegated authority to determine the applicant's fitness and grant or deny registration; where the application involves renewal of a license previously granted, the matter will be referred to an Administrative Law Judge to determine whether the application should be granted or denied. This distinction is based upon a provision of the Administrative Procedure Act that no person may participate in the final decision of a matter if he has participated in the investigation or prosecution of that matter or a factually-related case. This provision of the Administrative Procedure Act does not apply, however, in the case of initial licenses.

Subsection (e) of the proposed rule will delegate to the Executive Director the Commission's authority under section 8a(2)(a) of the Commodity Exchange Act summarily and without hearing to refuse to register any person whose registration is currently under suspension or has previously been revoked.

Subsection (f) will permit an applicant or the Division of Enforcement to seek reconsideration by the Commission of orders granting or refusing registration. Under subsection (g), the Commission will be authorized to stay the effectiveness of any order issued under the rule pursuant to delegated authority, either on its own motion or based upon a petition for reconsideration filed pursuant to subsection (f).

Under subsection (h)(1), the Director or Deputy Director of the Division of Trading and Markets may give notice pursuant to subsection (a), which may result in the withdrawal of an application, only with the concurrence of the Director of the Division of Enforcement or his designee. Where a notice is to be given by the Executive Director under subsection (b), which may result in a denial of registration or a hearing to determine fitness, that notice may be given only with the concurrence of the Director of the Division of Trading and Markets, the Director of the Division of Enforcement and the Deputy General Counsel, or their designees.

Under subsection (i), the Commission reserves to itself the decision whether to institute a denial proceeding in any case not covered by the disqualifying circumstances that are enumerated in subsection (a).

Pursuant to authority contained in sections 2a(11) and 8a(5) of the Commodity Exchange Act, as amended, 7 U.S.C. § 4(a)(j) and 12a(5) (1976), the Commodity Futures Trading Commission hereby proposes for adoption § 1.10e of Part 1 of Chapter I of Title 17 of the Code of Federal Regulations as set forth below:

§ 1.10e Delegation of authority to deny registration.

(a) The Director or Deputy Director of the Division of Trading and Markets may at any time give written notice to any applicant for registration in any capacity under the Commodity Exchange Act, stating that

(1) Information has come to his attention which tends to show that one or more of the following circumstances exist: That the applicant or any general partner, officer, director, person performing similar functions, controlling person, or holder of more than 10 percent of the stock of the applicant—

(i) Was convicted of any felony in any State or Federal court, or was debarred by any agency of the United States from contracting with the United States, or the applicant willfully made a false or misleading material statement in his application or willfully omitted to state a material fact in connection with the application; or

(ii) Within 10 years preceeding the filing of the application has been convicted of a misdemeanor which (A) involves any transactions or advice concerning any commodity or security; (B) arises out of conduct of the business of a futures commission merchant, floor broker, commodity trading advisor, commodity pool operator, securities broker, securities dealer, municipal securities dealer, transfer agent, clearing agency, investment adviser, investment company, or as an associated or affiliated person or employee of any of the foregoing; or (C) involves embezzlement, fraudulent

[2] 40 FR 28125 (July 3, 1975).

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conversion, misappropriation of funds, securities or other property, counterfeiting, gambling, or similar crimes reflecting upon the ability of the applicant, if registered, faithfully to discharge the fiduciary duties imposed by the Act; or

(iii) At the time of the application, is permanently or temporarily enjoined by order, judgment or decree of any court of component jurisdiction, or is prohibited by agreement or settlement with the Commission or the Securities and Exchange Commission, (A) from acting as a commodity trading advisor, commodity pool operator, futures commission merchant, floor broker, securities broker or dealer, municipal securities dealer, transfer agent, clearing agency, investment adviser, investment company, or as an associated or affiliated person or employee of any of the foregoing, or (B) from engaging in or continuing any conduct or practice in connection with any such activity or involving any transaction or advice concerning commodities or securities; or

(iv) Within 10 years preceding the filing of the application, has been found by any court of competent jurisdiction, by the Commission or the Securities and Exchange Commission, or has admitted by agreement or settlement to which the Commission or the Securities and Exchange Commission is a party, (A) to have violated any provision of the Commodity Exchange Act, the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, Investment Advisers Act of 1940, or any rule or regulation under any such statutes; (B) to have aided, abetted, counseled, commanded, induced, or procured the violation by any other person of such statutes or rules or regulations; or (C) to have failed reasonably to supervise, with a view to preventing violations of such statutes, rules or regulations, another person who commits such a violation, if such person is subject to his supervision; or

(v) Is subject to an outstanding order of the Commission denying trading trading privileges on any contract market to such person, or suspending or revoking the registration of such person as a commodity trading advisor, commodity pool operator, futures commission merchant, floor broker, or associated person, or suspending or expelling such person from membership on any contract market;

(2) This information, if true, is a basis upon which the applicant may be found unfit for registration and upon which the applicant's registration may be denied;

(3) Unless the applicant voluntarily withdraws his application it may be necessary, after further investigation of these facts, to institute the public procedures for denial of registration described in paragraph (b) of this section;

(4) In these circumstances, an applicant is required to reconfirm in writing that he wishes to have his application given further consideration; and

(5) Unless the applicant files with the Director or Deputy Director of the Division of Trading and Markets a notification in writing, within 30 days of the date of the notice that the applicant wishes to have his application for registration given further consideration, his application will be deemed to have been withdrawn and will be given no further consideration.

(b) On the basis of apparently credible evidence the Executive Director may at any time give written notice to any applicant for registration in any capacity under the Commodity Exchange Act that

(1) The Division of Trading and Markets and the Division of Enforcement allege and are prepared to prove that one or more of the circumstances set forth in paragraph (a)(1) of this section exist;

(2) The allegations set forth in the notice, if true, constitute a basis upon which the applicant may be found unfit for registration pursuant to section 8a(2)(B) of the Commodity Exchange Act and upon which the applicant's registration may be denied;

(3) The applicant is entitled to a hearing at which he may challenge the truth of the allegations set forth in the notice or show cause why, notwithstanding the truth of those allegations, registration should nevertheless be granted;

(4) A hearing for these purposes may be obtained by filing a written request with the Executive Director within 30 days after the date of the notice to the applicant;

(5) If the applicant does not timely request a hearing he will be deemed to have waived his right to a hearing on all issues concerning his application; and

(6) If the applicant does not timely request a hearing the Commission or the Executive Director or Chief Administrative Law Judge (acting pursuant to authority delegated under paragraph (d) of this section) may thereafter decide whether to grant or deny his registration based upon the facts stated in the notice, which will not have been disputed and which may be deemed to be true for that purpose.

(c) If an applicant should request a hearing in accordance with paragraph (b)(4) of this section, an adjudicatory proceeding on the question of the applicant's fitness for registration shall thereafter be conducted and concluded in accordance with the Commission's rules of practice, 17 CFR Part 10; the matter shall be referred to the Chief Administrative Law Judge who shall set a date for hearing and assign an Administrative Law Judge to conduct the proceeding. For purposes of that proceeding, the notice given in accordance with paragraph (b) of this section shall be treated as a duly authorized complaint by the Division of Enforcement seeking, as relief, denial of the application for registration, and the request for hearing shall be treated as an answer which generally denies every allegation contained in the notice upon which a hearing has been requested: *Provided, however,* That (1) the Division of Enforcement may thereafter amend the complaint to seek such other and further relief as may be appropriate in view of the matters charged and, with leave of the Commission, may allege further grounds as a basis for denial of registration; and (2) the applicant may supplement his answer to set forth any affirmative defenses he may wish to assert and the alleged facts upon which those defenses are based. The provisions of §§ 10.22 and 10.23 of the rules of practice, concerning a complaint and answer, shall otherwise be inapplicable.

(d) If no request for a hearing is received by the Executive Director within 30 days after a notice has been given in accordance with paragraph (b) of this section, the Executive Director may proceed as follows:

(1) In the case of an applicant for an initial registration, pursuant to authority hereby delegated by the Commission, the Executive Director may determine the applicant's fitness for registration and may issue an order, pursuant to section 8a(2) of the Commodity Exchange Act, granting or refusing registration to the applicant based upon the application, the notice with proof of service, and an appropriate showing that a hearing has not been requested.

(2) In the case of an applicant for renewal of a registration previously granted, the Executive Director may transmit to the Chief Administrative Law Judge a true copy of the application, the notice with proof of service, and an appropriate showing that a hearing has not been requested, and, based thereon, the Chief Administrative Law Judge, pursuant to authority hereby delegated by the Commission, may determine the applicant's fitness for registration and may issue an order, pursuant to section 8a(2) of the Commodity Exchange Act, granting or refusing registration to the applicant.

(e) Notwithstanding any other provision contained in this section, the Executive Director is hereby delegated authority pursuant to section 8a(2)(A) of the Commodity Exchange Act to enter an order refusing to register any person if the prior registration of such person has been suspended (and the period of such suspension shall not have expired) or has been revoked.

(f) A copy of any order issued pursuant to paragraph (d) or (e) of this section shall promptly be served upon the applicant and the Division of Enforcement and provided to each member of the Commission. Within fifteen days after service upon an applicant of an order grantng or refusing registration issued pursuant to paragraph (d) or (e) of this section, the applicant or the Division of Enforcement may file with the Commission's Secretariat a petition for reconsideration setting forth the grounds in support thereof. The petition of an applicant shall not be based upon any matter of which the applicant had notice and opportunity for hearing under paragraph (b) of this section unless it be claimed, and supported by affidavit, that notice under paragraph (b) of this section was not timely received by the applicant.

(g) An order granting or refusing registration issued pursuant to paragraph (d) or (e) of this section shall be effective as a final order of the Commission thirty days after the date it was served upon the applicant. Within that period the Commission, on its own motion, or based upon a petition filed pursuant to paragraph (f) of this section, may stay the effectiveness of the order and then or thereafter may reverse, affirm or modify the order or direct reconsideration of the order on such basis and in accordance with such procedures as it may determine.

(h)(1) The Director or Deputy Director of the Division of Trading and Markets shall give notice under paragraph (a) of this section only with the concurrence of the Director of the Division of Enforcement or his designee. The Executive Director shall give notice under paragraph (b) of this section only with the concurrence of the Director of the Division of Trading and Markets, the Director of the Division of Enforcement and the Deputy General Counsel, or their designees.

(2) For purposes of this section, notice to and service upon the applicant shall be sufficient if mailed first class properly addressed to the applicant at the address shown on his application or any amendment thereto, and shall be complete upon mailing; a record showing the date upon which a document was duly mailed, and by whom, prepared and retained in the normal course of Commission business, shall be adequate proof of service of the document. Documents submitted to the Executive Director or the Director of the Division of Trading and Markets shall be considered filed only upon actual receipt.

(i) The Commission reserves to itself the decision in any case whether to institute a proceeding to determine whether to refuse an applicant's registration for reasons other than the existence of circumstances described in paragraph (a)(1) of this section.

Issued in Washington, D.C., on November 9, 1978.

WILLIAM T. BAGLEY,
Chairman, Commodity Futures Trading Commission.

[FR Doc. 78-32232 Filed 11-15-78; 8:45 am]

[4810-22-M]

DEPARTMENT OF THE TREASURY

Customs Service

[19 CFR Parts 4, 6, 10, 123, 162, and 171]

PENALTIES FOR VIOLATIONS OF CUSTOMS AND NAVIGATION LAWS

Proposed Rule

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: The "Customs Procedural Reform and Simplification Act of 1978" made numerous changes to laws enforced by the Customs Service. Some of the changes relate to fines, penalties, and forfeitures incurred for violations of customs and navigation laws relating to:

1. The transportation of merchandise by foreign or other nonentitled vessels in the coastwise trade,

Foreign repairs and equipment purchases by vessels of the United States,

3. The falsity or lack of a manifest, and

The false and fraudulent entry of merchandise.

Generally, the Act changes the penalties provided, adds new procedural rules to be followed at the administrative level, and provides for more judicial review. This document proposes to amend the Customs regulations to establish new procedures to reflect these changes.

DATE: Comments must be received on or before December 18, 1978. A shorter than normal comment period is mandated as the result of the early effective date of the new statutory procedures.

ADDRESS: Written comments should be addressed to the Commissioner of Customs, Attention: Regulations and Legal Publications Division, U.S. Customs Service, 1301 Constitution Avenue NW., Room 2335, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT:

Edward T. Rosse, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, 202-566-8317.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Customs Procedural Reform and Simplification Act of 1978 (Pub. L. 95-410), approved October 3, 1978 (the "Act"), makes numerous amendments to statutes administered by the Customs Service which relate to fines, penalties, and forfeitures for violations of the customs and navigation laws. Specifically, the Act further amends:

1. Section 27, Merchant Marine Act of 1920 (46 U.S.C. 883), relating to the transportation of merchandise by foreign or other nonentitled vessels in the coastwise trade,

2. Section 466, Tariff Act of 1930 (19 U.S.C. 1466), relating to foreign repairs and equipment purchases by vessels of the United States,

3. Section 584, Tariff Act of 1930 (19 U.S.C. 1584), relating to falsity or lack of manifest, and

4. Section 592, Tariff Act of 1930 (19 U.S.C. 1592), relating to false and fraudulent entry of merchandise.

This document proposes to amend the Customs regulations to reflect these changes made by the Act.

COASTWISE TRANSPORTATION OF MERCHANDISE

1. Section 27, Merchant Marine Act of 1920, as amended (46 U.S.C. 883), provides generally that no merchandise shall be transported between points within the coastwise laws of the United States, directly or by way of foreign port, or for any part of the transportation, except in a vessel built in and documented under the laws of the United States, and owned by a U.S. citizen.

Prior to enactment of Pub. L. 95-410, the sole penalty for violation of 46 U.S.C. 883 was forfeiture of the merchandise unlawfully transported. Section 213 of the Act amends 46 U.S.C. 883 to provide that Customs may assess a monetary penalty in an amount up to the value of the merchandise as an alternative to forfeiture. Also, the vessel owner, agent, or operator, or any person with a commercial interest in the merchandise, is made liable for the monetary penalty.

To reflect these changes, it is proposed to amend § 4.80, Customs regulations (19 CFR 4.80), by adding a new paragraph setting forth the alternative of assessing a monetary penalty in an amount up to the value of the merchandise. The district director of Customs would be given discretion as to whether to seize the merchandise or to assess a monetary penalty. It also is proposed to amend § 171.22(a), Customs regulations (19 CFR 171.22(a)),

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to state that the monetary penalty, regardless of its amount, is subject to remission by the district director if he is satisfied that the violation occurred as a direct result of an arrival of the transporting vessel in distress.

FOREIGN REPAIRS AND EQUIPMENT PURCHASES BY U.S. VESSELS OR AIRCRAFT

2. Prior to enactment of Pub. L. 95-410, section 466, Tariff Act of 1930, as amended (19 U.S.C. 1466), provided for forfeiture of a vessel of U.S. registry, together with its tackle, apparel, and furniture, for the willful and knowing neglect or failure of the owner or master to report, make entry, and pay duties on repairs to, or equipment purchases for, the vessel made in a foreign country. The provisions of 19 U.S.C. 1466 are made applicable to U.S.-registered aircraft by § 6.7(d), Customs regulations (19 CFR 6.7(d)), issued under the authority of section 1109, Federal Aviation Act of 1958, as amended (49 U.S.C. 1509).

Section 206 of the Act amends 19 U.S.C. 1466 to provide a monetary penalty in an amount up to the value of the vessel (or aircraft) as an alternative to forfeiture. In addition, it expands the activities subject to penalty to include the making or procuring of any false statement concerning the purchases or repairs without reasonable cause to believe the truth of the statements.

This section also amends 19 U.S.C. 1466 to include a prepenalty notice procedure to provide persons suspected of violating the statute an opportunity to discuss with Customs officials why a penalty notice should not be issued or, if issued, why it should be in a lesser amount than that proposed by the district director. However, the prepenalty notice procedure is not available if the district director elects to seize and forfeit the vessel (or aircraft).

Accordingly, it is proposed to add new subpart G, relating to violations of 19 U.S.C. 1466, to part 162, Customs Regulations (19 CFR Part 162). Proposed § 162.70(a)(1) would provide that the provisions of the new subpart would apply to violations that occur after October 3, 1978, the effective date of section 206 of the Act. Proposed § 162.72(a) would provide that the district director may seize the vessel (or aircraft) or assess a monetary penalty in an amount up to its value.

It also is proposed to add a prepenalty notice procedure in new §§ 162.76, 162.78, and 162.79 of subpart G. This procedure would require the district director to provide written notice of his intent to issue a penalty claim if he has reasonable cause to believe a violation has occured and determines that further proceedings are warranted. The prepenalty notice would describe all material facts and circumstances of the alleged violations, specify all laws and regulations allegedly violated, and state the estimated loss of duties, if any, and the amount of the proposed penalty. The notice also would inform the person concerned of his right to make a written and an oral presentation as to why he believes a claim should not be issued or, if issued, why it should be in a lesser amount than proposed. Generally, the person would have 30 days from the date of mailing of the notice to make both written and oral presentations. However, if less than 1 year remains before the statute of limitations may be asserted as a defense, the district director may specify a shorter period of time to respond to the prepenalty notice, but this period may not be less than 7 days from the date of mailing. Furthermore, extensions of time to respond may be given under the same circumstances that extensions of time for filing petitions for relief may be given under § 162.32(a), Customs Regulations (19 CFR 162.32(a)), as amended by T.D. 78-36, published in the FEDERAL REGISTER on February 3, 1978 (43 FR 4595). The district director in his discretion, may allow more than one written and one oral presentation.

After considering any presentations made, the district director either will inform the person in writing that no violation has been found and that no claim will be issued, or will issue a notice of a claim for a monetary penalty. The notice will contain any changes in the information provided in the prepenalty notice, and inform the person of his right to apply for relief under section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618), in accordance with part 171, Customs Regulations (19 CFR Part 171).

FALSITY OR LACK OF MANIFEST

3. Section 431, Tariff Act of 1930, as amended (19 U.S.C. 1431), requires the master of a vessel arriving in the United States to have on board a manifest in the form prescribed by the Secretary of the Treasury. The manifest must be signed by the master under oath as to the truth of the statements it contains. Section 583, Tariff Act of 1930, as amended (19 U.S.C. 1583), requires the master of every vessel and the person in charge of every vehicle bound to a port or place in the United States to deliver the vessel or vehicle manifest to Customs. These requirements regarding the manifest are made applicable to aircraft arriving in the United States by §§ 6.3 and 6.7, Customs Regulations (19 CFR 6.3, 6.7), issued under the authority of section 1109, Federal Aviation Act of 1958, as amended (49 U.S.C. 1509). Customs uses the manifest to ensure that all merchandise on the vessel, vehicle, or aircraft ultimately is entered or otherwise appropriately accounted for under the customs laws and regulations.

Various penalties are provided in section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), for failure to have a manifest on board or for having a false manifest. A penalty equal to the domestic value of the merchandise is assessed if merchandise is found on board or is unloaded which is not included in, or does not agree with, the manifest (an overage). This is the most common of the several penalties provided in 19 U.S.C. 1584. However, if the master or person in charge (or commander) fails to produce the manifest, or if any merchandise described in the manifest is not found on board (a shortage), a penalty of $500 is assessed.

Section 109 of the Act amends 19 U.S.C. 1584 to limit the penalty provided for an overage to the lesser of the domestic value of the merchandise or $10,000. In addition, section 109 provides that before a claim for a monetary penalty in excess of $500 resulting from an overage, failure to produce the manifest, and a shortage may be made, a prepenalty notice must be issued. The person suspected of a violation must be provided the opportunity to discuss with Customs officials why a penalty notice should not be issued or, if issued, why it should be in a lesser amount than proposed.

Section 109 of the Act also extends the liability for the various penalties under 19 U.S.C. 1584 to any person directly or indirectly responsible for any discrepancy in the manifest. Previously, only the master of the vessel, the person in charge of the vehicle, or the owner of the vessel or vehicle (or the commander or owner of the aircraft), was liable for a penalty.

Under 19 U.S.C. 1584, if Customs is satisfied that the manifest is incorrect by reason of clerical error or other mistake and that no part of the merchandise not found on board was unloaded or discharged except as specified in the report of the master (or commander), penalties shall not be incurred. The Act amends 19 U.S.C. 1584 by defining the term "clerical error" as a "nonnegligent, inadvertent, or typographical mistake in the preparation, assembly, or submission of the manifest."

Accordingly, it is proposed to amend part 162, Customs Regulations (19 CFR Part 162), by adding a new § 162.72(b) in subpart G to set forth the penalty of $500 for failure to produce a manifest, the penalty of $500 for a shortage, and the penalty of the lesser of the domestic value of the merchandise or $10,000 for any overage. This section also would state what

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persons would be liable for these penalties. In administering this section, Customs will endeavor to assess penalties only against the parties actually responsible for the manifest discrepancy. For example, a penalty under 19 U.S.C. 1584 would not be assessed against the carrier if the record clearly showed that the cargo was packaged in such a way that the carrier's employees or agents were prevented from knowing its contents. An example of such packaging would be that a cargo container was filled at the exporter's factory in a foreign country and was not opened until it reached the importer's facility in the United States.

Proposed § 162.70(a)(1) would make the new provisions applicable to violations that occur after October 3, 1978, the effective date of section 109 of the Act.

The prepenalty notice procedure in proposed §§ 162.76, 162.78 and 162.79, applicable to violations of 19 U.S.C. 1466, also would be applicable to these violations. However, the prepenalty notice also would describe the merchandise and the details of any discrepancy in the manifest, and no prepenalty notice would be issued if the proposed penalty is $500 or less.

The following sections of the Customs Regulations also would be amended to conform to the new statutory language:

1. Footnote 23 to § 4.12, which contains part of the text of 19 U.S.C. 1584,

2. Sections 4.12(a)(5) and 6.7(h)(5), which define the term "clerical error or other mistake," and

3. Section 162.65(c), which specifies the persons to whom a notice and demand for payment of a penalty for failure to manifest narcotics or marihuana will be sent.

FALSE AND FRAUDULENT ENTRY OF MERCHANDISE

4. Prior to the enactment of Pub. L. 95-410, if any person entered or introduced, or attempted to enter or introduce, or aided or procured the entry or introduction of, merchandise into the commerce of the United States by means of specified false or fraudulent acts or omissions, the merchandise or its domestic value was subject to forfeiture under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592). Section 110 of the Act completely revises 19 U.S.C. 1592.

The penalty has been changed from an in rem penalty, forfeiture of the merchandise or its domestic value, to an in personam penalty, a monetary liability of the violator. However, seizure of the merchandise is permitted if Customs has reasonable cause to believe that the importer is insolvent or outside U.S. jurisdiction, or that seizure is necessary to protect the revenue or prevent the importation of prohibited or restricted merchandise. The seized merchandise would be forfeited to the United States under 19 U.S.C. 1592 only if the monetary penalty is not paid.

The monetary penalty has been changed from a fixed amount, the domestic value of the merchandise, to an amount varying according to the violator's culpability, i.e., whether the violation is the result of fraud, gross negligence, or negligence. The penalty for a fraudulent violation may not exceed the domestic value of the merchandise. The penalty for gross negligence may not exceed the lesser of the domestic value or four times the loss of duties involved. If there is no loss of duties, the penalty for gross negligence may not exceed 40 percent of the dutiable value of the merchandise. The penalty for negligence would be the lesser of the domestic value or twice the loss of duties. If there is no loss of duties, the negligence penalty could not exceed 20 percent of the dutiable value. No penalty may be assessed because of clerical errors or mistakes of fact unless they are part of a pattern of negligent conduct.

If the violator makes a prior disclosure of a fraudulent violation, the penalty may not exceed an amount equal to the loss of duties, or 10 percent of dutiable value if there is no loss of duties. If it is a grossly negligent or negligent violation that is disclosed, the penalty may not exceed the amount of interest accruing on the loss of duties.

A prepenalty notice procedure for suspected violations of 19 U.S.C. 1592 has been provided. The notice would not be required, however, in noncommercial cases or if the proposed penalty is $1,000 or less. The Act thus incorporates, in general, the prepenalty notice procedure in Part 171, Customs Regulations (19 CFR Part 171).

The Act also provides that the alleged violator shall have a reasonable opportunity to make oral and written presentations in seeking relief from a penalty under section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618). At the conclusion of any proceeding under 19 U.S.C. 1618, Customs is required to provide a written statement setting forth the determination and the findings of fact and conclusions of law on which the determination is based.

Except for alleged intentional violations which (1) Involve Japanese television receivers that were or are the subject of antidumping proceedings, (2) occurred before October 3, 1978, and (3) were the subject of a Customs investigation begun before October 3, 1978, these changes to 19 U.S.C. 1592 are effective with respect to proceedings commenced after December 31, 1978.

Therefore, the excepted violations, and all other violations for which proceedings commenced before January 1, 1979, will continue to be subject to the provision of 19 U.S.C. 1592 existing before its amendment by Pub. L. 95-410 and to the applicable provisions of parts 162 and 171, Customs Regulations, currently in force.

It is proposed, therefore, to add provisions relating to violations of 19 U.S.C. 1592 to new subpart G of part 162, Customs Regulations.

Proposed § 162.70(a)(2) would identify those violations of 19 U.S.C. 1592 covered by the provisions in subpart G, and would state that all other provisions of part 162 would apply to those violations, unless subpart G provides special procedures.

Proposed § 162.71 would define the following terms used in subpart G: "loss of duties","actual loss of duties", "potential loss of duties", "noncommercial importation", "clerical error", and "mistake of fact".

Proposed § 162.73 would state the maximum monetary penalties assessable under 19 U.S.C. 1592. It essentially would follow the language of the statute, setting forth the ceilings for the monetary penalties.

Proposed § 162.74 would contain procedures relating to the prior disclosure provisions of the Act similar to Customs current voluntary disclosure procedures set out in § 171.1(a), Customs Regulations (19 CFR 171.1(a)), as amended by T.D. 78-152, published in the FEDERAL REGISTER on June 1, 1978 (43 FR 23711). It would state that a prior disclosure is made if the person concerned discloses the circumstances of the violation before, or without knowledge of, the commencement of a formal investigation, and tenders any loss of duties at the time of disclosure or within 30 days after Customs notifies him of the amount of the loss of duties. The person who claims a lack of knowledge of the commencement of a formal investigation would have to prove that lack of knowledge. It also is proposed to authorize the district director to extend that 30-day period if he determines there is good cause to do so. If a prior disclosure were made the amount of the monetary penalty would be limited as provided in proposed § 162.73.

Proposed § 162.74 also would continue the current practice of the district director referring disclosures to the field office of the Office of Investigations. After investigation, the matter would be referred back to the district director to determine whether a prior disclosure has been made. Proposed § 162 also would set forth the circumstances constituting "commencement of a formal investigation." The cir-

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cumstances would be identical to those in § 171.1(a)(1), Customs Regulations, which are considered in determining whether an investigation has been initiated for purposes of applying the voluntary disclosure provisions.

Proposed § 162.74 also would continue Customs policy of not assessing a penalty if the disclosed violation involves a loss of duties of $250 or less and the other criteria of § 171.1(a)(3)(ii) are met. However, for cases to which subpart G of part 162 relates, it is proposed to change the procedures in § 171.1(a)(2) with regard to undisclosed violations discovered by Customs as the result as the investigation of another violation. Customs now treats these undisclosed violations as "disclosed" as long as they are not intentional violations. Because of the Congressional intent as expressed in the legislative history of the Act (H.R. Rep. No. 95-621, 95th Cong., 1st sess., p. 17 (1977)), it is proposed to include in the regulations a provision stating that this type of violation no longer will be treated as if "disclosed", and therefore will not be entitled to treatment under the prior disclosure provisions.

Proposed § 162.75 would contain the provisions relating to seizures under 19 U.S.C. 1592. It would emphasize that seizure is a provisional remedy authorized only under the limited circumstances set forth in the Act. Moreover, no seizure would be allowed if a prior disclosure were made. It also would provide specifically for the seizure notice already required under § 162.31 (19 CFR 162.31).

Proposed § 162.75 also would specify that the seized merchandise would be released upon the deposit of security equal to the maximum penalty which may be assessed. It is proposed that the merchandise would be released, upon deposit of security equal to the penalty assessed, to the person from whom seized if the entry is not prohibited or restricted. It also is proposed that the merchandise could be released to any other person upon deposit of adequate security, (1) if the entry is not prohibited or restricted, (2) if the district director is satisfied that the person has a substantial interest in the merchandise, and (3) if the person submits either a hold-harmless agreement or a release from the owner and/or person from whom the merchandise was seized. Finaly, proposed § 162.75 would state that the merchandise may be forfeited only if the monetary penalty were not paid on time.

Proposed § 162.77 would contain the prepenalty notice requirements of the Act. Because seizure is a provisional remedy, the proposed section would state that the notice will be issued whether or not a seizure has been made. It also would set forth the requirements for the contents of the prepenalty notice as specified in the Act and would state that no prepenalty notice would be needed if the claim were for $1,000 or less or if it involved a noncommercial importation.

Proposed §§ 162.78 and 162.79 would contain the provisions relating to making representations in response to the prepenalty notice and acting on those presentations. These provisions would apply to alleged violations of 19 U.S.C. 1592 as well as to alleged violations of 19 U.S.C. 1466 and 1584.

Proposed § 162.79a would provide for a written notice of a claim for a monetary penalty if no prepenalty notice were required.

Proposed § 162.79b would reflect the change made by the Act that actual loss of duties shall be collected for a violation of 19 U.S.C. 1592, whether or not a monetary penalty is assessed.

In addition to adding new subpart G to part 162, it also is proposed to amend part 171, relating to petitions for relief from fines, penalties, or forfeitures incurred.

Section 171.1 would be amended to except the cases under subpart G, part 162, from its provisions. Section 171.1 contains the voluntary disclosure and prepenalty notice provisions which will continue to apply to 19 U.S.C. 1592 cases which do not come under the Act.

A new § 171.14 would be added to provide for an oral presentation seeking relief from penalties incurred for violations of 19 U.S.C. 1592 for which proceedings commenced after December 31, 1978. The person desiring to make an oral presentation in support of a petition for relief would have to request an opportunity to do so in the petition. If so requested, Customs would give him a reasonable opportunity to make the presentation. In addition, other oral presentations could be allowed in the discretion of the district director, regional commissioner, or Commissioner whenever a petition or supplemental petition is under his consideration. Thus, the current Customs practice of allowing oral presentation of arguments for relief whenever appropriate would be continued.

New § 171.31a would provide for written statements to the petitioner of the Customs decision as to relief from those violations. The statement would set forth the findings of fact and conclusions of law upon which the decision is based.

It also is proposed to amend other sections of the Customs Regulations to conform to changes made by the Act. Rather than provide for a separate section in new subpart G relating only to the penalties to which the Act relates, it is proposed to amend the following sections so as to apply to all penalty cases:

1. Section 10.41(d), Customs Regulations (19 CFR 10.41(d)), provides that any foreign vehicle, aircraft, or boat used in international traffic without a proper entry having been made will be subject to "forfeiture" under 19 U.S.C. 1592. Sections 123.12(c) and 123.14(d), Customs Regulations (19 CFR 123.12(c), 123.14(d)), provide that the use of foreign locomotives, railroad equipment, trucks, buses, or taxicabs in violation of the regulations relating to international traffic from contiguous countries will subject them to "forfeiture" under 19 U.S.C. 1592. Inasmuch as the Act provides for monetary penalties under that statute and limits the circumstances under which seizure and forfeiture may take place, it is proposed to amend these three sections to provide that the use of the articles without making proper entry or in violation of the regulations may result in "liabilities" being incurred under 19 U.S.C. 1592.

2. Section 162.21(a), Customs Regulations (19 CFR 162.21(a)), as amended by T.D. 77-136, published in the FEDERAL REGISTER on May 17, 1977 (42 FR 25323), states when Customs officers will seize merchandise. It provides that any Customs officer having reasonable cause to believe that a law has been violated, making property subject to forfeiture, will seize the property if it is available, except for violations of 19 U.S.C. 1592 when the circumstances set out in § 162.41(a) exist. Because the Act limits the use of seizure as a remedy for violations of 19 U.S.C. 1592, and authorizes a monetary penalty as an alternative to seizure for violations of 19 U.S.C. 1466 and 46 U.S.C. 883, § 162.21(a) is inconsistent with the Act in that this section mandates seizure in many cases. Therefore, it is proposed to amend § 162.21(a) to provide that property may be seized by any Customs officer who has reasonable cause to believe that any law or regulation enforced by Customs has been violated, by reason of which the property has become subject to seizure or forfeiture. A new sentence also would be added to that section to make it clear that the section does not authorize seizures otherwise restricted, nor does it authorize a remedy other than seizure when it is required by law.

3. Section 162.43(b), Customs Regulations (19 CFR 162.43(b)), relating to appraisement of property for penalty purposes, provides that for property not under seizure, the basis for the claim for forfeiture value or for assessment of a penalty is the domestic value of the property. Because the Act provides that penalties may be less than the full forfeiture value and may be based on dutiable value, it is proposed to amend that section to make it clear that domestic value is the basis for a claim for forfeiture value or for an assessment of a penalty relating to forfeiture value.

AUTHORITY

These amendments are proposed under the authority of R.S. 251, as amended (19 U.S.C. 66), sections 466, 584, 592, 624, 46 Stat. 718, 748, 750, as amended, 759 (19 U.S.C. 1466, 1584, 1592, 1624), section 27, 41 Stat. 999, as amended (46 U.S.C. 883), and section 1109, 72 Stat. 799, as amended (49 U.S.C. 1509).

COMMENTS

Consideration will be given to any written comments on these proposed amendments that are submitted timely, preferably in triplicate, to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with section 103.8(b), Customs Regulations (19 CFR 103.8(b)), during regular business hours at the Regulations and Legal Publications Division, Headquarters, U.S. Customs Service, 1301 Constitution Avenue NW., Room 2335, Washington, D.C. 20229.

DRAFTING INFORMATION

The principal author of this document is Richard M. Belanger, Regulations and Legal Publications Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

PROPOSED AMENDMENTS

It is proposed to amend parts 4, 6, 10, 123, 162, and 171 of the Customs Regulations (19 CFR ps. 4, 6, 10, 123, 162, 171) in the following manner:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. It is proposed to amend footnote 23 to § 4.12 to read as follows:

§ 4.12 Explanation of manifest discrepancy.

* * *

* * * If any merchandise described in such manifest is not found on board the vessel or vehicle the master or other person in charge or the owner of such vessel or vehicle or any person directly or indirectly responsible for any discrepancy between the merchandise and said manifest shall be subject to a penalty of $500: *Provided*, That if the collector (appropriate Customs officer) shall be satisfied that the manifest * * * is incorrect by reason of clerical error or other mistake and that no part of the merchandise not found on board was unshipped or discharged except as specified in the report of the master, said penalties shall not be incurred. * * *.

(Sec. 584, Tariff Act of 1950, as amended; 19 U.S.C. 1584.)

§ 4.12 [Amended]

2. It is proposed to amend the second sentence of § 4.12(a)(5) to read as follows:

(a) * * *

(5) * * * For purposes of this section, the term "clerical error" is defined as a nonnegligent, inadvertent, or typographical mistake in the preparation, assembly, or submission of the manifest. * * *

3. It is proposed to amend § 4.80 by redesignating present paragraphs (b), (c), (d), (e), (f), and (g) as (c), (d), (e), (f), (g), and (h), respectively, and by inserting a new paragraph (b) to read as follows:

§ 4.80 Vessels entitled to engage in coastwise trade.

* * * * * *

(b) *Penalties for violating coastwise laws.* (1) The penalty imposed for the illegal transportation of merchandise between coastwise points is forfeiture of the merchandise or, in the discretion of the district director, a monetary penalty in an amount up to the value of the merchandise to be recovered from the consignor, seller, owner, importer, consignee, agent, or other person or persons so transporting or causing the merchandise to be transported (46 U.S. 883).

(2) The penalty imposed for the unlawful transportation of passengers between coastwise points is $200 for each passenger so transported and landed (46 U.S.C. 289).

PART 6—AIR COMMERCE REGULATIONS

It is proposed to amend the second sentence of § 6.7(h)(5) to read as follows:

§ 6.7 Documents for entry.

* * * * * *

(h) * * *

(5) * * * For purposes of this section, the term "clerical error" is defined as a nonnegligent, inadvertent, or typographical mistake in the preparation, assembly, or submission of the manifest. * * *

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

It is proposed to amend the last sentence of § 10.41(d) to read as follows:

§ 10.41 Instruments, exceptions.

* * * * * *

(d) * * * The use of any such vehicle, aircraft, or boat without a proper entry having been made may result in liabilities being incurred under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592).

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. It is proposed to amend § 123.12(c) to read as follows:

§ 123.12 Entry of foreign locomotives and equipment in international traffic.

* * * * * *

(c) *Penalty for improper use.* The use of any foreign locomotive and other foreign railroad equipment in violation of this section may result in liabilities being incurred under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592).

2. It is proposed to amend § 123.14(d) to read as follows:

§ 123.14 Entry of foreign-based trucks, buses, and taxicabs in international traffic.

* * * * * *

(d) *Penalty for improper use.* The use of any vehicle referred to in this section in violation of this section may result in liabilities being incurred under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592).

PART 162—INSPECTION, SEARCH, AND SEIZURE

1. It is proposed to amend § 162.21(a) to read as follows:

§ 162.21 Responsibility and authority for seizures.

(a) *Seizures by Customs officers.* Property may be seized, if available, by any Customs officer who has reasonable cause to believe that any law or regulation enforced by the Customs Service has been violated, by reason of which the property has become subject to seizure or forfeiture. This paragraph does not authorize seizure when seizure or forfeiture is restricted by law or regulation (see, for example, § 162.75), nor does it authorize a remedy other than seizure when seizure or forfeiture is required by law or regulation. A receipt for seized property shall be given at the time of seizure to the person from whom the property is seized.

2. It is proposed to amend the first sentence of § 162.43(b) to read as follows:

§ 162.43 Appraisement.

* * * * * *

(b) *Property not under seizure.* With respect to property not under seizure,

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the basis for a claim for forfeiture value or for an assessment of a penalty relating to the forfeiture value is the domestic value as defined in paragraph (a), of this section, except that the value shall be fixed as of the date of the violation. • • •

• • • • • •

3. It is proposed to amend the first sentence of § 162.65(c) to read as follows:

§ 162.65 Penalties for failure to manifest narcotic drugs or marihuana.

• • • • • •

(c) *Notice and demand for payment of penalty.* A written notice and demand for payment of the penalty for failure to manifest incurred under section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), together with a copy of 19 U.S.C. 1584, shall be sent to the master of the vessel, or commander of the aircraft, or the person in charge of the vehicle and to the owner of the vessel, aircraft, or vehicle, or any person directly or indirectly responsible. • • •

4. It is also proposed to amend part 162 by adding a new subpart G to read as follows:

Subpart G—Special Procedures for Certain Violations

Sec.
162.70 Applicability.
162.71 Definitions.
162.72 Penalties under sections 466 and 584(a)(1), Tariff Act of 1930, as amended.
162.74 Prior disclosure.
162.75 Seizures limited under section 592, Tariff Act of 1930, as amended.
162.76 Prepenalty notice for violations of sections 466 or 584(a)(1), Tariff Act of 1930, as amended.
162.77 Prepenalty notice for violations of section 592, Tariff Act of 1930, as amended.
162.78 Presentations responding to prepenalty notice.
162.79 Determination as to violation.
162.79a Other notice.
162.79b Recovery of actual loss of duties.

Subpart G—Special Procedures for Certain Violations

§ 162.70 Applicability.

(a) The provisions of this subpart apply only to fines, penalties, or forfeitures incurred for the following violations of the customs laws:

(1) Violations of sections 466 and 584(a)(1), Tariff Act of 1930, as amended (19 U.S.C. 1466, 1584(a)(1)), that occur after October 3, 1978, and

(2) Except as provided in paragraph (b) of this section, violations of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), with respect to which proceedings have commenced after December 31, 1978. For purposes of this subparagraph, a proceeding commences with the issuance of a prepenalty notice or, if no prepenalty notice is issued, with the issuance of a notice of a claim for a monetary penalty.

(b) The provisions of this subpart do not apply to alleged intentional violations of 19 U.S.C. 1592 if the alleged violation—

(1) Involves television receivers that are the products of Japan and were or are the subject of antidumping proceedings (see § 153.46 of this chapter),

(2) Occurred before October 3, 1978, and

(3) Was the subject of a Customs investigation begun before October 3, 1978.

(c) The provisions of subparts A through F of this part shall apply to the violations referred to in paragraph (a) of this section unless this subpart specifically provides otherwise.

§ 162.71 Definitions.

When used in this subpart, the following terms shall have the meanings indicated:

(a) *Loss of duties.* "Loss of duties" means the duties of which the Government is or may be deprived by reason of the violation and includes both actual and potential loss of duties.

(1) *Actual loss of duties.* "Actual loss of duties" means the duties of which the Government has been deprived by reason of the violation in respect of entries on which liquidation had become final at the time of discovery of the violation.

(2) *Potential loss of duties.* "Potential loss of duties" means the duties of which the Government tentatively was deprived by reason of the violation in respect of entries on which liquidation had not become final at the time of discovery of the violation.

(b) *Noncommercial importation.* "Noncommercial importation" means merchandise imported by a traveler for an individual's personal or household use, or as a gift, but not imported for sale or other commercial purposes.

(c) *Clerical error.* "Clerical error" means an error in the preparation, assembly, or submission of a document which results when a person intends to do one thing but does something else. It includes, for example, errors in transcribing numbers, errors in arithmetic, and the failure to assemble all the documents in a record.

(d) *Mistake of fact.* "Mistake of fact" means an action based upon a belief by a person that the material facts are other than they really are; it can be that a fact exists but is unknown to the person, or that he believes something is a fact when in reality it is not. An action is not a mistake of fact if the erroneous belief is caused by the neglect of a legal duty.

§ 162.72 Penalties under sections 466 and 584(a)(1), Tariff Act of 1930, as amended.

(a) *Foreign repairs and equipment purchases; election to proceed.* If the district director has reasonable cause to believe that a violation of section 466, Tariff Act of 1930, as amended (19 U.S.C. 1466), has occurred, he may elect to proceed against the vessel or aircraft, or against the violator for a claim for a monetary penalty in an amount up to the domestic value of the vessel or aircraft.

(b) *Falsity or lack of manifest.* The penalties for violation of section 584(a)(1), Tariff Act of 1930, as amended (19 U.S.C. 1584(a)(1)), are as follows:

(1) A penalty of $500 against the master of a vessel, the commander of an aircraft, or the person in charge of a vehicle bound to the United States who does not produce the manifest on demand.

(2) A penalty of $500 against the master of a vessel, the commander of an aircraft, the person in charge of a vehicle, or the owner of the vessel, aircraft, or vehicle, or any person directly or indirectly responsible for the discrepancy, if any merchandise described in the manifest is not found on board (a "shortage").

(3) A penalty equal to the lesser of $10,000 or the domestic value of merchandise found on board of, or after having been unladen from, a vessel, aircraft, or vehicle, which is not included or described in the manifest or does not agree with it (an "overage"). This penalty may be assessed against the master of the vessel, the commander of the aircraft, the person in charge of the vehicle, the owner of the vessel, aircraft, or vehicle, or any person directly or indirectly responsible for the discrepancy. Unmanifested merchandise belonging to or consigned to the master or crew of the vessel, the commander or crew of the aircraft, or to the owner or person in charge of the vehicle, also shall be subject to forfeiture.

(c) *Exception.* There is no violation, and consequently no penalty incurred under paragraph (b), in the circumstances described in §§ 4.12(a)(5) and 6.7(h)(5) of this chapter.

§ 162.73 Penalties under section 592, Tariff Act of 1930, as amended.

(a) Maximum penalty without prior disclosure. If the person concerned has not made a prior disclosure as provided in § 162.74, the monetary penalty under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), shall not exceed:

(1) For fraudulent violations, the domestic value of the merchandise;

(2) For grossly negligent violations (i) The lesser of the domestic value of the merchandise or four times the loss of duties, or

(ii) If there is no loss of duties, 40 percent of the dutiable value of the merchandise; and

(3) For negligent violations (i) The lesser of the domestic value of the merchandise or two times the loss of duties, or

(ii) If there is no loss of duties, 20 percent of the dutiable value of the merchandise.

(b) *Maximum penalty with prior disclosure.* If the person concerned has made a prior disclosure, the monetary penalty shall not exceed:

(1) For fraudulent violations (i) One times the loss of duties, or

(ii) If there is no loss of duties, 10 percent of the dutiable value of the merchandise; and

(2) For grossly negligent and negligent violations, the interest on any loss of duties. The interest shall be computed from the date of liquidation at the prevailing rate of interest applied under section 6621, Internal Revenue Code of 1954, as amended (26 U.S.C. 6621).

(c) *Exception; clerical error or mistake of fact.* There is no violation and, consequently, no penalty incurred, if the falsity or omission is due solely to clerical error or mistake of fact, unless the error or mistake is part of a pattern of negligent conduct.

§ 162.74 Prior disclosure.

(a) *In general.* A prior disclosure is made if the person concerned discloses the circumstances of a violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), before, or without knowledge of, the commencement of a formal investigation of that violation, and makes a tender of any loss of duties in accordance with paragraph (e) of this section. If a prior disclosure is made, the maximum penalties shall be as set forth in § 162.73(b).

(b) *Referral for investigations.* Any disclosure of a violation shall be referred immediately by the district director to the appropriate field office of the Office of Investigations. Upon completion of its investigation, the field office immediately shall return the disclosure, together with its report, to the district director for appropriate action.

(c) *Commencement of formal investigation.* A formal investigation of a violation is considered to be commenced:

(1) In the case of a referral by an import specialist or other Customs officer of a matter involving the disclosing party and the disclosed information for investigation of a possible violation of 19 U.S.C. 1592, on the date the matter was referred to the Office of Investigations;

(2) In the case of referral by an import specialist or other Customs officer of a request for value, classification or other technical investigation, on the date recorded in writing by an investigating agent as the date on which he discovered facts and circumstances which caused him to believe that the possiblity of a violation of 19 U.S.C. 1592 existed with respect to the disclosing party and the disclosed information;

(3) In the case of an investigation prompted by an individual other than a Customs officer with regard to the disclosing party and the disclosed information, on the date recorded on the Memorandum of Information Received, Customs Form 4621, by the Office of Investigations as the date on which the information was received;

(4) In the case of an ongoing investigation of a possible violation of 19 U.S.C. 1592 not involving the disclosing party and the information disclosed, on the date recorded in writing by an investigating agent as the date on which he discovered facts and circumstances which caused him to believe that the possibility of a violation of 19 U.S.C. 1592 existed with respect to the disclosing party and the disclosed information;

(5) In the case of a general ongoing investigation of a specific class of goods or industry, on the date recorded by the Office of Investigations as the date on which it determined to direct its investigation specifically to the disclosing party and the disclosed information; and

(6) In all other cases, on the date recorded in a Report of Investigation, Customs Form 23, as the date on which an investigator was assigned to investigate possible violations of 19 U.S.C. 1592 by the disclosing party with respect to the disclosed information.

(d) *Proof of lack of knowledge.* A person who claims a lack of knowledge of the commencement of a formal investigation has the burden to prove that lack of knowledge.

(e) *Tender of loss of duties.* A person who discloses the circumstances of the violation shall tender any loss of duties at the time of disclosure, or within 30 days after the district director notifies the person in writing of his calculation of the loss of duties. The district director may extend the period if he determines there is good cause to do so.

(f) *Undisclosed violations.* Undisclosed violations discovered by Customs as the result of an investigation of a prior disclosure of another violation shall not be entitled to treatment under the prior disclosure provisions.

(g) *Minor violations.* If the district director determines that:

(1) The disclosed violation involves a loss of duties of $250 or less,

(2) Any loss of duties has been deposited, and

(3) The violation disclosed either does not extend to other ports, or already has been disclosed at other ports, he shall not refer the matter for investigation or establish a penalty case unless there are compelling reasons for doing so, such as a history of similar violations.

§ 162.75 Seizures limited under section 592, Tariff Act of 1930, as amended.

(a) *When authorized.* Merchandise may be seized for violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592) *only* if the district director has reasonable cause to believe that a person has violated the statute and that

(1) The person is insolvent,

(2) The person is beyond the jurisdiction of the United States,

(3) Seizure otherwise is essential to protect the revenue, or

(4) Seizure is essential to prevent the introduction of prohibited or restricted merchandise into the Customs territory of the United States.

(b) *No seizure if prior disclosure.* Under no circumstances shall merchandise be seized under the authority of 19 U.S.C. 1592 if there has been a prior disclosure of the violation. This paragraph does not limit seizures under the authority of any other applicable law or regulation.

(c) *Seizure notice.* If merchandise is seized, the district director shall promptly issue a written notice of seizure to the person concerned and to any other person the facts of record indicate has an interest in the merchandise. The seizure notice shall contain the information required by § 162.31 and shall state why the seizure was necessary.

(d) *Release of seized merchandise—*

(1) *To person from whom seized.* The district director shall return seized merchandise to the person from whom seized upon the deposit of security, in a form acceptable to the district director, equal to the maximum penalty which may be assessed, if the entry of the merchandise into the commerce of the United States is not prohibited or restricted.

(2) *To others.* The district director may release seized merchandise to any other person upon the deposit of adequate security, in a form acceptable to the district director, if the entry of the merchandise into the commerce of the United States is not prohibited or restricted, and if:

(i) The district director is satisfied that the person has a substantial interest in the merchandise, and

(ii) The person submits either an agreement to hold the United States and its officers and employees harmless, or a release from the owner and/

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or the person from whom the merchandise was seized.

(3) *Forfeiture.* If neither a petition for relief is filed in accordance with Part 171 of this chapter, nor the monetary penalty paid within the time provided by law, the district director immediately shall:

(1) Report the facts to the U.S. attorney for the judicial district in which the seizure was made, if the appraised value of the seized merchandise exceeds $10,000, or

(2) Proceed under the summary forfeiture provisions of Subpart E of this part, if the appraised value does not exceed $10,000.

§ 162.76 Prepenalty notice for violations of sections 466 or 584(a)(1), Tariff Act of 1930, as amended.

(a) *When required.* If the district director has reasonable cause to believe that a violation of section 466 or 584(a)(1), Tariff Act of 1930, as amended (19 U.S.C. 1466, 1584(a)(1)), has occurred and determines that further proceedings in the form of a claim for a monetary penalty are warranted, he shall issue to the person concerned a written notice of his intent to issue a penalty claim.

(b) *Contents*—(1) *Facts of violation.* The prepenalty notice shall:

(i) Describe the merchandise, if applicable,

(ii) Set forth the details of the error in the manifest, if applicable,

(iii) Specify all laws and regulations allegedly violated,

(iv) Describe all material facts and circumstances which establish the alleged violation, and

(v) State the estimated loss of duties, if any, and, taking into account all circumstances, the amount of the proposed monetary penalty.

(2) *Right to make presentation.* The prepenalty notice also shall inform the person of his right to make a written and an oral presentation within 30 days of the mailing of the notice (or such shorter period as may be prescribed under § 162.78) as to why a claim for a monetary penalty should not be issued or, if issued, why it should be in a lesser amount than proposed.

(c) *Exception.* No prepenalty notice shall be issued if the proposed penalty for an alleged violation of 19 U.S.C. 1584(a)(1) is $500 or less.

§ 162.77 Prepenalty notice for violations of sectidn 592, Tariff Act of 1930, as amended.

(a) *When required.* If the district director has reasonable cause to believe that a violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), has occurred, and determines that further proceedings are warranted, he shall issue to the person concerned a notice of his intent to issue a claim for a monetary penalty. The prepenalty notice shall be issued whether or not a seizure has been made.

(b) *Contents*—(1) *Facts of violation.* The prepenalty notice shall:

(i) Describe the merchandise,

(ii) Set forth the details of the entry or introduction, the attempted entry or introduction, or the aiding or abetting of the entry, introduction, or attempt,

(iii) Specify all laws and regualtions allegedly violated,

(iv) Disclose all material facts which establish the alleged violation,

(v) State whether the alleged violation occurred as the result of fraud, gross negligence, or negligence, and

(vi) State the estimated loss of duties, if any, and, taking into account all circumstances, the amount of the proposed monetary penalty.

(2) *Right to make presentations.* The prepenalty notice also shall inform the person of his right to make an oral and a written presentation within 30 days of the mailing of the notice (or such shorter period as may be prescribed under § 162.78) as to why a claim for a monetary penalty should not be issued or, if issued, why it should be in a lesser amount than proposed.

(c) *Exceptions.* A prepenalty notice shall not be issued if:

(1) The claim is for $1,000 or less, or

(2) The violation occurred with respect to a noncommercial importation.

§ 162.78 Presentations responding to prepenalty notice.

(a) *Time within which to respond.* Unless a shorter period is specified in the prepenalty notice or an extension is given in accordance with paragraph (b) of this section, the named person shall have 30 days from the date of mailing of the prepenalty notice to make a written and an oral presentation. The district director may specify a shorter reasonable period of time, but not less than 7 days, if less than 1 year remains before the statute of limitations may be asserted as a defense.

(b) *Extensions.* If at least 1 year remains before the statute of limitations may be asserted as a defense, the district director, upon written request, may extend the time for filing a written presentation, or making an oral presentation, or both, for any of the reasons given in § 162.32(a) relating to extensions of time for filing petitions for relief. Other extensions may be authorized only by Headquarters.

(c) *Form and contents of written presentation.* The written presentation need not be in any particular form, but shall contain information sufficient to indicate that it is the written presentation in response to the prepenalty notice. It should contain answers to the allegations in the prepenalty notice and set forth the reasons why the person believes the claim should not be issued or, if issued, why it should be in a lesser amount than proposed.

(d) *Additional presentations.* In addition to one written and one oral presentation, the district director, in his discretion, may allow further presentations.

§ 162.79 Determination as to violation.

(a) *No violation.* If, after considering any presentations made in response to the prepenalty notice, the district director determines that there was no violation by the person named in the prepenalty notice, he promptly shall notify the person in writing of that determination and that no claim for a monetary penalty will be issued.

(b) *Violation*—(1) *Written notice of claim.* If, after considering any presentations made in response to the prepenalty notice, the district director determines that there was a violation by the person named in the prepenalty notice, he promptly shall issue a written notice of a claim for a monetary penalty to that person.

(2) *Contents.* The notice of a claim for a monetary penalty shall contain any changes in the information provided in the prepenalty notice, and shall inform the person of his right to apply for relief under section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618), in accordance with part 171 of this chapter.

§ 162.79a Other notice.

If no prepenalty notice is issued, a written notice of any monetary penalty incurred shall contain the information required under § 162.76(b)(1) or § 162.77(b)(1), except that the notice shall state the amount of the claim for a monetary penalty. The notice also shall inform the person of his right to apply for relief under section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618), in accordance with Part 171 of this chapter.

§ 162.79b Recovery of actual loss of duties.

Whether or not a monetary penalty is assessed under this subpart, the district director shall require the deposit of any actual loss of duties resulting from a violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), notwithstanding that the liquidation of the entry to which the loss is attributable has become final.

PART 171—FINES, PENALTIES, AND FORFEITURES

1. It is proposed to amend § 171.1 by adding a new paragraph (c) to read as follows:

§ 171.1 Special procedures for certain liabilities incurred under section 592, Tariff Act of 1930, as amended.

* * * * *

(c) *Exceptions.* The provisions of this section do not apply to violations referred to in § 162.70(a)(2) of this chapter.

2. It is proposed to amend Part 171 by adding a new § 171.14 to read as follows:

§ 171.14 Oral presentations seeking relief.

(a) *For certain violations.—(1) Right to make oral presentation.* If the penalty incurred is for a violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), for which proceedings commenced after December 31, 1978, the person named in the notice also may make an oral presentation seeking relief in accordance with this paragraph. For purposes of this paragraph, a proceeding commences with the issuance of a prepenalty notice or, if no prepenalty notice is issued, with the issuance of a notice of a claim for a monetary penalty.

(2) *Prerequisites.* The person shall be given a reasonable opportunity to make an oral presentation provided that a petition has been filed under § 171.12, and that the petition contains a request to present orally the reasons for remission or mitigation of the penalty.

(b) *Other oral presentations.* Oral presentations other than those provided in paragraph (a) of this section may be allowed in the discretion of the district director, regional commissioner, or Commissioner whenever a petition or supplemental petition is under his consideration.

3. It is proposed to amend § 171.22(a) to read as follows:

§ 171.22 Special cases acted upon by district director.

(a) *Merchandise illegally transported coastwise.* A forfeiture of merchandise or a monetary penalty incurred under title 46, United States Code, section 885, for illegally transporting merchandise coastwise, may be remitted by the distrcit director, regardless of the value of the merchandise or the amount of the penalty, if the petition for relief establishes to the satisfaction of the district director that the violation occurred as a direct result of an arrival of the transporting vessel in distress.

4. It is proposed to amend Part 171 by adding a new § 171.31a to read as follows:

§ 171.31 Written decision.

If a petition or supplemental petition (see § 171.33) for relief relates to a violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), for which proceedings commenced after December 31, 1978, the petitioner shall be provided with a written statement setting forth the decision on the matter and the findings of fact and conclusions of law upon which the decision is based. For purposes of this section, a proceeding commences with the issuance of a prepenalty notice or, if no prepenalty notice is issued, with the issuance of a notice of a claim for a monetary penalty.

R. E. CHASEN,
Commissioner of Customs

Approved: October 26, 1978.

RICHARD J. DAVIS,
Assistant Secretary of the Treasury.

[FR Doc. 78-32242 Filed 11-15-78; 8:45 am]

[4180-22-M]

[19 CFR Parts 11, 111, 133, 148, and 162]

RECORDKEEPING, REPORTING BY CUSTOMHOUSE BROKERS, TRADEMARKS, AND THE DISPOSITION OF FORFEITED DISTILLED SPIRITS, WINES, AND MALT LIQUOR

Proposed Rules

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: The "Customs Procedural Reform and Simplification Act of 1978", approved October 3, 1978, made numerous changes to the Tariff Act of 1930. One of the significant changes was to require that records of the type normally kept in the ordinary course of business be made pertaining to the importation of merchandise and furnished to Customs, upon request, for examination and inspection. The Act also required all licensed customhouse brokers to file a status report with Customs on specified dates. In addition, the Act modified the procedures relating to the importation, seizure, and disposal of articles having a U.S.-registered trademark, as well as the disposal of imported liquor forfeited to the Government. This document proposes to amend the Customs regulations to reflect these changes.

DATES: Comments must e received on or before: December 18, 1978.

ADDRESS: Written comments should be addressed to the Commissioner of Customs, Attention: Regulations and Legal Publications Division, U.S. Customs Service, 1301 Constitution Avenue NW., Room 2335, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT:

John E. Elkins, Regulations and Legal Publications Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, 202-566-8237.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pub. L. 95-410, the "Customs Procedural Reform and Simplification Act of 1978" ("the Act"), was approved on October 3, 1978.

Two of the major objectives of the Act are:

1. To permit the establishment of more efficient and flexible procedures for handling the documentary and financial aspects of import transactions while insuring compliance with Customs laws and the collection of accurate import statistics, and

2. To modify Customs procedures to expedite the processing of goods and individuals while reducing administrative costs for the Government.

To carry out these objectives, numerous provisions of the Tariff Act of 1930 were amended. These amendments necessitate changes to the Customs regulations. This document relates only to the recordkeeping requirements, reporting requirements of customhouse brokers, and the importation, seizure, and disposal of articles having a U.S.-registered trademark, as well as the disposal of imported liquor forfeited to the Government. Additional provisions of the Act which will require amendments to the Customs regulations will be the subject of other documents published in the FEDERAL REGISTER.

RECORDKEEPING

1. Prior to the Act, there was no general recordkeeping requirement in the Tariff Act of 1930, as amended, applicable to importers. Section 104 of the Act added a new section 508 to require records to be kept by any owner, importer, consignee or their agent who either imports goods into the Customs territory of the United States or knowingly causes goods to be imported.

Records pertaining to the importation of merchandise or substantiating the correctness of information contained in the documents required in connection with the entry of merchandise and which are normally kept in the ordinary course of business have to be made, kept, and available for examination and inspection by Customs. Importers and other affected persons must keep the required records for such period as the Secretary of the Treasury may prescribe, not to exceed 5 years from the date of entry of the merchandise.

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In general, domestic transactions between an importer and a person ordering merchandise from him are excluded from the recordkeeping requirement. For example, an individual ordering an article from a retailer and a retailer ordering an article from an importer would not be required to make a record of the transaction for Customs purposes. However, if the person ordering the merchandise from an importer provides technical data, molds, equipment, other production assists, material, components, or parts with knowledge that they will be used in the manufacture or production of the imported merchandise, or the terms and conditions of the importation are controlled by the person placing the order with the importer (e.g., the importer is merely the agent of the person placing the order), records of the transaction must be made and kept for Customs purposes.

It is proposed to amend parts 111 and 162, Customs regulations, to reflect these changes.

EXAMINATION OF IMPORTERS

2. Under section 509, Tariff Act of 1930, as amended (19 U.S.C. 1509), appropriate Customs officers could examine under oath, any owner, importer, consignee, agent, or other person, upon any matter relating to the classification or value of imported goods and require the production of any letters, accounts, contracts, invoices, or other documents relating to the goods. An order to appear and produce documents under 19 U.S.C. 1509 could be used only to obtain information about unliquidated entries or importations made during the preceding year.

As amended by section 105 of the Act, 19 U.S.C. 1509 provides that the Secretary of the Treasury or his delegate is permitted to summon, upon reasonable notice, any person involved with the importation of merchandise or any person who has possession, custody, or care of relevant records, and to examine records and to take testimony necessary to determine the correctness of an entry, the liability of any person for duties and taxes, and the amount of fines and penalties, or to insure compliance with the applicable laws and regulations administered by the Customs Service.

Special procedures concerning third-party summonses are also provided in section 105 of the Act. These procedures provide notice to a person whose records of import transactions are being kept by a third party if that third party is summoned to produce the records. The term "third-party recordkeeper" means: (1) A customhouse broker, (2) an attorney, or (3) an accountant.

It is proposed to amend parts 111 and 162, Customs Regulations, to reflect these changes.

ENFORCEMENT OF ADMINISTRATIVE SUMMONS

3. Under section 510, Tariff Act of 1930, as amended (19 U.S.C. 1510), any person refusing to appear, produce documents, sign a deposition, or answer interrogatories under 19 U.S.C. 1509, was subject to a penalty of not less than $20 nor more than $500. If an owner, importer, or consignee perjured himself during an examination, the goods could be forfeited or their value recovered from him.

As amended by section 106 of the Act, 19 U.S.C. 1510 is similar to many statutes which provide for judicial enforcement of administrative summonses. The U.S. district courts are given jurisdiction, after notice and hearing, to compel the production of records or the giving of testimony as ordered by Customs under 19 U.S.C. 1509. If a person fails to obey a court order, he could be punished for contempt. In addition, a person who refused to obey a court order and who is adjudged guilty of contempt could be prohibited from importing merchandise or obtaining release of any of his merchandise of which Customs has custody for so long as he remains in contempt. If he refuses to obey for 1 year, all of his merchandise in Customs custody could be sold at public auction or otherwise disposed of under the Customs laws.

It is proposed to amend part 162, Customs Regulations, to reflect these changes.

REPORTING REQUIREMENT FOR CUSTOMHOUSE BROKERS

4. Under section 641 of the Tariff Act of 1930 as amended (19 U.S.C. 1641), the Secretary may prescribe rules and regulations governing the licensing of customhouse brokers. Under this section, Customs determines the qualifications and responsibilities of brokers, administers examinations, and issues, suspends, and revokes licenses. However, there is a need for Customs to be provided current information on the status of licensed brokers.

As amended by section 113 of the Act, 19 U.S.C. 1641 requires all licensed customhouse brokers to file a status report with Customs on or before February 1, 1979, and on or before February 1 of each third year thereafter.

Each individual broker is required to state the name and address of his business and whether he is actively engaged in transacting Customs business. Each corporation, partnership, or association is required to report the name and address of the business, the names and addresses of the officers or members licensed as individual brokers qualifying it for a license, and whether it is actively engaged in transacting Customs business. It is proposed to amend § 111.30, Customs Regulations, to reflect these changes.

DISPOSITION OF FORFEITED MERCHANDISE

5. Under section 491, Tariff Act of 1930, as amended (19 U.S.C. 1491), merchandise which remains in Customs custody for 1 year from the date of its importation without the payment of estimated duties, storage fees, and other charges is considered unclaimed and abandoned to the Government. Abandoned merchandise is appraised and sold by Customs at public auction.

Section 492, Tariff Act of 1930, as amended (19 U.S.C. 1492), permits the District Director of Customs to destroy forfeited merchandise subject to internal revenue tax if he believes it "will not sell" for an amount sufficient to pay the taxes due. While section 492 appears to permit the sale of forfeited liquor, Customs has interpreted section 5688(a) of the Internal Revenue Code of 1954 (26 U.S.C. 5688(a)) as prohibiting sale and requiring destruction of forfeited liquor. This is the case even though section 5688(a) appears to provide an exception to the general rule if a different manner of disposal is "otherwise provided by law." As a result, Customs sells abandoned liquor and destroys forfeited liquor.

As amended by section 208 of the Act, 19 U.S.C. 1491 explicitly permits the sale of forfeited distilled spirits, wines, and malt liquor. However, forfeited spirits, wines, or malt liquor could be sold only if no Government agency or charitable institution needs them. It is proposed to amend § 162.46, Customs Regulations, to reflect these changes.

Section 111 of the Act amends sections 607, 610, and 612, Tariff Act of 1930, as amended (19 U.S.C. 1607, 1610, 1612), to raise from $2,500 to $10,000 the value of merchandise subject to summary forfeiture. Accordingly, it also is proposed to amend the heading to section 162.46, Customs Regulations, to reflect this change. Conforming amendments to the Customs Regulations to incorporate the change will be published separately.

TREATMENT OF TRADEMARKED ARTICLES

6. Section 42 of the Act of July 5, 1946 (15 U.S.C. 1124), prohibits the importation of merchandise which copies or simulates a U.S. registered trademark, or which bears any mark or name calculated to induce belief that the merchandise is manufactured in the United States. Merchandise which is imported in violation of this provision may be: (1) Forfeited and sold by Customs after obliteration of the trademark, (2) returned to the country of origin, (3) sold by the importer after obliteration of the trademark, or (4) destroyed.

With respect to imported articles which violate 15 U.S.C. 1124, section 211 of the Act provides the following:

(a) The articles shall be seized.

(b) The trademark owner shall be notified of the seizure.

(c) The articles shall be forfeited to the Government unless the trademark owner gives written consent to some other disposition, such as reexportation or entry after obliteration of the trademark.

(d) The articles shall be delivered to a Federal, State, or local government agency which needs them for an official purpose or to a charitable institution.

(e) The articles shall be sold at public auction if, after one year, they cannot be delivered to a Federal, State, or local government agency or a charitable institution. However, unless obliteration of the trademark would destroy the articles or be disproportionately expensive with regard to their value, the trademark shall be obliterated on the articles to be sold.

(f) Articles which are unsafe or a health hazard shall be destroyed.

Section 526, Tariff Act of 1930 (19 U.S.C. 1526), prohibits the importation of goods bearing a trademark owned by a corporate or real citizen of the United States and registered in accordance with 15 U.S.C. 1124, unless written consent of the trademark owner to the goods' importation has been given. Merchandise imported in violation of 19 U.S.C. 1526 may be seized and forfeited by Customs.

As amended by section 211 of the Act, 19 U.S.C. 1526 permits, under certain conditions, the entry of imported trademarked merchandise accompanying persons arriving in the United States. The trademarked articles must be for the arriving person's personal use, and the exemption could be claimed only by the same person for the same type of article once each 30 days. If any exempt article is sold within 1 year following importation, the article or its value (to be recovered from the importer) would be subject to forfeiture. Generally, the exemption would be limited to one article of a type bearing a protected trademark. For example, it appears cameras are usually imported singly for personal use. Thus only one camera may be imported under the exemption irrespective of the trademark it bears. The Commissioner of Customs will determine if a quantity of an article in excess of one may be entered and, with the approval of the Secretary of the Treasury, publish in the FEDERAL REGISTER a list of types of articles and the quantities of each entitled to exemption. Further, if the holder of a protected trademark allows importation of a quantity in excess of one of its particular trademarked article, the total of those trademarked articles authorized by the trademark holder may be entered without penalty.

It is proposed to amend §§ 11.13(d), 133.21(c), and 133.22(c), Customs Regulations, to reflect these changes. It is also proposed to amend Parts 133 and 148, Customs Regulations, by adding new §§ 133.25 and 148.55, respectively.

AUTHORITY

These amendments are proposed under the authority of R.S. 251, as amended (19 U.S.C. 66); sections 491, 509, 510, 511, 526, 624, 46 Stat. 726, as amended, 733, as amended, 741, 759 (19 U.S.C. 1491, 1509, 1510, 1511, 1526, 1624); Pub. L. 95-410 (October 3, 1978).

COMMENTS

Before adopting this proposal, consideration will be given to any written comments, preferably in triplicate, that are submitted timely to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with § 103.8(b), Customs Regulations (19 CFR 103.8(b), during regular business hours at the Regulations and Legal Publications Division, Headquarters, U.S. Customs Service, 1301 Constitution Avenue NW., Room 2335, Washington, D.C. 20229.

The comment period is 30 days, instead of the 60 days ordinarily required by Executive Order 12044 of March 23, 1978 (43 FR 12661) because this proposal is designed to implement legislative changes made by Pub. L. 95-410, which becomes effective upon enactment.

DRAFTING INFORMATION

The principal author of this document was John E. Elkins, Regulations and Legal Publications Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

PROPOSED AMENDMENTS

It is proposed to amend parts 11, 111, 133, 148, and 162, Customs Regulations (19 CFR Parts 11, 111, 133, 148, 162) in the following manner:

PART 11—PACKING AND STAMPING, MARKING

§ 11.13 [Amended]

It is proposed to amend § 11.13(d) by substituting a comma for the period at the end of the section and adding "except articles disposed of under § 133.25 (a) or (b) of this chapter."

PART 111—CUSTOMHOUSE BROKERS

§ 111.23 [Amended]

1. It is proposed to amend § 111.23(a) by substituting "5 years" for "6 years" wherever it appears.

§ 111.25 [Amended]

2. It is proposed to amend § 111.25 by substituting "in accordance with the provisions of §§ 162.1a through 162.1i" for "on demand".

§ 111.26 [Amended]

3. It is proposed to amend § 111.26 by substituting "Except in accordance with the provisions of §§ 162.1a through 162.1i, a" for "A" at the beginning of the sentence.

4. It is proposed to amend § 111.30 by changing the section heading and adding a new paragraph (d) to read as follows:

§ 111.30 Change of business address, organization, or name; status report.

. . . . . .

(d) *Status report.* Each customhouse broker shall file a status report with Customs on or before February 1, 1979, and on or before February 1 of each third year thereafter. The original shall be filed with the Commissioner of Customs, U.S. Customs Service, Attention: Entry and Licensing Branch, Washington, D.C. 20229. A copy also shall be filed with the District Director of Customs in each district where the broker is licensed to transact Customs business. No form or particular format is required. Each individual broker shall state whether he is actively engaged in transacting Customs business; if so, he shall state the name under which his business is conducted (if he is a sole proprietor) or the name of his employer, his business address (or addresses if he has branch offices), and the names of any corporate, partnership, or association brokers for which he is an officer. The report of each corporation, partnership, or association shall state the name under which its business is conducted, its business address, the names and addresses of the members of the partnership or officers of the corporation or association qualifying it for a license, and whether it is actively engaged in transacting Customs business.

PART 133—TRADEMARKS, TRADE NAMES, AND COPYRIGHTS

1. It is proposed to amend § 133.21(c) by deleting "or" at the end of paragraph (5), replacing the period at the end of paragraph (6) with a semicolon

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followed by the word "or", and adding a new paragraph (7) to read as follows:

§ 133.21 Restrictions on importation of articles bearing recorded trademarks and trade names.

• • • • • •

(c) *Restrictions not applicable.* • • •

(7) The articles of foreign manufacture bear a recorded trademark and the personal exemption is claimed and allowed under § 148.55 of this chapter.

2. It is proposed to amend § 133.22(c) by adding two new sentences at the end of the section to read as follows:

§ 133.22 Detention of articles subject to restrictions.

• • • • • •

(c) *Failure to obtain release in 30 days.* • • • The owner of the trademark will be notified of the seizure and the quantity of the articles seized. Unless the trademark owner within 30 days of notification provides written consent to an importation of the articles, exportation, entry after obliteration of the trademark, or other appropriate disposition, the articles shall be disposed of in accordance with § 133.25.

3. It is proposed to amend part 133 by adding a new § 133.25 to read as follows:

§ 133.25 Disposition of forfeited trademarked articles.

The Commissioner or his designee shall dispose of forfeited trademarked articles after obliteration of the trademark, where feasible, in the following manner:

(a) *Government use.* By delivery to any Federal, State or local government agency which, in the opinion of the Commissioner or his designee, has established a need for the articles.

(b) *Gifts to charities.* By delivery to any charitable institution which, in the opinion of the Commissioner or his designee, has established a need for the articles.

(c) *Sale.* If more than 1 year has passed since the forfeiture, the articles may be sold at public auction by the Commissioner or his designee. Prior to sale, the Commissioner or his designee shall detemine that a need for the article has not been established by any eligible government organization or charitable institution under paragraphs (a) or (b) of this section.

(d) *Destruction.* If the article is unsafe or a health hazard, it shall be destroyed.

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

It is proposed to amend part 148 by adding a new § 148.55 to read as follows:

§ 148.55 Exemption for articles bearing American trademark.

(a) *Application of exemption.* An exemption is provided for trademarked articles accompanying any person arriving in the United States which would be prohibited entry under section 526, Tariff Act of 1930, as amended (19 U.S.C. 1526), or section 42 of the Act of July 5, 1946 (60 Stat. 440; 15 U.S.C. 1124), because the trademark has been registered with the U.S. Patent Office and recorded with Customs. The exemption may be applied to those trademarked articles of foreign manufacture bearing a trademark owned by a citizen of, or a corporation or association created or organized within, the United States when imported for the arriving person's personal use in the quantities provided in paragraph (c) of this section. Unregistered and unrecorded trademarked articles are not subject to quantity limitation.

(b) *Limitations.*—(1) *30-day period.* The exemption in paragraph (a) of this section shall not be granted to any person who has taken advantage of the exemption for the same type of article within the 30-day period immediately prior to his arrival in the United States. The date of the person's last arrival on which he claimed this exemption shall be considered to be the date he last took advantage of the exemption.

(2) *Sale of exempted articles.* If an article which has been exempted is sold within one year of the date of importation, the article or its value (to be recovered from the importer), is subject to forfeiture. A sale subject to judicial order or in the liquidation of an estate is not subject to the provisions of this paragraph.

(c) *Quantities.* Generally, each person arriving in the United States may apply the exemption to one article of the type bearing a protected trademark. The Commissioner shall determine if a quantity of an article in excess of one may be entered and, with the approval of the Secretary of the Treasury, publish in the FEDERAL REGISTER a list of types of articles and the quantities of each entitled to the exemption. If the holder of a protected trademark allows importation of a quantity in excess of one of its particular trademarked article, the total of those trademarked articles authorized by the trademark holder may be entered without penalty.

PART 162—RECORDKEEPING, INSPECTION, SEARCH, AND SEIZURE

1. It is proposed to amend the title to part 162 to read "Part 162—Recordkeeping, Inspection, Search, and Seizure" as set forth above.

2. It is proposed to amend § 162.0 by deleting the first sentence and inserting the following two sentences:

§ 162.0 Scope.

This part sets forth the recordkeeping requirements and procedures governing the examination of records and persons in connection with routine audits and investigations of possible violations of laws and regulations administered by Customs. It contains provisions for the inspection, examination, and search of persons, vessels, aircraft, vehicles, and merchandise involved in importation, for the seizure of property, and for the forfeiture and sale of seized property. • • •

3. It also is proposed to amend part 162 by deleting present §§ 162.1 and 162.2, by amending the title to subpart A to read "Subpart A—Recordkeeping, Inspection, Examination and Search", and by adding new §§ 162.1a through 162.1i to read as follows:

§ 162.1 [Reserved]

§ 162.1a Definitions.

When used in §§ 162.1a through 162.1i, the following terms shall have the meaning indicated:

(a) *Records.* "Records" means:

(1) Books, papers, correspondence, accounts, statements, declarations, technical data, and other documents, including automated record storage devices (e.g., magnetic discs and tapes) and computer programs necessary to retrieve information in a usable form, which:

(i) Relate to the importation or entry of merchandise;

(ii) Are of the type normally kept in the ordinary course of business; and

(iii) Are sufficiently detailed:

(A) To establish the right to make entry,

(B) To establish the correctness of any entry,

(C) To determine the liability of any person for duties and taxes due, or which may be due, the United States,

(D) To determine the liability of any person for fines, penalties, and forfeitures, and

(E) To insure compliance with the laws and regulations administered by the Customs Service; and

(2) Any specific records required elsewhere in this chapter.

(b) *Third-party recordkeeper.* "Third-party recordkeeper" means any Customs broker, attorney, or accountant.

(c) *Summons.* "Summons" means any summons issued under this subpart which requires the production of records or the giving of testimony relating to records.

(d) *Technical data.* "Technical data" includes records, diagrams, and other data with regard to a business or an engineering or exploration operation, whether conducted inside or outside the United States, and whether on paper, cards, photographs, blueprints, tapes, microfiche, film, or other media.

§ 162.1b Recordkeeping.

(a) *Who must keep records.* Any owner, importer, consignee, or their agent who imports, or knowingly causes to be imported, any merchandise into the Customs territory of the United States, shall make and keep records as defined in § 162.1a(a).

(b) *Domestic transaction excluded.* A person ordering merchandise from an importer in a domestic transaction does not knowingly cause merchandise to be imported and is not required to make and keep records unless:

(1) The terms and conditions of the importation are controlled by the person placing the order with the importer (e.g., the importer is not an independent contractor but the agent of the person placing the order); or

(2) Technical data, molds, equipment, other production assistance, material, components, or parts are furnished by the person placing the order with the importer with knowledge that they will be used in the manufacture or production of the imported merchandise.

§ 162.1c Record retention period.

Unless a different period of time is provided elsewhere in this chapter with respect to a specific type of record, any record required or made under § 162.1b shall be kept for 5 years from the date of entry of the merchandise.

§ 162.1d Examination of records and witnesses.

(a) *Records.* During the course of any inquiry or investigation initiated:

(1) To determine the correctness of any entry, the liability of any person for duties and taxes due or which may be due, or any liability for fines, penalties, and forfeitures, or

(2) To insure compliance with the laws and regulations administered by the Customs Service,

any Customs officer, with the consent of the owner, importer, consignee, or their agent, or any other person concerned, may examine, or cause to be examined, any relevant records by providing the person with reasonable notice, either orally or in writing, which describes the records with reasonable specificity.

(b) *Summons.* During the course of any inquiry or investigation initiated for the reasons set forth in paragraph (a) of this section, the Commissioner of Customs or his designee, but no designee of the Commissioner below the rank of district director (area director in region II) or special agent in charge, may with reasonable notice issue a summons to any owner, importer, consignee, their agent, or any other person who imported merchandise, or knowingly caused merchandise to be imported.

(c) *Transcript of testimony under oath.* Testimony of any person examined under this section shall be taken under oath and may be transcribed.

§ 162.1e Contents of summons.

(a) *Summons for person.* Any summons issued under § 162.1d(b) to compel the appearance of an owner, importer, consignee, or their agent, a third-party recordkeeper, or any other person, shall state the following:

(1) The name and title of the Customs officer before whom the appearance shall take place;

(2) The place where the person shall appear, not to exceed 100 miles from the place where the summons was served;

(3) The time of appearance; and

(4) The name and address of the Customs officer issuing the summons.

(b) *Summons for records.* If the summons requires the production of records, in addition to containing the information required by paragraph (a) of this section, the summons shall describe the records with reasonable specificity.

§ 162.1f Service of summons.

(a) *Who may serve.* Any person designated in the summons is authorized to serve it.

(b) *Method of service*—(1) *Natural person.* Service upon a natural person shall be made by personal delivery.

(2) *Corporation, partnership, or association.* Service shall be made upon a domestic or foreign corporation, or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivery to an officer, managing or general agent, or any other agent authorized to receive service of process.

(c) *Certificate of service.* On the hearing of an application for the enforcement of the summons, the certificate of service signed by the person serving the summons is prima facie evidence of the facts it states.

§ 162.1g Third-party recordkeeper.

(a) *Notice.* Except as provided by paragraph (f) of this section, if a summons issued under § 162.1d to a third-party recordkeeper requires the production of records or testimony relating to import transactions of an owner, importer, consignee, or their agent, or any person other than the person summoned, and the person is identified in the description of the records in the summons, notice of the summons shall be provided the person to whom the records relate.

(b) *Time of notice.* Notice of service of summons required by paragraph (a) of this section should be provided by the issuing officer immediately after service of summons is obtained under § 162.1f, but in no event shall notice be given less than five business days before the date set in the summons for the examination of records or persons.

(c) *Contents of notice.* The issuing officer shall insure that any notice issued under this section includes a copy of the summons and contains the following information:

(1) That compliance with the summons may be stayed if written direction is given by the person receiving notice to the person summoned not to comply with the summons.

(2) That a copy of the direction not to comply and a copy of the summons shall be mailed by registered or certified mail to the person summoned at the addresses in the summons and to the issuing Customs officer.

(3) That the actions under paragraphs (c) (1) and (c)(2) of this section shall be accomplished not later than the day before the day fixed in the summons as the day upon which the records are to be examined or testimony given.

(d) *Service of notice.* The issuing officer shall serve the notice required by paragraph (a) of this section in the same manner as is prescribed in § 162.1f for the service of a summons, or by certified or registered mail to the last known address of the person entitled to notice.

(e) *Examination precluded.* If notice is required by this section, no records may be examined and no testimony may be taken before the date fixed in the summons as the date to examine the records or to take the testimony. If the owner, importer, consignee, or their agent, or any other person concerned issues a stay of the summons, no examination shall take place, and no testimony shall be taken, without the consent of the person staying compliance, or without an order issued by a U.S. district court.

(f) *Exceptions to notice*—(1) *Personal liability for duties and taxes.* This section does not apply to any summons served on the person, or any officer or employee of the person, with respect to whose liability for duties and taxes the summons is issued.

(2) *Verification.* This section does not apply to any summons issued to determine whether or not records of

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the import transactions of an identified person have been made or kept.

(3) *Court order.* Notice shall not be given if a U.S. district court determines, upon petition by the issuing Customs officer, that reasonable cause exists to believe giving notice may lead to an attempt:

(i) To conceal, destroy, or alter relevant records;

(ii) To prevent the communication of information from other persons through intimidation, bribery, or collusion; or

(iii) To flee to avoid prosecution, testifying, or production of records.

§ 162.1h Enforcement of summons.

Whenever any person does not comply with a summons issued under § 162.1d, the issuing officer may request the appropriate U.S. attorney to seek an order requiring compliance from the U.S. district court for the district in which the person is found or resides or is doing business.

§ 162.1i Failure to comply with court order.

(a) *Importations prohibited.* If a person fails to comply with a court order enforcing the summons, and is adjudged guilty of contempt, the Commissioner, with the approval of the Secretary of the Treasury, may prohibit that person from directly or indirectly importing merchandise, and withhold delivery of merchandise imported by that person or for his account for so long as he remains in contempt.

(b) *Sale of merchandise.* If the failure of a person to comply with a summons continues for more than 1 year after the Commissioner issues instructions to withhold delivery, the merchandise shall be considered abandoned, and shall be sold at public auction or otherwise disposed of in accordance with subpart E of this part.

§ 162.2 [Reserved]

4. It is proposed to amend § 162.46(a) by deleting the period and adding "or section 491(b), Tariff Act of 1930, as amended (19 U.S.C. 1491(b))."

5. It is proposed to further amend § 162.46 by amending the section heading and by adding a new paragraph (e) to read as follows:

§ 162.46 Summary forfeiture where value not over $10,000; Disposition of goods.

* * * * *

(e) *Disposition of distilled spirits, wines, and malt liquor.* In addition to disposition by sale or destruction as provided for by this section, distilled spirits, wines, and malt liquor may be delivered:

(1) To any Government agency the district director determines has a need for these articles for medical, scientific, or mechanical purposes, or for any other official purpose for which appropriated funds may be expended by a Goverment agency, or

(2) By gift to any charitable institution the district director determines has a need for the articles for medical purposes.

R. E. CHASEN,
Commissioner of Customs.

Approved: October 26, 1978.

RICHARD J. DAVIS,
Assistant Secretary of the Treasury.

[FR Doc. 78-32243 Filed 11-15-78; 8:45am]

[6732-01-M]

FEDERAL MEDIATION AND CONCILIATION SERVICES

[29 CFR Part 1404]

ARBITRATION SERVICES

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Proposed regulations.

SUMMARY: Federal Mediation and Conciliation Service (FMCS) proposes to amend Part 1404 of Title 29, CFR governing FMCS services in arbitration of labor disputes. This notice contains the text of the proposed regulations, a description of the major changes, and an invitation for comment by the public. The proposed changes are designed primarily to clarify the current regulations, to strengthen the prohibitions against the listing of advocates on the Roster of Arbitrators, and to spell out certain concepts of due process in connection with the removal of arbitrators from the Roster. The proposed regulations also establishes in the Arbitrator Review Board, a mechanism for advising the Director of the Service as to the Admission or removal of arbitrators, functions for which the Director has ultimate responsibility.

DATE: Comments are due on or before January 15, 1978.

ADDRESS: Send comments to the Office of the General Counsel, Federal Mediation and Conciliation Service, 2100 K. Street NW., Washington, D.C. 20427.

FOR FURTHER INFORMATION CONTACT:

David Vaughn, Associate General Counsel, 653-5303 and FTS: 653-5305.

SUPPLEMENTARY INFORMATION:

COMMENT

Part 1404 of Title 29, CFR contains the Federal Mediation and Conciliation Service (FMCS) rules concerning the policy of the FMCS Arbitration Services program, standards of eligibility of arbitrators for admission to and retention on the roster, procedures for obtaining arbitration services, guidelines for the conduct of proceedings, and the procedures for administrative action regarding arbitrators on the roster.

In the course of administering the FMCS arbitration program, and after extended discussion with the Arbitration Services Advisory Committee of FMCS, the Service has determined that changes in Part 1404 are needed. Notice of the availability of the preliminary draft on which these proposed regulations are based was published in the FEDERAL REGISTER on November 13, 1978.

Changes which are proposed to be made in the FMCS Regulation on Arbitration are designed primarily to clarify the current regulation, to strengthen the prohibitions against the listing of advocates on the roster of Arbitrators, and to spell out certain concepts of due process in connection with the removal of arbitrators from the roster. The proposed new regulation also establishes, in the Arbitrator Review Board, a mechanism for advising the Director of the Service as to the admission or removal or arbitrators, functions for which the Director has ultimate responsibility.

Descriptions of the more significant changes follow.

SCOPE AND AUTHORITY (1404.1)

This is a new section which is intended to spell out in the Regulation the Statutory authority of the Service to maintain and administer its arbitration process. While the Section is new the authorities which are cited are not.

POLICY (1404.2)

This is a restatement of the policy which was contained in Section 1404.1 of the current Regulation. The section contains nothing new, and is intended merely as a clarification of existing policy.

ADMINISTRATIVE RESPONSIBILITIES (1404.3)

This is a new section. It not only clarifies and defines the responsibilities of the Office of Arbitration Services and the Director but it also establishes and defines the responsibilities of the Abritrator Review Board. The Board is given responsibility for reviewing the qualifications of applicants for listing on the Roster of Arbitrators, for reviewing the status of persons already on the roster, and for recommending appropriate action with respect to such persons to the Director.

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ROSTER AND STATUS OF MEMBERS (1404.4)

While this section is new it does not contain new requirements. Rather, it is an attempt to spell out things that are included in present Subpart B, or that result from inherent limitations on FMCS or other administering agencies by operation of law. The new section also specifies that arbitrators have no vested right to be nominated to any particular panel or number of panels or to be appointed in any case.

LISTING ON THE ROSTER; CRITERIA FOR LISTING AND RETENTION (1404.5)

This is a restatement and simplification of criteria contained in the old Regulation. It also redefines and strengthens the definition of "advocacy", establishes a "grandfather clause" permitting continued use of advocates who were on the Roster before the effective date of the present Regulation, and perfects the ban on admission of advocates or continued service of persons already on the Roster who become advocates after they were admitted.

The section defines reasons for removal from the Roster, including removal for unacceptability to the parties who use FMCS arbitration facilities. Finally, the section incorporates due process requirements designed to prohibit arbitrary or capricious action on the part of the agency.

NOMINATIONS OF ARBITRATORS (1404.12)

This section spells out criteria which may be used by the Office of Arbitration Services in selecting persons to be nominated on panels. It is nothing more than a codification of practices that have been used for such purposes in the past.

CONDUCT OF HEARINGS, AND REPORTS, ETC. (1404.14)

These sections are mechanical, not substantive, and clarify the Service's authority to require arbitrators on the Roster to submit reports, to assist in the preparation of their own biographical sketches, and to do other such things associated with their activities deriving from their listing on the Roster.

Interested persons are invited to submit comments concerning these proposed Regulations and data or arguments on or before January 15, 1978. Comments should be addressed to Office of the General Counsel, Federal Mediation and Conciliation Service, 2100 K Street, N.W., Washington, D.C. 20427. Telephone inquiries may be directed to David Vaughn, Associate General Counsel, 653-5304 and FTS 653-5305.

These amendments are proposed under the authority set forth below in section 1404.1 of the proposed regulations.

It is therefore proposed to revise Part 1404 of 29 CFR to read as follows:

PART 1404—ARBITRATION SERVICES

Subpart A—Arbitration Policy; Admininstration of Roster

Sec.
1404.1 Scope and authority.
1404.2 Policy.
1404.3 Administrative responsibilities.

Subpart B—Roster of Arbitrators; Admission and Retention

1404.4 Roster and status of members.
1404.5 Listing on the roster; Criteria for listing and retention.
1404.6 Freedom of choice.

Subpart C—Procedures for Arbitration Services

1404.10 Procedures for requesting arbitration panels.
1404.11 Arbitrability.
1404.12 Nominations of arbitrators.
1404.13 Selection and appointment of arbitrators.
1404.14 Conduct of hearings.
1404.15 Decision and award.
1404.16 Fees and charges of arbitrators.
1404.17 Reports and biographical sketches.

AUTHORITY: Title II of the Labor Management Relations Act of 1947, Pub. L. 80-101, an amended in 1959 by Pub. L. 86-257, and 1974 by Pub. L. 93-360.

Subpart A—Arbitration Policy; Administration of Roster

§ 1404.1 Scope and Authority.

This chapter is issued by the Federal Mediation and Conciliation Service (FMCS) under Title II of the Labor Management Relations Act of 1947 (Pub. L. 80-101) as amended in 1959 (Pub. L. 86-257) and 1974 (Pub. L. 93-360). The chapter applies to all arbitrators listed on the FMCS Roster of Arbitrators, to all applicants for listing on the Roster, and to all persons or parties seeking to obtain from FMCS either names or panels of names of arbitrators listed on the Roster in connection with disputes which are to be submitted to arbitration or factfinding.

§ 1404.2 Policy.

The labor policy of the United States is designed to promote the settlement of issues between employers and represented employees through the processes of collective bargaining and voluntary arbitration. This policy encourages the use of voluntary arbitration to resolve disputes over the interpretation or application of collective bargaining agreements. Voluntary arbitration and factfinding in disputes and disagreements over establishment or modification of contract terms are important features of constructive labor-management relations, as alternatives to economic strife in the settlement of labor disputes.

§ 1404.3 Administrative responsibilities.

(a) *Director.* The Director of FMCS has ultimate responsibility for all aspects of FMCS arbitration activities and is the final agency authority on all questions concerning the Roster or FMCS arbitration procedures.

(b) *Office of Arbitration Services.* The Office of Arbitration Services (OAS) maintains a Roster of Arbitrators (the "Roster"); administers Subpart C of these Regulations (Procedures for Arbitration Services); assists, promotes, and cooperates in the establishment of programs for training and developing new arbitrators; collects information and statistics concerning the arbitration function, and performs other tasks in connection with the function that may be assigned by the Director.

(c) *Arbitrator Review Board.* The Arbitrator Review Board (the "Board") shall consist of a presiding officer and such members and alternate members as the Director may appoint, and who shall serve at the Director's pleasure and may be removed at any time. The Board shall establish its own procedures for carrying out its duties.

(1) *Duties of the Board.* The Board shall:

(i) Review the qualifications of all applicants for listing on the Roster, interpreting and applying the criteria set forth in subsection 1404.5 of this part;

(ii) Review the status of all persons whose continued eligibility for listing on the Roster has been questioned under subsection 1404.5 of this part;

(iii) Make recommendations to the Director regarding acceptance or rejection of applicants for listing on the Roster, or regarding withdrawal of listing on the Roster for any of the reasons set forth herein.

Subpart B—Roster of Arbitrators; Admission and Retention

§ 1404.4 Roster and status of members.

(a) *The Roster.* The FMCS shall maintain a Roster of labor arbitrators consisting of persons who meet the criteria for listing contained in subsection 1404.5 of this part and whose names have not been removed from the Roster in accordance with subsection 1404.5(d).

(b) *Adherence to Standards and Requirements.* Persons listed on the Roster shall comply with the FMCS rules and regulations pertaining to arbitration and with such guidelines and procedures as may be issued by OAS pursuant to Subpart C hereof. Arbitrators are also expected to conform to the ethical standards and procedures set forth in the Code of Professional

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Responsibility for Arbitrators of Labor Management Disputes, as approved by the Joint Steering Committee of the National Academy of Arbitrators.

(c) *Status of Arbitration.* Persons who are listed on the Roster and are selected or appointed to hear arbitration matters or to serve as factfinders do not become employees of the Federal Government by virtue of their selection or appointment. Following selection or appointment, the arbitrator's relationship is solely with the parties to the dispute, except arbitrators may be subject to certain reporting requirements specified in Subpart C.

(d) *Role of FMCS.* FMCS has no power to:

(1) Compel parties to arbitrate or agree to abritration;

(2) Enforce an agreement to arbitrate;

(3) Compel parties to agree to a particular arbitrator;

(4) Influence, alter or set aside decisions of arbitrators listed on the Roster;

(5) Compel, deny or modify payment of compensation to an arbitrator.

(e) *Nominations and Panels.* On request of the parties to an agreement to arbitrate or engage in fact-finding, or where arbitration or factfinding may be provided for by statute, OAS will provide names or panels of names without charge. Procedures for obtaining these services are contained in subpart C. Neither the submission of a nomination or panel nor the appointment of an arbitrator constitutes a determination by FMCS that an agreement to arbitrate or enter factfinding proceedings exists; nor does such action constitute a ruling that the matter in controversy is arbitrable under any agreement.

(f) *Rights of persons listed on the roster.* No person shall have any right to be listed or to remain listed on the Roster. FMCS retains the authority and responsibility to assure that the needs of the parties using its facilities are served. To accomplish this purpose it may establish procedures for the preparation of panels or the appointment of arbitrators or fact finders which include consideration of such factors as background and experience, availability, acceptability, geographical location and the expressed preferences of the parties.

§ 1404.5 Listing on the roster; criteria for listing and retention.

Persons seeking to be listed on the Roster must complete and submit an application form which may be obtained from the Office of Arbitration Services. Upon receipt of an executed form, OAS will review the application, assure that it is complete, make such inquiries as are necessary, and submit the application to the Arbitrator Review Board. The Board will review the completed applications under the criteria set forth in subsections (a) and (c) of this Section, and will forward to the Director its recommendation on each applicant. The Director makes all final decisions as to whether an applicant may be listed.

(a) General Criteria. Applicants for the Roster will be listed on the Roster upon a determination that they:

(1) Are experienced, competent and acceptable in decisionmaking roles in the resolution of labor relations disputes; or

(2) Have extensive experience in relevant positions in collective bargaining; and

(3) Are capable of conducting an orderly hearing, can analyze testimony and exhibits and can prepare clear and concise findings and awards within reasonable time limits.

(b) *Proof of Qualification.* The qualifications listed in (a) above are preferably demonstrated by the submission of actual arbitration awards prepared by the applicant while serving as an impartial arbitrator chosen by the parties to disputes. Equivalent experience acquired in training, internship or other development programs, or experience such as that acquired as a hearing officer or judge in labor relations controversies may also be considered by the Board.

(c) *Advocacy.* (1) Definition. An advocate is a person who is employed by either labor or management and who represents, as an attorney or consultant, either management or labor in matters of labor relations, including but not limited to the subjects of collective bargaining, unfair labor practices, equal employment opportunity and other areas generally recognized as constituting labor relations. The definition includes attorneys or consultants or others who represent employers or employees in individual cases or controversies involving workmen's compensation, occupational health or safety, minimum wage or other labor standards matters.

(2) Eligibility. Except in the case of persons listed on the Roster before November 17, 1976, no person who is an advocate, as defined above, may be listed and no person who was listed on the Roster at any time who was not an advocate when listed or who did not divulge advocacy at the time of listing may continue to be listed after becoming an advocate or after the fact of advocacy is revealed.

(d) *Duration of Listing, Retention.* Initial listing may be for a period not to exceed three years, and may be renewed thereafter for periods not to exceed two years, provided upon review that the listing is not cancelled by the Director as set forth below. Notice of cancellation may be given to the member whenever the member:

(1) No longer meets the criteria for admission;

(2) Has been repeatedly and flagrantly delinquent in submitting awards;

(3) Has refused to make reasonable and periodic reports to FMCS, as required in Subpart C, concerning activities pertaining to arbitration and required of all persons listed on the Roster:

(4) Has been the subject of complaints by parties who use FMCS facilities and the Director concludes that just cause for cancellation has been shown;

(5) Is determined by the Director to be unacceptable to the parties who use FMCS arbitration facilities; the Director may base a determination of unacceptability on FMCS records showing the number of times the arbitrator's name has been proposed to the parties and the number of times it has been selected.

No listing may be cancelled without sixty days notice of the reasons for the proposed removal and an opportunity to submit a written response, unless the Director determines that the FMCS or the parties will be harmed by continued listing. In such cases an arbitrator's listing may be suspended without notice or delay pending final determination in accordance with these procedures. The Director may, at his discretion, appoint a hearing officer to conduct an inquiry into the facts of any proposed cancellation and to make recommendations to the Director.

§ 1404.6 Freedom of choice.

Nothing contained herein should be construed to limit the rights of parties who use FMCS arbitration facilities jointly to select any arbitrator or arbitration procedure acceptable to them.

Subpart C—Procedures for Arbitration Services

§ 1404.10 Procedures for requesting arbitration panels.

The Office of Arbitration Services has been delegated the responsibility for administering all requests for arbitration services under these regulations.

(a) The Service will refer a panel of arbitrators to the parties upon request. The Service prefers to act upon a joint request which should be addressed to the Federal Mediation and Conciliation Service, Washington, D.C. 20427, Attention: Office of Arbitration Services. In the event that the request is made by only one party, the Service will submit a panel; however, any submission of a panel should not be construed as anything more than compliance with a request and does not necessarily reflect the contractual requirements of the parties.

(b) The parties are urged to use the Request for Arbitration Panel form (R-43) which has been prepared by the Service and is available in quantity at all FMCS regional offices and field stations or upon request to the Office of Arbitration Services, 2100 K Street, Washington, D.C. 20427. The form R-43 is reproduced herein for purposes of identification:

(c) A brief statement of the issues in dispute should accompany the request to enable the Service to submit the names of arbitrators qualified for the issues involved. The request should also include a current copy of the arbitration section of the collective bargaining agreement or stipulation to arbitrate.

(d) If form R-43 is not utilized, the parties may request a panel by letter which must include the names, addresses, and phone numbers of the parties, the location of the contemplated hearing, the issue in dispute, the number of names desired on the panel, the industry involved and any special qualifications of the panel or special requirement desired.

§ 1404.11 Arbitrability.

Where either party claims that a dispute is not subject to arbitration, the Service will not decide the merit, of such claim.

§ 1404.12 Nominations of arbitrators.

(a) When the parties have been unable to agree on an arbitrator, the Service will submit to the parties the names of seven arbitrators unless the applicable collective bargaining agreement provides for a different number, or unless the parties themselves request a different number. Together with the submission of a panel of arbitrators, the Service will furnish a biographical sketch for each member of the panel. This sketch states the background, qualifications, experience, and per diem fee and other fees established by the arbitrator, such as cancellation, postponement rescheduling or administrative fees.

(b) When a panel is submitted, an FMCS control case number is assigned. All future communication between the parties and the Service should refer to the case number.

(c) The Service considers many factors when selecting names for inclusion on a panel, but the agreed-upon wishes of the parties are paramount. Special qualifications of arbitrators experienced in certain issues or industries, or possessing certain backgrounds, may be identified for purposes of submitting panels to accommodate the parties. The Service may also consider such things as general acceptability, geographical location, availability, size of fee, and the need to expose new arbitrators to the selection process in preparing panels. The Service has no obligation to put an individual on any given panel, or on a minimum number of panels in any fixed period, such as a month or a year.

(1) If at any time both parties request that a name or names be omitted from a panel, such name or names will be omitted, unless they are excessive in number or otherwise appear to lack careful consideration.

(2) If at any time both parties request that a name or names be included on a panel, such name or names will be included.

(3) If only one party requests that a name or names be omitted from a panel, or that specific individuals be added to the panel, such request shall not be honored.

(4) If the issue described in the request appears to require special technical experience or qualifications, arbitrators who possess such qualifications will, where possible, be included on the panel submitted to the parties.

§ 1404.13 Selection and appointment of arbitrators.

(a) The parties should notify the OAS of their selection of an arbitrator. The arbitrator, upon notification by the parties, shall notify the OAS of his selection and willingness to serve. Upon notification of the parties' selection of an arbitrator, the Service will make a formal appointment of the arbitrator.

(b) Where the contract is silent in the manner of selecting arbitrators, the parties may wish to consider one of the following two methods most commonly utilized by the parties for selection of an arbitrator from a panel:

(1) Each party alternately strikes a name from the submitted panel until one remains. The striking procedure is customarily completed at a joint meeting between the parties.

(2) Each party advises the Service of its order of preference by numbering each name on the panel and submitting the numbered list in writing to OAS. The name on the panel that has the lowest accumulated numerical number will be appointed.

(c) The Service will make a direct appointment of an arbitrator based upon a joint request or upon a unilateral request when the applicable collective bargaining agreement so authorizes.

(d) The arbitrator, upon appointment notification, is required to communicate with the parties immediately to arrange for preliminary matters, such as date and place of hearing.

§ 1404.14 Conduct of hearings.

(a) All proceedings conducted by the arbitrator shall be in conformity with the contractual obligations of the parties. The arbitrator is also expected to conduct all proceedings in conformity with § 1404.4(b). The conduct of the arbitration proceeding is under the arbitrator's jurisdiction and control and the arbitrator's decision is to be based upon the evidence and testimony presented at the hearing or otherwise incorporated in the record of the proceeding. The arbitrator may, unless prohibited by law, proceed in the absence of any party who, after due notice, fails to be present or to obtain a postponement. An award rendered in an *ex parte* proceeding of this nature must be based upon evidence presented to the arbitrator.

§ 1404.15 Decision and award.

(a) Arbitrators are encouraged to render awards not later than 60 days from the date of the closing of the record as determined by the arbitrator, unless otherwise agreed upon by the parties or specified by law. A failure to render an award within the 60 days required by FMCS may not affect the validity of such an award. However, it does reflect upon the performance of an arbitrator with regard to his continuing relationship with the FMCS roster.

(b) The parties should inform the OAS whenever a decision is unduly delayed. The arbitrator shall notify the OAS if and when the arbitrator (1) Cannot schedule, hear and determine issues promptly, and; (2) Learns a dispute has been settled by the parties prior to the decision.

(c) After an award has been submitted to the parties, the arbitrator is required to file a copy with the OAS. The arbitrator is further required to submit a Fee and Award Statement, form R-19, showing a breakdown of the fee and expense charges so that the Service may be in a position to review conformance with its fee and expense reporting requiements. Filing both award and report within 15 days after rendering an award is required of all arbitrators.

(d) While the service encourages the publication of arbitration awards, it is the policy of the Service not to release arbitration decisions for publication without the consent of both parties. Furthermore, the Service expects the arbitrators it has nominated or appointed not to give publicity to awards they issue if objected to by one of the parties.

§ 1404.16 Fees and charges of arbitrators.

(a) No administrative or filing fee is charged by the Service. The current policy of the Service permits each of its nominees or appointees to charge a

per diem fee and other predetermined fees for services, the amount of which has been certified in advance to the Service. Each arbitrator's maximum per diem fee and other predetermined fees are set forth on a biographical sketch which is sent to the parties when panels are submitted, and are the controlling fees of the arbitrator selected. The arbitrator shall not change any fee to be noted on his or her biographical sketch without giving at least 30 days advance notice to the Service of the intention to do so.

(b) In cases involving unusual amounts of time and expenses relative to pre-hearing and post-hearing administration of a particular case, an administrative charge may be made.

(c) All charges other than those specified by § 1404.16(a) shall be divulged to and agreement obtained by the arbitrator with the parties immediately after appointment.

(d) The Service requests that it be notified of any arbitrator's deviation from the policies expressed herein. However, the Service will not attempt to make any resolution of any fee dispute or provide a forum to the parties for the Service making any determination of a fee dispute.

§ 1404.17 Reports and biographical sketches.

(a) Arbitrators listed on the Roster shall execute and return all documents, forms and reports required by the Service. They shall also keep the Service informed of changes of address, telephone number, availability, and of any business or other connection or relationship which involves labor-management relations, or which creates or gives the appearance of advocacy as defined in § 1404.4(c)(1).

(b) The Service may require each arbitrator listed on the Roster to prepare at the time of initial listing, or to revise, biographical information in accordance with a format to be provided by the Service at the time of initial listing or biennial review. Arbitrators may also request revision of biographical information at other times to reflect changes in fees, additional charges, address, experience and background, or other relevant data. The Service reserves the right to decide and approve the format and content of biographical sketches.

ROBERT P. GAJDYS,
Director of Administration.

[FR Doc 78-32179 Filed 11-15-78; 8:45 am]

[6735-01-M]

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

[29 CFR Part 2701]

GOVERNMENT IN THE SUNSHINE ACT REGULATIONS

Proposed Rulemaking

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission proposes to adopt regulations implementing the Government in the Sunshine Act, 5 U.S.C. 522b. The proposed regulations contemplate that most meetings of the Commission, including those at which the Commission carries out its adjudication responsibilities, will be open to the public.

DATES: Interested persons may comment in writing on the proposed regulations by no later than 5 p.m., December 18, 1978.

ADDRESS: All comments should be addressed to: Robert J. Pleasure, General Counsel, Federal Mine Safety and Health Review Commission, 1703 K Street NW., Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT:

Robert J. Pleasure, General Counsel, 202-653-5610.

JEROME R. WALDIE,
Chairman, Federal Mine Safety and Health Review Commission.

Under the authority of section 113 of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-165 (30 U.S.C. 823), the Commission proposes to amend title 29 of the Code of Federal Regulations by adding a new part 2701 to read as follows:

PART 2701—GOVERNMENT IN THE SUNSHINE ACT REGULATIONS

Sec.
2701.1 Purpose and scope.
2701.2 Open meetings policy: Closure of meetings.
2701.3 Announcement of meetings.
2701.4 Request to open or close meeting.
2701.5 Petition for review.
2701.6 Discussions during open meetings.
2701.7 Expedited closing procedure.

AUTHORITY.—Sec. 113, Federal Mine Safety and Health Act of 1977, Pub. L. 95-165 (30 U.S.C. 823).

§ 2701.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to implement the Government in the Sunshine Act, 5 U.S.C. 552b. The rules in this part are intended to open, to the extent practicable, the meetings of the Commission to public observation while preserving the Commission's ability to fulfill its responsibilities and respect the interests of persons in confidential consideration of sensitive matters.

(b) *Scope.* This part applies to all meetings of the Commission. A "meeting of the Commission" means a joint deliberation in person or by conference telephone call of at least a majority of either the members of the Commission or of a panel of three or more Commissioners that determines or results in the joint conduct or disposition of official Commission business, but does not include (1) deliberations regarding a decision to open or close a meeting, to withhold information about a meeting, and the circumstances of meetings, such as their time, place, and subject matter, and (2) the individual deliberations of Commission members of matters considered upon circulated documents or other notation procedure.

§ 2701.2 Open meetings policy; closure of meetings.

(a) *Policy.* Commission meetings will generally be open to public observation, including meetings concerning the disposition by the Commission of a formal adjudication. See 5 U.S.C. 522b(c)(10).

(b) *Closure.* Meetings may be closed, or certain information about a meeting may not be disclosed under the circumstances contemplated by 5 U.S.C. 522b (c)(1)-(10), and under the procedures specified by 5 U.S.C. 552b (d) and (f). Commission employees may attend closed meetings of the Commission unless the notice of a closed meeting states otherwise.

§ 2701.3 Announcement of meetings.

(a) *Generally.* The Commission shall publicly announce and submit to the FEDERAL REGISTER at least 7 days before a meeting, the time, place, subject matter of a meeting, whether it is to be open or closed, and the name and phone number of the Commission employee who will respond to requests for information about the meeting. The description of the subject matter of a meeting at which the Commission will consider adjudicatory matters, shall include the names and docket numbers of the cases to be considered. The Commission shall also contact, by phone or mail, the parties to the cases to be considered at the meeting, shall post a copy of a notice of the meeting at the Office of Public Information, shall mail notices to persons who have requested inclusion of their names on a meeting mailing list, and may issue press releases.

(b) *Shorter notice.* If a majority of the members of the Commission or a panel of three or more Commissioners determines by a recorded vote that pressing Commission business requires that a meeting be called in less than 7 days, the announcement required by paragraph (a) of this section shall be made at the earliest practicable time.

(c) *Changes in time, place, subject matter, and decision whether to open or close after public announcement of meeting.* If the time or place of a meeting publicly announced is changed, or an item to be considered at such a meeting is to be deleted, the change or deletion shall be publicly announced without a recorded vote at the earliest practicable time in the manner required by paragraph (a) of this section. The subject matter of a meeting publicly announced shall not be expanded and the decision to open or close such a meeting shall not be changed unless a majority of the members of the Commission or if a panel of three or more Commissioners determines by a recorded vote that agency business so requires and that no earlier announcement of the change was possible; the Commission shall publicly announce such a change and the vote of each member upon the change at the earliest practicable time.

§ 2701.4 Request to open or close meeting.

Any person may request that the Commission open a meeting that it has earlier decided to close. Any person whose interest may be directly affected by the opening of a meeting may request that the meeting be closed. Seven copies of a request shall be filed in writing with the Executive Director of the Commission at the earliest practicable time, and no later than one hour before the meeting. A request to close shall state the interest of the person that may be adversely affected. The Commission shall take a recorded vote on the request if one member desires that it do so. The Executive Director shall inform the requesting person of whether a vote was taken, and, if so, its outcome. Requests shall be addressed as follows: Sunshine Act Request, Office of the Executive Director, Federal Mine Safety and Health Review Commission, 1730 K Street NW., Washington, D.C. 20006.

§ 2701.5 Petition for review.

Any person may petition the Commission to review any action he alleges to be in violation of this part or 5 U.S.C. 552b that was taken by any employee or member of the Commission. The petition shall be in writing and shall be filed with the Executive Director within 30 days of the alleged violation. The Commission shall consider and rule upon the petition with expedition.

§ 2701.6 Discussion during open meetings.

Deliberations, discussions, comments, statements, or observations made during the course of an open meeting do not constitute actions of the Commission, nor do they necessarily represent the basis for any Commission action. Comments made by a Commissioner or an employee of the Commission may be advanced for purposes of discussion or argument, or as an aside, and may not reflect the views or ultimate position of that Commissioner or employee. Reasons for decisions stated by a Commissioner at an open meeting may be later changed by that Commissioner, as may a Commissioner's vote. For these reasons, persons who choose to act on the basis of discussions at open meetings do so entirely at their own risk and without any assurance that the Commission's final decisions will be reflective of the discussions or initial vote.

§ 2701.7 Expedited closing procedure.

(a) *Policy.* Although it is the general policy of the Commission to open to the public meetings that may be subject to closure, including meetings concerning adjudication of cases, the Commission may find it necessary in the public interest to close meetings. The purpose of this section is to provide an expedited closing procedure under 5 U.S.C. 552b(d)(4). The Commission has determined that, inasmuch as the Commission's responsibilities are almost entirely adjudicatory, a majority of its meetings may properly be closed under 5 U.S.C. 5522(c)(10). Although the Commission has to date held few meetings, those that have been held concerned the adjudication of cases and could properly have been closed.

(b) *Procedure.* A meeting may be closed if a majority of either the members of the Commission or of a panel of three or more Commissioners votes by recorded vote at the beginning of such a meeting to close it to the public. The record of the vote shall reflect the vote of each voting member and shall be made available to the public. A public announcement of the time, place, and subject matter of the meeting shall be made at the earliest practicable time, except to the extent that such information is exempt from disclosure under 5 U.S.C. 552b(c). Section 2701.3 does not apply to meetings closed under this section.

[FR Doc. 78-32250 Filed 11-15-78; 8:45 am]

[4910-14-M]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Part 183]

[CGD 78-034]

BOATS AND ASSOCIATED EQUIPMENT

Display of Capacity Information

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a proposed rule appearing in the September 21, 1978 issue of the FEDERAL REGISTER by changing the reference to a table in two places and making minor clerical changes.

FOR FURTHER INFORMATION CONTACT:

Mr. Lars E. Granholm, Office of Boating Safety (G-BBT), U.S. Coast Guard, room 4314, Department of Transportation, Trans Point Building, 2100 Second Street SW., Washington, D.C. 20590, 202-426-4027.

SUPPLEMENTARY INFORMATION: In FR Doc. 78-26561 appearing at page 43006 in the FEDERAL REGISTER of September 21, 1978, 33 CFR 183.41(a)(1) and 183.41(a)(2)(ii) on page 43009 are corrected to read as follows:

§ 183.41 Persons capacity: Outboard boats.

(a) * * *

(1) The maximum weight capacity determined under § 183.35 for the boat minus dry motor and control weight, dry battery weight, and full portable fuel tank weight from Table 4, Subpart H of this part, or

(2) * * *

(ii) Add, in normal operating positions, the dry motor and control weight, dry battery weight, and full portable fuel tank weight, if any, shown in Table 4, Subpart H of this part, for the maximum horsepower capacity marked on the boat. Permanently installed fuel tanks shall be full of fuel.

* * * * *

Dated: November 6, 1978.

R. H. SCARBOROUGH,
Vice Admiral, U.S. Coast Guard, Acting Commandant.

[FR Doc. 78-31999 Filed 11-15-78; 8:45 am]

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[4910-14-M]

[33 CFR Part 117]

[CGD 78-142]

PERQUIMANS RIVER, N.C.

Proposed Drawbridge Operation Regulations

AGENCY: Coast Guard, DOT.

ACTION: Proposed Rule.

SUMMARY: At the request of the North Carolina Department of Transportation the Coast Guard is considering changing the regulations governing the operation of the U.S. highway 17 drawbridge across the Perquimans River, mile 12.0, Herdford, N.C., to allow periods when the draw need not open for the passage of vessels. This proposal is being made because of limited openings during the periods proposed. This action will relieve the bridge owner of the burden of having a person constantly available to open the draw.

DATE: Comments must be received on or before December 18, 1978.

ADDRESS: Comments should be submitted to and are available for examination at the office of the Commander (oan), Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, Va. 23706.

FOR FURTHER INFORMATION CONTACT:

Frank L. Teuton, Jr., Chief, Drawbridge Regulations Branch (G-WBR/73), Room 7300, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590, 202-426-0942.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their name and address, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal.

The Commander, Fifth Coast Guard District, will forward any comments received with his recommendations to the Chief, Office of Marine Environment and Systems, U.S. Coast Guard Headquarters, Washington, D.C., who will evaluate all communications received and recommend a course of final action to the Commandant on this proposal. The proposed regulations may be changed in the light of comments received.

DRAFTING INFORMATION: The principal persons involved in drafting this proposal are: Frank L. Teuton, Jr., Project Manager, Office of Marine Environment and Systems, and Mary Ann McCabe, Project Attorney, Office of the Chief Counsel.

DISCUSSION OF THE PROPOSED REGULATIONS

These regulations are being considered because of limited openings during the period concerned. To illustrate this point, from April 1 through September 30 from midnight to 8 a.m. there were six openings in 1973, five openings in 1974, five openings in 1975, two openings in 1976 and no openings in 1977. From October 1 through March 31 from 10 p.m. to 10 a.m., there were 2 openings in 1973, no openings in 1974, 11 openings in 1975, 2 openings in 1976 and 2 openings in 1977. The Coast Guard feels that this proposed change should be presented to the public for consideration.

In consideration of the foregoing, it is proposed that Part 117 of Title 33 of the Code of Federal Regulations be amended by adding § 117.245(g)(1-a) as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.245 Navigable waters discharging into the Atlantic Ocean south of and including Chesapeake Bay and into the Gulf of Mexico, except the Mississippi River and its tributaries and outlets; bridges where constant attendance of draw tenders is not required.

* * * * *

(g) * * *

(1-a) Perquimans River, mile 12.0, U.S. 17 drawbridge at Herdford, N.C. The draw shall open on signal, except that from midnight to 8 a.m. from April 1 through September 30, and from 10 p.m. to 10 a.m. from October 1 through March 31 the draw need not open for the passage of vessels.

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; (33 U.S.C. 499, 49 U.S.C. 1655(g)(2)); 49 CFR 1.46(c)(5).)

NOTE.—The Coast Guard has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended, and OMB Circular A-107.

Dated: November 9, 1978.

J. B. HAYES,
Admiral, U.S. Coast Guard
Commandant.

[FR Doc. 78-32284 Filed 11-15-78; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 1007-4]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS—MASSACHUSETTS

Proposed Rulemaking: Approval of Good Engineering Practice Stack Height at Kimberly-Clark's Columbia Mill

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of a revision to the Masachusetts State Implementation Plan (SIP) which would allow Kimberly-Clark's Columbia Mill in Lee, Mass. to burn higher sulfur content fuel than presently required by the federally-approved SIP, upon completion of construction of a taller stack. The proposed stack height increase is an interim control strategy which is consistent with section 123 of the Clean Air Act, as amended, and which will eliminate potential air quality standards violations.

DATE: Comments must be received on or before December 18, 1978.

ADDRESSES: Copies of the Massachusetts submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Region I, Room 2113, JFK Federal Building, Boston, Mass. 02203; Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460; and Department of Environmental Quality Engineering, Division of Air and Hazardous Materials, 600 Washington Street, Boston, Mass. 02111.

Comments should be submitted to the Regional Administrator, Region I, Environmental Protection Agency, Room 2203, JFK Federal Building, Boston, Mass. 02203.

FOR FURTHER INFORMATION CONTACT:

David Stonefield, Air Branch, EPA Region I, Room 2113, JFK Federal Building, Boston, Mass. 02203, 617-223-5609.

SUPPLEMENTARY INFORMATION: On August 11, 1978 the Commissioner of the Massachusetts Department of Environmental Quality Engineering (DEQE) submitted a State Implementation Plan (SIP) revision to allow Kimberly-Clark's Columbia Mill in Lee to burn residual fuel oil with a sulfur content not to exceed 1.21 pounds per million Btu heat release potential (approximately equivalent to 2.2 percent sulfur content by weight). The mill is presently limited to use of residual fuel oil with a sulfur content not to exceed 0.55 pounds per million Btu heat release potential (approximately equivalent to 1.0 percent sulphur content by weight).

This source was previously evaluated as part of a SIP revision submitted by the DEQE on April 14, 1977, which proposed a relaxation of the sulfur in fuel limitations to 2.2 percent for all sources in the Berkshire Air Pollution Control District (APCD). The SIP revision, which would bring the federally approved SIP and DEQE regulations into conformance with Chapter 353 of the Acts of 1974 (passed by the State Legislature on June 11, 1974), was approved by EPA in the FEDERAL REGISTER published on March 24, 1978 (43 FR 12324) with the exception of 2 sources. These sources, Kimberly-Clark's Columbia Mill and Crane Paper Company's Pioneer Mill, were predicted by computer dispersion modeling to cause violations of the National Amvient Air Quality Standards (NAAQS) for sulfur dioxide (SO_2) and thus had to be limited to the 1.0 percent sulfur content requirement of the original SIP.

The revision now under consideration proposes a change in stack configuration whereby the combustion products emitted from 3 existing stacks at Kimberly-Clark's Columbia Mill with heights of 56, 59.5, and 72.2 feet will be emitted through one new 122 foot stack. Additional modeling submitted by the DEQE shows that this modification will allow the Columbia Mill to burn 2.2 percent sulfur content fuel oil without jeopardizing the NAAQS for SO_2.

A stack height of 122 feet, which is necessary to avoid high ambient concentrations which could have occurred due to the adverse aerodynamic effects of nearby structures on plume disposal from the shorter stacks, also eliminates the previously modeled NAAQS violations. The proposed stack height increase is consistent with section 123 of the Clean Air Act, as amended, and is acceptable as an interim control strategy pending promulgation of EPA regulations under section 123 for the determination of good engineering practice stack height. EPA will reevaluate the SIP revision for consistency with the regulations when they are promulgated.

This SIP revision is not subject to the new requirements for Prevention of Significant Deterioration (PSD) in 40 CFR 52.21. First, the source does not need a PSD permit because (a) construction and use of the new stack does not increase emmissions, and (b) the proposed fuel change, while increasing emissions, is excluded from the definition of a "major modification" which requires a permit (40 CFR 52.21(b)(2)(ii)(d)); and second, the SIP revision, resulting in the increased emissions, does not consume increment because a SIP revision for sources in the Berkshire APCD, proposing an increase in allowable emissions from 1.0 percent sulfur oil to 2.2 percent sulfur oil, was pending in the Regional Office on August 7, 1977 (40 CFR 52.21(b)(11)(i)).

The Regional Adminsitrator proposes to approve the revision to the Massachusetts Implementation Plan and to amend 40 CFR Part 52 in the manner set forth below.

The Administrator's decision to approve or disapprove the plan revison will be based on whether it meets the requirements of sections 110(a)(2)(A)-(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51. This revison is being proposed pursuant to sections 110(a) and 301 of the Clean Air Act, as amended (42 U.S.C. 7410 and 7601).

Dated: November 1, 1978.

WILLIAM R. ADAMS, Jr.,
Regional Administrator, Region I.

Subpart W—Massachusetts

§ 52.1120 [Amended]

1. In § 52.1120 paragraph (c)(13) is amended by inserting between the date "April 14, 1977" and the word "by" the following phrase: "and additional technical information pertinent to the Schweitzer Division, Kimberly-Clark Corporation, Columbia Mill, Lee submitted on August 11, 1978".

§ 52.1126 [Amended]

2. In § 52.1126 paragraph (g) is amended by deleting "Schweitzer Division, Kimberly-Clark Corporation, Columbia Mill, Lee" from the list of disapproved sources.

[FR Doc. 78-32170 Filed 11-15-78; 8:45 am]

[6560-01-M]

[FRL 978-4; Docket No. A-SS-76-389]

[40 CFR Part 65]

STATE AND FEDERAL ADMINISTRATIVE ORDERS PERMITTING A DELAY IN COMPLIANCE WITH STATE IMPLEMENTATION PLAN REQUIREMENTS

Proposed Delayed Compliance Order for Levesque Lumber Co., Masardis, Maine

AGENCY: Environmental Protection Agency.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: The purpose of this notice is to withdraw a prior FEDERAL REGISTER notice proposing a Delaying Compliance Order for the Levesque Lumber Co. at Masardis, Maine. This action is being taken because the Levesque Lumber Company has altered the compliance strategy outlined in the proposed Delayed Compliance Order. The company now will be disposing of its wood waste by burning it in a boiler system, rather than by landfilling it. This strategy involves the purchase of new equipment and will take an additional 3 months to implement beyond the originally proposed final compliance date of September 1, 1978. Since this strategy represents an even more environmentally sound approach to wood waste disposal than landfilling, Region I of EPA supports the change in plans. However, because of the many steps involved in issuance of a Delayed Compliance Order, Region I does not have sufficient time to have such an order issued in final form to the Levesque Lumber Co. by the new compliance date of December 1, 1978. Therefore this office has decided to alter its enforcement strategy against this source. Region I will soon be issuing an immediate compliance order, incorporating the December 1, 1978 deadline, to the company, pursuant to section 113(a)(1) of the Clean Air Act. This type of order is not required to be published in the FEDERAL REGISTER.

DATE: This withdrawal is immediately effective.

FOR FURTHER INFORMATION CONTACT:

Sam Silverman, attorney, 617-223-5600 or Robert O'Meara, engineer 617-223-5610, both at EPA, Region I, JFK Federal Building, Room 2103, Boston, Mass. 02203.

SUPPLEMENTARY INFORMATION: A FEDERAL REGISTER notice published at 43 FR 26460 (June 20, 1978) solicited public comments and offered the opportunity to request a public hearing on a proposed Delayed Compliance Order to be issued by EPA to the Levesque Lumber Co. at Masardis, Maine.

In consideration of the foregoing explanation of the change in the source's compliance strategy and in EPA's enforcement response, the proposal published in the FEDERAL REGISTER (43 FR 26460) on June 20, 1978 entitled "Proposed Delayed Compliance Order for the Levesque Lumber Co., Masardis, Maine," is hereby withdrawn.

Dated September 19, 1978.

WILLIAM R. ADAMS, Jr.,
Regional Administrator,
Region I.

[FR Doc. 78-32169 Filed 11-15-78; 8:45 am]

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[6315-01-M]

COMMUNITY SERVICES ADMINISTRATION

[45 CFR Part 1069]

GRANTEE PERSONNEL MANAGEMENT

Executive Order 12044 on Improving Government Regulations

AGENCY: Community Services Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: In response to Executive Order 12044, Improving Government Regulations, the Community Services Administration (CSA) is planning to revise its entire series of policy statements on grantee personnel management. The CSA Instructions proposed for revision include 6900-01, 6900-02, 6900-03, 6900-04, Personnel Policies and Procedures; 6901-1, Employment of Persons with Criminal Records; 6901-2, Assistance to Vietnam-Era Veterans; 6903-1, Policies and Procedures on $15,000 Per Year Salary limitation; 6903-3, Payment for Overtime and Authorization for Compensatory Time; 6906-1, Social Security Coverage for Employees under CAP Grants; 6907-01, Policy Guidance on Lobbying Activities; 6907-1a, Restrictions on Political Activities; 6907-2, Limitation with Respect to Unlawful Demonstrations, Rioting and Civil Disturbances; 6907-3, Employee Participation in Direct Action; 6907-4, Outside Employment of Grantee and Delegate Agency Personnel; 6909-01, Conflicts of Interest in Community Action Program Contracts; 6909-1, Prohibition Against Acceptance of Gifts and Gratuities.

We are interested in receiving comments on all areas of grantee personnel management, but in particular on the following topics. Are there gaps or omissions in the present rules which cause difficulties for CSA grantees? Are the present rules too restrictive? Are these personnel policies inconsistent with any state or local laws? Do these policies present specific difficulties for public CAAs? If you have had any specific problems in interpreting or in implementing these policies, please describe them to us.

DATE: Comments received before January 15, 1979 will be most useful in drafting the proposed rule.

ADDRESS: Send comments to: Timothy P. McTighe, Community Services Administration, Office of Community Action, Policy Development and Review Division, 1200 19th Street NW., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT:

Timothy P. McTighe, telephone 202-254-5047.

GRACIELA (GRACE) OLIVAREZ,
Director.

[FR Doc. 78-32074 Filed 11-15-78; 8:45 am]

[4910-14-M]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[46 CFR Parts 32 and 151]

[CGD 75-039]

CERTAIN TANK BARGES

Visual Identification

AGENCY: Coast Guard, DOT.

ACTION: Withdrawal of proposed rule.

SUMMARY: In Docket Number CGD 75-039 (41 FR 5291), the Coast Guard proposed to require barges carrying hazardous or potentially pollutant bulk liquid cargoes to have the name of the barge painted on a horizontal surface so as to be visible from an aircraft. Recent casualty reports indicate that the numerous mass breakaways which motivated this rulemaking are no longer occurring. The Coast Guard, therefore, is withdrawing the proposed rule.

FOR FURTHER INFORMATION CONTACT:

Mr. Fred Schwer, Project Manager, Office of Marine Environment and Systems (G-WLE-4/73), room 7315, Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590. Telephone 202-426-4958.

DISCUSSION

The proposal was in response to a series of mass barge breakaways on the Mississippi River and its tributaries. It was planned to use aircraft to locate and identify barges so that their owners or operators could be called to assist the Coast Guard in recovery operations.

Sixteen letters of comment were received in response to the notice, all but two of which were opposed to the proposal. The principal objection was that the issuance of barge fleeting regulations, which set standards for mooring facilities, solved many of the breakaway problems. Other objections included cost and maintenance problems.

In response to the comments, the Coast Guard has been evaluating the barge fleeting regulations since their issuance on January 2, 1976. It now appears that the regulations are working, and that the incidence of mass breakaways has been greatly reduced.

Therefore, the Coast Guard has determined that rulemaking action concerning barge identification is not appropriate at this time. The withdrawal of this proposal, however, does not preclude the issuance of a similar proposal, in the future.

In consideration of the foregoing, the proposal published in the FEDERAL REGISTER (41 FR 5291) on February 5, 1976, entitled "Visual Identification of Certain Tank Barges" (CGD 75-039) is hereby withdrawn.

Dated: November 6, 1978.

R. H. SCARBOROUGH,
Vice Admiral, U.S. Coast Guard,
Acting Commandant.

[FR Doc. 78-32000 Filed 11-15-78; 8:45 am]

[6712-01-M]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 1]

[Gen. Docket No. 78-316]

FEE REFUNDS AND FUTURE FCC FEES

Order Extending Time for Filing Comments

AGENCY: Federal Communications Commission.

ACTION: Extension of time for filing comments.

SUMMARY: Time for filing comments related to FCC fee refund program Inquiry in General Docket No. 78-316 extended to December 1, 1978.

DATES: Comments must be filed on or before December 1, 1978.

ADDRESSES: Federal Communications Commission Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

C. Grey Pash, Jr., Office of General Counsel, 632-7112.

SUPPLEMENTARY INFORMATION:

ORDER

Adopted: November 6, 1978.

Released: November 7, 1978.

By the General Counsel pursuant to delegated authority.

In the matter of fee refunds and future FCC fees, Gen Docket No. 78-316.

1. In a notice of inquiry in this proceeding which was released on October 6, 1978 (FCC 78-695, 43 FR 46658), the time for filing comments related to part B of the notice, i.e., to the fee refund program, was set as November 8, 1978. Two parties have asked for an extension of time in which to file comments.[1]

[1] Request for extension of time until December 11, 1978, filed jointly by the law firms of Fletcher, Heald & Hildreth and

Footnotes continued on next page

2. After reviewing the requests, I believe that an additional period of time for the filing of comments on part B of the notice is warranted. The data on the cost calculation process are substantial and detailed, and the proposed procedures for operating the fee refund program are complex and raise a number of difficult questions. Because the Commission believes that imput from the potential participants in this program is very important, an additional period for preparing comments will bendfit both the Commisssion and the parties.

3. Accordingly, in consideration of the factors noted above, the request for extension of time is granted in part, and it is ordered that the time for filing comments related to part B of the notice of inquiry in this proceeding is extended by 23 days to permit filing of comments by December 1, 1978. This action is taken pursuant to the authority delegated to me in § 0.251(b) of the Commission's rules, 47 C.F.R. 0.251(b).

FEDERAL COMMUICATIONS COMMISSION,
ROBERT R. BRUCE,
General Counsel.

[FR Doc. 78-32202 Filed 11-15-78; 8:45 am]

[6712-01-M]

[47 CFR Part 73]

[BC Docket No. 78-364; RM-2936; RM-2968; RM-2988]

FM BROADCAST STATIONS IN GRAND RAPIDS AND HIBBING, MINN.

Proposed Table of Assignments and Order To Show Cause

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking and order to show cause.

SUMMARY: FCC proposes four alternative plans for making FM assignments to two Minnesota communities. The first proposal would assign channels 228A and 269A to Grand Rapids and Hibbing Minn., respectively. The second proposal would assign channels 252A and 269A to Grand Rapids and Hibbing, respectively. The third proposal would assign channels 245 and 282 to Grand Rapids and channels 230 and 271 to Hibbing; while the last proposal would assign channel 252A to Grand Rapids and channels 230 and 281 to Hibbing. All four proposals could bring a second FM station to either or both Grand Rapids and Hibbing, Minn. These proposals result from separate petitions filed by Itasca Broadcasting Co., Jerry J. Collins and Grand Rapids Radio, Inc.

Footnotes continued from last page

Dow, Lohnes & Albertson on November 3, 1978.

DATES: Comments must be received on or before January 2, 1979, and reply comments must be received on or before January 22, 1979.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Freda Lippert Thyden, Broadcast Bureau, 202-632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: November 3, 1978.

Released: November 9, 1978.

In the matter of amendment of § 73.202(b), table of assignments, FM Broadcast stations (Grand Rapids and Hibbing, Minn.), BC Docket No. 78-364, RM-2936, RM-2968, RM-2988.

The Commission, by the Chief, Broadcast Bureau, has before it for consideration three petitions which propose amending § 73.202(b) of the rules, the FM table of assignments. The first petition (RM-2936), filed by Itasca Broadcasting Co. ("Itasca"), proposes the assignment of a second FM channel,[1] 228A, 252A, or 282, to Grand Rapids, Minn. The second petition (RM-2968), submitted by Jerry J. Collins ("Collins"), proposes the assignment of a second FM channel, 230, to Hibbing, Minn.; and the last petition (RM-2988), filed by Grand Rapids Radio, Inc., requests the substitution of channel 245 for channel 244A in Grand Rapids, Minn. Only one opposition has been submitted in this proceeding, that being Collins' opposition to the proposal to assign channel 228A to Grand Rapids.

2. Since the three proposals made herein conflict with one another, they are being considered jointly. The size and location of the communities with which we are concerned are as follows: Grand Rapids (pop. 7,247),[2] seat of Itasca County (pop. 35,530) is located 256 kilometers (160 miles) north of Minneapolis, while Hibbing (pop. 16,104), located in St. Louis County (pop. 220,693) is 48 kilometers (30 miles) northeast of Grand Rapids and 96 kilometers (60 miles) northwest of Duluth, Minn.

3. Itasca argues that in spite of Grand Rapids' two aural services (station KXGR (channel 244A) licensed to Grand Rapids Radio, Inc., and fulltime AM Station KOZY), Grand Rapids warrants an additional FM assignment. Itasca states that the county has no other commercial broadcast stations than those located at Grand Rapids and that the proposed FM station, regardless of class, will provide an additional local service to a large rural area. Further, petitioner notes that Grand Rapids has a newspaper that is published only twice a week. In describing the area, Itasca indicates that tourism is an important industry in the county during the winter as well as the summer. Recreational facilities include fishing, swimming beaches, tennis courts, golf courses, and a hockey rink. Also noted by petitioner is that Grand Rapids is the trading center of a large area which has industries such as paper making and iron mining. According to Itasca, the Minnesota Department of Employment Services has reported that the labor force or total employment in the county has increased approximately 30 percent during the past 4 years.

4. As to the other proposal concerning Grand Rapids, Grand Rapids Radio, Inc. ("GRR"), licensee of the class A station (KXGR) located in that city, requests the substitution of channel 245 for channel 244A in order to provide service to the outlying areas. GRR submits that its proposed facility will provide first FM service to an area of 3,046 square miles with a population of 26,992 persons and first nighttime aural service to an area of 3,775 square miles with a population of 30,154 persons. Petitioner further submits various letters from residents of the area surrounding Grand Rapids indicating, among other things, that school authorities need wide area broadcast coverage to provide information on school events, news and emergency closings. Also, the Minnesota Power & Light Co. noted in its correspondence that some of its service area that would be covered by a class C station does not presently receive normal nighttime or daytime coverage. Nighttime coverage in particular was thought to be most valuable in terms of emergency situations. Petitioner also provided demographic data on the city and its county as did Itasca Broadcasting Co., the petitioner seeking a second FM channel at Grand Rapids.

5. In regard to the proposal to assign FM channel 230 to Hibbing, Minn., although that city presently has three aural services (station WMFG-FM (channel 292A), fulltime AM Station WMFG and daytime-only AM Station WKKQ licensed to petitioner) the proponent argues that a high powered class C FM facility is needed to provide service to the community and the area north of it. Petitioner, Collins, notes that a class C FM station located at Hibbing can be expected, employing *Roanoke Rapids-Anamosa* criteria,[3] to

[1] In addition, class C channel 219 has been reserved for noncommercial educational use at Grand Rapids. Station KAXE operates on that frequency.

[2] All population figures are taken from the 1970 U.S. Census.

[3] To fully explore this aspect of the proceeding, we need showings from the parties of the areas and populations which would receive first and second FM (*Roanoke*

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bring significant first FM service to an area of 2,439 square miles with a population of 35,702 persons and a second FM service to a "grey" area of 958 square miles with a population of 55,491 persons. Petitioner also submits that Hibbing presently has very limited nighttime facilities since its only FM station is a class A and neither its power nor antenna height approach the maximum allowed even for a class A channel and its only fulltime AM station is a class IV with the usual limited coverage provided by 250 watts power at night.

6. In describing the Hibbing area, Collins asserts that since 1970, there has been a substantial growth in population (from 16,104 in 1970 to 18,560 in 1976) as well as a substantial growth in retail and wholesale sales. Petitioner notes that the U.S. Business Census reports a growth in retail trade from $31,174,000 in 1967, to $47,932,000 in 1972. Similarly, wholesale trade increased from $43,159,000 in 1969 to $52,061,000 in 1972. Hibbing is also described as the largest Minnesota Iron Range community, the center of the supply of taconite, a material refined into high-grade iron-bearing taconite pellets used for industry's blast furnaces.

7. We believe for the reasons indicated by petitioners that each proposal merits consideration in a rulemaking proceeding. However, spacing requirements prohibit the granting of one of the three assignments as originally requested.[4] In fact, Collins in proposing the allocation of channel 230 to Hibbing notes that such an assignment would be precluded if channel 228A were assigned to Grand Rapids as initially proposed by Itasca since the distance between the two cities is only 48 kilometers (30 miles), not the required separation of 104 kilometers (65 miles). In view of this situation, Collins proposes that channel 288A be used in lieu of channel 228A at Grand Rapids. However, Itasca states in a supplemental pleading that channel 252A would be preferable to channel 288A. Although the requests for channel 230 at Hibbing and channel 245 at Grand Rapids can be resolved independently of one another,[5] the resolution of these requests will dictate which channel, if any, is assigned as a second FM allocation to Grand Rapids.

8. In considering the proposals made by petitioners, observance must be given not only to spacing requirements but also to intermixture strictures. The Commission's policy in this regard is to avoid intermixing classes of FM channels in the same community.[6] Although the Commission has departed from the intermixture policy in cases where a party finding no other available channel seeks a class A channel even though the others already in the community are class B or C, that situation does not occur in this proceeding. Rather, there are an adequate number of class A and class C channels available to Grand Rapids and Hibbing so that intermixture of FM frequencies in either community is not necessary. Grand Rapids presently has an operating class A station (KXGR on channel 244A). Other class A channels available for assignment to that city are channels 228A, 252A, and 288A. However, if the Commission finds that GRR's request for a class C station on channel 245 in lieu of its class A facility on channel 244A is warranted, another class C frequency (282) can be allocated to Grand Rapids. Also, if the Commission concludes that Hibbing, which also presently has a class A facility (WMFG on channel 292A) warrants a second FM assignment, either another class A frequency (269A) or a class C channel (230, 271, or 281) can be allocated to it. If, as requested, class C channel 230 is assigned to Hibbing, then the presently operating Hibbing class A station should be given an opportunity to apply for a class C facility (channel 271 or 281).[7]

9. Each of the channel assignments proposed by petitioners will preclude the use of the particular frequency to a number of communities of over 1,000 populations as follows: channel 230 at Hibbing will cause preclusion to 12 communities; channel 245 at Grand Rapids will cause preclusion to 18 communities; channel 228A at Grand Rapids will cause preclusion to 13 communities; channel 252A at Grand Rapids will cause preclusion to 3 communities; and channel 282 at Grand Rapids will cause preclusion to 19 communities.[8] In its pleadings requesting the assignment of channel 228A or channel 282 to Grand Rapids, Itasca states that channels are available as follows for several of the precluded communities: channel 240A for Aurora, channel 252A for Bagley, channel 237A for Baudette, channel 228A for Cass Lake and channel 296A for Warroad. In this connection, Itasca and the other petitioners should submit information concerning the availability of channels to the other communities (tabulated in footnote 8, supra) precluded by their respective requests.

[7] Of the two channels, a channel 281 assignment is preferable as it would permit the transmitter to be located in a larger area 3.2 kilometers (2 miles) north of Hibbing; whereas, a channel 271 allocation would require the transmitter site to be located in a more limited area 16 kilometers (10 miles) north of the city.

[8] Tabulated below are those precluded communities without current FM channel assignments along with their populations and the proposals which would cause them to sustain preclusions.

Community	Population	230 to Hibbing	245 to Grand Rapids	228A to Grand Rapids	252A to Grand Rapids	282 to Grand Rapids
Minnesota:						
Bagley	1,314	X				X
Coleraine	1,086	X		X	X	X
Aurora	2,431	X	X	X		
Silver Bay	3,504	X	X			
Chisholm	5,913	X		X		X
Keewatin	1,382	X		X		X
Gilbert	2,187	X	X	X		X
Two Harbors	4,437	X	X			
Cass Lake	1,317			X	X	X
*Walker	1,073			X		X
Crosby	2,241			X		X
Buhl	1,303		X			X
Baudette	1,547					X
Nashwauk	1,341					X
*Roseau	2,552					X
Warroad	1,086					X
Mora	2,582		X			
Proctor	3,123		X			
Wisconsin:						
Washburn	1,957		X			
Mellen	1,168		X			
Hurley	2,418		X			
Michigan:						
Bessemer	2,805		X			

*Have AM stations.

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Rapids) and first and second nighttime aural (*Anamosa*) service as a consequence of the assignment of a particular channel to a particular city. See *Roanoke Rapids*, 9 FCC 2d 672 (1967); and *Anamosa and Iowa City, Iowa*, 46 FCC 2d 520 (1974).

[4] Itasca initially proposed the assignment of channel 228A to Grand Rapids. After noting that Collins' request for the allocation of channel 230 at Hibbing would preclude the channel 228A allocation, Itasca proposed that channel 252A be assigned to Grand Rapids. Later when Grand Rapids Radio, Inc., requested the substitution of channel 245 for channel 244A, Itasca proposed that class C channel 282 be assigned to Grand Rapids as a second FM allocation.

[5] In compliance with *Ashbacker Radio Corp. v. F.C.C.*, 326 U.S. 327 (1945), if interest is expressed in a channel 245 assignment at Grand Rapids by someone other than GRR, we cannot grant the proposed modification of its license from operation on a class A to class C (channel 245) channel. Rather, if the public interest warrants, that channel will be allocated to Grand Rapids subject to application by all interested parties.

[6] In addition to the matter of assigning a particular class of station to a community of a given size, this policy has as one of its underlying purposes a system of assignments which makes it possible for all local stations to have the opportunity to obtain comparable facilities for service and competition.

10. Petitioners should also submit *Roanoke Rapids-Anamosa* showings (see footnote 3. *supra*) for their respective proposals. Although Collins and GRR provided some information on first or second service areas,their showings did not meet the Commission's requirements. For instance, Collins fails to provide data on any first or second AM nighttime service (the *Anamosa* standard) which will result from the proposal. Further, while providing figures for first and second FM service (*Roanoke Rapids*), Collins fails to indicate whether these are based on the assumption of existing or "reasonble" facilities. Collins should provide this information since, when "reasonable" facilities in a community are greater than existing ones, proponents are expected to use the former in preparing their *Roanoke Rapids-Anamosa* showing. In its study, GRR incorrectly used existing rather than "reasonable" facilities in making its calculations where the latter are greater and therefore should have been employed. Although providing figures for first FM and first AM nighttime service, GRR's showing is further deficient in that no data on second service is furnished.

11. In commenting on the notice, the parties should indicate why Grand Rapids and/or Hibbing warrant class C allocations rather than class A assignments as is presently the case. Since their respective sizes suggest either class of channel might be appropriate, the choice between them will need to be made based on the importance of the additional coverage a class C station would have particularly a first or second service. The parties should also address themselves to the desirability of particular channel allocations from the viewpoint of transmitter site locations. In addition, Hibbing Broadcasting Co., licensee of the class A station, WMFG, at Hibbing, should indicate whether it desires a class C facility and if not, why. We are directing an appropriate order to show cause to Hibbing Broadcasting in the event that either plan III or IV is adopted. In so doing we are aware of the not insubstantial expense it would have to bear in the power increase aspect of converting from a class A to a class C operation. We therefore stress that if the licensee opposes such modification, its views will receive careful consideration.

12. Since we believe that it is appropriate to explore the assignment possibilities described above in a rulemaking proceeding, we propose to consider the following plans as revisions in the FM table of assignments (§ 73.202(b) of the Commission's rules) with respect to the cities listed below:

PLAN I

City	Channel No. Present	Channel No. Proposed
Grand Rapids, Minn	244A	228A, 244A
Hibbing, Minn	292A	269A, 292A

PLAN II

Grand Rapids, Minn	244A	244A, 252A
Hibbing, Minn	292A	269A, 292A

PLAN III

Grand Rapids, Minn	244A	245, 282
Hibbing, Minn	292A	230, 271

PLAN IV

Grand Rapids, Minn	244A	244A, 252A
Hibbing, Minn	292A	230, 281

13. *It is ordered*, That, pursuant to section 316 of the Communications Act of 1934, as amended, Hibbing Broadcasting Co., licensee of radio station WMFG-FM, Hibbing, Minn., shall show cause why its license for station WMFG-FM (channel 292A) should not be modified to specify operation on channel 271 or channel 281 in lieu of channel 292A at Hibbing, Minn.

14. Pursuant to § 1.87 of the Commission's rules and regulations, the licensee of station WMFG-FM may, not later than January 2, 1979, request that a hearing be held on the proposed modification. Pursuant to § 1.87(f) if the right to request a hearing is waived, Hibbing Broadcasting Co. may, not later than January 2, 1979, file a written statement showing with particularity why its license should not be modified or not so modified as proposed in the order to show cause. In this case, the Commission may call on Hibbing Broadcasting Co. to furnish additional information, designate the matter for hearing, or issue without further proceeding an order modifying the license as provided in the order to show cause. If the right to request a hearing is waived and no written statement is filed by the date referred to above, Hibbing Broadcasting Co. is deemed to consent to the modification as proposed in the order to show cause and a final order will be issued by the Commission if the channel changes referred to in this notice are found to be in the public interest.

15. *It is further ordered*, That the Secretary of the Commission shall send a copy of this order by certified mail, return receipt requested, to Hibbing Broadcasting Co., Radio Station WMFG-FM, 807 West 37th Street, Hibbing, Minn. 55746, the party to whom the order to show cause is directed.

16. Authority to institute rulemaking proceedings, showings required, cutoff procedures, and filing requirements are contained in the attached appendix and are incorporated by reference herein.

NOTE: A showing of continuing interest is required by paragraph 2 of the appendix before a channel will be assigned.

17. Interested parties may file comments on or before January 2, 1979, and reply comments on or before January 22, 1979.

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

APPENDIX

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g), and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM table of assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the notice of proposed rulemaking to which this appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the notice of proposed rulemaking to which this appendix is attached. Proponents(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignemnt is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cutoff procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission rules.)

(b) With respect to petitions for rulemaking which conflict with the proposal(s) in this notice, they will be considered as comments in the proceeding, and public notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later

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than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the notice of proposed rulemaking to which this appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b), and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

[FR Doc. 78-32203 Filed 11-15-78; 8:45 am]

[4910-59-M]

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[49 CFR Part 572]

[Docket No. 78-09; Notice 2]

ANTHROPOMORPHIC TEST DUMMIES REPRESENTING 3-YEAR-OLD CHILDREN

Proposed Specifications and Performance Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice amends some of the specifications and performance requirements for anthropomorphic test dummies representing 3-year-old children proposed in May 1978. The dummies are intended to be used in testing the performance of child seating systems. The amendments were formulated on the basis of results of tests conducted after issuance of the May 1978 notice. The amendments would have the effect of improving the 3-year-old dummy as a tool for measuring child restraint performance.

DATES: Comments on this notice must be received on or before December 15, 1978.

PROPOSED EFFECTIVE DATE: Date of publication of the final rule on test dummies in the FEDERAL REGISTER.

ADDRESS: Comments should refer to the docket number and be submitted to Room 5108, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT:

Mr. Vladislav Radovich, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street S.W., Washington, D.C. 20590, 202-426-2264.

SUPPLEMENTARY INFORMATION: This notice amends certain of the proposed Specifications and Performance Requirements for Part 572, Anthropomorphic Test Dummies, Subpart C—3-Year-Old Child, published on May 18, 1978 (43 FR 21490). The May 18 proposal emphasized that the proposed calibrations for the 3-year-old dummy set forth in the notice were still tentative, and noted that agency testing would continue following issuance of the notice in anticipation of narrowing the response range of the dummy. The notice also advised interested persons that the refined calibrations would be placed in the docket when completed. A copy of the refinements was placed in the docket on September 27, 1978. The amended specifications and performance requirements set forth in this notice have been formulated as a result of such further testing. As anticipated, test results indicated the feasibility of modifying portions of the calibrations proposed in the May notice so as to narrow the dummy's response ranges. The effect of the amendments, therefore, is to improve the dummy as a tool for measuring the performance of child restraint systems in simulated crashes, pursuant to the recently proposed amendment to Motor Vehicle Safety Standard No. 213, *Child Seating Systems* (43 FR 21470, May 18, 1978). The agency will not make further amendments to the proposed calibrations for the 3-year-old dummy prior to final rulemaking action.

One amendment set forth in this notice is a modification of the drawings and specifications for SA 103C 030 Torso Assembly, incorporated by reference to § 572.15 (*General Description*). It consists of the addition of a sternum support to the rib cage. This modification is shown in the drawings ATD-6000 (Sheets 1 and 2), ATD-6045, ATD-6061 and ATD-6096. These modified drawings have been placed in the docket. The other amendments are slight changes in some of the performance requirements proposed in the May 18 notice. The texts of these amendments are set forth below. A diagram of the cylinder described in the amendment to proposed § 572.19(c)(2) is also available for examination in the docket (See Diagram SK 9-13).

Interested persons are invited to submit comments on this notice. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a succinct and concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. Any claim of confidentiality must be supported by a statement demonstrating that the information falls within 5 U.S.C. section 552(b)(4), and that disclosure of the information is likely to result in substantial competitive damage; specifying the period during which the information must be withheld to avoid that damage; and showing that earlier disclosure would result in that damage. In addition, the commenter or, in the case of a corporation, a responsible corporate official authorized to speak for the corporation must certify in writing that each item for which confidential treatment is requested is in fact confidential within the meaning of section 552(b)(4) and that a diligent search has been conducted by the commenter or its employees to assure that none of the specified items has previously been released to the public.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

The agency has reviewed the impacts of these amendments and determined that they are not a significant regulation within the meaning of Executive Order 12044.

The principal authors of this notice are Mr. Vladislav Radovich, Office of Vehicle Safety Standards, and Ms. Nancy Eager, Office of the Chief Counsel.

In consideration of the foregoing, the proposal to add Subpart C—3-Year-Old Child, to 49 CFR Part 572, Anthropomorphic Test Dummies (43 FR 21490; May 18, 1978), is amended as follows:

Subpart C—3-Year-Old Child

1. The first sentence of § 572.16(b) is amended to read:

§ 572.16 **Head.**

. . . . . .

(b) When the head is impacted in accordance with paragraph (c) of this section by a test probe conforming to § 572.21(a) at 7 fps., the peak resultant accelerations measured at the location of the accelerometers mounted in the headform in accordance with § 572.21(b) shall be not less than 95g, and not more than 112g. * * *

. . . . . .

2. Section 572.17 (c)(3)(iii) and (c)(3)(iv) are amended as follows:

§ 572.17 **Neck.**

. . . . . .

(C) * * *

(3) * * *

(iii) t_2-t_1, shall be not more than 4 milliseconds.

(vi) The measured deceleration between t_2 and t_3 shall be not less than 20g and not more than 34g.

. . . . . .

3. Paragraphs (c) and (d)(2) of § 572.18 are revised as follows:

§ 572.18 **Thorax.**

. . . . . .

(c) When impacted by a test probe conforming to § 572.21(a) at 13 fps. in accordance with paragraph (d) of this section, the peak resultant acceleration at the location of the accelerometers mounted in the chest cavity in accordance with § 572.21(c) shall be not less than 50g and not more than 70g. The acceleration-time curve for the test shall be unimodal and shall lie at or above the 30g level for an interval not less than 2.5 milliseconds and not more than 4.0 milliseconds. The lateral acceleration vector shall not exceed 5g.

(d) *Test Procedure.* * * *

(2) Place the longitudinal centerline of the test probe at the chest midsaggital plane so that it is 1.5 inches below the longitudinal centerline of the bolt that attaches the top of the ribcage sternum to the thoracic spine box.

. . . . . .

4. In § 572.19, paragraph (b) is amended, and sentences are added to the end of paragraphs (c)(2) and (c)(4) as set forth below:

§ 572.19 **Lumbar spine, abdomen and pelvis.**

(b) When subjected to continuously applied force in accordance with paragraph (c) of this section, the lumbar spine assembly shall flex by an amount that permits the rigid thoracic spine to rotate from its initial position in accordance with Figure 18 of this subpart by 40 degrees at a force level of not less than 34 pounds and not more than 47 pounds, and straighten upon removal of the force to within 5 degrees of its initial position.

(c) *Test Procedure.* * * *

(2) * * * Remove the head and the neck and install a cylindrical aluminum adapter 2.0 inches in diameter and 2.80 inches long in place of the neck.

. . . . . .

(4) * * * Apply a forward force in the midsaggital plane at the top of the adapter, so that at 40 degrees of the lumbar spine flexion the applied force is perpendicular to the thoracic spine box.

(Sec. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50 and 501.8.)

Issued on November 13, 1978.

MICHAEL M. FINKELSTEIN,
Associate Administrator for Rulemaking.

[FR Doc. 78-32302 Filed 11-15-78; 8:45 am]

[4910-59-M]

[49 CFR Part 576]

[Docket No. 74-31; Notice 5]

RECORD RETENTION

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes an amendment of Part 576, Record Retention, that would extend the record retention period from 5 to 8 years. The existing interim rule requires the retention of certain records pertaining to safety-related defects for 5 years. This notice is being issued in response to comments received on an earlier notice of proposed rulemaking in this subject area. The extension would aid implementation of the agency's existing statutory defect and noncompliance enforcement authority.

DATES: Comments must be received on or before February 12, 1979. Proposed effective date: 180 days after publication of the final rule in the FEDERAL REGISTER.

ADDRESSES: Comments should refer to the docket number and be submitted to: Room 5108, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT:

Roger Tilton, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20950, 202-426-2992.

SUPPLEMENTARY INFORMATION: This notice proposes an amendment to Part 576, Record Retention, which would increase the length of the retention period from 5 to 8 years. The existing interim rule requires the retention of certain information pertaining to safety-related defects for 5 years. The interim rule on record retention was published on August 20, 1974 (39 FR 30045). Contemporaneously, a proposal was published that solicited comments on the interim rule (39 FR 30048). One feature of the interim rule was a 5-year record retention period.

The Center for Auto Safety's comments on the proposal questioned the advisability of a 5-year retention period when the agency's defect and noncompliance jurisdiction extends for a longer time. Section 154 of the National Traffic and Motor Vehicle Safety Act (the Act) (15 U.S.C. § 1381 et seq.) requires a motor vehicle manufacturer to remedy without charge a defect or noncompliance that is determined to exist under section 151 or 152 of the Act within 8 years after the first purchase of the motor vehicle. Need for information, suggested the Center, could extend beyond the 5 years in which the information would be available under the existing proposal. In other words, a 5-year retention period might not be sufficient for the purposes of enforcing actions that extended beyond 5 years. If this were the case, the agency enforcement of the Act might be impeded.

The NHTSA tentatively concludes that the Center's arguments have merit. A 5-year retention requirement given the Act's 8-year enforcement authority might be unnecessarily short and might result in frustrating enforcement of defect or noncompliance actions on an older vehicle. According-

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ly, to aid in enforcing section 154, the agency proposes to extend the retention requirement to 8 years.

The agency has reviewed the costs and other impacts associated with this proposal and concludes that this proposal if adopted would not result in any significant increase in costs of record retention. Any minimal cost increases would be offset by the increased benefits resulting from the retention of sufficient information for a long enough time to aid enforcement of the Act. Enforcement will be particularly improved in the discovery and remedy of latent defects and noncompliances.

In consideration of the foregoing, it is proposed that Part 576, Record Retention, of Volume 49 of the Code of Federal Regulations be amended by revising Part 576.5 to read as follows:

§ 576.5 Basic requirements.

Each manufacturer of motor vehicles shall retain as specified in § 576.7 all records described in § 576.6 for a period of 8 years from the date on which they were generated or acquired by the manufacturer.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a succinct and concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. Any claim of confidentiality must be supported by a statement demonstrating that the information falls within 5 U.S.C section 552(b)(4), and that disclosure of the information is likely to result in substantial competitive damage; specifying the period during which the information must be withheld to avoid that damage; and showing that earlier disclosure would result in that damage. In addition, the commenter or, in the case of a corporation, a responsible corporate official authorized to speak for the corporation must certify in writing that each item for which confidential treatment is requested is in fact confidential within the meaning of section 552(b)(4) and that a diligent search has been conducted by the commenter or its employees to assure that none of the specified items has previously been released to the public.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the acton will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and its is recommended that interested persons continue to examine the docket for new material.

The principal author of this proposal is Roger Tilton of the Office of Chief Counsel.

(Secs. 112, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1401, 1407); Secs. 108, 152, 158, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1392, 1412, 1418); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.)

Issued on November 7, 1978.

MICHAEL M. FINKELSTEIN,
Associate Administrator for Rulemaking.

[FR Doc. 78-32016 Filed 11-15-78; 8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

[3410-11-M]

DEPARTMENT OF AGRICULTURE

Forest Service

GOSPEL-HUMP ADVISORY COMMITTEE

Meeting

The Gospel-Hump Advisory Committee will meet at 7 p.m., December 14, 1978 in the Nezperce Forest Supervisor's Office, Grangeville, Idaho. The purpose of this meeting is to review a study plan for the Forest Integrated Land Management Plan, as required by the National Forest Management Act of 1976 (Pub. L. 94-588).

The meeting will be open to the public. Persons who wish to attend should notify Ed Laven, 319 East Main, Grangeville, Idaho; telephone 208-983-1950. Written statements may be filed with the committee before or after the meeting.

DON BIDDISON,
Forest Supervisor.

NOVEMBER 3, 1978.

[FR Doc. 78-32252 Filed 11-15-78; 8:45 am]

[3410-11-M]

NATIONAL GRASSLANDS GRAZING FEE REVIEW

Meetings and Request for Comments

Notice is hereby given that the Forest Service, Department of Agriculture, is scheduling public meetings and requesting comments relative to the review of fees charged on National Grasslands. The comments received by the Forest Service will be used to assist in the development of the National Grasslands grazing fee system that will be put into effect on March 1, 1979.

A Forest Service task force recently completed the first phase of the review. Public responses were received during June and July, 1978. These responses were considered in arriving at the proposed National Grasslands fee system.

The proposed fee system utilizes the section of the Public Rangelands Improvement Act of 1978 (Pub. L. 95-514) that established an economic value grazing fee formula. Although the Act does not apply to the National Grasslands, it does provide a concept of fair market value for public land grazing fees. This concept was used in the development of the proposed National Grasslands grazing fee system and results in a proposed fair market value for 1978 that would vary from approximately $1.55 per animal month in Oregon and Idaho to $2.65 per animal month in the remaining National Grasslands States.

Annual increases or dereases in the fee for any given year will be limited to not more than plus or minus 25 percent of the previous year's fee. Data needed to calculate what the fee for 1978 would have been or the projected 1979 fee is not available. Under the proposed fee system, and utilizing available data, the 1978 fee for Oregon and Idaho would have been $1.55 and would have varied from $2.42 to $2.65 per animal month in the remaining National Grasslands States. The fees acutally charged during 1978 range from $1.57 to $3.51.

An information package containing evaluation of alternatives and explanation of the proposed fee system may be obtained by writing to:

Forest Supervisor, Custer National Forest, Box 2556, Billings, Mont. 59103.
Forest Supervisor, Cibola National Forest, 10308 Candelaria NE., Albuquerque, N. Mex. 87112.
Forest Supervisor, Ochoco National Forest, Federal Building, Prineville, Oreg. 97754.
Regional Forester, 11177 West Eighth Avenue, Box 25127, Lakewood, Colo. 80225.
Forest Supervisor, Caribou National Forest, 250 South 4th Avenue, Pocatello, Idaho 83201.
Forest Supervisor, National Forests in Texas, Federal Building, Box 969, Lufkin, Tex. 75901

Written statements may be submitted to the above addresses until December 31, 1978.

Public meetings to explain the proposed fee system, answer questions, and receive public comments are scheduled as follows:

Dickinson, North Dakota, Crown Room, 1st National Bank Building., 143 West Villard. November 27, 1978, 7 p.m. mountain standard time.
Boise City, Oklahoma, Exhibit Building, Fairgrounds, North edge of town on Highway 385. November 27, 1978, 7 p.m. mountain standard time (8 p.m. central standard time).
Malad, Idaho, Conference Room, Forest Service Office. November 27, 1978, 7 p.m. pacific standard time.
Madras, Oregon, State Savings & Loan Building, 235 5th Street. November 27, 1978, 7 p.m. pacific standard time.
Rapid City, South Dakota, Howard Johnson Motor Lodge, 2211 La Crosse Street. November 28, 1978, 7 p.m. mountain standard time.
Bonham, Texas, Fannin County Courthouse, Meeting Room, Third Floor. November 28, 1978, 7 p.m. central standard time.
Cheyenne, Wyoming, Hitching Post Motel, West 16th Street. November 29, 1978, 7 p.m. mountain standard time.
Decatur, Texas, Womans Building, Rodeo Grounds. November 29, 1978, 7 p.m. central standard time.

This notice is being published on behalf of all the Regions and National Forests involved in the National Grasslands grazing fee review by the Regional Forester in Region 2 of the Forest Service.

Dated: November 9, 1978.

CRAIG W. RUPP,
Regional Forester.

[FR Doc. 78-32208 Filed 11-15-78; 8:45 am]

[6320-01-M]

CIVIL AERONAUTICS BOARD

[Order 78-11-15; Dockets 32711 and 33091]

DALLAS/FORT WORTH-FLORIDA SERVICE INVESTIGATION AND FLORIDA SERVICE CASE

Order on Reconsideration

DALLAS/FORT WORTH-NEW ORLEANS-FLORIDA

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the second day of November 1978.

In the matter of Dallas/Fort Worth-Florida service investigation (formerly Dallas/Fort Worth-New Orleans-Florida Service Investigation) (Docket 32711) and Florida Service Case (Docket 33091).

By Order 78-5-129 (May 19, 1978) the Board instituted this case to determine whether the public convenience and necessity require new nonstop authority in the following nine markets: Dallas/Fort Worth-Tampa/Miama/Fort Lauderdale, New Orleans-Tampa/Miami/Fort Lauderdale, Tampa-Miami/Fort Lauderdale and Miami-Fort Lauderdale. We included the three intra-Florida markets to give applicants some additional routing flexibility, but we emphasized that the

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focus should be on the six New Orleans/Dallas/Fort Worth markets.

Petitions for reconsideration have been filed by Continental Air Lines, American Airlines, Braniff Airways and Western Air Lines. Answers have been filed by Continental, Braniff, Southwest Airlines, Texas International Airlines, National Airlines, Delta Air Lines, Frontier Airlines,[1] the Jacksonville Port Authority and the Bureau of Pricing & Domestic Aviation (BPDA).[2]

In their petitions, both Continental and American argue that the Dallas/Fort Worth-New Orleans market should not be excluded from this proceeding; Braniff asks that the case be expanded to embrace the Dallas/Fort Worth/New Orleans-Orlando/Jacksonville/West Palm Beach markets; and Western wants to include the Denver-Dallas/Fort Worth/New Orleans markets.

National and BPDA support inclusion of the Dallas/Fort Worth-New Orleans market, but TXI, Southwest, Delta, Braniff oppose it; Jacksonville and BPDA would include additional Florida points, which Delta opposes; and, finally, BPDA and Frontier support expansion to include Denver while Braniff, Continental and TXI oppose. Frontier also contended in its answer that, should the Board place the Denver-Dallas/Fort Worth market in issue, it should include the Denver-Houston and Houston-New Orleans-Tampa/Miami/Fort Lauderdale markets as well.

Air Florida has filed a petition for clarification, asking that we not preclude service to Dallas/Fort Worth through Love Field instead of, or in addition to, DFW Regional Airport. Answers were filed by American and the DFW Parties (the Cities of Dallas and Fort Worth, the Dallas Chamber of Commerce, the Fort Worth Chamber of Commerce, the North Texas Commission and the Dallas/Fort Worth Regional Airport Board.)[3] The opponents argue essentially that all interstate operations should be performed through DFW Regional Airport as contemplated by the Board in the *Dallas-Fort Worth Regional Airport Investigation*, Order E-21341 (Sept. 30, 1964).

On September 6, Administrative Law Judge Katherine A. Kent submitted a certification to the Board. She pointed out that six markets in issue in her case had subsequently been placed in issue in the *Florida Service Case*, Order 78-7-128 (July 25, 1978).[4] She asks the Board to clarify whether, in fact, we intended to have identical issues heard in two concurrent cases. Pending our response to her certification, she has suspended procedural steps in Docket 32711.

Florida Service

We instituted this case in Order 78-7-128 (July 25, 1978) in response to applications by Southern Airways for authority between Atlanta and a number of points in Florida (Docket 31680) and by Coastal Airlines for authority between New Orleans and Jacksonville via Mobile, Pensacola, Panama City, Tallahassee and Gainesville (Docket 31917). Although we placed in issue authority between and among all cities in both applications, we said that the focus of the case is new Florida authority.[5]

Petitions for reconsideration were filed by Air Florida, American Airlines, Delta Air Lines,[6] Southern Airways, the Gulfport-Biloxi Regional Airport Authority,[7] the Sarasota-Manatee Airport Authority and the County of Volusia (Daytona Beach). All except Air Florida want us to expand the scope of the case. Air Florida argues that we should eliminate those markets that have no demonstrable need for additional service, which, in Air Florida's view, are the markets it serves or will soon begin to develop under intrastate authority from the Florida Public Service Commission. Delta asks us to add Fort Myers, Southern wants to include Fort Myers, Sarasota and Daytona Beach, and each of the three civic petitioners wants its community included. American would add not only Sarasota and Fort Myers, but also Dallas/Fort Worth, Houston, Nashville, Memphis and St. Louis. It argues that those five cities could serve as alternative gateways for Florida passengers who now must rely principally on connections at Atlanta to get to and from other parts of the country.

Answers supporting inclusion of some or all of the four Florida/Mississippi points were filed by Braniff Airways, the Bureau of Pricing and Domestic Aviation (BPDA), the Fort Myers Parties and the Tallahassee Parties. Braniff also supports American's request to add Dallas/Fort Worth, and the St. Louis Parties endorse the addition of St. Louis. Continental Air Lines, Delta, Southern, TWA and BPDA vigorously oppose American's petition insofar as it asks for five other gateways. They cite the existing size of the case (91 markets) and the absence of any relationship between those five gateways and the markets already in issue. Southern, Southeast Airlines and BPDA oppose Air Florida's petition to contract the scope on the grounds that the Board should not predetermine Florida's service requirements and that the Board historically has declined to protect services of intrastate carriers from competition by federally certificated carriers. Northwest Airlines' answer is in the same vein as Delta's petition: that is, Northwest does not oppose including Fort Myers as long as its pending exemption application in Docket 30132 will not be delayed or denied. Finally, Eastern Air Lines opposes any expansion because of the size and complexity of the case. Eastern also argues that we should consolidate this case for decision with the *Florida-Atlanta Competitive Nonstop Service Case*, Docket 30679, because there are closely related economic and environmental issues.

Disposition of Petitions

Partly in response to petitions and partly on our own initiative, we have decided to make adjustments in the scopes of these two cases. Our objectives are the same: to consider Florida's service needs, to accommodate the desires of some carriers to expand their systems in Florida and to examine the need for additional service between Florida and the major Southern Tier hubs of New Orleans and Dallas/Fort Worth. But there are competing considerations that we cannot ignore. Six markets in issue in *Florida Service* had previously been placed in issue in *Dallas/Fort Worth-New Orleans-Florida*, one market (Atlanta-Tallahassee) is in issue in *Florida-Atlanta*, and one market is in issue in the *Houston-Tampa/Orlando and New Orleans-Orlando Investigation* (Order 78-3-113). This duplication is undesirable because it ties up the resources of parties and the Board unnecessarily, it can lead to conflicting decisions by different administrative law judges, and it can slow the trial of cases as well as delay their final disposition at the

[1] In its motion for leave to file its answer late, Frontier states that it did not receive Western's petition until after the date for filing answers. We will grant its motion.

[2] American and Delta have applied for exemptions to serve markets in issue in this proceeding. So as not to delay disposition of the pending petitions for reconsideration and clarification, we will deal with the exemption applications in a separate order.

[3] These answers were accompanied by motions for leave to file the otherwise unauthorized documents, which we will grant. Also, in their answers to petitions for reconsideration, BPDA supported Air Florida's request and Delta opposed it.

[4] New Orleans-Tampa/Miami/Ft. Lauderdale, Tampa-Miami/Ft. Lauderdale and Miami-Ft. Lauderdale.

[5] At note 4, we said: "We recognize that this puts in issue more authority than Southern and Coastal are seeking, as well as some authority at issue in other cases, and will result in a very large proceeding; but, we wish to take a broad look at Florida's service needs.

[6] Delta's pleading is styled a "contingent" petition, the contingency being the Board's failure to act on a Delta application in another proceeding. We will treat the petition as though it were not contingent.

[7] Gulfport-Biloxi filed a motion for leave to file its petition late. We will grant the motion.

Board level. Some applicants may decide to choose one forum or another, but those that do not will be put to the expense of participating in two cases simultaneously for the same authority. We have tried to avoid duplication as much as possible, and we believe that it makes sense to do so here.[8]

In *Dallas/Fort Worth-New Orleans-Florida*, we will deny the petitions of American, Continental and Western and grant the petition of Braniff, in part, by adding the Dallas/Fort Worth-Orlando / Jacksonville / West Palm Beach markets. They are not in issue in any other proceeding, they are related geographically to the markets already in issue, and their inclusion will enable us to examine the need for service between Dallas/Fort Worth and Florida's six largest cities.[9] At the same time, we will remove the three New Orleans-Florida markets and the three intra-Florida markets which are in issue for new turnaround authority in *Florida Service*. We will, however, allow applicants to propose local air transportation between and among the six Florida cities on flights that also serve Dallas/Fort Worth. This will give sufficient latitude for applicants to construct viable service patterns between Dallas/Fort Worth and Florida.[10]

As to Air Florida's airport question, the instituting order did not designate the airport through which Dallas is to be served, and we have decided to leave the question open for now rather than to impose a pretrial restriction. The parties should address this issue in their exhibits and testimony, and the judge should deal with it in the initial decision.

In the *Florida Service Case*, we have decided to grant petitions for reconsideration insofar as they seek to add Fort Myers, Sarasota-Manatee, Daytona Beach, and Gulfport-Biloxi, to deny them in all other respects and to narrow the focus of the proceeding by eliminating duplication and extraneous markets.

The *Florida-Atlanta Competitive Nonstop Case* and the *Houston-Tampa/Orlando and New Orleans-Orlando Investigation* are now before administrative law judges for decision. In issue in the former is new turnaround authority in the Atlanta-Tallahassee/Sarasota/Daytona Beach markets, while turnaround New Orleans-Orlando authority is in issue in the latter. If we place these four markets in issue for new unrestricted authority in *Florida Service*, we are liable to have conflicting decisions from different judges. It would, therefore, be prudent to wait until all three cases are before us for decision so we can take a consistent, rational approach. But that would mean delaying service improvements to the public because *Florida Service* is already about six months behind the other two cases. We believe that the best course is to remove the identical issue—unrestricted turnaround authority—from *Florida Service* and consider only new authority that is tied to service in other markets in the case. In that way, we can avoid tying up *Florida-Atlanta* and *Houston-Tampa/Orlando pending an initial decision in Florida Service*. Carriers that now want turnaround authority in these four markets, but did not apply in the two earlier cases, can apply for the more limited authority here and pursue unrestricted authority at a later date. We will require that nonstop flights between Atlanta and Tallahassee, Daytona Beach or Sarasota and nonstop flights between New Orleans and Orlando serve a point beyond Atlanta or New Orleans or a beyond point in Florida.

We have also decided to exclude new nonstop authority between Atlanta and Mobile, Gulfport-Biloxi or New Orleans. These markets have no relationship to improvements in *Florida Service*, either from Atlanta and points north or from New Orleans and points west. In the same vein, we will deny American's request to add Dallas/Ft. Worth, Houston, Nashville, Memphis, and St. Louis as alternative gateways to Atlanta and New Orleans for Florida passengers. We realize that American wants access to Florida and that its lack of authority at Atlanta or New Orleans places it at a disadvantage compared to applicants having authority at those two hubs. That will be a problem as long as entry is not universally open to everyone and as long as the Act requires administrative hearings. We have observed many times that each carrier participates in each route case with both the advantages and the liabilities of its preexisting route system. We cannot equalize all these advantages and disadvantages in each case, nor do we try to do so. This proceeding was instituted in response to applications for new Atlanta/New Orleans-Florida and Intra-Florida authority; it was not designed to consider new service between Florida and the rest of the United States. American is free to file for separate examination of its desire for access to Florida.

Next, we will deny Air Florida's petition to eliminate the intra-Florida markets it serves. We are aware of Air Florida's high-quality services within the State, but we certainly are not prepared at this point to conclude that the public convenience and necessity do not require additional authorizations. Air Florida will have an opportunity to present evidence supporting its position to the judge and the Board. Also, since we have not discouraged or prevented Air Florida from seeking to expand into interstate markets served by federally certificated carriers, it would certainly be inequitable to protect Air Florida from competition by interstate carriers.

Turning to Delta's petition and Northwest's answer, their attempt to link this proceeding to their Fort Myers exemption applications is not persuasive. They present different issues and seek different types of relief from that which is available in this proceeding. As a matter of fact, we have recently ruled on those applications in Order 78-10-107 (October 20, 1978) on their own merits.

Finally, we will deny at this time Eastern's request that we consolidate *Florida-Atlanta* and *Florida Service* for decision. Eastern does raise a couple of difficult issues, but it is premature to decide them based on the allegations in Eastern's pleading. Eastern may raise them again in *Florida-Atlanta*, where it is a party, or later in this case. If they are raised, we will consider Eastern's arguments when we have an initial decision and a record formally before us.

Accordingly, the Board:

1. Grants the petition of Braniff Airways for reconsideration of Order 78-5-129 to the extent indicated in paragraph 3 below;

2. Renames the *Dallas/Ft. Worth-New Orleans-Florida Service Investigation*, Docket 32711, the *Dallas/Ft. Worth-Florida Service Investigation;*

3. Modifies ordering paragraph 4 of Order 78-5-129 to read as follows:

4. The investigation instituted in paragraph 3, above, shall consider whether it is consistent with the public convenience and necessity to grant new or improved authority between and among Dallas/Ft. Worth, Tex., and Tampa, Miami, Ft. Lauderdale, Orlando, Jacksonville and West Palm Beach, Fla., provided that any authority

[8] See *St. Louis-Denver-Las Vegas/Reno Route Investigation*, Order 78-8-90 (August 17, 1978). We also reaffirm our decision in Order 78-5-129 to exclude the Dallas/Fort Worth-New Orleans market from this case. That market is the subject of a separate, recently instituted Subpart M case in Docket 32315.

[9] There is absolutely no geographical relationship between Denver and these markets as far as we can see, and we will not include Denver authority in the case. With respect to Frontier's request to add Houston markets to the case, it is improper to seek expansion of the scope of a proceeding in an answer to a petition for reconsideration. Such a request must be made in a petition itself so that other interested persons have an opportunity to respond. Therefore, we decline to consider Frontier's proposal for adding Houston markets.

[10] We are renaming the case the *Dallas/Fort Worth-Florida Service Investigation*. We will delegate to the administrative law judge authority to consolidate new applications and to dismiss applications of parties who are not interested in the case now that New Orleans is removed.

awarded shall be subject to the condition that all flights must serve Dallas/Ft. Worth;[11]

4. Directs applicants interested in the Dallas/Fort Worth-Orlando/Jacksonville/West Palm Beach markets to file their applications and environmental evaluations under 14 CFR Part 312 within 14 days of the service date of this order;

5. Delegates to the presiding administrative law judge authority to consolidate conforming applications and to dismiss applications of parties who no longer want to participate in the proceeding in Docket 32711 in light of its revised scope;

6. Grants the motion of Frontier Airlines for leave to file a late answer in Docket 32711;

7. Denies the motion of Continental Air Lines for leave to file an otherwise unauthorized document in Docket 32711;

8. Grants the motions of American Airlines and the DFW Parties for leave to file otherwise unauthorized documents in Docket 32711;

9. Grants the petition of Air Florida in Docket 32711 for clarification to the extent indicated in this order;

10. Denies, except to the extent granted, all petitions, motions and other requests for reconsideration or clarification of Order 78-5-129.

11. Grants the petitions of American Airlines, Delta Air Lines, Southern Airways, the Gulfport-Biloxi Regional Airport Authority, the Sarasota-Manatee Airport Authority and the County of Volusia for reconsideration of Order 78-7-128 to the extent indicated in paragraph 12, below;

12. Modifies ordering paragraph 2 of Order 78-7-128 to read as follows:

2. This proceeding shall consider whether it is consistent with the public convenience and necessity to grant new or improved authority between and among Mobile, Ala., Atlanta, Ga., New Orleans, La., Gulfport-Biloxi, Miss., Daytona Beach, Ft. Lauderdale, Fort Myers, Gainesville, Jacksonville, Melbourne, Miami, Orlando, Panama City, Pensacola, Sarasota-Manatee, Tallahassee, Tampa-St. Petersburg-Clearwater and West Palm Beach, Fla., with the following exceptions: (a) new authority between Atlanta and New Orleans, Mobile or Gulfport-Biloxi is not in issue, and (b) new nonstop authority between New Orleans and Orlando and between Atlanta and Tallahassee, Daytona Beach or Sarasota-Manatee shall be conditioned to require that all flights serve a point beyond New Orleans or Atlanta or another point in Florida; * * *.[12]

13. Directs applicants interested in the Gulfport-Biloxi/Daytona Beach/Fort Myers/Sarasota-Manatee markets added by this order to file their applications and environmental evaluations under 14 CFR Part 312 within 14 days of the service date of this order;

14. Delegates to the presiding administrative law judge authority to consolidate conforming applications and to dismiss applications of parties who no longer want to participate in the proceeding in Docket 33091 in light of its revised scope;

15. Grants the motion of the Gulfport-Biloxi Regional Airport Authority for leave to file its petition late;

16. Makes the Gulfport-Biloxi Regional Airport Authority, the Sarasota-Manatee Airport Authority and the County of Volusia parties to the proceeding in Docket 33091; and

17. Denies, except to the extent granted, all petitions for reconsideration of Order 78-5-129.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[13]

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-32286 Filed 11-15-78; 8:45 am]

[11] Carriers may apply for, and the judge may award, the authority as one segment, as six separate segments, or as any combination betwen the two. We have changed the language in this paragraph to conform with the change made in seciton 401(d)(1) of the Act by the Airline Deregulation Act of 1978, Pub. L. 95-504 (Oct. 24, 1978). Since this case is in an early procedural stage, we expect the judge and the parties to address and to apply the substantive provisions, including the declaration of policy, of the new law.

[12] See note 11, which applies to Docket 33091 as well.

[13] All Members concurred.

[6320-01-M]

[Docket 30699]

OAKLAND SERVICE CASE (FITNESS PHASE)

Prehearing Conference

Notice is hereby given that a prehearing conference in the fitness phase of the *Oakland Service Case*, Docket 30699, is assigned to be held on December 5, 1978, at 9:30 a.m. (local time), in room 1003, Hearing Room C, Universal North Building, 1875 Connecticut Avenue NW., Washington, D.C., before the undersigned.

In order to facilitate the conduct of the conference, parties are instructed to submit, on or before November 28, 1978, one copy to each party, two copies to the Board's Docket Section, and four copies to the judge of (1) proposed statements of issues, taking into account the amendment of the Federal Aviation Act of 1958 by the Airline Deregulation Act of 1978, (2) proposed stipulations, and (3) statements of position.

The submissions should also address two other matters. First, they should contain any proposed addition to or modification or deletion of the evidence to be presented by new entrants set forth in Attachment I to Order 78-4-121, April 19, 1978. Second, if there is any objection to the procedural dates listed below, such objection should be noted and the suggested change indicated. The proposed procedural dates are as follows:

Direct Exhibits—December 20, 1978.
Rebuttal Exhibits—January 3, 1979.
Hearing—January 9, 1979.
Briefs—Ten days after hearing ends.

Dated at Washington, D.C., November 9, 1978.

ARTHUR S. PRESENT,
Administrative Law Judge.

[FR Doc. 78-32287 Filed 11-15-78; 8:45 am]

[6320-01-M]

[Docket 30699]

OAKLAND SERVICE CASE (ECONOMIC PHASE)

Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter will be convened on December 12, 1978, at 10 a.m. (local time), in Room 1003, Hearing Room B, Universal North Building, 1875 Connecticut Avenue NW., Washington, D.C., before the undersigned. (43 FR 51118), Nov. 2, 1978.)

There is attached a statement of issues, a request for information, a request for evidence and a procedural schedule which will be discussed at the prehearing conference. Any party or interested person who wishes to comment on, or amend, revise, or modify the statement of issues, the requests for information and evidence and the procedural schedule must do so on, or before, December 4, 1978.[1]

Interested persons are reminded that applications for the route authority at issue must be filed with the Board's Docket Section prior to the prehearing conference in the economic phase of the case.

At the prehearing conference, all applicants will serve the presiding administrative law judge with a docketed copy of any application(s) for route authority and a docketed copy of any motion(s) to consolidate such application(s) with this proceeding.

Dated at Washington, D.C., November 9, 1978.

ALEXANDER N. ARGERAKIS,
Administrative Law Judge.

ATTACHMENT A—STATEMENT OF ISSUES

A. Is the authorization of new or additional multiple, permissive, subsidy-ineligible nonstop air transportation between Oakland, Calif., on the one hand, and Albuquerque, N. Mex.; Atlanta, Ga.; Boston, Mass.; Chicago, Ill.; Dallas/Ft. Worth, Tex.; Denver, Colo.; Detroit, Mich.; Houston, Tex.; Kansas City, Mo.; Los Angeles, Calif.; Minneapolis/St. Paul, Minn.; Philadelphia, Pa.; Phoenix, Ariz.; Portland, Oreg.;[14] Salt Lake City, Utah; and Seattle/Tacoma, Wash.,[14] consistent with the public convenience and necessity?

B. Is each of the above-named markets capable of supporting a daily nonstop round trip service with suitable aircraft on a profitable basis?

ATTACHMENT B—REQUEST FOR EVIDENCE

BPDA ONLY

I. Provide service-segment data by month for calendar year 1977 and for the 11-month period ended November 30, 1978, for nonstop operations in the markets at issue by flight, direction and carrier, showing the following information:
(a) Departures scheduled and operated;
(b) On-board passengers transported; and
(c) On-board passenger load factor.

II. Furnish a schedule of fares applicable in the markets at issue in effect on November 30, 1978. The schedule should show the following fare categories:
(a) First class
(b) Coach
(c) Economy
(d) Deluxe night coach
(e) Night coach
(f) Other—specify

III. Furnish single-plane schedules operated by the incumbent carriers in the markets at issue during the mid-month in each quarter for CY 1977 and for the 11-month period ended November 30, 1978.

IV. Submit a list of all markets at issue in this proceeding wherein applications for nonstop authority have been filed pursuant to section 10 of the Airline Deregulation Act of 1978. Pub. L. 95-104, 49 U.S.C. 1371(d). This schedule is to be kept current by BPDA until a final Board decision is entered in this proceeding.

ATTACHMENT C—REQUEST FOR EVIDENCE

CARRIER APPLICANTS ONLY

I. Submit a proposed schedule for the forecast year 1980 showing the type of equipment to be operated, aircraft seating capacity by class of service, and gate-to-gate flight time (block hours).

II. Submit proposed point-to-point fares in each market including, but not limited to, first class, coach, economy, deluxe night coach and night coach fares. Indicate the discount and promotional fares that will be available, and the terms and conditions applicable to this category of fares.

III. Submit an estimated yield per revenue passenger mile for each market.

IV. Submit a traffic forecast for each market showing:
(a) The traffic estimated for each fare category; and
(b) The traffic needed to generate sufficient revenues for a profitable operation including a return in investment element for a one daily round trip operation.

V. Submit an estimate of revenues and expenses for each market assuming a one daily round trip operation, using the current Subpart K methodology "with appropriate adjustments to reflect innovative features of the service proposal." All such adjustments must be clearly noted.

ATTACHMENT D—PROCEDURAL SCHEDULE

Information responses, December 29, 1978.
Direct exhibits and related testimony, January 22, 1979.
Rebuttal exhibits and related testimony, February 12, 1979.
Hearing, February 20, 1979.

[FR Doc. 78-32288 Filed 11-15-78; 8:45 am]

[1] Two copies of the comments should be filed with the Board's Docket Section and two copies should be sent directly to the administrative law judge.

[14] Applicants may seek to have Portland and Seattle/Tacoma designated as coterminals. Order 78-9-96.

[3510-25-M]

DEPARTMENT OF COMMERCE

Industry and Trade Administration

COLLEGE OF MEDICINE AND DENTISTY, NEW JERSEY, ET AL.

Consolidated Decision on Applications for Duty-Free Entry of Ultramicrotomes

The following is a consolidation decision on applications for duty-free entry of ultramicrotomes pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301). (See especially § 301.11(e).)

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review between 8:30 a.m. and 5 p.m. in room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue NW., Washington, D.C. 20230.

Docket No. 78-00305. Applicant: College of Medicine and Dentistry of New Jersey, P.O. Box 10146, Newark, N.J. 07101. Article: LKB 2128-010 Ultratome IV Ultramicrotome and Accessories. Manufacturer: LKB Produkter AB, Sweden. Intended Use of Article: The article is intended to be used to cut sections for electron microscopy of biological material including plant, animal and fungal specimens. Normal and disease biological tissues will be embedded in hardened epoxy resins, and other resins and embedding materials for sectioning. Investigations will include chiefly ultrastructural studies of morphology of normal and diseased plant and animal tissues, and electron cytochemical studies aimed at detecting and localizing certain proteins in diseased tissue. The major cytochemical studies proposed are designed to: (a) Detect vascular damage and (b) precisely localize immunoglobulins in natural and experimental autoimmune disorders of the kidney and central nervous system using the immuno-peroxide technique. The article will also be used in the courses Ultrastructure and Cytochemistry which will involve a study of general principles on techniques and the use of the electron microscope to study the fine structure of cells and various cellular organelles and the employment of cytochemical staining methods to localize various enzymes. The objectives of these courses will be to train students in the use and application of electron microscopy and to use the electron microscope in solving individual research problems. Application received by Commission of Customs: Advice submitted by the department of health, education, and welfare on: October 10, 1978.

Docket No. 78-00308. Applicant: University of Washington, Department of Opthalmology RJ-10, RR 735 HSB, Seattle, Wash. 98195. Article: Ultramicrotome, Model LKB 8800A and accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used to prepare brain, nerve and eye specimens for ultrastructural studies on normal physiological tissues, developmental studies on animal systems, cyto and histochemical studies on enzyme and subcellular organelle localization in cells and tissues, morphology, interfaces, and subcellular changes in cells induced by changes in the biochemical and physical environments. The article will also be used in courses to train students in the use and application of electron microscopy and to use the electron microscope in solving individual research problems. Application received by Commissioner of Customs: June 29, 1978. Advice submitted by the Departent of Health, Education, and Welfare on: October 10, 1978.

Docket No. 78-00309. Applicant: Indiana University, Department of Biology, Bloomington, Ind. 47401. Article: Ultramicrotome, Model LKB 2128-010 and accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for ultrastructural studies on normal and pathologic plant tissues, developmental studies on laticifier cell systems, cyto and histochemical studies on enzyme and subcellular organelle localization in laticifer cells and gland tissues, membrane interactions at organelle-cytoplasm interfaces, and subcellular changes in cells induced by changes in their biochemical and physical environments. This research will be conducted to further basic knowledge on cell and tissue ultrastructure and to reveal, at the ultrastructural level, the enzyme localization and distribution of alkaloids and terpenoids in cells and tissues developing under normal and pathological conditions. In addition, the article will be used in the courses Cell Ultrastrucure and Cell Cytochemistry which will involve a study of general principles on techniques and the use of the electron microscope to study the fine structure of cells and various subcellular organelles and the employment of cytochemical staining methods to lo-

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calize various enzymes and other cellular compounds. Application received by Commissioner of Customs: June 29, 1978. Advice submitted by the Department of Health, Education, and Welfare on: October 10, 1978.

Docket No. 78-00315. Applicant: Yale University, Biology Department, Kline Biology Tower, New Haven, Conn. 06520. Article: LKB 8800A Ultrotome III Ultramicrotome and Accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used to section specimens of plant and animal tissues which have been frozen in liquid freon. Investigations to be conducted will include studies of cell ultrastructure and intracellular localization of elements in: (a) Plant cells that undergo large rhythmic and light-regulated changes in turgor; (b) protoplasts isolated from cereals and regenerating new walls; (c) cells of plants subjected to environmental pollutants; (d) cells of plants subjected to gravitational stimulation; and (e) pathological and normal tissue from animals and plants. The article will also be used in a course entitled Cell Biology in which students will be taught standard electron microscopy. Application received by Commissioner of Customs: July 5, 1978. Advice submitted by the Department of Health, Education, and Welfare on: October 10, 1978.

Docket No. 78-00316. Applicant: The Medical College of Wisconsin, 561 North 15th Street, Milwaukee, Wis. 53233. Article: LKB 2128-010 Ultrotome IV Ultramicrotome. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for the development of sets of slides of a variety of animal and human tissues for class use in histology. Studies will be conducted to learn about cell structure and function. Students will be trained in the use and application of electron microscopy and learn light and electron microscopy of human tissue in courses entitled Histology and Ultrastructure Technique. Application received by Commissioner of Customs: July 5, 1978. Advice submitted by the Department of Health, Education, and Welfare on: October 10, 1978.

Docket No. 78-00317. Applicant: Ellis Fischel State Cancer Hospital, 115 Business Loop 70 West, Columbia, Mo. 65201. Article: LKB 8800A Ultrotome III Ultramicrotome. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used to prepare tissue specimens for the study of cellular structure of various cancer tumors. Application received by Commissioner of Customs: July 5, 1978. Advice submitted by the Department of Health, Education, and Welfare on: October 10, 1978.

Docket No. 78-00324. Applicant: University of California, Facility for Advanced Instrumentation, Hutchinson Hall, Room 9, Davis, Calif. 95616. Article: LKB 2128-010/Ultrotome IV Ultramicrotome. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used in conducting ultrastructural studies of the myxobacteria *Chondromyces crocatus* and *Stigmatella aurantica*, a species of gliding bacteria which form tree-shaped fruiting bodies as part of their life cycle. The article will also be used to train students in the use and application of electron microscopy and to use the transmission electron microscope in solving individual research problems. Application received by Commissioner of Customs: July 7, 1978. Advice submitted by the Department of Health, Education, and Welfare on: October 10, 1978.

Docket No. 78-00330. Applicant: University of California, Department of Botany, Robbins Hall, Davis, Calif. 95616. Article: LKB 2128-010 Ultrotome IV Ultramicrotome and accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used as a primary tool in several major projects which involve plants or plant-like materials (blue-green and green algae, fungi, and higher plants). The various taxa to be used are the blue-green alga *Starria zimbabweensis;* the green algae *Dysmorphococcus globosus* and *Pyrobotrys stellatra;* the basidiomycete fungus *Pholiota terrestris;* and the tree *Ginkgo biloba*. In addition, the article will be used in a course in biological electron microscopy laboratory (Botony 231L, 3 units) which involves an introduction to techniques of plant and animal specimen preparation and TEM operation. Application received by Commissioner of Customs: July 12, 1978. Advice submitted by the Department of Health, Education, and Welfare on: October 10, 1978.

Docket No. 78-00338. Applicant: Slippery Rock State College, Slippery Rock, Pa. 16057. Article: LKB 8800A Ultrotome III Ultramicrotome and Accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for the investigation of specimens from various living and fossil subjects. These investigations will include ultrastructural studies on developmental morphogenesis in flowering plants myxomycetes, small mammals, and fossil animals. Augmentive to such studies will be cyto- and histochemical investigations of enzymes, organelles, and other subcellular constituents that contribute to the genesis of form in various living systems. The article will also be used in the course, Introduction to Electron Microscopy to Train Students in the basic theory and techniques attendant to various electron procedures. Application received by Commissioner of Customs: July 20, 1978. Advice submitted by the Department of Health, Education, and Welfare on: October 10, 1978.

Docket No. 78-00339. Applicant: University of Florida, Department of Microbiology and Cell Science, Gainesville, Fla. 32611. Article: 2 LKB 8800A Ultrotome III Ultramicrotomes and Accessories. Manufacturer: LKB Produkter AB, Sweden. Intended us of ariticle. The articles will be used for thin and thick sectioning for both light and electron microscopy of plant and animal tissue cultured cells. Flat embediments will be examined. Specimens will be examined to pursue the following objectives: (1) To study the cytology of somatic diploid plant cells created by fusion of protoplasts in vitro. (2) To follow the process by which a nitrogen-fixing bacterium infects plant roots, and find the extent to which invasion occurs. (3) To study cytological effects of *Helminthosporium maydis* toxin on various strains of susceptible and resistant corn. The articles will also be used in the course Biological Techniques in Electron Microscopy to train biology graduate students to the level where they can use the elecron microscope in their Master's and Ph. D. research problems. Application received by Commissioner of Customs: July 17, 1978. Advice submitted by the Department of Health, Education, and Welfare on: October 10, 1978.

Docket No. 78-00340. Applicant: Children's Hospital Medical Center, Department of Pathology Research, 320 Longwood Avenue, Boston, Mass. 02115. Article: LKB 8800A Ultrotome III Ultramicrotome and Accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used to section animal materials from various organs embedded in hardened apoxy resins. Investigations will include ultrastructural studies on normal and pathologic human and animal tissues, cyto- and histochemical studies on enzymes and subcellular organelle localization in cells and tissues, localization in ceils and tissues, localization of radioactive amino acid and carbohydrate precursors to subcellular organelles, and subcellular changes in cells induced by alteration in the biochemical and physical environments. In addition, the article will also be used for educational purposes in the courses: Lung Structure—Normal and in Disease, Pulmonary Hypertension—Its Ultrastructural Appearance; and Pediatric Pathology. These courses will involve a study of general principles on electron microscope techniques and the use of the electron microscope to study the fine

structure of cells and various methods to localize enzymes and radioactive percursors. Application received by Commissioner of Customs: July 17, 1978. Advice submitted by the Department of Health, Education, and Welfare on: October 10, 1978.

Docket No. 78-00351. Applicant: Mount Sinai School of Medicine, Fifth Avenue and 100th Street, New York, N.Y. 10029. Article: LKB 2128-010/Ultrotome IV Ultramicrotome and accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for the study of brain tissues from experimental monkeys in research to further basic knowledge on brain ultrastructure and to reveal, at the ultrastructural level, the changes occurring during growth and development. Investigations will be conducted to understand early postnatal development and to correlate ultrastructural changes with behavorial maturation. By understanding these correlations, preventive measures for human diseases can be established. Application received by Commissioner of Customs: July 26, 1978. Advice submitted by the Department of Health, Education, and Welfare on: October 19, 1978.

Docket No. 78-00352. Applicant: Lutheran General Hospital, 1775 West Dempster Street, Park Ridge, Ill. 60068. Article: LKB 2128-010 Ultrotome IV Ultramicrotome and accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used in cutting sections of tissues. (tumor biopsies, renal biopsies, muscle tissues) for electron microscopic examination in the following clinical research projects:

(a) Typing and identification of neoplastic conditions essential for patient's treatment and prognosis.

(b) Diagnosis of renal diseases, particularly identification of types of various glomerulonephritis.

(c) Muscle biopsy tissues in clinical research of primary degenerative myopathies.

The electron microscopic material is also used for a pathology resident-training program as well as for training resident physicians in othe disciplines, especially those in internal medicine. Application received by Commissioner of Customs: July 26, 1978. Advice submitted by the Department of Health, Education, and Welfare on: October 19, 1978.

Docket No. 78-00372. Applicant: The Roosevelt Hospital, Department of Pathology, 428 West 59th Street, New York, N.Y. 10019. Article: LKB 8800A III Ultramicrotome and accessories. Manufacturer: LKB Produktor AB, Sweden. Intended use of article: The article is intended to be used for sectioning pathological materials including renal biopsy specimens, tumor of various kinds, metabolic diseases for study in order to further basic knowledge on human cell and tissue ultrastructure and to proper classification of tumor. Application received by Commissioner of Customs: August 3, 1978. Advice submitted by the Department of Health, Education, and Welfare on: October 19, 1978.

Comments: No comments have been received with respect to any of the foregoing applications. Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign articles for such purposes as these articles are intended to be used, is being manufactured in the United States. Reasons: Each of the foreign articles provides a range of cutting speeds 0.1 to 20 millimeters or more per second. The most closely comparable domestic instrument is the Model MT-2B ultramicrotome which is manufactured by Ivan Sorvall, Inc. (Sorvall). The Model MT-2B has a range of cutting speeds from 0.09 to 3.2 millimeters per second. The conditions for obtaining high-quality sections that are uniform in thickness, depend to a large extent on the hardness, consistency, toughness and other properties of the specimen materials, the properties of the embedding materials, and geometry of the block. In connection with a prior application (Docket No. 69-00665-33-46500), which relates to the duty-free entry of an article meeting the cutting speed specification described above, the Department of Health, Education, and Welfare (HEW) advised that "Smooth cuts are obtained when the speed of cutting, (among such [other] factors as knife edge condition and angle), is adjusted to the characteristics of the material being sectioned. The range of cutting speeds and a capability for the higher cutting speeds is, therefore, a pertinent characteristic of the ultramicrotome to be used for sectioning materials that experience has shown difficult to section." In connection with another prior application (Docket No. 70-00077-33-46500) which also relates to an article meeting the cutting speed specification described above, HEW advised that "ultrathin sectioning of a variety of tissues having a wide range in density, hardness etc." requires a maximum range in cutting speed and, further, that the "production of ultrathin serial sections of specimens that have a great variation in physical properties is very difficult." Accordingly, HEW advises in its respectively cited memoranda, that cutting speeds in excess of 4 millimeters per second are pertinent to the satisfactory sectioning of the specimen materials and the relevant embedding materials that will be used by the applicants in their respective experiments.

For these reasons, we find that the Sorvall Model MT-2B ultramicrotome is not of equivalent scientific value to the foreign articles to which the foregoing applications relate, for such purposes as these articles are intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to any of the foreign articles to which the foregoing applications relate, for such purposes as these articles are intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

RICHARD M. SEPPA,
Director,
Statutory Import Programs Staff.

[FR Doc. 78-32259 Filed 11-15-78; 8:45 am]

[3510-25-M]

DUKE UNIVERSITY MEDICAL CENTER

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5 p.m. in Room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue NW., Washington, D.C. 20230.

Docket No: 78-00275. Applicant: Duke University Medical Center, Department of Anatomy, Box 3011, Durham, N.C. 27710. Article: Cryostat and accessories. Manufacturer: Meric, France. Intended use of article: The article is intended to be used to freeze and maintain at low temperature biological membrane specimens for X-ray diffraction studies. Experiments will be conducted to evaluate the structural effects of freezing biological tissue by comparing X-ray structure before freezing to that after freezing.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides a temperature range of —190 to 20° centigrade. The Department of

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Health, Education, and Welfare advises in its memorandum dated September 26, 1978 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Statutory Import Programs Staff.

[FR Doc. 78-32260 Filed 11-15-78; 8:45 am]

[3510-25-M]

IDAHO STATE UNIVERSITY

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5 p.m. in Room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue NW., Washington, D.C. 20230.

Docket number: 78-00257.

Applicant: Idaho State University, 921 South Eighth Avenue, Attention: Purchasing Box 8219, Pocatello, Idaho 83209.

Article: 200 (each) Longworth small mammal traps, complete units with trap and nest box and accessories.

Manufacturer: Penlon Ltd., United Kingdom.

Intended use of article: The article is intended to be used to capture and release rodents to obtain a description of the seasonal and yearly changes in population size, birth and death rates in natural populations of the rodents in high desert habitat.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article traps small mammals as well as juveniles weighing 10 grams or less and provides a coldweather nesting box. The Department of Health, Education, and Welfare advises in its memorandum dated September 26, 1978 that: (1) The capability of the foreign article described above is pertinent to the applicant's intended purpose; and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Statutory Import Programs Staff.

[FR Doc. 78-32261 Filed 11-15-78; 8:45 am]

[3510-25-M]

LOVELACE BIOMEDICAL AND ENVIRONMENTAL RESEARCH INSTITUTE, INC.

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5 p.m. in Room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue NW., Washington, D.C. 20230.

Docket number: 78-00262.

Applicant: Lovelace Biomedical and environmental Research Institute, Inc., P.O. Box 5890, Albuquerque, N. Mex. 87115.

Article: Vibrating Bed Aerosol Generator.

Manufacturer: Fraunhofer Gesellschaft, West Germany.

Intended use of article: The article is intended to be used for research to generate useful, reproducible, and undamaged dry aerosols consisting of different fibrous insulation materials. As part of a research project entitled "Insulation—Carcinogenic and Fibrogenic Materials," two different aerosol generation systems will be tested. One of these makes use of a shearing action to separate the fibers from the bulk supply and can be fabricated locally. The other makes use of a unique bed that vibrates at low frequencies under exact electronic control.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign ariticle, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides the capability for reducing dry materials to aerosol size (about 0.4 micrometers) by using vibrating bed aerosol generation. The National Bureau of Standards advises in its memorandum dated October 10, 1978, that: (1) The capability of the foreign article described above is pertinent to the applicant's intended purpose; and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Statutory Import Programs Staff.

[FR Doc. 78-32262 Filed 11-15-78; 8:45 am]

[3510-25-M]

NORTH CAROLINA STATE UNIVERSITY

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5 p.m. in Room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue NW., Washington, D.C. 20230.

Docket No.: 78-00276.

Applicant: North Carolina State University/Raleigh, N.C., School of Agriculture and Life Sciences, Department of Crop Science, Box 5155, Raleigh, N.C. 27650.

Article: Particulate Matter Prediction Metering Equipment.

Manufacturer: WD and HO Wills, United Kingdom.

Intended use of article: The article is intended to be used for studies of the tar content of tobacco. Experiments will be conducted to reduce tar levels in flue-cured tobacco with the objective of reducing health hazards associated with tobacco. The article paralyzes ground tobacco so that rapid determination can be made on a large number of samples.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides the capability for determining the very specialized particulate matter index as "tars" in tobacco. The Department of Health, Education, and Welfare advises in its memorandum dated September 26, 1978 that: (1) The capability of the foreign article described above is pertinent to the applicant's intended purpose; and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Statutory Import Programs Staff.

[FR Doc. 78-32263 Filed 11-15-78; 8:45 am]

[3510-25-M]

UNIVERSITY OF CALIFORNIA, SAN DIEGO

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5 p.m. in Room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue NW., Washington, D.C. 20230.

Docket No.: 78-00286. Applicant: University of California, San Diego, Gilman Drive and La Jolla Village Drive, La Jolla, Calif. 92093. Article: Multiple sample replicator and accessories. Manufacturer: Biotech, Switzerland. Intended use of aritcle: The article is intended to be used to meter out replicate aliquots of lymphoid cell culture supernatents which may be added to fresh cultures or may be assayed for the presence of antibody. Its purpose is to make possible accurate limiting dilution assays of the frequency of responding lymphoid cells during research into the basic mechanisms of the immune response.

Comments: No comments have been received with respect to this application.

Decesion: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides the capability to simultaneously take samples from 60 wells and release them on an assay plate. The Department of Health, Education, and Welfare advises in its memorandum dated September 26, 1978, that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the forcign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Statutory Import Programs Staff.

[FR Doc. 78-32264 Filed 11-15-78; 8:45 am]

[3510-25-M]

UNIVERSITY OF UTAH

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5 p.m. in Room 6886C of the Department of Commerce Building, 14th and Constitution Avenue NW., Washington, D.C. 20230.

Docket No. 78-00260. Applicant: University of Utah, Salt Lake City, Utah 84112. Article: H-33 Centrifuge with pneumatic motor, Model CS-33, Mix-1-2L Mixer Unit and accessories. Manufacturer: MEAB Metallextraktion AB, Sweden. Intended use of article: The article is intended to be used to investigate the recovery of metal values (such as copper, nickel, uranium, and other important metals) from electrolyte solutions using liquid-liquid (solvent) extraction. The article will also be used to expand the already well-recognized hydrometallurgy program at the university. Laboratory experiments involving the use of the article will be incorporated into regular undergraduate and graduate level courses Met. E. 570L: Hydrometallurgical Laboratory and Met. E. 674: Advanced mineral processing.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides the capability of rapidly separating two immiscible phases within 99.9 percent. The National Bureau of Standards advises in its memorandum dated October 10, 1978, that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose, and (2) it knows of no domestic instrument of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Statutory Import Programs Staff.

[FR Doc. 78-32265 Filed 11-15-78; 8:45 am]

[3510-25-M]

UNIVERSITY OF VIRGINIA ET AL.

Applications for Duty Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to section 6(c) of the Educational, Scien-

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tific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument of apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Statutory Import Programs Staff, Bureau of Trade Regulation, U.S. Department of Commerce, Washington, D.C. 20230, on or before December 6, 1978. Regulations (15 CFR 301.9) issued under the cited Act prescribe the requirements for comments.

A copy of each application is on file, and may be examined between 8:30 a.m. and 5 p.m., Monday through Friday, in Room 6886C of the Department of Commerce Building, 14th and Constitution Avenue NW., Washington, D.C. 20230.

Docket No. 78-00455. Applicant: University of Virginia, School of Medicine, Rehabilitation Engineering Center, P.O. Box 3368, University Station, Charlottesville, Va. 22903. Article: Wheelchair Manipulator and accessories. Manufacturer: Spar Aerospace Products Ltd., Canada. Intended use of article: The article is a unique manipulator arm intended to be used for testing and evaluating purposes. The experiments to be conducted are of two basic types:

(1) Interface experiments conducted to establish the best ways of "connecting" the patient with the manipulator arm controls;

(2) Extensive testing with severely handicapped patients in order to establish what kind, and to what degree, microcomputer-assisted control is required.

Application received by Commissioner of Customs: October 24, 1978.

Docket No. 79-00031. Applicant: University of California—Los Alamos Scientific Laboratory, P.O. Box 990, Los Alamos, New Mexico 87545. Article: Image Converter Camera. Manufacturer: John Hadland, United Kingdom. Intended use of article: The article is intended to be used to photograph the behavior of a high velocity (up to 10^8 cm/sec) plasma stream emerging from a coaxial plasma gun. The article will also be used to diagnose a planned liner implosion plasma experiment. The specific experiments to be conducted include the following:

A. Studies of the initial gas breakdown in the gun;

B. Study of the formation and subsequent behavior of the plasma stream in front of the gun nozzle;

C. The injection of this plasma into a magnetic field;

D. The measurement of the plasma properties such as axial velocity, transverse energy, temperature, impurity content, total energy;

E. Experiments to optimize gun parameters for production of thermonuclear plasmas.

Application received by Commissioner of Customs: October 24, 1978.

Docket No. 79-00034. Applicant: New York University Medical Center, 550 First Avenue, New York, N.Y. 10016. Article: LKB 2088 Ultrotome V Ultramicrotome and Accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for studies of cultured cells of the animal nervous system and clonal cell lines, as well as their isolated subcellular components. Various types of cells from animal tumors will be studied as will biopsy specimens from the human and animal nervous system. Experiments to be conducted will involve studying the organization of subcellular fibrous organelles and their alterations during the development and aging process as well as the changes which they might undergo in neoplastic transformation. Attempts will be made to experimentally alter the distributions and connections of these organelles. Other studies will be done to monitor the subcellular fractionation and purification of both fibrous organelles and membrane from tissues as a correlate to biochemical studies. The article will also be used to instruct graduate students, students in M.D.-Ph. D. program and postdoctoral fellows in the basic techniques of ultramicrotomy, in its application to the science of electron microscopy. Application received by Commissioner of Customs: October 26, 1978.

Docket No. 79-00036. Applicant: Cornell University, Department of Chemistry, Baker Laboratory, Ithaca, N.Y. 14853. Article: LKB 8800A Ultrotome III Ultramicrotome and accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for ultrastructural studies of plant and animal specimens to determine elemental distribution in normal and pathologic states. The localization of diffusible ions (Na^+, K^+, Mg^{++}, Mn^{++}, Cl^-, P^-) in cells and tissues will also be evaluated and a comparison made between conventional and cryotechniques to determine the optimum preparative procedures. Application received by Commissioner of Customs: October 30, 1978.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Statutory Import Programs Staff.

[FR Doc. 78-32257 Filed 11-15-78; 8:45 am]

[3510-25-M]

WAYNE STATE UNIVERSITY SCHOOL OF MEDICINE ET AL.

Applications for Duty Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Statutory Import Programs Staff, Bureau of Trade Regulation, U.S. Department of Commerce, Washington, D.C. 20230, on or before December 6, 1978.

Regulations (15 CFR 301.9) issued under the cited Act prescribe the requirements for comments.

A copy of each application is on file, and may be examined between 8:30 a.m. and 5 p.m., Monday through Friday, in Room 6886C of the Department of Commerce Building, 14th and Constitution Avenue NW., Washington, D.C. 20230.

Docket Number: 79-00024.

Applicant: Wayne State University School of Medicine, Department of Pathology, 9374 Scott Hall, 540 East Canfield, Detroit, Mich. 48201.

Article: Balzers BAF 301 High Vacuum Freeze-Etch System and accessories.

Manufacturer: Balzers High Vacuum Corp. Subsidiary of Balzers Ltd., Switzerland.

Intended use of article: The article is intended to be used for varied projects in a research program in morphology. Among the research interests are the following:

(1) Investigation of the relative contributions that elevated wall stress and vasopathogenesis of the microvascular lesions in severe hypertension.

Examination of the characteristics and distribution of the different types of junctions that are located within the complex intercellular space between cardiac muscle cells and to study the effects induced by angiotensin II and renal hypertension.

(3) Study of freeze-fracture and etching changes induced by renal hypertension on the arteriosclerosis prone intercostal orifices of the aorta in man.

(4) Examination of the modifications induced at the level of the tight endothelial junctions by amgiotension II and renal hypertension.

(5) Investigation of the role of increased vascular permeability in the development of the cardiomyopathic process.

The article will also be used in a course in experimental cardiovascular pathology to introduce students to the area of experimental pathology and teach them how the investigation of animal models of human disease can lead to a better understanding and improved therapy of disease in man.

Application received by Commissioner of Customs: October 16, 1978.

Docket number: 79-00026.

Applicant: The Public Schools of Brookline, Mass., 333 Washington Street, Brookline, Mass. 02146.

Article: Elementary School Computer Systems.

Manufacturer: Societe Generale Tortue Ltee, Canada.

Intended use of article: The article is intended to be used for the analysis of the LOGO activities of a group of 16 sixth-grade students, representing a full spectrum of ability, which are being documented with a view to developing ways of capturing the learning possibilities of such an environment.

Application received by Commissioner of Customs: October 18, 1978.

Docket number: 79-00027.

Applicant: Smithsonian Institution Astrophysical Observatory, 60 Garden Street, Cambridge, Mass. 02138.

Article: Image Intensifier Tube.

Manufacturer: Robert Bosch GmbH, Germany.

Intended use of article: The article is intended to be used for observations of a variety of astronomical objects using high-efficiency spectrographs attached to large telescopes. These observations will include studies of galactic and extragalatic phenomena such as quasars, galaxy redshifts, cosmological evolution, interstellar absorption, and stellar or galactic chemical composition. The article will be used as an input stage for a high-gain image intensifier chain, which will in turn feed a photodiode detector array, allowing detection and location of individual photoelectron events.

Application received by Commissioner of Customs: October 18, 1978.

Docket number: 79-00029.

Applicant: University of Illinois at Chicago Circle, Department of Physics, P.O. Box 4348, Chicago, Ill. 60680.

Article: Multigas Laser.

Manufacturer: Lambda Physik, West Germany.

Intended use of article: The article is intended to be used for studies of atomic and molecular gases, particularly small molecular systems such as the H_2, N_2, CO and OCS. Optical and collisional properties are to be measured (e.g., photoionization of existed states and collisional deactivation). A variety of experiments involving laser excitation, often by two quanta, enabling the determination of system properties will be conducted. The objective of these experiments is to determine the basic material properties under the influence of intense ultraviolet radiation.

Application received by Commissioner of Customs: October 24, 1978.

Docket number: 79-00030.

Applicant: University of Illinois at Chicago Circle, P.O. Box 4348, Chicago, Ill. 60680.

Article: Pulse CO_2 Laser Kit and accessories.

Manufacturer: Lumonics Research Ltd., Canada.

Intended use of article: The article is intended to be use to study organic reactions initiated by infrared radiation. A specific example is the reaction of butadiene to form vinyl cyclohexene. The molecules to be studied absorb radiation produced by a CO_2 laser and undergo reactions in the gas phase. Mixtures of reactants such as butadiene will be prepared in cells; the cell will be irradiated with the laser; and a product analysis will be undertaken.

Application received by Commissioner of Customs: October 24, 1978.

Docket number: 79-00032.

Applicant: Howard University, 415 College Street NW., Washington, D.C. 20059.

Article: Electron Microscope, Model EM 10A with Coolwell recirculating cooling system and accessories.

Manufacturer: Carl Zeiss, West Germany.

Intended use of article: The article is intended to be used for studies of biological materials related to human diseases, particularly heart disease and stroke and cancer with focus on studies on the molecular and subcellular alteration of organelles. Investigations will be conducted to:

(a) To determine the changes in myofibril structure and function in cardiac cells and endothelia in normal and heart diseased animals.

(b) Determine the ultrastructural changes that occur during the transformation of a normal mammary gland cell into a tumor cell.

(c) Localize the sites of protein hormone binding on the plasma membrane of cells in hormone responsive tissues.

(d) Localize sites of tumor specific antigens on cultured cell surfaces.

Application received by Commissioner of Customs: October 24, 1978.

Docket No. 79-00033. Applicant: University of North Carolina, Department of Environmental Sciences and Engineering, School of Public Health 201H, Chapel Hill, N.C. 27514. Article: Gas Chromatograph/Mass Spectrometer Data System, Model 70/70F and accessories. Manufacturer: VG-Micromass, United Kingdom. Intended use of article: The article is intended to be used for the study and application of gas phase ion chemistry to problems in environmental sciences and engineering. The particular phenomena to be studied include: unimolecular gas phase reactions of excited ions and gas phase ion-molecule reactions with particular emphasis on developing an understanding of chemical ionization mass spectrometry and studying novel ion-molecule reactions which might have utility for the analysis of materials of interest to environmental scientists and engineers. These materials include polycyclic aromatic hydrocarbons, their phenolic derivatives, chlorinated and brominated aromatic compounds, chlorinated phenols, plasticizers, metabolites, conjugates and transformation products of the above, soil or water extracts and so forth. Experiments will be conducted with the following objectives:

1. To identify the water borne effluents resulting from various coal gasification technologies.

2. To identify the biodegradation products of various coal gasification effluents.

3. To identify physical/chemical treatment products of coal gasification effluents.

4. To monitor the time-course of the biodegradation of compounds in coal gasification effluents.

5. To identify the chemical degradation products of aquatic humic acid.

6. To identify the chlorination products of humic acid model compounds.

7. To identify the volatile compounds resulting from the chlorination of humic acid.

Application received by Commissioner of Customs: October 24, 1978.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Statutory Import Programs Staff.

[FR Doc. 78-32258 Filed 11-15-78; 8:45 am]

[3510-25-M]

WILLIAM MARSH RICE UNIVERSITY

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scien-

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tific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5 p.m. in Room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue NW., Washington, D.C. 20230.

Docket No. 78-00282. Applicant: William Marsh Rice University, P.O. Box 1892, Houston, Tex. 77001. Article: Automatic Recording Circular Dichroism Spectrometer, Model J500C with Model MCD 1BS Electromagnet Accessory. Manufacturer: JASCO Ltd., Japan. Intended use of article: The article is intended to be used for studies of proteins, synthetic organic compounds, natural products and coordination compounds. Experiments to be conducted will consist of recording the wavelength dependence of the natural and magnetically induced circular dichroism at a variety of temperatures and sample concentration. The spectra will be utilized to establish the three-dimensional relationships of the molecular groups in their characteristic geometry and how such interactions determine the nature of the biological functionality of these molecules.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides capabilities for circular dichroism (CD) spectra, rapid switching between right and left polarized light (50,000 times/second) and specialized magnet to propogate CD light. The Department of Health, Education, and Welfare advises in its memorandum dated September 26, 1978 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Statutory Import Programs Staff.

[FR Doc. 78-32266 Filed 11-15-78; 8:45 am]

[3510-22-M]

National Oceanic and Atmospheric Administration

NEW ENGLAND FISHERY MANAGEMENT COUNCIL

Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council, established by section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), will meet to discuss: (1) Foreign fishing permit applications; (2) review of possible scallop management strategies; (3) groundfish trip limitations and vessel class closures; (4) report of Chairmen's meeting, legal status report, and DOC Audit Report; and (5) other business.

DATES: The meeting will convene on Wednesday, November 29, 1978, at approximately 10 a.m. and adjourn on Thursday, November 30, 1978, at approximately 5 p.m. The meeting is open to the public.

ADDRESS: The meeting will take place at the Holiday Inn, junction of Routes 1 and 128, Peabody, Mass.

FOR FURTHER INFORMATION CONTACT:

Spencer Apollonio, Executive Director, New England Fishery Management Council, Peabody Office Building, One Newbury Street, Peabody, Mass. 01960, telephone: 617-535-5450.

SUPPLEMENTARY INFORMATION: For information on seating arrangements, changes to the agenda, and/or written comments, contact the Executive Director.

Dated: November 9, 1978.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.

[FR Doc. 78-32235 Filed 11-15-78; 8:45 am]

[3510-11-M]

United States Travel Service

AIRLINE SEMINAR

Meeting

Notice is hereby given that the United States Travel Service (USTS), an agency of the Department of Commerce, will be holding a seminar on November 28, 1978, beginning at 10 a.m. in Room 4830 of the Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Given that the U.S.A. is currently one of the best buys in the tourism marketplace, an open forum is planned to enable USTS to exchange ideas with executives in the airline industry. At the meeting USTS will present its Fiscal Year 1979 marketing program.

A limited number of seats will be available to observers from the public and the press. Mr. Gordon McCoun, Room 1508, U.S. Department of Commerce, Washington, D.C. 20230, telephone 202-377-3196, will respond to public requests for information about the meeting.

FABIAN CHAVEZ, JR.,
Assistant Secretary of Commerce for Tourism.

[FR Doc. 78-32267 Filed 11-15-78; 8:45 am]

[6315-01-M]

COMMUNITY SERVICES ADMINISTRATION

CAP INCENTIVE PROJECTS

Waiver of Non-Federal Share Requirement

1. *Purpose.* This notice is issued to inform the public of a waiver of the non-Federal share requirement for the CAP incentive projects and the criteria on which that waiver is based.

2. *Background.* Each CAP incentive project will be a partnership between a community action agency and a private nonprofit organization or group, composed of residents of the community, which is working to alleviate poverty conditions or to deal with poverty-related issues in the community at large or at the neighborhood level. These partneships will identify structural or functional causes of poverty within their community structure that contribute to the continued impoverishment of local residents. They then will be responsible for developing and implementing a strategy designed to eliminate the particular cause which has been identified.

3. *Waiver criteria.* Under the authority provided in section 225(c) of the Economic Opportunity Act of 1964, as amended, the Director is waiving the non-Federal share requirement. These are not the types of projects that can generate non-Federal share since they are process-oriented and not designed to deliver services.

GRACIELA (GRACE) OLIVAREZ,
Director.

[FR Doc. 78-32073 Filed 11-15-78; 8:45 am]

[3910-01-M]

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF SCIENTIFIC ADVISORY BOARD

Meeting

NOVEMBER 7, 1978.

The USAF Scientific Advisory Board Aeronautics Panel Subcommittee on Engine Comparison Study will meet on December 4 and 5, 1978 at Wright-Patterson Air Force Base, Ohio. The purpose of the meeting is to review the results of the Joint Air Force/Navy Funded Engine Comparison Study. The Committee will meet from 9 a.m. to 4:30 p.m. each day.

The meeting concerns matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information contact the Scientific Advisory Board Secretariat at 202-697-8845.

CAROL M. ROSE,
Air Force Federal Register Liaison Officer.

[FR Doc. 78-32209 Filed 11-15-78; 8:45 am]

[3710-08-M]

Department of the Army

INTERIM STATIONING OF THE 2D BATTALION, 9TH INFANTRY, 2D INFANTRY DIVISION AT FORT RILEY, KANS.

Negative Declaration

The Department of the Army, U.S. Department of Defense, gives notice that an environmental impact statement is not being prepared for the interim stationing at Fort Riley, Kans., of the 2d Battalion, 9th Infantry, 2d Infantry Division.

The environmental assessment indicates that the interim stationing will not create significant local, regional, or national impacts on the environment and that no significant environmental controversy will be associated with the interim stationing. As a result of these findings, it has been determined that an environmental impact statement is not required.

The 2d Battalion, 9th Infantry, 2d Infantry Division, will be temporarily stationed at Fort Riley, Kans., upon its redeployment to the United States from the Republic of Korea in December 1978. The battalion will redeploy initially as an infantry battalion consisting of approximately 500 officers and enlisted personnel. Upon its return it is expected that it will be converted to a mechanized infantry battalion and will increase its strength to approximately 850 officers and enlisted personnel. The addition of one battalion of approximately 850 military with 1,000 dependents will be within both post and regional historical population fluctuations and will not appreciably alter population densities. There will be a slight increase in frequency of use of training areas but no new training areas or changes in type of training.

The environmental assessment file is available for inspection during regular working hours at the following locations:

Director of Facilities and Engineering, Engineer Plans and Service Division, Room 202, Building 187, Fort Riley, Kans. 66442, telephone: 913-239-2718 or

Headquarters, Department of the Army, Office of the Assistant Chief of Engineers, Environmental Office, Room 1E676, Pentagon, Washington, D.C. 20310, telephone: 202-694-1163.

BRUCE A. HILDEBRAND,
Deputy for Environmental Affairs, Office of the Assistant Secretary of the Army (Civil Works).

NOVEMBER 8, 1978.

[FR Doc. 78-32178 Filed 11-15-78; 8:45 am]

[3810-70-M]

Office of the Secretary

DOD ADVISORY GROUP ON ELECTRON DEVICES

Advisory Committee Meeting

Working Group B (Mainly Low Power Devices) of the DOD Advisory Group on Electron Devices (AGED) will meet in closed session 6-7 December 1978. The meeting on 6 December will be held at the Institute for Defense Analyses, 400 Army Navy Drive, Arlington, Va. 22202, in conjunction with Working Group C. The meeting on 7 December will be held at the Naval Air Systems Command, Washington, D.C. 20360.

The purpose of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with tactical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs that the Military Departments propose to initiate with industry, universities or in their laboratories. The low power device area includes such programs as integrated circuits, charge coupled devices and memories. The review will include details of classified program details throughout.

In accordance with section 10(d) of appendix I, Title 5, United States Code, it has been determined that this advisory Group meeting concerns matters listed in section 552b(c) of title 5 of the United States Code, specifically subparagraph (1) thereof, and that accordingly, this meeting will be closed to the public.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Washington Headquarters Service, Department of Defense.

NOVEMBER 9, 1978.

[FR Doc. 78-32206 Filed 11-15-78; 8:45 am]

[3128-01-M]

DEPARTMENT OF ENERGY

DRAFT REPORT TO THE PRESIDENT BY THE INTERAGENCY REVIEW GROUP ON NUCLEAR WASTE MANAGEMENT

Extension of Period for Public Comment

Notice is hereby given that the period during which public comment on this report will be solicited and considered has been extended through December 4, 1978. This extension beyond the original deadline of November 18, 1978, set forth in the FEDERAL REGISTER notice dated October 19, 1978, is in recognition of problems of distribution and the need to permit sufficient time for meaningful public review and comment.

The Interagency Review Group (IRG) was established by President Carter on March 15, 1978 to develop recommendations for establishing an Administration policy on long-term management of the Nation's nuclear waste. This includes waste from commercial nuclear power operations, and existing low-level, transuranic, and high-level defense waste.

All interested agencies, organizations, or persons desiring to submit comments on the Draft Report are invited to do so. Copies are available for public inspection at the DOE public document room, located in the Library, Room 1223, Department of Energy, 20 Massachusetts Avenue, NW., Washington, D.C. 20545. Copies are also available at the DOE Regional Offices in: Boston, Mass.; New York, N.Y.; Philadelphia, Pa.; Atlanta, Ga.; Chicago, Ill.; Dallas, Tex.; Kansas City, Mo.; Denver, Colo.; San Francisco, Calif.; and Seattle, Wash.

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Requests for copies of the report and written comments may be sent to: Interagency Review Group on Nuclear Waste Management, Department of Energy, 20 Massachusetts Avenue, NW., Room 8137, Washington, D.C. 20545, telephone: 202-376-4036.

Following consideration of comments submitted, the report will be revised as appropriate and submitted to the President.

Dated as Washington, D.C., this 13th day of November, 1978.

For the Department of Energy.

WILLIAM P. DAVIS,
Deputy Director of Administration.

[FR Doc. 78-32256 Filed 11-15-78; 8:45 am]

[3128-01-M]

Office of Energy Research

HIGH ENERGY PHYSICS ADVISORY PANEL

Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given that the High Energy Physics Advisory Panel will meet on Monday, December 4, 1978, from 9 a.m. to 10 p.m. and Tuesday, December 5, 1978, from 9 a.m. to 5 p.m., in the Comitium of the Central Laboratory at the Fermi National Accelerator Laboratory, Batavia, Ill.

The Panel was established to provide advice and guidance on a continuing basis to the Secretary of Energy through the Director, Office of Energy Research, with respect to the high energy physics research program.

The tentative agenda for the meeting is as follows:

- Review of the research program and developmental activities at Fermi National Accelerator Laboratory, including construction activities.
- Presentations and discussion of FY 1979 high energy physics program, problems, and plans at Stanford Linear Accelerator Center (SLAC), at Brookhaven National Laboratory (BNL), at Lawrence Berkeley Laboratory (LBL), at the Cornell Synchrotron, and at Argonne National Laboratory (ANL).
- Present status of Japan-U.S. collaborations and People's Republic of China-U.S. collaborations.
- Formation of an Accelerator Research and Development Subpanel of the High Energy Physics Advisory Panel.

The meetings are open to the public. The Chairman of the Panel is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Panel will be permitted to do so, either before or after the meetings. Members of the public who wish to make oral statements pertaining to agenda items should inform Georgia Hildreth, Director, Advisory Committee Management, 202-252-5935, at least 5 days prior to the meeting and reasonable provision will be made to include their presentation on the agenda.

Transcripts of the meetings will be available for the public review at the Freedon of Information Public Reading Room, Room GA-152, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Any person may purchase a copy of the transcripts from the reporter.

Issued at Washington, D.C., on November 13, 1978.

WILLIAM P. DAVIS,
Deputy Director of Administration.

[FR Doc. 78-32255 Filed 11-15-78; 8:45 am]

[3128-01-M]

Office of the Secretary

MATERIAL CRITERIA AND INSTALLATION PRACTICES FOR INSULATION AND OTHER WEATHERIZATION MATERIALS

Solicitation of Views

AGENCY: Department of Energy.

ACTION: Opportunity to present written views on a draft of material criteria and installation practices for several kinds of insulation and other weatherization materials.

SUMMARY: The Office of Conservation and Solar Applications, Department of Energy, has prepared a draft Technical Report entitled "Material Criteria and Installation Practices for the Retrofit Application of Insulation and Other Weatherization Materials" (November 1978).

The draft Technical Report contains material criteria and installation practices intended to assist manufacturers, installers, and consumers regarding effective and safe retrofitting of residential buildings to improve energy efficiency. The materials covered by the draft Technical Report are thermal insulation, vapor barriers, caulking and weatherstripping, clock thermostats, water heater insulation, storm windows and doors, thermal windows, and multi-glazing.

DATES: Comments by December 22, 1978. (Procedures on filing comments are given elsewhere in this notice.)

ADDRESSES: Comments to Public Hearing Management, Room 2313, Box WB, Department of Energy, 2000 M Street, NW., Washington, D.C. 20461. (Procedures on filing comments are given elsewhere in this notice.) Requests for the draft Technical Report should be made to Ms. Gloria Purnell, Department of Energy, 20 Massachusetts Avenue, NW., Room 2252C, Washington, D.C. 20545, 202-376-1964.

FOR FURTHER INFORMATION CONTACT:

Dr. Ervin Bales (Material Criteria), Division of Buildings and Community Systems, Department of Energy, Room 2250, 20 Massachusetts Avenue, NW., Washington, D.C. 20545, 202-376-4888.

Ms. Shelley Launey (Installation Guidelines), Division of Buildings and Community Systems, Department of Energy, Room 2251, 20 Massachusetts Avenue, NW., Washington, D.C. 20545, 202-376-4708.

SUPPLEMENTARY INFORMATION:

A. ISSUES OF PARTICULAR INTEREST

While the Department of Energy (DOE) is interested in comments regarding any aspect of or issue raised by the draft Technical Report, the DOE is particularly interested in responses to the following questions:

- Are the technical elements of all of the material criteria and installation practices as good as they reasonably could be?
- Are any of the material criteria or installation practices inconsistent with any requirements imposed by a Federal agency or other entity? Are they inconsistent with any guidance of less than a mandatory nature by a Federal agency or other entity?
- With respect to the installation practices:
- How will these installation practices affect the time spent to complete the installation of a specific measure?
- Are the majority of the provisions included in these practices currently being followed?
- What criteria would you recommend to define good installation practice? Would it be beneficial to institute state certification of installers to ensure the quality of installations?
- Are all of the provisions contained in these installation practices workable?

The DOE would appreciate comments addressing these questions to contain as much specific information as reasonably possible.

B. COMMENT PROCEDURES

Interested persons are invited to submit written data, views, or arguments with respect to the draft Technical Report. The DOE is particularly interested in comments addressing the questions set forth above. Comments should be submitted to the address and by the date indicated above and should be identified on the outside of the envelope and on documents submitted to DOE with the designation "material/installation standards." If

possible, fifteen copies should be submitted.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing, one copy only. The DOE reserves the right to determine the confidential status of the information and to treat it according to its determination.

Issued in Washington, D.C., November 9, 1978.

OMI WALDEN,
Assistant Secretary, Conservation and Solar Applications.

[FR Doc. 78-32225 Filed 11-15-78; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1007-5]

DISPOSAL FACILITIES IN WETLANDS

Public Meeting

The Environmental Protection Agency (EPA) will hold a public meeting on December 11, 1978, to provide opportunity for discussion of draft policy guidance regarding permits under sections 402 and 404 of the Clean Water Act (Pub. L. 95-217) for solid waste disposal facilities located in wetlands.

EPA has developed a draft policy guidance memorandum dated August 23, 1978, which provides policy guidance on the applicability of the National Pollutant Discharge Elimination System (NPDES) program to facility operators who dispose of solid waste in wetlands and other waters of the United States. Although the discharge of any solid waste into waters of the United States requires an NPDES permit, this guidance is limited to solid waste disposal facilities located in wetlands or other waters of the United States which receive wastes from sources such as trucks, barges, or other transportation vehicles. The guidance applies principally to wetlands and tidal areas, including unvegetated coastal mud flats, that may be or have been converted to solid waste disposal facilities.

The thrust of the policy expressed in the draft guidance is that the discharge of solid wastes into such waters is subject to the NPDES requirements of section 402 of the Clean Water Act and should not be permitted where there are practicable alternatives which: (1) Do not involve a discharge into water; or (2) could be conducted in a manner less damaging to the affected aquatic ecosystem. In addition to receiving comments on the draft guidance, the Agency is also soliciting suggestions for alternative approaches such as consolidating the section 402 permits with permits issued under section 404 of the Act or deferring entirely to either the section 402 or section 404 permits.

The draft policy guidance is consistent with the principles contained in EPA's Wetlands Policy (38 FR 10834, May 2, 1973), Executive Order 11990 providing for the protection of wetlands (42 FR 26901, May 24, 1977), and EPA's proposed classification criteria for solid waste disposal facilities under section 4004 of the Resource Conservation and Recovery Act and section 405 of the Clean Water Act (43 FR 4953, February 6, 1978).

It is likely that the policy guidance will later, through the Agency's normal rulemaking procedure, be developed into regulations under section 402 or 404 of the Clean Water Act. This action would be taken to provide for application of the policy guidance through States which are designated to operate the permit programs.

The meeting on December 11, 1978, will begin at 1 p.m., with registration at 12:30 p.m., and will end before 5 p.m. It will be held at: EPA, Waterside Mall, Room 2117, 401 M Street SW., Washington, D.C.

Statements may be presented orally at the meeting, but should not exceed ten (10) minutes in length. Written comments on the draft policy guidance memorandum should be submitted no later than December 22, 1978, to: Scott L. Slesinger, Permits Division (EN-336), Office of Water Enforcement, 401 M Street SW., Washington, D.C. 20460.

For further information on this meeting, contact: Geraldine Wyer, Public Participation Officer, U.S. EPA, Office of Solid Waste (WH-562) 401 M Street SW., Washington, D.C. 20460, 202-755-9157.

Copies of the draft policy guidance memorandum may be obtained on request after November 10, 1978, from: Solid Waste Information, U.S. EPA, 26 West St. Clair, Cincinnati, Ohio 45268; or by calling 513-684-8491.

THOMAS C. JORLING,
Assistant Administrator for Water and Waste Management.

NOVEMBER 9, 1978.

[FR Doc. 78-32168 Filed 11-15-78; 8:45 am]

[6560-01-M]

[FRL 1006-8]

MANAGEMENT ADVISORY GROUP TO THE MUNICIPAL CONSTRUCTION DIVISION

Open Meeting

Under Pub. L. 92-463, notice is hereby given that a meeting of the Management Advisory Group (MAG) to the Municipal Construction Division will be held at Waterside Mall, Room 3906-08, 401 M Street SW., Washington, D.C. on December 7-8, 1978. The meeting will begin at 9 a.m.

The purpose of the meeting is to discuss and review the following: Needs survey, State delegation, minority business enterprises, EPA prequalifications guidelines, Corps of Engineers agreements, status of ICR study, alternative and innovative technology, marine discharge secondary treatment modifications (301h), EPA/State agreements, operation and maintenance strategy and Buy American.

The meeting will be open to the public. Any member of the public wishing to attend the meeting should contact the Executive Secretary, Mr. Harold P. Cahill, Jr., Director, Municipal Construction Division, EPA, Washington, D.C. 20460. The telephone number is 202-426-8986.

THOMAS C. JORLING,
Assistant Administrator for Water and Waste Management.

NOVEMBER 9, 1978.

[FR Doc. 78-32167 Filed 11-15-78; 8:45 am]

[6720-01-M]

FEDERAL HOME LOAN BANK BOARD

[No. AC-51]

PAN AMERICAN FEDERAL SAVINGS & LOAN ASSOCIATION, SAN FRANCISCO, CALIF.

Approval of Conversion Application, Finol Action

NOVEMBER 9, 1978.

Notice is hereby given that on November 9, 1978, the Federal Home Loan Bank Board, as the operating head of the Federal Savings and Loan Insurance Corp., by Resolution No. 78-611 approved the plan of conversion, as amended in accordance with Resolution No. 78-149 which approved the conversion application of Pan American Federal Savings and Loan Association, San Francisco, Calif., to convert to a California stock association. Copies of the application are available for inspection at the Office of the Secretary of said Corporation, 1700 G Street NW., Washington, D.C. 20552 and the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of San Francisco, 600 California Street, San Francisco, Calif. 94120.

By the Federal Home Loan Bank Board.

J. J. FINN,
Secretary.

[FR Doc. 78-32279 Filed 11-15-78; 8:45 am]

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[6210-01-M]

FEDERAL RESERVE SYSTEM

CARROLL COUNTY BANCSHARES, INC.

Formation of Bank Holding Company

Carroll Bounty Bancshares, Inc., Carroll, Iowa, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Carroll County State Bank, Carroll, Iowa. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842 (c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 30, 1978. Any comment on an application that requests a hearing must be sent to the Secretary's Office within 30 days of the date of this notice and must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 8, 1978.

JOHN M. WALLACE
Assistant Secretary of the Board.

[FR Doc. 78-32268 Filed 11-15-78; 8:45 am]

[6210-01-M]

FINANCIAL GENERAL BANKSHARES, INC.

Proposed Retention of National Mortgage Corp.

Financial General Bankshares, Inc., Washington, D.C., has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4 (b)(2)), for permission to retain voting shares of National Mortgage Corp., Washington, D.C. Notice of the application was published on October 3, 1978, in The Washington Post, a newspaper circulated in Washington, D.C.

Applicant states that the subsidiary would continue to engage in the activity of general mortgage banking, primarily engaging in originating mortgage loans, selling mortgage loans to permanent investors and servicing these loans. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Richmond.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than December 7, 1978.

Board of Governors of the Federal Reserve System, November 7, 1978.

JOHN M. WALLACE,
Assistant Secretary of the Board.

[FR Doc. 78-32269 Filed 11-15-78; 8:45 am]

[6210-01-M]

FIRST APACHE BANCSHARES, INC.

Formation of Bank Holding Company

First Apache Bancshares, Inc., Apache, Okla., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares (less directors' qualifying shares) of The First National Bank of Apache, Apache, Okla. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

First Apache Bancshares, Inc., Apache, Okla., has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of First Apache Business Trust, Apache, Okla. Notice of the application was published on August 17, 1978 in The Apache News, a newspaper circulated in Apache, Caddo County, Okla.

Applicant states that the proposed subsidiary would engage in the activities of offering credit life insurance and credit accident and health insurance in connection with extensions of credit by its proposed subsidiary. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than November 30, 1978.

Board of Governors of the Federal Reserve System, November 7, 1978.

JOHN M. WALLACE,
Assistant Secretary of the Board.

[FR Doc. 78-32270 Filed 11-15-78; 8:45 am]

[1505-01-M]

FEDERAL TRADE COMMISSION

PREEMPTIVE EFFECT OF SECTION 111(c)(1) OF MAGNUSON-MOSS WARRANTY ACT

Wisconsin Mobile Home Warranty Law

Correction

In FR Doc. 78-30772 appearing at page 50737 in the issue for Tuesday, October 31, 1978, make the following corrections:

(1) In the third column of page 50737, the last line of footnote four, "• • • and other Federal law." should have read "• • • any other Federal law."

(2) In the first column of page 30738, in the sixth line of the first complete paragraph, "• • • scheme or warranty rights • • •" should have read "• • • scheme of warranty rights • • •".

(3) In the middle column of page 50739, in the last paragraph in the portion of text discussing § 218.14(1)(d), in the second line, "• • • the effect of the Warranty on those • • •" should have read "• • • the effect of the Warranty Act on those • • •".

[1610-01-M]

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Receipt of Report Proposal

The following request for clearance of a report intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on November 8, 1978. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the FEDERAL REGISTER is to inform the public of such receipt.

The notice includes the title of the request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed NRC request are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed request, comments (in triplicate) must be received on or before December 4, 1978, and should be addressed to Mr. John M. Lovelady, Assistant Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street NW., Washington, D.C. 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

NUCLEAR REGULATORY COMMISSION

The NRC requests an extension without change clearance for Form NRC-354, Data Report on Spouse. This form is used to obtain information vital to NRC's security program, specifically, to determine whether or not certain individuals may become or continue to be eligible for NRC security clearance or access authorizations. The NRC estimates respondents will number approximately 24 annually and that burden will average 15 minutes per application.

NORMAN F. HEYL,
Regulatory Reports, Review Staff.

[FR Doc. 78-32207 Filed 11-15-78; 8:45 am]

[6820-24-M]

GENERAL SERVICES ADMINISTRATION

INSTITUTIONAL PATENT AGREEMENTS

Observance of New Effective Date

NOTE.—This notice originally was published in the FEDERAL REGISTER (43 FR 32463, July 27, 1978) at the request of the Office of Federal Procurement Policy (OFPP). OFPP now has requested that the notice be republished to include a statement regarding the resolution of Government Patent Policy desired by the Monopoly and Anticompetitive Activities Subcommittee Staff of the Senate Small Business Committee. The notice is as follows:

The use of Institutional Patent Agreements was prescribed in Federal Procurement Regulations (FPR) Amendment 187, January 20, 1978 (43 FR 4424, Feb. 2, 1978).

At the request of the Office of Federal Procurement Policy, the effective date of the amendment was changed from March 20, 1978, to July 18, 1978 (43 FR 16979, Apr. 21, 1978). The change permitted further review of the amendment by Members of Congress and others.

FPR Amendment 187 is effective on July 18, 1978, as previously announced. However, the referenced review will be continued in conjunction with the examination of Government patent policy which is in progress. The amendment is subject to change when there is a resolution of Federal Patent Policy.

Dated: November 3, 1978.

PAUL E. GOULDING,
Acting Administrator of General Services.

[FR Doc. 78-32236 Filed 11-15-78; 8:45 am]

[6820-34-M]

PRIVACY ACT OF 1974

Revocation and Transfer of Systems of Records

AGENCY: General Services Administration.

ACTION: Revocation and transfer of three systems of records.

SUMMARY: The purpose of this document is to give notice, pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, of the revocation of three systems of records which had been maintained by the National Center for Productivity and Quality of Working Life and the disposition of the records.

FOR FURTHER INFORMATION CONTACT:

Mr. William Hiebert, Records Management Branch, Paperwork Management Division, 202-566-0673.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Privacy Act of 1974, the National Center for Productivity and Quality of Working Life published in the FEDERAL REGISTER (42 FR 57442 and 57443) a notice of the existence of the following systems of records; Payroll Records GSA-3/1, system identification number 31-32-0001; General Financial Records GSA-3/2, system identification number 31-32-0002; and General Informal Personnel Files GSA-3/3, system identification number 31-32-0003. The National Center for Productivity and Quality of Working Life terminated operations on September 30, 1978. As the General Services Administration (GSA) has reponsibility for concluding the administrative operations of the Center, GSA hereby publishes notice that the above systems of records are revoked. The following is a summary of the disposition of the Center's systems of records subsequent to the termination date:

a. Payroll Records GSA-3/1 and General Financial Records GSA-3/2: Retained by GSA for use in concluding administrative operations of the National Center for Productivity and Quality of Working Life as part of the GSA system of records, Defunct Agency Records GSA/OAD-36.

b. General Informal Personnel Files GSA-3/3: The records in this system were copies of personnel actions and other employment records which were maintained at the National Center for Productivity and Quality of Working Life and were disposed of by the Center upon its termination.

Dated: October 26, 1978.

JANICE K. MENDENHALL,
Controller-Director of Administration.

[FR Doc. 78-32309 Filed 11-15-78; 8:45 am]

[6820-23-M]

REPORT ON ENVIRONMENTAL ACTIONS

Pursuant to the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.). and § 1500.6(e) of the Council on Environmental Quality Guidelines for the Preparation of Environmental Impact Statements (38 FR 20550) the following is a list of administrative actions for which environmental impact statements were under preparation by the General Services Administration from June 1, 1978, through August 31, 1978, for real property disposal actions and for facility planning actions. Also listed are administrative actions for

which environmental impact statements are planned in the future and actions for which environmental assessments were completed with negative declarations.

Dated: October 24, 1978.

JAMES B. SHEA, Jr.,
Commissioner,
Public Buildings Service.

REAL PROPERTY DISPOSAL ACTIONS

REGION 1.—ENVIRONMENTAL IMPACT STATEMENTS/NEGATIVE DECLARATIONS

A. *EIS's in preparation:*

Charlestown, R.I.—Draft EIS regarding disposal of approximately 604 acres of the former Naval Auxiliary Landing Field, published April 28, 1978; public comment and review period through June 27, 1978.

Newport, North Kingstown, Middletown, and Portsmouth, R.I.—Draft EIS regarding disposal of approximately 3,200 acres of the former Quonset Point Naval Air Station, Construction Battalion Center, and U.S. Naval Base, published April 28, 1978; public comment and review period through June 27, 1978.

B. *EIS's planned:* None.

C. *Environmental assessments completed with negative declarations:*

Vernon, Conn.—Public sale of former Rockville Carrier Station by competitive sealed bid.

Stoughton, Mass.—Negotiated sale of former post office to the town of Stoughton for municipal uses.

Waterville, Maine—Public sale of former post office by competitive sealed bid.

REGION 2.—ENVIRONMENTAL IMPACT STATEMENTS/NEGATIVE DECLARATIONS

A. *EIS's in preparation:* None.

B. *EIS's planned:* None.

C. *Environmental Assessments completed with negative declarations:*

Pemberton, N.J.—Public sale of 0.98 of an acre of McGuire Air Force Base by competitive bid.

St. Thomas, Virgin Islands.—Negotiated sale of the U.S. Court and Custom House to the Government of the Virgin Island for municipal uses.

Kearny, N.J.—Negotiated sale of 8.5 acres of the Army Reserve Center to the Kearny Industrial Commission for municipal uses.

Hempstead, N.Y.—Negotiated exchange of 1.73 acres of Navy-owned property at Mitchel Field with the county of Nassau.

REGION 3.—ENVIRONMENTAL IMPACT STATEMENTS/NEGATIVE DECLARATIONS

A. *EIS's in preparation:* none.

B. *EIS's planned:* none.

C. *Environmental assessment completed with negative declarations:*

Prince Georges County, Md.— Proposed assignment of Woodrow Wilson Memorial to the Department of Transportation for Maryland State Highway Administration. Transfer of the remaining portion to the Department of Interior (NPS) for open space.

Curwensville, Pa.—Negotiated sale of the former Naval Reserve Center to the Borough of Curwensville.

Marshall County, W.Va.—Public sale of portion, Hannibal Lock and Dam by competitive bid.

Talbot County, Md.—Proposed acquisition of Ashford farm to Department of National Resources, Maryland Wildlife Administration for wildlife conservation purposes.

Mountaintop, Pa.—Negotiated sale of ten items of industrial equipment, King Fifth Wheel Co. for industrial purposes.

Alexandria, Va.—Public sale of Quartermaster Market Center by competitive bid.

Lewes, Del.—Proposed assignment of the former Harbor Defense Unit to the Hertiage Conservation and Recreation Service for conveyance to State of Delaware for public park use.

Point Pleasant, W.Va.—Negotiated sale of West Virginia National Guard training facility to county commission for county fairground and farm museum.

REGION 4.—ENVIRONMENTAL IMPACT STATEMENTS/NEGATIVE DECLARATIONS

A. *EIS's in preparation:* none.

B. *EIS's planned:*

Key West, Fla.—Draft EIS regarding the disposal of approximately 122 acres of the Naval Air Station.

C. *Environmental assessments completed with negative declarations:*

Oak Ridge, Tenn.—Negotiated sale of 10.61 acres of buffer lands at the Federal Building to city of Oak Ridge, Tenn. for controlled local development.

REGION 5.—ENVIRONMENTAL IMPACT STATEMENTS/NEGATIVE DECLARATIONS

A. *EIS's in preparation:* none.

B. *EIS's planned:* none

C. *Environmental assessments completed with negative declaration:*

Wausau, Wis.—Federal Building, 317 First Street. Property consists of 0.8 acre located on the west side of the contral business district of Wausau. Property is improved with a two-story and partial three-story brick Federal building with a floor area of 27,530 square feet. Proposed disposal by sale to Marathon County.

Steubenville, Ohio.—Former Naval and Marine Corps Reserve Center, Cherry Avenue and Pico Street. Property consists of two parcels. Parcel 1, covering 1.48 acres, is improved with a parking lot. Parcel 2, covering 1.43 acres, is improved with a Naval Reserve Center building and two garages. Proposed disposal by sealed bid sale.

Battle Creek, Mich.—Portion, Veteran's administration Hospital Reservation. Property consists of 38.46 acres of land improved with towers and radar apparatus in very poor condition. Proposed disposal by sealed bid sale as one unit.

Battle Creek, Mich.—Portion, Veteran's Administration Hospital Reservation. Property consists of two noncontiguous parcels of unimproved land. Parcel 1 is 79.7 acres and Parcel 2 is 75.5 acres. Proposed disposal by conveyance of Parcel 2 to the State of Michigan for conservation of wildlife.

Algoma, Wis.—Algoma Pierhead Light Station, 78 Vernon Street. Property consists of .4 acre of land on a bluff overlooking Lake Michigan. Improvements include one house and two storage buildings. Proposed disposal by sealed bid sale.

Romulus, Mich.—Former U.S. Post Office site, Wayne Road. Property consists of 2.66 acres of unimproved land. Proposed disposal by sealed bid sale.

Evansville, Ind.—Former Naval and Marine Corps Reserve Center, 2700 West Illinois Street. Property consists of 10.175 acres of land improved with nine structures. Proposed disposal by negotiated sale to the city of Evansville for various purposes such as a public park, a headquarters for the city's civil defense department and an office and morgue for the county coroner.

REGION 6.—ENVIRONMENTAL IMPACT STATEMENTS/NEGATIVE DECLARATIONS

A. *EIS's in preparation:* None.

B. *EIS's planned:* None.

C. *Environmental assessments completed with negative declarations:*

Shawnee County, Kans.—Public sale of 7.7 acres of land improved with a frame warehouse-type building by competitive bid.

Wichita, Kans.—Negotiated sale of 572.77 acres of land improved with 69 buildings including 7,000 items of equipment and personal property items to the contractor operator, the Boeing Co.

REGION 7.—ENVIRONMENTAL IMPACT STATEMENTS/NEGATIVE DECLARATIONS

A. *EIS's in preparation:* None.

B. *EIS's planned:* None.

C. *Environmental assessments completed with negative declarations:*

Albuquerque, N. Mex.—Negotiated sale of Air Force Plant No. 83 to the General Electric Co. for continued use for production of jet engine parts.

El Paso County, Tex.—Negotiated sale of 1.607 acres unimproved land in western section El Paso, El Paso County, Tex. to the University of Texas at El Paso. The land will be used to expand student parking facilities.

Chavez County, N. Mex.—Negotiated sale of 6.88 acres improved with fence in Chavez County, N. Mex. to the County of Chavez for public use programs for the community.

Jonesboro, Ark.—Negotiated sale of 0.8 acre of land with Federal building and Courthouse located thereon to city of Jonesboro and County of Craighead, Ark., to be used as office space for parks department, building inspector's department, police department, and courtrooms.

Fort Bliss, Tex.—Negotiated sale of 0.594 acre of land will be conveyed to city of El Paso Public Service Board for expansion of existing lift station. Sealed bid sale of 3.887 acres to public. Conveyance of 0.0823 of an acre to city of El Paso for use as traffic control area or for inclusion in sealed bid sale.

Former Chennault AFB, Tex.—Sealed bid sale of 28.34 acres of land.

San Antonio, Tex.—Sealed bid sale of 18.36 acres of land and 76 houses at Brooks Family Housing Annex.

Big Spring, Tex.—Sealed bid sale of 119.16 acres of fee land, 1.58 acres associated easements, and 263 family housing units at former Webb Air Force Base, Tex.

Santa Rosa, N. Mex.—Assign 20.51 acres of land to Heritage Conservation and Recreation Service for conveyance to city of Santa Rosa for park and recreation. Negotiated sale of 0.23 acre to adjacent owner. Assignment of 11.0 acres to Department of Health, Education, and Welfare for conveyance to

Eastern New Mexico Rehabilitative Services for the Handicapped, Inc. for educational use.

Houston, Tex.—Assign golf course at Ellington Air Force Base to Heritage Conservation and Recreation Service for Conveyance to city of Pasadena, Tex.

REGION 8—ENVIRONMENTAL IMPACT STATEMENTS/NEGATIVE DECLARATIONS

A. *EIS's in preparation:* None.

B. *EIS's planned:* None.

C. *Environmental assessments completed with negative declarations:*

Del Norte, Colo.—Public sale of the former Forest Service unimproved lot consisting of 0.24-acre by competitive bid.

Harlowton, Mont.—Negotiated sale of a portion of the Forest Service Administrative Site to the State of Montana for National Guard use.

Glacier National Park, Mont.—Public sale of the former National Park Service log buildings by competitive bid.

Glasgo, Mont.—Conveyance of Glasgo Air Force Base to Valley County, Mont., for airport purposes.

REGION 9—ENVIRONMENTAL IMPACT STATEMENTS/NEGATIVE DECLARATIONS

A. *EIS's in preparation:* Negative.

B. *EIS's planned:*

Novato, Calif.—Draft EIS regarding disposal of approximately 1,475 acres of the former Hamilton Air Force Base.

C. *Environmental assessments completed with negative declarations:*

Madera County, Calif.—Negotiated sale of 55 acres improved with 68 buildings of the Madera Training Center to the County of Madera for use as a training center for the unemployed.

San Pedro, Calif.—Negotiated sale of 44.41 acres fee, 0.379 acre permit and 49 buildings of the property known as the Lower Reservation, Fort MacArthur to the City of Los Angeles for continued use of the property for harbor purposes.

Pomona, Calif.—Public sale of approximately 4.54 acres encumbered with a 3.57 acre easement identified as a portion of the Naval Industrial Reserve Ordnance Plant.

South Gate, Calif.—Negotiated sale of 18 items of Government owned, contractor operated-machinery and equipment installed in the Magna Mills Products Plant to the Contractor/Operator, Magna Mills Products for continued use in Government production programs.

San Diego, Calif.—Public sale for off-site removal of approximately 550,000 cubic yards of gravel under the surface of 34.2 acres of land at Miramar Naval Air Station.

Battle Mountain, Nev.—Transfer to the Department of the Interior, Bureau of Land Mangement 0.83 acre of land improved with 5 houses known as the Federal Aviation Administration Housing Area to be utilized as housing for employees engaged in managing programs to preserve and develop the recreation, watershed, wildlife, and range potential of the surrounding public lands.

REGION 10—ENVIRONMENTAL IMPACT STATEMENTS/NEGATIVE DECLARATIONS

A. *EIS's in preparation:* None.

B. *EIS's planned:* None.

C. *Environmental assessments completed with negative declarations:*

Lane County, Oreg.—Public sale of approximately 1.7 acres fee-owned land and negotiated sale of approximately 1 acre easement to the underlying landowners. The property is a portion of the Goshen-Roseburg Transmission Line located near the city of Goshen.

Tillamook County, Oreg.—Negotiated sale of the old Trask Substation Site consisting of approximately 34.96 acres to the Port of Tillamook Bay. The property is located near the city of Tillamook.

Lane County, Oreg.—Negotiated sale of the Coburg Microwave Station consisting of 1.15 acres to the underlying landowners. The property is located near the city of Eugene.

Harney County, Oreg.—Negotiated sale of the electrical distribution line to C.P. National Corporation and public sale of approximately 27.58 acres, bearing a portion of the Burns Air Force Station located near the city of Burns.

Bannock County, Idaho.—Public sale of approximately 0.58 acre improved with one building located in the city of Pocatello.

FACILITY PLANNING ACTIONS

REGION 1

A. *EIS's in preparation:*

Providence, R.I.—Final EIS for leased construction of a new Federal Office Building.

Springfield, Mass.—Final EIS for construction of a new Courthouse-Federal Office Building and Parking Facility.

Boston, Mass.—Final EIS for construction of a new Federal Office Building.

B. *EIS's planned:*

Boston, Mass.—Preliminary draft EIS for lease costruction of a new Veterans' Administration Clinic Building (temporarily deferred).

Houlton, Maine.—Preliminary draft EIS for construction of new Border Station (temporarily deferred).

C. *Environmental assessments completed with negative declaration:* None.

REGION 2

A. *EIS's in preparation:* None.

B. *EIS's planned:* None.

C. *Environmental assessments completed with negative declaration:* None.

REGION 3

A. *EIS's in preparation:*

Suitland, Md.—Draft EIS for the Suitland Federal Center Master Plan—Southern Portion including Smithsonian Institution Museum Support Center (temporarily deferred).

Wilkes-Barre, Pa.—Draft EIS for lease construction of Federal Building (temporarily deferred).

Washington, D.C.—Draft EIS for relocation and consolidation, and construction of a building for the Nuclear Regulatory Commission.

Washington, D.C.—Final EIS for new construction for the University of the District of Columbia.

Washington, D.C.—Final EIS for leasehold 1900 Half Street, SW., (Buzzard Point).

B. *EIS's planned:*

Washington, D.C.—Draft EIS for lease construction, Bureau of Labor Statistics.

C. *Environmental assessments completed with negative declaration:* None.

REGION 4

A. *EIS's in preparation:*

Birmingham, Ala.—Draft EIS for new construction of Federal Building-U.S. Courthouse and parking facility (temporarily deferred).

Mobile, Ala.—Draft EIS for leasing action of historic structure of Battle House Hotel for Federal office space.

Nashville, Tenn.—Draft EIS for renovation of Union Station.

B. *EIS's planned:*

Montgomery, Ala.—Draft EIS for renovation of Union Station.

Jackson, Miss.—Amended EIS for parking provision for new Federal Building.

C. *Environmental assessments completed with negative declaration:*

Aiken, S.C.—New construction of leased Federal Building.

Montgomery, Ala.—New construction of leased laboratory facility for the Environmental Protection Agency.

Florence, Ky.—New construction for extension to leased facility for Internal Revenue Service.

REGION 5

A. *EIS's in preparation:*

Detroit, Mich.—Final EIS for construction of U.S. Federal Courthouse Annex.

Detroit, Mich.—Final EIS for acquisition, repair and alteration of a Secondary Truck Inspection Facility for the U.S. Customs Service.

Milwaukee, Wis.—Draft EIS for lease construction of a Federal Building and Parking Facility.

B. *EIS's planned:* None.

C. *Environmental assessments completed with negative declaration:* None.

REGION 6

A. *EIS's in preparation:*

Omaha, Nebr.—Draft EIS for construction of a Federal Office Building.

Kansas City, Mo.—Draft EIS for the repair and alteration of Union Station.

B. *EIS's planned:*

Kansas City, Kansas/Kansas City, Mo. (standard metropolitan statistical areas).—Preliminary draft EIS for Internal Revenue Service-Midwest Service Center.

C. *Environmental assessments completed with negative declaration:* None.

REGION 7

A. *EIS's in preparation:*

El Paso, Tex.—Final EIS for construction of Federal Building and Parking Facility and the repair and alteration of Courthouse Federal Building Conversion.

Roma, Tex.—Draft EIS for lease of a Border Station (temporarily deferred).

B. *EIS's planned:*

Brownsville, Tex.—Draft EIS for lease construction of a Border Station.

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C. *Environmental assessments completed with negative declaration:*

Oklahoma City, Okla.—Repair and alteration of Post Office-Courthouse.
Ysleta (El Paso), Tex.—Federal construction of a Border Station.

REGION 8

A. *EIS's in preparation:*

Denver Federal Center, Jefferson County, Colo.—Draft Master Plan/Draft Environmental Impact Statement.

B. *EIS's planned:* None.

C. *Environmental assessments completed with negative declaration:* None.

REGION 9

A. *EIS's in preparation:*

West Los Angeles, Calif.—Draft EIS for construction of a Federal Bureau of Investigation Parking Facility.

B. *EIS's planned:*

San Francisco, Calif.—Preliminary draft EIS for construction of Federal Building.

C. *Environmental assessments completed with negative declaration:* None.

REGION 10

A. *EIS's in preparation:*

Anchorage, Alaska—Federal Building.—Supplement to the final EIS.

B. *EIS's planned:* None.

C. *Environmental assessments completed with negative declaration:* None.

[FR Doc. 78-32189 Filed 11-15-78; 8:45 am]

[4110-02-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

DIRECT, DISCRETIONARY GRANT PROGRAMS; CORRRECTION

In the Notice announcing closing dates for transmittal of applications for fiscal year 1979 published in the FEDERAL REGISTER on August 23, 1978, pages 37618-37659, several technical corrections need to be made. The notice is corrected as follows:

(1) On page 37619, in the list of closing dates, CFDA No. 13.433D should be changed to 13.443D;

(2) On page 37619, in the list of closing dates, the closing date for CFDA No. 13.435B should be changed to January 8, 1979;

(3) On page 37620, third column, second paragraph, third line, $3,000,000 should be changed to $250,000;

(4) On page 37632, third column, fifteenth line, citation should be changed to (20 U.S.C. 1021, 1031, and 1034); and

(5) The closing date for transmittal of applications for the Gifted and Talented—Model Projects Program (13.562c), on page 37638 of the Notice, is being retracted. The request for proposals for that program will be published in the Commerce Business Daily at a later date. On page 37619, CFDA No. 13.562c, program title, and date should be dropped from the list.

Dated: October 31, 1978.

ERNEST L. BOYER,
U.S. Commissioner of Education.

[FR Doc. 78-32237 Filed 11-15-78; 8:45 am]

[4110-02-M]

DIRECT DISCRETIONARY GRANT PROGRAMS

Closing Dates for Transmittal of Applications for Fiscal Year 1979; Correction

In FR Doc. 78-23550 appearing at page 37618 in the issue for Wednesday, August 23, 1978, make the following corrections;

(1) On page 37619, in the table of closing dates, in the entry for No. 13.563, under the heading, "Closing date", the date given should be "Jan. 5, 1979" instead of "Jan. 5, 1978".

(2) On page 37628, in the third column, in the 4th full paragraph, in the 6th line, insert the word "not" between the words "will" and "be".

(3) On page 37657, in the third column, in the heading, "13.577—COMMUNITY SERVICE AND CONTINUING EDUCATION—SPECIAL PROJECTS PROGRAM", the number "13.577" should be changed to read "13.557".

(4) On page 37658, in the first column, the number "13.577" in the heading, "13.577—COMMUNITY SERVICE AND CONTINUING EDUCATION—SPECIAL PROJECTS PROGRAM", should be changed to read "13.557".

[4110-02-M]

ADVISORY COUNCIL ON FINANCIAL AID TO STUDENTS SUBCOMMITTEE ON FEDERAL AND STATE INSURED PROGRAMS

Public Meeting

Notice is hereby given, pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 463), that the next meeting of the Advisory Council on Financial Aid to Students Subcommittee on Federal and State Insured Programs will be held at the O'Hare Hilton Hotel, O'Hare International Airport, Chicago, Ill. on Tuesday, December 5 and Wednesday, December 6, 1978. The meeting on Tuesday will begin at 7 p.m. and the meeting the following day will begin at 9 a.m., continuing until 4:30 p.m.

The Advisory Council on Financial Aid to Students is established under section 499(a) of the Higher Education Act of 1965, as amended (20 U.S.C. 1089). The committee shall advise the Commissioner on matters of general policy arising in the administration by the Commissioner of programs relating to financial assistance to students and on the evaluation of the effectiveness of these programs.

All meetings shall be open to the public. The agenda of this subcommittee shall include discussion of two issues in the current reauthorization planning—options in the loans programs and their relationship to the single application process.

Records shall be kept of all Council proceedings and will be available for public inspection at the Council's Office, located in room 3661, Regional Office Building No. 3, 7th and D Streets SW., Washington, D.C. 20202.

Signed in Washington, D.C., on November 13, 1978.

WARREN T. TROUTMAN,
Office of Education Delegate.

[FR Doc. 78-32204 Filed 11-15-78; 8:45 am]

[4110-02-M]

NATIONAL ADVISORY COMMITTEE ON BLACK HIGHER EDUCATION AND BLACK COLLEGES AND UNIVERSITIES

Meeting

AGENCY: National Advisory Committee on Black Higher Education and Black Colleges and Universities.

ACTION: Notice.

SUMMARY: This notice sets forth the schedule and proposed agenda of the eighth meeting of the National Advisory Committee on Black Higher Education and Black Colleges and Universities. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. 1). This document is intended to notify the general public of their opportunity to attend.

DATE: December 4 and 5, 1978, 9 a.m. to 5 p.m.

ADDRESS: The Harambee House Hotel, 2225 Georgia Avenue NW., Washington, D.C. 20001.

FOR FURTHER INFORMATION CONTACT:

Ms. Carol J. Smith, Program Delegate, National Advisory Committee on Black Higher Education and Black Colleges and Universities, Room 4913, ROB-3, 400 Maryland Avenue SW., Washington, D.C. 20202, 202-245-2825 or 245-2352.

The National Advisory Committee on Black Higher Education and Black Colleges and universities is governed by the provisions of Part D of the

General Education Provisions Act (Pub. L. 90-247 as amended; 20 U.S.C. 1233 et seq.) and the Federal Advisory Commitee Act (Pub. L. 92-463; 5 U.S.C. app. I) which set forth standards for the formation and use of advisory committees.

The Committee is directed to advise the Secretary of Health, Education, and Welfare, the Assistant Secretary for Education, and the Commissioner of Education. The Committee shall examine all approaches to higher education of black Americans as well as the needs of historically black colleges and universities.

The meeting on December 4 and 5, 1978, will be open to the public beginning at 9 a.m. and ending 5 p.m. each day. The meeting will be held at the Harambee House Hotel, 2225 Georgia Avenue NW., Washington, D.C. 20001.

The proposed agenda includes a review of the drafts of three reports developed for the Committee on Access, Institutional Diversity, and Quality Improvements; plans for carrying out priorities in the Committee's plan of action, and discussion of reauthorization of higher education legislation.

Records shall be kept of all Committee proceedings and shall be available for public inspection at the Office of the National Advisory Committee on Black Higher Education and Black Colleges and Unviersities located at 7th and D Streets SW., Room 4913, ROB-3, Washington, D.C.

Signed at Washington, D.C., on November 10, 1978.

CAROL J. SMITH,
Program Delegate, National Advisory Committee on Black Higher Education and Black Colleges and Universities.

[FR Doc. 78-32205 Filed 11-15-78; 8:45 am]

[4110-02-M]

STRENGTHENING DEVELOPING INSTITUTIONS PROGRAM

Closing Date for Transmittal of Applications for Fiscal Year 1979

Applications are invited for new programs under the Strengthening Developing Institutions program.

Authority for this program is contained in section 301-306 of title III of the Higher Education Act of 1965, as amended. (20 U.S.C. 1051 to 1056.)

This program assists selected higher education institutions, called developing institutions, to strengthen their academic quality, administrative capacity, and student services.

Closing date for transmittal of applications: Applications for grants must be mailed (postmarked) or hand delivered by February 2, 1979.

Applications delivered by mail: An application sent by mail must be addressed to the U.S. Office of Education, Application Control Center, Attention 13.454, Washington, D.C. 20202.

Proof of mailing must consist of a legible U.S. Postal Service dated postmark or a legible mail receipt with the date of mailing stamped by the U.S. Postal Service. Private metered postmarks or mail receipts will not be accepted without a legible date stamped by the U.S. Postal Service.

NOTE.—The U.S. Postal Service does not uniformly provide a dated postmark. Applicants should check with their local post office before relying on this method.) Applicants are encouraged to use registered or at least first class mail.

Each late applicant will be notified that late applications will not be considered in the current competition.

Applications delivered by hand: An application that is hand delivered must be taken to the U.S. Office of Education, Application Control Center, Room 5673, Regional office Building 3, 7th and D Streets SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8 a.m. and 4 p.m. (Washington, D.C., time) daily, except Saturdays, Sundays, and Federal holidays.

Applications that are hand delivered will not be accepted after 4 p.m. on the closing date.

Applicable regulations: The regulations applicable to this program are:

(a) Office of Education General Provisions Regulations (45 CFR pt. 100a), and

(b) Regulations governing the Strengthening Developing Institutions program (45 CFR pt. 169). Proposed regulations for the Strengthening Developing Institutions program were published November 2, 1978. The proposed rules list the criteria which the U.S. Commissioner of Education will use for designating a developing institution. The new rules also list funding criteria for the program, set forth program priorities, and describe the procedure for selecting grantees.

Applicants should base their proposals on the proposed rules published in the FEDERAL REGISTER on November 2, 1978. If there is any change between the proposed and final criteria, applicants will be given an opportunity to make corresponding corrections in their applications.

Program information: In the past, two distinct programs with separate priorities were administered under Title III—the Basic Institutional Development program and the Advanced Institutional Development program. The proposed regulations combine these programs into one. The single program concept recognizes the infinite variety of strengths and weaknesses of institutions. Thus each applicant may request funds based on its respective needs. The focus of the activities for which an applicant seeks Federal assistance determines the size and duration of the grant for which the Commissioner may consider that applicant.

Other than an assisting agency or institution, each institution participating as an applicant in a consortium under this program must be a developing institution as defined in the regulations.

Available funds: In fiscal year 1979 an appropriation of $120 million is available for grants.

Application forms: Application forms and information packages are expected to be ready for mailing by December 1, 1978. They may be obtained by writing to the Division of Institutional Development, U.S. Office of Education (Room 3052, Regional Office Building 3), 400 Maryland Avenue SW., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages.

Further information: For further information contact Dr. Anita F. Allen, Division of Institutional Development (Room 3058, Regional Office Building 3), 400 Maryland Avenue SW., Washington, D.C. 20202. Telephone, 202-245-9754.

(20 U.S.C. 1051-1056)

(Catalog of Federal Domestic Assistance No. 13.454, Strengthening Developing Institutions.)

Dated: November 6, 1978.

ERNEST L. BOYER,
U.S. Commissioner of Education.

[FR Doc. 78-32238 Filed 11-15-78; 8:45 am]

[4110-85-M]

Office of the Assistant Secretary for Health

HEALTH MAINTENANCE ORGANIZATIONS

AGENCY: Public Health Service, HEW.

ACTION: Notice, September list of qualified health maintenance organizations.

SUMMARY: This notice sets forth the name, address, service area, and date of qualification of an entity determined by the Secretary to be a qualified health maintenance organization. In addition, the service area of a previously qualified HMO has been revised and it has been added following the listing of this month's qualified HMO.

FOR FURTHER INFORMATION CONTACT:

V 43/222 NO 16 78 UMI

Howard R. Veit, Director, Office of Health Maintenance Organizations, Park Building, 3rd Floor, 12420 Parklawn Drive, Rockville, Md. 20857, 301-443-4106.

SUPPLEMENTARY INFORMATION: Regulations issued under title XIII of the Public Health Service Act, as amended, (42 CFR 110.605(b)) require that all newly qualified HMO's be published on a monthly basis in the FEDERAL REGISTER. The following entity has been determined to be a qualified HMO under section 1310(d) of the Public Health Service Act (42 U.S.C. 300e-9(d)):

QUALIFIED HEALTH MAINTENANCE ORGANIZATION

Name, address, service area, and date of qualification

(Preoperational Qualified Health Maintenance Organization: 42 CFR 110.603(c))

1. Los Padres Group Health, (Individual Practice Association Model, see Section 1310(b)(2)(A) of the Public Health Service Act), P.O. Box 1767, San Luis Obispo, Calif. 93406. Service area: San Luis Obispo County, Calif. Date of qualification: September 21, 1978.

REVISED SERVICE AREA

A service area listed in the annual cumulative list of qualified HMO's and published on April 7, 1978, in the FEDERAL REGISTER (43 FR 14908-13) is revised as follows:

1. Maxi-Care, 4455 West 117th Street, Suite 502, Hawthorne, California 90250. Service area:

Change from:

South Bay and Southwest portion of the Los Angeles metropolitan area. The zip codes included in the area are as follows:

90001	90045	90230	90278	90505
90002	90047	90245	90291	90710
90003	90056	90247	90301	90717
90007	90058	90248	90302	90731
90008	90059	90249	90303	90732
90011	90061	90250	90304	90744
90016	90062	90254	90305	90745
90018	90066	90260	90501	90746
90037	90220	90266	90502	90747
90043	90221	90274	90503	
90044	90222	90277	90504	

Change to:

South Bay and Southwest portion of the Los Angeles metropolitan area including the following zip codes:

90001	90002	90003	90005*	90006*	90007	90008
90011	90013*	90014*	90015*	90016	90017*	90018
90019*	90024*	90025*	90026*	90034*	90035*	90037
90043	90044	90045	90047	90049*	90056	90057*
90058	90059	90061	90062	90064*	90066	90067*
90071*	90210*	90211*	90212*	90220	90221	90222
90230	90241*	90242*	90245	90247	90248	90249
90250	90254	90255*	90260	90262*	90266	90272*
90274	90277	90278	90280*	90290*	90291	90301
90302	90303	90304	90305	90401*	90402*	90403*
90404*	90405*	90501	90502	90503	90504	90505
90706*	90710	90712*	90713*	90715*	90716*	90717
90723*	90731	90732	90744	90745	90746	90747
90802*	90803*	90804*	90805*	90806*	90807*	90808*
90810*	90813*	90814*	90815*	90840*	91020*	91040*
91042*	91201*	91202*	91203*	91204*	91205*	91206*
91207*	91208*	91214*	91301*	91302*	91303*	91304*
91306*	91307*	91311*	91316*	91324*	91325*	91326*
91331*	91335*	91340*	91342*	91343*	91344*	91345*
91352*	91356*	91364*	91367*	91401*	91402*	91403*
91405*	91406*	91411*	91423*	91436*	91501*	91502*
91504*	91505*	91506*	91601*	91602*	91604*	91605*
91606*	91607*	91608*	93063*	93065*		

*added zip codes - date revised service area approved, September 26, 1978.

Date of qualification: Transitionally qualified - March 25, 1976.

V 4 3 1 / 2 2 2 2

Files containing detailed information regarding qualified HMO's will be available for public inspection between the hours of 8:30 a.m. and 5 p.m., Monday through Friday, except for Federal holidays, in the Office of Health Maintenance Organizations, Office of the Assistant Secretary for Health, Department of Health, Education, and Welfare, Park Building, 3d Floor, Rockville, Md. 20857.

Questions about the review process or requests for information about qualified HMO's should be sent to the same office.

Dated: November 6, 1978.

HOWARD R. VEIT,
Director, Office of Health Maintenance Organizations.

[FR Doc. 78-32210 Filed 11-15-78; 8:45 am]

[4110-07-M]

Office of the Secretary

SOCIAL SECURITY BENEFITS

AGENCY: Social Security Administration.

ACTION: Notice of contribution and benefit base, quarter of coverage amount, retirement test exempt amounts, and extended table of benefit amounts for 1979.

SUMMARY: The Secretary has determined—

(1) The social security contribution and benefit base to be $22,900 for remuneration paid in 1979 and self-employment income earned in taxable years beginning in 1979;

(2) The amount of earnings a person must have to be credited with a quarter of coverage of 1979 to be $260; and

(3) The monthly exempt amount under the social security retirement test for taxable years ending in calendar year 1979 to be $375 for beneficiaries aged 65 and over and $290 for beneficiaries under age 65.

A table reflecting the new higher average monthly wage and related benefit amounts made possible by the higher average contribution and benefit base is also published. The table will be used to primarily compute the retirement benefits of workers who reach age 62 before 1979. Benefits based on earnings of workers who reach age 62, or who die or become disabled before reaching age 62, in 1979 or later will generally be determined by a new benefit formula provided by the Social Security Amendments of 1977 (Pub. L. 95-216).

FOR FURTHER INFORMATION CONTACT:

Harry Ballantyne, Office of the Actuary, Social Security Administration, 6401 Security Boulevard, Baltimore, Md. 21235, telephone 301-594-2466.

SUPPLEMENTARY INFORMATION: Sections 203(f)(8), 213(d) and 230(a) of the Social Security Act (42 U.S.C. 403(f)(8), 413(d) and 430(a)) require the Secretary of Health, Education, and Welfare to publish in the FEDERAL REGISTER on or before November 1, 1978, the contribution and benefit base, the quarter of coverage amount, and the retirement test exempt amount for calendar year 1979.

CONTRIBUTION AND BENEFIT BASE

The contribution and benefit base serves two purposes:

(1) It is the maximum annual amount of earnings on which social security taxes are paid.

(2) It is the maximum annual amount used in figuring a person's social security benefits.

Section 230(c) of the Social Security Act specifies that the amount of the contribution and benefit base for 1979 is $22,900.

QUARTER OF COVERAGE AMOUNT

Computation. The 1979 amount for a quarter of coverage is $260. A quarter of coverage is the basic unit for determining whether a worker is insured under the social security program. For years before 1978, an individual generally was credited with a quarter of coverage for each quarter in which wages of $50 or more were paid, or for which $100 or more of self-employment income were credited, to the individual. Beginning in 1978, wages generally are no longer reported quarterly; annual reports will be made. With the change to annual reporting, section 352(b) of the Social Security Amendments of 1977 amended section 213(d) of the Social Security Act to provide that a quarter of coverage would be credited for each $250 of an individual's total wages and self-employment income for calendar year 1978 (up to a maximum of 4 quarters of coverage for the year). Section 213(d) also provides that this $250 amount shall be redetermined each year and any change published in the FEDERAL REGISTER no later than November 1 of each year. Under the prescribed formula, the quarter of coverage amount for 1979 shall be equal to the 1978 amount of $250 multiplied by the ratio of (1) the average amount, per employee, of the wages of all employees reported under the program for calendar year 1977 to (2) the average amount of those wages reported for calendar year 1976. The section further provides that if the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Average wages. Average wages for calendar years 1976 and 1977 are determined by using the average wages in reports received by the Social Security Administration for the first calendar quarter of each year. The earnings in the first quarter are considered to give the most accurate results, because many wage earners reach the ceiling for reported earnings before the end of the year while relatively few reach the ceiling in the first quarter.

For each quarter before 1978, taxable wages paid to employees by their employers were posted to the record of earnings of each individual employee. (Beginning in 1978, wages are reported on an annual basis.) These records are referred to as Summary Earnings Records. As the wages were posted to the Summary Earnings Records, the data were tabulated on a 100 percent basis to obtain the total amount of reported taxable wages and the total number of employees for whom the wages were reported. The tabulated data on taxable wages reported for the first calendar quarter of each year 1976 and 1977 were limited to those wages that were reported and posted to the Summary Earnings Records by the end of the quarterly updating operations completed in September of the same year. About 72.8 million employees had taxable wages reported for the first calendar quarter of 1976 that were posted to the Summary Earnings Records by the end of the September 1976, and the average amount of their taxable wages was $2,306.62 per employee. The corresponding number of employees and average amount of taxable wages for the first calendar quarter of 1977 were 75.1 million and $2,444.86 respectively. The ratio of average taxable wages reported for the first quarter of 1977 to average taxable wages reported for the first quarter of 1976 is therefore 1.0599318.

Amount. Multiplying in 1978 quarter of coverage amount of $250 by the ratio of 1.0599318 produces the amount of $264.98, which must then be rounded to $260. Accordingly, the quarter of coverage amount for 1979 is $260.

RETIREMENT TEST EXEMPT AMOUNT

Computation. The 1979 amount of $375 for the retirement test monthly exempt amount for beneficiaries aged 65 through 71 is stated in the law. The corresponding annual retirement test exempt amount for those individuals is $4,500. Section 301 of the Social Security Amendments of 1977 amended section 203 of the Social Security Act to provide a higher retirement test exempt amount for beneficiaries aged 65 through 71 than for those beneficiaries under age 65.

The monthly exempt amount of $290 for beneficiaries under age 65 is determined according to a formula specified in the law, which automatically produces a mathematical result based upon reported statistics. Section 203(f)(8) of the Social Security Act provides that the retirement test monthly exempt amount for 1979 shall be equal to the 1978 amount of $270 multiplied by the ratio of (1) the average amount, per employee, of the wages of all employees reported under the program for calendar year 1977 to (2) the average amount of those wages reported for calendar year 1976. The section further provides that if the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

There is no limit on the amount an individual aged 72 or over may earn and still receive social security benefits. (Beginning in 1982, the age at which the retirement test no longer applies will be reduced from age 72 to age 70.)

Average wages. Average wages for this purpose is determined in the same way as for a quarter of coverage. Therefore, the ratio of the average wages for 1977 compared to 1976 is 1.0599318.

Exempt amount for persons under age 65. Multiplying the 1978 retirement test monthly exempt amount of $270 by the ratio of 1.0599318 produces the amount of $286.18. This must then be rounded to $290. Accordingly, the retirement test monthly exempt amount for persons under age 65 is determined to be $290 for 1979. The corresponding annual exempt amount for 1979 is $3,480.

EXTENSION OF BENEFIT TABLE EFFECTIVE JANUARY 1979

The following is an extension of the table for determining primary insurance amount and maximum family benefits which appeared in section 215(a) of the Social Security Act before the Social Security Amendments of 1977. This extension reflects the higher average monthly wage and related benefit amounts now possible under the increased contribution and benefit base published by this notice effective with January 1979 in accordance with section 215(i) of the Social Security Act. The extended portion of the benefit table shown here will apply primarily to benefits based on earnings of workers who reach age 62 before 1979. Benefits based on earnings of workers who reach age 62, or who die or become disabled before age 62, in 1979 or later will generally be based on a new benefit formula specified in the Social Security Amendments of 1977.

Table for Determining Primary Insurance Amount and Maximum Family Benefits Beginning January 1979

I	II	III		IV	V
(Primary insurance benefit under 1939 Act, as modified)	(Primary insurance amount effective for June 1977)	(Average monthly wage)		(Primary insurance amount)	(Maximum family benefits)
If an individual's primary insurance benefit (as determined under subsec. (d)) is—	Or his primary insurance amount as determined under subsec. (c)) is—	Or his average monthly wage (as determined under subsec. (b)) is—		The amount referred to in the preceding paragraphs of this subsection shall be—	And the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of his wages and self-employment income shall be—
At least— But not more than—		At least—	But not more than—		
		$1,476	$1,480	$696.40	$1,218.70
		1,481	1,485	697.40	1,220.50
		1,486	1,490	698.40	1,222.20
		1,491	1,495	699.40	1,224.00
		1,496	1,500	700.40	1,225.70
		1,501	1,505	701.40	1,227.50
		1,506	1,510	702.40	1,229.20
		1,511	1,515	703.40	1,231.00
		1,516	1,520	704.40	1,232.70
		1,521	1,525	705.40	1,234.50
		1,526	1,530	706.40	1,236.20
		1,531	1,535	707.40	1,238.00
		1,536	1,540	708.40	1,239.70
		1,541	1,545	709.40	1,241.50
		1,546	1,550	710.40	1,243.20
		1,551	1,555	711.40	1,245.00
		1,556	1,560	712.40	1,246.70
		1,561	1,565	713.40	1,248.50
		1,566	1,570	714.40	1,250.20
		1,571	1,575	715.40	1,252.00
		1,576	1,580	716.40	1,253.70
		1,581	1,585	717.40	1,255.50
		1,586	1,590	718.40	1,257.20
		1,591	1,595	719.40	1,259.00
		1,596	1,600	720.40	1,260.70
		1,601	1,605	721.40	1,262.50
		1,606	1,610	722.40	1,264.20
		1,611	1,615	723.40	1,266.00
		1,616	1,620	724.40	1,267.70
		1,621	1,625	725.40	1,269.50
		1,626	1,630	726.40	1,271.20
		1,631	1,635	727.40	1,273.00
		1,636	1,640	728.40	1,274.70
		1,641	1,645	729.40	1,276.50
		1,646	1,650	730.40	1,278.20
		1,651	1,655	731.40	1,280.00
		1,656	1,660	732.40	1,281.70
		1,661	1,665	733.40	1,283.50
		1,666	1,670	734.40	1,285.20
		1,671	1,675	735.40	1,287.00
		1,676	1,680	736.40	1,288.70
		1,681	1,685	737.40	1,290.50
		1,686	1,690	738.40	1,292.20
		1,691	1,695	739.40	1,294.00
		1,696	1,700	740.40	1,295.70
		1,701	1,705	741.40	1,297.50

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Table for Determining Primary Insurance Amount and Maximum Family Benefits Beginning January 1979—Continued

I	II	III		IV	V
(Primary insurance benefit under 1939 Act, as modified)	(Primary insurance amount effective for June 1977)	(Average monthly wage)		(Primary insurance amount)	(Maximum family benefits)
If an individual's primary insurance benefit (as determined under subsec. (d)) is—	Or his primary insurance amount as determined under subsec. (c)) is—	Or his average monthly wage (as determined under subsec. (b)) is—		The amount referred to in the preceding paragraphs of this subsection shall be—	And the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of his wages and self-employment income shall be—
At least—	But not more than—	At least—	But not more than—		
		$1,706	$1,710	$742.40	$1,299.20
		1,711	1,715	743.40	1,301.00
		1,716	1,720	744.40	1,302.70
		1,721	1,725	745.40	1,304.50
		1,726	1,730	746.40	1,306.20
		1,731	1,735	747.40	1,308.00
		1,736	1,740	748.40	1,309.70
		1,741	1,745	749.40	1,311.50
		1,746	1,750	750.40	1,313.20
		1,751	1,755	751.40	1,315.00
		1,756	1,760	752.40	1,316.70
		1,761	1,765	753.40	1,318.50
		1,766	1,770	754.40	1,320.20
		1,771	1,775	755.40	1,322.00
		1,776	1,780	756.40	1,323.70
		1,781	1,785	757.40	1,325.50
		1,786	1,790	758.40	1,327.20
		1,791	1,795	759.40	1,329.00
		1,796	1,800	760.40	1,330.70
		1,801	1,805	761.40	1,332.50
		1,806	1,810	762.40	1,334.20
		1,811	1,815	763.40	1,336.00
		1,816	1,820	764.40	1,337.70
		1,821	1,825	765.40	1,339.50
		1,826	1,830	766.40	1,341.20
		1,831	1,835	767.40	1,343.00
		1,836	1,840	768.40	1,344.70
		1,841	1,845	769.40	1,346.50
		1,846	1,850	770.40	1,348.20
		1,851	1,855	771.40	1,350.00
		1,856	1,860	772.40	1,351.70
		1,861	1,865	773.40	1,353.50
		1,866	1,870	774.40	1,355.20
		1,871	1,875	775.40	1,357.00
		1,876	1,880	776.40	1,358.70
		1,881	1,885	777.40	1,360.50
		1,886	1,890	778.40	1,362.20
		1,891	1,895	779.40	1,364.00
		1,896	1,900	780.40	1,365.70
		1,901	1,905	781.40	1,367.50
		1,906	1,910	782.40	1,369.20

(Catalog of Federal Domestic Assistance Programs Nos. 13.802-5, and 13.807 Social Security Programs.)

Dated: November 6, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary.

[FR Doc. 78-31805 Filed 11-15-78; 8:45 am]

[4310-84-M]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[U-060]

DESOLATION AND GRAY RIVER MANAGEMENT PLAN, UTAH

Announcement of Public Meetings; Extension of Comment Period

The Moab District will hold three public meetings for the purpose of receiving public comment concerning the draft management plan for Desolation and Gray Canyons of the Green River in Utah. Meetings will be held as follows: Monday, December 4, 1978 at 7:30 p.m., Utah State Office, University Club Building, Conference Room, 14th Floor, 136 East South Temple, Salt Lake City, Utah; Tuesday, December 5, 1978 at 7 p.m., Denver Public Library, Weyer Auditorium, 1357 Broadway, Denver, Colo.; and Wednesday, December 6, 1978 at 7:30 p.m., Court Room, Grand County Courthouse, Center Street, Moab, Utah.

Because these meetings are being held past the stated comment deadline, of November 7, 1978, comments concerning the draft plan will be accepted until December 23, 1978.

Comments or questions shall be directed to: District Manager, Moab District, P.O. Box 970. Moab, Utah 84532, phone, 801-259-6111.

SUPPLEMENTAL INFORMATION

A synopsis of the recommendations contained in the plan is available from the Moab District Office upon request.

The plan primarily provides for the management of floatboating recreation resource on the river from Sand Wash (3 miles north of the Carbon County line) to Swasey's rapids (12 miles north of the town of Green River, Utah).

Comments will be used in the preparation of the environmental assessment and in developing the final plan.

S. GENE DAY,
Moab District Manager.

NOVEMBER 8, 1978.

[FR Doc. 78-32222 Filed 11-15-78; 8:45 am]

[4310-84-M]

[NM 35247, 35249 and 35251]

NEW MEXICO

Applications

NOVEMBER 8, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Co. has applied for three 4½-inch natural gas pipeline rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 29 N., R. 9 W.,
Sec. 25, lots 9, 10 and 16.
T. 31 N., R. 9 W.,
Sec. 19, lot 7.
T. 30 N., R. 10 W.,
Sec. 9, lots 15 and 16.

These pipelines will convey natural gas across 0.370 of a mile of public lands in San Juan County, N.Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, N.Mex. 87107.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-32215 Filed 11-15-78; 8:45 am]

[4310-84-M]

[NM 35200]

NEW MEXICO

Application

NOVEMBER 8,1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the act of November 16, 1973 (87 Stat. 576), Northwest Pipeline Corp. has applied for one 4½-inch natural gas pipeline right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 29 N., R. 5 W.,
Sec. 23, SE¼SE¼;
Sec. 24, SW¼SW¼.

This pipeline will convey natural gas across 0.434 of a mile of public land in Rio Arriba County, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, N. Mex. 87107.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-32216 Filed 11-15-78; 8:45 am]

[4310-84-M]

[NM 35246]

NEW MEXICO

Application

NOVEMBER 8, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the act of November 16, 1973 (87 Stat. 576), Southern Union Gathering Co. has applied for one 4-inch natural gas pipeline right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 31 N., R. 12 W.,
Sec. 3, E½SE¼.

This pipeline will convey natural gas across 0.179 of a mile of public land in San Juan County, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, N. Mex. 87107.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-32217 Filed 11-15-78; 8:45 am]

[4310-84-M]

[NM 35252 and 35254]

NEW MEXICO

Applications

NOVEMBER 9, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Co. has applied for two 4½-inch natural gas pipeline and related facilities rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 28 N., R. 7 W.,
Sec. 21, N½NW¼.
T. 32 N., R. 12 W.,
Sec. 34, E½NW¼.

These pipelines will convey natural gas across 0.238 of a mile of public lands in Rio Arriba and San Juan Counties, N.Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, N.Mex. 87107.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-32218 Filed 11-15-78; 8:45 am]

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[4310-84-M]

[NM 31869]

NEW MEXICO

Proposed Withdrawal and Reservation of Lands—Amendment

NOVEMBER 7, 1978.

Notice of proposed withdrawal and reservation of lands, appearing in the FEDERAL REGISTER of January 12, 1978 at page 1843, Doc. No. 78-842, is hereby amended to add the following described lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 18 N., R. 4 W.,
Sec. 15: NW¼.
T. 19 N., R. 4 W.,
Sec. 7: Lots 3, 4.
T. 20 N., R. 4 W.,
Sec. 18: N½NE¼, SW¼NE¼, N½SE¼NE¼, and N½SE¼SE¼NE¼.
T. 21 N., R. 5 W.,
Sec. 7: Lots 1, 2, and E½NW¼.
T. 17 N., R. 6 W.,
Sec. 16: SE¼;
Sec. 21: NE¼;
Sec. 23: NW¼.
T. 22 N., R. 6 W.,
Sec. 7: Lots 1, 2, and E½NW¼.
T. 19 N., R. 7 W.,
Sec. 6: Lots 1, 2, and S½NE¼;
Sec. 7: Lots 3, 4;
Sec. 12: W½NE¼.
T. 21 N., R. 7 W.,
Sec. 1: SE¼.
T. 22 N., R. 7 W.,
Sec. 7: NE¼.
T. 20 N., R. 8 W.,
Sec. 10: SE¼.
T. 13 N., R. 9 W.,
Sec. 18: SE¼.
T. 22 N., R. 9 W.,
Sec. 8: SW¼.
T. 24 N., R. 9 W.,
Sec. 4: SE¼.
T 13 N., R. 10 W.,
Sec. 12: Lots 1, 2, 3, 4.
T. 22 N., R. 10 W.,
Sec. 16: N½, and SW¼;
Sec. 26: NE¼;
Sec. 27: E½.
T. 23 N., R. 10 W.,
Sec. 6: Lots 3, 4, 5, and SE¼NW¼.
T. 15 N., R., 11 W.,
Sec. 6: SE¼.
T. 13 N., R. 12 W.,
Sec. 22: NW¼;
Sec. 24: NW¼.
T. 16 N., R. 12 W.,
Sec. 26: SE¼.
T. 25 N., R. 12 W.,
Sec. 13: SW¼.
T. 23 N., R. 13 W.,
Sec. 3: SE¼.
T. 28 N., R. 13 W.,
Sec. 7: Lots 1, 2, 3, 4, 5.
T. 16 N., R. 14 W.,
Sec. 20: S½.
T. 16 N., R. 15 W.,
Sec. 14: SE¼;
Sec. 24: SE¼.
T. 16 N., R. 16 W.,
Sec. 18: N½NE¼, and SE¼;
Sec. 26: SW¼.
T. 16 N., R. 17 W.,
Sec. 14: NE¼.
T. 14 N., R. 18 W.,
Sec. 24: SW¼;
Sec. 26: E½.
T. 11 N., R. 20 W.,
Sec. 2: N½SE¼.
T. 15 N., R. 20 W.,
Sec. 16: SE¼SE¼.
T. 16 N., R. 20 W.,
Sec. 6: Lots 16, 17, 18, 19, 20, 21, 22, 23.
T. 16 N., R. 21 W.,
Sec. 10: Lots 5, 6, 7, 8.

Containing 7,057.42 acres.

The period for filing requests for a public hearing and for filing of comments provided in the original notice is extended to December 18, 1979.

MICHAEL T. SOLAN,
Acting State Director.

[FR Doc. 78-32253 Filed 11-15-78; 8:45 am]

[4310-84-M]

[NM 35054 and 35204]

NEW MEXICO

Applications

NOVEMBER 7, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Company has applied for three 4½-inch natural gas pipeline rights-of-way and related facilities across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 21 S., R. 22 E.,
sec. 1, E½SE¼;
sec. 12, N½NE¼, SW¼NE¼, SE¼NW¼ and NE¼SW¼.
T. 21 S., R. 23 E.,
sec. 5, lot 4;
sec. 6, lots 1, 6, 7, S½NE¼, SE¼NW¼ and NE¼SW¼.
T. 20 S., R. 24 E.,
sec. 30, SE¼NE¼ and E½SE¼;
sec. 31, NE¼NE¼and W½E½.
T. 19 S., R. 27 E.,
sec. 36, S½NE¼.
T. 19 S., R. 28 E.,
sec. 31, lot 2.

These pipelines will convey natural gas across 4.730 miles of public lands in Eddy County, N.Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, N.Mex. 88201.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-32254 Filed 11-15-78; 8:45 am]

[4310-84-M]

[Colorado 26176e1

NORTHWEST PIPELINE CORP. PIPELINE APPLICATION;

Correction

In FR Doc. 78-31631 appearing on page 52293 in the issue of Thursday November 9, 1978, the Colorado serial number was stated as 27176 e and the county as Rio Blanco. It should have read serial number 26176 e and Moffat County instead of Rio Blanco County.

JOHN R. BERNICK
Acting Leader, Craig Team, Branch of Adjudication.

[FR Doc. 78-32211 Filed 11-15-78; 8:45 am]

[4310-84-M]

[Colorado 24402 n]

NORTHWEST PIPELINE CORP.

R/W Application for Pipeline

NOVEMBER 6, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449), as amended (30 U.S.C. 185), Northwest Pipeline Corp., 315 East 200 South, Salt Lake City, Utah 84111, has applied for a right-of-way for the East Douglas Creek Gathering System of approximately 8.617 miles on the following Public Land:

SIXTH PRINCIPAL MERIDIAN, RIO BLANCO COUNTY, COLORADO

T. 2 S., R. 101 W.
Sec. 35: SW¼NW¼, W½SW¼.
T. 3 S., R. 100 W.
Sec. 7: W½SE¼, SE¼SW¼;
Sec. 18: E½NW¼, SW¼NW¼, W½SW¼.
T. 3 S., R. 101 W.
Sec. 1: NE¼, N½SW¼;
Sec. 2: W½W½;
Sec. 3: NE¼NE¼NE¼, SE¼SE¼;
Sec. 10: N½NE¼, NW¼SE¼, SW¼, SW¼NE¼;
Sec. 13: SE¼SE¼;
Sec. 24: N½NE¼, SW¼NE¼, SE¼NW¼, E½SW¼, SW¼SW¼;
Sec. 25: NW¼NW¼;
Sec. 26: E½NE¼, SE¼;
Sec. 34: E½SE¼;
sec. 35: NW¼NE¼, E½NW¼, SW¼NW¼, NW¼SW¼.

The above-named gathering system will enable the applicant to collect natural gas and to convey it to the applicant's customers.

The purposes for this notice are: (1) To inform the public that the Bureau of Land Management is proceeding with the preparation of environmental and other analytic reports, necessary for determining whether or not the application should be approved and if approved, under what terms and conditions; (2) to give all interested parties the opportunity to comment on the applications; (3) to allow any party asserting a claim to the lands involved or having bona fide objections to the proposed natural gas gathering system to file its claim or objections in the Colorado State Office. Any party so filing must include evidence that a copy thereof has been served on Northwest Pipeline Corp.

Any comment, claim or objections must be filed with the Chief, Branch of Adjudication, Bureau of Land Management, Colorado State Office, Room 700, Colorado State Bank Building, 1600 Broadway, Denver, Colo. 80202, as promptly as possible after publication of this notice.

JOHN R. BERNICK,
Acting Leader, Craig Team, Branch of Adjudication.

[FR Doc. 78-32212 Filed 11-15-78; 8:45 am]

[4310-84-M]

[Colorado 22617- b and c]

NORTHWEST PIPELINE CORP.

Pipeline Application

NOVEMBER 7, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449), as amended (30 U.S.C. 185), Northwest Pipeline Corp., P.O. Box 1526, Salt Lake City, Utah 84110, has applied for a right-of-way for a 4½-inch o.d. natural gas pipeline, approximately 3.64 miles long, across the following public lands in Garfield County:

SIXTH PRINCIPAL MERIDIAN, COLORADO

T. 8 S., R. 104 W.,
Sec. 7, 8, 9, and 18.
T. 8 S., R. 105 W.,
Sec. 12

The proposed lateral pipelines will enable the applicant to convey natural gas from the Texas Gas-Federal 7-8-104, the Palmer Oil & Gas-Federal 12-16 and the Walter Fees-Federal No. 2-3-8-104 wells in the Bar X Field to an existing Rocky Mountain Natural Gas Gathering System.

The purposes of this notice are: To inform the public that the Bureau of Land Management will be proceeding with the preparation of environmental and other analyses necessary for determining whether the application should be approved and, if so, under what terms and conditions; to allow interested parties to comment on the application, and to allow any persons asserting a claim to the lands or having bona fide objections to the proposed natural gas pipeline right-of-way to file their objections in this office. Any person asserting a claim to the lands or having bona fide objections must include evidence that a copy thereof has been served on the applicant.

Any comment, claim, or objection must be filed with the Team Leader, Canon City-Grand Junction, Branch of Adjudication, Bureau of Land Management, Colorado State Office, Room 700, Colorado State Bank Building, 1600 Broadway, Denver, Colo. 80202, as promptly as possible after publication of this notice.

RODNEY A. ROBERTS,
Leader, Canon City-Grand Junction Team Branch of Adjudication.

[FR Doc. 78-32213 Filed 11-15-78; 8:45 am]

[4310-84-M]

[W-65085]

WYOMING

Applicotion

NOVEMBER 7, 1978.

Notice is hereby given that pursuant to Sec. 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Panhandle Eastern Pipe Line Company of Brighton, Colorado, filed an application for a right-of-way to construct a pipeline gathering system consisting of 4, 6, 8, and 10 inch pipelines and related facilities for the purpose of transporting natural gas across the following described public lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 23 N., R. 96 W.,
Sec. 5, 6, 7, 8, and 18.
T. 24 N., R., 96 W.,
Sec. 7, 8, 17, 18, 19, 20, 29, 30, 31, and 32.
T. 23 N., R. 97 W.,
Sec. 1, 3, 11, 12, 13, 14, and 23.
T. 24 N., R. 97 W.,
Sec. 3, 4, 8, 9, 10, 11, 13, 14, 15, 16, and 24.
T. 25 N., R. 97 W.,
Sec. 34 and 35.

The proposed natural gas pipeline gathering system will transport natural gas from the Davis Hay Reservoir No. 12, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, and 40 wells; the Forest Hay Reservoir No. 13 well; the Cities Services Federal No. B-1 well; the Davis Bastard Buttes No. 1 and 2 wells; and the Davis Bush Lake No. 1 well, all located within Sweetwater County, Wyo.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 1300 Third Street, P.O. Box 670, Rawlins, Wyo. 82301.

HAROLD G. STINCHCOMB,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-32219 Filed 11-15-78; 8:45 am]

[4310-84-M]

[W-65796]

WYOMING

Application

NOVEMBER 8, 1978.

Notice is hereby given that pursuant to sec. 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Panhandle Eastern Pipe Line Co. of Brighton, Colo. filed an application of a right-of-way to construct a 4 inch pipeline as an addition to their gathering system for the purpose of transporting natural gas across the following described public lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING.

T. 24 N., R. 97 W.,
Sec. 14, SE¼NW¼.

The proposed pipeline will transport natural gas from the Davis Hay Reservoir No. 10 well to a point of connection with Panhandle Eastern's 6 inch pipeline all located within the SE¼NW¼ of section 14, T. 24 N., R. 97 W., Sweetwater County, Wyo.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 1300 Third Street, P.O. Box 670, Rawlins, Wyo. 82301.

HAROLD G. STINCHCOMB,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-32220 Filed 11-15-78; 8:45 am]

[4310-84-M]

WYOMING

Commencement of Wilderness Inventory and Availability of Handbook

This Notice announces the commencement of wilderness inventory of public lands in Wyoming administered by the Bureau of Land Management, and the availability of the "Wilderness Inventory Handbook" to guide the wilderness inventory process. This announcement is a followup to the Notice appearing in the FR, Vol. 43, No. 188, dated Wednesday, September

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27, 1978, which announced the commencement of the Bureauwide inventory. The "Wilderness Inventory Handbook" is available on request from all BLM offices in Wyoming as listed below. These offices are also available for contact regarding input to the wilderness inventory.

State Director, Bureau of Land Management, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyo. 82001.
Worland, District Manager, P.O. Box 119, 1700 Robertson Avenue, Worland, Wyo. 82401.
Grass Creek Resource Area, Area Manager, P.O. Box 119, 1700 Robertson Avenue, Worland, Wyo. 82401.
Washakie Resource Area, Area Manager, P.O. Box 119, 1700 Robertson Avenue, Worland, Wyo. 82401.
Cody Resource Area, Area Manager, P.O. Box 528, Federal Building, 1131 13th, Cody, Wyo. 82414.
Rawlins, District Manager, P.O. Box 670, 1300 Third Street, Rawlins, Wyo. 82301.
Divide Resource Area, Area Manager, P.O. Box 670, 1300 Third Street, Rawlins, Wyo. 82301.
Medicine Bow Resource Area, Area Manager, P.O. Box 670, 1300 Third Street, Rawlins, Wyo. 82301.
Lander Resource Area, Area Manager, P.O. Box 589, Lander, Wyo. 82520.
Rock Springs, District Manager, P.O. Box 1869, Highway 187 N, Rock Springs, Wyo. 82901.
Green River Resource Area, Area Manager, P.O. Box 1869, Highway 187 N, Rock Springs, Wyo. 82901.
Salt Wells Resource Area, Area Manager, P.O. Box 1869, Highway 187 N, Rock Springs, Wyo. 82901.
Pinedale Resource Area, Area Manager, P.O. Box 768, Molyneux Building, Pinedale, Wyo. 82941.
Kemmerer Resource Area, Area Manager, P.O. Box 632, Kemmerer, Wyo. 83101.
Casper, District Manager, 951 Union Boulevard, Casper, Wyo. 82601.
Platte River Resource Area, Area Manager, 951 Union Boulevard, Casper, Wyo. 82601.
Buffalo Resource Area, Area Manager, P.O. Box 979, Buffalo, Wyo. 82834.
Newcastle Resource Area, Area Manager, Highway 16 Bypass, Newcastle, Wyo. 82701.

DANIEL P. BAKER,
State Director.

[FR Doc. 78-32221 Filed 11-15-78; 8:45 am]

[4310-10-M]

DEPARTMENT OF THE INTERIOR

Office of the Secretary

REQUEST FOR COMMENTS ON 5-YEAR OUTER CONTINENTAL SHELF OIL AND GAS LEASING PROGRAM

Request for Comments; Corrections

AGENCY: Office of Outer Continental Shelf Program Coordination.

ACTION: Correction to notice of request for comments on 5-Year Outer Continental Shelf Oil and Gas Leasing Program.

SUMMARY: On October 26, 1978 (43 FR 50055), a notice of a request for comments on the 5-Year Outer Continental Shelf Oil and Gas Leasing Program was published in the FEDERAL REGISTER. The Southern California and Santa Barbara Channel areas were incorrectly described in that notice and a correction is being issued today.

FOR FURTHER INFORMATION CONTACT:

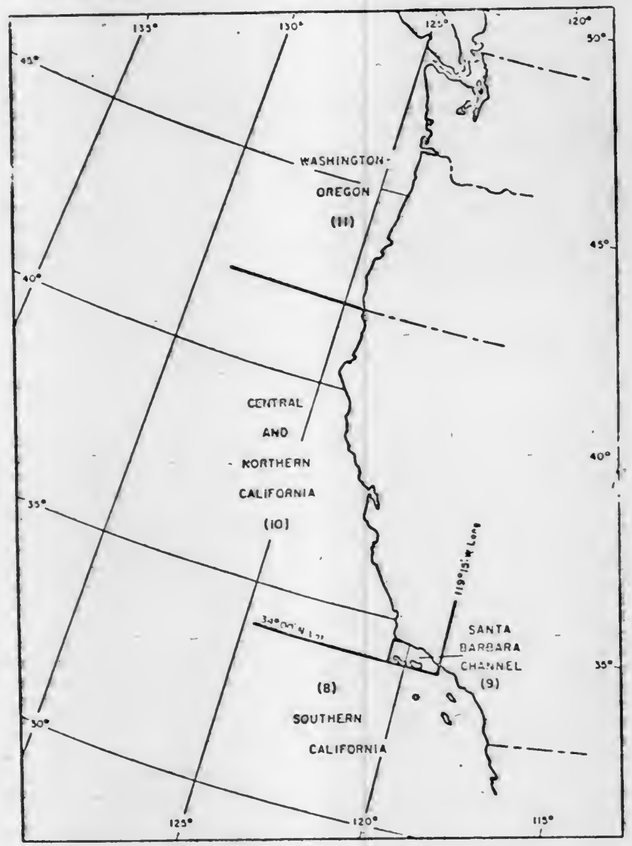
Carolita Kallaur, Office of OCS Program Coordination, Department of the Interior, Room 4126, 18th and C Streets NW., Washington, D.C. 20240, 202-343-9314.

AUTHOR: Carolita Kallaur, Office of OCS Program Coordination, Department of the Interior, Room 4126, 18th and C Streets NW., Washington, D.C. 20240, 202-343-9314.

SUPPLEMENTARY INFORMATION: A notice of a request for comment on the 5-Year Outer Continental Shelf (OCS) Oil and Gas Leasing Program was published on October 26, 1978, in the FEDERAL REGISTER. Comments were requested on 22 OCS areas. The approximate location provided for area 8, Southern California and area 9 Santa Barbara Channel and the accompanying map, provided incorrect descriptions of the area. The approximate locations should be as follows:

Area	Approximate location
8. Southern California	South of 34° N latitude and that portion north of 34° N latitude east of 119° 15' west longitude.
9. Santa Barbara	Santa Barbara Channel north of 34° N latitude, west of 119° 15' W longitude and east of 120° 30' W longitude.

A revised map is shown below.



[4310-10-M]

Dated: November 9, 1978.

ALAN D. POWERS,
Director, Office of OCS Program Coordination.

[FR Doc. 78-32191 Filed 11-15-78; 8:45 am]

[4310-10-M]

OUTER CONTINENTAL SHELF ADVISORY BOARD

Notice and Agenda for Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. No. 92-643, 5 U.S.C. App. I and the Office of Management and Budget's Circular No. A-63, Revised.

The Outer Continental Shelf Advisory Board will meet during the period 8 a.m. to 5 p.m., December 14, 1978, and 8 a.m. to 11:30 a.m., December 15, 1978, at the Doubletree Inn, No. 2 Portola Plaza, Fisherman's Wharf, Monterey, Calif.

The meeting will cover the following principal subjects:

December 14, 1978:

(1) OCS Lands Act Amendments of 1978:
(a) Preparation of regulations;
(b) Offshore oil spill pollution fund;
(c) Fisherman's contingency fund;
(d) 5-year leasing program;
(e) OCS administrative grants; and
(f) Oil and gas information program.
(2) Revision of the national oil spill contingency plan.
(3) Impact of natural gas deregulation on OCS development.
(4) Funding of Coast Guard activities.
(5) Report on Coast Guard OCS missions.
(6) Status report on environmental studies program.

December 15, 1978:

(1) Patterns in OCS bidding and ownership.
(2) Bidding systems.

The meeting is open to the public. Interested persons may make oral or written presentations to the Board. Such requests should be made no later than November 28 to:

Alan D. Powers, Office of OCS Program Coordination, Department of the Interior, Room 4126, Washington, D.C. 20240, 202-343-9311.

Requests to make oral statements should be accompanied by a summary of the statement to be made.

Minutes of the meeting will be available for public inspection and copying 3 weeks after the meeting at the Office of OCS Program Coordination, Room 4126, Department of the Interior, 18th and C Streets NW., Washington, D.C.

MICHELE TETLEY,
Acting Director, Office of OCS Program Coordination.

NOVEMBER 13, 1978.

[FR Doc. 78-32192 Filed 11-15-78; 8:45 am]

[7020-02-M]

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-37]

CERTAIN SKATEBOARDS AND PLATFORMS THEREFOR

Notice and Order Concerning Commission Determination

Upon consideration of the presiding officer's recommended determination and the record in this proceeding, the Commission (Chairman Parker dissenting and Commissioner Stern not participating) hereby orders the termination of investigation No. 337-TA-37, Certain Skateboards and Platforms Therefor, on the basis of a determination that no violation of section 337 of the Tariff Act of 1930, as amended, exists.

Copies of the Commissioners opinions in support of their determinations are available to the public during official working hours at the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436. Notice of the institution of the investigation was published in the FEDERAL REGISTER on November 11, 1977 (42 FR 58792).

By order of the Commission.

Issued: November 13, 1978.

KENNETH R. MASON,
Secretary.

[FR Doc. 78-32298 Filed 11-15-78; 8:45 am]

[4410-18-M]

DEPARTMENT OF JUSTICE

Law Enforcement Assistance Administration

ADMINISTRATIVE APPEAL OF THE CONNECTICUT JUSTICE COMMISSION

Hearing

Notice is hereby given that the Administrative Appeal of the Connecticut Justice Commission on the denial of the Connecticut Department of Adult Probation's Application for Funding will be heard on November 20, 1978, commencing at 9 a.m. The location of the hearing will be Superior Court Hearing Room No. 2, 75 Elm Street, Hartford, Conn. The hearing will be presided over by Ernest S. Milner of the Office of Criminal Justice Programs at the Law Enforcement Assistance Administration and will be open to the public.

For further information call William P. Joyce, Office of General Counsel, LEAA at 202-376-3691.

CHARLES A. LAUER,
Deputy General Counsel.

[FR Doc. 78-32177 Filed 11-15-78; 8:45 am]

[6820-49-M]

NATIONAL COMMISSION ON THE INTERNATIONAL YEAR OF THE CHILD, 1979

MEETING

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C. App. I), announcement is made of the following National Commission meetings scheduled to assemble on November 30 and December 1, 1978.

NATIONAL COMMISSION ON THE INTERNATIONAL YEAR OF THE CHILD

November 30, 1978—10 a.m. to 12 noon; 1 p.m. to 5 p.m.
December 1, 1978—9 a.m. to 12 noon; 1 p.m. to 3:30 p.m.
New Executive Office Building, Room 2008, 726 Jackson Place NW., Washington, D.C. 20506.

OPEN MEETING

Contact: Benedict J. Latteri, Administrative Officer, National Commission on the International Year of the Child, Room 6001, 726 Jackson Place NW., Washington, D.C. 20506.

Purpose. The National Commission serves as the focal point for the observance of all International Year of the Child activities in the country, and for all U.S. cooperation on International Year of the Child observances with other countries. It will provide a forum for examining the fundamental needs of children; it will create a better understanding of the needs of children, both in the United States and abroad; it will encourage and/or coordinate Federal, State, and local programs to meet these needs; and it will write a report to the President on its activities and findings, including recommendations of future actions relating to the well-being of children.

The Commission will assess and identify programs which could be endorsed or replicated nationally; receive and disseminate information, ideas, and proposals for improving the well-being of the Nation's children; encourage local citizen support for meeting the basic human needs of children; such as health, nutrition, legal rights, education, and physical development; and foster the creation of new programs and the improvement of existing programs directed at permanently improving the status of children.

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Agenda. The Commissioners will specifically address the following issues: Child nurturing, health, education, juvenile justice, individual development, impact of discrimination/alienation, and impact of the media.

Attendance by the public will be limited to space available.

Dated: November 9, 1978.

BENEDICT J. LATTERI,
Administrative Officer, National Commission on the International Year of the Child.

[FR Doc. 78-32172 Filed 11-15-78; 8:45 am]

[4410-01-M]

NATIONAL COMMISSION FOR THE REVIEW OF ANTITRUST LAWS AND PROCEDURES

PUBLIC MEETING

In accordance with Executive Order 12,022 and section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 770), notice is hereby given that the National Commission for the Review of Antitrust Laws and Procedures (hereinafter Commission), will hold a public meeting on Thursday, November 30, 1978, beginning at 9:30 a.m. in Room 4232, Dirksen Senate Office Building, First and Constitution Avenue NE., Washington, D.C. The purpose of the meeting is to consider matters relating to the Commission's final report to the President and the Attorney General.

Dated: November 13, 1978.

WENDELL B. ALCORN, Jr.,
Special Counsel.

[FR Doc. 78-32272 Filed 11-15-78; 8:45 am]

[7536-01-M]

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

ADVISORY COMMITTEE HUMANITIES PANEL

Meeting

NOVEMBER 8, 1978.

Pursuant to the provisions of the Federal Adivsory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at 806 15th Street NW., Washington, D.C. 20506:

1. Date: December 5, 1978.
Time: 9 a.m. to 5:30 p.m.
Room: 1130.
Purpose: to review Summer Stipend applications in Anthropology submitted to the National Endowment for the Humanities for projects beginning after January 1, 1979.

2. Date: December 7, 1978.
Time: 9 a.m. to 5:30 p.m.
Room: 314.
Purpose: to review Summer Stipend applications in Early Modern European History submitted to the National Endowment for the Humanities for projects beginning after January 1, 1979.

3. Date: December 7-8, 1978.
Time: 9 a.m. to 5:30 p.m.
Room: 807.
Purpose: to review Elementary and Secondary Education Program applications submitted to the National Endowment for the Humanities for projects beginning after April 1, 1979.

4. Date: December 8, 1978.
Time: 9 a.m. to 5:30 p.m.
Room: 314.
Purpose: to review Summer Stipend applications in Recent U.S. History submitted to the National Endowment for the Humanities for projects beginning after January 1, 1979.

5. Date: December 11, 1978.
Time: 9 a.m. to 5:30 p.m.
Room: 1130.
Purpose: to review applications in Literature and the Fine Arts that have been submitted to the General Research Program of the National Endowment for the Humanities, for projects beginning March 1, 1979.

6. Date: December 11-12, 1978.
Time: 9 a.m. to 5:30 p.m.
Room: 807.
Purpose: to review Elementary and Secondary Education Program applications submitted to the National Endowment for the Humanities for projects beginning after April 1, 1979.

7. Date: December 12, 1978.
Time: 9 a.m. to 5:30 p.m.
Room: 1025.
Purpose: to review Summer Stipend applications in Early English Literature submitted to the National Endowment for the Humanities for projects beginning after January 1, 1979.

8. Date: December 12, 1978.
Time: 9 a.m. to 5:30 p.m.
Room: 1130.
Purpose: to review Summer Stipend applications in French and Italian submitted to the National Endowment for the Humanities for projects beginning after January 1, 1979.

9. Date: December 14, 1978.
Time: 9 a.m. to 5:30 p.m.
Room: 314.
Purpose: to review Summer Stipend applications in Ancient, Medieval and Renaissance History submitted to the National Endowment for the Humanities for projects beginning after January 1, 1979.

10. Date: December 14, 1978.
Time: 9 a.m. to 5:30 p.m.
Room: 1025.
Purpose: to review Summer Stipend applications in American Studies submitted to the National Endowment for the Humanities for projects beginning after January 1, 1979.

11. Date: December 15, 1978.
Time: 9 a.m. to 5:30 p.m.
Room: 1025.
Purpose: to review History applications submitted to the General Research Program of the National Endowment for the Humanities, for projects beginning March 1, 1979.

12. Date: December 15, 1978.
Time: 9 a.m. to 5:30 p.m.
Room: 314.
Purpose: to review Summer Stipend applications in Early U.S. History submitted to the National Endowment for the Humanities for projects beginning after January 1. 1979.

13. Date: December 19, 1978.
Time: 9 a.m. to 5:30 p.m.
Room: 807.
Purpose: to review Summer Stipend applications in Art History submitted to the National Endowment for the Humanities for projects beginning after January 1, 1979.

Because the proposed meetings will consider financial information and disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that the meetings would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close these meetings to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street NW., Washington, D.C. 20506, or call 202-724-0367.

STEPHEN J. MCCLEARY,
Advisory Committee, Management Officer.

[FR Doc. 78-32227 Filed 11-15-78; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-333]

POWER AUTHORITY OF THE STATE OF NEW YORK

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 40 to Facility Operating License No. DPR-59, issued to Power Authority of the State of New York (the licensee), which revised Technical Specifications for operation of the James A. FitzPatrick Nuclear Power Plant (the facility), located in Oswego County, N.Y. The amendment is effective as of its date of issuance.

This amendment revises the technical specifications relating to the leak rate testing requirements for systems which penetrate the containment boundary and are connected to the reactor coolant pressure boundary.

The applications for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4), an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment submitted by letter dated February 23, 1976, as supplemented July 5, 1978 (date of NRC receipt), and application dated August 1, 1978, (2) Amendment No. 40 to License No. DPR-59, and (3) the Commission's related safety evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Oswego County Office Building, 46 East Bridge Street, Oswego, N.Y. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 9th day of November 1978.

For the Nuclear Regulatory Commission.

THOMAS A. IPPOLITO,
Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc. 78-32193 Filed 11-15-78; 8:45 am]

[7590-01-M]

REGULATORY GUIDE

Issuance and Availability

The Nuclear Regulatory Commission has issued a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 1.136, Rivision 1, "Materials for Concrete Containments," describes some bases acceptable to the NRC staff for implementing the Commission's regulations with regard to materials for concrete containments. This guide, the first in a series that presents the NRC staff position on the acceptability of the ASME/ACI "Code for Concrete Reactor Vessels and Containments," for licensing purposes, endorses, with certain exceptions, Article CC-2000 of the code, which discusses materials for concrete containments. The guide has been revised as a result of public comment and additional staff review.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, attention: Docketing and Service Branch.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of the latest revision of issued guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to repoduce them.

(5 U.S.C. 552(a).)

Dated at Rockville, Md., this 8th day of November 1978.

For the Nuclear Regulatory Commission.

ROBERT B. MINOGUE,
Director, Office of Standards Development.

[FR Doc. 78-32195 Filed 11-15-78; 8:45 am]

[7590-01-M]

[Docket Nos. STN 50-566, 50-567]

TENNESSEE VALLEY AUTHORITY (YELLOW CREEK NUCLEAR PLANT, UNITS 1 AND 2)

Order Regarding Oral Argument

NOVEMBER 9, 1978.

Oral argument on the appeal of the NRC staff from the February 3, 1978 partial initial decision of the Licensing Board [1] in this construction permit proceeding will be heard at 10 a.m. on Wednesday, December 6, 1978, in the Commission's public hearing room on the 5th floor of the East West Towers Building, 4350 East-West Highway, Bethesda, Md. The argument will be confined to the single question presented by that appeal and briefed by the parties, [2] viz., whether the Licensing Board correctly held that this Commission lacks the authority to impose a condition on a limited work authorization or construction permit requiring the utility to submit a water quality monitoring program to the staff for its approval. [3]

One hour is allotted to each side for the presentation of its argument. As the appellant, the staff will have the right to open and to close.

Each party shall notify the Secretary to this Board, by letter no later than November 28, of the name of the counsel who will present argument on its behalf. [4]

It is so ordered.

For the Appeal Board.

MARGARET E. DU FLO,
Secretary to the Appeal Board.

[FR Doc. 78-32194 Filed 11-15-78; 8:45 am]

[4910-58-M]

NATIONAL TRANSPORTATION SAFETY BOARD

[N-AR 78-46]

ACCIDENT REPORT; SAFETY RECOMMENDATIONS AND RESPONSES

Availability

Marine Accident Report and Safety Recommendations.—The National Transportation Safety Board on November 8 released its formal investigation report concerning the collision of the Liberian tankship M/V *Stolt Viking* and the U.S. crewboat *Candy Bar* which occurred last January 7 some 110 miles south of Lake Charles, La.

[1] LBP-778-7, 7 NRC 215.

[2] The only parties to the appeal are the staff and the applicant, Tennessee Valley Authority.

[3] See discussion, LBP-7-78-7, supra, 7 NRC at 229-31.

[4] This Board withheld the calendaring of oral argument on the staff's appeal until this time because of its desire to abide the event of the Licensing Board's ultimate decision on the construction permit application. Given the limited scope and non-urgency of that appeal, we thought it would be preferable to consolidate its hearing and determination with any appeal which might be taken from the ultimate decision. Because, however, the rendition of that decision is apparently being delayed because of the radon issue recently remanded by us to the Licensing Board, we have now decided to move forward with the consideration and disposition of the pending appeal. Should the ultimate decision itself produce an appeal by one of the parties, that appeal will be heard and decided separately.

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The report, No. NTSB-MAR-78-9, shows that the 565-foot tankship collided with the 95-foot crewboat as it was servicing oil rigs. The crewboat was cut into two pieces; the tankship was not damaged. Two crewmen escaped from the *Candy Bar* and were rescued 4 hours after the accident, but the other two crewmen are missing and are presumed dead. The bow section of the *Candy Bar* sank soon after the accident, the stern section remaining afloat until the morning of January 8.

The Safety Board has determined that the probable cause of this accident was the failure of the *Stolt Viking* and the *Candy Bar* to keep an adequate lookout both visually and on radar. Contributing to the accident was the failure of the *Stolt Viking* and the *Candy Bar* to sound fog signals. Contributing to the loss of life was the lack of lifejackets in the wheelhouse of the *Candy Bar*.

This accident was investigated jointly by the Safety Board and the U.S. Coast Guard. A Coast Guard formal board of investigation was convened in New Orleans, La., on January 11, 1978. The Safety Board's report is based on the factual information developed by this investigation. The Safety Board has considered all facts pertinent to its statutory responsibility to determine the cause or probable cause of this accident and to make recommendations.

As a result of this investigation, on October 25 the Safety Board issued five recommendations to the Coast Guard. These recommendations, made independently of any recommendations proposed by the Coast Guard, are:

Require vessels carrying more than six passengers for hire and engaged in the offshore oil industry to have electronic navigational equipment including radar, LORAN, and a fathometer. (M-78-74)

Require that a person applying for an operator's license for vessels carrying more than six passengers for hire and engaged in the offshore oil industry be examined in the use of electronic navigational equipment such as radar, LORAN, and fathometers. (M-78-75)

Require that the operator of every radar-equipped vessel carrying more than six passengers for hire and engaged in the offshore oil industry be qualified as a "radar observer." (M-78-76)

Require that the operators of vessels carrying more than six passengers for hire and engaged in the offshore oil industry, when operating for more than 12 hours: (1) Establish standardized watch schedules to minimize fatigue from prolonged duty hours, and (2) appoint one operator to be in charge to establish responsibility of command and to avoid confusion in an emergency. (M-78-77)

Require that an additional number of life preservers be provided for the personnel on watch in the engineroom and pilothouse and at the bow lookout station for all vessels carrying more than six passengers for hire and engaged in the offshore oil industry, and require that these additional life preservers be stowed where they are readily accessible to the personnel on watch. (M-78-78)

Each of the above recommendations is designated "Class II, Priority Action." If any of these recommendations is not accepted, the Coast Guard is required to detail the reasons for such refusal. This is one of the means by which the Safety Board exercises its responsibility for assessing the safety operating and regulatory practices of the Coast Guard. Notice of recommendation responses will be published in the FEDERAL REGISTER.

RESPONSES TO SAFETY RECOMMENDATIONS

Aviation

A-78-63 through A-78-65.—Letter of October 20 from the Federal Aviation Administration is in response to recommendations issued following investigation of the accident last May 19 at Martinsville, Va., involving a Piper PA-31 Navajo Chieftan which was substantially damaged when it ran off the end of the runway and over an embankment after an aborted takeoff. An elevator cable became caught on the edge of a fuselage bulkhead lightening hole during the takeoff roll and prevented the pilot from moving the elevators and rotating the airplane for liftoff.

The recommendations called for FAA to issue an airworthiness directive applicable to Piper PA-31 Navajo Chieftan aircraft requiring corrective action, such as a plastic guard around the lightening hole at fuselage station 87.50, to prevent elevator control cable interference (A-78-63); to evaluate the adequacy of current Piper PA-31 Navajo Chieftan service information and maintenance procedures for rigging and adjustment of elevator controls and to include necessary data on elevator cable tension-temperature compensation in the Navajo Chieftan Service Manual (A-78-64); and to evaluate the engineering feasibility on these aircraft of increasing the elevator control cable tension and the size of the lightening hole at fuselage station 87.50 and of covering or relocating the elevator control cable turnbuckles (A-76-68).

In response, FAA stated that it expected to issue by the end of October an airworthiness directive to require compliance with a Piper service bulletin. This bulletin will specify installation of a plastic guard around the lightening hole at fuselage station 87.50 and will contain procedures for setting and checking cable tension and provide temperature-tension compensation curves. The compensation curves will be incorporated into the next revision of the Navajo Chieftan Service Manual. In view of these actions, FAA does not believe that further evaluation is necessary.

Highway

H-78-40 and H-78-41.—Letter of October 30 from the Federal Highway Administration is in response to recommendations dealing with procedures for identifying and informing interstate commercial carriers and drivers of their responsibilities under the Federal Motor Carrier Safety Regulations. The recommendations were issued last May 17 in connection with the highway accident which occurred on a long, steep grade on U.S. Highway 221, north of Marion, N.C., on May 12, 1977.

In response, FHWA states there is already a procedure to identify carriers who are under the jurisdiction of the Federal Motor Carrier Safety Regulations (FMCSR). According to FHWA, given the magnitude of the commercial interstate motor carrier transportation and its national scope, the varied types of operations and the dynamic nature of these commercial entities, the identification procedure is not absolute and there is no guarantee that it, or any other procedure, would identify each one of the 150,000 business entities actively operating at any given time. FHWA believes that only a few small carriers engaged in continuous operations are not known to the Bureau of Motor Carrier Safety (BMCS).

FHWA notes that at present there are 149,336 carriers actively engaged in interstate commerce that are listed in the census identification records maintained by BMCS, and this number is subject to constant change as carriers enter and depart the field. FHWA says there are now procedures for identifying these carriers and that a description of the laws, regulations, and practices of entry and departure in the field of commercial highway transportation is essential to an understanding of this identification procedure. Also, FHWA cites the potential duplication of State efforts and the opposition to further regulation of commercial entities, stating, "The benefits that would be obtained by the relatively few additional carriers is not considered justification for the additional funding resources required to administer such a registration program, nor is it likely that the added reporting burden imposed on these business entities would be considered favorably within the executive or legislative spheres of the Federal Government."

According to FHWA, identification of commercial drivers and vehicles is even more difficult. There is no Federal licensing or permit requirement. This is an area exclusively under State jurisdiction, and each State has its individual requirements. FHWA says that the optimum course of action in the Motor Carrier Safety Program is active attention to identifying carriers and informing them of their responsibility. In this regard, FHWA expects to issue in about 30 days a notice advising Regional Administrators to review the entry and registration requirements of each State within their region and to assure that an exchange of information about commercial carriers' identity is part of standard operating procedure. The assistance of the Governor's Highway Safety Representative is being solicited.

As for informing all carriers and drivers under FHWA jurisdiction of their responsibilities in regard to the FMCSR, FHWA explains that such a procedure under Federal law is in existence. It involves an initial informational "service of the regulations," as well as safety educational and promotional opportunities continuously undertaken as a regular feature of the Federal Motor Carrier Safety Program. As part of the activities directly conducted by Federal personnel in the program, information about the requirements of the FMCSR and the responsibilities of those operating in interstate commercial highway operation is provided. Meetings with motor carrier oriented audiences, such as trade associations or unions, are continuously held, and planned presentations, speeches, nighttime radio shows, and participation panels where motor carrier safety is the primary subject are provided.

Further, FHWA notes that inquiries are continuously received from motor carriers and drivers relating to interpretation and application of the FMCSR on a daily basis. In excess of 42,000 such inquiries were responded to in fiscal year 1977, FHWA reports. Numerous publications are released by FHWA/BMCS, including "Accidents of Large Motor Carriers of Property and Passengers," "Analysis of Motor Carrier Accidents Involving Vehicle Defects or Mechanical Failure," and "Analysis of Accidents Involving Fire." These publications present annual information about reportable accidents involving commercial motor vehicles engaged in interstate commerce. The data is derived from motor carrier reports filed with FHWA/BMCS and serves to remind and instruct of accident reporting responsibilities.

The Interstate Truck Driver's Handbook is designed to help commercial drivers understand their responsibilities regarding the FMCSR. FHWA notes that over 200,000 such booklets were distributed in English and Spanish versions. Also, the FHWA/BMCS has initiated arrangements with the Department of Transportation's Transportation Safety Institute, Oklahoma City, Okla., by which training classes are conducted for carriers and other industry personnel on a regular basis at which the FMCSR are the principal subject matter. Seven such classes are scheduled for fiscal year 1979.

Within the limits of available resources, FHWA considers that the present procedures utilized to inform carriers and drivers under FHWA jurisdiction are responsive and effective.

Marine

M-78-16 through M-78-30.—Letter of October 12 from the U.S. Coast Guard is in response to recommendations issued following investigation of the sinking of the Great Lakes bulk cargo vessel SS *Emund Fitzgerald* in eastern Lake Superior on November 10, 1975. The ship, with 29 crewmen and a full load of taconite pellets, was enroute from Superior, Wis., to Detroit, Mich., and was proceeding at a reduced speed in a severe storm when it sank approximately 17 miles from the entrance to Whitefish Bay, Mich. No distress call was heard and no survivors or bodies were located, although the vessel's two inflatable liferafts, several personal flotation devices, and other debris were found.

Recommendation M-78-16 asked Coast Guard to determine if reduction in the minimum freeboard requirements for Great Lakes vessels permitted by the 1969, 1971, and 1973 amendments to 46 CFR Part 45 increases the potential for vessel flooding because the designs of weathertight closures are not adequate and to report the findings. Coast Guard reports that reduction in minimum freeboard will increase potential for vessel flooding through inadequate hatch covers; however, this problem should be resolved by insuring adequacy of closure devices. The determination of inadequacy of presently used weathertight closures will be made at the conclusion of the current research project on Great Lakes hatch covers.

In answer to M-78-17, which asked Coast Guard to initiate a design study to improve the current weathertight hatchcover and clamp designs used on Great Lakes bulk vessels with a view toward requiring a more effective means of closure of such fittings, Coast Guard says a study is now being contracted to evaluate hatch cover designs and clamps, and that results of this study are expected by summer 1979.

Recommendation M-78-18 asked Coast Guard to insure that the masters of Great Lakes bulk cargo vessels have the loading information required by 46 CFR 45.105, including the proper sequences for simultaneous loading and deballasting or unloading and ballasting. Coast Guard reports that the 1973 Great Lakes Load Line regulations requiring loading information were put into effect during 1973 and 1974; every Great Lakes bulk cargo ship was required to produce a loading manual that includes information on proper sequencing. the ship rider program instituted in 1976 has been used to insure that these manuals are on board each vessel and that they are used. During the annual inspection of a Great Lakes bulk carrier there is an additional check on the availability of these manuals. Also, there is a joint effort with the American Bureau of shipping to update and improve the format of the manuals.

Recommendation M-78-19 called for Coast Guard to require that masters of all Great Lakes cargo vessels who are not required by 46 CFR 45.105 to have loading information be provided with such information, including the proper sequence for simultaneous loading and deballasting or unloading and ballasting. Coast Guard states that current regulations allow ships built prior to 1973 the option of retaining old freeboards and of not meeting all of the new requirements, including a loading manual. Inasmuch as there are less than 15 existing cargo vessels over 150 gross tons and not in bulk cargo, and none of these ships requires special ballasting, Coast Guard does not concur that a loading manual for these vessels would materially increase the level of safety.

In response to M-78-20, recommending a requirement that a Great Lakes cargo vessel meet a minimum level of subdivision and damage stability to prevent the foundering of the vessel because of flooding through one hatch or flooding because of damage in a limited area of the vessel, Coast Guard says it has evaluated comments on an advance notice of proposed rulemaking and is waiting for results of a Maritime Administration research study on subdivision, expected this fall, before evaluating alternative levels of subdivision for regulatory purposes.

Coast Guard agrees with the intent of recommendation M-78-21, which recommended a means of detecting water in the cargo holds a Great Lakes vessel so that her master will have an early indication of flooding and can take any necessary corrective action. However, Coast Guard does not agree that the requirement can be met with existing equipment. Solid bulk cargoes, particularly ores, present several problems: providing adequate mechanical protection and providing migration and access to the device for liquid level indication, and the prevention of plugging caused by the mud-like matter at the access to the devices. Because of the limited success of indicators in grain-like cargoes and

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widespread use in liquid cargoes, Coast Guard will continue to monitor equipment development for application responsive to this recommendation.

Commenting on M-78-22, which asked Coast Guard to amend 46 CFR 56.50-50 to require an effective bilge pumping system in Great Lakes bulk vessels so that if the vessel has trim by the bow and is listing, water can be removed from any portion of the cargo hold, Coast Guard states that the combination of longitudinal stability of the typical Great Lakes vessel and the nature of ore cargoes effect on bilge suction openings removes bilge pumping as a viable survival factor on these ships. Coast Guard believes that 46 CFR 56.50-50 application to these vessels and their hull arrangement provides adequate capacity for removal of water from the cargo compartment.

In response to M-78-23, which asked Coast Guard to require instruments in the wheelhouse to detect changes in both trim and heel on Great Lakes bulk cargo vessels so that changes in trim and heel caused by the presence of water or a change in cargo configuration can be detected, Coast Guard says that since an inclinometer is a standard piece of vessel equipment used to measure heel angle, still another instrument is not considered appropriate. Such instrumentation will give an indication of heel if there is off center flooding or cargo shifts. Coast Guard believes that a trimming inclinometer is practically useless, stating, "The longitudinal metracentric height of these vessels is such that the weight shift or addition that is necessary to become manifest in trim or in pitching would be discernible by visual means. The magnitude of these weights are such as to be out of the realm of practical realism."

Recommendation M-78-24 asked that Coast Guard require that the information supplied to the master of Great Lakes cargo vessels on loading and stability also include information on the vessel's ability to survive flooding (e.g., trim and heel results after assumed damage) so that the master can take appropriate corrective action or formulate timely plans to effect crew evacuation. Coast Guard concurs with the recommendation and such information requirements will be a part of the regulation package concerning subdivision noted in reponse to M-78-20.

Responding to M-78-25, which recommended that Coast Guard require Great Lakes vessels to have emergency position indicating radio beacons (EPIRB's) so that vessels lost or in serious danger can be located rapidly and accurately, Coast Guard reports that on August 9 the Federal Communications Commission published proposed rules for Class C Emergency Position Indicating Radio Beacons (43 FR 35343). These rules were based on development work done by the Coast Guard and the Transportation System Center in cooperation with the FCC. The proposed rules would apply to voluntary users in coastal waters. The Coast Guard is now working with the FCC on the next step of the project—developing requirements for EPIRB's with the same technical characteristics for Great Lakes vessels.

Recommendation M-78-26 asked Coast Guard to determine, in conjunction with the American Bureau of Shipping, the limiting sea state applicable to the design of Great Lakes bulk cargo vessels including freeboard and longitudinal strength and report the findings. Coast Guard, in responding to this recommendation in view of its sole legislated responsibility for marine safety, notes that the American Bureau of Shipping has developed rules for longitudinal strength of Great Lakes vessels and that Coast Guard has reviewed and accepted these rules as a structural standard. The wave conditions used for this standard were "families of wave spectrums, which represent a 'state of the art' effort to describe sea conditions." Coast Guard states:

> The analyst's desire to create more accurate numerical descriptions of sea and weather phenomena while laudable is perhaps misleading. It is a dangerous deception to claim that any known methodology to describe the sea is anything more than an approximation, mainly useful to make comparative analysis of one hull shape and structure with another rather than predicting nature's forces in an absolute sense. It follows that it is not feasible to relate direct observation of the sea, by eyeball or instruments, to a "go" or "no go" salling criterion in anything other than a gross sense.
>
> Expressed another way, the vulnerability of a vessel to damage at any given time is the product of an infinite variety of forces produced by various combinations of wind, wave, and vessel motion. It is here that we must still depend primarily on the master of the vessel to exercise his expertise. He may find for example that the "feel" of his vessel tells him he should slow or change course in relative moderate sea conditions on one leg of his voyage when on another leg or on another day differently loaded he might proceed at higher speed with perfect safety in more adverse conditions.

Further, Coast states that selection of a maximum sea state for freeboard purposes is not a practical approach to safety since it implies that the ship designer knows precisely how much water will come on deck in a given sea state. Freeboard alone can neither provide a dry deck nor provide a consistent estimate of how wet the deck will be in a given sea state. Coast Guard believes that there is merit in advancing the means of wave prediction so that masters can be better informed through more accurate wind, wave and weather reporting and, to this end, has encouraged agencies to increase their efforts in instrumentation for measurement of waves.

In response to recommendation M-78-27, which asked Coast Guard to prohibit the navigation of Great Lakes vessels in wind and wave conditions which exceed the limiting sea state used for vessel design, Coast Guard says, as in response to recommendation M-78-26, that there is no limiting sea state that can be identified either for structural strength or freeboard considerations. Accordingly, Coast Guard cannot use this as a means for prohibiting ships from sailing the Great Lakes.

Recommendation M-78-28 asked Coast Guard to determine, in conjunction with the American Bureau of Shipping, the design criteria used to determine the structural adequacy of hatch covers and report the findings, and to evaluate the design criteria and impose more stringent standards if indicated. Coast Guard reports that it has reviewed the existing hatch cover designs for structural adequacy against current criteria as published in 46 CFR 45.145 and finds no hatch cover that fails to meet the criteria. Decisions as to changes in the criteria will be made at the conclusion of the hatch cover research mentioned in response to M-78-17.

Commenting on M-78-29, recommending that all Great Lakes bulk cargo vessels have a fathometer, Coast Guard notes that 33 CFR 164.35(h) and (i) as promulgated on January 31, 1977, now requires a fathometer and recording device on all self-propelled Great Lakes vessels of 1,600 gross tons and over. This equipment is being installed at the time of the next drydocking of each vessel, but in no case later than June 1, 1982.

Recommendation M-78-30 called for Coast Guard to increase the surface search and rescue (SAR) capability on the Great Lakes during severe weather periods. Coast Guard reports that since the loss of the *Fitzgerald*, the following changes have been made to increase SAR capability:

1. Older 36' motor lifeboats have been replaced by newer, more capable 44' motor lifeboats at Stations Marquette and Grand Marais.
2. Three SAR Stations have been commissioned: Station Portage (1976) primary boat, 21' UTL; Station Bayfield (1977) primary boat, 41' UTB; and Station North Superior (1977) primary boat, 44' MLB.
3. Vessel employment schedules have been adjusted so that none of the buoy tenders (WLB), harbor tugs (WYTM) nor the MACKINAW (WAGB) have scheduled maintenance periods during November. All cutters are kept in Bravo status during that month of historically severe storms.
4. Plans are approved for the first of the new 140' ice-breaking tugs to be homeported at Sault Ste. Marie. This vessel is scheduled to be operating this winter (1978-79).

Coast Guard's October 12 letter includes response statistics for Lake Superior stations and cutters, including those added following the *Fitzgerald* tragedy. The nationwide average in fiscal year 1977 was 366 responses per SAR Station. Based on that data, Coast Guard says that the number and type of resources available on the Great Lakes compare favorably with those committed to other areas of similar activity. During the winter season, major shipping is curtailed due to severe weather conditions and historically SAR activity is relatively low. Coupled with the establishment of three new stations in the past 2 years, the improvement of vessel readiness schedules and the recent modernization of equipment, this represents a measurable increase of SAR coverage on the Great Lakes.

Pipeline

P-74-19.—The American Society of Mechanical Engineers (ASME) on October 19 responded to the Safety Board's letter of September 29 concerning comments forwarded by ASME on July 17 (43 FR 42828, September 21, 1978). The recommendation resulted from investigation of the gas pipeline leak, explosion, and fire which occurred December 9, 1972, in the Missouri Public Service Co. system at Clinton, Mo., and called for guidelines for use of telemetering on gas distribution systems so that system failures can be promptly detected.

The Safety Board expressed agreement that the use of telemetry as an early warning agent is only one of a number of applications for this device and that its use to detect malfunction of the system is not its primary function. The Board maintains its position that guidelines for installation of telemetry for malfunction detection are necessary and finds that the parameters listed in the "Conclusions" of ASME's July 17 response are reasonable and should be used in developing guidelines for publication to be used by small gas companies. The Board concurs with the suggestion that actual test work is needed to substantiate ASME's hypothetical analysis. The Board stated that it will tabulate from its records the instances in which existing telemetering has in fact resulted in, or has had the potential of resulting in, earlier onsite time by gas company personnel as mentioned in ASME's comments.

In response, ASME said it would welcome a meeting, as offered by the Safety Board, of its Gas Standards Committee representatives with the Board's staff to discuss the conduct of telemetry tests, the development of guidelines, and the use of Safety Board information on using telemetry for failure detection. Also, ASME might wish to work with the Board in developing design/parameters/criteria of a telemetry test program in order to come to grips with the realities of what state-of-the-art telemetry systems can and cannot do.

Railroad

R-77-19.—The Chicago Transit Authority (CTA) on October 30 acknowledged the Safety Board's September 13 reply to CTA's response of July 21 (43 FR 36535, August 17, 1978). The recommendation asked CTA to provide a safe passageway between rapid transit cars when passengers are moving from one car to another, and was issued following investigation of the April 19, 1977, accident in Clinton, Ill.

The Safety Board's September 13 letter notes that certain rail rapid transit carriers, including CTA, have a unique mechanical problem with end-of-car floor and side closures due to extreme curvature of track and agrees that sliding floor plates and accordion or roller-type side curtains could present very serious pinching hazards, assuming design inadequacies. Nevertheless, the Board believes that the curved end casting and safety chains have demonstrably fallen short of the mark in affording a hazard-free passageway. Warning signs and public address system announcements function only as passive restraints; if passengers are permitted to move from car to car, their movements must be given positive protection, the Board stated. If remedial retrofitting of passageways cannot be effected, the carrier should lock or otherwise barricade the passageway to all but emergency use.

CTA's response states that the Safety Board's point is understood and that response has been delayed in the hope, unsuccessful up to now, of identifying an alternative which would not itself introduce an unaccepable potential new hazard. CTA will continue to search for a better solution and will advise the Board when one is found.

NOTE: The above notice reports on Safety Board documents recently released and recommendation response letters received. Single copies of accident reports, the Board's recommendation letters, and responses in their entirety are available without charge. Copies of accident reports are in limited supply.

All requests to the Board for copies must be in writing, identified by report or recommendation number. Address inquiries to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594.

Multiple copies of accident reports may be purchased by mail from the National Technical Information Service, U.S. Department of Commerce, Springfield, Va. 22151.

(Secs. 304(a)(2) and 307 of the Independent Safety Board Act of 1974 (Pub. L. 93-633, 88 Stat. 2169, 2172 (49 U.S.C. 1903, 1906)).)

MARGARET L. FISHER,
Federal Register
Liaison Officer.

NOVEMBER 13, 1978.

[FR Doc. 78-32249 Filed 11-15-78; 8:45 am]

[3110-01-M]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on November 8, 1978 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes—

The name of the agency sponsoring the proposed collection of information;

The title of each request received;

The agency form number(s), if applicable;

The frequency with which the information is proposed to be collected;

An indication of who will be the respondents to the proposed collection;

The estimated number of responses;

The estimated burden in reporting hours; and

The name of the reviewer or reviewing division or office.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503, 202-395-4529, or from the reviewer listed.

NEW FORMS

TENNESSEE VALLEY AUTHORITY

Survey of consumer interest in solar hot water heaters
Single-time
Electric homeowners in Northern Alabama.
1,600 responses; 400 hours
Ellett, C. A., 395-6132

DEPARTMENT OF COMMERCE

Bureau of census
Quarterly return of withheld Federal income tax IRS 941 E
Annually
Tax exempt organizations and pension and annuities, 100,000 responses; 10,000 hours
C. Louis Kincannon, 395-3211

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

V 43 1 222 2

Sharing business success
OE-580
Annually
School districts, 200 responses; 1,680 hours
Laverne V. Collins, 395-3214

National Institutes of Health
U.S.A./U.S.S.R.—Joint breast cancer rehabilitation project
Quarterly
Women with single mastectomies, 1,920 responses; 1,440 hours
Richard Eisinger, 395-3214

National Institutes of Health
Mitis study forms (Multicenter investigation for limitation of infart size)
Single-time
Patients who have suffered a myocardial infarction, 428 responses; 121 hours
Richard Eisinger, 395-3214

Health Resources Administration
Survey of chiropractic graduates and practitioners
Single-time
Chiropractic graduates and practitiones, 3,375 responses; 1,875 hours
Office of Federal Statistical Policy and Standard
Richard Eisinger, 673-7956

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Disaster Assistance Administration
Field test of: Application for disaster recovery
Assistance
On occasion
Disaster victims, 1,000 responses; 3,000 hours
Strasser, A., 395-6132

REVISIONS

WATER RESOURCES COUNCIL

Title III annual report
Annually
St. Agen. Design. to Admin. & Coordi. St. Comp. Wa. & Rir. 54 responses; 2,160 hours
Budget Review Division
Clarke, Edward H., 395-4775

VETERANS ADMINISTRATION

Application for educational assistance by a spouse or surviving spouse
22-5490W
On occasion
Spouse or surviving spouse, 6,000 responses; 2,000 hours
Caywood, D. P., 395-3443

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service
Annual report of packers
P & S-125
Annually
Livestock slaughterers in U.S., 900 responses; 2,700 hours
Ellett, C. A., 395-6132

DEPARTMENT OF COMMERCE

Bureau of Census
Computers and office and accounting machines
MA-35R
Annually
Manufacturing establishments, 389 responses; 584 hours
Office of Federal Statistical Policy and Standard, 673-7956

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of education
Financial status and performance report, Pub. L. 94-142 and Pub. L. 89-313
OE-9039-1, 2
Annually
State educational agencies, 228 responses; 1,026 hours
Laverne V. Collins, 395-3214

Office of Education
Basic grant program student validation roster
OE-255-4
Annually
Institutions participting in the beog program, 5,000 responses; 25,000 hours
Laverne V. Collins, 395-3214

Office of Education
Application for basic educational opportunity grant
OE-255
Annually
"Postsecondary" students, 1,000,000 responses; 2,000,000 hours
Laverne V. Collins, 395-3214

Office of Education
Beog student eligibility report
OE-255-1
On occasion
Stu. and postsec. instit. in which beog students enroll, 3,000,000 responses; 1,500,000 hours
Laverne V. Collins, 395-3214

Office of Education
Report on handicapped children ADA in State operated or supported schools
OE-9052
Annually
State agencies, 160 responses; 160 hours
Laverne V. Collins, 395-3214

Office of Education
Beog supplemental form for 1979-80 award period
OE-255-2
On occasion
Beog applications, 200,000 responses; 100,000 hours
Laverne V. Collins, 395-3214

DEPARTMENT OF LABOR

Bureau of Labor Statistics
New York City stabilized apartment house price index of operating costs collection forms
BLS 3112-A, B, C
Monthly
Businesses servicing stabilized New York City apartment house operators, 1,360 responses; 340 hours
Strasser, A., 395-6132

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration
Highway safety improvement program
Annually
State and Territorial Highway Agencies, 55 responses; 19,250 hours
Geiger, Susan B., 395-5867

EXTENSIONS

RAILROAD RETIREMENT BOARD

Request for payment by qualified organizations
G-740B
On occasion
Railroad Hospital Associations and Physicians, 40,000 responses; 6,668 hours
Reese, B. F., 395-3211

Pay rate report
UI-1E
On occasion
Applicants for RUIA benefits, 7,000 responses; 600 hours
Reese, B. F., 395-3211

TENNESSEE VALLEY AUTHORITY

TVA fishing census
Serviors
TVA 5587
On occasion
Fishermen, 24,000 responses; 2,400 hours
Ellett, C. A., 395-6132

FEDERAL RESERVE SYSTEM

Dealer report of condition
FR 2002, 2003
Annually
Primary dealers in U.S. Government securities, 34 responses; 2,040 hours
Geiger, Susan B., 395-5867

EXTENSIONS

RAILROAD RETIREMENT BOARD

Letter and questionnaire regarding survivors of deceased employee
RL-94-F
On occasion
Survivor of deceased employee, 24,000 responses; 8,000 hours
Reese, B. F., 395-3211

Request for information regarding residual (payment)
RL-113
On occasion
Potential beneficiaries, 2,500 responses; 1,250 hours
Reese, B. F., 395-3211

Medical insurance premium due and payment summary (third party)
G-805
Monthly
Medical insurance intermediaries, 216 responses; 36 hours
Reese, B. F., 395-3211

DEPARTMENT OF AGRICULTURE

Economics, Statistics, and Cooperatives Service
Farm real estate taxes levied (Land and buildings)
Annually
Local tax officials, 3,060 responses; 1,530 hours
Ellett, C. A., 395-6132

DEPARTMENT OF COMMERCE

Bureau of Census
Construction project report, multi-family residential
C-700(R)
Monthly
Owners of multi-family residential buildings, 36,000 responses; 12,000 hours
C. Louis Kincannon, 395-3211

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Resources Administration
Record of State and local action under section 1122 of the Social Security Act
HRABHPRDO22
On occasion
One design. planning agency in each State or territory, 5,250 responses; 2,100 hours
Richard Eisinger, 395-3214

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Office of Education
Financial status and performance reports
Title I, ESEA of 1965
OE 380-1, OE 380-2
Annually
Sea's, 57 responses; 1,112 hours
Laverne V. Collins, 395-3214

Office of Education
Guaranteee Agency request for claims paid
OE 1189-1, 2, 3,
Annually
Guarantee Agencies; 312 responses; 624 hours
Laverne V. Collins, 395-3214

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Administration (Office of Assistant Secretary)
Supporting schedules for Federal housing Administration 2742
FHA-2744 A through E
On occasion
FHA approved mortgagees, 300 responses; 300 hours
Strasser, A., 395-6132

Administration (Office of Assistant Secretary)
Lender's request for termination of home mortgage insurance
FHA-2344
On occasion
Mortgage lenders, 450,000 responses; 112,500 hours
Strasser, A., 395-6132

DEPARTMENT OF INTERIOR

Bureau of Mines
Mine production of bauxite
6-1010-QA
Quarterly
Producers of bauxite, 80 responses; 44 hours
Office of Federal Statistical Policy and Standard
Ellett, C. A., 673-7956

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service
Immigration bond
I-352A
On occasion
Bond obligor, 10,000 responses; 83 hours
Laverne V. Collins, 395-3214

DEPARTMENT OF THE TREASURY

Bureau of Customs
Petition for remission or mitigation of forfeitures and penalties incurred
CF 4609
On occasion
Individuals violating U.S. law, 5,500 responses; 184 hours
Geiger, Susan B., 395-5867

DAVID R. LEUTHOLD,
Budget and Management Officer.

[FR Doc 78-32224 Filed 11-15-78; 8:45 am]

[3190-01-M]

OFFICE OF THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

TRADE POLICY STAFF COMMITTEE

Solicitation of Public Views

Pursuant to section 201 of the Trade Act of 1974, on November 3, 1978, the President received a report from the United States International Trade Commission (USITC) on the case of Bolts, Nuts and Large Screws of Iron or Steel (Investigation No. TA-201-37). The Commission submitted a report containing an affirmative determination that lag screws, or bolts, bolts (except mine-roof bolts) and bolts and their nuts imported in the same shipment, nuts, and screws having shanks or threads over 0.24 inch in diameter, all the foregoing of iron or steel, provided for in items 646.49, 646.54, 646.56, and 646.63 of the Tariff Schedules of the United States (TSUS), are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing articles like or directly competitive with the imported articles.

The Commission finds and recommends that, to prevent or remedy such injury to the domestic industry, it is necessary to impose rates of duty (a) in lieu of the present rates of duty with respect to lag screws or bolts and screws having shanks or threads over 0.24 inch in diameter, of iron or steel, provided for in items 646.49 and 646.63 of the TSUS, and (b) in addition to the present rates with respect to bolts (except mine-roof bolts) and bolts and their nuts imported in the same shipment, and nuts, of iron or steel, provided for in items 646.54 and 646.56 of the TSUS, as follows—

[Percent ad valorem]

1st year	2d year	3d year	4th year	5th year
20	20	15	10	10

Within 60 days of receiving a report from the Commission containing an affirmative determination, the President must determine what method and amount of import relief he will provide or determine that the provision of relief is not in the national economic interest, and whether he will direct expeditious consideration of adjustment assistance petitions.

In determining whether to provide import relief and what method and amount of import relief he will provide, the President must take into account, in addition to other considerations he may deem relevant, the following factors:

(1) The probable effectiveness of the import relief as a means to promote adjustment, the efforts being made or to be implemented by the industry concerned to adjust to import competition, and other considerations relevant to the position of the industry in the Nation's economy;

(2) The effect of import relief on consumers and on competition in the domestic markets for such articles;

(3) The effect of import relief on the international economic interest of the United States;

(4) The impact on United States industries and firms as a consequence of any possible modification of duties or other import restrictions which may result from international obligations with respect to compensation;

(5) The geographic concentration of imported products marketed in the United States;

(6) The extent to which the United States market is a focal point for exports of such articles by reason of restraints on exports of such articles to, or on imports of such articles into, third country markets; and

(7) The economic and social costs which would be incurred by taxpayers, communities and workers if import relief were or were not provided.

The Office of the Special Representative for Trade Negotiations chairs the interagency Trade Policy Committee structure that makes recommendations to the President as to what action, if any, he should take on reports submitted by the USITC under section 201(d). In order to assist the Trade Policy Staff Committee in developing recommendations to the President as to what action to take under sections 202 and 203 of the Trade Act of 1974, the Committee welcomes briefs from interested parties on the above listed subjects. (Additional information on this case is available in USITC report 201-37).

Briefs should be submitted in twenty (20) copies to Secretary, Trade Policy Staff Committee, Room 728, Office of the Special Representative for Trade Negotiations, 1800 G Street, NW., Washington, D.C. 20506.

To be considered by the Trade Policy Staff Committee, submissions should be received in the Office of the Special Representative for Trade Negotiations no later than the close of business Thursday, November 30, 1978.

WILLIAM B. KELLY, Jr.,
Chairman,
Trade Policy Staff Committee.

[FR Doc. 78-32271 Filed 11-15-78; 8:45 am]

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[6820-97-M]

PRESIDENTIAL COMMISSION ON WORLD HUNGER

DOMESTIC, AGRICULTURE POLICY, CONSUMER AND NUTRITION SUBCOMMITTEE

Meetings

Subcommittees of the Presidential Commission on World Hunger have scheduled meetings as follows:

The Domestic, Agriculture Policy, Consumer and Nutrition Subcommittee will meet on November 18, 1978, at 10 a.m., at 736 Jackson Place NW., Washington, D.C. The Public Participation and Communication Subcommittee will meet on December 6, 1978; and the International Policy Subcommittee will meet on December 7, 1978.

The meetings will be open to observation by the public. Details as to locations and times of the latter two subcommittees are being developed and may be obtained by calling area code 202-395-3505. Persons interested in attending such meetings should address a letter to the Commission or visit in person the Presidential Commission on World Hunger offices at 734 Jackson Place NW., Washington, D.C. 20006. Admission of observers will be on the basis of earliest postmark date or date of visit and to the extent space is available.

Please refer to FEDERAL REGISTER Vol. 43, No. 208, for objectives and membership of the Presidential Commission on World Hunger.

DANIEL E. SHAUGHNESSY,
Deputy Executive Director, Presidential Commission on World Hunger.

[FR Doc. 78-32223 Filed 11-15-78; 8:45 am]

[8010-01]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 10466; 811-34]

ANCHOR INCOME FUND, INC.

Application for an Order Declaring That Applicant Has Ceased To Be An Investment Company

NOVEMBER 1, 1978.

Notice is hereby given that Anchor Income Fund, Inc. ("Applicant"), Westminster at Parker, Elizabeth, New Jersey 07207, a Delaware corporation registered under the Investment Company Act of 1940 ("Act") as a diversified, open-end management company, filed an application on October 5, 1978, pursuant to section 8(f) of the Act, for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant asserts that it registered under the Act (under the name "New York Stocks, Inc.") on October 24, 1940, and later filed a registration statement pursuant to the Securities Act of 1933 (under the name "Diversified Funds, Inc.") with respect to 1,000,000 shares of capital stock. Such registration statement, as amended, was declared effective on April 1, 1954, and an initial public offering was commenced thereafter (under the name "Diversified Investment Fund, Inc."). Applicant states that on July 31, 1978, it merged with The Income Fund of America, Inc. ("Fund"), a registered, open-end investment company incorporated under the laws of Delaware. Applicant further states that the merger was approved by the holders of more than a majority of the outstanding shares of Applicant, in accordance with Delaware law. Under the laws of the State of Delaware, Applicant's separate existence ceased upon effectiveness of the merger.

Applicant represents that it is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs. According to the application, title to all of Applicant's portfolio securities and other assets was vested in the Fund upon effectiveness of the merger. Applicant submits that the only consideration from the Fund consisted of shares of its capital stock equal in value to the value of Applicant's net assets.

Section 8(f) of the Act provides, in part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order and, upon the effectiveness of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than November 27, 1978, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-32190 Filed 11-15-78; 8:45 am]

[8025-01-M]

SMALL BUSINESS ADMINISTRATION

[License No. 01/01-0280]

A B SBIC, INC.

Filing of Application for Approval Conflict of Interest Transaction Between Associates

Notice is hereby given that A B Small Business Investment Co., Inc. (A B), Schoolhouse Road, Chesire, Conn. 06410, a Federal licensee under the Small Business Investment Act of 1958, as amended, has filed an application pursuant to § 107.1004 of the regulations governing small business investment companies (13 CFR 107.1004 (1978)), for approval of a conflict of interest transaction.

A B desires to provide financing in the amount of $30,000 to Mr. Brent Thompson for the purpose of enabling that individual to purchase a grocery store known as E-Z Reach Market, located at 1389 North Main Street, Waterbury, Conn.

Mr. Thompson has been an employee of Buzzutos', Inc., the parent of A B since June 24, 1973, and upon approval of this financing, he will resign from Buzzutos', Inc. In accordance with the term "Associate of a Licensee" set forth under § 107.103 of the Small Business Administration's regulations, he is an associate of A B. Pursuant to the provisions of § 107.1004(b)(1) of SBA's regulations, this affiliation requires A B to obtain an exemption from the SBA in order to provide the proposed financing to Mr. Thompson.

Notice is hereby given that any person may, not later than December 1, 1978, submit written comments to SBA on the proposed financing. Any such comments should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

A copy of this notice shall be published by A B in a newspaper of general circulation in Waterbury, Conn.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: November 9, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-32176 Filed 11-15-78; 8:45 am]

[8025-01-M]

REGION IV ADVISORY COUNCIL MEETING

Public Meeting

The Small Business Administration Region IV Advisory Council, located in the geographical area of Birmingham, Ala., will hold a public meeting at 9 a.m., on Thursday, December 7, 1978, in the Birmingham Hilton Inn, 260 Goodwin Crest Drive, Birmingham, Ala., to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call James C. Barksdale, District Director, Small Business Administration, 908 South 20th Street, Birmingham, Ala. 35205, 205-254-1341.

Dated: November 9, 1978.

K. DREW,
Deputy Advocate for Advisory Councils.

[FR Doc. 78-32175 Filed 11-15-78; 8:45 am]

[8025-01-M]

[Declaration of Disaster Loan Area No. 1544]

COMMONWEALTH OF PUERTO RICO

Declaration of Disaster Loan Area

The municipalities of Ponce, Coamo, Juana Diaz, Lajas, Santa Isabel, Humacao, Patillas, San German, Naguabo, Yabucoa, Fajardo, Guanica, Arroyo, Maunabo, Guayanilla, Salinas, Cidra, Gurabo, Las Piedras, Utuado, Ceiba, Juncos, Toa Baja, Canovanas, Aibonito, Guayama, Yauco, Trujillo Alto, Cabo Rojo, and adjacent municipalities within the Commonwealth of Puerto Rico constitute a disaster area because of physical damage resulting from heavy rains, severe flooding, and landslides which occurred on October 22 through October 28, 1978. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on January 8, 1979 and for economic injury until August 8, 1979, at: Small Business Administration, District Office, U.S. Courthouse and Federal Office Building, Sixth Floor, Room 691, Carlos Chardon Avenue, Hato Rey, P.R. 00919, or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: November 8, 1978.

PATRICIA M. CLOHERTY,
Acting Administrator.

[FR Doc. 78-32174 Filed 11-15-78; 8:45 am]

[4910-14-M]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 78-162]

COAST GUARD AND PYROTECHNICS SIGNAL MANUFACTURERS ASSOCIATION, INC.

Open Meeting

Notice is hereby given that a meeting between the Coast Guard and the Pyrotechnics Signal Manufacturers Association, Inc., will be held at 9:30 a.m. on November 28, 1978, at Nassif Building, Room 8334, 400 Seventh Street SW., Washington, D.C. 20590.

This meeting is being held at the request of the Pyrotechnics Signals Manufacturers Association, Inc., to allow them to present their comments on the changes to specifications for distress signalling equipment proposed in the FEDERAL REGISTER of Monday, October 23, 1978 (43 FR 49440) and the proposed carriage requirement for visual distress signals on boats published in the FEDERAL REGISTER on Monday, April 10, 1978 (43 FR 15118).

This meeting is open to the public. Anyone wishing to attend should contact Mr. David R. Gauthier, U.S. Coast Guard Office of Boating Safety; Transpoint Building, Room 4308, 2100 Second Street SW., Washington, D.C. 20590, telephone number 202-426-4176.

Dated: November 8, 1978.

E. A. DELANEY,
Captain, U.S. Coast Guard, Acting Chief, Office of Boating Safety.

[FR Doc. 78-32280 Filed 11-15-78; 8:45 am]

[4910-14-M]

[CGD 78-155]

PROPOSED RAILROAD BRIDGE ACROSS THE NIANTIC RIVER, MILE 0.0, BETWEEN EAST LYME AND WATERFORD, CONN.

Public Hearing

The Commandant has authorized a public hearing to be held by the Commander, Third Coast Guard District in conjunction with the Federal Railroad Administration (FRA). The hearing will be held at East Lyme Town Hall, 108 Pennsylvania Avenue, Niantic, Conn., on Thursday, December 14, 1978, from 1 to 4:30 p.m. and from 7 to 10 p.m. The purpose of the hearing is to hear testimony on the effects the proposed action will have on the quality of the human environment pursuant to the National Environmental Policy Act of 1969 (NEPA) and on navigation pursuant to Section 9 of the Rivers and Harbors Act of 1899 and other bridge statutes.

A draft Environmental Impact Statement (EIS) on the proposed action was filed with the Environmental Protection Agency on October 5, 1978 in compliance with NEPA. Copies of the draft EIS and Coast Guard Public Notice number 3-357 are available for review at the following locations:

Connecticut State Library, Hartford, Conn.; East Lyme Public Library, Niantic, Conn.; Waterford Public Library, Waterford, Conn.; East Lyme Town Hall, Niantic, Conn. and Waterford Town Hall, Waterford, Conn.

The proposed action is the replacement of a bascule bridge across the Niantic River, mile 0.0, and its approaches between East Lyme and Waterford, Conn. The existing bridge provides a horizontal clearance of 45 feet between fenders, normal to the axis of the channel and a vertical clearance of 11 feet above normal high water in the closed position (unlimited in the open position). The proposed bridge will provide a horizontal clearance of 100 feet between fenders, normal to the axis of the channel and a vertical clearance of 13 feet above normal high water in the closed position (unlimited in the open position). The total project length between existing track tie-in points is approximately 0.7 miles. The project cost, estimated to be $5,352,000, is to be funded 100 percent by the Federal Government as part of the Northeast Corridor Improvement Project under authorization of the Railroad Revitalization and Regulatory Reform Act of 1976.

The hearing will be informal. Both the Coast Guard and FRA representatives will preside at the hearing, make brief opening statements, and announce the procedures to be followed at the hearing. Each person who wishes to make an oral statement should notify the Commander (oan), Third Coast Guard District, Governors Island, New York, N.Y. 10004 or the Director, Northeast Corridor Project, Federal Railroad Administration, 2100 Second Street, SW, Washington, D.C. 20590 prior to the hearing date. Such notification should include the approximate time required to make the presentation. Comments previously submitted are a matter of record and need not be resubmitted at the hearing. Speakers are encouraged to

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provide written copies of their oral statements to the hearing officer at the time of the hearing. Those wishing to make written comments only may submit those comments at the hearing, to the Commander (oan), Third Coast Guard District or the Director, Northeast Corridor Project, Federal Railroad Administration through January 20, 1979. All comments received will be considered. A transcript of the hearing, as well as written comments received outside the hearing, will be available for public review in the Third Coast Guard District and FRA Northeast Corridor Project offices approximately 30 days after the hearing date.

(Sec. 502, 60 Stat. 847, as amended; (33 U.S.C. 525, 49 U.S.C. 1655(g)(6)(C)); 49 CFR 1.46(c)(10))

Dated: November 9, 1978.

F. P. SCHUBERT,
Captain, U.S. Coast Guard, Acting Chief, Office of the Marine Environment and Systems.

[FR Doc. 32281 Filed 11-15-78; 8:45 am]

[4910-13-M]

Federal Aviation Administration

RADIO TECHNICAL COMMISSION FOR AERONAUTICS (RTCA), SPECIAL COMMITTEE 134—GENERAL PURPOSE ELECTRONIC TEST EQUIPMENT

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the RTCA Special Committee 134 on General Purpose Electronic Test Equipment to be held December 7 and 8, 1978, Conference Room 9W67, National Center No. 1, Naval Electronics Systems Command, 2511 Jefferson Davis Highway, Arlington, Va. commencing at 9 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of Fifth Meeting held October 19 and 20, 1978; (3) Briefing on MIL-T-28800 and its Impact on DOD Acquisition of Off-The-Shelf Electronic Test Equipment; (4) Report by Procurement Working Group and Review of Warranty Shortfall Issue Paper; (5) Report by Logistics Working Group and Review of Wasteful Cost of Obsolescence Issue Paper; (6) Report by Requirements Working Group and Review of Specification Confusion Issue Paper; (7) Establish a List of Other Issues and Assign Tasks; (8) Discussion of Service Credits for Maintenance; and (9) Other Business

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements or obtain information should contact the RTCA Secretariat, 1717 H Street NW., Washington, D.C. 20006; 202-296-0484. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on November 7, 1978.

KARL F. BIERACH,
Designated Officer.

[FR Doc. 78-32233 Filed 11-15-78; 8:45 am]

[4910-59-M]

National Highway Traffic Safety Administration

[Docket No. IP77-19; Notice No. 2]

BMW OF NORTH AMERICA, INC.

Grant of Petition for Inconsequential Noncompliance

This notice grants the petition by BMW of North America, Inc., of Montvale, N.J., to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) for a noncompliance with 49 CFR 571.105-75, Motor Vehicle Safety Standard No. 105-75, Hydraulic Brake Systems. The basis of the petition was that it is inconsequential as it relates to motor vehicle safety.

Notice of the petition was published on December 12, 1977, and an opportunity afforded for comment (42 FR 62435).

Paragraph § 5.3.5 of Standard No. 105-75 requires a passenger car to be equipped with a brake system indicator lamp, whose lens is labeled "BRAKE." The letters and lens must be of contrasting colors, one of which is red. The primary purpose of the lamp is to indicate a gross loss of pressure such as is caused by rupture of a brake line or a drop of level of brake fluid in the master cylinder reservoir compartment. A NHTSA compliance investigation (File CIR 1765) discovered that the word "BRAKE" had been moulded into the red lens so that there was no color contrast per se. BMW argued that this is inconsequential because "• • • even though, strictly speaking, there is no contrast in color, as such • • • there are differences both in brightness and visual texture between the raised letters and the lens • • • making the word "BRAKE" clearly discernible in contrast to its background." BMW submitted photographs of the lens in support of this contention, which have been available for examination in the docket. The condition exists on approximately 9500 model 2002s manufactured from January 1, 1976, the effective date of the requirement, through June 1976.

Two comments were received on the petition, from private citizens, both of whom supported BMW.

The NHTSA, after review of all the data available to it, has concluded that the lens meets the intent of the requirement, which is to provide a warning to the vehicle operator. Although the agency does not believe, on the basis of BMW's photographs, that there is a readily discernible "contrast in brightness and visual texture between the raised letters and lens," the lens itself is of sufficient size that the illumination of the lamp should be easily perceived by the vehicle operator, alerting him to a potentially unsafe driving situation. The word "brake" will appear on the lighted lens though there is no great contrast between it and its background. The noncompliance then appears inconsequential as it relates to motor vehicle safety and the petition of BMW of North America, Inc. is hereby granted.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on November 7, 1978.

MICHAEL M. FINKELSTEIN,
Associate Administrator for Rulemaking.

[FR Doc. 78-32009 Filed 11-15-78; 8:45 am]

[4910-59-M]

National Highway Traffic Safety Administration

FINANCIAL ASSISTANCE TO PARTICIPANTS IN RULEMAKING PROCEEDINGS

Selection of Proceedings To Be Funded

AGENCY: National Highway Traffic Safety Administration (NHTSA).

ACTION: Announcement of funding priorities.

SUMMARY: This notice announces NHTSA's priorities for the allocation of funds available for fiscal year 1979 to reimburse participants in NHTSA rulemaking proceedings under the agency's public participation program. The notice informs the public of the availability of funding and invites comment on the agency's selection of proceedings.

DATES: Comments must be received on or before December 4, 1978.

ADDRESSES: Comments should be submitted to: Ms. Jeannette Feldman, Office of Consumer Participation, 400 Seventh Street SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT:

Jeannette Feldman, Office of Consumer Participation, National Highway Traffic Safety Administration, Washington, D.C. 20590, 202-426-0670.

SUPPLEMENTARY INFORMATION: On January 11, 1977, the Department of Transportation (DOT) initiated a 1-year pilot program for providing financial assistance to certain participants in DOT administrative proceedings (42 FR 2863; January 13, 1977). The goal of the program was to encourage participation by groups and individuals capable of making a substantial contribution to the decision-making process, but unable to present their views due to limited financial resources. The pilot program was administered jointly by DOT and NHTSA. The program was extended on an interim basis on March 3, 1978 (43 FR 10918; March 16, 1978).

Congress has now appropriated fiscal year 1979 funds to conduct and report to Congress on a 1-year demonstration project of public participation in rulemaking building upon the experience gained in past financial assistance program undertakings. The report made to Congress at the close of fiscal year 1979 will assist in a judgment as to the value of funding public participation in future years and the level of funding required. DOT intends to issue revised regulations in the near future under which NHTSA will operate this fiscal year 1979 demonstration project.

NHTSA is presently establishing priorities for the allocation of its authorized financial assistance funds for fiscal year 1979. This notice represents a listing of those contemplated rulemaking proceedings in which NHTSA plans to make available public participation funding. NHTSA is announcing its tentative selection of proceedings in order to invite public comment on the choice of proceedings and to provide advance notice to interested parties to allow them to begin planning for participation.

During fiscal year 1979, NHTSA plans to make available public participation funds in the following proceedings:

1. Light Truck and Van Fuel Economy Rulemaking to set average fuel economy standards for model years 1982-84 light trucks and vans.
2. Seat Belt Assemblies Rulemaking proposing to improve seat belt comfort, convenience, reliability and effectiveness by prescribing parameters for performance of seat belt assemblies.
3. Pedestrian Protection Rulemaking proposing standards for vehicle bumpers and exterior surfaces which would reduce the severity of pedestrian injuries.
4. Truck Rear Underride Protection Rulemaking proposing to require protection devices to eliminate penetration under the rear ends of heavy trucks and trailers and to dissipate crash force.
5. Low Tire-Pressure Warning Indicator Rulemaking proposing to require a low tire-pressure warning indicator on all vehicles or tires to show a specified drop from recommended pressure.
6. Brake System Inspectability Proceeding proposing to establish test procedures and criteria for measurement of brake system degradation.
7. Hydraulic Brake Systems Rulemaking proposing to extend coverage of the hydraulic brake standard (49 CFR 571.105) to multipurpose vehicles, buses, and all trucks.
8. Rulemaking to assure unobstructed fields of view for drivers by proposal of standards governing direct fields of view and by upgrading of the rearview mirror standard (49 CFR 571.111-76). (NPRM's issued Oct. 31, 1978).
9. Occupant Protection Rulemaking proposing to extend the interior protection standard (49 CFR 571.201) to trucks, buses, and multipurpose vehicles and to extend the driver impact protection (49 CFR 571.203) and steering control rearward displacement (49 CFR 571.204) standards to light trucks. (NPRM issued November 1, 1978).

NHTSA's plans to fund these proceedings are subject to the availability of funds. The priorities established are intended merely as guidelines and may change depending on the number and quality of proposals received in funded proceedings and the progress of the agency's rulemaking plan. NHTSA may fund additional rulemakings as circumstances dictate. The agency will attempt to provide as much advance notice as possible of changes in plans for public participation.

Interested persons are invited to submit comments on NHTSA's selection of proceedings. A public file of these comments will be available in the Office of Consumer Participation for review.

In order to permit NHTSA to begin implementation of its program as early in the fiscal year as possible, the comment period for this notice has been limited to 30 days.

(Sec. 103, 119, Pub. L. 89-563, 80 Stat. 718, 15 U.S.C. 1392, 1407; Secs. 102, 201, 408, 501, et. seq. Pub. L. 92-513, 86 Stat. 949 (15 U.S.C. 1912, 1941, 1988, 2001, et. seq) Pub. L. 95-335, 92 Stat. 435)

Issued on: November 3, 1978.

JOAN CLAYBROOK,
Administrator.

[FR Doc. 78-32296 Filed 11-15-78; 8:45 am]

[4910-59-M]

[Docket No. IP77-21; Notice 2]

VESPA OF AMERICA CORP.

Grant of Petition for Inconsequential Noncompliance

This notice grants the petition by Vespa of America Corp. of San Francisco, Calif., to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) for an apparent noncompliance with 49 CFR 571.123, Motor Vehicle Safety Standard No. 123, *Motorcycle Controls and Displays.* The basis of the petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of the petition was published on March 2, 1978 (43 FR 8610) and an opportunity afforded for comments.

Petitioner is an importer of motor scooters which are defined as "motorcycles" under the Federal motor vehicle safety standards. Pursuant to table 2 of Standard No. 123 if a motorcycle is equipped with a neutral gear indicator, it shall be in the form of a green display lamp that illuminates when the gear selector is in neutral position. Since March 1975 Vespa has imported approximately 7,367 motor-driven cycles equipped with a neutral gear indicator that differ from the specifications of Standard No. 123. Vespa's motorscooters incorporate a hand rotating shift system "by which the operator can visually determine what gear he is in by alignment of [an indicator dot on the handlebar] with the gear indicator numeral on the rotating shift arm". A dot between "1" and "2" indicates neutral though it is not otherwise identified. Petitioner believes that the noncompliance is inconsequential because "correct operation of gear selection and the neutral position is adequately explained through (the) Vehicle Owners Manual which is supplied to the retail buyer."

No comments were received on the petition.

The intent of the indicator requirement in table 2 is to aid the motorcycle operator to find "neutral" when its selection is desired, and to avoid it when it is not. With respect to foot operated gear changes, the green light also denotes the midpoint between higher and lower gears, enabling the operator to avoid inadvertent selection of the improper gear in emergency as well as ordinary driving situations. The intent of this requirement is fulfilled visually by the Vespa system in which the alignment of two dots, one on the handlebar and one on the shift arm, indicate positively that the gears are in neutral. Therefore, it has been determined that the noncompliance with Standard No. 123 is inconsequential as it relates to motor vehicle safety, and the petition of Vespa of America Corp. is hereby granted.

(Sec. 3, Pub. L. 92-548, 86 Stat. 1159 (15 U.S.C. 1410); delegations of authority at 49 CFR 1.50 and 501.8).

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Issued on November 7, 1978.

MICHAEL M. FINKELSTEIN,
Acting Associate Administrator for Rulemaking.

[FR Doc. 78-32010 Filed 11-15-78; 8:45 am]

[4810-22-M]

DEPARTMENT OF THE TREASURY

Customs Service

CERTAIN TEXTILES AND TEXTILE PRODUCTS FROM THE REPUBLIC OF CHINA (TAIWAN)

Final Countervailing Duty Determination

AGENCY: Customs Service, Treasury Department.

ACTION: Final countervailing duty determination.

SUMMARY: This notice is to inform the public that a countervailing duty investigation has resulted in a final determination that the Government of the Republic of China (Taiwan) has not given benefits considered to be bounties or grants on the manufacture or exportation of men's and boys' apparel and textile mill products of cotton, wool, and manmade fibers.

EFFECTIVE DATE: November 16, 1978.

FOR FURTHER INFORMATION CONTACT:

Leon McNeill, Operations Officer, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, 202-566-5492.

SUPPLEMENTARY INFORMATION: On June 1, 1978, a "preliminary countervailing duty determination" was published in the FEDERAL REGISTER (43 FR 23785). The notice stated that it had been determined preliminarily that benefits had been bestowed by the Government of the Republic of China on the manufacture, production, or exportation of men's and boys' apparel and textile mill products of cotton, wool, and manmade fibers which constituted bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303) (referred to in this notice as "the Act").

For purposes of this notice "textile mill products" include yarns, fabrics, household textiles, miscellaneous products of textile mills, and certified handloomed and folklore products, made of cotton, wool, and manmade fibers, as specified in U.S. bilateral textile agreements and described by the Tariff Schedules of the United States Annotated (TSUSA) item numbers set forth in the appendix to the FEDERAL REGISTER notice published on October 13, 1978 (43 FR 47340). "Men's and boys' apparel" includes those items described by TSUSA item numbers in the appendix to the above-cited FEDERAL REGISTER notice.

Programs preliminarily determined not to be bounties or grants within the meaning of section 303 of the Act included the following:

(1) Reduction in the stamp tax on export documents.

(2) Customs duty drawback on imported raw materials and semifinished products used to manufacture exports.

(3) Reduction in income tax on dividends or partnership profits for nonresident aliens or foreign companies.

(4) Rebate of Taiwanese business tax upon export. The Department has consistently held that the nonexcessive rebate or remission of indirect taxes, directly related to the exported product, does not constitute a bounty or grant within the meaning of the Act. No evidence received since the preliminary determination shows that the rebate or remission of this tax exceeds the rate of the tax.

The preliminary determination indicated that the following programs might constitute bounties or grants within the meaning of the Act. Information developed since the preliminary determination is indicated for each particular program:

(1) Income tax holidays or accelerated depreciation of fixed assets used for exportation for newly created firms or firms expanding their production facilities under the statute for encouragement of investment (SEI). Accelerated depreciation was not used by any of the investigated companies. The income tax holidays of 4 and 5 years are considered bounties or grants. The tax savings resulting from these holidays made up this benefit.

(2) Preferential export financing. The Central Bank supports an export loan program by standing ready to purchase from commercial banks a set value of export loans made at a low rate of interest if the commercial bank is forced to assume the risk of the borrower. The difference between this rate and commercial rates formed the basis of this benefit. This benefit is considered a bounty or grant.

(3) Benefits for firms located in export processing zones, including exemption from import duties and taxes on machinery. These benefits were received and are considered bounties or grants. They were calculated by spreading the value of the taxes exempted over the life of the equipment.

(4) Exemptions for exporting firms from import duties on capital items. Except for firms located in the export processing zones, there is no exemption from such import duties. However, other companies can pay their import duty liabilities on an installment basis. This program is considered to be a bounty or grant.

(5) A tax incentive for operating expenses incurred on overseas sales promotion activities. This benefit is considered a bounty or grant, equal to the tax savings for the company involved.

(6) Export risk insurance. As stated in the preliminary determination, such a program is considered to be a bounty or grant only to the extent that premiums are subsidized by the government. The Government of the Republic of China has not subsidized the export insurance fund for several years.

Another program has come to the attention of the Department since the preliminary determination which is considered a bounty or grant. It is a provision of the SEI (article 10) which reduces the income tax liability of selected firms from 35 to 24 percent. The benefit is equal to a company's tax savings due to the reduced rate.

After consideration of all information received subsequent to the preliminary determination, it is hereby determined that benefits have been paid by the Government of the Republic of China on the manufacture, production, or exportation of certain textiles and textile products in the form of tax holidays, preferential export financing, exemption of duties on capital equipment used in production for export, deferred payment of import duties on capital equipment used in production for export, tax incentives for operating expenses incurred in promoting sales abroad, and reduced income taxes. These benefits will be reduced after the 1978 tax year since many firms will then become ineligible for the tax holiday.

It has further been determined that these bounties involve an aggregate amount of less than 0.21 percent of the value of the total Taiwanese exports to the United States of the textile products in question, and are thus considered to be de minimis in size. Therefore, it has been determined that no bounty or grant is being paid or bestowed, directly or indirectly, within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303), upon the manufacture, production, or exportation of men's and boys' wearing apparel and textile mill products from the Republic of China (Taiwan).

This notice is published pursuant to section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303).

Pursuant to reorganization plan No. 26 of 1950 and Treasury Department order 190 (revision 15), March 16, 1978, the provisions of Treasury Department order 165, revised, November 2, 1954, and § 159.47 of the Customs regulations (19 CFR 159.47), insofar as they pertain to the issuance of a final countervailing determination by the Commissioner of Customs, are hereby waived.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

[FR Doc. 78-32187 Filed 11-15-78; 8:45 am]

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[4810-22-M]

CERTAIN TEXTILES AND TEXTILE PRODUCTS FROM COLOMBIA

Final Countervailing Duty Determination

AGENCY: Customs Service, Treasury Department.

ACTION: Final countervailing duty determination.

SUMMARY: This notice is to inform the public that a countervailing duty investigation has resulted in a determination that the Government of Colombia has given benefits which constitute bounties or grants under the countervailing duty law on the manufacture, production, or exportation of certain leather wearing apparel from Colombia. All merchandise found to be benefitting from the bestowal of bounties or grants enter the United States duty free and are being referred to the U.S. International Trade Commission for an injury determination. It has further been determined that all other merchandise covered by this investigation, dutiable and nondutiable, does not receive benefits considered to be a bounty or grant within the meaning of the countervailing duty law.

EFFECTIVE DATE: November 16, 1978.

FOR FURTHER INFORMATION CONTACT:

Donald W. Eiss, Office of Tariff Affairs, U.S. Treasury Department, 15th Street and Pennsylvania Avenue NW., Washington, D.C. 20220, 202-566-8256.

SUPPLEMENTARY INFORMATION: On June 1, 1978, a "preliminary countervailing duty determination" was published in the FEDERAL REGISTER (43 FR 23786). The notice stated that it had been preliminarily determined that benefits had been received by Colombian manufacturers/exporters of men's and boys' apparel and textile mill products of cotton, wool, and manmade fiber which may constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303) (referred to in this notice as "the Act").

For purposes of this notice, "textile mill products" include yarns, fabrics, household textiles, and miscellaneous products of textile mills and certified handloomed and folklore products, made of cotton, wool, and manmade fibers as specified in U.S. bilateral textile agreements and described by the Tariff Schedules of the United States Annotated (TSUSA) item numbers set forth in the appendix to the FEDERAL REGISTER notice published on October 13, 1978 (43 FR 47340). "Men's and boys' apparel" includes those items described by TSUSA item numbers in the appendix to the above-cited FEDERAL REGISTER notice.

The products from Colombia which are classified under items 307.60, 705.30, and 791.76 are free of duty.

In that preliminary determination, the exemption from Customs duties for raw materials used in export production under the Plan Vallejo and export credit financing were found not to be bounties or grants within the meaning of the Act. The Plan Vallejo is a program designed to permit import duty remission under certain circumstances. Additionally, it was preliminarily determined that two programs were not utilized by manufacturers in sectors covered by this investigation or were not applicable. They were: (1) A program of export credit insurance, which was not utilized by this industry, and (2) alleged maritime transportation subsidies, which were found not to exist. Based upon the information supplied subsequent to the preliminary determination, the Treasury Department has found no reason to alter the preliminary determination with respect to these programs in this final determination.

Four programs were identified as preliminarily bestowing benefits which would be considered bounties or grants within the meaning of the Act. Since that determination, further information has been supplied by the Government of Colombia with respect to each of the four programs. On the basis of that information, it has been determined that no benefits have been received by manufacturers/exporters of the products under investigation under the following programs:

(1) Governmental activity in the area of international trade through the activities of PROEXPO. It has been determined that the activities of this organization are in fact related to the general development of international trade with Colombia, imports as well as exports—with functions identical to those carried out by commercial offices attached to the embassies of all countries. Based upon the very limited nature of the activities, as well as the very general orientation of those activities, it has been concluded that the PROEXPO operations in the United States do not operate in such a way as to be considered bounties or grants within the meaning of the Act.

(2) Concessions for firms located in free trade zones. The Government of Colombia has established six free trade zones and firms within those zones receive the remission of import duties on raw materials, component parts, and capital equipment. The latter is only available if the manufacturer certifies that the equipment will be used solely to produce goods for export. The Treasury does not consider the remission of duties on raw materials or component parts a bounty or grant, but the remission of import duties on capital equipment is conceptually considered a bounty or grant. Of the companies located in the six free trade zones, only one exported product subject to this investigation and at any time took advantage of the duty remission scheme for capital equipment. The benefit received was calculated as the amount of duty exempted on the value of imported equipment, spread over the useful life of that equipment and divided by the total exports of the firm. The ad valorem benefit received as a result of this program for this firm was 0.05 percent, an amount clearly de minimis particularly given the fact that less than 0.1 percent of total Colombian exports of products covered by the investigation were produced by this firm.

On the basis of evidence collected, it has been determined that benefits have been bestowed to Colombian manufacturers on products covered by this investigation under two programs administered by the Government of Colombia. They are:

(1) Customs duty exemptions on equipment used in production for export under the Plan Vallejo. As indicated above, the Treasury Department does not consider the exemption from customs duties for imported capital equipment as allowable under the countervailing duty law. The ad valorem benefit conferred under such a scheme would be equal to the value of customs duties exempted on the imported equipment spread across its useful life, divided by the exports of those products for the most recent period. An ad valorem benefit was calculated for three major product areas—yarn, fabric, and men's and boys' wearing apparel. Based upon the calculation described above, an ad valorem benefit for the Colombian industry of 0.1 percent was found in the case of yarns, 0.08 percent in the case of those products in which a 9 percent negotiable tax credit certificate (CAT) is paid and 0.01 percent in the case of those products in which a 12-percent CAT is paid.

(2) Payment of negotiable tax credit certificates (CAT's) at a fixed percentage of the value of the export transactions. The products covered by this investigation receive three different levels of CAT certificates, 5, 9, and 12 percent generally based upon type of product involved.

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The Government of Colombia has asserted that a number of deductions should be made to the CAT rates in determining whether a "net" bounty is, in fact, conferred under this program. The Treasury has accepted a number of these offsets including the payment of a number of local sales taxes, customs duties, cotton taxes and other indirect taxes borne by the products under investigation but which are not otherwise rebated upon export.

An offset was also granted for the nonrebate of the national sales tax on machinery, consistent with the position established by the Treasury Department in its determination published in the FEDERAL REGISTER of June 15, 1978 (43 FR 25812-25814) with respect to countervailing duties being imposed on unwrought zinc, bottled green olives, and nonrubber footwear from Spain. However, it should be noted that the Treasury Department on August 29, 1978, published in the FEDERAL REGISTER its intention to review the bases upon which the countervailing duties in those cases were revised (43 FR 38658). If that review leads to any change in the policies enunciated in that June 15, 1978, notice which affect the conclusion drawn in this case, our analysis in this case will be adjusted to reflect those changes.

A further adjustment was made for the fact that the CAT is calculated only on the domestic value added component in the final product rather than the total f.o.b. value. This reduces the actual ad valorem benefit received by the firm through CAT's.

An additional adjustment was made for the value of the CAT lost to the firm as a result of Government regulations which prevent the firm from receiving its CAT certificate until at least 90 days after application for the CAT has been filed. The value lost was calculated using the prevailing time deposit rate in Colombia.

Offsets were not granted for: (1) Payroll and social security taxes incurred by the firm which are not considered by the Treasury to be directly related to the product, (2) the discount incurred on the sale of CAT's on the stock exchange, (3) a bonding charge assessed on goods imported duty free under Plan Vellejo, (4) Customs duties not otherwise exempted under Plan Vallejo, and (5) the lost value in the rebate of the national sales tax due to the delay in its payment.

As a result of analysis based upon the above, it has been determined that the entire 5 percent CAT on yarn products plus the 0.1 percent benefit under the Customs duty exemption program is more than offset by the deductions allowed and therefore no "net" bounty or grant has been found to exist with respect to this product. With respect to those items upon which a 9-percent CAT is paid the "net" bounty or grant has been determined to be 1.81 percent and with respect to those items receiving a 12-percent CAT a "net" bounty of 2.15 percent has been calculated. However, Colombian manufacturers of these products have certified that they will renounce the "net" bounties of 1.81 and 2.15 percent voluntarily relinquishing CAT certificates valued in those amounts on fabric and apparel exports to the United States. The Government of Colombia and its Central Bank have stated that they will monitor this agreement and report any violations to the U.S. Treasury Department. Based upon these circumstances, it is determined that with respect to fabric and men's and boys' apparel, no "net" bounty or grant exists.

It has been determined that with respect to certain leather wearing apparel exported to the United States from Colombia, upon which a 12-percent CAT is paid net benefits amounting to 5.94 percent are being received. No renumciation of these benefits has been filed and, therefore, after consideration of all information received, it is hereby determined that exports of men's and boys' leather wearing apparel from Colombia benefit from bounties or grants within the meaning of section 303 of the Act. The bounties or grants are in this form of tax certificates (CAT's) paid as a fixed percentage of the value of the export.

In accordance with section 303 of the Act and until further notice, the net amount of such bounties or grants has been estimated to be 5.94 percent of the value of the merchandise.

The merchandise found to benefit from the bounty or grant enters the United States under item No. 791.76 of the Tariff Schedules of the United States Annotated. This merchandise is duty free. In accordance with section 303(a)(2) of the Act (19 U.S.C. 1303(a)(2)), countervailing duties may not be imposed upon any article or merchandise which is free of duty in the absence of a determination by the U.S. International Trade Commission that an industry in the United States is being, or is likely to be, injured, or is prevented from being established, by reason of the importation of such article or merchandise into the United States. Accordingly, the International Trade Commission is being advised of this determination, and the liquidation of entries, or of withdrawals from warehouse, for comsumption of the duty-free apparel in question will be suspended pending the determination of the commission. Accordingly, effective on or after the date of publication of this notice in the FEDERAL REGISTER, and until further notice, upon the entry, or withdrawal from warehouse, liquidation will be suspended pending the determination of the U.S. International Trade Commission.

This determination is published pursuant to section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303).

Pursuant to reorganization plan No. 26 of 1950 and Treasury Department order 190 (revision 15), March 16, 1978, the provisions of Treasury Department order 165, revised, November 2, 1954, and § 159.47 of the Customs regulations (19 CFR 159.47), insofar as they pertain to the issuance of a final countervailing determination by the Commissioner of Customs, are hereby waived.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

NOVEMBER 7, 1978.

[FR Doc. 78-32185 Filed 11-15-78; 8:45 am]

[4810-22-M]

CERTAIN TEXTILES AND TEXTILE PRODUCTS FROM INDIA

Final Countervailing Duty Determination

AGENCY: Customs Service, Treasury Department.

ACTION: Final Countervailing Duty Determination.

SUMMARY: This notice is to advise the public that a countervailing duty investigation has resulted in a final determination that the Government of India has not given benefits considered to be bounties or grants withing the meaning of the countervailing duty law on the manufacture, production or exportation of men's and boys' apparel and textile mill products of cotton, wool and manmade fibers.

EFFECTIVE DATE: November 16, 1978.

FOR FURTHER INFORMATION CONTACT:

Holly Kuga, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, 202-566-5492.

SUPPLEMENTARY INFORMATION: On June 1, 1978, an affirmative "Preliminary Countervailing Duty Determination" was published in the FEDERAL REGISTER (43 FR 23788). That notice stated that it had been preliminarily determined that benefits had been bestowed by the Government of India to manufacturers/exporters of men's and boys' apparel and textile mill products of cotton, wool and manmade fibers which constituted bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303) hereinafter referred to as "the Act").

For purposes of this notice "textile mill products" include yarns, fabrics, household textiles, miscellaneous products of textile mills, and certified handloomed and folklore products, made of cotton, wool and manmade fibers, as specified in U.S. bilateral textile agreements and described by the Tariff Schedules of the United States Annotated (TSUSA) item numbers set forth in the appendix to the FEDERAL REGISTER notice published on October 13, 1978 (43 FR 47340). "Men's and boys' apparel" includes those items described by TSUSA item numbers in the appendix to the abovecited FEDERAL REGISTER notice.

The following programs were preliminarily found not to constitute bounties or grants within the meaning of section 303 of the Act:

(1) The nonexcessive drawback of customs duties and rebates of excise taxes upon export.

(2) Export risk insurance laws provided by the Export Credit and Guarantee Corporation (ECGC).

In addition, a number of other programs were preliminarily determined as not applicable to, or utilized by, Indian textile and textile product manufacturers subject to this investigation. They include:

(1) Tax Credit Certificates; (2) Income Tax Offsets for Overseas Expenses; (3) Export Promotion Grants by the Market Development Fund; (4) Export Financing through the Industrial Development Bank; (5) Benefits by virtue of location in Kandla Free Trade Zone.

No information has been submitted subsequent to the preliminary determination to alter the Treasury Department's position with respect to these programs.

Three programs were identified in the preliminary determination as bestowing benefits constituting "bounties or grants" within the meaning of the Act. It was also indicated that further information was to be collected and analyzed before a final determination in the case would be issued. This information, and the results of subsequent analyses, are discussed below.

(1) Cash Rebates Upon Export—Exporters of textiles and textile products subject to this investigation receive cash rebates upon export varying from 6.5 percent to 15 percent of the f.o.b. value of the exported products. The Government of India has certified information submitted regarding the incidence of indirect taxes which are not otherwise rebated upon export and which are borne by the various products under investigation. These taxes include national sales taxes, municipal taxes and excise taxes assessed on the product or its component parts. Offsets have been granted consistent with the position established by the Treasury in the determination published in the FEDERAL REGISTER on June 15, 1978 (43 FR 25812-25814) with respect to the countervailing duties being imposed on unwrought zinc, bottled green olives and, nonrubber footwear from Spain. However, it should be noted that the Treasury Department on August 29, 1978 published in the FEDERAL REGISTER its intention to review the bases upon which the countervailing duties in those cases were revised (43 FR 38658). If that review leads to any change in the policies enunciated in that June 15, 1978 notice which affect the conclusions drawn in this case, our analysis in this case will be adjusted to reflect those changes.

Based upon the information submitted, it has been determined that with respect to the products covered by this investigation, the indirect taxes borne by the products exceed the cash rebates received upon export and that therefore this program does not operate to confer a "bounty or grant" within the meaning of the Act.

(2) Export Financing—The Government of India allows commercial banks to provide short term export financing at rates which are considered to be preferential compared to commercial interest rates presently charged in India. Information has been supplied regarding the utilization of the lower rate available on export financing for the larger textile manufacturers/exporters in India. Based upon the experience of these firms, it has been determined that the ad valorem benefit received by the textile industry by virtue of the availability of credit at preferential terms is 0.19 percent.

(3) Import Permits—Indian exporters involved in this investigation are eligible to receive permits to import goods used to manufacture their products, either component parts or raw materials, up to a fixed percentage of the f.o.b. value of their exports. These permits are negotiable and in the preliminary determination it was stated that pending information regarding the extent to which the permits are bought and sold, they would be considereдc a "bounty or grant." Such information has been received and the ad valorem benefit bestowed has been calculated to be 0.001 percent. The very low benefit was due to the general lack of demand for these permits since a significant liberalization of Indian import restrictions was put into effect in April 1978.

On the basis of information provided subsequent to the preliminary determination, it is hereby determined that benefits have been paid by the Government of India on the manufacture/exportation of men's and boys' apparel and textile mill products made of cotton, wool and manmade fibers in the form of preferential export financing and the sale of import permits. It has further been determined that these benefits involve an aggregate amount of 0.191 percent, considered to be de minimus in size, and that therefore no bounty or grant is being paid or bestowed, directly or indirectly, within the meaning of section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303), upon the manufacture, production or exportation of men's and boys' apparel and textile mill products of cotton, wool or manmade fibers from India.

This notice is published pursuant to section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303).

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department order 190 (revision 15), March 16, 1978, the provisions of Treasury Department order No. 165, Revised, November 2, 1954, and § 159.47 of the Customs regulations (19 CFR 159.47), insofar as they pertain to the issuance of a final countervailing duty determination by the Commissioner of Customs, are hereby waived.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

NOVEMBER 7, 1978.

[FR Doc. 78-32184 Filed 11-15-78; 8:45 am]

[4810-22-M]

CERTAIN TEXTILES AND TEXTILE PRODUCTS FROM THE REPUBLIC OF KOREA

Final Countervailing Duty Determination

AGENCY: Customs Service, Treasury Department.

ACTION: Final Countervailing Duty Determination.

SUMMARY: This notice is to inform the public that a countervailing duty investigation has resulted in a final determination that the Government of Korea has not given benefits which are considered to be bounties or grants on the manufacture or exportation of men's and boys' apparel and textile mill products of cotton, wool, and manmade fibers.

EFFECTIVE DATE: November 16, 1978.

FOR FURTHER INFORMATION CONTACT:

Leon McNeill, Operations Officer, Duty Assessment Division, Office of Operations, U.S. Customs Service, Washington, D.C. 20229, 202-566-5492.

SUPPLEMENTARY INFORMATION: On June 1, 1978, a "Preliminary Countervailing Duty Determination" was published in the FEDERAL REGISTER (43 FR 23791). The notice stated that cer-

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tain practices of the Government of the Republic of Korea provided benefits to manufacturers, but that such benefits did not constitute bounties or grants within the meaning of section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303), since the amount of the total benefits, 0.25 percent of the value of the merchandise exported, was considered to be de minimis. The programs involved are:

1. Short term financing at preferential interest rates.

2. Interest savings resulting from delayed payment in customs duties on imports of machinery and equipment.

3. Tax benefits under a provision for accelerated depreciation in connection with fixed assets used directly for exportation of goods.

4. Interest savings resulting from the deferrals by inclusion in loss accounts of reserve funds in connection with losses accruing from export activities.

The preliminary determination also stated that certain other practices of the Government of the Republic of Korea did not on their face constitute bounties or grants. These practices are:

1. Exemption from commodity and textile taxes, which are indirect taxes, levied on the exported product. These taxes were substituted for a value added tax on July 1, 1977.

2. Remission, upon exportation, of customs duties on imported raw materials, reflecting internationally accepted principles of "drawback" on such items.

3. Benefits from export industrial estates. Under the Export Industrial Estate Development Law, manufacturers allegedly were given benefits for locating in areas outside of traditional population centers. No benefits, but rather certain disincentives have been imposed on factories in high population areas to encourage their location in the industrial estates.

4. Long term and special raw material purchase loans. There is no evidence to show that the terms of these loans are more favorable than those commercially available.

In addition, certain other practices were not considered to constitute bounties or grants because they were either not applicable to, or were not utilized by, the Korean textile industry. These practices are:

1. Benefits to exporters of the "link system" which allegedly provides exporters the right to import certain luxury items that are ordinarily carefully controlled. None of the textile firms utilized this system in 1977 and the program was abolished on December 31, 1977.

2. Benefits from locating in Masan and IRI Free Export Zones. No textile facilities are located in these zones.

3. Deferred payment export financing, which is not utilized by the textile industry.

4. Deferred payment of commodity and textile taxes. Prior to abolition of these taxes, the textile industry was not eligible for any extension of payments on these taxes.

Interested parties were invited to submit relevant data, views or arguments in writing with respect to the preliminary determination. However, no additional information has been received. In view of the foregoing, the conclusions reached in the preliminary determination remain unchanged and it is determined that no bounty or grant is being paid or bestowed, directly or indirectly, within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303), upon the manufacture, production or exportation of textile mill products or men's and boys' wearing apparel from the Republic of Korea.

For purposes of this notice, "textile mill products" include yarns, fabrics, household textiles, miscellansous products of textile mills, and certified handloomed and folklore products, made of cotton, wool and manmade fibers, as specified in the U.S. bilateral textile agreements and described by the Tariff Schedules of the United States Annotated (TSUSA) item numbers set forth in the appendix to the FEDERAL REGISTER notice published on October 13, 1978 (43 FR 47340). "Men's and boys' apparel" includes those items described by TSUSA item numbers in the appendix to the above-cited FEDERAL REGISTER notice.

This notice is published pursuant to section 303(a), Tariff Act of 1930, as amended (19 U.S.C. 1303(a)).

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department order 190 (revision 15), March 16, 1978, the provisions of Treasury Department order 165, revised November 2, 1954 and § 159.47 of the Customs regulations (19 CFR 159.47), insofar as they pertain to issuance of a final countervailing duty determination by the Commissioner of Customs, are hereby waived.

ROBERT H. MUNDHEIM,
General Counsel
of the Treasury.

NOVEMBER 7, 1978.

[FR Doc. 78-32186 Filed 11-15-78; 8:45 am]

[4810-22-M]

CERTAIN TEXTILES AND TEXTILE PRODUCTS FROM THE PHILIPPINES

Final Countervailing Duty Determination

AGENCY: Customs Service, Treasury Department.

ACTION: Final Countervailing Duty Determination.

SUMMARY: This notice is to advise the public that a countervailing duty investigation has resulted in a final determination that the Government of the Philippines has not given benefits considered to be bounties or grants within the meaning of the Countervailing Duty Law on the manufacture, production, or exportation of men's and boys' apparel and textile mill products of cotton, wool, and manmade fibers.

EFFECTIVE DATE: November 16, 1978.

FOR FURTHER INFORMATION CONTACT:

Stephen Nyschot, Duty Assessment Division, Office of Operations, U.S. Customs Service, Washington, D.C. 20229, telephone 202-566-5492.

SUPPLEMENTARY INFORMATION: On June 1, 1978, an affirmative "Preliminary Countervailing Duty Determination" was published in the FEDERAL REGISTER (43 FR 23793). That notice stated that it had been preliminarily determined that benefits had been bestowed by the Government of the Philippines upon the manufacture, production or exportation of men's and boys' apparel and textile mill products of cotton, wool and manmade fibers which constituted bounties or grants within the meaning of section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303) (hereinafter referred to as the Act).

For purposes of this notice "textile mill products" include yarns, fabrics, household textiles, miscellaneous products of textile mills, and certified handloomed and folklore products, made of cotton, wool and manmade fibers, as specified in U.S. bilateral textile agreements and described by the Tariff Schedules of the United States Annotated (TSUSA) item numbers set forth in the appendix to the FEDERAL REGISTER notice published on October 13, 1978 (43 FR 47340). "Men's and boys' apparel" includes those items described by TSUSA item numbers in the appendix to the above-cited FEDERAL REGISTER notice.

A. The following programs were preliminarily determined to be not applicable to or utilized by the textile industry in the Philippines; no information has been submitted to the Treasury since then which modifies that determination:

1. Various incentives under the Investment Incentives Act. No textile company receives benefits under that law.

2. Tax credit on purchase of domestic capital equipment. Such equipment is not purchased by the textile industry.

B. The following programs were preliminarily determined not to be bounties or grants within the meaning of section 303 of the Act; no information has been submitted to the Treasury since then which modifies that determination:

1. Various tax incentives under the Export Incentives Act (R.A. 6135), including:

a. Customs duty exemption for imported components used in the production of articles to be exported (drawback).

b. Exemption from sales taxes on export sales.

c. Exemption from specific taxes (i.e., special excise tax) and compensating taxes (i.e., border tax adjustments) on raw materials used in articles to be exported.

The Department has consistently held that the nonexcessive rebate or remission of indirect taxes, directly related to an exported product, does not constitute a bounty or grant within the meaning of the law. There is no evidence before the Department that the rebate of this tax operates to confer bounties or grants on exports of the merchandise in question from the Philippines. Information received since the preliminary determination shows that the rebate or remission of this tax does not exceed the rate of tax.

2. Incentives granted to companies located in the Bataan Export Processing Zone, including:

a. The exemption of taxes and duties on imports of raw materials and supplies used in the production of articles to be exported. These are not treated as bounties by Treasury.

b. Exemption from municipal and provincial sales taxes. The policy of the Treasury regarding the rebate or remission of indirect taxes has been stated above.

c. Reduced utility and water rates. According to the Government, these rates are identical to ordinary rates assessed outside the zone.

d. Manpower training in market promotion. According to the Government, no such assistance exists.

The preliminary determination indicated that the following programs might constitute bounties or grants within the meaning of the Act. Information developed since the preliminary determination is indicated for each particular program:

1. Various tax incentives under the Export Incentives Act (R.A. 6135) including:

A. Exemption from import duties on imported machinery or equipment. Companies may qualify for either full of partial duty exemption on capital equipment imported within 5 years after registration for use in the manufacture of goods for export. Such exemptions were given, and are considered to be a bounty or grant. Their value is calculated by spreading the value of the exemption for each company over the life of the equipment.

B. Tax credits on domestic capital equipment purchased equal to the amount of taxes and duties that would have been paid had the equipment been imported. No textile company received benefits under this program, since such equipment was not manufactured in the Philippines.

C. Reduced income tax for 5 years. During the first 5 years of a firm's registration under this Act, it may deduct an amount equal to the sum of the direct labor costs and local raw materials used in the production process from its taxable income in computing income tax liability. This benefit was received, and is considered a bounty or grant. It is quantified by calculating the tax savings obtained annually by the firm.

D. Income tax benefits resulting from a 50 percent deduction from taxable income for training purposes. No textile company received benefits under this program.

E. Tax benefits resulting from the deduction of undistributed profit reinvested in capital stock for procurement or expansion of machinery and equipment used. This provision was not utilized by any of the textile companies.

2. Possible preferential financing benefits resulting from the Central Bank's relaxed cash deposit requirements on letters of credit opened by Philippine importers resulting in lower costs to exporters of imported components and raw materials. The Central Bank normally requires a 50 percent cash deposit on letters of credit opened by importers for a period of 30 days. However, this acts as a Government-imposed surcharge on the issuance of letters of credit opened with commercial banks; it does not operate as a preferential financing arrangement. The 50 percent requirement is reduced to 25 percent for firms receiving benefits under the Export Incentives Act and other exporters and is completely eliminated for firms located in the Bataan Export Processing Zone. This provision is considered a bounty or grant since it confers benefits on selected firms equal to the potential interest related to holding funds for the 30-day period which other importers must deposit with the Central Bank.

3. Special incentives granted to companies located in the Bataan Export Processing Zone, including:

A. Accelerated depreciation rates for fixed assets. This program was not utilized by any of the textile firms.

B. The carryover of deductions from taxable income for losses incurred during the first 5 years of operation. This benefit was received, and is considered a bounty or grant because it is not universally available to manufacturers in the Philippines. It is measured by the tax savings earned by firms due to the provision.

C. The exemption of duties on imports of machinery and equipment used in the production of articles to be exported. Such exemptions were given, and are considered to be a bounty or grant. Their value is calculated by spreading the value of the exemption for each company over the life of the equipment.

D. Reduced income taxes. This reduction was available only under the Export Incentives Act. There is no provision for reduced income taxes under the Export Processing Zone Authority.

E. Government guaranteed loans. These were not given to any of the textile firms.

F. Special financial assistance for factory construction. No such assistance was given to any of the firms in the Export Processing Zone.

4. Priority status of exporters in the issuance of import licenses and foreign exchange allocations. The Government states that no such program exists, since the Central Bank does not issue import licenses and does not have any allocation scheme for foreign exchange.

After consideration of all information received subsequent to the preliminary determination, it is hereby determined that benefits have been paid by the Government of the Philippines on the manufacture, production or exportation of certain textiles and textile products in the form of reduced income taxes, exemption of duties on capital equipment used in production for export, loss carryovers for firms in the export processing zone, and relaxed cash deposit requirements on letters of credit for importing capital equipment or raw materials used in production for export. These benefits will be greatly reduced after tax year 1978, since the majority of the firms will then become ineligible for the reduced income tax, which accounts for a large part of these benefits.

It has further been determined that these benefits involve an aggregate amount of less than 0.22 percent of the value of the total of Philippine exports to the United States of the textile products in question, and are thus considered to be de minimis in size. Therefore, it has been determined that no bounty or grant is being paid or bestowed, directly or indirectly, within the meaning of section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303), upon the manufacture, production, or exportation of certain

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textiles and textile products from the Philippines.

This notice is published pursuant to section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303).

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department order 190 (revision 15), March 16, 1978, the provisions of Treasury Department order 165, revised, November 2, 1954, and § 159.47 of the Customs regulations (19 CFR 159.47), insofar as they pertain to the issuance of a final countervailing determination by the Commissioner of Customs, are hereby waived.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

[FR Doc. 78-32188 Filed 11-15-78; 8:45 am]

[4810-22-M]

Office of the Secretary

VISCOSE RAYON STAPLE FIBER FROM FRANCE

Antidumping; Withholding of Appraisement and Determination of Sales at Less Than Fair Value

AGENCY: U.S. Treasury Department.

ACTION: Withholding of appraisement and determination of sales at less than fair value.

SUMMARY: This notice is to advise the public that an antidumping investigation has resulted in a determination that viscose rayon staple fiber from France is being sold at less than fair value under the Antidumping Act, 1921. (Sales at less than fair value generally occur when the price of merchandise for exportation to the United States is less than the price of such or similar merchandise sold in the home market or to third countries). Appraisements of entries of this merchandise will be suspended for 3 months. This case is being referred to the United States International Trade Commission for a determination concerning possible injury to an industry in the United States.

EFFECTIVE DATE: November 16, 1978.

FOR FURTHER INFORMATION CONTACT:

Michael E. Crawford, Operations Officer, U.S. Customs Service, Office of Operations, Duty Assessment Division, Technical Branch, 1301 Constitution Avenue NW., Washington, D.C. 20229, telephone 202-566-5492.

SUPPLEMENTARY INFORMATION: On March 28, 1978, a petition in proper form was received from counsel on behalf of Avtex Fibers, Inc., Valley Forge, Pa., alleging that viscose rayon staple fiber from France is being sold at less than fair value, thereby causing injury to, or the likelihood of injury to, an industry in the United States, within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 *et seq.*) (referred to in this notice as "the Act"). On the basis of this information and subsequent preliminary investigation by the Customs Service, an "Antidumping Proceeding Notice" was published in the FEDERAL REGISTER of May 5, 1978 (43 FR 19489).

For purposes of this investigation, the term "viscose rayon staple fiber" refers to fibers in noncontinuous form, not carded or combed and not otherwise processed, wholly of filaments, except laminated filaments and plexiform filaments, made by the viscose process, of rayon. These fibers are classified under items 309.4320 and 309.4325, Tariff Schedules of the United States, Annotated (TSUSA).

DETERMINATION OF SALES AT LESS THAN FAIR VALUE

On the basis of information developed in the Customs investigation and for the reasons noted below, I hereby determine that viscose rayon staple fiber from France is being sold at less than fair value within the meaning of section 201(a) of the Act (19 U.S.C. 160(a)).

STATEMENT OF REASONS ON WHICH THIS DETERMINATION IS BASED

The reasons and bases for the above determination are as follows:

a. *Scope of the investigation.* Rhone Pulenc Textiles exported virtually all of the viscose rayon staple fiber which was sold to the United States during the period of investigation. Therefore, the investigation was limited to this manufacturer.

b. *Basis of comparison.* For the purposes of considering whether the merchandise in question is being, or is likely to be, sold at less than fair value within the meaning of the Act, the proper basis of comparison is between the purchase price and the home market price of such or similar merchandise. Purchase price, as defined in section 203 of the Act (19 U.S.C. 162), was used since all export sales to the United States were made to an unrelated customer. Home market price, as defined in § 153.2, Customs Regulations (19 CFR 153.2), was used since such or similar merchandise was sold in the home market in sufficient quantities to provide a basis for fair value.

In accordance with § 153.31(b), Customs Regulations (19 CFR 153.31(b)), pricing information was obtained concerning imports and home market sales during the period November 1, 1977, through April 30, 1978.

c. *Purchase price.* For the purposes of this determination, since all merchandise was purchased or agreed to be purchased prior to the time of exportation, by the persons by whom or for whose account it was imported, within the meaning of section 203 of the Act, the purchase price has been calculated on the basis of the c&f price. Adjustments were made for ocean freight and French inland freight.

d. *Home market price.* For the purpose of this determination of sales at less than fair value, the home market price has been calculated on the basis of the f.o.b. price with an adjustment for French inland freight.

Adjustment was claimed for certain selling expenses incurred in the home market. A claim for adjustment for advertising expenses in the home market was denied, since such expenses were not shown to be directly related to the sales under consideration and were not incurred for the benefit of purchasers in later sales of the merchandise. A claim for adjustment for expenses incurred in relation to merchandise returned by home market purchasers for failure to meet quality standards was granted, since such expenses were determined to be directly related to the particular sales under consideration.

e. *Cost of producing.* Information received from petitioner indicated the possibility that sales of French viscose rayon staple fiber were occurring in the home market at prices less than the cost of producing the merchandise, within the meaning of section 205(b) of the Act (19 U.S.C. 164(b)). Therefore, cost information was requested from respondent with reference to the period January 1, 1977, through March 31, 1978. A comparison of the actual cost of producing the merchandise with home market prices during the investigatory period revealed that 7.21 percent of home market sales of viscose rayon staple fiber were at prices not less than the cost of producing the merchandise, within the meaning of § 153.5, Customs Regulations (19 CFR 153.5). It has been determined that these sales at or above the cost of producing the merchandise are adequate as a basis for the determination of the foreign market value of the merchandise. Therefore, petitioner's claim that such sales be disregarded, as inadequate in number to establish foreign market value, in favor of the use of the constructed value for this purpose, has been rejected.

Petitioner claimed that expenses incurred in connection with the production of merchandise which is not sold, or which is sold at greatly reduced prices, because it is of an inferior quality, should be deducted from revenue received from home market sales of rayon staple fiber, for purposes of comparison of those sales prices to the cost of production of the merchandise.

Information relevant to this expense was requested from respondent. Such information not having been received, an adjustment to home market prices has been made, for purposes of comparison of those prices to the cost of production, based upon evidence of such expenses incurred by an Austrian producer. This latter information was verified during the conduct of a previous antidumping investigation involving Viscose Rayon Staple Fiber from Austria (1978). Should information regarding this expense be received from respondent in a timely fashion appropriate revisions will be made and the U.S. International Trade Commission will be notified of the extent to which the results of this Final Determination are materially affected thereby.

Petitioner has claimed that certain general and selling expenses attributable to the production and sale of this merchandise by Rhone Poulenc Textiles were incurred by that producer's parent company, Rhone Poulenc S.A., and should be included within the cost of production of this merchandise for purposes of determination whether sales at less than the cost of production have occurred within the meaning of section 205(b) of the Act (19 U.S.C. 164(b). There is evidence that the expenses in question, for example, expenses for financial management, research and development, planning, and bad debt reserve, were not included in the information presented to the Customs Service. Therefore, Rhone Poulenc S.A. has been requested to provide immediately information on such expenses as they relate to the production and sale of this merchandise by Rhone Poulenc Textiles. Revisions in the Final Determination may be necessary as a result of these inquiries. To the extent that the results of this Final Determination are materially affected thereby, appropriate revisions will be made and the U.S. International Trade Commission will be notified.

f. *Results of comparison.* Using the above criteria, comparisons were made on 100 percent of the viscose rayon staple fiber sales to the United States during the representative period. Those comparisons indicate that the purchase price was less than the home market price of such or similar merchandise. A margin of approximately 14.6 percent was found on 100 percent of the sales compared.

The Secretary has provided an opportunity to known interested persons to present written and oral views pursuant to § 153.40, Customs Regulations (19 CFR 153.40).

Based on the reasons noted above, Customs Officers are being directed to withhold appraisement of viscose rayon staple fiber from France in accordance with § 153.48, Customs Regulations (19 CFR 153.48).

This withholding of appraisement notice, which is published pursuant to § 153.35(a), Customs Regulations (19 CFR 153.35(a)), shall become effective November 16, 1978. It shall cease to be effective at the expiration of 3 months from the date of this publication (February 16, 1979) unless previously revoked.

The United States International Trade Commission is being advised of this determination.

This determination is being published pursuant to section 201(d) of the Act (19 U.S.C. 160(d)).

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

NOVEMBER 8, 1978.

[FR Doc. 78-32245 Filed 11-15-78; 8:45 am]

[4810-22-M]

VISCOSE RAYON STAPLE FIBER FROM FINLAND

Antidumping; Withholding of Appraisement and Determination of Sales at Less Than Fair Value

AGENCY: U.S. Treasury Department.

ACTION: Withholding of appraisement and determination of sales at less than fair value.

SUMMARY: This notice is to advise the public that an antidumping investigation has resulted in a determination that viscose rayon staple fiber from Finland is being sold at less than fair value under the Antidumping Act, 1921. (Sales at less than fair value generally occur when the price of merchandise for exportation to the United States is less than the price of such or similar merchandise sold in the home market or to third countries). Appraisements of entries of this merchandise will be suspended for 3 months. This case is being referred to the United States International Trade Commission for a determination concerning possible injury to an industry in the United States.

EFFECTIVE DATE: November 16, 1978.

FOR FURTHER INFORMATION CONTACT:

Michael E. Crawford, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, telephone 202-566-5492.

SUPPLEMENTARY INFORMATION: On March 28, 1978, a petition in proper form was received from counsel on behalf of Avtex Fibers, Inc., Valley Forge, Pa., alleging that viscose rayon staple fiber from Finland is being sold at less than fair value, thereby causing injury to, or the likelihood of injury to, an industry in the United States, within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 *et seq.*) (referred to in this notice as "the Act"). On the basis of this information and subsequent preliminary investigation by the Customs Service, an "Antidumping Proceeding Notice" was published in the FEDERAL REGISTER of May 5, 1978 (43 FR 19490).

For purposes of this investigation, the term "viscose rayon staple fiber" refers to rayon staple fiber in noncontinuous form, not carded, not combed, and not otherwise processed, wholly of filaments (except laminated filaments and plexiform filaments).

DETERMINATION OF SALES AT LESS THAN FAIR VALUE

On the basis of information developed in the Customs investigation and for the reasons noted below, I hereby determine that viscose rayon staple fiber from Finland is being sold at less than fair value within the meaning of section 201(a) of the Act (19 U.S.C. 160(a)).

STATEMENT OF REASONS ON WHICH THIS DETERMINATION IS BASED

The reasons and bases for the above determinations are as follows:

a. *Scope of the investigation.* All of the imports of the subject merchandise from Finland are manufactured by the Kemira Oy Sateri, Valkeakoski, Finland. Therefore, the investigation was limited to this manufacturer.

b. *Basis of comparison.* For the purposes of considering whether the merchandise in question is being, or is likely to be, sold at less than fair value within the meaning of the Act, the proper basis of comparison is between the purchase price and the home market price of such or similar merchandise. Purchase price, as defined in section 203 of the Act (19 U.S.C. 162), was used since all export sales to the United States were made to nonrelated customers. Home market price, as defined in § 153.2, Customs Regulations (19 CFR 153.2), was used since such or similar merchandise was sold in the home market in sufficient quantities to provide a basis for fair value.

In accordance with § 153.31(b), Customs Regulations (19 CFR 153.31(b)), pricing information was obtained concerning imports and home market sales during the period November 1, 1977 through April 30, 1978.

c. *Purchase price.* For the purposes of this determination, since all merchandise was purchased or agreed to be purchased prior to the time of exportation, by the persons by whom or for whose account it was imported, within the meaning of section 203 of the Act, the purchase price has been

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calculated on the basis of the C.I.F. duty paid price. Adjustments were allowed for ocean freight, U.S. inland freight, insurance, duty, sales commission, and inland freight in Finland.

d. *Home market price.* For the purposes of this determination of sales at less than fair value, the home market price has been calculated on the basis of the f.o.b. factory price with adjustments for cash discount, selling expenses and moisture content.

The selling expenses claimed are not a circumstance of sale but they are general selling expenses and are deducted as an offset, not to exceed the amount of commission paid in the United States. This is in accordance with § 153.10(b) of the Customs Regulations (19 CFR 153.10(b)).

Respondent also made claims for adjustments based on expenses incurred for technical assistance provided customers in the home market. Information submitted by the manufacturer failed to show that the claim for technical assistance was directly related to the sales under consideration, as required by § 153.10, Customs Regulations (19 CFR 153.10). The service provided appears to promote future sales of the merchandise. Also, the information showed an allocation for technical assistance which applied to an extended period of time. Therefore, an adjustment was disallowed.

The respondent also claims that the exchange rate used by Customs to convert Finnmarks to U.S. dollars does not accurately reflect the value of the Finnmark with respect to the particular sales. The exchange rates used in this case were published by the Federal Reserve Bank in New York. During the first quarter of 1978, a currency variance of 5 percent or more occurred only on 2 days. With respect to the sales under consideration, no sales were made on either of these 2 days. Therefore, the currency rate issued for the first quarter of 1978 was used for currency conversion in accordance with § 153.52, Customs Regulations (19 CFR 153.52).

A claim was made for an adjustment for home market availability of the subject merchandise as a circumstance of sale. No evidence has been submitted to justify such an adjustment. The claim has been found to be not quantifiable and not directly related to the sales under consideration as required for such an adjustment by § 153.10, Customs Regulations.

e. *Cost of producing.* Since the petition contained an allegation of sales at less than the cost of production, pursuant to section 205(b) of the Act (19 U.S.C. 164(b)), information was obtained concerning the production costs of viscose rayon staple fiber from Finland. The cost of producing the merchandise was determined from the response of Kemira Oy Sateri and the verification report of the Assistant Customs Attaché. This information reflects Sateri's production costs, including the cost of materials, fabrication and general expenses. In order to determine whether sales below the cost of production are being made pursuant to § 153.5, Customs Regulations (19 CFR 153.5), cost information was obtained and analyzed for the period May 1, 1977 through April 30, 1978. The cost of producing the merchandise was compared to the home market price, less a cash discount. Using these criteria, it has been determined that 60 percent of Sateri's home market sales of viscose rayon staple fiber are not being made at prices less than the cost of producing the merchandise pursuant to § 153.5, Customs Regulations (19 CFR 153.5).

The petitioner stated that costs incurred on behalf of Sateri by its parent company, Kemira Oy, attributable to the production of rayon staple fiber should be included in the cost of production calculation. As a result of the verification, no costs were found that would be attributable to the production of rayon staple fiber by the parent company.

The petitioner also stated that cost incurred as a result of the production of "waste" and "off-quality" fiber in the course of the manufacturing process should be included in the cost of production calculation. For purposes of the comparison of home market prices to the cost to produce, the home market prices were reduced. This reduction was based on a similar calculation made regarding rayon staple fiber from Austria. The amount represents the loss of revenue in the sale of the off-quality fiber. This adjustment did not affect the comparisons by placing any additional sale into the below cost range. Further information has been requested from counsel for Sateri and an appropriate adjustment will be made if it becomes apparent that it will change results of the comparisons.

f. *Results of comparison.* Using the above criteria, comparisons were made on 100 percent of the viscose rayon staple fiber sales to the United States during the representative period. Those comparisons indicate that the purchase price was less than the home market price of such or similar merchandise. Margins were found ranging from approximately 8.8 to 13.1 percent on 100 percent of the sales compared. The weighted average margin of those sales on which comparisons were made amounted to 11.77 percent.

The Secretary has provided an opportunity to known interested persons to present written and oral views pursuant to § 153.40, Customs Regulations (19 CFR 153.40).

Based on the reasons noted above, Customs Officers are being directed to withhold appraisement of viscose rayon staple fiber from Finland in accordance with § 153.48, Customs Regulations (19 CFR 153.48).

This withholding of appraisement notice, which is published pursuant to § 153.35(a), Customs Regulations (19 CFR 153.35(a), shall become effective November 16, 1978. It shall cease to be effective at the expiration of 3 months from the date of this publication (February 16, 1979), unless previously revoked.

The United States International Trade Commission is being advised of this determination.

This determination is being published pursuant to section 201(d) of the Act (19 U.S.C. 160(d)).

ROBERT H. MUNDHEIM,
General Counsel
of the Treasury.

NOVEMBER 8, 1978.

[FR Doc. 78-32246 Filed 11-15-78; 8:45 am]

[4810-22-M]

VISCOSE RAYON STAPLE FIBER FROM ITALY

Antidumping; Withholding of Appraisement Notice

AGENCY: U.S. Treasury Department.

ACTION: Withholding of Appraisement.

SUMMARY: This notice is to advise the public that an antidumping investigation has resulted in a tentative determination that viscose rayon fiber from Italy is being sold at less than fair value within the meaning of the Antidumping Act, 1921. Sales at less than fair value generally occur when the price of merchandise sold for exportation to the United States is less than the price of such or similar merchandise sold in the home market or to third countries. Appraisement for the purpose of determining the proper duties applicable to entries of this merchandise will be suspended for 6 months. Interested persons are invited to comment on this action not later than 30 days from the effective date of this notice.

EFFECTIVE DATE: November 16, 1978.

FOR FURTHER INFORMATION CONTACT:

Mary S. Clapp, Operations Officer, Duty Assessment Division, United States Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229, telephone 202-566-5492.

SUPPLEMENTARY INFORMATION: On March 28, 1978, information was received in proper form pursuant to §§ 153.26 and 153.7, Customs Regulations (19 CFR 153.26, 153.27), from counsel acting on behalf of Avtex Fibers, Inc., Valley Forge, Pa., a domestic producer of the subject merchandise, indicating a possibility that viscose rayon staple fiber from Italy is being or is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (hereinafter referred to in this notice as "the Act"). An "Antidumping Proceeding Notice" was published in the FEDERAL REGISTER on May 5, 1978 (43 FR 19491). For purposes of this investigation, the term "viscose rayon staple fiber" refers to viscose rayon staple fiber in noncontinuous form, not carded, not combed and not otherwise processed, wholly of filaments (except laminated filaments and plexiform filaments).

TENTATIVE DETERMINATION OF SALES AT LESS THAN FAIR VALUE

On the basis of the information developed in the Customs investigation and for the reasons noted below, pursuant to section 201(b)(1) of the Act (19 U.S.C. 160(b)(1)), I hereby determine that there are reasonable grounds to believe or suspect that the exporter's sales price of viscose rayon staple fiber from Italy is less, or is likely to be less, than the fair value, and thereby the foreign market value, of such or similar merchandise.

STATEMENT OF REASONS ON WHICH THIS TENTATIVE DETERMINATION IS BASED

A. *Scope of the Investigation.* It appears that 100 percent of imports of the subject merchandise from Italy were exported to the United States by Italviscosa. The investigation was therefore limited to sales by Italviscosa.

B. *Basis of Comparison.* For purposes of this notice, considering whether the merchandise in question is being, or is likely to be, sold at less than fair value within the meaning of the Act, the proper basis of comparison appears to be between exporter's sales price and the home market price of such or similar merchandise. Exporter's sales price, as defined in section 204 of the Act (19 U.S.C. 163), was used since all export sales by Italviscosa were made to a related importer in the United States, Snia Viscosa, Inc., (U.S.A.). Home market price, as defined in § 153.2, Customs Regulations (19 CFR 153.2), was used since or similar merchandise was sold in the home market in sufficient quantities to provide a basis for comparison.

In accordance with § 153.31(b), Customs Regulations (19 CFR 153.31(b)), pricing information was obtained concerning sales to the United States and in the home market during the period November 1, 1977, through April 30, 1978.

C. *Exporter's Sales Price.* For purposes of this tentative determination, the exporter's sales price was calculated on the basis of the resale price of imported merchandise in accordance with section 204 of the Act. Adjustments were made for lading, ocean freight, factoring costs, brokerage, duty, warehouse costs, inland freight in both the home market and the United States, pier usage charges, selling and administrative expenses incurred in the U.S., and a duty rebate, as applicable. Adjustments for lading, ocean freight, factoring, brokerage, duty, warehousing, inland freight, and pier usage were made since these costs and charges are incident to bringing the merchandise from the point of shipment in Italy to point of delivery in United States. The selling and administrative expenses incurred in the United States were deducted as charges incurred in the resale of the merchandise. The adjustment for duty rebate reflected duties refunded to the manufacturerer upon exportation of the merchandise to the United States and the adjustment consisted of an addition to the exporter's sales price.

D. *Home Market Price.* For purposes of this determination, the home market price has been calculated on basis of the weighted average price in the home market to unrelated purchasers during the investigative period. Deductions were made for a discount, inland freight, a commission, and as an offset for selling expenses claimed on the U.S. sales pursuant to § 153.10, Customs Regulations (19 CFR 153.10). This offset for selling expenses and commission was below the amount claimed on exporter's sales price and the actual amount claimed was allowed. No other adjustments were claimed or made.

E. *Cost of Production.* The petition contained a sufficient allegation of sales at less than the cost of production, pursuant to section 205(b) of the Act (19 U.S.C. 164(b)). Therefore, information was obtained concerning the production costs of viscose rayon staple fiber in Italy. The cost of production was calculated on the basis of the cost of materials, cost of labor, and general expenses incurred in the manufacture and sale of the merchandise, as provided for in § 153.5, Customs Regulations (19 CFR 153.5).

The petitioner has raised several issues relative to similar investigations on France and Finland, concerning the possible exclusion of certain cost data by the respondents. Further information is currently being obtained and, if an adjustment is appropriate, it will be made prior to the final determination.

On the basis of the information submitted, it has been tentatively determined that Italviscosa is not selling viscose rayon staple fiber in the home market at less than the cost of producing the merchandise.

F. *Results of Fair Value Comparisons.* Using the above criteria, comparisons were made on virtually all sales of the subject merchandise to the United States during the period of investigation. These comparisons indicated that the exporter's sales price of viscose rayon staple fiber from Italy was less, or likely to be less, than the home market price of such or similar merchandise. Margins were found on all of the sales compared, ranging from 17.5 to 19.7 percent. A weighted average margin of approximately 18.6 percent was found on all sales compared.

Accordingly, Customs officers are being directed to withhold appraisement of viscose rayon staple fiber from Italy in accordance with § 153.48, Customs Regulations (19 CFR 153.48).

In accordance with § 153.40, Customs Regulations (19 CFR 153.40), interested persons may present written views or arguments or request in writing that the Secretary of the Treasury afford an opportunity to present oral views.

Any request that the Secretary of the Treasury afford an opportunity to present oral views should be addressed to the Commissioner of Customs, 1301 Constitution Avenue, NW., Washington, D.C. 20229, in time to be received by his office not later than December 1, 1978. Such request must be accompanied by a statement outlining the issues wished to be discussed.

Any written views or arguments should likewise be addressed to the Commissioner of Customs in time to be received by his office not later than December 18, 1978. All persons submitting written views or arguments should avoid repetitious and merely cumulative material. Counsel for the petitioner and respondent are requested to serve all written submissions on all other counsel and to file 10 copies of their submissions with the Commissioner of Customs.

This notice, which is published pursuant to § 153.35(b) of Customs Regulations (19 CFR 153.35(b)), shall become effective November 16, 1978. It shall cease to be effective at the expiration of 6 months from the date of publication (May 16, 1979) unless previously revoked.

ROBERT H. MUNDHEIM,
General Counsel
of the Treasury.

NOVEMBER 8, 1978.

[FR Doc. 78-52247 Filed 11-15-78; 8:45 am]

[4810-22-M]

VISCOSE RAYON STAPLE FIBER FROM SWEDEN

Antidumping: Withholding of Approisement Notice

AGENCY: U.S. Treasury Department.

ACTION: Withholding of Appraisement.

SUMMARY: This notice is to advise the public that an antidumping investigation has resulted in a tentative determination that viscose rayon staple fiber from Sweden is being sold at less than fair value within the meaning of the antidumping Act, 1921. Sales at less than fair value generally occur when the price of merchandise sold for exportation to the United States is less than the price of such or similar merchandise sold in the home market or to third countries. Appraisements for purposes of determining the proper duties applicable to entries of this merchandise will be suspended for 6 months. Interested persons are invited to comment on this action not later than December 18, 1978.

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EFFECTIVE DATE: November 16, 1978.

FOR FURTHER INFORMATION CONTACT:

Mary S. Clapp, Operations Officer, Duty Assessment Division, United States Customs Service, 1301 Constitution Ave., NW., Washington, D.C. 20229, telephone 202-566-5492.

SUPPLEMENTARY INFORMATION: On March 28, 1978, information was received in proper form pursuant to §§ 153.26 and 153.27, Customs Regulations (19 CFR 153.26, 153.27), from counsel acting on behalf of Avtex Fibers, Inc., Valley Forge, Pa., a domestic producer of the subject merchandise, indicating a possibility that viscose rayon staple fiber from Sweden is being or is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.). (Hereafter referred to in this notice as "the Act"). The "Antidumping Proceeding Notice" was published in the FEDERAL REGISTER on May 5, 1978 (43 FR 19492).

TENTATIVE DETERMINATION OF SALES AT LESS THAN FAIR VALUE

On the basis of the information developed in the Customs investigation and for the reasons noted below, pursuant to section 201(b)(1) of the Act (19 U.S.C. 160(b)(1)), I hereby determine that there are reasonable grounds to believe or suspect that the purchase price of viscose rayon staple fiber from Sweden is less, or is likely to be less, than the fair value, and thereby the foreign market value, of such or similar merchandise.

STATEMENT OF REASONS ON WHICH THIS DETERMINATION IS BASED

A. *Scope of Investigation.* It appears that virtually 100 percent of the exports of the subject merchandise from Sweden were exported to the United States by Svenska Rayon AB. The investigation was therefore limited to sales by Svenska.

B. *Basis of Comparisons.* For purposes of considering whether the merchandise in question is being, or is likely to be, sold at less than fair value within the meaning of the Act, the proper basis of comparison is between purchase price and the third country price of such or similar merchandise. Purchase price, as defined in section 203 of the Act (19 U.S.C. 162), was used since all export sales by Svenska were made prior to the date of exportation to an unrelated United States purchaser. Third country price, as defined in § 153.3, Customs Regulations (19 CFR 153.3), was used since such or similar merchandise was not sold in the home market.

In accordance with § 153.31(b), Customs Regulations (19 CFR 153.31(b)), pricing information was obtained concerning sales to the United States and to third countries during the period November 1, 1977, through April 30, 1978.

C. *Purchase price.* For purposes of this tentative determination, the purchase price was calculated on the basis of the selling price to the unrelated United States purchaser in accordance with section 203 of the Act. Adjustments were made for ocean freight, insurance, U.S. Customs duties, and inland freight. These adjustments were made since these costs and charges were incident to bringing the merchandise from the point of shipment in Sweden to the point of delivery in the United States and the charges were included in the selling price.

D. *Third Country Price.* For purposes of this determination, the third country price has been calculated on the basis of the weighted average price to unrelated purchasers in a third country, France, during the investigatory period. Deductions were made for cash discounts, freight, and insurance, and for differences in sales commissions in the two relevant markets. The adjustment for differences in sales commissions was made in accordance with § 153.10(b), Customs Regulations (19 CFR 153.10(b)). No other adjustments were claimed or made.

E. *Cost of Production.* Information received from petitioner indicated the possibility that sales of Swedish viscose rayon staple fiber were occurring in third countries at prices less that the cost of producing the merchandise, within the meaning of section 205(b) of the Act (19 U.S.C. 164(b)). Therefore, cost information was requested from respondent with reference to the period May 1, 1977, through April 30, 1978. A comparison of the actual cost of producing the merchandise with prices to Iranian purchasers during the investigatory period revealed that those sales were at prices less than the cost of producing the merchandise pursuant to § 153.5, Customs Regulations (19 CFR 153.5). Therefore, those sales were disregarded in establishing the foreign market value for this merchandise, pursuant to section 205(b) of the Act. A comparison of the actual cost of producing the merchandise with prices to French purchasers during the investigatory period revealed that those sales were at prices not less than the cost of producing the merchandise pursuant to § 153.5, Customs Regulations. Therefore, sales to France were used for purposes of determining the foreign market value of the merchandise.

Repondent has urged that general and selling expenses should not be included within the "cost of producing" this merchandise, under section 205(b) of the Act. In prior Treasury decisions applying section 205(b) of the Act, the cost of producing has been construed as including all elements of cost pertaining to the manufacture and marketing of the merchandise. The individual home market or third country prices, as appropriate, with which the cost of producing is compared, also include these cost factors. Consequently, it is determined that the term "cost of producing" in section 205(b) encompasses all cost elements, including costs of manufacture and of marketing, which are included in the prices with which the cost of producing is being compared. Additional information has been requested from Svenska in connection with the specific costs included within the various fixed costs allocated to the cost of producing this merchandise. This information will be considered prior to the Final Determination in this case.

F. *Results of Fair Value Comparisons.* Using the above criteria, comparisons were made on virtually all the sales of the subject merchandise to the United States during the period of investigation. These comparisons indicated that the purchase price of viscose rayon staple fiber from Sweden was less, or likely to be less, than the third country price of such or similar merchandise. Margins were found on all the sales compared, ranging from 1.4 to 3.6 percent. A weighted average margin of approximately 2.3 percent was found on all sales compared.

Accordingly, Customs officers are being directed to withhold appraisement of viscose rayon staple fiber from Sweden in accordance with § 153.48, Customs Regulations (19 CFR 153.48).

In accordance with § 153.40, Customs Regulations (19 CFR 153.40), interested persons may present written views or arguments or request in writing that the Secretary of the Treasury afford an opportunity to present oral views. These requests should be addressed to the Commissioner of Customs, 1301 Constitution Avenue, N.W., Washington, D.C. 20229, in time to be received by his office not later than December 1, 1978. Such requests must be accompanied by a statement outlining the issues to be discussed.

Any written views or arguments should likewise be addressed to the Commissioner of Customs in time to be received by his office not later than December 18, 1978. All persons submitting written views or arguments should avoid repetitious and merely cumulative material. Counsel for the petitioner and the respondent are requested to serve all written submissions on all other counsel and to file 10 copies of their submissions with the Commissioner of Customs.

This notice, which is published pursuant to § 153.35(b) of the Customs Regulations (19 CFR 153.35(b)), shall become effective November 16, 1978. It shall cease to be effective at the expiration of 6 months from the date of publication. (May 16, 1979) unless previously revoked.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

NOVEMBER 8, 1978.

[FR Doc. 78-32248 Filed 11-15-78; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

[Decisions Volume No. 46]

DECISION—NOTICE

Decided: November 3, 1978.

The following applications are governed by Special Rule 247 of the Commission's rules of practice (49 CFR 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date of notice of the application is published in the FEDERAL REGISTER. Failure to file a protest, on or before December 18, 1978, will be considered as a waiver of opposition to the application. A protest under these rules should comply with rule 247(e)(3) of the Rules of Practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding (as specifically noted below), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. A protestant should include a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describe in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named. If the protest includes a request for oral hearing, such request shall meet the requirements of section 247(e)(4) of the special rules and shall include the certification required in that section.

Section 247(f) provides, in part, that an applicant which does not intend timely to prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administratively acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

We find:

With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the national transportation policy. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of the Interstate Commerce Act and the Commission's regulations. This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a protestant, that the proposed dual operations are consistent with the public interest and the national transportation policy subject to the right of the Commission which is hereby expressly reserved to impose such conditions as it finds necessary to insure that applicant's operations shall conform to the provisions of section 210 of the Interstate Commerce Act.

It is ordered:

In the absence of legally sufficient protests, filed within 30 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decisions-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, such duplication shall not be construed as conferring more than a single operating right.

Applicants must comply with all specific conditions set forth within 90 days after the service of the notification of the effectiveness of this decision-notice, or the application of a noncomplying applicant shall stand denied. By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones.

H. G. HOMME, Jr.,
Secretary.

MC 200 (Sub-312F), filed September 29, 1978. Applicant: RISS INTERNATIONAL CORP., a Delaware corporation, 903 Grand Avenue, Kansas City, MO 64106. Representative: Ivan E. Moody (same address as applicant). To operate as a *common carrier*, by motor vehicle, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Kenova, WV, and Cincinnati, OH, over U.S. Hwy 52, serving no intermediate points, as an alternate route for operating convenience only, in connection with carrier's otherwise authorized regular-route operations, and (2) between Kenova, WV, and Louisville, KY, over Interstate Hwy 64, serving no intermediate points, as an alternate route for operating convenience only, in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Kansas City, MO.)

MC 2253 (Sub-85F), filed September 18, 1978. Applicant: CAROLINA FREIGHT CARRIERS CORP., P.O. Box 697, Cherryville, NC 28021. Representative: J. S. McCallie (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Cast iron pipe and cast iron fittings*, from Charlotte, NC, to points in AL, DE, IL, IN, KY, MD, MI, MS, NJ, NY, PA, TN, VA, WV, and WI; and (2) *plastic pipe and plastic fittings*, from Bakers, NC, to points in AL, DE, IL, IN, KY, MD, MI, MS, NJ, NY, PA, TN, VA, WV, and WI. (Hearing site: Charlotte, NC.)

MC 2253 (Sub-86F), filed September 18, 1978. Applicant: CAROLINA FREIGHT CARRIERS CORP., P.O. Box 697, Cherryville, NC 28021. Representative: J. S. McCallie (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Caulking compound and roofing cement*, from Ocala, FL, to Selinsgrove, PA. (Hearing site: Charlotte, NC, or Gainesville, FL.)

MC 2876 (Sub-1F), filed August 25, 1978. Applicant: W. J. BEITLER CO.,

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a corporation, 3379 Stafford Street, Pittsburgh, PA 15204. Representative: William J. Lavell, 2310 Grant Building, Pittsburgh, PA 15219. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between the facilities of W. J. Beitler Co., at or near Pittsburgh, PA, on the one hand, and, on the other, Anmoore, WV, those points in WV on and north of U.S. Hwy 50, and those in OH on and east of Interstate Hwy 77. (Hearing site: Pittsburgh, PA, or Washington, DC.)

NOTE.—Tacking is authorized at the facilities of W. J. Beitler Co., at or near Pittsburgh, PA. with carrier's authority in MC 2876, issued January 14, 1943. The following service is authorized: *General commodities*, with the exceptions noted above, from Anmoore, WV, those points in WV on and north of U.S. Hwy 50, and those in OH on and east of Interstate Hwy 77, to Youngstown and Warren, OH, and those points in PA within 75 miles of Pittsburgh, PA.

MC 3500 (Sub-3F), filed June 15, 1978, previously noticed in the FEDERAL REGISTER issue of September 5, 1978. Applicant: PACIFIC STORAGE CO., a corporation, 517 North Hunter Street, Stockton, CA 95201. Representative: Edward J. Hegarty, 100 Bush Street, 21st floor, San Francisco, CA 94104. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used household goods*, in containers, between points in Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, El Dorado, Fresno, Glenn, Inyo, Kern, Kings, Lake, Madera, Marin, Mariposa, Mendocino, Merced, Mono, Monterey, Napa, Nevada, Placer, Sacramento, San Benito, San Francisco, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Sierra, Solano, Sonoma, Stanislaus, Sutter, Tulare, Tuolumne, Yolo, and Yuba Counties, CA, restricted to the transportation of shipments having a prior or subsequent movement in containers, beyond the points authorized, and further restricted to the performance of pickup and delivery service in connection with the packing, crating, and containerization, or unpacking, uncrating, and decontainerization of such shipments. (Hearing site: San Francisco, CA.)

NOTE.—This republication shows additional CA counties.

MC 5470 (Sub-160F), filed October 2, 1978. Applicant: TAJON, INC., a Deleware corporation, R.D. 5, Mercer, PA 16137. Representative: Brian L. Troiano, 918 16th Street NW., Washington, DC 20006. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry coffee gounds*, in dump vehicles, from Freehold, NJ, to Gonvick, MN. (Hearing site: Washington, DC, or Newark, NJ.)

MC 7156 (Sub-9F), filed August 28, 1978. Applicant: WILLIAMS TRANSFER CO., a corporation, P.O. Box 706, 2995 Prairie Road, Eugene, OR 97401. Representative: Russell M. Allen, 1200 Jackson Tower, Portland, OR 97205. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used household goods*, between points in Lane County, OR, restricted to the transportation of shipments having a prior or subsequent movement, in containers, beyond the points authorized, and further restricted to the performance of pickup and delivery service in connection with packing, crating, and containerization or unpacking, uncrating, and decontainerization of such shipments. (Hearing site: Portland or Eugene, OR.)

MC 8472 (Sub-7F), filed August 14, 1978. Applicant: SOUTH END CARTAGE, a corporation, 4222 South Knox Avenue, Chicago, IL 60632. Representative: Abraham A. Diamond, 29 South LaSalle Street, Suite 454 Barristers Building, Chicago, IL 60603. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *General commodities (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), in containers; and (2) empty containers*, or *trailers* for the movement of the containers, between Chicago, IL, on the one hand, and, on the other, points in IL, IN, IA, KY, MI, MN, MO, NE, and WI, restricted to the transportation of traffic having a prior or subsequent movement by rail or by water. (Hearing site: Chicago, IL.)

MC 13250 (Sub-142F), filed September 28, 1978. Applicant: J. H. ROSE TRUCK LINE, INC. 4101 Fulton, P.O. Box 16190, Houston, TX 77022. Representative: Robert J. Birnbaum, 500 W. 16th Street, P.O. Box 1945, Austin, TX 78767. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Water pollution control equipment*, (2) *irrigation equipment*, (3) *parts and accessories* for the commodities named in (1) and (2) above, and (4) *such commodities* as are used in the installation of the commodities named in (1), (2), and (3) above, from the facilities of Davco-Defiance Division of Davis Water & Waste Industries, Inc., at or near Thomasville, GA, to points in the United States (except AK and HI); and (5) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (1), (2), (3), and (4) above, (except commodities in bulk), in the reverse direction. (Hearing site: Atlanta, GA, or Birmingham, AL.)

MC 16903 (Sub-57F), filed September 14, 1978. Applicant: MOON FREIGHT LINES, INC., P.O. Box 1275, Bloomington, IN 47401. Representative: Donald W. Smith, P.O. Box 40659, Indianapolis, IN 46240. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Stone, marble, and granite* (except in dump vehicles), (1) from the facilities of The Stone Center, at or near St. Louis, MO, to points in CO, and those in the United States in and east of ND, SD, NE, KS, OK, and TX, and (2) from points in Washington County, AR, Forest and Lemar Counties, MS, and Bourbon County, KS, to points in IL, KY, and MO. (Hearing site: St. Louis, MO.)

MC 21259 (Sub-2F), filed October 6, 1978. Applicant: GERTSEN CARTAGE CO., INC., 3000 Hirsch Street, Melrose Park, IL 60160. Representative: Anthony C. Vance, Suite 301, 1307 Dolley Madison Boulevard, McLean, VA 22101. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, and Classes A and B explosives), in containers, between Chicago, IL, on the one hand, and, on the other, points in IA, IL, IN, KY, MI, MN, MO, NE, OH, TN, and WI, restricted to the transportation of traffic having an immediate prior or subsequent movement by rail or water. (Hearing site: Chicago, IL.)

MC 28060 (Sub-45F), filed October 4, 1978. Applicant: WILLERS, INC., d.b.a. WILLERS TRUCK SERVICE, 1400 North Cliff Avenue, P.O. Box 944, Sioux Falls, SD 57101. Representative: Bruce E. Mitchell, Fifth Floor, Lenox Towers I, 3390 Peachtree Road, Atlanta, GA 30326. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products and meat byproducts, and articles distributed by meat-packing houses*, as described in sections A and C of appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766 (except commodities in bulk, in tank vehicles), from the facilities of John Morrell & Co., at or near Sioux Falls, SD, to points in AZ, IN, NM, WY, and those in CA in and south of San Luis Obispo, Kern, and San Bernardino Counties, restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations. (Hearing site: Chicago, IL.)

MC 29910 (Sub-194F), filed October 2, 1978. Applicant: ARKANSAS-BEST FREIGHT SYSTEM, INC., 301 South 11th Street, Fort Smith, AR 72901. Representative: Don A. Smith, P.O. Box 43, 510 North Greenwood, Fort Smith, AR 72902. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from points in Georgetown County, SC, to those points in the United States in and east of MN, IA, MO, AR, and LA. (Hearing site: Washington, DC.)

MC 35706 (Sub-13F), filed August 22, 1978. Applicant: ATSL, INC., Building A, 10 Oregon Avenue, Philadelphia, PA 19148. Representative: Steven M. Tannenbaum, 135 North Fourth Street, Philadelphia, PA 19106. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Ladies apparel and store supplies*, (except commodities in bulk), from the facilities of The Miller-Wohl Co., Inc., (1) at Secaucus, NJ, to the facilities used by the Miller-Wohl Co., Inc., at or near Cleveland, OH and Detroit, MI, and (2) at or near Cleveland, OH, to the facilities used by the Miller-Wohl Co., Inc., at or near Detroit, MI. (Hearing site: Camden, NJ, or Philadelphia, PA.)

MC 47583 (Sub-76F), filed September 18, 1978. Applicant: TOLLIE FREIGHTWAYS, INC., 1020 Sunshine Road, Kansas City, KS 66115. Representative: D. S. Hults, P.O. Box 225, Lawrence, KS 66044. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Borate* (except in bulk), from Trona, Boron, and Dunn, CA, to points in OK and TX, restricted to the transportation of traffic originating at the named origins and destined to the indicated destinations. (Hearing site: Kansas City, MO.)

MC 51146 (Sub-632F), filed August 28, 1978. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: John R. Patterson, 2480 East Commercial Boulevard, Fort Lauderdale, FL 33308. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Pulpboard and pulpboard products*, from Otsego, MI, to Buffalo, Rochester, and Syracuse, NY, Austin and Minneapolis, MN, Louisville, KY, and points in OH, IN, and IL; and (2) *waste paper*, from Kansas City, MO, to those points in IA on and east of U.S. Hwy 65, and those points in IL on and north of Interstate Hwy 70. (Hearing site: Chicago, IL.)

MC 52704 (Sub-180F), filed August 24, 1978. Applicant: GLENN McCLENDON TRUCKING CO., INC., P.O. Drawer "H", LaFayette, AL 36862. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Liquid cleaning compounds and liquid bleaching compounds*, (except commodities in bulk), from the facilities of National Marketing Associates, Inc., at or near New Orleans, LA, to points in AL, FL, GA, MS, and TN, and (2) *materials, equipment, and supplies* used in the manufacture or distribution of commodities named in (1) above (except commodities in bulk), in the reverse direction. (Hearing site: Atlanta, GA.)

MC 61396 (Sub-357F), filed August 22, 1978. Applicant: HERMAN BROS., INC., P.O. Box 189, Omaha, NE 68101. Representative: John E. Smith, II (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer and fertilizer materials*, in bulk, from the facilities of Land O'Lakes Agricultural Services Division, at or near Mason City, IA, to points in MN, NE, ND, SD, and WI. (Hearing site: Omaha, NE, or Des Moines, IA.)

MC 63562 (Sub-58F), filed August 25, 1978. Applicant: BN TRANSPORT INC., 6775 East Evans Avenue, P.O. Box 22694, Wellshire Station, Denver, CO 80224. Representative: Cecil L. Goettsch, 1100 Des Moines Building, Des Moines, IA 50309. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from the facilities of Keystone Consolidated Industries, Inc., at or near Peoria, IL, to points in ID, MN, MT, ND, OR, SD, WA, and WY. (Hearing site: Peoria or Chicago, IL.)

MC 69116 (Sub-203), filed August 24, 1978. Applicant: SPECTOR INDUSTRIES, INC., d.b.a. SPECTOR FREIGHT SYSTEM, 1050 Kingery Highway, Bensenville, IL 60106. Representative: Edward G. Bazelon, 39 South LaSalle Street, Chicago, IL 60603. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Iron and steel articles, zinc articles, lead articles, and springs*, (2) *construction materials, construction supplies, and construction equipment*, from the facilities of Penn-Dixie Industries, Inc., Penn-Dixie Steel Corp., and Steven Spring, Inc., at or near Lansing and Grand Rapids, MI, Blue Island and Joliet, IL, Kokomo, Fort Wayne, Elkhart, and Cicero, IN, Centerville, IA, Denver, CO, Albuquerque, NM, Jackson, MS, Columbus and Toledo, OH, and Newton, KS, to points in the United States (except AK and HI), restricted to the transportation of traffic originating at the named origins, and (3) *equipment, materials, and supplies* used in the manufacture and distribution of the commodities in (1) and (2) above, (except commodities in bulk), in the reverse direction, restricted to the transportation of traffic destined to the indicated destinations. (Hearing site: Chicago, IL.)

MC 69833 (Sub-136F), filed September 18, 1978. Applicant: ASSOCIATED TRUCK LINES, INC., 200 Monroe Avenue NW. Sixth Floor, Grand Rapids, MI 49503. Representative: Harry Pohlad (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Ford Motor Co., at or near Milan, MI, as an off-route point in connection with carrier's authorized regular-route operations. (Hearing site: Detroit or Lansing, MI.)

MC 95540 (Sub-1044F), filed October 2, 1978. Applicant: WATKINS MOTOR LINES, INC., 1144 West Griffin Road, P.O. Box 1636, Lakeland, FL 33802. Representative: Benjy W. Fincher (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen turnover meat pies and frozen fruit pies*, from Union City, CA, to Phoenix, AZ, Albuquerque, NM, St. Louis, MO, and points in TX. (Hearing site: San Francisco or Los Angeles, CA.)

MC 107496 (Sub-1162F), filed August 22, 1978. Applicant: RUAN TRANSPORT CORP., 666 Grand Avenue, Des Moines, IA 50309. Representative: E. Check, P.O. Box 855, Des Moines, IA 50304. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Propellants*, in bulk, from East Chicago, IN, to Franklin, KY, and Butler, PA; and (2) *liquid fertilizer*, in bulk, in tank vehicles, from the facilities of Texas Sulphur Products Co., at or near Ottawa, IL, to points in IA, IL, KY, MI, MO, MN, ND, NE, OH, PA, SD, and WI. (Hearing site: Chicago, IL, or Kansas City, MO.)

MC 108053 (Sub-147F), filed September 15, 1978. Applicant: LITTLE AUDREY'S TRANSPORTATION CO., INC., P.O. Box 129, Fremont, NE 68025. Representative: Arnold L. Burke, 180 North LaSalle Street, Chicago, IL 60601. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products and meat byproducts, and articles distributed by meat-packing houses*, as described in sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766 (except hides and commodities in bulk), from Schuyler, NE, to points in

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ID, OR, UT, and WA. (Hearing site: Chicago, IL.)

MC 108676 (Sub-127F), filed August 22, 1978. Applicant: A. J. METLER HAULING & RIGGING, INC., 117 Chicamauga Avenue NE., Knoxville, TN 37917. Representative: Louis J. Amato, P.O. Box E, Bowling Green, KY 42101. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Precast and prestressed concrete products*, from Bristol, TN, to points in KY, NC, SC, VA, and WV. (Hearing site: Knoxville, TN.)

MC 108676 (Sub-128F), filed August 22, 1978. Applicant: A. J. METLER HAULING & RIGGING, INC., 117 Chicamauga Avenue NE., Knoxville, TN 37919. Representative: Louis J. Amato, P.O. Box E, Bowling Green, KY 42101. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Materials, equipment, and supplies* used in the construction and maintenance of dams, locks, steam plants, roads, buildings, and bridges, (except contractors' machinery and equipment, and commodities in bulk), between points in AL, GA, KY, MS, NC, SC, TN, and VA, restricted to the transportation of traffic moving from, to, or between facilities of Tennessee Valley Authority. Condition: Issuance of a certificate in this proceeding is subject to the prior or coincidental cancellation of carrier's certificate in MC 108676 (Sub-14). (Hearing site: Nashville or Knoxville, TN.)

MC 108676 (Sub-131F), filed August 28, 1978. Applicant: A. J. METLER HAULING & RIGGING, INC., 117 Chicamauga Avenue, Knoxville, TN 37917. Representative: Louis J. Amato, P.O. Box E, Bowling Green, KY 42101. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from points in Richland County, SC, to points in the United States (except AK, HI, and SC). (Hearing site: Atlanta, GA.)

MC 109172 (Sub-12F), filed August 21, 1978. Applicant: NATIONAL TRANSFER, INC., d.b.a. NATIONAL MOTOR FREIGHT, 5265 Utah Avenue South, Seattle, WA 98134. Representative: Lawrence V. Smart Jr., 419 Northwest 23d Avenue, Portland, OR 97210. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, between points in Multnomah, Clackamas, and Washington Counties, OR, and Clark and Cowlitz Counties, WA, on the one hand, and, on the other, points in OR and WA. (Hearing site: Portland, OR.)

MC 110525 (Sub-1263F), filed September 29, 1978. Applicant: CHEMICAL LEAMAN TANK LINES, INC., a Delaware corporation, 520 East Lancaster Avenue, Downingtown, PA 19335. Representative: Thomas J. O'Brien (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fuel oil additives*, in bulk, in tank vehicles, from Bridgeport, CT, to points in ME and NH. (Hearing site: Washington, DC.)

NOTE.—Dual operations may be at issue in this proceeding.

MC 111310 (Sub-34F), filed August 29, 1978. Applicant: BEER TRANSIT, INC., P.O. Box 352, Black River Falls, WI 54615. Representative: Wayne W. Wilson, 150 East Gilman Street, Madison, WI 53703. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages and malt beverage dispensing equipment*, from New Ulm, MN, to points in IL, IN, IA, MO, and WI. (Hearing site: New Ulm, MN, or Madison, WI.)

MC 111545 (Sub-256F), filed October 2, 1978. Applicant: HOME TRANSPORTATION CO., INC., P.O. Box 6426, Station A, Marietta, GA 30065. Representative: Robert E. Born (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Electric precipitator panels, and iron and steel*, from Independence, OH, to points in CA and those in the United States in and east of MN, IA, NE, KS, OK, and TX. (Hearing site: Columbus, OH, or Washington, DC.)

MC 114939 (Sub-51F), filed October 13, 1978. Applicant: BULK CARRIERS LTD., P.O. Box 10, Cooksville Post Office, Mississauga, Ontario, Canada L59 2W7. Representative: John W. Ester, 100 West Long Lake Road, Suite 102, Bloomfield Hills, MI 48013. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wood preservative*, in bulk, in tank vehicles, from Memphis, TN, to the ports of entry on the International boundary line between the United States and Canada in MI, restricted to the transporation of traffic moving in foreign commerce to points in the Provinces of Ontario and Quebec, Canada. (Hearing site: Memphis, TN, or Washington, DC.)

MC 115311 (Sub-303F), filed September 5, 1978. Applicant: J & M TRANSPORTATION CO., INC., P.O. Box 488, Milledgeville, GA 31061. Representative: Kim G. Meyer, P.O. Box 872, Atlanta, GA 30301. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic articles* and *ploystyrene products*, from the facilities of U. C. Industries, at or near, Tallmadge, OH, to those points in the United States in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Chicago, IL, or Cincinnati, OH.)

MC 115322 (Sub-145F), filed August 22, 1978. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, FL 32809. Representative: L. W. Fincher, P.O. Box 426, Tampa, FL 33601. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, in vehicles equipped with mechanical refrigeration (except commodities in bulk, in tank vehicles), from the facilities of M&M/MARS, at or near Cleveland, TN, to points in CT, DE, FL, GA, ME, MD, MA, NH, NJ, NY, NC, SC, PA, RI, VT, and VA, restricted to the transportation of traffic originating at the named origins and destined to the indicated destinations. (Hearing site: New York, NY, or Washington, DC.)

MC 115826 (Sub-346F), filed August 28, 1978. Applicant: W. J. DIGBY, INC., a Nevada corporation, 6015 East 58th Avenue, Commerce City, CO 80022. Representative: Howard Gore (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Horse meat*, from Redmond, OR, to points in CA, CT, MA, NY, TX, and WA. (Hearing site: Denver, CO.)

MC 116130 (Sub-1F), filed June 16, 1978. Applicant: MY-OWN TRUCKING CO., INC., P.O. Box 21, Westbury, NY 11757. Representative: Jack Schiller, 1 Lefrak City Plaza, Flushing, NY 11368. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, and commodities requiring special equipment), (1) between New York, NY, on the one hand, and on the other, points in Suffolk County, NY, and (2) from points in Nassau County, NY, to points in Suffolk County, NY. (Hearing site: New York, NY.)

MC 117344 (Sub-278F), filed August 24, 1978. Applicant: THE MAXWELL CO., a corporation, 10380 Evendale Drive, Cincinnati, OH 45215. Representative: James R. Stiverson, 1396 West Fifth Avenue, Columbus, OH 43212. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sulphur trioxide*, in bulk, in tank vehicles, from the facilities of E. I. duPont de Nemours & Co., at or near (1) East Chicago, IN, to Alsip, Chicago, Lemont, and Millsdale, IL, Cincinnati and Columbia Park, OH, Denver, CO, El Dorado, AR, Geismar, LA, Greensville and Mauldin, SC, Houston, TX, Kansas City and St. Louis, MO, Midland, Muskegon, and St. Louis, MI, and Newport, TN, and (2) Columbia Park, OH, to St. Louis, MO. (Hearing site: Washington, DC.)

MC 117416 (Sub-59F), filed August 28, 1978. Applicant: NEWMAN AND PEMBERTON CORP., 2007 University Avenue, NW., Knoxville, TN 37921. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (I) *Charcoal, charcoal briquettes, fire place logs, charcoal lighter fluid, and hickory chips*, and (II) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (I) above, (except commodities in bulk, in tank vehicles), (1) between the facilities of the Kingsford Co., at Burnside, KY, and Crossville, TN, on the one hand, and, on the other, points in AL, FL, GA, IL, IN, KY, MI, NC, OH, SC, and TN; and (2) from Dothan, AL, to Atlanta, GA. (Hearing site: Washington, DC.)

MC 117416 (Sub-60F), filed August 24, 1978. Applicant: NEWMAN AND PEMBERTON CORP., 2007 University Avenue, NW., Knoxville, TN 37921. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Metal powders and ferrite powders*, and *materials, equipment, and supplies* used in the manufacture, sale, and distribution of metal powders and ferrite powders (except commodities in bulk, in tank vehicles), between the facilities of Greenback Industries, at or near Greenback, TN, on the one hand, and, on the other, points in AL, FL, GA, IL, IN, KY, MI, OH, and SC. Condition: Issuance of a certificate in this proceeding is subject to the prior or coincidental cancellation of the certificate in MC 117416 (Sub-54). (Hearing site: Washington, DC.)

MC 117823 (Sub-57F), filed September 15, 1978. Applicant: DUNKLEY REFRIGERATED TRANSPORT, INC., 1915 South 900 West, Salt Lake City, UT 84104. Representative: Jeffrey A. Knoll, 5565 East 52d Avenue, Commerce City, CO 80022. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, from points in WA, OR, and ID, to points in WA, OR, ID, CA, NV, and AZ. Condition: The person or persons who it appears may be engaged in common control must either file an application under section 5(2) of the Interstate Commerce Act, or submit an affidavit indicating why such approval is unnecessary. (Hearing site: Portland, OR, or Seattle, WA.)

MC 117940 (Sub-281F), filed June 15, 1978, previously noticed in the FEDERAL REGISTER issue of August 17, 1978. Applicant: NATIONWIDE CARRIERS, INC., P.O. Box 104, Maple M Plain, MN 55359. Representative: Allan Timmerman, 5300 Hwy 12, Maple Plain, MN 55359. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities as are dealt in by retail stores* (except in bulk, in tank vehicles), between points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of Montgomery Ward & Co., Inc. Condition: The certificate to be issued herein shall be limited in point of time to a period of expiring 3 years from its date of issue, unless, prior to its expiration (but not less than 6 months prior to its expiration), applicant files a petition for permanent extension of the certificate showing that it has been in full compliance with applicable regulations. (Hearing site: Chicago, IL.)

NOTE.—The purpose of this republication is to change the origin and destination points.

MC 118130 (Sub-90F), filed September 25, 1978. Applicant: SOUTH EASTERN XPRESS, INC., P.O. Box 6985, Fort Worth, TX 76115. Representative: Billy R. Reid, P.O. Box 9093, Fort Worth, TX 76107. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, in containers, from points in Jefferson County, CO, to points in TX. (Hearing site: Dallas, TX, or Denver, CO.)

MC 118959 (Sub-179F,) filed October 3, 1978. Applicant: JERRY LIPPS, INC., a Florida corporation, 130 South Frederick Street, Cape Girardeau, MO 63701. Representative: Hazel Seabaugh (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Paper, paper products*, and *cloth*, and (2) *materials, equipment and supplies* used in connection with the commodities in (1) above, (except commodities in bulk), between Mobile, AL, Marinette, Green Bay, and Oconto Falls, WI, and Rogers, AR, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: St. Louis or Cape Girardeau, MO.)

MC 119422 (Sub-64F), filed August 21, 1978. Applicant: EE-JAY MOTOR TRANSPORTS, INC., 15th and Lincoln, East St. Louis, IL 62204. Representative: Ernest A. Brooks II, 1301 Ambassador Building, St. Louis, MO 63101. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Compounding asphalt*, in bulk, in tank vehicles equipped with heating devices, from the facilities of Mobile Oil Corp., at Augusta, KS, to points in MO, IL, OH, and MN. (Hearing site: St. Louis, MO, or Dallas, TX.)

MC 121654 (Sub-15F), filed August 24, 1978. Applicant: COASTAL TRANSPORT & TRADING CO., a corporation, P.O. Box 458, Forest Park, GA 30050. Representative: Richard M. Tettelbaum, 3390 Peachtree Road, 5th Floor—Lenox Towers South, Atlanta, GA 30326. To operate as a *common carrier*, by motor vehicle, over irregular routes, in the transportation of: (1) *Gypsum and Gypsum Products*, and (2) *Materials, Equipment, and Supplies* used in the manufacture, distribution, or installation of gypsum and gypsum products (except commodities in bulk), from the facilities of Georgia-Pacific Corp., at or near Brunswick, GA, to points in FL, NC, and SC. (Hearing site: Atlanta, GA, or Jacksonville, FL.)

NOTE.—Dual operations are involved in this proceeding.

MC 123054 (Sub-20F), filed August 25, 1978. Applicant: R & H CORP., a Delaware corporation, 295 Grand Avenue, Box 469, Clarion, PA 16214. Representative: William J. Lavelle, 2310 Grant Building, Pittsburgh, PA 15219. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass containers, closures for glass containers, plastic articles, and fiberboard boxes*, (1) from Marienville, Parker, and points in Clarion County, PA, to points in PA, and (2) from Du Bois, PA, to points in AL, CT, DE, FL, GA, ME, MD, MA, MI, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VA, VT, WV, and DC. (Hearing site: Washington, DC, or Pittsburgh, PA.)

MC 123056 (Sub-8F), filed August 24, 1978. Applicant: FREDONIA TRUCK LINE, INC., Highway 96 and Jackson Street, Fredonia, KS 66736. Representative: Laurel D. McClellan, 401 North Sixth, P.O. Box 478, Fredonia, KS 66736. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Wheat middlings*, from Coffeyville, KS, to points in AR, MO (except St. Louis), and OK, under a continuing contract with Independent Mills, Inc., of Kansas City, MO. (Hearing site: Wichita, KS, or Springfield, MO.)

NOTE.—Dual operations are at issue in this proceeding.

MC 124025 (Sub-11F), filed September 29, 1978. Applicant: GLASS TRUCKING CO., a corporation, 200 Chestnut Street, P.O. Box 276, Newkirk, OK 74647. Representative: C. L. Phillips, Room 248, Classen Terrace Building, 1411 N. Classen, Oklahoma City, OK 73106. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Baler*

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wire, fencing, nails, welded wire panels, fence posts, and reinforcing bar, (except commodities which because of size or weight require the use of special equipment), (1) from Pueblo, CO, to points, in AZ, CA, NV, UT, MO, AR, and LA, and (2) from Kansas City, MO, to points in AR, LA, TX, OK, KS, NE, and CO, under a continuing contract with Glass Wholesale, Inc., of Newkirk, OK. (Hearing site: Oklahoma City, OK.)

MC 124411 (Sub-19F), filed September 1, 1978. Applicant: SULLY TRANSPORT, INC., P.O. Box 185, Sully, IA 50251. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Fertilizer and fertilizer materials,* in bulk, from the facilities of Land O'Lakes Agricultural Services Division, at or near Mason City, IA, to points in MN, NE, ND, SD, and WI. (Hearing site: Minneapolis, MN.)

MC 124692 (Sub-240F), filed August 24, 1978. Applicant: SAMMONS TRUCKING, a corporation, P.O. Box 4347, Missoula, MT 59806. Representative: J. David Douglas (same address as applicant). To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Iron and steel articles,* from Dallas, TX, to points in AZ, AR, CA, CO, GA, IL, KS, LA, NM, and OK. (Hearing site: Dallas, TX.)

MC 124896 (Sub-68F), filed August 28, 1978. Applicant: WILLIAMSON TRUCK LINES, INC., P.O. Box 3485, Wilson, NC 27893. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except in bulk), between Rocky Mount, NC, Oneida, NY, Mason City, IA, Independence, MO, La Grange, GA, Calhoun, GA, and Quakertown, PA. (Hearing site: Raleigh, NC, or Kansas City, MO.)

MC 124973 (Sub-11F), filed September 18, 1978. Applicant: ROY S. SARGEANT, INC., P.O. Box 95, Vienna, NJ 07880. Representative: Edward F. Bowes, 167 Fairfield Road, P.O. Box 1409, Fairfield, NJ 07006. To operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: (A)(1) *Frozen prepared dough, hors-d'oeuvres* and *bakery products,* and (2) *portion-controlled seafood,* when moving in mixed loads with the commodities named in (A)(1) above, (a) between the facilities of Durkee Foods, Inc., at Thorofare, Mullica Hills, and Swedesboro, NJ, on the one hand, and, on the other, the facilities of Durkee Foods, Inc., at Pittston, PA, (b) from the facilities of Durkee Foods, Inc., at Thorofare, Mullica Hills, and Swedesboro, NJ, to points in NH, VT, NY, CT, RI, MA, VA, WV, MD, IL, IN, MI, OH, and DC; (B) *bakery products,* from Hudsonville, MI, to the facilities of Durkee Foods, Inc., at Thorofare, Mullica Hills, and Swedesboro, NJ; and (C) *baking materials,* from Joliet, IL, and Louisville, KY, to the facilities of Durkee Foods, Inc., at Thorofare and North Bergen, NJ, under a continuing contract with Durkee Foods, Inc., a division of SCM Corp., of Cleveland, OH. (Hearing site: New York, NY, or Newark, NJ.)

MC 125335 (Sub-32F), filed October 2, 1978. Applicant: GOOD-WAY, INC., a Maryland corporation, P.O. Box 2283, York, PA 17405. Representative: Gailyn L. Larsen, P.O. Box 81849, Lincoln, NE 68501. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in or used by grocery, drug, and food business houses (except frozen, and commodities in bulk), from the facilities of Gulf Atlantic Distribution Services, at or near Forest Park, GA, to points in FL. (Hearing site: Houston, TX, or Harrisburg, PA.)

MC 128030 (Sub-118F), filed September 27, 1978. Applicant: THE STOUT TRUCKING CO., INC., P.O. Box 177, Urbana, IL 61801. Representative: James R. Madler, 120 W. Madison Street., Room 718, Chicago, IL 60602. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Animal feed, animal feed ingredients, and materials and supplies used in the manufacture and distribution of animal feed* (except commodities in bulk), between the facilities of Kal Kan Foods, Inc., at or near Mattoon, IL, on the one hand, and, on the other, points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the named facilities. (Hearing site: Chicago, IL.)

MC 128220 (Sub-25F), filed September 27, 1978. Applicant: RALPH LATHAM, d.b.a., LATHAM TRUCKING CO., P.O. Box 596, Burnside, KY 42519. Representative: Robert M. Pearce, P.O. Box 1899, Bowling Green, KY 42101. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Charcoal, charcoal briquettes, fireplace logs, wood chips, lighter fluid, vermiculite, and spices and sauces used in outdoor cooding* (except commodities in bulk), from the facilities of Kingsford Co., at or near (1) Louisville, KY, to points in IL, IN, IA, MI, MN, OH, PA, and WI, (2) Belle, MO, to points in CO, IL, IA, KS, MN, NE, ND, OK, SD, and WI, (3) Jackonsville, TX, to points in AL, AZ, AR, CA, CO, LA, MS, NV, NM, and OK, (4) Chicago, IL, to points in MN and WI, and (5) East St. Louis, IL, to points in IL, IN, IA, KY, MI, MN, OH, and WI. (Hearing site: Lexington or Louisville, KY.)

MC 128905 (Sub-6F), filed September 11, 1978. Applicant: ZERKLE TRUCKING CO., an Ohio corporation, 2400 Eighth Avenue, Huntington, WV 25703. Representative: John M. Friedman, 2930 Putnam Avenue, Hurricane, WV 25526. To operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: (1) *Plastic pipe and plastic pipe fittings,* and *materials* used in the installation of plastic pipe, from Wilton, IA, to points in KY, OH, VA, and WV, (2) *building materials and asbestos fibre cement pipe,* from Waukegan, IL, to points in KY, OH, VA, and WV, and (3) *insulation board,* from Alexandria, IN, and Rockdale, IL, to points in KY, OH, VA, and WV, under a continuing contract in (1), (2), and (3) above, with Johns-Manville Sales Corp. and Johns-Manville Perlite Corp., of Oak Brook, IL. (Hearing site: Charleston, WV.)

NOTE.—Dual operations may be at issue in this proceeding.

MC 133095 (Sub-199F), filed September 26, 1978. Applicant: TEXAS CONTINENTAL EXPRESS, INC., P.O. Box 434, Euless, TX 76039. Representative: Hugh T. Matthews, 2340 Fidelity Union Tower, Dallas TX 75201. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by farm supply stores and farm equipment stores, from points in the United States (except AK and HI), to points in Red River County, TX. (Hearing site: Dallas, TX.)

MC 133095 (Sub-200F), filed September 29,1978. Applicant: TEXAS-CONTINENTAL EXPRESS, INC., P.O. Box 434, Euless, TX 76039. Representative: Hugh T. Matthews, 2340 Fidelity Union Tower, Dallas, TX 75201. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Such commodities,* as are dealt in and used by manufacturers and distributors of alcoholic beverages (except commodities in bulk, in tank vehicles), between the facilities of Heublein, Inc., at or near Paducah, KY, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Dallas, TX.)

MC 133095 (Sub-201F), filed October 2, 1978. Applicant: TEXAS-CONTINENTAL EXPRESS, INC., P.O. Box 434, Euless, TX 76039. Representative: Kim G. Meyer, P.O. Box 872, Atlanta, GA 30301. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Hair care products, toilet preparations, hair dryers, and beauty salon supplies,* from the facilities of Helene Curtis Industries, Inc., at or near Franklin Park, IL, to points in TX. (Hearing site: Chicago, IL.)

MC 133095 (Sub-203F), filed October 2, 1978. Applicant: TEXAS-CONTINENTAL EXPRESS, INC., P.O. Box 434, Euless, TX 76039. Representative: Hugh T. Matthews, 2340 Fidelity Union Tower, Dallas, TX 75201. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Alcoholic beverages* (except in bulk), from Detroit, MI, to points in AZ, NM, CA, and NV. (Hearing site: Dallas, TX.)

MC 133326 (Sub-2F), filed August 28, 1978. Applicant: DIVERSIFIED AUTO FREIGHT, INC., P.O. Box 3045, Lake Charles, LA 70601. Representative: Gordon I. Herzog, 314 North Broadway, St. Louis, MO 63102. To operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Automobiles and automobile parts,* when moving in mixed loads with automobiles, in secondary movements, in truck-away service, (1) from Argentine, KS, and Houston, TX, to points in AR, IA, KS, MO, and NE, and (2) between points in AR, IA, KS, MO, and NE, under continuing contracts in (1) and (2) above, with (a) Volkswagen Mid-America, Inc., of St. Louis, MO, and (b) Volkswagen of America, Inc., of Englewood Cliffs, NJ. (Hearing site: St. Louis or Kansas City, MO.)

MC 133735 (Sub-7F), filed October 2, 1978. Applicant: AUDUBON TRANSPORT, INC., Wever, IA 52658. Representative: Richard D. Howe, 600 Hubbell Building, Des Moines, IA 50309. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Corn products,* in bulk, from the facilities of Hubinger Co., at or near Koekuk, IA, to points in IL, MO, KS, NE, SD, MN, WI, IN, and PA, (2) *corn products and soybean meal,* in bulk, from points in Macon County, IL, to the facilities of Hubinger Co., at or near Koekuk, IA, and (3) *corn products, fertilizers, and calcium chloride,* in bulk, from the facilities of Naples Terminal Co., at or near Naples, IL, to points in IA. (Hearing site: Des Moines, IA or Kansas City, MO.)

MC 134645 (Sub-25F), filed September 26, 1978. Applicant: LIVESTOCK SERVICE, INC., 1420 Second Avenue South, St. Cloud, MN 56301. Representative: Anthony E. Young, 29 South LaSalle Street, Suite 350, Chicago, IL 60603. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat byproducts, and articles distributed by meatpacking houses,* as described in sections A and C of appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 MCC 209 and 766 (except

hides and commodities in bulk), from the facilities of John Morrell & Co., at or near St. Paul, MN, to points in AL, FL, GA, KY, MS, NC, SC, and TN, restricted to the transportation of traffic originating at the named origins and destined to the indicated destinations. (Hearing site: Chicago, IL.)

NOTE.—Dual operations are at issue in this proceeding.

MC 134755 (Sub-156F), filed September 26, 1978. Applicant: CHARTER EXPRESS, INC., P.O. Box 2773, Springfield, MO 65804. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Confectionery products and cough drops* (except commodities in bulk), from the facilities of Luden's, Inc., at Reading, PA, to points in LA, TX, AR, OK, MO, KS, and CO. (Hearing site: Kansas City, MO.)

NOTE.—Dual operations may be at issue in this proceeding.

MC 134922 (Sub-272F), filed August 14, 1978. Applicant: B. J. McADAMS, INC., Route 6, Box 15, North Little Rock, AR 72118. Representative: Bob McAdams (same address as applicant). To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Adhesives* (except in bulk), from La Mirada and Compton, CA, to those points in the United States in and east of ND, SD, NE, KS, OK, and TX. Condition: Pursuant to the decision in MC 134922 (Sub-95 et al.), served September 7, 1978, this proceeding is being held open until such time as a determination of applicant's fitness has been made. (Hearing site: Los Angeles, CA or Washington, DC.)

MC 134922 (Sub-273F), filed August 16, 1978. Applicant: B. J. McADAMS, INC., Route 6, Box 15, North Little Rock, AR 72118. Representative: Bob McAdams (same address as applicant). To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Plastic materials, plastic products, plastic powders, plastic granules, and plastic pellets* (except commodities in bulk), from Kobuta, PA, to points in KS, OK, TX, MO, AR, LA, TN, MS, AL, GA, and FL. Condition: Pursuant to the decision in MC 134922 (Sub-95 et al.), served September 7, 1978, this proceeding is being held open until such time as a determination of applicant's fitness has been made. (Hearing site: Philadelphia, PA or Washington, DC.)

MC 134922 (Sub-274F), filed August 21, 1978. Applicant: B. J. McADAMS, INC., Route 6, Box 15, North Little Rock, AR 72118. Representative: Bob McAdams (same address as applicant). To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Clay,* in bags, from Sandersville and Macon, GA, to Hillsdale, MI, (2) *chemicals, adhesives, and plastic articles* (except commodities in bulk), from Hillsdale, MI, to points in CA, WA, OR, ID, NV, UT, AZ, CO, NM, OK, and TX, (3) *adhesives and plastic articles* (except commodities in bulk), from Orange, CT, Jamestown, NY, and points in NJ, to points in CA, WA, OR, ID, NV, UT, AZ, CO, NM, OK, and TX, and (4) *chemicals* (except in bulk), from Orange, CT, Jamestown, NY, and points in NJ, to points in WA, ID, CO, and NM. Condition: Pursuant to the decision in MC 134922 (Sub-95 et al.), served September 7, 1978, this proceeding is being held open until such time as a determination of applicant's fitness has been made. (Hearing site: Philadelphia, PA or Washington, DC.)

MC 135185 (Sub-36F), filed September 26, 1978. Applicant: COLUMBINE CARRIERS, INC., P.O. Box 15246, 1720 East Garry Avenue, Santa Ana, CA 92705. Representative: Charles J. Kimball 350 Capitol Life Center, 1600 Sherman Street, Denver, CO 80203. To operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: (1) *Chemicals, cleaning compounds, disinfectants, deodorants, drug and toilet preparations, household cleaning supplies, hydraulic cement, sand, adhesive tape, plastic synthetics, rubber cement, caulking and brazing compounds* (except commodities in bulk), from the facilities of Lehn & Fink Products Co., a division of Sterling Drug, Inc., at on near Lincoln and Decatur, IL, to points in LA and MS, and (2) *drugs,* from the facilities of sterling drug, Inc., at or near Gulfport, MS, to the facilities of Sterling Drug, Inc., at or near Des Plaines, IL, and Secaucus, NJ, under a continuing contract in (1) and (2) above, with Sterling Drug, Inc., of New York, NY. (Hearing site: New York, NY.)

MC 136315 (Sub-40F), filed September 27, 1978. Applicant: OLEN BURRAGE TRUCKING, INC., Route 9, Box 22-A, Philadelphia, MS 39350. Representative: Fred W. Johnson, Jr., 1500 Deposit Guaranty Plaza, P.O. Box 22628, Jackson, MS 39205. To operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Dump trailers and platform trailers,* from the facilities of Dorsey Trailers, Inc., at Hummels Wharf, PA, to points in AR, LA, MS, and TX. (Hearing site: Jackson, MS or Washington, DC.)

NOTE.—Dual operations are at issue in this proceeding.

MC 136605 (Sub-72F), filed September 26, 1978. Applicant: DAVIS BROS. DIST., INC., P.O. Box 8058, Missoula, MT 59807. Representative: Allen P.

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Felton (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Furnaces, and parts, components, and accessories*, used in the installation of furnaces, from the facilities of Lear Siegler, Mamoth Division, at or near Minneapolis, MN, to points in the United States in and west of ND, SD, NE, KS, OK, and TX (except AK and HI). (Hearing site: Minneapolis, MN.)

MC 138505 (Sub-9F), filed September 14, 1978. Applicant: METROPOLITAN CONTRACT SERVICES, INC., 9225 Katy Freeway, Suite 110, Houston, TX 77024. Representative: John W. McWhirter, Jr., P.O. Box 2150, Tampa, FL 33601. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities*, as are dealt in by retail department stores, between the facilities of Montgomery Ward & Co., Inc., in Pasco, Pinellas, Hillsborough, and Polk Counties, FL, under a continuing contract with Montgomery Ward & Co., Inc., of Chicago, IL. (Hearing site: Houston, TX.)

MC 138875 (Sub-108F), filed September 25, 1978. Applicant: SHOEMAKER TRUCKING CO., a corporation, 11900 Franklin Road, Boise, ID 83705. Representative: F. L. Sigloh (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Tile and tile products*, and (2) *materials and supplies*, used in the manufacture, distribution, and installation of the commodities in (1) above (except commodities in bulk), from Minerva, OH, to points in AZ, CA, CO, ID, MT, NV, OR, WA, and WY, restricted to the transportation of traffic originating at the named origin. (Hearing site: Cleveland OH or Washington, DC.)

MC 138882 (Sub-136F), filed August 16, 1978. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O. Box 707, Troy, AL 36081. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fiberboard containers and pulpboard containers*, between the facilities of Sonoco Products Co., at Charleston, SC, Henderson, TN, Henderson, KY, Alpha, OH, Chicago, IL, St. Louis, MO, and Houston, TX, on the one hand, and on the other, points in the United States (except AK and HI). (Hearing site: Birmingham, AL or Charleston, SC.)

MC 139323 (Sub-5F), filed August 28, 1978. Applicant: KARS TRANSPORT, INC., 3333 Northwest 116 Street, Miami, FL 33167. Representative: Richard B. Austin, Suite 214, Palm Coast II Building, 5255 Northwest 87th Avenue, Miami, FL 33178. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except cement, those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between those points in FL in and south of Brevard, Orange, Polk, Hillsborough, and Pinellas Counties (except points in Monroe County). (Hearing site: Miami, FL.)

MC 139482 (Sub-66F), filed August 21, 1978. Applicant: NEW ULM FREIGHT LINES, INC., County Road 29 West, New Ulm, MN 56073. Representative: Samuel Rubenstein, 301 North Fifth Street, Minneapolis, MN 55403. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Scrap rubber*, from the facilities of Eastern Products Corp., at Andover and Boston, MA, to points in AZ, AR, CA, CO, ID, IL, IN, IA, KS, KY, MI, MN, MO, MT, NE, NV, NM, NY, ND, OH, OK, OR, PA, SD, TN, TX, UT, VA, WA, WV, WI, and WY. (Hearing site: Minneapolis or St. Paul, MN.)

NOTE.—Dual operations are at issue in this proceeding.

MC 139495 (Sub-388F), filed September 26, 1978. Applicant: NATIONAL CARRIERS, INC., 1501 East Eighth Street, P.O. Box 1358, Liberal, KS 67901. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bakery products*, in vehicles equipped with mechanical refrigeration, from the facilities of Interbake Foods, Inc., at or near Richmond, VA, to points in AR, AZ, CA, CO, CT, IL, IN, IA, KS, KY, LA, ME, MA, MI, MN, MS, MO, MT, NE, NM, ND, OH, OK, OR, RI, SD, TN, TX, WA, WI, and WY. (Hearing site: Washington, DC.)

MC 139495 (Sub-390F), filed September 28, 1978. Applicant: NATIONAL CARRIERS, INC., 1501 East Eighth Street, P.O. Box 1358, Liberal, KS 67901. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture*, from the facilities of Thomasville Furniture Industries, Inc., at or near (a) Appomattox and Brookneal, VA, and (b) Thomasville, Pleasant Garden, Lenoir, Hickory, and Winston-Salem, NC, to points in AZ, AR, CA, CO, CT, ID, IL, IA, KS, LA, ME, MA, MN, MO, MT, NE, NV, NH, NM, NC, ND, OK, OR, RI, SD, TX, UT, VT, VA, WA, WI, and WY. (Hearing site: Washington, DC.)

MC 139615 (Sub-19F), filed September 29, 1978. Applicant: D.R.S. TRANSPORT, INC., P.O. Box 29, Oskaloosa, IA 52577. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Pipe, pipe fittings, valves, and hydrants*, and (2) *materials and supplies*, used in the installation of the commodities in (1) above (except commodities in bulk), from the facilities of Clow Corp. in Talladega County, AL, and at or near Birmingham, AL, to points in the United States (except AL, AK, and HI). (Hearing site: Chicago, IL.)

MC 139615 (Sub-20F), filed September 29, 1978. Applicant: D.R.S. TRANSPORT, INC., P.O. Box 29, Oskaloosa, IA 52577. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Pipe, pipe fittings, valves, and hydrants*, and (2) *materials and supplies*, used in the installation of the commodities in (1) above (except commodities in bulk), from the facilities of Clow Corp., at or near Columbia, MO, to points in the United States (except AK, MO, and HI). (Hearing site: Chicago, IL.)

MC 139906 (Sub-17F), filed August 16, 1978. Applicant: INTERSTATE CONTRACT CARRIER CORP., a Delaware corporation, 2156 West 2200 South, P.O. Box 30303, Salt Lake City, UT 84125. Representative: Richard A. Peterson, P.O. Box 81849, Lincoln, NE 68501. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products*, from the facilities of Beveridge Paper Co., Inc., at Indianapolis, IN, to points in AZ, CA, CO, NM, OR, UT, and WA, restricted to the transportation of traffic originating at the named origins. Condition: Issuance of a certificate in this proceeding is subject to prior or coincidental cancellation of permit in MC 134599 (Sub-125), issued January 30, 1978. (Hearing site: Lincoln, NE or Salt Lake City, UT.)

NOTE.—Dual operations are at issue in this proceeding. The purpose of this application is to convert contract carrier authority to common carrier authority.

MC 139973 (Sub-51F), filed September 15, 1978. Applicant: J. H. WARE TRUCKING, INC., P.O. Box 398, Fulton, MO 65251. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles* (except those which because of size or weight require the use of special equipment), from the facilities of Keystone Consolidated Industries, Inc., at or near (1) Greenville, MS, to points in AZ and NM, and (2) Santa Clara, CA, to points in AZ, NM, and TX. (Hearing site: Chicago, IL or Kansas City, MO.)

NOTE.—Dual operations may be at issue in this proceeding.

MC 139973 (Sub-52F), filed September 15, 1978. Applicant: J. H. WARE TRUCKING, INC., P.O. Box 398, Fulton, MO 65251. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from the facilities of Northwestern Steel & Wire Co., at or near Sterling and Rock Falls, IL, to points in TX, OK, AR, LA, and MS. (Hearing site: Chicago, IL, or Kansas City, MO.)

NOTE.—Dual operations may be at issue in this proceeding.

MC 140024 (Sub-128F), filed August 23, 1978. Applicant: J. B. MONTGOMERY, INC., a Delaware corporation, 5565 East 52d Avenue, Commerce City, CO 80022. Representative: Jeffrey A. Knoll (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Refractories*, from the facilities of C-E Industrial Products Division, Combustion Engineering, Inc., at Siloam, KY, to points in MI, OH, IN, IL, and WI. (Hearing site: Philadelphia, PA, or Washington, DC.)

MC 140033 (Sub-67F), filed September 15, 1978. Applicant: COX REFRIGERATED EXPRESS, INC., 10606 Goodnight Lane, Dallas, TX 75220. Representative: D. Paul Stafford, Suite 1125 Exchange Park, P.O. Box 45538, Dallas, TX 75245. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) (a) *Foodstuffs, fats, oils*, (except in bulk, in tank vehicles), *restaurant supplies, restaurant furniture, and restaurant fixtures*, and (b) *agricultural commodities, fish, and poultry* otherwise exempt from economic regulation under section 203(b)(6) of the Interstate Commerce Act, when moving in the same vehicle with the commodities named in (1)(a) above, between Carpinteria, CA, and Florence, KY, restricted to the transportation of traffic originating at or destined to the facilities of Sambo's Restaurants, Inc., and (2) *Meats, meat products and meat byproducts, and articles distributed by meat-packing houses*, as described in sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766 (except hides and commodities in bulk, in tank vehicles), from Friona, Amarillo, Plainview, and Hereford, TX, to Carpinteria, CA. (Hearing site: Dallas, TX, or San Francisco, CA.)

NOTE.—Dual operations may be at issue in this proceeding.

MC 140389 (Sub-37F), filed October 16, 1978. Applicant: OSBORN TRANSPORTATION, INC., P.O. Box 1830, Gadsden, AL 35902. Representative: Clayton R. Byrd, P.O. Box 12566, Atlanta, GA 30315. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat byproducts, and articles distributed by meat-packing houses*, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 MCC 209 and 766 (except hides and commodities in bulk), from the facilities of John Morrell & Co., at or near Sioux City, IA, and St. Paul, MN, to points in AL, FL, GA, MS, NC, SC, and TN, restricted to the transportation of traffic originating at the named origin. (Hearing site: Chicago, IL.)

MC 140389 (Sub-38F), filed October 16, 1978. Applicant: OSBORN TRANSPORTATION, INC., P.O. Box 1830, Gadsden, AL 35902. Representative: Clayton R. Byrd, P.O. Box 12566, Atlanta, GA 30315. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat byproducts, and articles distributed by meat-packing houses*, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 MCC 209 and 766 (except hides and commodities in bulk), from the facilities of John Morrell & Co., at or near (1) Memphis, TN, and Shreveport, LA, to points in AL, FL, GA, NC, SC, and TN, and (2) Shreveport, LA, to points in MS, restricted in (1) and (2) above, to the transportation of traffic originating at the named origins. (Hearing site: Chicago, IL.)

MC 140484 (Sub-34F), filed August 23, 1978. Applicant: LESTER COGGINS TRUCKING, INC., 2671 East Edison Avenue, P.O. Box 69, Fort Meyers, FL 33902. Representative: Chester A. Zyblut, 366 Executive Building, 1030 15th Street NW., Washington, DC 20005. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat byproducts, and articles distributed by meat-packing houses*, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 MCC 209 and 766 (except hides and commodities in bulk), from the facilities of Swift & Co., at Rochelle, St. Charles, and Bradley, IL, to points in OH, and those points in NY and PA on and west of Interstate Hwy 81. (Hearing site: Chicago, IL.)

MC 140601 (Sub-8F), filed September 29, 1978. Applicant: BILLY FRANK, d.b.a., FRANK BROS., 349 Abbott Avenue, Hillsboro, TX 76645. Representative: Charles E. Munson, 500 West 16th Street, P.O. Box 1945, Austin, TX 78767. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Asbestos cement pipe and fittings, and accessories for asbestos cement pipe*, from the facilities of CertainTeed Corp., at Hillsboro, TX, to points in the United States (except AK, AZ, AR, CA, CO, HI, KS, LA, MS, MO, NE, NM, OK, TX, and TN); and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (1) above, in the reverse direction, under a continuing contract with CertainTeed Corp., of Valley Forge, PA. (Hearing site: Dallas, TX.)

MC 141046 (Sub-11F), filed August 28, 1978. Applicant: MASON O. MITCHELL, d.b.a. M. MITCHELL TRUCKING, 1911 I Street, LaPorte, IN 46350. Representative: Norman R. Garvin, 1301 Merchants Plaza, Indianapolis, IN 46204. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Wood products, plastic products, toothpick dispensers, sporting goods, and accessories for sporting goods*, from the facilities of Forster Mfg. Co., at or near Wilton, ME, to points in CO, under continuing contracts with Forster Mfg. Co., Inc., of Wilton, ME. (Hearing site: Indianapolis, IN, or Chicago, IL.)

MC 142413 (Sub-6F), filed September 15, 1978. Applicant: ROBERT STEVEN IRWIN, an individual, Route 1, Box 86-A, Jennings, FL 32060. Representative: John H. Wilbur, P.O. Box 58, Jacksonville, FL 32201. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Roof and floor joists*, and (2) *materials, accessories, and equipment* used in the manufacture of roof and floor joists, from the facilities of Trus Joist Corp. at Valdosta, GA, to points in DE, NJ, PA, NY, OK, CT, RI, MI, WI, IA, IL, IN, and MO, under a continuing contract with Trus Joist Corp. of Valdosta, GA. (Hearing site: Jacksonville, FL, or Valdosta, GA.)

MC 142559 (Sub-63F), filed October 12, 1978. Applicant: BROOKS TRANSPORTATION, INC., 3830 Kelley Avenue, Cleveland, OH 44114. Representative: John P. McMahon, 100 East Broad Street, Columbus, OH 43215. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Knocked down buildings, building materials, building parts, and building supplies* (except commodities in bulk), between Niles, OH, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Columbus, OH, or Washington, DC.)

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NOTE.—Dual operations may be at issue in this proceeding.

MC 142792 (Sub-2F), filed August 21, 1978. Applicant: DENNIS I. OLSON, d.b.a. TWO WAY TRUCKING, 4 Ginger Cove Road, Valley, NE 68064. Representative: Donald L. Stern, Suite 610, 7171 Mercy Road, Omaha, NE 68106. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cheese*, from the facilities of Newman Grove Creamery Co., at Newman Grove, NE, to points in MN, WI, IL, IN, MI, OH, PA, DE, NJ, NY, and VT, restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations. (Hearing site: Omaha, NE.)

MC 142920 (Sub-1F), filed September 27, 1978. Applicant: OLIVER TRUCKING CORP., 2203 West Oliver Street, Indianapolis, IN 46221. Representative: Morton E. Kiel, Suite 6193, 5 World Trade Center, New York, NY 10048. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities as are dealt in by manufacturers and distributors of sound, communications, educational, and entertainment commodities* (except commodities in bulk), from Danbury and West Haven, CT, Bellmawr, Burlington, Cherry Hill, East Brunswick, Flemington, and Pitman, NJ, New York, NY, and points in CA, to Terre Haute and Indianapolis, IN, under a continuing contract with CBS Inc., of New York, NY. (Hearing site: New York, NY.)

MC 142941 (Sub-18F), filed August 29, 1978. Applicant: SCARBOROUGH TRUCK LINES, INC., 1313 North 25th Avenue, Phoenix, AZ 85009. Representative: Lewis P. Ames, 10th Floor, 111 West Monroe, Phoenix, AZ 85003. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Confectioneries*, and *dessert preparations* in vehicles equipped with mechanical refrigeration, and (2) *coin-operated vending machines*, from Chicago, IL, to points in AR, IA, KS, LA, MO, NE, OK, and TX. (Hearing site: Chicago, IL.)

MC 143691 (Sub-13F), filed August 28, 1978. Applicant: PONY EXPRESS COURIER CORP., a Delaware corporation, P.O Box 4313, Atlanta, GA 30302. Representative: Francis J. Mulcahy (same address as applicant). To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Commerical papers, documents, written instruments, business records, accounting processing media and data processing media*, (1) between Memphis International Airport, at Memphis, TN, Knoxville Downtown Airport, at Knoxville, TN, Nashville Metropolitan Airport, at Nashville, TN, and Lovell Field, at Chattanooga, TN, on the one hand, and, on the other, points in TN, (2) Between Memphis International Airport, at Memphis, TN, on the one hand, and, on the other points in AR and MO, (3) between Greater Cincinnatic Airport, at Florence, KY, Port Columbus International Airport, at Columbus, OH, Cleveland-Hopkins International Airport, at Cleveland, OH, Dayton Airport, at Dayton, OH, and Toledo Airport, at Toledo, OH, on the one hand, and, and on the other, points in OH, (4) between Louisville, KY, on the one hand, and, on the other, points in TN and OH, restricted in (1), (2), and (3) above to the transporation of traffic having an immediate prior or subsequent movement by air, under a continuing contract in (1), (2), (3) and (4) above with Federal Intermediate Credit Bank, of Louisville, KY. (Hearing site: Louisville, KY.)

MC 144041 (Sub-19F), filed August 31, 1978. Applicant: DOWNS TRANSPORTATION CO., INC., 2750 Canna Ridge Circle NE., Atlanta, GA 30345. Representative: K. Edward Wolcott, Post Office Box 872, Atlanta, GA 30301. To operate as a *common carrier*, by motor vehicle, over irregular routes transporting: *Paper articles*, and *plastic articles* (except commodities in bulk), between those points in the United States on and east of U.S. Hwy 85. (Hearing site: Atlanta, GA.)

NOTE.—Dual operations may be at issue in this proceeding.

MC 144259 (Sub-4F), filed October 10, 1978. Applicant: Jennaro Lines, Inc., 2332 South Peck Road, Whittier, CA 90601. Representative: MILTON W. FLACK, 4311 Wilshire Boulevard, Suite 300, Los Angeles, CA 90010. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Cleaning compounds* (except in bulk), in vehicles equipped with mechanical refrigeration, from the facilities of Quality Pac, at or near Chicago, IL, to points in CA, OR, and WA, under a continuing contract with Gold Seal Co., of Summit, NJ. (Hearing site: Los Angeles, CA.)

MC 144330 (Sub-41F), filed September 28, 1978. Applicant: UTAH CARRIERS, INC., P.O. Box 1218, Freeport Center, Clearfield, UT 84110. Representative: Rick J. Hall, P.O. Box 2465, Salt Lake City, UT 84110. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber and lumber products*, from points in WY to points in AR, KY, LA, MS, and TN. (Hearing site: Salt Lake City, UT, or Cheyenne, WY.)

MC 144440 (Sub-2F), filed October 4, 1978. Applicant: RICHARD D. DOMBACH, 58 South Duke Street, Millersville, PA 17551. Representative: John W. Metzger, 49 North Duke Street, Lancaster, PA 17602. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Asphalt sealing coating* (except in bulk), from the facilities of Chevron U.S.A., Inc., at or near Baltimore, MD, to the facilities of Henry S. Breneman, at Lancaster, PA, under a continuing contract with Henry S. Breneman, of Lancaster, PA. (Hearing site: Lancaster or Harrisburg, PA.)

MC 144756 (Sub-1F), filed July 10, 1978. Applicant: DEDICATED TRUCKING CORP., 183 Highway 508, Chehalis, WA 98532. Representative: Henry C. Winters, 235 Evergreen Building, Renton, WA 98055. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: I.(A) *Petroleum and petroleum products, emulsified petroleum sizing, and gasoline additives, in containers, in mixed loads with such commodities as are dealt in by suppliers, marketers, or distributors of petroleum products;* and (B) *Such commodities as are dealt in by suppliers, marketers, or distributors of petroleum products, in mixed loads with petroleum and petroleum products, emulsified petroleum sizing, and gasoline additives, in containers*, (1) from Seattle, WA, to points in CA, ID, MT, OR and WY, and (2) from Wilmington, CA, to points in AZ, CO, NV, NM, UT and WA, under continuing contracts in I(A) and (B) above, with Texaco, Inc., of Houston TX: and II.(A) *charcoal, vermiculite, and hickory chips, in bags, charcoal ligher fluid and fireplace logs*, from Elk Grove, CA, and Springfield, OR, to points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA and WY; and (B) *materials and supplies used in the manufacture and distribution of charcoal, vermiculite, hickory chips, charcoal ligher fluid, and fireplace logs*, (except commodities in bulk, in tank vehicles), from points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA and WY, to Elk Grove, CA, and Springfield, OR; and (C) *fireplace logs*, from Stockton, CA, to points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA and WY: and (D) *materials and supplies used in the manufacture and distribution of fireplace logs*, from points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA and WY to Stockton, CA, under continuing contracts in II(A), (B), (C) and (D) above, with Kingsford Co., of Louisville, KY. (Hearing site: Portland, OR, or Seattle, WA.)

MC 144953 (Sub-1F), filed September 15, 1978. Applicant: MULLEN TRUCKING, LTD., 6204-A Burbank Road SE., Calgary, AB, Canada T2H 2C2. Representative John T. Wirth, 2310 Colorado State Bank Building, 1600 Broadway, Denver, CO 80202. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bentonite, barite, lignite, and drilling mud additives*, (except commodities in bulk), from points in MT, NV, ND, SD, and WY, to the ports of entry on the International Boundary line between the United States and Canada in WA, ID, and MT, restricted to the transportation of traffic in foreign commerce. (Hearing site: Denver, CO, or Great Falls, MT).

MC 145106F, filed July 31, 1978. Applicant: EDINA CARTAGE CO., a corporation, 1000 Taylor Avenue, Flat River, MO 63601. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, DC 20001. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Glass products, metal products, plastic products, clay and clay products, feldspar, and talc*, (except commodities in bulk); (2) *molds and machinery* used in the manufacture of glass products, (except commodities in bulk); (3) *bottle coating systems* (except commodities in bulk); (4) *parts and accessories* for the commodities named in (2) and (3) above, (except commodities in bulk), and (5) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (1), (2), (3), and (4) above, (except commodities in bulk), between the facilities of Flat River Glass Co., at or near Flat River, MO, on the one hand, and, on the other, points in the United States (except AK and HI), under a continuing contract with Flat River Glass Company, of Flat River, MO. (Hearing site: Washington, DC.)

MC 145180 (Sub-1F), filed September 29, 1978. Applicant: THREE TRANSPORTATION, DIVISION OF POLK WELDING AND ERECTION CO., INC., 1909 Hemlock Avenue, P.O. Box 2698, Tampa, FL 33619. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fiberglass and plastic gasoline storage tanks, preconditioners, ducts, and industrial ventilating commodities*, from the facilities of the Fiberglass Equipment Division of Dart Environmental Services, Co., at Bartow, FL, to points in AL, AR, GA, KY, LA, MS, NC, SC, TN, and VA. (Hearing site: Tampa, FL.)

NOTE.—The person or persons who appear to be engaged in common control must either file an application under section 5(2) of the Interstate Commerce Act, or submit an affidavit indicating why such approval is unnecessary.

MC 145182 (Sub-1F), filed August 21, 1978. Applicant: M & M DELIVERY SERVICE, INC., 116 Chestnut Street, Mount Sterling, OH 43143. Representative: David A. Turano, 100 East Broad Street, Columbus, OH 43215. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in by retail department stores, between Washington Court House, OH, on the one hand, and, on the other, points in OH, under continuing contracts with Spiegel, Inc. and Aldens, Inc., of Chicago, IL. (Hearing site: Columbus, OH.)

MC 145204F, filed August 4, 1978, and previously noticed in the FEDERAL REGISTER issue of October 12, 1978. Applicant: TVF SECURITY CO., INC., P.O. Box 815, Warsaw, IN 46580. Representative: Donald W. Smith, P.O. Box 40659, Indianapolis, IN 46240. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Such commodities* as are sold in vending machines, (2) *materials, equipment, and supplies* for vending machines, from St. Louis, MO, and points in IL, OH, MI, KY, IN, and WI, to the facilities of Bertsch Vending Co., Inc., at Warsaw, Marion, Goshen, Elkhart, Lebanon, and Bloomington, IN, and Owensboro, KY; and (3) *potato chips, potato twists, potato puffs, fried pork skins*, and *pretzels*, from Beloit, WI, Louisville, KY, St. Louis, MO, and Allen Park, MI, to Warsaw, IN, under continuing contracts in parts (1) and (2) above with Bertsch Vending Co., Inc., of Warsaw, IN, and in part (3) above with Frito-Lay, Inc., of Dallas, TX. (Hearing site: Indianapolis, IN, or Chicago, IL.)

NOTE.—This republication adds part (3) of the commodity description and Frito-Lay as a contracting shipper.

MC 145232F, filed August 14, 1978. Applicant: PETER C. LANEGRAN, doing business as, PMW TRUCKING SERVICE, 359 5th Avenue North, South St. Paul, MN 55075. Representative: Elmer B. Trousdale, 1700 First National Bank Building, St. Paul, MN 55101. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, those requiring special equipment, petroleum, and cement, in bulk), from points in MN, to points in ND, SD, and WI, under a continuing contract with Knox Lumber Co., of St. Paul, MN. (Hearing site: St. Paul or Minneapolis, MN.)

MC 145299F, filed August 31, 1978, previously published in the FEDERAL REGISTER issue of October 3, 1978. Applicant: KEY LEASING, INC., 1423 Jefferson, Naperville, IL 60068. Representative: Stephen H. Loeb, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Appliances*, from the facilities of Amana Refrigeration, Inc., at Franklin Park, IL, to points in IN and OH, and (2) *damaged appliances*, in the reverse direction, under contract with Amana Refrigeration, Inc., of Franklin Park, IL. (Hearing site: Chicago, IL.)

NOTE.—This republication shows the inclusion of part (2).

MC 145304F, filed August 25, 1978. Applicant: LAMPTON-LOVE, INC., 134 South Lamar Street, Jackson, MS 39201. Representative: Donald B. Morrison, 1500 Deposit Guaranty Plaza, Jackson, MS 39205. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquefied petroleum gas*, in bulk, in tank vehicles, from Hattiesburg and Pascagoula, MS, to points in AL, AR, FL, GA, LA, and TN. (Hearing site: Jackson, MS.)

NOTE.—(1) The certificate to be issued in this proceeding shall be limited in point of time to period expiring 5 years from the effective date thereof. (2) The person or persons who appear to be engaged in common control must either file an application under section 5(2) of the interstate Commerce Act, or submit an affidavit indicating why such approval is unnecessary.

MC 145305F, filed August 30, 1978. Applicant: BEVTRANS, INC., a California corporation, P.O. Box 778, Hartford, CT 06101. Representative: William J. Boyd, 600 Enterprise Drive, Suite 222, Oak Brook, IL 60521. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in and used by manufacturers and distributors of alcoholic beverages, between the facilities of Heublein, Inc., at or near Paducah, KY, on the one hand, and, on the other, points in the United States (except AK and HI), under a continuing contract with Heublein, Inc., of Hartford, CT. (Hearing site: New York, NY, or Washingtonton, DC.)

MC 145356F, filed August 28, 1978. Applicant: L. E. MARKLAND, 655 Lion Court, Casper, WY 82601. Representative: Ward A. White, P.O. Box 568, Cheyenne, WY 82001. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Cement*, in bulk, (a) from Lyons, CO, to points in NE, UT, and WY, and (b) from Trident and Montana City, MT, to points in UT and WY; (2) *fly ash*, in bulk, from the Dave Johnston Power Plant, at Glenrock, WY, to points in CO, MT, UT, WY, and those in NE on and west of NE Hwy 61; and (3) *sand*, in bulk, from Pueblo, CO, Brady, TX, and Houck, AZ, to points in CO, UT, and WY, under continuing contracts with Halliburton Services, of Duncan, OK. (Hearing site: Cheyenne or Casper, WY.)

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MC 145363F, filed September 13, 1978. Applicant: BREWTON EXPRESS, INC., P.O. Box 508, Winnfield, LA 71483. Representative: Brian E. Brewton (same address as applicant). To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Construction materials and construction supplies*, between points in AL, AR, LA, MS, OK, TN, and TX, under a continuing contract with Powell Lumber Co., of Lake Charles, LA. (Hearing site: New Orleans, LA, or Washington, DC.)

MC 14533F, filed September 15, 1978. Applicant: COLORADO STEEL & WIRE TRANSPORATION CO., INC., Route 1, Box 161C, Eaton, CO 80615. Representative: Truman A. Stockton, Jr., The 1650 Grant Street Building, Denver, CO 80203. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Steel fence posts, rebars, barbed bailing wire, angles, smooth bars, t-bar stock, fence, nails, and welded fabric*, from the facilities of Colorado Steel & Wire Co., at or near Loveland, CO, to points in AZ, ID, IA, IL, KS, MT, MN, ME, NM, ND, SD, TX, OK, UT, WI, and WY, and (2) *materials*, used in the manufacture of the commodities named in (1) above, in the reverse direction, under a continuing contract with Colorado Steel & Wire Co., of Loveland, CO. (Hearing site: Denver, CO.)

MC 145436F, filed September 15, 1978. Applicant: RONALD A. KOTTKE, doing business as KOTTKE TRUCKING, 520 Second Street NW., Ortonville, MN 56278. Representative: Samuel Rubenstein, 301 North Fifth Street, Minneapolis, MN 55403. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Canned goods*, from Arlington and Ortonville, MN, and Bloomer, WI, to points in CA, CO, MT, ND, OR, SD, UT, and WA, under a continuing contract with Big Stone Inc., of Chaska, MN. (Hearing site: Minneapolis, MN.)

MC 145480F, filed August 31, 1978. Applicant: ED WOLFE TRUCKING, INC., 20425 Ahha Lane, Bend, OR 97701. Representative: Philip G. Skofstad, P.O. Box 594, Gresham, OR 97030. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Lime sludge*, in bulk, from points in Yakima County, WA, to points in OR; (2) *volcanic aggregate*, in bulk, from points in Deschutes County, OR, to points in WA; (3) *crushed agri gypsum rock*, in bulk, from points in Washoe and Pershing Counties, NV, to points in OR; (4) *dry fertilizer*, in bulk, from points in Benton County, WA, to points in Wasco, Jefferson, Crook, Deschutes, Wheeler, Harney, Lake, and Klamath Counties, OR; and (5) *clay*, in bulk, from points in Placer County, CA, to Klamath Falls, OR. (Hearing site: Bend, OR.)

NOTE.—(a) Dual operations may be at issue in this proceeding; (b) one purpose of this application is to convert existing contract authority to common. That portion of this application which seeks to extend authority is as follows: In (2) above, carrier presently holds contract authority only to serve points in Yakima and Benton Counties, WA, as destination points; in (3) above, carrier presently holds contract authority only to serve the facilities of Midstate Fertilizer Co., at or near Empire, NV, as an origin point, and to serve points in Crook, Deschutes, and Jefferson Counties, OR, as destination points; and in (4) and (5) above, all authority constitutes an extension.

PASSENGER AUTHORITY

MC 74761 (Sub-21F), filed August 23, 1978. Applicant: TAMIAMI TRAIL TOURS, INC. d.b.a., TRAILWAYS, 200 Spring Street NW., Atlanta, GA 30303. Representative: Robert C. Boozer, 1400 Candler Building, 127 Peachtree Street NE., Atlanta, GA. To operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Passengers and their baggage, express, and newspapers*, in the same vehicle with passengers, (1) between Atlanta, GA, and Orlando, FL, from Atlanta, GA over Interstate Hwy 75 to junction GA Hwy 257, then over Ga Hwy 257 to Cordele, GA, then over U.S. Hwy 280 to junction Interstate Hwy 75, then over Interstate U.S. Hwy 75 to junction U.S. Hwy 90, then over U.S. Hwy 90 to Lake City, FL then over FL Hwy 47 to junction Interstate Hwy 75, then over Interstate Hwy 75 to junction FL Hwy 26, then over FL Hwy 26 to Gainesville, FL, then over U.S. Hwy 441 to junction FL Hwy 331, then over FL Hwy 331 to junction FL Hwy 121, then over FL Hwy 121 to junction Interstate Hwy 75, then over Interstate Hwy 75 to junction U.S. Hwy 27 near Ocala, FL, then over U.S. Hwy 27 to junction FL Hwy 50 at Clermont, FL, then over FL Hwy 50 to Orlando, FL, and return over the same route, serving the intermediate points of Macon, Cordele, Tifton, and Valdosta, GA, and Lake City and Gainesville, FL, and all intermediate points between Gainsville, FL, and Orlando, FL, and (2) between Statenville, GA, and Lake City, FL, from Statenville, GA over U.S. Hwy 129 to Jasper, FL, then over U.S. Hwy 41 to Lake City, and return over the same route, serving all intermediate points. (Hearing sites: Atlanta and Valdosta, GA and Gainesville and Orlando, FL.)

MC 126430 (Sub-1F), filed September 26, 1978. Applicant: TRENTWAY BUS LINES, LTD., P.O. Box 1017, Peterborough, ON, Canada K9J7A5. Representative: Jeremy Kahn, Suite 733, Investment Building, 1511 K Street, NW., Washington, DC 20005. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage*, in the same vehicle with passengers; in round-trip charter operations, beginning and ending at ports of entry on the international boundary line between the United States and Canada, and extending to points in the United States (except HI), restricted to the transportation of traffic originating at or destined to points in Canada. (Hearing site: Syracuse, NY.)

NOTE.—(1) The person or persons who appear to be engaged in common control must either file an application under section 5(2) of the Interstate Commerce Act, or submit an affidavit indicating why such approval is unnecessary. (2) The restriction and conditions contained in the grant of authority in this proceeding are phrased in accordance with the policy statement entitled Notice to Interested Parties of New Requirements Concerning Applications for Operating Authority to Handle Traffic to and from points in Canada, published in the FEDERAL REGISTER on December 5, 1974, and supplemented on November 18, 1975. The Commission is presently considering whether the policy statement should be modified, and is in communication with appropriate officials of the Provinces of Alberta, Saskatchewan, and Manitoba regarding this issue. If the policy statement is changed, appropriate notice will appear in the FEDERAL REGISTER and the Commission will consider all restrictions or conditions which were imposed pursuant to the prior policy statement, regardless of when the condition or restriction was imposed, as being null and void and having no force or effect.

BROKER AUTHORITY

MC 130112 (Sub-1F), filed August 17, 1978. Applicant: ATA, INC., AMERICA INTERSTATE TRAVEL, 698 High Street, Worthington, OH 43085. Representative: James W. Muldoon, 50 West Broad Street, Columbus, OH 43215. To engage in operations, in interstate or foreign commerce, as a *broker*, at Worthington, OH, in arranging for the transportation, by motor vehicle, of: *Passengers and their baggage in the same vehicle with passengers*, in round-trip special and charter operations, beginning and ending at points in Pickaway, Union, Madison, Fairfield, Licking, Delaware, Fayette, and Franklin Counties, OH, and extending to points in the United States (including AK and HI). (Hearing site: Columbus, OH or Washington, DC.)

MC 130302 (Sub-2F), filed August 14, 1978. Applicant: EASTERN SKI TOURS, INC., 1700 Walnut Street, Philadelphia, PA 19103. Representative: Harris T. Bock, 1620 Locust Street, Philadelphia, PA 19103. To engage in operations, in interstate or foreign commerce, as a *broker*, at Philadelphia, PA, in arranging for the transportation by motor vehicle, of: *Passengers and their baggage in the same vehicle with passengers*, in roundtrip special and charter operations, beginning and ending at points in PA, NJ, DE, MD, VA, and DC, and extending to points in PA, NJ, NY, MA, VT, NH, CT, ME, WV, and VA. (Hearing site: Philadelphia, PA.)

MC 130501F, filed September 1, 1978. Applicant: OHIO MOTORISTS ASSOCIATION, a corporation, 6000 South Marginal Road, Cleveland, OH 44103. Representative: Gerald P. Wadkowski, 85 East Gay Street, Columbus, OH 43215. To engage in operations, in interstate or foreign commerce, as a *broker*, at Cleveland, Lyndhurst, Parma Heights, Rocky River, Maple Heights, Chesterland, Ravenna, Painesville, Lorain, Wellington, Conneaut, Warren, Girard, and Oberlin, OH, in arranging for the transportation, by motor vehicle, of: *Passengers and their baggage*, in the same vehicle with passengers, in special and charter operations, beginning and ending at points in Ashtabula, Cuyahoga, Lorain, Lake, Geauga, Portage, and Trumbull Counties, OH, and extending to points in the United States (including AK but excluding HI). (Hearing site: Cleveland, OH.)

NOTE.—Applicant is cautioned that arrangements for charter parties or groups should be made in conformity with the requirements set forth in *Tauck Tours, Inc., Extension—New York, NY*, 54 MCC 291 (1952).

[FR Doc. 78-32111 Filed 11-15-78; 8:45 am]

[7035-01-M]

FOURTH SECTION APPLICATIONS FOR RELIEF

NOVEMBER 13, 1978.

This application for long- and short-haul relief has been filed with the ICC.

Protests are due to the ICC within 15 days from the date of publication of this notice.

FSA No. 43628, Sea-land Service, Inc., No. 102, intermodal rates on general commodities in containers, between ports in the Far East, on the one hand, and rail carrier's terminal at Savannah, Ga., on the other, by way of California ports, in its Tariff No. 201-A, ICC No. 93 and eight other individual and agency tariffs, effective December 8, 1978. Grounds for relief—water competition.

By the Commission.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 78-32275 Filed 11-15-78; 8:45 am]

[7035-01-M]

[Notice No. 128]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

The following publications include motor carrier, water carrier, broker, and freight forwarder transfer applications filed under section 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act.

Each application (except as otherwise specifically noted) contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application.

Protests against approval of the application, which may include a request for oral hearing, must be filed with the Commission on or before December 18, 1978. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest must be served upon applicants representative(s), or applicants (if no such representative is named), and the protestant must certify that such service has been made.

Unless otherwise specified, the signed original and six copies of the protest shall be filed with the Commission. All protests must specify with particularity the factual basis, and the section of the Act, or the applicable rule governing the proposed transfer which protestant believes would preclude approval of the application. If the protest contains a request for oral hearing, the request shall be supported by an explanation as to why the evidence sought to be presented cannot reasonably be submitted through the use of affidavits.

The operating rights set forth below are in synopses form, but are deemed sufficient to place interested persons on notice of the proposed transfer.

MC-FC-77769, filed July 20, 1978. Transferee: Larry R. Billings, d.b.a. K & B FREIGHT LINE, 740 North 11th Street, P.O. Box 371, Salina, KS 67401. Transferor: Kenneth F. Shade, d.b.a. K & B Freight Line, 740 North 11th Street, P.O. Box 371, Salina, KS 67401. Representative: Paul V. Kugan, 2707 West Douglas, Wichita, KS 67213. Authority sought for purchase by transferee of the operating rights set forth in Certificates of Registration MC 120099 (Sub-1) and MC 120099 (Sub-2) issued May 18, 1964, and February 16, 1973, respectively: Transportation of general commodities, except those of unusual value and except dangerous explosives, household goods as defined in Practices of Motor Common Carriers of Household Goods, 17 MCC 467, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, over regular routes from Salina to Lindsborg, thence via U.S. Hwy 81 to Salina with operations authorized in the reverse direction along said route, serving all intermediate points, provided, however, that no service is to be offered or performed between Salina proper, on the one hand, and, Lindsborg proper, on the other; and between Salina, KS and Salina, KS, from Salina over regular routes to Lindsborg, KS, thence north via U.S. Hwy 81 to Salina, KS, serving all intermediate points and the off-route points of Kanopolis, the commercial locations at the intersection of Interstate Hwy 70 and U.S. Hwy 156, Claflin, Lorraine, Kanopolis Reservoir, Salemburg, Smolan, Ralun, Mentor, and the Roxbury and Lindsborg commercial intersection on Interstate Hwy 35, also as an alternate route for operating convenience only, between Ellsworth, KS, and the intersection of KS Hwy 14 and KS Hwy 4 approximately 2 miles west of Genesco, KS, via KS Hwy 14. Transferee presently holds no Commission authority and does not seek section 210a(b) authority.

MC-FC-77834, filed August 28, 1978. Transferee: PLYMOUTH TRANSPORT, INC., 2290 Butler Pike, Plymouth Meeting, PA 19462. Transferor: Danella Bros., Inc., 2280 Butler Pike, Plymouth Meeting, PA 19462. Representative: Bernard V. DiGiacomo, 29 East Marshall Street, Norristown, PA 19401. Authority sought for purchase by transferee of the operating rights of transferor as set forth in Certificates MC 93944, MC 93944 (Sub-3), MC 93944 (Sub-8), and MC 93944 (Sub-9), issued August 3, 1970, February 15, 1967, November 25, 1974, and September 7, 1978, respectively, as follows: *Such commodities* as are ordinarily transported in dump trucks, in bulk, in dump vehicles, from Morrisville, PA and points in Falls Township, Bucks County, PA to points in NJ; *such bulk commodities* as are usually transported in dump trucks, between points in Bucks County, PA on the one hand, and, on the other, Lambertville, NJ and points in NJ within 40 miles of Lambertville, from Morrisville, PA to a specified portion of NJ; *sand and gravel*, from points in Northampton County, PA to points in DE, MD, NJ (except to points in Cumberland, Salem, Gloucester, Cape May, Atlantic, Camden, and Burlington Counties, NJ), NY, NC, VA, WV, and DC; *sand, gravel, slag, slag products and bituminous concrete*, between points in Falls Township, PA on the one hand, and, on the other, points in NJ; *alloys, ores, and refractory* products, (except in bulk), and similar commodities, from, to and between specified points in DE,

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PA, NJ, and MD; and *slag* (except in tank vehicles), from points in Bucks County, PA to points in the United States (except those in NJ, MD, OH, WV, HI, DE, AK, and DC). Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under section 210a(b).

MC-FC-77902, filed October 24, 1978. Transferee: SWEENEY BROS., INC., 280 New Ludlow Road., Chicopee, MA 01020. Transferor: Commercial Freightways, Inc., 449 Silver Street, Agawam, MA 01001. Representative: David M. Marshall, Attorney at Law, 101 State Street, Suite 304, Springfield, MA 01103. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate MC 134398, issued May 18, 1977, as follows: *General commodities* (with exceptions) as restricted, between points in Berkshire, Hampshire, Franklin, Hampden, and Worcester Counties, MA, on the one hand, and, on the other, Springfield, MA, and Hartford, New Haven, and Bridgeport, CT. Between Springfield, MA, on the one hand, and, on the other, Worcester, MA, and Hartford, New Haven, and Bridgeport, CT. Transferee is presently authorized to operate as a *common carrier* under Certificate MC 134398 and subs thereafter. Application has not been filed for temporary authority under section 210a(b).

MC-FC-77916, filed October 27, 1978. Transferee: GALLREIN TRUCKING CO., INC., Route 5, Russellville, KY 42276. Transferor: A.L. Johnson and A.R. Johnson, a partnership d.b.a. A.L. & A.R. Johnson, Route 1, Adairville, KY 42202. Representative: Robert L. Baker, Attorney, 618 United American Bank Building, Nashville, TN 37219. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Permit MC 136344, issued May 7, 1973, as follows: *Dry fertilizer and dry fertilizer materials, and agricultural chemicals*, in containers in mixed loads, from Nashville and Clarksville, TN and Cherokee, AL to points in Simpson and Logan Counties, KY, under a continuing contract or contracts with U.S. Steel Corp. Agri-Chemical Division. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under section 210a(b).

H. G. HOMME, Jr.,
Secretary.

[FR Doc 78-32276 Filed 11-15-78; 8:45 am]

[7035-01-M]

[Notice No. 209]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

NOVEMBER 3, 1978.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

MC 22311 (Sub-9TA), filed September 21, 1978. Applicant: WEST SHORE TRANSFER, INC., P.O. Box 765, 215 Marble Street, Hammond, IN 46320. Representative: Anthony E. Young, 29 South LaSalle Street, Suite 350, Chicago, IL 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Iron and steel articles*, from the facilities of Northwestern Steel and Wire Co., at or near Sterling and Rock Falls, IL, to those points in the United States in and east of WI, IA, NE, KS, OK, and TX; and (2) *Materials, supplies, and equipment* used in the manufacture and distribution of commodities named in (1) above, from the destinations named in (1) above, to the facilities named in (1) above, restricted in (1) and (2) above to the transportation of traffic originating at and destined to the named origins and named destinations except traffic moving in foreign commerce, for 180 days. Supporting shipper: North Western Steel and Wire Co., Lanny J. Munz, Assistant Manager, Transportation, 121 Wallace Street, Sterling, IL 61081. Send protests to: Lois M. Stahl, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 28088 (Sub-40TA) filed September 22, 1978. Applicant: NORTH & SOUTH LINES, INC., 2710 South Main Street, Harrisonburg, VA 22801. Representative: John R. Smms, Jr., 915 Pennsylvania Building, 425 13th Street NW., Washington, DC 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from Chambersburg, PA, to points in AL, GA, MS and TN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Pet, Inc., St. Louis, MO. Send protests to: Interstate Commerce Commission, Bureau of Operations, P.O. Box 210, Roanoke, VA 24011.

MC 51146 (Sub-644TA), filed September 22, 1978. Applicant: SCHNEIDER TRANSPORT, INC., 2661 South Broadway, Green Bay, WI 54306. Representative: John R. Patterson, 2480 East Commercial Boulevard, Ft. Lauderdale, FL 33308. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in or used by department stores, (except commodities in bulk), from Secaucus, NJ, to the facilities of P. A. Bergner & Co., located in Peoria, IL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: P. A. Bergner & Co., 200 Southwest Adams, Peoria, IL 61602. Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U. S. Federal Building, & Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 63417 (Sub-172TA), filed September 22, 1978. Applicant: BLUE RIDGE TRANSFER CO., INC., P.O. Box 13447, Roanoke, VA 24034. Representative: William E. Bain, P.O. Box 13447, Roanoke, VA 24034. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Water heaters, hot water tanks and heating boilers (except those the transportation of which because of size or weight require the use of special equipment)*, from

Kankakee, IL, to points in FL, for 180 days. Supporting shipper: A. O. Smith Corp., Kankakee, IL. Send protests to: Interstate Commerce Commission, Bureau of Operations, P.O. Box 210, Roanoke, VA 24011.

MC 105566 (Sub-184TA), filed September 21, 1978. Applicant: SAM TANKSLEY TRUCKING, INC., P.O. Box 1120, Cape Girardeau, MO 63701. Representative: Thomas F. Kilroy, Suite 406, 6901 Old Keene Mill Road, Springfield, VA 22150. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals*, (except in bulk), from Calvert City, KY, Cleveland, OH; Datton, NJ; Pace, FL, and Elkton, MD, to points in AZ, CA, CO, ID, MT, NV, NM, OR, TX, UT, WA, and WY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Air Products & Chemicals, Inc., P.O. Box 538, Allentown, PA 18105. Send protests to: P. E. Binder, Acting District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 1465, 210 North 12th Street, St. Louis, MO 63101.

MC 106074 (Sub-67TA), filed September 21, 1978. Applicant: B AND P MOTOR LINES, INC., P.O. Box 727, Shiloh Road and U.S. Hwy 221 South, Forest City, NC 28043. Representative: George W. Clapp, P.O. Box 836, Taylors, SC 29687. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Recycled boxboard*, from Taylors, SC, to Texarkans, AR-TX, Quincy, IL; Coffeyville, KS; Kansas City, KS-MO, and Poplar Bluff and St. Joseph, MO; and (2) *waste paper*, for recycling, from the destination points in (1), to Taylors, SC, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Carotell Paper Board Corp., P.O. Box 655, Taylors, SC 29687. Send protests to: Terrell Price, District Supervisor, 800 Briar Creek Road, Room CC516, Mart Office Building, Charlotte, NC 28205.

MC 106674 (Sub-338TA), filed September 22, 1978. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, U.S. Hwy 24 West, Remington, IN 47977. Representative: Jerry L. Johnson, P.O. Box 123, U.S. Hwy 24 West, Remington, IN 47977. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Concrete products*, (except in bulk), from Price Brothers Co. at Dayton, OH, to points in IN, IL, MI, KY, PA, NY, and WV, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Price Brothers Co., P.O. Box 825, Dayton, OH 45401. Send protests to: J. H. Gray, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 343 West Wayne Street, Suite 113, Fort Wayne, IN 46802.

MC 107496 (Sub-1163TA), filed September 22, 1978. Applicant: RUAN TRANSPORT CORP., 3200 Ruan Building, Des Moines, IA 50309. Representative: E. Check (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Ureau and blends containing urea*, (in bulk), from Port Neal, IA, to points in TX and NM, for 180 days. Supporting shipper: Terra Chemical, P.O. Box 1828, Sioux City, IA 51102. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 107515 (Sub-1176TA), filed September 21, 1978. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby & Richard M. Tettelbaum, Fifth Floor, Lenox Towers, 3390 Peachtree Road, NE., Atlanta, GA 30326. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by wholesale, retail, chain grocery and food business houses, (except in bulk, in tank vehicles), in mechanically refrigerated equipment, from the facilities of Kraft, Inc., Taylor, MI, to Ashland, KY, Cincinnati, OH; and Daniels, WV, for 180 days. (R-650 granted Effective September 12, 1978, Board Call ETA). Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Kraft, Inc., 500 Peshtigo Court, Chicago, IL 60690. Send protests to: Sara K. Davis, Transportation Assistant, Interstate Commerce Commission, 1252 West Peachtree Street NW., Room 300, Atlanta, GA 30309.

MC 108460 (Sub-67TA), filed September 21, 1978. Applicant: PETROLEUM CARRIERS CO., 5104 West 14th Street, P.O. Box 762, Sioux Falls, SD 57101. Representative: Gary Mundhenke, P.O. Box 762, Sioux Falls, SD 57101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer and fertilizer materials* (in bulk), from the facilities of Land O'Lakes Agricultural Services Division at or near Mason City, IA, to points in MN, NE, ND, SD, and WI, for 180 days. Supporting shipper(s): Land O'Lakes Agricultural Services Division, 2827 8th Avenue, South, Fort Dodge, IA 50501. (Sue Johnson, Distribution Control Specialist) Send protests to: J. L. Hammond, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 455, Federal Building, Pierre, SD 57501.

MC 108676 (Sub-134TA), filed September 21, 1978. Applicant: A. J. METLER HAULING & RIGGING, INC., 117 Chicamauga Avenue NE., Knoxville, TN 37917. Representative: Louis J. Amato, P.O. Box E, Bowling Green, KY 42101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber*, from points in CA, OR, and WA, to the plantsite of Altec Sound Products Division, Oklahoma City, OK, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Altec Sound Products Division, Oklahoma City, OK. Send protests to: Glenda Kuss, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, Suite A-422, U.S. Courthouse, 801 Broadway, Nashville, TN 37203.

MC 111214 (Sub-13TA), filed September 22, 1978. Applicant: GREENWOOD STORAGE & TRUCKING CO., INC., P.O. Box 943, Old Sidon Road, Greenwood, MS 38930. Representative: Fred W. Johnson, Jr., 1500 Deposit Guaranty Plaza, P.O. Box 22628, Jackson, MS 39205. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, between the facilities of Penn-Dixie Steel Corp., at or near Jackson, MS, and points in AL, AR, FL, GA, LA, TN, and TX, under a continuing contract, or contracts, with Penn-Dixie Steel Corp., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Penn-Dixie Corp., P.O. Box 5049, Kokomo, IN 46901. Send protests to: Alan C. Tarrant, District Supervisor, Interstate Commerce Commission, Room 212, 145 East Amite Building, Jackson, MS 39201.

MC 111302 (Sub-137TA), filed September 22, 1978. Applicant: HIGHWAY TRANSPORT, INC., P.O. Box 10470, 1500 Amherst Road, Knoxville, TN 37919. Representative: David A. Petersen, P.O. Box 10470, 1500 Amherst Road, Knoxville, TN 37919. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid resins*, (in bulk, in tank vehicles), from the facilities of Cargill, Inc., in Forest Park, GA, to points in MD, NJ, NY, PA, and VA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Cargill, Inc., 71

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Barnett Road, Forest Park, GA 30050. Send protests to: Joe Tate, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Suite A-422, U.S. Courthouse, 801 Broadway, Nashville, TN 37203.

MC 113434 (Sub-114TA), filed September 21, 1978. Applicant: GRABELL TRUCK LINE, INC., P.O. Box 511, 679 Lincoln Avenue, Holland, MI 49423. Representative: Richard C. Marsh, 1600 First Federal Building, Detroit, MI 48226. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic bottles*, from Port Clinton, OH, to Allegan, MI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Aim Packaging, Inc., P.O. Box 278, Port Clinton, OH 43452. Send protests to: C. R. Fleming, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 225 Federal Building, Lansing, MI 48933.

MC 113908 (Sub-451TA), filed September 22, 1978. Applicant: ERICKSON TRANSPORT CORP., P.O. Box 3180, Glenstone Station, Springfield, MO 65804. Representative: B. B. Whitehead (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fruit juice*, (in bulk), from Grandview, WA, to Northeast, PA, and Lawton, MI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Welch Foods, Inc., Westfield, NY. Send protests to: John V. Barry, District Supervisor, Room 600, 911 Walnut, Kansas City, MO 64106.

MC 115322 (Sub-149TA), filed September 22, 1978. Applicant: RED WING REFRIGERATED, INC., P.O. Box 10177, Taft, FL 32809. Representative: L. W. Fincher, P.O. Box 426, Tampa, FL 33601. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from Allentown and Chambersburg, PA, to points in FL and Chattanooga, TN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Pet, Inc., P.O. Box 392, St. Louis, MO 63166. Send protests to: G. H. Fauss, Jr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 115924 (Sub-34TA), filed September 22, 1978. Applicant: SUGAR TRANSPORT, INC., P.O. Box 4063, Port Wentworth, GA 31407. Representative: F. G. Williams, Jr., 1 Grange Road, Port Wentworth, GA 31407. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Sweeteners*, (in bulk, in tank vehicles), from Decatur, AL, to all points in GA, under a continuing contract, or contracts, with Savannah Foods & Industries, Inc., for 180 days. Supporting shipper: Savannah Foods & Industries, Inc., P.O. Box 339, Savannah, GA 31402. Send protests to: G. H. Fauss, Jr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 116175 (Sub-10TA), filed September 21, 1978. Applicant: WILLIAM E. (BILLY) ONEY, d.b.a. WILLIAM E. ONEY, Route 7, Box 37, Kingsport, TN 37660. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Feed blocks*, from Park City, KY, to all points in the States of VA and WV, for 180 days. Supporting shipper: Southern States Cooperative, Inc., P.O. Box 26234, Richmond, VA 23260. Send protests to: Interstate Commerce Commission, Bureau of Operations, P.O. Box 210, Roanoke, VA 24011.

MC 117686 (Sub-219TA), filed September 21, 1978. Applicant: HIRSCHBACH MOTOR LINES, INC., 5000 South Lewis Boulevard, P.O. Box 417, Sioux City, IA 51102. Representative: George L. Hirschbach (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Malt beverages and related advertising materials*, from Jefferson County, CO, to points in IA and MO; and (2) *Empty beverage containers and materials for recycling*, from points in IA and MO, to Jefferson County, CO, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Lou Bonner, Director of Transportation, Adolph Coors Co., Jefferson County, CO 80401. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 117940 (Sub-290TA), filed September 21, 1978. Applicant: NATIONWIDE CARRIERS, INC., P.O. Box 104, Maple Plain, MN 55359. Representative: Allan L. Timmerman, 5300 Highway 12, Maple Plain, MN 55359. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Printed matter*, from the facilities of Franchise Mailing Systems at Montgomery, MN, to points in the commercial zones of Huntsville, AL; Little Rock, AR; Decatur, Marietta, and Rome, GA; Bloomington, Kokomo, Lafayette, and Peru, IN; Bowling Green, KY; Boston, MA; Springfield, MO; Charlotte, NC; Zanesville, OH; Oklahoma City and Tulsa, OK; Chattanooga, Nashville, and Jackson, TN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Franchise Mailing Systems, 306 Second Street, Northwest, Montgomery, MN 56069. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building and U.S. Courthouse, 110 South Fourth Street, Minneapolis, MN 55401.

MC 118726 (Sub-143TA), filed September 21, 1978. Applicant: N. A. B. TRUCKING CO., INC., 1644 Edgewood Avenue, Indianapolis, IN 46217. Representative: James L. Beattey, Suite 1000, 130 East Washington Street, Indianapolis, IN 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass containers*, from the facilities of Midland Glass Co. at or near Terre Haute, IN, to Martinsville, VA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Midland Glass Co., P.O. Box 557, Cliffwood, NJ. Send protests to: Beverly J. Williams, Transportation Assistant, Interstate Commerce Commission, Federal Building and U.S. Courthouse, 46 East Ohio Street, Room 429, Indianapolis, IN 46204.

MC 118989 (Sub-203TA), filed September 22, 1978. Applicant: CONTAINER TRANSIT, INC., 5223 South Ninth Street, Milwaukee, WI 53221. Representative: Rolland K. Draves (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pails*, from facilities of Central Can Co., in Chicago, IL, to Midland, MI, for 180 days. Supporting shipper: Central Can Co., 3200 South Kilbourn, Chicago, IL 60623. Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 119789 (Sub-519TA), filed September 22, 1978. Applicant: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 226188, Dallas, TX 75266. Representative: Lewis Coffey, P.O. Box 226188, Dallas, TX 75266. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Food stuffs* (except in bulk), from the facilities of American Home Foods at Laporte, IN, to points in AR, LA and MS, for 180 days. Supporting shipper: American Home Foods Division, American Home Products Corp., 685 Third Avenue, New York, NY 10017. Send protests to: Opal M. Jones, Transportation Assistant, Interstate Commerce Commission, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

MC 123314 (Sub-22TA), filed September 21, 1978. Applicant: JOHN F. WALTER, INC., P.O. Box 175, Newville, PA 17241. Representative: Christian V. Graf, 407 North Front Street, Harrisburg, PA 17101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tomato paste*, from the facilities of Heinz U.S.A., Division of H. J. Heinz Co., at Toledo, OH, to the facilities of Heinz U.S.A., Division of H. J. Heinz Co., at Fremont, OH, for 180 days. Supporting shipper: Heinz U.S.A., Division of H. J. Heinz Co., P.O. Box 57, Pittsburgh, PA 15230. Send protests to: Charles F. Myers, District Supervisor, Interstate Commerce Commission, P.O. Box 869, Federal Square Station, Harrisburg, PA 17108.

MC 124078 (Sub-872TA), filed September 21, 1978. Applicant: SCHWERMAN TRUCKING CO., 611 South 28th Street, Milwaukee, WI 53215. Representative: Richard H. Prevette, 611 South 28th Street, Milwaukee, WI 53215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cement*, (in bulk), from Universal, Pa., to Pleasant Prairie, WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Wisconsin Associates, P.O. Box 74, Pleasant Prairie, WI 53158. Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 129862 (Sub-21TA), filed September 22, 1978. Applicant: RAJOR, INC., 100 Beta Drive, P.O. Box 756, Franklin, TN 37064. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fireplaces and chimneys*, from Lynwood, CA, to points in and east of MN, IA, KS, OK, and TX, for 180 days. Supporting shipper: Marco Manufacturing, Inc., 2520 Industry Way, Lynwood, CA 90262. Send protests to: Joe Tate, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Suite A-422, U.S. Courthouse, 801 Broadway, Nashville, TN 37203.

MC 133937 (Sub-27TA), filed September 21, 1978. Applicant: CAROLINA CARTAGE CO., INC., 1486 Willingham Drive, East Point, GA 30320. Representative: Henry P. Willimon, P.O. Box 1075, Greenville, SC 29602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Office supplies, machines, equipment, paper articles, printed advertising and display fixtures, shoe polish, laces, related articles, and leather goods*, between points and places in GA, FL, AL, MS, TN, NC, SC, Los Angeles and Ontario, CA, and Chicago, IL, for 180 days. Supporting shipper: Butler Shoe, Inc., Northeast Expressway, Atlanta, GA. Send protests to: Sara R. Davis, Transportation Assistant, Interstate Commerce Commission, 1252 West Peachtree Street NW., Room 300, Atlanta, GA 30309.

MC 135215 (Sub-3TA), filed September 21, 1978. Applicant: BULK TRANSPORTATION, 415 Lemon Avenue, Walnut, CA 91789. Representative: Melvin G. Thurman, 415 Lemon Avenue, Walnut, CA 91789. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Animal feed preparations, supplements and additives*, liquid (in bulk, in tank vehicles), from points in CA, to points in AZ, under a continuing contract or contracts, with Snow Commodities Co., Inc., Baker Commodities, Inc., and Pacific Kenyon Corp., for 180 days. Supporting shippers: (1) Snow Commodities Co., Inc., P.O. Box D, South Pasadena, CA 91030. (2) Baker Commodities, Inc., 4020 Bandini Boulevard, Los Angeles, CA 90023, and (3) Pacific Kenyon Corp., 1301 West 12th Street, Long Beach, CA 90813. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321 Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

MC 136511 (Sub-27TA), filed September 22, 1978. Applicant: VIRGINIA APPALACHIAN LUMBER CORP., 9640 Timberlake Road, Lynchburg, VA 24502. Representative: E. Stephen Heisley, 666 11th Street NW., No. 805, Washington, DC 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture*, from Richmond and Kenbridge, VA, to points in NV and NM, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Lea Industries, Inc., High Point, NC. Send protests to: Interstate Commerce Commission, Bureau of Operations, P.O. Box 210, Roanoke, VA 24011.

MC 136818 (Sub-42TA), filed September 21, 1978. Applicant: SWIFT TRANSPORTATION CO., INC., 335 West Elwood Road, P.O. Box 3902, Phoenix, AZ 84030. Representative: Donald Fernaays, 4040 East McDowell, Phoenix, AZ 85008. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, and meat by-products*, (except in bulk), from Searcy, AR, to points in CO, for 180 days. Applicant has also filed underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Land O'Frost, Inc., 16850 Chicago Avenue, Lansing, IL 60438. Send protests to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, 2020 Federal Building, 230 North First Avenue, Phoenix, AZ 85025.

MC 136818 (Sub-43TA), filed September 21, 1978. Applicant: SWIFT TRANSPORTATION CO., INC., 335 West Elwood Road, P.O. Box 3902, Phoenix, AZ 85030. Representative: Donald Fernaays, 4040 East McDowell Road, Phoenix, AZ 85008. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from points in Los Angeles County, CA, to points in CO, restricted to service for Triangle Steel and Supply Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Triangle Steel & Supply Co., 1000 West Francisco Street, Torrance, CA 90502. Send protests to: Andrew V. Bayor, District Supervisor, Interstate Commerce Commission, 2020 Federal Building, 230 North First Avenue, Phoenix, AZ 85025.

MC 141511 (Sub-7TA), filed September 21, 1978. Applicant: ROBERT W. RETTIG, d.b.a. PROTEIN EXPRESS, Route 2, Hartford, WI 53207. Representative: George A. Olson, P.O. Box 357, Gladstone, NJ 07934. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Frozen foodstuffs*, and (2) *commodities* other exempt from economic regulation when moving in mixed shipments with the commodities in (1) from the facilities of Moore's Food Products, Inc., Fort Atkinson, WI, to points in the States of IL, IN, MI, and OH, restricted to shipments originating at the above origin and destined to the above destinations and further restricted to service in vehicles equipped with mechanical refrigeration, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Moore's Food Products, Inc., Box 128, Fort Atkinson, WI 53538. Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

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MC 141511 (Sub-8TA), filed September 21, 1978. Applicant: ROBERT W. RETTIG, d.b.a. PROTEIN EXPRESS, Route 2, Hartford, WI 53207. Representative: George A. Olson, P.O. Box 357, Gladstone, NJ 07934. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Flour and other milling products* (except in bulk), from the facilities of Krause Milling Co. at or near Paxton, IL, to points in the states of CA, NV, OR, and WA, restricted to shipments originating at the above origin and destined to the above destinations, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Krause Milling Co., P.O. Box 1156, Milwaukee, WI 53201. Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 141511 (Sub-9TA), filed September 21, 1978. Applicant: ROBERT W. RETTIG, d.b.a. PROTEIN EXPRESS, Route 2, Hartford, WI 53207. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Meat, meat products, meat by-products and articles distributed by meat packinghouses*, and (2) *Foodstuffs*, when shipped in mixed loads with the commodities in (1) above, from, to or between the plantsite and or storage facilities utilized by Jones Dairy Farm at or near Fort Atkinson and Jefferson, WI, to points in the States of AZ and CA, restricted to shipments originating at and destined to the above named points, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Jones Dairy Farm, Jones Avenue, Fort Atkinson, WI 53538. Send protests to: Gail Daugherty Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 143267 (Sub-34TA), filed September 21, 1978. Applicant: CARLTON ENTERPRISES, INC., 4588 State Route 82, Mantua, OH 44255. Representative: Peter A. Greene, 900 17th Street NW., Washington, DC 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Refractory products*, from the facilities of Freeport Brick Co. at or near Freeport, Reesedale, and Creighton, PA, to points in MI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Freeport Brick Co., Drawer F, Freeport, PA 16229. Send protests to: Interstate Commerce Commission, 731 Federal Building, 1240 East Ninth Street, Cleveland, OH 44199.

MC 144026 (Sub-2TA), filed September 21, 1978. Applicant: WILLIAMS CARTAGE CO., INC., P.O. Box 897, Hartsville, S.C. 29950. Representative: Galland, Kharasch, Calkins & Short, R. L. McGeorge, 1054 31st Street NW., Washington, DC 20007. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Containers, aluminum and container ends, aluminum*, from Winston-Salem, NC, to Cheraw, SC, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: National Can Corp., 727 South Wolfe Street, Baltimore, MD 21231. Send protests to: E. E. Strotheid, District Supervisor, Interstate Commerce Commission, Room 302, 1400 Building, 1400 Pickens Street, Columbia, SC 29201.

MC 144282 (Sub-3TA), filed September 22, 1978. Applicant: JAMES RECK, d.b.a., JAMES RECK TRUCKING, 4029 West McDowell, No. 4, Phoenix, AZ 85009. Representative: A. Michael Bernstein, 1441 East Thomas Road, Phoenix, AZ 85014. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Cement roofing tile and related accessories*, from the plantsite of Staco Roof Tile Co., Inc., in Phoenix, AZ, to West Orange, NJ, under a continuing contract, or contracts, with Staco Roof Tile, Co., for 180 days. Supporting shipper: Staco Roof Tile Co., 3530 East Elwood, Phoenix, AZ 85040. Send protests to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, 2020 Federal Building, 230 North First Avenue, Phoenix, AZ 85025.

MC 145054 (Sub-4TA), filed September 22, 1978. Applicant: COORS TRANSPORTATION CO., 5105 York Street, Denver, CO 80216. Representative: Leslie R. Kehl, 1600 Lincoln Center Building, 1660 Lincoln Street, Denver, CO 80264. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat by-products and articles distributed by meat packinghouses*, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 MCC 209 and 766 (except hides and commodities in bulk), from Omaha, NE, to Chicago, IL, and to points in its commercial zone and to all points in the states of WI and KS, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: David Kousgaard, Traffic Consultant, Palamera Beef Corp., 25th and Z Streets, Omaha, NE 68107. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 145054 (Sub-5TA), filed September 22, 1978. Applicant: COORS TRANSPORTATION CO., 5101 York Street, Denver, CO 80216. Representative: Leslie R. Kehl, 1600 Lincoln Center Building, 1660 Lincoln Street, Denver, CO 80264. Authority sought to operate as a *common carrier*, by motor vehicle over irregular routes, transporting: *Cheese and cheese products, including synthetic cheeses*, from Logan, UT, to CO, for 180 days. Supporting shipper: L. D., Schreiber Cheese Co., 425 Pine Street, Green Bay, WI 54305. Send protests to: Herbert C. Ruoff, District Supervisor, Interstate Commerce Commission, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 145315 (Sub-1TA), filed September 21, 1978. Applicant: CHARLES LINCOLN VICKERS, d.b.a. C. L. VICKERS TRANSFER, Route 2, Albemarle, NC 28001. Representative: Charles Lincoln Vickers, Route 2, Albemarle, NC 28001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Unground petroleum coke* (in bulk, in dump vehicles), from Badin, NC, to Piney River, VA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Shiland Metal Brokerage Co., Inc., P.O. Box 3332-A, Birmingham, AL 35205. Send protests to: Terrell Price, District Supervisor, 800 Briar Creek Road, Room CC516, Mart Office Building, Charlotte, NC 28205.

MC 145339 (Sub-1TA), filed September 21, 1978. Applicant: NEBRASKA BEEF EXPRESS, INC., 5521 South 91st Street, Omaha, NE 68127. Representative: Kenneth P. Weiner. 408 Executive Building, Omaha, NE 68102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat by-products and articles distributed by meat packinghouses*, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 MCC 209 and 766 (except hides and commodities in bulk), from Omaha, NE, to Chicago, IL, and to points in its commercial zone and to all points in the states of WI and KS, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: David Kousgaard, Traffic Consultant, Palamera Beef Corp., 25th and Z Streets, Omaha, NE 68107. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 145369 (Sub-1TA), filed September 21, 1978. Applicant: AERO LIMOUSINE CO., INC., 3906 Concord Pike, Wilmington, DE 19803. Representative: Raymond A. Thisle, Jr., 5 Cottman Court, Homestead Road and Cottman Street, Jenkintown, PA 19046. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage* in the same vehicle with passengers in vehicles with a maximum seating capacity of 10 passengers plus driver, between the Philadelphia International Airport, located at Philadelphia, PA, on the one hand, and, on the other, points in DE within 25 miles of the boundaries of the Philadelphia International Airport, including Wilmington, DE, and its commercial zone, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Send protests to: T. M. Esposito, Transportation Assistant, 600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 145384 (Sub-3TA), filed September 22, 1978. Applicant: ROSE-WAY, INC., 1914 East Euclid, Des Moines, IA 50313. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Millwork and molding*, from Diamond Springs, CA, to points in IL, IN, IA, MI, MN, MO, OH, PA, and WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Pacific Southeast Forest Products, Inc., Suite 200, 5330 Primrose Drive, Fair Oaks, CA 95628. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 145384 (Sub-5TA), filed September 22, 1978. Applicant: ROSE-WAY, INC., 1914 East Euclid, Des Moines, IA 50313. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel*, from Chicago, IL, and points in the Chicago, IL, commercial zone, to Torrance and Oakland, CA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Eden National Steel Corp., 21515 Hawthorne Boulevard, Torrance, CA 90503. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 145384 (Sub-6TA), filed September 22, 1978. Applicant: ROSE-WAY, INC., 1914 East Euclid, Des Moines, IA 50313. Representative: James Hodge, 1980 Financial Center, Des Moines, IA 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fibreboard*, from Rocklin, CA, to points in IA, IL and IN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Fibreboard Corp., 4300 Dominquez Road, Rocklin, CA. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 145389TA, filed September 21, 1978. Applicant: THOMAS H. CHOATE III, 45 Waverly Wood, Helena, AR 72342. Representative: Grant M. Davis, 2217 Juneway Terrace, Fayetteville, AR 72701. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plywood, veneer, press board, and hardwood lumber*, from the commercial zone in Helena, AR, to points in TX, MO, TN, KS, OK, CO, AZ, LA, and MS, under a continuing contract, or contracts, with McKnight Veneer, for 180 days. Supporting shipper: McKnight Veneer, Garland Avenue, West Helena, AR 72390. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 145411 (Sub-1TA), filed September 21, 1978. Applicant: WILLIAM V. THOMAS, P.O. Box 554, Ojo Caliente, NM 87549. Representative: Rober V. Eaton, Modrall Law Firm, P.O. Box 2168, Albuquerque, NM 87103. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Gypsum products and the materials* used in marketing and manufacture of gypsum products, from Rosario, NM, to Colorado Springs, Loveland, Denver and Grand Junction, CO, from Hutchinson, KS, Pryor, OK, and Lebanon, OR, to Rosario, NM, under a continuing contract, or contracts, with Western Gypsum Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Western Gypsum Co., P.O. Box 2636, Santa Fe, NM 87501. Send protests to: District Supervisor, Interstate Commerce Commission, 1106 Federal Office Building, 517 Gold Avenue, SW., Albuquerque, NM 87101.

MC 145520 TA, filed September 22, 1978. Applicant: MARYLAND CONTINENTAL EXPRESS, INC., 129 Overhill Drive, Hagerstown, MD 21740. Representative: Edward N. Button, 1329 Pennsylvania Avenue, P.O. Box 1417, Hagerstown, MD 21740. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Veneer*, from Martinsburg, WV, and its commercial zone, to Wilsonville, OR, and its commercial zone, under a continuing contract, or contracts, with Erath Veneer Corp., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Erath Veneer Corp., 528 W. Race Street, Martinsburg, WV 25401. Send protests to: T. M. Esposito, Transportation Assistant, 600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 145529 TA, filed September 19, 1978. Applicant: ROBERT STEEN, d.b.a. STEEN'S FEEDS, East Elkhorn, Belle Fourche, SD 57717. Representative; Mark Menard, 5301 North Cliff, P.O. Box 480, Sioux Falls, SD 57101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry fertilizer*, in bulk or bag, from Minneapolis-St. Paul, MN, to all points in SD, for 180 days. Supporting shipper: (1) South Dakota Wheat Growers Association, 205 Van Slyke Building, Aberdeen, SD 57401. (James Pfeifer Manager, Fertilizer Division) (2) Shanard, Inc., Riverside Road, Mitchell, SD 57301. (Evan Fluth Plant Manager) Send protests to: J. L. Hammond District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 455, Federal Building, Pierre, SD 57501.

By the Commission.

H. G. Homme, Jr.,
Acting Secretary.

[FR Doc. 78-32273 Filed 11-15-78; 8:45 am]

[7035-01-M]

[Notice No. 210]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

November 3, 1978.

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the Federal Register publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the Federal Register. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority

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upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

MC 40915 (Sub-51TA), filed September 22, 1978. Applicant: BOAT TRANSIT, INC., P.O. Box 1403, Newport Beach, CA 92663. Representative: David R. Parker, 1600 Broadway, Suite 2310, Denver, CO 80202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Motor homes*, in secondary movements, in truck away service, from the facilities of Chinook International at Fontana, CA, to points in AZ, CO, ID, MT, NV, NM, OR, UT, WA and WY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Chinook International, Inc., 2700 First Street, La Verne, CA 91750. Send protests to: Irene Carlos Transportation Assistant, Interstate Commerce Commission, Room 1321 Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

MC 41404 (Sub-151TA), filed September 27, 1978. Applicant: ARGO-COLLIER TRUCK LINES CORP., P.O. Drawer 440, Fulton Hwy, Martin, TN 38237. Representative: Mark L. Horne, P.O. Drawer 440, Fulton Hwy, Martin, TN 38237. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from the facilities of Stouffer Foods at or near Solon, OH; to Atlanta, GA, and its commercial zone and Buford, GA, and Cordele, GA, restricted to shipments originating at the named origin and destined to the named destinations, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Stouffer Foods, Division of Stouffer Corp., 5750 Harper Road, Solon, OH 44139. Send protests to: Floyd A. Johnson, District Supervisor, Interstate Commerce Commission, 100 North Main Building, Suite 2006, 100 North Main Street, Memphis, TN 38103.

MC 61825 (Sub-84TA), filed September 22, 1978. Applicant: ROY STONE TRANSFER CORP., V. C., Drive, P.O. Box 385, Collinsville, VA 24078. Representative: John D. Stone, Roy Stone Transfer Corp., P.O. Box 385, Collinsville, VA 24078. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture and furniture parts and materials, supplies and equipment used in the manufacture and distribution of new furniture and furniture parts on return*, from Appomattox, VA, and Brookneal, VA, to DE, NC and NJ, (except Newark, NJ, and points in NJ within 15 miles of Newark, NJ), NY (except New York, NY), points in OH on and east of a line beginning at Lake Erie at Hwy 21, then south to Interstate 77, then south to the OH-WV State line, and PA, and *materials, supplies and equipment on return*, for 180 days. Supporting shipper: Thomasville Furniture Industries, Inc., Thomasville, NC 27360. Send protests to: Interstate Commerce Commission, Bureau of Operations, P.O. Box 210, Roanoke, VA 24011.

MC 61825 (Sub-85TA), filed September 22, 1978. Applicant: ROY STONE TRANSFER CORP., V. C., Drive, P.O. Box 385, Collinsville, VA 24078. Representative: John D. Stone, Roy Stone Transfer Corp., P.O. Box 385, Collinsville, VA 24078. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass containers, closures and fibreboard boxes and materials, equipment and supplies* used in the manufacture and distribution thereof on return, from the plantsite and storage facilities of Owens-Illinois located at or near Clarion, PA, to Norfolk, Suffolk and Williamsburg, VA, and *materials, equipment and supplies on return*, for 180 days. Supporting shipper: Owens-Illinois, Inc., P.O. Box 1035, Toledo, OH 43666. Send protests to: Interstate Commerce Commission, Bureau of Operations, P.O. Box 210, Roanoke, VA 24011.

MC 63417 (Sub-175TA), filed September 27, 1978. Applicant: BLUE RIDGE TRANSFER CO., INC., P.O. Box 13447, Roanoke, VA 24034. Representative: William E. Bain, P.O. Box 13447, Roanoke, VA 24034. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Insulating material*, from Leeds, AL, to Cincinnati, OH, and its Commercial Zone, for 180 days. Supporting shipper: Rock Wool Manufacturing Co., P.O. Box 11446, Birmingham, AL 35205. Send protests to: Interstate Commerce Commission, Bureau of Operations, P.O. Box 210, Roanoke, VA 24011.

MC 71593 (Sub-12TA), filed September 21, 1978. Applicant: FORWARDERS TRANSPORT, INC., 1815 Front Street, Scotch Plains, NJ 07076. Representative: Charles J. Williams, 1815 Front Street, Scotch Plains, NJ 07076. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Boston and Springfield, MA; New Haven, CT, New York, NY; Philadelphia, PA; Baltimore, MD; Chicago, IL; Milwaukee, WI; Memphis, TN, and St. Louis, MO, and their respective commercial zones, on the one hand, and, on the other, Los Angeles and San Francisco, CA; Phoenix, AZ; Reno, NV; Seattle, WA, and Portland, OR, and their respective commercial zones, restricted to the transportation of shipments moving on freight forwarder bills of lading, for 180 days. Supporting shipper: There are approximately (6) statements of support attached to this application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies thereof which may be examined at the field office named below. Send protests to: Robert E. Johnston, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 9 Clinton Street, Room 618, Newark, NJ 07102.

MC 106398 (Sub-839TA), filed September 27, 1978. Applicant: NATIONAL TRAILER CONVOY, INC., 525 South Main, P.O. Box 3329, Tulsa, OK 74103. Representative: Irvin Tull, 525 South Main, Tulsa, OK 74103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pickup trucks and van conversions*, from the facilities of Gladiator, Inc., at Denver, CO, to points in AZ, ID, MT, NV, NM, UT, and WY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Gladiator, Inc., P.O. Box 2237, Elkhart, IN 46515. Send protests to: Connie Stanley, Transportation Assistant, Room 240, Old Post Office and Courthouse Building, 215 NW., 3rd, Oklahoma City, OK 73102.

MC 110563 (Sub-242TA), filed September 22, 1978. Applicant: COLD-WAY FOOD EXPRESS, INC., P.O. Box 747, State Route 29 North, Sidney, OH 45365. Representative: Victor J, Tambascia (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Instant coffee, dry*, from the facilities of The Nestle Co., Inc., located at or near Freehold, NJ, to Denver, CO, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: The Nestle Co., Inc., 100 Bloomingdale Road, White Plains, NY 10605. Send protests to: Keith D. Warner, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 313 Federal Office Building, 234 Summit Street, Toledo, OH 43604.

MC 110563 (Sub-244TA), filed September 27, 1978. Applicant: COLD-WAY FOOD EXPRESS, INC., P.O. Box 747, State Route 29 North, Sidney, OH 45365. Representative: Victor J. Tambascia, P.O. Box 747, State Route 29 North, Sidney, OH 45365. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Confectionery products*, from the facilities of M&M Mars, Inc., located at or near Hackettstown, NJ, and Elizabethtown, PA, to Denver, CO, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: M&M Mars, Inc., Hackettstown, NJ 07840. Send protests to: Keith D. Warner, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 313 Federal Office Building, 234 Summit Street, Toledo, OH 43604.

MC 114569 (Sub-243TA), filed September 21, 1978. Applicant: SHAFFER TRUCKING, INC., P.O. Box 418, New Kingstown, PA 17072. Representative: N. L. Cummins, P.O. Box 418, New Kingstown, PA 17072. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products, and articles distributed by meat packing<houses*, as described in sections A, B, and C of Appendix I to the report in "Descriptions in Motor Carrier Certificates," 61 MCC 209 and 766 (except hides and skins and commodities in bulk), from the facilities of John Morrell and Co., at or near Sioux Falls, SD, to the State of FL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: John Morrell & Co., 208 South LaSalle Street, Chicago, IL 60604. Send protests to: Charles F. Myers, District Supervisor, Interstate Commerce Commission, P.O. Box 869, Federal Square Station, 228 Walnut Street, Harrisburg, PA 17108.

MC 114569 (Sub-244TA), filed September 21, 1978. Applicant: SHAFFER TRUCKING, INC., P.O. Box 418, New Kingstown, PA 17072. Representative: N. L. Cummins, P.O. Box 418, New Kingstown, PA 17072. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Prunes, prune extract, and juice in containers*, (1) restricted to traffic originating at the facilities utilized by Diamond/Sunsweet, Inc., at or near Middleboro, MA; Burlington and Bordentown, NJ, to points in the States of PA, MD, and NY (except New York City and points in Long Island, NY), and Washington, DC; (2) restricted to traffic originating at the facilities utilized by Diamond/Sunsweet, Inc., at or near Bordentown and Burlington, NJ, to points in NC, SC, VA, and Atlanta, GA; and (3) between the facilities utilized by Diamond/Sunsweet, Inc., at or near Middleboro, MA, on the one hand, and, on the other, those facilities utilized by Diamond/Sunsweet, Inc., at or near Bordentown, NJ, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Diamond/Sunsweet, Inc., P.O. Box 1727, Stockton, CA 95201. Send protests to: Charles F. Myers, District Supervisor, Interstate Commerce Commission, P.O. Box 869, Federal Square Station, 228 Walnut Street, Harrisburg, PA 17108.

MC 114632 (Sub-184TA), filed September 22, 1978. Applicant: APPLE LINES, INC., P.O. Box 287, 212 Southwest Second Street, Madison, SD 57042. Representative: Michael L. Carter, 212 Southwest Second Street, Madison, SD 57042. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except commodites in bulk), from Bonner Springs, KS, to points in OK and TX, for 180 days. Supporting shipper: South Eastern Public Service, 800 West 47th Street, Kansas City, MO 64112 (Mr. George H. Nesselrode, Vice President). Send protests to: J. L. Hammond, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 455, Federal Building, Pierre, SD 57501.

MC 123407 (Sub-498TA), filed September 27, 1978. Applicant: SAWYER TRANSPORT, INC., South Haven Square, U.S. Highway 6, Valparaiso, IN 46383. Representative: H. E. Miller, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic articles and polystyrene products*, from the facilities of U. C. Industries, Tallmadge, OH, to points in the United States in and east of ND, SD, NE, KS, OK, and TX, for 180 days. Supporting shipper: U.S. Gypsum Co., Donald R. Vandermyde, Manager Transportation, 0101 South Wacker Drive, Chicago, IL 60606. Send protests to: Lois M. Stahl, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 124078 (Sub-884TA), filed September 27, 1978. Applicant: SCHWERMAN TRUCKING CO., 611 South 28th Street, Milwaukee, WI 53215. Representative: Richard H. Prevette (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Mortar cement* (in bulk), from Knowles, WI, to Fort Calhoun, NE, for 180 days. Supporting shipper: The Western Lime & Cement Co., P.O. Box 2076, Milwaukee, WI 53201 (Darrel E. Hegy). Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 124511 (Sub-51TA), filed September 22, 1978. Applicant: OLIVER MOTOR SERVICE, INC., P.O. Box 223, East Highway 54, Mexico, MO 65265. Representative: Leonard R. Kofkin, 39 South LaSalle Street, Chicago, IL 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from the facilities of Maverick Tube Corp., at Union, MO, to points in IL, IA, KS, KY, and NE, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Maverick Tube Corp., 311 North Lindbergh Boulevard, St. Louis, MO 63141. Send protests to: Vernon V. Coble, District Supervisor, Interstate Commerce Commission, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

MC 124711 (Sub-64TA), filed September 22, 1978. Applicant: BECKER CORP., P.O. Box 1050, 2643 West Central, El Dorado, KS 67042. Representative: Norman A. Cooper, P.O. Box 1050, El Dorado, KS 67042. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Compounding asphalt requiring heat in transit* (in bulk, in tank vehicles), from facilities of Mobil Oil Corp. at Augusta, KS, to points in IL, OH, and MN, for 180 days. Supporting shipper: Mobil Oil Corp., 8350 North Central Expressway, No. 522, Dallas, TX 75206. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, 101 Litwin Building, Wichita, KS 67202.

MC 133119 (Sub-139TA), filed September 22, 1978. Applicant: HEYL TRUCK LINES, INC., 200 Norka Drive, P.O. Box 206 Akron, IA 51001. Representative: A. J. Swanson, Peterson, Bowman, Larsen & Swanson, 521

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South 14th Street, P.O. Box 81849, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products, dairy products, and articles distributed by meat packinghouses* (except commodities in bulk), from Sioux Falls, SD, and Estherville, IA, to points in TX and OK, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: John Morrell & Co., Curt Y. Hopkins, Manager of Transportation, 208 South LaSalle Street, Chicago, IL. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, 110 North 14th Street, Suite 620, Omaha, NE 68102.

MC 133971 (Sub-3TA), filed September 27, 1978. Applicant: TRUAX TRUCK LINE, INC., P.O. Box 248, Egan, LA 70531. Representative: Edward A. Winter, 236 Rosewood Drive, Metairie, LA 70005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber and plywood*, from the facilities of Weyerhaeuser Co. located at or near Harahan, LA, to points in MS, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Weyerhaeuser Co., 1001 Edwards Avenue, Harahan, LA 70123. Send protests to: Connie A. Guillory, District Supervisor, Interstate Commerce Commission, Bureau of Operations, T-9038, U.S. Postal Service Building, 701 Loyola Avenue, New Orleans, LA 70113.

MC 134286 (Sub-80TA), filed September 21, 1978. Applicant: ILLINI EXPRESS, INC., P.O. Box 1564, Sioux City, IA 51102. Representative: Charles M. Williams, Kimball, Williams, & Wolfe, 350 Capitol Life Center, 1600 Sherman Street, Denver, CO 80203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen bakery products* (except commodities in bulk), from the facilities of Arnold Bakers, Inc., at or near Stamford, CT, to Baltimore, MD, and all points in their respective commercial zones, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Mim Helms, Traffic Manager, Arnold Bakers, Inc., 10 Hamilton Avenue, Greenwich, CT 06830. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 140168 (Sub-4TA), filed September 27, 1978. Applicant: FANETTI REFRIGERATED TRANSPORT, Route 1, Box 29-A, Bloomer, WI 54724. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals* (except in bulk), from Columbus, OH, to Bloomer, WI, for 180 days. Supporting shipper(s): American Insulation, Inc., Route 3, Bloomer, WI 54724. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building and U.S. Courthouse, 110 South 4th Street, Minneapolis, MN 55401.

MC 140241 (Sub-27TA), filed September 27, 1978. Applicant: DALKE TRANSPORT, INC., Box 7, Moundridge, KS 67107. Representative: William B. Barker, 641 Harrison, Topeka, KS 66603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Precut log buildings, knocked down*, from Chadron, NE, to points in the United States, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Beaver Log Homes, Division of Chisum Industries, Inc., P.O. Box 1145, Claremore, OK 74107. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, 101 Litwin Building, Wichita, KS 67202.

MC 140829 (Sub-139TA), filed September 21, 1978. Applicant: CARGO CONTRACT CARRIER CORP., P.O. Box 206, U.S. Highway 20, Sioux City, IA 51102. Representative: William J. Hanlon, 55 Madison Avenue, Morristown, NJ 07960. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Artificial trees, light sets, decorations and displays*, from East Douglas, MA, to points in the States of IL, IN, MI, MO, and WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Charles Savard, Order Process Manager, Mr. Christmas, Inc., North Street, East Douglas, MA 01516. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 10 North 14th Street, Omaha, NE 68102.

MC 142574 (Sub-4TA), filed September 22, 1978. Applicant: CIRCLE C TRANSPORTATION CO., 5800 York Street, Denver, CO 80217. Representative: William J. Lippman, Suite 330, 50 South Steele Street, Denver, CO 80209. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, from the breweries of C. Schmidt & Sons and Ortlieb in Philadelphia, PA, to Denver, CO, under a continuing contract or contracts, with Rocky Mountain High Co., Denver, CO, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Rocky Mountain High Co., 5758 Lamar Street, Arvada, CO. Send protests to: Herbert C. Ruoff, District Supervisor, Interstate Commerce Commission, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 142668 (Sub-15TA), filed September 22, 1978. Applicant: AERO DISTRIBUTING CO., INC., 7259 Delta Circle, Mableton, GA 30336. Representative: Kim G. Meyer, 235 Peachtree Street, P.O. Box 872, Atlanta, GA 30301. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as is marketed by home products distributors for the account of Stanley Home Products, Inc., from Meridian, MS, to points in AL and those points in LA in and east of Pointe Coupee, Iberville, Assumption, Part of St. Martin and St. Mary, parishes, under a continuing contract or contracts, with Stanley Home Products, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Stanley Home Products, Inc., 116 Pleasant Street, Easthampton, MA 01025. Send protests to: Sara K. Davis, Transportation Assistant, Interstate Commerce Commission, 1252 West Peachtree Street NW., Room 300, Atlanta, GA 30309.

MC 142672 (Sub-32TA), filed September 21, 1978. Applicant: DAVID BENEUX PRODUCE & TRUCKING, INC., P.O. Drawer F, Mulberry, AR 72947. Representative: Don Garrison, 324 North Second Street, Rogers, AR 72756. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Fencing, fencing materials, wire and wire products*, from the facilities of Bekaert Steel Wire Corp., at or near Van Buren, AR, to points in AZ, CA, CO, CT, DE, FL, ID, MD, MI, MN, MT, NV, NJ, NM, NY, NC, ND, OR, PA, RI, SC, SD, UT, VA, WA, WV, WI, and WY; and (2) *Steel rods*, from the facilities of Georgetown Steel Co. at or near Beaumont, TX, to the facilities of Bekaert Steel Wire Corp., at or near Van Buren, AR; and (3) from all points in the United States (except AR, AK, and HI) to the facilities of Bekaert Steel Wire Corp., at or near Van Buren, AR, for 180 days. Supporting shipper: Bekaert Steel Wire Corp., I-40 and Lee Creek Road, Van Buren, AR 72956. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 143002 (Sub-3TA), filed September 21, 1978. Applicant: C. D. B., INC., 5170 36th Street SE., Grand Rapids, MI 49508. Representative: Karl L. Gotting, 1200 Bank of Lansing Building, Lansing, MI 48933. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals and plastic products other than expanded* (except in bulk, in tank vehicles), and miscellaneous equipment and supplies, from the facilities of Dow Chemical Co. at Midland, MI, and its commercial zone to Atlanta, GA, Los Angeles and Oakland, CA, Linden, NJ, and Houston and Dallas, TX, and their respective commercial zones, for 180 days. Supporting shipper: Dow Chemical Co., 690 Building, Midland, MI 48640. Send protests to: C. R. Flemming, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 225 Federal Building, Lansing, MI 48933.

MC 143205 (Sub-2TA), filed September 22, 1978. Applicant: DAVE HAAS, INC., 203 East Birch Street, Thorp, WI 54771. Representative: Michael J. Wyngaard, 150 East Gilman Street, Madison, WI 53703. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fabricated metal and metal products*, from the facilities of Industrial Fabricators, Inc., at Thorp, WI, to points in AL, AR, CA, CO, IL, IN, KS, KY, LA, MI, MO, NE, OH, TN, TX, PA, FL, MD, NY, WA, OR, ID, OK, and MS, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Industrial Fabricators, Inc., Thorp, WI 54771. Send protests to: Ronald A. Morken, District Supervisor, Interstate Commerce Commission, 212 East Washington Avenue, Room 317, Madison, WI 53703.

MC 143775 (Sub-19TA), filed September 21, 1978. Applicant: PAUL YATES, INC., 6601 West Orangewood, Glendale, AZ 85302. Representative: Michael R. Burke, 6601 West Orangewood, Glendale, AZ 85302. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Batteries and rubber tires, tubes, and accessories*, (1) from Little Rock, AR, Hanford, Los Angeles, Palo Alto, and Santa Fe Springs, CA; Phoenix, AZ; Cumberland, MD; Jackson, MS; Great Falls, MT; Akron, OH; and Des Moines, IA, to NV, NM, and WY, (2) from Little Rock, AR; Hanford, Los Angeles, Palo Alto, and Santa Fe Springs, CA; Cumberland, MD; Jackson, MS; Great Falls, MT; Akron, OH; and Des Moines, IA, to AZ, and (3) from Little Rock, AR; Phoenix, AZ; Cumberland, MD; Jackson, MS; Great Falls, MT; Akron, OH; and Des Moines, IA, to Santa Ana, CA, for 180 days. Supporting shipper: Charlie Case Tire Co., 32 South 7th Street, Phoenix, AZ 85034. Send protests to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, 2020 Federal Building, 230 North First Avenue, Phoenix, AZ 85025.

MC 145319 (Sub-1TA), filed September 27, 1978. Applicant: DALE BRADBURY AND BILL BRADBURY, d.b.a. BRADBURY BROS., P.O. Box 194A, Fort Scott, KS 66701. Representative: Clyde N. Christey, Suite 110L, Kansas Credit Union Building, Topeka, KS 66612. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Coal*, from facilities of Bill's Coal Co., near Garland and Fulton, KS, to the rail facilities near Stotesbury, MO, with subsequent movement by rail, restricted to the use of 10-wheel straight trucks only, for 180 days. Supporting shipper: Bill's Coal Co., Inc., 5200 Yale Avenue, Tulsa, OK 74135. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, 101 Litwin Building, Wichita, KS 67202.

MC 145384 (Sub-1TA), filed September 22, 1978. Applicant: ROSE-WAY, INC., 1914 East Euclid, Des Moines, IA 50306. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Resin compound*, in containers, from the facilities of Cargill, Inc., at or near Lynwood, CA, to Phoenix, AZ; Portland and Culver, OR, and Spokane and Seattle, WA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Cargill, Inc., 2801 Lynwood Road, Lynwood, CA 90262. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 145384 (Sub-7TA), filed September 22, 1978. Applicant: ROSE-WAY, INC., 1914 East Euclid, Des Moines, IA 50313. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Nickel base and titanium ingots and billets*, between the facilities of Viking Metallurgical at or near Verdi, NV, on the one hand, and, on the other, Owensboro, KY; Whitehall and Muskegon, MI; Monroe, NC, and New Hartford, NY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Viking Metallurgical, a subsidiary of Quanex, P.O. Box 339, Verdi, NV 89439. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 145388TA, filed September 22, 1978. Applicant: ABC SPECIAL DELIVERY, 736 East 11th Street, Chattanooga, TN 37403. Representative: Ira H. Pierce, Sr., 1109 Fairmount Avenue, Chattanooga, TN 37405. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, applicant does not seek authority to transport in bulk, in tank vehicles or passengers, (Section 210A, page 7 describes our request), from Chattanooga, TN, to points in the States of GA, NC, VA, KY, MS, AL, SC, IN, and MO, approximately 350 mile radius, for 180 days. Supporting shipper: D. M. Steward Manufacturing, Co., P.O. Box 510, Chattanooga, TN 37401. Send protests to: Joe J. Tate, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Suite A-422, U.S. Courthouse, 801 Broadway, Nashville, TN 37203.

MC 145417TA, filed September 27, 1978. Applicant: WELLS FARGO ARMORED SERVICE CORP., P.O. Box 4313, Atlanta, GA 30302. Representative: Steven J. Thatcher, P.O. Box 4313, Atlanta, GA 30302. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Coin currency and securities*, between New Orleans, LA, on the one hand, and on the other, points in FL west of the Apalachicola River, under a continuing contract, or contracts, with Federal Reserve Bank of New Orleans, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Federal Reserve Bank of New Orleans, P.O. Box 61630, New Orleans, LA 70161. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 West Peachtree Street, NW., Room 300, Atlanta, GA 30309.

MC 145428 (Sub-1TA), filed September 27, 1978. Applicant: CLIFF REED, Route 1, Box 510, Corvallis, MT 59840. Representative: John D. Greef, Recht & Greef, 210 Pinchney Street, Hamilton, MT 59840. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Lumber*, between points in MT, ID, WA, and OR, and from MT, ID, WA, and OR, to points in UT, WY, and CO, under a continuing contract or contracts, with Fox Lumber Sales, Inc., for 180 days. Supporting shipper(s): (1) Clyde Rummel, Mill Manager, Chempion Building Products/S & W Lumber Co., P.O. Box 395, Darby, MT 59829. (2) Carl Mohn,

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Sales Manager, Del Connor Lumber, Inc., P.O. Box 415, Darby, MT 59829. (3) Tom Fox, President, Fox Lumber Sales, Inc., P.O. Box 1021, Hamilton, MT 59840. Send protests to: Paul J. Labane, District Supervisor, Interstate Commerce Commission, 2602 First Avenue North, Billings, MT 59101.

MC 145490TA, filed September 21, 1978. Applicant: FOGLEMAN TRUCK LINE, INC., P.O. Box 1504, Crowley, LA 70526. Representative: Byron Fogleman, P.O. Box 1504, Crowley, LA 70526. Authority sought to operate as a *contract carrier*, by motor vehicle, ove irregular routes, transporting: (1) *Paper and paper products*, from plantsite of Union Camp Corp. at Lafayette, LA, to the States of TX, OK, AR, MS, and AL, and (2) *Materials and supplies* used in the manufacture and distribution of the above commodities, from TX, AR, OK, MS, and AL, to Union Camp Corp.'s plantsite at Lafayette, LA, under a continuing contract or contracts, with Union Camp Corp., for 180 days. Supporting shipper: Union Camp Corp., 1600 Valley Road, Wayne, NJ 07470. Send protests to: Connie A. Guillory, District Supervisor, Interstate Commerce Commission, Bureau of Operations, T-9038 U.S. Postal Service Building, 701 Loyola Avenue, New Orleans, LA 70113.

By the Commission.

H. G. HOMME, JR.,
Acting Secretary.

[FR Doc. 78-32274 Filed 11-15-78; 8:45 am]

[7035-01-M]

[Vol. No. 123]

PETITIONS, APPLICATIONS, FINANCE MATTERS (INCLUDING TEMPORARY AUTHORITIES), ALTERNATE ROUTE DEVIATIONS, AND INTRASTATE APPLICATIONS

PETITIONS FOR MODIFICATION, INTERPRETATION OR REINSTATEMENT OF OPERATING RIGHTS AUTHORITY

NOTICE

NOVEMBER 7, 1978.

The following petitions seek modification or interpretation of existing operating rights authority, or reinstatement of terminated operating rights authority.

All pleadings and documents must clearly specify the suffix (e.g. M1 F, M2 F) numbers where the docket is so identified in this notice.

An original and one copy of protests to the granting of the requested authority must be filed with the Commission within 30 days after the date of this notice. Such protests shall comply with Special Rule 247(e) of the Commission's *TGeneral Rules of Practice* (49 CFR 1100.247) [1] and shall include a concise statement of protestant's interest in the proceeding and copies of its conflicting authorities. Verified statements in opposition should not be tendered at this time. A copy of the protest shall be served concurrently upon petitioner's representative, or petitioner if no representative is named.

MC 124735 (Sub-1) (M1F) (notice of filing of petition to modify a permit), filed October 5, 1978. Petitioner: R. C. KERCHEVAL, JR., 2214 Fourth Avenue, South Seattle, WA 98134. Representative: George R. La Bissoniere, 1100 Norton Building, Seattle, WA 98104. Petitioner holds a motor *contract carrier* permit in MC 124735 Sub-1 issued Feburary 2, 1977, authorizing transportation, over irregular routes, as pertinent, of: *Parts of mobile homes and utility trailers, automotive springs, suspensions and parts thereof, brake drums, brake assemblies and parts thereof, tailgate hoists and parts thereof, wheels and wheel attaching parts, and parts for motor vehicle chassis and motor vehicle undercarriage*, from points in IL, IN, IA, MI, MO, OH, and WI, to ports of entry on the United States-Canada boundary line at or near Blaine, WA, Eastport, ID, Sweetgrass, MT, and Portal, ND. Restriction: The operations authorized immediately above are subject to the following conditions: The transportation service specified immediately above shall be in foreign commerce only. Said operations are restricted to the transportation of shipments destined to Vancouver, BC, and Calgary, and Edmonton, AB, Canada. Said operations are limited to a transportation service to be performed under a continuing contract(s) with Wheels & Equipment, Ltd., of Vancouver, BC, Canada. By the instant petition, petitioner seeks to modify the above authority by adding the ports of entry of International Falls, MN and Portal, ND as destination points in the territorial description.

MC 127618 (M1F) (Notice of filing of petition to modify certificate), filed September 27, 1978. Petitioner: WAGAR COACH LINES LTD., P.O. Box 294, Napanee, ON, CD K7R 3M4. Representative: Jeremy Kahn, Suite 733, Investment Building, 1511 K Street NW., Washington, DC 20005. Petitioner holds a motor *common carrier* certificate in MC 127618 issued February 2, 1967, authorizing transportation in foreign commerce, over irregular routes, of *Passengers and their baggage*, in charter operations, beginning and ending at ports of entry on the United States-Canada boundary line, and extending to points in the United States (except those in AK and HI) restricted to traffic originating at points in Ontario, Canada. By the instant petition, petitioner seeks to eliminate the restriction against service to AK.

MC 130138 (M1F) (correction) (Notice of filing of petition to modify license), filed June 20, 1978, previously noticed in the FEDERAL REGISTER issue of September 20, 1978. Petitioner: CHI-AM TOURS, INC., 9 Elizabeth Street, New York, NY 10013. Representative: Robert Goldstein, 8 West 40th Street, New York, NY 10018. Petitioner holds a motor carrier license as a *broker* in MC 130138, issued March 12, 1973, authorizing transportation, over irregular routes, of *Passengers and their baggage*, in round-trip sightseeing and pleasure tours, in special and charter operations, beginning and ending in that part of New York, NY in the Borough of Manhattan south of 14th Street, and extending to points in that part of the United States on and east of a line beginning at the mouth of the MS River and extending northerly along the MS River to its junction with the western boundary of Itasca County, MN, then northerly along the western boundaries of Itasca and Koochiching Counties, MN, to the United States-Canada boundary line. Applicant is authorized to engage in the above-specified operations as a broker at New York, NY. By the instant petition, petitioner seeks to modify the above authority by adding Los Angeles and San Francisco, CA to the beginning and ending portions of the territorial description, and also to add them as broker locations.

NOTE.—The purpose of this correction is to indicate the correct modification sought by this petition.

MC 135845 (Subs 1 and 3) (M1F) (Notice of filing petition to modify permits), filed May 18, 1978. Petitioner: CATER, INC., P.O. Box 129, Moorhead, MN 56560. Representative: Samuel Rubenstein, 301 North Fifth Street, Minneapolis, MN 55403. Petitioner holds motor *contract carrier* permits in MC 135845 Subs 1 and 3 issued June 12, 1972 and February 11, 1975, respectively. MC 135845 (Sub-1) authorizes transportation over irregular routes, of: (1) *Agricultural commodities*, the transportation of which is exempt from economic regulation under section 203(b)(6) of Part II of the Interstate Commerce Act when moving at the same time and in the same vehicle with the commodities named in (2) below, and (2) *Lactose and powdered corn sirup solids*, from Moorhead, MN to points in WA, OR, ID, MT, WY, ND, SD, and MN, under a continuing contract(s) in (1) and (2) above with Clark O. Orth Co., of Moorhead, MN. MC 135845 (Sub-3) authorizes transportation, over irregular routes, of: (1) *Corn syrup solids and dextrose*, from Keokuk and Clinton, IA, to points in WA, OR, ID, MT, WY, ND, SD, and MN, (2) *Sugar*, from Sidney, MT, Drayton, ND, and Moorhead, Crookston, and East Grand Forks, MN, to points in ND, SD, and MT, (3) *Cheese starter media*, from points in WI, to Moorhead, MN, and points in WA, OR, ID, MT, WY, ND, and SD, (4) *Lactose*, from Bongards, and Rochester, MN, to Moorhead, MN, and points in WA, OR, ID, MT, WY, ND, and SD, and (5) *Commodities*, which are otherwise exempt from economic regulation under section 203(b)(6) of Part II of the Act when moving in mixed shipments with the commodities in (1), (2), (3), and (4) hereinabove, from the respective origin points specified in (1), (2), (3), and (4) to their respective destination points in named States in (1), (2), (3), and (4). Restriction: The service authorized herein is subject to the following conditions: (A) The authority granted herein is restricted against the transportation of commodities in bulk, in tank vehicles, (B) The operations authorized herein are limited to a transportation service to be performed, under a continuing contract, or contracts, with Clark O. Orth Co., Moorhead, MN. By the instant petition, petitioner seeks to modify the above permits by substituting Ramsen, Inc. of St. Paul, MN as the contracting shipper in lieu of, Clark O. Orth Co. of Moorhead, MN.

REPUBLICATIONS OF GRANTS OF OPERATING RIGHTS AUTHORITY PRIOR TO CERTIFICATION

NOTICE

The following grants of operating rights authorities are republished by order of the Commission to indicate a broadened grant of authority over that previously noticed in the FEDERAL REGISTER.

An original and one copy of a petition for leave to intervene in the proceeding must be filed with the Commission within 30 days after the date of this FEDERAL REGISTER notice. Such pleading shall comply with Special Rule 247(e) of the Commission's General Rules of Practice (49 CFR 1100.247) addressing specifically the issue(s) indicated as the purpose for republication, and including copies of intervenor's conflicting authorities and a concise statement of intervenor's interest in the proceeding setting forth in detail the precise manner in which it has been prejudiced by lack of notice of the authority granted. A copy of the pleading shall be served concurrently upon the carrier's representative, or carrier if no representative is named.

MC 107839 (Sub-173) (republication), filed September 12, 1977, published in the FEDERAL REGISTER issue of October 6, 1977, and republished this issue. Applicant: DENVER-ALBUQUERQUE MOTOR TRANSPORT, INC., 2121 East 67th Avenue, Denver, CO 80216. Representative: Edward L. Gordon, P.O. Box 16106, Denver, CO 80216. A Decision of the Commission, Review Board Number 2, decided October 13, 1978, and served October 25, 1978, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier*, by motor vehicle, over irregular routes, in the transportation of: (1) *Foodstuffs;* (2) *pharmaceutical materials, supplies, and products;* (3) *chemicals;* (4) *alcoholic beverages;* (5) *tobacco products;* and (6) *pet foods*, in vehicles equipped with mechanical refrigeration, (A) from Denver, CO, to points in the United States in and west of MN, IA, MO, AR, and LA (except AK and HI), restricted to the transportation of traffic originating at (or moving from storage-in-transit at) Denver, CO, and destined to points in the United States in and west of MN, IA, MO, AR, and LA (except AK and HI); and (B) from points in the United States in and west of MN, IA, MO, AR, and LA (except AK and HI), to Denver, CO, restricted to the transportation of traffic originating at points in the United States in and west of MN, IA, MO, AR, and LA (except AK and HI), and destined to (or moving to storage-in-transit at) Denver, CO, and restricted in Parts (A) and (B) against the transportation of commodities in bulk, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to indicate the applicant's actual grant of authority.

MC 109708 (Sub-79) (republication), filed December 23, 1977, published in the FEDERAL REGISTER issue of February 16, 1978, and republished this issue. Applicant: INDIAN RIVER TRANSPORT CO., d.b.a. INDIAN RIVER TRANSPORT, INC., P.O. Box AG, Dundee, FL 33838. Representative: Bruce A. Bullock, Suite 530, Univac Building, 7100 West Center Road, Omaha, NE 68106. A Decision of the Commission, Review Board Number 3, decided September 29, 1978, and served October 13, 1978, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier*, by motor vehicle, over irregular routes, in the transportation of: (1) *Alcoholic liquors, neutral spirits, wine and brandy*, in bulk, in tank vehicles, from Auburndale and Lake Alfred, FL, to Lewiston, ME, Milwaukee, WI, and points in IL, IN, NJ, MA, MD, MI, KY, PA, OH, and LA; and (2) *neutral spirits and brandy*, in bulk, in tank vehicles, from Roberta, GA, to Peoria, IL, and Scobeyville, NJ, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to indicate the addition of Lewiston, ME, and Milwaukee, WI, in part (1) above, as destination points.

MC 134090 (Sub-4) (republication), filed July 5, 1977, published in the FEDERAL REGISTER issue of August 18, 1977, and republished this issue. Applicant: ALLBEST TRANSFER & WAREHOUSE, INC., 405 Division Street, Elizabeth, NJ 07201. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. A Decision of the Commission, Review Board Number 1, decided October 6, 1978, and served October 16, 1978, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *contract carrier*, by motor vehicle, over irregular routes, in the transportation of *Lawn and garden products*, in boxes and bags, from O. M. Scott & Sons Distribution Center, at New Brunswick, NJ, to the plantsite of M. Scott & Sons Co., at Marysville, OH, and points in CT, DE, MA, NY, and PA, under a continuing contract or contracts with O. M. Scott & Sons Co., of Marysville, OH, will be consistent with the public interest and the national transportation policy, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to delete MD as a destination point; indicate New Brunswick, NJ in lieu of Elizabethport, NJ as an origin point, and modify the territorial description.

MC 141914 (Sub-37F) (republication), filed April 3, 1978, published in the FEDERAL REGISTER issue of June 22, 1978, and republished this issue. Applicant: FRANKS & SON, INC., Route 1, Box 108A, Big Cabin, OK 74332. Representative: Kathrena J. Franks (same address as applicant). A Decision of the Commission, Review Board No. 1, decided October 17, 1978, and served October 31, 1978, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier*, by motor vehicle, over irregular routes, in the transportation of *Wooden products*, from Guilford, ME, to points in CA (except Los Angeles and San Francis-

[1] Copies of Special Rule 247 (as amended) can be obtained by writing to the Secretary, Interstate Commerce Commmission, Washington, DC 20423.

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co), CO, IN, ID, IA, MD, MT, NV, NM, OK, OR, SD, UT, WA (except Seattle), and WY, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to indicate the addition of MD as a destination point, and to indicate IN in lieu of IL as a destination point.

MOTOR CARRIER, BROKER, WATER CARRIER AND FREIGHT FORWARDER OPERATING RIGHTS APPLICATIONS

NOTICE

The following applications are governed by Special Rule 247 of the Commission's *General Rules of Practice* (49 CFR 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date of notice of filing of the application is published in the FEDERAL REGISTER. Failure to seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest under these rules should comply with section 247(e)(3) of the rules of practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding (including a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describing in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or applicant if no representative is named. All pleadings and documents must clearly specify the "F" suffix where the docket is so identified in this notice. If the protest includes a request for oral hearing, such requests shall meet the requirements of section 247(e)(4) of the special rules, and shall include the certification required therein.

Section 247(f) further provides, in part, that an applicant who does not intend timely to prosecute its application shall promptly request dismissal thereof, and that failure to prosecute an application under procedures ordered by the Commission will result in dismissal of the application.

Further processing steps will be by Commission decision which will be served on each party of record. Broadening amendments will not be accepted after the date of this publication except for good cause shown, and restrictive amendments will not be entertained following publication in the FEDERAL REGISTER of a notice that the proceeding has been assigned for oral hearing.

Each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

MC 113531 (Sub-2F), filed October 17, 1978. Applicant: B & M SERVICE, INC. Box 888, Rangely, CQ 81648. Representative: Truman A. Stockton, Jr., The 1650 Grant Street Building, Denver, CO 80203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Machinery, equipment, materials and supplies* used in, or in connection with, the discovery, devlopment, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and byproducts; (2) *machinery, materials, equipment and supplies* used in, or in connection with the construction, operation, repair, servicing, maintenance and dismantling of pipelines, including the stringing and picking up thereof; (3) *machinery, equipment, materials and supplies* used in, or in connection with the discovery, development, construction, operation, repair, servicing, maintenance and dismantling of mines; and (4) *commodities*, the transportation of which because of size or weight require special equipment, between points in that part of the United States in and west of ND, SD, NE, KS, OK, and TX (except AK and HI). (Hearing: November 28, 1978 (14 days), at 9:30 a.m. local time, at Denver, CO in a hearing room to be later designated.)

MC 113822 (Sub-8F), filed October 9, 1978. Applicant: DALGARNO TRANSPORTATION, INC., 12075 East 45th Avenue, Suite 522, Denver, CO 80239. Representative: William S. Richards, P.O. Box 2465, Salt Lake City, UT 84110. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Machinery, equipment, materials, and supplies*, used in, or in connection with the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum, and their procucts and by-products, and *machinery*, materials, equipment, and supplies used in, or in connection with the construction, operation, repair, servicing, maintenance, and dismantling of pipelines, including the stringing and picking up thereof, between points in AR, AZ, CA, CO, ID, KS, LA, MS, MT, NE, NV, NM, ND, OK, OR, SD, TX, UT, WA, and WY; (2) *Earth drilling machinery and equipment, and machinery, equipment, materials, supplies, and pipe* incidental to, used in or in connection with: (a) The transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment; (b) the completion of holes or wells drilled; (c) the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and (d) the injection or removal of commodities into or from holes or wells, between points in AR, AZ, CA, CO, ID, KS, LA, MS, MT, NE, NV, NM, ND, OK, OR, SD, TX, UT, WA, and WY; (3) To the extent required in *EX Parte 55 Sub No. 8*, applicant seeks authority to tack the applied for authority to its existing authority in Docket MC 113822 (Sub-3 and 4); (4) Restriction: The above authority to the extent that it duplicates authority presently held by applicant in Docket MC 113822 (Sub-3 and 4) shall not be construed as conferring more than a single operating right. (Hearing: November 28, 1978 (14 days), 9:30 a.m. local time, at Denver, CO, in a hearing room to be later designated.)

MC 144640 (Sub-3F), filed April 14, 1978, and previously published in the FEDERAL REGISTER issue of August 3, 1978. Applicant: AGRICULTURAL SERVICES ASSOCIATION, INC., Washington Street, Bells, TN 38006. Representative: William J. Augello, 120 Main Street, P.O. Box Z, Huntington, NY 11743. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: 1(b)B and 2, (1)(B) *Citrus and fruit concentrates*, from Highland City, Bartow, Umatilla, Plymouth, Bradenton, Auburndale, Leesburg, Forest City, Winterhaven, Orlando, Lake Wales, and Lakeland, FL, to Midfield and Huntsville, AL; Jonesboro and Helena, AR; Columbia and Gallation, IN; Jackson, Canton and Southhaven, MS; Columbia and St. Louis, MO; Vineland, NJ; Memphis, Nashville, Lebanon, Cookeville, Union City, Lawrenceburg, Martin and Humboldt, TN, and Richmond, VA; and (2) *juice*, (canned and bottled), from Highland City, Bartow, Umatilla, Plymouth, Bradenton, Auburndale, Leesburg, Forest City, Winterhaven, Orlando, Lake Wales, and Lakeland, FL, to Midfield and Huntsville, AL; Jonesboro and Helena, AR; Columbia and Gallation, IN; Jackson, Canton and Southhaven, MS; Columbia and St. Louis, MO; Vineland, NJ; Memphis, Nashville, Lebanon, Cookeville, Union City, Lawrenceburg, Martin, and Humboldt, TN, and Richmond, VA. (Hearing site:

Memphis, TN; New York, NY; Orlando, FL.)

NOTE.—This republication is to indicate "Jonesboro and Helena, AR", in lieu of Jonesboro and Helena, AK, in sections 1(b)B and 2 above.

FINANCE APPLICATIONS

NOTICE

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control through ownership of stock, of rail carriers or motor carriers pursuant to sections 5(2) or 210a(b) of the Interstate Commerce Act.

An original and one copy of protests against the granting of the requested authority must be filed with the Commission within 30 days after the date of this FEDERAL REGISTER notice. Such protest shall comply with Special Rules 240(c) or 240(d) of the Commission's *General Rules of Practice* (49 CFR 1100.240) and shall include a concise statement of protestant's interest in the proceeding. A copy of the protest shall be served concurrently upon applicant's representative, or applicant, if no representative is named.

MC-F-13698F. Authority sought for purchase by NORMAN W. WENGER & SONS, INC., Box 11, R.D. No. 2, East Earl, PA 17519, of a portion of the operating authorities of RAYMOND E. TOWNSEND, JR., Dagsboro-Omar Road, Frankford, DE 19945, and for acquisition by NORMAN W. WENGER, Box 11, R.D., No. 2, East Earl, PA 17519, of control of such rights through the transaction. Applicant's representative: John M. Musselman, 410 North Third Street, Harrisburg, PA 17108. Operating rights sought to be acquired: *Fertilizer* as a common carrier, over irregular routes, from Chesapeake, VA, to points in DE and MD east of the Chesapeake Bay and south of the Chesapeake and Delaware Canal; *manufactured fertilizers*, (except liquid fertilizer) in bulk, from Chesapeake, VA, to Windsor, NC; *manufactured fertilizers* (except liquid fertilizer), from Baltimore, MD, to points in that part of Delaware south of the Chesapeake and Delaware Canal, and points in Wicomico, Worcester and Somerset Counties, MD, and Accomac and Northampton Counties, VA; and *fertilizer*, from Dagsboro, Seaford, Bridgeville, Frankford, Milton, Harrington, Hartley, and Mt. Pleasant, DE, to points in Cecil, Kent, Queen Annes, Talbot, Caroline, Dorchester, Wicomico, Somerset and Worcester Counties, MD, and Accomac and Northampton Counties, VA, with no transportation for compensation on return except as otherwise authorized, and restricted against the transportation of liquid fertilizer in bulk, in tank vehicles, from Seaford, DE. Vendee seeks tacking or joinder with present authority at points in New Castle County, DE to authorize transportation of fertilizer from Chesapeake, VA to points in Berks, Bucks, Chester, Delaware, Lancaster, Montgomery and Philadelphia Counties, PA. Vendee is authorized to operate as a *common carrier* in DE, MD, NJ, PA and VA. No duplicating authority. Application has not been filed for temporary authority under section 210a(b).

NOTE.—MC 111023 (Sub-6F) is a directly related matter.

MC-F-13712F. Authority sought for purchase by MAIN LINE HAULING CO., INC., P.O. Box C, St. Clair, MO 63077, of the operating rights of HEISER TRUCK LINE, INC., Route 3, Herington, KS 67449. Applicants' attorney: William H. Shawn, Grove, Jaskiewicz, Gilliam, and Cobert, 1730 M Street NW., Washington, DC 20036. Operating rights sought to be transferred: *Building materials and related commodities* over irregular routes between Herington, KS, on the one hand, and Kansas City, KS, Kansas City, MO, on the other; *livestock, malt beverages, and other commodities* over irregular routes between Herington and Kansas City, KS, and *general commodities* over regular routes between White City, KS, and Kansas City, MO, with service to described intermediate and off-route points. Vendee is authorized to operate as a common carrier in MO, IL, and TN. Application has not been filed for temporary authority under section 210a(b).

NOTE.—If a nearing is deemed necessary, applicant requests that it be held at either Kansas City, KS; St. Louis, MO; or Washington, DC. MC 120181 (Sub-12F) is a directly related matter.

MC-F-13750F. Authority sought for purchase by CARLTON ENTERPRISES, INC., 4588 State Route 82, Mantua, OH 44255, of a portion of the operating rights of BREYER EXCHANGE, INC., R.D. 3, Box 43, New Philadelphia, OH 44663, of control of such rights through the transaction. Applicants' attorney: E. H. van Deusen, 220 West Bridge Street, P.O. Box 97, Dublin, OH 43017. Operating rights sought to be purchased: Salt and salt compounds, in bulk, as a *contract carrier* over irregular routes, transporting: From Rittman, OH, to points in NY on and west of a line beginning at the Niagara River southeast or Tonawanda, NY, and extending along NY Hwy 324 to junction NY Hwy 78 about 3 miles north of Bowmansville, NY, then south along NY Hwy 78 to junction U.S. Hwy 20 about 1 mile west of Lancaster, NY, then south along U.S. Hwy 20 to junction U.S. Hwy 62 about 4 miles north of Hamburg, NY, and then south along U.S. Hwy 62 via Hamburg, North Collins, Gowanda, Leon, Randolph, and Frewsburg, NY, to the NY-PA State line; to points in PA on and west of a line beginning at the NY-PA State line about 13 miles north of Warren, PA, and extending along U.S. Hwy 62 via Warren to junction PA Hwy 66 at Tionesta, PA, thence south along PA Hwy 66 via Shippenville, Clarion, and New Bethlehem, PA, to junction U.S. Hwy 422 about 1 mile east of Kittanning, PA, thence southeast along U.S. Hwy 422 via Elderton, PA, to junction U.S. Hwy 119 at Indiana, PA, and thence southwest along U.S. Hwy 119 via Homer City, Blairsville, Greensburg, Scottdale, Connelsville, Uniontown, and Point Marion, PA, to the PA-WV State line; and to points in Hancock, Brooke, Ohio, and Marshall Counties, WV, with no transportation for compensation on return except as otherwise authorized. *Salt*, from Fairport, OH, to points in that part of NY on and west of a line beginning at the Niagara River southeast of Tonawanda, NY, and extending along NY Hwy 324 to junction NY Hwy 78, then south along NY Hwy 78 to junction U.S. Hwy 20, then south along U.S. Hwy 20 to junction U.S. Hwy 62 and then south along U.S. Hwy 62 to the NY-PA State line, that part of PA on and west of a line beginning at the PA-NY State line and extending along U.S. Hwy 62 to junction PA Hwy 66, then south along PA Hwy 66 to junction U.S. Hwy 422, then southeast along U.S. Hwy 422 to junction U.S. Hwy 119, and then southwest along U.S. Hwy 119 to the PA-WV State line, and points in Brooke, Cabell, Hancock, Jackson, Kanawha, Marshall, Mason, Ohio, Pleasants, Putnam, Tyler, Wayne, Wetzel, and Wood Counties, WV; and *returned pallets*, from the above-specified destination points, to Fairport, OH. *Salt and salt compounds*, between points in Tuscarawas County, OH, on the one hand, and, on the other, points in KY, PA, and WV. *Salt and salt products*, from points in Tuscarawas County, OH, to points in IL, IN, KY, MD, MI, PA, VA, WV, and DC. Vendee is authorized to operate as a *common carrier* in OH, PA, and NY. Application has been filed for temporary authority under section 210a(b) of the Act.

MC 143267 (Sub-39F) is a directly related matter. (Hearing place: Columbus, OH.)

MC-F-13771F. Authority sought for purchase by LEAVITT'S FREIGHT SERVICE, INC., 3855 Marcola Road, Springfield, OR 97477, of a portion of the operating rights of PELLISSIER TRUCKING, INC., 1002 Hostetler (P.O. Box 192), The Dalles, OR 97068, and for acquisition by DEAN, DAR-

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RELL, DOUGLAS, AND DEWEY LEAVITT, all of 3855 Marcola Road, Springfield, OR 97477, of control of such rights through the transaction. Applicants' attorney: Russell M. Allen, 1200 Jackson Tower, Portland, OR 97205. Operating rights sought to be purchased: *Wooden Poles and Piling* as a *common carrier* over irregular routes from the facilities of J. H. Baxter Co. at or near The Dalles and Eugene, OR, to points in ID. Vendee is authorized to operate as a *common carrier* in OR, CA, NV, WA, and MT. Application has not been filed for temporary authority under section 210a(b).

MC-F-13790. Authority sought for purchase by PACE MOTOR LINES, INC., 132 West Dudleytown Road, Bloomfield, CT 06002, of the operating rights of ERNEST F. MONTZ, JR., d.b.a. J. F. RIEMER & CO., 15 Bailey Drive, West Haven, CT 06506, of control of such rights through the transaction. Applicants' representative: John E. Fay, 630 Oakwood Avenue, Suite 127, West Hartford, CT 06110. Operating rights sought to be transferred; *Meats and packinghouse products* as a *common carrier,* over irregular routes from New Haven, CT, to Springfield, MA, and Providence and Westerly, RI. Vendee is authorized to operate as a *common carrier* in CT, MA, RI, NY, and NJ. Application has been filed for temporary authority under section 210a(b).

NOTE.—MC 9268 (Sub-18F), is a directly related matter.

MC-F-13793F. Authority sought for purchase by NEBRASKA BULK TRANSPORTS, INC., P.O. Box 215, Bennet, NE 68317, of the operating rights of Dean H. Petersen, 2401 Park Avenue, Lincoln, NE 68502, and for acquisition by Dean L. Petersen of control of the rights through the purchase. Applicants' Attorney: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. Operating rights sought to be purchased: *Dairy products,* as a *common carrier,* over irregular routes, between points in NE, on the one hand, and, on the other, points in KS, MO, IA, MN, and CO. Restriction: The authority granted herein is restricted against the transportation of shipments originating at the plantsite of Beatrice Foods Co. at Lincoln, NE, as more fully described in Certificate No. MC 134418. Vendee is authorized to operate pursuant to Certificate No. MC 133219 as a *common carrier* in the 48 contiguous States, including DC. Application has not been filed for temporary authority under section 210a(b).

MC-F-13794F. Authority sought for purchase by ROSS NEELY EXPRESS, INC., 1500 Second Street, Birmingham, AL 35214, of a portion of the operating rights of Horne Heavy Hauling, Inc., P.O. Drawer L, Madisonville, KY 42431, and for acquisition by Ross Neely, Jr., also of Birmingham, AL, of control of the rights through purchase. Applicant vendee's attorney: Edward G. Villalon, 1032 Pennsylvania Building, Pennsylvania Avenue and 13th Street NW., Washington, DC. 20004; applicant vendor's attorney: Carl U. Hurst, P.O. Drawer L, Madisonville, KY 42431. Operating rights sought to be purchased: *General commodities,* except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment and those injurious or contaminating to other lading, as a *common carrier* over irregular routes: Between points within 15 miles of Chattanooga, TN, including Chattanooga, as described in vendor's certificate MC 35045. Vendee is authorized to operate pursuant to Certificate MC 99610 (Sub-14) and others in the transportation of general commodities (with the usual exceptions) as a *common carrier* in AL and MS. Application has been filed for temporary authority under section 210a(b).

NOTE.—MC 99610 (Sub-34F) is a directly related matter.

OPERATING RIGHTS APPLICATION(S) DIRECTLY RELATED TO FINANCE PROCEEDINGS

NOTICE

The following operating rights application(s) are filed in connection with pending finance applications under section 5(2) of the Interstate Commerce Act, or seek tacking and/or gateway elimination in connection with transfer applications under section 212(b) of the Interstate Commerce Act.

An original and one copy of protests to the granting of the authorities must be filed with the Commission within 30 days after the date of this FEDERAL REGISTER notice. Such protests shall comply with Special Rule 247(e) of the Commission's *General Rules of Practice* (49 CFR 1100.247) and include a concise statement of protestant's interest in the proceeding and copies of its conflicting authorities. Verified statements in opposition should not be tendered at this time. A copy of the protest shall be served concurrently upon applicant's representative or applicant if no representative is named.

Each applicant states that approval of its application will not significantly affect the quality of the human environment nor involve a major regulatory action under the Energy Policy and Conservation Act of 1975.

MC 1334 (Sub-23F), filed September 27, 1978. Applicant: Riteway Transport, Inc., 2131 West Roosevelt, Phoenix, AZ 85005. Representative: William H. Shawn, Suite 501, 1730 M Street NW., Washington, D.C. 20036. Authority is sought to operate as a regular route motor *common carrier* transporting: *General commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment) over regular routes: (1) Between Phoenix, AZ and Page, AZ, serving all intermediate points from Phoenix over Interstate Hwy 17 to junction of Interstate Hwy 40 to junction U.S. Hwy 89, then over U.S. Hwy 89 to junction U.S. Hwy 160, then over U.S. Hwy 160 to junction AZ Hwy 98, then over AZ Hwy 98 to Page, and return over the same route. (2) Between Grand Junction, CO and Moab, UT, serving all intermediate points from Grand Junction over U.S. Hwy 6 to junction of U.S. Hwy 163, then over U.S. Hwy 163 to Moab, and return over the same route. (3) Between Denver, CO, and Montrose, CO, serving all intermediate points, from Denver over U.S. Hwy 285 to junction of U.S. Hwy 50, then over U.S. Hwy 50 to Montrose, and return over the same route.

NOTE.—This matter is directly related to the section 5 finance proceeding in MC-F-13545 published in the FR issue of August 17, 1978. The purpose of this application is to convert irregular route authority in (3) above to regular route authority. (Hearing site: Phoenix, AZ, Grand Junction and Denver, CO.)

MC 9268 (Sub-18F), filed October 18, 1978. Applicant: PACE MOTOR LINES, INC., 132 West Dudleytown Road, Bloomfield, CT 06002. Representative: John E. Fay, 630 Oakwood Avenue, Suite 127, West Hartford, CT 06110. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Meats and packinghouse products,* in bulk, in vehicles equipped with mechanical refrigeration, between New York, NY, on the one hand, and, on the other, points in Providence and Westerly, RI. (Hearing site: Hartford or New Haven, CT.)

NOTE.—The purpose of this application is to eliminate the gateway of New Haven, CT, and is a matter directly related to MC-F-13790F, published in a previous section of this FR issue.

MC 75627 (Sub-1), filed October 7, 1977. Applicant: PERILLO MOTOR LINES, INC., 499 Central Avenue, New Providence, NJ 07974. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. On October 24, 1978, the Motor Carrier Board granted this gateway elimination application which was noted in the FEDERAL REGISTER on November 3, 1977 (42FR 57540). The application was subsequently amended and was granted, as per the amendment. The Board's decision authorizes the issuance of a certificate covering the transportation of: (1) *Electrical equipment, fittings, and fixtures,* and (2) *materials, supplies, and equipment,* used in the manufacture of the commodities in (1) above (except commodities in bulk), (a) between New York, NY, and points in Morris County, NJ, on the one hand, and, on the other, points in CT, ME, MA, NH, NY (except New York City and points in Westchester, Nassau, and Suffolk Counties), RI and VT, and (b) between points in Rockland County, NY, and Bergen, Passaic, Essex, and Hudson Counties, NJ, on the one hand, and, on the other, points in CT, ME, MA, NH, NY (except New York City and points in Westchester, Nassau, and Suffolk Counties), RI and VT.

NOTE.—This was a related matter to MC-FC-77333.

MC 99610 (Sub-34F), filed October 24, 1978. Applicant: ROSS NEELY EXPRESS, INC., P.O. Drawer "B," Pratt City Station, Birmingham, AL 35214. Representative: Edward G. Villalon, 1032 Pennsylvania Building, Pennsylvania Avenue and 13th Street NW., Washington, DC 20004. Authority sought to operate as *common carrier,* by motor vehicle, over regular and irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment), over regular routes: (1) Between Gadsden, AL and Chattanooga, TN, serving all intermediate points in AL and those in GA and TN within 15 miles of Chattanooga, TN, as intermediate and off-route points: From Gadsden over Interstate Hwy 59 to Chattanooga and return over the same route; and (2) between Bridgeport, AL and Chattanooga, TN serving all intermediate points in AL and those in GA and TN within 15 miles of Chattanooga as intermediate and off-route points: (a) over U.S. Hwy 72 to junction U.S. Hwy 41 (also portion U.S. Hwy 64) then over U.S. Hwy 41 (also portion U.S. Hwy 64) to junction Interstate Hwy 59, then over Interstate Hwy 59 to Chattanooga and return over the same route; and (b) from Bridgeport over U.S. Hwy 72 to junction Interstate Hwy 24, then over Interstate Hwy 24 to junction Interstate Hwy 59 then over Interstate Hwy 59 to Chattanooga and return over the same route. Irregular routes: (1) Between points within 15 miles of Chattanooga, TN, including Chattanooga. (Hearing site: Birmingham, AL or Atlanta GA.)

NOTE.—This application is directly related to MC-F-13794F, published in a previous section of this FEDERAL REGISTER issue, in which applicant seeks approval of the purchase of operating authority directly related which authorizes the transportation of the commodities herein described over irregular routes between points within 15 miles of Chattanooga, TN, including Chattanooga. Under existing operating authority in MC-99610 (Sub-14) applicant is authorized to transport general commodities, except commodities in bulk and household goods as defined by the Commission, over irregular routes between all points in Alabama north of the southern boundaries of Russell, Bullock, Pike, Crenshaw, Butler, Wilcox, Clarke, and Choctaw Counties. Thus, those points in the extreme northeastern corner of Alabama which are within 15 miles of Chattanooga, TN, are common points of service between the authority sought in the directly related sec. 5 application and applicant's existing authority. The purpose of this application is to permit the joinder of the authority to be acquired with applicant's existing authority over the described regular routes. Under applicant's Certificate MC 99610 (Sub-14) it is now authorized to serve as part of its network of regular routes in Alabama both Gadsden and Bridgeport. Thus, the authority sought herein will be joined with applicant's existing authority to provide service between points within 15 miles of Chattanooga, TN, on the one hand, and, on the other, applicant's existing authorized service territory in Alabama and Mississippi. Applicant also seeks to retain the nonradial irregular route authority to be acquired so as to able to perform the same service Horne Heavy Hauling, Inc., could provide between points within 15 miles of Chattanooga, TN, including Chattanooga, TN.

MC 111023 (Sub-6F), filed October 16, 1978. Applicant: NORMAN W. WENGER & SONS, INC., Box 11, R.D. No. 2, East Earl, PA 17519. Representative: John M. Musselman, 410 North Third Street, Harrisburg, PA 17108. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Fertilizer,* from Chesapeake, VA, to points in Berks, Bucks, Chester, Delaware, Lancaster, Montgomery, and Philadelphia Counties, PA. (Hearing site: Harrisburg, PA or Washington, DC.)

NOTE.—The purpose of this application is to eliminate the gateway of New Castle County, DE, and is a directly related matter to a section 5(2) finance proceeding docketed MC-F-13698F and published in a previous section of this FEDERAL REGISTER issue.

MC 120181 (Sub-12F), filed October 13, 1978. Applicant: MAIN LINE HAULING CO., INC., P.O. Box C, St. Clair, MO 63077. Representative: William H. Shawn, 1730 M Street NW., Washington, DC 20036. Authority sought to operate as a *common carrier,* by motor vehicle over regular routes, transporting: *General commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, and commodities in bulk, in tank trucks),* between Kansas City, MO, and St. Louis, MO, from Kansas City over Interstate 70 to St. Louis, and return over the same route. Gateways: Kansas City, MO and Parkway Village, MO. (Hearing site: St. Louis or Kansas City, MO.)

NOTE.—This matter is directly related to the section 5 finance proceeding in MC-F-13712F published in a previous section of this FEDERAL REGISTER issue. The purpose of this application is to eliminate the gateways of Kansas City and Parkway Village, MO. Applicant states that a portion of the authority being joined in this proceeding and being utilized for the gateway elimination is pending before the Commission and docketed MC 120181 (Sub-11F), filed August 8, 1978 and published in the FEDERAL REGISTER issue of October 5, 1978. Applicant has a corresponding Sub-9TA.

MC 143267 (Sub-39F), filed October 18, 1978. Applicant: CARLTON ENTERPRISES, INC., 4588 State Route 82, Mantua, Ohio 44255. Representative: E. H. van Deusen, P.O. Box 97, 220 West Bridge Street, Dublin, Ohio 43017. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Salt and salt compounds,* in bulk, from Rittman, OH, to points in NY on and west of a line beginning at the Niagara River southeast of Tonawanda, NY, and extending along NY Hwy 324 to junction NY Hwy 78 about 3 miles north of Bowmansville, NY, then south along NY Hwy 78 to junction U.S. Hwy 20 about 1 mile west of Lancaster, NY, then south along U.S. Hwy 20 to junction U.S. Hwy 62 about 4 miles north of Hamburg, NY, and then south along U.S. Hwy 62 via Hamburg, North Collins, Gowanda, Leon, Randolph, and Frewsburg, NY, to the NY-PA State line; to points in PA on and west of a line beginning at the NY-PA State line about 13 miles north of Warren, PA, and extending along U.S. Hwy 62 via Warren to junction PA Hwy 66 at Tionesta, PA, thence south along PA Hwy 66 via Shippenville, Clarion, and New Bethlehem, PA, to junction U.S. Hwy 422 about 1 mile east of Kittanning, PA, thence southeast along U.S. Hwy 422 via Elderton, PA, to junction U.S. Hwy 119 at Indiana, PA, and thence southwest along U.S. Hwy 119 via Homer City, Blairsville, Greensburg, Scottdale, Connelsville, Uniontown, and Point Marion, PA, to the PA-WV State line; and to points in Hancock, Brooke, Ohio, and Marshall Counties, WV, (2) *salt,* from Fairport, OH, to points in that part of NY on and west of a line beginning at the Niagara River southeast of Tonawanda, NY, and extending along NY Hwy 324 to junction NY Hwy 78, then south along NY Hwy 78 to junction U.S. Hwy 20, then south along U.S. Hwy 20 to junction U.S. Hwy 62 and then south along U.S. Hwy 62 to

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the NY-PA State line, that part of PA on and west of a line beginning at the PA-NY State line and extending along U.S. Hwy 62 to junction PA Hwy 66, then south along PA Hwy 66 to junction U.S. Hwy 422, then southeast along U.S. Hwy 422 to junction U.S. Hwy 119, and then southwest along U.S. Hwy 119 to the PA-WV State line, and points in Brooke, Cabell, Hancock, Jackson, Kanawha, Marshall, Mason, Ohio, Pleasants, Putnam, Tyler, Wayne, Wetzel, and Wood Counties, WV; and (3) *returned pallets*, from the above-specified destination points, to Fairport, OH; (4) *salt and salt compounds*, between points in Tuscarawas County, OH, on the one hand, and, on the other, points in KY, PA, and WV; and (5) *salt and salt products*, from points in Tuscarawas County, OH, to points in IL, IN, KY, MD, MI, PA, VA, WV, DC. (Hearing site: Columbus, OH.)

NOTE.—The purpose of this application is to convert Permit MC 113254, and subs 2, 3, and 4, to a certificate of public convenience and necessity. This is a matter directly related to a transfer proceeding under sec. 5, wherein applicant seeks to acquire the said permit from Breyer, Exchange, Inc., docketed MC-F-13750F and published in a previous section of this FEDERAL REGISTER issue.

MOTOR CARRIER ALTERNATE ROUTE DEVIATIONS

NOTICE

The following letter-notices to operate over deviation routes for operating convenience only have been filed with the Commission under the Deviation Rules—Motor Carrier of Property (49 CFR 1042.4(c)(11)).

Protests against the use of any proposed deviation route herein described may be filed with the Commission in the manner and form provided in such rules at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of this FEDERAL REGISTER notice.

Each applicant states that there will be no significant effect on either the quality of the human environment or energy policy and conservation.

MOTOR CARRIERS OF PROPERTY

MC 30204 (Deviation No. 30), HEMINGWAY TRANSPORT, INC., 438 Dartmouth Street, New Bedford, MA, filed October 26, 1978. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Newark, NJ over Interstate Hwy 280, then over Interstate Hwy 80 to junction U.S. Hwy 220, then over U.S. Hwy 220 to Duncansville, PA, and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Newark, NJ over U.S. Hwy 22 to junction unnumbered Hwy, then over unnumbered Hwy via Easton, Bethlehem, and Allentown, PA to junction U.S. Hwy 22, then over U.S. Hwy 22 to Harrisburg, PA, then over U.S. Hwy 11 to Hagerstown, MD, then over U.S. Hwy 40 to Cumberland, MD, then over U.S. Hwy 220 to Duncansville, PA and return over the same route.

MC 69901 (Deviation No. 6), COURIER-NEWSOM EXPRESS, INC., P.O. Box 270, Columbus, IN 47201, filed November 1, 1978. Carrier's representative: Edward G. Bazelon, 39 South LaSalle Street, Chicago, IL 60603. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Nashville, TN over Interstate Hwy 65 to Indianapolis, IN, then over Interstate Hwy 69 to junction MI Hwy 60, then over MI Hwy 60 to junction Interstate Hwy 94, then over Interstate Hwy 94 to Detroit, MI, and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commidities over a pertinent service route as follows: From Nashville, TN over U.S. Hwy 70N to junction U.S. Hwy 70S, then over U.S. Hwy 70S to junction U.S. Hwy 70, then over U.S. Hwy 70 to junction U.S. Hwy 25W, then over U.S. Hwy 25W to junction TN Hwy 61, then over TN Hwy 61 to junction TN Hwy 62, then over TN Hwy 62 to junction U.S. Hwy 27, then over U.S. Hwy 27 to junction U.S. Hwy 150, then over U.S. Hwy 150 to junction KY Hwy 35, then over KY Hwy 35 to junction KY Hwy 151, then over KY Hwy 151 to junction U.S. Hwy 60, then over U.S. Hwy 60 to junction U.S. Hwy 31E, then over U.S. Hwy 31E to junction U.S. Hwy 31, then over U.S. Hwy 31 to junction IN Hwy 9, then over IN Hwy 9 to junction IN Hwy 7, then over IN Hwy 7 to junction Alt. U.S. Hwy 31, then over Alt U.S. Hwy 31 to junction U.S. Hwy 31, then over U.S. Hwy 31 to junction U.S. Hwy 421, then over U.S. Hwy 421 to junction IN Hwy 29, then over IN Hwy 29 to junction U.S. Hwy 24, then over U.S Hwy 24 to junction U.S. Hwy 27, then over U.S. Hwy 27 to junction U.S. 12, then over U.S. Hwy 12 to junction Business Route U.S. Hwy 12, then over Business Route U.S. Hwy 12 to junction U.S. Hwy 12, then over U.S. Hwy 12 to Detroit, MI, and return over the same route.

MOTOR CARRIER INTRASTATE APPLICATION(S)

NOTICE

The following application(s) for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to section 206(a)(6) of the Interstate Commerce Act. These applications are governed by Special Rule 245 of the Commission's general rules of practice (49 CFR 1100.245), which provides, among other things, that protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, and any other related matters shall be directed to the State Commission with which the application is filed and shall not be addressed to or filed with the Interstate Commerce Commission.

Florida Docket No. 780838-CCT, filed October 13, 1978. Applicant: SMALLEY TRANSPORTATION CO., 410 Ware Boulevard, P.O. Box 5175, Tampa, FL 33675. Representative: Ansley Watson, Jr., 512 North Florida Avenue, P.O. Box 1531, Tampa, FL 33601. Certificate of public convenience and necessity sought to operate a freight service over regular routes, as follows: Transportation of: *General commodities* (except those of unusual value, household goods, commodities in bulk, commodities which because of size or weight require the use of special equipment, commodities in vehicles equipped with mechanical refrigeration, and the following commodities when moving in truckload lots: building and construction materials on flatbed trailers, fertilizer on flatbed trailers, beer, sodium hypochlorite, and empty glass containers and closures therefor), (1) Between Jacksonville and Melbourne, FL, serving all intermediate points: from Jacksonville over U.S. Hwy 1 and/or FL Hwy A1A to Melbourne, and return over the same route. (2) Between Jacksonville and Orlando, FL, serving all intermediate points: from Jacksonville over U.S. Hwy 17 to Orlando, and return over the same route. (3) Between Jacksonville and Ocala, FL, serving all intermediate points: from Jacksonville over U.S. Hwy 301 to Ocala, and return over the same route. (4) Between Ocala and Gainesville, FL, serving all intermediate points: from Ocala over U.S. Hwy 441 to Gainesville, and return over the same route. (5) Between Gainesville and Waldo, FL, serving all intermediate points: From Gainesville over FL Hwy 24 to Waldo, and return over the same route. (6) Between Gainesville and Palatka, FL, serving all intermediate points: from Gainesville over FL Hwy 20 to Palatka, and return over the same route. (7) Between Leesburg and New Smyrna Beach, FL, serving all intermediate points: from Leesburg over FL Hwy 44 to New Smyrna Beach, and return over the same route. (8) Between DeLand and Daytona Beach, FL, serving all intermediate points: from DeLand over U.S. Hwy 92 to Daytona Beach, and return over the same route. (9) Between Orlando and Titusville, FL, serving all intermediate points: from Orlando over FL Hwy 50 to its junction with FL Hwy 405, then over FL Hwy 405 to Titusville, and return over the same route. (10) Between Ocala and Williston, FL, serving all intermediate points: from Ocala over U.S. Hwy 27 to Williston, and return over the same route. (11) Between Gainesville and Williston, FL, serving all intermediate points: from Gainesville over FL Hwy 121 to Williston, and return over the same route. (12) Between Gainesville and High Springs, FL, serving all intermediate points: from Gainesville over U.S. Hwy 441 to High Springs, and return over the same route. (13) Between Williston and High Springs, FL, serving all intermediate points: from Williston over U.S. Hwy 27/41 to High Springs, and return over the same route. (14) Between Gainesville and Newberry, FL, serving all intermediate points: from Gainesville over FL Hwy 26 to Newberry, and return over the same route. (15) Between Gainesville and Archer, FL, serving all intermediate points: from Gainesville over FL Hwy 24 to Archer, and return over the same route. (16) Between Gainesville and Lake Butler, FL, serving all intermediate points: from Gainesville over FL Hwy 121 to Lake Butler, and return over the same route. (17) Between Starke and Lake Butler, FL, serving all intermediate points: from Starke over FL Hwy 100 to Lake Butler, and return over the same route. (18) Between Starke and Green Cove Springs, FL, serving all intermediate points: from Starke over FL Hwy 16 to Green Cove Springs, and return over the same route. (19) Between Starke and Palatka, FL, serving all intermediate points: from Starke over FL Hwy 100 to Palatka, and return over the same route. (20) Between Ocala and Barberville, FL, serving all intermediate points: from Ocala over FL Hwy 40 to Barberville, and return over the same route. (21) Between Barberville and Ormond Beach, FL, serving all intermediate points: from Barberville over FL Hwy 40 to Ormond Beach, and return over the same route. (22) Between Palatka and Bunnell, FL, serving all intermediate points: from Palatka over FL Hwy 100 to Bunnell, and return over the same route. (23) Between St. Augustine and Palatka, FL, serving all intermediate points: from St. Augustine over FL Hwy 207 to its junction with FL Hwy 100, then over FL Hwy 100 to Palatka, and return over the same route. (24) Between St. Augustine and Green Cove Springs, FL, serving all intermediate points: from St. Augustine over FL Hwy 16 to Green Cove Springs, and return over the same route. (25) Between Sanford and Mt. Dora, FL, serving all intermediate points: from Sanford over FL Hwy 46 to Mt. Dora, and return over the same route. (26) Between Orlando and Melbourne, FL, serving all intermediate points: from Orlando over U.S. Hwy 441 to Holopaw, then over U.S. Hwy 192 to Melbourne, and return over the same route. (27) Between Dunnellon and Williston, FL, serving all intermediate points: from Dunnellon over U.S. Hwy 41 to Williston, and return over the same route. (28) Between Orlando and Daytona Beach, FL, serving all intermediate points: from Orlando over I-4 to Daytona Beach, and return over the same route. (29) Between Jacksonville, FL, and the junction of I-95 with U.S. Hwy 192 near West Melbourne, FL, serving all intermediate points: from Jacksonville over I-95 to its junction with U.S. Hwy 192, and return over the same route. (30) Between Ocala and Gainesville, FL, serving all intermediate points: from Ocala over I-75 to Gainesville, and return over the same route. (31) Between Gainesville, FL, and the junction of I-75 with I-10, serving all intermediate points: from Gainesville over I-75 to its junction with I-10, and return over the same route. (32) Between Jacksonville, FL, and the junction of I-10 with I-75, serving all intermediate points: from Jacksonville over I-10 to its junction with I-75, and return over the same route. (33) Between High Springs, FL, and the junction of U.S. Hwy 441 with I-10, serving all intermediate points: from High Springs over U.S. Hwy 441 to its junction with I-10, and return over the same route. (34) Between Jacksonville, FL, and the junction of U.S. Hwy 90 with I-75, serving all intermediate points: from Jacksonville over U.S. Hwy 90 to its junction with I-75, and return over the same route. (35) Between Lake Butler and Macclenny, FL, serving all intermediate points: from Lake Butler over FL Hwy 121 to Macclenny, and return over the same route. (36) Between Lake Butler and Watertown, FL, serving all intermediate points: from Lake Butler over FL Hwy 100 to Watertown and return over the same route. (37) Between Bunnell and DeLand, FL, serving all intermediate points: from Bunnell over FL Hwy 11 to DeLand, and return over the same route. (38) Between Palatka and Eustis, FL, serving all intermediate points: from Palatka over FL Hwy 19 to Eustis, and return over the same route. (39) Between the junction of FL Hwy 40 with FL Hwy 314 and the junction of FL Hwy 314 with FL Hwy 19, serving all intermediate points: from the junction of FL Hwy 40 with FL Hwy 314, over FL Hwy 314 to its junction with FL Hwy 19, and return over the same route. (40) All other points in Alachua, Bradford, Brevard, Clay, Duval, Flagler, Lake, Marion,, Orange, Putnam, St. Johns, Seminole, and Volusia Counties, FL, will be served as off-route points in connection with the regular routes authorized to be served. Applicant seeks authority to engage in transportation in interstate and foreign commerce within the limits of the intrastate authority sought herein, and further seeks authority to tack or join the routes sought herein with each other at common points, and to tack or join all of the authority sought herein with its present operating rights under Florida Public Service Commission Certificate No. 1013, Interstate Commerce Commission Certificates of Registration No. MC 121667 and subs, and extensions thereof granted prior to final disposition of this application. Applicant seeks no authority herein duplicating that presently held under its certificate and certificates of registration referred to above. Intrastate, interstate and foreign commerce authority sought. Hearing: Date, time and place not yet fixed. Requests for procedural information should be addressed to Florida Public Service Commission, Fletcher Building, 101 East Gaines Street, Tallahassee, FL 32304, and should not be directed to the Interstate Commerce Commission.

Tennessee Docket MC 2668 (Sub-7), filed August 24, 1978. Applicant: HOHENWALD TRUCK LINES, INC., Columbia Highway, Hohenwald, TN 38462. Representative: A. O. Buck, 618 United American Bank Building, Nashville, TN 37219. Certificate of Public Convenience and Necessity sought to operate a freight service, over regular routes, as follows: Transportation of: *General commodities* (except household goods, Classes A and B explosives, commodities in bulk and those requiring special equipment): Route 1. Between Franklin, TN and Buffalo, TN. From Franklin over TN Hwy 96 to its junction with Interstate Hwy I-40, then over Interstate Hwy I-40 to Buffalo, and return over the same route. Route 2. Between Franklin, TN and Hohenwald, TN: From Franklin over U.S. Hwy 31 to its junction with TN Hwy 99, then over TN Hwy 99 to Hohenwald, and return over the same route. Said Routes 1 and 2 to be used as alternate routes for operating convenience only, and to be used in conjunction with all of applicant's existing authority. Hearing:

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November 21, 1978, at 1:30 p.m., C-1-110 Cordell Hull Building, Nashville, TN. Requests for procedural information should be addressed to Tennessee Public Service Commission, C1-102 Cordell Hull Building, Nashville, TN 37219, and should not be directed to the Interstate Commerce Commission.

NOTE.—The purpose of this republication is to clarify applicant's actual grant of authority, intrastate, interstate, and foreign commerce authority sought.

Tennessee Docket MC 5317 (Sub-2), filed August 23, 1978. Applicant: VOLUNTEER EXPRESS, INC., 1220 Faydur Court, Nashville, TN 37211. Representative: Walter Harwood, P.O. Box 15214, Nashville, TN 37215. Certificate of Public Convenience and Necessity sought to operate a freight service, over regular routes, as follows: Transportation of: *General commodities* (except Classes A and B explosives, household goods, commodities in bulk, and articles requiring special equipment), (1) From Jackson, TN via U.S. Hwy 45 to junction with U.S. Hwy 45W, then via U.S. Hwy 45W to the Obion County Line, then via any and all highways and roads in Obion and Weakley Counties, TN, serving all points in said counties (but serving no intermediate points between Jackson and the said Obion County Line), and return over the same route. (2) Amend Route (2) of carrier's Certificate No. 3436-A, so as to read as follows: "From Memphis, TN via I-40 to junction with U.S. Hwy 45 at Jackson, TN, then via U.S. Hwy 45 to its junction with U.S. Hwy 45E to the Weakley County Line, then via any and all highways and roads in Weakley and Obion Counties, serving all points in said counties, and serving Jackson as an intermediate point". (3) From Jackson, TN via I-40 to junction of I-40 and TN Hwy 22, and return over the same route, serving said junction of I-40 and TN Hwy 22 for purposes of joinder only. (4) Amend Route (1) of carrier's Certificate No. 3436, so as to read as follows: "From Nashville, TN, via I-40 to junction with TN Hwy 22, then via TN Hwy 22 to the Weakley County Line, then over any and all highways and roads in Weakley and Obion Counties, serving all points in said counties, and return over the same route, serving the junction of I-40 and TN Hwy 22 for purposes of joinder only." All of the foregoing routes to be used in conjunction with each other and in conjunction with all of carrier's other authority. Restricted against tacking the foregoing authority with any of carrier's other authority for the purpose of providing a through service between Nashville and Memphis, TN and points in their respective commercial zones. Hearing: December 11, 1978, at 9:30 a.m., C1-110 Cordell Hull Building, Nashville, TN. Requests for procedural information should be addressed to Tennessee Public Service Commission, C1-102 Cordell Hull Building, Nashville, TN 37219, and should not be directed to the Interstate Commerce Commission.

NOTE.—Applicant presently operates in interstate commerce pursuant to Certificates of Registration issued in MC 121699. The purpose of this publication is to clarify applicant's actual grant of authority, Intrastate, interstate and foreign commerce authority sought.

By the Commission.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 78-32112 Filed 11-15-78; 8:45 am]

sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409), 5 U.S.C. 552b(e)(3).

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[6351-01-M]

1

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10 a.m., November 21, 1978.

PLACE: 2033 K Street NW., Washington, D.C. 5th floor hearing room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Proposed revisions of Form 1-PR and amendment to the Freedom of Information Act Rules.

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254-6314.

[S-2316-78 Filed 11-14-78; 3:38 pm]

[6351-01-M]

2

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11 a.m., November 21, 1978.

PLACE: 2033 K Street NW., Washington, D.C., fifth floor hearing room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matters/application for registration as an associated person of a futures commission merchant; proposed administrative proceeding.

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254-6314.

[S-2317-78 Filed 11-14-78; 3:38 pm]

[6351-01-M]

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11 a.m. Friday, November 24, 1978.

PLACE: 2033 K Street NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market surveillance matters.

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254-6314.

[S-2318-78 Filed 11-14-78; 3:38 pm]

[6712-01-M]

4

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Thursday, November 9, 1978.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Special Open Commission Meeting.

CHANGES IN THE MEETING: Additional item to be considered.

Agenda, item No., and subject

Common Carrier—1—ENFIA Negotiations. Status Report.

The prompt and orderly conduct of Commission business requires that less than 7-days notice be given consideration of this additional item.

Action by the Commission, November 8, 1978. Commissioners Ferris, Chairman; Lee, Quello, Washburn, Fogarty, White, and Brown, voting to consider this additional item.

Additional information concerning this meeting may be obtained from the FCC Public Information Office, telephone 202-632-7260.

Issued: November 13, 1978.

[S-2312-78 Filed 11-14-78; 11:28 am]

[6712-01-M]

5

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Tuesday, November 14, 1978.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Open Commission meeting.

CHANGES IN THE MEETING: Additional item to be considered.

Agenda, item No., and subject

General—5—Radio frequency interference to electronic equipment.

The prompt and orderly conduct of Commission business requires that less than 7-days notice be given consideration of this additional item.

Action by the Commission, November 8, 1978. Commissioners Ferris, (Chairman), Lee, Quello, Washburn, Fogarty, White, and Brown voting to consider this additional item.

Additional information concerning this meeting may be obtained from the FCC Public Information Office, telephone 202-632-7260.

Issued: November 13, 1978.

[S-2313-78 Filed 11-14-78; 11:28 am]

[6730-01-M]

6

FEDERAL MARITIME COMMISSION.

TIME AND DATE: November 22, 1978, 10 a.m.

PLACE: Room 12126, 1100 L Street NW., Washington, D.C. 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions open to the public:

1. Report on notation items disposed of during October 1978.
2. Report of the Secretary on times shortened for submitting comments on section 15 agreements pursuant to delegated authority during October 1978.
3. Report of the Secretary on Applications for Admission to Practice approved during October 1978, pursuant to delegated authority.
4. Assignment of informal dockets by the Secretary during October 1978, pursuant to delelgated authority.
5. Monthly Report of actions taken pursuant to authority delegated to the Managing Director.
6. Agreement No. 10350: Cargo revenue pooling, sailing, and equal access agreement in the United States Atlantic/Argentina trade. Agreement No. 10346: Cargo revenue pooling, sailing, and equal access agreement in the Argentina/United States Gulf trade.

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Agreement No. 10349: Cargo revenue pooling, sailing, and equal access agreement in the Argentina/United States Atlantic trade.

7. Agreement No. 10044-4: Modification and extension of a pooling agreement in the southbound United States Gulf-Peru trade.

8. Agreement No. 10041-6: Modification and extension of a pooling agreement in the southbound United States Atlantic-Peru trade.

9. Agreements Nos. T-3453 and T-3453-A: Agreements regarding marine terminal facilities at San Juan, P.R. and Docket No. 76-41: Berthing of Seatrain Vessels in San Juan, P.R.—consideration of petition for stay.

10. Draft final rules limiting extensions of time to file pleadings and postponements of hearing dates.

11. Proposed revision of declaratory order procedures.

12. Special Docket No. 554: *Hermann Ludwig, Inc. v. Waterman Steamship Corp.*, consideration of the record.

Portions closed to the public:

1. Docket No. 71-76: *Bethlehem Steel Corp. v. Indiana Port Commission*, consideration of the record.

2. Docket No. 74-44: Agreement between Puerto Rico Maritime Shipping Authority and Puerto Rico Marine Management, Inc./Puerto Rico Marine Operating Co., Inc., consideration of the record.

CONTACT PERSON FOR MORE INFORMATION:

Francis C. Hurney, Secretary, 202-523-5725.

[S-2319-78 Filed 11-14-78; 3:48 pm]

[6735-01-M]

7

NOVEMBER 14, 1978.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 10 a.m., November 21, 1978.

PLACE: 1730 K Street NW., Room 600, Washington, D.C. 20006.

STATUS: This meeting will be open.

MATTERS TO BE CONSIDERED: The following will be considered and acted upon by the Commission. If necessary, they will be carried over to the next regularly scheduled meeting.

1. Peter White Coal Mining Corp., Docket Nos. HOPE 78-554, 78-555, 78-556, 78-557, 78-558 (petition for discretionary review).

2. Westmoreland Coal Co., Docket No. IBMA 76-101 (application for compensation).

3. *Kanawha Coal Co. v. Local Union No. 3453*, Docket No. IBMA 78-7 (Motion for filing brief on appeal).

CONTACT PERSON FOR MORE INFORMATION:

Donald Terry, 202-653-5644.

[S-2320-78 Filed 11-14-78; 3:48 pm]

[7025-01-M]

8

INTER-AMERICAN FOUNDATION.

TIME AND DATE: 12:30 p.m., November 28, 1978.

PLACE: Board Room, Inter-American Foundation, 1515 Wilson Boulevard, Rosslyn, Va. 22209.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. President's report.
2. Financial report.
3. Portfolio review of IAF funding.
4. Discussion on the learning process.

CONTACT PERSON FOR MORE INFORMATION:

Lawrence E. Bruce, Jr, 703-841-3812.

[S-2315-78 Filed 11-14-78; 3:37 pm]

[7590-01-M]

9

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: Monday, November 20, 1978.

PLACE: Commissioners Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

MONDAY, NOVEMBER 20 (ITEMS ARE TENTATIVE)

2:30 p.m.—(1) Discussion of proposals for reviewing allegations of discrimination in EEO (approximately 1 hour, public meeting). (2) Discussion of review of ALAB-500 and ALAB-489—Offshore Power Systems (floating nuclear plants) (approximately 1 hour, public meeting).

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee, 202-634-1410.

WALTER MAGEE,
Office of the Secretary.

NOVEMBER 13, 1978.

[S-2310-78 Filed 11-14-78; 11:08 am]

[7600-01-M]

10

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 1 p.m., November 22, 1978.

PLACE: Room 1101, 1825 K Street NW., Washington, D.C.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE INFORMATION:

Mrs. Patricia Bausell, 634-4015.

DATE: November 7, 1978.

[S-2311-78 Filed 11-14-78; 11:08 am]

[7910-01-M]

11

THE RENEGOTIATION BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 49412, October 23, 1978.

PREVIOUSLY ANNOUNCED DATE AND TIME OF MEETING: Thursday, November 30, 1978; 9:30 a.m.

CHANGE IN MEETING: Date postponed to: Thursday, December 14, 1978; 9:30 a.m.

CONTACT PERSON FOR MORE INFORMATION:

Kelvin H. Dickinson, Assistant General Counsel, Secretary, 2000 M Street NW., Washington, D.C. 20446, 202-254-8277.

Dated: November 9, 1978.

GOODWIN CHASE,
Chairman.

[S-2314-78 Filed 11-14-78; 3:37 pm]

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federal register

THURSDAY, NOVEMBER 16, 1978
PART II

THE NATIONAL ARCHIVES OF THE UNITED STATES • 1934 •

NATIONAL SCIENCE FOUNDATION

federal register

PRIVACY ACT OF 1974

Systems of Records; Annual Publication

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[7555-01-M]

NATIONAL SCIENCE FOUNDATION

PRIVACY ACT ISSUANCES

Notice of Incorporation by Reference

AGENCY: National Science Foundation.

ACTION: Incorporation by reference of Privacy Act issuances.

SUMMARY: Federal agencies are required by the Privacy Act of 1974 to give annual notice of certain records they maintain. The notices published last year were compiled by the Office of the Federal Register into "Privacy Act Issuances—1977 Compilation." The purpose of this document is to incorporate by reference the notices that appear in "Privacy Act Issuances—1977 Compilation" and to publish in full the systems that this agency has amended since publication of the 1977 Compilation.

DATES: This document fulfills the annual notice requirements of the Privacy Act for 1978.

FOR FURTHER INFORMATION CONTACT: Mr. Herman G. Fleming, NSF Privacy Act Officer, National Science Foundation, Washington, D.C. 20550.

Approval of the Director

The notices of systems of records of this agency which appear in "Privacy Act Issuances—1977 Compilation" are incorporated by reference. The Director of the Office of the Federal Register granted approval to incorporate by reference these Privacy Act issuances on October 2, 1978. Attached is the full text of systems of records that this agency has amended since publication of the 1977 Compilation.

Availability of 1977 Compilation

"Privacy Act Issuances—1977 Compilation" is available from Regional Depository Libraries at 50 locations around the country and can be examined at these libraries free of charge. The 1977 Compilation is also available at the General Services Administration Federal Information Centers, which are located at 38 central points around the country and may be examined at the central headquarters and all field offices of this agency. It is also available for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Upon request, the Office of the Federal Register will furnish a photocopy of the full text of a particular records system published in the 1977 Compilation for a nominal fee.

Location of Notices in 1977 Compilation

Notice of this agency's systems of records appear in Volume XI of the 1977 Compilation at page 54780 (Vol 42, no. 195, pp. 54780-54792, October 7, 1977). The price of this volume is six dollars and fifty cents.

Richard C. Atkinson.
Director.

October 30, 1978.

NSF—6

System name: Doctorate Records File.

Security classification: None.

System location: National Academy of Sciences, 2101 Constitution Avenue NW., Washington, D.C. 20418; and National Science Foundation, 1800 G Street NW., Washington, D.C. 20550; and National Institutes of Health, Buildings 31 and 12, 9000 Rockville Pike, Bethesda, Md. 20014.

Categories of individuals covered by the system: Approximately 99 percent of those individuals who have received earned doctorates from U.S. institutions.

Categories of records in the system: Name, Social Security number, education history, post grad plans, sex, citizenship, race, and related items.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: 1. Information is given to the institution awarding degree. 2. Certain information (name, year, and field of degree) is given to the institution that awarded degrees and to other organizations for address searches and statistical studies. No other routine uses have been identified although data is given to other organizations without identifying particulars for statistical purposes.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Computer tapes and questionnaires are kept by the National Academy of Sciences. Computer tapes are kept by the National Science Foundation and the National Institutes of Health.

Retrievability: Alphabetically by last name of individual.

Safeguards: Data are kept in secured areas with access limited to authorized personnel. Questionnaires are kept in locked cabinets. Published findings will be in formats which preclude individual identification.

Retention and disposal: Destroyed after 75 years.

System manager(s) and address: Division Director, Science Resources Studies, National Science Foundation.

Notification procedure: Write to the system manager and provide the following information:

1. System Name: Doctorate Records File.
2. Complete name at time degree was awarded.
3. Complete birthdate and institution awarding degree (to distinguish among duplicate names, if necessary).

Record access procedures: See "Notification procedure" above.

Contesting record procedures: See "Notification procedure" above.

Record source categories: Information obtained from individual.

Systems exempted from certain provisions of the act: None.

NSF—44

System name: Visiting Women Scientists Roster.

System location: Research Triangle Institute, P.O. Box 12194, Research Triangle Park, NC 27709.

Categories of individuals covered by the system: Women scientists who have asked to be included in a roster to be released to schools and professional groups.

Categories of records in the system: Name, address, telephone, ID number, science field, type of employment, highest degree earned, and race.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: The roster will be released to high schools and other groups who wish to bring women scientists into contact with junior high school, high school and college students.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Information will be stored on computer disk.

Retrievability: Computer records retrievable by ID number, name, geographic location, science field, type of employment.

Retention and disposal: Maintained at the Research Triangle Institute until August 1979, then turned over to NSF for disposition.

System manager(s) and address: Director, Division of Scientific Personnel Improvement. NSF, 2000 L Street NW., Washington, D.C. 20550.

Notification procedure: The NSF Privacy Act Officer should be contacted in accordance with procedures found at 45 CFR Part 613.

Record access procedures: See "Notification" above.

Contesting record procedures: See "Notification" above.

Record source categories: Information obtained from individuals.

NSF—45

System name: Study to Evaluate Scientific Information Services.

System location: King Research, Inc., 6000 Executive Boulevard, Suite 307, Rockville, Md. 20852; Charles River Associates, Inc., 1050 Massachusetts Avenue, Cambridge Mass. 02138

Categories of individuals covered by the system: A sample of 2,000 physicists is covered.

Categories of records in the system: Demographic, educational and professional characteristics of U.S. physicists. The study concentrates on factors describing the physicists' use of and attitudes toward scientific information services.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: The survey is used to develop a data base for generation of a policy-sensitive model of the demand for scientific and technical information services by scientists. This research is funded by NSF under contract DSI: 77-18020. Data provided by respondents will be used by the project staff for analysis purposes only, and will be published only in aggregate form without identifying specific individuals or institutions.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

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Storage: Questionnaires and computer cards are maintained by King Research, Inc. through keypunch and preliminary computer runs. Computer cards are maintained by Charles River Associates, Inc. from preliminary computer runs through final generation of the model.

Retrievability: Questionnaires and computer cards are filed by preassigned code number. Respondent names will not appear on questionnaires or computer cards.

Safeguards: All buildings and offices in which questionnaires and computer cards are stored are locked after working hours. Only direct project staff will be allowed access to files. Upon project completion, the list of responsdent names and addresses will be destroyed.

Retention and disposal: Questionnaires will be retained by King Research and computer cards will be retained by Charles River Associates for at least five years. Data will be made available to other researchers only in computer card format.

System manager(s) and address: Donald W. King Research Inc., 6000 Executive Boulevard, Suite 307, Rockville, Md. 20852; David S. Evans, Charles River Associates, Inc., 1050 Massachusetts Avenue, Cambridge, Mass. 02138.

Notification procedure: The NSF Privacy Act Officer should be contacted in accordance with procedures found at 45 CFR Part 613.

Record access procedures: See "Notification" above.

Record source categories: Information obtained from individuals and from other sources available to the general public.

NSF—46

System name: Sample of U.S. Scientists Who Published Research Papers during 1978.

System location: King Research, Inc., 6000 Executive Boulevard, Suite 307, Rockville, Md. 20852.

Categories of individuals covered by the system: The Background Survey individuals who published research papers in scientific journal during calendar year 1978. A sample of scientists in each of three scientific disciplines is covered.

Categories of records in the system: Demographic, education, and professional characteristics of U.S. scientists. The study concentrates primarily upon factors describing the scientists' perceptions of the relative importance of journal characteristics such as price, prestige, type of audience, quality, and level of readership.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: The Survey is used to generate a data base for analysis performed for the NSF-funded research contract DSI-77-17943 "An In-Depth Study of the Interactions Between Scientists and the Publishing of Scientific Journals." In addition, a subsample of survey respondents are to be contracted for personal interviews regarding their evaluation of the journals which they use. Data provided by respondents are used by the Principal Investigator for analysis purposes only and are published only in summary form without identifying specific individuals or institutions. May be released for statistical purposes without identifiers.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Questionnaires and computer cards are maintained by contractor, King Research.

Retrievability: Questionnaires: filed alphabetically by last name. Computer Cards: sorted numerically by preassigned code number.

Safeguards: Building is locked after business hours. Office in which Questionnaire and computer cards are stored is also locked after business hours. After completion of personal interviews and analysis respondents' names are removed from Questionnaires. At the completion of this research project the list of respondents' names, addresses, and telephone numbers will be destroyed.

System manager(s) and address: Helen Ebenfield, Division of Information Science and Technology, National Science Foundation, Washington, D.C. 20550, Dennis McDonald (Principal Investigator, NSF DSI-77-17943.) King Research Inc., Suite 307, 6000 Executive Boulevard, Rockville, Md. 20852.

Notification procedure: The NSF Privacy Act Officer should be contacted in accordance with procedures found at 45 CFR Part 613.

Record access procedures: See "Notification" above.

Record source categories: Information obtained from individuals and from other sources available to the general public.

NSF—47

System name: NSF Applied Research Evaluators Roster.

System location: Paper records are maintained at National Science Foundation, Office of Special Assistant for Oversight and Evaluation, Directorate for Applied Science and Research Applications, 1800 G Street NW., Washington, D.C. 20550. Computer tapes are maintained at Kappa Systems, Inc., 1501 Wilson Boulevard, Arlington, Va. 22209.

Categories of individuals covered by the system: Individuals who have agreed to participate in the NSF applied research evaluation project.

Categories of records in the system: Name, address, and scientific/professional group categorization.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Other Government agencies needing names of potential reviewers or specialists in particular fields may be given information from this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Paper records and computer tapes.

Retrievability: Paper records are filed alphabetically by last name; computer records retrievable by appropriate combination of field of science and engineering and field of application codes.

Safeguards: Records at NSF: Building employs security guard. Building is locked during nonbusiness hours when guard is not on duty. Room in which records are kept is locked during nonbusiness hours. Computer records: a password must be used to access computer files.

Retention and disposal: file is cumulative and is maintained indefinitely.

System manager(s) and address: Special Assistant for Oversight and Evaluation, Directorate for Applied Science and Research Application.

Notification procedure: The NSF Privacy Act officer should be contacted in accordance with procedures found at 45 CFR Part 613.

Record access procedures: See "Notification" above.

Contesting record procedures: See "Notification" above.

Record source categories: Information obtained from individual.

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THURSDAY, NOVEMBER 16, 1978
PART III



CIVIL AERONAUTICS BOARD

All-Cargo Carriers

RULES FOR ALL-CARGO AIR CARRIERS, DOMESTIC CARGO TRANSPORTATION; DELEGATION OF AUTHORITY

NO 16 78
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[6320-01-M]

Title 14—Aeronautics and Space

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER A—ECONOMIC REGULATIONS

[Regulation ER-1080; Reissuance of Part 291; Docket 33093]

PART 291—GENERAL RULES FOR ALL-CARGO CARRIERS

Operating Rules for All-Cargo Carriers and Domestic Cargo Transportation by Section 401 and Section 418 Carriers

NOVEMBER 8, 1978.

Adopted by the Civil Aeronautics Board at its office in Washington, D.C.

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: These rules govern all-cargo air carrier applications and certificates, and domestic air cargo services by all-cargo carriers and by existing certificated route carriers. They substantially lessen the extent of the Board's regulation of domestic cargo transportation, implementing Pub. L. 95-163, deregulating all-cargo service, and Pub. L. 95-504, the Airline Deregulation Act of 1978.

DATES: Effective: November 9, 1978, except for §§ 291.23, 291.33, and 291.42 which are subject to GAO Review and will be effective on December 31, 1978 unless later amended. Adopted: November 8, 1978.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: Within the last year Congress has passed two laws, substantially changing the direction and extent of the Board's regulation of the air transportation industry, particularly in the area of domestic air cargo. Pub. L. 95-163, enacted on November 9, 1977, which deregulated all-cargo service, eliminated the core elements of the Board's regulatory powers over domestic air freight: the ability to control entry and exit, and the ability to set or control rates by comparing the rates to carrier costs. Also, after a "grandfather" period ending November 9, 1978 (which allowed existing all-cargo carriers to obtain a new section 418 certificate authorizing air cargo service under deregulated conditions), the Board is directed to issue all-cargo certificates under section 418 to any applicant, unless it finds, within 180 days, that the applicant is not fit, willing, or able to operate as an all-cargo carrier or to comply with the Board's regulations. This type of certificate only applies to the direct carriage of air freight and mail within the United States, Puerto Rico, and the Virgin Islands.

Pub. L. 95-504, the Airline Deregulation Act of 1978, makes far-ranging changes in the way the air transportation industry is regulated, gradually ending most economic regulation by 1985. The Board's exemption power under section 416(b) of the Act has also been greatly expanded from its previous criteria of "undue burden" because of "unusual circumstances" or "limited operations" to that of "consistent with the public interest." It is within the framework of these two laws that the Board is adopting these rules for domestic cargo transportation, substantially as proposed, although with some changes discussed below.

In Notice of Proposed Rulemaking EDR-359 (43 FR 33733, August 1, 1978), the Board proposed to remove many of the economic regulatory restraints affecting domestic air cargo service, whether by all-cargo freighters or combination aircraft, and whether by carriers operating under section 401 or section 418 of the Act, including air taxi operators under Part 298 of the Economic Regulations (14 CFR Part 298) holding section 418 certificates. The only property not included within the coverage of these rules is that carried by air taxi operators not also holding section 418 certificates. To avoid any competitive disadvantage to one class of carriers, we thus proposed to use our exemption powers under both sections 416(b) and 418(c) of the Act, as explained in EDR-359 (pp. 3-4), to establish a single set of rules for all segments of the air freight industry, to the maximum extent possible.

We have received comments on our proposal from all types of carriers, shippers, forwarders, government agencies, and interest groups, large and small, both supporting and opposing parts of the proposal. A list of all commenters is attached as Appendix A. We have also heard oral argument from approximately 41 parties.

The Board will discuss the issues raised by the proposal, and explain the resolution of each on a subpart-by-subpart basis. Any requests or suggestions for changes made in the comments are denied unless specifically granted.

The changes made in Parts 241, 242, and 249 are being issued simultaneously in ER-1081, ER-1082, and ER-1083, respectively.

SUBPART A

Subpart A explains the applicability of the rules in Part 291, and defines certain terms used in the part. Intra-Alaskan and intra-Hawaiian cargo operations over which the Board still has full rate jurisdiction are included in the definition of "domestic cargo transportation"; while the terms "all-cargo air carrier" and "all-cargo air service" exclude these operations in accordance with the limitation in section 418(b)(3) of the Act. Changes have been made in § 291.1 to state that certain exemption provisions in Subpart D affect persons entering into control relationships with domestic cargo carriers.

SUBPART B

These rules set forth the form, content, and processing of applications for section 418 certificates that are needed to comply with the short time (180 days) under the Act for the Board to grant or deny the application, as explained in EDR-359 (p. 6). One of the more important features of the application procedures is that the statutory 180-day period does not begin to run until the application is complete. This insures both quick action and that only fit applicants are licensed, as is the intent of Congress.

Several additions have been made to Subpart B as proposed in EDR-359. Inadvertently, the word "material" had been left out of § 291.11(c)(9), thereby requiring that all claims in litigation, no matter how small, be listed in the application. It is our intent, however, to require that a list of only material claims be filed, thus giving us the needed information without unduly burdening the applicant, and we are, therefore, only requiring the filing of claims over $5,000 to avoid definitional problems.

Section 291.11(d)(2) also has been changed to require a pro-forma cash flow statement in addition to a pro-forma balance sheet and profit and loss statement. The proposed version mistakenly used the term "income statement" instead of the intended "cash flow statement."

Section 291.12(b)(ii) has been changed to provide that the copy of each application sent to the FAA for a safety and compliance report include a request for recommendations on the safety implications of the new service. This addition follows the policy set forth in section 102(a)(1) of the Federal Aviation Act of 1958, as amended by the Airline Deregulation Act of 1978.

Several carriers objected to the application form as needlessly burdensome, in requiring, for example, a listing of officers and directors, a presentation of financial information, and information on past violations of the Act. They recommended that the procedures allow incorporation by reference of all material already on file with the Board, that fitness information be eliminated for corporations already holding licenses, and that technical qualifications be deleted for all

existing direct air carriers, or for those already authorized to operate large aircraft.

First, although a case may be made that those carriers already licensed are obviously fit, we do not agree that the application form is unduly burdensome. Second, in order to follow Congressional intent that only fit applicants be licensed, the Board believes that it must have a full picture of the type of organization and its management, the ability to fulfill certificate obligations to the public, and the likelihood of compliance with the Act and Board regulations. In designing these application procedures, the Board has required only the minimum amount of information to meet its tests. Because of the short time to act on the application and the need to coordinate action with the FAA, it is necessary to have all information submitted in one complete package without the need to search through other dockets or files to compile the applicant's qualifications.

Section 291.14 adds provisions, not included in the proposed rule, for amendment of the identification information supplied on the application. There is no fee for amendments, and the Board will decide on the basis of the notification whether to issue a new certificate.

Two of the certificate conditions proposed by the Board for section 418 carriers have drawn criticism from some carriers. Commuters in particular argued that certificates should not automatically terminate on lapse of insurance coverage. They argued that carriers should have the option of merely "holding" a section 418 certificate, although not using it at the time, and therefore should not be required to continue expensive liability insurance when in a non-operational status. These commenters also argue that insurance may lapse for reasons not the fault of the carrier, and such a harsh penalty is overkill.

Section 291.20 of Subpart C provides that holders of 418 certificates must comply with the rules in Part 291 for all of their domestic cargo transportation, even though they may also be certificated or registered under some other Board authority. Air taxis and commuter airlines requested that they be allowed to hold 418 certificates, but be bound only by the rules of Part 298 as long as they operate aircraft no larger than permitted by that part. Most of these air taxis and commuters have "grandfather" 418 certificates, but do not operate large aircraft. They do not wish to be bound by the regulations of Part 291 governing record retention, reporting, and insurance, and they are concerned that their FAA certification requirements will become more stringent if they are subject to Part 291. On the other hand, they do not wish to relinquish their current 418 certificates and be put to the expense and trouble of reapplying should they eventually choose to start operating large aircraft.

The Board concludes that it is not in the public interest to create a class of "non-operating" section 418 certificate holders who do not have to comply with the rules of Part 291. Allowing persons to hold section 418 certificates while not subject to Part 291's requirements would make it difficult for the Board to monitor fitness and other certification requirements for the holders if and when they decide to operate. Further, the Board does not wish to encourage persons to obtain or retain section 418 certificates solely for their value as balance sheet assets.

Section 291.13(g) provides that a 418 certificate may not be transferred by the applicant to any other person. The section 418 certificate represents a finding by the Board that the holder is fit, willing, and able to operate in domestic cargo transportation. If the holder could transfer the certificate, the new holder would be able to avoid the "fit, willing, and able" test. This would clearly not be in the public interest. The burdens of applying for a 418 certificate are not great, and the prohibition on transfer does not preclude a 418 certificate holder from being acquired or controlled by another person. Therefore, the Board finds it reasonable to prohibit the transfer of section 418 certificates and to require persons seeking such a certificate to use the application process specified in Part 291.

We believe that Congress has clearly indicated the need for safety consciousness on the part of the Board, and has shown its concern for protection of the public in the form of liability insurance. The Airline Deregulation Act of 1978 makes safety an important component of the public interest in Board regulation of domestic air transportation (sections 102(a) (1) and (2) of the Act), and requires that both a study and a report be made on the effects of airline deregulation on safety. The Congress also included in section 401(q) of the Act a provision that no certificate shall remain in effect unless the carrier complies with insurance regulations of the Board. We believe that, in view of this Congressional declaration of policy, section 418 certificates should be subject to these same conditions of insurance. Responsibility for maintaining insurance coverage must be on the carrier in order to minimize the risk to the general public, and this provision gives the carrier the incentive to maintain the currency of its insurance coverage.

Some carriers also stated that failure to file required reports should not be grounds for revocation of a section 418 certificate. We do not, however, find this provision harsh since the reports required of these carriers are not only not burdensome, but needed for the Board's enforcement functions under the Act. This provision does allow the Board to consider mitigating factors, and does not make failure to file the reports conclusive in the revocation proceeding.

SUBPART C

The general rules in this subpart reflect the Board's decision to create one set of rules for almost all domestic air freight service. Although some exceptions have been made for the separate kinds of operations apart from section 418 that the different classes of carriers now provide, these rules set forth a common framework under which no class of carrier should suffer a competitive disadvantage. Nor do we believe that this framework burdens smaller firms with unnecessary paperwork or regulations. These rules are only lightly restrictive, in accordance with Congressional intent, and impose only one new requirement, requiring retention only of those records already kept by most businesses for their own purposes.

EDR-359 proposed in §§ 291.21 and 291.22 that two types of insurance be required: cargo liability insurance and public liability insurance. The Board tentatively concluded that cargo liability insurance was necessary to protect shippers against their damage claims becoming worthless due to the insolvency of new, and perhaps financially unstable, carriers. Many comments objected to the cargo liability coverage requirements and suggested a variety of alternatives. There were two main objections: (1) the expense of meeting the $500,000 minimum would unduly burden small operations, and (2) the proposals would not allow large operators to self-insure. In view of these comments, the Board has decided that cargo liability insurance should not be required. Cargo liability has never been required for unregulated air taxis, yet there have been few, if any, complaints to the Board from shippers unable to recover from an insolvent carrier. The expense burden on small operators and the inpediments to self-insurance for large operators outweigh the relatively small chance of harm to the shipping public if cargo insurance is not required. The Board also believes that it will be more efficient for shippers rather than carriers to purchase cargo insurance. The shipper has better knowledge of the value of the shipment than the carrier, and is in a better position to determine the proper level of insurance. We see no point in requiring an arbitrary minimum level of coverage, which will add

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to the costs of all shippers, when each individual shipper is in a better position to know how much insurance he needs.

So that the shipper will know in advance what liability insurance limits are maintained by the carrier, we are requiring that the carrier's airwaybills and rate sheets contain a clear and conspicuous notice of these limits. The shipper will then be able to make an informed decision on whether to use the carrier's service and whether to obtain his own insurance.

The Board further proposed that section 418 carriers maintain public liability insurance with a minimum of $500,000 per person and $20 million per occurrence. These amounts would be required only for aircraft larger than air taxi size. Aircraft of a size eligible for treatment as air taxis would still be subject only to the insurance requirements for air taxis, in order to avoid unduly discouraging air taxi operations from expanding their operations with larger aircraft.

No comments questioned the need for public liability insurance, but the Commuter Airlines Association of America (CAAA) felt that the minimum amount was far too high. There is no established method in the insurance industry for determining a "reasonable" amount of public liability insurance to be required for the wide range of aircraft and aircraft operators in the domestic cargo industry. In practice, the size of the aircraft is not a good indicator of the amount of potential third party damage from an accident, since the damage depends primarily on where or how the accident occurs.

As pointed out by CAAA, only a few insurers in the United States could write policies as large as $20 million for a single plane without obtaining excess coverage elsewhere. Therefore, to meet our requirements as proposed, many small operators will have to obtain insurance from a London insurer or obtain multiple policies. This will mean an increased premium. On the other hand, the additional cost would probably not be determinative of whether to engage in section 418 operations. Some balance must be struck between the public interest in insuring compensation for air accidents, and the public interest in making it financially possible for small operators to enter the domestic cargo industry at whatever level seems attractive to them. We are, therefore, adopting the public liability limits as proposed.

Section 291.22 as proposed incorporated by reference the policy conditions and certificate filing requirements applicable to air taxis. Some technical changes have been made to adapt the air taxi provisions to all-cargo air service treated by this rule. Section 291.22 now specifies that the insurer's liability applies to operations for all-cargo aircraft in domestic cargo transportation and prescribes two standard forms for certifying insurance coverage. The new forms are attached as appendices F and G. Carriers who obtained section 418 certificates prior to November 9, 1978, should submit insurance certification on these forms by December 9, 1978.

A second substantive change has been made in this subpart, in response to the comments and our reconsideration. As discussed under subpart D, we are deleting the rate reporting requirement proposed in EDR-359, and replacing it with a record retention requirement covering all rates and agreements by section 418 carriers. Since almost all businesses would keep this type of records for their own purposes, we see no increase in burden to require these records be maintained for a period of 1 year for enforcement audits by the Board.

Trans International Airlines, among others, requests that the record retention requirements apply equally, or not at all, to any all-cargo operator, with no exception for flights on small aircraft. We see no reason why domestic cargo transportation flights on small aircraft should be subject to these requirements. We recently issued a separate notice of proposed rulemaking, EDR-365 (43 FR 50150, Oct. 26, 1978) (Docket 33735), proposing substantial changes in Part 249 for record retention, including bringing section 418 carriers under this part. We shall, therefore, review these issues in that rulemaking, and adopt § 291.23 in the interim.

American commented that § 291.24, *Waiver of Board Economic Regulations* would relieve carriers providing domestic cargo operations under section 418 of the Act from Part 239, which requires reporting of freight loss and damage claims. It argues that Part 239 should be eliminated because the reports in CAB form 239 would no longer contain any meaningful information after the exclusion of data relating to domestic cargo operations.

The question of abolishing Part 239 of the Economic Regulations is one which should be considered separately since it involves foreign carriers. We have decided, therefore, to consider all of the aspects involved with the abolishment of Part 239 in a separate proceeding to be initiated in the near future. Until then we will continue to require reporting under Part 239 from those carriers who are now required to file these reports. This will be done in the final rule by making an exception for Part 239 reporting in § 291.24.

SUBPART D

This subpart continues our decision to establish one set of rules for all carriers providing domestic cargo transportation. For the reasons stated below and in EDR-359, we find these exemptions to be consistent with the public interest under section 416(b), and to be appropriate under section 418(c) of the Act.

TARIFF EXEMPTION

The first exemption relieves each carrier providing domestic cargo transportation from the filing of tariffs. In connection with this exemption, we had proposed to require the carrier to file rate sheets with the Board. After a careful review of all comments received in response to EDR-359, we have decided that our tentative reasoning and conclusion on the exemption from tariffs is correct. We are, however, substituting a record retention requirement for the rate reports.

This issue caused more controversy and resulted in more comments than any other. A large majority of comments received from shippers, forwarders, and direct carriers opposed this exemption. They claimed that rates will fluctuate wildly on a day-to-day basis, that some shippers may receive preferred treatment, that the existing system of tariff distribution for rate information will break down, that there will be no practical way to resolve disputs between shippers and carriers on the proper rate for a particular shipment, that the Board will be unable to prevent statutory discrimination or predatory practices, and that there will be no way for shippers easily to find out transportation costs and conditions of service, or to predict what they will be in the future.

Those direct carriers responding were also mostly opposed to eliminating tariffs. Along with the reasons advanced by the shippers, they argued that the Board does not have the legal power to exempt carriers from the tariff requirement, and that the tariff system benefits new carriers by giving them nationwide exposure by merely becoming a party to an existing tariff. Several commenters also cite the history of railroad rate legislation as showing that abuse will result if tariffs are eliminated.

The Department of Justice supported elimination of tariffs, and recommended replacement of the rate reports with a record retention requirement.

We have carefully and thoroughly reviewed each argument raised on this issue, both in the comments and at the oral argument, during which the main topic discussed was elimination of tariffs. After this review, we reaffirm our tentative conclusion and reasoning in

EDR-359 (pp. 11-14). To a large extent, the discussion in EDR-359 answers the legal and economic comments of the opposing parties.

Although we have decided to eliminate the requirement to file formally structured tariffs, we have never doubted the value of rate and rule information to the shippers. We believe, however, that tariffs directly inhibit competition, and possibly the flow of information itself. As we stated in EDR-359 (p. 12), and need not recount here, there are sufficient economic incentives to insure that information will continue to be distributed to the shippers. The experience of Federal Express and of the air taxi operators who are exempt from tariff filing has amply demonstrated this incentive. Nor do shippers in the deregulated air taxi market appear to have suffered in resolving claims or other disputes, or from rapid price fluctuations, as the comments claimed will happen here. For example, Federal Express, operating without tariffs, appears to have had few problems in terms of customer satisfaction. Federal Express is now carrying almost 9 million packages per year, and the Board received only four complaints relating to rates in 1977 and four in the first 7 months of 1978.

The shippers arguing for retention of tariffs appear to prefer artifical uniformity to a competitively determined price level, and to ask for protection from the Board that is opposed to the spirit of both deregulation laws. Their near unanimity in opposition, however, cannot be decisive: We must look beyond the cargo shipper to the ultimate consumer, who eventually pays for the inefficiencies and restrictions created by tariffs. Further, those same shippers who cling tenaciously to tariffs for certificated carriers have assisted in increasing scheduled cargo transported by air taxis between 1970 and 1977 from 38,661,000 pounds to 249,478,333 pounds, equivalent to an average annual increase of 27 percent.

The second major reason given for retaining the tariff requirement is to enable the Board to prevent discriminatory rates or predatory practices. After reviewing the comments, the Board agrees with those who argue that rate reporting would not be an effective method of monitoring pricing practices in domestic cargo transportation. We also agree with the Department of Justice that this rate reporting is in effect a posting of prices, which is only a half-way step toward the deregulated cargo industry that Congress has mandated. Since these reports have no substantial benefit, and would be a burden and expense on those carriers having to file them, we are replacing them with a requirement that rate sheets, contracts reflecting special prices, and airway bills be retained by the carrier for a period of 1 year.[1] This will enable the Board to take action on any complaints from shippers, and will provide the Board with the documents necessary to insure an effective means to monitor carrier pricing practices through spot audits. This requirement, coupled with the airbill retention requirements of existing Part 249 for section 401 carriers, will give the Board the necessary resources to fulfill its enforcement responsibilities.

One of the most important reasons for eliminating the tariff requirement in domestic cargo transportation is to have a preliminary test of the congressionally mandated elimination of tariffs for the passenger transportation industry in 1983 (sec. 1601 of the Act, as added by the Airline Deregulation Act of 1978). Domestic air freight service provides a means by which the Board and the Congress can observe the effects of price freedom combined with completely free entry. Since cargo comprises only about 10 percent of the entire air transportation industry in revenues, it is a good testing ground for the rest of the industry, as it was following passage of Pub. L. 95-163 in October of 1977.

In EDR-359 the Board mentioned, as did several commenters, that the Interstate Commerce Commission uses the tariffs filed with the Board as a basis for exemption from its own licensing and tariff requirement. The Board (with the knowledge of the staff of the Commission) will maintain a master list of ground points were air carrier delivery services can operate, assuring to those services protection from newly imposed Commission regulation. To ask for the addition of new points, we will permit carriers to file a self-canceling pickup and delivery tariff under Part 222. The Board will then, if the application is granted, add the new points to its master list. We intend to amend Part 222 in the future to reflect a final agreement with the Commission.

We are also simultaneously issuing OR-136, delegating to the Director, Bureau of Pricing and Domestic Aviation, the authority to require the filing of pickup and delivery tariffs under Part 221 by carriers operating in domestic cargo transportation if needed in the public interest.

Carriers that have effective tariff rules and rates on file with the Board will be allowed to maintain them in effect for 90 days from the effectiveness of this rule, so that they will have sufficient time to arrange for alternative methods of rate and rule publication.[2]

[1] Pending issuance of revised Part 249 (EDR-365), these records may be preserved on either paper or nonerasable microfilm.

[2] On Nov. 2, 1978, Delta Air Lines filed a motion for stay of the effectiveness of the exemption from tariff filing for 90 days, so that the present tariff system would remain in effect, allowing time for carriers to establish new shipping documents and procedures. The Board does not agree that the ending of the cargo tariff system has been sudden, or without sufficient time for the carriers to prepare. EDR-359 was issued 3 months ago, and the Board clearly indicated there its tentative decision on this issue. The Board has, in any event, anticipated the problem that Delta raises, and has included a provision in the rule that allows carriers, at their option, to keep their tariffs in effect for 90 days from the effective date of this rule. It is not entirely clear whether Delta's motion contemplates requiring all section 418 carriers to establish or retain tariffs during the 90-day period. To the extent that it does, the motion is denied. We have found no good reason why carriers who wish to move to a nontariff system immediatley, or in less than 90 days, should be restrained from doing so.

Several direct carriers have asked that, if tariffs are eliminated, prorate and interline agreements be filed with the Board. For the same reasons that we are eliminating tariffs, we believe that these agreements should not be filed with the Board. Carriers negotiate between themselves to arrive at these agreements, and certainly will be able to find out the terms of these agreements without the necessity of having them filed with the Board.

DUTY TO CARRY

The Board is also exempting carriers in domestic cargo transportation from the duty under section 404(a) of the Act to carry on reasonable request, for the reasons stated in EDR-359 (pp. 14-15). Many respondents opposed this exemption, claiming that the carriers would take advantage of their freedom from a legal duty to carry by refusing to transport out-sized, perishable, and other kinds of cargo, such as live animals.

This exemption, however, does not relieve the carriers of their service obligations as common carriers, and does not apply to a carrier's duty to refrain from providing preferential treatment to particular companies or persons. Carriers holding certificates under section 401 or 418 of the Act remain, by definition, common carriers. The statutory duty to provide service upon reasonable request is broader than the service obligations of a common carrier at common law. At common law, a carrier is permitted to hold itself out as a carrier of only a particular kind of freight, and is not obligated to carry other types of cargo. This exemption, therefore, only ends the Board's role in regulating the extent of the carriers service offerings, leaving that decision to carrier management in response to market demand. With unlimited entry into the air cargo industry, there is every reason to believe that all reasonable service needs will be met. Al-

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though it is true that some airfreight rates have increased since Pub. L. 95-163 was enacted, particularly on these special items, they have been more than matched by substantial increases in available all-cargo service, with more certainly to follow when entry is completely open.

We intend to monitor closely the activities of the all-cargo carriers and the operation of the cargo market under this exemption for any abuses by the carriers. Again, as in the case of the exemption from the tariff filing requirement, the exemption from section 404(a) will allow the domestic cargo industry to be the testing ground for the entire industry, which will be statutorily "deregulated" by terms of the Airline Deregulation Act.

MAIL AUTHORITY

EDR-359 proposed to exempt all-cargo flights within domestic cargo transportation from the requirement to file schedules with the Board under section 405(b) of the Act for the carriage of mail, since we cannot regulate the points to be served by the section 418 carriers. The U.S. Postal Service (USPS) argued that it is likely that some section 418 carriers will not be willing to develop the needed cargo facilities and equipment required by the USPS, and may not understand that their certificates to carry mail confer a legal obligation to do so under section 405(d) of the Act when USPS so demands. USPS recommended that mail authority should be given only to those applicants who asked specifically for mail authority, and that if a carrier subsequently decides not to carry mail, it could apply for an amendment to its certificate. Federal Express stated that the wholly permissive nature of the section 418 certificate should extend to the transportation of mail as well.

We agree with Federal Express that the real and potential powers of USPS under section 405 of the Act are formidable and would work against the concept of cargo deregulation. Since we are leaving the established mail transportation rules undisturbed for the combination flights of section 401 certificated carriers, there is no risk of any disruption in the movement of mail on established scheduled services between specific points. Also, since USPS would allow section 418 carriers to decide not to carry mail at all, we see no reason to subject them to section 405 of the Act. Any transportation of mail by these carriers should be entirely permissive. We see no reason to require section 418 carriers to go through the formality of certificate amendments, as USPS suggests.

ANTITRUST EXEMPTIONS

Section 291.31(d) exempts all-cargo air carriers from disclosing certain stock ownership by directors, officers, and 5 percent-or-more shareholders under section 407 (b) and (c). Such an exemption is already part of the interim Part 291 governing "grandfather" 418 operators. As a practical matter, the exemption affects only those carriers who engage solely in domestic cargo transportation, because other carriers would have to comply with section 407 (b) and (c) on the basis of their other operations. Emery Air Freight suggested that section 407 (b) and (c) disclosures should be retained for all carriers to monitor citizenship requirements and acquisitions of control. In the Board's judgment, citizenship requirements can be adequately enforced without the 407 (b) and (c) disclosures, and existing securities laws are sufficient to monitor acquisitions of control.

Section 291.31(e) exempts carriers from section 408 of the Act, dealing with mergers and acquisitions of control, to the extent that they are engaged in domestic cargo transportation. Several comments argued that the Board should not abdicate its antitrust enforcement duties to the Department of Justice. The passage of the Airline Deregulation Act of 1978 (Pub. L. 95-504), however, clearly directs the Board to move quickly toward a deregulated, competitive environment. Deregulation means relinquishment not only of rate and entry controls but also, to the fullest extent consistent with congressional intent, of antitrust responsibilities. Relieving the domestic cargo industry of the application notification procedures required by the new section 408 will reduce expense and delay. This exemption will also serve as a useful proving ground for the eventual deregulation of the entire industry as contemplated by the Airline Deregulation Act.

In granting the exemption from section 408, the Board is retaining authority to examine a limited range of transactions involving domestic cargo transportation securities. Thus, the general section 408 exemption is subject to the requirements of § 291.33. The Board is retaining this limited authority for the reasons stated in the discussion of § 291.33.

Section 291.31(e) as adopted provides that all segments of the domestic cargo industry can acquire and control other segments of that industry on an equal basis. Thus, domestic all-cargo carriers may acquire air freight forwarders, and air freight forwarders may acquire all-cargo carriers. Since many domestic cargo carriers are also engaged in other operations (for instance, foreign cargo transportation or passenger service), transactions involving the securities of those carriers will still be subject to section 408(a), unless the acquiring party is engaged solely in domestic cargo transportation. In the latter case, the transaction will be subject to the notification requirements of § 291.33. The exchange of domestic cargo transportation assets (such as cargo aircraft or loading equipment) is completely unrestricted. The Board intends that carriers engaged solely in domestic cargo transportation may also acquire "other common carriers" and "persons substantially engaged in the business of aeronautics." Section 291.31(e) also make it clear that foreign carriers, or persons controlling foreign carriers, may not acquire control of domestic all-cargo carriers without Board approval.

Section 291.31(f) exempts domestic cargo carriers from section 409 of the Act, dealing with interlocking relationships between air carrier managements. The same commenters that opposed exemption from 408 also opposed exemption from 409. They argued that the Board should not abandon its antitrust enforcement powers, especially where those powers protect against conflicts of interest. We reject these arguments, because, in our judgment, general public laws are sufficient to protect the public interest.

Section 291.31(f) also exempts domestic cargo carriers from section 412(c), dealing with filing and approval of agreements affecting interstate and overseas air transportation. The Airline Deregulation Act changed section 412 to make filing mandatory only for agreements involving foreign air transportation. Filing, and hence possible approval conferring antitrust immunity, is made permissible by section 412(c) for agreements involving interstate and overseas air transportation. The exemption from 412(c) will preclude the filing and approval of agreements involving domestic cargo transportation. In Pub. L. 95-163, Congress gave the Board broad discretion in the all-cargo field to decide in which areas it should relinquish its jurisdiction. That discretion was broadened in the Deregulation Act, which granted authority to exempt any person from the Act when the exemption is consistent with the public interest. We do not believe that it is essential, or even advisable, to retain approval or immunity powers over this portion of the industry.

As proposed, § 291.32 would exempt persons from section 408(a)(5) of the Act, thus allowing acquisitions of all-cargo carriers by any person. Section 408(a)(5) contained a restriction on transactions between air carriers and persons not connected with the transportation industry, which was eliminated by the Deregulation Act. Therefore, the situation dealt with by proposed § 291.32 no longer requires a special rule. Section 291.32 has been revised in the final rule to clarify, in response to comments, that acquisitions of all-cargo carriers by certain persons still covered by section 408(a) are permitted to the same extent as acquisitions of those persons by all-cargo carriers.

Proposed § 291.33 approved certain section 409(a) relationships which were beyond the scope of the Board's exemption powers at the time EDR-359 was issued. The Deregulation Act expanded the Board's section 416(b) exemption authority to apply to any "person," instead of any "air carrier." Therefore, the approval granted in proposed § 291.33 is no longer needed. Proposed § 291.33 has been replaced by a completely new provision.

Section 291.33 adopted here provides for a 45-day notification provision modeled after the similar provision in section 408(b)(3) of the Act (as recently amended). The notification provision applies only to the case a domestic cargo carrier merging with, acquiring control of, or having control acquired by, another air carrier with authority to transport cargo internationally. The general exemption of domestic cargo transportation activities from section 408(a) of the Act, contained in § 291.31(e), is conditioned on compliance with the notification provision. The purpose of the notification provision is to retain Board control over potentially anticompetitive effects of mergers and acquisitions when the still protected route system of the foreign operating section 401 carriers is a central factor. Although we prefer to make as many transactions as possible in the domestic cargo area subject to general antitrust provisions, we see a need to retain the ability to take at least a preliminary look in the cases of mixed domestic and foreign systems covered by § 291.33. Since the deregulated *domestic* cargo industry is still in the beginning stages of development, we believe that we need an opportunity to examine any unfair advantage that may arise out of the semi-exclusive nature of many of the important foreign routes.

Section 408(f) of the Act, creating a presumption of control when a person beneficially owns 10 percent or more of the securities or capital of an air carrier, does not apply to § 291.33. The Board intends that "acquisition of control" comprehend mergers and consolidations as well as purchase of securities.

SUBPART E

REPORTING MATTERS

The Postal Service argued that the reporting requirements proposed for Parts 241 and 291 are not sufficient for the development of service mail rates. It suggested that the Board adopt the additional reporting requirements necessary to develop multiservice mail rates. In support of the recommendation, the Postal Service stated that the failure to adopt the additional reporting requirements would place the Board in the position of: (1) Having to develop mail rates in the absence of adequate historical data, or (2) applying to section 418 carriers the domestic service mail rates which reflect the costs of section 401 trunk carriers. The first would lead to protracted evidentiary proceedings, and the second would cause severe equitable and legal problems.

We have concluded that postal rate responsibilities can be met under the Act without imposing a recurrent requirement to report the additional data. Since the Board still has the power to collect the needed data in special information requests, collection of data on an ad hoc basis seems to be the least burdensome course of action for both the carriers and the Board.

PART 241

SERVICE SEGMENT DATA

Three trunkline carriers commented on the proposed amendment of section 19-3 of Part 241, which would relieve route carriers from having to file individual flight stage data (service segment data) for section 418 all-cargo operations. American and Trans World favored continuing the requirement, while Northwest supported the Board's proposal.

American pointed out that service segment data have proven useful to the entire industry, and are valuable tools in determining whether all-cargo service is adequate in particular markets, and whether there is potential support for additional service. In essence, Trans World stated that the practical consequences of discontinuing the requirement to report section 418 all-cargo services in service segment data would place carriers conducting mixed passenger-cargo service under section 401 at a competitive disadvantage. More specifically, service segment data would be available for mixed passenger-cargo service, while carriers who conduct all-cargo operations would not be placed in a position of having to make known their point-to-point data.

We agree that service segment data has been a valuable tool for both the carriers and the Board. However, this alone is not a sufficient reason for continuing to impose the burden of reporting individual flight stage data for all-cargo operations on those who do not want to provide it. Quite simply, the Board no longer has a regulatory need for these data. Also, such a massive extension of reporting requirements as would be needed to assure an evenness in the availability of data could not be justified on the grounds that it is needed to protect carriers conducting mixed passenger-cargo operations.

SCHEDULE T-6

Among the reporting suggestions made in the comments was one to eliminate the reporting of all-cargo charters in CAB Form 41 Schedule T-6, "Report of Civil Aircraft Charters." We agree that there is no longer any need to submit data on domestic cargo charter operations within the geographic limitations specified in section 418, and the final rule has been amended accordingly.

EXPENSE DATA ON SCHEDULE T-8

In EDR-359, the Board proposed to establish a new CAB Form 41 Schedule T-8, "Report of Section 418 Operations." The schedule, attached to EDR-359 as appendix A, was designed to obtain data on operating revenues, traffic on revenue flights, and aircraft capacity operated. On the proposed schedule these data were to be segregated in two columns, one headed "Section 401 Operations" and the other headed "Section 418 Operations."

One direct carrier has suggested that the column headings be changed for the sake of clarity. As an alternative, it suggested that the columns be headed "Combination Aircraft" and "All-Cargo Aircraft." We are adopting this suggestion, in part, and will change the heading of the second column to read "All-Cargo Aircraft." The heading "Combination Aircraft" would not accurately depict the data which should be reported in the first column, since it may include all-cargo aircraft in international operations.

Another suggestion was that there is a duplication of reporting between the new Schedule T-8 and the summary domestic all-cargo statistics reported on CAB Form 41 Schedule T-1(b) and Schedule T-1(c). The all-cargo reporting on the new Schedule T-8 applies to all-cargo operations within the geographic limitations set out in section 418 of the Act, and these geographic limitations do not necessarily coincide with the domestic reporting entities of the carriers that will be subject to the reporting requirements. For example, statistics on Canadian transborder operations, intra-Alaskan and intra-Hawaiian operations may be included on

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Schedules T-1(b) and T-1(c), but not on Schedule T-8. Thus, the reporting requirement is not duplicative as suggested.

Upon review of Schedule T-8, the Board has decided that some expense data will be needed in order to separate all-cargo operating expenses from other operating expenses for the purpose of regulating passenger fare levels. Therefore, Schedule T-8 contains an additional line for operating expenses. We believe that the elimination of CAB Form 242, as discussed below, will more than offset an additional burden brought about by including the additional line item on Schedule T-8.

PART 291

Only one carrier challenged the necessity for the proposed reporting requirements embodied in Subpart E of Part 291. It argued that the semiannual financial and traffic schedules proposed were burdensome amd totally unnecessary to the exercise of the Board's few remaining powers over domestic air freight.

Section 205 of the Act still requires the Board to report to the Congress such information and data collected by the Board as may be considered of value in the determination of questions connected with the development and regulation of civil aeronautics. The reporting requirements in Subpart E are designed to: (a) Satisfy basic interests about the financial fitness of the air carriers, (b) enable general comparisons of the profitability of regulated and deregulated segments of the air transport industry, and (c) enable the Board to monitor the overall size, growth and health of deregulated cargo operations. Finally, the information received from Subpart E reports are designed to help monitor service levels as contemplated in section 418(b)(4).

The balance sheet and statement of operations are basic documents periodically generated by virtually every business enterprise. In Subpart E, we have given these basic documents a structured format so as to allow comparability, and so that we are receiving the same things from carriers conducting similar operations. The structured formats we have prescribed are not complex and should not present a formidable obstacle to even the smallest carriers.

PART 242

Seaboard expressed the view that the Board should not abolish reporting requirements contained in Part 242. They stated that Part 242 would provide the Board with valuable "benchmark" information on the effects of deregulation. Seaboard suggested, however, that it be required on an annual basis rather than a semiannual basis.

At the present time, the CAB Form 242 report is being filed by only nine air carriers. Originally intended as a temporary reporting requirement in 1965, it has continued to serve a useful purpose until now. We believe that any value the form has as a benchmark can also be provided by the new schedule T-8 in the CAB Form 41 report. The reporting on the new Schedule T-8 is also less burdensome than the CAB Form 242 report, which is composed of three different schedules and a separate certification sheet.

We have therefore decided to eliminate the CAB Form 242 report and rely instead on the new T-8 schedule in Part 241.

ENVIRONMENTAL AND ENERGY CONSIDERATIONS

In EDR-359, we proposed two sets of rules. The first established guidelines for the issuance of section 418 certificates. The other changed the rules governing the cargo operations of section 401 carriers.

With respect to the first set we tentatively concluded that the proposed rules constitute neither a major Federal action under the National Environmental Policy Act, 42 U.S.C. 4321 et. seq., (NEPA) nor a major regulatory action under the Energy Policy and Conservation Act, 42 U.S.C. 6201 et seq. (EPCA). We based these conclusions on the lack of discretion Congress has given us to deny applications of all-cargo carriers.

Although we still have the power to regulate the cargo operations of section 401 carriers, we tentatively concluded in EDR-359 that it would not be in the public interest to do so. While the second set of proposed rules might be considered a major Federal action, we concluded that they would not significantly affect the operations of section 401 carriers. We therefore concluded that NEPA does not require the preparation of an environmental impact statement evaluating the implications of this aspect of the proposed rules, and that EPCA does not require a statement of the energy impact of this set of rules.

The Massachusetts Port Authority (Massport) has submitted comments that do not challenge the Board's finding on the first set of rules. Massport argues, however, that the rules dealing with section 401 cargo operations are not mandated by Congress and therefore constitute a major Federal action under NEPA and a major regulatory action under EPCA. It also argues that in attempting to foster competition within the aviation industry, the Board has failed to consider either: (a) The possibly adverse impacts and economic inefficiencies it may be fostering between transportation modes, and (b) the costly externalities of fuel inefficiency and noise pollution.

Massport may be correct in its assertion that the change we have proposed in the rules governing the cargo operations of section 401 carriers constitutes a major Federal action. However, our decision not to prepare an environmental impact statement on that portion of the proposed rules was based on our finding that the rules would not have a significant impact on the environment. Massport's only challenge to that finding is its assertion that the rules may: (a) Foster adverse impacts and economic inefficiencies between transportation modes or (b) decrease fuel efficiency and/or create noise.

Massport has not, however, provided any basis for concluding that the rules will have a significant impact on the environment. As we said in issuing the proposed rules, we expect the rules to have a favorable, though insignificant, environmental impact by encouraging greater operating efficiencies. While we believe the rules will also have a favorable environmental impact on the operations of other modes of transportation, we believe these impacts would be even less significant. There is certainly no basis for concluding that there will be a significant impact, either beneficial or adverse, in this respect.

Similarly, we see no reason to find that the rules would have significant energy efficiency or noise pollution impacts. Section 401 carriers derive only 7 percent of their revenues from cargo operations. More than three quarters of those revenues come from cargo carried on planes which are also carrying passengers. Scheduling by section 401 carriers is this designed almost exclusively to accommodate the needs of passengers. The airlines are therefore not likely to make any significant changes in their scheduling in response to these rules. We thus affirm our tentative decision in EDR-359 that neither environmental impact nor energy assessment statements are required for the proposed rules.

EFFECTIVENESS

Section 418(a)(3) of the Act states that 1 year after the date of the enactment of Pub. L. 95-163 (November 9, 1977), any U.S. citizen may submit an application to the Board for a section 418 certificate, containing such information and in such form as the Board by regulation may require. Since these rules should, therefore, be operative by that date, we find good cause to make them effective immediately.

The Board will review the operation of domestic cargo transportation under these rules, particularly the public liability insurance requirement, after 12 months, and ask the staff for any recommended changes after 18 months.

FEDERAL REPORTS ACT

This rule requires applicants for section 418 certificates to provide the Board with certain information. By publishing this final rule, we have determined that this information is necessary and must be prepared and submitted. Accordingly, the application requirements found in § 291.11 and the related insurance certificate filing requirements in § 291.22 are adopted subject only to review by the General Accounting Office pursuant to 44 U.S.C. 3512. These specific requirements will be effective November 9, 1978. Applicants are not precluded from providing this information beginning November 9, 1978. However, GAO will conduct its clearance review to ensure that a minimum burden is imposed upon applicants and that the information is otherwise consistent with the Federal Reports Act. We shall publish a notice of GAO's decision when it is received.

This rule also contains reporting and recordkeeping requirements in §§ 291.23, 291.33, and 291.42 which will be submitted to the General Accounting Office for review under the Federal Reports Act. The effective date of these reporting requirements, unless the Board hereafter indicates otherwise, is December 31, 1978, which reflects the inclusion of a 45-day period which that statute allows for such review (44 U.S.C. 3512(c)(2)).

Accordingly, Part 291 of the Board's Economic Regulations (14 CFR Part 291) is revised and reissued to read as follows:

PART 291—DOMESTIC CARGO TRANSPORTATION

Subpart A—General

Sec.
291.1 Applicability.
291.2 Definitions.

Subpart B—All-Cargo Air Service Certificates

291.10 General.
291.11 Form and content of applications.
291.12 Procedure on receipt of application.
291.13 Certificate conditions.
291.14 Amendment of certificates.

Subpart C—General Rules for Domestic Cargo Transportation

291.20 Applicability.
291.21 Public disclosure of cargo liability insurance.
291.22 Public liability insurance.
291.23 Record retention.
291.24 Waiver of Board Economic Regulations.

Subpart D—Exemptions for Domestic Cargo Transportation

291.30 General.
291.31 Exemptions from the Act.
291.32 Mutuality of exemptions.
291.33 Notification requirement for certain transactions involving section 401 certificated carriers.
291.34 Duration of exemptions.
291.35 No relief from antitrust laws.

Subpart E—Reporting Rules

291.40 [Reserved].
291.41 Financial and statistical reporting—general.
291.42 Section 418 financial and statistical reporting.

Subpart F—Enforcement

291.50 Enforcement.

AUTHORITY: (Secs. 102, 204, 407, 416 and 418 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743 and 758, 766; 91 Stat. 1283, 1284, 49 U.S.C. 1302, 1324, 1377, 1386, and 1388; Pub. L. 95-504.)

Subpart A—General

§ 291.1 Applicability.

This part applies to domestic cargo transportation by air carriers certificated under sections 401 or 418 of the Act. It also applies to applicants for a certificate under section 418 of the Act, and to persons entering into control relationships or consolidations with domestic cargo air carriers.

§ 291.2 Definitions.

"Act" means the Federal Aviation Act of 1958, as amended, 49 U.S.C. 1301 et seq.

"All-cargo air carrier" or "section 418 carrier" means an air carrier holding an all-cargo air service certificate, issued under section 418 of the Act, to provide domestic cargo transportation, but excluding service between any pair of points both of which are in Alaska or in Hawaii.

"All-cargo air service" means domestic cargo transportation, but excluding service between any pair of points both of which are in Alaska or in Hawaii, performed by any air carrier holding a certificate issued under section 418 of the Act.

"Domestic cargo transportation" means the carriage by aircraft of property as a common carrier for compensation or hire, or mail, or both, in commerce between a place in any State of the United States, or the District of Columbia, or Puerto Rico, or the U.S. Virgin Islands, and a place in any other of those entities, or between places in the same State or other entity through the airspace over any place outside thereof, or between places within the District of Columbia, Puerto Rico, or the U.S. Virgin Islands. This includes commerce moving partly by aircraft and partly by other forms of transportation, as well as commerce moving wholly by aircraft.

"FAA" means the Federal Aviation Administration, U.S. Department of Transportation.

"Section 401 carrier" means an air carrier certificated under section 401 of the Act.

Subpart B—All-Cargo Air Service Certificates

§ 291.10 General.

Within 180 days after receipt of an application complying with this subpart from any U.S. citizen, the Board will issue a certificate to perform all-cargo air service, under section 418 of the Act, unless the Board finds that the applicant is not fit, willing, and able to provide such service or to comply with the Act or the orders and regulations of the Board. The 180-day period will not begin to run until the Board has received an application that is complete in all respects.

§ 291.11 Form and content of applications.

An original and six copies, typed on 8½ x 11-inch paper, shall be filed with the Docket Section, Office of the Secretary, Civil Aeronautics Board, Washington, D.C. 20428. The application may be mailed or delivered to Room 714, 1825 Connecticut Avenue NW., Washington, D.C. The application shall be conspicuously titled "Section 418 Application," and shall be accompanied by a check or money order payable to the Civil Aeronautics Board, in the amount of $250. The original of the application shall be manually signed and dated by the applicant, or by an authorized officer, partner, trustee, etc., of the applicant. The application shall contain all of the following information:

(a) *Identification of the applicant.*

(1) Name, mailing address, and telephone number of the applicant.

(2) Type of organization of the applicant, and State under whose law applicant is organized, if a corporation partnership, trust, etc.

(3) A statement that the applicant is a citizen of the United States as defined in section 101(14) of the Act.

NOTE.—Section 101(14) of the Act provides that a "citizen of the United States" means "(a) an individual who is a citizen of the United States or one of its possessions, or (b) a partnership of which each member is such an individual, or (c) a corporation or association created or organized under the laws of the United States or of any State, Territory, or possession of the United States, of which the president and two-thirds or more of the board of directors and other managing officers thereof are such individuals and in which at least 75 per centum of the voting interest is owned or controlled by persons who are citizens of the United States or of one of its possessions."

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(4) If any officers, directors, partners, trustees, shareholders, or persons who have the power to influence the management of the applicant are not U.S. citizens, state the names and citizenship of each such person, and describe each such person's interest in the applicant.

(b) *Applicant's past and present operations.*

(1) The names of all directors, partners, trustees officers, and principal management personnel of the applicant, and indicate the positions held by each.

(2) The total number of applicant's employees.

(3) A brief, narrative, chronological history of the ownership and operations of the applicant and its predecessors. Identify any civil Aeronautics Board, State, or foreign authority under which the applicant has conducted or is conducting air operations.

(4) A report on passenger and cargo air operations, if any, performed by the applicant or its predecessors over the past 3 years, totaled by year-end, showing:

(i) Aircraft hours flown;

(ii) Aircraft miles flown; and

(iii) Revenue ton-miles flown.

(5) The types of aircraft used in the above operations, the top 10 markets served, and the type of service performed. A list of aircraft owned or leased by the applicant, indicating type of aircraft, seating capacity and cargo capacity, and whether owned or leased.

(6) Applicant's equipment (exclusive of aircraft) and ground facilities owned or leased, including applicant's main base of operations.

(7) For the most recent 12-month period and, on a calendar or fiscal year basis, for the 2 preceding years (audited if possible), separating out for transport, transport-related and non-transport activities:

(i) Balance sheet;

(ii) Profit and loss statement; and

(iii) Cash flow statement.

(8) All material adverse changes, if any, in the financial position of the applicant that have occurred since the closing date of the balance sheet submitted in response to paragraph (a) of this section.

(9) All claims in litigation over $5,000, and any liabilities more than 60 days past due, on the date of the application.

(10) All FAA authority held by the applicant, and the address and telephone number of the responsible FAA office.

(d) *Projected operations.*

(1) The general geographic scope, the aircraft type, and the revenue hours anticipated for the first year of operations.

(2) Provide for the first year of operations, an illustrative profit and loss statement, pro-forma balance sheet (as at the end of the period), and cash flow statement.

(3) For applicants not now providing air service, an organizational plan of the proposed company, identify the directors, partners, trustees, officers, and principal management personnel, and briefly state the relevant qualifications.

(4) A detailed description of all provisions for the payment of cargo loss or damage claims, including insurance, claims reserves, etc.

(5) A statement of whether applicant's projected operations will require additional authority from the FAA and, if so, the status of any application for that authority, with the name, address, and telephone number of the FAA personnel responsible for processing the application.

(e) *Compliance disposition.*

(1) A description of each formal or docketed complaint lodged against the applicant, any predecessor or affiliate thereof (or against any other transportation company over which the applicant or any predecessor exercises or has ever exercised control) in the past 5 years, regarding compliance with the Federal Aviation Act or the rules, regulations, and requirements issued under it. The final disposition, if any, of each incident.

(2) A statement of whether, within the past 5 years, any of the persons and/or companies listed in paragraph (a)(1), either as a partner, officer, director, or stockholder, has been affiliated with, controlled by, or participated in control of any air carrier which, during such affiliation, was found to have committed knowing, willful violations of the Act, or of any order, rule, or regulation issued pursuant to the Act. If so, list the orders.

(3) Any action taken by the FAA under § 13.15 (involving civil penalties) § 13.17, § 13.19, or § 13.23 of this title in the past 5 years, and the disposition of each.

(4) An indication of whether the applicant, any predecessor, or any of the persons listed in the applicant's application has ever been found to have committed a felony, anti-trust violation, or to have engaged in criminal or civil fraud. Identification of the proceeding and provide a description, including current status or final disposition.

(f) *Insurance.*

The applicant shall provide a certificate complying with § 291.22 or state when its certificate will be filed with the Board.

(g) *Other information.*

The applicant may submit any other information that it believes to be relevant to the Board's decision of whether to issue it an all-cargo air service certificate.

§ 291.12 Procedure on receipt of application.

(a) Within 14 business days after the receipt of an application, the Board will notify the applicant whether its application is complete. If the application is not complete, the applicant will be told what information is necessary to complete the application. Applications will not be processed, and the 180-day period for issuance of a certificate will not begin to run, until the application is complete.

(b) Promptly upon the determination that an application is complete, the Board will (1) prepare a summary of the application and forward it to the FEDERAL REGISTER for publication, and (2) forward a copy of the application to the Secretary of Transportation with a request for a safety and compliance report from the FAA, and for recommendations on the safety implications of the proposed new service.

(c) The Board will hold the application for 21 days following the date of publication in the FEDERAL REGISTER for receipt of opposition from any member of the public. Opposition must be in writing, must identify the applicant and the docket number assigned to its application, and must relate to the fitness, willingness, or ability of the applicant to provide all-cargo air service or to comply with the Act or the Board's orders and regulations. The applicant shall be served by the opposing person with a copy of all documents submitted in opposition, at the same time that the documents are filed with the Board. The opposing documents shall contain proof of such service. The applicant shall have 14 days after receipt to reply to any opposing documents.

(d) After the period for the receipt of documents has expired, the Board will either (1) grant or deny the application on the basis of the written record, (2) request further information, or (3) set any disputed material issues of fact for expedited hearing before an Administrative Law Judge.

(e) In the case of applications that are opposed by any person, including the Secretary of Transportation, any further proceedings shall be governed by the Board's rules of practice, Part 302 of this title.

(f) The Board will transmit a copy of each certificate to the FAA when it is issued.

§ 291.13 Certificate conditions.

(a) All-cargo air service certificates shall remain effective only as long as the holder retains its U.S. citizenship (as defined in section 101(14) of the Act) and its insurance coverage required by § 291.22.

(b) All-cargo service certificates shall confer no right to receive subsidy, for the carriage of mail or otherwise.

(c) All-cargo air service certificates shall confer no right to carry passengers (except cargo attendants), or to engage in any air transportation outside the geographical scope of domestic cargo transportation. They shall not, however, restrict the right of the holder to provide scheduled, charter, contract, or other transportation of cargo, by air, within that geographical scope.

(d) All-cargo air service certificates shall entitle the holder to carry cargo attendants accompanying a shipment.

(e) Failure to file the reports required by this part, or to comply with the Act or the Board's regulations, shall be sufficient grounds to revoke a certificate.

(f) The authority to transport U.S. mail under this certificate is permissive, unless the Board, by order or rule, directs a carrier or class of carriers to transport mail on demand of the U.S. Postal Service.

(g) All-cargo air service certificates shall be held only by the applicant and shall not be transferred to any other person.

§ 291.14 Amendment of certificates.

Holders of all-cargo air service certificates shall notify the Board of any changes in the identification information supplied on the application under § 291.11(a). Notification must be received by the Board not later than 10 days after the change. An original and six copies, typed on 8½ × 11-inch paper, shall be filed with the Docket Section, Office of the Secretary, Civil Aeronautics Board, Washington, D.C. 20428. The notification may be mailed or delivered to Room 714, 1825 Connecticut Avenue NW., Washington, D.C.

Subpart C—General Rules for Domestic Cargo Transportation

§ 291.20 Applicability.

These rules apply to all domestic cargo transportation performed by air carriers certificated under sections 401 or 418 of the Act. Section 418 carriers that operate passenger-only or combination aircraft under section 401, Part 298 of this title, or other Board authority, must comply with these rules in connection with all domestic cargo transportation, whether provided on all-cargo or combination aircraft, operated pursuant to this authority or otherwise. In case a carrier may operate a particular flight under either a section 401 certificate or a section 418 certificate, the flight is presumed to be operated under the carrier's section 418 authority.

§ 291.21 Public disclosure of cargo liability insurance.

Every air carrier engaged in domestic cargo transportation shall give notice in writing to the shipper, when any shipment is accepted, of the limits of its cargo liability insurance, or of the absence of such insurance. Such notice shall be included clearly and conspicuously on all rate sheets and airwaybills of the carrier, and on any other documentation that is given to a shipper at the time of acceptance of the shipment.

§ 291.22 Public liability insurance.

(a) Each carrier operating all-cargo aircraft shall maintain public liability insurance. Policy conditions and certificate filing requirements shall be governed by the provisions of Subpart E of 14 CFR Part 298, except as provided in paragraph (b) of this section.

(b)(1) Carriers operating all-cargo aircraft larger than those eligible to be operated under 14 CFR Part 298 shall maintain combined bodily injury and property damage liability limits of at least $500,000 per person and $20 million per occurrence, with respect to such aircraft.

(2) Each certificate for insurance covering aircraft described in paragraph (b)(1) of this section shall be on Forms 29-D and 291-E.

(3) The liability of the insurer shall apply to the operation, maintenance, or use of all-cargo aircraft by the insured operator in "domestic cargo transportation."

§ 291.23 Record retention.

(a) The provisions of 14 CFR Part 249, *Preservation of air carrier accounts, records and memoranda*, shall apply to all carriers, except that records pertaining to transportation provided on aircraft eligible to be operated under Part 298 of this title, and records concerning transportation outside the geographic scope of domestic cargo transportation, need not be maintained unless required by other Board regulations.

(b) Each carrier shall retain for 1 year a copy of each rate sheet, airwaybill contract, and other document reflecting changed, new, or other previously unreported general or special prices or rules governing the carriage of freight in domestic cargo transportation (except mail), unless the transportation was performed in accordance with an effective tariff on file with the Board. Each carrier shall retain for 1 year a copy of any formula based on standard weight, mileage, or other method used to determine an individual airbill or contract.

§ 291.24 Waiver of Board Economic Regulations.

Except for this part and those parts of the Board's Economic Regulations (Part 200 through 299 of this title) specifically referred to in this part, carriers providing domestic cargo transportation are, with respect to that transportation, relieved from all obligations imposed on air carriers by those economic regulations. Flights operated entirely within domestic cargo transportation shall be free from those obligations, even though they may also carry shipments to or from points outside that geographic area. This waiver shall not apply to the requirements of Part 239 of this title.

Subpart D—Exemptions for Domestic Cargo Transportation

§ 291.30 General.

The following exemptions, except as otherwise specifically noted, apply only to domestic cargo transportation. They do not relieve a carrier from obligations derived from other transportation.

§ 291.31 Exemptions from the Act.

Each direct air carrier providing domestic cargo transportation is, with respect to such transportation, exempted from the following sections or subsections of the Act:

(a) Section 403, with the following exceptions:

(1) Air transportation of property within the States of Alaska or Hawaii; and

(2) To the extent necessary, as provided in Part 222 of this title, tariffs for pickup and delivery services not otherwise provided for in domestic cargo transportation.

NOTE.—Tariffs already on file with the Board may remain in effect for not longer than 90 days after the effective date of this rule.

(b) Subsection 404(a), except for air transportation of property within the States of Alaska or Hawaii, and (for all domestic cargo transportation) except the requirement to provide safe and adequate service, equipment, and facilities in connection with that transportation.

(c) Section 405 for all-cargo operations under section 418.

(d) Subsections 407(b) and 407(c).

(e) Subsections 408(a), except for subsection 408(a)(4), subject to the notification requirements of section 291.33.

(f) Sections 409 and 412(c).

§ 291.32 Mutuality of exemptions.

Indirect air carriers, to the extent they are engaged in domestic cargo transportation, common carriers that

are not air carriers, and persons substantially engaged in the business of aeronautics other than as air carriers, are exempted from subsection 408(a) of the Act with respect to domestic cargo transportation assets and with respect to securities of carriers engaged solely in domestic cargo transportation.

§ 291.33 Notification requirement for certain transactions involving section 401 certificated carriers.

(a) The exemption in § 291.31(e) is subject to the following condition:

Notice of any transaction resulting in the acquisition or control of a section 418 carrier by a section 401 certificated carrier having authority to transport cargo in foreign air transportation, or of any transaction resulting in the acquisition or control of a section 401 certificated carrier having such authority by a section 418 carrier, shall be filed with the Board not later than 45 days before the effective date of such transaction. The Board may invoke any of the powers and procedures described in section 408(b)(3) of the Act within 45 days after notice is filed.

(b) For the purposes of this section, the "presumption of control" provisions in section 408(f) of the Act shall not be applicable.

§ 291.34 Duration of exemptions.

The exemptions granted in §§ 291.31 through 291.33 shall continue in effect until the Board finds that the exemption is no longer in the public interest.

§ 291.35 No relief from antitrust laws.

The exemptions granted in §§ 291.31 through 291.33 do not constitute orders, within the meaning of section 414 of the Act, and confer no immunity or relief from the "antitrust" laws or any other statute except the Act. These exemptions do not relieve any person from the preacquisition notification requirements of the Clayton Act, 15 U.S.C. 18a, which apply to certain transactions involving firms with annual sales or assets of $10 million or more.

Subpart E—Reporting Rules

§ 291.40 [Reserved]

§ 291.41 Financial and statistical reporting—general.

(a) Carriers providing domestic cargo transportation that also conduct other operations under section 401 shall comply with the provisions of Part 241 of this title.

(b) Carriers providing domestic cargo transportation under section 418 certificates shall comply with § 291.42.

(c) Carriers providing domestic cargo transportation under section 418, and also providing other services under Part 298 of this title, shall report their domestic cargo transportation operations in accordance with § 291.42, and shall report all other traffic in accordance with the provisions of Subpart F of Part 298.

§ 291.42 Section 418 financial and statistical reporting.

(a) *General instructions and certification.*

(1) Carriers holding section 418 certificates shall file a Balance Sheet, Schedule 291-A, a Statement of Operations, Schedule 291-B, and a Summary of Traffic and Capacity Statistics, Schedule 291-C. These schedules will not be required from carriers who are subject to Part 241 of the Economic Regulations.

(2) Schedules required by this section shall be filed with the Civil Aeronautics Board semiannually on August 10 and February 10.

(3) All reports shall be addressed as follows: Bureau of Accounts and Statistics, Reports Control and Administration Division, B-46, Civil Aeronautics Board, Washington, D.C. 20428.

(4) The carrier's chief accounting officer shall sign the certification statement which appears at the bottom of the Balance Sheet and which relates to the information presented on the Balance Sheet, the Statement of Operations, and the Summary of Traffic and Capacity Statistics.

(b) *Balance Sheet.*

(1) This schedule shall reflect account balances at the close of business on the last day of each semiannual period for the corporate entity of each reporting carrier.

(2) "Current Assets" shall be comprised of all resources which may reasonably be expected to be realized in cash or sold or consumed within 1 year. This classification shall include cash, notes and accounts receivable, temporary cash investments, materials and supplies, and short-term prepayments.

(3) "Property and Equipment" shall be segregated into that which is owned and that which is leased under capital leases. All property and equipment, with the exception of land, shall be reported net of accumulated depreciation or amortization.

(4) "Other Assets" shall include all assets not included in the above categories, such as long-term investments, long-term prepayments, long-term receivables, deferred charges, and intangible assets.

(5) "Current Liabilities" shall be comprised of all obligations, the liquidation of which is reasonably expected to require the use of existing resources within 1 year. This classification shall include notes and accounts payable, accrued taxes and other debts, advances received, and current maturities of long-term debt.

(6) "Long-Term Debt" shall include all obligations which are not reasonably expected to be liquidated within 1 year. Typical examples include bonds payable, long-term notes payable, lease obligations, and pension obligations.

(7) "Other Liabilities" shall include any debts or obligations which are not properly listed in the "Current Liabilities" or "Long-Term Debt" sections.

(8) "Deferred Credits" shall include all credit balances of a general clearing nature, including credits held in suspense pending receipt of further information necessary for final disposition.

(9) "Stockholder's Equity" shall be reported as follows:

(i) "Capital Stock" shall be segregated as between common and preferred. The number of shares outstanding, along with the par or stated value of the stock, shall be reported. In the case of no-par stock without stated value, the full consideration received shall be reported

(ii) "Other Paid-In Capital" shall include the difference between the price at which the capital stock is sold and the par or stated value of the stock.

(iii) "Retained Earnings" shall represent the net income or loss from all operations of the corporate entity less dividends.

(iv) "Treasury Stock" shall represent the cost of stock issued by the carrier and reacquired by it but not retired or canceled.

(10) The statement of certification shall be signed by the carrier's chief accounting officer as provided in paragraph (a)(4).

(c) *Statement of Operations.*

(1) This schedule shall be filed semiannually by each reporting carrier and shall reflect the results of the carrier's corporate operations.

(2) "Operating Revenue" shall be categorized as follows:

(i) "Transport Revenues" shall include the revenues generated by the performance of air transportation services. This category shall be subdivided as follows:

(A) "Scheduled Service" shall include all transport revenues derived from operations between pairs of points which are served on a regularly scheduled basis. Transport revenues received from scheduled service operations shall be categorized as follows:

(1) Property;

(2) Mail; and

(3) Other. Revenues generated by the transportation of passengers shall be included in this category.

(B) "Nonscheduled Service" shall include all transport revenues derived from operations between pairs of points which are not served on a regularly scheduled basis.

(ii) "Transport-Related Revenues" shall include moneys received for providing air transportation facilities associated with the performance of services which flow from and are incidental to air transportation services performed by the air carrier. For example, this category would include cargo pickup and delivery charges, the preparation of extra documents, storage beyond the free period, and the provision of in-flight services.

(3) "Operating Expenses" shall be segregated as follows:

(i) "Flying Operations" shall include expenses incurred directly in the in-flight operation of aircraft and expenses attaching to the holding of aircraft and aircraft operational personnel in readiness for assignment to an in-flight status.

(ii) "Maintenance" shall include all expenses which are specifically identifiable with the repair and upkeep of property and equipment used in the performance of air transportation.

(iii) "General and Administrative" shall include that portion of all expenses of a general corporate nature and all other expenses not provided for elsewhere which are related to air transport operations either directly or indirectly.

(iv) "Depreciation and Amortization" shall include all depreciation and amortization expenses applicable to property and equipment used in providing air transportation services. These expenses shall be segregated between those applicable to owned property and equipment and those applicable to property and equipment which is leased.

(4) "Operating Profit (Loss)" shall be computed by subtracting the total operating expenses from the total operating revenues.

(5) "Nonoperating Income and Expense" shall include all revenues and expenses resulting from commercial ventures which are not inherently related to the performance of air transport services. For example, the revenues and expenses related to operating a hotel or motel would be reported under this category. This category shall also include the total interest expense incurred from all sources and be subdivided as follows:

(i) Interest Expense.

(ii) Other Nonoperating (Net).

(6) "Income Tax" shall reflect the semiannual provision for accruals of Federal, State, local, and foreign taxes based upon taxable income, and computed at the normal and surtax rates in effect during the current accounting year.

(7) "Discontinued Operations, Extraordinary Items or Accounting Changes" shall reflect any earnings or losses from discontinued operations, the net of the tax amount of extraordinary items, and the cumulative effect of any changes in accounting principles.

(d) *Summary of Traffic and Capacity Statistics.*

(1) Each reporting carrier shall file this schedule semiannually.

(2) "Traffic on Revenue Flights" shall be reported in the following categories:

(i) "Revenue ton-miles" shall reflect the total revenue ton-miles in all-cargo service for the semiannual period. Revenue ton-miles are computed by multiplying the aircraft miles flown on each flight stage by the number of tons of revenue traffic transported on that stage. Revenue ton-miles shall be reported based on the following categories:

(A) Scheduled Service. This statistic will be broken down between revenue ton-miles applicable to property and those applicable to mail.

(B) Nonscheduled Service.

(ii) "Nonrevenue ton-miles" shall reflect the total nonrevenue ton-miles in all-cargo service for the semiannual period. Nonrevenue ton-miles are computed by multiplying the aircraft miles flown on each flight stage by the number of tons of nonrevenue traffic transported on that stage.

(iii) "Revenue tons enplaned" shall reflect the total revenue tons of cargo loaded on aircraft during the semiannual period.

(3) "Aircraft capacity operated" shall be reported in the following categories:

(i) "Available ton-miles" shall reflect the total revenue ton-miles available for all-cargo service during the semiannual period. Available ton-miles are computed by multiplying the aircraft miles flown on each flight stage by the number of tons of aircraft capacity available for use on that stage. Available ton-miles shall be reported based on the ton-miles available for scheduled service and those available for nonscheduled service.

(ii) "Revenue aircraft miles flown" shall reflect the number of aircraft miles flown in revenue cargo service during the semiannual period.

(iii) "Nonrevenue aircraft miles flown" shall reflect the number of aircraft miles flown in nonrevenue cargo service during the semiannual period.

(iv) "Revenue aircraft departures performed" shall reflect the total number of takeoffs performed in revenue cargo service during the semiannual period.

(v) "Nonrevenue aircraft departures performed" shall reflect the total number of takeoffs performed in nonrevenue cargo service during the semiannual period.

(vi) "Revenue aircraft hours (airborne)" shall reflect the aircraft hours of flight (from takeoff to landing) performed in revenue cargo service.

(vii) "Nonrevenue aircraft hours (airborne)" shall reflect the aircraft hours of flight (from takeoff to landing) performed in nonrevenue cargo service.

Subpart F—Enforcement

§ 291.50 Enforcement.

In case of any violation of any of the provisions of the Act, or this part, or any other rule, regulation, or order issued under the Act, the violator may be subject to a proceeding pursuant to section 1002 and 1007 of the Act before the Board or a U.S. District Court, as the case may be, to compel compliance therewith; or to civil penalties pursuant to the provisions of section 901(a) of the Act; or, in the case of a willful violation, to criminal penalties pursuant to the provisions of section 902(a) of the Act; or other lawful sanctions including suspension or revocation of operating authority.

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,
Secretary.

COMMENTS ON AIRLINE CARGO DEREGULATION—DOCKET 33093

CARRIERS

Alaska International Air, Inc.
Trans Continental Airlines
CF Air Freight, Inc.
Allegheny Airlines, Inc.
American Airlines, Inc.
Caribbean Air Services, Inc.
Central American Air Taxi, Inc.
Delta Air Lines, Inc.
Emery Air Freight Corp.
Federal Express Corp.
Frontier Airlines
Midwest Air Charter, Inc.
Northwest Orient
Pan American World Airways, Inc.
Seaboard World Airlines, Inc.
Trans International Airlines, Inc.
Trans World Airlines, Inc.
United Air Lines, Inc.
Great Western Airlines, Inc. and Sedalia-Marshall-Boonville Stage Line, Inc.
Commuter Airlines Association of America
Imperial Air Freight Service, Inc.
DHL Corp. and DHL Airways, Inc.
The Flying Tiger Line, Inc.

SHIPPERS

American Standard, Inc.
Oxford Chemicals
Travenol Laboratories, Inc.
Sperry New Holland Division of Sperry Rand Corp.
Geo. A. Hormel & Co.
C. L. Frost & Son, Inc.
Robertshaw Controls Co.
The Budd Co.
Actran
General Mills, Inc.
Eastman Kodak Co.
Motorola Semiconductor Group
Oscar Mayer & Co.
Westinghouse Electric Corp.

U.S. Postal Service
Deere & Co.
Phillips Petroleum Co.
West Bend Co.
Minnesota Mining & Manufacturing Co.
Ethyl Corp.
Continental Freight Data Systems, Inc.
Harnischfeger Corp.
Computax, Inc.
Castle & Cooke Foods
H. Goodman & Sons, Inc.
Twin Disc, Inc.
Arthur G. McKee & Co.
W. R. Morgan
Pacific Resins & Chemicals, Inc.
Capwell's
Robert L. Garrett
C. F. Braun & Co.
Wright Line
Owens-Illinois
Blue Anchor, Inc.
Varo, Inc.
Spiegel, Inc.
Missouri Portland Cement Co.
Hiram Walker & Sons, Inc.
Western Electric
RCA
Swank, Inc.
Aldens, Inc.
Volvo of America Corp.
Westinghouse Electric Corp. (Industrial & Government Tube Division)
Anderson IBEC (Division of International Basic Economy Corp.)
Rockwell International (Saberliner Division)
Warnaco, Inc.
Georgia-Pacific Corp.
Firestone Tire and Rubber Co.
Diamond Fruit Growers, Inc.
FMC Corp.
Capitol Records, Inc.
CBS Records
Armour-Dial, Inc.
Shaklee Corp.
Levy's
Digital
Rhodia, Inc.
Joy Manufacturing Company
Trent Carpet/Roxbury Carpet (Divisions of WWG Industries, Inc.)
Dow Chemical U.S.A.
Montgomery Ward
ITT Grinnell Corp.
Certron Corp.
McCormick & Co., Inc.
Reichhold Chemicals, Inc.
Bio-Dynamics/bmc
Nekoosa Papers, Inc.
Goodman-Reichwald-Dodge, Inc.
General Mills Chemicals, Inc.
Thatcher Glass Manufacturing Co.
Lockheed-Georgia Co.
Wiebold Stores, Inc.
Broyhill Industries
Rexnord, Inc.
Marathon Battery Co.
Michelin Tire, Corp.
Horbart Brothers Co.
A & E Plasti-Line
Kohler Co.
Searle Laboratories
Omark Industries
Allis-Chalmers
International Foodservice/Los Angeles, Inc.
W. D. Allen Manufacturing Co.
Yellow Springs Instrument Co., Inc.
Red Devil
American Valve Manufacturing Corp.
Federal Pacific Electric Co.
Micro Switch (Division of Honeywell)
Union Underwear Co., Inc.
ITT Publishing
Jones & Laughlin Steel Corp.
Reynolds Aluminum
GAF Corp.
Ray-O-Vac Division, ESB, Inc.
Sarco Co. Inc.
Raytheon Data Systems Co.
AVCO
Whirlpool Corp.
Mohasco Corp.
National Lock Hardware
Day and Zimmermann, Inc.
Marion Power Shovel Division Dresser Industries, Inc.
J. L. Clark Manufacturing Co.
Brown & Williamson Tobacco Corp.
World Color Press
Fairchild Publications
Lincoln St. Louis
Oster Corp.
Engineering Sinterings and Plastics, Inc.
Erico Products, Inc.
Flintkote Co.
Kimberly-Clark Corp.
Lennox Industries, Inc.
Colonial Sugars Co., Borden, Inc.
Brunswick Corp.
GenRad, Inc.
Amerada Hess Corp.
Dixie Yarns, Inc.
Bath Iron Works, Corp.
Weirton Steel Division of National Steel Co.
Central Steel & Wire Co.
Oil-Dri Corp.
Cannon Mills Co.
ICI Americas, Inc.
Westinghouse Electric Corp. Powers Generation Group
Nordson Corp.
Brown & Haley
Cutter Laboratories, Inc.
Scott Graphics
Hewlett Packard Co.
Eagle Rubber Co., Inc.
Air Products and Chemicals, Inc.
Rockford Products Corp.
Mack Trucks, Inc.
Chevrolet Motor Division (General Motors Corp.)
Hedstrom Co.
Milliken & Co.
Buffalo Forge Co.
Clairol, Inc.
Ely & Walker
Hyland
Ball Seed Co.
Zellerback Paper Co.
Marathon LeTourneau Co.
AMP, Inc.
Louisville Cement Co.
Cascade Corp.
M. Lowenstein & Sons, Inc.
Corning Glass Works
Phelps Dodge Corp.
Strouss
Eaton Corp.
Jacobson Stores, Inc.
Monadnock Paper Mills, Inc.
Harry and David
Abbott Laboratories
DeSoto, Inc.
Ross Industries
Milwaukee Boston Store Co.
GTE Sylvania, Inc.
Continental Diversified Industries
Martin Marietta Aluminum, Inc.
Champion Products, Inc.
General Motors Corp.
ILC Dover
U.S. Department of Defense
CIBA-GEIGY Corp.
Freightliner Corp.
Grumman Aerospace Corp.
NCR Corp.
Pioneer Electronics of America

OTHERS

Air Freight Forwarders Association of America
Traffic Service Bureau, Inc.
Pacific Northwest Traffic League
Interstate Commerce Commission
Wisconsin Paper & Pulp Manufacturers' Traffic Association
Air Freight Motor carriers Conference, Inc.
COSTHA (Council for Safe transportation of Hazardous Articles)
U.S. Department of Justice
Eastern Industrial Traffic League, Inc.
Lincoln Chamber of Commerce
National Industrial Traffic League
Our Animal Wards
Shippers National Freight Claim Council, Inc.
Society of American Florists
National Small Shipments Traffic Conference, Inc. and Drug and Toilet Preparation Traffic Conference, Inc.
Massachusetts Port Authority
Logistical Management Consultants, Inc. and Greater Portland Shippers Conference, Inc.

[6320-01-C]

APPENDIX B

REPORT OF SECTION 418 OPERATIONS

Air Carrier	Operations	
Six-Months Ended	Section 401 Operations	All Cargo Aircraft (418)
Operating Revenue and Expenses		
Transport Revenues		
Scheduled Service		
Property		
Mail		
Other		
Nonscheduled Service		
Transport-Related Revenues		
Operating Expenses		
Traffic on Revenue Flights		
Revenue Ton-miles		
Scheduled Service:		
Property		
Mail		
Nonscheduled Service		
Nonrevenue Ton-Miles		
Revenue Tons Enplaned		
Aircraft Capacity Operated		
Aircraft Ton-miles:		
Scheduled Service		
Nonscheduled Service		
Aircraft Miles Flown:		
Revenue		
Nonrevenue		
Aircraft Departures Performed:		
Revenue		
Nonrevenue		
Aircraft Hours (Airborne)		
Revenue		
Nonrevenue		

Schedule T-8 CAB Form 41

APPENDIX C

BALANCE SHEET

Carrier _____

As at _____

ASSETS

Current assets:	
Cash	
Notes and accounts receivable–net	
Other current assets	
Total current assets	
Property and equipment:	
Owned property and equipment	
Less accumulated depreciation	
Property and equipment obtained under capital leases	
Less accumulated amortization	
Total property and equipment	
Other assets	
Total assets	

LIABILITIES AND STOCKHOLDERS' EQUITY

Current liabilities:	
Notes and accounts payable	
Accrued taxes	
Other current liabilities	
Total current liabilities	
Long–term debt	
Other liabilities	
Deferred credits	
Stockholders' equity:	
Capital stock	
Preferred _____ shares outstanding	
Common _____ shares outstanding	
Other paid–in capital	
Retained earnings	
Total stockholders' equity	
Less: Treasury stock	
Net stockholders' equity	
Total liabilities and stockholders' equity	

I, the undersigned, (Title) _____ of the above–named air carrier certify that the above report and the attached Statement of Operations and Summary of Traffic and Capacity Statistics have been examined by me and to the best of my knowledge and belief are true, correct and complete reports for the period stated.

Date _____ Signature: _____

Name (Please Type or Print): _____

Schedule 291–A

APPENDIX D

STATEMENT OF OPERATIONS

Carrier _____

Six Months Ended _____

Operating Revenue	
Transport Revenues	
Scheduled Service	
Property	
Mail	
Other	
Nonscheduled Service	
Transport Related Revenues	
Total Operating Revenue	
Operating Expense	
Flying Operations	
Maintenance	
General and Administrative	
Depreciation and Amortization	
Owned Property and Equipment	
Leased Property and Equipment	
Total Operating Expense	
Operating Profit (Loss)	
Nonoperating Income and Expense:	
Interest Expense	
Other Nonoperating (Net)	
Income Tax	
Discontinued operations, extraordinary items or Accounting changes	
Net Income (Loss)	

APPENDIX E

SUMMARY OF TRAFFIC AND CAPACITY STATISTICS

Carrier _____
Six Months Ended _____

Traffic on Revenue Flights

Revenue Ton-miles	
Scheduled Service:	
Property	
Mail	
Nonscheduled Service	
Nonrevenue Ton-miles	
Revenue Tons Enplaned	

Aircraft Capacity Operated

Available Ton-miles:	
Scheduled Service	
Nonscheduled Service	
Aircraft Miles Flown:	
Revenue	
Nonrevenue	
Aircraft Departures Performed:	
Revenue	
Nonrevenue	
Aircraft Hours (Airborne):	
Revenue	
Nonrevenue	

Schedule 291–C

APPENDIX F
Page 1 of 2

NOTE: THIS FORM IS TO BE COMPLETED BY AN OFFICER OR AUTHORIZED REPRESENTATIVE OF THE INSURANCE COMPANY

CAB Form 291-D
(11–78)

CERTIFICATE OF INSURANCE
ALL–CARGO AIR CARRIER POLICIES OF INSURANCE FOR AIRCRAFT BODILY INJURY AND PROPERTY DAMAGE LIABILITY

THIS CERTIFIES THAT:

_____(Insurer)
(Name and address of Insurer)

has issued a policy or policies of Aircraft Liability Insurance to _____ (Name and address of Insured All-Cargo Air Carrier)

_____(Named Insured)

effective from _____ until ten (10) days after written notice from the Insurer of the intent to terminate coverage is received by the Civil Aeronautics Board.

The Insurer (check one):

☐ is licensed to issue aircraft insurance policies; or

☐ is an approved surplus line insurer, in the State(s) of _____

The Insurer assumes, under the policy or policies listed below, aircraft liability insured to minimums at least equal to the following during operation, maintenance or use of all-cargo aircraft in "domestic cargo transportation" as that term is defined in 14 CFR 291.2:

Policy No.	Type of Liability	Minimum Limit Each person	Minimum Limit Each occurrence
	Combined Bodily Injury and Property Damage Liability Excluding Passengers (Other than cargo attendants)	$500,000	$20,000,000

The policy or policies listed in this certificate insure (check one):

☐ Operations conducted with the following types of aircraft:

☐ Operations conducted with the following aircraft:

FAA Registration	Manufacturer's Type	FAA Registration	Manufacturer's Type

V 43 N 0 16 7 8 / 222 UMI

APPENDIX F
Page 2 of 2

Each policy listed in this certificate has been amended by attachment of a Standard Endorsement Form (CAB Form 291-E) and does not cover operations except between a place in any State of the United States, or the District of Columbia, or Puerto Rico, or the U. S. Virgin Islands, and a place in any other of those entities, or between places in the same State or other entity through the airspace over any place outside thereof, or between places within the District of Columbia, Puerto Rico or the U.S. Virgin Islands.

_____
(Name of Insurer)

_____
(Name of Broker, if applicable)

_____
(Address of Broker)

Date: _____ By: _____
(Officer, or authorized representative of insurer or broker)

[6320-01-M]

STANDARD ENDORSEMENT

ALL-CARGO AIR CARRIER POLICIES OF INSURANCE FOR AIRCRAFT BODILY INJURY AND PROPERTY DAMAGE LIABILITY

The policy to which this endorsement is attached is hereby amended to assure compliance by the Named Insured, an all-cargo air carrier providing services in domestic cargo transportation, with the provisions of Part 291 of the Economic Regulations of the Civil Aeronautices Board.

1. In consideration of the premium stated in the policy to which this endorsement is attached, the Insurer hereby agrees to pay, within the limits of liability for coverages specified in the policy, all sums which the Named Insured shall become legally obligated to pay as damages for bodily injury to or death of persons or for loss of or damage to property of others, resulting from the Named Insured's negligent operation, maintenance, or use of all-cargo aircraft in "domestic cargo transportation" as that term is defined in 14 CFR 291.2. The liability of the Insurer is not contingent upon the solvency or freedom from bankruptcy of the Named Insured.

2. The Insurer also agrees that the attached policy shall remain in force, and cannot be replaced, cancelled, withdrawn, or modified to exclude any aircraft or to reduce the extent of liability coverage, by the Insurer or the Insured, nor expire by its own terms, until ten (10) days after written notice by the Insurer (by the retiring Insurer, in the event of replacement) describing the change is received by the Board's Bureau of Pricing and Domestic Aviation, Washington, D.C. 20428. In addition, with respect to expiration by the policy's own terms, the Insurer agrees that to be effective the notice to the Board of nonrenewal must be received not more than 30 days before the expiration date.

3. The Insurer further agrees that, within the limits of liability for coverages specified in the policy, no term, condition, limitation, stipulation or other provision contained in the policy or any endorsement attached thereto or any violation thereof by the Named Insured, except the EXCLUSIONS contained in this endorsement shall relieve the Insurer of liability with respect to such bodily injury or property damage. In this connection, the Insurer expressly agrees that no violation by the Named Insured of any safety or economic rule, regulation, order, or other legally imposed requirement of the Federal Aviation Administration or the Civil Aeronautics Board, and no special waiver issued by the Federal Aviation Administration or the Civil Aeronautics Board, shall affect the insurance afforded under this policy.

4. The Insurer further agrees that, while an aircraft owned by the Named Insured and declared in this policy, is withdrawn from normal use because of its breakdown, repair, servicing, loss or destruction, such insurance as is afforded by this policy with respect to such aircraft applies also with respect to another aircraft of similar type, horse-power, and payload capacity, whether or not owned by the Insured, while temporarily used as the substitute for such aircraft. (Applicable only if aircraft are listed in policy by FAA registration number).

5. The exclusions of the policy to which this endorsement is attached are deleted and are replaced by the following exclusions:

"Exclusions, unless otherwise provided in the policy of insurance, the liability insurance afforded under this policy shall not apply to:

"(a) Any loss against which the Named Insured has other valid and collectible insurance, except that the limits of liability provided under this policy shall be excess of the limits provided by such other valid and collectible insurance up to the limits certified in a certificate of insurance, but in no event exceeding the limits of liability expressed elsewhere in this policy;

"(b) Liability assumed by the Named Insured under any contract or agreement, unless such liability would have attached to the Insured even in the absence of such contract or agreement;

"(c) Bodily injury, sickness, disease, mental anguish or death of any employee of the Named Insured while engaged in the duties of his employment, or any obligation for which the Named Insured or any company as his Insurer may be held liable under any workmen's compensation or occupational disease law;

"(d) Loss of or damage to property owned, rented, occupied or used by, or in the care, custody or control of the Named Insured, or carried in or on any aircraft with respect to which the insurance afforded by this policy applies;

"(e) Personal injuries or death, or damage to or destruction of property, caused directly or indirectly, by hostile or warlike action, including action in hindering, combating or defending against an actual, inpending or expected attack by any government or sovereign power, de jure or de facto, or military, naval, or air forces, or by an agent of such government, power, authority or forces; the discharge, explosion or use of any weapon of war employing atomic fission or atomic fusion or radioactive materials; insurrection, rebellion, revolution, civil war or usurped power, including any action in hindering, combating, or defending against such an occurrence; or confiscation by any government or public authority;

"(f) Any loss arising from operations within any geographic areas other than the following: 'between a place in any State of the United States, or the District of Columbia,' or Puerto Rico, or the U.S. Virgin Islands, and a place in any other of those entities, or between places in the same State or other entity through the airspace over any place outside thereof, or between places within the District of Columbia, Puerto Rico or the U.S. Virgin Islands.'

"'(g) Any loss arising from operations by the Named Insured to or from installations of the Distant Early Warning System (DEW line) or the Ballistic Missile Early Warning System (BMEWS);

"(h) Any loss arising from the ownership, maintenance or use of any aircraft of a type or class not specified for coverage in the policy, or any aircraft not declared to the Insurer in accordance with the terms and conditions of this policy, other than substitute aircraft as authorized in paragraph 4 hereof;

"(i) Any loss arising from operations other than the carriage by aircraft of property as a common carrier for compensation or hire, or the carriage of mail by aircraft, in domestic cargo transportation."

6. The Named Insured will promptly reimburse the Insurer for payments made by the Insurer which the Insurer would not have been obligated to make except for the provisions of this endorsement.

7. Any exclusions, conditions or provisions of this endorsement that have the effect of restricting or nullifying the coverage granted by this policy in the absence of this endorsement shall not apply.

Attached to and forming part of Policy No(s):
Issued by:
To:
Date:
By:
(Authorized Representative of Insurer)

[FR Doc. 78-32004 Filed 11-9-78; 8:45 am]

[6320-01-M]

[Regulation ER-1081; Amendment No. 34; Docket No. 33093]

PART 241—UNIFORM SYSTEM OF ACCOUNTS AND REPORTS FOR CERTIFICATED AIR CARRIERS

Rules for All-Cargo Air Carriers and for Domestic Cargo Transportion

NOVEMBER 8, 1978.

Adopted by the Civil Aeronautics Board at its office in Washinton, D.C.

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: This rule sets accounting and reporting rules for all-cargo air carriers and for domestic cargo transportation. The reasons for this change are explaned in ER-1080, issued simultaneously.

DATES: Effective: December 31, 1978. Adopted: November 8, 1978.

FOR FURTHER INFORMATION CONTACT:

Raymond Kurlander, Director, Bureau of Accounts and Statistics, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, 202-673-5270.

Accordingly, the Board amends part 241 of its Economic Regulations (14 CFR Part 241) to read as follows:

1. Amend section 03 by adding a definition of "Section 418 cargo operations" to read:

Section 03—Definitions for Purposes of This System of Accounts and Reports

* * * * *

Section 418 operations.—The carriage by aircraft of property as a common carrier for compensation or hire, or mail, or both, in commerce between a place in any State of the United States, or the District of Columbia, or Puerto Rico, or the U.S. Virgin Islands, and a place in any other of those entities, or between places in the same State or other

entity through the air-space over any place outside thereof, or between places within the District of Columbia, Puerto Rico, or the U.S. Virgin Islands, but excluding service between any pair of points both of which are in Alaska or Hawaii. This includes commerce moving partly by aircraft and partly by other forms of transportation, as well as commerce moving wholly by aircraft.

. . . . . .

2. Amend section 21 by revising paragraph (g) to read:

Section 21—Introduction to System of Reports

. . . . . .

(g) Four separate air carrier entities shall be established for route air carriers for the purpose of submitting the reports prescribed. They are as follows: (1) Domestic operations; (2) operations via the Atlantic Ocean; (3) operations via the Pacific Ocean; and (4) operations within the Latin American areas. With respect to the first classification, the domestic entity shall embrace all operations within the 50 States of the United States and the District of Columbia, and shall also include Canadian transborder operations. Carriers need not establish a Latin American entity for reporting purposes if the only operations being conducted in that entity are section 418 cargo operations. The reports to be submitted by each entity shall be comparable to those required of a distinct legal entity whether the reporting entity constitutes such an entity, a semi-autonomous physically separated operating division of the air carrier, or an entity established for reporting purposes only.

. . . . . .

3. Amend section 22 by revising paragraph (a), the list of schedules in the CAB form 41 report, to read:

Section 22—General Reporting Instructions

(a) * * *

List of Schedules in CAB Form 41 Report

Schedule No.	Schedule title	Filing frequency	Applicability by carrier group		
			I	II	III
.	.	.	.	.	.
T-7	Statistical market report	Monthly			(7)
T-8	Report of sec. 418 operations	Semi-annually	(8)	(8)	(8)
T-41	Charter and special services revenue aircraft-miles flown; calculation of limitation of charter trips.	(9)		(3)	(3)
.	.	.	.	.	.

[1] In accordance with the provisions of sec. 235.4 and 235.5, of pt. 235 of this subch.
[2] For the first 9 mo and for the 12 mo of each calendar year.
[3] Applicable only to route air carriers.
[4] Applicable only to supplemental air carriers.
[5] Applicable to all air carriers except local service air carriers.
[6] Applicable only to local service air carriers.
[7] Applicable only to subsidized air carriers.
[8] Applicable only to trunk air carriers.
[9] Applicable only to carriers holding certificates issued under sec. 418 of the Act.

DUE DATES OF SCHEDULES IN CAB FORM 41 REPORT

Due dates[1] and Schedule No.

Jan. 20—P-12, P-12(a)
Jan. 30— * * *
Feb. 10[2] A, B-1[3], B-3, B-4, B-5, B-7, B-7(b), B-8, B-10, B-12, B-13, B-14, P-1.1, P-1.2, B-2, B-2(a), P-3, P-3.1, P-3(a), P-4, P-5.1, B-5.2, P-5(a), P-6, P-7, P-8, P-9.2, P-10, P-11(a), P-11(b), T-8.

. . . . . .

Aug. 10—A, A-1, B-1[3], B-3, B-4, B-5, B-7, B-7(b), B-8, B-10, B-12, B-13, B-14, P-1.1, P-1.2, P-2, P-2(a), P-3, P-3.1, P-3(a), P-4, P-5.1, P-5.2, P-5(a), P-8, P-7, P-8, P-9.2, P-11(a), P-11(b), T-8.

. . . . . .

4. Amend section 25, by amending paragraph (b) of the reporting instructions for schedule T-6 Report of Civil Aircraft Charters and by adding reporting instructions for new scheduled T-8 Report of Section 418 Operations immediately following the reporting instructions for schedule T-7 to read as follows:

Section 25—Traffic and Capacity Elements

. . . . . .

Schedule T-6—Report of civil aircraft charters.

. . . . . .

(b) A complete report shall be made on the schedule for the overall or system operations conducted by the air carrier; except that, all-cargo charters conducted within the geographic limitations set out in section 418 of the Act need not be reported.

. . . . . .

Schedule T-7—Statistical Market Report.

. . . . . .

Schedule T-8—Report of Section 418 Operations.

(a) This schedule shall be filed semi-annually by all air carriers holding section 401 certificates that conduct all-cargo operations under certificates issued for section 418 cargo operations.

(b) Data reported on this schedule shall be based on the system operations of the air carrier with the data being segregated between section 401 operations and all-cargo operations conducted on all-cargo aircraft under section 418.

(c) "Total Operating Revenue" shall be segregated between transport and transport-related revenues.

(d) Transport revenues shall be subdivided between those generated by scheduled service operations and those generated by nonscheduled service operations. Scheduled service revenues shall be further subdivided as follows:
(1) Property;
(2) Mail; and
(3) Other.

(e) "Operating Expenses" shall reflect the segregation of total operating expenses reported in line 7199 on Schedule P-11 or Schedule P-12 for the overall or system operations of the air carrier.

(f) "Revenue Ton-Miles" shall be segregated between those flown in scheduled service and those flown in nonscheduled service. Scheduled service ton-miles shall be subdivided between property transported and mail transported.

(g) "Nonrevenue Ton-Miles" and "Revenue Tons Enplaned" applicable to the revenue flights operated during the reporting period shall be reported on this schedule.

(h) "Available Ton-Miles" shall be segregated between scheduled service and nonscheduled service.

(i) "Aircraft Miles Flown," "Aircraft Departures Performed," and "Aircraft Hours (Airborne)" shall be segregated between the aircraft capacity operated in revenue service and nonrevenue service.

. . . . . .

5. Amend § 19-3, by adding a new sentence to read.

§ 19-3 Accessibility and transmittal of data.

Each air carrier shall maintain its prescribed operating statistics in a manner and at such locations as will permit ready availability for examination by representatives of the Board. All Group I subsidized route carriers, Group II subsidized route carriers and all Group III route air carriers shall transmit to the Board on a monthly basis individual flight stage data for scheduled services as prescribed in section 19-5, summarized by flight number, service segment, service class, and aircraft type. Individual flight stage data for section 418 all-cargo operations shall not be transmitted to the Board, but shall be included in the summary schedules prescribed in section 25 of this part. Those air carriers required to submit this data shall utilize either magnetic ADP tapes or ADP punched cards for transmitting the prescribed data to the Board. All ADP-oriented records shall be transmitted in accordance with standard practices to be established by the Board's Bureau of Accounts and Statistics. All such data shall be received by the Civil Aeronautics Board at its offices in Washington, D.C., no later than 30 days following the close of the month to which applicable.

(Sections 204 and 407 of the Federal Aviation Act, as amended, 72 Stat. 743, 766; 49 U.S.C. 1324 and 1377.)

NOTE.—The Civil Aeronautics Board is submitting this rule to the General Accounting Office for such review as may be appropriate under the Federal Reports Act, 44 U.S.C. 3512. The effective date of the reporting requirements of this rule, which is December 31, 1978, accordingly reflects the inclusion of a 45-day period which that statute allows for such review (44 U.S.C. 3512(c)(2)).

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-32005 Filed 11-9-78; 8:45 am]

[6320-01-M]

[Regulation ER-1082; Amendment No. 6; Docket 33093]

PART 242—REPORTING RESULTS OF SCHEDULED ALL-CARGO SERVICES

Revocation of Part

NOVEMBER 8, 1978.

Adopted by the Civil Aeronautics Board at its office in Washington, D.C.

AGENCY: Civil Aeronautics Board.

ACTION: Revocation of part.

SUMMARY: The Board is revoking this part of its Economic Regulations as no longer needed, for the reasons explained in ER-1080, issued simultaneously.

DATES: Effective: November 9, 1978. Adopted: November 8, 1978.

FOR FURTHER INFORMATION CONTACT:

Raymond Kurlander, Director, Bureau of Accounts and Statistics, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, 202-673-5270.

Part 242 [Reserved]

Accordingly, the Board revokes and reserves Part 242 of its Economic Regulations (14 CFR Part 242).

(Sections 204 and 407 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 766; 49 U.S.C. 1324 and 1377.)

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-32006 Filed 11-9-78; 8:45 am]

[6320-01-M]

[Regulation ER-1083; Amendment No. 28; Docket 33093]

PART 249—PRESERVATION OF AIR CARRIER ACCOUNTS, RECORDS, AND MEMORANDA

All-Cargo Air Carriers Under Section 418 of the Act

NOVEMBER 8, 1978.

Adopted by the Civil Aeronautics Board at its office in Washington, D.C.

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: For the reasons stated in ER-1080, issued simultaneously, this rule includes air carriers certificated under section 418 of the Act under the Board's record retention requirements.

DATES: Effective: December 31, 1978. Adopted: November 8, 1978.

FOR FURTHER INFORMATION CONTACT:

Raymond Kurlander, Director, Bureau of Accounts and Statistics, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, 202-673-5270.

Accordingly, the Board amends part 249 of its Economic Regulations (14 CFR part 249) by revising paragraph (a) of § 249.1 to read:

§ 219.1 Applicability.

* * * (a) air carriers that hold certificates issued under sections 401 or 418 of the Act, * * *.

(Sections 204 and 407 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 766; 49 U.S.C. 1324 and 1377.)

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-32007 Filed 11-9-78; 8:45 am]

[6320-01-M]

SUBCHAPTER E—ORGANIZATION REGULATION

[Regulation OR-136; Amendment No. 74, Docket 33093]

PART 385—DELEGATIONS AND REVIEW OF ACTION UNDER DELEGATIONS: NONHEARING MATTERS

Delegation to Director, Bureau of Pricing and Domestic Aviation for Pickup and Delivery Tariffs

NOVEMBER 8, 1978.

Adopted by the Civil Aeronautics Board at its office in Washington, D.C.

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: This rule delegates authority to the Director, Bureau of Pricing and Domestic Aviation, to require pickup and delivery tariffs in domestic cargo transportation if needed in the public interest. This rule is at the Board's own initiative, and is explained in ER-1080, issued simultaneously.

DATES: Effective: November 9, 1978. Adopted: November 8, 1978.

FOR FURTHER INFORMATION CONTACT:

Joseph A. Brooks, Office of General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, 202-673-5442.

SUPPLEMENTARY INFORMATION: Since this rule is administrative in nature, affecting a rule of agency organization and procedure, we find that

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there is good cause not to require public notice and procedures, and for making it effective immediately.

Accordingly, the Board is amending Part 385 of its Organization Regulations (14 CFR Part 385) by adding a new paragraph (oo) to § 385.13 to read as follows:

§ 385.13 Delegation to Director, Bureau of Pricing and Domestic Aviation.

• • • • •

(oo) Require pickup and delivery tariffs be filed with the Board under Part 221 of the Economic Regulations by carriers operating in domestic cargo transportation under Part 291, if in the public interest.

(Sec. 204 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743; 49 U.S.C. 1324. Reorganization Plan No. 3 of 1961, 75 Stat. 837, 26 FR 5989, 49 U.S.C. 1324 (note).)

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-32008 Filed 11-9-78; 8:45 am]

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federal register

THURSDAY, NOVEMBER 16, 1978
PART IV



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

■

ADDITIONAL PROTECTIONS PERTAINING TO BIOMEDICAL AND BEHAVIORAL RESEARCH INVOLVING PRISONERS AS SUBJECTS

federal register

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[4110-08-M]

Title 45—Public Welfare

SUBTITLE A—DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, GENERAL ADMINISTRATION

PART 46—PROTECTION OF HUMAN SUBJECTS

Additional Protections Pertaining to Biomedical and Behavioral Research Involving Prisoners as Subjects

AGENCY: Department of Health, Education, and Welfare.

ACTION: Final rule.

SUMMARY: These regulations stipulate additional requirements for Institutional Review Boards (Boards), provide for prisoners or representatives of prisoners on Boards when prisoners are involved, outline additional duties for Boards, and specify the conditions under which research involving prisoners is permitted.

EFFECTIVE DATE: These regulations shall become effective on November 16, 1978.

FOR FURTHER INFORMATION CONTACT:

Normand R. Goulet, Ph. D., Office for Protection from Research Risks, National Institutes of Health, 9000 Rockville Pike, Bethesda, Md. 20014, 301-496-7005

SUPPLEMENTARY INFORMATION: On January 5, 1978, the Department of Health, Education, and Welfare (Department) published (43 FR 1050) proposed rules providing additional protections for prisoners involved in research conducted or supported by the Department. Interested individuals, institutions and organizations were invited to submit comments. A total of 57 comments were received.

Response to Public Comments

The public comments and the Department's responses are discussed below in the order of their reference to the proposed regulations as they appeared in the Federal Register. The Department, having reviewed these comments, has decided to allow two additional types of research:

(1) Certain research on conditions particularly affecting prisoners as a class; and

(2) Certain research intended to benefit the subjects but which involves the use of control subjects to whom such benefit may not be expected.

Neither of these research categories may be approved until additional and more stringent review procedures are conducted. These requirements are detailed in § 46.306(a)(2) of these regulations.

Comment: Twelve respondents commented on the proposals to require that the Board should be "* * * sufficiently qualified through the maturity, experience, and expertise of its members, and the diversity of the members' racial and cultural backgrounds, to insure respect for its advice and counsel * * *" and that no Board should consist entirely of members of only one sex.

Several respondents felt that it was misleading and inappropriate to propose a change in Board composition in what was presented as proposed regulations on research involving prisoners. They felt that such a publication was not conspicuous enough to insure appropriate comment. In addition, it was noted that no justification was presented in the introductory comments which preceded the proposed changes. It was felt that a substantial change of this magnitude deserved to be published separately, with a full and adequate explanation of its meaning, and clearly labelled for comments by the affected and interested public.

Other respondents felt that changes to the existing criteria for Board membership should be proposed only when supported by clear evidence that present criteria are inadequate to provide protection to human subjects. The proposal should document these inadequacies for the public and should explain why they are attributable to the absence of certain types of people on the Board, as opposed to other reasons.

Several respondents felt that the current requirements, along with existing equal employment opportunity and affirmative action policies, are sufficient to the Department's needs and obligations. Placing additional limitations on the composition of Boards would further increase the difficulties in: (a) finding Board candidates who are willing and qualified to serve; (b) assembling a committee of workable size; (c) serving staggered terms because of vacations, sabbaticals, etc.; (d) constituting an appropriate committee in a smaller institution; and (e) precluding the overuse of minorities on Boards. These respondents felt that further limitations would be counterproductive in adversely affecting the quality of decisions and would detract from the respect shown to the Board's advice and counsel.

Finally, some respondents had concern for the potential for disagreement on the adequacy of the phrase, "diversity of the members' racial and cultural backgrounds." They felt that definitions were needed and that there would be as many definitions as there would be anthropologists.

Response: The Department does not feel that the language proposed by the Commission for Boards to be qualified for the review of research in prisoners differs so significantly from the existing requirement that all Boards be "* * * sufficiently qualified through the maturity, experience, and expertise of its members and diversity of its membership to insure respect for its advice and counsel" as to present any great difficulties for grantee and contractor institutions. The only significant change is in the substitution of "diversity of members' racial and cultural backgrounds" for "diversity of membership." Coupled with the existing requirement for the inclusion of persons competent to judge community attitudes, the present regulatory language has required existing Boards to acquire the same "diversity of racial and cultural backgrounds" that would be required under the change in language. No additional difficulties (a) in finding candidates, (b) with Board size, (c) in staggering terms, or (d) precluding the overuse of minorities, other than those already encounterd, need be anticipated. Similarly, the requirement for the inclusion of at least one member of the opposite sex has already been met without obvious difficulty by the great majority of Boards.

The Department also notes that the Commission's recently published recommendations with respect to Board operations provides an early opportunity to reopen these issues. Consequently, the Department has concluded that no purpose will be served by delaying implementation of the provisions incorporated in §§ 46.106(b)(1) and 46.106(b)(3).

Comment: Two respondents commented upon § 46.302, which states that the purpose of this subpart is to provide additional safeguards for the protection of prisoners involved in research. One respondent suggested that the introduction of additional protections would make it virtually impossible for prisoners to participate in research and that this runs counter to the philosophical cornerstones of modern penology. The commenter argued that participation in research (1) reduces the pervasive idleness of prisoners, and (2) encourages the assumption of responsibility on the part of the prisoners for their actions and welfare. The commenter felt that research participation should be encouraged, developed, and sustained.

Response: Testimony gathered by the Commission does not reflect general agreement among penologists that participation in research is an acceptable means to counteract undesirable aspects of incarceration or to assist in the rehabilitation of prisoners. In fact, most testimony before the Commission opposed the use of prisoners in any form of medical research not intended to benefit the individual prisoner. However, the Department has determined that research which is in the long range interests of prisoners as a class may be approved if the Secretary, after consulting appropriate experts, including experts in penology, medicine and ethics, and publishing a notice in the Federal Register, concurs with the approval recommendation of the IRB.

Comment: The other commenter on § 46.302 expressed the view that the Department has improperly accepted the Commission's position that prison conditions are so coercive that prisoners cannot give informed consent. In so concluding, it is argued, the Commission overlooked a significant legal aspect of informed consent, namely capacity. A person is able or unable to give informed consent according to whether or not he has the legal capacity to do so. A lack of legal capacity is based on minority or insanity considerations. Assuming that a prisoner suffers neither disability, his/her legal capacity to give informed consent, as well as to handle all of his/her other affairs, is undiminished.

Response: The Commission's basic question, as noted in its report (42 FR 3076 at 3078) is whether a prisoner is so situated as to be able to exercise free power of choice, i.e., whether a consent, even if informed, can be considered truly voluntary. The right to be secure in one's person is a constitutional right. The Supreme Court has held in *Brady* v. *United States*, 397 U.S. 742 (1970) that "waiver of constitutional rights must be voluntary." As noted in *Kaimowitz* v. *Department of Mental Health*, 42 U.S.L.W. 101 (1973), "the very nature of (the prisoner's) * * * incarceration diminishes the capacity to consent." The Commission concluded that age and mental incompetence alone are not the only factors in establishing the validity of consent. The Department agrees. No changes are made in § 46.302 as proposed.

Comment: Eight respondents commented upon the definitions incorporated in §46.303. Regarding the definition of "prisoner," several commenters indicated that clarification is needed concerning which individuals are included in the definition. They asked whether "prisoner" includes people in halfway houses, persons on parole, those serving time in alternative settings such as college campuses, persons committed to mental hospitals through legal proceedings, juveniles housed in correctional facilities, person housed in group homes or private care facilities, etc.

Response: The proposed definition of "prisoner" encompasses any individual involuntarily confined or detained for any period of time in an institution, such as a penal facility, a hospital by civil commitment, a prerelease center, or in a similar institution or facility which is not considered a normal, private, day-to-day residence. The term includes individuals sentenced to an institution under a criminal or civil statute, individuals detained by virtue of statutes or commitment procedures which provide alternatives to criminal prosecution or to incarceration in a penal institution, and individuals detained pending arraignment, trial, or sentencing. The term also includes inmates in educational release or work release programs. The term "prisoner" does not include either those persons voluntarily confined or those persons subject to a civil commitment procedure which is not an alternative to criminal prosecution. Under the proposed definition, persons on parole or residing on college campuses are in fact not involuntarily confined to an institution and are therefore clearly not "prisoners." Similarly, persons committed to mental hospitals, group homes, halfway houses, or who are out-clients, are not "prisoners" unless their commitment is by virtue of a statute or commitment procedure which is an alternative to criminal prosecution or incarceration in a penal institution.

Comment: It was also suggested that definitions of "biomedical" and "behavioral" research are needed. While carefully constructed biomedical research can be tested against the "reasonable probability of improving the health and well-being of the subject," this is an unrealistic standard for a good deal of behavioral research which has nothing to do with health and touches well-being only in the most indirect way. In addition, behavioral and psychological effects of criminality, personality, and demographic and life experience antecedents of criminality should be added to the allowable research as this information can almost solely be obtained from prisoners.

Reponse: Most research on the effects of criminality, personality and demographic and life experience of criminality would be admissible under paragraph (a)(2)(A) of § 46.306 as studies "of the possible causes, effects and processes of incarceration", and of criminal behavior, or under paragraph (a)(2)(B) as studies of "prisoners as incarcerated subjects" or under (a)(2)(C) as "Research on conditions particularly affecting prisoners as a class." The fact that a research project could not qualify under paragraph (a)(2)(D) requiring promise of "improving the health and well-being of the subject" (with the possible exception of control subjects, the use of which requires a more stringent review process) would not block its acceptance if it qualified under any of the other three paragraphs.

At the same time, the Department agrees to the utility of defining biomedical and behavioral research. The soon to be published recommendations of the Commission on Board operations will incorporate a definition of research in both biomedical and behavioral terms. The Department will consider its adoption after it has received comment on the recommendations.

Comment: It has been suggested that a research project should be considered to involve no more than minimal risk and no more than inconvenience to the subject even when a breach of confidentiality could conceivably present a potentially serious risk, *provided* that the investigator is in compliance with the confidentiality requirements of the human subjects regulations (45 CFR 46.119).

If this suggestion were adopted, research involving a risk resulting from a breach of confidentiality would be permitted under § 46.306(a)(2)(A) without prior consultation with experts and publication of a notice in the Federal Register.

Response: The regulation (§ 46.306(a)(2)(C)) does in fact, permit research involving potentially serious risk from a breach of confidentiality, but only on a case-by-case basis after the Secretary has consulted with appropriate experts, including experts in penology, medicine, and ethics, and published a notice in the Federal Register. The Department believes that this more conservative approach is warranted because: (1) breaches of confidentiality may occasionally occur despite compliance with confidentiality requirements; and (2) such breaches of confidentiality could be life-threatening (for example, in the case of disclosures concerning sexual assaults). Nevertheless, the Department is interested in receiving comments on this issue.

Comment: Four respondents commented on the composition of Boards where prisoners are involved, § 46.304. They noted that the proposed regulations specify that a majority of board members shall have no association with the prison(s) involved. They suggested that clarification of the meaning of "no association" was needed.

Response: The term "no association" was used generally in order to avoid as many conflicting interests as possible. It means that an individual should not be an officer, employee, agent, or trustee of the prison or have authority over or responsibility for any aspect of prison activities. However, by using the broad term "no association" the Department intends to rule out even

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more remote connections with prisons as well. It should be noted that the requirement refers only to the majority of each of the Boards, exclusive of prisoner members.

Comment: One commenter noted that the proposed regulations require additional screening by a Board established at each prison or jail in which the study is to take place. While some institutions may have such review panels, many do not. It appears that this is unnecessarily duplicative and likely to be a factor militating against research.

Response: There is no requirement for duplication of review functions. Current regulations require that a Board review and certify the safeguarding of the rights and welfare of human subjects at risk in biomedical and behavioral research activities. The Board need only have one member who is a prisoner or prisoner representative. When a second Board is established for purposes of convenience or when dictated by local considerations, only one such Board need have a prisoner or prisoner representative as a member.

Where a Board does not now exist, and is required by the regulations, the establishment of such a Board will become a prerequisite for the award of a grant or contract.

Comment: One respondent felt that to require institutions to include prisoners or prisoner representatives as Board members would lead inevitably to pressures from other population groups for equal representation on review committees, detracting from the Board's integrity and effectiveness.

Response: While acknowledging that the mandatory inclusion of specific prisoner representatives on Boards could lead to increased pressures from other population groups for similar representation, the Department believes the special circumstances involved in any research on prisoners warrant this requirement, to assure that the interests of the prisoners are directly represented on the Board.

Comment: There were six comments on § 46.305, concerning additional duties of the Boards where prisoners are involved. One commenter noted that § 46.305(a)(4) requires that the information necessary to prisoners' consent be presented in language which is appropriate for the subject population. The commenter ask whether this item should not be reworded to include each person tested.

Response: Existing regulations require at § 46.103(c)(1) that subjects be given a "fair explanation" of the procedures to be followed. An explanation that is incomprehensible to the subject, whether because of differences in native tongue, dialect, or complexity, is clearly not "fair." The requirement in § 46.305(4) serves only to reinforce this basic provision of the regulations.

Comment: One commenter noted that the regulations require that adequate assurance exist that parole boards will not take into account a prisoner's participation in the research in making decisions regarding parole. The commenter argued that although parole "credit" should not be given for research participation, it would be poor social policy to disallow information concerning a successful response to medical treatment if it has a bearing on the subject's ability to function well outside of the prison setting.

Response: The regulations require adequate assurance that parole boards not consider a prisoner's participation in research as a criterion for or against parole. Information concerning medical treatment and its bearing on the subject's ability to function in the future is strictly a physician-patient relationship and subject to constraints appropriate to that situation. These regulations are concerned only with considerations given to the physical act of participating in research in relation to parole board decisions.

Comment: Fifteen comments were received on permitted research involving prisoners, § 46.306. Several respondents felt that prisoners should be allowed to participate in medical research even if it does not have the intent and reasonable probability of improving the health and well-being of the subject. They argued that the regulations do not consider research which may strictly be of benefit to society as a whole.

Response: The Department is well aware of the past contributions of prison research, and of individual prisoners, acting as research subjects, to the general health and welfare of the Nation and of society as a whole. However, it finds that there are substantial reasons for prohibiting continuation of such research and does not find any demonstrable need for continuing such research except where, as provided in § 46.306, there is reason to believe that such research is necessarily concerned with prisons as institutions; prisoners as persons or as a class; or when the research has the intent and reasonable probability of improving the health and well-being of the subject (with the possible exception of control subjects, the use of which requires a more stringent review process).

The Department again notes that medical and medically related research:

—Has already been prohibited in all Federal prisons;
—Has been prohibited in eight States;
—Is conducted in only about seven of the States that either permit it or don't regulate it;
—And is not conducted in countries outside the United States.

In general, these prohibitions have been based on the demonstrable inequities of such research and on the questionable voluntariness of prisoner consent. Though in theory the benefits of such research are usually to society as a whole, prisoners included, only one segment of society, prisoners, is asked to accept the research risks. Even if prisoner consent is obtained, the circumstances of that consent in a confined, restrictive, unattractive and boring environment, raise questions as to the voluntary nature of that consent. In addition, other nations active in biomedical and behavioral research have been able to conduct investigations without involving prisoners. After considerable deliberation, the department has amended § 46.306 (a)(2) so as to permit certain research on conditions particularly affecting prisoners as a class and research on practices which have the intent and reasonable probability of improving the health and well-being of the subjects, even though some subjects who are in a control group may not benefit directly from the research. The review process required before these kinds of research may be approved is more stringent, and includes the requirement that the Secretary consult appropriate experts, including experts in penology, medicine and ethics, and published in the FEDERAL REGISTER his intent to approve such research.

Comment: One respondent felt that the allowable research on practices as stated in § 46.306(a)(2)(C) of the proposed regulations, § 46.306(a)(2)(D) of the final regulations, appears to allow a broader range of "therapeutic" research than the preamble would lead one to expect. The respondent noted that there is not even a "minimal risk" ceiling on this type of research.

Response: The Commission would permit research on practices which have the intent and reasonable probability of improving the health or well-being of the subject when a prisoner benefits from a practice, no limit on the inherent, medically related risk was intended. The Commission felt that a research subject should not be deprived of health benefits (even experimental ones) simply because the subject is a prisoner. The Department agrees.

Comment: Several respondents felt that "minimal risk" as used in § 46.306(a)(2)(A) and (B) should be defined more precisely.

Response: The Department agrees. A definition of "minimal risk" has been introduced into these regulations as § 46.303(d).

Comment: One respondent asked whether the phrase "no more than inconvenience to the subjects" means inconvenience in actually conducting the research or does it apply to the results.

Response: The Department is of the opinion that the risks must be minimal or absent and present no more than inconvenience to the subjects both during the conduct of the research and later, e.g., permissible research should not present the prospect of delayed side effects involving more than minimal risk, nor should it involve the accumulation of data potentially more than minimally injurious to the prisoner.

The regulations, proposed in the January 5, 1978, publication of the FEDERAL REGISTER (43 FR 1050-1053), are hereby adopted with the changes incorporated in § 46.306(a)(2), as noted above; the addition of a definition for "minimal risk;" and minor technical and editorial changes.

Dated: September 11, 1978.

CHARLES MILLER,
Acting Assistant Secretary for Health.

Approved: November 7, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary.

Accordingly, Part 46 of 45 CFR, Subtitle A, is amended by:

§ 46.106 [Amended].

1. Revising the second sentence of § 46.106(b)(1) to read: "The Board must be sufficiently qualified through the maturity, experience, and expertise of its members, and the diversity of the members' racial and cultural backgrounds, to insure respect for its advice and counsel for safeguarding the rights and welfare of human subjects."

2. Renumbering §§ 46.106(b)(3) through 46.106(b)(6) as §§ 46.106(b)(4) through 46.106(b)(7), and inserting the following new § 46.106(b)(3):

(3) No Board shall consist entirely of members of only one sex.

§ 46.301 [Redesignated].

3. Redesignating Subpart C and § 46.301 as Subpart D and § 46.401 respectively.

4. Adding the following new Subpart C.

Subpart C—Additional Protections Pertaining to Biomedical and Behavioral Research Involving Prisoners as Subjects

Sec.
46.301 Applicability.
46.302 Purpose.
46.303 Definitions.
46.304 Composition of Institutional Review Boards where prisoners are involved.
46.305 Additional duties of the Institutional Review Boards where prisoners are involved.
46.306 Permitted activities involving prisoners.

AUTHORITY: 5 U.S.C. 301.

Subpart C—Additional Protections Pertaining to Biomedical and Behavioral Research Involving Prisoners as Subjects

§ 46.301 Applicability.

(a) The regulations in this subpart are applicable to all biomedical and behavioral research conducted or supported by the Department of Health, Education, and Welfare involving prisoners as subjects.

(b) Nothing in this subpart shall be construed as indicating that compliance with the procedures set forth herein will authorize research involving prisoners as subjects, to the extent such research is limited or barred by applicable State or local law.

(c) The requirements of this subpart are in addition to those imposed under the other subparts of this part.

§ 46.302 Purpose.

Inasmuch as prisoners may be under constraints because of their incarceration which could affect their ability to make a truly voluntary and uncoerced decision whether or not to participate as subjects in research, it is the purpose of this subpart to provide additional safeguards for the protection of prisoners involved in activities to which this subpart is applicable.

§ 46.303 Definitions.

As used in this subpart:

(a) "Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of the Department of Health, Education, and Welfare to whom authority has been delegated.

(b) "DHEW" means the Department of Health, Education, and Welfare.

(c) "Prisoner" means any individual involuntarily confined or detained in a penal institution. The term is intended to encompass individuals sentenced to such an institution under a criminal or civil statute, individuals detained in other facilities by virtue of statutes or commitment procedures which provide alternatives to criminal prosecution or incarceration in a penal institution, and individuals detained pending arraignment, trial, or sentencing.

(d) "Minimal risk" is the probability and magnitude of physical or psychological harm that is normally encountered in the daily lives, or in the routine medical, dental, or psychological examination of healthy persons.

§ 46.304 Composition of Institutional Review Boards where prisoners are involved.

In addition to satisfying the requirements in § 46.106 of this part, an Institutional Review Board, carrying out responsibilities under this part with respect to research covered by this subpart, shall also meet the following specific requirements:

(a) A majority of the Board (exclusive of prisoner members) shall have no association with the prison(s) involved, apart from their membership on the Board.

(b) At least one member of the Board shall be a prisoner, or a prisoner representative with appropriate background and experience to serve in that capacity, except that where a particular research project is reviewed by more than one Board only one Board need satisfy this requirement.

§ 46.305 Additional duties of the Institutional Review Boards where prisoners are involved.

(a) In addition to all other responsibilities prescribed for Institutional Review Boards under this part, the Board shall review research covered by this subpart and approve such research only if it finds that:

(1) The research under review represents one of the categories of research permissible under § 46.306(a)(2);

(2) Any possible advantages accruing to the prisoner through his or her participation in the research, when compared to the general living conditions, medical care, quality of food, amenities and opportunity for earnings in the prison, are not of such a magnitude that his or her ability to weigh the risks of the research against the value of such advantages in the limited choice environment of the prison is impaired;

(3) The risks involved in the research are commensurate with risks that would be accepted by nonprisoner volunteers;

(4) Procedures for the selection of subjects within the prison are fair to all prisoners and immune from arbitrary intervention by prison authorities or prisoners. Unless the principal investigator provides to the Board justification in writing for following some other procedures, control subjects must be selected randomly from the group of available prisoners who meet the characteristics needed for that particular research project;

(5) The information is presented in language which is understandable to the subject population;

(6) Adequate assurance exists that parole boards will not take into account a prisoner's participation in the research in making decisions regarding parole, and each prisoner is clearly informed in advance that participation

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in the research will have no effect on his or her parole; and

(7) Where the Board finds there may be a need for follow-up examination or care of participants after the end of their participation, adequate provision has been made for such examination or care, taking into account the varying lengths of individual prisoners' sentences, and for informing participants of this fact.

(b) The Board shall carry out such other duties as may be assigned by the Secretary.

(c) The institution shall certify to the Secretary, in such form and manner as the Secretary may require, that the duties of the Board under this section have been fulfilled.

§ 46.306 Permitted research involving prisoners.

(a) Biomedical or behavioral research conducted or supported by DHEW may involve prisoners as subjects only if:

(1) The institution responsible for the conduct of the research has certified to the Secretary that the Institutional Review Board has approved the research under § 46.305 of this subpart; and

(2) In the judgment of the Secretary the proposed research involves solely the following:

(A) Study of the possible causes, effects, and processes of incarceration, and of criminal behavior, provided that the study presents no more than minimal risk and no more than inconvenience to the subjects;

(B) Study of prisons as institutional structures or of prisoners as incarcerated persons, provided that the study presents no more than minimal risk and no more than inconvenience to the subjects;

(C) Research on conditions particularly affecting prisoners as a class (for example, vaccine trials and other research on hepatitis which is much more prevalent in prisons than elsewhere; and research on social and psychological problems such as alcoholism, drug addiction and sexual assaults) provided that the study may proceed only after the Secretary has consulted with appropriate experts including experts in penology medicine and ethics, and published notice, in the FEDERAL REGISTER, of his intent to approve such research; or

(D) Research on practices, both innovative and accepted, which have the intent and reasonable probability of improving the health or well-being of the subject. In cases in which those studies require the assignment of prisoners in a manner consistent with protocols approved by the IRB to control groups which may not benefit from the research, the study may proceed only after the Secretary has consulted with appropriate experts, including experts in penology medicine and ethics, and published notice, in the FEDERAL REGISTER, of his intent to approve such research.

(b) Except as provided in paragraph (a) of this section, biomedical or behavioral research conducted or supported by DHEW shall not involve prisoners as subjects.

[FR Doc. 78-32050 Filed 11-15-78; 8:45 am]

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federal register

THURSDAY, NOVEMBER 16, 1978
PART V



DEPARTMENT OF ENERGY

NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

Proposed Rule

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[3128-01-M]

DEPARTMENT OF ENERGY

[10 CFR Part 1040]

NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

Proposed Rulemaking

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: Under various statutes, the Department of Energy is responsible for implementing compliance with and enforcement of public laws prohibiting discrimination because of race, color, national origin, sex, handicap, and age in programs and activities receiving Federal assistance from the Department of Energy. This regulation, which applies to all recipients of Federal assistance from the Department of Energy, is intended to insure that departmental federally assisted programs are operated without discrimination against potential beneficiaries, beneficiaries, and qualified handicapped persons. As employers, where employment is covered by this regulation and as providers of services, recipients are required to operate their programs in a nondiscriminatory manner consistent with this regulation.

DATES: Comments must be received on or before December 19, 1978.

ADDRESSES: Comments should be addressed to Carlos Ruiz, Office of Equal Opportunity, Department of Energy, Room 6105, 20 Massachusetts Avenue NW., Washington, D.C. 20545.

FOR FURTHER INFORMATION CONTACT:

Carlos Ruiz, Director, Federally Assisted Programs Division, Office of Equal Opportunity, Room 6105, 20 Massachusetts Avenue NW., Washington, D.C. 20545, 202-376-1923.

Marsha A. Robinson, Equal Opportunity Specialist, Office of Equal Opportunity, Room 6105, 20 Massachusetts Avenue NW., Washington, D.C. 20545, 202-376-1891.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Overview of Proposed Regulation.
III. Comment Procedure.

I. Background

The Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565, 42 U.S.C. 7101 et seq., transferred to DOE the functions of the Energy Research and Development Administration (ERDA), which had responsibility for long-term energy research and development, the Federal Energy Administration (FEA), with the task of developing the Nation's energy policy and allocating its energy supply, the Federal Power Commission (FPC), whose responsibilities were in the area of ratemaking for gas and electric power, as well as energy-related functions of various other Federal agencies and departments.

Although several of the DOE predecessor agencies and incoming components of other agencies were extending Federal assistance in the form of grants, loans, and contracts, none of those entities had issued appropriate regulations implementing Federal statutes which prohibit discrimination in federally assisted programs. The Department of Energy, in accordance with applicable laws, is issuing a proposed regulation to implement Federal statutes which prohibit discrimination in programs and activities receiving Federal assistance from DOE.

II. Overview of Proposed Regulation

The proposed DOE regulation is comprehensive in nature and encompasses the following laws pertaining to nondiscrimination in federally assisted programs: Title VI of the Civil Rights Act of 1964 prohibits discrimination on the ground of race, color, and national origin; section 16 of the Federal Energy Administration Act of 1974, as amended, and section 401 of the Energy Reorganization Act of 1974 prohibit discrimination on the ground of sex; Title VIII of the Civil Rights Act of 1968, as amended, prohibits discrimination on the ground of race, color, religion, national origin, or sex in the sale or leasing of all federally assisted housing; Title IX of the Education Amendments of 1972, as amended, prohibits discrimination on the basis of sex in any education program or activity receiving Federal assistance; section 504 of the Rehabilitation Act of 1973, as amended, provides that no otherwise qualified handicapped individual shall, solely by reason of his/her handicap, be denied the benefits of, be excluded from the participation in, or be subjected to discrimination under any program or activity receiving Federal assistance; and the Age Discrimination Act of 1975 prohibits discrimination on the basis of age in the administration of programs or activities receiving Federal assistance.

The regulation is divided into eight subparts. Subpart A (General Provisions) defines the important terms that are used throughout the regulation and states in general terms the program requirements common to the several Federal statutes implemented by this regulation. It also sets forth what the Secretary, DOE, believes is a simple, workable system of administration: assurances of compliance, self-evaluation by recipients, establishment of complaint procedures, and notification of employees and beneficiaries of the recipient's policy of nondiscrimination on the basis of race, color, national origin, sex, handicap, or age.

Subpart B pertains to the various kinds of discriminatory acts prohibited as well as the specific applicability of Title VI of the Civil Rights Act of 1964, section 16 of the Federal Energy Administration Act of 1974, as amended, and section 401 of the Energy Reorganization Act of 1974, to the employment practices of the recipient. Such employment practices include recruitment, hiring, compensation, promotion, demotion, training, and use of facilities.

Subpart C deals with implementation of Title IX of the Education Amendments of 1972, as amended, which is designed to eliminate discrimination on the basis of sex in any education program or activity receiving Federal assistance. It defines specifically all exceptions to the statute including educational institutions which are controlled by religious organizations, educational institutions whose primary purpose is the training of individuals for military service or for the merchant marine, membership practices of certain social fraternities and sororities, the Y.M.C.A., Girl Scouts, Boy Scouts, Camp Fire Girls, and the membership practices of certain voluntary youth service organizations.

Subpart D pertains to section 504 of the Rehabilitation Act of 1973 and defines in general terms the discriminatory acts prohibited, applicable parameters set for recipient's employment criteria, limitations of preemployment inquiries, and requirement of recipients to assure reasonable accommodation to qualified handicapped applicants, employees, or beneficiaries. It also establishes requirements for rendering existing and newly constructed facilities accessible to qualified handicapped applicants, employees, or beneficiaries.

Subparts E and F deal with the Age Discrimination Act of 1975 which prohibits discrimination on the basis of age in federally assisted programs and Title VIII of the Civil Rights Act of 1968 (the Fair Housing Law) which prohibits discrimination on the basis of race, color, national origin, religion, and sex in the sale or leasing of Federally assisted housing, respectively. Subparts E and F are reserved until such time as the applicability of the Federal statutes to the Department of Energy is determined.

Subparts G and H deal with the application of program monitoring and enforcement requirements and procedures common to the various Federal statutes included in the implemented by this regulation.

III. Comment Period

Interested persons are invited to submit written comments with respect to the proposed regulation to Carlos Ruiz, Director, Federally Assisted Programs Division, Office of Equal Opportunity, Department of Energy, Room 6105, 20 Massachusetts Avenue NW., Washington, D.C. 20545. Comments should be identified on the outside of the envelope and on the documents submitted to DOE with the designation "Comments on Nondiscrimination in Federally Assisted Programs Regulation." Five (5) copies should be submitted. All comments and related information should be received by DOE within 15 days following the final day of the 31 day comment period in order to insure consideration.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing, one copy only. Any material not accompanied by a statement of confidentiality will be considered to be non-confidential. DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

NOTE.—The Department of Energy has determined that this document does not contain a major proposal requiring preparation of an economic impact analysis (EIA) statement under Executive Orders 11821 and 11949 and OMB Circular A-107.

Issued in Washington, D.C., November 7, 1978.

JOHN F. O'LEARY,
Deputy Secretary,
Department of Energy.

Chapter X, Title 10 of the Code of Federal Regulations is amended by adding a proposed new Part 1040, reading as follows:

PART 1040—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

Subpart A—General Provisions

Sec.
1040.1 Purpose.
1040.2 Application.
1040.3 Definitions—General.
1040.4 Assurances Required and Pre-Award Review.
1040.5 Designation of Responsible Employee and Adoption of Complaint Procedure.
1040.6 Notice.
1040.7 Remedial and Affirmative Action and Self-Evaluation.

Subpart B—Title VI of the Civil Rights Act of 1964, Section 16 of the Federal Energy Administration Act of 1974, as amended, and Section 401 of the Energy Reorganization Act of 1974.

1040.11 Purpose and Application.
1040.12 Definitions.
1040.13 Discrimination Prohibited.
1040.14 Covered Employment.

Subpart C—Nondiscrimination on the Basis of Sex—Title IX of the Higher Education Amendment of 1972, as amended

1040.21 Purpose.
1040.22 Application.
1040.23 Definitions.
1040.24 Effects of Other Requirements.
1040.25 Educational Institutions Controlled by Religious Organizations.
1040.26 Military and Merchant Marine Educational Institutions.
1040.27 Membership Practices of Certain Organizations.
1040.28 Admissions.
1040.29 Educational Institutions Eligible to Submit Transition Plans.
1040.30 Transition Plans.
1040.31 Discrimination on the Basis of Sex in Admission and Recruitment Prohibited: Admission.
1040.32 Preference in Admission.
1040.33 Recruitment.
1040.34 Education Programs and Activities.
1040.35 Housing.
1040.36 Comparable Facilities.
1040.37 Access to Course Offerings.
1040.38 Access to Schools Operated by LEA's.
1040.39 Counseling and Use of Appraisal and Counseling Materials.
1040.40 Financial Assistance.
1040.41 Employment Assistance to Students.
1040.42 Health and Insurance Benefits and Services.
1040.43 Marital or Parental Status.
1040.44 Athletics.
1040.45 Textbooks and Curricular Materials.
1040.46 Procedures.

Subpart D—Nondiscrimination on the Basis of Handicap—Section 504 of the Rehabilitation Act of 1973, as amended

GENERAL PROVISIONS

1040.61 Purpose and Application.
1040.62 Definitions.
1040.63 Discrimination Prohibited.
1040.64 Effect of State or Local Law or Other Requirements and Effect of Employment Opportunities.
1040.65 Procedures.

EMPLOYMENT PRACTICES

1040.66 Discrimination Prohibited.
1040.67 Reasonable Accommodation.
1040.68 Employment Criteria.
1040.69 Preemployment Inquiries.

PROGRAM ACCESSIBILITY

1040.71 Discrimination Prohibited.
1040.72 Existing Facilities.
1040.73 New Construction.

Subpart E—Nondiscrimination on the Basis of Age—Age Discrimination Act of 1975, as amended

1040.81 [Reserved].

Subpart F—Nondiscrimination Under VIII of the Civil Rights Act of 1968, as amended.

Sec.
1040.91 [Reserved].

Subpart G—Program Monitoring

1040.101 Compliance Reviews.
1040.102 Compliance Information.
1040.103 [Reserved].
1040.104 Complaint Investigation.

Subpart H—Enforcement

MEANS OF EFFECTING COMPLIANCE

1040.111 Means Available.
1040.112 Noncompliance with Assurances.
1040.113 Termination of or Refusal to Grant or to Continue Federal Assistance.
1040.114 Other Means Authorized by Law.

OPPORTUNITY FOR HEARING

1040.121 Notice of Opportunity for Hearing.

HEARINGS AND FINDINGS

1040.131 Presiding Officer.
1040.132 Right to Counsel.
1040.133 Procedures, Evidence, and Record.
1040.134 Consolidated or Joint Hearings.

DECISION AND NOTICE

1040.141 Initial Decision or Certification.
1040.142 Exceptions and Final Decision.
1040.143 Rulings Required.
1040.144 Content of Orders.
1040.145 Post-Termination Proceedings.

JUDICIAL REVIEW

1040.151 Judicial Review.

Appendix A Federal Assistance Programs of the Department of Energy to which this Part applies.

AUTHORITY: Title VI of the Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat 241, 42 U.S.C. 2000d; section 16 of the Federal Energy Administration Act of 1974, Pub. L. 93-275, 88 Stat 96, 15 U.S.C. 775; section 401 of the Energy Reorganization Act of 1974, Pub. L. 93-438, 88 Stat 1233, 42 U.S.C. 5891; Title IX of the Higher Education Amendments of 1972, Pub. L. 92-318, 86 Stat 235, 20 U.S.C. 1681; section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat 355, 29 U.S.C. 794, the Age Discrimination Act of 1975, Pub. L. 94-135, 89 Stat 728, 42 U.S.C. 6101; Title VIII of the Civil Rights Act of 1968, Pub. L. 90-284, 82 Stat. 73, 42 U.S.C. 3601-3707.

Subpart A—General Provisions

§ 1040.1 Purpose.

The purpose of this Part is to implement Title VI of the Civil Rights Act of 1964, Pub. L. 88-352; section 16 of the Federal Energy Administration Act of 1974, as amended, Pub. L. 93-275; section 401 of the Energy Reorganization Act of 1974, Pub. L. 93-438; Title IX of the Education Amendments of 1972, as amended, Pub. L. 92-318 and Pub. L. 93-568; section 504 of the Rehabilitation Act of 1973, as amended, Pub. L. 93-112; the Age Discrimination Act of 1975, Pub. L. 94-135; and Title VIII of the Civil Rights Act of 1968, Pub. L. 90-284; so no person shall on the ground of race, color, national origin, sex, handicap, or age be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment, where the main purpose of the program or activity is

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to provide employment or when the delivery of program services is affected by the recipient's employment practices, in connection with any program or activity receiving Federal assistance from the Department of Energy (after this referred to as DOE or the Department).

§ 1040.2 Application.

(a) The application of this Part is to any program or activity for which Federal assistance is authorized under laws administered by DOE. Programs to which this Part applies are listed in Appendix A of this Part; Appendix A is to be revised from time to time by notice published in the FEDERAL REGISTER. This Part applies to money paid, property transferred, or other Federal assistance including cooperative agreements extended under any program or activity, by way of grant, loan, or contract by DOE, or an authorized contractor or subcontractor of DOE, the terms of which require compliance with this Part. If any statutes implemented by this Part are otherwise applicable, the failure to list a program in Appendix A does not mean the program is not covered by this Part.

(b) This Part does not apply to—

(1) contracts of insurance or guaranty; or

(2) employment practices under any program or activity except as provided in §§ 1040.12, 1040.41 and 1040.66.

§ 1040.3 Definitions—General.

(a) "Academic institution" includes any school, academy, college, university, institute, or other association, organization, or agency conducting or administering any program, project, or facility designed to educate or train individuals.

(b) "Administrative law judge" means a person appointed by the reviewing authority to preside over a hearing held under this Part.

(c) "Agency" or "Federal agency" refers to any Federal department or agency which extends Federal assistance.

(d) "Applicant for assistance" means one who submits an application, request, or plan required to be approved by a Department official or by a primary recipient as a condition to becoming eligible for Federal assistance.

(e) "Assistant Attorney General" refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

(f) "Associate Director" refers to the Associate Director, Federal Assistance Programs Division, Office of Equal Opportunity, DOE.

(g) "Compliance Review" means an analysis of a recipient's selected employment practices or delivery of services for adherence to provisions of any of the subparts of this Part.

(h) "Department" means the Department of Energy (DOE).

(i) Where designation of persons by race, color, or national origin is required, the following designations are to be used:

(1) *Black,* not of Hispanic origin. A person having origins in any of the black racial groups of Africa.

(2) *Hispanic.* A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race.

(3) *Asian or Pacific Islander.* A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This includes, for example, China, India, Japan, Korea, the Philippine Islands, and Somoa.

(4) *American Indian or Alaskan Native.* A person having origins in any of the original peoples of North America and who maintains cultural identification through tribal affiliation or community recognition.

(5) *White, not of Hispanic Origin.* A person having origins in any of the original peoples of Europe, North Africa, or the Middle East. Additional subcategories based on national origin or primary language spoken may be used where appropriate on either a national or a regional basis. Subparagraphs (1) through (5), inclusive, set forth in this section are in conformity with the office of Management and Budget (OMB) Ad Hoc Committee on Race/Ethnic Categories recommendations. To the extent that these designation are modified by the OMB Ad Hoc Committee, subparagraphs (1) through (5), inclusive, set forth in this section are to be interpreted to conform with those modifications.

(j) "Director" means the Director, Office of Equal Opportunity, DOE.

(k) "Disposition" means any treatment, handling, decision, sentencing, confinement, or other proscription of conduct.

(l) "Employment practices," see individual section headings.

(m) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration, or acquisition of facilities.

(n) "Federal financial assistance" or "Federal assistance" includes (1) grants and loans of Federal funds, (2) the grant or donation of Federal property and interest in property, (3) the detail of or provision of services by Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property, the funishing of services without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by the sale, lease, or furnishing of services to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(o) "General Counsel" means the Office of the General Counsel, Department of Energy.

(p) "Government organization" means the political subdivision for a prescribed geographical area.

(q) "Investigations" include fact-finding efforts and attempts to secure voluntary resolution of complaints.

(r) "Noncompliance" means the failure of a ricipient or subrecipient to comply with any subpart of this Part.

(s) "Primary recipient" means any person, group, organization, State, or local unit of government which is authorized or required to extend Federal assistance to another recipient for the purpose of carrying out a program.

(t) "Program" includes any project or activity for the provision of services, financial aid, or other benefits to individuals (including education or training, rehabilitation, or other services or disposition, whether provided through employees of the recipient or by others through contracts or other arrangements with the recipient, and including work opportunities and cash, loan, or other assistance to individuals), or for the provision of facilities for furnishing services, financial aid, or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal assistance include any disposition, services, financial aid, or other benefits provided with the aid of Federal assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal assistance, and to include any disposition, services, financial aid, or benefits provided in or through a facility provided with the aid of the Federal assistance or such non-Federal resources.

(u) "Recipient" means any person, State, or its political subdivision, any instrumentality of a state or its political subdivision, and public or private agency, institution, organization, or other entity, or any program to which Federal assistance is extended directly or through another recipient, but excludes any ultimate beneficiary of the assistance.

(v) "Responsible Departmental or DOE Official" means the official of the Department of Energy that has been assigned the principal responsibility for administration of the law extending Federal assistance.

(w) "Reviewing authority" means the component of the Department delegated authority by the Secretary to appoint, and to review the decisions of, administrative law judges in cases arising under this Part.

(x) "Secretary" means the Secretary of the Department of Energy.

(y) The term "United States" includes the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and all other territories and possessons of the United States, and the term "State" includes any one of the foregoing.

(z) "Headquarters" means DOE offices located in Washington, D.C.

§ 1040.4 Assurances required and preaward review.

(a) Assurances. An applicant for Federal assistance for a program or activity to which this Part applies shall submit an assurance on a form specified by the Director, that the progam or activity will be operated in compliance with this Part. Such assurances are to include provisions which give the United States a right to seek judicial enforcement.

(b) Duration of obligation. (1) In the case of Federal assistance extended in the form of real property or to provide real property or structure on the property, the assurance obligates the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) In the case of Federal assistance extended to provide personal property, the assurance obligates the recipient for the period during which its retains ownership or possession of the property.

(3) In all other cases, the assurance obligates the recipient to all terms and conditions contained in the certificate of assurance for the period during which Federal assistance is extended.

(c) Covenants. (1) Where Federal assistance is provided in the form of real property, structures, improvements on or interests in the property, or in the case where Federal assistance is provided in the form of a transfer of real property or interest in the property from the Department, the instrument effecting or recording this transfer is to contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) Where no transfer of property is involved or imposed with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (c)(1) of this section in the instrument effecting or recording any subsequent transfer of the property.

(3) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the covenant is to also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a material breach of the covenant. If a transferee of real property manages to mortgage or otherwise encumber the real property as security for financing construction of new or improvement of existing facilities on the property for the purpose for which the property was transferred, the Director may, upon request of the transferee and, if necessary to accomplish such financing and upon such conditions, as he or she deems appropriate, agree to forbear the exercise of the right to revert title for so long as the lien of the mortgage or other encumbrance remains effective.

(d) Assurances from Government agencies. In the case of any application from any department, agency or office of any State or local government for Federal financial assistance for any specified purpose, the assurance required by this section, is to extend to any other department, agency, or office of the same governmental unit if the policies of such other department, agency, or office will substantially affect the project for which Federal financial assistance is requested. That requirement may be waived by the responsible Department official if the applicant establishes, to the satisfaction of the responsible Department official, that the practices in other agencies or parts of programs of the governmental unit will in no way affect—

(1) its practices in the program for which Federal financial assistance is sought;

(2) the beneficiaries of or participants in or persons affected by such program; or

(3) full compliance with the subpart as respects such program.

(e) Assurance from academic and other institutions.

(1) In the case of any application for Federal financial assistance for any purpose to an academic institution, the assurance required by this section is to extend to admission practices and to all other practices relating to the treatment of students.

(2) The assurance required with respect to an academic institution, detention or correctional facility, or any other institution or facility, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, wards, inmates, persons subject to control, or clients of the institution or facility or to the opportunity to participate in the provision of services, disposition, treatment, or benefits to such individuals, shall be applicable to the entire institution or facility unless the applicant establishes, to the satisfaction of the responsible Department official, that the practices in designated parts or programs of the institution or facility will in no way affect its practices in the program of the institution or facility for which Federal financial assistance is sought, or the beneficiaries of, or participants in, such program.

(f) Continuing State programs. Any State or State agency administering a program which receives continuing Federal financial assistance subject to this regulation shall, as a condition for the extension of such assistance—

(1) provide a statement that the program is (or, in the case of a new program, will be) conducted in compliance with this regulation; and

(2) provide for such methods of administration as are found by the responsible Department official to give reasonable assurance that the primary recipient and all other recipients of Federal financial assistance under such program will comply with this regulation.

(g) Assistance for construction. Where the assistance is sought for the construction of a facility, or a part of a facility, the assurance is to extend to the entire facility and to facilities operated in connection with it. In particular, if a facility to be constructed is part of a larger system, the assurance is to extend to the larger system.

(h) Preaward review. Prior to and as a condition of approval, all applications for Federal financial assistance are to be reviewed by the appropriate Civil Rights Department official who is to make a written determination of the applicant's compliance with this Part. The basis for such a determination is to be the submission of the assurance of compliance as specified in paragraph (a) and a review of data to be submitted by the applicant as specified by the Director. For purposes of this paragraph, the appropriate departmental official at headquarters level is the Associate Director, Office of Equal Opportunity, and at the regional level it is to be the Civil Rights Officer delegated by the Director as having review authority for determining compliance with requirements of this Part. Where a determination of

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compliance cannot be made from this data, DOE may require the applicant to submit necessary additional information and may take other steps necessary to make the determination of compliance. Such other steps may include, for example, communicating with local government officials or minority group organizations and field reviews. Any agreement to achieve voluntary compliance as a result of a pre-award review shall be in writing. In the case of title VI, the Director will notify the Assistant Attorney General of instances of probable noncompliance determined as the result of application reviews. The opportunity for a hearing as provided under § 1040.113 is applicable to this section.

§ 1040.5 Designation of responsible employee and adoption of complaint procedures.

(a) Designation of responsible employee. Each recipient shall designate at least one employee to coordinate its efforts to carry out its responsibilities under this Part, including investigation of any complaint communicated to the recipient alleging its noncompliance with this Part or alleging any actions which would be prohibited by this Part. The recipient shall publish the name, office address and telephone number of the employee or employees appointed under this paragraph.

(b) Complaint procedure of recipient. A recipient shall adopt and publish in accordance with appropriate DOE approval and guidelines, complaint procedures providing for prompt and equitable resolution of any action which would be prohibited by this Part.

(c) A recipient shall display prominently, in reasonable numbers and places, posters which state that the recipient operates a program or programs subject to the nondiscrimination provisions of this Part, summarize those requirements, note the availability of information regarding this Part from the recipient and DOE, and explain briefly the procedures for filing a complaint. Information on requirements of this Part, complaint procedures and the rights of beneficiaries are to be included in handbooks, manuals, pamphlets, and other materials which are ordinarily distributed to the public to describe the federally assisted programs and the requirements for participation by recipients and beneficiaries. To the extent that recipients are required by law or regulation to publish or broadcast program information in the news media, the recipient shall insure that such publications and broadcasts state that the program in question is an equal opportunity program or otherwise indicate that discrimination in the program is prohibited by Federal law.

(d) Where a significant number or proportion of the population eligible to be served or likely to be directly affected by a federally assisted program requires service or information in a language other than English in order to be informed of or to participate in the program, the recipient shall take reasonable steps, considering the scope of the program and size and concentration of such population, to provide information in appropriate languages (including braille) to such persons. This requirement applies to written material of the type which is ordinarily distributed to the public. The Department may require a recipient to take additional steps to carry out the intent of this subsection.

§ 1040.6 Notice.

(a) A recipient shall take appropriate, initial, and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of race, color, national origin, sex, handicap, or age. The notification is to state, where appropriate, that the recipient does not discriminate in admission or access to, and treatment of, or employment in its programs and activities and inform employees of their rights under this Part. The notification is to include an identification of the responsible employee designated under § 1040.5. A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this Part. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publications, and distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

(c) The provisions of § 1040.5(d) to provide information in appropriate languages (including braille), apply to this section.

§ 1040.7 Remedial and affirmative action and self-evaluation.

(a) Remedial action. If the Director finds that a recipient has discriminated against persons on the basis of race, color, national origin, sex, handicap, or age in any program or activity receiving Federal assistance, the recipient shall take remedial action as the Director considers necessary to overcome the effects of the discrimination.

(b) Affirmative action. In the absence of a finding of discrimination on the basis of race, color, national origin, sex, handicap, or age in any program or activity a recipient may take affirmative action to overcome effects of conditions which resulted in limited participation by persons of a particular race, color, national origin, sex, handicap, or age.

(c) Self-evaluation. Each recipient shall, within 1 year of the effective date of this Part:

(1) Evaluate, in terms of the requirements of this Part, its current policies and practices and their effects concerning personnel working in connection with the recipient's program or activity;

(2) Modify any policies and practices which do not or may not meet the requirements of this Part; and

(3) Take appropriate remedial steps to eliminate the effects of discrimination which resulted or may have resulted from adherence to these policies and practices.

(d) Availability of self-evaluation and related materials. Recipients shall maintain on file, for at least 3 years following its completion, the evaluation required under paragraph (c) of this section, and shall provide to the Director upon request, a description of any modifications made under paragraph (c) (2) of this section and of any remedial steps taken under paragraph (c) (3) of this section.

Subpart B—Title VI of the Civil Rights Act of 1964; Section 16 of the Federal Energy Administration Act of 1974, as amended; and Section 401 of the Energy Reorganization Act of 1974

§ 1040.11 Purpose and application.

(a) The purpose of this subpart is to implement Title VI of the Civil Rights Act of 1964 (after this referred to as Title VI) and the pertinent regulations of DOE so that no person in any program or activity receiving Federal assistance shall on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under covered employment, as defined in § 1040.12, in connection with any program or activity receiving, in whole or in part, Federal assistance of the type subject to Title VI. This subpart is also to implement section 16

of the Federal Energy Administration act of 1974, as amended (after this referred to as section 16) and section 401 of the Energy Reorganization Act of 1974 (after this referred to as section 401) so that no person in any program or activity receiving Federal assistance shall on the ground of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under covered employment, as defined in § 1040.12, in connection with any program or activity receiving, in whole or in part, Federal assistance from DOE.

(b) The application of this subpart is to delivery of services by and the covered employment practices of recipients and subrecipients administering, participating in, or substantially benefiting from any program or activity receiving Federal assistance under laws administered by DOE covered by Title VI, section 16 or section 401.

§ 1040.12 Definitions

(a) "Covered employment" means employment practices covered by Title VI, sections 16 and 401. Such practices are those which—

(1) exist in a program where a primary objective of the Federal assistance is to provide employment; or

(2) cause discrimination on the basis of race, color, sex, or national origin with respect to beneficiaries or potential beneficiaries of the assisted program.

(b) "Title VI" refers to Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.* Where appropriate, this term also refers to the civil rights provision of other Federal statutes to the extent that they prohibit discrimination on the grounds of race, color, or national origin in programs receiving Federal assistance of the type subject to Title VI itself. The definitions set forth in § 1040.3 of Subpart A, to the extent not inconsistent with this subpart, are applicable to and incorporated into this subpart.

§ 1040.13 Discrimination prohibited.

(a) General. No person in the United States shall be excluded on the ground of race, color, national origin, or sex, from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this subpart applies.

(b) Specific discriminatory action prohibited. A recipient under any program to which this subpart applies may not, directly or through contractual or other arrangements, on the ground of race, color, national origin or sex:

(1) Deny an individual any disposition, service, financial aid, or benefit provided under the program;

(2) Provide any disposition, service, financial aid, or benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(3) Subject an individual to segregation or separate treatment in any matter related to his receipt of any disposition, service, financial aid, or benefit under the program;

(4) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any disposition, service, financial aid, or benefit under the program;

(5) Treat an individual differently from others in determining whether such individual satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any disposition, service, financial aid, function, or benefit provided under the program;

(6) Deny an individual an opportunity to participate in the program through the provision of services or otherwise afford such individual an opportuniy to do so which is different from that afforded others under the program (including the opportunity to participate the program as an employee but only to the extent set forth in § 1040.14 of this subpart; or

(7) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(c) A recipient, in determining the type of Federal assistance (i.e., disposition, services, financial aid, benefits, or facilities) which will be provided under any program, or the class of individuals to whom, or the situations in which the assistance will be provided, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the program objectives with respect to individuals of a particular race, color, national origin, or sex.

(d) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination because of race, color, national origin, or sex, or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of Title VI or this subpart.

(e) For the pupose of this section, the disposition, services, financial aid, or benefits provided under a program receiving Federal assistance include any portion of any program, function, or activity conducted by a recipient of Federal assistance in which the program, function, or activity is directly or indirectly improved, enhance, enlarged, or benefited by the Federal assistance or by which the recipient makes use of any facility, equipment, or property provided with the aid of Federal assistance.

(f) The enumeration of specific forms of prohibited discrimination in this paragraph and in § 1040.14 of this subpart does not limit the generality of the prohibition in paragraph (a) of this section.

(g) Exemptions—Exclusion from programs for protected groups. An individual is not to be considered subjected to discrimination by reason of his/her exclusion from the benefits of a program limited to individuals of a particular race, color, national origin, or sex different from his/hers when the exclusion is provided for or required by Federal law, for example, programs funded exclusively to serve on-reservation Indians.

§ 1040.14 Covered employment.

(a) Employment practices. (1) Whenever a primary objective of the Federal assistance to a program to which this subpart applies is to provide employment, a recipient of the assistance may not (directly or through contractual or other arrangements) subject any individual to discrimination on the grounds of race, color, national origin, or sex in its employment practices under the program (including recruitment or recruitment advertising, employment, layoff, or termination, upgrading, demotion or transfer, training, participation in upward mobility programs, rates of pay or other forms of compensation, and use of facilities). This prohibition also applies to programs where the primary objective of the Federal assistance is—

(i) To assist individuals through employment to meet expenses incident to the commencement or continuation of their education or training;

(ii) To provide work experience which contributes to the education or training of the individuals involved;

(iii) To reduce the unemployment of individuals or to help them through employment to meet subsistence needs; or

(iv) To provide employment to individuals who, because of handicaps, cannot be readily absorbed in the competitive labor market. The requirements applicable to construction employment under any such program are to be those specified in or under Part III of Executive Order 11246, as amended, or any Executive order which supersedes it.

(2) In regard to Federal assistance which does not have provision of employment as a primary objective, the provisions of paragraph (a)(1) of this section apply to the employment practices of the recipient if discrimination

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on the grounds of race, color, national origin, or sex in such employment practices tends to exclude persons from participation in, deny them the benefits of, or subject them to discrimination under the program receiving Federal assistance. In any such case, the provisions of paragraph (a)(1) of this section apply, to the extent necessary to assure equality of opportunity to and nondiscriminatory treatment of beneficiaries.

(b) Enforcement of Title VI compliance with respect to covered employment practices is not to be superseded by State or local merit systems relating to the employment practices of the same recipient.

Subpart C—Nondiscrimination on the Basis of Sex—Title IX of the Higher Education Amendments of 1972, as Amended

§ 1040.21 Purpose.

The purpose of this Part is to implement title IX of the Education Amendments of 1972, Pub. L. 92-318, as amended by Pub. L. 93-568, which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal assistance, whether or not the program or activity is offered or sponsored by an educational institution as defined in this subpart.

§ 1040.22 Application.

Except as provided in §§ 1040.25, 1040.26, and 1040.27, this subpart applies to every recipient and to each education program or activity operated by the recipient which receives or benefits from Federal assistance.

§ 1040.23 Definitions.

(a) "Title IX" means Title IX of the Education Amendments of 1972, Pub. L. 92-318, as amended by section 3 of Pub. L. 93-568, 88 Stat. 1855, (except sections 904 and 906 of the Amendments). 20 U.S.C. sections 1681, 1682, 1683, 1685, and 1686.

(b) "Educational Institution" means a local educational agency (L.E.A.) as defined by section 801 (f) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 881), a pre-school, a private elementary or secondary school, or an applicant or recipient of the type defined by paragraphs (c), (d), (e), or (f) of this section.

(c) "Institution of graduate higher education" means an institution which:

(1) Offers academic study beyond the bachelor of arts or bachelor of science degree, whether or not leading to a certificate of any higher degree in the liberal arts and sciences; or

(2) Awards any degree in a professional field beyond the first professional degree (regardless of whether the first professional degree in the field is awarded by an institution of undergraduate higher education or professional education); or (3) Awards no degree and offers no further academic study, but operates ordinarily for the purpose of facilitating research by persons who have received the highest graduate degree in any field of study.

(d) "Institution of undergraduate higher education" means:

(1) An institution offering at least 2 but less than 4 years of college level study beyond the high school level, leading to a diploma or an associate degree, or wholly or principally creditable toward a baccalaureate degree; or

(2) An institution offering academic study leading to a baccalaureate degree; or

(3) An agency or body which certifies credentials or offers degrees, but which may or may not offer academic study.

(e) "Institution of professional education" means an institution (except any institution of undergraduate higher education) which offers a program of academic study that leads to a first professional degree in a field for which there is a national specialized accrediting agency recognized by the U.S. Commissioner of Education.

(f) "Institution of vocational education" means a school or institution (except an institution of professional, graduate, or undergraduate higher education) which has as its primary purpose preparation of students to pursue a technical, skilled, or semi-skilled occupation or trade, or to pursue study in a technical field, whether or not the school or institution offers certificates, diplomas, or degrees and whether or not it offers full time study.

(g) "Administratively separate unit" means a school, department, or college of an educational institution (other than a local educational agency), admission to which is independent of admission to any other component of the institution.

(h) "Admission" means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by a recipient.

(i) "Student" means a person who has gained admission.

(j) "Transition plan" means a plan subject to the approval of the United States Commissioner of Education under section 901(a)(2) of the Education Amendments of 1972, under which an educational institution operates in making the transition from being an educational institution which admits only students of one sex to being one which admits students of both sexes without discrimination.

The definitions set forth in § 1040.3 of Subpart A of this Part, to the extent not inconsistent with this subpart, are made applicable to and incorporated into this subpart.

§ 1040.24 Effects of other requirements.

(a) Effect of other Federal provisions. The obligations imposed by this subpart are independent of, and do not alter, obligations not to discriminate on the basis of sex imposed by Executive Order 11246, as amended; sections 799A and 845 of the Public Health Service Act (42 U.S.C. 295h-9 and 298b-2), the Equal Pay Act (29 U.S.C. 206 and 206(d)); and any other Act of Congress or Federal regulation.

(b) Effect of State or local law or other requirements. The obligation to comply with this subpart is not obviated or alleviated by any State or local law or other requirement which would render any applicant or student ineligible, or limit the eligibility of any applicant or student, on the basis of sex, to practice any occupation or profession.

(c) Effect of rules or regulations of private organizations. The obligation to comply with this subpart is not obviated or alleviated by any rule or regulation of any organization, club, athletic or other league or association, which would render any applicant or student ineligible to participate or limit the eligibility or participation of any applicant or student, on the basis of sex, in any education program or activity operated by a recipient and which receives or benefits from Federal assistance.

§ 1040.25 Educational institutions controlled by religious organizations.

(a) Application. This subpart does not apply to an educational institution which is controlled by a religious organization to the extent that application of this subpart would not be consistent with the religious tenets of such an organization.

(b) Exemption. An educational institution which wishes to claim the exemption set forth in paragraph (a) of this section, is to do so by submitting in writing to the Director a statement by the highest ranking official of the institution identifying the provisions of this subpart which conflict with a specific tenet of the religious organization.

§ 1040.26 Military and merchant marine educational institutions.

This subpart does not apply to an educational institution whose primary purpose is the training of individuals for military service of the United States or for the merchant marine.

§ 1040.27 Membership practices of certain organizations.

(a) Social fraternities and sororities. This subpart does not apply to the membership practices of social fraternities and sororities which are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, the active membership of which consists primarily of students in attendance at institutions of higher education.

(b) Y.M.C.A., Y.W.C.A., Girl Scouts, Boy Scouts, and Camp Fire Girls. This subpart does not apply to the membership practices of the Young Men's Christian Association, the Young Women's Christian Association, the Girl Scouts, the Boy Scouts, and the Camp Fire Girls.

(c) Voluntary youth service organizations. This subpart does not apply to the membership practices of voluntary youth service organizations which are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, the membership of which has been traditionally limited to members of one sex and principally to persons of less than 19 years of age.

§ 1040.28 Admissions.

(a) Admission to education institutions prior to June 24, 1973 are not covered by this subpart.

(b) Administratively separate units. For the purposes, only, of this section, §§ 1040.28 and 1040.29, each administratively separate unit shall be deemed to be an educational institution.

(c) Application of § 1040.31 through § 1040.33. Except as provided in paragraphs (c) and (d) of this section, § 1040.31 through § 1040.33 apply to each recipient. A recipient to which § 1040.31 through § 1040.33 apply shall not discriminate on the basis of sex in admission or recruitment in violation of those sections.

(d) Educational institutions. Except as provided in paragraph (e) of this section as to recipients which are educational institutions, § 1040.31 through § 1040.33 apply only to institutions of vocational education, professional education, graduate higher education, and public institutions of undergraduate higher education.

(e) Public institutions of undergraduate higher education. §§ 1040.31 through 1040.33 do not apply to any public institutions of undergraduate higher education which, traditionally and continually from its establishment, has had a policy of admitting only students of one sex.

§ 1040.29 Educational institutions eligible to submit transition plans.

(a) Application. This section applies to each educational institution to which §§ 1040.31 through 1040.33 apply which:

(1) Admitted only students of one sex as regular students as of June 23, 1972; or

(2) Admitted only students of one sex as regular students as of June 23, 1965, but after that admitted as regular students, individuals of the sex not admitted prior to June 23, 1965.

(b) Provision for transition plans. An educational institution to which this section applies is not to discriminate on the basis of sex in admission or recruitment in violation of §§ 1040.31 through 1040.33 unless it is carrying out a transition plan approved by the U.S. Commissioner of Education as described in § 1040.30, which plan provides for the elimination of discrimination by the earliest practicable date but in no event later than June 23, 1979.

§ 1040.30 Transition plans.

(a) *Submission of plans.* Any institution to which § 1040.28 applies and which is composed of more than one administratively separate unit may submit either a single transition plan applicable to all units, or separate transition plans applicable to each unit.

(b) *Content of plans.* In order to be approved by the United States Commissioner of Education, a transition plan is to:

(1) State the name, address, and Federal Interagency Committee on Education (FICE) Code of the educational institution submitting the plan, the administratively separate units to which the plan is applicable, the name, address, and telephone number of the person to whom questions concerning the plan may be addressed. The person who submits the plan shall be the chief adminstrator or president of the institution, or another individual legally authorized to bind the institution to all actions set forth in the plan.

(2) State whether the educational institution or administratively separate unit admits students of both sexes as regular students and, if so, when it began to do so.

(3) Identify and describe, with respect to the educational institution or administratively separate unit, any obstacles to admitting students without discrimination on the basis of sex.

(4) Describe in detail the steps necessary to eliminate as soon as practicable each obstacle identified and indicate the schedule for taking these steps and the individual responsible for their implementation.

(5) Include estimates of the number of students, by sex, expected to apply for, be admitted to, and enter each class during the period covered by the plan.

(c) *Nondiscrimination.* No policy or practice of a recipient to which § 1040.29 applies is to result in treatment of applicants to, or students of, the recipient in violation of §§ 1040.31 through 1040.33 unless such treatment is necessitated by an obstacle identified in paragraph (b) (3) of this section and a schedule for eliminating that obstacle has been provided as required by paragraph (b) (4) of this section.

(d) Effects of past exclusion. To overcome the effects of past exclusion of students on the basis of sex, each educational institution to which § 1040.29 applies is to include in its transition plan and implement specific steps designed to encourage individuals of the previously excluded sex to apply for admission to the institution. The steps are to include instituting recruitment programs which emphasize the institution's commitment to enrolling students of the sex previously excluded.

§ 1040.31 Discrimination on the basis of sex in admission and recruitment prohibited: Admission.

(a) General. No person shall, on the basis of sex, be denied admission or be subjected to discrimination in admission by any recipient to which §§ 1040.31, 1040.32, and 1040.33 apply, except as provided in §§ 1040.29 and 1040.30.

(b) Specific prohibitions. (1) In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which §§ 1040.31, 1040.32, and 1040.33 apply shall not—

(i) Give preference to one person over another on the basis of sex, by ranking applicants separately on that basis, or otherwise;

(ii) Apply numerical limitations upon the number or proportion of persons of either sex who may be admitted; or

(iii) Otherwise treat one individual differently from another on the basis of sex.

(2) A recipient shall not administer or operate any test or other criterion for admission which has a disproportionate adverse effect on persons on the basis of sex unless the use of the test or criterion is shown to predict validly success in the education program or activity and alternative tests or criteria which do not have a disproportionately adverse effect are shown to be unavailable.

(c) Prohibitions relating to marital or parental status. In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which §§ 1040.31, 1040.32, and 1040.33 apply:

(1) Shall not apply any rule concerning the actual or potential parental, family, or marital status of a student

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or applicant which treats persons differently on the basis of sex;

(2) Shall not discriminate against or exclude any persons on the basis of pregnancy, childbirth, termination of pregnancy, or recovery therefrom, or establish or follow any rule or practice which discriminates or excludes;

(3) Shall treat disabilities related to pregnancy, childbirth, termination of pregnancy, or recovery therefrom in the same manner and under the same policies as any other temporary disability or physical condition; or

(4) Shall not make preadmission inquiry as to the marital status of an applicant for admission, including whether such applicant is "Miss" or "Mrs." A recipient may make preadmission inquiry as to the sex of an applicant for admission, but only if the inquiry is made equally of applicants of both sexes and if the results of the inquiry are not used in connection with discrimination prohibited by this subpart.

§ 1040.32 Preference in admission.

A recipient to which §§ 1040.31, 1040.32, and 1040.33 apply shall not give preference to applicants for admission, on the basis of attendance at any educational institution or other school or entity which admits as students or predominantly members of one sex, if the giving of such preference has the effect of discriminating on the basis of sex in violation of §§ 1040.31, 1040.32, and 1040.33.

§ 1040.33 Recruitment.

(a) Nondiscriminatory recruitment. A recipient to which §§ 1040.31, 1040.32, and 1040.33 apply shall not discriminate on the basis of sex in the recruitment and admission of students. A recipient may be required to undertake additional recruitment efforts for one sex as remedial action under § 1040.7(a) and may choose to undertake these efforts as affirmative action under § 1040.7(b).

(b) Recruitment at certain insitutions. A recipient to which §§ 1040.31, 1040.32, and 1040.33 apply shall not recruit primarily or exclusively at educational institutions, schools, or entities which admit as students only or predominantly members of one sex, if these actions have the effect of discriminating on the basis of sex in violation of §§ 1040.31, 1040.32, and 1040.33.

§ 1040.34 Education programs and activities.

(a) *General.* Except as provided elsewhere in this subpart, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives or benefits from Federal assistance. Ths subpart does not apply to actions of a recipient in connection with admission of its students to an education program or activity of—

(1) A recipient to which §§ 1040.31, 1040.32, and 1040.33 do not apply; or

(2) An entity, not a recipient, to which §§ 1040.31, 1040.32, and 1040.33 would not apply if the entity were a recipient.

(b) Specific prohibitions. Except as provided in § 1040.34 through § 1040.45, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex—

(1) Treat one person differently from another in determining whether the person satisfies any requirement or condition for the provision of the aid, benefit, or service;

(2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;

(3) Deny any person any such aid, benefit, or service;

(4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;

(5) Discriminate against any person in the application of any rules of appearance;

(6) Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;

(7) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees;

(8) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

(c) Assistance administered by a recipient educational institution to study at a foreign institution. A recipient educational institution may administer or assist in the administration of scholarships, fellowships, or other awards established by foreign or domestic wills, trusts, or similar legal instruments, or by acts of foreign governments and restricted to members of one sex, which are designed to provide opportunities to study abroad, and which are awarded to students who are already matriculating at or who are graduates of the recipient institution provided, a recipient educational institution which administers or assists in the administration of such scholarships, fellowships, or other awards which are restricted to members of one sex provides, or other wise makes available, reasonable opportunities for similar studies for members of the other sex. Such opportunities may be derived from either domestic or foreign sources.

(d) Programs not operated by recipient. (1) This paragraph applies to recipients which require participation by any applicant or student in any education program or activity not operated wholly by the recipient, or which facilitates, permits, or considers participation in educational consortia and cooperative employment and student-teaching assignments.

(2) The recipient: (i) Shall develop and implement a procedure designed to assure itself that the operator or sponsor of such other education program or activity takes no action affecting any applicant, student, or employee of the recipient which this subpart would prohibit the recipient from taking; and

(ii) Shall not facilitate, require, permit, or consider participation if such action occurs.

§ 1040.35 Housing.

(a) *General.* A recipient shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing, except as provided in this section (including housing provided only to married students).

(b) *Housing provided by recipient.* (1) A recipient may provide separate housing on the basis of sex.

(2) Housing provided by a recipient to students of one sex, when compared to that provided to students of the other sex, shall be as a whole:

(i) Proportionate in quantity to the number of students of that sex applying for such housing; and

(ii) Comparable in quality and cost to the student.

(c) *Other housing.* (1) A recipient shall not, on the basis of sex, administer different policies or practices concerning occupancy by its students of housing other than provided by the recipient.

(2) A recipient which, through solicitation, listing, approval of housing, or otherwise, assists any agency, organization, or person in making housing available to any of its students, shall take reasonable action as may be necessary to assure itself that housing as is provided to students of one sex, when compared to that provided to students of the other sex, is as a whole:

(i) Proportionate in quantity; and

(ii) Comparable in quality and cost to the student. A recipient may render this assistance to any agency, organization, or person which provides all or part of such housing to students only of one sex.

§ 1040.36 Comparable facilities.

A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but the facilities provided for students of one sex are to be comparable to the facilities provided for students of the other sex.

§ 1040.37 Access to course offerings.

A recipient shall not provide any course or otherwise carry out any of its education program or activity separately on the basis of sex, or require or refuse participation by any of its students on that basis, including health, physical education, industrial, business, vocational, technical, home economics, music, and adult education courses.

(a) With respect to classes and activities in physical education at the elementary school level, the recipient shall comply fully with this section as expeditiously as possible but in no event later than 1 year from the effective date of this regulation.

(b) This section does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.

(c) This section does not prohibit separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball, and other sports, the purpose or major activity of which involves bodily contact.

(d) Where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the recipient shall use appropriate standards which do not have that effect.

(e) Portions of classes in elementary and secondary schools which deal exclusively with human sexuality may be conducted in separate sessions for boys and girls.

(f) Recipients may make requirements based on vocal range or quality which may result in a chorus of choruses of one or predominantly one sex.

§ 1040.38 Access to schools operated by LEAs.

A recipient which is a local educational agency shall not, on the basis of sex, exclude any person from admission to—

(a) Any institution of vocational education operated by the recipient; or

(b) Any other school or educational unit operated by the recipient, unless the recipient otherwise makes available to a person, under the same policies and criteria of admission, courses, services, and facilities comparable to each course, service, and facility offered in or through the schools.

§ 1040.39 Counseling and use of appraisal and counseling materials.

(a) *Counseling.* A recipient shall not discriminate against any person on the basis of sex in counseling or guidance of students or applicants for admission.

(b) *Use of appraisal and counseling materials.* A recipient which uses testing or other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials which permit or require different treatment of students on the basis of sex unless the different materials cover the same occupations and interest areas and use of the different materials is shown to be essential to eliminate sex bias. Recipients shall develop and use internal procedures for insuring that materials do not discriminate on the basis of sex. Where the use of a counseling test or other instrument results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the recipient shall take action to assure itself that the disproportion is not the result of discrimination in the instrument or its application.

(c) *Disproportion in classes.* Where a recipient finds that a particular class contains a substantially disproportionate number of individuals of one sex, the recipient shall take action to assure itself that the disproportion is not the result of discrimination on the basis of sex in counseling, appraisal materials, or by counselors.

§ 1040.40 Financial assistance.

(a) *General.* Except as provided in paragraphs (b), (c), and (d) of this section, in providing financial assistance to any of its students, a recipient shall not:

(1) On the basis of sex, provide different amounts or types of assistance, limit eligibility for assistance which is of any particular type or source, apply different criteria, or otherwise discriminate;

(2) Through solicitation, listing, approval, provision of facilities or other services, assist any foundation, trust, agency, organization, or person which provides assistance to any of the recipient's students in a manner which discriminates on the basis of sex; or

(3) Apply any rule or assist in application of any rule concerning eligibility for assistance which treats persons of one sex different from persons of the other sex with regard to marital or parental status.

(b) Financial aid established by certain legal instruments.

(1) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests, or similar legal instruments or by acts of a foreign government which require that awards be made to members of a particular sex specified in those documents provided, that the overall effect of the award of such sex-restricted scholarships, fellowships and other forms of financial assistance does not discriminate on the basis of sex.

(2) To insure nondiscriminatory awards of assistance as required in subparagraph (b)(1) of this subsection, recipients shall develop and use procedures under which:

(i) Students are selected for award of financial assistance on the basis of nondiscriminatory criteria and not on the basis of availability of funds restricted to members of a particular sex;

(ii) An appropriate sex-restricted scholarship, fellowship, or other form of financial assistance is allocated to each student selected under subsection (b)(2)(i) of this section; and

(iii) No student is denied the award for which he or she was selected under subsection (b)(a)(i) of this section because of the absence of a scholarship, fellowship, or other form of financial assistance designated for a member of that student's sex.

(c) *Athletic scholarships.*

(1) To the extent that a recipient awards athletic scholarships or grants-in-aid, it shall provide reasonable opportunities for the awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.

(2) Separate athletic scholarships or grants-in-aid for members of each sex may be provided as part of separate athletic teams of members of each sex to the extent consistent with this section and § 1040.44 of this subpart.

§ 1040.41 Employment assistance to students.

(a) Assistance by recipient in making available outside employment. A recipient which assists any agency, organization or person in making employment available to any of its students—

(1) Shall assure itself that the employment is made available without discrimination on the basis of sex; and

(2) Shall not render services to any agency, organization, or person which discriminates on the basis of sex in its employment practices.

(b) Employment of students by recipients. A recipient which employs any of its students shall not do so in a discriminatory manner.

§ 1040.42 Health and insurance benefits and services.

In providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient shall not discriminate on the basis of sex. This section is not to prohibit a recipient from pro-

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viding any benefit or service which may be used by a different proportion of students of one sex than of the other, including family planning services. However, any recipient which provides full coverage health service shall provide gynecological care.

§ 1040.43 Marital or parental status.

(a) *Status generally.* A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status which treats students differently on the basis of sex.

(b) *Pregnancy and related conditions.* (1) A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extra-curricular activity, on the basis of the student's pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.

(2) A recipient may require the student to obtain the certification of a physician that the student is physically and emotionally able to continue participation in the normal education program or activity so long as the certification is required of all students for other physical or emotional conditions requiring the attention of a physician.

(3) A recipient which operates a portion of its educational program or activity separately for pregnant students, admittance to which is completely voluntary on the part of the student as provided in paragraph (b)(1) of this section, shall insure that the instructional program in the separate program is comparable to that offered to nonpregnant students.

(4) A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan, or policy which the recipient administers, operates, offers or participates in with respect to students admitted to the recipient's educational program or activity.

(5) In the case of a recipient which does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence for a period of time considered medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began.

§ 1040.44 Athletics.

(a) *General.* No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club, or intramural athletics offered by the recipient, and no recipient shall provide any athletics separately on the basis of sex.

(b) *Separate teams.* Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex shall be allowed to tryout for the team offered unless the sport involved is a contact sport. For the purposes of this subpart, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball, and other sports, the purpose of major activity of which involves bodily contact.

(c) *Equal opportunity.* A recipient which operates or sponsors interscholastic, intercollegiate, club, or intramural athletics shall provide equal athletic opportunity for members of both sexes; In determining whether equal opportunities are available, the Associate Director is to consider, among other factors:

(1) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes:

(2) The provision of equipment and supplies;

(3) Scheduling of games and practice time;

(4) Travel and per diem allowance;

(5) Opportunity to receive coaching and academic tutoring;

(6) Assignment and compensation of coaches and tutors;

(7) Provision of locker rooms, practice, and competitive facilities;

(8) Provision of medical and training facilities and services;

(9) Provision of housing and dining facilities and services; and

(10) Publicity. Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams, if a recipient operates or sponsors separate teams, will not constitute noncompliance with this section, but the Associate Director may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

(d) *Adjustment period.* A recipient which operates or sponsors interscholastic, intercollegiate, club, or intramural athletics at the elementary, secondary or post-secondary school level shall comply fully with this section as expeditiously as possible, but in no event later than one year from the effective date of this regulation.

§ 1040.45 Textbooks and curricular material.

Nothing in this regulation is to be interpreted as requiring, prohibiting, or abridging, in any way, the use of particular textbooks or curricular materials.

§ 1040.46 Procedures.

The procedural provisions applicable to Title VI of the Civil Rights Act of 1964 are adopted and incorporated in this section by reference. These procedures may be found in subparts G and H of this Part.

Subpart D—Nondiscrimination on the Basis of Handicap—Sec. 504 of the Rehabilitation Act of 1973, as amended

General Provisions

§ 1040.61 Purpose and application.

(a) The purpose of this subpart is to implement section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal assistance.

(b) This subpart applies to each recipient or subrecipient of Federal assistance from DOE and to each program or activity that receives or benefits from assistance.

§ 1040.62 Definitions.

(a) "Executive Order" means Executive Order 11914, titled "Nondiscrimination With Respect to the Handicapped in Federally Assisted Programs" issued on April 28, 1976.

(b) "Section 504" means section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112, amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 29 U.S.C. 794.

(c) "Handicapped person" means any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment.

(d) As used in paragraph (c) of this section, the phrase:

(1) "Physical or mental impairment" means—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affection one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genito-urinary; hemic an lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(2) "Major life activities" means functions such as caring for one's self, performing maunal tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraphs (d)(1) (i) and (ii) of this section, but is treated by a recipient as having such an impairment.

(e) "Qualified handicapped person" means—

(1) With respect to employment, a handicapped person who, with reasonable accommodation can perform the essential functions of the job in question;

(2) With respect to public preschool, elementary, secondary, or adult education services, a handicapped person:

(i) Of an age during which nonhandicapped persons are provided such services;

(ii) Of any age during which it is mandatory under State law to provide such services to handicapped persons; or

(iii) To whom a State is required to provide a free appropriate public education under section 712 of the Handicapped Act.

(3) With respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity; and

(4) With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(f) "Handicap" means any condition or characteristic that renders a person a handicapped person as defined in paragraph (c) of this section.

The definitions set forth in § 1040.3 of subpart A of this Part, to the extent not inconsistent with this subpart, are made applicable to and incorporated into this subpart.

§ 1040.63 Discrimination prohibited.

(a) *General.* No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives or benefits from Federal assistance from DOE.

(b) Discriminatory actions prohibited.

(1) A recipient, in providing any aid, benefit, or service, may not directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless the action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or services to beneficiaries of the recipient's program;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit or service.

(2) For purposes of this Part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement in the most integrated setting appropriate to the person's needs.

(3) Despite the existence of permissible separate or different programs or activities, a recipient may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration that—

(i) Have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap;

(ii) Have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons; or

(iii) Perpetuate the discrimination of another recipient if both recipients are subject to common admininstrative control or are agencies of the same State.

(5) In determining the site of a facility, an applicant for assistance or a recipient may not make selections that—

(i) Have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives Federal assistance from DOE; or

(ii) Have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(6) As used in this section, the aid, benefit, or service provided under a program or activity receiving or benefiting from Federal assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal assistance.

(c) Programs limited by Federal law. The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this Part.

(d) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.

§ 1040.64 Effect of State or local law or other requirements and effect of employment opportunities.

(a) The obligation to comply with this subpart is not obviated or alleviated by the existence of any State or local law or other requirement that,

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on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

(b) The obligation to comply with this Part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons than for nonhandicapped persons.

(c) Effect of other regulations. All regulations, orders, or similar directions issued by any officer of DOE which impose requirements designed to prohibit discrimination against individuals on the grounds of race, color, national origin, sex, age, or handicap under any program to which this Part applies, and which authorize the suspension, termination or refusal to grant or to continue Federal assistance under any program for failure to comply with these requirements, are superseded to the extent that discrimination is prohibited by this Part. Nothing in this Part is to relieve any person of the obligation assumed or imposed under any superseded regulation, order, instruction, or similar direction prior to the effective date of this Part. Nothing in this Part is to supersede Executive Orders 10925, 11114, 11063, 11246, and regulations issued under these authorities, or supersede any other regulations or instructions which prohibit discrimination on the grounds of race, color, national origin, sex, age, or handicap in any program or activity to which this Part applies.

§ 1040.65 Procedures.

The procedural provisions applicable to Title VI of the Civil Rights Act of 1964 are adopted and incorporated in this section by reference. These procedures may be found in Subparts G and H of this Part.

EMPLOYMENT PRACTICES

§ 1040.66 Discrimination prohibited.

(a) *General.* (1) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity to which this Part applies.

(2) A recipient shall make all decisions concerning employment under any program or activity to which this Part applies in a manner which insures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(3) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this paragraph include relationships with employment and referral agencies, labor unions, organizations providing or administering fringe benefits to employees of the recipient, and organizations providing training and apprenticeship programs.

(b) *Specific activities.* The provisions of this subpart apply to:

(1) Recruitment, advertising, and processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick or otherwise;

(6) Fringe benefits available by virtue of employment, whether administered by the recipient or not;

(7) Selection and provision of financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(c) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collection bargaining agreement to which it is a party.

§ 1040.67 Reasonable accommodations.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include: (1) Making facilities used by employees readily accessible to and usable by handicapped persons; and

(2) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) In determining, under paragraph (a) of this section, whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:

(1) The overall size of the recipient's program with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

§ 1040.68 Employment criteria.

(a) A recipient may not use any employment test or other selection criterion that screens out or tends to screen out handicapped persons unless—

(1) The test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question; and

(2) Alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are shown by the recipient to be unavailable.

(b) A recipient shall select and administer tests concerning employment to best insure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude or other factors the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

§ 1040.69 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a pre-employment medical examination or may not make pre-employment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature of severity of a handicap. A recipient may, however, make pre-employment inquiry into an applicant's ability to perform job-related functions.

(b) When a recipient is taking remedial action to correct the effects of past discrimination, under § 1040.7 of Subpart A of this Part, or is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity under § 1040.7 of Subpart A of this Part, or when a recipient is taking affirmative action under Section 503 of the Rehabilitation Act of 1973, as amended, the recipient may invite applicants for employment to indicate whether, and to what extent, they are handicapped provided that:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally, if no written questionnaire is used, that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and

(2) The recipient states clearly that the information is requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this subpart.

(c) Nothing in this section is to prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty provided that all entering employees are subjected to the examination regardless of handicap or absence of handicap and results of the examination are used only in accordance with the requirements of this subpart.

(d) Information obtained in accordance with this section concerning the medical condition or history of the applicant is to be collected and maintained on separate forms that are to be accorded confidentiality as medical records, except that:

(1) Supervisors and managers may be informed regarding restriction on the work or duties of handicapped persons and regarding necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the condition, might require emergency treatment; and

(3) Government officials investigating compliance with Section 504 of the Rehabilitation Act of 1973, as amended, shall be provided relevant information upon request.

PROGRAM ACCESSIBILITY

§ 1040.71 Discrimination prohibited.

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unuseable by handicapped persons, be denied the benfits of, be excluded from participation in, or be subjected to discrimination under any program or activity that receives or benefits from Federal assistance from DOE.

§ 1040.72 Existing facilities.

(a) *Program accessibility.* A recipient shall operate any program or activity to which this subpart applies so that the program or activity, when viewed in its entirety, is readily assessible and useable by handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and useable by handicapped persons.

(b) *Methods.* A recipient may comply with the requirements of paragraph (a) of this section through such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of health, welfare, or other social services at alternate accessible sites, alteration of existing facilities and construction of new facilities in conformance with the requirements of § 1040.73 or any other methods that result in making its program or activity accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate.

(c) *Time period.* A recipient shall comply with the requirement of paragraph (a) of this section within 60 days of the effective date of this Subpart except that where structural changes in facilities are necessary, the changes are to be made within three years of the effective date of this Subpart, but in any event, as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within 6 months of the effective date of this Subpart, a transition plan setting forth the steps necessary to complete the changes. The plan is to be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, and the plan is to meet with the approval of the Associate Director. A copy of the transition plan is to be made available for public inspection. At a minimum, the plan is to:

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve full program accessibility and, if the time period or the transition plan is longer than 1 year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the person responsible for implementation of the plan.

(e) Notice. The recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information concerning the existence and location of services, activities, and facilities that are accessible to, and useable by, handicapped persons.

§ 1040.73 New construction.

(a) *Design and construction.* Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient is to be designed and constructed in a manner that the facility or part of the facility is readily accessible to, and useable by, handicapped persons, if the construction was commenced after the effective date of this subpart.

(b) *Alteration.* Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this Subpart in a manner that affects or could affect the useability of the facility or part of the facility is, to the maximum extent feasible, to be altered in a manner that the altered portion of the facility is readily accessible to and useable by handicapped persons.

(c) *American National Standards Institute, Incorporated, accessibility standards.* Design, construction, or alteration of facilities in conformance with the "American National Standard Specification for Making Buildings and Facilities Accessible to, and Useable by, the Physically Handicapped," published by the American National Standards Institute, Incorporated (ANSI A117.1-1961 (R1971),[1] which is incorporated by reference in this Subpart, are to constitute compliance with paragraphs (a) and (b) of this section. Departures from the particular requirements of those standards by the use of other methods are to be permitted with the concurrence of the Associate Director when it is clearly evident that equivalent access to the facility or part of the facility is provided.

[1] Copies obtainable from American National Standards Institute, Inc., 1430 Broadway, New York, N.Y. 10018.

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Subpart E—Nondiscrimination on the Basis of Age—Age Discrimination Act of 1975, as amended.

§ 1040.81 [Reserved]

Subpart F—Nondiscrimination Under Title VIII of the Civil Rights Act of 1968, as amended

§ 1040.91 [Reserved]

Subpart G—Program Monitoring

§ 1040.101 Compliance reviews.

(a) The Director shall periodically conduct compliance reviews of selected recipients of DOE Federal assistance.

(b) The Director shall seek to review those recipients which have the most serious equal opportunity problems, or the greatest disparity in delivery of services on a nondiscriminatory basis. Selection for review is to be made on the basis of:

(1) The relative disparity between the percentage of minorities, women, or handicapped persons, in the relevant labor market, and the percentage of minorities, women, or handicapped persons, employed by the recipient;

(2) The percentage of minorities, women and handicapped persons in the population receiving project benefits;

(3) The number and nature of discrimination complaints filed against a recipient with DOE or other Federal agencies;

(4) The scope of the problems revealed by an investigation commenced on the basis of a complaint filed with DOE against a recipient; and

(5) The amount of assistance provided to the recipient.

(c) Within 30 days after selection of a recipient for review, DOE is to inform the recipient that it has been selected for review. The review will ordinarily be initiated by a letter requesting data pertinent to the review and advising the recipient of:

(1) The practices to be reviewed;

(2) The programs or activities affected by the review;

(3) The opportunity to make, at any time prior to receipt of DOE's finding, a documentary submission responding to DOE which explains, validates, or otherwise addresses the practices under review; and

(4) The schedule under which the review will be conducted and a determination of compliance or noncompliance made.

(d) Within 90 days of notifying a recipient that he has been selected for review, the Associate Director shall advise the recipient, in writing, of:

(1) Preliminary findings;

(2) Where appropriate, recommendations for achieving voluntary compliance; and

(3) The opportunity to request DOE to engage in voluntary compliance negotiations prior to the Director's final determination of compliance or noncompliance. The Director or his designee shall notify the Assistant Attorney General at the same time he notifies the recipient of any matter where recommmendations for achieving voluntary compliance are made.

(e) If, within 45 days of the recipient's notification under subsection (d) above, the Associate Director's recommendations for compliance are not met, or voluntary compliance is not secured, the matter will be forwarded to the Director for a determination of compliance on noncompliance. The determination is to be made no later than 15 days after conclusion of a 45 day negotiation period. If the Director makes a determination of noncompliance, the Department shall institute administrative proceedings specified in Subparts G and H.

(f) Where the Director makes a formal determination of noncompliance, the recipient and the Assistant Attorney General shall be immediately advised in writing of the determination and of the fact that the recipient has an additional 10 days in which to come into voluntary compliance. If voluntary compliance has not been achieved within the 10 days, the Director shall institute proceedings under Subpart H.

(g) All agreements to come into voluntary compliance shall be in writing and signed by the Director and an official who has authority to legally bind the recipient.

§ 1040.102 Compliance information.

(a) Cooperation and assistance. Each responsible Departmental official shall, to the fullest extent practicable, seek the cooperation of recipient in obtaining compliance with this Part and shall provide assistance and guidance to recipient to help them comply voluntary with this Part.

(b) *Compliance reports.* Each recipient shall keep reports and submit to the responsible Department official or his/her designee, timely, complete, and accurate compliance reports at the times, in such form, and containing information as the responsible Department official or the designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this Part. In general, recipients should have available for DOE data on the race, color, national origin, sex, age, and handicap status showing the extent to which members of minority groups are beneficiaries of federally assisted programs. In the case of any program under which a primary recipient extends Federal assistance to any other recipient of subcontracts with any other person or group, such other recipient shall also submit compliance reports to the primary recipient which will enable the primary recipient to carry out its obligations under this Part.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible Department official or his/her designee during normal business hours to books, records, personnel records, accounts, other sources of information, and its facilities, which are pertinent to ascertain compliance with this Part. The requirement for access to sources of information shall be contained in the certificate of assurance and agreed to by the recipient as a condition to award. Whenever any information required of a recipient is in the exclusive possession of any other agency, institution, or person and that agency, institution, or person falls or refuses to furnish that information, the recipient shall certify this in its report and set forth the efforts which it has made to obtain the information. The sub-recipient in such case shall be subject to proceedings described under Subpart H of this Part.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons information regarding the provisions of this section and its applicability to the program under which the recipient receives Federal assistance. Information is to be made available to beneficiaries, participants, and other interested persons in a manner which the responsible Department officials find necessary to inform such persons of the protections against discrimination assured them by this Part and the statutes to which this Part applies.

§ 1040.103 [Reserved]

§ 1040.104 Complaint investigation.

(a) The Associate Director shall investigate complaints of discrimination that allege a violation of—

(1) Title VI, of the Civil Rights Act of 1964, section 16 of the Federal Energy Administration Act of 1974, as amended, or section 401 of the Energy Reorganization Act of 1974;

(2) Title IX of the Education Amendments of 1972, as amended;

(3) Section 504 of the Rehabilitation Act of 1973, as amended;

(4) Age Discrimination Act of 1975, as amended, (reserved in this Part);

(5) Title VIII of the Civil Rights Act of 1968, as amended, (reserved in this Part); and

(6) This subpart.

(b) No complaint will be investigated if it is received by an appropriate Departmental official more than 180 days after the date of the alleged discrimination, unless the time for filing is extended by the Associate Director for good cause shown. Where a complaint is accepted for investigation, the Associate Director will initiate a DOE investigation. The Associate Director, who is responsible for the investigation, shall notify the complainant, in writing, if the complaint has been accepted or rejected.

(c) The Associate Director or his/her designee shall conduct investigations of complaints as follows:

(1) Within 10 days of receipt of a complaint, the Associate Director shall:

(i) Determine whether DOE has jurisdiction under paragraphs (a) and (b) of this section;

(ii) If jurisdiction is not found, wherever possible refer the complaint to the Federal agency with such jurisdiction and advise the complainant;

(iii) If jurisdiction is found, notify the recipient alleged to be discriminating of its receipt of the complaint; and

(iv) Initiate the investigation.

(2) The investigation will ordinarily be initiated by a letter requesting data pertinent to the complaint and advising the recipient of:

(i) The nature of the complaint, and with the written consent of the complainant, the identity of the complainant;

(ii) The program or activities affected by the complaint;

(iii) The opportunity to make, at any time prior to receipt of DOE's findings, a documentary submission, responding to, rebutting, or denying the allegations made in the complaint; and

(iv) The schedule under which the complaint will be investigated and a determination of compliance or noncompliance made.

(3) Within 90 days of notifying a recipient that he has been selected for review, the Associate Director shall advise the recipient, in writing of:

(i) Preliminary findings;

(ii) Where appropriate, recommendations for achieving voluntary compliance; and

(iii) The opportunity to request DOE to engage in voluntary compliance negotiations prior to the Director's final determination of compliance or noncompliance. The Director or his designee shall notify the Assistant Attorney General at the same time he notifies the recipient of any matter where recommendations for achieving voluntary compliance are made.

(4) If, within 45 days of the recipient's notification under subsection (3) above, the Associate Director's recommendations for compliance are not met, or voluntary compliance is not secured, the matter will be forwarded to the Director for a determination of compliance or noncompliance. the determination is to be made no later than 15 days after conclusion of a 45 day negotiation period. If the Director makes a determination of noncompliance, the Department shall institute administrative proceedings specified in Subparts G and H.

(5) Where the Director makes a formal determination of noncompliance, the recipient and the Assistant Attorney General shall be immediately advised in writing of the determination and of the fact that the recipient has an additional 10 days in which to come into voluntary compliance. If voluntary compliance has not been achieved within the 10 days, the Director shall institute proceedings under Subpart H. All agreements to come into voluntary compliance shall be in writing and signed by the Director and an official who has authority to legally bind the recipient.

(6) If the complainant or party other than the Attorney General has filed suit in Federal or State court alleging the same discrimination alleged in a complaint to DOE, and if during DOE's investigation, the trial of that suit would be in progress, DOE will consult with the Assistant Attorney General and court records to determine the need to continue or suspend the investigation and will monitor the litigation through the court docket and contacts with the complainant. Upon receipt of notice that the court has made a finding of discrimination, against a recipient that would constitute a violation of this Part, the DOE shall institute administrative proceedings as specified in Subpart H. All agreements to come into voluntary compliance shall be in writing and signed by the Director and an official who has authority to legally bind the recipient.

(7) The time limits listed in paragraphs (c)(1) through (c)(6) of this section shall be appropriately adjusted where DOE requests another Federal agency to act on the complaint. DOE is to monitor the progress of the matter through liaison with the other agency. Where the request to act does not result in timely resolution of the matter, DOE is to institute appropriate proceedings as required by this Part.

(d) Intimidatory or retaliatory acts prohibited. No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws implemented in this Part or because the complainant has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subpart. The identity of complainants is to kept confidential except as determined by the Associate Director to be necessary to carry out the purpose of this subpart, including investigations, hearings, or judicial proceedings arising thereunder.

Subpart H—Enforcement

MEANS OF EFFECTING COMPLIANCE

§ 1040.111 Means available.

If there appears to be a failure or threatened failure to comply with any of the provisions of this Part, and if the noncompliance or threatened noncompliance cannot be corrected by voluntary means, compliance with this Part may be effected by the suspension, termination of, or refusal to grant or to continue Federal assistance, or by any other means authorized by law. Such other means may include, but are not limited to—

(a) Referral to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law including other titles of the Civil Rights Act of 1964, other statutes to which this Part applies, or any assurance or other contractual undertaking; and

(b) Any applicable proceeding under State or local law.

§ 1040.112 Noncompliance with assurances.

If an applicant fails or refuses to furnish an assurance required under § 1040.4 of Subpart A of this part, or otherwise fails or refuses to comply with a requirement imposed by that section, such as § 1040.102(c), Subpart G of this Part, Federal assistance shall be refused in accordance with procedures of § 1040.113 of this subpart. DOE may defer action on pending applications for assistance in such a case during pendency of administrative proceedings under § 1040.113 of this subpart.

§ 1040.113 Termination of or refusal to grant or to continue Federal assistance.

No order suspending, terminating, or refusing to grant or continue Federal assistance is to become effective until—

(a) Notice of the proposed order is given to the Assistant Secretary, Intergovernmental and Institutional Relations, if the action is contemplated against a State or local government;

(b) The Director has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means. (It will be determined by the Director that compliance cannot be secured by voluntary means if it has not been secured within the time periods specifically set forth by this Part).

(c) There has been an express finding on the record after opportunity for hearing, of a failure by the applicant or recipient to comply with the re-

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quirement imposed by or under this Part;

(d) The action has been approved by the Secretary or his designee under § 1040.142; and

(e) The expiration of 30 days after the Secretary or his designee has filed with the committee of the House of Representatives and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend, terminate, or to refuse to grant or to continue Federal assistance is to be limited to the particular political entity or part of that entity or other applicant or recipient to whom the finding has been made and shall be limited in its effect to the particular program or part of the program in which the noncompliance has been found.

§ 1040.111 Other means authorized by law.

No action to effect compliance by any other means authorized by law is to be taken until—

(a) The Director has determined that compliance cannot be secured by voluntary means;

(b) The recipient or other person has been notified by the Director in writing that it has been found in formal noncompliance and that it has 10 days before formal enforcement proceedings begin in which to enter into a written voluntary compliance agreement.

(c) The expiration of at least ten (10) days from the mailing of the notice to the recipient or other person.

OPPORTUNITY FOR HEARING

§ 1040.121 Notice of opportunity for hearing.

(a) Whenever an opportunity for hearing is required by § 1040.113, the General Counsel or his/her designee shall serve on the applicant or recipient, by registered, certified mail, or return receipt requested, a notice of opportunity for hearing which will:

(1) Inform the applicant or recipient of the action proposed to be taken and of his right within twenty (20) days of the date of the notice of opportunity for hearing, or another period which may be specified in the notice, to request a hearing;

(2) Set forth the alleged item or items of noncompliance with this Part;

(3) Specify the issues;

(4) State that compliance with this Part may be effected by an order providing for the termination of or refusal to grant or to continue assistance, as appropriate, under the program involved; and

(5) Provide that the applicant or recipient may file a written answer to the notice of opportunity for hearing under oath or affirmation within twenty (20) days of its date, or another period which may be specified in the notice.

(b) The applicant or recipient may respond to a notice of opportunity for hearing by filing a written answer under oath or affirmation. The answer shall specifically admit or deny such allegation, or, where the applicant or recipient does not have knowledge or information sufficient to form a belief, the answer may so state and the statements shall have the effect of a denial. Allegations of fact not denied shall be deemed to be admitted. The answer shall separately state and identify matters alleged as affirmative defenses and may also set forth the matters of fact and law on which the applicant or recipient relies. The applicant or recipient may request a hearing on the answer.

(c) If the answer requests a hearing, the responsible DOE official will issue a notice of hearing specifying:

(1) The time, place, and nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held; and

(3) The matters of fact and law asserted or to be considered. The time and place of hearing will be fixed with due regard for the convenience and necessity of the parties or their representatives and for the public interest. An answer to a notice of hearing is not required.

(d) An applicant or recipient may file an answer, and waive or fail to request a hearing, without waiving the requirement for findings of fact and conclusions of law or the right to seek the Secretary's review in accordance with the provisions of §§ 1040.141 and 1040.142. At the time an answer is filed, the applicant or recipient may also submit written information or argument for the record if he does not request a hearing.

(e) An answer or stipulation may consent to the entry of an order in substantially the form set forth in the notice of opportunity for hearing: the order may be entered by the General Counsel or his/her designee. The consent of the applicant or recipient to the entry of an order shall constitute a waiver by him of a right to—

(1) A hearing under section 602 of Title VI of the Civil Rights Act of 1964 and § 1040.113;

(2) Findings of fact and conclusions of law; and

(3) seek the Secretary's review.

(f) The failure of an applicant or recipient to file an answer within the period prescribed, or, if he requests a hearing, his failure to appear at the hearing, shall constitute a waiver by him of a right to—

(1) A hearing under section 602 of Title VI of the Civil Rights Act of 1964 and § 1040.113;

(2) Conclusions of law; and

(3) Seek the Secretary's review. In the event of such a waiver, the responsible DOE official may find the facts on the basis of the record available and enter an order in substantially the form set forth in the notice of opportunity for hearing.

(g) An order entered in accordance with paragraph (e) or (f) of this section shall constitute the final decision of DOE, unless the Secretary on his own motion, within forty-five (45) days after entry of the order, issues his own decision, which shall then constitute the final decision of DOE.

(h) A copy of an order entered by the responsible DOE official shall be mailed to the applicant or recipient and to the complainant, if any.

HEARINGS AND FINDINGS

§ 1040.131 Presiding officer.

One or more administrative law judges appointed in accordance with 5 U.S.C. 3105 and 3344, are to —

(a) Preside at a hearing; and

(b) Make findings of fact and conclusions of law if an applicant or recipient waives a hearing and submits written information or argument for the record in accordance with § 1040.121.

§ 1040.132 Right to counsel.

In all proceedings under § 1040.121 through § 1040.151, the parties shall have the right to be represented by counsel. A notice of appearance is to be filed by counsel prior to participation in any such proceedings.

§ 1040.133 Procedures, evidence, and record.

(a) The hearing, decision, and any administrative review is to be conducted in conformity with 5 U.S.C. 554 through 557 and in accordance with such procedures as are proper and not inconsistent with § 1040.131 through § 1040.134, relating to the conduct of the hearing, giving of notices subsequent to those provided for in § 1040.121, taking of testimony, exhibits, arguments, and briefs, requests for findings, and other related matters. Both parties shall be entitled to introduce all relevant evidence on the issues as stated in the notice of hearing or as determined by the presiding officer at the outset of or during the hearing.

(b) Technical rules of evidence shall not apply to hearings conducted pursuant to this Part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the presiding officer. The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record.

(c) Each decision made after a hearing has been held shall be based on the hearing record, and written findings shall be made.

(d) If an applicant or recipient waives a hearing and submits written information or argument for the record in accordance with § 1040.121(d), written findings shall be made.

§ 1040.134 Consolidated or joint hearings.

In cases in which the same or related facts are asserted to constitute noncompliance with this Part with respect to two or more programs to which this Part applies or noncompliance with this Part and the regulations of one or more other Federal departments or agencies issued to implement the requirements of the laws cited in this Part, the Secretary may, by agreement with other departments or agencies, where applicable, provide for the conduct of consolidated or joint hearings and for the application to such hearings of rules of procedure not inconsistent with this Part. Final decision in such cases, insofar as programs subject to this Part are concerned, shall be made in accordance with § 1040.142.

DECISION AND NOTICE

§ 1040.141 Initial decision or certification.

The officer designated, (a) to preside at a hearing, or, (b) to make findings of fact and conclusions of law where an applicant or recipient waives a hearing and submits written information or argument for the record in accordance with § 1040.121(d), shall render an initial decision on the record or, if the Secretary so directs, shall certify the entire record to the Secretary for decision, together with a recommended decision on the record. A copy of such initial decision, or of such certification and recommended decision, shall be mailed to the applicant or recipient.

§ 1040.142 Exceptions and final decision.

(a) The applicant or recipient, within thirty (30) days of the mailing of an initial decision or a recommended decision, may file with the Secretary any exceptions to the decision, with reasons for the exceptions.

(b) In the absence of exceptions of an initial decision, the Secretary may, on his own motion within forty-five (45) days after the mailing of the initial decision, serve on the applicant or recipient a notice that the Secretary will review the decision.

(c) Upon the filing of exceptions to an initial decision or of a notice of review, the Secretary shall review the initial decision and issue his own decision on the record with the reasons for the decision.

(d) In the absence of either exceptions to an initial decision or of a notice of review, an initial decision shall constitute the final decision of DOE.

(e) Upon the filing of exceptions to a recommended decision, the Secretary shall review the recommended decision and issue his own decision on the record with reasons for the decisions.

(f) In the absence of exceptions to a recommended decision, the Secretary shall review the recommended decision and issue his own decision on the record with reasons for the decision.

§ 1040.143 Rulings required.

Any decision of a presiding officer shall set forth the rulings on each findings, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or under this Part with which it is found the applicant or recipient has failed to comply.

§ 1040.144 Content of orders.

The final decision may provide for suspension, termination, or refusal to grant or continue Federal assistance, in whole or in part, under the program involved, and may contain terms, conditions, and other provisions that are consistent with and will implement the purposes of this Part. Such a decision may include provisions designed to assure that no Federal assistance is extended to any program or activity of the applicant or recipient determined by the decision to be in default in the performance of an assurance given by an applicant or recipient under this Part, or to have otherwise failed to comply with this Part, unless and until the applicant or recipient corrects its noncompliance and satisfies DOE that it will fully comply with this Part. A copy of the final decision is to be mailed to the applicant or recipient and the complainant, if any.

§ 1040.145 Post termination proceedings.

(a) An applicant or recipient adversely affected by an order issued under § 1040.144 shall be restored to full eligibility to receive Federal assistance if it satisfies the terms and conditions of that order for eligibility or if it brings itself into compliance with this Part and provides reasonable assurance that it will fully comply with this Part. An elementary or secondary school or school system which is unable to file an assurance of compliance with this Part shall be restored to full eligibility to receive Federal assistance if it files a court order or a plan for desegregation which meets the requirements of this Part and provides reasonable assurance that it will comply with the court order or plan.

(b) Any applicant or recipient adversely affected by an order entered under § 1040.144 may at any time request the Director to restore fully its eligibility to receive Federal assistance. Any request is to be supported by information showing that the applicant or recipient has met the requirements of paragraph (a) of this section. If the Director determines in writing that those requirements have been satisfied, he/she shall restore the eligibility.

(c) If the Director denies the request, the applicant or recipient may submit a written request for a hearing to the Secretary specifying why it believes the official made an error. The applicant or recipient shall be given an expeditious hearing, with a decision on the record, in accordance with rules of procedures issued by the Secretary or his/her designee. The applicant or recipient will be restored to eligibility if it proves at the hearing that it satisfied the requirements of paragraph (a) of this section. While proceedings under this section are pending, the sanctions imposed by the order issued under § 1040.144 shall remain in effect.

JUDICIAL REVIEW

§ 1040.151 Judicial review.

Action taken under section 602 of the Civil Rights Act of 1964 is subject to judicial review as provided in section 603 of title VI of the Civil Rights Act of 1964.

APPENDIX A

Federal Assistance Programs of the Department of Energy To Which This Part Applies.

1. *Access Permits.*—Atomic Energy Act of 1954, as amended, sections 1, 2, 3 and 161(l), Pub. L. 83-703; 68 Stat. 919; 42 U.S.C. 2011-13, 2201; and Title I section 104 (c) of the Energy Reorganization Act of 1974, Pub. L. 93-438; 88 Stat 1237; 42 U.S.C. 5814; Department of Energy Organization Act, 42 U.S.C. 7101; Pub L. 95-91

2. *Motion Pictures Film Libraries.*—Atomic Energy Act of 1954, as amended, Pub. L. 83-703, sections 3 and 141(b), (68 Stat. 919), 42 U.S.C. 2013 and 2161; The Energy Reorganization Act of 1974, Pub. L. 93-438, Title I, sections 103 and 107, (88 Stat. 1240), 42 U.S.C. 5817; Department of Energy Organization Act, Pub. L. 95-91, Title I, section 102, and Title III, section 301, (19 Stat. 565), 42 U.S.C. 7101; the National Energy Extension Service Act, Title V, Pub. L. 95-39, (91 Stat. 191), 42 U.S.C. 7001.

3. *Granting of Patent Licenses.*—Atomic Energy Act of 1954, as amended, sections

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156 and 161(g); Pub. L. 83-703; 68 Stat. 919, 42 U.S.C. 2186 and 2201; Federal Nonnuclear Energy Research and Development Act of 1974, section 9 (f) (g) (h); Pub. L. 93-577; 88 Stat. 1887; 42 U.S.C. 5908 (f) (g) (h); Department of Energy Organization Act, 42 U.S.C. 7101; Pub. L. 95-91.

4. *University Laboratory Cooperative Program.*—Atomic Energy Act of 1954, as amended, section 31 (a) and (b); Pub. L. 83-703; 68 Stat. 919; 42 U.S.C. 2051; and Title I, Section 107, of the Energy Reorganization Act of 1974; Pub. L. 93-438; 88 Stat. 1240; 42 U.S.C. 5817; Department of Energy Organization Act, 42 U.S.C. 7101; Pub. L. 95-91.

5. *Facility Training Institutes, Short Courses, and Workshops on Energy and Environmental Subjects.*—Atomic Energy Act of 1954, as amended, section 31 (a) and (b); Pub. L. 83-703; 68 Stat. 919; 42 U.S.C. 2051; and Title I, section 107, of the Energy Reorganization Act of 1974; 42 U.S.C. 7101; Pub. L. 93-438; 88 Stat 1240; 42 U.S.C. 5817; Department of Energy Organization Act, 42 U.S.C. 7101; Pub. L. 95-91.

6. *Reactor Sharing and Fuel Assistance.*—Atomic Energy Act of 1954, as amended, section 31 (a) and (b), Pub. L. 83-703; 68 Stat. 919; 42 U.S.C. 2051; and Title I, section 107, of the Energy Reorganization Act of 1974; Pub. L. 93438, 88 Stat. 1240; 42 U.S.C. 5817; Department of Energy Organization Act, 42 U.S.C. 7101; Pub. L. 95-91.

7. *Traineeships for Graduate Students in Energy Related Fields.*—Atomic Energy Act of 1954, as amended, sections 31 (a) and (b); Pub. L. 83-703; 68 Stat. 919; 42 U.S.C. 2051; and Title I, section 107, of the Energy Reorganization Act of 1974; Pub. L. 93-458; 88 Stat. 1240; 42 U.S.C. 5817; Pub. L. 93-409, section 12(a); Pub. L. 94-163 section 337; Pub. L. 93-577, section 4(d); Pub. L. 93-275, section 5; Pub. L. 95-39, Title V, section 502 (7); Department of Energy Organization Act, 42 U.S.C. 7101; Pub. L. 95-91.

8. *Energy Related Laboratory Equipment Grants.*—Atomic Energy Act of 1954, as amended, section 31 (a) and (b); Pub. L. 83-703; 68 Stat. 919; 42 U.S.C. 2051; and Title I, section 107, of the Energy Reorganization Act of 1974; Pub. L. 93-438; 88 Stat. 1240; 42 U.S.C. 5817; Department of Energy Organization Act, 42 U.S.C. 7101; Pub. L. 95-91.

9. *Information Services Exhibits, Public Speakers Publications, Reference and Analysis.*—Atomic Energy Act of 1954, as amended, sections 3 and 141b; Pub. L. 83-703; 68 Stat. 919; 42 U.S.C. 2013 and 2161; and Title I, section 107, of the Energy Reorganization Act of 1974; Pub. L. 93-438; 88 Stat. 1240; 42 U.S.C. 5817; Department of Energy Organization Act, 42 U.S.C. 7101; Pub. L. 95-91.

10. *Payments in Lieu of Property Taxes.*—Atomic Energy Act of 1954, as amended, section 168; Pub. L. 83-703; 68 Stat. 919; 42 U.S.C. 2208; and Title I, section 107, of the Energy Reorganization Act of 1974; Pub. L. 93-438, 88 Stat. 1240; 42 U.S.C. 5817; Department of Energy Organization Act, 42 U.S.C. 7101; Pub. L. 95-91.

11. *Radiological Emergency Assistance.*—Atomic Energy Act of 1954, as amended, Pub. L. 83-703; 68 Stat. 919; 42 U.S.C. 2011 et seq.; and Title I, section 107, of the Energy Reorganization Act of 1974; Pub. L. 93-438; 88 Stat. 1240; 42 U.S.C. 5817; Department of Energy Organization Act, 42 U.S.C. 7101; Pub. L. 95-91.

12. *Nuclear Industry Seminars.*—Atomic Energy Act of 1954, as amended, section 141 (b); Pub. L. 83-703; 68 Stat. 919; 42 U.S.C. 2161, and Title I, section 107, of the Energy Reorganization Act of 1974; Pub. L. 93-438, 88 Stat. 1240; 42 U.S.C. 5817; Department of Energy Organization Act, 42 U.S.C. 7101; Pub. L. 95-91.

13. *Work Experience.*—Atomic Energy Act of 1954, as amended, section 3, Pub. L. 83-703; 68 Stat. 919; 42 U.S.C. 2013; and Title I, section 107, of the Energy Reorganization Act of 1974; Pub. L. 93-438; 88 Stat. 1240; 42 U.S.C. 5817; Department of Energy Organization Act; 42 U.S.C. 7101; Pub. L. 95-91.

14. *Citizens' Workshops.*—Atomic Energy Act of 1954, as amended, Pub. L. 83-703, section 3 and 141 (b), 68 Stat. 919; 42 U.S.C. 2013 and 2161; the Energy Reorganization Act of 1974, Pub. L. 93-438, Title I, section 103 and 107, 88 Stat. 1240; 42 U.S.C. 5817. Department of Energy Organization Act, Pub. L. 95-91, Title I, section 102, and Title III, section 301, 91 Stat. 565; 42 U.S.C. 7101; the National Energy Extension Service Act, Title V, Pub. L. 95-39, 91 Stat. 191; 42 U.S.C. 7001.

15. *Research and Development in Energy Conservation.*—Atomic Energy Act of 1954, as amended, section 31; Pub. L. 83-703; 68 Stat. 919; 42 U.S.C. 2051; and Title I, section 107, of the Energy Reorganization Act of 1974; Pub. L. 93-438; 88 Stat. 1240; Department of Energy Organization Act, 42 U.S.C. 7101; Pub. L. 95-91.

16. *Energy Related Inventions.*—Section 14 of the Federal Non-Nuclear Energy Research and Development Act of 1974; Pub. L. 93-577; Stat. 1894; 42 U.S.C. 5913; Department of Energy Organization Act, 42 U.S.C. 7101; Pub. L. 95-91.

17. *Research and Development Fission, Fossil, Solar, Geothermal, Electric and Storage Systems, Magnetic Fusion.*—Amendments to the Energy Reorganization Act of 1974 and the Atomic Energy Act of 1954; Department of Energy Organization Act, 42 U.S.C. 7101; Pub. L. 95-91.

18. *Energy Information Administration Clearinghouse (EIAC).*—Department of Energy Organization Act, section 205; Pub. L. 95-91.

19. *National Energy Information Center (NEIC).*—Federal Energy Administration Act of 1974, as amended, section 20(a) (4); Pub. L. 93-175; 15 U.S.C. 779; Department of Energy Organization Act, section 301; Pub. L. 95-91.

20. *Grants for Offices of Consumer Services.*—Title II, section 205 of the Energy Conservation and Production Act, Pub. L. 94-385; Department of Energy Organization Act, 42 U.S.C. 7101; Pub. L. 95-91.

21. *State Energy Conservation Program.*—Title III, sections 361-366, Part C of the Energy Policy and Conservation Act, Pub. L. 94-163; 42 U.S.C. 6321; Department of Energy Organization Act, 42 U.S.C. 7101; Pub. L. 95-91.

22. *Weatherization Assistance Program for Low Income Persons.*—Title IV, Part A of the Energy Conservation and Production Act, Pub. L. 94-385; 42 U.S.C. 6861-6870; Department of Energy Organization Act, 42 U.S.C. 7101; Pub. L. 95-91.

23. *Supplemental State Energy Conservation Program.*—Title IV, sections 432(a), Part B of the Energy Conservation and Production Act of 1976, Pub. L. 94-385; 42 U.S.C. 6801 *et. seq.; Department of Energy Organization Act, 42 U.S.C. 7101; Pub. L. 95-91.*

24. *Public Education in Energy.*—Atomic Energy Act of 1954, as amended, sections 31(a) and 31(b); Pub. L. 83-703; 68 Stat. 919; 42 U.S.C. 2051; and Title I, section 107 of the Energy Reorganization Act of 1974; Pub. L. 93-458; 88 Stat. 1240; 42 U.S.C. 5817; Pub. L. 93-409, section 12(a); Pub. L. 94-163, section 337; Pub. L. 93-577, section 4(d); Pub. L. 93-275; section 5; Pub. L. 95-39, Title V, section 502 (7); Department of Energy Organization Act, 42 U.S.C. 7101; Pub. L. 95-91.

25. *Special Studies and Projects in Energy Education and Training.*—Atomic Energy Act of 1954, as amended, sections 31(a) and 31(b); Pub. L. 83-703; 68 Stat. 919; 42 U.S.C. 2051; and Title I, section 107 of the Energy Reorganization Act of 1974; Pub. L. 93-458; 88 Stat. 1240; 42 U.S.C. 5817; Pub. L. 93-409, section 12(a); Pub. L. 93-163, section 337; Pub. L. 93-577, section 4(d); Pub. L. 93-275, section 5; Pub. L. 95-39, Title V, section 502 (7).

26. *Research and Development in Biomedical and Environmental Sciences.*—Atomic Energy Act of 1954, as amended, section 31; Pub. L. 83-703; 68 Stat. 919; 42 U.S.C. 2051; Title I, Sec. 107, of the Energy Reorganization Act of 1974; Pub. L. 93-438; 88 Stat. 1240; 42 U.S.C. 5817; Department of Energy Organization Act, 42 U.S.C. 7101; Pub. L. 95-91.

27. *Preface (Pre-Freshman and Cooperative Education for Minorities In Engineering).*—Atomic Energy Act of 1954, as amended, sections 31(a) and 31(b); Pub. L. 83-703; 68 Stat. 919; 42 U.S.C. 2051; and Title I, section 107 of the Energy Reorganization Act of 1974; Pub. L. 93-458; 88 Stat. 1240; U.S.C. 5817; Department of Energy Organization Act, Pub. L. 95-91, section 102 and 203; Pub. L. 93-409, section 12(a); Pub. L. 94-163, section 337; Pub. L. 93-577, section 4(d); Pub. L. 93-275, section 5; Pub. L. 95-39, Title V, section 502 (7).

28. *Materials Allocation.*—Section 104, Energy Policy and Conservation Act (EPCA), section 101(c) Defense Production Act of 1950, as amended (DPA), 50 U.S.C. 2071(c), section 7, Executive Order 11912, April 13, 1976, Defense Mobilization Order No. 13, September 22, 1976, 41 FR 43720; Department of Commerce, Bureau of Domestic Commerce, Delegation 4, 41 FR 52331, MA Regulations 10 CFR 216; Department of Energy Organization Act, 42 U.S.C. 7101; Pub. L. 95-91.

29. *Basic Energy Sciences, High Energy and Nuclear Physics, and Advanced Technology and Assessment Projects.*—Atomic Energy Act of 1954, as amended, section 31; Pub. L. 83-703; 68 Stat. 919; 42 U.S.C. 2051; and Title I, section 107, of the Energy Reorganization Act of 1974; Pub. L. 93-438; 88 Stat. 1240; 42 U.S.C. 5817; Department of Energy Organization Act; 42 U.S.C. 7101; Pub. L. 95-91.

30. *Energy Extension Service.*—National Energy Extension Service Act; Title V, Pub. L. 95-39; Department of Energy Organization Act, 42 U.S.C. 7101; Pub. L. 95-91.

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Federal Register

THURSDAY, NOVEMBER 16, 1978
PART VI



DEPARTMENT OF TRANSPORTATION

Coast Guard

COMMERCIAL DIVING OPERATIONS

General Provisions

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[4910-14-M]

Title 46—Shipping

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 76-009]

PART 197—GENERAL PROVISIONS

Commercial Diving Operations

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is issuing regulations governing commercial diving operations from vessels and facilities including vessels required to have a Certificate of Inspection; deepwater ports; and artificial islands, installations, other devices, or otherwise related to activities on the Outer Continental Shelf. Commercial diving exposes individual divers to many hazardous situations that can and have caused marine casualties. These regulations prescribe safety and health standards for commercial diving operations.

EFFECTIVE DATE: February 1, 1979.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: The Coast Guard published an Advance Notice of Proposed Rulemaking (ANPRM) on August 11, 1975 (40 FR 33681), proposing to amend chapter I of title 46 of the Code of Federal Regulations (CFR) by adding a new subchapter prescribing marine occupational safety and health standards for vessels and facilities that are under Coast Guard jurisdiction. In this ANPRM the Coast Guard proposed to regulate all working conditions and work places under Coast Guard jurisdiction if they are determined to be hazardous to employees, and if the Coast Guard determines that the hazards encountered can be reduced or eliminated by the promulgation of effective regulations.

The Occupational Safety and Health Administration (OSHA), Department of Labor, published an announcement in the FEDERAL REGISTER on October 22, 1975 (40 FR 49123), that it would hold an informal fact-finding hearing on commercial diving operations. The Coast Guard participated in this informal hearing that was conducted in Washington, D.C. on November 11 through 14, 1975.

On June 15, 1976 OSHA published a 6-month Emergency Temporary Standard (ETS) for commercial diving in the FEDERAL REGISTER (41 FR 24272). A Memorandum of Understanding (MOU), covering the relationship between OSHA and the Coast Guard during the 6-month period of the ETS and also during the period of development of final Coast Guard regulations for commercial diving, was signed on June 9, 1976, by the Commandant of the Coast Guard and the Assistant Secretary of Labor for Occupational Safety and Health. The text of the MOU was published with the ETS (41 FR 24291) and contained a provision terminating the MOU "upon the effective date of the Coast Guard standards * * * pertaining to diving operations." The ETS was withdrawn by OSHA on November 5, 1976 (41 FR 48969).

On July 15, 1976, the Coast Guard published an ANPRM in the FEDERAL REGISTER (41 FR 29151) stating that it was considering new regulations prescribing occupational safety and health standards for commercial diving. The Coast Guard invited specific public advice and recommendations on nine enumerated areas, and any general comments to assist it in developing new occupational safety and health regulations for commercial diving in areas of Coast Guard jurisdiction.

During August 1976, the OSHA Advisory Committee on Construction Safety and Health met to discuss materials and information relating to the occupational safety and health aspects of commercial diving operations and to make recommendations to OSHA. The Coast Guard participated in this public proceeding.

On November 5, 1976 OSHA published a Notice of Proposed Rulemaking (NPRM) and Notice of Public Hearings in the FEDERAL REGISTER (41 FR 48950) covering commercial diving operations. Pursuant to the MOU between the Coast Guard and OSHA, the Coast Guard published a Notice in the FEDERAL REGISTER (41 FR 48969 and 41 FR 49208) joining OSHA in the public hearings, scheduled for December 16 through 17, 1976, in New Orleans, to receive public comments for the Coast Guard on the substance of the OSHA proposed standards. During the joint public hearings (December 16 through 21, 1976, and January 10 through 14, 1977) the Coast Guard gave the public an opportunity to comment on Coast Guard regulatory concepts that would be substantively similar to the OSHA proposed standards for commercial diving operations.

On July 22, 1977 OSHA published its final commercial diving standard in the FEDERAL REGISTER (42 FR 37650). Under section 4(b)1 of the Occupational Safety and Health Act of 1970, the OSHA standards do not apply to those diving operations over which the Coast Guard exercises its statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health.

On November 10, 1977, the Coast Guard published a NPRM in the FEDERAL REGISTER (42 FR 58712), with corrections on November 21, 1977 (42 FR 59763), governing commercial diving operations from vessels and facilities subject to Coast Guard jurisdiction. In developing this proposal, the Coast Guard met at various times beginning in 1975 with members of the National Offshore Operations Industry Advisory Committee (NOOIAC). NOOIAC submitted its recommendations to the Coast Guard on June 15, 1977. These recommendations, along with the comments received as a result of the ANPRMs and joint OSHA/CG rulemaking activities, were taken into consideration for the purpose of the NPRM. Pursuant to the MOU the proposed regulation was considered to be substantively similar to the final OSHA commercial diving standard.

The public comment period for the NPRM remained open for written comments until December 27, 1977. A total of 29 written comments were received during the comment period. Commentors included private individuals; companies representing diving contractors, insurance consultants, manufacturers, a deepwater port, offshore exploration; industry and trade associations; five national recreational and sport diving training organizations; and a labor union.

As a result of these written comments, the regulations were revised in part. Many revisions have been made to the regulations to improve clarity without changing the substance of the regulations. Those changes that significantly alter the proposed regulations and those items that received considerable comment and have not been revised and discussed below.

This rule has been reviewed under the Department of Transportation's "Policies Procedures for Simplification, Analysis, and Review of Regulations" (43 FR 9582, March 8, 1978). An evaluation has been prepared, and has been included in the public docket.

DRAFTING INFORMATION

The principal persons involved in drafting this proposal are: Commander Peter T. Muth, Project Manager, Office of Merchant Marine Safety and Mr. Edward J. Gill, Jr., Project Attorney, Office of the Chief Counsel.

DISCUSSION OF MAJOR COMMENTS

PREAMBLE

Although the preamble to the proposed rule indicated that the proposal did not address the qualifications of individual dive team members, including the medical requirements, with the reasons therefor, two commentors made suggestions and recommendations in this area. One commentor commended the Coast Guard for its position on medical qualifications while suggesting that rulemaking for other personnel qualifications be initiated. The other commentor suggested that, as a minimum, the Coast Guard incorporate into this final rule the diving medical guidelines including the psychological screening requirements of the U.S. Navy. The Coast Guard agrees that the qualification of individual dive team members, especially the medical requirements, are important, and has noted that the commercial diving industry, subject to the jurisdiction of the Coast Guard, has established a school to train commercial divers; has physicians trained and experienced in hyperbaric medicine either employed full time or on-call by individual companies and the commercial diving school; has developed and vigorously follows an on-the-job training program encompassing all facets of commercial diving activities; and has established safety and health programs within most individual companies. It is the intent of the Coast Guard to regulate commercial diving operations on vessels and facilities subject to the jurisdiction of the Coast Guard to the extent necessary to insure an acceptable level of personnel safety and health. After careful reconsideration, the Coast Guard has reaffirmed its prior determination that it will not regulate in these areas at this time; however, the Coast Guard intends to publish an Advance Notice of Proposed Rulemaking concerning the qualifications of dive team members including medical requirements.

GENERAL

Several commentors were unsure about the application of this regulation to one atmosphere observation bells, suits, or submersibles. By the definition of "diver," those applications are not covered. The definition of "PVHO" was rewritten to clarify any possible misunderstanding by specifically excluding one atmosphere devices and to preclude a potential erroneous interpretation that the exterior pressure criteria of the ASME Code and ASME PVHO-1 was not required. All the requirements of ASME PVHO-1 are mandatory for new PVHO's. The requirements of 46 CFR 54 or as an alternative, Section VIII, Division 1 of the ASME Code, are, and have been, mandatory for existing PVHO's and include external pressure criteria. The requirements of ASME PVHO-1 are not mandatory for existing PVHO's under § 197.328(b).

Two commentors expressed concern over the exemption from the regulations of diving operations for marine scientific research and development purposes being limited to those conducted by educational institutions. The commentors suggested the words "by educational institutions" be deleted. The Coast Guard does not agree and foresees considerable difficulty differentiating between commercial diving operations for profit under the guise of research and development, and diving operations for purely marine scientific research and development purposes unless the limitation "by educational institutions" is retained.

The regulations allow the Coast Guard to accept substitutes for equipment, materials, apparatus, arrangements, procedures, or tests required by this subpart if the substitute provides an equivalent level of safety. Specific wording permitting equivalent substitutes has been removed from all sections of this rule except in the standard for helium, § 197.340(h). This permits the diving supervisor to determine equivalency to the required standards for helium when helium is obtained outside the United States without applying to the Commandant of the Coast Guard. This does not permit the diving supervisor to use helium meeting a lesser standard as a breathing gas, but only helium meeting the published standard.

Seventeen commentors offered 90 suggestions including numerous alternatives and alternative wording for § 197.208 on the designation of the person-in-charge and the other sections impacted by this section. These comments were accepted, in part, and the regulation has been completely rewritten to clearly define and assign responsibility where it belongs. This necessitated the addition of definitions for "diving supervisor" and "diving installation" and the addition § 197.210 and 197.404. The person-in-charge remains responsible for the vessel or facility, its operation and safety, and the records and reports required by statute or regulation. In addition, the person-in-charge must coordinate the activities on and of the vessel or facility with the diving supervisor so as not to endanger the dive team conducting diving operations. The diving supervisor is in charge of the planning and execution of the commercial diving operation and is responsible for the diving installation, the safety and health of the dive team, and the records and reports required. In addition, the diving supervisor must immediately notify the person-in-charge when a diving accident or casualty occurs, must keep the person-in-charge informed, and coordinate any changes to the planned diving operation with the person-in-charge.

EQUIPMENT

The equipment specifications and equipment requirements apply to each vessel or facility conducting commercial diving operations having a portable diving installation or having an installed diving installation. Nothing in this subpart amends or supercedes the requirements contained in other parts of titles 33 and 46 CFR for the design, plan approval, construction, certification, and inspection required of those vessels or facilities subject to this subpart conducting commercial diving operations and having installed diving systems. Therefore, permanently installed diving installations aboard certificated vessels must comply with 46 CFR 54 regarding pressure vessels, with 46 CFR 56 regarding pressure piping, and with 46 CFR 110 through 113 regarding electrical systems in addition to complying with this subchapter.

Three commentors recommended modification of the requirement that breathing supply hoses be made of kink-resistant material to allow use of synflex hose. The Coast Guard agrees that the wording of the proposal did not allow the use of synflex hose nor properly reflect what was intended. Section 197.312(a)(4) has been modified to clarify that breathing supply hoses are to resist kinking, and that the method of achieving this can be either by initial design and construction of the hose, or by supporting the hose in such a manner as to make it resistant to kinking.

Two comments were received on § 197.312(b)(2). The Coast Guard feels that the present wording clearly shows that markings are required only on diver and open bell umbilicals, not closed bell umbilicals, and that further clarification is unnecessary.

Paragraphs 197.314 (a)(1) and (c)(4) were modified to clarify intent and to specify the contents, dimensions, and packaging of the medical kit in response to several comments received.

In response to a commentor's question, the Coast Guard modified § 197.314(b) to clarify the two-way communications system requirement. This change permits substitution of the vessel or facility ship-to-shore, two-way communications system for the system required by this section if it is readily available to obtain emergency medical assistance.

Three commentors noted that the depth requirement as to when a decompression chamber was required differed between the Coast Guard and

OSHA standards. Two commentors did not offer an opinion as to the depth when it should be required, but recommended that the two agencies agree to the same figure of either 130 fsw or 100 fsw. The other commentor proposed adoption of 66 fsw with the no-decompression limit, or adoption of 100 fsw with the no-decompression limit and an additional requirement of having a decompression chamber any time a diver is working in a "contained space" where there is a chance of becoming "hung-up." This commentor also noted that a secondary breathing gas supply was required when a decompression chamber is required.

The requirement to have a decompression chamber at the dive location also requires additional associated equipment for the chamber (i.e., handling gear to load, unload, and position the decompression chamber; hoses and piping; a secondary breathing gas supply; a larger primary breathing gas supply; and breathing gases for treatment of decompression sickness); additional personnel to load, unload, and operate the decompression chamber and associated equipment; a substantially larger dive location capable of providing the extra space needed and supporting the additional weight; and a method of transportation with at least a fivefold, increased weight-handling capability over a dive not requiring a decompression chamber. Additionally, the requirements for a standby diver, individual surface tending, and more detailed record keeping are based on the determination of where the increased risks to a diver exist.

The incidence rate of decompression sickness among all divers diving within the no-decompression limit at depths less than 130 fsw is very small. Gas embolism can occur at almost any depth, but occurs more frequently at depths less than 66 fsw. (This may be because most air dives take place at depths less than 66 fsw.) Also, the incidence rate occurs more frequently when using SCUBA equipment. However, among experienced divers the incidence rate of gas embolism is small.

It is the opinion of the Coast Guard, based on a review of the entire record as set forth in the preamble of the NPRM, the diver's work environment, and a review of the experience of hundreds of thousands of air dives by military, civilian, governmental, commercial, sport, and recreational, and scientific divers all using the U.S. Navy air tables, that the requirement for a decompression chamber need not be set at a depth less than 130 fsw to protect against potential decompression sickness. The Coast Guard feels a 20 fsw requirement in lieu of a 66 fsw or 100 fsw requirement is not an unreasonable depth to require equipment for treatment of gas embolism. However, a review of the record and comments cited in the NPRM and the experience of many dives does not support protecting commercial divers (professionals) for possible gas embolism by providing additional personnel and equipment for no-decompression dives at depths less than 130 fsw.

After careful reconsideration and reexamination of the comments and records mentioned above, the Coast Guard reaffirms the 130 fsw decompression chamber requirement. However, the Coast Guard agrees with the general philosophy of the commentors regarding a single Federal standard for the same marine activity and has been discussing this subject with OSHA to resolve this issue. Both the Coast Guard and OSHA have determined that additional public input on this subject is desirable and both agencies intend to request additional public comment in a future notice in the FEDERAL REGISTER.

In answer to a commentor, the requirement of § 197.314(c)(5) to have a "capability" could be discharged by having specialized equipment such as a Stoke's litter with the personnel needed to carry it available or by having sufficient personnel to assist an injured diver into the decompression chamber. The wording of this section allows future equipment development to occur that may replace the most common present system of having "sufficient personnel" as long as the objective of getting the injured diver inside the decompression chamber is met.

One commentor recommended that dives at depths less than 40 fsw, or those not involving decompression, be exempt from the requirements of § 197.318. The Coast Guard disagrees. Neither ascent and descent rates nor bottom time can be determined without a timekeeping device. The diving supervisor may not be able to determine whether a diver has been at depths that require a decompression obligation without a gage available indicating diver depth (i.e., a diver working at 28 fsw for 6 hours vice at 32 fsw for 6 hours). Without the combined information of bottom time and depth available to the diving supervisor, the safety and health of the diver may be in jeopardy.

Many commentors objected to, and offered rewording for, "be made of corrosion-resistant material" where required for diving ladders, stages, and open bells (§§ 197.320 and 197.334). The Coast Guard agrees that the wording of the proposal was too restrictive and has rewritten those requirements. This wording allows either construction using corrosion-resistant material, or application of anti-corrosion coatings to protect the structural integrity of the device.

Two commentors suggested that the requirement of § 197.320(b)(3) be modified to allow the use of a diving ladder instead of a diving stage under certain conditions. The Coast Guard disagrees. Divers diving at depths deeper than 130 fsw, or outside the no-decompression limits, are more likely to be tired and need the additional assistance a diving stage affords over a diving ladder. A diving stage also provides a haven during in-water decompression stops. If because of conditions at the dive site, the use of a diving stage would likely cause an injury, § 197.202(b) allows a deviation from this requirement. If the use of the diving stage is unreasonable or impractical, § 197.206(b) provides that the Commandant of the Coast Guard may permit the use of alternative equipment or procedures that insure a degree of safety consistent with the minimum standard afforded by a diving stage.

One commentor suggested that § 197.326(b) be amended to allow ball valves to be used as PVHO pressure boundary shutoff valves in oxygen systems. The Coast Guard agrees and has amended the proposal accordingly.

Section 197.328(d)(3) has been changed in response to one commentor to clearly indicate that overpressurization of the PVHO is intended to be protected by this requirement and not the pressure piping. Pressure piping is protected by the pressure relief devices required by the ANSI Code.

The requirement that each PVHO must have a pressure sealing hatch (§ 197.328(c)(4) of the proposal) has been deleted. This requirement did not add anything that was not already required by the design Codes and was a point of confusion to two commentors.

Three commentors recommended modifications to the requirement for PVHO two-way voice communications systems. These comments were accepted, in part, and § 197.328(d) (6) and (7) and § 197.332(m) have been rewritten to clearly specify intent and set forth the requirements. The Coast Guard considers voice communications between the diving supervisor and occupants of a PVHO, between occupants in separately pressurized compartments of the same PVHO, and between the occupant of a closed bell and a diver in the water being supported from that closed bell as the minimum standards for the safety and health of the dive team members. Additionally, if two separate PVHO's are designed to mechanically couple and become in effect one PVHO, these two-way voice communications system requirements apply when the PVHO's are mechanically coupled. The Coast Guard did not intend to have redundant sound-powered communications systems in decompression chambers, and permits only one two-way voice communications system in a decompression chamber if the system is sound-powered. The configuration and operation of the required communications system is not specified, allowing any system that provides the required two-way voice contacts.

Four commentors pointed out that internal pressure gages were not required for PVHO's unless the PVHO atmosphere can be controlled internally. The Coast Guard agrees and has rewritten § 197.328(d)(7).

The Coast Guard has rewritten the viewport requirements of § 197.328(d) (8) and (9). As previously worded, it could have been interpreted to require that all occupants of dual- or multiple-lock PVHO's had to be seen from the exterior through one viewport, even if the PVHO has more than one viewport. In most situations, this would be impossible. The intent of the regulation is to require sufficient viewports to allow observation of all occupants from the exterior. If a PVHO is designed such that a single viewport would allow observation of all occupants, that design would satisfy this requirement.

Three commentors made suggestions concerning the requirement for a fire extinguisher inside a PVHO. The Coast Guard reviewed the causes of several PVHO fires, and has amended the proposed regulations to require a means of extinguishing a fire in the interior. Past experience indicates that fire prevention is most important and can be enhanced by keeping combustible materials, sources of heat and sparks, and all nonessential or potentially hazardous equipment, including electrical systems, to an absolute minimum inside a PVHO. Known combustible materials or sources of ignition required inside a PVHO should be isolated from the PVHO atmosphere and purged with inert gas, where possible, or maintained in a area easily accessible by an occupant to facilitate extinguishing a fire. Localized fires that have been combatible in the past have been extinguished with water or sand.

Two commentors recommended that § 197.328(c)(19) of the NPRM be amended to exempt additional electrical equipment inside PVHO's such as communications speakers and medical measurement instrumentation. Electrical systems, besides being a potential shock hazard, can present a source of ignition as well as the fuel required for combustion. Additionally, electrical shock hazards and possible galvanic action of the PVHO need to be considered when designing and maintaining interior electrical systems. The Coast Guard has carefully reviewed the proposed requirements and the comments received in the context of present-day equipment available, and has rewritten § 197.328(d)(18).

One commentor requested clarification of § 197.330(a)(6). This requirement assists surface personnel in locating and retrieving a closed bell after the umbilical has been severed. The emergency locating device required is not limited to the following but could be, active (i.e., an acoustical pinger), passive (i.e., a sonar reflector or target), or some other device (i.e., a surface buoy with attaching line releasible by either the closed bell occupants and/or remotely from the surface).

Three commentors suggested alternative language and alternatives to the requirements for a 12-hour breathing gas supply independent of the surface. The Coast Guard agrees, in part, with the suggestions and has rewritten § 197.330(a)(8). This revision recognizes that scrubbing and recirculating of breathing gases is an alternative to an independent breathing gas supply of sufficient volume and pressure to last for 12 hours. Also, having a sufficient breathing gas supply does not by itself provide life support as other considerations must be taken into account (i.e., thermal protection). The revision also allows a reduced life support capability if there are two independent retrieval systems for the closed bell.

One commentor suggested that § 197.332(d) be reworded to account for shipping dogs. Shipping dogs are constructed to be operated from only one side of a man-way or hatch, are never used to obtain a pressure seal, and are only used during shipping to prevent damage to the decompression chamber. When the decompression chamber is occupied, shipping dogs are removed or disabled by securing them out of the way. The Coast Guard agrees and has revised this requirement.

The proposed illumination levels for the interior of a decompression chamber were addressed by five commentors. Two commentors suggested deletion of the requirement as illumination was already covered by "PVHO-General" requirements. Two commentors expressed concern regarding fire prevention. Comments also addressed the "convenience" aspects of bunk reading lights. The Coast Guard agrees, in part, with the philosophy expressed; however, the lighting requirements addressed within the decompression chamber requirements are in addition to "General" PVHO illumination requirements. The general PVHO illumination requirement addressed work and operating conditions. The decompression chamber interior illumination requirement is directed not toward "convenience items" but being able to visually observe, treat, medically diagnose, and medically assist, if necessary, occupants undergoing decompression or treatment for decompression sickness. Therefore, the Coast Guard has rewritten § 197.332(e) for clarity.

The requirement for compressed gas cylinders, § 197.338(e), has been modified to allow the use of cylinders designed and constructed under the requirements of Part 54 of this Chapter, which requires a greater design safety factor for pressure vessels aboard certificated vessels than the standard of 49 CFR 178 Subpart C.

Two commentors recommended that § 197.346(b) be modified to allow a diver to select equipment he will use for a particular dive. The Coast Guard agrees in part, and has modified this requirement by requiring that a helmet cushion and weighted shoes be provided to the diver, but has not required them to be worn by the diver. When using a heavy-weight diving outfit, the absence of weighted shoes could pose an unintended risk to a diver's safety under some conditions; however, this risk may be avoided by the use of leg or ankle weights.

One commentor observed that the requirements of § 197.346(d)(5) regarding a "life-line" and a "communications cable" can be met in some cases by a communications cable in the hose group that has a breaking strength equal to or exceeding that required of a life-line. The Coast Guard agrees, and under such a circumstance would not require a separate life-line.

One commentor suggested that § 197.346(f) be modified to also exclude from the diver-carried reserve breathing gas requirement, diving with a stage nearby having a sufficient supply of breathing gases or a closed or open bell. The Coast Guard disagrees. An inexhaustable supply of breathing gas just beyond the immediate reach of a diver in distress may never be used. A reserve breathing gas supply, when required, should always be within the immediate reach of a diver, except when it becomes a greater hazard to the diver's safety than the diver not having it. In such a case, alternatives, such as the commentor suggested, should be considered.

OPERATIONS

One commentor requested clarification of what was meant by the post dive requirement in the proposal to check the physical condition of the diver. This has been clarified in § 197.410(a)(7)(i).

Five commentors suggested the requirement proposed in § 197.420(a) to have an operations manual prepared for each vessel or facility from which diving operations are conducted be modified. The Coast Guard agrees, in part, and with the rewriting of respon-

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sibilities has revised this requirement so that the diving supervisor provides to the person-in-charge and the dive team an operations manual. The intent of the proposed requirement to have an operations manual tailored to a specific situation is retained by requiring certain modifications to be made in writing.

SPECIFIC DIVING MODE PROCEDURES

Two commentors proposed that the depth requirement for the use of a closed bell (§ 197.434(d) of this rule) be changed from 300 fsw to 350 fsw. The Coast Guard disagrees. The Coast Guard, however, realizes that there may be specific commercial diving operations at depths greater than 300 fsw where the use of a closed bell may not be indicated and feels that § 197.206(b) allows a viable alternative.

One commentor pointed out that the proposed requirement in § 197.434(f)(2), that a standby diver be available one hour before the return of a closed bell to the dive location during saturation diving is impractical. An operational emergency could arise at any time that could require returning the closed bell to the dive location. The Coast Guard agrees and has rewritten the proposed requirements as § 197.434(g). The standby diver requirement for closed bell retrieval during saturation diving has been removed. A requirement that a member of the topside crew be diver-qualified and available has been substituted.

One commentor requested clarification of the prohibition against liveboating at night. The intent was to prohibit liveboating operations when the direction that the umbilical tends in the water, or when the "bubbles" from the diver, are not visible to the dive team member at the dive location continuously tending the diver. Also, the vessel from which liveboating operations are being conducted should be visible to other vessels transiting the area for the safety of the diver. This clarification has been made by prohibiting liveboating from 1 hour after sunset to 1 hour before sunrise or during periods of restricted visibility as defined in a new § 197.436(b).

Two commentors proposed that the depth limitation for liveboating be changed from 200 fsw to 250 fsw. The figure of 200 fsw appearing in § 197.436(a) was an unnoticed, typographical error appearing in the NPRM. The Coast Guard intended that there be a limitation of 220 fsw which is compatible with the 220 fsw bell requirement. The Coast Guard disagrees with changing the limitation for liveboating from 220 to 250 fsw. However, § 197.206(b) provides an alternative when there is a specific commercial diving operation that requires liveboating at depths greater than 220 fsw.

One commentor felt the requirement for a diver pick-up boat during liveboating operations was unnecessary as the vessel from which liveboating is supported should be able to make the diver pick-up. The commentor felt a second vessel might exacerbate the hazard to the diver in the water. However, under the worst situation, the vessel is most likely to have its screws fouled with a severed umbilical and be dead-in-the-water. Further, liveboating by definition could be conducted from a barge. Diver pick-up, in either case, might be difficult without the required pick-up boat, if possible at all. The Coast Guard has retained the requirement for a boat for diver pick-up in § 197.436(a)(4) thereby allowing the person-in-charge the option to utilize his vessel or the boat for picking up the diver in distress, whichever under the specific circumstances would be more appropriate.

PERIODIC TESTS AND INSPECTIONS OF DIVING EQUIPMENT

One commentor recommended that the words "repair or modification" in § 197.450(a) be changed to "overhaul" because there are many repairs or modifications that may not affect the quality of the breathing gas output of an air compressor. The same argument could be used regarding the word "overhaul." The tests required are not only for quality but also for quantity. The tests required are to be performed after every repair or modification to the compressor (such as, the speed at which it is driven, pressure boundaries, intake and exhaust piping arrangements, etc.) which might affect the quantity and/or quality of the compressor output. Retightening a foundation mounting nut of the compressor or straightening a bent dip stick on the prime mover are not intended to be considered "repairs" under this section.

One commentor suggested that a Compressed Gas Association (CGA) pamphlet, G-4.1 entitled "Cleaning Equipment for Oxygen Service," be referenced in § 197.452 and other CGA pamphlets be referenced elsewhere in this regulation. The Coast Guard disagrees. The Coast Guard, in preparing the NPRM, considered all CGA standards through December 1976 and found many of the standards had already made their way into regulations. Some of these regulations have been referenced in this subpart and thereby incorporated (i.e., 49 CFR 173.34 incorporated CGA pamphlet C-6, 1968 edition, and CGA pamphlet C-8, 1972 edition). The Coast Guard noted during its review of the CGA standards and publications that they were not developed with human life support under hyperbaric conditions as the main objective and therefore in some areas were neither complete nor acceptable.

One commentor recommended the exclusion of cylinders from the requirements of § 197.462 since they would be tested according to the appropriate DOT regulations. The Coast Guard disagrees. It is not the Coast Guard's intention to subject any pressure vessel to duplicate inspection and testing requirements. The "appropriate DOT regulations" apply to cylinders in interstate commerce and may not cover after purchase a significant percentage of cylinders used for diving. If a cylinder is inspected and tested annually with a hydrostatic test every fifth year in accordance with 49 CFR 173.34, it meets the requirements of this section.

One commentor expressed concern regarding the leak test requirement. In response, the Coast Guard has rewritten § 197.462(g) to set out the leak test procedures.

RECORDS

The revision of this regulation previously discussed regarding the person-in-charge and diving supervisor, required major revision to this portion of the regulations. The official logbook (Coast Guard form CG-706) required by statute is retained. Those vessels or facilities not required to have an official logbook by 46 U.S.C. 201 are required to have a logbook, as is the diving supervisor. The size, shape, and form of the logbook is left to the discretion of the person-in-charge or diving supervisor. The entries of the person-in-charge in either the official logbook or logbook have been reduced in quantity.

The entries required of the diving supervisor to be entered in the supervisor's logbook are much more detailed. They include entries similar to those required to be entered by the person-in-charge, specific information about the dive and divers, a record of the diving activity, equipment history including testing, etc. The Coast Guard recognizes that many of the records and entries required are not kept at the dive location. The Coast Guard does not require copying the information into the logbook or duplicating these existing records, as long as an entry is made in the diving supervisory's logbook at the dive location indicating where the records are physically available.

Several commentors suggested that form CG-2692 was not indicated for a diving casualty as required by § 197.486(b) but rather for a vessel casualty not involving diving. The Coast Guard agrees and has deleted this requirement. Section 197.486 was also rewritten to clarify that form CG-924E is required only when the dive location is a vessel, and that a written narrative report is required when the dive location is a facility.

In consideration of the foregoing, Chapter I of Title 46 of the Code of Federal Regulations is amended as follows:

PART 54—PRESSURE VESSELS

1. By adding a new § 54.01-17 to read as follows:

§ 54.01-17 Pressure vessel for human occupancy (PVHO).

Pressure vessels for human occupancy (PVHO's) must meet the requirements of subpart B (Commercial Diving Operations) of part 197 of this chapter.

PART 56—PIPING SYSTEMS AND APPURTENANCES

2. By adding a new § 56.50-110 to read as follows:

§ 56.50-110 Diving support systems.

(a) In addition to the requirements of this part, piping for diving installations which is permanently installed on the vessel must meet the requirements of subpart B (Commercial Diving Operations) of part 197 of this chapter.

(b) Piping for diving installations which is not permanently installed on the vessel need not meet the requirements of this part, but must meet the requirements of subpart B of part 197 of this chapter.

(c) Piping internal to a pressure vessel for human occupancy (PVHO) need not meet the requirements of this part, but must meet the requirements of subpart B of part 197 of this chapter.

PART 110—GENERAL PROVISIONS

3. By adding a new § 110.05-8 to read as follows:

§ 110.05-8 Electrical systems internal to pressure vessels for human occupancy (PHVO).

Electrical systems internal to a pressure vessel for human occupancy (PVHO) need not meet the requirements of this subchapter, but must meet the requirements of subpart B (Commercial Diving Operations) of part 197 of this chapter.

4. And by adding a new subchapter V, consisting at this time of part 197, subpart B, to read as follows:

SUBCHAPTER V—MARINE OCCUPATIONAL SAFETY AND HEALTH STANDARDS

PART 197—GENERAL PROVISIONS

Subpart A—(Reserved)

Subpart B—Commercial Diving Operations

GENERAL

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197.200 Purpose of subpart.
197.202 Applicability.
197.204 Definitions.
197.205 Availability of standards.
197.206 Substitutes for required equipment, materials, apparatus, arrangements, procedures, or tests.
197.208 Designation of person-in-charge.
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EQUIPMENT

197.300 Applicability.
197.310 Air compressor system.
197.312 Breathing supply hoses.
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197.318 Gages and timekeeping devices.
197.320 Diving ladder and stage.
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197.324 Diver's safety harness.
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197.328 PVHO—General.
197.330 PVHO—Closed bells.
197.332 PVHO—Decompression chambers.
197.334 Open diving bells.
197.338 Pressure piping.
197.338 Compressed gas cylinders.
197.340 Breathing gas supply.
197.342 Buoyancy-changing devices.
197.344 Inflatable flotation devices.
197.346 Diver's equipment.

OPERATIONS

197.400 Applicability.
197.402 Responsibilities of the person-in-charge.
197.404 Responsibilities of the diving supervisor.
197.410 Dive procedures.
197.420 Operations manual.

SPECIFIC DIVING MODE PROCEDURES

197.430 SCUBA diving.
197.432 Surface-supplied air diving.
197.434 Surface-supplied mixed gas diving.
197.436 Liveboating.

PERIODIC TESTS AND INSPECTIONS OF DIVING EQUIPMENT

197.450 Breathing gas tests.
197.452 Oxygen cleaning.
197.454 First aid and treatment equipment.
197.456 Breathing supply hoses.
197.458 Gages and timekeeping devices.
197.460 Diving equipment.
197.462 Pressure vessels and pressure piping.

RECORDS

197.480 Logbooks.
197.482 Logbook entries.
197.484 Notice of casualty.
197.486 Written report of casualty.
197.488 Retention of records after casualty.

Appendix A: Air no-decompression limits.

AUTHORITY: (46 U.S.C. 239; 46 U.S.C. 390b; 46 U.S.C. 391a; 33 U.S.C. 1509(b); 43 U.S.C. 1333(d)(1); 43 U.S.C. 1331 et seq., as amended by Sec. 203 and 208 of Pub. L. 95-372; 46 U.S.C. 395; 46 U.S.C. 375; 46 U.S.C. 391; 46 U.S.C. 392; 46 U.S.C. 416; 49 U.S.C. 1655(b); 49 CFR 1.46 (b) and (s).)

Subpart A—[Reserved]

Subpart B—Commerical Diving Operations

GENERAL

§ 197.200 Purpose of subpart.

This subpart prescribes rules for the design, construction, and use of equipment, and inspection, operation, and safety and health standards for commercial diving operations taking place from vessels and facilities under Coast Guard jurisdiction.

§ 197.202 Applicability.

(a) This subpart applies to commercial diving operations taking place at any deepwater port or the safety zone thereof as defined in 33 CFR 150; from any artificial island, installation, or other device on the Outer Continental Shelf and the waters adjacent thereto as defined in 33 CFR 147 or otherwise related to activities on the Outer Continental Shelf; and from all vessels required to have a certificate of inspection issued by the Coast Guard including mobile offshore drilling units regardless of their geographic location, or from any vessel connected with a deepwater port or within the deepwater port safety zone, or from any vessel engaged in activities related to the Outer Continental Shelf; except that this subpart does not apply to any diving operation—

(1) Performed solely for marine scientific research and development purposes by educational institutions;

(2) Performed solely for research and development for the advancement of diving equipment and technology; or

(3) Performed solely for search and rescue or related public safety purposes by or under the control of a governmental agency.

(b) Diving operations may deviate from the requirements of this subpart to the extent necessary to prevent or minimize a situation which is likely to cause death, injury, or major environmental damage. The circumstances leading to the situation, the deviations made, and the corrective action taken, if appropriate, to reduce the possibility of recurrence shall be recorded by the diving supervisor in the logbook as required by § 197.482(c).

§ 197.204 Definitions.

As used in this subpart:

"ACFM" means actual cubic feet per minute.

"ANSI Code" means the B31.1 American National Standards Insti-

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tute "Code for Pressure Piping, Power Piping."

"ASME Code" means the American Society of Mechanical Engineers "Boiler and Pressure Vessel Code."

"ASME PVHO-1" means the ANSI/ASME standard "Safety Standard for Pressure Vessels for Human Occupancy."

"ATA" means a measure of pressure expressed in terms of atmosphere absolute (includes barometric pressure).

"Bell" means a compartment either at ambient pressure (open bell) or pressurized (closed bell) that allows the diver to be transported to and from the underwater work site, allows the diver access to the surrounding environment, and is capable of being used as a refuge during diving operations.

"Bottom time" means the total elapsed time measured in minutes from the time the diver leaves the surface in descent to the time to the next whole minute that the diver begins ascent.

"Breathing gas/breathing mixture" means the mixed-gas, oxygen, or air as appropriate supplied to the diver for breathing.

"Bursting pressure" means the pressure at which a pressure containment device would fail structurally.

"Commercial diver" means a diver engaged in underwater work for hire excluding sport and recreational diving and the instruction thereof.

"Commercial diving operation" means all activities in support of a commercial diver.

"Cylinder" means a pressure vessel for the storage of gases under pressure.

"Decompression chamber" means a pressure vessel for human occupancy such as a surface decompression chamber, closed bell, or deep diving system especially equipped to recompress, decompress, and treat divers.

"Decompression sickness" means a condition caused by the formation of gas or gas bubbles in the blood or body tissue as a result of pressure reduction.

"Decompression table" means a profile or set of profiles of ascent rates and breathing mixtures designed to reduce the pressure on a diver safely to atmospheric pressure after the diver has been exposed to a specific depth and bottom time.

"Depth" means the maximum pressure expressed in feet of seawater attained by a diver and is used to express the depth of a dive.

"Dive location" means that portion of a vessel or facility from which a diving operation is conducted.

"Dive team" means the divers and diver support personnel involved in a diving operation, including the diving supervisor.

"Diver" means a person working beneath the surface, exposed to hyperbaric conditions, and using underwater breathing apparatus.

"Diver-carried reserve breathing gas" means a supply of air or mixed-gas, as appropriate, carried by the diver in addition to the primary or secondary breathing gas supplied to the diver.

"Diving installation" means all of the equipment used in support of a commercial diving operation.

"Diving mode" means a type of diving requiring SCUBA, surface-supplied air, or surface-supplied mixed-gas equipment, with related procedures and techniques.

"Diving stage" means a suspended platform constructed to carry one or more divers and used for putting divers into the water and bringing them to the surface when in-water decompression or a heavy-weight diving outfit is used.

"Diving supervisor" means the person having complete responsibility for the safety of a commercial diving operation including the responsibility for the safety and health of all diving personnel in accordance with this subpart.

"Facility" means a deepwater port, or an artificial island, installation, or other device on the Outer Continental Shelf subject to Coast Guard jurisdiction.

"Fsw" means feet of seawater (or equivalent static pressure head).

"Gas embolism" means a condition caused by expanding gases, which have been taken into and retained in the lungs while breathing under pressure, being forced into the bloodstream or other tissues during ascent or decompression.

"Heavy-weight diving outfit" means diver-worn surface-supplied deep-sea dress.

"Hyperbaric conditions" means pressure conditions in excess of surface atmospheric pressure.

"Injurious corrosion" means an advanced state of corrosion which may impair the structural integrity or safe operation of the equipment.

"Liveboating" means the support of a surfaced-supplied diver from a vessel underway.

"Maximum working pressure" means the maximum pressure to which a pressure containment device can be exposed under operating conditions (usually the pressure setting of the pressure relief device).

"No-decompression limits" means the air depth and bottom time limits of appendix A.

"Pressure vessel" means a container capable of withstanding an internal maximum working pressure over 15 psig.

"Psi(g)" means pounds per square inch (gage).

"PVHO" means pressure vessel for human occupancy but does not include pressure vessels for human occupancy that may be subjected to external pressures in excess of 15 psig but can only be subjected to maximum internal pressures of 15 psig or less (i.e., submersibles, or one atmosphere observation bells).

"Saturation diving" means saturating a diver's tissues with the inert gas in the breathing mixture to allow an extension of bottom time without additional decompression.

"SCUBA diving" means a diving mode in which the diver is supplied with a compressed breathing mixture from diver carried equipment.

"Standby diver" means a diver at the dive location available to assist a diver in the water.

"Surface-supplied air diving" means a diving mode in which the diver is supplied from the dive location or bell with compressed breathing air including oxygen or oxygen enriched air if supplied for treatment.

"Surface-supplied mixed-gas diving" means a diving mode in which the diver is supplied from the dive location or bell with a compressed breathing mixture other than air.

"Timekeeping device" means a device for measuring the time of a dive in minutes.

"Treatment table" means a depth, time, and breathing gas profile designed to treat a diver for decompression sickness.

"Umbilical" means the hose bundle between a dive location and a diver or bell, or between a diver and a bell, that supplies the diver or bell with a life-line, breathing gas, communications, power, and heat as appropriate to the diving mode or conditions.

"Vessel" means any waterborne craft including mobile offshore drilling units required to have a Certificate of Inspection issued by the Coast Guard or any waterborne craft connected with a deepwater port or within the deepwater port safety zone, or any waterborne craft engaged in activities related to the Outer Continental Shelf.

"Volume tank" means a pressure vessel connected to the outlet of a compressor and used as an air reservoir.

"Working pressure" means the pressure to which a pressure containment device is exposed at any particular instant during normal operating conditions.

§ 197.205 Availability of standards.

(a) Several standards have been incorporated by reference in this subchapter. The incorporation by reference has been approved by the Director of the FEDERAL REGISTER under the provisions of 1 CFR Part 51.

(b) The standards are available from the appropriate organizations whose addresses are listed below:

(1) American National Standards Institute, 1430 Broadway, New York, N.Y. 10018.

(2) American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, N.Y. 10017.

§ 197.206 Substitutes for required equipment, materials, apparatus, arrangements, procedures, or tests.

(a) The Coast Guard may accept substitutes for equipment, materials, apparatus, arrangements, procedures, or tests required in this subpart if the substitute provides an equivalent level of safety.

(b) In any case where it is shown to the satisfaction of the Commandant that the use of any particular equipment, material, apparatus, arrangement, procedure, or test is unreasonable or impracticable, the Commandant may permit the use of alternate equipment, material, apparatus, arrangement, procedure, or test to such an extent and upon such condition as will insure, to his satisfaction, a degree of safety consistent with the minimum standards set forth in this Subpart.

§ 197.208 Designation of person-in-charge.

(a) The owner or agent of a vessel or facility without a designated master shall designate, in writing, an individual to be the person-in-charge of the vessel or facility.

(b) Where a master is designated, the master is the person-in-charge.

§ 197.210 Designation of diving supervisor.

The name of the diving supervisor for each commercial diving operation shall be—

(a) Designated in writing; and

(b) Given to the person-in-charge prior to the commencement of any commercial diving operation.

EQUIPMENT

§ 197.300 Applicability.

(a) Each diving installation used on each vessel or facility subject to this subpart must meet the requirements of this subpart.

(b) In addition to the requirements of this subpart, equipment which is permanently installed on vessels and is part of the diving installation must meet subchapters F and J of this chapter.

(c) All repairs and modifications to pressure vessels used for commercial diving operations must be made in accordance with the requirements of section VIII, division 1 or division 2 of the ASME Code, ASME PVHO-1, part 54 of this chapter, or 49 CFR 173.34, as applicable.

(d) All repairs and modifications to pressure piping used for commercial diving operations must be made in accordance with the requirements of the ANSI Code or part 56 of this chapter, as applicable.

§ 197.310 Air compressor system.

A compressor used to supply breathing air to a diver must have—

(a) A volume tank that is—

(1) Built and stamped in accordance with section VIII, division 1 of the ASME Code with—

(i) A check valve on the inlet side;

(ii) A pressure gage;

(iii) A relief valve; and

(iv) A drain valve; and

(2) Tested after every repair, modification, or alteration to the pressure boundaries as required by § 197.462;

(b) Intakes that are located away from areas containing exhaust fumes of internal combustion engines or other hazardous contaminants;

(c) An efficient filtration system; and

(d) Slow-opening shut-off valves when the maximum allowable working pressure of the system exceeds 500 psig.

§ 197.312 Breathing supply hoses.

(a) Each breathing supply hose must—

(1) Have a maximum working pressure that is equal to or exceeds—

(i) The maximum working pressure of the section of the breathing supply system in which used; and

(ii) The pressure equivalent of the maximum depth of the dive relative to the supply source plus 100 psig;

(2) Have a bursting pressure of four times its maximum working pressure;

(3) Have connectors that—

(i) Are made of corrosion-resistant material;

(ii) Are resistant to accidental disengagement; and

(iii) Have a maximum working pressure that is at least equal to the maximum working pressure of the hose to which they are attached; and

(4) Resist kinking by—

(i) Being made of kink-resistant materials; or

(ii) Having exterior support.

(b) Each umbilical must—

(1) Meet the requirements of paragraph (a) of this section; and

(2) Be marked from the diver or open bell end in 10-foot intervals to 100 feet and in 50-foot intervals thereafter.

§ 197.314 First aid and treatment equipment.

(a) Each dive location must have—

(1) A medical kit approved by a physician that consists of—

(i) Basic first aid supplies; and

(ii) Any additional supplies necessary to treat minor trauma and illnesses resulting from hyperbaric exposure;

(2) A copy of an American Red Cross Standard First Aid handbook;

(3) A bag-type manual resuscitator with transparent mask and tubing; and

(4) A capability to remove an injured diver from the water.

(b) Each diving installation must have a two-way communications system to obtain emergency assistance except when the vessel or facility ship-to-shore, two-way communications system is readily available.

(c) Each dive location supporting mixed-gas dives, dives deeper than 130 fsw, or dives outside the no-decompression limits must meet the requirements of paragraph (a) of this section and have—

(1) A decompression chamber;

(2) Decompression and treatment tables;

(3) A supply of breathing gases sufficient to treat for decompression sickness;

(4) The medical kit required by paragraph (a)(1) of this section that is—

(i) Capable of being carried into the decompression chamber; and

(ii) Suitable for use under hyperbaric conditions; and

(5) A capability to assist an injured diver into the decompression chamber.

§ 197.318 Gages and timekeeping devices.

(a) A gage indicating diver depth must be at each dive location for surface-supplied dives.

(b) A timekeeping device must be at each dive location.

§ 197.320 Diving ladder and stage.

(a) Each diving ladder must—

(1) Be capable of supporting the weight of at least two divers;

(2) Extend 3 feet below the water surface;

(3) Be firmly in place;

(4) Be available at the dive location for a diver to enter or exit the water unless a diving stage or bell is provided; and

(5) Be—(i) Made of corrosion-resistant material; or

(ii) Protected against and maintained free from injurious corrosion.

(b) Each diving stage must—

(1) Be capable of supporting the weight of at least two divers;

(2) Have an open-grating platform;

(3) Be available for a diver to enter or exit the water from the dive location and for in-water decompression if the diver is—

(i) Wearing a heavy-weight diving outfit; or

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(ii) Diving outside the no-decompression limits, except when a bell is provided; and

(4) Be—(i) Made of corrosion-resistant material; or

(ii) Protected against and maintained free from injurious corrosion.

§ 197.322 Surface-supplied helmets and masks.

(a) Each surface-supplied helmet or mask must have—

(1) A nonreturn valve at the attachment point between helmet or mask and umbilical that closes readily and positively;

(2) An exhaust valve; and

(3) A two-way voice communication system between the diver and the dive location or bell.

(b) Each surface-supplied air helmet or mask must—

(1) Ventilate at least 4.5 ACFM at any depth at which it is operated; or

(2) Be able to maintain the diver's inspired carbon dioxide partial pressure below 0.02 ATA when the diver is producing carbon dioxide at the rate of 1.6 standard liters per minute.

§ 197.324 Diver's safety harness.

Each safety harness used in surface-supplied diving must have—

(a) A positive buckling device; and

(b) An attachment point for the umbilical life line that—

(1) Distributes the pulling force of the umbilical over the diver's body; and

(2) Prevents strain on the mask or helmet.

§ 197.326 Oxygen safety.

(a) Equipment used with oxygen or oxygen mixtures greater than 40 percent by volume must be designed for such use.

(b) Oxygen systems with pressures greater than 125 psig must have slow-opening shut-off valves except pressure boundary shut-off valves may be ball valves.

§ 197.328 PVHO—General.

(a) Each PVHO, contracted for or purchased after February 1, 1979, must be built and stamped in accordance with ASME PVHO-1.

(b) Each PVHO, contracted for or constructed before February 1, 1979, and not Coast Guard approved, must be submitted to the Coast Guard for approval prior to February 1, 1984.

(c) To be approved under paragraph (b), a PVHO must be—

(1) Constructed in accordance with Part 54 of this Chapter; or—

(2) Be built in accordance with section VIII, division 1 or division 2 of the ASME Code; and—

(i) Have the plans approved in accordance with § 54.01-18 of this chapter;

(ii) Pass the radiographic and other survey tests of welded joints required by section VIII, division 1 or division 2, as appropriate, of the ASME Code; and

(iii) Pass—(A) The hydrostatic test described in § 54.10-10 of this chapter; or

(B) The pneumatic test described in § 54.10-15 of this chapter and such additional tests as the Officer-in-Charge, Marine Inspection (OCMI) may require.

(d) Each PVHO must—

(1) Have a shut-off valve located within 1 foot of the pressure boundary on all piping penetrating the pressure boundary;

(2) Have a check valve located within 1 foot of the pressure boundary on all piping exclusively carrying fluids into the PVHO;

(3) Have the pressure relief device required by ASME PVHO-1;

(4) Have a built-in breathing system with at least one mask per occupant stored inside each separately pressurized compartment;

(5) Have a two-way voice communications system allowing communications between an occupant in one pressurized compartment of the PVHO and—

(i) The diving supervisor at the dive location;

(ii) Any divers being supported from the same PVHO; and

(iii) Occupants of other separately pressurized compartments of the same PVHO;

(6) If designed to mechanically couple to another PVHO, have a two-way communications system allowing communications between occupants of each PVHO when mechanically coupled;

(7) Have a pressure gage in the interior of each compartment that is—

(i) Designed for human occupancy; and

(ii) Capable of having the compartment pressure controlled from inside the PVHO;

(8) Have viewports that allow observation of occupants from the outside;

(9) Have viewports that meet the requirements of ASME PVHO-1 except those PVHO's approved under paragraph (b) of this section which have nonacrylic viewports;

(10) Have means of illumination sufficient to allow an occupant to—

(i) Read gages; and

(ii) Operate the installed systems within each compartment;

(11) Be designed and equipped to minimize sources of combustible materials and ignition;

(12) Have a protective device on the inlet side of PVHO exhaust lines;

(13) Have a means of extinguishing a fire in the interior;

(14) Have a means of maintaining the oxygen content of the interior atmosphere below 25 percent surface equivalent by volume when pressurized with air as the breathing mixture;

(15) Have a means of maintaining the interior atmosphere below 2 percent surface equivalent carbon dioxide by volume;

(16) Have a means of overriding and controlling from the exterior all interior breathing and pressure supply controls;

(17) Have a speech unscrambler when used with mixed-gas;

(18) Have interior electrical systems that are designed for the environment in which they will operate to minimize the risk of fire, electrical shock to personnel, and galvanic action of the PVHO; and

(19) Be tested after every repair, modification, or alteration to the pressure boundaries as required by § 197.462.

§ 197.330 PVHO—Closed bells.

(a) Except as provided in paragraph (b) of this section, each closed bell must meet the requirements of § 197.328 and—

(1) Have underwater breathing apparatus for each occupant stored inside each separately pressurized compartment;

(2) Have an umbilical;

(3) Have lifting equipment attached to the closed bell capable of returning the occupied closed bell when fully flooded to the dive location;

(4) Be capable of recompressing on the surface to the maximum design diving depth;

(5) Be constructed and equipped as required by § 197.332;

(6) Have an emergency locating device designed to assist personnel on the surface in acquiring and maintaining contact with the submerged PVHO if the umbilical to the surface is severed;

(7) Have a capability to remove an injured diver from the water; and

(8) Have a life support capability for the intact closed bell and its occupants for—

(i) Twelve hours after an accident severing the umbilical to the surface when the umbilical to the surface is the only installed means of retrieving the closed bell; or

(ii) A period of time, at least equal to 1 hour plus twice the time required to retrieve the bell from its designed operating depth and attach an auxiliary lifesupport system, after an accident severing the umbilical to the surface when the umbilical is one of the two independent installed means of retrieving the closed bell, each meeting the requirements of paragraph (a)(3) of this section.

(b) A closed bell that does not meet the requirements of paragraphs (a)(3), (a)(4), and (a)(5) of this section, must be capable of attachment to another PVHO that—

(1) Allows the transfer of personnel and diver's equipment under pressure from the closed bell to the PVHO;

(2) Meets the requirements of paragraph (a)(3) of this section;

(3) Is capable of attachment to a decompression chamber meeting the requirements of paragraphs (a)(4) and (a)(5) of this section; and

(4) Allows the transfer of personnel and diver's equipment under pressure from the PVHO to the decompression chamber.

§ 197.332 PVHO—Decompression chambers.

Each decompression chamber must—

(a) Meet the requirements of § 197.328;

(b) Have internal dimensions sufficient to accommodate a diver lying in a horizontal position and another person tending the diver;

(c) Have a capability for ingress and egress of personnel and equipment while the occupants are under pressure;

(d) Have a means of operating all installed man-way locking devices, except disabled shipping dogs, from both sides of a closed hatch;

(e) Have interior illumination sufficient to allow visual observation, diagnosis, and medical treatment of an occupant.

(f) Have one bunk for each two occupants;

(g) Have a capability that allows bunks to be seen over their entire lengths from the exterior;

(h) Have a minimum pressure capability of—

(1) 6 ATA, when used for diving to 300 fsw; or

(2) The maximum depth of the dive, when used for diving operations deeper than 300 fsw, unless a closed bell meeting the requirements of § 197.330(a) (3), (4), and (5) is used;

(i) Have a minimum pressurization rate of 2 ATA per minute to 60 fsw and at least 1 ATA per minute thereafter;

(j) Have a decompression rate of 1 ATA per minute to 33 fsw;

(k) Have an external pressure gage for each pressurized compartment;

(l) Have a capability to supply breathing mixtures at the maximum rate required by each occupant doing heavy work; and

(m) Have a sound-powered headset or telephone as a backup to the communications system required by § 197.328(c) (5) and (6), except when that communications system is a sound-powered system.

§ 197.334 Open diving bells.

Each open diving bell must—

(a) Have an upper section that provides an envelope capable of maintaining a bubble of breathing mixture available to a diver standing on the lower section of the platform with his body through the open bottom and his head in the bubble;

(b) Have lifting equipment capable of returning the occupied open bell to the dive location;

(c) Have an umbilical; and

(d) Be—(1) Made of corrosion-resisting material; or

(2) Protected against and maintained free from injurious corrosion.

§ 197.336 Pressure piping.

Piping systems that are not an integral part of the vessel or facility, carrying fluids under pressures exceeding 15 psig must—

(a) Meet the ANSI Code;

(b) Have the point of connection to the integral piping system of the vessel or facility clearly marked; and

(c) Be tested after every repair, modification, or alteration to the pressure boundaries as set forth in § 197.462.

§ 197.338 Compressed gas cylinders.

Each compressed gas cylinder must—

(a) Be stored in a ventilated area;

(b) Be protected from excessive heat;

(c) Be prevented from falling;

(d) Be tested after any repair, modification, or alteration to the pressure boundries as set forth in § 197.462; and

(e) Meet the requirements of—

(1) Part 54 of this Chapter; or

(2) 49 CFR 173.34 and 49 CFR 178 Subpart C.

§ 197.340 Breathing gas supply.

(a) A primary breathing gas supply for surface-supplied diving must be sufficient to support the following for the duration of the planned dive:

(1) The diver.

(2) The standby diver.

(3) The decompression chamber, when required by § 197.432(e)(2) or by § 197.434(a) for the duration of the dive and for one hour after completion of the planned dive.

(4) A decompression chamber when provided but not required by this subpart.

(5) A closed bell when provided or required by § 197.434(d).

(6) An open bell when provided or required by § 197.432(e)(4) or by § 197.434(c).

(b) A secondary breathing gas supply for surface-supplied diving must be sufficient to support the following:

(1) The diver while returning to the surface.

(2) The diver during decompression.

(3) The standby diver.

(4) The decompression chamber when required by § 197.432(e)(2) or by § 197.434(a) for the duration of the dive and one hour after the completion of the planned dive.

(5) The closed bell while returning the diver to the surface.

(6) The open bell while returning the diver to the surface.

(c) A diver-carried reserve breathing gas supply for surface-supplied diving must be sufficient to allow the diver to—

(1) Reach the surface.

(2) Reach another source of breathing gas; or

(3) Be reached by a standby diver equipped with another source of breathing gas for the diver.

(d) A primary breathing gas supply for SCUBA diving must be sufficient to support the diver for the duration of the planned dive through his return to the dive location or planned pick-up point.

(e) A diver-carried reserve breathing gas supply for SCUBA diving must be sufficient to allow the diver to return to the dive location or planned pick-up point from the greatest depth of the planned dive.

(f) Oxygen used for breathing mixtures must—

(1) Meet the requirements of Federal Specification BB-0-925a; and

(2) Be type 1 (gaseous) grade A or B.

(g) Nitrogen used for breathing mixtures must—

(1) Meet the requirements of Federal Specification BB-N-411c;

(2) Be type 1 (gaseous);

(3) Be class 1 (oil free); and

(4) Be grade A, B, or C.

(h) Helium used for breathing mixtures must be grades A, B, or C produced by the Federal Government, or equivalent.

(i) Compressed air used for breathing mixtures must—

(1) Be 20 to 22 percent oxygen by volume;

(2) Have no objectionable odor; and

(3) Have no more than—

(i) 1,000 parts per million of carbon dioxide;

(ii) 20 parts per million carbon monoxide;

(iii) 5 milligrams per cubic meter of solid and liquid particulates including oil; and

(iv) 25 parts per million of hydrocarbons (includes methane and all other hydrocarbons expressed as methane).

§ 197.342 Buoyancy-changing devices.

(a) A dry suit or other buoyancy-changing device not directly connected to the exhaust valve of the helmet or mask must have an independent exhaust valve.

(b) When used for SCUBA diving, a buoyancy-changing device must have

an inflation source separate from the breathing gas supply.

§ 197.344 Inflatable floatation devices.

An inflatable floatation device for SCUBA diving must—

(a) Be capable of maintaining the diver at the surface in a faceup position;

(b) Have a manually activated inflation device;

(c) Have an oral inflation device;

(d) Have an over-pressure relief device; and

(e) Have a manually operated exhaust valve.

§ 197.346 Diver's equipment.

(a) Each diver using SCUBA must have—

(1) Self-contained underwater breathing equipment including—

(i) A primary breathing gas supply with a cylinder pressure gage readable by the diver during the dive; and

(ii) A diver-carried reserve breathing gas supply provided by—

(A) A manual reserve (J valve); or

(B) An independent reserve cylinder connected and ready for use;

(2) A face mask;

(3) An inflatable floatation device;

(4) A weight belt capable of quick release;

(5) A knife;

(6) Swim fins or shoes;

(7) A diving wristwatch; and

(8) A depth gage.

(b) Each diver using a heavyweight diving outfit must—

(1) Have a helmet group consisting of helmet, breastplate, and associated valves and connections;

(2) Have a diving dress group consisting of a basic dress that encloses the body (except for head and hands) in a tough, waterproof cover, gloves, shoes, weight assembly, and knife;

(3) Have a hose group consisting of the breathing gas hose and fittings, the control valve, the lifeline, communications cable, and a pneumofathometer; and

(4) Be provided with a helmet cushion and weighted shoes.

(c) Each surface-supplied dive operation using a heavyweight diving outfit must have an extra breathing gas hose with attaching tools available to the standby diver.

(d) Each diver using a lightweight diving outfit must have—

(1) A safety harness;

(2) A weight assembly capable of quick release;

(3) A mask group consisting of a lightweight mask and associated valves and connections;

(4) A diving dress group consisting of wet or dry diving dress, gloves, shoes or fins, and knife; and

(5) A hose group consisting of the breathing gas hose and fittings, the control valve, the lifeline, communications cable, and a pneumofathometer (if the breaking strength of the communications cable is at least equal to that required for the lifeline, the communications cable can serve as the lifeline).

(e) Each surface-supplied air dive operation within the no-decompression limits and to depths of 130 fsw or less must have a primary breathing gas supply at the dive location.

(f) Each surface-supplied dive operation outside the no-compression limits, deeper than 130 fsw, or using mixed-gas as a breathing mixture must have at the dive location—

(1) A primary breathing gas supply; and

(2) A secondary breathing gas supply.

(g) Each diver diving outside the no-decompression limits, deeper than 130 fsw, or using mixed-gas must have a diver-carried reserve breathing gas supply except when using a heavyweight diving outfit or when diving in a physically confining area.

OPERATIONS

§ 197.400 Applicability.

Diving operations may only be conducted from a vessel or facility subject to the subpart if the regulations in this subpart are met.

§ 197.402 Responsibilities of the person-in-charge.

(a) The person-in-charge shall—

(1) Be fully cognizant of the provisions of this subpart;

(2) Prior to permitting any commercial diving operation to commence, have—

(i) The designation of the diving supervisor for each diving operation as required by § 197.210;

(ii) A report on—

(A) The nature and planned times of the planned diving operation; and

(B) The planned involvement of the vessel or facility, its equipment, and its personnel in the diving operation.

(b) Prior to permitting any commerical diving operation involving liveboating to commence, the person-in-charge shall insure that—

(1) A means of rapid communications with the diving supervisor while the diver is entering, in, or leaving the water is established; and

(2) A boat and crew for diver pickup in the event of an emergency is provided.

(c) The person-in-charge shall insure that a boat and crew for SCUBA diver pickup is provided when SCUBA divers are not line-tended from the dive location.

(d) The person-in-charge shall coordinate the activities on and of the vessel or facility with the diving supervisor.

(e) The person-in-charge shall insure that the vessel or facility equipment and personnel are kept clear of the dive location except after coordinating with the diving supervisor.

§ 197.404 Responsibilities of the diving supervisor.

(a) The diving supervisor shall—

(1) Be fully cognizant of the provisions of this subpart;

(2) Be fully cognizant of the provisions of the operations manual required by § 197.420;

(3) Insure that diving operations conducted from a vessel or facility subject to this subpart meet the regulations in this subpart;

(4) Prior to the commencement of any commercial diving operation, provide the report required by § 197.402 to the person-in-charge;

(5) Coordinate with the person-in-charge any changes that are made to the report required by § 197.402; and

(6) Promptly notify the person-in-charge of any diving related casualty, accident, or injury.

(b) The diving supervisor is in charge of the planning and execution of the diving operation including the responsibility for the safety and health of the dive team.

§ 197.410 Dive procedures.

(a) The diving supervisor shall insure that—

(1) Before commencing diving operations, dive team members are briefed on—

(i) The tasks to be undertaken;

(ii) Any unusual hazards or environmental conditions likely to affect the safety of the diving operation; and

(iii) Any modifications to the operations manual or procedures including safety procedures necessitated by the specific diving operation;

(2) The breathing gas supply systems, masks, helmets, thermal protection, when provided, and bell lifting equipment, when a bell is provided or required, are inspected prior to each diving operation;

(3) Each diver is instructed to report any physical problems or physiological effects including aches, pains, current illnesses, or symptoms of decompression sickness prior to each dive;

(4) A depth, bottom time profile, including any breathing mixture changes, is maintained at the dive location for each diver during the dive, except that SCUBA divers shall maintain their own profiles;

(5) A two-way voice communication system is used between—

(i) Each surface-supplied diver and a dive team member at the dive location or bell (when provided); and

(ii) The bell (when provided) and the dive location;

(6) A two-way communication system is available at the dive location to obtain emergency assistance;

(7) After the completion of each dive—

(i) The physical condition of the diver is checked by—

(A) Visual observation; and

(B) Questioning the diver about his physical well-being;

(ii) The diver is instructed to report any physical problems or adverse physiological effects including aches, pains, current illnesses, or symptoms of decompression sickness or gas embolism;

(iii) The diver is advised of the location of an operational decompression chamber; and

(iv) The diver is alerted to the potential hazards of flying after diving;

(8) For any dive outside the no-decompression limits, deeper than 130 fsw, or using mixed-gas as a breathing mixture—

(i) A depth, time, decompression profile including breathing mixture changes is maintained for each diver at the dive location;

(ii) The diver is instructed to remain awake and in the vicinity of the dive location decompression chamber for at least one hour after the completion of a dive, decompression, or treatment; and

(iii) A dive team member, other than the diver, is trained and available to operate the decompression chamber; and

(9) When decompression sickness or gas embolism is suspected or symptoms are evident, a report is completed containing—

(i) The investigation for each incident including—

(A) The dive and decompression profiles;

(B) The composition, depth, and time of breathing mixture changes;

(C) A description of the symptoms including depth and time of onset; and

(D) A description and results of the treatment;

(ii) The evaluation for each incident based on—

(A) The investigation;

(B) Consideration of the past performance of the decompression table used; and

(C) Individual susceptibility; and

(iii) The corrective action taken, if necessary, to reduce the probability of recurrence.

(b) The diving supervisor shall ensure that the working interval of a dive is terminated when he so directs or when—

(1) A diver requests termination;

(2) A diver fails to respond correctly to communications or signals from a dive team member;

(3) Communications are lost and can not be quickly reestablished between—

(i) The diver and a dive team member at the dive location; or

(ii) The person-in-charge and the diving supervisor during liveboating operations; or

(4) A diver begins to use his diver-carried reserve breathing gas supply.

§ 197.420 Operations manual.

(a) The diving supervisor shall—

(1) Provide an operations manual to the person-in-charge prior to commencement of any diving operation; and

(2) Make an operations manual available at the dive location to all members of the dive team.

(b) The operations manual must be modified in writing when adaptation is required because of—

(1) The configuration or operation of the vessel or facility; or

(2) The specific diving operation as planned.

(c) The operations manual must provide for the safety and health of the divers.

(d) The operations manual must contain the following:

(1) Safety procedures and checklists for each diving mode used.

(2) Assignments and responsibilities of each dive team member for each diving mode used.

(3) Equipment procedures and checklists for each diving mode used.

(4) Emergency procedures for—

(i) Fire;

(ii) Equipment failure;

(iii) Adverse environmental conditions including, but not limited to, weather and sea state;

(iv) Medical illness; and

(v) Treatment of injury.

(5) Procedures dealing with the use of—

(i) Hand-held power tools;

(ii) Welding and burning equipment; and

(iii) Explosives.

SPECIFIC DIVING MODE PROCEDURES

§ 197.430 SCUBA diving.

The diving supervisor shall insure that—

(a) SCUBA diving is not conducted—

(1) Outside the no-decompression limits;

(2) At depths greater than 130 fsw;

(3) Against currents greater than one (1) knot unless line-tended; and

(4) If a diver cannot directly ascend to the surface unless line-tended;

(b) The SCUBA diver has the equipment required by § 197.346(a);

(c) A standby diver is available while a diver is in the water;

(d) A diver is line-tended from the surface or accompanied by another diver in the water in continuous visual contact during the diving operation;

(e) When a diver is in a physically confining space, another diver is stationed at the underwater point of entry and is line-tending the diver; and

(f) A boat is available for diver pickup when the divers are not line-tended from the dive location.

§ 197.432 Surface-supplied air diving.

The diving supervisor shall insure that—

(a) Surface-supplied air diving is conducted at depths less than 190 fsw, except that dives with bottom times of 30 minutes or less may be conducted to depths of 220 fsw;

(b) Each diving operation has a primary breathing gas supply;

(c) Each diver is continuously tended while in the water;

(d) When a diver is in a physically confining space, another diver is stationed at the underwater point of entry and is line-tending the diver;

(e) For dives deeper than 130 fsw or outside the no-decompression limits—

(1) Each diving operation has a secondary breathing gas supply;

(2) A decompression chamber is ready for use at the dive location;

(3) A diving stage is used except when a bell is provided;

(4) A bell is used for dives with an in-water decompression time greater than 120 minutes, except when the diver is using a heavy-weight diving outfit or is diving in a physically confining space;

(5) A separate dive team member tends each diver in the water;

(6) A standby diver is available while a diver is in the water; and

(7) Each diver has a diver-carried reserve breathing gas supply except when using a heavy-weight diving outfit or when diving in a physically confining space; and

(f) The surface-supplied air diver has the equipment required by § 197.346 (b) or (d).

§ 197.434 Surface-supplied mixed-gas diving.

The diving supervisor shall insure that—

(a) When mixed-gas diving is conducted, a decompression chamber or a closed bell meeting the requirements of § 197.332 is ready for use at the dive location;

(b) A diving stage is used except when a bell is provided;

(c) A bell is used for dives deeper than 220 fsw or when the dive involves in-water decompression times greater than 120 minutes, except when the diver is using a heavy-weight diving outfit or is diving in a physically confining space;

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(d) A closed bell is used for dives at depths greater than 300 fsw, except when diving is conducted in a physically confining space;

(e) A separate dive team member tends each diver in the water;

(f) A standby diver is available during all nonsaturation dives;

(g) When saturation diving is conducted—

(1) A standby diver is available when the closed bell leaves the dive location until the divers are in saturation; and

(2) A member of the dive team at the dive location is a diver able to assist in the recovery of the closed bell or its occupants, if required;

(h) When closed bell operations are conducted, a diver is available in the closed bell to assist a diver in the water;

(i) When a diver is in a physically confining space, another diver is stationed at the underwater point of entry and is line-tending the diver;

(j) Each diving operation has a primary and secondary breathing gas supply meeting the requirements of § 197.340; and

(k) The surface-supplied mixed-gas diver has the equipment required by § 197.346 (b) or (d).

§ 197.436 Liveboating.

(a) During liveboating operations, the person-in-charge shall insure that—

(1) Diving is not conducted in seas that impede station-keeping ability of the vessel;

(2) Liveboating operations are not conducted—

(i) From 1 hour after sunset to 1 hour before sunrise; or

(ii) During periods of restricted visibility;

(3) The propellers of the vessel are stopped before the diver enters or exits the water; and

(4) A boat is ready to be launched with crew in the event of an emergency.

(b) As used in paragraph (a)(2)(ii) of this section, "restricted visibility" means any condition in which vessel navigational visibility is restricted by fog, mist, falling snow, heavy rainstorms, sandstorms or any other similar causes.

(c) During liveboating operations, the diving supervisor shall insure that—

(1) Diving is not conducted at depths greater than 220 fsw;

(2) Diving is not conducted in seas that impede diver mobility or work function;

(3) A means is used to prevent the diver's hose from entangling in the propellers of the vessel;

(4) Each diver carries a reserve breathing gas supply;

(5) A standby diver is available while a diver is in the water;

(6) Diving is not conducted with in-water decompression times greater than 120 minutes; and

(7) The person-in-charge is notified before a diver enters or exits the water.

PERIODIC TESTS AND INSPECTIONS OF DIVING EQUIPMENT

§ 197.450 Breathing gas tests.

The diving supervisor shall insure that—

(a) The output of each air compressor is tested and meets the requirements of § 197.340 for quality and quantity by means of samples taken at the connection point to the distribution system—

(1) Every 6 months; and

(2) After every repair or modification.

(b) Purchased supplies of breathing mixtures supplied to a diver are checked before being placed on line for—

(1) Certification that the supply meets the requirements of § 197.340; and

(2) Noxious or offensive odor and oxygen percentage;

(c) Each breathing supply system is checked, prior to commencement of diving operations, at the umbilical or underwater breathing apparatus connection point for the diver, for noxious or offensive odor and presence of oil mist; and

(d) Each breathing supply system, supplying mixed-gas to a diver, is checked, prior to commencement of diving operations, at the umbilical or underwater breathing apparatus connection point for the diver, for percentage of oxygen.

§ 197.452 Oxygen cleaning.

The diving supervisor shall ensure that equipment used with oxygen or oxygen mixtures greater than 40 percent by volume is cleaned of flammable materials—

(a) Before being placed into service; and

(b) After any repair, alteration, modification, or suspected contamination.

§ 197.454 First aid and treatment equipment.

The diving supervisor shall ensure that medical kits are checked monthly to insure that all required supplies are present.

§ 197.456 Breathing supply hoses.

(a) The diving supervisor shall insure that—

(1) Each breathing supply hose is pressure tested prior to being placed into initial service and every 24 months thereafter to 1.5 times its maximum working pressure;

(2) Each breathing supply hose assembly, prior to being placed into initial service and after any repair, modification, or alteration, is tensile tested by—

(i) Subjecting each hose-to-fitting connection to a 200 pound axial load; and

(ii) Passing a visual examination for evidence of separation, slippage, or other damage to the assembly;

(3) Each breathing supply hose is periodically checked for—

(i) Damage which is likely to affect pressure integrity; and

(ii) Contamination which is likely to affect the purity of the breathing mixture delivered to the diver; and

(4) The open ends of each breathing supply hose are taped, capped, or plugged when not in use.

(b) To meet the requirements of paragraph (a)(3) of this section, each breathing supply hose must be—

(1) Carefully inspected before being shipped to the dive location;

(2) Visually checked during daily operation; and

(3) Checked for noxious or offensive odor before each diving operation.

§ 197.458 Gages and timekeeping devices.

The diving supervisor shall insure that—

(a) Each depth gage and timekeeping device is tested or calibrated against a master reference gage or time- keeping device every 6 months;

(b) A depth gage is tested when a discrepancy exists in a depth gage reading greater than 2 percent of full scale between any two gages of similar range and calibration;

(c) A timekeeping device is tested when a discrepancy exists in a timekeeping device reading greater than one-quarter of a minute in a 4-hour period between any two timekeeping devices; and

(d) Each depth gage and timekeeping device is inspected before diving operations are begun.

§ 197.460 Diving equipment.

The diving supervisor shall insure that the diving equipment designated for use in a dive under § 197.346 is inspected before each dive.

§ 197.462 Pressure vessels and pressure piping.

(a) The diving supervisor shall insure that each volume tank, cylinder, PVHO, and pressure piping system has been examined and tested every 12 months and after any repair, modification, or alteration to the extent necessary to determine that they are in condition and fit for the service intended.

(b) The following tests must be made to meet the annual requirements of paragraph (a) of this section:

(1) An internal and external visual examination for mechanical damage or deterioration. If a defect is found that may impair the safety of the pressure vessel, a hydrostatic test must be performed.

(2) A leak test.

(3) A pneumatic test.

(4) A hydrostatic test every fifth year instead of the pneumatic test.

(c) The following tests must be made after any repair, modification, or alteration to meet the requirements of paragraph (a) of this section:

(1) An internal and external visual examination for correctness and adequacy of repair, modification, or alteration.

(2) A leak test.

(3) A hydrostatic test when the repair, modification, or alteration affects the pressure boundary.

(d) When the pneumatic test on pressure vessels is conducted—

(1) The test pressure must be the maximum allowable working pressure stamped on the pressure vessel; and

(2) The test may be conducted only after suitable precautions are taken to protect personnel and equipment.

(e) When the pneumatic test on pressure piping is conducted

(1) The test pressure must be no less than 90 percent of the setting of the relief device; and

(2) The test may be conducted only after suitable precautions are taken to protect personnel and equipment.

(f) When a hydrostatic test on a pressure vessel is made, the test pressure must be—

(1) 1¼ times the pressure stamped on the pressure vessel built to division 2 of the ASME Code; and

(2) 1½ times the pressure stamped on the pressure vessel built to division 1 of the ASME Code.

(g) When a hydrostatic test on pressure piping is conducted, the test must be conducted in accordance with the ANSI Code.

(h) When the leak test on pressure vessels or pressure piping is conducted—

(1) The test must be conducted with the breathing mixture normally used in service;

(2) The test must be conducted at the maximum allowable working pressure; and

(3) The test pressure must be maintained for a minimum of 10 minutes to allow checking all joints, connections, and regions of high stress for leakage.

RECORDS

§ 197.480 Logbooks.

(a) The person-in-charge of a vessel or facility required by 46 U.S.C. 201 to have an official logbook shall maintain the logbook on form CG-706.

(b) The person-in-charge of a vessel or facility not required by 46 U.S.C. 201 to have an official logbook, shall maintain, on board, a logbook for making the entries required by this subpart.

(c) The diving supervisor conducting commercial diving operations from a vessel or facility subject to this subpart shall maintain a logbook for making the entries required by this subpart.

§ 197.482 Logbook entries.

(a) The person-in-charge shall insure that the following information is recorded in the logbook for each commercial diving operation:

(1) Date, time, and location at the start and completion of dive operations.

(2) Approximate underwater and surface conditions (weather, visibility, temperatures, and currents).

(3) Name of the diving supervisor.

(4) General nature of work performed.

(b) The diving supervisor shall insure that the following information is recorded in the logbook for each commercial diving operation:

(1) Date, time, and location at the start and completion of each dive operation.

(2) Approximate underwater and surface conditions (weather, visibility, temperatures, and currents).

(3) Names of dive team members including diving supervisor.

(4) General nature of work performed.

(5) Repetitive dive designation or elapsed time since last hyperbaric exposure if less than 24 hours for each diver.

(6) Diving modes used.

(7) Maximum depth and bottom time for each diver.

(8) Name of person-in-charge.

(9) For each dive outside the no-decompression limits, deeper than 130 fsw, or using mixed-gas, the breathing gases and decompression table designations used.

(10) When decompression sickness or gas embolism is suspected or symptoms are evident—

(i) The name of the diver; and

(ii) A description and results of treatment.

(11) For each fatality or any diving related injury or illness that results in incapacitation of more than 72 hours or requires any dive team member to be hospitalized for more than 24 hours—

(i) The date;

(ii) Time;

(iii) Circumstances; and

(iv) Extent of any injury or illness.

(c) The diving supervisor shall insure that the following is recorded in the logbook for each diving operation deviating from the requirements of this subpart:

(1) A description of the circumstances leading to the situation.

(2) The deviations made.

(3) The corrective action taken, if appropriate, to reduce the possibility of recurrence.

(d) The diving supervisor shall insure that a record of the following is maintained:

(1) The date and results of each check of the medical kits.

(2) The date and results of each test of the air compressor.

(3) The date and results of each check of breathing mixtures.

(4) The date and results of each check of each breathing supply system.

(5) The date, equipment cleaned, general cleaning procedure, and names of persons cleaning the diving equipment for oxygen service.

(6) The date and results of each test of the breathing supply hoses and system.

(7) The date and results of each inspection of the breathing gas supply system.

(8) The date and results of each test of depth gages and timekeeping devices.

(9) The date and results of each test and inspection of each PVHO.

(10) The date and results of each inspection of the diving equipment.

(11) The date and results of each test and inspection of pressure piping.

(12) The date and results of each test and inspection of volume tanks and cylinders.

(e) The diving supervisor shall insure that a notation concerning the location of the information required under paragraph (d) is made in the logbook.

NOTE.—R.S. 4290 (46 U.S.C. 201) requires that certain entries be made in an official logbook in addition to the entries required by this section; and R.S. 4291 (46 U.S.C. 202) prescribes the manner of making those entries.

§ 197.484 Notice of casualty.

(a) In addition to the requirements of subpart 4.05 of this chapter and 33 CFR 146.01-20, the person-in-charge shall notify the Officer-in-Charge, Marine Inspection, as soon as possible after a diving casualty occurs, if the casualty involves any of the following:

(1) Loss of life.

(2) Diving-related injury to any person causing incapacitation for more than 72 hours.

(3) Diving-related injury to any person requiring hospitalization for more than 24 hours.

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(b) The notice required by this section must contain the following:

(1) Name and official number (if applicable) of the vessel or facility.

(2) Name of the owner or agent of the vessel or facility.

(3) Name of the person-in-charge.

(4) Name of the diving supervisor.

(5) Description of the casualty including presumed cause.

(6) Nature and extent of the injury to persons.

(c) The notice required by this section is not required if the written report required by § 197.486 is submitted within 5 days of the casualty.

§ 197.486 Written report of casualty.

The person-in-charge of a vessel or facility for which a notice of casualty was made under § 197.484 shall submit a report to the Officer-in-Charge, Marine Inspection, as soon as possible after the casualty occurs, as follows:

(a) On form CG-924E, when the diving installation is on a vessel.

(b) Using a written report, in narrative form, when the diving installation is on a facility. The written report must contain the information required by § 197.484.

(c) The report required by this section must be accompanied by a copy of the report required by § 197.410(a)(9) when decompression sickness is involved.

§ 197.488 Retention of records after casualty.

(a) The owner, agent, or person-in-charge of a vessel or facility for which a report of casualty is made under § 197.484 shall retain all records onboard that are maintained on the vessel or facility and those records required by this subpart for 6 months after the report of a casualty is made or until advised by the Officer-in-Charge, Marine Inspection, that records need not be retained onboard.

(b) The records required by paragraph (a) of this section to be retained on board include, but are not limited to, the following:

(1) All logbooks required by § 197.480.

(2) All reports required by § 197.402(a)(2)(ii), § 197.404(a)(4), § 197.410(a)(9).

(c) The owner, agent, person-in-charge, or diving supervisor shall, upon request, make the records described in this section available for examination by any Coast Guard official authorized to investigate the casualty.

APPENDIX A

The following table gives the depth versus bottom time limits for single, no-decompression, air dives made within any 12-hour period. The limit is the maximum bottom time in minutes that a diver can spend at that depth without requiring decompression beyond that provided by a normal ascent rate of 60 fsw per minute. (Although bottom time is concluded when ascent begins, a slower ascent rate would increase the bottom time thereby requiring decompression.) An amount of nitrogen remains in the tissues of a diver after any air dive, regardless of whether the dive was a decompression or no-decompression dive. Whenever another dive is made within a 12-hour period, the nitrogen remaining in the blood and body tissues of the diver must be considered when calculating his decompression.

AIR NO-DECOMPRESSION LIMITS

Depth (feet):	*No-decompression limits (minutes)*
35	310
40	200
50	100
60	60
70	50
80	40
90	30
100	25
110	20
120	15
130	10

(Source: U.S. Navy Diving Manual, 1 September 1973.)

(46 U.S.C. 239; 46 U.S.C. 390b; 46 U.S.C. 391a; 33 U.S.C. 1509(b); 43 U.S.C. 1333(d)(1); 43 U.S.C. 1331 et seq., as amended by Sec. 203 and 208 of Pub. L. 95-372; 46 U.S.C. 395; 46 U.S.C. 375; 46 U.S.C. 391; 46 U.S.C. 392; 46 U.S.C. 416; 49 U.S.C. 1655(b); 49 CFR 1.46 (b) and (s).)

Dated: November 9, 1978.

R. H. SCARBOROUGH,
Vice Admiral, U.S. Coast Guard,
Acting Commandant.

[FR Doc. 78-32282 Filed 11-15-78; 8:45 am]

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THURSDAY, NOVEMBER 16, 1978
PART VII

THE NATIONAL ARCHIVES OF THE UNITED STATES
LITTERA SCRIPTA MANET
1934

Federal Register

OFFICE OF MANAGEMENT AND BUDGET

RESCISSIONS AND DEFERRALS

Cumulative Report

[3110-01-M]

OFFICE OF MANAGEMENT AND BUDGET

CUMULATIVE REPORT ON RESCISSIONS AND DEFERRALS

NOVEMBER 1978.

This report is submitted in fulfillment of the requirements of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93-344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year with respect to which, as of the first day of the month, a special message has been transmitted to the Congress.

This month's report gives the status as of November 1, 1978, of 30 deferrals contained in the first special message for fiscal year 1979. This message was transmitted to the Congress on October 2, 1978.

RESCISSIONS

As of November 1, 1978, no rescission proposals were before the Congress.

DEFERRALS

As of November 1, 1978, $1,169.8 million in 1979 budget authority was being deferred from obligation and another $1.8 million in 1979 obligations was being deferred from expenditure. The following table summarizes the status of deferrals reported by the President, and the attachment shows the history and status of each deferral reported during fiscal year 1979.

INFORMATION FROM SPECIAL MESSAGES

The special message containing information on each of the deferrals covered by the cumulative report is contained in the FEDERAL REGISTER of: Wednesday, October 11, 1978 (Vol. 43, No. 197, Part III).

JAMES T. MCINTYRE, Jr.,
Director.

[3110-01-C]

DEFERRALS - FISCAL YEAR 1979 AS OF 11/06/78 18:17

PAGE 1 ATTACHMENT	- STATUS OF DEFERRAL - AMOUNT	DATE OF MESSAGE MO DA YR	CUMULATIVE AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 11-01-78
AMOUNTS IN THOUSANDS OF DOLLARS	AMOUNT TRANSMITTED ORIGINAL REQUEST					
AGENCY/BUREAU/ACCOUNT	DEFERRAL NUMBER					
DEPARTMENT OF AGRICULTURE						
Foreign Agricultural Service						
Salaries & expenses (special foreign currency)						
BA	D79- 1	10 2 78				415
Agricultural Stabilization & Conservation Service						
Commodity credit corporation						
BA	D79- 2	10 2 78				3,530
Forest Service						
Expenses, brush disposal						
BA	D79- 3	10 2 78				32,225
Restoration of forest lands						
BA	D79- 4	10 2 78				48
DEPARTMENT OF AGRICULTURE TOTAL BA						36,218
DEPARTMENT OF COMMERCE						
National Oceanic and Atmospheric Administration						
Construction						
BA	D79- 5	10 2 78				9,830
Promote and develop fishery products and research						
BA	D79- 6	10 2 78	-5,000			7,060
Fisheries loan fund						
BA	D79- 7	10 2 78				5,429
DEPARTMENT OF COMMERCE TOTAL BA			-5,000			22,319
						27,319

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PAGE 2 ATTACHMENT - STATUS OF DEFERRALS - FISCAL YEAR 1979 AS OF 11/06/78 18:17

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT	DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 11-01-78
DEPARTMENT OF DEFENSE-MILITARY								
Military Construction								
Military construction, all services BA	D79- 8	548,451		10 2 78				548,451
DEPARTMENT OF DEFENSE-MILITARY TOTAL BA		548,451						548,451
DEPARTMENT OF DEFENSE-CIVIL								
Corps of Engineers								
Alaska hydroelectric power development fund BA	D79-10	5,450		10 2 78				5,450
Miscellaneous Accounts								
Wildlife conservation, etc., military reservations BA	D79- 9	458		10 2 78				458
DEPARTMENT OF DEFENSE-CIVIL TOTAL BA		5,908						5,908
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE								
Alcohol, Drug Abuse & Mental Health Administration								
Construction & renovation, St. Elizabeths Hospital BA	D79-11	27,577		10 2 78				27,577
Social Security Administration								
Limitation on salaries and expenses BA	D79-12	1,725		10 2 78				1,725
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE TOTAL BA		29,302						29,302

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PAGE 3 ATTACHMENT - STATUS OF DEFERRALS - FISCAL YEAR 1979 AS OF 11/06/78 18:17

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT	DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 11-01-78
DEPARTMENT OF THE INTERIOR								
Heritage Conservation and Recreation Service								
Land and water conservation fund BA	D79-13	30,000		10 2 78				30,000
Geological Survey								
Payments from proceeds, sale of water BA	D79-14	36		10 2 78				36
Bureau of Mines								
Drainage of anthracite mines BA	D79-15	1,700		10 2 78				1,700
Office of Territorial Affairs								
Trust territory of the Pacific Islands BA	D79-16	12,000		10 2 78				12,000
DEPARTMENT OF THE INTERIOR TOTAL BA		43,736						43,736
DEPARTMENT OF JUSTICE								
Federal Prison System								
Buildings and facilities BA	D79-17	25,300		10 2 78				25,300
DEPARTMENT OF JUSTICE TOTAL BA		25,300						25,300
DEPARTMENT OF STATE								
Other								

NOTICES

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT	DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 11-01-78
Emergency refugee and migration assistance fund								
BA	D79-18	2,750		10 2 78				2,750
DEPARTMENT OF STATE								
TOTAL BA		2,750						2,750
DEPARTMENT OF TRANSPORTATION								
Federal Aviation Administration								
Civil supersonic aircraft development termination								
BA	D79-19	3		10 2 78				3
Facilities & equip. (Airport & airway trust fund)								
BA	D79-20	290,176		10 2 78				290,176
Federal Highway Administration								
Trust fund share of other highway programs								
BA	D79-21	40,000		10 2 78				40,000
Overseas highway								
BA	D79-22	13,100		10 2 78				13,100
DEPARTMENT OF TRANSPORTATION								
TOTAL BA		343,279						343,279
DEPARTMENT OF THE TREASURY								
Office of the Secretary								
Antirecession financial assistance fund								
BA	D79-23	2,205		10 2 78	-4			2,201
State and local government fiscal assistance fund								
BA	D79-24	78,489		10 2 78				78,489
O	D79-25	2,404		10 2 78	-556			1,848

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT	DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 11-01-78
Bureau of the Mint								
Construction of mint facilities								
BA	D79-26	5,730		10 2 78				5,730
DEPARTMENT OF THE TREASURY								
TOTAL BA		86,424			-4			86,420
TOTAL O		2,404			-556			1,848
GENERAL SERVICES ADMINISTRATION								
Property Management and Disposal Activities								
Rare silver dollar program								
BA	D79-27	2,123		10 2 78				2,123
Federal Preparedness Agency								
State and local preparedness								
BA	D79-28	80		10 2 78				80
GENERAL SERVICES ADMINISTRATION								
TOTAL BA		2,203						2,203
OTHER INDEPENDENT AGENCIES								
Foreign Claims Settlement Commission								
Payment of Vietnam prisoner of war claims								
BA	D79-29	10,945		10 2 78	-1,051			9,894
Interstate Commerce Commission								
Payment of directed rail service								
BA	D79-30	13,990		10 2 78				13,990
OTHER INDEPENDENT AGENCIES								
TOTAL BA		24,935			-1,051			23,884
TOTAL BA		1,175,825			-6,055			1,169,770
TOTAL O		2,404			-556			1,848

[FR Doc. 78-32310 Filed 11-15-78; 8:45 am]

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Federal Register

FRIDAY, NOVEMBER 17, 1978

highlights

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For workshops in Washington, D.C. and out of town, see notice on inside front cover.

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CPSC issues statement of applicability to hazardous substances packaged in large containers; effective 11-17-78 53711

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Commerce proposes rule on prohibition of discrimination, comments by 1-2-79 53765

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NOTE: There were no items eligible for inclusion in the list of RULES GOING INTO EFFECT TODAY.

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NOTE: All public laws from the second session of the 95th Congress have been received and assigned law numbers by the Office of the Federal Register. The last listing appeared in the issue of Oct. 15, 1978.

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Title 3—The President

Proclamation 4608 • **November 15, 1978**

Temporary Duty Increase on the Importation Into the United States of Certain High-Carbon Ferrochromium

By the President of the United States of America

A Proclamation

1. Pursuant to section 201(d)(1) of the Trade Act of 1974 (the Trade Act) (19 U.S.C. 2251(d)(1)), the United States International Trade Commission (USITC) on September 5, 1978, reported to the President (USITC Report 201-35) the results of its investigation under section 201(b)(1) of the Trade Act (19 U.S.C. 2251(b)(1)). The USITC determined that ferrochromium, containing over 3 percent by weight of carbon, provided for in item 607.31 of the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202) is being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing an article like or directly competitive with the imported article. The USITC recommended the imposition of tariff increases on the column 1 rate of 30 percent ad valorem in the first year declining to 20 percent ad valorem in the fifth year of relief.

2. On November 2, 1978, pursuant to section 202(b)(1) of the Trade Act (19 U.S.C. 2252(b)(1)), and after taking into account the considerations specified in section 202(c) of the Trade Act (19 U.S.C. 2252(c)), I determined to remedy the injury found to exist by the USITC through the proclamation of a temporary duty increase different from that recommended by the USITC. In accordance with section 203(b)(1) of the Trade Act (19 U.S.C. 2253(b)(1)), I transmitted a report to the Congress setting forth my determination and intention to proclaim a temporary duty increase and stating the reasons why my decision differed from the action recommended by the USITC.

3. Section 203(e)(1) of the Trade Act (19 U.S.C. 2253(e)(1)) requires that import relief be proclaimed and take effect within 15 days after the import relief determination date.

4. Pursuant to section 203(a)(1) of the Trade Act (19 U.S.C. 2253(a)(1)), I am providing import relief through the temporary increase of import duty on ferrochromium, containing over 3 percent by weight of carbon, valued less than 38 cents per pound, as hereinafter proclaimed.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes of the United States, including General Headnote 4 of the TSUS (19 U.S.C. 1202), sections 203 and 604 of the Trade Act (19 U.S.C. 2253 and 2483), and in accordance with Articles I and XIX of the General Agreement on Tariffs and Trade (GATT) (61 Stat. (pt. 5) A 12 and 61 Stat. (pt. 5) A 58: 8 UST (pt. 2) 1786), do proclaim that—

(1) Part I of Schedule XX to the GATT is modified to conform to the actions taken in the Annex to this proclamation.

(2) Subpart A, part 2 of the Appendix to the TSUS is modified as set forth in the Annex to this proclamation.

(3) This proclamation shall be effective as to those articles entered, or withdrawn from warehouse, for consumption on or after November 17, 1978, and before the close of November 16, 1981, unless the period of its effectiveness is earlier expressly modified or terminated.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of November, in the year of our Lord nineteen hundred seventy-eight, and of the Independence of the United States of America the two hundred and third.

Jimmy Carter

ANNEX

Subpart A, part 2 of the Appendix to the TSUS is modified by inserting in numerical sequence the following new provision:

Item	Articles	Rates of Duty 1	Rates of Duty 2	Effective Period
923.18	Ferrochromium, containing over 3 percent by weight of carbon, valued less than 38 cents per pound, provided for in item 607.31	4.625¢ per lb. on chromium content	4.625¢ per lb. on chromium content	On or before 11/15/81

[FR Doc. 78-32619 Filed 11-16-78; 10:25 am]

rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

[6325-01-M]

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Department of Defense

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: Positions at the Uniformed Services University of the Health Sciences which are established to work on grant-funded projects are excepted under schedule A because it is impracticable to examine for them. For clarity, excepted appointing authorities for the Uniformed Services University of the Health Sciences are placed under a separate headnote and removed from the headnote covering the entire Department.

EFFECTIVE DATE: November 2, 1978.

FOR FURTHER INFORMATION CONTACT:

James R. Edman, 202-632-4533.

Accordingly, 5 CFR 213.3106(b)(8) is revoked and (e) (1) and (2) are added as set out below:

§ 213.3106 Department of Defense.

• • • • • •

(b) *Entire Department (including the Office of the Secretary of Defense and the Departments of the Army, Navy, and Air Force).* • • •

(8) [Revoked]

• • • • • •

(e) *Uniformed Services University of the Health Sciences.*

(1) Positions of Dean, Associate Dean, Assistant Dean, faculty member, and teaching/research assistants.

(2) Positions established to perform work on projects funded from grants.

(5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954-1958 Comp., p. 218.)

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-32234 Filed 11-16-78; 8:45 am]

[6325-01-M]

PART 213—EXCEPTED SERVICE

National Endowment for the Humanities

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: The title of the position of Assistant Director for Project Grants Programs in the Division of Education Programs, National Endowment for the Humanities, is changed to Assistant Director, Higher Education Projects Program, to reflect organizational redesignation.

EFFECTIVE DATE: November 2, 1978.

FOR FURTHER INFORMATION CONTACT:

James R. Edman, 202-632-4533.

Accordingly, 5 CFR 213.3282 is amended by revising paragraph (b)(2) as set out below:

§ 213.3282 National Foundation on the Arts and the Humanities.

• • • • • •

(b) *National Endowment for the Humanities.* • • •

(2) Until September 30, 1980, Assistant Director, Higher Education Projects Program, Division of Education Programs.

(5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954-1958 Comp., p. 218.)

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-32200 Filed 11-16-78; 8:45 am]

[6325-01-M]

PART 213—EXCEPTED SERVICE

National Endowment for the Humanities

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment reflects the change in the title of the Division of Fellowships and Stipends, National Endowment for the Humanities, to Division of Fellowships, and of the Office of Planning and Analysis to Office of Planning and Policy Assessment. The amendment also corrects the titles of two Program Officers, Division of Fellowships, and two Program Officers, Division of Research Grants, which were erroneously listed in the FEDERAL REGISTER and reflects revocation of appointing authorities for several vacant positions which have not been filled.

EFFECTIVE DATE: October 27, 1978.

FOR FURTHER INFORMATION CONTACT:

James R. Edman, 202-632-4533.

Accordingly:

1. 5 CFR 213.3182 is amended by revising paragraph (b) (3), (4), (8), (9), (10), (12), (17), and (25), and revoking (b)(6) and (20) as set out below:

§ 213.3182 National Foundation on the Arts and the Humanities.

• • • • • •

(b) *National Endowment for the Humanities.* • • •

(3) Until September 30, 1980, Director, Office of Planning and Policy Assessment, when filled at grade GS-15 and below.

(4) Until September 30, 1980, Director, Division of Fellowships.

• • •

(6) [Revoked]

• • •

(8) Until September 30, 1980, two Program Officers, Division of Fellowships.

(9) Until September 30, 1980, two Program Officers, Division of Research Grants.

(10) Until September 30, 1980, one Assistant to the Director, Office of Planning and Policy Assessment.

• • •

(12) Until September 30, 1980, one Program Officer, Media Program, Division of Public Programs.

• • •

(17) Until September 30, 1980, one Assistant Director, Program Development, Division of Public Programs.

• • •

(20) [Revoked]

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• • •

(25) Until September 30, 1980, one Planning Officer, Office of Planning and Policy Assessment.

• • • • •

2.5 CFR 213.3282 is amended by revising paragraph (b)(1) and (16) to read as set out below:

§ 213.3282 National Foundation on the Arts and the Humanities.

• • • • • •

(b) *National Endowment for the Humanities.*

(1) Until September 30, 1980, Assistant Director, Research Materials Program, Division of Research Grants.

• • •

(16) Until September 30, 1980, one Humanist Administrator, Youth Programs, Division of Special Programs.

(5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954-1958 Comp., p. 218.)

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-32201 Filed 11-16-78; 8:45 am]

[6325-01-M]

PART 213—EXCEPTED SERVICE

Temporary Boards and Commissions

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This authority excepts from the competitive service all positions at grades GS-15 and below on the staff of the President's Commission on Pension Policy with the provision that no one may serve under this authority after December 15, 1979. This exception is granted because it is impracticable to examine for these positions.

EFFECTIVE DATE: November 2, 1978.

FOR FURTHER INFORMATION CONTACT:

James Edman, 202-632-4533.

Accordingly, 5 CFR 213.3199(w)(1) is added as set out below:

§ 213.3199 Temporary Boards and Commissions.

• • • • •

(w) *President's Commission on Pension Policy.*

(1) All positions on the staff of the President's Commission on Pension Policy. No one may serve under this authority after December 15, 1979.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954-1958 Comp., p. 218.)

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-32025 Filed 11-16-78; 8:45 am]

[3410-02-M]

Title 7—Agriculture

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

PART 971—LETTUCE GROWN IN LOWER RIO GRANDE VALLEY IN SOUTH TEXAS

Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation imposes pack, container, and inspection requirements on shipments of lettuce grown in the Lower Rio Grande Valley in south Texas. This should promote orderly marketing of such lettuce by standardizing the pack of lettuce shipped to consumers.

EFFECTIVE DATE: November 20, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, Deputy Director, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, Washington, D.C. 20250, telephone 202-447-6393.

SUPPLEMENTARY INFORMATION: Marketing Agreement No. 144 and Marketing Order No. 971 regulate the handling of lettuce grown in the Lower Rio Grande Valley in south Texas. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The South Texas Lettuce Committee, established under the order, is responsible for its local administration.

Notice was published in the October 24 FEDERAL REGISTER (43 FR 49541) regarding the proposal. It afforded interested persons an opportunity to file written comments by November 8, 1978. None was filed.

This regulation is based upon the recommendations made by the committee at its public meeting in McAllen, Tex., on October 12, 1978.

The recommendations of the committee reflect its appraisal of the 1978-79 lettuce crop and marketing prospects for the season.

The south Texas lettuce industry as well as other lettuce shipping areas are accustomed to operating on a 6-day shipping week. The experience has been that a 6-day shipping week is adequate for 5 days distribution in terminal markets. Therefore "packaging holidays" on Sundays and Christmas Day will promote more orderly marketing.

The pack and container requirements are in accord with the generally accepted commercial practices of the south Texas lettuce industry of packing specified numbers of heads of lettuce in specific sized containers limited to those found acceptable to the trade for safe transportation of the lettuce, and will prevent deceptive practices.

No purpose would be served by regulating the pack or requiring the inspection and assessment of insignificant quantities of lettuce. Therefore, quantities up to two cartons of lettuce per day are exempt from such requirements.

Provisions with respect to special purpose shipments, including export, are designed to meet the different requirements for export and noncommercial domestic trade. Because of the production area's proximity to the Mexican border, Mexican buyers have been accustomed to acquiring small lots of production area lettuce for their home market. These buyers utilize lettuce which fails to meet the pack and container requirements. Inasmuch as such shipments have a negligible effect on the domestic market, they are permitted provided certain safeguard requirements are met.

After consideration of all relevant matters, including the proposal set forth in the notice, it is found that the handling regulation will tend to effectuate the declared policy of the act.

It is further found that good cause exists for not postponing the effective date of this section 30 days after its publication in the FEDERAL REGISTER (5 U.S.C. 553) in that: (1) Shipments of lettuce grown in the production area are expected to begin about the effective date specified in this regulation, (2) to maximize benefits to producers this effective period should be set to cover as many shipments as possible during the shipping season, (3) information regarding the provisions of this regulation has been made available to producers and handlers in the production area, and (4) compliance with this regulation will not require any special preparation on the part of persons subject to it which cannot be completed by the effective date.

The regulation is as follows:

§ 971.319 Handling regulation.

During the period November 20, 1978, through March 31, 1979, no

person shall handle any lot of lettuce grown in the production area unless such lettuce meets the requirements of paragraphs (a), (b), and (c) of this section, or unless such lettuce is handled in accordance with paragraphs (d) or (e) of this section. Further, no person may package lettuce during the above period on any Sunday or on Christmas Day.

(a) *Pack.* (1) Lettuce heads, packed in container Nos. 7303, 7306, or 7313; if wrapped may be packed only 18, 20, 22, 24, or 30 heads per container; if not wrapped, only 18, 24, or 30 heads per container.

(2) Lettuce heads in container No. 85-40 may be packed only 24 or 30 heads per container.

(b) *Containers.* Containers may be only the following depth, width, and length respectively:

(1) Cartons with inside dimensions of 10 inches x 14¼ inches x 21⅝ inches (designated as carrier container No. 7303), or

(2) Cartons with inside dimensions of 9¾ inches x 14 inches x 21 inches (designated as carrier container No. 7306), or

(3) Cartons with inside dimensions of 14 inches x 9¾ inches x 21 inches (designated as carrier container No. 7313), or

(4) Cartons with inside dimensions of 10¾ inches x 16⅛ inches x 21½ inches (designated as earrier container No. 85-40—flat pack).

(c) *Inspection.* (1) No handler shall handle lettuce unless such lettuce is inspected by the Texas-Federal Inspection Service and an appropriate inspection certificate has been issued for it, except when relieved of such requirement by paragraphs (d) or (e) of this section.

(2) No handler may transport by motor vehicle, or cause such transportation of, any shipment of lettuce for which inspection is required unless each such shipment is accompanied by a copy of an appropriate inspection certificate or shipment release form (SPI-23) furnished by the inspection service verifying that such shipment meets the pack and container requirements of this section.

A copy of such inspection certificate or shipment release form shall be available and surrendered upon request to authorities designated by the committee.

(3) For administration of this part, such inspection certificate or shipment release form required by the committee as evidence of inspection is valid for only 72 hours following completion of inspection, as shown on such certificate or form.

(d) *Minimum quantity.* Any person may handle up to, but not to exceed two cartons of lettuce a day without regard to inspection, assessment, and pack requirements. This exception shall not be applied to any shipment of over two cartons of lettuce.

(e) *Special purpose shipments.* The pack, container, and inspection requirements of this section shall not be applicable to shipments as follows:

(1) For relief, charity, experimental purpose, or export to Mexico, if a handler presents a certificate of privilege for such lettuce prior to handling it, pursuant to §§ 971.120-971.125; and

(2) For export to Mexico, if the handler of such lettuce loads and transports it only in a vehicle bearing Mexican registration (license).

(f) *Definitions.* (1) "Wrapped" heads of lettuce refers to those which are enclosed individually in parchment, plastic, or other commercial film and then packed in cartons or other containers.

(2) Other terms used in this section have the same meaning as when used in Marketing Agreement No. 144 and this part.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.)

Dated November 14, 1978, to become effective November 20, 1978.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 78-32469 Filed 11-16-78; 8:45 am]

[3410-02-M]

[Lemon Reg. 172, Amendment 1; Lemon Reg. 173]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of California-Arizona lemons that may be shipped to the fresh market during the period November 19-25, 1978, and increases the quantity of such lemons that may be so shipped during the period November 12-18. Such action is needed to provide for orderly marketing of fresh lemons for the periods specified due to the marketing situation confronting the lemon industry.

DATES: The regulation becomes effective November 19-25, 1978, and the amendment is effective for the period November 12-18, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: *Findings.* Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, established under this marketing order, and upon other information, it is found that the limitation of handling of lemons, as hereafter provided, will tend to effectuate the declared policy of the act.

The committee met on November 14, 1978, to consider supply and market conditions and other factors affecting the need for regulation, and recommended quantities of lemons deemed advisable to be handled during the specified weeks. The committee reports the demand for lemons has changed somewhat, with smaller sizes improving and size 150's and larger showing an easing trend.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of lemons. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

1. Section 910.473 is added as follows:

§ 910.473 Lemon Regulation 173.

Order. (a) The quantity of lemons grown in California and Arizona which may be handled during the period November 19, 1978, through November 25, 1978, is established at 190,000 cartons.

(b) As used in this section, "handled" and "carton(s)" mean the same as defined in the marketing order.

§ 910.472 (Amended)

2. Paragraph (a) of § 910.472 Lemon Regulation 172 (43 FR 52462) is amended to read as follows: "The quantity of lemons grown in California and Arizona which may be handled during the period November 12, 1978, through November 18, 1978, is established at 200,000 cartons."

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(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.)

Dated: November 16, 1978.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 78-32623 Filed 11-16-78; 11:24 am]

[3410-34-M]

Title 9—Animals and Animal Products

CHAPTER I—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

SUBCHAPTER D—EXPORTATION AND IMPORTATION OF ANIMALS (INCLUDING POULTRY) AND ANIMAL PRODUCTS

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

Importation of Birds

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document finalizes the interim rule which amended the regulations relating to financial responsibility for costs associated with the maintenance and operation of approved quarantine facilities for the importation of birds, and gives notice requiring importers to reimburse Veterinary Services for all costs incurred which are associated with the maintenance and operation of such facilities. This action is necessary in order to recover costs incurred by Veterinary Services in providing services required by the importer which are associated with the operation and maintenance of approved quarantine facilities for importation of birds. The intended effect of this action is to reimburse Veterinary Services for funds expended in servicing approved quarantine facilities for importation of birds.

EFFECTIVE DATE: November 17, 1978.

FOR FURTHER INFORMATION CONTACT:

Dr. George P. Pierson, USDA, APHIS, VS, Room 817, Federal Building, 6505 Belcrest Road, Hyattsville, Md. 20782, 301-436-8170.

SUPPLEMENTARY INFORMATION: On August 9, 1978 (43 FR 35458-35459) and August 11, 1978 (43 FR 35682-35683), an interim rule was published in the FEDERAL REGISTER which amended, effective October 1, 1978, the regulations which relate to the financial responsibility for costs associated with the maintenance and operation of approved quarantine facilities for the importation of birds, and gave notice requiring importers to reimburse Veterinary Services for all costs incurred which are associated with the maintenance and operation of such facilities. This interim rule was of an emergency nature because the Department anticipated that it would not have funds to provide the services subsequent to October 1, 1978. However, the public was given an opportunity to comment on the interim rule.

A comment period through September 8, 1978, was provided and 13 comments were received by the Department. Three of these were from bird quarantine facility operators, two were from bird wholesalers, one was from a zoological park organization, two were from retail pet shops, one was from a Department employee, one was from a humane group, one was from a Congressman, one was from a university professor, and one was from the American Association of Avian Pathologists.

A summary of relevant comments received and the agencies' responses to these comments are as follows:

1. One comment received endorsed the interim rule.

2. One comment was noncommittal concerning agreement or disagreement with the rule, but suggested that a system be devised whereby quarantine cost for individual birds can be arrived at for the purpose of establishing their retail price. The agency believes this suggestion is impracticable and that it involves management problems which importers and dealers should resolve.

3. Of the remaining 10 comments received, most of these addressed economic problems related to the rule. Three of the ten expressed the opinion that the rule is discriminatory and unfair since importers are not required to reimburse the Government for services received from other agencies such as Customs and the U.S. Public Health Service.

Two of the ten expressed the opinion that the Department should continue to assume responsibility for all costs involved in providing approved quarantine stations with required services; 4 of the 10 expressed concern for the increased cost the importer must bear for reimbursement of the Department for services received; 3 of the 10 suggested that the rule will result in a high inflationary impact; 3 small importers and 1 wholesaler suggested that the impact of requiring importers to reimburse the Department for services received will drive small importers and wholesalers out of business; 2 of the 10 comments suggested revision of various operational procedures which they believed would result in reduced charges; and 1 suggested revision of computation procedures by which estimated charges were arrived at.

From the standpoint of economics, most of the objections posed in the comments referred to are academic since Federal funds which may be used to provide services required by approved quarantine facilities for the importation of birds were not available as of October 1, 1978, and the only realistic alternative is to discontinue the use of such facilities. The Department believes that the use of such facilities should be permitted, and therefore it is necessary that the reimbursable funds system set forth in the interim rule, as modified herein, be finalized.

Since the costs of services provided will be borne by the importer and will be passed on to the consumer, an increase in the retail price of birds is expected. An analysis of the inflationary impact of this action has been made, and the conclusion of this analysis is that the inflationary impact should be limited. Operational procedures have been and will continue to be reviewed and revised with the goal of decreasing costs of services provided to importers to the maximum extent possible.

Estimates of costs for laboratory services as proposed in the interim rule have been further reviewed and have been revised to accordingly accurately reflect actual costs to the Department. Originally the charges for laboratory costs as stated in § 92.11(g)(2) of the interim rule were $11.76 per sample, plus shipping charges for each sample. Based upon the aforementioned review, charges for laboratory costs in § 92.11(g)(2) of this document are reduced to $8.50 per sample plus shipping charges.

Further, overtime services when required will be charged at the actual rate of the GS level of the employee providing the services at the time such services are provided, including appropriate premium pay in accordance with the provisions of 5 U.S.C. 5541-5549. The interim rule required that overtime charges be paid in accordance with 9 CFR Part 97. However, part 97 includes a flat rate for reimbursement to the Department for certain import and export services rendered by the Department. This rate is an average hourly rate and includes overhead. Therefore, because the reimbursement to the Department for services performed at approved quarantine facilities is to be based upon

actual cost, and further, because the regulations at § 92.11(g)(3) provide for a surcharge for overhead, the reference in § 92.11(g) to part 97 is deleted. Further, part 97 is also amended to specify that such part does not apply to the provisions of § 92.11(g).

The reimbursement of the Department for the costs of services provided approved quarantine facilities may have an adverse economic impact on businesses which are economically unstable. However, the Department believes the affect of this action on businesses which are financially sound will be limited.

Additionally, 7 of the 10 comments received and summarized in item 3 above suggested that the placing of the interim rule into effect will increase smuggling activities due to the resulting higher cost of legally imported birds. Three of the ten suggested that because of increased smuggling activity which they expect will occur, the possibility of introducing diseases through such illegal movements will be increased and that the poultry industry will be jeopardized. Historically, bird smuggling activities were a problem before approved quarantine facilities for birds were established and have continued to be a problem since that date. It is anticipated that the reimbursement to the Department for services required by importers in the operation and maintenance of approved animal quarantine facilities will have no more than a minimum effect on overall bird smuggling activities.

Accordingly, Part 92, and Part 97, Title 9, Code of Federal Regulations, are amended in the following respects:

1. In § 92.11, a new paragraph (g) is added and the second sentence of paragraph (f) is amended to read:

§ 92.11 **Quarantine requirements.**

* * * * *

(f) *Standards for approved quarantine facilities and handling procedures for importation of birds.* * * * The cost of the facility and all costs associated with the maintenance and operations of such facility shall be borne by the importer in accordance with the provisions of § 92.11(g) and § 92.12 (a) and (c).

* * * * *

(g) *Charges for services.* The charges to be borne by importers for services provided for quarantine facilities approved in accordance with § 92.11(f) of this part shall be:

(1) The appropriate GS hourly rate (including appropriate premium pay in accordance with 5 U.S.C. 5541-5549) of the employee who actually performs the service, including his travel time and his travel expenses; *Provided, however,* Such time and travel expense shall not exceed the time and travel expense to and from his official duty station;

(2) Laboratory costs at $8.50 per sample, plus shipping charges per sample, and;

(3) A surcharge for overhead based on the most current historical data available showing the percentage of APHIS funds expended for administrative support.

§ 97.1 [Amended]

2. The phrase "Except as provided in § 92.11(g)(1)," is added to the beginning of the first sentence of § 97.1(a).

(Sec. 2, 32 Stat. 792, as amended; secs. 2, 3, 4, and 11, 76 Stat. 129, 130, 132 (21 U.S.C. 111, 134a, 134b, 134c, and 134f); sec. 603(a), (7 U.S.C. 450b and 2201, respectively); 37 FR 28464, 28477; 38 FR 19141.)

(64 Stat. 561 (7 U.S.C. 2260); sec. 15 Pub. L. 94-353, 90 Stat. 882 (49 U.S.C. 1741)) (38 FR 28814, Oct. 17, 1973, as amended at 42 FR 1455, Jan. 7, 1977; 42 FR 55599, Oct. 18, 1977).

These amendments establish procedures to be used to reimburse Veterinary Services for funds expended in servicing approved quarantine facilities for importation of birds. These amendments should become effective immediately in order to continue the furnishing of services involved.

Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that further notice and other public procedure with respect to the amendments are impracticable and unnecessary and good cause is found for making the amendments effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 14th day of November 1978.

NOTE.—This final rulemaking has been reviewed under the USDA criteria established to implement E.O. 12044, "Improving Government Regulations." While this action has not been designated "significant" under those criteria, an approved final impact analysis statement has been prepared and is available from Dr. E. R. Mackery, APHIS, VS, Program Services, Room 870, Federal Building, 6505 Belcrest Road, Hyattsville, Md. 20782, 301-436-8695.

PIERRE A. CHALOUX,
Deputy Administrator, Veterinary Services.

[FR Doc. 78-32470 Filed 11-16-78; 8:45 am]

[6210-01-M]

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS

Changes in Rates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Change in discount rates.

SUMMARY: The Board of Governors has amended its regulation A, "Extensions of Credit By Federal Reserve Banks," for the purpose of adjusting discount rates with a view to accommodating commerce and business in accordance with other related rates and the general credit situation of the country. Pursuant to the authority of 5 U.S.C. sec. 553 (b)(B) and (d)(3), these amendments are being published without prior general notice of proposed rulemaking, public participation, or deferred effective date. The Board has for good cause found that urgent economic and financial considerations require that these amendments must be adopted immediately and that delay would be contrary to the public interest.

EFFECTIVE DATE: The changes were effective on the dates specified below.

FOR FURTHER INFORMATION CONTACT:

Theodore E. Allison, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, 202-452-3257.

Pursuant to section 14(d) of the Federal Reserve Act (12 U.S.C. 357), Part 201 is amended as set forth below:

1. Section 201.51 is revised to read as follows:

§ 201.51 **Advances and discounts for member banks under sections 13 and 13a.**

The rates for all advances and discounts under sections 13 and 13a of the Federal Reserve Act (except advances under the last paragraph of such section 13 to individuals, partnerships, or corporations other than member banks) are:

Federal Reserve Bank of—	Rate	Effective
Boston	9½	Nov. 2, 1978
New York	9½	Nov. 1, 1978
Philadelphia	9½	Nov. 2, 1978
Cleveland	9½	Do.
Richmond	9½	Do.
Atlanta	9½	Nov. 3, 1978

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Federal Reserve Bank of—	Rate	Effective
Chicago	9½	Nov. 2, 1978
St. Louis	9½	Do.
Minneapolis	9½	Nov. 1, 1978
Kansas City	9½	Nov. 2, 1978
Dallas	9½	Do.
San Francisco	9½	Do.

2. Section 201.52 is revised to read as follows:

§ 201.52 Advances to member banks under section 10(b).

(a) The rates for advances to member banks under section 10(b) of the Federal Reserve Act are:

Federal Reserve Bank of—	Rate	Effective
Boston	10	Nov. 2, 1978
New York	10	Nov. 1, 1978
Philadelphia	10	Nov. 2, 1978
Cleveland	10	Do.
Richmond	10	Do.
Atlanta	10	Nov. 3, 1978
Chicago	10	Nov. 2, 1978
St. Louis	10	Do.
Minneapolis	10	Nov. 1, 1978
Kansas City	10	Nov. 2, 1978
Dallas	10	Do.
San Francisco	10	Do.

(b) The rates for advances to member banks for prolonged periods and significant amounts under section 10(b) of the Federal Reserve Act and section 201.2(e)(2) of regulation A are:

Federal Reserve Bank of—	Rate	Effective
Boston	10½	Nov. 2, 1978
New York	10½	Nov. 1, 1978
Philadelphia	10½	Nov. 2, 1978
Cleveland	10½	Do.
Richmond	10½	Do.
Atlanta	10½	Nov. 3, 1978
Chicago	10½	Nov. 2, 1978
St. Louis	10½	Do.
Minneapolis	10½	Nov. 1, 1978
Kansas City	10½	Nov. 2, 1978
Dallas	10½	Do.
San Francisco	10½	Do.

3. Section 201.53 is revised to read as follows:

§ 201.53 Advances to persons other than member banks.

The rates for advances under the last paragraph of section 13 of the Federal Reserve Act to individuals, partnerships, or corporations other than member banks secured by direct obligations of, or obligations fully guaranteed as to principal and interest by, the United States or any agency thereof are:

Federal Reserve Bank of—	Rate	Effective
Boston	12½	Nov. 2, 1978
New York	12½	Nov. 1, 1978
Philadelphia	12½	Nov. 2, 1978
Cleveland	12½	Do.
Richmond	12½	Do.
Atlanta	12½	Nov. 3, 1978
Chicago	12½	Nov. 2, 1978
St. Louis	12½	Do.
Minneapolis	12½	Nov. 1, 1978
Kansas City	12½	Nov. 2, 1978
Dallas	12½	Do.
San Francisco	12½	Do.

(12 U.S.C. 248(i). Interprets or applies 12 U.S.C. 357.)

By order of the Board of Governors, November 8, 1978.

JOHN M. WALLACE,
Assistant Secretary of the Board.

[FR Doc. 78-32401 Filed 11-16-78; 8:45 am]

[6210-01-M]

[Docket No. R-0189; Regulation E]

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS

PART 205—PURCHASE OF WARRANTS

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Rescission of regulation E.

SUMMARY: The Federal Reserve System has undertaken a substantive review of its regulations and, as part of that review, has determined that regulation E, "Purchase of Warrants", which governs the purchase by Federal Reserve Banks of certain short-term obligations of State or local governments, is obsolete and should be rescinded.

EFFECTIVE DATE: November 9, 1978.

FOR FURTHER INFORMATION CONTACT:

Richard H. Puckett, Manager, Regulatory Improvement Project, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, 202-452-2751.

SUPPLEMENTARY INFORMATION: Regulation E, "Purchase of Warrants" (12 CFR Part 205), first issued by the Board in 1915, governs the purchase by Federal Reserve Banks of obligations with a maturity from the date of purchase of not exceeding 6 months issued by State or local governments in anticipation of the collection of taxes or the receipt of assured revenues (hereinafter "warrants"). Regulation E implements section 14(b) of the Federal Reserve Act ("Act"), which empowers Federal Reserve Banks to purchase "bills, notes, revenue bonds, and warrants with a maturity from date of purchase of not exceeding 6 months, issued in anticipation of the collection of taxes or in anticipation of the receipt of assured revenues by any State, county, district, political subdivision, or municipality in the continental United States, • • • such purchases to be made in accordance with rules and regulations prescribed by the Board • • •." Federal Reserve Banks have not purchased warrants pursuant to the authority of section 14(b) of the Act and regulations E since 1933. Historically, Federal Reserve Banks purchased warrants to provide liquidity to member banks or income to Federal Reserve Banks. The purpose of regulation E is to limit purchases of warrants to a relatively small proportion of a Federal Reserve Bank's resources and to assure that investments of Federal Reserve Banks are of short maturity and are self-liquidating.

In 1933, section 12A of the Act was enacted, creating the Federal Open Market Committee ("FOMC") and limiting the power of Federal Reserve Banks to purchase warrants in the open market. While Federal Reserve Banks may purchase warrants directly from State or local governments subject to regulations issued by the Board, the purchase of such obligations in the open market may only be made at the direction of the FOMC. In 1932, section 10(b) of the Act was enacted, allowing member banks to borrow against any acceptable collateral, thereby permitting the use of warrants as collateral for advances to member banks by Federal Reserve Banks at a rate of at least one-half of one percent above the basic discount rate. In 1968, section 13 of the Act was amended to permit Federal Reserve Banks to make advances to member banks at the basic discount rate secured by warrants (see 12 CFR 201.108). These statutory developments have obviated any need for Federal Reserve Banks to make direct purchases from State or local governments of such obligations.

In the unlikely event that it becomes necessary or desirable, in the absence of regulation E, for Federal Reserve Banks to purchase warrants directly from State or local governments, the underlying statutory authority empowering Federal Reserve Banks to make such purchases in accordance with rules and regulations prescribed by the Board would still exist and appropriate authorization could be given at that time by the Board.

In view of the above-mentioned statutory developments which have made use of the section 14(b) authority to purchase warrants unnecessary, the Board has decided to rescind regulation E. In this connection, the language "compliance with the requirements of regulation E is not necessary; but" in 12 CFR 201.108(d) has been deleted.

By order of the Board of Governors, November 9, 1978.

JOHN M. WALLACE,
Assistant Secretary of the Board.

Title 12 CFR is amended as follows:

1. Part 205 is deleted in its entirety.

§ 201.108 [Amended]

2. Section 201.108(d) is amended by deleting from the second sentence the words "compliance with the requirements of regulation E is not necessary; but".

[FR Doc. 78-32414 Filed 11-16-78; 8:45 am]

[6355-01-M]

Title 16—Commercial Practices

CHAPTER II—CONSUMER PRODUCT SAFETY COMMISSION

SUBCHAPTER B—CONSUMER PRODUCT SAFETY ACT REGULATIONS

PART 1202—SAFETY STANDARD FOR MATCHBOOKS

Revised Safety Standard

AGENCY: Consumer Product Safety Commission.

ACTION: Revised final regulation.

SUMMARY: On May 4, 1977, the Commission issued a final safety standard for matchbooks. On March 31, 1978, a Federal court of appeals set aside portions of that standard. Since the Commission has decided not to reissue those portions or appeal the court's decision, the standard that went into effect on May 4, 1978, is different from the standard issued in May 1977. For purposes of clarity, the Commission is publishing in this document the standard, as revised to comply with the court order.

EFFECTIVE DATE: The revised standard became effective on May 4, 1978.

FOR FURTHER INFORMATION CONTACT:

George Anikis, Office of Program Managment, Consumer Product Safety Commission, Washington, D.C. 20207, telephone 301-492-6453.

SUPPLEMENTARY INFORMATION: On May 4, 1977, the Commission issued in final form a consumer product safety standard applicable to matchbooks (16 CFR Part 1202; 42 FR 22656-70). This standard was to become effective on May 4, 1978.

On March 31, 1978, the U.S. Court of Appeals for the First Circuit decided two petitions for review of the Commission's matchbook standard. In one decision, *D. D. Bean & Sons, Co.* v. *CPSC*, 574 F. 2d 643 (1st Cir. 1978), the court upheld certain challenged provisions, but set aside all of the "performance requirements" (§ 1202.5) contained in the standard. In the other decision, *Giglio* v. *CPSC*, 575 F. 2d 1 (1st Cir. 1978), the court upheld the Commission's position and no provisions in the standard were affected.

On May 4, 1978, the provisions in the matchbook standard not set aside by the court became effective. On May 11, 1978, the Commission considered some outstanding matters concerning the matchbook standard and decided:

1. The Commission would not take action to appeal the decision or to reissue any provision set aside by the court, and

2. The Commission would discontinue its staff work on a certification rule to accompany the matchbook standard.

The performance requirements set aside by the court were accompanied in the original standard by extensive laboratory testing procedures. Like the performance requirements themselves, these procedures have been deleted from the revised standard issued below. In the absence of laboratory testing procedures, there is no need for a certification rule for matchbooks. (The rule on which the staff was working would have included an acceptable sampling plan and other guidance concerning certification by matchbook manufacturers that their products comply with the laboratory tests.)

Certification of matchbooks with the remaining "general requirements" (§ 1202.4) can be based on a visual test. Therefore, a certification rule is unnecessary and it is sufficient for manufacturers to certify matchbooks based on section 14(a) of the Consumer Product Safety Act (15 U.S.C. 2063(a)).

Under section 14(a) matchbook manufacturers must issue certificates stating that the matchbook standard applies to their products and certifying that their matchbooks comply with it. These certificates must accompany the matchbooks or be otherwise furnished to distributors or retailers to whom the matchbooks are delivered. The certification must be based on a test of each matchbook or on a reasonable testing program (the manufacturers must use their own judgments in deciding what is a reasonable testing program). There is no specific language or format for the certifications, but they must contain the name of the manufacturer (or private labeler) issuing the certificate, as well as the date and place of manufacture.

For the convenience of anyone interested in the matchbook standard, the Commission is publishing the standard in its current form below. The performance requirements set aside by the court, as well as additional provisions that supported those requirements, have been deleted. Renumbering and other editorial changes have been made, where appropriate.

The Commission amends Title 16, Code of Federal Regulations, Chapter II, by revising part 1202 as follows:

Sec.
1202.1 Scope and effective date.
1202.2 Findings.
1202.3 Definitions.
1202.4 Matchbook general requirements.
1202.5 Certification.
1202.6 Marking.
1202.7 Prohibited stockpiling.

AUTHORITY: Secs. 2, 3, 7, 9, 14, 16, and 19, Pub. L. 92-573, 86 Stat. 1212-17 (15 U.S.C. 2051, 2052, 2056, 2058, 2063, 2065, and 2068).

§ 1202.1 Scope and effective date.

(a) *Scope.* This part 1202, a consumer product safety standard, prescribes the safety requirements, including labeling requirements, for the matchbook. This part 1202 applies to all matchbooks manufactured in or imported into the United States after its effective date.

(b) *Effective date.* The effective date shall be May 4, 1978.

§ 1202.2 Findings.*

(a) *Risk of injury.* The Commission finds that unreasonable risks of injury from accidents are associated with matchbooks. These unreasonable risks, which this part 1202 is intended to reduce or eliminate, are:

(1) Burn injuries, sustained by children and others, including mentally or physically impaired persons, who play with or otherwise improperly use bookmatches.

(2) Burn injuries sustained by persons who use bookmatches that fragment or have delayed ignition.

(3) Eye injuries sustained by persons who use bookmatches that fragment and cause particles from such matches to lodge in a person's eye.

(4) Burn injuries sustained by persons who use bookmatches that, when struck, ignite the remaining matches in the matchbook.

(5) Burn injuries sustained by persons from fires that have resulted

*The Commission's findings apply to the matchbook standard that it published on May 4, 1977 (42 FR 22656-70). On Mar. 31, 1978, the U.S. Court of Appeals for the First Circuit set aside portions of that standard (*D. D. Bean & Sons, Co.* v. *CPSC*, 574 F. 2d 643). On Nov. 17, 1978, the Commission published a revised version of the standard which reflects the court's decision. However, the findings have not been revised and they are therefore not fully applicable to the revised matchbook requirements. For example, the revised standard does not address the unreasonable risk of injury of "[b]urn injuries that have been sustained by persons from fires that have been set by the afterglow of extinguished bookmatches" (§ 1202.2(a)(6)) because the court set aside the afterglow performance requirement.

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from unexpected ignition of bookmatches with no deliberate action by the user.

(6) Burn injuries that have been sustained by persons from fires that have been set by the afterglow of extinguished bookmatches.

(b) *Products subject to this standard.* (1) The products subject to this standard are those kinds of manufactured ignition devices known as matchbooks. The matchbook consists of a group of bookmatches joined together and fastened within a cover. Although matchbooks are commonly referred to as paper matches or paper-stem matches to distinguish them from individual stick matches such as wooden stem matches packaged in boxes, all matchbooks, regardless of the materials of manufacture of the covers or of the bookmatches fastened within, are subject to this standard.

(2) Matchbooks subject to this standard can be divided into two basic categories: Resale matchbooks and special reproduction matchbooks. Resale matchbooks can be subdivided into advertising and nonadvertising matchbooks. Nonadvertising matchbooks are generally sold by large chain stores, and constitute a small portion of the total resale matchbook volume. Resale matchbooks with advertising are generally given away by tobacco shops, drug stores, vending firms, and other mass distribution outlets. Special reproduction matchbooks, characterized by their distinctive and unique cover designs, are purchased and distributed for promotional purposes by hotels, restaurants, financial institutions, and other business enterprises, and are given free to users.

(3) The Commission estimates that resale matchbooks accounted for almost 75 percent of the volume of matchbooks in 1975, or about 15 billion matchbooks, while special reproduction matchbooks accounted for just over 25 percent, or about 5.5 billion matchbooks.

(c) *Effects on utility, cost, and availability.* (1) The Commission finds that the public need for ignition devices which are small, portable, and can be used to provide a source of fire, is substantial since such products meet basic requirements for a source of fire to ignite tobacco products, fires, candles, or other products, and are also used for miscellaneous other purposes such as providing short term illumination. Three types of products: Matchbooks, individual stick matches, and lighters, predominantly supply the source of fire to meet these requirements.

(i) The Commission estimates that in 1976 U.S. consumers required approximately 645 billion such fire sources or "lights," as they are known, with almost 98 percent of this total required for tobacco products. In the aggregate, the requirements by U.S. consumers for a source of fire has been growing at an annual rate of approximately 3 percent. Matchbooks, the products regulated in this standard, are estimated to have supplied about 65 percent of the source of lights; lighters accounted for about 25 percent, and individual stick matches (primarily wooden-stem type) accounted for the remainder.

(ii) The Commission also finds that matchbooks fulfill a need by institutions and business enterprises for a particular form of specialty advertising that is both relatively inexpensive and effective in reaching a specified audience or population segment with the advertiser's message. Various studies of matchbooks as a form of advertising have found that readership can average 3 to 15 times higher than average readership, listenership, and viewership figures from competing media such as magazines, newspapers, radio, and television, and that readership retention of the matchbook advertising message was extremely high, about 45 percent. In addition, matchbooks tend to be considerably less expensive than other forms of specialty advertising, including those competing advertising items such as address books, key cases, litterbags, and the like, which are themselves relatively inexpensive.

(2) The Commission finds that the standard will have no adverse effects on the utility that consumers derive from matchbooks. To the extent that injuries and property damage associated with the use of matchbooks is reduced or eliminated as a result of this standard, the utility of matchbooks as a source of fire will be increased.

(3) The Commission estimates that manufacturing cost increases as a direct or indirect effect of this standard will be modest for the industry as a whole. Such increases will tend to be concentrated in one-time costs to complete changeover to reverse friction, and in costs to establish and implement testing programs and certification procedures.

(i) Because some 80-90 percent of the matchbooks produced annually are given free to consumers, there is not likely to be any direct cost impact on the consumer as a result of the standard. Some proportion of increased manufacturing costs will be passed on to the institutions and business enterprises that purchase matchbooks for promotional purposes. To the extent that increases in advertising and promotional costs may be reflected in higher prices for goods and services sold by these businesses, there may be indirect cost effects on consumers. If so, such impacts would likely be small, if not imperceptible.

(ii) For the 12-20 percent of matchbooks that are purchases at retail by consumers, some proportion of any manufacturing cost increases may be passed on to the consumer. A resulting increase in retail prices for such matchbooks will be small, no more than a few cents per box of 50 matchbooks.

(4) The Commission finds that the standard will not have impacts of significant magnitude on the availability of matchbooks. Although some institutions and business enterprises may reduce their matchbook purchases or eliminate them in response to any increased price of matchbooks, the large number of such purchasers, and the large volume purchased annually, are such that curtailment of purchases by some businesses is likely to have very small effects on the total number of matchbooks available to U.S. consumers.

(d) *Alternatives.* (1) The Commission has considered other means of achieving the objective of the standard throughout the course of its development. Certain other more elaborate test requirements were considered and were shown to have the potential for severe adverse effects on competition and estimated to result in disruptions and dislocations of manufacturing and commercial practices. Therefore, having considered and rejected such other means of achieving the objective of the standard, the Commission has found none that would cause less disruption or dislocation of manufacturing and other commercial practices, consistent with the public health and safety than this standard.

(2) Because of competition from substitute products such as inexpensive disposable butane lighters and because of other prevailing business and economic conditions, the industry manufacturing matchbooks has been in a state of contraction in recent years. This contraction, marked by the exit of some firms and by plant closings or consolidations, is likely to continue in the future; but this will neither be the result of, nor significantly accelerated by, effects of the standard. Currently, aggressive price and service competition prevails among firms vying for customer accounts. It is anticipated that this competition for sales may increase as an indirect effect of the standard. To the extent that this occurs, there may be some disruption or dislocation of manufacturing, sales, or distribution practices in certain matchbook product categories and market segments. Marginal firms and firms producing limited product categories or for limited market segments may be affected to a greater degree than multiproduct category or multimarket firms.

(e) *Conclusion.* The Commission finds that this standard, including its effective date, is reasonably necessary to eliminate or reduce the unreasonable risks of injury associated with matchbooks and that the issuance of the standard is in the public interest.

§ 1202.3 Definitions.

In addition to the definitions given in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052), the following definitions apply for the purpose of this standard:

(a) "Bookmatch" means a single splint, with a matchhead attached, that comes from a matchbook.

(b) "Bridge" means the matchhead material held in common by two or more splints.

(c) "Broken bridge" means a bridge that has become separated.

(d) "Caddy" means a package of two or more matchbooks wrapped or boxed together at a production plant.

(e) "Comb" means a piece of wood, paper, or other suitable material that has been formed into splints, that remain joined at their base, and that are designed to have matchheads attached to their tips.

(f) "Cover" means the paperboard or other suitable material that is wrapped around and fastened to the comb(s).

(g) "Friction" means the dried chemical mixture on the matchbook cover used to ignite the bookmatch.

(h) "Match" means a single splint with matchhead attached.

(i) "Matchbook" means one or more combs with matchheads attached and a cover that is wrapped around and fastened to those combs.

(j) "Matchhead" means the dried chemical mixture on the end of a splint.

(k) "Splint" means the support for the matchhead or that portion normally held when using the bookmatch.

§ 1202.4 Matchbook general requirements.

A matchbook shall meet the following general requirements:

(a) The friction shall be located on the outside back cover near the bottom of the matchbook.

(b) The cover shall remain closed without external force.

(c) No friction material shall be located on the inside of the cover where possible contact with the matchheads may occur during ordinary use.

(d) There shall be no bridge(s) or broken bridge(s).

(e) No matchhead in the matchbook shall be split, chipped, cracked, or crumbled.

(f) No portion of any matchhead shall be outside the matchbook cover when the cover is closed.

(g) No part of a staple or other assembly device for securing the cover and combs shall be within or touching the friction area.

(h) A staple used as an assembly device for securing the cover and combs shall be fully clinched so that the ends are flattened or turned into the cover.

§ 1202.5 Certification.

Certification shall be in accordance with section 14(a) of the Consumer Product Safety Act (15 U.S.C. 2063(a)). Under this provision, manufacturers and private labelers of products subject to safety standards must certify that their products conform to the standard, based on either a test of each product or on a reasonable testing program.

§ 1202.6 Marking.

(a) The manufacturer's or private labeler's name and city or a symbol which will identify the name and city shall appear on the matchbook. In addition, every private labeler must label the matchbook with a code which enables it to identify, if requested, the manufacturer of the product.

(b) Boxes or cartons in which two or more caddies are shipped shall be marked "For safety, store in a cool, dry place."

§ 1202.7 Prohibited stockpiling.

Section 9(d)(2) of the Consumer Product Safety Act (15 U.S.C. 2058(d)(2)) authorizes the Commission to prohibit manufacturers and importers from stockpiling a product subject to a consumer product safety standard between its date of issuance and its effective date. A manufacturer or importer is in violation of Section 9(d)(2) and of this § 1202.7 if it fails to comply with the following:

(a) *Definitions.* (1) "Base period" means, at the option of the manufacturer or importer concerned, any period of 365 consecutive days beginning on or after January 1, 1973, and ending on or before December 31, 1975.

(2) "Rate of production (or importation)" means the total number of matchbooks manufactured (or imported) during a stated time period. In determining whether a matchbook was manufactured during a stated time period, the date on which the cover and combs were assembled to form a matchbook shall be used. In the event that a manufacturer currently operates a matchbook manufacturing plant that it did not operate during the base period, or that it did not operate for an entire base period, that manufacturer shall use, as the rate of production during the base period for that plant, either (i) the average daily rate of production (including nonproduction days such as Sundays, holidays, and vacations) for the part of the base period he did operate that plant, multiplied by 365 or (ii) the rate of production during the base period of his most nearly similar matchbook manufacturing plant.

(b) *Prohibited act.* Manufacturers and importers of matchbooks, as these products are defined in § 1202.3(i), shall not manufacture or import matchbooks that do not comply with the requirements of this part 1202 between the date that this part 1202 is issued and the date that it becomes effective at a rate that is greater than the rate of production or importation during the base period plus 15 percent of that rate.

(c) *Documentation.* Manufacturers and importers shall maintain, for a period of six (6) months after the effective date specified in § 1202.1(b), appropriate documentation to be able to substantiate to the Commission that they are in compliance with the provisions of this section.

(Sec. 9, Pub. L. 92-573, 86 Stat. 1215; 15 U.S.C. 2058.)

Dated: November 13, 1978.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

[FR Doc. 78-32323 Filed 11-16-78; 8:45 am]

[6355-01-M]

SUBCHAPTER E—POISON PREVENTION PACKAGING ACT OF 1970 REGULATIONS

PART 1701—STATEMENTS OF POLICY AND INTERPRETATION

Statement of Policy and Interpretation Regarding Applicability of Child-Resistant Packaging Standards to Hazardous Substances Packaged in Large Containers

AGENCY: Consumer Product Safety Commission.

ACTION: Interpretation of regulation.

SUMMARY: The Commission issues this statement of policy and interpretation to explain that Commission requirements for child-resistant packaging do not, unless specified otherwise for a particular substance, apply to hazardous substances packaged in containers with a capacity of 5 gallons or greater. The Commission takes this position because special packaging requirements apply only to "household substances." The Commission does not generally consider substances packaged in containers of 5 gallons or more to be "household substances," as defined in the Poison Prevention Packaging Act of 1970, since they are not customarily used around the household. This statement of policy and interpretation is being issued to elimi-

nate confusion as to the application of the requirements for child-resistant packaging. It does not affect requirements under the Federal Hazardous Substances Act for hazardous substances intended, or packaged in a form suitable for use in the household.

EFFECTIVE DATE: November 17, 1978.

FOR FURTHER INFORMATION CONTACT:

Sandra Eberle, Directorate for Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207, 301-492-6400.

SUPPLEMENTARY INFORMATION: Section 3(a) of the Poison Prevention Packaging Act of 1970 (PPPA) (15 U.S.C. 1471-1478) provides that the Commission may issue standards for the special packaging of any "household substance" to help protect young children from serious personal injury or illness from handling, using, or ingesting such substance. As provided by section 2(2) of the PPPA (restated at 16 CFR 1700.1(b)(2)), the term "household substance," means any substance that is customarily produced or distributed for sale for consumption or use, or customarily stored by individuals in or about the household, and which is also a "hazardous substance" as defined in section 2(f) of the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261(f)); a "food, drug, or cosmetic" as those terms are defined in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321); or a "substance intended for use as fuel when stored in a portable container and used in the heating, cooking, or refrigeration system of a house."

The Commission has in effect special packaging requirements for various substances, as listed in its regulations at 16 CFR 1700.14(a). Among these are the following hazardous substances: Furniture polishes (16 CFR 1700.14(a)(2)), sodium or potassium hydroxide preparations (16 CFR 1700.14(a)(5)), turpentine preparations (16 CFR 1700.14(a)(6)), kindling and/or illuminating preparations (16 CFR 1700.14(a)(7)), methyl alcohol preparations (16 CFR 1700.14(a)(8)), sulfuric acid preparations (16 CFR 1700.14(a)(9)), ethylene glycol (16 CFR 1700.14(a)(11)), and prepackaged liquid solvents for paint or other similar surface coating materials (16 CFR 1700.14(a)(15)).

In the past, the Commission staff has interpreted the requirements for special packaging at 16 CFR 1700.14(a) to apply to hazardous substances without regard to the size of the container, unless a manufacturer could show that the hazardous substance was not a "household" substance when produced in a certain size container. The regulations at 16 CFR 1700.14(a) do not specify the size of the containers of the hazardous substances covered by the regulation, and when interpreted literally could apply to a hazardous substance in any size container. The Commission has received inquiries from manufacturers concerning the applicability of special packaging requirements to hazardous substances in large size containers.

Based on its experience with the manner in which these hazardous substances are marketed to consumers, the Commission has learned that most of the substances customarily marketed for household use are traditionally sold in packages of 1 gallon or less. The Commission is not aware of any instance in which these substances have been customarily produced or distributed for household use in containers of 5 gallons or greater. As a result, the Commission does not believe that these substances in containers of 5 gallons or more are customarily produced or distributed for sale for consumption or use, or customarily stored, by individuals in or about the household, and thus are not "household substances" within the meaning of the PPPA. Since these substances are not household substances when packaged in containers of 5 gallons or more, these substances are not required to be in special packaging when packaged in large size containers of 5 gallons or more. Unless otherwise specified, this statement of enforcement policy applies to all hazardous substances subject to special packaging requirements under the PPPA, including hazardous substances for which special packaging requirements are established in the future. Thus, unless a particular substance is designated by regulation as being a household substance when packaged in a container of 5 gallons or more, the substance will not be considered subject to special packaging requirements. The Commission is issuing this statement of enforcement policy in order to clarify this interpretation of the applicability of special packaging requirements to hazardous substances in large size containers of 5 gallons or greater. The requirement of special packaging continues to apply to these substances when packaged in containers smaller than 5 gallons. This statement does not affect the applicability of any requirements, including labeling requirements, under the FHSA for "hazardous substances intended or packaged in a form suitable, for use in the household" as defined in section 2(f) of the FHSA and the accompanying regulations at 16 CFR 1500.3(c)(10)(i).

Because the material published below is a general statement of Commission policy involving enforcement of a regulation, the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking and opportunity for public participation and delay in effective date are inapplicable. Therefore, the statement published below shall be effective upon date of publication.

Accordingly, pursuant to the Poison Prevention Packaging Act of 1970 (Pub. L. 91-601, Sections 2, 5, 7, 9, 94 Stat. 1670-1674, 15 U.S.C. 1471, 1474, 1476, 1478) and under authority vested in the Commission by the Consumer Product Safety Act (Pub. L. 92-573, Section 30(a), 86 Stat. 1231, 15 U.S.C. 2079(a)), 16 CFR Part 1701 is amended by adding a new § 1701.3 as follows:

§ 1701.3 Applicability of special packaging requirements to hazardous substances in large size containers.

The special packaging requirements of the PPPA apply to "household substances" for which the Commission has determined there is a need for special packaging, as provided in section 3 of the act (15 U.S.C. 1472). At section 2(2) of the act (15 U.S.C. 1471) (restated at 16 CFR 1700.1(b)(2)), the term "household substance" is defined as "any substance which is customarily produced or distributed for sale for consumption or use, or customarily stored, by individuals in or about the household * * *." The Commission has issued requirements for special packaging for certain hazardous substances at 16 CFR 1700.14(a). Unless otherwise indicated in the requirements for specific hazardous substances, the Commission interprets the term "household substance" as only applying to these hazardous substances when packaged in containers with a capacity of less than 5 gallons. As a result, unless otherwise specified, the hazardous substances at 16 CFR 1700.14(a) are not required to be in special packaging when packaged in containers of 5 gallons or more.

(Secs. 2, 5, 7, 9, Pub. L. 91-601; 94 Stat. 1670-1674 (15 U.S.C. 1471, 1474, 1476, 1478); sec. 30(a), Pub. L. 92-573, 86 Stat. 1231 (15 U.S.C. 2079(a).)

Effective date. These amendments become effective November 17, 1978.

Dated: November 14, 1978.

SADYE DUNN,
Secretary, Consumer Product Safety Commission.

[FR Doc. 78-32322 Filed 11-16-78; 8:45 am]

[4810-22-M]

Title 19—Customs Duties

CHAPTER I—UNITED STATES CUSTOMS SERVICE

[T.D. 78-448]

PART 158—RELIEF FROM DUTIES ON MERCHANDISE LOST, DAMAGED, ABANDONED, OR EXPORTED

Granting Allowance for Losses to Imported Merchandise Caused by Natural Force or Leakage

AGENCY: United States Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by granting relief from the payment of Customs duties for losses to imported merchandise caused by a natural force such as evaporation or by leakage. An allowance is presently made in the assessment of duties for lost or missing packages, or deficiencies in the contents of packages, and the Customs Service has determined that a similar allowance in the assessment of duties for losses caused by a natural force or by leakage should be granted.

EFFECTIVE DATE: November 17, 1978.

FOR FURTHER INFORMATION CONTACT:

Benjamin H. Mahoney, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, 202-566-5778.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Part 158 of the Customs Regulations (19 CFR Part 158) sets forth general rules for granting relief from Customs duties on imported merchandise which has been lost, damaged, abandoned, or exported. Although an allowance is made in the assessment of duties for lost or missing packages, or deficiencies in the contents of packages, no similar provision is made for an allowance in duties for losses to imported merchandise caused by a natural force such as evaporation or by leakage. The Customs Service has determined that such an allowance is advisable and that the Customs Regulations should be amended to grant an allowance in the assessment of duties where losses are caused by a natural force or by leakage.

Inasmuch as this amendment grants an allowance not presently provided and places no affirmative duty on the public, notice and public procedure are found to be unnecessary, and good cause exists for dispensing with a delayed effective date under the provisions of 5 U.S.C. 553.

DRAFTING INFORMATION

The principal author of this document was Todd J. Schneider, Regulations and Legal Publications Division of the Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices of the Customs Service participated in its development.

AMENDMENT TO CUSTOMS REGULATIONS

Part 158 of the Customs Regulations (19 CFR Part 158) is amended by adding a new section 158.7 to read as follows:

§ 158.7 Allowance for reduction or loss of merchandise by a natural force or by leakage.

Merchandise subject to ad valorem, specific, or compound rates of duty found at the time of importation to be reduced or diminished by a natural force, such as evaporation, or by leakage, shall be appraised in its condition as imported, with an allowance made in the value, weight, quantity, or measure to the extent of the reduction or loss, except when forbidden by law or regulation.

(R.S. 251, as amended, sec. 499, sec. 624, 46 Stat. 728, as amended, 759 (19 U.S.C. 66, 1499, 1624).)

LEONARD LEHMAN,
Commissioner of Customs.

Approved: November 3, 1978.

RICHARD J. DAVIS,
Assistant Secretary of the Treasury.

[FR Doc. 78-32392 Filed 11-16-78; 8:45 am]

[4110-07-M]

Title 20—Employee's Benefits

CHAPTER III—SOCIAL SECURITY ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

[Reg. No. 4]

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE (1950)

The Retirement Test

AGENCY: Social Security Administration, HEW.

ACTION: Interim regulations.

SUMMARY: The Social Security Amendments of 1977: (1) Eliminate the monthly earnings test beginning with monthly benefits payable January 1978, except for a one-time application of the test to each type of social security benefit; (2) raise the annual earnings limitation amount for individuals age 65 and over, beginning with taxable years ending after 1977; and (3) lower the age from 72 to 70 at which there is no longer an annual earnings limitation, beginning with taxable years ending after 1981.

These interim regulations explain the changes made by the amendments and clarify the effects of the statute. Because the amendments to the monthly earnings test and the annual earnings amount for people aged 65 and over are, under the terms of the statute, already in effect, we are now using some of the rules explained in this regulation. The rules may, however, be changed in light of the comments we receive.

DATES: Effective date: November 17, 1978. You will be given an opportunity to comment on the interim regulations. Your comments will be considered if we receive them no later than January 16, 1978.

ADDRESSES: Send your written comments to: Social Security Administration, Department of Health, Education, and Welfare, P.O. Box 1585, Baltimore, Md. 21203.

Copies of all comments we receive can be seen at the Washington Inquiries Section, Office of Information, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 5131, 330 Independence Avenue SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT:

Clara B. Powell, Legal Assistant, Division of Regulations, Office of Policy and Regulations, Office of Program Policy and Planning, Social Security Administration, Baltimore, Md. 21235, 301-594-7459. Ms. Powell will respond to questions, but all comments must be submitted in writing.

SUPPLEMENTARY INFORMATION:

ELIMINATION OF THE MONTHLY EARNINGS TEST

Before the passage of the Social Security Amendments of 1977 (Pub. L. 95-216), two tests were used to compute the benefits payable to social security beneficiaries who continued to work while entitled to benefits. These were the annual earnings test and the monthly earnings test. Under the annual earnings test, the yearly benefits payable to an individual were reduced $1 for each $2 of income earned during the course of a taxable year above the annual earnings limitation

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amount established for that year. Deductions were made beginning with the first month of the taxable year in which benefits were payable to the individual.

However, before the individual's monthly benefits were reduced, the monthly earnings test was applied. Under the monthly test, no matter how much money the beneficiary earned for the year as a whole, no benefits could be deducted for any month in the taxable year during which the beneficiary earned wages less than or equal to the monthly earnings limitation amount established for that year (which, in most cases, is 1/12 of the annual earnings limitation amount for that year) and did not perform substantial services in self-employment. These months are referred to as "nonservice" months.

One consequence of the monthly earnings test was that beneficiaries who earned the same amount of money in a given year received different benefits for that year simply because they earned their money in different ways. Consider, for example, two self-employed beneficiaries. One earned $15,000 for the year, but only worked 3 months. Full monthly benefits were paid this individual for the 9 nonservice months, under the monthly earnings test. The second beneficiary also earned $15,000, but worked regularly throughout the year. Since the beneficiary had no nonservice months, the monthly test did not apply; under the annual test, no benefits at all were paid to this beneficiary.

The Social Security Amendments of 1977 correct the unfairness of paying different benefits to beneficiaries who earn the same amount of money in a given year, simply because they earn their money in different ways. Beginning with benefits payable for January 1978, the monthly test is eliminated (except as explained below) and the benefits payable to a beneficiary will be reduced $1 for each $2 of his or her annual earnings above the annual earnings limitation amount, no matter how many nonservice months the beneficiary might have during the year.

The monthly earnings test will continue to apply, however, in the first year a beneficiary, while entitled to benefits, has a nonservice month. This year when the monthly test applies to a beneficiary is called the grace year. In most cases, the grace year will be the beneficiary's actual year of retirement. Applying the monthly test in the beneficiary's year of retirement means that benefits can be paid beginning with the first month of retirement regardless of how much money the beneficiary earned in the months preceding retirement.

Also, the monthly test can apply in more than 1 grace year to any given beneficiary if the beneficiary's entitlement to one type of benefit ends, and, after a break in entitlement of at least 1 month, the beneficiary becomes entitled to a different type of benefit. The monthly test would then apply in the first year that the beneficiary, while entitled to this new type of benefit, has a nonservice month.

It should be noted that, under the Social Security Act, no benefit deductions are made because of excess annual earnings earned by persons receiving benefits as disability beneficiaries under section 223 of the Act and as disabled widows, widowers, and children under section 202. Since the annual earnings test does not apply to these beneficiaries, the monthly earnings test does not apply to them either. As a result, no nonservice month incurred by any person while entitled to a disability benefit as a widow, widower, or child, or under section 223, will be counted in determining whether any given year is the beneficiary's grace year in which the monthly earnings test can apply.

As mentioned earlier, the elimination of the monthly earnings test except for the beneficiary's grace year is effective beginning with monthly benefits payable for January 1978. This means that beneficiaries who, while entitled to benefits, had a nonservice month in a taxable year ending prior to 1978 cannot have the monthly test applied to them in 1978 or thereafter, unless, as explained above, they become (or have become) entitled to a different type of benefit than before, after a break in entitlement of at least 1 month. On the other hand, since only benefits payable beginning January 1978 are affected by the amendment, no beneficiary has been overpaid because the monthly test was applied to him or her in more than 1 year prior to 1978. Because there was a delay in implementing the change in the monthly earnings test until May 1978, HEW has adopted a waiver policy for those net overpayments outstanding at the end of this year which result from erroneous application of the monthly earnings test for January through May 1978.

Annual Exempt Amount for Beneficiaries Age 65 and Older

Another provision of the Social Security Amendments of 1977 increases the annual earnings limitation amount for beneficiaries age 65 and older above the amount for beneficiaries below age 65. In the past, the exempt amount was the same for all beneficiaries. This provision is effective for all months of any taxable year ending after December 1977.

Age at Which Retirement Test No Longer Applies

The age at which the retirement test no longer applies is reduced from 72 to 70. This provision is effective for all months of any taxable year ending after December 1981. We are including this provision now so that beneficiaries making long-range retirement plans will know what rules will apply to them in 1982.

We find that publication of a notice of proposed rulemaking is impracticable and contrary to the public interest because two of the statutory provisions, the elimination of the monthly earnings test and the increase in the annual earnings limitation amount for beneficiaries age 65 and over are, under the terms of the statute, already effective and rules are needed to assure uniform implementation of these provisions. Furthermore, publication of a notice of proposed rulemaking to implement the reduction in the age at which the retirement tests no longer apply from 72 to 70 is unnecessary because this amendment is self-executing and leaves nothing to the discretion of the Secretary.

(Secs. 203 and 1102 of the Social Security Act as amended; 49 Stat. 623, as amended, 49 Stat. 647, as amended (42 U.S.C. 403 and 1302); Pub. L. 95-216.)

(Catalog of Federal Domestic Assistance Program Nos. 13.803, Social Security Retirement Insurance and 13.805, Social Security Survivors Insurance.)

Dated: August 11, 1978.

DON WORTMAN,
Acting Commissioner of Social Security.

Approved: November 11, 1978.

HALE CHAMPION,
Acting Secretary of Health, Education, and Welfare.

Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

1. Section 404.428(a) is revised to read as follows:

§ 404.428 Earnings in a taxable year.

(a) *General.* (1) In applying the annual earnings test (see § 404.415(a)) under this subpart, all of a beneficiary's earnings (as defined in § 404.429) for all months of the beneficiary's taxable year are used even though the individual may not be entitled to benefits during all months of the taxable year. (See, however, § 404.430 for the rule which applies to earnings of beneficiaries who turn age 72 during the taxable year (age 70 for all months of any taxable year ending after December 1981).)

(2) The taxable year of an employee is presumed to be a calendar year until it is shown to the satisfaction of the Social Security Administration that the individual has a different taxable year. A self-employed individual's taxable year is a calendar year unless the individual has a different taxable year for the purposes of subtitle A of the Internal Revenue Code of 1954. In either case, the number of months in a taxable year is not affected by: (i) The time a claim for social security benefits is filed, (ii) attainment of any particular age, (iii) marriage or the termination of marriage, or (iv) adoption. A taxable year ends with the death of the beneficiary. The month of death is counted as a month of the deceased beneficiary's taxable year in determining whether the beneficiary had excess earnings for the year under § 404.430.

2. Section 404.430 is amended as follows:

The section heading is revised; paragraph (a)(3) and (b) are revised; in paragraph (c)(1) the material preceding paragraph (c)(1)(i) is revised; and a new paragraph (d) is added to read as follows:

§ 404.430 Excess earnings; defined for taxable years ending after December 1972; monthly earnings amount; defined.

(a) *Method of determining excess earnings for years ending after December 1972.* For taxable years ending after 1972, an individual's excess earnings for a taxable year are 50 percent of his or her earnings (as described in § 404.429) for the year which are in excess of the product obtained by multiplying the number of months in that taxable year by the following applicable monthly exempt amount:

(1) • • •
(2) • • •

(3) the exempt amount for taxable years ending after December 1974, as determined under paragraphs (c) and (d) of this section. However, earnings in and after the month an individual turns age 72 will not be used to figure excess earnings for retirement test purposes. For the employed individual, wages for months prior to the month of attainment of age 72 are used to figure the excess earnings for retirement test purposes. For the self-employed individual, the pro rata share of the net earnings or net loss for the taxable year for the period prior to the month of attainment of age 72 is used to figure the excess earnings. If the beneficiary was not engaged in self-employment prior to the month of attainment of age 72, any subsequent earnings or losses from self-employment in the taxable year will not be used to figure the excess earnings. Where the excess amount figured under the provisions of this section is not a multiple of $1, it is reduced to the next lower dollar. (All references to age 72 will be age 70 for all months of taxable years ending after December 1981.)

Example 1. The self-employed beneficiary turned age 72 in July 1975. His net earnings for 1975, his taxable year, were $6,000. The pro rata share of the net earnings for the period prior to July is $3,000. His excess earnings for 1975 for retirement test purposes are $240. This is computed by subtracting $2,520 ($210×12), the exempt amount for 1975, from $3,000 and dividing the result by 2.

Example 2. The beneficiary turned age 72 in July 1975. His wages for the period prior to July were $3,000. From August through December 1975 he worked in self-employment and had net earnings in the amount of $2,000. His net earnings from self-employment are not used to figure his excess earnings. Only his wages for the period prior to July 1975 ($3,000) are used to figure his excess earnings. As in example 1, his excess earnings are $240.

Example 3. The facts are the same as in example 2 except that the beneficiary worked in self-employment throughout all of 1975, and had a net loss of $500 from the self-employment activity. The pro rata share of the net loss for the period prior to July is $250. His earnings for the taxable year to be used in figuring excess earnings are $2,750.

This is computed by subtracting the $250 net loss from self-employment from the $3,000 in wages. The excess earnings are $115 (($2,750 − $2,520)÷2).

(b) *Definition.* The retirement test monthly exempt amount is the amount of wages which a social security beneficiary may earn in any month without part of his or her monthly benefit being deducted because of excess earnings. For taxable years ending after 1977, the monthly exempt amount applies only in a beneficiary's grace year or years. (See § 404.435(a).)

(c) *Method of determining monthly exempt amount for taxable years ending after December 1974.* (1) Except as provided under paragraph (d) of this section, for purposes of paragraph (a)(3) of this section, the applicable monthly exempt amount effective for an individual's taxable year that ends in the calendar year after the calendar year in which an automatic cost-of-living increase in old-age, survivors, and disability insurance benefits is effective is the larger of:

• • • • •

(d) *Method of determining monthly exempt amount for taxable years ending after December 1977 for beneficiaries age 65 or over.* (1) For purposes of paragraph (a)(3) of this section, for all months of taxable years ending after 1977, the applicable monthly exempt amounts for individuals who have reached the age of 65 before the close of the taxable year involved are:

(i) $333.33⅓ for each month of any taxable year ending in 1978;

(ii) $375 for each month of any taxable year ending in 1979;

(iii) $416.66⅔ for each month of any taxable year ending in 1980;

(iv) $458.33⅓ for each month of any taxable year ending in 1981; and

(v) $500 for each month of any taxable year ending in 1982.

(2) Fractional amounts listed in paragraph (d)(1) of this section shall be rounded to the next higher whole dollar amount, unless the individual shows that doing so results in a different grace year (see § 404.435 (a) and (c)):

3. Section 404.435 is revised to read as follows:

§ 404.435 Excess earnings: months to which excess earnings cannot be charged.

(a) *Monthly benefits payable beginning with January 1978.* Beginning with monthly benefits payable for January 1978, no matter how much a beneficiary earns in a given taxable year, no deduction on account of excess earnings will be made in the benefits payable for any month: (1) In which he or she was not entitled to a monthly benefit; (2) in which he or she was considered not entitled to benefits (due to noncovered work outside the United States, no child in care, or refusal of rehabilitation, as described in § 404.436); (3) in which he or she was age 72 or over (age 70 for taxable years ending after 1981); (4) in which he or she was entitled to payment of a disability insurance benefit; (5) in which he or she was age 18 or over and entitled to a child's insurance benefit based on disability; (6) in which he or she was entitled to a widow's or widower's insurance benefit based on disability; or (7) which was a "nonservice" month (see paragraph (b) of this section) in the beneficiary's "grace year" (see paragraph (c) of this section).

(b) *Nonservice month; defined.* A nonservice month is any month in which an individual, while entitled to retirement or survivors benefits (1) does not work in self-employment (see paragraphs (d) and (e) of this section), (2) does not earn wages greater than the monthly exempt amount set for that month (see paragraph (f) of this section and § 404.430 (b), (c), and (d)), and (3) does not work in noncovered remunerative activity on 7 or more days in a month while outside the United States. A nonservice month occurs even if there are no excess earnings in the year.

(c) *Grace year; defined* (1) a beneficiary's first grace year is the taxable year in which the beneficiary is for the first time both entitled to a retirement or survivors benefit and has a nonservice month (see paragraph (b) of this section); (2) A beneficiary may have another grace year each time his or her entitlement to one type of benefit ends and, after a break in entitlement of at least 1 month, he or she be-

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comes entitled to a different type of retirement or survivors benefit. The new grace year would then be the first taxable year in which the beneficiary, while entitled to this new type of benefit, has a nonservice month; (3) A month will not be counted as nonservice month for purposes of determining whether a given year is a beneficiary's grace year if the nonservice month occurred while the beneficiary was entitled to disability benefits under section 223 of the Social Security Act or as a disabled widow, widower, or child under section 202.

Example 1: Don, age 65, will retire from his regular job in April of next year. Although he will have earned $11,000 for January-April of that year and plans to work parttime, he will not earn over the monthly exempt amount after April. Since next year will be the first year in which he is both entitled to benefits and has a nonservice month, it will be his grace year and he will be entitled to the monthly earnings test for that year only. He will receive benefits for all months in which he does not earn over the monthly exempt amount (May-December) even though his earnings have substantially exceeded the annual exempt amount. However, in the years which follow, only the annual earnings test will be applied if he has earnings that exceed the annual exempt amount, regardless of his monthly earnings.

Example 2: Marion, age 58, has been entitled to mother's insurance benefits since 1976 because she has had a child in her care who is under age 18. Marion is a seasonal worker who does not work during the summer. Her salary of $20,000 a year is enough so that all her monthly benefits could have been withheld each year because of excess earnings under the annual earnings test. However, she received full benefits for the summer months of 1976 and 1977 because these were nonservice months under the monthly earnings test. Marion will not receive benefits for these nonservice summer months in 1978 because they do not occur during her grace year. The reason is that 1978 is not the first year in which Marion, while entitled to mother's benefits, had a nonservice month.

Marion's child turns age 18 in May 1979 and, as a result, Marion's entitlement to mother's benefits ends as of April 1979. Marion becomes age 60 in February 1980 and retires in June 1980. She applies for and becomes entitled to widow's insurance benefits in July 1980. Because there was a break in entitlement to benefits of at least 1 month before entitlement to another type of benefit, 1980 is also a grace year for Marion because it is the first year in which she has a nonservice month while entitled to this new type of benefit.

(d) *When an individual works in self-employment.* An individual works in self-employment in any month in which he or she performs substantial services (see § 404.446) in the operation of a trade or business (or in a combination of trades and businesses if there is more than one) as an owner or partner even though there may be no earnings or net earnings caused by the individual's services during the month.

(e) *Presumption regarding work in self-employment.* An individual is presumed to have worked in self-employment in each month of the individual's taxable year until it is shown to the satisfaction of the Social Security Administration that in a particular month the individual did not perform substantial services (see § 404.446(c)) in any trade or business (or in a combination of trades and businesses if there are more than one) from which the net income or loss is included in computing the individual's annual earnings (see § 404.429).

(f) *Presumption regarding earning of wages.* An individual is presumed to have earned wages (as defined in § 404.429) in any given month of more than the applicable monthly exempt amount set for that month until it is shown to the satisfaction of the Social Security Administration that the individual did not earn wages in the month of more than the monthly exempt amount.

[FR Doc. 78-32413 Filed 11-16-78; 8:45 am]

[4110-03-M]

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Subpart B—Specific New Animal Drugs For Use In Animal Feeds

AMPROLIUM AND BACITRACIN ZINC

AGENCY: Food and Drug Administration.

ACTION: Final Rule.

SUMMARY: This document amends the regulations to codify a prior approval held by IMC Chemical Group, Inc., for use of amprolium and bacitracin zinc in chicken and turkey feed.

EFFECTIVE DATE: November 17, 1978.

FOR FURTHER INFORMATION CONTACT:

Lonnie W. Luther, Bureau of Veterinary Medicine (HFV-147), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4317.

SUPPLEMENTARY INFORMATION: IMC Chemical Group, Inc., Terre Haute, Ind. 47808, holds a prior approval for use of amprolium at 113.5 to 227 grams per ton (0.0125 percent to 0.025 percent) in combination with bacitracin zinc at 4 to 50 grams per ton for use in broiler chickens, replacement chickens, and turkeys.

This document reflects a previous approval and neither requires reevaluation of the basic data submitted nor constitutes a reaffirmation of the drug's safety and effectiveness. Since the approval was granted before July 1, 1975, a summary of the safety and effectiveness data and information submitted in accordance with § 514.11 (e)(2)(ii) (21 CFR 514.11(e)(2)(ii)) is not required to be filed with the Hearing Clerk, Food and Drug Adminstration.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.55 by amending paragraph (e)(2) in the table by revising the entry under the "Limitations" column and adding a new entry under the "Sponsor" column for subitem "Bacitracin 4 to 50" following item (iv), as follows:

§ 558.55 **Amprolium.**

* * * * *

(e) * * *
(2) * * *

Amprolium in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
*	* *	*	* *	*
(iv) * * *	Bacitracin 4 to 50.....	1. * * *	As bacitracin methylene disalicylate or bacitracin zinc.	Bacitracin zinc by No. 012769 in § 510.600(c) of this chapter.
		2. * * *	...do.....	Do.
*	* *	*	* *	*

Effective date: This regulation is effective November 17, 1978.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)).)

Dated: November 8, 1978.

LESTER M. CRAWFORD,
Director, Bureau of Veterinary Medicine.

[FR Doc. 78-32028 Filed 11-16-78; 8:45 am]

[4910-22-M]

Title 23—Highways

CHAPTER I—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER G—ENGINEERING AND TRAFFIC OPERATIONS

[FHWA Docket No. 78-35]

PART 635—CONSTRUCTION AND MAINTENANCE

Buy American Requirements

AGENCY: Federal Highway Administration, DOT.

ACTION: Final rule.

SUMMARY: This emergency regulation implements procedures required under section 401 of the Surface Transportation Assistance Act of 1978 (Act), Buy America provision, which provides, with exceptions, that funds authorized by the Act may not be obligated for highway projects unless materials and supplies are of United States origin.

DATES: This emergency regulation is effective November 6, 1978. Comments must be received on or before January 17, 1979.

ADDRESS: Anyone wishing to submit comments may do so, preferably in triplicate, to FHWA Docket No. 78-35, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street SW., Washington, D.C. 20590. All comments and suggestions received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. ET, Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Kenneth L. Ziems, Construction and Maintenance Division, 202-426-4847; or Lee J. Burstyn, Office of the Chief Counsel, 202-426-0786, Federal Highway Administration, 400 Seventh Street SW., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION: On November 6, 1978, the President signed into law the Surface Transportation Assistance Act of 1978, Pub. L. 95-599, 92 Stat. 2689. The provisions of Section 401, Buy America, are effective immediately and require implementation. Current regulations, 23 CFR 635, subpart D, prescribe procedures relating to product and material selection and use on Federal-aid highway projects, but are contrary to the requirements of the 1978 Act.

The Federal Highway Administrator, Karl S. Bowers, has determined that the required implementation of the new Buy America provision will have a major impact on many highway construction programs of the States. Section 401 allows for a modification in its application when such application would be inconsistent with the public interest. Foreign structural steel has been identified as the only foreign product having a significant nationwide effect on the cost of Federal-aid highway construction projects and its continued unrestricted use is contrary to Section 401 of the Act.

Therefore, the Administrator has determined that this emergency regulation is necessary and consistent with the public interest to provide regulations which will immediately implement the Buy America provision as it relates to the use of structural steel in highway projects. In addition, the Administrator has determined that it would be in the public interest to temporarily waive the provisions of section 401 as it applies to products and materials, other than structural steel, used in highway construction. The issuance of this regulation will allow the Federal Highway Administration to authorize States to proceed with advertising projects without incurring undue delay while awaiting formulation of implementing regulations.

This emergency regulation will allow for the immediate application of section 401 and assure the proper expenditure of Federal funds. In the interim, more extensive procedures may be devised which will fully encompass the policies, objectives, and requirements of the new Buy America provision. The legislation history of this provision indicates that Congress intended it to be interpreted in the light of the 1933 Buy American Act, 41 U.S.C. 10a-10d, as amended.

A docket for comments has been assigned to this regulation and the public is invited to submit their views and comments. Comments may also address future implementation of the Buy America provisions and revisions to the existing 23 CFR 635 Subpart D. These comments may be utilized in formulating a final regulation on this matter and may address proposed criteria concerning the identification of products and materials covered under the Act and implementing procedures.

In consideration of the foregoing, Part 635, Subpart D of Chapter I, Title 23, Code of Federal Regulations, is amended as follows:

1. The table of sections is amended by adding a new section to read:

Sec.
635.410 Buy America requirements.

2. Section 635.410 is added to read as follows:

§ 635.410 Buy America Requirements.

(a) The provisions of this section shall prevail and be given precedence over any requirements of this subpart which are contrary to this section.

(b) No Federal-aid highway construction project is to be authorized for advertisement or otherwise authorized to proceed unless at least one of the following requirements exist:

(1) The project has a total estimated cost of less than $450,000;

(2) The project includes no structural steel. Structural steel is defined as shapes, plates, H-piling, and sheet piling;

(3) The project is undertaken pursuant to 23 U.S.C. section 117 and the State's laws, regulations, directives and standards are adequate to accomplish the policies and objectives of § 401 of the Surface Transportation Assistance Act of 1978, Pub. L. 95-599;

(4) The State has in effect standard contract provisions that favor the use of domestic materials and products, including structural steel, to the same or

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a greater extent than the provisions here set forth; or

(5) A bidding procedure described as follows is used. A separate bid item is to be set up for furnishing structural steel to the project site. For this bid item, bidders are to be given the options of submitting a bid for (i) furnishing domestic structural steel, or (ii) submitting a bid for furnishing domestic steel and a bid for furnishing foreign steel. Bidders are to be advised that the contract will be awarded to the bidder who submits the lowest total bid based on furnishing domestic structural steel unless such total bid exceeds the lowest total bid based on furnishing foreign structural steel by more than 10 percent. The determination of foreign or domestic character is based on place of manufacture, and the origin of more than 50 percent of its components.

(c) Where appropriate, the effective date of application of this section is November 6, 1978.

(23 U.S.C. 315; Sec. 401, Surface Transportation Assistance Act of 1978, Pub. L. 95-599, 92 Stat. 2689; 49 CFR 1.48(b).)

NOTE.—The Federal Highway Administration has determined that this document does contain a significant proposal according to the criteria established by the Department of Transportation pursuant to Executive Order 12044.

Issued on: November 15, 1978.

KARL S. BOWERS,
Federal Highway Administrator.

[FR Doc. 78-32613 Filed 11-16-78; 9:21 am]

[4830-01-M]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER D—MISCELLANEOUS EXCISE TAXES

[T.D. 7571]

PART 54—PENSION EXCISE TAX REGULATIONS

PART 141—TEMPORARY EXCISE TAX REGULATIONS UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

Employee stock ownership plans

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to employee stock ownership plans ("ESOP's"). Changes in the applicable tax law were made by the Employee Retirement Income Security Act of 1974 (ERISA) and the Tax Reform Act of 1976. These regulations supersede temporary regulations relating to ESOP's. They are intended to provide guidance for the public in complying with the law. They affect all employees who participate in ESOP's and employers who establish ESOP's.

DATE: The regulations are generally effective for plan years ending after December 31, 1974.

FOR FURTHER INFORMATION CONTACT:

Thomas Rogan of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 (Attention: CC:EE), 202-566-3589.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On September 2, 1977, the FEDERAL REGISTER (42 FR 44396) published proposed amendments to the Pension Excise Tax Regulations (26 CFR Part 54). These proposed amendments were adopted as temporary regulations in a Treasury decision published in the same issue of the FEDERAL REGISTER (42 FR 44394).

After consideration of all written comments received regarding the proposed amendments, they are adopted as revised by this Treasury decision. Also, this Treasury decision supersedes the related temporary regulations.

The revisions in the final regulations are clarifying and procedural and do not make substantive changes in the proposed amendments.

The final regulations do not reflect changes made by the Revenue Act of 1978.

CONTINUING LOAN PROVISIONS UNDER PLAN

Comments from the public questioned whether the requirements of § 54.4975-11(a)(3), relating to certain plan provisions, are formal or operational. They also asked whether, if the requirements are formal, the appropriate provisions may be included in the plan by incorporating references to exempt loan provisions under § 54.4975-7(b).

Section 54.4975-11(a)(3) is restructured in the final regulations. Revisions make it clear that the terms of an ESOP must formally provide participants with certain protections and rights relating to exempt loan provisions. The plan terms providing these protections and rights may not simply consist of references incorporating related exempt loan provisions. Remedial plan amendments adopted before December 31, 1979, to provide these protections and rights are retroactively effective to the later of two dates: (1) The date on which the plan was designated as an ESOP or (2) November 1, 1977.

INTERGRATED PLANS

One comment suggested that the prohibition of integrated ESOP's under § 54.4975-11(a)(7)(ii) should not apply to plans in existence before November 1, 1977, that are designated as ESOP's after that date.

The final regulations do not adopt this suggestion. Instead, they make it clear that the prohibition against intergrated ESOP's applies to any plan designated as an ESOP after November 1, 1977. This provision is in accordance with the Report of the Committee of Conference on the Tax Reform Act of 1976 (H.R. Rep. No. 94-1515, 94th Cong., 2d Sess., 541, 542 (1976)).

TEMPORARY REGULATIONS SUPERSEDED

These final regulations supersede substantially indentical temporary excise tax regulations. Under § 141.4975-11, the proposed amendments were adopted as temporary regulations until supersession by permanent regulations.

DRAFTING INFORMATION

The principal author of this regulation was Thomas Rogan of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

ADOPTION OF AMENDMENTS TO THE REGULATIONS

Accordingly:

§ 141.4975-11 [Deleted].

1. 26 CFR Part 141 is amended by deleting § 141.4975-11.

2. The amendments to 26 CFR Part 54 are hereby adopted subject to the changes set forth below.

PARAGRAPH 1. Paragraph (a)(3) of § 54.4975-11, as set forth in the notice of proposed rulemaking, is changed to read as follows:

§ 54.4975-11 "ESOP" requirements.

(a) *In general.* • • •

(3) *Continuing loan provisions under plan—(i) Creation of protections and rights.* The terms of an ESOP must formally provide participants with certain protections and rights with respect to plan assets acquired with the proceeds of an exempt loan. These protections and rights are those referred to in the third sentence of § 54.4975-7(b)(4), relating to put, call, or other options and to buy-sell or similar arrangements, and in § 54.4975-7(b) (10), (11), and (12), relating to put options.

(ii) *"Nonterminable" protections and rights.* The terms of an ESOP must also formally provide that these protections and rights are nonterminable. Thus, if a plan holds or has distributed securities acquired with the proceeds of an exempt loan and either the loan is repaid or the plan ceases to be an ESOP, these protections and rights must continue to exist under the terms of the plan. However, the protections and rights will not fail to be nonterminable merely because they are not exercisable under § 54.4975-7(b) (11) and (12)(ii). For example, if, after a plan ceases to be an ESOP, securities acquired with the proceeds of an exempt loan cease to be publicly traded, the 15-month period prescribed by § 54.4975-7(b)(11) includes the time when the securities are publicly traded.

(iii) *No incorporation by reference of protections and rights.* The formal requirements of paragraph (a)(3) (i) and (ii) of this section must be set forth in the plan. Mere reference to the third sentence of § 54.4975-7(b)(4) and to the provisions of § 54.4975(b) (10), (11), and (12) is not sufficient.

(iv) *Certain remedial amendments.* Notwithstanding the limits under paragraph (a) (4) and (10) of this section on the retroactive effect of plan amendments, a remedial plan amendment adopted before December 31, 1979, to meet the requirements of paragraph (a)(3) (i) and (ii) of this section is retroactively effective as of the later of the date on which the plan was designated as an ESOP or November 1, 1977.

• • • • • •

PAR. 2. Paragraph (a)(7)(ii) of § 54.4975-11, as set forth in the notice of proposed rulemaking, is changed to read as follows:

§ 54.4975-11 "ESOP" requirements.

(a) *In general* • • •

(7) *Certain arrangements barred.*

• • •

(ii) *Integrated plans.* A plan designated as an ESOP after November 1, 1977, must not be integrated directly or indirectly with contributions or benefits under title II of the Social Security Act or any other State or Federal law. ESOP's established and integrated before such date may remain integrated. However, such plans must not be amended to increase the integration level or the integration percentage. Such plans may in operation continue to increase the level of integration if under the plan such increase is limited by reference to a criterion existing apart from the plan.

(Secs. 4975(e)(7), 7805, Internal Revenue Code of 1954 (88 Stat. 976, 68A Stat. 917; 26 U.S.C. 4975(e)(7), 7805).)

JEROME KURTZ,
Commissioner of Internal Revenue.

Approved: October 20, 1978.

DONALD C. LUBICK,
Assistant Secretary of the Treasury.

[FR Doc. 78-32151 Filed 11-16-78; 8:45 am]

[1410-01-M]

Title 37—Patents, Trademarks, and Copyrights

CHAPTER III—COPYRIGHT ROYALTY TRIBUNAL

PART 301—AGENCY RULES OF PROCEDURE

AGENCY: Copyright Royalty Tribunal (Tribunal).

ACTION: Final rule.

SUMMARY: Copyright Royalty Tribunal adopts its rules of procedure, including regulations required by the Government in the Sunshine Act, the Privacy Act, the Freedom of Information Act, and the equal employment opportunity procedures of the Tribunal.

EFFECTIVE DATE: November 20, 1978.

FOR FURTHER INFORMATION CONTACT:

Thomas C. Brennan, Chairman, Copyright Royalty Tribunal, 202-653-5175.

SUPPLEMENTARY INFORMATION: On October 23, 1978, the proposed rules of procedure of the Copyright Royalty Tribunal were published in the FEDERAL REGISTER (43 FR 49318-49326). Interested persons were given until November 8, 1978 to submit comments. The rules were considered and adopted by the Tribunal on November 9.

Several substantive comments were received which proposed more detailed procedures in the rules pertaining to rate adjustment and royalty fee distribution proceedings. The Tribunal, without prejudice to the content of these comments, determined that further refinement of rate adjustment and royalty fee procedures should be deferred.

The only change in the proposed rules is a technical amendment to 301.75 to amend the sixth line to read "publication of a proposed royalty distribution determination" rather than "publication of a proposed rate determination".

Accordingly, pursuant to 17 U.S.C. 803(a), Title 37 is amended by establishing a Chapter III entitled "Copyright Royalty Tribunal" and by adding the following new part 301, reading as set forth below.

EFFECTIVE DATE: This rule shall become effective on November 20, 1978.

ADOPTED: November 9, 1978.

THOMAS C. BRENNAN,
Chairman.

Part 301 is added to read as follows:

PART 301—COPYRIGHT ROYALTY TRIBUNAL RULES OF PROCEDURE

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AUTHORITY: 17 U.S.C. 803(a).

Subpart A—Organization

§ 301.1 Purpose.

The Copyright Royalty Tribunal (Tribunal) is an independent agency in the Legislative Branch, created by Public Law 94-553 of October 19, 1976.

The Tribunal's statutory responsibilities are:

(a) To make determinations concerning copyright royalty rates in the areas of cable television covered by 17 U.S.C. 111.

(b) To make determinations concerning copyright royalty rates for phonorecords (17 U.S.C. 115) and for coin-operated phonorecord players (jukeboxes) (17 U.S.C. 116).

(c) To establish and later make determinations concerning royalty rates and terms for non-commercial broadcasting (17 U.S.C. 118).

(d) To distribute cable television and jukebox royalties under 17 U.S.C. 111 and 17 U.S.C. 116 deposited with the Register of Copyrights.

§ 301.2 Address for information.

The official address of the Copyright Royalty Tribunal is 1111 20th Street NW., Washington, D.C. 20036, until March 31, 1979. Office hours are Monday through Friday, 8:30 a.m. to 5:30 p.m., excluding legal holidays.

§ 301.3 Composition of the Tribunal.

The Tribunal is composed of five members appointed by the President with the advice and consent of the Senate.

§ 301.4 The Chairman.

(a) On December 1st of each year the Chairman will be designated for a term of 1 year from the most senior Commissioner who has not yet previously served as Chairman, or, if all the Commissioners have served, the most senior Commissioner who has served the least number of terms will be designated Chairman.

(b) The responsibilities of the Chairman are, first, to preside at meetings and hearings of the Tribunal, and second, to represent the Tribunal officially in all external matters. In matters of legislation and legislative reports, the Chairman will represent the majority opinion of the Tribunal; however, any Commissioner with a minority or supplemental opinion may have that opinion represented also. The Chairman is the initial authority for all communications with other government officials or agencies and is the contracting officer; however, another Commissioner or subordinate official may be designated to act in his stead. The Chairman shall convene a meeting of the Tribunal upon the request of a majority of the Commissioners.

§ 301.5 Standing committee.

The Tribunal may establish standing or temporary committees to act in whatever capacity the Tribunal feels is appropriate. Said committees are authorized, in the areas of their jurisdiction, to conduct hearings, meetings, and other proceedings, but no such subdivision shall be authorized to act on behalf of the agency as a whole within the official meeting of 5 U.S.C. 552(a)(1).

§ 301.6 Administration of the Tribunal.

The administration of the Tribunal denotes chiefly the maintenance of the Tribunal records and the custodianship of Tribunal property. The records to be maintained include legal and public records, a current index of opinions, orders, policy statements, procedures, and rules of practice, and instructions that affect the public. Also, announcements of Tribunal actions must be published in the FEDERAL REGISTER as required, and the observance by the Tribunal of appropriate administrative procedure must be supervised, as well as the disposition of Tribunal correspondence. From time to time other administrative responsibilities may emerge. To manage the above, the Tribunal may choose to install an Administrative Officer; however, if not, it will be the Chairman's duty to see that these responsibilities are met.

§ 301.7 Proceedings.

(a) *Location.* The Tribunal will normally hold all proceedings at its principal office, except under exceptional circumstances, in which case the Tribunal may perform its duties anywhere in the United States. The Tribunal's proceedings will all be public, except as exempted in § 301.15.

(b) *Quorum.* A majority of the members of the Tribunal constitutes a quorum.

(c) *Voting.* Each Commissioner's vote shall be recorded separately, and the votes of the Commissioners shall be taken in order of their seniority, except that the Chairman shall vote last. No proxy votes will be recorded.

Subpart B—Public Access to Tribunal Meetings

§ 301.11 Open meeting.

(a) The purpose of this chapter is to comply with the Government in the Sunshine Act, Pub. L. 94-409; 90 Stat., 1241 et seq., 5 U.S.C. 522(b), and insure that all Tribunal meetings shall be open to the public. The conditions under which meetings, as an exception, may be closed, are listed in § 301.13

(b) Each meeting announcement by the Tribunal shall be made at least 7 calendar days in advance in the FEDERAL REGISTER and shall state the time and place of the meeting, the subject to be discussed, whether the meeting is to be open or closed, and the name and telephone number of the person to contact for further information.

(c) If amendments are made to the original announcement, they must be placed in the FEDERAL REGISTER as soon as practicable. Changes in time and place may be made simply by making such an announcement, but a change in subject matter requires a recorded vote by Commissioners, with the results of that vote appearing in the announcement of the amendment.

(d) If it is decided that a meeting must be held on shorter notice than 7 days, that decision must be made by recorded vote of Commissioners and included in the announcement.

§ 301.12 Conduct of open meetings.

(a) Meetings of the Tribunal will be conducted in a manner to insure both the public's right to observe and the ability of the Tribunal to conduct its business properly. The Chairman or presiding officer will take whatever measures he feels necessary to achieve this.

(b) The right of the public to be present does not include the right to participate or make comments.

(c) Reasonable access for news media will be provided at all public sessions provided that it does not interfere with the comfort of Commissioners, staff, or witnesses. Cameras will be admitted only on the authorization of the Chairman, and no witness may be photographed or have his testimony recorded for broadcast if he objects.

§ 301.13 Closed meetings.

In the following circumstances (as per 5 U.S.C. 552(c), 1-10) the Tribunal

may close its meetings or withhold information from the public:

(a) If the matter to be discussed has been specifically authorized to be kept secret by Executive order, in the interests of national defense or foreign policy;

(b) If the matter relates solely to the internal personnel rules and practices of the Tribunal;

(c) If the matter has been specifically exempted from disclosure by statute (other than 5 U.S.C. 552) and there is no discretion on the issue;

(d) If the matter involves privileged or confidential trade secrets or financial information;

(e) If the result might be to accuse any person of a crime or formally censure him;

(f) If there would be a clearly unwarranted invasion of personal privacy;

(g) If there would be disclosure of investigatory records compiled for law enforcement, or information which if written would be contained in such records, and to the extent disclosure would (1) interfere with enforcement proceedings, (2) deprive a person of the right to a fair trial or impartial adjudication, (3) constitute an unwarranted invasion of personal privacy, (4) disclosure the identify of a confidential source or, in the case of a criminal investigation or a national security intelligence investigation, confidential information furnished only by a confidential source, (5) disclosure investigative techniques and procedures, or (6) endanger the life or safety of law enforcement personnel.

(h) If premature disclosure of the information would frustrate the Tribunal's action, unless the Tribunal has already disclosed the concept or nature of the proposed action, or is required by law to make disclosure before taking final action.

(i) If the matter concerns the Tribunal's participation in a civil action or proceeding or in an action in a foreign court or international tribunal, or an arbitration, or a particular case of formal agency adjudication pursuant to 5 U.S.C. 554, or otherwise involving a determination on the record after opportunity for a hearing.

§ 301.14 Procedure for closing meetings.

(a) Meetings may be closed, or information withheld from the public, only by a recorded vote of a majority of the Commissioners. Each question, either to close a meeting or withhold information, must be voted on separately, unless a series of meetings is involved, in which case the Tribunal may vote to keep the discussions closed for 30 days, starting from the first meetings. If the Tribunal feels that information about a closed meeting must be withheld, the decision to do so must also be the subject of a recorded vote.

(b) Before a discussion to close a meeting or withhold information, the Chairman must certify that, in his opinion, such a step is permissible, and he shall cite the appropriate exemption under § 301.13. This certification shall be included in the announcement of the meeting and be maintained as part of the Tribunal's records.

(c) Following such a vote, and by the end of the working day, the Chairman must transmit the following information to the FEDERAL REGISTER for publication:

(1) The vote of each Commissioner;

(2) The appropriate exemption under § 301.13;

(3) A list of all persons expected to attend the meeting and their affiliation.

§ 301.15 Transcripts of closed meetings.

(a) All meetings closed to the public shall be subject to either a complete transcript or, in the case of § 301.13(i) and at the Tribunal's discretion, detailed minutes. Detailed minutes shall describe all matters discussed, identify all documents considered, summarize action taken as well as the reasons for it, and record all rollcall votes as well as any views expressed.

(b) Such transcripts or minutes shall be kept by the Tribunal for 2 years or 1 year after the conclusion of the proceedings, whichever is later. Any portion of transcripts of meetings which the Chairman does not feel is exempt from disclosure under § 301.13 will ordinarily be available to the public within 20 working days of the meeting. Transcripts or minutes of closed meetings will be reviewed by the Chairman at the end of each calendar year and if he feels they may at that time be disclosed, he will resubmit the question to the Tribunal to gain authorization for their disclosure.

§ 301.16 Requests to open or close meetings.

(a) Any person may request the Tribunal to open or close a meeting or disclose or withhold information. Such a request must be captioned "Request to Open" or "Close" a meeting on a specific date concerning a specific subject. The requester must state his or her reasons, and include name and address, and desirably, telephone number.

(b) In the case of a request to open a meeting the Tribunal has previously voted closed, the Tribunal must receive the request within 3 working days of the meeting's announcement. If not, it will not be heeded, and the requester will be so notified. Requests are desired in seven copies.

(c) For the Tribunal to act on a request to open or close a meeting, the question must be brought to a vote before the Tribunal by one of the Commissioners. If the request is granted, an amended meeting announcement will be issued immediately and the requester notified. If a vote is not taken, or if after a vote the request is denied, the requester will also be notified promptly.

§ 301.17 Ex parte communication.

(a) No person not employed by the Tribunal and no employee of the Tribunal who performs any investigative function in connection with a Trubunal proceeding shall communicate, directly or indirectly, with any member of the Tribunal or with any employee involved in the decisions of the proceeding, with respect to the merits of any proceeding before the Tribunal or of a factually related proceeding.

(b) No member of the Tribunal and no employee involved in the decision of a proceeding shall communicate, directly or indirectly, with any person not employed by the Tribunal or with any employee of the Tribunal who performs an investigative function in connection with the proceeding, with respect to the merit of any proceeding before the Tribnal or of a factually related proceeding.

(c) If an *ex parte* communication is made to or by any member of the Tribunal or employee involved in the decision of the proceeding, in violation of paragraph (a) or (b) of this section, such member or employee shall promptly inform the Tribunal of the substance of such communciation and of the circumstance surrounding it. The Tribunal shall then take such action it considers appropriate; provided that any written *ex parte* communication and a summary of any oral *ex parte* communication shall be made part of the public records of the Tribunal, but shall not be considered part of the record for the purposes of decision unless introduced into evidence by one of the parties.

(d) A request for information with respect to the status of proceeding shall not be considered an *ex parte* communication prohibited by this section.

Subpart C—Public Access To and Inspection of Records

The following is the manner in which Tribunal opinions, recommended decisions, orders, public reports and records shall be made available to the public.

§ 301.21 Public records.

(a) Final official determinations of the Tribunal will be published in the FEDERAL REGISTER and include the relevant facts and the reasons for those determinations.

(b) An annual report, required of the Tribunal to be presented to the Presi-

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dent and Congress each fiscal year, along with a detailed fiscal statement of account, will be available both for inspection at the Tribunal and for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(c) All other Tribunal records are available, for inspection or copying at the Tribunal, except:

(1) Records that relate solely to the internal personnel rules and practices of the Tribunal;

(2) Records exempted by statute from disclosure;

(3) Interoffice memoranda or correspondence not available by law except to a party in litigation with the Tribunal;

(4) Personnel, medical, or similar files whose disclosure would be an invasion of personal privacy;

(5) Communications among Commissioners concerning the drafting of decisions, opinions, reports, and findings on any Tribunal matter or proceeding;

(6) Offers of settlement which have not been accepted unless they have been made public by the offerer;

(7) Records not herein listed but which may be withheld as "exempted" if the Tribunal finds compelling reasons exist.

§ 301.22 Public access.

(a) Information may be requested from the Tribunal in person, by telephone, or by mail.

(b) If the material sought is not a Tribunal record, is exempted, or for some reason is unavailable, the person requesting it will be so informed and, in the case of an "exempted record," will be explained the reason for the exemption and the procedure for appeal under the Freedom of Information Act, § 301.13.

(c) Fees for copies of Tribunal records are: $.45 per page for 24 pages or less, and $.35 per page for 25 copies or more, with a minimum fee of $4; $10 for each hour or fraction thereof spent searching for records; $4 for certification of each document; and the actual cost to the Tribunal for any other costs incurred.

301.23 Freedom of Information Act.

(a) If a request is made under the Freedom of Information Act (5 U.S.C. 552), it must be in writing, be captioned "Freedom of Information Act Request," and identify as accurately as possible, the information desired.

(b) Within 10 working days after the Tribunal has received such a request, the Chairman shall inform the requester how the records may be inspected or copied and the cost (as under § 301.22) of copying. The chairman may, however, extend this time limit up to 10 working days if:

(1) Records must be located or transferred;

(2) Voluminous material must be examined;

(3) Other agencies with substantial interest in the matter must be consulted or other elements of the Tribunal must be consulted.

In this case the requester shall be notified in accordance with 5 U.S.C. 552 (a)(6)(B).

(c) If the request is denied, the Chairman shall so inform the requester in writing, citing the exemption authorizing the denial and informing the requester that he or she may appeal the denial to the Tribunal within 20 working days. Appeals must be in writing and must be acted on by the Tribunal within 20 working days of their receipt. If the appeal is rejected, the requester must be so notified immediately and informed of the provisions for judicial review under 5 U.S.C. 552(a)(4).

§ 301.24 Privacy Act.

(a) The Privacy Act of 1974 (Pub. L. 93-579) 5 U.S.C. 552(a), concerns only requests which contain personal information retrievable by a personal identified. This section does not apply to personnel records located in Government-wide systems elsewhere.

The purpose of the Privacy Act is to enable individuals to:

(1) Learn if the Tribunal maintains records concerning them;

(2) Have access to such records;

(3) Learn if and to whom the Tribunal has disclosed such records; and

(4) Amend such records.

The Tribunal, in compliance with paragraph (a)(4) of this section, will record the disclosures of all records, their dates, the material disclosed, and to whom the material has been disclosed.

(b) A request made under the Privacy Act must be in writing, captioned "Privacy Act Request," and identify as accurately as possible the records in question and the nature of the information desired. This section is not to be construed as allowing an individual access to information compiled in reasonable anticipation of a civil action or proceeding.

(c) The request must be signed by the person making it, and such signature will be considered certification that the person signing is either the individual involved or that person's guardian. If the Chairman considers it necessary, he may require additional verification. Section 552(a)(i)(3) of the Privacy Act; 5 U.S.C. 552(a)(i)(3), states the penalties for false representation.

(d) If a medical record is involved and the chairman feels that its disclosure might adversely affect the individual, he shall require that person to designate a medical doctor to whom the record will be transmitted.

(e) Within 10 working days after the Tribunal has received such a request, the Chairman shall acknowledge its receipt to the requester and within 30 days shall inform the requester how the records may be inspected and the cost for copying, unless the records are exempted under § 301.21(c).

(f) If an individual who has obtained access to personal records wishes to have those records amended, he or she must make such a request in writing, state the nature of the information desired amended, and cite the reasons. Within 10 working days after the Tribunal has received such a request, the Chairman shall acknowledge its receipt and inform the requester whether or not the request has been granted. If the request is denied, the Chairman shall explain why and inform the requester of the right to appeal the denial to the Tribunal. All appeals must be in writing, with the caption "Privacy Act Appeal," and the Chairman will inform the requester of their disposition within 30 working days, unless there is good cause for the time to be extended. If the appeal is denied the requester will be notified of the provision for judicial review under 5 U.S.C. 552(b).

(g) Exempt from this section is all investigatory material compiled for law enforcement purposes as stipulated in 5 U.S.C. 552(k)(2).

Subpart D—Equal Employment Opportunity

§ 301.31 Purpose.

(a) This section sets forth the Tribunal's policy concerning Equal Employment Opportunity and the complaint procedures in the case of discrimination.

(b) The policy of the Tribunal is to oppose discrimination in all areas of job application, employment, and promotion on the basis of race, religion, sex, national origin, age, or physical handicap; this is because such a policy is right and any other would be morally indefensible. This policy will be pursued actively and affirmatively.

§ 301.32 Recruitment and hiring.

(a) Except in the case of the personal staffs of Commissioners, responsibility for equal employment opportunity is the Tribunal's as a whole; however, the authority to execute this policy may be delegated to a Personnel Committee.

(b) All hiring will be done on the basis of individual qualifications, without discrimination. The criteria of who is best qualified to fill a vacancy rests with the Tribunal, but there will be no

criteria which discriminates in the areas covered by § 301.31(b).

(c) In soliciting job applicants, systematic efforts will be made to locate and encourage qualified minority and women candidates. Where appropriate, the positions will be advertised in publications with primarily minority and women readership and announced through organizations or groups with high minority and women representation.

(d) Applicants for the same position will be required to have the same skills and to provide the same background information. The total number of applicants considered must reflect the proportion of minorities and women reasonably available for such a position. The criteria by which applicants are screened and selected shall be job related.

§ 301.33 Complaint procedures.

(a) Any person who believes that he or she has been discriminated against on the basis of race, religion, sex, national origin, age, or physical handicap, must first resolve such a complaint through the following procedure before taking civil action. Before a complaint may be presented formally the procedures for resolving it informally must be exhausted.

(1) *Informal complaint procedures.* (i) Within 30 days of an alleged discriminatory act, or in the case of a personnel action, within 30 days of its effective date, the complainant must contact the Chairman of the Personnel Committee and explain the case for the complaint. In case the complaint is against the Chairman of the Personnel Committee, it will be made to the chairman of the Tribunal. The complainant may be accompanied or represented by any person of his or her choosing.

(ii) The chairman of the Personnel Committee, or the Chairman of the Tribunal, or a Commissioner designated by the Chairman, shall then make whatever inquiry seems necessary into the circumstances surrounding the complaint and shall attempt to resolve it informally through counseling. Such counseling shall be completed within twenty-one (21) days of the date on which the complaint was first brought, and written record will be kept. If an informal resolution is reached, its terms will be in writing. The identity of the complainant at this stage, however, will at no time be revealed unless he or she specifically authorizes it.

(iii) If an informal resolution is not reached, the complainant will be advised that he or she may then file a formal complaint.

(2) *Formal complaint procedure.* (i) Within 15 days of the final counseling session under the informal procedure above, and if no resolution has been reached, the complainant may file a formal written complaint addressed to the Chairman of the Tribunal, signed by the complainant, and specifying all the details surrounding the complaint.

(ii) On receipt of the complaint, the Chairman shall request an investigation by the Chairman of the Personnel Committee and two Commissioners not on the Committee. This investigation will review thoroughly all the circumstances surrounding the alleged discrimination and analyze the treatment of the complainant as compared with others in the same situation. The results shall be in writing and a copy sent to the complainant. The complainant shall then be given the opportunity to meet with the Commissioners who prepared this report to try to reach an adjustment of the complaint. The complainant may be accompanied or represented by a person of his or her own choosing. If the complainant is an employee of the Tribunal, he or she shall be allowed sufficient official time to present the complaint. If the complainant has designated another Tribunal employee to advise or represent him, that person shall be allowed sufficient official time to perform the appropriate duties.

(iii) If an adjustment is reached at this point, it must be signed by the complainant and shall serve to terminate the matter. If an adjustment is not reached, the investigative report will be transmitted to the Chairman of the Tribunal, and the Tribunal shall make a disposition of the complaint to take affect within 15 days. This disposition will be relayed to the complainant in writing immediately. The complainant shall also be advised of his or her right to file a civil action, or in the case of an employee of the Tribunal to demand a hearing.

(iv) Within 15 days of the announcement of the Tribunal's proposed disposition, a complainant who is an employee of the Tribunal may request a hearing. Upon receipt of such a request, the Chairman shall request from another Federal agency, a qualified Hearing Examiner who has been certified to hear Equal Employment Opportunity complaints.

(v) The Hearing Examiner, within 21 days, shall conduct a hearing. Witnesses will be allowed to testify, but their testimony must relate only to the complaint; information will be admitted into evidence, but only information having a direct bearing on the complaint. Both parties to the complaint shall have the opportunity to cross-examine. The hearing shall be recorded, and the transcript as well as the findings and recommendations of the Hearing Examiner shall be transmitted to the Tribunal for a final decision.

(vi) The Tribunal will give special consideration to the recommendations of the Hearing Examiner, and if he wishes to reject or modify those recommendations, the Tribunal must accompany such a decision with a letter detailing his reasons. The Tribunal's final decision will be accompanied by a copy of the Hearing Examiner's findings and recommendations and a transcript of the hearing.

(vii) After the decision has been issued, the complainant shall be advised immediately that he or she has the right to file a civil action in the appropriate District Court within 30 days.

(viii) If within one hundred eighty (180) days from the date the complainant first brought the complaint, the Tribunal has failed to issue a decision, the complainant will also have the right to file a civil action.

(ix) Where discrimination is found, the Tribunal shall review the matter which gave rise to the complaint and determine whether or not disciplinary action is necessary. The basis for this action shall be in writing, but not included in the complaint file.

§ 301.34 Third party allegation of discrimination.

Organizations or third parties may bring allegations of discrimination against the Tribunal in areas unrelated to individual complaints, but such allegations must be in writing, and in sufficient detail for the Tribunal to investigate them. The Tribunal may order an investigation, and the party bringing the allegations will be informed of its results as well as of any decision by the Tribunal and corrective action.

§ 301.35 Business relations.

Business contracts entered into by the Tribunal shall stipulate that all contractors, subcontractors, and suppliers to the Tribunal conform in their own policies with the substance of the Tribunal's Equal Employment Opportunity Policy.

Subpart E—Procedures and Regulations

§ 301.40 Scope.

All Tribunal proceedings will be governed by the procedures of this Subpart. This subpart does not apply to general statements of policy or to rules of agency organization, procedure, or practice.

§ 301.41 Formal hearings.

(a) The formal hearings which will be conducted pursuant to the rules of this subpart are rate adjustment proceedings, royalty fee distribution proceedings, and all rulemaking proceeding in which it has been determined to

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conduct a hearing. The Tribunal may also, on its own motion or on the petition of an interested party, hold other proceedings it deems necessary on any matter it has the authority to investigate, in order to obtain information in determining its policies, in exercising its duties, or in formulating or amending its rules and regulations. Such proceedings also will be subject to the rules of this subpart.

(b) Studies or conferences the Tribunal may hold in carrying out its statutory responsibilities may be conducted in whole or in part under the provisions of this subpart, depending upon the discretion of the Tribunal.

§ 301.42 Suspension, amendment, or waiver of rules.

(a) The provisions of this subpart may be suspended, revoked, amended, or waived, in whole or in part, at any time by the Tribunal for good cause shown, subject to the provisions of the Administrative Procedure Act. Where procedures have not been specifically prescribed in this subpart, the Tribunal shall follow those which in its opinion will best serve the purposes of a proceeding.

§ 301.43 Notice of proposed rulemaking.

(a) *General notice.* Public notice for rate adjustment and royalty distribution proceedings is covered in Subparts F and G of this Part. Before the adoption of any rule of general applicability, or the commencement of any hearing on any proposed rulemaking, the Tribunal shall publish a general notice in the FEDERAL REGISTER, such notice to be published not less than 30 days prior to the date on which the proposed rules may be considered by the Tribunal, or the date of any hearing on such proposed rules. However, where the Tribunal, for good cause, finds it impracticable, unnecessary, or contrary to the public interest to give such notice, it may adopt the rules without notice by incorporating a finding to such effect and a concise statement of the reasons therefor in the notice.

(b) *Notice.* A rule proceeding shall commence with a notice of proposed rulemaking. Such notice shall be published in the FEDERAL REGISTER, and to the extent practicable, otherwise made available to interested persons. The notice shall include: (1) The terms or substance of the proposed rule or a description of the subjects and issues involved; (2) reference to the legal authority under which the rule is proposed; (3) a statement describing the particular reason for the rule; and (4) an invitation to all interested persons to comment.

(c) *Hearing notice.* A hearing notice of proposed rulemaking shall be published in the FEDERAL REGISTER, and to the extent practicable, otherwise made available to interested persons. The hearing notice shall include: (1) Designated issues which are to be considered; (2) the time and place of hearing, and (3) instructions to interested persons seeking to make oral presentation.

§ 301.44 Conduct of proceedings.

(a) At the opening of the proceeding the Chairman shall announce the subject under consideration.

(b) Only Commissioners of the Tribunal, authorized Tribunal staff, or counsel as provided in this chapter shall question witnesses.

(c) Subject to the approval of the Tribunal, the Chairman will have the responsibility for:

(1) Setting the order of presentation of evidence and appearance of witnesses;

(2) Ruling on objections and motions;

(3) Administering oaths and affirmations to all witnesses;

(4) Making all rulings with respect to introducing or excluding documentary or other evidence;

(5) Regulating the course of the proceedings and the decorum of the parties and their counsel, and insuring that the proceedings are fair and impartial;

(6) Announcing the schedule of subsequent hearing;

(7) Taking any other action which is consistent with this chapter and which has been authorized by the Tribunal.

(d) With all due regard for the convenience of witnesses, proceedings shall be conducted as expeditiously as possible.

(e) Following the opening statement, the Tribunal may convene first in executive session if such is the requirement of a statute or rule.

§ 301.45 Declaratory rulings.

In accordance with 5 U.S.C., Sec. 554(e), the Tribunal may on motion of its own, or on motion of an interested party, issue a declaratory ruling in order to terminate a controversy or remove uncertainty.

§ 301.46 Testimony under oath or affirmation.

All witnesses at Tribunal proceedings shall be required to take an oath or affirmation before testifying; however, attorneys who do not appear as witnesses shall not be required to do so.

§ 301.47 Transcript and record.

(a) An official reporter for the recording and transcribing of hearings will be designated by the Tribunal from time to time. Anyone wishing to inspect the transcript of any hearing may do so at the Tribunal; however, anyone wishing a copy must purchase it from the official reporter.

(b) After the close of the hearing, the complete transcript of testimony together with all exhibits shall be certified as to identity by the Chairman and filed in the offices of the Tribunal.

(c) The transcript of testimony and all exhibits, papers, and requests filed in the proceeding, shall constitute the exclusive record or decision. Any decision resting on official notice of a material fact not appearing in the record shall automatically afford any party, on timely request, to have an opportunity to show the contrary.

§ 301.48 Closing the hearing.

To close the record of hearing, the Chairman shall make an announcement that the taking of testimony has concluded. In its discretion the Tribunal may close the record as of a future specified date, and allow time for exhibits yet to be prepared to be admitted: *Provided*, That the parties to the proceeding stipulate on the record that they waive the opportunity to cross-examine or present evidence with respect to such exhibits. The record in any hearing which has been recessed may not be closed by the Chairman prior to the day on which the hearing is to resume, except upon 10 days' notice to all parties.

§ 301.49 Documents.

(a) *Copies of documents.* The original and 15 copies of every document filed and served in proceedings before the Tribunal shall be furnished for the Tribunal's use, except exhibits made a part of the record.

(b) *Subscription and verification.* (1) The original of all documents filed by any party represented by counsel, shall be signed by at least one attorney of record and list his address and telephone number. All copies shall be confirmed. Except when otherwise specifically provided, documents signed by the attorney for a party need not be verified or accompanied by an affidavit. The signature of an attorney constitutes certification by him that he has read the document, that to the best of his knowledge and belief there is good ground to support it, and that it has not been interposed for delay.

(2) The original of all documents filed by a party not represented by counsel shall be both signed and verified by that party and list that party's address and telephone number.

(3) The original of a document that is not signed, or is signed with intent to defeat the purpose of this section, may be stricken as sham and false and the matter proceed as though the document had not been filed.

§ 301.50 Reopening of proceedings, modification or setting.

(a) *Condition for reopening.* (1) Except in the case of rate adjustment proceedings and distribution proceedings the Tribunal may, upon petition or its own motion, reopen any proceeding, after reasonable notice, for the purpose of rehearing arguments or reconsideration.

(2) After granting an opportunity to be heard, the Tribunal may alter, modify or set aside in whole or in part, the report of its finding or order if it finds such action required by changed conditions, by material mistake of fact or law, or by the public interest

(b) *Petition for reopening.* A petition for reopening shall be made in writing and shall state its grounds. If it is a petition to take further evidence, the nature and purpose of the new evidence to be adduced shall be stated briefly, and an explanation given for why such evidence was not available at the time of the prior hearing. If it is a petition for reargument or reconsideration, the matter that is claimed to have been erroneously decided shall be specified and the alleged errors outlined briefly. Copies of the petition shall be furnished to all participants or their counsel.

(c) *Stay of rule or order.* No petition for reopening nor permission for reopening shall constitute a stay of any Tribunal rule or order; except that the Tribunal may postpone the effective date of any action taken by it pending judicial review and if, in the Tribunal's opinion, justice so requires.

§ 301.51 Rules of evidence.

(a) *Admissibility.* In any public hearing before the Tribunal, evidence which is not unduly repetitious or cumulative and is relevant and material shall be admissible. The testimony of any witness will not be considered evidence in a proceeding unless the witness has been sworn.

(b) *Documentary evidence.* Evidence which is submitted in the form of documents or detailed data and information shall be presented as exhibits. Relevant and material matter embraced in a document containing other matter not material or relevant or not intended as evidence must be plainly designated as the matter offered in evidence, and the immaterial or irrelevant parts shall be marked clearly so as to show they are not intended as evidence. A document in which material and relevant matter occurs which is of such bulk that it would unnecessarily encumber the record, may instead be marked for identification, and the relevant and material parts, once properly authenticated, may be read into the record. If the Tribunal desires, a true copy of the material and relevant matter may be presented in extract and submitted as evidence. Anyone presenting documents as evidence must present copies of all other participants at the hearing or their attorneys, and afford them an opportunity to examine the documents in their entirety and offer any other portion in evidence which may be felt material and relevant.

(c) *Documents filed with the Tribunal.* If the matter offered in evidence is contained in documents already on file with the Tribunal, the documents themselves need not be produced, but may instead be referred to according to how they have been filed with the Tribunal.

(d) *Public documents.* If a public document is offered in evidence either in whole or in part, such as an official report, decision, opinion or published scientific or economic data, and the document has been issued by an Executive Department, a legislative agency or committee, or a Federal administrative agency (Government-owned corporations included), and is proved by the party offering it to be reasonably available to the public, the document need not be produced physically, but may be offered instead by identifying the document and signaling the relevant parts.

(e) *Copies to participants.* Copies of all prepared testimony and exhibits must be distributed to the Tribunal and to other participants or their counsel at a hearing, unless the Chairman directs otherwise. For its use the number of copies the Tribunal requires is seven.

(f) *Reception and ruling.* Any ruling on the admissibility of evidence will be made by the Chairman, and he shall control the reception of evidence and insure that it confines itself to the issues of the proceeding.

(g) *Offers of proof.* If the Chairman rejects or excludes proposed oral testimony and an offer of proof is made, the offer of proof shall consist of a statement of the substance of the evidence which it is contended would have been adduced. In the case of documentary or written evidence, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.

(h) *Introduction of studies and analysis.* If studies or analysis are offered in evidence, they shall state clearly the study plan, all relevant assumptions, the techniques of data collection, and the techniques of estimation and testing. The facts and judgments upon which conclusions are based shall be stated clearly, together with any alternative courses of action considered. If requested, tabulations of input data shall be made available to the Tribunal.

(i) *Statistical studies.* Statistical studies offered in evidence shall be accompanied by a summary of their assumptions, their study plans, and their procedures. Supplementary details shall be added in appendices. For each of the following types of statistical studies the following should be furnished:

(1) *Sample surveys.* (i) A clear description of the survey design, the definition of the universe under consideration, the sampling frame and units, the validity and confidence limits on major estimates; and

(ii) An explanation of the method of selecting the sample and of which characteristics were measured or counted.

(2) *Econometric investigations.* (i) A complete description of the econometric model, the reasons for each assumption, and the reasons for the statistical specification;

(ii) A clear statement of how any changes in the assumptions might affect the final result; and

(iii) Any available alternative studies, if requested, which employ alternative models and variables.

(3) *Experimental analysis.* (i) A complete description of the design, the controlled conditions, and the implementation of controls; and

(ii) A complete description of the methods of observation and adjustment of observation.

(4) *Studies involving statistical methodology.* (i) The formula used for statistical estimates;

(ii) The standard error for each component;

(iii) The test statistics, the description of how the tests were conducted, related computations, computer programs, and all final results; and

(iv) Summarized descriptions of input data and, if requested, the input data itself.

(j) *Cumulative evidence.* Cumulative evidence will be discouraged by the Tribunal and the Tribunal may limit the number of witnesses that may be heard in behalf of any one party on any one issue.

(k) *Further evidence.* At any state of a hearing the Chairman may call upon any party to furnish further evidence upon any issue.

(l) *Rights of parties as to presentation of evidence.* Every participant shall have the right to present his case by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be necessary to disclose the facts fully and truthfully. The Chairman, however, may limit introduction of evidence, examination, and cross-examination if in his judgment this evidence or examination would be cumulative or cause undue delay.

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§ 301.52 Participation in any proceeding.

Interested persons will be afforded an opportunity to participate in any proceeding and submit written data, views, or arguments, with or without the opportunity to present the same orally. If proposed rules are required by statute to be made on the record after opportunity for a hearing, such a hearing shall be conducted pursuant to 5 U.S.C., Subchapter II, and 7 U.S.C., and the procedure will be the same as in § 301.55 herein.

§ 301.53 Examination, cross-examination, and rebuttal.

(a) Each Commissioner may examine any witness at any time.

(b) Examination, cross-examination, and rebuttals relevant to the issues under consideration, shall be allowed by the Chairman, but only to the extent they are necessary for a full and true disclosure of the facts.

(c) *Selection of representatives for cross-examination.* The Tribunal will encourage individuals or groups with the same or similar interests in a proceeding to select a single representative to conduct their examination and cross-examination for them. However, if there is no agreement on the selection of a representative, then each individual or group will be allowed to conduct his own examination and cross-examination, but only on issues affecting his particular interest.

§ 301.54 Proposed findings and conclusions.

(a) Any party to the proceeding may file proposed findings of fact and conclusions, briefs, or memoranda of law, or may be directed by the Chairman so to file, such filings to take place within 20 days after the record has been closed, unless additional time is granted.

(b) Failure to file when directed to so do may be considered a waiver of the right to participate further in the proceeding, unless good cause is shown.

(c) Proposed findings of fact shall be numbered by paragraph and include all basic evidentiary facts developed on the record used to support proposed conclusions and cite appropriately the record for each evidentiary fact. Proposed conclusions shall be stated separately. Proposed findings submitted by someone other than an applicant in a proceeding shall be restricted to those issues which specifically affect that person.

(d) Proof of service upon all other counsel or parties in a proceeding must accompany pleadings and all other papers filed under this section.

§ 301.55 Promulgation of rules or orders.

(a) In adopting a rule or order the Tribunal will consider all relevant matters of fact, law, and policy, and all relevant matters which have been presented by interested persons, and will exercise due discretion. Together with a concise general statement of its basis and purpose and any necessary findings, the rule or order will be published in the FEDERAL REGISTER, and if any other public notice is necessary that will be made also.

(b) The effective date of any rule, or its amendment, suspension, or repeal, will be at least 30 days after it is published in the FEDERAL REGISTER, unless good cause has been shown and is published with the rule.

§ 301.56 Public suggestions and comments.

(a) The Tribunal encourages the public, not just those persons subject to its regulations, to submit suggestions and proposals concerning any substantial question before it, when that question will have subtantial impact either upon those directly regulated by the Tribunal or upon others. It is in the best interests of both the Tribunal and the public at large that the Tribunal be advised on issues and problems that are potentially significant to it. This will permit the Tribunal to consider policy questions and administrative reforms early enough so that they may be viewed in a general context and not in the detailed application of a particular proceeding.

(b) Upon receiving such suggestions or proposals, the Tribunal shall review them and take whatever action seems necessary. Further information may be requested from the party submitting the suggestion or proposals, and the Tribunal staff may be asked to make a study, or an informal public conference may be held. Conferences or procedures undertaken pursuant to this section shall not be deemed subject to the Administrative Procedure Act with respect to notice of rulemaking. They are intended by the Tribunal simply as a means of determining the need for Tribunal action, prior to issuing a notice of proposed rulemaking.

(c) Such suggestions or proposals, however, shall be filed in accordance with the Tribunal's rules.

(d) This policy may not be used to advocate ex parte a position in a pending proceeding. Suggestions or proposals offered must relate to general conditions, such as conditions in industry, the public interest, or the policies of the Tribunal.

Subpart F—Rate Adjustment Proceedings

§ 301.60 Scope.

This chapter governs only those proceedings dealing with royalty rate adjustments affecting cable television (17 U.S.C. 111), the production of phonorecords (17 U.S.C. 115), coin-operated phonorecord players (jukeboxes) (17 U.S.C. 116), and non-commercial broadcasting (17 U.S.C. 118). It does not govern unrelated rulemaking proceedings. Those provisions of subpart E generally regulating the conduct of proceedings shall apply to rate adjustment proceedings, unless they are inconsistent with the specific provisions of this subpart.

§ 301.61 Commencement of adjustment proceedings.

(a) In the case of cable television, phonorecords, and coin-operated phonorecord players (jukeboxes) rate adjustment proceedings will commence by the publication of a notice to that effect in the FEDERAL REGISTER on January 1, 1980, pursuant to 17 U.S.C. 804(a)(1). In the case of non-commercial broadcasting the notice will be published on June 30, 1982 and at 5-year intervals thereafter, pursuant 10 U.S.C. 118(c). The notice shall, to the extent feasible, describe the general structure and schedule of the proceeding.

(b) Initially, as outlined in paragraph (a) of this section a petition from an interested party is not necessary to commence proceedings. Thereafter, however, for rate adjustment proceedings to commerce, a petition must be filed by an interested party according to the following schedule:

(1) Cable Television: During 1985 and each subsequent fifth calendar year.

(2) Phonorecords: During 1987 and each subsequent 10th calendar year.

(3) Coin-operated phonorecord players (jukeboxes): During 1990 and each subsequent 10th calendar year.

(c) Cable television rate adjustment proceedings may also be commenced by the filing of a petition, according to 17 U.S.C., 801(b)(2) (B) and (C), if the Federal Communications Commission amends certain of its rules concerning the carriage by cable of broadcast signals, or with respect to syndicated and sports program exclusivity.

(d) In the case of non-commercial broadcasting, a petition is not necessary for the commencement of proceedings. They commence automatically according to paragraph (a) of this section.

§ 301.62 Content of petition.

(a) The petition shall detail the petitioner's interest in the royalty rate sufficiently to permit the Tribunal to determine whether the petitioner has "significant interest" in the matter. The petition must also identify the extent to which the petitioner's interest is shared by other owners or users, and owners or users with similar interests may file a petition jointly.

(b) In the case of a petition for rate adjustment as the result of a Federal Communications Commission rule change, the petition shall also set forth the action of the Federal Communications Commission which the party filing the petition feels authorizes a rate adjustment proceeding.

§ 301.63 Consideration of petition.

The Tribunal shall not start to consider any petition before the expiration of 90 days from the start of the calendar year specified in § 301.61(b) or 90 days from the effective date of the Federal Communications Commission action mentioned in § 301.62(c). Similar petitions may be joined together by the Tribunal for the purpose of determining "significant interest", and the Tribunal may permit written comments or a hearing on pending petitions.

§ 301.64 Disposition of petition.

At the end of the 90-day period, the Tribunal shall determine as expeditiously as possible if one or more petitioner's interest is "significant"; and shall publish in the FEDERAL REGISTER a notice of its determination and the reasons therefor, together with a notice of the commencement of proceedings if it has been determined to commence a proceeding. Any commencement notice shall, to the extent feasible, describe the general structure and schedule of the proceeding.

§ 301.65 Rate adjustment proceedings.

In any rate adjustment proceeding, all interested persons shall have the opportunity to present written comments and oral testimony, subject to the general provisions of subpart E.

§ 301.66 Publication of proposed rate determination.

(a) Following the conclusion of the hearings, the Tribunal shall publish as soon as possible in the FEDERAL REGISTER, a notice of its proposed findings and conclusions in the rate adjustment proceeding. The Tribunal shall afford all parties a reasonable opportunity to submit written comments on the proposed determination. The Tribunal may, if necessary, conduct additional hearings.

(b) A proposed determination will not be published if, in the Tribunal's judgment, a final determination cannot feasibly be rendered before the year's end as required by 17 U.S.C. 118(c) and 17 U.S.C. 804(e) concerning the termination of proceedings.

§ 301.67 Final determination.

Upon the conclusion of the procedures for proposed determinations described in § 301.66, or upon the conclusion of the rate adjustment proceedings provided in § 301.65, if the publication of a proposed rate determination is not feasible because of the requirements to reach a final determination before the end of the year (17 U.S.C. 118(c) and 17 U.S.C. 804(e)), the Tribunal shall publish in the FEDERAL REGISTER a written opinion stating in detail the criteria it found applicable, the facts found relevant, and the specific reasons for its determination.

§ 301.68 Reopening of proceedings.

Following the publication of a final determination in the FEDERAL REGISTER the Tribunal shall not reopen or conduct any further proceedings.

§ 301.69 Effective date of final determination.

A final determination by the Tribunal shall become effective thirty days following its publication in the FEDERAL REGISTER, unless an appeal has been filed prior to that time pursuant to 17 U.S.C. 810 to vacate, modify or correct a determination, and notice of the appeal has been served on all parties who appeared in the proceeding.

Subpart G—Royalty Fees Distribution Proceedings

§ 301.70 Scope.

This subpart governs only those proceedings dealing with the distribution of compulsory cable television and coin-operated phonorecord player (jukebox) royalties desposited with the Register of Copyrights, according to the terms of 17 U.S.C., 111(d)(5) and 116(c). It does not govern unrelated rulemaking proceedings. Those provisions of subpart E generally regulating the conduct of proceedings shall apply to royalty fee distribution proceedings, unless they are inconsistent with the specific provisions of this subpart.

§ 301.71 Commencement proceedings.

(a) *Cable television.* In the case of compulsory royalty fees for secondary transmissions by cable television, any person claiming to be entitled to such fees must file a claim with the Tribunal during the month of July each year in accordance with Tribunal regulations.

(b) *Coin-operated phonorecord players.* In the case of compulsory royalty fees for the use of nondramatic musical works by coin-operated phonorecord players (jukeboxes) any person claiming to be entitled to such fees must file a claim with the Tribunal during the month of January each year in accordance with Tribunal regulations.

§ 301.72 Determination of controversy.

(a) *Cable television.* After the first day of August each year, the Tribunal shall determine whether a controversy exists among the claimants of cable television compulsory royalty fees. In order to determine whether a controversy exists, the Tribunal may conduct whatever proceedings it feels necessary, subject to the procedures and regulations of subpart E. The results of this determination shall be announced in the FEDERAL REGISTER. If the Tribunal decides that a controversy exists, the FEDERAL REGISTER notice shall also announce the commencement of the royalty distribution proceeding, and shall, to the extent feasible, describe the general structure and schedule of the proceeding.

(b) *Coin-operated phonorecord players.* After the first day of October each year, the Tribunal shall determine whether a controversy exists among the claimants of coin-operated phonorecord player (jukebox) compulsory royalty fees. In order to determine whether a controversy exists the Tribunal may conduct whatever proceedings it feels necessary, subject to the procedures and regulations of subpart E. The results of this determination shall be announced in the FEDERAL REGISTER. If the Tribunal decides that a controversy exists, the FEDERAL REGISTER notice shall also announce the commencement of the royalty distribution proceeding, and shall, to the extent feasible, describe the general structure and schedule of the proceeding.

§ 301.73 Royalty distribution proceedings.

In any royalty distribution proceeding all interested claimants shall have the opportunity to present written comments and oral testimony, subject to the general provisions of subpart E.

§ 301.74 Publication of proposed royalty distribution determination.

(a) Following the conclusion of the hearings, the Tribunal shall publish, as soon as possible, in the FEDERAL REGISTER, a notice of its proposed findings and conclusions in the royalty distribution proceeding. The Tribunal shall afford all claimants a reasonable opportunity to submit written comments on the proposed determination. The Tribunal may, if necessary, conduct additional hearings.

(b) A proposed determination will not be published if, in the Tribunal's judgment, a final determination cannot feasibly be rendered before the year's end, as required by 17 U.S.C. 804(e) concerning the termination of proceedings.

§ 301.75 Final determination.

Upon the conclusion of the procedures for proposed determination described in § 301.74, or upon the conclusion of the royalty distribution proceedings provided in § 301.73, if the publication of a proposed royalty dis-

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tribution determination is not feasible because of the requirements to reach a final determination before the end of the year (17 U.S.C. 804(e)), the Tribunal shall publish in the FEDERAL REGISTER a written opinion stating in detail the criteria it found applicable, the facts found relevant, and the specific reasons for its determination.

§ 301.76 Reopening of proceedings.

Following the publication of a final determination in the FEDERAL REGISTER, the Tribunal shall not reopen or conduct any further proceedings.

§ 301.77 Effective date of final determination.

A final determination by the Tribunal shall become effective thirty days following its publication in the FEDERAL REGISTER, unless an appeal has been filed prior to that time pursuant to 17 U.S.C. 810 to vacate, modify, or correct a determination, and notice of the appeal has been served on all parties who appeared in the proceeding.

[FR Doc. 78-32471 Filed 11-16-78; 8:45 am]

[8320-01-M]

Title 38—Pensions, Bonuses and Veterans' Relief

CHAPTER I—VETERANS ADMINISTRATION

PART 36—LOAN GUARANTY

VA Home Loans in Foreclosure

AGENCY: Veterans Administration.

ACTION: Final regulation.

SUMMARY: The VA (Veterans Administration) has amended its regulations by adding a provision which allows an obligor on a delinquent VA guaranteed or insured loan in most circumstances to cure the delinquency at any time prior to a foreclosure sale. The new regulation allows an obligor on a VA loan to avoid foreclosure whenever he or she has sufficient funds to cure the delinquency prior to liquidation of the security provided that specific legal exceptions to reinstatement are not applicable.

EFFECTIVE DATE: November 9, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Raymond L. Brodie, Assistant, Director for Loan Management (261), Loan Guaranty Service, Veterans Administration, Washington, D.C. 20420, 202-389-3668.

SUPPLEMENTARY INFORMATION: On March 14, 1978, the Veterans Administration published for comment in the FEDERAL REGISTER (43 FR 10583) a proposed regulation concerning lender responsibilities in the area of loan reinstatement. The regulation, which is adopted, with the incorporation of one change, allows an obligor to reinstate his or her loan at any time prior to a judicial or statutory sale or other public sale of the secured property under power of sale provisions contained in the loan instruments. In order to have the loan reinstated, an obligor must pay sufficient funds to bring the delinquent loan to a current status.

Sufficient funds to bring the delinquent loan current includes but is not limited to an amount which would pay all installment payments presently due (including principal, interest, taxes, and insurance) and pay any reasonable expenses incurred by the lender or holder during foreclosure proceedings such as advertising costs, recording fees, attorney fees, etc. "Reasonable expenses" does not include the administrative expenses of loan servicing.

The Veterans Administration received many comments concerning the new regulation, most of which were favorable. Several of the respondents noted that in their jurisdictions in instances where loans were being judicially foreclosed, reinstatement of a loan after a certain point in the legal proceedings may not be legally feasible or have an undesirable consequence such as the promotion of junior liens. Along this line, another commentator pointed out that a local statute would not allow a loan reinstatement within 5 days of the foreclosure sale. We agree with both comments and have incorporated them into the text of the regulation.

Several respondents felt that reinstatement of the loan should not be required when the property is not owner-occupied or when the property has been transferred from the veteran to another party. VA believes that both comments are too inflexible. Although the intent of the loan guaranty program is to provide housing for veterans as owner-occupants, the governing law does not dictate property disposition by the veteran at a later date. However, field stations will be instructed to consider property occupancy as one factor in any decision to deny reinstatement of a VA loan.

One commentator felt that loan reinstatement should not be required where the borrower has been a chronic servicing problem; while another felt that reinstatement should not be required where the loan has been reinstated from foreclosure within the previous 2 years. Accordingly, we are instructing field stations to consider a borrower's payment history and the nature of the default(s) in connection with any request to deny loan reinstatement. A history of delinquency may indicate willful default, or insufficient income, but it may also indicate poor servicing. However, we do not believe that reinstatement of a loan should be denied routinely solely because the obligor has had his or her loan previously reinstated during the past 2 years.

Several comments were received that reinstatement should not be required when the property is in poor physical condition. Other respondents also felt that loan reinstatement should not be required if there is no evidence that the borrower will be able to maintain the mortgage obligation in the future. Both objections raise valid points. Our field stations accordingly will be instructed to review the condition of the property and the ability of the borrower to make future payments in connection with any request to deny reinstatement.

Comments were received in one final area. Many respondents felt that the new regulation would cause a burden both to the holders and to the VA by creating additional paperwork and causing procedural difficulties. VA does not anticipate that this new regulation will cause any substantial burden on either holders or the VA. We expect only a very small number of cases to be referred to VA with requests that a mortgagor be denied loan reinstatement.

Accordingly, 38 CFR Part 36 is amended by adding paragraph (g) in § 36.4308. This amendment is adopted under authority granted to the Administrator by section 1803(c)(1) of title 38, United States Code.

Approved: November 9, 1978.

By direction of the Administrator.

RUFUS H. WILSON,
Deputy Administrator.

In § 36.4308, paragraph (g) is added to read as follows:

§ 36.4308 Transfer of title by borrower or maturity by demand or accleration.

* * * * *

(g) If sufficient funds are tendered to bring a delinquency current at any time prior to a judicial or statutory sale or other public sale under power of sale provisions contained in the loan instruments to liquidate any security for a guaranteed loan, the holder shall be obligated to accept the funds in payment of the delinquency unless:

(1) The prior approval of the Administrator is obtained to do otherwise, or

(2) Reinstatement of the loan would adversely affect the dignity of the lien or be otherwise precluded by law.

A delinquency will include all installment payments (principal, interest, taxes, insurance, advances, etc.) due and unpaid and any accumulated late charges plus any reasonable expenses incurred and paid by the holder if termination proceedings have begun (e.g., advertising costs, foreclosure costs, attorney or trustee fees, recording fees, etc.).

[FR Doc. 78-32399 Filed 11-16-78; 8:45 am]

[6820-24-M]

Title 41—Public Contracts and Property Management

CHAPTER 1—FEDERAL PROCUREMENT REGULATIONS

[FPR Amdt. 196]

PART 1-1—GENERAL

Recovered Materials

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This amendment of the Federal Procurement Regulations (FPR) requires the executive agencies to procure items composed of the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The amendment is necessary to comply with the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act. The intended effect of the amendment is to increase the use of recovered materials, by providing a market for them through Federal procurements and by setting an example for industry and State and local governments to follow.

EFFECTIVE DATE: November 17, 1978.

FOR FURTHER INFORMATION CONTACT:

Philip G. Read, Director of Federal Procurement Regulations, 703-557-8947.

SUPPLEMENTARY INFORMATION: This FPR amendment implements the requirements of section 6002 of the Solid Waste Disposal Act (42 U.S.C. 3251 et seq.) as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq.), and Office of Federal Procurement Policy Letter No. 77-1.

PART 1-1—GENERAL

The table of contents for part 1-1 is amended by adding new entries as follows:

Subpart 1-1.24—[Reserved]

Subpart 1-1.25—Recovered Materials

Sec.
1-1.2500 Scope of subpart.
1-1.2501 Policy.
1-1.2502 General.
1-1.2503 Definitions.
1-1.2504 Procedures.

Subpart 1-1.25 is added as follows:

Subpart 1-1.25—Recovered Materials

§ 1-1.2500 Scope of subpart.

This subpart prescribes policies and procedures regarding the use of recovered materials.

§ 1-1.2501 Policy.

The policy of the Government is to procure items composed of the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

§ 1-1.2502 General.

This subpart 1-1.25 implements the Solid Waste Disposal Act (42 U.S.C. 3251 et seq.) as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq.), and Office of Federal Procurement Policy Letter No. 77-1. The statutes require agencies responsible for drafting or reviewing specifications to ensure that they: (1) Do not exclude the use of recovered materials, (2) do not require that items be manufactured from virgin materials, and (3) require recovered materials to the maximum extent possible without jeopardizing the intended end use of items. The statutes also require the Administrator, Environmental Protection Agency (EPA), to prepare guidelines on the availability, sources, and potential uses of recovered materials and associated items.

§ 1-1.2503 Definitions.

(a) "Recovered material" means material which has been collected or recovered from solid waste. It includes reclaimed materials.

(b) "Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities. It does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1242), or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011).

§ 1-1.2504 Procedures.

(a) This section is applicable to all procurements that: (1) Use Government specifications which specify minimum percentages of recovered materials, and (2) involve a purchase price for an item that: (i) exceeds $10,000 or (ii) exceeds $10,000 for quantities of an item or a functionally equivalent item purchased or acquired during the preceding fiscal year.

(b) Solicitations and contract awards which employ Government specifications requiring the utilization of recovered materials shall include a certification which, as a minimum, is as follows:

CERTIFICATION OF RECOVERED MATERIALS

The offeror contractor certifies that recovered materials will be used as required by specifications referenced in the solicitation/contract.

(c) Requirements in Government specifications involving recovered materials may be waived by the contracting officer only after a determination that the items:

(1) Are not reasonably available within a reasonable period of time, or

(2) (i) Fail to meet the performance standards set forth in the applicable specifications, or (ii) fail to meet the reasonable performance standards of the agency, or

(3) Are not available at a reasonable price.

The determination required by § 1-1.2504(c)(2) may be made only on the basis of Bureau of Standards guidelines.

(Sec. 205(c) 63 Stat. 390; 40 U.S.C. 486(c).)

Dated: November 9, 1978.

PAUL E. GOULDING,
Acting Administrator of General Services.

[FR Doc. 78-32442 Filed 11-16-78; 8:45 am]

[4110-07-M]

Title 45—Public Welfare

CHAPTER II—SOCIAL AND REHABILITATION SERVICE (ASSISTANCE PROGRAMS) DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

[Regulations No. 45]

V 4 3 1 2 2 3

PART 282—DEMONSTRATION PROJECTS

Social Security Act, Section 1115, Demonstration Projects

AGENCY: Social Security Administration, HEW.

ACTION: Final rule.

SUMMARY: These final rules provide for establishment and conduct by States of special demonstration projects under section 1115(b) of the Social Security Act. Pub. L. 95-216, the Social Security Amendments of 1977, redesignated the then existing section 1115 as 1115(a) and added a new 1115(b) to the Act. Under the new section 1115(b), States are permitted to waive certain requirements of the State Aid to Families with Dependent Children (AFDC) plan to enable them to conduct demonstration projects providing opportunities for public service employment, training, employment incentives, or other related activities. Participation by AFDC recipients must be voluntary.

EFFECTIVE DATE: November 17, 1978. Post-publication comments are invited, and consideration will be given to any written comments submitted within 60 days after publication.

ADDRESSES: Send comments to the Acting Commissioner of Social Security, Department of Health, Education, and Welfare, P.O. Box 1585, Baltimore, Md. 21203.

Copies of all comments received in response to this notice will be available for public inspection for 60 days following receipt during regular business hours at the Washington Inquiries Section, Office of Information, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 5131, 330 Independence Avenue SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT:

Ms. Virginia Casey Kohan, Legal Assistant, Office of Policy and Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Md. 21235, telephone 301-594-6629.

SUPPLEMENTARY INFORMATION: These rules, among other things, clarify the statutory provisions for public service employment with respect to: (1) Standards for health and safety; (2) Assignment of participants; (3) Prohibition against displacement of employed workers; (4) Workmen's compensation protection.

In addition, rules are provided for: (1) Compensating AFDC participants in the projects, (2) waiving provisions of title IV-A of the Social Security Act during the life of the project, and (3) using Federal and State moneys to fund the project.

Section 1115(b) became effective upon enactment on December 20, 1977 and provides that all projects must terminate no later than September 30, 1980. These regulations are needed to enable the States to submit approvable projects. Therefore, the Secretary finds that delay caused by publication of a notice of proposed rulemaking is contrary to the public interest and these regulations are published as final regulations.

These amendments are issued under authority of Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302) and Sec. 1115, 91 Stat. 1562 (42 U.S.C. 1315), Social Security Act, as amended.

(1977 Catalog of Federal Domestic Assistance Program No. 13.766, Public Assistance Research.)

The regulations are hereby adopted.

Dated: August 9, 1978.

DON WORTMAN,
Acting Commissioner of Social Security.

Approved: November 11, 1978.

HALE CHAMPION,
Acting Secretary of Health, Education, and Welfare.

Title 45, Chapter II, of the Code of Federal Regulations is amended by adding new Part 282 to read as follows:

PART 282—DEMONSTRATION PROJECTS

Subpart A—General Policy Provisions for Section 1115(b) Projects

Sec.
282.10 Purpose of section 1115(b).
282.11 States eligible to apply.
282.12 No preclusion of other projects.
282.13 Statewide project.
282.14 Section 402(a)(19) waiver—WIN.
282.15 Section 402(a)(3) waiver—single State agency administration.
282.16 Section 402(a)(8) waiver—disregard of earned income.
282.17 Duration of demonstration projects.
282.18 Participation must be voluntary.
282.19 Duration of volunteer's participation.
282.20 If volunteer withdraws from project.

Subpart B—Policy Provisions for Public Service Employment in Section 1115(b) Projects

282.25 Acceptable types of public service employment.
282.26 Assignment of participants.
282.27 Employed worker displacement prohibited.
282.28 Health, safety, other conditions.
282.29 Workmen's compensation protection.
282.30 No resultant "unemployment."

Subpart C—Administrative Provisions for Section 1115(b) Projects

282.35 Administrative requirements.
282.36 Application.
282.37 Public notice by State.
282.38 Public notice by Secretary.
282.39 Approval; denial.
282.40 Waiver cancellation; project termination.
282.41 Evaluation of demonstration projects.
282.42 Section 1115(b) project reports.

Subpart D—Compensation and Funding Provisions for Section 1115(b) Projects

282.46 Compensation of project volunteers.
282.47 Limitation on Federal matching in compensation to families.
282.48 Federal reimbursement to State for administrative expenses.

AUTHORITY: Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302). Sec. 1115, 91 Stat. 1562 (42 U.S.C. 1315), Social Security Act, as amended.

PART 282—DEMONSTRATION PROJECTS

Subpart A—General Policy Provisions for Section 1115(b) Projects

§ 282.10 Purpose of section 1115(b).

The purpose of section 1115(b) is to permit the States to achieve more efficient, effective use of public assistance funds; to reduce the dependency of public assistance recipients; and to improve the living conditions and increase the incomes of public assistance recipients. The purpose is to be achieved through a State's conducting not more than three demonstration projects, providing opportunities for public service employment, training, employment incentives, or other related activities. Participation by AFDC recipients must be voluntary.

§ 282.11 States eligible to apply.

Any State that has an approved plan under part A, title IV (AFDC), is eligible to apply for projects under section 1115(b).

§ 282.12 No preclusion of other projects.

Demonstration projects under section 1115(b) are authorized independently. Their use in a State does not preclude or limit other projects or activities approved under section 1115(a) or other provisions of the Act.

§ 282.13 Statewide project.

(a) *Limit of one statewide project.* Under section 1115(b), a State can have only three demonstration projects, only one of which may be a statewide project. A "statewide project" is one in effect in all political subdivisions of a State.

(b) *Section 402(a)(1) waiver.* If a State implements a section 1115(b) project statewide, no other 1115(b) project in the State can be statewide. A State may waive the requirements of section 402(a)(1) of the Act (relating to statewide operation) with respect to all three of its section 1115(b) projects, for the duration of the projects.

§ 282.14 Section 402(a)(19) waiver—WIN.

(a) *State waives WIN requirements.* A State may waive any or all of the requirements of section 402(a)(19) of the Act (relating to the work incentive program (WIN)) with respect to demonstration projects. Where section 402(a)(19) is waived, use WIN of funds in connection with a demonstration project under section 115(b) is prohibited.

(b) *State does not waive WIN requirements.* If a State does not waive section 402(a)(19), any person in active status under the WIN program is precluded from volunteering for or participating in a demonstration project under section 1115(b), unless the State AFDC agency has an agreement with the WIN agency defining the criteria under which persons in active WIN status may also participate as volunteers in 1115(b) projects. A person in active WIN status is a participant in a WIN component or is currently being considered for assignment to a WIN component.

§ 282.15 Section 402(a)(3) waiver—single State agency administration.

A State may waive the requirements of section 402(a)(3) of the Act (relating to administration by a single State agency) with respect to demonstration projects under section 1115(b).

§ 282.16 Section 402(a)(8) waiver—disregard of earned income.

(a) A State may waive the requirements of section 402(a)(8) of the Act (relating to disregard of earned income) with respect to individuals actively participating in demonstration projects under section 1115(b). However, no waiver of section 402(a)(8) shall permit a disregard of over one-half of the earned income of a project participant.

(b) Unless the State has waived the section 402(a)(8) earned income disregard under the authority of section 1115(b), it shall be applied to all of the compensation received by an individual for participating in a project, including the benefits payable on behalf of other members of the family as a result of the volunteer's participation (benefits to the family are also regarded as compensation to the project volunteer).

§ 282.17 Duration of demonstration projects.

(a) *Two-year limit.* A State may not conduct any demonstration project established under section 1115(b) for longer than 2 years, or beyond September 30, 1980, whichever comes first. Evaluation of the project may continue after its ending date.

(b) *Beginning date.* A demonstration project under section 1115(b) shall begin not earlier than either (1) the date of approval by the Secretary, or (2) the 60th day after the application is submitted to the Secretary, if the Secretary has not denied the application.

§ 282.18 Participation must be voluntary.

Participation in a demonstration project under section 1115(b) by any individual receiving AFDC benefits must be voluntary.

§ 282.19 Duration of volunteer's participation.

A volunteer's participation in a demonstration project under section 1115(b) may last for the life of the project (see § 282.17). A State's plan may provide for shorter periods of participation so that more volunteers may be given opportunities to participate.

§ 282.20 If volunteer withdraws from project.

A volunteer may withdraw from a project at any time. If the person does, eligibility for assistance remains protected. The State shall make adjustments so that the AFDC grant to the family will be paid as assistance rather than as compensation for participation in a project, starting with the date of withdrawal from the project.

Subpart B—Policy Provisions for Public Service Employment in Section 1115(b) Projects

§ 282.25 Acceptable types of public service employment.

(a) *Public service employment generally.* Demonstration projects under section 1115(b) may provide for public service employment. The following requirements apply:

(1) The job provided must meet public service needs not met or not adequately met prior to the start of the project;

(2) The job provided must be likely to lead to regular, unsubsidized employment, or to opportunities for continued job training; and

(3) The project must, to the extent feasible, provide jobs in an occupational field likely to expand within the public or private sector as the rate of unemployment drops.

(b) *Who may be a public service employer.* Demonstration projects under section 1115(b) may provide employment by both public and private, nonprofit agencies or organizations. The following requirements apply with respect to private, nonprofit agencies or organizations:

(1) The private, nonprofit agency or organization must be one that provides the public with educational, health, or social services;

(2) The agency's or organization's services must be offered to the general public, and must not be primarily or exclusively for the benefit of members constituents; and

(3) The agency's or organization's services must be the best available to meet the needs of the unemployed AFDC population.

§ 282.26 Assignment of participants.

Job or training assignments shall, to the extent possible, be within reasonable commuting distance for participants.

§ 282.27 Employed worker displacement prohibited.

In public service employment under a demonstration project, placement of participants must not result in displacement of employed workers.

§ 282.28 Health, safety, other conditions.

In public service employment under a demonstration project, the State must establish and maintain appropriate standards for health, safety, and other conditions relating to work and training. No participant in any project may be trained or employed under conditions which are unsanitary or hazardous to his health or safety. If the training or employment involves an inherently dangerous occupation (e.g., fire control, law enforcement), reasonable safety practices must be observed. In any public service employment project, the conditions of work, training, education, and employment must be reasonable, taking into consideration the type of work in which participants are involved, the geographic region and the standards applied to similar jobs in that region, and the level of skill of the participant. Requirements of the Service Contract Act of 1965 (Pub. L. 89-286), sections 208(a)(5) and 703(5), regarding health and safety conditions, represent the Federal standard that must be met.

§ 282.29 Workmen's compensation protection.

In public service employment under a demonstration project, the State must see that there is appropriate workmen's compensation protection for all participants. The protection must be equivalent to that provided for regular employees doing the same or similar work in the same locality. Workmen's compensation protection would primarily cover work-related injuries. Coverage may be provided

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through the State's compensation agency or by a private insurance carrier.

§ 282.30 No resultant "unemployment."

A participant's employment in a demonstration project under section 1115(b) is not considered employment for purposes of any finding with respect to "unemployment" as that term is used in section 407 (Dependent Children of Unemployed Fathers).

Subpart C—Administrative Provisions for Section 1115(b) Projects

§ 282.35 Administrative requirements.

The provisions of 45 CFR Part 74, Administration of Grants, which establish uniform administrative requirements and cost principles, apply to demonstration projects under section 1115(b), with the following exceptions:

(a) The provisions of Subpart G, Matching and Cost Sharing, do not apply; and

(b) The provisions of Subpart I, Financial Reporting Requirements, do not apply.

§ 282.36 Application.

(a) *Application kit available.* Application must be made in the format prescribed by the Commissioner of Social Security. An application kit containing all the necessary forms and instructions is available from, and completed applications must be sent to: Division of Contracting and Procurement, Social Security Administration, Box 7696, Gwynn Oak Branch, Baltimore, Md. 21207.

(b) *Incomplete applications.* A completed application is a written proposal for a demonstration project, signed by an authorized State official, and substantially in the format prescribed by the Commissioner. Only completed applications will be considered by the Secretary. The 60-day time period during which the Secretary may deny an application will not start until a completed application has been submitted.

§ 282.37 Public notice by State.

(a) *Publication and comments.* When a State submits an application to the Secretary for a section 1115(b) project, at the same time the State shall issue public notice that it has made application. The public notice must include a general description of the proposed demonstration project. The State shall invite comment from interested parties, which may be submitted to the State or to the Secretary within the 30-day period starting with the date the application is submitted to the Secretary.

(b) *Public inspection of application.* The State shall make copies of the application available for public inspection.

§ 282.38 Public notice by the Secretary.

(a) *Publication and comments.* The Secretary shall immediately upon receipt of an application publish a summary of the proposed demonstration project in the FEDERAL REGISTER. The Secretary will consider comments received from the public regarding the application.

(b) *Public inspection of applications.* The Secretary will make copies of the application available for public inspection at the Department of Health, Education, and Welfare. They may be inspected at this address: Family Assistance Studies Staff, Office of Research and Statistics, Social Security Administration, Room 914, 1875 Connecticut Avenue NW., Washington, D.C. 20009.

§ 282.39 Approval; denial.

(a) *Approval by the Secretary.* A State can proceed with a demonstration project under section 1115(b) when the State's application has been approved by the Secretary. The Secretary may not approve an application earlier than 30 days following the date the application is submitted to him. (Note that this coincides with the 30-day public comment period; see § 282.37.)

(b) *Denial by the Secretary.* A State can proceed with a demonstration project under section 1115(b) 60 days after the date on which the application is submitted to the Secretary, unless, during that 60-day period, the Secretary denies the application.

§ 282.40 Waiver cancellation; project termination.

The Secretary may review any waiver made by a State at any time during the life of the project. If the Secretary finds that any waiver made by a State is inconsistent with the purposes of section 1115(b) and the purposes of the AFDC program, the Secretary may disapprove the waiver. If the Secretary disapproves a waiver, and specifies that the project shall be terminated, the State must terminate the project no later than the last day of the month following the month in which the Secretary disapproved the State's waiver.

§ 282.41 Evaluation of demonstration projects.

Each project must include an evaluation component. Instructions for conducting an objective evaluation of a demonstration project are included in the application kit, and minimum Federal requirements for evaluation are set forth in the kit. An evaluation plan may go beyond the uniform Federal minimum requirements.

§ 282.42 Section 1115(b) project reports.

The State shall submit reports as prescribed by the Commissioner, for all project funds, including the non-Federal share.

Subpart D—Compensation and Funding Provisions for Section 1115(b) Projects

§ 282.46 Compensation of project volunteers.

(a) *Compensation defined.* AFDC assistance benefits paid to a family because of work performed in a public service assignment by one of its members shall be considered compensation for work performed. Additional amounts paid to the family by the State for work performed in a public service assignment shall also be regarded as compensation for work performed.

(b) *Level of compensation.* Each participant in a public service employment project must be compensated for work at an hourly rate equal to the prevailing entry level hourly wage for similar work in the same locality.

(c) *State use of other funds for compensation.* A State may include use of supplementary funds as part of its project plan.

(1) A State may use funds appropriated under the State and Local Fiscal Assistance Act (SLFAA) of 1972 for any fiscal year in which the project is conducted, to cover costs of salaries of participants in public service employment not covered by AFDC funds. A State may use other State or Federal funds, in the absence of any statutory or regulatory prohibition, to augment AFDC and SLFAA funds used for demonstration projects.

(2) Supplementary funds may be used to bring participant's salaries above the AFDC benefit level; to compensate participants for work-related expenses, including reasonable child care expenses; and for other purposes consistent with section 1115(b).

§ 282.47 Limitation on Federal matching in compensation to families.

Federal matching in amounts paid to a family which includes a member participating in a project may not be increased over the Federal matching which would be payable if the family were receiving AFDC and one of its members were not working in a project. States may supplement AFDC assistance above the family's grant level where a family member participates in service employment (e.g., to provide compensation under § 282.46 or for work related expenses) by using other Federal or State funds, including funds under the State and Local Fiscal Assistance Act; however, these supplementary amounts will not be eligible for matching under title IV-A of the Social Security Act.

EXAMPLE

Assume that a family with no other income receives a $300 monthly AFDC grant before one of the family member participates in a project. The Federal matching in this assistance payment is $150. As a result of a member's participation in a public service employment project conducted under section 1115(b) of the Act, the family's AFDC grant of $300 per month is now regarded as compensation, i.e., wages. Federal matching in this payment is still $150. Since this payment is regarded as compensation for work performed, the family is entitled to have the earned income disregard ($30 plus ⅓ of the remainder, assuming it is not waived as described in § 282.16) and work expenses (e.g., $70.00) deducted from this amount in determining countable income. When the $120 earned income disregard and work expenses of $70 are deducted, countable income is $110. Under the State's methodology for determining the amount of the AFDC grant, the family would be entitled to an additional assistance payment of $190 above the $300 received in compensation for participating in the project.

Nevertheless, because of the statutory limitation in section 1115(b)(4), no additional Federal matching is available in this $190 assistance payment since $150 in Federal matching is all that would have been available if the family were not participating in the project, and this amount will be paid to the State as partial reimbursement for the $300 paid to the family as compensation.

§ 282.48 Federal reimbursement to State for administrative expenses.

A State may be reimbursed for administrative costs of a demonstration project under section 1115(b), under the rules and at the rates that generally apply to administrative costs. Federal matching for administrative costs is not limited to the amounts payable to the State in absence of a section 1115(b) project.

[FR Doc. 78-32400 Filed 11-16-78; 8:45 am]

[6712-01-M]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[FCC 78-788]

PART 1—PRACTICE AND PROCEDURE

PART 73—RADIO BROADCAST SERVICES

Reregulation of Radio and TV Broadcasting

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: Reregulation of broadcasting by order to permit single licensing of common sited main, alternate main and auxiliary transmitters; permit FM and TV stations to make certain antenna system changes without prior authorizations; clarify licensing requirements for NCE-FM stations in Alaska; delete notifications for transmitter replacements and FM station stereo conversions; permit certain remote control operation without specific authorization; and adopt consolidated rules for auxiliary and emergency antennas.

EFFECTIVE DATE: November 20, 1978.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

John W. Reiser, Broadcast Bureau, 202-632-9660.

SUPPLEMENTARY INFORMATION:

Adopted: November 2, 1978.

Released: November 14, 1978.

By the Commission: Commissioner Washburn absent.

Order. In the matter of reregulation of radio and TV broadcasting.

1. Through the continuing study concerning the reregulation of radio and TV broadcasting, the FCC has under consideration the matter of amending part 73 of its rules to reduce or eliminate the application and notification filing requirements for several types of broadcast authorizations. These amendments will reduce the application burdens of licensees who wish to make modifications in their existing transmission equipment (modifications which have no effect on the coverage of the station), and reduce the FCC staff workload in processing the applications and requests. Along with these amendments to the rules which simplify the authorization processes, additional revisions include retitling of certain rule sections which will more correctly identify the subject covered. Also, some provisions in the present rules are being transferred or combined into other sections covering similar topics. This restructuring will provide the user of the rules with a more precise and convenient access to the rules. The reregulation of radio and TV broadcasting covered by this order is based primarily on recommendations of the Bureau staff responsible for processing applications and preparing authorizations. The amendments are being made by this reregulation order for the reasons specified.

2. *Licensing of multiple transmitters.* Under the present rules, each transmitter of a broadcast station (main, alternate main, and auxiliary transmitters) is covered by a separate license. This procedure originated at the time when many broadcast stations constructed their own transmitters. The licensee was required to submit the results of detailed technical tests to the FCC before authorization was issued to permit use of the transmitter for program service. Since few licensees construct their own transmitters any more, this separate licensing, except when different antenna systems are used, no longer serves a regulatory function. With this order, the rules are amended so that all colocated transmitters using a common antenna system will be covered by the single station license.

3. *Installation of new transmitters.* Station licensees specify the type of transmitter(s) being used. When a replacement transmitter is installed, the licensee must send a notice to the FCC so that a modified license can be issued. The notification requirements are being deleted from the rules by this order. Licensees may install replacement or additional type accepted transmitters without either prior authorization from, or notification to the FCC. Upon installation of a new transmitter, equipment performance measurements are to be made for retention in the station files to verify that the transmitter, as installed, is functioning correctly. These amendments do not preclude licensees from obtaining authority to use transmitters of their own design and construction upon proper application.

4. *Licensing of auxiliary antennas.* An auxiliary antenna is one that is permanently installed for use when the main antenna is out of service for repairs or maintenance. The auxiliary antenna may be located at the same site as the main transmission system or may be located at another site as part of a complete auxiliary transmission system. Because the location, radiation characteristics, or coverage area may differ from those specified for the main transmission system, separate licensing of the auxiliary antenna is required. To clarify the different

licensing procedures for auxiliary antennas and colocated transmitters, a new section is being included in subpart H applicable to all stations describing the licensing procedures for the auxiliary antennas.

5. *Emergency antennas.* Whenever the main antenna of a station not having an auxiliary antenna is damaged, it may be necessary for the station to quickly erect and use a temporary antenna in order to continue program service to the public. The present rules only provide for the use of an emergency antenna by commercial FM stations, although the use of such antennas is authorized on a temporary basis in all of the broadcast services. We are, therefore, consolidating the procedures for the temporary use of emergency antennas in subpart H of the rules for AM, FM, noncommercial educational FM, and TV stations.

6. *FM station conversion to stereophonic operation.* Licensees of FM stations are now required to send written notices to the FCC when converting from monophonic to stereophonic transmissions. These notifications are no longer needed since the FCC has sufficient data on stereo transmitting equipment and is no longer keeping statistics on the number of FM stations providing stereophonic programs. The equipment performance measurements made upon completion of the conversion of the transmitting equipment are sufficient for verification of satisfactory conversions.

7. *Remote control authorizations.* The rules now require that any broadcast licensee who wishes to operate the transmitter facility by remote control must obtain prior authorization to do so from the FCC. For all FM, and those AM stations using nondirectional antennas, the application is a simple request containing the address of the control point. AM stations using directional antennas and TV stations are required to submit detailed technical exhibits as evidence that the station, when operated by remote control, can provide adequate service to the public. We believe that the remote control authorization procedures no longer serve any salutory purpose for most nondirectional AM stations and FM stations, and that these stations could operate by remote control without specific remote control authority. Our regulatory responsibility would be served if the licensee using remote control notifies the FCC in Washington, D.C., of the remote control location. Additionally, the engineer in charge of the radio district in which the station is located is to be notified of remote control points located other than at the authorized transmitter or studio addresses.

8. *Use of FM subcarriers for remote control.* FM stations that plan to use subcarrier transmissions for the telemetry of transmitter data to a remote control or ATS monitoring point are now required to obtain a subsidiary communications authorization (SCA). Further, the use of the subcarrier is subject to the same logging requirements as if it were used to transmit specialized program information. (AM stations may use subaudible tones without prior authorization and without logging requirements.) We believe that the subsidiary communications authorization procedures and logging requirements should not be applicable to remote control telemetry transmissions not intended for use by the public. Therefore, these amendments will permit such use without prior Commission authorization and exempt subcarrier telemetry operations from the SCA logging requirements. In this connection, the amendments also clearly state that the transmission of the subcarrier is only required during periods when the operator wishes to determine the operating condition of the transmitter.

9. *Use of FM subcarriers and AM subaudible tones for automatic transmission systems.* The automatic transmission system rules are amended by including provisions for use of FM subcarriers or AM subaudible tones without specific authorization, similar to the above use when remote control systems are used, as discussed in paragraph 8 above.

10. *Replacement of FM and TV antennas and transmission lines.* Licensees who find it necessary or desirable to replace an existing antenna, or the transmission line connecting the transmitter to the antenna, are required to file an application for a construction permit, even though the replacement equipment may be identical to that in use, or would have no effect on the effective radiated power of the station. A construction permit application is also required to use circular polarization. In most cases, since the processing of the application for equipment changes raises no technical issues upon which the application would be denied, no useful purpose is served by continuing this traditional procedure. We therefore believe that FM and TV licensees should be permitted to make antenna and transmission line replacements or substitutions not affecting the station's effective radiated power or antenna height without first obtaining a construction permit. Under the rules as amended by this order, the licensee files an application to amend the existing station license after the transmission system modifications have been completed. This application is only required if the new transmission system is different from that identified or the transmitter operating power differs from that shown on the station license. These permissive changes do not apply to FM or TV directional antenna systems or where the changes could possible affect the operation of colocated or nearby AM stations. Authority to operate with temporary antenna arrangements during the period when the modifications are being made may be obtained with an informal request to the FCC.

11. *Upgrading of FM and TV transmitters.* Many FM and TV aural transmitters are combinations of several functional components such as the FM exciter unit, stereophonic generator, intermediate power amplifiers, and final power amplifiers. Frequently, these components are separately constructed units that can be separated both electrically and mechanically. Licensees occasionally replace or substitute these units within the transmission system, primarily to improve the quality and reliability of the program transmission. During the past several years, licensees wishing to replace FM exciter units or stereo generators in their existing transmitters were required to file an informal application to obtain prior FCC authority to make the substitutions. In nearly every instance there has been no technical basis for not permitting the requested substitutions to be made. The replacement equipment has either previously been subject to the FCC's type acceptance processes or has been evaluated for broadcast acceptability. Therefore, in order to remove unnecessary application filing and processing requirements, amendments adopted by this order will permit FM and TV station licensees to replace the modulation exciter units of their transmitters, and FM stations to replace stereo generators without prior FCC authorization if the replacement equipment has been type accepted or otherwise has been demonstrated to be compatible with the transmitter in use. Licensees will be responsible for insuring that their transmitters comply with the required transmission standards through the existing performance measurement requirements.

12. In addition to the above modifications, this order incorporates several changes by retitling certain rule sections and rearranging other rule provisions so similar subject matter is associated in the same section. Those amended rules which are essentially identical and common to all AM, FM, NCE-FM and TV stations are included in subpart H rather than being amended separately for each service subpart.

13. We conclude that, for the reasons set forth above, adoption of these revisions will serve the public interest and inasmuch as these amendments impose no additional burdens and raise no issue upon which comments would serve any useful purpose, prior notice of rulemaking, effective date provisions and public procedure thereon are unnecessary pursuant to the Administrative Procedure and Judicial Review Act provisions of 5 U.S.C. 553(b)(3)(B).

14. *Therefore, it is ordered,* That, pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, Part 73 of the Commission's rules and regulations are amended as set forth below, effective November 20, 1978.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082 (47 U.S.C. 154, 303).)

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

§ 1.537 [Deleted]

1. Section 1.537 is deleted in its entirety.

2. Section 73.43, including headnote, is amended, as follows:

§ 73.43 Modification of transmission systems.

Licensees of AM stations must observe the following procedures for making changes in authorizing station transmitting systems.

(a) No changes may be made: (1) That would result in emissions of signals outside of the authorized channel exceeding that which is permitted under § 73.40.

(2) That would result in the external performance characteristics being in disagreement with those prescribed in § 73.40.

(b) The following modifications may be made only upon specific authority of the FCC. Application to make the changes must be filed on FCC Form 340 (FCC Form 340 for noncommercial educational stations.)

(1) Installation of a main transmitter which is not included on the FCC's "radio equipment list" as type accepted for broadcast use.

(2) Modification of an existing transmitter that would affect its power rating or change any of the performance characteristics which are required for type acceptance.

(3) Change in the location or overall height of the antenna tower(s).

(4) Change in the antenna system (see § 73.45).

(5) Change in the operating power of the station.

(c) [Reserved]

(d) The following changes in the transmission system equipment may be made without prior authorization from the FCC. Equipment performance measurements must be made within 10 days after completing the modifications.

(1) Installation of a new transmitter which is included on the FCC's "radio equipment list" as type accepted for broadcast use. (See § 73.1665.)

(2) Replacement of the carrier frequency generator of the transmitter with one of a different type that has been demonstrated to the FCC to be compatible with the transmitter in use.

3. Section 73.45 is amended to read as follows:

§ 73.45 Antenna systems.

(a) All applicants for new, additional, or different AM station facilities and all licensees requesting authority to change the transmitting system site of an existing station must specify an antenna system, the efficiency of which complies with the requirements for the class and power of station. (See §§ 73.186 and 73.189.)

(b) The simultaneous use of a common antenna or antenna structure by more than one AM station or by a station of any other type or service may be authorized provided:

(1) Engineering data are submitted showing that satisfactory operation of each station will be obtained without adversely affecting the operation of the other station(s).

(2) The minimum field strength for each AM station complies with § 73.189(b).

(c) Should any changes be made or otherwise occur which could possibly alter the resistance of the antenna system, the licensee immediately must make a new determination of the antenna resistance (see § 73.45). (If the changes are due to the construction of FM or TV transmitting facilities, see § 73.316(e) or § 73.658.) Upon completion of the antenna resistance measurements an application for authority to resume determination of operating power by the direct method must be filed with the FCC in Washington, D.C., as follows:

(1) Whenever the measurements show that the antenna or common point resistance differs from that shown on the station authorization, FCC Form 302 (FCC Form 341 for noncommercial educational stations) must be filed with the information and measurement data specified in § 73.54(a).

(2) Whenever the measurements show that the antenna or common point resistance does not differ from that shown on the station authorization, an informal application must be filed with the information specified in subparagraphs (3) through (6) of § 73.54(e).

(d) No AM station licensee or permittee may change the physical height of an antenna, or supporting structure, or make any changes in the antenna system which will measurably alter the radiation characteristics, except upon application to and authority from the FCC.

4. In § 73.46, the headnote is amended to read as follows:

§ 73.46 Standards of good engineering practice.

* * * * * *

See §§ 73.1665 and 1670.

5. In § 73.47, paragraph (a) is amended to read as follows:

§ 73.47 Equipment performance measurements.

(a) The licensee of each AM station must make equipment performance measurements for each main transmitter when initially installed and thereafter at least once each calendar year. One set of measurements must be made during the 4-month period immediately preceding the filing date of the application for renewal of the station license. The dates of completion of successive sets of measurements may be no more than 14 months apart. If the same transmitter is authorized for more than one mode of operation, equipment performance measurements need be made at the highest authorized power level. (Equipment performance measurements for auxiliary transmitters are not required.) Equipment performance measurements must be made with equipment adjusted for normal program operation and must include all circuits between the main studio microphone terminals or amplifier input and the antenna circuit including equalizer or corrective circuits normally used, but without compression. The measurement program must yield the following information:

(1) * * *

* * * * * *

6. Section 73.48 is amended to read as follows:

73.48 Acceptability of broadcast transmitters for licensing.

See § 73.1660.

7. In § 73.51, paragraph (d) is amended to read as follows:

§ 73.51 Antenna input power; how determined.

* * * * * *

(d) The antenna input power shall be determined on a temporary basis without prior authority from the FCC as described in paragraphs (e) and (f) of this section in any of the following circumstances:

(1) In an emergency, where the authorized system has been damaged. (See § 73.45.)

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(2) Pending completion of authorized changes in the antenna system.

(3) If changes occur in the antenna system or its environment which affects or appears likely to affect the value of the antenna resistance.

(4) If the antenna current meter or common point meter becomes defective and the station does not have a remote reading or extension antenna or common point ammeter.

• • • • •

8. Section 73.63 is amended to read as follows:

§ 73.63 Auxiliary transmitter.

See § 73.1670.

9. Section 73.64 is amended to read as follows:

§ 73.64 Alternate main transmitter.

See § 73.1665.

10. Section 73.66 and headnote are amended to read as follows:

§ 73.66 Remote control authorizations.

(a) The licensee of an AM station using a nondirectional antenna may operate by remote control without specific authorization from the FCC. Written notice giving the address and description of the remote control point being used must be sent to the FCC in Washington, D.C., within 3 days of commencing remote control operation. When a remote control point is at an address or location other than that of either the authorized transmitter or studio facilities, the licensee must also send a notice to the engineer in charge of the radio district in which the station is located. This additional notice is to include the full address, location, and telephone number of the remote control point.

(b) Authority to operate an AM station using a directional antenna system by remote control from any remote control point is obtained using the following procedures:

(1) An applicant for a construction permit to erect a new or make modifications in an existing directional antenna, subject to the sampling system requirements of § 73.68, may request remote control authorization on the permit application FCC Form 301 (FCC Form 341 for noncommercial educational stations.)

(2) An existing licensee or permittee having a sampling system in compliance with the provisions of § 73.68(a) must request remote control authorization on FCC Form 301-A, and submit information showing that the directional antenna sampling system has been constructed according to the specifications of § 73.68(a).

(3) An existing station not having an approved disrectional sampling system in compliance with the provisions of § 73.68(a) must request remote control authorization on FCC Form 301-A, and submit information showing that the directional antenna is in proper adjustment and further showing the stability of the antenna system during the 1-year period specified in section II of the form 301-A.

11. In § 73.67 paragraph (c)(6) is deleted and a new paragraph (d) is added to read as follows:

§ 73.67 Remote control operation.

• • • • •

(c) • • •

(6) [Deleted]

(d) Stations using directional antennas when operated by remote control, must make a skeleton proof of performance, as defined in § 73.154, at least once each calendar year. The results of each proof, signed and dated by the qualified person who made it, must be kept on file at the transmitter or remote control point for a period of 3 years, and on request must be made available during that time to representatives of the FCC.

12. Section 73.89 is deleted in its entirety.

§ 73.89 [Deleted]

13. Section 73.142 is amended by adding new paragraph (j) to read as follows:

§ 73.142 Automatic transmission system facilities.

• • • • •

(j) AM stations may, without further authority from the FCC, use subaudible tones for the purposes of transmitting to ATS monitoring and alarm points essential data on the operating conditions of the broadcast transmitter and associated devices, subject to the following conditions:

(1) The tone must have a frequency no higher than 30 hertz.

(2) The amplitude of modulation of the carrier by the tone must not be higher than necessary to effect reliable and accurate data transmission, and may not, in any case exceed 6%.

(3) The tone may be transmitted only at such times and during intervals as necessary for the ATS functions.

(4) Measures must be used to insure that during period the tone is being transmitted, the total modulation of the carrier conforms with the requirements of § 73.55.

(5) Tone transmission must not significantly degrade the quality of program transmission or produce an audible effect resulting in public annoyance.

14. Section 73.250 is amended to read as follows:

§ 73.250 Acceptability of broadcast transmitters for licensing.

See § 73.1660.

15. In § 73.253, paragraph (a)(2) is amended to read as follows:

§ 73.253 Modulation monitors.

(a) • • •

(2) If the station is using subcarriers for SCA operation or for remote control or automatic transmission system telemetry, the licensee must have a modulation monitor of a type approved by the FCC for monitoring SCA subcarrier transmissions.

• • • • •

16. In § 73.254, the section headnote is amended, paragraph (a) is deleted in its entirety, paragraph (b) is redesignated as paragraph (a) and amended, and paragraph (c) is redesignated as paragraph (b) as follows:

§ 73.254 Equipment performance measurements.

(a) The license of each FM station must make equipment performance measurements for each main transmitter when initially installed and thereafter at least once each calendar year. One set of measurements must be made during the 4-month period immediately preceding the filing of the application for renewal of the station license. The dates of completion of successive sets of measurements may be no more than 14 months apart. (Equipment performance measurements for auxiliary transmitters are not required.) Equipment performance measurements must be made with equipment adjusted for normal program operation and shall include all circuits between the main studio amplifier microphone terminals or amplifier input and the antenna circuit including equalizer or corrective circuits normally used, but without compression. The measurement program must yield the following information:

(1) • • •

• • • • •

17. Section 73.255 is amended to read as follows:

§ 73.255 Auxiliary transmitter.

See § 73.1670.

18. Section 73.256 is amended to read as follows:

§ 73.256 Alternate main transmitters.

See § 73.1665.

19. Section 73.257 and headnote are amended to read as follows:

§ 73.257 Modification of transmission systems.

Licensees of FM stations must observe the following procedures for making changes in authorized station transmitting systems.

(a) No changes shall be made:

(1) That would result in emission of signals outside of the authorized channel exceed that which is permitted under § 73.314.

(2) That would result in the external performance characteristics being in disagreement with those prescribed in §§ 73.317 and 73.322.

(b) The following modifications may be made only upon specific authority of the FCC. Application to make such changes must be filed on FCC form 301.

(1) Installation of a main transmitter which is not included on the FCC's "radio equipment list" as type accepted for broadcast use.

(2) Modification of an existing transmitter which would affect its power rating or change any of the performance characteristics which are required for type acceptance.

(3) Change in the location or overall height of the antenna supporting structure.

(4) Change in the height above ground of the antenna center of radiation exceeding ±2 meters from that shown on the station authorization.

(5) Change in the effective radiated power of the station in the horizontal plane or in the directional radiation characteristics of the antenna.

(6) Change in an antenna system which is mounted on an AM station antenna or which could possibly affect the operation of any AM directional antenna system.

(c) The following modifications may be made and operation commenced without prior authorization from the FCC: *Provided,* That the modifications would not possibly affect the operation of any colocated or nearby AM station. Equipment performance measurements must be made and an application for license modification filed on FCC form 302 within 10 days following completion of the changes.

(1) Replacement of a nondirectional antenna with one of the same or different type or number of bays: *Provided,* That the height above ground of the center of radiation is within ±2 meters of that specified in the station authorization, and there is no change in the horizontal effective radiated power.

(2) Installation of a transmission line with one of a different type or length which requires change in the transmitter output power to maintain the licensed effective radiated power.

(3) Installation of harmonic filters or diplexers of a different type which require a change in the transmitter output power to maintain the licensed effective radiated power.

(d) The following changes in the transmission system equipment may be made without authorization from the FCC. Equipment performance measurements must be made within 10 days after completing the modification:

(1) Installation of a new transmitter which is included on the FCC's "radio equipment list" as type accepted for broadcast use. (See § 73.1665.)

(2) Replacement of the carrier frequency generator of the transmitter with one of a different type that has been demonstrated to the FCC to be compatible with the transmitter in use.

(3) Replacement of the FM exciter unit of the transmitter with one that has been acceptable for FM station use through the FCC's type acceptance procedures and that has been demonstrated to the FCC to be compatible with the transmitter in use.

(4) Replacement of the stereophonic generator of the transmitter with one that has been demonstrated to the FCC to be compatible with the transmitter in use.

20. Section 73.273 is amended to read as follows:

§ 73.273 Emergency antenna.

See § 73.1680.

21. Section 73.274 and headnote are amended to read as follows:

§ 73.274 Remote control authorizations.

(a) The licensee of an FM station may operate by remote control without authorization from the FCC. Written notice giving the address and description of the remote control point being used must be sent to the FCC in Washington, D.C. within 3 days of commencing remote control operation when a remote control point is at an address or location other than that of either the authorized transmitter or studio facilities, the licensee must also send a notice to the engineer in charge of the radio district in which the station is located. This additional notice is to include the full address, location, and telephone number of the remote control point.

(b) FM stations may, without specific authority from the FCC use a subcarrier frequency for remote control telemetry, in accordance with the technical provisions of this subpart and § 73.295(g), and upon installation of a modulation monitor type approved for monitoring FM subcarrier transmissions.

22. In § 73.275, a new paragraph (c) is added to read as follows:

§ 73.275 Remote control operation.

• • • • •

(c) When a subcarrier is used for telemetry of remote control data from the transmitter to the control point, radiation of the subcarrier is only necessary when remote transmitter readings are being made. However the subcarrier must be available for telemetry at all times. The subcarrier logging requirements specified in § 73.295(f) are not applicable to remote control telemetry operation.

23. In § 73.293, paragraph (a)(2) is amended, the note following paragraph (b)(3) is deleted, and new paragraphs (b)(4) and (d) are added to read as follows:

§ 73.293 Subsidiary Communications Authorizations.

(a) • • •

(1) • • •

(2) Transmission of signals which are directly related to the operation of FM stations; for example, relaying of broadcast material to other stations, remote cueing and order circuits, and similar uses. (Use of multiplex subcarriers for transmission of control and data telemetry for remote control or automatic transmission system (ATS) operations does not require an SCA.)

• • • • •

(b) • • •

• • • • •

(4) Experimental operation of an FM station to obtain the technical information necessary to support an application for an SCA for visual transmissions may be conducted under the provisions of § 73.1510.

(d) Prior permission to engage in any new or additional SCA activity other than the transmission of control and data telemetry for remote control ATS operation must be obtained from the FCC by filing an application on FCC form 318.

24. In § 73.295, the headnote and paragraphs (a) and (f) are amended to read as follows:

§ 73.295 Use of multiplex subcarriers.

(a) Use of multiplex subcarriers by an FM station must conform to the purposes authoized by the FCC under a Subsidiary Communications Authorization (SCA), except for the transmission control and telemetry data for remote control or automatic transmission system operation which may be conducted without an SCA.

• • • • •

(f) A daily SCA operating log must be maintained for the multiplex sub-

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carrier transmissions, except those for control and data telemetry for remote control or ATS operation. The following log entries are to be made, excluding subcarrier interruptions of 15 minutes or les:

(1) • • •

• • • • •

25. In § 73.297, paragraph (a) is amended to read as follows;

§ 73.297 Stereophonic broadcasting.

(a) An FM broadcast station may, without specific authority from the FCC, transmit stereophonic programs upon installation of type accepted stereophonic transmitting equipment and a type approved stereophonic modulation monitor. Prior to commencement of stereophonic broadcast, equipment performance measurements must be completed.

• • • • •

26. In § 73.316, paragraph (i) is amended and paragraphs (k) and (l) are deleted in their entirety:

§ 73.316 Antenna systems.

• • • • •

(j) When the proposed FM antenna is to be mounted on a tower in the vicinity of an AM station directional antenna system and it appears that the operation of the directional antenna system may be affected, an engineering study must be filed with the FM application concerning the effect of the FM antenna on the AM directional radiation pattern. Field measurements of the AM station may be required prior to and following construction of the FM station antenna, and readjustments made as necessary.

• • • • •

(k) [Deleted]
(l) [Deleted]

§ 73.321 [Deleted]

27. Section 73.321 is deleted in its entirety.

§ 73.330 [Deleted]

28. Section 73.330 is deleted in its entirety.

29. Section 73.342 is amended by adding new paragraph (j) to read as follows:

§ 73.342 Automatic transmission system facilities.

• • • • •

(j) An FM station may, without specific authority from the FCC, use a subcarrier frequency for automatic transmission system telemetry in accordance with the technical provisions of this subpart and § 73.295(g), and upon installation of a modulation monitor type approved for monitoring FM subcarrier transmissions. The subcarrier logging requirements specified in § 73.295(f) are not applicable to ATS telemetry operations.

30. In § 73.508, the existing text is designated as paragraph (a) and new paragraphs (b) and (c) are added to read as follows:

§ 73.508 Standards of good engineering practice.

(a) • • •

(b) The transmitter and associated transmitting equipment of each noncommercial educational FM station licensed for transmitter output power above 10 watts must be designated, constructed and operated in accordance with § 73.317.

(c) The transmitter and associated transmitting equipment of each noncommercial educational FM station licensed for transmitter power output of 10 watts or less, although not required to meet all requirements of § 73.317, must be constructed with the safety provisions of the current national electrical code as approved by the American Standards Association. These stations must be operated, tuned, and adjusted so that emissions are not radiated outside the authorized band causing or which are capable of causing interference to the communications of other stations. The audio distortion, audio frequency range, carrier hum, noise level, and other essential phases of the operation which control the external effects, must be at all times capable of providing satisfactory broadcast service. Studio equipment properly covered by an underwriter's certificate will be considered as satisfying safety requirements.

31. Section 73.513 and headnote are amended to read as follows:

§ 73.513 Noncommercial educational FM stations operating on unreserved channels.

Noncommercial education FM stations other than class D (secondary) which operate on channels 261 through 300 but which comply with § 73.503 as to licensing requirements and the nature of the service rendered, must comply with the provisions of the following sections of subpart B: § 73.201 through § 73.213 (classification of FM broadcast stations and allocations of frequencies) and such other sections of subpart B as are made specifically applicable by the provisions of this subpart C. Stations in Alaska using channels 261–300 need not meet the minimum effective radiated power requirement specified in § 73.211(a). In all other respects, stations operating on channels 261 through 300 are to be governed by the provisions of this subpart and not subpart B.

32. Section 73.542 is amended by adding new paragraph (j) to read as follows:

§ 73.542 Automatic transmission system facilities.

• • • • •

(j) A noncommercial educational FM station may, without specific authority from the FCC, use a subcarrier frequency for automatic transmission system telemetry in accordance with the technical provisions of this subpart and § 73.595(g), and upon installation of a modulation monitor type approved by the FCC for monitoring FM subcarrier transmissions. The subcarrier logging requirements specified in § 73.295(f) are not applicable to ATS operation.

34. Section 73.550 is amended to read as follows:

§ 73.550 Acceptability of broadcast transmitters for licensing.

See § 73.1660.

34. In § 73.553, paragraph (a)(2) is amended to read as follows:

§ 73.553 Modulation monitors.

(a) • • •

(2) If the station is using subcarriers for SCA operations or for remote control or automatic transmission system telemetry, the licensee must have a modulation monitor of a type approved by the FCC for monitoring SCA subcarriers transmissions.

• • • • •

35. In § 73.554, the section headnote is amended, paragraphs (a) and (b) are deleted in their entirety, paragraphs (c) and (d) are redesignated as paragraphs (a), and (b), and the redesignated paragraph (a) is amended in part to read as follows:

§ 73.554 Equipment performance measurements.

(a) The licensee of each noncommercial educational FM station with transmitter output power above 10 watts must make equipment measurements of each main transmitter when initially installed and thereafter at least once each calendar year. One set of measurements must be made during the 4-month period immediately preceding the filing date of the application for renewal of the station license. The dates of completion of successive sets of measurements must be no more than 14 months apart. (Equipment performance measurements for auxiliary transmitters are not required.)

Equipment performance measurements must be made with equipment adjusted for normal program operation and shall include all circuits between the main studio microphone terminals or amplifier input and the antenna circuit, including equalizer or corrective circuits normally used, but without compression. The measurement program must yield the following information:

(1) • • •

• • • • •

36. Section 73.555 is amended to read as follows:

§ 73.555 Auxiliary transmitter.

See § 73.1670.

37. Section 73.556 is amended to read as follows:

§ 73.556 Alternate main transmitters.

See § 73.1665.

38. Section 73.557, including headnote, is amended to read as follows:

§ 73.557 Modification of transmission systems.

Licensees of noncommercial educational FM stations must observe the following procedures for making changes in authorized station transmitting systems.

(a) No changes may be made:

(1) That would result in emission of signals outside of the authorized channel exceeding that which is permitted under § 73.314.

(2) That would result in the external performance characteristics being in disagreement with those prescribed in §§ 73.317 and 73.322.

(b) The following modifications may be made only upon specific authority of the FCC. Application to make the changes must be filed on FCC form 340.

(1) Installation of a main transmitter which is not included on the FCC's "radio equipment list" as type accepted for broadcast use.

(2) Modification of an existing transmitter which would affect its power rating or change any of the performance characteristics which are required for type acceptance.

(3) Change in the location or the overall height of the antenna supporting structure.

(4) Change in the height above ground of the antenna center of radiation exceeding ±2 meters from that shown on the station authorization.

(5) Change in the effective radiated power of the station in the horizontal plane or in the directional radiation characteristics of the antenna.

(6) Change in an antenna system which is mounted on an AM station antenna or which could possibly affect the operation of any AM directional antenna system.

(c) The following modifications may be made and operation commenced without prior authorization from the FCC: *Provided*, That the modifications would not possibly affect the operation of any co-related or nearby AM station. Equipment performance measurements must be made and an application for license modification filed on FCC form 341 within 10 days following completion of the changes.

(1) Replacement of a nondirectional antenna with one of the same or different type or number of bays. *Provided*, That the height above ground of the center of radiation is within ±2 meters of that specified in the station authorization, and there is no change in the horizontal effective radiated power.

(2) Installation of a transmission line with one of a different type or length which requires change in the transmitter output power to maintain the licensed effective radiated power.

(3) Installation of harmonic filters or diplexers of a different type which require a change in the transmitter output power to maintain the licensed effective radiated power.

(d) The following changes in the transmission systems equipment may be made without prior authorization from the FCC. Equipment performance measurements must be made within 10 days after completing the modification:

(1) Installation of a new transmitter which is included on the FCC's "Radio Equipment List" as type accepted for use. (See § 73.1665.)

(2) Replacement of the carrier frequency generator of the transmitter with one of a different type that has been demonstrated to the FCC to be compatible with the transmitter in use.

(3) Replacement of the FM exciter unit of the transmitter with one that has been acceptable for FM station use through the FCC's type acceptance procedures and that has been demonstrated to the FCC to be compatible with the transmitter in use.

(4) Replacement of the stereophonic generator of the transmitter with one that has been demonstrated to the FCC to be compatible with the transmitter in use.

39. Section 73.572 and headnote are amended to read as follows:

§ 73.572 Remote control authorizations.

(a) The licensee of a noncommercial educational FM station may operate by remote control without authorization from the FCC. However, written notice giving the address and description of the remote control point being used must be sent to the FCC in Washington, D.C. within three days of commencing remote control operation. When a remote control point is at an address or location other than that of either the authorized transmitter or studio facilities, the licensee must also send a notice to the engineer in charge of the radio district in which the station is located. This additional notice is to include the full address, location, and telephone number of the remote control point.

(b) A noncommercial educational FM station may, without specific authority from the FCC, use a subcarrier frequency for remote control or automatic transmission system telemetry, in accordance with the technical provisions of this part and § 73.595(g), and upon installation of a modulation monitor type approved for monitoring FM subcarrier transmissions.

40. In § 73.573, a new paragraph (c) is added to read as follows:

§ 73.573 Remote control operation.

• • • • •

(c) When a subcarrier is used for telemetry of remote control data from the transmitter to the control point, radiation of the subcarrier is only necessary when remote transmitter readings are being made. However the subcarrier must be available for telemetry at all times. The subcarrier logging requirements specified in § 73.595(f) are not applicable to remote control telemetry.

41. In § 73.593 paragraph (a)(2) is amended, the note following paragraph (b)(3) is dcleted, and new paragraphs (b)(4) and (d) are added to read as follows:

§ 73.593 Subsidiary Communications Authorizations.

(a) • • •

(1) • • •

(2) Transmission of signals which are directly related to the operation of noncommercial educational FM stations; for example, relaying of broadcast material to other stations, remote cueing and order circuits, and similar uses. (Use of multiplex subcarriers for transmission of control and data telemetry for remote control automatic transmission system (ATS) operations does not require an SCA.)

• • • • •

(b) • • •

• • • • •

(4) Experimental operation of a noncommercial educational FM station to obtain the technical information necessary to support an application for an SCA for visual transmissions may be conducted under the provisions of § 73.1510.

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(d) Prior permission to engage in any new or additional SCA activity other than the transmission of control and data telemetry for remote control ATS operation must be obtained from the FCC by filing an application on FCC form 318.

42. In § 73.595, the headnote and paragraphs (a) and (f) are amended to read as follows:

73.595 Use of multiplex subcarriers.

(a) Use of multiplex subcarriers by an FM station must conform to the purposes authorized by the FCC under a Subsidiary Communications Authorization (SCA) except for the transmission control and telemetry data for remote control or automatic transmission system operation which may be conducted without an SCA.

* * * * *

(f) A daily SCA operating log must be maintained for the multiplex subcarrier transmissions, except those for control and data telemetry for remote control or ATS operation. The following log entries are to be made, excluding subcarrier interruptions of 15 minutes or less:

(1) * * *

* * * * *

43. In § 73.596, paragraph (a) is amended to read as follows:

§ 73.596 Stereophonic broadcasting.

(a) A noncommercial educational FM broadcast station may, without specific authority from the FCC, transmit stereophonic programs upon installation of type accepted stereophonic transmitting equipment and, for stations authorized to operate with a transmitter output power over 10 watts, a type approved stereophonic modulation monitor. Prior to commencement of stereophonic broadcasts, equipment performance measurements must be completed.

* * * * *

44. Section 73.637 is amended to read as follows:

§ 73.637 Alternate main transmitters.

See § 73.1665.

45. Section 73.638 is amended to read as follows:

§ 73.638 Auxiliary transmitter.

See § 73.1670.

46. Section 73.639 including headnote is amended to read as follows:

§ 73.639 Modification of transmission systems.

Licensees of TV stations must observe the following procedures for making changes in authorized station transmitting systems.

(a) No changes shall be made:

(1) That would result in emission of signals outside of the authorized channel exceed that which is permitted under § 73.687(i)(1).

(2) That would result in the external performance characteristic being in disagreement with that prescribed in §§ 73.682 and 73.687.

(b) The following modifications may be made only upon specific authority of the FCC. Application to make such changes shall be filed on FCC form 301 (FCC form 340 for noncommercial educational stations.)

(1) Installation of a main transmitter which is not included on the FCC's "radio equipment list" as type accepted for broadcast use.

(2) Modification of an existing transmitter which would affect its power rating or modify any of the performance characteristics which are required for type acceptance.

(3) Change in the location or the overall height of the antenna supporting structure.

(4) Change in the height above ground of the antenna center of radiation exceeding ±2 meters from that shown on the station authorization.

(5) Change in the effective radiated power of the station in the horizontal plane or in the directional radiation characteristics of the antenna.

(6) Change in an antenna system which is mounted on an AM station antenna or which could possibly affect the operation of any AM directional antenna system.

(c) The following modifications may be made and operation commenced without prior authorization from the FCC: *Provided,* That the modifications would not possibly affect the operation of any co-located or nearby AM station. Equipment performance measurements must be made and an application for license modification filed on FCC form 302 (FCC form 341 for noncommercial educational TV stations) within 10 days following completion of the changes.

(1) Replacement of a nondirectional antenna with one of the same or different type or number of bays: *Provided,* That the height above ground of the center of radiation is within ± 2 meters of that specified in the station authorization, and there is no change in the horizontal effective radiated power.

(2) Installation of a transmission line with one of a different type or length which requires change in the transmitter output power to maintain the licensed effective radiated power.

(3) Installation of harmonic filters, sideband filters or diplexers of a different type which requires a change in the transmitter output power to maintain the licensed effective radiated power.

(d) The following changes in the transmission systems equipment may be made without prior authorization from the FCC. Equipment performance measurements must be made within 10 days after completing the modification:

(1) Installation of a new transmitter which is included on the FCC's "radio equipment list" as type accepted for broadcast use. (See § 73.1665.)

(2) Replacement of the carrier frequency generator of the transmitter with one of a different type that has been demonstrated to the FCC to be compatible with the transmitter in use.

47. Section 73.640 is amended to read as follows:

§ 73.640 Acceptability of broadcast transmitters for licensing.

See § 73.1660.

48. In § 73.677, paragraph (a)(10) is deleted and marked "Reserved."

§ 73.677 Remote control authorization.

* * * * *

(a) * * *

(10) [Reserved]

* * * * *

49. In § 73.685, paragraph (h)(2) is amended to read as follows:

§ 73.685 Transmitter location and antenna system.

* * * * *

(h) * * *

* * * * *

(2) When the proposed TV antenna is to be mounted on a tower in the vicinity of an AM station directional antenna system and it appears that the operation of the directional antenna system may be affected, an engineering study must be filed with the TV application concerning the effect of the TV antenna on the AM directional radiation pattern. Field measurements of the AM stations may be required prior to and following construction of the TV station antenna, and readjustments made as necessary.

* * * * *

50. A new § 73.1660 is added to Subpart H to read as follows:

§ 73.1660 Type acceptance of broadcast transmitters.

(a) A transmitter may be type accepted upon request of any manufacturer of transmitters following the type acceptance procedure described in Part 2 of the FCC's rules by submitting data and information to show that the transmitter meets the technical specifications for the type of broadcast service for which it is to be used. If acceptable the transmitter will be included on the FCC's published "radio equipment list."

(b) A permittee or licensee planning to install and use as a main transmitter one not included on the FCC's "radio equipment list" must obtain authority to use such a transmitter by filing an application for a construction permit on FCC form 301 (FCC form 340 for noncommercial educational stations). The application must include a complete description and circuit diagram of the transmitter, description of the carrier frequency determining circuits, complete operating parameters, and measurement data as required for type acceptance for the type of broadcast station at which it will be used.

(c) A transmitter which was in use prior to January 30, 1955, may continue to be used by the licensee, and successors or assignees, if it continues to comply with the technical requirements for the type of station at which it is used.

(d) Additional rules concerning type acceptance, modification of type accepted transmitters, and withdrawal of type acceptance are in Part 2 of the FCC's rules.

51. A new § 73.1665 is added to Subpart H to read as follows:

§ 73.1665 Main transmitters.

(a) Each broadcast station must have one or more main transmitters which comply with the provisions of transmitter technical requirements for type and class of station. Main transmitters are those which are used for regular program transmissions having power ratings appropriate for the authorized operating power(s). In addition, AM stations must use transmitters meeting the power rating specifications of § 73.41.

(b) A licensee may, without further authority or notification to the FCC, replace an existing main transmitter or install additional main transmitters for use with the authorized antenna if the replacement or additional transmitter(s) is type accepted as shown in the FCC "radio equipment list." Within 10 days after commencement of regular use of the replacement or additional transmitter(s), equipment performance measurements, as prescribed for the type of station are to be completed and a certification must be entered in the station, maintenance log by the station's consulting engineer, technical director, or chief operator that the station with the new transmitter(s), as installed, complies with the technical provisions of this part.

NOTE.—After January 1, 1979, no new licenses will be issued nor will existing licenses be renewed for alternate main transmitters operating into a single main antenna system. Further, licenses issued after that date will no longer identify the specific transmitters which are shown in the FCC's "radio equipment list" as type accepted for broadcast use. Composite or other transmitting equipment which has been licensed for use based on data filed by the licensee will continue to be specified on station authorizations.

52. A new § 73.1670 is added to read as follows:

§ 73.1670 Auxiliary transmitters.

(a) A licensee of a broadcast station may, without further authority from the FCC, install and use with the main antenna system one or more auxiliary transmitters for the following purposes:

(1) The transmission of regular programs upon failure of the main transmitter.

(2) The transmission of regular programs during maintenance or modification of the main transmitter.

(3) Emergency broadcast system operation.

(4) The transmission of regular programs by an AM station under a Presunrise Service Authority (PSA).

(5) The transmission of tests to determine the operating condition of the auxiliary transmitter or auxiliary antenna.

(6) For testing, upon the request of representatives of the FCC.

(b) Authorization to install an auxiliary transmitter for use with other than the main antenna must be obtained by filing an application for a construction permit on FCC form 301 (FCC form 340 for noncommercial educational stations).

(c) The following technical and operating standards apply to auxiliary transmitter:

(1) The auxiliary transmitter may be operated on only the station's authorized frequency and within the required carrier frequency departure tolerance for the type of station.

(2) The carrier frequency of the auxiliary transmitter must be measured as often as necessary to insure that it is maintained within the prescribed tolerance. If the transmitter is used daily for a period of more than 40 days, the measurement must be made at least once each calendar month with not more than 40 days between successive measurements.

(3) When using an auxiliary transmitter, the operating power may be less than the authorized power but may not exceed the authorized power within the permitted tolerance for the type of station. If operation with an auxiliary transmitter at reduced power continues for a period exceeding 10 days, the FCC in Washington, D.C. must be notified. (See § 73.52, AM; § 73.267, FM; § 73.567, NCE-FM; and § 73.689, TV.)

(4) If the operation of an auxiliary transmitter exceeds 2 consecutive days, an aural modulation monitor must be used with monitor indications available at the transmitter control point.

(5) Normal operator requirements apply to the operation of the auxiliary transmitter.

NOTE.—After January 1, 1979, new licenses will not be issued nor will existing licenses be renewed for auxiliary transmitters that are operated into the main antenna system.

53. A new § 73.1675 is added to part 73, subpart H, to read as follows:

§ 73.1675 Auxiliary antennas.

(a) An auxiliary antenna is one that is permanently installed and available for use when the main transmission system is out of service for repairs or replacement. Auxiliary antennas may be located at the same site as the station's main antenna or at a separate site.

(b) Authority to construct an auxiliary antenna must be obtained by filing an application for a construction permit on FCC form 301 (FCC form 340 for noncommercial educational stations).

54. A new § 73.1680 is added to part 73, subpart H, to read as follows:

§ 73.1680 Emergency antennas.

(a) An emergency antenna is one that is erected for temporary use after the authorized main and auxiliary antennas are damaged and cannot be used.

(b) Prior authority from the FCC is not required to erect and commence using an emergency antenna to restore program service to the public, however an informal request to continue operation with the emergency antenna must be made to the FCC in Washington, D.C. within 24 hours after commencement of its use. The request is to include the damage to the authorized antenna(s), description of the emergency antenna, and the station operation power with the emergency antenna.

(1) *AM stations.* AM stations may use a horizontal or vertical wire or a nondirectional vertical element of a directional antenna as an emergency antenna.

(2) *FM and TV stations.* FM and TV stations may erect any suitable radiator, or use operable sections of the authorized antenna(s) as an emergency antenna.

(c) The FCC may prescribe the output power, radiation limits, or other operating conditions when using an emergency antenna, and emergency

antenna authorizations may be modified or terminated in the event harmful interference is caused to other stations or services by the use of an emergency antenna.

[FR Doc. 78-32325 Filed 11-16-78; 8:45 am]

[6712-01-M]

[BC Docket No. 78-138; RM-3067]

PART 73—RADIO BROADCAST SERVICES

FM Broadcast Station in Greensboro, GA.; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Report and order.

SUMMARY: Action taken herein, as a result of a petition for rulemaking filed by the partnership of Boswell and Dingler, assigns FM channel 280A to Greensboro, Ga., as that community's first FM assignment. The proposed station could render a first local aural broadcast service to the community.

EFFECTIVE DATE: December 21, 1978.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Mildred B. Nesterak, Broadcast Bureau, 202-632-7792.

SUPPLEMENTARY INFORMATION:

REPORT AND ORDER

Adopted: November 7, 1978.

Released: November 13, 1978.

In the matter of amendment of § 73.202(b), *Table of Assignments*, FM Broadcast Stations. (Greensboro, Ga.), BC Docket No. 78-138, RM-3067.

1. The Commission has before it for consideration a notice of proposed rulemaking, adopted April 21, 1978, 43 FR 19241, proposing the assignment of FM channel 280A to Greensboro, Ga., as that community's first FM assignment. The notice was issued in response to a petition by the partnership of Boswell and Dingler ("petitioner"). Petitioner filed supporting comments reaffirming its intention to apply for the channel, if assigned. No opposing comments to the proposal have been received.

2. Greensboro (pop. 2,583), seat of Greene County (pop. 10,212) [1], is located in the east central part of Georgia, approximately 109 kilometers (68 miles) east of Atlanta and 104 kilometers (65 miles) northeast of Macon, Ga.

[1] Population figures are taken from the 1970 U.S. Census.

3. Petitioner states that Greensboro and Greene County have been experiencing a change in population and employment trends over the past few years. It asserts that the area which is now supporting a gradual and economically sound transition to manufacturing, industry and services, has had, between 1960-70, an 18-percent growth in services, 25 percent growth in wholesale and retail trade, a 63 percent growth in contract construction and 176 percent growth in finance, insurance and real estate.

4. We have given careful consideration to the proposal and believe that channel 280A should be assigned to Greensboro, Ga., to provide Greensboro and Greene County with a first local aural broadcast service.

5. Authority for the adoption of the amendment is contained in sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rules.

6. *Accordingly, it is ordered,* That effective December 21, 1978, § 73.202(b) of the Commission's rules and regulations, the FM Table of Assignments, is amended, as it pertains to the community listed below:

City	Channel No.
Greensboro, Ga	280A

7. *It is further ordered,* That this proceeding is terminated.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082 (47 U.S.C. 154, 155, 303).)

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc. 78-32327 Filed 11-16-78; 8:45 am]

[6712-01-M]

[Docket No. 21489]

PART 73—RADIO BROADCAST SERVICES

Repeal of Programing Restrictions on Subscription Television; Correction

AGENCY: Federal Communications Commission.

ACTION: Erratum.

SUMMARY: This deletion was inadvertently omitted from a document which was published in the FEDERAL REGISTER. The deletion removes the note following paragraph (b) of 47 CFR 73.643.

EFFECTIVE DATE: May 22, 1978.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Freda Lippert Thyden, Broadcast Bureau, 202-632-7792.

SUPPLEMENTARY INFORMATION: This is a correction of the report and order released on April 7, 1978, in docket No. 21489, which appeared in the FEDERAL REGISTER on Wednesday, April 12, 1978, page 15322.

In the matter of repeal of programing restrictions on subscription television. Erratum

Released: November 8, 1978.

The report and order in the above-entitled proceeding, docket No. 21489, adopted April 5, 1978, FCC 78-245, Mimeo No. 84933, is corrected by the deletion of the note following paragraph (b) of 47 CFR 73.643. This deletion was inadvertently omitted from the report and order as published.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-32328 Filed 11-16-78; 8:45 am]

[6712-01-M]

[Docket No. 20829; FCC 78-694]

PART 76—CABLE TELEVISION SERVICES

Nondiscrimination in the Employment Policies and Practices of Cable Television Applicants and Certificate Holders and Licensees of Cable Television Relay Stations

AGENCY: Federal Communications Commission.

ACTION: Report and order in docket No. 20829, "Nondiscrimination in the Employment Policies and Practices of Cable Television Applicants and Certificate Holders and Licensees of Cable Television Relay Stations."

SUMMARY: Commission reaffirms its jurisdication to regulate the employment practices of cable television systems to insure equal employment opportunity. Existing § 76.311 of the Commission's Rules is reorganized and some provisions are reworded to improve readability. Minor substantive changes in § 76.311 are adopted. Commission clarifies the requirments of its present EEO rules and adopts various internal monitoring and enforcement procedures designed to improve EEO compliance, including a commitment by the Commission to collect and collate local labor pool availability data in order to provide a more meaningful means of statistically evaluating operator performance in the employment area.

EFFECTIVE DATE: December 15, 1978.

ADDRESS: Office of the Secretary, Federal Communications Commission, 1919 M Street NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Bob Ratcliffe, Cable Television Bureau, 202-632-9703.

REPORT AND ORDER—PROCEEDING TERMINATED

Adopted: September 27, 1978.

Released: November 6, 1978.

By the Commission: Commissioner Quello absent.

In the matter of: Nondiscrimination in the employment policies and practices of cable television applicants and certificate holders and licensees of cable television relay stations, docket No. 20829.

1. The Commission has before it a notice of proposed rulemaking in docket 20829, FCC 76-749, 60 FCC 2d 618 (1976) (hereinafter Notice), concerning nondiscrimination in the employment policies and practices of cable television applicants and certificate holders and cable television relay station (CARS) licensees, together with comments filed in response thereto.[1] The Notice contemplated both clarification and amendment of our equal employment opportunity (EEO) rules[2] and procedures and was prompted primarily by a study of annual employment reports (FCC form 395A) filed by cable television systems in 1974. That study indicated that minorities and females were disproportionately represented in the lesser skilled and lower paying job categories within the cable industry and that, in general, these groups were not employed in numbers commensurate with their availability.[3] These results, in turn, suggested that the EEO programs being utilized by cable television operators were not sufficiently active and affirmative. We consequently advanced various proposals in the Notice as possible means of promoting a fuller realization of our equal employment goals in the cable television field without unnecessarily increasing the regulatory burden on cable operators.

2. Specifically, the Notice first undertook to describe and exemplify some of those elements of an effective affirmative action program which we deem essential under existing EEO rule requirements. Second, we considered possible methods, apart from analysis of FCC form 395A's, which might be used to meaningfully evaluate the implementation of affirmative action programs. In this connection we made several specific proposals, including: (a) A requirement that system operators conduct and submit local labor force availability surveys, (b) a requirement that system operators file updated EEO program statements with the Commission at regular intervals, (c) a proposal to establish five (5) or perhaps ten (10) full-time cable system employees as a threshold condition for filing written EEO program statements, and (d) a proposal to exempt from coverage in a system's EEO program any minority group "insignificantly" represented in the filing system's local labor pool. We also presented a sample affirmative action program which incorporated many of the above-mentioned proposals and asked comment as to whether this sample program should be adopted as a guideline or an official Commission form. Third, the Notice outlined a range of monitoring and enforcement techniques, including the use of "goals and timetables", which might be employed by the Commission in seeking to assure compliance with our EEO rules and to remedy significant departures from our equal employment objectives. Finally, we discussed the procedures we intend to follow in disposing of individual complaints of employment discrimination and the role such complaints will play in our overall enforcement program.

3. Just prior to our adoption of the Notice, the Supreme Court issued its decision in *NAACP* v. *FPC*, 425 U.S. 662 (1976). Therein the Court held that the authority of a Federal agency to regulate or consider the employment practices of its regulatees must be derived from the specific statutory purposes and functions of the agency and may not be based simply on a broad mandate to regulate in the public interest. Id. at 669. Recognizing that this decision might have significant jurisdictional implications for its proposals, the Commission stated in the Notice:

> In light of the Supreme Court's opinion, we seek comment as to whether our proposed actions are within the Commission's "statutory authority to consider the consequences of employment discrimination in performing its mandated regulatory functions." 60 FCC 2d at 521 (citation omitted).

In view of the pervasive importance of this issue, we shall address it, and the comments directed to it, at the outset.

JURISDICTION

4. *Comments.* A majority of the commenting parties[4] argue that the Commission's jurisdiction to regulate the employment practices of cable television operators is either highly suspect or lacking altogether. They contend that neither the Court's decision in *FPC, supra,* nor any reasonable construction of the Commission's established "ancillary" authority over cable television can support our regulatory proposals, or, indeed, our existing EEO rules.

5. NCTA, CZR and Sammons first point to the decision in *FPC* as precluding sole reliance on the national policy against discrimination, which CZR considers to be the position taken in the Notice, as a basis for the Commission's jurisdiction. Such reliance, they reason, would constitute the very kind of unspecific "public interest" justification for regulatory authority which the Court expressly rejected. These same parties also contend that, although the decision in *FPC* appears to sanction the Commission's existing regulation of employment practices as "necessary to enable the FCC to satisfy its (statutory) obligation • • • to insure (nondiscriminatory programing)," [5] the Court's conclusion in this regard was mere dictum and thus not binding. In any event, it is reasoned, the Court's conclusion was based on considerations applicable only to broadcasters and cannot, therefore, be taken to approve EEO regulation for

[1] The parties participating in this proceeding are listed in appendix A. See 41 FR 56211, December 27, 1976.

[2] The relevant provisions are contained in § 76.311 of the Commission's rules and apply to operators of cable television systems, both in that capacity and as licensees or permittees of CARS stations. See § 78.75. We note that, in an effort to improve the readability of these regulations, we have today revised § 76.311 by simplifying its internal organization and rewording some of its constituent parts. See appendix B. We do not intend by this revision, however, to alter the substance of the rule in any respects other than those sepcifically noted elsewhere herein. In order to maintain consistency with the Notice and avoid possible confusion, references to § 76.311 throughout this document are based upon its existing structure and paragraphing scheme.

[3] Subsequent Commission samples of cable industry employment profile data for 1976 and 1977, while indicating some improvement in minority and female employment patterns since 1974, generally attest to the continued underrepresentation of these groups. The results of these studies, as well as the 1974 figures, are attached at appendix C. It must be remembered, of course, that because these statistical surveys relied solely on FCC form 395A data and were not adjusted to account for local labor pool availability variations, they cannot be considered precise measures of EEO performance. They are, nonetheless, sufficiently reliable approximations of the general range of industry achievement in utilizing minority and female employees to raise legitimate questions concerning the adequacy of cable systems' EEO compliance and to support our conclusion that further efforts on our part are required in this area.

[4] National Cable Television Association (NCTA); Cole, Zylstra and Raywid (CZR); Cablecom-General, Inc. (Cablecom); Sammons Communications, Inc., et al. (Sammons) (see appendix A for a complete listing of the parties filing jointly with Sammons).

[5] 425 U.S. at 670, n. 7.

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cable television systems.[6] The parties consequently argue that the Court's reference to the cable television EEO rules, which was remarked in our Notice,[7] was either an error or, at best, inappropriate.[8]

6. NCTA also argues that the Commission's past attempts to base its cable EEO jurisdiction on an analogy to its obligation and authority to regulate the employment practices of broadcasters and common carriers are misplaced. NCTA notes that because cable systems do not utilize the spectrum in their activities, the same regulatory restrictions designed to insure nondiscriminatory programing which broadcasters legitimately incur as users of a limited public resource cannot be applied. And, since cable is not mentioned in the Communications Act and the Commission has necessarily refrained from asserting full licensing authority in the area, jurisdiction cannot be grounded on the statutory licensing responsibilities which the Commission has in the broadcast field. Moreover, NCTA contends that our asserted jurisdiction over the employment activities of common carriers is grounded on the recognition in the Communications Act of these enterprises' "special responsibilities" to provide service in a nondiscriminatory manner to the public. But, it is noted, such legislative recognition is totally lacking for cable television. NCTA concludes that neither our authority over broadcast nor common carrier EEO matters can provide support for our exercise of similar regulatory power with respect to cable television systems.

7. CZR and Sammons argue more particularly that our regulation of cable EEO concerns is not "reasonably ancillary" to the Commission's jurisdiction over broadcasting as defined by the decisions in *U.S.* v. *Southwestern Cable Co.*, 392 U.S. 157 (1968) and *U.S.* v. *Midwest Video Corp.*, 406 U.S. 649 (1972), and is consequently beyond our statutory authority. In this regard, CZR reasons that the cable EEO rules go a substantial step beyond the origination requirement sustained in *Midwest Video, supra*, and seek to regulate cable in accordance with the public interest goal of equal employment and not any proper broadcast purpose. Elaborating on this point, Sammons argues:

> Certainly [the cable EEO] rules cannot be said to be "reasonably ancillary" to the technical aspects of broadcast regulation. Unlike the Commission's exclusivity rules, they are unrelated to Commission allocation responsibilities or the need to protect local broadcast service. Unlike the Commission's former program origination rules, they cannot be said to be in furtherance of a goal of diverse local programing service • • •. In short, the Commission's CATV EEO regulations are not "reasonably ancillary" to its regulation of broadcast licensees. (Citations and footnotes omitted.)

Sammons reasons further that the Court's mention of the Commission's EEO rules in *FPC* does not dictate a contrary conclusion. In *FPC*, it is contended, the Court bottomed its positive reference to the Commission's EEO rules on the programing function of broadcasters. But, with the elimination of the program origination requirement, Sammons argues, this function is no longer performed by cable television systems and the Court's rationale may not, therefore, be applied by analogy to support employment regulation of cable television operators. CZR has also addressed the issue of cable television systems' programing role as a basis for our jurisdiction, but has done so not just with respect to origination but with respect to alternative forms of program discretion which and operator might exercise as well.[9] Like Sammons, however, CZR concludes that cable television's programing function cannot vindicate our regulatory control of cable employment practices.

8. The National Black Media Coalition (NBMC) suggests, on the other hand, that the Commission's jurisdiction over cable EEO matters is clear and fully broad enough to encompass the actions proposed in the Notice. NBMC adverts to the Commission's licensing authority under its plenary jurisdiction over use of the electromagnetic spectrum and concludes that this authority requires the development and enforcement of EEO policies for cable television systems. And, NBMC argues that the decision in *FPC* merely reinforces this conclusion since the opinion explicitly recognizes that the Commission's EEO regulations are necessary to insure nondiscriminatory programing.

9. *Discussion.* Despite the thrust of the majority of the comments, we are not persuaded that either the actions proposed in the Notice or the fairly extensive regulations governing cable EEO already embodied in Section 76.311 of the Rules are beyond out authority. On the contrary, we are convinced that the decision in *FPC* taken in conjunction with the jurisdictional standards outlined by the Supreme Court in *Midwest Video, supra*, firmly support our regulatory authority over the employment practices of cable television systems.

10. In *FPC*, petitioners had proposed adoption by the Federal Power Commission of a comprehensive set of regulations designed to curtail employment discrimination by FPC regulatees. The FPC declined to adopt the suggested rules, asserting that it lacked jurisdiction to do so. On appeal, the Court of Appeals for the District of Columbia Circuit reasoned that two distinct types of jurisdiction were at issue:

> One—to which the proposed rule extends—embraces power on the part of the Commission to prescribe personnel practices in detail and to receive complaints, adjudicate them, and punish directly infractions of those practices. The other • • • is power to take into account, in performance of its regulatory functions, including licensing and rate review, evidence that the regulatee is a demonstrated discriminator in its employment relations. *NAACP* v. *FPC*, 520 F.2d 432, 435 (1975).

The court then noted that the first, more expansive type of jurisdiction necessarily involved a power on the FPC's part "to regulate employment discrimination per se," and concluded that a specific statutory mandate would be required to support such broad authority. Reviewing the FPC's enabling legislation, the court determined that this mandate did not exist and that the proposed rule was consequently beyond the FPC's authority to adopt. As to that agency's regulatory power pursuant to the second type of jurisdiction, however, the court stated:

> We can foresee situtations in which consideration by the Commission of a regulatee's discriminatory employment practices • • • could be reasonably related to the pursuit of the Commission's proper objectives. We therefore conclude that the Commission does have jurisdiction over employment discrimination in the narrower sense described at the outset of the discussion. • • • 520 F. 2d at 443-44.

The Supreme Court subsequently affirmed the lower court's judgment, although it described the limits of the FPC's jurisdiction in slightly different terms:

> [The] Federal Power Commission is authorized to consider the consequences of discriminatory employment practices on the part of its regulatees *only insofar as* such consequences are *directly related* to the Commission's establishment of just and reasonable rates in the public interest. 425 U.S. at 671 (emphasis supplied).

In the sum, the critical determinant in fixing an agency's jurisdictional prerogatives in the EEO field is a direct realtionship or nexus between the proposed employment regulation and the legitimate regulatory objectives of the agency.

11. Neither the Court of Appeals nor the Supreme Court left the specific application of this standard to the FCC to pure speculation, however. Both courts addressed the issue by contrasting the authority of the FPC with that of the FCC. As the Court of Appeals stated:

> We have specifically recognized the responsibility of the FCC to guard against racially discriminatory programing. *Office of Communication of the United Church of Christ* v. *FCC*, 123 U.S. App. D.C. 328, 359 F. 2d 994 (1966). The FCC has reached the conclusion that a broadcaster's programing will inevitably fail fairly to reflect the tastes and viewpoints of minorities if those minorities are systematically excluded from the broadcaster's employ. This is a far different question from the one involved in the appeal before us • • •. [Discrimination] in programing • • • might be so subtle and unsusceptible of direct remedy as to require the eradication of its root cause. 520 F. 2d at 442-43 (footnote omitted).

The Supreme Court was even more explicit, expressly concluding that the FCC's statutory responsibilities clearly provide the necessary jurisdictional nexus to support its broadcast EEO rules:

> The Federal Communications Commission has adopted regulations dealing with the employment practices of its regulatees. See 47 CFR 73.125, 73.301, 73.680, 73.793, 73.599 (1975). These regulations can be justified as necessary to enable the FCC to satisfy its obligation under the Communications Act of 1934, 48 Stat. 1064, as amended, 47 U.S.C. 151 et seq., to insure that its licensees' programing fairly reflects the tastes and viewpoints of minority groups • • •. It has nowhere been argued that the Federal Power Commission needs similar regulations in order to promote energy production at reasonable rates. 425 U.S. at 670-71, n.7.[10]

12. It is then the Commission's legitimate interest in assuring the widest, most diversified programing for all segments of the population[11] which provides at least one underpinning for our authority to regulate the employment practices of broadcasters. This same "broadcast purpose" was specifically recognized by the Court in *Midwest Video* as a proper basis for our regulation of cable television. After concluding that, in general, the Commission's jurisdiction over cable television extended to the pursuit of positive broadcast goals,[12] the Court upheld the Commission's former mandatory program origination rule (§ 74.1111(a)), stating:

> The effect of the regulation, after all, is to assure that in the retransmission of broadcast signals viewers are provided *suitably diversified programing*—the same objective underlying regulations sustained in *National Broadcasting Co.* v. *United States, supra*, as well as the local carriage rule reviewed in *Southwestern* and subsequently upheld • • •. In sum, the regulation preserves and enhances the integrity of broadcast signals and therefore is "reasonably ancillary to the effective performance of the Commission's various responsibilities for the regulation of television broadcasting." 406 U.S. at 669-70 (emphasis supplied).

In the case of the program origination rule, of course, the objective of "suitably diversified programing" was served by increasing the sources of program material. This objective, however, is no less served, as the Court in *FPC* recognized in the context of broadcasting, by rules such as our EEO regulations which are designed to avoid artificial and adverse effects on the diversity of existing programing. If, then, we may promote diverse programing through regulation of cable television as well as broadcasting, and given that this goal is legitimately furthered by regulation of broadcasters' employment practices to avoid discriminatory programing, we think the conclusion inescapable that we may also, and to the same end, regulate the employment practices of cable operators. In short, our cable EEO rules clearly further a recognized broadcast objective and are therefore within the scope of our "ancillary" jurisdiction over cable television.[13]

13. CZR has suggested, however, that while this analytical approach to our jurisdiction may comport with the standards set down in *Midwest Video*, practical differences between broadcasters and cable television operators render our conclusion untenable. Specifically, CZR contends that discrimination in programing, which our EEO rules are said to guard against, presumes program discretion, and that although broadcasters may exercise such discretion, cable television systems do not. Thus, it is argued, rules directed at cable employment practices are unjustified because the harm they seek to avoid cannot exist. In this connection, CZR contends that the Commission's signal carriage rules and the technical availability of only certain signals largely eliminates any operator choice in determining the broadcast signals which a system will carry. As to origination programing, CZR notes that few operators engage in such efforts, that none are required to, and that in those cases where programing is originated, it is often "prepackaged" premium programing such as that received from Home Box Office, Inc., with little if any content control vested at the system level. Such limited program discretion, CZR concludes, cannot support EEO regulation of the cable industry as a whole.

14. We are not persuaded that the program discretion exercised by cable television operators is so narrowly circumscribed. The Commission's rules, for example, afford every system located outside of all television markets unlimited discretion in choosing its permissive signal complement.[14] This same freedom also applies to all small systems (less than 1,000 subscribers), regardless of market location.[15] Further, in the first 100 markets it is virtually impossible for cable systems to have their entire carriage selection dictated by the rules,[16] and all systems are unrestricted in their carriage of specialty stations.[17] A similarly unfettered choice is available to operators in their carriage of educational stations,[18] as well as in their selection of alternative program sources under the late-night programing provisions of the rules.[19] The suggestion, moreover, that the limited technical availability of signals seriously restricts the scope of these carriage options is difficult to credit. The increasing use of common carrier, CARS and earth station signal

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[6] For a more specific statement of this contention, see infra at para. 7.

[7] 60 FCC 2d at 621.

[8] The Court's reference to § 76.311 initially appeared in the version of its opinion printed in United States Law Week. 44 U.S.L.W. 4659, 4662, n. 7. This citation was subsequently deleted in the official report of the case and a reference to the various broadcast EEO rules, which had not been previously included, was inserted in its place. 425 U.S. 662, 670 n. 7. While this revision removed any express allusion to our cable employment regulations from the Court's decision, we do not take it to support the broad contention that the considerations underlying the Court's approval of our broadcast EEO rules are inapplicable to out regulation of cable employment practices. See paras. 12-16, infra.

[9] We believe this to be the better approach since clearly an operator may affect programing, and thus have the capacity to introduce discriminatory choices, not merely when he originates material but whenever program content discretion is afforded him. See paras. 13-16, infra, for details of CZR's broader contentions in this regard and our analysis thereof.

[10] NCTA, CZR and Sammons have correctly observed that this conclusion by the Court is dictum since the validity of our rules was not at issue in *FPC*. In the absence of countervailing authority, however, we consider the Court's statement to be a persuasive confirmation of the Commission's own long-standing assertion of jurisdiction over the employment practices of broadcasters. See *Nondiscrimination in Employment Practices of Broadcast Licensees*, FCC 68-702, 13 FCC 2d 766 (1968) and *Nondiscrimination in the Employment Practices of Broadcast Licensees*, FCC 76-426, 60 FCC 2d 226, 229 (1976).

[11] See *National Broadcasting Co.* v. *United States*, 319 U.S. 190 (1943).

[12] In this regard, the Court held: "[The] regulatory authority asserted by the Commission in 1966 and generally sustained by this Court in Southwestern was authority to regulate CATV with a view not merely to protect but to promote the objectives for which the Commission had been assigned jurisdiction over broadcasting." 406 U.S. at 667.

[13] To the extent, of course, that cable operators are also licensees of CARS facilities, our licensing responsibilities under the Communications Act of 1934, as amended, provide an additional and distinct jurisdictional support for our cable EEO rules.

[14] See § 76.57(b).

[15] See §§ 76.59(b), 76.61(b) and 76.63(a) as it relates to § 76.61(b).

[16] See § 76.61 (b) and (c) as it relates to the permissive carriage of independent signals in the first 50 markets and, as modified by § 76.63(a), as it relates to similar carriage in the second 50 markets.

[17] See §§ 76.59(d)(1), 76.61(e)(1) and 76.63(a) as it relates to § 76.61(e)(1).

[18] See §§ 76.59(c), 76.61(d) and 76.63(a) as it relates to § 76.61(d).

[19] See §§ 76.59(d)(3), 76.61(e)(3) and 76.63(a) as it relates to § 76.61(e)(3).

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importation methods, as well as the regulatory need to limit distant signal carriage in the first place, certainly argue to the contrary. We conclude that cable operators exercise substantial program discretion in the context of their carriage determinations and that such discretion clearly affords the opportunity for discriminatory choices which our EEO rules are properly intended to avoid. The latter point is exemplified with particular force in the case of specialty stations, whose wide availability is especially conducive to achieving our goal of program diversity and is positively encouraged by Commission policy. It seems most unlikely, however, that cable systems engaged in employment discrimination based on ethnic background or religion, for example, would undertake carriage of stations that direct their programing to individuals characterized by the very ethnic or religious traits which the operator has discriminated against in employment.

15. Origination programing, of course, provides an even more direct and pervasive form of program discretion than signal selection. And, while it is true that cable systems are no longer required to produce such material, this fact is not jurisdictionally dispositive. The relevant point is that every system may, and contrary to CZR's contention a substantial number of systems do, originate programing. As of September 1, 1977, for example, data compiled by Television Digest, Inc., indicated that out of 3,911 operating systems, 1,097, or 28.04 percent, offered nonautomated origination programing.[20] It is apparent, moreover, that even those systems whose originations consist exclusively of "pre-packaged" premium programing (that is, "pay-cable") are capable of exerting a form of content control over the material supplied to them by such sources as Home Box Office, Inc.[21] Beyond the fact that systems can initially select pay programing from several alternative sources, they may, and in our experience do, decline to carry particular programs provided by these sources at various times and for various reasons, in much the same manner that television broadcast stations may fail to "clear" programing supplied to them by a national television network. In such circumstances, of course, systems may also select replacement programs and thus engage directly in a programing function.

16. In sum, both in their signal carriage decisions and in connection with their origination function, cable television systems are afforded considerable control over the content of the programing they provide.[22] And, while this control may vary in kind and degree from the discretion exercised by broadcasters, it is nonetheless extensive and fully adequate to justify our regulatory efforts to insure that it is exerted in a nondiscriminatory fashion. Our conclusion in this regard is, we believe, perfectly consistent with the decision in *FPC*, for nothing therein intimates that the Commission's EEO jurisdiction is dependent upon total programing discretion by our regulatees, either in the sense that all operators must exercise a particular type of discretion (for example, origination) or that where they do exercise discretion, it must be complete (for example, signal selection).

Policy Clarification

17. Given the apparent underrepresentation of minorities and women suggested by our study of cable annual employment reports for 1974, we concluded in the notice that:

> [Although] our nondiscrimination rules are fairly comprehensive, there is a further need to describe and exemplify the measures which cable operators should undertake to promote the full realization of equal opportunity in employment for minorities and women. 60 FCC 2d at 618.

Accordingly, we endeavored in paragraphs 9–14 of the notice to clarify the meaning and scope of our operational, as distinguished from our informational, EEO requirements.[23] We emphasized first that these rules require not only nondiscrimination in employment (§ 76.311(a)), but the establishment and pursuit of a positive, continuing program of specific practices to assure equal employment opportunity—in brief, an affirmative action plan (§ 76.311(b)(1)). The starting point, we observed, in achieving these broad objectives is a reaffirmation by each cable operator of its commitment to equal employment opportunity in all phases of its employment activities—recruitment, evaluation, selection, promotion, compensation, training and termination. Each operator's program should, we concluded, set forth at the outset its adherence to this policy goal.

18. Turning to the specific elements of a complaint affirmative action program, we reviewed the provisions of § 76.311(b)(2) and pointed out that these rules require each cable system's program to: (a) Identify those individuals responsible for employment decisions and establish procedures to insure that these persons function in a consistent, nondiscriminatory manner; (b) establish effective methods to communicate the operator's equal employment policies to its employees and its prospective employees, including, among other outreach techniques, the posting of appropriate notices; (c) formulate procedures to continuously review the system's personnel practices to assure that, regardless of how neutral they appear, these practices are not having adverse effects on minorities and women. In this regard, we underscored the need for each operator to actively seek out qualified minorities and women for possible employment, and the necessity for each system to constantly evaluate and, where indicated, improve the effectiveness of its recruitment methods. We also took note of particular outreach techniques which might prove useful in achieving increased minority and female referrals;[24] (d) devise methods to insure that once a minority or female employee is hired, he or she is placed and promoted in a nondiscriminatory fashion. To this end, we indicated that a cable system's employment program should investigate possible methods of fostering the advancement of minorities and women in the system's organizational structure, particularly training programs—internal or external—which might be utilized to improve the skills and qualifications of minorities and women. We emphasized that our rules do not require a formal training program, but noted that, where appropriate and feasible, such programs can provide an extremely valuable means of fulfilling each operator's obligation to affirmatively promote equal employment opportunity. We also remarked that insuring nondiscriminatory allocation of such items as compensation, fringe benefits and opportunities to perform overtime constituted an essential EEO responsibility which each operator's employment program should address.

[20] *Television Factbook*, Services Volume, 1978 ed., p. 76-a.

[21] It should be noted that less than half of the systems originating non-automated programs provide a "pay-cable" service at all. Id. Even fewer systems provide this service as the exclusive form of their originations.

[22] Access- programing represents still another area in which cable operators are afforded an opportunity to influence the program material supplied to subscribers. In this case, however, the control is more subtle and is based primarily upon the broad discretion which a system may exercise in the day-to-day administration of its access services—as, for example, in program playback and production scheduling decisions—rather than on direct program content or source choices by the operator.

[23] Sections 76.311 (a) and (b) of the rules, which we did not propose to amend, govern a system's direct "operational" EEO obligations, while §§ 76.311 (c), (d), and (e) impose filing and reporting requirements which are designed primarily to assist the Commission in its monitoring and enforcement responsibilities. There is, of course, some overlap between these two broad categories of the rules. In particular, the detailed provisions of § 76.311(c)(2) concerning the contents of an operator's EEO program statement are clearly indicative of the types of actions which we intend an operator's actual employment program to encompass. Indeed, we commend these provisions to all operators as helpful in particularizing the requirements of § 76.311(b).

[24] See 60 FCC 2d at 622, n. 5.

19. We expressly invited comment in the notice on the foregoing clarifications of our rules, but the parties participating in this proceeding have been, at least with respect to the specific elements of our statement, uniformly silent. Whatever the import of this fact, we believe the guidance afforded by our observations is both warranted and helpful in assisting cable operators to understand their obligations and thus in promoting our equal employment goals. Accordingly, we shall adopt the clarifications outlined in the notice and reiterated herein. We should note, however, that the clarification should not be taken as exhaustive or as in any way limiting the scope of actions which cable systems might incorporate in their employment programs. Rather, it is intended to highlight and exemplify some of the more critical, and we believe minimally necessary, elements of an effective and therefore compliant program.

Analysis of EEO Program

20. Our experience in conducting the study of 1974 cable employment statistics and the general review of our EEO rules and procedures which we undertook prior to initiating this proceeding led us to conclude in the Notice that various amendments to the filing and reporting requirements of §§ 76.311 (c) and (d) were warranted. These changes would, we suggested, clarify some provisions and generally improve the usefulness of the employment information reported to the Commission. This would, in turn, upgrade both our and the operators' ability to analyze existing EEO programs and to detect and remedy noncompliance with the rules.

21. *Specific proposals.* Currently, our rules do not oblige a system to provide us with data concerning the percentages of minority groups and women in the local labor pool area from which system employees are drawn or reasonably could be drawn. We indicated in the Notice, however, that such an "availability survey" would afford the Commission and the system a valuable analytical tool in evaluating the effectiveness of EEO programs since it would establish the reference base against which the actual employment profile of a system as reported in its FCC form 395A could be compared. Accordingly, we proposed to require cable television systems to include an availability survey as part of their EEO program statement. Recognizing that there is no single definition of "local labor pool," we also suggested that each system should define this concept in the context of its own circumstances and location and then supply corresponding data.[25] Finally, we pointed out that where a comparison of a system's work force and availability figures demonstrates a substantial incongruity, specific remedial steps may be required to correct the deficiencies, unless there is a satisfactory explanation of the incongruity.

22. The Notice also advanced the suggestion that because affirmative action programs are by their nature evolving and dynamic, statements of these programs, and the availability data which they would include, should be updated at regular intervals rather than simply amended or supplemented at the operators' discretion as currently permitted.[26] We therefore proposed that revised EEO program statements be filed every 3, or perhaps every 5 years, observing that this filing interval should provide reasonably current data yet permit recognizable trends to develop. The Notice further sought comment on an appropriate employee level threshold for the filing of these written program statements. In this connection, we stated:

> It would appear that the imposition of such [filing] requirements may be unnecessarily burdensome on cable systems with less than five (or perhaps 10) full-time employees, and that reliable statistical analysis is more difficult for smaller employment units. 60 FCC 2d at 624.[27]

We added, however, that regardless of the filing threshold ultimately adopted, if information developed indicating a need, the Commission might require additional reports, data or other appropriate remedial steps from any operator irrespective of its number of full-time employees. Moreover, the Notice remarked that this filing threshold concept would not affect the obligation of all systems to comply with other pertinent provisions of § 76.311. Appropos of this observation, we expressly proposed an amendment to § 76.311(d) to clarify that every operator is required to file an annual report of complaints without regard to employee levels.

23. In an attempt to lessen the burden imposed by our proposals and to channel system EEO efforts into meaningful areas, we proposed to exempt from coverage in any system's employment program and thus from coverage in the system's program statement, any minority group "insignificantly represented" in the system's local labor pool area. In connection with this suggestion, we invited particular comment on what population proportion might define "significant." Finally, as mainly a procedural amendment, we proposed to delete the provisions of § 76.311(c)(2) dealing with the contents of EEO program statements and to instead substantially reflect these requirements in a "Sample Affirmative Action Program." [28] The proposed sample program also included appropriate sections reflecting the relevant amendments to the program statement provisions advanced elsewhere in the Notice (e.g., section IX of the sample program provides for reporting of the availability survey data discussed in paragraph 21, supra). We sought comment on the sample program itself and on whether it should be adopted as a guideline in conjunction with our proposed amendments to § 76.311(c) or whether it should be adopted as an official Commission form.

24. *Comments.* With the exception of NBMC, the commenting parties generally oppose the imposition of the additional filing requirements contemplated by the Notice. Cablecom, indeed, suggests that the Commission should not amend its EEO rules in any respect. Instead, it is argued, the Commission should utilize available and forthcoming data in this area to analyze its need for EEO jurisdiction and then present its conclusions to Congress in connection with the pending congressional review of the Communications Act. NCTA contends that the cable industry has recently undertaken great efforts to improve its EEO performance and that notable indications of success, particularly in the major television market areas where the bulk of minority populations reside, are becoming evident. NCTA concludes that the Commission should afford the industry a reasonable time to bring these efforts to full fruition

[25] The Notice remarked, however, that where a system is situated in a Standard Metropolitan Statistical Area (SMSA), we would consider the SMSA to be the local labor pool area for purposes of the availability survey. We also noted that where this was not the case, city or county-based figures would suffice, and indicated appropriate sources for this data.

[26] Presently, § 76.311(c)(1) imposes a one-time program statement filing requirement and § 76.311(c)(1)(i)(a) requires that any changes to this statement be filed with the Commission by May 31 of each year. There is, however, no obligation to periodically update the statement once it has been submitted.

[27] Under the existing rules, a five or more employee threshold is utilized to determine the obligation of systems to file program statements. Section 76.311(c)(1)(i)(b). For purposes of determining the number of employees in the context of this filing requirement, any system which constitutes a part of a "single employment unit" within the meaning of § 76.311(b)(3) must aggregate all employees of the "employment unit." If this aggregate total is less than 5, no statement need be filed by any system comprising the "employment unit." If the total is 5 or more, however, the systems comprising the "employment unit" must file a combined statement. See § 76.311(c)(1)(i)(c)(1). We note that while the Notice proposed possible amendment of the number of employees defining the filing threshold, no change was contemplated in the methods or consequences of aggregating employees set by the current rules and summarized here.

[28] 60 FCC 2d 618 at appendix 2.

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before imposing further EEO requirements that may prove unnecessary. CZR argues that our proposed filing requirements would clearly constitute an additional and significant burden for an industry already encumbered by detailed Federal regulation and reporting obligations and observes that such a result is in direct conflict with the intent of Congress as expressed in the Federal Reports Act, 44 U.S.C. 3512. This result is also inconsistent, in Sammons' view, with the Commission's stated purpose in this proceeding of avoiding unnecessary increases in the regulatory burden on cable television operators. NBMC, on the other hand, characterizes our proposals as basically requiring the filing of a single form and suggests that such a requirement cannot be considered overly burdensome, especially in view of the critical objective which the Commission is seeking to serve.

25. More specifically, NCTA, Oregon Cable Communications Association (OCCA) and Liberty Communications, Inc. (Liberty) point to the availability survey aspect of our proposals as posing significant problems. They argue that most cable systems operate in areas outside of SMSA's and that in these locations and statistical information required by the availability survey is difficult if not impossible to obtain.[29] Moreover, it is reasoned, the suggestion that such systems define their own local labor pool area in constructing appropriate survey data is impractical, given the resources and expertise of most systems, and is seriously complicated by the fact that many integrated systems operate in several communities with disparate demographic characteristics. If the Commission considers this data vital, NCTA, OCCA and Liberty conclude, the Commission itself should gather the relevant figures since it is clearly better equipped to do so and has greater access to the needed information.

26. In conjunction with our proposal to require availability surveys, we adverted to "substantial incongruity" between the data reported therein and a system's employment profile as a basis for further Commission action with respect to that system's employment performance. NCTA finds this reference disturbing because the concept of incongruity is not defined, thus leaving cable operators uncertain as to what is expected of them. NBMC, however, objects to this approach for very different reasons. It believes that our suggestion does not go far enough and that all systems found by our statistical comparison to be "outside the zone of reasonableness" should be required to devise and make available for public inspection "self-articulated goals and timetables for correcting employment incongruities."

27. Burden considerations similar to those advanced in opposition to the availability survey requirement also convince most parties (NCTA, OCCA, Liberty, Sammons and CZR) that our proposal to require periodic updating of EEO program statements is unwise. Several of these commenters suggest that the information supplied on cable systems' annual employment reports is more than adequate to accomplish the Commission's essential purpose of monitoring the industry's compliance with EEO policies and rules, and appear to contend as a result that program statements should not be required at all. At the very least, it is urged, the Commission should not demand more than the one-time statement filing dictated by the present rules. Alternatively, Liberty and OCCA suggest that the Commission could require updated program statements only where a system's annual employment reports indicated a need for such revision. If the Commission determines nonetheless to adopt a periodic filing requirement, these parties strongly favor a 5-year, as opposed to a 3-year, interval. In this regard, they point out that 5-year filings would reduce the compliance burden, and would coincide with both CARS license terms and with the availability of interim census data. By contrast, NBMC points to the "dismal" minority and female employment record of the cable industry as underscoring the need for close Commission scrutiny of cable system employment programs. To this end, NBMC urges that EEO program statements should be required of cable operators annually.

28. Various responses were received in connection with our request for comment on an appropriate employee level threshold for filing program statements. At one extreme, CZR proposes that our filing requirement should apply only to systems with 50 or more employees, noting that neither the U.S. Equal Employment Opportunity Commission (EEOC) nor the Office of Federal Contract Compliance Programs (OFCCP), which have specific statutory responsibilities for EEO matters, requires written reports from employers of less than 50 individuals. CZR contends that these agencies have set their reporting thresholds on the proper assumption that statistical information from smaller employee units is less valuable, and argues that the Commission should adopt a similar approach. At the very least, however, CZR urges that as between the 5- and 10-employee levels suggested by the Notice, the Commission should elect the higher figure. In this regard, CZR contends that statistical data gathered from such small units as 5-employee cable systems would be practically worthless and that reporting requirements for these systems would consequently constitute an utterly unnecessary burden. Moreover, this burden would be particularly keenly felt due to the limited resources which these small enterprises command. Finally, CZR notes that the Commission has adopted a 10-employee filing criterion in the broadcast area and that no logical reason exists to support any lower figure in the context of cable television regulation. NCTA, Liberty, Sammons and OCCA variously advance similar arguments to support higher employee trigger levels, many suggesting that a 15-employee threshold would be appropriate. In this connection, several parties note that Congress has set the jurisdictional limit of EEOC's authority at 15 employees and that this fact indicates a congressional determination concerning the size of business entities susceptible to equal employment regulation which the Commission should respect. NBMC, however, contends that the filing threshold should be even less than the 5 employee mark utilized in our current rules and suggested as a lower limit in the Notice. NBMC argues that the statement filing requirement is essential in vindicating the Commission's responsibility to insure nondiscrimination in cable employment and that coverage of the entire industry by this provision is therefore necessary. NBMC consequently reasons that all cable systems, regardless of employee levels, should be under an obligation to file updated statements of their EEO programs.

29. Our proposal to exempt from coverage in a system's EEO program and program statement any minority "insignificantly" represented in the system's local labor pool area prompted concurrence by NCTA and dissent by NBMC. NCTA suggests that an appropriate population percentage defining "insignificant" might be 10 percent. NBMC suggests that the proposal should be dropped altogether, arguing that no rational basis exists for establishing an acceptable cut-off percentage. With respect to our proposed clarification of §76.311(d)(1), Sammons contends that requiring all systems to file an annual report of complaints regardless of system size is burdensome and should be reconsidered. Should the Commission elect to retain this obligation, however, Sammons urges us to incorporate the required report as part of the annual employment report (FCC form 395A) and thereby lessen the reporting burden imposed on all operators. Several other parties (NCTA, Liberty, OCCA) recommend a similar consolidation at least in cases where the reporting system has had no complaints filed against it during the year.

30. Finally, on the question of whether the sample affirmative action program presented in the Notice should be adopted as a guideline or an official form, NCTA recommends the latter on the grounds that a form would be simpler for systems to complete and easier for the Commission to process. Sammons, on the other hand, suggests a guideline approach since this would avoid rigidity and permit systems to experiment in constructing an effective EEO program. Beyond these format considerations, the parties have directed several miscellaneous comments to various substantive provisions of the sample program. Specifically, NCTA and Sammons express concern that section V of the sample program, which requests an analysis of a system's recruitment performance and new hires, may require operators to make and retain records indicating the race, religion, national origin and sex of job applicants that are illegal under various State laws. NCTA also questions the viability of the provision in section IV of the sample program which indicates that current employees are encouraged to refer minority and female applicants. Restricting such referrals to minorities and women, NCTA contends, may well pose problems of reverse discrimination.[30] With respect to section VI of the sample program, Sammons notes that many systems, particularly smaller ones, do not possess the resources needed to implement employee training programs. Section VI should, it is concluded, be amended to indicate that training programs are not required by the Commission's EEO rules.

31. *Discussion.* At the outset, we must reject the notion that amendments to our cable EEO rules or procedures should await either Congressional action revising the Communications Act of 1934[31] or possible positive developments in the industry's employment performance as a result of recent NCTA sponsored efforts in this direction. Discharge of our existing responsibility to devise and pursue the most effective regulatory program to assure nondiscrimination in cable employment cannot be made contingent on such uncertainties.[32] This is not to say, of course, that we do not encourage voluntary commitments to improve EEO performance. We intend only that the mere promise or prospect of improved EEO performance cannot, standing alone, justify regulatory reticence.[33] We are persuaded, nonetheless, by other, more concrete considerations not to adopt the bulk of the rule amendments advanced in the Notice. Specifically, we are convinced that the proposed availability survey and periodic statement filing requirements represent appreciable burdens for cable television operators which should not be presently imposed. We must emphasize that our conclusion in this regard in no way reflects a dulled sensitivity to the problems of equal employment in the cable industry or a lessened commitment on our part to insure that these problems are resolved. Rather, our decision reflects a conviction that alternative measures, less intrusive than those originally proposed in the Notice, might equally further our goal of improved EEO performance while also serving our stated purpose in this proceeding of minimizing increased recordkeeping and reporting burdens on cable systems. In this regard, we are persuaded that an increased allocation of Commission resources to EEO compliance matters, including a more active Commission role in data collection and significantly upgraded review, monitoring and enforcement efforts on our part, taken in conjunction with the heightened awareness by cable operators of their EEO obligations which our policy clarification engenders, can provide the impetus needed to better the industry's employment record. In any event, we believe it preferable to at least test these means before encumbering cable operators with additional regulatory demands.

32. In particular, we note that our proposal to require an availability survey rested primarily on a conviction that local labor pool data would provide a valuable "analytical tool for evaluating an effective affirmative action program."[34] We remain so convinced, but believe that Commission collection and collation of the pertinent demographic data can afford us this tool without the attendant research and reporting burdens which inhere in the survey obligation outlined in the Notice. Indeed, in some respects, our undertaking to gather the relevant data might better serve our purposes. Commission collection of labor force figures, for example, would permit us greater flexibility in updating this information than would be possible under a fixed 3- or 5-year filing procedure, and would also likely result in a more accurate statistical compilation since we can bring to the process a uniform expertise that disparate cable systems with widely varying resources could not. We are aware that centralized data collection may result in some statistical distortion as well, due to our inability to fully account for appropriate variations in the definition of local labor pool in areas outside of SMSA's. Our suggestion in the Notice, in fact, to permit each system to delineate its own labor pool area was prompted by concern for these local differences.[35] On balance, however, it does not appear that the availability survey mechanism would significantly ameliorate this distortion. System operators have uniformly decried their ability and resources to properly determine local labor pool boundaries and would likely eschew this determination, resorting instead to the widely available city or county-based demographic information which we expressly approved in the Notice as acceptable in constructing availability survey data.[36] System-based data submission would, in these circumstances, produce no less, and possibly more, distortion than Commission ascertainment of labor pool minority and female availability. In this respect, we note that in establishing our availability data base we shall endeavor to approximate suitable labor pool limits for each employment unit based on our analysis of relevant geographic and demographic considerations rather than by rigid reliance on single county or city boundaries.[37] In any event, any system whose EEO compliance we may suspect based on substantial incongruities between its Annual Employment Report statistics and our own demographic data would be afforded an opportunity to explain these incongruities, including an opportunity to redefine its local labor pool area

[29] Indeed, the parties generally observe that census data does not provide the kind of detailed minority class breakdowns which the survey contemplates.

[30] CZR has addressed this question in a more general sense, contending that any affirmative action requirement may potentially result in reverse discrimination. CZR consequently recommends that our rules be amended to prohibit this possibility.

[31] 47 U.S.C. 151 et seq. See H.R. 13015, 95th Cong., 2d Sess. (1978).

[32] Clearly, the pendency of legislative deliberations contemplating the amendment of our statutory mandate does not affect our obligation to act in conformance with the requirements we perceive inherent in the present law. In this regard, Cablecom's implication that we should pause in our regulatory efforts to evaluate the need for our EEO jurisdiction is a moot point. We have long ago determined that the Commission should and could concern itself with equal employment matters. See *Report and Order in Docket 19246*, FCC 72-275, 34 FCC 2d 186 (1972). We have not altered this conviction, although we have, over time, more precisely defined the basis of our authority in this area. See paragraphs 9-16, supra. The essential question before us in this proceeding, then, is not our need for jurisdiction, but the appropriate nature and scope of a regulatory framework which will further our articulated employment goals without unduly impinging on competing regulatory objectives.

[33] See *Report and Order in Docket 19246*, *supra* at 189-90.

[34] 60 FCC 2d at 623.

[35] Id.

[36] 60 FCC 2d at 623, n. 6.

[37] We intend, moreover, to apply this same flexible approach to our determination of labor pool parameters for systems operating within SMSA's in order to obtain the most accurate data possible.

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where this may be appropriate, before any final action is taken.[39]

33. Our decision to collect and update labor pool statistics ourselves also serves to substantially attenuate the need for a periodic filing requirement since a major concern in suggesting this provision was to obtain regularly revised availability figures (part IX, sample program). It is true, of course, that the proposed sample program also requested other information, such as recruitment sources (part IV), job hires (part V), and training benefits (part VI), which could be expected to change over time and which we sought to update as well. We do not believe, however, that this information is so critical to our fundamental purpose of improved monitoring and evaluation techniques as to separately justify periodic reporting. In this regard, we note that the data sought in these parts is primarily concerned with detailing corrective actions taken by a system whose actual minority and female employment figures would suggest substandard performance. In this sense, then, the data in parts IV, V and VI of the sample program becomes critical to our evaluation of system EEO performance only if an initial determination of employment disparity is made. By contrast, availability statistics are essential to a meaningful threshold evaluation of all systems' apparent compliance with our EEO rules. We believe it appropriate, therefore, to seek the type of information requested in parts IV, V and VI on a demand basis rather than requiring it to be regularly provided by every operator. In this connection, we note that updated EEO program statements, to include additional information not usually reported, may be required of any system whose employment performance is suspect based on our analysis of FCC form 395A data and corresponding labor pool figures.[39]

34. We will, however, continue to require all cable television systems with five (5) or more full-time employees [40] to file an initial EEO program statement.[41] We believe this requirement usefully functions to direct each system's attention to the need for a well-defined equal employment program and to provide the Commission with baseline information on these programs. In connection with our rules governing the contents of such statements, we have elected to retain the provisions of existing § 76.311(c)(2) rather than adopting a modified version of the sample program either as a guideline or as a Commission form. A basic purpose in proposing the sample program format was to provide an appropriate vehicle for reporting periodically updated information in several areas. In view of our actions today declining to adopt a regular revision requirement, however, this justification no longer obtains.[42] We shall also retain the provisions of current § 76.311(c)(1)(i)(a) requiring any amendments or changes to existing EEO program statements to be filed with the Commission by May 31 of each year.

35. With respect to our proposal permitting the exclusion of "insignificantly represented" minorities from coverage in a system's EEO program, we are persuaded by the paucity of the record on this issue, not to adopt such a provision at this time.[43] We are, on the other hand, convinced that our suggested amendment of § 76.311(d)(1) clarifying the obligation of all systems, regardless of employee levels, to file an annual report of complaints is warranted and we shall adopt it as proposed. Since all operators are required under our rules to provide equal opportunity in employment, the Commission should be made aware of discrimination complaints filed against any system subject to our jurisdiction, not just those with a set number of employees. Specific allegations of employment bias are, unlike statistical comparisons, not dependent for their reliability on employee levels. Consistent with our desire to minimize the reporting burden on cable systems, however, we are also persuaded that the annual report of complaints can properly be combined with the annual employment report required by § 76.311(e).[44] In fact, this change has already been reflected on more recent versions of FCC form 395A.[45] To formally recognize this reporting method, we are amending § 76.311(d) appropriately.

ENFORCEMENT AND MONITORING: COMPLAINTS

36. In paragraphs 21-26 of the Notice we considered the nature and scope of the monotoring and enforcement efforts which we intend to pursue in the EEO area, as well as our proposed use and disposition of individual complaints of employment discrimination in the context of our enforcement and monitoring program. At the outset, we discussed the broad principles governing complaint employment performance, stating:

> Both the Commission and the courts have recognized that nonproportionate minority and female employment—standing alone—does not necessarily evidence discrimination requiring administrative action. Thus, in *Stone* v. *FCC*, 466 F. 2d 316, *rehearing denied*, 466 F. 2d 331 (1971), the court noted that disproportionate minority employment was in a "zone of reasonableness" in light of the licensee's affirmative recruitment practices. Conversely, "* * * a disparity that is reasonable in light of a recruitment policy might not be reasonable in its absence." *Bilingual Bicultural Coalition of Mass Media, Inc.* v. *FCC*, 492 F. 2d 656 (D.C. Cir., 1974). In this regard, it should be noted that such a "zone" is not static and that continued operation of an affirmative action plan should result in additional employment opportunities for minorities and women. 60 FCC 2d at 625.

We then outlined those measures we would consider appropriate in seeking to remedy apparent deviations from this standard, including requests for more specific data, use of on-site investigations and, in the case of significantly deficient EEO programs, the establishment of goals and timetables. In connection with the last of these alternatives, we explained that the fixing of specific goals and timetables would be left initially to the operator concerned, noting, however, that our evaluation of the operator's overall performance would be based on whether the system had established meaningful goals and made substantial efforts to achieve them. Finally, we expressly retained the option to order a hearing in cases where substantial and material questions of fact relating to a system's employment policies and practices could not be otherwise resolved, although we anticipated that such a procedure should be rarely required.

37. In paragraphs 25-26 of the Notice, we reiterated our intention to refer individual complaints of discrimination against cable television systems to appropriate local, State and Federal agencies, remarking that this approach was consistent with our view that it is beyond our responsibility to remedy individual employment discrimination. We urged prospective complainants, therefore, to register their grievances with these various agencies directly: we did, however, indicate that in the event no local, State or Federal body had jurisdiction over a cable-related discrimination complaint, we would hear specific allegations of violations of our EEO rules and determine what action might be appropriate. We observed that such complaints may result in an internal audit of the relevant system's Form 395A and EEO program to determine whether the operator appears to be discriminating in its employment practices. If such a determination is made, we indicated we would notify the local franchising authority of this fact and of whatever remedial action we had directed. Lastly, we noted that wherever any local, State or Federal agency or court of competent jurisdiction makes a final determination that a cable television system has engaged in employment discrimination, we would consider such findings. We expressly emphasized, however, that these findings would not necessarily present a substantial question or a basis for further inquiry under the Communications Act or under our own rules.

38. *Comments.* As a general matter, several parties (NCTA, CZR, Sammons, Liberty, OCCA) express concern that our proposed procedures would be grossly duplicative of the enforcement and oversight functions of numerous other agencies, both local and national, and particularly of EEOC. More specifically, Sammons suggests that the detailed enforcement methods outlined in the Notice, especially the imposition of corrective employment goals and timetables, constitute regulation of employment discrimination per se, and are, therefore, beyond the scope of this Commission's statutory authority as defined in *FPC*. And, in connection with the "goals and timetables" remedy, both CZR and NCTA contend that this approach treads perilously close to an unconstitutional quota system, with its attendant reverse discrimination implications. NCTA also urges that the Commission's proposed enforcement mechanisms are predicated on ill-defined or undefined standards and that cable operators are consequently left uncertain as to their potential liability. Pointing variously to our use of such terms as "zone of reasonableness," "significantly deficient EEO program" and "substantial incongruity" as criteria for evaluating the adequacy of system EEO performance, NCTA complains that we have given these phrases no ascertainable substance.

39. In connection with our complaint procedures, NCTA is particularly disturbed by our stated intention to entertain individual complaints of employment discrimination and to take "appropriate action" based thereon. First, NCTA notes, the Commission has given no indication of what sanctions might constitute such appropriate action. Moreover, it is argued, the court of appeals' decision in *FPC* expressly found the adjudication of individual complaints to be beyond the jurisdiction of an agency lacking explicit statutory authority to regulate employment discrimination. This Commission's role in processing complaints, NCTA concludes, should be limited to "educating cable operators, maintaining records respecting employment and monitoring the resolution of complaints filed with other more appropriate agencies." If required, NCTA concedes, we could refer complaints to these agencies for their disposition. And, given the abundance of EEO-concerned agencies at all levels of government and the almost certain existence of a local franchising authority for any particular cable system, NCTA contends there is little likelihood that there would be no appropriate agency which could accept such referrals. Sammons, on the other hand, sees no need to refer complaints or related employment information to local franchising authorities at all, arguing that any such information would be available for public inspection at the cable system concerned and thus easily accessible to local authorities.

40. NBMC takes issue with our conclusion in paragraph 26 of the Notice that a finding of discrimination by another agency or entity would not necessarily prompt action or further inquiry on our part. This conclusion, NBMC argues, cannot be reconciled with the testimony of former Commissioner Hooks and former Chairman Wiley before the House Subcommittee on Communications in 1976, where, in part, it was stated:

> Mr. HOOKS. [I]t is still my position that a reasonable cause determination [by another agency] at the very least raises a roadblock of some sort which the Commission is obligated on its own to investigate * * *.
>
> . . . . . .
>
> Mr. WILEY. I would not disagree with that.

And, of these two contrasting positions, NBMC contends the latter clearly reflects the proper, indeed the mandatory, course.

41. *Discussion.* The contention that our enforcement role in EEO matters duplicates that of EEOC and is therefore unnecessary rests on the faulty assumption that the functions and objectives of this Commission and EEOC are substantially identical. In point of fact, however, our purposes, and consequently our enforcement mechanisms, are considerably different. Thus, as we observed in *National Broadcasting Company, Inc.*, FCC 76-135, 58 FCC 2d 419, (1976), *aff'd sub nom., National Organization for Women* v. *FCC*, 555 F. 2d 1002 (D.C. Cir 1977):

> Our reading of the legislative history of the Civil Rights Act of 1964, particularly of its 1972 amendments, impresses upon us that EEOC, through conciliation if at all possible, attempts to make aggrieved persons whole. The Communications Act of 1934, as amended, is of a different character, however. The basic purpose of the Act is regulation in the public interest and not the creation of private rights. *Daly* v. *Columbia Broadcasting System, Inc.*, 309 F. 2d 83, 85 (1962). Our rules are promulgated and enforced consistent with our primary statutorily defined objectives, the regulation of interstate and foreign commerce in communications. (Footnote omitted.)

And, as the U.S. Court of Appeals for the District of Columbia Circuit more recently noted in *Bilingual Bicultural Coalition on Mass Media, Inc.* v. *FCC*,——F. 2d——(No. 75-1885, decided May 4, 1978) (Bilingual II):

> [T]he FCC functions very differently from the EEOC, both in the type of inquiries it makes and in the types of sanctions it can impose. The EEOC, aims primarily to remedy the effects of past discrimination; in its efforts to make aggrieved persons whole, it can invoke an array of *retrospective* remedies, including reinstatement, promotion, and restoration of seniority or back pay. The FCC, by contrast, is concerned primarily with the future: In its efforts to ensure that programming reflects minority interests, it invokes *prospective*, administrative sanctions * * *. [Slip Opinion at 14, footnotes omitted.]

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[39] It is true, of course, that one objective in proposing system collection of availability data was to afford each operator access to the specific labor pool statistics needed for a critical self-analysis of its EEO program and that this purpose is undercut by the centralized data gathering approach we are adopting today. We consequently intend to investigate means by which the labor force figures compiled by the Commission can be made available to individual operators.

[40] Indeed, as we observed in the Notice, any system, irrespective of its obligation to file program statements under the rules, may be required to submit relevant information to the Commission if its employment performance appears inadequate.

[41] Considerable attention was directed in the comments to the appropriate employee level filing threshold for updated statements. Since, however, we are not adopting a periodic filing requirement but are substantially retaining the current filing obligation, we feel bound, at least on the record before us, to continue the existing employee level trigger. *See Office of Communication of the United Church of Christ* v. *FCC*, 560 F. 2d 529 (2nd Cir. 1977).

[42] Our action today eliminating the certification process does not affect this obligation. Under our new registration procedure, each operator with five or more full-time employees will be required to submit an EEO program statement at the time of registration. See *Report and Order in CT Docket No. 78-206*, FCC 78-690, (1978) at para. 14, and new rule § 76.12(g) adopted therein. In this connection we are amending § 76.311(d) to delete reference to former rule § 76.13(a)(8) and to add a reference to § 76.12(g).

[43] Our decision not to adopt the sample program renders moot several points addressed to its provisions by various parties. See para. 30, supra.

[44] Our collection and use of availability data should give us experience in delineating the concept of "insignificantly represented" minorities in the context of cable employment patterns. We shall, therefore, consider revisiting this rule proposal after dealing with this data for some time.

[45] Section 76.311(e) implies that only those systems with five or more full-time employees would file FCC form 395A, thus rendering this report unsuitable as a means of reporting compliants. In actuality, however, *all* systems are sent these forms and all systems must sign and return them to the Commission, although only those with five or more full-time employees are required to complete the employment profile section. We are amending § 76.311(e) to clarify this point.

[46] See § 76.403. The form provides a block to be initialed by each operator if no complaints have been filed against the system during the calendar year. If complaints have been filed, an appropriate report is required to be attached.

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Given these distinctions, we are not persuaded that our involvement in assuring compliance with our EEO rules constitutes duplicative regulation.

42. Nor do we believe that our proposed enforcement remedy of imposing employment goals and timetables is impermissible, either because it amounts to regulation of employment discrimination per se,[46] or because it creates an unconstitutional "quota" system. *Per se* regulation, in our view, involves administrative intervention in the specific, individual employment decisions and actions of an operator. It embraces, as the court of appeals stated in *FPC*, "[the] power * * * to prescribe personnel practices in detail and to receive complaints, adjudicate them, and punish directly infractions of those practices." [47] The use of employment goals and timetables does not approach this kind of intrusive regulation. It does not address the day-to-day personnel practices of an operator, nor does it dictate individual employment decisions. It is simply a means of stimulating and measuring improvement in a system's overall employment performance by setting objectives which the system can seek to achieve by whatever specific methods it elects. As to the constitutional objections raised against this mechanism, recent court decisions have made it clear that the imposition of employment goals and timetables, aimed at correcting administratively determined EEO deficiencies does not entail constitutionally proscribed reverse discrimination. *EEOC* v. *American Telephone & Telegraph Co.*, 556 F. 2d 167 (3rd Cir. 1977), *cert. denied*, 46 U.S.L.W. 3803 (U.S. June 27, 1978): *Regents of the University of California* v. *Bakke*, 46 U.S.L.W. 4896, 4905 (U.S. June 28, 1978).

43. NCTA's concern for precise definition of the criteria utilized by the Commission in evaluating system EEO performance is understandable. We believe, however, that the critical standard here—"zone of reasonableness" or "reasonable representation"—has been adequately described and developed in numerous Commission as well as court decisions. E.g., *Stone* v. *FCC, supra; Bilingual Bicultural Coalition on Mass Media, Inc.* v. *FCC*, 492 F. 2d 656 (D.C. Cir. 1974); *Bilingual II, supra; National Organization for Women* v. *FCC, supra*, and cases cited therein at 1018, n. 106; *Nondiscrimination in the Employment Policies and Practices of Broadcast Licensees, supra* at 242; *KCOP Television, Incorporated*, 57 FCC 2d 227 (1975), *remanded, Los Angeles Women's Coalition for Better Broadcasting* v. *FCC*,——F. 2d——(D.C. Cir. No. 76-1133, *decided September 12, 1978*); *Mission Central Company*, 54 FCC 2d 581 (1975); 1972 *License Renewal Applications, 53FCC 2d 104 (1975); License renewal applications of Certain Broadcast Stations Licensed for and Serving the State of Colorado*, FCC 77-433, 65 FCC 2d 96 (1977). In this connection, therefore, it suffices to say that we shall be guided in our analyses by these and similar cases.

44. It would appear from NCTA's objections to our proposed complaint handling procedures, that our intentions in this area have been misunderstood. When we indicated that we would consider individual complaints of employment discrimination where such complaints could not be referred to other, more specialized agencies, we did not mean to imply, as NCTA has apparently inferred, that we would adjudicate and remedy a particular individual's employment grievance. Such a procedure would clearly fall within the proscription of the court of appeals in *FPA* against employment regulation per se [48] and would contravene our own expressed purposes.[49] Rather, we intended that individual complaints of discrimination would be considered by the Commission to the extent that they constitute relevant evidence bearing on our evaluation of a system's compliance with our EEO rules. It is for this reason that individual complaints may result in an internal audit of a system's employment performance as reflected in its Form 395A reports and EEO program.[50] If our review of all the pertinent information, including the complaint, indicates apparent noncompliance, then sanctions directed to remedying the system's program deficiencies, not sanctions aimed at repairing injury to the individual complainant, will be considered. The nature of any sanction ultimately imposed, of course, would depend on the severity of the noncompliance.[51] Taken in this perspective, we believe our proposed complaint procedure is perfectly consistent with our statutory responsibilities and authority.

45. Similarly, we believe that our proposed treatment of discrimination findings by other agencies is consistent with our obligations. We stated in the Notice that such findings would not necessarily present a substantial question or a basis for further inquiry under the Communications Act of 1934, as amended, or under our own rules. This is not to say, however, that we would ignore such findings. On the contrary, we intend to evaluate these determinations "carefully and fully in light of [our] own established standards." *National Organization for Women* v. *FCC, supra* at 1018. This evaluation would include an internal review of the concerned system's employment record, and in some circumstances requests for additional information, but not necessarily further formal inquiry. So clarified, we do not believe our proposed procedure presents substantial differences from NBMC's position. In any event, however, we consider our proposal to comport with both our responsibilities and with judicial precedent. *National Organization for Women* v. *FCC, supra* be included as employees of a system.[52] We see no reason to deviate from this determination at this point. Suggesting another form of exception, Sammons has requested us to exempt from our EEO requirements all systems whose services are rendered pursuant to a federal government contract (e.g., cable systems operating on a military reservation) or whose operations are subject to local franchise provisions covering EEO matters. These systems, it is contended, are already regulated with respect to their employment practices and need not be further regulated by the Commission. We find this argument unpersuasive. Our EEO rules seek to accomplish specific goals dictated by our particular statutory responsibilities. We do not believe these ends may be satisfactorily served if various systems are excused from compliance with our uniform requirements and made subject only to disparate local demands or federal contract compliance standards, none of which are designed with our purposes in mind.

Conclusion

48. We believe that the policies, procedures and rule amendments set forth herein will clarify the EEO obligations of cable television systems and will substantially assist us in ensuring compliance with our EEO rules, thereby contributing significantly to the achievement of true equal employment opportunity throughout the cable industry. We believe, therefore, that adoption of these policies, procedures and amendments is in the public interest.

Authority for adoption of the rules herein is contained in sections 2, 4 (i) and (j), 303, 307, 308, and 309 of the Communications Act of 1934, as amended.

Accordingly, it is ordered, That part 76 of the Commission's rules and regulations is amended as set forth in the attached appendix B effective December 15, 1978.

It is further ordered, That, the proceeding in docket 20829 is terminated.

(Secs. 2, 3, 4, 5, 301, 303, 307, 308, 309, 315, 317, 48 Stat., as amended, 1064, 1065, 1066, 1068, 1081, 1082, 1083, 1084, 1085, 1088, 1089; (47 U.S.C. 152, 153, 154, 155, 301, 303, 307, 308, 309, 315, 317).

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

Appendix A

PARTIES FILING COMMENTS

*Better TV, Inc., of Bennington
Cablecom-General, Inc.
Cole, Zylstra and Raywid
*Comax Telcom Corp., d.b.a. International Cable
*Connersville Cable Television, Inc.
*Dynamic Cablevision, Inc.
*Greater Boston Cablevision Corp.
*Hernando Cable TV, Inc.
*Mass. Cablevision, Inc.
National Black Media Coalition
National Cable Television Association
*Sammons Communications, Inc.
*TM Communications Co.
*Tri-County TV, Inc.
*U.S. Cablevision Corp.
*Video Enterprises, Inc.
*Video Enterprises of Western Mass.
*Westerly Cable Television, Inc.
*Whaling City Cable TV, Inc.

PARTIES FILING REPLY COMMENTS

Liberty Communications, Inc.
Oregon Cable Communications Association

Appendix B

Part 76 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

§ 76.305 [Amended]

1. In § 76.305(a)(7), the reference to "§ 76.311(f)" is changed to "§ 76.311(j)", and in § 76.305(c), the reference to "§ 76.311(f)" is changed to "§ 76.311(j)".

2. Section 76.311 is revised to read as follows:

§ 76.311 Equal employment opportunities.

The following provisions apply to all operators of cable television systems, both in that capacity and as licensees or permittees of cable television relay service stations. Where a system or a headquarters office has employment whose duties are related to the operation of a cable television relay service station, these employees shall be considered employees of the system or headquarters office employees unit for purposes of this section.

(a) *General policy.* Equal opportunity in employment shall be afforded by all operators of cable television systems to all qualified persons, and no person shall be discriminated against in employment because of race, color, religion, national origin, or sex.

(b) *Employment units.* The provisions of this section shall apply to cable television systems as employment units. Each cable system may be considered a single employment unit; however, where two or more systems are under common ownership or control and are interrelated in their local management, operation, and utilization of employees, they shall constitute a single employment unit. See also paragraph (c) of this section.

(c) *Headquarters office.* A multiple cable operator shall treat as a separate employment unit each headquarters office if the work of that office is primarily related to the operation of more than one employment unit as described in paragraph (b) of this section.

(d) *Exemptions.* Every employment unit (including headquarters offices) shall comply with the requirements of paragraphs (e), (f), (h), (i), and (j) of this section. Where an employment unit has five or more full-time employees, it shall also comply with paragraph (g) of this section.

(e) *Establishment of equal employment opportunity program.* Each employment unit shall establish, maintain, and carry out a positive continuing program of specific practices designed to assure equal opportunity in every aspect of cable system employment policy and practice. Under the terms of its program, a unit shall:

(1) Define the responsibility of each level of management to insure a positive application and vigorous enforcement of the policy of equal opprtunity, and establish a procedure to review and control managerial and supervisory performance;

(2) Inform its employees and recognized employee organizations of the positive equal employment opportunity policy and program and enlist their cooperation;

(3) Communicate the unit's equal employment opportunity policy and program and its employment needs to sources of qualified applicants without regard to race, color, religion, national origin, or sex, and solicit their recruitment assistance on a continuing basis;

(4) Conduct a continuing program to exclude every form of prejudice or discrimination based upon race, color, religion, national origin, or sex from the unit's personnel policies and practices and working conditions.

(5) Conduct continuing review of job structure and employment practices and adopt positive recruitment, training, job design, and other measures needed to assure genuine equality of opportunity to participate fully in all organizational units, occupations, and levels of responsibility in the employment unit.

(f) *Contents of equal employment opportunity program.* An employment unit's equal employment opportunity program should reasonably address itself to the specific areas set forth below, to the extent that they are appropriate in terms of employment unit size, location, etc.:

(1) Posting notices in the cable operator's offices and places of employment informing employees, and applicants for employment, of their equal employment opportunity rights, and their right to notify the Equal Employment Opportunity Commission, the Federal Communications Commission, or other appropriate agency if they believe they have been discriminated against. Where a significant percentage of employees, employment applicants, or residents of the community of a cable television system are Hispanic, such notice should be posted in Spanish and English. Similar use should be made of other languages in such posted equal employment opportunity notices, where appropriate;

(2) Placing a notice in bold type on the employment application informing prospective employees that discrimination because of sex, race, color, religion, or national origin is prohibited and that they may notify the Equal Employment Opportunity Commission, the Federal Communications Commission, or other appropriate agency if they believe they have been discriminated against;

(3) Placing employment advertisements in media that have significant circulation among minority-group people in the recruiting area;

(4) Recruiting through schools and colleges with significant minority-group enrollments;

(5) Maintaining systematic contacts with minority and human relations organizations, leaders, and spokesmen to encourage referral of qualified minority or female applicants;

(6) Encouraging present employees to refer minority or female applicants;

(7) Making known to the appropriate recruitment sources in the employer's immediate area that qualified minority members and females are being sought for consideration whenever the cable operator hires;

(8) Instructing personally those on the staff of the employment unit who make hiring decisions that all applicants for all jobs are to be considered without discrimination;

(9) Where union agreements exist, cooperating with the union or unions in the development of programs to assure qualified minority persons or females of equal opprtunity for em-

[46] We have often stated that our responsibilities do not include the regulation of employment discrimination per se and we continue to adhere to that view. See, e.g., *National Broadcasting Company, Inc., supra* at 422; *Nondiscrimination in the Employment Policies and Practices of Broadcast Licensees*, 60 FCC 2d 226, 229 (1976).

[47] 520 F. 2d at 435.

[48] See paras. 10 and 42, *supra*.

[49] See para. 41 and note 46, *supra*.

[50] 60 FCC 2d at 627.

[51] The Communications Act Amendments of 1978, Pub. L. 95-234, 92 Stat. 33, has added forfeiture to the range of remedies outlined in the *Notice* and discussed herein. As with the other remedies we have described, we will not hesitate to use our forfeiture authority where necessary to assure that cable companies meet their obligations under our equal employment rules.

[52] *Report and Order in Docket 19246*, 34 FCC 2d 186, 192 (1972).

*Filed jointly.

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ployment, and including an effective nondiscrimination clause in new or renegotiated union agreements;

(10) Avoiding use of selection techniques or tests that have the effect of discriminating against minority groups or females;

(11) Instructing personally those of the employment unit's staff who make decisions on placement and promotion that minority employees and females are to be considered without discrimination, and that job areas in which there is little or no minority or female representation should be reviewed to determine whether this results from discrimination;

(12) Giving minority groups and female employees equal opportunity for positions which lead to higher positions. Inquiring as to the interest and skills of all lower paid employees with respect to any of the higher paid positions, followed by assistance, counselling, and effective measures to enable employees with interest and potential to qualify themselves for such positions;

(13) Reviewing seniority practices to insure that such practices are nondiscriminatory and do not have a discriminatory effect;

(14) Examining rates of pay and fringe benefits for present employees with equivalent duties, and adjusting any inequities found;

(15) Providing opportunity to perform overtime work on a basis that does not discriminate against qualified minority group or female employees.

(g) *Filing of equal employment opportunity program.* Except as otherwise provided in paragraph (d) of this section, every employment unit shall file a statement of its equal employment opportunity program indicating specific practices to be followed in order to assure equal employment opportunity for females, blacks, Hispanics, American Indians or Alaskan Natives, and Asians or Pacific Islanders in such aspects of employment practices as recruitment, selection, training, placement, promotion, pay, working conditions, demotion, layoff, and termination. Any changes or amendments to existing programs shall be filed with the Commission on or before May 31 of each year thereafter. If, pursuant to paragraphs (b) and (d) of this section or § 76.12(g), a cable operator has been exempted from the requirement that it file an equal employment opportunity program statement, but has failed to satisfy the conditions of that exemption at any time during the first 3 months of a calendar year, it shall file the statement on or before May 31 of that year.

(h) *Report of complaints.* Every employment unit shall submit an annual report to the Commission indicating whether any complaints regarding violations by the cable operator of equal employment provisions of Federal, State, territorial, or local law have been filed during the preceding calendar year before any body having competent jurisdiction. This report may be filed in conjunction with the report required by paragraph (i) of this section. The report shall state with respect to each such complaint: the parties involved, the date filed, the courts or agencies before which the matter has been heard, the appropriate file number (if any), and the respective disposition or current status of the complaint. Any cable operator who has filed such information with the Equal Employment Opportunity Commission need not do so with the Federal Communications Commission, if such previous filing is indicated.

(i) *Report of annual employment.* Every employment unit shall file with the Commission an annual employment report (FCC form 395-A). However, only employment units with five or more full-time employees need complete the employment data portions of the form. employment data shall reflect the figures from any one payroll period in January, February, or March of the year during which the report is filed. The same payroll period should be used in each year's annual employment report.

(j) *Records available for public inspection.* (1) A copy of every annual employment report, equal employment opportunity program statement, and complaint report that has been filed with the Commission, and copies of all exhibits, letters, and, other documents filed as part thereof, all amendments thereto, all correspondence between the cable operator and the Commission pertaining to the reports after they have been filed and all documents incorporated therein by reference, are open for public inspection at the offices of the Commission in Washington, D.C.

(2) Every employment unit shall maintain for public inspection a file containing a copy of every document described in subparagraph (1) of this paragraph. Each document shall be retained for a period of 5 years, except for program statements, which must be retained until superseded. The file shall be maintained at the principal workplace of the employment unit, or at any accessible location (such as a public registry for documents or an attorney's office) in the principal community served by the employment unit. A headquarters office employment unit file and a file containing a consolidated set of all documents pertaining to the other employment units of a multiple cable operator shall be maintained at the headquarters office of the cable operator or at any accessible place in the community in which the office is located. The operator shall provide reasonable accommodations at these locations for undisturbed inspection of his equal employment opportunity records by members of the public during regular business hours.

APPENDIX C

TOTAL EMPLOYEES - 1974

CHART #1

[78-32231-C]

JOB CATEGORIES	ALL EMPLOYEES			MINORITY GROUP EMPLOYEES										TOTAL
				MALE				FEMALE						
	Total (Col. 2+3)	Male	Female	Negro	Oriental	American Indian	Spanish Surnamed American	Negro	Oriental	American Indian	Spanish Surnamed American	All Minorities	
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)		
Officials and managers	2,410	1,990	420	12	11	15	42	1	3	2	9	95	
Professionals	740	670	70	11	1	6	15	2	-	1	-	36	
Technicians	4,620	4,580	40	110	24	31	187	4	5	-	1	362	
Sales workers	890	730	160	41	3	2	44	9	2	1	5	107	
Office and clerical	3,990	230	3,760	25	7	4	16	90	25	18	176	361	
Craftsmen (Skilled)	2,600	2,530	70	134	8	27	161	3	2	-	6	341	
Operatives (Semi-skilled)	1,620	1,600	20	75	9	10	107	-	1	1	1	204	
Laborers (Unskilled)	260	250	10	13	3	1	12	-	-	-	-	29	
Service workers	170	160	10	8	0	1	15	-	-	-	-	24	
TOTAL	17,300	12,740	4,560	429	66	97	599	109	38	23	198	1,559	

CHART #2

APPENDIX C

PERCENT OF TOTAL EMPLOYEES - 1974

JOB CATEGORIES	ALL EMPLOYEES			MINORITY GROUP EMPLOYEES								
				MALE				FEMALE				TOTAL
	Total (Col. 2+3) (1)	Male (2)	Female (3)	Negro (4)	Oriental (5)	American Indian (6)	Spanish Surnamed American (7)	Negro (8)	Oriental (9)	American Indian (10)	Spanish Surnamed American (11)	All Minorities
Officials and managers	14	12	2	.07	.06	.09	.2	.006	.02	.01	.05	.5
Professionals	4	4	.4	.06	.006	.03	.09	.01	-	.006	-	.2
Technicians	27	26	.2	.6	.1	.2	1	.02	.03	-	.006	2
Sales workers	5	4	.9	.2	.02	.01	.3	.05	.01	.006	.03	.6
Office and clerical	23	1	22	.1	.04	.02	.09	.5	.1	.1	1	2
Craftsmen (Skilled)	15	15	.4	.8	.05	.2	.9	.02	.01	-	.03	2
Operatives (Semi-skilled)	9	9	.1	.4	.05	.06	.6	-	.006	.006	.006	1
Laborers (Unskilled)	2	1	.06	.08	.02	.006	.07	-	-	-	-	.2
Service workers	1	.9	.06	.05	-	.006	.09	-	-	-	-	.1
TOTAL	100	74	26	2.5	.4	.6	3	.6	.2	.1	1	9

CHART # 3

TOTAL EMPLOYEES IN SAMPLE - 1976

APPENDIX C

JOB CATEGORIES	TOTAL	MALE					FEMALE				
		American Indian, Alaskan Native	Asian, Pacific Islander	Black	Hispanic	White	American Indian, Alaskan Native	Asian, Pacific Islander	Black	Hispanic	White
OFFICIALS & MANAGERS	404	6	4	-	15	288	3	1	3	3	81
PROFESSIONALS	38	2	2	-	-	31	-	-	1	-	2
TECHNICIANS	612	13	6	11	21	556	1	-	-	-	4
SALES WORKERS	214	1	-	3	6	137	-	1	1	5	60
OFFICE & CLERICAL	598	4	1	1	4	39	12	8	20	36	473
CRAFTSMEN (Skilled)	473	6	13	35	37	364	-	-	-	1	17
OPERATIVES (Semi-skilled)	151	-	5	3	26	116	-	-	-	1	-
LABORERS (Unskilled)	17	-	-	-	-	17	-	-	-	-	-
SERVICE WORKERS	20	-	-	2	-	17	-	-	-	-	1
TOTAL	2527	32	31	55	109	1565	16	10	25	46	638

CHART # 4 PERCENT OF TOTAL SAMPLE - 1976 APPENDIX C

JOB CATEGORIES	TOTAL	MALE					FEMALE				
		American Indian, Alaskan Native	Asian, Pacific Islander	Black	Hispanic	White	American Indian, Alaskan Native	Asian, Pacific Islander	Black	Hispanic	White
OFFICIALS & MANAGERS	15.99	0.24	0.16	-	0.59	11.40	0.12	0.04	0.12	0.12	3.20
PRO-FESSIONALS	1.51	0.08	0.08	-	-	1.23	-	-	0.04	-	0.08
TECHNICIANS	24.21	0.51	0.24	0.43	0.83	22.00	0.04	-	-	-	0.16
SALES WORKERS	8.47	0.04	-	0.12	0.24	5.42	-	0.04	0.04	0.20	2.37
OFFICE & CLERICAL	23.65	0.16	0.04	0.04	0.16	1.54	0.47	0.32	0.79	1.42	18.71
CRAFTSMEN (Skilled)	18.70	0.24	0.51	1.38	1.46	14.40	-	-	-	0.04	0.67
OPERATIVES (Semi-skilled)	5.98	-	0.20	0.12	1.03	4.59	-	-	-	0.04	-
LABORERS (Unskilled)	0.67	-	-	-	-	0.67	-	-	-	-	-
SERVICE WORKERS	0.79	-	-	0.08	-	0.67	-	-	-	-	0.04
TOTAL	100*	1.27	1.23	2.17	4.31	61.92	0.63	0.40	0.99	1.82	25.23

*Arithmetic disagreement due to rounding off of percentages.

CHART # 5 TOTAL EMPLOYEES IN SAMPLE - 1977 APPENDIX C

JOB CATEGORIES	TOTAL	MALE					FEMALE				
		American Indian, Alaskan Native	Asian, Pacific Islander	Black	Hispanic	White	American Indian, Alaskan Native	Asian, Pacific Islander	Black	Hispanic	White
OFFICIALS & MANAGERS	392	4	5	2	13	280	3	1	3	1	80
PRO-FESSIONALS	32	2	1	-	-	26	-	-	-	-	3
TECHNICIANS	613	9	5	13	15	560	1	-	-	-	10
SALES WORKERS	161	-	-	8	5	111	1	1	1	5	29
OFFICE & CLERICAL	658	-	2	3	2	48	9	10	25	38	521
CRAFTSMEN (Skilled)	461	1	16	33	32	373	-	-	-	-	6
OPERATIVES (Semi-skilled)	190	1	8	9	20	151	-	-	-	-	1
LABORERS (Unskilled)	24	-	-	-	-	24	-	-	-	-	-
SERVICE WORKERS	41	1	-	4	3	31	-	-	-	-	2
TOTAL	2572	18	37	72	90	1604	14	12	29	44	652

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CHART # 6 PERCENT OF TOTAL SAMPLE - 1977 APPENDIX C

JOB CATEGORIES	TOTAL	MALE				FEMALE			
		American Indian, Alaskan Native	Asian, Pacific Islander	Black	Hispanic	American Indian, Alaskan Native	Asian, Pacific Islander	Black	Hispanic	White
OFFICIALS & MANAGERS	15.24	0.15	0.19	0.08	0.5	0.12	0.04	0.12	0.04	3.11
PROFESSIONALS	1.25	0.08	0.04	-	-	-	-	-	-	0.12
TECHNICIANS	23.82	0.35	0.19	0.05	0.58	0.04	-	-	-	0.39
SALES WORKERS	6.25	-	-	0.31	0.19	-	0.04	0.04	0.19	1.13
OFFICE & CLERICAL	25.61	-	0.08	0.12	0.08	0.35	0.39	0.97	1.48	20.27
CRAFTSMEN (Skilled)	17.91	0.04	0.62	1.28	1.24	-	-	-	-	0.23
OPERATIVES (Semi-skilled)	7.39	0.04	0.31	0.35	0.78	-	-	-	-	0.04
LABORERS (Unskilled)	0.93	-	-	-	-	-	-	-	-	-
SERVICE WORKERS	1.59	0.04	-	0.15	0.12	-	-	-	-	0.08
TOTAL	100*	0.70	1.43	2.79	3.49	0.55	0.47	1.13	1.71	25.37

*Arithmetic disagreement due to rounding off of percentages.

[FR Doc. 78-32231 Filed 11-16-78; 8:45 am]

FEDERAL REGISTER, VOL. 43, NO. 223—FRIDAY, NOVEMBER 17, 1978

proposed rules

This section of the FEDERAL REGISTER contoins notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participote in the rule making prior to the adoption of the finol rules.

[6325-01-M]

CIVIL SERVICE COMMISSION

[5 CFR Part 334]

TEMPORARY ASSIGNMENT OF EMPLOYEES BETWEEN EXECUTIVE AGENCIES AND STATES, LOCAL GOVERNMENTS, AND INSTITUTIONS OF HIGHER EDUCATION

Proposed Rulemaking

AGENCY: U.S. Civil Service Commission.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rule seeks to amend part 334 to: Reflect the inclusion of Indian tribal governments and the Northern Mariana Islands as eligible participants under the mobility provisions of the Intergovenmental Personnel Act, as amended; limit back-to-back assignments; limit total time spent on assignment(s) by an individual employee; encourage more cost-sharing; require forwarding of assignment agreement within 15 days after start of assignment; allow 30 days advance notice on early terminations; limit participation of noncareer employees; and clarify employee's right to return to original position. These amendments are intended to strengthen the administration and regulation of the mobility program.

DATE: Comments must be received by January 15, 1979.

ADDRESS: Comments should be directed to Miriam Ershkowitz, Director, Office of Faculty Fellows and Personnel Mobility, Bureau of Intergovenmental Personnel Programs, 1900 E Street NW., Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT:

Ardrey Harris, Office of Faculty Fellows and Personnel Mobility, Bureau of Intergovenmental Personnel Programs, Room 2A11, 1900 E Street NW., Washington, D.C. 20415, telephone 202-632-5373.

It is proposed that 5 CFR Part 334 be revised to read as follows:

PART 334—TEMPORARY ASSIGNMENT OF EMPLOYEES BETWEEN EXECUTIVE AGENCIES AND STATES, LOCAL AND INDIAN TRIBAL GOVERNMENTS, AND INSTITUTIONS OF HIGHER EDUCATION

Sec.
334.101 Purpose.
334.102 Definitions.
334.103 Length of assignments.
334.104 Requirement for written agreement.
334.105 Termination of agreement.
334.106 Reports required.

AUTHORITY: 5 U.S.C. 3376; E.O. 11589, 3 CFR 557 (1971-1975)

§ 334.101 Purpose.

The purpose of this part is to carry into effect the objectives of title IV of the Intergovernmental Personnel Act of 1970, which authorizes the temporary assignment of employees between Executive agencies and States, local and Indian tribal governments, and institutions of higher education.

§ 334.102 Definitions.

In this part: (a) "Assignment" means a period of service under chapter 33, subchapter VI of Title 5, United States Code.

(b) "Employee" means an individual employed in a career position or as an attorney or presidential management intern in an executive agency; or an individual employed for at least 90 days in a career position with a State, local, or Indian tribal government, or an institution of higher education;

(c) "Executive agency" has the meaning given that term by section 105 of Title 5, United States Code;

(d) "Institution of higher education" means a domestic, accredited public or private 4-year college, university, or a technical or junior college;

(e) "Indian tribal government" refers to any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village as defined in the Alaska Native Claims Settlement Act (85 Stat. 688) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and includes any tribal organization as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638, S. 105);

(f) "Local government" means any political subdivision, instrumentality, or authority of a State or States; and any general or special purpose agency of such a political subdivision, instrumentality, or authority; and

(g) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, and a territory or possession of the United States; and an instrumentality or authority of a State or States; and a Federal-State authority or instrumentality.

§ 334.103 Length of assignment.

(a) An assignment may be made for up to 2 years and may be extended by the head of the executive agency for up to 2 additional years.

(b) An Executive agency may not send or receive on assignment an employee who has served for 4 continuous years on an assignment without at least a 12-month return to duty with his or her original employer.

(c) Assignments less than 60 calendar days apart involving the same participants, are a continuous assignment.

(d) An executive agency may not send on assignment an employee who has served on mobility assignments for more than a total of 6 years during his or her Federal career. The Commission may waive this provision upon the written request of the agency head.

§ 334.104 Requirement for written agreement.

(a) Before an assignment is made, the executive agency and the State, local or Indian tribal government, or institution of higher education, and the assigned employee shall enter into a witten agreement which records the obligations and responsibilities of the parties as specified in Federal Personnel Manual chapter 334.

(b) Where the Federal agency pays more than 50 percent of the costs of the mobility assignment involving a Federal employee and the period of assignment exceeds 6 months, the agency must document the rationale for the cost-sharing arrangements in the mobility agreement.

(c) Two copies of the original agreement, as well as any modification, must be sent to the U.S. Civil Service Commission within 15 days of the date that the assignment or modification becomes effective.

§ 334.105 Termination of agreement.

(a) An assignment may be terminated at any time at the request of the executive agency or the State, local,

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Indian tribal government, or institution of higher education involved. The party terminating the assignment prior to the agreed upon date should provide 30 days advance notice along with a statement of reasons to the other signers of the agreement.

(b) At the end of the assignment, agencies must return the employee to the same position occupied prior to the mobility assignment or reassign the employee to another position of like pay, grade level, and kind. If promoted while on assignment, the employee must be returned to the new position at the completion of the assignment.

§ 334.106 Reports required.

An executive agency which assigns an employee to or receives an employee from a State, local, Indian tribal government, or institution of higher education in accordance with this part shall submit to the Commission such reports as the Commission may request.

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-32026 Filed 11-16-78; 8:45 am]

[6720-01-M]

FEDERAL HOME LOAN BANK BOARD

[12 CFR Part 552]

[No. 78-605]

FEDERAL SAVINGS AND LOAN SYSTEM

Mergers and Consolidations for Federal Stock Associations

NOVEMBER 8, 1978.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed regulations.

SUMMARY: The proposed regulations would provide merger rules for savings and loan associations having Federal stock charters. The Board believes such rules are necessary because merger questions relating to Federal stock associations have arisen and the present regulations are silent on this matter.

DATE: Comments must be received on or before: January 15, 1979.

ADDRESS: Send comments to the Office of the Secretary, Federal Home Loan Bank Board, 17th and G Street NW., Washington, D.C. 20552. Comments available for public inspection at this address.

FOR FURTHER INFORMATION, CONTACT:

Douglas P. Faucette, Associate General Counsel, Federal Home Loan Bank Board (202-377-6410), at the above address.

SUPPLEMENTARY INFORMATION: On October 28, 1974, the National Housing Act was amended by Pub. L. 93-495 to provide Federal mutual associations converting to the stock form of organization the opportunity to retain their Federal charters. In implementation thereof, the Board adopted part 552 of the rules and regulations for the Federal Savings and Loan System (12 CFR 552, Resolution No. 75-414; May 9, 1975). It was intended that part 552 would constitute the minimal regulations necessary for the operation of Federal stock associations; the Board stated in the preamble to its March 7, 1975, proposal of part 552 (Board Resolution No. 75-226) that regulations relating to corporate actions such as mergers would be proposed at a later date.

Promulgation of merger regulations was deferred at that time in order to (1) provide implementing regulations without undue delay, (2) concentrate limited staff resources on initial conversions, and (3) gain experience with the new Federal stock associations. These objectives have been achieved. Accordingly, the Board proposes new §§ 552.13, 552.14, and 552.15, to read as set forth below.

PART 552—STOCK ASSOCIATIONS

§ 552.13 Combinations involving charter S associations.

(a) *Scope and authority.* Charter S associations may enter into combinations only in accordance with the provisions of this section.

(b) *Definitions.* (1) Association—any building and loan, savings and loan, or homestead association, or cooperative bank, organized under Federal or State law.

(2) Consolidation—fusion of two or more associations into a newly created association having the combined powers and rights of all its constituents.

(3) Constituent association—resulting or disappearing association.

(4) Disappearing association—(i) any association whose corporate existence does not continue after a merger effected under this section, (ii) any constituent association consolidating under this section, or (iii) the selling association in the case of a bulk sale in exchange for assumption of liabilities.

(5) Merger—uniting two or more associations by the transfer of all property rights, and franchises to one, which retains its name and corporate identity.

(6) Mutual association—any association organized in a form not requiring nonwithdrawable stock under Federal or State law.

(7) Stock association—any association organized in a form requiring nonwithdrawable stock.

(8) Resulting association—an association which continues its corporate existence after, or is created by, a combination effected under this section.

(9) State—includes the District of Columbia, Commonwealth of Puerto Rico, and States, territories, and possessions of the United States.

(c) *Forms of combination.* Charter S associations may combine with other associations in the following ways:

(1) Mergers or bulk purchases of assets in exchange for assumption of liabilities: *Provided,* that (i) all constituent associations have accounts insured by the Federal Savings and Loan Insurance Corporation, and (ii) if any constituent is a mutual association, the resulting association shall be mutually held.

(2) Consolidations among Federal associations resulting in Federal mutual associations.

(d) *Board approval.* Prior written approval of the Board is required for every combination. In determining whether to confer such approval, the Board shall apply the criteria set forth in § 571.5 of this chapter.

(e) *Approval of board of directors.* Before filing for Board approval, the combination shall be approved by each constituent association's board of directors: (1) By a two-thirds vote of the entire board of each Federal association, and (2) as required by State law for other constituents.

(f) *Combination agreement.* (1) All terms, conditions, agreements or understandings, or other provisions with respect to the combination, shall be set forth fully in a written combination agreement.

(2) The combination agreement shall state: (i) that the combination shall not be effective unless and until approved by the Board; (ii) which constituent association is to be the resulting association; (iii) the name of the resulting association; (iv) the location of the home office and any other offices of the resulting association; (v) the terms and conditions of the combination and method of effectuation; (vi) any charter amendments, or the new charter in the event of consolidation; (vii) the manner of converting or exchanging the stock of each constituent association into stock, savings accounts, or other securities of the resulting association or cash, property, rights, or securities of any other entity in connection with the combination; (viii) the basis upon which the savings accounts of the resulting association shall be issued; (ix) the number, names and residence addresses, and terms of directors; (x) the effect upon and assumption of any liquidation account of a disappearing association by the resulting association; and (xi) such other provisions, agreements, or understandings as relate to the combination.

(g) *Application for Board approval.* (1) *Contents.* Applications shall be in a form prescribed by the Board and shall include appropriate information regarding fairness and legal, economic, managerial, financial, disclosure, accounting, and tax aspects of the combinaton.

(2) *Filing requirement.* Constituent associations shall file jointly two copies of applications prepared pursuant to this section with their Principal Supervisory Agent, and two with the Board's Office of the Secretary.

(h) *Notice.* (1) *Publication of notice.* Constituent associations shall jointly publish notice within 15 days of filing an application with the Board. Notice shall be published on the same day of each of 2 consecutive weeks in a newspaper printed in the English language and having a general circulation in the community or communities served by the constituent associations. If the Supervisory Agent determines that the primary language of a significant number of the adult residents of the community is a language other than English, she/he may require that notice also be given in the appropriate language(s). The notice shall include: (i) A statement that an application under this section has been filed with the Board; (ii) the name and address of the home or principal office of each constituent association; (iii) a brief summary of the principal terms of the combination agreement; (iv) the name and address of the home office of the resulting association; (v) a statement as to which offices of constituent associations are to be maintained as home office or branches and which are to be discontinued; (vi) a statement that any person may file written comments concerning the application which will be considered by the Board if filed with the Office of the Principal Supervisory Agent and the Board's Office of the Secretary (with addresses disclosed) within 10 days (or within 30 days if advice is filed within the first 10 days stating that more time is needed to furnish additional information) of publication or such later date as may be permitted by the Office of the Principal Supervisory Agent; and (vii) a statement that the application and all comments filed pursuant to the notice shall be available for public inspection by any person at the above offices, except for any material exempt from disclosure pursuant to the Freedom of Information Act. Promptly after publication of the notice, the constituent associations shall jointly file with the Board two copies of the notice and publisher's affidavit of publication.

(2) *Notice to State officials and other interested persons.* The Supervisory Agent shall give notice of the application to the State official who supervises savings and loan associations in the State in which the constituent associations are located, and to persons whose requests for announcements under § 563e.6 of the rules and regulations for insurance of accounts have been received in time for such notification; these notices shall be in addition to legal notification as set forth in subparagraph (h)(1) of this paragraph. The Supervisory Agent may also give notice to any other persons she/he believes might have an interest in the application.

(3) *Republication.* In the event of a determination by the Board's Office of the General Counsel that at the time notice was published the application was materially incomplete, each constituent association shall, in accordance with the directions of that Office, republish or redeliver such notice.

(4) *Notice to stockholders.* In addition to publication, constituent Charter S associations shall mail notice of the filing of applications to stockholders within 10 days of filing. The contents of such notice shall be in the form prescribed by subparagraph (1).

(5) *Procedure.* Processing of an application under this section shall follow the procedures set forth in this paragraph and in § 543.2(e)(2)-(5) and § 543.2(f).

(i) *Approval by charter S stockholders.* (1) *Prior Board approval.* No meeting for the purpose of voting on a combination agreement shall be held, and no proxies for such meeting of a stock association shall be solicited, prior to the approval of the combination agreement by the Board.

(2) *Charter S stockholder approval.* Except as provided below in this section, an affirmative vote of two-thirds of the outstanding voting stock shall be required for approval of the combination agreement. If any class of shares is entitled to vote as a class pursuant to § 552.4 of this part, an affirmative vote of a majority of the shares of each voting class and two-thirds of the total voting shares shall be required. The required votes shall be taken at a meeting of the association.

(3) *Exceptions.* Stockholders of the resulting association need not authorize a combination agreement if: (i) The association's charter is not changed; (ii) each share of stock outstanding immediately prior to the effective date of the combination is to be an identical outstanding share or a treasury share of the resulting association after such effective date; and (iii) either (*a*) no shares of voting stock of the resulting association and no securities convertible into such stock are to be issued or delivered under the plan of combination, or (*b*) the authorized unissued shares or the treasury shares of voting stock of the resulting association to be issued or delivered under the plan of combination, plus those initially issuable upon conversion of any securities to be issued or delivered under such plan, do not exceed 15 percent of the total shares of voting stock of such association outstanding immediately prior to the effective date of the combination.

(j) *Disclosure.* The Board may require, in connection with a combination under this section, such disclosure of information as it deems necessary or desirable for the protection of investors in any of the constituent associations.

(k) *Articles of combination.*

(1) Following stockholder approval, articles of combination shall be executed in duplicate by each association, by its chief executive officer or executive vice president and by its secretary or an assistant secretary, and verified by one of the officers of each association signing such articles, and shall set forth: (i) The plan of combination; (ii) the number of shares outstanding in each association; and (iii) the number of shares in each association voted for and against such plan.

(2) Both sets of articles of combination shall be filed with the Office of the Secretary which shall, if it finds that such articles conform to the requirements of this regulation, endorse the articles and return one set to the resulting association.

(l) *Effective date.* No combination under this section shall be effective until approved by the Board. The effective date of a combination in which the resulting association is a Charter S association shall be the date of endorsement of the articles of combination by the Office of the Secretary. The effective date of a combination in which the resulting association is not a Federal association shall be a date subsequent to Board approval prescribed by the law of the State under which the resulting association is chartered. If a disappearing association combining under this section is a Charter S association, its charter shall be deemed to be canceled as of the effective date of the combination; such charter shall be surrendered to the Board at the time of filing of the articles of combination.

(m) *Mergers and consolidations: Transfers of assets and liabilities to resulting association.* Upon the effective date of merger or consolidation under this section, if the resulting association is a Federal association, all assets and property (real, personal, and mixed, tangible and intangible, choses in action, rights, and credits)

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then owned by each constituent association or which would inure to any of them, shall immediately by operation of law and without any conveyance, transfer, or further action, become the property of the resulting association. The resulting association shall be deemed to be a continuation of the entity of each constituent association, the rights and obligations of which shall remain unimpaired, and the resulting association, on the effective date of merger or consolidation, shall succeed to such rights and obligations and the duties and liabilities connected therewith.

§ 552.14 Appraisal rights.

(a) *Right to demand payment for appraised value.* Except as provided in paragraph (b) of this section, any stockholder of a Charter S association combining in accordance with § 552.13 of this part shall have the right to demand payment of the appraised value of his stock: *Provided,* That such stockholder has not voted in favor of the combination and complies with the provisions of subsection (c) of this section.

(b) *Exceptions.* No stockholder required to accept only qualified consideration for his stock shall have the right under this section to demand payment of the stock's appraised value if (1) such stock was listed on a national securities exchange on the date of the meeting of stockholders at which the combination was acted upon; or (2) stockholder action is not required for a combination made pursuant to § 552.13(i)(3) of this part. "Qualified consideration" means cash, shares of stock of any association or corporation which at the effective date of the combination will be listed on a national securities exchange, or any combination of shares of stock and cash described above.

(c) *Procedure.*

(1) *Notice.* Each constituent Charter S association shall notify all stockholders entitled to rights under this section, not less than 20 days prior to the meeting at which the combination agreement is to be submitted for stockholder approval, of the right to demand payment of appraised value of shares, and shall include in such notice a copy of this section. Such notice shall be sent individually to stockholders of record and may be part of management's proxy solicitation for such meeting.

(2) *Demand for appraisal and payment.* Each stockholder electing to make a demand under this section shall deliver to the Charter S association, before voting on the combination, a writing identifying himself and stating his intention thereby to demand appraisal of and payment for his shares. Such demand must be in addition to and separate from any proxy or vote against the combination by the stockholder.

(3) *Notification of effective date.* Within 10 days after the effective date of the combination, the resulting association shall individually notify stockholders of constituent Charter S associations, who have complied with the provisions of subparagraph (c)(2) and have not voted in favor of the combination, of the effective date of the combination and inform them that, within 60 days of such date, the respective requirements of subparagraphs (c) (4) and (5) (set out in the notice) must be satisfied.

(4) *Stock certificates to be noted.* Within 60 days after the effective date of the combination, each stockholder demanding appraisal and payment under this section shall submit to the transfer agent his certificates of stock for notation thereon that an appraisal and payment have been demanded with respect to such stock and that appraisal proceedings are pending. Any stockholder who fails to submit his stock certificates for such notation shall no longer be entitled to appraisal rights under this section and shall be deemed to have accepted the terms offered under the combination.

(5) *Petition to be filed.* Within 60 days after the effective date of the combination, stockholders of a constituent Charter S association who have complied with the provisions of subparagraphs (c) (2) through (4) and who are otherwise entitled to appraisal rights under this section, may file a petition with the Board, with a copy by registered or certified mail to the resulting association, demanding a determination of the fair market value of the stock of all such stockholders. A stockholder entitled to file a petition under this section who fails to file such petition shall be deemed to have accepted the terms offered under the combination.

(6) *Withdrawal of demand.* Notwithstanding the foregoing, at any time within 60 days after the effective date of the combination, any stockholder shall have the right to withdraw his demand for appraisal and to accept the terms offered upon the combination.

(7) *Valuation and payment.* The Board shall direct the Office of Economic Research, or if it so elects, appoint one or more independent persons, to appraise the shares, determining their fair market value exclusive of any element of value arising from the accomplishment or expectation of the combination. Appraisals prepared by independent persons shall be reviewed and opined upon by the Office of Economic Research as to the suitability of the appraisal methodology and the adequacy of the analysis and supportive data. The Board after consideration of the appraisal report and the advice of the Office of Economic Research shall if it concurs in the valuation of the shares direct payment by the resulting association of the appraised fair market value of the shares, upon surrender of the certificates representing such stock. Payment shall be made, together with interest from the effective date of the combination, at a rate deemed equitable by the Board.

(8) *Voting and distribution.* Any stockholder who had demanded his appraisal rights as provided in subparagraph (2) of this paragraph shall thereafter neither be entitled to vote such stock for any purpose nor be entitled to the payment of dividends or other distributions on the stock (except dividends or other distribution payable to, or a vote to be taken by stockholders of record at a date which is on or prior to, the effective date of combination): *Provided,* That if any stockholder becomes unentitled to appraisal and payment of appraised value with respect to such stock and accepts or is deemed to have accepted the terms offered upon the combination, such stockholder shall thereupon be entitled to vote and receive the distributions described above.

(9) *Status.* Shares of the resulting association into which shares of the stockholders demanding appraisal rights would have been converted or exchanged, had they assented to the combination, shall have the status of authorized and unissued shares of the resulting association.

§ 552.15 Supervisory mergers.

Notwithstanding the foregoing provisions of this Part, the Board may determine to waive or deem inapplicable any part of §§ 552.13 or 552.14 insofar as it is deemed necessary to avert imminent failure of a Charter S association. For purposes of such action under subsection 5(d) of the Home Owners Loan Act, the term "member" shall include stockholders of a Charter S association.

(Sec. 105, Pub. L. 93-495, Oct. 28, 1974; secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended; 12 U.S.C. 1725, 1726, 1730; sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464. Reorganizational Plan. No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 comp., p. 1071.)

By the Federal Home Loan Bank Board.

J. J. FINN,
Secretary.

[FR Doc. 78-32391 Filed 11-16-78; 8:45 am]

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[1505-01-M]

SMALL BUSINESS ADMINISTRATION

[13 CFR Part 120]

BUSINESS LOAN POLICY

Proposed Rulemaking

Correction

In FR Document 78-29282 appearing at page 47734 in the issue for Tuesday, October 17, 1978, the date of deadline for comments given in the "Date" paragraph on page 47734 should have been "December 18, 1978" instead of "November 16, 1978".

[3510-17-M]

DEPARTMENT OF COMMERCE

Office of the Secretary

[15 CFR Part 15]

PROHIBITION OF DISCRIMINATION AGAINST THE HANDICAPPED IN FEDERALLY ASSISTED PROGRAMS OPERATED BY THE DEPARTMENT OF COMMERCE

Proposed Rule

AGENCY: Department of Commerce.

ACTION: Proposed rule.

SUMMARY: This proposed rule is to implement section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 as it applies to federal financial assistance administered by the Department of Commerce. Section 504 provides in relevant part that: "No otherwise qualified handicapped individual * * * shall, solely by reason of his handicap, be exluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." This proposed regulation covers all recipients of federal financial assistance and is intended to insure that their federally assisted programs and activities are operated without discrimination on the basis of handicap.

DATE: All interested persons and organizations are invited to submit written comments no later than January 2, 1979.

ADDRESS: Director, Office of Civil Rights, Department of Commerce, Room 4065, 14th and Constitution Avenue NW., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT:

Alice K. Helm, Deputy Assistant General Counsel for Administration Management, 202-377-5391.

SUPPLEMENTARY INFORMATION: On April 28, 1976, President Ford issued Executive Order 11914 (41 FR 17871) to effect uniform implementation of section 504 of the Rehabilitation Act of 1973 as amended (Pub. L. 93-112, 29 U.S.C. 794). Executive Order 11914 directed the Secretary of the Department of Health, Education, and Welfare to coordinate implementation of section 504 by Federal agencies.

On January 13, 1978, HEW's coordinating regulations (43 FR 2132) took effect. Section 85.4 of these regulations required that all agencies administering programs of federal financial assistance draft proposed handicap regulations consistent with HEW's regulations.

In response to the above obligations, the Department of Commerce now proposes to add 15 CFR Part 15 as follows.

Dated: November 1, 1978.

JUANITA M. KREPS,
Secretary.

Sec.
15.1 Purpose.
15.2 Application.
15.3 Definitions.
15.4 General prohibition of discrimination against the handicapped.
15.5 Employment.
15.6 Program accessibility.
15.7 Compliance.
15.8 Enforcement.

AUTHORITY: Executive Order 11914; sec. 504, Rehabilitation Act of 1973, as amended (Pub. L. 93-112, 29 U.S.C. 794).

§ 15.1 Purpose.

This rule is intended to prohibit discrimination against the handicapped in programs operated by recipients of Federal financial assistance authorized by the Department of Commerce. Section 504 of the Rehabilitation Act of 1973 as amended, 29 U.S.C. 794, and Executive Order 11914 require the Department of Commerce to issue the following proposed regulation based on regulations issued by the Department of Health, Education, and Welfare on January 13, 1978 (43 FR 2132).

§ 15.2 Application.

This part applies to each recipient and program or activity that receives or benefits from Federal financial assistance administered by the Department of Commerce.

§ 15.3 Definitions.

(a) "Executive order" means Executive Order 11914 titled "Nondiscrimination with respect to the Handicapped in Federally Assisted Programs," issued April 28, 1976.

(b) "Section 504" means section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112, 29 U.S.C. 794, as amended by section 111(a), Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 29 U.S.C. 706.

(c) "Agency" means the Department of Commerce and any of its constituent units empowered to provide Federal financial assistance.

(d) "Recipient" means any State or its political subdivision, any instrumentality of a State or its political subdivision any public or private agency, institution, organization, or other entity to which Federal financial assistance is provided, either directly or through another recipient. This includes successors, assignees, and transferees, but excludes the ultimate beneficiary of the assistance. Wherever the term "recipient" appears, it shall be read to include "other parties" (see definition below).

(e) "Other parties" includes, in addition to recipients subject to this regulation, any person, any governmental, public, or private agency, institution or organization that, because of direct or substantial participation in any federally assisted program, is prohibited from engaging in the discriminatory acts covered by this part. Examples are; Contractors, subcontractors, employers, users of facilities or services, and commercial or industrial organizations located in a federally assisted industrial park.

(f) "Federal financial assistance" means any grant, loan, contract (other than a procurement contract or an insurance or guaranty contract), or any other arrangement by which an agency provides assistance in the form of:

(1) Funds;

(2) Service of Federal personnel; or

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the federal share or its fair market value is not returned to the Federal government.

(g) "Facility" includes but is not limited to all or any portion of buildings, ships, equipment, roads, parking lots, parks, industrial parks, or other real or personal property or interest in such property.

(h) "Handicapped person" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

(1) "Physical or mental impairment" means:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal, respiratory, cardiovascular, reproductive, digestive,

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genitourinary, hemic and lymphatic, skin, endocrine, special sense organs, speech organs, or

(ii) Any mental or psychological disorder such as mental retardation, oranic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments; cerebral palsy, epilepsy, muscular dystrophy, diabetes, mental retardation, emotional illness, drug addiction, and alcoholism.

(2) "Major life activities" includes self-care, working, performing manual tasks, walking, seeing, hearing, speaking, breathing, and learning.

(3) "Has a record of such an impairment" means has a history of, or has been classified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means has a physical or mental impairment that, while not substantially limiting major life activities, is treated by the recipient as so limiting;

(i) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(ii) Has none of the impairments defined in paragraph (h)(1) of this section but is treated by recipient as having such an impairment.

(i) "Qualified handicapped person" means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question; and

(2) With respect to services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

§ 15.4 General provisions on discrimination.

(a) A recipient of Federal financial assistance shall not discriminate in any way against qualified individuals because they are handicapped. Examples of prohibited discrimination include but are not limited to the following:

(1) Providing assistance to the handicapped that is not equal to or as effective as that provided for the nonhandicapped.

(2) Aiding or perpetuating discrimination against qualified handicapped persons by providing assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipients' program.

(3) Otherwise limiting a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(b) Recipients shall administer programs, activities, and services in a setting that permits the greatest possible degree of integration between handicapped and nonhandicapped persons. Program benefits or services shall be provided separately to qualified handicapped persons only where necessary to afford them equivalent benefits and services.

(c) Recipients shall insure that all necessary information is available in a form appropriately accessible to all handicapped applicants, employees, and beneficiaries. (Example: Braille and tapes for visually handicapped persons.)

(d) A recipient shall not deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards.

(e) In determining the site or location of a facility, a recipient may not make selections that would discriminate against the handicapped.

(f) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or executive order to handicapped persons, or the exclusion of specific classes of handicapped persons from a program limited to other classes of handicapped persons by Federal statute or executive order, is not prohibited by this part.

§ 15.5 Employment.

(a) *General prohibitions against employment discrimination.* (1) No recipient of Federal financial assistance may discriminate in any phase of employment against qualified handicapped persons. Similarly, no recipient may engage in employment practices that, regardless of the recipient's intentions, have the effect of discriminating against the handicapped. Areas of prohibited employment discrimination include but are not limited to: Recruitment, hiring, compensation, training, job assignments, tenure, seniority, leave, or any other condition or privilege.

(2) A recipient may not participate in a contract that involves discrimination against the handicapped. Examples: Contracts with employment and referral agencies, labor unions, organizations providing training or apprenticeship programs, and suppliers and administrators of fringe benefits.

(b) *Reasonable accommodation.* A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee, unless the recipient shows that such accommodation would impose an undue hardship on a program's operation or cause the program to be discontinued. Reasonable accommodation may include:

(1) Making facilities used by employees and beneficiaries readily accessible to and usable by handicapped persons, and

(2) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) *Employment criteria.* A recipient may not use employment tests or criteria that discriminate against handicapped persons. A recipient also must ensure that employment tests are adapted for use by persons who have handicaps that impair sensory, manual, or speaking skills.

(d) *Preemployment inquiries.* A recipient may not conduct a preemployment medical examination or make a preemployment inquiry as to whether an applicant is a handicapped person. A recipient may make preemployment inquiries only as to an applicant's ability to perform job-related functions.

(e) *Affirmative action.* When a recipient is taking remedial action to correct the effects of past discrimination, or when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped. *Provided,* That:

(1) The recipient states clearly on any written questionnaire used for this purpose that the information is solely for use in remedying past discrimination or in effecting affirmative action under section 503 of the Act (29 U.S.C. 793); and

(2) The recipient makes clear that the information is being requested on a strictly voluntary basis, will be kept confidential, and that failure to provide it will not adversely affect an applicant or employee.

(f) *Employment on ships.* The Department of Commerce incorporates by reference the physical and mental requirements for serving on ships established by the U.S. Coast Guard (46 CFR 10.01-1 et seq.). Since it is highly improbable that more than a few handicapped individuals could satisfy the Coast Guard requirements, the Department exempts all cargo ships, but not passenger ships, from the requirements of this part. Should any qualified handicapped person meet the Coast Guard requirements, reasonable accommodation shall be made on an individual basis.

§ 15.6 Program accessibility.

(a) *General requirement.* A program facility's alleged inaccessibility to or unusability by the handicapped shall not be an excuse for denying qualified handicapped persons the benefits of or participation in any program receiving Federal financial assistance. However, a recipient is not required to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons, so long as the program as a whole is accessible to the handicapped.

(b) *Existing facilities.* A recipient shall operate each program and/or activity so that, as a whole, they are readily accessible to and usable by qualified handicapped people.

(c) *Structural changes in existing facilities.* Where needed to make programs accessible to or usable by qualified handicapped persons, structural changes in existing facilities shall be made as soon as possible, but in any event no later than three (3) years after these regulations take effect.

(d) *New construction.* New facilities shall be designed and constructed so as to be readily accessible to and usable by the handicapped. Alterations to existing structures shall be subject to this same requirement.

(e) The minimum standards for structural accessibility shall be those prescribed by the American National Standards Institute, Inc. (ANSI A117.1-1961 (R1971), and these standards are incorporated by reference in this part (copies available from the American National Standards Institute, Inc., 1430 Broadway, New York, N.Y. 10018).

§ 15.7 Compliance.

(a) *Notice.* No later than ninety (90) days after this rule takes effect, a recipient shall take steps to notify all current and future employees and beneficiaries that it does not discriminate against the handicapped in compliance with section 504 and this regulation.

(b) *Assurance.* All recipients of Federal financial assistance to which this regulation applies shall sign a written form assuring that the programs and facilities receiving Federal financial assistance will be conducted in compliance with this regulation. If assistance is in the form of property or an interest in property, an assurance shall obligate the recipient not to discriminate against the handicapped for as long as the property is used for the general purpose for which the assistance is extended. Similar assurances may also be required from contractors, subcontractors, subgrantees, or other participants in the program.

(c) *Self-evaluation.* Within one (1) year after this regulation becomes effective, recipients shall evaluate their policies and practices to determine if they comply with this regulation; interested handicapped persons shall be asked to participate in this self-evaluation process. At a minimum, recipients shall ascertain the following:

(1) The extent to which discrimination against the handicapped still exists;

(2) The rate at which this problem is being resolved;

(3) Deficiencies in current practices;

(4) The specific steps that will be taken to remedy such deficiencies.

The results of the self-evaluation will be reviewed by the head of the Department of Commerce unit extending the Federal financial assistance. Following the initial self-evaluation recipients shall conduct a 504 self-evaluation at least once every two (2) years.

(c) *Authority delegation.* The Department of Commerce proposes to delegate to HEW the authority to monitor compliance with section 504 in higher education. This authority delegation would be coextensive with that already given HEW under Title VI.

§ 15.8 Enforcement.

The Department of Commerce incorporates by reference its Title VI enforcement proceedings (15 CFR 8.7-8.14).

[FR Doc. 78-32321 Filed 11-16-78; 8:45 am]

[6750-01-M]

FEDERAL TRADE COMMISSION

[16 CFR Part 13]

[File No. 781 0023]

INDIANA DENTAL ASSOCIATION, ET AL.

Consent Agreement with Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Provisional consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this provisionally accepted consent agreement, among other things, would require an Indianapolis, Ind., dental association and its 14 component societies to cease establishing or engaging in any policy, act, or practice that may induce their members to refuse to submit data requested by third-party payers for benefit determination; compel third-party payers to alter provisions of any health care benefits program; influence members to render other than independent judgments; or restrict consumers and third-party payers in their choice of dentists and/or dental consultants. The association and its component societies would be further required to mail a copy of the complaint and order to each of their members, together with a letter advising them that they are free to choose their own course of action in dealing with dental health care insurance plans.

DATE: Comments must be received on or before January 15, 1979.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, Sixth Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

FTC/CD, Alan K. Palmer, Washington, D.C. 20580, 202-523-3455.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and provisionally accepted by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's rules of practice (16 CFR 4.9(b)(14)).

[File No. 781 0023]

INDIANA DENTAL ASSOCIATION, ET AL.

AGREEMENT CONTAINING CONSENT ORDER TO CEASE AND DESIST

In the matter of Indiana Dental Association, a corporation; First District Dental Society, a corporation; Indianapolis District Dental Society, a corporation; Isaac Knapp Dental Society, a corporation; Western Indiana Dental Society, a corporation; Ben Hur Dental Society, an unincorporated association; East Central Dental Society, an unincorporated association; Eastern Indiana Dental Society, an unincorporated association; Greene District Dental Society, an unincorporated association; North Central Dental Society, an unincorporated association; Northwest Dental Society, a corporation; South Central Dental Society, an unincorporated association; South Eastern Dental Society, an unincorporated association; Wabash Valley Dental Society, an unincorporated association; and West Central Dental Society, an unincorporated association.

The Federal Trade Commission having initiated an investigation of certain activities of the Indiana Dental Association (IDA), a corporation, and of the component dental societies chartered by IDA (Component Societies), as named in the caption hereof, and IDA and the Component Societies having determined that they are willing to enter into an agreement to cease and desist from said activities;

It is hereby agreed by and between the IDA and the Component Societies, by their duly authorized officers and their attorneys.

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and counsel for the Federal Trade Commission that:

1. Respondent IDA is an Indiana corporation with its principal office at 402 Jefferson Building, 1 Virginia Avenue, Indianapolis, Ind. IDA charters, and is divided into, 14 geographic component societies, more particularly described below:

Respondent First District Dental Society, an Indiana corporation, is a component society of IDA with its mailing address in care of Dr. Steven E. Dixon, 3700 Bellemeade Avenue, Evansville, Ind.

Respondent Indianapolis District Dental Society, an Indiana corporation, is a component society of IDA with its principal office at the Illinois Building, 17 West Market Street, Indianapolis, Ind.

Respondent Isaac Knapp Dental Society, an Indiana corporation, is a component society of IDA with its mailing address in care of Dr. Emory W. Bryan, Jr., 700 Indiana Bank Building, Fort Wayne, Ind.

Respondent Western Indiana District Dental Society, an Indiana corporation, is a component society of IDA with its mailing address in care of Dr. Robert H. Michaels, 3120 Wabash Avenue, West Terre Haute, Ind.

Respondent Ben Hur Dental Society, an unincorporated association, is a component society of IDA with its mailing address in care of Dr. Michael A. McDonald, 1606 North Lebanon, Lebanon, Ind.

Respondent East Central Dental Society, an unincorporated association, is a component society of IDA with its mailing address in care of Dr. Paul B. Risk, 610 South Tillotson Avenue, Muncie, Ind.

Respondent Eastern Indiana Dental Society, an unincorporated association, is a component society of IDA with its mailing address in care of Dr. John P. Backmeyer, 2519 East Main Street, Richmond, Ind.

Respondent Greene District Dental Society, an unincorporated association, is a component society of IDA with its mailing address in care of Dr. Keith M. Broshears, 290 A Street, Linton, Ind.

Respondent North Central Dental Society, an unincorporated association, is a component society of IDA with its mailing address in care of Dr. Dennis M. Miller, 3608 Pleasant Street, South Bend, Ind.

Respondent Northwest Dental Society, an Indiana corporation, is a component society of IDA with its mailing address in care of Dr. Edward Young, 808 Madison Street, LaPorte, Ind.

Respondent South Central Dental Society, an unincorporated association, is a component society of IDA with its mailing address in care of Dr. Peter H. Leonard, 2739 Central Avenue, Columbus, Ind.

Respondent South Eastern Dental Society, an unincorporated association, is a component society of IDA with its mailing address in care of Dr. Elbert P. Combs, 411 Clifty Drive, Madison, Ind.

Respondent Wabash Valley Dental Society, an unincorporated association, is a component society of IDA with its mailing address in care of Dr. F. Wesley Pelk, 3429 South La Fontaine Street, Kokomo, Ind.

Respondent West Central Dental Society, an unincorporated association, is a component society of IDA with its mailing address in care of Dr. Lewis J. Urschel, 2204 Scott Street, Lafayette, Ind.

2. Only for the purpose of this proceeding, and for compliance and enforcement proceedings under the order contemplated hereby, IDA and the Component Societies individually and severally admit all the jurisdictional allegations set forth in the draft of the complaint here attached and waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

3. This agreement shall not become a part of the official record of this proceeding unless and until it is accepted by the Commission. The Commission may (1) accept the agreement; (2) reject it and issue a complaint for adjudication; or (3) take such other action as it may deem appropriate. If this agreement is accepted, the Commission will place said agreement on the public record, and at the same time will make available an explanation of the provisions of the order and the relief to be obtained thereby and any other information which it deems helpful in assisting interested persons to understand the terms of the order. For a period of sixty (60) days after placement of the order on the public record and issuance of the statement, the Commission will receive and consider any comments or views concerning the order that may be filed by any interested persons. Thereafter, if comments or views submitted to the Commission disclose facts or considerations which indicate that the order contained in the agreement is inappropriate, improper, or inadequate, the Commission may withdraw its acceptance of this agreement and so notify IDA and the Component Societies, in which event the Commission will take such other action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require), and decison, in disposition of the proceedings.

4. This agreement is for settlement purposes only and does not constitute an admission by IDA or any of the Component Societies that the law has been violated as alleged in the draft of complaint here attached.

5. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to IDA or any of the Component Societies, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached, and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so issued, the order to cease and desist shall have the same force and effect as, and may be altered, modified, or set aside in the same manner and within the same time as provided by statute for other orders. The order shall become final upon service. Mailing of the complaint and decision containing the agreed-to order to IDA and the Component Societies at the addresses stated in this agreement shall constitute service. IDA and the Component Societies waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or this agreement may be used to vary or contradict the terms of the order.

6. IDA and each of the Component Societies have read the proposed complaint and order contemplated hereby, and each understands that once the order has been issued, IDA and each of the Component Societies will be required to file one or more compliance reports showing that it has fully complied with the order, and that it may be liable for a civil penalty in the amount provided by then existing law for each violation of the order after it becomes final.

7. Nothing in this agreement shall affect any complaint or order which the Commission may issue with respect to IDA or any one or more of the Component Societies if this agreement is not accepted by the Commission.

ORDER

I

It is ordered, That the following definition shall apply in this order: "Third-party payer" or "payer" means any entity that provides a program of reimbursement for dental health care services to employees or members of any business organization, and any person, such as an independent claims adjuster, who provides evaluative services in connection with any such reimbursement program.

It is further ordered, That respondents, their successors or assigns, and the officers, agents, representatives and employees of each of them, directly or through any subsidiary, division, or other device, shall cease and desist from engaging in any activity, course of conduct, practice, or policy that in whole or in part:

A. Requests, urges, recommends, or suggests that dentists, or has the purpose or effect of requiring or organizing dentists to, (1) refuse to submit radiographs or such other pretreatment and post-treatment reports, analyses and materials (except where post-treatment radiographs are not taken in the course of treatment and would expose the patient to unnecessary radiation) as third-party payers request for use in benefit determination or (2) refuse to deal in any particular way with any one or more third-party payers;

B. Compels or coerces any third-party payer to incorporate, delete or odify any provision in any existing or proposed dental health care benefits program;

C. Has the purpose of causing or inducing consumers to choose dentists who do not cooperate with third-party payers, or influencing, to any degree, consumers' choice of dentists based on the degree and/or manner of noncooperation between such dentists and any third-party payer or payers;

D. Has the purpose of compelling, coercing, or inducing any third-party payer to select particular dental consultants for reasons other than the expertise of such consultants; or

E. Has the purpose or effect of influencing any dental consultant to render any opinion other than that which reflects his independent expert judgment.

III

It is further ordered, That, within thirty (30) days after this order becomes final, each respondent shall mail to each of its members a copy of the Commission's complaint and order in this matter, as well as a letter, in the form shown as "appendix A" to this order, advising that respondents have abandoned all policies, guidelines, and principles, that request, urge, recommend, or suggest that dentists, or have the purpose or effect of requiring or organizing dentists to, (1) refuse to submit radiographs or such other pretreatment and post-treatment reports, analyses and materials (except where post-treatment radiographs are not taken in the course of treatment and would expose the patient to unnecessary radiation) as third-party payers request for use in benefit determination or (2) refuse to deal in any particular way with any one or more third-party payers. Furthermore, the letter shall further advise that dentists are free to choose to deal with any such programs and payers in such manner as they decide individually. In addition to the foregoing, each respondent shall mail a copy of the aforementioned complaint, order, and letter to every person who joins such respondent within five (5) years of the date of service of this Order: *Provided, however*, That mailing by the Indiana Dental Association will relieve the appropriate component society of the obligation of such mailing to a member of the Indiana Dental Association.

IV

It is further ordered, That, within sixty (60) days after service of this order, and annually on the anniversary date of the original report, for each of the five (5) years thereafter, each respondent shall individually file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this Order.

V

It is further ordered, That nothing in this order shall be construed to exempt any respondent from compliance with the antitrust laws or the Federal Trade Commission Act, and the fact that any activity is not prohibited by this Order shall not bar a challenge to it under such laws and statute.

VI

It is further ordered, That each respondent shall notify the Commission at least thirty (30) days prior to any proposed change in it, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or association, or any other change in the corporation or association which may affect compliance obligations arising out of this Order.

APPENDIX "A"

(Respondent's Letterhead)

DEAR DOCTOR: As you may be aware, the Federal Trade Commission (FTC) has been investigating certain activities of the Indiana Dental Association (IDA) and its component societies. IDA and its component societies have voluntarily entered into an agreement with the FTC which resulted in the issuance by the Commission on [date] of a complaint and the entry of a consent order which requires, in essence, that IDA and its component societies cease and desist from certain activities that are concerned with dental health care benefits programs and cooperation by dentists with the administrators of such programs. The order also requires that you be sent a copy of the complaint and order and this letter.

In accordance with the terms of the FTC's order, you are hereby notified that IDA and its component societies have abandoned all policies, guidelines and principles which request, urge, recommend, or suggest that dentists, or have the purpose or effect of requiring or organizing dentists to, (1) refuse to submit radiographs or such other pretreatment and post-treatment reports, analyses, and materials (except where post-treatment radiographs are not taken in the course of treatment and would expose the patient to unnecessary radiation) as third-party payers request for use in benefit determination or (2) refuse to deal in any particular way with any one or more third-party payers. You are further notified that you are free to choose to deal with any such payers and programs in such manner as you decide individually.

Copies of the FTC's complaint and order are enclosed.

Sincerely,

President.

Enclosure.

ANALYSIS TO FACILITATE PUBLIC COMMENT ON PROPOSED CONSENT ORDER

The Federal Trade Commission has accepted an agreement containing a proposed consent order from the Indiana Dental Association ("IDA") and the fourteen component societies chartered by IDA ("component societies"). The file reference for the agreement is 781-0023.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become a part of this record. At the conclusion of the public record period, the Commission will review the agreement and all comments and determine whether to withdraw the agreement or make the order final.

The investigation of IDA and the component societies is one of a number that the Commission has conducted in various areas of the health care field. Of particular concern in this case is the impact of the practices of certain dental associations on insurance carrier cost control programs in the dental field. These programs comprise: (1) The limitation of reimbursement to the least costly adequate treatment, and (2) the determination of benefits before nonemergency treatment is rendered. In these insurance programs, when a treating dentist submits a treatment plan that raises questions as to whether it calls for the least costly, yet adequate approach, a dental consultant employed by the third-party payer reviews the treatment plan and diagnostic data to make the benefit determination. If the plan which the treating dentist proposes calls for other than the least costly, yet adequate approach, the third-party payer's liability is limited to reimbursement based on the less expensive but still adequate treatment. The patient remains free to elect the treatment he wishes but, if he chooses the more costly treatment, he must pay the difference between that charge and the amount reimbursed for the less expensive treatment. By making this review and determination of the amount to be paid prior to commencement of the treatment or the patient's commitment to it, the limits of the carrier's liability are clearly understood and the patient is better informed about his choices.

The Indiana Dental Association is a corporation with about 2,000 members. It is governed by an elected house of delegates which in turn elects trustees and officers who together constitute the board of trustees of IDA, which manages the affairs of the association between sessions of the house of delegates. Active membership in IDA is open to dentists licensed in Indiana. The component societies are district dental societies chartered by IDA. Their members constitute the membership of IDA and elect its house of delegates. Each component society has a council that coordinates IDA policy for dealing with insurance plans.

The Commission's proposed complaint alleges that, in 1961, IDA began to develop and distribute standards which indicated that dentists should not cooperate with dental insurance plans by submitting X-rays to the insurers. When the demand for dental insurance grew rapidly in the late 1960's, IDA revised its standards to address more precisely the submission of X-rays to third-party payers and, through its component societies, it actively sought the adherence of all dentists to these uniform standards for dealing with insurance plans. The complaint further charges that IDA and its components violated section 5 of the Federal Trade Commission Act in that their acts to control the design of insurance plans and to assure the uniform manner in which dentists deal with the plans have the effects of eliminating competition among dentists, tampering with the cost of dental services, and being unfair to consumers by denying them the benefits of carriers' cost-controlling efforts and of the second professional opinions provided by the carriers' dental consultants. IDA and the component societies have agreed to a consent order that requires them to cease from engaging in any activity, course of conduct, practice, or policy that:

(a) Requests, urges, recommends, or suggests that dentists, or has the purpose or effect of requiring or organizing dentists to:

(1) Refuse to submit X-rays or pretreatment and post-treatment reports, analyses, and materials to third-party payers (except where post-treatment radiographs are not taken in the course of treatment and would expose the patient to unnecessary radiation) requested for benefit determination; or

(2) Refuse to deal in any particular way with any third-party payer;

(b) Compels or coerces any third-party payer to change any provision in any existing or proposed dental health care benefits program;

(c) Has the purpose of causing or inducing or influencing, to any degree, consumers' choice of dentists based on the degree or manner of noncooperation between such dentists and any third-party payer;

(d) Has the purpose of compelling, coercing, or inducing any third-party payer to select particular dental consultants for reasons other than the expertise of such consultants; or;

(e) Has the purpose or effect of influencing any dental consultant to render any opinion other than that which reflects his independent expert judgment.

In addition, IDA and its component societies are to mail to each of their members copies of the complaint and order in this matter and advise them that IDA and the components have abandoned all policies and practices that require or induce dentists not

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to cooperate with features of insurance plans. This letter will also inform the members that they are free to determine individually how they will deal with dental health care services insurance plans.

To ensure that the order is obeyed, IDA and each of the components must, within sixty (60) days after the effective date of the order, file with the Commission a written report showing in detail the manner and form of its compliance. Similar reports are to be filed annually for the next 5 years. Moreover, IDA and each of the components must notify the Commission at least thirty (30) days prior to any proposed change in their organization which might affect their obligations under the order. Finally, the order contains a provision affirming that activities not specifically encompassed by the order may nonetheless be subject to challenge under the antitrust laws or the Federal Trade Commission Act.

This order is part of a continuing effort by the Commission to promote the provision of health care services to the public at a fair and reasonable cost.

This analysis is intended to encourage public comment; it does not constitute an official interpretation of the agreement and proposed order or a modification of their terms.

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-32316 Filed 11-16-78; 8:45 am]

[6740-02-M]

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[18 CFR Part 154]

RATE SCHEDULES AND TARIFFS

Proposed Rulemaking Which Would Clarify the 36-Month Purchased Gas Adjustment Clause Cost of Service Filing Requirement

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking in docket No. RM79-2.

SUMMARY: The Commission proposes to amend its rules to clarify existing purchased gas cost adjustment clause regulations for interstate natural gas pipelines. If adopted, the regulations would require a full cost review of a pipeline's rates at least every 3 years if the pipeline has a purchased gas cost adjustment clause in its tariff.

DATE: Comments are due on or before December 11, 1978.

ADDRESS: File comments with: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:

Charles E. Bullock, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, 202-275-4232.

A. BACKGROUND

The Commission's regulations covering purchased gas adjustment clause (PGA clause) provisions in pipelines' FERC gas tariffs require a pipeline restate its base tariff rate at least every 36 months. The filing is accompanied by a cost of service study for the most recently available 12 months of actual costs. The intent of these regulations is to insure that pipelines which are granted the right to maintain a PGA clause in their tariffs will be subject to a full rate review at least once every 36 months as provided by the current § 154.38(d)(4)(vi)(*a*).

The beginning of the 36-month period is determined by § 154.38(d)(4)(vi)(*b*), which now states: "(b) If a section 4(e) case is filed before the expiration of the 36-month period, a new 36-month period will start running when the proposed rates go into effect. Rates determined by the Commission in section 4(e) or a 5(a) proceeding or rates in a settlement agreement approved by the Commission shall establish the new base tariff rate when they become effective pursuant to a final order, and a new 36-month period will start running".

In the Federal Power Commission (FPC) order Nos. 452 and 452-A, the FPC allowed pipelines to include purchased gas adjustment provisions in their tariffs to permit them to file abbreviated rate filings to reflect changes in purchased gas costs without filing a general section 4 rate case showing the pipeline's overall costs and revenues. However, to insure that its overall costs and revenues were in balance, the FPC, in those orders, promulgated § 154.38(d)(4)(vi) to require that a pipeline's base tariff rate be restated at least once every 3 years, accompanied by a full cost of service and revenue study.

The present § 154.38(d)(4)(vi)(*b*) allows a pipeline in a section 4(e) rate settlement to update its original cost of service, and to establish a new base tariff rate after the rates in the docket originally become effective, subject to refund, in that docket.[1] This could encourage delays in resolving rate cases by encouraging pipelines to delay negotiating settlements so as to establish new base tariff rates after the date the rates originally become effective subject to refund.

Furthermore, it is not clear from the language of § 154.38(d)(4)(vi)(*a*) that the 36-month overall rate review requirement is a continuing obligation, and not one merely to be met after a PGA clause first becomes effective.

SUMMARY OF THE PROPOSED AMENDMENT

This Commission believes that the most appropriate way to accomplish the objective of § 154.38(d)(4)(vi) is to start the 36-month period from the latest of three dates. These are the dates on which (1) the proposed rates in a general section 4(e) rate case, which is filed before the expiration of the last 36-month period, become effective after notice, and suspension if any; or (2) rates are established by final order pursuant to a general section 5(a) rate investigation; or (3) a revised base tariff rate becomes effective, subject to refund, as a result of a filing made pursuant to § 154.38(d)(4)(vi)(*a*). Accordingly, this Commission proposes to amend § 154.38(d)(4)(vi)(*b*) to reflect the method for determining the 36-month period, as discussed above. Furthermore, the Commission proposes to amend § 154.38(d)(4)(vi)(*a*) to make it clear that the 36-month overall rate review requirement is a continuing obligation, and not merely one to be met after a PGA clause first becomes effective.

PUBLIC COMMENT PROCEDURES

Interested persons may participate in this proposed rulemaking by submitting written data, views, or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before December 11, 1978. Each person submitting a comment should include his name and address, identify the notice (docket No. RM79-2), and give reasons for any recommendations. An original and 14 conformed copies should be filed with the Secretary of the Commission. Comments should indicate the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. Written comments shall be placed in the Commission's public files and will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street NE., Washington, D.C. 20426, during regular business hours.

(Administrative Procedure Act (5 U.S.C. 553), Natural Gas Act, as amended (15 U.S.C. 717), Department of Energy Organization Act, Pub. L. 95-91, E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, it is proposed to amend Part 154, Subchapter E, Title 18, Code of Federal Regulations, as set forth below:

By the direction of the Commission.

KENNETH F. PLUMB,
Secretary.

1. Section 154.38 is proposed to be amended in paragraph (d) by revising clauses (vi)(*a*) and (vi)(*b*) of subparagraph (4) to read as follows:

[1] See: Algonquin Gas Transmission Co., order issued Oct. 13, 1978, in docket No. RP78-74.

§ 154.38 Composition of rate schedule.

* * * * *

(d) *Statement of rate.* * * *

(4) * * *

(vi) * * *

(*a*) Upon the expiration of 36 months after the effective date of the PGA clause, and thereafter, upon the expiration of 36 months from the date the base tariff rate was last established pursuant to the provisions of clause (vi)(*b*), the company shall file a tariff sheet(s) restating its rates to establish a new base tariff rate. The Company shall state its agreement that this filing will automatically be subject to refund concurrently with the filing at the end of 36 months of the tariff sheets establishing a new base tariff rate until an agreement is reached or a Commission determination is made. With this tariff sheet(s) the company shall file a study in the form and with the content prescribed by § 154.63 of the regulations, except statements O and P, to support the new base tariff rate. (If the company has a section 5(a) case pending a final order or has made a section 4(e) filing for which the proposed rates would not become effective before termination of the 36-month period, a study from that proceeding may be utilized.) This study shall be based upon actual costs for the 12 months of most recently available experience, provided that the 12-month period used ends not more than 4 months prior to the expiration of the 36-month period. Annualization for changes which actually occurred in the 12 months will be permitted. This study shall be served on the company's jurisdictional customers and interested State commissions concurrently with the company's filing with the Commission.

(*b*) For purposes of caluse (vi)(*a*) of this subparagraph, the 36-month period shall begin, and the base tariff rate shall be deemed to have been established, on the latest of the dates on which: the rates in a general section 4(e) rate case, which is filed before the expiration of the last 36-month period, has become effective after notice, and suspension if any; or rates are established by final order pursuant to a general section 5(a) rate proceeding, if that occurs prior to the expiration of the last 36-month period; or a revised base tariff rate becomes effective, subject to refund, as a result of a filing made pursuant to clause (vi)(*a*) of this subparagraph.

[FR Doc. 78-32326 Filed 11-16-78; 8:45 am]

[4510-30-M]

DEPARTMENT OF LABOR

Office of the Secretary

[29 CFR Part 56]

WORK INCENTIVE PROGRAMS FOR AFDC RECIPIENTS UNDER TITLE IV OF THE SOCIAL SECURITY ACT

Amendments Establishing New Procedures for the Determination of the Sanction Period

AGENCIES: Department of Labor and Department of Health, Education, and Welfare.

ACTION: Notice of proposed rulemaking.

SUMMARY: The purpose of this proposed rulemaking is to amend the regulations governing the work incentive program (WIN) for AFDC applicants or recipients. These amendments would remove provisions of the regulations which impose a fixed period of AFDC ineligibility (sanction period) on those individuals who are deregistered from the WIN program for failure or refusal to participate without good cause. In the place of the fixed sanction period, the proposed regulations would establish a flexible period of ineligibility—one which bases the length of time during which an individual loses AFDC benefits on the length of time the person has refused to participate. The length of time the person has refused to participate will be that which exists between the individual's first refusal to participate in the WIN program and the date on which a notice of intended deregistration is sent. Procedures for determining when refusal to participate starts are also prescribed.

DATE: Comments are due by January 16, 1978. Comments, communications, and inquiries concerning the proposed amendments to 29 CFR Part 56 and 45 CFR Part 224 should be directed to Mr. Hans at the address set forth below. Comments shall be in writing and submitted in duplicate.

FOR FURTHER INFORMATION CONTACT:

Merwin S. Hans, Executive Director, National Coordination Committee, Work Incentive Program, Room 5102, Patrick Henry Building, 601 D Street NW., Washington, D.C. 20213, telephone number 202-376-6694.

SUPPLEMENTARY INFORMATION: These proposed regulations concern one aspect of the work incentive (WIN) program. They are being proposed in response to several court actions, including *McLean* v. *Califano*, No. 76 Civ. 1572 (CES) (S.D.N.Y., filed June 27, 1977).

The work incentive program is a national work and training program designed to provide services and opportunities necessary to enable applicants for aid to families with dependent children (AFDC) and recipients of AFDC to become economically independent through employment. The program is administered jointly by the Department of Labor and the Department of Health, Education, and Welfare.

Legislative requirements for the WIN program are contained in title IV, parts A and C of the Social Security Act. According to these provisions certain persons must register with the WIN program in order to be eligible for AFDC. Persons who must register with the program are required to participate in employment and training activities which will enable them to become employed in the shortest time possible. Those required to register but who refuse to participate in the program may be deregistered and are subject to loss of their part of an AFDC grant. No one may be deregistered without being offered an opportunity for a fair hearing.

These proposed regulations involve the period of AFDC ineligibility (sanction period) imposed on those individuals who are deregistered from the WIN program for failure or refusal to participate in a WIN activity without good cause.

On June 23, 1977, the U.S. District Court for the Southern District of New York held that the provision of the WIN regulations entitled, "Subsequent WIN Registration by Deregistered Individuals" (29 CFR 56.77; 45 CFR 224.77) was inconsistent with the Social Security Act. *McLean* v. *Califano*, No. 76 Civ. 1572 (CES) (S.D.N.Y., filed June 27, 1977). A final order and judgment in this case was entered on September 14, 1977.

Section 402(a)(19)(F) of the Social Security Act provides in relevant part that: "* * * if and for so long as any individual * * * has been found by the Secretary of Labor * * * to have refused without good cause to participate * * * or to have refused without cause to accept employment (that individual's) * * * need shall not be taken into account in making the determination * * * (of the family's AFDC benefits)."

The existing regulations, at 29 CFR 56.77 and 45 CFR 224.77, provide that a WIN registrant is automatically subject to a 90-day sanction period for the first failure of refusal to participate in the WIN program without good cause and a 6-month sanction period for subsequent failures or refusals. These time periods apply regardless of the length of the actual period during which an individual has failed or refused to participate in the program.

The district court in New York invalidated this provision "because it

found that the statutory term, "if and for so long as" requires that the length of the sanction period must be related to the period of time the particular individual has actually refused to participate. The court also held that a fixed sanction period which is not related to the actual period of nonparticipation does not comport with the Act.

Although the decision in *McLean* v. *Califano* applied by its own terms only to deregistered WIN registrants in the State of New York, it would be inappropriate to use one system of sanctions for registrants in the State of New York and a different system elsewhere in the United States. The result of a dual system of sanctions would be that registrants in different States would be subject to different sanctions for engaging in similar conduct that constitutes failure or refusal to participate in the WIN program without good cause. Similarly, a dual system of sanctions would be inconsistent with principles of sound program administration. These considerations have also been brought to the attention of the two Departments by the institution of several lawsuits which seek to implement the *McLean* decision in other States. Accordingly, these proposed regulations would establish a single system for determining the sanction period which, in the Departments' view, is consistent with the *McLean* holding.

The Departments considered the possibility of adopting one policy for persons who refuse or fail to participate in the WIN program for the first time, and another policy for persons who refuse or fail to participate in WIN on more than one occasion. However, *McLean* v. *Califano* may preclude the use of two different policies since that opinion emphasizes "an individual determination for each individual" and also stresses the words of the statute—"if and for so long as." Moreover, the *McLean* case involved an individual who failed or refused to participate in WIN on more than one occasion. Therefore, these proposed regulations treat those who refuse on more than one occasion to participate in a WIN activity for the first time. The Departments invite comment on this issue. Should all persons who fail or refuse to participate in a WIN activity have their sanction period calculated in the same manner, or should a different method of calculating the sanction period be used for those who fail or refuse to participate in a WIN activity on more than one occasion? If *McLean* precludes the adoption of different policies for the first and second refusers, should the Department seek legislation which would permit them to treat first and second refusers differently?

In formulating the proposed regulations to replace the current scheme set forth principally in 29 CFR 56.77 and 45 CFR 224.77, the Departments were guided by two important aspects of the *McLean* decision. First, the court clearly rejected an argument that WIN registrants cannot be deregistered for failure or refusal to participate in the WIN program without good cause. The court said: "[A]lthough we understand plaintiff's argument that an individual who is so sanctioned under the regulations is precluded from the very benefits which Congress hoped would function as positive incentives to becoming a wage earner, we do not believe that the creation of negative incentives is beyond the discretionary powers which Congress invested in the Secretaries of HEW and Labor." Therefore, the authority to deregister registrants who fail to participate in the program without good cause is a valid exercise of the Secretaries' statutory authority, set forth in section 439 of the Social Security Act, to promulgate regulations for the operation of the WIN program, and is not inconsistent with the purposes of the Act.

Another important aspect of the *McLean* decision was its holding that the statute did not require that the sanction period equal, with mathematical precision, the period of failure or refusal to participate. Rather, the decision said that "a close approximation as to each individual" would suffice.

The WIN process may be summarized as follows. A person is required to register for a WIN activity. Staff work is completed on the person—an appraisal of the supportive services needs and an employment evaluation of the person is made. The person may be referred to a WIN activity. The person may fail or refuse to report to a WIN office or to a Win activity. If this happens, a conciliation period of up to 30 days takes place during which a WIN counselor attempts to persuade the person to participate in WIN. If the person continues to fail or refuse to participate in WIN, he is sent a notice of intended deregistration. Following the notice a hearing may take place if requested. If the hearing results in a finding that there is no good cause for the person's failure or refusal to participate, he is deregistered. A 60-day counseling period then takes place. During this counseling period, the person may appeal the finding of the hearing to the State Appellate Board or to the National Review Panel which sits in Washington, D.C. After the 60-day counseling period, the person will be subjected to a sanction if counseling is unsuccessful.

The major problems which are inherent in formulating the proposed rules are:

(1) When does failure or refusal to participate begin; and

(2) When does it end.

The proposed rules address these problems by specifying that failure or refusal to participate begins on the date of the individual's first failure or refusal to participate in a WIN activity without good cause, and ends on the date a "notice of intended deregistration" is sent to the individual. The length of time that elapses between these two dates will determine the length of the subsequent sanction period during which an individual is ineligible to register for WIN and receive AFDC benefits.

The proposed rules provide that a notice of intended deregistration will not be sent to an individual until all efforts toward conciliatory resolution of disputes between the WIN sponsor and the registrant have been exhausted. (This conciliation effort may continue for a period not to exceed 30 days, but may be terminated sooner at the discretion of the WIN sponsor when it is apparent that the dispute cannot be reconciled in this manner.) The proposed rules also provide that the notice of intended deregistration will specify the determined date of the registrant's first failure or refusal to participate in WIN activity without good cause. The notice will also include, among other information, notification of the registrant's right to a hearing where he or she believes the proposed action and/or proposed length of the sanction period is incorrect. (It should be noted that according to the current rules governing the program if the hearing decision is adverse to the individual and he or she participates in counseling for a period of up to 60 days aimed at persuading him/her to participate in the WIN program, no sanction may be imposed during that period. Furthermore, if such counseling is successful, no sanction may be imposed.)

Because it is not always clear when the individual has first failed or refused to participate, the regulations further spell out how this determination is to be made. They provide that this date will be determined by identifying the date on which the individual first expressly refused to participate (overt or express refusal), or the date on which he or she began to act in such a way that failure or refusal to participate can be implied (defacto refusal).

With respect to whether a failure or refusal to participate can be implied from an individual's actions, the regulations do not attempt to spell out each and every action that may give rise to such an implication. There are a variety of ways that an individual may indicate an unwillingness to participate. It would be impossible to identify all of these in regulations.

However, a refusal may be deemed to have occurred if the individual takes any of the actions set forth in chapter 9, section B-3b of the WIN Handbook. According to that section of the handbook the following actions may constitute a failure or refusal to participate.

(1) A registrant, after two call-in notices, refuses or fails without good cause to appear for an appraisal or other interview;

(2) A certified registrant fails to appear without good cause for a job referral or interview when the referral is made by the WIN sponsor staff, and the job meets appropriate work criteria and is consistent with the employability plan;

(3) A registrant repeatedly fails to show up for work or for WIN sponsor and/or SAU interviews, appointments, classes, etc., without good cause;

(4) A registrant seriously disrupts a WIN activity or the orderly administration of the overall program, or his behavior constitutes a threat or hazard to fellow registrants;

(5) A registrant possesses the required education, experience, or aptitude to perform the assignment but makes no noticeable effort to benefit from the WIN activity. The registrant's performance must be at a level consistently below the normal range of achievement of the individual's fellow WIN registrants. The determining factors would be the WIN staff's best judgment as to whether the individual is performing at or near his actual potential;

(6) The registrant quits his job without good cause or is fired for cause during the initial 90 days of employment. The determination as to whether an individual was fired for cause is made by the WIN sponsor, based on unemployment insurance service criteria;

(7) The registrant refuses without good cause to accept suitable child care, thereby precluding participation in WIN;

(8) A registrant refuses without good cause to accept other services, such as transportation, thereby precluding participation in work or training. However, a registrant may not be compelled to accept major medical services even if the refusal of such services precludes further participation.

The first failure or refusal to participate is used to measure the beginning of the sanction period. As noted, where the failure or refusal to participate is implied by a person's actions, the date the individual began the pattern of misbehavior is used to measure the beginning of the sanction period. Accordingly, since the determination of the beginning of the pattern will indeed be judgmental, this determination will be subject to review under 29 CFR 56.65 and 45 CFR 224.65. These sections are being amended by this proposed rulemaking to provide that the length of the sanction period is subject to review under the WIN adjudication system.

The Departments have noted that under the proposed method for calculating the sanction period, persons whose failure or refusal to participate is implied from a pattern of behavior will always be subject to a greater sanction than persons whose failure or refusal to participate is express. Therefore, to make certain that persons fully understand the consequences of their failure to refusal to participate, the Departments will put into effect program policy to adequately warn each person at the time of registration that either an express (overt) refusal, or a pattern of behavior (de facto or implied refusal) that frustrates the intent of the program without good cause, could result in the loss of a portion of the family's cash benefits. The Departments invite comment on problems which may result from imposing a greater sanction on those whose failure or refusal to participate is attributable to a pattern of behavior.

With regard to the ending date for measuring the sanction period, the proposed rules use the date of the notice of intended deregistration. This date has been chosen because it will establish a standard, nondiscretionary rule applicable to all program registrants and will enable the WIN sponsor to include this information in the notice. The registrant will then have the opportunity to decide whether to raise the length of the sanction period as an issue at the hearing. We considered other alternatives, including the date of request for a hearing and the date of the hearing decision. However, since use or either of these dates would have the effect of extending the length of the sanction period and thereby penalizing registrants for exercising their right to a hearing, these dates were not chosen.

Accordingly, it is proposed to amend title 29, part 56 as follows:

PART 56—WORK INCENTIVE PROGRAMS FOR AFDC RECIPIENTS UNDER TITLE IV OF THE SOCIAL SECURITY ACT

1. Section 56.51 is amended by: Revising paragraph (a); adding the following new paragraphs (b) and (c); and renumbering the existing paragraph (b) and subsequent paragraphs accordingly.

§ 56.51 Sanctions.

A State plan under title IV-A of the Act shall provide that:

(a) When a registered recipient has been found to have failed or refused without good cause to participate in the WIN program, the following sanctions shall apply for so long as the registrant fails or refuses to participate. This period will be determined in accordance with paragraph (b) of this section.

(b) The period of sanction resulting from a failure or refusal to participate without good cause shall be measured by the length of time that elapsed from the date of the registrant's first failure or refusal to participate in the WIN program to the date of the WIN sponsor's issuance of the notice of intended deregistration.

(c) The first failure or refusal to participate in the WIN program may be manifested either by an overt (express) refusal or de facto failure to participate.

(1) An overt (express) refusal is a written or oral statement which indicates that an individual will not participate in the WIN program. Where this expression is made, the first refusal to participate shall be deemed to have occurred on the date of that expression.

(2) A de facto refusal is any act or pattern of behavior which indicates that an individual will not participate in the WIN program. Where a de facto failure is one act on the part of the individual, the first failure to participate shall be deemed to have occurred on the date of that act. Where a de facto failure is a pattern of behavior on the part of the individual, the first failure to participate shall be deemed to have occurred on the date the pattern began.

* * * * *

2. Section 56.63 is amended by: Revising paragraph (a); adding the following new paragraph (b)(2); by renumbering the existing subparagraphs in paragraph (b) accordingly; and by amending the new paragraph (b)(3) as follows:

§ 56.63 Requirement of conciliation and notice.

(a) All efforts toward conciliatory resolution of disputes between the WIN sponsor and the registrant must be exhausted prior to the issuance of a notice of intended deregistration. This conciliation effort may continue for a period not to exceed 30 days but may be terminated sooner at the discretion of the WIN sponsor when it is apparent that the dispute cannot be reconciled in this manner. Immediately after the conciliation period has terminated, or the dispute remains unresolved after 30 days, the WIN sponsor shall mail to the registrant a notice of intended deregistration.

(b) The notice shall include:

(1) • • •

(2) Notice of the determined date of first failure or refusal to participate in the WIN program without good cause, and the consequent length of the sanction period.

(3) Notification of the registrant's right to a hearing if the registrant believes the proposed action is incorrect and/or the length of the sanction period is incorrect, provided a request for a hearing is filed as prescribed in § 56.64.

• • • • •

3. Paragraph (a) of § 56.65 is revised to read as follows:

§ 56.65 Issues subject to hearing.

(a) Under the WIN adjudication system a hearing officer will hear and decide WIN program issues arising subsequent to registration by certified and uncertified registrants. WIN program issues include failure or refusal to appear for appraisal, assignment to a WIN component, unresolved WIN grievances, failure or refusal without good cause to accept employment or otherwise participate in the WIN program, and the determination of the length of the sanction period.

• • • • •

4. Paragraph (a) of § 56.68 is amended by revising subparagraph (5) as follows:

§ 56.68 Decisions of the hearing officer.

(a) The hearing officer may rule:

• • • • •

(5) That the length of the period of the registrant's failure or refusal to participate was not correctly determined.

The hearing officer may also render such other rulings as are appropriate to the issues in question. However, a hearing officer shall not consider the validity or constitutionality of the regulations in this part or of the Act.

• • • • •

5. Paragraph (a) of § 56.77 is revised to read as follows:

§ 56.77 Subsequent WIN registration by deregistered individuals.

(a) An individual who was deregistered on the basis of a "failure or refusal to participate without good cause" determination, upon application, may again register for WIN, provided the sanction period specified in § 56.51(b) has elapsed and the individual has given evidence to the WIN project staff of willingness to participate.

• • • • •

Signed at Washington, D.C., this 7th day of November, 1978.

RAY MARSHALL,
Secretary of Labor.
JOSEPH A. CALIFANO, Jr.,
Secretary of Health, Education, and Welfare.

[FR Doc. 78-32120 Filed 11-16-78; 8:45 am]

[7600-01-M]

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

[29 CFR Parts 2200 and 2201]

RULES OF PROCEDURE

Extension of Time for Comments on Proposed Rulemaking

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Occupational Safety and Health Review Commission extends the comment period on a previously published proposed rule document relating to rules of procedure. The extension is granted in order to permit sufficient time for all interested persons to submit comments on the proposed rules.

DATE: Comments must be submitted by December 15, 1978.

ADDRESS: Comments should be addressed to Robert C. Gombar, Acting General Counsel, Occupational Safety and Health Review Commission, 1825 K Street NW., Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT:

Robert C. Gombar, Acting General Counsel, 202-634-4015.

SUPPLEMENTARY INFORMATION: On August 18, 1978, the Occupational Safety and Health Review Commission proposed the amendment of several of its rules of procedure as well as the adoption of certain additional rules of procedure (43 FR 36854). The Commission held a public hearing on these proposed revisions in Chicago, Ill., on October 30, 1978. The period for commenting on these proposed revisions was to close on November 10, 1978. The American Bar Association Committee on Occupational Safety and Health has requested an extension of time to file comments, stating that the illness of a key committee member as well as other administrative difficulties have delayed the preparation of its comments. The Commission is concerned that all interested persons have sufficient time to analyze its proposed rule changes and to submit well-documented comments. In order to achieve this and to accommodate the American Bar Association as well as other persons who may be similarly situated, the Commission is extending the comment period until December 15, 1978.

One significant change to the Commission rules of procedure proposed August 18 is the adoption of a new set of rules of simplified proceedings designed to reduce both paperwork and expense to parties as well as to make Commission adjudications less complex and time consuming. The Commission also proposed a number of other changes, including the following: A new rule on interlocutory appeals, the elimination of the 20-day period between the mailing of a judge's initial decision to the parties and the filing of his report with the Commission, the reinstitution of a 25-day deadline for the filing of petitions for discretionary review, a new rule on settlements designed to give better notice of settlement proposals to affected employees.

Signed at Washington, D.C., this 13th day of November 1978.

ROBERT C. GOMBAR,
Acting General Counsel.

[FR Doc. 78-32398 Filed 11-16-78; 8:45 am]

[4510-43-M]

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[30 CFR Part 46]

STATE GRANTS

Amendment and Recodification of Regulations

AGENCY: Mine Safety and Health Administration, Department of Labor.

ACTION: Proposed rule.

SUMMARY: This proposed rule will establish procedures and requirements for applying for, receiving, and administering State grants under section 503 of the Federal Mine Safety and Health Act of 1977. The proposed rule will establish a new part 46 of title 30, Code of Federal Regulations and will replace the regulations relating to State grants previously authorized under the Federal Coal Mine Health and Safety Act of 1969 and published by the Secretary of the Interior in 30 CFR 651.

DATES: Comments must be received on or before January 16, 1979.

ADDRESS: Send comments to Frank A. White, Office of Standards, Regulations and Variances, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Va. 22203.

FOR FURTHER INFORMATION CONTACT:

Adam W. Hare, Deputy Chief, Branch of Contracts and Grants, Room 723, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Va. 22203, telephone 703-235-8454.

SUPPLEMENTARY INFORMATION:

I. BACKGROUND

The Federal Mine Safety and Health Act of 1977, Pub. L. 91-173, as amended by Pub. L. 95-164 (Act), applies to all coal and other (metal and nonmetal) mines, amends the Federal Coal Mine Health and Safety Act of 1969, Pub. L. 91-173 and repeals the Federal Metal and Nonmetallic Mine Safety Act of 1966, Pub. L. 89-577. Section 503 of the Act allows States in which coal or other mining takes place to receive grants from the Secretary of Labor for the purposes of developing and enforcing effective coal or other mine health and safety laws and regulations consistent with the provisions of section 506 of the Act and improving State worker's compensation and occupational disease laws and programs related to coal or other mine employment. The funds may also be used to promote effective Federal-State coordination and cooperation in the field of mine safety and health. In addition, the Mine Safety and Health Administration (MSHA) will assist the States in developing and administering miner training programs, while also providing safety and health training opportunities to State mine inspection agencies. MSHA believes these grant and training programs will strengthen Federal-State coordination in promoting mine safety and health.

II. APPLICABILITY

These proposed rules set forth the procedures and requirements for any State in which coal or other mining takes place to apply for, receive, and administer State grants under section 503 of the Act. These rules will replace those existing regulations dealing with State grants previously issued by the Secretary of the Interior and published in Chapter VI, Part 651, Title 30, Code of Federal Regulations. Those regulations applicable to State grants and published in part 651 of title 30 will be inoperative after promulgation of new part 46 in title 30.

III. PUBLIC COMMENTS

These proposed rules are not subject to the notice and comment procedures in 5 U.S.C. 553 because they deal with grants and are exempt under 5 U.S.C. 553(a)(2). However, the Assistant Secretary of Labor for Mine Safety and Health wishes to afford interested persons the opportunity to comment upon the proposed rules. Therefore, interested persons may participate in the rulemaking process by submitting written data, views, and arguments. Copies of these proposed rules will be sent to the States that are affected by them.

IV. DRAFTING INFORMATION

The principal persons responsible for drafting these proposed rules are: Frank A. White, Office of Standards, Regulations and Variances, MSHA, Department of Labor; Adam W. Hare, Branch of Contracts and Grants, MSHA, Department of Labor; and Bernard R. McGuire, Division of Mine Safety and Health, Office of the Solicitor, Department of Labor.

V. REGULATORY ANALYSIS

NOTE.—It has been determined that this document does not contain a major proposal requiring the preparation of a regulatory analysis under Executive Order 12044, Improving Government Regulations (43 FR 12661, Mar. 24, 1978), or the Department of Labor's proposed guidelines for implementing the Executive Order (43 FR 22915, May 26, 1978).

Dated: November 14, 1978.

ROBERT B. LAGATHER,
Assistant Secretary of Labor for Mine Safety and Health.

It is proposed to add a new Part 46 to Chapter I, Title 30, CFR as follows:

SUBCHAPTER G—FILING AND OTHER ADMINISTRATIVE REQUIREMENTS

PART 46—STATE GRANTS FOR ADVANCEMENT OF HEALTH AND SAFETY IN COAL AND OTHER MINES

Subpart A—General

Sec.
46.1 Purpose and scope.
46.2 Definitions.
46.3 Purpose of making and States eligible to receive grants.

Subpart B—Application for Grants

46.4 Manner of submission.
46.5 Delegation of authority.
46.6 Information required.

Subpart C—Approval of Applications and Limitations

46.7 Requirements for approval.
46.8 Defective applications and modifications.
46.9 Limitations.
46.10 Termination.
46.11 Appeals and hearings.

Subpart D—Fiscal and Accounting

46.12 Procedures for obtaining payments.
46.13 Accounting records.
46.14 Procurement standards.
46.15 Property management standards and patents and copyrights.

Subpart E—Reports

46.16 State monitoring of grant-supported activities; reports.
46.17 Acknowledgment of Federal Government participation.

Subpart F—Consultation and Cooperation

46.18 Consultation and cooperation.

AUTHORITY: Sections 503 and 508 of the Federal Mine Safety and Health Act of 1977, Pub. L. 91-173 as amended by Pub. L. 95-164.

Subpart A—General

§ 46.1 Purpose and scope.

This part provides the procedures for making grants to States under the provisions of section 503 of the Federal Mine Safety and Health Act of 1977 (Pub. L. 91-173 as amended by Pub. L. 95-164). Additional standards contained in Office of Management and Budget Circular A-102 (revised) "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments" dated August 24, 1977 (42 FR 45828-45891), are also applicable to grant instruments entered into between the Federal and State governments.[1]

§ 46.2 Definitions.

As used in this part and in grants entered into pursuant to this part:

(a) "Government" means the United States of America.

(b) "Secretary" means the Secretary of Labor or his authorized representative.

(c) "MSHA" means the Mine Safety and Health Administration of the U.S. Department of Labor.

(d) "Assistant Secretary" means the Assistant Secretary of Labor for Mine Safety and Health, U.S. Department of Labor, or his authorized representative.

(e) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territories of the Pacific Islands, in which coal or other mining takes place.

(f) "Fiscal Year" means a 12-month period ending on September 30.

(g) "Act" means the Federal Mine Safety and Health Act of 1977, Pub. L. 91-173 as amended by Pub. L. 95-164.

§ 46.3 Purpose of making and States eligible to receive grants.

(a) The Secretary, in coordination with the Secretary of Health, Education, and Welfare and the Secretary of Interior, is authorized by section 503(a) of the Act to make grants to any State in which coal or other mining takes place to: (1) Assist in developing and enforcing effective coal or other mine health and safety laws and regulations; (2) improve State

[1] The Office of Management and Budget Circular No. A-102 is available for inspection at the State Grants Program Office, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Va. 22203.

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worker's compensation and occupational disease laws and programs related to coal or other mine employment; and (3) promote Federal-State coordination and cooperation in improving the health and safety conditions in the coal or other mines.

(b) Grants shall be made to a State through its official coal or other mine inspection or safety agency, and executed by an individual authorized to act for the State agency.

Subpart B—Application for Grants

§ 46.4 Manner of submission.

(a) An original and two copies of the application shall be submitted through the State clearinghouse as required by Office of Management and Budget Circular A-95 to the Assistant Secretary of Labor for Mine Safety and Health, U.S. Department of Labor, 4015 Wilson Boulevard, Arlington, Va. 22203.

(b) The Application for Federal Assistance (nonconstruction programs) contained in Attachment M of Office of Management and Budget Circular A-102 (revised) shall be used when applying for grants.

(c) States shall report deviations from grant budgets and shall request approval for budget revisions in accordance with the provisions of Attachment K, Office of Management and Budget Circular A-102 (revised).

§ 46.5 Delegation of authority.

General authority and responsibility for the administration and enforcement of mine safety and health programs, including the authority of the Secretary to review applications for grants and to make awards under section 503 of the Act, has been delegated to the Assistant Secretary by Secretary of Labor Order 3-78, effective March 9, 1978. The Assistant Secretary may redelegate authority to such officers and employees as he deems appropriate. The delegation to the Assistant Secretary, therefore, includes the authority to issue, amend, and repeal rules under this part and to provide policy, regulations, and guidelines by which this part is implemented. The Assistant Secretary may, with respect to any grant award, impose additional conditions prior to or at the time of the award when, in his judgment, such conditions are necessary to assure safe and healthful working conditions for individuals working in mines, or to promote the conservation of grant funds.

§ 46.6 Information required.

Applications shall be in the form of proposals, which consistent with the purposes of the grant must:

(a) Set forth the programs, policies, and methods to be followed in carrying out the application in accordance with the purposes of section 503(a) of the Act. An application may provide for: (1) Assistance to States in developing and enforcing effective coal or other mine health and safety laws and regulations consistent with the provisions of section 506 of the Act; (2) improvement to State worker's compensation and occupational disease laws and programs related to coal or other mine employment; and (3) promotion of Federal-State coordination and cooperation in improving the health and safety conditions in the coal or other mines.

(b) Designate the State coal or other mine inspection or safety agency as the sole agency responsible for administering the grant throughout the State, and contain satisfactory evidence that such agency will have the authority to carry out the purpose of a grant provided under this part.

(c) Give assurances satisfactory to the Assistant Secretary that such agency has or will have an adequate and competent staff of trained inspectors qualified under the laws of such State to make coal or other mine inspections within such State.

(d) Provide for the extension and improvement of the State program for the improvement of coal or other mine health and safety in the State, and provide that no advance notice of an inspection will be provided to anyone.

(e) Contain assurance satisfactory to the Assistant Secretary that grants provided under this part will supplement, not supplant, existing State coal or other mine health and safety programs.

(f) State the period of time during which each of the programs will be pursued.

(g) Contain a financial plan (budget information) submitted on the "Application for Federal Assistance (nonconstruction programs)" contained in Attachment M of Office of Management and Budget Circular A-102 (revised).

(h) Provide such fiscal control and fund accounting procedures as may be necessary to comply with the requirements of this part and as may be appropriate to assure proper disbursement and accounting of grants made under this part.

(i) Provide the name and title of the person who will direct the program.

(j) Provide the approximate number and general qualifications of the personnel who will work on the program.

(k) Indicate the location or locations at which the various projects in the program(s) will be pursued.

(l) Provide assurances satisfactory to the Assistant Secretary that, if the grant is made, the required funds (matching share) from non-Federal sources will be forthcoming. Matching share represents the portion of project costs not borne by the Federal Government. General guidelines for computing matching share are defined in Attachment F, Office of Management and Budget Circular A-102 (revised).

(m) Indicate whether the programs or any part of the programs have been or will be submitted to other organizations for the purpose of obtaining a grant.

(n) Agree that the official coal or other mine inspection or safety agency designated pursuant to paragraph (b) of this section shall make the reports required by § 46.16 (State monitoring of grant-supported activities reports) of this part and shall abide by all other terms and conditions which the Assistant Secretary may prescribe.

Subpart C—Approval of Applications and Limitations

§ 46.7 Requirements for approval.

The Assistant Secretary shall approve only those applications, or requests for renewals, that meet the requirements set forth in the Act and this part.

§ 46.8 Defective applications and modifications.

(a) Any application, or request for renewal, that does not meet the requirements of this part shall be returned promptly and the state shall be requested to modify, amend, or revise the application as necessary in order to meet the requirements and to resubmit the application or request for renewal.

(b) The Assistant Secretary will not finally disapprove any State application or modification, amendment, or revision thereof without first affording the State agency reasonable notice and opportunity for a public hearing, as provided in § 46.11 (appeals and hearings) of this part.

§ 46.9 Limitations.

(a) Applications shall only be considered for programs that meet the purposes and objectives of section 503 of the Act and this part.

(b) Grants shall be made on a fiscal year basis or portion thereof.

(c) Each grant shall be covered by a grant agreement between the Government and the State. The grant agreement shall establish the purposes, objectives, total estimated cost of the program during the fiscal year for which the grant is to be made, and the approved financial plan.

(d) Federal funds will be granted on the basis of grant applications, and the amount granted to any State for a fiscal year under this section shall not exceed 80 percentum of the amount expended by such State in such year for carrying out the approved grant. The Assistant Secretary may allocate

funds between States and may fix the grant at less than 80 per centum, and the percentages may be unequal between grants and between States.

(e) None of the funds granted by the Government or provided by the State shall be used for any purpose not specifically provided in the grant agreement.

(f) Any State accepting a grant or grants under this part shall agree that neither the Government nor any of its officers, agents, or employees shall be responsible or liable for any loss, expense, damage to property, or for death or bodily injury to persons, which may arise from or be incident to any project or grant coming hereunder, and the State shall agree to hold the Government and its officers, agents, or employees harmless from all such claims.

(g) Reimbursement for travel expenses shall be in accordance with the State's regular lawfully established policies and procedures, except they may not exceed those authorized in Standardized Government Travel Regulations (Federal Property Management Regulations, 41 CFR Parts 101[141).[2]

(h) The State shall comply with the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d 1970) which provides that no person in the United States shall on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance, and with the implementing regulation issued by the Secretary of Labor with the approval of the President (29 CFR Part 31). Any grant for a project which involves a federally assisted construction contract, as defined in Executive Order 11246, as amended, shall be subject to the condition that the grantee shall be subject to the condition that the grantee shall comply with the requirements of the Executive order, as amended, and with the applicable rules, regulations, and procedures.

(i) Under the provisions of the Federal Hatch Act (Political Activities Act of Aug. 2, 1939, as amended, 5 U.S.C. 1501-1508 (1976)), all State or local agencies, officers and employees whose principal employment is in connection with activities financed by any grant under this part, irrespective of whether the employees are under a merit system, are prohibited, with certain exceptions, from:

(1) Using official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office.

(2) Directly or indirectly coercing, attempting to coerce, commanding, or advising any other State or local officer or employee to pay, lend, or contribute anything of value to any party, committee, organization, agency, or person for political purposes.

(3) Being a candidate for elective office. Inquiries with respect to the provisions of the Federal Hatch Act as it affects grants awarded under this Part should be directed to the Office of the Assistant Secretary, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Va. 22203.

§ 46.10 Termination.

(a) A State grant may be terminated by the State upon written notice to the Assistant Secretary, specifying the date upon which the State grant shall be terminated, but which date of termination shall not be less than 30 days from the date of the notice.

(b) Any grant awarded under this part may be revoked or terminated, in whole or in part, by the Assistant Secretary at any time within the period of the grant, whenever the Assistant Secretary finds, after giving due notice to the State and affording the State an opportunity for a hearing under § 46.11 (appeals and hearings) of this part, that the State has failed to comply with the terms and conditions of the grant or the regulations of this part. The State shall be notified of such findings in writing and given the reasons therefor, together with the effective date.

§ 46.11 Appeals and hearings.

(a) The proposed disapproval by the Assistant Secretary of any initial State application, request for renewal, or modification of grant funds, or proposed termination of State grants shall be given to the State by written notice setting forth the reasons for the proposed disapproval or termination. The State, through its designated coal or other mine inspection or safety agency, may appeal such decision by the mailing of a notice of appeal and request for a public hearing to the Assistant Secretary within 30 days after receipt of the notice of proposed disapproval or termination.

(b) A notice of hearing under this section shall be published in the FEDERAL REGISTER and the period of time between such publication and the date fixed for the hearing shall not be less than 30 days. The nature of the hearing shall be dependent upon the issues involved. The notice of hearing shall prescribe the rules of the proceeding.

(c) The final decision of the Assistant Secretary disapproving any initial application or modification, or request for renewal, or terminating a grant shall be conclusive unless the State within 30 days from the date of such decision shall file a petition in the U.S. Court of Appeals for the District of Columbia stating that such decision should be modified or set aside in whole or in part. The filing of a petition shall not stay the application of the decision of the Assistant Secretary except as ordered by the court.

Subpart D—Fiscal and Accounting

§ 46.12 Procedures for obtaining payments

(a) States shall be paid under one of the methods defined in Attachment J, Office of Management and Budget Circular A-102 (revised).

(b) States shall comply with the provisions of Attachment A, Office of Management and Budget Circular A-102 (revised) when operating with federally advanced funds.

§ 46.13 Accounting records.

(a) State financial management systems shall be maintained in accordance with the provisions of Attachment G, Office of Management and Budget Circular A-102 (revised).

(b) The State's records relating to each grant, with all supporting and related documents shall, at all reasonable times, be made available, upon request for inspection and audit by the Assistant Secretary, the Secretary, or by the Comptroller General of the United States or their authorized representatives. If desired, microfilm copies may be substituted in lieu of original records.

(c) The State's records relating to each grant shall be retained and made available until the expiration of 3 years from the date of the submission of the final expenditure report or, for grants which are renewed annually, from the date of the submission of each annual expenditure report, with the following qualifications:

(1) The records shall be retained beyond the 3-year period if audit findings have not been resolved.

(2) Records for nonexpendable property which was acquired with Federal grant funds shall be retained for 3 years after its final disposition.

(3) When grant records are transferred to or maintained by MSHA, the 3-year retention requirement is not applicable to the grantee.

§ 46.14 Procurement standards.

(a) The State is the responsible authority, without recourse to MSHA, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of a grant. This includes but is not limited to disputes, claims, protests of award, source evaluation, or other matters of a contractual nature. Matters concerning violation of law are to be referred to

[2] The Federal Property Management Regulations are available for inspection at the State Grants Program Office, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, VA. 22203.

such local, State, or Federal authority as may have proper jurisdiction.

(b) States may use their own procurement regulations which reflect applicable State and local law, rules and regulations provided that procurements made with Federal grant funds adhere to the standards set forth in Attachment O, Office of Management and Budget Circular A-102 (revised).

§ 46.15 Property management standards and patents and copyrights.

(a) Except as specified in paragraphs (b) (1) and (2) below, the "Property Management Standards" contained in Attachment N of Office of Management and Budget Circular A-102 (revised) are applicable to all grants.

(b) Specific standards for control of copyrights and patents are:

(1) If any program produces patentable items, patent rights, processes, or inventions, in the course of work aided by a Federal grant, such fact shall be promptly and fully reported to MSHA. MSHA shall determine whether protection on such invention or discovery shall be sought and how the rights in the invention or discovery—including rights under any patent issued thereon—shall be allocated and administered in order to protect interest consistent with the Act.

(2) Where the grant results in a book or other copyrightable material, any such work normally becomes the property of the Government, and the grantee would not be authorized to secure a copyright thereon. However, educational institutions and individuals in the field of education may be granted the right to publish works arising out of the grant provided that the Government secures a royalty-free, nonexclusive, and irrevocable license to publish, reproduce, use, and dispose of the work, and to authorize or ratify the acts of others to do the same.

Subpart E—Reports

§ 46.16 State monitoring of grant-supported activities; reports.

(a) States shall constantly monitor the performance of grant-supported activities to assure that time schedules are being met, projected work units by time periods are being accomplished, and other performance goals are being achieved. This review shall be made for each program, function, or activity of each grant as set forth in the approved grant application.

(b) States shall submit a quarterly performance report for each grant which briefly presents the following for each program, function, or activity involved:

(1) A comparison of actual accomplishments to the goals established for the period. Where the output of grant programs can be readily quantified, such quantitative data shall be related to cost data for computation of unit costs.

(2) Reasons for slippage in those cases where established goals were not met.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(c) States shall submit financial reports in accordance with Attachment H of Office of Management and Budget Circular A-102 (revised).

(d) Between the required performance reporting dates, events may occur which have significant impact upon the project or program. In such cases, the State shall inform MSHA as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially affect the ability to attain program objectives, prevent the meeting of time schedules and goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken or contemplated and any Federal assistance needed to resolve the situation.

(2) Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.

(e) If any performance review conducted by the State discloses the need for change in the budget estimates in accordance with the criteria established in Attachment K, Office of Management and Budget Circular A-102 (revised), the State shall submit a request for budget revision.

§ 46.17 Acknowledgment of Federal Government participation.

Appropriate acknowledgment shall be given by the State of the Department of Labor's participation in financing each project. Such acknowledgment shall be included in all publications, news releases, and other information media developed to publicize, describe, or report on activities and accomplishments carried out in whole or in part with funds received under provisions of the Act.

Subpart F—Consultation and Cooperation

§ 46.18 consultation and cooperation.

(a) As contemplated by the Act, the Assistant Secretary will consult and cooperate with the State in accomplishing the purposes of the grant, including, but not limited to, the furnishing of advice and assistance to promote the objectives of the Act and the coordination of projects.

(b) In addition to cooperating in carrying out the purposes of State grants, the Assistant Secretary also shall cooperate with such States in training Federal and State inspectors jointly, and in establishing a system by which State and Federal inspection reports of coal or other mines located in the State are exchanged for the purpose of improving health and safety conditions in such mines.

[FR Doc. 78-32472 Filed 11-16-78; 8:45 am]

[4110-92-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

[45 CFR Part 224]

WORK INCENTIVE PROGRAMS FOR AFDC RECIPIENTS UNDER TITLE IV OF THE SOCIAL SECURITY ACT

Amendments Establishing New Procedures for the Determination of the Sanction Period

AGENCIES: Office of Human Development Services, HEW.

ACTION: Notice of proposed rulemaking.

SUMMARY: The purpose of this proposed rulemaking is to amend the regulations governing the work incentive program (WIN) for AFDC applicants or recipients. These amendments would remove provisions of the regulations which impose a fixed period of AFDC ineligibility (sanction period) on those individuals who are deregistered from the WIN program for failure or refusal to participate without good cause. In the place of the fixed sanction period, the proposed regulations would establish a flexible period of ineligibility—one which bases the length of time during which an individual loses AFDC benefits on the length of time the person has refused to participate. The length of time the person has refused to participate will be that which exists between the individual's first refusal to participate in the WIN program and the date on which a notice of intended deregistration is sent. Procedures for determining when refusal to participate starts are also prescribed.

DATES: Comments are due by January 16, 1979. Comments, communications, and inquiries concerning the proposed amendments to 29 CFR Part 56 and 45 CFR Part 224 should be directed to Mr. Hans at the address set forth below. Comments shall be in writing and submitted in duplicate.

FOR FURTHER INFORMATION CONTACT:

Merwin S. Hans, Executive Director, National Coordination Committee, Work Incentive Program, Room 5102, Patrick Henry Building, 601 D Street NW., Washington, D.C. 20213, Telephone Number 202-376-6694.

SUPPLEMENTARY INFORMATION: These proposed regulations concern one aspect of the Work Incentive (WIN) Program. (See Department of Labor 29 CFR Part 56 Regulations elsewhere in this issue.) They are being proposed in response to several court actions, including *McLean* v. *Califano*, No. 76 Civ. 1572 (CES) (S.D.N.Y., filed June 27, 1977).

The work incentive program is a national work and training program designed to provide services and opportunities necessary to enable applicants for Aid to Families with Dependent Children (AFDC) and recipients of AFDC to become economically independent through employment. The program is administered jointly by the Department of Labor and the Department of Health, Education, and Welfare.

Legislative requirements for the WIN program are contained in title IV, parts A and C of the Social Security Act. According to these provisions certain persons must register with the WIN program in order to be eligible for AFDC. Persons who must register with the program are required to participate in employment and training activities which will enable them to become employed in the shortest time possible. Those required to register but who refuse to participate in the program may be deregistered and are subject to loss of their part of an AFDC grant. No one may be deregistered without being offered an opportunity for a fair hearing.

These proposed regulations involve the period of AFDC ineligibility (sanction period) imposed on those individuals who are deregistered from the WIN program for failure or refusal to participate in a WIN activity without good cause.

On June 23, 1977, the United States District Court for the Southern District of New York held that the provision of the WIN regulations entitled, "Subsequent WIN Registration by Deregistered Individual" (29 CFR 56.77; 45 CFR 224.77) was inconsistent with the Social Security Act. *McLean* v. *Califano*, No. 76 Civ. 1572 (CES) (S.D.N.Y., filed June 27, 1977). A final order and judgment in this case was entered on September 14, 1977.

Section 402(a)(19)(F) of the Social Security Act provides in relevant part that: "• • • if and for so long as any • • • individual • • • has been found by the Secretary of Labor • • • to have refused without good cause to participate • • • or to have refused without good cause to accept employment (that individual's) need shall not be taken into account in making the determination (of the family's AFDC benefits)."

The existing regulations, at 29 CFR 56.77 and 45 CFR 224.77, provide that a WIN registrant is automatically subject to a 90-day sanction period for the first failure or refusal to participate in the WIN program without good cause and a 6-month sanction period for subsequent failures or refusals. These time periods apply regardless of the length of the actual period during which an individual has failed or refused to participate in the program.

The District Court in New York invalidated this provision because it found that the statutory term, "if and for so long as" requires that the length of the sanction period must be related to the period of time the particular individual has actually refused to participate. The court also held that a fixed sanction period which is not related to the actual period of nonparticipation does not comport with the Act.

Although the decision in *McLean* v. *Califano* applied by its own terms only to deregistered WIN registrants in the State of New York, it would be inappropriate to use one system of sanctions for registrants in the State of New York and a different system elsewhere in the United States. The result of a dual system of sanctions would be that registrants in different States would be subject to different sanctions for engaging in similar conduct that constitutes failure or refusal to participate in the WIN program without good cause. Similarly, a dual system of sanctions would be inconsistent with principles of sound program administration. These considerations have also been brought to the attention of the two Departments by the institution of several lawsuits which seek to implement the *McLean* decision in other States. Accordingly, these proposed regulations would establish a single system for determining the sanction period which, in the Departments' view, is consistent with the *McLean* holding.

The Departments considered the possibility of adopting one policy for persons who refuse or fail to participate in the WIN program for the first time, and another policy for persons who refuse or fail to participate in WIN on more than one occasion. However, *McLean* v. *Califano* may preclude the use of two different policies since that opinion emphasizes "an individual determination for each individual" and also stresses the words of the statute—"if and for so long as." Moreover, the *McLean* case involved an individual who failed or refused to participate in WIN on more than one occasion. Therefore, these proposed regulations treat those who refuse on more than one occasion to participate in a WIN activity the same way as those who refuse to participate in a WIN activity for the first time. The Departments invite comment on this issue. Should all persons who fail or refuse to participate in a WIN activity have their sanction period calculated in the same manner, or should a different method of calculating the sanction period be used for those who fail or refuse to participate in a WIN activity on more than one occasion? If *McLean* precludes the adoption of different policies for the first and second refusers, should the Departments seek legislation which would permit them to treat first and second refusers differently?

In formulating the proposed regulations to replace the current scheme set forth principally in 29 CFR 56.77 and 45 CFR 224.77, the Departments were guided by two important aspects of the *McLean* decision. First, the court clearly rejected an argument that WIN registrants cannot be deregistered for failure or refusal to participate in the WIN program without good cause. The court said: "[A]lthough we understand plaintiff's argument that an individual who is so sanctioned under the regulations is precluded from the very benefits which Congress hoped would function as positive incentives to becoming a wage-earner, we do not believe that the creation of negative incentives is beyond the discretionary powers which Congress invested in the Secretaries of HEW and Labor." Therefore, the authority to deregister registrants who fail to participate in the program without good cause is a valid exercise of the Secretaries' statutory authority, set forth in Section 439 of the Social Security Act, to promulgate regulations for the operation of the WIN program, and is not inconsistent with the purposes of the Act.

Another important aspect of the *McLean* decision was its holding that the statute did not require that the sanction period equal, with mathematical precision, the period of failure or refusal to participate. Rather, the decison said that "a close approximation as to each individual" would suffice.

The WIN process may be summarized as follows. A person is required to register for a WIN activity. Staff work is completed on the person—an appraisal of the supportive services needs and an employment evaluation of the person is made. The person may be referred to a WIN activity. The person may fail or refuse to report to a WIN office or to a WIN activity. If this happens, a conciliation period of up to 30 days takes place during which a WIN counselor attempts to persuade the person to participate in WIN. If the person continues to fail or refuse

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to participate in WIN, he is sent a notice of intended deregistration. Following the notice a hearing may take place if requested. If the hearing results in a finding that there is no good cause for the person's failure or refusal to participate, he is deregistered. A 60 day counseling period then takes place. During this counseling period, the person may appeal the finding of the hearing to the State Appellate Board or to the National Review Panel which sits in Washington, D.C. After the 60 day counseling period, the person will be subjected to a sanction if counseling is unsuccessful.

The major problems which are inherent in formulating the proposed rules are:

(1) When does failure or refusal to participate begin; and

(2) When does it end.

The proposed rules address these problems by specifying that failure or refusal to participate begins on the date of the individual's first failure or refusal to participate in a WIN activity without good cause, and ends on the date a "notice of intended deregistration" is sent to the individual. The length of time that elapses between these two dates will determine the length of the subsequent sanction period during which an individual is ineligible to register for WIN and receive AFDC benefits.

The proposed rules provide that a notice of intended deregistration will not be sent to an individual until all efforts toward conciliatory resolution of disputes between the WIN sponsor and the registrant have been exhausted. (This conciliation effort may continue for a period not to exceed 30 days, but may be terminated sooner at the discretion of the WIN sponsor when it is apparent that the dispute cannot be reconciled in this manner.) The proposed rules also provide that the notice of intended deregistration will specify the determined date of the registrant's first failure or refusal to participate in WIN activity without good cause. The notice will also include, among other information, notification of the registrant's right to a hearing where he or she believes the proposed action and/or proposed length of the sanction period is incorrect. (It should be noted that according to the current rules governing the program if the hearing decision is adverse to the individual and he or she participates in counseling for a period of up to 60 days aimed at persuading him/her to participate in the WIN program, no sanction may be imposed during that period. Furthermore, if such counseling is successful, no sanction may be imposed.)

Because it is not always clear when the individual has first failed or refused to participate, the regulations further spell out how this determination is to be made. They provide that this date will be determined by identifying the date on which the individual first expressly refused to participate (overt or express refusal), or the date on which he or she began to act in such a way that failure or refusal to participate can be implied (defacto refusal).

With respect to whether a failure or refusal to participate can be implied from an individual's actions, the regulations do not attempt to spell out each and every action that may give rise to such an implication. There are a variety of ways that an individual may indicate an unwillingness to participate. It would be impossible to identify all of these in regulations.

However, a refusal may be deemed to have occurred if the individual takes any of the actions set forth in chapter 9, section B-3b of the WIN handbook. According to that section of the handbook the following actions may constitute a failure or refusal to participate.

(1) A registrant, after two call-in notices, refuses or fails without good cause to appear for an appraisal or other interview;

(2) A certified registrant fails to appear without good cause for a job referral or interview when the referral is made by the WIN sponsor staff, and the job meets appropriate work criteria and is consistent with the employability plan;

(3) A registrant repeatedly fails to show up for work or for WIN sponsor and/or SAU interviews, appointments, classes, etc., without good cause;

(4) A registrant seriously disrupts a WIN activity or the orderly administration of the overall program, or his behavior constitutes a threat or hazard to fellow registrants;

(5) A registrant possesses the required education, experience, or aptitude to perform the assignment but makes no noticeable effort to benefit from the WIN activity. The registrant's performance must be at a level consistently below the normal range of achievement of the individual's fellow WIN registrants. The determining factors would be the WIN staff's best judgment as to whether the individual is performing at or near his actual potential;

(6) The registrant quits his job without good cause or is fired for cause during the initial 90 days of employment. The determination as to whether an individual was fired for cause is made by the WIN sponsor, based on unemployment insurance service criteria;

(7) The registrant refuses without good cause to accept suitable child care, thereby precluding participation in WIN;

(8) A registrant refuses without good cause to accept other services, such as transportation, thereby precluding participation in work or training. However, a registrant may not be compelled to accept major medical services even if the refusal of such services precludes further participation.

The first failure or refusal to participate is used to measure the beginning of the sanction period. As noted, where the failure or refusal to participate is implied by a person's actions, the date the individual began the pattern of misbehavior is used to measure the beginning of the sanction period. Accordingly, since the determination of the beginning of the pattern will indeed be judgmental, this determination will be subject to review under 29 CFR 56.65 and 45 CFR 224.65. These sanctions are being amended by this proposed rulemaking to provide that the length of the sanction period is subject to review under the WIN adjudication system.

The Departments have noted that under the proposed method for calculating the sanction period, persons whose failure or refusal to participate is implied from a pattern of behavior will always be subject to a greater sanction than persons whose failure or refusal to participate is express. Therefore, to make certain that persons fully understand the consequences of their failure or refusal to participate, the Departments will put into effect program policy to adequately warn each person at the time of registration that either an express (overt) refusal, or a pattern of behavior (defacto or implied refusal) that frustrates the intent of the program without good cause, could result in the loss of a portion of the family's cash benefits. The Departments invite comment on problems which may result from imposing a greater sanction on those whose failure or refusal to participate is attributable to a pattern of behavior.

With regard to the ending date for measuring the sanction period, the proposed rules use the date of the notice of intended deregistration. This date has been chosen because it will establish a standard, nondiscretionary rule applicable to all program registrants and will enable the WIN sponsor to include this information in the notice. The registrant will then have the opportunity to raise the length of the sanction period as an issue at the same hearing available on the issue of his refusal to participate. We considered other alternatives, including the date of request for a hearing and the date of the hearing decision. However, since use of either of these dates would have the effect of penalizing registrants for exercising their right to

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a hearing, these dates were not chosen.

Accordingly, it is proposed to amend Title 45, Part 224 as follows:

PART 224—WORK INCENTIVE PROGRAMS FOR AFDC RECIPIENTS UNDER TITLE IV OF THE SOCIAL SECURITY ACT

1. Section 224.51 is amended by: revising paragraph (a); adding the following new paragraphs (b) and (c); and renumbering the existing paragraph (b), (c), and (d) as paragraphs (d), (e) and (f) respectively.

§ 224.51 Sanctions.

A State plan under title IV-A of the Act shall provide that:

(a) When a registered recipient has been found to have failed or refused without good cause to participate in the WIN program, the following sanctions shall apply for so long as the registrant fails or refuses to participate. This period will be determined in accordance with paragraph (b) of this section.

* * * * *

(b) The period of sanction resulting from a failure or refusal to participate without good cause shall be measured by the length of time that elapsed from the date of the registrant's first failure or refusal to participate in the WIN program to the date of the WIN sponsor's issuance of the notice of intended deregistration.

(c) The first failure or refusal to participate in the WIN program may be manifested either by an overt (express) refusal or defacto failure to participate.

(1) An overt (express) refusal is a written or oral statement which indicates that an individual will not participate in the WIN program. Where this expression is made, the first refusal to participate shall be deemed to have occurred on the date of that expression.

(2) A defactor refusal is any act or pattern of behavior which indicates that an individual will not participate in the WIN program. Where a defacto failure is one act on the part of the individual, the first failure to participate shall be deemed to have occurred on the date of that act. Where a defacto failure is a pattern of behavior on the part of the individual, the first failure to participate shall be deemed to have occurred on the date the pattern began.

* * * * *

2. Section 224.63 is amended by: Revising paragraph (a); adding the following new paragraph (b)(2); by renumbering the existing paragraphs (b)(2)-(b)(7) as paragraphs (b)(3)-(b)(8) in paragraph (b) accordingly; and by amending the new paragraph (b)(3) as follows:

§ 224.63 Requirement of conciliation and notice.

(a) All efforts toward conciliatory resolution of disputes between the WIN sponsor and the registrant must be exhausted prior to the issuance of a notice of intended deregistration. This conciliation effort may continue for a period not to exceed 30 days but may be terminated sooner at the discretion of the WIN sponsor when it is apparent that the dispute cannot be reconciled in this manner. Immediately after the conciliation period has terminated, or the dispute remains unresolved after 30 days, the WIN sponsor shall mail to the registrant a notice of intended deregistration.

(b) The notice shall include:

(1) * * *

(2) Notice of the determined date of first failure or refusal to participate in the WIN program without good cause, and the consequent length of the sanction period.

(3) Notification of the registrant's right to a hearing if the registrant believes the proposed action is incorrect and/or the length of the sanction period is incorrect, provided a request for a hearing is filed as prescribed in § 224.64.

3. Paragraph (a) of § 224.65 is revised to read as follows:

§ 224.65 Issues subject to hearing.

(a) Under the WIN adjudication system a hearing officer will hear and decide WIN program issues arising subsequent to registration by certified and uncertified registrants. WIN program issues include failure or refusal to appear for appraisal, assignment to a WIN component, unresolved WIN grievances, failure or refusal without good cause to accept employment or otherwise participate in the WIN program, and the determination of the length of the sanction period.

* * * * *

4. Paragraph (a) of § 224.68 is amended by revising subparagraph (5) as follows:

§ 224.68 Decisions of the hearing officer.

(a) The hearing officer may rule:

* * * * *

(5) That the length of the period of the registrant's failure or refusal to participate was not correctly determined.

The hearing officer may also render such other rulings as are appropriate to the issues in question. However, a hearing officer shall not consider the validity or consitutionality of the regulations in this part or of the Act.

* * * * *

5. Paragraph (a) of § 224.77 is revised to read as follows:

§ 224.77 Subsequent WIN registration by deregistered individuals.

(a) An individual who was deregistered on the basis of a "failure or refusal to participate without good cause" determination, upon application, may again register for WIN, provided the sanction period specified in § 224.51(b) has elapsed and the individual has given evidence to the WIN project staff of willingness to participate.

* * * * *

Dated: October 30, 1978.

JOSEPH A. CALIFANO, JR.,
Secretary of Health, Education, and Welfare.

Dated: November 7, 1978.

RAY MARSHALL,
Secretary of Labor.

[FR Doc. 78-32119 Filed 11-16-78; 8:45 am]

[4110-02-M]

Office of Education

[45 CFR Part 139]

TRAINING PROGRAM FOR SPECIAL PROGRAMS STAFF AND LEADERSHIP PERSONNEL

Intent Not To Publish Final Regulations

AGENCY: Office of Education, DHEW.

ACTION: Notice of intent not to publish final regulations and withdrawal of proposed rulemaking.

SUMMARY: After extensive discussion and deliberation regarding the statute, the notice of proposed rulemaking published on January 12, 1978, and the subsequent public comments, the Commissioner of Education has decided that section 417B(f) of the Higher Education Act of 1965, as amended, does not require publication of a separate implementing regulation.

EFFECTIVE DATE: This notice is effective November 17, 1978.

FOR FURTHER INFORMATION, CONTACT:

Velma L. Monteiro, Bureau of Higher and Continuing Education, 7th and D Streets, SW., Regional Office Building 3, Room 3514, Washington, D.C. 20202, telephone 202-245-2511.

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SUPPLEMENTARY INFORMATION: The Education Amendments of 1976 added a new subsection 417B(f), which authorized the Commissioner to award contracts to institutions of higher education and other appropriate public agencies and nonprofit private organizations to provide staff and training for leadership personnel in the projects of the special programs for students from disadvantaged backgrounds.

The Office of Education has awarded a contract based on requests for proposals (RFP). A synopsis of the initial RFP was published in the Commerce Business Daily on August 10, 1978, establishing September 8, 1978, as the closing date for receipt of proposals. The initial training contract was awarded on September 29, 1978.

(Catalog of Federal Domestic Assistance No. 13.592, Training Program for Special Programs Staff and Leadership Personnel.)

Dated: October 11, 1978.

ERNEST L. BOYER,
U.S. Commissioner of Education.

Approved: November 8, 1978.

HALE CHAMPION,
Acting Secretary of Health, Education, and Welfare.

[FR Doc. 78-32317 Filed 11-16-78; 8:45 am]

[4110-92-M]

Administration on Aging

[45 CFR Part 1321]

GRANTS FOR STATE AND COMMUNITY PROGRAMS ON AGING

Withdrawal of Notice of Proposed Rulemaking

AGENCY: Office of Human Development Services, DHEW.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This notice withdraws proposed regulations published on December 5, 1977 (42 FR 61479). That proposal would have transferred, from the Commissioner on Aging to State agencies on aging, authority to approve extensions of a 3-year limitation of project awards under State and community programs on aging. It would also have established criteria to be used by State agencies to approve such extensions. The Older Americans Act Amendements of 1978 was passed October 18, 1978. This legislation will require a number of regulatory changes. We are therefore withdrawing the proposed rule in order to reevaluate it in light of the new legislation and to consider all necessary amendments to our regulations at the same time.

DATES: Effective on November 17, 1978.

FOR FURTHER INFORMATION CONTACT:

Martin Sicker, Ph. D., Office of Program Development, Administration on Aging, Office of Human Development Services, Department of Health, Education, and Welfare, telephone 202-245-6809.

(Secs. 304(c) and 305(a) of the Older Americans Act; 87 Stat. 40 (42 U.S.C. 3024(c) and 3025(a)).)

(Catalog of Federal Domestic Assistance Program No. 13.609, Special Programs for the Aging.)

Dated: September 14, 1978.

ROBERT BENEDICT,
Commissioner on Aging.

Dated: October 11, 1978.

ARABELLA MARTINEZ,
Assistant Secretary for Human Development Services.

Approved: November 11, 1978.

HALE CHAMPION,
Acting Secretary.

[FR Doc. 78-32390 Filed 11-16-78; 8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

[3410-15-M]

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

KANSAS ELECTRIC POWER COOPERATIVE, INC.

Draft Environmental Impact Statement

Notice is hereby given that the Rural Electrification Administration may prepare an environmental impact statement in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 in connection with a proposed application for financing from Kansas Electric Power Cooperative, Inc. (KEPCo), 5709 West 21st Street, P.O. Box 4267, Gage Center Station, Topeka, Kans. 66604. The statement will cover proposed financing of KEPCo participation in the Wolf Creek Generating Station, unit No. 1, which is sponsored by Kansas Gas & Electric Co. and Kansas City Power & Light Co. The generator rated at 1150 MW will be driven by steam produced by a pressurized water nuclear reactor and will be located in Coffey County, Kans., approximately 53 miles south of Topeka, Kans. Approximately 180 miles of transmission line were constructed in conjunction with the project. KEPCo proposes to be a 17-percent participant in the ownership of the generating unit.

The U.S. Nuclear Regulatory Commission (NRC) Office of Nuclear Reactor Regulation published a draft environmental statement in July 1975 and a final environmental statement in October 1975 concerning this project. The NRC statement will be utilized by REA in making its decision. If prepared, the REA statement will supplement the NRC statement and will determine the environmental effect of the Federal financing proposed to be provided to KEPCo for its participation.

Interested persons are invited to submit comments which may be helpful to REA in preparing the draft EIS.

Comments should be forwarded to the Assistant Administrator—Electric, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250, with a copy to KEPCo, the proposed borrower, whose address is given above. Additional information may be obtained at the borrower's office during regular business hours.

Dated at Washington, D.C., this 8th day of November 1978.

ROBERT W. FERAGEN,
Administrator, Rural Electrification Administration.

[FR Doc. 78-32277 Filed 11-16-78; 8:45 am]

[3410-18-M]

Economics, Statistics, and Cooperatives Service

STUDY OF FOREIGN INVESTMENT IN U.S. REAL ESTATE

AGENCY: Economics, Statistics, and Cooperatives Service.

ACTION: Notice.

SUMMARY: The Economics, Statistics, and Cooperatives Service (ESCS) will conduct a study of the feasibility of establishing a system to monitor foreign direct investments in agricultural, rural, and urban property. This study will be conducted between the date of publication of this notice and September 30, 1979. The information sought will be that which is useful in identifying regular and reliable sources of information on foreign ownership in U.S. real estate. Various local, State, and Federal agencies will be contacted, as well as buyers and sellers of real estate, officials of financial institutions, brokers, attorneys, and others who participate in the real estate market. All information on specific individuals, or their representatives, or other persons will be held confidential. Failure to provide information requested for this study will be subject to the enforcement provisions of 22 U.S.C. 3105.

FOR FURTHER INFORMATION CONTACT:

Gene L. Wunderlich, Natural Resource Economics Division, Economics, Statistics, and Cooperatives Service, U.S. Department of Agriculture, Washigton, D.C. 20250, 202-447-9179.

SUPPLEMENTAL INFORMATION: The International Investment Survey Act of 1976 (22 USC 3101 et seq.) mandated a study of the feasibility of establishing a system to monitor foreign direct investments in agricultural, rural, and urban real property. ESCS has been designated to carry out this study. The relevant delegations of authority were published at 43 FR 37419, August 23, 1978.

STUDY OBJECTIVES

This study will be conducted between the date of publication of this notice and September 30, 1979. The product of the study will be a report to Congress covering the following topics:

(1) The real estate industry as an information system: A description of the real estate industry, those aspects particularly important in foreign investment, the sources of information about real estate. Background for other reports.

(2) A review of State law on restrictions on foreign investment in real estate, emphasizing reporting and registration.

(3) Restrictions, controls, and registration requirements as they pertain to U.S. investors abroad.

(4) Technical, economic and administrative feasibility of Federal registration and Federal reporting systems. A comparison of two types of centralized systems concerned exclusively with obtaining information on foreign investment in real estate.

(5) Legal analysis of the feasibility of systems designed solely to obtain information on foreign investment in real estate.

(6) Description of multipurpose data systems, specification of the uses and limits of multipurpose systems. Conceptual models and existing systems.

(7) State of arts of land record systems in the United States beginning with assessment records and emphasizing capabilities to identify and aggregate information on land owners including citizenship and residence of beneficial owners.

(8) Review of state of multipurpose cadastres abroad to determine systems or elements transferable to the United States. Analysis includes the usefulness of systems abroad in determining citizenship and residence of owners.

(9) Technical, economic, and administrative feasibility of land data systems that produce data on foreign ownership as a by-product. Comparison of county-record-oriented network with periodic full count of sample surveys. Evaluation will follow prescribed criteria.

(10) Legal analysis of multipurpose systems as they are designed and used

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for compiling information on foreign investment in U.S. real estate.

(11) Secrecy and disclosure of information on land ownership and land transactions—an extension of an initial study.

(12) The economic impact of foreign investment in real estate: Analysis, based on available data, of the likely effects of foreign purchase and ownership of land on prices, employment, capital formation in the economy as a whole; and effect of foreign investment on farmland prices, size of farm, tenure, structure, productivity, and rural communities.

(13) Institutional analysis of land information systems which report foreign ownership of land. Emphasis of the analysis is on the control of information as an instrument of power; and effect of centralization and decentralization on management of information systems.

(14) Summary comparison of four scenarios of information systems so that tradeoffs between alternatives are clearly discernible. Within limits of available information, recommendations will be made.

(15) Bibliography.

SOURCES OF INFORMATION

Data will be gathered primarily through interviews with knowledgeable individuals who are associated with the transfer, financing, recordation, valuation, and management of real property. Categories of persons to be contacted include:

(1) *Real estate brokers.* Firms or persons acting for, and on behalf of, buyers and sellers of real property interests. May include firms and services such as property listing that are ancillary to transactions.

(2) *Real estate counselors.* Persons or firms who advise buyers, sellers, and others who hold, manage, appraise, finance, or assist in the trade of real estate.

(3) *Buyers and sellers.* Buyers and sellers of interests in real estate not limited to titles in fee simple.

(4) *Attorneys.* Persons licensed to practice law and others, including title examiners, directly involved in legal services pertaining to real estate. (No information will be sought the disclosure of which would breach the confidentiality of the attorney-client relationship.)

(5) *Financial officials.* Persons in financial institutions such as banks, savings and loans, and mortgage companies responsible for the financing of real property transfers or managing real estate for others.

(6) *Real estate managers.* Firms or persons responsible for the use of and income from real property owned by others.

(7) *Recorders.* The officials of local governments responsible for the recording of instruments affecting real estate titles. May also be titled registrar of deeds, recorder of deeds, or clerk.

(8) *Assessors.* The officials of local governments responsible for the identification and valuation of real property for tax purposes. May also be known as assessing officer and may also include appraisers, auditors, or treasurers to the extent that they create, hold, or use real property information.

Indivisuals within these categories will be selected for interview on the basis of self-advertisement or offering of services, published articles or books relating to the subject, referrals by professional or trade organizations, referrals by persons previously contacted, or position held in organizations known to be engaged in any of the activities mentioned.

STAFF AND CONTRACTORS

The data will be gathered and the report written by a combination of USDA staff and contractor personnel. Contractors engaged for this project are:

(1) Barlow Burke, Washington College of Law, The American University, Washington, D.C. 20016.
(2) Frances Flanagan, School of Business Administration, University of California, Berkeley, Calif. 94270.
(3) International Association of Assessing Officers, 1313 East 60th Street, Chicago, Ill. 60637.
(4) J. Dean Jansma, Department of Agricultural Economics and Rural Sociology, Pennsylvania State University, University Park, Pa. 16802.
(5) Lincoln Institute of Land Policy, 26 Trowbridge Street, Cambridge, Mass. 02138.
(6) John McMahan, 1 Embarcadero Center, San Francisco, Calif. 94111.
(7) Texas Real Estate Research Center, Texas A. & M. University, College Station, Tex. 77843.
(8) Robert Warren, College of Urban Affairs and Public Policy, University of Delaware, Newark, Del. 19711.
(9) Price Waterhouse and Co., Office of Government Services, 1801 K Street, Northwest, Washington, D.C. 20006.
(10) Bruce Zagaris, 1923 38th Street, Northwest, Washington, D.C. 20007.

CONFIDENTIALITY

22 U.S.C. 3104(c) provides that information collected in the course of this study on specific owners, buyers, sellers, or their representatives, or other persons questioned will be available only to officials or employees, consultants, and persons working under contract on this project. According to that section, such information may only be released as authorized by the President to other Government agencies or officials to further the purposes of the act.

ENFORCEMENT

Failure to supply information requested for this study will be subject to the enforcement provisions of 22 U.S.C. 3105, which provides for a civil penalty not exceeding $10,000; or a criminal penalty of a fine not to exceed $10,000, or imprisonment for not more than 1 year, or both.

Dated: November 9, 1978.

KENNETH R. FARRELL,
Administrator.

[FR Doc. 78-32463 Filed 11-16-78; 8:45 am]

[3410-03-M]

Science and Education Administration

NATIONAL AGRICULTURAL RESEARCH AND EXTENSION USERS ADVISORY BOARD

Meetings

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), the Science and Education Administration announces the following meeting:

Name: National Agricultural Research and Extension Users Advisory Board.
Date: December 6, 7, and 8, 1978.
Time: 9 a.m.
Place: Room 330, GHI Building, 500 12th Street SW., Washington, D.C.
Type of meeting: Open to the public. Persons may participate in the meeting as time and space permit.
Comments: The public may file written comments before or after the meeting with the contact person below.
Purpose: To organize this new Board and initiate measures to develop independent advisory opinions on the food and agricultural sciences.
Contact person for agenda and more information: Dr. James Nielson, Executive Director of the Board, Science and Education Administration, U.S. Department of Agriculture, Washington, D.C. 20250, telephone 202-447-8662.

Done at Washington, D.C., this 13th day of November 1978.

ERNEST L. CARLEY,
Acting Executive Director, National Agricultural Research and Extension Users Advisory Board.

[FR Doc. 78-32320 Filed 11-16-78; 8:45 am]

[6320-01-M]

CIVIL AERONAUTICS BOARD

[Docket 33363]

FORMER LARGE IRREGULAR AIR SERVICE INVESTIGATION

Hearing

The hearing on the applications of Puerto Rico Airlines, announced in the order of the presiding administrative law judge of September 29, 1978, will be held on December 19, 1978, at 9 a.m., in Room 1003, Hearing Room B, Universal Building North, 1875 Connecticut Avenue NW., Washington, D.C. 20428.

Dated at Washington, D.C., November 13, 1978.

RUDOLF SOBERNHEIM,
Administrative Law Judge.

[FR Doc. 78-32475 Filed 11-16-78; 8:45 am]

[6320-01-M]

[Order 78-11-45; Docket 26291]

IMMEDIATE RESTORATION OF ADEQUATE AIR SERVICE FOR AMERICAN SAMOA

Renewed Petition; Order

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 13th day of November 1978.

1. BACKGROUND

On January 8, 1974, American Samoa filed a petition for immediate restoration of adequate service.[1] The impetus behind its petition was the fact that: (1) Pan American had eliminated service (two round trips) between Pago Pago and Papeete, Tahiti, and reduced Pago Pago-Honolulu service from six round trips, prior to October 28, 1973, to three; and (2) American Airlines had eliminated one of its two weekly Honolulu-Pago Pago-Auckland round trips. The day before Samoa filed its petition, American filed an application to suspend all service over its South Pacific route which included American Samoa.[2] Subsequently, Pan American increased its Honolulu-Pago Pago service to six weekly round trips. The sixth round trip was later discontinued.

By order 74-2-99, February 25, 1974, we granted American's suspension application and dismissed Samoa's petition without prejudice, stating that this action would "allow a later evaluation of Pan American's service, if necessary." The primary basis of our action was the increase in service by Pan American (p. 6). On April 18, 1975, we transmitted our recommended decision to the President for approval in the *American-Pan American Route Exchange Agreement* case which, among other things, eliminated U.S.-flag competition at American Samoa with the removal of American's services. Because the agreement had eliminated competitive service, we instituted a new route proceeding—the *South Pacific Service Case*—to consider the need for restoring competitive service in the South Pacific.[3] In approving the transfer, President Ford noted:

> I am concerned, however, that loss of competitive service not result in inadequate service. For that reason I recommend that the Board expedite its procedure so that its proposed decision in the *South Pacific Service* case can be submitted for my review by July, 1976, and that the Board inquire into the adequacy of service at American Samoa under existing route authority.

After a full evidentiary hearing, we rendered our decision in the *South Pacific Service* case, order 77-7-89, July 22, 1977, authorizing Continental to operate over a Los Angeles-Honolulu-American Samoa-Fiji-New Zealand-Australia route. In that decision, we reaffirmed our concern for sufficient service to Samoa, stating that "the special responsibility of the U.S. Government for the welfare of American Samoa, to whose economy air transportation and tourism are exceedingly important, cannot be stressed too often" (p. 24). That action resulted in the restoration of competitive U.S.-flag authority, but unfortunately has not resulted in the restoration of competitive service. Continental has not been able to institute service over its new route because the Australian Government has not approved Continental's schedules or new low fares in the United States-Australia market.[4]

2. RENEWED PETITION

On October 21, 1977, the Samoan authorities filed a renewed petition for an adequacy of service investigation (docket 26291). Samoa stated that Pan American had filed schedules (effective November 1, 1977) which would reduce the number of flights between Honolulu and Pago Pago from four weekly round trips to two, resulting in the elimination of all service to Australia; that it is not requesting that Pan American provide more service than that offered prior to November 1, 1977, but only that it restore and not reduce service below the four weekly flights offered until that date; and that, because Continental has not instituted its South Pacific service, there is no justification for Pan American to reduce service.[5]

By order 77-12-144, December 29, 1977, we deferred action on American Samoa's petition in docket 26291 and directed the Office of Community and Congressional Relations (OCCR) to hold discussions with Pan American and American Samoa to determine the latter's air transportation needs and the means for better satisfying them. OCCR held several meetings and had several telephone discussions with representatives of both parties, and it issued its report on April 5, 1978. Responses were filed by Pan American, Continental, and American Samoa.

OCCR concluded that, while Pan American could provide an increase in the level of service at American Samoa, the long-term solution of the problem is tied to the conclusion of bilateral negotiations with Australia so that Continental can begin service, and that an adequacy of service case is not justified. It recommended, therefore, that the petition be dismissed. It also endorsed the possibility of South Pacific Island Airways, a Samoan-based carrier, providing two round trips per week between Honolulu and Pago Pago.[6]

Continental contends that the authorization of South Pacific Island Airways is a "'short-term" solution; that the Board should take all necessary steps to effectuate Continental's entry into the South Pacific markets; that Pan American has hindered its entry by increasing capacity in the United States-Australia market above the level it said it would operate without U.S.-flag competition; and that the Australian Government's objection is to excess capacity in the United States-Australia market, and not to Continental itself.

Pan American states that existing service to Pago Pago is adequate; that its modified schedules have not reduced traffic or resulted in unreasonable load factors; that OCCR's proposals for additional service by alteration of current schedules are impracticable; that it cannot be compelled to provide more service without notice and a hearing, and Samoa's request that show-cause procedures be used is improper; that Continental also has the responsibility to serve Samoa, and it can do so without also serving Australia; and that Pan American is not obligated to reduce its competitive efforts

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[1] American Samoa is a United States possession in the South Pacific 2,599 miles from Hawaii and 2,737 miles from Sydney. In the Transpacific Route Investigation, docket 16242, Opinion of Nov. 18, 1968, p. 4., we emphasized our * * * "special responsibility to American Samoa, whose economic development is an important national objective."

[2] Concurrently, we had pending before us the joint application of Pan American and American for a route exchange under which American would trade its South Pacific authority to Pan American for certain Caribbean authority held by Pan American.

[3] Orders 75-6-152/153/154.

[4] During the *South Pacific* case, Continental stated that service over the new route would not be economically feasible without Australia. New Zealand has accepted Continental's designation as U.S.-flag carrier, but has indicated that it might not accept its proposed fares, and that further discussions may be necessary.

[5] During the *South Pacific* case, Pan American had stated that with competition it would be forced to reduce its service at Pago Pago to one round trip per week in the Honolulu-Pago Pago market. Of course, when Pan American announced its November schedules, Continental had not announced commencement of service.

[6] South Pacific Island Airways has filed an application for 401 authority between Honolulu and Pago Pago (docket 33139).

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in the United States-Australia markets and provide the number of flights it forecast in the *South Pacific Service* case.

American Samoa argues that the OCCR report fails to note the United States' responsibility for Samoa, Samoa's heavy dependence on tourism and U.S. air service provided by Pan American, and the consequences of the loss of Australia service. It contends that the report provides a basis for sustaining its petition and asks us to direct Pan American to show cause why its Samoa service should not be restored to the pre-October 31, 1977, level.

3. DISPOSITION

We are fully cognizant of the serious service problems that have plagued American Samoa since 1974.[7] However, the history recounted above demonstrates the difficulties involved in assuring adequate service to American Samoa. Clearly, the long-term solution to American Samoa's service needs is the provision of competitive service by a willing carrier; and we have certificated Continental to be that carrier. The short term is the problem.[8]

The best method of bringing immediate improvements to American Samoa's air service is to authorize a competitor or competitors willing and able to institute service to American Samoa without the support of travelers flying beyond American Samoa to Australia or New Zealand. We recognize that an applicant for Pago Pago-Honolulu authority may need to support its service over that segment with traffic from some point behind Pago Pago or behind Honolulu. We are prepared to act quickly under the recently liberalized exemption provisions of section 416 of the Act to authorize service to any U.S. point which an applicant needs to support a reasonable pattern of round trip Pago Pago-Honolulu service.[9]

Applicants are free to request authority to any point west of American Samoa if they believe those beyond markets are necessary to a viable Honolulu-Pago Pago service, but we will not now decide whether any interim authority should include beyond rights to Australia and New Zealand, the most likely beyond markets west of American Samoa. Because of the uncertainties in our bilateral relationships with Australia and New Zealand, applicants for exemption authority which includes rights to these countries, and other interested persons, should provide information on the consumer and carrier need for such beyond operations for the interim period and the negotiating issues such authorization would raise.[10]

The Airline Regulatory Reform Act of 1978 added a new section 419 to the Federal Aviation Act designed to assure essential air transportation to eligible small communities. See Pub. L. 95-504, section 33 (1978). Pago Pago is an eligible point as defined in that section (sec. 419(a)(1)(A)). We have directed the staff to consult with representatives of the government of American Samoa and submit recommendations to enable us to make findings of American samoa's "essential air transportation." The new statute may make it possible for us to subsidize essential air service at American Samoa if no carrier is willing to provide that service without subsidy.

Finally, we will defer action on Samoa's petition for an adequacy of service investigation under section 404 of the Act until we have attempted these other methods of improving American Samoa's air service.

Accordingly,

1. We defer the petition of American Samoa in docket 26291;

2. We request carriers interested in temporary exemption authority to American Samoa to file applications within 30 days from the date of adoption of this order; and

3. We shall serve this order on all certificated scheduled and supplemental carriers, the Governor of American Samoa and South Pacific Islands Airways.

We shall publish this order in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[11]

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-32476 Filed 11-16-78; 8:45 am]

[7] Pan American is now providing only two weekly Honolulu-Pago Pago round trips. Air New Zealand provides the only air service between Pago Pago and Auckland, with one weekly round trip. No direct air service is provided between Pago Pago and Sydney.

[8] Continental has stated that next May it plans to start a limited pattern of service to American Samoa serving New Zealand as a beyond point. Its petition to postpone inauguration of its South Pacific service until May 1, 1979 is now pending before the Board.

[9] Pub. L. 95-504, sec. 31 (1978).

[10] Continental has indicated that it will serve American Samoa as an intermediate point on its through services between Honolulu and Australia and New Zealand. However, difficulties with those countries have caused Continental to seek permission to delay the inauguration of those services. It may be some time before we will be able to reach agreement with the governments of Australia and New Zealand on all issues related to Continental's South Pacific service.

[11] All members concurred.

[6320-01-M]

[Docket 28475]

ST. LOUIS-KANSAS CITY SUBPART M PROCEEDING

Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding is assigned to be held on December 5, 1978, at 10 a.m. (local time), in room 1003, hearing room B, Universal North Building, 1875 Connecticut Avenue NW., Washington, D.C., before the undersigned.

For information concerning the issues involved and other details in this proceeding, interested persons are referred to the order of administrative law judge, dated October 19, 1978, and other documents which are in the docket of this proceeding on file in the docket section of the Civil Aeronautics Board.

Dated at Washington, D.C., November 13, 1978.

RICHARD M. HARTSOCK,
Administrative Law Judge.

[FR Doc. 78-32474 Filed 11-16-78; 8:45 am]

[3510-24-M]

DEPARTMENT OF COMMERCE

Economic Development Administration

WEBSTER ENTERPRISES, INC. ET AL.

Determinations of Eligibility To Apply For Trade Adjustment Assistance

Petitions have been accepted for filing from four firms: (1) Webster Enterprises, Inc., 3012 Keswick Road, Cleveland, Ohio 44120, a producer of children's squeeze toys (accepted November 8, 1978); (2) Knitcapers, Inc., 93-37 150th Street, Jamaica, N.Y. 11435, a producer of women's sweaters (accepted November 8, 1978); (3) Jolie Handbag, Inc., 416 West 13th Street, New York, N.Y. 10014, a producer of handbags and cosmetic bags (accepted November 9, 1978); and (4) Robert Lewis, Inc., 804 Broadway, West Long Branch, N.J. 07764, a producer of men's leather and cloth coats and jackets (accepted November 9, 1978). The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (Pub. L. 93-618) and section 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315).

Consequently, the U.S. Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Chief, Trade Act Certification Division, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the 10th calendar day following the publication of this notice.

JACK W. OSBURN, Jr.,
Chief, Trade Act Certification Division, Office of Planning and Program Support.

[FR Doc. 78-32307 Filed 11-16-78; 8:45 am]

[3510-13-M]

National Bureau of Standards

APPROVED INTERPRETATIONS FOR FEDERAL STANDARD COBOL (FIPS PUB 21-1)

Under the provisions of Pub. L. 89-306 and Executive Order 11717, the Secretary of Commerce is authorized to establish uniform Federal ADP standards. FIPS PUB 21-1 specifies Federal Standard COBOL. The Standard defines the elements of the COBOL programming language and the rules for their use. During the use of the standard, questions arise as to the meaning of certain language specifications. FIPS PUB 29 defines the procedures to be followed in providing solutions to these questions. The procedures allow for the solutions to be used uniformly throughout the Federal Government and by all implementors of compilers acquired by the Federal Government. Accordingly, in the February 14, 1978, issue of the FEDERAL REGISTER (FR Doc. 78-4037, p. 6294), the National Bureau of Standards published a notice of proposed interpretation of Federal Standard COBOL as pertains to the specification of delimiters in the UNSTRING statement and the specification of literals (figurative constants) in the alphabet-name clause. All comments submitted concurred with the proposed interpretations.

Each of the following approved interpretations contains a definition of the problem, discussion of the issues, approved language interpretation, supporting justification, necessary clarifications, to Federal Standard COBOL, and the effective date of the interpretation. Each approved interpretation, as of the effective date, becomes an integral part of Federal Standard COBOL and, as such, is considered to be included whenever reference is made to Federal Standard COBOL.

Interested parties may, in accordance with FIPS PUB 29, Interpretation Procedures for Federal Standard COBOL, dated June 30, 1974, submit comments concerning interpretations of Federal Standard COBOL to the Chairman, Federal COBOL Interpretations Committee, c/o Associate Director for ADP Standards, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234.

Dated: November 8, 1978.

ERNEST AMBLER,
Director.

FEDERAL STANDARD COBOL INTERPRETATION NO. 2—THE UNSTRING STATEMENT

PROBLEM: When the UNSTRING statement with the ALL phrase is specified and the data being acted upon the UNSTRING statement contains two or more contiguous occurrences of the delimiter specified in the DELIMITED By phrase, how many occurrences of the delimiter are moved to the area referenced by identifier-5?

ISSUES: Given the following UNSTRING statement:

```
UNSTRING ID-1 DELIMITED BY ALL
  "AB"
INTO ID-4 DELIMITER IN ID-5 COUNT
  IN ID-6
ID-7 COUNT IN ID-9
POINTER ID-10
TALLYING IN ID-11.
```

and the following description of the data:

```
01 ID-1 PICTURE IS X(10) VALUE
  "12ABABABCD".
01 ID-4 PICTURE IS X(8) VALUE
  SPACE.
01 ID-5 PICTURE IS X(8) VALUE
  SPACE.
01 ID-6 PICTURE IS 99 VALUE ZERO.
01 ID-7 PICTURE IS X(8) VALUE
  SPACE.
01 ID-9 PICTURE IS 99 VALUE ZERO.
01 ID-10 PICTURE IS 99 VALUE 1.
01 ID-11 PICTURE IS 99 VALUE ZERO.
```

What is the content of these data items after execution of the UNSTRING statement, especially as it concerns ID-5?

INTERPRETATION: This interpretation applies to American National standard COBOL, X3.23-1974, as it has been adopted as Federal Standard COBOL, FIPS PUB 21-1. The interpretation is that only one occurrence of the delimiter in the data item referenced by identifier-1 is moved to the data item referenced by identifier-5 when the ALL phrase is specified, whether or not the delimiter is contiguous to one or more additional occurrences of itself.

SUPPORTING JUSTIFICATION: References—The following references to American National Standard COBOL, X3.23-1974, pertain to the issues involved in this interpretation:

(a) Page II-92, General Rule 5.21.4(8)—"When the ALL phrase is specified, one occurrence or two or more contiguous occurrences of literal-1 (figurative constant or not) or the contents of the data item referenced by identifier-2 are treated as if it were only one occurrence, and this occurrence is moved to the receiving data item according to the rules in General Rule (13)d."

(b) Page II-92, General Rule 5.21.4(11)—"Each literal-1 or the data item referenced by identifier-2 represents one delimiter. When a delimiter contains two or more characters, all of the characters must be present in contiguous positions of the sending item, and in the order given to be recognized as a delimiter."

(c) Page II-93, General Rule 5.21.4(13)d—"If the DELIMITER IN phrase is specified, the delimiting character(s) are treated as an elementary alphanumeric data item and are moved into the data item referenced by identifier-5 according to the rules for the MOVE statement."

DISCUSSION: Reference (a) specifies that, once a delimiter is encountered, that occurrence is moved to the receiving data item for the delimiter. Reference (a) also specifies that the existence of more than one contiguous occurrence of the delimiter (as in the case "12ABABABCD") is considered as one occurrence and this occurrence is moved. It can be argued that "this" occurrence means all of the contiguous occurrences of the delimiter, however, a careful reading of reference (a) reveals that the antecedent of "this" is "one occurrence" and therefore only "one occurrence" is moved.

Reference (b) defines how one delimiter of two or more characters is detected. Given the example above, in the case of a sending data item containing the value "12ABABABCD" with a delimiter specified of ALL "AB", the conditions are correct for encountering the delimiter specified.

Reference (c) discusses how the movement of the delimiter into the data item referenced by identifier-5 is accomplished.

Therefore, upon execution of the UNSTRING statement specified in the above example, the following will result:

```
ID—4=12bbbbbb
ID—5=ABbbbbbb
ID—6=02
ID—7=CDbbbbbb
ID—9=02
ID—10=11
ID—11=02
```

CLARIFICATION OF FEDERAL STANDARD COBOL: None.

EFFECTIVE DATE OF INTERPRETATION: This interpretation is effective on May 17, 1978.

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FEDERAL STANDARD COBOL INTERPRETATION NO. 4—THE ALPHABET-NAME CLAUSE

PROBLEM: In order to determine what collating sequence has been specified in an alphabet-name clause, and whether that specification is correct, it is necessary to know to which characters the figurative constants HIGH-VALUE and LOW-VALUE refer if they are specified in the clause.

ISSUES: A figurative constant may be specified in a COBOL source program where a literal may be specified. The alphabet-name clause in the SPECIAL-NAMES paragraph permits the specification of a character in the native character set of the computer by means of an nonnumeric literal. There is no specific restriction upon using a figurative constant of HIGH-VALUE or LOW-VALUE as the specification of a nonnumeric literal in the alphabet-name clause. However, the character in the native character set referred to by one of these figurative constants HIGH-VALUE and LOW-VALUE is normally defined in terms of the program collating sequence; but the program collating sequence may be established by the definition in an alphabet-name clause. At issue are the following questions:

(a) If specified in the alphabet-name clause for an alphabet-name which is referenced in the PROGRAM COLLATING SEQUENCE clause of the OBJECT-COMPUTER paragraph, do the figurative constants HIGH-VALUE and LOW-VALUE result in unambiguous identification of the collating sequence for that alphabet-name?

(b) What is the collating sequence which is used to determine the actual characters referenced by HIGH-VALUE and LOW-VALUE when these figurative constants are specified in an alphabet-name clause?

INTERPRETATION: This interpretation applies to American National Standard COBOL, X3.23-1974, as it has been adopted as Federal Standard COBOL, FIPS PUB 21-1. The figurative constants LOW-VALUE and HIGH-VALUE and their equivalent forms LOW-VALUES and HIGH-VALUES, respectively, may be specified in an alphabet-name clause in the SPECIAL-NAMES paragraph of a COBOL source program, whether or not the alphabet-name which is the subject of the clause is referenced in the PROGRAM COLLATING SEQUENCE clause of the OBJECT-COMPUTER paragraph for that program. In all cases where such a specification of LOW-VALUE is made, the character referenced by the figurative constant LOW-VALUE is that character which has the lowest ordinal position in the native collating sequence for the native character set implemented on the computer specified in the OBJECT-COMPUTER paragraph. In all cases where such a specification of HIGH-VALUE is made, the character referenced by the figurative constant HIGH-VALUE is that character which has the highest ordinal position in the native collating sequence for the native character set implemented on the computer named in the OBJECT-COMPUTER paragraph.

SUPPORTING JUSTIFICATION: References.—The following references to American National Standard COBOL, X3.23-1974, pertain to the issues involved in this interpretation:

(a) Page I-81, paragraph 5.3.2.2.2.3, states in part: "A figurative constant may be used wherever a literal appears in a format, except that whenever the literal is restricted to having only numeric characters in it, the only figurative constant permitted is ZERO (ZEROS, ZEROES)." It further states: "When the figurative constants HIGH-VALUE(S) or LOW-VALUE(S) are used in the source program, the actual character associated with each figurative constant depends upon the program collating sequence specified."

(b) Page II-6, paragraph 3.1.2.4, specifies rules for the OBJECT-COMPUTER paragraph. In particular, General Rule (3) states: "If the PROGRAM COLLATING SEQUENCE clause is not specified, the native collating sequence is used." General Rule (4) states: "If the PROGRAM COLLATING SEQUENCE clause is specified, the program collating sequence is the collating sequence associated with the alphabet-name specified in that clause."

(c) Page II-8, paragraph 3.1.3.3, specifies Syntax Rules for the SPECIAL-NAMES paragraph. In particular, Syntax Rule (2) states: "If the literal phrase of the alphabet-name clause is specified a given character must not be specified more than once in an alphabet-name clause."

(d) Pages II-9 and II-10, paragraph 3.1.3.4, specifies General Rules for the SPECIAL-NAMES paragraph. In particular, the following General Rules are of interest:

(1) General Rule (3)d, Rule 1 states: "The value of each literal specifies:

1. The ordinal number of a character within the native character set, if the literal is numeric • • •.

2. The actual character within the native character set, if the literal is nonnumeric • • •."

(2) General Rule (3)d, Rule 3 states: "Any characters within the native collating sequence, which are not explicitly specified in the literal phrase, assume a position, in the collating sequence being specified, greater than any of the explicitly specified characters. The relative order within the set of these unspecified characters is unchanged from the native collating sequence."

(3) General Rule (3)d, Rule 5 states: "If the ALSO phrase is specified, the characters of the native character set specified by the value of literal-1, literal-3, literal-4, • • •, are assigned to the same position in the collating sequence being specified."

(4) General Rule (4) states: "The character that has the highest ordinal position in the program collating sequence specified is associated with the figurative constant HIGH-VALUE. If more than one character has the highest position in the program collating sequence, the last character specified is associated with the figurative constant HIGH-VALUE."

(5) General Rule (5) states: "The character that has the lowest ordinal position in the program collating sequence specified is associated with the figurative constant LOW-VALUE. If more than one charracter has the lowest position in the program collating sequence, the first character specified is associated with the figurative constant LOW-VALUE."

Discussion: An alphabet-name which is defined by an alphabet-name clause in which literals appear may be referenced in the PROGRAM COLLATING SEQUENCE clause of the OBJECT-COMPUTER paragraph and in the COLLATING SEQUENCE phrase of the SORT and MERGE statements. Consider the case where the alphabet-name defined in an alphabet-name clause containing literals is referenced in the PROGRAM COLLATING SEQUENCE clause. It cannot be supposed that the figurative constants LOW-VALUE and HIGH-VALUE specify characters from the native computer code set in terms of the program collating sequence being defined in the alphabet-name clause. Such a supposition would lead to inconsistencies. For example, LOW-VALUE if specified as the first literal in an alphabet-name clause would not uniquely identify any character; and LOW-VALUE specified other than as the first literal in an alphabet-name clause would be prohibited by reference (c). For HIGH-VALUE, the inconsistency would be that any unspecified character assumed to be highest in the program collating sequence, if specified by means of HIGH-VALUE in the alphabet-name clause, would then be explicitly specified and could not be the character referred to by HIGH-VALUE, according to references (d)(2) and (d)(4). These inconsistencies can only be avoided if either HIGH-VALUE and LOW-VALUE are syntactically incorrect specifications for literals in the alphabet-name clause or else HIGH-VALUE and LOW-VALUE specify characters in terms of some other program collating sequence than that which is being defined. Because reference (a) allows a figurative constant to be used "wherever a literal appears in a format," and since there is no specific prohibition of any figurative constant being used in the alphabet-name clause, the interpretation is given that, while processing the alphabet-name clause and before the program collating sequence is established, the native collating sequence is the program collating sequence for purposes of determining the characters referred to by HIGH-VALUE and LOW-VALUE. The term "native character set" used in reference (d)(1) obviously embraces both the concepts of a native character code set and of a native collating sequence. The native character set must be ordered if meaning is to be given to the rule applying to numeric literals specified in an alphabet-name clause. This same ordering applies to the "actual character within the native character set, if the literal is nonnumeric." The use of the term "native character set" in reference (d)(1) is interpreted to mean that the native collating sequence is to be the program collating sequence used to determine the characters referred to by HIGH-VALUE and LOW-VALUE in the alphabet-name clause, even if the alphabet-name being defined is not specified in the PROGRAM COLLATING SEQUENCE clause.

Discussion of Examples: The following example is provided to illustrate the interpretation. Assume that a computer has a character set consisting of eight characters ordered, from low to high, in the native collating sequence A, B, C, D, E, F, G, H. The following alphabet-name clause is used to define a restructured collating sequence:

```
SPECIAL-NAMES.
RESTRUCTURED-ALPHABET IS:
    "C"
    "D" ALSO HIGH-VALUE ALSO LOW-
      VALUE
    "B".
```

Because of reference (a), HIGH-VALUE and LOW-VALUE are permitted in the clause because the General Format of the SPECIAL-NAMES paragraph permits literals where these figurative constants are used. Because of reference (d)(1), the native collating sequence is used as the program collating sequence for purposes of defining RESTRUCTURED-ALPHABET, regardless of what the program collating sequence is for the remainder of the COBOL source program. Therefore, the collating sequence established for RESTRUCTURED-ALPHABET at execution time is:

```
C (lowest ordinal position)
D and H and A (second ordinal position)
B (third ordinal position)
E
F
G (highest ordinal position)
```

If the OBJECT-COMPUTER paragraph specifies the clause "PROGRAM COLLATING SEQUENCE IS RESTRUCTURED-ALPHABET", the character referred to by LOW-VALUE, except in an alphabet-name clause, is the character "C"; and the character referred to by HIGH-VALUE, except in an alphabet-name clause, is the character "G".

CLARIFICATION OF FEDERAL STANDARD COBOL: None.

EFFECTIVE DATE OF INTERPRETATION: This interpretation is effective on May 17, 1979.

[FR Doc. 78-32318 Filed 11-16-78; 8:45 am]

[3510-13-M]

APPROVED INTERPRETATION FOR FEDERAL STANDARD COBOL (FIPS PUB 21-1)

Under the provisions of Pub. L. 89-306 and Executive Order 11717, the Secretary of Commerce is authorized to establish uniform Federal ADP standards. FIPS PUB 21-1 specifies Federal standard COBOL. The standard defines the elements of the COBOL Programing Language and the rules for their use. During the use of the standard, questions arise as to the meaning of certain language specifications. FIPS PUB 29 defines the procedures to be followed in providing solutions to these questions. The procedures allow for the solutions to be used uniformly throughout the Federal Government and by all implementors of compilers acquired by the Federal Government. Accordingly, in the February 14, 1978 issue of the FEDERAL REGISTER (FR Doc 78-4037, page 6294), the National Bureau of Standards published a notice of proposed interpretation of Federal standard COBOL as pertains to the specification of a COPY statement in the Identifiation Division of a COBOL source program. All comments submitted about the proposed interpretation have been duly considered.

The following approved interpretation contains a definition of the problem, discussion of the issues, approved language interpretation, supporting justification, necessary clarifications to Federal standard COBOL, and the effective date of the interpretation. The approved interpretation, as of the effective date, becomes an integral part of Federal standard COBOL and, as such, is considered to be included whenever reference is made to Federal standard COBOL.

Interested parties may, in accordance with FIPS PUB 29, interpretation procedures for Federal standard COBOL, dated June 30, 1974, submit comments concerning interpretations of Federal standard COBOL to the Chairman, Federal COBOL Interpretations Committee, c/o Associate Director for ADP Standards, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234.

Dated: November 8, 1978.

ERNEST AMBLER,
Director.

FEDERAL STANDARD COBOL INTERPRETATION NO. 3—THE COPY STATEMENT

PROBLEM: In order to determine whether or not the characters "COPY" when specified in a paragraph within the Identification Division cause text to be copied from a COBOL library, it is necessary to determine which characters in a COBOL source program constitute a comment-entry. If implementations of COBOL compilers differ with respect to whether a given instance of "COPY" causes text to be copied, portability of COBOL programs will be adversely impacted.

ISSUES: A COPY statement may be specified in a COBOL source program where a character-string may be specified; and a comment-entry is a character-string, but one for which the normal delimifation by separators does not apply in the same way as for other types of character-strings. At issue are the following two questions:

(a) What sequence of characters in a COBOL source program constitutes a single comment-entry?

(b) If a sequence of characters beginning with the characters "COPY" appears where a comment-entry may be specified but that sequence of characters is not a valid COPY statement, does an error exist in the program or are the characters considered to be part of a comment-entry?

INTERPRETATION: This interpretation applies to American national standard COBOL, X3.23-1974, as it has been adopted as Federal standard COBOL. FIPS PUB 21-1. The interpretation is in two parts. Each part addresses one of the issues related above.

(a) Any character other than a space character which immediately follows a period separator at a point in a COBOL source program where a comment-entry may be specified is either the first character of the specification of a COPY statement or else the first character of a comment-entry. Once the first character of a comment-entry has been encountered, that character and any succeeding characters up to, but not including, the period separator which immediately precedes the next header in the source program are all part of a single character-string, regardless of the appearance within this comment-entry character-string of any

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space or period characters. Consequently, in the AUTHOR, INSTALLATION, DATE-WRITTEN, DATE-COMPILED, and SECURITY paragraphs of the Indentification Division, a COPY statement may be specified only immediately following the paragraph header or immediately following another COPY statement.

(b) If a sequence of characters beginning with the characters "COPY" appears following a period separator at a point where a comment-entry may be specified, and if that sequence of characters up to the next period character which is followed by a space character is not the specification of a valid COPY statement according to the general format and syntax rules for that statement, the program is syntactically correct with respect to this specification of characters; and the characters in question are within a comment-entry character-string.

SUPPORTING JUSTIFICATION: References: The following references to American national standard COBOL, X3.23-1974, pertain to the issues involved in this interpretation:

(a) Page I-58, paragraph 4.2, states the definition of an entry as: "Any descriptive set of consecutive clauses terminated by a period and written in the Identification Division, Environment Division, or Data Division of a COBOL source program."

(b) Page I-74, Paragraph 5.2.1.8, states in part: "Paragraphs within the Identification and Procedure Divisions, and the entries within the Environment and Data Divisions must be terminated by the separator period."

(c) Page I-76, paragraph 5.3.2.1, states in part: "The rules established for the formation of separators do not apply to the characters which comprise the contents of nonnumeric literals, comment-entries, or comment lines."

(d) Page I-76, paragraph 5.3.2.2, states: "A character-string is a character or a sequence of contiguous characters which forms a COBOL word, a literal, a PICTURE character-string, or a comment-entry. A character-string is delimited by separators."

(e) Page I-82, paragraph 5.3.2.2.4, states: "A comment-entry is an entry in the Identification Division that may be any combination of characters from the computer's character set."

(f) Page I-94, paragraph 5.4.3.1, specifies that, where a comment-entry appears, it may optionally be repeated.

(g) Page X-2, paragraph 2.2, specifies the general format of the COPY statement.

(h) Page X-2, paragraph 2.3, specifies syntax rules for the copy statement. In particular, syntax rule (2) states: "The copy statement must be preceded by a space and terminated by the separator period." Syntax rule (7) states: "A COPY statement may occur in the source program anywhere a character-string or a separator may occur except that a copy statement must not occur within a COPY statement."

Discussion: (a) A comment-entry is a character-string according to reference (d), but a comment-entry is also an entry according to reference (e). In order to be consistent with one another, these referenced language specifications require that, in the case of a comment-entry, the entry in question must consist of a single clause which must, in turn, consist of a single character-string.

(b) A character-string must be delimited by separators according to reference (d), and an entry is terminated by a period according to reference (a). Because the entry and the character-string consist of identical characters in the case of a comment-entry, the character-string must be terminated with a separator period.

(c) According to reference (c), the rules for the formation of separators are not applicable to the contents of a comment-entry, which may consist of any characters including space and period characters in any combination. Therefore, the period separator which delimits the comment-entry can only be that period separator which terminates the paragraph according to reference (b). Only that particular period separator, because of its preceding a header, can be distinguished from those characters constituting the comment-entry.

(d) When a COPY statement is specified in place of a comment-entry character-string according to reference (h), characters specified following that COPY statement may be a comment-entry because of the repetition allowed by reference (f). In fact, this is the only circumstance under which a comment-entry is repeated. If a comment-entry begins immediately after a paragraph header, there can only be a single comment-entry in the paragraph since the rules for the formation of separators do not apply.

DISCUSSION OF EXAMPLES: In the following examples, assume that ABC, file-history, and high-sec are text-names contained in a COBOL library but that low-sec is not a text-name contained in such a library.

(a) SECURITY. HOW DO WE COPY ABC. ENVIRONMENT DIVISION.

Because of reference (c), the space preceding "COPY" is not a separator; consequently, no COPY statement is specified. A single comment-entry has been specified consisting of the characters "HOW DO WE COPY ABC".

(b) DATE-WRITTEN. ORIGINAL PROGRAM WRITTEN JANUARY 9, 1975. FILE DESCRIPTIONS MAINTAINED ON-LIBRARY. COPY FILE-HISTORY. DATE-COMPILED.

Because of reference (c), the period and space preceding "copy" do not constitute a period separator; consequently, no copy statement is specified. A single comment-entry has been specified.

(c) SECURITY. COPY HIGH-SEC. ENVIRONMENT DIVISION.

A valid copy statement has been specified according to references (g) and (h) in a position where a character-string, namely a comment-entry, can be specified. Therefore, the library text with text-name HIGH-SEC is copied into the program.

(d) SECURITY. COPY ABC GERZUN NOT IN LIBRARY. ENVIRONMENT DIVISION.

A syntactically valid COPY statement has not been specified according to references (g) and (h), i.e., a period separator does not immediately follow "ABC". The sequence of characters "COPY ABC GERZUN NOT IN LIBRARY" is a comment-entry according to reference (e).

(e) SECURITY. COPY LOW-SEC. ENVIRONMENT DIVISION.

A valid COPY statement has been specified according to references (g) and (h) in a position where a character-string, namely a comment-entry can be specified. However, since there is no library text named LOW-SEC, an error exists.

(f) SECURITY. COPY ABC. COMMENT SOME MORE. ENVIRONMENT DIVISION.

A valid COPY statement has been specified. Library text with the text-name ABC is copied into the program. The library text logically replaces only "COPY ABC.". The source program text following the COPY statement is a valid comment-entry permitted by reference (f).

CLARIFICATION OF FEDERAL STANDARD COBOL: None.

Effective Date of Interpretations: This interpretation is effective on May 17, 1978.

[FR Doc 78-32319 Filed 11-16-78; 8:45 am]

[3510-22-M]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

MID-ATLANTIC FISHERY MANAGEMENT COUNCIL

Meeting

AGENCY: National Marine Fisheries Service, NOAA.

ACTION: Notice of public meeting.

SUMMARY: The Surf Clam/Ocean Quahog Subcommittee of the Scientific and Statistical Committee of the Mid-Atlantic Fishery Management Council, established by section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), will meet to discuss revisions to the Surf Clam and Ocean Quahog Fishery Management Plan, and other business as necessary.

DATE: The meeting will convene on Wednesday, December 6, 1978, at 10 a.m. and adjourn approximately at 3 pm. This meeting is open to the public.

ADDRESS: The meeting will take place at the Best Western Philadelphia Airport Motel, Philadelphia Airport, Route 291, Philadelphia, Pa. 19153, 215-365-7000.

FOR FURTHER INFORMATION CONTACT:

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, North and New Streets, Room 2115, Federal Building, Dover, Del. 19901, telephone 302-674-2331.

Dated: November 14, 1978.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.

[FR Doc. 78-32421 Filed 11-16-78; 8:45 am]

[3510-22-M]

MID-ATLANTIC FISHERY MANAGEMENT COUNCIL

Meeting

AGENCY: National Marine Fisheries Service, NOAA.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council, established by section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), will meet to discuss: (1) Squid Fishery Management Plan, (2) Mackerel Fishery Management Plan, (3) Butterfish Fishery Management Plan, (4) Shark Fishery Management Plan, (5) Fluke Fishery Management Plan, (6) Status of Fishery Management Plans, (7) Other Administrative matters.

DATES: The meeting will convene on Wednesday, December 13, 1978, and will adjourn approximately at 1 p.m. on Friday, December 15, 1978.

ADDRESS: The meeting will take place at the Best Western Philadelphia Airport Motel, Philadelphia Airport, Route 291, Philadelphia, Pa. 19153, 215-365-7000.

FOR FURTHER INFORMATION CONTACT:

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, North and New Streets, Room 2115, Federal Building, Dover, Del. 19901, telephone 302-674-2331.

Dated: November 14, 1978.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.

[FR Doc. 78-32422 Filed 11-16-78; 8:45 am]

[6315-01-M]

COMMUNITY SERVICES ADMINISTRATION

NATIONAL CONSUMER COOPERATIVE BANK FEDERAL INTERAGENCY TASK FORCE

Meetings

ACTION: Notice of public meetings.

SUMMARY: The National Consumer Cooperative Bank Federal Interagency Task Force announces a series of 13 public meetings to provide general information on the Bank and to obtain specific comments on issues and questions generated by working subcommittees of the Interagency Task Force.

DATE, TIME, LOCATION, LOCAL LEAD AGENCY AND CONTACT PERSON:

Date and time	Location	Local lead agency	Local contact
Dec. 1, 9 a.m. to 5 p.m ..	215 Fremont St., room 605, San Francisco, Calif.	Department of Housing and Urban Development.	Sharon Brown, 415-556-8484.
Dec. 2, 9 a.m. to 5 p.m ..	College of Santa Fe, Cerrillos Rd. and St. Michaels Dr., the Forum, Santa Fe, N. Mex.	Department of Agriculture.	Doh Purcell, 505-766-3956.
Dec. 4, 9 a.m. to 5 p.m ..	Denver Marina Hotel, 303 West Colfax Ave., Big Horn Room, Denver, Colo.	ACTION	Karen Paget or Wayne Olson, 303-837-2671.
Dec. 4, 9 a.m. to 5 p.m ..	Federal Building, 228 Walnut St., third floor, Harrisburg, Pa.	National Credit Union Administration.	Joyce Stydinger, 717-782-4595
Dec. 4, 9 a.m. to 5 p.m ..	Federal Building, 26 Federal Plaza, room 1-102, New York, N.Y.	Department of Commerce	Al Funai, 212-264-5647.
Dec. 5, 9 a.m. to 5 p.m ..	Radisson-Cadillac Hotel, 1114 Washington Blvd., Woodward Room, Detroit, Mich.	Department of Housing and Urban Development.	Doris Mersdorf, 313-353-5834.
Dec. 5, 10 a.m. to 7 p.m.	Park Place Plaza, EPA Conference Room, 1200 Sixth Ave., Seattle, Wash.	Department of Health, Education, and Welfare.	Harvey Chester, 206-442-0486.
Dec. 8, 9 a.m. to 5 p.m ..	Fort Snelling, 266 Federal Bldg., conference room 564, St. Paul, Minn.	Community Services Administration.	Bev Gleeson, 612-296-5740.
Dec. 11, 9 a.m. to 5 p.m.	McCormack Federal Bldg., Devonshire St. and Post Office Sq., room 206, Boston, Mass.	ACTION	John Torian, 617-223-4510.
Dec. 11, 9 a.m. to 5 p.m.	Holiday Inn Central, 3321 South 72d St., Empire D Room, Omaha, Nebr.	Department of Energy	June Heard, 816-374-2061.
Dec. 13, 9 a.m. to 5 p.m.	Gaillard Municipal Bldg., 77 Calhoun St., Mezzanine Meeting Rooms, Charleston, S.C.	Community Services Administration.	Jim Middleton, 803-723-9285.
Dec. 14, 9 a.m. to 5 p.m.	New Orleans Public Library, Loyola and Tulane Aves., Library Auditorium, New Orleans, La.	....do	Norman Riemer, 214-767-6177.
Dec. 15, 9 a.m to 5 p.m.	City of Memphis Board of Education Administration Bldg., 2597 Avery St., Auditorium, Memphis, Tenn.	....do	Foster Adams, 901-528-2900.

FOR FURTHER INFORMATION CONTACT:

Jerry Storey, Office of Interagency and External Affairs, Community Services Administration, 1200 19th Street NW., room 238, Washington, D.C. 20506, 202-632-8322.

SUPPLEMENTARY INFORMATION: The National Consumer Cooperative Bank Act was signed into law on August 20, 1978. The Bank is intended to improve the effectiveness of self-help cooperatives by providing them financing and technical assistance. The Bank will be established as a mixed ownership Government corporation administered by a 13-member Board of Directors, 7 from Federal agencies and 6 from the general public. Eventually, the Bank will be wholly owned by its member cooperatives and will operate independently of the Federal Government.

The Administration has established a Federal Interagency Task Force to expedite implementation of the Act. The Interagency Task Force, chaired by the Department of the Treasury, is made up of 11 member agencies. The Interagency Task Force will recommend policies and procedures to the Bank.

The Interagency Task Force has organized six working subcommittees, as follows:

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I. *Internal Procedures,* chaired by the Department of Housing and Urban Development. This subcommittee deals with Board procedures, stockholders'; voting power, conflict of interest rules, setting up main and branch Bank offices and reports to Congress.

II. *Priorities and Allocation of Financial Assistance,* chaired by the White House Office of Consumer Affairs. This subcommittee deals with policy guidelines for defining eligible cooperatives, for apportioning loans, guarantees, interest subsidies, and technical assistance among eligible cooperatives.

III. *Finance and Lending Policies,* chaired by the Department of the Treasury. This subcommittee deals with the terms, conditions, and procedures for granting assistance, with the fees and interest rates to be charged, with Bank borrowing and with questions concerning stock that do not involve voting power.

IV. *Self-Help Development Fund,* chaired by ACTION. This subcommittee deals with questions concerning the Self-Help Development Fund.

V. *Technical Assistance,* chaired by the Department of Commerce. This subcommittee deals with questions concerning technical assistance, including standards and procedures for setting fees.

VI. *Public Participation,* chaired by the Community Services Administration and ACTION. This subcommittee is responsible for generating and coordinating public input to the work of the Interagency Task Force.

PUBLIC MEETINGS: The 13 public meetings on the Bank will be coordinated at the local level by a lead Federal agency, identified in the schedule of meetings above. Representatives of the Interagency Task Force subcommittees will attend these meetings to receive public comment on the issues and questions being considered by those subcommittees. Public input resulting from each meeting will be forwarded directly to the pertinent Interagency Task Force subcommittee(s).

A list of questions, which represent some of the major issues being addressed by the Interagency Task Force, follows below. These questions will form a basis of comment and discussion at the public meetings. Participants may comment on general matters about the Bank during the information portion of the public meeting. Participants may comment on specific subcommittee issue areas during that portion of the public meeting set aside for each subcommittee.

The public meetings are open to all interested parties. For scheduling purposes, any person who wishes to comment on a subcommittee issue at a public meeting is requested to contact the local lead Federal agency person identified above. It is the special aim of these public meetings to get as many comments, ideas and suggestions as possible from a broad representation of persons and groups interested or involved in consumer cooperative activity. The Interagency Task Force invites those who are either unable to participate in person at a public meeting or who wish to comment in more detail than public meeting time will permit to send their information and views to Jerry Storey, address above, by December 31, 1978.

A brief summary of major provisions of the Bank follows as an appendix to this notice. The Bank Act appears in full in the Congressional Record of July 17, 1978.

GRACIELA (GRACE) OLIVAREZ,
Director.

APPENDIX—SUMMARY OF THE NATIONAL CONSUMER COOPERATIVE BANK

Background

On August 20, 1978, the President signed into law the Consumer Cooperative Bank Act (Pub. L. 95-351), to create an independent national bank for cooperatives.

Purpose of the Bank

The purpose of the legislation is to provide financial and technical assistance to not-for-profit cooperatives. To accomplish this, the legislation: (1) Establishes a Bank to make loans at market interest rates to cooperatives in a variety of fields (Title I) and (2) creates a Self-Help Development Fund and Technical Assistance capability to assist low-income cooperatives or co-ops with special needs. (Title II).

Eligibility

To be eligible for assistance, a cooperative must: (1) Be operated on a nonprofit cooperative basis and must furnish goods, services, or facilities primarily for the benefit of its members or voting stockholders as consumers and (2) be a legally chartered entity entirely owned and controlled by such cooperatives. (Please see section 105 of the Act.)

Producer cooperatives are also eligible, but loans to producer cooperatives may not exceed 10 percent of the Bank's gross assets.

Beginning October 1, 1983, up to 30 percent of the Bank's gross assets may be loans for residential housing cooperatives. In addition, the Bank must make its best efforts to assure that 35 percent of all loans outstanding at the end of each fiscal year are made to low-income cooperatives or cooperatives primarily serving low-income persons.

The Bank's Budget

The Act authorizes the Government to purchase up to $300 million of Class A preferred stock over 5 years. In addition, borrowers will be required to own certain amounts of common stock. Any cooperative eligible to borrow may purchase additional common stock. The Bank may raise additional funds by borrowing up to ten times its capital.

TITLE I

The Bank Board

Initially, the Bank will be governed by a 13-member Board of Directors appointed by the President, for 3-year terms. Of the 13 members, 7 will be from agencies and departments of the Federal Government, and 6 will be from the general public. The public members must have extensive experience in the cooperative field.

Eventually, the Bank will be owned and governed by cooperatives which borrow or are eligible to borrow from the Bank. As cooperative ownership of Bank stock increases, Presidentially appointed directors will be replaced by directors elected by cooperative shareholders.

TITLE II

The Act establishes an office of Self-Help Development and Technical Assistance within the Bank whose Director is appointed by the President. Policies and procedures governing the operation of the Office are subject to review by the Board.

The Act creates a separate loan account called the Self-Help Development Fund and authorizes $75 million to the Fund over 3 years.

The Fund may be used for capital investment loans to eligible cooperatives provided that:

(1) The applicant (a) needs more capital than it can get form a bank loan or from other sources; or (b) the membership of th applicant is, or will be, composed substantially of low-income persons; or (c) the project or activity to be financed will serve low-income persons; and (2) the applicant (a) needs more capital than it can get from a bank loan or from other sources; and (b) shows it can repay the capital investment loan within 30 years.

Eligible cooperatives which cannot pay market rates of interest to the Bank or to another lender because they serve low-income persons may apply for interest supplement payments from the Fund.

The Office will charge interest on both capital investment advances and interest supplement payments. The Board of Directors may authorize rates of interest lower than those charged for loans under Title I.

Technical Assistance.

The Office will make available information and services concerning the organization, financing and management of cooperatives. It may contract with other private or public organizations to achieve its goals.

The Office will investigate new types of services and will provide financial analyses and market surveys for eligible cooperatives.

The Office will develop and implement programs to train members, directors, and staff of eligible cooperatives in the operation and use of cooperatives.

The Office will work with other Government agencies to insure that information concerning relevant programs is available to eligible cooperatives.

Congress has authorized an appropriation of $2 million for fiscal year 1979 for the adminstration of the Office of Self-Help Development and Technical Assistance program. It has authorized such sums as may be necessary for fiscal year 1980 and fiscal year 1981.

THE INTERAGENCY TASK FORCE

General

In September the administration established an Interagency Task Force consisting of representatives from 11 agencies or departments to expedite the implementation of the Bank. The Task Force is responsible to prepare recommendations for implementation to the Bank Board. The Board makes final decisions about operational and policy matters.

Structure of the Task Force

The Interagency Task Force is chaired by the Treasure Department. Six working subcommittees have been established, each chaired by an agency, office, or department. They are:

1. Internal Procedures—Department of Housing and Urban Development.
2. Eligibility and Priorities—Esther Peterson, Special Assistant to the President for Consumer Affairs.
3. Finance and Lending Policies—Department of Treasury.
4. Self-Help Development Fund—ACTION.
5. Technical Assistance—Department of Commerce.
6. Public Participation—The Community Services Administration and ACTION.

The Task Force hopes to have its recommendations for the Bank finalized by January 31, 1979.

Nominations

Nominations for public members of the Board of Directors are requested by November 30, 1978. Nominations are being solicited from cooperative organizations and other interested groups. The Adminstration hopes to have nominees selected, and ready for Senate hearings some time in January.

MAJOR ISSUES AND QUESTIONS OF THE INTERAGENCY TASK FORCE

SUBCOMMITTEE I—INTERNAL PROCEDURES

1. How can information about the Bank and the Office of Self Help best be provided to interested cooperatives and other groups?

Some examples:

a. Existing Federal agencies.
b. Private groups.
c. Field representative of the Bank and the Office of Self-Help.
d. A combination of the above.
e. Other:————.

2. What should be included in the annual report to Congress and in the annual report to shareholders?

The Act specifies that the annual report to the shareholders shall include a report on the Bank's financial condition. You may want to read section 106 on the annual report to shareholders and section 111 on the annual report to Congress before answering this question.

Some examples:

a. List of loans and grants made.
b. Upcoming appropriations and possible new bills.
c. Number of low income, elderly, rural, and inner city residents served.
d. Other:————.

3. What kind of information about the Bank and the Office should be made available in between or in addition to annual reports?

Some examples:

a. Summary of the Act.
b. Examples of different types of cooperatives.
c. Services offered by the Bank and the Office of Self-Help.
d. Other:————.

4. Rejected applicants may appeal decisions to the Board of Directors within 30 days. How can this best be handled? Please read section 113 before answering this question. Appeals are limited to decisions contrary to the stated policies of the Bank.

Some examples:

a. Subcommittee of the Board.
b. Board's staff.
c. Other:————.

5. How much weight should each vote cast by a shareholder be given in elections for the Bank's Board of Directors and at the annual meetings? Please read section 104(g) and section 106 before answering this question.

6. What should the relationship between the Fund and the Board be with respect to: 1) the Board reviewing policies of the Office (see section 201), and 2) operations such as initial evaluation of a loan? This question appears under subcommittee IV also.

SUBCOMMITTEE II—PRIORITIES

1. What steps should a primary cooperative be required to take in order to comply with the statutory requirements of "economic democracy" and maximum participation by members? You may want to look at section 105(a) No. 5.

Some examples:

a. Elected Board of Directors.
b. Referenda on policy issues.
c. Fair elections.
d. Requiring that a certain percentage of the people a cooperative serves be members.
e. Opportunity for the members to vote on major business and financial decisions of the cooperative.
f. All of the above.
g. Other: ————.

2. How should the term "not-for-profit basis" be defined?

3. What percentage per annum should be permitted to be paid as dividends on voting stock or membership capital? On what basis did you arrive at your conclusion?

Please look at section 105(a)2 on limiting dividends before answering this question.

4. How should we define "low income person"? Should we use different definitions for the Bank and for the Office of Self Help?

Some examples:

CSA guideline defines a family of four with an income of $6,200 as low income—about 25 million people. Bureau of Labor Statistics defines a family of four with an income of $10,000 as low income—about 75 million people. Title XX guideline—50 percent of State's median income—about 54 million people—$8,500 for a family of four.

5. How big a percentage of low income people—both members and patrons—must a cooperative serve to be considered a low income cooperative for the purpose of the Office of Self Help?

6. How can the Bank and the Office of Self Help best encourage the growth of cooperatives serving low income people, the elderly, and inner city, and rural residents?

Some examples:

Targeting resources.
Special technical assistance.
Low interest rates.

7. Section 105(b) of the Act allows primary producers to borrow from the Bank unless the dollar volume of loans made to such producers exceeds 10 percent of the gross assets of the Bank. What types of primary producer co-ops, if any, should be given priority

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in the lending policies of the Bank? Should primary producer co-ops be eligible to apply for assistance from the Office of Self Help and Technical Assistance? Should the 10-percent limit also apply to assistance from the Office?

8. What factors should the Bank and the Office of Self Help take into account in establishing lending priorities?

SUBCOMMITTEE III—FINANCE AND LENDING POLICIES

1. For what purposes does your organization anticipate borrowing from the Co-op Bank?

a. Emergency working capital.
b. Seasonal working capital.
c. New capital equipment.
d. Used capital equipment.
e. Commercial real estate.
f. Residential real estate.
g. To pay for technical assistance, training, or management consulting help.
h. Refinancing.
i. Other: ————.

2. What dollar amount of loans and type would you be asking the Bank for?

In 1979?
In 1980?
Over the 5-year period, 1979-84?
Beyond 1984?

3. The law requires loans to be made at rates of interest generally prevailing in the area. Stock purchases can be included as part of this determination.

In this light, how much stock should a cooperative be required to purchase? Please read section 108(b) before answering this question.

4. To assist in conversion of the Bank to cooperative ownership, Congress has given the Bank the authority to require co-ops to purchase stock amounting to at least 1 percent and as much as 10 percent of the loan amount.

a. Should purchase of stock be uniform among all borrowers and types of loans? If not, explain.
b. When and at what level should stock purchases be made? Should they be made in advance; as interest is paid; in flat sums; or by some other method?
c. Should borrowers be required to continue to hold stock after all or part of their loans have been paid back? If so, how much?
d. Should the Bank attempt to maximize stock purchases as a means of building up its capital base? Or as a means of speeding the retirement of Government capital?

5. Should interest rates charged by the Bank be uniform to all borrowers or should they reflect the type of loan, risk involved and collateral offered?

6. How should the Bank determine the impact of the loan on existing small businesses?

7. To what extent would a potential borrower of the Bank be willing or able to pay for or have included in the cost of the loan such items as feasibility studies, financial audits, appraisals of property for loan security purposes, etc.?

8. Bank interest charges could be made at a fixed rate or one which varies with the cost of money to the Bank. As a cooperative Bank any earnings are refundable to the users of the Bank. Which method of interest rate policy would you prefer?

SUBCOMMITTEE IV—SELF HELP DEVELOPMENT FUND

1. What is an appropriate definition of a cooperative serving low-income members with respect to the Self Help Development Fund? This question is also asked in Subcommittee II on Priorities. How much of the Self Help Development Fund should go to coops serving low-income people?

2. How should we design a system of ongoing public participation for the fund?

Some examples:

a. Local advisory committees.
b. Staff liaisons with cooperatives.
c. Questionnaires.
d. Annual report.
e. Other:————.

3. What should the relationship between the Fund and the Board be with respect to: (1) The Board reviewing policies of the Office (see section 201), and (2) operations such as initial evaluation of a loan? This question also appears under Subcommittee I.

4. Please comment on the experience of taking out loan for your cooperative or community group, or making loans to such groups. What lessons could we learn for use in designing the loan delivery system?

5. For what purposes is your cooperative or community group likely to borrow from the Fund (or Bank)? What would be the likely size of your loan?

6. What kinds of technical assistance would be relevant for the specific purpose of repaying loans?

7. The Coop Bank Act requires that the Self Help Office receive a plan for repayment as part of every loan application. How would you project and document your coop's ability to generate the cash needed to make payments at regular intervals for principal, interest, and technical assistance received from the Fund?

SUBCOMMITTEE V—TECHNICAL ASSISTANCE

1. Through which means can technical assistance best be administered?

Some examples:

a. Cooperatives and federations of cooperatives.
b. Training centers.
c. Office of Self Help personnel.
d. Universities.
e. Other:————.

2. What type of technical assistance would your cooperative or group find most useful? (you may find Title II sections 204, 205, 206 and 207 useful.)

Some examples:

a. Feasibility studies.
b. Financial, market and operations analysis.
c. Staff training.
d. Outreach to low-income people.
e. Consumer information.
f. Membership recruitment.
g. Other:————.

3. How can the Bank and the Office help cooperatives leverage resources from other groups such as local banks, Federal agencies, local government, private foundations, and volunteers?

4. What type of new cooperative services should the technical assistance program explore and possibly support?

5. What kind of board of director training and membership education programs would your cooperative find useful? Would you still be interested in this kind of assistance if you had to pay for it?

[FR Doc. 78-32375 filed 11-16-78; 8:45 am]

[6355-01-M]

CONSUMER PRODUCT SAFETY COMMISSION

TECHNICAL ADVISORY COMMITTEE ON POISON PREVENTION PACKAGING

Meeting

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of Meeting.

SUMMARY: This notice announces an orientation meeting for new members of the Technical Advisory Committee on Poison Prevention Packaging on December 5, 1978, from 9 a.m. to 1 p.m. The meeting will be held at 5401 Westbard Avenue, Room 456, Bethesda, Md.

FOR FURTHER INFORMATION CONTACT:

Sadye E. Dunn, Office of the Secretary, Suite 300, 1111 18th Street NW., Washington, D.C. 20207, 202-634-7700.

SUPPLEMENT INFORMATION: The Technical Advisory Committee provides advice and recommendations on the types and kinds of products which require special packaging that will protect children from injury or illness resulting from handling or ingestion of household substances. The purpose of the meeting on December 5 is to provide orientation on the role and work of the Technical Advisory Committee for new members of the Committee. The meeting is open to the public; however, space is limited. Persons who wish to make oral or written presentations to the Technical Advisory Committee should notify the Office of the Secretary (see address above) by November 28, 1978. The notification should list the name of the individual who will make the presentation, the person, company, group, or industry on whose behalf the presentation will be made, the subject matter and the approximate time requested. Time permitting, these presentations and other statements from the audience to the Committee may be allowed by the presiding officer.

Dated: November 14, 1978.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

[FR Doc. 78-32417 Filed 11-16-78; 8:45 am]

[1410-01-M]

COPYRIGHT ROYALTY TRIBUNAL

POLICY AS TO DISCLOSURE OF INFORMATION CONCERNING LOCATIONS OF CERTAIN PHONORECORD PLAYERS (JUKEBOXES)

AGENCY: Copyright Royalty Tribunal (Tribunal).

ACTION: Final statement of agency policy.

SUMMARY: This notice is published, under authority of 17 U.S.C. 116(c)(5), to establish the policy and practice of the Copyright Royalty Tribunal as to the disclosure of information concerning the location of certain jukeboxes, which data has been filed with the Tribunal as required by its regulations.

EFFECTIVE DATE: November 9, 1978.

FOR FURTHER INFORMATION CONTACT:

Thomas C. Brennan, Chairman, Copyright Royalty Tribunal, 202-653-5175.

SUPPLEMENTARY INFORMATION: The Copyright Royalty Tribunal adopted a regulation, which became effective October 10, 1978, providing for the filing in the offices of the Tribunal of current listings of locations where licensed jukeboxes are placed and the number of jukeboxes at such locations. The regulation was published in the FEDERAL REGISTER of September 12, 1978 (43 FR 40498).

At a public meeting on November 9, 1978, the Tribunal considered and, after hearing the views of interested parties, determined its policy and practice as to the disclosure of the jukebox location lists.

The text of the Copyright Royalty Tribunal Policy statement is as follows:

SUBJECT: CRITERIA AND PROCEDURES FOR THE DISCLOSURE OF JUKEBOX LOCATION LISTS

Resolved, That the Copyright Royalty Tribunal should not disclose the actual location lists filed by jukebox operators pursuant to the Copyright Royalty Tribunal's regulations requiring licensed jukebox operators to file location lists with the Copyright Royalty Tribunal.

In the form that the Copyright Royalty Tribunal receives said information from the operators, the Copyright Royalty Tribunal shall not disclose to any person the name of any jukebox operator corresponding to any identifiable or particular location list.

Further resolved, That the Copyright Royalty Tribunal shall compile a catalog listing the number of jukeboxes by state, and if possible, by local governmental entities. Such a catalog shall be made available to persons who can reasonably be expected to have a claim.

Upon application by persons who can reasonably be expected to have a claim, the Copyright Royalty Tribunal shall make available a selected location identification, determined and compiled by the Copyright Royalty Tribunal from information received from jukebox operators.

Dated: November 9, 1978.

THOMAS C. BRENNAN,
Chairman.

[FR Doc. 78-32467 Filed 11-16-78; 8:45 am]

[3810-70-M]

DEPARTMENT OF DEFENSE

Office of the Secretary

DEFENSE SCIENCE BOARD TASK FORCE ON STRATEGIC PLANNING, EXPERIMENT IN THE MARITIME BALANCE AREA

Advisory Committee Meeting

The Defense Science Board Task Force on Strategic Planning Experiment in the Maritime Balance Area will meet in closed session on December 11, 1978, in Arlington, Va.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

A meeting of the Task Force on Strategic Planning Experiment in the Maritime Balance Area has been scheduled for December 11, 1978, to discuss the conduct of the experiment in applying business policy/strategic planning concepts to the development of a competitive strategy for the maritime balance area. The Task Force and its associated Navy study group will focus on the long-term competition between the United States and the Soviet Union in the maritime area.

In accordance with section 10(d) of appendix I, title 5, United States Code, it has been determined that this Defense Science Board Task Force meeting concerns matters listed in section 552b(c) of title 5, of the United States Code, specifically subparagraph (1) thereof, and that accordingly this meeting will be closed to the public.

Dated: November 14, 1978.

MAURICE W. ROCHE,
Director, Correspondence and Directives.

[FR Doc. 78-32466 Filed 11-16-78; 8:45 am]

[3128-01-M]

DEPARTMENT OF ENERGY

FUEL ECONOMY OF MOTOR VEHICLES

Availability of 1979 Gas Mileage Guide

The Department of Energy (DOE) hereby gives notice of the availability of the 1979 Gas Mileage Guide. The Environmental Protection Agency (EPA) has issued regulations on fuel economy, testing, labeling and information disclosure procedures and requirements (40 CFR Part 600) which, among other things, contain requirements for dealers of 1978 and later model year automobiles and light trucks to have copies of a booklet, the Gas Mileage Guide, available and on display in their showrooms. In this booklet prospective purchasers will be able to find the fuel economies of the various models of those vehicles offered for sale in a given model year. DOE is required by section 506(b)(1) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901, et seq.), as amended by section 301 of the Energy Policy and Conservation Act (89 Stat. 871 et seq.), to publish and distribute this booklet. Section 600.405-77 of the EPA regulations states that dealers will be expected to make these booklets available as soon as they are received by them, but in no case later than 15 working days after notification is given of booklet availability. The publication today of this notice constitutes such notification.

The 1979 Gas Mileage Guide is available for display and distribution by dealers in their showrooms. Any dealer who has not already received Guides from DOE or requires additional copies should request copies by writing to the following address, specifying the quantity desired of the 49-State and/or the California version:

N 0 1 7 7 8 UMI

Fuel Economy, Department of Energy, Office of Administration, Washington, D.C. 20545.

Issued in Washington, D.C., November 13, 1978.

OMI WALDEN,

Assistant Secretary, Conservation and Solar Applications.

[FR Doc. 78-32330 Filed 11-16-78; 8:45 am]

[3128-01-M]

PEACEFUL USES OF ATOMIC ENERGY

Proposed Subsequent Arrangements

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed subsequent arrangement under the Agreement for Cooperation between the Governments of the United States and Japan for Civil Uses of Atomic Energy and the Agreement for Cooperation Between the Government of the United States and the European Community for Civil Uses of Atomic Energy.

The subsequent arrangement to be carried out under the above named agreements involves the transfer of 46.139 kilograms of uranium enriched to 93.3 percent U-235 from Germany to Japan. This material will be used as fuel in the JMTR and JRR-2 reactors.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security of the United States.

This subsequent arrangement will take effect no sooner than 15 days after publication of this notice.

For the Department of Energy.

Dated: November 14, 1978.

HAROLD D. BENGELSDORF,
Director for Nuclear Affairs, International Programs.

[FR Doc. 78-32331 Filed 11-16-78; 8:45 am]

[6450-01-M]

DEPARTMENT OF ENERGY

REQUESTS FOR INTERPRETATION FILED WITH THE OFFICE OF GENERAL COUNSEL

Month of October 1978

Notice is hereby given that during the month of October 1978 the requests for interpretation listed in the appendix to this notice were filed pursuant to 10 CFR Part 205, Subpart F with the Office of General Counsel, Department of Energy (DOE). Notice of subsequently received requests will be published at the end of each calendar month. Copies of the requests for interpretation listed herein are on file in DOE's public reading room, Information Access Office, GA-152, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585.

Interested parties may submit written comments on the listed interpretation requests on or before December 18, 1978. Comments should be identified on the outside envelope and on documents submitted with the file number of the interpretation request and all comments should be filed with the Office of General Counsel, Department of Energy, Room 5134, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461, Attention: Diane Stubbs. Aggrieved parties, as defined in 10 CFR 205.2, will continue to receive actual notice of pending interpretation requests in accordance with the current practice of the Office of General Counsel.

For further information, contact Diane Stubbs, Office of General Counsel, 12th and Pennsylvania Avenue NW., Room 5138, Washington, D.C. 20461, 202-566-9070.

EVERARD A. MARSEGLIA, Jr.,
Acting Assistant General Counsel for Interpretations and Rulings, Office of General Counsel.

NOVEMBER 9, 1978.

APPENDIX.—*List of Requests for Interpretation Received by the Office of General Counsel*

[Month of October 1978]

Date received	Name and location of requestor	File No.
Oct. 2, 1978	Shell Oil Co., William O. Riddoch, 1 Shell Plaza, P.O. Box 2463, Houston, Tex. 77001. Issue: Is Shell permitted to pay the onshore posted price plus transportation costs for offshore crude oil when the contract for the purchase of the offshore crude oil refers to a posting providing for onshore delivery (10 CFR 212.74(b)).	A-348
Oct. 4, 1978	Sinclair Oil Corp., William J. Mutryn, Casson, Calligaro & Mutryn, 1100 Watergate Office Bldg., 2600 Virginia Ave., NW., Washington, D.C. 20037. Issue: Does 10 CFR 210.62 prohibit the imposition of a finance charge on delinquent accounts provided that all other credit terms remain the same.	A-349
Oct. 11, 1978	National Association of Texaco Wholesalers, Inc., Fred B. Causey, P.O. Box 95265, Atlanta, Ga. 30347. Issue: In computing its maximum lawful selling price, must a wholesale purchaser-reseller, which was previously a consignee, follow the normal business practices of its supplier (10 CFR 212.93 and 210.62).	A-350
Oct. 18, 1978	Kern County Refinery, Inc., John E. Rosa, Smith, Hulsey, Schwalbe & Nichols, 500 Barnett Bank Bldg., Jacksonville, Fla. 32202. Issue: May a refiner impute a lawful base price pursuant to 10 CFR 212.111 without reference to a comparable transaction where the necessary information is difficult to obtain.	A-351
Oct. 19, 1978	Consolidated Gas Supply Corp., John E. Holtzinger, Jr., Morgan, Lewis & Bockius, 1800 M St. NW., Washington, D.C. 20036. Issue: Are sales made prior to Jan. 1, 1975, of NGL and NGL products extracted at gas processing plants owned and operated by a "public utility" exempt from mandatory price controls (10 CFR Part 212, Subparts E and K).	A-352
Oct. 20, 1978	Shell Oil Co., Kim Jensen Clifford, 1 Shell Plaza, P.O. Box 2463, Houston, Tex. 77001. Issue: 1. Does § 324(a) of the Clean Air Act Amendments have the effect of freeing marketing costs incurred and paid for the procurement and installation of vapor recovery equipment from the limitations of 10 CFR 212.83(c)(2)(E). 2. What effect does § 324(a) have on the equal application rule set forth in 10 CFR 212.83(h).	A-353
Oct. 23, 1978	Indiana Farm Bureau Cooperative Association, Inc., William F. Paddock, 120 East Market St., Indianapolis, Ind. 46204. Issue: Does a property retain its stripper well status if, subsequent to certification, the property is leased to a different operator (10 CFR 212.54).	A-354
Oct. 30, 1978	Aminoil U.S.A., Inc., A. H. Ness, P.O. Box 94193, Houston, Tex. 77018. Issue: May iso-butane be treated as a separate product from normal butane if it was historically priced and treated differently.	A-355
Do	John Gould, Jr., 103 Wall Towers West, Midland, Tex. 79701 Issue: Does production from a reentered well on a unitized property qualify as new crude oil eligible for upper tier pricing (10 CFR 212.75 and 212.74).	A-356

[FR Doc. 78-32419 Filed 11-16-78; 8:45 am]

[6740-02-M]

FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. RI78-99]

ARKANSAS LOUISIANA GAS CO.

Petition for Declaratory Order

NOVEMBER 8, 1978.

Take notice that on September 28, 1978, Arkansas Louisiana Gas Co. (Arkla), P.O. Box 21734, Shreveport, La. 71151, filed a petition for a declaratory order pursuant to section 1.7(c) of the Commission's rules of practice and procedure requesting that the Commission end an existing controversy by declaring whether for sales of gas by producers to Arkla within the State of Texas the amount of tax adjustment provided in section 2.56a(b) of FERC regulations (and other similar applicable regulations) is to be calculated in accordance with the interpretation of the Texas tax statute by the Texas Comptroller of Public Accounts, Minerals Tax Division, as set forth in Texas natural gas tax rule .008 (7.5 percent) or whether the calculation should be done as a percentage of a taxable value of the gas that includes 100 percent of the production tax (8.1081 percent).

Any person desiring to be heard or to make any protest with reference to said petition should on or before November 30, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any party wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32343 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. RI79-4]

B. J. OIL CO.

Petition for Declaratory Order

NOVEMBER 8, 1978.

Take notice that on October 11, 1978, B. J. Oil Co. filed, in docket RI79-4, a petition pursuant to 1.7(c) of the Commisson's rules of practice and procedure requesting that the Commission confirm the authorization of B. J. Oil Co. to collect, effective as of April 25, 1978, 61 cents per Mcf for all gas sold by it to Columbia Gas Transmission Corp. (Columbia) for old gas stripper wells.[1]

Petitioner states that it is the beneficial owner of the following meter names: Walters Natural Resources Inc., G. W. Walters, agent; and G. W. Jean Walters, and that there is complete identity of ownership between B. J. Oil Co. and the above-cited meter names. Petitioner further claims that because of this identity of interest, it is entitled to the benefits of the Commission's order issued in docket No. RI79-4, on April 25, 1978, authorizing the collection of 61 cents per Mcf, plus an annual escalation of 1 cent per Mcf commencing on January 1, 1978.

Any person desiring to be heard or to make any protest with reference to said petition should on or before December 1, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or protest in accordance with the requirement of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any party wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32370 Filed 11-16-78; 8:45 am]

[6740-02-M]

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RI79-5]

BARTH ENERGY CORP. (TEXAS)

Petition for Special Relief

NOVEMBER 9, 1978.

Take notice that on October 16, 1978, Barth Energy Corp. (Texas) ("Barth"), 1228 San Jacinto Building, Houston, Tex. 77002, filed a petition for special relief pursuant to § 2.76 of the Commission's General Policy and Interpretation. Barth seeks an increase in its rate from 30¢ per Mcf at 14.65 psia to 52.49125¢ per Mcf at 14.65 psia for the sale of gas from the West Bay City Field, Malagorda County, Tex. to Valley Gas Transmission Inc. Barth states that this rate would allow it to recover the cost of installing a two stage compressor and the additional production tax charged thereto.

Any person desiring to be heard or to make any protest with reference to said petition should on or before November 30, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any party wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32368 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. RI79-1]

BLAKE HAMMAN

Petition for Special Relief

NOVEMBER 8, 1978.

Take notice that on October 2, 1978, Blake Hamman (Petitioner), 706 Continental Life Building, Forth Worth, Tex. 76102, filed a petition for special relief in Docket No. RI79-1 pursuant to § 2.76 of the Commission's General Policy and Interpretations (18 CFR 2.76).

Petitioner requests authorization to charge $1.75 per Mcf for the sale of gas from the Walter A. Bennett A-1 Well, Parker and Wise Counties, Tex. Petitioner is entitled to 17.9022 per Mcf. Presently the sale is to the Natural Gas Pipeline Co. of America. Petitioner proposes to rework the A Zone of the well and install a compressor in order to materially increase the supplies from the well and to insure continued production.

Any person desiring to be heard or to make any protest with reference to said petition should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All such petitions or protests should be filed on or before December 1, 1978. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties

[1] See the Commission's order accepting settlement agreement, granting special relief, and permitting intervention, which was issued Apr. 25, 1978, in docket No. RI77-26.

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to the proceeding. Any person wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32369 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. EL79-2]

CENTRAL VERMONT PUBLIC SERVICE CORP. AND GREEN MOUNTAIN POWER CORP.

Application

NOVEMBER 9, 1978.

Take notice that on November 3, 1978, Central Vermont Public Service Corp. (Central Vermont) and Green Mountain Power Corp. (Green Mountain) filed a joint application seeking authority to acquire 6,000 additional shares of Vermont Electric Power Co.'s (VELCO) Class B shares of Common Stock. The Federal Power Commission in Docket No. E-7817, issued December 22, 1972 and in Docket No. E-9094, issued December 30, 1974, authorized Central Vermont and Green Mountain to acquire VELCO Common Stock.

Central Vermont is incorporated under the laws of the State of Vermont with its principal business office at Rutland, Vt., and is engaged in the purchase, production, transmission, distribution, and sale of electric energy in 174 towns in Vermont. Central Vermont is qualified as a foreign corporation in the States of New Hampshire and New York. Green Mountain is incorporated under the laws of the State of Vermont, with its principal business office at Burlington, Vt., and is engaged in the purchase, production, transmission, distribution, and sale of electric energy in the northern portion of Vermont. Green Mountain is qualified as a foreign corporation in the State of Maine.

VELCO is incorporated under the laws of the State of Vermont, with its principal business office at Rutland, Vt., and is engaged in the construction of a system for the transmission and distribution of St. Lawrence River Project and Niagara Project power purchased by the State of Vermont from the Power Authority of the State of New York for reallocation on an equitable basis to electric distribution facilities throughout Vermont.

VELCO is proposing to issue First Mortgage Bonds, Series G, in an aggregate principal amount of $9 million and 6,000 shares of Class B Common Stock $100 par value, for cash at par in order to finance its continuing construction program.

Central Vermont and Green Mountain propose to purchase all the additional Class B stock issued by VELCO, in sum 6,000 shares. It is intended that Central Vermont purchase 59.47 percent of the shares issued by VELCO (3,568 shares) and that Green Mountain purchase 40.53 percent (2,432 shares), which is proportionate to their distribution of kWh in Vermont.

Any person desiring to be heard or to make any protest with reference to said application should file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, on or before December 1, 1978, petitions to intervene or protests in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to the proceeding or participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules. The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32371 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. CP79-46]

COLORADO INTERSTATE GAS CO.

Application

NOVEMBER 8, 1978.

Take notice that on October 30, 1978, Colorado Interstate Gas Co. (Applicant), P.O. Box 1087, Colorado Springs, Colo. 80944, filed in Docket No. CP79-46 an application pursuant to section 7 of the Natural Gas Act and §157.7(g) of the Regulations thereunder (18 CFR 157.7(g)) for a certificate of public convenience and necessity authorizing the construction and for permission and approval of the abandonment during the 12-month period commencing January 1, 1979, and operation of field gas compression and related metering and appurtenant facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

The state purpose of this budget-type application is to enable applicant to act with reasonable dispatch in maintaining production from its field gathering operations.

Applicant states that the estimated total cost of the proposed construction and abandonment under §157.7(g) would not exceed $3,000,000 and no single project would exceed $500,000.

Applicant also states that the total cost of said facilities would be financed from current working funds on hand, funds from operations, short-term borrowing, or long-term financing.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 1, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32372 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. CP79-26]

CONSOLIDATED GAS SUPPLY CORP. AND EQUITABLE GAS CO.

Application

NOVEMBER 8, 1978.

Take notice that on October 17, 1978, Consolidated Gas Supply Corp. (Consolidated), 445 West Main Street, Clarksburg, W. Va. 26301, and Equitable Gas Co. (Equitable), 420 Boulevard of the Allies, Pittsburgh, Pa. 15219 (jointly referred to as Applicants), jointly filed in Docket No. CP79-26 a joint application pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing the exchange of natural gas and construction and operation of certain facilities required therefor, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants state that Equitable has available to it a quantity of gas in the vicinity of Doddridge County, W. Va., but is unable to attach such supplies to its system because the heavy hydrocarbons in such supplies would liquefy if injected into Equitable's system at certificated operating pressures of 850 psig. It is stated that Equitable does not have available facilities to remove such hydrocarbons from its gas, but that Consolidated, operates extraction facilities in the area and is willing to exchange gas with Equitable.

The application states that Equitable proposes to deliver up to 20,000 Mcf of gas per day to Consolidated at a point of interconnection to be constructed and operated by Equitable at its own expense near its West Union Station No. 53, in Doddridge County, W. Va. To accept such deliveries, it is stated that Consolidated would construct and operate approximately 1.83 miles of 8-inch Line TL-433 and related facilities to connect its existing Line TL-265 with the proposed exchange delivery point. Applicants state that the cost of these facilities to Equitable is estimated to be $1,000, to be financed from funds on hand and Consolidated's facilities are estimated to cost $263,162, to be financed from funds on hand or from funds to be obtained from its parent, Consolidated Natural Gas Co.

Applicants state that Consolidated would cause equivalent quantities of natural gas to be redelivered to equitable by Texas Eastern Transmission Corp., a pipeline supplier of both applicants, at existing points of connection in Greene and Westmoreland Counties, Pa.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 1, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32373 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket Nos. RP78-20, et al.]

COLUMBIA GAS TRANSMISSION CORP., ET AL.

Filing of Pipeline Refund Reports and Refund Plans

NOVEMBER 8, 1978.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before December 11, 1978. Copies of the respective filings are on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

APPENDIX

Filing date	Company	Docket No.	Type filing
Oct. 13, 1978	Columbia Gas Transmission Corp	RP78-20	Report.
Oct. 12, 1978	El Paso Natural Gas Co	RP67-9	Do.
Oct. 16, 1978	Southern Natural Gas Co	RP78-81	Do.
Do	Tennessee Gas Pipe Line Co	RP75-13, et al	Do.
Oct. 13, 1978	Transwestern Pipeline Co	AR70-1	Do.
Oct. 20, 1978	Mid-Louisiana Gas Co	AR61-2	Plan.
Do	Texas Eastern Transmission Corp	AR64-2, et al	Do.
Oct. 23, 1978	Panhandle Eastern Pipeline		
Do	Mid- Louisiana Gas Co.	RP77-6	Plan.
Oct. 26, 1978	Algonquin Gas Transmission Co	RP76-15	Do.

[FR Doc. 78-32341 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-44]

FLORIDA POWER & LIGHT CO.

Filing

NOVEMBER 7, 1978.

Take notice that Florida Power & Light Co. (FPL) on October 31, 1978, tendered for filing an amendment to an agreement executed by it, entitled "Amendment Number Two to Agreement To Provide Specified Transmission Service Between Florida Power & Light Co. and Tampa Electric Co." FPL states that under the Amendment, FPL will transmit power and energy for the Tampa Electric Co. (TECO) as is required by TECO in the implementation of its interchange agreement with the Fort Pierce Utilities Authority. FPL requests an effective date of no later than 30 days after the date of filing. According to FPL, a copy of this filing was served upon the Senior Vice President of TECO.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 20, 1978. Protests will be considered by the Commission in de-

termining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32344 Filed 11-16-78; 8:45 am]

[6740-02—M]

[Docket No. RP78-76]

GAS RESEARCH INSTITUTE

Proposed Change in Gas Research Institute Charge

NOVEMBER 7, 1978.

Take notice that Great Lakes Gas Transmission Co. (Great Lakes), on October 16, 1978, tendered for filing Twenty-Ninth Revised Sheet No. 57, to its FPC Gas Tariff, First Revised Volume No. 1, proposed to be effective January 1, 1979.

Great Lakes states that the revised tariff sheet reflects the GRI adjustment related to the Gas Research Institute's 1979 Research and Development Program as approved by Commission Opinion No. 30 (RP78-76) issued September 21, 1978.

Great Lakes also states that copies of this filing have been served upon its customers and the Public Service Commissions of Minnesota, Wisconsin, and Michigan.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20425, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 20, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32345 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. RP78-76]

GAS RESEARCH INSTITUTE

Proposed Changes in FERC Gas Tariff

NOVEMBER 7, 1978.

Take notice that Kansas-Nebraska Natural Gas Co., Inc. (Kansas-Nebraska) on October 16, 1978, tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1. Kansas-Nebraska states that such filing is in compliance with Opinion No. 30 issued September 21, 1978 in Docket No. RP78-76. This filing will increase Kansas-Nebraska's rates charged its jurisdictional customers pursuant to the Gas Research Institute Charge Adjustment provision (section 21) of its FERC Gas Tariff, Third Revised Volume No. 1 by the amount of 2.3 mills per Mcf. This filing is proposed to become effective January 1, 1978.

Copies of the filing have been served on the company's jurisdictional customers and other interested persons, including public bodies.

Any person desiring to be heard or make any protest with reference to this filing should, on or before November 20, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) under the Regulations of the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32346 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-41]

HARTFORD ELECTRIC LIGHT CO.

Filing

NOVEMBER 7, 1978.

Take notice that on October 30, 1978, the Hartford Electric Light Co. (HELCO) tendered for filing an exchange agreement (the "Agreement") between HELCO and Montaup Electric Co. (Montaup). The Agreement, dated as of March 20, 1978, provides for HELCO to exchange capacity and energy in South Meadow Unit Nos. 11, 12, 13, and 14 gas turbine generating units for capacity and energy from Montaup's system having the characteristics of two oil-fired base load type generating units located at Canal Station, according to HELCO.

The Agreement provides that the parties will determine prior to 12:01 a.m. on Monday of each week during the term of the Agreement whether it is economically advantageous to the parties that an exchange, pursuant to the Agreement, shall take place during that week, according to HELCO.

HELCO will pay capacity charges to Montaup in an amount equal to $0.003/kilowatthour times the kilowatthours delivered during each week; HELCO will pay energy charges to Montaup at a cost of $0.018/kilowatthour subject to adjustment to reflect changes in fuel price at Canal; Montaup will pay HELCO's incremental cost of providing any energy taken by Montaup pursuant to the Agreement according to HELCO.

HELCO requests an effective date of March 20, 1978 for the Agreement.

Montaup has filed a certificate of concurrence in this docket.

The Agreement has been executed by HELCO and by Montaup and copies have been mailed to each of them, according to HELCO.

Any persons desiring to be heard or to protest said filing should file a petition to intervene or protest to the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426 in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions of protests should be filed on or before November 20, 1978. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB
Secretary.

[FR Doc. 78-32347 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-42]

HARTFORD ELECTRIC LIGHT CO.

Filing

NOVEMBER 7, 1978.

Take notice that on October 30, 1978, the Hartford Electric Light Co. (HELCO) tendered for filing an exchange agreement (the Agreement) between HELCO and New Bedford Gas & Edison Light Co. (New Bedford). The Agreement, dated as of February 24, 1978, provides for HELCO to exchange capacity and energy in South Meadow Unit Nos. 11, 12, 13, and 14 gas turbine generating units for capacity and energy from New Bedford's system having the characteristics of two oil-fired base load type generating units located at Canal Station, according to HELCO.

The Agreement provides that the parties will determine prior to 12:01 a.m. on Monday of each week during the term of the Agreement whether it is economically advantageous to the parties that an exchange, pursuant to the Agreement, shall take place during that week, according to HELCO.

HELCO will pay capacity charges to New Bedford in an amount equal to $0.003/kilowatthour times the kilowatthours delivered during each week; HELCO will pay energy charges to New Bedford at a cost of $0.018/kilowatthour subject to adjustment to reflect changes in fuel price at Canal; New Bedford will pay HELCO's incremental cost of providing any energy pursuant to the Agreement, according to HELCO.

HELCO requests an effective date of February 27, 1978 for the Agreement.

New Bedford has filed a certificate of concurrence in this docket.

The Agreement has been executed by HELCO and by New Bedford and copies have been mailed to each of them, according to HELCO.

Any persons desiring to be heard or to protest said filing should file a petition to intervene or protest to the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with the §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 20, 1978. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32348 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-39]

INTERSTATE POWER CO.

Filing

NOVEMBER 7, 1978.

Take notice that Interstate Power Co. (Company) on October 30, 1978, tendered for filing an electric service agreement dated September 5, 1978, with the city of Jackson, Minn. This Agreement proposes to supersede and cancel the electric service agreement dated October 20, 1959, F.E.R.C. Electric Service Rate Schedule, No. 38. According to the Company the proposed agreement will provide for transmission service of Western Area Power Administration power, and Missouri Basin Municipal Power Agency energy, through Company's facilities, to the community.

The Company requests waiver of the Commission's notice requirements to allow for an effective date of August 2, 1978.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions and protests should be filed on or before November 20, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32349 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. RP79-8]

KANSAS-NEBRASKA NATURAL GAS CO., INC.

Proposed Changes in FERC Gas Tariff

NOVEMBER 7, 1978.

Take notice that Kansas-Nebraska Natural Gas Co., Inc., on October 31, 1978 tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1. Kansas-Nebraska states that the proposed change would increase revenues from jurisdictional sales and service by $8,618,706 based on the 12-month period ending June 30, 1978, as adjusted for known and reasonably measurable changes.

Kansas-Nebraska states that the jurisdictional rates filed herewith are designed to enable Kansas-Nebraska to recover increases in its jurisdictional cost of service resulting from: (1) additional facilities required to connect new sources of supply and to maintain deliverability from existing sources of supply; (2) gas exploration and development; (3) increased purchased gas and royalty costs; (4) increased operating costs including higher costs of labor, materials and supplies; (5) increased revenues needed to provide a return of 11.38 percent on its utility investment; and (6) increased income, payroll and property taxes.

Kansas-Nebraska states that copies of the filing were served upon the company's jurisdictional customers and interested public bodies.

Kansas-Nebraska requests that the tendered sheets be accepted for filing and be permitted to become effective after 30 days following the date of filing.

In addition, Kansas-Nebraska tendered for filing Substitute Sixth Revised Sheet No. 4 to Kansas-Nebraska's FERC Gas Tariff, Third Revised Volume No. 1, proposing to increase revenues from jurisdictional sales by approximately $5.3 million in the event the Commission suspends its general rate increase for 5 months. Kansas-Nebraska states that these proposed rates are designed to enable Kansas-Nebraska to recover its increased purchased gas and royalty costs resulting from the enactment of the Natural Gas Policy Act.

Any person desiring to be heard or make any protest with reference to this filing should, on or before November 20, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) under the Regulations of the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32350 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket Nos. CP77-1; CP76-297; CP76-274; CP76-121; CP75-271 and CP74-92; CP76-494; CP74-62; CP76-259; CP74-64; CI77-163; CI77-164]

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McCULLOCH INTERSTATE GAS CO., ET AL.

Order Consolidating Proceedings, Granting Petition for Declaratory Order and Establishing Hearing Procedures

NOVEMBER 8, 1978.

The above captioned applications involve, are related to or will be affected by a proposal whereby Colorado Interstate Gas Co. (CIG) will acquire certain pipeline and other facilities currently owned and operated by McCulloch Interstate Gas Co. (McInterstate) in Converse and Campbell Counties, Wyo., and McInterstate will sell and transfer its remaining facilities in that area to its affiliates, McCulloch Gas Processing Co. (McProcessing) and McCulloch Gas Transmission Co. (McTransmission). If the proposed transactions are approved McInterstate will cease to be a natural gas company as defined by section 2(6) of the Natural Gas Act (15 U.S.C. 717a(6)), and its jurisdictional facilities will continue to be operated by CIG or as allegedly non-jurisdictional intrastate facilities by McProcessing and McTransmission. Due to the complex and related nature of these proceedings, a thorough review of the filings and submitted data and documentation is set forth herein.

McInterstate's application to abandon its interstate activities was filed approximately 6 years subsequent to the issuance of Commission authorization approving McInterstate's entrance into the interstate market.[1] By order issued June 19, 1970, (43 FPC 909), McInterstate was issued a certificate authorization, in Docket No. CP70-230, for the acquisition, construction and operation of gas transmission facilities extending 160 miles from the Recluse Field, Campbell County, Wyo., in a southerly direction through the Hilight Field, Campbell County, Wyo., to a point near Douglas, Wyo., where the facilites interconnected with CIG's transmission system.[2] Simultaneously, CIG was authorized to construct and operate the interconnecting facilities at Douglas. The parties had alleged that the construction and operation of these facilites would make available residue gas at various processing plants in the Powder River Basin available to CIG as an additional source of supply to meet its 1971 gas supply requirements. The total estimated cost of the project at the time of certification exceeded $14 million.

Pursuant to that arrangement, McInterstate has purchased natural gas from producers in the Powder River Basin area in Wyoming, where McProcessing is the principal supplier. McProcessing purchases and processes casinghead gas produced in conjunction with oil in addition to selling residue gas to McInterstate in interstate commerce. The sales are made at the tailgate of the following processing plants: Ute, Gas Draw, Oedekoven, Jamison-Prong, Hilight, Gillette-Kitty, and Gillette-Recluse Plants pursuant to McProcessing's FPC Rate Schedule No. 3. McInterstate transports and sells the gas to McTransmission whose excess volumes are sold to CIG.

On October 1, 1976,[3] McInterstate filed, in Docket No. CP77-1, an application seeking authorization pursuant to Section 7(b) of the Natural Gas Act for the (a) abandonment and sale of all of its interstate facilities, (b) the abandonment of the sale for resale in interstate commerce to CIG and (c) the abandonment of transportation service provided CIG. McInterstate proposes to abandon its interstate facilities by sale to CIG and its two affiliates, McTransmission and McProcessing.

Pursuant to the proposed transaction, McInterstate proposes to sell to CIG the following facilities:

1. Approximately 71 miles of 16-inch transmission line extending from a point near the outlet of McProcessing's Hilight Plant, located in Campbell County, Wyo., to the point of interconnection with CIG's Powder River Lateral in Converse County, Wyo.;
2. An inert gas generation and compression facility located at the Hilight Plant;
3. Certain measurement facilities located in Converse County, Wyo., used in connection with the purchase of gas from the Superior Oil Co. (Superior) in the Bear Creek Field, Converse County, Wyo.; and
4. Approximately 3.5 miles of 4-inch pipeline and associated measurement facilites located in Converse County, Wyo., and used in connection with the purchase of gas from Clyde C. Lamar and William L. Pease (Lamar and Pease) in the Manning Field, Converse County, Wyo.

McInterstate proposes to sell to McTransmission the following facilities, all located in Campbell County, Wyo.:

1. 39.8 miles of 6-inch pipeline from the Recluse Processing Plant to Kitty Junction;
2. 9.6 miles of 4-inch[3] and 10 miles of 8-inch pipeline from Kitty Junction to the Kitty Processing Plant;
3. 38 miles of 12-inch pipeline from the Kitty Plant to the Hilight Plant;
4. The Oedekoven Lateral, 3.5 miles of 6-inch pipeline connecting with the 6-inch Recluse to Kitty Junction pipeline;
5. The Gas Draw Lateral, 7.5 miles of 4-inch pipeline connecting with the Recluse to Kitty Junction line;
6. The Jamison Prong Lateral, 2.1 miles of 4-inch pipeline connecting with the Kitty Junction to Kitty lines;
7. The Gas Draw Junction Compressor Station with 1,500 compressor horsepower;
8. 250 compressor horsepower located at the Jamison Prong Plant; and
9. Those facilities which have been installed subsequent to the aforementioned facilities certificated in Docket No. CP70-231.

Also, McInterstate proposes to abandon its 4,000 compressor horsepower located at the Hilight Plant.

Additionally, McInterstate seeks authorization to accomplish the following:

1. To abandon the sale for resale in interstate commerce which is made to CIG; [4]
2. To abandon the transportation service provided to CIG and; [5]
3. To assign to McProcessing the transportation service provided to Atlantic Richfield Company (ARCO) under that certain Transportation Agreement, Gillette Gas Plant, Campbell County, Wyo. by and between ARCO and McInterstate (successor to McTransmission) dated September 1, 1969; and to request from the Commission a continued disclaimer of jurisdiction over such transportation service as set forth in Docket No. CP70-231.[6]

The estimated net book values of facilities and other assets, including line pack and intangibles, to be sold to CIG, McTransmission and McProcessing are $3,407,913, $1,831,653, and $434,871 respectively, on December 31, 1976.

Should the proposed abandonment be granted, McInterstate would cease to be a "natural gas company" under the Natural Gas Act. The sale to CIG under Rate Schedule PL-1 will be supplanted by a new sale made to McProcessing pursuant to an application filed in Docket No. CI77-164 on December 20, 1976. As the facilities utilized by McInterstate to transport gas for CIG under Rate Schedule X-1 will be sold to CIG, the transportation service will, in effect be continued by CIG.

On August 23, 1976,[7] CIG filed, in Docket No. CP76-494, an application for authorization pursuant to section 7(c) to acquire and operate from McInterstate certain facilities previously described and perform several transportation services presently performed by McInterstate. CIG proposes to purchase the facilities for an amount equal to the greater of the net book value or fair market salvage value of such facilities at the time of closing. In addition, CIG will pay McInterstate for (1) any gas previously delivered McInterstate by but not yet paid for by CIG, (2) the line pack in McInterstate's 16-inch Line, and (3) the intangibles on McInterstate's books attributable to the assets to be sold and acquired. The total net book value of the facilities to be acquired plus payments for line pack and intangibles is estimated to be $3,374,206 on December 31, 1976.

McInterstate has also agreed to assign to CIG:

1. McInterstate's Gas Purchase Agreement dated July 21, 1972, with Superior for the purchase of gas produced by Superior from Bear Creek Field; and
2. McInterstate's Gas Purchase Agreement dated April 1, 1976, with Lamar and Pease and Champlin Petroleum for the purchase of gas from the Manning Field.

Furthermore, pursuant to the proposed Gas Sales Agreement, McProcessing agrees to sell and deliver to CIG the following:

1. Twenty-five percent of the residue gas from the Hilight Plant attributable to the Hilight Field, and
2. Approximately 50 percent of the residue gas from the Well Draw Gas Plant attributable to gas produced from the Well Draw field.

In addition to the above, McInterstate and its affiliated companies have granted CIG the "right to first refusal" to purchase gas or meet any bona fide offer to purchase gas which such companies may have from time to time for sale in interstate commerce from the Powder River Basin of Wyoming and Montana. Should any gas become available in the region north of the Hilight Plant, CIG states the construction of additional facilities may be necessary. Such construction would be necessary inasmuch as the facilities acquired by McTransmission north of Hilight are intended for solely intrastate operation.

CIG also proposes to transport certain gas volumes from the Spearhead Ranch and Bear Creek (Allemand) areas [8] for Mountain Fuel Supply Co. (Mountain Fuel). Such volumes, together with certain volumes for CIG, are presently being transported by McInterstate pursuant to its Rate Schedule X-1. Under this arrangement, CIG and Mountain Fuel will be required to submit the requisite tariff filings to provide for the delivery by Mountain Fuel of the Spearhead Ranch and Bear Creek (Allemand) volumes to, and the transportation by CIG. In addition, CIG proposes to transport for McProcessing up to a maximum of 1,500 Mcf of gas per day for ultimate delivery to certain intrastate customers of McTransmission.

The purpose of the proposed abandonment and transfer of the aforementioned facilities and services is to place CIG in a posture of being able to connect new supplies in the Powder River Basin more expeditiously without the necessity of making transportation arrangements with a third party. In its filings and submitted data, CIG has predicted that the dedication of additional reserves to plants north of Hilight is unlikely whereas there are indications of new reserves in the area surrounding the 71 miles of pipeline it proposes to acquire. During the first three years subsequent to the abandonment, CIG would be assured of receiving additional supplies due to the proposed assignment of 25 percent of the Hilight reserves and 50 percent of the Well Draw producer reserves in addition to Manning, Spearhead Ranch and Bear Creek reserves.

Perhaps most important, McInterstate wants to terminate its interstate gas transmission activities. McInterstate asserts that its gas supply is dwindling and it is now curtailing McTransmission's industrial interruptible customers north of Hilight. Producer and industrial sales are curtailed during the heating season.

Contrary to CIG's projections, McInterstate projects McTransmission will have greater access to new reserves and thereby eliminate its current level of curtailment subsequent to the grant of abandonment. McInterstate asserts that it is currently foreclosed from competing for these new supplies due to its limited budget authority. It argues that larger competitors have larger rate bases and consequently, greater budget authority so that they are able to immediately connect new sources of gas rather than seek certification from the Commission for new facilities.[9]

A significant element of this proposed transaction is McInterstate's request for a continued disclaimer of jurisdiction over transportation of ARCO gas to MDU. MDU purchases approximately 67 percent of the available interstate residue gas sold from the ARCO Gillette, Wyo., gas-processing plant. The Gillette gas-processing plant is an accounting unit made up of the Recluse gas-processing plant to the north and the Kitty gas-processing plant to the south. The Recluse gas-processing plant delivers interstate residue gas directly to both MDU and McInterstate. The Kitty gas processing plant delivers interstate residue gas directly to McInterstate on a jurisdictional interstate basis and to McTransmission on a nonjurisdictional basis.

The total average residue gas production from the Recluse and Kitty plants (Gillette Plant Unit) is approximately 216 MMcf/month, approximately 145 MMcf/month is purchased by MDU; 99 MMcf/month of such production is delivered directly to MDU without the utilization of any of McInterstate's jurisdictional pipeline system. The balance of this residue gas (145-99 = 46 MMcf/month) is now exchanged or transported by McInterstate through its jurisdictional pipeline facilities.

As proposed, McProcessing will assume McInterstate's obligation to provide transportation service for ARCO. McInterstate has requested "a continued disclaimer of jurisdiction" for McProcessing, referring to the Commission's order issued June 19, 1970 in Docket No. CP70-230, et al. In the above-referenced order, the Commission did not disclaim jurisdiction but it rather deferred ruling on the jurisdictional aspects of the transportation service stating "* * * McCullock Interstate alleges that these operations are non-jurisdictional; however, the authorization hereinafter granted should not be construed to imply Commission acquiescence in the alleged nonjurisdictional status of these operations" (43 FPC 911). McInterstate states that should its request for a disclaimer be denied, the remaining alternatives are the following: (a) to seek abandonment of service in interstate commerce and attempt to accomodate delivery of MDU's contract dedication from the Kitty plant on an intrastate basis at Billy Creek Storage through McTransmission, or (b) attempt to negotiate MDU's acquisition of the facilities required to provide the transportation service.

There is no evidence of MDU's willingness to consider either of these proposals. The contractual agreements executed by MDU and McInterstate expressly impose upon McInterstate the obligation to effectuate the exchange arrangement in order to avoid the necessity for duplication of facilities. Moreover, either proposal would necessitate the filing of applications to

[1] The "Commission" when used in the context of an action taking place before October 1, 1977, refers to the Federal Power Commission; when used otherwise, the reference is to the Federal Energy Regulatory Commission.

[2] McInterstate filed a supplement to the initial application on May 23, 1976. Responses to requests for additional information were submitted on May 29, 1977, and on May 31, 1978.

[3] Although granted certificate authority in Docket No. CP70-231, McInterstate never acquired this pipeline segment.

[4] By order issued in Docket No. CP78-231 on June 19, 1970, such sales were authorized under McInterstate's Rate Schedule PL-1.

[5] By order issued in Docket No. CP74-92, on February 11, 1976, the Commission authorized such service under McInterstate's Rate Schedule X-1.

[6] The Commission deferred ruling on the original request. See order issued in same docket on June 19, 1970.

[7] CIG supplemented its applications in response to requests for additional information on May 19, 1977 and June 5, 1978.

[8] Although the Bear Creek (Allemand) Area and the Bear Creek Field are essentially in the same location, they represent to distinct supply sources, the former involving the purchase of gas by CIG from Colorado Oil and Gas Corp. and the latter involving the purchase of gases by McTransmission from Superior.

[9] In making these predictions, McInterstate is presuming that the Wyoming Public Service Commission will authorize McTransmission's purchase of these facilities which would substantially increase its rate base and expenses and thereby its distribution rates with indeterminate benefits flowing to existing users. McInterstate has admitted that the immediate effect of the abandonment will be a reduction of available supplies to McTransmission. Due to that Commission's concern over the potential effect on its customers, it has intervened in these proceedings.

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abandon and transfer service which are not before us.

Upon review, it appears that the transportation service currently being performed is jurisdictional and would continue to be so if performed by McProcessing. As admitted by McInterstate, transportation of the residue gas to MDU is exchanged or transported through its jurisdictional facilities. It is well-established that such arrangements require certificate authority pursuant to section 7(c) of the Act.[10] We therefore direct McInterstate to file an application seeking such certification within thirty (30) days of the issuance of this order.

Another jurisdictional issue arises from this transaction due to the proposed transportation arrangements of gas for McProcessing to McTransmission's customers south of Hilight. Presently, McTransmission has commitments to deliver gas along McInterstate's transmission line to various residential, commercial and industrial customers within Wyoming which service McInterstate provides. Under the instant proposal, CIG would continue these deliveries to McTransmission, pursuant to the terms of an unexecuted transportation agreement between McProcessing and CIG. Although the initial rate is unspecified, the agreement provides that the charge for the transportation service will be based on CIG's cost of service, including a reasonable rate of return.[11]

McTransmission and McProcessing claim that neither need authorization for such transportation inasmuch as title to the gas remains with McProcessing until it is delivered to McTransmission by CIG and therefore no interstate sale takes place. The volumes delivered to McTransmission are for delivery to its customers for consumption within the state of Wyoming. The volumes which CIG intends to transport for McProcessing would be comingled with CIG's interstate supply which is destined for transportation outside the State of Wyoming in interstate commerce. In apparent conflict with McInterstate's position is its petition for a declaratory order filed in Docket No. CP76-121 on October 2, 1975, seeking a Commission ruling that its sales to McTransmission in Wyoming for intrastate consumption are subject to the Commission's jurisdiction.

As previously mentioned, in seeking certification in Docket No. 70-231, McInterstate intended to receive a portion of the gas supplies for its affiliate, McTransmission. Consistent therewith, it executed a contract with McTransmission in February, 1970 to provide volumes for McTransmission's commitment to Northern Utilities, Inc. Petrolane Wyoming Gas Service and *residential, commercial and industrial customers within Wyoming* (emphasis added).

Due to an order issued by the Wyoming Public Service Commission (WPSC) on August 5, 1975,[12] in which the WPSC asserted jurisdiction over McInterstate's sale to McTransmission, McInterstate filed the instant petition. McInterstate contends that the WPSC's assertion of jurisdiction over its sale of gas to McTransmission and facilities "used and useful", is duplicative of the Commission's jurisdiction and could materially affect its financial position. McInterstate admits that previously it had taken the position that its gas sales to McTransmission were not subject to the Commission's jurisdiction, however McInterstate has never taken the position that the WPSC had jurisdiction over the sale. McInterstate wants this Commission to assert jurisdiction to foreclose any further action by the WPSC. The question before us in both cases is whether the commingling of the producers' gas in the interstate pipeline facilities of McInterstate or its successor-in-interest, CIG, with natural gas transported out of the State of Wyoming renders the producer's sale of gas to the distributor, McTransmission, a jurisdictional "sale in interstate commerce of natural gas for resale for ultimate public consumption."[13]

The commingling of "intrastate" natural gas with an interstate gas stream which flows out of the State of production was recognized as imposing the Commission's jurisdiction over a local producer's sale in *California* v. *LoVaca Gathering Company*[14] and *FPC* v. *Amerada Petroleum Corporation*.[15] In the *LoVaca* case the Supreme Court held that "the sale of gas which crosses a state line at any state of its movement from wellhead to ultimate consumption [is] 'in interstate commerce' within the meaning of the Act".[16] The *LoVaca* doctrine is premised upon the fact that some part of the local production will in the commingled flow, be transported beyond the State of origin. Such a situation differs from those instances where the interstate pipeline terminates in the same State in which a sale of locally produced gas has been made thus precluding the possibility of its ever being transported beyond the State of origin.[17]

The facts in the *Amerada* case more closely approximate those in the instant case than do the facts in the *LoVaca* case. It concerns a producer sale to MDU, an interstate pipeline, which is resold by the distribution component of MDU to the ultimate consumer. In both instances the Supreme Court held that the commingling of the intrastate gas purchased from local producers, in spite of restrictive use provisions, made the whole transaction jurisdictional from the outset because some of this gas was transported in the interstate stream beyond the state of production.

Montana-Dakota Utilities Co. requests a hearing on this matter. It asserts that only through the mechanisms of a hearing can all the facts be developed as to the physical facilities involved, the ultimate jurisdictional conclusions, and the impact on MDU. It takes no position on whether the declaratory order should be granted. The issue involved in this proceeding is principally a legal and policy matter. As previously pointed out, the Commission believes that from both a policy and legal viewpoint, the request should be granted. MDU does not indicate how a hearing would enhance the Commission's ability to decide the instant petition. When there is no dispute as to the factual content of a situation, the application of administrative policy and legal principles does not require an adjudicatory hearing. *Municipal Light Boards of Reading and Wakefield, Massachusetts* v. *FPC*, 146 U.S. App. D.C. 294, 450 F. 2d 1341 (1971), cert. denied, 405 U.S. 989 (1972); *Tennessee Gas Pipeline Company* v. *FPC*, 561 F. 2d 955 (D.C. Cir., 1977). We find no basis for the need for a formal evidentiary hearing on this issue. We find that the commingling of the producers, gas in the interstate pipeline facilities of McInterstate and its successor with natural gas to be transported out of the State of production, Wyoming, renders the producers' sale for resale jurisdictional. Accordingly, McInterstate's request for a declaratory order will be granted; however its request for disclaimer of jurisdiction over those volumes CIG proposed to transport for McProcessing is denied.

[10] *Pacific Northwest Corporation et al.*, Docket No. G-8932 et al., 14 FPC 157, 163 (1955); *Shell Oil Company*, Docket No. G-5029 et al., 25 FPC 1316, 1317 (1961) *Natural Gas Pipeline of America*, Docket No. CP 64-50, 34 FPC 1258, 1263 (1965), *Oklahoma Natural Gas Company, et al.*, Docket No. G-19593, 23 FPC 921 (1960).

[11] In its response filed June 5, 1978, CIG estimated that the initial transportation rate would be 23 cents per Mcf.

[12] NPSC Docket No. 9643, No. 9601, Sub.-4; No. 9601, Sub.-5; and No. 9601, Sub.-6.

[13] 15 U.S.C. § 717(bX1970).

[14] 379 U.S. 366 (1965).

[15] 379 U.S. 687 (1965) *Cf. Louisiana Power & Light Co.* v. *FPC*, 483 F. 2d 623 (5th Cir. 1973), cert. denied, sub nom., *Texasgulf Inc.* v. *FPC*, 416 U.S. 974 (1974); *Rosario Production Co., et al.*, Docket Nos. C166-776, et al., Opinion No. 781, 55 FPC——(1976).

[16] 379 U.S. at 369. Even the flow of insignificant volumes beyond the state of origin can require the imposition of federal jurisdiction. See *Connecticut Light & Power Co.* v. *FPC*, 324 U.S. 515 (1945).

[17] Compare *Colorado Interstate Gas Co., et al.*, Docket Nos. CP75-323, et al., Opinion No. 777, 55 FPC—— (1976).

Other Related Dockets

In Docket No. CP76-297 McInterstate was authorized to construct and operate certain facilities consisting primarily of 3.5 miles of 4-inch transmission line plus appurtenant facilities, and a compressor station, to transport gas purchased in the Manning Field Converse County, Wyo., to a point of interconnection with its 16-inch line. The compressor is on loan to McProessing; however, there is a question as to whether McInterstate will seek to transfer title to McProcessing.

In Docket No. CP76-274, McInterstate filed a complaint pursuant to § 1.6 of the Commission's rules of practice and procedure (18 CFR § 1.6) alleging that facilities proposed to be constructed and operated by Phillips Petroleum Co. and/or Panhandle Eastern Pipeline Co. in Converse County, Wyo. are uneconomical and wasteful, ultimately detrimental to the interstate consumers of gas, and, therefore, not required by the public convenience and necessity. McInterstate requested an order to show cause and that the matter be set for the hearing.

In Docket No. CP75-271, McInterstate was granted authority to transport certain gas volumes produced in the Bear Creek (Allemand) Area for CIG. This transportation service is performed with the facilities used to perform the service authorized in Docket No. CP74-92. If the abandonment authorization sought in Docket No. CP77-1 is granted, CIG will transport its own gas.

In Docket No. CP74-92, McInterstate was authorized to transport CIG gas volumes from the Spearhead Ranch Area approximately 35 miles to the interconneciton with CIG's facilities. These gas volumes are delivered to McInterstate by Mountain Fuel pursuant to authority granted in Docket No. CP74-64. Pending before the Commission are a petition to amend this certificate to authorize the transportation of gas from additional acreage in the Spearhead Ranch Area and McInterstate's proposed revised tariff sheets for Rate Schedule X-1. Temporary authorization was granted on November 26, 1976. This transportation will be performed by CIT if McInterstate's abandonment request is granted.

In Docket No. CP76-259, Mountain Fuel proposes to construct and operate approximately 35 miles of 10-inch pipeline and appurtenant facilities extending from the end of its 10-inch pipeline in the Spearhead Ranch Field to a point of interconnection with CIG's 16-inch pipeline in Converse County, Wyo. This line would parallel McInterstate's 16-inch line. Mountain Fuel states that it filed its application because it was unable to obtain McInterstate's consent to transport additional volumes on a reasonable basis and that, as a result, Mountain Fuel was hampered in its effects to contract for new supplies of gas in the Spearhead Ranch Area. Mountain Fuel further states that this application may be withdrawn on CIG's receipt of authorization.

In Docket No. CP74-62, CIG filed a petition to amend the certificate previously issued in that docket which authorized the transportation and exchange of gas with Mountain Fuel from dedicated acreage in the Spearhead Ranch Area, Converse County, Wyo., to add additional acreage to the dedicated area and to sell to McInterstate 40 percent of the 25 percent of the volumes which CIG will purchase from Mountain Fuel from the additional acreage. The sale to McInterstate will contine only until such time as CIG purchases the facilities from McInterstate as set forth in the application in Docket No. CP76-494. McInterstate will receive from Mountain Fuel and transport the new volumes with the volumes from the original dedicated acreage approximately 35 miles to the point of interconncection with CIG's facilities. Temporary authorization was issued on November 26, 1976.

In Docket No. CP74-64, Mountain Fuel filed a petition to amend the certificate to enlarge the dedicated area in the Spearhead Ranch Area to attach new wells as set forth above in the discussion of the petition to amend filed in Docket No. CP74-62. A temporary certificate authorizing the enlargement was issued on November 26, 1976.

Our resolution of the jurisdictional issues addressed herein must be viewed as placing some constraints upon our future disposition of the applications pending before us; however, McInterstate and CIG have indicated in their filings and responses to inquiries a recognition of these issues and a corresponding intent to make the changes and modifications if found to be necessary. Therefore in order to allow this consolidated proceeding to progress, we find it appropriate to allow the parties an opportunity to amend their applications and make the requisite filings consistent with the findings contained herein within 30 days from issuance of this order. Upon receipt of these filings, a hearing shall be convened in order to ascertain whether the proposed transportation, as modified, is in the public convenience and necessity. A prehearing conference will be convened for the purpose of setting forth the primary issues to be developed in an on-the-record proceeding inter alia, i.e., gas supply reserve projections, and potential impact upon the consumer. In setting this proceeding for hearing, all proceedings which are involved, related to or affected by this proposal will be considered and addressed.

After due notice by publication in the Federal Register on October 20, 1976 (41 FR 46477), petitions to intervene in the proceedings in Docket No. CP77-1 were filed by CIG and WPSC. After notice by the publication in the Federal Register on September 17, 1976 (41 FR 40228), petitions to intervene in the proceedings in Docket No. CP76-494 were filed by WPSC, the Public Service Company of Colorado, and Mountain Fuel Supply Company. After notice by publication of October 28, 1975 (40 FR 50147), petitions to intervene in the proceedings in Docket No. CP76-121 were filed by State of Louisiana, MDU, Arco, CIG, WPSC and Inexco Oil Company. No other petition to intervene, other notice of intevention or protest to the granting of the proceedings set forth above have been filed.

The Commission finds:

(1) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that a public hearing be held on the matters involved and the issue presented in these proceedings.

(2) Due to the related nature of the applications and since there may be common questions of law or fact involved, it is appropriate to consolidate the proceedings in the above captioned dockets.

(3) The producer sales of natural gas to McInterstate and McTransmission for resale are and will continue to be in interstate commerce subject to the jurisdiction of the Commission, and such sales of natural gas are subject to the requirements of subsections (c) and (e) of section 7 of the Natural Gas Act.

(4) Participation by the aforementioned intervenors may be in the public interest. Good cause exists for accepting the late petitons to intervene and notices of intervention filed in this proceeding.

The Commission orders:

(A) These proceedings are hereby consolidated for purposes of hearing and disposition.

(B) Pursuant to the authority of the Natural Gas Act, particular sections 7 and 15 thereof, the Commission's

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Rules of Practice and Procedure (18 CFR Part 1), and the Regulations under the Natural Gas Act (18 CFR Ch. I, subch. E), a prehearing conference shall be held on January 8, 1979, commencing at 10 a.m. in a hearing room of the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, to discuss procedural issues and the clarification of issues.

(C) An Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose (See Delegation of Authority 18 CFR § 3.5 (d)), shall preside at the prehearing conference in this proceeding, with authority to establish and change all procedural dates, and to rule on all motions (with the sole exception of motions to consolidate and sever and motions to dismiss), as provided for in the Rules of Practice and Procedure.

(D) McInterstate shall file an application pursuant to Section 7(c) of the Natural Gas Act for certificate authority to perform the transportation service for Arco described herein within thirty (30) days of issuance of this order.

(E) The petition for a declaratory order filed by McInterstate suggesting sales of gas to McTransmission to be found to be within the Commission's jurisdiction is hereby granted. Within thirty days of the issuance of this order, McInterstate or its successor shall file with the Commission an application according to the Commission's Regulations for authorization to continue sales of natural gas for resale in interstate commerce to McTransmission.

(F) The above-mentioned intervenors are permitted to intervene in this proceeding subject to the rules and regulations of the Commission; *Provided, however,* that the participation of such intervenors shall be limited to matters affecting asserted rights and interests as specifically set forth in their petitions to intervene; and *Provided further,* that the admission of such intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order of the Commission entered in this proceeding.

By the Commission. (Commissioner Sheldon, concurring in part and dissenting in part, filed a separate statement appended hereto.)

KENNETH F. PLUMB,
Secretary.

Sheldon, Commissioner, concurring in part and dissenting in part:

NOVEMBER 8, 1978

I concur in all of the actions taken by my colleagues in these dockets, with the exception of one. To the extent that they assert jurisdiction over the sale by McCulloch Gas Processing Co. to McCulloch Gas Transmission Co. of up to 1,500 Mcf per day of natural gas for resale to customers within the State of Wyoming, where the gas is produced, I must respectfully dissent.

My colleagues base their assertion of jurisdiction upon the fact that delivery of this gas will be accomplished through a portion of Colorado Interstate Gas Co.'s interstate pipeline system (albeit a portion entirely within the State), and thus will be commingled with gas destined ultimately to travel out-of-state for resale elsewhere. As with earlier pronouncements of a similar nature, the assertion is said to be predicated upon the Supreme Court's opinions in *California* v. *Lo-Vaca Gathering Co.*, 379 U.S. 366 (1965), and *FPC* v. *Amerada Petrolem Corp.*, 379 U.S. 687 (1965).

Since this Commission's order of May 9, 1978, in *Columbia Gas Transmission Corp., et al.*, Docket No. CP77-363, to which I also dissented, I have consistently taken the position that the mere fact of commingling in an interstate pipeline, in and of itself, does not render a sale of natural gas subject to our jurisdiction. In the *Lo-Vaca* and *Amerada* cases, the gas in question was first sold into the interstate pipeline's undifferentiated system supply before being resold or otherwise disposed of. In this case, the interstate pipeline is involved only for the purpose of transporting a discrete volume of gas, on behalf of others, from one point in the state of another; its intervening role is in the nature of bailor in an intrastate transaction rather than purchaser with an opportunity to resell out-of-state.

In short, my position has been that such intrastate transactions are beyond the scope of our jurisdiction, and that attempts to reach them on the basis of commingling alone distort the teachings of *Lo-Vaca* and *Amerada*. I see no reason to deviate from the position in this instance.

GEORGIANA H. SHELDON,
Commissioner.

[FR Doc. 78-32374 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket Nos. G-11161, *et. al.*]

McCULLOCH OIL & GAS CORP. (SUCCESSOR TO McCULLOCH OIL CORP.

Redesignation

NOVEMBER 6, 1978.

By letter filed November 7, 1977, as amended by a letter filed April 10, 1978, McCulloch Oil & Gas Corp. (MOG) requests amendment of all of the certificates of McCulloch Oil Corp. (MCO) and redesignation of the related rate schedules so as to substitute the name of MOG for MCO. MOG indicates that as a result of a corporate reorganization, MOG (a wholly owned subsidiary of MCO) acquired all of MCO's oil and gas properties and assumed MCO's duties and obligations, to be effective February 28, 1977, all as more fully set forth in the Appendix hereto.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and pwtitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before November 15, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

APPENDIX

Purchaser	Location of sale (County and State)	MCO FERC GRS No. and docket No.	MOG FERC GRS No.	Assignment supplement No.
United Gas Pipe Line Co	Claiborne, La	2 (G-11161)	4	22
Panhandle Eastern Pipe Line Co	Ellis, Okla	19 (CI71-726)[1]	5	5
Northern Natural Gas Co	Dewey, Okla	20 (CI72-144)	6	4
Arkansas Louisiana Gas Co	do	21 (CI71-87)	7	4
Trunkline Gas Co	Vermilion, La	22 (CI73-102)[1]	8	11
El Paso Natural Gas Co	Lea, N. Mex	23 (CI73-227)	9	10
Northern Natural Gas Co	Ellis, Okla	24 (CI73-521)	10	2
Do	do	29 (CI75-559)	11	2
Montana Dakota Utilities Co	Custer, et al., Wyo	30 (CI75-604)	12	5
Panhandle Eastern Pipe Line Co	Ellis, Okla	32 (CI76-413)	13	3

[1]Temporary certificate only.

[FR Doc. 78-32351 Filed 4- -78; 8:45 am]

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[6740-02-M]

[Docket No. RP74-97 (PGA78-1)]

MONTANA-DAKOTA UTILITIES CO.

Offer of Settlement

NOVEMBER 8, 1978.

Take notice that on October 31, 1978, Montana-Dakota Utilities Co. (MDU) submitted an offer of settlement in the above-captioned proceeding. On September 25, 1978, an Initial Decision was issued which, *inter alia,* denied MDU's request to include in its purchased gas adjustment (PGA) the cost of Powell II intrastate gas purchased from MDU's Sheridan intrastate system. Inclusion of these purchases would have spread the costs to MDU's interstate customers.

MDU states that if it is allowed to include the costs of the Powell II gas in its PGA adjustments, and if the provision of the Natural Gas Policy Act of 1978 concerning the unenforceability of intrastate utilization contracts is enacted into law, MDU agrees to use its best efforts to arrange for transfer to MDU's main line system of the volumes held in storage for its account by Northern Gas Co. and to use its best efforts to arrange for delivery to the main line system of any excess gas production available from the Powell II Unit, as well as any other production in excess to the requirements of the Sheridan System, which might become available to MDU within the State of Wyoming and which otherwise would not be available to the main line system. However, MDU is not willing to construct additional facilities to connect the Powell II production field to its interstate system.

Any person desiring to comment on said offer of settlement should do so with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426 on or before November 20, 1978. Copies of this offer of settlement are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32352 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket Nos. ER77-480, ER77-493, and ER77-494]

MONTAUP ELECTRIC CO.

Refunds

NOVEMBER 9, 1978.

Take notice that Montaup Electric Co. on September 29, 1978, tendered for filing on behalf of itself, Blackstone Valley Electric Co. and Brockton Edison Co., a report of refunds made on September 13, 1978 in accordance with the settlement agreement in the above-noted dockets, approved by letter order dated August 24, 1978.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such protests should be filed on or before November 30, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32376 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-48]

MONTAUP ELECTRIC CO.

Cancellation

NOVEMBER 9, 1978.

Take notice that Montaup Electric Co. on November 2, 1978, tendered for filing a notice of cancellation opf Rate Schedule FERC No. 41, proposed to be effective January 31, 1977 and of Rate Schedule No. 42, proposed to be effective November 1, 1976. Montaup indicates that notice of the proposed cancellations has been served upon the Maine Public Service Utilities Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10. All such petitions or protest should be filed on or before November 20, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are filed with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32377 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. CP78-181]

NATURAL GAS PIPELINE CO. OF AMERICA

Petition To Amend

NOVEMBER 9, 1978.

Take notice that on October 19, 1978, Natural Gas Pipeline Co. of America (Petitioner), 122 South Michigan Avenue, Chicago, Ill. 60603, filed in Docket No. CP78-181 a petition to amend the order of April 25, 1978, issued in the instant docket (57 FPC——) pursuant to section 7(c) of the Natural Gas Act so as to authorize the continued transportation of natural gas for Trunkline Gas Co. (Trunkline), an increase in the authorized transportation quantity, an additional redelivery point and establishment and/or revision of transportation rates for gas received, all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

It is indicated that pursuant to the order of April 25, 1978, Petitioner was authorized to transport up to 10,000 Mcf of natural gas per day for Trunkline from the existing points of interconnection between the facilities of Petitioner and Stingray Pipeline Co. and between Petitioner and U-T Offshore System (UTOS) both in Cameron Parish, La. It is indicated that Petitioner delivers on a best efforts basis equivalent volumes less 1 percent retained for fuel reimbursement to an existing point of interconnection between Trunkline and Petitioner in Montgomery County, Tex. It is indicated that the subject transportation would terminate upon completion and placing in service of the expansion of Trunkline's Lakeside Lateral, or on December 31, 1978, whichever occurs first.

Petitioner states that it and Trunkline are currently negotiating an amendment to their transportation agreement dated December 14, 1972, as amended, to provide for a long-term transportation thereunder of gas volumes that are presently available for delivery for Trunkline's account at the terminus of the UTOS pipeline system in Cameron Parish, La. It is indicated

that Trunkline has advised Petitioner that the continuation of the limited term transportation pending completion of said negotiations and authorization of the long-term transportation arrangement is necessary to permit Trunkline to receive quantities of gas available to it from the offshore Louisiana area. Consequently, Petitioner and Trunkline have amended their letter agreement dated January 10, 1978, by an amendatory agreement dated September 11, 1978, which amendatory agreement extends the term of the transportation service until the long-term arrangement is authorized but not later than December 31, 1979. Petitioner also states that pursuant to such amendatory agreement it would receive, on a best efforts basis, daily quantities of gas, up to a maximum of 140,000 Mcf per day, tendered for Trunkline's account at the UTOS Delivery Point, and that it would redeliver, on a thermal basis less fuel consumed on Petitioner's pipeline system, equivalent quantities of gas at either the existing emergency interconnection between Trunkline and Petitioner in Montgomery County, Tex. (Montgomery Redelivery Point) as previously authorized herein or at the proposed additional existing interconnection of Petitioner and Trunkline near Lakeside, Cameron Parish, La. (Cameron Redelivery Point). The quantities of gas to be delivered at the Montgomery Redelivery Point would be subject to Petitioner's discretion but would not be in excess of 100,000 Mcf per day unless by mutual consent of the parties, it is said.

Petitioner proposes to charge Trunkline a rate of 2.1 cents per Mcf for volumes redelivered at the Lakeside interconnection and 3.5 cents per Mcf for volumes delivered to the Montgomery County redelivery point. It is indicated that volumes of gas redelivered are to be reduced by 0.25 percent and 0.6 percent at the Lakeside and Montgomery points, respectively, for fuel consumed on Petitioner's pipeline system to accomplish the transportation.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before November 29, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32378 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. RP73-8]

NORTH PENN GAS CO.

Proposed Changes in FERC Gas Tariff

NOVEMBER 7, 1978.

Take notice that North Penn Gas Co. (North Penn) on October 31, 1978, tendered for filing proposed changes in its FERC Gas Tariff, First Revised Volume No. 1, pursuant to its PGA Clause for rates to be effective December 1, 1978.

Fifty-Ninth Revised Sheet No. PGA-1 reflects a decrease of 3.294 cents per Mcf from the rates as submitted to the Federal Energy Regulatory Commission (Commission) on October 30, 1978 in Second Substitute Fifty-Eighth Revised Sheet No. PGA-1.

The change in rates contained in this filing reflect a surcharge credit of 25.723 cents per Mcf which results from amounts accumulated in the unrecovered purchased gas cost account for the 6-month period March 1, 1978 through August 31, 1978; the jurisdictional portion of refunds received for the same 6-month period: and a carryover balance from the surcharge credit filed to be effective for the 6-month period December 1, 1977 through May 31, 1978.

North Penn requests a waiver of any of the Commission's Rules and Regulations as may be required to permit Fifty-Ninth Revised Sheet No. PGA-1 to become effective December 1, 1978 as proposed.

Copies of this filing were served upon North Penn's jurisdictional customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 20, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32353 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. ER78-291]

NORTHERN STATES POWER CO. (MINNESOTA)

Certification

NOVEMBER 8, 1978.

Take notice that Presiding Administrative Law Judge Michael Levant on October 19, 1978, certified to the Commission a proposed settlement agreement in the above-noted docket. Judge Levant indicates that agreement was filed by joint motion of Northern States and its Municipal Wholesale Customers on September 28, 1978, and provides that Northern States will file new rates, make appropriate refunds and refrain from increasing the revised rates prior to April 1, 1980.

Any person desiring to be heard or to protest said settlement agreement should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20427, on or before November 27, 1978. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this agreement are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32354 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Project No. 2056]

NORTHERN STATES POWER CO.

Application for Use of Project Lands and Waters

NOVEMBER 8, 1978.

Take notice that an application was filed March 9, 1978, under the Federal Power Act, 16 U.S.C. §§ 791a-825r, by the Northern States Power Co. (correspondence to: Mr. G. V. Welk, Manager, Regulatory Activities, Northern States Power Co., Minneapolis, Minn. 55401) for authorization to reconstruct an existing non-project 115 kV overhead transmission line crossing the Mississippi River at the Applicant's Saint Anthony Falls Project No. 2056 in Minneapolis, Minn.

The Applicant states that the planned new line is necessary to solve reliability problems in the downtown area and would replace the existing single circuit line with a double circuit crossing. The existing line is not adequate for 400 MVA and will not accommodate a double circuit. The planned line would cross project waters approximately 150 feet downstream of the existing line. The clearance between the line and the water surface at a normal pool elevation of 750 feet (msl) would be 90 feet. There would be no structures constructed on the project lands. Upon completion of the new crossing, the existing line would be removed.

The Applicant has received permits for the planned crossing from the U.S. Army Corps of Engineers, the Minnesota Department of Natural Resources, and the city of Minneapolis.

Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR § 1.8 or § 1.10 (1977). In determining the appropriate action to take, the Commission will consider all protests filed, but a person who merely files a protest does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any protest or petition to intervene must be filed on or before December 11, 1978. The Commission's address is: 825 North Capitol Street NE., Washington, D.C. 20426.

The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32355 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket Nos. ER77-5 and E-8152]

OTTER TAIL POWER CO.

Extension of Time

NOVEMBER 6, 1978.

On October 30, 1978, Otter Tail Power Co. filed a motion for extension of time for filing briefs opposing exceptions to the initial decision issued in this proceeding on September 15, 1978. The motion states that additional time is needed because of novel issues presented in this case and because of the length of the initial decision and briefs. The intervenor Cities filed a response stating that it does not object to the request as long as the extension is granted to all parties. The response filed by Commission Staff Counsel on November 1, 1978, objects to any extension beyond 1 week.

Upon consideration notice is hereby given that an extension of time is granted to and including November 16, 1978 for all parties to file briefs opposing exceptions.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32379 Filed 11-16-78; 8:45 am]

[6740-02—M]

[Docket Nos. E-7777 (Phase II), E-7796]

PACIFIC GAS & ELECTRIC CO. AND PACIFIC POWER & LIGHT CO., ET AL.

Motion To Approve Proposed Settlement Agreement

NOVEMBER 3, 1978.

Take notice that on June 12, 1978, Anza Electric Cooperative, Inc., tendered for filing, as a party to the proceedings in the above-noted docket, a motion to approve proposed settlement agreement and for withdrawal as a party to Commission proceedings thereto. Anza indicates that the agreement is between it and its sole supplier, Southern California Edison Co. Anza states that the agreement, if approved by the Commission, will obviate the need for further participation in these proceedings by Anza, and at the same time will not affect the rights of any of the other parties to the proceedings.

Any person desiring to be heard or to protest said settlement agreement should file comments with the Federal Power Commission, 825 North Capitol Street NE., Washinton, D.C. 20426, on or before November 15, 1978. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this agreement are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32380 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-43]

PACIFIC POWER & LIGHT CO.

Proposed Termination

NOVEMBER 8, 1978.

Take notice that Pacific Power & Light Co. (PP&L) on October 30, 1978, tendered for filing a notice of termination of Rate Schedule FPC No. 111.

PP&L indicates that the transmission service provisions of Schedule No. 111 were to terminate, by the terms of the contract, as of September 18, 1978, the date of commercial operation of the Wyodak Project.

PP&L indicates that a copy of this filing was sent to the Black Hills Power and Light Co., the customer under Schedule No. 111.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 20, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32356 Filed 11-16-78; 8:45 am]

[6740-02—M]

[Docket No. ER79-46]

PACIFIC POWER & LIGHT CO.

Filing of Revised Exhibits

NOVEMBER 8, 1978.

Take notice that Pacific Power & Light Co. (Pacific), on November 1, 1978, tendered for filing, in accordance with § 35.13 of the Commission's Regulations, revised exhibits to Rate Schedule FPC No. 114, Supplement Nos. 3 and 4. These exhibits describe the changes to Points of Delivery and Emergency Points of Interconnection between Pacific and the United States of America, Department of Energy, Bonneville Power Administration (BPA).

Pacific requests waiver of the Commission's notice requirements to permit these revised exhibits to become effective June 30, 1976, which it claims is the date of commencement of service.

Copies of the filing were supplied to the Bonneville Power Administration.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 20, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file

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with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32357 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. RP78-62]

PANHANDLE EASTERN PIPE LINE CO.

Proposed Changes

NOVEMBER 9, 1978.

Take notice that Panhandle Eastern Pipe Line Co. (Panhandle) on November 2, 1978, tendered for filing proposed changes in the following revised tariff sheets:

FERC GAS TARIFF, ORIGINAL VOLUME NO. 1

First Substitute Twenty-Fourth Revised Sheet No. 3-A.
First Substitute First Revised Sheet No. 3-B.
First Substitute Second Revised Sheet No. 43-1.
Third Substitute Fourth Revised Sheet No. 43-2.
First Substitute Fifth Revised Sheet No. 43-3.
First Substitute Sixth Revised Sheet No. 43-4.

FERC GAS TARIFF, ORIGINAL VOLUME NO. 2

Second Revised Sheet No. 93.
Second Revised Sheet No. 135.
Second Revised Sheet No. 211.
Third Revised Sheet No. 375.
First Revised Sheet No. 439.
First Revised Sheet No. 462.
First Revised Sheet No. 463.
First Revised Sheet No. 484.
First Revised Sheet No. 556.
First Revised Sheet No. 611.
First Revised Sheet No. 640.
First Revised Sheet No. 641.
Second Revised Sheet No. 694.
Second Revised Sheet No. 695.
First Revised Sheet No. 724.
First Revised Sheet No. 725.
Second Revised Sheet No. 784.
Second Revised Sheet No. 801.
First Revised Sheet No. 811.
First Revised Sheet No. 812.
First Revised Sheet No. 848.
First Revised Sheet No. 849.
Second Revised Sheet No. 875.
Second Revised Sheet No. 876.
First Revised Sheet No. 963.
First Revised Sheet No. 964.

An effective date of November 1, 1978 is proposed.

On May 1, 1978, Panhandle filed revised tariff sheets to its FERC Gas Tariff, Original Volume Nos. 1 and 2. By order issued May 31, 1978, the Commission accepted for filing the tariff sheets listed in Appendix A to such order and suspended their use "until November 1, 1978, when it shall be permitted to become effective, subject to refund, upon motion filed by Panhandle in accordance with the provisions of the Natural Gas Act."

On September 15, 1978, Panhandle filed Substitute Tariff Sheet Nos. 3-A, 3-B, 43-1, 43-2, 43-3 and 43-4 to its FERC Gas Tariff, Original Volume No. 1 pursuant to the Commission's suspension order requesting that such substitute tariff sheets be made effective on November 1, 1978. by an order dated November 1, 1978, the Commission rejected the substitute tariff sheets "without prejudice" to Panhandle's right to refile the tariff sheets in accordance with either of two specified alternatives: (1) reflecting the suspended rates without any adjustment for revised gas costs or (2) reflecting suspended rates as adjusted to reflect all costs included in your latest approved PGA rate adjustment. Panhandle states that this filing is in accordance with alternative (2), above.

Copies of this filing were served on Panhandle's jurisdictional customers, interested state regulatory agencies and all parties to the proceeding.

Any person desiring to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C., 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 22, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32381 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. CI79-105]

PHILLIPS PETROLEUM CO.

Limited-Term Certificate Application

NOVEMBER 7, 1978.

Take notice that on November 1, 1978, Phillips Petroleum Co. (Phillips), Bartlesville, Okla. 74004, filed in Docket No. CI79-105 an application for a limited-term certificate with pregranted abandonment of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act and the Commission's Regulations thereunder.

Applicant seeks a limited-term certificate with pregranted abandonment to make a sale of gas to United Gas Pipe Line Co. (United) for a period commencing on the expiration of the 60-day emergency sale which was commenced on October 13, 1978, with said limited-term sale to expire on November 26, 1980.

Applicant and United have entered into a Limited-Term Gas Purchase Contract dated October 3, 1978, which expires on November 26, 1980, providing for delivery of emergency volumes that Applicant has available for delivery from its Kingfisher Plant, located in section 9, Township 15 North, Range 5 West, Kingfisher County, Okla., and/or its Cimarron Plant, located in section 27, Township 20 North, Range 17 West, Woodward County, Okla. Applicant's volume is estimated to be approximately 30,000 Mcfd. This limited-term agreement is to commence on the expiration of 60 days from the start of emergency deliveries that were commenced on October 13, 1978. Consideration for gas delivered under the contract during the limited term will be a base rate of 174.0 cents per MMBtu.

Any person desiring to be heard or to make any protest with reference to said application, on or before November 29, 1978, should file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32358 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-40]

PUGET SOUND POWER & LIGHT CO.

Filing

NOVEMBER 7, 1978.

Take notice that on October 30, 1978, Puget Sound Power & Light Co. (Puget) tendered for filing a Letter Agreement between Puget and the City of Seattle Department of Lighting (Seattle).

Puget indicates that the Agreement sets forth the Terms and Conditions under which Puget will make available

firm capacity to Seattle during the months of December 1978 and January 1979. This capacity is required by Seattle to supplement its resources in anticipation of possible cold weather induced deficiencies on its system, according to Puget.

A copy of the filing has been sent to the City of Seattle, according to Puget.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 20, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32359 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. RP79-7]

SOUTHERN NATURAL GAS CO.

Proposed Rate Increase

NOVEMBER 8, 1978.

Take notice that Southern Natural Gas Co. (Southern) on October 31, 1978, tendered for filing proposed changes in its FPC Gas Tariff, Sixth Revised Volume No. 1 and Original Volume No. 2. The proposed changes are based on the twelve-month period ending July 31, 1978 and, as adjusted, would increase jurisdictional revenues by $55,600,000.

Southern states that the principal reason for the proposed rate increase is to recover cost increases experienced in all levels of Southern's operations but primarily in the cost of the Company's gas supplies. Other cost increases include higher taxes and debt costs.

Copies of the filing have been served upon Southern's jurisdictional customers and interested state public service commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 20, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32382 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-45]

SOUTHWESTERN ELECTRIC POWER CO.

Filing

NOVEMBER 8, 1978.

Take notice that the Southwestern Electric Power Co. (SWPC) on October 31, 1978, tendered for filing:

(1) Power Coordination, Interchange and Transmission Service Agreement between Arkansas Electric Cooperative Corp. (AECC) and SWPC dated March 18, 1977.

(2) Certificate of Concurrence dated August 31, 1978, signed by AECC in support of this filing.

(C) Notice of Cancellation of Contract between AECC and SWPC dated August 16, 1960, accepted for filing August 18, 1963, and identified as FPC No. 58.

SWPC indicates that service under this schedule commenced July 1, 1978, and it is respectfully requested that the Commission accept this as an application for waiver of prior notice requirements and provide for the filing to become effective July 1, 1978.

Any person desiring to be heard or to make any protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 20, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32360 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. R178-98]

SUN OIL CO.

Petition for Special Relief

NOVEMBER 8, 1978.

Take notice that on September 25, 1978, Sun Oil Co., Two North Park East, Box 20, Dallas, Tex. 75221, filed a petition for special relief in Docket No. R178-98 pursuant to § 2.76 of the Commission's General Policy and Interpretations (18 CFR 2.76).

Petitioner requests authorization to charge a base rate of 34.8028 per Mcf at 14.65 psia, subject to BTU adjustment from a base of 1000 BTU's, for the sale of gas to Panhandle Eastern Pipe Line Co. from the Stucker Unit, Well No. 1, North Bishop Field, Ellis County, Okla. Sun is currently collecting a base rate of 29.3398 per Mcf, plus 7.0268 tax reimbursement. The total rate, including excise, production and conservation tax, requested is 41.8346 cents per Mcf. Sun Oil Co. plans a FRAC treatment of the Stucker Unit which will result in estimated increase production to 900 per Mcf per day from 454 Mcf per day. The cost of the FRAC treatment is set at $25,292.

Any person desiring to be heard or to make any protest with reference to said petition should file a petition to intervene or a protest with the Federal Energy Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All such petitions or protests should be filed on or before December 1, 1978. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32383 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. RI79-7]

SUN OIL CO.

Petition for Special Relief

NOVEMBER 8, 1978.

Take notice that on October 19, 1978, Sun Oil Co. (Petitioner), Two North Park East, Box 20, Dallas, Tex. 75221, filed a petition for special relief, in Docket No. RI79-7, pursuant to

§ 2.76 of the Commission's General Policy and Interpretations.

Petitioner requests authorization to charge a total rate of 48.9108 cents per Mcf at 15.025 psia for the sale of gas from the State Agency-Tract 4, Well No. 3, Belle Isle Field, St. Mary Parish, La., to United Gas Pipeline Co. Petitioner is currently collecting a total rate of 37.60084 cents per Mcf at 15.025 psia, subject to Btu adjustment, for the sale of the subject gas. Petitioner has replaced tubing in the said well in order to restore production. The cost of the replacement tubing was $94,500.

Any person desiring to be heard or to make any protest with reference to said petition should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All such petitions or protests should be filed on or before December 1, 1978. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32384 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. CP76-501]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Application to Amend

NOVEMBER 8, 1978.

Take notice that on October 30, 1978, Transcontinental Gas Pipe Line Corp. (Applicant), P.O. Box 1396, Houston, Tex. 77001, filed in Docket No. CP76-501 an application pursuant to section 7(c) of the Natural Gas Act and § 2.79 of the Commission's General Policy and Interpretations (18 CFR 2.79) to amend the order issued December 28, 1976, in said docket, as amended,[1] so as to:

(1) Continue a transportation service for Kohler Co. (Kohler) for an additional 2-year term;

(2) Transport gas from additional sources; and

(3) Increase the maximum transportation volume from 1,100 Mcf per day, to 1,600 dekatherms (dt) equivalent of gas per day, all as more fully set forth in the application to amend which is on file with the Commission and open to public inspection.

Applicant states that the order of December 28, 1976, as amended, authorized it to transport, on an interruptible basis, up to 1,100 Mcf of gas per day for the account of Kohler for use for high-priority purposes in Kohler's Spartansburg, S.C., plant.

Applicant further states that Kohler has amended its gas purchase contract with Glen A. Martin (Martin) to purchase contract gas from additional sources of supply in the South Longhorn and Greenbranch Fields, Duval and McMullen Counties, Tex. Gas from the additional sources of supply would be delivered to Applicant at mutually agreeable points on Applicant's system in Duval and McMullen Counties, Tex., it is indicated.

No additional facilities are required by Applicant to transport gas from the additional sources of supply, it is said.

Applicant states that Kohler has requested that Applicant convert the transportation agreement between Applicant and Kohler to a service agreement under Applicant's effective Rate Schedule T. Under Rate Schedule T, Applicant would charge an initial rate of 23.5 cents per dt for all quantities delivered hereunder and would retain, initially, 3.8 percent of the quantities received for transportation as make-up for compressor fuel and line loss.

Any person desiring to be heard or to make any protest with reference to said application to amend should on or before November 30, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

KENNETH F. PLUMB,
Secretary

[FR Doc. 78-32361 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. CP79-44]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Application

NOVEMBER 8, 1978.

Take notice that on October 30, 1978, Transcontinental Gas Pipe Line Corp. (Applicant), P.O. Box 1396, Houston, Tex. 77001 filed in Docket No. CP79-44 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of up to 132 (dt) equivalent of natural gas per day, on an interruptible basis, for the account of Carolina Pipeline Co., Inc.; NCNG Exploration Corp., an affiliate of North Carolina Natural Gas Corp.; Philadelphia Electric Co.; Piedmont Exploration Co., Inc., an affiliate of Piedmont Natural Gas Co., Inc.; Tar Heel Energy Corp., an affiliate of Public Service Co. of North Carolina, Inc.; UCG Energy Corp., an affiliate of North Carolina Natural Gas Corp.; Philadelphia Electric Co.; Piedmont Exploration Co., Inc., an affiliate of Piedmont Natural Gas Co., Inc.; Tar Heel Energy Corp., an affiliate of Public Service Co. of North Carolina, Inc.; UCG Energy Corp., an affiliate of United Cities Gas Co., North and South Carolina Division; Rockingham Co., an affiliate of North Carolina Gas Service Division of Pennsylvania & Southern Gas Co.; and Burlington Industries, Inc., all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that with the exception of Burlington Industries, Inc. these transportation customers are all distribution company customers of Applicant or affiliates of Applicant's distributors.

Applicant further states that the joint venture (Transmac Exploration and Development Program) of these transportation customers has discovered and developed a successful well in the West Raceland Field, Laufourche Parish, La.

Applicant requests authorization herein to transport for the account of the above transportation customers, on an interruptible basis, their interests in the West Raceland Field gas from the point of connection in the field to existing points of delivery on Applicant's system to such customers, or their affiliates.

Applicant states that transportation service into its Rate Zone 2 initially would be rendered at 23.5 cents per dt, and into Rate Zone 3 at 24 cents per dt. Transco would initially withhold 3.8 percent of the transportation volumes destined for delivery in Rate Zone 2 and 4.4 percent of the volumes for delivery in Rate Zone 3 for compressor fuel and line loss make-up, it is assented.

Applicant states that the subject gas would be utilized by the ultimate recipients to moderate the impact of Applicant's curtailments or their high-priority end uses.

The transportation service would be rendered with existing capacity on an interruptible basis, and the revenues generated by the service would be credited to Applicant's cost-of-service in an appropriate rate proceeding, thus redounding to the benefit of the other services rendered by Applicant's system, it is asserted.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 30, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise adivsed, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32362 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket Nos. CP75-17 and CP75-277]

TRANSWESTERN PIPELINE CO.

Technical Conference

NOVEMBER 3, 1978.

Take notice that on December 5, 1978, there will be a conference to discuss the volumetric entitlements of Transwestern Gas Pipeline Co.'s right-of-way customers. The conference will convene at 10:00 a.m. in the Gawaine Room of the downtown Ramada Inn, Amarillo, Tex. All interested persons are invited to attend, however, attendance at the conference will not be deemed to constitute formal intervention in the above-captioned proceedings.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32385 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. CP78-50]

TRUNKLINE GAS CO.

Change in Tariff

NOVEMBER 7, 1978.

Take notice that Trunkline Gas Co. (Trunkline) on October 30, 1978, tendered for filing Second Revised Sheet No. 1-E and Original Sheet Nos. 1638 through 1681 to its FERC Gas Tariff, Original Volume No. 2.

Trunkline states that such changes are made to provide a Rate Schedule T-43 for the transportation of natural gas on behalf of Panhandle Eastern Pipe Line Co. (Panhandle). Trunkline proposes that these sheets become effective on September 18, 1978.

A copy of this filing has been served on Panhandle.

Any person desiring to be heard or to make any protest with reference to said applications, on or before November 24, 1978, should file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32363 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. CP78-337]

TRUNKLINE GAS CO.

Change in Tariff

NOVEMBER 7, 1978.

Take notice that Trunkline Gas Co. (Trunkline) on October 30, 1978, tendered for filing First Revised Sheet No. 1-E and Original Sheet Nos. 1598 through 1637 to its FERC Gas Tariff, Original Volume No. 2.

Trunkline states that such changes are made to provide a Rate Schedule T-42 for the transportation of natural gas on behalf of Panhandle Eastern Pipe Line Co. (Panhandle). Trunkline proposes that these sheets become effective on September 19, 1978.

A copy of this filing has been served on Panhandle.

Any person desiring to be heard or to protest said filing should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All such petitions or protests should be filed on or before November 24, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32364 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. CP78-390]

TRUNKLINE GAS CO.

Change in Tariff

NOVEMBER 7, 1978.

Take notice that Trunkline Gas Co. (Trunkline) on October 30, 1978, tendered for filing Third Revised Sheet No. 1-E and Original Sheet Nos. 1682 through 1722 to its FERC Gas Tariff, Original Volume No. 2.

Trunkline states that such changes are made to provide Rate Schedules E-19 and E-20 for the exchange of natural gas with Natural Gas Pipeline Co. of America (Natural). Trunkline proposes that these sheets become effective on August 29, 1978.

A copy of this filing has been served on Natural.

Any person desiring to be heard or to make any protest with reference to said application, on or before Novem-

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the FERC.

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ber 24, 1978, should file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32365 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. ER77-313]

UNION LIGHT HEAT & POWER CO.

Filing

NOVEMBER 9, 1978.

Take notice that Union Light, Heat & Power Co. on October 26, 1978, tendered for filing, in accordance with the Commission's letter of October 12, 1978, accepting the tariff rate sheets attached to the Settlement Agreement dated May 12, 1978, billing and revenue data for the city of Williamstown, Ky., the only purchaser under the subject rates for the period of July 15, 1977 to September 15, 1978.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such protests should be filed on or before November 30, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32380 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. RP79-6]

UNITED GAS PIPE LINE CO.

Filing of Revised Tariff Sheets

NOVEMBER 7, 1978.

Take notice that on October 26, 1978, United Gas Pipe Line Co. tendered for filing with the Federal Energy Regulatory Commission (Commission) the tariff sheets listed below to its FERC Gas Tariff, Original Volume No. 2:

Tariff Sheet and Proposed Effective Date

First Revised Sheet No. 1087, May 6, 1978.
First Revised Sheet No. 1153, August 1, 1978.
First Revised Sheet No. 1170, August 25, 1978.
First Revised Sheet No. 1193, September 15, 1978.

United states the purpose of this filing is to show increased volume for fuel and unaccounted for gas as provided in Article II of certain of United's transportation agreements.

United states that copies of these tariff sheets have been mailed to Transcontinental Gas Pipe Line Corp., Mississippi Valley Gas Co. and Michigan Wisconsin Pipe Line Co.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedures (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before November 15, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32366 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. CP79-29]

WESTERN GAS INTERSTATE CO.

Application

NOVEMBER 9, 1978.

Take notice that on October 16, 1978, Western Gas Interstate Co. (Western), 1800 First International Building, Dallas, Tex. 75270, filed in Docket No. CP79-29 an application pursuant to section 7(c) of the Natural Gas Act and section 157.7(b) of the Regulations thereunder (18 CFR 157.7(b)) for a certificate of public convenience and necessity authorizing the construction, during the 12-month period commencing with the date of the requested authorization, and operation of facilities to enable Western to take into its certificated main pipeline system natural gas which would be purchased or received from producers or other similar sellers, all as more fully set forth in the application on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to augment Western's ability to act with reasonable dispatch in connecting to its pipeline system supplies of natural gas which may become available from various producing areas generally co-extensive with its pipeline system or the systems of other pipeline companies which may be authorized to transport gas for the account of or exchange gas with Western.

It is stated that the total cost of the proposed facilities would not exceed $150,000 and that the cost of any single project would not exceed 25 percent of the total cost. It is indicated that these costs would be financed from funds on hand and, to the extent necessary, with short-term borrowings from Western's parent, Southern Union Co.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 16, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.70). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Western to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32387 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket No. CP79-31]

WESTERN GAS INTERSTATE CO.

Application

NOVEMBER 9, 1978.

Take notice that on October 16, 1978, Western Gas Interstate Co. (Applicant), 1800 First International Building, Dallas, Tex. 75270, filed in Docket No. CP79-31, an application pursuant to section 7 of the Natural Gas Act and § 157.7(g) of the Commission's regulations under the Natural Gas Act (18 CFR 157.7(g)) for a certificate of public convenience and necessity authorizing the construction and for permission for and approval of the abandonment, during the calendar year 1979, and operation of field gas compression and related metering and appurtenant facilities, as as more fully set forth in the application on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in the construction, relocation, and operation and abandonment of facilities which will not result in changing Applicant's system saleable capacity or service from that authorized prior to the filing of the instant application.

Applicant states that the total cost of the proposed construction and abandonment of facilities would not exceed $500,000 and that the cost of any single project would not exceed 25 percent of the total authorization. Applicant indicates that it would finance such cost from internally generated funds.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 16, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding.

Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear to be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32388 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Docket Nos. RP 72-41 (PGA 79-1)]

WESTERN TRANSMISSION CORP.

Proposed Changes

NOVEMBER 7, 1978.

Take notice that Western Transmission Corp. (Western), on November 1, 1978, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following sheet:

Tenth Revised Sheet No. 3-A, superseding Ninth Revised Sheet No. 3-A.

The proposed changes would decrease the monthly charges for purchased gas to Colorado Interstate Gas Co., Western's sole jurisdictional customer, pursuant to the proposed provisions of section 18 of Western's FPC Gas Tariff, Original Volume No. 1.

Because of the brief time available subsequent to the Commission's adoption of its new rules relating to Purchased Cost Adjustment Clauses, Western requests that the notice provision otherwise applicable be waived so as to permit the proposed rates to become effective December 1, 1978.

Copies of this filing have been served upon Colorado Interstate Gas Co.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 15, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32367 Filed 11-16-78; 8:45 am]

[6740-02-M]

[Project No. 1984]

WISCONSIN RIVER POWER CO.

Place and Procedures for Public Session

NOVEMBER 8, 1978.

By notice granted this date, the Petenwell Lakes Property Owners Association ("PLPOA") and the Wisconsin Department of Natural Resources ("DNR") were permitted to intervene respecting Wisonsin River Power Co's. ("WRPC") application for approval of a revised Exhibit R (recreation plan) for the Castle Rock-Petenwell Project (FERC Project No. 1984).

The Exhibit R is a statement of the recreational developments that WRPC intends to provide at the Castle Rock and Petenwell flowages. WRPC filed with the Exhibit P a Land Use Plan and an Exhibit W (environmental report); WRPC has also subsequently amended the Exhibit R.

PLPOA and DNR raise numerous issued regarding the recreational plan. Central among these are:

1. Does the plan provide adequate protection for wetlands;
2. Does the plan provide adequate protection for certain wildlife species (such as osprey);
3. Does the plan adequately provide for the removal of stumps and trees from the Petenwell flowage (and did WRPC previously violate orders of the Commission and the Wisconsin Public Service Commission with regard to such a stump and tree removal);
4. Does the plan provide adequate access roads to the flowages;
5. Does the plan provide enough boat launching ramps, picnic tables, and related facilities;
6. Should certain shoreline areas, such as the Petenwell dikes, be open to public use; and
7. Should WRPC be allowed to remove certain lands from the project boundary?

Both PLPOA and DNR requested that a public meeting be held in the vi-

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cinity of the project so that the public may express their views on the Exhibit R. WRPC recommended that any meeting held should be an informal proceeding conducted by staff.

It appears that a public session may be helpful. Accordingly, Commission staff counsel will convene two public sessions in the circuit courtroom of the Adams County courthouse, in Friendship, Wis., beginning at 9 a.m. and at 7 p.m. on Wednesday, November 29, 1978, and continuing thereafter until concluded so that the intervenors, members of the public, and any interested Federal, State or local agencies may state their views, orally or in writing, and have their positions and statements considered along with the pleadings and comments filed in this proceeding. All oral and written statements presented will be transcribed by a court reporter into a written record of the public session.

To avoid confusion and to insure that all persons wishing to present their positions can do so, the following procedures will be observed at the public session:

All those desiring to be heard, or wishing to submit written statements, should, before the convening of the sessions noted above, fill out cards with their names, addresses, and the organization they represent, if any, and give the cards to Commission staff counsel. Blank cards will be available at the entrance to the courtroom.

When a person's name is called, he should come forward and state his name, address, and the organization he represents, if any. If he wishes to make an oral statement, he should proceed to do so. If he wishes to submit a written statement and also make an oral statement, he should confine his oral remarks to a brief summary of the highlights of the written statement, since all written statements will be copied into the record as though read. the statements made at the public session do not constitute evidence, and the persons giving statements will not be subject to cross-examination.

If a peson wishes to make a statement for the record but is unable to be present at the time his name is called, he may leave a copy of his statement with the reporter, and it will be copied into the record as though read. If for any reason a person wishing to be heard is unable to attend the public session, he may submit a written statement by December 22, 1978, to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, and it will be made a part of the record of the public session.

Copies of the Exhibit R (as amended), the Land Use Plan, and the Exhibit W are available for public inspection at the following locations:

Wisconsin River Power Co., Wisconsin Rapids, Wis., 715-422-3111.

McMillan Memorial Library, 490 East Grand Avenue, Wisconsin Rapids, Wis., 715-423-1040.

Mauston Public Library, 133 East State Street, Mauston, Wis., 608-847-4454.

Adams County Library, 101 South Main, Adams, Wis., 608-339-3211.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32389 Filed 11-16-78; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1003-2; PF-113]

PESTICIDE PROGRAMS

Filing of Pesticide Petition

Monsanto Agricultural Products Co., 800 North Lindbergh Boulevard, St. Louis, Mo. 63166, has submitted a petition (PP 8F2128) to the Environmental Protection Agency (EPA) which proposes that 40 CFR 180.314 be amended by establishing a tolerance for the residues of the herbicide triallate (S-(2,3,3-trichloroallyl) diisopropylthiocarbamate) in or on the raw agricultural commodities sugar beets, sugar beet tops, soybeans, soybean forage and hay all at 0.05 part per million (ppm). The proposed analytical method for determining residues is by gas liquid chromatography with electron capture detector. Notice of this submission is given pursuant to the provisions of section 408(d)(1) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on this petition to the FEDERAL REGISTER Section, Program Support Division (TS-757), Office of Pesticide Programs, EPA, Room 401, East Tower, 401 M Street SW., Washington, D.C. 20460. Inquiries concerning this petition may be directed to Product Manager (PM) 25, Registration Division (TS-767), Office of Pesticide Programs, at the above address, or by telephone at 202-755-7012. Written comments should bear a notation indicating the petition number. Comments may be made at any time while a petition is pending before the Agency. All written comments filed pursuant to this notice will be available for public inspection in the office of the FEDERAL REGISTER Section from 8:30 a.m. to 4 p.m. Monday through Friday.

Dated: November 7, 1978.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

[FR Doc. 78-32338 Filed 11-16-78; 8:45 am]

[6560-01-M]

[FRL 1008-4]

SCIENCE ADVISORY BOARD; TECHNOLOGY ASSESSMENT AND POLLUTION CONTROL COMMITTEE

Open Meeting

As required by Pub. L. 92-463; this is to give notice that a meeting of the Technology Assessment and Pollution Control Committee will be held beginning at 9 a.m., December 4 and 5, 1978, in room 1101, West Tower, EPA Headquarters, 401 M Street SW., Washington, D.C. The meeting is open to the public. Any member of the public wishing to attend or to have further information on the meeting should contact Lloyd Taylor or Rita Haggerty, 703-557-7720.

The committee will discuss the identification of pollution control technology research needs; incentives for development and utilization of pollution control technology; whether to review the scientific and technical basis of four proposed EPA regulations; and items of interest to the members.

RICHARD M. DOWD,
Staff Director,
Science Advisory Board.

NOVEMBER 13, 1978.

[FR Doc. 78-32340 Filed 11-16-78; 8:45 am]

[6560-01-M]

[FRL 1007-6]

STATE OF SOUTH CAROLINA

Review by the U.S. Environmental Protection Agency, Region IV, Water Supply Branch of Exemptions Granted by the South Carolina Department of Environmental Regulation From June 24, 1977, to June 24, 1978

This public notice is issued under section 1416 of the Safe Drinking Water Act, Pub. L. 93-523, December 16, 1974 and 142.22(b) of the National Interim Primary Drinking Water Regulations, published in the FEDERAL REGISTER on January 20, 1976.

All information related to the granting of these exemptions is available for public inspection between the hours of 8:30 a.m. and 5 p.m., Monday through Friday at:

Division of Water Supply, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201.

All interested parties are invited to submit written comments on the exemptions issued and on the need for continuing these exemptions. Comments must be submitted on or before December 18, 1978 and should be sent to:

Mr. Curtis F. Fehn, Chief, State Program Section, Water Supply Branch, U.S. Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Ga. 30308, Telephone 404-881-3781.

Dated: November 3, 1978.

ASA B. FOSTER,
Acting Regional Administrator.

[FR Doc. 78-32339 Filed 11-16-78; 8:45 am]

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[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1008-3; OTS 140001]

TOXIC SUBSTANCES CONTROL

Security of Confidential Business Information

AGENCY: Environmental Protection Agency.

ACTION: Supplemental clarification.

SUMMARY: This notice clarifies the Agency's procedures for handling chemical substances whose identity has been treated as confidential for purposes of the Inventory of Chemical Substances under seciton 8(b) of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2601 et seq.).

ADDRESS: Copies of the EPA business confidentiality regulations and TSCA Confidential Business Information Security Manual may be obtained by calling or writing John B. Ritch, Jr., Director, Industry Assistance Office (TS-793), 401 M Street SW., Washington, D.C. 20460, telephone 800-424-9065; in Washington, D.C., telephone 554-1404.

SUPPLEMENTARY INFORMATION: On September 8, 1978, EPA promulgated final amendments to its business confidentiality regulations, 40 CFR Part 2, 43 FR 39997. These amendments were effective October 10, 1978. On July 25, 1978, EPA announced the availability of its TSCA Confidential Business Information Security Manual, 43 FR 32186. These security procedures were effective immediately upon publication. If EPA makes major changes to these regulations or security manual, the Agency will provide an opportunity for public comment.

Section 2.306 of the business confidentially regulations establishes standards governing release of information obtained under TSCA. This section incorporates by reference the Agency's general rules on handling confidential information and establishes special rules for handling TSCA information consistent with the statute. In particular, these regulations provide notice to the affected business prior to public disclosure of information claimed as confidential. In addition, the regulations provide that although EPA does not believe that notice is required when the Agency furnishes the confidential informtion to another Federal agency, a contractor performing work under TSCA, a congressional committee, or to any other person pursuant to court order, EPA will give notice to an affected business in such instances as a matter of policy. In providing for notice to affected businesses prior to disclosure to other Federal agencies, a contractor, Congress, or pursuant to court order, EPA has reserved certain flexibility. The regulations provide that in these instances, EPA may give notice to the affected business by letter sent by certified mail return receipt requested, by telegram or by notice published in the FEDERAL REGISTER.

Questions have arisen concerning EPA's intended procedures for handling chemical substances whose identities will be treated as confidential for purposes of the inventory compiled under section 8(b) of TSCA. This notice is intended to clarify two points:

(1) EPA intends to physically segregate its data base on chemical substances whose identities will be treated as confidential for purposes of the Inventory; and

(2) EPA intends to provide notice to the affected business by letter or telegram before furnishing information on these chemical substances to another Federal agency, a contractor, Congress or pursuant to court order. EPA does not intend to give notice of such disclosure by the FEDERAL REGISTER.

Dated: November 9, 1978.

STEVEN D. JELLINEK,
Assistant Administrator for
Toxic Substances.

[FR Doc. 78-32337 Filed 11-16-78; 8:45 am]

[6712-01]

FEDERAL COMMUNICATIONS COMMISSION

[FCC 78-744; RM-2647]

CONNECTING AND CONCURRING CARRIERS TO JUSTIFY THEIR RATES AS DO THE ISSUING CARRIERS REQUIREMENTS

Memorandum Opinion and Order Denying Petition for Rulemaking

Adopted: October 19, 1978.

Released: November 2, 1978.

In the matter of amendment to § 61.38 of Commission's rules to require connecting and concurring carriers to justify their rates as do the issuing carriers, RM-2647.

1. We have before us a Petition for Rulemaking filed by the U.S. Department of Defense (DOD) on March 19, 1976 requesting that the Commission amend § 61.38 of its rules. DOD seeks an amendment of that section to require the filing of additional data and information by concurring and connecting carriers.[1] The petition for rulemaking was placed on public notice and in response comments were received from Central Telephone Co., Mid-Continent Telephone Corp., Continental Telephone Corp., GTE Service Corp., and its affiliated telephone companies, Rochester Telephone Corp. and American Telephone & Telegraph Co. (AT&T). DOD filed a reply.

2. Section 61.38 does not require that support data be filed by connecting and concurring carriers with regard to tariff changes initiated by the issuing carrier. The Final Report and Order in Docket No. 18703, 25 F.C.C. 2d 957, 968 (1970), which promulgated § 61.38, demonstrates that it was the Commission's intent that only issuing carriers (and connecting carriers who had requested changed or new matter be filed by the issuing carrier), would be required to file support data and information.

3. DOD contends here that enlarging the scope of the supporting data requirement to include concurring and connecting carriers is more in line with the broader intent of the Commission in creating § 61.38. Its position is that the § 61.38 cost material filed by the issuing carrier in support of its rates has no direct value in evaluating the lawfulness of the same rates charged by a concurring or connecting carrier and that the Commission's regulatory processes and the public interest would best be served if all carriers, including concurring and connecting carriers, were required to submit detailed economic and other data to justify rate changes. Finally, DOD states that its interests would be adequately served if the cost data are required only for rate changes for private line service and the terminal equipment used in connection with such services.

4. All of the connecting parties oppose the proposed rulemaking. They

[1] A connecting carrier is, basically, an intrastate carrier which engages in interstate or foreign communication solely through physical connection with an unaffiliated interstate or foreign carrier. Sections 3(u) and 2(b) of the Communications Act, 47 U.S.C. 153(u) and 152(b).

A concurring carrier, as defined in § 61.14 of the Commission's rules, is "a carrier (other than a connecting carrier) subject to the act which concurs in and assents to schedules of charges and regulations filed on its behalf by an issuing carrier or carriers."

An issuing carrier is a carrier "subject to the act which publishes and files a tariff or tariffs with the Commission." Section 61.16 of the Commission's rules.

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argue, variously, that the petition fails to comply with the requirements of § 1.401 of the Commission's rules for petitions for rulemaking; that requiring a connecting carrier to file supportive data would be contrary to the language of the Communications Act and would violate the intent of Congress; that the proposed amendment would impose a burden of unnecessary and useless paperwork upon carriers and the Commission staff; that DOD has made no effort to present any new evidence which might lead the Commission to depart from its decision as to the § 61.38 requirements; and that the present procedure already results in a valid comparison between revenues and costs by way of the cost data filed by the issuing carrier and by the distribution of revenues in the separations process. DOD's reply responds to these arguments without raising any new matters.

5. Although we consider the DOD petition as requesting that connecting and concurring carriers file support data only with regard to private line service, the same considerations and the same reasoning would apply to nonprivate line services. Our conclusion would accordingly be the same.[2] DOD's petition does not present facts or data in support of its proposed amendment which might indicate that costs and rates would differ significantly from those determined by the cost support data currently submitted by the issuing carriers, nor does it specify how the interests of the DOD would be affected, aside from general representations of alleged benefits to the public and to DOD as a consumer. First, we should note that AT&T, in support of a private line tariff filing, would submit not only its own cost support data for its Long Lines Department but that for all the associated Bell System Companies. Since the amount of facilities provided by the Bell System is generally so large in comparison to those provided by the independent (i.e. non-Bell) connecting or concurring carriers, its cost data dominates and, in effect, largely determines the rate schedules for private line services.[3] Secondly, the costs of these independent connecting carriers are included in the total Bell System costs (generally in the form of revenue requirements). Therefore, the data supporting any such rate schedule does include all costs, whether generated directly within the Bell System or not. This independent company cost data could presumably be broken out separately upon request of the Commission if such became necessary in any given case. However, the petitioner has not shown what public benefit would accrue from routinely requiring the submission of this cost data separately rather than in the aggregate as is now the case.

6. Although it is difficult to estimate the volume of additional paperwork which the proposed rule would generate, it clearly would be very substantial. For example, 55 telephone companies are concurring carriers to AT&T's 260 tariff for private line service, and virtually all of the other telephone companies in the United States, over 1,500 in all, are connecting carriers. The additional burdens the DOD rule would impose on each connecting and concurring carrier to assemble and directly submit the data and information in support of changes in this single tariff would be enormous, and out of all proportion to any perceptible benefit to the public. Indeed, the proposed rule might well make the regulatory process so unwieldly as to frustrate effective regulation, were it to be applied to the 260 Tariff, not to mention the numerous other tariffs on file with the Commission toward which the same rationale might be applied. Under these circumstances, we do not believe that the institution of a rulemaking proceeding on this matter would be in the public interest. This is not to say, however, that in any given case or in a specific rate investigation the Commission or a presiding judge may not require such separate information to be submitted if circumstances warrant it.

7. Accordingly, *It is ordered*, That the Petition for Rulemaking if denied.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-32332 Filed 11-16-78; 8:45 am]

[2] Connecting carriers are already required to file appropriate support material for exception rates filed on their behalf as part of an issuing carrier's general tariff offering, and our decision and discussion is not intended to apply to such rates.

[3] The amount of private line facilities provided by the Bell System is perhaps 10 times or more of that provided by independents. This is illustrated by statistics which show that the Bell System's total private line revenues in 1976 were $1,638,910,624. This compares to non-Bell private line revenues, as reported by independent telephone companies with over 96 percent of total independent revenues, of $148,755,000 of which over $87 million was revenue of carriers reporting to the Commission. Source: Statistics of Communications Common Carriers, Year Ended December 31, 1976, p. 30, Table 16, lines 112, 128 and Independent Telephone Statistics 1977 Edition, p. 20.

[6712-01-M]

FM AND TV TRANSLATOR APPLICATIONS READY AND AVAILABLE FOR PROCESSING

Adopted: November 6, 1978.

Released: November 9, 1978.

By the Chief Broadcast Facilities Division.

Notice is hereby given pursuant to § 1.572(c) and § 1.573(d) of the Commission's Rules, that on December 29, 1978, the TV and FM translator applications listed in the attached Appendix will be considered as ready and available for processing. Pursuant to section 1.227(b)(1) and § 1.519(b) of the Commission's Rules, an application, in order to be considered with any application appearing on the attached list or with any other application on file by the close of business on December 28, 1978, which involves a conflict necessitating a hearing with any application on this list, must be substantially complete and submitted for filing at the offices of the Commission in Washington, D.C., by the close of business on December 28, 1978. The attention of prospective applicants is directed to the fact that some contemplated proposals may not be eligible for consideration with an application appearing in the attached Appendix by reason of conflicts between the listed applications and applications appearing in previous notices published pursuant to § 1.573(d) of the Commission's Rules.

The attention of any party in interest desiring to file pleadings concerning any pending TV and FM translator application, pursuant to section 309(d)(1) of the Communications Act of 1934, as amended, directed to § 1.580(i) of the Commission's Rules for provisions governing the time for filing and other requirements relating to such pleadings.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

UHF TV TRANSLATOR APPLICATIONS

BMPTT-780726IL (K72DK), Elgin, La Grande, Union & Baker, Oreg., Blue Mt. Television, Association. Req: Change frequency to Channel 62, 758-764 MHz.

BPTT-780726IM (K74BX), Elgin, La Grande, Union & Baker, Oreg., Blue Mt. Television, Association. Req: Change frequency to Channel 64, 770-776 MHz.

BPTT-780726IN (K784BC), Elgin, La Grande, Union & Baker, Oreg., Blue Mt. Television, Association. Req: Change frequency to Channel 66, 782-788 MHz.

BPTT-780728IU (New), Lakeport, Calif., The Lake County Television Club. Req: Channel 62, 758-764 MHz, 100 watts. Primary: KVIE-TV, Sacramento, Calif.

BPTT-780728IV (K71BD), Lakeport & Clear Lake Basin, Calif., The Lake County Television Club. Req: Channel frequency to Channel 66, 782-788 MHz.

BPTT-780728IW (K73BQ), Lakeport, Calif., The Lake county Television Club. Req: Change frequency to Channel 64, 770-776 MHz, increase output power to 100 watts.

BPTT-780728IX (K77BS), Lakeport, Calif., The Lake County Television Club. Req: Change frequency to Channel 58, 734-740 MHz.

BPTT-780728IY (K80BG), Lakeport, Calif., The Lake County Television Club. Req: Change frequency to Channel 56, 722-728 MHz.

BPTT-780811IB (new), Flagstaff, Ariz., Trinity Broadcasting of Arizona, Inc. Req: Channel 62, 758-764 MHz, 100 watts. Primary; KPAZ-TV, Phoenix, Ariz.

BPTT-780830ID (W65AH), Loundonville, Ohio, Ohio Educational Television Network Commission. Req: Change primary TV station to WOUC-TV, Channel 44, Cambridge, Ohio.

BPTT-780925IA (new), Brainerd, Minn., Channel 10, Inc. Req: Channel 57, 728-734 MHz, 100 watts. Primary: WDIO-TV, Duluth, Minn.

BPTT-780925IB (new), Aitkin, Minn., Channel 10, Inc. Req: Channel 66, 782-788 MHz, 100 watts. Primary: WDIO-TV, Duluth, Minn.

BPTT-781005IA (new), San Jose, Los Gatos, Santa Clara, Saratoga, Los Altos, Sunnyvale, Palo Alto and Mountain View, Calif., KNTV, Inc. Req: Channel 42, 638-644 MHz, 1000 watts. Primary: KNTV-TV, San Jose, Calif.

VHF TV TRANSLATOR APPLICATIONS

BPTTV-780711IE (new), Fredericksted, St. Croix (and surrounding area), U.S. Virgin Islands, Virgin Island Public Television System. Req: Channel 13, 210-216 MHz, 10 watts. Primary: WJTJ-TV, Charlotte Amalie, St. Thomas, U.S. Virgin Islands.

BPTTV-780713IE (new), Chambers, Lupton, Navajo, and Sanders, Ariz., Puerco Valley TV Association, Inc. Req: Channel 11, 198-204 MHz, 10 watts. Primary: KOAT-TV, Albuquerque, N. Mex.

BPTTV-780911IB (new), Rexburg and St. Anthony, Idaho, Futura Titanium Corp. d.b.a. Futura Communications. Req: Channel 12, 204-210 MHz, 10 watts. Primary: KPVI-TV, Pocatello, Idaho.

BPTTV-780926IB (new), Silver City, N. Mex. Regents of New Mexico State University. Req: Channel 12, 204-210 MHz, 100 watts. Primary: KRWG-TV, Las Cruces, N. Mex.

FM TRANSLATOR APPLICATIONS

BPFT-780801JD (new), Tri-Cities (Pasco, Kennewick, and Richland), Wash., Columbia Translator Council. Req: Channel 204, 88.7 MHz, 10 watts. Primary: KGTS-FM, Walla Walla, Wash.

BPFT-78081IV (new), Winter Park, Winter Garden, Orlando, and Popka, Fla., The Moody Bible Institute of Chicago. Req: Channel 228, 93.5 MHz, 1 watt. Primary: WKES-FM, St. Petersburg, Fla.

BPFT-780801IW (new), Gainesville, Fla., The Moody Bible Institute of Chicago. Req: Channel 252, 98.3 MHz, 1 watt. Primary: WKES—FM, St. Petersburg, Fla.

BPFT-780929IA (new), Prineville, Oreg., Juniper Broadcasting, Inc. Req: Channel 272, 102.3 MHz, 10 watts. Primary: KXIQ-FM, Bend, Oreg.

[FR Doc. 78-32334 Filed 11-16-78; 8:45 am]

[6712-01-M]

TV BROADCAST APPLICATIONS READY AND AVAILABLE FOR PROCESSING

Adopted: November 7, 1978.

Released: November 13, 1978.

By the Acting Chief, Broadcast Facilities Division:

Notice is hereby given, pursuant to § 1.572(c) of the Commission's Rules, that on December 22, 1978, the TV broadcast applications listed in the attached Appendix will be considered as ready and available for processing. Pursuant to §§ 1.227(b)(1) and 1.591(b) of the Commission's Rules, an application in order to be considered with any application appearing on the attached list or with any other application on file by the close of business on December 21, 1978, which involves a conflict necessitating a hearing with any application on this list, must be substantially complete and tendered for filing at the offices of the Commission in Washington, D.C., by the close of business on December 21, 1978.

The attention of any party in interest desiring to file pleadings concerning any pending TV broadcast application, pursuant to § 309(d)(1) of the Communications Act of 1934, as amended, is directed to § 1.580(i) of the Commission's Rules for provisions governing the time for filing and other requirements relating to such pleadings.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

BPCT-5184; new; North Pole, Alaska, Evangelistic Missionary Fellowship, Channel 4, ERP. Vis. 18.66 kW, HAAT: 1819 88 ft.

BPCT-780713IB; new; Indianapolis, Ind., Channel 59 of Indiana, Inc., Channel 59, ERP. Vis. 1472 kW, HAAT: 548.9 ft.

BPCT-780720IC; new; Marion, Ill., Dennis F. Doelitzsch, Channel 27, ERP. Vis. 152. kW, HAAT: 529 ft.

BPCT-780728IF; new; Valdosta, Ga., Peachtree Telecasting, Inc., Channel 44, ERP. Vis. 559 kW, HAAT: 839 ft.

BPCT-780814IC; new; Springfield, Ohio, Miami Valley Christian Broadcasting Association, Inc., Channel 26, ERP. Vis. 1219 kW, HAAT: 488 ft.

BPCT-780822IB; new; Prescott, Ariz., William H. Sauro, Channel 7, ERP. Vis. 2kW. HAAT: 1,550 ft.

BPCT-780824IA; new; Watertown, N.Y., R.B.G. Productions, Inc., Channel 50, ERP. Vis. 778 kW, HAAT: 633 ft.

BPCT-780828IF; new; Atlanta, Ga., Channel 69 of Georgia, Inc., Channel 69, ERP Vis. 1580 kW, HAAT: 960 ft.

BPCT-780831IA; new; Salisbury, Md., MDV Television Co., Inc., Channel 47, ERP. Vis. 2570 kW, HAAT: 1000 ft.

BPCT-780914KL; WAND; Decatur, Ill., WAND Television, Inc., Channel 17, Change ERP. Vis. 5000 kW, change HAAT: 1285.2 ft.

BPCT-780919KF; new; Lafayette, La., Charles Chatelain, Channel 15, ERP. Vis. 281 kW, HAAT: 208.65 ft.

BPET-600; WNJB(TV); New Brunswick, N.J., New Jersey Public Broadcasting Authority, Channel 58, ERP. Vis. 3040.9 kW, HAAT: 1410.3.

BPET-615; new; Greenwood, S.C., South Carolina Educational Television Commission, Channel 38, ERP. Vis. 893 kW, HAAT: 744 ft.

[FR Doc. 78-32333 Filed 11-16-78; 8:45 am]

[6730-01-M]

FEDERAL MARITIME COMMISSION

MATSON TERMINALS, INC.

Agreements Filed; Correction

In FR Doc. 78-31273, appearing on page 51724 in the issue of Monday, November 6, 1978, appeared a summary of Agreement No. T-3737 between Matson Terminals, Inc., and Nippon Yusen Kaisha (NYK). The summary should have shown NYK as agent of Korea Marine Transport Co., Ltd.

Dated: November 14, 1978.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-32420 Filed 11-16-78; 8:45 am]

[6730-01-M]

(Independent Ocean Freight Forwarder License No. 291]

BAKER, IRONS & DOCKSTADER, INC.

Order of Revocation

On October 16, 1978, Baker, Irons & Dockstader, Inc., 17 Battery Place, New York, N.Y. 10004, voluntarily surrendered its Independent Ocean Freight Forwarder License No. 291 for revocation and requested that revocation be effective on October 21, 1978, the expiration date of its Independent Ocean Freight Forwarder surety bond.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 201.1 (revised), section 5.01(c), dated August 8, 1977:

It is ordered, That Independent Ocean Freight Forwarder License No. 291, issued to Baker, Irons & Dockstader, Inc., be and is hereby revoked effective October 21, 1978 without prejudice to reapplication for a license in the future.

It is further ordered, That a copy of this Order by published in the FEDERAL REGISTER and served upon Baker, Irons & Dockstader, Inc.

ROBERT G. DREW,
Director, Bureau of Certification and Licensing.

[FR Doc. 78-32408 Filed 11-16-78; 8:45 am]

[6210-01-M]

FEDERAL RESERVE SYSTEM

MARJON BANCORPORATION, INC.

Formation of Bank Holding Company

Marjon Bancorporation, Inc., Colesburg, Iowa, has applied for the Board's approval under § 3(a)(1) of the Bank

Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Farmers Savings Bank, Colesburg, Iowa. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than December 4, 1978. Any comment on an application that requests a hearing must be sent to the Secretary's Office within 30 days of the date of this notice and must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 9, 1978.

JOHN M. WALLACE,
Assistant Secretary of the Board.

[FR Doc. 78-32336 Filed 11-16-78; 8:45 am]

[6210-01-M]

SOCIETY CORP.

Acquisition of Bank

Society Corp., Cleveland, Ohio, has applied for the Board's approval under § 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent (less directors' qualifying shares) of the voting shares of First National Bank of Clermont County, Bethel, Ohio. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Cleveland. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than December 1, 1978. Any comment on an application that requests a hearing must be sent to the Secretary's Office within 30 days of the date of this notice and must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 9, 1978.

JOHN M. WALLACE,
Assistant Secretary of the Board.

[FR Doc. 78-32335 Filed 11-16-78; 8:45 am]

[6210-01-M]

FEDERAL RESERVE SYSTEM

CATOOSA BANCSHARES, INC.

Formation of Bank Holding Company

Catoosa Bancshares, Inc., Catoosa, Okla., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 percent (less directors qualifying shares) of the voting shares of First Bank of Catoosa, Catoosa, Okla. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received no later than December 7, 1978. Any comment on an application that requests a hearing must be sent to the Secretary's office within 30 days of the date of this notice and must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 13, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-32409 Filed 11-16-78; 8:45am]

[1610-01-M]

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Receipt of Report Proposals

The following requests for clearance of reports intended for use in collecting information from the public were received by the Regulatory reports Review Staff, GAO, on November 9, 1978. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the FEDERAL REGISTER is to inform the public of such receipt.

The notice includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed CAB requests are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed requests, comments (in triplicate) must be received on or before December 5, 1978, and should be addressed to Mr. John M. Lovelady, Assistant Director, Regulatory Reports Review, U.S. General Accounting Office, Room 5106, 441 G Street NW., Washington, D.C. 20548.

Further information may be obtained from Patsy J. Stuart, of the Regulatory Reports Review Staff, 202-275-3532.

CIVIL AERONAUTICS BOARD

The CAB requests clearance of the new application, recordkeeping and reporting requirements contained in Part 291 (ER-1080) of the Board's Economic Regulations. These requirements are mandatory under the Federal Aviation Act of 1958, as amended, for air carriers holding all-cargo certificates from the Board to engage in domestic cargo transportation. CAB estimates respondents will number approximately 645 domestic air carriers and burden will average 8 hours per application; 30 minutes for the bodily injury and property damage insurance forms 291-D and 291-E; 1 hour for notifications dealing with acquisition or merger between an all-cargo carrier (providing domestic cargo service) and an air carrier holding authority to transport international cargo; and 24 hours for reporting on forms 291-A, Balance Sheet, 291-B, Statement of Operations, and 291-C, Summary of Traffic and Capacity Statistics which are filed semiannually.

The CAB requests clearance of the new reporting Schedule T-8, Report of section 418 Operations, to Form 41 of Part 241—Uniform System of Accounts and Reports for Certificated Air Carriers. CAB states that reporting on this schedule is mandatory under the Federal Aviation Act of 1958, as amended, by air carriers holding section 401 certificates that conduct all-cargo operations under certificates issued for Section 418 cargo operations. Schedule T-8 filing will be required semiannually on February 10 and August 10. The CAB estimates respondents will number approximately 11 certificated air carriers and reporting burden will average 16 hours per report.

NORMAN F. HEYL,
Regulatory Reports Review Officer.

[FR Doc. 78-32443 Filed 11-16-78; 8:45 am]

[6820-38-M]

GENERAL SERVICES ADMINISTRATION

[Intervention Notice 75]

MARYLAND PUBLIC SERVICE COMMISSION AND BALTIMORE GAS & ELECTRIC CO.

Case No. 7268

The Administrator of General Services seeks to intevene in a proceeding before the Maryland Public Service Commission involving an application of Baltimore Gas & Electric Co. for a revision in gas, electric, and steam rates. The Administrator of General Services represents the interests of the executive agencies of the U.S. Government as users of utility services.

Persons desiring to make inquiries of GSA concerning this case should submit them, in writing, to Mr. Spence W. Perry, Assistant General Counsel, Regulatory Law Division, General Services Administration, 18th and F Streets NW., Washington, D.C. 20405, telephone 202-566-0726, within 30 days of the publication of this notice in the FEDERAL REGISTER, and refer to this notice number.

Persons making inquiries are put on notice that the making of an inquiry shall not serve to make any persons parties of record in the proceeding.

(Section 201(a)(4), Federal Property and Administrative Services Act, 40 U.S.C. 481(a)(4).)

Dated: October 30, 1978.

JAY SOLOMON,
Administrator of General Services.

[FR Doc. 78-32397 Filed 11-16-78; 8:45 am]

[6820-34-M]

GENERAL SERVICES ADMINISTRATION

IMPROVING GOVERNMENT REGULATIONS

Agenda of Significant Regulatory Activity

AGENCY: General Services Administration.

ACTION: Semiannual agenda.

SUMMARY: This agenda announces the significant regulatory actions that GSA plans for the 6-month period from mid-November 1978 to mid-May 1979. This agenda was developed under the guidelines in Executive Order 12044, Improving Government Regulations (43 FR 12661, Mar. 24, 1978). GSA's purpose in publishing this agenda is to allow interested persons an opportunity to participate in the early stages of the rulemaking process.

FOR FURTHER INFORMATION CONTACT:

John T. Gilmartin, Director, Paperwork Management Division 202-566-0857.

SUPPLEMENTARY INFORMATION: On May 25, 1978, GSA published its proposed report on implementation plans for Executive Order 12044 at 43 FR 22616. As explained in the report, GSA will publish a semiannual agenda of significant regulatory activity during November and May of each year. The agenda lists, for each of GSA's services and staff offices, new significant regulations that are being considered, changes that are planned to existing significant regulations, and the significant regulations that will be reviewed during the upcoming 6-month period. GSA's next semiannual agenda will be published in the May 18, 1979, issue of the FEDERAL REGISTER.

Dated: November 13, 1978.

JAY SOLOMON,
Administrator of General Services.

FEDERAL PREPAREDNESS AGENCY

A. NEW REGULATIONS

No new significant regulations are being considered.

B. CHANGES TO EXISTING REGULATIONS

1. Stabilization Regulations for Prices, Rents, Wages, and Salaries (32A CFR Part 151); delete from CFR.
a. Need for change: This regulation is no longer required.
b. Legal basis: The Economic Stabilization Act of 1970 has expired.
c. Contact point: Dorinda Lowery, Director, Management Services Division, 202-566-1975.
d. Regulatory analysis: Will not be prepared.

C. REGULATIONS SCHEDULED FOR REVIEW

1. Dispersion and Protective Construction; Policy, Criteria, Responsibilities (32A CFR Part 101).
a. Contact point: Edward K. Zabrowski, Acting Assistant Director for Civil Crisis Preparedness, 202-566-0800.
b. Expected completion date for review: November 30, 1978.
2. Maintenance of the Mobilization Base (32A CFR Part 102).
a. Contact point: Edward K. Zabrowski, Acting Assistant Director for Civil Crisis Preparedness, 202-566-0800.
b. Estimated completion date for review: November 30, 1978.
3. Emergency Action for Maintenance of the Mobilization Base (32A CFR Part 102a).
a. Contact point: Edward K. Zabrowski, Acting Assistant Director for Civil Crisis Preparedness, 202-566-0800.
b. Expected completion date for review: November 30, 1978.
4. Defense Production; Priorities and Allocations Authority (32A CFR Part 103).
a. Contact point: Edward K. Zabrowski, Acting Assistant Director for Civil Crisis Preparedness, 202-566-0800.
b. Expected completion date for review: November 30, 1978.
5. Guidance on Priority Use of Resources in Immediate Postattack Period (32A CFR Part 104).
a. Contact point: Leonard L. Reese, Director, Controlled Conflict Preparedness Division, 202-566-0773.
b. Expected completion date for review: November 30, 1978.
6. National Security Policy Governing Scientific and Engineering Manpower (32A CFR Part 105).
a. Contact point: William D. Baird, Director, General War Preparedness Division, 202-566-0394.
b. Expected completion date for review: November 30, 1978.
7. Health Manpower Occupations (32A CFR Part 106).
a. Contact point: Nina Winkler, Office of the Director, 202-566-1627.
b. Expected completion date for review: November 30, 1978.
8. Policy Guidance for a National Emergency Blood Program (32A CFR Part 107).
a. Contact point: Nina Winkler, Office of the Director, 202-566-1627.
b. Expected completion date for review: November 30, 1978.
9. Program for Expansion of Supplies of Materials Needed for Defense Purposes in the Event of a Major Disaster (32A CFR Part 108).
a. Contact point: Gaston L. Choiniere, Executive Director, 202-566-0550.
b. Expected completion date for review: November 30, 1978.
10. Provision of Materials Under Government Control as Needed to Supplement Supplies Commercially Available in the Event of a Major Disaster (32A CFR Part 109).
a. Contact point: Edward K. Zabrowski, Acting Assistant Director for Civil Crisis Preparedness, 202-566-0800.
b. Expected completion date for review: November 30, 1978.
11. Policy on Use of Government-Owned Industrial Plant Equipment by Private Industry (32A CFR Part 110).
a. Contact point: Edward K. Zabrowski, Acting Assistant Director for

Civil Crisis Preparedness, 202-566-0800.

b. Expected completion date for review: November 30, 1978.

12. General Policies for Strategic and Critical Materials Stockpiling Policy (32A CFR Part 111).

a. Contact point: Edward K. Zabrowski, Acting Assistant Director for Civil Crisis Preparedness, 202-566-0800.

b. Expected completion date for review: November 30, 1978.

13. Use of Priorities and Allocation Authority for Federal Supply Classification (FSC) Common Use Items (32A CFR Part 112).

a. Contact point: Gaston L. Choiniere, Executive Director, 202-566-0550.

b. Expected completion date for review: November 30, 1978.

14. Policy Guidance and Delegation of Authorities for Use of Priorities and Allocations to Maximize Domestic Energy Supplies (32A CFR Part 113).

a. Contact point: Edward K. Zabrowski, Acting Assistant Director for Civil Crisis Preparedness, 202-566-0800.

b. Expected completion date for review: November 30, 1978.

NATIONAL ARCHIVES AND RECORDS SERVICE

A. NEW REGULATIONS

No new significant regulations are being considered.

B. CHANGES TO EXISTING REGULATIONS

1. Access to national security information (41 CFR 105-61.104) and public use of donated historical materials (41 CFR 105-61.2); revise procedures for handling mandatory review requests for classified information accessioned by the National Archives or donated to the Government and deposited in a Presidential library.

a. Need for change: Changes required by EO 12065, National Security Information.

b. Legal basis: 44 U.S.C. 2103, 2104, 2107, and 2107 note; and EO 12065.

c. Contact point: Adrienne Thomas, Planning and Analysis Division, 202-523-3214.

d. Regulatory analysis: Will not be prepared.

C. REGULATIONS SCHEDULED FOR REVIEW

No significant regulations are scheduled for review.

FEDERAL PROPERTY RESOURCES SERVICE

A. NEW REGULATIONS

No new significant regulations are being considered.

B. CHANGES TO EXISTING REGULATIONS.

1. Property for educational and public health purposes (41 CFR 101-47.308-4(l)-(k)); revise regulations to require perpetual use restriction on real property conveyed and to specify appropriate releases of restrictions.

a. Need for change: Result of review by GSA of the effectiveness of procedures related to the conveyance of surplus real property at a monetary discount for public purposes.

b. Legal basis: Section 203(k)(1) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 484(k)(1)).

c. Contact point: James Pitts, Special Programs Division, 202-566-0003.

d. Regulatory analysis: Will not be prepared.

2. Floodplain management and protection of wetlands (41 CFR 101-47.202-2(b)(6)); amend regulations to require the holding agency to submit to GSA, in the agency's excess report, a list of uses that are restricted under identified Federal, State, or local regulations.

a. Need for change: The requirements of Executive Orders 11988 and 11990 for referencing use restrictions on conveyance documents dictated a need for more information from holding agencies.

b. Legal basis: National Environmental Policy Act of 1969 and Executive Orders 11988 and 11990.

c. Contact point: Chester R. Julian, Environmental Staff Officer, 202-566-0505.

d. Regulatory analysis: Will not be prepared.

C. REGULATIONS SCHEDULED FOR REVIEW.

No significant regulations are scheduled for review.

AUTOMATED DATA AND TELECOMMUNICATIONS SERVICE

No significant regulatory actions are planned.

FEDERAL SUPPLY SERVICE

No significant regulatory actions are planned.

OFFICE OF CONTROLLER-ADMINISTRATION

No significant regulatory actions are planned.

OFFICE OF GENERAL COUNSEL

No significant regulatory actions are planned.

PUBLIC BUILDINGS SERVICE

No significant regulatory actions are planned.

[FR Doc. 78-32508 Filed 11-16-78; 8:45 am]

[4110-86-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Disease Control Center

PRACTICAL ASPECTS OF MEASLES ELIMINATION

Open Meeting

The following meeting will be convened by the Center for Disease Control and will be open to the public for observation and participation, limited only by the space available:

Date: December 7, 1978.
Time: 9:15 a.m.
Place: Room 207, Building 1, Center for Disease Control, 1600 Clifton Road NE., Atlanta, Ga. 30333.
Purpose: To discuss an appropriate scientific approach for implementing a program to eliminate measles from the United States.
Additional information may be obtained from: Dr. A. David Brandling-Bennett, Chief, Surveillance and Assessment Branch, Immunization Division, Bureau of State Services, Center for Disease Control, 1600 Clifton Road NE., Atlanta, Ga. 30333, telephones, FTS: 236-3745, Commercial: 404-329-3745.

Dated: November 9, 1978.

ELVIN HILYER,
Acting Director,
Center for Disease Control.

[FR Doc. 78-32311 Filed 11-16-78; 8:45 am]

[4110-03-M]

Food and Drug Administration

ADVISORY COMMITTEES

Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meetings are announced:

Committee name	Date, time, and place	Type of meeting and contact person
1. Clinical Chemistry Section of the Clinical Chemistry and Hematology Devices Panel.	Dec. 4 and 5, 9 a.m., Silver Room, Holiday Inn Motel, 8777 Georgia Ave., Silver Spring, Md.	Open public hearing, Dec. 4, 9 to 10 a.m.; open committee discussion, Dec. 4, 10 a.m. to 4 p.m., Dec. 5, 9 a.m. to 5 p.m.; Eugene W. Rice (HFK-440), 8757 Georgia Ave., Silver Spring, Md. 20910, 301-427-7234.

General function of the Committee. The Committee reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons are encouraged to present information pertinent to the classification of clinical chemistry devices to the contact person. Submission of data relative to tentative classification findings is also invited. Persons desiring to make formal presentations should notify the contact person by November 17, 1978, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and also an indication of the approximate time required to make their presentations.

Open committee discussion. The Clinical Chemistry Section of the Clinical Chemistry and Hematology Devices Panel will review and classify the following clinical chemistry in vitro diagnostic products: automated radioimmunoassay systems, tonometers, high density lipoprotein (HDL) cholesterol test systems, and angiotensin II test systems. The committee will also review and classify urine test kits sold "over-the-counter" for detection of early pregnancy.

Committee name	Date, time, and place	Type of meeting and contact person
2. Physical Medicine Devices Section of the Surgical and Rehabilitation Devices Panel.	Dec. 6, 9 a.m., Room 1813, FB-8, 200 C St. SW., Washington, D.C.	Open public hearing, 9 to 10 a.m.; open committee discussion, 10 a.m. to 4 p.m.; Johnsie W. Bailey (HFK-410), 8757 Georgia Ave., Silver Spring, Md. 20910, 301-427-7238.

General function of the Committee. The Committee reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons are encouraged to present information pertinent to the discussion on the agenda in this notice to the contact person. Submission of data relative to tentative classification findings is also invited. Persons desiring to make formal presentations should notify the contact person by November 22, 1978, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and also an indication of the approximate time required to make their presentations.

Open committee discussion. The Panel will discuss the Bureau's Product Development Protocol Guidelines and the arrangement of a premarket approval application. The Panel will also discuss voice controlled devices for the handicapped and classification of any additional devices.

Committee name	Date, time, and place	Type of meeting and contact person
3. Pathology Subcommittee of the Science Advisory Board.	Dec. 7, 1:30 p.m., Room GI-112A, University of Arkansas Medical Center, Education II Bldg., Little Rock, Ark.	Open public hearing/open committee discussion, 1:30 to 4 p.m.; Ruth S. Magee, National Center for Toxicological Research, Jefferson, Ark. 72079.

General function of the Committee. The Committee advises on establishment and implementation of a research program that will assist the Commissioner of Food and Drugs and the Administrator, Environmental Protection Agency, in fulfilling their regulatory responsibilities.

Agenda—Open public hearing/open committee discussion. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee.

The Subcommittee will discuss the following pathology programs: Current status of staff; status of backlog in pathology; experiment No. 169—Comparison study with the National Cancer Institute to Examine Histopathological Findings from Three Sources; pathology assistants; and visiting scientists program.

Committee name	Date, time, and place	Type of meeting and contact person
4. Microbiology Section of the Immunology and Microbiology Devices Panel.	Dec. 7 and 8, 9 a.m., Versailles, Room 3, Holiday Inn, 8121 Wisconsin Ave., Bethesda, Md.	Open public hearing, Dec. 7, 9 a.m. to 5:30 p.m.; open committee discussion, Dec. 8, 9 a.m. to 4:30 p.m.; Thomas M. Tsakeris (HFK-440), 8757 Georgia Ave., Silver Spring, Md. 20910, 301-427-7234.

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General function of the Committee. The Committee reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. In response to considerable interest regarding the performance acceptability of gonococcal antibody screening tests, the Bureau of Medical Devices has scheduled a meeting of the Microbiology Section, Immunology and Microbiology Devices Panel, to determine acceptable sensitivity and specificity limits for these tests. The Panel will receive testimony from industry representatives, epidemiological experts, and potential users of these products on the intrinsic value of these tests.

Interested persons are encouraged to present information pertinent to the safety and effectiveness of gonococcal antibody screening tests. Because these tests are purported to be most useful in low-risk population groups, the information presented should address specifically the question of acceptable sensitivity, specificity, and predictive value of these tests for these groups. Persons desiring to make formal presentations should notify the contact person by November 22, 1978, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and also an indication of the approximate time required to make their presentations.

Open committee discussion. The Microbiology Devices Section will review and discuss the information presented with a view toward making a recommendation respecting acceptable limits of sensitivity and specificity for all gonococcal antibody screening tests.

Committee name	Date, time, and place	Type of meeting and contact person
5. Contraceptive and Other Vaginal Drug Products Panel.	Dec. 7, 8, and 9, 9 a.m., Conference Room M, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md. (Dec. 7-8), Committee and Caucus Room, Ramada Inn, Rockville, Md. (Dec. 9).	Open public hearing, Dec. 7, 9 to 10 a.m.; open committee discussion, Dec. 7, 10 a.m. to 4:30 p.m.; Dec. 8 and 9, 9 a.m. to 4:30 p.m.; Armond M. Welch (HFD-510), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4960.

General function of the Committee. The Committee reviews and evaluates available data concerning the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee. Persons desiring to make presentations should notify the contact person before December 4, 1978, and submit a brief statement of the general nature of the data, information, or views they wish to present, the names and addresses of proposed participants, and an indication of the approximate time desired for their presentations.

Open Committee discussion. The Panel will review data submitted pursuant to the over-the-counter (OTC) review's call for data for this panel (see also 21 CFR 330.10(a)(2)). The Panel will be reviewing, voting upon, and modifying the content of summary minutes and categorization of ingredients and claims.

Committee name	Date, time, and place	Type of meeting and contact person
6. Anti-Infective Drugs Subcommittee of the Anti-Infective and Topical Drugs Advisory Committee.	Dec. 11 and 12, Conference Room F, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open public hearing, Dec. 11, 9 to 10 a.m.; open committee discussion, Dec. 11, 10 a.m. to 4:30 p.m., Dec. 12, 9 a.m. to 2:30 p.m.; Mary K. Bruch (HFD-140), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4310.

General function of the Committee. The Committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational prescription drugs for use in infectious diseases, dermatological disorders, and ocular disease.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee.

Open committee discussion. The Committee will discuss the prophylactic use of systemic antimicrobials in surgical procedures; the following alternative antibiotic susceptibility discs: ticarcillin disc, minocycline disc, cephazolin disc, and cyclocillin disc; and FDA updates on the following actions: azoquinoline toxicity, neomycin publications, tetracycline-pediatric publications, and gentamicin intrathecal.

Committee name	Date, time, and place	Type of meeting and contact person
7. Gastrointestinal Drugs Advisory Committee	Dec. 12 and 13, 9 a.m., Conference Room G-H (Dec. 12), Conference Room F (Dec. 13), Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open public hearing, Dec. 12, 9 to 10 a.m.; open committee discussion, Dec. 12, 10 a.m. to 5 p.m., Dec. 13, 9 a.m. to 5 p.m.; Joan C. Standaert (HFD-110), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4730.

General function of the Committee. The Committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational prescription drugs for use in gastrointestinal diseases.

Agenda—Open public hearing. Any interested persons may present data, information, or views orally or in writing, on issues pending before the Committee.

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Open committee discussion. In connection with acetaminophen, the Committee will be discussing *N*-acetylcysteine for overdose; use in patients with pre-existing liver disease; incidence of liver damage at therapeutic doses; and possibility of increased risk in combination with hepatic enzyme inducers.

The Committee's discussion and conclusions regarding acetaminophen will be considered by the agency in its preparation of a tentative final monograph on OTC internal analgesic drugs. Such a monograph is being developed as part of the OTC Drug Review proceeding on OTC internal analgesic, antipyretic, and antirheumatic products. The proposed monograph for those products was published in the FEDERAL REGISTER of July 8, 1977 (42 FR 35346).

The Committee will also be discussing secretin (Kabi—pre-NDA); Chronulac as a laxative, NDA 17-884 (Merrell-National); and guidelines for Hepatotoxicity-Post-Fogarty Conference.

Committee name	Date, time, and place	Type of meeting and contact person
8. Blood and Blood Derivatives Panel	Dec. 15 and 16, 9 a.m., Room 719, Rock-wall Bldg., 11400 Rockville Pike, Rockville, Md.	Open public hearing, Dec. 15, 9 to 10 a.m.; open committee discussion, Dec. 15, 10 a.m. to 6:30 p.m., Dec. 16, 8:30 a.m. to 5 p.m.; Clay Sisk (HFB-5), 8800 Rockville Pike, Bethesda, Md. 20014, 301-443-5455.

General function of the Committee. The Committee reviews and evaluates available data concerning the safety and effectiveness of biological products.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee.

Open committee discussion. The Panel will discuss final editing of the Panel report and plasma fractionation products, blood grouping reagents, blood bank products and other products previously reviewed by the Panel.

Committee name	Date, time, and place	Type of meeting and contact person
9. Ophthalmic Panel	Dec. 15 and 16, Conference Room C, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md. (Dec. 15), Georgia Room, Holiday Inn, Bethesda, Md. (Dec. 16).	Open public hearing, Dec. 15, 9 to 10 a.m.; open committee discussion, Dec. 15, 10 a.m. to 4:30 p.m., Dec. 16, 9 a.m. to 4:30 p.m.; John T. McElroy (HFD-510), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4960.

General function of the Committee. The Committee reviews and evaluates available data concerning the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee. Persons desiring to make presentations should notify the contact person before December 12, 1978, and submit a brief statement of the general nature of the data, information, or views they wish to present, the names and addresses of proposed participants, and an indication of the approximate time desired for their presentations.

Open committee discussion. The Panel will review data submitted pursuant to the over-the-counter (OTC) review's call for data for this panel (see also 21 CFR 330.10(a)(2)).

The Panel will be reviewing, voting upon, and modifying the content of summary minutes and categorization of ingredients and claims.

Committee name	Date, time, and place	Type of meeting and contact person
10. Drug Abuse Advisory Committee	Dec. 18, 9 a.m., Conference Room G, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open public hearing, 9 to 10 a.m.; open committee discussion, 10 a.m. to 4:30 p.m.; Robert C. Nelson (HFD-120), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3890.

General function of the Committee. The Committee advises the Commissioner of Food and Drugs regarding the scientific and medical evaluation of all information gathered by the Department of Health, Education, and Welfare and the Department of Justice with regard to safety, efficacy, and abuse potential of drugs or other substances and recommends actions to be taken by the Department of Health, Education, and Welfare with regard to marketing, investigation, and control of such drugs or other substances.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee.

Open committee discussion. The Committee will discuss a pending IND (investigational new drug) between the principal investigator and the Committee; Mazindol (Sandoz)—consideration of the sponsor's petition for removal from control; Temazepan (Sandoz)—evaluation of the abuse potential of this NDA (new drug application); and research protocol review.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this

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notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this FEDERAL REGISTER notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be obtained from the Public Records and Documents Center (HFC-18), 5600 Fishers Lane, Rockville, Md. 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

The Commissioner approves the scheduling of meetings at locations outside of the Washington, D.C., area on the basis of the criteria of 21 CFR 14.22 of FDA's regulations relating to public advisory committees.

Dated: November 9, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 78-32197 Filed 11-16-78; 8:45 am]

[4110-03-M]

[Docket No. 78P-0177]

FRANK SCHOLZ X-RAY CORP.

Approval of Variance for General Operating Table Top Extension

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The agency announces the approval of a variance from the performance standard for diagnostic X-ray systems and their major components for Accessory System 1564, General Operating Table Top Extension for Image Intensification, manufactured by Frank Scholz X-Ray Corp., P.O. Box 223, Needham Heights, Mass. 02194. The manufacturer submitted a petition for the variance, and the Director of the Bureau of Radiological Health has determined that the tabletop extension can be designed to a maximum aluminum equivalent thickness of 1.5 millimeters (mm) rather than the 1.0-mm limit set by the standard and that suitable radiation protection will be provided.

DATES: The variance becomes effective December 18, 1978 and shall end December 18, 1981. Written objections and supporting information by December 18, 1978.

ADDRESS: Written objections to the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

Joseph Wang, Bureau of Radiological Health (HFX-460), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3426.

SUPPLEMENTARY INFORMATION: Section 1020.30(n) of the performance standard for diagnostic X-ray systems and their major components (21 CFR 1020.30(n)) limits the amount of material allowable between the patient and the image receptor. For stationary tabletops, the limit, expressed as an aluminum equivalent thickness, is 1.0 millimeter. This provision in the standard assures that the maximum number of X-ray photons that have passed through the patient will be available for production of the diagnostic image.

Accessory System 1564, General Operating Table Top Extension for Image Intensificaiton, manufactured by Frank Scholz X-ray Corp., P.O. Box 223, Needham Heights, Mass. 02194, is an X-ray penetrable "diving board" type extension that permits the use of C-arm image intensifier on most operating and surgical tables. The tabletop extension is made from a sheet of ¾-inch plywood, laminated with 1/32-inch formica sheets on both surfaces. Because this tabletop extension is not movable after it has been clamped onto the host table, the manufacturer must comply with the requirements of § 1020.30(n) for a stationary tabletop.

The manufacturer's petition notes that to certify the product properly and take into account unavoidable measurement errors, the tabletop extension thickness design criterion must be somewhat less than 1.0-mm aluminum equivalence. This thickness can be achieved with a tabletop extension made from a sheet of ⅝-inch plywood, when the aluminum equivalence test is performed under a broad-beam geometry condition. However, this design leads to poorer structural stability and consequent difficulty in performing emergency procedures such as cardiac resuscitation. The petition claims that by allowing the ¾-inch plywood to be used with the product, thereby exceeding the 1.0-mm aluminum equivalence required, the manufacturer can produce a tabletop extension with sufficient safety factor for use during cardiac resuscitation. For this reason, the manufacturer has requested a variance from § 1020.30(n).

The Director agrees that the ⅝-inch plywood tabletop extension would meet the 1.0-mm aluminum equivalence required when the aluminum equivalence test is performed under a broad-beam geometry condition. However, when the aluminum equivalence measurements are properly performed under a narrow-beam geometry condition, both the ⅝-inch and ¾-inch plywood tabletop extensions would be greater than the 1.0-mm aluminum eqivalence requirement. The present 1.0-mm aluminum equivalence requirement for stationary tabletops assumes an ability to fasten the tabletop material to a rigid mechanical structure on the edges, e.g., metal side rails or posts. Because oblique fluorosocopy may require that the X-ray beam pass through the edge of the tabletop extension, the use of metal side rails on this tabletop extension would limit its clinical utility. Thus, structural and mechanical rigidity must be provided by the tabletop extension material alone. For emergency procedures such as cardiac resuscitation, a ¾-inch plywood tabletop extension is needed. An aluminum equivalence measurement for this tabletop extension under a narrow-beam geometry condition would require a maximum aluminum equivalence of 1.5 mm.

The Director has determined that even if the full 1.5-mm aluminum equivalence were used for this product, the increased radiation dose to the patient would be negligible. Less than 5 percent of an X-ray beam generated at 90 kilovolts peak or above and passed through material equivalent in thickness to the human chest is absorbed by 0.5-mm aluminum. Because the tabletop extension is designed for procedures in which it will be positioned between the patient and the image receptor only a small fraction of the time, the likely increase in patient radiation dose resulting from the additional tabletop extension thickness requested would be minimal.

The Director agrees that the added structural stability that would be obtained is a necessary safety feature and that there should be little radiation dose increase from use of the product. In accordance with § 1010.4 (21 CFR 1010.4), the Director has concluded that the petitioner's tabletop extension is intended for a special purpose that cannot be performed or accomplished with equipment meeting all requirements of § 1020.30, but utilizes suitable means for providing radiation safety protection. Therefore, the Director has approved the requested variance from § 1020.30(n), provided general operating tabletop extensions manufactured under this variance shall have tabletop extensions whose thickness shall not exceed 1.5-mm aluminum equivalent. The variance is granted for the manufacture of a maximum of 50 product units per year.

The manufacturer has been directed to modify, in accordance with § 1010.4(d), the tags, labels, or other certification required by § 1010.2 (21 CFR 1010.2) and permanently affixed to or inscribed upon products that are marketed under this variance, to state the following:

This product complies with Variance No. 78004 effective on December 18, 1978.

The Commissioner of Food and Drugs has reviewed the potential environmental impact of this variance and has concluded that the action will not significantly affect the quality of the human environment and that an environmental impact statement is not required. A copy of the environmental impact analysis report is on file in the office of the Hearing Clerk, Food and Drug Administration.

Variance No. 78004 shall become effective on December 18, 1978, for the manufacture of 50 product units per year, and shall end December 18, 1981, unless written objections and supporting documentation, identified with Hearing Clerk Docket No. 78P-0177, are filed with the Hearing Clerk, Food and Drug Administration address above, on or before December 18, 1978, requesting that the variance be modified or not granted. Upon receipt of such objections and supporting documentation, the agency will stay the effective date of the variance until the Director, Bureau of Radiological Health, rules on them. Under § 1010.4(c)(3), the applicant shall be notified of the stay by certified mail, and a notice of the stay shall be published in the FEDERAL REGISTER. The ruling on the objections shall be made within 60 days, shall be published in the FEDERAL REGISTER, and shall constitute final agency action subject to judicial review under section 358(d) (42 U.S.C. 263f(d)) of the Public Health Service Act, as amended by the Radiation Control for Health and Safety Act of 1968.

The application for this variance and all related correspondence, except information covered by the confidentiality provisions of section 360A(e) of the act (42 U.S.C. 263i(e)), have been placed on public display in the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, and may be seen Monday through Friday from 9 a.m. to 4 p.m., except on Federal legal holidays.

Dated: November 8, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 78-32199 Filed 11-16-78; 8:45 am]

[4110-03-M]

PANEL ON REVIEW OF CONTRACEPTIVE AND OTHER VAGINAL DRUG PRODUCTS

Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), the Food and Drug Administration announces the renewal of the Panel on Review of Contraceptive and Other Vaginal Drug Products by the Secretary of Health, Education, and Welfare.

DATE: Authority for this committee will expire on December 31, 1978, unless the Secretary formally determines that continuance is in the public interest.

FOR FURTHER INFORMATION CONTACT:

Richard L. Schmidt, Committee Management Officer (HFA-27), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-2765.

Dated: November 9, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 78-32198 Filed 11-16-78; 8:45 am]

[4110-03-M]

[Docket Nos. 77N-0230, 77N-0231, 77N-0316, and 77N-0317]

PENICILLIN AND TETRACYCLINE IN ANIMAL FEEDS

Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This document gives advance notice of a public hearing on the proposed withdrawal of approval of new animal drug applications for premixes containing penicillin and tetracycline.

FOR FURTHER INFORMATION CONTACT:

Richard T. Hunt, Compliance Regulations Policy Staff (HFC-10), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3480.

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of August 30, 1977 (42 FR 43772), the Director of the Bureau of Veterinary Medicine issued a notice of opportunity for hearing on a proposal to withdraw approval of certain new animal drug applications (NADA's) for penicillin-containing premixes intended for use in animal feed on the grounds that: (1) New evidence shows that the penicillin-containing products have not been shown to be safe for subtherapeutic use as required by section 512(e)(1)(B) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(e)(1)(B)) and § 558.15 (21 CFR 558.15); (2) the applicants have failed to establish and maintain records and make reports as required by section 512(e)(2)(A) of the act (21 U.S.C. 360b(e)(2)(A)) and § 558.15; and (3) new evidence shows that there is a lack of substantial evidence that penicillin-containing premixes are effective for therapeutic uses under section 512(e)(1)(C) of the act (21 U.S.C. 360b(e)(1)(C)).

On October 21, 1977 (42 FR 56264), the Director issued a similar notice of opportunity for hearing on a proposal to withdraw approval of certain NADA's for tetracycline (chlortetracycline and oxytetracycline)-containing premixes intended for use in animal feed on the same grounds.

In response to these notices, approximately 20 drug firms, agricultural organizations, and individuals requested hearings.

The Commissioner of Food and Drugs announces, therefore, that there will be a formal evidentiary public hearing on these proposals. In accordance with § 12.35 (21 CFR 12.35), a notice of hearing will be published in the FEDERAL REGISTER as soon

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as practicable. In the meantime, participants in the hearing are encouraged to begin preparation of the material required to be disclosed under § 12.85 (21 CFR 12.85).

The evidentiary hearing will be open to the public. If, however, the Commissioner finds that portions of the NADA's that serve as the basis for the hearing contain information entitled to protection as a trade secret, that part of the hearing involving those portions will not be public, unless the respondents so specify.

Dated: November 9, 1978.

SHERWIN GARDNER,
Acting Commissioner of Food and Drugs.

[FR Doc. 78-32045 Filed 11-9-78; 11:31 am]

[4110-83-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Resources Administration

AGENDA PLANNING SUBCOMMITTEE OF THE NATIONAL COUNCIL ON HEALTH PLANNING AND DEVELOPMENT

Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of December 1978:

Name: Agenda Planning Subcommittee of the National Council on Health Planning and Development.
Date and time: December 5, 1978, 10:30 a.m. to 2 p.m.
Place: HEW North Building, Room 1137, 330 Independence Avenue SW., Washington, D.C. 20201.
Open for entire meeting.
Purpose: The objectives of the Agenda Planning Subcommittee are to: (1) Assist the chairperson in planning the order and timing of agenda topics for full Council consideration and action to assure that the Secretary will receive advice and/or recommendations on each of its three areas of functional responsibilities under section 1503(a) in an appropriate time and manner; (2) coordinate information about and among subcommittee activities and plans; and (3) provide preliminary review of proposed changes in Council operations.
Agenda: The subcommittee will assist the chairperson in planning the order and timing of agenda topics for full Council consideration for the January 12, 1979, meeting; coordinate information about and among subcommittee activities and plans; and provide preliminary review of the Council budget.

Anyone requiring information regarding the subject subcommittee should contact Mrs. S. Judy Silsbee, Executive Secretary, National Council on Health Planning and Development, Room 10-27, Center Building, 3700 East-West Highway, Hyattsville, Md. 20782, telephone 301-436-7175.

Agenda items are subject to change as priorities dictate.

Dated: November 13, 1978.

JAMES A. WALSH,
Associate Administrator for Operations and Management.

[FR Doc. 78-32304 Filed 11-16-78; 8:45 am]

[4110-83-M]

NATIONAL ADVISORY COUNCIL ON HEALTH PROFESSIONS EDUCATION

Filing of Annual Report

Notice is hereby given that pursuant to section 13 of Pub. L. 92-463, the annual report for the following Health Resources Administration Federal Advisory Committee has been filed with the Library of Congress: National Advisory Council on Health Professions Education.

Copies are available to the public for inspection at the Library of Congress, Special Forms Reading Room, Main Building, or weekdays between 9 a.m. and 4:30 p.m., at the Department of Health, Education, and Welfare, Department Library, North Building, Room 1436, 330 Independence Avenue SW., Washington, D.C. 20201, telephone 202-245-6791. Copies may be obtained from Mr. Robert L. Belsley, Bureau of Health Manpower, Room 4-27, Center Building, 3700 East-West Highway, Hyattsville, Md. 20782, telephone 301-436-6564.

Dated: November 13, 1978.

JAMES A. WALSH,
Associate Administrator for Operations and Management.

[FR Doc. 78-32303 Filed 11-16-78; 8:45 am]

[4110-08-M]

National Institutes of Health

REPORT ON BIOASSAY OF 4'-(CHLOROACETYL)-ACETANILIDE FOR POSSIBLE CARCINOGENICITY

Availability

4'-(Chloroacetyl)-acetanilide (CAS 140-49-8) has been tested for cancer-causing activity with rats and mice in the Bioassay Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary: A bioassay for the possible carcinogenicity of 4'-(chloroacetyl)-acetanilide was conducted using Fischer 344 rats and B6C3F1 mice. Applications of the chemical include use as an intermediate in the manufacture of dyes and drugs. 4'-(Chloroacetyl)-acetanilide was administered in the feed, at either of two concentrations, to groups of 50 male and 50 female animals of each species.

Under the conditions of this bioassay, 4'-(chloroacetyl)-acetanilide was not carcinogenic when administered in the diet to Fischer 344 rats or B6C3F1 mice of either sex.

Single copies of the report are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Md. 20014.

(Catalog of Federal Domestic Assistance Program No. 13.393, Cancer Cause and Prevention Research.)

Dated: November 6, 1978.

DONALD S. FREDRICKSON,
Director, National Institutes of Health.

[FR Doc. 78-31766 Filed 11-16-78; 8:45 am]

[4110-08-M]

REPORT ON BIOASSAY OF 2,4-DIMETHOXYANILINE HYDROCHLORIDE FOR POSSIBLE CARCINOGENICITY

Availability

2,4-Dimethoxyaniline hydrochloride (CAS 54150-69-5) has been tested for cancer-causing activity with rats and mice in the Bioassay Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary: A bioassay for the possible carcinogenicity of 2,4-dimethoxyaniline hydrochloride was conducted using Fischer 344 rats and B6C3F1 mice. 2,4-Dimethoxyaniline hydrochloride was administered in the feed, at either of two concentrations, to groups of 50 male and 50 female animals of each species.

Under the conditions of this bioassay there was no convincing evidence for the carcinogenicity of 2,4-dimethoxyaniline hydrochloride in Fischer 344 rats or B6C3F1 mice.

Single copies of the report are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Md. 20014.

(Catalog of Federal Domestic Assistance Program No. 13.393, Cancer Cause and Prevention Research.)

Dated: November 6, 1978.

DONALD S. FREDRICKSON,
Director, National Institutes of Health.

[FR Doc. 78-31767 Filed 11-16-78; 8:45 am]

[4110-08-M]

REPORT ON BIOASSAY OF N,N'-DIETHYLTHIOUREA FOR POSSIBLE CARCINOGENICITY

Availability

N,N'-Diethylthiourea (CAS 105-55-5) has been tested for cancer-causing activity with rats and mice in the Bioassay Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary: A bioassay for the possible carcinogenicity of N,N'-diethylthiourea was conducted using Fischer 344 rats and B6C3F1 mice. Applications of the chemical include use as an anticorrosion agent. N,N'-Diethylthiourea was administered in the feed, at either of two concentrations, to groups of 50 males and 50 females of each species.

Under the conditions of this bioassay, N,N'-diethylthiourea was carcinogenic to Fischer 344 rats, causing follicular-cell carcinomas of the thyroid in males and follicular-cell neoplasms of the thyroid in females. There was no evidence for the carcinogenicity of the compound in B6C3F1 mice.

Single copies of the report are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Md. 20014.

(Catalog of Federal Domestic Assistance Program No. 13.393, Cancer Cause and Prevention Research.)

Dated: November 6, 1978.

DONALD S. FREDRICKSON,
Director, National Institutes of Health.

[FR Doc. 78-31768 Filed 11-16-78; 8:45 am]

[4210-01-M]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Disaster Assistance Administration

[Docket No. NFD-649; FDAA-3067-EM]

CALIFORNIA

Emergency Declaration and Related Determinations

AGENCY: Federal Disaster Assistance Administration.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential Declaration of an emergency for the State of California (FDAA-3067-EM), dated October 29, 1978, and related determinations.

DATED: October 29, 1978.

FOR FURTHER INFORMATION CONTACT:

A. C. Reid, Program Support Staff, Federal Disaster Assistance Administration, Department of Housing and Urban Development, Washington, D.C. 20410, 202-634-7325.

NOTICE: Pursuant to the authority vested in the Secretary of Housing and Urban Development by the President under Executive Order 11795 of July 11, 1974, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-285; and by virtue of the Act of May 22, 1974, entitled "Disaster Relief Act of 1974" (88 Stat. 143), notice is hereby given that on October 29, 1978, the President declared an emergency as follows:

I have determined that the impact of brush fires on the State of California is of sufficient severity and magnitude to warrant a declaration of an emergency under Pub. L. 93-288. I therefore declare that such an emergency exists in the State of California.

Notice is hereby given that, pursuant to the authority vested in the Secretary of Housing and Urban Development under Executive Order 11795, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-285, I hereby appoint Mr. Robert C. Stevens of the Federal Disaster Assistance Administration to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following area of the State of California to have been adversely affected by this declared emergency:

The county of Los Angeles.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

WILLIAM H. WILCOX,
Administrator, Federal Disaster Assistance Administration.

[FR Doc. 78-32394 Filed 11-16-78; 8:45 am]

[4210-01-M]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection

[Docket No. N-78-899]

NATIONAL MOBILE HOME ADVISORY COUNCIL

AGENCY: Assistant Secretary for NVACP, HUD.

ACTION: Notice of Appointment of Members of National Mobile Home Advisory Council and Announcement of National Mobile Home Advisory Council Meeting.

SUMMARY: This notice announces the appointment of 12 members of the National Mobile Home Advisory Council. Their terms are for 2 years, ending on August 21, 1980. The terms of the other 12 members on the Council will expire on August 21, 1979. It also announces a meeting of the Advisory Council.

EFFECTIVE DATE: November 17, 1978.

FOR FURTHER INFORMATION CONTACT:

Aubrey Edwards, Special Assistant to the Deputy Assistant Secretary for Regulatory Functions; Mobile Home Standards Division; Office of Neighborhoods, Voluntary Associations and Consumer Protection; Department of Housing and Urban Development; 451 7th Street SW., Washington, D.C. 20410, telephone 202-755-5597.

SUPPLEMENTARY INFORMATION: The National Mobile Home Construction and Safety Standards Act of 1974 (Title VI of the Housing and Community Development Act of 1974) authorizes the Secretary of the Department of Housing and Urban Development to establish Federal construction and safety standards for mobile homes. It provides for the appointment by the Secretary of a National Mobile Home Advisory Council composed of 24 members. The membership of the Council is selected equally from each of the following categories: (a) Consumer organizations, community organizations, and recognized consumer leaders; (b) the mobile home industry and related groups, including at least one representative of small business; and (c) government agencies including Federal, State, and local governments. The purpose of the National Mobile Home Advisory Council is to advise the Department to the extent feasible prior to the establishment, amendment or revocation of any mobile home construction and safety standard.

Sections 6 (a) and (b) of the Charter of the National Mobile Home Advisory Council enacted pursuant to section 9(c) of the Federal Advisory Committee Act stipulates that members are appointed to serve 2-year terms which expire on August 21 of the second year of the member's appointment.

Nominations for the expiring terms of August 21, 1977 were requested at 42 FR 36038 on July 13, 1977. In response to that request 366 persons were nominated. The August 21, 1978 nominees were also drawn from this list of 366 persons plus some other nominations we have recently re-

ceived. Qualifications were evaluated and the 12 appointments were made from these groups of nominees.

The following is a discussion of the major considerations that led to the Department's selections. The Department sought to achieve geographical balance according to the size of the mobile home industry and the number of homes in use in each region of the country. The Department also tried to appoint persons who would offer the Council a broad spectrum of views.

The following members were previously appointed and will continue to serve on the Council until August 21, 1979:

COMMUNITY AND CONSUMER REPRESENTATIVES

Patricia Kish, Vice Chairperson of Mobile Home Advisory Board, California.

Larry Landis, Associate Professor, Drake University, Iowa.

Manual Lujan, Mobile Home Owner, Clovis, Calif.

Position Open—a member will be appointed.

GOVERNMENT OFFICIALS

Daniel Baird, Mobile Home Plant Inspector, Office of the State Fire Marshal, Louisiana.

Orville Cummings, Deputy Chief, Bureau of Mobile Home Construction, Department of Highway Safety and Motor Vehicles, Florida.

Richard I. Hauck, Section Chief, Manufactured Structures Section, Minnesota Department of Administration.

E. R. Jones, Director, Division of Mobile and Manufactured Housing Standards, State of Arizona.

INDUSTRY REPRESENTATIVES

Louis M. Balius, Director of Consumer and Legal Affairs for Champion Home Builders Co., Michigan.

Donald A. Barrow, Vice President of Product Development, Skyline Corp., Elkhart, Ind.

James Dyer, President of the New Jersey Mobile Home Association, New Jersey.

Paul Kay, General Sales Manager, Wood Products, Weyerhaeuser Co., Washington.

Pursuant to the requirements of section 603 of Title VI of the Housing and Community Development Act of 1974 (Pub. L. 92-383) and the Federal Advisory Committee Act of 1972 (Pub. L. 92-463), the following persons are appointed to serve terms on the National Mobile Home Advisory Council, which will expire on August 21, 1980:

COMMUNITY AND CONSUMER REPRESENTATIVES

Timothy Carlyle, Chairman, Orange County Mobile Home Park Commission, Calif.

Suzanne Lindamood, Assistant Professor, Auburn University, Ala.

Carol B. Meeks, Assistant Professor, New York State College of Human Ecology, N.Y.

William White, Executive Director, Federation of Mobile Home Owners of Florida, Inc., Fla.

GOVERNMENT OFFICIALS

Fred Jolly, Director, Housing and Environmental Health, Nebr.

Robert Leggett, Sanitarian, State Health Department, Iowa.

Leah B. McCartney, Member Public Service Commission, Mo.

John Steele, Administrator, Mobile Home Division, Department of Labor and Standards, Tex.

INDUSTRY REPRESENTATIVES

Kenneth C. Coffing, Director, Quality Control, National Homes, Ind.

John F. DePledge, Product Manager, Prefinished Paneling, Champion Building Products, Conn.

Raymond F. Tucker, Director, Engineering Codes and Standards, Guerdon Industries, Ky.

Vincent J. Wanzek, Vice President, Research and Engineering, Fleetwood Enterprises, Inc., Calif.

In accordance with section 605 of Title VI of the Housing and Community Development Act of 1974 (Pub. L. 93-383) and section 10(a)(2) of the Federal Advisory Committee Act of 1972 (Pub. L. 92-463) announcement is made of the following meetings:

The National Mobile Home Advisory Council will meet on December 4, 5, and 6, 1978. The meetings are open to the public and will convene at 9 a.m. on Monday, December 4, 1978 at the Nevada Room, 6th Floor, 215 Fremont Street, San Francisco, Calif. 94105.

Among the topics planned for discussion are the following:

A. Formaldehyde Vapor;

B. Wind Research;

C. Recommendations on Lighting and Associated Wiring;

D. Title III—Energy Conservation/Thermal Envelope Standards;

E. Energy Conservation—Heating and Cooling Systems;

F. Emergency Window and Egress Device Requirements;

G. Discussion of Interim Rules;

H. Proposals to Eliminate Problems Encountered Under Extreme Environmental Conditions;

I. Applicability of Reference Standards;

J. Fire Presentation;

K. Transportation Safety;

L. Transportation Durability;

M. Recommendation on Proposed Recreational Vehicle Regulation;

N. Private Agency Requirements for Mobile Homes; and

O. Proposed Rule on Copper Clad Aluminum Wiring.

The National Mobile Home Advisory Council will meet again in early May, 1979. The exact dates and the agenda for this meeting will be published 30 days before the scheduled meetings. The May meetings will be held in the Departmental Conference Room (Room 10233) located at the Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410.

(Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d) and section 605, National Mobile Home Construction and Safety Standards Act of 1974, 42 U.S.C. 5404.)

Issued at Washington, D.C., November 14, 1978.

GENO C. BARONI,
Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection.

[FR Doc. 78-32524 Filed 11-16-78; 8:45 am]

[4310-84-M]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[M 42170]

MONTANA

Application

NOVEMBER 7, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C.), Continental Pipe Line Co. has applied for one 3-inch crude oil pipeline across the following land:

PRINCIPAL MERIDIAN, MONTANA

T. 8 N., R. 24 E.,
Sec. 1, Lots 4 and 5.

This pipeline will convey crude oil across 0.31 mile of public lands in Musselshell County, Mont.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, Bank Electric Building, Drawer 1160, Lewistown, Mont. 59457.

ROLAND F. LEE,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-32312 Filed 11-16-78; 8:45 am]

[4310-84-M]

[NM 35236]

NEW MEXICO

Application

NOVEMBER 6, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Gas Co. of New Mexico has applied for one 4-inch natural gas pipeline and related facilities right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 20 S., R. 27 E.,
Sec. 32, S½NE¼ and N½SE¼.

This pipeline will convey natural gas across 0.40 of a mile of public land in Eddy County, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P. O. Box 1397, Roswell, N. Mex. 88201.

RAUL E. MARTINEZ,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-32313 Filed 11-16-78; 8:45 am]

[4310-84-M]

[U-32083]

COAL LEASE OFFERING BY SEALED BID

NOVEMBER 6, 1978.

U.S. Department of the Interior, Bureau of Land Management, Utah State Office, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111. Notice is hereby given that the lands hereinafter described in Carbon County, Utah, will be offered for coal lease by sealed bid of $25 per acre minimum bonus to the qualified bidder of the highest cash amount per acre or fraction thereof. The sale will be held at 2 p.m., m.s.t., December 5, 1978, in room 1408 of the University Club Building. Sealed bids may not be modified or withdrawn unless such modification or withdrawal is received before the date, time, and place set for the opening of such bids. The successful bidder is obligated to pay for the newspaper publications of this notice.

LAND OFFERED

The following-described lands are located in Carbon County, Utah approximately 24 miles east of the community of Price, Utah:

T. 14 S., R. 14 E., SLM, Utah
Sec. 6, lot 6, NE¼SW¼;
Sec. 8, SW¼, SW¼SE¼;
Sec. 17, N½NW¼, SW¼NW¼, N½SE¼.
Containing 476.41 acres.

PUBLIC COMMENTS

The public is invited to submit written comments on the fair market value of the coal to be leased. Approximately 2,617,500 tons of recoverable coal will be mined from the lands to be leased. These lands are expected to be underlain by two minable coal beds, which are the Upper and Lower Sunnyside Seams, with an average total thickness projected over the entire leasehold of about 12 feet; however, only the upper coal bed is considered recoverable at this time because the seams are too close together over much of the tract for profitable mining of both. New developments in mining techniques may allow recovery of lower seam coal sometime in the future. The coal in both seams averages about 4.2 percent moisture, 38.5 percent volatile matter, 52.0 percent fixed carbon, 5.3 percent ash, 1.3 percent sulfur and 13,000 Btu per pound heat content. Written comments on the fair market value will be received by the Bureau of Land Management, Utah State Office, University Club Building, 136 East South Temple, salt Lake City, Utah 84111. A copy of the written comments should also be submitted to the Office of the Conservation Manager, Geological Survey, Box 25046, Denver Federal Center, Denver, Colo. 80225. Written comments must be received by November 21, 1978 in order to be considered. All written comments submitted by the public on fair market value, except those portions identified as proprietary by the commenter and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection.

RENTAL AND ROYALTY

A lease issued as a result of this offer will provide for payment of an annual rental of $3 per acre or fraction thereof and a royalty payable to the United States at the rate of 9.2 percent of the value of coal mined by underground methods; but not less than $3.22 per ton of 2,000 pounds shall be due on coal extracted by the lessee from the leased lands. The value of the coal shall be determined in accordance with 30 CFR 211.63.

DETAILED STATEMENT

A detailed statement of the terms and conditions of the lease offer, how and where to submit sealed bids, and the obligations of the high bidder to pay for publication of this notice may be obtained from the Bureau of Land Management, Utah State Office.

WILLIAM G. LEAVELL,
Associate State Director.

[FR Doc. 78-32315 Filed 11-16-78; 8:45 am]

[4310-84-M]

DISCUSSION OF THE BAKER RESOURCE AREA MANAGEMENT FRAMEWORK PLAN AND ROADLESS AREA INVENTORY

Public Meetings

Notice is hereby given that public meetings will be held at the locations and on the dates indicated below to discuss and receive information to: (1) Update the 1974 edition of the Baker Resource Area land use plan which covers the public lands located in Baker County, Oreg. and (2) Review and provide information pertaining to the districts preliminary roadless area inventory on the public lands within the entire Baker District.

1. January 9, 1979, in Halfway, Oreg., High School Library: 7 p.m.
2. January 10, 1979, in Huntington, Oreg., High School Cafeteria: 7 p.m.
3. January 11, 1979, in Baker, Oreg., Community Center: 7 p.m.
4. January 17, 1979, in Enterprise, Oreg., Clover Leaf Hall: 7 p.m.

The meetings at Halfway, Huntington and Baker will be divided into two parts. Roadless areas will be discussed at 7 p.m. and the land use plan update at 8 p.m. The meeting at Enterprise will be concerned with only the roadless area inventory but comments on the Baker Resource Area land use plan will be received.

Written comments concerning either the land use plan or roadless area inventory are welcome and should be sent to the Bureau of Land Management, Box 987, Baker, Oreg. 97814, by January 19, 1979.

The update of the Baker Resource Area land use plan preceeds the preparation of the Ironside Grazing Environmental Statement. The roadless area inventory is in preparation for the Bureau's wilderness study on lands within the Baker district.

GORDON R. STAKER,
District Manager.

NOVEMBER 9, 1978.

[FR Doc. 78-32314 Filed 11-16-78; 8:45 am]

[4310-84-M]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

MID-ATLANTIC OUTER CONTINENTAL SHELF

Proposed Oil and Gas Lease Sale No. 49

In connection with oil and gas leasing on the Outer Continental Shelf, the Secretary of the Interior has established a policy relating to sale notices to further and enhance consultation with the affected coastal states. That policy includes providing the affected states with the opportunity to review the sale notice in proposed form prior to its publication in final form in the FEDERAL REGISTER. The following is a proposed sale notice for planned Sale No. 49, on the Mid-Atlantic Outer Continental Shelf, which is being sent to the Governors of affected States for their review. This notice is hereby published as a matter of information to the public.

Dated: November 14, 1978.

ARNOLD E. PETTY,
Acting Associate Director,
Bureau of Land Management.

Approved:

CECIL D. ANDRUS,
Secretary of the Interior.

PROPOSED SALE NOTICE

1. *Authority.* This notice is published pursuant to the Outer Continental Shelf Lands Act (43 U.S.C. 1331-1343), as amended, and the regulations issued thereunder (43 CFR Part 3300).

2. *Filing of bids.* Sealed bids will be received by the Manager, New York Outer Continental Shelf (OCS) Office, Bureau of Land Management, 26 Federal Plaza, Suite 32-120, New York, N.Y. 10007. Bids may be delivered, either by mail or in person, to the above address until 4:30 p.m., e.s.t., February —, 1979; or by personal delivery to (sale site in New York City to be announced) between the hours of 8:30 a.m., e.s.t., and 9:30 a.m., e.s.t., February —, 1979. Bids received by the Manager later than the times and dates specified above will be returned unopened to the bidders. Bids may not be modified or withdrawn unless written modification or withdrawal is received by the Manager prior to 9:30 a.m., e.s.t., February —, 1979. All bids must be submitted and will be considered in accordance with applicable regulations, including 43 CFR Part 3300. The list of restricted joint bidders which applies to this sale was published in 43 FR 49856, October 25, 1978.

3. *Method of bidding.* A separate bid in a sealed envelope, labeled "Sealed Bid for Oil and Gas Lease (insert number of tract), not to be opened until 10 a.m., e.s.t., February —, 1979," must be submitted for each tract. A suggested form appears in paragraph 17 of this notice. Bidders are advised that tract numbers are assigned solely for administrative purposes and are not the same as block numbers found on official protraction diagrams. All bids received shall be deemed submitted for a numbered tract. Bidders must submit with each bid one-fifth of the cash bonus in cash or by cashier's check, bank draft, certified check, or money order payable to the order of the Bureau of Land Management. No bid for less than a full tract as described in paragraph 13 will be considered. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places, as well as submit a sworn statement that the bidder is qualified under 43 CFR Subpart 3302. The suggested form for this statement to be used in joint bids appears in paragraph 18. Other documents may be required of bidders under 43 CFR 3302.4. Bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

4. *Bonus bidding with a fixed sliding scale royalty.* Bids on tracts 49-1, 49-2, 49-3, 49-4, 49-5, 49-6, 49-7, 49-8, 49-9, 49-10, 49-11, 49-13, 49-15, 49-16, 49-17, 49-18, 49-38, 49-39, 49-43, 49-46, 49-84, 49-85, 49-86, 49-87, 49-88, 49-89, 49-90, 49-91, 49-92, 49-93, 49-94, 49-95, 49-96, 49-97, 49-98, 49-99, 49-101, 49-102, 49-104, 49-105, 49-106, 49-107, 49-108, 49-109, 49-110, 49-111, 49-112, 49-113, 49-114, 49-115, 49-116, 49-118, 49-119, 49-120, 49-123, 49-124, 49-125, and 49-126, must be submitted on a cash bonus bid basis with the percent royalty due in amount or value of production saved, removed or sold fixed according to the sliding scale formula described below. This formula fixes the percent royalty at a level determined by the value of lease production during each calendar quarter. For purposes of determining the percent royalty due on production during a quarter, the value of production during the quarter will be adjusted for inflation as described below. The determination of the value of the production on which royalty is due will be made pursuant to 30 CFR 250.64 and section 6(b) of the lease form.

The fixed sliding scale formula operates in the following way: When the quarterly value of production, adjusted for inflation, is less than $15.929026 million, a royalty of 16.66667 percent in amount or value of production saved, removed or sold will be due on the unadjusted value or amount of production. When the adjusted quarterly value of production is equal to or greater than $15.929026 million, but less than or equal to $3423.822697 million, the royalty percent due on the unadjusted value or amount of production is given by

$$R_j = b[\mathrm{Ln}\ (V_j/S)]$$

where

R_j = the percent royalty that is due and payable on the unadjusted amount or value of all production saved, removed or sold in quarter j

b = 9.0

Ln = natural logarithm

V_j = the value of production in quarter j, adjusted for inflation, in millions of dollars

S = 2.5

When the adjusted quarterly value of production is greater than $3423.822697 million, a royalty of 65.00000 percent in amount or value of production saved, removed or sold will be due on the unadjusted quarterly value of production. Thus, in no instance will the quarterly royalty due exceed 65.00000 percent in amount or value of quarterly production saved, removed or sold.

In determining the quarterly percent royalty due, R_j, the calculation will be rounded to five decimal places (for example, 18.59859 percent). This calculation will incorporate the adjusted quarterly value of production, V_j, in millions of dollars, rounded to the sixth digit, i.e., to the nearest dollar (for example, 19.743026 millions of dollars).

The form of the sliding scale royalty schedule is illustrated in Figure 1. Note that the effective quarterly royalty rate depends upon the inflation adjusted quarterly value of production. However, this rate is applied to the unadjusted quarterly value of production to determine the royalty payments due.

[4310-84-C]

Figure 1
Form of the Sliding Royalty Schedule

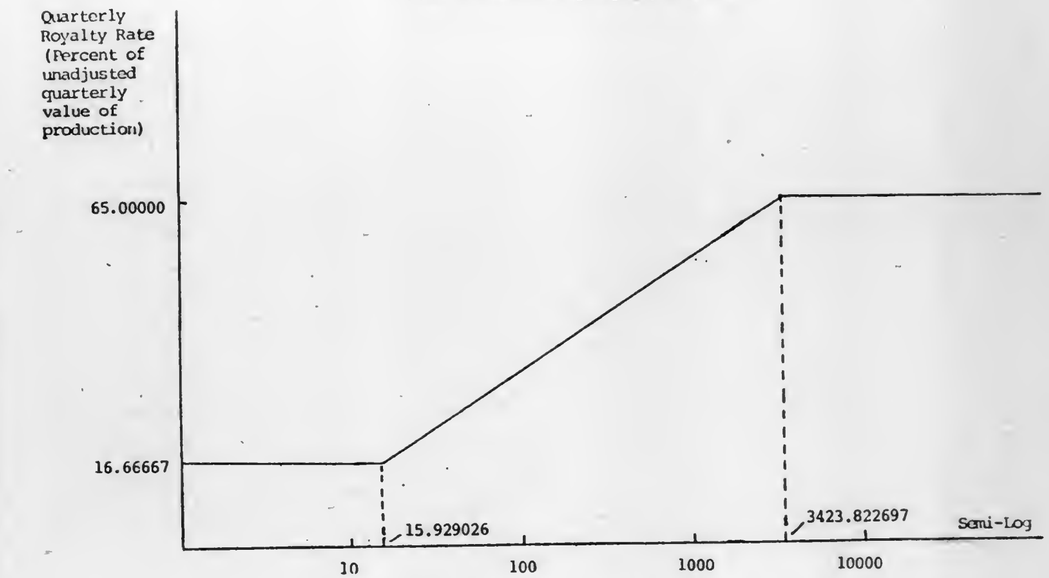


TABLE 1. HYPOTHETICAL QUARTERLY ROYALTY CALCULATIONS

(1) Actual Value of Quarterly Production (Millions of Dollars)	(2) GNP Fixed Weighted Price Index	(3) Inflation Factor[a]	(4) Adjusted Value of Quarterly Production[b] (V_j, Millions of $)	(5) Percent Royalty Rate (R_j)	(6) Royalty Payment[c] (Millions of Dollars)
10.000000	200.0	4/3	7.500000	16.66667	1.666667
30.000000	200.0	4/3	22.500000	19.56141	5.868423
90.000000	200.0	4/3	67.500000	29.66253	26.696277
270.000000	200.0	4/3	202.500000	39.55004	106.785108
810.000000	200.0	4/3	607.500000	49.43755	400.444155
10.000000	250.0	5/3	6.000000	16.66667	1.666667
30.000000	250.0	5/3	18.000000	17.76673	5.330019
90.000000	250.0	5/3	54.000000	27.65424	24.888816
270.000000	250.0	5/3	162.000000	37.54175	101.362725
810.000000	250.0	5/3	486.000000	47.42926	384.177006

a Column (2) divided by 150.0 (assumed value of GNP fixed weighted price index at time leases are issued).

b Column (1) divided by Inflation Factor.

c Column (1) times Column (5).

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In adjusting the quarterly value of production for use in calculating the percent royalty due on production during the quarter, the actual value of production will be adjusted to account for the effects of inflation by dividing the actual value of production by the following inflation adjustment factor. The inflation adjustment factor used will be the ratio of the GNP fixed weighted price index for the calendar quarter preceding the quarter of production to the value of that index for the quarter preceding the issuance of the lease. The GNP fixed weighted price index is published monthly in the Survey of Current Business by the Bureau of Economic Analysis, U.S. Department of Commerce. The percent royalty will be due and payable on the actual amount or value of production saved, removed, or sold as determined pursuant to 30 CFR 250.64 and section 6(b) of the lease form. The timing of procedures for inflation adjustments and determinations of the royalty due will be specified at a later date. Table 1 provides hypothetical examples of quarterly royalty calculations using the sliding scale formula just described under two different values for the quarterly price index.

Leases awarded on the basis of a cash bonus bid with fixed sliding scale royalty will provide for a yearly rental or minimum royalty payment of $8 per hectare or fraction thereof.

Bidders for these tracts should recognize that the Department of Energy is authorized, under section 302(b) and (c) of the Department of Energy Organization Act, to establish production rates for all Federal oil and gas leases.

5. *Bonus bidding with a fixed constant royalty.* Bids on the remaining tracts to be offered at this sale must be on a cash bonus basis with a fixed royalty of 16⅔ percent. Leases which may be issued will provide for a yearly rental payment or minimum royalty payment of $8 per hectare or fraction thereof. A suggested cash bonus bid form is shown in paragraph 17.

6. *Equal opportunity.* Each bidder must have submitted by 9:30 a.m., e.s.t., February 1979, the certification required by 41 CFR 60-1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form 1140-8 (November 1973), and the Affirmative Action Representation Form, Form 1140-7 (December 1971).

7. *Bid opening.* Bids will be opened on February , 1979, beginning at 10 a.m., e.s.t., at the address stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing and recording bids received and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight, February , 1979, that bid will be returned unopened to the bidder, as soon thereafter as possible.

8. *Deposit of payment.* Any cash, cashier's checks, certified checks, bank drafts, or money orders submitted with a bid may be deposited in a suspense account in the Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

9. *Withdrawal of tracts.* The United States reserves the right to withdraw any tract from this sale prior to issuance of a written acceptance of a bid for that tract.

10. *Acceptance or rejection of bids.* The United States reserves the right to reject any and all bids for any tract. In any case, no bid for any tract will be accepted and no lease for any tract will be awarded to any bidder unless:

(a) The bidder has complied with all requirements of this notice and applicable regulations;

(b) The bid is from the highest responsible, qualified bidder; and

(c) The amount of the bid has been determined to be adequate by the Secretary of the Interior.

No bid will be considered for acceptance unless it offers a cash bonus in the amount of $62 or more per hectare or fraction thereof.

11. *Successful bidders.* Each person who has submitted a bid accepted by the Secretary of the Interior will be required to execute copies of the lease specified below, pay the balance of the cash bonus bid together with the first year's annual rental and satisfy the bonding requirements of 43 CFR 3304.1 within the time provided in 43 CFR 3302.5.

12. *Protraction diagram.* Tracts offered for lease may be located on the following protraction diagrams which are available from the Manager, New York Outer Continental Shelf Office at the address stated in paragraph 2, at $2 each.

(a) Outer Continental Shelf Official Protraction Diagram No. NJ 18-3.

(b) Outer Continental Shelf Official Protraction Diagram No. NJ 18-5 Salisbury.

(c) Outer Continental Shelf Official Protraction Diagram No. 18-6.

(d) Outer Continental Shelf Official Protraction Diagram No. NJ 18-8 Chincoteague.

13. *Tract descriptions.* The tracts offered for bid are as follows:

NOTE.—There are gaps in the numbers of the tracts listed. Some of the blocks identified in the final environmental statement are not to be included in this notice.

[4310-84-C]

OCS OFFICIAL PROTRACTION DIAGRAM NO. NJ 18-3
(Approved October 31, 1974)

Tract	Block	Description	Hectares
49-1	163	All	2304
49-2	164	All	2304
49-3	206	All	2304
49-4	207	All	2304
49-5	208	All	2304
49-6	247	All	2304
49-7	248	All	2304
49-8	250	All	2304
49-9	251	All	2304
49-10	252	All	2304
49-11	289	All	2304
49-12	330	All	2304
49-13	333	All	2304
49-14	374	All	2304
49-15	376	All	2304
49-16	377	All	2304
49-17	378	All	2304
49-18	420	All	2304
49-19	639	All	2304
49-20	721	All	2304
49-21	722	All	2304
49-22	724	All	2304
49-23	726	All	2304
49-24	732	All	2304
49-25	765	All	2304
49-26	766	All	2304
49-27	767	All	2304
49-28	770	All	2304
49-29	773	All	2304
49-30	774	All	2304
49-33	809	All	2304
49-34	810	All	2304
49-35	811	All	2304
49-38	854	All	2304
49-39	856	All	2304
49-43	898	All	2304
49-46	943	All	2304
49-47	946	All	2304
49-51	989	All	2304

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OCS OFFICIAL PROTRACTON DIAGRAM NO. NJ 18-5 SALISBURY
(Approved October 31, 1974)

Tract	Block	Description	Hectares
49-55	1009	All	2304

OCS OFFICIAL PROTRACTION DIAGRAM NO. NJ 18-6
(Approved October 31, 1974)

Tract	Block	Description	Hectares
49-56	20	All	2304
49-57	21	All	2304
49-58	63	All	2304
49-59	64	All	2304
49-61	98	All	2304
49-62	102	All	2304
49-63	103	All	2304
49-64	107	All	2304
49-66	140	All	2304
49-67	141	All	2304
49-68	146	All	2304
49-69	147	All	2304
49-70	149	All	2304
49-71	150	All	2304
49-72	151	All	2304
49-73	183	All	2304
49-74	186	All	2304
49-75	188	All	2304
49-76	191	All	2304
49-77	192	All	2304
49-78	193	All	2304
49-79	227	All	2304
49-80	233	All	2304
49-81	234	All	2304
49-82	270	All	2304
49-83	278	All	2304
49-84	402	All	2304
49-85	403	All	2304
49-86	404	All	2304
49-87	405	All	2304
49-88	449	All	2304
49-89	450	All	2304
49-90	451	All	2304

OCS OFFICIAL PROTRACTION DIAGRAM NO. NJ 18-6 (Cont'd.)
(Approved October 31, 1974)

Tract	Block	Description	Hectares
49-91	491	All	2304
49-92	493	All	2304
49-93	494	All	2304
49-94	495	All	2304
49-95	534	All	2304
49-96	535	All	2304
49-97	537	All	2304
49-98	538	All	2304
49-99	539	All	2304
49-101	581	All	2304
49-102	582	All	2304
49-104	623	All	2304
49-105	626	All	2304
49-106	665	All	2304
49-107	666	All	2304
49-108	667	All	2304
49-109	668	All	2304
49-110	709	All	2304
49-111	710	All	2304
49-112	711	All	2304
49-113	751	All	2304
49-114	752	All	2304
49-115	753	All	2304
49-116	754	All	2304
49-118	795	All	2304
49-119	796	All	2304
49-120	797	All	2304
49-123	837	All	2304
49-124	838	All	2304
49-125	839	All	2304
49-126	840	All	2304
49-132	969	All	2304

OCS OFFICIAL PROTRACTION DIAGRAM NO. NJ 18-8 CHINCOTEAGUE
(Approved December 2, 1976)

Tract	Block	Description	Hectares
49-133	40	All	2304
49-134	41	All	2304
49-135	84	All	2304
49-136	85	All	2304

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14. *Lease terms and stipulations.* All leases issued as a result of this sale will be for an initial term of 5 years. Leases issued will be on Form 3300-1 (September 1978), available from the Manager, New York Outer Continental Shelf Office, at the address stated in paragraph 2. Section 6 of the lease will be amended for tracts offered on a cash bonus basis with a fixed sliding scale royalty, listed in paragraph 4, as follows:

Sec. 6 *Royalty on production.* (a) To pay the lessor a royalty of that percent in amount or value of production saved, removed or sold from the leased area as determined by the sliding scale royalty formula as follows. When the quarterly value of production, adjusted for inflation, is less than $15.929026 million, a royalty of 16.66667 percent in amount or value of production saved, removed or sold will be due on the unadjusted value or amount of production. When the adjusted quarterly value of production is equal to or greater than $15.929026 million, but less then or equal to $3423.822697 million, the royalty percent due on the unadjusted value or amount of production is given by

$$R_j = b[\mathrm{Ln}\,(V_j/S)]$$

where

R_j = the percent royalty that is due and payable on the unadjusted amount or value of all production saved, removed or sold in quarter j
b = 9.0
Ln = natural logarithm
V_j = the value of production in quarter j, adjusted for inflation, in millions of dollars
S = 2.5

When the adjusted quarterly value of production is greater than $3423.822697 million, a royalty of 65.00000 percent in amount or value of production saved, removed or sold will be due on the unadjusted quarterly value of production. Thus, in no instance will the quarterly royalty due exceed 65.00000 percent in amount or value of quarterly production saved, removed or sold.

In determining the quarterly percent royalty due, R_j, the calculation will be rounded to five decimal places (for example, 18.59859 percent). This calculation will incorporate the adjusted quarterly value of production, V_j, in millions of dollars, rounded to the sixth digit, i.e., to the nearest dollar (for example, 19.743026 millions of dollars) • • •

Except as otherwise noted, the following stipulations will be included in each lease resulting from this sale. In the following stipulations the term Supervisor refers to the Atlantic Area Oil and Gas Supervisor for Operations of the Geological Survey and the term Manager refers to the Manager of the New York OCS Office of the Bureau of Land Management.

STIPULATON No. 1

If the Supervisor having reason to believe that a site, structure or object of historical or archeological significance hereinafter referred to as "cultural resource", may exist in the lease area, gives the lessee written notice that the lessor is invoking the provisions of this stipulation, the lessee shall upon receipt of such notice comply with the following requirements:

Prior to any drilling activity or the construction or placement of any structure for exploration or development on the lease, including but not limited to, well drilling and pipeline and platform placement, hereinafter in this stipulation referred to as "operation," the lessee shall conduct remote sensing surveys to determine the potential existence of any cultural resource thay may be affected by such operations. All data produced by such remote sensing surveys as well as other pertinent natural anc cultural environmental data shall be examined by a qualified marine survey archeologist to determine if indications are present suggesting the existence of a cultural resource that may be adversely affected by any lease operation. A report of this survey and assessment prepared by the marine survey archeologist shall be submitted by the lessee to the Supervisor and to the Manager for review.

If such cultural resource indicators are present the lessee shall: (1) Locate the site of such operation so as not to adversely affect the identified location; or (2) establish, to the satisfaction of the Supervisor, on the basis of further archeological investigation conducted by a qualified marine survey archeologist or underwater archeologist using such survey equipment and techniques as deemed necessary by the Supervisor, either that such operation will not adversely affect the location identified or that the potential cultural resource suggested by the occurrence of the indicators does not exist.

A report of this investigation prepared by the marine survey archeologist or underwater archeologist shall be submitted to the Supervisor and the Manager for their review. Should the Supervisor determine that the existence of a cultural resource which may be adversely affected by such operation is sufficiently established to warrent protection, the lessee shall take no action that may result in an adverse effect on such cultural resource until the Supervisor has given directions as to its preservation.

The lessee agrees that if any site, structure, or object of historical or archeological significance should be discovered during the conduct of any operations on the leased area, he shall report immediately such findings to the Supervisor, and make every reasonable effort to preserve and protect the cultural resource from damage until the Supervisor has given directions as to its preservation.

STIPULATION No. 2

At his discretion, the Supervisor may require the lessee to conduct environmental surveys, as approved by the Supervisor, to determine the extent and composition of biological populations or habitats which might require additional protective measures. The Supervisor shall provide written notice to the lessee of his decision to require such surveys. The areal extent of any surveys required will be determined by the Supervisor on a case-by-case basis.

Based upon results of required surveys, the Supervisor may require the lessee to (1) relocate the site of operations so as not to affect adversely the significant biological populations or habitats deserving protection; or (2) modify operations in such a way as not to affect adversely the significant biological populations or habitats deserving protection; or (3) establish to the satisfaction of the Supervisor that such operations will not adversely affect the significant biological populations or habitats, deserving protection.

The lessee shall submit all data obtained in the course of such surveys to the Supervisor, with the locational information for drilling or other activity. The lessee may take no action that might result in any effect on the biological populations or habitats until the Supervisor provides written directions to the lessee, with regard to permissible actions.

In the event that important biological populations or habitats are identified subsequent to commencement of operations, the lessee shall make every reasonable effort to preserve and protect all biological populations and habitats within the lease area, until the Supervisor provides written instructions to the lessee with regard to the biological populations or habitats identified.

STIPULATION No. 3

Pipelines will be required, (1) if pipeline rights-of-way can be determined and obtained, (2) if laying such pipelines is technically feasible and environmentally preferable, and (3) if, in the opinion of the lessor, pipelines can be laid without net social loss, taking into account any incremental costs of pipelines over alternative methods of transportation and any incremental benefits in the form of increased environmental protection or reduced multiple use conflicts. The lessor specifically reserves the right to require that any pipeline used for transporting production to shore be placed in certain designated management areas. In selecting the means of transportation, consideration will be given to any recommendation of the intergovernmental planning program for assessment and management of transportation of Outer Continental Shelf oil and gas with the participation of Federal, State, and local government and industry. Where feasible and environmentally preferable, all pipelines, including both flow lines and gathering lines for oil and gas, shall be buried to a depth suitable for adequate protection from water currents, sand waves, storm scouring, fisheries trawling gear, and other factors as determined on a case-by-case basis.

Following the completion of pipeline installation, no crude oil production will be transported by surface vessel from offshore production sites, except in the case of emergency. Determinations as to emergency conditions and appropriate responses to these conditions will be made by the Supervisor. Where the three criteria set forth in the first sentence of this stipulation are not met and surface transportation must be employed, all vessels used for carrying hydrocarbons to shore from the leased area will conform with all standards established for such vessels pursuant to the Ports and Waterways Safety Act of 1972, as amended (42 U.S.C. 391a).

STIPULATION No. 4

Drilling cutting and drilling muds shall be disposed of by shunting the material through a downpipe to a depth of 20-50 feet below the ocean surface or by transporting these materials to pre-selected disposal sites approved by the Supervisor, and the Environmental Protection Agency. Based on the composition of produced formation waters and the site-specific environmental conditions, the Supervisor may require reinjection of such formation waters.

STIUPLATION No. 5

(To be included only in leases resulting from this sale for portions of tracts 49-22, NE¼SE¼; 49-28, SE¼; and 49-29, SE¼NW¼.)

Before operations may proceed on portions of these tracts, the lessee must demonstrate to the Supervisor's satisfaction that a particular hazardous accumulation of shallow gas does not exist, or that drilling plans can be designed to assure safe operations in the area.

STIPULATION No. 6

(To be included only in leases resulting from this sale for portions of tracts: 49-29, S½SE¼; 49-30, S½, NE¼, SE¼NW¼; 49-51, S½, NE¼, S½NW¼, NE¼NW¼; 49-56, SE¼, S½NE¼; 49-58, E½; 49-64, S½, NE¼, SE¼NW¼; 49-70, S½, S½NE¼; 49-71, S½, NE¼, S½NW¼; 49-76, S½, S½NE¼; 49-80, S½SE¼, NE¼SE¼; 49-81, S½, NE¼, S½NW¼, NE¼NW¼; 49-88, SE¼SW¼; 49-92, W½; 49-94, E½SE¼; 49-96, SE¼, SE¼NE¼; 49-97, W½; 49-98, SE¼SE¼; 49-99, S½, NE¼, SE¼NW¼; 49-101, S½, NW¼; 49-102, S½, NE¼, S½NW¼; 49-104, E½NE¼, E½W¼NE¼; 49-107, SE¼SE¼; 49-108, S½, S½NE¼, SE¼NW¼; 49-111, E¼, SE¼SW¼; 49-113, E½; 49-116, E½SE¼, SE¼NE¼; 49-118, W½; 49-119, S½SE¼; 49-120, S½, NE¼; 49-124, E½; 49-125, S½, NW¼; 49-126, S½, NE¼, E½NW¼, SW¼NW¼; 49-132, E½SE¼; 49-135, SE¼SE¼; AND 49-136, S½, NE¼.)

Exploratory drilling operations, emplacement of structures (platforms) or seafloor wellheads for production or storage of oil or gas will not be allowed within these areas unless or until the lessee has demonstrated to the Supervisor's satisfaction that mass movement of sediments is unlikely or that exploratory drilling operations, structures (platforms), casing, and wellheads can be safely designed to protect the environment in case such mass movement occurs at the proposed location. This may necessitate oil exploration for and development of oil or gas be performed from locations outside of the area of unstable sediments, either within or outside of the tract.

STIPULATION No. 7

(To be included only in leases resulting from this sale for tracts 49-24, 49-47, 49-57, 49-59, 49-72, 49-77, 49-78, 49-83, 49-105, 49-109, 49-112, and 49-116.)

Exploratory drilling operations, emplacement of structures (platforms) or seafloor wellheads for production or storage of oil or gas will not be allowed within these areas unless or until the lessee has demonstrated to the Supervisor's satisfaction that mass movement of sediments is unlikely or that exploratory drilling operations, structures (platforms), casing and wellheads can be safely designed to protect the environment in case such mass movement occurs at the proposed location. This may necessitate all exploration for and development of oil or gas be performed from locations off these tracts and oiutside of the area of unstable sediments.

STIPULATION No. 8

Preface: This stipulation applies to those tracts located in naval fleet operating areas. The tracts affected are listed with the appropriate naval geographical area coordinator.

Tracts 49-1, 49-2, 49-3, 49-4, 49-5, 49-6, 49-7, 49-8, 49-9, and 49-10: Narragansett Bay OPAREA. Contact Commander, Submarine Squadron Two, Naval Submarine Base, New London, Conn.

Tracts 49-20, 49-21, 49-22, 49-25, 49-26, 49-27, 49-33, 49-34, 49-35, 49-38, 49-39, 49-43, 49-46, 49-47, 49-51, 49-56, 49-57, 49-58, 49-59, 49-61, 49-62, 49-63, 49-64, 49-66, 49-67, 49-68, 49-69, 49-70, 49-71, 49-72, 49-73, 49-74, 49-75, 49-76, 49-77, 49-78, 49-79, 49-80, 49-81, 49-82, 49-83, 49-84, 49-85, 49-86, 49-87, 49-88, 49-89, 49-90, 49-91, 49-92, 49-93, 49-94, 49-95, 49-96, 49-97, 49-98, 49-99, 49-101, 49-102, and 49-105: Atlantic City OPAREA. Contact Commanding Officer, Naval Air Engineering Center, Lakehurst, N.J.

Tracts 49-55, 49-123, 49-124, and 49-132: Patuxent River OPAREA. Contact Commander, Naval Air Test Center, Patuxent River, Md.

Tracts 49-133, 49-134, 49-135, and 49-136: Virginia Capes OPAREA. Contact Commanding Officer, Fleet Area Control and Surveillance Facility Naval Air Station, Oceana, Va.

(a) Whether or not compensation for such damage or injury might be due under a theory of strict liability or otherwise, the lessee assumes all risks of damage or injury to persons or property, which occurs in, on, or above the Outer Continental Shelf, to any person or persons who are agents, employees, or invitees of the lessee, its agents, independent contractors or subcontractors doing business with the lessee in connection with any activities being performed by or on behalf of the lessee in, on, or above the Outer Continental Shelf, if such injury or damage to such person or property occurs by reason of the activities of any agency of the U.S. Government, its contractors or subcontractors, or any of their officers, agents, or employees being conducted as a part of, or in connection with, the programs and activities of the commander of the appropriate military installation, listed in the Preface. The lessee assumes this risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors or subcontractors, or any of their officers, agents, or employees.

Notwithstanding any limitation of the lessee's liability in Sec. 14 of the lease, the lessee assumes this risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors or subcontractors, or any of their officers, agents, or employees. The lessee further agrees to indemnify and save harmless the United States against and to defend at its own expense the United States against and to defend at its own expense the United States against all claims for loss, damage, or injury sustained by the lessee, and to indemnify and save harmless the United States against, and to defend at its own expense the United States against, all claims for loss, damage, or injury sustained by the agents, employees, or invitees of the lessee, its agents or any independent contractors or subcontractors doing business with the lessee in connection with the programs and activities of the aforementioned military installations, whether the same be caused in whole or in part by the negligence or fault of the United States, its contractors, or subcontractors, or any of their officers, agents, or employees and whether such claims might be sustained under a theory of strict or absolute liability or otherwise.

(b) The lessee, when operating or causing to be operated on its behalf boat or aircraft traffic into the individual designated warning areas, shall enter into an agreement with the commander of the appropriate onshore military installation, listed in the Preface, utilizing an individual designated warning area prior to commencing such traffic. Such agreement will provide for positive control of boats and aircraft operating into the warning areas at all times.

STIPULATION No. 9

(To be included only in leases resulting from this sale for tracts 49-55, 49-56, 49-57, 49-58, 49-59, 49-61, 49-62, 49-63, 49-64, 49-66, 49-67, 49-68, 49-69, 49-70, 49-71, 49-72, 49-73, 49-74, 49-75, 49-76, 49-77, 49-78, 49-79, 49-80, 49-81, 49-82, 49-83, 49-84, 49-85, 49-86, 49-87, 49-88, 49-89, 49-90, 49-91, 49-92, 49-93, 49-94, 49-95, 49-96, 49-97, 49-98, 49-99, 49-101, 49-102, 49-104, 49-105, 49-106, 49-107, 49-108, 49-109, 49-110, 49-111, 49-112, 49-113, 49-114, 49-115, 49-116, 49-118, 49-119, 49-120, 49-123, 49-124, 49-125, 49-126, 49-132, 49-133, 49-134, 49-135, and 49-136.)

(a) Whether or not compensation for such damage or injury might be due under a theory of strict or absolute liability or otherwise, the lessee assumes all risk of damage or injury to persons or property, which occurs in, on, or above the Outer Continental Shelf, to any person or persons or to any property of any person or persons who are agents, employees or invitees of the lessee, its agents, independent contractors or subcontractors doing business with the lessee in connection with any activities being performed by or on behalf of the lessee in, on, or above the Outer Continental Shelf, if such injury or damage to such person or property occurs by reason of the activities of any agency of the U.S. Government, its contractors or subcontractors, as a part of, or in connection with, the programs and activities of the National Aeronautics and Space Administration (NASA), Wallops Flight Center. The lessee assumes this risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors or subcontractors, or any of their officers, agents, or employees.

Notwithstanding any limitation of the lessee's liability in Sec. 14 of the lease, the lessee assumes this risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors, or subcontractors, or any of their officers, agents, or employees. The lessee further agrees to indemnify and save harmless the United States against and to defend at its own expense the United States against all claims for loss, damage, or injury sustained by the lessee, and to indemnify and save harmless the United States against, and to defend at its own expense the United States against, all claims for loss, damage, or injury sustained by the agents, employees, or invitees of the lessee, its agents, or any independent contractors, or subcontractors doing business with the lessee in connection with the programs and activities of the NASA, Wallops Flight Center whether the same be caused in whole or in part by the negligence or fault of the United States,

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its contractors, or subcontractors or any of their officers, agents, or employees and whether such claims might be sustained under a theory of strict or absolute liability or otherwise.

(b) The lessee, when operating or causing to be operated on its behalf, boat, ship, or aircraft traffic into the leased area or surrounding area of the lease, including any part of the Outer Continental Shelf between the 35th and 39th parallels, shall enter into an agreement with the Director, Wallops Flight Center prior to commencing such traffic. Such agreement shall provide for positive control of boats, ships, and aircraft operating in the above designated areas and will provide for the avoidance of interference with the programs and activities of the NASA Wallops Flight Center.

(c) Upon recommendation by the Director, Wallops Flight Center when the activities of the NASA Wallops Flight Center may endanger personnel or property, the lessee agrees, upon receipt of the notice from the Supervisor, to evacuate all personnel from all structures on the lease and to shut-in and secure all wells and other equipment, including pipelines on the lease, within forty-eight (48) hours or within such longer period as may be specified by the Supervisor. The Supervisor shall not require evacuation of personnel and shutting-in and securing of equipment for a period of time greater than seventy-two (72) hours; however, such period of time may be extended by subsequent notice from the Supervisor. Equipment and structures may remain in place on the lease during such time as the evacuation remains in effect.

(d) The lessee agrees to control his own electromagnetic emissions and those of these agents, employees, invitees, independent contractors, or subcontractors emanating from the leased area or surrounding area of the lease, including any part of the Outer Continental Shelf between the 35th and 39th parallels, in accordance with the requirements specified by the Director, Wallops Flight Center, to the degree necessary to prevent damage to, or unacceptable interference with, the programs and activities of the NASA, Wallops Flight Center.

Necessary monitoring, control and coordination with the lessee, his agents, employees, invitees, independent contractors, or subcontractors, will be effected by the Director, Wallops Flight Center; Provided, however, that control of such electromagnetic communication shall in no instance prohibit all manner of electromagnetic communications during any period of time between a lessee, its agents, employees, invitees, independent contractors, or subcontractors and onshore facilities.

STIPULATION No. 10

(To be included in any leases resulting from this sale for the sliding scale royalty tracts listed in paragraph 4 of this notice.)

(a) The royalty rate on production saved, removed or sold from this lease is subject to consideration for reduction under the same authority that applies to all other oil and gas leases on the Outer Continental Shelf (30 CFR 250.12 (e)). The Director, Geological Survey, may grant a reduction for only 1 year at a time. Reduction of royalty rates will not be approved unless production has been underway for 1 year or more.

(b) Although the royalty rate specified in section 6(a) of this lease or as subsequently modified in accordance with applicable regulations and stipulations is applicable to all production under this lease, not more than 16⅔ percent of the production saved, removed or sold from the lease area may be taken as royalty in amount, except as provided in section 15(d) of this lease: The royalty on any portion of the production saved, removed or sold from the lease in excess of 16⅔ percent may only be taken in value of the production saved, removed or sold from the lease area.

15. *Information to lessees.* On September 18, 1978, the OCS Lands Act Amendments of 1978 were enacted. Some sections of current regulations applicable to OCS leasing operations are inconsistent with this new legislation, and the legislation requires the issuance of some new regulations. The inconsistencies will be corrected by rulemakings and the new regulations will be issued as soon as possible. Nevertheless, bidders are notified that provisions of the OCS Lands Act Amendments shall apply to all leases offered at this lease sale and shall supersede all inconsistent provisions in current regulations applicable to OCS leasing operations.

Some of the tracts offered for lease may fall in areas which may be included in fairways, precautionary zones, or traffic separation schemes. Corps of Engineers permits are required for construction of any artificial islands, installations and other devices permanently or temporarily attached to the seabed located on the Outer Continental Shelf in accordance with the Outer Continental Shelf Lands Act, as amended.

Bidders are advised that the Departments of the Interior and Transportation have entered into a Memorandum of Understanding dated May 6, 1976, concerning the design, installation, operation and maintenance of offshore pipelines. Bidders should consult both Departments for regulations applicable to offshore pipelines.

Bidders are also advised that in accordance with section 16 of each lease offered at this sale the lessor may require a lessee to operate under a unit, pooling or drilling agreement and that the lessor will give particular consideration to requiring unitization in instances where one or more reservoirs underlie two or more leases with either a different royalty rate or a royalty rate based on a sliding scale.

In the enforcement of Stipulation 2, the Supervisor will receive recommendations from a committee composed of designated representatives of the Bureau of Land Management, U.S. Fish and Wildlife Service, U.S. Geological Survey, the National Marine Fisheries Service, the Environmental Protection Agency, and representatives of the affected States. It is intended that this committee will remain in existence throughout the operating life of the field. The Supervisor will consult with the committee in identifying areas or resources of biological importance on the conduct of the biological surveys by lessees, and on the appropriate course of action after the surveys have been conducted.

The committee has completed a preliminary review of the sale area and has determined that it will recommend to the Supervisor that no pre-exploration surveys be required on any of the tracts offered, with the possible exception of those noted below. The committee may recommend that surveys be required prior to development.

Exception: The BLM is currently funding a study of the canyon areas in the Mid and North Atlantic regions. This Canyon Assessment Study shall involve an analysis of historical data and of field surveys of ten of the seventeen canyon blocks. The analysis of historical data, available in April, 1979, may provide information on the faunal communities in Tracts 49-92, 49-96, 49-97, 49-101, 49-104, 49-113, 49-118, 49-124, 49-125, and 49-126. Preliminary interpretations of the field surveys, conducted in Tracts 49-113, 49-118, 19-124, 49-125, and 49-126, shall be available in July, 1979. Seven other blocks, although not included in the Canyon Assessment Study, may also be evaluated at that time because of their bathymetric characteristics. These tracts are 49-88, 49-108, 49-109, 49-111, 49-116, 49-120, and 49-132. Based on the analysis of the historical and field data, the committee may recommend to the Supervisor that pre-exploration surveys be required on any or all of the above mentioned tracts.

16. *OCS orders.* Operations on all leases resulting from this sale will be conducted in accordance with the provisions of all Mid-Atlantic Orders, as of their effective date, and any other applicable OCS Order as it becomes effective.

17. *Suggested bid form.* It is suggested that bidders submit their bids to the Manager, New York Outer Continental Shelf Office, in the following form:

Oil and Gas Bid

The following bid is submitted for an oil and gas lease on the tract of the Outer Continental Shelf specified below:

Tract No.	Total Amount Bid	Amount per Hectare	Amount of Cash Bonus Submitted with Bid

Proportionate Interest of Company(s) Submitting Bid

Company _____ Percent Interest _____

Address _____ N.Y. Misc. No. _____

Signature _____
(Please type signer's name under signature)

18. *Required joint bidders statement.* In the case of joint bids, each joint bidder is required to execute a joint bidder's statement before a notary public and submit it with his bid. A suggested form for this statement is shown below.

Joint Bidder's Statement

I hereby certify that _____(entity submitting bid) is eligible under 43 CFR 3302 to bid jointly with the other parties submitting this bid.

_____
Signature
(Please type signer's name under signature)

Sworn to and subscribed before me this _____day of _____ 19__

_____
NOTARY PUBLIC

State of _____

County of _____

[FR Doc. 78-32396 Filed 11-16-78; 8:45 am]

[7020-02-M]

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-50]

CERTAIN SYNTHETIC GEMSTONES

Commission Determination, Order and Memorandum Opinion

This Determination and Order provides for the disposition of (1) Motion Docket No. 50-5, a motion for summary determination pursuant to § 210.50 of the Commission's Rules of Practice and Procedure (hereinafter "CRPP") (19 CFR 210.50), and (2) Motion Docket No. 50-8, a motion to make this investigation a "more complicated" investigation pursuant to CRPP § 210.15 (19 CFR 210.15). Motion Docket No. 50-5 was filed by Respondents on August 7, 1978, and was certified to the Commission for decision, together with all exhibits and responses, by the Presiding Officer in her Recommended Order September 6, 1978, issued pursuant to CRPP § 210.53 (19 CFR 210.53). Motion Docket No. 50-8 was filed with the Commission by Respondents on October 6, 1978.

DETERMINATIONS AND ORDER

Having reviewed and considered (1) Motion Docket No. 50-5, as certified to the Commission by the Presiding Officer on September 6, 1978, together with all exhibits and responses thereto, (2) the Presiding Officer's recommended order of September 6, 1978, granting Respondents' motion for summary determination, and (3) exceptions to the Presiding Officer's recommended order, filed by Respondents on September 19, 1978, in the context of the record in the instant investigation, the Commission, by action of November 13, 1978, determines that the standards for granting a motion for summary determination under CRPP § 210.50 have not been met, in that genuine issues of material fact do exist, and Respondents have not shown their entitlement to summary determination as a matter of law. Accordingly, Respondents' motion for summary determination (Motion Docket No. 50-5) is denied.

In addition, having reviewed and considered Motion Docket No. 50-8, filed by Respondents on October 6, 1978 to make the instant investigation "more complicated" within the meaning of CRPP § 210.15 (19 CFR 210.15) and section 337(b)(1) (19 U.S.C. 1337(b)(1)) in the context of the record in this investigation, the Commission, by action of November 13, 1978, determines that the record in this investigation does not support a designation of this investigation as a "more complicated" investigation. Accordingly, Respondents' motion to designate this investigation more complicated (Motion Docket No. 50-8) is denied.

In light of these determinations, the Commission, by action of November 13, 1978, *Orders*—

1. That this matter be remanded to the Presiding Officer for further proceedings consistent with this Opinion;

2. That the provisions of CRPP § 210.41(e)(1) (19 CFR 210.41(e)(1)) are waived with respect to the required completion date for the hearing required by CRPP § 210.41(a)(1) (19 CFR 210.41(a)(1));

3. That the Presiding Officer is directed to establish a new timetable for a Prehearing Conference, Prehearing Statements, and Hearing which provides for the completion of a hearing required by CRPP § 210.41(a)(1) (19

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CFR 210.41(a)(1)) by no later than December 15, 1978;

4. That, notwithstanding the provisions of CRPP § 210.53(a) (19 CFR 210.53(a)), the Presiding Officer is directed to certify the record to the Commission and file her recommended determination with the Commission by no later than January 15, 1978.

PROCEDURAL HISTORY

On February 9, 1978, a complaint was filed with the Commission under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) (hereinafter "section 337"), on behalf of Queensbury Opal Co., Ltd., of Beechwood, Ohio ("Complainant"), alleging that unfair methods of competition and unfair acts exist in the unlicensed importation of certain gems having light piping fibers with cores of high refractive index and clad layers of lower refractive index ("certain synthetic gemstones") into the United States, or in their sale, by reason of the coverage of certain synthetic gemstones by the claims of U.S. Letters Patent No. 3,742,731 (hereinafter "the '731 patent"). The '731 patent is held by Complainant by virtue of an assignment from patentees Michael R. Phillips and Jerome H. Ludwig. Complainant further alleged that the effect or tendency of such unlicensed importation is to destroy or substantially injure an industry, efficiently and economically operated, in the United States, or to prevent the establishment of a domestic industry. Accordingly, Complainant seeks an exclusion order against the alleged unlicensed importation of certain synthetic gemstones into the United States.

On March 14, 1978, the Commission instituted an investigation under Section 337 with respect to these matters and published a notice of investigation in the FEDERAL REGISTER of March 17, 1978 (43 FR 11272-11273). A correction to the notice of investigation was issued by the Commission on March 27, 1978, and was published in the FEDERAL REGISTER of March 30, 1978. Copies of the complaint, amended complaint, and notice of investigation were served upon named respondents.

A notice of preliminary conference was issued by the Presiding Officer on April 17, 1978, served on parties of record, and published in the FEDERAL REGISTER of April 21, 1978 (43 FR 17063). A notice of resetting of preliminary conference was issued by the Presiding Officer on April 25, 1978, served on parties of record, and published in the FEDERAL REGISTER of April 28, 1978. On May 1, 1978, a preliminary conference with respect to this investigation was held before the Presiding Officer.

On May 31, 1978, the Presiding Officer recommended (1) that the complaint be amended by adding Cathay Corp. of Stamford, Conn., as a party respondent and (2) that Rudolf and Helmuth May, and Fritz Mohr, be terminated as foreign party respondents. By Commission Memorandum Opinion of June 22, 1978, the Commission accepted the Presiding Officer's recommendations.

On June 30, 1978, the Presiding Officer issued a notice of preliminary conference and hearing which was served upon parties of record and published in the FEDERAL REGISTER of July 7, 1978 (43 FR 29362). In that notice, the Presiding Officer established a timetable for (1) the completion of discovery, (2) the service of prehearing conference statements by the parties, (3) a prehearing conference, and (4) a hearing to be held in connection with the investigation. A prehearing conference was scheduled to have been held on September 26, 1978, and a hearing was scheduled to have been held on October 3, 1978. Neither a Prehearing Conference nor a Hearing have been held in connection with this investigation to date. Unless otherwise ordered by the Commission, the deadline for the completion of a hearing in this investigation is October 17, 1978, pursuant to CRPP §§ 210.41 (a)(1) and (e)(1) (19 CFR 210.41 (a)(1), (e)(1)).

On August 7, 1978, Respondents, acting pursuant to CRPP § 210.50 (19 CFR 210.50), filed a motion for summary determination (Motion Docket No. 50-5), together with a supporting brief and other materials, with the Secretary, which was served upon the parties or counsel of record, alleging that Complainant's '731 patent is invalid and unenforceable, and, therefore, is incapable of being infringed. Accordingly, Respondents urged the Commission to terminate the investigation. On August 21, 1978, Complainant filed, among other things, a brief in opposition to Respondents' motion for summary determination, and, on August 25, 1978, the Commission Investigative Attorney filed a response to Respondent's motion for summary determination, supporting Respondents' motion in part.

On September 6, 1978, the Presiding Officer, acting pursuant to CRPP § 210.53 (19 CFR 210.53), issued her recommended order granting Respondents' motion for summary determination under CRPP Section 210.50. The Presiding Officer postponed indefinitely the prehearing conference, prehearing statements, and hearing dates for the investigation. The Presiding Officer certified Respondents' motion for summary determination, together with all exhibits and responses thereto, to the Commission for disposition.

Exceptions to the Presiding Officer's recommended order were filed by Respondents on September 19, 1978 and by the Commission Investigative Attorney on September 19, 1978. Exceptions and alternative findings of fact and conclusions of law were filed by Complainant on September 25, 1978. In addition, Complainant filed a response to the exceptions of the Commission Investigative Attorney and Respondents on September 29, 1978.[1]

On October 6, 1978, Respondents filed a motion (Motion Docket No. 50-8) with the Commission pursuant to CRPP § 210.15 (19 CFR 210.15) requesting that the Commission designate this investigation "more complicated" within the meaning of the rule and section 337(b)(1) (19 U.S.C. 1337(b)(1)). On October 11, 1978, both Complainant and the Commission Investigative Attorney submitted responses to this motion.

On October 12, 1978, the Presiding Officer issued an Order certifying this motion to the Commission for disposition. Pending disposition of these matters by the Commission, all additional discovery in the investigation has been suspended by the Presiding Officer.

OPINION

The instant matters before the Commission are: (1) the Presiding Officer's recommended order of September 6, 1978, pursuant to CRPP Section 210.53 (19 CFR 210.53), which urges the Commission, among other things,[2] to grant Respondent's motion for summary determination of August 6, 1978, (Motion Docket No. 50-5), and terminate this investigation; and (2) Respondents' motion of October 6, 1978, pursuant to CRPP Section 210.15 (19 CFR 210.15), which urges the Commission to designate this investigation as a "more complicated" investigation. We shall treat each of these motions in turn in the following discussion.

[1] Under CRPP provisions, the exeptions of the Commission Investigative attorney and the exceptions and alternative findings of fact and conclusions of law of the Complainant were not timely filed (CRPP § 210.54, 201.14 and 201.16(d), 19 CFR 210.54, 201.14, and 201.16(d)). With respect to Complainant's response to the exceptions of the Commission Investigative Attorney and Respondent, the CRPP makes no provision for the filing of such a document. If such document is construed as permissible under CRPP § 210.54, then it is not timely filed under that section and CRPP §§ 201.14 and 201.16(d) (19 CFR 210.54, 201.14, and 201.16(d)).

[2] The Presiding Officer recommended in full on September 6, 1978:

1. That the Commission find that there is no violation of section 337;

2. That the Commission dismiss respondent Incom Corporation on the grounds that it does not engage in the importation or sale of synthetic gemstones;

3. That the Commission grant respondents' motion for summary determination (Motion Docket No. 50-5) and terminate this investigation; and,

4. That the Commission return to respondents the physical exhibits and materials submitted on August 4, 1978 which were made conditionally available to the parties for inspection; there may be a need for these exhibits in pending proceedings in the U.S. District Court in Connecticut, *Queensbury Opal Co., Ltd.*, v. *Paul S. Rogell and Rogell Associates, Inc.*, Civil Action No. B-78-35.

This Opinion deals only with Recommendations Nos. 1 and 3. Recommendations 2 and 4 will be dealt with by the Commission

Footnotes continued on next page

I. MOTION DOCKET NO. 50-5

With respect to Respondents' motion for summary determination, the Presiding Officer, by her recommended order of September 6, 1978, is satisfied that the record shows that there is no genuine issue as to any material fact and that Respondents are entitled to summary determination as a matter of law. Upon examination of the record, we reject the Presiding Officer's recommendation that Respondents' motion for summary determination be granted and this investigation be terminated. The Presiding Officer's recommendation is erroneous for two primary reasons:

(1) The Presiding Officer erred as a matter of law in dismissing the dependent claims of the '731 patent solely on the basis of her finding of the invalidity of the independent claim of the patent.

(2) Genuine issues of material fact exist which warrant additional fact-finding proceedings and hearing before the Presiding Officer.

A. The Presiding Officer may not rely solely upon the invalidity of an independent claim to invalidate dependent claims. Before a motion for summary determination can be granted under CRPP § 210.50, the "pleadings and any depositions, admissions on file, and affidavits (must) show that there is no geniuine issue as to any material fact and that the moving party is entitled to summary determination as a matter of law" (19 CFR 210.50(b)). We are of the opinion and hold that the Presiding Officer's recommended order of September 6, 1978, contains legal error in two significant respects. First, the Presiding Officer's conclusions of law with respect to the alleged invalidity of Complainant's '731 patent are based upon an erroneous legal premise.

The Presiding Officer, in her conclusions of law, found Complainant's '731 patent to be invalid under 35 U.S.C. 102(a) and 102(b) for the purposes of the Commission's proceeding under section 337, and, accordingly, unenforceable under section 337 (Recommended Order of September 6, 1978, Conclusion of Law No. 2). Consequently, the Presiding Officer concluded that Respondents have not engaged in unfair methods of competition or unfair acts under Section 337, and there is no violation of Section 337 (Recommended Order of September 6, 1978, Conclusion of Law No. 3).

The Presiding Officer was of the view that if the independent claims of a patent are demonstrated to be invalid, then the remaining dependent claims of a patent are necessarily invalid (Recommended Order of September 6, 1978, page 8). Accordingly, the Presiding Officer, in demonstrating the alleged invalidity of Complainant's '731 patent, found the only independent claim of Complainant's '731 patent (Claim 1) to be invalid, and stated "consequently all of the remaining 10 claims (Claims 2-11 of Complainant's '731 patent) fall if claim 1 is invalid" (Recommended Order of September 6, 1978, page 8). This premise is erroneous as a matter of law.

United States patent laws provide that a patent is presumed to be valid (35 U.S.C. 282). Furthermore—

> Each claim of a patent (whether in independent or dependent form) shall be presumed valid independently of the validity of other claims; dependent claims shall be presumed valid even though dependent upon an invalid claim (35 U.S.C. 282).

With this statutory basis in mind, it is evident that the Presiding Officer erred as a matter of law with respect to the alleged invalidity of the ten dependent claims of Complainants' '73 patent (Claims 2-11) by not according each claim of the '731 patent, independent or dependent, the requisite statutory presumption of validity. Accordingly, we are unable to accept the Presiding Officer's conclusions of law that Complainant's '731 patent is invalid under 35 U.S.C. 102(a) and 102(b) for purposes of this litigation under section 337, and is unenforceable under section 337. The proceedings must therefore be remanded to the Presiding Officer for a determination of validity of claims 2-11.

B. Disputed Issues of Material Fact Remain.

1. The record does not support the Presiding Officer's finding that light piping is the sole means of producing a "catseye" effect in these gemstones.

The Presiding Officer, in reliance upon the affidavits of Vause, Hicks, the Vause tie-tac exhibit to the Rogell affidavit, and Exhibit 2 to the complaint in this matter, found that a synthetic gemstone as disclosed in Claim 1 of Complainant's '731 patent was produced, known, and in public use in 1970 (Recommended Order of September 6, 1978, finding of fact No. 7). This finding of fact is clearly material to the Presiding Officer's subsequent conclusion of law that Complainant's '731 patent is invalid under 35 U.S.C. 102(a) and 102(b) (Recommended Order of September 6, 1978, Conclusion of Law No. 2). However, analysis of the record upon which she bases her findings of fact demonstrates that finding of fact No. 7 is not supported by the facts of record.

In this respect, we refer to the Presiding Officer's treatment of the Hicks affidavit (Recommended Order of September 6, 1978, pages 7-9). Based on the Hicks affidavit, the Presiding Officer found each element of Claim 1 of Complainant's '731 patent to read on the Vause tie-tac, a certain synthetic gemstone within the scope of this investigation (Recommended Order of September 6, 1978, page 7). Complainant argued in its brief that the Hicks affidavit failed to meet each element of Claim 1 of the '731 patent in that Mr. Hicks did not specifically state that the fibers of the Vause tie-tac were arranged "for piping ambient light through the fiber cores" (Recommended Order of September 6, 1978, page 8). The Commission Investigative Attorney, in supporting Respondents' CRPP Section 210.50 motion, argued that the Hicks' affidavit does show that ambient light is piped through the fiber cores of the Vause tie-tac by observing transmission of an image along the direction of the fiber axis "as this image can be so transmitted in no other way but by light piping" (Recommended Order of September 6, 1978, page 8) (emphasis supplied). In response to this argument, the Presiding Officer found that "(t)he argument of the investigative attorney is persuasive. Mr. Hicks in effect has described all elements of claim 1 of the '731 patent" (Recommended Order of September 8, 1978 page 8).

In ruling on a motion for summary determination under CRPP § 210.50 (19 CFR 210.50), we cannot, as a matter of law, countenance the partial predication of a key finding of fact (finding of fact No. 7) upon the argument of a party where there is no record support for the factual finding. The record simply does not support the assertion that the image referred to above "can be so transmitted in no other way but by light piping" (Recommended Order of September 6, 1978, page 8). An inspection of the file wrapper respecting Complainant's '731 patent and prior art references reveals that there are at least several other possible ways whereby a chatoyant or "cateye" effect may be produced. (See U.S. Letters Patent No. 2,948,082, patented August 9, 1960, U.S. Letters Patent No. 3,581,522, patented June 1, 1971, and references thereto in the file history of Complainant's '731 patent.) Accordingly, there remains a dispute as to material fact on the issue whether light piping is the only means of producing a "catseye" effect.

Footnotes continued from last page

after the additional factfinding proceedings, hearing, and recommended determination ordered above.

2. Inconsistencies in sworn affidavits on public knowledge create a genuine issue of material fact.

In addition, there is a genuine issue of material fact respecting the alleged invalidity of Complainant's '731 patent which warrants additional factfinding proceedings and hearing before the Presiding Officer and makes summary determination inappropriate in this investigation.[3]

35 U.S.C. 102(a) and 102(b) provide that a person shall be entitled to a patent unless—

(a) The invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent, or

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States.

Respondent, in moving for summary determination, has, among other things, asserted the invalidity of Complainant's '731 patent under 35 U.S.C. 102(a) and 102(b) and has explicitly relied upon statements in the Rogell affidavit respecting public knowledge, use, or sale of his invention. In opposing Respondents' motion, Complainant has relied upon (1) statements in the Rogell affidavit respecting public knowledge, use, or sale of Rogell's invention and (2) the affidavits and declarations of Respondent Rogell in Patent Office proceedings with respect to the same issues. (See, e.g., Complainant's Brief in Opposition to Respondents' Motion for Summary Determination, filed August 21, 1978, page 17.)

Upon examination of the record, it appears to us that sworn and unsworn statements of Respondent Rogell on several occasions in proceedings before the U.S. Patent Office in comparison to sworn statements before this Commission raise a genuine issue of material fact respecting the validity of Complainant's '731 patent under 35 U.S.C. 102(a) and 102(b). In recommending that Respondents' motion pursuant to CRPP § 210.50 be granted, the Presiding Officer has ruled that Complainant's '731 patent is invalid under 35 U.S.C. 102(a) and 102(b) for the purposes of the Commission's investigation under section 337, and is unenforceable under section 337 (Recommended Order of September 6, 1978, Conclusion of Law No. 2). Respondents, in supporting their motion for summary determination with "necessary supporting affidavits for summary determination in * * * (their) * * * favor" (CRPP § 210.50(a), 19 CFR 210.50(a)), submitted, and explicitly relied upon, among other things, an affidavit of Paul S. Rogell (Respondents' Motion Docket No. 50-5, page 3, Recommended Order of September 6, 1978, page 3) which is a part of the supporting materials certified to us by the Presiding Officer and which is a part of the adjudicative record in this investigation. Patent applications, and accompanying declarations and powers of attorney, of Respondent Rogell, filed with the Commission, are also a part of the record in this proceeding. With respect to the Rogell patent applications filed with the Commission in connection with this investigation, Respondent Rogell, on several occasions swore or stated that his invention was not publicly known or used or on sale within the meaning of 35 U.S.C. 102(a) and 102(b) (See, e.g., Rogell patent applications filed on or about May 5, 1970, December 8, 1970, and June 28, 1973). Moreover, in the affidavit of Paul S. Rogell, explicitly relied upon by Respondents in support of their motion for summary determination, Respondent Rogell states that "he had tried to sell his synthetic gemstone and that it was disclosed to others without any restriction as to confidentiality before 1971, the year in which (patentees of Complainant's '731 patent) * * * claim to have reduced their invention * * * to practice." (See, e.g., Recommended Order of September 6, 1973, page 3; Affidavit of Paul S. Rogell, pages 2-3, et seq.) One or the other of these statements is false. We see no basis, in the absence of uncontrovertible record evidence, to accept one over the other. There therefore is raised a genuine issue of material fact.

In ruling on Respondents' motion for summary determination, the Presiding Officer, although noting that "the principal affidavit relied upon by the Respondents in support of their motion is that of Paul S. Rogell" and that "Mr. Rogell's affidavit is the key that ties most of the other affidavits to specific gemstones" (Recommended Order of September 6, 1978, pages 3 and 5, respectively) chose to disregard the Rogell affidavit. The Presiding Officer's position was as follows: "(d)isregarding the Rogell affidavit, there are enough undisputed facts to support a finding that the (Complainants') '731 patent is invalid and unenforceable" (Recommended Order of September 6, 1978, page 5). The Presiding Officer took this position in response to questions raised by Complainants who had pointed to the inconsistencies of Rogell's affidavit with prior statements before the Patent Office. (See, e.g., Complainants' Brief in Opposition to Respondents' Motion for Summary Determination, pages 4-9, 16-24.) The Presiding Officer chose to treat Complainant's objections as merely raising a question of Respondent Rogell's credibility (Recommended Order of September 6, 1978, pages 3-4).

While we agree with the Presiding Officer that "(t)he issue here is not whether Mr. Rogell signed sworn misstatements of fact in connection with patent applications, but whether there are genuine issues of fact material to this motion for summary determination" (Recommended Order of September 6, 1978, page 4), we cannot agree with the Presiding Officer that Complainant has merely raised an issue of credibility.[4] In addition, in considering a motion for summary determination under CRPP § 210.50, we cannot support the selective reading of the adjudicatory record urged upon us by the Presiding Officer, whereby the principal affidavit relied upon by movant is disregarded.

In order to support movant's position on alleged invalidity of the '731 patent, certainly it is axiomatic under 35 U.S.C. 282 [5] that the burden of persuasion is on the party asserting the invalidity of a patent.[6] Clearly, if Respondent's position on invalidity cannot be upheld without disregarding the affidavit and evidentiary materials upon which they principally rely to support such position, Respondents have not shown absence of material fact issues entitling them to summary determination.

In ruling upon Respondents' motion for summary determination pursuant to CRPP § 210.50 in the instant investigation, we have viewed the evidence submitted and primarily relied upon by Respondents in the light most favorable to the party opposing the motion. Likewise, all reasonable inferences were drawn in favor of Complainant. We have found substantial controversy as to the alleged invalidity of Complaints' '731 patent and conflicting affidavits or sworn statements respecting public knowledge, use, or sale of Respondents' invention. We are, therefore, unable to hold, as a matter of law for the purpose of this proceeding under section 337, that Complainant's '731 patent is invalid under 35 U.S.C. 102(a) and 102(b). Rather, we must presume it to be valid under 35 U.S.C. 282 until Respondents carry their burden of persuasion on the issue of invalidity.

Accordingly, we have denied Respondents' motion for summary determination and have remanded this matter to the Presiding Officer for further factfinding proceedings and hearing consistent with this Memorandum Opinion.

[3] By stating that it appears to us that there is "at least a genuine issue of material fact" respecting the alleged invalidity of Complainant's '731 patent, we do not mean to imply that there is only one such issue. On the contrary, it appears to us that there may be more such issues. (See, e.g., Complainant's Brief in Opposition to Respondent's Motion for Summary Determination, filed August 21, 1978.) In considering a motion for summary determination pursuant to CRPP § 210.50 (19 CFR 210.50), however, it is only necessary that one genuine issue as to any material fact exist to render summary determination improper.

[4] Even if Respondent's credibility were the only issue of fact, it might preclude our granting summary determination. See, e.g., *Hackley* v. *Roudebush*, 520 F.2d 108, 159 (D.C. Cir. 1975); *Pfizer, Inc.* v. *International Rectifier Co.*, 538 F.2d 180, 185 (8th Cir. 1976).

[5] 35 U.S.C. 282 provides, in pertinent part, that "(t)he burden of establishing invalidity of a patent or any claim thereof shall rest on the party asserting it."

[6] Id., *Solder Removal Co., et al.* v. *United States International Trade Commission, et al.* Appeal No. 77-25, Memorandum Decision of August 24, 1978, at pages 9, 11 (CCPA 1978).

II. MOTION DOCKET NO. 50-8

As is evident from our determination and order, we have decided not to designate the instant investigation "more complicated" under CRPP § 210.15 and section 337(b)(1). We therefore deny Respondents' motion of October 6, 1978. In reaching his conclusion, we have considered Respondents' motion in light of (A) the meaning and purpose of CRPP § 210.15 and (B) its application in Commission practive since the enactment of the Trade Act of 1974.

A. The meaning and purpose of CRPP § 210.15. CRPP § 210.15 provides a means whereby the 1 year time limitation for section 337 investigations may be extended, in "more complicated" cases, to 18 months. CRPP § 210.15 is based upon statutory requirement of section 337(b)(1) which provides, in pertinent part, that—

The Commission shall conclude any such (Section 337) investigation, and make its determination under this section, at the earliest practicable time, but not later than 1 year (18 months in more complicated cases) after the date of publication of notice of such investigation. The Commission shall publish in the FEDERAL REGISTER its reasons for designating any investigation as a more complicated investigation (19 U.S.C. 1337(b)(1)).

Section 337(b)(1) does not provide any criteria for designating an investigation as a more complicated one. However, the Senalt Committee on Finance, in explaining this section, provided criteria which the Commission should consider by stating that—

The Committee intends for the term "more complicated investigation" to refer to investigations which are of an involved nature due to the subject matter, difficulty in obtaining information, or large number of parties involved (S. Rep. No. 1298, 93 Cong., 2d Sess. at p. 194 (1974)).

In CRPP § 210.15, we have explicitly adopted these criteria established by the Committee on Finance. In ruling upon the instant motion to make "more complicated," we have considered these criteria.

Respondents, in making their motion, have not seriously argued either that the subject matter of the investigation or the number of parties thereto would justify making this ivestigation "more complicated" under CRPP § 210.15. Rather, Respondents have argued that the complex procedural aspects of this investigation have made it an "investigation of an involved nature." (Respondents' Motion Pursuant to § 210.15 to Designate this Investigation as a "More Complicated" Investigation, October 6, 1978, page 4.) We agree with Respondents that the procedural aspects of the instant investigation have become involved to a certain degree and agree with the Commission Investigative Attorney that some accommodation must be made to provide the parties with additional time in which to complete a hearing if Motion Docket No. 50-5 is denied. (Response of Commission Investigative Attorney to Motion to Designate this Investigation More Complicated, October 11, 1978, page 1.) Considering the procedural history of this investigation and the time constraints under the CRPP, we believe that a workable accommodation to provide the parties with additional time for additional factfinding and hearing is provided by our determinations and order, supra. The main procedural problem confronting the parties was the time constraint of CRPP § 210.41(e), which we have waived in favor of establishing a new date for completion of hearing of "no later than December 15, 1978."[7]

B. The application of CRPP § 210.15 since 1974. We have granted CRPP § 210.15 motions on two occasions since the enactment of the Trade Act of 1974. In *Certain Color Television Receiving Sets* (Investigation No. 337-TA-23) (hereinafter "Color Televisions"), the involved nature of the subject matter at issue, difficulty in obtaining information, and the number of parties all justified designating the investigation "more complicated." Likewise, in *Doxycycline* (Investigation No. 337-TA-3) we granted a CRPP § 210.15 motion due to the voluminous discovery, difficulty in obtaining information, and complexity of issues raised.

We have denied CRPP § 210.15 motions on several occasions, including *Certain Monumental Wood Windows* (Investigation No. 337-TA-40) (hereinafter "Wood Windows"), and *Certain Apparatus for the Continuous Production of Copper Rod* (Investigation No. 337-TA-52) (herinafter "Copper Rod"). As the Commission Investigative Attorney has noted in opposing Respondents' motion to make "more complicated" in this investigation, "in cases much more complicated than the present one, similar motions were not granted (citing *Wood Windows* and *Copper Rod*)." The instant motion is like those denied in *Wood Windows* and *Copper Rod;* we could not seriously maintain that the record in this investigation has become "more complicated" and meets the Senate Finance Committee criteria referred at above as was the case in *Color Televisions* and, more recently, *Doxycycline.*

By Order of the Commission.

Issued: November 14, 1978.

KENNETH R. MASON,
Secretary.

[FR Doc. 78-32468 Filed 11-16-78; 8:45 am]

[7] This does not address the question of whether procedural complications will ever justify declaring a case "more complicated." In this case, however, the investigation can be completed within 12 months notwithstanding the time taken by our consideration of the motion for summary determination.

[4510-30-M]

DEPARTMENT OF LABOR

Employment and Training Administration

EMPLOYMENT TRANSFER AND BUSINESS COMPETITION DETERMINATIONS UNDER THE RURAL DEVELOPMENT ACT

Applications

The organizations listed in the attachment have applied to the Secretary of Agriculture for financial assistance in the form of grants, loans, or loan guarantees in order to establish or improve facilities at the locations listed for the purposes given in the attached list. The financial assistance would be authorized by the Consolidated Farm and Rural Development Act, as amended, 7 U.S.C. 1924(b), 1932, or 1942(b).

The Act requires the Secretary of Labor to determine whether such Federal assistance is calculated to or is likely to result in the transfer from one area to another of any employment or business activity provided by operations of the applicant. It is permissible to assist the establishment of a new branch, affiliate, or subsidiary, only if this will not result in increased unemployment in the place of present operations and there is no reason to believe the new facility is being established with the intention of closing down an operating facility.

The Act also prohibits such assistance if the Secretary of Labor determines that it is calculated to or is likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services, or fa-

cilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

The Secretary of Labor's review and certification procedures are set forth at 29 CFR Part 75. In determining whether the applications should be approved or denied, the Secretary will take into consideration the following factors:

1. The overall employment and unemployment situation in the local area in which the proposed facility will be located.

2. Employment trends in the same industry in the local area.

3. The potential effect of the new facility upon the local labor market, with particular emphasis upon its potential impact upon competitive enterprises in the same area.

4. The competitive effect upon other facilities in the same industry located in other areas (where such competition is a factor).

5. In the case of applications involving the establishment of branch plants or facilities, the potential effect of such new facilities on other existing plants or facilities operated by the applicant.

All persons wishing to bring to the attention of the Secretary of Labor any information pertinent to the determinations which must be made regarding these applications are invited to submit such information in writing within 2 weeks of publication of this notice to: Deputy Assistant Secretary for Employment and Training, 601 D Street NW., Washington, D.C. 20213.

Signed at Washington, D.C., this 14th day of November 1978.

ERNEST G. GREEN,
Assistant Secretary for Employment and Training.

APPLICATIONS RECEIVED DURING THE WEEK ENDING NOVEMBER 9, 1978

Name of Applicant, and Location of Enterprise, and Principal Product or Activity

Huntington Industries, Huntington, Utah; extraction of fossil resins from coal.
Bluefield Motel Corp., Bluefield W.V.; motel.
Futura Color Corp., Ringgold, Ga.; manufacture of dyeing carpet yarn.
Hallmark Plastics, Inc., Acworth, Ga.; manufacture counter tops.
River City Hotel Joint Venture, Paducah, Ky.; hotel.
J. E. Messenger Co., Inc., Newport, Ark.; manufacture of electrical wire and cordage.
Miller Manufacturing Co., Stratton, Nebr.; manufacture farm equipment.

[FR Doc. 78-32054 Filed 11-16-78; 8:45 am]

[4510-26-M]

Occupational Safety and Health Administration

[V-78-11]

FIRESTONE PLASTICS CO.

Application for variance

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of application for variance.

SUMMARY: This notice announces the application of Firestones Plastics Co. for a variance from the standard prescribed in 29 CFR 1910.1017 (g)(1) and (g)(4)(v) concerning the provision of respirators for employees exposed to vinyl chloride.

DATES: The last date for interested persons to submit comments is December 18, 1978. The last date for affected employers and employees to request a hearing on the application is December 18, 1978.

ADDRESS: Send comments or requests for a hearing to: Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., Room N-3668, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT:

Mr. James J. Concannon, Director, Office of Variance Determination at the above address, telephone 202-523-7121, or the following Regional and Area Offices:

U.S. Department of Labor, Occupational Safety and Health Administration, Gateway Building, Suite 2100, 3535 Market Street, Philadelphia, Pa. 19104.

U.S. Department of Labor, Occupational Safety and Health Administration, Willian J. Green Jr., Federal Building, 600 Arch Street, Room 4256, Philadelphia, Pa. 19106.

NOTICE OF APPLICATION

Notice is hereby given that Firestone Plastics Co., a division of the Firestone Tire & Rubber Co., Firestone Boulevard, Pottstown, Pa. 19464, has made application pursuant to section 6(d) of the Occupational Safety and Health Act of 1970 (84 Stat. 1596; 29 U.S.C. 655) and 29 CFR 1905.11 for a variance from the requirements prescribed in 29 CFR 1910.1017(g)(4)(v) which specifies the types of respirators which are appropriate for use in atmospheric concentrations of vinyl chloride not exceeding 25 ppm.

Section 1910.1017(g)(1) requires the employer to provide and assure use of respirators which meet the requirement of the standard. Although not specifically requested in the application, a variance from this paragraph would also be required.

The address of the place of employment that will be affected by the application is:

Firestone Plastics Co., Division of Firestone Tire & Rubber Co., Firestone Boulevard, Pottstown, Pa. 19464.

The applicant certifies that employees who would be affected by the variance have been notified of the application by giving a copy of it to their authorized employee representative, and by posting a copy at all places where notices to employees are normally posted. Employees have also been informed of their right to petition the Assistant Secretary for a hearing.

The applicant has requested a variance to allow it to provide and assure the use of a MESA/NIOSH approved half facepiece, breathing tube, canister combination respirator, all components of which shall be the product of one manufacturer, at atmospheric concentrations not exceeding 25 ppm VCM only under the following conditions:

A. Firestone shall initially and annually perform accepted quantitative respiratory fit tests on each employee who elects to use the above-described respirator.

B. Each employee shall be permitted to use and to continue to use said half facepiece, breathing tube, canister combination respirator for exposures not exceeding 25 ppm VCM only if the results of the quantitative respiratory fit tests, with respect to each employee, indicate a "Protection Factor" of 100 (the "Protection Factor" is defined as the ratio of the contaminant concentrations outside and inside the respirator);

C. If the results of the initial or annual quantitative respiratory fit tests indicate a "Protection Factor" of less than 100 for an employee, such employee shall be restricted to use a respiratory protective unit approved under § 1910.1017(g)(4);

D. Employees may elect, at their discretion, to wear full facepiece, gas mask style respirators or a respiratory protection unit approved under § 1910.1017(g)(4) in lieu of the above-referred to half facepiece respiratory unit for exposures not exceeding 25 ppm VCM;

E. Firestone's employees shall be instructed to notify Firestone of changed facial characteristics which occur, for example, as a result of the performance of extensive dental work or the growth of a beard and, in such event, Firestone, at regularly scheduled intervals, shall conduct quantitative respiratory fit tests to determine the employee's continued eligibility to use a half facepiece, breathing tube, canister combination respirator unit for exposures not exceeding 25 ppm VCM;

F. The quantitative respiratory fit tests shall be performed in accordance with accepted quantitative respirator fit test procedures by persons trained in and competent to perform such tests;

G. The results of all quantitative tests performed by Firestone will be recorded and maintained on file and, upon reasonable request, will be produced for inspection by a compliance safety and health officer conducting an inspection at Firestone's facilities;

H. Proper maintenance, care and inspection of all respirators and proper training of respirator wearers will be systematically accomplished by means of a program conforming to the requirements of 29 CFR 1910.134.

Firestone contends that use of a MESA/NIOSH approved half facepiece respirator only under the conditions specified above will provide employment to its employees which is as safe and healthful as that which would prevail if it complied with 29 CFR 1910.1017(g)(4)(v), and thus, OSHA should grant Firestone a variance under section 6(d) of the Act.

The applicant states that on August 31, 1978, the alternative respirator system (half facepiece, breathing tube, canister) was submitted to NIOSH for testing. Until the test results are received, no further decision can be made on the merits of the application. Firestone also has not submitted a detailed procedure for a quantitative fit testing. This information is also required in order to make a decision on the merits of the application.

Signed at Washington, D.C., this 1st day of November 1978.

EULA BINGHAM,
Assistant Secretary of Labor.

[FR Doc. 78-32291 Filed 11-16-78; 8:45 am]

[4510-26-M]

[V-78-12]

GENERAL MOTORS CORP. AND CHRYSLER CORP.

Application for Variance and Grant of Interim Order

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTIONS: (1) Notice of applications for variances and interim orders; (2) Grant of interim orders.

SUMMARY: This notice announces the applications of General Motors Corp. and Chrysler Corp. for variances and interim orders pending a decision on the applications for variances from the standard prescribed in 29 CFR 1910.1018 concerning Inorganic Arsenic. It also announces the granting of interim orders until a decision is rendered on the applications for variances.

DATES: The effective date of the interim orders is November 17, 1978. The last date for interested persons to submit comments is December 18, 1978. The last date for affected employers and employees to request a hearing on the applications is December 18, 1978.

ADDRESS: Send comments or requests for a hearing to: Office of variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., Room N-3668, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT:

Mr. James J. Concannon, Director, Office of Variance Determination at the above address, telephone: 202-523-7121.

or the following Regional and Area Offices:

U.S. Department of Labor, Occupational Safety and Health Administration, JFK Federal Building, Room 1804, Government Center, Boston, Mass. 02203.
U.S. Department of Labor, Occupational Safety and Health Administration, 400-2 Totten Pond Road, 2d Floor, Waltham, Mass. 02154.
U.S. Department of Labor, Occupational Safety and Health Administration, 1515 Broadway (1 Astor Plaza), Room 3445, New York, N.Y. 10036.
U.S. Department of Labor, Occupational Safety and Health Administration, 200 Mamaroneck Avenue, Room 302, White Plains, N.Y. 10601.
U.S. Department of Labor, Occupational Safety and Health Administration, 2E Blackwell Street, Dover, N.J. 07801.
U.S. Department of Labor, Occupational Safety and Health Administration, Gateway Building, Suite 2100, 3535 Market Street, Philadelphia, Pa. 19104.
U.S. Department of Labor, Occupational Safety and Health Administration, Federal Building, Room 1110, Charles Center, 31 Hopkins Plaza, Baltimore, Md. 21201.
U.S. Department of Labor, Occupational Safety and Health Administration, Federal Office Building, Room 3007, 844 King Street, Wilmington, Del. 19801.
U.S. Department of Labor, Occupational Safety and Health Administration, 1375 Peachtree Street NE., Suite 587, Atlanta, Ga. 30309.
U.S. Department of Labor, Occupational Safety and Health Administration, Building 10, Suite 33, La Vista Perimeter Office Park, Tucker, Ga. 30084.
U.S. Department of Labor, Occupational Safety and Health Administration, 32d Floor, Room 3263, 230 South Dearborn Street, Chicago, Ill. 60604.
U.S. Department of Labor, Occupational Safety and Health Administration, 344 Smoke Tree Business Park, North Aurora, Ill. 60542.
U.S. Department of Labor, Occupational Safety and Health Administration, 231 West Lafayette, Room 628, Detroit, Mich. 48226.
U.S. Department of Labor, Occupational Safety and Health Administration, Clark Building, Room 400, 633 West Wisconsin Avenue, Milwaukee, Wis. 53203.
U.S. Department of Labor, Occupational Safety and Health Administration, Federal Office Building, Room 4028, 550 Main Street, Cincinnati, Ohio 45202.
U.S. Department of Labor, Occupational Safety and Health Administration, Federal Office Building, Room 847, 1240 East Ninth Street, Cleveland, Ohio 44199.
U.S. Department of Labor, Occupational Safety and Health Administration, 555 Griffin Square Building, Room 602, Dallas, Tex. 75202.
U.S. Department of Labor, Occupational Safety and Health Administration, 1425 West Pioneer Drive, Irving, Tex. 75061.
U.S. Department of Labor, Occupational Safety and Health Administration, 50 Penn Place, Suite 408, Oklahoma City, Okla. 73118.
U.S. Department of Labor, Occupational Safety and Health Administration, 911 Walnut Street, Room 3000, Kansas City, Mo. 64106.
U.S. Department of Labor, Occupational Safety and Health Administration, 210 North 12th Boulevard, Room 520, St. Louis, Mo. 63101.
U.S. Department of Labor, Occupational Safety and Health Administration, 1150 Grand Avenue, 6th Floor, 12 Grand Building, Kansas City, Mo. 64106.
U.S. Department of Labor, Occupational Safety and Health Administration, 9470 Federal Building, 450 Golden Gate Avenue, P.O. Box 36017, San Francisco, Calif. 94102.
U.S. Department of Labor, Occupational Safety and Health Administration, 211 Main Street, San Francisco, Calif. 94105.
U.S. Department of Labor, Occupational Safety and Health Administration, 400 Oceangate, Suite 530, Long Beach, Calif. 90802.

NOTICE OF APPLICATION

Notice is hereby given that General Motors Corp., 3044 West Grand Boulevard, Detroit, Mich. 48202, and Chrysler Corp., P.O. Box 1919, Detroit, Mich. 48288, have made applications pursuant to section 6(d) of the Occupational Safety and Health Act of 1970 (84 Stat. 1596; 29 U.S.C. 655) and 29 CFR 1905.11 for variances, and interim orders pending a decision on the applications for variances, from the standards prescribed in various paragraphs of 29 CFR 1910.1018 concerning inorganic arsenic.

The addresses of the places of employment that will be affected by the applications are as follows:

GENERAL MOTORS CORP.

FISHER BODY DIVISION

Detroit Fleetwood, West Fort and West End, Detroit, Mich.
Flint Plant, 4300 South Saginaw Street, Flint, Mich.

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Lansing, 401 Verlinden Avenue, Lansing, Mich.
Pontiac, 900 Baldwin Avenue, Pontiac, Mich.
Detroit Control Plant, 6051 Hastings Street, Detroit, Mich.

GENERAL MOTORS ASSEMBLY DIVISION PLANTS

Arlington, 2525 East Abram Street, Arlington, Tex.
Baltimore, 2122 Broening Highway, Baltimore, Md.
Doraville, 3900 Motors Industrial Way, Doraville, Ga.
Fairfax, 100 Kindelberger Road, Kansas City, Kans.
Framingham, Western Avenue, Framingham, Mass.
Fremont, 45500 Fremont Boulevard, Fremont, Calif.
Janesville, 1000 Industrial Drive, Janesville, Wis.
Lakewood, McDonough and Sawtell, Atlanta, Ga.
Leeds, 6817 Stadium Drive, Kansas City, Mo.
Linden 1016 West Edgar Road, Linden, N.J.
Lordstown, 1600 Hallock Young Road, Lordstown, Ohio.
Norwood, 4726 Smith Road, Norwood, Ohio.
Oklahoma City, 7447 Southeast 74th Street, Oklahoma City, Okla.
St. Louis, 3809 North Union Boulevard, St. Louis, Mo.
Southgate, 2700 Tweedy Boulevard, Southgate, Calif.
Tarrytown, Beekman Avenue, Tarrytown, N.Y.
Van Nuys, 8000 Van Nuys Boulevard, Van Nuys, Calif.
Willow Run, 2625 Tyler Road, Ypsilanti, Mich.
Wilmington, Boxwood Road, Wilmington, Del.

STAMPING AND ASSEMBLY DIVISION

Belvidere Assembly Plant, Chrysler Drive, Belvidere, Ill.
Hamtramck Assembly Plant, 7900 Jos. Campau Avenue, Hamtramck, Mich.
Jefferson Assembly Plant, 12200 East Jefferson Avenue, P.O. Box 1658, Detroit, Mich.
Lynch Road Assembly Plant, 6334 Lynch Road, P.O. Box 1518, Detroit, Mich.
Missouri Truck Assembly Plant, 1050 Dodge Drive, Fenton, Mo.
Newark Assembly Plant, 550 South College Street, P.O. Box 179, Newark, Del.
St. Louis Assembly Plant, 1001 North Highway Drive, Fenton, Mo.
Warren Recreational Vehicle Plant, 6600 East Nine Mile Road, Warren, Mich.
Warren Truck Assembly Plant, 21500 Mound Road, Detroit, Mich.
Warren Truck Special Equipment Center, 21900 Hoover Road, Warren, Mich.

In addition, the applicants have asked to have these variances apply to any future facilities which would have solder grinding booths which operate in the same manner.

The applicants certify that employees who would be affected by the variances have been notified of the applications by giving copies of them to their authorized employee representatives, and by posting copies at all places where notices to employees are normally posted. Employees have also been informed of their right to petition the Assistant Secretary for a hearing.

Regarding the merits of the applications, the applicants contend the method they propose to use will provide a place of employment as safe as that required by § 1910.1018 which contains regulations concerning Inorganic Arsenic.

The applicants' facilities contain solder grinding booths where successive employees use successively finer abrasives to grind solder from car bodies as they pass through the booth. According to the material specifications, this solder contains up to 0.6 percent arsenic. High velocity particles of solder dust containing arsenic are thrown into the atmosphere of the booth by the grinding operation. The booths are operated under negative pressure with an in-draft of a minimum of 150 f/m at all openings.

Specifically, the applicants request variances from several paragraphs of the inorganic arsenic standards, as follows:

Section 1910.1018(e) contains requirements concerning exposure monitoring.

Section 1910.1018(e)(1)(ii) defines employee exposure to inorganic arsenic as the exposure which would occur if the employee were not wearing a respirator.

Section 1910.1018(e)(1)(iii) requires collection of full shift (at least 7 continuous hours) personal sampling including at least one sample for each shift for each job classification in each work area.

The applicants state that past monitoring has shown, with a confidence level of more than 99 percent, that the level of airborne inorganic arsenic in the booths does not exceed 20,000 $\mu g/M^3$. The operation of the booths is on a continuous assembly-line basis, with very little fluctuation in the dust levels within any of the shifts. For these reasons the applicants state that monitoring the levels in the booths and taking full-shift personal samples would serve no useful purpose. The employees in the booths are required to wear approved positive pressure air-supplied hoods which are listed in § 1910.1018(h)(2) table I for concentrations of inorganic arsenic not greater than 20,000 $\mu g/M^3$. The applicants state that there are no problems with fit, comfort or employee acceptance with these respirators, and that their proper use is strictly enforced. Therefore, they state that the only monitoring which is meaningful is inside the respirator in the breathing zone of the employee. The applicants also state that their blood lead monitoring program serves as an additional check on the proper functioning of the air-supplied hoods.

Section 1910.1018(g)(1) requires the institution of engineering and work practice controls to reduce exposures to or below the permissible exposure limits, except to the extent that the employer can establish that such controls are not feasible. Paragraph (g)(2) requires the establishment and implementation of a written program to reduce exposure. The applicants request variances from the requirement for using engineering and work practice controls to reduce employee exposure in the solder grinding booths and from the requirement to develop written compliance programs. The applicants state that the positive pressure air-supplied hoods and the respirator programs will protect their employees from exposure to inorganic arsenic while in the solder grinding booths, and that the negative pressure of the booths and the hygiene requirements will keep the airborne arsenic from being carried to other areas of the plants. Therefore, the applicants state that, without regard to the feasibility of engineering or work practive controls, they are providing a safe and healthful place of employment to their employees.

Section 1910.1018(h)(2) contains the requirements for respirator selection, including a table which lists the required respirator for various concentrations of air-borne inorganic arsenic. The applicants request variances from this section to permit supervisors to wear half facepiece filter-type respirators approved for toxic dust, with a high-efficiency filter if necessary. Although these respirators are accepted in Table I of the standard only for concentrations of inorganic arsenic not greater than 100 $\mu g/M^3$, the applicants state that the time the supervisors spend in the booth is minimal (1-3 minutes at a time, not exceeding 15 minutes per shift and 1 hour per week) and, therefore, the supervisors' exposure would be within the permitted 8 hour time-weighted average. The applicants also state that supervisors would be required to wear the positive pressure air-supplied hoods if they are in the booth for an extended period of time.

Section 1910.1018(m)(3)(i) requires that employers provide readily accessible lunchroom with temperature controlled, positive pressure, filtered air supply for employees working in regulated areas. The applicants state that the negative pressure in the booths keeps the airborne inorganic arsenic from spreading to other areas of the plant. Employees are forbidden to eat in the booths, and are required to blow dust from their clothing, remove hoods and gloves and wash prior to eating. The applicants argue that the negative pressure of the booths and the hygiene requirements make it safe for employees to eat in the existing lunchrooms throughout the plant. A separate lunchrooms with temperature controlled filtered air would provide no additional protection to the employees, according to the applicants.

Section 1910.1018(m)(5) requires that employers provide and assure the use of facilities for employees working in regulated areas where exposure (without the use of respirators) exceeds 100 $\mu g/M^3$ to vacuum their protective clothing and clean or change shoes before entering change rooms, lunchrooms or showers. The applicants propose instead to provide an air ring to blow the solder dust from the clothing before the employees leave the booth. The dust is contained within the atmosphere of the booth. The applicants state that vacuuming properly requires considerable time and effort to pass the nozzle over all parts of the clothing, while blowing the dust off the clothing with an air ring can be accomplished quickly and easily. Thus they state that the use of compressed air to blow the dust off is likely to be more effective than vacuuming.

Section 1910.1018(n) requires physical examinations of employees exposed above the action level without regard to the use of respirators, either annually or semi-annually, depending on length and level of exposure. These examinations must include, among other things, a chest X-ray. The applicants state that the use of positive pressure, air-supplied hoods provides such a level of protection that the employees' exposure is well below the action level. Chrysler Corporation states that there is, therefore, no need for medical examinations for these employees. General Motors Corp. states that there is no need for semi-annual medical examinations, but that they will provide annual medical examinations to include interval medical history, audiometric examination, pulmonary function test, 14×17 chest X-ray, blood hemoglobin determination, and blood hemocrit determination. Both companies argue that the needless use of chest X-rays provides greater risk to employees than does the very low level of inorganic arsenic to which employees protected by the hoods are exposed. Chrysler Corp. requests a variance from the requirement for chest X-rays. General Motors Corp. requests a variance from the requirement for semi-annual chest X-rays.

In addition to the above, the applicants state that they will comply with the training requirements of § 1910.1018(o) concerning inorganic arsenic and § 1910.134 concerning respirators, and with maintenance, inspection, fitting and storage requirements for the hoods as contained in § 1910.134. Employees in the solder grinding booths will receive blood-lead monitoring on a bimonthly basis. This will serve as a check on the efficacy of the hoods, since the solder also contains lead.

GRANT OF INTERIM ORDER

The applicants also requested interim orders to be effective until a decision is made on the applications for variances.

The solder which the applicants are using contains lead as well as arsenic. The new standard on lead has just been published in the FEDERAL REGISTER. Since the same subjects will be raised by the applicants in respect to the lead standard, it has been determined that an interim order is necessary to permit the employers to submit applications for variances from the lead standard and to consolidate the requests.

Therefore it is ordered, pursuant to the authority in section 6(d) of the Occupational Safety and Health Act of 1970, in 29 CFR 1905.11(c) and in Secretary of Labor's Order No. 8-76 (41 FR 25059) that General Motors Corp. and Chrysler Corp. be, and they are hereby, authorized to operate as follows for a limited period of time to permit the filing of applications for variances from the new lead standard:

1. Employees in the grinding booth shall be supplied with and required to wear individually issued air-supplied hoods approved to 20,000 μ/M^3 of inorganic arsenic;

2. Monitoring shall be done inside the hood in the breathing zone of the employee. Monitoring in the booth and full-shift sampling are not required at this time;

3. The development and implementation of a written program for using engineering and administrative controls to reduce exposure is not required at this time;

4. The supervisors shall be permitted to use half facepiece filter-type respirators approved for toxic dusts when they enter the grinding booths, so long as their exposure time remains minimal (1-3 minutes at a time, not exceeding 15 minutes per shift and 1 hour per week). If they are in the booth for an extended period of time they shall be required to wear positive pressure air-supplied hoods;

5. Employees shall be forbidden to eat in the grinding booths, and shall be required to blow dust from their clothing, remove hoods and gloves, and wash prior to eating. However, readily accessible temperature controled, positive pressure, filtered air lunchrooms are not required at this time;

6. Employees leaving the grinding booth shall be required to remove dust from their clothing by vacuuming or blowing with compressed air; and

7. Medical examinations of employees working in the solder grinding booths are not required at this time.

General Motors Corp. and Chrysler Corp. shall give notice of this interim order to employees affected thereby by the same means required to be used to inform them of the applications for a variance.

This interim order shall become effective upon publication and shall remain in effect, unless circumstances change, until January 8, 1979.

Signed at Washington, D.C. this 13th day of November, 1978.

EULA BINGHAM,
Assistant Secretary of Labor.

[FR Doc. 78-32292 Filed 11-16-78; 8:45 am]

[4510-26-M]

ADVISORY COMMITTEE ON CONSTRUCTION SAFETY AND HEALTH

Appointment of Members

This is to announce the appointment of members to the Advisory Committee on Construction Safety and Health, established under section 107(e)(1) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Williams-Steiger Occupational Safety and Health Act of 1970 (29 U.S.C. 656).

The membership of the Committee and the categories represented are as follows:

EMPLOYEE

Joe A. Adam, Director, Department of Safety and Health, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry, 901 Massachusetts Avenue NW., Washington, D.C. 20001.
Melvin J. Boyle, Assistant to the International Secretary, International Brotherhood of Electrical Workers, 1125 Fifteenth Street NW., Washington, D.C. 20005.
Robert E. P. Cooney, General Vice President, International Association of Bridge, Structural and Ornamental Iron Workers, 400 First Street NW., Washington, D.C. 20001.
Robert Farrell, Safety Director, International Union of Operating Engineers, 6200 Joliet Road, Countryside, Ill. 60525.
Roy Steinfurth, Administrator, Health Hazard Programs, International Association of Heat and Frost Insulators and Asbestos Workers, 1300 Connecticut Avenue NW., Room 505, Washington, D.C. 20036.

EMPLOYER

Harry Carr, President, Chief Executive, H. Carr & Sons, Inc., 85 Aldrich Street, Providence, R.I. 02905.
Steven Cooper, Director, Safety and Health, Stanley Structures, Inc., 5801 Pecos Street, Denver, Colo. 80221.
Charles H. Hart, Associate Director of Services, Codes and Standards, National Electrical Contractors Association, 7315 Wisconsin Avenue, Washington, D.C. 20014.
Carl Melin, Vice President, Industrial Relations, Chicago Bridge & Iron Co., 800 Jorie Boulevard, Oakbrook, Ill. 60521.
James Packenham, Safety Manager, Ebasco Services, Inc., 2 Rector Street, New York, N.Y. 10006.

STATE

E. I. "Bud" Malone, Commissioner, Department of Labor and Industry, State of Minnesota, Space Center Building, 5th Floor, 444 Lafayette Road, St. Paul, Minn. 55101.

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Fred L. Ottoboni, Coordinating Engineer, State of California, Department of Health, 2151 Berkeley Way, Berkeley, Calif. 94704.

FEDERAL

Bruce A. Hollett, Senior Industrial Hygienist, National Institute for Occupational Safety and Health, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

PUBLIC

Gene Canham, General Industry Training Officer, Industrial Commission of Arizona, 18 Vah Ki Road, Valley Farms, Ariz. 85291.

William J. Foy, Manager, Loss Control Services, National Loss Control Service Corp., 8316 Arlington Boulevard, Fairfax, Va. 22030.

Messrs. Adam, Canham, Carr, Cooper, Foy, Hart, Melin, Packenham and Steinfurth are new members; all others are reappointments.

The members were selected on the basis of their experience and competence in the field of construction safety and health and will serve until June 30, 1980. Mr. E. I. Malone will serve as Committee Chairman.

Signed at Washington, D.C. this 8th day of November 1978.

RAY MARSHALL,
Secretary of Labor.

[FR Doc. 78-32293 Filed 11-16-78; 8:45 am]

[4510-26-M]

ADVISORY COMMITTEE ON CONSTRUCTION SAFETY AND HEALTH

Meeting

Notice is hereby given that the Advisory Committee on Construction Safety and Health, established under section 107(e)(1) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) will meet on Tuesday, December 5 and Wednesday, December 6, 1978 in Room C-5515, Seminar Room No. 6. The meeting is open to the public and will begin at 9 a.m.

The agenda for this meeting will include the swearing in of committee members, a review of OSHA activities as they relate to the construction industry, discussion of the development of standards and general compliance activities as they relate to the safety and health of construction workers.

Written data, views, or arguments may be submitted, preferably with 20 copies, to the Division of Consumer Affairs. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting.

Anyone wishing to make an oral presentation should notify the Division of Consumer Affairs before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation.

Oral presentations will be scheduled at the discretion of the Chairman, depending on the extent to which time permits. Communications may be mailed to:

Ken Hunt, Office of Public and Consumer Affairs, U.S. Department of Labor-OSHA, Third Street and Constitution Avenue NW., Room N-3635, Washington, D.C. 20210, phone: 202-523-8024.

Materials provided to members of the Committee are available for inspection and copying at the above address.

Signed at Washington, D.C., this 9th day of November 1978.

EULA BINGHAM,
Assistant Secretary of Labor.

[FR Doc. 78-32294 Filed 11-16-78; 8:45 am]

[4510-28-M]

Office of the Secretary

INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY FOR WORKERS ADJUSTMENT ASSISTANCE

Correction

In the Appendix to FR Doc. 78-29672 published in FEDERAL REGISTER of October 20, 1978, on pages 79060 and 79061 is corrected by changing the location of the Niffty Creations, Inc. (workers), appearing on line 1 of the schedule on page 79061 from Lindenhurst, N.J., to Lindenhurst, N.Y.

Signed at Washington, D.C., this 7th day of November 1978.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 78-32459 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-4085 through 4104, 4209 through 4212]

Sugar Corp. of Puerto Rico

CERTIFICATION REGARDING ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

	Facility
TA-W-4085	Finca Matos Palmas
TA-W-4086	Finca Catalana-Huguerito
TA-W-4087	Finca La Luisa
TA-W-4088	Finca Ciclon
TA-W-4089	Finca Celba
TA-W-4090	Finca Cibuco
TA-W-4091	Finca San Cristobal
TA-W-4092	Finca Paraiso
TA-W-4093	Finca Monserrate
TA-W-4094	Finca Vapor
TA-W-4095	Loiza Admin. Office
TA-W-4096	Finca Rio Grande
TA-W-4097	Finca Palmarejo
TA-W-4097-a	Finca Merines
TA-W-4098	Finca Buena Vista
TA-W-4098-a	Finca San Luis
TA-W-4099	Finca Virginia
TA-W-4099-a	Finca Santa Catalina
TA-W-4100	Finca Mini-Mini
TA-W-4100-a	Finca Delores
TA-W-4101	Taller Reunion
TA-W-4102	Taller Deseada
TA-W-4103	Taller Isidora
TA-W-4104	Taller Destino
TA-W-4209	Taller Las Claras
TA-W-4210	Taller Central
TA-W-4211	Toa-San Vicente Admin. Office
TA-W-4212	Taller Delores

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4085 through 4104 and 4209 through 4212: investigations regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigations were initiated on August 22, 1978 in response to worker petitions received on August 21, 1978 which were filed by the Sugar Corp. of Puerto Rico on behalf of workers and former workers producing sugarcane at several farms, tractor shops and administrative offices in Puerto Rico.[1]

The Notices of Investigation for TA-W-4085 through 4104 were published in the FEDERAL REGISTER on September 15, 1978 (43 FR 39458). The Notices of Investigation for TA-W-4209 through 4212 were published in the FEDERAL REGISTER on October 10, 1978 (43 FR 46591). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of the Sugar Corp. of Puerto Rico, the U.S. Department of Commerce, the U.S. Department of Agriculture, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. The investigation has revealed that all of the requirements have been met.

U.S. imports of cane and beet sugar in 1975 totaled 3.9 million short tons and increased in 1976 to 4.7 million short tons and to 6.1 million short tons in 1977. The ratio of imports to domestic production increased from 59 percent in 1975, to 66 percent in 1976 and 96 percent in 1977.

Prior to 1974, imports of sugar were regulated by statute. Since the expiration of the Sugar Act on December 31, 1974, imported sugar entering the United States has not been subject to quota restrictions. As a result, domestic prices of sugar have tended to approach world sugar prices.

Sugar prices have dropped from 1974 levels of 57.3 cents per pound, to the January 1976 price of 11.5 cents per pound and 11.0 cents per pound in 1977. Domestic sugar growers have been selling their products at prices below the cost of production. Although price supports were instituted in 1977 raising the price paid to domestic producers, that price is still below the Sugar Corp. of Puerto Rico's cost of production. This disparity in cost of production and price of sugar has caused the company to substantially contract its sugar production operations.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with sugar cane produced at the Sugar Corp. of Puerto Rico locations listed in the appendix contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers at the Sugar Corp. of Puerto Rico listed in the appendix engaged in employment related to the production of sugar cane who became totally or partially separated from employment on or after the respective impact dates and before the respective termination dates are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974. All workers totally or partially separated after the respective termination dates are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 13th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[1]Petitions TA-W-4209-4212 were received on September 25, 1978 and investigations were initiated on September 26, 1978.

	Facility	Impact date	Termination date
TA-W:			
4085	Finca Matos Palmas	Aug. 17, 1977	Aug. 31, 1978.
4086	Finca Catalana-Huguerito	do	Do.
4087	Finca La Luisa	do	Do.
4088	Finca Ciclon	do	Do.
4089	Finca Celba	do	July 31, 1978.
4090	Finca Cibuco	do	Aug. 31, 1978.
4091	Finca San Cristobal	do	Jan. 31, 1978.
4092	Finca Paraiso	do	Do.
4093	Finca Monserrate	do	Do.
4094	Finca Vapor	do	Do.
4095	Loiza Administrative Office	do	Aug. 31, 1978.
4096	Finca Rio Grande	do	Do.
4097	Finca Palmarejo	do	Do.
4097-a	Finca Merines	do	Do.
4098	Finca Buena Vista	do	Do.
4098-a	Finca San Luis	do	Do.
4099	Finca Virginia	do	Do.
4099-a	Finca Santa Catalina	do	Do.
4100	Finca Mini-Mini	do	Do.
4100-a	Finca Delores	do	Do.
4101	Taller Reunion	do	None.
4102	Taller Deseada	do	Do.
4103	Taller Isidora	do	Do.
4104	Taller Destino	do	Do.
4209	Taller Las Claras	Sept. 3, 1978	Do.
4210	Taller Central	do	Do.
4211	Toa-San Vicente Administration Office	Aug. 1, 1978	Do.
4212	Taller Delores	Sept. 21, 1977	Do.

[FR Doc. 78-32461 Filed 11-16-78; 8:45 am]

[4510-28-M]

INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 1, 1978.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 1, 1978.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 6th day of November 1978.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

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APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Brody, Inc. of DeKalb (ILGWU)	DeKalb, Ill	Nov. 1, 1978	Oct. 30, 1978	TA-W-4,329	Women's fall and spring coats.
Genesco, Inc., General Shoe Co. Div., Danville (company).	Danville, Ky	Nov. 2, 1978	do	TA-W-4,330	Manufacturing of shoes.
Genesco, Inc., General Shoe Co., Div., Fulton (company).	Fulton, Miss	do	do	TA-W-4,331	Do.
Genesco, Inc., General Shoe Co., Div., Iuka (company).	Iuka, Miss	do	do	TA-W-4,332	Do.
Genesco, Inc., General Shoe Co., Div., Ripley (company).	Ripley, Miss	do	do	TA-W-4,333	Do.
Genesco, Inc., General Shoe Co., Div., 56th Ave. Rubber Mill (company).	Nashville, Tenn	do	do	TA-W-4,334	Shoe components.
Genesco, Inc., General Shoe Co., Div., Chapel Hill Sole Cutting (company).	Chapel Hill, Tenn	do	do	TA-W-4,335	Do.
Genesco, Inc., General Shoe Co., Div., General Adhesives and Chemical Co. (company).	Nashville, Tenn	do	do	TA-W-4,336	Do.
Genesco, Inc., General Shoe Co., Div., Southern Sole (company).	do	do	do	TA-W-4,337	Do.
Genesco, Inc., General Shoe Co., Div., Tullahoma Capitol Products (company).	Tullahoma, Tenn	do	do	TA-W-4,338	Do.
Genesco, Inc., General Shoe Co., Div., Dominion Shoe Co. (warehouse) (company).	Charlotte, N.C	do	do	TA-W-4,339	Distribution and warehousing of footwear.
Genesco, Inc., General Shoe Co., Div., Fulton (warehouse) (company).	Fulton, Miss	do	do	TA-W-4,340	Do.
Genesco, Inc., General Shoe Co., Div., Genstar (warehouse) (company).	Nashville, Tenn	do	do	TA-W-4,341	Do.
Genesco, Inc., General Shoe Co., Div., Huntsville (warehouse) (company).	Huntsville, Ala	do	do	TA-W-4,342	Do.
Genesco, Inc., General Shoe Co., Div., J & M (warehouse) (company).	Nashville, Tenn	do	do	TA-W-4,343	Do.
Genesco, Inc., General Shoe Co., Div., Customer Service (warehouse) (company).	do	do	do	TA-W-4,344	Do.
Genesco, Inc., General Shoe Co., Div., Fayetteville (warehouse) (company).	Fayetteville, Tenn	do	do	TA-W-4,345	Do.
Genesco, Inc., General Shoe Co., Div., 63d Ave. (warehouse) (company).	Nashville, Tenn	do	do	TA-W-4,346	Do.
Genesco, Inc., General Shoe Co., Div., Main Street General Maintenance (company).	do	do	do	TA-W-4,347	General maintenance for equipment.
Na-Lor Manufacturing Co. (Knit Goods Union ILGWU).	Philadelphia, Pa	do	do	TA-W-4,348	Men's sweaters from man-made and natural yarns.
Pembroke, Inc. (company)	Egg Harbor City, N.J.	do	Oct. 31, 1978	TA-W-4,349	Tailored top coats for the military.
Rockwell International Admiral Group (workers).	Rosemont, Ill	Nov. 3, 1978	Oct. 20, 1978	TA-W-4,350	Sales office, warehouse (or distribution) and electronic service center.
D. Seidmann's Sons, Inc. (Knit Good Union, ILGWU).	Philadelphia, Pa	Nov. 2, 1978	Oct. 31, 1978	TA-W-4,351	Knit scarves and knit headwear.

[FR Doc. 78-32460 Filed 11-16-78; 8:45 am]

[4510-28-M]

INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (the Act) and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separtion of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 1, 1978.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 1, 1978.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C., this 7th day of November 1978.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
GTE Sylvania (IUE)	Batavia, N.Y	Nov. 3, 1978	Nov. 2, 1978	TA-W-4,352	Parts for television sets.
Northampton Steel Corp. (workers)	Easton, Pa	do	Nov. 19, 1978	TA-W-4,353	Fabricated structural steel.
Teledyne Wah Chang, Albany Division of Teledyne, Inc. (USWA).	Albany, Oreg	do	Nov. 2, 1978	TA-W-4,354	Separation, reduction, and fabrication of zirconium, hafnium, columbium, titanium, and other rare metals.
Tennessee Leather Products, Inc. (workers).	LaFollette, Tenn	Nov. 6, 1978	Nov. 3, 1978	TA-W-4,355	Leather and rawhide coats.
Voyager Sportswear, Inc. (company)	New Bedford, Mass	do	Nov. 2, 1978	TA-W-4,356	Children's sportswear.
Washington Porcelain (workers)	Washington, N.J	do	Nov. 1, 1978	TA-W-4,357	Switch plates, castings, pouring cups, light fixtures, known as industrial porcelain.
Willoform Manufacturing Co., Inc. (Undergarment & Negligee Workers Union, ILGWU).	New York, N.Y	do	Nov. 2, 1978	TA-W-4,358	Brassieres and girdles.

[FR Doc. 78-32462 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-4037]

ARROW CO., DIVISION OF CLUETT, PEABODY & CO., INC., TROY, N.Y.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4037: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on August 7, 1978, in response to a worker petition received on July 17, 1978, which was filed by the Amalgamated Clothing & Textile Workers Union on behalf of workers and former workers producing men's dress shirts at the Troy, N.Y., plant of the Arrow Co., Division of Cluett, Peabody & Co., Inc.

The Notice of Investigation was published in the FEDERAL REGISTER on August 29, 1978 (43 FR 38635). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from the Arrow Co., its customers, the National Cotton Council of America, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of men's and boys woven dress and business shirts increased from 30,800,000 units in 1975 to 64,283,000 units in 1976, and to 64,446,000 units in 1977. U.S. imports increased to 34,127,000 units during the first 6 months of 1978 compared to 32,443,000 units for the same period in 1977.

The imports to domestic production ratio for men's and boys woven business and dress shirts increased from 36.2 percent in 1975 to 70.4 percent in 1976 and to 72.6 percent in 1977.

The Arrow Co. imported increasing quantities of both men's dress and men's sport shirts during 1976 and 1977. Company imports of men's sport shirts increased in the first 6 months of 1978 compared to the same period of 1977.

A survey of retail customers of the Arrow Co. revealed that several of these customers had reduced their purchases from the subject firm in 1977 compared to 1976 while increasing imports of men's dress and sport shirts from abroad. A number of these customers also reduced their purchases from the Arrow Co. in the first 6 months of 1978 compared to the first 6 months of 1977 while increasing direct imports or domestic purchases of shirts produced offshore.

On June 28, 1976, the Department of Labor certified workers at the Troy, N.Y., plant of the Arrow Co. as eligible to apply for trade adjustment assistance (TA-W-790). That certification remained in effect until June 28, 1978.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's dress shirts produced at the Troy, N.Y., plant of the Arrow Co., Division of Cluett, Peabody & Co., Inc., contributed importantly to the total or partial separation of workers at the plant. In accordance with the provisions of the Act, I make the following certification:

All workers at the Troy, N.Y., plant of the Arrow Co., Division of Cluett, Peabody & Co., Inc., who became totally or partially separated from employment on or after June 28, 1978, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 13th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-32444 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-4079 and TA-W-4080]

ARROW CO., DIVISION OF CLUETT, PEABODY & CO., INC., EVELETH AND VIRGINIA, MINN.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4079 and 4080: Investigations regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigations were initiated on August 18, 1978, in response to a worker petition received on August 18, 1978, which was filed by the Amalgamated Clothing & Textile Workers Union on behalf of workers and former workers producing men's dress shirts at the Eveleth I and Virginia, Minn., plants of the Arrow Co., Division of Cluett, Peabody & Co., Inc.

The Notices of Investigation were published in the FEDERAL REGISTER on September 1, 1978 (43 FR 39193-94). No public hearing was requested and none was held.

The information upon which the determinations were made was obtained principally from officials of the Arrow Co, its customers, the National Cotton Council of America, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act

must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That sales or production, or both, of the firm or appropriate subdivision have decreased absolutely.

Production, in quantity of shirt cuttings, at the Arrow Co.'s Eveleth I plant increased from 1976 to 1977 and continued to increase in the January-August period of 1978 compared to the same period of 1977.

Production, in quantity of stitched shirts, at the Arrow Co.'s Eveleth I and Virginia, Minn., plants increased from 1976 to 1977 and continued to increase in the first 8 months of 1978 compared to the same period of 1977.

Production, in quantity of finished shirts, at the Arrow Co.'s Virginia, Minn., plant increased from 1976 to 1977 and continued to increase in the January-August period of 1978 compared to the same period of 1977.

Separate sales data for the Eveleth I and Virginia, Minn., plants are not available since finished shirts from the plants are sent directly to the company's distribution center in Atlanta, Ga., and then sold to retailers with no record kept with respect to where they were produced. Only a small inventory is maintained. Because of this arrangement, production and sales for the Eveleth I and Virginia, Minn., plants are roughly equivalent.

CONCLUSION

After careful review, I determine that all workers at the Eveleth I (Eveleth, Minn.) and Virginia, Minn., plants of the Arrow Co., Division of Cluett, Peabody & Co., Inc., are denied eligibility to apply for trade adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 9th day of November 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-32445 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-4079a]

ARROW CO. DIVISION OF CLUETT, PEABODY & CO., INC., EVELETH, MINN.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-4079a: Expansion of investigation TA-W-4079 regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on August 18, 1978, in response to a worker petition received on August 18, 1978, which was filed by the Amalgamated Clothing & Textile Workers Union on behalf of workers and former workers producting men's dress shirts at the Eveleth I plant of the Arrow Co. Division of Cluett, Peabody & Co., Inc. This investigation was expanded to include workers engaged in employment related to the stitching and packaging of men's woven underwear at the Arrow Co.'s No. 2 plant in Eveleth, Minn. These workers were engaged in the same manufacturing operations at the Company's Eveleth I plant until October 31, 1977, when they were transferred to Eveleth II. A separate case number (TA-W-4079a) was established to distinguish this group of workers from other company employees producing men's dress shirts at the Eveleth I facility.

The Notice of Investigation was published in the FEDERAL REGISTER on September 1, 1978 (43 FR 39193-94). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of the Arrow Co., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations; or threat thereof, and to the absolute decline in sales or production.

The ratio of U.S. imports of men's and boys' nonknit underwear to domestic production did not exceed 1 percent during the 1973-77 period.

A survey of retail customers of the Arrow Co. revealed that in 1977 compared to 1976, and in the first 8 months of 1978 compared to the same period of 1977, none of the responding customers had decreased purchases of men's woven underwear from the subject firm while increasing imports of like articles. All purchasers of men's woven underwear from the Arrow Co. who responded to the Department's survey indicated that they had not imported this product during the first 8 months of 1978.

CONCLUSION

After careful review, I determine that all workers at the Eveleth II plant, located in Eveleth, Minn. of the Arrow Co. Division of Cluett, Peabody & Co., Inc., are denied eligibility to apply for adjustment assistance under Title II, Chapter 2, of the Trade Act of 1974.

Signed at Washington, D.C., this

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-32446 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-4023]

ASARCO, INC., TACOMA, WASH.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-4023: Investigation regarding certification of eligibility to apply for adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on August 2, 1978, in response to a worker petition received on July 27, 1978, which was filed by the United Steelworkers of America on behalf of workers and former workers smelting and refining copper at the Tacoma, Wash., plant of ASARCO, Inc.

The notice of investigation was published in the FEDERAL REGISTER on August 11, 1978 (43 FR 35759). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of ASARCO, Inc., the U.S. Department of Commerce, the U.S. International Trade Commission, the U.S. Department of the Interior, the American Metals Market, Metal Bulletin, Metals Week, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of refined copper increased from 147 thousand short tons in 1975 to 384 thousand short tons in 1976 and to 391 thousand short tons in 1977. Imports increased from 164 thousand short tons in the first half of 1977 to 327 thousand short tons in the first half of 1978. The imports to domestic production ratio increased from 8.6 percent in 1975 to 21 percent in 1976 and to 22.2 percent in 1977. The imports to domestic production ratio increased from 15 percent in the first half of 1977 to 35.9 percent for the same period in 1978.

Imports of copper are affected by the differential between the domestic producers price of copper and the price established by the LME (London Metal Exchange). When the LME price drops more than the estimated transportation cost of 5 cents per pound below the domestic producers price, the demand for imported copper increases. During the last 9 months of 1977 and the first 6 months of 1978, the average LME price was almost 8 cents per pound below the average domestic producers price. At the same time, the abundant supply of copper stocks in the foreseeable future provides no reason for domestic consumers of copper to maintain ties with domestic producers for purposes of a guarantee against copper shortages. Consequently, imports of refined copper increased in 1977 when compared to 1976 and doubled in the first half of 1978 when compared to the same period in 1977, when many domestic producers curtailed production because of the depressed market price of copper.

Price pressure from imported copper has reduced ASARCO's ability to profitably mine domestic ore and convert it to copper concentrate and then to refined copper. The domestic producers price of copper has been approximately equal to or below the cost of production of refined copper at ASARCO's Tacoma, Wash., plant. Consequently, ASARCO has been either breaking even or incurring losses by operating the Tacoma facility.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with the smelted and refined copper produced at the Tacoma, Wash., plant of ASARCO, Inc., contributed importantly to the decline in sales and production and to the total or partial separation of workers at the facility. In accordance with the provisions of the Act, I make the following certification:

All workers at ASARCO, Inc., Tacoma, Wash., who became totally or partially separated from employment on or after January 1, 1978, are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Trade Act of 1974.

Signed at Washington, D.C., this 9th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-32447 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-3398]

BOUND BROOK TOGS CO., INC., BOUND BROOK, N.J.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3398: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on March 22, 1978, in response to a worker petition received on February 13, 1978, which was filed by the Amalgamated Clothing & Textile Workers' Union on behalf of workers formerly producing ladies' blouses, pants, skirts, sweat suits and shirts at Bound Brook Togs Co., Inc., Bound Brook, N.J.

The Notice of Investigation was published in the FEDERAL REGISTER on April 7, 1978 (43 FR 14775-14776). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Bound Brook Togs Company, Incorporated, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The Bound Brook Togs Co. produced women's sportswear only for the period from October 1975 through December 1977. During each quarter of 1977, production was greater than in the respective quarter of 1976.

The Department conducted a survey of manufacturers who contracted with Bound Brook Togs. Consistent with the production statistics, the survey revealed that manufacturers increased their contract work with Bound Brook. The manufacturers which provided Bound Brook with the major part of its contract work did not purchase imports or utilize foreign contractors. Imports were purchased by only one manufacturer, and those represented a negligible proportion of that manufacturer's total sales.

CONCLUSION

After careful review, I determine that all workers of Bound Brook Togs Co., Inc., Bound Brook, N.J. are denied eligibility to apply for trade adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 7th day of November 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-32121 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-3674]

C & C FASHIONS, INC., WEEHAWKEN, N.J.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3674: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 8, 1978, in response to a worker petition received on April 28, 1978, which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' coats and raincoats at C & C Fashions Weehawken, N.J.

The Notice of Investigation was published in the FEDERAL REGISTER on May 28, 1978 (43 FR 22793). No public hearing was requested and none was held. The Notice of Investigation stated that the name of C & C Fashions, Inc. was C & C Styles.

The information upon which the determination was made was obtained principally from officials of C & C Fashions, Inc., its customers (manufacturers), the U.S. Department of Commerce, the U.S. International Trade Commission, the National Cotton Council of America, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of women's, misses', and children's coats and jackets increased from 2,252 thousand dozen in 1976 to 2,723 thousand dozen in 1977. Imports declined from 590 thousand dozen in the first quarter of 1977 to 572 thousand dozen in the first quarter of 1978. The ratio of imports to domestic production increased from 48.3 percent in 1976 to 54.9 percent in 1977.

U.S. imports of women's, misses', and children's raincoats decreased

from 261 thousand dozen in 1976 to 242 thousand dozen in 1977. Imports increased from 84 thousand dozen in the first quarter of 1977 to 129 thousand dozen in the first quarter of 1978. The ratio of imports to domestic production decreased from 45.0 percent in 1976 to 40.3 percent in 1977.

The Department conducted a survey of the principal manufacturers for which C & C Fashions, Inc. worked in 1976 and 1977. The sole manufacturer for which C & C worked in 1976 reduced purchases from C & C Fashions, Inc. and increased purchases of imported ladies' coats and raincoats in 1977 compared to 1976. A manufacturer that accounted for a majority of sales in the first quarter of 1977 discontinued purchases from C & C Fashions, Inc. and increased purchases of imported ladies' coats and raincoats in the first quarter of 1978.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increased imports of articles like or directly competitive with the ladies' coats and raincoats produced at C & C Fashions, Inc., Weehawken, N.J. contributed importantly to the decline in sales and to the separation of workers at that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of C & C Fashions, Inc., Weehawken, N.J. who became totally or partially separated from employment on or after June 24, 1977, and before April 1, 1978, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974. All workers of C & C Fashions, Inc. who became totally or partially separated from employment on or after April 1, 1978, are denied eligibility to apply for adjustment assistance.

Signed at Washington, D.C. this 13th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-32448 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-3553; TA-W-3554]

COATS & CLARK, INC., ZIPPER DIVISION, JAMESVILLE, N.C., NEWPORT NEWS, VA.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3553 and 3554: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on April 27, 1978, in response to worker petitions received on April 14, 1978, which were filed on behalf of workers and former workers producing zippers at the Jamesville, N.C. plant (TA-W-3553) and the Newport News, Va., plant (TA-W-3554) of the Zipper Division of Coats & Clark, Inc.

The Notice of Investigation was published in the FEDERAL REGISTER on May 16, 1978 (43 FR 21069). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Coats & Clark, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the act must be met. It is concluded that all of the requirements have been met.

The Zipper Division of Coats & Clark, Inc. is engaged in the production and sales of consumer and industrial zippers. The Jamesville, N.C. plant is part of an integrated production process as it performs the initial stages of zipper production for the Zipper Division. The Newport News, Va., plant is a Zipper Division facility involved in the final stages of production of zippers.

The U.S. imports of zippers declined from 83 million units in 1976 to 60 million units in 1977. Imports increased from 20.9 million units in the first 5 months of 1977 to 30.0 million units in the first 5 months of 1978.

A U.S. Labor Department survey indicated that customers of Coats & Clark's Zipper Division were increasing purchases of imports in 1977 and in 1978 while decreasing purchases from Coats & Clark, Inc.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with zippers producted at the Jamesville, N.C., plant and the Newport News, Va., plant of the Zipper Division of Coats & Clark, Inc. contributed importantly to the decline in sales or production and to the total or partial separations of workers at those plants. In accordance with the provisions of the Act, I make the following certification:

All workers of the Jamesville, N.C. plant of the Zipper Division of Coats & Clark, Inc. who became totally or partially separated from employment on or after February 5, 1978; and all workers at the Newport News, Va. plant of the Zipper Division of Coats & Clark, Inc, who became totally or partially separated from employment on or after November 20, 1977, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 7th day of November 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-32122 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-3507]

D & M UNIFORM CO., INC., SALEM, MASS.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3507: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on April 13, 1978 in response to a worker petition received on April 3, 1978 which was filed on behalf of workers and former workers producing women's blouses and shirts at D & M Uniform Co., Inc., Salem, Mass.

The Notice of Investigation was published in the FEDERAL REGISTER on April 25, 1978 (43 FR 17552). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of D & M Uniform Co., Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of women's blouses and shirts increased from 30,273 thousand dozen in 1976 to 30,849 thousand dozen in 1977. In the first quarter of 1978, imports of blouses increased to 10,186 thousand dozen compared to 8,280 thousand dozen in the first quarter of 1977. The ratio of imports to domestic production remained relatively constant from 1975 to 1976 at 70.3 percent and declined slightly to 69.7 percent in 1977.

D & M Uniform Co. was a contractor working exclusively from 1970 to September of 1977 for a Boston blouse manufacturing firm. From 1976 to 1977, this manufacturer experienced a substantial drop in its unit sales and by September of 1977 could no longer provide work to D & M Uniform. After losing these contracts, D & M Uniform could not find steady work from other blouse manufacturers. The Boston manufacturer who had supplied work to D & M Uniform attempted to make up for the reduction in blouse sales by going into other items such as pants, skirts, and blazers; but D & M Uniform was not equipped to make these garments.

Surveys, conducted by the U.S. Department of Labor, with manufacturers in the blouse industry and their customers have shown that manufacturers have been losing sales since 1975 as customers turn to lower-priced, imported blouses. Department surveys have been confirmed by industry import data which show that over the past 5 years, U.S. imports of women's blouses and shirts have nearly doubled and the ratio of imports to domestic production has risen from 50 percent in 1973 to 70 percent in 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with women's blouses and shirts produced at D & M Uniform Co., Inc., Salem, Mass. contributed importantly to the decline in sales and production and to the total or partial separation of workers at the firm. In accordance with the provisions of the Act, I make the following certification:

All workers of D & M Uniform Co., Inc., Salem, Mass. who became totally or partially separated from employment on or after December 16, 1977 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 7th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-32123 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-3567]

FMC CORP., FREDERICKSBURG, VA.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3567: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 3, 1978 in response to a worker petition received on April 19, 1978 which was filed by the Amalgamated Clothing & Textile Workers Union on behalf of workers formerly producing cellophane film at the Fredericksburg, Va. plant of FMC Corp.

The Notice of Investigation was published in the FEDERAL REGISTER on May 16, 1978 (43 FR 21068). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of FMC Corp., its customers, U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

FMC Corp.'s Film Division had two plants producing cellophane: Marcus Hook, Pa. and Fredericksburg, Va. FMC closed its Marcus Hook plant in January 1977, and closed its Fredericksburg, Va. plant in March 1978. Subsequent to the closure of the Fredericksburg, Va. plant, FMC has ceased producing cellophane and is selling off its inventory.

The overriding factor in the closure of FMC's cellophane plants, as well as plants operated by other domestic cellophane manufacturers is the increasing substitution of less costly plastic films for cellophane in the packaging industry. Consumption of cellophane by the meat, bakery, and tobacco industries fell sharply in the period from 1960 to 1977. Cellophane was replaced by PVC film, polyethelene and oriented polypropylene. These films, produced from petrochemicals, are manufactured at a lower cost than cellophane, but are able to meet market place requirements for package performance. Declining demand for cellophane contributed to excess capacity in the industry, which further escalated plant closings by major cellophane producers.

Aggregate data reflects the subsitution of transparent plastic films for cellophane. U.S. production and consumption of cellophane dropped 12 percent and 10 percent respectively from 1976 to 1977. U.S. production of polypropylene and polyethelene increased by 14 percent and 12 percent, respectively, during the same period.

The customer survey conducted by the Department of Labor, revealed that major purchasers of cellophane were forced to switch to foreign sources after FMC and other domestic producers closed their plants. In 1977, when the Fredericksburg plant was still in operation, increased import purchases by customers who decreased purchases from FMC, constituted an insignificant percentage of the decline in FMC sales in that period.

Customers stated that the major import influence had occurred during the second quarter of 1978 subsequent to the closure of the Fredericksburg plant.

FMC imported cellophane for a short period in 1977 only. These imports were of a type of colored cellophane unavailable domestically, and were insignificant in relation to both company sales and production at the Fredericksburg plant.

CONCLUSION

After careful review, I determine that all workers of the Fredericksburg, Va. plant of FMC Corp. are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 7th day of November 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-32124 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-3686]

FORMFLEX FOUNDATIONS, INC., SADDLE BROOKE, N.J.

Revised Determination on Reconsideration

On October 12, 1978 (43 FR 49066) the Department of Labor granted administrative reconsideration of the original negative determination which it made pursuant to section 223 of the Trade Act of 1974 for all workers at the Saddle Brooke, N.J., plant of Formflex Foundations, Inc., regarding eligibility to apply for worker adjustment assistance.

Counsel for one of the former workers claimed that the Department erred in denying the petition by focusing its investigation on the entire Saddle Brooke plant instead of on the sewing department of that plant. Counsel for the worker claimed that the sewing department should have been the appropriate subdivision and that the ceasing of production with the resultant separations of all the sewers from that department on April 1, 1978, fulfills all the requirements of section 222 of the Trade Act of 1974. Counsel for the worker further states that the sewing department is an appropriate subdivision of the firm by virtue of the fact that it is distinguishable from

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other subdivisions of the firm mainly by fuction, skill, and pay scale.

In its reconsideration, the Department reviewed the investigative file and performed additional investigative functions and determined that production and employment of sewers in the sewing department ceased on Aprii 1, 1978. The investigation further revealed that since only sewers were employed in the sewing department, the sewing department is, therefore, distinguishable by function from other departments at the Saddle Brooke plant and may be considered an appropriate subdivision.

While there may be an element of domestic transfer of sewing jobs from the Saddle Brooke plant to other Formflex Foundation plants in Puerto Rico, employment of sewers in Puerto Rico decreased in the third and fourth quarters of 1977 compared to their immediately preceding quarters and 31 percent in the first 5 months of 1978 compared to the same period in 1977.

A review of the case file indicates that company imports of finished sewn brassieres and girdles from Haiti increased 65 percent in 1977 compared to 1976 and 49 percent in the first 4 months of 1978 compared to the same period in 1977.

U.S. imports of brassieres, bralettes, and bandeaux increased absolutely from 8.8 million dozen in 1976 to 9.5 million dozen in 1977 and further increased 2.2 million dozen in the first quarter of 1977 to 2.4 million for the same period in 1978. The imports to domestic production ratio was 51.6 percent in 1976 and it has increased in every year since 1973.

U.S. imports of corsets and girdles increased absolutely from 231,000 in 1976 to 269,000 dozen in 1977 and further increased from 53,000 dozen in the first quarter of 1977 to 72,000 dozen for the same period in 1978. The imports to domestic production ratio was 6 percent in 1976 and it has increased in every year since 1973.

Conclusion

Based on additional evidence, a review of the entire record and in accordance with the provisions of the Act, I make the following revised determination:

All workers in the sewing department of the Saddle Brooke, N.J., plant of Formflex Foundations, Inc., who became totally or partially separated from employment on or after April 25, 1977, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 13th day of November 1978.

JAMES F. TAYLOR,
Dirccfor, Office of Management, Administration and Planning.

[FR Doc. 78-32449 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-3325]

FORTUNE SPORTSWEAR, JERSEY CITY, N.J.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3325: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 8, 1978, in response to a worker petition received on April 28, 1978, which was filed by the Amalgamated Clothing & Textile Workers' Union on behalf of workers and former workers producing men's and women's leather and suede coats and jackets at Fortune Sportswear, Jersey City, N.J.

The Notice of Investigation was published in the FEDERAL REGISTER on March 24, 1978 (43 FR 12401). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Fortune Sportswear, its manufacturer, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. The Department's investigation revealed that all of the requirements have been met.

United States imports of men's, boys', women's, misses', juniors' and children's leather coats and jackets increased from $115.5 million in 1975, to $177.8 million in 1976 and increased in 1977 to $186.4 million. The import to domestic production ratio was 59.5 percent in 1975 increased to 96.3 percent in 1976 and decreased to 85.3 percent in 1977.

Fortune Sportswear produces under contract for a manufacturer whose sales decreased in 1976 compared to 1975 and in 1977 compared to 1976. A survey of this manufacturer's largest customers indicated that customers decreased purchases from this manufacturer in 1977 while increasing purchases of imported leather coats and jackets.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that imports of articles like or directly competitive with men's and women's leather and suede coats and jackets produced by Fortune Sportswear, Jersey City, N.J., contributed importantly to the decline in sales and production and to the total or partial separation of workers at that plant. In accordance with the provisions of the Act, I make the following certification:

All workers of Fortune Sportswear, Jersey City, N.J. who became totally or partially separated from employment on or after February 10, 1977, and before March 3, 1978, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 7th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-32125 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-3788]

HERCULES TROUSER CO., INC., COLUMBUS, OHIO

Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on May 31, 1978, in respoonse to a worker petition received on May 28, 1978, which was filed by the Amalgamated Clothing & Textile Workers Union on behalf of workers and former workers engaged in shipping men's dress pants and leisure suits at the Columbus, Ohio plant of Hercules Trouser Co., Inc.

The Notice of Investigation was published in the FEDERAL REGISTER on June 20, 1978 (43 FR 26497). No public hearing was requested and none was held.

In a letter dated November 3, 1978 the petitioner, the Amalgamated Clothing & Textile Workers' Union withdrew the petition for Hercules Trouser Co., Columbus, Ohio (TA-W-3788). Therefore, continuing the present investigation would serve no purpose. Consequently the investigation has been terminated.

Signed at Washington D.C. this 8th day of November 1978.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc 78-32450 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-3147]

JERROLD ELECTRONICS CORP., CHICOPEE, MASS.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3147: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on February 16, 1978, in response to a worker petition received on January 30, 1978, which was filed by the International Brotherhood of Electrical workers on behalf of workers and former workers producing cable systems of equipment and master antenna systems at General Instrument Corp., Jerrold Electronics Division, Chicopee, Mass. The investigation revealed that Jerrold Electronics is a wholly owned subsidiary of General Instrument Corp.

The Notice of Investigation was published in the FEDERAL REGISTER on March 3, 1978 (43 FR 8862). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Jerrold Electronics Corp., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligiblity requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of C.A.T.V. equipment increased both absolutely and relative to domestic shipment during 1977 compared to 1976 and during the first half of 1978 compared to the first half of 1977.

The Chicopee, Mass. plant is the only domestic production facility of Jerrold Electronics Corp. A production facility in Nogales, Mexico was opened by the company in 1970. As a result of a corporate decision by Jerrold, certain production lines of CATV equipment were transferred from the Chicopee facility to the Nogales plant. A transfer of printed circuit board production from Chicopee to Nogales occurred during October 1977, and a transfer of production of amplifiers from Chicopee to Nagales began in January 1978; the amplifier production line at Nogales was fully operational by May 1, 1978. Imports by Jerrold from the Nogales facility increased relative to the value of production at Chicopee in fiscal (March to February) 1978, compared to fiscal 1977 and continued to increase in the first 4 months of fiscal 1979.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with cable systems of equipment and master antenna systems (CATV) produced at Jerrold Electronics Corp., Chicopee, Mass., contributed importantly to the decline in production and to the total or partial separation of workers of that facility. In accordance with the provisions of the Act, I make the following certification:

All workers of the Chicopee, Mass., plant of Jerrod Electronics Corp., who become totally or partially separated from employment on or after January 26, 1977, are certified eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 7th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management Administration and Planning.

[FR Doc. 78-32126 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-4049]

LAWRENCE MAID FOOTWEAR, INC., LAWRENCE, MASS.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-4049: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on August 8, 1978, in response to a worker petition received on August 4, 1978, which was filed on behalf of workers and former workers producing women's dress shoes and casual shoes at Lawrence Maid Footwear, Inc., Lawrence, Mass.

The Notice of Investigation was published in the FEDERAL REGISTER on August 29, 1978 (43 FR 3634). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Lawrence Maid Footwear, Inc., its customers, the American Footwear Industries Association, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

On September 16, 1976, the Department of Labor issued a certification of eligibility to apply for adjustment assistance for employees producing women's and misses' shoes at Lawrence Maid Footwear, Lawrence, Mass., a division of W. R. Grace & Co., New York.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. The Department's investigation revealed that all of the requirements have been met.

The women's dress shoes and casual shoes produced by Lawrence Maid Footwear, Inc., Lawrence, Mass., are included in the import category "Women's Nonrubber Footwear, Except Athletic." U.S. imports of this category, expressed as a percentage of domestic production, increased from 131.6 in 1976 to 137.3 in 1977, and from 139.7 in the first half of 1977 to 143.3 in the first half of 1978. Imports increased absolutely from 100.6 million pairs in the first half of 1977 to 105.6 million pairs in the first half of 1978.

Firms, representing a significant portion of Lawrence Maid Footwear's sales in 1976 and 1977, reported that they decreased purchases from the subject firm while increasing purchases of imports, in the first half of 1978 as compared to the time period in 1977.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increased imports of articles like or directly competitive with women's dress shoes and casual shoes produced at Lawrence Maid Footwear, Inc., Lawrence, Mass., contributed importantly to the decline in sales and to the separation of workers at that plant. In accordance with the provisions of the Act, I make the following certification:

All workers of Lawrence Maid Footwear, Inc., Lawrence, Mass., engaged in employment related to the production of women's dress shoes and women's casual shoes who became totally or partially separated from employment on or after September 16, 1978, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 13th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-32451 Filed 11-16-78; 8:45 am]

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[4510-28-M]

[TA-W-3757, 3758, 3759]

M. WILE & CO., INC., ELMWOOD AVENUE, BUFFALO, N.Y., DUNKIRK, N.Y., GOODELL STREET, BUFFALO, N.Y.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3757, 3758 and 3759: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 23, 1978, in response to a worker petition received on May 15, 1978, which was filed by the Amalagamated Clothing & Textile Workers' Union on behalf of workers and former workers producing men's tailored clothing at the Elmwood Avenue, Buffalo, N.Y., plant (TA-W-3757) the Dunkirk, N.Y., plant (TA-W-3758) and the Goodell Street, Buffalo, N.Y., plant (TA-W-3759) of M. Wile & Co., Inc.

The Department's investigation revealed that M. Wile & Co., Inc., produced men's tailored suits and men's sportjackets.

The notice of investigation was published in the FEDERAL REGISTER on June 6, 1978 (43 FR 24633). No public hearing was requested, and none was held.

The information upon which the determination was made was obtained principally from officials of M. Wile & Co., Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met. With respect to workers at the Elmwood Avenue, Buffalo, N.Y., and Dunkirk, N.Y., plants, without regard to whether any of the other criteria have been met, the following criterion has not been met:

that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated.

Pursuant to the requirements of 29 CFR 90.2, total or partial separations must be the equivalent to a total unemployment of 5 percent or 50 workers, whichever is less, or a reduction in hours worked to 80 percent or less of average weekly hours.

Evidence developed in the Department's investigation revealed that the total number of workers experiencing involuntary separations during the period from May 11, 1977, one year prior to the signature date of the petitions, to the present at the Elmwood Avenue, Buffalo, N.Y., plant and the Dunkirk, N.Y., plant of M. Wile & Co., amounted to less than 5 percent of the workforce and less than 50 workers in each plant, respectively. Average hours worked by employees in the respective plants were not reduced to 80 percent or less of employees' average weekly hours during the period from May 11, 1977 to the present.

There is no immediate threat to employment for the workers at the Elmwood Avenue, Buffalo, N.Y., plant and the Dunkirk, N.Y., plant of M. Wile & Co., Inc.

With respect to workers at the Goodell Street, Buffalo, N.Y., plant, without regard to whether any of the other criteria have been met, the following criterion has not been met:

that sales or production, or both, of the firm or subdivision have decreased absolutely.

Coat production at the Elmwood Avenue plant increased from 1976 to 1977 and increased in the first 5 months of 1978 compared to the first 5 months of 1977.

CONCLUSION

After careful review I determine that all workers at the Elmwood Avenue, Buffalo, N.Y., Dunkirk, N.Y., and Goodell Street, Buffalo, N.Y., plants of M. Wile & Co., Inc., are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 9th day of November 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-32452 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-4039]

MARSHALL RAY CORP., TROY, N.Y.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-4039: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on August 7, 1978, in response to a worker petition received on July 17, 1978, which was filed by the Amalgalated Clothing & Textile Workers' Union on behalf of workers and former workers producing men's sportcoats and leisure suits. The investigation revealed that the plant produces men's sportcoats exclusively.

The Notice of Investigation was published in the FEDERAL REGISTER on August 29,1978 (43 FR 38635). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of the Marshall Ray Corp., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The Department's investigation revealed that imports of men's and boys' tailored dress coats and sportcoats decreased in quantity from 6,965 thousand units in 1976 to 6,269 thousand units in 1977 and decreased from 3,537 thousand units in the first half of 1977 to 3,237 thousand units in the first half of 1978. The ratio of imports to domestic production decreased from 30.0 percent in 1976 to 26.5 percent in 1977.

CONCLUSION

After careful review, I determine that all workers of Marshall Ray Corp., Troy, N.Y., are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 7th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc 78-32127 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-3972]

NEKO TOGS, PATERSON, N.J.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3972: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The Investigation was initiated on July 13, 1978, in response to a worker petition received on July 10, 1978, which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing children's dresses at Neko Togs, Paterson, N.J.

The Notice of Investigation was published in the FEDERAL REGISTER on July 28, 1978 (43 FR 32885). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Neko Togs, Benco Togs, Inc. (the parent Company of Neko Togs), its customers, the National Cotton Council of America, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the total or partial separation, or threat thereof, and to the absolute decline in sales or production.

Neko Togs markets the children's dresses it produces through its parent company, Benco Togs, Inc., New York, N.Y. A survey of a significant portion of Benco Togs' customers indicated that in general, customers that decreased purchases from the subject firm did not increase purchases of imported children's dresses in 1977 as compared to 1976, or in the first half of 1978 as compared to the same period in 1977.

CONCLUSION

After careful review, I determine that all workers of Neko Togs, Paterson, N.J., are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 6th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-32128 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-3692]

NEW BRUNSWICK CHILDREN'S COAT CO., HIGHLAND PARK, N.J.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3692: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 8, 1978, in response to a worker petition received on April 28, 1978, which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing children's coats at New Brunswick Children's Coat Co., Highland Park, N.J.

The Notice of Investigation was published in the FEDERAL REGISTER on May 26, 1978 (43 FR 22793). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of New Brunswick Children's Coat Co., its customers (manufacturers), customers of the manufacturers, the U.S. Department of Commerce, the U.S. International Trade Commission, the National Cotton Council of America, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

U.S. imports of women's, misses', and children's coats and jackets increased from 2,252 thousand dozen in 1976 to 2,723 thousand dozen in 1977. The ratio of imports to domestic production increased from 48.3 percent in 1976 to 54.9 percent in 1977. Imports declined from 590 thousand dozen in the first quarter of 1977 to 572 thousand dozen in the first quarter of 1978.

Subsequent to the earliest impact date which could be set under the law, April 25, 1977, there were no significant layoffs until November 1977, when the layoffs typical to the firm and the industry occurred. Employment at New Brunswick Children's Coats increased in the first 5 months of 1978 compared with the same period of 1977.

CONCLUSION

After careful review, I determine that all workers of New Brunswick Children's Coat Co., Highland Park, N.J., are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 7th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Adminstration and Planning.

[FR Doc. 78-32129 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-4139]

PARKER MANUFACTURING CO., WORCESTER, MASS., NORTHBORO, MASS.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4139: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on September 6, 1978 in response to a worker petition received on September 5, 1978 which was filed on behalf of workers and former workers producing hand tools at the Parker Manufacturing Co., Worcester, Mass. The investigation revealed that the Parker Manufacturing Co. also operates a plant in Northboro, Mass. which represents an integrated part in the production of the hand tools produced at the Worcester plant. The investigation was expanded to include the Northboro plant.

The Notice of Investigation was published in the FEDERAL REGISTER on September 29, 1978 (43 FR 44935). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of the Parker Manufacturing Co., and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That sales or production, or both, of the firm or subdivision have decreased absolutely.

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Sales at the Parker Manufacturing Co. increased in 1977 compared to 1976 and in the first three quarters of 1978 compared to the same period in 1977. Production at the Parker Manufacturing Co. also increased in 1977 compared to 1976 as well as in the period January through August 1978 compared to the same period in 1977.

CONCLUSION

After careful review, I determine that all workers of the Worcester and Northboro, Mass. plants of the Parker Manufacturing Co. be denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 13th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-32453 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-3198]

PETROCELLI CLOTHES, NEW YORK, N.Y.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3198: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on February 22, 1978 in response to a worker petition received on February 6, 1978 which was filed by the Amalgamated Clothing and Textile Workers' Union on behalf of workers and former workers producing men's and boys' tailored clothing. The investigation revealed that men's suits, sportcoats, and trousers were produced.

The Notice of Investigation was published in the FEDERAL REGISTER on March 3, 1978 (43 FR 8863). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Petrocelli Clothes, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated.

The Department's investigation revealed that the average employment of workers at Petrocelli Clothes and its subdivisions increased in 1977 compared to 1976. Average employment remained constant for the first half of 1978 compared to that for 1977.

Average weekly hours worked increased in 1977 over 1976 and did not change significantly in the first half of 1978 compared with the first half of 1977.

There is no immediate threat of separation of workers at this firm.

Workers at Petrocelli Clothes and its subdivisions were previously certified as eligible to apply for adjustment assistance on February 18, 1976 (TA-W-363). That certification expired on February 18, 1978.

CONCLUSION

After careful review, I determine that all workers of Petrocelli Clothes and its subdivisions, located in New York, N.Y., are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 7th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-32130 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-3263]

Q-T SHOE MANUFACTURING CO., INC., LEBANON, PA., PATERSON, N.J.

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents in the results of TA-W-3263: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on February 27, 1978 in response to a worker petition received on February 13, 1978, which was filed on behalf of workers and former workers producing women's casual footwear at Q-T Shoe Manufacturing Co., Inc., Lebanon, Pa. The investigation was expanded to include the workers at the company's Paterson, N.J. plant.

The notice of investigation was published in the FEDERAL REGISTER on March 14, 1978 (43 FR 10648). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Q-T Shoe Manufacturing Co., Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. With respect to workers producing women's casual footwear at the Paterson, N.J. plant of Q-T Shoe Manufacturing Co., Inc., without regard to whether any of the other criteria have been met, the following criterion has not been met:

That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated.

Evidence developed in the course of the investigation revealed that total or partial separation did not occur at the Paterson, N.J. plant.

Employment of production workers at Paterson did not change from 1976 to 1977. Layoffs occurred in the second half of 1976 up to December of that year, more than 1 year prior to the date of the petition. In the first two quarters of 1977 workers were being recalled from the 1976 layoffs. From the third quarter of 1977 to the second quarter of 1978 employment increased every quarter compared to the same quarter of the previous year. Hours per worker remained stable throughout the period.

With respect to workers producing women's casual footwear at the Lebanon, Pa. plant of Q-T Shoe Manufacturing Co., Inc., it is concluded that all of the requirements have been met.

U.S. imports of women's and misses' nonrubber footwear, except athletic increased from 190.7 million pairs in 1975 to 195.5 million pairs in 1976 and decreased to 181.8 million pairs in 1977. In the first quarter of 1978 imports increased to 56.3 million pairs compared to 48.9 million pairs in the same period of 1977.

The ratio of imports to domestic production increased from 114.0 percent in 1976 to 119.2 percent in 1977 and increased from 126.0 percent in the first quarter of 1977 to 132.2 percent in the same period of 1978.

A survey of customers of Q-T Shoe Manufacturing Co., Inc. revealed that several customers increased purchases of imported women's nonrubber shoes and decreased purchases from the subject firm in 1977 and in the first quarter of 1978.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with women's casual shoes produce by Q-T Shoe Manufacturing Co., Inc., Lebanon, Pa. contributed importantly to the decline in production and to the total or partial separation of workers at the plant. In accordance with the provisions of the Act, I make the following certification:

All workers at Q-T Shoe Manufacturing Co., Inc., Lebanon, Pa. who became totally or partially separated from employment on or after November 30, 1977, and before May 1, 1978, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

I further determine that all workers at the Paterson, N.J. plant of Q-T Shoe Manufacturing Co., Inc., are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 7th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-32131 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-3606]

RIVERSIDE MANUFACTURING CO., ELMWOOD PARK, N.J.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3606: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigaton was initiated on May 8, 1978 in response to a worker petition received on April 28, 1978 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' coats at Riverside manufacturing Co., Paterson, N.J. The investigation revealed that the plant is located in Elmwood Park, N.J. not Paterson, N.J.

On February 8, 1978, the Office of Trade Adjustment Assistance issued a negative determination regarding eligibility to apply for adjustment assistance for workers at Riverside Manufacturing Co., Elmwood Park, N.J. (TA-W-2258).

The Notice of Investigation was published in the FEDERAL REGISTER on May 26, 1978 (43 FR 22793). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Riverside Manufacturing Co., its customers (manufacturers), customers of the manufacturers, the U.S. Department of Commerce, the U.S. International Trade Commission, the National Cotton Council of America, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or subdivision have contributed importantly to the total or partial separation, or threat thereof, and to the absolute decline in sales or production.

The Department conducted a survey of the principal manufacturers who contracted work with Riverside in 1976 and 1977. Manufacturers that accounted for 100 percent of sales in 1977 did not purchase imported ladies' coats nor did they use foreign contractors in 1976, 1977, or 1978. One manufacturers' sales declined in 1977 compared to 1976. A survey of this manufacturer's customers revealed that, in general, respondents did not reduce purchases for the manufacturer while also increasing purchases of imports.

CONCLUSION

After careful review, I determine that all workers of Riverside manufacturing Co., Elmwood Park, N.J. are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 7th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-32132 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-3673]

RUTGERS CLOAK MANUFACTURING CO., INC., EAST BRUNSWICK, N.J.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3673: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 8, 1978, in response to a worker petition received on April 28, 1978, which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing children's coats at Rutgers Cloak Manufacturing Co., Inc., East Brunswick, N.J.

The Notice of Investigation was published in the FEDERAL REGISTER on May 28, 1978 (43 FR 22793). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Rutgers Cloak Manufacturing Co., Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, the National Cotton Council of America, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of women's, misses', and children's coats and jackets increased from 2,252 thousand dozen in 1976 to 2,723 thousand dozen in 1977. Imports declined from 590 thousand dozen in the first quarter of 1977 to 572 thousand dozen in the first quarter of 1978. The ratio of imports to domestic production increased from 48.3 percent in 1976 to 54.9 percent in 1977.

The Department conducted a survey of customers of Rutgers Cloak Manufacturing Co., Inc. Customers that accounted for a significant portion of Rutgers' sales in 1976 reduced purchases from Rutgers and increased purchases of imported children's coats in 1977 compared to 1976. Customers that accounted for a significant portion of Rutgers sales in 1977 reduced purchases from Rutgers and increased purchases of imported children's coats in the first half of 1978 compared to the first half of 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with the children's coats produced at Rutgers Cloak Manufacturing Co., Inc., East Brunswick, N.J., contributed importantly to the decline in sales or production and to the total or partial separation of workers at that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Rutgers Cloak Manufacturing Co., Inc., East Brunswick, N.J., who became totally or partially separated from employment on or after April 25, 1977, are eligible to apply for adjustment assistance

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under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 13th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-32454 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-4029]

SANDVIK CONVEYOR, INC., HURFFVILLE, N.J.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-4029: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on August 2, 1978, in response to a worker petition received on July 28, 1978, which was filed on behalf of all workers and former workers producing steel belt conveyors and processing units at the Hurffville, N.J., plant of Sandvik Conveyor, Inc. The investigation revealed that the workers produced textile dryers and conveyors, primarily conveyors.

The Notice of Investigation was published in the FEDERAL REGISTER on August 11, 1978 (43 FR 35759). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Sandvik Conveyor, Inc., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

Workers at the Hurffville, N.J., plant of Sandvik Conveyor, Inc. produced two types of products: textile dryers and conveyors. The majority of production in 1977 and 1978 was conveyors.

U.S. imports of conveyors and conveying equipment increased in value in 1977 to 34.2 million dollars from 16.2 million dollars in 1976. The ratio of imports of conveyors and conveying equipment increased to 2.1 percent in 1977 compared to 1.2 percent in 1976.

Production of conveyors manufactured at the Hurffville plant has been transferred to a Sandvik plant located outside the United States. Company imports of conveyors from this plant increased in value in 1977 compared to 1976 and increased in the first 6 months of 1978 compared to the first 6 months of 1977. With the closing of production at the Hurffville plant, Sandvik Conveyor expects to increase its imports of conveyors in the last half of 1978.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with conveyors produced at the Hurffville, N.J., plant of Sandvik Conveyor, Inc. contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Sandvik Conveyor, Inc., Hurffville, N.J., who became totally or partially separated from employment on or after July 21, 1977, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 7th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-32133 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-3446]

SANGAMO-WESTON, INC., SPRINGFIELD, ILL.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3446: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on March 30, 1978 in response to a worker petition received on March 21, 1978, which was filed by the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America on behalf of workers and former workers producing electrical measuring meters and transformers and data recording equipment at the Springfield, Ill. plant of Sangamo-Weston, Inc.

The Notice of Investigation was published in the FEDERAL REGISTER on April 25, 1978 (43 FR 17551). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Sangamo-Weston, Inc., its customers, Schlumberger, Ltd., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to made an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

U.S. imports of electricity supply meters, also known as electrical measuring meters, were negligible for the period 1976 through March, 1978. The imports to domestic production ratio was less than one-half of 1 percent throughout the period.

A Department of Labor survey of customers of Sangamo-Weston's Springfield plant indicated that none purchased imported data recording equipment from January 1976 through June 1978.

According to another Labor Department survey regarding electrical measuring meters and transformers, most customers increased purchases from Sangamo-Weston in 1977 compared to 1976 and in the first half of 1978 compared to the first half of 1977. Most customers did not purchase any imports during these period. Only one customer increased purchases from foreign sources in the first half of 1978 compared to the first half of 1977 while decreasing purchases from Sangamo-Weston. However, the value of import purchases by this customer was insignificant in relation to sales of electrical measuring meters and transformers by Sangamo-Weston.

Subsequent to the closure of the Springfield plant, production was transferred to other domestic facilities of Sangamo-Weston.

CONCLUSION

After careful review, I determine that all workers at the Springfield, Ill. plant of Sangamo-Weston, Inc. are denied eligibility to apply for trade adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 9th day of November 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-32455 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-4125 and 4126]

SOUTHERN DIVISION AND MIDDLE DIVISION OF COLORADO & WYOMING RAILWAY CO., PUEBLO, COLO.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4125 and 4126: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigations were initiated on August 31, 1978 in response to a worker petition received on August 9, 1978 which was filed by the Brotherhood of Maintenance of Way Employees Mountain & Plains Federation on behalf of workers and former workers engaged in transporting coal from CF&I Steel Corp. to an interchange (TA-W-4125), transporting raw materials from the interchanges to the plant (CF&I Steel), and transporting finished products to commercial interchanges (TA-W-4126) at the Southern Division and the Middle Division of the Colorado & Wyoming Railway Co., Pueblo, Colo.

The Notice of Investigation was published in the FEDERAL REGISTER on September 12, 1978 (43 FR 40576). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of CFF&I Steel Corp., the Colorado & Wyoming Railway Co. and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of the section 222 of the Act must be met. With respect to workers of the Middle Division, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated.

With respect to workers of the Southern Division, without regard to whether any of the criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Average employment at the Middle Division of the Colorado & Wyoming (C&W) Railway Co. increased in the period January to August 1978 compared to the same period in 1977. Average employment increased in each of the most recent four quarters compared to the same quarter of the previous year. There is no immediate threat of separation to workers of the Middle Division of C&W Railway.

Average employment at the Southern Division of the Colorado & Wyoming (C&W) Railway Co. did not decrease in the period January to August 1978 compared to the same period in 1977. At the end of 1977 and in the first three months of 1978 all significant layoffs were caused by the coal strike. There is no immediate threat if separation to workers of the Southern Division of the C&W Railway.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that all workers of the Middle and Southern Divisions of the Colorado & Wyoming Railway Co., Pueblo, Colo., are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 7th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-32134 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-3512]

TIMEX COMPONENTS, INC., SOMERSET, N.J.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3512: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on April 13, 1978, in response to a worker petition received on April 4, 1978, which was filed by the International Union of Electrical Workers on behalf of workers and former workers producing liquid crystals and displays for digital watches at Timex Components, Inc., Somerset, N.J. The investigation revealed that the plant primarily produces liquid crystal displays for watches and clocks.

The Notice of Investigation was published in the FEDERAL REGISTER on April 25, 1978 (43 FR 17552). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Timex Components, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of elibility to apply for adjustment assistance each of the group eligibilty requirements of section 222 of the Act must be met. With respect to workers producing liquid crystal displays for watches, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That sales or production, or both, of the firm or subdivision have decreased absolutely.

Timex purchased the Somerset plant in April 1976. Timex Components, Inc., first received orders for liquid crystal displays for watches in the same month. Sales of liquid crystal displays for watches by Timex Components, Inc., increased in April-December 1977 compared to the same period of 1976 and increased in the first 6 months of 1978 compared to the same period of 1977. Sales increased in each of the last three quarters of 1977 compared to the same quarter of 1976 and increased in each of the first two quarters of 1978 compared to the same quarter of 1977.

Production of liquid crystal displays for watches began in May 1976. Production increased in May-December 1977 compared to the same period of 1976 and increased in the first 6 months of 1978 compared to the same period of 1977. Production increased in each of the last two quarters of 1977 compared to the same quarter of 1976 and increased in each of the first two quarters of 1978 compared to the same quarter of 1977.

With respect to workers producing liquid crystal displays for clocks, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The value of U.S. imports of liquid crystal displays increased from $0.7 million in 1976 to $1.0 million in 1977. The ratio of imports to domestic production decreased from 11.7 percent in 1976 to 8.6 percent in 1977. The value of imports increased from $0.2 million in the first 3 months of 1977 to $0.3 million in the first 3 months of 1978. The ratio of imports to domestic production increased from 7.7 percent in

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the first 3 months of 1977 to 8.6 percent in the first 3 months of 1978.

Timex Components, Inc., produced liquid crytal displays for clocks from June 1977 through May 1978. In May 1978, Timex Components, Inc., discontinued production of liquid crystal displays for clocks and arranged for outstanding customer orders to be supplied by another domestic manufacturer.

CONCLUSION

After careful review, I determine that all workers of Timex Components, Inc., Somerset, N.J., are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 13th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-32456 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-3974]

TITANIUM ENTERPRISES, GREEN COVE SPRINGS, FLA.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3974: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on July 13, 1978 in response to a worker petition received on July 5, 1978 which was filed on behalf of workers and former workers mining heavy minerals, dry mill to produce zircon, rutile, ilmenite, monazite, staurolite, and leucoxene at Titanium Enterprises, Green Cove Springs, Fla. The Department's investigation revealed that zircon, ilmenite, and rutile represented almost all of Titanium Enterprises sales. Sales of staurolite, monazite and leucoxene are insignificant.

The Notice of Investigation was published in the FEDERAL REGISTER on July 28, 1978 (43 FR 32885-6). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Titanium Enterprises, its customers, the U.S. Department of Commerce, the U.S. international Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

ZIRCON

Imports of zircon increased from 62,643 short tons in 1976 to 65,204 short tons in 1977 and increased to 49,193 short tons in the first 6 months of 1978 compared to 16,877 short tons for the same 1977 period. The ratio of imports to domestic production decreased slightly from 160.6 percent in 1976 to 152.0 percent in 1977. For the first half of 1978, the ratio increased substantially to 229.3 percent compared to 78.7 percent for the same 1977 period.

According to industry sources, the leading supplier of zircon to the United States is Australia. Australian reserves exceed those of the United States and are less expensive to recover. Domestic prices of zircon have steadily declined from $300 per short ton in 1974 to $150 in 1977. As of September, 1978 the domestic price of zircon remained at $150 per short ton while Australian zircon was priced at $140 per short ton. Evidence developed during the investigation indicated that this downward pressure on market prices has forced the company to sell at prices below production costs.

ILMENITE

Imports of ilmenite have steadily increased from 168,402 tons in 1976 to 334,990 tons in 1977 and increased to 151,757 tons in the first half of 1978 compared to 112,340 tons in the same 1977 period. The ratio of imports to domestic production has also increased during this same period from 25.81 percent in 1976 to 52.46 percent in 1977 and increased to 49.59 percent in the first half of 1978 compared to 35.19 percent in the same 1977 period.

The downward pressure on market prices from imported ilmenite has reduced the ability of domestic producers to profitably mine and process the ore. An analysis of the industry indicates that the average price for ilmenite from 1976-1977 was $55 per ton. Foreign ilmenite ran from $15.71-14.81 per ton in the same period. As of August 1978 the average domestic price declined to $50 per ton. The average world price, however, was approximately $15 per ton, 70 percent below the domestic price. As a consequence, it is increasingly unprofitable to continue to mine and produce ilmenite and the company stopped this operation on June 30, 1978.

In addition, the customer purchasing ilmenite from Titanium Enterprises indicated it reduced purchases of ilmenite and are replacing it with imported titanium slag. The slag is used in the same basic process as the ilmenite to make titanuim dioxide, however, the costs of production are less.

RUTILE

Imports of rutile increased in each year from 226,860 tons in 1973 to 281,712 tons in 1976 and declined to 123,800 tons in 1977. In the first 6 months of 1978 imports increased substantially to 138,991 tons compared to 73,372 tons in the same 1977 period. The ratio of imports to domestic production followed a similar trend during the same time periods.

Industry sources report that Australia is the world's major supplier of rutile. Since domestic production of rutile has historically been low, the United States has depended almost entirely on Australian imports of rutile ore. Spot rutile prices, controlled by Australian producers and by the Australian Government, were $510 (per short ton c.i.f. Atlantic ports) in 1976 and $360 in 1977. The price of rutile in the first half of 1978 was $325-350 in the United States.

Industry sources have stated that as a result of this price control by Australian producers, companies have been forced to sell rutile at a price below their operating costs.

In addition, the customer buying rutile from Titanium Enterprises indicated it reduced purchases from the subject firm and increased purchases from foreign sources in the first half of 1978 compared to the same 1977 period.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with zircon, ilmenite, and rutile produced at Titanium Enterprises, Green Cove Springs, Fla., contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Titanium Enterprises, Green Cove Springs, Fla., who became totally or partially separated from employment on or after January 1, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 7th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-32135 Filed 11-16-78; 8:45 am]

[4510-26-M]

[TA-W-4018]

UNITED SLIPPER CO., BRIDGEPORT, CONN.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4018: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on August 31, 1978 in response to a worker petition received on July 28, 1978 which was filed on behalf of workers and former workers producing men's, women's and children's soft-soled slippers at the United Slipper Co., Bridgeport, Conn.

The Notice of Investigation was published in the FEDERAL REGISTER on August 8, 1978 (43 FR 35130). No public hearing was requested and none was held.

The information upon which the determination was made as obtained principally from officials of the United Slipper Co., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, the American Footwear Industries Association, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of men's, women's and children's house slippers increased absolutely and relatively in 1975 and 1976 compared to the preceding years. Imports in 1977, both absolutely and relatively, were above the average annual level for the period 1974-1976. Major customers of United Slipper which utilize foreign sources for a major part of their slipper supplies ceased buying from United Slipper completely in 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increased imports of articles like or directly competitive with slippers produced at United Slipper Co., Bridgeport, Conn. contributed importantly to the decline in sales and to the separation of workers at that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of United Slipper Co., Bridgeport, Conn. who became totally or partially separated from employment on or after August 20, 1977 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 9th day of November 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-32457 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-4017]

UNIROYAL, INC., WASHINGTON, IND.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-4017: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on July 31, 1978, in response to a worker petition received on July 20, 1978, which was filed on behalf of workers and former workers producing vinyl-coated rainwear at the Washington, Ind., plant of Uniroyal, Inc.

The Notice of Investigation was published in the FEDERAL REGISTER on August 8, 1978 (43 FR 35130-1). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Uniroyal, Inc., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of waterproof rainwear and other waterproof garments increased from 221.6 thousand dozen in 1975 to 403.9 thousand dozen in 1976, and decreased to 317.7 thousand dozen in 1977. Imports increased from 162.2 thousand dozen in the first half of 1977 to 214.2 thousand dozen in the first half of 1978.

The company started to import waterproof clothing in July 1976. These imports increased significantly relative to company production in the first 7 months of 1978 compared with the like period of 1977. Company plans for the Washington, Ind., plant call for the complete replacement of plant production with company imports of waterproof clothing by the end of 1978.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with the waterproof clothing produced at the Washington, Ind., plant of Uniroyal, Inc. contributed importantly to the decline in sales or production and to the total or partial separation of workers at that plant. In accordance with the provisions of the Act, I make the following certification:

All workers of the Washington, Ind., plant of Uniroyal, Inc. who became totally or partially separated from employment on or after March 24, 1978, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 7th day of November 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-32136 Filed 11-16-78; 8:45 am]

[4510-28-M]

[TA-W-3918]

VICTORY OPTICAL MANUFACTURING CO., NEWARK, N.J.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3918: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on June 27, 1978, in response to a worker petition received on June 27, 1978, which was filed by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America on behalf of workers and former workers producing opthalmic frames and finished sunglasses at Victory Optical Manufacturing Co., Newark, N.J.

The Notice of Investigation was published in the FEDERAL REGISTER on July 7, 1978 (43 FR 29364). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Victory Optical Manufacturing Co., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make a affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

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U.S. imports of eyeglass frames increased from 27.1 million units in 1976 to 29.0 million units in 1977 and from 7.6 million units in the first quarter of 1977 to 8.4 million units in the same period of 1978.

U.S. imports of sunglasses increased from 75.6 million pairs in 1976 to 86.8 million pairs in 1977 and from 24.2 million pairs in the first 3 months of 1977 to 31.1 million pairs in the same period of 1978.

Company imports of eyeglass frames and sunglasses increased in 1976 and 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with opthalmic frames and finished sunglasses produced at Victory Optical Manufacturing, Newark, N.J., contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Victory Optical Manufacturing Co., Newark, N.J., who became totally or partially separated from employment on or after June 21, 1977, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 9th day of November 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc 78-32458 Filed 11-16-78; 8:45 am]

[7537-01-M]

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

ARTISTS-IN-SCHOOLS ADVISORY PANEL; NATIONAL ENDOWMENT FOR THE ARTS

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Artists-In-Schools Advisory Panel to the National Council on the Arts will be held on December 6, 1978, from 9 a.m. to 5 p.m., December 7, 1978, from 9 a.m. to 5 p.m., and December 8, 1978, from 9 a.m. to 5 p.m., in Room 1422, Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C.

A portion of this meeting will be open to the public on December 6, 1978, from 9 a.m. to 2 p.m., December 7, 1978, from 9 a.m. to 5 p.m., and December 8, 1978, from 9 a.m. to 5 p.m. The topic of discussion will be Policy.

The remaining sessions of this meeting on December 6, 1978, from 2 p.m. to 5 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the FEDERAL REGISTER, March 17, 1977, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202-634-6070.

Dated: November 14, 1978.

JOHN H. CLARK,
Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 78-32424 Filed 11-16-78; 8:45 am]

[7537-01-M]

DANCE ADVISORY PANEL; NATIONAL ENDOWMENT FOR THE ARTS

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel to the National Council on the Arts will be held December 9, 1978, from 9 a.m. to 6 p.m., December 10, 1978, from 9 a.m. to 6 p.m., and December 11, 1978, from 9 a.m. to 6 p.m., in Room 1422, Columbia PLaza Office Building, 2401 E Street NW., Washington, D.C.

A portion of this meeting will be open to the public on December 10, 1978, from 4:30 p.m. to 6 p.m., and December 11, 1978, from 9 a.m. to 1 p.m. The topic of discussion will be policy.

The remaining sessions of this meeting on December 9, 1978, from 9 a.m. to 6 p.m., December 10, 1978, from 9 a.m. to 4:30 p.m., and December 11, 1978, from 1 p.m. to 6 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the FEDERAL REGISTER March 17, 1977, these sessions will be closed to the public pursuant to subsections (c)(4), (6), and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202-634-6070.

Dated: November 14, 1978.

JOHN H. CLARK,
Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 78-32427 Filed 11-14-78; 8:45 am]

[7537-01-M]

FOLK ARTS ADVISORY PANEL; NATIONAL ENDOWMENT FOR THE ARTS

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Folk Arts Advisory Panel to the National Council on the Arts will be held December 7, 1978, from 9 a.m. to 5 p.m., December 8, 1978, from 9 a.m. to 5:30 p.m., December 9, 1978, from 9 a.m. to 5:30 p.m., and December 10, 1978, from 9 a.m. to 5 p.m.

A portion of this meeting will be open to the public on December 9, 1978, from 9 a.m. to 1 p.m. The topic of discussion will be Policy and Guidelines.

The remaining sessions of this meeting on December 7, 1978, from 9 a.m. to 5 p.m., December 8, 1978, from 9 a.m. to 5:30 p.m., December 9, 1978, from 1 p.m. to 5:30 p.m., and December 10, 1978, from 9 a.m. to 5 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the FEDERAL REGISTER March 17, 1977, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202-634-6070.

Dated: November 14, 1978.

JOHN H. CLARK,
Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 78-32429 Filed 11-16-78; 8:45 am]

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[7537-01-M]

MEDIAL ARTS (PRODUCTION AID) ADVISORY PANEL; NATIONAL ENDOWMENT FOR THE ARTS

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Production Aid) to the National Council on the Arts will be held on December 11, 1978, from 9 a.m. to 6 p.m., December 12, 1978, from 9 a.m. to 6 p.m., and December 13, 1978, from 9 a.m. to 6 p.m., Room 1220, Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C.

This meeting is for the purpose of Panel review, descussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairmen published in the FEDERAL REGISTER of March 17, 1977, these sessions will be closed to the public pursuant to subsection (c) (4), (6), and 9(B) of section 552 of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202-634-6070.

Dated: November 14, 1978.

JOHN H. CLARK,
Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 78-32425 Filed 11-16-78; 8:45 am]

[7537-01-M]

MUSIC (PLANNING SECTION) ADVISORY PANEL; NATIONAL ENDOWMENT FOR THE ARTS

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music (Planning Section) Advisory Panel to the National Council on the Arts will be held December 5, 1978, from 9:30 a.m. to 6 p.m., December 6, 1978, from 9:30 a.m. to 5:30 p.m., December 7, 1978, from 9:30 a.m. to 6 p.m., and December 8, 1978, from 9:30 a.m. to 5:30 p.m., in room 1422, Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C.

A portion of this meeting will be open to the public on December 5, 1978, from 9:30 a.m. to 5 p.m., December 6, 1978, from 1:45 p.m. to 5:30 p.m., and on December 7, 1978, from 9:30 a.m. to 1:30 p.m. The topic of discussion will be Policy and Guidelines.

The remaining sessions of this meeting on December 5, 1978, from 5 p.m. to 6 p.m., December 6, 1978, from 9:30 a.m. to 1:45 p.m., December 7, 1978, from 1:30 p.m. to 6 p.m., and December 8, 1978, from 9:30 a.m. to 5:30 p.m., are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the FEDERAL REGISTER, March 17, 1977, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202-634-6070.

Dated: November 14, 1978.

JOHN H. CLARK,
Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 78-32428 Filed 11-16-78; 8:45 am]

[7537-01-M]

VISUAL ARTS (CRAFTS EXHIBITION AID/WORKSHOPS) PANEL; NATIONAL ENDOWMENT FOR THE ARTS

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Visual Arts (Crafts Exhibition Aid/Workshops).

Advisory Panel to the National Council on the Arts will be held December 11, 1978, from 9:30 a.m. to 5:30 p.m., December 12, 1978, from 9:30 a.m. to 5:30 p.m., and December 13, 1978, from 9:30 a.m. to 5:30 p.m., in Room 1426, Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the FEDERAL REGISTER of March 17, 1977, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(B) of section 552 of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202-634-6070.

Dated: November 14, 1978.

JOHN H. CLARK,
Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 78-32426 Filed 11-16-78; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

LICENSING PROCEDURES FOR GEOLOGIC REPOSITORIES FOR HIGH-LEVEL RADIOACTIVE WASTES

Proposed General Statement of Policy

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Proposed General Statement of Policy.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has under consideration the following proposed policy statement regarding establishment of procedures for licensing geologic high-level waste repositories to be constructed and operated by the U.S. Department of Energy (DOE). This NRC policy statement is intended to inform DOE, interested States and members of the public of the procedures with which DOE will be required to comply to receive a license to construct and operate a repository. The policy, as finally adopted, may be codified as part of the Commission's regulations.

DATE: Comments are due on or before January 16, 1979.

ADDRESSES: Send comments and sugestions to: Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, attention: Docketing and Service Branch. Copies of comments may be examined in the: U.S. Nuclear Regulatory Commission Public Document Room, 1717 H Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

James C. Malaro, Chief, High-Level and Transuranic Waste Branch, Division of Fuel Cycle and Material Safety, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

SUPPLEMENTAL INFORMATION: The Commission is considering the procedures to be used in the licensing of high-level waste repositories, and believes that it would be useful to solicit the views of interested persons prior to making any final decision. Accordingly, the Commission is publishing for comment the Proposed General Statement of Policy on high-level radioactive waste repository licensing procedures set forth below. The Proposed General Statement of Policy could also be used by DOE for interim planning purposes pending a final Commission decision on repository licensing procedures.

Under present statute, it is not clear whether NRC would have licensing authority over DOE's planned Waste Isolation Pilot Plant (WIPP) proposed to be located at Carlsbad, N. Mex. However, if the WIPP facility is subject to NRC licensing, NRC expects to apply these procedures in the licensing review.

NRC licensing authority over DOE waste management activities is derived from sections 202(3) and 202(4) of the Energy Reorganization Act of 1974. These sections confine NRC licensing authority over DOE waste management activities to certain DOE facilities for receipt and storage of high level radioactive waste. If WIPP is to be used exclusively for disposal of transuranic wastes from the defense program and 1,000 commercial spent fuel rod assemblies, then WIPP might not be licenseable. While the 1,000 commercial spent fuel rod assemblies would be "high level radioactive waste," [1] the transuranic wastes would not be, and the facility would not be "primarily" for receipt and storage of "high level radioactive wastes" (section 202(3) of the Energy Reorganization Act). If WIPP is to be used for disposal of defense program high level wastes, then it would be licenseable under section 202(4) of the Act provided it was not "used for, or . . . part of, research and development activities." It is possible that, depending upon the exact program proposed by DOE, WIPP could be regarded as a research and development facility exempt from licensing.

Introduction

The U.S. Nuclear Regulatory Commission ("NRC" or "Commission") is vested with licensing authority over certain DOE high-level radioactive waste repositories by sections 202(3) and 202(4) of the Energy Reorganization Act of 1974. These sections refer to:

(3) Facilities used primarily for the receipt and storage of high-level radioactive wastes resulting from activities licensed under such Act (Atomic Energy Act).

(4) Retrievable Surface Storage Facilities and other facilities authorized for the express purpose of subsequent long-term storage of high-level radioactive waste generated by the Administration, which are not used for, or are part of, research and development activities.

Under the Energy Reorganization Act of 1974, as amended, and the Atomic Energy Act of 1954, as amended, such repositories would not be licensed as "production" or "utilization" facilities. Rather, they would be licensed under those provisions of the Atomic Energy Act dealing with receipt and possession of "byproduct" and "special nuclear" materials. However, the Commission has authority under the Atomic Energy Act to fashion procedures for licensing of byproduct and special nuclear material that are tailored to the kinds of activities being authorized and the potential hazards involved. For example, although a license for possession and use of plutonium in a sealed calibration source and a license for possession and use of plutonium for purposes of processing and fuel fabrication are both special nuclear materials licenses, the former license may be issued after a single review (and indeed may even be generally licensed without the need for filing and review of a specific license application—see 10 CFR 70.19), while the latter license may only be issued after a review process resembling in many respects the two-step licensing review provided in the Atomic Energy Act for production and utilization facilities (see 10 CFR 70.22(f) and 70.23(b)).

In fashioning the procedures which follow, several unique features of geologic high-level waste repositories were carefully considered. For such a repository, the suitability of the site becomes crucial, for the integrity of the site itself is essential to assure containment of the radioactive materials. Thus, sound policy suggests that the Commission be afforded the opportunity to participate in DOE's site selection process, though—considering the tentative character of the activities involved—only in an informal advisory capacity. Also, for such an application, construction of a repository shaft would constitute the first major penetration of the geologic containment. If improperly constructed or sealed, it could impair the ability of the geologic containment to isolate wastes over long periods of time. At the same time, construction of this shaft is expected to dispel some of the uncertainties in the accuracy of data necessary for design of the underground repository. Thus, while a safety review prior to sinking of a shaft would be appropriate, the scope of review and the findings required need to take into account the possibility that only limited data may be available. Further, there should be a formal safety review of the main repository design features before substantial commitments are made and alterations become impracticable to implement. Finally, the Commission believes that it should examine the methods of construction and any new information that may have been developed during construction before formally authorizing receipt and storage of radioactive materials at the repository.

If a repository is subject to the NRC licensing authority, the entire repository will be subjected to licensing review, including those activities which by themselves might not be within the scope of NRC responsibility. This comprehensive review will be necessary because loss of integrity in any part of a repository could imperil the integrity of the entire repository.

The Commission believes it should prepare an environmental impact statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 ("NEPA") prior to authorizing construction of the main repository shaft. This statement could be updated prior to receipt and storage of radioactive materials at the repository should new information warrant.

Early Notification to States and Other Interested Parties

In order to provide opportunity for early input from States and other interested parties, the Commission would, upon receipt of a DOE license application or request for an informal early site review, (1) publish in the Federal Register a notice of such receipt (2) make a copy of the application or request available at the Public Document Room, and (3) transmit copies of such request to the Governor of the State and to the Chief Executive of the municipality in which the respository is tentatively planned to be located and to the Governors of any contiguous States. Also, the staff would offer to meet with State and local officials to provide them with information about the Commission's review and to explore the possibilities of State and local participation in the Commission licensing process.

Licensing Procedures

The proposed repository licensing procedures are divided into four parts: review of DOE site selection, review of repository development, repository licensing, and respository closure.

1. *Review of DOE site selection.* There would be informal NRC staff comments to DOE on site suitability matters after DOE's site selection. Such informal consultation, which might take the form of written NRC staff comments supplemented by one or more open meetings between the two agency staffs, would enable the NRC staff to point out those aspects of a location which in its judgment might require special attention or present special problems, and would help to define the kinds of information that might be needed for the Commission to make licensing decisions.

As indicated, the interaction between NRC staff and DOE at this early stage would be consultive in nature. That is, NRC staff may provide comments and advice, but the Commission will neither make formal findings nor take other formal action. DOE would remain at liberty to come forward later with any license application that it believed would conform to Commission requirements, and the Commission would be free, as the evidence might warrant, to formally approve or disapprove the application.

2. *Review of repository development.* The formal Commission licensing review process would begin with the filing of an application for a license by DOE prior to commencement of construction of a repository shaft. The application would be docketed for review after a preliminary review for completeness, notice of the application would be published in the Federal Register offering an opportunity for interested persons to intervene and request a hearing, and a public announcement would be issued.

The application would include information on site suitability and repository design features important to safety. An environmental report prepared by DOE addressing the matters set forth in section 102(2)(C) of NEPA would be submitted with or prior to the application.

It is probable that some information necessary to make a definitive finding of the repository's safety will not then be available. Nevertheless, the Commission [2] could authorize construction of the repository upon completion of a review of all NEPA, safety, and common defense and security issues, and upon finding (1) after considering reasonable alternatives that the benefits of the proposal exceed the costs under NEPA, and (2) that there is reasonable assurance that the types and amounts of wastes described in the application can be stored in a repository of the design proposed without unreasonable risk to the health and safety of the public or being inimical to the common defense and security. Construction would commence with the sinking of the main repository shaft. In the alternative, where insufficient information is available prior to shaft sinking to permit the Commission to make the complete findings set forth above, on request by DOE or on the Commission's own initiative, the Commission could allow the safety review to be conducted in two phases. Construction of the shaft could commence upon finding (1) after considering reasonable alternatives, that the benefits of the proposal exceed the costs under NEPA, and (2) that there is reasonable assurance that: (a) The site is suitable for a repository within which high-level wastes of the kinds and quantities described in the application can be stored without unreasonable risk to the health and safety of the public or being inimical to the common defense and security, and (b) the plans for construction of the main shaft and related structures can be implemented in a manner compatible with the use of the site for a respository. The full findings set forth previously would, then, have to be made before the start of construction of surface and underground structures. Safety issues that could not be resolved based upon the available information might be deferred until the repository operating license review provided that: (1) an adequate program has been developed to resolve the issue prior to that time, and (2) there is reasonable assurance that the issue can be resolved in a favorable manner at the later date. The Commission requests public comments on this possible course of action.

The NEPA environmental review would address, to the extent possible based on available information, environmental impacts and alternatives associated directly or indirectly with siting, construction, and operation of the repository. Any hearing held upon request of an interested person would be conducted in accordance with subpart G of 10 CFR Part 2.

The applicant will be required to report to the NRC, during the course of construction, any site characterization data obtained which are not within the predicted limits upon which the repository design was based. Also, it would be required to report deficiencies in design and construction which, if uncorrected, could have a significant adverse effect upon the safety of the repository at any future time.

3a. *Repository licensing.* Prior to receipt of any radioactive material at the repository, DOE will need to file an updated license application with the Commission. The license authorizing actual receipt and storage of radioactive materials would be issued after the Commission has conducted a final review of health and safety and common defense and security issues in the light of (1) any additional geologic, hydrologic, and other data obtained during construction; (2) conformance of construction of repository structures, systems, and components with the earlier received design; (3) results of research programs carried out to resolve questions identified during prior reviews; (4) plans for startup and routine operations; and (5) plans for identifying and responding to any unanticipated releases of radioactive material from the repository. Issuance of a license will require a definitive finding under the Atomic Energy Act that the receipt, possession, and use of the special nuclear and byproduct materials at the repository will not constitute unreasonable risk to the health and safety of the public or be inimical to the common defense and security. If warranted by new information which the staff judges could materially alter the NEPA cost-benefit balance, the earlier environmental impact statement will be updated. Also, if requested by a person whose interest may be affected, a hearing in accordance with subpart G of 10 CFR Part 2 would be held prior to license issuance.

3b. *License amendment (as needed).* If special restrictions such as retrievability or a limit on amounts or types of wastes have been imposed in the license, an amendment will be required prior to committing waste to irretrievable disposal or prior to the receipt of additional waste. It is anticipated that the required review procedures and findings will be similar to those described above for initial licensing, taking into account additional information abtained during the retrievable storage phase or during operation with limited inventory.

DOE will be required to conduct and monitor its operations, to keep records, and to submit routine and special reports, in accordance with Commission regulations and orders. All operations will be subject to such continuing NRC inspection activities as may be found to be appropriate.

4. *Review of repository closure.* After the repository has been developed and filled to maximum capacity but prior to final closure of the underground excavations and shafts and the decommissioning of surface facilities, and NRC review and approval will be required of the licensee's proposed program for compliance with regulations governing sealing of the underground repository, decommissioning of surface facilities, storage of permanent rec-

[1] Even though spent fuel which is to be disposed of in a geologic repository may have some resource value, it contains radioactive waste. Thus, it is clearly a "high level" radioactive waste because it contains all the toxic and long-lived radionuclides contained in the liquid wastes from reprocessing that have traditionally been regarded as a form of high level radioactive waste.

[2] For hearings granted on an application, the Commission expects, as in a nuclear power reactor licensing proceeding, to designate an Atomic Safety and Licensing Board to hear and initially decide the contested issues. As in any licensing case, it would be possible for the Board to render partial decisions on several discrete issues, such as NEPA issues.

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ords, and long-term monitoring. Following completion of the review, a change in license status may be warranted.

For the U.S. Nuclear Regulatory Commission.

Dated at Washington, D.C. this 14th day of November, 1978.

JOHN C. HOYLE,
Acting Secretary of the Commission.

[FR Doc. 78-32416 Filed 11-16-78; 8:45 am]

[3110-01-M]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on November 9, 1978 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes:

The name of the agency sponsoring the proposed collection of information;

The title of each request received;

The agency form number(s), if applicable;

The frequency with which the information is proposed to be collected;

An indication of who will be the respondents to the proposed collection;

The estimated number of responses;

The estimated burden in reporting hours; and

The name of the reviewer or reviewing division or office.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503 (202-395-4529), or from the reviewer listed.

NEW FORMS

DEPARTMENT OF AGRICULTURE

Economics, Statistics, and Cooperatives Service
Point of Purchase Survey
Single-time
Various farm operations, 11,000 responses; 7,333 hours
Office of Federal Statistical Policy and Standard, 673-7956

DEPARTMENT OF DEFENSE

Departmental and other
CAMPUS/CAMPVA Unified Report on Mental Health Services
CAMPUS 368
On occasion
Mental health service professional providers, 149,000 reponses; 22,350 hours
Caywood, D. P., 395-3443

REVISIONS

FEDERAL RESERVE SYSTEM

Domestic Finance Company Report of Consolidated Assets and Liabilities (Monthly Reprot)
FR 2248
Monthly
Sample of finance companies, 960 responses; 2,400 hours
Geiger, Susan B., 395-5867

FEDERAL RESERVE SYSTEM

Domestic Finance Company Report of Consolidated Assets and Liabilities (Quarterly Report)
FR 2248A
Quarterly
Sample of finance companies, 480 responses; 1,440 hours
Geiger, Susan B., 395-5867

DEPARTMENT OF AGRICULTURE

Economics, Statistics, and Cooperatives Service
List sampling frame
Annually
Farmers, 406,530 responses; 33,745 hours
Office of Federal Statistical Policy and Standard, 673-7956

DEPARTMENT OF THE TREASURY

Bureau of Customs
Special summary steel invoice
Customs 5520
On occasion
Foreign shipper, seller, or manufacturer, 175,000 responses; 43,750 hours
Geiger, Susan B., 395-5867

EXTENSIONS

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

State and local government information (EEO-4)
EEOC 164
Annually
State and local governments with 15+ employees, 45,600 responses; 364,800 hours
Laverne V. Collins, 395-3214

DEPARTMENT OF AGRICULTURE

Forest Service
Technical data—electronic type land use
3700-10
On occasion
Radio, TV, and telephone companies, 100 responses; 25 hours
Ellett, C. A., 395-6132
Economics, Statistics, and Cooperatives Service
Retail seed price inquiry
Semi-annually
Retail seed dealers, 1,400 responses; 467 hours
Ellett, C. A., 395-6132.

DAVID R. LEUTHOLD,
Budget and Management Officer.

[FR Doc. 78-32415 Filed 11-16-78; 8:45 am]

[4510-23-M]

PRESIDENT'S COMMISSION ON COAL

HEARINGS

The President's Commission on Coal will be holding public hearings at the following locations and times:

Date and time: November 29, 1978; 1:00 p.m. to 6:30 p.m.
Place: City Council Chambers, City Hall, 55 West Maiden Street, Washington, Pa.
Date and time: December 14, 1978; 9:30 a.m. to 5:30 p.m.
Place: Armington Science Center, Chrisman Auditorium, Pikeville College, Pikeville, Ky.

The hearings are being held to assure that the views of the public are heard and considered by the Commission in its study.

The Commission was created to conduct a comprehensive review of the state of the coal industry in the United States with particular emphasis on matters pertaining to productivity, capital investment, and the general economic health of the industry; collective bargaining, grievance procedures, and such other aspects of labor-management relations as the Commission deems appropriate; health, safety, and living conditions in the Nation's coal fields; the development and application of new technologies to the industry; the impact on the coal industry of Federal regulations and such other matters as the Commission deems appropriate.

Hearings have already been held by the Commission in Charleston, W. Va., and Denver, Colo. At these sessions, witnesses discussed the broad range of issues which the Commission will be considering over the coming year. The Washington, Pa., and Pikeville, Ky., hearings will be more directed in their scope, with segments of each hearing being devoted to a single topic.

A major portion of the Washington, Pa., hearing will be devoted to testimony from witnesses addressing issues relating to productivity in the coal industry.

The morning session of the Pikeville hearing will focus on problems of the transportation of coal, and the afternoon, housing needs in coal production areas.

The latter parts of both hearings will be open to witnesses who wish to address any of the other issues before the Commission.

In addition to the oral presentations, the Commission will accept written statements from persons or organizations for 30 days after each hearing.

Anyone wishing to testify at either hearing, or to submit a written statement for the record, should contact Mr. James Childress, President's Commission on Coal, Box 1424, Washington, D.C. 20013, or call 202-673-7925.

MICHAEL S. KOLEDA,
Executive Director,
President's Commission on Coal.

NOVEMBER 14, 1978.

[FR Doc. 78-32465 Filed 11-16-78; 8:45 am]

[4710-08-M]

DEPARTMENT OF STATE

Secretary of State's Advisory Committee on Private International Law

STUDY GROUP ON INTERNATIONAL CHILD ABDUCTION BY ONE PARENT

Meeting

A meeting of the Study Group on International Child Abduction by One Parent, a subgroup of the Secretary of State's Advisory Committee on Private International Law, will be held on Saturday, December 9, 1978, at 9:30 a.m., in room 219, Hastings School of Law, 198 McAllister Street, San Francisco, Calif.

The purpose of the meeting will be to consider and review possible responses to the Questionnaire and Report on International Child Abduction by One Parent prepared by the Hague Conference on Private International Law, and to identify and consider relevant legal issues arising in connection with these abductions in such areas as conflicts of law and comparative law.

Members of the general public may attend the meeting up to the limits of the capacity of the meeting room and may participate subject to instructions of the chariman. It is requested that, prior to December 9, 1978, members of the general public who plan to attend the meeting inform Ms. Susan Short, Office of the Legal Adviser, Department of State, of their name, affiliation, and address. The telephone number is 202-632-0522.

Dated: November 14, 1978.

STEPHEN M. SCHWEBEL,
Vice Chairman.

[FR Doc. 78-32418 Filed 11-16-78; 8:45 am]

[4710-07-M]

[Public Notice CM-8/127]

ADVISORY COMMITTEE ON INTERNATIONAL INTELLECTUAL PROPERTY

Meeting

The International Copyright Panel of the Department of State's Advisory Committee on International Intellectual Property will meet in open session on Tuesday, December 12, 1978, at the Department of State in conference room 1105 from 9:30 a.m. to 1 p.m.

The purpose of this open meeting will be to discuss the following topics:

1. Possible U.S. adherence to the Bern Convention;
2. UNESCO/WIPO Subcommittee on Off-the-Air Videotaping Meeting, September 1978;
3. UNESCO/WIPO Subcommittee on Cable Television Meeting, July 1978;
4. UNESCO/WIPO Draft Convention for the Avoidance of Double-taxation of Copyright Royalties;
5. Fellowships for Foreign Copyright Trainees.

The public attending may, as time permits and subject to the instruction of the chairperson, participate in the discussions or may submit their views in writing to the chairperson prior to or at the meeting for later consideration by the committee.

Members of the public who plan to attend will be admitted up to the limits of the conference room's capacity. Entrance to the Department of State building in controlled and entry will be facilitated if arrangements are made in advance of the meeting. Members of the general public who plan to attend the meeting are requested to provide their name, affiliation, and address to Steven Brattain, Office of Business Practices, Department of State, 202-632-3491, prior to December 12, 1978. All non-Government attendees should use the C Street entrance to the building.

Dated: November 7, 1978.

HARVEY J. WINTER,
Executive Secretary.

[FR Doc. 78-32410 Filed 11-16-78; 8:45 am]

[4710-07-M]

[Public Notice CM-8/128]

SHIPPING COORDINATING COMMITTEE; SUBCOMMITTEE ON SAFETY OF LIFE AT SEA

Meeting

The working group on ship design and equipment of the Subcommittee on Safety of Life at Sea, a subcommitteee of the Shipping Coordinating Committee, will hold an open meeting at 9:30 a.m. on Thursday, December 7, 1978, in room 9232 of the Department of Transportation, 400 Seventh Street SW., Washington, D.C.

The purpose of this meeting will be to consider the following:

General commentary on the Canadian effort to edit the Code and combine Chapters 1 and 2;
Prepare final recommendations for Chapter 5B (electrical plant);
Review the single failure criteria for consistency as used throughout the Code;
Review the various angles of heel and list which are used to describe limiting conditions throughout the Code;
Discuss the adequacy of the quality assurance measures currently in the Code.

Requests for further information should directed to Commander John Deck III, U.S. Coast Guard (G-MMT-4/82), telephone 202-426-2197.

The Chairman will entertain comments from the public as time permits.

RICHARD K. BANK,
Chairman,
Shipping Coordinating Committee.

NOVEMBER 9, 1978.

[FR Doc. 78-32411 Filed 11-16-78; 8:45 am]

[4710-07-M]

[Public Notice CM-8.129]

SHIPPING COORDINATING COMMITTEE; SUBCOMMITTEE ON SAFETY OF LIFE AT SEA

Meeting

The Working Group on Radiocommunications of the Subcommittee on Safety of Life at Sea (SOLAS), a part of the Shipping Coordinating Committee, will conduct an open meeting at 1:30 p.m. on Thursday, December 14, 1978, in Room 8442 of the Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590.

The purpose of the meeting is to prepare position documents for the Twentieth Session of the Subcommittee on Radiocommunications of the Intergovernmental Maritime Consultative Organization (IMCO) to be held in London on March 26-30, 1979. In particular, the working group will discuss the following topics:

Survival craft radio equipment;
Operational requirements for future EPIRBs;
Operational standards for shipboard radio equipment;
Maritime distress system.

Requests for further information should be directed to Lieutenant R. F. Carlson, U.S. Coast Guard (G-OTM/74), Washington, D.C., telephone: 202-426-1345.

The Chairman will entertain comments from the public as time permits.

RICHARD K. BANK,
Chairman,
Shipping Coordinating Committee.

NOVEMBER 10, 1978.

[FR Doc. 78-32412 Filed 11-16-78; 8:45 am]

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[3410-01-M]
[4910-62-M]

DEPARTMENT OF AGRICULTURE

Office of the Secretary

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

RURAL TRANSPORTATION ADVISORY TASK FORCE

Nominations For Membership

The Secretaries of Agriculture and Transportation hereby solicit nominations for membership on the Rural Transportation Advisory Task Force in accordance with subsection 2(c) of Pub. L. 95-580.

The "Act to Establish a Rural Transportation Advisory Task Force" (Pub. L. 95-580, enacted November 2, 1978) created a 16-member task force, jointly chaired by the Secretaries of Agriculture and Transportation. The Secretaries appoint the members of the task force on the following basis:

(1) One to be selected from a list of qualified individuals recommended by the Secretary of Agriculture;

(2) One to be selected from a list of qualified individuals recommended by the Secretary of Transportation;

(3) One to be selected from a list of qualified individuals recommended by the chairman of the Interstate Commerce Commission;

(4) One to be selected from a list of qualified individuals recommended by the chairman of the Committee on Agriculture, Nutrition, and Forestry, U.S. Senate;

(5) One to be selected from a list of qualified individuals recommended by the Chairman of the Committee on Agriculture, U.S. House of Representatives;

(6) Three to be selected from lists of qualified individuals recommended by carriers and associations of carriers, not to include more than one representative from each of the three transport modes, rail, motor, and water;

(7) Four to be selected from lists of qualified individuals recommended by the agricultural community including agricultural shippers and associations of shippers; and

(8) Two to be selected from lists of qualified individuals recommended by the academic community.

Purpose of the task force. The task force will study and report on methods for enhancing the economical and efficient movement of agricultural commodities (including forest products) and agricultural inputs, including recommendations for approaches for determining the continuing transportation needs of agriculture, for establishing a national agricultural transportation policy and for identifying impediments to a railroad transportation system adequate for the needs of agriculture. The task force is authorized to publish an initial report within 180 days of enactment. After holding public hearings, the task force is required to compile a final report which addresses the same issues provided for in the initial report and which contains specific recommendations for a railroad transportation system adequate to meet the essential needs of the agricultural industry. The final report is due within 420 days of enactment.

Members of the task force who are full time officers or employees of the United States shall receive no additional pay on account of service on the task force. While away from their homes or regular places of business in the performance of services for the task force, members of the task force shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.

The Secretaries shall furnish such supplies, and clerical and administrative support as they deem necessary to enable the task force to carry out its responsibilities.

The task force shall be dissolved 45 days after publication of the final report.

The nominations sought are those from which the Secretaries may make the selections described in (6), (7), and (8) above. Nominations should state clearly which category the nominee is to represent, i.e., carrier, agricultural shipper, or academe. Nominations should also include a statement of the nominee's qualification, or reason the nomination is made.

Nominations must be received by December 15, 1978, to insure consideration. Send to Ronald F. Schrader, Special Assistant for Transportation, Office of the Secreatry, U.S. Department of Agriculture, Washington, D.C. 20250, Attention: Rural Transportation Advisory Task Force.

Dated: November 14, 1978.

CAROL TUCKER FOREMAN,
Acting Secretary of Agriculture.

BROCK ADAMS,
Secretary of Transportation.

[FR Doc. 78-32464 Filed 11-16-78; 8:45 am]

[4510-29-M]
[4830-01-M]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

[Application No. D-809]

EMPLOYEE BENEFIT PLANS

Proposed Exemption for Certain Transactions Involving the Trend Mills, Inc. et al. Profit Sharing Plan

AGENCIES: Department of the Treasury/Internal Revenue Service Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor and the Internal Revenue Service (the Agencies) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the purchase by Champion International Corporation (CIC), and the subleasing and transfer to WWG Industries, Inc. (WWG), of a certain parcel of land containing a factory/office building presently owned for the Trend Mills, Inc. et al. profit sharing plan (the plan) by the related Trend Mills, Inc. et al. profit sharing trust (the trust). The proposed exemption, if granted, would affect participants and beneficiaries of the plan, CIC, WWG, and other persons participating in the proposed transactions.

DATE: Written comments and requests for a public hearing must be received by the Internal Revenue Service on or before December 20, 1978.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption would be effective March 17, 1977.

ADDRESS: All written comments and requests for a public hearing (at least six copies) should be sent to the Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attention: E:EP:PT:1 (D-809). The application for exemption and the comments received will be available for public inspection at the Internal Revenue Service National Office Reading Room, 1111 Constitution Avenue NW., Washington, D.C. 20224 and at the Public Documents Room of Pension and Welfare Benefit Programs, Room N-4677, 200 Constitition Avenue NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT:

Timothy S. Smith of the Prohibited Transactions Staff of the Employee Plans Division, Internal Revenue Service, 202-566-6761. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Agencies of a proposed exemption from the restrictions of sections 406(a)(1) (A) through (D), 406(a)(2), 406(b)(1) and 407(a) of the Act and from the taxes imposed by sections 4975 (a) and (b) of the Code by reason of sections 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of CIC and Citizens and Southern Bank (C & S) pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA procedure 75-1 (40 FR 18471, April 28, 1975) and Rev. Proc. 75-26, 1975-1 C.B. 722. While certain aspects of the transactions for which relief has been requested may be permissible under the transitional relief afforded by sections 2003(c) and 414 of the Act, other aspects of the transactions might not be so covered and, thus, the agencies are proposing relief with respect to each requested transaction.

SUMMARY OF FACTS AND REPRESENTATIONS

The application contains facts and representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Agencies for the complete representations of the applicants.

1. The plan was established on June 30, 1961, effective July 1, 1960. The original plan sponsors were Trend Mills, Inc. (Trend), Trend Sales Co. and Trend Latex & Chemical Co. Through a series of plan and trust amendments plan sponsors were added and deleted so that by the time of the ninth amendment to the plan, effective December 31, 1969, the only employers remaining as plan sponsors were Trend & Trend Industries, Inc. The Trust Co. of Georgia was the original trustee for the Trust. Under the seventh amendment to the Trust, C & S became successor trustee for the Trust on August 20, 1969.

2. Effective December 18, 1969, Trend merged into a subsidiary of CIC which was subsequently merged into CIC. The plan continued in existence. However, since approximately December 31, 1971, no new contributions to the Trust have been made and no new participants have been admitted to the plan.

3. The trust owns a one story carpet manufacturing plant with office space (the plant) situated on approximately 11.3 acres of land in Plainville, Ga. The total building area is approximately 216,133 square feet (including 3,867 square feet of office space). The plant was built in six phases between 1960 and 1973. The first four phases containing 124,200 square feet (the original building) were completed by 1968. The fifth stage containing 93,933 square feet (the addition) was completed in 1970.

4. The plant at all relevant times has been used by Trend and CIC as a carpet manufacturing facility. The original Building was involved in a sale and leaseback transaction consummated on June 26, 1968 involving the sale by Trend of the original building to the Trust Co. of Georgia as then trustee of the trust and a subsequent leaseback of the building to Trend. The original term of this lease was 10 years and the annual rental was $53,400. The lease also specified that it would continue on a year-to-year basis with the same terms at the option of Trend or its successor.

5. Under a construction agreement signed and dated April 21, 1969 between Trend and the Trust Co. of Georgia, as the then trustee of the trust, Trend agreed to construct the addition to the plant. Trend was to act as general contractor and the trust was to pay Trend for the costs of construction upon presentation by Trend to the trustee of a certification of completion and a statement of the costs of construction and, subsequent to the completion of the addition, the lease covering the plant was to be amended to reflect an increased rent. The addition was completed sometime prior to December 31, 1970 at a cost of approximately $499,641. However, for reasons unexplained and unknown to CIC and C & S, Trend never presented to the trustee the agreed upon certificate of completion and the trust never paid Trend the costs of construction nor was the lease agreement ever amended nor did Trend or CIC ever pay any increased rent for the addition.

6. As of December 31, 1976 the trust carried the entire plant on its books of account with a market and book value of $426,000 (the bookvalue of the original building). Using this market value the books of account showed the plant as comprising 50.14 percent of the market value of the trust's assets. During the 5 plan years ending December 31, 1976 an average of 20 percent of each year's remaining year-end participants terminated from the plan. The applicants estimate that for the next 5 years this rate will increase to 25 percent and that if this trend continues the entire liquid balance of the trust (comprising all of its assets other than the plant) will be paid out by the end of 1979.

7. An appraisal made by Kirkland & Co. of Atlanta, Ga. on March 16, 1976 placed the market value of the plant at $900,000 and the rental value at $119,973 a year.

8. On March 17, 1977 C & S and CIC entered into an agreement under which C & S, as trustee for the trust agreed to sell and CIC agreed to buy the plant for a price of $604,497, subject to obtaining from the Department of Labor and the Internal Revenue Service a ruling that the transaction was not a prohibited transaction or, in the alternative, an exemption from the prohibited transaction provisions of the Act and Code. On the same date C & S and CIC and Chicago Title Insurance Co. (Chicago Title), as escrow agent, entered into an escrow agreement under which CIC deposited $604,497 toward the purchase price for the plant and C & S deposited a trustee's deed from C & S as grantor to CIC as grantee with Chicago Title pending notice to Chicago Title that the transaction should be completed.

9. The applicants have submitted a memorandum of law which states that there is authority under Georgia statutory and case law for the proposition that the trust is obliged to make payment to CIC for the addition and that the obligation on the part of CIC, as successor to Trend, to pay increased rent is dependent upon the performance of the trust's covenant to pay for the addition. In order to determine the net sales price to be paid by CIC to the trust for the plant, CIC and C & S agreed, as a result of arm's-length negotiations, that the proper method should be to recreate the events that would have taken place beginning in 1970 and ending on December 31, 1976 if the terms of the construction agreement had been carried out, and if the lease had been amended to reflect the construction of the addition. Accordingly, the purchase price agreed to by C & S and CIC for the plant was caluclated by taking into consideration the fair market value of the plant (arrived at primarily through the income method of valuation) and the fact that the trustee for the trust did not pay Trend for the costs of the addition to the plant and the fact that Trend did not pay any increased rent, with compounding or discounting, as appropriate, of amounts by an interest factor of 8.8 percent (the rate determined by C & S and CIC to be the average rate which would have been paid or earned during the years involved, i.e., the average prime rate plus 1 percent for the years 1971-76). The fair market value of the plant used in this calculation was $900,000. This figure was based on the appraisal of March 16, 1976 as well as on other relevant factors including the adverse economic conditions then prevailing in the carpet industry, the singular purpose of the plant and the abundance of sim-

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ilar industrial facilities in the Plainville, Ga. area.

10. A second appraisal of the plant by Frank B. Roberts and Associates of Atlanta, Ga., as of November 21, 1977, placed its market value at $1,000,000. In light of this higher value CIC and C & S entered into an agreement dated February 28, 1978 under which CIC agreed to pay $25,641 as additional consideration for the plant.

11. C & S has not attempted to locate a purchaser or lessee for the plant who is not a disqualified person (party in interest). C & S believes that in light of the continuing lease obligations and the fact that the property is subject to lease renewals running to CIC on the original building but not on the addition that no purchaser could be located who would pay the trust a price comparable to that which will be received from the employer. The trustee also believes that its efforts to locate an unrelated lessee or purchaser would be unproductive because of the depressed conditions of the carpet industry in the vicinity of the plant and because of the singular purpose of the plant.

12. On March 30, 1978 CIC sold the assets of its Trend Carpet Division to WWG, a Delaware corporation. Pursuant to the terms of the asset purchase agreement between CIC and WWG, CIC has entered into a sublease with WWG under which WWG is the sublessee of the plant, subject to all of the terms and conditions of the lease between CIC and C & S. Under this agreement, following receipt by CIC of the exemption requested from the Agencies, CIC will deliver a deed conveying the plant to WWG or will cause C & S to deliver a trustee's deed for the plant directly to WWG. The employees at the plant are now employed by WWG.

NOTICE TO INTERESTED PERSONS

Written notice will be given to all plan members, and all beneficiaries presently receiving distributions under the plan. Notice will be provided by posting a notice on bulletin boards which are regularly reviewed by all Plan members at the plant, which notice will set forth the nature of the pending exemption and inform the plan members of their right to submit comments. In addition, as soon as feasible after notice is published in the FEDERAL REGISTER, a copy of the notice in the FEDERAL REGISTER will be mailed to each plan member and to each beneficiary receiving benefits under the plan by first-class mail. Copies of all such notifications will be forwarded to the Agencies at the time they are made available or distributed.

The posting of notice on the plan member bulletin board referred to above will take place within seven (7) days after publication in the FEDERAL REGISTER of notice of this application; the sending of copies of the notice as published in the FEDERAL REGISTER will be accomplished within a reasonable time not to exceed fourteen (14) days after the date of publication of notice in the FEDERAL REGISTER of this application.

GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 4975(c)(2) of the Code and section 408(a) of the act does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Code and the act, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the act which, among other things, require that a fiduciary discharge his duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 4975(c)(1)(F) of the Code and section 406(b)(2) and (b)(3) of the Act;

(3) Before an exemption may be granted under section 4975(c)(2) of the Code and section 408(a) of the Act, the Agencies must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Code and the Act, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(5) This document does not meet the criteria for significant regulations set forth in paragraph 8 of the proposed Treasury directive appearing in the FEDERAL REGISTER for Wednesday, May 24, 1978 (43 FR 22319).

WRITTEN COMMENTS AND HEARING REQUEST

All interested persons are invited to submit written comments or requests for a hearing on the proposed exemption to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the application for exemption at the addresses set forth above.

PROPOSED EXEMPTION

Based upon the facts and representations set forth in the application, the Agencies are considering granting the requested exemption under the authority of section 4975(c)(2) of the Code and section 408(a) of the Act and in accordance with the procedures set forth in ERISA procedure 75-1 and Rev. Proc. 75-26. If the exemption is granted, the taxes imposed by section 4975(a) and (b) of the Code by reason of sections 4975(c)(1) (A) through (E) of the Code and the restrictions of sections 406(a)(1) (A) through (D), 406(a)(2), 406(b)(1) and 407(a) of the act shall not apply to the purchase of the plant by CIC from the trust for $630,138 in cash, provided that this amount is not less than the fair market value of the plant after making appropriate adjustments for costs in connection with the construction of the addition and rent due the trust, nor to the subleasing and transfer to WWG. The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C. this 9th day of November, 1978.

FRED J. OCHS,
Director, Employee Plans Division, Internal Revenue Service.

IAN D. LANOFF,
Administrator of Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 78-32226 Filed 11-16-78; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

[Notice 742]

ASSIGNMENT OF HEARINGS

NOVEMBER 14, 1978.

Cases assigned for hearing, postponement, cancellation, or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 95876 (Sub-235F), Anderson Trucking Service, Inc., now being assigned for hearing on February 6, 1979 (1 day), at St. Paul, MN, in a hearing room to be later designated.

MC 92950 (Sub-1F), Wolverton Dray Lines, Inc., now being assigned for hearing on February 7, 1979 (3 days), at St. Paul, MN in a hearing room to be later designated.

MC 134477 (Sub-243F), Schanno Transportation, Inc., now being assigned for hearing on February 12, 1979 (2 days), at St. Paul, MN, in a hearing room to be later designated.

MC 144452 (Sub-2F), Arlen Lindquist d.b.a. Arlen E. Lindquist Trucking, now being assigned for hearing on February 14, 1978 (3 days), at St. Paul, MN, in a hearing room to be later designated.

MC 133119 (Sub-134F), Heyl Truck Lines, Inc., now being assigned for hearing on January 24, 1979 (1 day), at Omaha, NE, in a hearing room to be later designated.

MC 144265 (Sub-1F), Aid, Inc., now being assigned for hearing on February 7, 1979 (3 days), at New Orleans, LA, in a hearing room to be later designated.

MC 2908 (Sub-24F), Capital Motor Lines, d.b.a. Capital Trailway, now being assigned for hearing on February 12, 1979 (1 week), at Montgomery, AL, in a hearing room to be later designated.

MCC 10094, International Brotherhood of Teamster, Chauffers, Warehousemen & Helpers of America versus Akers Motor Lines, Inc., MCC 10167, Akers Motor Lines, Inc., and Akers-Central Motor Lines, Inc.—Investigation and Revocation of Certificates, now being assigned for hearing on February 5, 1979 (2 weeks), at Charlotte, NC in a hearing room to be later designated.

MC 123681 (Sub-34F), Widing Transportation, Inc., now assigned for hearing on January 15, 1979, at Portland, OR, will be held in Court Room 2, Bankruptcy Court, Pioneer Courthouse, 555 Southwest Yamhill Street and continued to January 22, 1979 (5 days), at Seattle, WA, in a hearing room to be later designated.

MC 100666 (Sub-384F), Melton Truck Lines, Inc., now assigned November 13, 1978, at Columbus, OH, is canceled and transferred to Modified Procedure.

MC 36989, Adams Packing Association, Inc., et al. versus Consolidated Rail Corp., et al., now assigned for hearing on January 9, 1979, at Orlando, FL, is postponed indefinitely.

MC 2908 (Sub-23F), Capitol Motor Lines, d.b.a. Capitol Trailways, now assigned for hearing on December 5, 1978, at Tuscaloosa, AL, is postponed indefinitely.

MC 115841 (Sub-589), Colonial Refrigerated Transportation, Inc., now assigned for hearing on November 30, 1978, at Dallas, TX, is canceled and reassigned for November 30, 1978 (2 days), at San Antonio, TX, in a hearing room to be later designated.

MC 144285F, Bay Haven Marina, Inc., now assigned for hearing on November 15, 1978, at Chicago, IL, is canceled.

AB 7 (Sub-62), Stanley E. G. Hillman, Trustee of the Property of Chicago, Milwaukee, St. Paul & Pacific Railroad Co., Debtor, Abandonment Near Faribault and Zumbrota, in Rice and Goodhue Counties, MN, now assigned for hearing on November 27, 1978, at Zumbrota, MN, is postponed to November 28, 1978, at Zumbrota, MN, City Hall, 55 East Third.

MC 144225, Jadeel Trucking, Inc., now assigned for hearing on November 3, 1978, at Boston, MA, is postponed indefinitely.

MC 113678 (Sub-740F), Curtis, Inc., now assigned for hearing on November 29, 1978, at Chicago, IL, is postponed indefinitely.

MC 115826 (Sub-327F), W. J. Digby, now assigned December 11, 1978 at Denver, CO, is advanced and reassigned to November 28, 1978 (1 day), at Denver, CO, and will be held at Room C-503, U.S. Courthouse, 1929 Stout Street.

MC 117119 (Sub-619), Willis Shaw Frozen Express, Inc., now assigned December 11, 1978 (1 day), at Denver, CO, and will be held at Division 2, U.S. Courthouse, 1929 Stout Street.

MC 116915 (Sub-45), Eck Miller Transportation Corp., now assigned November 15, 1978 at Louisville, KY, is canceled and reassigned to November 21, 1978 for prehearing conference at the Offices of the Interstate Commerce Commission in Washington, DC.

MCC 10163, Clark Transfer, Inc., versus Consolidated Productions, Inc., now assigned November 29, 1978, for prehearing conference at the Offices of the Interstate Commerce Commission in Washington, DC.

MC 113678 (Sub-749F), Curtis, Inc., now being assigned on February 27, 1979 (4 days), at Los Angeles, CA, and continued to March 5, 1979 (5 days), at San Francisco, CA, in rooms to be later designated.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 78-32441 Filed 11-16-78; 8:45 am]

[7035-01-M]

[Notice No. 211]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

NOVEMBER 3, 1978.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

MC 8515 (Sub-14 TA), filed September 28, 1978. Applicant: TOBLER TRANSFER, INC., Junction Interstate 80 and IL 89, Spring Valley, IL 61354. Representative: Leonard R. Kofkin, 39 South LaSalle Street, Chicago, IL 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, (except commodities in bulk, household goods as defined by the Commission, Classes A and B explosives, and those requiring special equipment), serving the facilities of Caterpillar Tractor Co. at or near Pontiac, IL, as an off-route point in connection with applicant's existing regular route authority, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Caterpillar Tractor Co., C.R. Sommer, Supervisor, Inbound Traffic, 100 Northeast Adams Street, Peoria, IL 61629. Send protests to: Lois M. Stahl, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 102478 (Sub-8 TA), filed September 28, 1978. Applicant: BRIGHT BELT MOTOR LINES, INC., P.O. Box 237, Grifton, NC 28530. Representative: Ralph McDonald, 336 Fayetteville Street, P.O. Box 2246, Raleigh, NC 27602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Roofing, roofing materials, and industrial asphalt* (except commodities in bulk), from the facilities of Trumbull Asphalt Co., and Owens-Corning Fiberglas Corp., at Morehead City, NC, to points in VA, (expect Richmond

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and Chesapeake), for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: (1) Trumbull Asphalt Co., P.O. Box 37, Morchead City, NC 28557. (2) Owens-Corning Fiberglas Corp., 105 Arendel, Morehead City, NC 28557. Send protests to: Archie W. Andrews, District Supervisor, Interstate Commerce Commission, 624 Federal Building, 310 New Bern Avenue, P.O. Box 26896, Raleigh, NC 27611.

MC 107012 (Sub-284 TA), filed September 29, 1978. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Gerald A. Burns, P.O. Box 988, Fort Wayne, IN 46801. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Artificial Christmas trees*, from the facilities of Marathon Carey-McFall Co., located at or near Montgomery, Avis, Jersey Shores, and Harrisburg, PA, to points in IA, IL, IN, MI, MN, OH, and WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Marathon Carey-McFall Co., Montoursville, PA 17754. Send protests to: J. H. Gray, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 343 West Wayne Street, Suite 113, Fort Wayne, IN 46802.

MC 108119 (Sub-102 TA), filed September 27, 1978. Applicant: E. L. MURPHY TRUCKING CO., P.O. Box 43010, St. Paul, MN 55164. Representative: Andrew R. Clark, 1000 First National Bank Building, Minneapolis, MN 55402. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Materials and supplies* used in the manufacture of axle assemblies, (1) from Dayton and Tiffin, OH; Elkhart, Logansport, and Reynolds, IN; Chicago, IL; Mequon, WI; Jackson and Detroit, MI; Chattanooga, TN; and Montezuma, GA, to Seminole, OK; and (2) from Seminole, OK, to Chino, CA, Dayton, OH; Chattanooga, TN; McMinnville, OR; Elkhart, IN; and Montezuma, GA, for 180 days. Supporting shipper: Kelsey Hayes, Axle and Brake Division, P.O. Box 1587, Seminole, OK 74868. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building and U.S. Courthouse, 110 South Fourth Street, Minneapolis, MN 55401.

MC 108651 (Sub-22 TA), filed September 28, 1978. Applicant: ROY B. MOORE, INC., 233 Wilcox Drive, P.O. Box 628, Kingsport, TN 37662. Representative: Daniel H. Moore, Wilcox Drive, P.O. Box 628, Kingsport, TN 37662. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned goods*, from Alton, Leicester, Leroy, Oakfield, Phelps, Shortsville, and South Dayton, NY, to Charlotte, NC, for 180 days. Supporting shipper: Curtice Burns, Inc., Lent Avenue, Leroy, NY 14482. Send protests to: Glenda Kuss, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, Suite A-422, U.S. Courthouse, 801 Broadway, Nashville, TN 37203.

MC 112750 (Sub-348TA), filed September 29, 1978. Applicant: PUROLATOR COURIER CORP., 3333 New Hyde Park Road, New Hyde Park, NY 11040. Representative: Elizabeth L. Henoch (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Commercial papers, documents, and written instruments* (except currency and negotiable securities) as are used in the business of banks and banking institutions, between Bluefield, WV, and Raleigh, NC, under a continuing contract or contracts, with The Flat Top National Bank of Bluefield, for 90 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: The Flat Top National Bank of Bluefield, P.O. Box 950, Bluefield, WV 24701. Send protests to: Maria B. Kejss, Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, NY 10007.

MC 113429 (Sub-5TA), filed September 29, 1978. Applicant: MICHAEL CONTRIS, d.b.a. CONTRIS TRUCKING, R.R. No. 1, Faulkner Road, Harrod, OH 45850. Representative: Michael Contris, R.R. No. 1, Faulkner Road, Harrod, OH 45850. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Machine parts and materials* used in the manufacture or repair of construction equipment (except commodities in bulk), between Lima, OH; on the one hand, and, on the other hand, points in the United States, (except AK, HI, and OH), under a continuing contract or contracts, with Clark Equipment Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Clark Equipment Co., 525 North 24th Street, Battle Creek, MI. Send protests to: Interstate Commerce Commission, Bureau of Operations, 313 Federal Office Building, 234 Summit Street, Toledo, OH 43604.

MX 115669 (Sub-171TA), filed September 28, 1978. Applicant: DAHLSTEN TRUCK LINE, INC., P.O. Box 95, 101 West Edgar Street, Clay Center, NE 68933. Representative: Howard N. Dahlsten, (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry feed ingredients*, from the facilities of Occidental Chemical Co., at or near Montpelier, IA, to points in IL, IN, OH, and WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Mike Gonzales, Manager, Motor Transportation, Occidental Chemical Co., P.O. Box 1185, Houston, TX 77001. Send protests to: Max H. Johnston, District Supervisor, 285 Federal Building and Courthouse, 100 Centennial Mall North, Lincoln, NE 68508.

MC 119702 (Sub-65TA), filed September 29, 1978. Applicant: STAHLY CARTAGE CO., 130-A Hillsboro Avenue, P.O. Box 486, Edwardsville, IL 62025. Representative: Carl Wetzel (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid Fertilizer* (in bulk, in tank vehicles), from Bourbon and Watseka, IL, to points in IN, for 180 days. Supporting shipper: R. R. Whipple, Supervisor-Traffic, Allied Chemical Corp., P.O. Box 2120, Houston, TX 77001. Send protests to: Charles D. Little, District Supervisor, Interstate Commerce Commission, 414 Leland Office Building, 527 East Capitol Avenue, Springfield, IL 62701.

MC 123179 (Sub-4TA), filed September 29, 1978. Applicant: ARROW FREIGHT LINES, INC., 80 Progress Street, West Springfield, MA 01089. Representative: Alan R. Barthelette, 80 Progress Street, West Springfield, MA 01089. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture and metal articles, and materials and supplies* used in the manufacture and distribution thereof, between the facilities of N M Industries Division of Standex International Corp., at or near West Springfield, MA, on the one hand, and, on the other, points in MD, VA, NC, and SC, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: N M Industries Division of Standex International Corp., 203 Circuit Avenue, West Springfield, MA 01089. Send protests to: David M. Miller, District Supervisor, 436 Dwight Street, Room 338, Springfield, MA 01103.

MC 125335 (Sub-31TA), filed September 29, 1978. Applicant: GOODWAY INC., P.O. Box 2283, York, PA 17405. Representative: Gailyn L. Larsen, Peterson, Bowman, Larsen & Swanson, P.O. Box 81849, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, (except in bulk), from the facilities of Knouse Foods, Inc., in Adams and Franklin Counties, PA, to points in TN, MS, AR, LA, TX, OK, GA, and AL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: Knouse Foods, Inc., William H. Horner, Traffic Manager, Peach Glen, PA 17306. Send protests to: Charles F. Myers, District Supervisor, Interstate Commerce Commission, P.O. Box 869, Federal Square Station, Harrisburg, PA 17108.

MC 125535 (Sub-8TA), filed September 21, 1978. Applicant: JOHN SHARP TRUCKING CO., INC., Hamilton Court, South Warwick Road, Somerdale, NJ 08083. Representative: Donald S. Helm, P.O. Box 814, Cherry Hill, NJ 08003. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Shelves, bins, counters, refrigerators, freezers, cooling rooms, cooling boxes, and parts and accessories thereto*, and (2) *materials, equipment, and supplies* used in the manufacture of the commodities in (1) above, between Cherry Hill, NJ, on the one hand, and, on the other, points in the United States in and east of KS, NE, ND, OK, SD, and TX (except points in CT, DE, DC, MD, NJ, NY, PA, VA and WV), under a continuing contract or contracts, with Hussman Refrigerator Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: Hussmann Refrigerator Co., P.O. Box 507, Cherry Hill, NJ 08034. Send protests to: John P. Lynn, Transportation Specialist, Interstate Commerce Commission, 428 East State Street, Room 204, Trenton, NJ 08608.

MC 126622 (Sub-6TA), filed September 27, 1978. Applicant: AUDET & MEGANTIC TRANSPORT LTEE., P.O. Box 1330, Lac Megantic, PQ. Representative: Harold Paschios, 443 Congress Street, Portland, ME 04101. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Wood chips*, (in bulk), from ports of entry on the International Boundary Lines between the United States and Canada located at or near Jackman and Coburn Gore, ME, to points in ME, restricted to the transportation of traffic originating at Lac Megantic and Woburn, PQ, and limited to a transportation service to be performed, under a continuing contract or contracts, with Torpedo Lumber Enc., for 90 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: Torpedo Lumber, Enc., 3677 Rue Levis, Lac Megantic, PQ (Attn: Michel Boisvert, President). Send protests to: Ross J. Seymour, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 3, 6 Loudon Road, Concord, NH 03301.

MC 126844 (Sub-56TA), filed September 28, 1978. Applicant: R. D. S. TRUCKING CO., INC., 1713 North Main Road, Vineland, NJ 08360. Representative: Terrence D. Jones, 2033 K Street NW, Washington, DC 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods, and commodities* exempt from regulation under section 203(b)(6) of the Interstate Commerce Act when moving in mixed loads with frozen foods, from the facilities of Empire Freezers of Syracuse, Inc., at Syracuse, NY, to points in CT, MA, NH, RI, VT, NY, PA, NJ, DE, MD, OH, MI, VA and the DC, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Empire Freezers of Syracuse, Inc., P.O. Box 4892, Syracuse, NY 13221. Send protests to: John P. Lynn, Transportation Specialist, Interstate Commerce Commission, 428 East State Street, Room 204, Trenton, NJ 08608.

MC 128592 (Sub-14TA), filed September 28, 1978. Applicant: KLM, INC., Old Highway 49 South, P.O. Box 6098, Jackson, MS 39208. Representative: Donald B. Morrison, 1500 Deposit Guaranty Plaza, P.O. Box 22628, Jackson, MS 39205. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Ham*, from Miami, FL, to Greeley, CO; and (2) *frozen foods*, from Denver and Greeley, CO, to the distribution facilities of the Burger King Corp. at Seattle, WA, under a continuing contract, or contracts, with Burger King Corp., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Burger King Corp., 9200 South Dadeland Boulevard, Miami, FL 33156. Send protests to: Alan C. Tarrant, District Supervisor, Interstate Commerce Commission, Room 212, 145 East Amite Building, Jackson, MS 39201.

MC 134531 (Sub-13TA), filed September 29, 1978. Applicant: AGGREGATE HAULERS, INC., Route 2, Box 559-A, West Columbia, SC 29169. Representative: Burton W. Lanier, Route 2, Box 559-A, West Columbia, SC 29169. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry fertilizer and fertilizer materials*, (except in bulk, in tank or hopper-type vehicles), between points in SC, GA, TN, and NC, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Kaiser Agricultural Chemicals, 1101 Harbor Road, West Columbia, SC 29169. Send protests to: E. E. Strotheid, District Supervisor, Interstate Commerce Commission, Room 302, 1400 Building, 1400 Pickens Street, Columbia, SC 29201.

MC 134531 (Sub-14TA), filed September 29, 1978. Applicant: AGGREGATE HAULERS, INC., Route 2, Box 559-A, West Columbia, SC 29169. Representative: Burton W. Lanier, Route 2, Box 559-A, West Columbia, SC 29169. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Concrete products*, from Richland, Spartanburg and Greenville Counties, SC, to points in GA, NC and TN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): (1) Interpace Corp., P.O. Box 5008, Columbia, SC 29250. (2) Metromont Materials, P.O. Box 1292, Spartanburg, SC 29301. Send protests to: E. E. Strotheid, District Supervisor, Interstate Commerce Commission, Room 302, 1400 Building, 1400 Pickens Street, Columbia, SC 29201.

MC 134592 (Sub-14TA), filed September 28, 1978. Applicant: HERB MOORE AND HAZEL MOORE, d.b.a. H. & H TRUCKING CO., 10360 North Vancouver Way, Portland, OR 97211. Representative: Philip G. Skofstad, P.O. Box 594, Gresham, OR 97030. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Malt beverages*, from Van Nuys, Fairfield and San Rafael, CA to Seattle and Bellevue, WA, and (2) *wine and champagne*, from San Francisco, San Jose, Sacramento, Lodi, and Sonoma, CA, to Seattle and Bellevue, WA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): (1) K & L Distributors, Inc., P.O. Box 1969, Bellevue, WA 98009. (2) Alaska Distributors, Co., 4601 6th Avenue South, Seattle, WA 98108. Send protests to: R. V. Dubay, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 114 Pioneer Courthouse, Portland, OR 97204.

MC 138732 (Sub-17TA), filed September 28, 1978. Applicant: OSTERKAMP TRUCKING, INC., Box 5546, Orange, CA 92667. Representative: Steven K. Kuhlman, P.O. Box 82028, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bentonite clay* (except in bulk), from the facilities of American Colloid Co., at or near Lovell, WY, to

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points in CA, for 180 days. Supporting shipper: American Colloid Co., P.O. Box 228, Skokie, IL 60077. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321, Federal Building, 300 North Los Angeles Street, Los Angeles, CA. 90012.

MC-139458-TA, filed September 27, 1978. Applicant: RICHNER, INC., P.O. Box 1488, Durango, CO 81301. Representative: J. Albert Sebald, 1700 Western Federal Building, Denver, CO 80202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Coal* (in bulk), from the mine of Arness-McGriffin Coal Co. about 4 miles west of Durango, La Plata County, CO, on U.S. Hwy 160, to the Hanna rail siding on U.S. Hwy 160 about 6 miles west of Del Norte, Rio Grande County, CO, for 180 days. Supporting shipper: Arness-McGriffin Coal Co., 1139 Main Avenue, Durango, CO 81301. Send protests to: H. C. Ruoff, District Supervisor, Interstate Commerce Commission, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 140118 (Sub-9TA), filed September 28, 1978. Applicant: S.T.L. TRANSPORT, INC., P.O. Box 9776, 1000 Jefferson Road, Rochester, NY 14623. Representative: S. Michael Richards/Raymond A. Richards, P.O. Box 225, Webster, NY 14580. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Costume jewelry and materials, supplies and equipment* used in the manufacture, sale, and distribution of costume jewelry, between Newark, NY, on the one hand, and, on the other, points in MA, NH, and RI, under a continuing contract or contracts, with C. H. Stuart, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: C. H. Stuart, Inc., Stuart Park, Route 88 South, Newark, NY 14513. Send protests to: Interstate Commerce Commission, U.S. Courthouse and Federal Building, 100 South Clinton Street, Room 1259, Syracuse, NY 13260.

MC 140277 (Sub-9TA), filed September 27, 1978. Applicant: VAN ZEE EXPRESS, LTD., Box 125 West Highway, Orange City, IA 51041. Representative: Mark Menard, Rentschlers Truck Plaza, P.O. Box 480, Sioux Falls, SD 57101. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Commodity bags, envelopes, packets, pouches, wrappers, and bag ties*, from Sioux Falls, SD, to Baltimore, MD, Norfolk, VA; South Plainfield, NJ; and the States of KS and OK, under a continuing contract or contracts, with American Western Co., for 180 days. Supporting shipper: American Western Co., 1500 "M" Avenue, Sioux Falls, SD 57102. (Robert L. Jonas plant manager). Send protest to: J. L. Hammond, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 455, Federal Building, Pierre, SD 57501.

MC 140487 (Sub-3TA), filed September 21, 1978. Applicant: YELLOWSTONE TRUCKING, INC., North 9 Post Street, Room 425, Peyton Building, Spokane, WA 99210. Representative: William J. Monehim, P.O. Box 1756, Whittier, CA 90609. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Lumber*, from points in ID on and north of U.S. Hwy 95 from Lewiston to junction State Hwy 13 at Grangeville, then State Hwy 13 to U.S. Hwy 12 at Kooskia, then U.S. Hwy 12 to the ID-MT State line, points in MT on and west of U.S. Hwy 93 from the ID-MT State line to junction U.S. Hwy 2 at Kalispell, then on, north and west of U.S. Hwy 2 to junction State Hwy 49 at East Glacier Park, then State Hwy 49 to junction U.S. Hwy 89 at Kiowa, then U.S. Hwy 89 to the United States-Canadian border, and from Peshastin, WA, and points in WA on and east of U.S. Hwy 97 to points in CO, ID, IL, IN, IA, KS, MI, MN, MO, MT, NE, ND, OH, SD, UT, WA, WI, and WY, under a continuing contract or contracts, with The Pack River Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: The Pack River Co., North 9 Post Street, Room 425, Peyton Building, P.O. Box 1452, Spokane, WA 98174. Send protests to: Hugh H. Chaffee, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 858 Federal Building, Seattle, WA 98174.

MC 140849 (Sub-16TA), filed September 29, 1978. Applicant: ROBERTS TRUCKING CO., INC., P.O. Drawer G, U.S. Hwy 271 South, Poteau, OK 74953. Representative: Prentiss Shelley, P.O. Drawer G, Poteau, OK 74953. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Polyester fibers, quilting, quilting fillers, comforters, drapes and quilted bedspreads* in shipper-owned and carrier-owned trailers, from Clinton, OK, to points in MS, NE, TN, TX, and GA, under a continuing contract, or contracts, with Kellwood Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Kellwood Co., 200 Sears Road, Perry, GA 31069. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 143214 (Sub-2TA), filed September 28, 1978. Applicant: MATUSZKO FARMS TRUCKING, INC., 19 Ball Lane, North Amherst, MA 01059. Representative: David M. Marshall, Marshall and Marshall, 101 State Street, Suite 304, Springfield, MA 01103. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Beer, and materials and supplies* used in the distribution thereof (1) between Syracuse, NY, and Hartford, CT; and (2) between Rochester, NY, and Hartford, CT, and (3) between Philadelphia, PA, and Hartford, CT, under a continuing contract or contracts, with Rogo Distributors, Division of Allan S. Goodman, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Rogo Distributors, Division of Allan S. Goodman, Inc., 191 Park Street, P.O. Box 1558, East Hartford, CT 06108. Send protests to: David M. Miller, District Supervisor, 436 Dwight Street, Room 338, Springfield, MA 01103.

MC 143503 (Sub-15TA), filed September 28, 1978. Applicant: MERCHANTS HOME DELIVERY SERVICE OF TEXAS, INC., P.O. Box 5067, Oxnard, CA 93031. Representative: David B. Schneider, 223 Ciudad Building, Oklahoma City, OK 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture, furnishings, and appliances*, from the facilities of Finger Furniture Co., Inc., at or near Beaumont and Houston, TX to points in Acadia, Allen, Beauregard, Calcasie, Cameron, Evangeline, Jefferson, Davis, Lafayette, Rapides, Sabine, Vermilion, and Vernon Parishes, LA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Finger Furniture Co., Inc., P.O. Box 194, Houston, TX 77001. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321, North Los Angeles Street, Los Angeles, CA 90012.

MC 143511 (Sub-2TA), filed September 29, 1978. Applicant: HARDINGER TRANSFER CO., P.O. Box 521, Erie, PA 16512. Representative: William A. Schaal, P.O. Box 521, Erie, PA 16512. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Aluminum scrap metal* (except in dump vehicles), from Erie, PA, to Cleveland, Sandusky, Toledo, and Heath, OH; Wabash and East Chicago, IN; Detroit, Benton Harbor, and Coldwater, MI; and Chicage, IL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Kaiser Aluminum & Chemical Co., 1015 East 12th Street, Erie, PA 16512. Send protests to: John J. England, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

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MC 143593 TA, filed September 27, 1978. Applicant: ROTA-CONE OILFIELD OPERATING CO., 429 North 14th Street, Muskogee, OK 74401. Representative: C. L. Phillips, Room 248, Classen Terrace Building, 1411 North Classen, Oklahoma City, OK 73106 Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products, materials, supplies and equipment* used in the manufacture and distribution of paper and paper products (except commodities in bulk), in LTL and truckload lots, from the facilities of Container Corp. of America, Muskogee, OK, to points in AR, KS, and MO, under a continuing contract or contracts, with Container Corp. of America, for 180 days. Supporting shipper: Container Corp. of American, P.O. Box 1441, Fort Worth, TX 76101. Send protests to: Connie Stanley, Transportation Assistant, Room 240, Old Post Office & Court House Building, 215 Northwest, 3d, Oklahoma City, OK 73102.

MC 143603 (Sub-2TA), filed September 28, 1978. Applicant: BENJAMIN DIMEDIO, JR., d.b.a. FREIGHT CONSULTANTS CO., 1631 South 6th Street, Camden, N.J. 08104. Representative: Francis W. McInerny, 1000 16th Street NW., Washington, D.C. 20036. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Zinc concentrates* (in bulk, in dump vehicles), from Camden, NJ, to Palmerton, PA, under a continuting contract or contracts with G & W Industries, Natural Resources Group, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: G & W Natural Resources Group, a division of Gulf & Western Industries, Inc., First American Center, Nashville, TN 37238. Send protests to: John P. Lynn, Transportation Specialist, Interstate Commerce Commission, 428 East State Street, Room 204 Trenton, NJ 08608.

MC 143775 (Sub-20TA), filed September 29, 1978. Applicant: PAUL YATES, INC., 6601 West Orangewood, Glendale, AZ 85301. Representative: Michael R. Burke, 6601 West Orangewood, Glendale, AZ 85301. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, from Adams and Franklin Counties, PA, to AR, LA, MS, OK, TN, and TX, for 180 days. Supporting shipper: Knouse Foods, Inc., Peach Glen, PA 17306. (William H. Horner, Traffic Manager). Send protests to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, 230 North First Avenue, 2020 Federal Building, Phoenix, AZ 85025.

MC 144191 (Sub-4TA), filed September 28, 1978. Applicant: ELAINE MOON SIGNS, INC., T/A CLASSIC VANS OF VA., P.O. Box 2471, West Springfield, VA 22152. Representative: John M. Ballenger, 6121 Lincolnia Road, Suite 400, Alexandria, VA 22312. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plastic sheeting and chemicals* used in the production of electronic circuit boards (except in bulk), between Vienna, VA, on the one hand, and, on the other, Tampa and Orlando, FL, under a continuing contract or contracts, with Thickol Dynachem, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Thickol Dynachem, 234 Dominion Road NE., Vienna, VA. Send protests to: T. M. Esposito, Transportation Assistant, 600 Arch Street, Room 3238, Philadelphia, PA.

MC 144428 (Sub-4TA), filed September 27, 1978. Applicant: TRUCKADYNE, INC., Route 16, Mendon, MA 01756. Representative: Samuel L. Watts, TDS, Inc., 1050 Waltham Street, Lexington, MA 02173. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plastic flower pots, and other plastic articles* used in the horticultural business and in the return direction products used or useful in the manufacture, processing and marketing of the above products (except in bulk), between the facilities of Lockwood Products, Inc., located at Leominster, MA, and Toledo, OH; on the one hand, and the 48 contiguous States on the other, under a continuing contract or contracts, with Lockwood Products, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Lockwood Products, Inc., 80 Sherman Street, Cambridge, MA 02140. Send protests to: David M. Miller, District Supervisor, 436 Dwight Street, Room 338, Springfield, MA 01103.

MC 145152 (Sub-7TA), filed September 27, 1978. Applicant: BIG THREE TRANSPORTATION, INC., P.O. Box 706, Springdale, AR 72764. Representative: Don Garrison, 324 North Second Street, Rogers, AR 72756. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Candy and confectionery items*, (except in bulk), *dessert preparations, advertising and display materials, gum ball machines and stands*, from the facilities of Leaf Confectionery, Inc., at or near Chicago, IL, to Birmingham and Montgomery, AL; Little Rock, AR; Atlanta, GA; Kansas City and Wichita, KS; Baton Rouge, New Orleans, and Shreveport, LA; Jackson, MS; Kansas City and St. Louis, MO; Oklahoma City and Tulsa, OK; Memphis and Nashville, TN; and Corpus Christi, Dallas, Fort Worth, Houston, and San Antonio, TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Leaf Confectionery, Inc., 1155 North Cicero Avenue, Chicago, IL 60651. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 145192TA, filed August 8, 1978, and published in the FEDERAL REGISTER issue of October 16, 1978, and republished as corrected this issue. Applicant: AUTO EXPRESS MEXICANO, DIV., PACIFICO, S.A. De C.V. CORP.-MEX ARROYO de GUADALUPE No. 86, Fraccionamiento La Escalera, Mexico, 14, D.F., Representative: Paul F. Sullivan, 710 Washington Building, Washington, DC 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except household goods, dangerous explosives, commodities in bulk and those requiring special equipment), between ports of entry in CA and AZ on the United States-Mexico boundary, on the one hand, and, on the other, San Diego, Los Angeles and San Francisco, CA, and Phoenix and Tucson, AZ, including the commercial zones of named points, restricted to traffic moving in foreign commerce, for 180 days. Supporting shipper: There are approximately twenty-five statements of support attached to this application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies thereof which may be examined at the field office named below. Send protests to: Richard H. Dawkins, District Supervisor, Interstate Commerce Commission, Room B-400 Federal Building, 727 E. Durango Street, San Antonio, TX 78206. The purpose of this republication is to include the territorial scope which was previously omitted.

MC 145283 (Sub-1TA), filed September 28, 1978. Applicant: JOHN D. LITTLE and JAMES E. RICHARDS d.b.a. TOTAL TRANSPORTATION SYSTEMS, 2422 South Peck Road, Whittier, CA 90601. Representative: James E. Richards, 2422 South Peck Road, Whittier, CA 90601. Authority

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sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Tires, pneumatic, auto, loose,* from South Gate, CA, to Yuma, Tucson, Tempe and Phoenix, AZ, on a split delivery basis, for the account of the Fed-Mart Corp., under a continuing contract or contracts, with the Fed-Mart Corp., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: The Fed-Mart Corp., 8001 Othello, San Diego, CA 92138. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321, Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

MC 145395TA, filed September 28, 1978. Applicant: LUCKEY TRUCKING, INC., R.R. No. 45, Streator, IL 61364. Representative: Robert T. Lawley, Routman and Lawley, 300 Reisch Building, Springfield, IL 62701. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Prestressed concrete beams,* from Blackstone and Crystal Lake, IL, to points in the United States (except AK and HI), under a continuing contract or contracts, with Pre-Stressed Engineering Co., Division of Road Materials Corp., for 180 days. Supporting shipper: Pre-Stressed Engineering Co., Division of Road Materials Corp., William Holub, Vice President, Route 1, Blackstone, IL 61313. Send protests to: Lois M. Stahl, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 145405 (Sub-1TA), filed September 28, 1978. Applicant: JOHN W. WOLFE, 274 Mindella Way, Layton, UT 84041. Representative: Raymond M. Kelley, Thompson and Kelley, 450 Capitol Life Center, Denver, CO 80203. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Cedar shake, shingles and ridge,* (2) *Roofing and siding and roofing and siding materials and equipment,* (1) From points in Forks, WA, and its commercial zone and Port Angeles, WA, and its commercial zone to points in Denver, CO, and its commercial zone, Grand Junction, CO, and its commercial zone, Casper, WY, and its commercial zone and Cheyenne, WY, and its commercial zone, and (2) From points in Denver, CO, and its commercial zone to points in ID, MT, OR, UT, WA, and WY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: There are approximately (five) statements of support attached to this application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies thereof which may be examined at the field office named below. Send protests to: L. D. Helfer, District Supervisor, Interstate Commerce Commission, 5301 Federal Building, Salt Lake City, UT 84138.

MC 145478TA, filed September 28, 1978. Applicant: RUBEN BERMUDEZ G., d.b.a. TRANSPORTES BERMUDEZ, S.A., de C.V., P.O. Box 970, Tecate, CA 92080. Representative: Ruben Bermudez G., P.O. Box 970, Tecate, CA 92080. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: (A) *Hides, catele, loose on pallets,* and (B) *Chemicals, equipment and supplies* used in the tanning of hides, (C) *returning pallets and containers,* between Long Beach, Los Angeles, Modesto, Oakland, San Diego, San Francisco and Santa Cruz, CA, on the one hand, and points at the United States International Boundary at San Ysidro and Tecate, CA, on the other hand, under a continuing contract or contracts, with Teneria Ensenada S.A., de C.V., for 180 days. Supporting shipper: Teneria Ensenada S.A., de C.V., D. R. Coleman Apoderado, APdo No. 376, Ensenada, Mexico. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, 300 N. Los Angeles Street, Room 1321, Los Angeles, CA 90012.

MC 145489TA, filed September 28, 1978. Applicant: ROSE-WAY, INC., 1914 E. Euclid, Des Moines, IA 50313. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Aluminum and aluminum products,* from the facilities of Reynolds Metals Company at or near McCook, IL, to points in CA, OR, and WA, under a continuing contract or contracts with Reynolds Metals Co. of Richmond, VA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Reynolds Metals Co., P.O. Box 27003, Richmond, VA 23161. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-32430 Filed 11-16-78; 8:45 am]

[7035-01-M]

[Notice No. 212]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

NOVEMBER 3, 1978.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC, and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

MC 25798 (Sub-336TA), filed September 26, 1978. Applicant: CLAY HYDER TRUCKING LINES, INC., P.O. Box 1186, Auburndale, FL 33823. Representative: Tony G. Russell, P.O. Box 1186, Auburndale, FL 33823. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Frozen foods,* from the facilities of Fox Deluxe Pizza Co. at Joplin, MO and the facilities of the Pillsbury Co. at Joplin and Carthage, MO to points in NE, IA, CO, KS, OK, AR, and TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Totino's Frozen Foods Division, the Pillsbury Co., 7350 Commerce Lane, Fridley, MN 55432. Send protests to: Donna M. Jones, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations Monterey Building, Suite 101, 8410 NW. 53d Terrace, Miami, FL 33166.

MC 37656 (Sub-11TA), filed October 2, 1978. Applicant: DOYLE TRUCKING CORP., 100 Plaza Center, Secaucus, NJ 07094. Representative: Edward L. Nehez, P.O. Box 1409, 167 Fairfield Road, Fairfield, NJ 07006. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Commodities* dealt in or used by manufacturers of furniture, bedding, and home furnishings (except commodities in bulk), between the facilities of Simmons Company at Elizabeth and Linden, NJ, on the one hand, and, on the other, points in MA, RI, CT, NY, NJ, PA, DE, MD, VA, WV, and DC under a continuing contract or contracts with Simmons Co., for 180 days. Supporting shipper: Simmons Co., 6428 Warren Drive, Norcross, GA 30090. Send protests to: Robert E. Johnston, District Supervisor, Interstate Commerce Commission, 9 Clinton Street, Washington, DC 20423.

NOTE.— Applicant presently operates as a contract carrier for Simmons Co. between Elizabeth and Linder, NJ, and points in CT, DE, DC, and portions of NY, PA, and MD, and seeks an extension of its service area to meet changing requirements of Simmons Co. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority.

MC 48441 (Sub-26TA), filed September 19, 1978. Applicant: R.M.E. INC. P.O. Box 418, Streator, IL 61364. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, DC 20001. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Paper articles and plastic articles,* (1) from the facilities of Continental Diversified Industries, Bondware Division at or near Chicago, IL to points in WI, and (2) from the facilities of Continental Diversified Industries, Bondware Division at or near Shelbyville, IL to points in IN and OH for 180 days. Supporting shipper: Walter L. Weart, Division Manager—Traffic Methods and Control, Continental Diversified Industries, Bondware Division, 800 E. Northwest Hwy, Palatine, IL 60067. Send protests to: Lois M. Stahl, Transportation Analyst, I.C.C., Room 1386, 219 S. Dearborn Street, Chicago, IL 60604.

MC 51146 (Sub-649TA), filed October 2, 1978. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representive: John R. Patterson, 2480 E. Commercial Boulevard, Fort Lauderdale, FL 33308. Authority sought to operate as *common carrier,* by motor vehicle, over irregular routes, transporting: *Pet food* from Camp Hill, PA to IL, IN, MI, OH, and WI, for 180 days. Applcant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Perk Dog Food Co., 1580 N. Northwest Hwy, Park Ridge, IL 60068 (Leonard L. Golz). Send protest to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 E. Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 53841 (Sub-15TA), filed October 2, 1978. Applicant: W. H. CHRISTIE & SONS, INC., Box 517, East State Street, Knox, PA 16232. Representative: John A. Pillar, Attorney at Law, 205 Ross Streeet, Pittsburgh, PA 15219. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Berverge containers and materials, equipment and supplies* used in the manufacture or sale of containers and empty pallets (except commoditieis in bulk) between the facilities of Berverage Bottle Division, Hoover Universal, Inc., at or near Columbus, OH on the one hand, and, on the other, points in IL, IN, KY, MI, PA, TN, and WV, for 180 days. Supporting shipper: Hoover Universal, Inc., Route 2, Triport Road, Georgetown, KY 40323. Send protest to: John J. England, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 2111 Federal Building, Pittsburgh, PA 15222.

MC 55896 (Sub-92TA), filed September 19, 1978. Applicant: R-W SERVICE SYSTEM, INC., 20225 Goddard Road, Taylor, MI 48180. Representative: George E. Batty, 20225 Goddard Road, Taylor, MI 48180. Authority sought to operate as *common carrier,* by motor vehicle, over irregular routes, transporting: *Empty plastic bottles,* from Port Clinton, OH to Franklin, KY and Elizabethton, TN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Aim Packaging, Inc., P.O. Box 278, Port Clinton, OH 43452. Send protests to: T. S. Quinn, District Supervisor, Interstate Commerce Commission, 604 Federal Building and U.S. Courthouse, 231 West Lafeyette Boulevard, Detroit, MI 48226.

MC 64932 (Sub-588TA), filed September 19, 1978. Applicant: ROGERS CARTAGE CO., 10735 South Cicero Avenue, Oak Lawn, IL 60453. Representative: William F. Farrell, Traffic Manager, Commerce, 10735 South Cicero Avenue, Oak Lawn, IL 60453. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Freon* in bulk in tank vehicles, from the DuPont plant at or near Montague, MI to OH on and west of a line beginning at the MI-OH State line and extending along I 475 to Junction I 75, thence along I 75 to Junction U.S. Hwy 68, thence along U.S. Hwy 68 to the OH-KY State line; also to MO destinations other than St. Louis Commercial Zone, for 180 days. Supporting shipper: G. W. Fillingame, Freight Traffic Manager, E.I. Du Pont de Nemours & Co., 1007 Market Street, Wilmington, DE 19898. Send protests to: Lois Stahl, Transportation Assistant, Interstate Commerce Commission, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 71593 (Sub-11TA), filed September 19, 1978. Applicant: FORWARDERS TRANSPORT, INC., 1815 Front Street, Scotch Plains, NJ 07076. Representative: Charles J. Williams, 1815 Front Street, Scotch Plains, NJ 07076. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Such commodities as are dealt in by retail stores,* (except commodities in bulk), from the facilities of United States Packing & Shipping Co., Inc., at Jersey City, NJ, to Detroit, MI, Milwaukee, WI, CHicago, IL, Cinncinnati and Columbus, OH, and their respective commercial zones, for 180 days. Supporting shipper: Milwaukee Sores Car Association, 1818 North Commerce Street, Milwaukee, WI 53212. Send protests to: Robert E. Johnston, District Supervisor, Interstate Commerce Commission, Newark, NJ 07102.

MC 94265 (Sub-283TA), filed October 2, 1978. Applicant: BONNEY MOTOR EXPRESS, INC., Post Office Box 305, Route 460, Windsor, VA 23487. Representative: Clyde W. Carver, Suite 212, 5299 Roswell Road, NE., Atlanta, GA 30342. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Particle board, pulpboard, and paper* from the facilities of Union Camp Corp. at or near Franklin, VA to points in AR, IA, KS, LA, MO and TX for 180 days. Supporting shipper: Union Camp Corp., George L. Wright, Jr., Area Traffic Manager, Franklin, VA 23851. Send protests to: Paul D. Collins, District Supervisor, Interstate Commerce Commission, 10-502 Federal Building, 400 North Eighth Street, Richmond, VA 23240.

MC 105375 (Sub-78TA), filed September 19, 1978. Applicant: DAHLEN TRANSPORT, INC., 1680 Fourth Avenue, Newport, MN 55055. Representative: Joseph A. Eschenbacher, Jr., 1680 Fourth Avenue, Newport, MN 55055. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Plastic pellets,* in bulk, from the Minneapolis/St. Paul Commercial Zone to

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the plantsite of 3M Co. at Menomonie, WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Minnesota Mining & Manufacturing Co., 3M Center, St. Paul, MN 55101. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building and U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 105375 (Sub-79TA), filed September 19, 1978. Applicant: DAHLEN TRANSPORT, INC., 1680 Fourth Avenue, Newport, MN 55055. Representative: Joseph A. Eschenbacher, Jr., 1680 Fourth Avenue, Newport, MN 55055. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer*, in bulk, in tank vehicles, from Prescott, WI to points in MN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Allied Chemical Corp., P.O. Box 2120 Houston, TX 77001. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building and U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 106674 (Sub-343TA), filed October 2, 1978. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, U.S. Hwy 24 West, Remington, IN 47977. Representative: Jerry L. Johnson, P.O. Box 123, Remington, IN 47977. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Grain flour and prepared flour in bags*, from Springfield, IL, to AL, FL, GA, SC and TN, for 180 days. Supporting shipper: Pillsbury Co., 608 2nd Avenue South, Minneapolis, MN 55402. Send protests to: J. H. Gray, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 343 West Wayne Street, Suite 113, Fort Wayne, IN 46802.

MC 107403 (Sub-115TA), filed September 22, 1978. Applicant: MATLACK, INC., 10 W. Baltimore Avenue, Lansdowne, PA 19050, Representative: Martin C. Hynes, Jr. (Same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Rock salt*, in bags, from The Village of Brodhead, Northampton County, PA, to points in NJ, NY, MD and DE, for 180 days. Supporting shipper: International Salt Co., 30 Buxton Farm Road., Stamford, CT 06905. Send protests to: T. M. Esposito, Transportation Assistant, 6 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 107496 (Sub-1164TA), filed September 26, 1978. Applicant: RUAN TRANSPORT CORP., 666 Grand Avenue, Des Moines, IA 50309. Representative: E. Check (Same as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid petroleum wax*, in bulk, in tank vehicles, from Casper, WY to Naugatuck, CT, for 180 days. Supporting shipper: Amoco Oil Co., P.O. Box 6110A, Chicago, IL 60680. Send protests to: Herbert W. Allen, District Supervisor Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 107743 (Sub-52TA), filed September 19, 1978. Applicant: SYSTEM TRANSPORT, INC., E. 11707 Montgomery, P.O. Box 3456 T.A., Spokane, WA 99220. Representative: J. Michael Alexander, 136 Wynnewood Professional Building, Dallas, TX 75224. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Collapsible plastic bins*, from Dawson Springs, KY and Liberty Center, OH to points in CA, OR, WA, ID, NV, AZ, UT, MT, WY, CO, NM and TX, for 180 days. Supporting shipper: The Boxx Corp., Suite 815, Northtown Office Building, Spokane, WA 99207. Send protests to: Hugh H. Chaffee, District Supervisor, Bureau of Operations, I.C.C., 858 Federal Building, Seattle, WA 98174.

MC 111375 (Sub-101TA), filed September 26, 1978. Applicant: PIRKLE REFRIGERATED FREIGHT LINES, INC., P.O. Box 3385, Madison, WI 53704. Representative: Charles E. Dye, P.O. Box 3358, Madison, WI 53704. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuff*, from Albert Lea, MN and its Commercial Zone to point in SD, for 180 days. Supporting shipper: Miami Margarine Co., 5226 Vine Street, Cincinnati, OH 45217. Send protests to: District Supervisor, Ronald A. Morken, Interstate Commerce Commission, 212 E. Washington Avenue, Room 317, Madison, WI 53703.

MC 113434 (Sub-112TA), filed September 19, 1978. Applicant: GRABELL TRUCK LINE, INC., 679 Lincoln Avenue, P.O. Box 511, Holland, MI 49423. Representative: Wilhelmina Boersma, 1600 First Federal Building, Detroit, MI 48226. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass containers and accessories therefor and cartons* when moving in mixed shipments with glass containers, from the facilities of Thatcher Glass Manufacturing Co., Division of Dart Industries, at Lawrenceburg, IN to Paducah, KY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Thatcher Glass Manufacturing Co., 1901 Grand Central Avenue, Elmira, NY 14901. Send protests to: C. R. Flemming, District Supervisor, Interstate Commerce Commission, 225 Federal Building, Lansing, MI 48933.

MC 113434 (Sub-115TA), filed September 26, 1978. Applicant: GRABELL TRUCK LINE, INC., P.O. Box 511, 679 Lincoln Avenue, Holland, MI 49423. Representative: Miss Wilhelmina Boersma, 1600 First Federal Building, Detroit, MI 48226. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Metal containers and container ends*, from the facilities of Owens Illinois, Inc., at or near Perrysburg, OH to Holland, MI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Owens-Illinois, Inc., P.O. Box 1035, Toledo, OH 43666. Send protests to: C. R. Flemming, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 225 Federal Building, Lansing, MI 48933.

MC 113463 (Sub-10TA), filed October 2, 1978. Applicant: CONTRACT CARRIER, INC., 830 Broadway NE., Albuquerque, NM 87102. Representative: Edwin E. Piper, Jr., 1115 Sandia Savings Building, Albuquerque, NM 87102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Commodity, doors and component parts thereof*, from the facilities of Dependable Door Co., Inc., at or near Belen, NM, to points in Denver, Adams, Arapahoe, Jefferson, Douglas, Boulder, Weld Larimer, El Paso, and Pueblo Counties, CO, under a continuing contract or contracts with Dependable Door Co., Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Dependable Door Co., Inc., Belen, NM. Send protests to: District Supervisor, Interstate Commerce Commission, 1106, Federal Office Building, 517 Gold Avenue SW, Albuquerque, NM 87101.

MC 113828 (Sub-261TA), filed October 2, 1978. Applicant: O'BOYLE TANK LINES, INC., P.O. Box 30006, Washington, DC 20014. Representative: William P. Sullivan, 1320 Fenwick Lane, Silver Spring, MD. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Vinegar*, in bulk, in tank vehicles, from Winchester, VA, to Muscatine, IA, for 180 days. Supporting shipper: Heinz USA, Division of H. J. Heinz Co., P.O. Box 57, Pittsburgh, PA 15230. Send protests to: T. M. Esposito, Transportation Assistant,

600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 115322 (Sub-151TA), filed October 2, 1978. Applicant: REDWING REFRIGERATED, INC., 9831 South Orange Avenue, P.O. Box 10177, Taft, FL 32809. Representative: L. W. Fincher, P.O. Box 426, Tampa, FL 33601. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry spaghetti and macaroni products*, from Jersey City, NJ, to points in FL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: C. F. Mueller Co., 180 Baldwin Ave., Jersey City, NJ 07306. Send protests to: District Supervisor, G. H. Fauss, Jr., ICC, Bureau of Operations, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 115648 (Sub-31TA), filed October 2, 1978. Applicant: LOCK TRUCKING, INC., P.O. Box 278, Wheatland, WY 82201. Representative: Ward A. White, Attorney, P.O. Box 568, Cheyenne, WY 82001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Ore and concentrates*, in dump vehicles, from points in Converse and Platte Counties, WY, to the Cotter Corp. Mill in Fremont County, CO, approximately 5 miles south of Canon City, CO, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: UO CO, Inc., a UT corporation, 304 First Security Building, Salt Lake City, UT 84111. Send Protests to: District Supervisor, Paul A. Naughton, Interstate Commerce Commission, Room 105 Federal Building and Courthouse, 111 South Wolcott, Casper, WY 82601.

MC 115826 (Sub-352TA), filed September 26, 1978. Applicant: W. J. DIGBY, INC., 1960 31st Street, Denver, CO 80217. Representative: Howard Gore, 1960 31st Street, Denver, CO 80217. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Carcass meat*, from Fort Morgan CO, to Wallula, WA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Columbia Foods, Inc., Dakota City, NE 68731. Send protests to: Herbert C. Ruoff, District Supervisor, Interstate Commerce Commission, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 116073 (Sub-370TA), filed October 2, 1978. Applicant: BARRETT MOBILE HOME TRANSPORT, INC., 1825 Maine Avenue, P.O. Box 919, Moorhead, MN 56560. Representative: John C. Barrett, Box 919, Moorhead, MN 56560. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Travel trailers*, from Jackson Center and Versailles, OH, to points and places in the United States, including AK but excluding HI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Airstream, Division of Beatrice Foods Co., West Pike Street, Jackson Center, OH 45334. Send protests to: Ronald R. Mau, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 268, Federal Building and U.S. Post Office, 657 2nd Avenue North, Fargo, ND 58102.

MC 116763 (Sub-440TA), filed October 2, 1978. Applicant: CARL SUBLER TRUCKING, INC., North West Street, Versailles, OH 45380. Representative: Gary J. Jira, North West Street, Versailles, OH 45380. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products, in packages*, from Texaco Inc., facilities in Jefferson County, TX, to MN, WI, IA, MO, IL, IN, MI, OH, KY, NY, Bayonne, NJ, and Martinsburg, WV, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Texaco, Inc., William K. Marshall, Assistant Manager—Traffic U.S., 1111 Rusk, Houston, TX 52332. Send Protests to: Paul J. Lowry, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 5514-B Federal Building, 550 Main Street, Cincinnati, OH 45202.

MC 117439 (Sub-60TA), filed September 26, 1978. Applicant: BULK TRANSPORT, INC., 5500 Florida Boulevard, P.O. Box 1429, Baton Rouge, LA 70821. Representative: Mr. Edward A. Winter, 235 Rosewood Drive, Metairie, LA 70005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Mineral filler*, from the facilities of Louisiana Cement Co., a division of OKC Corp. located at or near New Orleans, LA, to Houston and Galveston, TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Mr. Michael Fandal, Traffic Manager, Louisiana Cement Co., 14900 Intracoastal Drive, New Orleans, LA 70129, Send protests to: Connie A. Guillory, Interstate Commerce Commission, Bureau of Operations, T-9038 U.S. Postal Service Building, 701 Loyola Avenue, New Orleans, LA 70113.

MC 117815 (Sub-298TA), filed October 2, 1978. Applicant: PULLEY FREIGHT LINES, INC., 405 Southeast 20th Street, Des Moines, IA 50317. Representative: Jack H. Blanshan. attorney at Law, 205 West Touhy Avenue, Suite 200, Park Ridge, IL 60068. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, trasnporting: *Such commodities* as are dealt in by business and office supply companies, from the facilities of United Stationers at Forest Park, IL, to Des Monies, IA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: United Stationers, 1701 South First Avenue, Maywood, IL 60153. send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 118130 (Sub-89TA), filed September 19, 1978. Applicant: SOUTH EASTERN XPRESS, INC., P.O. Box 6985, Fort Worth, TX 76115. Representative: Billy R. Reid, P.O. Box 9093, Fort Worth, TX 76107. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Malt beverages*, and (2) *empty containers*, commodities named in (1) from Jefferson County, CO, to points in TX and commodities named in (2) from points in TX to Jefferson County, CO, for 180 days, Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Adolph Coors Co., Golden, CO 80401. Send protests to: Robert J. Kirspel, District Supervisor, Room 9A27 Federal Building, 819 Tayor Street, Ft. Worth, TX 76102.

MC 118159 (Sub-278TA), filed August 1, 1978, and published in the FEDERAL REGISTER issue of October 4, 1978, and republished as corrected this issue. Applicant: NATIONAL REFRIGERATED TRANSPORT, INC., P.O. Box 51366, Dawson Station, Tulsa, OK 74151. Reresentative: Warren L. Troupe, 2480 East Commercial Boulevard, Fort Lauderdale, FL 33308. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Battery boxes, covers and vents, rubber and plastic*, from Indianapolis, IN, and Philadelphia, MS to points in AL, CT, DE, GA, KS, KY, MA, MS, MO, NH, NJ, NY, NC, OH, PA, RI, SC, TN, TX, VA, and WI, for 180 days, Supporting shipper: The Richardson Co., 2701 Lake Street, Melrose Park, IL 60160. send protests to: Connie Stanley, transportation assistant, Room 240, Old Post Office and Court House Building, 215 Northwest 3d, Oklahoma City, OK 73102.

MC 118159 (Sub-279TA), filed August 10, 1978, and published in the FEDERAL REGISTER issue of October 18, 1978, and republished as corrected this issue. Applicant: NATIONAL RE-

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FRIGERATED TRANSPORT, INC., P.O. Box 51366, Dawson Station, Tulsa, OK 74151. Representative: Warren L. Troupe, 2480 East Commercial Boulevard, Fort Lauderdale, FL 33308. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic containers*, from the facilities of Hoover Universal at or near Lenexa, KS to points in AL, AR, AZ, CA, CO, FL, GA, ID, KS, LA, MS, MT, NM, NV, NE, NC, ND, OK, OR, SC, SD, TN, TX, UT, WA, and WY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Hoover Universal, Beverage Bottle Division, Route 2, Tri Port Road, Georgetown, KY 40324. Send protests to: Connie Stanley, Transportation Assistant, Room 240, Old Post Office and Courthouse Building, 215 Northwest 3d, Oklahoma, OK 73102.

MC 125777 (Sub-231TA), filed September 19, 1978. Applicant: JACK GRAY TRANSPORT, INC., 4600 East 15th Avenue, Gary, IN 46403. Representative: Edward G. Bazelon, 39 South LaSalle Street, Chicago, IL 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Grinding balls*, in dump vehicles from Kansas City, MO, to Baltimore, MD, Dividing Creek, NJ, Martinsburg, WV, Powderly, AL, Richards City, TN, and Shamokin Dam, PA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Kenneth E. Brewer, Assistant Manager—Transportation, ARMCO, Inc., 7000 Roberts Street, Kansas City, MO 64125. Send protests to: Lois Stahl, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 127974 (Sub-15TA), filed October 2, 1978. Applicant: P. LIEDTKA TRUCKING, INC., 110 Patterson Avenue, Trenton, NJ 08610. Representative: Alan Kahn, Esquire, 1920 Two Penn Center Plaza, Philadelphia, PA 19102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plywood, particleboard, hardboard, gypsumboard, moulding and accessories* used in the installation thereof from the plant and storage facilities of Weyerhaeuser Co. located at Chesapeake, VA, to points in DE, MD, ME, NH, PA, and VT for 180 days. Supporting shipper: Weyerhaeuser Co., P.O. Box 1188, Chesapeake, VA 23320. Send protests to: John P. Lynn, District Supervisor, Interstate Commerce Commission, 428 East State Street, Room 204, Trenton, NJ 08608. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority.

MC 129624 (Sub-18TA), filed October 2, 1978. Applicant: ROUTE MESSENGERS OF PA, INC., 2425 Bainbridge Street, Philadelphia, PA 19146. Representative: Alan Kahn, Esquire, 1920 Two Penn Center Plaza, Philadelphia, PA 19102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cleaning compounds, insecticides, air fresheners, deodorizers, brooms, brushes, mops, toilet preparations, food supplements, food seasoning, household utensils, clothing hangers, mirrors, custume jewelry, books, magnetic tapes, and advertising and promotional material* related to the foregoing (1) from the facilities of Amway Corp., in Dayton, NY, to the carrier's terminal in Philadelphia, PA (2) from the carrier's terminals in Philadelphia, PA, and Camden, NJ, to points in that part of PA east of the western boundaries, of Potter, Clinton, Centre, Huntingdon, and Fulton Counties, PA, and north and west of the northern and western boundaries of Northampton, Lehigh, Berks, Lancaster, and York, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Amway Corp., Monmouth Junction Road, Box 900, Dayton, NJ 08810. Send protests to: T. M. Esposito, Transportation Assistant, 600 Arch St., Room 3238, Philadelphia, PA 19106.

MC 129759 (Sub-26TA), filed October 2, 1978. Applicant: TRIANGLE TRUCKING CO., P.O. Box 490, McKees Rocks, PA 15136. Representative: David A. Turano, George, Greek, King, McMahon & McConnaughey, 100 East Broad Street, Columbus, OH 43215. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Roof deck, bridge deck, metal roofing and siding, and equipment, materials and supplies* (except commodities in bulk) used in the manufacture and installation thereof between Cambridge, OH, on the one hand, and, on the other, points in the States of CA, CT, DE, FL, IL, IN, KS, KY, MA, MI, MN, MO, MS, NE, NJ, NY, OH, OR, PA, SC, SD, TN, TX, UT, VA, and WI. Restricted to service performed under a continuing contract or contracts with Elwin G. Smith Division, Cyclops Corp., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Elwin G. Smith Division, Cyclops Corp., 100 Walls Street, Pittsburgh, PA 15202. Send protests to: J. A. Neggemyer, District Supervisor, Interstate Commerce Commission, 416 Old Post Office Building, Wheeling, WV 26003.

MC 133591 (Sub-50TA), filed September 19, 1978. Applicant: WAYNE DANIEL TRUCK, INC., P.O. Box 303, Mt. Vernon, MO 65712. Representative: Harry Ross, 58 South Main Street, Winchester, KY 40391. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper and plastic cups, containers, dishes, plates, trays, napkins and related articles*, from Springfield, MO, to Denver, CO, for 180 days. Supporting shipper: Lily Division of Owens-Illinois, 707 Madison, Toledo, OH 43666. Send protests to: District Supervisor, John V. Barry, Room 600, 911 Walnut, Kansas City, MO 64106.

MC 133689 (Sub-232TA), filed October 2,, 1978. Applicant: OVERLAND EXPRESS, INC., 719 First Street, Southwest, New Brighton, MN 55112. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Furnaces and heat exchangers*, from McGregor, Cloquet and St. Paul, MN, to points in AL, AR, CT, DE, FL, GA, IL, IN, IA, KS, KY, ME, MD, MA, MI, MS, MO, NE, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, WI, and DC. (2) Materials and supplies used in the manufacture of commodities named in (1) above from Wall Lake, MI, Fort Wayne, IN, and Mexico, MO, to Cloquet, McGregor, and St. Paul, MN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Wilson Heating & Air Conditioning, 2296 Wycliff, St. Paul, MN 55114. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building & U.S. Court House, 110 South Fourth Street, Minneapolis, MN 55401.

MC 134405 (Sub-53TA), filed October 2, 1978. Applicant: BACON TRANSPORT CO., P.O. Box 1134, Ardmore, OK 73401. Representative: Dean Williamson, 280 National Foundation Life Building., Oklahoma City, OK 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sand*, in tank vehicles, from McCulloch County, TX, to AL, AR, CO, KS, LA, MS, NM, OK, and WY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Halliburton Services, a division of Halliburton Co., P.O. Box 1431, Duncan, OK 73533. Dowell Division of Dow Chemical Co., P.O. Box 21, Tulsa, OK 74102. Texas Mining Co., Suite 2420, 1425 Elm Street, Dallas, TX 75201. Send protests to: Connie Stanley, Transportation Assistant, Room 240, Old Post Office and Court House Building, 215 Northwest Third, Oklahoma City, OK 73102.

MC 134477 (Sub-263TA), filed August 10, 1978. and published in the FEDERAL REGISTER issue of October 18, 1978, and republished as corrected this issue. Applicant: SCHANNO TRANSPORTATION, INC., 5 West Mendota Road, P.O. Box 3496, St. Paul, MN 55118. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Electric ranges and microwave ovens, and such commodities*, as are used in the manufacture, sale and distribution of electric ranges and microwave ovens from the facilities of Litton Microwave Cooking Products, Litton Systems, Inc., at Minneapolis, MN, to points in AL, AR, CT, DE, FL, GA, IL, IN, IA, KY, LA, ME, MD, MA, MI, MS, MO, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, WI, and DC, for 180 days. Supporting shipper: Litton, Inc., 1405 Xenium Lane North, Minneapolis, MN 55441. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building and U.S. Court House, 110 South Fourth Street, Minneapolis, MN 55401.

MC 134604 (Sub-3TA), filed September 26, 1978. Applicant: HOWARD DULLUM, Gardner, ND 58036. Representative: Alan Foss, 502 First National Bank Building, Fargo, ND 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia*, in bulk, in tank vehicle, from Barnesville, MN, to points in ND and SD, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Farmland Industries, Inc., P.O. Box 7305, Kansas City, MO 64116. Send protests to: Ronald R. Mau, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 268, Federal Building and U.S. Post Office, 657 Second Avenue North, Fargo, ND 58102.

MC 135874 (Sub-140TA), filed September 19, 1978. Applicant: LTL PERISHABLES, INC., 550 East Fifth Street South, South St. Paul, MN 55075. Representative: K. O. Petrick, 550 East Fifth Street South, South St. Paul, MN 55075. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods* (except commodities in bulk), from the facilities of Continental Freezers of Illinois, Chicago, IL, to points in SD, MN, NE, ND, KS, IA, WI, IN, MI, KY, MO, OH, and Sharon, PA. Restricted to traffic originating at the facilities of Continental Freezers of Illinois, Chicago, IL, and destined to points in the named States, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Continental Freezers of Illinois, 4220 South Kildare Bouvelard, Chicago, IL 60632. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building and U.S. Courthouse, 110 South Fourth Street, Minneapolis, MN 55401.

MC 138157 (Sub-90TA), filed September 19, 1978. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREIGHT, Representative: Patrick E. Quinn, P.O. Box 9596, Chattanooga, TN 37412. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Synthetic plastics, adhesives, sealants, cements, chemicals, chemical compounds, cleaning compounds, rubber compounds, soldering flux, coatings, lubricants, and materials, equipment and supplies*, used in the application of the commodities named above, from Cambridge, MA, to points in the United States (except AK and HI); (2) *synthetic plastics, adhesives, sealants, cements, chemicals, chemical compounds, gas absorbing compounds, rubber compounds, soldering flux, coatings, lubricants, and materials, equipment and supplies*, used in the application of the commodities named above, from Woodbury, NJ, and Atlanta, GA, to points in the United States (except AK and HI); (3) *synthetic plastic adhesives, sealants, cements, chemicals, chemical compounds, gas absorbing compounds, rubber compounds, soldering flux, coatings, lubricants, air entraining agents, cement clinker or grinding compounds, concrete or masonry plasticizer and water reducing compounds, tall oil, lignin liquors and materials, equipment and supplies*, in the application of the commodities named above from Chicago, IL, to points in the United States (except AK and HI); (4) *cleaning compounds, chemicals, chemical compounds, and fertilizer compounds*, from Nashua, NH, to points in the United States (except AK and HI); (5) *synthetic plastics, synthetic latex, battery insulating partitions, and pulpboard*, from Owensboro, KY, to points in the United States (except AK and HI); (6) *synthetic plastics, synthetic latex, battery insulating partitions, and cleaning compounds*, from Acton, MA, to points in the United States (except AK and HI); and (7) *materials, equipment, and supplies*, used in the manufacture, production, and distribution of the commodities named in (1) through (6) above, from points in the United States (except AK and HI), to the origins named in (1) through (6) above, and to San Leandro, CA. Restrictions: Restricted against the transportation of commodities in bulk, in tank vehicles, and commodities which by reason of size and weight require the use of special equipment and further restricted to traffic originating at or destined to the facilities of W. R. Grace & Co., for 180 days. Supporting shipper: W. R. Grace & Co., 55 Hayden Avenue, Lexington, MA 02173: Send protests to: Mr. Joe J. Tate, District Supervisor, A-422 Federal Building, 801 Broadway, Nashville, TN 37203.

NOTE.—Applicant holds contract carrier authority in MC 134150 and Subs thereunder, therefore dual operations may be involved.

MC 138824 (Sub-15TA), filed September 19, 1978. Applicant: REDWAY CARRIERS, INC., 5910 49th Street, Kenosha, WI 53140. Representative: Paul J. Maton, 10 South LaSalle Street, Suite 1620, Chicago, IL 60603. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Food products dry or liquid, in containers and materials and supplies*, incidental to, and used in the processing, canning, and bottling of said food products, between the facilities of Ocean Spray Cranberries, Inc., in Kenosha County, WI, and North Chicago, IL, on the one hand, and, on the other, points in MO west of U.S. Hwy 65 (including Springfield), AR, KS, and MN, under a continuing contract or contracts with Ocean Spray Cranberries, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Ocean Spray Cranberries, Inc., 7800 South 60th Avenue, Kenosha, WI 53140. Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 138225 (Sub-8TA), filed August 7, 1978, and published in the FEDERAL REGISTER issue of October 18, 1978, and republished as corrected this issue. Applicant: HEDRICK ASSOCIATES, INC., Rural Route No. 2, Box 10A2, Douglas Road, Far Hills, NJ 07931. Representative: William P. Jackson, Jr., 3426 North Washington Boulevard, P.O. Box 1240, Arlington, VA 22210. Authority sought to operate as *contract carrier*, by motor vehicle, over irregular routes, transporting: *Marine engines*, from the facilities of Chrysler Corp., Marine Division, at or near Beaver Dam, WI, to the facilities of Trojan Boat Co., at or near Lancaster, PA, under a continuing contract or

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contracts with Trojan Yacht Co., for 180 days. Supporting shipper: Trojan Yacht Co., Greenfield Road, P.O. Box 3571, Lancaster, PA. Send protests to: Robert E. Johnston, District Supervisor, Interstate Commerce Commission, 9 Clinton Street, Newark, NJ 07102.

MC 138438 (Sub-32TA), filed October 2, 1978. Applicant: D. M. BOWMAN, INC., Route 2, Box 43A1, Williamsport, MD 21795. Representative: Edward N. Button, 1329 Pennsylvania Avenue, P.O. Box 1417, Hagerstown, MD 21740. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Building materials*, from Frederick, MD, and its commerical zone, to points in PA, VA, WV, and DC, for 180 days. Applicant has also filed and underlying ETA seeking up to 90 days of operating authority. Supporting shipper: M. J. Grove Lime Co., Campbell Grove Division, the Flintkote Co., 11350 McCormick Road, Hunt Valley, MD 21031. Send protests to: T. M. Esposito, Transportation Assistant, 600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 139923 (Sub-50TA), filed October 2, 1978. Applicant: MILLER TRUCKING CO., INC., P.O. Drawer "D," Stroud, OK 74079. Representative: Stephen H. Loeb, attorney at law, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Wax paper*, and (2) *meat processing machines*, when moving in mixed loads with the commodities described in (1) above, (1) from the facilities of Hollymatic Corp. at Plymouth, IN, to points in CA, CO, NE, OR, TX, and WA, and (2) from the facilities of Hollymatic Corp., at Park Forest, IL, to points in CO, NE, OR, TX, and WA, for 180 days. Supporting shipper: Hollymatic Corp., 80 North Main, Park Forest, IL 60466. Send protests to: Connie Stanley, Transportation Assistant, Room 240, Old Post Office and Court House Building, 215 Northwest Third, Oklahoma City, OK 73102.

MC 140118 (Sub-8TA), filed September 26, 1978. Applicant: S. T. L. TRANSPORT, INC., 1000 Jefferson Road, P.O. Box 9776, Rochester, NY 14263. Representative: S. Michael Richards/Raymond A. Richard, P.O. Box 225, Webster, NY 14580. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Beverages, in cans and bottles* (except malt beverages), from Springfield, Ma, to all points in NY, under a continuing contract or contracts with Country Club Soda Co., Inc., for 180 days. Applicant has also filed and underlying ETA Seeking up to 90 days of operating authority. Supporting shipper: Country Club Soda Co., Inc., 180 Avocado Street. Springfield, MA 01104. Send protests to: Interstate Commerce Commission, U.S. Courthouse and Federal Building, 100 South Clinton Street, Room 1259, Syracuse, NY 13260.

MC 140665 (Sub-37TA), filed September 19, 1978. Applicant: PRIME, INC., Route 1, Box 115-B, Urbana, MO 65767. Representative: Clayton Geer, P.O. Box 786, Ravenna, OH 44266. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Automotive parts and accessories, rubber or rubber products, then or tire treads, vehicle wheels, and materials and supplies*, used in the production or marketing of the above commodities between points in Portage, Summit, and Stark Counties, OH, on the one hand, and, on the other, points in TX and CA, for 180 days. Supporting shipper: Teledyne Monarch Rubber, 10 Lincoln Park, Hartville, OH 44632. Send protests to: District Supervisor, John V. Barry, Room 600, 911 Walnut Street, Kansas City, MO 64106.

MC 142368 (Sub-14TA), filed October 10, 1978. Applicant: DANNY HERMAN TRUCKING, INC., 15252 Valley Boulevard, City of Industry, CA 91744. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Safes*, from City of Industry, CA, to Chicago, IL, Cincinnati, OH, Denville, NJ, and Florence, KY, and from Cincinnati, OH to Denville, NJ, for 180 days. Supporting shipper: Gary Safe Co., 330 Ninth Avenue, City of Industry, CA 91746. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, 300 North Los Angeles Street, Los Angeles, CA 90012.

MC 142559 (Sub-59TA), filed October 2, 1978. Applicant: BROOKS TRANSPORTATION, INC., 3830 Kelley Avenue, Cleveland, OH 44114. Representative: David A. Turano, Suite 1800, 100 East Broad Street, Columbus, OH 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Animal feed, feed ingredients, supplements, additives, materials and supplies*, used in the manufacture and promotion of animal feeds (except in bulk), between the facilities of Kal Kan Foods, Inc., at or near Hutchinson, KS, on the one hand, and, on the other, points in CT, DE, IN, ME, MA, MD, MI, NJ, NY, NC, OH, PA, RI, SC, VT, VA, and DC, for 180 days. Applicant has also filed and underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Kal Kan Foods, Inc., 3386 East 44th Street, Vernon, CA 90058. Send protests to: Interstate Commerce Commission, 731 Federal Building, 1240 East Ninth Street, Cleveland, OH 44199.

MC 143059 (Sub-30TA), filed October 2, 1978. Applicant: MERCER TRANSPORTATION CO., 12th and Main Streets, P.O. Box 35610, Louisville, KY 40232. Representative: Clayte Binion, 1108 Continental Life Building, Fort Worth, TX 76102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic pipe in coils or packages and on pallets, and fittings* used in the installation thereof when moving in connection therewith, from the plantsite of DuPont Co. at Tulsa, OK, to Union City, Pico Rivera, and San Diego, CA, Little Rock and Fort Smith, AR, Colorado Springs, CO, Springfield, MO, North Beloit, Green Bay, Sheboygan, and Oshkosh, WI, Carlsbad, Farmington, Lovington, and Tantum, NM, White Bear Lake, St. Paul, and Minneapolis, MN, Jackson, MS, Salt Lake City, UT, Boise and Idaho Falls, ID, Great Falls, Harvre, Kallspell, and Missoula, MT, Lincoln and Grand Island, NB, Beaumont, Houston, Longview, and Midland, TX, Spokane, WA, Douglas, Powell, Riverton, and Casper, WY, and Tuscon, AZ. Restriction: Restricted to the use of two (2) trailers or semi-trailer puled in tandem, for 180 days. Supporting shipper: Mr. David McCormick, Assistant Freight Traffic Manager, Dupont Corp., Wilmington, DE 19898. Send protests to: Ms. Linda H. Sypher, District Supervisor, Interstate Commerce Commission, 426 Post Office Building, Louisville, KY 40202.

MC 143127 (Sub-14TA), filed October 2, 1978. Applicant: K. J. TRANSPORTATION, INC., 1000 Jefferson Road, Rochester, NY 14623. Representative: John M. Nader, Attornery at Law, Route 3, Box 4, Bowling Green, KY 42101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Brick, briquettes and brickettes and equipment, materials and supplies* used in the installation of brick, briquettes and brickettes (except commodities in bulk, in tank vehicles), from Owensboro, KY, to points in the United States in and east of MN, IA, MO, AR, and LA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Modern Methods, Inc., P.O. Box 370, Owensboro, KY 42301. Send protests to: Interstate Commerce Commission, U.S. Courthouse & Federal Building, 100 South Clinton Street, Room 1259, Syracuse, NY 13260.

MC 143540 (Sub-7TA), filed October 2, 1978. Applicant: MARINE TRANSPORT CO., 2321 Burnette Boulevard, P.O. Box 2142, Wilmington, NC 28402. Representative: Jean H. Lewis, Esq. 9525 Trojan Court, Richmond, VA 23229. Temporary authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Wood pulp, paper, waste paper, paper articles, and lumber*: From the facilities of Federal Paper Board Co., Inc. located at or near Riegelwood, NC; Wilmington, NC; Cape Fear, NC; Roanoke Rapids, NC; and Richmond, VA, to points in the United States (except AK and HI); and (2) *materials, supplies, and equipment used in connection with the manufacture, distribution, and sale of wood pulp, paper, waste paper, paper articles, and lumber* (except in bulk) from points in the United States (except AK and HI) to the facilities of Federal Paper Board Co., Inc., located at or near Riegelwood, NC: Wilmington, NC; Cape Fear, NC; Roanoke Rapids, NC; and Richmond, VA., under continuing contract or contracts with Federal Paper Board Co., Inc., for 180 days. Supporting shipper: Federal Paper Co., Inc., Riegelwood, NC 28456. Send protests to: Mr. Archie W. Andrews, District Supervisor, Interstate Commerce Commission, 624 Federal Building, 310 New Bern Avenue, P.O. Box 26896, Raleigh, NC 27611.

MC 143605 (Sub-1TA), filed October 2, 1978. Applicant: B & M EXPRESS, INC., 500 South Western, P.O. Box 25852 Oklahoma City, OK 73112. Representative: G. Timothy Armstrong, 6161 North May Avenue, Oklahoma City, OK 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Tires, tire parts, inner tubes, inner tube parts;* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities described in (1) above (except commodities in bulk), between the plantsite and facilities of Dayton Tire & Rubber Co. at or near Oklahoma City, OK, on the one hand, and, on the other, points in AR, CO, KS, NE, OK, and TX, for 180 days. Supporting Shipper: Dayton Tire & Co., P.O. Box 24011, Oklahoma City, OK 73124. Send protests to: Connie Stanley, Transportation Assistant, Room 240, Old Post Office and Court House Building, 215 Northwest Third, Oklahoma City, OK 73102.

MC 144682 (Sub-7TA), filed October 2, 1978. Applicant: R. R. STANTLEY, P.O., Box 95, Mesquite, TX 75149. Representative: Richard T. Churchill, Attorney at Law, 5001 South Hulen, Suite 106, Fort Worth, TX 76132. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bakery Goods, NOI; prepared dough, not frozen; cakes, cookies, rolls, frozen icing paste*, from plantsite of the Pillsbury Co., Denison, TX, to points in the States of AZ, CA, CO, NM, for 180 days. Supporting shipper: The Pillsbury Co., 3400 Texoma Drive, Denison, TX. Send protests to: Opal M. Jones, Transportation Assistant, Interstate Commerce Commission, 110 Commerce Street, Room 13C12, Dallas, TX 75242.

MC 144855 (Sub-4TA), filed October 2, 1978. Applicant: TRANS CONTINENTAL CARRIERS, INC., 169 East Liberty Avenue, Anaheim, Calif. 92803. Representative: Elizabeth I. Abreu, Knapp, Stevens, Grossman & Marsh, 707 Wilshire Boulevard, Suite 1800, Los Angeles, CA 90017. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Foods foodstuffs, food-treating compounds; chemicals and additives* (except in bulk), *and advertising paraphernalia; and materials equipment and supplies* used in the manufacture, preparation, sales, and distribution of spices, extracts, convenience foods, confectionery products, food products, salad dressings, and foodstuffs (except in bulk), and (2) *commodities*, the transportation of which is exempt from regulation under the provision of section 203(b) of the Interstate Commerce Act, in mixed loads with commodities described in (1) above, between CA, on the one hand, and, on the other, OR and WA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: McCormick & Co., Inc. 1311 Schilling Place, Salinas, CA 93901. Send protest to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321, Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

MC 144879 (Sub-2TA), filed October 2, 1978. Applicant: D & J TRANSFER CO., Sherburn, MN 56171. Representative: Mr. Lavern R. Holdeman, 521 South 14th Street, P.O. Box 81849, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat by-products, and articles* distributed by meat packinghouses, as described in sections A and C of Appendix 1 to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766 (except in bulk), from the facilities of Sioux Pac of Iowa, Inc., at or near Sioux City, IA, to points in the States of IL and WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Sioux Pac of Iowa, Inc., P.O. Box 2354, Stockyard Station, Sioux City, IA 51107. Send Protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building and U.S. Court House, 110 South Fourth Street, Minneapolis, MN 55401.

MC 145065 (Sub-2TA), filed September 19, 1978. Applicant: WESTERN CARRIER, INC., 2100 Alaskan Way, Seattle, WA 98121. Representative: George R. LaBissoniere, 1100 Norton Building, Seattle, WA 98104. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen and perishable foodstuffs* when moving in vehicles equipped with mechanical refrigeration, from Seattle and its commercial zone, Ocean Park, and South Bend, WA to points in OR and CA, for 180 days. Supporting shipper(s): There are approximately 7 statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies thereof which may be examined at the filed office named below. Send protests to: Hugh H. Chaffee, District Supervisor, Bureau of Operations, ICC 858 Federal Building, Seattle, WA 98174.

MC 145072 (Sub-3TA), filed October 10, 1978. Applicant: M. S. CARRIERS, INC., 7372 Eastern Avenue, Germantown, TN 38138. Representative: Mr. A. Doyle Cloud, Jr., 2008 Clark Tower, 5100 Poplar Avenue, Memphis, TN 38137. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Soap and soap products* from the plantsite of Proctor and Gamble, Inc. at or near Kingsville, LA to the facilities of Malone and Hyde, Inc. located at Memphis, TN and its commercial zone, for 180 days. Supporting shipper(s): Malone and Hyde, Inc., 1991 Corporate Avenue, Memphis, TN 38132. Send protests to: Mr. Floyd A. Johnson, District Supervisor, Interstate Commerce Commission, 100 North Main Building, Suite 2006, 100 North Main Street, Memphis, TN 38103.

MC 145320 (Sub-1TA), filed October 2, 1978. Applicant: CHARLES ALLEN d.b.a. CHARLES ALLEN CONSTRUCTION CO., 1012 South Margrave, Fort Scott, KS 66701. Representative: William B. Barker, 641 Harrison, Topeka, KS 66603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Coal*, from the minesite of Bills Coal Co. at or near Fulton, KS to Stotesbury, MO, for 180 days. Applicant has also filed an unerlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Bills Coal Co., Suite 500, 5200 South Yale, Tulsa, OK 74135. Send protests to: M. E. Taylor, District Supervisor, Interstate Com-

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merce Commission, 101 Litwin Building, Wichita, KS 67202.

MC 145366 (Sub-1TA), filed September 19, 1978. Applicant: VENABLE TRUCKING CO., INC., Rt. 1, Box 313, Odenville, AL 35120. Representative: John W. Cooper, 200 Woodward Building, Birmingham, AL 35203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Cold mix asphalt*, in open dump vehicles, from the facilities of Ashland-Warren, Inc., at or near Birmingham, AL to points in FL west of Apalachicola River and points in GA, LA, MS, and TN. (2) *Sand*, from points in FL west Apalachicola River, and points in GA, LA, MS, and TN to Jefferson, Shelby, Calhoun and Etowah Counties, AL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Ashland-Warren, Inc., 700 37th Street, South, Birmingham, AL. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operations, ICC, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 145367 (Sub-1TA), filed September 28, 1978. Applicant: STANLEY DILLEY TRUCKING CO., INC., 5718 North Broadway, Wichita, KS 67219. Representative: Paul V. Dugan, 2707 West Douglas, Wichita, KS 67213. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Hides*, between Solomon, KS, on the one hand, and the States of OK, TX, NM, AZ, and CA, on the other hand, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: John Rueb Associates, Inc., Solomon, KS 67480. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, 101 Litwin Building, Wichita, KS 67202.

MC 145384 (Sub-8TA), filed October 2, 1978. Applicant: ROSE-WAY, INC., 1914 East Euclid, Des Moines, IA 50313. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, lumber products, and plywood*, from the facilities of the Pacific Lumber Co., at or near Scotia and Fortuna, CA, to points in IA, IL, IN, MN, MO, OH, and WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: the Pacific Lumber Co., P.O. Box 37, Scotia, CA 95565. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 145387TA, filed September 19, 1978. Applicant: Joseph J. Faria and Jearldene Faria d.b.a. FARRIA TRUCKING, Route 2, Box 122B Valeria Road, Dos Palos, CA 93620. Representative: Joseph J. Garia, Route 2, Box 122B Valeria Road, Dos Palos, CA 93620. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Steel nuts and bolts*, from Los Angeles, CA, to Tacoma and Seattle, WA, and their commercial zones, under a continuing contract or contracts with John Perine Co., Fastco, Inc., for 180 days, Supporting shippers: John Perine Co., 820 South Adams Street, Seattle, WA 98108. Fastco, Inc., 2306 East 11th Street, Tacoma, WA 98421. Send protests to: District Supervisor, Michail M. Butler, 211 Main, Suite 500, San Francisco, CA 94105.

MC 145463TA, filed October 2, 1978. Applicant: BRINK'S INC., Thorndal Circle, Darien, CT 06820. Representative: Richard H. Streeter, 1729 H Street, NW., Washington, DC 20006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Precious metals*, between Rochester, MN, and Cudahy, WI, on the one hand, and, on the other, Rochester, MN, Elk Grove Village, IL, and Fairfield, CT, under a continuing contract or contracts with Handy & Harman for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Handy & Harman, Richard E. Hart, General Manager, 1770 Kings Highway, Fairfield, CT 06430. Send protests to: Lois M. Stahl, Transportation Assistant, Interstate Commerce Commission, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 145464TA, filed October 2, 1978. Applicant: James Taylor d.b.a. JAMES TAYLOR TRUCKING, 114 Twilight Circle, Placentia, CA 92670. Representative: David Nissenberg, Esq., 7855 Ivanhoe Avenue, Suite 224, La Jolla, CA 92037. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Bathroom vanities and culture marble tops*, between Orange, CA, and points in the State of AZ, under a continuing contract or contracts with Aztec Industries, Inc., for 180 days. Supporting shipper: Aztec Industries, Inc., 212 West Taft, Orange, CA 92665. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, 300 North Los Angeles Street, Room 1321, Los Angeles, CA 90012.

MC 145465TA, filed October 2, 1978. Applicant: GURN ENTERPRISES, INC., Route 6, Box 8, Allegan, MI 49010. Representative: Edward N. Button, P.O. Box 1417, 1329 Pennsylvania Avenue, Hagerstown, MD 21740. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Drugs and toilet articles and materials and supplies used in the manufacture, sale, and distribution thereof*, between Allegan, MI, and points in its commercial zone, on the one hand, and, on the other, points in AR, CT, DE, DC, KY, ME, MD, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, NH, and MA, under a continuing contract or contracts with L. Perrigo Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: L. Perrigo Co., 117 Water Street, Allegan, MI 49010. Send protests to: C. R. Flemming, District Supervisor, Interstate Commerce Commission, 225 Federal Building, Lansing, MI 48933.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-32431 Filed 11-16-78; 8:45 am]

[7035-01-M]

[Notice No. 130]

MOTOR CARRIER TRANSFER PROCEEDINGS

NOVEMBER 17, 1978.

Application filed for temporary authority under section 210a(b) in connection with transfer application under section 212(b) and Transfer Rules, 49 CFR Part 1132:

MC-FC-77910. (correction) (Pebble Haulers, Inc.—transferee—Dalby Transfer & Storage, Inc.—transferor), published in the November 2, 1978, issue of the FEDERAL REGISTER, on page 51195. Previous notice should have read as follows: PEEBLE HAULERS, INC., 2630 Delta Avenue, Colorado Springs, CO 80910, seeks temporary authority to transfer a portion of the operating rights of Dalby Transfer & Storage, Inc., P.O. Box 7187, 641 Winters Drive, Colorado Springs, CO 80933, under section 210a(b) * * *.

MC-FC-77927. By application filed November 6, 1978, TROWMAN TRANSPORT, INC., 14 Beech Street, Corinth, NY 12822, seeks temporary authority to transfer the operating rights of Ashline Trucking, Inc., 14 Beech Street, Corinth, NY 12822, under section 210a(b). The transfer to Trowman Transport, Inc., of the operating rights of Ashline Trucking, Inc., is presently pending.

MC-FC-77928. By application filed November 1, 1978, WINSTON LIMOUSINE SERVICE, INC., 41 Pembrook Drive, Stony Brook, NY 11790, seeks temporary authority to transfer the operating rights of Tri-Cities Limo Service, Inc., 567 Main Street, Passaic, NJ 07055, under section 210a(b). The transfer to Winston Limousine Service, Inc., of the operating rights of Tri-Cities Limo Service, Inc., is presently pending.

By the Commission.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 78-32432 Filed 11-16-78; 8:45 am]

[7035-01-M]

[Notice No. 129]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

The following publications include motor carrier, water carrier, broker, and freight forwarder transfer applications filed under section 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act.

Each application (except as otherwise specifically noted) contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application.

Protests against approval of the application, which may include a request for oral hearing, must be filed with the Commission on or before December 18, 1978. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest must be served upon applicants representative(s), or applicants (if no such representative is named), and the protestant must certify that such service has been made.

Unless otherwise specified, the signed original and six copies of the protest shall be filed with the Commission. All protests must specify with particularity the factual basis, and the section of the Act, or the applicable rule governing the proposed transfer which protestant believes would preclude approval of the application. If the protest contains a request for oral hearing, the request shall be supported by an explanation as to why the evidence sought to be presented cannot reasonably be submitted through the use of affidavits.

The operating rights set forth below are in synopses form, but are deemed sufficient to place interested persons on notices of the proposed transfer.

MC-FC-77838, filed September 7, 1978. Transferee: A & H Enterprises, Ltd., 62 Third Avenue, Southwest, Britt, IA 50423. Transferor: Robert H. Lewerke, Bob's Freight Line, Golfview Avenue, Britt, IA 50423. Representative: G. W. Templeton, attorney at law, 190 East Fifth Street, Garner, IA 50438. By order of November 8, 1978, the Motor Carrier Board approved the transfer to transferee the operating rights in Certificate MC 124056 issued January 24, 1963, to transferor, authorizing the transportation of general commodities, with certain exceptions, over regular routes, between Mason City and Kanawha, IA, serving the intermediate points of Duncan and Britt, IA; and between junction IA Hwy 111 and unnumbered Hwy (approximately 7 miles east of Corwith, IA), and Corwith, IA, serving no intermediate points. Petitions for reconsideration may be filed by any interested person within 20 days. Send petitions for reconsideration to: The Secretary, Interstate Commerce Commission, Washington, DC 20423.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 78-32433 Filed 11-16-78; 8:45 am]

[7035-01-M]

[Docket No. AB-18 (Sub-No. 6)]

CHESAPEAKE & OHIO RAILWAY CO.

Abandonment Between Coleman and Union, Isabella County, Mich., Findings

Notice is hereby given pursuant to section 1a(6)(a) of the Interstate Commerce Act (49 U.S.C. 1a(6)(a)) that by a decision entered on November 23, 1977, and the decision of the entire Commission, served September 12, 1978, as modified, adopted the decision of the Administrative Law Judge, which is administratively final, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in *Oregon Short Line R. Co.—Abandonment Goshen*, 354 I.C.C. 584 (1978), the present and future public convenience and necessity permit the abandonment by the Chesapeake & Ohio Railway Co. of a portion of its Mt. Pleasant Branch between Valuation Station 41+06, southwest of Coleman, Mich., and Valuation Station 655+45 in Union Township, northeast of Mt. Pleasant, Mich., a distance of approximately 11.64 miles, all in Isabella County, Mich. A certificate of abandonment will be issued to the Chesapeake & Ohio Railway Co. based on the above-described finding of abandonment, 30 days after publication of this notice (on or before December 18, 1978), unless within 30 days from the date of publication, the Commission further finds that:

(1) A financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued; and

(2) It is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If the commission so finds, the issuance of a certificate of abandonment will be postponed for such reasonable time, not to exceed 6 months, as is necessary to enable such person or entity to enter into a binding agreement, with the carrier seeking such abandonment, to provide such assistance or to purchase such line and to provide for the continued operation of rail services over such line. Upon notification to the Commission of the execution of such an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in the Notice of the Commission entitled "Procedures for Pending Rail Abandonment Cases" published in the FEDERAL REGISTER on March 31, 1976, at 41 FR 13691, as amended by publication of May 10, 1978, at 43 FR 20072. All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-32437 Filed 11-16-78; 8:45 am]

[7035-01-M]

[Docket No. AB-1 (Sub-No. 56)]

CHICAGO & NORTH WESTERN TRANSPORTATION CO.

Abandonment Between Marshall Junction and Vesta, in Lyon and Redwood Counties, Minn; Findings

Notice is herby given pursuant to section 1a(6)(a) of the Interstate Commerce Act (49 U.S.C. 1a(6)(a)) that by a decision decided September 13, 1978, a finding, which is administratively final, was made by the Commission, Division 2, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in *Oregon Short Line R. Co.—Abandonment Goshen*, 354 ICC 584 (1978), and for public use as set forth in said decision, the present and future public convenience and necessity permit the abandonment by the Chicago and North Western Transportation Co. of a line of railroad extend-

ing approximately 37.3 miles between Marshall junction and Vesta, in Lyon and Redwood Counties, Minn. A certificate of abandonment will be issued to the Chicago and North Western Transportation Co. based on the above-described finding of abandonment, 30 days after publication of this notice (on or before December 18, 1978), unless within 30 days from the date of publication, the Commission further finds that:

(1) A financially responsible person (including a Government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued; and

(2) It is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquistion cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed for such reasonable time, not to exceed 6 months, as is necessary to enable such person or entity to enter into a binding agreement, with the carrier seeking such abandonment, to provide such assistance or to purchase such line and to provide for the continued operation of rail services over such line. Upon notification to the Commission of the execution of such an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquistion of the involved rail line are contained in the Notice of the Commission entitled "Procedures for Pending Rail Abandonment Cases" published in the FEDERAL REGISTER on March 31, 1976, at 41 FR 13691, as amended by publication of May 10, 1978, at 43 FR 20072. All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

H. G. HOMMER, Jr.,
Acting Secretary.

[FR Doc. 78-32438 Filed 11-16-78; 8:45 am]

[7035-01-M]

[Docket No. AB-1 (Sub-No. 40)]

CHICAGO & NORTH WESTERN TRANSPORTATION CO.

Abandonment Between Gillett, Oconto County, Wis., and Scott Lake, Iron County, Mich.; Findings

Notice is hereby given pursuant to section 1a(6)(a) of the Interstate Commerce Act (49 U.S.C. 1a(6)(a)) that by a decision entered on October 4, 1978, a finding, which is administratively final, was made by the Commission, Administrative Law Judge, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in *Oregon Short Line R. Co.—Abandonment Goshen*, 354 ICC 584 (1978), and for public use as set forth in said decision, the present and future public convenience and necessity permit the abandonment by the Chicago & North Western Transportation Co. of its line of railroad extending northerly from milepost 33.3 at Gillett, Oconto County, Wis., to the end of the line at milepost 122.7 at Scott Lake, Iron County, Mich., a distance of 89.4 miles in Oconto, Forest and Florence Counties, Wis., and Iron county, Mich. A certificate of abandonment will be issued to the Chicago & North Western Transportation Co. based on the above-described finding of abandonment, 30 days after publication of this notice (on or before December 18, 1978), unless within 30 days from the date of publication, the Commission further finds that:

(1) A financially responsible person (including a Government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued; and

(2) It is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed for such reasonable time, not to exceed 6 months, as is necessary to enable such person or entity to enter into a binding agreement, with the carrier seeking such abandonment, to provide such assistance or to purchase such line and to provide for the continued operation of rail services over such line. Upon notification to the Commission of the execution of such an assistance or acquisition and operating agreement the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or tha acquisition of the involved rail line are contained in the Notice of the Commission entitled "Procedures for Pending Rail Abandonment Cases" published in the FEDERAL REGISTER on March 31, 1976, at 41 FR 13691, as amended by publication of May 10, 1978, at 43 FR 20072. All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above referenced decision.

H.G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-32440 Filed 11-16-78; 8:45 am]

[7035-01-M]

[Docket No. AB-7 (Sub-No. 39)]

STANLEY E. G. HILLMAN, TRUSTEE OF THE PROPERTY OF CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD CO., DEBTOR

Abandonment Near Trail City to Faith Branch in Dewey, Corson, Ziebach, and Meade Counties, S. Dak.; Findings

Notice is herby given pursuant to section 1a(6)(a) of the Interstate Commerce Act (49 U.S.C. 1a(6)(a)) that by a decison decided September 29, 1978, a finding, which is adminstratively final, was made by the Commission, Review Board Number 5, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in *Oregon Short Line Railroad Co.-Abandonment Goshen*, 354 I.C.C. 584 (1978), the present and future public convenience and necessity permit the abandonment by Stanley E. G. Hillman, Trustee of the Property of Chicago, Milwaukee, St. Paul & Pacific Railroad Co. of its line of railroad extending from milepost 0.0 near Trail City to milepost 106.5 near Faith, a distance of approximately 106.5 miles in Dewey, Corson, Ziebach and Meade Counties, S. Dak. A certificate of abandonment will be issued to Stanley E. G. Hillman, Trustee of the Property of Chicago, Milwaukee, St. Paul & Pacific Railroad Co. based on the above described finding of abandonment, 30 days after publication of this notice (on or before December 18, 1978) unless within 30 days from the date of publication, the Commission further finds that:

(1) A financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued; and

(2) It is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed for such reasonable time, not to exceed 6 months, as is necessary to enable such person or entity to enter into a binding agreement, with the carrier seeking such abondonment, to provide such assistance or to purchase such line and to provide for the continued operation of rail services over such line. Upon notification to the Commission of the execution of such an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in the Notice of the Commission entitled "Procedures for Pending Rail Abandonment Cases" published in the FEDERAL REGISTER on March 31, 1976, at 41 FR 13691, as amended by publication of May 10, 1978, at 43 FR 20072. All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above referenced decision.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-32439 filed 11-16-78; 8:45 am]

[7035-01-M]

[Ex Parte No. 241; Rule 19; 53d Rev. Exemption No. 90]

ABERDEEN & ROCKFISH RAILROAD CO. ET AL.

Exemption Under Mandatory Car Service Rules

It appearing, That certain of the railroads named below own numerous 50-ft. plain boxcars; that under present conditions, there are substantial surpluses of these cars on their lines; that return of these cars to the owners would result in their being stored idle; that such cars can be used by other carriers for transporting traffic offered for shipments to points remote from the car owners; and that compliance with Car Service Rules 1 and 2 prevents such use of these cars, resulting in unnecessary loss of utilization of such cars.

It is ordered, That, pursuant to the authority vested in me by car service rule 19, 50-ft. plain boxcars described in the Official Railway Equipment Register, ICC-RER No. 409, issued by W. J. Trezise, or successive issues thereof, as having mechanical designation "XM," and bearing reporting marks assigned to the railroads named below, shall be exempt from provisions of car service rules 1, 2(a), and 2(b).

Aberdeen & Rockfish Railroad Co.
Reporting Marks: AR
Atlanta & Saint Andrews Bay Railway Co.
Reporting Marks: ASAB
XXX
XXX
Camino, Placerville & Lake Tahoe Railroad Co.
Reporting Marks: CPLT
XXX
City of Prinevill
Reporting Marks: COP
The Clarendon & Pittsford Railroad Co.
Reporting Marks: CLP
XXX
XXX
Duluth, Missabe & Iron Range Railway Co.
Reporting Marks: DMIR
East Camden & Highland Railroad Co.
Reporting Marks: EACH
XXX
Genessee & Wyoming Railroad Co.
Reporting Marks: GNWR
XXX
Greenville & Northern Railway Co.
Reporting Marks: GRN
Lake Superior & Ishpeming Railroad Co.
Reporting Marks: LSI
Lenawee County Railroad Co. Inc.
Reporting Marks: LCRC
Louisiana Midland Railway Co.
Reporting Marks: LOAM
Louisville & Wadley Railway Co.
Reporting Marks: LW
Louisville, New Albany & Corydon Railroad Co.
Reporting Marks: LNAC
Manufacturers Railway Co.
Reporting Marks: MRS
Middletown & New Jersey Railway Co., Inc.
Reporting Marks: MNJ
Missouri-Kansas-Texas Railroad Co.
Reporting Marks: BKTY-MKT
New Orleans Public Belt Railroad
Reporting Marks: NOPB
XXX
Oregon & Northwestern Railroad Co.
Reporting Marks: ONW
Oregon, Pacific & Eastern Railway Co.
Reporting Marks: OPE
Pearl River Valley Railroad Co.
Reporting Marks: PRV
Peninsula Terminal Co.
Reporting Marks: PT
Providence & Worcester Co.
Reporting Marks: PW
Raritan River Rail Road Co.
Reporting Marks: RR
Sacramento Northern Railway
Reporting Marks: SN
St. Lawrence Railroad
Reporting Marks: NSL
Sierra Railroad Co.
Reporting Marks: SERA
Terminal Railway, Alabama State Docks
Reporting Marks: TASD
The Texas Mexican Railway Co.
Reporting Marks: TM
Tidewater Southern Railway Co.
Reporting Marks: TS
Toledo, Peoria & Western Railroad Co.
Reporting Marks: TPW
Vermont Railway, Inc.
Reporting Marks: VTR
WCTU Railway Co.
Reporting Marks: WCTR
XXX
Youngstown & Southern Railway Co.
Reporting Marks: YS
Yreka Western Railroad Co.
Reporting Marks: YW

Effective November 9, 1978, and continuing in effect until further order of this Commission.

Issued at Washington, D.C., November 7, 1978.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc. 78-32434 Filed 11-16-78; 8:45 am]

[7035-01-M]

[Service Order No. 1344, I.C.C. Order No. 1344]

ILLINOIS CENTRAL GULF RAILROAD CO.

Rerouting Traffic

In the opinion of Joel E. Burns, agent, The Illinois Central Gulf Railroad Co. is unable to transport traffic over its line between Bloomington, Ind., and Indianapolis, Ind., because of track conditions.

It is ordered, (a) *Rerouting traffic.* The Illinois Central Gulf Railroad Co. being unable to transport traffic over its line between Bloomington, Ind., and Indianapolis, Ind., because of track conditions, is authorized to divert or reroute such traffic over any available route to expedite the movement. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing. The billing covering all such cars rerouted shall carry a reference to this order as authority for the rerouting.

(b) *Concurrence of receiving roads to be obtained.* The railroad rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification to shippers.* Each carrier rerouting cars in accordance with this order, shall notify each shipper at the time each shipment is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

V 4 3 1 2 2 3

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers, or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 10:30 a.m., November 3, 1978.

(g) *Expiration date.* This order shall expire at 11:59 p.m., February 15, 1979, unless otherwise modified, changed, or suspended.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of the order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., November 3, 1978.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc. 78-32436 Filed 11-16-78; 8:45 am]

[7035-01-M]

[Service Order No. 1344; I.C.C. Order No. 1]

NEW YORK, SUSQUEHANNA & WESTERN RAILROAD CO.

Rerouting Traffic

In the opinion of Joel E. Burns, agent, the New York, Susquehanna & Western Railroad Co. in unable to transport traffic between Sparta, NJ, and Stockholm, NJ, because of a bridge out of service.

It is ordered, (a) *Rerouting traffic.* The New York, Susquehanna & Western Railroad Co., being unable to transport traffic between Sparta, NJ, and Stockholm, NJ, because of a bridge out of service, that carrier and its connections are hereby authorized to reroute or divert such traffic over any available route to expedite the movement. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing. The billing covering all such cars rerouted shall carry a reference to this order as authority for the rerouting.

(b) *Concurrence of receiving roads to be obtained.* The railroad rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted , before the rerouting or diversion is ordered.

(c) *Notification to shippers.* Each carrier rerouting cars in accordance with this order, shall notify each shipper at the time each shipment is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers, or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 11.59 p.m., October 31, 1978.[1]

(g) *Expiration date.* This order shall expire at 11:59 p.m., January 31, 1979, unless otherwise modified, changed, or suspended.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of the order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., October 31, 1978.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc. 78-32435 Filed 11-16-78; 8:45 am]

[1] Replaces I.C.C. Order No. 2 issued under Service Order No. 1252.

N 0 1 7 7 8 UMI

sunshine act meetings

This section of the FEDERAL REGISTER contoins notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409), 5 U.S.C. 552b(e)(3).

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[6320-01-M]

1

[M-178, Nov. 9, 1978]

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 9:30 a.m., November 16, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

1. Ratification of items adopted by notation.

2. Delegation of Authority to the Director, Bureau of Pricing and Domestic Aviation, to act on complaints challenging the reasonableness of fares within the "no-suspend" zones established by PS-80. (Memo 7847-J, BPDA, OGC).

3. Dockets 33090 and 23080-2, Petition of AAT Airlines, Inc., d.b.a. Air Sunshine for the determination of mail rates; Motion of USPS to include Air Sunshine in Docket 23080-2 (Memo 7673-A, BPDA).

4. Docket 33635, Western's and Southern's requests to designate the hyphenated points Miami and Ft. Lauderdale as coterminals (Memo 8271, BPDA).

5. Dockets 32528 and 32574; United's application to remove closed-door restriction in Kansas City-Chicago/Denver markets and petition for order to show cause; Braniff's application to remove one-stop restriction in Kansas City-Denver market (Memo 8278, BPDA, OGC).

6. Dockets 32754 and 32751, Southern's motion for isssuance of an order to show cause why its certificate for Route 98 should not be amended so as to authorize it to serve Atlanta-Washington, D.C. (Dulles service only) nonstop and Atlanta-New York one-stop; and Southern's application for an exemption from the requirements of its certificate pending final Board action on its certificate amendment application (Memo 8281, BPDA, OGC).

7. Docket 33105, Braniff's extension of Exemption Authority, Reno-Las Vegas (Memo 8122-C, BPDA).

8. Dockets 28755, 29462, and 33213, Applications of United for realignment and restriction removal (Memo 8283, BPDA).

9. Docket 20051, Proposed waiver of ex parte rule to allow staff discussions with FAA and DOT on the application of Airline Scheduling Committees (Memo 8268, OGC).

10. Proposed waiver of ex parte rule to allow staff discussions with FAA and DOT on the Board's prospective scheduling of route cases (Memo 8269, OGC).

11. Docket 22641—Mackey Exemption. Dockets 25446 and 28266—Mackey Certification Proceeding (OGC).

12. Dockets 33361, 33362, 33363, Former Large Irregular Air Service Investigation, Certification to the Board (7690-I, OGC).

13. Dockets 32327, 33361, 33362, 33363, 33686, 33687, 32630, 32632, 31540, 33688, and 33689, Former Large Irregular Air Carrier Investigation—Order disposing of motions to consolidate and/or requests to reinstate previously dismissed applications (7690-H, OGC).

14. Docket 33216, Louisville-Kansas City Nonstop Route Investigation—Order on Reconsideration (OGC).

15. Final rules amending Part 384 Statement of Organization Delegation of Authority and Availability of Records and Information and Part 385 Delegations and Review of Action Under Delegation; Nonhearing Matters (Memo 8266, OGC, BAS, BCP, OMD).

16. Freedom of Information Act request by Institute for Public Interest Representation To Inspect Audit Materials Regarding Allocation of Costs of Discriminatory Employment Practices (Memo 8286, OGC).

17. Docket 31979, Kodiak-Western Alaska Airlines, Inc., Enforcement Proceeding (Memo 8277, OGC).

18. Docket 23080-2, Priority and Nonpriority Domestic Service Mail Rates Investigation (OGC).

19. Dockets 30587/30591, Colonial Airlines, Inc., (Memo 8015-D, OGC).

20. Docket 33275, New Orleans-West Service Investigation: Petitions for reconsideration (Memo 7879-B, OGC).

21. Dockets 33320, 31542 and 33605, Houston Service Investigation (Memo 8070-D, OGC).

22. Docket 30635, Arizona Service Investigation (OGC).

23. Docket 31989, Transportes Aereos Bolivianos' application for an initial foreign air carrier permit (Memo 8284, BIA, OGC).

24. Docket 32772, Application of Aerolineas Argentinas for a declaratory order stating that its current authority includes Miami-Montreal nonstop rights (Memo 8287, BIA).

25. Docket 31977, Application of International Developers, Inc. (Japan) d.b.a. Toyo World Enterprises of California, Inc., for indirect foreign air carrier permit (Memo 8097-A, BIA, OGC).

26. Docket 31703, Application of Quebecair for a new foreign air carrier permit to operate charters between 20 named European countries and any point or points in the United States, subject to conditions and limitations (BIA, OGC).

27. Canadian Restrictions on U.S. Carriers' Charter Operations into Northwest Ontario (Memo 8279, BIA, OGC).

28. Docket 33274, Application of the Fredericton Flying Club, Inc., for an initial foreign air carrier permit to operate charters between Canada and the U.S. using small aircraft (Memo 8275, BIA, OGC).

29. Docket 33229, Application of Aircair Services, Ltd., d.b.a. Yellow Bird Air for an initial foreign air carrier permit to operate charters between Canada and the U.S. using small aircraft (Memo 8274, BIA, OGC).

30. Dockets 25608 and 31006, Seagreen Air Transport, Ltd's, application to amend and renew its two foreign air carrier permits (Memo 8276, BIA, OGC).

31. Notice of Proposed Rulemaking to amend section 213.3(d) of the Economic Regulations to remove the mandatory 30-day waiting period for effectiveness of orders requiring foreign air carriers to discontinue operation of existing schedules (BIA, OGC, BPDA-Memo 8285).

32. Docket 21670, Frontier Airlines Mail Subsidy Rates (Instructions to staff).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068

[S-2321-78 Filed 11-15-78; 10:46 am]

[6320-01-M]

2

[M-178, Amdt. 1; Nov. 11, 1978]

CIVIL AERONAUTICS BOARD.

Notice of addition of item to the November 16, 1978, meeting agenda.

TIME AND DATE: 9:30 a.m., November 16, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 3a. Dockets 33913, 33851, 33846, and 33845, applications of Braniff, American, Continental and TWA for exemption authority to operate in markets in which authority is granted under section 401(d)(5).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, The Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: This item concerns requests for exemption authority in "dormant authority" markets. The staff issued an order under delegated authority last Thursday granting certificate authori-

ty in certain dormant authority markets. For any exemption authority to be effective it should be granted as close to the grant of the certificate authority as possible. In view of the extremely short deadlines on the issuance of dormant authority certificates—14 days—the staff was not able to prepare a memo on the exemption authority earlier. Accordingly, the following Members have voted that agency business requires the addition of 3a to the November 16, 1978, agenda and that no earlier announcement of this addition was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-2322-78 Filed 11-15-78; 10:46 am]

[6712-01-M]

3

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 12:15 p.m., Thursday, November 9, 1978.

PLACE: Room 856, 1919 M Street NW, Washington, D.C.

STATUS: Emergency closed Commission meeting.

SUBJECT

The decision in *Central Florida Enterprises, Inc.* v. *FCC* (D.C. Circuit No. 76 1742).

The prompt and orderly conduct of Commission business did not permit announcement prior to the meeting.

Additional information concerning this meeting may be obtained from FCC Public Information Office, telephone 202-632-7260.

Issued: November 14, 1978.

[S-2323-78 Filed 11-15-78; 11:01 am]

[6712-01-M]

4

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Tuesday, November 14, 1978.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Open Commission meeting.

CHANGES IN THE MEETING: The following items have been deleted:

Agenda, Item No., and Subject

General—3—Petitions for special relief filed by Citizens Communications Center requesting approval of reimbursement provisions contained in certain licensee-citizens group agreements.

General—4—Petition for partial reconsideration of the Commission's decision in Mid-Continent Telecasting, Inc., et al., filed by Gilmore Broadcasting Corp.

Common Carrier—2—Application by A.T. & T. for authority to construct a domestic satellite Earth station at the Goddard Space Flight Center, Greenbelt, Md. (File No. 652-DSE-P-77).

Common Carrier—3—Western Union International, Inc., application for authority to lease and operate 14 56-kilobit circuits in the Westar and Intelsat satellite systems; construct and operate a domestic satellite Earth station at each Andover, Maine, and Etam, W. Va.; designate the Goddard Space Flight Center (GSFC), Greenbelt, Md., as a limited purpose gateway; and use the requested facilities to provide leased 56-kilobit leased channel service to the National Aeronautics and Space Administration (NASA) between GSFC and the Ascension Islands, Bermuda, Chile, Ecuador and Spain; Communications Satellite Corp. applications requesting authority to construct and operate an 11-meter antenna and associated facilities at each Andover, Maine and Etam, West Virginia and to use said facilities in conjunction with the Westar domestic satellites; to construct two Intelsat standard B antennas and associated facilities at the GSFC, Greenbelt, Md.

Additional information concerning this meeting may be obtained from the FCC Public Information Office, telephone 202-632-7260.

Issued: November 14, 1978.

[S-2324-78 Filed 11-15-78; 11:01 am]

[6740-02-M]

5

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 52847, Published November 14, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., November 15, 1978.

CHANGE IN THE MEETING: The following item has been added:

Item No., Docket No., and Company

CP-13. RP72-89, et al., Columbia Gas Transmission Corp., et al.

KENNETH F. PLUMB,
Secretary.

[S-2326-78 Filed 11-15-78; 3:35 pm]

[6740-02-M]

6

NOVEMBER 15, 1978.

FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: 3 p.m. November 15, 1978.

PLACE: 825 North Capitol Street NE., Washington, D.C. 20426, Room 9306.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Initiation of civil litigation.

CONTACT PERSON FOR INFORMATION:

Kenneth F. Plumb, Secretary, telephone 202-275-4166.

[S-2327-78 Filed 11-15-78; 3:35 pm]

[6740-02-M]

7

NOVEMBER 15, 1978.

FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: 2 p.m., November 22, 1978.

PLACE: 825 North Capitol Street, NW., Washington, D.C. 20426, Hearing Room A.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will be briefed by the Staff on the comments received in Docket No. RM79-3, Notice of Proposed Rulemaking on Regulations implementing the Natural Gas Policy Act of 1978. No vote will be taken at this meeting, but drafting instructions may be given to the Staff.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth F. Plumb, Secretary, telephone 202-275-4166.

KENNETH F. PLUMB,
Secretary.

[S-2330-78 Filed 11-15-78; 3:35 pm]

[6720-01-M]

8

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: 9:30 a.m., November 22, 1978.

PLACE: 1700 G Street NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION:

Franklin O. Bolling, 202-377-6677.

MATTERS TO BE CONSIDERED:

Branch Office Application—Eureka Federal Savings & Loan Association of San Francisco, San Francisco, Calif.
Branch Office Application—First Federal Savings & Loan Association of York, York, Nebr.
Satellite Office Application—Home Federal Savings & Loan Association, St. Petersburg, Fla.

Application for Bank Membership—Newport Savings Bank, Newport, N.H.
Applications for Bank Membership and Insurance of Accounts (Proposed)—Central Oregon Savings & Loan Association, Bend, Oreg.
Branch Office Application—Biscayne Federal Savings & Loan Association, Miami, Fla. (Broward County).
Branch Office Application—Biscayne Federal Savings & Loan Association, Miami, Fla. (Dade County).
Consideration of Forward Commitments to Purchase Securities.

No. 197, November 15, 1978.

RONALD A. SNIDER,
Assistant Secretary.

[S-2329-78 Filed 11-15-78; 3:35 pm]

[6210-01-M]

9

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

TIME AND DATE: 10 a.m., Wednesday, November 22, 1978. The closed portion of the meeting will commence at the conclusion of the open discussion.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Part of the meeting will be open; part will be closed.

MATTERS TO BE CONSIDERED:

Open portion:

SUMMARY AGENDA

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed revision to the Report of Negotiable Orders of Withdrawal (NOW) Accounts (FR 2015).

DISCUSSION AGENDA

1. Board's regulatory improvement program: further consideration of Regulation V (Guarantee of Loans for National Defense Work).
2. Proposed Federal Reserve Bank budgets for 1979.
3. Any agenda items carried forward from a previously announced meeting.

NOTE.—The open portion of this meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling 202-452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

Close portion:

1. Proposed system-wide facsimile network, including competitive procurement alternatives. (This matter was originally announced for a meeting on Friday, November 17, 1978).
2. Proposed negotiation of a construction contract for major power and air conditioning alterations for the building of the Federal Reserve Bank of New York.
3. Proposed negotiation of a contract for architectural and engineering services for the proposed new building project of the Federal Reserve Bank of San Francisco.
4. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
5. Any agenda items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board, 202-452-3204.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

NOVEMBER 14, 1978.

[S-2325-78 Filed 11-15-78; 11:36 am]

[7590-01-M]

10

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: Tuesday, November 21, 1978.

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE CONSIDERED:

TUESDAY, NOVEMBER 21, 9:30 A.M.

1. Discussion of petition for hearing by NRDC in Tarapur matter (approximately 1 hour, public meeting).
2. Discussion of reducing procedural cost burdens (approximately 1 hour, public meeting).
3. Affirmation session (approximately 10 minutes, public meeting): (a) FOIA appeal of K. Gaynor.

TUESDAY, NOVEMBER 21, 1:30 P.M.

1. Briefing on NMSS role in international safeguards and physical security determinations (approximately 1 hour, closed—exemption 1).
2. Discussion of personnel matter (approximately 1 hour, closed—exemption 6).

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee, 202-634-1410.

ROGER M. TWEED,
Office of the Secretary.

NOVEMBER 14, 1978.

[S-2328-78 Filed 11-15-78; 3:35 pm]

[8120-01-M]

11

TENNESSEE VALLEY AUTHORITY.

TIME AND DATE: 10:30 a.m., Thursday, October 19, 1978.

PLACE: Conference Room B-32, West Tower, 400 Commerce Avenue, Knoxville, Tenn.

STATUS: Open.

MATTERS TO BE CONSIDERED:

C—PURCHASE AWARDS

1. Amendment to contract 78K61-822569 with Westinghouse Electric Corp. for hydrogen recombiners for the proposed Yellow Creek Nuclear Plant.
2. Req. No. 577555—IQT contract for complete line of new tires and tubes for any TVA project or warehouse.
3. Rejection of bids received in response to Invitation No. 553593 for indefinite quantity term contract for electrical terminals, connectors, lugs, tools, and accessories for Hartsville Nuclear Plant.
4. Rejection of bids received in response to Invitation No. 824268 for wastewater management collection and holding facilities, including installation, for Muscle Shoals Reservation.

F—POWER ITEMS

1. Letter agreement with Interlake, Inc., covering relocation of TVA's Gallatin-Portland 69-kV line to provide clearance for company's proposed new plant near Gallatin, Tenn.

Dated: October 16, 1978.

CONTACT PERSON FOR MORE INFORMATION:

John Van Mol, Director of Information, or a member of his staff can respond to requests for information about this meeting. Call 615-632-3257, Knoxville, Tenn. Information is also available at TVA's Washington office, 202-566-1401.

SUPPLEMENTARY INFORMATION:

TVA BOARD ACTION

The TVA Board of Directors has found, the public interest not requiring otherwise, that TVA business requires that this meeting be called at the time set out above and that no earlier announcement of the meeting was possible.

The members of the TVA Board have voted to approve the above findings and their approvals are recorded below.

Approved:

S. DAVID FREEMAN.
RICHARD M. FREEMAN.

[S-2331-78 Filed 11-15-78; 3:58 pm]

V 43 / 223

federal register

FRIDAY, NOVEMBER 17, 1978
PART II



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

■

PROTECTION OF HUMAN SUBJECTS

Proposed Regulations on Research Involving Those Institutionalized as Mentally Disabled

NO 17 78
UMI

[4110-08-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

[45 CFR Part 46]

PROTECTION OF HUMAN SUBJECTS

Proposed Regulations on Research Involving Those Institutionalized as Mentally Disabled

AGENCY: Department of Health, Education, and Welfare.

ACTION: Proposed rule.

SUMMARY: The Department of Health, Education, and Welfare (HEW) is proposing regulations to implement the recommendations of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research pertaining to research involving those institutionalized as mentally disabled. Key provisions require that such research be carried out only if the methods are appropriate, the investigators competent, and the facilities adequate. Risks must be minimized, and the research performed in connection with medically indicated diagnosis and treatment wherever possible. Adequate provision must be made to obtain the subject's fully informed consent, or the consent of legal representatives if the subjects are incapable of consenting on their own behalf. Where the subject lacks full capacity to consent, provision is made for the subject's assent.

DATES: Written comments on the proposed rules are invited, and should be received on or before January 16, 1979, if they are to be given full consideration.

ADDRESSES: Send comments to: Office for Protection from Research Risks, National Institutes of Health, 9000 Rockville Pike, Bethesda, Md. 20014. Additional copies of this notice may be obtained from the same address. All comments received will be available for inspection at Room 303, Westwood Building, 5333 Westbard Avenue, Bethesda, Md., weekdays (Federal holidays excepted) between the hours of 9 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT:

Joseph R. Marches, Ph. D., Office for Protection from Research Risks, National Institutes of Health, 9000 Rockville Pike, Bethesda, Md. 20014, 301-496-7005.

SUPPLEMENTARY INFORMATION: Basic regulations governing the protection of human subjects involved in research, development, and related activities supported by HEW through grants and contracts were published in the FEDERAL REGISTER on May 30, 1974 (30 FR 18914).

In the preamble to these regulations, HEW indicated that it would propose further rules to provide additional protection for research subjects with diminished capacity to provide informed consent, including institutionalized individuals with mental disability.

The National Research Act (Pub. L. 93-348) was signed into law on July 12, 1974, creating the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research (Commission). One of the charges to the Commission was to study the nature of the research being conducted which involved what the Act referred to as the "institutionalized mentally infirm," including the mentally ill, the mentally retarded, the emotionally disturbed, and the senile, who are confined to institutions either voluntarily or involuntarily. Such persons by the very nature of their disabilities may not be competent to provide informed consent to participation in research. At the same time, the nature of their disabilities requires extensive research efforts to study the etiology, pathogenesis, prevention, therapy, and management of their conditions. The Commission was required to recommend to the Secretary of Health, Education, and Welfare, policies defining the circumstances under which research involving the institutionalized mentally infirm might be appropriate and to make recommendations to Congress regarding the protection of subjects (including the institutionalized mentally infirm) involved in research not subject to regulation by HEW.

In discharging its duties under this mandate, the Commission studied the nature and extent of research in mental health, mental illnesses, and mental retardation, the purposes for which the research is conducted, and the issues surrounding the participation in research of the institutionalized mentally infirm. Representatives from professional societies, Federal agencies, and public interest groups, as well as private citizens presented their views to the Commission at public hearings. To assure that viewpoints of minorities would be expressed, the National Minority Conference on Human Experimentation made recommendations to the Commission on research involving the institutionalized mentally infirm. The Commission also reviewed papers and reports prepared under contract, including papers on informed consent and a survey of actual practices in research involving institutionalized subjects. Finally, the Commission conducted extensive deliberations in public and developed recommendations on the participation in research of "those institutionalized as mentally infirm."

ACTIONS ON RECOMMENDATIONS OF THE COMMISSION

Pursuant to section 205 of the National Research Act (Pub. L. 93-348), the recommendations of the Commission on research involving those institutionalized as mentally infirm were published in the FEDERAL REGISTER (43 FR 11328) on March 17, 1978. Comments were received from approximately 100 organizations, institutions, legal and medical practitioners, and private citizens. After reviewing the recommendations and the comments, the Secretary has prepared the notice of proposed rulemaking set forth below, which in essence accepts the recommendations. However, the proposed rules depart from the recommendations of the Commission in a few respects.

DEPARTMENT'S RESPONSE TO RECOMMENDATIONS

DEFINITIONS

The term "institutionalized mentally infirm" as used in section 202(a)(2) of the National Research Act, is defined to include "individuals who are mentally ill, mentally retarded, emotionally disturbed, psychotic, senile, or who have other impairments of a similar nature and who reside as patients in an institution." Thus, the term "mentally infirm" was intended to encompass a broad array of people who, because of cognitive or emotional handicaps, reside in institutions and are subject to institutional constraints. The Commission's recommendations are applicable to research involving individuals so impaired when they are residents of these institutions. However, as noted by the Commission and by the Department, the term "mentally infirm" is inadequate. First, it is not in current clinical use. Second, there is considerable debate about whether symptoms that may result in institutionalization are properly characterized as diseases or illnesses in the conventional sense, or whether they represent problems in social adaptation. Current theories of personal adjustment recognize an interaction between biological and environmental factors resulting in behavior that society regards as illness or disability. An alternative to psychiatric diagnosis, which assumes a medical or disease model, is the view that disturbing behavior is more appropriately described in terms of conditions that evoke, reinforce and perpetuate that behavior.

Third, it is increasingly recognized that labeling, by the use of such terms as "mentally infirm," may stereotype conceptions of people and their problems. Fourth, many individuals who commented on HEW's November 16, 1973, proposed policy (39 FR 18914) objected to the use of the term "mentally infirm" because it reflected an antiquated notion of mental illness and its scope was unclear, e.g., some felt it included those incapacitated as a result of physical conditions.

HEW substituted the term "mentally disabled" in the proposed rulemaking of August 23, 1974 (39 FR 30648), and reaffirms this change here. The term is separately defined in § 46.503(c) of the proposed regulations.

The National Research Act does not separately define "institutionalized." The Commission has noted that institutionalization may result from misdiagnosis or error and that confinement to a mental institution does not necessarily establish the fact of mental disability. The Department feels that the protection of these regulations should extend to all individuals residing either voluntarily or involuntarily in residential institutions for the care and treatment of the mentally disabled, including those who are mentally ill, mentally retarded, emotionally disturbed, psychotic or senile, regardless of their legal status or reason for their being institutionalized. Such individuals include but are not limited to mentally disabled patients in public or private mental hospitals, psychiatric patients in general hospitals, inpatients of community mental health centers, and mentally disabled individuals who reside in halfway houses or nursing homes. These regulations would not include noninstitutionalized patients or out-patients who would be covered by general regulations, nor would they include patients who are not mentally disabled but who, for reasons of convenience, are temporarily housed in institutions for the care and treatment of the mentally ill. The term "individuals institutionalized as mentally disabled" is so defined in § 46.503(d).

The definition of "minimal risk" is drawn, with only minor editorial changes, from the Commission's definition. In the preparation of these proposed regulations, considerable attention focused on whether this definition adequately captures the thrust of the additional explanatory comments provided by the Commission. There was concern whether the definition of minimal risk as included here should be interpreted to mean that a minimal risk situation obtains only when the research procedures include risks for institutionalized mentally disabled subjects which are identical to those encountered by normal subjects in routine medical or psychological examinations, or whether research procedures involving risks similar to those encountered by normal subjects should be the standard. For example, should a procedure which is routinely included in examination of mentally disabled persons be regarded as involving minimal risk because it is similar to the risk encountered by normal persons, or as involving more than minimal risk simply because it is not identical to any procedure ordinarily experienced by a normal person.

The Commission proposes that risks normally encountered in the daily lives of normal persons, or in the routine medical or psychological examination of normal persons, serve as a standard against which the Institutional Review Board (Board) should judge risks for institutionalized mentally disabled subjects. The Commission notes that, for such subjects, "routine examination procedures present no more than minimal risk if the likely impact of such procedures on them is similar to what would be experienced by normal persons undergoing the procedures" (emphasis added). The Board is also charged with determining "the degree of risk that would be presented to normal persons and then consider whether such risk is heightened by the illness or institutionalization of the prospective subjects or class of subjects." Thus, the Department believes that risks normally encountered in the daily lives or routine examination of normal persons serve as a standard against which risks for mentally disabled subjects can be judged.

Consideration was given to inserting the words "comparable to that" between "discomfort" and "normally" in the definition as presented in these proposed regulations. This would serve to emphasize the comparative, judgmental nature of the assessment of risk. However, there was concern that such a phrase, if inserted, could be interpreted to permit disabled subjects to be exposed to greater risks than intended by the Commission. Hence, the definition in § 46.503(h) of the proposed regulations adheres to the original wording of the Commission. Comments from the public are especially invited on this definition.

The Department has also added definitions of "children," "parent," "legally authorized representative," and "assent," borrowed largely from its previous proposed rulemaking with respect to research with children (43 FR 31786 at p. 31793).

A definition of "consent auditor" is included as well as a definition of "advocate." The former describes an individual whose primary role is to assure that the consent/assent process functions properly; the latter contemplates someone who would in effect serve as another representative of the subject, in addition to the legally authorized representative. One or both of these definitions will be included in the final regulations on the institutionalized mentally disabled, depending on what if any functions are assigned to consent auditors and advocates in other sections of the regulations. The rulemaking on research involving children and these regulations will be conformed before either is issued in final form.

Recommendation (*1*) regarding the review of research by Boards is implemented by § 46.504 substantially as proposed by the Commission. Several of the Commission's comments on the recommendation were included in the regulations for purposes of clarification.

SPECIAL CONSIDERATIONS REGARDING INDIVIDUALS WHO OBJECT TO TREATMENT

In its recommendations (2), (3), and (4), discussed below, the Commission provides special protections for subjects who are incapable of giving fully informed consent. The Department recognizes, however, that it is often difficult to demarcate between subjects who are capable and those who are not. Also, the decision as to capability normally cannot be made until the time when each subject is involved in the research. Leaving the institution and the research investigators the discretion to decide whether individual subjects are capable of giving consent could lead to uneven protections for human subjects. In recognition of this, the Commission has provided the institutional review boards with authority to appoint consent auditors to observe the consent process and determine in fact whether proper decisions are being made regarding capacity to consent (or assent). In recommendation (4), appointment of a consent auditor is mandatory.

One alternative, which was considered by the Department for the purpose of limiting the researchers' discretion, was to require added protections whenever the subject had been declared "legally incompetent" by a court of appropriate jurisdiction. This approach is not being pursued because in fact only a small proportion of the institutionalized mentally disabled, who may be less than fully capable of giving consent, have had their status adjudicated by a court.

Recommendations (2) and (3) contain two parallel clauses, (2)(b)(iii) and (3)(D)(iv), stating generally that when a subject objects to participation in an intervention which: Involves only minimal risk (recommendation 2), or holds out the prospect of direct benefit for the subject and is available only in the context of the research (recommendation 3), the research may be conducted or supported only if the subject's participation is specifically authorized by a court of competent ju-

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risdiction. Although the Commission did not specifically indicate, we interpret these provisions as applying only when the subject lacks the capacity to give informed consent.

The Commission does not provide any clarifying comment on this clause. In a dissenting opinion (43 FR 11328 at page 11358), Commissioner King suggests that: "Perhaps the Commission required court authorization to insure as fair and objective an assessment of the quality of the objection as possible. I certainly share the Commission's concern about insuring a fair and objective assessment of the quality of the prospective subject's objection. Most forms of mental illness and mental retardation are viewed as possibly impairing a patient's ability to make sound personal decisions. We should be concerned therefore about a subject's ability to refuse as well as to assent to participation in research activities." Commissioner King proceeded to dissent on the ground that a court is not necessarily in the best position to make the necessary decision as to the quality of the objection, and in the belief that the decision should be left to the Board, which could, if it wished, seek assistance from a court.

The courts themselves are divided on this issue. In a Federal case, *Wyatt* v. *Stickney* (344 F.Supp. 373 [M.D. Ala. 1972]; 344 F.Supp. 387 [M.D. Ala. 1973]) (see also *Wyatt* v. *Aderholt*, 503 F.2d. 1305 [5th Cir. 1974]), the court held (appendix A,29) only that "Residents shall have a right not to be subjected to experimental research without the express and informed consent of the resident (or) of his guardian or next of kin • • • Such proposed research shall first have been reviewed and approved by the institution's Human Rights Committee." Court approval as such was not required, though consultation with legal counsel was recommended.

More recently, the Massachusetts Supreme Judicial Court in *Belchertown State School* v. *Saikewicz* (370 N.E.2d 417) has held that questions concerning the continuation of life extending therapy in incompetent patients must go before a probate court for approval. While the case involves life extending therapy, not merely benefits, the decision tends to support the Commission majority's view that the courts must play a central role in the consent process when a mentally disabled patient is unable to consent to a proposed treatment regimen.

There are arguments that neither next of kin, other legally authorized guardians, nor courts should be able to override the objection of a mentally disabled subject except in extreme cases. The Commission notes in its report the view of one of its consultants that "The burden in law for incompetence should be very high. No evidence other than a showing that the patient is comatose should ordinarily be accepted as proof of incompetence • • • To accept proxy consent is to authorize invasions of persons and personality without regard to the wishes of the research subject • • •." To date, no court has adopted such a view.

For purposes of the proposed regulations, the Department has followed the Commission's recommendations concerning authorization by a court of competent jurisdiction. At the same time, it is acknowledged that there are views in sharp conflict with this position. The Department therefore encourages further public comment on this issue.

Recommendation (2), on research that does not present more than minimal risk, is implemented by § 46.505 largely as suggested and with the Commission's recommended requirement of court approval to protect the objecting subject who lacks the capacity to give informed consent. If such a subject objects, the research must include an intervention that holds the prospect of direct benefit to the subject, or a monitoring procedure required for the well-being of the subject.

As an added protection for subjects who are incapable of giving informed consent, the Department is giving consideration to requiring that a consent auditor monitor all research covered by these regulations, including research involving no more than minimal risk. Whenever the consent auditor finds a particular subject lacks the capability to consent, the subject may not be involved in the research without the consent of an advocate (in addition to the consent of the legally authorized representative and, in the case of an objecting subject, a court). Public comment is requested on this added protection.

Recommendation (3) concerns research involving greater than minimal risk but presenting the prospect of direct benefit to the individual subjects. Section 46.506 implements this recommendation with modifications. The term "legally authorized representative" is substituted for the term "guardian" since the latter is normally associated with persons having responsibility for minors, while these regulations apply both to adults and minors institutionalized as mentally disabled. Again, the requirement for court approval protects the objecting subject who lacks the capacity to consent. When such a subject objects, the research can proceed only if the Board finds that the intervention or monitoring procedure is available only in the context of the research.

Again, public comment is requested on a proposal to require the consent of an advocate whenever the consent auditor determines that the subject is incapable of giving informed consent.

Recommendation (4), pertaining to research involving greater than minimal risk but likely to yield generalizable knowledge about the subjects' disorder, is implemented by § 46.507. The regulation substantially follows the Commission's recommendation except with respect to subjects who are incapable of giving informed consent.

With regard to subjects who are capable of assenting (though not consenting), the Department is considering whether to follow the Commission's approach of permitting such subjects to participate if they assent and their legally authorized representative consent, or alternatively, to require in addition the consent of (1) the Secretary, based upon the advice of an expert panel, or (2) an advocate.

With regard to subjects incapable of assenting, the Department is considering whether to: (1) Bar their involvement in such research (on the assumption that needed research could be done using other subjects), (2) adopt the Commission's recommendation, which would permit their participation if they do not object and the legally authorized representative and a court of competent jurisdiction give their approval, (3) require, in addition to the approval of the legally authorized representative and the court, approval by the Secretary, or (4) require, in addition to that of the representative and the court, approval by an advocate.

Public comment is requested on the above alternatives.

The regulations proposed in § 46.508 for implementation of recommendation (5) depart slightly from paragraph B of that recommendation. Instead of referring to a national ethical advisory board as the body to review research that cannot be approved under recommendations (2), (3), and (4), § 46.508 would allow the Secretary to consult with a panel of experts in pertinent disciplines (e.g., science, medicine, education, ethics, law). Depending on the circumstances, the panel could be a national ethical advisory board or an ad hoc panel of experts. This gives the Secretary flexibility to secure the best advice available in a particular situation.

The Department is considering whether greater specifity should be required regarding the nature of the consent process under situations covered by recommendation (5). Public comment regarding this issue is requested.

DEPARTMENT'S RESPONSE TO PUBLIC COMMENTS

In response to publication in the FEDERAL REGISTER of the Commission's recommendations on research involving those institutionalized as mentally infirm, approximately 100 comments were received from individuals, citizen groups, legal and medical practitioners, researchers, and representatives of societies, university departments, and institutions. Although the respondents objected to some points in the recommendations, they were mainly complimentary of the Commission's recommendations. Several indicated complete acceptance of the recommendations as drafted.

Described below are the public responses received on the recommendations. In general, the comments directly addressed issues and implications of the recommendations but occasionally extended into the supplementary discussion material presented by the Commission relating to each of its recommendations.

1. *Comment on the definition of "institutionalized mentally infirm".* Public response to the March 17, 1978, recommendations contained objections to this term similar to those received in response to the proposed rulemaking of August 23, 1974. The major concern was that the term reflected an antiquated concept of mental illness with an ill-defined boundary as to the kinds of disabilities and conditions that would be included.

Response. The Department agrees. As noted under "Department's response to recommendations," the term "mentally disabled" has been substituted for "mentally infirm" in § 46.503 and is utilized throughout the proposed regulations.

2. *Comment on recommendation* (1). While there was general acceptance of this recommendation as drafted, a number of those commenting questioned the reality of delegating to Boards the task of discerning (A) that "the research methods are appropriate" to the research, and (B) the "competence of the investigator." The comments also expressed a desire for clarification of the "good reason" criterion included in paragraph (D) for involving participants and the meaning of "equitable" selection presented in paragraph (G).

Response. The Department does not feel that the recommendations of the Commission that Boards consider the appropriateness of the proposed methodology and the competence of the investigator are unrealistic. Boards are required under existing regulation (45 CFR 46.106) to have the professional competence and other qualifications necessary to the review of the specific activities likely to be presented to them. Under such circumstances, a properly constituted Board should have no difficulty in making such decisions. These recommendations are implemented substantially as written in § 46.504(a) (1) and (2).

The Department agrees that the "good reason" criterion deserves further explanation. Accordingly, the Department has added in § 46.504(a)(4) a brief description of the factors to be considered in determining the appropriateness of conducting research on those institutionalized as mentally disabled.

Similarly, the Department has provided additional explanation as to what is meant by "equitable" selection and incorporated this in § 46.504(a)(7).

3. *Comment on recommendation* (2)(*B*)(*ii*). Reservation was expressed as to the adequacy of accepting "assent" or "no objection" as criteria for allowing the participation of patients who are incapable of consenting. Some public respondents felt that the opportunity to object might be vitiated by the institutional setting or the subject's lack of decisionmaking experience.

Response. The standard for "assent" requires that the subject be told what procedures will be performed in the research and on this basis choose, or not choose, to participate. The subject would be expected to be able to communicate this choice unambiguously and be aware that subjects may withdraw from participation. Assent is not intended to be a substitute for the informed consent of legally authorized representatives, but as an additional applicable standard for affirmative agreement to participate in research. Assent is to be obtained whenever a subject is not capable of giving informed consent and other conditions are satisfied. Mere failure to object is not to be construed as assent.

The "absence of an objection" criterion is appropriate only where the subject is incapable of assenting and where the research is relevant to the subject's condition and presents no more than minimal risks. These points were included in the Commission's discussion pertaining to this recommendation and serve to clarify the Department's intent.

4. *Comment on recommendations* (2)(*B*)(*iii*), (3)(*D*)(*iv*), *and* (3)(*E*)(*ii*). Recommendations (2) and (3) contain provisions for court authorized participation of objecting subjects if the research holds the prospect of direct benefit to the subject or includes a monitoring procedure required for the well-being of the subject. As we have already said, we interpret these provisions as applying only when the subject is incapable of giving informed consent.

Public comment reflected varying degrees of objection to the suggested role of the court in overriding the right to refuse participation in research even when judged to be beneficial.

Reponse. The Department acknowledges the difficulty of resolving the conflicting right of a patient to refuse treatment for whatever reason, and of the right, even the duty, of the State to provide treatment when it is in the apparent best interest of the patient. This matter is discussed above under "Department's response to recommendations" and additional public comment is encouraged.

5. *Comment on recommendation* (3)(*D*)(*ii*). Several comments in connection with recommendation (3) were in reference to the concept of the guardian. Some proposed that the guardian's role be limited to concurrence with or withdrawal of the subject's consent to participation in research. Other respondents favored a change in the word "guardian" to the term "legally authorized representative" as used in subpart A of 45 CFR Part 46. It was suggested that the "legally authorized representative" concept would be more amenable to family input and patient-family decision making than the "guardian" notion.

Response. In light of these comments, the Department has substituted the term "legally authorized representative" in the wording of §§ 46.505(b)(2), 46.506(a)(4)(B), 46.507 (a)(4)(C), and 46.508(b)(2)(C) of the proposed regulations. The term "guardian" has been retained only in connection with minors.

6. *Comment on recommendation* (4). Public reaction to this recommendation was mixed as to whether persons institutionalized as mentally disabled should be involved in research with more than minimal risk and holding no prospect of direct benefit for individual subjects. At least one person supported the dissenting position of Commissioner Cooke to the effect that research involving more than minimal risk not be performed unless it can clearly be shown that the anticipated knowledge might reasonably benefit the individual subjects in the future.

Response. This recommendation is implemented by § 46.507, which requires that all of the safeguards of § 46.504 must be met. This includes the requirement in § 46.504(a)(4) that there be good reasons for using institutionalized individuals as subjects. Section 46.507(a)(3) further requires that the Board must find the research to be of vital importance for the understanding or amelioration of the type of disorder or condition affecting the subject, if the Board is to allow research under this recommendation.

If the subject is a child, § 46.507 (a)(5) requires satisfaction of §§ 46.407

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and 46.409 of subpart D relating to research involving children.

Sections 46.507 (b) and (c) also state that no subject may be allowed in the research over his or her objection and that the IRB shall appoint a consent auditor to ensure the adequacy of the consent process.

7. *Comment on recommendation (5).* A number of those commenting view this Recommendation as a questionable means for extending the latitude of conditions under which research may involve institutionalized persons. They fear that the risk of abuse or exploitation would be high for the category of research encompassed by this recommendation. It was further felt that a need for specifically involving institutionalized individuals should be documented before any research could be permitted under this Recommendation. The opinion was also expressed that the need for involving a national ethical advisory board in decision-making was not self-evident, and that the required review (paragraph B) might be more satisfactorily handled at the Board or program level, thus negating the need for a national board.

Response. The Department acknowledges the Commission's view that only research of major significance and the presence of a serious health problem would justify the approval of research under recommendation (5). The problem addressed must be a grave one with a reasonable expectation of producing important and needed scientific information, and must be implemented by an equitable method for inviting participation among institutionalized subjects. Approval of any research under this recommendation is contingent upon the Board's determination as to the critical nature of the health problem involved. The Secretary will give the public an opportunity to review and comment on any proposed action. Hence, it gives the Secretary discretion to approve important research when conditions warrant, while providing adequate safeguards against abuse.

Notice is given that it is proposed to make any amendments that are adopted effective upon publication in the FEDERAL REGISTER.

Dated: November 1, 1978.

JULIUS B. RICHMOND,
Assistant Secretary for Health.

Approved: November 6, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary.

It is therefore proposed to amend Part 46 of 45 CFR, Subtitle A, by:

§ 46.301 (Subpart C) [Redesignated as § 46.601 (Subpart F)]

1. Redesignating subpart C and § 46.301 as subpart F and § 46.601 respectively.

2. Adding the following new subpart E.

Subpart E—Additional Protections Pertaining to Biomedical and Behavioral Research Involving as Subjects Individuals Institutianalized as Mentally Disabled

Sec.
46.501 Applicability.
46.502 Purpose.
46.503 Definitions.
46.504 Additional duties of the Institutional Review Boards where individuals institutionalized as mentally disabled are involved.
46.505 Research not involving greater than minimal risk.
46.506 Research involving greater than minimal risk but presenting the prospect of direct benefit to the individual subjects.
46.507 Research involving greater than minimal risk and no direct benefit to individual subjects, but likely to yield generalizable knowledge about the subjects' disorder or condition.
46.508 Research not otherwise approvable which presents an opportunity to understand, prevent, or alleviate a serious problem affecting the health or welfare of individuals institutionalized as mentally disabled.

AUTHORITY: 5 U.S.C. 301.

Subpart E—Additional Protections Pertaining to Biomedical and Behavioral Research Involving as Subjects Individuals Institutionalized as Mentally Disabled.

§ 46.501 Applicability.

(a) The regulations in this subpart are applicable to all biomedical and behavioral research conducted or supported by the Department of Health, Education, and Welfare involving as subjects individuals institutionalized as mentally disabled.

(b) Nothing in this subpart shall be construed as indicating that compliance with the procedures set forth herein will in any way render inapplicable pertinent State or local laws bearing upon activities covered by this subpart.

(c) The requirements of this subpart are in addition to those imposed under the other subparts of this part.

§ 46.502 Purpose.

Individuals institutionalized as mentally disabled are confined in institutional settings in which their freedom and rights are potentially subject to limitation. In addition, because of their impairment they may be unable to comprehend sufficient information to give a truly informed consent. Also, in some cases they may be legally incompetent to consent to their own participation in research.

At the same time, so little is known about the factors that cause mental disability that efforts to prevent and treat such disabilities are in the primitive stages. There is widespread uncertainty regarding the nature of the disabilities, the proper identification of persons who are disabled, the appropriate treatment of such persons, and the best approaches to their daily care. The need for research is clearly manifest. It is the purpose of this subpart to permit the conduct of responsible investigations while providing additional safeguards for those institutionalized as mentally disabled.

§ 46.503 Definitions.

As used in this subpart:

(a) "Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of the Department of Health, Education, and Welfare to whom authority has been delegated.

(b) "DHEW" means the Department of Health, Education, and Welfare.

(c) "Mentally disabled" individuals includes those who are mentally ill, mentally retarded, emotionally disturbed, psychotic or senile, regardless of their legal status or the reason for their being institutionalized.

(d) "Individuals institutionalized as mentally disabled" means individuals residing, whether by voluntary admission or involuntary confinement, in institutions for the care and treatment of the mentally disabled. Such individuals include but are not limited to patients in public or private mental hospitals, psychiatric patients in general hospitals, inpatients of community mental health centers, and mentally disabled individuals who reside in halfway houses or nursing homes.

(e) "Children" are persons who have not attained the legal age of consent to general medical care as determined under the applicable law of the jurisdiction in which the research will be conducted.

(f) "Parent" means a child's natural or adoptive parent.

(g) "Legally authorized representative" means an individual or judicial or other body authorized under applicable law to consent on behalf of a prospective subject to such subject's participation in the particular activity or procedure. An official serving in an institutional capacity may not be considered a legally authorized representative for purposes of this subpart.

(h) "Minimal risk" is the probability and magnitude of physical or psychological harm or discomfort that is normally encountered in the daily lives, or in the routine medical or psychological examination, of normal individuals.

(i) "Assent" means a prospective subject's affirmative agreement to participate in research. Mere failure to object shall not, absent affirmative agreement, be construed as assent. Assent can only be given following an explanation, based on the types of information specified in § 46.103(c), appropriate to the level of understanding of the subject, in accordance with procedures established by the Institutional Review Board.

(j) "Consent auditor" means a person appointed by the Institutional Review Board to ensure the adequacy of the consent process, particularly when there is a substantial question about the ability of a subject to consent or assent or when there is a significant degree of risk involved. Consent auditors are responsible only to the Board and should not be involved with the research, nor should they be employed by or otherwise associated with the institution conducting or sponsoring the research, or with the institution in which the subject resides. They should be persons familiar with the physical, psychological, and social needs of the class of prospective subjects as well as with their legal status.

(k) "Advocate" means an individual appointed by the Institutional Review Board to act in the best interests of the subject. The advocate will, although he or she is not appointed by a court, be construed to carry the fiduciary responsibilities of a guardian ad litem toward the person whose interests the advocate represents. No individual may serve as an advocate if the individual has any financial interest in, or other association with, the institution conducting or sponsoring the research, nor with the institution in which this research in conducted; nor, where the subject is the ward of a State or other agency, institution, or entity, may the advocate have any financial interest in, or other association with, that State, agency, institution, or entity. An advocate must be familiar with the physical, psychological, and social needs and the legal status of the class of individuals institutionalized as mentally disabled in the institution in which the research is conducted. [This definition will be retained in the final regulations if duties are assigned to "advocates."]

§ 46.504 Additional duties of the institutional review boards where individuals institutionalized as mentally disabled are involved.

(a) In addition to all other responsibilities prescribed for Institutional Review Boards under this part, the Board shall review research covered by this subpart and approve such research only if it finds that:

(1) The research methods are appropriate to the objectives of the research;

(2) The competence of the investigator(s) and the quality of the research facility are sufficient for the conduct of the research;

(3) Appropriate studies in nonhuman systems have been conducted prior to the involvement of human subjects;

(4) There are good reasons to involve institutionalized individuals as subjects of the research. In reviewing proposals to involve institutionalized persons in research, the Board should evaluate the appropriateness of involving alternative, noninstitutionalized populations in the study instead of, or along with, the institutionalized individuals. Sometimes, the participation of alternative populations will not be possible or relevant, as when the research is designed to study problems or functions that have no parallel in free-living persons, (e.g., studies of the effects of institutionalization or studies related to persons, such as the profoundly retarded or severely handicapped, who are almost always found in residential facilities.)

(5) Risk of harm or discomfort is minimized by using the safest procedures consistent with sound research design and by using procedures performed for the diagnosis or treatment of the particular subject whenever possible;

(6) Adequate provisions are made to protect the privacy of the subjects and to maintain confidentiality of data. For example, data may be disclosed to authorized personnel and used for authorized purposes only; data should be collected only if they are relevant and necessary for the purposes of the research and analysis; data should be maintained only as long as they are necessary to the research or to benefit the subjects; and all data should be maintained in accordance with fair information practices;

(7) Selection of subjects among those institutionalized as mentally disabled will be equitable. Subjects in an institution should be selected so that the burdens of research do not fall disproportionately on those who are least able to consent or assent, nor should one group of patients be offered opportunities to participate in research from which they may derive benefit to the unfair exclusion of other equally suitable groups of patients.

(8) Adequate provisions are made to assure that no prospective subject will be approached to participate in the research unless the health care professional who is responsible for the health care of the subject has determined that the invitation to participate in the research and the participation itself will not interfere with the health care of the subject;

(9) The Board shall appoint a consent auditor to ensure the adequacy of the consent procedures when, in the opinion of the Board, such a person is considered necessary, e.g., when there is a substantial question about the ability of a subject to consent or to assent or when there is a significant degree of risk involved; and

[In the event the Department decides that there should be consent auditors for all projects, the above paragraph will be appropriately modified.]

(10) The conditions of all applicable subsequent sections of this subpart are met.

(b) The Board shall carry out such other duties as may be assigned by the Secretary.

(c) The institution shall certify to the Secretary, in such manner as the Secretary may require, that the duties of the Board under this subpart have been fulfilled.

§ 46.505 Research not involving greater than minimal risk.

Biomedical or behavioral research that does not involve greater than minimal risk to subjects who are institutionalized as mentally disabled may be conducted or supported by DHEW provided the Institutional Review Board has determined that:

(a) The conditions of § 46.504 are met; and

(b) Adequate provisions are made to assure that no subject will participate in the research unless:

(1) The subject gives informed consent to participation;

(2) If the subject lacks the capacity to give informed consent, the research is relevant to the subject's condition, the subject assents or does not object to participation, and the subject's legally authorized representative consents to the subject's participation; or

(3) If a subject, who lacks the capacity to give informed consent, objects to participation: (i) The research includes an intervention that holds out the prospect of direct benefit to the subject, or includes a monitoring procedure required for the well-being of the subject, (ii) the subject's legally authorized representative consents to the subject's participation, and (iii) the subject's participation is authorized by a court of competent jurisdiction.

[Consideration is being given to mandating that, in addition to the above requirements: (1) A "consent auditor" be appointed by the Institutional Review Board to ensure the adequacy of the consent process and determine whether each subject consents, or is incapable of consent but assents, or objects to participation, and (2) whenever the consent auditor determines that a subject is incapable of consenting, the subject may not par-

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ticipate without the authorization of an "advocate."]

§ 46.506 Research involving greater than minimal risk but presenting the prospect of direct benefit to the individual subjects.

(a) Biomedical or behavioral research in which more than minimal risk to subjects who are institutionalized as mentally disabled is presented by an intervention that holds out the prospect of direct benefit for the individual subjects, or by a monitoring procedure likely to contribute to the well-being of the subjects, may be conducted or supported provided the Institutional Review Board has determined that:

(1) The conditions of section 46.504 are met;

(2) The risk is justified by the prospect of benefit to the subjects;

(3) The relation of the risk to anticipated benefit to subjects is at least as favorable as that presented by available alternative approaches;

(4) Adequate provisions are made to assure that no adult will participate in the research unless:

(i) The subject gives informed consent to participation;

(ii) If the subject lacks the capacity to give informed consent, the subject assents to participation, and the subject's legally authorized representative consents to the subject's participation; or

(iii) If a subject who lacks the capacity to give informed consent, does not assent, or objects to participation: (A) The intervention or monitoring procedure is only available in the context of the research, (B) the subject's legally authorized representative consents to the subject's participation, and (C) the subject's participation is authorized by a court of competent jurisdiction.

[Consideration is being given to mandating that, in addition to the above requirements: (1) A "consent auditor" be appointed by the Institutional Review Board to ensure the adequacy of the consent process and determine whether each subject consents, or is incapable of consent but assents, or objects to participation, and (2) whenever the consent auditor determines that a subject is incapable of consenting, the subject may not participate without the authorization of an "advocate."]

(5) Adequate provisions are made to assure that no child will participate in the research unless:

(i) The subject assents (if capable) and the subject's parent(s) or guardian(s) give permission, as provided in section 46.409 of this part; or

(ii) If the subject objects to participation, the intervention or monitoring procedure is available only in the context of the research, the subject's parent(s) or guardian(s) give permission, and the subject's participation is authorized by a court of competent jurisdiction.

(b) Where appropriate, the Institutional Review Board shall appoint a consent auditor to ensure the adequacy of the consent process and determine whether each subject consents, or is incapable of consent but assents, or objects to participation. [This paragraph will be deleted if a consent auditor is required in all cases.]

§ 46.507 Research involving greater than minimal risk and no prospect of direct benefit to individual subjects, but likely to yield generalizable knowledge about the subjects' disorder or condition.

(a) Biomedical or behavioral research in which more than minimal risk to subjects who are institutionalized as mentally disabled is presented by an intervention that does not hold out the prospect of direct benefit for the individual subjects, or by a monitoring procedure that is not likely to contribute to the well-being of the subjects, may be conducted or supported provided an Institutional Review Board has determined that:

(1) The conditions of section 46.504 are met;

(2) The risk represents a minor increase over minimal risk;

(3) The anticipated knowledge (i) is of vital importance for the understanding or amelioration of the type of disorder or condition of the subjects, or (ii) may reasonably be expected to benefit the subjects in the future;

(4) Adequate provisions are made to assure that no adult will participate in the research unless the following conditions are met:

(i) The subject gives informed consent to participation;

(ii) If the subject lacks the capacity to give informed consent, the subject assents to participation, and the subject's legally authorized representative consents to the subject's participation; or

(iii) If the subject lacks the capacity to assent but does not object, the subject's legally authorized representative and a court of competent jurisdiction consent to the subject's participation.

[The Department is considering the following additions to the above provisions:

In § 46.507(a)(4)(B), with respect to subjects capable of consenting: (i) Adding the requirement that inclusion of each subject be approved by the Secretary based upon the advice of a panel of experts, or (ii) requiring the approval of an "advocate."

In § 46.507(a)(4)(C), with respect to subjects incapable of assenting: (i) Prohibiting use of such subjects on the theory that there is no research which can be performed only with these subjects, (ii) requiring approval by the Secretary based upon the advice of a panel of experts, or (iii) requiring the approval of an "advocate."]

(5) If the subject is a child, the requirements of §§ 46.407 and 409 of subpart D (relating to research involving children) are satisfied.

(b) No subject may be involved in the research over his or her objection.

(c) The Institutional Review Board shall appoint a consent auditor to ensure the adequacy of the consent process and determine whether each subject consents, or is incapable of consenting but assents, or is incapable of assenting but does not object, or objects to participation. [This paragraph will be deleted if a consent auditor is required for all research covered by this subpart.]

§ 46.508 Research not otherwise approvable which presents an opportunity to understand, prevent, or alleviate a serious problem affecting the health or welfare of individuals institutionalized as mentally disabled.

Biomedical or behavioral research that the Insitutional Review Board does not believe meets the requirements of §§ 46.505, 46.506, or 46.507 may nevertheless be conducted or supported by DHEW provided:

(a) The Institutional Review Board has determined the following:

(1) The conditions of § 46.504 are met; and

(2) The research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of individuals institutionalized as mentally disabled; and

(b) The Secretary, after consultation with a panel of experts in pertinent disciplines (e.g., science, medicine, education, ethics, law) and following opportunity for public review and comment, has determined either (1) that the research in fact satisfies the conditions of §§ 46.505, 46.506, or § 46.507, as applicable, or (2) the following:

(i) The research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of individuals institutionalized as mentally disabled;

(ii) The conduct of the research will be in accord with basic ethical principles of beneficence, justice, and respect for persons, that should underlie the conduct of research involving human subjects; and

(iii) Adequate provisions are made for obtaining consent of those subjects capable of giving fully informed consent, the assent of other subjects and the consent of their legally authorized representatives, and, where appropriate, the authorization of a court of competent jurisdiction [and if §§ 46.505, 46.506, 46.507 require an advocate, the authorization of that advocate].

[FR Doc. 78-31822 Filed 11-16-78; 8:45 am]

Federal Register

FRIDAY, NOVEMBER 17, 1978
PART III



DEPARTMENT OF LABOR

Employment Standards Administration

MINIMUM WAGES FOR FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION

General Wage Determination Decisions

[4510-27-M]

DEPARTMENT OF LABOR

Employment Standards Administration

MINIMUM WAGES FOR FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION

General Wage Determination Decisions

General Wage Determination Decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed in construction activity of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, (37 FR 21138) and of Secretary of Labor's Orders 12-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General Wage Determination Decisions are effective from their date of publication in the FEDERAL REGISTER without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

MODIFICATIONS AND SUPERSEDEAS DECISIONS TO GENERAL WAGE DETERMINATION DECISIONS

Modifications and Supersedeas Decisions to General Wage Determination Decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the Modifications and Supersedeas Decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 13-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing General Wage Determination Decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and Supersedeas Decisions are effective from their date of publication in the FEDERAL REGISTER without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Office of Special Wage Standards, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Wage Determination Decision.

NEW GENERAL WAGE DETERMINATION DECISIONS

Maine.—ME78-2178 and ME78-2159.

MODIFICATIONS TO GENERAL WAGE DETERMINATION DECISIONS

The numbers of the decisions being modified and their dates of publication in the FEDERAL REGISTER are listed with each State.

California:	
CA78-5007	Jan. 27, 1978.
Florida:	
FL77-1141	Nov. 25, 1977.
FL78-1064	Aug. 4, 1978.
FL78-1065	Aug. 11, 1978.
FL78-1070	Aug. 25, 1978.
Louisiana:	
LA78-4099	Oct. 6, 1978.
LA78-4113	Oct. 13, 1978.
Maryland:	
MD78-3046	May 19, 1978.
Michigan:	
MI78-2001	Feb. 3, 1978.
Minnesota:	
MN78-2150	Oct. 27, 1978.
Pennsylvania:	
PA77-3122; PA77-3124	Sept. 9, 1978.
PA77-3012	Apr. 28, 1978.
PA78-3016	Apr. 14, 1978.
PA78-3017	May 5, 1978.
PA78-3045	May 12, 1978.
PA78-3064; PA78-3066; PA78-3067	Sept. 22, 1978.
PA78-3068; PA78-3070	Sept. 29, 1978.
PA78-3069	Oct. 6, 1978.
Texas:	
TX78-4078	Aug. 11, 1978.
TX78-4082; TX78-4084; TX78-4087	Aug. 25, 1978.
TX78-4096	Sept. 22, 1978.

SUPERESEDEAS DECISIONS TO GENERAL WAGE DETERMINATION DECISION

The numbers of the decisions being modified and their dates of publication in the FEDERAL REGISTER are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Colorado:	
CO78-5108(CO78-5132)	July 14, 1978.

CANCELLATION OF GENERAL WAGE DETERMINATION

General Wage Determination No. GA77-1093, Glynn County, Ga., is hereby cancelled. Agencies with building construction projects contemplated in the county should utilize the project determination procedure by submitting form SF-308 (see 29 CFR Part 1, Section 1.5). Contracts for which bids have been opened shall not be affected by this notice. Consistent with 29 CFR Part 1, Section 1.7 (b)(2), inclusion of the above decision in contracts which the bid opening is within ten (10) days of this notice need not be affected.

Signed at Washington, D.C., this 9th day of November 1978.

DOROTHY P. COME,
Assistant Administrator,
Wage and Hour Division.

[FR Doc. 78-32082 Filed 11-16-78; 8:45 am]

NEW DECISION
STATE: MAINE
DECISION NUMBER: ME78-2159
DESCRIPTION OF WORK: BUILDING CONSTRUCTION
COUNTY: YORK
DATE: DATE OF PUBLICATION

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asbestos Workers	11.36	1.10	.95		.01
Bricklayers	8.83				
Carpenters	8.62	.65	.50		.01
Cement Mason	7.10				
Electricians	10.85	.75	3%+.25		.02
Ironworkers, Structural, Ornamental, and Reinforcing	10.35	1.10	1.10		.02
Laborers	7.27	.60	.75		.10
Millwrights	7.94	.45	.30		.01
Painters	6.08				
Plumbers: North Berwick to Ogunquit, Maine, thence southerly along coastline to Atlantic Ocean to Portsmouth, N.H.	10.75	.68	.55		.02
Remainder of County:	9.80	.55	.90		.02
Roofers	6.58				
Sheet Metal Workers	9.92	.60	.60		.02
Steamfitters	10.20	.53	.45		.02
Truck Drivers:					
2 Axle	3.70				
3 Axle	4.00				
Power Equipment Operators:					
Crane	9.63				

[4510-27-C]

NEW DECISION
STATE: MAINE
DECISION NUMBER: ME78-2158
DESCRIPTION OF WORK: BUILDING CONSTRUCTION.
COUNTY: CUMBERLAND
DATE: DATE OF PUBLICATION

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bricklayers	8.80	.40	.50		.02
Carpenters	6.86				
Cement Masons	8.80	.40	.50		.02
Electricians	10.30	.65	3%+.25		.02
Ironworkers, Structural, Ornamental and Reinforcing	9.65	.70	1.00		.04
Laborers	6.20	.60	.75		.10
Plumbers & Pipefitters	9.80	.55	.90		.02
Roofers	7.85				
Sheet Metal Workers	7.98	.52	.165		.05
Sheetrockers	7.85				
Tapers	7.85				
Power Equipment Operators:					
Crane	6.92				

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MODIFICATIONS P. 1

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. CA78-5007 - Mod. #1 (43 FR 3863 - January 27, 1978) San Diego County, California					
Change:					
PAINTERS:					
Brush	$11.58	1.23	1.28	.75	.07
Spray; Swing Stage, Brush	11.83	1.23	1.28	.75	
Paperhangers; Spray, Swing Stage; Sandblaster	12.08	1.23	1.28	.75	.07
DECISION No. FL77-1141 - Mod. #5 (42 FR 60552 - November 25, 1977) Volusia County (except Cape Kennedy, Kenndey Space Flight Center, Cape Canaveral Air Force Station), Florida					
Change:					
Carpenters	7.70	.50	.50		.05
Piledrivers	8.00	.50	.50		.05
DECISION No. FL78-1064 - Mod #1 (43 FR 34661 - August 4, 1978) Brevard, Hillsborough, Indian River, Monatee, Martin, Orange, Osceola, Pinellas, Polk, St Lucie, Sarasota, Seminole, and Volusia Counties, Florida					
Omit:					
Brevard and Volusia Counties					
Add:					
Brevard and Volusia Counties (excluding Cape Canaveral, Kennedy Space Flight Center, Patrick Air Force Base, and Melabar Radar Site, Florida).					

MODIFICATIONS P. 2

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION No. FL78-1065 - Mod. #1 (43 FR 35809 - August 11, 1978) Brevard, Lake, Orange, Osceola, Polk, Seminole, and Volusia Counties, Florida					
Omit:					
Brevard and Volusia Counties					
Add:					
Brevard and Volusia Counties (excluding Cape Canaveral, Kennedy Space Flight Center, Patrick Air Force Base, and Melabar Radar Site, Florida).					
DECISION NO. FL78-1070 - Mod. #1 (43 FR 38277 - August 25, 1978) Pinellas County, Florida					
Change:					
Cement Masons	$6.30				
Electricians	6.27				
Ironworkers	6.36				
Laborers	4.26				
Painters	5.26				
Plasterers	7.66				
Sheet Metal Workers	5.81				
Roofers	4.32				
Tile Setters	6.79				
Power Equipment Operators:					
Grader	4.79				

MODIFICATIONS P. 3

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #LA78-4099 - Mod. #2 (43 FR 46449 - October 6, 1978) Statewide Louisiana					
Change:					
Electricians:					
Zone 1 - Electricians	$13.04	5%	8%		3/10%
Cable splicers	13.29	5%	8%		3/10%
Zone 5 - Electricians	11.90	.35	3%+.40		.03
Cable splicers	11.90	.35	3%+.40		.03
Lathers - Zone 8	11.35				
Line construction:					
Zone 1 - Group 1	11.90	.35	3%+.40		.03
Group 2	75%JR	.35	3%+.40		.03
Group 3	65%JR	.35	3%+.40		.03
Group 4	45%JR	.35	3%+.40		.03
Group 5	50%JR	.35	3%+.40		.03
Zone 2:					
Linemen, line equipment & line truck operators	13.04	5%	8%		3/10%
Cable splicers	13.29	5%	8%		3/10%
Plumbers & pipefitters - Zone 3	10.80	.80	.80		.10
Power Equipment Ops. (Bldg Const):					
Zone 1 - Group 1	7.69	.65	.63		.05
Group 2	8.05	.65	.63		.05
Group 3	8.38	.65	.63		.05
Group 4	8.47	.65	.63		.05
Group 5	8.79	.65	.63		.05
Group 6	10.27	.65	.63		.05
Zone 5 - Group 1	7.98	.65	.75		.05
Group 2	7.66	.65	.75		.05
Group 3	7.45	.65	.75		.05
Group 4	8.26	.65	.75		.05
Group 5	10.65	.65	.75		.05
Group 6	8.67	.65	.75		.05
Group 7	9.35	.65	.75		.05
Zone 6 - Group 1	8.20	.65	.75		.05
Group 2	7.57	.65	.75		.05
Group 3	7.35	.65	.75		.05
Group 4	7.89	.65	.75		.05
Group 5	8.66	.65	.75		.05
Group 6	9.89	.65	.75		.05
Group 7	11.06	.65	.75		.05
Group 8	11.31	.65	.75		.05
Group 9	11.56	.65	.75		.05
Group 10	11.81	.65	.75		.05

MODIFICATIONS P. 4

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #LA78-4113 - Mod. #2 (43 FR 47429 - October 13, 1978) Bossier, Caddo & Calcasieu Parishes, Louisiana					
Change:					
Lathers (Bossier & Caddo Parish)	$11.35				
Power Equipment Operators:					
Calcasieu Parish:					
Group 1	7.98	.65	.75		.05
Group 2	7.66	.65	.75		.05
Group 3	7.45	.65	.75		.05
Group 4	8.26	.65	.75		.05
Group 5	10.65	.65	.75		.05
Group 6	8.67	.65	.75		.05
Group 7	9.35	.65	.75		.05
DECISION #MD78-3046 - Mod. #2 (42 FR 21813 - May 19, 1978) Baltimore City, Maryland					
Change:					
Ironworkers:					
Structural & Reinforcing	10.24	.90	1.91		.06
Fence Erectors	9.89	.90	1.91		.06

MODIFICATIONS P. 5

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION MI78-2001 - MOD. #4 (43 FR 4817 - February 3, 1978) Kent County, Michigan					
CHANGE: Sheet Metal Workers	$10.55	.77	.80	.67	.02
DECISION MN78-2150 - MOD. #1 (43 FR 50332 - October 27, 1978) Blue Earth, Fairbault, Freeborn & Mower Counties, Minnesota					
CHANGE: Bricklayers: Blue Earth County Bricklayers, Stonemasons & Blocklayers	10.405	.65	.51	.61	
Mower County & that part of Freeborn Co., east of a line running north & south from Geneva to Cordon & the City of Blooming Prarie: Bricklayers, Stonemasons, Cement Blocklayers, Pointers, Caulkers & Cleaners	11.075	.70	.25		
Fairbault & Remainder of Freeborn County Bricklayers, Stonemasons, Tuckpointers & Blocklayers	10.50	.70	.50		
Carpenters: Building Construction: Freeborn & Fairbault Counties Carpenters, Millwrights & Piledrivermen	10.82				
Mower County Carpenters & Piledrivermen	10.82				

MODIFICATIONS P. 6

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #PA77-3122 - Mod. #9 (42 FR 45614 - September 9, 1977) Cumberland, Dauphin, Perry, Juniata, New Cumberland Depot in York County, Pennsylvania					
Change: Sheet Metal Workers	10.47	1.40	1.18		.13
Ironworkers: Structural, Ornamental	12.105	1.14	1.36		.03
Reinforcing	12.105	1.14	1.36		.03
Painters: Brush	9.15	.32	.30		.02
Structural Steel	9.60	.32	.30		.02
Spray	9.90	.32	.30		.02
Tanks, Bridges, Stacks	10.40	.32	.30		.02
Asbestos Workers	11.21	.87	.90		.01
DECISION #PA77-3124 - Mod. #8 (42 FR 45618 - September 9, 1977) Northampton County, Pennsylvania					
Change: Sheet Metal Workers	10.47	1.40	1.18		.13
Carpenters	10.70	.64	.72		.01
Millwrights	11.10	.64	.72		.01
Asbestos Workers	11.21	.87	.90		.01

MODIFICATIONS P. 7

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #PA78-3012 - Mod. #8 (43 FR 18476 - April 28, 1978) Clinton, Centre, Huntingdon, Fulton & Mifflin Counties, Pennsylvania					
Change: Asbestos Workers Zone 2	11.21	.87	.90		.01
DECISION #PA78-3016 - Mod. #4 (43 FR 16106 - April 14, 1978) Lehigh County, Pennsylvania					
Change: Sheet Metal Workers	10.47	1.40	1.18		.13
Carpenters	10.70	.64	.72		.01
Millwrights	11.10	.64	.72		.01
Asbestos Workers	11.21	.87	.90		.01
DECISION #PA78-3017 - Mod. #5 (43 FR 19574 - May 5, 1978) Carbon, Monroe County including Tobyhanna Army Depot, and Pike County, Pennsylvania					
Change: Glaziers Zone 2	10.00	.65	.85		
Carpenters Zone 1	10.70	.64	.72		.01
Millwrights Zone 2	11.10	.64	.72		.01

MODIFICATIONS P. 8

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #PA78-3045 - Mod. #5 (43 FR 20714 - May 12, 1978) Lackawanna, Susquehanna, Wayne, and Wyoming Counties, Pennsylvania					
Change: Cement Masons: Wyoming, Wayne, Susquehanna Counties, Scraton in Lackawanna County	11.55				
DECISION #PA78-3064 - Mod. #1 (43 FR 43224 - September 22, 1978) Schuylkill County, Pennsylvania					
Change: Asbestos Workers	11.21	.87	.90		.01
Add: Millwrights	11.45	.50	.55		.05
DECISION #PA78-3066 - Mod. #2 (43 FR 43228 - September 22, 1978) Columbia, Montour & Snyder Counties, Pennsylvania					
Change: Ironworkers Zone 1	12.105	1.14	1.36		.03
Asbestos Workers Zone 2	11.21	.87	.90		.01

DECISION #PA78-3067 - Mod #2
(43 FR 43232 - September 22, 1978)
Adams & York Counties, Pennsylvania

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Asbestos Workers	11.21	.87	.90		.01
Bricklayers & Stonemasons	9.65	.60	.45		
Marble, Tile & Terrazzo Workers	8.70	.45	.45		

DECISION #PA78-3068 - Mod. #1
(43 FR 45160 - September 29, 1978)
Lebanon County, Pennsylvania

Change:					
Sheet Metal Workers	10.47	1.40	1.18		.13
Ironworkers	12.105	1.14	1.36		.03
Painters:					
(West of Route 72)					
Brush	9.15	.32	.30		.02
Structural Steel	9.60	.32	.30		.02
Spray	9.90	.32	.30		.02
Asbestos Workers	11.21	.87	.90		.01

DECISION #PA78-3069 - Mod. #1
(43 Fr 46475 October 6, 1978)
Berks County, Pennsylvania

Change:					
Asbestos Workers	11.21	.87	.90		.01

DECISION #PA78-3070 - Mod. #2
(43 FR 45162 - September 29, 1978)
Lancaster County, Pennsylvania

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Ironworkers	12.105	1.14	1.36		.03
Painters:					
Elizabeth Dowetal Twp.					
Brush	9.15	.32	.30		.02
Steel	9.60	.32	.30		.02
Spray	9.90	.32	.30		.02
Asbestos Workers	11.21	.87	.90		.01
Bricklayers & Stonemasons	9.65	.60	.45		
Marble Setters	8.70	.45	.45		
Tile Setters	8.70	.45	.45		
Terrazzo Workers	8.70	.45	.45		

DECISION #TX78-4078 - Mod. #6
(43 FR 35881 - August 11, 1978)
Collin, Dallas, Denton, Ellis, Grayson, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Cos., Texas

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Bricklayers & stonemasons:					
Zone 1	$ 9.60				

DECISION #TX78-4082 - Mod. #3
(43 FR 38278 - August 25, 1978)
Brazos County, Texas

Change:					
Plumbers	12.37	.75	.75		.12

DECISION #TX78-4084 - Mod. #4
(43 FR 38281 - August 25, 1978)
Galveston & Harris Cos., Texas

Change:					
Marble masons' finishers	8.45				
Painters:					
East Harris Co. - Group 1	12.13				
Group 2	12.485				
Group 3	12.225				
Group 4	12.38				
Group 5	12.525				
Group 6	12.79				
Pipefitters:					
That part of Galveston Co. east of the Trinity River	11.935	.645	.70		.11
Plumbers:					
Galveston County	11.935	.645	.70		.11
Harris County	12.37	.75	.75		.12
Terrazzo workers' finishers:					
Terrazzo workers' finishers	8.45				
Terrazzo floor machinemen	8.60				
Terrazzo base machinemen	8.75				
Tile setters' finishers	8.45				

DECISION #TX78-4087 - Mod. #3
(43 FR 38285 - August 25, 1978)
Armstrong, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher & Wheeler Cos., Texas

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Painters - Group 1	$ 9.30		.50		
Group 2	9.42		.50		
Group 3	10.05		.50		
Group 4	9.55		.50		

DECISION #TX78-4096 - Mod. #4
(43 FR 43242 - September 22, 1978)
Bell, Bosque, Coryell, Falls, Hill & McLennan Cos., Texas

Change:					
Building Construction:					
Painters - Group 1	8.15				.04
Group 2	8.65				.04
Group 3	8.75				.04
Group 4	8.90				.04
Group 5	9.25				.04

SUPERSEDEAS DECISION

STATE: Colorado
COUNTY: Statewide
DECISION NUMBER: CO78-5132
DATE : Date of Publication
Supersedes Decision No. CO78-5108 dated July 14, 1978, in 43 FR 30431
DESCRIPTION OF WORK: Heavy and Highway Construction

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS:					
Carpenters					
*Zone 1	$ 9.32	.80	.90	.75	.07
*Zone II	9.82	.80	.90	.75	.07
Underground Carpenters					
*Zone I	9.52	.80	.90	.75	.07
*Zone II	10.02	.80	.90	.75	.07
Working on Creosoted coated lumber or other toxic materials					
Sawmen continuously assigned to 14 HP saw at job site.	9.62	.80	.90	.75	.07
High work 35' above ground or above permanent floor or deck	9.67	.80	.90	.75	.07
CEMENT MASONS:					
*Zone I	9.40	.52	1.15	.30	.11
*Zone II	9.90	.52	1.15	.30	.11
ELECTRICIANS:					
Adams, Arapahoe, Boulder, Clear Creek, Denver, Douglas, Eagle, Gilpin, Grand, Jefferson, Lake, Larimer, Logan, Morgan, Phillips, Sedgwick, Summit, Washington, Weld and Yuma Counties					
Electricians	11.69	.70	3%+.75		.02
Cable Splicers	11.94	.70	3%+.75		.02
Delta, Dolores, Garfield, Gunnison, Hinsdale, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkins, Rio Blanco, Routt, San Juan and San Miguel Counties					
Electricians	11.89	.72	3%+.25		1%
Cable Splicers	12.14	.72	3%+.25		1%

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS: (Cont'd)					
Alamosa, Archuleta, Baca, Bent, Chaffee, Crowley, Custer, Fremont, Huerfano, Kiowa, La Animas, Mineral, Otero, Prowers, Pueblo and Rio Grande Counties					
Zone I (Within 12 miles from Pueblo Main Post Office)					
Electricians	$ 11.40	.72	3%+.80		1%
Cable Splicers	12.54	.72	3%+.80		1%
Zone II (12 to 20 miles from Pueblo Main Post Office)					
Electricians	11.80	.72	3%+.80		1%
Cable Splicers	12.94	.72	3%+.80		1%
Zone 3 (30 to 40 miles from Pueblo Main Post Office)					
Electricians	12.15	.72	3%+.80		1%
Cable Splicers	13.29	.72	3%+.80		1%
Zone 4 (40 miles and over from Pueblo Main Post Office)					
Electricians	13.28	.72	3%+.80		1%
Cable Splicers	14.42	.72	3%+.80		1%
Electricians on electrical contracts less than $20,000 in Zones 3 and 4	9.65	.72	3%+.80		1%
Cheyenne, Elbert, El Paso, Kit Carson, Lincoln, Park, and Teller Counties					
Electricians	11.50	.72	3%+.50		.015
IRONWORKERS:					
Structural, Ornamental, and reinforcing	10.95	.94	1.25		.12
LINE CONSTRUCTION:					
Cable Splicers	11.78	.45	3%+.35		3/4%
Lineman Cableman	11.04	.45	3%+.35		3/4%
Lineman (Journeyman)	10.97	.45	3%+.35		3/4%
Line Equipment Operators	9.34	.45	3%+.35		3/4%
Line Equipment Maintenance Man	9.34	.45	3%+.35		3/4%
Groundman	7.70	.45	3%+.35		3/4%

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS:					
Adams, Arapahoe, Boulder, Clear Creek, Delta, Denver, Douglas, Eagle, Elbert, Garfield, Gilpin, Grand, Gunnison, Jackson, Jefferson, Lake, Larimer, Logan, Mesa, Moffat, Montrose, Morgan, Park (Northern half), Phillips, Pitkin, Rio Blanco, Routt, Bedgwick, Summit, Washington, and Weld Counties					
Brush	$ 10.38	.70	.85		.07
Spray, Swing Stage	10.98	.70	.85		.07
Baca, Bent, Crowley, Custer, Reurfano, Kiowa, Las Animas, Otero, Prowers and Pueblo Cos.					
Brush	8.07	.50	.50		.04
Steel Painters	8.57	.50	.50		.04
Spray Painters	9.07	.50	.50		.04
Steel Spray	9.57	.50	.50		.04
Archulata, Chaffee, Cheyenne, Dolores, El Paso, Fremont, Hinsdale, Kit Carson, La Plata, Lincoln, Mineral, Montezuma, Ouray, Park (Southern half), Rio Grande, Saguache, San Juan, San Miguel and Teller Counties					
Brush	8.94	.70	.50		.04
Spray	9.69	.70	.50		.04
Steel	9.44	.70	.50		.04
Steel Spray	10.19	.70	.50		.04

LABORERS	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
	Zone 1	Zone 2				
Group 1	$ 7.57	$ 8.07	.52	.60		.05
Group 2	7.67	8.17	.52	.60		.05
Group 3	7.97	8.47	.52	.60		.05
Group 4	8.12	8.62	.92	.60		.05
Group 5	8.32	8.82	.52	.60		.05
LABORERS (Tunnels)						
Group 1	7.57	8.07	.52	.60		.05
Group 2	8.47	8.97	.52	.60		.05
Group 3	8.57	9.07	.52	.60		.05
Group 4	8.65	9.15	.52	.60		.05
Group 5	8.72	9.22	.52	.60		.05
Group 6	9.12	9.62	.52	.60		.05
(Shafts, Raises, Missile Silos and all underground work other than Tunnels)						
Group 1	8.57	9.07	.52	.60		.05
Group 2	8.72	9.22	.52	.60		.05
Group 3	8.82	9.32	.52	.60		.05
Group 4	9.10	9.60	.52	.60		.05
Group 5	9.15	9.65	.52	.60		.05
Group 6	9.25	9.75	.52	.60		.05

LABORERS

Group 1: Minimum Labor, including Caissons to 8'; Carrying Reinforcing Rods; Work on Cross Culverts, connections and side drains in connection with highway work, whether corrugated metal or concrete pipe; Fence Erectors; Metal Mesh; Dowel Bars; Tie Bars and Chairs in concrete paving; Flagman; Nursery Man including seeding, mulching and planting of trees, shrubs and flowers; Stake Chaser; Gabion Baskets and Reno Mattressess; Pipe plants and yards, stringing of pipe or skids, handling and signaling on pipe line work

Group 2: Chuck Tenders, Nippers, Core and Diamond Drill Helpers, Powdermen Helepr; Hot Asphalt Labor, Rakers, Boxtenders, Asphalt Curb Machines, Potmen (not mechanical); Multi-plate Culvert Pipe; Air, gas and electrical tool operators; Barco Hammers; Spaders, electric hammers; Air Tampers; Cutting Torches on demolition work; Caissons 8' to 12'; Cofferdams; Power operated Concrete Buggies; Operators of concrete saws on pavement (other than gang saws); Timber and Chain Saws; Stresser or Stretcherman on Post Tension or Prestressed Concrete on or off jobsite; Tool Room Man and Checkers; Cement Finisher Helper; Sand Blaster; Sand Blaster Helper; Concrete processing material; Monitor; Spotters; Signalmen; Dumpmen; Transverse Concrete Conveyor Operator; Mechanical Groutersj Boring Machine (air hydraulic); Automatic Concrete Power Curbing Machine; Jack Hammer; Vibrators; Paving Breakers; Frostproofing; Any laborer performing bridge work over 40' above the ground or above a floor and working from a Bos'n Chair; Swing Stage, Life Belt or Block and Tackle as safety requirement. (All lines and safety belts used shall be of a type approved by State and Federal laws); Gunniting and Shotcrete Helpers; Caissons over 12'; Scalers; Timbermen, underpinning and shoring; Form-setters and/or stringmen on roads, highways, streets and airport runways; Distribution, placing and hooking of landing mats; Bull Float (hand operated) and Center Expansion Machines; Grade Checkers if required by employer; Pipe Wrappers; Dopers; Jeep Holiday Detector Man, Bandage Makers; Laborers working in trenches on all pipe lines, sewer, water, gas, oil, telephone conduit, Pen Stock, Siphons, drainage lines, Caulkers, Yarners, Fine Graders, air, gas, electric and hydraulic tools, Boring Machines, Hydraulic Jacks, Drills, Tampers, and similar operated tools; Wiping of Joint Concrete Pipe, inside and out; Labor, applicable to pipe coating or wrapping, plants and yards; Enamelers of pipe, inside and out

LABORERS (Cont'd)

Group 3: Powdermen and Blasters; Gunnite Nozzlemen; Shotcrete Operator; Pipe Layer on truck pipe lines in connection with highway work; Relining Pipe; Mixer Man; Pipelayer; Hydro-broom

Group 4: Wagon Drills and Air Tracks; Jack Hammer Operators in Caissons over 12'; Bellers and Stemmen; Licensed Powdermen; Diamond and Core Drills powered by air

Group 5: Any work, other than on bridges, performed by Laborers working from a Bos'n Chair, Swinging Stage, Life Belt or Block and Tackle as a safety requirement. All lines and safety belts used shall be of a type approved by State and Federal laws; Pugs and Galleys in Dams

LABORERS
(Tunnels)

Group 1: Outside Labor

Group 2: Minimum Tunnel Labor, Dry Houseman

Group 3: Cable or Hose Tenders, Chuck Tenders, Concrete Laborers, Dumpmen, Whirley Pump Operators

Group 4: Helpers on Shotcrete, Gunniting and Sand Blasting; Helpers, Core and Diamond Drills; Pot Tenders

Group 5: Cement Finisher Helper, applying or concrete processing materials

Group 6: Collapsible from movers and setters, Miners, Machine Men and Bit Grinders, Nippers, Powdermen and Blasters, Reinforcing Steel Setters, Timbermen (steel or wood tunnel support, including the placement of sheeting when required) and all cutting and welding that is incidental to the Miner's work; Tunnel Liner Plate Setters; Vibrator Men, internal and external; Unloading, stopping and starting of Moran Agitator Cars; Diamond and Core Drill Operators; Cement Finisher (underground); Shotcrete Operator; Gunnite Nozzlemen, Sand Blasters, Pump Concrete placement Men

NOTICES

LABORERS (Cont'd)
(Shafts, Raises, Missile Silos and all Underground Work other than Tunnels)

Group 1: Laborers, Topmen, Bottommen and Cagers

Group 2: Chucktenders, Concrete Laborers, Whirley Pump Operators

Group 3: Helpers in Shotcrete Gunniting and Sand Blasting; Helpers on Core and Diamond Drills; Pot Tenders; Cement Finisher Helpers; applying of Concrete processing material

Group 4: Collapsible form movers and setters, Miners, Machine Men and Bit Grinders, Nippers, Powdermen and Blasters, Reinforcing Steel Setters, Timbermen (steel or wood tunnel support, including the placement of sheeting when required) and all cutting and welding that is incidental to the Miner's work; Liner plate Setters; Vibrator Men, internal and external

Group 5: Diamond and Core Drill Operators; Cement Finisher (underground); Gunnite Nozzlemen; Shotcrete Operators; Sand Blasters and Pump Concrete Placement Men

Group 6: Any employee performing work underground from a Bos'n Chair, Swinging Stage, Life Belt or Block and Tackle as a safety requirement. (All lines and safsty belts used shall be of a type approved by State and Federal laws)

POWER EQUIPMENT OPERATORS (Other than for work in Tunnels, Shafts and Raises)	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
	ZONE 1*	ZONE 2*				
Group 1	$ 8.75	$9.50	.74	.90	.35	.06
Group 2	9.10	9.85	.74	.90	.35	.06
Group 3	9.45	10.20	.74	.90	.35	.06
Group 4	9.60	10.35	.74	.90	.35	.06
Group 5	9.75	10.50	.74	.90	.35	.06
Group 6	9.90	10.65	.74	.90	.35	.06
(For work in Tunnels, Shafts, and Raises)						
Group 1	8.90	9.65	.74	.90	.35	.06
Group 2	9.25	10.00	.74	.90	.35	.06
Group 3	9.35	10.10	.74	.90	.35	.06
Group 4	9.60	10.35	.74	.90	.35	.06
Group 5	9.75	10.50	.74	.90	.35	.06
Group 6	10.15	10.90	.74	.90	.35	.06

NOTICES

POWER EQUIPMENT OPERATORS
(Other than for work in Tunnels, Shafts and Raises)

Group 1: Air Compressor; Asphalt Screed; Oiler; Brakeman; Drill Operator - smaller than Williams MF and similar; Helper to Heavy Duty Mechanic and/or Welder; Operators of 5 or more light plants, Welding Machines, Generators, single unit conveyor; Pumps; Vacuum Well Point System; Tractor, under 70 HP with or without attachments; Rodman, Chainman; Grade Checker

Group 2: Conveyor, handling building materials; Ditch Witch and similar Trenching Machine; Fireman or Tank Heater, road; Forklift; Haulage Motor Man; Pugmill; Portable Screening Plant with or without a spray bar; Screening Plants, with classifier; Self-propelled Roller, rubber-tired under 5 tons

Group 3: Asphalt Plant; Backfiller, Bituminous Spreader or Laydown Machine; Cableway Signalman; Caisson Drill; Williams MF, similar and larger; C.M.I. and similar; Concrete Batching Plants; Concrete finish Machine; Concrete Gang Saws on concrete paving; Concrete Mixer, less than 1 yd.; Concrete Placement Pumps, under 8 inches; Distributors, Bituminous Surfaces; Drill, Diamond or Core; Drill Rigs, rotary, churn, or cable tool; Elevating Graders, Equipment Lubricating and service Engineer; Engineer Fireman; Grout Machine; Gunnite Machine; Hoist, 1 drum; Hydraulic Backhoes, wheel mounted under 3/4 yd.; Loader, Barber Green, etc.; Loader up to and including 6 cu. yds.; Machine Doctor; Mechanic; Motor Grader/Blade, rough; Road Stabilization Machine; Rollers, self-propelled, all types over 5 tons; Sandblasting Machine; single unit portable crusher, with or without washer; Tie Tamper, wheel mounted; Tractor, 70 HP and over with or without attachments; Trenching Machine Operator; Welder; Winch on truck; Instrument Man

Group 4: Cable operated Crane, track mounted; Cable operated power Shovels, Draglines, Clamshells, and Backhoes, 5 cu. yds. and under; Concrete Mixer over 1 cu. yd.; Concrete Paver 34S or similar; Concrete Placement Pumps, 8 inches and over; Crane, 50 tons and under; Hoist, 2 drums; Hydraulic Backhoe, 3/4 yd. and over; Loader, over 6 cu. yds.; Mechanic-welder, heavy duty; Mixer mobile; Motor Grader/blade, finish; Multiple unit portable Crusher, with or without washer; Piledriver; Scrapers, single bowl under 40 cu. yds.; Self-propelled Hydraulic Crane; Tractor with sideboom; Truck mounted Hydraulic Crane

POWER EQUIPMENT OPERATORS (Cont'd)
(Other than for work in Tunnels, Shafts and Raises)

Group 5: Cable operated power Shovels, Draglines, Clamshells and Backhoes over 5 cu. yds.; Crane, over 50 tons carrier mounted; Derrick; Electric rail type Tower Crane; Hoist, 3 drum or more; Quad Nine and similar push unit; Scrapers - single bowl including pups 40 cu. yds. and tandem bowls and over

Group 6: Cableway; Climbing Tower Crane; Crawler or truck mounted Tower Crane; Wheel Excavator, Tower Crane, truck type

POWER EQUIPMENT OPERATORS (Cont'd)
(For work in Tunnels, Shafts and Raises)

Group 1: Brakeman

Group 2: Motorman

Group 3: Compressor (900 CFM and over) serving Tunnels, Shafts and Raises

Group 4: Air Tractors; Grout Machine; Gunnite Machine; Jumbo Form; Mechanic; Welder

Group 5: Concrete Placement Pumps, 8" and over discharge; Mechanic-Welder, heavy duty; Mucking Machines and Front End Loaders, underground; Slusher; Mine Hoist Operator

Group 6: Mole

TRUCK DRIVERS	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
	ZONE 1*	ZONE 2*				
Group 1	$ 8.15	$ 8.65	.74	.40	.46	
Group 2	8.25	8.75	.74	.40	.46	
Group 3	8.35	8.85	.74	.40	.46	
Group 4	8.40	8.90	.74	.40	.46	
Group 5	8.45	8.95	.74	.40	.46	
Group 6	8.50	9.00	.74	.40	.46	
Group 7	8.55	9.05	.74	.40	.46	
Group 8	8.60	9.10	.74	.40	.46	
Group 9	8.70	9.20	.74	.40	.46	
Group 10	8.75	9.25	.74	.40	.46	
Group 11	8.85	9.35	.74	.40	.46	
Group 12	9.00	9.50	.74	.40	.46	
Group 13	9.05	9.55	.74	.40	.46	
Group 14	9.15	9.65	.74	.40	.46	
Group 15	9.25	9.75	.74	.40	.46	
Group 16	9.35	9.85	.74	.40	.46	
Group 17	9.45	9.95	.74	.40	.46	
Group 18	9.65	10.15	.74	.40	.46	

TRUCK DRIVERS

Group 1: Pickups; Helpers; Scalemen; Checkers; Spotters; Dumpmen

Group 2: Dump Trucks, to and including 6 cu. yds.; Sweepers; Flat Rack, single axle; Liquid and Bulk Tankers, single axle; Warehouse men; Washers; Greasemen; Servicemen; Ambulance Drivers

Group 3: Dump Trucks, over 6 cu. yds. to and including 14 cu. yds.; Flat Rack, tandem axle; Battery Men; Mechanics' Helpers; Material Checkers; Cardex Men; Expeditors; Man Haul Shuttle Truck or Bus

Group 4: Straddle Truck; Lumber Carrier; Liquid and Bulk Tankers, tandem axle

Group 5: Fork Lift Driver; Fuel Truck; Grease Truck; Combination Fuel and Grease

Group 6: Distributor Truck Driver; Cement Mixer, Agitator Truck to and inlcuding 10 cu. yds.; Liquid and Bulk Tankers, semi or combination

Group 7: Multi-purpose Truck; Speciality and Hoisting

Group 8: Dump Trucks, over 14 cu. yds. to and including 29 cu. yds.; High Boy, Low Boy, Floats, semi; Cab operated Distributor Truck Driver, semi; Liquid and Bulk Tankers, Euclid, Electric or similar; Truck Drivers; Dumptor type Youngbuggy, Jumbo and similar type equipment

Group 9: Truck Driver, Snow Plow

Group 10: Cement Mixer, Agitator Truck, over 10 cu. yds., to and including 15 cu. yds.

Group 11: Dump Trucks, over 29 cu. yds. to and including 39 cu. yds.

Group 12: Cement Mixer, Agitator Truck, over 15 cu. yds.

Group 13: Dump Trucks, over 39 cu. yds. to and including 54 cu. yds.; Tireman

Group 14: Mechanic

Group 15: Dump trucks, over 54 cu. yds. to and including 79 cu. yds.

Group 16: Heavy Duty Diesel, Mechanics, Body Men, Welders or Combination Men

Group 17: Dump Trucks, over 75 cu. yds. to and including 104 cu. yds.

Group 18: Dump Trucks, over 104 cu. yds.

ZONE DESCRIPTION
For
CARPENTERS

Counties entirely within Zone 1:

Adams	Crowley	Gilpin	Morgan
Alamosa	Custer	Huerfano	Otero
Arapahoe	Delta	Jefferson	Phillips
Archuleta	Denver	La Plata	Prowers
Bent	Douglas	Lake	Pueblo
Boulder	Eagle	Larimer	Rio Grande
Chaffee	El Paso	Las Animas	Sedgwick
Clear Creek	Elbert	Logan	Teller
Conejos	Fremont	Mesa	Weld
Costilla	Garfield	Montezuma	

Counties entirely within Zone 2:

Baca	Jackson	Moffat	Routt
Cheyenne	Kiowa	Ouray	San Juan
Dolores	Kit Carson	Park	San Miguel
Grand	Lincoln	Pitkin	Summit
Gunnison	Mineral	Rio Blanco	Yuma
Hinsdale			

Legal description of the portions of Montrose, Saguache and Washington Counties which are included within Zone 1, as follows:

All of Montrose County lying Northerly of the North Line of Ouray County and said North Line extended West to the Township Line between R11W and R12W, said part lying East of said Township Line of the New Mexico Principal Meridian, and the Eastern portion of Saguache County; from Highway 285 to the town of Saguache, and Highway 114 to the County Line, and all of Washington County lying North of the 40°00'00" Latitude base line.

Legal description of the portions of Montrose, Saguache and Washington Counties which are included within Zone 2, as follows:

All of Montrose County except that part lying Northerly of the North Line of Ouray County and said North Line extended West to the Township Line between R11W, and R12W, said point being East of said Township Line of the New Mexico Principal Meridian and the Western portion of Saguache County; from Highway 285 to Town of Saguache and Highway 114 to County Line, and all of Washington County lying South of the 40°00'00" Latitude base line.

LABORERS - Zone Descriptions

Zone 1: The area encompassed by 15 driving miles from the main Post Office at Craig, Steamboat Springs, and Meeker. Also included are all other Counties not outlined in Zone 2.

Zone 2: The Counties of Jackson, Moffat, Rio Blanco and Routt.

ZONE DESCRIPTIONS
Cement Masons, Power Equipment Operators
and Truck Drivers

A. Counties entirely within Zone 1:

Alamosa	Custer	Huerfano	Otero
Archuleta	Delta	Jefferson	Phillips
Bent	Denver	La Plata	Prowers
Boulder	Douglas	Larimer	Pueblo
Chaffee	El Paso	Logan	Rio Grande
Clear Creek	Fremont	Mesa	Sedgwick
Conejos	Garfield	Montezuma	Teller
Costilla	Gilpin	Morgan	Weld
Crowley			

B. Counties entirely within Zone 2:

Baca	Jackson	Moffat	Saguache
Cheyenne	Kiowa	Ouray	San Juan
Dolores	Kit Carson	Park	San Miguel
Grand	Lake	Pitkin	Summit
Gunnison	Lincoln	Rio Blanco	Yuma
Hinsdale	Mineral	Routt	

C. Legal description of the portions of Adams, Arapahoe, Eagle, Elbert, Las Animas, Montrose and Washington Counties which are included within Zone 1, as follows:
All of Adams, Arapahoe, Elbert and Las Animas Counties lying west of the Township line between R59W and R60W of the 7th Guide Meridian West; and all of Eagle County lying west of the Township line between R80W and R81W of the 10th Guide Meridian West of all of Montrose County lying East of said Township line of the New Mexico Principal Meridian, and all of Washington County lying North of the 40°00'00" Latitude Base Line.

B. Legal description of the portions of Adams, Arapahoe, Eagle, Elbert, Las Animas, Montrose and Washington Counties which are included within Zone 2, as follows:
All of Adams, Arapahoe, Elbert and Las Animas lying East of the Township Line between R59W and R60W of the 7th Guide Meridian West, and all of Eagle County lying East of the Township Line between R80W and R81W of the 9th Guide Meridian West and all of Montrose County except that part lying Northerly of the North line of Ouray County and said North line extendad West of the Township line between R11W and R21 W, said point being East of said Township line of the New Mexico Principal Meridian and all of Washington County lying South of the 40°00'00" Latitude Base Line.

federal register

FRIDAY, NOVEMBER 17, 1978
PART IV

DEPARTMENT OF ENERGY
Economic Regulatory Administration

POWERPLANT AND INDUSTRIAL FUEL USE ACT
Proposed Rules For Implementation

V 4 3 1 2 2 3

[6450-01-M]

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[10 CFR Parts 500, 501, 502, 503, and 505]

[Docket No. ERA-R-78-19]

PROPOSED RULES TO IMPLEMENT THE POWERPLANT AND INDUSTRIAL FUEL USE ACT

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is proposing rules to implement provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA) which prohibits the use of petroleum and natural gas by certain electric powerplants and industrial major fuel burning installations. In general, FUA will become effective on May 8, 1979, 180 days after the date of enactment. These rules establish procedures and criteria upon which users may petition for exemption from the prohibitions of the Act. These rules also establish a requirement for a Fuels Decision Report which must be submitted as part of any petition for exemption.

DATES: Comments by February 2, 1979, 4:30 p.m. Hearing dates: To be announced.

ADDRESS: All comments to: Public Hearing Management, Docket No. ERA-R-78-19, Department of Energy, Room 2313, 2000 M Street NW, Washington, D.C. 20461. Hearing locations: To be announced.

FOR FURTHER INFORMATION CONTACT:

William L. Webb (Office of Public Information), Economic Regulatory Administration, Department of Energy, Room B-110, 2000 M Street NW., Washington, D.C. 20461, 202-634-2170.

Stephen M. Stern (Regulations and Emergency Planning), Economic Regulatory Administration, Department of Energy, Room 6010, 2000 M Street NW., Washington, D.C. 20461, 202-254-9766.

Barton House (Fuels Regulation—Program Office), Economic Regulatory Administration, Department of Energy, Room 6128I, 2000 M Street NW., Washington, D.C. 20461, 202-254-3905.

James Heffernan (Office of General-Counsel), Department of Energy, Room 6114, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461, 202-566-9296.

SUPPLEMENTARY INFORMATION:

I. Background
II. Coverage
A. New powerplants
B. Existing powerplants
C. New installations
D. Existing installations
III. Other Related Rules
A. Proposed rules for existing facilities and system compliance option
B. Transitional facilities and other matters
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I. *Background*

The Fuel Use Act (FUA) renews a national commitment to restrain the unnecessary use of our dwindling oil and natural gas resources and to check our growing dependence on foreign energy supplies. Efforts to encourage greater coal and alternate fuel use in place of oil and gas began with enactment of the Energy Supply and Environmental Coordination Act of 1974 (ESECA), Public Law 93-317, in June 1974. ESECA authorized DOE to prohibit certain existing powerplants and installations from burning petroleum and natural gas and to order certain powerplants and installations in the "early planning process" to be built with coal burning capability. Before DOE could issue any order under ESECA, it had to make detailed technical findings. The burden of proving these findings for each order was placed upon DOE. In addition, the order was not effective under ESECA until DOE had completed a three-stage administrative process.

Under FUA, DOE can establish a more effective and comprehensive program. In contrast with the provisions of ESECA, FUA itself prohibits the use of petroleum and natural gas by certain powerplants. FUA also authorizes DOE to prohibit by rule or by individual order the use of natural gas or petroleum by certain other powerplants and installations. FUA also establishes a process by which DOE may exempt a powerplant or installation from any prohibition if certain criteria are met. The burden of proof of demonstrating that an exemption is warranted rests on the petitioner requesting the exemption and not on DOE.

II. *Coverage of FUA*

The prohibitions and exemptions provided for in FUA apply to four major categories of users: new powerplants, new installations, existing powerplants, and existing installations. ERA will therefore organize its rules to include in separate parts all applicable rules relating to the prohibitions and exemptions for each user category. A part common to all will describe a Fuels Decision Report which must accompany petitions for exemption and other common parts containing various procedural and other provisions.

FUA addresses the major user categories as follows:

A. *New powerplants* (Part 503). A new powerplant is prohibited from using petroleum or natural gas as a primary energy source, and is prohibited from being constructed without the capability to use an alternate fuel as a primary energy source, unless we grant an exemption from such prohibitions. We may grant a temporary or permanent exemption from these prohibitions if a petitioner demonstrates that certain physical, economic, environmental, legal, or other factors preclude compliance as enumerated in these proposed rules. We may grant a temporary exemption, generally for a period of up to 5 years, if compliance with a prohibition cannot be accomplished immediately. A permanent exemption may be granted in those instances in which compliance with the prohibitions will not be possible.

B. *Existing powerplants* (Part 504). Regulations with respect to existing powerplants will be set forth in a subsequent Notice of Proposed Rulemaking, which is scheduled to be issued in the near future.

C. *New installations* (Part 505). A new installation consisting of a boiler is prohibited from using petroleum or natural gas as a primary energy source unless we grant the installation an exemption from the prohibition. We are also authorized to prohibit by rule the use of petroleum or natural gas by new installations other than boilers where it is apparent that an exemption would not otherwise be warranted. We may grant a temporary or permanent exemption from the prohibitions, whether imposed by statute or rule, if a petitioner demonstrates that certain physical, economic, environmental, legal, or other factors preclude compliance as enumerated in these proposed rules. We may grant a temporary exemption generally for a period of up to 5 years, if compliance with a prohibition cannot be achieved immediately. A permanent exemption may be granted in those instances in which compliance with a prohibition will not be possible.

D. *Existing installations* (Part 506). Regulations with respect to existing installations will be set forth in the same subsequent Notice of Proposed Rulemaking reference with respect to powerplants.

III. *Other Related Rules*

A. *Proposed rules for system compliance option* (Part 507). These proposed rules do not include rules relating to the system compliance option (Part 507). We intend to issue those proposed rules at the same time as we issue proposed rules with respect to prohibitions and exemptions for existing powerplants and installations, as stated above. The preamble of that notice of proposed rulemaking will address the issues and alternate proposals associated with those proposed rules.

B *Transitional facilitities and other matters.* Prior to publication of final rules implementing FUA, we may propose separate rules for, and receive, consider and take action on:

1. Criteria and procedures by which owners of powerplants and installations, which were acquired or for which substantial construciton was undertaken between April 20, 1977, and November 9, 1978, may petition for those units to be defined as "existing" rather than "new" units under FUA. (Part 515 "Transitional Facilities");

2. Petitions for exemption filed by certain powerplants as provided for in section 902(a) of FUA;

3. Petitions for exemptions under section 211(d) of FUA (Temporary Exemptions for the Use of Petroleum by Certain Installations) filed by installations as provided for in section 902(b) of FUA; and

4. Provide notice in the FEDERAL REGISTER on the procedures to be followed by certain installations previously issued prohibition orders to elect coverage under FUA as provided in section 762(a) of FUA.

C. *Forms.* The proposed forms which must be submitted as part of a petition for exemption from any of the prohibitions and any other forms will be published in the FEDERAL REGISTER and public comments solicited at a later date.

D. *Guidelines.* From time to time, ERA will develop, as necessary, formal guidelines in support of regulations promulagated under FUA, and may publish them in the *Federal Register* for public review and comment.

IV. *Fuels Decision Report (Part 502)*

As part of this notice we are publishing for public comment rules for a Fuels Decision Report which is required to be submitted as part of any petition for exemption. The purpose of the Fuels Decision Report is to provide petitioners with the opportunity to demonstrate to ERA their good faith efforts to comply with the prohibitions of the Act by avoiding the use of natural gas and petroleum.

V. *Specific Comments Requested*

We have issued these proposed rules promptly in order to focus public attention and discussion on the provisions of FUA, and to expedite implementation of this program. In some instances, we have proposed alternatives for your consideration. In all cases, we solicit your comments on any issue before we reach a final decision on these regulations, not only on the specific issues and alternative proposals we enumerate below.

A. *Competition.* Regulatory schemes may tend to build in advantages for existing and large firms and to stifle competition for new entries and expanding firms. We solicit comments on whether these proposed regulations, or sections thereof, are likely to have adverse, beneficial, or neutral impacts on competition. We also welcome comments and suggestions concerning alternatives which enhance competition.

B. *Urban policy.* We solicit comments on whether any part of these proposed regulations advance or set back the goal of preserving and revitalizing towns and cities throughout the country. We also solicit comments concerning ways we might consider indirect increases in oil consumption attributable to granting an exemption.

C. *Filing fees—Part 501, Subpart B.* The purpose of the proposed fees are to recover, to the extent practicable, the costs incurred by the Government in performing the analysis necessary to grant or deny a petition for an exemption. Analysis of each exemption petition will require us to analyze one or more of the following components:

- Environmental data,
- Financial data,
- Engineering data,
- Fuel supply/transportation data.

Based upon the experience gained in administering the ESECA program, we anticipate that, at a minimum, the cost of each of the analytical components will be as follows:

- Environmental analysis—2 man-years @ $30,000 equals $60,000;
- Financial analysis—75 man-days or ⅓ man-years equals $10,000;
- Engineering analysis—75 man-days or ⅓ man-years equals $10,000;
- Fuel supply and transportation; 35 man-days or ⅙ man-years equals $5,000.

We propose that the fees will be levied only once irrespective of the number of alternative fuels analyzed by the applicant. The basis data and methodology required to perform the requisite analyses for one alternate fuel will generally be applicable to any additional alternate fuels analyzed by the applicant in his Fuels Decision Report.

We solicit comments on the amounts of the proposed fees, on whether they should be calculated on the number of units at a proposed site, and on the number or type of exemptions to which fees pertain. Further, we invite comment on whether the fees should be based on other factors, such as the size or cost of the unit.

D. *Definitions.* We note that the definitions also will apply to existing facilities, rules, which we have not yet proposed. Therefore, we particularly invite your early analysis of our proposed definitions as they would apply to both new and existing facilities, as well as opportunities we may have overlooked in furnishing the objectives of the Act.

E. *Natural gas definition § 500.2(d).* We have proposed that natural gas produced from wells with a maximum efficient production rate (MPR) of less than 250 million Btu's per day which were acquired on or after July 18, 1977, be classified as "natural gas" rather than as an alternate fuel. The purpose of this proposed definition is to preclude users from escaping the statutory prohibitions on natural gas use simply by purchasing wells which meet the MPR criteria. As an alternate approach, we are also considering a permit system whereby ERA would evaluate the wells acquired on or after July 18, 1977, on a case-by-case or geographic basis prior to determining the definition of the gas. Possible factors we would consider in making this determination would include the circum-

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stances under which ownership of the wells was acquired, the size of the reservoir in which the well is located, the alternative uses of the gas, and the geographic location (i.e., region of the country) of the well. We request your comments on these or other alternative approaches.

In addition, we are evaluating the merit of limiting the amount of natural gas burned from wells acquired prior to July 18, 1977, which have an MPR of less than 250 million Btu's/day. Under this approach, ERA would exclude from the definition of natural gas only the percentage of the gas produced which corresponds to the user's net working interest (i.e., 100 percent less the basic landowner's royalty and other interests). ERA would consider the percentage of gas produced from the well which represents the landowner's royalty and other interests as "purchased gas" subject to the prohibitions of the Act. ERA will publish the procedures for making the demonstrations required by the "natural gas" definition at a later date.

We are also considering permanently excluding from the definition of natural gas geopressurized methane produced from wells drilled before 1990, thus making it an alternate fuel for the purposes of these regulations. This approach is based on the premise that the production of geopressurized methane has not crossed the technological threshold necessary to permit extensive production by 1990. We believe this would provide an incentive for the development of this valuable resource. We invite comments on whether geopressurized methane should be excluded from the definition of natural gas; what other exotic gases, such as methane from coal seams, should be excluded; and whether this exclusion should be restricted to use in existing units, thus precluding the availability of temporary exemptions for use of these gases by new units. We are interested in suggestions and comments concerning other administrative means for providing incentives for the development and use of these gases.

F. *Petroleum definition—§ 500.2(e).* We are considering excluding from the definition of petroleum those byproducts from refinery operations which a refinery user could demonstrate are both commercially unmarketable and could be used elsewhere in the plant to replace petroleum or natural gas. We request comments on this interpretation of the petroleum definition and the appropriate means by which a refiner could make this demonstration to ERA. We will publish for comment proposed procedures for making this and other required demonstrations for the petroleum definition at a later date.

G. *Definition of units within aggregations—§ 500.2(a).* A powerplant or installation is defined as a unit which has a design firing rate of 100 million Btu's per hour (MMBtu/hr) or greater, or is in a combination of two or more such units which are located at the same site and which in the aggregate have a design firing rate of 250 MMBtu/hr or greater. Within the aggregations, we propose to define as "new" only those units whose construction cause the aggregated design firing rate at the site to exceed 250 MMBtu/hr. In such a case, the units contributing to the aggregation of 250 MMBtu/hr would be defined as existing once the "new" unit was constructed. Thus if three 80 MMBtu/hr units were constructed at a new site in 1979 (subsequent to enactment of FUA), and a fourth 80 MMBtu/hr unit were constructed in 1980, at the time of the construction of the fourth unit, the three units constructed in 1979 would be defined as "existing" and only the fourth unit would be defined as "new" for the purposes of these regulations. We solicit comments on this proposal.

H. *Reconstruction or refurbishment of powerplants and installations—§ 500.2(a).* We propose to treat any powerplant or installation as new which has been reconstructed or refurbished or added to since April 20, 1977, to the extent that the cost of such reconstruction, refurbishment, or addition equals or exceeds 50 percent of the price of a replacement unit. We invite public comment on whether 50 percent of the replacement unit cost is the appropriate criteria.

I. *Fuels decision report—Part 502.* We call your attention to the requirement that a Fuels Decision Report accompany all requests for exemption. We expect to base much of our regulatory review on this document. We solicit your comments on this proposed rule.

We are particularly interested in comments and suggestions relating to how a petitioner can demonstrate that he made a good faith, competent effort to avoid using petroleum and natural gas. As a general rule, we would expect a petitioner to consider all reasonable alternatives, including alternate fuels, combinations of two or more alternate fuels, and mixtures of one or more alternate fuels with petroleum or natural gas. We ask to focus on a broad range of alternate fuels, including the following: coal, solar, municipal waste, wood chips, low and medium Btu gas from coal, byproduct fuels such as black liquor, petroleum coke, industrial waste byproducts, biomass, synthetic fuels derived from coal and other alternate fuels.

In addition, we solicit comments relating to the number and kinds of fuels a petitioner must examine in preparing the Environmental Impacts Analysis chapter (§ 502.16) of his Fuels Decision Report in order to aid us in our review of the environmental impacts of the grant or denial of the petition. We also solicit comments on whether petitioners requesting temporary exemptions should be required to submit a complete Fuels Decision Report as part of their petition.

J. *Cost calculations § 503.5 and § 505.5.* Section 212 of the Act provides that ERA must grant an exemption from the prohibitions due to lack of alternate fuel supply at a reasonable cost if the cost of using an alternate fuel substantially exceeds the cost of using imported oil. We have proposed rules which provide the criteria, methodology, and evidence requirements for making this cost comparison. In all cases, we have determined that this cost comparison must include the capital, operation and maintenance, and fuel costs associated with any particular fuel choice, and that these costs must be expressed in real terms discounted to present value. The following sections address specific components of the cost calculation, and solicit comments on the alternate proposals and issues associated with the cost calculations.

1. *Alternative cost comparison methodologies.* We are proposing to use a cost comparison test based on a ration index. Under this methodology, a petitioner must construct a ratio comparing the present value of using an alternate fuel to the present value of using imported oil. If the ratio obtained is higher than some specific ratio designated by ERA in the final rules, ERA would determine that the cost of using coal substantially exceeds the cost of using imported oil, and would grant the exemption. If, however, the ratio obtained is less than the ratio designated as the decision point, ERA would deny the exemption. Sections 503.5 and 505.5 of the proposed rules describe this methodology in detail. We welcome comments on the proposed methodology.

The alternative ERA is considering employs a methodology based on the concept of a specific dollar or percentage amount added to the price of imported oil. ERA would use this "direct increment" methodology to determine when the cost of using coal or another alternate fuel substantially exceeds the cost of using imported oil. Under this alternative, the petitioner would calculate the cost, discounted to the present, of using an alternate fuel, including the associated capital and operation and maintenance costs. He would then calculate these costs using the equations specified in §§ 503.5 and 505.5 with the single exception that the price of oil would be obtained by adding the price of imported oil and some constant increment or percentage specified by ERA [1]. If the present value cost of using an alternate fuel is greater than the cost of using oil priced in this manner, we would conclude that the cost of using an alternate fuel substantially exceeds the cost of using imported oil, and would grant an exemption. We invite comment on the direct increment methodology for the cost comparision as well as on what specific increment or percentage should be used.

2. *Substantially exceeds index.* We propose to designate a specific index as the decision point for the substantially exceeds test. If we choose to use this method, the specific ratio selected as the index will probably be between 1.3 and 1.8, but a higher ratio may finally be selected. We are using a ratio of 1.6 in these proposed regulations for illustrative purposes. We are considering a specific value for the alternative direct increment test which would have comparable effect. We intend to update the index periodically. We invite comments on the magnitude of the index and on whether the same index should be used for powerplants, installations, purchased electric power, and for the general and special cost tests.

3. *Specification of discount rates.* The cost calculation procedures in §§ 503.5 and 505.5 require that real uninflated discount rates be used. We have tentatively set discount rates for new powerplants at 3.5 percent per annum (over and above the annual rate of inflation) and have estimated the discount rate at 7 percent per annum (over and above the annual rate of inflation) for new major fuel burning installations. We are also considering setting separate discount rates for categories of powerplants and major fuel burning installations by regulatory jurisdiction or industrial grouping. We well also consider administratively feasible ways of using a specific discount rate for each firm or industry based upon their financial factors. We welcome comments on the desirability and administrative practicality of these alternatives.

4. *Capital outlays.* We solicit comments on whether the capital outlays considered under the cost comparison test should be restricted to boiler and pollution control equipment only, or whether they should include other specified depreciable assests, land, and working capital. We also solicit comments on the appropriate treatment of salvage value for assests with useful lives that differ from the main useful life of the powerplant or installation under consideration.

[1] Note: For powerplants, cost would be calculated according to equations 2 and 7 of § 503.5 of these regulations. For installations, cost would be calculated according to equations 2 and 7 of § 505.5 of these regulations.

5. *Investment tax credit and accelerated depreciation.* Consistent with the provisions of the Energy Tax Act of 1978, we propose that petitioners for exemptions for powerplants and installations not be allowed to take into consideration investment tax credits for oil and gas fired units in computing cost for the purpose of the comparative cost calculation. In addition, we propose that petitioners requesting exemptions for installations not be allowed to use accelerated depreciation in computing the costs of oil or gas fired units. By the same token, we propose to require that petitioners deduct from the cost of the alternate fuel unit the maximum investment tax credit available and the present value of the maximum accelerated depreciation rate allowed by law. In other words the proposed rules assume that the petitioner will realize the benefits of the investment tax credit and accelerated depreciation immediately for alternate fuel fired units. We welcome comments on these proposals.

6. *Powerplant annual capacity factor.* We have proposed that 70 percent be used for the annual capacity factor for new powerplants for the purpose of computing cost. We are considering an alternative approach which permits the petitioner to rebut this 70 percent annual capacity factor assumption by considering the impact upon the unit under consideration of changes in the use of existing powerplants in his electrical region.

To rebut the 70 percent assumption, you would have to demonstrate that the powerplant under consideration would operate at an average annual capacity factor significantly different than 70 percent over the life of the unit. The average annual capacity factor for this unit would have to be greater than 80 percent or less than 60 percent to constitute a significant difference. You would have to calculate the annual capacity factor for the unit under consideration on the basis that that unit would be economically dispatched with all other powerplants in your electrical region, as if that electrical region were one large utility. We also would require that the oil/gas fired unit which is compared with the alternate fuel fired unit for cost calculation purposes be sized to achieve comparable levels of system reliability for the electrical region.

We invite your comments on the administrative and technical feasibility of, as well as necessity for, this alternative approach, as well as comments on other alternative approaches which would address the impact of existing powerplants in a petitioner's electrical region upon the cost of the powerplant under consideration. We also invite comment on whether the average annual capacity factor for the powerplant under consideration should be a simple average of the yearly annual capacity factors or a weighted average—weighted by the annual discount factor used to compute cost.

7. *Fuel and other price projections.* (a) *Fuel prices.* We are considering a variety of methods for selecting, incorporating and revising projected fuel prices for oil, coal, and other alternate fuels, in the comparative cost calculation. In the proposed rule, we calculate the price of imported oil by adjusting the fuel price by a factor which is the ratio of the average price of recent imported crude oil receipts to the average price of recent total receipts of domestic and imported crude oil. The alternatives under consideration include, but are not limited to: (1) The use of current fuel prices over the life of the facility; (2) the use of a specific set of fuel price projections such as those developed by the Energy Information Administration or some other recognized source; and (3) the use of an annually revised margin incorporating refinery and transportation costs added to the most recent refiner acquisition cost of imported petroleum available in the DOE Monthly Energy Review at the time the petition is submitted.

We invite comments on the proposals and alternatives, and on methods for correctly addressing the problem of estimating fuel price levels in future years.

(b) *Other prices.* The proposed rule requires that all estimated expenditures, except natural gas and petrolium products, be expressed in real (uninflated) terms using the prices in effect at the time the petition is submitted. We also invite public comment on the use of real (uninflated) prices versus the use of nominal, projected prices in the cost comparison calculations.

8. *Other factors for powerplants.* The proposed comparative cost calculation for powerplants does not provide special treatment for:

- Cost of work in progress;
- Allowance for funds used in construction;
- Tax normalizations versus flow through; or
- Public, cooperative, or investor ownership.

We solicit public comment on the need for special treatment for any of the above in the case of oil fired powerplants or in the case of alternate fuel fired powerplants.

K. *Use of fluidized bed combustion not feasible—General requirements for permanent exemptions—§§ 503.10 and 404.8.* We propose that a petitioner for most permanent exemptions be required to consider the use of a method of fluidized bed combustion of an al-

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ternate fuel, and to demonstrate that use of such a method is not technically or economically feasible. We further propose that if we make a generic or site-specific finding that use of such a method is technically and economically feasible, we will deny a petitioner's request for a permanent exemption unless he demonstrates that he would be eligible for one of several permanent exemptions if the use of a method of fluidized bed combustion were required. We solicit comments and suggestions regarding the criteria we should use to make a site-specific or a generic finding that use of a method of fluidized bed combustion is technically and economically feasible. Such criteria could include:

- One year's demonstrated reliable operation of the 100 MMBtu/hr Georgetown University unit sponsored by DOE (which is scheduled to begin operation in 1979);
- An engineering report prepared by a reputable consulting engineering firm or boiler manufacturer recommending the use of a fluidized bed unit for an application covered by these regulations;
- The first sale of a unit of the size covered by these regulations to a utility or industrial concern by a boiler manufacturer offering a standard boiler warranty of operation; or
- A sample number (three, five, or ten) of sales by manufacturers of fluidized bed units of the size covered by these regulations to domestic utilities or industrial concerns.

We also solicit comments and general information on the availability, cost, reliability, and current use of methods of fluidized bed combustion of alternate fuels.

We are also considering requiring that petitioners for exemption, including for temporary exemptions, make preliminary investments in fluidized bed combustion units which use oil or gas in order to lay the groundwork for ultimate perfection of the technology and ultimate use of alternate fuels. We solicit comments concerning when, and in what context, we might institute such requirements, and what the likely impact of such a requirement would be.

L. *Alternative powerplant site—general requirement for permanent exemption—§ 503.11.* Section 212 of FUA requires that prior to obtaining specified permanent exemptions for new powerplants, the petitioner must demonstrate an inability to comply with the prohibitions of the act by locating the new powerplant at reasonable alternative sites. We propose to use the cost calculation for new powerplants, § 503.5, as a determinant of whether an alternative site is feasible. We welcome your comments on whether we should use this approach. We expect you to consider alternative sites beyond a given electric utility's service area, and, indeed, beyond the electrical regions defined in § 500.2(b). We also solicit your suggestions on alternative criteria which could be used (e.g., a set geographic distance beyond which the petitioner would not be required to examine alternative sites), comments on the evidence requirements for the proposed criteria and for any alternatives suggested, and comments on the means of utilizing the evidence to definitively measure the criteria.

M. *Terms and conditions—§§ 503.12 and 505.9.* The act makes us responsible for imposing such terms and conditions on an exemption that we determine appropriate, including "requiring the use of effective fuel conservation measures which are practicable and consistent with the purposes of the act". The kinds of terms and conditions we may impose go beyond various conservation measures, to include a variety of other restraints and limitations. We have proposed that a temporary exemption be conditioned on the use of a mixture, if feasible, during the exemption period. We are considering conditioning an exemption which allows a petitioner to use oil on a requirement that the petitioner use no more than a specified minimum amount of oil, or possibly use no oil at all, in the exempt unit in the event of national emergency such as an interruption of foreign supplies which results in the reimposition of oil allocation controls. We solicit comments on these and other terms and conditions we could impose on both temporary and permanent exemptions to further the objectives of the Act.

N. *Environmental requirements exemption—§§ 503.33 and § 505.24.* ERA is considering two alternatives with respect to this exemption. Under the first, any person who plans to request a permanent exemption on the grounds that use of an alternate fuel will violate environmental requirements must first apply for the necessary environmental permits and receive a final determination from EPA or the State on these permits.

This will be our general policy in implementing the environmental exemption. Under the second alternative a petitioner could apply for a permanent environmental exemption at any time prior to a final decision by the relevant environmental permitting agency. Under this alternative, reviews of a petition by ERA would not require preliminary review by EPA or state environmental authority. In this case, we would specify criteria which a petitioner must meet for such early filing. We would also retain the right to return without prejudice any early submission we deem premature and require that the environmental permitting process be completed. We are seeking comments on (1) the usefulness of the proposed and the alternative approaches, and (2) on the criteria to be used if the alternative approach were adopted.

O. *Capital availability exemption—§§ 503.34 and 505.24.* Section 212 of the act states that we must grant a permanent exemption from the prohibitions whenever the use of an alternate fuel would not allow the petitioner to obtain adequate capital. We are considering several alternatives for implementing this "capital availability" test for powerplants and installations. We invite comments on the proposals and alternatives outlined here as well as on the general problem of assessing when lack of adequate capital might preclude compliance with FUA.

1. *Powerplants—§ 503.24. Small Utilities.* We are considering, as an alternative to the provisions of the proposed regulation, establishing separate criteria for large utilities and small utilities. Under this alternative we would apply the criteria proposed in the regulation to large utilities, and would establish separate criteria for small cooperative, municipal, and privately owned utilities. We solicit comments on what criteria are appropriate for small utilities, and on which utilities should be subject to the separate test.

2. *Installations—§ 505.24.* The proposed rule for installations stipulates that to qualify for an exemption, the incremental amount of capital needed to use an alternate fuel rather than oil or natural gas must be 25 percent or more than the annual capital budget of the parent firm averaged over the last 3 years. In this context, when a firm is applying for exemption for one or more facilities we may evaluate the availability of capital for all facilities at the same time. Once a firm has passed this test, we intend to examine the firm's capital financing problem on a case-by-case basis. The proposed rule does not require a new firm, which is not a subsidiary or division of another corporation, to make the initial 25 percent showing, but does require that firm to demonstrate that it qualifies for the exemption on a case-by-case basis.

We are considering an alternative which would require a firm petitioning for an inadequate capital exemption to present documentation of diligent yet unproductive attempts to obtain the necessary additional captial for alternate fuel use from some combination of private and public sources. We are considering requiring the firm to make a diligent effort to obtain the additional capital from at least two recognized private sources and from any of several public sources such as the Economic Development Administration.

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We solicit your comments on both the proposed rule and the alternative. We also solicit your comments concerning the impact these proposals could have on competition.

P. *Cogeneration exemption—§§ 503.27 and 505.27.* We propose not to grant exemptions permitting cogeneration using oil or natural gas if cogeneration using alternate fuel is feasible. Once a petitioner has demonstrated that alternate fuel use is not feasible, we would review his petition for a cogeneration exemption on a case-by-case basis.

Within the case-by-case approach, and alternative we are considering is to specify the criteria that we will use in our review. We would grant an exemption for cogeneration with oil or gas if the petitioner can demonstrate net oil/gas savings over the life of the facility after all opportunities for using alternate fuels have been exhausted. A net oil savings occurs if the cogeneration project results in less total use of oil and gas by the beneficiaries of the project, including utility participants and any other affected parties, than would be used under the best non-cogeneration alternative.

A limited number of exemptions could be also granted to cogeneration projects that do not satisfy the oil saving criterion. For example, exemptions could be granted on a case-by-case basis where the petitioner can show the proposed project would result in the first commercial use of technology which, after it is commercially proven, could be used in other facilities that burn alternative fuels or that the project would result in other special benefits or public interest advantages, including urban area impacts.

Under an alternative approach we would grant exemptions to cogeneration projects that result in increased oil of gas use, provided the incremental oil or gas consumption is compensated by some combination of larger total energy savings and by large cost savings to all parties affected by the project. We seek comments on these approaches, as well as specific examples of congeneration situations where an exemption should be granted even if net oil or gas savings cannot be demonstrated.

Q. *Fuel mixtures exemption—§§ 503.38 and 505.28.* Section 212(d) of the Act requires that we grant a permanent exemption for certain fuel mixtures if we find that the amount of petroleum or natural gas used in the mixture will not exceed the minimum percentage of the total Btu heat input needed to maintain reliability of operation consistent with maintaining a reasonable level of fuel efficiency, as determined by rule. It further states that we cannot require the percentage for an installation to be less than 25 percent. We are not proposing such a rule at this time, because we do not yet have adequate information to determine the minimum percentages of petroleum or natural gas needed in various mixtures. We welcome your thoughts on this matter.

Under the proposed rules, we will review the percentages proposed in petitions for exemption case be case. The same approach will be used in reviewing the percentages of petroleum or natural gas to be used in mixtures proposed in response to the general mixtures requirement for temporary and premanent exemptions contained in §§ 503.8 and 505.6, and §§ 503.9 and 505.7, respectively, of these proposed regulations.

We invite comments on the methodology we should use to assess the percentages proposed in petitions for exemption, and on the kinds of engineering and technical data we need to develop a rule pertaining to such percentages. We also solicit comments and general information pertaining to use of a varity of mixtures, including:

- Coal-oil mixes,
- Coal-gas mixes,
- Mixes of oil or gas and biomass,
- Mixes of oil or gas and municipal, industrial, or agricultural wastes,
- Mixes of oil or gas and solar energy, and
- Mixes of oil or gas and other alternate fuels.

R. *Solar energy—§§ 503.38 and 505.28.* FUA and these proposed regulations define solar energy (including wind, tide and other intermittent sources) as an alternate fuel. In many cases, such as continuous operation of large commercial complexes, a solar facility will need to utilize back up fuels. In the interest of encouraging the development and increased use of solar energy sources, we will allow petroleum or natural gas to be used as the back up in a solar powered facility.

We propose to handle the use of backup fuels in a solar facility under the permanent mixtures exemption. (§§ 503.38 and 505.28). Although we are not proposing rules for percentages of oil or gas allowed in mixtures at this time, we solicit your comments on the percentage of natural gas or petroleum we should allow in a solar mixture.

We are considering an alternative approach in which petitioners requesting exemptions for solar mixtures would not be required to prepare and submit a Fuels Decision Report, although they would be required to certify that use of 100 percent alternate fuel is not feasible. We solicit your comments on whether petitioners for solar mixtures exemptions should receive preferential treatment through elimination of the Fuels Decision Report requirement. We also welcome comments and suggestions concerning other ways of encouraging the development and increased use of solar energy under these regulations.

S. *Reliability of service exemption—§ 503.40.* Section 212 of the Act provides for a permanent exemption for a new powerplant to prevent an impairment of reliability of service. We propose to take into consideration the type of unit the petitioner proposes to use in our evaluation of his request for a reliability exemption. We propose to favor the use of combustion turbines over other types of units in order to limit oil consumption over the life of the powerplant.

An alternative approach would be to restrict the hours of operation of the exempt unit to 1500 hours per year after the period of reliability need is over. In this case no particular type of facility would be favored. We are futher considering relaxing the 1500 hour restriction to the extent that a utility accelerates its reduction of use of less efficient existing oil and natural gas fired units. We seek comments on the proposal and alternatives. We also solicit comments on the loss of load probability (LOLP) criteria specified in the proposed rule.

We also propose to express a policy that reliability exemptions will be judged in terms of areas at least as large as the 29 electrical regions specified in § 500.2(b). We solicit comments on this proposal.

T. *Intermediate load exemption—§ 503.42.* Section 212 of the Act provides for a permanent, but terminable exemption for new intermediate load powerplants which are constructed and operated to replace existing powerplants of equivalent capacity or less which use petroleum or natural gas as a primary energy source. The act further provides that the petitioner must demonstrate that, if coal were used in the powerplants being replaced, they would cause or contribute to a concentration, in an air quality region or area, of a pollutant for which national ambient air quality standards are or would be exceeded. We propose to grant this exemption only to intermediate load powerplants which replace coal capable petroleum or gas fired powerplants. We feel that this is a reasonable interpretation of the Act since there would be no reason to evaluate the resultant pollution concentration of burning coal if in fact the plant being replaced could not burn coal.

An alternative approach would be to allow any petroleum or natural gas consuming powerplant to qualify under the replacement provision. We seek comments on the proposal and the alternative.

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U. *Temporary exemption for future use of synthetic fuels — §§ 503.24 and 505.14.* We have chosen at this time not to define synthetic fuels in any way other than as synthetic fuels derived from alternate fuels and not derived from petroleum or natural gas. We solicit comments on whether synthetic fuels should be defined only as fuels derived from other fuels. We further solicit comments and information identifying the fuels which should be considered synthetic fuels for the purposes of these regulations, including information pertaining to the availability, reliability, and use of those fuels. We also invite comments regarding the kinds and level of financial commitments needed to develop and use synthetic fuels.

V. *Product/process requirements exemption—§ 505.29.* ERA proposes to restrict its consideration of petitions for this exemption to non-boilers, the rules for which will be published at a later date. ERA is also considering establishing a general presumption against granting this exemption for boilers, but accepting petitions for review on a case-by-case basis. ERA solicits comments identifying potential grounds upon which the owners of a boiler might file for this exemption, and means by which such petition claims could be verified.

W. *Environmental planning.* We expect that firms petitioning for exemptions to the prohibitions will include in their analysis of all reasonable alternative fuels a discussion of the assumed pollution control measures that would be necessary for compliance with environmental requirements. Furthermore, we anticipate that potential petitioner will consult early in their fuels planning process with us and with appropriate EPA and State Environmental agencies to determine with the greatest degree of specificity the environmental requirements that would apply to each of the fuel options under consideration. Such guidance from the environmental agencies is important for petitioner's cost calculations as well as for other steps in the exemption process. We may, at some later date, provide more detailed guidance on appropriate prepetition environmental consultations. We solicit comments and suggestions regarding prepetition environmental consultation procedures.

X. *Regulatory efficiency and interagency coordination.* We solicit comments on how to mesh the FUA regulatory program sufficiently with other federal and state programs so as to realize the potential for efficieny, professional calibre of the outputs, minimal paperwork, and timely resolution of conflicts. In this connection we note that most new facilities subject to ERA review under FUA will also be reviewed under federal and state environmental law. We have therefore initiated discussions with EPA on this subject. We have a similar challenge in the case of electric utilities to mesh administration of the powerplant provisions of FUA with the utility conservation service provisions of NECPA (the National Energy Conservation Policy Act of 1978) and PURPA (the Public Utility Regulatory Policy Act of 1978).

VI. *Comment Procedures.*

A. *Written comments..* You are invited to participate in this Rulemaking by submitting data, views or arguments with respect to the issues set forth in this Notice. Comments should be submitted to the address indicated in the "ADDRESSES" section of this Notice and should be identified on the outside envelope and on documents submitted with the designation "Powerplant and Industrial Fuel Use Act" Docket No. ERA-R-78-19. You should submit 15 copies. All comments received will be available for public inspection in the DOE Reading Room, Room GA-152, Forrestal Building, 1000 Independence Avenue, SW. between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. We will consider all comments received by February 2, 1979, 4:30 p.m.

You should identify separately any information or data you consider to be confidential and submit it in writing, one copy only. We reserve the right to determine the confidential status of the information or data and to treat it according to our determination.

B. *Public hearings.* Procedures for the public hearings to be held on these proposed regulations will be set forth at the time that dates and locations for the public hearings are announced in the FEDERAL REGISTER.

A draft regulatory analysis of the proposed regulations, as contemplated by Executive Order No. 12044, is attached as an appendix to these proposed rules. Copies may also be obtained from the ERA, 2000 M Street, NW., Room B-110, Washington, D.C. 20461, 202-634-2170. In addition, a draft Environmental Impact Statement (EIS) has been prepared pursuant to the National Environmental Policy Act (NEPA) and is available for review in Room B-110, 2000 M Street, NW., Washington, D.C.

(Department of Energy Organization Act, Pub. L. 95-91, Powerplant and Industrial Fuel Use Act of 1978; Executive Order 12009, 42 FR 46267).

In consideration of the foregoing, Chapter II, Title 10 of the Code of Federal Regulations is proposed to be amended by adding new Parts 500, 501, 502, 503, 505, 506, 507 in a new Subchapter E, as set forth below.

Issued in Washington, D.C. on November 9, 1978.

DAVID J. BARDIN,
Administrator, Ecomonic Regulatory Administration.

10 CFR, Chapter II is amended by adding Subchapter E consisting of Parts 500-507, to read as follows:

Subchapter E—Alternate Fuels

PART 500—POLICY AND DEFINITIONS

Sec.
500.1 Policy.
500.2 Definitions.
(a) General definitions.
(b) Electric region.
(c) Design capacity.
(d) Natural Gas.
(e) Petroleum.

PART 501—ADMINISTRATIVE PROCEDURES AND SANCTIONS

Subpart A—General Provisions

501.1 Purpose and scope.
501.2 Appearance before ERA.
501.3 Filing of documents.
501.4 Computation of time.
501.5 Extension of time.
501.6 Service.
501.7 General filing requirements.
501.8 Filing fees.
501.9 Effective date of orders or rules.
501.10 Order of precedence.
501.11 Address for filing documents with DOE.
501.12 Freedom of information reading room/docket room.
501.13 Appeal.

Subpart B—Filing Fees

501.20 Purpose.
501.21 Scope.
501.22 General exceptions; waiver.
501.23 Payment of fees.
501.24 Fee schedule.

Subpart C—Written Comments, Conferences and Public Hearings

501.30 Purpose and scope.
501.31 Written comments.
501.32 Requests for an opportunity to be heard.
501.33 Conferences.
501.34 Public hearings.
501.35 Public file.

Subpart D—Subpoenas; Witness Fees

501.40 Issuance.
501.41 Witness Attendance; Production of documents.
501.42 Service.
501.43 Fees.
501.44 Petition to quash or modify.
501.45 Enforcement.

Subpart E—Prohibition Orders

501.50 Purpose and scope.
501.51 What to file.
501.52 Where to file.
501.53 Notice.
501.54 Contents.
501.55 ERA evaluation.
501.56 Public participation.
501.57 Decision and order.

Subpart F—Exemptions

Sec.
501.60 Purpose and scope.
501.61 Labeling of petition.
501.62 What to file.
501.63 Attestation.
501.64 Fees.
501.65 Where to file.
501.66 When to file.
501.67 Contents.
501.68 Adequacy of petition.
501.69 Notice of petition.
501.70 Hearing.
501.71 ERA evaluation.
501.72 Retained Authority.
501.73 Decision and Order.
501.74 Judicial review.

Subpart H—Requests for Modification and Rescission of Orders and Rules Issued Under FUA

501.100 Purpose and scope.
501.101 What to file.
501.102 Where to file.
501.103 When to file.
501.104 Notice.
501.105 Contents.
501.106 ERA evaluation.
501.107 Decision and order.
501.108 Timeliness.

Subpart I—Requests for Stay

501.120 Purpose and scope.
501.121 What to file.
501.122 Where to file.
501.123 Notice.
501.124 Contents.
501.125 DOE evaluation.
501.126 Decision and order.

Subpart J—Requests for Interpretations

501.130 Purpose and scope.
501.131 What to file.
501.132 Where to file.
501.133 Notice.
501.134 Contents.
501.135 DOE evaluation.
501.136 Decision and order.

Subpart K—Rulings

501.140 Purpose and scope.
501.141 Criteria for issuance.
501.142 Modification or rescission.
501.143 Comments.

Subpart L—Petitions for Rulemaking

501.150 Purpose and scope.
501.151 Petition for rulemaking.
501.152 Comments in connection with rulemaking.
501.153 Where to file.

Subpart M—Complaints

501.160 Purpose and scope.
501.161 What to file.
501.162 Where to file.
501.163 Contents.
501.164 ERA evaluation.
501.165 Decision.

Subpart N—Notice of Violation and Remedial Order

501.170 Purpose and scope.
501.171 Notice of violation.
501.172 Hearings and Conferences.
501.173 Remedial order.

Subpart O—Investigations, Violations, Sanctions, and Judicial Actions

501.180 Investigations.
501.181 Violations.
501.182 Sanctions (FUA).
501.183 Injunctions.
501.184 Citizen suits.

PART 502—FUELS DECISION REPORT

502.1 Purpose and scope.
502.2 General instructions.
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502.4 Introduction.
502.5 Fuels considered.
502.6 Alternative sites considered.
502.7 Technical and engineering considerations.
502.8 Availability considerations.
502.9 Economic considerations.
502.10 Site considerations.
502.11 Environmental regulatory considerations.
502.12 Operational considerations.
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502.14 Petroleum and natural gas consumption.
502.15 Conservation measures.
502.16 Environmental impacts analysis.
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PART 503—NEW ELECTRIC POWERPLANTS

Subpart A—Statutory Prohibitions

503.1 Purpose and scope.
503.2 Statutory Prohibitions.

Subpart B—General Requirements for Exemptions

503.3 Purpose and scope.
503.4 Fuels Decision Report.
503.5 Cost calculations for new powerplants.
503.6 State approval.
503.7 No alternative power supply—Permanent exemptions.
503.8 Use of mixtures—General requirement for temporary exemptions.
503.9 Use of mixtures—General requirement for permanent exemptions.
503.10 Use of fluidized bed not feasible—General requisrement for permanent exemption.
503.11 Alternative sites—General requirement for permanent exemptions.
503.12 Terms and conditions; Compliance plans.

Subpart C—Temporary Exemptions for new Powerplants

503.20 Purpose and scope.
503.21 Lack of alternate fuel supply.
503.22 Site limitations.
503.23 Inability to comply with applicable environmental requirements.
503.24 Future use of synthetic fuels.
503.25 Public interest exemption.

Subpart D—Permanent exemptions for new Powerplants

503.30 Purpose and scope.
503.31 Lack of alternate fuel supply for the first ten years of useful life.
503.32 Lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum.
503.33 Site limitations.
503.34 Inability to comply with applicable environmental requirements.
503.35 Inability to obtain adequate capital.
503.36 State or local requirements.
503.37 Cogeneration.
503.38 Permanent exemption for certain fuel mixtures containing natural gas or petroleum.
503.39 Emergency purposes.
503.40 Permanent exemption for powerplants necessary to maintain reliability of service.
503.41 Peakload powerplants.
503.42 Intermediate load powerplants.

PART 504—EXISTING ELECTRIC POWERPLANTS [RESERVED]

PART 505—NEW MAJOR FUEL BURNING INSTALLATIONS

Subpart A—Statutory Prohibitions

505.1 Purpose and scope.
505.2 Statutory prohibitions. (a) Petroleum and natural gas use by boilers. (b) Petroleum and/or natural gas use by non-boilers covered by a rule or order.

Subpart B—General Requirements for Exemptions

505.3 Purpose and scope.
505.4 Fuels Decision Report.
505.5 Cost calculation for new MFBI's.
505.6 Use of mixtures—General requirement for temporary exemptions.
505.7 Use of mixtures—General requirement for permanent exemptions.
505.8 Use of fluidized bed combustion not feasible-General requirement for permanent exemption.
505.9 Terms and conditions; Compliance plans.
505.10 Purpose and scope.
505.11 Lack of alternate fuel supply.
505.12 Site limitations.
505.13 Inability to comply with applicable environmental requirements.
505.14 Future use of synthetic fuels.
505.15 Public interest exemption.
505.16 The use of petroleum.

Subpart D—Permanent exemptions for new MFBI's

505.20 Purpose and scope.
505.21 Lack of alternate fuel supply for the first 10 years of useful life.
505.22 Lack of alternate fuel supply at a cost which does not substantially exceed the cost of using petroleum.
505.23 Site limitations.
505.24 Inability to comply with applicable environmental requirement.
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505.26 State or local requirements.
505.27 Cogeneration.
505.28 Permanent exemption for certain fuel mixtures containing natural gas or petroleum.
505.29 Emergency purposes.
505.30 Product of process requirements.
505.31 Scheduled equipment outages.

PART 506—EXISTING MAJOR FUEL BURNING INSTALLATION [RESERVED]

PART 507—SYSTEM COMPLIANCE [RESERVED]

PART 500—POLICY AND DEFINITIONS

§ 500.1 General policy

(a) *Fuel Use Act (FUA).*

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(1) The primary purpose of the Powerplant and Industrial Fuel Use Act of 1978 (Fuel Use Act) is to minimize the use of petroleum and natural gas in industrial and electric utility boilers. The Act challenges American industry and government. It sets forth the following prohibitions applicable to electric powerplants and major fuel burning installations:

(i) Prohibition of the use of petroleum or natural gas in new powerplants and installations;

(ii) Prohibition of the construction of new powerplants without the capability to use coal or other alternate fuels;

(iii) Prohibition of natural gas use by existing powerplants unless that fuel was used during 1977;

(iv) Prohibition of increased use of natural gas by existing powerplants over historical use levels;

(v) Prohibition of natural gas use by existing powerplants after January 1, 1990;

(vi) Discretionary authority for DOE to issue rules or orders prohibiting existing powerplants and installations from using petroleum or natural gas and from using excessive amounts of petroleum and natural gas in mixtures.

(2) The Act requires American industry to apply its ingenuity and full competence to avoid use of petroleum and natural gas:

(i) By use of alternate fuels, and

(ii) By use of innovative technologies and conservation measures.

(3) The Act requires us to face up to the long term economic impacts of dependence on petroleum and natural gas to meet future needs. It requires the leaders of American industry to analyze their future energy needs comprehensively from the standpoint of national interest as well as corporate interet. It requires the Federal Government to protect the overall public interest for future generations as well as our own. It challenges all parts of the Department, and of State and Federal Government, to work with American industry to secure a coordinated, directed effort towards realizing environmentally sound alternatives to the use of petroleum and natural gas.

(4) These rules decribe procedures and criteria the Department of Energy proposes to use in implementing the provisions of the Act. the Secretary of the Department of Energy has delegated the responsibility to implement and enforce the provisions of the Act to the Administrator of the Economic Regulatory Administration (ERA).

(b) *Availability of exemptions.* If you believe you are entitled to any exemption from the prohibitions of the Act you must deomonstrate to the satisfaction of the ERA that you warrant the exemption. In order to demonstrate this contention, you must provide convincing and substantial evidence that you made a good faith, competent effort to carry out the policies of the Act (including your attempts to overcome any obstacles to comply with the Act) in accordance with the criteria established in these regulations. We intend to review each exemption petition carefully and will dismiss any which does not fully meet the standards set forth in these regulations.

(c) *Fuels decision report: A showing of technological excellence.* A petition for exemption must include a Fuels Decision Report to demonstrate your competent, good faith efforts to avoid the use of petroleum and natural gas. The Fuels Decision Report provides the opportunity to demonstrate the technological excellence of well engineered solutions which accurately reflect your ingenuity and best professional judgment. It should show the calibre of your response to a fundamental technological challenge.

(d) *Fuel switching capability.* In the interest of maintaining fuel flexibility and an ability to cope with supply disruptions, we recommend that you build in fuel switching capabilities in your powerplants and installations. Such capability would allow your units to be switched from alternate fuels to oil or gas, from oil or gas to alternate fuels or even from oil to gas or vice versa.

(e) *Fuel use objectives.* We interpret the primary objectives of the act to be first, to prohibit or minimize oil and gas consumption, and second, where oil or gas must be used, to insure that it is used efficiently. We have structured the eligibility criteria of the exemptions accordingly. The exemptions relating to lack of alternate fuel supply, site limitations, environmental requirements, adequacy of capital, and State or local requirements, cover the primary reasons why it may not be feasible to burn an alternate fuel. Many of the other exemptions deal with a particular end use application that is not necessarily incompatible with alternate fuel use. Therefore ERA will require you to show why your particular end use need could not be met by using an alternate fuel. Examples of this treatment include the permanent exemptions for emergencies, scheduled equipment outages, cogeneration, and mixtures.

(f) *Temporary versus permanent exemptions.* In cases where both temporary and permanent exemption are available, we will grant a temporary exemption rather than a permanent one if possible. Petitions for temporary exemptions must demonstrate that you *cannot* use an alternate fuel. Further, where possible, we intend to condition the granting of a temporary exemption on the use of a mixture of alternate fuel with oil or natural gas during the period of the exemption. We also shall condition the granting of a temporary exemption on your submission of an acceptable compliance plan which provides a certainty that you will be in compliance with the prohibitions of the Act upon the expiration of the exemption.

(g) *Terms and conditions.* (1) We reserve the right to impose conditions when granting a temporary or permanent exemption, consistent with the purposes of the act, including use of effective conservation measures and use of mixtures. The types of conservation measures or mixtures which might be required would include the use of fuel efficient equipment and technologies, the adoption of fuel efficient operating practices, the use of mixtures of natural gas or petroleum and alternate energy sources such as coal, biomass or solar. We also reserve the right, upon granting an exemption, to specify which fuel (natural gas or petroleum) you must use. We may revoke your exemption if your fail to meet the appropriate terms and conditions of the exemption, including the compliance plan. If you operate your powerlant or installation in violation of the Act or in excess of that authorized in an exemption, we intend to impose the penalties authorized by the statute.

(2) We believe that any penalties imposed under the Act on electric powerplant use should not be used as the basis for computing fuel costs for the purpose of any automatic fuel adjustment (or similar) clause in determining electricity rates.

(h) *Treatment of costs in exemption requests.* (1) We will consider *all* constraints to alternate fuel use associated with the cost of using an alternate fuel under the exemption for lack of alternate fuel supply at a reasonable cost. This will allow us to comprehensively evaluate all cost considerations, including equipment costs, site costs, fuel costs, and transportation costs, and thus determine possible tradeoffs between such items as quality of fuel consumed versus type of pollution control equipment required. Since the rules require that costs be treated under one exemption only, they do not establish cost criteria for each separate exemption. If you base your petition on cost as the obstacle to using an alternate fuel, you should apply for the lack of alternate fuel supply exemption and perform the comparative cost calculation, rather than for an exemption relating to specific physical or technological constraints on fuel use such as site limitations, environmental requirements, or State or local requirements.

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(2) You may not be able to determine whether to request an exemption due to physical or technological constraints, or due to the cost of using an alternate fuel, until you have completed your analysis of that fuel. For example, you may determine that you cannot burn one of the alternate fuels you considered without violating applicable environmental requirements. To arrive at this conclusion, you would have to have made a good faith effort to comply with environmental requirements. A good faith effort means that you have examined reasonable environmental compliance measures and have consulted with competent engineering advisors, EPA or the State concerning the best proposal for using control technology and taking other steps, such as purchasing offsets, to meet environmental requirements. If you determine that all of the options that are available to you are insufficient to meet environmental requirements, and EPA or the State has denied the environmental permit application you submitted, you should apply for an environmental exemption. If, however, you determined that options are available which would allow compliance with environmental regulations, but the cost of using an alternate fuel and complying with environmental regulations substantially exceeds the cost of using imported oil, you should apply for a lack of alternate fuel supply exemption (which contains the cost test) and not an environmental exemption.

(i) *Geographic considerations for new electric powerplants.* (1) Utilities have a great deal of flexibility in where they site powerplants to serve customer demand. This flexibility is due to extensive transmission systems, interconnections, and agreements to buy power from other utilities. Consequently, the Act requires that for many permanent exemptions you must demonstrate that you are unable to comply with a prohibition, not only at your proposed site, but also at any reasonable alternative sites. You must examine reasonable alternative sites with respect to the following permanent exemptions: lack of alternate fuel supply, site limitations, environmental requirements, inability to obtain adequate capital, State or local requirements, and intermediate load electric powerplants.

(2) Except in the case of the peakload or cogeneration exemption, the Act also requires that you show that there is no alternate supply of electric power to the one you are proposing. This means that you must demonstrate to us that you could not purchase electricity, or construct and operate an alternate fuel supply powerplant, at a cost which does not substantially exceed the cost of using imported oil to meet your customer demand.

(3) Therefore, to prepare a petition for most permanent exemptions adequate for our review you must examine all geographic areas where a plant could be sited within the cost criteria of these regulations, and you must provide information on the capacity construction plants of your electrical region and beyond. You may not arbitrarily limit your examination to sites within your own utility service area. By coordinated planning on an electrical region basis you can generally carry out the policy of the statutory prohibitions. In appropriate instances, however, you may have to evaluate alternative sites in other electrical regions.

(4) We intend to evaluate reliability on the basis of electrical regions. We intend to treat powerplant operations within an electrical region as if they were part of one large utility system.

(j) *Suitability of equipment.* (1) We plan to limit the amount of oil and gas consumed as the result of any exemption for an electric powerplant to the minimum consistent with the purpose of the exemption and the overall thrust of the Act. The construction of a particular type of fuel burning equipment leads to a generally known level of use based upon the economics of operating that equipment. Therefore, ERA may take into consideration the type of equipment proposed by the applicant in evaluating an exemption request.

(2) For both the peakload and reliability exemption, we will favor construction of combustion turbines as opposed to other types of generating equipment. Combustion turbines have historically been used to serve peakload demand and would generally be the most economic units within the 1500 hours per year operation restriction of the Act.

(3) Although the reliability exemption is a permanent exemption, its purpose is to cover a temporary condition. It is important that generation capacity be adequate to avoid brownouts, but at the same time it is important that new oil or gas fired units not be constructed if they will operate at high capacity factors throughout their entire useful lives. Combustion turbines can be constructed in a relatively short period of time and thereby meet generating capacity requirements.

(4) In addition, we expect that construction of combustion turbines will reduce the long run use of oil or gas. Although combustion turbines have higher heat rates than combined cycle or steam plants, their higher operational costs will probably limit the hours of their operation and therefore result in a net oil savings. Combustion turbines are generally the last units to be dispatched whereas combined cycle units could serve both intermediate and base load requirements.

(k) *Solar energy.* In the interests of encouraging the development and increased use of solar energy, we will allow scarce fuel resources (natural gas and petroleum) to be used, at reasonable levels, as the back up fuels in solar powered facilities. We will review the use of mixtures of solar energy and petroleum or natural gas under the permanent mixtures exemption.

(l) *NEPA compliance.* (1) We will support our decision with respect to the grant or denial of a petition for most permanent exemptions with appropriate NEPA documentation. These documents may be (i) an Environmental Impact Statement (EIS), where the proposed action is deemed a major Federal action significantly affecting the quality of the human environment; (ii) an environmental assessment (EA), where it is unclear whether an EIS is required; or (iii) an internal ERA memorandum where, prior to preparing an EA, it is clear, in our view, that no EIS is required. An EA would be followed by either preparation of an EIS or a finding that the proposed action is not a major Federal action significantly affecting the quality of the human environment.

(2) We will require petitioners for most permanent exemptions to prepare an environmental impact analysis pursuant to § 502.16 of these regulations (the Environmental Impact Analysis Chapter of the Fuels Decision Report). We intend to independently verify, to the extent feasible and appropriate, any information in the petitioner's Fuels Decision Report which is used or relied on in an EA or EIS.

§ 500.2 Definitions.

This section defines certain terms utilized throughout these regulations unless otherwise expressly provided for or demanded by the regulations. The use of the male gender is to include female; the use of singular to include plural.

(a) *General definitions.* For purposes of this Part and Parts 501, 502, 503, 504, 505, and 506 the terms listed:

(1) "Acquisition" means physical receipt of an item at the facility site and does not include mere transfer of title or ownership.

(2) "The Act" and "FUA" mean the Powerplant and Industrial Fuel Use Act of 1978.

(3) "Action" means a prohibition, by rule or order, in accordance with sections 202, 301(b) and (c), 302(a) and (b), 401, 402, and 405 of the Act; an order granting or denying an exemption in accordance with sections 211, 212, 311, and 312 of the Act; a modification or rescission of any such order,

or rule; an interpretation; a notice of violation; a remedial order; a ruling issued; or a rulemaking undertaken by DOE.

(4) "Affiliate", when used in relation to person, means another person who controls, is controlled by, or is under common control with, such person.

(5) "Aggrieved", for purposes of administrative proceedings, describes and means a person [with an interest sought to be protected under the DEOA, or the Act] who is adversely affected by an action proposed or undertaken by DOE.

(6) "Air pollution control agency" means any of the following:

(i) A single State agency designated by the Governor of that State as the official State air pollution control agency,

(ii) An agency established by two or more States and having substantial powers or duties pertaining to the prevention and control of air pollution,

(iii) A city, county, or other local government, health authority, or, in the case of any city, county, in which there is an agency other than the health authority charged with responsibility for enforcing ordinances or laws relating to the prevention and control of air pollution, such other agency, or

(iv) An agency of two or more municipalities located in the same State or in different States and having substantial powers or duties pertaining to the prevention and control of air pollution.

(7) "Alternate fuel" means electricity or any fuel, other than natural gas or petroleum. The term includes—

(i) Coal;

(ii) Solar energy;

(iii) Petroleum coke, shale oil, uranium, biomass, and municipal, industrial, or agricultural wastes, wood and renewable and geothermal energy sources;

(iv) Liquid, solid, or gaseous waste byproducts of refinery or industrial operations which are commercially unmarketable, either by reason of quality or quantity,

(v) Any fuel derived from an alternate fuel; and

(vi) Waste gases from industrial operations.

(8) "Applicable environmental requirements" includes—(i) Any standard, limitation, or other requirement established by or pursuant to Federal or State law (including any final order of any Federal or State court) applicable to emissions of environmental pollutants (including air and water pollutants) or disposal of solid waste residues resulting from the use of coal or other alternate fuels or natural gas or petroleum as a primary energy source or from the operation of pollution control equipment in connection with such use, taking into account any variance of law granted or issued in accordance with Federal law or in accordance with State law to the extent consistent with Federal law; and

(ii) Any other standard, limitation, or other requirement established by, or pursuant to, the Clean Air Act, the Clean Water Act, the resource Conservation and Recovery Act, or the National Environmental Policy Act of 1969. Such term does not include, however, local laws, ordinances, or regulations of whatever kind or purpose unless they are explicitly based upon or part of pertinent Federal or State laws, standards, limitations, or other environmental requirements.

(9) "Base load powerplant" means a powerplant the electric generation of which in Kilowatt hours exceeds, for any 12-calendar-month period, such powerplant's design capacity multiplied by 3,500 hours.

(10) "Btu" means British thermal unit.

(11) "Clean Air Act" means the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.* (1970), as amended by Pub. L. 93-319, 88 Stat. 246, and Pub. L. 95-91, 91 Stat. 685.

(12) "Coal" means anthracite, bituminous and sub-bituminous coal, lignite, and any fuel derivative thereof.

(13) "Cogeneration facility" means an electric powerplant or a major fuel burning installation which produces (i) electric power and (ii) any other form of useful energy (such as steam, gas or heat) which is, or will be, used for industrial, commerial, or space heating purposes.

(14) "Combined cycle unit" means an electric power generating unit that consists of a combination of one or more combustion gas turbine units and one or more steam turbine units with the required energy input of the steam turbine(s) provided by the approximately matched to the energy in the exhaust gas from the combustion turbine unit(s). Use of small amounts of supplemental firing for the steam turbine does not preclude the unit from being a combined cycle unit.

(15) "Conference" means an informal meeting, incident to any proceeding, between DOE and any interested person.

(16) "Construction" means substantial physical onsite construction or reconstruction of an electric powerplant or major fuel burning installation which constitutes more than clearance of a site or installation of foundation pilings.

(17) "Costs" means total costs, both operating and capital, incurred over the estimated remaining useful life of an electric powerplant or major fuel burning installation, discounted to the present pursuant to rules established in parts 503, 504, 505, and 506 of these regulations.

(18) "Delayed compliance order" means an order issued by the Administrator of EPA in accordance with section 113(d)(5) of the Clean Air Act allowing for delayed compliance with any air pollution requirement under any applicable implementation plan for an initial period not extending beyond December 31, 1980 and an additional period not extending beyond December 31, 1985.

(19) "Design capacity or capability" is a defined in subsection (c) of this section.

(20) "DOE" or "the Department" means the United States Department of Energy, as defined in sections 201 and 301(a) of the Department of Energy Organization Act, including the Secretary of Energy of his designee.

(21) "DEOA" means the Department of Energy Organization Act (Pub. L. 95-91) (42 U.S.C. 7101 et seq.), as implemented by E.O. 12009 (42 F.R. 46267).

(22) "Document" includes any petition, application or part thereof.

(23) "Discount rate" means—

(i) After tax cost of capital for installations;

(ii) Before tax cost of capital for powerplants.

(24) "Duly authorized representative" means a person who has been designated to appear before DOE in connection with a proceeding on behalf of a person interested in or aggrieved by that proceeding. The appearance may consist of the submission of applications, petitions, requests, statements, memoranda of law, other documents, or of a personal appearance, oral communication, or any other participation in the proceeding.

(25) "Electric powerplant" and "powerplant" man any stationary electric generating unit, consisting of a boiler, a combustion turbine unit, or a combined cycle unit, which produces electric power for purposes of sale or exchange and—

(i) Has the design capability of consuming any fuel (or mixture thereof) at a fuel heat input rate of 100 million Btu's per hour or greater; or

(ii) Is in a combination of two or more electric generating units which are located at the same site and which in the aggregate have a design capability of consuming any fuel (or mixture thereof) at a fuel heat input rate of 250 million Btu's per hour or greater.

(26) "Electric generating unit" does not include—

(i) Any electric generating unit subject to the licensing jurisdiction of the Nuclear Regulatory Commission; and

(ii) Any cogeneration facility, less than half of the annual electric power

generation of which is sold or exchanged for resale.

(27) "Electric region" is a defined in subsection (b) of this section.

(28) "Electric utility" means any person, including any affiliate, or Federal agency, who sells electric power.

(29) "EPA" means the Environmental Protection Agency.

(30) "ERA" means the Economic Regulatory Administration of the Department of Energy.

(31) "Existing boiler" means any boiler other than a new boiler.

(32) "Existing powerplant or MFBI" means any powerplant or MFBI other than a new powerplant or MFBI.

(33) "FERC" means the Federal Energy Regulatory Commission.

(34) "Fluidized bed combustion" means combustion of fuel in connection with a bed of inert material, such as limestone or dolomite, which is held in a fluid-like state by the means of air or other gases being passed through such materials.

(35) "FTC" means the Federal Trade Commission.

(36) "High-priority user," for purposes of section 312(j) of the Act means any residential user of natural gas, or any commercial user whose consumption of natual gas on a peak day is less than 50 Mcf.

(37) "Installation" means "major fuel burning installation."

(38) "Intermediate load powerplant" means a powerplant (other than a peakload powerplant), the electrical generation of which in kilowatt hours does not exceed, for any 12-calendar-month period, such powerplant's design capacity multiplied by 3,500 hours.

(39) "Internal combustion engine" means a heat engine in which the combustion that generates the heat takes place inside the engine proper.

(40) "Interpretation" means a written statement issued by the DOE General Counsel, or his delegate, in response to a written request, that applies the regulations, rulings and other precedents previously issued by the FEA or DOE to the particular facts of a prospective or completed act or transaction.

(41) "Local distribution company," for the purposes of section 401 of the Act, means any person engaged in the business of transportation or local distribution of natural gas and the sale of natural gas for ultimate consumption.

(42) "Loss of load" means the number of hours per year during which the total demand for electricity within the region could exceed the available supply of generation capacity to the region. See § 503.39.

(43) "Major fuel burning installation," "installation" and "MFBI" mean a stationary unit consisting of a boiler, combustion turbine unit, combined cycle unit, or internal combustion engine, including an internal combustion engine used for generation of electricity, which—

(i) (A) Has a design capability of consuming any fuel, or mixture thereof, at a fuel heat input rate of 100 million Btu's per hour or greater; or

(B) Is in a combination of two or more such units which are located at the same site and which in the aggregate have a design capability of consuming any fuel, or mixture thereof, at a fuel heat input rate of 250 million Btu's per hour or greater.

(ii) In determining whether units are at the same site for purposes of defining "new major fuel burning installations," ERA will presume that units within 10 miles of each other are located at the same site.

(iii) "Major fuel burning installation," "installation," and MFBI do not include—

(A) Any electric powerplant; or

(B) Any pump or compressor used solely in connection with the production, gathering, transmission, storage, or distribution of gases or liquids, but only if there is certification to ERA of such use.

(44) "Mcf" means 1,000 cubic feet of natural gas.

(45) "MFBI" means "major fuel burning installation."

(46) "Minimum peakload requirement for any calendar year" means, for purposes of section 501 of the Act, and section 507 of these regulations governing the System Compliance Option, the total kilowatt hours generated during the calendar year by natural gas on the applicant electric utility company system divided by the aggregate capacity of all the electric powerplants in such system but not to exceed 1,500 full-load hours per year.

(47) "Mixture" when used in relation to fuels used in a unit, means a mixture of petroleum or natural gas and an alternate fuel, or a combination of such fuels used simultaneously or alternately in such unit.

(48) "Natural gas" is as defined in paragraph (d) of this section.

(49) "NEPA" means the National Environmental Policy Act of 1969, 42 U.S.C. 4321, et seq.

(50) "New boiler" means any boiler for which there was not a commitment for construction or acquisition as of the date of the publication under section 701(b) of the Act of the proposed rule or order establishing the prohibition.

(51) "New electric powerplant" means a stationary unit consisting of a boiler, combustion turbine unit or combined cycle unit which—

(i) (A) Has a design capacity of consuming any fuel (or mixture thereof) at a fuel heat input rate of 100 million Btu's per hour or greater; or

(B) Has in combination with all other units at the same site, whether new or existing, an aggregate design capability of consuming any fuel (or mixture thereof) at a fuel heat rate input rate of 250 million Btu's an hour or greater. For purposes of this clause, there shall be excluded any unit which has a design capability to consume any fuel (including any mixture thereof) that does not equal or exceed 50 million Btu's per hour, and

(ii) (A) Which was not operational as of April 20, 1977; or

(B) Which since April 20, 1977, has been reconstructed or refurbished or added to, to the extent that the cost of such reconstruction, refurbishment, or addition equals or exceeds 50 percent of the price of replacement unit; or

(C) Which has been moved from one site to another since November 9, 1978.

(iii) The term "new electric powerplant" does not include any unit deemed existing under part 515 of this title.

(52) "New major fuel burning installation" means a stationary unit consisting of a boiler, combustion turbine unit, combined cycle unit, or internal combustion engine, including an internal combustion engine, used for the generation of electricity which—

(i) (A) Has a design capacity of consuming any fuel (or mixture thereof) at a fuel heat input rate of 100 million Btu's per hour or greater; or

(B) Has in combination with all other units at the same site, whether new or existing, an aggregate design capability of consuming any fuel (or mixture thereof) at a fuel heat input rate of 250 million Btu's an hour or greater. For purposes of this clause, there shall be excluded any unit which has a design capability to consume any fuel (including any mixture thereof) that does not equal or exceed 50 million Btu's per hour, and

(ii) (A) Which was not operational as of April 20, 1977; or

(B) Which since April 20, 1977, has been reconstructed or refurbished or added to, to the extent that the cost of such reconstruction, refurbishment, or addition equals or exceeds 50 percent of the price of a replacement unit; or

(C) Which has been moved from one site to another since November 9, 1978.

(iii) The term "new major fuel burning installation" does not include any unit deemed existing under part 515 of this Title.

(53) "Non-boiler" means any stationary unit which is not a boiler and which consist of either a combustion turbine unit, combined cycle unit, or internal combustion engine.

(54) "Notice of violation" means a written statement issued to a person by ERA that states on or more alleged violations of the provisions of parts 500, 501, 502, 503, 504, 505, 506, and

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515 of this Chapter or any order or rulemaking issued pursuant thereto.

(55) "Offset" means an emission reduction obtained from existing sources by new or modified major sources. These emission reductions are greater than the SIP requirements for existing sources. In areas where the National Ambient Air Quality Standards (NAAQS) are not being met (Non-Attainment Areas), new or modified sources, after the application of Lowest Achievable Emission Requirements (LAER), must obtain emission reductions from existing sources so that no pollutant for which a NAAQS is being violated will be emitted. In areas where the NAAQS is being met (Prevention of Significant Deterioration Areas), a new or modified major source, after the application of Best Available Control Technology (BACT) may obtain emission reductions from existing sources where an allowable increment for emissions is less than needed for constructing a new plant or modifying an existing plant.

(56) "Order" means a written directive issued by ERA pursuant to Parts 500, 501, 502, 503, 504, 505, 506, and 515 of this Chapter.

(57) "Outdoor lighting", for the purpose of section 501 of the Act, means lighting by any stationary source which is not located inside a building.

(58) "Peakload powerplant" means a powerplant the electrical generation of which in kilowatt hours does not exceed, for any 12-calendar-month period, such powerplant's design capacity multiplied by 1,500 hours.

(59) "Person" means any—

(i) Individual corporation, company, partnership, association, firm, institution, society, trust, joint venture, or joint stock company;

(ii) Any State, the District of Columbia, Puerto Rico, and any territory or possession of the United States,

(iii) Any agency or instrumentality (including any municipality) thereof, or

(iv) A parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls.

(60) "Petroleum" is as defined in subsection (e) of this section.

(61) "Petition" means the formal request for an exemption submitted to ERA under parts 503, 504, 505, and 506 of these regulations, which includes the Fuels Decision Report, appropriate forms, and other information pertaining to eligibility and evidentiary requirements as stated in these regulations.

(62) "Pipeline", for purposed of section 103(b) of the Act, means any interstate pipeline or local distribution company.

(63) "Pipeline company", for the purposes of section 401 of the Act, means any person engaged in the business of transporting natural gas by pipeline other than as a local distribution company.

(64) "Powerplant" means "electric powerplant."

(65) "Product or process requirements" means that product or process for which the use of an alternate fuel is not technically feasible due to the necessity to maintain satisfactory control of product quality and for which the substitution of steam is not technically feasible due to process requirements.

(66) "Primary energy source" means the fuel or fuels used for normal operation by any existing or new electric powerplant or major fuel required for unit ignition startup, testing, flame stabilization and control uses, and

(i) Minimum amounts of fuel required for unit ignition startup, testing, flame stabilization and control uses, and

(ii) Minimum amounts of fuel required to alleviate or prevent unanticipated equipment outages and emergencies directly affecting health, safety or welfare which would result from electric power outages.

(67) "Proceeding" means a process and activity, and any part thereof, instituted by DOE, either on its own initiative or in response to an application, complaint, petition or request submitted by the owner or operator of a powerplant, major fuel burning installation, or any other person that may lead to an action by DOE.

(68) "Prohibition order" means—

(i) An order issued pursuant to sections 202(b), 301 (b) and (c), 302 (a) and (b), and 401 of the Act that prohibits a powerplant or major fuel-burning installation or a boiler used for space-heating purposes from burning natural gas or petroleum products as its primary energy source; or

(ii) An order issued pursuant to section 301(c) and 302(b) of the Act that prohibit excessive use of natural gas or petroleum in mixtures burned by a powerplant or major fuel-burning installation as its primary energy source.

(69) "Remedial order" means a directive issued by ERA requiring a person to cease a violation or to eliminate or to compensate for the effects of a violation or both.

(70) "Residence", for the purposes of section 402 of the Act, means any single or multiple family dwelling unit, including commonly held areas associated with any such unit.

(71) "SIP" means State Implementation Plan as required by section 110 of the Clean Air Act to insure that National Ambient Air Quality Standards will be attained and maintained.

(72) "Site limitation", when used with respect to any powerplant or installation, means a specific physical limitation associated with a particular site which relates to the use of an alternate fuel as a primary energy source for the powerplant or installation, such as—

(i) Inaccessibility to alternate fuels;

(ii) Lack of transportation facilities for alternate fuels;

(iii) Lack of adequate facilities for the handling, use, and storage of alternate fuels;

(iv) Lack of adequate land or facilites for the control or disposal of wastes from such powerplant or installation, including lack of pollution control equipment or devices necessary to assure compliance with applicable envirnomental requirements; and

(v) Lack of an adequate and reliable supply of water, including water for use in compliance with applicable environmental regulations.

(73) "State regulatory authority" means any State agency which has ratemaking authority with respect to the sale of electricity by any State-regulated electric utility.

(74) "Statement of general policy" means a written statement issued by ERA and published in the FEDERAL REGISTER in a form to be codified in section 500.

(75) "Synthetic fuel" means any synthetic fuel derived from an alternate fuel and does not include synthetic fuels derived from petroleum or natural gas.

(76) "Turbine or combustion turbine" means an electric power generating unit that is a combination of a rotary engine driven by a gas under pressure that is created by the combustion of any fuel, with an electric power generator driven by the engine.

(77) "Wetlands areas" means, for purposes of section 103(a)(12) of the Act, those geographical areas designated as wetlands areas by State or local environmental regulatory authorities, or in the absence of any such geographic designation, those areas that are inundated by surface or ground water with a frequency sufficient to support, and under normal circumstances does or would support, a prevalence of vegetation or aquatic life that requires saturated, seasonally saturated or tidally saturated soil conditions for growth or reproduction.

(b) *Electric region—Electric region groupings for reliability measurements with regard to the Powerplant and Industrial Fuel Use Act of 1978.* (1) The following is a list of electric regions for use with regard to the Powerplant and Industrial Fuel Use Act of 1978. The regions are identified by FERC (DOE) power supply areas as authorized by section 202(a) of the Federal Power Act except where noted. They will be reviewed annually by the Economic Regulatory Administration. Each grouping meets one or more of the following criteria:

(i) Existing centrally dispatched pools and hourly power brokers;

(ii) Systems with joint planning and construction agreements;

(iii). Systems with coordination agreements in the areas of—

(A) Generation reseve and system reliability criteria

(B) Capacity and energy exchange policies

(C) Maintenance scheduling

(D) Emergency procedures for dealing with capacity or fuel shortages;

(iv) Systems within the same National Electric Reliability Council (NERC) region with historical coordination policies.

The Power Supply Areas (PSA's), referred to in the definition of electric regions, were first defined by the Federal Power Commission in 1936. The most recent reference to them is given in the 1970 National Power Survey, Vol. I, Pg. I-3-16. In cases where an petitioner finds an ambiguity in a regional assignment he shall consult with ERA for an official determination.

(2) ELECTRIC REGION GROUPINGS

	DOE (FERC) power supply areas
(i) Allegheny Power System (APS).	7, except Duquesne Light Co.
(ii) American Electric Power System (AEP).	Entire AEP System.
(iii) New England Planning Pool (NEPOOL).	1, 2.
(iv) New York Planning Pool (NYPP).	3, 4.
(v) Pennsylvania-New Jersey-Maryland Interconnection (PJM).	5, 6.
(vi) Commonwealth Edison Co.	14.
(vii) Florida Coordination Group (FCG).	24.
(viii) Middle South Utilities.	25.
(ix) Southern Co.	22, 23.
(x) Gulf States Group	35.
(xi) Tennessee Valley Authority (TVA).	20.
(xii) Virginia-Carolina Group (VACAR).	18, 21.
(xiii) Central Area Power Coordination Group (CAPCO).	Cleveland Electric Illuminating Co., Toledo Edison Co., Ohio Edison Co., Duquesne Light Co.
(xiv) Cincinnati, Columbus, Dayton Group (CCD).	Cincinnati Gas & Electric Co., Columbus & Southern Ohio Electric Co., Dayton Power & Light Co.
(xv) Kentucky Group	19.
(xvi) Indiana Group	Indiana utilities except AEP.
(xvii) Illinois-Missouri Group/(ILLMO).	15, 40.
(xviii) Michigan Electric Coordinated Systems (MECS).	11.
(xix) Wisconsin-Upper Michigan Group (WUMS).	13.
(xx) Mid-Continent Area Power Pool (MAPP).	16, 17, 26, 27, 28.
(xxi) Missouri-Kansas Group (MOKAN).	29, 24.
(xxii) Oklahoma Group	33, 36.
(xxiii) Texas Interconnected Systems (TIS).	37, 38.
(xxiv) Rocky Mountain Power Pool (RMPP).	31, 32.
(xxv) Northwest Power Pool (NWPP).	30, 41, 42, 43, 44, 45.
(xxvi) Arizona-New Mexico Group.	39, 48 within Arizona.
(xxvii) Southern California-Nevada.	47, 48 in Nevada and California.
(xxviii) Northern California-Nevada.	46.
(xxix) Alaska	49.

(c) *Design capacity.* [Reserved for FERC promulgation of rules]

(d) *Natural gas.* "Natural gas" means any fuel consisting in whole or in part of natural gas; liquid petroleum gas; synthetic gas derived from petroleum or natural gas liquids; or any mixture of natural gas and synthetic gas, except as designated in subparagraph (1)(iv) below.

(1) Natural gas does not include—

(i) Natural gas which is commercially unmarketable either by reason of quality or quantity. Gas in commercially unmarketable when production from the well(s) does not provide adequate revenue to pay the operating expenses of production and distribution.

(ii) Natural gas produced by the user from a well acquired by the user prior to July 18, 1977 [1] the maximum efficient rate production rate of which is less than 250 million Btu's per day. For purposes of this subparagraph—

(A) "Produced by the user" means that the user must own a working (mineral) interest in the gas being produced from the subject well(s).

(B) "Maximum efficient production rate" means that rate at which production may be sustained without damage to the reservoir or the rate which may be sustained without damage to the ultimate recovery of gas through the well.

(iii) Synthetic gas, derived from an alternate fuel which is not mixed with natural gas; or

(iv) Natural gas for which the person proposing to use the gas certifies to ERA that:

(A) Such person owns, or is entitled to receive, at the point of manufacture, synthetic gas derived from coal or another alternate fuel;

(B) The Btu content of such synthetic gas is equal to or greater than the Btu content of the natural gas to be covered by this subsection by reason of such certification, plus the approximate Btu content of any natural gas consumed or lost in transportation;

(C) Such person delivers, or arranges for the delivery of, such synthetic gas to a pipeline or pipelines which by transport or displacement are capable of delivering such synthetic gas, mixed with natural gas, to such person; and

(D) All necessary permits, licenses, or approval from appropriate Federal, State, and local agencies (including Indian tribes) have been obtained for construction and operation of the facilities for the manufacture of the synthetic gas involved, except that for purposes of the prohibition under Section 201(2) of the Act against powerplants being constructed without the capability of using coal or the construction of such synthetic gas facilities shall be required under this subparagraph to be certified and documented.

(2) The application of subparagraph (1)(iv) with respect to the use of natural gas by any powerplant or major-fuel burning installation is conditioned on the person using such natural gas submitting to ERA a report not later than 1 year after certification is made under subparagraph (1)(iv) and annual thereafter, containing the following information:

(i) The source, amount, quality, and point of delivery to the pipeline of the synthetic gas to which subparagraph (1)(iv) applied during the annual period ending with the calendar month preceding the date of such report; and

(ii) The amount, quality, and point of delivery by the pipeline to such person of the natural gas covered by subparagraph (1)(iv) which is used by such person during such annual period.

(3) In the case of any boiler subject to a prohibition under section 401 of the Act, the preceding provisions of this subsection shall apply with respect to such boiler to the same extent and in the same manner as they apply in the case of major fuel-burning installations.

(e) *Petroleum.* "Petroleum" means crude oil and products delivered from crude oil, other than—

(1) Synthetic gas derived from crude oil and its derivatives;

(2) Liquid petroleum gas;

(3) Petroleum coke or waste gases from nonrefinery industrial operations; and

(4) Liquid, solid, or gaseous byproducts of refinery operations which are commercially unmarketable by reason of—

(i) Quality, where the byproducts, including components such as butane and propane which can be extracted from the byproducts, could not—

(A) Reasonably be expected to be used in nonrefinery operations; and

(B) Be produced and distributed at a price which would provide adequate revenue to pay the operating expenses of this production and distribution; or

(ii) Quantity, where—

(A) Insufficient or sporadic quantities of the byproduct, including components such as butane and propane

[1] NOTE.—July 18, 1977, is the date which the House of Representatives pased the provision introducing the maximum efficient production rate of 250 million Btu's per day into the proposed legislation.

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which can be extracted from the by-products, are produced to maintain an adequate and reliable supply to a potential user; and

(B) No dependable market exists for these byproducts, or components of the byproducts, which can support a price which will provide adequate revenue to pay the operating expenses of the production and distribution of the byproduct or its components.

PART 501—ADMINISTRATIVE PROCEDURES AND SANCTIONS

Subpart A—General Provisions

§ 501.1 Purpose and scope.

Part 501 establishes the procedures to be utilized and identifies the sanctions that are available in proceedings before the Department of Energy and the Economic Regulatory Administration under Parts 501-506 of this Chapter.

§ 501.2 Appearance before ERA.

(a) If you are authorized to appear and participate in any proceeding relating to an order, rule, or petition for exemption, you may appear personally, or a duly authorized representative may appear on your behalf.

(b) Any petition, request or complaint filed by your duly authorized representative, must state that he is your duly authorized representative.

(c) ERA may deny, temporarily or permanently, your privilege of participating in ERA proceedings, including oral presentation, if ERA finds that you—

(1) Have made false or misleading statements, either orally or in writing;

(2) Have filed false affidavits or other writings;

(3) Lack the specific authority to represent the person seeking an ERA action; or

(4) Have disrupted or are disrupting a proceeding.

§ 501.3 Filing of documents.

(a) You have filed a document (for example, any application, request, complaint, or petition) with ERA when it has been accepted for filing. ERA will return any petition or document which is deemed incomplete. All documents and exhibits which are accepted for filing become part of the ERA file and will not be returned.

(b) Documents to be filed should be sent by mail or hand delivered. Documents sent by wire or facsimile should be confirmed in writing, sent by mail, or hand delivered.

(c) ERA will consider documents received after regular business hours to have been filed on the next business day. Regular business hours are 8 a.m. to 4:30 p.m., Eastern time.

(d) Address documents: Economic Regulatory Administration, Department of Energy, Code FUA, 2000 M Street NW., Washington, D.C. 20461

§ 501.4 Computation of time.

(a) *Days.* (1) When ERA computes time in days under these regulations, ERA will not include the day of the act (or default) from which a period of time begins to run. ERA will include the last day of the period, unless it is a Saturday, Sunday or legal holiday, in which case the period runs until the end of the next weekday that is not a Federal legal holiday.

(2) ERA shall exclude Saturdays, Sundays or intervening Federal legal holidays from its computation of time when the period of time allowed or prescribed in the regulations is 7 days or less.

(b) *Additional time after service by mail.* Whenever DOE serves by mail an order, notice, interpretation or other document, specifying a time period for you to perform an act, refrain from performing an act, or commence a proceeding, you may add 3 days to the period prescribed.

§ 501.5 Extension of time.

ERA may provide for an extension of time to file if you can show good cause for the extension.

§ 501.6 Service.

(a) DOE will serve all orders, notices, interpretations or other documents which it is required to serve, personally or by certified mail unless otherwise provided in these regulations.

(b) ERA will consider service upon your duly authorized representative to be service upon you.

(c) Service by certified mail is effective upon mailing. ERA will consider official United States Postal receipts from certified mailing as prima facie evidence of service.

§ 501.7 General filing requirements.

(a) *Purpose and scope.* This section applies to all documents you file with DOE.

(b) *Signing.* (1) You or your duly authorized representative must sign and verify any petition, or other documents that are required to be signed by these regulations.

(2) If your authorized representative files any petition or other document, he must certify in the document that he is your duly authorized representative.

(c) *Labeling.* You should clearly label any petition or other document that you file with ERA, both on the document and on the outside of the envelope, according to the nature of the action involved (e.g., "Application for Exemption").

(d) *Obligation to supply information.* You are under a continuing obligation during any ERA proceeding in which you are involved to provide ERA with any new or newly discovered information that is relevant to that proceeding, including information relating to any document you file with any DOE or ERA office, relevant to the proceeding before ERA.

(e) *The same or related matters.* If you file a petition, or other document requesting ERA action you must state whether, to the best of your knowledge, the same or a related issue, act or transaction has been or presently is being considered or investigated by any DOE office, other Federal agency, department or instrumentality; or a State municipal agency. You must also state whether you, or someone acting for you, have made contact with any employee of DOE regarding the same issue, act or transaction. If you have made contact, you must provide ERA with the name of the person contacted; whether the contact was verbal or in writing; the nature and substance of the contact; and the date or dates of the contact.

(f) *Confidential information/number of copies to submit.* (1)(i) If an individual or firm wishes to claim that some or all of the information contained in any document or application filed with the DOE is exempt from the mandatory public disclosure requirements of the Freedom of Information Act (5 U.S.C. 552 (1970), as amended, or is information referred to in 18 U.S.C. 1905 (1970), or is otherwise exempt by law from public disclosure, and wishes to request that DOE not disclose this information, he must file together with the document two copies of the document from which he has deleted the information claimed to be confidential. These two non-confidential copies must be clearly labeled as "confidential information deleted" copies. In addition, the individual or firm which claims confidentiality must indicate in the original document that it is confidential or contains confidential information, and must file a concise statement of the justification for non-disclosure. If, for example, a claim is made that the information comes within the exemption in 5 U.S.C. 552(b)(4) for trade secrets and commercial or financial information or is covered by 18 U.S.C. 1905, there must be a concise statement specifying why the information is privileged or confidential.

(ii) If an individual or firm filing any document or application does not wish to claim confidentiality pursuant to subparagraph (1)(i) above he must submit in addition to the original, one copy of the document or application, except as provided elsewhere, and indicate on the original and the copy that there is nothing confidential in the document.

(2) DOE retains the right to make its own determination with regard to claim of confidentiality. In the event DOE makes a preliminary determination that certain of the information claimed to be confidential should be released to the public, it shall send notice to the individual submitting the document of DOE's preliminary decision to deny a claim of confidentiality in whole or in part, and provide five days for responding to that notice. In the event the DOE determines, after considering any response to its preliminary determination, to release information which an applicant continues to claim is confidential, the DOE will provide notice of such determination, no less than 48 hours prior to public disclosure of the information.

(3) Paragraph (f) does not apply where you submit a DOE or ERA form which contains its own instructions on requests for confidential treatment of information.

(g) *Separate applications, petitions or requests.* If you are requesting an ERA action, you should submit a separate document for each action sought, utilizing the forms provided in these regulations, even if the application, petition, or request pertains to the same or a related issue, act or transaction. For purposes of this subsection, each exemption requested is a request for a separate action.

§ 501.8 Filing fees.

If you are submitting a petition which requires a filing fee, a check payable to the order of the United States Treasurer must accompany the petition before it will be accepted for filing.

§ 501.9 Effective date of orders or rules.

When ERA issues a rule or order under the Act, the rule or order will be effective as against all persons having notice of the rule or order, 60 calendar days after publication in the FEDERAL REGISTER, unless it is stayed, modified, suspended, or rescinded. The rule or order is deemed to be issued on the date, on which it is signed by an authorized representative or ERA, unless the rule or order provides otherwise.

§ 501.10 Order of precedence.

If there is any conflict or inconsistency between the provisions of this part and any other provisions of Parts 2002-2010 of this Chapter, the provisions of this part will control with respect to procedure.

§ 501.11 Addresses for filing documents.

(a)(1) This section provides you with the addresses for all petitions, forms, written communication and other documents that you file.

(2) The DOE National Office has facilities for the receipt of transmissions via TWX and FAX to its offices at 12th and Pennsylvania Avenue NW., and 2000 M Street NW. (The FAX machines are 3M full duplex 4- or 6-minute (automatic) and Dex 4100 Graphic Science full duplex 3- or 6-minute (automatic).) For purposes of Parts 500, 501, 502, 503, 504, and 505 of this Chapter, all your transmissions should be to the machines at 2000 M Street NW., except those to be sent to the Office of General Counsel which you should transmit to the machines at 12th and Pennsylvania Avenue NW.

FAX NUMBERS

202-566-9304	(3M) (12th and Penn.)
202-566-9864	(Dex) (12th and Penn.)
202-254-6175	(3M) (2000 M Street)
202-254-6461	(3M) (2000 M Street)
202-254-8906	(Dex) (2000 M Street)

TWX NUMBERS

710-822-1912	(12th and Penn.)
710-822-9454	(2000 M Street)
710-822-9459	(2000 M Street)

(b) You should address documents to be filed with ERA as follows: Economic Regulatory Administration, Department of Energy, Code FUA, Attn: (name of office to receive document, if known, and/or labeling as specified in Section 501.7), Washington, D.C. 20461.

§ 501.12 ERA Public Information Office.

(a) DOE will make available at Room B-110, 2000 M Street NW., Washington, D.C., for public inspection and copying—

(1) Each decision and order along with a statement setting forth the relevant facts and legal basis of an order, with confidential information deleted, issued in response to each petition or request for a public hearing.

(2) The written comments received from interested persons in connection with issuance of prohibition orders, the modification or rescission of prohibition orders, and a verbatim transcript of any oral comments made at a public hearing held prior to issuance of an order;

(3) The comments received during each rulemaking proceeding, with a verbatim transcript of the public hearing, if such a public hearing was held; and

(4) Any other information required by statute to be made available for public inspection and copying, and any information that ERA determines should be made available to the public through display in the ERA Public Information Office.

§ 501.13 Appeal.

Except as provided otherwise, you may not administratively appeal any action covered by this Part.

Subpart B Filing Fees

§ 501.20 Purpose.

This subpart provides you with the procedures for submission of fees charged for services rendered by ERA in the evaluation of certain petitions.

§ 501.21 Scope.

You must pay a filing fee when you file a petition for—

(a) An exemption, either permanent or temporary;

(b) An extension of a temporary exemption; or

(c) A modification or rescission of a prohibition imposed by rule or order.

§ 501.22 General exceptions; waiver.

(a) You are not required to pay a filing fee when you file—

(1) A petition for a prohibition by rule or order;

(2) A petition for a stay;

(3) A petition for an interpretation;

(4) A petition for any type of rulemaking involving general policy or a declaratory order; or

(5) A petition or request for any other type of administrative action not specifically covered by § 501.2 (a), (b) and (c) above.

(b) ERA may, upon application by any interested person, or upon its own initiative, waive the requirements of this subpart if ERA determines such waiver is authorized by law and is in the public interest.

§ 501.23 Payment of fees.

(a) *Time of payment.* You must include with the petition the full amount of the fee. ERA will not accept and will return any petition which does not include the total fee amount.

(b) *Fees not refundable.* You will be charged a petition fee irrespective of ERA's disposition of the petition or your withdrawal of the petition. If your petition is returned as incomplete the fee will be returned.

(c) *Method of payment.* You must pay the fee by check, draft, or money order payable to the U.S. Treasury.

§ 501.24 Fee schedule.

This schedule applies to all petitions for exemption except those which request exemption for peakload powerplants. This proposed schedule would include multiple petitions regarding a number of units at a single site or requests for multiple types of exemption regarding any unit. ERA reserves the discretion to impose on a case-by-case basis higher fees where the size or complexity of a particular petition require exceptional expenditures of administrative time and resources. ERA also intends to review the adequacy of these fees during the initial implementation of this new regulatory program

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and, where appropriate, amend and refine them over time. DOE also reserves the right to reduce fees in response to a request made at a prepetition conference, at which evidence of overlapping costs may be presented.

Peakload exemption	$1,000
Solar mixtures exemption	5,000
Temporary or permanent exemption	25,000
Exemptions which require environmental analysis	85,000

Subpart C—Written Comments, Conferences and Public Hearings

§ 501.30 Purpose and scope.

This subpart establishes the procedures for requesting an ERA conference or a public hearing and for submitting written comments. Conferences and hearings shall be convened at the discretion of ERA consistent with requirements of the DEOA and FUA.

§ 501.31 Written comments.

ERA shall provide a period of 45 days for submission of written comments concerning a proposed prohibition rule or order or a petition for an exemption or permit. This period may be extended at the discretion of ERA. Written comments shall be filed in accordance with Subpart A of this part.

§ 501.32 Written comments and requests for an opportunity to be heard.

Within 21 days after the publication of a proposed prohibition rule or order or of a notice of the filing of a petition for an exemption or permit, any interested person may submit to ERA a written request for an opportunity to be heard at a conference or a public hearing. This time may be extended at the discretion of ERA.

§ 501.33 Conferences.

(a) Your request for a conference shall be in writing and include a showing as to why the conference will materially advance the proceeding. You must address the request to the ERA office that is conducting the proceeding.

(b) Actual notice of the time, place, and nature of the conference will be provided to the person who requested the conference. ERA will determine who may attend a conference, but a conference will generally include only the representative of the person requesting the conference, Government representatives, and other persons requested by the person requesting the conference.

(c) When ERA convenes a conference in accordance with this section, any person invited may present views as to the issue or issues involved. You may submit documentary evidence at the conference. Such evidence will be treated as if submitted in the regular course of a hearing. ERA will not normally have a transcript of the conference prepared but may do so at its discretion.

(d) Because a conference is solely for the exchange of views incident to a proceeding, there will be no formal reports or findings by ERA unless ERA in its discretion determines that it would be advisable. ERA will, however, record for the public file the occurrence of any conference.

§ 501.34 Public Hearings.

A public hearing under this subsection is not intended to be an adjudicatory hearing and the adjudicatory provisions of sections 554 and 556 of the Administrative Procedure Act (5 U.S.C. 554, 556) do not apply.

(a) *Hearing request and attendance.* (1) If you are an interested person you may request and ERA will convene a public hearing on any proposed prohibition rule or order, or on any petition for an exemption or permit. Any interested person may file a request to participate in the public hearing. A request for a hearing or to participate in a hearing shall be in writing and signed by you. It shall include a description of your interest in the issue or issues involved and of the anticipated content of your presentation. When applicable, you must also provide a statement explaining why you would be an appropriate spokesperson for the particular view expressed.

(2) Participants at the public hearing will be afforded the opportunity for presentation of data and material, oral and documentary. Participants at the public hearing shall identify all witnesses and provide a copy of each exhibit to be presented to ERA not later than 10 days prior to the hearing date.

(b) *Presiding Officer.* ERA will appoint a Presiding Officer to conduct the public hearing and a panel to assist him. An agenda will be prepared to provide, to the extent practicable, for the presentation of all relevant views by competent spokespersons.

(c) *Notice.* ERA will convene a public hearing only after publishing a notice in the FEDERAL REGISTER which states the time, place, and nature of the public hearing.

(d) *Hearing Rules*—(1) *Order of presentation*—(i) *Opening statements.* For a proposed prohibition by rule or order, ERA may make an opening statement and, for a petition, the petitioner may make an opening statement. The length of statements will be within the discretion of the presiding officer.

(ii) *Principal presentation.* Following opening statements for a proposed prohibition by rule or order, those persons subject to such proposed prohibition, or in the case of an exemption petition, the petitioner, may reoent his data and materials oral or documentary.

(iii) *Other presentations.* Following the principal presentation other persons, in the order of appearance in the hearing agenda, may present their data and materials, oral or documentary. Following presentations by all persons appearing on the hearing agenda, the Presiding Officer, solely within his discretion, may permit other persons to make presentations.

(iv) *Summary statements.* After all of the above presentations have been concluded, the participants in their order of appearance may make short and concise summary statements reviewing their positions.

(2) *Questioning.* At the public hearing ERA will provide any interested person with an opportunity to question—

(i) Other interested persons who make oral presentations;

(ii) Employees and contractors of the United States who have made written or oral presentations or who have participated in the development of the proposed rule or order or in the consideration of the petition for an exemption or permit; and

(iii) Experts and consultants who have provided information to any person who makes an oral presentation and which is contained in or referred to in such presentation. You may ask questions of those persons listed in paragraph (ii) by submitting the question in writing to the Presiding Officer. You are to submit questions to be asked of ERA employees or contractors 10 days in advance of the hearing. The Presiding Officer will determine if the question involves a material fact which is in dispute. He shall also restrict questioning which may be duplicative or not likely to result in a timely or effective resolution of the issues.

(3) *Witnesses.* The obtaining and use of witnesses is the responsibility of the participants. All witnesses will be present on their own volition, but any person appearing as a witness may be subject to questioning by any participant, the Presiding Officer, or the panel. The refusal of a witness to answer questions will be considered by ERA in determining the weight to be accorded the testimony of the witness. Witnesses will not be sworn.

(4) *Evidence.* The Presiding Officer shall have the authority to exclude data or materials which he deems to be improper or irrelevant. Formal rules of evidence shall not be applicable. Documentary material must be of a size consistent with ease of handling, transportation and filing and copies shall be provided for each participant. While large exhibits may be used

during the hearing, copies of such exhibits shall be provided in reduced size for submission as evidence. Two copies shall be furnished to the Presiding Officer and one copy to each participant. The Presiding Officer will be responsible for the exclusion of evidence which is irrelevant, immaterial or unduly repetitious.

(5) *Procedural Questions.* The Presiding Officer shall determine all procedural questions not governed by this subpart. The Presiding Officer shall have the authority to limit the number of witnesses to be used by any participant and to impose such time limitations as he shall deem reasonable.

(6) *Transcript.* ERA will have a verbatim transcript made of the public hearing. The transcript, together with any written comments submitted in the course of the proceeding, will be made available for public inspection and copying at the Freedom of Information Reading Room as provided in section 501.12.

(7) *ERA's Decision.* ERA's decision will be based on the public file, evidence presented at the public hearing together with the written comments submitted and other relevant information developed during the course of a proceeding.

§ 501.35 Public file.

(a) *Contents.* The public file in each case shall consist of the rule, order, or petition with supporting data and supplemental information, with the exception of material deemed by ERA to be exempt from disclosure under the Freedom of Information Act. In addition, the public file shall contain all data and information submitted by interested persons in favor of or in opposition to such rule, order or petition, excluding any material ERA deems to be exempt from disclosure under the Freedom of Information Act.

(b) *Availability.* The public file shall be available for inspection upon written request from any interested person. Documents in the public file may be removed only by ERA staff. Photocopies may be made available, on request. The charge for such copies shall be made in accordance with a written schedule.

(c) *Closing of the public file.* The public file shall remain open for 15 days following the public hearing during which time the interested persons may submit additional written statements.

Subpart D—Subpoenas; Witness Fees

§ 501.40 Issuance.

The Administrator of ERA, or his duly authorized agent, may sign and issue subpoenas either on his own initiative or upon your request, where your are a participant in that hearing. You must support your request for a subpoena by an adequate showing that the information you seek will materially advance the proceeding.

§ 501.41 Witness attendance; production of documents.

A subpoena may require the attendance of a witness, and/or the production of documentary or other tangible evidence in the possession or under the control of the person served, or both.

§ 501.42 Service.

(a) A subpoena may be served personally or by registered or certified mail. If a subpoena is served personally, it may only be served by a person who is not an interested person in the proceeding and is not less than 18 years of age. For purposes of this paragraph, you are an "interested person" if you are participating directly in the proceeding with respect to which the subpoena is issued.

(b) (1) ERA will serve a subpoena by delivering a copy of it to the person named in the subpoena.

(2) ERA will tender fees for one day's attendance and mileage, as specified in 501.43 of this subpart, with the subpoena. If ERA issues the subpoena at the request of any officer or agency of the United States, however, ERA will not tender the fees and mileage at the time of service.

(3) ERA will deliver a copy of the subpoena and any fees to a natural person by—

(i) Handing them to the person;

(ii) Leaving them at the person's office with the person in charge of the office;

(iii) Leaving them at the person's dwelling or the usual place of abode with a person of suitable age and discretion who resides there;

(iv) Mailing them to the person by registered mail, to his last known address; or

((v) Any method that provides the person with actual notice.

(4) ERA will deliver a copy of the subpoena and any fees to a person, other than a natural person, by—

(i) Handing them to a registered agent of the person;

(ii) Handing them to any officer, director, or agent in charge of any office of such person;

(iii) Mailing them to the last known address of any registered agent, officer, director, or agent in harge of any office of the person by registered or certified mail; or

(iv) Any method that provides any registered agent, officer, director, or agent in charge of any office of the person with actual notice and the fees are made available prior to the return date.

(5) If you have offices and operations in more then one jurisdiction, you may notify ERA in writing if you wish to designate one address to which any subpoena may be served.

(c) The ERA office with the responsibility for the proceeding in which the subpoena was issued will retain the original subpoena together with a certificate of service.

§ 501.43 Fees.

If you are subpoened by ERA, you will be paid the same fees and mileage as would be paid to a witness in a proceeding in the District Courts of the United States. The person requesting the subpoena will pay these fees and mileage, except that ERA may pay the fees and mileage when, in its judgment—

(1) The presence of the subpoenaed witness will materially advance the proceeding; and

(2) The person who requested the subpoena would suffer a serious hardship if required to pay the fees and mileage.

§ 501.44 Petition to quash or modify.

(a) If you are a person to whom a subpoena is directed, you may apply prior to the time specified for compliance in the subpoena, but not more than 10 days after the date of service of the subpoena, to the Administrator of ERA, to quash or modify the subpoena. You must include in your petition a brief statement of the reasons you rely on.

(b) The Administrator of ERA, or his duly authorized representative may—

(1) Summarily deny your application;

(2) Quash or modify the subpoena; or

(3) Condition the denial or grant of your petition upon the satisfaction of certain just and reasonable requirements.

(c) While the Administrator of ERA or his duly authorized representative is considering your petition to quash or modify a subpoena, you may petition for ERA to issue a stay of the obligation to comply with the subpoena in accordance with Subpart I.

§ 501.45 Enforcement.

If you refuse to obey a subpoena, ERA may request the Attorney General to seek the aid of the District Court of the United States for any district in which you are found to compel you, after notice, to appear and give testimony, and/or to appear and produce any subpoenaed documents before ERA.

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Subpart E—Prohibition Orders

§ 501.50 Purpose and scope.

Section 301 of the Act authorizes ERA to prohibit by rule or order the use of petroleum or natural gas, or both in existing facilities if certain findings are made. Section 202 of the Act authorizes ERA to prohibit by rule or order the use of natural gas or petroleum, or both, in new non-boiler major fuel burning installations.

(a) This subpart establishes the procedures for the filing by existing powerplants or installations and by new non-boiler MFBI's of petitions for a rule or order prohibiting the use of petroleum and/or natural gas either in toto or, in the case of existing facilities, in amounts in excess of the minimum amount necessary to maintain reliability of operation of the unit consistent with maintaining reasonable fuel efficiency of the resulting mixture.

(b) A proceeding for issuance of a prohibition by order or rule may be commenced by ERA on its initiative or in response to a petition.

§ 501.51 What to file.

(a) You must file either a "Petition for a Prohibition Order" or "Petition for Prohibition by Rule", as appropriate, which should be clearly labeled as such. Your petition must comply with the general filing requirements stated in § 501.7 in addition to the requirements stated in this subpart, must be in writing and must be signed by a responsible authorized official.

(b) You may petition for a prohibition by order for an individual powerplant or installation or for combinations thereof at a single site. The petition should specify the applicable units. Petitions may be made for a prohibition by rule covering units which are not at the same site, but such rule may only cover individual powerplants or MFBI's and not combinations thereof.

(c) If you wish to claim confidential treatment for any information contained in the petition or other documents submitted under this subpart, you must comply with the procedures set out in section 501.7.

§ 501.53 Where to file.

Petitions shall be filed at the address provided in § 501.11.

§ 501.52 Notice.

ERA shall publish your petition and a proposed order or rule in the FEDERAL REGISTER and shall serve a copy on the owner of each powerplant or installation that would be affected by the proposed rule or order. The notice shall describe the proposed action, state the content of the proposed order or rule and provide a period of no less than 45 days from the date of its publication in which interested persons may file written data, views or arguments, and request a public hearing in accordance with the provisions governing hearings set out in this part. In the case of a rule, the notice shall also contain a detailed statement of any special circumstances or characteristics required to be taken into account in prescribing such rule. A copy shall be transmitted to the operator of any powerplant or MFBI required to be specifically identified in such rule.

§ 501.54 Contents.

(a) You shall state the type of order or rule requested. You shall make a full and complete statement of all relevant facts pertaining to the subjects of the petition and to the ERA action sought. You shall include a full discussion of the pertinent provisions and relevant facts contained in the documents submitted with the petition. You shall include the following information for all units to be covered by the rule or order:

(1) *Prohibitions on petroleum and/or natural gas use for existing powerplants or installations.* (i) Description of the facility, including, but not limited to, location, electric power and/or energy output, fuels utilized and rate of use thereof, and, in the case of a powerplant, the identification of the electric power dispatching systems with which the powerplant is interconnected.

(ii) Information regarding the powerplant or installation's capability to burn alternate fuels and an identification and description of any plant equipment or facilities necessary to the burning of an alternate fuel that you would have to acquire or refurbish to render the powerplant or installation fully capable of burning an alternate fuel.

(iii) Identify the type of fuel you intend to use; the source from which you now or will obtain the fuel; and the means you intend to use to transport the fuel.

(iv) Identify the maximum and minimum characteristics of other alternate fuels which are compatible with the facility's design tolerances; the source from which you could obtain such fuel; and the means of transporting the fuel to the facility.

(v) Identify any anticipated acquisition or refurbishing of alternate fuel handling and firing equipment (such as unloaders, conveyors, crushers, pulverizers, scales, burners, feeders, air heaters, soot blowers, instrumentation and controls, and waste disposal, that would be required to institute alternate fuel burning capability. Also include current copies of detailed plot plans and elevation drawings that are relevant to alternate fuel burning, and any information relevant to the adequacy of storage facilities for the alternate fuel.

(vi) Identify the expenditures associated with the procurement of the above new equipment or the refurbishing of existing equipment needed to institute alternate fuel firing capability, stating this information on a component by component basis, and also provide an estimate of the operating and maintenance expenditure differential (including the fuel expenditure differential) associated with the necessary changes.

(vii) Estimate any changes in capacity foreseen as a result of fuel conversion. Include any nameplate ratings assigned by the boiler manufacturer, and net dependable rating in the case of a powerplant. Describe the methodology employed in estimating changes in rated capacity.

(viii) Provide an estimate of the lead time necessary to institute alternate fuel firing capability (including the time associated with actions required to meet air pollution control regulations). Specify the estimated time for the acquisition or

(ix) Identify any State or local laws or policies that might limit the utilization of alternate fuel by the applicant.

(x) With respect to powerplants, information regarding the potential for the impairment of the reliability of service, if any, in the area served by the powerplant were a prohibition rule or order to be issued.

(xi) An estimate of the anticipated effect that the denial of the petition would have on your operation.

(xii) Any other information that you believe is pertinent to ERA's evaluation of the petition.

(xiii) A certification by your chief executive officer or his duly authorized representative of the accuracy of the information stated in the petition.

(2) *Prohibitions on petroleum and/or natural gas use by new non-boiler MFBI's.* (i) Description of the facility, including but not limited to, type of facility, location, energy output, fuels to be utilized and rate of use thereof, uses to be made of energy output (list Standard Industrial Code classification of products produced using the energy output of the facility), and the state of design and construction that the installation has reached at the time of the petition.

(ii) A description of the modifications to the design and construction of the installation, if any, required to render it capable of using alternate fuel as its primary energy source, if the capability currently is not planned.

(iii) The identification of the type of alternate fuel that is or will be the installation's design specification fuel, the source from which the petitioner anticipates that it will be able to obtain the fuel and the supply's susceptibility to interruption and the method by which the fuel would be transported to the installation.

(iv) An identification and description of any contractual commitments for the design and/or construction of the installation and an analysis of the impact, if any, of the requirement that the installation be prohibited from using petroleum or natural gas as its primary energy source.

(v) An estimate of the anticipated effect that denial of the petition would have on your proposed operation.

(vi) Any other information that you believe would be pertinent to ERA's evaluation of the petition.

(vii) A certification by your chief executive officer or his duly authorized representative of the accuracy of the information stated in the petition.

(3) *Conference.* You may request a conference regarding the petition. If your request is not made at the time the petition is filed, you must make it as soon after as possible. Your request and ERA's determination concerning it shall be made in accordance with the subpart concerning conferences and public hearings.

§ 501.55 ERA evaluation.

(a) *Processing.* (1) ERA may investigate any statement in your petition or any other document submitted to it and may utilize in its evaluation any relevant facts obtained by such investigation. ERA may solicit or accept submissions from third persons relevant to your petition or other document. You will be afforded an opportunity to respond to all relevant third person submissions.

(2) ERA may conduct its own investigation and consider any other source of information in evaluating a petition or other document. ERA on its initiative may convene a conference, if, in its discretion, it considers that such conference will advance its evaluation of the petition.

(3) ERA may dismiss the petition without prejudice if it determines that there is not sufficient information upon which to base a decision, and if upon request the necessary additional information is not submitted by you.

(b) *Criteria.* ERA's decision with respect to a petition and the decision with respect to an ERA initiated proceeding shall depend on whether ERA can make the required findings.

§ 501.56 Public participation.

(a) Prior to the issuance of a rule or order, ERA shall publish a proposal to issue the rule or order in the FEDERAL REGISTER, together with a statement of the reasons for the rule or order.

(b) ERA shall take the actions described in 10 CFR 208 dealing with consideration of environmental impact.

(c) ERA shall provide an opportunity to petition for an exemption and shall process the petition in accordance with Subpart E.

(d) ERA shall provide all interested persons an opportunity to present oral data, views and arguments at a public hearing held in accordance with Subpart M.

(e) A copy of the proposed rule or order shall be transmitted by the Secretary to the Administrator of the Environmental Protection Agency and the Secretary shall request the agency to comment thereon within the period provided to the public. In any case, the Administrator of the Environmental Protection Agency shall be afforded the same opportunity to comment and question as is provided other interested persons.

(f) A copy of the proposed rule or order, if to an installation, shall be transmitted by the Secretary to the Federal Trade Commission and the Secretary shall request the Commission to comment thereon within the period provided to the public. In any case, the Federal Trade Commission shall be afforded the same opportunity to comment and question as is provided other interested persons.

§ 501.57 Decision and order.

(a) After consideration of a petition and other relevant information received or obtained during the proceeding, ERA may issue either a Prohibition Order or Rule or an order denying the petition for a rule or order.

(b) ERA shall include in the order a written statement of the pertinent facts, a statement of the legal basis upon which the order is issued, and, when a prohibition is issued, a recitation of the conclusions regarding the findings to be made by ERA and a summary of the rationale for each. The order shall provide that the prohibitions stated therein shall become effective on the date stated in the order.

(c) Enclosed with the order may be a schedule of events that should take place by a stated date (compliance schedule) to insure that any affected unit will be able to comply with the prohibitions stated in the order by the date stated. The compliance schedule may require actions by the affected unit 60 days subsequent to service of rule or order.

(d) ERA shall serve a copy of the order upon the petitioner or, if the action was initiated by ERA, upon the owner and operator of the affected unit(s) and upon any other person who participated in the proceeding by filing written comments or making oral presentation. Notice of issuance of the order shall be published in the FEDERAL REGISTER.

Subpart F—Exemptions

§ 501.60 Purpose and scope.

(a) If you own or control—

(1) A new powerplant or installation consisting of a boiler, this subpart provides you with the procedures for filing a petition requesting a temporary or permanent exemption under, respectively, sections 211 and 212 of FUA;

(2) A new installation other than a boiler this subpart provides you with the procedures for filing a petition requesting a temporary or permanent exemption under respectively, sections 211 and 212 of FUA, or for filing a petition which demonstrates that you would have been granted an exemption from a prohibition under section 202(b) of FUA;

(3) An existing powerplant or installation this subpart provides you with the procedures for filing a petition for temporary or permanent exemption under, respectively, sections 311 and 312 of FUA, or for filing of a petition which demonstrates that you would have been granted an exemption from a prohibition under section 303(a) of FUA;

(4) A new powerplant or installation this subpart provides you with the procedures for filing a petition requesting extension of a temporary exemption granted under section 211 of FUA for—

(i) Lack of alternate fuel supply, site limitations or environmental requirements;

(ii) Future use of synthetic fuels;

(iii) Public interest; or

(iv) Use of petroleum by certain installations.

(5) An existing powerplant or installation this subpart provides you with the procedures for filing a petition for extension of a temporary exemption granted under section 311 of FUA for—

(i) Lack of alternate fuel supply, site limitations, or environmental requirements;

(ii) Future use of synthetic fuels;

(iii) Use of innovative technologies;

(iv) Units to be retired;

(v) Public interest;

(vi) Peakload powerplants; or

(vii) Powerplants where necessary to maintain reliability of service; and

(b) If you are a petitioner for an exemption or extension of exemption under this subpart you must comply with the general filing requirements stated in Subpart A, in addition to the requirements stated in this subpart.

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§ 501.61 Labeling of petition.

(a) If you are filing for a temporary exemption for a new or existing powerplant or installation under this subpart you must file a written "Petition for Temporary Exemption" which should be clearly labeled as such, both on the petition and on the outside of the envelope in which the petition is transmitted, and signed by the person filing the petition.

(b) If you are filing for a permanent exemption for a new or existing powerplant or installation under this subpart you must file a written "Petition for Permanent Exemption" which should be clearly labeled as such, both on the petition and on the outside of the envelope in which the petition is transmitted, and signed by the person filing the petition.

(c) If you are filing for extension of a temporary exemption for a new or existing powerplant or installation under this subpart you must file a written "Petition for Extension (or Renewal) of Temporary Exemption" which should be clearly labeled as such, both on the petition and on the outside of the envelope in which the petition is transmitted, and signed by the person filing the petition.

§ 501.62 What to file.

If you are filing a petition under this subpart you must send to ERA your petition, meeting the requirements of this subpart and of Parts 502 and 503 or 505 of this Title including;

(a) A transmittal letter;

(b) A Fuels Decision Report, as required by Part 502; and

(c) The appropriate exemption forms

§ 501.63 Certification.

(a) (1) If you are a corporation filing a petition under this subpart, in addition to any affidavits and certifications required under Parts 500, 501, 502, 503, 504 or 505 of this Title, your chief executive officer, and your chairman of the board shall certify in writing to the truth of all allegations in your petition.

(2) Where you are a wholly-owned subsidiary filing a petition under this subpart, then the requirements of this subsection will apply both to you and to your parent corporation.

(b) If you are other than a corporation, and you file a petition under this subpart in addition to any affidavits and certifications required under Parts 500, 501, 502, 503, 504, and 505 of this Title, your chief managerial officer shall attest in writing to the truth of all allegations in your petition.

(c) You must include the attestations required under this section, together with any petition you file under this subpart.

§ 501.64 Fees.

If you file a petition for exemption or extension under this subpart, you must include any fees required under Subpart B of this Part, together with your petition, unless the fees have been waived by ERA under Subpart B of this Part.

§ 501.65 Where to file.

You must file any petition for exemption or extension of exemption under this subpart with the DOE National Office at the address provided in Section 501.11.

§ 501.66 When to file.

(a) You may file any petition for exemption under this subpart, at any time after May 8, 1979, except for petitions for exemption filed under Section 902 of FUA.

(b) You may file any petition for exemption under Section 902 of FUA at any time after November 9, 1978.

(c) You may file any petition for extension of a temporary exemption under this subpart, at any time during the period of effectiveness of the initial temporary exemption.

§ 501.67 Contents.

(a) In addition to the specific requirements contained in Parts 500, 501, 502, 503, 504, and 505 of this Title, you must include in any petition for exemption or for extension of a temporary exemption under this subpart—

(1) A complete description of the exemption or exemptions you seek;

(2) A complete statement of all relevant facts pertaining to the circumstances, acts or transactions that are the subject of your petition, and to the ERA action you seek; and

(3) A full description of the pertinent provision and relevant facts contained in any relevant documents.

(b) You must submit copies of all proposed contracts, agreements, leases, instruments, and other documents determined to be relevant to any petition for exemption or extension of exemption under this subpart to ERA upon its request.

(c) You must submit your petition in the form prescribed in Appendix (to be published at a future date) to these regulations.

(d) If you wish to claim confidential treatment for any information contained in your petition or other document submitted under this subpart, you must comply with the procedures in Section 501.7.

§ 501.68 Adequacy of petition.

(a) ERA will in a timely manner inform you by letter, when ERA determines that your petition for exemption is adequate for filing.

(b) ERA may invite you to participate in a conference to discuss any defects in your petition for exemption or extension where your petition fails to contain necessary, required, or requested information and documentation, or otherwise fails to comply with the requirements of this subpart, or Parts 502 and 503 or 505 of this Title, and where this failure affects the adequacy of your petition under this subpart and Parts 502 and 503 or 505 of this Title.

(c) If you fail to submit necessary or requested information and documentation, in order to perfect your petition, ERA may return your petition without prejudice.

§ 501.69 Notice of petition.

(a) When ERA receives your properly filed petition under this subpart, it will publish a notice in the FEDERAL REGISTER. ERA will include in this notice a summary statement of your reasons for requesting an exemption, or an extension of a temporary exemption. ERA will provide in the notice a period of no less than 45 days for interested persons to file written data, views or arguments.

(b) When ERA receives your porperly filed petition, it will notify appropriate State agencies having primary authority to permit or regulate the construction or operation of a powerplant, or, where appropriate, an installation.

(c) ERA will transmit a copy of your petition to—

(1) The Administrator of the Environmental Protection Agency, and

(2) In the case of installations, the Federal Trade Commission.

(3) These agencies will have the same opportunity for comment that is provided other interested persons under this section.

§ 501.70 Hearing.

(a) Any interested person, within 15 days after publication of your petition under section 501.69, may request a hearing in order to present oral data, views and arguments concerning your petition.

(b) Either on its own initiative or upon receipt of a request for a hearing under this section, ERA will schedule a public hearing and will publish notice of the hearing in the FEDERAL REGISTER.

(c) ERA will hold any public hearing under this section in accordance with the provisions of Subpart C of this Part.

§ 501.71 ERA evaluation.

(a) *Processing.* (1) ERA may initiate an investigation of any statement in your petition or any other document submitted to it. ERA may utilize in its evaluation any relevant facts obtained by this investigation. ERA may request or accept submissions from third

persons relevant to your petition or other document, in which case you shall have an opportunity to respond to all relevant third person submissions. In evaluating your petition, ERA may conduct its own investigation and consider any other source of information. ERA on its initiative may convene a conference, if, in its discretion, it considers that a conference will advance its evaluation of your petition.

(2) If ERA determines that there is insufficient information upon which to base a decision and if, upon request, you fail to submit necessary additional information, ERA may dismiss your petition without prejudice.

(b) *Criteria.* ERA's decision on your petition will depend upon whether you have met your burden of proving the necessary elements of the exemption or extension you seek, as provided for in Parts 502, 503, and 504 of this Title.

§ 501.72 Retained authority.

(a) ERA may redesignate a petition for an exemption from one kind of exemption to another or from a permanent exemption to a temporary exemption where pertinent factors and criteria relating to the petition indicate an exemption other than that chosen by you to be appropriate.

(b) ERA may adopt such different procedures as it deems necessary and reasonable in acting upon any particular petition.

§ 501.73 Decision and order.

(a)(1) ERA will issue an order either granting or denying your petition within 6 months after the end of the period for public comment applicable to your petition unless that period is extended by ERA.

(2) The period for public comment shall end—

(i) 45 days after the conclusion of a hearing held under Section 501.70 of this subpart; or

(ii) Where no hearing is held, at the expiration of the 45-day written comment period provided for in Section 501.69 of this subpart.

(3) ERA may on its initiative extend the period for public comment to a date certain by publishing notice in the FEDERAL REGISTER, including a statement of the reasons for the extension.

(b)(1) ERA will serve a copy of the order granting or denying a petition for exemption upon you, and upon any other person who participated in the proceeding by filing written comments or making oral presentation.

(2) ERA will publish any order granting or denying your petition under this subpart in the FEDERAL REGISTER together with a statement of the reasons for the grant or denial.

(c)(1) ERA will base any order granting or denying a petition for exemption upon consideration of the whole record, or those parts of the whole record cited by a party and supported by and in accordance with reliable, probative and substantial evidence.

(2) ERA will include in an order granting or denying a petition for exemption under this subpart a written statement of the pertinent facts and a statement of the legal basis upon which the order is issued.

(d)(1) ERA shall include in any order granting a petition for exemption, except for an order granting an exemption under section 401 of FUA, such terms and conditions as ERA determines appropriate, including terms and conditions requiring the use of effective fuel conservation measures which are practicable and consistent with the purposes of FUA.

(2) ERA will design any terms and conditions included in any temporary exemption issued or extended under Sections 211 and 311 of FUA, to insure that upon expiration of the exemption, the persons and powerplant or installation covered by the exemption will comply with the applicable prohibitions under FUA.

(e) Prior to the issuance of a permanent final order granting or denying a petition for exemption, ERA will perform an analysis of the environmental impact of the issuance of such order in accordance with applicable Department regulations implementing the National Environmental Policy Act of 1969.

§ 501.74 Judicial review.

If you are aggrieved by any order issued by ERA under this subpart, within 60 days of publication in the FEDERAL REGISTER of the order, you may file a petition for judicial review. You must file your petition with the United States Court of Appeals for the Circuit wherein you reside, or have your principal place of business.

Subpart H—Requests for Modification and Rescission of Orders and Rules Issued Under FUA

§ 501.100 Purpose and scope.

(a) If you own or operate a powerplant or installation which has received a prohibition rule or order under FUA, this subpart provides you with the procedures for filing a petition for modification or rescission of the order of rule.

(b) ERA may commence a proceeding under this subpart in response to your petition or upon its initiative. A proceeding commenced on ERA's initiative may be commenced by ERA at any time afte ERA has issued a prohibition order or rule under FUA. Sections 501.104, 501.106, 501.107, and 501.109 of this subpart shall be applicable to the proceeding regardless of the manner in which the proceeding was initiated. Other sections of this subpart apply only to a proceeding commenced in response to a petition.

§ 501.101 What to file.

(a) You must file a "Petition for Modification (or Rescission) of Prohibition Order or Rule (FUA)" which should be clearly labelled as such, using the applicable terms, both on the petition and on the outside of the envelope in which the petition is transmitted. The petition must be in writing and signed by you. You must comply with the general filing requirements stated in § 501.7 in addition to the requirements stated in this subpart.

(b) If you wish to claim confidential treatment for any information contained in the petition or other documents submitted under this subpart, you must comply with the procedures stated in § 501.7(f).

§ 501.102 Where to file.

You are to file the petition with the DOE National Office at the address provided in § 501.11.

§ 501.103 When to file.

You may file a petition under this subpart based on significantly changed circumstances at any time after the order is final.

§ 501.104 Notice.

(a) You must send by United States mail a copy of the petition and any subsequent amendments or other documents relating to the petition, from which confidential information has been deleted in accordance with § 501.7 (f), to each person who is reasonably ascertainable as a person who will be aggrieved by the ERA action you seek, including persons who participated in the prior proceeding. You must include with the copy of the petition a statement that the person may, within 10 days, submit comments regarding the petition to the ERA office with which the petition was filed. You shall include with the petition filed with ERA a certification to ERA that you have complied with the requirements of this paragraph and shall include the names and addresses of each person to whom a copy fo the petition was sent.

(b) If you determine that compliance with paragraph (a) would be impracticable, you must:

(1) Comply with the requirements of paragraph (a) with regard to those persons whom it is reasonable and possible to notify; and

(2) Include with the petition a description of the persons or class or

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classes of persons to whom notice was not sent.

(3) ERA may require you to provide additional or alternative notice, or may determine that the notice required by paragraph (a) of this section is not impracticable, or may determine that notice should be published in the FEDERAL REGISTER.

(c)(1) ERA will serve notice on any other person readily identifiable by ERA as one who will be aggrieved by the ERA action sought and may serve notice on any other person that written comments regarding the petition will be accepted if filed within 10 days of service of the notice.

(2) If ERA on its initiative commences a proceeding for the modification or rescission of an order it will give notice, either by service of a written notice or by verbal communication, which communication must be promptly confirmed in writing, to each person who was served the order that ERA proposes to modify or rescind. ERA will give a reasonable period of time for each person notified to file a written response or give a verbal communication, if promptly confirmed in writing.

(d) If you are submitting written comments to ERA with respect to a petition filed under this subpart you must send a copy of the comments, or a copy form which confidential information has been deleted in accordance with § 501.7(f), to the petitioner. You must certify to ERA that you have complied with the requirements of this paragraph. ERA may notify other persons participating in the proceeding of the comments and provide an opportunity for the persons to respond.

§ 501.105 Contents.

(a) (1) Your petition must contain a complete statement of all relevant facts pertaining to the circumstances, acts or transactions that are the subject of your petition and to the ERA action you seek. The facts must include the names and addresses of all affected persons (if reasonably ascertainable); a description of the acts or transactions that would be affected by the requested action; and a full description of the pertinent provisions and relevant facts contained in any relevant documents. You are also to submit, upon request, copies of all contracts, agreements, leases, instruments, and other documents relevant to your petition. You must include with your petition a copy of the prohibition order or rule of which modification or rescission is sought.

(2) Your petition must fully describe the events, acts, or transactions that comprise the significantly changed circumstances as defined in § 501.106, upon which your petition is based. You must state why, if the significantly changed circumstances are new or newly discovered facts, the facts were not or could not have been presented during the prior proceeding.

(b) You must state whether you request or intend to request that there be a conference regarding your petition. If you did not make a request at the time the petition was filed you must make it as soon thereafter as possible, to insure that the conference is held when it will be most beneficial. Your request and ERA's determination regarding it will be made in accordance with Subpart C of this part, which determination is in ERA's discretion.

(c) You must include in the petition a discussion of all relevant authorities, including but not limited to, DOE or EPA rulings, regulations, interpretations, and decisions on appeals relied upon to support the action you seek.

§ 501.106 ERA evaluation.

(a) *Processing.* (1) ERA may initiate an investigation of any statement in your petition or any other document submitted to it and may utilize in its evaluation any relevant facts obtained by the investigation. ERA may solicit or accept submissions from third persons relevant to any petition under this subpart. You will be afforded an opportunity to respond to all relevant third person submissions. The affected powerplant, installation, boiler or nonboiler's opportunity to respond to written comments or oral presentations in response to a notice of intention to issue a modification or rescission of an order shall be in accordance with the notice. ERA may conduct its own investigation and consider any other source of information in evaluating your petition. ERA may on its own initiative convene a conference, if, in its discretion, it considers that a conference will advance its evaluation of the petition.

(2) ERA may dismiss your petition without prejudice if it determines that there is insufficient information upon which to base a decision and if upon request you did not submit the necessary additional information.

(b) *Criteria.* ERA's decision will be based on a determination that there are significantly changed circumstances. For purposes of this paragraph, the term "significantly changed circumstances" mean—

(1) Your discovery of material facts that were not known or could not have been known to you at the time of the proceeding and action upon which your petition is based;

(2) Your discovery of a law, regulation, interpretation, ruling, order or decision on appeal that was in effect at the time of the proceeding upon which the petition or order is based and which, if it had been made known to ERA would have been relevant to the proceeding and would have substantially altered the outcome; or

(3) There has been a substantial change in the facts or circumstances upon which an outstanding and continuing prohibition order was based, which change occurred during the interval between issuance of the order and the date of filing of the petition under this subpart, and was caused by forces or circumstances beyond your control.

§ 501.107 Decision and order.

(a) ERA shall issue an appropriate order after considering your petition and other relevant information received during the proceeding.

(b) ERA will either modify or rescind the prohibition order or rule or deny your petition for modification or rescission and will include a written statement setting forth the pertinent facts and legal basis of the order.

(c) ERA will serve the order upon you, the petitioner, or, if the action was initiated by ERA, upon the affected powerplant or installation. ERA will publish in the FEDERAL REGISTER a notice of issuance of an order substantially modifying or rescinding a prohibition order or rule.

§ 501.108 Timeliness.

(a) ERA will take action on a petition for modification or rescission of a prohibition order within 90 days of filing.

(b) ERA will issue an order granting or denying the petition within 150 days of the filing of your petition.

(c) For purposes of this section, the term "action" includes service of a "Notice of Intention to Modify (or Rescind) Prohibition Order" on the petitioner.

Subpart I—Requests for Stay

§ 501.120 Purpose and scope.

(a) This subpart provides you with the procedures for the petition for and granting of a stay by DOE. You are not, however, to use this subpart for the mandatory stays provided for in sections 202(b) and 301(a) of FUA.

(b) Your application for stay under this subpart will only be considered—

(1) Incident to a petition for modification or rescission of an order; or

(2) Pending judicial review.

(c) You must comply with all final DOE orders, regulations, rulings, and generally applicable requirements unless a petition for a stay is granted.

§ 501.121 What to file.

(a) You must file a "Petition for Stay (FUA)" which should be clearly labeled as such both on the petition and on the outside of the envelope in which the petition is transmitted. The petition must be in writing and must be signed by you. You shall comply with the general filing requirements stated in § 501.7, in addition to the requirements stated in this subpart.

(b) If you wish to claim confidential treatment for any information contained in the petition or other documents submitted under this subpart, you are to use the procedures set out in § 501.7(f)

§ 501.122 Where to file.

You are to file your petition for stay of an order under FUA at the address provided in § 501.11.

§ 501.123 Notice.

DOE will publish notice in the FEDERAL REGISTER of receipt of an application for stay under this subpart.

§ 501.124 Contents.

(a) You shall include in your petition a full and complete statement of all relevant facts pertaining to the act or transaction that is the subject of the petition and to the DOE action sought. The facts shall include, but not be limited to, criteria listed below in § 501.125(b).

(b) You may request a conference regarding the application. If your request is not made at the time the application is filed, you must make it as soon thereafter as possible. Your request and DOE's determination regarding it will be made in accordance with Subpart C of this part.

§ 501.125 DOE evaluation.

(a) *Processing.* (1) DOE may investigate any statement in your petition or any other document submitted to it and may utilize in its evaluation any relevant facts obtained by the investigation. DOE may solicit or accept submission from third persons relevant to your petition or other document. You will be afforded an opportunity to respond to all relevant third person submissions. DOE may conduct its own investigation and consider any other source of information in evaluating a petition or other document. DOE on its initiative may convene a conference, if, in its discretion, it considers that the conference will advance its evaluation of the petition.

(2) DOE may dismiss the petition without prejudice if it determines that there is not sufficient information upon which to base a decision and if upon request the necessary additional information is not submitted by you.

(3) DOE will process petitions for stay as expeditiously as possible. DOE will grant or deny the petition for stay within 10 business days after receipt of the petition whenever it is administratively feasible to do so.

(b) *Criteria.* DOE will grant a stay if you show that there is a likelihood of success on the merits and you also show one or more of the following:

(1) That irreparable injury will result in the event that the stay is denied;

(2) That denial of the stay will result in a more immediate serious hardship, or gross inequity to you than to the other persons affected by the proceeding;

(3) That it would be desirable for public policy or other reasons to preserve the *status quo ante* pending a decision on the merits of the appeal, petition, modification or rescission; or

(4) That it is impossible for you to fulfill the requirements of the original order.

§ 501.126 Decision and order.

(a) DOE must issue an order granting or denying the petition upon consideration of the petition and other relevant information received or obtained during the proceeding.

(b) DOE will include in the order a written statement setting forth the relevant facts and the basis of the decision, including any terms and conditions of the stay.

Subpart J—Requests for Interpretation

§ 501.130 Purpose and scope.

This subpart provides you with the procedures you must use to file a formal request for an interpretation and with the procedures DOE will use to consider your request. Any response, whether verbal or written, to a general inquiry or to other than a formal written request for interpretation filed with the General Counsel or his delegate is not an interpretation and merely provides general information.

§ 501.131 What to file.

(a) If you are filing under this subpart you must file a "Request for Interpretation (FUA)" which should be clearly labeled as such both on the request and on the outside of the envelope in which the request is transmitted. You must sign your request and it must be in writing. Your request must also comply with the general filing requirements stated in § 501.7.

(b) If you wish to claim confidential treatment for any information contained in the request or other documents submitted under this subpart, the procedures set out in § 501.7(f) will apply.

§ 501.132 Where to file.

You must file a request for interpretation with the DOE General Counsel or his delegate at the address provided in § 501.11.

§ 501.133 Notice.

(a) You must send by U.S. mail a copy of your request and any subsequent amendments or other documents relating to the request, from which confidential information has been deleted in accordance with § 501.7(f) to each person who is reasonably ascertainable as a person who will be aggrieved by the DOE action you seek. You must include with the copy of the request a statement that the person may, within 10 days, submit comments regarding the request to the General Counsel or his delegate with whom the request was filed. You must include with the request filed with DOE a certification to DOE that you have complied with the requirements of this paragraph and you must also include the names and addresses of each person to whom a copy of the request was sent.

(b) If you determine that compliance with paragraph (a) would be impracticable, you must:

(1) Comply with the requirements of paragraph (a) with regard to those persons whom it is reasonable and possible to notify; and

(2) Include with the request a description of the persons or class or classes or persons to whom notice was not sent.

(3) DOE may require you to provide additional or alternative notice, may determine that the notice required by paragraph (a) of this section is not impracticable, or may determine that notice should be published in the FEDERAL REGISTER.

(c) DOE will serve notice on any other person readily identifiable by DOE as one who will be aggrieved by the DOE action sought and may serve notice on any other person that written comments regarding the petition will be accepted if filed within 10 days of service of the notice.

(d) If you are submitting written comments to DOE with respect to a request filed under this subpart you must send a copy of the comments, or a copy from which confidential information has been deleted in accordance with § 501.7(f), to the requestor. You must certify to DOE that you have complied with the requirements of this paragraph. DOE may notify other persons participating in the proceeding of your comments and provide an opportunity for those persons to respond.

§ 501.134 Contents.

(a) You must include in the request a complete statement of all relevant facts pertaining to the circumstances, acts or transactions that are the subject of your request and to the DOE action you seek. The facts must include the names and addresses of all affected persons (if reasonably ascer-

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tainable) and a full discussion of the pertinent provisions and relevant facts contained in the documents submitted with the request. You must submit copies of all relevant contracts, agreements, leases, instruments, and other documents with the request. When your request pertains to only one step in a larger integrated transaction, you must also submit the facts, circumstances, and other relevant information pertaining to the entire transaction.

(b) You must include in your request a discussion of all relevant authorities, including, but not limited to, DOE and EPA rulings, regulations, interpretations, and decisions on appeals relied upon to support the particular interpretation you seek.

§ 501.135 DOE evaluation.

(a) *Processing.* (1) DOE may initiate an investigation of any statement in a request or any other document submitted to it under this subpart, and may utilize in its evaluation any relevant facts obtained by the investigation. DOE may solicit or accept submissions from third persons relevant to your request for interpretation or any other document submitted under this subpart. You will be afforded an opportunity to respond to all relevant third person submissions. DOE may consider any other source of information in evaluating a request for interpretation or any other document submitted under this subpart. DOE on its own initiative may convene a conference, if, in its discretion, it considers that a conference will advance its evaluation of the request.

(2) DOE will issue its interpretation on the basis of the information provided in your request, unless that information is supplemented by other information brought to the attention of the General Counsel during the proceeding. DOE's interpretation will, therefore, depend for its authority on the accuracy of your factual statements and you may rely upon it only to the extent that the facts of the actual situation correspond to those upon which the interpretation was based.

(3) DOE may refuse to issue you an interpretation, if DOE determines that there is insufficient information upon which to base a decision and if, upon request, you do not submit the necessary additional information.

(b) *Criteria.* (1) DOE will base its interpretations as applicable, on the DEOA, and FUA, and the regulations and published rulings of DOE as applied to the specific actual situation.

(2) DOE will take into consideration previously issued interpretations dealing with the same or a related issue.

§ 501.126 Decision and order.

(a) DOE may issue an interpretation after consideration of the request for interpretation and other relevant information received or obtained during the proceeding.

(b) The interpretation will contain a written statement of the information upon which it is based and a legal analysis of and conclusions regarding the application of rulings, regulations and other precedent to the situation presented in the request.

(c) You may rely on an interpretation only if it is specifically addressed to you or DOE served a copy of the interpretation upon you and you are directly involved in the same transaction or act. If you are entitled to rely upon an interpretation you will not be subject to the civil or criminal penalties stated in Subpart O of this part for any act you made in reliance upon the interpretation, notwithstanding that the interpretation is subsequently declared by judicial or other competent authority to be invalid.

(d) DOE may at any time rescind or modify an interpretation on its own initiative. Rescission or modification may be affected by notifying persons entitled to rely on the interpretation that it is rescinded or modified. This modification will include a statement of the reasons for the rescission or modification and, in the case of a modification, a restatement of the interpretation as modified.

(e) An interpretation is modified by a subsequent amendment to the regulations or ruling to the extent that it is inconsistent with the amended regulation or ruling.

(f) (1) If you are aggrieved by an interpretation you may submit a petition for reconsideration to the General Counsel within 30 days of service of the interpretation. You have not exhausted your administrative remedies until a period of 30 days from the date of service of the interpretation has elapsed without receipt by the General Counsel of a petition for reconsideration or, if you have filed a timely petition for reconsideration of the interpretation, until that petition has been acted on by the General Counsel. However, you may consider the petition as having been denied if the General Counsel does not respond to the petition within 60 days of the date of receipt thereof, or within such extended time as the General Counsel may prescribe by written notice to the petitioner concerned within that 60-day period.

(2) DOE may summarily deny a petition for reconsideration if—

(i) You have not filed it in a timely manner, unless good cause is shown; or

(ii) It is defective on its fact for failure to state, and to present facts and legal argument in support thereof, that the interpretation was erroneous in fact or in law, or that it was arbitrary or capricious.

(3) The General Counsel may deny your petition for reconsideration if you do not establish that—

(i) You are aggrieved by the interpretation;

(ii) The interpretation was erroneous in fact or in law; or

(iii) The interpretation was arbitrary or capricious.

DOE's denial of your petition for reconsideration shall be a final order of which you may seek judicial review.

Subpart K—Rulings

§ 501.140 Purpose and scope.

The General Counsel will issue rulings in accordance with the provisions of this subpart. General Counsel will publish each ruling in the FEDERAL REGISTER. You are entitled to rely upon a ruling to the extent provided in this subpart.

§ 501.141 Criteria for issuance.

(a) The General Counsel may issue a ruling whenever—

(1) There has been a substantial number of inquiries with regard to similar factual situations or a particular section of the regulations; or

(2) It determines that it will be of assistance to the public in applying the regulations to a specific situation.

§ 501.142 Modification or rescission.

(a) The General Counsel may modify or rescind a ruling by—

(1) Publishing the modification or rescission in the FEDERAL REGISTER; or

(2) A rulemaking proceeding in accordance with Subpart L of this part.

(b) You shall not be subject to the sanctions or penalties stated in Subpart O of this part for action taken in reliance upon a ruling, notwithstanding that the ruling is subsequently declared by judicial or other competent authority to be invalid. You may not rely upon a ruling after it has been declared invalid or after it is rescinded or modified as provided in paragraph (a) of this section.

§ 501.143 Comments.

You may file a written comment on or objection to a published ruling at any time with the General Counsel at the address provided in § 501.11.

Subpart L—Petition for Rulemaking

§ 501.150 Purpose and scope.

(a) This subpart provides you with the procedures you must use to request an ERA rulemaking proceeding. This subpart does not apply to a rulemaking to impose a prohibition under Subpart E. ERA may commence a rulemaking proceeding upon its own initiative or pursuant to a petition filed by any interested person.

(b) ERA will conduct rulemaking proceedings in accordance with the Administrative Procedures Act, the Department of Energy Organization Act, and FUA.

§ 501.151 Petitions for rulemaking.

(a) You may file a written petition for the issuance, amendment or repeal of regulation set out in sections 500-510 at any time. Your petition must be signed by the Chief Executive Officer.

(b) ERA shall consider your petition for a rulemaking and either—

(1) Institute a rulemaking as requested or as modified;

(2) Provide you with written reasons why ERA does not intend to institute a rulemaking as requested; or

(3) Notify you in writing that the matter is under consideration and that a decision cannot be made at that time because of the inadequacy of available information, changing circumstances or other reasons as set forth in the notice.

§ 501.152 Comments in connection with rulemaking.

Comments filed in connection with a rulemaking must be filed in accordance with the instructions in the notice of proposed rulemaking published in the FEDERAL REGISTER. You must submit your comments in writing and they must be signed.

§ 501.153 Where to file.

You must file your petition with the Economic Regulatory Administration, Assistant Administrator for Regulations and Emergency Planning at the address provided in § 501.11. If you submit comments in connection with a rulemaking, you must submit them in accordance with the instructions in the notice of proposed rulemaking.

Subpart M—Complaints

§ 501.160 Purpose and scope.

This subpart provides the procedures you must use to file complaints alleging violations of any DOE or ERA rule, order, regulation, ruling, or interpretations of FUA.

§ 501.161 What to file.

If you wish to file a complaint under this subpart, clearly label your filing "Complaint", and submit it in writing over your signature in accordance with the general filing requirements stated in § 501.7. ERA will accept verbal complaints that otherwise satisfy the requirements of this subpart, but ERA may request written verification.

§ 501.162 Where to file.

You may file your complaint with the Assistant Administrator for Fuels Regulations Economic Regulatory Administration at the address provided in § 501.11.

§ 501.163 Contents.

You must include in your complaint a complete statement of all relevant facts pertaining to the act or transaction that is subject to your complaint. You must also include the names and addresses of all persons involved (if reasonably ascertainable), a description of the events that led to your complaint, and a statement describing the regulation, ruling, order, rule, or interpretation that allegedly has been violated.

§ 501.164 ERA evaluation.

(a) *Processing.* ERA may investigate any statement in your complaint or any other document submitted, and may utilize in its evaluation any relevant facts obtained by such investigation or from any other source of information. ERA may solicit or accept submissions from third persons relevant to your complaint or other related documents. ERA, on its initiative, may order a conference if it considers a conference will enhance ERA evaluation of your compliant.

(b) *Confidentiality of information.* ERA will treat as confidential information received in any investigation of your complaint, including your identity and the identity of any other person who provides information, to the extent such information is covered by the investigatory file exception to public disclosure contained in 5 U.S.C. 552. However, if ERA determines that disclosures would be in the public interest, ERA may release such information subsequent to notifying you of its intentions and offering you the opportunity to respond.

§ 501.165 Decision.

After considering your complaint and any other relevant information received or obtained during the proceeding, ERA may—

(a) Issue a notice of probable violation in accordance with the provisions of Subpart N of this part;

(b) Determine that no violation has occurred or that a notice of probable violation would not be appropriate; or

(c) Take such other action as it deems appropriate.

Subpart N—Notice of Violation and Remedial Orders

§ 501.170 Purpose and scope.

(a) ERA will determine the nature and extent of violations of any rule, regulation, exemption or order issued by it under the authority of the Act according to the procedures of this subpart. ERA will also issue Notices of Violation and Remedial Orders according to the procedures of this subpart.

(b) ERA will take whatever action is necessary under this subpart and Suppart O of this Part to determine the nature and extent of a violation when it has reason to believe a violation of any provision of any rule, regulation, exemption, permit or order issued by ERA under the authority of the Act has occurred, is continuing to occur, or is about to occur. Where time, the nature of the proceeding, and the public interest permit, ERA will privide alleged violators with a draft Notice of Violation at least 30 days prior to the issuance of a violation. Otherwise ERA will commence a proceeding under this subpart by service of Notice of Violation.

§ 501.171 Notice of violation.

(a) *Notice.* ERA may issue a Notice of Violation if after its investigation it finds, subject to reconsideration as provided in § 501.172 of this subpart, that you have committed, are currently committing or are about to commit a violation.

(b) *Contents.* (1) ERA will set forth in the Notice of Violation the nature of the violation, the relevant facts, the legal basis for the conclusions reached therein and other provisions of the order which are contemplated at that time including the proposed penalty if applicable.

(2) If ERA is proposing to assess a civil penalty, you will be informed in the Notice of Violation of your opportunity for a hearing before an Administrative Law Judge, as set forth in § 501.172(a)(1) below, before any final determination on the violation and penalty are made by ERA. You will also be informed in the notice of your right to elect to have the procedures of § 501.172(a)(2) below apply in lieu of the hearing with respect to a final determination on the assessment of any civil penalty.

(3) If ERA is not proposing to assess a civil penalty, you will be informed in the Notice of Violation of your opportunity for a conference as set forth in § 501.176(b) before a final determination on the violation is made by ERA. ERA may in its discretion also provide you with an opportunity for a hearing pursuant to § 501.172(a)(1).

(c) *Service.* ERA will serve a copy of the Notice of Violation upon you and upon other persons readily identifiable by the ERA as likely to be aggrieved by issuance of a Remedial Order.

(d) *Rescission.* ERA will notify in writing that the notice has been rescinded if it finds no violation has occurred, is continuing to occur, or is about to occur or if for any reason

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ERA feels that the issuance of a Remedial Order would not be appropriate.

§ 501.172 Hearings and conferences.

(a) *When civil penalty proposed*—(1) *Hearing alternative.* (i) Unless you have elected to have the provisions of paragraph (2) of this subsection apply, ERA will convene, upon your request, a hearing before an Administrative Law Judge pursuant to section 554 of the Administrative Procedure Act (5 U.S.C. 554), before a final determination on the violation and penalty is made.

(ii) If you have received a Notice of violation you may request, within 30 days of receipt of the notice, an administrative hearing provided in subparagraph (i) above. To make a request you must comply with the instructions set forth in the notice.

(2) *Election alternative.* (i) If you have received a Notice of Violation, in which a penalty has been proposed, you may elect, within 30 days after receipt of the notice, to have ERA make a final determination on the violation and penalty within 45 days after you have notified ERA of your election.

(ii) If you are making an election provided in subparagraph (i) you must comply with the instructions set forth in the Notice of Violation. Your election under this subsection is final except that ERA may, if you request, revoke the election when good cause, as determined by ERA, is demonstrated for the revocation.

(b) *When civil penalty not proposed*—(1) *Conference.* If you have received a Notice of Violation, in which a civil penalty has not been proposed, you may, within 30 days after receipt of the notice, request a conference with ERA to discuss the notice. In order to request a conference, you must comply with the instructions set forth in the notice.

§ 501.173 Remedial order.

(a) *General.* ERA will issue you a Remedial Order if, after considering all the information received during the proceeding, the ERA determines that you have committed, are committing or are about to commit a violation.

(b) *Remedies.* ERA may, in any Remedial Order issued, require you to take such action as ERA determines is necessary to eliminate or to compensate for the effects of a violation.

(c) *Contents.* ERA will, in any Remedial Order issued under this section, set forth the relevant facts and legal basis of the order and where appropriate, the final penalty assessed and the basis therefor. When you have requested an administrative hearing as provided in § 501.172 above, the order will include the findings made by the Administrative Law Judge. The order will be effective upon service, unless otherwise provided in the order, until stayed, suspended, modified or rescinded on judicial review.

(d) *Service.* The ERA will serve a copy of the Remedial Order upon you, any other person who was served a copy of the Notice of Violation, and any other person readily identifiable by the ERA as one who is aggrieved by the order. ERA will place a copy of each final order, modified to insure the confidentiality of information protected from disclosure under 18 U.S.C. 1905 and 54 U.S.C. 552, on file in the Public Information Office described in § 501.12.

(e) *Judicial review.* Judicial review of a Remedial Order is provided for in section 723 of the Act.

Subpart O—Investigation, Violations, Sanctions, and Judicial Actions

§ 501.180 Investigations.

(a) *General.* ERA may, in its discretion, initiate investigations to determine compliance by any person with any rule, regulation, exemption, or order issued by ERA under the authority of the Act, any decree of court relating thereto, or any other ageny action. ERA encourages your voluntary cooperation with its investigations. When the circumstances warrant, however, ERA may issue subpoenas as provided in Subpart D of this part. ERA may also conduct investigative conferences in the course of any investigation in accordance with Subpart C of this part.

(b) *Investigators.* Designated representatives of ERA will conduct the investigations. The representatives have the authority to administer oaths and receive affirmations in any matter under investigation by ERA.

(c) *Notification.* If you are under investigation in accordance with this section and are requested to furnish information or documentary evidence ERA will notify you as to the general purpose for which the information or evidence is sought.

(d) *Termination.* ERA may close the investigation file at any time, without prejudice to further investigation by ERA at any time the circumstances so warrant.

(e) *Confidentiality.* ERA will keep confidential any information received in an investigation under this section, including the identity of the person investigated and any other person who provides information during the investigation, unless otherwise determined by ERA, to the extent it is covered under the investigatory file exception to public disclosure contained in 5 U.S.C. 522.

§ 501.181 Violations.

You have committed a violation if you committed an act which results in a circumvention or contravention of the requirements of any provision of the regulations issued under the authority of the Act or any order, rule, exemption, or permit issued pursuant thereto.

§ 501.182 Sanctions.

(a) *General.* (1) If you violate any provision of the regulations issued under the authority of the Act or any order, rule, exemption or permit issued pursuant thereto you will be subject to the penalties and sanctions as provided herein.

(2) Each day that you violate any provision of the regulations issued under the authority of the Act or any order, rule, exemption, or permit issued pursuant thereto constitutes a separate violation within the meaning of the provisions of this section relating to civil penalties.

(b) *Criminal fines.* (1) If you willfully commit a violation under this subsection, except a violation of the provision of section 402 of the Act relating to the use of natural gas for decorative outdoor lighting, you will be subject to a fine of not more than $50,000 or imprisonment of not more than 1 year, or both, for each violation.

(2) The ERA may at any time refer a willful violation to the Department of Justice for criminal prosecution.

(c) *Civil penalties.* (1) If you commit a violation under this subsection you will be subject to the following civil penalties which may be assessed by the ERA:

(i) If you own or operate a facility which exceeds the use of natural gas or petroleum allowed by an exemption granted by ERA, the penalty will not be more than $3 per Mcf of natural gas or $10 per barrel of oil used in excess of that allowed by the exemption.

(ii) If you violate any other provision, the penalty will not be more than $25,000 for each violation.

(2) Either the General Counsel of DOE in consultation with the Department of Justice or, where appropriate, the Department of Justice, upon referral by ERA, will prosecute civil penalties.

(3) ERA may compromise and settle, and collect civil penalties whenever it considers it to be appropriate or advisable.

(d) *Corporate personnel.* (1) If you are a director, officer, or agent of a corporation and you willfully authorize, order or perform any act or practice constituting a violation of any provision of the regulations issued under authority of the Act, or any order, rule, or exemption, or permit issued pursuant thereto, you will be subject to the penalties specified in paragraphs (b) and (c) of this section without regard to any penalties to which the corporation may be subject. You will not, however, be subject to imprisonment under paragraph (b) unless you also knew, or reasonably should have know of noncompliance by the corporation or had received from the ERA notice of noncompliance by the corporation.

(2) For purposes of this paragraph:

(i) "Agent" includes any employee or other person acting on behalf of the corporation on either a temporary or permanent basis, whether or not he/she has authority to engage in the particular activity involved; and

(ii) "Notice of noncompliance" is a Remedial Order issued under Section 501.173 of this Part.

(e) *Other penalties.* You will be subject to the criminal penalties provided in 18 U.S.C. 1001 (1970) if you willfully conceal a material fact, make a fraudulent statement or representation; or use or attest to any document containing a fraudulent statement pertaining to matters within the scope of the Act or the DEOA.

§ 501.183 Injunctions.

Whenever it appears to ERA that any person has committed, is committing, or is about to commit a violation of any regulation, order, rule or exemption issued under the Act, ERA may in accordance with Section 724 of the Act request the Attorney General to bring a civil action in the appropriate district court of the United States to enjoin such acts or practices. Upon proper showing, a temporary restraining order or a preliminary or permanent injunction will be granted without bond. The relief sought may include a mandatory injunction commanding any person to comply with any provision of such order, regulation, rule, exemption or permit the violation of which is prohibited by Section 724 of the Act and may also include interim equitable relief.

§ 501.184 Citizen suits.

(a) *General.* If you are aggrieved by the failure of ERA to perform any nondiscretionary act or duty under the Act you may file a Petition for Action for ERA to take such action as you may feel to be proper. You must file the petition with the Assistant Administrator for Fuels Regulation at the address provided in Section 501.11 of this Part. Your petition must specify the action requested and set forth the facts and legal arguments that constitute the basis for the request.

(b) *ERA decision.* Within 60 days of receiving the Petition for Action ERA will notify you that it has instituted the action you requested; that other action, as stated, is being taken; or that no action is being taken and state the reasons therefor.

(c) *Judicial relief.* If after you have received notice of ERA's decision you still feel aggrieved you may commence a civil action in the appropriate district court as provided in Section 725 of the Act. You may not commence any action under Section 725 unless you have satisfied the requirements of this section.

PART 502—FUELS DECISION REPORT

§ 502.1 Purpose and scope.

(a) If you petition for a temporary or permanent exemption from the prohibitions of this Title, you must submit as part of your petition a Fuels Decision Report. Your Fuels Decision Report should demonstrate the professional competence, and indeed excellence, of your good faith efforts to avoid using petroleum or natural gas. You can show how you tried to secure and rely on an alternate fuel. You can also show how you tried, at the least, to minimize the amount of oil or gas you use by attempting to substitute a mixture, to employ energy efficient technologies, and to implement other oil and gas conservation measures. The Fuels Decision Report describes the preliminary design analysis performed to make your fuels decision. It should accurately reflect the ingenuity and professional judgment used in attempting to find an energy source other than petroleum or natural gas which can serve your needs. It shows the calibre of your response to a fundamental technological challenge.

(b) We have not stipulated which alternate fuels you must consider. Selection of fuels is your choice, based upon your determination of your needs and supply opportunities. The kinds of fuel you might consider could range from coal to any fuel (or mixture, if appropriate) that is not petroleum or natural gas.

(c) Your Fuels Decision Report must demonstrate that you rigorously explored and objectively evaluated all reasonable alternatives to oil or gas. It must clearly and concisely describe the process and methodology you used to search for, analyze, and evaluate each fuel you considered, including documentation of feasibility reports, experts and sources used. The evidence you provide in support of your evaluation of each fuel considered must be sufficient to demonstrate that you qualify for one or more exemptions, and must meet the eligibility and evidentiary requirements pertaining to the appropriate specific exemptions covered by this Title.

(d) The kinds of information which must be included in your Fuels Decision Report may differ depending on the kind of exemption or the type of unit under consideration. The information required is outlined in the evidentiary requirements of Parts 503, 504, 505 and 506 of these regulations. For example, if you are requesting a permanent exemption, your Report must contain the results of you examination of the feasibility of using fuel mixtures and fluidized bed combustion technologies. If you are requesting a temporary exemption, your report must contain the results of your examination of the feasibility of using an alternate fuel immediately and of using a fuel mixture during the period of the proposed exemption. If you are requesting a permanent exemption for a powerplant, your report must in most cases contain the results of your examination of alternate sources of power and, in some cases, of alternative sites.

(e) The depth of analysis as to a specific alternate fuel will vary by chapter in your Fuels Decision Report. If you concluded that you cannot obtain an adaquate supply of a particular alternate fuel, your analysis and the evidence supporting that conclusion and demonstrating you eligibility for an exemption on those grounds should appear in the Availability Considerations Chapter. If you concluded that use of a second alternate fuel was not feasible due to certain State or local requirements, your analysis and evidence should appear either in the Site Considerations Chapter or in the Other Considerations Chapter. If you concluded that cost of using a third alternate fuel would substantially exceed the cost of using imported oil, taking due account of the costs of pollution control equipment and of purchasing and preparing land for wet sludge disposal, your analysis of the environmental requirements should appear in the Environmental Regulatory Chapter, and your analysis and documentation of the cost of using that fuel compared with using the cost of using imported oil should appear in the Economic Considerations Chapter. When use of a particular fuel is not affected by the considerations addressed in a particular chapter, you should merely include a statement to that effect. For example, if you concluded that there would not be environmental problems associated with use of the second alternate fuel you considered, you would simply state your conclusions and the reasons supporting it in the Environmental Regulatory Considerations chapter.

§ 502.2 General instructions.

(a) *Pre-filing conference for clarification.* You may request an informal pre-filing conference with ERA to discuss your forthcoming Fuels Decision Report and to clarify any questions you may have concerning the information required by this Part.

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(b) *Pre-filing conference for waivers.* You may request an informal pre-filing conference with ERA to discuss whether your Fuels Decision Report must contain all of the chapters and information required by this Part. We retain the right to waive some of the requirements for the contents of the Fuels Decision Report if we determine that the purpose of the Act are best achieved by doing so. The grounds upon which we might consider waiving certain requirements could include:

(1) The burden of meeting such requirements could be excessive for a small firm or for a new firm;

(2) The burden of meeting such requirements could be excessive for firm requesting an exemption for an existing facility;

(3) The burden of meeting such requirements could be excessive for a petioner requesting a temporary exemption;

(4) The burden of meeting such requirements could be excessive for a petitioner requesting a certain type of exemption; or

(5) Other reasons as determined by ERA.

After the pre-filing conference, we will prepare a written memorandum of record identifying any requirements of the Fuels Decision Report which we agreed to waive. We will mail a copy of the memorandum of record to you within 10 days of the prefiling conference. If you file a petition for exemption, you must include a copy of the memorandum of record in your Fuels Decision Report. We also reserve the right to request any additional information that may be necessary once you have filed your petition.

(c) *Writing and organization.* Prepare you Fuels Decision Report as follows:

(1) Your Fuels Decision Report should be analytic rather than encyclopedic.

(2) You should discuss impacts in proportion to their significance. There should only be a brief discussion of minor issues.

(3) Your Fuels Decision Report should be concise, and be no longer than necessary to comply with these regulations. It should seriously express the results of professional engineering analysis. It should also convey those results in plain English understandable to the serious lay public.

(d) *Incorporation by Reference.* You may incorporate material into your Fuels Decision Report by reference when to do so will cut down on the bulk without impeding agency and public review of the Report. You must cite the incorporated material in the Report and briefly describe its content. Whenever you are citing material contained in the appropriate forms you have filed, you must indicate the name of the form, its date, and the page and section number that contains the material cited. You may not incorporate any material by reference unless it is submitted with your petition or has been submitted previously to DOE. If it has been previously submitted to DOE, you must identify the office to which it was submitted, and insure that it is reasonably available for inspection by ERA and by potentially interested persons within the time allowed for comment. You may not incorporate by reference any material based on proprietary data which is itself not available for review and comment.

(e) *Corporate responsibility.* (1) The Chief Executive Officer of the petitioner must certify that the information contained in the petitioner's Fuels Decision Report represents the best professional judgment and expertise available to the corporation in making its fuels decision.

(2) The Chief Executive Office shall complete and sign the following sworn statement:

I,———(name and title) of)———(name of firm, corporation, etc.) certify that I have read the following Fuels Decision Report and have personally made reasonable inquiry into the accuracy of its contents; that the Report represents the best professional expertise, knowledge, and judgment available to the———(name of firm, corporation, etc.) in making its fuels decision; and that I do not have knowledge of any inaccuracy in the Report. The steps taken in preparing the Report are described in Attachment A which is incorporated and made a part of this certification:

I certify that this statement, including the attached information, is true, complete and correct to the best of my knowledge and belief.

.....
(Signature)

.....
(Date)

(3) In addition to the statement in subparagraph (2), the Chief Executive Officer shall include as Attachment A to the certification:

(i) A description of how the national policies and public interests concerning use of alternate fuels were explained to the professional and management personnel who were involved in the decision to seek an exemption or who prepared any portion of the report, including copies of any corporate policy or other general statements explaining the nature and importance of the fuels decision for national energy and economic goals; a description and the dates of any meetings concerning such matters and identification of the persons who actually attended them;

(ii) A description of the process by which the petitioner has in the past made fuels decisions, including identification of the persons who would ordinarily be responsible for such decisions, and their reporting relationships within the corporation; and

(iii) A description of the process by which the petitioner made the decision to seek an exemption, including any review of the decision that was conducted after preparation of the Fuels Decision Report, identification of the persons primarily responsible for the decision or review and their reporting relationships within the corporation, and a description of the involvement of various levels within the corporation, with specific discussion of the involvement of the Executive Committee and governing body of the corporation, in the decision.

(f) *Professional responsibility methodology and scientific accuracy.* You must insure the professional integrity and competence of the analyses contained in your Fuels Decision Report, including the economic, engineering, and scientific analyses. You must identify any methodologies used, and you must make explicit reference by footnote to the scientific, economic, engineering and other sources relied upon for conclusions in the Report. You must require that the professional engineers, architects, scientists, economists, financial analysts, and other experts who prepared the Report certify to the accuracy and integrity of the portion they prepared. Each professional who was responsible for preparing a portion of the Report shall complete and sign the following sworn statement;

I,———(name and title) of———(name of corporation) having prepared the———portion of the Fuels Decision Report for the———(firm, corporation, etc.) certify that I have read the aforementioned portion of the Report, that such matters set forth therein represent my best professional judgment and are true and correct to the best of my knowledge and belief. I understand that I may be questioned orally or in writing under oath in a court or public administrative hearing concerning the aforementioned section and am willing to be so questioned.

.....
(Signature)

.....
(Date)

(g) *Relationships between Fuels Decision Report and Forms.* The Fuels Decision Report and the appropriate forms will constitute your petition for exemption. Your Fuels Decision Report will contain the analysis, evidence, and documentation required to support your request for exemption. The forms will contain summary data and quantitative information which will be used to screen your petition for eligibility adequacy and accuracy, and to insure that you provide the detailed information needed for analysis. The forms you submit must reference the appropriate chapters and pages in your Fuels Decision Report where the explanation, justification, and back-up material supporting the information contained in the forms can be found. You may also reference the forms in your Fuels Decision Report, and incorporate then in your Report if appropriate.

§ 502.3 Contents.

Your Fuels Decision Report must contain—

(a) *Cover sheet.* (1) The name of the petitioner.

(2) The name and location of the unit for which an exemption is being requested.

(3) The specific exemption(s) being requested.

(4) The name, address, and telephone number of the person who can supply further information.

(5) The general form may be substituted for the cover sheet.

(b) *Certifications.* Your Fuels Decision Report must contain the certifications required in §§ 502.2(e) and 502.2(f) of this part. Such certifications shall follow the cover sheet of the Fuels Decision Report.

(c) *Summary.* Your Fuels Decision Report must contain a summary which adequately and accurately summarizes the Report. The summary must stress the major conclusions, i.e., the exemptions you are requesting, and the basis for those conclusions. The summary must not be more than 15 pages long. If ERA waived any requirements for your Fuels Decision Report, append to the summary the memorandum of record of the prefiling conference.

(d) *Table of Contents.* Include a Table of Contents representing the contents as follows:

CHAPTERS

(i) Cover sheet
(ii) Certification
(iii) Summary
(1) Introduction
(2) Fuels Considered
(3) Alternative Sites Considered
(4) Technical/Engineering Considerations
(5) Availability Considerations
(6) Economic Considerations
(7) Site Considerations
(8) Environmental Regulatory Considerations
(9) Operational Considerations
(10) Other Considerations
(11) Petroleum/Natural Gas Consumption
(12) Conservation Measures
(13) Environmental Impacts Analysis
(A-1) List of Preparers
(A-2) References
(A-3) Appendices

(e) *List of Preparers.* List the names, together with the qualifications and professional disciplines, of the persons who were primarily responsible for preparing the Report or significant background papers, including basic components of the Report. Identify the specific chapters or portions of the report each person prepared, and the previous experience, if any, of each of the acquisition, handling, or use of alternate fuels at that or a comparable facility.

(f) *References.* (1) List the references which identify the reports, documents, experts, and other sources you consulted in compiling the Report. Cite these sources in accordance with acceptable documentation standards, including references to the part of the Report to which they apply. If the source is unusual or little known, briefly describe its contents. Also, cite the documents enclosed as appendices and their relationships to the report.

(2) Identify at the end of each chapter of the Fuels Decision Report any information or any statement based in whole or in part on information or principles which, to your knowledge, are not in accordance with facts or principles generally accepted by experts in the particular subject matter.

(g) *Appendices.* Include in the appendices material which substantiates any analysis fundamental to the Report, materials prepared in connection with the report, relevant engineering feasibility studies, other studies and memoranda relating to fuel choice decisions prepared during the past 5 years, and any other documents, studies or analyses which are analytic and relevant to the decision to be made. Also include in the appendices copies of the forms you submit as part of your petition.

§ 502.4 Introduction.

This chapter is intended to give ERA a quick overview of your firm, what your firm does, and what the unit for which you are requesting an exemption is like. The purpose of this chapter is to provide a context for the remainder of the Report. You may substitute the general form for this chapter if appropriate.

(a) Brief description of your company;

(b) Description of your operation at the facility under consideration;

(c) Description of the need for the unit under consideration:

(1) Purpose of the unit,

(2) Operational requirements for the unit, including

(i) Size (capacity, input, and output in million Btu's per hour),

(ii) Output in terms of product or service to be supplied,

(iii) Operating mode, including capacity factor, utilization factor, and fluctuations in the load,

(3) For powerplants, for each year for 10 years for your company and your electrical region (reports regularly filed with DOE regarding your electrical region may be incorporated by reference):

(i) Projected demand,

(ii) Projected generation capacity to meet demand (by fuel and size of plant),

(iii) Calculation of reserve margin.

§ 502.5 Fuels considered.

Identify and describe the alternate fuels you considered, including mixtures, petroleum and natural gas. Specify the types of fuels you considered, their fuel characteristics, types of units (boiler, combined cycle, etc.) and equipment needed for each fuel, quality and quantities of fuel, and other relevant considerations. Provide a clear, competent and concise explanation of why you selected each fuel for consideration as well as a brief discussion of why you did not consider other alternate fuels. If you are requesting an exemption for a powerplant (except for cogeneration or peakload), you must also discuss alternate sources of electric power in this chapter.

§ 502.6 Alternative sites considered.

If you are requesting a permanent exemption for a new powerplant relating to lack of alternate fuel supply, site limitations, environmental requirements, adequacy of capital, State or local requirements, or intermediate load, identify and describe the alternative sites you examined for each alternate fuel you considered, as well as for petroleum and natural gas. Provide a clear, competent, and concise explanation of the approach and methodology you used for selecting and evaluating each site, in accordance with the evidentiary requirements set forth in § 503.11 of these regulations. Also briefly address the reasons you rejected consideration of other alternative sites. If you are requesting an exemption for an installation, or for an existing powerplant, you need not include this Chapter.

§ 502.7 Technical and engineering considerations.

Outline your approach and methodology for determining whether use of the alternate fuels you considered is technically feasible. Address the alternative unit designs you considered and the unit specifications required, etc. Indicate which fuels are not technically feasible and why you made that determination. If you concluded that there are no significant technical or engineering problems associated with the use of a particular fuel, you may merely state your conclusion and the reasons for it without providing in-depth analysis and documentation. Also outline and discuss any technical or engineering considerations which would require the use of petroleum or

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of natural gas rather than an alternate fuel. Specific considerations which might be addressed include product or process problems, state of the art considerations, derating, and operational reliability problems. If you are requesting a permanent exemption for a new powerplant relating to lack of alternate fuel supply, site limitations, environmental requirements, adequacy of capital, State or local requirements, or intermediate load powerplant, address the appropriate technical and engineering considerations pertaining to each alternative site examined for each alternate fuel considered.

§ 502.8 Availability considerations.

Outline your approach and methodology for determining whether an adequate and reliable supply of the alternate fuels you examined is available. Also assess the availability of the kinds of petroleum and natural gas you considered. Identify the quantity and quality of fuels you sought, the number, kind and names of suppliers you contacted, the kinds of supply arrangements you proposed or were able to obtain (including prices), the timeliness of availability of the fuels, the impact of timeliness on reliability of service (if appropriate), the sources you used to conduct your search, and other availability questions. If you concluded that there are no significant availability problems associated with a particular fuel, you may merely state your conclusion and the reasons for it. If you are requesting a permanent exemption for a powerplant (except for cogeneration or peakload), address the alternate sources of electric power you considered. If you are requesting a permanent exemption for a new powerplant relating to lack of alternate fuel supply, site limitations, environmental requirements, adequacy of capital, State or local requirements, or intermediate load, outline the appropriate availability considerations for each alternative site you examined for each alternate fuel you considered.

§ 502.9 Economic considerations.

Describe your approach and methodology for analyzing the relative economic benefits and costs of the alternate fuels, including petroleum and natural gas, you considered, and your findings. If you are requesting a permanent exemption for a powerplant (except for cogeneration or peakload), also address the economic considerations relating to the alternate sources of electric power you considered. Detail here the economic analyses you performed to determine whether use of a fuel is economically feasible. Economic considerations include capital costs, the ability to raise capital, operation and maintenance costs, fuel costs, transportation costs, and environmental costs. Present your assessment using the methodology for cost comparison calculations provided in §§ 503.5 and 505.5 of these regulations. Also present the approach, methodology and calculations you traditionally use to make economic decisions, and the results based on that methodology. If you concluded that use of a particular fuel is economically feasible, you may simply state this without providing in-depth analysis and documentation. If you are requesting a permanent exemption for a new powerplant relating to lack of alternate fuel supply, site limitations, environmental requirements, adequacy of capital, State or local requirements, or intermediate load, outline the appropriate economic considerations for each alternate site you examined for each alternate fuel you considered.

§ 502.10 Site considerations.

Address the requirements that the use of alternate fuels, petroleum, and natural gas would impose on the site under consideration, and whether such requirements could be met. Site considerations could include accessibility of fuel, the adequacy of transportation facilities for delivery of fuel to the site, the adequacy of facilities and land for storage, use, and handling of fuel, the adequacy of facilities and land for disposal of wastes from the fuel, the availability and adequacy of water, and other potential site limitations. Describe the approach and methodology you used to assess the site requirements for each fuel you considered and the alternatives you examined for overcoming any site limitations. If you concluded that there are no significant site limitations which would preclude the use of a particular fuel, you may merely state this without further elaboration. If you are requesting a permanent exemption for a new powerplant relating to lack of alternate fuel supply, site limitations, environmental requirements, adequacy of capital, State or local requirements, or intermediate load, analyze the alternative sites examined for each alternate fuel considered.

§ 502.11 Environmental regulatory considerations.

Describe the Federal, State and local environmental requirements, including air emission, water discharge and waste disposal limitations, which you must meet for each fuel considered. Also identify the equipment and facilities needed to meet the environmental requirements for each fuel. If the requirements can be met, but at an unreasonable cost, address the question of environmental costs in Economic Considerations Chapter. Describe the approach and methodology you used in making a good faith effort to comply with environmental requirements, including your examination of alternate technologies and fuels capable of meeting the requirements for necessary environmental permits. If you concluded that environmental standards and requirements would not constrain the use of a particular fuel, you may merely state your conclusion and the reasons for it. If you are requesting a permanent exemption for a new powerplant relating to lack of alternate fuel supply, site limitations, environmental requirements, adequacy of capital, State or local requirements, or intermediate load, describe the environmental requirements and constraints pertaining to each alternative site you examined for each fuel you considered.

§ 502.12 Operational considerations.

Outline your operational requirements and the alternative approaches you examined to meet them. Describe and document the methodology you used to identify your load and reliability requirements, and to determine that a need exists for an emergency unit, a peakload unit, or for a unit capable of meeting scheduled equipment outages, if appropriate. Include an analysis of the feasibility of using alternate fuels, as well as petroleum and natural gas, for meeting such requirements. If you conclude that there are no significant operational considerations which would preclude the use of a particular fuel, you may merely state this without providing in-depth analysis and documentation. For powerplants, the analysis should address not only the facility under consideration, but your company and electrical region.

§ 502.13 Other considerations.

You may use this chapter to describe and analyze any other considerations which affected your fuel choice decisions, or to provide any other information which might be of use to ERA in evaluating your petition for exemption. Inclusion of this chapter is optional.

§ 502.14 Petroleum and natural gas consumption.

(a) Identify your current and projected petroleum and natural gas consumption for the unit for which you are requesting an exemption, and for the facility at which the unit is located. Provide the following information.

(1) *For powerplants and installations.* (i) How many units do you have at the facility under consideration which burn petroleum or natural gas (including the unit for which the exemption is requested), what is their nameplate and net dependable capacity and current level of annual fuel consumption?

(ii) What are your retirement plans for your existing oil and gas units at the facility under consideration?

(iii) What are your projected (through 1990) annual levels of consumption of petroleum and natural gas (by fuel type and barrel or Mcf per year)?

(A) For the unit under consideration;

(B) For all existing oil and gas units at the facility under consideration;

(2) *For powerplants.* (i) How many units do you have in your system and electrical region which burn oil or gas, what is their capacity, and what is their current level of annual fuel consumption?

(ii) What are your retirement plans for the existing oil and gas units in your company and electrical region?

(iii) What are the projected (through 1990) annual levels of consumption of petroleum and natural gas (by fuel type and Bbl or mcf per year) for your company and electrical region?

(iv) What kind of regional planning has taken place so that you and other utilities in your electrical region will reduce your dependence on petroleum and natural gas?

(v) What are you doing to shift all of your existing powerplants off natural gas by 1990?

(vi) What changes in your dispatch of existing units do you contemplate if the exemption is granted, or if the exemption is denied?

(3) *For installations only.* (i) In the case of natural gas, what curtailment priorities will the unit and the facility under consideration fall under?

(b) If you are requesting an exemption which would allow you to use petroleum, identify the minimum amount of oil you would need for the unit under consideration in the event of a national emergency, such as a foreign supply interruption, which results in the reimposition of petroleum allocation controls. Also identify your plans and alternate courses of action during a national emergency if we were to prohibit you from using oil in that unit during such an emergency. For both the unit under consideration and the facility at which it is located, describe your fuel switching plans and capabilities.

§ 502.15 Conservation measures.

Identify, describe and document any conservation measures you have taken or intend to take to minimize the use of oil or gas if this exemption is granted. Outline the conservation measures you intend to take, and the conservation goals you have set for yourself, for the unit under consideration, for the facility at which the unit is or will be located, and for your company. Conservation measures entail either reduction in consumption of oil and gas or increased efficiency in the utilization of oil and gas. Such measures can range from housekeeping measures to replacement of inefficient units. Such measures also could include the use of mixtures of gas or oil and alternate fuels, and new more efficient technologies. Your description of the measures you intend to use should be detailed and should include comparative consumption figures, identification of conservation equipment or techniques, proposed manner of use, proposed date of use, cost, etc.

§ 502.16 Environmental impacts analysis.

(a) In order to aid us in fulfilling our objectives under the National Environmental Policy Act (NEPA), you must include this chapter in your Fuels Decision Report if you are requesting a permanent exemption for a new powerplant or installation, or a permanent exemption for an existing powerplant or installation relating to cogeneration, scheduled equipment outages, State or local requirements, or intermediate load powerplants. Material which has been included under § 502.11 or pursuant to any other requirement for environmental information may be incorporated by reference in this chapter.

(b) ERA will issue detailed guidelines for this Environmental Impacts Analysis chapter at a later time. In general, this chapter must contain the following:

(1) A clear and concise description of the existing site, and, in the case of new powerplants, alternative site(s) environment which may be affected by the grant or denial of your petition for exemption, including any pertinent summary technical data, maps, and diagrams;

(2) A detailed description of the probable environmental impacts resulting from the grant or denial of your petition, including direct and indirect impacts (including indirect increases in oil consumption attributable to the grant of your petition), and beneficial and negative impacts; and

(3) A discussion of how the grant or denial of your exemption would conform to or conflict with any existing or proposed Federal, State or local land use plans, policies or controls.

§ 502.17 ERA evaluation.

ERA will evaluate your Fuels Decision Report for its sufficiency under this Part. ERA may return your petition for exemption, in accordance with § 501.68, if you fail to submit a sufficient and complete Fuels Decision Report, fail to consider all reasonable alternate fuels, or fail to adequately demonstrate that you are unable to use any alternate fuel in lieu of petroleum or natural gas.

PART 503—NEW ELECTRIC POWERPLANTS

Subpart A—Statutory Prohibitions

§ 503.1 Purpose and scope.

(a) *Purpose.* This subpart sets forth the statutory prohibitions imposed by the Act.

(b) *Scope.* This subpart applies to all new electric powerplants for which construction or acquisition was initiated on or after April 20, 1977, except those designated as existing powerplants under Part 515 of this Title, or those granted an exemption under Subparts C and D of this Part. Any person who has any ownership or interest in, or who operates, rents or leases a powerplant is subject to the prohibition of the Act and the penalties specified by the Act.

§ 503.2 Statutory prohibitions.

Section 201 of the Act prohibits, except where an exemption has been granted under Subpart C or D of this Part, the following:

(a) The use of petroleum or natural gas as a primary energy source in any new electric powerplant; and

(b) The construction of any new electric powerplant without the capability to use an alternate fuel as a primary energy source.

Subpart B—General Requirements for Exemptions

§ 503.3 Purpose and scope.

This subpart establishes the general requirements necessary to qualify for either a temporary or permanent exemption under this Part and sets out the methodology for calculating the cost of using an alternate fuel and the cost of using imported petroleum.

§ 503.4 Fuels decision report.

(a) Before ERA will accept a petition for either a temporary or permanent exemption under this Part, you must include as part of your petition a Fuels Decision Report as described in Part 502. The Fuels Decision Report shall contain the analysis and documentation of the evidence required in support of your exemption request.

(b) Your petition may contain more than one exemption request. In this case, your petition would include one Fuels Decision Report which addresses your considerations and the appropriate forms for the exemptions you are processing.

§ 503.5 Cost calculations for new powerplants.

(a) *General.* If you are requesting an exemption for a new powerplant on the basis that the cost of using an alternate fuel as a primary energy

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source or the cost of using an alternate power supply substantially exceeds the cost of using imported petroleum, you must use the comparative cost test provided in this section.

The cost of using an alternate fuel in lieu of imported petroleum as a primary energy source, or the cost to use an alternate power supply will be deemed to be substantially in excess of the cost to use imported petroleum where the ratio of the former to the latter is equal to or greater than the index set periodically by ERA.

Initially, ERA sets the index at (1.5). ERA will revise the index from time to time after public notice and an opportunity to comment. Revisions shall become effective for all ERA decisions after final publication.

The cost test takes into consideration capital outlays, operation and maintenance expenses, and delivered fuel expenditures. There are two comparative cost tests—a General Cost Test and a Special Cost Test. You must demonstrate eligibility for a permanent exemption using the procedures specified in the General Cost Test (section b). You must demonstrate eligibility for a temporary exemption using the procedures specified in the General Cost Test (section b) or the Special Cost Test (section c).

The General Cost test differs from the Special Cost Test with respect to the time period over which costs are calculated and the types of fuel consuming equipment being compared. When using the General Cost Test, the cost must be computed for the useful life of the powerplant. When using the Special Cost Test, the cost is computed only for the term of the exemption. In the General Cost Test the proposed oil or natural gas powerplant is compared with an alternate fuel capable powerplant. In the Special Cost Test an alternate fuel capable powerplant burning oil or natural gas is compared with an alternate fuel capable powerplant consuming that alternate fuel.

(b) *Cost Calculation—General Cost Test.* You may be eligible for a permanent exemption if you demonstrate that the cost of using an alternate fuel starting with each successive year within the first 10 years of operation will always substantially exceed the cost of using imported petroleum over the useful life of the powerplant. You will have to show that the cost of using an alternate fuel, starting in each of the first 10 years of operation and using oil or natural gas until the start of using an alternate fuel, substantially exceeds the cost of using only imported petroleum. In the case where you are comparing the costs of using an alternate power supply, you need only compare the cost of using the alternate power supply for the useful life of the powerplant to the cost of using imported petroleum in the proposed powerplant. If the costs of the former substantially exceeds the latter, you may be eligible for a permanent exemption.

ERA will not grant a permanent exemption if a temporary exemption solves the cost problem within ERA's definition. Therefore, if the cost computed with successive starting dates for alternate fuel use (for the first 10 years of operation) does not always substantially exceed the cost of using imported petroleum, you would only be eligible for a temporary exemption. The length of the temporary exemption would be for a minimum period where the cost of starting to use alternate fuel always substantially exceeds the cost of using imported petroleum. For example, if you plan to burn a coal derived fuel such as Low-Btu gas, which is not scheduled to be available form a bona fide supplier for 2 years after the installation of the boiler designed to burn the coal derived fuel, DOE may grant a temporary exemption and allow the burning of natural gas based on an acceptable certification of the schedule of delivery of the coal derived fuel.

For the General Cost Test, ERA defines cost as the sum of the annual outlays for capital, operations and maintenance and delivered fuel, discounted to the present.

To conduct the test, you must use the equations that follow.

Calculate the ratio (R) of the cost of using an alternate fuel to the cost of using imported petroleum with equation 1.

$$\text{EQ 1} \qquad R = \frac{\text{COST (ALTERNATE)}}{\text{COST (OIL)}}$$

Calculate the cost of using an alternate fuel and imported petroleum with equation 2.

$$\text{EQ 2} \qquad \text{COST} = I + \frac{OM_1 + FL_1}{(1+K)^1} + \frac{OM_2 + FL_2}{(1+K)^2} + \ldots + \frac{OM_N + FL_N}{(1+K)^N} - \frac{S_p}{(1+K)^p} \quad 1/$$

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Calculate investment (I), operations and maintenance (OM), and fuel (FL) for equation 2 using equations 3, 4 and 5.

$$\text{EQ 3} \qquad I = I_o + \frac{I_1}{(1+K)^1} + \frac{I_2}{(1+K)^2} + \ldots + \frac{I_N}{(1+K)^N}$$

1/ The electric power industry is a regulated industry. Its profits depend upon its regulators as well as its costs. Since there are many regulatory bodies, which do not always act the same way, we decided not to be concerned with the profits, per se, but only with the costs to society of producing electricity. The income taxes paid by the utilities are transfer payments, from a societal point of view, and therefore are not included in the calculation.

$$\text{EQ 4} \qquad OM = 8760 \times ACF \times O \times C$$

$$\text{EQ 5} \qquad FL = 8760 \times ACF \times C \times f \times H$$

The terms in equations 1 through 5 are defined as follows:

R - The ratio of the cost of using an alternate fuel to the cost of using imported petroleum.

COST - The total discounted cost in dollars for the period of the exemption (life of the plant) of constructing and operating the plant.

I - Discounted total net capital outlay in dollars, excluding investment tax credits and "Advances in Aid of Construction" (as per FERC system of accounts). May include investment in additional transmission facilities to deliver power to your service area. (ERA will not consider investment tax credits for oil or gas fired powerplants.)

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I_o - Net capital outlay in dollars up to the time the powerplant goes into operation or the alternate power supply becomes available.

$I_1 \ldots I_n$ Yearly net capital outlay from first year of operation through the life of the plant.

OM - Annual cost in dollars of operating and maintaining the unit. May include expenditures for wheeling power to your service area.

S_p - Salvage value of equipment rendered useless by changing the fuel from oil or natural gas to alternate fuel in year p, if the fuel is changed.

ACF - Annual capacity factor of the plant expressed as a fraction (see Section d).

O - Operations and maintenance in dollars per Kwh at 70% annual capacity factor (S/Kwh).

C - Design capacity of the plant in kW.

FL - Annual delivered fuel expenditures in dollars.

f - Delivered fuel expenditures to the plant expressed in dollars per Btu.

H - Heat input rate for the plant in Btu per KWH

P - Year fuel is changed from oil or natural gas to alternate fuel.

K - The real cost of capital expressed as a fraction (see Section d).

N - The useful life of the powerplant (see Section d).

8760 - The number of hours in a year.

Fuel transportation costs are part of delivered fuel expenditures except where you must invest in capital equipment to deliver the fuel. The capital outlays for this equipment are included in the capital outlay terms. Similarly, the cost of delivering power to your service area should be included in operations and maintenance unless you must construct transmission facilities, in which case you may include these expenditures in the capital outlay term.

The step by step procedure that follows shows the comparison that you must make. It outlines the equipment and fuel comparisons as well as the time comparisons. If you are using the test to demonstrate eligibility for a lack of alternate fuel supply exemption begin with step (A). If you are using the test to demonstrate that there is no alternate supply of power, use only steps (A), (D), (E), and (F).

(A) Compute: the cost (COST) of using an alternate fuel in an alternate fuel fired powerplant from the start of operation with equation (2).

(2). (b) Compute the cost (COST) of using an alternate fuel in a dual fire powerplant (alternate fuel and oil or natural gas) with equation (2) assuming an alternate fuel is not used as the primary energy source until the end of the first year of operation and that oil or natural gas is used for the first year of operation. Capital investment, operating and maintenance and fuel expenditures should reflect postponed use of alternate fuel (e.g., installation of scrubber when used).

(C) Successively compute the cost (COST) of using an alternate fuel in a dual fired power plant with equation (2) assuming alternate fuel is postponed until the end of the second through tenth year of operation (and oil or natural gas is used in the years preceeding alternate fuel use).

(D) Compute the cost (COST) of using oil or natural gas in an oil or natural gas fired powerplant as the primary energy source with equation (2) throughout the useful life of the unit.

(E) If you are comparing the use of an alternate power supply with the use of imported petroleum, compute the ratio of the cost of using the alternate power supply to the cost of using oil or natural gas both for the lifetime of the powerplant. Otherwise, compute the ratios (R) of the cost of using an alternate fuel at the beginning of operation, and successively at the end of the first through tenth year to the cost of using oil or natural gas throughout the life of the powerplant with equation (1).

(F) If all the ratios (R) are greater than, for illustrative purposes, 1.5 (an index to be set periodically by ERA), your proposed powerplant would meet the cost criteria for a permanent exemption. If one or more of the ratios (R) is equal to or less than 1.5 and a series of ratios (R), starting with the case where alternate fuel is used from the start of operation, are all greater than 1.5, a temporary exemption would be granted for the minimum period in which the cost of starting to use alternate fuel, deferred year by year, always exceeds 1.5.

The following table shows the hypothetical results of four sets of calculations.

HYPOTHETICAL RESULTS OF FOUR SETS OF CALCULATIONS

Year in which alternate fuel use is commenced	Case I	Case II	Case III	Case IV
At start of operation	1.7	1.7	1.7	1.3
1	1.7	1.7	1.7	1.3
2	1.4	1.7	1.7	1.3
3	1.4	1.7	1.7	1.3
4	1.4	1.7	1.4	1.3
5	1.4	1.7	1.4	1.0
6	1.4	1.7	1.2	1.0
7	1.4	1.7	1.2	1.0
8	1.4	1.7	1.2	1.0
9	1.4	1.7	1.2	1.0
10	1.4	1.7	1.2	1.0

The result of the above table shows that: A 2-year temporary exemption would be granted in Case I, a permanent exemption would be granted in Case II, a 3-year temporary exemption would be granted in Case III, and no exemption would be granted in Case IV.

(c) *Cost calculations—Special cost test.* You may be eligible for temporary exemption if you demonstrate that the cost of using an alternate fuel in an alternate fuel fired powerplant will substantially exceed the cost of using oil or natural gas in a dual fired powerplant (alternate fuel and oil or natural gas) over the period of the proposed exemption. The period of the exemption cannot exceed 10 years. You will have to show that the cost of using an alternate fuel substantially exceeds the cost of using imported petroleum for the first year of operation, the first two years of operation, and successive first years of operation, up to the period of the proposed exemption. To do so, you must perform the calculations with successive ending dates to determine the maximum length of the exemption. ERA will limit the duration of a temporary exemption to the shortest time possible.

The factors included in the computation are the operations and maintenance, delivered fuel expenditures incurred over the period of the proposed exemption, and marginal capital outlays required to use gas or oil as a primary energy source during the period of the temporary exemption.

To conduct the test, you must use the equations that follow.

Calculate the ratio (R) of the cost of using an alternate fuel to the cost of using imported petroleum with equation 6.

$$\text{EQ 6} \quad R = \frac{\text{COST (ALTERNATE)}}{\text{COST (OIL)}}$$

Calculate the cost using equation 7.

$$\text{EQ 7} \quad \text{Cost} = I + \frac{OM_1 + FL_1}{(1+K)^1} + \frac{OM_2 + FL_2}{(1+K)^2} + \ldots + \frac{OM_p + FL_p}{(1+K)^p} - \frac{Sp}{(1+k)^p}$$

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Calculate investment (I), operations and maintenance (OM), and fuel (FL) for equation 7 using equations 8, 9, and 10.

$$\text{EQ 8} \quad I = I_o + \frac{I_1}{(1+K)^1} + \frac{I_2}{(1+K)^2} + \ldots + \frac{I_p}{(1+K)^p}$$

$$\text{EQ 9} \quad OM = 8760 \times ACF \times O \times C$$

$$\text{EQ 10} \quad FL = 8760 \times ACF \times C \times f \times H$$

The terms in equations 6 through 10 are defined as follows:

R - The ratio of the cost of using an alternate fuel to the cost of using imported petroleum.

COST - The total discounted cost in dollars of constructing and operating the powerplant for the period of the exemption.

I - Discounted total net capital outlay in dollars excluding investment tax credits and "Advance in Aid of Construction" (as per FERC system of accounts) to use oil or natural gas as a primary energy source during the period of the proposed exemption in a dual fired powerplant. The investment in the basic powerplant (that which would be required if oil or natural gas was not used) itself is not included in this comparison as it is irrelevant. (ERA will not consider investment tax credits for oil or gas fired powerplants.)

I_o - Net capital outlay in dollar up to the time the powerplant goes into operation to use oil or natural gas as a primary energy source during the period of the proposed exemption in a dual fired powerplant.

$I_1 \ldots I_p$ Yearly net capital outlay from first year of operation up to the change to alternate fuel to use oil or natural gas as a primary energy source during the period of the proposed exemption in a dual fired powerplant.

OM - Annual cost in dollars of operating and maintaining the powerplant.

S_p - Salvage value of equipment rendered useless by changing from oil or natural gas to alternate fuel,

ACF - Annual capacity factor of the powerplant expressed as a fraction (see Section d).

O - Operations and maintenance costs in dollars per KWH at 70% annual capacity factor ($/kWh).

C - Design capacity of the plant in KW.

FL - Annual delivered fuel expenditure in dollars (see section d).

f - Delivered fuel expenditure to the plant expressed in dollars per Btu (see Section d).

H - Heat input rate for the plant in Btu per KWH.

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K - The real cost of capital expressed as a fraction, (see Section d).

p - The period of the proposed exemption.

8760 - The number of hours in a year.

The step by step procedure that follows shows the comparisons you must make.

(A) Compute the cost (COST) of using an alternate fuel in an alternate fuel fired powerplant assuming the length of the proposed exemption is 1 year with equation 7.

(B) Compute the cost (COST) of using oil or natural gas valued at imported petroleum prices in a dual fired powerplant assuming the length of the proposed exemption is 1 year with equation 7.

(C) Compute the ratio (R) of the cost of using an alternate fuel for the first year to the cost of using imported petroleum for the first year with equation 6.

(D) Repeat the calculations made in (A), (B), and (C) above assuming the length of the proposed exemption is 2 years, 3 years, 4 years, and so on, up to the period of the proposed exemption.

(E) A temporary exemption would be granted where the ratios (R) are greater than, for illustrative purposes, 1.5 (the index to be established by ERA).

(d) *Information on parameters used in the calculation. (1) All estimated expenditures, except natural gas, and petroleum products, shall be expressed in real (uninflated) terms using the prices in effect at the time the petition is submitted.*

(2) The delivered price of oil or natural gas to be used in the cost calculation must reflect the price of imported oil.

The imported petroleum price is reflected in the cost calculation in the following way:

$$PFE = \frac{PICO}{PCCO} \times PF$$

where

PICO = Price of imported crude oil. The most recent refiner acquisition cost of imported crude oil as reported in the Federal Register monthly notice for the DOE Domestic Crude Oil Allocation (Entitlements) Program.

PCCO = Price of composite crude oil. The most recent weighted average cost of total reported crude oil receipts as reported in the Federal Register notice for the DOE Entitlements Programs.

PF = Price of your fuel. The most recent actual weighted average cost of your fuel oil (other than natural gas). Alternatively, if no purchases of fuel oil occurred, or you used natural gas during that month, you should use a simple average of the industrial price of fuel oil (capable of being burned in your facility) sold in your area by at least three suppliers.

For proposed natural gas users, you shall use the price of No. 2 distillate fuel oil in this calculation.

PFE = Price of fuel for equation the cost of oil for use in Equation 1.

(3) For new powerplants, the annual capacity factor shall be assumed to be 70 percent of the design capacity.

(4) The useful life of a coal, nuclear, oil or natural gas fired powerplant will be 35 years. The useful life of other alternate fuels powerplants shall be presumed to be 35 years. You may rebut this presumption with suitable engineering evidence.

(5) The cost of capital for electric utilities is 3.5 percent per year in real terms.

(6) All estimated expenditures will be computed in accordance with generally accepted accounting principles.

(e) *Evidence Supporting the Comparative Cost Test.* All petitions for exemption requiring the use of the comparative cost test shall include, but not be limited to, the following information:

(1) A detailed accounting of all capital outlays including a description of all major construction and equipment. All critical assumption should be stated and sufficient data should be included to support your estimates.

(2) A detailed accounting of all operations and maintenance expenditures including a description of all major elements. All critical assumptions should be stated and sufficient data included to support your estimates.

(3) A detailed accounting of all delivered fuel expenditures including transportation. All critical assumptions should be stated and sufficient data included to support your estimates. The fuel characteristics for each alternate fuel should be included.

(4) If the useful life of the new powerplant is judged to be less than 35 years, all critical assumptions and sufficient data to support that position.

(5) The powerplant design capacity and the heat input rate, for each fuel considered.

(f) *Example of calculations.* You are planning to build a new powerplant and the fuels you are considering are coal and oil. In this particular situation, the delivered cost of coal is much greater for the first three years than it will be in later years because of a transportation problem requiring three years to resolve. Do you qualify for an exemption? If so, is it permanent or temporary?

To determine if you qualify for a permanent exemption, you would have to use the General Cost Test and compute the ratios of the cost to use (1) coal for the useful life of a coal fired powerplant, (2) oil for the first year and coal for the remainder of the useful life of a dual fired powerplant, (3) oil for the first two years and coal for the remainder of the useful life of a dual fired powerplant • • •, and 11) oil for the first 10 years and coal for the remainder of the useful life of a dual fired powerplant to the cost of using oil for the entire useful life of an oil fired powerplant.

All 11 ratios would have to be higher than 1.5 in order to qualify for a permanent exemption. However, if a series of successive ratios, starting with the case where alternate fuel is used from the start of operations, are all greater than 1.5, you would be eligible for a temporary exemption up to the last year the ratio is greater than 1.5.

In this example, we will only compute the ratios of (1) the cost to use coal for the useful life of a coal fired powerplant and (2) the cost of using oil for the first three years and coal for the remainder of the useful life of a dual fired powerplant to the cost of using oil for the entire useful life of an oil fired powerplant.

To determine if you qualify for a temporary exemption of three years, if you have not already done so with the General Cost Test, you would have to use the Special Cost Test and compute the ratios of the cost to use coal in a coal fired powerplant to the cost to use oil in a dual fired powerplant for one, two, and three years. All three ratios would have to be higher than 1.5 in order to qualify for a three year temporary exemption. In this example, we will only compute the ratio of the cost to use coal in a coal-fired powerplant to the cost to use oil in a dual fired plant for three years.

(1) *Parameters.* A set of hypothetical parameters are given below:

(A) Coal and dual-fired powerplant:
Net capital outlay for coal-fired powerplant (without scrubber) before the plant becomes operational—$96,250,000.
Net capital outlay for dual-fired powerplant (without scrubber) before the plant becomes operational—$111,710,000.
Net marginal capital outlay for a dual-fired powerplant (without scrubber) before the plant becomes operational—$15,460,000.
Salvage value of equipment rendered useless by shifting from oil to coal—$3,860,000.
Net capital outlay for scrubber—$22,500,000.
Operations and maintenance costs per kWh:
Dual-fired powerplant burning oil—$0.0015/kWh.
Coal-fired powerplant burning coal—$0.0025/kWh.

(B) Oil-fired powerplant:
Net capital outlay for powerplant before it becomes operational—$66,250,000.
Operations and maintenance cost per kWh—$0.0015/kWh.

(C) Fuel:
Delivered price of oil—$2.52/1,000,000 Btu.
Heat input rate of oil—10,000 Btu/kWh.
Delivered price of coal for the first 3 years of operations—$4.28/1,000,000 Btu.
Delivered price of coal for the 4th through 35th year of operation—$1.35/1,000,000 Btu.
Heat input rate for coal—10,000 Btu/kWh.

(D) Powerplant capacity—250,000 kW.

(2) Analysis:

(A) The annual fuel and operations and maintenance expenditures are developed below.

—Delivered coal expenditures for the first 3 years:

FL = 8760 x ACF x C x f x H
= 8760 hr/yr x 0.7 x 250,000 KW
x $4.28/1,000,000 BTU
x 10,000 BTU/KWH
= $65,610,000/yr

—Delivered coal expenditures for the 4th through 35th years:

FL = 8760 x ACF x C x f x H
= 8760 hr/yr x 0.7 x 250,000 KW
x $1.35/1,000,000 BTU
x 10,000 BTU/KWH
= $20,700,000/yr

—Delivered oil expenditures:

FL = 8760 x ACF x C x f x H
= 8760 hr/yr x 0.7 x 250,000 KW
x $2.52/1,000,000 BTU
x 10,000 BTU/KWH
= $38,630,000/yr

—Operations and maintenance expenditures for a coal-fired powerplant burning coal:

OM = 8760 x ACF x O x C
= 8760 h/yr x 0.7 x $0.0025/KWH
x 250,000 KW
= $1,833,000/yr

—Operations and maintenance expenditures for a dual-fired powerplant burning oil:

OM = 8760 x ACF x O x C
= 8760 hr/yr x 0.7 x $0.0015/KWH
x 250,000 KWH
= $2,300,000

—Operations and maintenance expenditure for an oil-fired powerplant burning oil:

OM = 8760 x ACF x O x C
= 8760 hr/yr x 0.7 x $0.0015/KWH
x 250,000 KW
= $2,300,000/yr

(B) General cost test. The relevant cash flows are shown in the following table for the three cases in which computations are being made:

CASH FLOWS FOR GENERAL COST TEST

($ in Thousands)

Type of Cash Flow	Year(s)	Case 1 Coal Over Life of Powerplant	Case 2 Imported Petroleum for First 3 Yrs and Coal Thereafter	Case 3 Imported Petroleum Over the Life of the Powerplant
Investment	0	$96,250 + $22,500	$111,710	$ 66,250
Investment	3	0	$ 22,500	0
Salvage	3	0	$ 3,860	0
Operation and Maintenance	1, 2, 3	$ 3,383/yr.	$ 2,300/yr.	$ 2,300/yr.
Operation and Maintenance	4, ...,35	$ 3,833/yr.	$ 3,833/yr.	$ 2,300/yr.
Fuel	1, 2, 3	$ 65,610	$ 38,630/yr.	$ 38,630/yr.
Fuel	4, ...,35	$ 20,700/yr.	$ 20,700/yr.	$ 38,630/yr.

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The following computations are in thousands of dollars.

- Cost of using coal from the start of operation.

$$I = I_o + \frac{I_1}{(1+K)^1} + \frac{I_2}{(1+K)^2} + \ldots + \frac{I_n}{(1+K)^n}$$

$$= (96{,}250 + 22{,}500) + \frac{0}{(1.035)^1} + \frac{0}{(1.035)^1} + \ldots + \frac{0}{(1.035)^{35}}$$

$$= \$118{,}800$$

$$COST = I + \frac{OM_1 + FL_1}{(1+K)^1} + \frac{OM_2 + FL_2}{(1+K)^2} + \ldots + \frac{OM_n + FL_n}{(1+K)^n} - \frac{S_p}{(1+K)^p}$$

$$= 118{,}800 + \frac{3{,}833 + 65{,}610}{(1.035)^1} + \frac{3{,}833 + 65{,}610}{(1.035)^2} + \frac{3{,}833 + 65{,}610}{(1.035)^3} + \frac{3{,}833 + 20{,}700}{(1.035)^4} + \ldots + \frac{3{,}833 + 20{,}700}{(1.035)^{35}} - 0$$

$$= \$735{,}300$$

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- Cost of using imported petroleum for the first three years and coal thereafter.

$$I = I_o + \frac{I_1}{(1+K)^1} + \frac{I_2}{(1+K)^2} + \ldots + \frac{I_n}{(1+K)^n}$$

$$= 111{,}710 + \frac{22{,}500}{(1.035)^3}$$

$$= \$132{,}000$$

$$COST = I + \frac{OM_1 + FL_1}{(1+K)^1} + \frac{OM_2 + FL_2}{(1+K)^2} + \ldots + \frac{OM_n + FL_n}{(1+K)^n} - \frac{S_p}{(1+K)^p}$$

$$= 132{,}000 + \frac{2{,}300 + 38{,}630}{(1.035)^1} + \frac{2{,}300 + 38{,}630}{(1.035)^2} + \frac{2{,}300 + 38{,}630}{(1.035)^3} + \frac{3{,}833 + 20{,}700}{(1.035)^4} + \ldots + \frac{3{,}833 + 20{,}700}{(1.035)^{35}} - \frac{3{,}860}{(1.035)^3}$$

$$= \$655{,}100$$

- Cost of using imported petroleum over the life of the powerplant.

$$I = I_o + \frac{I_1}{(1+K)^1} + \frac{I_2}{(1+K)^2} + \ldots + \frac{I_n}{(1+K)^n}$$

$$= 66{,}250 + \frac{0}{(1.035)^1} + \frac{0}{(1.035)^2} + \ldots + \frac{0}{(1.035)^{35}}$$

$$= \$66{,}250$$

$$COST = I + \frac{OM_1 + FL_1}{(1+K)^1} + \frac{OM_2 + FL_2}{(1+K)^1} + \ldots + \frac{OM_n + FL_n}{(1+K)^n} - \frac{S_p}{(1+K)^p}$$

$$= 66{,}250 + \frac{2{,}300 + 38{,}630}{(1.035)^1} + \frac{2{,}300 + 38{,}630}{(1.035)^2} + \ldots + \frac{2{,}300 + 38{,}630}{(1.035)^{35}} - 0$$

$$= \$884{,}900$$

- Computation of ratios

$$R = \frac{COST\ (COAL\ throughout\ life)}{COST\ (OIL)}$$

$$= \frac{735{,}300}{884{,}900} = 0.83$$

$$R = \frac{COST\ (OIL\ first\ three\ years,\ coal\ thereafter)}{COST\ (OIL)}$$

$$= \frac{665{,}100}{884{,}900} = 0.75$$

—Since the index is less than 1.5, you would not qualify for a permanent or temporary exemption, using the general cost test.

(C) *Special cost test.* The relevant cash flows are shown in the following table for the two cases in which computations are being made.

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CASH FLOW FOR SPECIAL COST TEST (IN THOUSANDS)

Type of Cash Flow	Year (s)	Total Case Flows Case 1 Coal Over Life of Powerplant	Case 2 Petroleum for First 3 Yrs. & Coal Thereafter	Capital Outlays Required to Use Imported Oil Case 1 Coal Over Life of Powerplant	Case 2 Petroleum for First 3 Yrs. & Coal Thereafter
Investment	0	$ 96,250 + $22,500	$111,710	$7,040	
Investment	3	0	$ 22,500	-	$22,500
Salvage	3	0	$ 3,860		(-) 3,860.
Operation and Maintenance	1,2, 3	$ 3,833/yr.	$ 2,300/yr.	//////////////////// //////////////////// //////////////////// ////////////////////	
Fuel	1,2, 3	$ 65,610/yr.	$ 38,630/yr.	////////////////////	

The following computations are in thousands of dollars.

- Cost of using coal from the start of operation.

$$I = I_o + \frac{I_1}{(1+K)^1} + \frac{I_2}{(1+K)^2} + \ldots \frac{I_p}{(1+K)^p}$$

$$= \$7{,}040 + \frac{0}{(1.035)^1} + \frac{0}{(1.035)^2} + \ldots + \frac{0}{(1.035)^{35}}$$

$$= \$7{,}040$$

$$COST = I + \frac{OM_1 + FL_1}{(1+K)^1} + \frac{OM_2 + FL_2}{(1+K)^1} + \ldots + \frac{OM_p + FL_p}{(1+K)^p} - \frac{S_p}{(1+K)^p}$$

$$= 7{,}040 + \frac{3{,}833 + 65{,}610}{(1.035)^1} + \frac{3{,}833 + 65{,}610}{(1.035)^2} + \frac{3{,}833 + 65{,}610}{(1.035)^3}$$

$$- 0$$

$$= \$201{,}600$$

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- Cost of using imported petroleum for the first three years (and coal thereafter)

$$I = I_o + \frac{I_1}{(1+K)^1} + \frac{I_2}{(1+K)^2} + \ldots + \frac{I_p}{(1+K)^n}$$

$$= 0 + \frac{22,500}{(1.035)^3}$$

$$= \$20,290$$

$$COST = I + \frac{OM_1 + FL_1}{(1+K)^1} + \frac{OM_2 + FL_2}{(1+K)^2} + \ldots + \frac{OM_p + FL_p}{(1+K)^p} - \frac{Sp_p}{(1+K)^p}$$

$$= 20,290 + \frac{2,300 + 38.630}{(1.035)^1} + \frac{2,300 + 38,630}{(1.035)^2} + \frac{2,300 + 38.630}{(1.035)^3} - \frac{3860}{(1.035)^3}$$

$$= \$131,500$$

- Computation of ratio

$$R = \frac{COST\ (COAL\ FOR\ PERIOD\ OF\ EXEMPTION)}{COST\ (OIL\ FOR\ PERIOD\ OF\ EXEMPTION)}$$

$$= \frac{201,600}{131,500} = 1.53$$

If ERA had set the index at 1.5, you would be granted a temporary exemption.

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§ 503.6 State approval required for powerplant.

(a) Where approval by the appropriate State regulatory authority is required prior to the construction or use of a new powerplant, you may submit a petition for an exemption for consideration by ERA prior to obtaining the approval.

(b) An exemption granted for a powerplant shall not become effective until you demonstrate to the satisfaction of ERA that all applicable approvals required by the State regulatory authority have been obtained.

§ 503.7 No alternative power supply—Permanent exemptions.

(a) *Application.* Section 212 of the Act provides for a permanent exemption for lack of alternate fuel supply, site limitations, environmental requirements, inability to obtain adequate capital, State or local requirements, fuel mixtures, emergency purposes, reliability of service, or intermediate load. To qualify for one of these exemptions you must demonstrate to the satisfaction of ERA that despite diligent good faith efforts, there is no alternate supply of electric power which is available within a reasonable distance at a reasonable cost without impairing short-run of long-run reliability of service which you could obtain. ERA assumes that you will be able to demonstrate that there is no alternative supply of electric power if the expected date of plant operation is more than 10 years from the date you apply for an exemption. For proposed plants expected to being operational within 10 years from the date you submit your petition, you must demonstrate to the satisfaction of ERA the following:

(1) You cannot purchase electricity from another utility at a cost per kwh that is less than 1.5 times the cost of petroleum. You may include transmission costs to your service area in your cost calculation. ERA will consider any source of electricity that costs less than 1.5 times the cost of producing electricity from your proposed plant to be within a reasonable distance and at a reasonable cost. (For this subpart the cost factor will be the same as that used in the cost calculation.)

(2) You cannot construct and operate an alternate fuel fired plant either within or outside your service area at a cost which does not substantially exceed the cost of using imported petroleum. See Section 503.5 for instructions on calculations of cost. You may include transmission costs for power delivery to your service area.

(*b*) *Evidence.* You must include in your Fuels Decision Report the following substantial evidence to corroborate the above requirements:

(1) A detailed description of your methodology to calculate the cost for purchased electricity and for your proposed plant as required in Subsection (a)(1) above;

(2) Identification and explanation of all figures used in your calculations supporting Subsection (a)(1) above;

(3) A description of your efforts to purchase electricity, and

(4) All data required by Section 503.5 (Cost Calculation) supporting Subsection (a)(2) above.

§ 503.8 Use of mixtures—General requirement for temporary exemptions.

(a) ERA will not consider a petition for any temporary exemption under Section 211 of the Act to be complete, adequate, or acceptable for filing unless you demonstrate to the satisfaction of ERA in your Fuels Decision Report whether or not the use of a mixture of natural gas or petroleum and an adequate fuel is economically and technically feasible during the period of the proposed exemption.

(b) If ERA determines that use of a particular fuel mixture is technically or economically feasible during the period of the proposed exemption, ERA will condition the granting of any temporary exemption under this Part upon the use of that mixture during the period of the temporary exemption.

§ 503.9 Use of mixtures—General requirement for permanent exemptions.

(a) *Application.* ERA will not consider a petition for any of the following exemptions provided for in Section 212 of the Act (lack of alternate fuel supply, site limitations, environmental requirements, inability to obtain adequate capital, State or local requirements, cogeneration, emergency purposes, reliability of service, or intermediate load) to be complete, adequate, or acceptable for filing unless you demonstrate to the satisfaction of ERA in your Fuels Decision Report that you have considered the use of a mixture(s) for which an exemption under Section 503.38 (Fuel Mixtures) of these regulations would be available.

(b) *Demonstration.* ERA will not grant any of the exemptions listed above unless you demonstrate that use of such a mixture(s) is not economically or technically feasible in the unit for which you are requesting an exemption. To make such a demonstration, you must show in your Fuels Decision Report to the satisfaction of ERA that:

(1) If use of a mixture(s) were required, you would be eligible for one of the following permanent exemptions provided for in the Act: lack of alternate fuel supply, site limitations, environmental requirements, inability to obtain adequate capital, or State or local requirements; or

(2) The use of a mixture(s) is not technically or economically feasible in your specific unit due to design or special circumstances as determined by ERA on a case-by-case basis.

§ 503.10 Use of fluidized bed combustion not feasible—general requirement for permanent exemptions.

(a) *Application.* ERA will not consider a petition for one of the following exemptions provided for in Section 212 of the Act (lack of alternate fuel supply, site limitations, environmental requirements, inability to obtain adequate capital, State or local requirements, cogeneration, emergency purposes, reliability of service, or intermediate load) to be complete, adequate or acceptable for filing unless you demonstrate to the satisfaction of ERA in your Fuels Decision Report that:

(1) You have considered the use of a method of fluidized bed combustion of an alternate fuel; and

(2) Use of a method of fluidized bed combustion of an alternate fuel is not economically or technically feasible.

(b) *Finding.* If ERA determines, on a generic basis, that use of a method of fluidized bed combustion is technically and economically feasible, ERA will deny your request for exemption unless you demonstrtate to the satisfaction of ERA that:

(1) If use of a method of fluidized bed combustion were required, you would be eligible for one of the following permanent exemptions provided for in Section 212 of the Act: lack of alternate fuel supply, site limitations, environmental requirements, inability to obtain adequate capital, or State or local requirements; or

(2) The use of a method of fluidized bed combustion is not technically or economically feasible in your specific unit due to design or special circumstances as determined by ERA on a case-by-case basis.

§ 503.11 Alternative site—General requirement for permanent exemptions.

(a) *Application.* Section 212 of the Act provides for a permanent exemption for lack of alternate fuel supply, site limitations, environmental requirements, inability to obtain adequate capital, State or local requirements, or intermediate load. To qualify, you must demonstrate to the satisfaction of ERA that you cannot use alternate fuels at reasonable alternative sites as well as at your proposed sites. You must show that:

(1) You examined all reasonable alternative sites in your effort to use alternate fuels; and

(2) You are unable to use alternate fuels at any of the alternative sites you considered at a cost which does not substantially exceed the cost of using imported petroleum, or, in special circumstances, for other reasons.

(b) *Evidence.* You must include in your Fuels Decision Report the following substantial evidence to corroborate the above requirements:

(1) A map indicating your proposed site and each of the alternative sites you considered;

(2) A description of each of the alternate fuels you considered for use at each alternative site you considered;

(3) A detailed description of the criteria you used to select the alternative sites you considered and to select the alternate fuels you examined for use at each alternative site;

(4) Copies or summaries of any studies you performed as part of, or in support of your search for reasonable alternative sites;

(5) All data required by § 503.5 (Cost Calculation) supporting any contentions you make pertaining to the cost of using alternate fuels at alternative sites; and

(6) A detailed explanation of any contention you make concerning other reasons which would preclude use of alternative sites.

§ 503.12 Terms and conditions; compliance plans.

(a) *Terms and conditions generally.* You must comply with the terms and conditions of an exemption granted under the Act by the ERA, including terms and conditions requiring the use of (1) effective fuel conservation measures, and (2) fuel mixtures.

(b) *Compliance plans for temporary exemptions.* (1) A compliance plan certified by the Chief Executive Officer shall accompany a petition for a temporary exemption. The compliance plan shall include at least the following:

(i) A detailed schedule of progressive events and the dates upon which the events are to take place indicating how compliance with the applicable prohibitions of the Act will occur;

(ii) Documentary evidence of binding contract for fuel or facilities for the production of fuel which would allow for compliance with the applicable prohibitions of the Act;

(iii) Any other documentary evidence which indicates an intention to comply with the applicable prohibitions of the Act; and

(iv) A detailed statement of the manner in which you intend to comply with Section 503.8 of these regulations requiring the use of fuel mixtures as a condition to the granting of a temporary exemption where the use of fuel mixtures is technically and economically feasible.

(2) The exemption shall not be effective until the compliance plan is approved by ERA.

(3) Revisions of Compliance Plans. If the petition is granted, you must submit to ERA an updated compliance plan certified by your Chief Executive Officer:

(i) At the end of each 12 month period from the effective date of the exemption;

(ii) Within 1 month of an alteration of any milestone in the compliance plan, together with the reasons for the alteration and its impact upon the scheduling of all other milestones in the plan; and

(iii) At any time the ERA, in its discretion, determines that a revised compliance plan is necessary to reflect changes in circumstances.

(c) *Enforcement.* An exemption is subject to termination upon the violation of any provision of an exemption or any provision of the pertinent compliance plan.

Subpart C—Temporary Exemptions for New Powerplants

§ 503.20 Purpose and scope.

(a) This subpart implements the provisions contained in section 211 of the Act with regard to temporary exemptions for new powerplants.

(b) This subpart establishes the criteria and standards which owners or operators of new powerplants who petition for a temporary exemption must meet to sustain their burden of proof under the Act.

(c) You shall submit all petitions for temporary exemptions for new powerplants in accordance with the procedures set out in Part 501 of these regulations.

(d) The duration of any temporary exemption granted under this subpart shall be measured from the date that the powerplant is placed in service.

§ 503.21 Lack of alternate fuel supply.

(a) *Eligibility.* Section 211(a)(1) of the Act provides for a temporary exemption due to lack of an alternate fuel supply. To qualify you must demonstrate to the satisfaction of ERA that:

(1) You made a good faith effort to obtain an adequate and reliable supply of an alternate fuel of the quality necessary to conform to the design and operational requirements of the new powerplant;

(2) For the period of the proposed exemption, the cost of using such a supply would substantially exceed the cost of using imported petroleum as a primary energy source as defined in § 503.5 (cost calculation) of these regulations; and

(3) You will be able to comply with the applicable prohibitions of these regulations at the end of the proposed exemption period.

(b) *Evidence required in support of a petition.* To submit an adequate petition for review by ERA you must include in your Fuels Decision Report the following substantial evidence to corroborate the above requirements:

(1) A description of the approach and methodology you used to search for and evaluate the use of the alternate fuels you considered;

(2) A description of the alternate unit designs you considered in a good faith effort to comply with the applicable prohibitions;

(3) A description of the detailed design requirements for the new powerplant as specified by the purchaser, including capacity, alternate fuel capability, and all other specifications;

(4) A description of the specific fuel characteristics of all the fuels which can be used by the new powerplant;

(5) Evidence that you sought to obtain the full range of alternate fuels and fuel characteristics which could be used by the new powerplant, including bid requests, and/or advertisements for supply contracts and all responses thereto, as well as any other arrangements you attempted to make to secure supplies;

(6) Evidence of the contracts or other arrangements you have made to insure a reliable and adequate supply of an alternate fuel at the end of the proposed exemption; and

(7) All data required by Section 503.5 (Cost Calculation) of these regulations necessary for computing the cost calculation formula.

(c) *Compliance plan.* You must submit to ERA a compliance plan in accord with section 214 of the Act and § 503.12 of these regulations simultaneously with submission of your petition to satisfy ERA requirements for petition adequacy. You must submit an updated compliance plan as required by Section 503.12 of these regulations and as required by the terms of any order granting an exemption under this subpart.

(d) *Duration.* This temporary exemption, taking into account any extensions of renewals, may not exceed 10 years.

§ 503.22 Site limitations.

(a) *Eligibility.* Section 211(a)(2) of the act provides for a temporary exemption due to a site limitation. To qualify you must demonstrate, to the satisfaction of ERA, that one or more of the following specific physical limitations relevant to the location or operation of your powerplant exist which, despite your diligent good faith, cannot be overcome before the end of the proposed exemption period:

(1) Alternate fuels would be inaccessible;

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(2) Transportation facilities for alternate fuels would be unavailable;

(3) Adequate facilities for handling, using or storing an alternate fuel would be unavailable;

(4) Adequate means for controlling and disposing of wastes would be unavailable;

(5) Adequate and reliable supply of water would be unavailable; or

(6) Other site limitations exist which would not permit the location or operation of the proposed powerplant using an alternate fuel.

(b) *Evidence to be submitted in support of the petition.* To submit an adequate petition for review by ERA, you must include in your Fuels Decision Report the following substantial evidence to corroborate the above criteria:

(1) Evidence that the site limitation is a physical limitation, and not a requirement of Federal, State, or local law which could be the basis of an exemption under § 503.36 (State or local requirements);

(2) Evidence that alternative means for overcoming the specific site limitations were considered, with a detailed description of the efforts made to overcome the site limitations set out in your petition;

(3) Evidence of the equipment or space requirements for which the site limitation is claimed; and

(4) Evidence of contracts or other arrangements you have made to insure that the site limitation will be overcome and that you will comply with the prohibitions at the end of the proposed exemption period. Examples of evidence relevant to establishing a site limitation for purposes of a temporary exemption are as follows:

(i) Detailed documentation of impediments, including rights of way problems, site diagrams, maps of the surrounding areas and other items essential to the showing of a site limitation;

(ii) Identification of transportation facilities relevant to the specific site of the powerplant and demonstration why existing transportation facilities cannot be utilized or new facilities constructed;

(iii) Copies of bid requests, advertisements, and general efforts made to secure alternative transportation facilities;

(iv) Identification of potential alternate fuel storage locations within a reasonable geographic area surrounding the proposed powerplant;

(iv) Detailed scale site plans of the entire facility which include those areas not directly involved with the specific boiler;

(vi) A specific listing of all equipment necessary and not currently available to properly handle alternate fuel;

(vii) Copies of bid requests, advertisements and general efforts made to secure alternative fuel storage facilities;

(viii) Copies of quotes from bona fide supplier, indicating lead times for purchase and installation of required ancillary storage of handling equipment;

(ix) Specific listing of any equipment necessary and not currently available to properly control and dispose of waste;

(x) Identification of potential alternate waste disposal locations within a reasonable geographic area surounding the proposed powerplant;

(xi) A description of efforts made to secure off site disposal areas, including the cost of acquisition of the sites, transportation facilities and waste handling costs involved in their use; and

(xii) Copies of bid requests, advertisements, and general efforts made to secure waste control and disposal equipment.

(c) *Compliance plan.* you must submit to ERA a compliance plan in accordance with section 214 of the Act and section 503.12 of these regulations simultaneously with submission of your petition to satisfy ERA requirements for petition adequacy. You must submit an updated compliance plan as required by § 503.12 of these regulations and as required by the terms of any order granting an exemption under this subpart.

(d) *Duration.* This temporary exemption, taking into account any extensions and renewals, may not exceed 5 years.

§ 503.23 Inability to comply with applicable environmental requirements.

(a) *Eligibility.* Section 211(a)(3) of the Act provides for a temporary exemption due to an inability to comply with applicable environmental requirements. To qualify you must demonstrate to the satisfaction of ERA in your Fuels Decision Report that despite diligent good faith efforts:

(1) You will be unable to comply with the applicable prohibitions imposed by the Act without violating applicable Federal of State environmental requirements as of the projected date of commencement of operations; and

(2) You will be able to comply with the applicable prohibitions imposed by the Act by the end of the temporary exemption period.

(b) *Evidence required in support of the petition.* To submit an adequate petition for review by ERA, you must include your Fuels Decision Report petition the following substantial evidence to corroborate. the above requirements:

(1) A copy of any application which has been filed with EPA or a State agency for a permit to construct or operate a new powerplant.

(2) A copy of the decision of action taken by EPA or a State agency with respect to the application for a permit to construct or operate the new powerplant.

(3) A detailed synopsis of the administrative record fo the proceedings by EPA or the State agency for a construction or operation permit.

(4) Copies of all technical studies that you have relied upon with regard to consideration of alternate fuels, pollution control equipment, offsets, variances, State Implementation Plan revisions, and redesignations of Class 2 areas to Class 3.

(5) Copies of requests for bids, all responses received, and contracts signed, if any, for an alternate fuel supply and for the purchase and installation of pollution control equipment.

(6) Copies of agreements made by you with the State or other companies for the acquisition of appropriate "offsets." If the agreement is conditioned upon the grant of a variance, State Implementation Plan revision or redesignation of Class 2 areas, you must submit a letter from the State agency indicating when a proceeding to effectuate the agreement will take place.

(c) *A petition to ERA in lieu of application to EPA.* If you have not applied to EPA or a State agency for a construction or operation permit, you must also submit to ERA:

(1) Verification that the facility cannot burn an alternate fuel on the date of commencement of operations in compliance with all applicable air poilution control requirements; and

(2) Items required under paragraphs (b) 4, 5, and 6 above.

(d) *Compliance plan.* You must submit to ERA a compliance plan in accord with section 214 of the Act and § 503.12 of these regulations simultaneously with submission of your petition to satisfy ERA requirements for petition adequacy. You must submit an updated compliance plan as required by § 503.12 of these regulations and as required by the terms of any order granting an exemption under this subpart.

(e) *Duration.* This temporary exemption, taking into account extensions and renewals, may not exceed 5 years.

§ 503.24 Future use of synthetic fuels.

(a) *Eligibility.* Section 211(b) of the Act provides for a temporary exemption based upon the future use of synthetic fuels. To qualify you must demonstrate to the satisfaction of ERA that:

(1) You will be able to comply with the applicable prohibitions imposed by the Act by the end of the proposed exemption period by the use of synthetic fuel as a primary energy source in your powerplant;

(2) You will not be capable of complying with the applicable prohibitions imposed by the Act by using an alternate fuel in your powerplant before the end of the proposed exemption period.

(b) *Evidence required in support of the petition.* To submit an adequate petition for review by ERA you must include in your Fuels Decision Report the following substantial evidence to corroborate the above requirements:

(1) Copies of economic and technical feasibility studies pertaining to the use of synthetic fuels by your proposed powerplant;

(2) Reliable evidence of the financial commitments you have made to construct, operate, and maintain equipment which will use synthetic fuel as the primary energy source at the end of the proposed exemption period;

(3) Copies of bid requests, advertisements, contracts and/or other agreements relating to the production, purchase, and transportation of synthetic fuel; and

(4) Information with regard to permits that may be required by Federal or State agencies for the construction and operation of a powerplant using synthetic fuels.

(c) *Compliance plan.* You must submit to ERA a compliance plan in accordance with section 214 of the Act and § 503.12 of these regulations simultaneously with submission of your petition to satisfy ERA requirements for petition adequacy. You shall submit an updated compliance plan as required by § 503.12 of these regulations and as required by the terms of any order granting an exemption under this subpart.

(d) *Duration.* This temporary exemption may be granted for a period of up to 5 years and may be extended for an additional 5 years, but so extended may not exceed 10 years.

§ 503.25 Public interest exemption.

(a) *Eligibility.* Section 211(c) of the Act provides for a temporary public interest exemption. To qualify you must demonstrate to the satisfaction of ERA that:

(1) You are unable to comply with the applicable prohibitions imposed by the Act, except in extraordinary circumstances during the period for which exemption is requested, but that you will be capable of complying at the end of the proposed exemption period;

(2) You are not eligible for a temporary exemption based on lack of alternate fuel supply, site limitations, or environmental requirements;

(3) The granting of the petition would be in accord with the purposes of the Act and would be in the public interest.

(b) *Evidence required in support of a petition.* To submit an adequate petition for review by ERA you must include in your Fuels Decision Report substantial evidence to corroborate the above requirements.

(c) *Compliance plan.* You must submit to ERA a compliance plan in accordance with Section 214 of the Act and § 503.12 of these regulations simultaneously with submission of your petition to satisfy ERA requirements for petition adequacy. You must submit an updated compliance plan as required by § 503.12 of these regulations and as required by the terms of any order granting an exemption under this subpart.

(d) *Duration.* This temporary exemption, taking into account extension and renewals, may not exceed 5 years.

Subpart D—Permanent Exemptions for New Electric Powerplants

§ 503.30 Purpose and scope.

(a) This subpart implements the provisions contained in section 212 of the Act with regard to permanent exemptions for new electric powerplants.

(b) This subpart establishes the criteria and standards which owners or operators of new powerplants that petition for a permanent exemption must meet to sustain their burden of proof under the Act.

(c) You must submit all petitions for permanent exemptions for new powerplants in accordance with the procedures set out in Part 501 of these regulations.

§ 503.31 Lack of alternate fuel supply for the first 10 years of useful life.

(a) *Eligibility.* Section 212(a)(1)(A)(i) of the Act provides for a permanent exemption due to lack of an adequate and reliable supply of alternate fuel during the first 10 years of useful life of the new powerplant. To qualify you must demonstrate to the satisfaction of ERA that:

(1) You made a good faith effort to obtain an adequate and reliable supply of an alternate fuel of the quality necessary to conform to the design and operational requirements of the new powerplant; and

(2) Such a supply will not be available within the first 10 years of useful life of the new powerplant.

(b) *Evidence in support of a petition.* To submit an adequate petition for review by ERA, you must include in your Fuels Decision Report the following substantial evidence to corroborate the above requirements:

(1) A description of the alternate unit designs you considered in a good faith effort to comply with the applicable prohibitions;

(2) A description of the detailed design requirements for the new powerplant as specified by the purchaser, including capacity, alternate fuels capability, and all other pertinent specifications;

(3) A description of the specific fuel characteristics of all the fuels which can be used by the new powerplant;

(4) Evidence that you sought to obtain the full range of alternate fuels and fuel characteristics which could be used by the new powerplant;

(5) Evidence that you solicited at least three bids from at least 25 percent of the supplier market for an adequate and reliable supply of alternate fuel, including bid requests and/or advertisements for supply contracts and all proposals or responses thereto, as well as any other arrangements you attempted to make to secure supplies; and

(6) A description of the approach and methodology you used to search for and evaluate the use of the alternate fuel you considered, including a discussion of how you made your assessment that an adequate and reliable supply of the quality of fuel needed would not be available within the first 10 years of useful life of the new powerplant.

§ 503.32 Lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum.

(a) *Eligibility.* Section 212(a)(1)(A)(ii) of the Act provides for a permanent exemption due to lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. To qualify you must demonstrate to the satisfaction of ERA that:

(1) You made a good faith effort to obtain an adequate and reliable supply of an alternate fuel of the quality necessary to conform to design and operational requirements of the new powerplant; and

(2) The cost of using such a supply would substantially exceed the cost of using imported petroleum as a primary energy source during the useful life of the new powerplant as defined in § 503.5 (Cost Calculation) of these regulations.

(b) *Evidence in support of a petition.* To submit an adequate petition for review by ERA, you must include in your Fuels Decision Report the following substantial evidence to corroborate the above requirements:

(1) A description of the alternate unit designs you considered in a good faith effort to comply with the applicable prohibitions;

(2) A description of the detailed design requirements for the new

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powerplant as specified by the purchaser, including capacity, alternate fuels capability, and all other pertinent specifications;

(3) A description of the specific fuel characteristics of all the fuels which can be used by the new powerplant;

(4) Evidence that you sought the full range of alternate fuels and fuel characteristics which could be used by the new powerplant, including bid requests and/or advertisements for supply contracts, all proposals and responses thereto, as well as any other arrangements you attempted to make to secure supplies;

(5) All data required by § 503.5 of these regulations (Cost Calculation) necessary for computing the cost calculation formula; and

(6) A description of the approach and methodology you used to search for and evaluate the use of the alternate fuel you considered.

§ 503.33 Site limitation.

(a) *Eligibility.* Section 212(a)(1)(B) of the Act provides for a permanent exemption due to a site limitation. To qualify you must demonstrate to the satisfaction of ERA that, despite good faith efforts:

(1) Alternate fuels are inaccessible as a result of a specific physical limitation to the location or operation of the proposed powerplant;

(2) Transportation facilities for alternate fuels would be unavailable;

(3) Adequate facilities for handling, using or storing alternate fuels would be unavailable;

(4) Adequate means for controlling and disposing of wastes would be unavailable;

(5) Adequate and reliable supply of water would be unavailable; or

(6) Other site limitations exist which would not permit the location or operation of the proposed powerplant using an alternate fuel, and these limitations cannot be reasonably expected to be overcome within 5 years after commencement of operations.

(b) *Evidence to be submitted in support of the petition.* To submit an adequate petition for review by ERA, you must include in your Fuels Decision Report the following substantial evidence to corroborate the above criteria.

(1) Evidence that the site limitation is a physical limitation, and not a requirement of Federal, State, or local law which could be the basis of an exemption under § 503.36 (State or local requirements);

(2) Evidence that alternatives means for overcoming the specific site limitations were sought, with a detailed description of the efforts made to overcome the site limitations set out in your petition; and

(3) Evidence of the equipment or space requirements for which the site limitation is claimed. Examples of evidence relevant to establishing a site limitation for purposes of a permanent exemption are as follows:

(i) Detailed documentation of impediments, including rights of way problems, site diagrams, maps of the surrounding areas and other items essential to the showing of a site limitation;

(ii) Identification of transportation facilities relevant to the geographic site of the powerplant and demonstration why existing transportation facilities cannot be utilized or new facilities constructed;

(iii) Copies of bid requests, advertisements and general efforts made to secure alternative transportation facilities;

(iv) Identification of potential alternate fuel storage locations within a reasonable geographic area surrounding the proposed powerplant;

(v) Detailed scale site plans of the entire facility which include those areas not directly involved with a specific powerplant;

(vi) A specific listing of all equipment necessary and not currently available to properly handle alternate fuels;

(vii) Copies of bid requests, advertisements and general efforts made to secure alternative fuel storage facilities;

(viii) Copies of quotes from bona fide suppliers, indicating lead times for purchase and installation or required ancillary storage or handling equipment;

(ix) Specific listing of any equipment necessary and not currently available to properly control and dispose of waste;

(x) Identification of potential alternate waste disposal locations within a reasonable geographic area surrounding the proposed powerplant;

(xi) A description of efforts made to secure off-site disposal areas, including the cost of acquisition of the sites, transportation facilities and waste handling costs involved in their use; and

(xii) Copies of bid requests, advertisements, and general efforts made to secure waste control and disposal equipment.

§ 503.34 Inability to comply with applicable environmental requirements.

(a) *Eligibility.* Section 212(a)(1)(C) of the Act provides for a permanent exemption due to the inability to comply with the applicable environmental requirements. To qualify you must demonstrate to the satisfaction of ERA that, despite good faith efforts:

(1) You cannot burn alternate fuels without violating applicable environmental requirements within 5 years after beginning operation by providing proof that EPA or the State has denied a construction permit and by providing the information requested below, and

(2) You cannot burn alternate fuels at reasonable alternative sites and meet the applicable environmental requirements.

(b) *Evidence supporting petition.* To submit an adequate petition for review by ERA, you must include in your Fuels Decision Report the following substantial evidence to corroborate the above requirements:

(1) A copy of your construction permit application and all supporting documents filed with or subsequent to the application;

(2) To the extent applicable, a copy of the EPA and/or State denial of your construction permit application;

(3) A detailed synopsis of the administrative record of the EPA and/or state permit proceedings;

(4) Copies of reports examining environmental compliance of the facility including fuel use, pollution control equipment, availability of offsets, variances, SIP revisions, and redesignations;

(5) Copies of requests for bids and responses received for fuel supply and pollution control equipment and copies of correspondence on offsets, variances, SIP revisions, and redesignations; and

(6) Evidence that there is no reasonable alternative site as specified in § 2003.11 of these regulations.

(c) *Prepetition actions.* (1) It is recommended that you request a meeting with ERA and EPA or the appropriate State regulatory agency to discuss options for complying with the prohibitions; and (2) you must submit a copy to DOE of your construction permit application at the same time you submit it to EPA or the State if you are applying for use of oil or gas as well as an alternate fuel.

§ 503.35 Inability to obtain adequate capital.

(a) *Eligibility.* Section 212(a)(1)(D) of the Act provides for a permanent exemption due to inability to obtain adequate capital. To qualify you must demonstrate to the satisfaction of ERA that despite good faith efforts:

(1) You will be unable to comply with the applicable prohibitions imposed by the Act if you cannot obtain the additional capital required for an alternate fuel facility beyond that required for your proposed facility.

(2) You cannot raise this additional capital due to specific restrictions in your ability to raise debt and equity capital; and

(3) These specific restrictions on your ability to raise debt and equity capital could not be alleviated by any past or future action of your public utility Commission or any other regulatory authority.

(b) *Evidence required in support of the petition.* To submit an adequate petition for review by ERA, you must include in your Fuels Decision Report supporting documentary evidence to corroborate the above requirements. The evidence should include but not be limited to the following information:

(1) Statement of the State regulatory authority's policies on utility capital structure and formation, on the recognition of allowance for funds used during construction (in the utility's net plant) and of construction work in progress (in the utility's rate base), and on the accounting procedure for recognizing tax credits (flow-through or normalized).

(2) Relevant records pertaining to the utility's specific efforts to raise capital associated with the proposed powerplant.

(3) Five year history of the utility's capital structure recognizing specific security issues and their current yields and investment ratings. Indicate where a security issued has specific ties to an on-line or scheduled generating unit.

(4) Five year summary of the utility's financial record as indicated by the standard financial indicators including cash earnings and dividend records; time interest coverage ratios; price-earnings ratios; and market to book value ratios.

(5) Projected changes in the utility's capital structure and financial indicators where the powerplant burns:

(i) Alternate fuel; and

(ii) Oil or natural gas.

§ 503.36 State or local requirements.

(a) *Eligibility.* Section 212(b) of the Act provides for a permanent exemption due to State or local requirements. To qualify you must demonstrate to the satisfaction of EPA that:

(1) With respect to the proposed site of the powerplant, the operations or construction of the new powerplant using an alternate fuel is infeasible because of a State or local requirement other than a building code, nuisance or zoning law;

(2) You have, in good faith attempted unsuccessfully to obtain a variance from the State or local requirement or have determined why none is available;

(3) There is no reasonable alternative site for the facility;

(4) The granting of the exemption would be in the public interest and would be consistent with the purposes of this Title; and

(5) You are unable to comply with the applicable prohibitions imposed by the Act and you are ineligible for a permanent exemption based on lack of alternate fuel supply, site limitations, environmental requirements or inability to obtain adequate capital.

(b) *Evidence required in support of a petition.* To submit an adequate petition for review by ERA, you must include in your Fuels Decision Report the following substantial evidence to corroborate the above requirements:

(1) A copy of the pertinent State or local requirement with its citation and its legislative history;

(2) The identification and location of the administrative body which implements the requirement;

(3) A description of your attempts to obtain a variance from the requirement;

(4) A description of any activities you were involved in pertaining to the enactment of the requirement;

(5) A description of equipment, procedures, advance planning time and costs necessary to comply with the requirement;

(6) A detailed description of why compliance is infeasible;

(7) The impact upon you and/or your local community, if any, should this petition be denied;

(8) An explanation of the reasons why granting this exemption would be in the public interest;

(9) An analysis of why you cannot qualify for each of the exemptions listed in (a)(5) above; and

(10) All evidence required by Section 503.11 (Alternative Sites), of this Part.

§ 503.37 Cogeneration.

(a) *Eligibility.* Section 212(c) of the Act provides for a permanent exemption for cogeneration. To qualify you must demonstrate to the satisfaction of ERA at least the following minimum criteria:

(1) You are unable to comply with the applicable prohibitions imposed by the Act;

(2) That there are economic and other benefits of cogeneration with petroleum or natural gas, none of which are obtainable through the use of an alternate fuel.

(b) *Evidence required in support of a petition.* To submit an adequate petition for review by ERA you must include in your Fuels Decision Report the following substantial evidence to corroborate the above requirements:

(1) Documentary evidence which demonstrates that you considered the use of alternate fuels, including a description of the fuel alternatives you examined and the factors important in your decision to reject the use of alternate fuels. Such factors would include lack of alternate fuel supply, site limitations, environmental requirements, or inability to raise adequate capital;

(2) The purchaser's design specifications of the new unit;

(3) An engineering description of the system, including proposed output and uses thereof, with sufficient detail to ensure that the unit qualifies as a cogeneration facility;

(4) A detailed economic and engineering analysis demonstrating the benefits of cogenerating with petroleum or natural gas and demonstrating that these benefits are not obtainable through the use of alternate fuels;

(5) A comparison of the total oil and gas consumption by the proposed cogeneration project and the best feasible alternatives, including the effect on oil or gas used by the electric utility or by other affected parties; and

(6) An analysis of the immediate and long-term economic impacts on parties not directly involved in the project (for example, the other customers of the utility receiving the electricity).

§ 503.38 Permanent exemption for certain fuel mixtures containing natural gas or petroleum.

(a) *Eligibility.* Section 212(d) of the Act provides for a permanent exemption for certain fuel mixtures. To qualify you must demonstrate to the satisfaction of ERA that:

(1) You propose to use a mixture of natural gas or petroleum and an alternate fuel as a primary energy source;

(2) You are not capable of complying with the applicable prohibitions imposed by the Act; and

(3) The amount of petroleum or natural gas you propose to use in the mixture will not exceed the minimum percentage of the total Btu heat imput needed to maintain operational reliability consistent with maintaining a reasonable level of fuel efficiency.

(b) *Evidence required in support of a petition.* To submit an adequate petition for review by ERA you must include in your Fuels Decision Report the following substantial evidence to corroborate the above requirements:

(1) A complete description of the fuel mixture, component elements of the mixture, and percentage of each component to be utilized;

(2) The purchaser's design specifications for the unit for which you are requesting an exemption;

(3) An engineering assessment of the proportions of petroleum or natural gas needed to maintain operational reliability and an adequate level of fuel efficiency; and

(4) Documentary evidence which demonstrated that you have considered the use of alternate fuels as a primary energy source. You must include a description of the supply alternatives you considered, the cost and

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availability of each alternate fuel considered, and the factors important in your decision to reject the use of an alternate fuel as a primary energy source.

(c) *Reporting requirement.* If the exemption is granted, you must submit an annual report to ERA certifying that the affected units have used no more than the percentage of oil or natural gas specified in the exemption order. The certification shall be executed by your Chief Executive Officer.

§ 503.39 Emergency purposes.

(a) *Eligibility.* Section 212(e) of the Act provides for a permanent exemption for emergency purposes. To qualify you must demonstrate to the satisfaction of ERA:

(1) You are unable to comply with the applicable prohibitions imposed by the Act; and

(2) You shall operate and maintain the powerplant for emergency purposes only.

(b) *Definition.* For the purposes of this permanent exemption an emergency exists when the operating utility has been required to curtail its industrial customers by 10 percent or more from expected noninterruptible demand.

(c) *Evidence required in support of a petition.* To submit an adequate petition for review by ERA you must include in your Fuels Decision Report substantial evidence to corroborate the above requirements. The evidence submitted must include at a minimum:

(1) A certificate executed by the Chief Executive Officer of the operating utility stating that emergency operation under the provisions of this exemption will occur only when it is required to curtail 10 percent or more of its noninterruptible industrial customers; and

(2) Documentary evidence which demonstrates that you considered the use of alternate fuels, including a description of the fuel alternatives you examined and the factors important in your decision to reject the use of alternate fuels. Such factors would include lack of alternate fuel supply, site limitations, environmental requirements, inability to raise adequate capital, certain State or local requirements, or other reasons which would preclude the use of an alternate fuel.

(d) *Reporting requirement.* At the end of each 12 month period from the effective date of the exemption, you must report to ERA the monthly and annual total generating capacity used and amounts of electricity generated under the provisions of this exemption with a description of the purposes of use.

503.40 Permanent exemption for powerplants necessary to maintain reliability of service.

(a) *Eligibility.* (1) Section 212(f) of the Act provides for a permanent exemption to maintain reliability of service. To qualify you must demonstrate to the satisfaction of ERA that:

(i) You are not capable of complying with the applicable prohibitions imposed by the Act without an impairment of reliability of service as measured by the loss of load probability technique described in paragraphs (a)(2), and (a)(3) below:

(ii) Despite diligent good faith efforts, you are not able to make the demonstration necessary to obtain a permanent exemption on the basis of lack of alternate fuel supply, site limitations, environmental requirements, inability to raise adequate capital, or certain State or local requirements, in the time required to prevent an impairment of service;

(2) You must calculate reliability of service utilizing the loss of load probability (LOLP) technique. The LOLP must be computed for your electrical region using the first 12 month period of powerplant operation. It is to be calculated as the sum of either the weekly or the monthly estimates of hourly load/capacity deficits. You may decide whether to perform the calculation using weekly or monthly data. The LOLP calculation must take into consideration equipment forced outage rates, projected customer electrical demand, and generating capacity projections for the electrical region, including existing generating capacity, planned generating capacity additions and projected firm bulk electrical purchases and sales, and projected retirements. If necessary, you may also calculate LOLP with modifications to account for transmission constraints, energy shortages, and other factors that are not adequately addressed by adhering to the foregoing specifications.

(3) Reliability of service is impaired if the LOLP at the time the proposed unit is to be added, including all available emergency reliability connections and other bulk power ties, is greater than:

(i) One day in 5 years if your proposed powerplant will start operating within 3 years from the filing of your petition;

(ii) One day in 3 years if your proposed powerplant will start operating between 3 and 5 years from the filing of your petition; or

(iii) One day in 1 year if your proposed powerplant will start operating in 5 or more years from the filing of your petition.

(b) *Evidence supporting the petition.* To submit an adequate petition for review by ERA you must include in your Fuels Decision Report the following substantial evidence to corroborate the above requirements:

(1) All data you used in determining the loss of load probability;

(2) An explanation including equations of how you are calculating the loss of load probability;

(3) A description of the proposed new powerplant to include the size and type of powerplant, and type of fuel used;

(4) Your plans for meeting projected customer electrical demand and an explanation of the method and data you employ in calculating that demand; and

(5) If your proposed new powerplant is not to be a combustion turbine powerplant, an explanation of the reasons why the construction of a combustion turbine powerplant would not resolve your reliability of service problem.

(c) *Duration.* If ERA grants a reliability of service exemption for a combustion turbine powerplant, the exemption shall be valid as long as there is no change in the thermal cycle of the powerplant.

§ 503.41 Peakload powerplants.

(a) *Eligibility.*—(1) *Proposed use of petroleum.* Section 212(g) of the Act provides for a permanent exemption for peakload powerplants if you propose to use petroleum as a primary energy source in a new peakload powerplant, or propose to construct a peakload powerplant to use petroleum without the capability to use an alternate fuel as a primary energy source. To qualify you must certify to ERA that the powerplant will be operated solely as a peakload powerplant for the life of the powerplant and supply the requested data supporting this contention.

(2) *Proposed use of natural gas.* Section 212(g) of the Act provides for a permanent exemption for peakload powerplants if you propose to use natural gas as a primary energy source in a new peakload powerplant, or propose to construct a peakload powerplant to use natural gas without the capability to use an alternate fuel as a primary energy source. To qualify:

(i) You must certify to ERA that the powerplant will be operated solely as a peakload powerplant for the life of the powerplant; and

(ii) The Administrator of the EPA or the Director of the appropriate State air pollution control agency must certify that the use by the powerplant of an available alternate fuel as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within the region, of a pollutant for which any national air quality standard is or would be exceeded.

(3) Your powerplant is operated solely as a peakload powerplant if the electrical generation of the powerplant in kilowatt hours does not exceed, for any 12-calendar-month period, the powerplant's design capacity multiplied by 1,500 hours.

(b) *Evidence required in support of a petition.* To submit an adequate petition for review by ERA you must include in your Fuels Decision Report the following substantial evidence to corroborate the above requirements:

(1) The petition must be accompanied by a sworn statement signed by the Chief Executive Officer of the electric utility which will operate the powerplant certifying that the powerplant is to be operated solely as a peakload powerplant. The certification must set forth the design capacity of the powerplant and the maximum allowable generation of the powerplant in kilowatt hours according to the definition of peakload for each 12 months of operation as a peakload powerplant.

(2) If you propose to use natural gas or construct a powerplant to use natural gas in lieu of an alternate fuel as a primary energy source, an air qualify certification must have been prepared for the Secretary by the Administrator of the EPA or the Director of the appropriate State air pollution control agency which meets the requirements contained in paragraph (a)(2)(ii), above, and which describes all fuels considered in the certification. The air quality certification must be accompanied by a copy of your application requesting the certification as filed before the EPA or State air pollution control agency and by all supporting documentation filed with or subsequent to the application. DOE may determine that your application for the air quality certification is deficient for purposes of this subpart if the EPA or State air pollution control agency failed to consider all available alternate fuels.

(3) If your proposed peakload powerplant is to be other than a combustion turbine powerplant, you must supply with the petition the following information on the electrical region that would include the proposed peakload powerplant based on the pwerplant's first 12 months of projected operation:

(i) A demand projection;

(ii) A load duration curve;

(iii) An inventory of existing powerplants by size, type, and fuel used;

(iv) A listing of planned powerplants by size, type, and fuel use; and

(v) The projected order of dispatch for existing and proposed powerplants.

(c) *Liability for operating in excess of exemption.* The operation of a peakload powerplant which has been granted this exemption in excess of that allowed by the exemption shall be subject to penalties under Title VII, Subtitle C of the Act unless the powerplant meets the criteria set forth in section 721(c) of the Act.

(d) *Reporting requirement.* If the petition is granted, you must report to ERA, at the end of each 12 month period from the first day of the month following the effective date of the exemption and, if applicable, upon reaching the maximum number of hours of permitted operation within each 12 month period, the name, location, and design capacity of the exempted unit, the number of hours of operation permitted by the exemption, and the number of hours of actual operation.

§ 503.42 Intermediate load powerplants.

(a) *Eligibility.* Section 211(h) of the Act provides for an exemption for intermediate load powerplants use of petroleum as a primary source. To qualify you must demonstrate to the satisfaction of ERA that:

(1) The Administrator of the EPA or the Director of the appropriate State air pollution control agency has certified that the use of any available alternate fuel as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within such region, of a pollutant for which any national ambient air quality standard is or would be exceeded as described in (c) below;

(2) The powerplant to be constructed and operated will replace no more than the equivalent generating capacity of existing units which:

(i) Permanently cease operation within one month of commencement of operation of the new powerplant;

(ii) Use natural gas or petroleum as a primary energy source;

(iii) Are owned by the same person who is to operate the new powerplant;

(iv) Are capable of using coal as a primary energy source; and

(v) Would cause or contribute to a pollutant concentration in a manner described in subsection (a)(1), above;

(3) The powerplant is to be operated only as an intermediate load powerplant in which the electrical generation, in kilowatt hours, for any 12-calendar-month period, shall not exceed the powerplant's design capacity multiplied by 3,500 hours;

(4) The net heat input rate for the powerplant will be maintained at or less than 9,500 Btu's per kilowatt hour throughout the useful life of the powerplant;

(5) There is no reasonable alternative site for the powerplant, as defined in § 503.11 of these regulations; and

(6) The powerplant is to be constructed with the capability to use a synthetic fuel derived from an alternate fuel as a primary energy source.

(b) *Evidence supporting the petition.* To submit an adequate petition for review by ERA you must include in your Fuels Decision Report the following substantial evidence to corroborate the above requirements;

(1) A copy of your application for air quality certification for this unit filed with the EPA or State air pollution control agency, and all supporting documentation filed with or subsequent to the application;

(2) A description of the existing powerplants to be replaced by the new intermediate load powerplant which shall include:

(i) The name and location of each of the existing powerplants;

(ii) The volume of fuel consumed by type for the previous 2 years by the existing powerplants;

(iii) The corporate ownership of the existing powerplants;

(iv) Evidence that the existing powerplants are capable of using coal; and

(v) The reasons for claiming that the existing powerplants would cause or contribute to a pollutant concentration if they used coal as a primary energy source;

(3) An affidavit executed by the Chief Executive Officer of the electric utility which will operate the proposed powerplant certifying that the powerplant shall be operated at all times in the future only as an intermediate load powerplant. The certification shall set forth the design capacity of the proposed powerplant and the maximum allowable generation of the proposed powerplant in kilowatt hours for its first 12 months of operation as an intermediate load powerplant;

(4) An affidavit executed by the Chief Executive Officer and a qualified engineer of the operating utility of the powerplant which certifies that the powerplant can operate at a heat rate of 9,500 Btu's per kilowatt hour or less throughout the useful life of the powerplant;

(5) An affidavit executed by the Chief Executive Officer and a qualified engineer of the operating utility certifying that the powerplant will meet the synthetic fuels capability requirement described in paragraph (a)(7) above. The affidavit must include a description of the specific characteristics that make the intermediate load powerplant capable of using the synthetic fuels which the powerplant is being designed to use; and

(6) A demonstration that there are no alternative sites where you could comply with the prohibitions; and

(7) Identification and description with appropriate documentation of the synthetic fuels you have selected and a description of the basis for your decision to select that particular fuel, including any marketing studies, con-

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tracts or other documents relating to that selection.

(c) *Air quality certification to the Secretary*—(1) Your petition is not complete unless the Administrator of the Environmental Protection Agency or the Director of the appropriate State air pollution control agency has certified to the Secretary that the use by the powerplant of an alternate fuel as a primary energy source will cause or contribute to a concentration in an air quality control region or any area within the region of a pollutant for which any national ambient air quality standard is or would be exceeded.

(2) The air quality certification shall be an essential part of the ERA administrative record on the petition and the record shall not be completed without it. The certificate shall include at least a specification of each alternate fuel considered by EPA or the appropriate State air pollution control agency in reaching its decision regarding certification.

(d) *Reporting requirement.* If the petition is granted, you must report to ERA, at the end of each 12-month period from the first day of the month following the effective date of the exemption and, if applicable, upon reaching the maximum number of hours of permitted operation within each 12 month period, the name, location, and design capacity of the exempt unit, the number of hours of operation permitted by the exemption, the number of hours of actual operation, and efforts taken to seek and obtain a synthetic fuel for use in the powerplants.

(e) *Periodic review.* ERA shall, from time to time, review this exemption and shall terminate it when he finds that there is available a supply of synthetic fuel suitable for use by the exempt powerplant.

(f) *Enforcement.* Violations of the provisions of this exemption shall subject you to the maximum penalties provided for by Part 501, Subpart O of these regulations.

PART 505—NEW MAJOR FUEL BURNING INSTALLATIONS

Subpart A—Prohibitions

§ 505.1 Purpose and scope.

(a) *Purpose.* This subpart sets forth the statutory prohibitions imposed on boilers by the Act and establishes the procedures ERA intends to employ in administering and implementing its authority to prohibit nonboilers from using petroleum or natural gas.

(b) *Scope.* This subpart applies to all new major fuel burning installations for which construction or acquisition was initiated on or after April 20, 1977, except those designated as existing installations under part 515 of this chapter, or those granted an exemption under Subparts C and D of this Part. Any person who has any ownership or interest in, or who operates, rents or leases an installation is subject to the prohibitions of the Act and the penalties as specified by the Act.

§ 505.2 Prohibitions.

(a) *Prohibition of the use of natural gas or petroleum as a primary energy source in boilers.* Section 202(a) of the Act prohibits, except where an exemption has been granted under Subpart C or D of these regulations, the use of petroleum or natural gas as a primary energy source in any new installation consisting of one or more boilers.

(b) *Prohibition of the use of natural gas or petroleum as a primary energy source in nonboilers.* (1) Prohibition by Rule: (i) ERA may prohibit, by issuance of a rule, certain categories of nonboilers from the use of petroleum or natural gas as a primary energy source.

(ii) In a rulemaking proceeding ERA will consider any special circumstances or characteristics of the category of nonboilers that would be prohibited from using natural gas or petroleum as a primary energy source. Factors to be considered include the overall technical feasibility of members of the category to burn an alternate fuel, as well as their size and their appropriate location. ERA will consider all other circumstances, characteristics, and factors it deems relevant and appropriate which are brought to its attention.

(iii) ERA will not apply a final rule to your installation covered by this subsection while it is considering any petition you have filed for an exemption for that installation. Your petition must be filed, under the procedures outlined in Part 501, within 60 days after publication of the final rule in the FEDERAL REGISTER for ERA to stay the rule as it pertains to your installation. The stay will also be in effect during any period required for judicial review of ERA's action on your exemption petition.

(iv) No final rule will apply to an installation that—

(A) has received an order containing a comparable prohibition; or

(b) was proposed to receive an order but did not because of a demonstration that the installation qualified or would qualify for an exemption under the Act.

(2) Prohibition by Order: (i) ERA may prohibit, by order, the use of natural gas or petroleum as a primary energy source in a new major fuel burning installation consisting of a nonboiler, if that installation has not been identified as a member of a category subject to a final rule at the time of the issuance of the proposed order.

(ii) ERA may not issue a final order to your installation covered by this subsection if you can demonstrate that your installation is eligible for an exemption. However, if your installation is eligible for a temporary exemption only, ERA can issue you a final order that will take effect at the expiration of the temporary exemption.

(iii) If ERA cannot issue you a final order because your facility is eligible for a permanent exemption, or if the effective date of the order is delayed during the period that a temporary exemption is in effect, ERA will take the necessary action to assure that you comply with the terms and conditions of the order granting the exemption.

(3)(i) ERA may not prohibit the use of petroleum or natural gas in your installation covered by this subsection if you began the acquisition or construction of the nonboiler installation before the date the proposed rule or proposed order containing the prohibition was published.

(ii) If you began acquisition or construction of the installation prior to the date of publication of the proposed rule or proposed order, ERA will consider your installation to be an "existing" installation for purposes of treatment under the Existing Major Fuel Burning Installations section (Title III, Subtitle A) of the Act.

Subpart B—General Requirements for Exemptions

§ 505.3 Purpose and scope.

This subpart establishes the general requirements necessary to qualify for either a temporary or permanent exemption under this Part and sets out the methodology for calculating the cost of using an alternate fuel and the cost of using imported petroleum.

§ 505.4 Fuels decision report.

(a) Before ERA will accept a petition for either a temporary or permanent exemption under this Part, you must include as part of your petition a Fuels Decision Report, as described in Part 502. The Fuels Decision Report shall contain the analysis and documentation of the evidence required in support of your exemption request.

(b) Your petition may contain more than one exemption request. In this case, your petition would include one Fuel Decision Report which addresses your considerations and the appropriate forms for the exemptions you are requesting.

§ 505.5 Cost calculation for new installations.

(a) *General.* If you are requesting an exemption for a new installation on the basis that the cost of using an alternate fuel as a primary energy source substantially exceeds the cost of using imported petroleum, you must use the comparative cost test provided in this section.

The cost of using an alternate fuel in lieu of imported oil or gas as a primary energy source will be deemed to be substantially in excess of the cost of using imported oil or gas where the ratio of the former to the latter is equal to or greater than the index set periodically by ERA.

Initially, ERA sets the index at (1.5). ERA will revise the index from time to time after public notice and time to comment. Revisions shall become effective for all ERA decisions after final publication.

The cost test takes into consideration capital outlays, operation, and maintenance expenses, delivered fuel expenditures, and the effect of depreciation and taxes on cash flow. There are two comparative cost tests—A General Cost Test and a Special Cost Test. If you are eligible for a permanent exemption you must demonstrate that eligibility using the procedures specified in the General Cost Test (section b). If you are eligible for a temporary exemption, you must demonstrate that eligibility using the procedures specified in the General Cost Test (section b) or the Special Cost Test (section c).

The General Cost Test differs from the Special Cost Test with respect to the time period over which costs are calculated and the types of fuel consuming equipment being compared. When using the General Cost Test, the cost is computed for the useful life of the installation. When using the Special Cost Test the cost is computed only for the term of the exemption. In the General Cost Test, the proposed oil or natural gas installation is compared with an equivalent alternate fuel capable installation. In the Special Cost Test, an alternate fuel capable installation burning oil or natural gas is compared with an alternate fuel capable installation consuming that alternate fuel.

(b) *Cost calculation—General cost test.* You may be eligible for a permanent exemption if you demonstrate that the cost of using an alternate fuel starting any time within the first 10 years of operations will always substantially exceed the cost of using imported petroleum over the useful life of the unit. You will have to show that the cost of using an alternate fuel starting in each of the first 10 years of operation and using oil or natural gas until the start of using alternate fuel, substantially exceeds the cost of using only imported petroleum.

ERA will not grant a permanent exemption if a temporary exemption solves the cost problem within ERA's definition. Therefore, if the cost computed with successive starting dates for alternate fuel use (for the first 10 years of operation) does not always substantially exceed the cost of using imported petroleum, you would only be eligible for a temporary exemption. The length of the temporary exemption would be the minimum period within which the cost of starting to use alternate fuel always substantially exceeds the cost of using imported petroleum. For example, if you plan to burn a coal derived fuel such as Low-BTU gas, which is not scheduled to be available from a bona fide supplier for 2 years after the installation of the boiler designed to burn the coal derived fuel, ERA may grant a temporary exemption and allow the burning of natural gas based on an acceptable certification of the schedule of delivery of the coal derived fuel.

In the General Cost Test, ERA defines cost as the sum of the annual after tax cash outlays for capital, operations and maintenance, and delivered fuel, and the effect of depreciation and taxes on cash flow discounted to the present.

To conduct the test, you must use the equations that follow.

Calculate the ratio (R) of the cost of using an alternate fuel to the cost of using imported petroleum with equation 1.

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EQ 1 $$R = \frac{\text{COST (ALTERNATE)}}{\text{COST (OIL)}}$$

Calculate the cost of using an alternate fuel and imported petroleum with equation 2.

EQ 2 $$\text{COST} = I + \frac{(1-t)(OM_1 + FL_1) - t \cdot DPR_1}{(1+K)^1} + \frac{(1-t)(OM_2 + FL_2) - t \cdot DPR_2}{(1+K)^2} + \ldots + \frac{(1-t)(OM_n + FL_n) - t \cdot DPR_n}{(1+K)^n} - \frac{Sp}{(1+K)^p}$$ 1/

Calculate investment (I), for equation 2 using equation 3.

EQ 3 $$I = I_o + \frac{I_1}{(1+K)^1} + \frac{I_2}{(1+K)^2} + \ldots + \frac{I_N}{(1+K)^N}$$

1/ This definition of cost follows accepted industry practice of basing investment decisions on the after tax cash flow associated with investment, depreciation and operating expenses.

The terms in equations 1 through 3 are defined as follows:

R - The ratio of the cost of using an alternate fuel to the cost of using imported oil or gas.

COST - The total discounted after tax cost in dollars for the period of the exemption (life of the installation) of constructing and operating the installation.

I - Discounted total net capital outlay in dollars excluding investment tax credits.

I_o - Net capital outlay in dollars up to the time the installation goes into operation.

$I_1 \ldots I_n$ - Yearly net capital outlays from first year of operation through the life of the installation.

OM - Annual cost in dollars of operating and maintaining the installation.

t - Federal income tax rate (see Section d).

FL - Annual delivered fuel cost in dollars (see Section d).

P - Year fuel is changed from oil to alternate fuel.

K - The real cost of capital expressed as a fraction (see Section d).

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N - The useful life of the installation (see Section d).

DPR - Annual depreciation using the method which depreciates the asset as quickly as allowed by law. You cannot use accelerated depreciation for oil and gas fired boilers.

Sp - Salvage value of equipment rendered useless by changing the fuel from oil or natural gas to alternate fuel in year P, if the fuel is changed.

The step by step procedure that follows shows the comparisons that you must make. It outlines the equipment and fuel comparisons as well as the time comparisons.

(A) Compute the cost (COST) of using an alternate fuel in an alternate fuel fired installation from the start of operation with equation (2).

(B) Compute the cost (COST) of using an alternate fuel in dual fired installation with equation (2) assuming an alternate fuel is not used as the primary energy source until the end of the first year of operation and that oil or natural gas is used for the first year of operation. Capital investment, operating and maintenance and fuel expenditures should reflect postponed use of alternate fuel (e.g., installation of scrubber when used).

(C) Successively compute the cost (COST) of using an alternate fuel in a dual fired installation with equation (2) assuming alternate fuel is postponed until the end of the second through tenth year of operation (and oil or natural gas is used in the years preceding alternate fuel use).

(D) Compute the cost (COST) of using oil or natural gas in an oil or natural gas fired installation as the primary energy source with equation (2) throughout the useful life of the unit.

(E) Compute the ratios (R) of the cost of using an alternate fuel at the beginning of operation, and successively at the end of the first through tenth year to the cost of using oil or natural gas throughout the life of the installation with equation (1).

(F) If all the ratios (R) are greater than, for illustrative purposes, 1.5 (an index to be set periodically by ERA), your proposed installation would meet the cost criteria for a permanent exemption. If one or more of the ratios (R) is equal to or less than 1.5 and a series of ratios (R), starting with the case where alternate fuel is used from the start of operation, are all greater than 1.5, a temporary exemption would be granted for the minimum period in which the cost of starting to use alternate fuel, deferred year by year, always exceeds 1.5.

The following table shows the hypothetical results of four sets of calculations.

HYPOTHETICAL RESULTS OF FOUR SETS OF CALCULATIONS

Year in which alternate fuel use is commenced	Case I	Case II	Case III	Case IV
At start of operation	1.7	1.7	1.7	1.3
1	1.7	1.7	1.7	1.3
2	1.4	1.7	1.7	1.3
3	1.4	1.7	1.7	1.3
4	1.4	1.7	1.4	1.3
5	1.4	1.7	1.4	1.0
6	1.4	1.7	1.2	1.0
7	1.4	1.7	1.2	1.0
8	1.4	1.7	1.2	1.0
9	1.4	1.7	1.2	1.0
10	1.4	1.7	1.2	1.0

The results of the above table shows that: a 2-year temporary exemption would be granted in Cast I, a permanent exemption would be granted in Case II, a 3-year temporary exemption would be granted in Case III, and no exemption would be granted in Case IV.

(c) *Cost Calculation—Special Cost Test.*

You may be eligible for a temporary exemption if you demonstrate that the cost of using an alternate fuel in an alternate fuel fired installation will substantially exceed the cost of using oil or natural gas in a dual fired installation (alternate fuel and oil or natural gas) over the period of the proposed exemption. The period of the exemption cannot exceed 10 years. You will have to show that the cost of using alternate fuel substantially exceeds the cost of using imported petroleum for the first year of operation, the first 2 years of operation, and successive first years of operation, up to the period of the proposed exemption. To do so, you must perform the calculations with successive ending dates to determine the maximum lenght of the exemption. ERA will limit the duration of a temporary exemption to the shortest time possible.

The calculation takes into consideration the operations and maintenance and delivered fuel expenditures incurred and the effect of depreciation and taxes on cash flow during the period of the proposed exemption and marginal capital outlays required for your installation to use gas or oil as a primary energy source during the period of the temporary exemption.

To conduct the test you must use the equations that follow.

Calculate the ratio (R) of the cost of using an alternate fuel to the cost of using imported petroleum with equation (6).

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EQ 6 $R = \frac{\text{COST (ALTERNATE)}}{\text{COST (OIL)}}$

Calculate the cost using equation (7).

EQ 7 $$\text{Cost} = I_o + \frac{(1-t)(OM_1 + FL_1) - t \cdot DPR_1}{(1+K)^1} + \frac{(1-t)(OM_2 + FL_2) - t \cdot DPR_2}{(1+K)^2} + \ldots + \frac{(1-t)(OM_p + FL_p) - t \cdot DPR_p}{(1+K)^p} - \frac{Sp}{(1+K)^p}$$

EQ 8 $$I = I_o + \frac{I_1}{(1+K)^1} + \frac{I_2}{(1+K)^2} + \ldots + \frac{I_p}{(1+K)^p}$$

The terms in equations 6 through 8 are defined as follows.

R - The ratio of the cost of using an alternate fuel to the cost of using imported petroleum.

COST - The total discounted cost in dollars of constructing and operating the installation for the period of the exemption.

I - Discounted total net capital outlay in dollars excluding investment tax credit to use oil or natural gas as a primary energy source during the period of the proposed exemption, in a dual fired installation. The investment in the basic installation (that which would be required if oil or natural gas was not used) itself is not included in this comparison as it is irrelevant. (ERA will not consider investment tax credits for oil and gas fixed installations.)

I_o - Net capital outlay in dollars up to the time the installation goes into operation to use oil or natural gas as a primary energy source during the period of the proposed exemption, in a dual fired installation.

$I_1 \ldots I_p$ - Yearly net capital outlay from first year of operation up to the change to alternate fuel to use oil or natural gas as a primary energy source during the period of the proposed exemption, in a dual fired installation.

OM - Annual cost in dollars in operating and maintaining the installation.

Sp - Salvage value of equipment rendered useless by changing from oil or natural gas to alternate fuel.

t - Federal income tax rate (see Section d).

FL - Annual delivered fuel cost in dollars (see Section d).

K - The real cost of capital expressed as a fraction (see Section d).

P - The period of the proposed exemption.

DPR - Annual depreciation using the method which depreciates the asset as quickly as allowed by law. You cannot use accelerated depreciation for oil and gas fired boilers.

The step by step procedure that follows shows the comparison you must make.

(A) Compute the cost (COST) of using an alternate fuel in an alternate fuel fired new installation assuming the length of the proposed exemption is 1 year with equation 7.

(B) Compute the cost (COST) of using oil or natural gas valued at imported petroleum prices in a dual fired installation assuming the length of the proposed exemption is 1 year with equation 7.

(C) Compute the ratio (R) of the cost of using an alternate fuel for the first year to the cost of using imported petroleum for the first year with equation 6.

(D) Repeat the calculations made in (A), (B), and (C) above assuming the length of the proposed exemption is 2 years, 3 years, 4 years, and so on, up to the period of the proposed exemption.

(E) A temporary exemption would be granted, where the ratios (R) are greater than, for illustrative purposes, 1.5 (the index established by ERA).

(d) *Information on parameters used in the calculation.* (1) All estimated expenditures, except natural gas and petroleum products shall be expressed in real (uninflated) terms using the prices in effect at the time the petition is submitted.

(2) The delivered price of oil or natural gas to be used in the cost calculation must reflect the price of imported oil.

The imported petroleum price is reflected in the cost calculation in the following way:

$$PFE = \frac{PICO}{PCCO} \times PF$$

where

PICO = Price of imported crude oil. The most recent refiner acquisition cost of imported crude oil as reported in the Federal Register monthly notice for the DOE Domestic Crude Oil Allocation (Entitlements) Program.

PCCO = Price of composite crude oil. The most recent weighted average cost of total reported crude oil receipts as reported in the Federal Register notice for the DOE Entitlements Program.

PF = Price of your fuel. The most recent actual weighted average cost of your fuel oil (other than natural gas). Alternatively, if no purchases of fuel oil occurred, or you used natural gas during that month, you should use a simple average of the industrial price of fuel oil (capable of being burned in your facility) sold in your area by at least three suppliers.

For proposed natural gas users, you shall use the price of No. 2 distillate fuel oil in this calculation.

PFE = Price of fuel for equation. The cost of oil for use in Equation 1.

(3) For new installations, the annual capacity factor shall be assumed to be 60 percent of the design capacity. You may rebut this presumption with suitable engineering evidence.

(4) The useful life of major fuel burning installations shall be 40 years. You may rebut this presumption with suitable engineering evidence.

(5) The cost of capital for major fuel burning installations is 7.0 percent per year in real terms.

(6) The Federal income tax rate is 46 percent.

(7) All estimated expenditures will be computed in accordance with generally accepted accounting principles.

(e) *Evidence supporting the comparative cost test.* All petitions for exemption requiring the use of the comparative cost test shall include, but not be limited to the following information:

(1) A detailed accounting of all capital outlays including a description of all major construction and equipment. All critical assumptions should be stated and sufficient data should be included to support your estimates.

(2) A detailed accounting of all operations and maintenance expenditures including a description of all major elements. All critical assumptions should be stated and sufficient data included to support your estimates.

(3) A detailed accounting of all delivered fuel expenditures including transportation. All critical assumptions should be stated and sufficient data included to support your estimates. The fuel characteristics for each alternate fuel should be included.

(4) If the useful life of the installation is judged to be less than 40 years, all critical assumptions and sufficient data to support that position.

(5) A detailed accounting of the depreciation which should include the depreciable base and its tax life. All critical assumptions should be stated and sufficient data included to support your estimates.

(f) *Example of calculations.* You are planning to build a new major fuel burning installation and the fuels you are considering are coal and oil. In this particular situation, the delivery cost of coal is much greater for the first three years than it will be in the later years because of a transportation problem requiring three years to resolve. Do you qualify for an exemption? If so, is it permanent or temporary?

To determine if you qualify for a permanent exemption, you would have to use the General Cost Test and compute the ratios of the cost to use (1) coal for the useful life of a coal fired installation, (2) oil for the first year and coal for the remainder of the useful life of a dual fired installation, (3) oil for the first two years and coal for the remainder of the useful life of a dual fired installation, * * *, and 11) oil for the first 10 years and coal for the remainder of the useful life of a dual fired installation to the cost of using oil for the entire life of an oil fired installation.

All eleven ratios would have to be higher than 1.5 in order to qualify for a permanent exemption. However, if a series of successive ratios, starting with the case where alternate fuel is used from the start of operation, are all greater than 1.5, you would be eligible for a temporary exemption up to the last year the ratio greater than 1.5.

In this example, we will only compute the ratios of (1) the cost to use coal for the useful life of a coal fired installation and (2) the cost to use oil for the first 3 years and coal for the remainder of the useful life of a dual fired installation to the cost of using oil for the entire useful life of an oil fired installation.

To determine if you qualify for a temporary exemption, if you have not already done so with the General Cost Test, of 3 years, you would have to use the Special Cost Test and compute the ratios of the cost to use coal in a coal fired installation to the cost to use oil in a dual fired installation for 1, 2, and 3 years. All three ratios would have to be higher than 1.5 in order to qualify for a three year temporary exemption. In this example, we will only compute the ratio of the cost to use coal in a coal fired installation to the cost to use oil in a dual fired installation for 3 years.

(1) *Parameters*—a set of hypothetical parameters are given below.

(A) Coal and Dual fired installation:

Net capital outlay for coal fired installation (without scrubber) before the installation becomes operational, $5,545,000.

Net capital outlay for dual fired installation (without scrubber) before unit becomes operational, $6,435,000.

Net marginal outlay for dual fired installation (without scrubber) before the unit becomes operational, $890,000.

Salvage value of equipment rendered useless by shifting from oil to coal, $223,000.

Net capital outlay for scrubber, $2,575,000.

Operations and maintenance costs per year:

Dual fired installation burning oil, $343,000.

Coal fired installation burning coal, $858,000.

(B) Oil fired installation:

Net capital outlay for installation before it becomes operational, $2,668,000.

Operations and maintenance costs per year, $258,000.

(C) Fuel:

Annual cost to burn imported oil, $2,163,000.

Annual cost to burn coal for the first three years of operation, $3,447,000.

Annual cost to burn coal for the fourth through fortieth year of operation, $1,159,000.

(2) *Analysis.*

(A) General Cost Test. The relevant cash flows are shown in the following table for the three cases in which computations are being made.

CASH FLOWS FOR GENERAL COST TEST IN (IN THOUSANDS)

Type of Cash Flow	Year(s) Flow Occurs	Case 1 Coal Over Life Of Installation	Case 2 Imported Petroleum For First 3 Yrs. & Coal Thereafter	Case 3 Imported Petroleum Over the Life Of Installation
Investment	0	$5,545 + $2,575	$6,435	$2,668
Investment	3	0	$2,575	0
Salvage	3	0	$ 223	0
Operation & Maintenance	1, 2, 3,	$ 858/yr.	$343/yr.	$258/yr.
Operation & Maintenance	4, ..., 40	$ 858/yr.	$858/yr.	$258/yr.
Fuel	1, 2, 3,	$3,477/yr	$2,163/yr.	$2,163/yr.
Fuel	4, ..., 40	$1,159/yr.	$1,159/yr.	$2,163/yr.
Effect of Taxes and Depreciation	1, ..., 40	Depreciation is greater of double declining balance or straight line over remaining period. For the purposes of this example the pollution control equipment is depreciated in the same way as all other equipment.		

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The following computation are in thousands of dollars.

- Cost of using coal from the start of operation.

$$I = I_o + \frac{I_1}{(1+K)^1} + \frac{I_2}{(1+K)^2} + \ldots + \frac{I_n}{(1+K)^n}$$

$$= (5{,}545 + 2{,}575) + \frac{0}{(1.07)^1} + \frac{0}{(1.07)^2} + \ldots + \frac{0}{(1.07)^{40}}$$

$$= \$8{,}120$$

$$COST = I + \frac{(1-t)(OM_1 + FL_1) - t \cdot DPR_1}{(1+K)^1}$$

$$+ \frac{(1-t)(OM_2 + FL_2) - t \cdot DPR_2}{(1+K)^2} + \ldots$$

$$+ \frac{(1-t)(OM_n + FL_n) - t \cdot DPR_n}{(1+K)^n} - \frac{S_p}{(1+K)^p}$$

$$COST = 8{,}120 + \frac{(1-0.46)(858 + 3477) - 0.46 \times DPR_1}{(1.07)^1}$$

$$+ \frac{(1-0.46)(858 + 3477) - 0.46 \times DPR_2}{(1.07)^2}$$

$$+ \frac{(1-0.46)(858 + 3477) - 0.46 \times DPR_3}{(1.07)^3}$$

$$+ \frac{(1-0.46)(858 + 1159) - 0.46 \times DPR_4}{(1.07)^4}$$

$$+ \ldots + \frac{(1-0.46)(858 + 1159) - 0.46 \times DPR_{40}}{(1.07)^{40}}$$

$$- \frac{0}{(1.07)^{40}}$$

$$= \$24{,}330$$

- Cost of using imported petroleum for the first three years and coal thereafter.

$$I = I_o + \frac{I_1}{(1+K)^1} + \frac{I_2}{(1+K)^2} + \ldots + \frac{I_n}{(1+K)^n}$$

$$= 6{,}435 + \frac{2{,}575}{(1.07)^3}$$

$$= \$8{,}537$$

$$COST = I + \frac{(1-t)(OM_1 + FL_1) - t \cdot DPR_1}{(1+K)^1}$$

$$+ \frac{(1-t)(OM_2 + FL_2) - t \cdot DPR_2}{(1+K)^2} + \ldots$$

$$+ \frac{(1-t)(OM_n + FL_n) - t \cdot DPR_n}{(1+K)^n} - \frac{S_p}{(1+K)^p}$$

$$\text{COST} = 8{,}537 + \frac{(1-0.46)(343 + 2{,}163) - 0.46 \times \text{DPR}_1}{(1.07)^1} + \frac{(1-0.46)(343 + 2{,}163) - 0.46 \times \text{DPR}_2}{(1.07)^2} + \frac{(1-0.46)(343 + 2{,}163) - 0.46 \times \text{DPR}_3}{(1.07)^3} + \frac{(1-0.46)(858 + 1{,}159) - 0.46 \times \text{DPR}_4}{(1.07)^4} + \ldots + \frac{(1-0.46)(858 + 1{,}159) - 0.46 \times \text{DPR}_{40}}{(1.07)^{40}} - \frac{223}{(1.07)^3}$$

$$= \$21{,}762$$

- Cost of using imported petroleum over the life of the installation

$$I = I_o + \frac{I_1}{(1+K)^1} + \frac{I_2}{(1+K)^2} + \ldots + \frac{I_n}{(1+K)^n}$$

$$= 2{,}668 + \frac{0}{(1.07)^1} + \frac{0}{(1.07)^2} + \ldots + \frac{0}{(1.07)^{40}}$$

$$= 2{,}668$$

$$\text{COST} = I + \frac{(1-t)(OM_1 + FL_1) - t \cdot DPR_1}{(1+K)^1} + \frac{(1-t)(OM_2 + FL_2) - t \cdot DPR_2}{(1+K)^2} + \ldots \pm \frac{(1-t)(OM_n + FL_n) - t \cdot DPR_n}{(1+K)^n} - \frac{S_p}{(1+K)^p}$$

$$\text{COST} = 2{,}668 + \frac{(1-0.46)(258 + 2{,}163) - 0.46 \times \text{DPR}_1}{(1.07)^1} + \frac{(1-0.46)(258 + 2{,}163) - 0.46 \times \text{DPR}_2}{(1.07)^2} + \ldots$$

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$$+ \frac{(1-0.46)(258 + 2{,}163) - 0.46 \times DPR_{40} - 0}{(1.07)^{40}}$$

$$= 19{,}573$$

- Computation of ratios

$$R = \frac{\text{COST (COAL THROUGHOUT LIFE)}}{\text{COST (OIL)}}$$

$$= \frac{24{,}330}{19{,}573} = 1.24$$

$$R = \frac{\text{COST (OIL FIRST THREE YEARS, COAL THEREAFTER)}}{\text{COST (OIL)}}$$

$$= \frac{21{,}762}{19{,}573} = 1.11$$

- Since the index is 1.5, you would not qualify for a permanent exemption, or a temporary exemption, using the General Cost Test.

(C) Special Cost Test. The relevant cash flow are shown in the following tables for the two cases in which computations are being made.

CASH FLOW FOR SPECIAL COST TEST (IN THOUSANDS)

Type of Cash Flow	Year(s)	Total Cash Flows	Capital Outlays Required to Use Oil	
		Case 1 Coal Over Life of Installation	Case 1 Coal Over Life of Installation	Case 2 Imported Petroleum First 3 Yrs of Coal Thereafter
Investment	0	$5,545 + $2,575	$1,685	-
Investment	3	0	-	$ 2,575
Salvage	3	0	-	(-)223
Operation & Maintenance	1, 2, 3,	$ 858/yr.	$ 343/yr.	
Fuel	1, 2, 3,	$3,477/yr.	$2,163/yr	
Effects of Taxes and Depreciation	1, 2, 3,	Depreciation is greater of double declining balance or straight line over remaining period. For the purposes of this examole, the pollution control equipment is depreciated in the same way as all other equipment.		

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The following computations are in thousands of dollars.

- Cost of using coal from the start of operation.

$$I = I_o + \frac{I_1}{(1+K)^1} + \frac{I_2}{(1+K)^2} + \ldots \frac{I_p}{(1+K)^p}$$

$$= 1{,}685 + \frac{0}{(1.07)^1} + \frac{0}{(1.07)^2} + \frac{0}{(1.07)^3}$$

$$= 1{,}685$$

$$COST = I + \frac{(1-t)(OM_1 + FL_1) - t \cdot DPR_1}{(1+K)^1} + \frac{(1-t)(OM_2 + FL_2) - t \cdot DPR_2}{(1+K)^2} + \ldots + \frac{(1-t)(OM_p + FL_p) - t \cdot DPR_p}{(1+K)^p} - \frac{S_p}{(1+K)^p}$$

$$COST = 1{,}685 + \frac{(1-0.46)(858 + 3{,}477) - 0.46 \times DPR_1}{(1.07)^1} + \frac{(1-0.46)(858 + 3{,}477) - 0.46 \times DPR_2}{(1.07)^2} + \frac{(1-0.46)(858 + 3{,}477) - 0.46 \times DPR_3}{(1.07)^3} - 0$$

$$= \$7{,}361$$

- Cost of using imported petroleum for the first three years (and coal thereafter)

$$I = I_o + \frac{I_1}{(1+K)^1} + \frac{I_2}{(1+K)^2} + \ldots + \frac{I_p}{(1+K)^p}$$

$$= 0 + \frac{2{,}575}{(1.07)^3}$$

$$= \$2{,}102$$

$$COST = I + \frac{(1-t)(OM_1 + FL_1) - t \cdot DPR_1}{(1+K)^1} + \frac{(1-t)(OM_2 + FL_2) - t \cdot DPR_2}{(1+K)^2} + \ldots + \frac{(1-t)(OM_p + FL_p) - t \cdot DPR_p}{(1+K)^p} - \frac{S_p}{(1+K)^p}$$

$$COST = 2{,}102 + \frac{(1-0.46)(343 + 2{,}163) - 0.46 \times DPR_1}{(1.07)^1} + \frac{(1-0.46)(343 + 2{,}163) - 0.46 \times DPR_2}{(1.07)^2} + \frac{(1-0.46)(343 + 2{,}163) - 0.46 \times DPR_3}{(1.07)^3} - \frac{223}{(1.07)^3}$$

$$= 4{,}863$$

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- Computation of ratio

$$R = \frac{\text{COST (COAL FOR PERIOD OF EXEMPTION)}}{\text{COST (OIL FOR PERIOD OF EXEMPTION)}}$$

$$\frac{7,361}{4,868} = 1.51$$

- If ERA had set the index at 1.5, you would be granted a temporary exemption.

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§ 505.6 Use of mixtures—General requirement for temporary exemptions.

(a) ERA will not consider a petition for a temporary exemption under section 211 of the Act to be complete, adequate or acceptable for filing unless you demonstrate, to the satisfaction of the ERA in your Fuels Decision Report, whether or not the use of a mixture of natural gas or petroleum and an alternate fuel is economically and technically feasible during the period of the proposed exemption.

(b) If ERA determines that the use of a particular fuel mixture is technically and economically feasible during the period of the proposed exemption, ERA will condition the granting of any temporary exemption under this part upon the use of that mixture during the period of the temporary exemption.

§ 505.7 Use of mixtures—General requirement for permanent exemptions.

(a) *Application.* ERA will not consider a petition for any of the following exemptions provided for in section 212 of the Act (lack of alternate fuel supply, site limitations, environmental requirements, inability to obtain adequate capital, State or local requirements, cogeneration, emergency purposes, product/process, or equipment outages) to be complete, adequate, or acceptable for filing unless you demonstrate to the satisfaction of ERA in your Fuels Decision Report that you have considered the use of a mixture(s) for which an exemption under § 503.28 (Fuel Mixtures) of these regulations would be available.

(b) *Demonstration.* ERA will not grant any of the exemptions listed above unless you demonstrate that use of such a mixture(s) is not economically or technically feasible in the unit for which you are requesting an exemption. To make such a demonstration, you must show in your Fuels Decision Report to the satisfaction of ERA that:

(1) If use of a mixture(s) were required, you would be eligible for one of the following permanent exemptions provided for in the Act: lack of alternate fuel supply, site limitations, environmental requirements, inability to obtain adequate capital, or State or local requirements; or

(2) The use of a mixture(s) is not technically or economically feasible in your specific unit due to design or special circumstances as determined by ERA on a case-by-case basis.

§ 505.8 Use of fluidized bed combustion not feasible—General requirement for permanent exemptions.

(a) *Application.* ERA will not consider a petition for one of the following permanent exemptions provided for in section 212 of the Act (lack of alternate fuel supply, site limitations, environmental requirements, inability to obtain adequate capital, State or local requirements, cogeneration, emergency, product/process, or equipment outages), to be complete, adequate or acceptable for filing unless you demonstrate in your Fuels Decision Report to the satisfaction of ERA that:

(1) You have considered the use of a method of fluidized bed combustion of an alternate fuel; and

(2) Use of a method of fluidized bed combustion of an alternate fuel is not economically or technically feasible.

(b) *Finding.* If ERA determines, on a generic basis, that use of a method of fluidized bed combustion is economically and technically feasible, ERA will deny your request for exemption unless you demonstrate to the satisfaction of ERA that:

(1) If use of a method of fluidized bed combustion were required, you would be eligible for one of the following permanent exemptions provided for in section 212 of the Act: lack of alternate fuel supply, site limitations, environmental requirements, inability to raise adequate capital, or State and local requirements; or

(2) The use of a method of fluidized bed combustion is not technically or economically feasible in your specific unit due to design or special circumstances as determined by ERA on a case-by-case basis.

§ 505.9 Terms and conditions; compliance plans.

(a) *Terms and conditions generally.* You must comply with the terms and conditions of an exemption granted under the Act by the ERA, including terms and conditions requiring the use of (1) effective fuel conservation measures and (2) fuel mixtures.

(b) *Compliance plans for temporary exemptions.* (1) A compliance plan certified by your Chief Executive Officer must accompany a petition for a temporary exemption. The compliance plan shall include at least the following:

(i) a detailed schedule of progressive events and the dates upon which the events are to take place indicating how you will comply with the applicable prohibitions of the Act;

(ii) documentary evidence of binding contracts for fuel or facilities for the production of fuel which you require to comply with the applicable prohibitions of the Act;

(iii) any other documentary evidence which indicates your intention to comply with the applicable prohibitions of the Act, and

(iv) a detailed statement of the manner in which you intend to comply with § 505.6 of these regulations requiring the use of fuel mixtures as a condition to the granting of a temporary exemption where the use of fuel mixtures is technically and economically feasible.

(2) The exemption shall not be effective until the compliance plan is approved by ERA.

(3) Revisions of Compliance Plans. If the petition is granted; you must submit the ERA an updated compliance plan certified by your Chief Executive Officer:

(i) at the end of each 12 month period from the effective date of the exemption;

(ii) within 1 month of an alteration of any milestone in the compliance plan, together with the reasons for the alteration and its impact upon the scheduling of all other milestones in the plan, and

(iii) at any time the ERA, in its discretion, determines that a revised compliance plan is necessary to reflect changes in circumstances.

(c) *Enforcement.* Any exemption is subject to termination upon the violation of any provision of the exemption or any provision of the pertinent compliance plan.

Subpart C—Temporary Exemptions for New Major Fuel Burning Installations

§ 505.10 Purpose and scope.

(a) This subpart implements the provisions contained in Section 211 of the Act with regard to temporary exemptions for new installations.

(b) This subpart establishes the criteria and standards which owners or operators of new installations who petition for a temporary exemption must meet to sustain their burden of proof under the Act.

(c) You must submit all petitions for temporary exemptions for new installations in accordance with the procedure set out in Part 501 of these regulations.

(d) The duration of any temporary exemption granted under this subpart shall be measured from the date that the installation is placed in service.

§ 505.11 Lack of alternate fuel supply.

(a) *Eligibility.* Section 211(a)(1) of the Act provides for a temporary exemption due to lack of an alternate fuel supply. To qualify you must demonstrate to the satisfaction of ERA that:

(1) You made a good faith effort to obtain an adequate and reliable supply of an alternate fuel of the quality necessary to conform to the design and operational requirements of the new installation;

(2) For the period of the proposed exemption, the cost of using such a supply would substantially exceed the cost of using imported petroleum as a primary energy source as defined in

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§ 505.5 (Cost Calculation) of these regulations; and

(3) You will be able to comply with the applicable prohibitions of these regulations at the end of the proposed exemption period.

(b) *Evidence required in support of a petition.* In order to submit an adequate petition for review by ERA you must include in your Fuels Decision Report the following substantial evidence to corroborate the above requirements:

(1) A description of the approach and methodology you used to search for and evaluate the use of the alternate fuels you considered.

(2) A description of the alternate unit designs you considered in a good faith effort to comply with the applicable prohibitions;

(3) A description of the detailed design requirements for the new installation as specified by the purchaser, including capacity, alternate fuel capability, and all other specifications;

(4) A description of the specific fuel characteristics of all the fuels which can be used by the new installation;

(5) Evidence that you sought to obtain the full range of alternate fuels and fuel characteristics which could be used by the new installation, including bid requests and/or advertisements for supply contracts and responses thereto, as well as any other arrangements you attempted to make to secure supplies;

(6) Evidence of the contracts or other arrangements you have made to insure a reliable and adequate supply of an alternate fuel at the end of the proposed exemption; and

(7) All data required by § 505.5 (Cost Calculation) of these regulations necessary for computing the cost calculation formula.

(c) *Compliance plan.* You must submit to ERA a compliance plan in accord with section 214 of the Act and § 505.9 of these regulations simultaneously with submission of your petition in order to satisfy ERA requirements for petition adequacy. You must submit an updated compliance plan as required by § 505.9 of these regulations and as required by the terms of any order granting an exemption under this subpart.

(d) *Duration.* This temporary exemption, taking into account any extensions or renewals, may not exceed ten years.

§ 505.12 Site Limitations.

(a) *Eligibility.* Section 211(a)(2) of the Act provides for a temporary exemption due to a site limitation. To qualify you must demonstrate, to the satisfaction of the ERA, that one or more of the following specific physical limitations relevant to the location or operation of your installation exist which, despite your diligent good faith efforts, cannot be overcome before the end of the proposed exemption period:

(1) Alternate fuels would be inaccessible as a result of a specific physical limitation relevant to the location or operation of the proposed installation;

(2) Transportation facilities for alternate fuels would be unavailable;

(3) Adequate facilities for handling, using or storing an alternate fuel would be unavailable;

(4) Adequate means for controlling and disposing of wastes would be unavailable;

(5) Adequate and reliable supply of water would be unavailable; or

(6) Other site limitations exist which would not permit the location or operation of the proposed installation using an alternate fuel.

(b) *Evidence to be submitted in support of the petition.* To submit an adequate petition for review by ERA, you must include in your Fuels Decision Report the following substantial evidence to corroborate the above criteria:

(1) Evidence that the site limitation is a physical limitation, and not a requirement of a Federal, state, or local law which could be the basis of an exemption under § 505.26 (State or local requirements);

(2) Evidence that alternative means for overcoming the specific site limitations were considered, with a detailed description of the efforts made to overcome the site limitations set out in your petition;

(3) Evidence of the equipment or space requirements for which the site limitation is claimed;

(4) Evidence of the contracts or other arrangements you have made to insure that the site limitation will be overcome and that you will comply with the prohibitions at the end of the proposed exemption period. Examples of evidence relevant to establishing a site limitation for purposes of a temporary exemption are as follows:

(i) Detailed documentation of impediments, including rights-of-way problems, site diagrams, maps of the surrounding areas and other items essential to the showing of a site limitation;

(ii) Identification of transportation facilities relevant to the specific site of the installation and a demonstration why existing transportation facilities cannot be utilized or new facilities constructed;

(iii) Copies of bid requests, advertisements and general efforts made to secure alternative transportation facilities;

(iv) Identification of potential alternate fuel storage locations within a reasonable geographic area surrounding the proposed installation;

(v) Detailed scale site plans of the entire facility which include those areas not directly involved with the specific installation;

(vi) A specific listing of all equipment necessary and not currently available to properly handle alternate fuel;

(vii) Copies of bid requests, advertisements and general efforts made to secure alternative fuel storage facilities;

(viii) Copies of quotes from bona fide suppliers, indicating lead times for purchase and installation of required ancillary storage or handling equipment;

(ix) Specific listing of any equipment necessary and not currently available to properly control and dispose of waste;

(x) Identification of potential alternate waste disposal locations within a reasonable geographic area surrounding the proposed installation;

(xi) A description of efforts made to secure offsite disposal areas, including the cost of acquisition of the sites, transportation facilities and waste handling costs involved in their use; and

(xii) Copies of bid requests, advertisements, and general efforts made to secure waste control and disposal equipment.

(c) *Compliance plan.* You must submit to ERA a compliance plan in accordance with section 214 of the Act and § 505.9 of these regulations simultaneously with submission of your petition to satisfy ERA requirements for petition adequacy. You must submit an updated compliance plan as required by § 505.9 of these regulations and as required by the terms of any order granting an exemption under this subpart.

(d) *Duration.* This temporary exemption, taking into account any extensions and renewals, may not exceed 5 years.

§ 505.13 Inability to comply with applicable environmental requirements.

(a) *Eligibility.* Section 211(a)(3) of the Act provides for a temporary exemption due to an inability to comply with applicable environmental requirements. To qualify you must demonstrate in your Fuels Decision Report to the satisfaction of the ERA that despite diligent good faith efforts:

(1) You will be unable to comply with the applicable prohibitions imposed by the Act without violating applicable Federal or State environmental requirements as of the projected date of commencement of operation; and

(2) You will be able to comply with the applicable prohibitions imposed by the Act by the end of the temporary exemption period.

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(b) *Evidence required in support of the petition.* To submit an adequate petition for review by ERA, you must include in your Fuels Decision Report the following substantial evidence to corroborate the above requirements:

(1) A copy of any application which has been filed with EPA or a State agency for a permit to construct or operate the new installation;

(2) A copy of the decision or action taken by EPA or a State agency with respect to the application for a permit to construct or operate the new installation;

(3) A detailed synopsis of the administrative record of the proceedings by ERA or the State agency for a construction or operation permit;

(4) Copies of all technical studies that you have relied upon with regard to consideration of alternate fuels, pollution control equipment, offsets, variances, State Implementation Plan revisions, and redesignations of Class 2 areas to Class 3 areas;

(5) Copies of requests for bids, responses received, and contracts signed, if any, for an alternate fuel supply and for the purchase and installation of pollution control equipment; and

(6) Copies of agreements made by you with the State or other companies for the acquisition of appropriate "offsets." If the agreement is conditioned upon the grant of a variance, State Implementation Plan revision or redesignation of Class 2 areas, you must submit a letter from the State agency indicating when a proceeding to effectuate the agreement will take place.

(c) *A petition to ERA in absence of application to EPA.* If you have not applied to EPA or a State agency for a construction or operation permit, you must submit to ERA:

(1) Verification that the facility cannot burn an alternate fuel on the date of commencement of operations in compliance with all applicable air pollution control requirements; and

(2) Items required under paragraphs (b), (4), (5), and (6) above.

(d) *Compliance plan.* You must submit to ERA a compliance plan in accordance with section 214 of the Act and § 505.9 of these regulations simultaneously with submission of your petition to satisfy ERA requirements for petition adequacy. You must submit an updated compliance plan as required by § 505.9 of these regulations and as required by the terms of any order granting an exemption under this subpart.

(e) *Duration.* This temporary exemption taking into account extensions and renewals, may not exceed 5 years.

§ 505.14 Future use of synthetic fuels.

(a) *Eligibility.* Section 211(b) of the Act provides for a temporary exemption based upon the future use of synthetic fuels. To qualify you must demonstrate to the satisfaction of ERA that:

(1) You will be able to comply with the applicable prohibitions imposed by the Act at the end of the proposed exemption period by the use of synthetic fuel as a primary energy source in your installation; and

(2) That you will not be capable of complying with the applicable prohibitions imposed by the Act by using an alternate fuel in your installation before the end of the proposed exemption period.

(b) *Evidence required in support of the petition.* To submit an adequate petition for review by ERA you must include in your Fuels Decision Report the following substantial evidence to corroborate the above requirements:

(1) Copies of economic and technical feasibility studies pertaining to the use of synthetic fuels by your installation;

(2) Reliable evidence of the financial commitments you have made to construct, operate, and maintain equipment which will use synthetic fuel as the primary energy source at the end of the proposed exemption period;

(3) Copies of bid requests, advertisements, contracts and/or other agreements relating to the production, purchase, and transportation of synthetic fuel; and

(4) Information with regard to permits that may be required by Federal or State agencies for the construction and operation of an installation using synthetic fuels.

(c) *Compliance plan.* You must submit to ERA a compliance plan in accord with section 214 of the Act and § 505.9 of these regulations simultaneously with submission of your petition to satisfy ERA requirements for petition adequacy. You shall submit an updated compliance plan as required by § 505.9 of these regulations and as required by the terms of any order granting an exemption under this subpart.

(d) *Duration.* This temporary exemption may be granted for a period of up to 5 years and may be extended for an additional 5 years, but so extended may not exceed 10 years.

§ 505.15 Public interest exemption.

(a) *Eligibility.* Section 211(c) of the Act provides for a temporary public interest exemption. To qualify you must demonstrate to the satisfaction of ERA that:

(1) You are unable to comply with the applicable prohibitions imposed by the Act, except in extraordinary circumstances, during the period for which exemption is requested, but that the installation will be capable of complying at the end of the proposed exemption period;

(2) You are not eligible for any other temporary exemption contained in section 211 of the Act; and

(3) The granting of the exemption request would be in accord with the purposes of the Act and would be in the public interest.

(b) *Evidence required in support of a petition.* To submit an adequate petition for review by ERA you must include in your Fuels Decision Report substantial evidence to corroborate the above requirements.

(c) *Compliance plan.* You must submit to ERA a compliance plan in accordance with section 214 of the Act and § 505.9 of these regulations simultaneously with submission of your petition to satisfy ERA requirements for petition adequacy. You must submit an updated compliance plan as required by § 505.9 of these regulation and as required by the terms of any order granting an exemption under this subpart.

(d) *Duration.* This temporary exemption, taking into account extensions and renewals, may not exceed 5 years.

§ 505.16 The use of petroleum.

(a) *Eligibility.* This exemption is designed to afford installations subject to the prohibitions imposed by section 202 of the Act, an opportunity for relief prior to the date that regulations become final. Section 211(d) of the Act provides for a temporary exemption for the use of petroleum which may be granted in certain cases, as described below. Petitions filed for this exemption will be deemed to be a petition for a mixtures exemption after the effective date of the final regulations and will be received by ERA under § 505.28 of this Title (mixtures). To qualify for this exemption, you must demonstrate to the satisfaction of ERA that:

(1) The installation does not have nor will it acquire a design capacity of consuming any fuel at a heat input rate in excess of 300 MMBtu's per hour;

(2) The installation will utilize alternate fuels for at least 75 percent of the annual fuel heat input upon expiration of the temporary exemption;

(3) An expedited granting of a temporary exemption permitting the use of petroleum is necessary, and that you cannot reasonably wait until final regulations are promulgated; and

(4) You would reasonably be entitled to a temporary exemption on some other basis and that you will apply for that exemption in a manner timely enough to afford resolution prior to expiration of this temporary exemption.

(b) *Evidence required in support of a petition.* To submit an adequate petition for review by ERA you must include in your Fuel Decision Report the following substantial evidence to corroborate the above requirements:

(1) Description of the detailed design requirements for the new installation as indicated in the purchaser's design specifications, including capacity, alternate fuel capabilities, and other appropriate specifications;

(2) Evidence of binding contracts, State construction permits, or other arrangements you have made to insure that an alternate fuel will be utilized for at least 75 percent of the annual fuel heat input of the unit at the end of the proposed exemption period;

(3) Documentation of the rationale for the need for an expedited approval of a temporary exemption prior to the date final regulations become effective; and

(4) Description of the impact if the exemption request were denied.

(b) *Compliance plan.* You must submit to ERA a compliance plan in accordance with section 214 of the Act and § 505.9 of these regulations is required simultaneously with submission of your petition in order to satisfy ERA requirements for petition adequacy. You must submit an updated compliance plan as required by § 505.9 of these regulations and as required by the terms of any order granting an exemption under this subpart.

(c) *Duration.* This temporary exemption, taking into account extensions and renewals, may not exceed 5 years.

Subpart D—Permanent Exemptions for New MFBI's

§ 505.20 Purpose and scope.

(a) This subpart implements the provisions contained in Section 211 of the Act with regard to permanent exemptions for new major fuel burning installations.

(b) This subpart establishes the criteria and standards which owners or operators of new installations who petition for a permanent exemption must meet to sustain their burden of proof under the Act.

(c) You must submit all petitions for permanent exemptions for new installations in accordance with the procedures set out in Part 501 of these regulations.

§ 505.21 Lack of alternate fuel supply for the first 10 years of useful life.

(a) *Eligibility.* Section 212(a)(1)(A)(i) of the Act provides for a permanent exemption due to lack of an adequate and reliable supply of alternate fuel during the first 10 years of useful life of the new installation. To qualify you must demonstrate to the satisfaction of ERA that:

(1) You made a good faith effort to obtain an adequate and reliable supply of an alternate fuel of the quality necessary to conform to the design and operational requirements of the new installation; and

(2) Such a supply will no be available within the first 10 years of useful life of the new installation.

(b) *Evidence in support of a petition.* In order to submit an adequate petition for review by ERA, you must include in your Fuels Decision Report the following substantial evidence to corroborate the above requirements:

(1) A description of the alternate unit designs you considered in a good faith effort to comply with the applicable prohibitions;

(2) A description of the detailed design requirements for the new installation as specified by the purchaser, including capacity, alternate fuels capability, and all other pertinent specifications.

(3) A description of the specific fuel characteristics of all the fuels which can be used by the new installation;

(4) Evidence that you sought to obtain the full range of alternate fuels and fuel characteristics which could be used by the new installation;

(5) Evidence that you solicited at least 3 bids from at least 25 percent of the supplier market for an adequate and reliable supply of alternate fuel, including bid requests and/or advertisements for supply contracts and all responses you received, as well as any other arrangements you attempted to make to secure supplies; and

(6) A description of the approach and methodology you used to search for and evaluate the use of the alternate fuel you considered, including a discussion of how you made your assessment that an adequate and reliable supply of the quality of fuel needed would not be available within the first 10 years of useful life of the new installation.

§ 505.22 Lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum.

(a) *Eligibility.* Section 212(a)(1)(A)(ii) of the Act provides for a permanent exemption due to lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported oil. To qualify you must demonstrate to the satisfaction of ERA that:

(1) You made a good faith effort to obtain an adequate and reliable supply of an alternate fuel of the quality necessary to conform to design and operational requirements of the new installation; and

(2) The cost of using such a supply would substantially exceed the cost of using imported petroleum as a primary energy source, as defined in § 505.5 (Cost Calculation) of these regulations during the useful life of the new installation.

(b) *Evidence in support of a petition.* In order to submit an adequate petition for review by ERA, you must include in your Fuels Decision Report the following substantial evidence to corroborate the above requirements:

(1) A description of the alternate unit designs you considered in a good faith effort to comply with the applicable prohibitions;

(2) A description of the detailed design requirements for the new installation as specified by the purchaser, including capacity, alternate fuels capability, and all other pertinent specifications;

(3) A description of the specific fuels characteristics of all of the fuels which can be used by the new installation.

(4) Evidence that you sought the full range of alternate fuels and fuel characteristics which could be used by the new installation, including bid requests, and/or advertisements for supply contracts, all responses you received, as well as any other arrangements you attempted to make to secure supplies;

(5) All data required by § 505.5 of these regulations (Cost Calculation) necessary for computing the cost calculation formula; and

(6) A description of the approach and methodology you used to search for and evaluate the use of the alternate fuel you considered.

§ 505.23 Site limitations.

(a) *Eligibility.* Section 211(a)(2) of the Act provides for a permanent exemption due to a site limitation. To qualify you must demonstrate to the satisfaction of the ERA that, despite good faith efforts:

(1) Alternate fuels would be inaccessible as a result of a specific physical limitation to the location or operation of the proposed installation;

(2) Transportation facilities for alternate fuels would be unavailable;

(3) Adequate facilities for handling, using, or storing alternate fuels would be unavailable;

(4) Adequate means for controlling and disposing of wastes would be unavailable;

(5) Adequate and reliable supply of water would be unavailable; or

(6) Other site limitations exist which would not permit the location or operation of the proposed installation using an alternate fuel and that these limitations cannot be reasonably expected to be overcome within 5 years

after the commencement of operations.

(b) *Evidence to be submitted in support of the petition.* In order to submit an adequate petition for review by ERA, you must include in your Fuels Decision Rationale the following substantial evidence to corroborate the above criteria:

(1) Evidence that the site limitation is a physical limitation, and not a requirement of a Federal, State, or local law which could be the basis of an exemption under Section 505.26 (State or local requirements);

(2) Evidence that alternative means for overcoming the specific site limitations were sought, with a detailed description of the efforts made to overcome the site limitations set out in your petition; and

(3) Evidence of the equipment or space requirements for which the site limitation is claimed. Examples of evidence relevant to establishing a site limitation for purposes of a permanent exemption are as follows:

(i) Detailed documentation of impediments, including rights-of-way problems, site diagrams, maps of the surrounding areas and other items essential to the showing of a site limitation;

(ii) Identification of transportation facilities relevant to the geographic site of the installation and demonstration showing why existing transportation facilities cannot be utilized or new facilities constructed;

(iii) Copies of bid requests, advertisements, and general efforts made to secure alternative transportation facilities;

(iv) Identification of potential alternate fuel storage locations within a reasonable geographic area surrounding the proposed installation;

(v) Detailed scale site plans of the entire facility which include those areas not directly involved with the specific installation;

(vi) A specific listing of all equipment necessary and not currently available to properly handle alternate fuels;

(vii) Copies of bid requests, advertisements, and general efforts made to secure alternative storage facilities;

(viii) Copies of quotes from bona fide suppliers, indicating lead times for purchase and installation for required ancillary storage or handling equipment;

(ix) Specific listing of any equipment necessary and not currently available to properly control and dispose of waste;

(x) Identification of potential alternate waste disposal locations within a reasonable geographic area surrounding the proposed powerplant;

(xi) A description of efforts made to secure off site disposal areas, transportation facilities, and waste handling costs involved in their use; and

(xii) Copies of bid requests, advertisements, and general efforts made to secure waste control and disposal equipment.

§ 505.24 Inability to comply with applicable environmental requirements.

(a) *Eligibility.* Section 212(a)(1)(C) of the act provides for a permanent exemption due to inability to comply with applicable environmental requirements. To qualify you must demonstrate to the satisfaction of ERA that, despite good faith efforts, you cannot burn alternate fuels without violating applicable environmental requirements within 5 years after beginning operation by providing proof that EPA or the State has denied a construction permit and by providing the information requested below.

(b) *Evidence supporting petition.* To submit an adequate petition for review by ERA, you must include in your Fuels Decision Report the following substantial evidence to corroborate the above requirements:

(1) A copy of your construction permit application and all supporting documents filed with or subsequent to the application;

(2) To the extent applicable, a copy of the EPA and/or State denial of your construction permit application;

(3) A detailed synopsis of the administrative record of the EPA and/or State permit proceedings;

(4) Copies of reports examining environmental compliance of the facility including fuel use, pollution control equipment, availability of offsets, variances, SIP revisions, and redesignations; and

(5) Copies of requests for bids and responses received for fuel supply and pollution control equipment and copies of any correspondence on offsets, variances, SIP revisions, and redesignations.

(c) *Prepetition actions.* (1) It is recommended that you request a meeting with ERA and EPA or the State to discuss options for complying with the prohibitions; and

(2) You must also send a copy of your construction permit application at the same time you submit it to EPA or the State if you are applying for use of oil or gas as well as an alternate fuel.

§ 505.25 Inability to obtain adequate capital.

(a) *Eligibility.* Section 212(a)(1)(D) of the Act provides for a permanent exemption due to inability to obtain adequate capital. To qualify you must demonstrate to the satisfaction of ERA that—

(1) If you are a part of an existing consolidated corporation, the differ-

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ence in cost between your proposed facility and an alternate fuel facility is equal to or greater than 25 percent of the averge annual investment expenditures for the past three years of the consolidated corporation of which you are a part; or

(2) If you are a new business firm, not a part of a consolidated corporation, despite good faith efforts that you cannot obtain the additional capital required for an alternate fuel facility beyond that required for your proposed facility.

(b) *Evidence required in support of the petition.* To submit an adequate petition for review by ERA, you must include in your Fuels Decision Report supporting documentary evidence to corroborate the foregoing requirements. The evidence should include but not be limited to the following information:

(1) If you are a part of an existing consolidated corporation, 3-year summary of the financial record of the consolidated corporation, as indicated by the standard financial indicators including cash earnings and dividend records; time interest coverage ratios; price-earnings ratios; market to book value ratios; and all investment expenditures.

(2) If you are a new business firm:

(i) Relevant records pertaining to your specific efforts to raise capital associated with your proposed facility.

(ii) Your financial statement.

§ 505.26 State or local requirements.

(a) *Eligibility.* Section 212(b) of the Act provides for an exemption due to State or local requirements. To qualify you must demonstrate to the satisfaction of the ERA that:

(1) With respect to the proposed site of the installation, the operation or construction of the new installation using an alternate fuel is infeasible because of a State or local requirement other than a building code, nuisance or zoning law;

(2) You have, in good faith, attempted unsuccessfully to obtain a variance from the State or local requirement or have demonstrated why none is available;

(3) The granting of the exemption would be in the public interest and would be consistent with the purposes of this title; and

(4) You are ineligible for a permanent exemption based on lack of alternate fuel supply, site limitations, environmental requirements, or inability to obtain adequate capital.

(b) *Evidence required in support of a petition.* To submit an adequate petition for review by ERA, you must include in your Fuels Decision Report the following substantial evidence to corroborate the above requirements:

(1) A copy of the pertinent State or local requirement with its citation and its legislative history;

(2) The identification and location of the administrative body which implements the requirement;

(3) A description of your attempts to obtain a variance from the requirements;

(4) A description of any activities you were involved in pertaining to the enactment of the requirement;

(5) A description of equipment, procedures, advance planning time and costs necessary to comply with the requirement;

(6) A detailed description of why compliance is infeasible;

(7) The impact upon you and/or your local community, if any, should your petition be denied;

(8) An explanation of the reasons why granting this exemption would be in the public interest; and

(9) An analysis of why you cannot qualify for any of the exemptions listed in paragraph (a)(4) above.

§ 505.27 Cogeneration.

(a) *Eligibility.* Section 212(c) of the Act provides for a permanent exemption for cogeneration. To qualify you must demonstrate to the satisfaction of ERA at least the following minimum criteria:

(1) You are unable to comply with the applicable prohibitions imposed by the Act;

(2) That there are economic and other benefits of congeneration with petroleum or natural gas none of which are obtainable through the use of an alternate fuel.

(b) *Evidence required in support of a petition.* To submit an adequate petition for review by ERA you must include in your Fuels Decision Report the following substantial evidence to corroborate the above requirements:

(1) Documentary evidence which demonstrates that you considered the use of alternate fuels, including a description of the fuel alternatives you examined and the factors important in your decision to reject the use of alternate fuels. Such factors would include lack of alternate fuel supply, site limitations, environmental requirements, or inability to raise adequate capital;

(2) Purchaser's design specifications for the new unit;

(3) An engineering description of the system, including proposed output and uses thereof, with sufficient detail to insure that the unit qualifies as a cogeneration facility;

(4) A detailed economic and engineering analysis demonstrating the benefits of cogenerating with petroleum or natural gas and demonstrating that these benefits are not obtainable through the use of alternate fuels;

(5) A comparison of the total oil and gas consumption by the proposed cogeneration project and the best feasible alternative, including the effect on oil or gas used by the installation or by other affected parties; and

(6) An analysis of the immediate and long-term economic impacts on parties not directly involved in the project.

§ 505.28 Permanent exemption for certain fuel mixtures containing natural gas or petroleum.

(a) *Eligibility.* Section 212(d) of the Act provides for a permanent exemption for certain fuel mixtures. To qualify you must demonstrate to the satisfaction of ERA that:

(1) You propose to use a mixture of natural gas or petroleum and an alternate fuel as a primary energy source;

(2) You are not capable of complying with the applicable prohibitions imposed by the Act; and

(3) The amount of petroleum or natural gas you propose to use in the mixture will not exceed the minimum percentage of the total Btu heat input needed to maintain operational reliability consistent with maintaining a reasonable level of fuel efficiency.

(b) *Evidence required in support of a petition.* To submit an adequate petition for review by ERA you must include in your Fuels Decision Report the following substantial evidence to corroborate the above requirements:

(1) A complete description of the fuel mixture, component elements of the mixture, and percentage of each component to be utilized;

(2) The purchaser's design specifications for the unit for which you are requesting an exemption;

(3) An engineering assessment of the proportions of petroleum or natural gas needed to maintain operational reliability and an adequate level of fuel efficiency; and

(4) Documentary evidence which demonstrates that you have considered the use of alternate fuels as a primary energy source. You must include a description of the supply alternatives you considered, the cost and availability of each alternate fuel considered, and the factors important in your decision to reject the use of an alternate fuel as a primary energy source.

(c) *Reporting requirement.* If the exemption is granted, you must submit an annual report to ERA certifying that the affected units have used no more than the percentage of oil or natural gas specified in the exemption order. The certification shall be executed by your chief executive officer.

§ 505.29 Emergency purposes.

(a) *Eligibility.* Section 212(e) of the Act provides for a permanent exemption for emergency purposes. To qualify you must demonstrate to the satisfaction of ERA that:

(1) You are unable to comply with applicable prohibitions imposed by the Act;

(2) You will operate and maintain the installation for emergency purposes only.

(b) *Definition.* For the purposes of this permanent exemption, an emergency exists when operation is necessary for (1) plant protection, or (2) the preservation of human health, including services to hospitals, public transportation facilities, sanitation, water supply and pumping, or other essential services. Secondary services which support essential services are excluded.

(c) *Evidence required in support of a petition.* To submit an adequate petition for review by ERA you must include in your Fuels Decision Report the following substantial evidence to corroborate the above requirements:

(1) Certification executed by the Chief Executive Officer stating that emergency operation under the provisions of this exemption will occur only when plant protection or the preservation of human health is required;

(2) Documentary evidence which demonstrates that you considered the use of alternate fuels, including a description of the fuel alternatives you examined and the factors important in your decision to reject the use of alternate fuels. Such factors would include lack of alternate fuel supply, site limitations, environmental requirements, inability to raise adequate capital, certain State or local requirements, or other reasons which would preclude the use of an alternate fuel;

(3) An estimate of the emergency generating capacity required for the first three 12-month periods of exempt operation to be used for plant protection and for preservation of human health;

(4) A list of specific uses described by the terms plant protection and preservation of human health, is provided in paragraph (b) above;

(5) The total emergency generating capacity for which exemption is requested; and

(6) Identification and description of previous exemptions, if any, granted under the provisions of this section.

(d) *Reporting requirement.* At the end of each 12-month period from the effective date of the exemption you must report to ERA the monthly and annual total generating capacity used and amounts generated under the provisions of this exemption with a description of the purposes of use.

§ 505.30 Product or process requirements.

ERA has made a preliminary determination that this exemption (section 212(i) of the Act) applies solely to cer-

tain nonboiler categories. These categories are not subject to the statutory prohibitions against petroleum and gas usage, although the Act does provide ERA with the discretionary authority to promulgate rules prohibiting oil and gas use by these categories of nonboilers. ERA does not intend to issue rules pertaining to those categorical prohibitions at this time. Therefore, we do not now interid to issue regulations governing the eligibility and evidence requirements for granting this exemption.

§ 505.31 Scheduled equipment outages.

(a) *Eligibility.* Section 212(j) of the Act provides for a permanent exemption to meet scheduled equipment out<ages. To qualify you must demonstrate to the satisfaction of ERA that:

(1) You are unable to comply with the applicable prohibitions imposed by the Act;

(2) Your routine maintenance schedule does not permit continuing operation unless ERA grants this exemption and the reasons why; and

(3) The pertinent unit will be used only during those periods when other units are not in operation for reason of scheduled outage.

(b) *Evidence required in support of a petition.* To submit an adequate petition for review by ERA you must include in your Fuels Decision Report the following substantial evidence to corroborate the above requirements:

(1) A schedule of operation for the pertinent unit estimating the number of hours per year and fuel consumption for projected use during the first 12 months of operation after commencement of operation;

(2) A description of the maintenance schedule for all units located at the facility specifically identifying those units at the facility which will be out of service for scheduled maintenance at times when the unit for which the exemption is requested, is operating; and

(3) Documentary evidence which demonstrates that you considered the use of alternate fuels, including a description of the fuel alternatives you examined and the factors important in your decision to reject the use of alternate fuels. Such factors would include lack of alternate fuel supply, site limitations, environmental requirements, inability to raise adequate capital, or certain State or local requirements.

(c) *Reporting requirement.* ERA will rely upon the schedule of operation of the unit submitted with the petition as the permanent schedule for exempt use. You must notify ERA in advance of any changes to this schedule.

APPENDIX—DRAFT REGULATORY ANALYSIS—PROPOSED RULES TO IMPLEMENT PROVISIONS OF THE POWERPLANT AND INDUSTRIAL FUEL USE ACT

I. INTRODUCTION

The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is proposing rules to implement provisions of the Powerplant and Industrial Fuel Use Act (FUA). The Act contains prohibitions on the use of petroleum and natural gas and provides certain exemptions from the prohibitions.

The Act contains the following provisions restricting oil and natural gas use:

It prohibits use of petroleum or natural gas in new facilities;

It prohibits building new electric powerplants that cannot burn coal or other alternate fuels;

It forbids use of natural gas as a primary energy source in existing electric powerplants after January 1, 1990;

It bans natural gas use by existing powerplants before January 1, 1990, unless that fuel was used by a powerplant as a primary energy source during 1977;

It provides that where a powerplant has historically used natural gas, it cannot consume any greater proportion of the fuel than in the past; and

It provides DOE with authority to issue rules or orders prohibiting existing facilities from using petroleum or natural gas and from using excessive amounts of petroleum or natural gas in mixtures.

FUA authorizes DOE to exempt a powerplant or an installation from the statutory or discretionary prohibitions. The exemptions cover certain physical, economic, environmental, and legal factors that preclude compliance with the prohibitions. The proposed rules establish criteria that must be met to obtain an exemption. The burden of proof of demonstrating that an exemption is warranted rests on the petitioner requesting the exemption and not on DOE.

II. POLICY OBJECTIVES

FUA is an integral part of the National Energy Act (NEA) and represents an expansion of the authority contained in the Energy Supply and Environmental Coordination Act of 1974 (ESECA). The primary purpose of FUA is to minimize the use of petroleum and natural gas in industrial and electric utility boilers. By minimizing the use of scarce fuels in boilers, use of all alternate fuels, not only coal, is encouraged. A shift from consumption of scarce fuels to more abundant domestic resources furthers the goal of national energy self sufficiency and its attendanee benefits of reducing the vulnerability of the United States to energy supply interruptions and improving the balance of payments.

The policy objectives for implementing this program follow from the Act. Most important is to prohibit or minimize the use of oil or natural gas, and second, where oil or natural gas must be used, to insure that it is used efficiently. Therefore ERA intends to administer the Act in a stringent manner calling on American industry to utilize its ingenuity and expertise to develop and use technologies for using alternate fuels.

III. IMPACT ANALYSIS OF PROPOSED REGULATIONS

The quantitative impacts of policy alternatives available to ERA in implementing the Fuel Use Act were assessed by the Energy Information Administration (EIA), DOE, at the request of ERA. Their findings are presented in an analysis memorandum, "Analysis of Proposed DOE Regulations Implementing the Powerplant and Industrial Fuel Use Act", AM/EI/79-07. The memorandum can be obtained from: Energy Information Administration Clearinghouse, 1726 M Street NW., Room 210, Washington, D.C. 20461, 202-634-5641.

The analysis focuses on three key policy alternatives that are discussed in section IV. The following subsections provide an overview of some aspects not captured by the forecasts and the highlights of the regulatory program's estimated impact on national energy consumption and imports.

Forecasting considerations

Forecasts of the impact of regulations are highly dependent upon the structure of the models used to produce the forecasts and on the assumptions incorporated in the cases examined. As a result some of the benefits of implementing FUA regulations may not be evident from the quantitative forecasts and are instead discussed qualitatively in this section.

Savings of oil and gas attributable to implementing FUA are measured from a base case without FUA. The base is predicated upon firms selecting the most economic energy source. However, there may be instances where a firm may not do this. For example, a utility which is having difficulty obtaining rate increases may prefer to construct a less capital intensive plant even though the generation costs over the life of the plant may be slightly greater than for a more capital intensive plant. An industrial firm may prefer to burn oil or gas, rather than coal, even at a slightly higher cost because these are cleaner fuels and enhance the corporate image as a good neighbor. In these cases a regulatory program reinforces the market mechanism and insures that there will not be backsliding from the base case forecasts.

Similarly, the base case may be over optimistic in terms of coal consumption since the forecasts do not take into account the level of risk and uncertainty of using one fuel as opposed to another. Users often perceive coal burning and nuclear powerplants as presenting greater uncertainties than oil or gas burning. The construction lead times are longer and capital outlays are greater resulting in a potential for escalation in project costs. Further, in some geographic areas where coal has not recently or has never been burned there may be considerable hesitation in initiating its use. The implementation of FUA will greatly reduce the role of uncertainty in fuel burning decisions.

It is likely that the program will encourage the introduction of new technology to burn conventional alternate fuels and encourage the introduction of new energy sources. Since coal is the most abundant alternate energy source most firms subject to the prohibitions of the Act will elect to burn coal. With greatly increased direct coal use improved methods of burning will develop, commercialization of those methods, such as fluidized bed combustion, will occur, and an experienced coal industry labor force will expand. The Act will also encourage research and the commercialization of other alternate energy sources such as solid waste, gasified coal, and solar energy.

In addition to the factors described above that are not accounted for in the model, and therefore not the forecasts, two significant assumptions were made which must be kept in mind when interpreting the forecasts. First, it was assumed that world oil prices in constant dollars would not increase. If it had instead been assumed that world oil prices in constant dollars will increase, market forces would tend to cause a reduction in oil and gas consumption that is otherwise attributed to the regulatory program.

Secondly, most of the policy alternatives in implementing FUA were analyzed without the other portions of the National Energy Act. When the natural gas pricing provisions of NEA are included the combined oil and gas savings attibutable to FUA tend to decline, but oil imports are further reduced. This extra reduction in oil imports occurs because the NEA gas pricing provisions eliminate the distinction between interstate and intrastate gas markets, and some of the gas freed up by FUA is delivered to interstate markets where it substitutes for oil, rather than remaining in the ground awaiting demand from the intrastate market. To the extent possible the analysis presented in this summary is based upon EIA's analysis including the natural gas pricing provisions or an interpretation of impacts that would occur had the natural gas pricing provisions been included throughout.

Energy impact of implementing FUA

The oil and natural gas savings from implementing FUA are estimated to be about 450 thousand barrels a day (MBD) oil equivalent in 1985 and about 650 MBD oil equivalent in 1990. Most of the savings are oil rather than natural gas. This occurs because the price of natural gas rises with the implementation of the NEA gas pricing provisions so that firms with boilers large enough to be covered by the Act are less likely to choose natural gas even in the absence of a regulatory program.

Virtually all of the program savings are attributable to the industrial sector and not the utility sector. The relative cost of using coal as opposed to oil leads utilities to select construction of base load coal fired plants. However, industrial firms that have somewhat lower utilization rates and face relatively higher coal prices and operations and maintenance costs may favor construction of oil fired plants. The regulatory program is effective in preventing much of this oil fired construction by the cost criteria it imposes.

By implementing FUA oil imports are expected to decline by about 450 MBD in both 1985 and 1990. Not all of the program savings in 1990 translate into import reductions because natural gas consumption in the residential and commercial sectors increases.

IV. POLICY ALTERNATIVES

Three significant policy issues were selected for detailed analysis. They are the level of the index to be used in the comparative cost test, the extent to which discretionary prohibitions on existing units should be exercised, and the extent to which types of proposed utility generating equipment should be considered in granting a reliability exemption. Each issue is discussed below.

Index level of the comparative cost test

A facility shall be exempt from the prohibitions if it can be demonstrated that the

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cost of using an alternate fuel substantially exceeds the cost of using imported petroleum. The determination of what constitutes "substantially exceeds" is very important since most exemption requests will be evaluated under this criteria. ERA has used a level of 50 percent for illustrative purposes in its proposed regulations. ERA will designate an index in its final regulations that will probably be between 30 percent and 80 percent but may well be higher.

The index level should be high considering the purposes of the Act and the variations in cost estimates. The primary objective of the regulatory program is to reduce oil and gas consumption. This reduction is necessary to further the goal of national energy self sufficiency, reduce the vulnerability of the United States to energy supply interrruptions, and to conserve gas and petroleum for the benefit of present and future generations. The importance of the goals and the legislative language, "substantially exceeds", indicate that use of a large percentage figure to capture social benefits is warranted. Also, the variation in cost estimates is so great as to render meaningless small differences in estimated costs.

According to the model, using a cost index of 30 percent saves 650 MBD (oil equivalent) of oil and natural gas in 1990. By increasing the index to 50 percent an additional 50 MBD of oil and natural gas is saved. There are additional savings by increasing the index to 80 percent but they amount to less than 50 MBD.

As noted earlier, the model attributes negligible savings to the utility sector. However, according to the model, those savings would be captured if the index were 10 percent.

At an index of 50 percent or 80 percent, most of the new industrial boilers and existing coal capable boilers would not be exempted from the prohibitions on the basis of cost. Installations where the cost of using an alternate fuel would exceed the cost of using imported petroleum by more than 50 or 80 percent are likely to be small (less than 250 MMBtu/hour) and require a substantial amount of pollution control equipment.

The total annualized cost in 1990 to directly affected installations is estimated to be about $515 million (1975 dollars) with a 30 percent index. By increasing the index from 30 percent to 50 percent the cost increases by $26 million, and by another $23 million by increasing the index from 50 percent to 80 percent. The costs represent the difference between burning coal versus oil or natural gas. The annualized costs are calculated by dividing the present value of the capital, operations and maintenance, and fuel costs by the sum of the present value discount factors. Because of this discounting calculation these costs cannot meaningfully be divided by program savings.

The cost to the economy may be less than that to directly affected users to the extent that the oil and natural gas saved goes to consumers in the residential and commercial sectors who would otherwise have to use imported petroleum or synthetic natural gas.

All units versus new units only

The Act prohibits new facilities from using oil or natural gas. However, it grants DOE discretionary authority to issue prohibition orders to certain existing facilities. Generally these facilities must be alternate fuel capable; they must not require substantial physical modification or substantial derating to use coal or other alternate fuel; and the conversion must be financially feasible.

The model considered only the impacts of direct solid coal burning by existing facilities. The analysis shows that oil and natural gas savings due to prohibiting existing units from burning oil or natural gas amounts to about 200 MBD oil equivalent in both 1985 and 1990. 200 MBD represents approximately 45 percent of total program savings in 1985 and 30 percent in 1990. No additional units are converted between 1985 and 1900 so the percentage reflects the changeover in capital stock where new units become relatively more important than today's units in terms of fuel consumption.

Virtually all the savings from existing facilities are attributable to the industrial sector.

The costs imposed on a directly affected installation will be about the same whether it is existing or new because both face the same comparison test.

In terms of total annualized costs incurred by directly affected MFBI's the impact among regions is somewhat more unequal when only new MFBI's are subject to prohibitions. For example, in 1985 if only new MFBI's were subject to prohibitions the MFBI's in the Southwest would incur costs of $225 million (1975 dollars) which represents 78 percent of the national cost. However, if prohibitions are applied to existing as well as new units the cost incurred by the southwest increases to $261 million but this amount is about 71 percent of the national cost.

Type of equipment—Utilities

The Act provides an exemption for an oil or natural gas powerplants if the plant is required to prevent an impairment of reliability of service. Although the exemption is a permanent exemption, the condition that it covers, reliability, is temporary in nature. The policy alternatives examined with respect to this exemption were favoring combustion turbine equipment in granting the exemption and disregarding the type of proposed equipment.

The objectives in administering this exemption are to assure that adequate capacity is constructed so that brownouts will not occur, to minimize the use of oil and natural gas consumed under this exemption, and to provide incentives for adequate planning for construction of alternate fuel-fired plants to meet load requirements.

The analysis assesses the trade off between constructing less efficient generating units versus construction of more efficient units that would operate at higher capacity factors. A combusion turbine has a substantially higher heat rate than a combined cycle unit so it requires more oil to generate a kilowatt hour of electricity. However, due to its high operating costs it is one of the last units dispatched to meet electrical demand. The combined cycle unit, conversely, requires less oil to generate a kilowatt hour but its favorable economics tend to result in dispatching it to meet intermediate load demand and occasionally base load demand.

The forecasts show that in 1985 oil-fired capacity will be constructed to meet the reserve margin requirement since the lead time is not great enough to construct sufficient nuclear or coal fired capacity. By 1990 lead times are great enough so that reliability is not a problem.

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In the absence of a combustion turbine restriction, utilities would construct 7000 megawatts (MW) of combined cycle capacity by 1985 to meet reliability requirements. In 1985 operation of the combined cycles would save an additional 20 MBD of oil in the utility sector over the program cases presented earlier.

However, the 7000 MW of combined cycle constructed through 1985 would be operating to meet intermediate load demand in 1990 whereas the distillate turbines would be operating to meet peak load demand. Further, most of the distillate turbines constructed for reliability by 1985 displace turbines that would otherwise have been constructed between 1985 and 1990 to service peak load demand in 1990. Additional coal-fired capacity will be constructed to meet load requirements. The net result is that in 1990 by restricting the reliability exemption to combustion turbines 100 MBD of oil is saved. Had the turbine restriction (or some equally effective substitute) not been incorporated in all the program forecasts, utility oil consumption in 1990 would have been 100 MBD higher than was shown in the program forecasts.

V. MACROECONOMIC EFFECTS

The annual impact on real GNP for any of the years 1978 through 1990 will not exceed a decline of about 0.1 of 1 percent of total predicted GNP, or approximately $1.6 billion per year in an economy which is estimated to be about $2 trillion.

The effect of the program on other macroeconomic variables such as the unemployment rate, the wholesale price index, and the consumer price index will be to increase them by an amount that is the same as or smaller than the impact on the GNP. For example, if the long-term base rate of inflation is 4 percent per year, this program would increase this rate to a maximum of 4.1 percent.

VI. REASONS FOR SELECTING THE PREFERRED ALTERNATIVES

ERA proposes to select an index as high as 80 percent or higher for the comparative cost test, pursue a prohibition order program for existing facilities, and favor construction of combustion turbines in granting the reliability exemption. These alternatives are preferred because they result in the greatest oil and natural gas savings which is the primary objective of the program.

In light of national energy goals and the fact that corporate decisions do not conventionally include national costs of burning oil or natural gas, the costs associated with an index of 80 percent are not unreasonable. Further the costs could well be less than those indicated in the analysis because of the large variability of construction project estimates. Also, we intend to review and adjust the index from time to time as experience dictates.

By pursuing a prohibition program for existing facilities large oil and gas savings can be achieved in a relatively short period of time.

In adition to the scarce fuel savings directly associated with favoring combustion turbines for the reliability exemption, the approach provides the greatest incentive to utilities to adequately plan in advance for meeting load requirements with alternate fuel-fired plants.

VII. LEGISLATIVE INITIATIVES

The Fuel Use Act represents a significant advance in the effort to minimize oil and natural gas consumption in the industrial and utility sectors. Further measures may follow FUA. These measures may include broadening of FUA as well as initiatives that would complement and increase the effectiveness of the oil and natural gas replacement effort.

[FR Doc. 78-32308 Filed 11-14-78; 11:51 am]

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FRIDAY, NOVEMBER 17, 1978
PART V



DEPARTMENT OF LABOR

Mine Safety and Health Administration

■

METAL AND NONMETAL MINING OTHER THAN COAL MINING

Health Standards; Miscellaneous Amendments

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[4510-43-M]

Title 30—Mineral Resources

CHAPTER I—MINE SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR

SUBCHAPTER N—METAL AND NONMETALLIC MINE SAFETY

METAL AND NONMETAL MINING OTHER THAN COAL MINING

Health Standards; Miscellaneous Amendments

AGENCY: Mine Safety and Health Administration (MSHA), Department of Labor.

ACTION: Final rule.

SUMMARY: This rule establishes a definition for the term "potable water," establishes new mandatory standards with respect to silica and new mandatory standards limiting the use and storage of specified toxic or harmful chemical substances, and revises the mandatory standards related to exposure to asbestos dust. These regulations will improve health conditions to which mine workers are exposed and provide mine workers with an equivalent degree of protection as workers in other industries subject to similar hazards.

EFFECTIVE DATE: December 18, 1978.

FOR FURTHER INFORMATION CONTACT:

Dr. Aurel Goodwin, Chief, Division of Health, Metal and Nonmetal Mine Safety and Health, Mine Safety and Health Administration, U.S. Department of Labor, Ballston Towers No. 3, 4015 Wilson Boulevard, Arlington, Va. 22203, 703-235-8307.

SUPPLEMENTARY INFORMATION:

I. Rulemaking Background

Acting under the rulemaking authority of section 6 of the Federal Metal and Nonmetallic Mine Safety Act (30 U.S.C. 725) (Metal Act), the Secretary of the Interior published a notice of proposed rulemaking to amend Parts 55, 56, and 57, Title 30, Code of Federal Regulations in the Federal Register on Thursday, July 7, 1977 (42 FR 35000-35002).

The notice proposed to:

(1) Revise the definition of "potable" water;

(2) Prohibit the use or storage of certain specified toxic chemical substances except under laboratory conditions approved by a nationally recognized agency acceptable to the Secretary;

(3) Revise existing mandatory standards by reducing the 8-hour time-weighted average airborne concentration of asbestos dust to which employees are exposed from 5 fibers per milliliter greater than 5 microns in length to 2 fibers per milliliter; and

(4) Prohibit silica sand or other materials containing more than 1 percent free silica from being used as an abrasive substance in abrasive blasting cleaning operations underground and allowing such use in surface activities only with the use of full-flow respiratory protection, or equivalents for all exposed persons.

A comparison was made between the language and substantive requirements of each proposed definition and mandatory health standard with the corresponding OSHA definition and regulation. In each instance, the proposed definition or mandatory health standard affords at least the same degree of health protection to the individuals working in the metal and nonmetal mining industries as its counterpart OSHA definition or regulation affords those persons working in the general and construction industries subject to the Occupational Safety and Health Act. The proposed definition and rules were developed or revised after consultation with the Federal Metal and Nonmetal Mine Safety Advisory Committee appointed under section 7 of the Metal Act (30 U.S.C. 726).

Pub. L. 95-164, the Federal Mine Safety and Health Amendments Act of 1977 (Amendments Act), amended the Federal Coal Mine Health and Safety Act, Pub. L. 91-173, and repealed the Federal Metal and Nonmetallic Mine Safety Act, Pub. L. 89-577.

The resulting law, the Federal Mine Safety and Health Act of 1977, applies to all coal and other (metal and nonmetal) mines. With regard to rulemaking proceedings which had begun but were not completed prior to March 9, 1978, the effective date of the Amendments Act, section 301(c)(3) of that Act provides the Secretary of Labor with the authority to continue the proceedings and promulgate such rules under the rulemaking authority of the Federal Mine Safety and Health Act.

II. Discussion of Comments and Changes

1. *55, 56, 57.5-1(b)—Asbestos.* Comments were made expressing concern as to the wording of proposed paragraph (b) regarding methods for asbestos fiber identification, based in part, on the conclusions of a National Bureau of Standards (NBS) report entitled "A Report on the Fiber Content of Eighty Industrial Talc Samples Obtained From, and Using the Procedures of, the Occupational Safety and Health Administration."

Among the conclusions contained in the report were: (1) It is the opinion at NBS that the existing OSHA procedure is useful only for determining "fiber" content and not "asbestos" content.

(2) The NBS believes that the resolution of the measurement problem, including the definition and identification of asbestos, will be accomplished by significant changes in the procedure and probably by changes in the method as well.

Several medical studies were referenced in the comments. T. R. Fears, "American Journal of Epidemiology" (vol. 104, pp. 523-526, 1976); McDonald, et al., "Cancer" (vol. 26, pp. 914-919, 1970); McDonald, et al., "American Review of Respiratory Disease Supplement" (vol. 115, No. 4, April 1977); Gibson, "Inserm" (vol. 52, pp. 107-116); Enterline, New York Academy of Science (February 1975); McDonald, et al., "Archives of Environmental Health" (vol. 28, February 1974); and Finklea, unpublished.

The NBS study, performed at the request of OSHA, was done for bulk materials, not airborne dust, and does not represent an analysis of the methods used by MSHA. MSHA does not use the method evaluated by NBS to identify asbestos minerals.

Presumably, the medical studies were cited to either refute the need for a standard or to argue against a reduction of the standards. The studies cited represent only a small part of the medical literature on asbestos exposure and disease. When all reports on this subject are considered, they demonstrate an overwhelming association between asbestos exposure and lung disease. Few, if any, of these reports have sufficient information to judge the specific risk of disease associated with any given exposure. The general consensus within the medical community is that any exposure to carcinogens creates a risk of disease. Therefore, standards should require exposure levels to be set as low as possible so long as they are both achievable and can be measured.

Because of scientific data developed in the late 1960's and early 1970's, the asbestos standards 30 CFR 55.5-1, 56.5-1, and 57.5-1 were amended in 1974 to provide the current limit of 5 fibers/ml greater than 5 microns (micrometers) in length. In keeping with the Secretary's responsibilities, MESA (predecessor of MSHA) continued to study the available data on asbestos dust, and as a result of these studies, in June 1976 submitted to the advisory committee a recommendation to reduce the 5 fibers/ml limit to 2 fibers/ml. The reason for the reduction to 2 fibers/ml limit is to prevent

asbestosis and to protect to a greater degree against cancer. The 2 fibers/ml limit is consistent with MSHA's current asbestos dust standard for surface work areas of underground coal mines and surface coal mines and OSHA's current standards for general industries and the construction industry. A reduction from 5 fibers/ml level to 2 fibers/ml will improve significantly the working environment of miners.

MSHA believes that the two fiber regulation is both achievable and amenable to measurement. The 2 fiber/ml standard should assure that less than 1 percent of workers, occupationally exposed, will develop clinical signs of asbestosis.

Some prominent medical and health authorities have indicated that permissible exposures up to 2 fibers/ml may still be too high to adequately protect the health of miners exposed to asbestos dust during a working lifetime. OSHA has published in the Federal Register and solicited comments on a proposal to reduce asbestos exposure levels from 2 to 0.5 fibers/ml for all industries except the construction industry which will be considered separately at some later date. NIOSH has recommended to OSHA an asbestos standard of 0.1 fiber/ml. Although MSHA has no present plans to implement such a further reduction in exposure levels, data and evidence will continue to be gathered and analyzed to determine if future reductions may be warranted.

It was commented that the term "fiber" as used in the regulation was not clearly defined and that the definition of "asbestos" appeared to have been designed expressly to include crushed stone operations.

The terminology for defining asbestos was obtained from mineralogists and was not designed expressly to include crushed stone operations. Crushing and grinding are performed in most mining operations, including those producing commercial asbestos, and not just at crushed stone operations.

Commenters stated that no studies have quantified health hazards resulting from exposure to asbestiform tremolite and actinolite and that there is sufficient controversy among recognized occupational health experts concerning the need to apply increasingly stringent exposure limits to all "asbestiform" minerals on the basis of carcinogenicity to warrant further careful study. They also recommended exclusion of actinolite from a more restrictive standard (i.e., less than 2 fibers/ml) unless adequate laboratory testing and epidemiological studies indicate otherwise.

In response to these comments, of the six asbestos minerals specified in the regulation, chrysotile, amosite, crocidolite, and anthophylite have been associated with increased risk of cancer in humans. Neither tremolite nor actinolite asbestos have been shown to cause cancer in humans or animals. However, studies of workers involved in mining materials containing mixtures of tremolite and other minerals have shown excess disease associated with such exposures. Tremolite and actinolite appear to form a solid solution series, representing end members of that mineral group. The promulgated standards retain tremolite and actinolite asbestos in the definition of asbestos.

It was commented that the proposed rule differed from that recommended by the advisory committee in that the phrase "longer than 5 micrometers" after the phrase "in excess of 10 fibers" had been omitted.

The omission of the phrase "longer than 5 micrometers" was a typographical error and has been corrected in the promulgated standards.

2. *55, 56, 57.5-10—Silica.* Commenters stated that the term "exposed" should be defined and that the proposed standards should have included other abrasive materials such as staurolite, garnet, and those made from slag containing a high percentage of glass.

The term " exposed" as used in regulations 55, 56, 57.5-10 refers to persons who would breathe air containing potentially harmful concentrations of silica dust originating from an abrasive cleaning operation. If abrasive cleaning is conducted in a building with forced ventilation, exposed persons would be persons in the downstream direction from the abrasive cleaning operation. If the cleaning is conducted out of doors, persons downwind of the abrasive cleaning operation may be exposed. In all cases, those persons whose exposure exceeds the applicable TLV limit in regulations 55, 56, 57.5-1 would be considered exposed. In a closed building with little or no ventilation, concentrations of harmful silica dust may persist for several hours following the conclusion of abrasive blasting. So the termination of abrasive blasting may not end the exposure.

Regulations limiting exposure to toxic substances are required under the act. It has been demonstrated that worker exposure to crystalline silica does cause silicosis. Evidence does not indicate that the health effects of such materials as glass, staurolite or garnet are as severe. However, the use of these materials is governed by other standards which may require that the same control measures be taken.

3. *55, 56, 57.5-6—Chemical storage.* Concern was expressed that "• • • conditions approved by nationally recognized agency • • •," could be interpreted to mean a laboratory accredited by the American Industrial Hygiene Association or a similar organization.

The term "nationally recognized agency which is acceptable to the Secretary" includes agencies and organizations that provide guidelines for laboratory procedures. Such organizations are the American Industrial Hygiene Association laboratories accredited by the American Industrial Hygiene Association and the Manufacturing Chemists Association.

4. *55, 56, 57.2—Potable water.* It was commented that the public health service drinking water standards, 42 CFR 72, Subpart J, are applicable only to interstate commerce, and that the Environmental Protection Agency standards published in 40 CFR 141 under the Safe Drinking Water Act of 1974, Pub. L. 93-523, should be included. The definition of "potable water" is modified in this final rule by adding 40 CFR 141.

III. Drafting Information

The principal persons responsible for preparation of these proposed health standards are: Thomas J. Shepich, Administrator for Metal and Nonmetal Mine Safety and Health, MSHA; Dr. Aurel Goodwin, Chief, Division of Health; and Donald R. Tindal, Counsel for General Legal Advice, Office of the Solicitor, U.S. Department of Labor.

IV. Regulatory Analysis

Note.—It has been determined that this document does not contain a major proposal requiring the preparation of a regulatory analysis under Executive Order No. 12044, or the Department of Labor's proposed guidelines for implementation of the Executive Order (43 FR 22915, May 26, 1978). The primary impact of new § 55.5-1, 56.5-1, and 57.5-1, pertaining to asbestos, will be upon asbestos mines and mills which contain known asbestos fibers, employing a total of approximately 1,000 workers. The total cost of compliance with these provisions is estimated to be less than $10 million during the first year.

Dated: November 8, 1978.

Robert B. Lagather,
Assistant Secretary, for Mine Safety and Health.

PART 55—SAFETY AND HEALTH STANDARDS—METAL AND NONMETALLIC OPEN PIT MINES

Part 55, Subchapter N, Chapter I, Title 30, Code of Federal Regulations is amended and revised as follows:

A. Section 55.2 "Definitions", is amended by revising the definition of the term "Potable" as follows:

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§ 55.2 Definitions

. . . . . .

"Potable water" means water which shall meet the applicable minimum health requirements for drinking water established by the State or community in which the mine is located or by the Environmental Protection Agency in 40 CFR Part 141, pages 169–182 revised as of July 1, 1977. Where no such requirements are applicable, the drinking water provided shall conform with the Public Health Service Drinking Water Standards, 42 CFR Part 72, Subpart J, pages 527–533, revised as of October 1, 1976. Publications to which references are made in this definition are hereby made a part hereof. These incorporated publications are available for inspection at each Metal and Nonmetal Mine Safety and Health Subdistrict Office of the Mine Safety and Health Administration.

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§ 55.5 [Amended]

B. Section 55.5 "Air Quality and Physical Agents" is amended as follows:

1. Paragraph (b) of mandatory standard 55.5–1 is revised as follows:

55.5–1 *Mandatory.* • • •

. . . . . .

(b) The 8-hour time-weighted average airborne concentration of asbestos dust to which employees are exposed shall not exceed 2 fibers per milliliter greater than 5 microns in length, as determined by the membrane filter method at 400– 450 magnification (4 millimeter objective) phase contrast illumination. No employees shall be exposed at any time to airborne concentrations of asbestos fibers in excess of 10 fibers longer than 5 micrometers, per milliliter of air, as determined by the membrane filter method over a minimum sampling time of 15 minutes. "Asbestos" is a generic term for a number of hydrated silicates that, when crushed or processed, separate into flexible fibers made up of fibrils. Although there are many asbestos minerals, the term "asbestos" as used herein is limited to the following minerals: chrysotile, amosite, crocidolite, anthophylite asbestos, tremolite asbestos, and actinolite asbestos.

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2. New mandatory standard 55.5–6 is added as follows:

55.5–6 *Mandatory.* The following chemical substances shall not be used or stored except by competent persons under laboratory conditions approved by a nationally recognized agency acceptable to the Secretary.

(a) Carbon tetrachloride,
(b) Phenol,
(c) 4-Nitrobiphenyl,
(d) Alpha-naphthylamine,
(e) 4,4-Methylene Bis (2-chloroaniline),
(f) Methyl-chloromethyl ether,
(g) 3,3 Dichlorobenzidine,
(h) Bis (chloromethyl) ether,
(i) Beta-napthylamine,
(j) Benzidine,
(k) 4-Aminodiphenyl,
(l) Ethylenediamine,
(m) Beta-propiolactone,
(n) 2-Acetylaminofluorene,
(o) 4-Dimethylaminobenzene, and
(p) N-Nitrosodimethylamine.

3. New mandatory standard 55.5–10 is added as follows:

55.5–10 *Mandatory.* Silica sand, or other materials containing more than 1 percent free silica, shall not be used as an abrasive substance in abrasive blasting cleaning operations without requiring full-flow respiratory protection, or equivalent, to all exposed persons.

(Sec. 508, Pub. L. 91–173 as amended by Pub. L. 95–164, 83 Stat. 803 (30 U.S.C. 957), and Sec. 301(c)(3), Pub. L. 95–164, 91 Stat. 1318 (30 U.S.C. 961).)

PART 56—SAFETY AND HEALTH STANDARDS—SAND, GRAVEL, AND CRUSHED STONE

Part 56, Subchapter N, Chapter I, Title 30, Code of Federal Regulations is amended and revised as follows:

C. Section 56.2 "Definitions" is amended by revising the definition of the term "Potable" to read as follows:

§ 56.2 Definitions

. . . . . .

"Potable water" means water which shall meet the applicable minimum health requirements for drinking water established by the State or community in which the mine is located or by the Environmental Protection Agency in 40 CFR Part 141, pages 169–182 revised as of July 1, 1977. Where no such requirements are applicable, the drinking water provided shall conform with the Public Health Service Drinking Water Standards, 42 CFR Part 72, Subpart J, pages 527–533, revised as of October 1, 1976. Publications to which references are made in this definition are hereby made a part hereof. These incorporated publications are available for inspection at each Metal and Nonmetal Mine Safety and Health Subdistrict Office of the Mine Safety and Health Administration.

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§ 56.5 [Amended]

D. Section 56.5 "Air Quality and Physical Agents" is amended as follows:

1. Paragraph (b) of mandatory standard 56.5–1 is revised as follows:

56.5–1 *Mandatory.*

. . . . . .

(b) The 8-hour time-weighted average airborne concentration of asbestos dust to which employees are exposed shall not exceed 2 fibers per milliliter greater than 5 microns in length, as determined by the membrane filter method at 400–450 magnification (4 millimeter objective) phase contrast illumination. No employees shall be exposed at any time to airborne concentrations of asbestos fibers in excess of 10 fibers longer than 5 micrometers, per milliliter of air, as determined by the membrane filter method over a minimum sampling time of 15 minutes. "Asbestos" is a generic term for a number of hydrated silicates that, when crushed or processed, separate into flexible fibers made up of fibrils. Although there are many asbestos minerals, the term "asbestos" as used herein is limited to the following minerals: chrysotile, amosite, crocidolite, anthophylite asbestos, tremolite asbestos, and actinolite asbestos.

. . . . . .

2. New mandatory standard 56.5–6 is added as follows:

56.5–6 *Mandatory.* The following chemical substances shall not be used or stored except by competent persons under laboratory conditions approved by a nationally recognized agency acceptable to the Secretary.

(a) Carbon tetrachloride,
(b) Phenol,
(c) 4-itrobiphenyl,
(d) Alpha-naphthylamine,
(e) 4,4-Methylene Bis (2-chloroaniline),
(f) Methyl-chloromethyl ether,
(g) 3,3 Dichlorobenzidine,
(h) Bis (chloromethyl) ether,
(i) Beta-napthylamine,
(j) Benzidine,
(k) 4-Aminodiphenyl,
(l) Ethylenediamine,
(m) Beta-propiolactone,
(n) 2-Acetylaminofluorene,
(o) 4-Dimethylaminobenzene, and
(p) N-Nitrosodimethylamine.

3. New mandatory standard 56.5–10 is added as follows:

56.5–10 *Mandatory.* Silica sand, or other materials containing more that 1 percent free silica, shall not be use as an abrasive substance in abrasive blasting cleaning operations without requiring full-flow respiratory protection, or equivalent, to all exposed persons.

(Sec. 508, Pub. L. 91–173 as amended by Pub. L. 95–164, 83 Stat. 803 (30 U.S.C. 957), and Sec. 301(c)(3), Pub. L. 95–164, 91 Stat. 1318 (30 U.S.C. 961).)

PART 57—SAFETY AND HEALTH STANDARDS—METAL AND NONMETALLIC UNDERGROUND MINES

Part 57, Subchapter N, Chapter I, Title 30, Code of Federal Regulations is amended and revised as follows:

E. Section 57.2 "Definitions" is amended by revising the definition of the term "Potable" is to read as follows:

§ 57.2 Definitions

. . . . . .

"Potable water means water which shall meet the applicable minimum health requirements for drinking water established by the State or community in which the mine is located or by the Environmental Protection Agency in 40 CFR Part 141, pages 169–182 revised as of July 1, 1977. Where no such requirements are applicable, the drinking water provided shall conform with the Public Health Service Drinking Water Standards, 42 CFR Part 72, Subpart J, pages 527–533, revised as of October 1, 1976. Publications to which references are made in this definition are hereby made a part hereof. These incorporated publications are available for inspection at each Metal and Nonmetal Mine Safety and Health Subdistrict Office of the Mine Safety and Health Administration.

. . . . . .

§ 57.5 [Amended]

F. Section 57.5 "Air Quality, Ventilation, Radiation, and Physical Agents" is amended as follows:

1. Paragraph (b) of mandatory standard 57.5–1 which is applicable to surface and underground is revised as follows:

57.5–1 *Mandatory.*

. . . . . .

(b) The 8-hour time-weighted average airborne concentration of asbestos dust to which employees are exposed shall not exceed 2 fibers per milliliter greater than 5 microns in length, as determined by the membrane filter method at 400–450 magnification (4 millimeter objective) phase contrast illumination. No employees shall be exposed at any time to airborne concentrations of asbestos fibers in excess of 10 fibers longer than 5 micrometers, per milliliter of air, as determined by the membrane filter method over a minimum sampling time of 15 minutes. "Asbestos" is a generic term for a number of hydrated silicates that, when crushed or processed, separate into flexible fibers made up of fibrils. Although there are many asbestos minerals, the term "asbestos" as used herein is limited to the following minerals: chrysotile, amosite, crocidolite, anthophylite asbestos, tremolite asbestos, and actinolite asbestos.

. . . . . .

2. New mandatory standard 57.5–6 which is applicable to surface and underground is added as follows:

57.5–6 *Mandatory.* The following chemical substances shall not be used or stored except by competent persons under laboratory conditions approved by a nationally recognized agency acceptable to the Secretary.

(a) Carbon tetrachloride,
(b) Phenol,
(c) 4-Nitrobiphenyl,
(d) Alpha-naphthylamine,
(e) 4,4-Methylene Bis (2-chloroaniline),
(f) Methyl-chloromethyl ether,
(g) 3,3 Dichlorobenzidine,
(h) Bis (chloromethyl) ether,
(i) Beta-napthylamine,
(j) Benzidine,
(k) 4-Aminodiphenyl,
(l) Ethylenediamine,
(m) Beta-propiolactone,
(n) 2-Acetylaminofluorene,
(o) 4-Dimethylaminobenzene, and
(p) N-Nitrosodimethylamine.

3. New mandatory standard 57.5–10 which is applicable to surface only is added as follows:

57.5–10 *Mandatory.* Silica sand, or other materials containing more than 1 percent free silica, shall not be used as an abrasive substance in abrasive blasting cleaning operations without requiring full-flow respiratory protection, or equivalent, to all exposed persons.

4. New mandatory standard 57.5–16 which is applicable to underground only is added as follows:

57.5–16 *Mandatory.* Silica sand, or other materials containing more than 1 percent free silica, shall not be used as an abrasive substance in abrasive blasting cleaning operations.

(Sec. 508, Pub. L. 91–173 as amended by Pub. L. 95–164, 83 Stat. 803 (30 U.S.C. 957), and Sec. 301(c)(3), Pub. L. 95–164, 91 Stat. 1318 (30 U.S.C. 961).)

[FR Doc. 78-32300 Filed 11-16-78; 8:45 am]

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FRIDAY, NOVEMBER 17,1978
PART VI



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

■

RENTAL PUBLIC HOUSING PROGRAM

Revised Annual Contributions Contract

[4210-01-M]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-78-898]

RENTAL PUBLIC HOUSING PROGRAM

Revised Annual Contributions Contract

AGENCY: Department of Housing and Urban Development.

ACTION: Announcement of comment and public inspection period for the revised annual contributions contract for the rental public housing program (24 CFR Part 841).

SUMMARY: The consolidated annual contributions contract (ACC) for the rental public housing program is being revised by the Department to incorporate the requirements of the United States Housing Act of 1937, as amended by the Housing and Community Development Act of 1974. The following are the current HUD forms which will be superseded: HUD-53010 (11-69) Consolidated Annual Contributions Contract Part I, HUD-53010B (2-70) Consolidated Annual Contributions Contract Part I, HUD-53010C (1-72) Amendment to Annual Contributions Contract and HUD-53011 (11-69) Consolidated Annual Contributions Contract Part II. From the publication of this notice until the expiration of the comment period, copies of the revised ACC will be available for public inspection, during regular business hours, at each HUD Regional office and with the rules docket clerk at HUD Headquarters. A copy of the ACC will also be furnished to any interested party making a request to the rules docket clerk during the comment period.

DATES: Comments are invited from public housing agencies (PHA's), Federal agencies, members of the public and other interested parties. All relevant comments received on or before December 18, 1978, will be considered for inclusion in the final printed version of the revised ACC.

ADDRESS: Comments should be sent to the rules docket clerk, office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT:

Jane Taliaferro, Chief, Conventional Housing Branch, Public Housing Division, U.S. Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410, telephone 202-755-5837.

SUPPLEMENTARY INFORMATION: This is the first major revision to the ACC in almost 10 years and many of the changes incorporate the requirements of the United States Housing Act of 1937, as amended by the Housing and Community Development Act of 1974. As has been done previously, it is the intent of the Department to require PHA adoption of the new ACC form for all of its projects (including section 23 and Turnkey III projects but excluding all section 8 projects) only when there is either an ACC amendment or a new contract providing for additional financial assistance. The most significant changes incorporated in the revised ACC are summarized as follows:

1. Section 1 provides a new format for summarizing the necessary information relating to each project which should greatly reduce the preparation and review time spent by HUD staff. The pertinent data will be provided on a separate attachment for each project, thus facilitating the addition of projects and the use of the data.

2. The special provisions for Turnkey projects (section 110) have been revised to provide that, before a seller may call upon HUD to take action to remedy an alleged default, the seller must notify HUD of a substantial default by the PHA within 30 days of the initial occurrence and must provide supporting evidence thereof and of the fact that the seller is not in default. HUD will be obligated to act only if it determines that a substantial default by the PHA has occurred and that the seller is not in default.

3. The "equivalent elimination" and "Buy American Act" requirements have been eliminated from article III, since these former statutory requirements were deleted from the USHAct by the HCDAct of 1974.

4. Under section 312 the reconstruction, restoration or repair of a damaged or destroyed project must now be accomplished in accordance with a reconstruction or restoration progran which has been approved by HUD.

5. A new section 317 has been added requiring a PHA to notify HUD of litigation and to take certain litigation-related actions only in accordance with HUD policy and procedure.

6. Section 401(F) has been changed to give HUD the right to require any depositary to refuse to permit withdrawals from the PHA's general fund when a substantial default is threatened, as well as when it has already occurred.

7. Section 405(D) contains the following new provisions: (1) A PHA must notify HUD immediately when development moneys theretofore received exceed the PHA's needs for the next 6-month period; and (2) development moneys which are in excess of a project's needs must be applied in payment of obligations or for reduction of annual contributions.

8. Section 405(E) provides for amendment of the ACC to state the actual development cost after issuance of the actual development cost certificate, whereas previously such an ACC amendment has not been required.

9. In section 408 and elsewhere reference is no longer made to the terms "permanent note" and "project loan note"; reference is made, instead, only to the HUD loan. It is intended to develop one note form covering all HUD loans.

10. Section 415(D) provides a new formula for determining the amount of each debt service annual contribution after the first one. Under this formula the annual contribution amount is equal to (A) the level debt service on all unmatured issues of bonds issued for the project plus (B) an amount computed by multiplying the maximum debt service contribution percentage less 1 percent or less such other differential as HUD may from time to time determine, by the excess of the latest established minimum development cost for the project over the principal amount of bonds issues to finance that project.

11. Section 415(M) adds a new provision limiting debt service annual contributions with respect to any project to the amount of contract authority states in exhibit A after any required reductions.

12. Section 417 will require the application of all moneys in the advance amortization fund to payment of outstanding obligations, or to payment of development cost in lieu of issuing additional obligations, or to reduction of annual contributions.

13. Article V has been reorganized to include all grounds of default under "substantial default". The term "substantial breach" is no longer used. New specific grounds of "substantial default" are (1) failure to comply with training, employment and contracting opportunities under section 3 of the HUD Act of 1968; (2) failure to complete or prosecute diligently, or to repair or reconstruct a project; (3) failure to comply with any statutory or budgetary restriction on cost of construction or development; (4) refusal or neglect to sell project notes or bonds as required under the ACC; or (5) institution of any litigation without HUD approval. Upon the occurrence or threat of occurrence of any event constituting a substantial default, HUD may exercise the remedies provided under article V. HUD may demand possession or conveyance of title to the projects or any specified part thereof under the ACC, and it is expressly provided that HUD is not obligated to demand or accept possession or title to any project. If a substantial default occurs during development, HUD has the right to suspend development, reduce the number of units or terminate the ACC under the specified conditions.

Issued at Washington, D.C., on October 26, 1978.

LAWRENCE B. SIMONS,
Assistant Secretary for Housing, Federal Housing Commissioner.

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FRIDAY, NOVEMBER 17, 1978
PART VII



DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

USE AND DISPOSITION OF PROPERTY ACQUIRED BY STATES

Modified or Terminated Highway Projects

V 4 3 1 2 2 3

[4910-22-M]

Title 23—Highways

CHAPTER I—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER E—PLANNING

[FHWA Docket No. 78-19]

PART 480—USE AND DISPOSITION OF PROPERTY ACQUIRED BY STATES FOR MODIFIED OR TERMINATED HIGHWAY PROJECTS

AGENCY: Federal Highway Administration (FHWA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This rule prescribes requirements and standards for the disposition and use of property acquired by States with the participation of Federal-aid highway funds in connection with proposed highway projects which are subsequently modified or terminated. The rule provides that, upon the approval of the Federal Highway Administrator, States may use such property for certain public interest purposes without being required to make a credit to Federal funds. This issuance is necessary in order to implement section 107(f) of the Surface Transportation Assistance Act of 1978, OMB Circular A-102, and the President's urban policy.

EFFECTIVE DATE: December 18, 1978.

FOR FURTHER INFORMATION CONTACT:

Lawrence A. Staron, Chief, Interstate Reports Branch, Office of Engineering, FHWA, 202-426-0404; Reid Alsop, Attorney, Office of the Chief Counsel, FHWA, 202-426-0800; or Robert C. Ashby, Attorney, Office of the General Counsel, Office of the Secretary of Transportation (OST), 202-426-4710. The address of these individuals is 400 7th Street SW., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION: On August 7, 1978, FHWA published a proposed rule (43 FR 35007) to prescribe standards for the use and disposal of property that was acquired by States with the participation of Federal-aid highway funds in connection with proposed highway projects which are subsequently modified or terminated. Usually, in such cases, the property is no longer needed for highway purposes. State and local governments have been uncertain about how to use or dispose of this property, particularly since FHWA policy had been to require repayment of the Federal share in many cases.

The preamble to the proposed rule set forth the policy and statutory bases for the proposed rule. Since the publication of the proposed rule, Congress has partially altered the legal framework for regulatory action. Section 107(f) of the Surface Transportation Assistance Act of 1978, Pub. L. 95-599, 92 Stat. 2689, strengthened and made more explicit the statutory basis for the rule. Section 107(f) also repealed section 110(b) of the Federal-aid Highway Act of 1976, discussed in the preamble to the proposed rule.

With respect to portions of the Interstate system withdrawn under 23 U.S.C. 103(e)(2) and 103(e)(4) before its date of enactment, section 107(f) prohibits FHWA from requiring repayment of the Federal share of the cost of acquiring property which the State reuses for a transportation project under title 23 of the United States Code, for a public conservation or recreation purpose, or for another public purpose determined by the Secretary to be in the public interest. In order to take advantage of the statutory prohibition, States must apply the property to the substitute use within 10 years of the withdrawal of the Interstate project.

The statutory prohibition applies only to property acquired in connection with Interstate projects which have been withdrawn under 23 U.S.C. 103(e)(2) and 23 U.S.C. 103(e)(4) prior to November 6, 1978, the date of enactment of section 107(f). The statute is silent on whether FHWA may require or decline to require repayment of the Federal share in other situations. The statute is not, therefore, a mandate to FHWA to impose payback in other situations. Consequently, FHWA has the discretion, as a matter of administrative policy, to impose or not to impose payback in these situations.

The policy considerations informing FHWA's discretion in this matter are those outlined in the preamble to the proposed rule. In the past, States planned extensive freeway systems in major urban areas. Land was acquired for these planned highways, and buildings were torn down or fell into disrepair. In many cases, the highway project was later abandoned. Such abandonments may occur in the future as well, for environmental or other reasons. The vacant land, often in or near the central city, may be very important to the revitalization of the urban centers. Such urban revitalization is a cornerstone of the President's urban policy. Department of Transportation policy should encourage, rather than discourage, the use of land formerly intended to be used for a terminated highway project for purposes consistent with urban revitalization. Requiring repayment of highway funds to the Federal Government as a prerequisite to a new use discourages such use. A policy which does not require repayment when an appropriate new use is found for the land encourages and facilitates important new urban projects.

OMB Circular A-102, attachment N, which constitutes binding policy guidance on FHWA, provides that when a recipient of Federal funds no longer can use property acquired with the Federal funds for its original purpose, it can use the property for another Federal program or a State and local program consistent with the programs of the grantor agency. The grantor agency may not require repayment of the Federal share if it approves such a reuse. Given this directive, FHWA must exercise the discretion it has under statute to permit appropriate reuses without a repayment requirement.

Both the House and Senate debate concerning section 107(f) demonstrate legislative support for the policy set forth in the proposed rule. Senator Javits, the Senate sponsor, said that he wished Congress to work "in concert with the administration" to achieve the goals of the Secretary's policy (Daily Congressional Record, Aug. 18, 1978, S13748). The House sponsor, Representative Fowler, said in his floor comments that he favored the policy expressed in the proposed rule and did not intend his legislation to restrict the authority of the Secretary of Transportation to implement the policy in non-Interstate situations (Daily Congressional Record, Sept. 27, 1978, H10937). This final rule applies to Interstate situations, including future withdrawals, and to non-Interstate situations as well.

Comments Received

FHWA received 35 comments on the proposed rules. Of these, 23 were favorable, 5 were unfavorable, and 7 were neither favorable nor unfavorable.

Changes to the Rule in Response to Comments

CONSISTENCY WITH LOCAL AND REGIONAL PLANNING

The most frequent comment about the proposed rules concerned the absence of any specific requirement that local or regional officials participate in the planning of proposed substitute projects. The commenters on the subject unanimously suggested that proposed reuses have the approval and concurrence of the local government where the property is located or that responsible local officials be included in the decisionmaking process. We agree that local and regional officials and planning organizations should have a role in the selection and planning of substitute projects, as may be required in State or Federal law governing such substitute projects. However, in the interest of regulatory simplicity, we do not wish to add a new Federal requirement that projects must receive concurrences that are not now required. Therefore, § 480.107(b)(5) requires States to certify to the Administrator that all local or regional concurrences required under law for submission of a given proposal have been received. Thus, Federal, State and local requirements for concurrences of local officials and other mechanisms for public participation concerning proposals for park, recreation, urban renewal or other programs must be obtained before the State submits its proposal to FHWA. This provision does not mean that all concurrences necessary for final implementation of the program must be obtained in order to make the proposal. Presumably, concurrences necessary to final implementation must be obtained before the substitute project can become a reality. If these concurrences are not forthcoming, then the proposal as originally conceived cannot be implemented, and a requirement of a credit to Federal funds under § 480.107(e) may arise.

TRANFERS OF PROPERTY TO PRIVATE PARTIES

Commenters were divided on the issue, not addressed in the proposed rule, of whether it should be permissible for States to transfer property to private parties as part of public interest projects under the rules. Some of the several commenters on this issue said that States should not be able to sell property to a private party, even as part of a public interest program, without paying the Federal share of the sales proceeds back to the Federal Government. Others, pointing to the role of private development in urban renewal projects, urged that such transfers be explicitly permitted.

The primary intent of the regulations is to facilitate the development of publicly owned projects for public benefit. Sales to private parties by the State, or by a transferee of the State (such as an urban redevelopment authority), even as part of a worthwhile public interest project, raise serious questions of policy in the context of these regulations. As a general matter, where such sales take place, States should share the proceeds with FHWA. Nevertheless, we recognize that there may be some situations in which important benefits may not become available to the public unless the State, without having to make a credit to Federal funds, is able directly or indirectly to transfer the property to private parties. Certain urban renewal programs, if accompanied by suitable safeguards against windfalls to any party, may create such a situation.

Section 480.107(b)(4) of the final rule requires States to inform the Administrator if property will be transferred to a private party in connection with the proposed reuse. If so, the State must justify the transfer to the Administrator. The justification should indicate why transfer to a private party, without any credit by the State to Federal funds, is necessary in order to provide important benefits to the public. The Administrator (§ 480.107(d)(4)) shall impose a requirement for a credit to Federal funds unless he or she finds that this justification is sufficient. A requirement for a credit to Federal funds on this ground would affect only the property proposed for transfer to private parties.

APPLICABILITY OF THE REGULATION

The proposed rule applied to all future uses and dispositions of former highway property, regardless of the date of modification or termination of the highway project. States were required to submit reuse proposals within 10 years of the modification or termination (or 2 years after the effective date of the regulations) and to make the reuse within 6 years of the Administrator's determination that no credit to Federal funds was required.

a. *Retrospective application.* Section 107(f) of the Surface Transportation Assistance Act of 1978 limited the applicability of its prohibition of repayment requirements to applications of former highway property to appropriate reuses within 10 years of the withdrawal of the original Interstate project. While FHWA has the discretion to designate a longer period, we believe that a 10-year limitation is sound as a policy matter. For consistency, the final rule applies the 10-year limit to all situations (§ 480.103(c)).

b. *Application to smaller properties.* A number of comments recommended that the word "modification" be defined carefully, lest the regulations be interpreted to cover disposals of small parcels of property, uneconomic remnants, and the like, to which the policies of the regulation do not apply. The proposed rule attempted to deal with this problem by excepting from coverage property "insignificant in size or value." In drafting the final rule, however, we have decided instead to exclude from coverage portions of highway rights-of-way covered by subpart C of 23 CFR part 713 (§ 480.103(b)). Subpart C applies to the disposal of right-of-way property in situations other than Interstate transfers under 23 U.S.C. 103(e)(2) or 103(e)(4) and other decisions not to build a major section of a planned highway. The use of this existing regulation will simplify administration and obviate the need to define "modification."

c. *Time limit for reuse.* One commenter expressed concern that the 6-year time limitation for reuse of property after the Administrator's determination was too inflexible. The requirement of § 480.107(b)(9) that the State assure that the reuse will be made "expeditiously" gives FHWA and the States the opportunity to work out realistic timetables for the development of reuses on a case-by-case basis. The 6-year limitation has been dropped.

THE ISSUE OF INTENT

Several commenters expressed the concern that the regulations would give States an incentive to acquire property for nonhighway purposes in the first instance. That is, knowing that land acquired for highways could later be used for another purpose, the States would purchase the land with Federal-aid highway funds even though they had no intention of actually constructing a highway. Representative Howard expressed a similar concern in the floor discussion of section 107(f) of the Surface Transportation Assistance Act of 1978 (Daily Congressional Record, Sept. 15, 1978, Id.) The thorough review process, including environmental, planning and engineering requirements, which States must now go through in order to get FHWA's approval to acquire right-of-way with Federal-aid funds is a strong, probably conclusive, obstacle to such practices. Nevertheless, we think it proper for States to certify to the Administrator as part of their submission concerning a reuse of property acquired after the effective date of this regulation that it was acquired with the intention, at the time of acquisition, of constructing a highway (§ 480.107(b)(1)). The Administrator, of course, has the discretion to look behind this or any other certification required in the submission if he or she believes it is necessary to do so.

RELOCATION ASSISTANCE

The proposed rule provided for FHWA participation in relocation assistance to end with the modification or termination of the highway project. One commenter made a persuasive case that FHWA participation should continue for a longer time. After reevaluating our policy position, we have decided to permit FHWA participation in relocation assistance until the date when the State sells or otherwise disposes of the property of a person, tenant or business whose property was acquired in connection with a Federal-aid highway project, who remains in

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occupancy, and who would have qualified for relocation aid had they moved prior to the modification or termination of the highway project. This participation is permissive: The Administrator has the discretion to end such participation at any time after the modification or termination of the project. The aim of this provision is equity to all interested parties, and it is anticipated that the actual end point of FHWA participation in any given case will be decided by negotiation between the State and FHWA. After this end point, relocation assistance becomes the responsibility of the State and any Federal agency involved with the substitute project (§ 480.115).

PROPERTY MANAGEMENT

One commenter asked FHWA to participate in court awards and settlements and property management costs such as demolition arising after the date of withdrawal. The proposed rule provided that FHWA property management standards would apply to the property until the date on which the Administrator approves a reuse or on which the State sells or otherwise disposes of the property. We believe that it would be reasonable to permit FHWA to participate in property management and other costs, such as those cited by the comment, until the same date. This participation will be discretionary, to be decided on a case-by-case basis by FHWA.

RIGHTS OF FORMER OWNERS

A number of States have laws protecting the rights of persons from whom property was acquired for highway rights-of-way, providing that when the property is not used for highway purposes the property reverts to the original owners or that the original owners have the first option to repurchase the property. FHWA intends that such laws be followed. It was with these laws in mind that the proposed rule required all proposed reuses to be consistent with State law. Several comments suggested that this provision of the proposed rule was not sufficiently explicit, and section 107(f) of the Surface Transportation Assistance Act of 1978 explicitly protected the rights under State law of former property owners. In light of these developments, the final rule requires States to certify that rights under State law of former owners have been observed (§ 480.107(b)(6)).

FUTURE USES OF PROPERTY

A few commenters expressed concern that States might use highway property for a public interest purpose for a short time and then sell it, realizing a windfall in the process. This fear seems somewhat speculative. However, it is probably prudent to create a precaution against such actions by requiring States to assure the Administrator that they will not make major alterations in an approved reuse without the Administrator's consent (§ 480.107(b)(8)). For purposes of this requirement, a major alteration is a change in the nature of the property use (e.g. from a park to a housing project, from public to private ownership). If this assurance is not observed, the Administrator may revoke the approval of the reuse and require the State to make an appropriate credit to Federal funds (§ 480.107(e)).

APPLICATION TO RURAL AREAS

One comment expressed concern that, given the rule's emphasis on urban revitalization, the rule slighted the needs of rural areas. While the problem addressed by the rule is most acute in urban areas, the rule applies in all parts of the country. To clarify this general application of the rule, we have added the words "or rural" to § 480.107(a)(2).

HISTORIC PRESERVATION

One commenter suggested that FHWA and the State should be required to prepare an assessment of the effects of the reuse of the property on historic resources on or eligible for inclusion in the National Register of Historic Places. The comment asked for coverage under the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470f) and the regulations of the Advisory Council on Historic Preservation (36 CFR Part 800) of all State and local projects concerning which a credit to Federal funds was not required under these rules. When a State or local government receives Federal assistance from the Department of Transportation or another Federal agency for a substitute project, the procedures of the National Historic Preservation Act and the Advisory Council regulations automatically apply to the substitute project.

However, with respect to State or local substitute projects which do not receive Federal assistance, it would be inappropriate for this rule to impose the considerable administrative requirements of the National Historic Preservation Act and the Advisory Council regulations. There is no legal requirement for such an imposition. The absence of a requirement for a credit to Federal funds is not a Federal expenditure on behalf of the substitute project. The project is a purely State or local effort. The Administrator's determination not to require a credit to Federal funds is not a license for the substitute project. There is consequently no direct Federal "undertaking," no federally assisted undertaking, and no Federal licensing of a State activity, such that 16 U.S.C. 470e or its implementing regulations are legally required to apply.

As a matter of policy, however, we agree that States should take the preservation of historic resources explicitly into account as they plan substitute projects. Therefore, the regulations (§ 480.107(b)(5)) will require a State to consult with and seek the comments of its State Historic Preservation Officer with respect to proposed reuses of highway property which affect historic resources on or eligible for inclusion in the National Register of Historic Places.

OTHER CHANGES

In addition to the changes made in response to comments or to legislation, the final rule differs from the proposed rule in the following respects:

1. A definition of "applied to a reuse under this part" has been added to § 480.105. Because the rule does not apply to property which has not been applied to a reuse under this part within 10 years of the modification or termination of the highway project, it is necessary to define what constitutes such an application. An application must be a commitment by the State to devote the property to a specific public interest use. It is impossible to determine in advance what would constitute an adequate commitment in every case. Therefore, the rule leaves it to the discretion of the Administrator to determine on a case-by-case basis when an application has been made.

2. There may be instances in which, to make an informed determination about a proposed reuse, the Administrator will need additional information about the proposal or its impacts. Therefore a new provision (§ 480.107(b)(10)) has been added to require States to submit such additional information on request.

3. In addition to laws concerning the rights of former owners, some States have laws specifically governing the disposal of former highway property. A provision has been added to require State certification that these laws, and all other State laws involved with a proposed reuse, have been observed (§ 480.107(b)(7)).

4. In many urban renewal programs, a State or other public agency will sell property to a private developer below market value. If such an arrangement is not approved without a requirement for repayment under § 480.107(d)(4), the State, under the proposed rule, would have had to sell the property competitively and attempt to obtain the highest possible return. This requirement could be inconsistent with sales as part of urban renewal programs. Therefore, § 480.109(2) has been amended to give the Administrator discretion to waive the requirement for competitive sales and highest possible return in meritorious cases.

5. In the proposed rules, the frequent references were made to the Administrator's "approval" of a reuse or of "approved reuses." This terminology is somewhat misleading. The Administrator has no authority to approve or disapprove uses by States of land which the States own. All the Administrator does under these regulations is to determine whether or not the State is required to make a credit to Federal funds concerning property acquired but no longer needed for a highway project. The language of the final rule (e.g. § 480.107(c)) reflects this understanding of the Administrator's role.

COMMENTS NOT RESULTING IN CHANGES TO THE PROPOSED RULE

CONSISTENCY WITH TITLE 23

The principal objection to the proposed rule by the unfavorable comments was that the rule was inconsistent with title 23 of the United States Code. Objectors focused on 23 U.S.C. 101(d), which provides that "no funds authorized to be appropriated from the Highway Trust Fund shall be expended by or on behalf of any Federal department, agency or instrumentality other than the Federal Highway Administration" unless the expenditures are specifically called for by an appropriations act and are for the "construction of Federal-aid highways" or other highway purposes.

Section 101(d) is concerned with expenditures. There is no evidence in the legislative history of the provision that Congress intended the term to be understood in any but ordinary meaning—"an expending, a laying out of money, a disbursement" (Black's Law Dictionary). Such expenditure occurred earlier, when the State, acting in good faith, incurred costs to acquire property pursuant to a project agreement with FHWA and was reimbursed for a share of these costs. When the Administrator approves a reuse under the regulations, there is no disbursement of highway funds. Section 101(d) does not purport in any way to affect the subsequent disposition of property that was acquired with Federal funds. The absence of a repayment requirement cannot reasonably be construed to be an expenditure for the purposes of title 23. The final rule is not inconsistent with section 101(d).

In this connection, it should be pointed out that OMB Circular A-102 forbids the imposition of requirements additional to its standards "unless specifically required by Federal law" (attachment N, § 1). Title 23 makes no specific legal requirement which authorizes FHWA to add a repayment mandate to the OMB standards. The only statute specifically addressing repayment in section 107(f), which prohibits repayment with respect to certain categories of property. Outside of these categories, the OMB Circular applies. Where section 107(f) applies, of course, the policy of the rules has been mandated by statute.

ADJACENT FEDERAL PROPERTY

One commenter suggested that when former highway property is adjacent to Federal property, such as national parks, the Federal agency involved be given first option to acquire the property. We do not believe it is appropriate to place additional Federal constraints upon the States' authority to use or dispose of property to which they hold title, and for this reason did not adopt the suggestion.

DELEGATION TO THE ADMINISTRATOR

One commenter suggested that the Secretary, rather than the Administrator, should have the approval authority over proposed reuses. We do not adopt this suggestion, believing that the authority should reside in the agency that has direct responsibility for the administration of this and other portions of the highway program.

EXCEPTION TO REPAYMENT REQUIREMENT FOR SALES PROCEEDS

The preamble to the proposed rule invited comment on the question of whether, if a State sold former highway property but used the proceeds for other transportation projects, it should be excused from the repayment requirement normally attaching to sales proceeds. Only one comment, favoring such a provision, was received. We have determined that such a provision would be too difficult to administer fairly, and for that reason have not included it in the final rule.

STATE PAYBACK

One commenter mentioned that its State law required the State to repay its own highway account for the State share of the acquisition cost of property not used for highway purposes, and asked how the rule might deal with this situation. We view this problem as a matter of State law that is beyond the scope of these regulations.

DRAFTING INFORMATION

The principal authors of this document are Reid Alsop, Office of the Chief Counsel, FHWA and Robert C. Ashby, Attorney, Office of the General Counsel, OST.

Accordingly, title 23 of the Code of Federal Regulations is amended by adding a new part 480, as set forth below.

Issued at Washington, D.C.: November 13, 1978.

KARL S. BOWERS,
Federal Highway Administrator.

PART 480—USE AND DISPOSITION OF PROPERTY ACQUIRED BY STATES FOR MODIFIED OR TERMINATED HIGHWAY PROJECTS

Sec.
480.101 Purpose.
480.103 Applicability.
480.105 Definitions.
480.107 Use of real property for other programs.
480.109 Other dispositions of real property.
480.111 Disposition and use of tangible personal property.
480.113 Use of credits to Federal funds.
480.115 Relocation assistance.
480.117 Property management.
480.119 Intangible items of cost.

AUTHORITY: Pub. L. 95-599, 92 Stat. 2689 (23 U.S.C. 103(e) (5), (6)); Pub. L. 85-767, 72 Stat. 915 (23 U.S.C. 315); 49 CFR 1.48(b); Office of Management and Budget Circular A-102, attachment N (August 24, 1977).

§ 480.101 Purpose.

The purpose of the regulations in this part is to prescribe standards for the use and disposition of property acquired by States with the participation of Federal-aid highway funds when the highway project for which the property was acquired is modified or terminated, such that the property is no longer needed for the purposes of the highway project.

§ 480.103 Applicability.

(a) The regulations in this part are applicable to the use and disposition of property acquired with the participation of Federal-aid highway funds for any project on any Federal-aid system which has not been closed by the payment of a final voucher as of the effective date of this part when, because of the modification or termination of the project, the property is no longer needed for purposes of the highway project. With the exceptions stated in subsections (b) and (c) of this section, these regulations apply to any use or disposition made of such property, whenever it was acquired, after the effective date of this part.

(b) This part does not apply to portions of highway rights-of-way covered by Subpart C of 23 CFR Part 713.

(c) The provisions of §§ 480.107 and 480.111 of this part for the reuse of property without the requirement of a credit to Federal funds do not apply to property which has not been applied to a reuse under this part within 10 years of the modification or termination of the highway project in connection with which it was acquired.

(d) Nothing in this part shall be construed to affect or conflict with the obligations of States with respect to

advance acquisition of right-of-way pursuant to 23 U.S.C. 108(c).

§ 480.105 Definitions.

The following definitions apply for purpose of this part:

"Applied to a reuse under this part" means committed, as determined by the Administrator, to a reuse under sections 480.107 or 480.111 of this part;

"Intangible items of cost" means items having no physical existence or recoverable value, such as preliminary engineering or overhead;

"Real property" means land, and interests therein, including improvements, structures and appurtenances thereto, but excluding movable equipment and machinery;

"Tangible personal property" means any property, other than real property, having a physical existence, such as construction items, materials and equipment.

§ 480.107 Use of real property for other programs.

(a) When real property is no longer needed for the highway project for which it was acquired, because of the modification or termination of the project, the State may, subject to the provisions of this section, reuse the property without being required to make a credit to Federal funds for:

(1) A project under another Federal grant program, or

(2) A project under any State or local program the purposes of which are consistent with a program or programs authorized for support by the U.S. Department of Transportation. State and local transportation projects (except projects for toll roads), projects for public recreation or conservation purposes, programs for the restoration and revitalization of urban or rural areas, and other programs consistent with the public interest shall be deemed consistent with Department of Transportation programs for the purposes of this subsection.

(b) In order to reuse real property without being required to make a credit to Federal funds, the State shall submit to the Federal Highway Administrator the following information:

(1) A certification that property acquired after the effective date of these regulations was acquired with the intent, at the time of acquisition, of using it for highway purposes;

(2) A finding that the property is no longer needed for purposes of the highway project for which it was acquired;

(3) An explanation of the grounds for the finding;

(4) A description of the program for which the State proposes to use the property. In the case of a State or local program, the description shall include a justification of the program in terms of consistency with DOT programs. Each description shall also indicate whether any of the property involved will be transferred to any private party in connection with the proposed program. The State shall justify to the Administrator the necessity in the public interest for any transfer, without a requirement for a credit to Federal funds, to a private party;

(5) A certification that all reviews, approvals or concurrences by State, regional or local officials or planning organizations required under law for the proposal have been obtained, and that the State has consulted with and sought the comments of the State Historic Preservation Officer in the case of any proposed reuse which affects historic resources on or eligible for inclusion in the National Register of Historic Places;

(6) A certification that the rights under State law of persons owning property in the right-of-way immediately prior to such property being obtained by the State have been observed;

(7) A certification that the methods to be used to dispose of the property and the proposed substitute use for the property are in all other respects consistent with State law;

(8) An assurance that the approved reuse will be made expeditiously and that no major alteration in the proposed reuse will be made without the consent of the Administrator; and

(9) Any additional information requested by the Administration.

(c) Based on this submission, the Administrator shall determine whether or not the State is required to make a credit to Federal funds.

(d) The Administrator shall require a credit to Federal funds with respect to property the proposed reuse of which:

(1) Is inconsistent with any Federal statute;

(2) Involves property concerning which the certifications, findings and assurances required by subsection (b) of this section are not made;

(3) Proposes to use the property, or its value, to form part of the State or local matching share with respect to any Federal program; or

(4) Proposes to transfer the property to any private party, unless the Administrator determines that such transfer, without a requirement for a credit to Federal funds, is necessary in the public interest.

(e) If the Administrator determines that the assurance required by item (8) of subsection (b) of this section has not been observed, the Administrator may revoke his determination not to require a credit to Federal funds and direct the State to dispose of the property as provided in §§ 109 and 111(b) of this part.

§ 480.109 Other dispositions of real property.

(a) When real property is no longer needed for purposes of the highway project for which it was acquired, and the Administrator has determined under section 480.107 of this part that a credit to Federal funds is required, the State shall apply to the Administrator for disposition instructions. The Administrator shall instruct the State to dispose of the property in one of the following ways:

(1) Retain title to the property, and credit Federal funds in an amount computed by applying the Federal percentage of participation in the cost of the original acquisition to the current fair market value of the property; or

(2) Sell the property, and credit Federal funds in an amount computed by applying the Federal percentage of participation in the cost of the original acquisition to the sale proceeds (after deducting actual and reasonable selling and fix-up expenses, if any, from the sale proceeds). The State shall employ proper sales procedures which, unless otherwise provided by the Administrator, provide for competition to the maximum extent practicable and result in the highest possible return. The Administrator may require sales under this provision to be conducted according to guidelines provided by the Administrator.

§ 480.111 Disposition and use of tangible personal property.

(a) When a State no longer needs tangible personal property acquired in connection with a modified or terminated Federal-aid highway project, it shall use the property in connection with its other federally-sponsored activities in the following order of priority:

(1) Activities sponsored by the Department of Transportation;

(2) Activities sponsored by other Federal agencies.

(b) When the State no longer needs or cannot use the property as provided in subsection (a) of this section, the property may be disposed of or used according to the following standards:

(1) The State may use for any purpose or sell property with a project cost of less than $1,000 without making a credit to Federal funds.

(2) The State may use for any purpose or sell property with a project cost of $1,000 or more, after a credit to Federal funds in an amount computed by applying the Federal percentage of participation in the cost of its original acquisition to the sale proceeds. When a State sells property, it shall do so in a manner which maximizes competition and the return from the sale. The State shall be permitted to deduct and retain from the Federal share $100 or 10 percent of the proceeds, whichever is larger, for selling and handling expenses.

§ 480.113 Use of credits to Federal funds.

Credits made to Federal funds pursuant to sections 109 and 111(b) of this part shall be credited to the State's Federal-aid apportionment to which the original acquisition of the property was attributable, in the manner set forth in 23 U.S.C. 118(b).

§ 480.115 Relocation assistance.

With respect to owner-occupants, tenants, businesses, and farm operations whose property has been acquired in connection with a federally assisted highway project, who are still in occupancy, and who could have qualified as displaced persons if they had moved prior to the date of modification or termination, the obligations of the Federal Highway Administration under the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. 4601 et seq.) shall continue for that period of time after the date of modification or termination as is considered equitable by the Administrator, but in no event shall this period extend beyond the date the State sells or otherwise disposes of the property. If the Administrator determines under section 107 of this part that no credit to Federal funds is required, the State shall assure the Administrator that it or the Federal agency granting assistance to the substitute program will assume these obligations after the Administrator's approval with respect to any such persons, businesses, or farm operations displaced as a result of the original acquisition or reuse of the former highway property.

§ 480.117 Property management.

Rules or standards of property management normally applicable to property obtained with the participation of Federal-aid highway funds shall continue to apply to the management of property acquired by States in connection with a highway project after the modification or termination of the project. These rules or standards shall cease to apply to the property as of the date of a determination by the Administrator that no credit to Federal funds is necessary for a reuse of real property, upon the reuse of tangible personal property for another Federal program, or on the date the State sells or otherwise disposes of the property. FHWA may in the discretion of the Administrator participate in the costs of property management and in other costs related to the acquisition of the property or the modification or termination of the highway project that are incurred before such dates.

§ 480.119 Intangible items of cost.

States are not required to make a credit to Federal funds with respect to any intangible items of cost upon which the State expended Federal-aid highway funds in connection with a project which was modified or terminated.

[FR Doc. 78-32423 Filed 11-16-78; 8:45 am]

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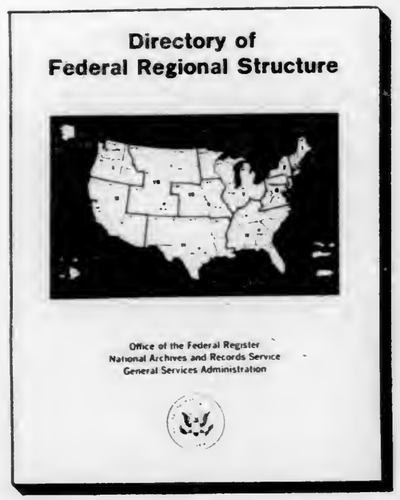
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The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR notice 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
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CSA	CSC		CSA	CSC
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rules and regulations

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

[7590-01-M]

Title 10—Energy

CHAPTER I—NUCLEAR REGULATORY COMMISSION

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

Personnel Monitoring Reports

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Approval of reporting and recordkeeping requirements by Comptroller General.

SUMMARY: On September 29, 1978, the Nuclear Regulatory Commission published in the FEDERAL REGISTER a notice of rulemaking, effective December 13, 1978, amending its regulations "Standards for Protection Against Radiation" to extend to all NRC specific licensees the requirement for submission of an annual statistical summary report on radiation exposure of workers.

The notice included the following note:

NOTE.—The Nuclear Regulatory Commission has submitted this rule to the Comptroller General for such reviews as may be appropriate under the Federal Reports Act, as amended, 44 U.S.C. 3512. The date on which the reporting requirements of this rule became effective, unless advised to the contrary, accordingly reflects inclusion of the 45-day period which that statute allows for such review (44 U.S.C. 3512(c)(2)).

Notice is hereby given that the reporting requirements set out in the rule have been approved by the U.S. General Accounting Office.

EFFECTIVE DATE: December 13, 1978.

The reporting requirements set out in the notice of rulemaking amending 10 CFR Part 20 which was published in the FEDERAL REGISTER on September 29, 1978 (43 FR 44827) have been approved by the U.S. General Accounting Office under number B-180225 (R0084).

FOR FURTHER INFORMATION CONTACT:

Gerald L. Hutton, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone 301-492-7086.

Dated at Bethesda, Md., this 9th day of November 1978.

For the Nuclear Regulatory Commission.

LEE V. GOSSICK,
Executive Director for Operations.

[FR Doc. 78-32580 Filed 11-17-78; 8:45 am]

[6714-01-M]

Title 12—Banks and Banking

CHAPTER III—FEDERAL DEPOSIT INSURANCE CORPORATION

SUBCHAPTER B—REGULATIONS AND STATEMENTS OF GENERAL POLICY

PART 329—INTEREST ON DEPOSITS

Interest Rate Limitations on Savings Accounts From Which Funds May be Automatically Transferred to the Depositor's Checking Account

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is amending its interest rate regulations to conform them to certain provisions of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 (FIRA). FIRA requires, among other things, that the rate of interest paid by thrift institutions (including mutual savings banks) on savings deposits subject to preauthorized funds transfer agreements must not exceed the maximum rate of interest payable by commercial banks on passbook savings deposits (currently 5 percent per year). Thus, commercial banks and thrift institutions are limited to paying the same rate of interest on savings accounts from which funds may be automatically transferred to other accounts of the same depositor, including funds transferred to cover checks drawn on the depositor's checking account. It is important to bear in mind that this applies only to those savings deposits from which funds may be automatically transferred. Thrift institutions will still be allowed to pay interest on their regular passbook savings accounts at a yearly rate which is one-quarter of 1 percent higher than the maximum rate allowed commercial banks.

EFFECTIVE DATE: This amendment is effective on November 20, 1978.

FOR FURTHER INFORMATION CONTACT:

F. Douglas Birdzell, Senior Attorney, Bank Regulation Section, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, D.C. 20429, 202-389-4324.

SUPPLEMENTARY INFORMATION: On October 15, 1978, Congress passed FIRA. Section 1602 of that statute amends section 102 of Pub. L. 94-200 to provide in substance that as to savings deposits subject to preauthorized transfer agreements whereby transfers may be made to the depository bank or a checking or other account of the same depositor, the maximum rate of interest payable shall be no more than the maximum rate payable on passbook savings deposits in federally insured banks other than mutual savings banks. This provision of FIRA effectively lowers the maximum rate which thrift institutions may pay on such savings deposits to the maximum commercial bank rate (currently 5 percent per year).

In general, thrift institutions (including mutual savings banks) have been permitted to pay one-quarter of 1 percent more interest each year on any given category of deposit than the maximum allowed commercial banks. The other exceptions to this rate differential apply to NOW (negotiable order of withdrawal) accounts and time deposits consisting of funds held by public units or funds deposited in individual retirement accounts or pursuant to Keogh (H.R. 10) plans.

This amendment also makes minor technical changes in § 329.7 of FDIC's regulations which involve the updating of cross-references to subparagraphs in that regulation.

The provisions of 5 U.S.C. section 553 concerning notice, public participation and deferred effective date were not followed in connection with the adoption of this amendment because it simply implements the requirements of a statute already in existence.

After coordination with the Board of Governors of the Federal Reserve

System and the Federal Home Loan Bank Board and pursuant to its authority under sections 9 and 18 of the Federal Deposit Insurance Act (12 U.S.C. sections 1819 and 1828) and section 1602 of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 (Pub. L. 95-630), FDIC's Board of Directors is amending § 329.7 of FDIC's regulations by adding a new subparagraph (9) to § 329.7(b) and by adding the numbers (6), (7), (8), and (9) following the number (5) in paragraph (b)(1)(i) of § 329.7. The amendment follows:

§ 329.7 **Maximum rates of interest or dividends payable on deposits of insured nonmember mutual savings banks.**[14]

(a) • • •

(b) *Maximum rates payable.*—(1) *General.* (i) Except as provided in paragraphs (b) (2), (3), (4), (5), (6), (7), (8), and (9), and paragraph (e) of this section, no insured nonmember mutual savings bank shall pay interest or dividends at a rate in excess of 5¼ percent per annum on any deposit. • • •

• • • • • •

(9) No insured nonmember mutual savings bank may pay interest at a rate in excess of 5 percent per annum on any savings deposit which is subject to a preauthorized transfer agreement whereby the bank has been authorized by the depositor in writing to automatically transfer funds from the savings deposit to the bank itself or to a checking or other account of the same depositor in connection with checks, drafts or similar instruments drawn by the depositor upon the bank.

• • • • • •

By order of the Board of Directors.

Dated: October 30, 1978.

FEDERAL DEPOSIT INSURANCE CORPORATION,
ALAN R. MILLER,
Executive Secretary.

[FR Doc. 78-32595 Filed 11-17-78; 8:45 am]

[1505-01-M]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket Nos. 14324, 14606, 14625, 14685, and 14779; Amdt. Nos. 23-23; 25-46; 27-16; 29-17; and 121-149]

[• • • •

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

Airworthiness Review Program Amendment No. 7; Airframe Amendments; Final Rule

Correction

On page 52495 in the issue for Monday, November 13, 1978, there appeared a correction to FR Doc. 78-30348 which had appeared in the issue of October 30, 1978. Because of printing limitations, the reproductions of the formulas for § 25.331 (c)(2)(i) and (c)(2)(ii) did not come out perfectly. Therefore, please note that the portion of both formulas which reads "(n-15)" should have appeared with a decimal point as follows: "(n-1.5)".

[4910-13-M]

[Docket No. 17686; Amdt. 39-3351]

PART 39—AIRWORTHINESS DIRECTIVES

Israel Aircraft Industries Model 1121 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive which requires protection and/or relocation of the flexible fuel lines in the near proximity of the Ni-Cad batteries on Israel Aircraft Industries (IAI) model 1121 series airplanes. The AD is needed to minimize the possibility of damaging the flexible fuel lines in the event of a Ni-Cad battery thermal runaway which could result in a fire.

DATES: Effective December 20, 1978. Compliance is required within the next 150 hours time in service after the effective date of this AD, unless already accomplished.

ADDRESSES: The applicable service bulletin may be obtained from Commodore Aviation, Inc., 505 Park Avenue, New York, N.Y. 10022; or Commodore Aviation, Inc., 2025 South Nicklas, Suite 115, Oklahoma City, Okla. 73128. A copy of the service bulletin is contained in the rules docket for this amendment in room 916, 800 Independence Avenue SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT:

D. C. Jacobsen, Chief, Aircraft Certification Staff, AEU-100, Europe, Africa, and Middle East Region, Federal Aviation Administration, c/o American Embassy, Brussels, Belgium, telephone 513.38.30

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring protection and/or relocation of the flexible fuel lines located in the near proximity of the Ni-Cad batteries on certain Israel Aircraft Industries (IAI) Model 1121 Series airplane was published in the FEDERAL REGISTER at 43 FR 10410; March 13, 1978.

The proposal was prompted by an FAA determination that the unprotected flexible fuel lines in near proximity of the Ni-Cad batteries presented a potentially hazardous condition.

Interested persons have been afforded an opportunity to participate in the making of the amendment. Three comments were received; two objected to the proposal. Two commentators assured there would be total voluntary compliance with IAI Service Bulletin No. CJ-16; therefore, negating the need for an AD. Voluntary compliance with a manufacturer's SB does not relieve the FAA from taking airworthiness directive action as appropriate.

One commentator, citing the satisfactory service record of the IAI-1121 aircraft, also objected on the ground that there have been no actual accidents or incidents involving fuel lines and Ni-Cad batteries on IAI-1121 aircraft and stated that consideration should be given to the economic impact of the proposal on operators. The FAA has considered the economic impact as well as the safety aspect and the compliance time is intended to allow modification during routine maintenance so as to minimize the burden to operators.

The amendment is adopted as proposed.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

ISRAEL AIRCRAFT INDUSTRIES (IAI). Applies to model 1121, 1121A, and 1121B airplanes, serial numbers through 150 except 107 and equipped with Ni-Cad battery overtemperature warning or combination overtemperature warning and indicator systems, which rely on a common single sensor per battery.

Compliance required within the next 150 hours time in service after the effective date of this AD, unless already accomplished.

To reduce the possibility of damage to the flexible fuel lines and potential fire in the event of an uncontrolled Ni-Cad battery thermal runaway, modify the flexible fuel line installation and after modification perform inspections and leak tests in accordance with Commodore Jet Service Bulletin No. CJ-16, dated May 31, 1977, or equivalent, approved by the Chief, Aircraft Certification Staff, FAA, Europe, Africa, and Middle East Region, c/o American Embassy, APO NY 09667.

This amendment becomes effective December 20, 1978.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89).)

Issued in Washington, D.C., on November 9, 1978.

J. A. FERRARESE,
Acting Director,
Flight Standards Service.

[FR Doc. 78-32536 Filed 11-17-78; 8:45 am]

[4110-07-M]

Title 20—Employees' Benefits

CHAPTER III—SOCIAL SECURITY ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950——)

Subpart M—Coverage of Employees of State and Local Governments

STATE AND LOCAL GOVERNMENTS—SOCIAL SECURITY DEPOSIT REQUIREMENTS; FREQUENCY WITH WHICH STATES SHALL DEPOSIT CONTRIBUTIONS

AGENCY: Social Security Administration, HEW.

ACTION: Final regulations.

SUMMARY: These regulations increase the frequency with which States and interstate instrumentalities (which are treated as States to the extent practicable) deposit social security contributions on wages and salaries paid to covered employees. This new rule will require States to deposit contributions 15 days after the end of the first month in the calendar quarter, 15 days after the second month, and 45 days after the third month in the quarter. For interstate instrumentalities, however, the contributions for the third month of the quarter will be due by the last day of the first month of the next quarter. The present quarterly deposit requirement for States, which requires deposits 1 month and 15 days after the end of each calendar quarter, results in substantial losses of interest income to the social security trust funds. It is also inconsistent with requirements for all other employers who must deposit as often as weekly, biweekly, and monthly. The Social Security Act requires that, so far as practicable, the same requirements shall apply to States as apply to other employers.

EFFECTIVE DATE: July 1, 1980. The statute (section 7 of Pub. L. 94-202) requires that a rule affecting frequency or due dates for payments and reports by the States shall not be made effective until 18 months after it is published in the FEDERAL REGISTER. In addition, we believe that making the rule effective at the beginning of a calendar quarter will reduce whatever administrative problems may be involved in making this change.

FOR FURTHER INFORMATION CONTACT:

Armand Esposito, Legal Assistant, 6401 Security Boulevard, Baltimore, Md. 21235, telephone 301-594-5551.

SUPPLEMENTARY INFORMATION: Section 218 of the Social Security Act (42 U.S.C. 418) provides for social security coverage of services of employees of State and local governments through voluntary agreements between the individual States and the Secretary of Health, Education, and Welfare. Coverage is provided for groups which consist generally of employees of the State or of a political subdivision of the State. All States (and about 54 interstate instrumentalities, which are treated as States to the extent practicable) have entered into agreements. Nationally, over 70 percent of all State and local government employees have social security coverage.

The Act also specifies in section 218(e) (42 U.S.C. 418(e)) that the States will pay contributions, equivalent to social security taxes, "at such time or times as the Secretary of Health, Education, and Welfare may by regulations prescribe • • •". The Act further provides, in section 218(i) (42 U.S.C. 418(i)), that the Secretary's regulations shall impose, so far as practicable, the same requirements on States, in the administration of the coverage of State and local government employees, as those imposed on other employers under title II of the Social Security Act and chapter 21 and subtitle F of the Internal Revenue Code of 1954.

The present regulations on payment of social security contributions require that States deposit contributions in a Federal Reserve Bank on a quarterly basis, 1 month and 15 days after the end of each calendar quarter. This depository requirement results in substantial losses of interest income to the social security trust funds. It is also significantly more liberal than the requirements imposed by the Internal Revenue Code on private employers, nonprofit organizations (many of which provide coverage for their employees on a voluntary basis) and other employers who must deposit as often as weekly, biweekly, and monthly, depending on the accumulated amount of social security and income taxes that are withheld.

These more liberal State depository requirements were initially given the States in response to their argument that they had serious administrative problems in receiving, accounting for, and transmitting payments. The States have now had sufficient time to gain experience, however, in processing contribution payments. Further, the amounts involved in earlier years did not result in significant losses of interest earnings to the social security trust funds. These amounts have now grown substantially and many States use the withheld contributions for investment purposes or as current cash flow.

PUBLICATION OF NOTICE OF PROPOSED RULEMAKING

On March 30, 1978, a notice of proposed rulemaking was published in the FEDERAL REGISTER (43 FR 13395) which proposed that States and interstate instrumentalities deposit social security contributions monthly, by the 15th day of the month after the wages were paid. Six options for implementation were presented, ranging from putting those changes into effect as soon as legally permissible to phasing in over a 5-year period. We invited the public to submit new options as well as variations on those we had presented, both on timing of deposits and phasing. The NPRM also proposed that States deposit social security contributions by wire transmission through the Treasury Financial Communications System. The changes were proposed to reduce the substantial losses of interest income to the social security trust funds and to make the deposit requirements for States more like those set by the Internal Revenue Service for employers in the private sector. (These employers may be required to deposit as often as weekly.) We provided a 75-day comment period to give interested parties time to submit written comments, suggestions, or objections.

REACTION TO THE PROPOSAL

We received about 3,300 comments, primarily from State officials, local political subdivisions, governmental organizations and about 200 Members of Congress. The commenters were overwhelmingly opposed to any changes in the States' deposit procedures. The

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main objections were that—(1) the States would lose interest income; (2) depositing contributions in the year of implementation, that under current rules would have been deposited the following year, would be inflationary; (3) more frequent deposit would cause administrative problems and increase administrative costs (The State and local governments said they could not file timely and accurate reports if monthly deposits were required, reporting officials would need additional training, and more staff would be needed because of the increased workload.); (4) States should be relieved of liability for contributions due because they could no longer guarantee the accuracy of the reports from political subdivisions under the shortened time frame; (5) the proposal did not contain minimum deposit requirements as do the IRS regulations for private employers; and (6) the proposed change was a violation of the spirit, if not letter, of the original agreements entered into between the States and the Federal Government. Some commenters suggested that the States would not have entered into the original agreements if more frequent deposits had been required and that the change may stimulate termination of coverage.

Social Security Administration officials met March 30, May 16 and 17, and August 24 and 25 of this year with members of the National Conference of State Social Security Administrators to discuss the proposal for monthly deposits. The State administrators said that they completely opposed any plan for more frequent deposits under which the States would remain liable for the contributions due. The Administrators said that either the States should be relieved of liability and the political subdivisions report directly to IRS, or the notice of proposed rulemaking should be withdrawn and no action taken pending possible enactment of universal coverage. They also opposed the requirement for wire transmission of social security contributions. They pointed out that private employers do not have this requirement.

MODIFICATIONS TO PUBLISHED PROPOSALS

We have considered both the oral and written comments on the proposal to require the States to deposit monthly, by the 15th day of the next month, using wire transmission. As a result, we have made significant changes in the final regulations. First, we are retaining the requirement that the States deposit the social security contributions for each of the first 2 months of a calendar quarter by the 15th day after each month. However, the contributions for the third month will not be due until 1 month and 15 days after the end of that month. (There is one exception. Contributions from interstate instrumentalities for the third month of a calendar quarter will be due by the last day of the following month. These entities currently report 30 days after the end of each quarter.) This is more favorable to the States than the 15-15-15 proposal presented in the NPRM. Second, we are not requiring States to use wire transmission; this remains optional. We have also made other clarifying changes. These changes are responsive to comments, and we explain them further after discussion of the comments.

While almost all of the commenters oppose these regulations, we believe they are necessary to make the requirements for States more like those for private employers. Also, the change to more frequent deposit must be made in the interests of the social security trust funds and all social security taxpayers. Without this change, the interest income lost to the trust funds by the early 1980's will be over $200 million annually. This loss of trust fund revenues will grow each year at the same time that social security taxes on all workers covered by the program are rising to preserve the financial integrity of the trust funds. All social security taxpayers are disadvantaged by the current procedures which permit the States to deposit quarterly. We are, therefore, implementing a 15-15-45-day deposit system for payment of contributions due by the States.

ISSUES RAISED

Following is a discussion of the issues identified from the comments submitted and from the meetings held with memers of the National Conference of State Social Security Administrators. The major objections to the proposed regulations are discussed. Some of the comments have been grouped, summarized, or paraphrased. While most of the commenters opposed the concept of more frequent deposits, only a few of them provided detailed information on the financial impact or specific comments on the options presented. We have attempted, however, to report the views expressed and to respond to the issues raised.

LOSS OF INTEREST INCOME TO THE STATES

One of the major concerns was the loss of interest income to the States if a monthly deposit schedule is implemented. Currently, State deposits are not due until 1 month and 15 days after the end of each quarter; as a result, substantial sums may be held by the States and their political subdivisions for an extended period of time before they are deposited in the social security trust funds.

In response to a questionnaire distributed under the auspices of the Subcommittee on Social Security of the House Ways and Means Committee in early 1976, 41 States supplied information based on wage data for 1974 showing estimated interest losses of about $42 million for 1974 if a monthly deposit schedule were implemented. The States indicate that the amount of those losses has now increased. For example, in 1976, one State estimated a total loss of interest earnings to the State and its local entities of $3.8 million; that estimate has now increased to $5 million.

Although the States will lose interest income if monthly deposits are implemented, they will still earn substantial amounts. (One State has estimated that its interest income for 1980 would still be $456,000.) It is estimated that if the total State-deposit liability for calendar year 1980 (estimated to be $14,526 million, based on the intermediate set of assumptions in the 1978 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Disability Insurance Trust Funds, House Document No. 95-336) were invested at an annual rate of 5 percent (perhaps a conservative assumption of the rate at which State and local governments could expect to earn interest on their short-term investments) the States could realize interest income of $10 million if the funds were invested for only 5 days and $30 million if the funds were invested for a 15-day period.

Although more frequent deposit of contributions will reduce State investment income, the change will add significant income to the social security trust funds. If the States are required to make monthly deposits beginning with July 1, 1980, the trust funds will realize estimated added interest income of $179 million in calendar year 1981, $213 million in calendar year 1982, and $247 million in calendar year 1983. In commenting on the notice of proposed rulemaking, the Government Accounting Office (GAO) said that if the proposed deposit schedule had been in effect in the past, the social security trust funds would have received an additional $1 billion in interest income. They also pointed out that if the requirements for States were the same as those for other employers, the increase in interest income would be even greater in the future.

Another issue is the appropriate use of social security contributions withheld from employees' paychecks and matched almost universally by their State and local government employers. Should they continue to be used to help defray the costs of State and local government, as advocated by the States, or should they be used for their intended purpose, to finance the social security program? Concern for the financial status of State and local governments must be weighed both against the needs of the social security trust funds, and the interests of the social security contributors and beneficiaries, and against the requirement in section 218(i) of the Social Security Act that the deposit requirements applied to the States be, as far as practicable, the same as those imposed on private employers by the Internal Revenue Code. We believe that the 15-15-45 deposit schedule strikes the most reasonable balance between these considerations.

ADDITIONAL COSTS TO THE STATES

When the States responded in 1976 to the previously mentioned questionnaire, they estimated there would be added administrative costs of over $2.5 million if they had to deposit monthly instead of quarterly. Some States have said their current administrative costs could double (or even triple) because of (1) increased workload, (2) the need for additional personnel, (3) training which will be required, and (4) bookkeeping or systems changes.

We agree that administrative costs will increase somewhat. However, many States will still receive interest income under the 15-15-45-day deposit procedure and can use these funds to pay for any increased administrative costs. Further, some States should not have sizable administrative increases since they already have the ability to deposit monthly. There are at least 17 States where some or all State departments and political subdivisions are now required to deposit social security contributions with the State social security agency more than once a quarter.

The States cited another cost which would result from the change to more frequent deposits. Under the present regulations, contributions for the last calendar quarter of a year would not be due until February 15 of the next year. In the year that this change is made, however, the States said they will pay the contributions due for 2 of the 3 months in the last calendar quarter in that year rather than the next year. (One month's contribution instead of two would have been due depending upon the phase-in option selected). Under the 15-15-45-day method, the States are correct in that they would be required to pay 2 months of additional contributions in the year of implementation. Some suggested this would be inflationary. Since this is a transfer of funds from the States to the Federal Government, we do not believe the impact on the national economy is inflationary.

We see the requirement that the States pay the amounts due at an increased pace as a budgeting problem that does not itself increase State costs. The States are being asked to deposit contributions sooner; they are not being asked to pay more. If the States are unable to budget for the changeover and are required to use other methods to obtain the funds due, there could be an increased cost. However, since the change will not be effective until 18 months after publication of this regulation, the States should have time enough to budget for the earlier payment of contributions.

ADMINISTRATIVE PROBLEMS

The States have said it will be administratively impossible to pay contributions 15 days after the month. They indicate that they will not be able to process the reports in that time period or provide accurate wage information. Some have indicated that under State law they cannot make payment of the contributions due without documentation, such as the wage report to be filed.

We realize that States may have administrative problems in making more frequent deposits. We do not believe the problems are so extensive and severe that States will not be able to devise processes which will enable them to comply with more frequent deposits. The amount of contributions due can be determined by the total covered payroll or by matching amounts of social security contributions withheld from employees. (Those States which cannot currently legally make payments based on estimates would have time to secure any necessary legislative changes since, by law, these rules cannot become effective until 18 months after they are published in the FEDERAL REGISTER.) The States will still have 45 days at the end of each quarter to reconcile the payments made to their total liability for the quarter (subject to interest charges for late payments). With quarterly reporting under the new rule the end of the 45-day deposit schedule will coincide with the schedule for filing the quarterly wage reports. We are considering an annual reporting system. We published a notice of proposed rulemaking on August 9, 1978, proposing that States report annually instead of quarterly (43 FR 35344). If we do adopt an annual wage reporting system, the 45-day deposit schedule for the third month of the quarter will still accommodate States which will continue to reconcile their payment liability quarterly. Under either reporting system, since only the deposit will be due monthly, the amount of paperwork will not be excessive. As we have said, data supplied by 41 States for 1974 showed 17 States where some or all State departments and political subdivisions are required to deposit social security contributions with the State social security agency more than once a quarter, and some as often as biweekly.

UNILATERAL CHANGE IN FEDERAL-STATE AGREEMENT

Some commenters have said that the proposed regulation is a unilateral change to a mutual agreement. They argue: (1) That the change is contrary to the intent of their agreements with the Secretary, and (2) that no change should be made in the deposit requirements before universal coverage is enacted. The agreements between the States and the Secretary of Health, Education, and Welfare do not provide for quarterly deposits of social security contributions. Instead, they provide that the States must comply with the Secretary's regulations relating to the time of payment of contributions.

Further, we do not agree that any change in the deposit requirements should be delayed until after possible enactment of universal coverage since whether or when it may be enacted cannot be predicted. There will be at least a 2-year delay associated with mandatory coverage. The Social Security Amendments of 1977 provide for an HEW study, in consultation with the Office of Management and Budget, the Department of the Treasury, and the Civil Service Commission, of mandatory coverage for State and local employees. Reports and recommendations to the President and Congress are not required until December 20, 1979.

RELIEVE STATES OF FINANCIAL LIABILITY

It has been suggested that the Federal Government should relieve the States of liability for the contributions due and have the political subdivisions report directly to the Internal Revenue Service. The States indicate that they should not be responsible for the contributions due if monthly deposits are required because they will not be able to guarantee the accuracy of the amounts due without accompanying wage reports. This change, which some commenters have suggested as the only viable alternative, is not possible under present law. Under the law and the terms of the agreements the State alone is liable for contribution payments.

OPTIONS FOR MONTHLY DEPOSITS NOT FEASIBLE

The NPRM indicated five possible options in addition to immediate implementation for changing the States' deposit requirements from quarterly to monthly. We requested comments

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on those options and suggestions for other options.

Overall, the commenters did not discuss the substance of the Social Security Administration's options but disagreed with the concept of more frequent deposits underlying the proposals. They suggested the withdrawal of the NPRM. As indicated, some writers felt that the only other viable alternative was to relieve the States of liability. Others disagreed with the complexity of the options offered. We agree that those options, which have frequent changes in due dates, are not practical administratively, and we have not selected any of them.

One commenter indicated that it would be "* * * just as practical to require deposits to be made 15 days after the end of the pay period as it is to be made 15 days after the end of the month as currently proposed." This proposal does not take into account the States' need to accumulate the necessary information and funds from the political subdivision.

Implementing monthly deposits under the 15-15-45-day method effective July 1, 1980, produces significant added income for the social security trust funds and provides the States with one effective date so that the administrative problems of a phased-in implementation are eliminated. Further, the 45 days for deposit at the end of the quarter will make it possible for the States to make their deposit and reconcilation report at the same time, thus removing one of the reporting dates proposed in the NPRM.

REGULATION LACKS MINIMUM DEPOSIT REQUIREMENTS

The NPRM proposed that the States deposit the entire month's contributions for employees in all political subdivisions when due. This has been vigorously protested by the States as being more stringent than comparable IRS requirements, for political subdivisions with few employees. Under the IRS schedule for depositing withheld income and social security taxes, the amount of taxes due determines the frequency of deposits. For example, if the total undeposited taxes are less than $200, the deposit may be paid quarterly. At the other extreme, if at the end of any quarter-monthly period, the cumulative undeposited taxes for the quarter are $2,000 or more, the deposit is due within 3 banking days after the quarter-monthly period ends.

It has been suggested that political subdivisions be permitted to continue quarterly payment if withheld social security contributions do not amount to more than $2,000 in a quarter. The requirements for political subdivisions are set by the State and are not subject to Federal regulations. Whether a State wishes to permit a political subdivision to deposit quarterly and not monthly is at the discretion of the State. There are, however, no minimum deposit exemptions in this regulation.

WIRE TRANSMISSION OF SOCIAL SECURITY CONTRIBUTIONS

The States objected to the proposal in the NPRM to mandate wire transmission of social security contributions; they pointed out that IRS does not require private employers to do this. It was also indicated that the delay which occurs between the time of State deposit and the time the trust funds are credited with the deposit is a Federal problem which should be addressed by the Federal Government. Several commenters also saw a problem with the lack of immediate proof of payment of the contributions.

Wire transmission is now optional. Currently, about six States use the facilities to deposit their social security contributions. We have removed mandatory wire transmission from the final regulation. However, wire transmission remains optional, and we encourage its use.

TERMINATION OF COVERAGE STIMULATED

Some commenters suggested that changing to monthly deposits will cause States to terminate social security coverage.

Termination of coverage clearly would not be in the best interests of the individuals involved. Those employees who may not have worked under social security long enough to become permanently insured would lose social security protection when coverage is terminated. Even those who would be insured for retirement protection would lose disability protection after 5 years. In addition, once coverage is terminated, the employment may not be covered again under social security. Further, it would be difficult, if not impossible, for the States and political subdivisions to obtain comparable replacement protection at the low cost of social security protection.

OPERATION COMMONSENSE

While deleting the requirement for wire transmission from § 404.1223, we also revised the remaining material to make it clearer. In addition, we have modified §§ 404.1255 and 404.1255a to make them easier to read. Basically, we deleted the detailed procedural steps to highlight the substantive rules, and revised the format to make the information in those rules readily accessible.

15-15-45-DAY METHOD

The 15-15-45-day method requires the States to deposit social security contributions due for each of the first 2 months of a calendar quarter by the 15th day of the following month. The contributions for the third month in the quarter are due 1 month and 15 days after the end of that third month (1 month for interstate instrumentalities). With quarterly reporting under the new rule, this alinement of the third month's payment with the regular quarterly wage report permits the final deposit and the total payments made for the quarter to be reconciled with the detailed wage report (subject to interest charges for late payments).

We believe there are many advantages to this method which were not present in the methods previously published or suggested in response to those proposals:

(1) The States will have more use of the social security contributions than under the 15-15-15-day requirement and will be able to use these moneys to defray any administrative expenses.

(2) The States will also have more control of their liability under the agreement since they will have time each quarter to reconcile their total liability for the quarter.

(3) This method causes less change in existing State procedures and facilitates the accommodation of State processes.

(4) The social security trust funds will receive more money than they currently do under quarterly payments and the flow will be more predictable and steady than at present; and

(5) The Secretary will be fulfilling his statutory responsibility to make requirements for States and private employers as like as practicable.

Accordingly, these rules are adopted as set forth below.

(Secs. 205, 218, 1102 of the Social Security Act, and sec. 7, Pub. L. 94-202; 53 Stat. 1368, as amended, 64 Stat. 514, as amended, and 49 Stat. 647, as amended, and 89 Stat. 1137; 42 U.S.C. 405, 405a, 418, and 1302.)

(Catalog of Federal Domestic Assistance Program No. 13.802-13.805, Social Security Program.)

Dated: October 30, 1978.

STANFORD G. ROSS,
Commissioner of Social Security.

Approved: November 8, 1978.

HALE CHAMPION,
Acting Secretary of Health, Education, and Welfare.

1. Section 404.1223 is amended to read as follows:

§ 404.1223 Manner of payment of contributions by States.

The State shall deposit in the appropriate Federal Reserve Bank any contributions it is required to pay to the Secretary of the Treasury by an agreement made under the Act. The State shall pay the contributions in money to the Federal Reserve Bank, or any of its branches, serving the district in which the State is located, without notice, within the prescribed time periods, see §§ 404.1255 and 404.1255a.

2. Section 404.1255 is amended to read as follows:

§ 404.1255 Place and time for filing contribution returns, and wage reports and making deposits of contributions—for calendar quarters prior to July 1, 1980.

(a) *Deposits.* Contribution payments for wages paid in a calendar quarter shall be made in the manner prescribed in § 404.1223. Except as provided in paragraph (c)(2) of this section, contribution payments for a calendar quarter are due and payable on or before the 15th day of the second month of the next calendar quarter. However, for an instrumentality of two or more States, the contribution payments for a calendar quarter are due and payable on or before the last day of the first month of the next calender quarter. The Secretary may, for good cause shown, and upon application by a State, or an instrumentality of two or more States, allow further time for the payment of contributions without interest.

(b) *Failure to make deposits when due.* For the interest assessable for failure to make contributions within the prescribed time see § 404.1225.

(c) *Contribution returns and wage reports.*

(1) *Where to be filed.* All contribution returns, wage reports, and adjustment reports shall be filed with SSA.

(2) *When to be filed.* The State shall file the contribution return and the wage report for any calendar quarter on or before the 15th day of the second month of the next calendar quarter. An instrumentality of two or more States shall file the contribution return and the wage report for any calendar quarter on or before the last day of the first month of the next calendar quarter. In addition there are the following exceptions both for States and instrumentalities of two or more States.

(i) *For periods before the date of execution of agreement or modification.* If an agreement or modification provides for the coverage of employees for periods before the date of execution of the agreement or modification, any contributions for those periods shall be paid and contribution returns or wage reports for those periods shall be filed within 90 days after the date of execution of the agreement or modification;

(ii) *For initial periods after date of execution of agreement.* If an agreement or modification provides for the coverage of employees for the calendar quarter in which the Secretary signs the agreement, or any of the following four calendar quarters, the State shall pay any contributions due and file the contribution return and wage report for each of those calendar quarters on or before the last day of the second month of the next calendar quarter. However, if paragraph (c)(2)(i) permits additional time, that paragraph applies.

(3) *Good cause.* If good cause is shown, the Secretary may allow a State, or an instrumentality of two or more States, additional time to file a contribution return and wage report. (Interest will be assessed for failure to pay contributions within the prescribed time period. See § 404.1225.)

(4) *Consolidated report incomplete.* If the responsible State official has not received a wage report for the State or any of its political subdivisions in time to file a consolidated wage report by the due date, the State official shall indicate on the recapitulation report each political subdivision, coverage group or payroll unit which has not submitted a wage report. Upon receipt of the delinquent wage report, the State official shall send it to the SSA and shall deposit in the Federal Reserve Bank, or one of its branches, any contributions payable on the additional wages reported. Interest will be assessed on those delinquencies (see § 404.1226).

(5) *Due date is a Federal nonworkday.* If the last day for paying contributions or filing any wage reports or contribution returns falls on a Federal nonworkday, the contributions may be paid and the contribution return or wage report filed on the next business day.

(6) *Mailed reports and deposits.* If mailed, the contribution return or wage report shall be posted in time to reach the SSA under ordinary handling of the mails by the due date. If the deposit is mailed, it shall be posted in time to reach the appropriate Federal Reserve Bank under ordinary handling of the mails by the due date.

3. New § 404.1255a is added to read as follows:

§ 404.1255a Place and time for filing contribution returns, and wage reports, and making deposits of contributions—for months on or after July 1, 1980.

(a) *Deposits.* Contribution payments for wages paid in a month shall be made in the manner prescribed in § 404.1223. Except as provided in paragraph (c)(2) of this section, contribution payments are due and payable as follows:

(1) For each of the first 2 months in a calendar quarter the payments are due on or before the 15th day of the following month, and

(2) For the third month in the calendar quarter, the payments are due on or before the 15th day of the second month of the next quarter, except that for an instrumentality of two or more States, contribution payments for the third month in the calendar quarter are due on or before the last day of the following month.

However, the Secretary may for good cause shown, and upon application by a State or an instrumentality of two or more States, allow further time for the payment of contributions.

(b) *Failure to make deposits when due.* For the interest assessable for failure to make contributions within the prescribed time see § 404.1225.

(c) *Contribution returns and wage reports.*

(1) *Where to be filed.* All contribution returns, wage reports, and adjustment reports shall be filed with the SSA.

(2) *When to be filed.* The State shall file the contribution return and the wage report for any calendar quarter on or before the 15th day of the second month of the next calendar quarter. An instrumentality of two or more States shall file the contribution return and the wage report for any calendar quarter on or before the last day of the first month of the next calendar quarter. In addition, there are the following exceptions both for States and instrumentalities of two or more States.

(i) *For periods before the date of execution of agreement or modification.* If an agreement or modification provides for the coverage of employees for periods before the date of execution of the agreement or modification, any contributions for those periods shall be paid and contribution returns or wage reports for those periods shall be filed within 90 days after the date of execution of the agreement or modification;

(ii) *For initial periods after date of execution of agreement.* If an agreement or modification provides for the coverage of employees for the calendar quarter in which the Secretary signs the agreement, or any of the following four calendar quarters, the State shall pay any contributions due

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and file the contribution return and wage report for each of those calendar quarters on or before the last day of the second month of the next calendar quarter. However, if paragraph (c)(2)(i) permits additional time, that paragraph applies.

(3) *Good cause.* If good cause is shown, the Secretary may allow a State, or an instrumentality of two or more States, additional time to file a contribution return and wage report. (Interest will be assessed for failure to pay contributions within the prescribed time period. See § 404.1225.)

(4) *Consolidated report incomplete.* If the responsible State official has not received a wage report for the State or any of its political subdivisions in time to file a consolidated wage report by the due date, the State official shall indicate on the recapitulation report each political subdivision, coverage group or payroll unit which has not submitted a wage report. Upon receipt of the delinquent wage report, the State official shall send it to the SSA and shall deposit in the Federal Reserve Bank, or one of its branches, any contributions payable on the additional wages reported. Interest will be assessed on those delinquencies (see § 404.1226).

(5) *Due date is a Federal nonworkday.* If the last day for paying contributions or filing any wage reports or contribution returns falls on a Federal nonworkday, the contributions may be paid and the contribution return or wage report filed on the next business day.

(6) *Mailed reports and deposits.* If mailed, the contribution return or wage report shall be posted in time to reach the SSA under ordinary handling of the mails by the due date. If the deposit is mailed, it shall be posted in time to reach the appropriate Federal Reserve Bank under ordinary handling of the mails by the due date.

[FR Doc. 78-32052 Filed 11-17-78; 8:45 am]

[6560-01-M]

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER E—ANIMAL FEEDS, DRUGS, AND RELATED PRODUCTS

[FAP 7H5165/T40; FRL 1007-7]

PART 561—TOLERANCES FOR PESTICIDES IN ANIMAL FEEDS ADMINISTERED BY THE ENVIRONMENTAL PROTECTION AGENCY

Tricyclazole

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a feed additive regulation related to the experimental use of the fungicide tricyclazole in or on rice hulls, bran, and polishings. The regulation was requested by Elanco Products Co. This rule will permit the marketing of rice hulls, bran, and polishings while further data is collected on the subject pesticide.

EFFECTIVE DATE: November 20, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard F. Mountfort, Acting Product Manager (PM) 21, Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street SW., Washington, D.C. 20460, 202-426-2456.

SUPPLEMENTARY INFORMATION: On July 7, 1977, the EPA announced (42 FR 19449) that Elanco Products Co., a division of Eli Lilly & Co., P.O. Box 1750, Indianapolis, Ind. 46206, had filed a food additive petition (FAP 7H5165). This petition proposed that 21 CFR 561 be amended by the establishment of a regulation permitting residues of the fungicide tricyclazole (5-methyl-1,2,4-trlazolo[3,4,-*b*]benzothiazole and its metabolite 1,2,4-triazolo [3, 4,-*b*]benzothiazole-5-methanol in or on rice hulls, bran, polishings, and straw resulting from application of the fungicide to growing rice in a proposed experimental program with tolerance limitations of 7 parts per million (ppm). Subsequently, the petitioner amended the notice of filing (43 FR 19449) by deleting rice straw from the list of items and by increasing the proposed tolerances from 7 ppm to 15 ppm.

The tolerances in or on rice hulls, bran, and polishings at 15 ppm were proposed in accordance with an experimental use permit that has been issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973, 89 Stat. 751; 7 U.S.C. 136(a) et seq.). No comments were received by the Agency in response to the above notices of filing.

The scientific data reported, and other relevant material have been evaluated, and it has been determined that the pesticide may be safely used in accordance with the provisions of the experimental use permit which has been issued under FIFRA. It has further been determined that since residues of the pesticide may result in rice bran, hulls, and polishings from the agricultural use provided for in the experimental use permit, the feed additive regulation should be established and should include a tolerance limitation.

The toxicological data considered in support of the proposed tolerances included a 90-day rat feeding study with a no-observable-effect level (NOEL) of 275 ppm, a 90-day mouse feeding study (NOEL not established at 400 ppm, lowest level fed), a 90-day dog feeding study with a (NOEL of 7.5 milligrams (mg)/kilogram (kg) of body weight (bw)/day, and a rat metabolism study showing 90 percent of the labeled tricyclazole excreted in 48 hours (98.2 percent in 4 days).

Based on the 90-day dog feeding study and using a safety factor of 2,000, the provisional acceptable daily intake (PADI) for man is 0.00375 mg/kg bw/day. The concurrently proposed temporary tolerances on human food items would theoretically represent 26.5 percent of the PADI. The metabolism of tricyclazole is adequately understood, and an adequate analytical method (gas chromatography) is available for enforcement purposes. A related document establishing temporary tolerances for residues of tricyclazole in or on rice at 3 ppm; the liver and kidney of cattle, goats, hogs, horses, poultry, and sheep at 0.1 ppm; and in milk and eggs at 0.03 ppm appears elsewhere in today's FEDERAL REGISTER. The temporary tolerances established by this related document (PP 5G1590) will be adequate to cover residues that might result in eggs; milk; and the liver and kidney of cattle, goats, hogs, horses, poultry, and sheep from the proposed feed additive use in this document as delineated in 40 CFR 180.6(a)(2).

The pesticide is considered useful for the purpose for which tolerances are sought. Therefore, the regulation establishing tolerances for residues of tricyclazole in or on rice bran, hulls, and polishings at 15 ppm by amending 21 CFR Part 561 is being promulgated as proposed. Accordingly, a feed additive regulation is established as set forth below.

Any person adversely affected by this regulation may, on or before December 20, 1978, file written objections with the Hearing Clerk, EPA, Room M-3708, 401 M Street SW., Washington, D.C. 20460. Such objections should be submitted and specify the provisions of the regulation deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by the grounds legally sufficient to justify the relief sought.

Effective on November 20, 1978, 21 CFR Part 561 is amended as set forth below.

STATUTORY AUTHORITY: Section 409(c)(1) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 348(c)(1).].

Dated: November 9, 1978.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

21 CFR 561 is amended by adding section 561.395 to read as follows:

§ 561.395 Tricyclazole.

(a) Tolerances are established for combined residues of the fungicide tricyclazole (5-methyl-1,2,4-triaxolo[3,4-*b*]benzothiazole) and its metabolite 1, 2, 4-triazolo[3, 4-*b*]benzothiazole-5-methanol in or on rice bran, rice hulls, and rice polishings at 15 parts per million resulting from application of the fungicide in accordance with the provisions of an experimental use permit that expires August 21, 1979.

(b) Residues in rice bran, rice hulls, and rice polishings not in excess of 15 parts per million resulting from the use described in paragraph (a) of this section remaining after expiration of the experimental use program will not be considered actionable if the pesticide is legally applied during the term of and in accordance with the provisions of the experimental use permit and feed additive tolerances.

(c) Elanco Products Co. shall immediately notify the Environmental Protection Agency of any findings from the experimental use that have a bearing on safety. The firm shall also keep records of distribution and performance and on request make the records available to any authorized officer or employee of the Environmental Protection Agency or the Food and Drug Administration.

[FR Doc. 78-32479 Filed 11-17-78; 8:45 am]

[4830-01-M]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7572]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Liability of Income Tax Return Preparers for Failure To Compute and Report Estimated Tax Additions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulation.

SUMMARY: This document provides a final regulation relating to the liability of income tax return preparers for failure to compute and report additions to the tax imposed on the taxpayer for underpayment of estimated tax. This regulation amends an existing regulation provision as a result of a reexamination of the basis for this provision. This regulation affects persons who prepare income tax returns for compensation and provides guidance needed to comply with the law.

DATE: The regulation applies retroactively to documents prepared after December 31, 1977.

FOR FURTHER INFORMATION CONTACT:

Mark L. Yecies of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attention CC:LR:T (202-566-3464, not a toll-free call).

SUPPLEMENTARY INFORMATION:

BACKGROUND

This document contains an amendment to the Income Tax Regulations (26 CFR Part 1) under section 6694 of the Internal Revenue Code of 1954, relating to certain penalties applicable to income tax return preparers. On November 23, 1977, the FEDERAL REGISTER published final regulations relating to income tax return preparers (42 FR 59961). Section 1.6694-1(d) of those regulations indicates that a preparer may be subject to the penalties provided under section 6694 for the failure to compute and report the additions to the tax imposed on the taxpayer under section 6654 or 6655 for underpayment of estimated tax. This regulation section has been reexamined and it has been concluded that this is not appropriate. Accordingly, this document amends § 1.6694-1(d) to provide that a preparer is not subject to penalty under section 6694 for failure to compute and report these estimated tax additions.

DRAFTING INFORMATION

The principal author of this regulation is Mark L. Yecies of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

Adoption of amendment to the regulations

Accordingly, 26 CFR Part 1 is amended as follows:

Section 1.6694-1(d) is amended by revising the second sentence to read as set forth below and by deleting the third sentence.

§ 1.6694-1 Understatement of taxpayer's liability by income tax return preparer.

* * * * *

(d) *Understatement of liability defined.* * * * Tax under subtitle A of the Internal Revenue Code of 1954 does not include the additions to the tax provided by section 6654 and section 6655 (relating to underpayment of estimated tax). * * *

There is need for immediate guidance with respect to the provision contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

(Sec. 7805, Internal Revenue Code of 1954 (68A Stat. 917, 26 U.S.C. 7805).)

JEROME KURTZ,
Commissioner of Internal Revenue.

Approved: November 8, 1978.

EMIL M. SUNLEY,
Acting Assistant Secretary of the Treasury.

[FR Doc. 78-32515 Filed 11-15-78; 8:45 am]

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[1505-01-M]

[T.D. 7670]

PART 6—TEMPORARY INCOME TAX REGULATIONS UNDER THE BANK HOLDING COMPANY TAX ACT OF 1976

Elections Under the Bank Holding Company Tax Act of 1976

Correction

In FR Doc. 78-31473, appearing at page 52027 in the issue of Wednesday, November 8, 1978, make the following changes in the third column under the heading "Explanation of Provisions."

1. In the first paragraph, the third line from the bottom of the paragraph delete the word "Tax".

2. In the second paragraph, second line, insert the word "Tax" after the word "Company" and in the same paragraph, the fourth line from the bottom of the page, change the word "of" to read "or".

[6560-01-M]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER E—PESTICIDE PROGRAMS

[PP 6E1796/R110; FRL 1008-1]

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Carbaryl

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the insecticide carbaryl. The amendment to the regulations was requested by the Interregional Research Project No. 4. This rule establishes a maximum permissible level for residues of carbaryl in maple sap.

EFFECTIVE DATE: November 20, 1978.

FOR FURTHER INFORMATION CONTACT:

Mrs. Patricia Critchlow, Registration Division (WH-567), Office of Pesticide Programs, EPA, 401 M Street SW., Washington, D.C. 202-755-2516.

SUPPLEMENTARY INFORMATION: On July 6, 1976, the EPA published a notice of proposed rulemaking in the FEDERAL REGISTER (41 FR 27741) in response to a pesticide petition (PP 6E1796) submitted to the Agency by Dr. C. C. Compton, Coordinator, Interregional Research Project No. 4 (IR-4), New Jersey State Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, N.J. 08903, on behalf of the IR-4 Technical Committee and the Agricultural Experiment Station of Vermont. This petition proposed that 40 CFR 180. 169 be amended by the establishment of a tolerance for residues of the insecticide carbaryl (1-naphthyl *N*-methylcarbamate) including its hydrolysis product 1-naphthol, calculated as 1-naphthyl *N*-methylcarbamate, in the raw agricultural commodity maple sap at 0.5 part per million (ppm). No comments or requests for referral to an advisory committee were received in response this notice of proposed rulemaking.

The toxicological data considered in support of this tolerance included a 2-year rat feeding/oncongenicity study with a no-observable-effect level (NOEL) of 200 ppm; a 1-year dog subchronic feeding study with an NOEL of 400 ppm; a rhesus monkey teratology study with an NOEL of greater than 20 milligrams (mg)/kilogram (kg) of body weight (bw) (highest level fed); an 18-month mouse oncogenicity study, negative at 400 ppm; a three-generation rat reproduction study with an NOEL of 200 mg/kg bw/day; a dog teratology study with an NOEL of 3 mg/kg bw. The acceptable daily intake (ADI) in man is 0.1 mg/kg bw/day.

Carbaryl is a candidate for a rebuttable presumption against registration (RPAR) since it may exceed the risk criteria described in 40 CFR 162. 11(a)(3)(ii)(B) for some uses. However, the amount of carbaryl added to the diet from the use, calculated to be 0.0023 mg/kg bw/day for a 1.5-kg daily diet, is too small to produce an increase in toxicological or pharmacological effects in man. Thus, the tolerance established by this rule is considered to pose a negligible increment in risk.

It has been concluded, therefore, that the proposed amendment to 40 CFR 180.169 should be adopted without change, and it has been determined that this regulation will protect the public health.

Any person adversely affected by this regulation may, on or before December 20, 1978, file written objections with the Hearing Clerk, EPA, Room M-3708, 401 M Street SW., Washington D.C. 20460. Such objections should be submitted and specify the provisions of the regulation deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by the grounds legally sufficient to justify the relief sought.

Effective on November 20, 1978, part 180, subpart C, section 180.169 is amended by adding a tolerance for residues of carbaryl in maple sap at 0.5 ppm as set forth below.

STATUTORY AUTHORITY: Section 408(e) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 346a(e)].

Dated: November 9, 1978.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

Part 180, subpart C, section 180.169 is amended by alphabetically inserting in the table a tolerance for residues of the insecticide carbaryl in maple sap at 0.5 ppm to read as follows:

§ 180.169 Carbaryl; tolerances for residues.

Commodity:	Parts per million
Maple sap	0.5

[FR Doc. 78-32478 Filed 11-17-78; 8:45 am]

[3510-15-M]

Title 46—Shipping

CHAPTER II—MARITIME ADMINISTRATION, DEPARTMENT OF COMMERCE

SUBCHAPTER G—EMERGENCY OPERATIONS

PART 308—WAR RISK INSURANCE

Eligibility Requirements and Conforming Amendments

AGENCY: Maritime Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: The Maritime Administration amends its regulations to clarify the eligibility of U.S.-flag vessels and to establish eligibility criteria for war risk insurance for foreign-flag vessels which conform to the revised legislative authority of the Secretary of Commerce under an amendment to the Merchant Marine Act, 1936. This amendment also makes certain changes in titles, addresses, binder fees, application and binder forms, definitions, supporting documents, warranties, and in the voluntary contract of commitment forms.

EFFECTIVE DATE: November 20, 1978.

FOR FURTHER INFORMATION CONTACT:

K. H. Green, Director, Office of Marine Insurance, Room 3622, Maritime Administration, Department of Commerce, Washington, D.C. 20230, telephone 202-377-4820 or 4091.

SUPPLEMENTARY INFORMATION: On June 2, 1978, the Maritime Administration published in the FEDERAL REGISTER (43 FR 24075) (FR Doc. 78-15237) a proposed regulation to amend 46 CFR Part 308, War Risk Insurance, in accordance with the revised enabling authority contained in Pub. L. 94-523 (90 Stat. 2474) which became law on October 17, 1976. Interested parties were invited to submit comments on the proposed regulation. Comments were received from two trade associations of shipowners, five shipping subsidiaries of oil companies and two trade union associations.

DISCUSSION OF COMMENTS

Before addressing the various comments, it is important to examine briefly some of the background of the enabling legislation. During the hearings before the House Committee on Merchant Marine and Fisheries on Pub. L. 94-523, an amendment was offered which would have completely eliminated the foreign-flag participation in the war risk insurance program. The Maritime Administration offered a proposal whereby it would withdraw the blanket finding that all Effective United States Controlled (EUSC) vessels of Panamanian, Honduran, or Liberian registry would be eligible automatically for war risk insurance interim binders. Participation would be limited to approximately 25 percent of the EUSC fleet tonnage previously enrolled in the program which expired on September 7, 1975, on a case-by-case basis. Suggested eligibility criteria for foreign-flag vessels offered by the Maritime Administration included the characteristics, the employment and the general management of the vessel.

In extending the program for 3 years to expire September 30, 1979, the Congress added the following language to section 1203(a) of the Merchant Marine Act, 1936 (46 U.S.C. 1283(a)): "In determining whether to grant such insurance or reinsurance to foreign-flag vessels, the Secretary shall further consider the characteristics, the employment, and the general management of the vessel by the owner or charterer."

Some of the commentators recommended broadening the scope of eligibility of foreign-flag vessels so as to enroll as many as possible; the elimination of preference for vessels which trade at least 30 percent on a cargo tonnage basis with the United States; the elimination of "proposed arbitrary and unreasonable treatment of tankers;" and retention of eligibility only for Panamanian, Honduran, or Liberian registered vessels of the EUSC fleet.

One commentator stated that it felt that "Special Rules for Foreign Flag vessels set forth in section 308.2-2 are unnecessarily restrictive and if adopted would be detrimental to the national interest and the best interests of participating U.S.-flag owners/operators." Further, while appreciating that "a review of the legislative history of Pub. L. 94-523 makes clear the Congress no longer intends the program to be open to all vessels in the 'Effective United States Controlled Fleet,'" the commentator urged that in determining eligibility, the base of participation be made as large as possible within the parameters of Congressional intent, and also offered the following language to be subsitituted for proposed language in § 308.2, "Vessels substantially engaged in the foreign commerce of the United States or which would be required in the event of a war or national emergency." The same commentator recommended the elimination of granting preference if 30 percent of a vessels's trade is conducted between foreign ports and ports in the United States.

Another commentator recommended that the Maritime Administration "should continue to let the program's coverage of foreign-flag vessels lapse as it has for the past several years," or in the alternative "strictly enforce guidelines recently set by Congress in determining vessel eligibility." Other recommendations it offered were that 75 percent of the crews of foreign-flag vessels be English speaking; that standards be established for communications and navigational gear; that the 5-year safety records of foreign-flag vessels be examined closely; that foreign-flag vessel age be restricted to no more than 20 years; and that the foreign-flag fleet "be no more than one-fourth of its previous size."

Other comments received included the recommendations that the regulation "reflect the Congressional intent to limit the extent of the war risk insurance coverage to the 25 percent figure" and inclusion of consideration of the nationality and quality of the crew as a criterion in addition to the criteria contained in Pub. L. 94-523.

The Maritime Administration recognizes that the EUSC fleet is composed of vessels registered in Panama, Honduras, and Liberia. Therefore, only vessels of those registries which meet the revised criteria of the regulation will be considered for enrollment in the war risk insurance interim binder program on a case-by-case basis.

The regulation has also been amended to provide that only those foreign-flag vessels not over 20 years of age will be considered for enrollment in the war risk insurance interim binder program.

The amended language suggested for § 308.2 has been adopted.

The proviso dealing with preference being given to vessels which trade 30 percent on a cargo tonnage basis with the United States will be relocated to modify the new language of § 308.2(b)(1), rather than after § 308.2-2(b)(2)(vi), as in the proposed regulation.

In § 308.2(b)(2), the deadweight tonnage of product tankers for which preference will be given is raised from 60,000 deadweight tons to 90,000 deadweight tons.

The Assistant Secretary of Commerce for Maritime Affairs has approved the determination that these amendments will not result in any major economic consequences that would require the preparation of a regulatory analysis pursuant to EO 12044 (43 CFR 12661, Mar. 24, 1978); Department of Commerce Administration Order 218-7 and existing Maritime Administration procedures.

(Catalog of Federal Domestic Assistance Program No. 11,503, Maritime War Risk Insurance.)

Accordingly, Subchapter G—Emergency Operations, 46 CFR part 308 is amended as follows:

1. Delete the term "Maritime Administrator" wherever it appears in part 308 and substitute therefor the term "Assistant Secretary."

2. Delete the term "American War Risk Agency, 99 John Street, New York, N.Y. 10038" wherever it appears in part 308 and substitute therefor the term "American War Risk Agency, 14 Wall Street, New York, N.Y. 10005."

3. Delete the term "Division of Insurance, Maritime Administration, Washington, D.C. 20235" wherever it appears in Part 308 and substitute therefor the term "Maritime Administration, Attention: Director, Office of Marine Insurance, Washington, D.C. 20230."

4. Section 308.1 is revised to read as follows:

§ 308.1 Eligibility of a vessel and its owner for insurance.

Any vessel within one of the following categories shall be eligible for insurance, but shall remain eligible only while meeting the qualifications criteria in one of said categories. An eligible vessel is not insured unless and

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until an application is submitted as required in subpart B, C, or D of this part 308 and the Assistant Secretary for Maritime Affairs (Assistant Secretary) approves said application.

(a) A vessel registered, enrolled, or licensed under the laws of the United States of America (United States); any undocumented vessel owned or chartered by or made available to the United States or any department or agency thereof; any tug or barge or other watercraft (documented under the laws of the United States, or undocumented) owned by a citizen of the United States and used in essential water transportation; and United States citizen-owned watercraft used in the fishing trade or industry, except when used exclusively in or for sport fishing.

(b) Any vessel, other than a vessel described in paragraph (a) of this section determined by the Assistant Secretary to be engaged in the national defense or the national economy of the United States and subject to an unqualified Contract of Commitment with the United States in a form required by the Assistant Secretary, and which is:

(1) Owned by a United States corporation, or a foreign corporation in which a majority of the stock is owned and controlled by a citizen or citizens of the United States, whether direct or through intervening corporations, foreign or domestic. Where such intervening corporations are foreign, the ultimate majority ownership and control of the stock of such corporations must be vested in a citizen or citizens of the United States as defined in section 1201(d), Merchant Marine Act, 1936, as amended (46 U.S.C. 1281(d)); or

(2) Owned by a foreign corporation which is not directly or beneficially owned by a citizen or citizens of the United States, but which vessel is under a long-term charter or other long-term contract covering the use of the vessel on terms deemed by the Assistant Secretary to subject the vessel to United States control in the event of an emergency. The charterer of such vessel must be either a citizen or citizens of the United States or a foreign corporation in which a majority of the stock is owned and controlled by a citizen or citizens of the United States, whether direct or indirect through intervening corporations, foreign or domestic. Where such intervening corporations are foreign, ultimate majority ownership and control of the stock of such corporations must be vested in a citizen or citizens of the United States, as defined in section 1201(d), Merchant Marine Act, 1936, as amended (46 U.S.C. 1281(d)).

(c) Any other vessel, at the sole discretion of the Assistant Secretary, but only while engaged in a service which has been determined by the Assistant Secretary to be in the interest of the national defense or the national economy of the United States. Vessels in this category are not eligible for war risk insurance interim binders.

5. § 308.2 is revised to read as follows:

§ 308.2 Requirements for eligible vessels.

(a) *Restrictions—foreign-flag vessels.* Interim insurance is available on any vessel described in § 308.1 (a) and (b) above, provided application for interim insurance is submitted as required in subparts B, C, or D of this part 308, and the Assistant Secretary approves said application: *Provided,* That only vessels of Panamanian, Honduran, or Liberian registry not more than 20 years old will be considered eligible under § 308.1 (b) above for interim insurance, subject at all times to the determination specified in paragraph (b) of this section.

(b) *Special rules—foreign-flag vessels.* For the purpose of providing interim insurance on vessels described in § 308.1(b), the Assistant Secretary shall consider the characteristics, employment, and general management of the vessel. The Assistant Secretary formally determines that the following vessels are engaged in a service in the interest of the national defense or the national economy of the United States and qualify for interim insurance:

(1) Vessels substantially engaged in the foreign commerce of the United States or which would be required in the event of a war or national emergency: *Provided,* That a vessel will be considered to be substantially engaged in the foreign commerce of the United States if, on a semiannual basis, in excess of thirty percent (30%) of the net tons of cargo carried by the vessel is carried between a foreign port or ports and a port or ports in the United States (including Alaska, Hawaii, Puerto Rico, and any territory or insular possession of the United States), but only if such cargo is transported to such port or ports for consumption therein or for transshipment (in its raw state or subsequent to refining) for consumption elsewhere in the United States;

(2) Product tankers up to 90,000 deadweight tons and with particular emphasis on so-called handy-sized tankers having relatively high speed and refueling at sea capability;

(3) Dry bulk cargo vessels;

(4) Heavy lift vessels;

(5) Refrigerated vessels and other classes of ships in short supply in the United States-flag fleet; and

(6) Other vessels with special capabilities.

(c) *Vessel location reports.* All vessels for which war risk insurance interim binders have been issued must file reports under the United States Merchant Vessel Locator Filing System (USMER). The purpose of USMER is to keep national agencies informed concerning arrivals, departures and at-sea locations of insured merchant vessels throughout the world. Failure to make regular reports as required will result in a one-time notice of default after which, if the failure to report continues, all war risk insurance interim binders and any insurance attaching thereunder will be canceled. Instruction pamphlets and message format forms for the filing of USMER messages will be furnished by the Maritime Administration with the binders when issued.

(d) *Change in status of vessel described in § 308.1 (a) and (b) after binder issued: Notice.* It is the intention of the parties that any breach of the warranty prescribed hereunder as to vessels in all categories with respect to Department of Commerce Transportation Orders T-1 and T-2 (32A CFR Parts 701 and 502), as well as the additional warranties as to vessels in categories (b)(1) and (b)(2), with respect to maintenance of eligibility for insurance and availability of the insured vessels to the U.S. Government in time of emergency, shall terminate the binders and any insurance attaching thereunder. In the event of the sale, demise charter, requisition, confiscation, change of flag, total loss, or any other change in status which, by the terms of the binder causes the binder to terminate, prompt notice shall be given in writing to the American War Risk Agency, 14 Wall Street, New York, N.Y. 10005.

(e) *Change in status of other vessels: Notice.* It is the intention of the parties that any breach of the warranty as to operation in the approved service of vessles described in § 308.1(c) shall terminate the insurance. In the event of the sale, demise charter, requisition, confiscation, change of flag, total loss, any other change in status or change in operation of the vessel in the approved service prompt notice shall be given to the American War Risk Agency, 14 Wall Street, New York, N.Y. 10005.

6. Section 308.3 is revised to read as follows:

§ 308.3 Applications for insurance; warranties; supporting documents; payment of binder fees.

(a) *In general.* Separate applications shall be filed for war risk hull insurance, war risk protection and indemnity insurance, and Second Seamen's war risk insurance for each vessel to be covered by such insurance, except for LASH or similar type barges, in which case one set of applications may be filed for a group of such barges if

accompanied by a schedule of the individual vessels to be insured containing the required information for each vessel. Disbursements insurance, limited to consumable and subsistence stores, slop chests, bar stock, and bunker fuel, is available as added coverage upon application for war risk hull insurance. All applications for war risk hull insurance shall be accompanied by information relating to the vessel in required form, in triplicate, for use by the Assistant Secretary in determining the value thereof, pursuant to part 309 of this subchapter G, as amended from time to time and published in the FEDERAL REGISTER. An applicant submitting more than one application at the same time is required to submit only a single citizenship certificate or single set of citizenship certificates, as the case may be.

(b) *Warranties.*—(1) *In general.* Applications for war risk hull and protection and indemnity insurance in any eligible category of this part 308 shall include a warranty that, at all times during the effective period of the binder and any insurance attaching thereunder, the insured vessel, regardless of its nation of registry, will comply with Department of Commerce Transportation Orders T-1 and T-2 (32A CFR parts 701 and 502), or any modifications thereof so long as they remain in force and that the vessel will not be chartered, except with the prior approval of the Maritime Administration, unless in accordance with the provisions of § 221.7 of this chapter. The requirement for "prior approval" of the Maritime Administration of charters to noncitizens is applicable to any charter in existence at the time the applicant applies for insurance. Existing charters which are subject to this requirement include charters or contracts of affreightment to noncitizens which will extend for a period of more than six (6) months subsequent to the date of application for insurance or under which the vessel is committed to make a voyage or voyages of which the total period of time will extend for more than six (6) months subsequent to the date of application for insurance.

(2) *Vessels described in § 308.1(a).* Applications for war risk insurance on a vessel described in § 308.1(a) shall contain the warranty that at and from the date of issuance of the interim binder and for and during the term of any insurance attaching thereunder, such vessel will remain eligible within its category.

(3) *Vessels described in § 308.1(b).* Applications for war risk insurance on a vessel described in § 308.1(b) shall contain the warranties that at all times the vessel will remain eligible within its applicable category; that the vessel will be made available for use by the United States pursuant to the signed Contract of Commitment submitted with the insurance applications, as required by the Maritime Administration; that the vessel will remain in the approved service; and that no controlling interest in the vessel shall be transferred by a subsequent sale or long-term charter, except on the condition that the successor in interest agrees to be bound by the terms of the applicant's Contract of Commitment. All instruments transferring any controlling interest in the vessel, including long-term charter or merger agreements, shall be submitted to the Maritime Administration for prior approval.

(4) *Vessels described in § 308.1(c).* Applications for war risk insurance on a vessel described in § 308.1(c) shall contain warranties that the vessel will remain in the approved service and that any change in flag or service will be reported in advance to the Maritime Administration for a new determination as to whether the vessel's service is in the interest of the national defense or the national economy of the United States. Vessels in this category are not eligible for war risk insurance interim binders.

(5) *Vessel locator filing requirements for vessels in all categories.* Applications for insurance on vessels in all categories, except tugs and barges and vessels used exclusively in the fishing trade or industry, described in § 308.1(a), shall contain a warranty that at all times the vessel will file reports as required under the U.S. Merchant Vessel Locator Filing System (USMER) as prescribed in § 308.2(c) above.

(c) *Filing applications for insurance.* An application for insurance on a vessel described in § 308.1(a) shall be made in triplicate to the American War Risk Agency, 14 Wall Street, New York, N.Y. 10005, underwriting agent for the Maritime Administration, as prescribed in §§ 308.101, 308.201, and 308.301. All other insurance applications shall be made in triplicate to the Maritime Administration, Attention: Director, Office of Marine Insurance, Washington, D.C. 20230.

(d) *Materials in support of application on vessel described in § 308.1(b).*—(1) *In general.* An application for insurance on a vessel described in § 308.1(b) shall be accompanied by: (i) A contract of commitment, executed in triplicate originals, in the form prescribed in § 308.5 of this part 308; (ii) An executed agreement contained in the application for insurance that any charter or other contract covering the use of the vessel during the period of the binder or any insurance attaching thereunder shall be subject to termination or suspension without notice in the event the United States requires the use of the vessel under the voluntary contract of commitment submitted by the applicant; (iii) A copy of amendment 36 to 46 CFR part 308, signed by an official of the applicant and signifying knowledge of all new requirements, criteria of eligibility, terms, conditions, and warranties. A copy of this amendment 36 will be attached to all binders issued. In the event the vessel is determined to be ineligible under the terms of this part 308, the applicant will be so advised and the executed contract of commitment and any official foreign government action or approval will be returned to the applicant by the Maritime Administration.

(2) *Certificate of citizenship.* An application for insurance on such a vessel shall be supported by citizenship certificate(s), executed in triplicate originals, in form prescribed in § 308.4 of this part 308, establishing the U.S. citizenship of the majority ownership and control of the vessel-owning corporation, whether direct or through intervening corporations.

(3) *Existing long-term charters.* An application for a vessel in this category which is at the time of application under long-term charter or other long-term contract, either to the applicant or from the applicant to a third party, shall be jointly submitted by the owner and the charterer, and in addition to the other materials required under this paragraph, shall be accompanied by a copy of the long-term contract covering the use of the vessel and all addenda thereto, certified to be full and complete copies (except as to rate of hire or freight) and citizenship certificate(s) in triplicate in the form prescribed in § 308.4 of this part 308 establishing the U.S. citizenship of the majority of the shareholders and control of the charterer. The charterer shall also furnish to the Maritime Administration a certified copy of any amendment to such charter which may be issued subsequent to the issuance of any binder of insurance under this part 308.

(4) *Foreign government action or approval.* An application for a vessel in this category also shall be accompanied by a certified copy of the evidence of any official action or approval required by the government of the country of registry as a prerequisite to the execution of a contract of commitment with the United States.

(5) *Additional materials.* With respect to a vessel in this category, the applicant shall submit the following additional materials:

(i) A statement describing the service in which the vessel is engaged, including a listing of the vessel's voyages and ports of call during the immediately preceding six (6) month period, indicating the tonnage and type of

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cargo carried on such voyages and the reasons why such service should be deemed to be in the interest of the national defense or the national economy of the United States;

(ii) Material demonstrating the management and financial capabilities of the applicant, and

(iii) In the case of a new vessel or a vessel which has not for the six (6) months immediately prior to the date of the application been engaged in the foreign commerce of the United States, a statement, signed by a responsible company official, certifying the extent to which the vessel will be engaged in the foreign commerce of the United States for the six (6) months immediately following the issuance of any interim binder of insurance under this part 308.

(e) *Requests for changes in binders.* All requests for changes in binders and inquiries relative to the insurance after the interim binders have been issued shall be directed to the American War Risk Agency, 14 Wall Street, New York, N.Y. 10005.

(f) *Fees.* A check payable in U.S. funds to the "Maritime Adm.—Commerce" for the total amount of all binder fees payable by such applicant shall accompany each application. Binder fees are not returnable.

(g) *Copies of applications.* Copies of insurance applications, vessel data forms, certificates of citizenship, and the contract of commitment may be obtained from the American War Risk Agency at the address listed above or from the Maritime Administration. Attention: Director, Office of Marine Insurance, Washington, D.C. 20230.

7. § 308.4 is revised to read:

§ 308.4 Form of citizenship and control.

Certificates of citizenship in the following form shall be submitted in triplicate with the application filed for vessels described in § 308.1(b) of this part 308. Form MA-183A (4-78).

UNITED STATES OF AMERICA, DEPARTMENT OF COMMERCE, MARITIME ADMINISTRATION, CERTIFICATE OF OWNERSHIP AND CONTROL BY UNITED STATES CITIZENS

APPLICANT FOR WAR RISK INSURANCE

I,———— (Name), ———— (Title) ———— of ———— (Name of Corporation), am duly authorized to execute this certificate of citizenship to comply with the requirements for obtaining War Risk Insurance to cover the ———— (Country) flag ———— (Type of Vessel), ———— (Name of Vessel), ———— (Gross Tonnage), ———— (Year Built).

That ———— (Name of Corporation) is a ———— (Country) corporation owned and controlled by ———— (Give sequence of majority ownership and control of all owning or controlling corporations or other owners, if any, and furnish the full information as to each; if above space is not adequate, continue on back of this form.), a corporation organized and existing under the laws of ———— (Country), the majority (51 percent or more) of the stock of which corporation is owned and controlled by citizens of ———— (Country).

That of the stock interests shown above to be owned and controlled by ———— (Country) citizens, none is held beneficially for a citizen of another country.

Company Seal.
Dated: ————.

————.
(Signature.)

————.
(Typed or printed name of signer.)

NOTE.—The United States Criminal Code makes it a criminal offense for any person knowingly to make a false statement or representation to, or to conceal a material fact from, any department or agency of the United States as to any matter within its jurisdiction (18 U.S.C. 1001), or to file a false, fictitious or fraudulent claim against the United States (18 U.S.C. 287). (Certificate of Citizenship to be submitted in triplicate with insurance application.)

8. The introductory paragraph of § 308.5 and the first four paragraphs of the owner's contract of commitment are amended to read as follows:

§ 308.5 Form of voluntary contract of commitment.

Applications for insurance on vessels described in § 308.1(b) of this part 308 shall be accompanied by a contract of commitment, in triplicate originals, executed by the owner (or by the owner and the charterer where required by § 308.3 of this part 308). Contracts of commitment shall be submitted on standard contract form which may be obtained from the American War Risk Agency or the Maritime Administration at the addresses given above. (NOTE: The effective date of the contract of commitment will be the effective date of the binder and will be inserted in the contract of commitment by the Maritime Administration.)

Contract MA————

OWNER'S CONTRACT OF COMMITMENT

This agreement, made as of ————, 19——, by and between the United States of America, acting by and through the Department of Commerce, Maritime Aministration or its successor (herein called the "United States"), and ————, a corporation organized and existing under the laws of ———— (herein called the "Owner"), and having its prinicpal place of business at ————;

WITNESSETH

Whereas, on ————, 19——, the Assistant Secretary of Commerce for Maritime Affairs (herein called the "Assistant Secretary") found and determined that the ———— (herein described as the "vessel"), Official No. ————, documented under the laws of ————, of ———— Gross Tons, which was built ————, 19——, is eligible for interim war risk insurance under Title XII, Merchant Marine Act, 1936, as amended, and General Order 75, as revised, 46 CFR Part 308, § 308.1(b): *Provided,* That the Vessel shall at all time be in compliance with requirements of 46 CFR Part 308 and that the Vessel shall be made available to the United States upon request in event of a national emergency, as described in Article (1) hereinbelow, pursuant to this Contract of Commitment: *And, provided further,* That the Owner or the Master of the Vessel shall periodically notify the United States of the Vessel's position in accordance with § 308.2(c) of this Part 308 and

Whereas, the parties hereto desire to enter into such a voluntary Contract of Commitment covering the Vessel:

Now, therefore, in consideration of the premises and other good and valuable considerations hereinafter set forth, the parties hereto mutually agree as follows: • • •

9. Section 308.6 is amended by changing the paragraph "(d)" designation to "(e)" and inserting the following new paragraph "(d)":

§ 308.6 Period of interim binders and renewal procedure.

• • • • • •

(d) New applications for interim binders on foreign-flag vessels, with necessary attachments as specified in § 308.3 of this part 308 and check for binder fees prescribed, should be filed with the Maritime Administration, Attention: Director, Office of Marine Insurance, Washington, D.C. 20230. All interim binders for foreign-flag vessels will become effective on the date the owner's contract of commitment is executed by the Maritime Administration.

• • • • • •

§ 308.101 [Amended]

10. Section 308.101 is amended as follows:

(a) By inserting, after the paragraph on warranty of compliance with Department of Commerce Transportation Orders T-1 and T-2, the following new paragraph:

Warranted, as to a vessel in any eligible category of the application, that at all times during the binder period or any period of insurance attaching thereunder, the vessel, by action of its owner or master, will comply with the requirements of the United States Merchant Vessel Locator Filing System (USMER) as defined in § 308.2(c) of this Part 308.

(b) By eliminating the paragraph beginning with "Binding fee" and substituting therefor the following:

BINDER FEE (NOT RETURNABLE): UNITED STATES-FLAG VESSELS

$25 per vessel, under 500 gross tons;
$100 per vessel, 500 gross tons and over;
$5 each LASH or similar type barge.

FOREIGN-FLAG VESSELS

$50 per vessel, under 500 gross tons;
$200 per vessel, 500 gross tons and over;
$10 each LASH or similar type barge in United States funds.

(c) By deleting the paragraph beginning with the words "Check payable" and substituting the following new paragraph:

Check payable in United States funds to the order of "Maritime Adm.—Commerce" is enclosed herewith.

Section 308.102 is amended by: (a) Changing the section heading and (b) deleting the last sentence and substituting three sentences therefor to read as follows:

§ 308.102 Issuance of interim binder; its terms and conditions; fees.

• • • The binder fee (not returnable) for U.S.-flag vessels shall be $25 per vessel under 500 gross tons; $100 per vessel of 500 gross tons or over; and $5 per LASH or similar type barge. The binder fee (not returnable) for foreign-flag vessels shall be $50 per vessel under 500 gross tons; $200 per vessel 500 gross tons or over; and $10 per LASH or similar type barge. All fees are payable in U.S. funds by check to order of the "Maritime Adm.—Commerce."

12. Section 308.103(a) is amended by changing the last sentence to read as follows:

§ 308.103 Sums which will be insured under interim binder.

(a) • • • The "stated valuation" of the vessel insured refers to the vessel as described in § 309.5 of this chapter (Maritime Administration General Order 82, 30th Revision, as amended).

• • • • • •

13. Section 308.106 is amended by inserting, after the paragraph on warranty of compliance with Department of Commerce Transportation Orders T-1 and T-2, the following new paragraph:

§ 308.106 Standard form of war risk hull insurance interim binder and optional disbursements insurance endorsement.

(a) • • • Warranted, as to a vessel in any eligible category of the application, that at all times during the binder period or any period of insurance attaching thereunder, the vessel, by action of its owner or master, will comply with the requirements of the United States Merchant Vessel Locator Filing System (USMER) as defined in § 308.2(c) of this Part 308.

• • • • • •

§ 308.201 [Amended]

14. Section 308.201 is amended as follows:

(a) By inserting after the warranty of compliance with Department of Commerce Transportation Orders T-1 and T-2, the following new paragraph:

Warranted, as to a vessel in any eligible category of the application, that at all times during the binder period and any period of insurance attaching thereunder, the vessel, by action of its owner or master, will comply with the requirements of the United States Merchant Vessel Locator Filing System (USMER) as defined in § 308.2(c) of this Part 308.

(b) By deleting the two paragraphs beginning with the words "Binding fee" and "Check payable," respectively, and substituting therefor two new paragraphs as follows:

Binder fee (not returnable), $5 for each United States-flag LASH or similar type barge; $25 for all other United States-flag vessels; $10 for each foreign-flag LASH or similar type barge; and $50 for all other foreign-flag vessels.

Check payable in United States funds to order of "Maritime Adm.—Commerce" is enclosed herewith.

15. Section 308.202 is amended by deleting the last sentence and substituting the following two sentences:

§ 308.202 Insurance of interim binder; its terms and conditions.

The binder fee (not returnable) shall be $5 for a United States-flag LASH or similar type barge; $25 for all other United States-flag vessels; $10 for a foreign-flag LASH or similar type barge; and $50 for all other foreign-flag vessels. All fees are payable in United States funds by check to the order of "Maritime Adm.—Commerce."

16. Section 308.206 is amended by inserting, after the paragraph on warranty of compliance with Department of Commerce Transportation Orders T-1 and T-2, the following new paragraph:

§ 308.206 Standard form of war risk protection and indemnity insurance interim binder.

• • • Warranted, as to a vessel in any eligible category of the application, that at all times during the binder period or any period of insurance attaching thereunder, the vessel, by action of its owner or master, will comply with the requirements of the United States Merchant Vessel Locator Filing System (USMER) as defined in § 308.2(c) of this Part 308. • • •

17. In § 308.301 the paragraphs beginning with the words "Binding fee" and "Check Payable," respectively, are amended to read as follows:

§ 308.301 Form of application.

• • • • • •

Binder fee (not returnable) $75 for a United States-flag vessel and $150 for a foreign-flag vessel.

Check payable in United States funds to the order of "maritime Adm.—Commerce" is enclosed herewith.

• • • • • •

18. Section 308.302 is amended by deleting the last sentence and substituting therefor the following two sentences:

§ 308.302 Issuance of interim binder; its terms and conditions.

• • • the binder fee (not returnable) shall be $75 for a United States-flag vessel and $150 for a foreign-flag vessel. All fees are payable in United States funds by check to the order of "Maritime Adm.—Commerce."

19. Section 308.501 is amended by adding a new penultimate paragraph as follows:

§ 308.501 Cargoes on which coverage is available.

• • • For the purposes of this Subpart F—War Risk Cargo Insurance, the terms "cargo" and "cargoes" as used herein shall include loaded or empty containers located aboard U.S.-flag and foreign-flag vessels insured under Title XII, Merchant Marine Act, 1936, as amended. • • •

20. The index to part 308 is amended in part as follows:

308.2 Requirements for eligible vessels.
308.3 Applications for insurance; warranties; supporting documents; payment of binder fees.
308.4 Forms of citizenship and control.
308.102 Issuance of interim binder; its terms and conditions; fees.

(Secs. 204(b), 1201.1214, Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b) and 1281-1294); Reorganization Plans No. 21 of 1950 (64 Stat. 1273), and No. 7 of 1961 (75 Stat. 840), as amended by Pub. L. 91-469 (84 Stat. 1036) and Department of Commerce Organization Order 10-8 (36 FR 19077, July 23, 1973).)

Dated: November 14, 1978.

By order of the Assistant Secretary of Commerce for Maritime Affairs, Maritime Administration.

JAMES S. DAWSON, JR.
Secretary,
Maritime Administration.

[FR Doc. 78-32493 Filed 11-17-78; 8:45 am]

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[6712-01-M]

Title 47—Telecommunication CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

PART 0—COMMISSION ORGANIZATION

Delegation of Forfeiture Authority to the Staff; Correction

AGENCY: Federal Communications Commission.

ACTION: Erratum—rule amendment.

SUMMARY: By order, the Commission delegated forfeiture authority to the staffs of the various bureaus and offices, pursuant to Pub. L. 95-234. In a separate order, the Commission completely revised the delegated authority of the Cable Television Bureau, including forfeiture authority. This erratum deletes from the first order the forfeiture delegation pertaining to the Cable Television Bureau because it is adequately set forth in the second order.

EFFECTIVE DATE: November 9, 1978.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Jerold L. Jacobs, Cable Television Bureau, 202-632-6483.

In the matter of delegation of forfeiture authority to the staff pursuant to Pub. L. 95-234.

Released: November 13, 1978.

In the above-captioned matter, Order, FCC 78-767, released November 2, 1978, and published at 43 FR 52244, November 9, 1978 the appendix is revised to delete paragraph 4, which was intended to amend § 0.288 of the Commission's rules. The intended amendment of § 0.288 was accomplished in Order, FCC 78-764, released November 2, 1978.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-32551 Filed 11-17-78; 8:45 am]

[6712-01-M]

PART 1—PRACTICE AND PROCEDURE

Editorial Amendments Concerning Reregulation of Radio and TV Broadcasting

AGENCY: Federal Communications Commission.

ACTION: Editorial amendment.

SUMMARY: By order, the FCC amends §§ 1.533, 1.536 and 1.539 of its rules to bring various form titles into conformance with other rule sections and to more clearly state their purpose.

EFFECTIVE DATE: November 15, 1978.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

John W. Reiser, Phil Cross, Steve Crane, Broadcast Bureau, 202-632-9660.

SUPPLEMENTARY INFORMATION: In the matter of reregulation of radio and TV broadcasting—editorial amendments; Order.

Adopted: November 7, 1978.

Released: November 9, 1978.

By the Chief, Broadcast Bureau: 1. Sections 1.533, 1.536 and 1.539 of the Commission's rules contain listings by form number and title of the various application forms used to apply for construction permits, station licenses, and renewal of station licenses in the broadcast services. The identifying titles of several of these forms do not clearly reflect the purposes of the application, do not conform to the titles of the classes of stations as used elsewhere in the Rules, or do not agree with the titles printed on the forms. Therefore, by this order, the titles of application forms are being revised as shown in the attached appendix.

2. We conclude that adoption of the editorial amendments shown in the attached appendix will serve the public interest. Prior notice of rulemaking, effective date provisions, and public procedure thereon are unnecessary, pursuant to the Administrative Procedure and Judicial Review Act provisions of 5 U.S.C. 553(b)(3)(B), inasmuch as these amendments impose no additional burdens and raise no issue upon which comments would serve any useful purpose.

3. Therefore, *It is ordered*, That pursuant to sections 4(i), 303(r) and 5(a)(1) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rules, part 1 of the Commission's rules and regulations is amended as set forth below, effective November 15, 1978.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; 47 U.S.C. 154, 155, 303.)

FEDERAL COMMUNICATIONS COMMISSION.
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

1. In § 1.533, paragraphs (a)(1), (a)(5), (a)(6) and (a)(7) are amended to read as follows:

§ 1.533 Application forms for authority to construct a new station or make changes in an existing stations.

* * * * *

(a)(1) FCC form 301, "Application for Authority to Construct or Make Changes in an Existing Commercial Broadcast Station."

* * * * *

(5) FCC form 330-P, "Application for Authority to Construct or Make Changes in Instructional TV Fixed and/or Response Station(s) and Low Power Relay Station(s)."

(6) FCC form 340, "Application for Authority to Construct or Make Changes in a Noncommercial Educational Broadcast Station."

(7) FCC form 346, "Application for Authority to Construct or Make Changes in a TV or FM Broadcast Translator Station."

* * * * *

2. In § 1.536, paragraphs (b)(1), (b)(6) and (b)(7) are amended to read as follows:

§ 1.536 Application for license to cover construction permit.

* * * * *

(b)(1) FCC form 302, "Application for a New Commercial Broadcast Station License."

* * * * *

(6) FCC form 341, "Application for a New Noncommercial Educational Broadcast Station License."

(7) FCC form 347, "Application for a TV or FM Broadcast Translator Station License."

* * * * *

3. In § 1.539, paragraphs (d)(1), (d)(5), (d)(6), (d)(7), and (d)(8) are amended to read as follows:

§ 1.539 Application for renewal of license.

* * * * *

(d)(1) FCC form 303, "Application for Renewal of License for Commercial TV Broadcast Station."

* * * * *

(5) FCC form 313-R, "Application for Renewal of Auxiliary Broadcast License (Short Form)." To be used for applications for renewal of license of auxiliary broadcast stations where there has been no change in the information contained in the initial application for license, except as provided in paragraph (9) below.

(6) FCC form 330-R, "Application for Renewal of Instructional TV Fixed Station and/or Response Station(s) and Low Power Relay Station(s) License."

(7) FCC form 342, "Application for Renewal of a Noncommercial Educational Broadcast Station License."

(8) FCC form 348, "Application for Renewal of TV or FM Broadcast Translator Station License."

* * * * *

[FR Doc. 78-32521 Filed 11-17-78; 8:45 am]

[6712-01-M]

[Docket No. 21010; RM-2577; FCC 78-791]

PART 15—RADIO FREQUENCY DEVICES

UHF Television Receiver Noise Figures

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: At 43 FR 36096, August 15, 1978, the Federal Communications Commission adopted revised technical specifications for the UHF noise figure of a TV receiver. The regulation calls for a followup report each year after certification giving the actual noise figure performance of the production units of the model as measured during that year. Because certain existing language is subject to misinterpretation the FCC revises § 15.66(c) to make it clear that followup proof of performance measurements of UHF noise figure are required only for TV receivers certificated on or after October 1, 1979.

EFFECTIVE DATE: November 24, 1978.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Herman Garlan, International and Operations Division, Office of Chief Engineer, Federal Communications Commission, Washington, D.C. 20554, 202-632-7095.

In the matter of UHF television receiver noise figures; order.

Adopted: November 6, 1978.

Released: November 16, 1978.

By the Commission.

1. In our report and order in docket No. 21010 adopted August 1, 1978, [1] we adopted a revised technical specification for the UHF noise figure of a TV receiver. [2] Paragraph (c) of this regulation calls for the submission of a followup report each year after certification giving the actual noise figure performance of the production units of the model as measured during that year.

2. As stated in paragraph 45 of the report and order in docket 21010, it was our intention that the followup reports be submitted for TV receivers certificated after October 1, 1979. However the language of § 15.66(c) would appear to require followup reports for TV receiver certifications granted between September 15, 1978, and October 1, 1979, as well as those granted after October 1, 1979.

3. We are accordingly revising the text of § 15.66(c) to make it clear that the followup report is required only for TV receiver certifications granted after October 1, 1979. The revised text for § 15.66(c) is given below.

4. Authority for this rule amendment is contained in sections (i), 303(r), 303(s) and 330 of the Communications Act of 1934. Since the amendment is editorial in nature, the public notice procedures and the effective date provisions of 5 U.S.C. 553 do not apply.

5. In view of the above: *It is ordered* that, effective November 24, 1978, the heading and text of § 15.66(c) is revised to read as set out below.

(Secs. 303, 48 Stat. as amended, 1082, 330, Sec. 2, 76 Stat., 151, 47 U.S.C. 303, 330.)

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

In § 15.66 of part 15, the heading of paragraph (c) is revised by adding the words "required for a TV receiver certificated on or after October 1, 1979". As revised the heading and text of § 15.66(c) read as follows:

§ 15.66 All-channel television broadcast reception: Noise figure.

* * * * *

(c) *Followup proof of performance required for a TV receiver certificated on or after October 1, 1979.*

Each year after certification has been granted for a specific model, the grantee shall file a report giving the actual UHF noise figure performance of the units of that model as actually measured during that year.

[FR Doc. 78-32527 Filed 11-17-78; 8:45 am]

[1] UHF TV Receiver Noise Figure, FCC 78-582, 43 FR 36096 (Aug. 15, 1978).

[2] 47 CFR 15.66.

[6712-01-M]

[BC Docket No. 78-141; RM 3062]

PART 73—RADIO BROADCAST SERVICES

FM Broadcast stations in Martin and Neon, Ky.: Changes Made in Table of Assignments

PREAMBLE

AGENCY: Federal Communications Commission.

ACTION: Report and order.

SUMMARY: Action taken as a result ot a petition for rulemaking filed by Guaranty Broadcasting Co. herein assigns FM channel 261A to Martin, Ky., and deletes it from Neon, Ky. The assigned channel could be used to provide a first local aural broadcast service to Martin.

EFFECTIVE DATE: December 21, 1978.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Mildred B. Nesterak, Broadcast Bureau, 202-632-7792.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), Table of Assignments, FM broadcast stations. (Martin and Neon, Ky.); Report and Order.

Adopted: November 7, 1978.

Released: November 15, 1978.

By the Chief, Broadcast Bureau:

1. On April 21, 1978, the Commission issued a Notice of Proposed Rulemaking, 43 FR 19691, in the above-entitled matter proposing the deletion of Channel 261A from Neon, Ky., and its assignment to Martin, Ky. The proceeding was instituted on the basis of a petition filed by Guaranty Broadcasting Co. ("petitioner"). There were no oppositions to the proposal. Supporting comments were filed by petitioner and Tazewell Broadcasting, Inc. ("Tazewell"), licensee of Station WTZE-FM, Tazewell, Va.

2. Martin is a community of 786 persons in Floyd County (pop. 35,880). [1] It is located approximately 64 kilometers (40 miles) west of the intersection of Virginia and West Virginia State lines and 13 Kilometers (8 miles) south of Prestonburg, Ky. Martin has no local aural broadcast service.

3. Petitioner states that Martin, primarily a mining community, has increased its population to an estimated 1,200 in 1977. It asserts that, with the country relying more heavily on coal

[1] Population figures are taken from the 1970 U.S. Census.

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as an energy source, the county population can be expected to increase, and the opportunities for new businesses and existing concerns will continue to grow. Petitioner, in its supporting comments, has reaffirmed its intention to apply for a construction permit for a broadcast station on the proposed channel, if assigned.

4. In supporting comments, Tazewell states that if Channel 261A were assigned to Martin it would permit the service of its station (WTZE-FM) in Tazewell, Va., to be improved. It notes that WTZE-FM is prevented from relocating its antenna to a more desirable site at the present time due to separation required to the vacant Neon assignment. If Channel 261A were reassigned to Martin, WTZE-FM could relocate its antenna and increase its coverage area.

5. Once Channel 261A is deleted from Neon, it can be assigned to Martin in compliance with the minimum distance separation requirements.

6. We believe that it would be in the public interest to assign Channel 261A to Martin, Ky. There is a demand for its use to provide the community with an opportunity to institute a first local aural broadcast service. Channel 261A at Neon has remained vacant and unapplied for, and no interest has been shown for its use there in response to the Notice herein.

7. Authority for the adoption of the amendments contained herein appears in sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's Rules and Regulations.

8. In view of the foregoing, *it is ordered*, That effective December 21, 1978, the FM Table of Assignments, § 73.202(b), is amended to read as follows:

City	Channel No.
Martin, Ky	261A
Neon, Ky	

9. *It is further ordered*, That this proceeding is terminated.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; 47 U.S.C. 154, 155, 303.)

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc. 78-32522 Filed 11-17-78; 8:45 am]

[7035-01-M]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

Subchapter A—General Rules and Regulations

PART 1033—CAR SERVICE

[S.O. 1338; Amdt. 2]

Madison Railroad, Division of City of Madison Port Authority Authorized To Operate Over Tracks Formerly Operated by Madison Railway Co., Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Emergency order, Amendment No. 2 to Service Order No. 1338.

SUMMARY: The Madison Railway Co., Inc., has operated a line of railroad between Madison, Ind., and North Vernon, Ind., under an operating agreement with the State of Indiana. This operating agreement has been cancelled, and the State has entered into an operating agreement with the Madison Railroad, Division of city of Madison Port Authority to operate this line of railroad. Service Order No. 1338 authorizes the Madison Railroad, Division of city of Madison Port Authority to operate this line, pending dispositon of its application to operate as the designated operator in order to provide uninterrupted rail service to shippers on this line. Service Order No. 1338 is published in full in volume 43 of the FEDERAL REGISTER at page 42257. Amendment No. 2 extends this order until February 15, 1979.

DATES: Effective 11:59 p.m., November 15, 1978. Expires 11:59 p.m., February 15, 1979.

FOR FURTHER INFORMATION CONTACT:

Charles C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, telephone 202-275-7840, telex 89-2742.

SUPPLEMENTARY INFORMATION:

Decided November 14, 1978.

Upon further consideration of Service Order No. 1338 (43 FR 42257 and 47976), and good cause appearing therefor:

It is ordered, That:

§ 1033.1338 Service Order No. 1338, Madison Railroad, division of city of Madison Port Authority authorized to operate over tracks formerly operated by Madison Railway Co., Inc.: be, and it is hereby, amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) Expiration date: The provisions of this order shall expire at 11:59 p.m., February 15, 1979, unless otherwise modified, changed or suspended by order of this Commisison.

Effective date: This amendment shall become effective at 11:59 p.m., November 15, 1978.

(49 U.S.C. 1(10-17).)

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission, at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael. Member Robert S. Turkington not participating.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 78-32584 Filed 11-17-78; 8:45 am]

[4310-55-M]

Title 50—Wildlife and Fisheries

CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 33—SPORT FISHING

Opening of Seney National Wildlife Refuge, Michigan to Sport Fishing

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulation.

SUMMARY: The Director has determined that the opening to sport fishing of Seney National Wildlife Refuge, Mich. is compatible with the objectives for which the area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

DATES: January 1, 1979 through December 31, 1979.

FOR FURTHER INFORMATION CONTACT:

John R. Frye, Refuge Manager, Seney National Wildlife Refuge, Seney, Mich. 49883, 906-586-9851.

SUPPLEMENTARY INFORMATION:

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

Sport fishing is permitted on the Seney National Wildlife Refuge, Mich. only on the areas designated by signs as being open to fishing. These areas comprising three pools and two rivers are delineated on maps available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, Department of the Interior, Federal Building, Fort Snelling, Twin Cities, Minn. 55111. Sport fishing shall be in accordance with all applicable State regulations subject to the following conditions:

1. Stream and ditches, open only during the regular State trout fishing season, are:

a. Driggs River from Highway M-28 south to the diversion ditch.

b. Walsh Creek and ditch from Highway M-28 south to C-3 Pool.

c. Creighton River—entire length through refuge.

2. Manistique River, entire length through refuge, open from January 1, 1979, through December 31, 1979.

3. Pools are open to fishing, daylight hours only, as follows:

a. All Pools—January 1, 1979, through February 28, 1979.

b. Show Pools (located west of Highway M-77 one-half mile north of the headquarters entrance road) from Memorial Day (May 28, 1979), through Labor Day (September 3, 1979).

c. C-3 Pool—July 1, 1979, through Labor Day (September 3, 1979).

4. Night fishing, boats and the use of minnows for bait are prohibited except on the Creighton and Manistique Rivers.

5. Snowmobiles, All-Terrain Vehicles or motorized bikes are not allowed on the refuge.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33. The public is invited to offer suggestions and comments at any time.

NOTE.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

NOVEMBER 14, 1978.

JOHN R. FRYE,
Refuge Manager.

[FR Doc. 78-32553 Filed 11-17-78; 8:45 am]

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

[7535-01-M]

NATIONAL CREDIT UNION ADMINISTRATION

[12 CFR Part 701]

ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

Credit Union Service Corporation; Correction

In FR Doc. 78-31135 appearing at page 51407 in the issue for Friday, November 3, 1978, make the following changes:

1. On page 51408, first column, under "SUPPLEMENTAL INFORMATION" second paragraph, eleventh line, "The purposed regulation" is corrected to read "The proposed regulation".

2. On page 51408, second column, under "Contracting With A Credit Union Service Corporation." ninth line, "unions and credit service corporations" is corrected to read "unions and credit union service corporations".

3. On page 51408, third column, under "Application Procedures for Credit Union Service Corporations" in the second paragraph, tenth line, "modification" is corrected to read "modifications".

[4910-13-M]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 39]

[Docket No. 78-SO-69]

CURTISS WRIGHT C-46 SERIES AIRCRAFT

Proposed Airworthiness Directive

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require removal of the wheel well area ram air scoop on C-46 series aircraft. The proposed AD is required based on service experience to prevent an engine fire from having reentry path behind the firewall, which could result in catastrophic failure of the wing, and to maintain fire fighting capability.

DATE: Comments must be received on or before December 20, 1978.

ADDRESS: Send comments on this proposal in duplicate to Chief, Engineering and Manufacturing Branch, Southern Region, Federal Aviation Administration, P.O. Box 20636, Atlanta, Ga. 30320.

FOR FURTHER INFORMATION CONTACT:

W. J. Lawrence, Engineering and Manufacturing Branch, Southern Region, Federal Aviation Administration, P.O. Box 20636, Atlanta, Ga. 30320, telephone 404-763-7435.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the rules docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the rules docket.

The FAA has determined that an in-flight engine fire reentered the wheel well area and severely damaged the wing structure on a C-46 aircraft certificated under Civil Air Regulation (CAR) Part 3. Since this condition is likely to exist or develop on other airplanes of the same type design, the proposed AD would require removal of the wheel well area ram air scoop.

THE PROPOSED AMENDMENT

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

CURTISS WRIGHT. C-46 series aircraft certificated in all categories.

Compliance is required within the next 100 hours of operation after the effective date of this AD unless already accomplished.

To prevent an engine fire from reentry aft of the firewall, accomplish the following:

Remove the wheel well ram air scoop(s) located on each engine nacelle just aft of the firewall and seal the hole(s) with the same type material and fasteners as used in the affected nacelle area. Acceptable repair methods may be found in AC 43.13-1A, Chapter 2, or in USAF T.O. AN 01-25LA-3 Section VI.

Alternate methods of compliance may be acceptable if approved by the Chief, Engineering and Manufacturing Branch, Southern Region.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, as amended, (49 U.S.C. 1354(a), 1421, 1423; sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.85.)

NOTE.—The Federal Aviation Administration has determined that this document involves a proposed regulation which is not considered to be significant under the procedures and criteria prescribed by Executive Order 12044 and as implemented by interim Department of Transportation guidelines (43 FR 9582; Mar. 8, 1978).

Issued in East Point, Ga., on November 6, 1978.

PHILLIP M. SWATEK,
Director, Southern Region.

[FR Doc. 78-32539 Filed 11-17-78; 8:45 am]

[4910-13-M]

[14 CFR Part 39]

[Docket No. 78-SO-14]

TELEDYNE CONTINENTAL MOTORS, MODELS TSIO-520-J AND TSIO-520-N ENGINES

Proposed Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend an existing airworthiness directive (AD) applicable to Teledyne Continental Motors Series TSIO-520-J and TSIO-520-N engines installed in certain Cessna model aircraft by requiring the installation of an improved No. 2 (#2) intake manifold tube. The amendment is needed to improve the induction system flexible elbow retention on the intake manifold and thereby eliminating the repetitive inspection imposed by amendment 39-3153.

DATE: Comments must be received on or before December 20, 1978.

ADDRESSES: Send comments on the proposed amendment in duplicate to Chief, Engineering and Manufacturing Branch, ASO-210, Southern Region, P.O. Box 20636, Atlanta, Ga. 30320.

The applicable Customer Service Bulletin may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, Ala. 36601. A copy of the Service Bulletin is contained in Room 275, Engineering and Manufacturing Branch, ASO-210, Southern Region, Federal Aviation Administration, 3400 Whipple Street, East Point, Ga.

FOR FURTHER INFORMATION CONTACT:

H. D. Roe, Aerospace Engineer, Engineering and Manufacturing Branch, ASO-210, Southern Region, Federal Aviation Administration, 3400 Whipple Street, East Point, Ga. 30344, telephone 404-763-7435.

SUPPLEMENTARY INFORMATION: This proposed amendment would further amend amendment 39-3153, FR 10340, AD 78-06-01, as amended by amendment 39-3193, which currently requires repetitive inspections on Teledyne Continental TSIO-520-J and TSIO-520-N engines installed in certain Cessna and Riley converted Cessna aircraft. After issuing amendment 39-3193, the FAA has determined that with a longer nipple engagement the critical flexible elbow to intake manifold joint at the engine to airframe interface is improved and repetitive inspections would no longer be required on aircraft which have replaced elbow tube TCM P/N 629138 with improved elbow tube TCM P/N 642590. In addition, it has been determined that the R. H. flexible elbow installation and condition inspection may no longer be necessary and it is proposed to delete those provisions.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Engineering and Manufacturing Branch, Flight Standards Division, FAA Southern Region, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD will be filed in room 275.

THE PROPOSED AMENDMENT

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of part 39 of the Federal Aviation Regulations (14 CFR 39.13) as amended by further amending amendment 39-3153, FR 10340, AD 78-06-01 as amended by amendment 39-3139 to read as follows:

TELEDYNE CONTINENTAL MOTORS. Amendment 39-3153 as amended by amendment 39-3193 is further amended by amending AD 78-06-01. Applies to model TSIO-520-J and TSIO-520-N engines not previously fitted with improved elbow tube TCM P/N 642590, installed in, but not limited to, Cessna models 340A and 414. Also applies to Cessna model 340 as modified by STC's SA1881SW or SA186NW.

Compliance is required as indicated except that the initial 25-hour inspection specified in paragraph A-2 is not required for Cessna aircraft manufactured after April 1, 1978.

To prevent a separation of flexible elbow TCM P/N 635930 from the left hand (L.H.) No. 2 cylinder intake tube and possible engine malfunctions or stoppage, accomplish the following:

A. 1. Within the next 12 months after the effective date of this amendment, replace induction system intake tube TCM P/N 629138 with new intake tube TCM P/N 642590. After the intake tube has been replaced with the new tube TCM P/N 642590, inspections required by paragraph A.2 do not apply.

2. Within the next 25 hours time in service after the effective date of this AD, unless already accomplished, and thereafter at each 100 hours time in service, accomplish the following:

(i) Inspect the L.H. elbow installation for full engagement over intake manifold tube and intercooler nipple beads with the hose clamps properly located behind nipple beads.

(ii) Check torque of 30 to 35 inch pounds on left flexible intake manifold clamps (Cessna P/N U-84-270-SH) and intercooler clamps (Cessna P/N U-94-260-SH or B35A-21P). On aircraft which use TCM clamps (P/N 631972) at these joints, check for torque of 25 to 30 inch pounds. On Riley conversions which use Riley P/N 631972 clamps on these joints, check for 30 to 35 inch pounds.

(iii) Upon request of the operator, an FAA maintenance inspector may adjust the repetitive inspection interval up to a maximum time between inspections of 125 hours to permit compliance at an established inspection period of the operator if the request contains substantiating data to justify the increase for that operator.

3. The inspections required by paragraph A-2 may be discontinued once the intake tube has been replaced with new tube TCM P/N 642590.

B. Alternate methods of compliance may be acceptable if approved by the Chief, Engineering and Manufacturing Branch, Federal Aviation Administration, Southern Region, Atlanta, Georgia.

C. Appropriate maintenance record must be made in accordance with FAR 43.9

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, as amended, (49 U.S.C. 1354(a), 1421, 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.85.)

NOTE.—The FAA has determined that this document involves a proposed regulation which is not considered to be significant under the procedures and criteria prescribed by Executive Order 12044 and as implemented by interim Department of Transportation guidelines (43 FR 9582; Mar. 8, 1978).

Issued in East Point, Ga., on November 6, 1978.

PHILLIP M. SWATEK,
Director, Southern Region.

[FR Doc. 78-32538 Filed 11-17-78; 8:45 am]

[4910-13-M]

[14 CFR Parts 47 and 91]

[Docket No. 17331; Reference Notice No. 77-27]

AIRCRAFT REGISTRATION—GENERAL OPERATING AND FLIGHT RULES

Special Identification Numbers for Civil Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This notice withdraws notice No. 77-27 (42 FR 57968; November 7, 1977) by which the Federal Aviation Administration proposed to remove all references to special identification numbers for civil aircraft from the Federal Aviation Regulations and discontinue issuance of these numbers. The intended effect is to terminate the rulemaking action initiated by notice No. 77-27. This action is necessary because the FAA has decided, after reviewing the comments on the notice and its policy in this matter, that the practice of issuing special identification numbers should continue. However, in order to reduce the cost to the Government of this service, certain of the existing procedures for issuing these numbers are being modified.

DATE: November 20, 1978.

FOR FURTHER INFORMATION CONTACT:

Ms. Elizabeth Bowman, Technical Section, (AAC-251), Aircraft Registration Branch, Airmen and Aircraft Registry, Federal Aviation Administration, P.O. Box 25082, Oklahoma City, Okla. 73125, telephone 405-686-2284.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 47.15(d) of the Federal Aviation Regulations provides that any unassigned U.S. identification number may be assigned as a special identification number, and an applicant desiring such a number may apply for it to the

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FAA Aircraft Registry. Special identification numbers are distributed by the registry upon proper application and payment by the applicant of the $10 fee required by § 47.17(a)(4).

The Federal Aviation Act of 1958 does not require the issuance of special identification numbers to the owners of U.S. civil aircraft. Nonetheless, the FAA has provided the public with this service for more than two decades.

In notice No. 77-27 the FAA proposed to discontinue the issuance of special identification numbers, by revoking § 47.15(d) and removing all references to these numbers in parts 47 and 91. The FAA suggested that this might be an appropriate action because of the increasing burden this service has imposed on the FAA Aircraft Registry in recent years.

PUBLIC COMMENT

The FAA received 464 public comments in response to notice No. 77-27, only seven of which were in favor of the proposal.

Two supporting commenters pointed to specific practical benefits that would result from discontinuing the issuance of special identification numbers. One commenter contended that limiting each aircraft to one identification number throughout its life would eliminate the need for maintaining a cross-reference file for aircraft identification numbers and serial numbers. The commenter believes that this file is needed only because of the large number of aircraft that have serial numbers identical to those of other aircraft. However, even if notice No. 77-27 had been adopted, the registry would have continued to maintain its cross-reference file to facilitate finding aircraft information when only a serial number is available.

A second commenter asserted that allowing the identification numbers of aircraft to be changed can be hazardous and expensive to a lending institution because changes prevent precise and easy identification of aircraft used for collateral, and causes added expense when the security conveyances are changed to reflect a change of registration.

The commenters opposing the proposal suggested raising the fees charged for special numbers to recover costs. This, it was argued, would allow the FAA to hire more people, and would reduce the volume of requests. Other commenters suggested raising the fees for general aviation only, while some suggested shifting the burden of the costs to large aircraft operators or air carriers.

A large number of commenters said pride of ownership and a desire to retain some freedom of choice in aircraft identification prompted their opposing the proposal. A few commenters stated that, if owners were not able to retain their special identification numbers, they might retain their aircraft longer and thus contribute to a reduction in aircraft sales.

A large number of comments suggested that there was a subjective safety factor in recognition by air traffic and ground control personnel of distinctive aircraft registration numbers. This recognition, they maintain, leads to better and less radio communication and greater ease of handling by airport and air traffic personnel. The commenters also felt that the use of distinctive numbers contributes to: A greater sense of professionalism on the part of pilots flying easily recognizable aircraft, easier recognition by passengers and customers at airports, and easier bookkeeping for corporate aircraft. Commenters also contended that specially marked aircraft are a good advertisement for the companies flying them.

WITHDRAWAL OF NOTICE

After consideration of the comments received in response to notice No. 77-27 and review of the agency's policy and procedures with respect to special identification numbers, the FAA has decided that the issuance of these numbers should not be discontinued. The comments received have indicated that special identification numbers are important to the aviation community. The FAA believes that the availability of these numbers is a small, but important, contribution to the promotion of civil aviation. Therefore, in spite of the heavy workload imposed by this service, procedure changes will be made to continue to provide special numbers, without interfering with the essential tasks of the FAA Aircraft Registry.

In an effort to deal with the ever-increasing volume of requests for special identification numbers, the Registry is presently depending more on computer checks to determine the availability of requested numbers. The registry's computer capacity has recently been enlarged, and new procedures have been instituted. Because of these procedures, telephone requests to determine the availability of specific numbers can no longer be accepted. Computer checks for the availability of these numbers will be made on a regular basis, and time-consuming manual checks by Registry personnel will be discontinued. Should these measures not be adequate to hold down costs, the FAA will consider revising the charge for this service.

The withdrawal of notice No. 77-27 does not preclude the FAA from issuing similar notices in the future, nor does it commit the FAA to any course of action.

Accordingly, notice No. 77-27, published in the FEDERAL REGISTER on November 7, 1977 (42 FR 57968), is hereby withdrawn.

(Sec. 313(a) and 501, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1401); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).)

Issued in Oklahoma City, Okla., on October 27, 1978.

THOMAS J. CRESWELL,
Director,
Aeronautical Center.

[FR Doc. 78-32537 Filed 11-17-78; 8:45 am]

[6320-01-M]

CIVIL AERONAUTICS BOARD

[14 CFR Parts 221, 302, 399]

[EDR-336; PDR-58; PSDR-52; Docket No. 33836; Dated: October 26, 1978]

U.S. MAINLAND-PUERTO RICO/VIRGIN ISLANDS RATEMAKING ENTITY

Change in Tariff Justification; Revision of Complaint Procedures; Statement of General Policy; Correction

AGENCY: Civil Aeronautics Board.

ACTION: Errata.

SUMMARY: These errata correct errors in the notice of proposed rulemaking for the passenger-fare rulemaking concerning the U.S. Mainland-Puerto Rico/Virgin Islands ratemaking entity (43 FR 51641, Nov. 6, 1978). References to the Board's policy statements were incorrectly cited.[1]

FOR FURTHER INFORMATION CONTACT:

Steven McKinney, Trial Attorney, Bureau of Pricing and Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, 202-673-5273.

On page 51646, the reference to "Part 339.31" under § 221.165(d)(4) should be changed to "Part 399.31."

On page 51647, the references to "Part 339.31" and "Part 339.34" under §§ 302.505(b)(2) and 302.505(f) should be changed to "Part 399.31" and "Part 399.34," respectively.

Dated: November 13, 1978.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-32587 Filed 11-17-78; 8:45 am]

[1] Corrections made to pp. 19 and 20 of the original document.

[6750-01-M]

FEDERAL TRADE COMMISSION

[16 CFR Part 440]

HEARING AID INDUSTRY

Publication of Staff Report on Proposed Trade Regulation Rule

AGENCY: Federal Trade Commission.

ACTION: Publication of staff report.

SUMMARY: The Federal Commission's Bureau of Consumer Protection has released to the public a staff report that summarized and analyzes the evidence in its rulemaking proceeding on the hearing aid industry. The staff also recommended the final action which the Commission should take. The staff report and recommended rule have been placed on public record No. 215.44. This report has not been adopted or reviewed by the Commission. The Commission's final determination in this rulemaking proceeding (40 FR 26646, June 24, 1975) will be based upon the record taken as a whole including this report, the presiding officer's report released in August 1977, and comments upon both these reports received during the 60-day comment period. This comment period will commence with the publication of this notice.

DATE: Comments on the staff report, the staff's recommended rule and the presiding officer's report must be filed no later than January 19, 1979.

ADDRESSES: Requests for copies of the report should be sent to the Distribution Branch, Room 126, Federal Trade Commission/SIR, Sixth Street and Pennsylvania Avenue NW, Washington, D.C. 20580.

Comments should be sent to: Secretary, Federal Trade Commission, Sixth Street and Pennsylvania Avenue NW, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

James Skiles, 202-724-1511, Deputy Assistant Director for Food and Drug Advertising, Federal Trade Commission/PF, Washington, D.C. 20580; or Robert L. Patterson, 202-724-1497, Attorney, Division of Food and Drug Advertising, Federal Trade Commission/PF, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Pursuant to § 1.13(g) of the Commission's rules of practice, the staff has made its report, containing its summary and analysis of the record and its recommendations as to the form of the final rule, to the Commission. The report is now available for public comment under rule 1.13(h). Copies may be obtained from the Distribution Branch, Room 126, Federal Trade Commission/SIR, Sixth Street and Pennsylvania Avenue NW, Washington, D.C. 20580.

The following documents can be requested: The Presiding Officer's Report; The Staff's Recommended Rule, together with a very brief summary of the Staff Report; The Staff Report, with appendices A through B thereto. This contains both the Recommned Rule and the summary mentioned above and Appendices C through F of the Staff Report.

Comments will be accepted on both the staff report, and the presiding officer's report of August 1977, for a period of 60 days from publication of this notice in the FEDERAL REGISTER. Comments should be identified as "Comment on Staff and Presiding Officer Reports Hearing Aid Industry TRR," and addressed to the Secretary, Federal Trade Commissions, Sixth Street and Pennsylvania Avenue NW, Washington, D.C. 20580. When feasible, five copies should be submitted.

The Commission cautions all concerned that the staff report has not been reviewed or adopted by the Commission, and that its publication should not be interpreted as reflecting the present views of the Commission or any individual member thereof.

Issued: November 20, 1978.

ALBERT H. KRAMER,
Director,
Bureau of Consumer Protection.

[FR Doc. 78-32597 Filed 11-17-78; 8:45 am]

[4830-01-M]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Parts 1 and 55]

[LR-218-76]

INCOME TAX

Real Estate Investment Trusts; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the taxation of real estate investment trusts.

DATES: The public hearing will be held on December 20, 1978, beginning at 1:30 p.m. Outlines of oral comments must be delivered or mailed by December 7, 1978.

ADDRESS: The public hearing will be held in the Chief Counsel's Conference Room, Room 4132, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, D.C. The outlines should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-218-76), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

George Bradley or Charles Hayden of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, 202-566-3935, not a toll-free call.

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under §§ 856, 857, 858, 859, 860 and related provisions of the Internal Revenue Code of 1954. The proposed regulations appeared in the FEDERAL REGISTER for July 7, 1978, at page 29317 (43 FR 29317). A correction notice appeared in the FEDERAL REGISTER for July 25, 1978, at page 32150 (43 FR 32150).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and also desire to present oral comments at the hearing on the proposed regulations should submit an outline of the comments to be presented at the hearing and the time they wish to devote to each subject by December 7, 1978. Each speaker will be limited to 10 minutes for an oral presentation exclusive of time consumed by questions from the panel for the Government and answers to these questions.

Because of controlled access restriction, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 1:15 p.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the proposed Treasury Directive appearing in the FEDERAL REGISTER for Wednesday, May 24, 1978.

By direction of the Commission of Internal Revenue.

ROBERT A. BLEY,
Director, Legislation and Regulations Division.

[FR Doc. 78-32514 Filed 11-17-78; 8:45 am]

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[8320-01-M]

VETERANS ADMINISTRATION

[38 CFR Parts 2 and 21]

VETERANS' EDUCATION

Determinations Concerning School Closing

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: In the proposed regulations the Administrator of Veterans' Affairs is delegating to the Directors of VA field stations the authority to determine whether or not a school closing is based upon an Executive order of the President or due to an emergency situation. He is delegating the authority to review these decisions to the Director, Education and Rehabilitation Service. Minor changes are being made in the wording of some regulations to make them conform to the wording of the law. The proposed regulations allow for more prompt decisions by delegating the authority to make them.

DATE: Comments must be received on or before December 20, 1978. It is proposed to make this amendment effective the date of final approval.

ADDRESS: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, D.C. 20420. Comments will be available for inspection at the address shown above during normal business hours until January 2, 1979.

FOR FURTHER INFORMATION CONTACT:

June C. Schaeffer, Assistant Director for Policy and Program Administration, Educational and Rehabilitation Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, D.C. 20420, 202-389-2092.

SUPPLEMENTARY INFORMATION: Section 1780(a), Title 38, United States Code gives the Administrator the authority to pay educational assistance to veterans and eligible persons or subsistence allowance to veterans during such closing as well as the authority to avoid counting absences during the closings. The continuing energy shortage has resulted in hundreds of school closings over the past several years. It is no longer practical for the Administrator to determine personally whether each closing is based on an Executive order of the President or is due to an emergency situation. Sections 21.130(a), 21.4203 (b), and 21.4205(c) are all amended to allow a Director of a VA field station to determine whether or not a school closing is based on an Executive order of the President or is due to an emergency situation. The Director, Education and Rehabilitation Service is given the authority to review all such decisions.

ADDITIONAL COMMENT INFORMATION

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposal to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, D.C. 20420. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays), until January 2, 1979. Any person visiting central office for the purpose of inspecting any such comments will be received by the Central Office Veterans Services Unit in room 132.

Such visitors to any VA field station will be informed that the records are available for inspection only in central office and furnished the address and the above room number.

Approved: November 13, 1978.

By direction of the Administrator.

RUFUS H. WILSON,
Deputy Administrator.

1. In part 2, a new § 2.98 is added to read as follows:

§ 2.98 Delegation of authority to Directors of VA field stations to determine whether or not a school closing is based on Executive order of the President or due to an emergency situation and to the Director, Education and Rehabilitation Service to review these decisions.

This delegation of authority is identical to §§ 21.130, 21.4203, and 21.4205 of this chapter.

2. In part 21, § 21.130(a)(1)(i) is revised to read as follows:

§ 21.130 Subsistence allowance.

(a) *Payments.* Each veteran under chapter 31 will be paid a subsistence allowance to the rates specified in § 21.133. Final payment may be withheld until proof of continued enrollment is received and the account adjusted. Allowance will be paid while the veteran is in training status, including any period during which he or she is on authorized leave.

(1) A veteran is in training status during:

(i) Periods when he or she is in attendance; this includes weekends and legal holidays (or customary vacation periods connected therwith) and, as determined by the Director of the VA field station of jurisdiction, periods when the schools are closed temporarily under an established policy based upon an Executive order of the President or due to an emergency situation.

(*a*) If the emergency school closing is due to a strike by the faculty or staff of the school, and the closing lasts more than 30 days, the Director, Education and Rehabilitation Service will decide if veterans enrolled in the school may still be considered to be in training status. His or her decision will be based on a full assessment of the strike situation. A veteran will not be considered to be in training status if in his or her judgment the school closing will not be temporary. (38 U.S.C. 1780(a).)

(*b*) A school, which disagrees with a decision made under this paragraph by a Director of a VA field station, has 1 year from the date of the letter notifying the school of the decision to request that the decision be reviewed. The request must be submitted in writing to the Director of a VA field station where the decision was made. The Director, Education and Rehabilitation Service shall review the evidence of record and any other pertinent evidence the school may wish to submit. The Director, Education and Rehabilitation Service has the authority either to affirm or reverse a decision of the Director of a VA field station. (38 U.S.C. 1780(a).)

* * * * *

3. In § 21.4203, paragraph (b)(1) is revised to read as follows:

§ 21.4203 Reports by schools; requirements.

* * * * *

(b) *Entrance or reentrance.* * * *

(1) Schools organized on a term, quarter, or semester basis shall generally report enrollment for the term, quarter, semester, ordinary school year or ordinary school year plus summer term. If a certification covers two or more terms, the school will report the dates for the break between terms if a term ends and the following term does not begin in the same or the next calendar month. No allowances are payable for these intervals. The school will report the period between each term, quarter, or semester, if the eligible veteran or student elects not to be paid for the intervals between terms. Where the student is a veteran or eligible person pursuing a program on a less than half-time basis or is a serviceman or servicewoman, a separate enrollment certification will be required for each term, quarter, or semester.

(i) The Director of the VA field station of jurisdiction may authorize payment to be made for breaks, including intervals between terms, within a certified period of enrollment during which the school is closed under an established policy based upon an order of the President or due to an emergency situation.

(*a*) If the Director has authorized payment due to an emergency school closing, resulting from a strike by the faculty or staff of the school, and the closing lasts more than 30 days, the Director, Education and Rehabilitation Service, will decide if payments may be continued. His or her decision will be based on a full assessment of the strike situation. Further payments will not be authorized if in his or her judgment the school closing will not be temporary. (38 U.S.C. 1780(a).)

(*b*) A school, which disagrees with a decision made under this paragraph by a Director of a VA field station, has 1 year from the date of the letter notifying the school of the decision to request that the decision be reviewed. The request must be submitted in writing to the Director of a VA field station where the decision was made. The Director, Education and Rehabilitation Service shall review the evidence of record and any other pertinent evidence the school may wish to submit. The Director, Education and Rehabilitation Service has the authority either to affirm or reverse a decision of the Director of a VA field station. (38 U.S.C. 1780(a).)

(ii) Where a veteran or an eligible person, who is pursuing a course leading to a standard college degree, transfers between consecutive school terms from one approved institution to another approved institution, for the purpose of enrolling in, and pursuing, a similar course at the second institution, the veteran or eligible person shall, for the purpose of entitlement to the payment of educational assistance allowance be considered to be enrolled at the first institution during the interval, if the interval does not exceed 30 days, following the termination date of the school term of the first institution. (38 U.S.C. 1780.)

* * * * *

4. In § 21.4205, paragraph (c) (1) and (5) is revised to read as follows:

§ 21.4205 Absences.

* * * * *

(c) *Reporting.* (1) Veterans and eligible persons must report each full day of absence from scheduled attendance as well as days when the school was closed for local and school holidays and, if reported enrollment was on an ordinary school year basis, intervals between terms, quarters, or semesters. When the school is closed for the weekend those days will not be reported nor will legal holidays established by Federal or State law or customary vacation periods connected with them be reported if the school is closed. These customary vacation periods will be reasonable periods identified as a holiday vacation on the school approval literature. Generally a reasonable period will be interpreted to mean not more than 1 calendar week at Christmas and New Years and shorter periods of time in connection with other legal holidays. However, if classes are normally scheduled for Saturday and Sunday, absences must be reported. At the discretion of the Director of the VA field station of jurisdiction, days of absence will not be reported for days of nonattendance within a certified period of enrollment during which the school is closed under an established policy based upon an Executive order of the President or due to an emergency situation. (38 U.S.C. 1780(a).)

(i) If the Director has authorized the nonreporting of days of absence as the result of an emergency school closing resulting from a strike by the faculty or staff of the school, and the closing lasts more than 30 days, the Director, Education and Rehabilitation Service will decide if absences will continue not to be reported. His or her decision will be based on a full assessment of the strike situation. Payment of educational assistance will be terminated if in his or her judgment the school closing will not be temporary. (38 U.S.C. 1780(a).)

(ii) A school, which disagrees with a decision made under this paragraph by a Director of a VA field station, has 1 year from the date of the letter notifying the school of the decision to request that the decision be reviewed. The request must be submitted in writting to the Director of the VA field station where the decision was made. The Director, Education and Rehabilitation Service shall review the evidence of record and any other pertinent evidence the school may wish to submit. The Director, Education and Rehabilitation Service has the authority either to affirm or reverse a decision of the Director of a VA field station. (38 U.S.C. 1780(a).)

* * * * *

(5) Where a veteran or eligible person, who is pursuing a course not leading to a standard college degree, transfers between consecutive school terms within a school year from one approved institution to another institution, for the purpose of enrolling in, and pursuing, a similar course at the second institution, the veteran or eligible person shall, for the purpose of entitlement to the payment of the educational assistance allowance, be considered to be enrolled at the first institution during the interval if the interval does not exceed 30 days following the termination date of the school term of the first institution, but such periods shall be counted as absences for the purposes of this section. (38 U.S.C. 1780(a).)

[FR Doc. 78-32547 Filed 11-17-78; 8:45 am]

[4110-07-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

[45 CFR Part 205]

GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

Quality Control System—Incentive Adjustments in Federal Financial Participation in the Aid to Families with Dependent Children Program

AGENCY: Social Security Administration, HEW.

ACTION: Notice of proposed rulemaking.

SUMMARY: The proposed amendment provide States administering the Aid to Families with Dependent Children Program (AFDC) with a fiscal incentive for lowering their AFDC payment error rates. The incentive payments are based on States achieving a payment error rate of less than 4 percent calculated by including payments to ineligible families, overpayments to eligible families, underpayments to eligible families, and nonpayments to eligible families due to erroneous terminations or denials. For each one-half percent payment error reduction below 4 percent a State will receive an additional 10 percent of the Federal share of money saved, up to a maximum of 50 percent for States achieving error rates below 2 percent.

DATES: Your comments will be considered if we receive them no later than January 19, 1979.

ADDRESS: Send your written comments to: Social Security Administration, Department of Health, Education, and Welfare, P.O. Box 1585, Baltimore, Md. 21203.

Copies of all comments we receive can be seen at the Washington Inquiries Section, Office of Information, Social Security Administration, Department of Health, Education, and Welfare, North Building, room 5131, 330 Independence Avenue SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT:

John X. Bowes, Division of Quality Control Management, 202-245-0788. Mr. Bowes will respond to questions, but all comments must be submitted in writing.

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SUPPLEMENTARY INFORMATION:

Section 403(j) of the Social Security Act provides that incentive payments to States will be based on the dollar error rate for ineligibility, overpayments, underpayments, and incorrect denials and terminations of assistance. The current quality control system for incorrect denials and terminations of assistance does not generate a payment error rate. The review is limited to whether the reason given by the State for the action is correct. The proposed regulation provides that the error rate for incorrect denials and terminations of assistance will be converted into a payment error rate by using the average amount of payment to all cases receiving AFDC during the quality control 6-month sample period. This payment error rate will be combined with the payment error rate for cases in payment status, i.e., ineligible, overpaid, and underpaid cases, for use in determining a State's elligibility for incentive payments. To modify the current quality control system to measure directly the dollar errors resulting from incorrect denials and terminations of assistance would entail a major redesign at considerable cost and delay. The Department believes that the proposed regulation provides a reasonable method for deriving a dollar error rate for these cases without revision of the current quality control system. The proposed regulation is also consistent with the statutory requirement that incentive payments be available beginning with the January–June 1978 sample period.

(The proposed amendments are to be issued under the authority of Sections 403, 407 and 1102 of the Social Security Act, as amended; 49 Stat. 628, as amended; 75 Stat. 75, as amended; 49 Stat. 647, as amended; 42 U.S.C. 603, 607 and 1302.)

(Catalog of Federal Domestic Assistance Programs No. 13.761—Public Assistance—Maintenance Assistance (State Aid).)

Dated: August 11, 1978.

DON WORTMAN,
Acting Commissioner of Social Security.

Approved: November 4, 1978.

JOSEPH A. CALIFANO, JR.,
Secretary of Health, Education, and Welfare.

45 CFR Part 205 is amended by adding a new § 205.42 to read as follows:

§ 205.42 Incentive adjustments in Federal financial participation in the AFDC Program.

(a) Effective with the January–June 1978 quality control sampling period and for periods thereafter, a State shall receive increased Federal financial participation for reducing below 4 percent the dollar error rate of AFDC assistance provided under the State plan.

(b) The amount of increased Federal financial participation in expenditures made by the State under its plan shall be determined by the amount by which such expenditures are less than they would have been if the State's erroneous payments had been at a rate of 4 percent, and disbursement shall be as follows:

(1) 10 percent of the Federal share of such amount where the State dollar error rate is at least 3.5 percent but less than 4 percent;

(2) 20 percent of the Federal share of such amount where the State dollar error rate is at least 3 percent but less than 3.5 percent;

(3) 30 percent of the Federal share of such amount where the State dollar error rate is at least 2.5 percent but less than 3.0 percent;

(4) 40 percent of the Federal share of such amount where the State dollar error rate is at least 2 percent but less than 2.5 percent; and

(5) 50 percent of the Federal share of such amount where the State dollar error rate is less than 2 percent.

(c) For purposes of this section, the term "dollar error rate" means the total of the dollar error rates of aid to ineligible families, overpayments to eligible families, underpayments to eligible families, and nonpayments to eligible families due to erroneous terminations or denials. The dollar error rate for erroneous terminations or denials shall be derived by using the average amount of payment to all cases receiving AFDC during the quality control 6-month sample period. The term "erroneous payments" means the total of erroneous payments to ineligible families receiving assistance and overpayments to eligible families receiving assistance.

[FR Doc. 78-31939 Filed 11-17-78; 8:45 am]

[6712-01-M]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Parts 0, 5, 21, 23, 25, 73, 74, 78, 81, 87, 89, 91, 93, 94, 95, 97 and 99]

[Gen. Docket No. 78-365; FCC 78-790]

PROTECTION OF FCC MONITORING STATIONS, FROM RADIO INTERFERENCE

PREAMBLE

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: FCC proposes rules to provide strong radio signal protection for FCC Monitoring Station equipment and operations. The proposed rules are similar to, and follow, those already existing for the Department of Commerce Table Mountain Radio Receiving Site and for the National Observatory Radio Telescope operations.

DATE: Comments must be filed on or before January 22, 1979, and reply comments on or before February 21, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

William A. Luther, Field Operations Bureau, 202-632-7593.

SUPPLEMENTARY INFORMATION:

In the matter of amendments to Parts 0, 5, 21, 23, 25, 73, 74, 78, 81, 87, 89, 91, 93, 94, 95, 97, and 99 of the Commission's rules relative to the protection of FCC monitoring stations, from radio interference; Notice of Proposed Rule Making.

Adopted: November 6, 1978.

Released: November 16, 1978.

By the Commission:

1. The Federal Communications Commission and its predecessor agency have constructed, developed, operated, and maintained for more than 45 years, the only civilian radio monitoring system in the United States. The Commission has recently reorganized this system, reducing the total number of fixed monitoring sites to 13 as the minimum number required for satisfactory performance of its missions. Monitoring station assignments include enforcement of national laws, and international regulations and treaties relating to electromagnetic transmissions; solution of radio interference cases on a worldwide basis; participation in search and rescue efforts (safety of life and property) in conjunction with other agencies, organizations, and governments; conducting surveys or data gathering projects which will give results upon which to base administrative decisions; and participation in the international monitoring network in accordance with the International Telecommunication Union, Geneva Radio Regulations as well as in International Radio Consultative Committee recommendations. These missions are accomplished by means of monitoring, on demand and on a routine basis, of the radio spectrum to the extent local circumstances and propagation vagaries allow, and by means of corollary direction finding. Fixed monitoring of FCC licensed communications satellites is also being initiated as the current state-of-the-art requires.

2. Topographical and siting conditions affecting each of the 13 monitoring stations vary somewhat, as expected throughout the 12 widespread States and the U.S. Commonwealth of Puerto Rico where the monitoring stations are located. These conditions have been fully considered in accordance with existing, approved international criteria. The U.S. national monitoring station siting criteria correspond to the international standards. Of particular concern, however, is the continuing and relentless deterioration of the ambient electromagnetic environment at the 13 critical locations. The number, along with the average power output, of radio stations (transmitters) of all kinds is steadily increasing, resulting in a general trend of deterioration of receiving ability. This trend is one of the greatest threats to operational capability and performance at the monitoring stations.

3. Unwanted electromagnetic fields can create a problem for radio receiving and monitoring activities in several ways; namely:

(a) Strong fundamental signals may directly cover or obliterate co-channel, adjacent-channel, or near-channel desired signals with modulation components.

(b) Harmonic, sub-harmonic, or spurious transmitter emissions, or spurious emissions produced externally to transmitters may occur in literally every portion of the radio spectrum to interfere with reception. *Every* transmitter manufactured has harmonic or spurious radiation to some—hopefully minimum—degree. This radiation may easily exceed interference thresholds when transmitters are placed close to the monitoring stations, when transmitters are relatively powerful, or when antennas are highly directional in radiation pattern.

(c) Transmitters radiate broadband noise which can reduce effective sensitivity of receiving equipment.

(d) Strong, transmitted fundamental frequency signals may produce a phenomenon known as receiver desensitization. Tunable receivers, such as those required for monitoring purposes, are particularly susceptible to this situation which can easily occur without the monitoring observer's knowledge.

(e) Intermodulation products, yielded by solution of well known mathematical formulas, are commonly encountered when two or more transmitted signals mix under any nonlinear circumstance to create second, third, fourth, fifth, and higher order signals, any single one of which can cause disabling interference. Intermodulation products are undesired signals found at frequencies that are sums and differences of all the original contributing signal frequencies with low order integer multiples of each being likely possibilities. The number of possible products is infinite. Often occurring is interference of 2nd, 3rd, or 5th order, although higher order interference products are sometimes found. It is also not uncommon for more than two AM or FM broadcast stations in a city to be involved in such interference. As an example, 23 AM broadcast stations exist in and near Honolulu, Hawaii. Together they produce more than 8,500 second and third order frequency possibilities, not to mention higher orders. Many of those produced happen to fall on international distress and calling frequencies, as well as on safety service communicating channels. The FCC monitoring station in Hawaii is subject to a substantial number of these possibilities.

4. Notwithstanding present positive actions taken at monitoring stations to reduce susceptibility, it is a fact that some interference from radio transmitters occurs. To achieve a measure of control over this interference, the practice of examining applications for radio stations, as well as measuring actual signal strength, near FCC monitoring stations has existed for more than 25-five years. In each case where new facilities or power increases were proposed for stations which would result in *actual* adverse interference levels, appropriate corrective measures were required. In those cases where radio facilities were proposed which would result in *potential* interference, the licensee has been required to accept certain preconditions. Appropriate stipulations were placed on licenses in either event. More than eighty (80) application reviews, or case studies, have occurred to date. License or authorization conditions designed to protect FCC monitoring stations were subsequently required in approximately three-quarters of the instances. These are predominately with respect to AM broadcast stations (540 to 1600 kHz) but also include FM broadcast stations (88 to 108 MHz) as well as land mobile radio base stations operating in the land mobile frequency bands.

5. To afford the needed protection, the Commission has relied upon the procedure of the licensing Bureau sending pertinent engineering data to the Field Operations Bureau for study to determine if radiation limitations, or preconditions, are required. If so, the restrictive clause or recommended limitation language was merely incorporated into conditions typed on the station authorization. At times, this procedure was accompanied by informal discussions with the applicant or his representative, if any. As a result of self-examination and concern that applicants might not be receiving due notice, a new course of action was recently instituted for Broadcast Services whereby the applicant is advised in writing of possible or probable interference to one of the FCC monitoring stations and notified of the restrictive or protective clause language. The applicant is given several weeks to indicate objection, if any. This new procedure is still somewhat deficient in furnishing full notice to applicants who may unknowingly enter into expensive study, consultation, and preparation of an application, only to discover *later* that the proposal may be objectionable because of interference to monitoring station operation. It is believed to be in the public interest to publish our concern herein expressed, and to propose inclusion in the Rules and Regulations, as shown in the Appendix attached, criteria used in the engineering examination of radio applications, so that appropriate consideration may be given by applicants to necessary protection of the monitoring stations. It is also necessary, of course, to publish locations of the monitoring stations involved. This is done by the Appendix. Since these are relatively large Government reservations, special geographical coordinates are specified to be uniformly used for reference in distance determination and subsequent propagation calculation. Also, the U.S. Department of Commerce (NOAA) has recently agreed to include a properly located symbol for FCC Monitoring Stations in future editions of its Sectional Aeronautical Charts (Scale 1:500,000), which should aid in locating FCC facilities.

6. To establish acceptable and unacceptable levels of electromagnetic fields at monitoring stations for Commission purposes, a number of criteria were relied upon. These are:

(a) FCC Rules and Regulations, criteria for the Radio Astronomy and Radio Research Installations, such as found, for example in Section 73.1030.

(b) FCC Rules and Regulations, criteria for the U.S. Department of Commerce Table Mountain Radio Receiving Zone, such as found, for example in Section 73.1030.

(c) NAVELEX 0101,108, Naval Shore Electronics Criteria, Naval Security Group Elements, Department of the Navy.

(d) NAVELEX 010,103, HF Radio Propagation and Facility Site Selection, Naval Shore Electronics Criteria, Naval Electronics System Command, Department of the Navy.

(e) Standards for the Siting of Monitoring Stations, Chapter 2, Handbook for Monitoring Stations, International Radio Consultative Committee (C.C.I.R.).

(f) Existing levels of signals which existed when monitoring stations were established, correlated to observed interference levels.

The threshold level of 10 millivolts per meter indicated in the attached Appendix reflects the Commission's desire not to impose a blanket, un-

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yielding prohibition of radio stations near FCC monitoring stations. It is recognized that indigenous circumstances might vary, and allow installation of certain transmitter facilities under some conditions that preclude operations elsewhere under similar conditions. We believe that a *case-by-case analysis will give maximum opportunity to the applicants for radio construction,* and still allow the protection needed at the FCC monitoring stations. The threshold level shown in the proposed Rules, as well as the circumstances under which the applications are examined, are identical to that being used at the present time on a less formal basis.

7. Along with the proposed inclusion in Section 0.121(c) of reference geographical coordinates at FCC monitoring stations, the attached Appendix updates this section by deleting those stations which have been closed as a result of reorganization. The Zip Code is added for Laurel, Md., and Sabana Seca, P.R. is placed into alphabetical order in the list. The Appendix also corrects the index to Part 87 with an editorial inclusion of existing § 87.31.

8. For answers to questions concerning this Notice, you may contact

William A. Luther, Room 738, 1919 M Street NW., Washington, D.C. 20554, telephone 202-632-7593.

9. Authority for the amendments proposed in the Appendix hereto is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended.

10. Pursuant to applicable procedures set forth in § 1.415 of the Commission's Rules, interested persons may file comments on or before January 22, 1979, and reply comments on or before February 21, 1979. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision in this proceeding, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this Notice.

11. In accordance with the provisions of § 1.419 of the Rules, an original and 5 copies of all comments, briefs, and other documents shall be furnished the Commission. All fillings made in this proceeding will be made available for examination by interested parties during regular business hours in the Federal Communications Commission's Public Reference Room at its Headquarters, 1919 M Street NW., Washington, D.C.

WILLIAM J. TRICARICO,
Secretary.

1. It is proposed to amend the Commission's Rules by revising § 0.121(c) as follows:

§ 0.121 Location of field installations.

* * * * *

(c) Monitoring stations are located at the following addresses and geographical coordinates:

* * * Allegan, Mich. 49010
42°36'20" N. Latitude
85°57'20" W. Longitude
* * * Anchorage, Alaska 99502
61°09'43" N. Latitude
149°59'55" W. Longitude
* * * Belfast, Maine 04915
44°26'42" N. Latitude
69°04'58" W. Longitude
* * * Canandaigua, N.Y. (delete entire entry)
* * * Chillicothe, Ohio (delete entire entry)
* * * Douglas, Ariz. 85607
31°30'06" N. Latitude
109°39'10" W. Longitude
* * * Ferndale, Wash. 98248
48°57'21" N. Latitude
122°33'13" W. Longitude
* * * Fort Lauderdale, Fla. 33314
26°06'08" N. Latitude
80°16'42" W. Longitude
* * * Grand Island, Nebr. 68801
40°55'24" N. Latitude
98°25'59" W. Longitude
* * * Kingsville, Tex. 78363
27°26'29" N. Latitude
97°53'00" W. Longitude
* * * Laurel, Md. 20810
39°09'54" N. Latitude
76°49'17" W. Longitude
* * * Livermore, Calif. 94550
37°43'30" N. Latitude
121°45'12" W. Longitude
* * * Powder Springs, Ga. 30073
33°51'44" N. Latitude
84°43'26" W. Longitude
* * * Sabana Seca, P.R. 00749
18°27'23" N. Latitude
66°13'37" W. Longitude
* * * Waipahu, Hawaii 96797
21°22'45" N. Latitude
157°59'54" W. Longitude

2. It is further proposed to amend the Commission's Rules by inserting new §§ 5.67(d), 21113(c), 23.20(e), 25.203(h), 73.1030(c), 74.12(d), 78.19(f), 81.31(d), 87.31(h), 89.15(f), 91.8(n), 93.9(d), 94.25(l), 95.17(f), 97.41(h), and 99.11(i), each of which will read as follows:

* * * * *

Protection for Federal Commissions Commission monitoring stations:

(1) Applicants for a radio station authorization to operate in the vicinity of an FCC monitoring station are advised to give due consideration, prior to filing applications, to the need to protect the FCC stations from harmful interference. Geographical coordinates of the facilities which require protection are found Paragraph 0.121(c) of the Commission's Rules. Applications for stations (except mobile stations) which will produce on any frequency a direct wave fundamental field strength of *greater than 10 mV/m* in the authorized bandwidth of service (−65.8 dBW/m² power flux density assuming a free space characteristic impedance of 120 ● ohms) at the referenced coordinates, may be examined to determine extent of possible interference. Depending on the theoretical field strength value and existing root-sum-square or other ambient radio field signal levels at the indicated coordinates, a clause protecting the Monitoring Station may be added to the station authorization.

(2) In the event that calculated value of expected field exceeds 10 mV/m (−65.8 dBW/m²) at the reference coordinates, or if there is any question whether field strength levels might exceed the threshold value, advance consultation to discuss any protection necessary, is recommended. Prospective applicants may communicate with:

Chief, Field Operations Bureau, Federal Communications Commission, Washington, D.C. 20554, telephone 202-632-6980.

(3) Advance consultation is recommended particularly for those applicants who have no reliable data which indicates whether the field strength or power flux density figures in the above table would be exceeded by their proposed radio facilities (except mobile stations). In such instances, the following is a suggested guide for determining whether coordination is recommended:

(i) All stations within 2.4 kilometers (1.5 statute miles);

(ii) Stations within 4.8 kilometers (3 statute miles with 50 watts or more average effective radiated power (ERP) in the primary plane of polarization in the azimuthal direction of the Monitoring Station;

(iii) Stations within 16 kilometers (10 statute miles) with 1 kW or more average ERP in primary plane of polarization in the azimuthal direction of the Monitoring Station;

(iv) Stations within 80 kilometers (50 statute miles) with 25 kW or more average ERP in the primary plane of polarization in the azimuthal direction of the Monitoring Station.

(4) The Commission will not screen applications to determine whether advance consultation has taken place. However, applicants are advised that such consultation can avoid objections from the Federal Communications Commission or modification of any authorization which will cause harmful interference.

3. The Contents to Part 87 of the rules is also corrected to include the presently omitted § 87.31, application for ground station authorization.

[FR Doc. 78-32523 Filed 11-17-78; 8:45 am]

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[6712-01-M]

[47 CFR Part 73]

[BC Docket No. 78-366; RM-3152]

FM BROADCAST STATION IN DUBACH, LA.

Proposed Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: Action taken herein proposes the assignment of a class A FM channel to Dubach, La. The proposed channel would provide for a station which could render a first full-time local aural broadcast service to the community. This action is taken pursuant to a petition filed by Joseph P. Robillard.

DATES: Comments must be received on or before January 8, 1979, and reply comments must be received on or before January 29, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Mildred B. Nesterak, Broadcast Bureau, 202-632-7792).

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations, (Dubach, La.). Notice of proposed rulemaking.

Adopted: November 7, 1978.

Released: November 13, 1978.

By the Chief, Broadcast Bureau:

1. *Petitioner, proposal, comments:*

(a) A petition for rulemaking[1] was filed June 7, 1978, by Joseph P. Robillard ("petitioner"), requesting the assignment of Channel 249A to Dubach, La., as that community's first FM assignment. No responses to the proposal were received.

(b) The channel could be assigned in compliance with the minimum distance separation requirements, provided the transmitter is located 5 kilometers (3 miles) south of Dubach.

2. *Community data:*

(a) *Location:* Dubach, in Lincoln Parish, is located approximately 19 kilometers (12 miles) north of Ruston, La.

(b) *Population:* Dubach—1,096; Lincoln Parish—33,800.[2]

[1] Public Notice of the petition was given on July 18, 1978, Report No. 1134.

[2] Population figures are taken from the 1970 U.S. Census.

(c) *Local aural broadcast service:* There is no local aural broadcast service in Dubach.

3. *Economic data:* Petitioner claims that the population of Lincoln Parish has increased to 36,535 in 1976.[3] Petitioner states that Dubach's main industry is a gasoline refinery that has an annual payroll exceeding $500,000. He notes that four other refineries are located around Dubach. Petitioner also has submitted detailed information with respect to population, education, civic organizations, transportation and recreation in an effort to demonstrate the need for an FM assignment.

4. In view of the fact that the proposed FM channel could provide the community with a first local aural broadcast service, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Rules, with regard to Dubach, La., as follows:

City	Channel No.	
	Present	Proposed
Dubach, La.	—	249A

5. Authority to institue rule making proceedings, showings required, cut-off procedures, and filing requirements are set forth below and are incorporated by reference herein.

NOTE:—A showing of continuing interest is required by paragraph 2 below before a channel will be assigned.

6. Interested parties may file comments on or before January 8, 1979, and reply comments on or before January 29, 1979.

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

1. Pursuant to authority found in section 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rulemaking to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rulemaking to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The Proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rulemaking which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rulemaking to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b), and (c) of the Commission Rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

[FR Doc. 78-32552 Filed 11-17-78; 8:45 am]

[3] Petitioner asserts that this figure does not include the student population of Louisiana Technical University or Grambling State University but in fact the Census figures do include the resident student population.

V 4 3 1 2 2 4

[6712-01-M]

[47 CFR Part 73]

[BC Docket No. 78-367; RM-3162]

FM BROADCAST STATION IN CLINTON, LA.

Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: As a result of a petition filed by Feliciana Broadcasting Corp., action taken herein proposes the assignment of FM Channel 224A to Clinton, La.; as that community's first FM assignment. The proposed assignment could provide for a first local aural broadcast service to Clinton.

DATES: Comments must be received on or before January 8, 1979; reply comments must be received on or before January 29, 1979.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Mildred B. Nesterak, Broadcast Bureau, 202-632-7792.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), Table of Assignments, FM broadcast stations (Clinton, La.); notice of proposed rulemaking.

Adopted: November 7, 1978.

Released: November 16, 1978.

By the Chief, Broadcast Bureau:

1. *Petitioner, proposal, comments:*

(a) A petition for rulemaking was filed June 7, 1978, by Feliciana Broadcasting Corp. ("petitioner"), requesting the assignment of FM Channel 224A to Clinton, La., as that community's first FM assignment. [1] No responses to the proposal were received.

(b) The channel could be assigned in conformity with the minimum distance separation requirements, provided the transmitter site is located approximately 10 kilometers (6 miles) north of Clinton.

(c) Petitioner states that it will promptly file an application for the channel, if assigned.

2. *Community data:*

(a) *Location:* Clinton, seat of East Feliciana Parish, is located approximately 48 kilometers (30 miles) north of Baton Rouge, La.

(b) *Population:* Clinton—1,884; East Feliciana Parish—17,657. [2]

(c) *Local arual broadcast service:* Clinton has no local aural broadcast service.

[1] Public Notice of the petition was given on August 2, 1978, Report No. 1135.

[2] Population figures are taken from the 1970 U.S. Census.

3. *Economic data:* Petitioner states that the chief industry of the area adjacent to Clinton has been agriculture. However, it adds, this pattern has gradually changed and the parish now has a significant number of people employed in public hospitals and institutions. It notes that residential housing developing and sales of rural homesites have been moving at an unprecedented rate within the past five years and stands as evidence of the continued and expanded population shift to this area. Petitioner also has submitted information with respect to the form of government, education, churches, and civic organizations in order to demonstrate the need for an FM assignment.

4. Petitioner states that not only does Clinton lack a station but there also is no local aural broadcast service in Amite County, Miss., to the north, St. Helen Parish to the east, and West Feliciana Parish to the west. Portions of these surrounding areas would be within the service contour of a station operating on the proposed channel. Petitioner notes that its Parish (East Feliciana) is served only by a weekly newspaper.

5. In light of the above information and the fact that the proposed FM channel would provide for a first local aural broadcast service to Clinton, La., the Commission believes it appropriate to propose amending the FM Table of Assignments, § 73.202(b) of the rules, with regard to Clinton, La., as follows:

City	Channel No.	
	Present	Proposed
Clinton, La.	—	224A

6. Authority to institute rulemaking proceedings, showings required, cutoff procedures, and filing requirements are contained below and are incorporated by reference herein.

NOTE: A showing of continuing interest is required by paragraph 2 below before a channel will be assigned.

7. Interested parties may file comments on or before January 8, 1979, and reply comments on or before January 29, 1979.

FEDERAL COMMUNICATIONS COMMISSION.
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

APPENDIX

1. Pursuant to authority found in section 4(i), 5(d)(1), 303(g), and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposal Rulemaking* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rulemaking to which appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comment even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rulemaking which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rulemaking* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission Rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

[FR Doc. 78-32520 Filed 11-17-78; 8:45 am]

[6712-01-M]

[47 CFR Part 73]

[BC Docket No. 78-368; RM-3155]

FM BROADCAST STATION IN ROMA-LOS SAENZ, TEX.

Proposed Changes in Table of Assignments

AGENCY: Federal Communciations Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Action taken herein proposes the assignment of FM Channel 285A to Roma-Los Saenz, Tex. A station operating on this channel could bring a first local aural broadcast service to the community. This action was initiated by a petition filed by Tele View, Inc.

DATES: Comments must be filed on or before January 9, 1979 and reply comments must be filed on or before January 29, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Mildred B. Nesterak, Broadcast Bureau, 202-632-7792.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), Table of Assignments, FM broadcast stations (Roma-Los Saenz, Tex.); Notice of Proposed Rule Making.

Adopted: November 7, 1978.

Released: November 16, 1978.

By the Chief, Broadcast Bureau:

1. The Commission has before it for consideration a petition for rule making [1], filed by Tele View, Inc. ("petitioner"), requesting the deletion of FM Channel 249A from Rio Grande City, Tex., and its assignment to Roma-Los Saenz, Tex. No responses to the proposal have been received.

2. Roma-Los Saenz (pop. 2,154) in Starr County (pop.17,707) [2], is located on the Rio Grande River, approximately 129 kilometers (80 miles) south of Laredo, Tex. Roma-Los Saenz presently has no local aural broadcast service. Since channel 285A can be assigned to this community in conformity with the distance separation requirements without the need to delete the assignment at Rio Grande City, we shall pursue that approach rather than the one suggested in the petition.

3. Petitioner claims that the population of Roma-Los Saenz is growing rapidly due to the legal immigration of Mexican nationals into the community. It states that the economic activities in the community are retail sales, public employment, especially in the school system, and agriculture and farm labor. Petitioner notes that the city's sales tax collections for the past 3 years have been approximately $50,000 per year. It asserts that there are no AM, FM or television stations in Starr County and the closest broadcast station to Roma-Los Saenz (daytime-only AM Station KIRT) is located some 71 kilometers (44 miles) away at Mission, Tex. Petitioner states that it will apply for the channel, if assigned.

4. We believe it appropriate to consider making an assignment to bring a first local service to the community, and to that end are proposing to amend § 73.202(b) of the Commission's rules, the FM Table of Assignments, as follows:

City	Channel No.	
	Present	Proposed
Roma-Los Saenz, Tex.		285A

5. Since Roma-Los Saenz is located within 320 kilometers (199 miles) of the United States-Mexican border, the proposed assignment of channel 285A to that community is subject to concurrence by the Mexican Government.

6. The Commission's authority to institute rulemaking proceedings, showings required, cutoff procedures, and filing requirements are set forth below and are incorporated by reference herein. NOTE.—A showing of continuing interest is required by paragraph 2 below before a channel will be assigned.

7. Interested parties may file comments on or before January 9, 1979, and reply comments on or before January 29, 1979.

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

APPENDIX

1. Pursuant to authority found in section 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rulemaking to which this appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rulemaking to which this appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cutoff procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and public notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rulemaking to which this appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

[FR Doc. 78-32519 Filed 11-17-78; 8:45 am]

[1] Public notice of the petition was given on July 18, 1978, Report No. 1134.

[2] Population figures are taken from the 1970 U.S. Census.

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notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

[3410-11-M]

DEPARTMENT OF AGRICULTURE

Forest Service

OCALA NATIONAL FOREST, MARION, LAKE, AND PUTNAM COUNTIES

Timber Management Plan and Environmental Statement; Alternative D

Alternative D as presented in the Ocala Timber Management Plan and Final Environmental Statements is selected for implementation. Implementation to begin 30 days after the filing with the Environmental Protection Agency, and upon notification of this action with those interested individuals, organizations and agencies. Implementation is estimated to begin on or after December 20, 1978.

The selection of Alternative D is based on the analysis provided in the Final Environmental Statement. This alternative provides sound technical direction for management of the timber resource and contains mitigating measures necessary to maintain a high level of production in the other natural resources of the Ocala National Forest.

Another alternative examined an accelerated harvesting of all timber at a pathological rotation age, is unacceptable becuase of the potential undesirable impacts on the other natural resources of the forest. In the implementation of the plan some acreage will be maintained at less than full stocking of timber in order to protect and maintain other resource values.

Dated: November 9, 1978, Atlanta, Ga.

LAWRENCE M. WHITFIELD,
Regional Forester.

[FR Doc. 78-32540 Filed 11-17-78; 8:45 am]

[6320-01-M]

CIVIL AERONAUTICS BOARD

[Docket 33381; Order 78-11-47]

AIR WISCONSIN, INC.

Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 14th day of November 1978.

On September 8, 1978, Air Wisconsin filed an application for an amendment of its certificate of public convenience and necessity for Route 186. The amendment requested would authorize it to add Grand Island, Nebr., as a terminal point, and Toledo, Ohio, as an intermediate point.[1]

On September 18, 1978, it filed a petition for an order to show cause why we should not grant the requested authority.

Air Wisconsin has begun to operate two daily round-trip flights between Minneapolis-St. Paul and Grand Island, via Lincoln, Nebr.,[2] and it plans to increase that service to three daily round trips. These flights provide Grand Island with its only single-plane single-carrier service to Minneapolis-St. Paul. It also intends to provide transportation between Toledo and Detroit, and between Toledo and Chicago, with four daily nonstop flights from Detroit to Toledo, three daily nonstop flights from Toledo to Chicago, and four daily nonstop flights from Chicago to Toledo.[3] It asserts that its proposed service will benefit the traveling public by increasing the frequency and convenience of flights between the cities, filling gaps in the service provided by incumbent carriers, and improving connecting possibilities to beyond-market points. It requests that the authority be permissive and subsidy-ineligible.

No answers in opposition have been filed. A statement in support was filed on September 18, 1978, by the city of Toledo, the Toledo Area Chamber of Commerce, and the Toledo-Lucas County Port Authority. A supporting statement was also filed by the city of Lincoln, Nebr., on October 6, 1978.

We tentatively conclude, on the basis of the tentative findings below, that the grant of Air Wisconsin's applicaton is consistent with the public convenience and necessity. We further tentatively conclude that it should be accomplished by show-cause procedures. There is no opposition to the carrier's requests and there do not appear to be any material, determinative issues of fact which require an oral evidentiary hearing for their resolution.

The recently enacted Airline Deregulation Act of 1978 creates a rebuttable presumption that requested route authority is consistent with the public convenience and necessity. The burden is on the opponents of an application to prove by a preponderance of the evidence that the proposed service would be inconsistent with the standard.[4]

We will give interested persons 30 days following the date of service of this order to show cause why these tentative findings should not be made final. We will allow 10 days thereafter for answers to objections. We expect that the objections will be supported by detailed economic or legal arguments. If an oral evidentiary hearing complete with opportunty for cross-examination is requested, the objector should state, in detail, why such a hearing is necessary and what relevant and material facts he would expect to establish through such a hearing that could not be established in written pleadings. We will not entertain general, vague or unsupported objections.

Accordingly,

1. We direct all interested persons to show cause why we should not issue an order making final the tentative findings and conclusions stated here, and amending Air Wisconsin's certificate for Route 186 to authorize the addition of Grand Island, Nebr., as a terminal point, and Toledo, Ohio, as an intermediate point;

2. Any interested person having objections to the issuance of an order making final the proposed findings, conclusions and certificate amendments set forth here shall no later than December 14, 1978, file with us and serve upon all persons listed in paragraph 5 a statement of objections

[1] Air Wisconsin's certificate was issued by Order 78-8-196, August 31, 1978. Before certification, while still a Part 298 carrier, it decided to inaugurate service to the points at issue in this proceeding. Inauguration of service was scheduled for September 1, 1978, at Grand Island, and for October 29, 1978 at Toledo. To obviate the necessity of postponing service, we granted it an emergency exemption by Order 78-9-121, September 28, 1978.

[2] Service is by Swearingen Metroliner aircraft with a 19-passenger seating configuration.

[3] We tentatively find that applicant is fit, willing, and able to provide the proposed services, and that our action would not be a major federal action significantly affecting the environment within the meaning of section 102(C) of the National Environmental Policy Act of 1969. Projected fuel commitment would be 255,249 gallons per year, less than the 10 million gallons per year increase which defines a "major regulatory action." 14 CFR subsection 313.4(a)(1).

[4] Federal Aviation Act of 1958, section 401(d)(9) (B) and (C), as amended by the Airline Deregulation Act of 1978, section 14 (Pub. L. 95-504, section 14).

together with a summary of testimony, statistical data, and evidence expected to be relied upon to support its objections; answers to objections shall be filed no later than December 26, 1978.

3. If timely and properly supported objections are filed, we will accord full consideration to the matters or issues raised before taking further action;

4. In the event no objections are filed to any part of this order, we will deem all further procedural steps relating to such part or parts to have been waived, and we will take no further action; and

5. We will serve a copy of this order upon all persons named in the service list of Docket 33381.

We will publish this order in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[5]

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-32579 Filed 11-17-78; 8:45 am]

[6320-01-M]

[Docket 32711]

DALLAS/FORT WORTH-FLORIDA SERVICE INVESTIGATION

Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on December 19, 1978, at 10 a.m. (local time), in Room 1003, Hearing Room D, Universal North Building, 1875 Connecticut Avenue NW., Washington, D.C., before the undersigned Administrative Law Judge.

In order to facilitate the conduct of the conference, parties are instructed to submit one copy to each party and four copies to the judge of (1) proposed statements of issues, (2) proposed stipulations, (3) proposed requests for information and evidence, and (4) time required by each party to comply with requests for information and evidence addressed to it. The Bureau of Pricing and Domestic Aviation will circulate its material on or before December 1, 1978, and the other parties on or before December 8, 1978.

Dated at Washington, D.C., November 14, 1978.

KATHERINE A. KENT,
Administrative Law Judge.

[FR Doc. 78-32577 Filed 11-17-78; 8:45 am]

[5] All members concurred.

[6320-01-M]

[Order 78-11-46; Dockets 32711 and 32950]

DALLAS/FORT WORTH-FLORIDA SERVICE INVESTIGATION

Order Dismissing Application

Issued under delegated authority, November 14, 1978.

The motion of Piedmont Aviation, Inc., to consolidate its application in Docket 32950 into the investigation in Docket 32711 was granted by Order 78-7-68, dated July 18, 1978. By letter filed in the Docket section on August 22, 1978, Piedmont withdrew its application. The application will therefore be dismissed.

Accordingly, pursuant to authority delegated by the Board to the Chief Administrative Law Judge in its Regulations, 14 CFR 385.10(b),

It is ordered, That:

1. The application of Piedmont Aviation, Inc., in Docket 32950, previously consolidated into Docket 32711, is dismissed.

2. Piedmont Aviation, Inc., is dismissed as a party to Docket 32711.

Persons entitled to petition the Board for review of this order pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within 10 days after the service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period unless before that date a petition for review thereof is filed, or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-32578 Filed 11-17-78; 8:45 am]

[6320-001-M]

[Docket 32126]

TWIN CITIES-KANSAS CITY-OKLAHOMA-TEXAS ROUTE PROCEEDING

Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding will be held on December 19, 1978, at 10 a.m. (local time), Hearing Room C, Universal North Building, 1875 Connecticut Avenue NW., Washington, D.C. 20428, before the undersigned. (42 FR 52273, Nov. 9, 1978.)

For information concerning the issues involved and other details in this proceeding, interested persons, are referred to the prehearing conference report served on April 18, 1978, and other documents which are in the docket of this proceeding on file in the Docket Section of the Civil Aeronautics Board.

Dated at Washington, D.C., November 13, 1978.

ALEXANDER N. ARGERAKIS,
Administrative Law Judge.

[FR Doc. 78-32576 Filed 11-17-78; 8:45 am]

[6335-01-M]

COMMISSION ON CIVIL RIGHTS

CALIFORNIA ADVISORY COMMITTEE

Rescheduled Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the California Advisory Committee (SAC) of the Commission originally scheduled for November 17, 1978 and November 18, (FR Doc. 78-30104) on page 49826 has been changed.

The meeting now will be November 18, 1978; 12 noon to 5 p.m. and November 19, 1978; 10 a.m. to 1 p.m.

The meeting place will remain the same.

Dated at Washington, D.C., November 13, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-32983 Filed 11-17-78; 8:45 am]

[6335-01-M]

HAWAII ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Hawaii Advisory Committee (SAC) of the Commission will convene at 7:30 p.m. and will end at 10 p.m. on December 8, 1978, The Pagoda Hotel, 1525 Rycroft Street, Honolulu, Hawaii 96814.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Western Regional Office of the Commission, 312 North Spring Street, Room 1015, Los Angeles, Calif. 90012.

The purpose of this meeting is to discuss program planning and determine program priorities for statewide activities.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

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Dated at Washington, D.C., November 13, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-32484 Filed 11-17-78; 8:45 am]

[6335-01-M]

MARYLAND ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Maryland Advisory Committee (SAC) of the Commission will convene at 10 a.m. and will end at 4 p.m. on December 9, 1978, Baltimore-Washington Airport Terminal, State Aviation Administration.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Mid-Atlantic Regional Office of the Commission, 2120 L Street NW., Room 510, Washington, D.C. 20037.

The purpose of this meeting is to discuss the study of police misconduct in Baltimore and report of the outcome of the Regional Planning Conference.

Dated at Washington, D.C., November 13, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-32485 Filed 11-17-78; 8:45 am]

[6335-01-M]

MICHIGAN ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Michigan Advisory Committee (SAC) of the Commission will convene at 10 a.m. and will end at 4 p.m. on December 7, 1978, 163 Madison Street, Detroit, Mich. 48226.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Mid-western Regional Office of the Commission, 230 South Dearborn Street, 32nd Floor, Chicago, Ill. 60604.

The purpose of this meeting is to discuss a proposal for Housing Project.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., November 13, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-32486 Filed 11-17-78; 8:45 am]

[6335-01-M]

MONTANA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Montana Advisory Committee (SAC) of the Commission will convene at 9:30 a.m. and will end at 1 p.m. on December 2, 1978, Rocky Mountain College, The Fortin Center.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Rocky Mountain Regional Office of the Commission, Executive Tower Inn, Suite 1700, 1405 Curtis Street, Denver, Colo. 80202.

The purpose of this meeting is to develop future SAC projects for period 1979 and 1980.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., November 13, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-32487 Filed 11-17-78; 8:45 am]

[6335-01-M]

OREGON ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a Planning and Conference meeting of the Oregon Advisory Committee (SAC) of the Commission will convene at 3 p.m. and will end at 8 p.m. on December 8 and 9, 1978, Sheraton Motor Inn, 1000 N.E. Multnomah Street, Portland, Oreg. 97232.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Northwestern Regional Office of the Commission, 915 Second Avenue, Room 2852, Seattle, Wash. 98174.

The purpose of this meeting is to discuss program planning for fiscal year 1979, 1980 and 1981.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., November 13, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-32488 Filed 11-17-78; 8:45 am]

[6335-01-M]

REGIONAL ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the Rules and Regulations of the U.S. Commission on Civil Rights, that a Regional SAC Conference of the Arizona, California, Hawaii and Nevada Advisory Committees (SACs) of the Commission will convene at 10 a.m. to 4 p.m. on December 9, 1978 and will reconvene at 10 a.m. to 1 p.m. on December 10, 1978, The Pagoda Hotel, 1525 Rycroft Street, Honolulu, Hawaii 96814.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Western Regional Office of the Commission, 312 North Spring Street, Room 1015, Los Angeles, Calif. 90012.

This meeting is to discuss program planning and prioritize activities for fiscal year 1981.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., November 13, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-32482 Filed 11-17-78; 8:45 am]

[6335-01-M]

SOUTH CAROLINA ADVISORY COMMITTEE

Amendment

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the South Carolina Advisory Committee (SAC) of the Commission originally scheduled for December 8, 1978 (FR Doc. 78-31366) on page 51825 has been changed to January 4, 1979.

The meeting place and time will remain the same.

Dated at Washington, D.C., November 13, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-32489 Filed 11-17-78; 8:45 am]

[6335-01-M]

VERMONT ADVISORY COMMITTEE

Amendment

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Vermont Advisory Committee (SAC) of the Commission originally scheduled for November 29, 1978 (FR Doc. 78-31368) on page 51825 has been changed to November 28, 1978.

The meeting place and time will remain the same.

Dated at Washington, D.C., November 13, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-32490 Filed 11-17-78; 8:45 am]

[6315-01-M]

COMMUNITY SERVICES ADMINISTRATION

EMERGENCY ENERGY ASSISTANCE PROGRAM (EXTENDED)

Reopening of EEAP and Availability of Funds

Notice is hereby given to the public that the Community Services Administration has been required by Court Order (*Greig* v. *Olivarez*) to reopen the Emergency Energy Assistance Program (EEAP) and make available the remaining funds to eligible recipients not served in the program. This Notice applies only to the Emergency Energy Assistance Program funded with fiscal year 1978 moneys.

This Notice sets forth the guidelines and requirements to comply with the Court Order and implement EEAP (Extended). This Notice is being issued and made effective upon publication in order to comply with and pursuant to the requirements of the Court Order.

1. DEFINITIONS

(a) Obligation is the grant of CSA to the grantee and occurs with the Regional Director's signature and mailing of the Form 314.

(b) Commitment is approval by the grantee of an individual's application for assistance. The individual's application should be signed and dated; the countersignature of an authorized grantee official indicating approval should also be dated. Approvals dated after March 15, 1979, may not be charged to CSA grant funds under the EEAP (Extended) program.

(c) Expenditure is actual payment by the grantee of commitments made on or before March 15, 1979. "Expended" is the same as "disbursed" and "liquidated."

2. POLICY

This one-time funded Emergency Energy Assistance Program (Extended) is not intended to be an income transfer program; nor does it entitle any person or household to a certain amount and/or form of assistance. Rather, the primary intent of this program is to make available to CSA-funded grantees additional funds which will enable them to respond to the crisis situations which occurred during the period January 1, 1978 through June 30, 1978.

Grantees will assure that potentially eligible beneficiaries receive timely notification of the program and are provided ample opportunity for full participation.

The areas and grantees served will be those declared last winter to have an energy-related emergency between January 1, 1978 and May 1, 1978. Individuals and households having previously received benefits under EEAP are not eligible for additional benefits under this Notice.

3. ORGANIZATIONS ELIGIBLE FOR FUNDING UNDER THIS PROGRAM

CSA will fund grantees only in those areas in which the Director of CSA declared under the initial EEAP program that an Energy Related Emergency existed in 1978. Subject to a review by the CSA Regional Director of past performance in crisis intervention programing, grants will be made to the same organizations which served that area under EEAP. If an organization cannot carry out this supplemental program, the CSA Regional Director may identify another agency to operate the program.

Grantees again may enter into delegate agency agreements with other agencies to carry out part or all of the work program.

Funds under this program will be assigned Program Account (80). They also will be governed by the provisions of § 1061.30-1 through § 1061.30-14 (CSA Instruction 6143-1a) and any changes thereto, which governed the activities carried out under the regular Crisis Intervention Program Account (22), to the extent that they do not conflict with this Notice.

4. WHO CAN BE SERVED

a. *Income eligibility.* Only individuals and households not previously served by EEAP may be considered for this program;

Individuals of age 60 and above, whose income for any 90-day period between January 1, 1978 and June 30, 1978 was between 125 percent and 150 percent of the CSA poverty guidelines and/or elderly individuals and couples (age 60 and over) who receive Supplementary Security Income (SSI). (See A Appendix A for income chart);

Individuals and households whose income for any 90-day period between January 1, 1978 and June 30, 1978 was no higher than 125 percent of the CSA poverty guidelines. (See Appendix A for income chart).

b. *Program eligibility.* If a person meets income eligibility guidelines, program eligibility must be determined. An emergency energy need must have existed during the 1977-78 winter, the person must have lacked fiscal resources to meet this need, and the lack of these resources must have resulted in serious hardship.

In order to demonstrate program eligibility, applicants must provide copies or evidence of utility/fuel bills, paid or unpaid, which were due during the period Januay 1, 1978 through June 30, 1978. The applicant must also be asked to provide proof that these bills (or the payment of them) created for the applicant an emergency need which the person or household did not have the resources to meet. When such proof is not available a self-declaration that such an emergency need existed, when accompanied by the copies or evidence of bills (paid or unpaid), will be sufficient demonstration of program eligibility. In those cases where the applicants cannot supply copies or evidence of utility/fuel bills (paid or unpaid) from the period January 1, 1978 through June 30, 1978 local program operators may accept current fuel/utility bills (paid or unpaid) for purposes of identifying an applicant's utility/fuel vendor and as evidence of the vendor-vendee relationship; but in such cases applicants must sign an affidavit that they did in fact incur energy bills during the period Januray 1, 1978—June 30, 1978 which caused them serious hardship.

c. *Income disregard.* No payment made under this program shall be considered income for the purpose of determining eligibility for or level of benefits under any income transfer program including, but not limited to, public assistance, veterans benefits, food stamps, Supplemental Security Income, or any other CSA program.

5. WHAT THESE FUNDS CAN BE USED FOR

Grantees shall not exclude any energy-related utility or fuel expense from coverage under this program. Fuel and utility bills eligible for payment shall include, but not be limited to those for operating cooking stoves, lights, water, furnaces, space heaters, wood-burning stoves, and refrigerators. However, telephone bills are not eligible for payment.

Funds also shall be used to cover such items as blankets and warm clothing, temporary space heaters,

emergency furnace repairs, firewood, fuel oil delivery, temporary shelter, nutrition, health and other supportive services, replacement of broken window panes, and temporary/emergency repairs to housing otherwise unfit for habitation.

Funds under this program shall be made available for the payment of credits toward future delivery of fuel and/or utility bills. This means that the assistance provided to eligible applicants may include the payment of current fuel/utility bills and the establishment of escrow accounts with fuel/utility vendors, as well as other types of assistance described above.

Cash assistance will be limited to voucher payments and payments made directly to suppliers of fuel or other assistance.

6. LENGTH OF PROGRAM

Grantees shall not accept applications for assistance after March 15, 1979.

7. MAINTENANCE OF EFFORT

Services provided with funds made available under EEAP (Extended) shall be in addition to and not in substitution for services previously provided without Economic Opportunity Act assistance.

8. DISTRIBUTION OF FUNDS TO GRANTEES

Applications will not be required from previous grantees. Work programs of the previous EEAP program will remain in effect, unless the grantee requests changes.

In the event a previous grantee cannot conduct the program, the Regional Office can identify another grantee to cover the same area. In such cases a work program will be required within 21 days of the effective date of the grant.

Regional Offices will allocate funds to grantees in those areas designated in 1978 as emergency areas.

CSA Form 314 will be prepared immediately in the allocated amount.

Regional Directors are delegated final sign off authority for this program.

Since a waiver of the clearinghouse review procedures required under OMB Circular A-95 was granted for EEAP, the A-95 process does not apply to this extended program. New grantees, however, are requested to submit an informaton copy of their application to the appropriate clearinghouse(s).

9. POST-FUNDING REQUIREMENTS

PROJECT ACCOMPLISHMENT REPORT

Grantees must submit to the appropriate Regional Office a report stating the amount of funds the grantee has committed through January 31, 1979, and the number of eligible households involved. This report is due February 7, 1979.

FINANCIAL REPORTING

Grantees must submit a separate SF 269, Financial Status Report covering activities for this program only. Reports are due June 15, 1979. Grantees shall follow normal procedures for submission of the SF 269, i.e., one copy to the appropriate CSA Regional Office and one copy to Grants Accounting Branch, Finance and Grants Management Division, CSA Headquarters, 1200 19th Street NW., Washington, D.C. 20506.

PROJECT PROGRESS REVIEW REPORTS

Grantees are required to submit a separate project Progress Review Report, CSA Form 440, covering all activities under this program to the appropriate CSA Regional Office with a copy forwarded to CSA Headquarters, Attention: Energy Program. The report is due July 15, 1979. The following activities completed during the program period are to be addressed in section 1A of the Form 440.

1. Total number of households which were assisted under all of the eligible activities of this program. This should be nonduplicative count, and of this number;

a. Number of elderly individuals assisted whose income is between 125 percent and 150 percent of CSA poverty guidelines;

b. Number of elderly individuals assisted whose income is 125 percent or less;

c. Total number of households whose utility/fuel bills were paid and/or received future credits for utility/fuel bills and total amount obligated for this purpose;

d. Total number of households which received other forms of emergency energy assistance under this program and total amount obligated for this purpose.

2. Total number of individuals residing in households served as accounted for in 1 above.

3. Number of reviews of denial of assistance requested and the results thereof.

AUDITS

Grantees will not be required to have a separate audit of this program. The program will be audited at the time of the grantee's regularly scheduled audit.

Five copies of the audit shall be submitted by the auditor to the appropriate CSA Regional Auditor concurrent with submission to the grantee.

10. APPEAL FROM DENIAL OF ASSISTANCE

Each EEAP (Extended) local program operator shall establish and make known to all applicants procedures for review of the denial of EEAP assistance under this program to any household or person, which shall include at a minimum:

1. Written application forms.

2. Notification in writing of the reasons for denial of assistance, the opportunity to submit additional written information which the applicant believes would warrant favorable determination of eligibility.

3. Provision for review of a denial of an application for assistance by the program operator's executive officer, or his/her designee and an opportunity for provision of any additional information by the applicant.

4. Notice in writing of the program operator's final decision on review.

A written description of these review procedures shall be maintained on file by the program operator and available for public inspection.

11. ALLOCATION OF FUNDS

CSA Headquarters will distribute available funds among the States where there was a declared energy-related emergency last winter pursuant to a formula based on: (a) the number of elderly whose income is below 150 percent of the poverty guidelines; (b) the number of persons below 125 percent of the poverty guidelines; and (c) on the severity of the 1977-78 winter weather as measured by heating degree days in each State and area in which EEAP assistance was provided prior to May 20, 1978.

12. LIMITATION OF PROJECT EXPENDITURES

LIMITATION PAYMENTS TO ANY ELIGIBLE PERSON OR HOUSEHOLD

The sum of all forms of assistance made to and/or on behalf of any eligible person or household under this program may not exceed $250.

OBLIGATION TIME-FRAME

(1) Program commitments by grantees may be made only during the grant period as set forth on the statement of CSA grant. Grantee commitments made before or after these dates shall be disallowed. Funds committed by grantees but not disbursed at the end of the grant period shall be liquidated (paid out) by June 15, 1979.

(2) Funds which are not committed by the grantee by March 15, 1979, under this grant shall be returned to CSA for refund to the U.S. Treasury.

OVEREXPENDITURES

If the grantee incurs expenditures in excess of the total amount of the approved grant, the amount of the overexpenditure must be absorbed by the grantee.

PROHIBITION AGAINST TRANSFER TO ANOTHER GRANT

Funds remaining uncommitted to individuals by the grantee cannot be transferred by the grantee to another grant. The amount of free or uncommitted cash balance remaining with the grantee and its delegate agencies at the end of the program shall be accounted for in the required financial report. If savings occur in the liquidation of commitments outstanding at the end of the program, these become part of the balance to be returned to CSA.

13. ADMINISTRATIVE COSTS

Combined personnel and administrative costs may not exceed fifteen percent (15 percent) of these EEAP (Extended) grant funds.

14. NON-FEDERAL SHARE REQUIREMENT

The non-Federal share requirement for the Emergency Energy Assistance Program (EEAP) under Program Account (80) is waived.

GRACIELA (GRACE) OLIVAREZ,
Director.

COMMUNITY SERVICES ADMINISTRATION

CSA PROVERTY INCOME GUIDELINES FOR ALL STATES EXCEPT ALASKA AND HAWAII

	Non-farm family		Farm family	
	125 pct	150 pct	125 pct	150 pct
Size of family unit:				
1	$3,925	$4,710	$3,363	$4,035
2	5,200	6,240	4,438	5,325
3	6,475	7,770	5,513	6,615
4	7,750	9,300	6,588	7,905
5	9,025	10,830	7,663	9,195
6	10,300	12,360	8,738	10,485

125 pct=For family units with more than 6 members, add $1,275 for each additional member in a nonfarm family and $1,075 for each additional member in a farm family.

150 pct=For family units with more than 6 members, add $1,530 for each additional member in a nonfarm family and $1,290 for each additional member in a farm family.

CSA POVERTY GUIDELINES FOR ALASKA

	Non-farm family		Farm family	
	125 pct	150 pct	125 pct	150 pct
Size of family unit:				
1	$4,925	$5,910	$4,225	$5,070
2	6,513	7,815	5,563	6,675
3	8,100	9,720	6,900	8,280
4	9,687	11,625	8,238	9,885
5	11,275	13,530	9,575	11,490
6	12,863	15,435	10,913	13,095

125 pct=For family units with more than 6 members, add $1,588 for each additional member in a nonfarm family and $1,338 for each additional member in a farm family.

150 pct=For family units with more than 6 members, add $1,905 for each additional member in a nonfarm family and $1,605 for each additional member in a farm family.

CSA POVERTY GUIDELINES FOR HAWAII

	Non-farm family		Farm family	
	125 pct	150 pct	125 pct	150 pct
Size of family unit:				
1	$4,525	$5,430	$3,913	$4,695
2	5,987	7,185	5,138	6,165
3	7,450	8,940	6,363	7,635
4	8,913	10,695	7,588	9,105
5	10,375	12,450	8,813	10,575
6	11,838	14,205	10,038	12,045

125 pct=For family units with more than 6 members, add $1,463 for each additional member in a nonfarm family and $1,225 for each additional member in a farm family.

150 pct=For family units with more than 6 members, add $1,755 for each additional member in a nonfarm family and $1,470 for each additional member in a farm family.

NOTIFICATION OF DENIAL OF ASSISTANCE FORM (SAMPLE)

DEAR APPLICANT: Your application for the Emergency Energy Assistance Program (EEAP) (Extended) has been denied for the following reason(s):

[ ] You did not meet the income eligibility requirements between January 1, 1978 and June 30, 1978.

[ ] You previously received assistance under EEAP and are therefore not eligibile for additional benefits.

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[ ] You have provided insufficient evidence that an emergency energy need resulting in serious hardship during the 1977-78 winter.
[ ] The assistance you have requested is not an emergency energy need covered by this program.
[ ]_____

_____

_____

If you do not agree with the reason(s) for denial set forth above, you may submit additional information which you believe will warrant a favorable determination of eligibility.

With or without additional information you shall have the opportunity to appeal the denial of assistance to [the program operator's chief executive officer or his/her designee [1]. You may submit additional information to [the reviewer of your application [1].

After review of the denial of your application, you will receive a notice in writing of the final decision.

[FR Doc. 78-32534 Filed 11-17-78; 8:45 am]

[1] Insert name.

[6315-01-M]

COMMUNITY SERVICES ADMINISTRATION

NATIONAL CONSUMER COOPERATIVE BANK FEDERAL INTERAGENCY TASK FORCE

Public Meetings

NOTE.—This document originally appeared in the FEDERAL REGISTER for November 17, 1978. It is reprinted in this issue to meet requirements for publication on an assigned day of the week. (See OFR notice 41 FR 32914, August 6, 1976.)

ACTION: Notice of public meetings.

SUMMARY: The National Consumer Cooperative Bank Federal Interagency Task Force announces a series of 13 public meetings to provide general information on the Bank and to obtain specific comments on issues and questions generated by working subcommittees of the Interagency Task Force.

DATE, TIME, LOCATION, LOCAL LEAD AGENCY AND CONTACT PERSON:

Date and time	Location	Local lead agency	Local contact
Dec. 1, 9 a.m. to 5 p.m ..	215 Fremont St., room 605, San Francisco, Calif.	Department of Housing and Urban Development.	Sharon Brown, 415-556-8484.
Dec. 2, 9 a.m. to 5 p.m ..	College of Santa Fe, Cerrillos Rd. and St. Michaels Dr., the Forum, Santa Fe, N. Mex.	Department of Agriculture.	Don Purcell, 505-766-3956.
Dec. 4, 9 a.m. to 5 p.m ..	Denver Marina Hotel, 303 West Colfax Ave., Big Horn Room, Denver, Colo.	ACTION	Karen Paget or Wayne Olson, 303-837-2671.
Dec. 4, 9 a.m. to 5 p.m ..	Federal Building, 228 Walnut St., third floor, Harrisburg, Pa.	National Credit Union Administration.	Joyce Stydinger, 717-782-4595
Dec. 4, 9 a.m. to 5 p.m ..	Federal Building, 26 Federal Plaza, room 1-102, New York, N.Y.	Department of Commerce	Al Funai, 212-264-5647.
Dec. 5, 9 a.m. to 5 p.m ..	Radisson-Cadillac Hotel, 1114 Washington Blvd., Woodward Room, Detroit, Mich.	Department of Housing and Urban Development.	Doris Mersdorf, 313-353-5834.
Dec. 5, 10 a.m. to 7 p.m	Park Place Plaza, EPA Conference Room, 1200 Sixth Ave., Seattle, Wash.	Department of Health, Education, and Welfare.	Harvey Chester, 206-442-0486.
Dec. 8, 9 a.m. to 5 p.m ..	Fort Snelling, 266 Federal Bldg., conference room 564, St. Paul, Minn.	Community Services Administration.	Bev Gleeson, 612-296-5740.
Dec. 11, 9 a.m. to 5 p.m	McCormack Federal Bldg., Devonshire St. and Post Office Sq., room 208, Boston, Mass.	ACTION	John Torian, 617-223-4510.
Dec. 11, 9 a.m. to 5 p.m	Holiday Inn Central, 3321 South 72d St., Empire D Room, Omaha, Nebr.	Department of Energy	June Heard, 816-374-2061.
Dec. 13, 9 a.m. to 5 p.m	Gaillard Municipal Bldg., 77 Calhoun St., Mezzanine Meeting Rooms, Charleston, S.C.	Community Services Administration.	Jim Middleton, 803-723-9285.
Dec. 14, 9 a.m. to 5 p.m	New Orleans Public Library, Loyola and Tulane Aves., Library Auditorium, New Orleans, La.	....do	Norman Riemer, 214-767-6177.
Dec. 15, 9 a.m. to 5 p.m.	City of Memphis Board of Education Administration Bldg., 2597 Avery St., Auditorium, Memphis, Tenn.	....do	Foster Adams, 901-528-2900.

FOR FURTHER INFORMATION CONTACT:

Jerry Storey, Office of Interagency and External Affairs, Community Services Administration, 1200 19th Street NW., room 238, Washington, D.C. 20506, 202-632-8322.

SUPPLEMENTARY INFORMATION: The National Consumer Cooperative Bank Act was signed into law on August 20, 1978. The Bank is intended to improve the effectiveness of self-help cooperatives by providing them financing and technical assistance. The Bank will be established as a mixed ownership Government corporation administered by a 13-member Board of Directors, 7 from Federal agencies and 6 from the general public. Eventually, the Bank will be wholly owned by its member cooperatives and will operate independently of the Federal Government.

The Administration has established a Federal Interagency Task Force to expedite implementation of the Act. The Interagency Task Force, chaired by the Department of the Treasury, is made up of 11 member agencies. The Interagency Task Force will recommend policies and procedures to the Bank.

The Interagency Task Force has organized six working subcommittees, as follows:

I. *Internal Procedures,* chaired by the Department of Housing and Urban Development. This subcommittee deals with Board procedures, stockholders'; voting power, conflict of interest rules, setting up main and branch Bank offices and reports to Congress.

II. *Priorities and Allocation of Financial Assistance,* chaired by the White House Office of Consumer Affairs. This subcommittee deals with policy guidelines for defining eligible cooperatives, for apportioning loans, guarantees, interest subsidies, and technical assistance among eligible cooperatives.

III. *Finance and Lending Policies,* chaired by the Department of the Treasury. This subcommittee deals with the terms, conditions, and procedures for granting assistance, with the fees and interest rates to be charged, with Bank borrowing and with questions concerning stock that do not involve voting power.

IV. *Self-Help Development Fund,* chaired by ACTION. This subcommittee deals with questions concerning the Self-Help Development Fund.

V. *Technical Assistance,* chaired by the Department of Commerce. This subcommittee deals with questions concerning technical assistance, including standards and procedures for setting fees.

VI. *Public Participation,* chaired by the Community Services Administration and ACTION. This subcommittee is responsible for generating and coordinating public input to the work of the Interagency Task Force.

PUBLIC MEETINGS: The 13 public meetings on the Bank will be coordinated at the local level by a lead Federal agency, identified in the schedule of meetings above. Representatives of the Interagency Task Force subcommittees will attend these meetings to receive public comment on the issues and questions being considered by those subcommittees. Public input resulting from each meeting will be forwarded directly to the pertinent Interagency Task Force subcommittee(s).

A list of questions, which represent some of the major issues being addressed by the Interagency Task Force, follows below. These questions will form a basis of comment and discussion at the public meetings. Participants may comment on general matters about the Bank during the information portion of the public meeting. Participants may comment on specific subcommittee issue areas during that portion of the public meeting set aside for each subcommittee.

The public meetings are open to all interested parties. For scheduling purposes, any person who wishes to comment on a subcommittee issue at a public meeting is requested to contact the local lead Federal agency person identified above. It is the special aim of these public meetings to get as many comments, ideas and suggestions as possible from a broad representation of persons and groups interested or involved in consumer cooperative activity. The Interagency Task Force invites those who are either unable to participate in person at a public meeting or who wish to comment in more detail than public meeting time will permit to send their information and views to Jerry Storey, address above, by December 31, 1978.

A brief summary of major provisions of the Bank follows as an appendix to this notice. The Bank Act appears in full in the Congressional Record of July 17, 1978.

GRACIELA (GRACE) OLIVAREZ,
Director.

APPENDIX—SUMMARY OF THE NATIONAL CONSUMER COOPERATIVE BANK

Background

On August 20, 1978, the President signed into law the Consumer Cooperative Bank Act (Pub. L. 95-351), to create an independent national bank for cooperatives.

Purpose of the Bank

The purpose of the legislation is to provide financial and technical assistance to not-for-profit cooperatives. To accomplish this, the legislation: (1) Establishes a Bank to make loans at market interest rates to cooperatives in a variety of fields (Title I) and (2) creates a Self-Help Development Fund and Technical Assistance capability to assist low-income cooperatives or coops with special needs. (Title II).

Eligibility

To be eligible for assistance, a cooperative must: (1) Be operated on a nonprofit cooperative basis and must furnish goods, services, or facilities primarily for the benefit of its members or voting stockholders as consumers and (2) be a legally chartered entity entirely owned and controlled by such cooperatives. (Please see section 105 of the Act.)

Producer cooperatives are also eligible, but loans to producer cooperatives may not exceed 10 percent of the Bank's gross assets.

Beginning October 1, 1983, up to 30 percent of the Bank's gross assets may be loans for residential housing cooperatives. In addition, the Bank must make its best efforts to assure that 35 percent of all loans outstanding at the end of each fiscal year are made to low-income cooperatives or cooperatives primarily serving low-income persons.

The Bank's Budget

The Act authorizes the Government to purchase up to $300 million of Class A preferred stock over 5 years. In addition, borrowers will be required to own certain amounts of common stock. Any cooperative eligible to borrow may purchase additional common stock. The Bank may raise additional funds by borrowing up to ten times its capital.

TITLE I

The Bank Board

Initially, the Bank will be governed by a 13-member Board of Directors appointed by the President, for 3-year terms. Of the 13 members, 7 will be from agencies and departments of the Federal Government, and 6 will be from the general public. The public members must have extensive experience in the cooperative field.

Eventually, the Bank will be owned and governed by cooperatives which borrow or are eligible to borrow from the Bank. As cooperative ownership of Bank stock increases, Presidentially appointed directors will be replaced by directors elected by cooperative shareholders.

TITLE II

The Act establishes an office of Self-Help Development and Technical Assistance within the Bank whose Director is appointed by the President. Policies and procedures governing the operation of the Office are subject to review by the Board.

The Act creates a separate loan account called the Self-Help Development Fund and authorizes $75 million to the Fund over 3 years.

The Fund may be used for capital investment loans to eligible cooperatives provided that:

(1) The applicant (a) needs more capital than it can get form a bank loan or from other sources; or (b) the membership of th applicant is, or will be, composed substantially of low-income persons; or (c) the project or activity to be financed will serve low-income persons; and (2) the applicant (a) needs more capital than it can get from a bank loan or from other sources; and (b) shows it can repay the capital investment loan within 30 years.

Eligible cooperatives which cannot pay market rates of interest to the Bank or to another lender because they serve low-income persons may apply for interest supplement payments from the Fund.

The Office will charge interest on both capital investment advances and interest supplement payments. The Board of Directors may authorize rates of interest lower than those charged for loans under Title I.

Technical Assistance

The Office will make available information and services concerning the or-

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ganization, financing and management of cooperatives. It may contract with other private or public organizations to achieve its goals.

The Office will investigate new types of services and will provide financial analyses and market surveys for eligible cooperatives.

The Office will develop and implement programs to train members, directors, and staff of eligible cooperatives in the operation and use of cooperatives.

The Office will work with other Government agencies to insure that information concerning relevant programs is available to eligible cooperatives.

Congress has authorized an appropriation of $2 million for fiscal year 1979 for the adminstration of the Office of Self-Help Development and Technical Assistance program. It has authorized such sums as may be necessary for fiscal year 1980 and fiscal year 1981.

THE INTERAGENCY TASK FORCE

General

In September the administration established an Interagency Task Force consisting of representatives from 11 agencies or departments to expedite the implementation of the Bank. The Task Force is responsible to prepare recommendations for implementation to the Bank Board. The Board makes final decisions about operational and policy matters.

Structure of the Task Force

The Interagency Task Force is chaired by the Treasure Department. Six working subcommittees have been established, each chaired by an agency, office, or department. They are:

1. Internal Procedures—Department of Housing and Urban Development.
2. Eligibility and Priorities—Esther Peterson, Special Assistant to the President for Consumer Affairs.
3. Finance and Lending Policies—Department of Treasury.
4. Self-Help Development Fund—ACTION.
5. Technical Assistance—Department of Commerce.
6. Public Participation—The Community Services Administration and ACTION.

The Task Force hopes to have its recommendations for the Bank finalized by January 31, 1979.

Nominations

Nominations for public members of the Board of Directors are requested by November 30, 1978. Nominations are being solicited from cooperative organizations and other interested groups. The Adminstration hopes to have nominees selected, and ready for Senate hearings some time in January.

MAJOR ISSUES AND QUESTIONS OF THE INTERAGENCY TASK FORCE

SUBCOMMITTEE I—INTERNAL PROCEDURES

1. How can information about the Bank and the Office of Self Help best be provided to interested cooperatives and other groups?

Some examples:

a. Existing Federal agencies.
b. Private groups.
c. Field representative of the Bank and the Office of Self-Help.
d. A combination of the above.
e. Other:————.

2. What should be included in the annual report to Congress and in the annual report to shareholders?

The Act specifies that the annual report to the shareholders shall include a report on the Bank's financial condition. You may want to read section 106 on the annual report to shareholders and section 111 on the annual report to Congress before answering this question.

Some examples:

a. List of loans and grants made.
b. Upcoming appropriations and possible new bills.
c. Number of low income, elderly, rural, and inner city residents served.
d. Other:————.

3. What kind of information about the Bank and the Office should be made available in between or in addition to annual reports?

Some examples:

a. Summary of the Act.
b. Examples of different types of cooperatives.
c. Services offered by the Bank and the Office of Self-Help.
d. Other:————.

4. Rejected applicants may appeal decisions to the Board of Directors within 30 days. How can this best be handled? Please read section 113 before answering this question. Appeals are limited to decisions contrary to the stated policies of the Bank.

Some examples:

a. Subcommittee of the Board.
b. Board's staff.
c. Other:————.

5. How much weight should each vote cast by a shareholder be given in elections for the Bank's Board of Directors and at the annual meetings? Please read section 104(g) and section 106 before answering this question.

6. What should the relationship between the Fund and the Board be with respect to: 1) the Board reviewing policies of the Office (see section 201), and 2) operations such as initial evaluation of a loan? This question appears under subcommittee IV also.

SUBCOMMITTEE II—PRIORITIES

1. What steps should a primary cooperative be required to take in order to comply with the statutory requirements of "economic democracy" and maximum participation by members? You may want to look at section 105(a) No. 5.

Some examples:

a. Elected Board of Directors.
b. Referenda on policy issues.
c. Fair elections.
d. Requiring that a certain percentage of the people a cooperative serves be members.
e. Opportunity for the members to vote on major business and financial decisions of the cooperative.
f. All of the above.
g. Other: ————.

2. How should the term "not-for-profit basis" be defined?

3. What percentage per annum should be permitted to be paid as dividends on voting stock or membership capital? On what basis did you arrive at your conclusion?

Please look at section 105(a)2 on limiting dividends before answering this question.

4. How should we define "low income person"? Should we use different definitions for the Bank and for the Office of Self Help?

Some examples:

CSA guideline defines a family of four with an income of $6,200 as low income—about 25 million people. Bureau of Labor Statistics defines a family of four with an income of $10,000 as low income—about 75 million people. Title XX guideline—50 percent of State's median income—about 54 million people—$8,500 for a family of four.

5. How big a percentage of low income people—both members and patrons—must a cooperative serve to be considered a low income cooperative for the purpose of the Office of Self Help?

6. How can the Bank and the Office of Self Help best encourage the growth of cooperatives serving low income people, the elderly, and inner city, and rural residents?

Some examples:

Targeting resources.
Special technical assistance.
Low interest rates.

7. Section 105(b) of the Act allows primary producers to borrow from the Bank unless the dollar volume of loans made to such producers exceeds 10 percent of the gross assets of the Bank. What types of primary producer co-ops, if any, should be given priority in the lending policies of the Bank? Should primary producer co-ops be eligible to apply for assistance from the Office of Self Help and Technical Assistance? Should the 10-percent limit also apply to assistance from the Office?

8. What factors should the Bank and the Office of Self Help take into account in establishing lending priorities?

SUBCOMMITTEE III—FINANCE AND LENDING POLICIES

1. For what purposes does your organization anticipate borrowing from the Co-op Bank?

a. Emergency working capital.
b. Seasonal working capital.
c. New capital equipment.
d. Used capital equipment.
e. Commercial real estate.
f. Residential real estate.
g. To pay for technical assistance, training, or management consulting help.
h. Refinancing.
i. Other: ————.

2. What dollar amount of loans and type would you be asking the Bank for?

In 1979?
In 1980?
Over the 5-year period, 1979–84?
Beyond 1984?

3. The law requires loans to be made at rates of interest generally prevailing in the area. Stock purchases can be included as part of this determination.

In this light, how much stock should a cooperative be required to purchase? Please read section 108(b) before answering this question.

4. To assist in conversion of the Bank to cooperative ownership, Congress has given the Bank the authority to require co-ops to purchase stock amounting to at least 1 percent and as much as 10 percent of the loan amount.

a. Should purchase of stock be uniform among all borrowers and types of loans? If not, explain.
b. When and at what level should stock purchases be made? Should they be made in advance; as interest is paid; in flat sums; or by some other method?
c. Should borrowers be required to continue to hold stock after all or part of their loans have been paid back? If so, how much?
d. Should the Bank attempt to maximize stock purchases as a means of building up its capital base? Or as a means of speeding the retirement of Government capital?

5. Should interest rates charged by the Bank be uniform to all borrowers or should they reflect the type of loan, risk involved and collateral offered?

6. How should the Bank determine the impact of the loan on existing small businesses?

7. To what extent would a potential borrower of the Bank be willing or able to pay for or have included in the cost of the loan such items as feasibility studies, financial audits, appraisals of property for loan security purposes, etc.?

8. Bank interest charges could be made at a fixed rate or one which varies with the cost of money to the Bank. As a cooperative Bank any earnings are refundable to the users of the Bank. Which method of interest rate policy would you prefer?

SUBCOMMITTEE IV—SELF HELP DEVELOPMENT FUND

1. What is an appropriate definition of a cooperative serving low-income members with respect to the Self Help Development Fund? This question is also asked in Subcommittee II on Priorities. How much of the Self Help Development Fund should go to coops serving low-income people?

2. How should we design a system of ongoing public participation for the fund?

Some examples:

a. Local advisory committees.
b. Staff liaisons with cooperatives.
c. Questionnaires.
d. Annual report.
e. Other:————.

3. What should the relationship between the Fund and the Board be with respect to: (1) The Board reviewing policies of the Office (see section 201), and (2) operations such as initial evaluation of a loan? This question also appears under Subcommittee I.

4. Please comment on the experience of taking out loan for your cooperative or community group, or making loans to such groups. What lessons could we learn for use in designing the loan delivery system?

5. For what purposes is your cooperative or community group likely to borrow from the Fund (or Bank)? What would be the likely size of your loan?

6. What kinds of technical assistance would be relevant for the specific purpose of repaying loans?

7. The Coop Bank Act requires that the Self Help Office receive a plan for repayment as part of every loan application. How would you project and document your coop's ability to generate the cash needed to make payments at regular intervals for principal, interest, and technical assistance received from the Fund?

SUBCOMMITTEE V—TECHNICAL ASSISTANCE

1. Through which means can technical assistance best be administered?

Some examples:

a. Cooperatives and federations of cooperatives.
b. Training centers.
c. Office of Self Help personnel.
d. Universities.
e. Other:————.

2. What type of technical assistance would your cooperative or group find most useful? (you may find Title II sections 204, 205, 206 and 207 useful.)

Some examples:

a. Feasibility studies.
b. Financial, market and operations analysis.
c. Staff training.
d. Outreach to low-income people.
e. Consumer information.
f. Membership recruitment.
g. Other:————.

3. How can the Bank and the Office help cooperatives leverage resources from other groups such as local banks, Federal agencies, local government, private foundations, and volunteers?

4. What type of new cooperative services should the technical assistance program explore and possibly support?

5. What kind of board of director training and membership education programs would your cooperative find useful? Would you still be interested in this kind of assistance if you had to pay for it?

[FR Doc. 78-32375 Filed 11-16-78; 8:45 am]

[3125-01-M]

COUNCIL ON ENVIRONMENTAL QUALITY

IMPROVING GOVERNMENT REGULATIONS

Final Report on Implementation of Executive Order 12044

AGENCY: Council on Environmental Quality.

ACTION: Information.

SUMMARY: This report outlines a description of the process for developing and revising the two regulations for which the Council is responsible, the National Environmental Policy Act (NEPA) regulations and the National Oil and Hazardous Substances Pollution Contingency Plan regulations. The report identifies changes made to comply with the Order.

FOR FURTHER INFORMATION: Questions should be addressed to:

Nicholas C. Yost, General Counsel, Council on Environmental Quality, 722 Jackson Place NW., Washington, D.C. 20006.

A. BACKGROUND

Executive Order 12044 on Improving Government Regulations requires agencies to issue a draft report implementing the policy and provisions of the Order. The Council published its draft report in 43 FR 22593 (May 25, 1978). No public comments were received on the draft report. Related comments on the Council's proposed NEPA regulations together with inter-

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nal revisions are the basis for this Final Report implementing Executive Order 12044.

The Council on Environmental Quality is responsible for enacting two kinds of regulations. First, the Council is directed by Executive Order 11991 (May 24, 1977) to prepare and enact regulations implementing the National Environmental Policy Act (NEPA). The Council's NEPA regulations have been under preparation and review since June 1977.

Proposed NEPA regulations were published in the FEDERAL REGISTER (48 FR 25230, June 9, 1978) for public review and comment. Second, in Executive Order 11735 (August 3, 1973) the President designated the Council on Environmental Quality to exercise the President's authority under section 311(c)(2) of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) to prepare and publish a National Contingency Plan for removal of oil and hazardous substances. The Council has prepared and published a National Oil and Hazardous Substances Pollution Contingency Plan in the form of regulations in 40 CFR 1510 et seq. (as amended March 26, 1976). During 1977 and 1978 the National Contingency Plan regulations have been under review for proposed revisions.

NEPA and the National Contingency Plan are the only subjects which in the presently foreseeable future will involve regulations by the Council on Environmental Quality. The work of preparing regulations in these two areas was largely completed before Executive Order 12044 became effective. Therefore application of Executive Order 12044 to the Council's regulatory activities is generally limited to future revisions or amendments to the Council's NEPA and National Contingency Plan regulations.

B. SEMIANNUAL AGENDA OF REGULATIONS

To give the public adequate notice, the Council will publish semiannually in the FEDERAL REGISTER an agenda listing proposed revisions to its NEPA regulations and National Contingency Plan regulations that are currently under development or review. The Council's schedule for its semiannual agenda was published in 43 FR No. 191 page xiii, October 2, 1978. The schedule indicates that the Council's semiannual agenda will appear on January 5, 1979, and July 5, 1979. The agenda will describe the need for and legal basis for the action being taken, and the status of regulations previously listed on the agenda. The agenda will list the name and telephone of a knowledgeable Council staff member. The agenda will also indicate, if possible, whether a regulatory analysis will be required.

C. POLICY

It is the Council's policy consistent with sections 1 and 2 of Executive Order 12044 that:

(1) The need for and purposes of proposed regulations and revisions are clearly established;

(2) The public have an early and meaningful opportunity to review and comment on proposed regulations and revisions;

(3) Proposed regulations and revisions are coordinated with all Federal agencies affected;

(4) Meaningful alternatives are considered and analyzed before proposed regulations and revisions are adopted;

(5) Compliance costs, paperwork, and other burdens on the public are minimized;

(6) Proposed regulations and revisions be written simply, in plain language;

(7) Comments are considered and an adequate response is prepared;

(8) The Council review proposed regulations and revisions to insure adherence to these policies and the policies of Executive Order 12044.

D. PROCESS FOR REVISING THE COUNCIL'S REGULATIONS

The two regulations for which the council has responsibility for issuing were initiated by Executive Order. The National Contingency Plan regulations were developed in 1971 and have experienced several revisions. The NEPA regulations were largely developed in 1977, before Executive Order 12044 became effective. A detailed description of the process used by the Council in developing its NEPA regulations was published in its draft report implementing Executive Order 12044, 43 FR 22593, May 25, 1978. Since both the Council's regulations have already been developed, and since the Council will issue no other regulations, the final report addresses the Council's process for revising these regulations.

1. *Revising National Environmental Policy Act Regulations*

Based on the Council's annual review of Federal agency compliance with the National Environmental Policy Act and on an examination of the paperwork and regulatory burden of the regulations, the General Counsel will make an initial determination whether revisions to the NEPA regulations are necessary. Revisions may also be initiated as a result of statutory, Executive Order, or judicial requirements.

If appropriate, public hearings or meetings will be held to verify the need for revisions and identify reasons for revision. Additional ways for early public and agency participation in the development of proposed revisions (such as questionnaires) will be used where appropriate.

If revisions to the NEPA regulations are determined by the Council to be necessary, draft revisions will be prepared under the supervision of the General Counsel, taking into consideration the results of early public and agency participation. To the extent relevant, the analysis required by section 3 of Executive Order 12044 will be prepared concurrently with the drafting of proposed revisions.

Proposed revisions will be published in the FEDERAL REGISTER for public review and comment. Ordinarily the review and comment period will be 60 days. Where appropriate, proposed revisions may be circulated to Federal agencies for review and comment before being published in the FEDERAL REGISTER as proposed revisions. In cases where proposed revisions are minor, technical or clerical in nature, or where otherwise required by law, the proposed revisions will be published in the FEDERAL REGISTER with a 30-day public review and comment period. Proposed revisions to the NEPA regulations published in the FEDERAL REGISTER will indicate how the public may obtain copies of any accompanying analyses that may have been prepared.

Federal agency and public comments on proposed revisions will be considered. Where appropriate, meetings with affected agencies and representatives of the public will be held to discuss specific issues. Before proposed revisions are published in final form in the FEDERAL REGISTER, the Council will determine whether the proposed revisions comply with the policy of this report and the provisions in section 2(d) of Executive Order 12044.

2. *Revising National Contingency Plan Regulations*

The National Contingency Plan regulations provide in 40 CFR 1510.32 that the National Response Team:

"Shall establish and maintain a Committee on Revision of the National Plan. The Committee shall provide suggested revisions to the NRT (National Response Team) for consideration, approval and publication by CEQ. The Primary Agencies (Departments of Transportation, Defense, Commerce, Interior, and the Environmental Protection Agency) shall provide membership on this standing Committee. Advisory agencies (Departments of Justice, State, and HEW, HUD, and the NRC) shall participate whenever revision or proposed amendments would affect those agencies."

The National Response Team, which consists of representatives of the Primary and Advisory agencies, thus is responsible for preparing proposed revisions to the National Contingency Plan regulations. Proposed revisions are then submitted to the Council on Environmental Quality for review and approval. If the revisions are minor, technical, or clerical, they will be published in the FEDERAL REGISTER as proposed regulations with a 30-day public review and comment period. If the revisions are significant, there will ordinarily be a 60-day public review and comment period before the revisions are issued as final regulations. Significant revisions are those that are other than minor, technical, or clerical in nature.

E. CRITERIA FOR DEFINING SIGNIFICANT COUNCIL REGULATIONS

Future action by the Council will be limited to revisions to the NEPA regulations and the National Contingency Plan regulations. Proposed revisions to these two regulations will be deemed "significant" for purposes of Executive Order 12044 unless the revisions are minor, technical, or clerical in nature. This means that ordinarily the public will have 60 days for review and comment on proposed revisions, and that the Council will ordinarily approve each proposed revision before publication in final form in the FEDERAL REGISTER.

F. CRITERIA FOR IDENTIFYING WHICH COUNCIL REGULATIONS REQUIRE REGULATORY ANALYSIS

Future action by the Council will be limited to revisions to the NEPA regulations and the National Contingency Plan regulations. Proposed revisions to these two regulations, to the extent relevant, will be accompanied by regulatory analysis whenever the General Counsel determines that the proposed revisions will result in an annual effect on the economy of $100 million or more or a major increase in costs or prices for individual industries, levels of government, or geographic regions, or when the Council determines that the policies of Executive Order 12044 require a regulatory analysis.

G. SUPPLEMENTARY INFORMATION

Consultation with State and local government officials will be carried out in accordance with the procedures established by the President's Memorandum to Heads of Agencies (March 23, 1978) accompanying the issuance of Executive Order 12044, and with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App. 1.

The Council's proposed NEPA regulations will be promulgated as final regulations in 40 CFR 1500 et seq.

The Council's National Oil and Hazardous Substances Contingency Plan regulations are promulgated in 40 CFR 1510 et seq.

NICHOLAS C. YOST,
General Counsel.

[FR Doc. 78-32517 Filed 11-17-78; 8:45 am]

[3710-08-M]

DEPARTMENT OF DEFENSE

Department of the Army

ARMY ADVISORY PANEL ON ROTC AFFAIRS

Open Meeting

In accordance with Pub. L. 92-463, dated October 6, 1972, notice is given of a meeting of the Army Advisory Panel on ROTC affairs on December 6, 1978, at the Pentagon. The proposed schedule of activities is as follows:

0830—Opening remarks: Chairman—Swearing of new panel members.
0900—Remarks: Deputy for Military Personnel Policy, Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs).
0915—Remarks: Deputy Chief of Staff for ROTC/Region Commanders.
1015—Coffee break.
1030—Remarks: Department of the Army representative.
1045—Presentation: Officer accessions—Planning: Officer Personnel Management Directorate.
1150—Lunch.
1330-1600—Panel discussion: Chairman.

The meeting is open to the public.

WILLIAM A. SCOTT,
Lieutenant Colonel., GS, Executive Secretary for the Army Advisory Panel on ROTC Affairs.

[FR Doc. 78-32543 Filed 11-17-78; 8:45 am]

[3710-08-M]

ARMY SCIENCE BOARD/AIR FORCE SCIENCE ADVISORY BOARD

Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee meeting:

ARMY SCIENCE BOARD/AIR FORCE SCIENTIFIC ADVISORY BOARD

Date and time: December 13 and 14, 1978; 8 a.m. to 5 p.m. each day.
Place: December 13—USAREUR, Heidelberg, Germany; closed session.
December 14—USAFE, Ramstein, Germany; closed session.
Proposed agenda: The Army and Air Force Science Boards will receive classified briefings and hold classified discussions on their Joint Summer Study on "Battlefield Systems Integration." This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof.

ROBERT F. SWEENEY,
Lieutenant Colonel, GS, Executive Secretary, Army Science Board.

[FR Doc. 78-32541 Filed 11-17-78; 8:45 am]

[3710-08-M]

MILITARY TRAFFIC MANAGEMENT COMMAND; MILITARY PERSONAL PROPERTY CLAIMS SYMPOSIUM

Open Meeting

Announcement is made of a meeting of the Military Personal Property Claims Symposium. This meeting will be held on December 14, 1978, at Headquarters, Military Traffic Management Command, Nassif Building, Room 714, 5611 Columbia Pike, Falls Church, Va. 22041. The meeting will convene at 9 a.m. and adjourn at approximately 3 p.m.

Proposed agenda: The purpose of the Symposium is to provide an open discussion and free exchange of ideas with the public on mutual problems arising from claims for loss, damage or destruction of personal property while in transit or storage.

This symposium will be open to the public to the extent that space limitations of the meeting space permit. Because of these limitations, interested parties are requested to reserve space by contacting the Commander, Military Traffic Management Command, Attention: MT-PPM, Washington, D.C. 20315, telephone 202-756-1808.

All interested persons desiring to submit topics to be discussed should submit them in writing to the address given in the preceding paragraph. Topics to be discussed should be received on or before December 7, 1978.

Dated: November 13, 1978.

DONALD H. MENSCH,
Colonel, GS, Director of Personal Property.

[FR Doc. 78-32542 Filed 11-17-78; 8:45 am]

[3710-92-M]

PROPOSED GENERATING STATION IN LOUISA AND MUSCATINE COUNTIES, IOWA

Intent To Prepare a Draft Environmental Impact Statement (DEIS)

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS).

SUMMARY: Iowa-Illinois Gas & Electric Co., Davenport, Iowa, proposes to construct a 650-megawatt, coal-fired, steam-electric generating station in Louisa and Muscatine Counties, Iowa.

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The site for the facility, which is to be known as the Louisa Generating Station, is located adjacent to the Mississippi River approximately 5 miles downstream of Muscatine, Iowa. The company has applied for a Department of the Army permit for a discharge structure which is part of the proposed facility. The permit application is being processed under section 10 of the River and Harbor Act of 1899 and section 404 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1344).

Notice is hereby given of the Corps of Engineers, Rock Island District, assumption of "lead agency" responsibility for Federal action and the decision to prepare a DEIS for the proposed generating station. The DEIS will cover all aspects of plant construction and operation out to the first tower of the transmission line.

DATE: DEIS will be released for public review on or before February 2, 1979.

ADDRESS: Questions about the proposed action and the environmental impact statement should be directed to:

F. W. Mueller, Jr., Colonel, Corps of Engineers, District Engineer, Rock Island District, Corps of Engineers, Clock Tower Building, Rock Island, Ill. 61201.

By authority of the Secretary of the Army.

Dated: November 9, 1978.

ROME D. SMYTH,
Colonel, U.S. Army, Director, Administrative Management, TAGCEN.

[FR Doc. 78-32544 Filed 11-17-78; 8:45 am]

[3710-92-M]

PROPOSED PROJECT ON THE SNAKE RIVER WATERSHED IN MARSHALL, POLK, AND PENNINGTON COUNTIES, MINN.

Intent To Prepare a Draft Environmental Impact Statement (DEIS)

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS).

SUMMARY: Notice is hereby given of the Corps of Engineers, St. Paul District, decision to prepare a DEIS for a proposed project on the Snake River watershed in Marshall, Polk, and Pennington Counties, Minn. The proposed project will provide for snagging, clearing, and construction of shelterbelts along selected reaches of the Snake River to reduce rural flood losses.

DATE: DEIS will be released for public review on or before January 1, 1979.

ADDRESS: Questions about the proposed action and environmental impact statement can be answered by:

Col. Forest T. Gay III, St. Paul District Corps of Engineers, 1135 U.S. Post Office and Custom House, St. Paul, Minn. 55101.

By authority of the Secretary of the Army.

Dated: November 9, 1978.

ROME D. SMYTH,
Colonel, U.S. Army, Director, Administrative Management TAGCEN.

[FR Doc. 78-32545 Filed 11-17-78; 8:45 am]

[3810-70-M]

Department of the Navy

PRIVACY ACT OF 1974

New System of Records

AGENCY: Department of the Navy.

ACTION: Notification of a new system of records.

SUMMARY: The Department of the Navy proposes a new system of records identified as N00025 MILFAMHOUSSUBTESTSYS, entitled: "Family Housing Mock Utility Billing System." The record system notice is published in its entirety below.

DATES: This system shall become effective as proposed without further notice on December , 1978, unless comments are received on or before December , 1978, which would result in a contrary determination requiring republication for further comments.

ADDRESS: Comments may be sent to the system manager identified in the record system notice.

FOR FURTHER INFORMATION CONTACT:

Mrs. H. S. Hanback, Freedom of Information and Privacy Act Coordinator, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, Va. 22332.

SUPPLEMENTARY INFORMATION: This system is to produce mock utility bills and management reports on the usage of gas, fuel oil, electricity, steam, propane, and hot water heat for a representative cross section of approximately 10,000 military family housing units. The Department of the Navy's systems of records notices, as prescribed by the Privacy Act, have been published in the FEDERAL REGISTER as follows:

FR Doc. 77-28255 (42 FR 51230), Sept. 28, 1977.

FR Doc. 78-23953 (43 FR 42497), Sept. 20, 1978.

Advance notice of the proposed new system of records was submitted by the Department of the Navy on October 18, 1978, pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a(o)).

MAURICE W. ROCHE,
Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

NOVEMBER 15, 1978.

N00025 MILFAMHOUSSUBTESTSYS

System name:

Family Housing Mock Utility Billing System.

System location:

Ten test sites: Pacific Missile Test Center, Point Mugu, Calif.; Construction Battalions Center, Port Hueneme, Calif.; Public Works Center, Great Lakes, Ill.; Marine Corps Development and Education Command, Quantico, Va.; Fort Eustis, Va.; Fort Gordon, Ga.; Marine Corps Air Station, Beaufort, S.C.; Little Rock Air Force Base, Ark.; Cannon Air Force Base, N. Mex.; Yuma Proving Grounds, Ariz.; Central Processing Site: Harry Diamond Laboratories, White Oak, Md.

Categories of individuals covered by the system:

Military and civilian personnel occupying housing units selected at the 10 test sites.

Categories of records in the system:

This system is to produce mock utility bills and management reports on the usage of gas, fuel oil, electricity, steam, propane, and hot water heat for a representative cross section of approximately 10,000 military family housing units. Information as to name, address, rank/rate, number of dependents, house phone number, account number, and utility consumption will be maintained for a 15-month period.

Authority for maintenance of the system:

Public Law 95-82 (Military Construction Authorization Act, 1978); 5 U.S.C. 301 Department Regulations.

Routine uses of records maintained in the system, including categories of users and the purpose of such uses:

Information is used to determine the feasibility of metering utility consumption in military family housing. Officials and employees of the Department of the Navy, Department of Defense and components thereof in the performance of their official duties related to the measuring of energy consumption in military family housing units. The Senate or the House of Representatives of the United States or any committee or subcommittee thereof on matters within their jurisdiction requiring disclosure of files or records of individuals covered by this system of records.

Policies and practices for storing, retrieving, accessing, retaining and disposing of records in the system: Storage:

Magnetic tape, disk, punched card, and file folders.

Retrievability:

Account number.

Safeguards:

Housing files are used solely within housing office; magnetic tape, punched card, and disk files used solely within the security measures.

Retention and disposal:

Held 5 years and destroyed by authority SECNAVINST P5212.5B, para. 11300.

System manager and address:

Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, Va. 22332.

Notification procedure:

Records are maintained by the housing office at the service activities participating in the test. Individual may request access to such data upon presenting proof of identity (ID) card.

Record access procedures:

The agency's rules for access to records may be obtained from the installation family housing office.

Contesting record procedures:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

Record source categories:

Data collected from each individual and utility consumption data obtained from monthly meter readings.

Systems exempted from certain provisions of the Act:

None.

[FR Doc. 78-32596 Filed 11-17-78; 8:45 am]

[6450-01-M]

DEPARTMENT OF ENERGY

INTERNATIONAL ENERGY AGENCY INDUSTRY ADVISORY BOARD

Voluntary Agreement and Plan of Action To Implement the International Energy Program; Meeting

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (Pub. L. 94-163), notice is hereby provided of a meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on November 27 and 28, 1978, at the headquarters of the IEA, 2 rue Andre Pascal, Paris 16, France, beginning at 3 p.m. on November 27. The purpose of this meeting of the IAB is to permit attendance by representatives of the IAB at a meeting of the IEA Standing Group on Emergency Questions (SEQ) which is being held at Paris on November 27 and 28.

The agenda for the meeting is under the control of the SEQ. It is expected that the following draft agenda will be followed and that representatives of the IAB will be invited to join the meeting during discussion of items 4-15 or such other items as may be determined by the SEQ.

1. Approval of the draft agenda.
2. Summary record of the 22d meeting.
3. Quarterly oil forecast.
4. Current situation in the international oil market.
5. Emergency reserves of IEA countries:
(a) Final report to the governing board on reserves as at July 1, 1978.
(b) Emergency reserves as at October 1, 1978.
(c) Consumer stock regulations in participating countries (fact finding study by secretariat).
6. Second allocation systems test (AST-2).
(a) Note by the Chairman of the SEQ.
(b) Final review of the draft report to the governing board.
(c) Approximate estimate of total AST-2 cost.
7. Updates of the emergency management manual.
(a) The "Undoing" of type 2 and type 3 international oil reallocations under type 1 activities in the IEP reallocation procedures.
(b) Demand restraint (incorporation of conclusions of the SEQ working group into the emergency management manual (EMM)).
8. Workshop on product imbalances (agenda and organization).
9. Proposal to harmonize the interface between the IEA and the EEC emergency systems (proposal by the Secretariat to Directorate General XVII of the European Commission).
10. Future allocation systems tests.—Optimum design of systems tests.
11. 1979 work program.
12. Demand restraint.—Principles on the treatment of border-crossing traffic.
13. Special section of the information system.
(a) Base period final consumption (BPFC).
(I) Current calculation.
(II) Report by the BPFC working group.
(b) Questionnaire A/B reporting instructions.
(c) Timing of emergency data tests.
14. Future meeting dates.
15. Any other business.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, these meetings will not be open to the public.

Issued in Washington, D.C., November 15, 1978.

ROBERT C. GOODWIN, Jr.,
Acting Assistant General Counsel, International Trade and Emergency Preparedness, Office of General Counsel.

[FR Doc. 78-32586 Filed 11-17-78; 8:45 am]

[6450-01-M]

[Docket No. ERA-R-77-7]

Economic Regulatory Administration

Draft Environmental Impact Statement Concerning the Exemption of Motor Gasoline From Mandatory Petroleum Allocation and Price Regulations

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of availability of environmental impact statement and public hearing.

SUMMARY: The Economic Regulatory Administration of the Department of Energy announces the availability of a draft environmental impact statement (EIS) on the pending proposal to exempt motor gasoline from the mandatory petroleum allocation and price regulations. Written comments are invited, and a public hearing will be held with respect to the draft EIS.

DATES: Comments by January 5, 1979, 4:30 p.m. Requests to speak by December 7, 1978, 4:30 p.m. Hearing date: December 19, 1978, 9:30 a.m.

ADDRESS: Send comments and requests to speak to: Department of Energy, Public Hearing Management, Room 2313, Docket No. ERA-R-77-7, 2000 M Street NW., Washington, D.C. 20461.

HEARING LOCATION: Room 2105, 2000 M Street NW., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

William E. Caldwell (Economic Regulatory Administration), Department of Energy, 2000 M Street NW., Room 2304, Washington, D.C. 20461, 202-254-8034.

William L. Webb (Media Relations),

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Department of Energy, 2000 M Street NW., Room B-110, Washington, D.C. 20461, 202-634-2170.

Carol M. Borgstrom (Division of NEPA Affairs), Department of Energy, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461, 202-566-9760.

J. Thomas Wolfe (Office of General Counsel), Department of Energy, 20 Massachusetts Avenue, Room 8217, Washington, D.C. 20461, 202-376-4266.

SUPPLEMENTARY INFORMATION:

I. BACKGROUND

DOE published an "Environmental Assessment of the Exemption of Motor Gasoline From Mandatory Petroleum Allocation and Price Regulation" in the FEDERAL REGISTER on June 28, 1978 (43 FR 27995), and held a public hearing on this EA on July 14, 1978. On the basis of comments received on the EA, and in accordance with the provisions of the National Environmental Policy Act (NEPA), DOE decided to prepare an EIS on its pending proposal to deregulate motor gasoline. The draft EIS addresses the environmental consequences that may result from the proposed action as well as alternatives to deregulation.

II. COMMENT PROCEDURES

A. AVAILABILITY OF DRAFT EIS

Copies of the draft statement can be obtained from ERA's Office of Public Information, Room B-110, 2000 M Street NW., Washington, D.C. 20461, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. In addition, copies are available for public review in the DOE Freedom of Information Reading Room, GA-152, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585. Copies have been provided to the Environmental Protection Agency, other interested Federal agencies, State clearinghouses, persons who commented on the June 1978 EA, and others known to be interested in the draft EIS.

B. WRITTEN COMMENTS

Interested persons are invited to submit written comments with respect to the draft EIS to the above address. comments should be identified on the outside of the envelope and on the documents submitted to DOE with the designation "Draft EIS on Deregulation of Motor Gasoline." Fifteen (15) copies should be submitted. All comments and related information should be received by DOE by January 5, 1979, in order to insure consideration.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing one copy only. Any material not accompanied by a statement of confidentiality will be considered to be nonconfidential. DOE reserves the right to determine to confidential status of the information or data and to treat it according to its determination.

C. PUBLIC HEARING

1. Participation procedure.—A public hearing on the draft statement will be held at 9:30 a.m., on December 19, 1978, in Room 2105, 2000 M Street NW., Washington, D.C., to receive oral presentations from interested persons.

Any person who has an interest in the draft EIS may make a written request for an opportunity to make oral presentation. Such a request should be directed to the above address before 4:30 p.m., December 7, 1978. The person making the request should provide a concise summary of the proposed oral presentative and a telephone number where he or she may be reached. Each person selected to be heard will be notified by DOE of his or her participation before 4:30 p.m., December 11, 1978, and shall submit 15 copies of his or her proposed statement to the above address on or before December 18, 1978.

2. Conduct of hearings.—DOE reserves the right to arrange the schedule of presentations to be heard and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based on the number of persons requesting to be heard.

A DOE official will be designated as presiding officer to chair the hearing. This will not be a judicial or evidentiary-type hearing. Questions may be asked only by those conducting the hearing, and there will be no cross-examination of persons presenting statements.

Any participant who wishes to ask a question at the hearing may submit the question, in writing, to the presiding officer.

The presiding officer will determine whether the question is relevant and whether the time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Office, Room 2107, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461, between the hours of 8 a.m., and 4:30 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

Issued in Washington, D.C., November 17, 1978.

DOUGLAS G. ROBINSON,
Assistant Administrator, Regulations and Emergency Planning, Economic Regulatory Administration.

[FR Doc. 78-32732 Filed 11-17-78; 12:31 pm]

[6450-01-M]

ENERGY SUPPLY AND ENVIRONMENTAL COORDINATION ACT

Issuance of Prohibition Orders to Certain Major Fuel Burning Installations

The Department of Energy (DOE) hereby gives notice that on November 13, 1978, it issued prohibition orders, pursuant to the authorities granted it by section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (ESECA), as amended, 15 U.S.C. 791 et seq., and Chapter II, Title 10, Code of Federal Regulations (10 CFR), Parts 303 and 305, to the following Major Fuel Burning Installations (MFBI's):

Docket No.	Owner	Installation	Unit No.	Location
OCU-1112-1	Ash Grove Cement Co.	Chanute Plant	1	Chanute, Kans.
OCU-1112-2	do	do	2	Do.

By publication in the FEDERAL REGISTER on May 3, 1978, (43 FR 19064), DOE gave notice of its intention to issue prohibition orders to the above-named MFBI's. Pursuant to this notice, written comments were requested on the proposed orders and a public hearing was held in Kansas City, Mo. on May 18, 1978, to receive oral presentation of data, views, and arguments. Comments received by DOE during the period provided for written comment, as well as oral testimony received during the public hearing and any supplemental comments, were considered and evaluated before the prohibition orders were issued. Comments received which were considered pertinent to DOE's findings, are addressed in appendix IV to the prohibition orders.

The prohibition orders will prohibit the above-named MFBI's from burning natural gas or petroleum products as their primary energy source. The orders will not become effective, however, until (1) the Administrator of the Environmental Protection Agency (EPA) certifies, pursuant to section 2(b) of ESECA and section 113(d) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401, et seq.), the earliest date that the affected installations will be able to burn coal and comply with applicable air pollution requirements and (2) DOE has considered the environmental impact of making the orders effective, pursuant to 10 CFR 208.3(a)(4) and 305.9, and has served the affected installations with a notice of effectiveness, as provided in 10 CFR 303.10(b), 303.37(b) and 305.7. The date the prohibition orders will be effective will be stated in the notice of effectiveness.

The above-named MFBI's have been served the prohibition orders by registered mail. In addition, copies of these prohibition orders will be available to the public at DOE's Freedom of Information Reading Room, Room 2107, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461, and at the DOE Regional Office's reading room, 324 East 11th Street, Kansas City, Mo. 64106.

Any questions regarding this notice should be directed to Walter A. Romanek, Director, Division of Coal Utilization, Department of Energy, Code OCU (Prohibition Orders: Ash Grove Cement Co., Chanute Plant, Chanute, Kansas Installation, Docket Nos. OCU 1112-1 and 1112-2), Washington, D.C. 20461, telephone 202-254-3910.

(Energy Supply and Envirommental Coordination Act of 1974 (15 U.S.C. 791 et seq.), as amended by Pub. L. 95-70; Federal Energy Administration Act of 1974 (15 U.S.C. 761 et seq.), as amended by Pub. L. 95-70; Department of Energy Organization Act (42 U.S.C. 7101, et seq.); E.O. 11790 (39 FR 23185); E.O. 12009 (42 FR 46267).)

Issued in Washington, D.C., November 13, 1978.

BARTON R. HOUSE,
Assistant Administrator, Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 78-32506 Filed 11-17-78; 8:45 am]

[6450-01-M]

ENERGY SUPPLY AND ENVIRONMENTAL COORDINATION ACT

Issuance of Prohibition Orders to Certain Major Fuel Burning Installations

The Department of Energy (DOE) hereby gives notice that on November 13, 1978, it issued prohibition orders, pursuant to the authorities granted it by section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (ESECA), as amended, 15 U.S.C. 791 et seq., and Chapter II, Title 10, Code of Federal Regulations (10 CFR), Parts 303 and 305, to the following Major Fuel Burning Installations (MFBI's):

Docket No.	Owner	Installation	Unit No.	Location
OCU-0514-1	Martin Marietta	Martin Marietta	1	Atlanta, Ga.
OCU-0514-2	do	do	2	Do.

By publication in the FEDERAL REGISTER on May 3, 1978, (43 FR 19070), DOE gave notice of its intention to issue prohibition orders to the above-named MFBI's. Pursuant to this notice, written comments were requested on the proposed orders and a public hearing was held in Atlanta, Ga., on May 16, 1978, to receive oral presentations of data, views, and arguments. Comments received by DOE during the period provided for written comment, as well as oral testimony received during the public hearing and any supplemental comments, were considered and evaluated before the prohibition orders were issued. Comments received which were considered pertinent to DOE's findings, are addressed in appendix IV to the prohibition orders.

The prohibition orders will prohibit the above-named MFBI's from burning natural gas or petroleum products as their primary energy source. The orders will not become effective, however, until (1) the Administrator of the Environmental Protection Agency (EPA) certifies, pursuant to section 2(b) of ESECA and section 113(d) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401, et seq.), the earliest date that the affected installations will be able to burn coal and comply with applicable air pollution requirements and (2) DOE has considered the environmental impact of making the orders effective, pursuant to 10 CFR 208.3(a)(4) and 305.9, and has served the affected installations with a notice of effectiveness, as provided in 10 CFR 303.10(b), 303.37(b) and 305.7. The date the prohibition orders will be effective will be stated in the notice of effectiveness.

The above-named MFBI's have been served the prohibition orders by registered mail. In addition, copies of these prohibition orders will be available to the public at DOE's Freedom of Information Reading Room, Room 2107, Federal Building, 12th and Pennsylvania Ave. NW., Washington, D.C. 20461, and at the DOE Regional Office's Reading Room, 1655 Peachtree Street NE., 8th Floor, Atlanta, Ga. 30309.

Any questions regarding this notice should be directed to Walter A. Romanek, Director, Division of Coal Utilization, Department of Energy, Code OCU (Prohibition Orders: Martin Marietta Corp., Martin Marietta Cement, Atlanta, Ga. Installations, Docket Nos. OCU-0514-1 and 0514-2), Washington, D.C. 20461, telephone 202-254-3910.

(Energy Supply and Environmental Coordination Act of 1974 15 U.S.C. 791 et seq.), as amended by Pub. L. 95-70; Federal Energy Administration Act of 1974 (15 U.S.C. 761 et seq.), as amended by Pub. L. 95-70; Department of Energy Organization Act (42 U.S.C. 7101 et seq.); E.O. 11790 (39 FR 23185); E.O. 12009 (42 FR 46267).)

Issued in Washington, D.C., November 13, 1978.

BARTON R. HOUSE,
Assistant Administrator, Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 78-32507 Filed 11-17-78; 8:45 am]

[6740-02-M]

Federal Energy Regulatory Commission

[Docket Nos. CI79-1, et al.]

NAPECO, INC., ET AL.

Applications for Certificate, Abandonment of Service and Petitions To Amend Certificates [1]

NOVEMBER 8, 1978.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authori-

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

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zation to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should, on or before December 4, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
CI79-1, A, Oct. 4, 1978	Napeco Inc., 122 South Michigan Ave., Chicago, Ill. 60603.	Natural Gas Pipeline Co. of America, Selby-Hooper No. 2-4 well, Roger Mills County, Okla.	(1)	14.65
CI79-5, A, Oct. 4, 1978	Cotton Petroleum Corp., 4200 One Williams Center, Tulsa, Okla. 74103.	Cities Service Gas Co., certain acreage in the northeast Tuttle field, Grady County, Okla.	(1)	14.65
CI79-6, A, Oct. 4, 1978	....do	Panhandle Eastern Pipeline Co., certain acreage in the Wattenberg field, Weld County, Colo.	(1)	15.025
CI79-7, A, Oct. 2, 1978	J. M. Huber Corp., 2000 West Loop South, Houston, Tex. 77027.	McCulloch Gas Processing Corp., Huber Federal 29-1 and Keeline Chase 27-3 wells from the Muddy formation only, in the North Payne field, Campbell County, Wyo.	(2)	15.025
CI79-8, A, Oct. 2, 1978	The Superior Oil Co., P.O. Box 1521, Houston, Tex. 77001.	El Paso Natural Gas Co., Parkway west field, Eddy County, N. Mex..	(1)	14.73
CI79-9, A, Oct. 4, 1978	Sohio Natural Resources Co., 50 Penn Place—Suite 1100, Oklahoma City, Okla. 73118.	Northwest Pipeline Corp., Colorow Gulch field, Rio Blanco County, Colo.	(2)	15.025
CI79-10, A, Oct. 2, 1978	Amoco Production Co., Security Life Building, Denver, Colo. 80202.	Montana-Dokata Utilities Co., Boysen field, Fremont County, Wyo.	(1)	15.025
CI79-11, A, Oct. 5, 1978	Southland Royalty Co., 1000 Fort Worth Club Tower, Fort Worth, Tex. 78102.	El Paso Natural Gas Co., Morrow formation in the Simmons No. 1-A well located in sec. 17-T12N-R22W, Roger Mills County, Okla.	(1)	14.73
CI79-12, A, Oct. 5, 1978	Dorchester Exploration, Inc., 1100 Midland National Bank Tower, Midland, Tex. 79701.	El Paso Natural Gas Co., Horsecreek, northwest (Morrow Lo) field, Kelln 205-1 and Kelln 206-1, Lipscomb and Ochiltree Counties, Tex.	(1)	14.73
CI79-13, A, Oct. 5, 1978	Cotton Petroleum Corp.	Panhandle Eastern Pipeline Co., certain acreage in the Wattenberg field, Weld County, Colo.	(1)	15.025
CI79-14, E, Oct. 5, 1978	Gulf Oil Corp., (successor in interest to Kewanee Oil Co.), P.O. Box 2100, Houston, Tex. 77001.	Consolidated Gas Supply Corp., certain acreage located in the Henrietta DeKalb field, Calhoun County, W. Va.	(3)	14.65
CI79-15, E, Oct. 5, 1978	....do	Consolidated Gas Supply Corp., certain acreage located in the Vandalia field, Lewis County, W.Va.	(3)	14.65
CI79-16, A, Oct. 5, 1978	Cotton Petroleum Corp., 4200 1 Williams Center, Tulsa, Okla 74103.	El Paso Natural Gas Co., certain acreage in the Howe Ranch field, Hemphill County, Tex.	(1)	14.65
CI79-17, A, Oct. 5, 1978	Continental Oil Co., P.O. Box 2197, Houston, Tex. 77001.	Kansas-Nebraska Natural Gas Co., Inc., Charlet field, Edwards County, Kan.	(4)	14.65
CI79-18, E, Oct. 5, 1978	Gulf Oil Corp., (successor in interest to Kewanee Oil Co.).	Consolidated Gas Supply Corp., certain acreage located in the Elk Creek field, Barbour County, W.Va.	(3)	14.65
CI79-19, E, Oct. 5, 1978	....do	Consolidated Gas Supply Corp., certain acreage located in the Sycamore Millstone field, Calhoun County, W.Va.	(3)	14.65
CI79-20, A, Oct. 5, 1978	Transco Exploration Co., P.O. Box 1396, Houston, Tex. 77001.	Transcontinental Gas Pipe Line Corp., northeast White City field, Eddy County, N. Mex.	(1)	14.65
CI79-21 (CI63-1139), B, Oct. 6, 1978.	Viersen & Cochran, P.O. Box 280, Okmulgee, Okla. 74447.	Arkansas Louisiana Gas Co., North Drummond area, Garfield County, Okla.	Release by purchaser.	
CI79-22, A, Oct., 6, 1978	Transco Exploration Co	Transcontinental Gas Pipe Line Corp., Mustang Island area, block 889-S field, offshore Texas.	(1)	14.65
CI79-23, A, Oct. 6, 1978	Continental Oil Co	El Paso Natural Gas Co., South Empire field, Eddy County, N. Mex., limited to the Morrow formation only.	(5)	14.73

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
CI79-24, F, Oct. 6, 1978	Atlantic Richfield Co. (successor in interest to Murchison Trusts), P.O. Box 2819, Dallas, Tex. 75221.	El Paso Natural Gas Co., N/2 of secs. 1 and 13, T32N, R9W, located in La Plata County, Colo., from the surface to the base of the Pictured Cliffs formation.	(10)	15.025
CI79-25, E, Oct. 6, 1978	Gulf Oil Corp. (successor in interest to Kewanee Oil Co.).	Consolidated Gas Supply Corp., certain acreage located in the Sycamore Millstone field, Calhoun County, W.Va.	(11)	14.65
CI79-26, E, Oct. 6, 1978	....do	Consolidated Gas Supply Corp., certain acreage located in the Spruce Creek field, Ritchie and Gilmer Counties, W. Va.	(12)	14.65
CI79-27, E, Oct. 2, 1978	Sun Oil Co. (successor in interest to Corpening Enterprises, et al.), P.O. Box 20, Dallas, Tex. 75221.	Cities Service Gas Co., Ripley system, Cushing plant, Payne County, Okla.	(13)	14.73
CI79-28, A, Oct. 11, 1978	Southland Royalty Co., 1000 Fort Worth Club Tower, Fort Worth, Tex. 76102.	Kansas Nebraska Natural Gas Co., Inc., Morrow formation in the Lehmbeck No. 1-30 well located in sec. 30-T5N-R19E, Texas County, Okla.	(1)	14.73
CI79-29, A, Oct. 10, 1978	Transco Exploration Co., P.O. Box 1396, Houston, Tex. 77001.	Transcontinental Gas Pipe Line Corp., West Raceland field, Lafourche Parish, La.	(1)	15.025
CI79-30, F, Oct. 10, 1978	Amoco Production Co. (successor in interest to Aikman Bros. Corp.), Security Life Bldg., Denver, Colo. 80202.	Michigan Wisconsin Pipe Line Co., Laverne Gas area, Harper County, Okla..	(14)	14.65
CI79-33 (CI64-1140), F, Oct. 10, 1978.	Amoco Production Co. (successor in interest to Exxon Corp.).	Michigan Wisconsin Pipe Line Co., Northeast Cedardale field, Woodward County, Okla.	(15)	14.65
CI79-31 (CI63-1057), B, Oct. 10, 1978.	Exxon Corp., P.O. Box 2180, Houston, Tex. 77001.	Trunkline Gas Co., Quicksand Creek field, Newton County, Tex.	Depleted, plugged, and abandoned, leases have terminated and contract has been cancelled.	
CI79-34 (CI68-621), B, Oct. 5, 1978.	Tenneco Oil Co., P.O. Box 2511, Houston, Tex. 77001.	Tennessee Gas Pipeline Co., Bay City east field, Matagorda County, Tex.	(16)	
CI79-35, B, Oct. 2, 1978	Premier Resources, Ltd., Suite 2100, First of Denver Plaza, 633-17th St., Denver, Colo. 80202.	Northern Natural Gas Co., Biesel BO1401 sec. 30-T22N-R22W, Woodward County, Okla.	(17)	
CI79-36, A, Oct. 6, 1978	Kerr-McGee Corp., P.O. Box 25861, Oklahoma City, Okla. 73125.	Tennessee Gas Pipeline Co., the Maple Branch field, Monroe and Lowndes Counties, Miss.	(1)	15.025
CI79-37, A, Oct. 6, 1978	Phillips Petroleum Co., 5 C4 Phillips Bldg., Bartlesville, Okla. 74004.	El Paso Natural Gas Co., Sun-Berry unit—southwest Cheyenne field, sec. 7-T13N-R24W, Roger Mills County, Okla.	(1)	14.73
CI79-38, A, Oct. 11, 1978	Florida Gas Exploration Co., P.O. Box 44, Winter Park, Fla. 32790.	Transcontinental Gas Pipe Line Corp., No. 1 Shirley L. Sherman and No. 1 unit 25-10 wells, Oakvale field, Jefferson Davis County, Miss.	(1)	15.025
CI79-39, A, Oct. 12, 1978	Southland Royalty Co., 1000 Fort Worth Club Tower, Fort Worth, Tex. 76102.	Northern Natural Gas Co., certain acreage in Texas County, Okla., limited to the Chester and Morrow formations only.	(1)	14.73
CI79-40 (CI71-795), B, Oct. 10, 1978.	Texaco Inc., P.O. Box 430, Bellaire, Tex. 77401.	Transcontinental Gas Pipe Line Corp., offshore block 538, Matagorda County, Tex.	(18)	
CI79-42 (CI62-243), B, Oct. 13, 1978.	Exxon Corp., P.O. Box 2180, Houston, Tex. 77001.	Arkansas Louisiana Gas Co., Northwest Beaver field, Grady County, Okla.	Depleted, lease has terminated and contract has been canceled.	
CI79-43, A, Oct. 6, 1978	Texaco Inc., P.O. Box 2420, Tulsa, Okla. 74102.	Cities Service Gas Co., Hewitt east field, Carter County, Okla.	(1)	14.73
CI79-44 (CI66-1059), E, Oct. 13, 1978.	Gulf Oil Corp. (successor in interest to Murphy Oil Co. of Oklahoma and Natural Gas & Oil Co., a division of Mississippi River Fuel Corp.), P.O. Box 2100, Houston, Tex. 77001.	Southern Natural Gas Co., Golden Meadow east, Kings Ridge and Coffee Bay fields, LaFourche Parish, La.	(19)	15.025
CI79-45, E, Oct. 6, 1978	Gulf Oil Corp. (successor in interest to Kewanee Oil Co.).	Consolidated Gas Supply Corp., certain acreage located in the Spruce Creek field, Ritchie County, W. Va.	(20)	14.65
CI79-46, E, Oct. 6, 1978	....do	Consolidated Gas Supply Corp., certain acreage located in the Stumptown Normantown field, Gilmer County, W. Va.	(21)	14.65
CI79-47, (CI77-68), B, Oct. 13, 1978.	General American Oil Co. of Texas, Meadows Bldg., Dallas, Tex. 75206.	Transcontinental Gas Pipe Line Corp., West Cameron block 45 field, Gulf of Mexico.	(22)	
CI79-48, E, Oct. 16, 1978	Gulf Oil Corp. (successor in interest to Kewanee Oil Co..	Carnegie Natural Gas Co., certain acreage located in the Pennsboro Tollgate field, Ritchie County, W. Va.	(23)	
CI79-49, E, Oct. 16, 1978	....do	Equitable Gas Co., certain acreage located in the Vadis field, Lewis County, W. Va.	(24)	14.65

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Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
CI79-50, E, Oct. 16, 1978	....do	Equitable Gas Co., certain acreage located in the Vadis field, Lewis and Gilmer Counties, W. Va.	(25)	14.65
CI79-51, F, Oct. 16, 1978	Amoco Production Co. (successor in interest to Aikman Bros. Corp.) Security Life Bldg., Denver, Colo. 80202.	Michigan Wisconsin Pipe Line Co., Laverne field, Harper County, Okla., limited to the Tonkawa formation only.	(26)	14.65
CI79-52, A, Oct. 16, 1978	Southland Royalty Co., 1000 Fort Worth Club Tower, Fort Worth, Tex. 76102.	Panhandle Eastern Pipe Line Co., Chester formation in the Chance No. 1-24 well located in sec. 24-T4N-R18E, Texas County, Okla.	(1)	14.73
CI79-53, A, Oct. 16, 1978	Amoco Production Co., P.O. Box 50879, New Orleans, La. 70150.	Transcontinental Gas Pipe Line Corp., Ship Shoal block 248 field, offshore Louisiana.	(5)	15.025
CI79-54, A, Oct. 18, 1978	Panhandle Western Gas Co., P.O. Box 1642, Houston, Tex. 77001.	Panhandle Eastern Pipe Line Co., Hay Reservoir area, Sweetwater County, Wyo.	(17)	14.65
CI79-55, A, Oct. 18, 1978	Sun Oil Co., P.O. Box 20, Dallas, Tex. 75221.	El Paso Natural Gas Co., Deck field, Sterling County, Tex.	(24)	14.65
CI79-56, E, Oct. 18, 1978	Gulf Oil Corp. (successor in interest to Kewanee Oil Co.).	Colorado Interstate Gas Co., certain acreage located in the Rock east field, Sweetwater County, Wyo.	(29)	15.025
CI79-57, E, Oct. 18, 1978	....do	Cities Service Gas Co., certain acreage located in the Guymon Southeast field, Texas County, Okla.	(30)	14.73
CI79-58, E, Oct. 18, 1978	....do	Arkansas Louisiana Gas Co., certain acreage located in the Willow Springs field, Gregg County, Tex.	(31)	14.65
CI79-59, B, Oct. 19, 1978	Austral Oil Co. Inc., and Oil Participations Inc., 1006 First City National Bank Bldg., Houston, Tex. 77002.	Trunkline Gas Co., Twin Island field, Cameron Parish, La.	Well off production; low bottom hole pressure and water production; considered depleted.	
CI79-60, E, Oct. 16, 1978	Gulf Oil Corp. (successor in interest to Kewanee Oil Co.), P.O. Box 2100, Houston, Tex. 77001.	Equitable Gas Co., certain acreage located in the H. Green Lawford field, Ritchie County, W. Va.	(32)	14.65
CI79-61, E, Oct. 16, 1978	....do	Equitable Gas Co., certain acreage located in the Vadis field, Lewis County, W. Va.	(33)	14.65
CI79-62, E, Oct. 16, 1978	....do	Equitable Gas Co., certain acreage located in the Revel field, Gilmer County, W. Va.	(34)	14.65
CI79-63, E, Oct. 18, 1978	....do	Equitable Gas Co. certain acreage located in the Vadis field, Lewis County, W. Va.	(35)	14.85
CI79-64, E, Oct. 16, 1978	....do	Equitable Gas Co., certain acreage located in the Vadis field, Gilmer County, W. Va.	(36)	14.65
CI79-65, A, Oct. 19, 1978	Mobil Oil Corp., 9 Greenway Plaza—Suite 2700, Houston, Tex. 77046.	Transwestern Pipeline Co., certain acreage in the Burton Flat north field, Eddy County, N. Mex.	(1)	14.73
CI79-66, A, Oct. 17, 1978	Union Oil Co. of California, Union Oil Center, Rm. 901, P.O. Box 7600, Los Angeles, Calif. 90051.	Texas Gas Transmission Corp., block 237 (deep), West Cameron area, offshore Louisiana.	(1)	14.73
CI79-67, A, Oct. 16, 1978	Exxon Corp., P.O. Box 2180, Houston, Tex. 77001.	Northwest Pipeline Corp., Salt Wells field, Sweetwater County, Wyo.	(1)	14.73
CI79-68, A, Oct. 16, 1978	Amoco Production Co., Security Life Bldg., Denver, Colo. 80202.	Cities Service Gas Co., Higgins and South Higgins fields, Sweetwater County, Wyo.	(1)	15.025
CI79-69, E, Oct. 19, 1978	Gulf Oil Corp., (Successor in interest to Kewanee Oil Co.).	Equitable Gas Co., certain acreage located in the Vadis field, Gilmer and Lewis Counties, W. Va.	(25)	14.65
CI79-70, E, Oct. 19, 1978	....do	Cities Service Gas Co., certain acreage located in the Quinlan Northwestern field, Woodward County, Okla.	(37)	14.65
CI79-71, E, Oct. 18, 1978	....do	Arkansas Louisiana Gas Co., certain acreage located in the Milton north field, Haskell County, Okla.	(38)	14.73
CI79-72, E, Oct. 18, 1978	....do	Cabot Corp., certain acreage located in the Sycamore Millstone field, Calhoun County, W.Va.	(39)	14.73
CI79-73, A, Oct. 19, 1978	Cabot Corp., 1 Houston Center, Suite 1000, Houston, Tex. 77002.	Kokomo Gas & Fuel Co., sec. 14-T3N-R16ECM, limited to all depths below the base of the Chase group of the Permian age, Texas County, Okla.	(1)	14.73
CI79-74, A, Oct. 23, 1978	Enserch Exploration, Inc., 1817 Wood St., Dallas, Tex. 75201.	Natural Gas Pipeline Co. of America, certain acreage in the Bluitt plant area, Roosevelt County, N. Mex.	(1)	14.73
CI79-75, A, Oct. 12, 1978	Mesa Petroleum Co., P.O. Box 2009, Amarillo, Tex. 79189.	El Paso Natural Gas Co., White City Penn field, Eddy County, N. Mex.	(1)	14.73

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
CI79-76, A, Oct. 20, 1978	Arkla Exploration Co., P.O. Box 21734, Shreveport, La. 71151.	Tennessee Gas Pipeline Co., Charles Dugas No. 1 well, sec. 19-T13S-R5E, Tigre Lagoon field, Vermillion Parish, La..	(40)	15.025
CI79-77, A, Oct. 23, 1978	Southland Royalty Co., 1000 Fort Worth Club Tower, Fort Worth, Tex. 76102.	Kansas Nebraska Natural Gas Co., Inc., certain acreage located in Phillips County, Mont.	(1)	14.73
CI79-78, B, Oct. 23, 1978	Northern Pump Co., et al., 1915-57th Ave. North, Minneapolis, Minn. 55430.	Texas Eastern Transmission Corp., Joe Cook No. 1 gas unit, Mercedes field, Hidalgo County, Tex.	Gas supply was exhausted.	
CI79-79, E, Oct. 16, 1978	Sun Oil Co. (successor to Corpening Enterprises, et al.), P.O. Box 20, Dallas, Tex. 75221.	Cities Service Gas Co., Lost Creek field, Stillwater plant, located in Payne County, Okla.	(41)	14.73
CI79-80, (CI61-316), B, Oct. 23, 1978.	General American Oil Co. of Texas, Meadows Bldg., Dallas, Tex. 75206.	United Gas Pipe Line Co., Hollywood field, Terrebonne Parish, La.	(42)	
CI79-81, A, Oct. 25, 1978	Amoco Production Co., et al., Security Life Bldg., Denver, Colo. 80202.	Cities Service Gas Co., Echo Springs field, Carbon County, Wyo.	(1)	15.025
CI79-82, E, Oct. 25, 1978	Gulf Oil Corp., (successor in interest to Kewanee Oil Co.).	Columbia Gas Transmission Corp., certain acreage located in the Reed Deemer field, Greene County, Pa.	(43)	14.73

[1] Applicant is willing to accept the applicable national rate pursuant to opinion No. 770, as amended.
[2] Applicant is filing under gas purchase contract dated July 11, 1978.
[3] Applicant is filing under gas purchase contract dated Aug. 20, 1978.
[4] Effective as of July 1, 1978, applicant acquired all of Kewanee's interest in properties covered by contract dated Sept. 18, 1953, as amended.
[5] Effective as of July 1, 1978, applicant acquired all of Kewanee's interest in properties covered by contract dated Oct. 31, 1963, as amended.
[6] Applicant is filing under gas purchase and sales agreement dated Sept. 7, 1978.
[7] Effective as of July 1, 1978, applicant acquired all of Kewanee's interest in properties covered by contract dated April 3, 1947, as amended.
[8] Effective as of July 1, 1978, applicant acquired all of Kewanee's interest in properties covered by contract dated Aug. 6, 1964, as amended.
[9] Applicant is filing under gas purchase and sales agreement dated Sept. 18, 1978.
[10] Effective date of transfer of ownership: Jan. 31, 1978 (N/2 sec. 1) and May 25, 1978 (N/2 sec. 13). Applicant is willing to accept the applicable national rate pursuant to opinion No. 770, as amended.
[11] Effective as of July 1, 1978, applicant acquired all of Kewanee's interest in properties covered by contract dated Oct. 18, 1940, as amended.
[12] Effective as of July 1, 1978, applicant acquired all of Kewanee's interest in properties covered by contract dated Aug. 10, 1943, as amended.
[13] Sun acquired Corpening Enterprises, et al. (Corpening Gas Systems, Atlanta Petroleum Production Co. and Ketal Oil Producing Co.) interests by assignment dated July 20, 1978, and made effective July 23, 1978.
[14] By virtue of an assignment dated June 26, 1968, from Sun Oil Co. assigned certain interests in certain oil and gas leases located in Harper County, Okla., to the Aikman Bros. Corp. By virtue of a further assignment effective Oct. 1, 1977, from Ted Leyhe, et al. (Aikman Bros.), Applicant has been assigned certain interests in certain of the oil and gas leases acquired by Aikman Bros. from Sun. Said leases are subject to gas sales contract dated Mar. 9, 1957.
[15] Applicant, by virtue of an assignment effective April 9, 1978, from Exxon Corp., formerly Humble Oil & Refining Co. (Exxon), has been assigned certain interests in certain oil and gas leases located in Woodward County, Okla. Applicant is willing to accept the applicable national rate pursuant to opinion No. 770, as amended.
[16] Well plugged and abandoned because of hazardous conditions, well being located within limits of populous area. With the existing hazardous conditions, Tenneco Oil made evaluation and determined there were no further economic reserves remaining.
[17] Last production was January 1977, well was plugged because it was noncommercial and has not been in a profit position since 1976. Premier has no future plans for any additional operations in the area or on the lease and, to the best of Premier's knowledge, nor is any other company considering this lease for further exploration. The lease was held by production and is now being terminated and returned to the original mineral owners.
[18] Deliveries ceased on Jan. 19, 1978, gas reserves depleted, lease was released on Apr. 24, 1978 and Texaco has no further right, title or interest therein.
[19] Applicant acquired Murphy's interest in the acreage effective as of Oct. 1, 1974. The contract dated Aug. 20, 1956, was canceled effective Jan. 31, 1977, and Gulf has executed a replacement contract dated July 11, 1978, which now covers applicant's interest in the natural gas available for sale from acreage operated by American Petrofina in the Golden Meadow east, Kings Ridge, Coffee Bay fields, La Fourche Parish, La. Applicant is willing to accept the applicable national rate pursuant to opinion No. 770, as amended.
[20] Effective as of July 1, 1978, applicant acquired all of Kewanee's interest in properties covered by contract dated June 20, 1944, as amended.
[21] Effective as of July 1, 1978, applicant acquired all of Kewanee's interest in properties covered by contract dated Sept. 19, 1944, as amended.
[22] Ceased production on Jan. 9, 1978, efforts to restore production were unsuccessful and the oil and gas lease expired by its terms on May 25, 1978.
[23] Effective as of July 1, 1978, applicant acquired all of Kewanee's interest in properties covered by contract dated July 3, 1936, as amended.
[24] Effective as of July 1, 1978, applicant acquired all of Kewanee's interest in properties covered by contract dated July 24, 1961, as amended.
[25] Effective as of July 1, 1978, applicant acquired all of Kewanee's interest in properties covered by contract dated June 2, 1958, as amended.
[26] Applicant, [1] by virtue of an assignment effective Oct. 1, 1977, from Ted Leyhe, et al. (Aikman Bros.), has been assigned certain interest in certain oil and gas leases located in Harper County, Okla. Said leases are subject to gas sales contract dated Feb. 13, 1968.
[27] Seller and purchaser are affiliated.
[28] Applicant is filing under residue gas purchase agreement dated July 15, 1978.
[29] Effective as of July 1, 1978, applicant acquired all of Kewanee's interest in properties covered by contract dated July 2, 1969, as amended.
[30] Effective as of July 1, 1978, applicant acquired all of Kewanee's interest in properties covered by contract dated Nov. 10, 1958, as amended.
[31] Effective as of July 1, 1978, applicant acquired all of Kewanee's interest in properties covered by contract dated Apr. 28, 1953 which has been replaced by a contract dated Feb. 1, 1978.
[32] Effective as of July 1, 1978, applicant acquired all of Kewanee's interest in properties covered by contract dated Oct. 10, 1935, as amended.
[33] Effective as of July 1, 1978, applicant acquired all of Kewanee's interest in properties covered by contract dated Apr. 18, 1960, as amended.
[34] Effective as of July 1, 1978, applicant acquired all of Kewanee's interest in properties covered by contract dated Oct. 22, 1951, as amended.
[35] Effective as of July 1, 1978, applicant acquired all of Kewanee's interest in properties covered by contract dated Feb. 20, 1942, as amended.
[36] Effective as of July 1, 1978, applicant acquired all of Kewanee's interest in properties covered by contract dated June 1, 1967, as amended.
[37] Effective as of July 1, 1978, applicant acquired all of Kewanee's interest in properties covered by contract dated June 18, 1963, as amended.
[38] Effective as of July 1, 1978, applicant acquired all of Kewanee's interest in properties covered by contract dated July 8, 1964, as amended.
[39] Effective as of July 1, 1978, applicant acquired all of Kewanee's interest in properties covered by contract dated Dec. 23, 1937, as amended.
[40] Applicant is filing under gas sale contract dated Aug. 16, 1978.
[41] Sun acquired the interest of Corpening Enterprises, et al. (Corpening Gas Systems, Atlanta Petroleum Production Co. and Ketal Oil Producing Co.), in the Lost Creek system and Stillwater plant, located in Payne County, Okla., by assignment dated July 20, 1978, and made effective July 23, 1978. Applicant is willing to accept the applicable national rate pursuant to opinion No. 770, as amended.
[42] The Southdown well No. 4, LK RA SU "B", which is the only well covered by the abandonment application, ceased to produce on Apr. 9, 1973, due to the decline of reservoir pressure to the extent that the well ceased to flow gas and was shut in by the operator. No acreage is removed from dedication as a result of this filing because the leases are held by other production.
[43] Effective as of July 1, 1978, applicant acquired all of Kewanee's interest in properties covered by contract dated Sept. 22, 1931, as amended.

Filing code: A—Initial service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total succession. F—Partial succession.

[FR Doc. 78-32342 Filed 11-17-78; 8:45 am]

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[6740-02-M]

SEMINARS CONCERNING IMPLEMENTATION OF THE NATURAL GAS POLICY ACT

NOVEMBER 14, 1978.

The Federal Energy Regulatory Commission will co-sponsor, in cooperation with nine law schools, a series of 1-day seminars, beginning December 6, 1978, concerning the implementation of the Natural Gas Policy Act (NGPA).

The purpose of the seminars will be to inform natural gas producers, attorneys and other interested persons about the NGPA and the implementing regulations.

Information about registration for the seminars and further details are attached.

KENNETH F. PLUMB,
Secretary.

NATURAL GAS POLICY ACT IMPLEMENTATION SEMINARS

Nine 1-day seminars for natural gas producers December 6-15, 1978.

Sponsored by:

University of Mississippi School of Law.
University of Houston College of Law.
Louisiana State University Law Center.
Southern Methodist University School of Law.
Ohio State University School of Law.
University of Kansas School of Law, Washburn University of Topeka School of Law, Kansas Bar Association.
University of Oklahoma School of Law.
University of Denver School of Law.
University of California at Los Angeles School of Law.

Cosponsored by:

The Federal Energy Regulatory Commission.

Purpose: Implementation of the Natural Gas Policy Act of 1978 will require a full understanding of the new law and the implementing regulations promulgated by the Federal Energy Regulatory Commission. The goal of these seminars is to bring together some of the individuals who will be interpreting and administering the provisions of the NGPA as well as those who will be required to comply with the act.

Each seminar will inform natural gas producers, attorneys and other interested persons about the NGPA and the implementing regulations, with particular emphasis on the pricing of natural gas. In addition, seminar sessions will focus on the interim collection regulations under section 503(e), filing requirements, procedures for State determinations, FERC review of State determinations, and new regulatory and filing requirements for both intrastate and interstate natural gas transactions.

SEMINAR CONTENT

All seminars will cover:
- Pricing provisions of the Natural Gas Policy Act of 1978.
- Interim collections.
- Filing requirements in general.
- Filing requirements for State determinations.
- Regulatory requirements for intrastate natural gas transactions.
- Panel discussion.
- Question and answer session.

Seminar Schedule: 8:30 a.m. to 5:00 p.m.

December 6, 1978—Jackson, Miss., Downtown Holiday Inn, Lamar and Amite Streets, 601-969-5100.

December 7, 1978—Houston, Tex., University of Houston Campus, Krost Hall, 4800 Calhoun, 713-749-1422.

December 8, 1978—New Orleans, La., Hyatt Regency Hotel, 500 Poydras Plaza, and Loyola Avenue, 503-561-1234.

December 9, 1978—Dallas, Tex., Southern Methodist University Campus, McFarlin Auditorium, 713-749-1422.

December 12, 1978—Wichita, Kans., Canterbury Inn, 5805 West Kellogg, 316-942-7911.

December 13, 1978—Oklahoma City, Okla., Sheraton Century Center, One N. Broadway, 405-235-2780.

December 14, 1978—Denver, Colo., Regency Hotel, 3900 Elati, Interstate 25 at 38th Avenue, 303-433-6131.

December 15, 1978—Los Angeles, Calif., Bonaventure Hotel, 5th and Figueroa Streets, 213-624-1000.

Speakers: Speakers for each seminar will include a member of the Federal Energy Regulatory Commission, FERC legal and technical staff, representatives of sponsoring law schools, conservation agency and other state officials having jurisdiction to make NGPA determinations, and local legal practitioners. Each seminar will conclude with a panel discussion by the speakers.

REGISTRATION INFORMATION

We urge you to pre-register so that space can be reserved at the seminar of your choice.

Fill in your organization name and address on registration form. List names and phone numbers of individual registrants in space below.

Be sure to indicate the specific seminar date to the right of each name and check the appropriate space for luncheon reservation. Luncheon and coffee, prices will vary depending on seminar location.

Seminar registration does not include hotel reservations. Registrants will be required to make their own hotel reservations. If you reserve accommodations at seminar hotel sites, indicate that reservation is for the Natural Gas Seminar.

For further information contact: Ms. Cynthia Porter (Dingle Associates), 202-554-5581 or 554-5532.

Mail registration form by November 27 to: Dingle Associates, Inc., 525 School Street SW., Suite 301, Washington, D.C. 20024.

After November 27, call Ms. Cynthia Porter at 202-554-5581 or 554-5532.

[FR Doc. 78-2585 Filed 11-17-78; 8:45 am]

[6450-01-M]

Western Area Power Administration

CENTRAL VALLEY PROJECT (CVP) POWER RATE ADJUSTMENT

Changes in Dates for Public Participation in Supplemental Proceedings

AGENCY: Western Area Power Administration (WAPA), Department of Energy.

ACTION: Notice of changes in dates.

SUMMARY: The dates for various steps in the Supplemental Proceedings for Public Participation in Power Rate Adjustments for CVP, California, were changed with a Notice in the FEDERAL REGISTER for September 22, 1978, 43 FR 43065. The additional information forum held in Sacramento, Calif., on September 27, 1978, to answer questions concerning revised tentative rates was continued to September 28, 1978, and October 19, 1978, and concluded on October 20, 1978. As a result of a new power rate alternative presented on September 27, 1978, the public participants at the forum asked for an extension of time to allow their comments to be prepared. We agreed to allow more time. Written comments will now be due November 27 and rebuttal comments on December 22. A public comment forum will be held January 9, 1979, and final position summaries are due January 26, 1979.

DATES: Written comments on the revised tentative rates may be submitted on or before November 27, 1978. Written rebuttal comments may be submitted on or before December 22, 1978. The supplemental public comment forum will be held at the Caravan Inn at 9:30 a.m., on January 9, 1979. Written summaries of positions are due on or before January 26, 1979.

ADDRESSES: Three copies of written comments shall be mailed to each of the following:

Area Manager, Western Area Power Administration, Department of Energy, 2800 Cottage Way, Sacramento, Calif. 95825.
Administrator, Western Area Power Administration, Department of Energy, P.O. Box 3402, Golden, Colo. 80401.
Assistant Secretary for Resource Applications, Department of Energy RA-4, Washington, D.C. 20461.

In addition, a copy should be submitted to each person who has previously submitted comments. A list of such persons may be obtained from the Area Manager.

FOR FURTHER INFORMATION CONTACT:

Gordon R. Estes, Area Manager, Western Area Power Administration, Department of Energy, 2800 Cottage Way, Sacramento, Calif. 95825, 916-484-4251.
Conrad K. Miller, Western Area Power Administration, Department of Energy, P.O. Box 3402, Golden, Colo. 80401, 303-231-1535.

SUPPLEMENTARY INFORMATION: This proceeding was started in September 1977, with the announcement that two alternative rates were under consideration. See FR 46619. Following public information and public comment forums, the customers requested more time to obtain informtion and submit comments. Accordingly, the procedures were revised to authorize the establishment of interim rates followed by supplemental proceedings, 43 FR 12076; and interim rates were established, 43 FR 12361, to become effective May 25, 1978.

In April 1978, the Department of Energy announced supplemental proceedings for public participation in CVP power rate adjustments before a final decision is made, 43 FR 16391. A supplemental information forum was held on April 27 and continued to June 9. A number of written comments were received on June 30. However, the dates for rebuttal comments, the public comment forum, and the position summaries were cancelled pending further developments. New dates for the continuation of the supplemental proceedings were established, 43 FR 43065, and an additional information forum was held on September 27 and 28 and October 19 and 20, 1978. The dates established in 43 FR 43065 required written comments by November 1, 1978. Information forum participants asked for more time in which to prepare their comments. We agree to allow more time. Accordingly, this Notice establishes new dates for public comments.

Issued in Washington, D.C., November 15, 1978.

WILLIAM P. DAVIS,
Deputy Director of Administration.

[FR Doc. 78-32593 Filed 11-17-78; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[PP 5G1590/T162; FRL 1009-5]

PESTICIDE PROGRAMS

Establishment of Temporary Tolerances for Tricyclazole

Elanco Products Co., P.O. Box 1750, Indianapolis, Ind. 46206, submitted a pesticide petition (PP 5G1590) to the Environmental Protection Agency (EPA). This petition requested that temporary tolerances be established for combined residues of the fungicide tricyclazole (5-methyl-1-1,2,4-triazolo [3,4-*b*]benzothiazole and its metabolite 1, 2, 4=triazolo[3, 4=*b*]=*benzpthiazole-5-methanol in or on the raw agricultural commodities rice at 3 parts per million (ppm); liver and kidney of cattle, goats, hogs, horses, poultry, and sheep at 0.1 ppm; and milk and eggs at 0.03 ppm. (A related document concerning the establishment of a feed additive regulation for residues of tricyclazole in or on rice hulls, bran, and polishings appears elsewhere in today's* FEDERAL REGISTER.)

These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with an experimental use permit that has been issued under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (86 Stat. 973, 89 Stat. 751; 7 U.S.C. 136(a) et seq.).

An evaluation of the scientific data reported and other relevant material showed that the requested tolerances were adequate to cover residues resulting from the proposed experimental use, and it was determined that the temporary tolerances would protect the public health. The temporary tolerances have been established for the pesticide, therefore, with the following provisions:

1. The total amount of the pesticide to be used must not exceed the quantity authorized by the experimental use permit.

2. Elanco Products Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The firm must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These temporary tolerances expire August 21, 1979. Residues not in excess of 3 ppm remaining in or on rice; 0.1 ppm remaining in liver and kidney of cattle, goats, hogs, horses, poultry, and sheep; and 0.03 ppm remaining in milk and eggs after this expiration date will not be considered actionable if the pesticide is legally applied during the term of and in accordance with the provisions of the experimental use permit and temporary tolerances.

These temporary tolerances may be revoked if the experimental use permit is revoked or if any scientific data or experience with this pesticide indicates such revocation is necessary to protect the public health. Inquiries concerning this notice may be directed to Mr. Richard F. Mountfort, Acting Product Manager (PM) 21, Registration Division (TS-767), Office of Pesticide Programs, East Tower, 401 M Street SW., Washington, D.C. 20460, 202-426-2456.

(Statutory authority: Section 408(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(j).)

Dated: November 7, 1978.

DOUGLAS D. CAMPT,
Acting Director, Registration Division.

[FR Doc. 78-32480 Filed 11-17-78; 8:45 am]

[6560-01-M]

[FRL 1009-3]

RECEIPT OF ENVIRONMENTAL IMPACT STATEMENTS

President Carter's Reorganization Plan No. 1 (see President's Message of July 15, 1977) transferred certain functions from the Council on Environmental Quality (CEQ) to the Environmental Protection Agency (EPA). Some of these functions relate to operational duties associated with the administrative aspects of the environmental impact statement (EIS) process. In Memorandum of Agreement No. 1 entered into between CEQ and EPA, dated March 29, 1978, it was agreed that EPA would be the official recipient of EIS's and would publish the availability of each EIS received on a weekly basis. This is the duty formerly carried out by CEQ pursuant to Section 1500.11(c) of the CEQ Guidelines.

Review periods for draft and final EIS will be computed as follows: The

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45-day review period for draft EIS's will be computed from the Friday following the week which is being reported; the 30-day wait period for final EIS's will be computed from the date of receipt of the EIS by EPA and commenting parties.

The following is a list of environmental impact statements received by the Environmental Protection Agency from November 6, 1978 through November 10, 1978; the date of submission of comments on draft EIS's as computed from November 17, 1978 is January 2, 1978.

Copies of individual statements are available for review from the originating agency. Back copies are also available at 10 cents per page from the Environmental Law Institute, 1346 Connecticut Avenue, Washington, D.C. 20036.

Dated: November 14, 1978.

JOSEPH M. McCABE,
Acting Director,
Office of Federal Activities.

DEPARTMENT OF AGRICULTURE

Contact: Mr. Barry Flamm, Coordinator, Environmental Quality Activities, U.S. Department of Agriculture, Room 359A, Washington, D.C. 20250, 202-447-3965.

RURAL ELECTRIFICATION ADMINISTRATION

Final

Stanton Generating Station, 60 MW Steam Generator, Mercer County, N.D. November 9: The proposed action concerns the use of REA guaranteed loan funds to finance the proposed supplemental steam generator, 60 MW, coal-fired steam electric generating unit for the existing Stanton generating station. The Stanton station is located in Mercer County, N.Dak. Make-up and cooling water will come from the Missouri River. The primary fuel will come from the existing nearby Indian Head Mine in Mercer County which is the present source of fuel. (USDA-REA-(ADM)-78-3-F.) Comments made by: USDA, FERC, DOI, EPA, DOE, and State agencies. (EPA Order No. 81210.)

SOIL CONSERVATION SERVICE

Draft

South Branch-Park River Watershed, Hartford County, Conn. November 8: Proposed is the completion of work remaining to be done on the South Branch-Park River Watershed in Hartford County, Conn. The remaining work includes a total of 3.7 miles of channel: 1.9 miles of channel on Trout Brook and Asylum Avenue branch, including 1,200 feet of enclosed conduit in the area of Farmington Avenue and Four Bridges in West Hartford, in Mill Brook, 1.1 miles of channel work will be done, and Piper Brook, 0.7 miles of channel work is anticipated. The modification of a total of six bridges will be required. (USDA-SCS-EIS-WS-(ADM)-78-1-D-CT.) (EPA Order No. 81205.)

U.S. ARMY CORPS OF ENGINEERS

Contact: Dr. C. Grant Ash, Office of Environmental Policy Department, Attention: DAEN-CWR-P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 1000 Independence Avenue SW., Washington, D.C. 20314, 202-693-6795.

Final

Saw Mill Run, Pittsburgh, Allegheny County, Pa., November 9: The statement refers to a proposed flood control project on the Saw Mill Run through the west end of the city of Pittsburgh. Project measures will include the widening and deepening and minor realignment of 5,600 feet of the channel. Project alteratives include channel modifications of different capacities, reservoirs, flood walls and dikes, tunnels, flood forecasting and warning system, flood plain management, flood insurance, flood proofing, permanent excavation and no action. (Pittsburgh district.) Comments made by: USDA, HEW, DOI, EPA, state and local agencies, groups and businesses. (EPA Order No. 81212.)

Blair and Sitcum Waterways, Tacoma Harbor, Pierce County, Wash. November 7: Proposed is a navigation channel improvement plan for the Blair and Sitcum Waterways in the Tacoma Harbor, Pierce County, Wash. The plan would provide for the deepening of Blair Waterway to a depth of 45 feet, Federal maintenance of Sitcum Waterway to depths of 35-40 feet, and replacement of the east 11th Street Bridge over Blair Waterway. Materials dredged from the waterways would be deposited on disposal and stock pile sites within the industrialized port of Tacoma area. (Seattle District.) Comments made by: EPA, DOI, DOT, USCG, USDA, DOC, USN, HUD, AHP, State and local agencies groups. (EPA Order No. 81200.)

DEPARTMENT OF DEFENSE, ARMY

Contact: George Q. Cunney, Jr., Acting Chief, Environmental Office, Office of the Assistant Chief of Engineers, Department of the Army, Room 1E676, Pentagon, Washington, D.C. 20310, 202-694-4269.

Draft

Acquisition of Maneuver Area II, Fort Bliss, El Paso County, Tex. Nov. 6: Proposed is the acquisiton of lands comprising the training area known as Maneuver Area II located at Fort Bliss, El Paso County, Tex. Fee ownership could be acquired either by purchase or by land exchange. Segments of Maneuver Area I which could be applied towards acquisition by exchange are currently being used for a variety of training purposes. Projected military training missions call for increased utilization of the area following acquisition. Five alternatives are considered (EPA Order No. 81197).

GENERAL SERVICES ADMINISTRATION

Contact: Mr. Andrew E. Kauders, Executive Director, Environmental Affairs Division, General Services Administration, 18th and F Street, NW. Washington, D.C. 20405, 202-566-0405.

Draft

NRC Headquarters, relocation and consolidation, District of Columbia and Montgomery County, Md. Nov. 9: Proposed is the relocation and consolidation of the Nuclear Regulatory Commission Headquarters. The GSA is presently considering two locations in the District of Columbia and three locations in Montgomery County, Md. NRC is presently housed in nine separate facilities, one of which is in downtown Washington, and eight in Montgomery County, Md. The proposed action will require that GSA lease approximately 600,000 square feet of occupiable space in a building to be constructed (EPA Order No. 81211).

Final

Newpot Naval Base, Quonset Point, disposition, Washington, and Newport Counties, R.I. Nov. 9: The proposed action involves the disposition of surplus Federal real property in the State of Rhode Island. The surplus properties comprise portions of the former Naval Air Station—Quonset Point, Construction Battalion Center—Davisville, located in Washington County, and portions of the Newport Naval Base consisting of the Navy Supply Center, Newport County, R.I. The two bases form a continuous land parcel. Quonset Point was declared excess in its entirety, while portions of Davisville have been retained by the Navy. Roughly 2,100 acres are presently under the jurisdiction of GSA. Comments made by: USDA, SBA, DOE, FERC, EPA, HUD, DOI, DLAB, DOT, State and local agencies, groups and individuals (EPA Order No. 81209).

DEPARTMENT OF HUD

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410, 202-755-6308.

Draft

Frederick Heights housing project, Frederick County, Md. Nov. 9: Proposed is the issuance of HUD home mortgage insurance for the Frederick Heights housing project, Frederick County, Md. The project will involve the construction of 1,121 living units on a 102 acre tract of land. The project will also include two community recreational centers, a 10 acre school site, and interior open space system, with playground facilities (EPA order No. 81208).

SECTION 104(H)

The following are community development block grant statements prepared and circulated directly by applicants pursuant to section 104(H) of the 1974 Housing and Community Development Act. Copies may be obtained from the office of the appropriate local executive. Copies are not available from HUD.

In accordance with the Council on Environmental Quality's Guidelines (40 CFR 1500) the following EIS will not complete the minimum 90 day requirement for EIS's until December 15, 1978.

Final

East Temple residential project, Bell County, Tex. Nov. 9: Proposed is a multi-year project under the Community Development Block Grant Program located in Temple, Bell County, Tex. The project, to be known as the East Temple residential project, will encompass approximately 115 acres of land, and will consist of the construction of a single-family residential subdivision of about 450 units for low and moderate income homebuyers. Also included is the expansion of Wilson Park, and the dedication of right-of-way for the extension of a major thoroughfare. Comments made by: EPA, DOI, USDA, State and local agencies (EPA order No. 81207).

DEPARTMENT OF INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 4256, Interior Building, Department of the Interior, Washington, D.C. 20240, 202-343-3891.

BUREAU OF RECLAMATION

Final

McGee Creek Project, Atoka County, OK, Nov. 8: The proposed McGee Creek Project, Atoka County, OK, will store surface water to meet expanding M. & I. water needs of Oklahoma City and parts of south-central Oklahoma, about 71,800 acre-feet of M. & I. water will be provided and 8,000 acre-feet will be released downstream to provide continuous streamflow rate of 11 cubic feet per second. The project includes construction of a dam, dike, reservoir, pipeline, a natural scenic recreation area, wildlife management area, and appurtenant facilities. (INT-FES-78-32.) Comments made by: AHP, EPA, USDA, COE, DOC, HEW, DOI, DOT, State and local agencies groups. (EPA Order No. 81202.)

NUCLEAR REGULATORY COMMISSION

Contact: Mr. Voss A. Moore, Assistant Director for Environmental Projects, P-518, Washington, D.C. 20555, 301-492-8446

Final

Sundesert Nuclear Plant Units 1 and 2, Riverside County, Calif., Nov. 7: This FEIS was prepared by the Nuclear Regulatory Commission and the Department of the Interior. Proposed is the issuance of a construction permit to San Diego Gas & Electric Co. for construction of the Sundesert Nuclear Plant, Units 1 and 2. The plant is located in Riverside County, Calif., approximately 8.9 Km (5.5 miles) west of the Colorado River and 25.7 Km (15.9 miles) southwest of Blythe, Calif. and will employ 2 presssurized-water reactors (PWR's) to produce up to 2,785 megawatts thermal (MWT) for each unit. (NUREG-0455.) Comments made by: AHP, USDA, COE, DOE, DOC, DOI, EPA, State and local agencies groups, individuals and businesses. (EPA Order No. 81199.)

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 7th Street, SW, Washington, D.C. 20590, 202-426-4357.

FEDERAL HIGHWAY ADMINISTRATION

Draft

CA-76, Oceanside Bypass, I-5 East to Oceanside, San Diego County, Calif., Nov. 9: Proposed is the construction of a highway to provide for the relocation of CA-76 located in Oceanside City, San Diego County, Calif. The project would relocate the western 2.9 miles of CA-76 to bypass Central Oceanside. Connecting with the existing highway near Fronitier Drive, the new route would bypass the westerly Mission Avenue Commercial Strip and would have a controlled access. Basic alternatives are no project, an ultimate 6-lane expressway or 8-lane freeway. Design and alternative decisions will be made after all comments have been evaluated. (FHWA-CA-EIS-78-04-D.) (EPA Order No. 81214.)

U.S. 264 Improvement, Wilson to Greenville, Wilson, Greene, and Pitt Counties, N.C.: Nov. 8: Proposed is the construction of a 4-lane divided highway, either by dualizing the existing roadway or constructing a dual highway on a new location from the intersection of existing U.S. 264 and N.C. 58 east of Wilson to a connection with the existing U.S. 264 Greenville bypass near Frog Level, or to a connection in new location near Pitt County Memorial Hospital at Greenville. The proposed improvement will either upgrade, or generally parallel and replace, this portion of existing U.S. 264 which is about 29.7 miles in length, and crosses portions of Wilson, Greene, and Pitt Counties, NC. (FHWA-NC-EIS-78-07-D.) (EPA order No. 81204.)

Max North and South, U.S. 83, ND-23 to ND-37, Ward and McLean Counties, N. Dak., Nov. 9: Proposed is the construction of a two-lane roadway parallel to the existing roadway on U.S. 83 from ND-23 south to ND-37. The project would provide a four-lane divided highway approximately 22 miles long. The proposed improvement requires the purchase of right-of-way. Basically, it is proposed to construct an additional roadway adjacent to the existing roadway throughout the length of the improvement. The existing roadway will remain in place to serve as one roadway of the four-lane divided highway (FHWA-ND-EIS-78-04D) (EPA Order No. 81213).

Yonkers Arterial Highway Systerm, Nepperhan Route, Westchester County, N.Y., Nov. 8: Proposed is an improvement plan for two sections of the Nepperhan Arterial Route to be included in the Yonkers Arterial Highway System in the city of Yonkers, Westchester County, N.Y. The two sections involved extend from South Broadway to New Main Street and from Walsh Road to Lake Avenue, a distance of 0.16 mile and 0.82 mile, respectively. Existing right-of-way will be used for the project and new right-of-way has recently been acquired (FHWA-NY-EIS-77-07D) (EPA Order No. 81201).

U.S. 35, from U.S. 68 to U.S. 35 bypass, Greene and Fayette Counties, Ohio, Nov. 7: Proposed is the construction of approximately 27.2 miles of four-lane divided highway on a new location in Greene and Fayette Counties, Ohio. The project will begin at the existing U.S. 35 bypass around Xenia and connect with the U.S. 35 bypass around Washington Courthouse. The proposed relocation will provide interchanges at: (1) Bickett Road, (2) U.S. 68, (3) existing U.S. 35 west of Jamestown, (4) OH-72, (5) west of the existing I-71/U.S. 35 interchange, (6) east of the existing I-71/U.S. 35 interchange, and (7) Palmer Road. Six alternatives were considered (FHWA-Ohio-EIS-78-01-D) (EPA Order No. 81198).

Railroad Relocation, city of Oshkosh, Winnebago County, Wis., Nov. 8: Proposed is the consolidation of the Soo Line and C & NW rail traffic affecting the city of Oshkosh, Winnebago County, Wis. The proposed consolidation would transfer train movements of the Soo Line onto the C & NW tracks in joint operation. To accomplish this change, four sets of crossover switches would be constructed on existing railroad right-of-way and the C & NW tracks and swing bridge across the Fox River would be upgraded. As part of the project an underpass at Irving Avenue has been recommended (FHWA-Wisc-EIS-78-01-D) (EPA Order No. 81203).

Final

TN-5, U.S. 45, Henderson, Chester and McNairy Counties, Tenn., Nov. 9: Proposed is the improvement of the existing two-lane TN-5 to a four-lane divided facility with no control of access, along with a proposed bypass for the cities of Selmer and possibly Bethel Springs. The project begins at the Mississippi State line and extends in a northerly direction to 0.70 mile south of TN-100 in Henderson, McNairy, and Chester Counties, Tenn. The project length is approximately 32 miles (FHWA-TN-EIS-77-03-F) (Region 4). Comments made by: HUD, DOC, USDA, DOT, TVA, HEW, EPA, DOI, and State agencies (EPA Order No. 81206).

Routes 1 and I-105, Los Angeles, Los Angeles County, Calif., Nov. 7: The proposed improvement is the construction of I-105 as an eight-lane full access-controlled highway near Los Angeles International Airport, and construction of the CA-1 State freeway as a multi-lane end of freeway transition. The project length is 17.2 miles on Route 105 and 0.4 mile on Route 1. Adverse impacts include the relocation of 8,100 persons and 240 businesses, increased air and noise pollution, and temporary construction disruptions. A 4(F) determination is necessary concerning park areas in the project area (FHWA-CA-EIS-74-14-F). Comments made by: DOI, EPA, DOT, AHP, State, and local agencies, groups, individuals and businesses (EPA Order No. 81146).

[FR Doc. 78-32555 Filed 11-17-78; 8:45 am]

[6712-01-M]

FEDERAL COMMUNICATIONS COMMISSION

CANADIAN STANDARD BROADCAST STATIONS

Notification List

List of new stations, proposed changes in existing stations, deletions, and corrections in assignments of Canadian standard broadcast stations modifying the assignments of Canadian broadcast stations contained in the appendix to the recommendations of the North American Regional Broadcasting Agreement Engineering Meeting January 30, 1941.

OCTOBER 18, 1978.

CANADIAN LIST NO. 377

Call letters	Location	Power	Antenna	Schedule	Class	Antenna height (feet)	Ground system: Number of radials	Ground system: Length (feet)	Proposed date of commencement of operation
				960 kHz					
(New)	Mont-Joli, Quebec, N. 48°35'*24*", W. 68°08'*20*" (previously notified N. 48°35'15", W. 68°08'01", change of directional antenna radiation pattern)	1	DA-N, ND-D-185.	U	III	.....	.....	.....	*Oct. 18, 1979.*
				1070 kHz					
CKST	St. Alberta, Alberta, N. 53°*26'09*", W. 113°*37'00*" (change of site, previously notified N. 53°25'40", W. 113°35'14")	10	DA-1.....	U	II	.....	.....	.....	June 5, 1979.
				1240 kHz					
(New)	Port Hardy, British Columbia, N. 50°42'35", W. 127°26'10"	1D/0.25N	ND-182.....	U	IV	135	120	318	Oct. 18, 1979.
				1280 kHz					
CHRB	High River, Alberta, N. 50°29'12", W. 113°51'04" (now in operation)	10	DA-2.....	U	III	.....	.....	.....	
				1340 kHz					
CKVT	Temiscamingue, Quebec, N. 46°44'06", W. 79°03'30" (now in operation with increase of day-time power)	1D/0.25N	ND-185.....	U	IV	170	120	293ave.	
				1450 kHz					
CHRT	St. Eleuthere, Quebec, N. 47°28'36", W. 69°16'14" (P.O. 0.25kW)	*1D*/0.25N	ND-185.....	U	IV	140	120	271ave.	Oct. 18, 1978.

WALLACE E. JOHNSON,
Chief, Broadcast Bureau,
Federal Communications Commission.

[FR Doc. 78-32511 Filed 11-17-78; 8:45 am]

[6712-01-M]

[FCC 78-792]

COMPOSITE WEEK DATES FOR THE ANNUAL PROGRAMING REPORT

NOVEMBER 13, 1978.

The following dates will constitute the composite week for use in the preparation of the Annual Programing Report (FCC Form 303-A) for all commercial television licensees and permittees who must file this report by February 1, 1979.

Sunday, October 1, 1978.
Monday, March 13, 1978.
Tuesday, July 18, 1978.
Wednesday, May 24, 1978.
Thursday, April 6, 1978.
Friday, January 20, 1978.
Saturday, February 25, 1978.

COMPOSITE WEEK FOR PROGRAM LOG ANALYSIS FOR COMMERCIAL TV LICENSEES AND CERTAIN OTHER APPLICANTS

Licensees of commercial television stations with license expiration dates of June 1, and thereafter during calendar year 1979, will also use the composite week dates set forth above in answering Question Nos. 5, 11, and 12 of section IV of the television license renewal application (FCC Form 303).

Additionally, the above dates will constitute the composite week for use by television applicants in preparing assignment of license and transfer of control applications filed on or after January 1, 1979.

Action by the Commission, November 6, 1978. Commissioners Ferris (Chairman), Lee, Quello, Washburn, Fogarty, White, and Brown.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-32509 Filed 11-17-78; 8:45 am]

[6712-01-M]

MEXICAN STANDARD BROADCAST STATIONS

Notification List

List of new stations, proposed changes in existing stations, deletions, and corrections in assignments of Mexican standard broadcast stations modifying the assignments of Mexican broadcast stations contained in the appendix to the recommendations of the North American Regional Broadcasting Agreement Engineering Meeting, January 30, 1941.

JULY 1, 1978.

MEXICAN LIST NO. 285

Call letters	Location	Power watts	Antenna radiation mv/m/kw	Schedule	Class	Antenna height (feet)	Ground system: Number of radials	Ground system: Length (feet)	Proposed date of change or commencement of operation
				630 kHz					
XETK	Mazatlan, Sin., N. 23°13'04", W. 106°23'03" (shares antenna with XERJ, 1320 kHz)	1.000D/.250N	ND-U-175.....	U	III	*305*	120	328	Immediately.
				710 kHz					
XERPO	Oaxaca, Oax., N. 17°03'46", W. 96°43'21" (PO 0.500/kw/D, *0.100/kw/N*)	1.000D/.100N	ND-U-175.....	U	II	295	90	318	Do.
				850 kHz					
XEUS	Hermosillo, Son., N. 29°05'03", W. 110°57'54" (PO 1/kw/D, ND-D-191)	1.000D/*1.000N*	ND-D-191, DA-N.	U	II	295	120	591	Jan. 1, 1979.
				880 kHz					
XETZ	*Zapopan, Jal., N. 20°43'30", W. 103°24'00"* (PO 1/kw/D, ND-D-181)	10.000	ND-D-*190*.....	D	II	*280*	*120*	*280*	Immediately.
				920 kHz					
XEVV	Chiapa De Corzo, Chis., N. 16°42'05", W. 92°55'11"	5.000D/.250N	ND-U-201.....	U	III	348	120	348	Do.
				920 kHz					
XECQ	Culiacan, Sin., *N. 24°49'09", W. 107°25'49"* (shares antenna with XESA, 1360 kHz)	5.000D/.100N	ND-U-183.....	U	III	246	120	246	Do.
				920 kHz					
(New)	Jesus Carranza, Ver., N. 17°26'23", W. 95°02'58" (delete assignment)	5.000	ND-D-190.....	D	III	267	120	267	
				920 kHz					
(New)	Yogope, Ver., N. 17°33'42", W. 95°33'13"	1.000	ND-D-190.....	D	III	267	120	267	Jan. 1, 1979.
				920 kHz					
(New)	Tuxpan, Ver., N. 20°57'18", W. 97°23'59"	*1.000*	ND-D-190.....	D	III	267	120	267	Immediately.
				930 kHz					
XEIH	Fresnillo, Zac., N. 23°10'58", W. 102°53'46" (PO 1400 kHz)	5.000D/.200N	ND-U-190.....	U	III	265	120	265	Jan. 1, 1979.
				960 kHz					
XEK	Nuevo Laredo, Tam., *N. 27°29'23", W. 99°32'00"* (PO 2/kw/D, 1/kw/N, ND-U-184)	*5.000D*/1.000N	ND-U-184.....	U	III	258	90	258	Do.
				1240 kHz					
XEPC	Zacatecas, Zac., *N. 22°45'48", W. 102°33'46"*	1.000D/.150N	ND-U-175.....	U	IV	179	90	179	Immediately.
				1250 kHz					
XESC	Sabinas, Coah., N. 27°51'13", W. 101°06'34" (PO 1.000/kw/D	1.000D/1.000N	ND-U 175	U	III	*157*	90	177	Do.
				1270 kHz					
XECOL	Tijuana, BCN., N. 32°32'20", W. 117°02'40" (PO 0.500/kw/U, ND-U-175	5.000D/5.000N	DA-2.....	U	III	.....	.....	.....	Do.
				1270 kHz					
XEYW	Uman, Yuc., N. 20°52'12", W. 89°44'41"	2.500D/.500N	ND-U-190.....	U	III	194	120	194	Do.
				1290 kHz					
XEDB	Tonola, Chis., *N. 16°05'35", W. 93°45'31"* (PO 1/kw/D, 0.250/kw/N, ND-U-175)	5.000D/D.250N	ND-U-*184*.....	U	III	*197*	90	*199*	Do.
				1320 kHz					
XERJ	Mazatlan, Sin., *N. 23°13'04", W. 106°23'03"* (shares antenna with XETK, 630 kHz)	*5.000D*/.500N	ND-U-*175*.....	U	III	*305*	120	328	Do.
				1340 kHz					
XEZE	Santiago Ixc, Nay., N. 21°47'00", W. 105°12'00"	.250D/.200N	ND-U-150.....	U	IV	*118*	120	164	Do.
				1360 kHz					
XEY	Celaya, Gto., *N. 20°30'57", W. 100°45'54"* (shares antenna with XENC, 1540 kHz)	1.000D/.250N	ND-U-*173*.....	U	III	*148*	120	*148*	Do.
				1400 kHz					
XEOJ	Lazaro Cardenas, Mich., N. 18°00'10", W. 102°15'40"	1.000D/.100N	ND-U-170.....	U	IV	131	120	134	Do.

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MEXICAN LIST NO. 285—Continued

Call letters	Location	Power watts	Antenna radiation mv/m/kw	Schedule	Class	Antenna height (feet)	Ground system: Number of radials	Ground system: Length (feet)	Proposed date of change or commencement of operation
				1400 kHz					
XEFS	Izucar De M. Pue., N. 16°36'22", W. 98°27'32"	.250	ND-D-150	D	IV	105	90	105	Do.
				1400 kHz					
XEEX	El Dorado, Sin., N. 24°19'12", W. 107°22'42" (PO 0.250/kw/D, 0.150/kw/N, ND-U-184)	*1.000D/* .150N	ND-U-*174*	U	IV	*119*	*120*	*161*	Jan. 1, 1979.
				1400 KHz					
XEIH	Fresnillo, Zac., *N. 23°10'56", W. 102°53'46"* (vide 930 kHz)	.800D/ .250N	ND-U-150	U	IV	109	90	109	Immediately.
				1450 kHz					
XEBP	Torreon, Coah., N. 25°32'18", W. 103°27'55"	1.000D/ .250N	ND-U-175	U	IV	230	90	230	Do.
				1480 kHz					
XETKR	V. De Guadalupe, N.L. N. 25°41'48", W. 100°12'05"	5.000D/ .500N	ND-U-190	U	III	166	120	166	Do.
				1520 kHz					
XEUAA	Aguascalientes, Ags., N. 21°54'44", W. 102°19'01"	.250	ND-D-190	D	II	161	120	161	Do.
				1530 kHz					
XEUR	Mexico, D.F., N. 19°23'52", W. 99°07'30"	3.000	ND-D-190	D	II	161	120	161	Do.
				1530 kHz					
XEUR	Texcoco, Mex., N. 19°25'45", W. 98°56'57"	5.000N	DA-N	N	II				Do.
				1540 kHz					
XENC	Celaya, Gt., *N. 20°30'57", W. 100°45'54"* (shares antenna with XEY, 1360 kHz	1.000D/ .250N	ND-U-190	U	II	*148*	120	*148*	Do.
				1550 kHz					
XENU	Nuevo Laredo, Tam., *N. 27°26'27", W. 99°31'30"*	5.000	ND-D-184	D	II	159	90	164	Do.

WALLACE E. JOHNSON,
Chief, Broadcast Bureau,
Federal Communications Commission.

[FR Doc. 78-32510 Filed 11-17-78; 8:45 am]

[6712-01-M]

RADIO TECHNICAL COMMISSION FOR MARINE SERVICES

Meetings

In accordance with Pub. L. 92-463, "Federal Advisory Committee Act," the schedule of future Radio Technical Commission for Marine Services (RTCM) meetings is as follows:

Special Committee No. 71, "VHF Automated Radiotelephone Systems"—Notice of 13th Meeting—Tuesday, December 5, 1978, 10 a.m. (Full day meeting)—Conference Room A-106, 1229 20th Street NW., Washington, D.C.

AGENDA

1. Call to Order.
2. Administrative Matters.
3. Presentation and Discussion:

John J. Renner, Chairman SC-71, Advanced Technology Systems, Inc., 3426 North Washington Boulevard, Arlington, Va. 22201, phone, 703-525-2664.

Special Committee No. 72, "Numerical Identification of Stations in Maritime Telecommunications Systems"—Notice of 11th Meeting—Wednesday, December 6, 1978, 9:30 a.m., Conference Room 7327, 2025 M Street NW., Washington, D.C.

AGENDA

1. Call to Order; Chairman's Report.
2. Administrative Matters.
3. Discussion of U.S. Position for CCIR.

Francis K. Williams, Chairman, SC-72, Federal Communications Commission, Washington, D.C. 20554, phone 202-632-7054.

Special Committee No. 70, "Minimum Performance Standards (MPS)—Marine Loran-C Receiving Equipment"—Notice of 13th Meeting—Thursday, December 7, 1978, 10 a.m. (All day meeting)—Conference Room 7200, Nassif (DOT) Building, 400 Seventh Street SW. (at D Street), Washington, D.C.

AGENDA

1. Call to order.
2. All Business.
3. Administrative Matters.
4. New Business.
5. Other Business.

Capt. Alfred E. Fiore, Chairman, SC-70, U.S. Merchant Marine Academy, Kings Point, N.Y. 11024, phone 516-482-8200.

The RTCM has acted as a coordinator for maritime telecommunications since its establishment in 1947. All RTCM meetings are open to the public. Written statements are preferred, but by previous arrangement, oral presentations will be permitted within time and space limitations.

Those desiring additional information concerning the above meeting(s) may contact either the designated chairman or the RTCM Secretariat, phone 202-632-6490.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-32528 Filed 11-17-78; 8:45 am]

[6730-01-M]

FEDERAL MARITIME COMMISSION

AGREEMENTS FILED

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street NW., Room 10218; or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, La.; San Francisco, Calif.; Chicago, Ill.; and San Juan, P.R. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before December 11, 1978, in which this notice appears. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

Agreement No.: T-3742.
Filing Party: Mr. Randall V. Adams, Port of Palm Beach, P.O. Box 9935, Riviera Beach, Fla. 33403.
Summary: Agreement No. T-3742, between the Port of Palm Beach District (Port) and Caribbean Lines Corp. (CLC), provides for the renewable, 1-year exclusive lease of certain facilities to be used as warehouse space, and the nonexclusive right to use Port's lands and dock facilities for the loading and unloading of its vessels at the Port of Palm Beach, Fla. As compensation, CLC will pay $14,400 per annum as rental plus utility charges and all applicable charges as specified in the Port's tariff. CLC guarantees to ship a minimum of 25,000 short tons on an annual basis. Upon approval, Agreement No. T-3742 will supersede Agreement No. T-3536, as amended.

Agreement No. 5660-26.
Filing Party: Stanley O. Sher, Esq., Billig, Sher & Jones, P.C., Suite 300, 2033 K Street NW., Washington, D.C. 20006.
Summary: Agreement No. 5660-26 modifies the basic agreement of the Marseilles North Atlantic U.S.A. Freight Conference by deleting the provision that conference expenses be apportioned on the basis of 50 percent based in equal shares and 50 percent on tonnage and replacing it with a provision specifying that the members will apportion conference expenses as they shall from time to time agree by unanimous-less-one vote.

By order of the Federal Maritime Commission.

Dated: November 14, 1978.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-32590 Filed 11-17-78; 8:45 am]

[6730-01-M]

TOTEM OCEAN TRAILER EXPRESS, INC.

Notice of Petition for a Declaratory Order Filed

The Federal Maritime Commission hereby gives notice that the following petition for a declaratory order has been filed with the Commission for approval pursuant to 46 CFR 502.68.

Interested parties may inspect and obtain a copy of the petition for a declaratory order offered at the Washington office of the Federal Maritime Commission, 1100 L Street NW., Room 10218, or may inspect the petition at the field offices located at New York, N.Y.; New Orleans, La.; San Francisco, Calif.; Chicago, Ill.; and San Juan, P.R. Interested parties may submit comments on the petition, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, on or before December 5, 1978. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed petition.

A copy of any comments should also be forwarded to the party filing the petition and the statement should indicate that this has been done.

PETITION FOR DECLARATORY ORDER

FILING PARTY: James A. Stenger, Esquire, Billig, Sher & Jones, P.C., Suite 300, 2033 K Street NW., Washington, D.C. 20006.

SUMMARY: A petition for a Declaratory Order has been filed on behalf of Totem Ocean Trailer Express, Inc. (Totem), with respect to movements in the Alaska trade which are exempt from regulation by the Interstate Commerce Commission under 49 U.S.C.A. 303(b)(6). Totem requests that the Declaratory Order be issued to require that (a) every water common carrier must file with the FMC all the rates, fares, and charges for or in connection with transportation between intercoastal points on its own route, (b) water common carriers may not hold themselves out to provide transportation under single factor joint rates with motor carriers inasmuch as such rates cannot be filed with the FMC, and (c) where water common carriers file with the FMC port-to-port rates that are available only in connection with through services offered in conjunction with motor common carriers, the applicable tariffs filed with the FMC must so indicate.

By order of the Federal Maritime Commission.

Dated: November 14, 1978.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-32591 Filed 11-17-78; 8:45 am]

[6732-01-M]

FEDERAL MEDIATION AND CONCILIATION SERVICE

IMPROVING GOVERNMENT REGULATIONS

Final Report on Steps Taken To Implement Executive Order 12044

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Publication of final report on steps taken to comply with Executive Order 12044.

SUMMARY: This report contains the steps taken by FMCS to comply with Executive Order 12044. Agency action will encourage public involvement in the preparation of agency regulations and will help insure that regulations are as simple and unburdensome as possible.

FOR FURTHER INFORMATION CONTACT:

David Vaughn, Associate General Counsel, 202-653-5305.

ADDRESS: Comments and inquiries regarding this report may be directed to the General Counsel, Federal Mediation and Conciliation Service, 2100 K Street NW., Washington, D.C. 20427.

SUPPLEMENTARY INFORMATION: This final report is submitted as required by section 5 of Executive Order 12044. The draft report of the agency was published in 43 FR 21993 (May 22, 1978). Public comment was solicited. No comments were received. (1) The process used by the agency in developing regulations is as follows:

(a) The office within the agency with responsibility for the subject area covered by a regulation determines, based on internal evaluation of the operation or impact of regulations or on comment from outside the agency, that a change in agency regulations may be appropriate; or an existing regulation is selected for review under the agency's semi-annual review procedure required by Section 4 of the Order;

(b) The office transmits the proposed change to the agency's General Counsel, the Director of Administration, and the Deputy Director for analysis and comment;

(c) The proposed change is transmitted to the Director of the Agency, together with the comments required by paragraph (b) above;

(d) The Director reviews the issues to be considered in the proposed change and the alternative approaches to be explored;

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(e) If the Director determines that a change is warranted and when he or she determines the alternatives to be explored, he or she directs the General Counsel, in consultation with the relevant office, the Director of Administration, and the Deputy Director, to prepare a draft notice of proposed rulemaking containing the proposed change and the alternatives, if any, to be explored;

(f) The agency solicits informal comment from other appropriate Federal agencies and advisory committees;

(g) The General Counsel submits to the Director for review and approval the notice of proposed rulemaking. The Director may require a regulatory analysis. Included in the submission is a plan for obtaining public comment and target dates for completion of steps in the development of the Regulations. For significant regulations (see section 2, below) the agency prepares and submits a regulatory analysis. Such an analysis includes a careful examination of alternative approaches. For significant regulations, the Director must determine that the factors set forth in section 2(d) of the order are satisfied and that the regulation will not have an adverse impact on the structure or operation of collective bargaining.

(h) The notice of proposed rulemaking is published in the FEDERAL REGISTER for a 60-day comment period. The comment period for any step in the development process may be shortened only for good cause. When the period is shortened, a statement of the reasons for the shortened period will accompany the notice. The notice will describe the regulation and include a statement of the need for and legal basis for the action and the name and telephone number of a knowledgeable agency official. Regulations that are not significant under the agency's criteria will be accompanied by a statement to that effect in the initial notice of proposed rulemaking and all subsequent notices;

(i) Copies of the notice of proposed rulemaking are circulated during the comment period to representatives of the labor-management community, including business and labor groups whose organizations would be affected by the change, to representatives of State and local governments where appropriate, and to appropriate committees of the Congress. Press releases are distributed to inform the public through the media of the proposed change, with particular emphasis on the trade press serving the labor-management community;

(j) Public hearings are held where there is need or public interest;

(k) At the close of the comment period, all comments received are reviewed by the General Counsel and the relevant office within the agency. A summary of the comments is prepared by those two offices and is sent to the Director and Deputy Director. Changes based on the comments and on further analysis by the agency are incorporated into a draft set of proposed regulations, which is prepared in notice form;

(l) The draft proposed regulations are sent to the Deputy Director for review and to the Director for approval;

(m) When the draft proposed regulations are approved by the Director, they are published in the FEDERAL REGISTER and a second round of public involvement and comment on the full text of the proposed regulations is initiated through procedures identical to steps (i) through (k) above;

(n) The revised draft regulations are sent to the Deputy Director for review and to the Director for approval;

(o) When the regulations are approved, they are published in the FEDERAL REGISTER. Copies of the regulations are sent to members of the labor-management community affected by the regulations, and to the media;

The agency has made the following changes in its regulation development process: The agency has formalized the procedural steps in the regulatory development process in order to comply with the order and has made an integral part of the development process steps which previously occurred informally or not at all. The periods for public comment has been extended to 60 days. Draft regulations will be preceded by notices of proposed rulemaking to attempt to obtain external comment prior to drafting the full text of the proposed regulation. (2) The agency criteria for determining significant regulations are:

(a) The type and number of individuals, businesses, organizations, and State and local governments affected;

(b) The compliance and reporting requirements likely to be involved;

(c) Direct and indirect effects of the regulation including the effect on competition;

(d) The relationship of the regulations to those of other programs and agencies; and

(e) The degree of impact on the overall structure or operation of collective bargaining.

Since the agency is not a regulatory or enforcement agency as those terms are generally understood, the agency has no regulations which meet the criteria of section 2(e) of the Order.

(3) The agency criteria for identifying which regulations require regulatory analysis are:

(a) Those which have major economic consequences for the general economy for individual industries, geographical regions or levels of government;

(b) Those which would siginificantly impact the overall structure or operation of collective bargaining for the general economy, for individual industries, geographic regions, or levels of government;

(c) The Director may in his or her discretion require that a regulatory analysis be conducted for any proposed change in regulations.

(4) The agency will select regulations for review in accordance with the following criteria:

(a) The continued need for the regulation;

(b) The type and number of complaints or suggestions received;

(c) The burdens imposed on those directly or indirectly affected by the regulations;

(d) The need to simplify or clarify language;

(e) The need to eliminate overlapping and duplicative regulations;

(f) The length of time since the regulation has been evaluated or the degree to which the structure or operation of collective bargaining and labor relations have changed in the area affected by the regulation; and

(g) Whether the procedures set forth in the regulation can be improved.

(5) Agency regulations to be reviewed initially are those dealing with Arbitration Services (29 CFR Part 1404) and Mediation Assistance in the Federal Service (29 CFR Part 1425). Internal agency review of those two parts is in progress. Possible changes to Part 1404 are also being considered by the Arbitration Services Advisory Committee of FMCS. Possible changes to Part 1425 are also being discussed with the Federal Service Impasses Panel to insure consistency of regulation and to avoid duplication of functions. These and other regulations will be described, the need and legal basis for the proposed review set forth, and the status of the regulations in this report updated in the semi-annual agency agenda to be published by the agency as required by section 2(a) of the order. The dates for publication of the semi-annual agenda will be announced in the FEDERAL REGISTER on the first Monday in October.

ROBERT P. GAJDYS,
Director of Administration.

[FR Doc. 78-32516 Filed 11-17-78; 8:45 am]

[6750-01-M]

FEDERAL TRADE COMMISSION

TRANSMITTAL RULES

Early Termination of Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the 30-day waiting period of the premerger notification rules.

SUMMARY: Geosource, Inc. is granted early termination of the 30-day waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of the Wheatley Co. from Tesoro Petroleum Corp. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by Geosource, Inc. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: November 8, 1978.

FOR FURTHER INFORMATION CONTACT:

Malcolm R. Pfunder, Associate Director for Premerger Notification, Bureau of Competition, Room 303, Federal Trade Commission, Wasington, D.C. 20580, 202-523-3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by sections 201 and 202 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act and § 803.11 of the rules implementing the Act permit the agencies, in individual cases, to terminate this waiting period prior to its expiration and to publish notice of this action in the FEDERAL REGISTER.

By direction of the Commission.

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-32549 Filed 11-17-78; 8:45 am]

[1610-01-M]

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Receipt of Report Proposal

The following request for clearance of a report intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on November 14, 1978. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the FEDERAL REGISTER is to inform the public of such receipt.

The notice includes the title of the request received, the name of the agency sponsoring the proposed collection of information, the agency form number, if applicable, and the frequency with which the information is proposed to be collected.

Written comments on the proposed FTC request are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed request, comments (in triplicate) must be received on or before December 8, 1978, and should be addressed to Mr. John M. Lovelady, Assistant Director, Regulatory Reports Review, U.S. General Accounting Office, Room 5106, 441 G Street NW., Washington, D.C. 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

FEDERAL TRADE COMMISSION

The FTC requests clearance of a new, voluntary, single-time Consumer Complaint Processing System Survey Form. The FTC has contracted for a study of the need and feasibility of a national consumer information system which would computerize the consumer complaints currently handled by local, State, and Federal consumer agencies. As part of this study the contractors intend to contact approximately 500 consumer complaint-handling offices across the country and at every level of government. This survey will seek information on the volume of complaints handled; the need or present use of, or plans for computerization; and solicit comments on any particularized problems or objections to such a system the respondent agency may have. The survey will be conducted by mail shortly after GAO clearance. FTC estimates that responses will be returned within a month and their evaluation and analysis begun. As part of this phase of the study, FTC plans to contact a certain number of the respondents for personal follow-up interviews. The FTC estimates respondent burden will average 1 hour per survey form.

NORMAN F. HEYL,
Regulatory Reports, Review Officer

[FR Doc. 78-32583 Filed 11-17-78; 8:45 am]

[4110-02-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

OFFICE OF THE ASSISTANT SECRETARY FOR EDUCATION

Statement of Mission, Organization, Functions, and Order of Succession

Part E, Education Division, Chapter EA, Office of the Assistant Secretary for Education, of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health, Education, and Welfare, published in the FEDERAL REGISTER at 39 FR 32342 on September 6, 1974, and at 41 FR 52540 on November 30, 1976, is hereby deleted and a new statement is added as follows. This effects a realignment of functions within the Office of the Assistant Secretary for Education.

Sec. EA.00 *Mission.* The Assistant Secretary for Education is responsible for general direction and supervision of the Education Division, a Principal Operating Component of the Department of Health, Education, and Welfare; provides leadership for all education activities of the Department; and serves as key advocate for assuring that the Department provides professional and financial assistance to strengthen education in accordance with Federal laws, rules, and regulations. In addition, the Assistant Secretary serves as principal adviser to the Secretary on education affairs. Executive Order 11761 designates the Assistant Secretary for Education as Chairperson of the Federal Interagency Committee on Education, which was established to facilitate the coordination of education activities of Federal agencies. Under the Order, the Secretary of the Department of Health, Education, and Welfare, with the assistance of the Assistant Secretary for Education, identifies the Nation's education needs and goals and recommends, to the President, policies promoting the progress of education.

Sec. EA.10 *Organization.* A. The Office of the Assistant Secretary for Education is under the supervision of the Assistant Secretary for Education who heads the Education Division and reports directly to the Secretary.

B. The Office of the Assistant Secretary for Education includes the following positions and their respective staffs:

Assistant Secretary for Education
Executive Director, Federal Interagency Committee on Education
Director, Office of Policy Communication
Deputy Assistant Secretary for Education
Deputy Assistant Secretary for Education (Policy Development)
Deputy Assistant Secretary for Education (Education Resources)

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Administrator, National Center for Education Statistics
Director, Fund for the Improvement of Postsecondary Education

Sec. EA.20 *Functions.* 1. The Assistant Secretary for Education is the principal officer in the Department responsible to the Secretary for direction and supervision of education activities wherever they are performed in the Department, and for providing advice and consultation to the Secretary on all aspects of the Department's education activities. As Chairperson of the Federal Interagency Committee on Education, the Assistant Secretary for Education also is responsible for facilitating coordination of education activities of other Federal agencies with Education Division programs. The Executive Director of the Federal Interagency Committee on Education is responsible for the planning and administration of the Committee's activities.

The Director, Office of Policy Communication, reports directly to the Assistant Secretary for Education. The Office of Policy Communication is responsible for monitoring the activities of the education community to provide timely and accurate information on its program and legislative objectives. The work of the Office of Policy Communication also includes the development and implementation of information activities to assure that the programs and policies of the Education Division are communicated effectively to the education community and the general public. The Office of Policy Communication coordinates all public affairs activities of the Division involving relationships with the education community, including appropriate State agencies.

2. The Deputy Assistant Secretary for Education serves as principal deputy to the Assistant Secretary for Education and acts as Assistant Secretary during the absence or disability of the Assistant Secretary or if a vacancy occurs in the position of Assistant Secretary for Education.

Represents the Assistant Secretary for Education and interprets Federal education policies and programs to the education community and the general public. Provides day-to-day guidance and support to the Office of Policy Communication. The Deputy Assistant Secretary for Education is responsible for insuring that the views of the education community are considered in the policymaking processes of the Division.

The Deputy Assistant Secretary for Education participates in the policy development and implementation process as it pertains to the development of legislation. Advises and consults with the Assistant Secretary for Education on new policy initiatives, establishment of priorities, and provision of policy guidance to Education Division agency public information offices. Provides principal day-to-day support and guidance to the Federal Interagency Committee on Education.

Serves as the Education Division's principal liaison to the Office of the Deputy Under Secretary for Intergovernmental Affairs. Also serves as principal liaison between the Department and the Department's Regional Centers on all aspects of the education activities of the Regional Centers.

3. The Deputy Assistant Secretary for Education (Policy Development) coordinates development of general programmatic education policies in the Education Division, including formulation of program and legislative initiatives. Provides guidance in determination of priorities, objectives, and goals for education, including formulation of recommendations to the Assistant Secretary. Facilitates communication among components of the Division to insure effective implementation of short- and long-term policy decisions.

Coordinates 5-year plans and program evaluation for the Assistant Secretary for Education. Monitors research and statistical activities in the agencies comprising the Education Division, as they relate to policy development. Advises the Assistant Secretary for Education on key implementation issues. Chairs the Education Data Acquisition Council.

Recommends program and policy issues for analysis and coordinates necessary studies and actions to be undertaken within the Education Division. Coordinates development of data used at the level of the Assistant Secretary for Education and within the agencies comprising the Education Division.

4. The Deputy Assistant Secretary for Education (Education Resources) is the principal adviser to the Assistant Secretary for Education, and promotes the Assistant Secretary's policies and goals, on all aspects of the relationship of budget formulation to the development of Federal education policy, and in all areas of oversight and coordination of management functions in the Education Division. Applies an intimate knowledge of policy development processes and educational administration in the Education Division, as well as detailed familiarity with the personal policy positions of the Assistant Secretary for Education, to review of education agency budget requests and analysis of agency program management. Works closely with the Deputy Assistant Secretary for Education (Policy Development) to insure that the education budget, as proposed to the Office of Management and Budget and as presented to the Congress, reflects Federal education policy as determined by the Assistant Secretary for Education, the Secretary, and the President; and to insure that activities undertaken in the formulation of education policy reflect the concerns of the Department and the Congress which the incumbent is aware of through representation of the Assistant Secretary for Education in the budget formulation process.

In furtherance of the foregoing, the Deputy Assistant Secretary for Education (Education Resources) is principal adviser to the Assistant Secretary for Education on Education Division matters pertaining to formulation, analysis, and presentation of budgets; staff resource allocations; and all aspects of administrative and financial management. Establishes Education Division policy in management and budget, and oversees the management and budget activities of the Department's education agencies.

Represents the Assistant Secretary for Education with the staff of other Assistant Secretaries, the Office of Management and Budget, the Congress, and the general public on policies and procedures relating to management and budget activities of the Education Division. Represents the Assistant Secretary for Education in presenting, justifying, and interpreting the Education Division budget and related appropriations matters to the Secretary, the Office of Management and Budget, and the Congress.

Works with the Assistant Secretary for Management and Budget and the Under Secretary in the preparation of budget estimates and forecasts of resources required to support programs and activities of the Education Division. Establishes and maintains appropriate management policies, procedures, and systems throughout the Education Division. Provides administrative policy guidance to the Education Division. Supervises all management, administrative, budget, and financial activities within the Office of the Assistant Secretary for Education.

5. The Administrator, National Center for Education Statistics (NCES), collects and disseminates statistics and other data related to education in the United States and in other nations. Collects, reviews, and annually reports to Congress statistics on the condition of education in the United States. Conducts and publishes reports on in-depth analyses of the meaning and significance of such statistics. Assists State and local educational agencies in improving and automating their statistical and data collection activities. Reviews statistics and reports on education activities in other nations. Conducts intensive research and development activities in the areas of survey methods and statistical applications. Provides statistical consultation to officials of the Education Division and others.

The National Center for Education Statistics includes the Office of the Administrator and the following divisions. The functions of each are as follows:

a. Office of the Administrator. Establishes and maintains consultative and working relations with the Education Division, the Department, Congressional committees, other governmental agencies, and other users and producers of education statistics. Deliberates with and provides senior staff technical support to the Advisory Council on Education Statistics. Coordinates NCES activities with the Federal Interagency Committee on Education. Directs the Federal Interagency Consortium of Users of Education Statistics. Provides staff assistance to the Education Data Acquisition Council, including the Executive Director. Prepares the annual Data Acquisition Plan for the Education Division. Provides NCES with administrative, logistical, and management services. Promotes formulation of statistical standards appropriate to the work of NCES. Develops improved statistical methods and techniques for application in NCES operations. Develops and enforces standards designed to protect the confidentiality of personal data in the collection, reporting and publication of data.

b. Division of Elementary and Secondary Education Statistics. Coordinates, designs, develops, and implements an integrated data system of elementary and secondary education statistics to meet Federal, State, and local governmental and private institutional needs for planning, management, and evaluation purposes. Develops standardized terminology and data definitions to promote compatibility of reporting of data, plans, designs, conducts, and reports on statistical surveys and studies of elementary and secondary institutions and populations and educational manpower. Provides statistics and analyses in these areas in support of the Center's mission to collect and report statistics on the condition of education in the United States. Ascertains from the elementary and secondary education community the need for additions to, modifications in, or deletions from the data collected by NCES, as well as the periodicity of recurring survey activity. Conducts in-depth statistical analyses of elementary and secondary education data bases, derived from both NCES data and data available from other sources and prepares analytical reports applying the data to education policy issues and problems.

c. Division of Postsecondary and Vocational Education Statistics. Coordinates, designs, develops, and implements an integrated data system of postsecondary and vocational education statistics to meet Federal, State, local, and private institutional needs for planning, management, and evaluation purposes. Develops standardized terminology and data definitions in these fields to promote compatibility of reporting of data. Plans, designs, conducts, and reports on statistical surveys and studies of colleges and universities; adult, continuing, and vocational education institutions; and postsecondary and vocational populations. Provides statistics and analyses in these areas in support of the Center's mission to collect and report statistics on the condition of education in the United States. Ascertains from the postsecondary and vocational education community the need for additions to, modifications in, or deletions from the data collected by NCES, as well as the periodicity of recurring survey activity. Conducts in-depth statistical analyses of postsecondary and vocational education data bases, derived from both sources and prepares analytical reports applying the data to education policy issues and problems.

d. Division of Multilevel Education Statistics. Plans, designs, conducts, analyzes, and reports on statistical surveys and studies of libraries and learning resources, including educational broadcasting and technology. Develops, conducts, and analyzes all longitudinal surveys and studies in NCES. Is responsible for the development and application of education indicators and assessment tools, including the National Assessment of Educational Progress. Develops indicators and conducts such surveys to compare education in the United States to that in other nations, and maintains data on education statistics in foreign countries. Operates the Fast Response Survey System to provide rapid data on topics of immediate concern to education.

e. Division of Statistical Services. Develops and creates computerized data bases which are readily available to the education community. Operates the EDSTAT computerized information retrieval system for education statistics. Provides computer programming services for NCES. Insures that contracts involving automated data processing comply with NCES standards and requirements. Plans, develops, coordinates, and oversees the State-assistance activities of NCES. Drafts regulations, guidelines, and procedures for Federal-State cooperative projects. Provides statistical information and analyses for other Federal components, the education community, and the general public. Develops and publishes an annual report on the condition of education, pursuant to section 406(d) of Pub. L. 93-380. Develops and applies statistical time-series techniques and models to project education statistics. Provides editorial and publication services for NCES. Provides forms control for all public use forms for NCES, and provides forms design service for all parts of the Education Division.

6. The Director, Fund for the Improvement of Postsecondary Education, is responsible for the planning and administration of the Fund, including preparation of program and budgetary plans and supervision of staff necessary to implement those plans.

Sec. EA.30 *Order of succession.* During the absence or disability of the Assistant Secretary for Education, or in the event of a vacancy in that position, the first official listed below who is available shall act as Assistant Secretary, except during a period of planned absence for which a different order has been designated as provided in (b) below.

(a) (1) Deputy Assistant Secretary for Education.

(2) Deputy Assistant Secretary for Education (Policy Development).

(3) Deputy Assistant Secretary for Education (Education Resources).

(b) For a planned period of absence, the Assistant Secretary may specify a different order of succession.

Dated: November 13, 1978.

FREDERICK M. BOHEN,
Assistant Secretary for Management and Budget.

[FR Doc. 78-32589 Filed 11-17-78; 8:45 am]

[4310-84-M]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Colorado 19885]

LANDS IN ROUTT COUNTY, COLO.

Public Hearing

NOVEMBER 9, 1978.

U.S. Department of the Interior, Bureau of Land Management, Colorado State Office, Denver, Colo. Notice is hereby given that a public hearing will be held on December 11, 1978, at 7 p.m. in the Routt County Courthouse in Steamboat Springs, Colo. The purpose of the hearing is to obtain public comments, with respect to offering for lease certain coal resources in the lands hereinafter described, on the Technical Examination-Environmental Assessment Report and on the following items: (1) The method of mining to be employed to obtain maximum economic recovery of the coal, (2) the impact that mining the coal in proposed leasehold may have on the

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area, included but not limited to impacts on the environment, agriculture, and other economic activities, and (3) method of evaluation of the coal to be offered. Comments will be accepted orally or in writing and will be considered prior to lease offering.

In addition, the public is invited to submit written comments on the fair market value of the coal to be offered to the State Director, Bureau of Land Management, Room 700, Colorado State Bank Building, 1600 Broadway, Denver, Colo. 80202.

COAL TO BE OFFERED: The lands are located in Routt County, Colo., approximately 10 miles southeast of Hayden, Colo. The lands are described as follows:

SIXTH PRINCIPAL MERIDIAN, COLORADO

T. 5 N., R. 87 W.,
Sec. 1: Lots 5, 6, 7 and 8 (Containing 125.16 acres).

NOTICE OF AVAILABILITY: The Technical Examination-Environmental Assessment Report will be available for review in the Craig District Office, Bureau of Land Management, 455 Emerson Street, P.O. Box 248, Craig, Colo. 81625.

A copy of the Technical Examination-Environmental Assessment Report, the case file, and the comments submitted by the public on fair market value, except those portions identified as proprietary by the commenter, will be available for public inspection at the Bureau of Land Management, Room 700, Colorado State Bank Building, 1600 Broadway, Denver, Colo. 80202.

JOHN R. BERNICK,
Acting Leader, Craig Team, Branch of Adjudication.

[FR Doc. 78-3241 Filed 11-17-78; 8:45 am]

[4310-70-M]

National Park Service

REVISED MANAGEMENT POLICY ON DIVING

The National Park Service management policy on diving is available for inclusion in its manual, the Management Policies. This is not a new policy of the National Park Service; it simply incorporates a previous policy into the manual for easy reference. Copies of this policy may be obtained after November 13, 1978, by writing the nearest regional office.

Mid-Atlantic Regional Office, National Park Service, 143 South Third Street, Philadelphia, Pa. 19106.
Midwest Regional Office, National Park Service, 1709 Jackson Street, Omaha, Nebr. 68102.
North Atlantic Regional Office, National Park Service, 15 State Street, Boston, Mass. 02109.
Pacific Northwest Regional Office, National Park Service, 601 Fourth and Pike Building, Seattle, Wash. 98101.
Rocky Mountain Regional Office, National Park Service, 655 Parfet Street, P.O. Box 25287, Denver, Colo. 80225.
Southeast Regional Office, National Park Service, 1895 Phoenix Boulevard, Atlanta, Ga. 30349.
National Capital Region, National Park Service, 1100 Ohio Drive SW., Washington, D.C. 20242.
Western Regional Office, National Park Service, 450 Golden Gate Avenue, Box 36063, San Francisco, Calif. 94102.
Southwest Regional Office, National Park Service, P.O. Box 728, Sante Fe, N. Mex. 87501.

Dated: October 27, 1978.

WILLIAM J. WHALEN,
Director, National Park Service.

[FR Doc. 78-32530 Filed 11-17-78; 8:45 am]

[4310-70-M]

BIG CYPRESS NATIONAL PRESERVE, FLA.

Public Meetings

Notice is hereby given that the National Park Service will hold a series of two public meetings in Florida during December 1978, on proposed special regulations for Big Cypress National Preserve.

The meetings will be held on the dates indicated in the following places:

December 5, 1978: Dade County Agricultural Center, Auditorium, 18710 Southwest 288th Street, Homestead, Fla.
December 6, 1978: East Naples Middle School, 4100 Estey Drive, Naples, Fla.

The meetings will begin at 7:30 p.m.; however, National Park Service Personnel will be available at each of the meeting locations, on the dates indicated, at 6:30 p.m. local time, to answer questions or explain the details of the proposed regulations during the hour before the meeting begins. The chairperson will limit the time allowed each person for comment after a survey of the number of people who wish to provide oral comments.

Concurrent with the public meetings, the National Park Service will be accepting written comments on the proposed regulations. It is anticipated that these proposed regulations will be published in the FEDERAL REGISTER prior to the meetings.

Special regulations are being proposed pursuant to the Act of October 11, 1974, Pub. L. 93-440 (88 Stat. 1260; 16 U.S.C. 698i) establishing Big Cypress National Preserve. The Act requires the Secretary of the Interior to publish such rules and regulations as he deems necessary and appropriate to limit or control the use of Federal lands and waters within the Preserve in matters relating to:

(1) Motorized vehicles;
(2) Exploration for and extraction of oil, gas, and other minerals;
(3) Grazing;
(4) Draining or constructing of works or structures which alter the natural water courses;
(5) Agriculture;
(6) Hunting, fishing, and trapping;
(7) New construction of any kind; and
(8) Such other uses as the Secretary determines must be limited or controlled in order to carrry out the purposes of the Act.

Specifically, the proposed regulation to be discussed during the December meetings will deal with:

(1) Motorized vehicles;
(2) Camp structures;
(3) Aircraft use;
(4) Watershed protection;
(5) Hunting, fishing, and trapping;
(6) Grazing.

The purpose of these meetings is to explain the need for regulations in the Preserve and to provide for additional citizen participation through which the Service will reserve ideas, suggestions, comments, and objections prior to final publication of the regulations.

The public record will remain open until January 19, 1979, during which time written comments on the proposals will be welcomed, reviewed, and considered.

Anyone wishing a copy of the proposed regulations, additional information on the public meetings or the National Park Service regulatory process, or an opportunity to submit comments on the proposed regulations may write to the Superintendent, Everglades National Park, P.O. Box 279, Homestead, Fla. 33030. Copies of the proposed regulations will not be available until November 20, 1978.

Dated: November 14, 1978.

RICHARD S. TOUSLEY,
Acting Associate Director, Management and Operations, National Park Service.

[FR Doc. 78-32531 Filed 11-17-78; 8:45 am]

[4710-14-M]

INTERNATIONAL JOINT COMMISSION

POSSIBLE CHANGES TO ITS ORDERS OF APPROVAL ON THE REGULATION OF LAKE SUPERIOR

Public Hearings

The International Joint Commission will hold public hearings at the times and places noted below to receive comment concerning possible changes to its Orders of Approval for the regulation of Lake Superior.

Under the 1914 Orders of Approval, as amended, Lake Superior outflows are calculated on levels of that lake and levels and flows in the St. Marys River.

The Commission has declared to the Governments of Canada and the United States in a 1976 report its intention, after holding public hearings and considering the evidence, to direct the operation of the Lake Superior control works to provide benefits to interests throughout the Great Lakes system without undue detriment to Lake Superior interests. Governments have indicated their general concurrence. The Commission is now considering whether the 1914 Orders of Approval should be amended, to reflect this philosophy. If anyone believes he may be harmed by the order or its amendment, he should make this concern known at this hearing, so that the Commission may take these concerns into account when providing for suitable and adequate provision for the protection and indemnity of all interests. The Commission's Control Board has proposed Plan 77 as a regulation plan to implement this objective. Under Plan 77, all control works would be operated to keep the levels of Lake Superior, Michigan and Huron at the same elevation relative to their historical mean monthly levels.

These hearings are being held to obtain the public's views concerning amendment of the 1914 Orders of Approval with a view to possible implementation of Plan 77, and concerning measures to ensure suitable protection and/or adequate indemnification of all interests in connection with these actions.

The hearings are international and citizens of both Canada and the United States are welcome to participate in both countries. Opportunity will be given to anyone, whether on his own behalf or in a representative capacity, to offer pertinent information to assist the Commission.

Testimony may be given orally or in writing. While not mandatory, written statements are desirable to supplement oral testimony and to ensure accuracy of the record. When a written statement is presented, the Commission requests 30 copies if convenient.

TIMES AND PLACES OF HEARINGS

December 12, 1978; Great Hall, Radisson Hotel, 505 West Superior Street, Duluth, Minn.; 2 p.m. and 7:30 pm.
December 13, 1978; Blake Auditorium, Thunder Bay City Hall, 500 Donald Street, Thunder Bay, Ontario; 3 p.m. and 7:30 pm.
December 14, 1978; Algoma West Room, Sault Ste. Marie Holiday Inn, 208 St. Marys River Drive, Sault Ste. Marie, Ontario; 2 p.m. and 7:30 pm.

W. A. BULLARD,
Secretary, United States Section, International Joint Commission.

D. G. CHANCE,
Secretary, Canadian Section, International Joint Commission.

NOVEMBER 14, 1978.

[FR Doc. 78-32477 Filed 11-17-78; 8:45 am]

[7020-02-M]

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-43]

CERTAIN CENTRIFUGAL TRASH PUMPS

Commission Hearing on Presiding Officer's Recommendation, Relief, Bonding and the Public Interest

Recommendation of "no violation" issued. In connection with the Commission's investigation, under section 337 of the Tariff Act of 1930, of alleged unfair methods of competition and unfair acts in the importation and sale of certain centrifugal trash pumps in the United States, the Presiding Officer recommended on October 25, 1978, that the Commission determine that there is no violation of section 337. The Presiding Officer certified the hearing record to the Commission for its consideration. Copies of the Presiding Officer's recommendation may be obtained by interested persons by contacting the office of the Secretary to the Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

Commission hearing scheduled. The Commission will hold a hearing beginning at 10 a.m., e.s.t., Wednesday, December 13, 1978, in the Commission's Hearing Room (Room 331), 701 E Street NW., Washington, D.C. 20436, for two purposes. First, the Commission will hear oral argument on the Presiding Officer's recommendation that there is no violation of section 337 of the Tariff Act of 1930. Second, the Commission will receive oral presentations concerning appropriate relief, bonding, and the public interest in the event that the Commission determines that there is a violation of section 337. These matters are being heard on the same day in order to facilitate the completion of this investigation within time limits under law and to minimize the burden of this hearing upon the parties to the investigation. The procedure for each portion of the hearing follows.

Oral argument on Presiding Officer's recommendation. A party to the Commission's investigation or an interested agency wishing to present to the Commission an oral argument concerning the Presiding Officer's recommendation will be limited to no more than 30 minutes. A party or interested agency may reserve 10 minutes of its time for rebuttal. The oral arguments will be held in this order: complainant, respondents, interested agencies, and Commission investigative staff. Any rebuttals will be held in this order: respondents, complainants, interested agencies, and Commission investigative staff.

Oral presentations on relief, bonding, and the public interest. Following the oral arguments on the Presiding Officer's recommendation, a party to the investigation, an interested agency, a public interest group, or any interested member of the public may make an oral presentation on relief, bonding, and the public interest.

1. *Relief.* In the event that the Commission were to find a violation of section 337, it would issue: (1) An order which could result in the exclusion from entry of certain centrifugal trash pumps into the United States; or (2) an order which could result in requiring respondents to cease and desist from alleged unfair methods of competition or unfair acts in the importation and sale of these trash pumps. Accordingly, the Commission is interested in what relief should be ordered, if any.

2. *Bonding.* In the event that the Commission were to find a violation of section 337 and order some form of relief, that relief would not become final for a 60-day period during which the President would consider the Commission's report. During this period, the certain centrifugal trash pumps would be entitled to enter the United States under a bond determined by the Commission and prescribed by the Secretary of the Treasury. Accordingly, the Commission is interested in what bond should be determined, if any.

3. *The public interest.* In the event that the Commission were to find a violation of section 337 and order some form of relief, the Commission must consider the effect of that relief upon the public interest. Accordingly, the Commission is interested in the effect of any exclusion order or cease and desist order upon: (1) The public health and welfare, (2) competitive conditions in the U.S. economy, (3) the production of like or directly competitive articles in the United States, and (4) U.S. consumers.

A party to the Commission's investigation, an interested agency, a public interest group, or any interested person wishing to make an oral presentation concerning relief, bonding, and the public interest will be limited to no more than 15 minutes. Participants will be permitted an additional 5 minutes each for summation after all

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presentations have been made. Participants with similar interests may be required to share time. The order of oral presentations will be as follows: Complainant, respondents, interested agencies, public interest groups, other interested members of the public, and Commission investigative staff. Summations will follow the same order.

How to participate in the hearing. If you wish to appear at the Commission's hearing, you must file a written request to appear with the Secretary to the Commission, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, no later than the close of business (5:15 p.m., e.s.t.) on Friday, December 1, 1978. Your written request must indicate whether you wish to present an oral argument concerning the Presiding Officer's recommendation or an oral presentation concerning relief, bonding and the public interest, or both. While only parties to the Commission's investigation, interested agencies, and the Commission investigative staff may present an oral argument concerning the Presiding Officer's recommendation, public interest groups and other interested members of the public are encouraged to make an oral presentation concerning the public interest.

Written submissions to the Commission. The Commission requests that written submissions of two types be filed prior to the hearing in order to focus the issues and facilitate the orderly conduct of the hearing.

1. *Briefs on the Presiding Officer's recommendation.* Parties to the Commission's investigation, interested agencies, and the Commission Investigative Staff are encouraged to file briefs concerning exceptions to the Presiding Officer's recommendation. Prehearing briefs must be filed with the Secretary to the Commission by no later than the close of business on Friday, December 1, 1978. Briefs must be served on all parties of record to the investigation on or before the date they are filed with the Secretary. Statements made in briefs should be supported by references to the record. Persons with the same positions are encouraged to consolidate their briefing, if possible.

2. *Written comments and information concerning relief, bonding, and the public interest.* Parties to the Commission's investigation, interested agencies, public interest groups, and any other interested members of the public are encouraged to file written comments and information concerning relief, bonding, and the public interest. These written submissions will be very useful to the Commission in the event it determines that there is a violation of section 337 and that relief should be granted.

Written comments and information concerning relief, bonding, and the public interest shall be submitted in this order. First, complainant shall file a detailed proposed Commission action, including a proposed determination of bonding, a proposed remedy, and a discussion of the effect of its proposals on the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers, with the Secretary to the Commission by no later than the close of business on Friday, November 24, 1978. Second, other parties, interested agencies, public interest groups, and other interested members of the public shall file written comments and information concerning the action which complainant has proposed, any available alternatives, and the advisability of any Commission action in light of the public interest considerations listed above by no later than the close of business on Wednesday, December 6, 1978.

Additional information. The original and 19 true copies of all written submissions must be filed with the Secretary to the Commission. If you wish to submit a document (or a portion thereof) to the Commission in confidence, you must request in camera treatment. Your request should be directed to the Chairman of the Commission and must include a full statement of the reasons for granting in camera treatment. The Commission will either accept such submission in confidence, or it will return the submission to you. All nonconfidential written submissions will be open to public inspection at the Secretary's Office.

Notice of the Commission's investigation was published in the FEDERAL REGISTER of February 14, 1978 (43 FR 6342).

By order of the Commission:

Issued: November 15, 1978.

KENNETH R. MASON,
Secretary.

[FR Doc. 78-32594 Filed 11-17-78; 8:45 am]

[7510-01-M]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 78-60]

LUNAR SAMPLE ANALYSIS ADVISORY COMMITTEE

Meeting

The Lunar Sample Analysis Advisory Committee will meet on November 25 and 26, 1978, in Room 5026 at NASA Headquarters, 400 Maryland Avenue, SW., Washington, D.C. 20546. The meeting will be open to the public up to the seating capacity of the room (approximately 50 including Committee members and other participants). Visitors will be required to sign a visitor's register.

The NASA Lunar Sample Analysis Advisory Committee was established as an interdisciplinary guide to advise NASA management as to future funding mechanisms for Lunar Sample Analysis projects within NASA and other government agencies. The Committee members provide a wide range of scientific and administrative expertise in space and other science. The Chairperson of the Committee is Professor Richard H. Jahns. There are currently seven members on the Committee. The meeting of the Committee is being held at this time because of the urgent need for the Committee to provide recommendations in time to be used in developing program funding plans for fiscal year 1979 and for consideration of fiscal year 1980 budgets. For further information, contact the Executive Secretary, Dr. Bevan M. French 202-755-3760, NASA Headquarters, Code SL-4, Washington, D.C. 20546.

ARNOLD W. FRUTKIN,
Associate Administrator for External Relations.

NOVEMBER 14, 1978.

[FR Doc. 78-32512 Filed 11-17-78; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS

Proposed Meetings

In order to provide advance information regarding proposed meetings of the ACRS Subcommittees and Working Groups, and of the full Committee, the following preliminary schedule reflects the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published October 20, 1978 (43 FR 49080). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the FEDERAL REGISTER approximately 15 days (or more) prior to the meeting. Those Subcommittee and Working Group meetings for which it is anticipated that there will be a portion or all of the meeting open to the public are indicated by an asterisk (*). It is expected that the sessions of the full Committee meeting designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee meetings begin at 8:30 a.m. and

Subcommittee and Working Group meetings usually begin at 8:30 a.m. The exact time when items listed on the agenda will be discussed during full Committee meetings and when Subcommittee and Working Group meetings will start will be published approximately 15 days prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the December 1978 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone 202/634-3267, Attn: Mary E. Vanderholt) between 8:15 a.m. and 5 p.m., e.s.t.

SUBCOMMITTEE AND WORKING GROUP MEETINGS

**Fluid Dynamics*, November 28-29-30, 1978, San Francisco, Calif. The Subcommittee will meet with representatives of the NRC to discuss and review the design basis and construction of the Mark II Boiling Water Reactor (BWR) Containment System. The Mark II load definition, load acceptance criteria, and load combination methods will be discussed. Notice of this meeting was published September 21, October 20, and November 13, 1978 (43 FR 42826, 49080, and 52568, respectively).

**Power and Electrical Systems*, December 1, 1978, Washington, D.C. Postponed indefinitely. Notice of this meeting was published October 20, 1978 (43 FR 49080).

**Generic Items*, December 5, 1978, Washington, D.C. The Subcommittee will review the status of the various generic items contained in the Committee's November 15, 1977, "Status of Generic Items Relating to Light-Water Reactors, Report No. 6." Notice of this meeting was published October 20, 1978 (43 FR 49080).

**Regulatory Activities*, December 6, 1978, Washington, D.C. The Subcommittee will review working papers and future regulatory guides; also it will discuss pertinent activities which affect the current licensing process and/or reactor operations. Notice of this meeting was published October 20, 1978 (43 FR 49080).

**Advanced Reactors*, December 6, 1978, Washington, D.C. Rescheduled from November 1, 1978, Washington, D.C. The Subcommittee will continue its review of matters related to NRC sponsored research on the safety of advanced reactor designs. Notice of this meeting was published October 17, 20, and 31 (43 FR 47802, 49080 and 50763, respectively).

**Architect-Engineer Balance of Plant*, December 18, 1978, Washington, D.C. The Subcommittee will review the Fluor Power Services, Inc., Balance of Plant Standard Safety Analysis Report (BOPSSAR) and its relationship to the Babcock and Wilcox Standard Reference System B-SAR-205 for a preliminary design approval. Notice of this meeting was published October 20, 1978 (43 FR 49080).

**Salem Nuclear Power Staton, Unit No. 2*, December 19, 1978, Washington, D.C. The Subcommittee will review the application of the Public Service Electric & Gas Co. for a license to operate Unit No. 2 of this Station. Notice of this meeting was published October 20, 1978 (43 FR 49080).

**Regulatory Activities*, January 3, 1979, Washington, D.C. The Subcommittee will review working papers and future regulatory guides; also, it will discuss pertinent activities which affect the current licensing process and/or reactor operations. Notice of this meeting was published October 20, 1978 (43 FR 49080).

**Spent Fuel Storage*, January 3, 1979 (afternoon), Washington, D.C. The Subcommittee will review the proposed rule developed by the NRC on Licensing Requirements for the Storage of Spent Fuel in an Independent Spent Fuel Storage Installation (ISFSI).

**Extreme External Phenomena*, January 9, 1979, Las Vegas, Nev. The Subcommittee will review NRC sponsored research regarding seismic design of nuclear power plants. Notice of this meeting was published October 20, 1978 (43 FR 49080).

**Regulatory Activities*, February 7, 1979, Washington, D.C. The Subcommittee will review working papers and future regulatory guides; also, it will discuss pertinent activities which affect the current licensing process and/or reactor operations.

ACRS FULL COMMITTEE MEETINGS

December 7-9, 1978: *Reactor Safety Research—ACRS Annual Report to Congress.

January 4-6, 1979: Agenda to be announced.

February 8-10, 1979: Agenda to be announced.

Dated: November 15, 1978.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc. 78-32564 Filed 11-17-78; 8:45 am]

[7590-01-M]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS, SUBCOMMITTEE ON GENERAL ITEMS

Meeting

The ACRS Subcommittee on Generic Items will hold a meeting on December 5, 1978, in Room 1046, 1717 H Street NW., Washington, D.C. 20555, to review the status of the various generic items contained in the Committee's November 15, 1977, "Status of Generic Items Relating to Light-Water Reactors, Report No. 6." Notice of this meeting was published on October 20 (43 FR 49080).

In accordance with the procedures outlined in the FEDERAL REGISTER on October 4, 1978 (43 FR 45926), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows:

TUESDAY, DECEMBER 5, 1978

8:30 A.M. UNTIL THE CONCLUSION OF BUSINESS.

The Subcommittee may meet in Executive Session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting and to formulate a report and recommendations to the full committee,

At the conclusion of the Executive Session, the Subcommittee will hear presentations by and hold discussions with representatives of the NRC Staff, and their consultants, pertinent to the above topics. The Subcommittee may then caucus to determine whether the matters identified in the initial session have been adequately covered and whether additional meetings of the Subcommittee will be required.

In addition, it may be necessary for the Subcommittee to hold one or more closed sessions for the purpose of exploring matters involving proprietary information. I have determined, in accordance with Subsection 10(d) of Public Law 92-463, that, should such sessions be required, it is necessary to close these sessions to protect proprietary information (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Mr. Richard K. Major (telephone 202-634-1414) between 8:15 a.m. and 5 p.m., e.s.t.

Dated: November 15, 1978.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc. 78-32563 Filed 11-17-78; 8:45 am]

[7590-01-M]

[Docket No. 50-348]

ALABAMA POWER CO.

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 6 to Facility Operating License No. NPF-2, issued to Alabama Power Co. (the licensee), which revised Technical Specifications for operation of the Joseph M. Farley Nu-

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clear Plant, Unit No. 1 (the facility) located in Houston County, Ala. The amendment was effective as of October 26, 1978.

The amendment incorporates a one-time change which expires on November 1, 1978, to allow plant startup with one of two redundant safety-related high efficiency particulate air filters at 99.93% efficiency instead of at 99.95% efficiency.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated October 26, 1978, (2) Amendment No. 6 to License No. NPF-2, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission Public Document Room, 1717 H Street NW., Washington, D.C., and at the George S. Houston Memorial Library, 212 West Vurdeshaw Street, Dothan, Ala. 36301. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 9th day of November 1978.

For the Nuclear Regulatory Commission.

A. SCHWENCER,
Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.

[FR Doc. 78-32557 Filed 11-17-78; 8:45 am]

[7590-01-M]

[Docket Nos. STN 50-592 and STN 50-593]

ARIZONA PUBLIC SERVICE CO., ET AL., PALO VERDE NUCLEAR GENERATING STATION, UNITS 4 AND 5

Availability of Applicant's Environmental Report

Pursuant to the National Environmental Policy Act of 1969 and the regulations of the Commission in 10 CFR 51, Arizona Public Service Co., on behalf of itself and 10 applicants, has filed an environmental report, dated September 1978, in support of their application to construct and operate the Palo Verde Nuclear Generating Station, Units 4 and 5, to be located in Maricopa County, Ariz. (See related notices at 43 FR 19727 and 19729 dated May 8, 1978.) The report, which discusses environmental considerations related to the construction and operation of the proposed facility is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20555, and at the Phoenix Public Library, Science and Industry Section, 12 East McDowell Road, Phoenix, Ariz. Copies of the report are also being made available at the State Clearinghouse, Office of Economic Planning and Development, 1700 West Washington Street, Phoenix, Ariz., and at the Maricopa Association of Governments, 1820 West Washington Street, Phoenix, Ariz.

After the Environmental Report has been analyzed by the Division of Site Safety and Environmental Analysis staff, a Draft Environmental Statement will be prepared. Upon preparation of the Draft Environmental Statement, the Commission will, among other things, cause to be published in the FEDERAL REGISTER a summary notice of availability of the draft statement, with a request for comments from interested persons on the draft statement. The summary notice will also contain a statement to the effect that comments of Federal agencies and State and local officials will be made available when received. Upon consideration of comments submitted with respect to the Draft Environmental Statement, the staff will prepare a Final Environmental Statement, the availability of which will be published in the FEDERAL REGISTER.

Dated at Bethesda, Md., this 14th day of November 1978.

For the Nuclear Regulatory Commission.

WM. H. REGAN, JR.,
Chief, Environmental Projects Branch No. 2, Division of Site Safety and Environmental Analysis.

[FR Doc. 78-32558 Filed 11-17-78; 8:45 am]

[7590-01-M]

[Docket Nos. 50-329-OL, 50-330-OL]

CONSUMERS POWER CO. (MIDLAND PLANT, UNITS 1 AND 2)

Supplemental Notice of Hearing

On October 18, 1978, the Atomic Safety and Licensing Board published in the FEDERAL REGISTER a notice of hearing on the application for a facility operating license by the Consumers Power Co. for its Midland Plant, Units 1 and 2. 43 FR 48089. The Notice provided that a special prehearing conference pursuant to 10 CFR 2.751(a) would commence on November 15, 1978. All parties to this proceeding have agreed to a postponement of the prehearing conference, which has been rescheduled for December 14, 1978, beginning at 9:30 a.m. at the 75th District Court, Courtroom No. 2, Courthouse, Midland, Mich. 48640.

It is so ordered.

Dated at Bethesda, Md., this 13th day of November 1978.

For the Atomic Safety and Licensing Board.

IVAN W. SMITH,
Chairman.

[FR Doc. 78-32559 Filed 11-17-78; 8:45 am]

[7590-01-M]

[Docket No. 50-341]

DETROIT EDISON CO., ET AL. (ENRICO FERMI ATOMIC POWER PLANT, UNIT 2)

Special Prehearing Conference

In accordance with the Atomic Safety and Licensing Board's Memorandum and Order dated November 13, 1978, a special prehearing conference will commence at 10 a.m., local time, on Monday, December 18, 1978 (and will continue through Tuesday, December 19, 1978, if necessary) in Judge Patton's Courtroom (Room 1057), U.S. Courthouse, 231 West Lafayette Street, Detroit, Mich. 48226.

As provided for by 10 CFR 2.751a, and to the extent consistent with the nature of an operating license proceeding (see 10 CFR 2.760a), the conference will be held to:

(1) Consider all intervention petitions to allow the Board to make such preliminary or final determinations as to the parties to the proceeding, as may be appropriate.

(2) Permit identification of the key issues in the proceeding;

(3) Take any steps necessary for further identificaiton of the issues; and

(4) Establish a schedule for further actions in the proceeding.

As further provided in the November 13, 1978 Memorandum and Order, those who have filed petitions for leave to intervene may amend or supplement their petitions by no later than December 4, 1978.

As permitted by 10 CFR 2.715(a), the Board will hear the limited appearance statements of those who have filed written requests to make such an appearance. It is our present intention to hear such statements at the commencement of the proceeding. To the extent that we receive further requests for limited appearances at the conference, they will be accommodated to the extent that time permits after completion of the formal business of the conference.

It is so ordered.

Dated at Bethesda, Md., this 13th day of November, 1978.

The Atomic Safety and Licensing Board, designated to rule on petitions for leave to intervene.

CHARLES BECHHOEFER,
Chairman.

[FR Doc. 78-32560 Filed 11-17-78; 8:45 am]

[7590-01-M]

[Docket Nos. 50-315 and 50-316]

INDIANA & MICHIGAN ELECTRIC CO. AND INDIANA & MICHIGAN POWER CO.

Issuance of Amendment to Facility Operating License and Negative Declaration

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 26 and 8 to Facility Operating License Nos. DPR-58 and DPR-74 issued to Indiana & Michigan Electric Co., which revised the Appendix B Technical Specifications for operation of the Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2 (the facilities), located in Berrien County, Mich.

These changes related to deicing measurements, water chemistry in plant systems, chemical discharges, thermal discharge surveillance, groundwater (well) monitoring, termination of biota monitoring, changes in reporting requirements to conform to NRC guides, deletion of one time requirements (equipment and reports) that have now been met, automated isolation of waste gas storage volume, milk background monitoring and miscellaneous minor editorial changes.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

The Commission has prepared an Environmental Impact Appraisal and Safety Evaluation for the revised Technical Specifications and has concluded that an environmental impact statement for this particular action is not warranted because there will be no environmental impact attributable to the action other than that which has already been predicted and described in the Commission's Final Environmental Statement for the facilities, dated August 8, 1978.

For further details with respect to this action, see (1) the application for amendments dated March 1, 1978, (2) Amendment Nos. 26 and 8 to Facility Operating License Nos. DPR-58 and DPR-74, and (3) the Commission's Environmental Impact Appraisal and Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the Maude Reston Palenske Memorial Library, 500 Market Street, St. Joseph, Mich. 49085. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 8th day of November 1978.

For the Nuclear Regulatory Commission.

A. SCHWENCER,
Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.

[FR Doc. 78-32561 Filed 11-17-78; 8:45 am]

[7590-01-M]

[NUREG-75/087]

REVISION TO THE STANDARD REVIEW PLAN

Issuance and Availability

As a part of the continual maintenance of the Standard Review Plan (SRP), the Nuclear Regulatory Commission's (NRC's) Office of Nuclear Reactor Regulation has published Revision No. 1 to SRP Section "Introduction" for the NRC staff's safety review of applications to build and operate light-water-cooled nuclear power reactors. The purpose of the plan, is to improve both the quality and uniformity of the NRC staff's review of applications to build new nuclear power plants, and to make information about regulatory matters widely available, including the improvement of communication and understanding of the staff review process by interested members of the public and the nuclear power industry. The purpose of the updating program is to revise sections of the SRP for which changes in the review plan have been developed since the original issuance in September 1975 to reflect current practice.

Copies of the Standard Review Plan for the Review of Safety Analysis Reports for the Nuclear Plants, which has been identified as NUREG-75/087, are available from the National Technical Information Service, Springfield, Va. 22161. The domestic price is $70.00, including first-year supplements. Annual subscriptions for supplements alone are $30.00. Individual sections are available at current prices. The domestic price for Revision No. 1 to section "Introduction" is $4.00. Foreign price information is available from NTIS. A copy of the Standard Review Plan including all revisions published to date is available for public inspection at the NRC's Public Document Room at 1717 H Street NW., Washington, D.C. 20555. (5 U.S.C. 552(a)).

Dated at Bethesda this 7th day of November, 1978.

For the U.S. Nuclear Regulatory Commission.

ROGER J. MATTSON,
Director, Division of Systems Safety.

[FR Doc. 78-32562 Filed 11-17-78; 8:45 am]

[3110-01-M]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on November 13, 1978 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes:

The name of the agency sponsoring the proposed collection of information;

The title of each request received;

The agency form number(s), if applicable;

The frequency with which the information is proposed to be collected;

An indication of who will be the respondents to the proposed collection;

The estimated number of responses;

The estimated burden in reporting hours; and

The name of the reviewer or reviewing division or office.

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Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503, 202-395-4529, or from the reviewer listed.

NEW FORMS

DEPARTMENT OF ENERGY

Service Life Data
FERC-73
Annually
Oil pipelines within FERC jurisdiction, 21 responses; 4,620 hours
Hill, Jefferson B., 395-5867

DEPARTMENT OF COMMERCE

National Fire Prevention
Fire department/officer survey
Single-time
Fire chiefs/administrator, 200 responses; 80 hours
C. Louis Kincannon, 395-3211

Bureau of Census
Permit office computer use questionnaire
S-142
Single-time
7,000 building permit offices, 7,000 responses; 3,500 hours
C. Louis Kincannon, 395-3211

Industry and Trade Administration
Appropriate technology
NTIS-PR-493
Single-time
Service organizations, 300 responses; 10 hours
C. Louis Kincannon, 395-3211

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institutes of Health
Implementation of the hospice concept
Other (see SF-83)
Terminal cancer patients and their families, 7,200 responses; 3,600 hours
Richard Eisinger, 395-3214

National Institutes of Health
Beta-blocker heart attack trial
Other (see SF-83)
Heart attack survivors, 36,000 responses; 11,250 hours
Richard Eisinger, 395-3214

Office of Human Development
Survey instruments for 1978 program administration
Review
Single-time
State vocational rehabilitation agency staff, 480 responses; 161 hours
Richard Eisinger, 395-3214

Health Resources Administration
Family Growth—Cycle III: Pilot study
Single-time
Women 15-44 years of age in at least four selected communities, 600 responses; 300 hours
Office of Federal Statistical Policy and Standard, 673-7956

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Housing Management
Longitudinal survey of housing adjustments of older people pretest questionnaire
AHS-57X
Single-time
Households in 1 SMSA, 300 responses; 225 hours
Strasser, A., 395-6132

Housing Production and Mortgage Credit
Application—mortgage insurance section 203(n), loan for living unit in a cooperative
HUD-92013-N
On occasion
Mortgage lending institutions, 1,000 responses; 500 hours
Strasser, A., 395-6132

REVISIONS

DEPARTMENT OF ENERGY

Solar collector manufacturing survey
EIA-63
Single-time
Manufacturers/importers of solar collector, 100 responses; 33 hours
Hill, Jefferson B., 395-5867

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration
Annual supplement to December 31 financial and statistical report
REA 479A
Annually
REA telephone borrowers, 896 responses; 6,631 hours
Ellett, C. A., 395-6132

DEPARTMENT OF COMMERCE

Bureau of Census
Census forms—1980 Census of population and housing
D-1 and 2
Single-time
Entire U.S. population, 86,000,000 responses; 28,663,800 hours
Office of Federal Statistical Policy and Standard, 673-7956

National Oceanic and Atmospheric Administration
Processed fishery products: Family of forms
88—13, 12(02), 13(50), 13A, 13B, and 13C
Annually
Producers of fishery products, 4,340 responses; 1,635 hours
C. Louis Kincannon, 395-3211

National Oceanic and Atmospheric Administration
Commercial fisheries logbooks: Family of forms
88—59, 140, and 153
Other (see SF-83)
Captains of fishing craft, 221,870 responses; 8,177 hours
C. Louis Kincannon, 395-3211

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary
Basic questionnaire study of family economics
(Pretest)
OS-12-78
On occasion
Heads of households in Michigan longitudinal study, 75 responses; 38 hours
Office of Federal Statistical Policy and Standard, 673-7956

Center for Disease Control
Rat control project activities—quarterly report
CDC 7.15
Quarterly
Rat control project grantees, 272 responses; 2,176 hours
Richard Eisinger, 395-3214

DEPARTMENT OF LABOR

Labor Management and Service Administration
Annual report
Treasury—Labor 5,500, 5500-C, 5500-K
Annually
All pension plans and selected welfare plans, 552,000 responses; 3,588,000 hours
Strasser, A., 395-6132

DEPARTMENT OF THE INTERIOR

Bureau of Mines
Aluminum
6-1012-M
Monthly
Producers of aluminum, 156 responses; 78 hours
Ellett, C. A., 395-6132

EXTENSIONS

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institutes of Health
National study of the incidence, prevalence and costs of multiple sclerosis
Single-time
Patients, hospitals, physicians, 27,400 responses; 14,779 hours
Richard Eisinger, 395-3214

DAVID R. LEUTHOLD,
Budget and Management Officer.

[FR Doc. 78-32505 Filed 11-17-78; 8:45 am]

N 0 2 0 7 8 UMI

[3170-01-M]

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

INTERGOVERNMENTAL SCIENCE, ENGINEERING, AND TECHNOLOGY ADVISORY PANEL

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the Office of Science and Technology Policy announces the following meeting:

NAME: Intergovernmental Science, Engineering, and Technology Advisory Panel; Transportation, Commerce, and Community Development Task Force.

DATE: December 14, 1978; 8:45 a.m.-4 p.m.

PLACE: New Executive Office Building, Room 2008, 726 Jackson Place NW., Washington, D.C. 20500.

TYPE OF MEETING: Open.

CONTACT PERSON:

Mr. Louis H. Blair, Office of Science and Technology Policy, Executive Office of the President, 202-395-4596. Anyone planning to attend should contact Mr. Blair's office by December 8, 1978.

PURPOSE OF PANEL: The Intergovernmental Science, Engineering, and Technology Advisory Panel was established on November 4, 1976. The Panel is to identify State, regional, and local government problems which research and technology may assist in resolving or ameliorating and to help develop policies to transfer research and development findings.

MINUTES OF THE MEETING: Executive minutes of the meeting will be available from Mr. Blair's office.

TENTATIVE AGENDA

1. Review of Department of Commerce and Department of Transportation science and technology programs of interest to State and local government. This discussion is a continuation of earlier discussions with these two agencies.

2. Review of the research and development prioritization process in the areas of Community and Economic Development; Transportation; Public Works; and Fire Prevention and Control.

WILLIAM J. MONTGOMERY,
Executive Officer, Office of Science and Technology Policy.

NOVEMBER 9, 1978.

[FR Doc. 78-32567 Filed 11-17-78; 8:45 am]

[8010-01-M]

SECURITIES AND EXCHANGE COMMISSION

[Administrative Proceeding File No. 3-5562]

KORFUND, INC.

Application and Opportunity for Hearing

NOVEMBER 9, 1978.

Notice is hereby given that Korfund, Inc. (the "Applicant") has filed an application (File No. 81-413) pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), for an order exempting the Applicant from the reporting requirements of section 15(d) of the Exchange Act.

The Applicant states, in part:

1. Pursuant to a statutory merger effected on August 15, 1978, a wholly owned subsidiary of Decision Systems, Inc. ("DSI") was merged with and into Applicant. Each share of Applicant's common stock held by the public was converted into and exchanged for $0.83 per share, and the shares held by DSI through its wholly owned subsidiary were canceled. As a result of this merger, Applicant is now a wholly owned subsidiary of DSI and no longer has any public shareholders.

2. Audited financial statements for Applicant for its latest fiscal year ended April 30, 1977, were contained in the proxy statement sent to Applicant's shareholders in connection with the merger.

3. The common stock of DSI is registered with the Commission pursuant to section 12(g) of the Exchange Act. DSI files current, quarterly, and annual reports pursuant to section 13 of such Act.

4. The results of Applicant's operations will be reported by DSI in its periodic reports on a consolidated basis.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 500 North Capitol Street NW., Washington, D.C. 20549.

Notice is further given that any interested person, no later than December 4, 1978, may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reasons for such request, and the issues of fact and law raised by the application which he desires to controvert. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-32526 Filed 11-17-78; 8:45 am]

[8010-01-M]

[Administrative Proceeding, file No. 3-5563]

MULTI-AMP CORP.

Application and Opportunity for Hearing

NOVEMBER, 9, 1978.

Notice is hereby given that Multi-Amp Corp. ("Applicant") has filed an application (File No. 81-397) pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), for an order granting Applicant an exemption from the provisions of section 15(d) of the 1934 Act.

The Applicant states, in part:

1. On July 26, 1978, Applicant merged with M-A Texas Corp., which changed its name to Multi-Amp Corp. As a result of this merger, applicant no longer has any publicly owned common stock.

2. The merger transaction was reported in detail in the Applicant's proxy statement dated July 5, 1978.

Applicant argues that the granting of the exemption would not be inconsistent with the public interest or the protection of investors.

For a more detailed statement of the information presented, interested persons are referred to said application which is on file in the office of the Commission at 500 North Capitol Street NW., Washington, D.C. 20549.

Notice is further given that not later than December 4, 1978, any interested person may submit to the Commission in writing his views on any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street NW., Washington, D.C. 20459, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-32525 filed 11-17-78; 8:45 am]

[8025-01-M]

SMALL BUSINESS ADMINISTRATION

[Application No. 02/02-5351]

EXIM CAPITAL CORP.

Application for a License To Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company under section 301(d) of the Small Business Investment Act of 1958, as amended (Act) (15 U.S.C. 661 et seq.), has been filed by Exim Capital Corp. (applicant) with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1978).

The officers, directors, and stockholders are as follows:

Victor K. Chun, 22 Dunwoodie Place, Greenwich, Conn. 06830; President, Director, and 33⅓ percent stockholder.

Austin Chunsik Oh, 33 Khakum Wood Road, Greenwich, Conn. 06830; Vice President, Secretary, Director, and 66⅔ percent stockholder.

Kyung Soo Han, 147-31 Barclay Avenue, Flushing, N.Y. 11355; Director.

The applicant, a New York corporation, will maintain an office at 489 Fifth Avenue, New York, N.Y. 10017 and will begin operations with $510,000 of paid-in capital and paid-in surplus derived from the sale of 5,100 shares of common stock to two individuals.

The applicant will operate within the investment policies of § 107.101(c) of the regulations. The applicant anticipates being both equity and loan oriented in its investment decisions and policy. The applicant intends to make investments to businesses owned by person or persons whose participation in the free enterprise system is hampered because of social or economic disadvantages and primarily in those businesses of retail or wholesale nature which are concerned in sales of products and rendering of services or businesses which are involved in light manufacturing.

It is the intention of the applicant to finance businesses, as hereinabove described, with concentration of its efforts toward businesses which are in supermarket, dry cleaning, fruit vegetables and/or restaurant fields, with the probability of other fields which the applicant, after careful investigation, could determine as being those businesses for which there is a need and an ability of the borrower to enjoy success.

Applicant also intends to render management consulting services to clients and other small business concerns. Such services will be performed by officers and directors of the applicant, and will include business consulting, appraising, feasibility reports, and placement of institutional loans.

As a small business investment company under section 301(d) of the Act, the applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Act, as amended, from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered becuase of social or economic disadvantages.

Matters involved in SBA's consideration of the applicant include the general business reputation and character of the proposed owners and management and the probability of successful operations of the applicant under this management, including adequate profitability and financial soundness, in accordance with the Act and SBA Rules and Regulations.

Any person may, not later than December 5, 1978, submit to SBA written comments on the proposed applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, 1441 L Street NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in New York, N.Y.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: November 6, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-32496 Filed 11-17-78; 8:45 am]

[8025-01-M]

REGION III ADVISORY COUNCIL EXECUTIVE BOARD

Public Meeting

The Small Business Administration Region III Advisory Council Executive Board will hold a public meeting at 1 p.m., on Tuesday, December 12, 1978, in the Philadelphia District Office Conference Room, U.S. Small Business Adminstration, Philadelphia District Office, Suite 400, East Lobby, One Bala Cynwyd Plaza, Bala Cynwyd, Pa., to discuss such business as may be presented by members, the staff of the Small Business Administration, or others attending.

For further information, write or call Daniel P. Henson III, Regional Director, U.S. Small Business Adminstration, Suite 646, West Lobby, One Bala Cynwyd Plaza, 231 St. Asaphs Road, Bala Cynwyd, Pa. 19004, 215-596-5901.

Dated: November 14, 1978.

K. DREW,
Deputy Advocate for Advisory Councils.

[FR Doc. 78-32497 Filed 11-17-78; 8:45 am]

[8025-01-M]

[License No. 06/06-0175]

SMALL BUSINESS INVESTMENT CAPITAL, INC.

Filing of Application for Approval of Conflict of Interest Transactions Between Associates

Notice is hereby given, pursuant to § 107.1004(e) of the regulations governing small business investment companies (13 CFR 107.1004 (1978)), of a request for approval of two conflict-of-interest transactions between Small Business Investment Capital, Inc. (Licensee), 10003 New Benton Highway, Little Rock, Ark. 72203, a Federal licensee under the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 et seq.), and Associates.

Licensee was licensed by SBA on March 6, 1975. It is owned 100 percent by Shur-Valu Stamps, Inc., 10003 New Benton Highway, Little Rock, Ark. 72203, which in turn is owned approximately 95 percent by Affiliated Food Stores, Inc., a cooperative of retail grocers.

It is proposed that Licensee provide financial assistance to GES, Inc., 382 West Chestnut, Marianna, Ark. 72360, to purchase the supermarket of Norman Kelley, a director of Licensee, Affiliated Food Stores, Inc., and Shur-Valu Stamps, Inc. As such, Mr. Kelley is an Associate of Licensee as defined by § 107.3(a) of the SBA rules and regulations. GES, Inc., is owned by Messrs. Oral W. Edwards, Joe W. Girard, and Herman H. Storey, Jr.

The proposed financing falls within the purview of § 107.1004(b)(5) of the regulations and requires a written exemption from SBA. SBA is considering a request for such exemption.

Also, Licensee proposes to provide financial assistance to Mr. Fred Smith, 550 East Main, Magnolia, Ark. 71753, to purchase one or more grocery stores presently being sold by The Kroger Co. Mr. Smith is a director of Affiliated Food Stores, Inc., and Shur-Valu Stamps, Inc. As such, Mr. Smith is an Associate of Licensee as defined by § 107.3(c) of the regulations.

The proposed financing falls within the purview of § 107.1004(b)(1) of the regulations and requires a written exemption from SBA. SBA is considering a request for such exemption.

Notice is further given that any person may, not later than December 5, 1978, submit to SBA in writing, comments on the proposed transaction. Any such communication should be addressed to: Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

A copy of this Notice shall be published in a newspaper of general circulation in Little Rock, Paragould, and Malvern, Ark.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: November 14, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-32498 Filed 11-17-78; 8:45 am]

[8025-01-M]

[Declaration of Disaster Loan Area No. 1545]

TENNESSEE

Declaration of Disaster Loan Area

Obion County and adjacent counties within the State of Tennessee constitute a disaster area as a result of natural disaster as indicated:

County: Obion.
Natural Disaster: Drought.
Dates: June 15, 1978-September 30, 1978.

Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on May 14, 1979, and for economic injury until the close of business on August 13, 1979, at:

Small Business Administration,
District Office,
Parkway Towers—Suite 1012,
404 James Robertson Parkway,
Nashville, Tenn. 37219

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: November 14, 1978.

PATRICIA M. CLOHERTY,
Acting Administrator.

[FR Doc. 78-32499 Filed 11-17-78; 8:45 am]

[4910-13-M]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RADIO TECHNICAL COMMISSION FOR AERONAUTICS (RTCA)

Special Committee 136—Installation of Emergency Locator Transmitter (ELT)

MEETING

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of the RTCA Special Committee 136 on Installation of Emergency Locator Transmitter (ELT) within Aircraft to be held December 12, 13, and 14, 1978, in Conference Room 8AB, DOT/Federal Aviation Administration Building, 800 Independence Avenue SW., Washington, D.C., commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of Second Meeting held August 22, 23, and 24, 1978; (3) ELT Equipment, Aircraft Structures, and Field Data Working Groups Meet in Separate Sessions; (4) Reports by Working Groups to Full Committee; (5) Briefing on Status of ELT Minimum Performance Standards; and (6) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements or obtain information should contact the RTCA Secretariat, 1717 H Street NW., Washington, D.C. 20006; 202-296-0484. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on November 9, 1978.

KARL F. BIERACH,
Designated Officer.

[FR Doc. 78-32529 Filed 11-17-78; 8:45 am]

[4910-60-M]

DEPARTMENT OF TRANSPORTATION

Materials Transportation Bureau

LIST OF APPLICATIONS FOR EXEMPTIONS

AGENCY: Materials Transportation Bureau, DOT.

ACTION: List of Applications for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein.

DATES: Comment period closes on December 20, 1978.

ADDRESSED TO: Dockets Branch, Information Services Division, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION:

Copies of the applications are available for inspection in the Dockets Branch, Room 6500, Trans Point Building, 2100 Second Street SW., Washington, D.C.

Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

New Application

Application No.	Applicant	Regulation(s) affected	Nature of application
8090-N	The Goodyear Tire & Rubber Co., Akron, Ohio.	49 CFR 173.301(d)(2), 173.302(a)(3).	To authorize shipment of natural gas in manifolded DOT specification 3AAX cylinders. (Mode 1.)
8091-N	Western Electric Co., Inc., Greensboro, N.C.	49 CFR 173, Subparts D, E, F, G, H, J, K, L, M, N.	To authorize shipment of mercury relays excepted from certain requirements of the regulations. (Mode 4.)
8092-N	Dow Chemical Co., Midland, Mich	49 CFR 173.154(a)(9)	To authorize one shipment of ammonium persulfate (oxidizer) in non-DOT specification fiber drums. (Mode 1.)
8093-N	Gibson Cryogenics, Lakeside, Calif	49 CFR 173.315	To authorize shipment of liquefied methane in non-DOT specification portable tank. (Mode 1.)
8095-N	U.S. Department of Defense, Washington, D.C.	49 CFR 173.65	To authorize shipment of a class a explosive with a radioactive source in a DOT 7A specification container. (Mode 2.)
8096-N	Pressure-Pak Container Co., East Hampton, Conn.	49 CFR 173.302, 175.3, 178.42.	To manufacture, mark, and sell a non-DOT specification welded cylinder patterned after DOT specification 3E for shipment of compressed gases. (Modes 1, 2, 3, 4, 5.)
8097-N	AGFA-Gevaert Inc., Teterboro, N.J	49 CFR 173.204	To authorize shipment of sodium hydrosulfide in polyethylene bags of 1 lb 9 oz placed inside a friction top metal can overpacked in a DOT specification 12B fiberboard box. (Modes 1, 4.)

New Application—Continued

Application No.	Applicant	Regulation(s) affected	Nature of application
8098-N	WITCO Chemical Corp., Richmond, Calif.	49 CFR 173.157(b)(2)	To authorize shipment of 55 lb benzoyl peroxide with 25 percent water by weight in securely closed containers made of polyethylene film at least 0.004 in thick inside DOT specification 21C fiber drum. (Modes 1, 2, 3.)
8099-N	Union Carbide Corp., Bound Brook, N.J.	49 CFR 173.365(a)(6)	To authorize shipment of an insectide, poison B, in a "pour-type box" consisting of an open mouth heat sealed bag in a non-DOT specification fiberboard box not to exceed 30 lb. (Modes 1, 2, 3.)
8100-N	Ball Brothers Inc., Anchorage, Alaska	49 CFR 175.30(a)(1)	To authorize the transportation of propane in DOT specification 51 portable tanks. (Mode 4.)
8101-N	U.S. Department of Defense, Washington, D.C.	49 CFR 173.392(c)(7)	To authorize shipment of rocket ammunition containing depleted uranium in exclusive use vehicles without the "radioactive" placards. (Mode 1.)

This notice of receipt of applications for new exemptions is published in accordance with section 107 of the Hazardous Materials Transportation Act.

(49 CFR U.S.C. 1806; 49 CFR 1.53(e).)

Issued in Washington, D.C., on November 9, 1978.

J. R. GROTHE, *Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.*

[FR Doc. 78-32305 Filed 11-17-78; 8:45 am]

[4910-60-M]

LIST OF APPLICATIONS FOR RENEWAL OR MODIFICATION OF EXEMPTIONS OR APPLICATIONS TO BECOME A PARTY TO AN EXEMPTION

AGENCY: Materials Transportation Bureau, DOT.

ACTION: List of applications for renewal or modification of exemptions or application to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier FEDERAL REGISTER publications, they are not expected here. Except as otherwise noted, renewal applications are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments on or before December 5, 1978.

ADDRESSED TO: Dockets Branch, Information Services Division, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for examination in the Dockets Branch, room 6500, Trans Point Building, 2100 Second Street SW., Washington, D.C.

Application No.	Applicant	Renewal of exemption
1479-X	U.S. Department of the Army, Washington, D.C.[1]	1479
2000-X	Union Carbide Corp., Tarrytown, N.Y	2000
2051-X	Virginia Chemicals Inc., Portsmouth, Va	2051
2709-X	U.S. Department of the Army, Washington, D.C.[2]	2709
3187-X	PPG Industries, Inc., Pittsburgh, Pa	3187
3330-X	Babcock & Wilcox, Lynchburg, Va	3330
3667-X	Groendyke Transport, Inc., Enid, Okla	3667
3992-X	Union Carbide Corp., Bound Brook, N.J	3992
4039-X	Airco Industrial Gases, Murray Hill, N.J	4039
4177-X	Hydrodyne Industries, Inc., Hauppauge, L.I., N.Y.[3]	4177
4453-X	Maynes Explosives Co., Lee's Summit, Mo	4453
4684-X	Honeywell Inc., Minneapolis, Minn	4684
4717-X	El Paso Products Co., Odessa, Tex	4717
4717-X	Northern Petrochemical Co., Des Plaines, Ill	4717
4717-X	Union Carbide Corp., Bound Brook, N.J	4717
4734-X	General Electric Co., Waterford, N.Y	4734
4932-X	Federal Laboratories, Inc., Saltsburg, Pa	4932
5186-X	Liquid Carbonic Corp., Chicago, Ill	5186
5649-X	Aquabrom, Adrian, Mich	5649
5704-X	IMC Chemical Group, Inc., Allentown, Pa	5704
5895-X	Explosive Technology, Fairfield, Calif	5895
5959-X	Ethyl Corp., Baton Rouge, La	5959
6016-X	Harvey Co., Greensburg, Pa	6016
6083-X	Stauffer Chemical Co., Westport, Conn	6083
6218-X	Chemetron Corp., Chicago, Ill	6218
6281-X	E. I. du Pont de Nemours & Co., Wilmington, Del	6281
6293-X	Olin Corp., East Alton, Ill	6293
6334-X	Allied Chemical Corp., Morristown, N.J	6334
6348-X	Olin Chemicals Group., Stamford, Conn	6348
6349-X	Union Carbide Corp., Tarrytown, N.Y	6349
6392-X	El Paso Products Co., Odessa, Tex	6392
6418-X	Shell Oil Co., Houston, Tex	6418
6484-X	International Minerals & Chemical Corp., Mundelein, Ill	6484
6538-X	Wonder Corp. of America, Stamford, Conn.[4]	6538
6543-X	M. & T. Chemicals Inc., South San Francisco, Calif	6543
6607-X	Bio-Lab, Inc., Conyers, Ga	6607
6610-X	Oxirane Chemical Co., Pasadena, Tex	6610
6651-X	Enthone Inc., New Haven, Conn	6651
6668-X	Union Carbide Corp., Tarrytown, N.Y	6668
6672-X	U.S. Department of the Army, Washington, D.C	6672
6672-X	Chandler Evans Inc., West Hartford, Conn	6672
6720-X	Sea-Land Service, Inc., Elizabeth, N.J.[5]	6720
6802-X	Lincoln Welding Supply Co., Lincoln, Neb	6802
6894-X	U.S. Department of Energy, Washington, D.C	6894
6901-X	Monsanto Co., St. Louis, Mo	6901
6908-X	Hughes Aircraft Co., Culver City, Calif	6908

Application No.	Applicant	Renewal of exemption
6925-X	Economics Laboratory, Inc., St. Paul, Minn	6925
6944-X	U.S. Department of the Army, Washington, D.C.[6]	6944
6998-X	Rockwell International, Raleigh, N.C	6998
7005-X	Dow Chemical U.S.A., Midland, Mich	7005
7005-X	Bignier Schmid-Laurent Paris, France[7]	7005
7042-X	Walter Kidde & Co., Inc., Mebane, N.C.[8]	7042
7051-X	Ozark-Mahoning Co., Tulsa, Okla	7051
7052-X	Mallory Battery Co., Tarrytown, N.Y.[9]	7052
7220-X	Greif Bros. Corp., Union, N.J	7220
7239-X	Atlas Powder Co., Dallas, Tex	7239
7285-X	Ugine Kuhlmann of America, Inc., Paramus, N.J	7285
7423-X	Dow Chemical Co., Freeport, Tex[10]	7423
7526-X	Nepera Chemical Co., Inc., Harriman, N.Y.[11]	7526
7538-X	Southern Chemical Products Co., Macon, Ga	7538
7590-X	National Classification Board, Washington, D.C.[12]	7590
7617-X	White Pass & Yukon Route, North Vancouver, B.C	7617
7633-X	Orval Tank Containers, Paris, France	7633
7677-X	San Diego Gas and Electric Co., San Diego, Calif	7677
7695-X	Orval Tank Containers, Paris, France	7695
7720-X	Williams, Dimond & Co., San Francisco, Calif.[13]	7720
7727-X	Pollard & Co., Wilmington, Del.[14]	7727
7765-X	Carleton Controls Corp., East Aurora, N.Y.[15]	7765
7824-X	Petrolite Corp., St. Louis, Mo	7824
7845-X	Livingston Copters, Inc., Juneau, Alaska	7845
7872-X	Magna Corp., Houston, Tex.[16]	7872
7876-X	Ashland Chemical Co., Columbus, Ohio	7876
7881-X	FMC Corp., Philadelphia, Pa.[17]	7881
7893-X	L'Air Liquide, Paris, France	7893
7893-X	Orval Manutention, Paris, France	7893
7936-X	Olin Chemicals Group, Stamford, Conn	7936

[1] To provide for an additional tank motor vehicle and to stipulate additional carrier operational requirements.

[2] To provide for certain modifications to containers for shipment of Class A explosives.

[3] Renewal and to provide for additional pressure vessels.

[4] To provide for modification of existing design of pressure vessel.

[5] To accommodate the removal of insulation and jacketing from cargo tanks.

[6] To provide for certain modifications to containers for shipment of Class A explosives

[7] To authorize shipment by rail as an additional mode of transportation.

[8] To authorize shipment of additional hazardous materials; to authorize certain inspections to be performed outside the United States.

[9] To authorize shipment of lithium batteries by passenger carrying aircraft as additional mode of transportation.

[10] To authorize shipment of a water reactive flammable solid.

[11] To authorize shipment of additional pyroforic liquids.

[12] To extend the authority to transport under the exemption to another motor carrier.

[13] To delete the requirement that valve must be facing forward when the tank is transported by highway.

[14] Renewal and to change proper shipping name to "Phenol, liquid."

[15] Renewal and to provide for certain cylinder design modifications.

[16] Renewal and to provide for certain tank design modifications.

[17] To authorize stowage deviation for packages of sodium sulfide aboard passenger vessel.

Application No.	Applicant	Party to exemption
4612-P	Aldrich Chemical Company, Inc., Milwaukee, Wis.	4612
4850-P	Pengo Industries, Inc., Fort Worth, Tex	4850
5959-P	Mobil Chemical Co., Beaumont, Tex	5959
6392-P	Mobil Chemical Co., Beaumont, Tex	6392
6536-P	Chemetron Corp., Chicago, Ill	6536
6611-P	Cities Service Co., Tulsa, Okla	6611
6611-P	L'Air Liquide, Paris, France	6611
6657-P	Kelsey Welding Supply Corp., New Berlin, Wis	6657
6765-P	L'Air Liquide, Paris, France	6765
6765-P	Cities Service Co., Tulsa, Okla	6765
6793-P	Superintendence Company Inc., New York, N.Y	6793
7005-P	Superintendence Company Inc., New York, N.Y	7005
7023-P	Allied Chemical Corp., Morristown, N.J	7023
7052-P	Jet Propulsion Laboratory, Pasadena, Calif	7052
7060-P	New England Nuclear Corp., Boston, Mass	7060
7060-P	Megair Corp., Bowie, Md	7060
7060-P	Atlantic Air, Inc., Baltimore, Md	7060
7613-P	Traffic Data Systems, Inc., Lexington, Mass.[1]	7613
7823-P	Air Products and Chemicals, Inc., Allentown, Pa	7823
7824-P	Champion Chemicals, Inc., Houston, Tex	7824
7894-P	Container Corporation of America, Chicago, Ill	7894
7894-P	Packaging Corporation of America, Chicago, Ill	7894
7938-P	Lowaco, S.A., Rue Boissonnas, Switzerland	7938
8012-P	Tankcontainer Leasing, S.A., Geneva, Switzerland	8012

[1] To become a party to and to authorize alternate closure or provide the use of inside metal cans having screw type closures.

This notice of receipt of applications for revewal of exemptions and for party to an exemption is published in accordance with Section 107 of the Hazardous Materials Transportation Act (49 CFR U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, D.C., on November 9, 1978.

J. R. GROTHE, *Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.*

[FR Doc. 78-32306 Filed 11-17-78; 8:45 am]

[4910-60-M]

Materials Transportation Bureau

TECHNICAL PIPELINE SAFETY STANDARDS COMMITTEE

Public Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App. I), notice is hereby given of a meeting of the Technical Pipeline Safety Standards Committee on December 5 and 6, 1978, at 9 a.m., in Room 3201 of the Transpoint Building, 2100 Second Street SW., Washington, D.C. 20590.

The committee will review two notices of proposed rulemaking in accordance with Section 4(b) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1673(b)): Docket PS-52, Cathodically Protected Transmission Lines (43 FR 39401, September 5, 1978) and Docket PS-54, Joining of Plastic Pipe (43 FR 49334, October 23, 1978). Also, the following Sections of the Federal Gas Pipeline Safety Standards (49 CFR Part 192) are scheduled for review as part of a program to consider existing regulations and revoke or revise those that are not achieving their intended purpose: Sections 192.111, 192.233, 192.245(a), 192.323, 192.353, 192.705(b), 192.706(b), 192.707(a)(2), 192.707(b)(2)(ii), 192.707 (b)(3), 192.707(c), 192.709, 192.711(b), 192.713(a)(2), (b), (c), and (d), 192.715(c), 192.717 (a) and (b), 192.719(a)(2), 192.721(b), 192.723(b)(1), 192.731(c), 192.739, 192.743 (a) and (b), 192.745, 192.747, and 192.749(a).

Attendance is open to the public, but limited to the space available. With prior approval of the Chairman of the Committee, members of the public may present oral statements related to the items scheduled for review, but a statement may not exceed 10 minutes. Members of the public may present written statements to the Committee at any time during the meeting.

Additional information about the meeting may be obtained from Miss Shesha Sheppard, Room 6302, 2100 Second Street SW., Washington, D.C., telephone 202-426-0135.

CESAR DE LEON, *Associate Director for Pipeline Safety Regulation, Materials Transportation Bureau.*

[FR Doc. 78-32582 Filed 11-17-78; 8:45 am]

V 43 / 224 N 0 20 78 UMI

[4810-25-M]

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Treasury Department Order No. 145-1]

AUTHORITY TO MAKE LOANS TO THE MAYOR OF THE DISTRICT OF COLUMBIA TO COMPLETE CAPITAL PROJECTS

By virture of the authority vested in the Secretary of the Treasury under section 723 of the Act of December 24, 1973 (Pub. L. 93-198, 87 Stat. 774,821), which was delegated to me in Treasury Order No. 190, as revised, it is hereby ordered that:

1. The authority to lend such sums as the Mayor of the District of Columbia may determine are required to complete capital projects and take such other actions as may be necessary under section 723(a) of the Act of December 24, 1973 (Pub. L. 93-198, 87 Stat. 774,821) is delegated to the Commissioner, Bureau of Government Financial Operations.

2. This authority may be redelegated by the Commissioner, Bureau of Government Financial Operations to any officer or employee under the supervision or control of the Commissioner.

Dated: November 7, 1978.

PAUL H. TAYLOR,
Fiscal Assistant Secretary.

[FR Doc. 78-32513 Filed 11-17-78; 8:45 am]

[4810-10-M]

[Dept. Circular Public Debt Series—No. 28-78]

TREASURY NOTES OF NOVEMBER 30, 1980

Series V-1980

NOVEMBER 16, 1978.

1. INVITATION FOR TENDERS

1. 1. The Secretary of the Treasury, under the authority of the Second Liberty Bond Act, as amended, invites tenders for approximately $2,691,000,000 of United States securities, designated Treasury Notes of November 30, 1980, Series V-1980 (CUSIP No. 912827 JF 0). The securities will be sold at auction with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts may also be issued for cash to Federal Reserve Banks as agents of foreign and international monetary authorities.

2. DESCRIPTION OF SECURITIES

2. 1. The Securities will be dated November 30, 1978, and will bear interest from that date, payable on a semiannual basis on May 31, 1979, and each subsequent 6 months on November 30 and May 31, until the principal becomes payable. They will mature November 30, 1980, and will not be subject to call for redemption prior to maturity.

2. 2. The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift of other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any possession of the United States, or any local taxing authority.

2. 3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2. 4. Bearer securities with interest coupons attached, and securities registered as to principal and interest, will be issued in denominations of $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of coupon, registered and book-entry securities, and the transfer of registered securities will be permitted.

2. 5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. SALE PROCEDURES

3. 1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Standard time, Tuesday, November 21, 1978. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, November 20, 1978.

3. 2. Each tender must state the face amount of securities bid for. The minimum bid is $5,000 and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.11 percent. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender and the amount may not exceed $1,000,000.

3. 3. All bidders must certify that they have not made and will not make any agreements for the sale or purchase of any securities of this issue prior to the deadline established in section 3.1. for receipt of tenders. Those authorized to submit tenders for the account of customers will be required to certify that such tenders are submitted under the same conditions, agreements, and certifications as tenders submitted directly by bidders for their own account.

3. 4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are only permitted to submit tenders for their own account.

3. 5. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan association; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by a deposit of 5 percent of the face amount of securities applied for (in the form of cash, maturing Treasury securities or readily collectible checks), or by a guarantee of such deposit by a commercial bank or a primary dealer.

3. 6. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, a coupon rate will be established, on the basis of a ⅛ of 1 percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price

above the original issue discount limit of 99.500. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3. 7. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will only be notified if the tender is not accepted in full, or when the price is over par.

4. RESERVATIONS

4. 1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. PAYMENT AND DELIVERY

5. 1. Settlement for allotted securities must be made or completed on or before Thursday, November 30, 1978, at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received at such institution no later than:

(a) Monday, November 27, 1978, if the check is drawn on a bank in the Federal Reserve District of the institution to which the check is submitted (the Fifth Federal Reserve District in case of the Bureau of the Public Debt), or

(b) Friday, November 24, 1978, if the check is drawn on a bank in another Federal Reserve District.

Checks received after the dates set forth in the preceding sentence will not be accepted unless they are payable at the applicable Federal Reserve Bank. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or any employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5. 2. In every case where full payment is not completed on time, the deposit submitted with the tender, up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5. 3. Registered securities tendered as deposits and in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." If new securities in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon (securities offered by this circular) to be delivered to (name and address)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5. 4. If bearer securities are not ready for delivery on the settlement date, purchasers may elect to receive interim certificates. These certificates shall be issued in bearer form and shall be exchangeable for definitive securities of this issue, when such securities are available, at any Federal Reserve Bank or Branch or at the Bureau of the Public Debt, Washington, D.C. 20226. The interim certificates must be returned at the risk and expense of the holder.

5. 5. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. GENERAL PROVISIONS

6. 1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of securities on full-paid allotments, and to issue interim certificates pending delivery of the definitive securities.

6. 2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

PAUL H. TAYLOR,
Fiscal Assistant Secretary.

SUPPLEMENTARY STATEMENT

The announcement set forth above does not meet the Department's criteria for significant regulations and, accordingly, may be published without compliance with the Departmental procedures applicable to such regulations.

[FR Doc. 78-32695 Filed 11-16-78; 4:06 pm]

[8320-01-M]

VETERANS ADMINISTRATION

STATION COMMITTEE ON EDUCATIONAL ALLOWANCES

Meeting

Notice is hereby given pursuant to section V, Review Procedure and Hearing Rules, Station Committee on Educational Allowances that on December 6, 1978, at 1 p.m., the Veterans Administration Regional Office Station Committee on Educational Allowances shall at Federal Building, U.S. Courthouse, Room A-220, 110 9th Avenue, South, Nashville, Tenn., conduct a hearing to determine whether Veterans Administration benefits to all eligible persons enrolled in Lauderdale County board of Education Farm Cooperative Training Program, Ripley, Tenn., should be discontinued, as provided in 38 CFR 21.4134, because a requirement of law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the Committee at that time and place.

V 4 3 / 2 2 4

Dated: November 9, 1978.

R. S. BIELAK,
Director,
VA Regional Office.

[FR Doc. 78-32546 Filed 11-17-78; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

[Notice 743]

Assignment of Heorings

NOVEMBER 15, 1978.

Cases assigned for hearing, postponement, cancellation, or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 32166 (Sub-10), Bronaugh Motor Express, Inc., now being assigned for hearing on January 16, 1979 (14 days), at the Hilton Inn, Junction of Interstate 75 and Kentucky Hwy 922, Lexington, KY.

MC 43963 (Sub-12F), Chief Truck Lines, Inc., now being assigned for Prehearing Conference on December 11, 1978, at the Offices of Interstate Commerce Commission, Washington, DC.

MC 113678 (Sub-728F), Curtis, Inc., now assigned January 24, 1979, at Omaha, NE, is canceled to be handled under modified procedure.

MC 87103 (Sub-23), Miller Transfer & Rigging Co., now assigned November 17, 1978, is canceled transfered to modified procedure.

MC 139577 (Sub-12F), Adams Transit Inc., now assigned November 28, 1978, at Chicago, IL, is canceled and transfered to modified procedure.

MC-F-13486, Witte Transportation Co.—Purchase (Portion)—Scott's Transportation Service, Inc., now assigned December 11, 1978, at Chicago, IL, is canceled, transfered to modified procedure.

MC 134477 (Sub-228F), Schanno Transportation, Inc., now assigned for hearing on January 23, 1979, at Chicago, IL, and will be held in Room 204A, E. M. Dirksen Building.

MC 140829 (Sub-87F), Cargo Contract Carrier Corp., now assigned for hearing on January 29, 1979, at Chicago, IL, and will be held in Room 204A, E. M. Dirksen Building.

MC 78228 (Sub-79F), J. Miller Express, Inc., now assigned for hearing on January 25, 1979, at Chicago, IL, and will be held in Room 204A, E. M. Dirksen Building.

MC 35358 (Sub-40F), Berger Transfer & Storage, Inc., now assigned for hearing on January 30, 1979, at Chicago, IL, and will be held in Room 204A, E. M. Dirksen Building.

MC 30032 (Sub-8F), Houdek Motor Service, Inc., now assigned for hearing on February 1, 1979, at Chicago, IL, and will be held in Room 204A, E. M. Dirksen Building.

MC 135874 (Sub-14F), LTL Perishables, Inc., now assigned for hearing on January 15, 1979, at St. Paul, MN, and will be held in Courtroom 984, Federal Building.

MC 123407 (Sub-438F), Sawyer Transport, Inc., now assigned for hearing on January 11, 1979, at St. Paul, MN, and will be held in Courtroom 984, Federal Building.

MC 144232 (Sub-1F), Trans National Truck, Inc., now being assigned prehearing conference December 19, 1978, at the offices of Interstate Commerce Commission, Washington, DC.

MC-F-13516, Wilson Freight Co.—Control and Merger—Strickland Transportation Co., Inc., now assigned January 9, 1979, at Cincinnati, OH, is postponed indefinitely.

MC 113678 (Sub-432), MIF, Curtis Inc., now assigned for hearing on January 9, 1979, at St. Paul, MN, and will be held in Courtroom 984, Federal Building.

MC 143496 (Sub-1), United Coach Companies of Tidewater, Inc., now assigned for hearing on November 27, 1978, at Norfolk, VA, and will be held in Grand Jury Room, U.S. Post Office and Courthouse.

No. 37020, Increased Minimum Weights With Increased and Reduced Rates on Eastbound Transcontinental Lumber and Related Articles now assigned for hearing on December 12, 1978, at San Francisco, CA, and will be held in the U.S. Courthouse, Courtroom 15.

MC 114457 (Sub-397F), Dart Transit Co., a corporation, now assigned for hearing on December 7, 1978, at St. Paul, MN, and will be held in Courtroom 984, Federal Building.

MC 135874 (Sub-104F), LTL Perishables, Inc., now assigned for hearing on December 6, 1978, at St. Paul, MN, and will be held in Courtroom 984, Federal Building.

MC 135874 (Sub-106F), LTL Perishables, Inc., now assigned for hearing on December 5, 1978, at St. Paul, MN, and will be held in Courtroom 984, Federal Building.

MC 138144 (Sub-27F), Fred Olson Co., Inc., now assigned for hearing on December 6, 1978, at Chicago, IL, and will be held in Room 1319, E. M. Dirksen Building.

MC 135797 (Sub-132F), J. B. Hunt Transport, Inc., now assigned for hearing on December 5, 1978, at Chicago, IL, and will be held in Room 1319, E. M. Dirksen Building.

MC 134755 (Sub-139F), Charter Express, Inc., now assigned for hearing on December 11, 1978, at Dallas, TX, and will be held in the Tax Court Room 330, U.S. Post Office and Courthouse Building.

MC 107064 (Sub-122F), Steere Tank Lines, Inc., now assigned for hearing on December 12, 1978, at Dallas, TX, and will be held in the Tax Court Room 330, U.S. Post Office and Courthouse Building.

MC 115841 (Sub-615F), Colonial Refrigerated Transportation, now assigned for hearing on December 13, 1978, at Dallas, TX, and will be held in the Tax Court Room 330, U.S. Post Office and Courthouse Building.

MC 140762 (Sub-1F), Trinity Industries Transportation, Inc., now assigned for hearing on December 14, 1978, at Dallas, TX, and will be held in the Tax Court Room 330, U.S. Post Office and Courthouse Building.

MC 106074 (Sub-57), B & P Motor Lines, Inc., now assigned for hearing on December 18, 1978, at Dallas, TX, and will be held in the Tax Court Room 330, U.S. Post Office and Courthouse Building.

MC 115730 (Sub-48F), The Mickow Corp., now assigned for hearing on December 6, 1978, at Des Moines, IA, and will be held in Room 453, Federal Building.

MC 112223 (Sub-109F), Quickie Transport Co., now assigned for hearing on December 11, 1978, at St. Paul, MN, and will be held in Courtroom 984, Federal Building.

MC 118569 (Sub-7F), Halberg Construction & Supply, Inc., d.b.a. Kirsher Transport Co., a corporation, now assigned for hearing on December 11, 1978, at St. Paul, MN, and will be held in Courtroom 984, Federal Building.

MC 83835 (Sub-151F), Wales Transportation, Inc., now assigned for hearing on December 19, 1978, at Dallas, TX, and will be held in Room 5A15-17, Federal Building.

MC 119988 (Sub-145F), Great Western Trucking Co., Inc., now assigned for hearing on December 11, 1978, at Dallas, TX, and will be held in Room 5A15-17, Federal Building.

MC 119777 (Sub-349F), Ligon Specialized Hauler, Inc., now assigned for hearing on December 12, 1978, at Dallas, TX, and will be held in Room 5A15-17, Federal Building.

MC 144690 (Sub-1F), Cherry-Wink, Inc., now assigned for hearing on December 14, 1978, at Dallas, TX, and will be held in Room 5A15-17, Federal Building.

MC 105045 (Sub-83F), R. L. Jeffries Trucking Co., Inc., now assigned for hearing on December 12, 1978, at Dallas, TX, and will be held in Room 5A15-17, Federal Building.

FD 28611, Southern Pacific Transportation Co. To Discontinue The Operation Of Passenger Trains Between San Francisco and San Jose and Intermediate Points, now assigned for hearing on December 5, 1978, at San Francisco, CA, and will be held in Room 1194, State Office Building.

AB 1 (Sub-58), Chicago & North Western Transportation Co. Abandonment Near Currie and Birmingham, in Cottonwood and Murray Counties, MN, now assigned for hearing on December 11, 1978, at Slayton, MN, and will be held in New Murray County Office Building.

MC 9812 (Sub-9F), C. F. Kolb Trucking Co., Inc., now assigned November 20, 1978, at St. Louis, MO, is postponed indefinitely.

MC 134906, Cape Air Freight, Inc. and MC 134906 (Sub-Nos. 1, 2, 3, 4, 5, 6, 7) Cape Air Freight, Inc., now assigned December 5, 1978, at Louisville, KY, is postponed indefinitely.

MC 65941 (Sub-50F), Tower Lines, Inc., now being assigned for continued hearing on December 12, 1978, at the Offices of the Interstate Commerce Commission, Washington, D.C.

H. G. HOMME, JR.,
Secretary.

[FR Doc. 78-32572 Filed 11-17-78; 8:45 am]

[7035-01-M]

FOURTH SECTION APPLICATIONS FOR RELIEF

NOVEMBER 15, 1978.

This application for long-and-short-haul relief has been filed with the ICC.

Protests are due at the ICC within 15 days from the date of publication of this notice.

FSA No. 43629, Southwestern Freight Bureau, Agent's B-788, rates on cement and related articles, from Buda, TX to stations in Southwestern and Western Trunk Line Territories, in Supplement 126 to its Tariff 325-B, ICC 5156, to become effective December 11, 1978. Grounds for relief—market competition.

H. G. HOMME, JR.,
Secretary.

[FR Doc. 78-32568 Filed 11-17-78; 8:45 am]

[7035-01-M]

[Notice No. 213]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

NOVEMBER 9, 1978.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC, and also in the ICC field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

MC 30844 (Sub-623TA), filed September 25, 1978. Applicant: DROBLIN REFRIGERATED XPRESS, INC., 2125 Commercial Street, Waterloo, IA 50703. Representative: John P. Rhodes, P.O. Box 5000, Waterloo, Ia 50704. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Synthetic plastics, adhesives, sealants, cements, chemicals, chemical compounds, cleaning compounds, rubber compounds, soldering flux, coatings, lubricants, and equipment, materials and supplies* used in the application of the commodities named above, from Cambridge, MA, to points in the United States (except AK and HI); (2) *Synthetic plastics, adhesives, sealants, cements, chemicals, chemical compounds, gas absorbing compounds, rubber compounds, soldering flux, coatings, lubricants, and equipment, materials and supplies* used in the application of the commodities named above, from Woodbury, NJ, and Atlanta, GA, to points in the United States (except AK and HI); (3) *Synthetic plastics, adhesives, sealants, cements, chemicals, chemical compounds, gas absorbing compounds, rubber compounds, soldering flux, coatings, lubricants, air entraining agents, cement clinker or grinding compounds, concrete or masonry plasticizer and water reducing compounds, tall oil, lignin liquors, and equipment, materials and supplies* used in the application of the commodities named above, from Chicago, IL, to points in the United States (except AK and HI); (4) *Cleaning compounds, chemicals, chemical compounds, and fertilizer compounds,* from Nashua, NH, to points in the United States (except AK and HI); (5) *Synthetic plastics, synthetic latex, battery insulting partitions, and pulpboard,* from Owensboro, KY, to points in the United States, (except AK and HI); (6) *Synthetic plastics, synthetic latex, battery insulting partitions, cleaning compounds,* from Acton, MA, to points in the Unites States (except AK and HI); (7) *Materials, equipment and supplies* used in the manufacture, production, and distribution of the commodities named in 1 through 6 above, from points in the United States (except AK and HI), to the origins named in 1 through 6 above, and to San Leandro, CA, restricted against the transportation of commodities in bulk, in tank vehicles, and commodities which by reason of size and weight require the use of special equipment and further restricted to traffic originating at or destined to the facilities of W. R. Grace & Co., for 180 days. Common control may be involved. Supporting shipper: W. R. Grace & Co., 55 Hayden Avenue, Lexington, MA 02173. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA. 50309.

MC 30844 (Sub-626TA), filed September 29, 1978. Applicant: KROBLIN REFRIGERATED XPRESS, INC., 2125 Commercial Street, Waterloo, IA 50702. Representative: John P. Rhodes, P.O. Box 5000, Waterloo, IA 50704. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products and articles distributed by meat packinghouses,* as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except hides and skins and commodities in bulk), from the facilities utilized by John Morrell & Co., Cincinnati, OH to NJ and NY, for 180 days. Applicant intends to tack to authority held in Sub-381, Meats, etc., from St. Louis, MO, and East St. Louis, IL, to points in NJ and NY. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting Shipper: John Morrell & Co., 208 LaSalle Street, Chicago, IL 60604. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 51146 (Sub-646TA), filed September 26, 1978. Applicant: SCHNEIDER TRANSPORT, INC., 2661 South Broadway, P.O. Box 2298, Green Bay, WI. 54306. Representative: John R. Patterson, 2480 East Commercial Boulevard, Fort Lauderdale, FL 33308. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Corrugated boxes,* from the facilities of Westvaco Corp. at Kansas City, KS, to MO, IA and NE, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Westvaco Corp., 530 Sunshine Road, Kansas City, KS 66115 (Francis E. Steele). Send protests to Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Mulwaukee, WI 53202.

MC 51146 (Sub-647TA), filed September 29, 1978. Applicant: SCHNEIDER TRANSPORT, INC., 2661 South Broadway, Green Bay, WI 54306. Representative: John R. Patterson, 2480 East Commercial Boulevard Fort Lauderdale, FL 33308. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Wood windows, sliding glass doors, wood folding*

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doors, partitions, and *equipment, materials, and supplies* used in the manufacture and distribution of the above-described commodities (except commodities in bulk), from Pella, IA, to points in AL, CT, DE, GA, IL, IN, KY, ME, MD, MA, MI, MS, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, and WI; and (2) *equipment, materials, and supplies* used in the manufacture and distribution of the above-described commodities (except commodities in bulk), in the reverse direction, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Roiscreen Co., Pella, IA 50219 (Andrew Beerends). Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Rom 619, Milwaukee, WI 53202.

MC 59367 (Sub-128TA), filed September 26, 1978. Applicant: DECKER TRUCK LINE, INC., P.O. Box 915, 3584 5th Avenue South, Fort Dodge, IA 50501. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byroducts, and articles distributed by meat packinghouses,* as described in sections A, B, and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766, (except hides and skins and commodities in bulk), from the facilities utilized by John Morrell & Co., at or near Sioux Falls, SD, and Estherville, IA, to points in TX and OK, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: John Morrell & Co., 208 South LaSalle Street, Chicago, IL 60604. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 69492 (Sub-69TA), filed October 4, 1978. Applicant: HENRY EDWARDS, d.b.a. HENRY EDWARDS TRUCKING CO., P.O. Box 97, Clinton, KY 42031. Representative: Roland M. Lowell, 618 United American Bank Building, Nashville, TN 37219. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Malt beverages, related advertising materials, containers, and pallets,* between St. Louis, MO, and Metropolis, IL, and their commercial zones, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Rips Distributing Co., 121 Metropolis Street, Metropolis, IL 62960. Send protests to: Floyd A. Johnson, District Supervisor, Interstate Commerce Commission, 100 North Main Building, Suite 2006, 100 North Main Street, Memphis, TN 38103.

MC 95540 (Sub-1045TA), filed October 4, 1978. Applicant: WATKINS MOTOR LINES, INC., 1144 West Griffin Road, P.O. Box 1636, Lakeland, FL 33802. Representative: Benjy W. Fincher, 1144 West Griffin Road, P.O. Box 1636, Lakeland, FL 33802. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Frozen foods,* except commodities in bulk), from the facilities of Rich Products Corp., located at or near Appleton, WI, to the facilities of Rich Products Corp., located at or near Murphreesboro, TN, restricted to the transportation of traffic originating at the named origin and destined to the named destination, for 180 days. There is no environmental impact involved in this application. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Rich Products Corp., 1145 Niagara Street, Buffalo, NY 14240. Send protests to: Donna M. Jones, Transportation Assistant, Interstate Commerce Commission, Monterey Building, Suite 101, 8410 Northwest 53d Terrace, Miami, FL 33166.

MC 95540 (Sub-1046TA), filed October 4, 1978. Applicant: WATKINS MOTOR LINES, INC., 1144 West Griffin Road, P.O. Box 1636, Lakeland, Fla. 33802. Representative: Benjy W. Fincher, 1144 West Griffin Road, P.O. Box 1636, Lakeland, Fla. 33802. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Bakery goods, other than frozen,* from Sayreville, NJ, to Jacksonville, Orlando, Tampa and Miami FL, for 180 days. There is no environmental impact involved in this application. Supporting shipper: Sunshine Biscuits, Inc., 245 Park Avenue, New York, NY 10017. Send protests to: Donna M. Jones, Transportation Assistant, Interstate Commerce Commission, Monterey Building, Suite 101, 8410 Northwest, 53d Terrace, Miami, FL 33166.

MC 95540 (Sub-1047TA), filed October 4, 1978. Applicant: WATKINS MOTOR LINES, INC., 1144 West Griffin Road, P.O. Box 1636, Lakeland, FL 33802. Representative: Benjy W. Fincher, 1144 West Griffin Road, P.O. Box 1636, Lakeland, FL 33802. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Cellulose acetate,* dry in bulk or bags, from Celco, VA, to Newark, NJ, for 180 days. There is no environmental impact involved in this application. Applicant has also filed an underlying ETA seeking up to 89 days of operating authority. Supporting shipper: Celanese Corp., 1211 Avenue of the Americas, New York City, NY 10036. Send protests to: Donna M. Jones Transportation Assistant, Interstate Commerce Commission, Monterey Building, Suite 101, 8410 Northwest, 53d Terrace, Miami, FL 33166.

MC 106644 (Sub-268TA), filed October 4, 1978. Applicant: SUPERIOR TRUCKING CO., INC., P.O. Box 916, 2770 Peyton Road, Atlanta, GA 30301. Representative: Louis C. Parker, III, P.O. Box 916, Atlanta, GA 30301. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Cast stone veneer,* from Napa and Solano County, CA to points in AK, NM, TX, OK, AZ, LA, MS, TN, AL, GA, NC, SC and FL, for 180 days. Supporting shipper: Stucco Stone Products, P.O. Box 237, Napa, CA, 94558. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 West Peachtree Street NW., Room 300, Atlanta, GA 30309.

MC 107403 (Sub-1121TA), filed October 4, 1978. Applicant: MATLACK, INC., 10 West Baltimore Avenue, Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr. (same as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Dry sugar,* (in bulk, in tank vehicles), from Supreme, LA, to points in Denison, TX; Knoxville, TN; Cincinnati, OH; and Wilson, AR; for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Supreme Sugar Co., Division ADM Corp., 320 One Shell Plaza, New Orleans, LA. Send protests to: T. M. Esposito, Transportation Assistant, 600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 110420 (Sub-788TA), filed September 29, 1978. Applicant: QUALITY CARRIERS, INC., P.O. Box 186, Pleasant Prairie, WI 53158. Representative: Michael V. Kaney (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Fabric softener,* (in bulk, in tank vehicles), from the plantsite of Procter & Gamble Co., at Green Bay, WI, to Brown Co., Kalamazoo, MI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Procter & Gamble Co., 301 East Sixth Street, Cincinnati, OH 45201. Send protests to: Gail Daugherty Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 110525 (Sub-1264TA), filed August 28, 1978. Applicant: CHEMICAL LEAMAN TANK LINES, INC., P.O. Box 200, 520 N. Lancaster Avenue, Downingtown, PA 19335. Representative: Thomas J. O'Brien (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Boron trifluoride gas,* in shipper owned trailers, from the facilities of Allied Chemical Corp., at Marcus Hook, PA, to Odessa, TX, and Gulfport, MS, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Allied Chemical Corp., P.O. Box 1086-R, Morristown, NJ 07960. Send protests to: T. M. Esposito Transportation Assistant, 600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 110988 (Sub-372TA), filed September 26, 1978. Applicant: SCHNEIDER TANK LINES, INC., 4321 West College Avenue, Giltedge Building, Appleton, WI 54911. Representative: John R. Patterson, 2480 East Commercial Boulevard, Ft. Lauderdale, FL. 33308. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Chemicals,* (in bulk, in tank vehicles), from Memphis, TN, to Cornwall and Niagara Falls, NY; Pidgeon River, New Brighton, and Tenstrike, MN; Portal, ND; Sweetgrass, MT; Ishpeming and Saulte Ste., Marie, MI; and Eau Claire, WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Commercial Chemical Co., Division Osmose Wood Preserving Company, 1172 North Thomas Street, Memphis, TN 38107 (Vivian Tanner). Send protests to: Gail Daugherty Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building, and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 111545 (Sub-259TA), filed October 4, 1978. Applicant: HOME TRANSPORTATION COMPANY, INC., 1425 Franklin Road SE, P.O. Box 426 Station A, Marietta, GA 30067. Representative: Robert E. Born, P.O. Box 6426, Station A, Marietta, GA 30065. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Cast stone veneer,* from the facilities of Stucco Stone Products, Inc., at Napa, CA, to points in AL, AR, AZ, FL, GA, LA, MS, NM, NC, OK, SC, TN and TX, for 180 Days. Supporting shipper: Stucco Stone Products, Inc., P.O. Box 237, Napa, CA 94558. Send protests to: Sara K. Davis Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 West Peachtree Street NW., Room 300, Atlanta, GA 30309.

MC 111729 (Sub-747TA), filed September 26, 1978. Applicant: PUROLATOR COURIER CORP., 3333 New Hyde Park Road, New Hyde Park, NY 11040. Representative: Elizabeth L. Henoch (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *General commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission and commodities in bulk), between points in AR, on traffic having a prior or subsequent out-of-state movement, restricted against the transportation of packages or articles weighing more than 50 pounds, for 90 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: (1) American Cyanamid Co., 2300 South Eastern Avenue, Los Angeles, CA (2) Amway Corp., 1800 East Dyer Road, Santa Ana, CA. Send protests to: Maria B. Kejss, Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, NY 10007.

MC 112520 (Sub-355TA), filed October 4, 1978. Applicant: McKENZIE TANK LINES, INC., P.O. Box 1200, Tallahassee, FL 32302. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Demethanized raw make (propane-ethane mix),* from Maurice, LA, to West Palm Beach, FL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: United Technology, Inc. 1690 New Britain Avenue, Farmington, CT. 06032. Send protests to: G. H. Fauss, Jr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 113678 (Sub-764TA), filed September 26, 1978. Applicant: CURTIS, INC., 4810 Pontiac Street, Commerce City, CO 80022. Representative: Roger M. Shaner, 4810 Pontiac Street, Commerce City, CO 80022. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except commodities in bulk), in vehicles equipped with mechanical refrigeration, from facilities utilized by J. H. Filbert, Inc., in Fulton, Clayton, DeKalb, Cobb, and Douglas Counties, GA, to points in DC, KY, MD, NC, OH, SC, and TN, VA and WV, for 180 days. Supporting shipper: J. H. Filbert, Inc., 3701 Southwestern Boulevard, Baltimore, MD 12229. Send protests to: H. C. Ruoff, District Supervisor, Interstate Commerce Commission, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 114132 (Sub-5TA), filed October 4, 1978. Applicant: CHURN'S TRUCK LINES, INC., P.O. Box 188, Eastville, VA. 23347. Representative: William J. Augello, 120 Main Street, P.O. Box Z, Huntington, NY 11743. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Canned goods,* between Cheriton, VA, on the one hand, and, on the other, Queen Anne, MD, for 180 days. Supporting shipper: K.M.C., Foods, Inc., Box 298, Queen Anne, MD 21657. Send protests to: T. M. Esposito Transportation Assistant, 600 Arch Street, Room 3238, Philadelphia, PA 21657.

MC 114457 (Sub-438TA), filed October 4, 1978. Applicant: DART TRANSIT CO., 2102 University Avenue, St. Paul, MN 55114. Representative: James H. Wills, 2102 University Avenue, St. Paul, MN 55114. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Plastic containers,* from Green Bay, WI, to Niles, MI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Midway Can Co., 2341 Hampden Avenue, St. Paul, MN 55114. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building, 110 South 4th Street, U.S. Court House, Minneapolis, MN 55401.

MC 114569 (Sub-248TA), filed September 29, 1978. Applicant: SHAFFER TRUCKING, INC., P.O. Box 418, New Kingstown, PA 17072. Representative: N. L. Cummins, P.O. Box 418, New Kingstown, PA 17072. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Candy and confectionery products and candy cough drops,* from Luden's, Inc., Reading, PA to CA, OR and WA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Luden's Inc., 200 North 8th Street, Reading, PA. Send protests to: Charles F. Myers, District Supervisor, Interstate Commerce Commission, P.O. Box 869, Federal Square Station, Harrisburg, PA 17108.

MC 115826 (Sub-351TA), filed September 26, 1978. Applicant: W. J. DIGBY, INC., 1960 31st Street, Denver, CO 80217. Representative: Howard Gore, 1960 31st Street, Denver, CO 80217. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes,

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transporting: (1) *Paper and paper products, plastic products, and products manufactured and distributed by manufacturers and converters of paper and paper products, and materials, equipment, and supplies* used in the manufacture and distribution of the above-named commodities (except in bulk), from the facilities of The Continental Group, Inc., Bondware Division at or near Ft. Worth, TX, to points in OR, WA, ID, MT, NV, UT, CO, NM, AZ, and CA; and (2) *Plastic beads,* (except in bulk), from the facilities of The Continental Group, Inc., Bondware Division at or near Saginaw, TX, to the facilities of The Continental Group, Inc., Bondware Division at or near San Pedro and La Mirada, CA; (3) *Empty containers,* on return, from the facilities of The Continental Group, Inc., Bondware Division at or near San Pedro and La Mirada, CA, to the facilities of the Continental Group, Inc., Bondware Division at or near Saginaw, TX, for 180 days. Supporting shipper: The Continental Group, Inc., Bondware Division, 800 East Northwest Hwy, Palatine, IL 60067. Send protests to: H. C. Ruoff, District Supervisor, Interstate Commerce Commission, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 116099 (Sub-8TA), filed October 4, 1978. Applicant: WOODWORTH & SONS, INC., Tolono, IL 61880. Representative: Robert T. Lawley, 300 Reisch Building, Springfield, IL 62701. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Liquid fertilizer,* (in bulk, in tank trailers), from Bourbon, IL., to points in IN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: R. R. Whipple, Supervisor-Traffic, Allied Chemical Corp., P.O. Box 2120, Houston, TX 77001. Send protests to: Charles D. Little, District Supervisor, Interstate Commerce Commission, 414 Leland Office Building, 527 East Capitol Avenue, Springfield, IL 62701.

MC 116459 (Sub-72 TA), filed October 4, 1978. Applicant: RUSS TRANSPORT, INC., P.O. Box 4022, Chattanooga, TN 37405. Representative: Charles T. Williams, P.O. Box 4022, Chattanooga, TN 37405. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Asphalt and asphalt products,* (in bulk, in tank vehicles, from Knoxville, TN, to points in KY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Shell Oil Co., P.O. Box 2099, Houston, TX 77001. Send protests to: Glenda Kuss, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, Suite A-422, U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 119654 (Sub-61TA), filed October 4, 1978. Applicant: HI-WAY DISPATCH, INC., 1401 West 26th Street, Marion, IN 46952. Representative: Norman R. Garvin, 1301 Merchants Plaza, Indianapolis, IN 46204. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Glass containers and glass container accessories,* from Winchester and Richmond, IN, to points in IL, KY, MI, OH, and WI, and St. Louis, MO, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Anchor Hocking Corp., 109 North Broad Street, Lancaster, OH 43130. Send protests to: J. H. Gray, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 343 West Wayne Street, Suite 113, Fort Wayne, IN 46802.

MC 119934 (Sub-225TA), filed October 4, 1978. Applicant: ECOFF TRUCKING, INC., 625 E. Broadway, Fortville, IN 46040. Representative: Robert W. Loser II, 1009 Chamber of Commerce Building, Indianapolis, IN 46204. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Liquid fertilizer,* (in bulk, in tank vehicles), from Bourbon, IL, to points in IN, for 180 days. Supporting shipper: Allied Chemical Corp., P.O. Box 2120, Houston, TX 77001. Send protests to: Beverly J. Williams, Transportation Assistant, Interstate Commerce Commission, Federal Building and U.S. Courthouse. 46 East Ohio Street, Room 429, Indianapolis, IN 46204.

MC 125470 (Sub-34TA), filed September 26, 1978. Applicant: MOORE'S TRANSFER, INC., P.O. Box 1151, Norfolk, NE 68701. Representative: Lavern R. Holdeman, Peterson, Bowman, Larsen & Swanson, 521 South 14th Street, P.O. Box 81849, Lincoln, NE 68501. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Cattle feeders, liquid feed tanks, pickup rails, farrowing crates, anchor bolts and fabricated steel products* (except in bulk), from the facilities of Grain and Confinement Systems, Inc., d.b.a. Apache Enterprises at or near Norfolk, NE, to points in the States of CO, IA, KS, MN, MO, ND, SD, and WY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Grain and Confinement Systems, Inc., d.b.a. Apache Enterprises, Douglas Stevens, President, P.O. Box 306, Norfolk, NE. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 125985 (Sub-24TA), filed July 12, 1978. Applicant: AUTO DRIVEAWAY CO., 310 S. Michigan Avenue, Chicago, IL 60604. Representative: Ronald I. Fredriksen (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Freight utility trucks,* from the plant sites of Holiday Rambler Corp. in Elkhart County, IN, on the one hand, and, on the other, to points in the United States, in driveaway service, in secondary movement, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Duane R. Johnson, Vice President, Marketing and Transportation, Holiday Rambler Corp., 65528 State Road 19, Wakarusa, IN 46573. Send protests to: Lois M. Stahl, Transportation Assistant, Interstate Commerce Commission, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 126118 (Sub-101TA), filed September 25, 1978. Applicant: CRETE CARRIER CORP., P.O. Box 81228, Lincoln, NE 68501. Representative: Duane W. Acklie (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Those commodities used by and dealt in by manufacturers of motor vehicle parts and accessories* (except in bulk), Between Smithville, TN, and its commercial zone, on the one hand, and, on the other, points in the United States, (except AK, HI and TN), for 180 days. Common control may be involved. Supporting shipper: Jay Chalfant, Vice President-Distribution and Operations, Maremont Corp., and Nuturn Corp., 1283 Murfreesboro Road, Nashville, TN 37217. Send protests to: Max H. Johnston, District Supervisor, 285 Federal Building and Court House, 100 Centennial Mall North, Lincoln, NE 68508.

MC 129387 (Sub-83TA), filed September 27, 1978. Applicant: PAYNE TRANSPORTATION, INC. P.O. Box 1271, Huron, SD 57350. Representative: Scott E. Daniel, P.O. Box 82028, Lincoln, NE 68501. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Meat, meat products, and meat by-products, and articles distributed by meat packinghouses,* as described in sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from Huron, SD, to points in KS. Restriction: Restricted to traffic originating at the facilities of Huron Dressed Beef and destined to the named destination State, for 180 days. Supporting shipper: Huron Dressed Beef, P.O. Box 924, Huron, SD 57350. Send protests to: James L. Hammond District Supervisor, Room 455 Federal Building, Pierre, SD 57501.

MC 135221 (Sub-11TA), filed September 27, 1978. Applicant: DICK SIMON TRUCKING, INC., 3700 South 4355 West, Salt Lake City, UT 84120. Representative: Ms Irene Warr, 430 Judge Building, Salt Lake City, UT 84111. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Bakery products,* from the facilities of Little Dutch Boy Bakeries, Inc., at or near Draper, UT, to New York, NY, and Chicago, IL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Little Dutch Boy Bakeries, Inc., 12349 South 970 East, Draper, UT 84020. Send protests to: Mr. Lyle Helfer, District Supervisor, Interstate Commerce Commission, Room 5301, Federal Building, 125 South State Street, Salt Lake City, UT 84138.

MC 136782 (Sub-4TA), filed September 26, 1978. Applicant: R.A.N. TRUCKING CO., P.O. Box 367, Wheatland, PA 16161. Representative: Warren W. Wallin, Sullivan & Associates, Ltd., 10 South LaSalle Street, Suite 1600, Chicago, IL 60603. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Meat, meat products and meat by-products,* as described in Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766, from the facilities of Dinner Bell Foods, Inc., located at Defiance, OH, to White River Junction, VT, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Dinner Bell Foods, Inc., Defiance, OH. Send protests to: John J. England, District Supervisor, Interstate Commerce Commission, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

MC 136911 (Sub-4TA), filed September 29, 1978. Applicant: PACKAGE EXPRESS, INC., 22 Tyler Street, Springfield, MA 01109. Representative: David M. Marshall, Marshall and Marshall, 101 State Street, Suite 304, Springfield, MA 01103. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Such merchandise, equipment and supplies* as are sold, used or distributed by a manufacturer of cosmetics, (1) between the carrier's terminal at Springfield, MA, on the one hand, and, on the other, points in Windham, Bennington, Rutland and Windsor Counties, VT, and (2) between Middlesex, VT, on the one hand, and, on the other, points in VT. Restriction: The operations authorized herein are restricted to the transportation of packages or articles not exceeding 50 pounds per package and not exceeding 250 pounds per shipment from one consignor at one location to one consignee at one location on any day, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Avon Products, Inc., Midland and Peck Avenues, Ryen, NY 10590. Send protests to: David M. Miller, District Supervisor, 436 Dwight Street, Room 338, Springfield, MA 01103.

MC 142189 (Sub-36TA), filed September 29, 1978. Applicant: C. M. BURNS, d.b.a. WESTERN TRUCKING, 521 Lincoln Avenue, Baker, MT 59313. Representative: Michael R. Griffith, P.O. Box 980, Baker, MT 59313. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Chemicals, dry cleaning, and janitorial supplies and materials and supplies* used in the manufacture and distribution of such commodities (except in bulk, in tank vehicles), (1) from Wichita and Lawrence, KS; Rothchild, Green Bay, Eau Clair, Milwaukee, Monticello and Madison, WI: Solvay and Niagara Falls, NY; Mosher and St. Louis, MO; Minneapolis, MN; Gabbs, NV; Columbus, MS; Mapleton, Peorla, Chicago, and Ottawa, IL; Sweetwater County, WY; Bauxite, AR; Copperhill, TN; Lake Charles, LA; Texas City, Seadrift, and Brownsville, TX; Boron and Los Angeles, CA; and points in WA, to points in MT, ND, SD and WY; and (2) from Cleveland, OH; and Wyandotte, MI, to points in MT and WY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: (1) Rodney E. Hallsten, Office Manager, Dyce Sales & Engineering Service Co., Inc., P.O. Box 30176, Billings, MT 59107. Send protests to: Paul J. Labane, District Supervisor, Interstate Commerce Commission, 2602 First Avenue North, Billings, MT 59101.

MC 142723 (Sub-2TA), filed September 29, 1978. Applicant: BRISTOL CONSOLIDATORS, INC., 108 Riding Trail Lane, Pittsburgh, PA 15215. Representative: William A. Gray, Wick, Vuono & Lavelle, 2310 Grant Building, Pittsburgh, PA 15219. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Such commodities,* as are dealt in by retail variety, department, and drug stores, and *equipment, materials, and supplies* used in the conduct of such business (except commodities in bulk), between the facilities of G. C. Murphy Co. in Monroe, LA, on the one hand, and, on the other, points in AL, AR, FL, GA, IL, IN, KY, LA, MS, NC, SC, TN, TX, VA, and PA, under a continuing contract or contracts, with G. C. Murphy Co., for 180 days. Supporting shipper: G. C. Murphy Co. 531 Fifth Avenue, McKeesport, PA 15132. Send protests to: John J. England, District Supervisor, Interstate Commerce Commission, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

MC 144855 (Sub-5TA), filed October 4, 1978. Applicant: TRANS CONTINENTAL CARRIERS, INC., 169 East Liberty Avenue, Anaheim, CA 92803. Representative: Elizabeth I. Abreu of Knapp, Stevens, Grossman & Marsh, 707 Wilshire Boulevard, Suite 1800, Los Angeles, CA 90017 Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Fruit and fruit juices and frozen grape concentrate,* from Yakima Coputy, WA, to CA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Yakima Valley Grape Producers, Inc., 401 Avenue B, Grandview, WA 98930. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, 300 North Los Angeles Street, Room 1321, Los Angeles, CA 90012.

MC 144872 (Sub-2TA), filed September 26, 1978. Applicant: RICE TRUCK LINES, P.O. Box 2644, Great Falls, MT 59403. Representative: Ray F. Koby, 314 Montana Building, Great Falls, MT 59401. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Refined uranium ore,* in containers, from the facilities of Western Nuclear, Inc., near Wellpinit, WA, to Metropolis, IL, and Gore, OK, restricted to traffic moving under a continuing contract or contracts, with Western Nuclear, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Western Nuclear, Inc., 134 Union Boulevard, Lakewood, CO 80228. Send protests to: Paul J. Labane, District Supervisor, Interstate Commerce Commission, 2602 First Avenue North, Billings, MT 59101.

MC 144964 (Sub-1TA), filed October 4, 1978. Applicant: ESSEX EXPRESS, INC., 1200 Hammondville Road, Pompano Beach, FL 33060. Representative: Clifton Peter Rose, Patton, Boggs & Blow, 1200 Seventeenth Street NW., Washington, DC 20036. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Dried and frozen foodstuffs in cartons,* from the Buitoni facilities in South Hackensack, and a public warehouse in Secaucus, NJ, to

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points in NC, SC, TN, GA, AL and FL, for 180 days. There is no environmental impact involved in this application. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Buitoni Foods Corp., 450 Huyler Street, South Hackensack, NJ 07606. Send protests to: Donna M. Jones, Transportation Assistant, Interstate Commerce Commission, Monterey Building, Suite 101, 8410 Northwest, 53rd Terrace, Miami, FL 33166.

MC 145002 (Sub-1TA), filed October 4, 1978. Applicant: SCHUMACHER TIRE SERVICE, INC., 1923 Gateway Drive, Grand Forks, ND 58201. Representative: James B. Hovland, 414 Gate City Building, P.O. Box 1680, Fargo, ND 58102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Calcium chloride*, in bags, from Midland, MI, to the facilities of Schumacher Tire Service, Inc., at Grand Forks, ND, under a continuing contract or contracts, with Schumacher Tire Service, Inc., for 180 days. applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Schumacher Tire Service, Inc., 1923 Gateway Drive, Grand Forks, ND 58201. Send protests to: Ronald R. Mau, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 268, Federal Building and U.S. Post Office, 657 2nd Avenue North, Fargo, ND 58102.

MC 145340 (Sub-1TA), filed September 26, 1978. Applicant: BILLY R. BURGESS, Route 1, Box 250, Shirley, AR 72153. Representative: (same address as above). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Wood pallets, pallet parts and wooden packaging products*, from Concord, AR, to Lake Mills, IA; Batavia, IL; Seward, NE; Cozad, NE; Dallas, TX; Springfield, MO; Memphis, TN; West Alexandria, OH; Little Rock, AR; Jonesboro, AR; Wynne, AR; Mount Pleasant, TN; under a continuing contract or contracts, with Martin Lumber Co., Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Martin Lumber Co., Inc., P.O. Box 5, Concord, AR 72523. Send protests to: William H. Land, Jr., district Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 116212 (Sub-10TA), filed September 25, 1978. Applicant: EYRE'S BUS SERVICE, INC., 15910 Union Chapel Road, Woodbine, MD 21797. Representative Bruce E. Mitchell, 5th Floor, Lenox Towers I, 3390 Peachtree Road, Atlanta, GA 30326. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage and express*, in the same vehicle with passengers, between Washington, DC, and the junction of U.S. Hwy 29 and Interstate Hwy 495 at or near Four Corners, MD, serving the intermediate point of Silver Spring, MD, from Washington over Colesville Road to junction of U.S. Hwy 29, then over U.S. Hwy 29 to junction Interstate 495 and return over the same route. Restriction: Authority requested herein is restricted against (1) originating traffic in DC destined to Four Corners and points south thereof, and (2) originating traffic from points between Four Corners, and the MD-DC Line destined to DC, for 180 days. Send protests to: William L. Hughes, District Supervisor, Interstate Commerce Commission, 1025 Federal Building, Baltimore, MD 21201.

By the Commission.

H. G., Homme, Jr.,
Acting Secretary.

[FR Doc. 78-32574 Filed 11-17-78; 8:45 am]

[7035-01-M]

[Notice No. 214]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

November 9, 1978.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the Federal Register publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the Federal Register. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

Motor Carriers of Property

MC 200 (Sub-311TA), filed September 26, 1978. Applicant: RISS INTERNATIONAL CORP., 903 Grand Avenue, P.O. Box 2809, Kansas City, MO 64142. Representative: Ivan E. Moody, 903 Grand Avenue, Kansas City, MO 64106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Rolls of pressed felt* (except in bulk), from Millbury, MA, to Jackson, MI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Felters, Inc., West Street, Millbury, MA 02062. Send protests to: Vernon V. Coble, District Supervisor, Interstate Commerce Commission, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

MC 29910 (Sub-193TA), filed September 25, 1978. Applicant: ARKANSAS-BEST FREIGHT SYSTEM, INC., 301 South 11, Fort Smith, AR 72901. Representative: Joseph K. Reber, Manager of Commerce, 301 South 11, Fort Smith, AR 72901. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) serving the plantsite and warehouse facilities of Campbell Filter Co., a subsidiary of Facet Enterprises, at or near Dexter, MO, as an off-route point in connection with carrier's authorized service route between St. Louis, MO and Memphis, TN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Facet Enterprises, P.O. Box 1637, Henderson, NC 27536. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 41098 (Sub-45TA), filed September 25, 1978. Applicant: GLOBAL VAN LINES, INC., One Global Way, Anaheim, CA 98203. Representative: Alan F. Wohlstetter, Denning & Wohlstetter, 1700 K Street NW., Washington, DC 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New office furniture*, from the facilities of Lehigh-Leopold Division of Litton Industries at Burlington, IA, to points in CT, DE, MD, MA, NJ, NY, PA, RI, DC, and those points in OH on and east of Interstate Hwy 71, for 180 days. Supporting shipper: Lehigh-Leopold Division of Litton Industries, 2825 Mt. Pleasant Street, Burlington, IA. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321 Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

MC 61396 (Sub-361TA), filed September 26, 1978. Applicant: HERMAN BROS., INC., 2565 St. Marys Avenue, P.O. Box 189, Omaha, NE 68101. Representative: Duane L. Stromer (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid nitrogen in shipper owned trailers*, from the facilities of Airco Industrial Gases at or near East Alton, IL to Omaha, NE., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: W.K. Kubala, Distribution Superintendent, Airco Industrial Gases Division Airco, Inc., P.O. Box 300, East Alton, IL 62024. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 73165 (Sub-456TA), filed September 19, 1978. Applicant: EAGLE MOTOR LINES, INC., 830 North 33d Street, Birmingham, AL 35202. Representative: R. Cameron Rollins, Attorney for Eagle Motor Lines, Inc., 830 North 33d Street, Birmingham, AL 35202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, as described in Appendix V to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 (except iron and steel buildings, completed, knocked down, or in sections, and except commodities which because of size and weight require the use of special equipment) (1) between points in LA (except points in West Feliciana Parish) on, west, or south of a line beginning at a point on the MS-LA State line and extending along U.S. Hwy 61 to New Orleans, then along U.S. Hwy 90 to the LA-AL State line, on the one hand, and, on the other, points in MS, TN, AL, GA, FL, MD, PA, NY, NC, SC, and points in AR on or east of U.S. Hwy 61, (2) between points in West Feliciana, Ascension, St. John the Baptist, and East Baton Rouge Parishes, LA, and points in Livingston, Tangipahoa, and St. Tammany Parishes, on and south of a line beginning at a point on the Livingston Parish line near Denham Springs, LA, and extending along U.S. Hwy 190 to Covington, then along LA Hwy 36 to its junction with LA Hwy 41, then along LA Hwy 41 to its junction with U.S. Hwy 11, then along U.S. Hwy 11 to the LA-MS State line, on the one hand, and, on the other, points in GA, TN, MD, PA, NY, NC, SC, AL, AR, FL, and points in MS on and north of U.S. Hwy 82, (3) between points in Livingston, Tangipahoa, and St. Tammany Parishes, LA, north of a line beginning at a point on the Livingston Parish line near Denham Springs, extending along U.S. Hwy 190 to Covington, and then LA Hwy 36 to its junction with LA Hwy 41, then along U.S. Hwy 41 to its junction with U.S. Hwy 11, then along U.S. Hwy 11 to the LA-MS State line, and points in East Feliciana, St. Helena, and Washington Parishes, on the one hand, and, on the other, points in GA, TN, MD, PA, NY, NC, SC, AK, FL east of the Apalachicola River, and that part of AL on or east of a line beginning at the AL-GA State line then extending along U.S. Hwy 84 to Dothan, AL, then along U.S. Hwy 431 to Abbeville, then along AL Hwy 10 to Clio, then along AL Hwy 51 to Midway, then along U.S. Hwy 82 to Union Springs, then along U.S. Hwy 29 to Tuskegee, then along AL Hwy 81 to Loachapoka, then along AL Hwy 14 to Wetumpka, then along U.S. Hwy 231 to Sylacauga, then along U.S. Hwy 280 to Birmingham, then along U.S. Hwy 31 to the TN-AL State line, (4) from points in LA to points in VA, WV, ME, NH, VT, MA, RI, CT, NJ, DE, the Lower Peninsula of MI, that part of OH south of a line beginning at the OH-PA State line and extending along U.S. Hwy 62 to Columbus, OH, then along U.S. Hwy 23 to Circleville, and then along U.S. Hwy 22 to Cincinnati, the Upper Peninsula of MI on or east of U.S. Hwy 45, that part of KY (except Louisville) on or east of a line beginning at Hawesville, KY, then along KY Hwy 69 to Fordsville, then along KY Hwy 54 to Short Creek, then along KY Hwy 79 to Caneyville, then along KY Hwy 185 to Bowling Green, then along U.S. Hwy 31W to the KY-TN State line, and that part of WI on or east of a line beginning at Land O'Lake, WI, extending along U.S. Hwy 45 to Monico, then along WI Hwy 32 to Gillett, then along WI Hwy 22 to Oconto, then along U.S. Hwy 41 to Pensaukee, (5) from points in LA on or east of a line beginning at the LA-TX State line southwest of Many, and extending along LA Hwy 6 to Clarence, then along U.S. Hwy 84 to Joyce, then along LA Hwy 34 to Monroe, and then along U.S. Hwy 165 to the LA-AR State line to points in KY (except Louisville) on or east of U.S. Hwy 431, and that part of WI on or east of a line beginning at Port, Wing, WI, and extending along Bayfield County Hwy A to Iron River, then along U.S. Hwy 2 to its junction with U.S. Hwy 63, then along U.S. Hwy 63 to Grandview, then along Bayfield County Hwy D to its junction with Bayfield County M, then along Bayfield County Hwy M to Clam Lake, then along WI Hwy 77 to its junction with WI Hwy 13, then along WI Hwy 13 to Igema, then along WI Hwy 86 to Tomahawk, then along U.S. Hwy 51 to Wausau, then along WI Hwy 29 to its junction with WI Hwy 49, then along WI Hwy 49 to its junction with WI Hwy 175 near Lomira, then along WI Hwy 175 to Menomonee Falls, then along WI Hwy 100 to Bayside, and the Upper Peninsula of MI, (6) from points in LA on or east of a line beginning at the LA-TX State line near Burr Ferry, and extending along LA Hwy 8 to Sicily Island, then along LA Hwy 15 to Clayton, then along U.S. Hwy 65 to Tallulah, then along U.S. Hwy 80 to Delta, to points in KY (except Louisville), on or east of U.S. Hwy 41, that part of WI on or east of a line beginning at Superior, WI, and extending along U.S. Hwy 53 to Spooner, then along U.S. Hwy 63 to Turtle Lake, then along WI Hwy 79 to its junction with U.S. Hwy 12, then along U.S. Hwy 12 to its junction with Interstate Hwy 94 near Menomonie, then along Interstate Hwy 94 to Osseo, then along WI Hwy 27 to Westby, then along U.S. Hwy 14 to its junction with WI Hwy 23 near Helena, then along WI Hwy 23 to Darlington, then along WI Hwy 81 to Monroe, then along WI Hwy 69 to the WI-IL State line, and that part of IL on or within an area bounded by a line beginning at the IL-WI State line near Oneco, IL, then along IL Hwy 26 to Dixon, then along U.S. Hwy 52 to Mendote, then along U.S. Hwy 51 to its junction with U.S. Hwy 6 near La Salle, then along U.S. Hwy 6 to Joliet, then along Alternate U.S. Hwy 66 to junction with U.S. Hwy 66, then along U.S. Hwy 66 to Chicago (except points on U.S. Hwy 6, Alternate U.S. Hwy 66, or U.S. Hwy 66), (7) from points in LA in, south, or east of West Feliciana, Pointe Coupee, St. Landry, Acadia, Jefferson Davis, and Calcasieu Parishes, to points in KY (except Louisville) on or east of a line beginning at the KY-IL State line and extending south along KY Hwy 109 to Clay, then along KY Hwy 132 to Shady Grove, then along KY Hwy 139 to KY-TN State line, that part of WI on or east of a line beginning at Danbury, and extending along WI Hwy 35 to its junction with WI Hwy 46 near Milltown, then along WI Hwy 46 to its junction with U.S. Hwy 63, then along U.S. Hwy 63 to the WI-MN State line, that part of IA on or east of a line beginning at the IA-MN State line near Burroak, and extending along U.S. Hwy 52 to Luxemburg, then along IA Hwy 3 to Dubuque, and that part of IL on and east of a line beginning at East

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Dubuque, and extending along U.S. Hwy 20 to Stockton, then along IL Hwy 78 to Mount Carroll, then along IL Hwy 88 to Peoria, then along Interstate Hwy 74 to its junction with IL Hwy 121 southeast of Peoria, then along IL Hwy 121 to Greenup, then along IL Hwy 130 to Olney, then along U.S. Hwy 50 to the IL-IN State line except points on and within that part of IL bounded by a line beginning at the IL-IN State line and extending west along U.S. Hwy 36 to Decatur, then north along U.S. Hwy 51 to La Salle, then east along U.S. Hwy 6 to Joliet, then north along Alternate U.S. Hwy 66 to junction U.S. Hwy 66, then along U.S. Hwy 66 to Chicago, and then south along the IL-IN State line to point of beginning), (8) from points in LA in or east of Iberia, Lafayette, St. Martin, Iberville, West Baton Rouge, East Baton Rouge, and East Feliciana Parishes, to points in WI, that part of KY (except Louisville) in or east of Crittenden, Caldwell, and Trigg Counties, that part of IA on or east of U.S. Hwy 218, and that part of IL on, north or east of a line beginning at Quincy, and extending along IL Hwy 104 to its junction with IL Hwy 29 near Taylorville, then along IL Hwy 29 to Pana, then along U.S. Hwy 51 to Centralia, then along IL Hwy 161 to junction with IL Hwy 37, then along IL Hwy 37 to Mt. Vernon, then along IL Hwy 15 to the IL-IN State line (except points on and within that part of IL bounded by a line beginning at the IL-IN State line and extending west along U.S. Hwy 36 to Decatur, then north along U.S. Hwy 51 to La Salle, then east along U.S. Hwy 6 to Joliet, then north along Alternate U.S. Hwy 66 to junction U.S. Hwy 66, then along U.S. Hwy 66 to Chicago, and then south along the IL-IN State line to point of beginning), (9) from points in LA in Terrebonne, Lafourche, St. Charles, Jefferson, Plaquemines, St. Bernard, Orleans, St. John the Baptist, and St. Tammany Parishes, to points in KY (except Louisville), IA, IL (except points on and within that part of IL bounded by a line beginning at the IL-IN State line and extending west along U.S. Hwy 36 to Decatur, then north along U.S. Hwy 51 to La Salle, then east along U.S. Hwy 6 to Joliet, then north along Alternate U.S. Hwy 66 to junction U.S. Hwy 66, then along U.S. Hwy 66 to Chicago, and then south along the IL-IN State line to point of origin), and that part of MO on and north of a line beginning at a point on the IA-MO State line near Irema, MO, then along U.S. Hwy 169 to Carmack, then along U.S. Hwy 136 to Bethany, then along MO Hwy 13 to Hamilton, then along U.S. Hwy 36 to Chillicothe, then along U.S. Hwy 65 to Marshall, then along MO Hwy 41 to junction U.S. Hwy 40 near Boonville, then along U.S. Hwy 40 to Columbia, then along U.S. Hwy 63 to Jefferson City, then along U.S. Hwy 50 to Beaufort, then along MO Hwy 155 to junction MO Hwy 8 near Potosi, then along MO Hwy 8 to Leadington, then along U.S. Hwy 67 to junction MO Hwy 72 near Fredericktown, then along MO Hwy 72 to junction with MO Hwy 34 near Jackson, then along MO Hwy 34 to Cape Girardeau, (10) between points in Terrebonne, Lafourche, St. James, Ascension, St. John the Baptist, St. Charles, Jefferson, Plaquemines, St. Bernard, Orleans, St. Mary, part of St. Martin, Assumption, Iberville, Pointe Coupee, Concordina, Tensas, East Carroll Parishes, LA, and points in Madison Parish, on or east of U.S. Hwy 65, on the one hand, and, on the other, points in AR, (11) between points in Iberia, Vermilion, La Fayette, St. Martin, Acadia, St. Landry, Madison, and Avoyelles Parishes, LA, on the one hand, and, on the other, points in AR (except points in Polk, Sevier, Howard, Little River, Hempstead, Miller, Lafayette, and Columbia Counties), (12) between points in Cameron, Jefferson Davis, Calcasieu, Allen, Evangeline, Rapides, LaSalle, Catahoula, Franklin, and West Carroll Parishes, LA, on the one hand, and, on the other, points in AR on or north of a line beginning at the LA-AR State line and extending along U.S. Hwy 65 to Pine Bluff, then along U.S. Hwy 270 to Y City, then along U.S. Hwy 71 to Ft. Smith, (13) between points in Beauregard, Vernon, Sabine, Natchitoches, Grant, Caldwell, Winn, Ouachita, Richland, and Morehouse Parishes, LA, on the one hand, and, on the other, points in AR in and north of Phillips, Desha, Chicot, Monroe, Woodruff, Jackson, Independence, Cleburne, Stone, Searcy, and Boone Counties, (14) between points in Jackson, Ouachita, and Morehouse Parishes, LA, on the one hand, and, on the other, points in Benton, Carroll, Washington, Madison, and Newton Counties, AR, (15) between points in TX, on the one hand, and, on the other, points in GA, FL, NC, SC, AL, NY on or east of a line beginning at the NY-PA State line line near Corbettsville, and extending along NY Hwy 7 to Schenectady, then along NY Hwy 50 to Saratoga Springs, then along U.S. Hwy 9 to the Canada-United States boundary line, PA on or east of Interstate Hwy 81, MD on or east of U.S. Hwy 522, TN on or east of a line beginning at the TN-KY State line near Static, and extending along TN Hwy 42 to Sparta, then along U.S. Hwy 70S to McMinnville, then along TN Hwy 55 to junction with TN Hwy 50 near Lynchburg, then along TN Hwy 50 to junction with U.S. Hwy 64, then along U.S. Hwy 64 to Feyetteville, then along U.S. Hwy 231 to the TN-U.S. Hwy 64 to Feyetteville, then along U.S. Hwy 231 to the TN-AL State line, and MS on or east of a line beginning at the MS-TN State line and extending along U.S. Hwy 45 to Tupelo, then along MS Hwy 6 to Pentotee, then along MS Hwy 9 to Calhoun City, then along MS Hwy 8 to Grenada, then along MS Hwy 7 to Greenwood, then along U.S. Hwy 82 to Greenville, (16) between points in TX on or south of a line beginning at Glenrio, and extending along U.S. Hwy 66 to Amarillo, then along U.S. Hwy 287 to Decatur, then along TX Hwy 24 to Greenville, then along U.S. Hwy 69 to Mineola, then along U.S. Hwy 80 to the TX-LA State line, on the one hand, and, on the other, points in MS, TN, NY on or east of a line beginning at Alexandria Bay, and extending along NY Hwy 12 to Watertown, then along Interstate Hwy 81 to Cortland, then along NY Hwy 13 to Horseheads, then along NY Hwy 14 to the NY-PA State line, PA on or east of a line beginning at Lawrenceville, and extending along U.S. Hwy 15 to Williamsport, then along U.S. Hwy 220 to the PA-MD State line, and MD, (17) between points in TX on or south of a line beginning at Farwell, and extending along U.S. Hwy 70 to the TX-OK State line east of Vernon, on the one hand, and, on the other, points in NY and PA, (18) between points in TX on or south of a line running from the NM-TX State line along U.S. Hwy 180 to Weatherford, and then along U.S. Hwy 80 to the TX-LA State line, on the one hand, and, on the other, points in AR on or east of Interstate Hwy 55, (19) between El Paso, TX, and points in TX on or south of a line beginning at Orange, and extending along Interstate Hwy 10 to Houston, then along U.S. Hwy 59 to Laredo, on the one hand, and, on the other, points in AR on or east of a line beginning at the AR-LA State line and extending along U.S. Hwy 65 to Little Rock, and then along U.S. Hwy 67 to the AR-MO State line, (20) from points in TX to points in DE, NJ, CT, VT, ME, MA, RI, NH, VA, points in WV on or east of a line beginning at Williamson, and extending along U.S. Hwy 119 to Logan then WV Hwy 10 to Pineville, then along WV Hwy 16 to Beckley, then along U.S. Hwy 19 to junction U.S. Hwy 60, then along U.S. Hwy 60 to Lewisburg, then along U.S. Hwy 219 to the WV-MD State line, KY on or east of a line beginning at the KY-TN State line near Albany and extending along U.S. Hwy 127 to Albany, then along KY Hwy 90 to Burnside, then along U.S. Hwy 27 to Somerset, then along U.S. Hwy 80 to Manchester, then along U.S. Hwy 421 to Tyner, then along KY Hwy 30 to Salyersville, KY, then along U.S. Hwy 460 to Paintsville, and then along KY

Hwy 40 to the KY-WV State line, (21) from points in TX on or south of a line beginning at Glenrio, and extending along U.S. Hwy 66 to Amarillo, then along U.S. Hwy 287 to Decatur, then along TX Hwy 24 to Greenville, then along U.S. Hwy 69 to Mineola, then along U.S. Hwy 80 to the TX-LA State line to points in WV on, south, or east of a line beginning at Huntington, and extending along U.S. Hwy 60 to Charleston then along U.S. Hwy 119 to Weston, and then along U.S. Hwy 19 to the WV-PA State line, KY beginning at the KY-TN State line, and extending along U.S. Hwy 31E to Glasgow, then along U.S. Hwy 68 to Lexington, then along U.S. Hwy 60 to Ashland, (22) from points in TX on or south of a line beginning at Farwell, and extending along U.S. Hwy 70 to the TX-OK State line east of Bernone, to points in WV, OH south of a line beginning at the OH-PA State line and extending along U.S. Hwy 62 to Columbus, then along U.S. Hwy 23 to Circleville, and then along U.S. Hwy 22 to Cincinnati, and KY (except Louisville) on or east of U.S. Hwy 431, (23) from points in TX on or south of a line beginning at El Paso, and extending along U.S. Hwy 80 to Pecos, then along U.S. Hwy 285 to Ft. Stockton, then along U.S. Hwy 67 to San Angelo, then along U.S. Hwy 87 to Brady, then along U.S. Hwy 190 to Temple, TX, then along U.S. Hwy 81 to Waco, and then along U.S. Hwy 84 to the TX-LA State line to points in the Lower Peninsula of MI, and KY east of the TN River (except Louisville), (24) from points in TX on or south of a line beginning at the TX-NM State line and extending along TX Hwy 176 to Big Spring, then along U.S. Hwy 80 to the TX-LA State line to points in MI on or east of a line beginning at the Canada-United States boundary line, and extending along Interstate Hwy 75 to Topinabee, then along U.S. Hwy 27 to the MI-IN State line, (25) from points in Orange and Jefferson Counties, TX, to points in KY (except Louisville) WI on or east of a line extending from Superior, along U.S. Hwy 53 to La Crosse, and then along U.S. Hwy 61 to the WI-IL State line, IL on or east of a line extending from E. Dubuque, along U.S. Hwy 20 to Freeport, then along IL Hwy 26 to Dixon, then along U.S. Hwy 52 to Mendota, then along U.S. Hwy 51 to Sandovel, then along U.S. Hwy 50 to the IL-IN State line (except points on and within that part of IL bounded by a line beginning at the IL-IN State line and extending west along U.S. Hwy 36 to Decatur, then north along U.S. Hwy 51 to La Salle, then east along U.S. Hwy 6 to Joliet, then north along Alternate U.S. Hwy 66 to junction U.S. Hwy 66, then south along the IL-IN State line to point of beginning), (26) from points in Hidalgo, Cameron, Kenedy, Kleberg, Nueces, and San Patricio Counties, TX to points in KY (except Louisville), WI on or east of U.S. Hwy 51, and IL on or east of U.S. Hwy 51 (except points on and within that part of IL bounded by a line beginning at the IL-IN State line and extending west along U.S. Hwy 36 to Decatur, then north along U.S. Hwy 51 to La Salle, then east along U.S. Hwy 6 to Joliet; then north along Alternate U.S. Hwy 66 to junction U.S. Hwy 66, then along U.S. Hwy 66 to Chicago, and then south along the IL-IN State line to point of origin), for 180 days. Supporting shippers: There are approximately 98 certifications of support attached to the application which may be examined at the Interstate Commerce Commission, Washington, D.C., or copies thereof may be examined at the field office named below. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, Room 1616, 2121 Building, Birmingham, AL 35203.

NOTE.—Applicant indicates that all of the above authority is presently held in MC 73165 (Sub-E-4), published in the FEDERAL REGISTER of June 21, 1974, at pages 22320-23. The purpose of this application is to continue such operations after October 17, 1978, the effective date of an order served July 19, 1978, revoking the Sub-E-4 authority on grounds that no public notice of tacking possibilities had been given in connection with a predecessor authority, MC 73165 (Sub-272), published in the FEDERAL REGISTER of October 9, 1969.

MC 103051 (Sub-457TA), filed August 9, 1978. Applicant: FLEET TRANSPORT CO., INC., 934 44th Avenue, North, Nashville, TN 37209. Representative: Russell E. Stone, P.O. Box 90408, Nashville, TN 37209. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Alumina hydrate*, in bags, from Campobello, SC to Boston and Sharon, MA, for 180 days. Supporting shipper: A. B. Wood Chemical Co., Inc., Campobello, SC. Send protest to: Joe J. Tate, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Suite A-422, U.S. Courthouse, 801 Broadway, Nashville, TN 37203.

MC 104104 (Sub-15TA), filed September 25, 1978. Applicant: GEORGE A. FETZER, INC., RD 1, Newton Sussex Road, Augusta, NJ 07822. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass containers*, accessories therefor and cartons when moving in mixed shipments with glass containers from the facilities of Thatcher Glass Manufacturing Co., division of Dart Industries at Wharton, NJ to points in CT, MA, ME, NH, NY, RI, VT, and points in PA east of U.S. Hwy 15, for 180 days. Supporting shipper: Thatcher Glass Manufacturing Co., division of Dart Industries, P.O. Box 265, Elmira, NY 14902. Send protest to: Joel Morrows, District Supervisor, Interstate Commerce Commission, 9 Clinton Street, Newark, NJ 07102.

MC 107295 (Sub-887TA), filed October 11, 1978. Applicant: PRE-FAB TRANSIT, CO., P.O. Box 146, 100 South Main Street, Farmer City, IL 61842. Representative: Duane Zehr (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Laundry machine parts*, between Fairfield, IA and Frankfort, IN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: J. H. Sellars, Materials Manager, the Dexter Co., 501 North 8th, Fairfield, IA 52556. Send protest to: Charles D. Little, District Supervisor, Interstate Commerce Commission, 414 Leland Office Building, 527 East Capitol Avenue, Springfield, IL 62701.

MC 109689 (Sub-338TA), filed October 3, 1978. Applicant: W. S. HATCH CO., 643 South 800 West, Woods Cross, UT 84078. Representative: Mark K. Boyle, Attorney at Law, 10 West Broadway Building, Suite 400, Salt Lake City, UT 84111. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Soda ash*, in bulk, from Sweetwater County, WY to Pacola and El Reno, OK, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Allied Chemical Corp., P.O. Box 1139R, Morristown, NJ 07960. Send protest to: District Supervisor, L. D. Helfer, Interstate Commerce Commission, 5301 Federal Building, Salt Lake City, UT 84138.

MC 110563 (Sub-243TA), filed September 25, 1978. Applicant: COLD-WAY FOOD EXPRESS, INC., P.O. Box 747, State Route 29 North, Sidney, OH 45365. Representative: Victor J. Tambascia, (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Roasted coffee, in cans in fiber cartons; instant coffee in jars in fiber cartons; beverage preparations, dry in cans in fiber cartons*, from the facilities of Hills Bros. Coffee, Inc., located at or near Edgewater, NJ to Denver, CO, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Hills Bros. Coffee, Inc., Two Harrison Street, San Fran-

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cisco, CA. Send protest to: Keith D. Warner, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 313 Federal Office Building, 234 Summit Street, Toledo, OH 43604.

MC 111302 (Sub-138TA), filed October 3, 1978. Applicant: HIGHWAY TRANSPORT, INC., P.O. Box 10470, 1500 Amherst Road, Knoxville, TN 37919. Representative: David A. Peterson (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Vegetable oils*, in bulk, in tank vehicles from the facilities of Central Soya in Chattanooga, TN, to Atlanta and Decatur, GA; Balitimore, MD; and Pennsauken, NJ, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Central Soya Co., Inc., 1300 Fort Wayne National Bank Building, Fort Wayne, IN 46802. Send protests to: Glenda Kuss, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, Suite A-422, U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC111401 (Sub-532TA), filed October 11, 1978. Applicant: GROENDYKE TRANSPORT, INC., 2510 Rock Island Boulevard, P.O. Box 632, Enid, OK 73701. Representative: Victor R. Comstock, P.O. Box 632, Enid, OK 73701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum naptha* (in bulk, in tank vehicles), from Cyril, OK, to points in IA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Drake Petroleum Co., 6231 North Pulaski Road, Chicago, IL 60646. Send protests to: Connie Stanley, Transportation Assistant, Room 240, Old Post Office and Court House Building, 215 Northwest, Third, Oklahoma City, OK. 73102.

MC 111434 (Sub-96TA), filed September 26, 1978. Applicant: DON WARD, INC., 241 West 56th Avenue, Denver, CO 80216. Representative: J. Albert Sebald, 1700 Western Federal Building, Denver, CO 80202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fly ash*, in bulk, from points in WY to points in CO, MT, and SD, for 180 days. Applicant has also filed an ETA seeking up to 90 days of operating authority. Supporting shipper: Pozzolanic Northwest, Inc., 1449 Kent West Mall, Kent, WA 98031. Send protests to: Roger L. Buchanan, District Supervisor, Interstate Commerce Commission, 721 19th Street, 492 U.S. Customs House, Denver, CO 80202.

MC 112822 (Sub-465TA), filed September 25, 1978. Applicant: BRAY LINES, INC., 1401 North Little Street, P.O. Box 1191, Cushing, OK 74023. Representative: Dudley G. Sherrill, 1401 North Little Street, P.O. Box 1191, Cushing, OK 74023. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from the facilities of Fox De Luxe Pizza Co. at Joplin, MO, and the facilities of the Pillsbury Co. at or near Joplin and Carthage, MO, to points in CO, IA, IL, IN, KS, MN, OK, TX, and UT, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Totino's Frozen Foods Division, the Pillsbury Co., 7350 Commerce Lane, Fridley, MN 55432. Send protests to: Connie Stanley, Transportation Assistant, Room 240, Old Post Office and Courthouse Building, 215 Northwest Third, Oklahoma City, OK 73102.

MC 113908 (Sub-452TA), filed October 11, 1978. Applicant: ERICKSON TRANSPORT, INC., 2105 East Dale Street, P.O. Box 3180 Glenstone Station, Springfield, MO 65804. Representative: B. B. Whitehead (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Flour* (in bulk, in tank vehicles), from Minneapolis, MN to Springfield, MO, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Kraft, Inc., Chicago, IL. Send protests to: John V. Barry, District Supervisor, Room 600, 911 Walnut Street, Kansas City, MO 64106.

MC 115841 (Sub-650TA), filed October 11, 1978. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., 9041 Executive Park Drive, Suite 110, Building 100, Knoxville, TN 37919. Representative: D. R. Beeler (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from the facilities of Flowers Industries, located at or near Fountain Inn, SC., to points in the States of AL, MS, OH, TX, MI, MO, KS, WI, NE, CO, GA, PA, OK, AR, and AZ, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Flowers Industries, Old Laurens Road, Fountain Inn, SC 29644. Send protests to: Glenda Kuss, Transportation Assistant, Bureau of Operations, Interstate Commerce, Suite A-422, U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 118202 (Sub-93TA), filed October 11, 1978. Applicant: SCHULTZ TRANSIT, INC., P.O. Box 406, 323 Bridge Street, Winona, MN 55987. Representative: Eugene A. Schultz, P.O. Box 406, Winona, MN 55987. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned and preserved foodstuffs* (except commodities in bulk), from the facilities of Heinz U.S.A., Division of H. J. Heinz Co., at or near Pittsburgh, PA., to points in CO, KS, MN, MO, NE, ND, SD and WI, for 180 days. Supporting shipper: Heinz U.S.A., Division of H. J. Heinz Co., P.O. Box 57, Pittsburgh, PA 15230. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building and U.S. Court House, 110 South Fourth Street, Minneapolis, MN 55401.

MC 119654 (Sub-62TA), filed October 11, 1978. Applicant: HI-WAY DISPATCH, INC., 1401 West 26th Street, Marion, IN 46952. Representative: Norman R. Garvin, Scopelitis & Garvin, 1301 Merchants Plaza, Indianapolis, IN 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pulpboard and fibreboard*, from the facilities of the Alton Box Board Co. at or near Alton, IL, to Aurora, IN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Alton Box Board Co., 401 Alton Street, Alton, IL 62002. Send protests to: J. H. Gray, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 343 West Wayne Street, Suite 113, Fort Wayne, IN 46802.

MC 126899 (Sub-122TA), filed October 11, 1978. Applicant: USHER TRANSPORT, INC., 3925 Old Benton Road, P.O. Box 3156, Paducah, KY 42001. Representative: William L. Willis, 708 McClure Building, Frankfort, KY 40601. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Malt beverages and related advertising materials*, from Evansville, IN, and Newport, KY, to St. Louis, MO; and (2) *empty malt beverage containers, pallets and rejected shipments of malt beverages*, from St. Louis, MO, to Evansville, IN, and Newport, KY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: G. Heileman Brewing Co., Inc., 925 South Third Street, La Crosse, WI 54601. Send protests to: Floyd A. Johnson, District Supervisor, Interstate Commerce Commission, 100 North Main Building, Suite 2006, 100 North Main Street, Memphis, TN 38103.

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MC 127840 (Sub-78TA), filed October 12, 1978. Applicant: MONTGOMERY TANK LINES, INC., 17550 Fritz Drive, Chicago, IL 60438. Representative: William H. Towle, 180 North LaSalle Street, Chicago, IL 60601. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals*, (in bulk, in tank vehicles), from Wichita, KS, to Danbury, CT, and Deepwater, NJ, for 180 days. Supporting shipper: William F. Kelly, Senior Traffic Specialist, Abbott Laboratories, 14th Sheridan Road, North Chicago, IL 60064. Send protests to: Lois Stahl, Transportation Assistant, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 128246 (Sub-31TA), filed August 2, 1978, and published in the FEDERAL REGISTER issue of October 6, 1978, and republished as corrected this issue. Applicant: SOUTHWEST TRUCK SERVICE, P.O. Box AD, Watsonville, CA 95076. Representative: Michael P. Groom, Esq., 500 Swenson Building, 777 North First Street, San Jose, CA 95112. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat byproducts and articles distributed by meat packinghouses* as described in sections A and C of appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766 (except hides and commodities in bulk), from the facilities of Swift & Co. at or near Clovis, NM, to CO, KS, OK, TX, and UT, under a continuing contract or contracts with Swift & Co., Chicago, IL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Swift & Co., 115 West Jackson Boulevard, Chicago, IL 60604. Send protests to District Supervisor, Michael M. Butler, 211 Main, Suite 500, San Francisco, CA 94105. The purpose of this republication is to include *meat* in the commodity description as previously omitted.

MC 129032 (Sub-58TA), filed October 11, 1978. Applicant: TOM INMAN TRUCKING, INC., 6015 South 40th West Avenue, Tulsa, OK 74107. Representative: Jerry D. Garland, 6015 South 49th West Avenue, Tulsa, OK 74107. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Automotive parts and materials and supplies*, used in the manufacturing of automotive parts, between the facilities of Ford Motor Co. in the State of MI, on the one hand, and, on the other, St. Louis, MO; Kansas City, MO; and St. Paul, MN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Ford Motor Co., 1 Parkland Boulevard, Parkland Towers East, Suite 200, Dearborn, MI 48126. Send protests to: Connie Stanley, Transportation Assistant, Room 240, Old Post Office and Court House Building, 215 Northwest Third, Oklahoma City, OK 73102.

MC 133655 (Sub-124TA), filed September 25, 1978. Applicant: TRANSNATIONAL TRUCK, INC., P.O. Box 31300, Amarillo, TX 79120. Representative: Warren L. Troupe, 2480 East Commercial Boulevard, Fort Lauderdale, FL 33308. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fresh and frozen meat, boxed and hanging*, from Palestine, TX, to Chicago, IL, Detroit, MI, Milwaukee and Madison, WI, St. Paul, MN, North Baltimore, Cincinnati, and Columbus, OH, St. Louis, Springfield, and Kansas City, MO, Davenport and Fort Madison, IA, Topeka, KS, Oklahoma City, OK, Searcy, AR, and Memphis, TN, for 180 days. Supporting shipper: Vernon Calhoun Packing Co., P.O. Box 709, Palestine, TX 75801. Send protests to: Haskell E. Ballard, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box F-13206, Federal Building, Amarillo, TX 79101.

MC 133655 (Sub-126TA), filed October 11, 1978. Applicant: TRANS-NATIONAL TRUCK, INC., P.O. Box 31300, Amarillo, TX 79120. Representative: Warren L. Troupe, 2480 East Commercial Boulevard, Fort Lauderdale, FL 33308. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cheese*, from Newman Grove, NE, to points in CT, IL, KS, MN, MO, NJ, NY, OH, and PA, for 180 days. Supporting shipper: Newman Grove Creamery Co., Box 338, Newman Grove, NE 68758. Send protests to: Haskell E. Ballard, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box F-13206, Federal Building, Amarillo, TX 79101.

MC 134150 (Sub-17TA), filed October 3, 1978. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREIGHT, 2931 South Market Street, Chattanooga, TN 37410. Representative: Patrick E. Quinn (same as above). Authority sought to operate as a *contfact carrier*, by motor vehicle, over irregular routes, transporting: *Casts*, from the facilities of Cutter Laboratories, Inc., at or near San Diego, CA, to points in the United States (except AK and HI), for 180 days. Restrictions: Restricted to traffic originating at the facilities of Cutter Laboratories, Inc., and further restricted to a transportation service to be performed under a continuing contract or contracts with Cutter Laboratories, Inc. Supporting shipper: Cutter Laboratories, Inc., Fourth and Parker Streets, Berkeley, CA 94710. Send protests to: Glenda Kuss, Bureau of Operations, Interstate Commerce Commission, Suite A-422, U.S. Court House, 801 Broadway, Nashville, TN 37203.

NOTE.—Applicant holds common carrier authority in MC 138157 and subs thereunder, therefore dual operations may be involved.

MC 134467 (Sub-34TA), filed October 11, 1978. Applicant: POLAR EXPRESS, INC., P.O. Box 845, Springdale, AR 72764. Representative: Charles M. Williams, Kimball, Williams & Wolfe, 350 Capitol Life Center, 1600 Sherman Street, Denver, CO 80203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Candy, confectionery products, and foodstuffs* (except in bulk), from the facilities utilized by the Nestle Co., at or near Burlington, WI, to Memphis, TN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: The Nestle Co., 100 Bloomingdale Road, White Plains, NY 10605. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 134701 (Sub-4TA), filed October 3, 1978. Applicant: J-V, INC., 9832 Tonya Drive, Sandy, UT 84070. Representative: Miss Irene Warr, 430 Judge Building, Salt Lake City, UT 84111. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer*, in bags, from the international port of entry between the United States and Canada located at Sweetgrass, MT, to points in Maricopa, Pima, and Yuma Counties, AZ, and Los Angeles, San Francisco, Fresno, Placer, Sacramento, Nevada, King, Tulare, Orange, Kearn, Ventura, Riverside, San Bernadino, and Imperial Counties, CA, under a continuing contract or contracts with Sherritt Gordon Mines, Ltd., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Sherritt Gordon Mines, Ltd., Fort Saskatchewan, AL, Canada T8L2P2. Send protests to: District Supervisor, L. D. Helfer, Interstate Commerce Commission, 5301 Federal Building, Salt Lake City, UT 84138.

MC 134783 (Sub-43TA), filed September 25, 1978. Applicant: DIRECT SERVICE, INC., 940 East 66th Street, P.O. Box 2491, Lubbock, TX 79408. Representative: Charles M. Williams, 1600 Sherman Street, Denver, CO 80203. Authority sought to operate as a *common carrier*, by motor vehicle,

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over irregular routes, transporting: *Canned and preserved apple products, and canned and preserved apple by-products*, from the facilities of National Fruit Product Co., Inc., at or near Lincolnton, NC, to points in AR, LA, OK, and TX, for 180 days. Supporting shipper: National Fruit Product Co., Inc., P.O. Box 2040, Winchester, VA 22601. Send protests to: Haskell E. Ballard, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box F-13206, Federal Building, Amarillo, TX 79101.

MC 136220 (Sub-61TA), filed October 11, 1978. Applicant: SULLIVAN'S TRUCKING CO., INC., P.O. Box 2164, Ponca City, OK 74601. Representative: G. Timothy Armstrong, 6161 North May Avenue, Oklahoma City, OK 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Aluminum dross, aluminum scrap, and smelting residue* (in bulk, in tank vehicles), from points in and east of TX, KS, NE, SD, and ND, to Sapulpa and Checotah, OK, for 180 days. Supporting shipper: Teller Metal Co., 12115 Lackland Road, St. Louis, MO 63141. Send protests to: Connie Stanley, Transporting Assistant, Room 240, Old Post Office and Court House Building, 215 Northwest Third, Oklahoma City, OK 73102.

MC 139495 (Sub-377TA), filed August 21, 1978, and published in the FEDERAL REGISTER issue of October 25, 1978, and republished as corrected this issue. Applicant: NATIONAL CARRIERS, INC., 1501 East Eighth Street, P.O. Box 1358, Liberal, KS 67901. Representative: Herbert Alan Dubin, Sullivan & Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Paper and paper products*, from the facilities of Union Camp Corp. at or near Tifton, GA, to points in the United States, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of paper and paper products (except commodities in bulk), from points in the United States to the facilities of Union Camp Corp. at or near Tifton, GA, for 180 days. Supporting shipper: Union Camp Corp. 1600 Valley Road, Wayne, NJ 07470. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, 101 Litwin Building, Wichita, KS 67202. The purpose of this republication is to complete the territorial description as previously omitted.

MC 139836 (Sub-5TA), filed July 26, 1978. Applicant: LINT TRANSFER, INC., 4549 Delaware Avenue, Des Moines, IA 50313. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Tires, tire parts, inner tubes, and materials, equipment, and supplies*, used in the manufacture of tires and inner tubes, between the facilities of the Firestone Tire & Rubber Co., at Des Moines, IA, on the one hand, and, on the other, points in NE, and points in IL in the Moline, East Moline, and Rock Island Commercial Zones, under contract with the Firestone Tire & Rubber Co., for 180 days. Supporting shipper: The Firestone Tire & Rubber Co., 1200 Firestone Parkway, Akron, OH 44317. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 140086 (Sub-1TA), filed October 11, 1978. Applicant: De LARIA TRANSPORT, INC., 327 Eighth Avenue Northwest, New Brighton, MN 55112. Representative: Bruce A. Rasmussen, 1110 Northwestern Bank Building, Minneapolis, MN 55402. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Crude coffee oil* (in bulk, in tank vehicles), from Gonvick, MN, to Ripon, CA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Northern Sun Products Co., P.O. Box 646, Gonvick, MN 56644. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building, 110 South Fourth Street, U.S. Court House, Minneapolis, MN 55401.

MC 140118 (Sub-7TA), filed September 25, 1978. Applicant: S. T. L. TRANSPORT, INC., 1000 Jefferson Road, P.O. Box 9776, Rochester, NY 14623. Representative: S. Michael Richards/Raymond A. Richards, P.O. Box 225, Webster, NY 14580. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Beverages, in cans and bottles* (except malt beverages), from Boston, MA, to points in CT, ME, MA, NH, NJ, NY, PA, RI, and VT, for 180 days, under a continuing contract with White Rock Products Corp. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: White Rock Products Corp., 1705 Columbus Avenue, Boston, MA 02119. Send protests to: Interstate Commerce Commission, U.S. Courthouse and Federal Building, 100 South Clinton Street, Room 1259, Syracuse, NY 13260.

MC 141330 (Sub-2TA), filed September 25, 1978. Applicant: MALCOLM POWELL, d.b.a. Powell Trucking, Route 1, Lumber City, GA. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Lumber*, from Lumpkin, GA, to FL, GA, NC, SC, and TN, for 180 days, under a continuing contract with St. Regis Paper Co. Applicant has also filed an ETA seeking up to 90 days of operating authority. Supporting shipper: St. Regis Paper Co., P.O. Box 26324, Jacksonville, FL 32218. Send protests to: G. H. Fauss, Jr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 142204 (Sub-7TA), filed October 3, 1978. Applicant: ROBERT R. GUNVILLE, JR., Star Route 2, Iron Mountain, MI 49801. Representative: Michael S. Varda, 121 South Pinckney Street, Madison, WI 53703. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Crushed stone* (roofing granules) in bulk, from the facilities of GAF Corp. at or near Pembine, WI, to Chicago, IL and its Commercial Zone, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: GAF Corp., Pembine, WI 54156. Send protests to: C. R. Flemming, District Supervisor, Interstate Commerce Commission, 225 Federal Building, Lansing, MI 48933.

MC 142268 (Sub-35TA), filed September 26, 1978. Applicant: GORSKI BULK TRANSPORT, INC., R.R. No. 4, Harrow, ON, Canada NOR 1GO. Representative: Bernard S. Gorski, 843 Central Avenue, Windsor, ON, Canada. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tomatoe paste*, in bulk, in tank vehicles, from the facilities of Hunt-Wesson Foods, Inc., at Perrysburg, OH, to Duluth, MN; from Oakdale and Davis, CA, to Salina, KS, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Hunt-Wesson Foods, Inc., 1645 West Valencia Drive, Fullerton, CA 92634. Send protests to: T. S. Quinn, District Supervisor, Interstate Commerce Commission, 604 Federal Building and U.S. Courthouse, 231 West Lafayette Boulevard, Detroit, MI 48226.

MC 142559 (Sub-56TA), filed September 25, 1978. Applicant: BROOKS TRANSPORTATION, INC., 3830 Kelley Avenue, Cleveland, OH 44114. Representative: John P. McMahon, 100 East Broad Street, Columbus, OH 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, except commodities in bulk, between the facilities of Woldert Canning Co. at Lindale and Tyler, TX, on the one hand, and, on the other, points in the United States (except AK and HI) for 180 days. Supporting shipper: Woldert Canning Co., P.O. Box 1140, Tyler, TX 75710. Send protests to: Interstate Commerce Commission, 731 Federal Building, 1240 East Ninth Street, Cleveland, OH 44199.

MC 144110 (Sub-3TA), filed September 25, 1978. Applicant: KANE TRANSPORT, INC., P.O. Box 126, Sauk Centre, MN 56378. Representative: Gene P. Johnson, P.O. Box 2471, Fargo, ND 58108. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia*, from the facilities of Farmland Industries, Inc., at or near Barnesville and Benson, MN to points in ND and SD, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Farmland Industries, Inc., P.O. Box 7305, Kansas City, MO 64116. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building and U.S. Courthouse, 110 Fourth Street, Minneapolis, MN 55401.

MC 144330 (Sub-42TA), filed October 3, 1978. Applicant: UTAH CARRIERS, INC., Post Office Box 1218, Freeport Center, Clearfield, UT 84016. Representative: Rick J. Hall, Post Office Box 2465, Salt Lake City, UT 84110. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Asbestos cement pipe, couplings, fittings and accessories* used for the installation thereof (except commodities in bulk), from the facilities of CertainTeed Corp. at St. Louis, MO to points in ND, for 180 days. Supporting shipper(s): CertainTeed Corp., 1400 Union Meeting Road, Bluebell, PA 19422. Send protests to: District Supervisor, L. D. Helfer, Interstate Commerce Commission, 5301 Federal Building, Salt Lake City, UT 84138.

MC 144709 (Sub-3TA), filed September 25, 1978. Applicant: MINERAL CARRIERS, INC., 183 East Main Street, Bridgewater, NJ 08807. Representative: Paul J. Keeler, Esquire, P.O. Box 253, South Plainfield, NJ 07080. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Ground coffee*, in dump trailers, from Freehold, NJ to Gonvick, MN, under a continuing contract with the Nestle Co., Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): The Nestle Co., 100 Bloomingdale Road, White Plains, NY 10605. Send protests to: Robert E. Johnston, District Supervisor, Interstate Commerce Commission, 9 Clinton Street, Room 618, Newark, NJ 07102.

MC 145202 (Sub-1TA), filed September 26, 1978. Applicant: K-LINES, LTD., 3125 South 11th Street, Council Bluffs, IA 51501. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Frozen boxed meat*, from the facilities of Coast Packing Co., of Omaha, Inc., at Omaha, NE to points in AL, FL, GA, KY, LA, MS, NC, SC, and TN, under continuing contract or contracts with Coast Packing Co. of Omaha, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Joseph A. DeLuca, Sales Manager-Traffic Manager, Coast Packing Co. of Omaha, Inc., P.O. Box 37525, Omaha, NE 68137. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 No. 14th Street, Omaha, NE 68102.

MC 145264 (Sub-2TA), filed September 26, 1978. Applicant: GONZALO MENDOZA, d.b.a. MENDOZA TRUCKING CO., 3262 South Bell, Chicago, IL 60631. Representative: James Madler, 120 West Madison Street, Chicago, IL 60602. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *The transportation of paint, varnish, solvents, cleaning compounds, and materials, equipment and supplies* used in the manufacture, distribution and application of paint, varnish, solvents, cleaning compounds (except in bulk), between the Chicago, IL commercial zone, on the one hand, and, on the other, points in MI on and south of State Hwy 46; points in IN on and north of U.S. Hwy 20; restricted to shipments originating at the facilities of the Enterprises Cos., for 180 days. Supporting shipper(s): The Enterprise Cos., Patrick J. Del Monico, Traffic Manager, 1191 South Wheeling Road, Wheeling, IL 60090. Send protests to: Lois M. Stahl, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 145268 (Sub-3TA), filed September 25, 1978. Applicant: KENNETH B. HOLM & GLENN STEED, d.b.a. H & S Enterprises, 3150 South 1200 West, Salt Lake City, UT 84125. Representative: Irene Warr, 430 Judge Building, Salt Lake City, UT 84111. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plate, sheet and structural steel and steel pipe*, (1) from Portland, OR, and Oakland, CA, to Salt Lake, Weber, Davis, and Utah Counties, UT; and (2) from Portland, OR, to Oakland, CA; restricted to traffic originating at the facilities of Metra Steel at Portland, OR, and Oakland, CA, under a continuing contract with Metra Steel, for 180 days. Supporting shipper: Metra Steel, 5851 North Lagoon, Portland, OR 97217. Send protests to: L. D. Helfer, District Supervisor, Interstate Commerce Commission, 5301 Federal Building, Salt Lake City, UT 84138.

MC 145301 (Sub-1TA), filed September 19, 1978. Applicant: R.E.M. TRANSPORT CO., INC., Building No. 431, Raritan Center, Edison, NJ 08817. Representative: Brian S. Stern, 2425 Wilson Boulevard, No. 327, Arlington, VA 22201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass, flat and automotive*, from Broken Arrow (at or near Tulsa), OK, to points in AL, AZ, AR, CA, CO, DE, GA, IL, IN, IA, KY, KS, LA, MD, MI, NM, MS, MO, NE, NJ, MN, NY, NC, ND, OH, PA, SC, SD, TN, TX, VA, WV, WI, DC, for 180 days. Supporting shipper: Ford Motor Co., Glass Division, 300 Renaissance Center, Detroit, MI 48243. Send protests to: Robert E. Johnston, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 9 Clinton Street, Room 618, Newark, NJ 07102.

MC 145345 (Sub-1TA), filed September 25, 1978. Applicant: PUBLISHERS TRANSPORTATION SERVICES, INC., 418 South Yale, Garland, TX 75040. Representative: James W. Hightower, 136 Wynnewood Professional Building, Dallas, TX 75224. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Books and magazines*, from Dallas, TX to Paris, Tyler, Lufkin, Houston, Beaumont, Corpus Christi, Bryan, Victoria, Galveston, and Lubbock, TX, for 180 days, under a continuing contract with Magazine Cartage Co., Inc. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Magazine Cartage Co., Inc., 12330 East Northwest Highway, Dallas, TX 75238. Send protests to: Opal M. Jones, Transportation Assistant, Interstate Commerce Commission, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

MC 145384 (Sub-2TA), filed September 26, 1978. Applicant: ROSE-WAY, INC., 1914 East Euclid, Des Moines, IA 50313. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, trans-

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porting: *Steel castings and forgings*, from the facilties of American Western Foundries at or near Santa Barbara, CA, to points in AZ, IL, IN, KY, MO, NM, OH, OK, and TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: American Western Foundries, 831 State Street, Santa Barbara, CA 93102. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 145384 (Sub-4TA), filed September 26, 1978. Applicant: ROSE-WAY, INC., 1914 East Euclid, Des Moines, IA 50313. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber and lumber products*, from Scotia, Fortuna, Eureka, and Standard, CA., to points in IA, IL, MN, WI, and Upper Peninsula of MI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Midwest Lumber Associates, 600 West Main Street, Sun Prairie, WI 52590. Send protests to: Herbert W. Allen, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 518 Federal Building, Des Moines, IA 50309.

MC 145407 (Sub-1TA), filed September 25, 1978. Applicant: R. B. GARRARD & W. L. GARRARD, d.b.a. G & G Trucking, Route 4, Box 488, Florence, MS 39073. Representative: Fred W. Johnson, Jr., P.O. Box 22628, Jackson, MS 39205. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Farm supplies* between points in AL, AR, LA, MS, MO, TN, and TX, for 180 days, under a continuing contract with MFC Services. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: MFC Services, P.O. Box 500, Madison, MS 39110. Send protests to: Alan C. Tarrant, District Supervisor, Interstate Commerce Commission, Room 212, 145 East Amite Building, Jackson, MS 39201.

MC 145416 (Sub-1TA), filed September 25, 1978. Applicant: HEINEMAN DISTRIBUTING, INC., 301 West Second Street, Port Clinton, OH 43452. Representative: Arthur R. Cline, attorney-at-law, 420 Security Building, Toldeo, OH 42604. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, from Milwaukee, WI; Pittsburgh, PA; Newport, KY; and Fulton, NY, to Bowling Green and Port Clinton, OH, under a continuing contract or contracts with Heineman Beverages, Inc., and Bowling Green Beverage, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Heineman Beverage, Inc., 301 West Second Street, Port Clinton, OH 43452; and Bowling Green Beverage, Inc., Nims Road and North Dixie Highway, Bowling Green, OH 43402. Send protests to: Keith D. Warner, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 313 Federal Office Building, 234 Summit Street, Toledo, OH 43604.

MC 145468TA, filed September 25, 1978. Applicant: K.S.S. TRANSPORTATION CORP., P.O. Box 3052, 1 & Adams Station, North Brunswick, NJ 08902. Representative: Daniel C. Sullivan, Esq., 10 S. LaSalle Street, Chicago, IL 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in by manufacturers of metal tool and utility boxes, tool chests, medical cabinets, benches and shelves (except commodities in bulk), (A) from the facilities of Waterloo Industries, Inc., at Waterloo, IA; Sedalia, MO; Pochontas and Walnut Ridge, AR; and the facilities of Lumidor Manufacturing at Los Angeles, CA, to points in the United States (except AK and HI); (B) from Des Moines and Clarksville, IA; Janesboro, AR; Independence, MO; Ft. Wayne and Evansville, IN; Louisville, KY; Minneapolis, MN; Worcester, MA; Los Angeles, CA; Greenville, TN; and points in IL to the facilities of Waterloo Industries, Inc., at Waterloo, IA; Sedalia, MO; and Pocahontas, AR, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Waterloo Industries, Inc., P.O. Box 209, Waterloo, IA 50704. Send protests to: Robert E. Johnston, District Supervisor, Interstate Commerce Commission, 9 Clinton Street, Newark, NJ 07102.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-32575 Filed 11-17-78; 8:45 am]

[7035-01-M]

[Notice No. 131]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

NOVEMBER 20, 1978.

Synopses of orders entered by the Motor Carrier Board of the Commission pursuant to sections 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

Each application (except as otherwise specifically noted) filed after March 27, 1972, contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application. As provided in the Commission's General Rules of Practice any interested person may file a petition seeking reconsideration of the following numbered proceedings on or before December 11, 1978. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

MC-FC-77797, filed July 27, 1978. Transferee: QUASAR EXPRESS, INC., 1812 K Avenue, Sioux Falls, SD 57101. Transferor: Williams Truck Service, Inc., 1812 K Avenue, Sioux Falls, SD 27101. Transferee's Representative: Scott E. Daniel, Esq., Suite 500, the Atrium, 1200 North Street, P.O. Box 82028, Lincoln, NE 68501. On November 8, 1978, the Motor Carrier Board approved this application but included in such approval, and not shown in the FEDERAL REGISTER notice of September 21, 1978, Permit MC 111720 (Sub-18), issued October 23, 1978, in the name of the transferor, as follows: *Meat, meat products, meat byproducts, dairy products and articles distributed by meat packinghouses*, as described in sections A, B, and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766 (except hides and commodites in bulk), from the facilities of John Morrell & Co., at or near Sioux Falls, SD to points in IL, IN, and WI. Petitions for reconsideration may be filed within 20 days from the date of this publication. Send petitions for reconsideration to: The Secretary, Interstate Commerce Commission, Washington, DC 20423.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 78-32570 Filed 11-17-78; 8:45 am]

[7035-01-M]

[Notice No. 132]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

The following publications include motor carrier, water carrier, broker, and freight forwarder transfer applications filed under sections 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act.

Each application (except as othewise specifically noted) contains a statement by applicants that there will be no significant effect on the quality of

the human environment resulting from approval of the application.

Protests against approval of the application, which may include a request for oral hearing, must be filed with the Commission by December 20, 1978. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest must be served upon applicant's representative(s), or applicants (if no such representative is named), and the protestant must certify that such service has been made.

Unless othewise specified, the signed original and six copies of the protest shall be filed with the Commission. All protests must specify with particularity the factual basis, and the section of the Act, or the applicable rule governing the proposed transfer which protestant believes would preclude approval of the application. If the protest contains a request for oral hearing, the request shall be supported by an explanation as to why the evidence sought to be presented cannot reasonably be submitted through the use of affidavits.

The operating rights set forth below are in synopses form, but are deemed sufficient to place interested persons on notice of the proposed transfer.

MC-FC-77914, filed November 1, 1978. Transferee: AMERICAN TANK TRANSPORT, INC., 6350 Ordnance Point Road, Baltimore, MD 21225. Transferor: SECON SERVICE SYSTEM, INC., Foot of Meadowland Parkway, Secaucus, NJ 07094. Representatives: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904; Arthur M. Wisehart, 36 West 44th Street, New York, NY 10036. Authority sought for purchase by transferee of a portion of the operating rights of transferor, as set forth in Certificate MC 17778, issued January 9, 1978, as follows: *General commodities*, in bulk (exept those requiring dump truck service), over specified regular routes, between New York, NY, and Amsterdam, NY, serving the intermediate points of Yonkers, Poughkeepsie, Newburgh, Hudson, Albany, and Schenectady, NY, and the off-route points of Cohoes, Troy, Johnstown, Gloversville, Voorheesville, Middleville, Colonie, Menands, Saratoga Springs, Tuckahoe, and White Plains, NY, and Pittsfield, MA; between New York, NY, and Boston, MA, serving the intermediate points of Bridgeport, New Haven, New London, and Hartford, CN, Springfield and Brookline, MA, and Providence, RI, and those between Bridgeport and New York, and the off-route points of Waterbury and New Britain, CN, Mount Vernon and Westchester, NY, and Roxbury, MA; between New York, NY, and Washington, DC, serving the intermediate points of Jersey City, Newark, and Trenton, NJ, Philadelphia, and Marcus Hook, PA, and Baltimore, MD, and the off-route points of Hoboken, New Brunswick, Hillside, Elizabeth Port, Elizabeth, Edgewater, Bayonne, Bayway, Perth Amboy, Paterson, Kearny, Passaic, Bergenfield, Bloomfield, and Silver Lake, NJ; between junction U.S. Hwy 1 and NJ Hwy 3 and Secaucus, NJ, serving no intermediate points and with no service at junction U.S. Hwy 1 and NJ Hwy 3; between New York, NY, and Walton, NY, serving no intermediate points; between New York, NY, and Farmingdale, Long Island, NY, serving all points and off-route points in Nassau County, Long Island, NY. Irregular routes: *Fertilizer*, in bulk, from North Weymouth, MA, to West Haven, CN, from Baltimore, MD, to West Haven, CN; from West Haven, CN, to points in MA., From Carteret, NJ, to points in CT; *Insecticides and fungicides*, in bulk, between West Haven, CN, and Baltimore, MD; *Liquid linoleum cement*, in bulk, in tank vehicles, from Whippany, NJ, to Fullerton, PA, and Wilmington, DE. Transferee presently holds no authority from this Commission. Application has been filed for temporary authority under section 210a(b).

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 78-32571 Filed 11-17-78; 8:45 am]

[7035-01-M]

[Notice No. 219]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

NOVEMBER 17, 1978.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC, and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

MC 128273 (Sub-310TA), filed July 21, 1978, published in the FEDERAL REGISTER on September 29, 1978, republished this issue. Applicant: MIDWESTERN DISTRIBUTION, INC., P.O. Box 189, 121 Humboldt Street, Fort, Scott, KS 66701. Representative: James W. Muldoon, 50 West Broad Street, Columbus, OH 43215. The Motor Carrier Board granted authority in this proceeding on Qctober 30, 1978, to operate as a common carrier by motor vehicle, over irregular routes, transporting: *Such commodities* as are manufactured, processed, distributed, or dealt in, by manufacturers or converters of paper and paper products (except in bulk), from Chillicothe and Schooleys, OH, to points in AZ, AR, CA, CO, ID, IA, KS, LA, MS, MO, MT, NE, NV, NM, ND, OK, OR, SD, TX, UT, WA, and WY.

This grant of statewide authority differs from the prior notice of September 29, 1978, which indicated that applicant was seeking voluminous specific points within the above States. The grant of temporary authority coincides with the evidence furnished by the supporting shipper.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 78-32569 Filed 11-17-78; 8:45 am]

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sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409), 5 U.S.C. 552b(e)(3).

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Federal Energy Regulatory Commission	4
International Trade Commission	5
National Commission on Libraries and Information Science	6
National Transportation Safety Board	7
U.S. Railroad Retirement Board	8
Renegotiation Board	9, 10, 11, 12
Securities and Exchange Commission	13

[6320-01-M]

1

[M-178, Amdt; Nov. 15, 1978]

CIVIL AERONAUTICS BOARD.

Notice of addition of items to the November 16, 1978, meeting agenda.

TIME AND DATE: 9:30 a.m., November 16, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 8a. Applicability of Airline Deregulation Act to pending cases (OGC, BPDA). 18a. Docket 26838—Priority Reserved Air Freight Rate Investigation (OGC).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: Staff work on this item was completed on Monday, November 13, 1978, and because of the Thansgiving Holiday there will be no scheduled meeting for 2 weeks. This item concerns questions of interest to parties and judges in pending cases. Item 18a is being added in order for the Board to give the parties notice of its decision to take review sufficiently in advance of the deadlines for petitions for discretionary review. Accordingly, the following Members have voted that agency business requires the addition of item 8a and item 18a to the November 16, 1978, agenda and that no earlier announcement of these additions was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-2344-78 Filed 11-16-78; 3:52 pm]

[6570-06-M]

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

TIME AND DATE: 9:30 a.m. (eastern time), Friday, November 17, 1978.

PLACE: Commission Conference Room, No. 5240, on the fifth floor of the Columbia Plaza Office building, 2401 E Street NW., Washington, D.C. 20506.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

Open to the public:

1. Recommended procedures for office appeals and review.
2. Proposed designation of the Corpus Christi (Texas) Human Relations Commission as a 706 agency.
3. Final affirmative action guidelines.
4. Freedom of Information Act Appeal No. 78-9-FOIA—224, concerning a request by an attorney for EEO-4 reports submitted to the Commission by various local governments.
5. Report on Commission operations by the Executive Director.

Closed to the public:

Litigation Authorization: General Counsel Recommendations: Matters closed to the public under the Commission's regulations at 29 CFR 1612.13.

NOTE.—Any matter not discussed or concluded may be carried over to a later meeting.

CONTACT PERSON FOR MORE INFORMATION:

Marie D. Wilson, Executive Officer, Executive Secretariat, at 202-634-6748.

This notice issued November 9, 1978.

[S-2335-78 Filed 11-16-78; 11:58 am]

[6570-06-M]

3

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

TIME AND DATE: 9:30 a.m. (eastern time), Tuesday, November 21, 1978.

PLACE: Commission Conference Room No. 5240, on the fifth floor of the Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C. 20506.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Final affirmative action guidelines.
2. Report on Commission operations by the Executive Director.

Note.—Any matter not discussed or concluded may be carried over to a later meeting.

CONTACT PERSON FOR MORE INFORMATION:

Marie D. Wilson, Executive Officer, Executive Secretariat, at 202-634-6748.

This notice issued November 14, 1978.

[S-2334-78 Filed 11-16-78; 11:58 am]

[6740-02-M]

4

NOVEMBER 15, 1978.

FEDERAL ENERGY REGULATORY COMMISSION

TIME AND DATE: 10 a.m., November 22, 1978.

PLACE: 825 North Capitol Street NE., Washington, D.C., Room 9306.

STATUS: Open.

Matters to be considered: Agenda.

NOTE.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth F. Plumb, Secretary, telephone 202-275-4166.

This is a list of matters to be considered by the commission. It does not include a listing of all papers relevant to the items on the agenda. However, all public documents may be examined in the Office of Public Information.

GAS AGENDA—208TH MEETING, NOVEMBER 22, 1978, REGULAR MEETING (10 A.M.)

CAG-1 Docket No. RP77-58 (TT79-1), Mid Louisiana Gas Co.
CAG-2 Docket No. RP79-6, United Gas Pipe Line Co.
CAG-3 Docket No. RP74-14 and RP74-34, Mountain Fuel Resources, Inc.
CAG-4 Docket No. RP78-11, Trunkline Gas Co.
CAG-5 Docket No. R-389-B, Transco Exploration Co.
CAG-6 Docket No. CI77-541, Transco Exploration Co.
CAG-6 Docket No. CI72-1169, et al., Bobby Joe Manziel, et al.
CAG-6 Docket No. CI73-750, et al., Chevron U.S.A., Inc., et al.
CAG-6 Docket No. G-4547, et al., Atlantic Richfield Co., et al.
CAG-6 Docket No. CI78-745, Southland Royalty Co.
CAG-6 Docket No. G-11637, Gulf Oil Corp.
CAG-6 Docket No. CI73-4, Energy Reserves Group, Inc.
CAG-6 Docket No. G-4547, Atlantic Richfield Co.
CAG-6 Docket No. CI77-394, Amoco Production Co.
CAG-6 Docket No. CI65-95, Amoco Production Co.
CAG-6 Docket No. CI78-519, Gulf Oil Corp.
CAG-6 Docket No. CI62-1388, Atlantic Richfield Co.
CAG-6 Docket No. CI75-38, Gulf Oil Corp.
CAG-6 Docket No. CI78-1175, Hunt Oil Co.
CAG-6 Docket No. CS72-1169, et al., Bobby Joe Manziel, et al.
CAG-6 Docket No. CI78-1083, J. M. Huber Corp.
CAG-6 Docket No. CI78-1197, Terra Resources, Inc.
CAG-6 Docket No. CI78-1091, Gulf Oil Corp.
CAG-6 Docket No. CI78-710, et al., American Natural Gas Production Co.
CAG-6 Docket No. CI78-1141, Cotton Petroleum Corp.
CAG-7 Docket No. G-16287, Texaco, Inc.

I. PIPELINE RATE MATTERS

RP-1. Docket No. RP79-4, Cities Service Gas Co.
RP-2. Docket No. RP78-87, Texas Eastern Transmission Corp.
RP-3. Docket No. RP78-76, Gas Research Institute.

II PIPELINE CERTIFICATE MATTERS

CP-1. Docket No. CP78-4, Transcontinental Gas Pipe Line Corp.
CP-2. Docket No. CP78-172, El Paso Natural Gas Co.
CP-2. Docket No. CP78-257, Western Gas Interstate Co.
CP-2. Docket No. CP76-87, El Paso Natural Gas Co.
CP-3. Docket No. CP76-60, *Arkansas Louisiana Gas Co., complainant* v. *McColloch Oil Corp. of Texas*, defendant.

POWER AGENDA—208TH MEETING, NOVEMBER 22, 1978, REGULAR MEETING

CAP-1. Docket No. ER79-47, Ohio Power Co., Cleveland Electric Illuminating Co.
CAP-2. Docket Nos. ER78-599 and ER78-610, Consolidated Edison Co. of New York.
CAP-3. Docket No. ER78-365, Consolidated Edison Co. of New York.
CAP-4. Docket No. ER78-568, Florida Power Corp.
CAP-5. Docket No. EL78-10, Delmarva Power & Light Co., Delmarva Power & Light Co. of Maryland, and Delmarva Power & Light Co. of Virginia.
ER-1. Docket Nos. ER78-460 and ER78-483, Potomac Edison Co.
ER-2. Docket No. ER78-509, Northern Indiana Public Service Co.
ER-3. Docket No. ER76-320, The Connecticut Light & Power Co.

KENNETH F. PLUMB,
Secretary.

[S-2333-78 Filed 11-016-78; 10:33 am]

[7020-02-M]

5

[USITC SE-78-57A]

INTERNATIONAL TRADE COMMISSION.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Tuesday, November 21, 1978.

CHANGES IN THE MEETING: Additional agenda item:

9. Titanium dioxide (Inv. AA1921-Inq.-23)—Briefing and vote.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth R. Mason, Secretary, 202-523-0161.

[S-2343-78 Filed 11-16-78; 3:30 p.m.]

[7527-01-M]

6

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE.

TIME: 9 a.m. to 4:30 p.m., and 8:30 a.m. to 12:30 p.m., respectively.

DATE: December 7 and 8, 1978.

PLACE: Beverly Wilshire Hotel, Beverly Hills, Calif.

STATUS: Open.

MATTERS TO BE DISCUSSED:

Opening remarks, Chairman. Commission Appointments—Status. White House Conference on Library and Information Services:

Advisory Committee—Status.
Discussion of content—Thematic priorities for the White House Conference.
Discussion of possible speakers for the major content themes.
Literacy theme conferences.
Establishment of a proposed information industry working group for the White House Conference.
Public information and fund raising efforts.
Information Society Film Project.
Discussion of agenda for Chairman's anticipated meeting with the President.
Discussion of report of the Ad Hoc Committee on Governance.
Commission Committees.
National Periodicals Advisory Committee Report on meeting.

CONTACT PERSON FOR MORE INFORMATION:

Alphonse F. Trezza, Executive Director, NCLIS, 202-653-6252.

NOVEMBER 15, 1978.

[S-2336-78 Filed 11-16-78; 11:58 am]

[4910-58-M]

7

NATIONAL TRANSPORTATION SAFETY BOARD.

TIME AND DATE: 9 a.m., Wednesday, November 15, 1978 (NM-78-39].

PLACE: NTSB Board Room, National Transportation Safety Board, 800 Independence Avenue, SW., Washington, D.C. 20594.

STATUS: Closed under exemption 10 of the Government in the Sunshine Act.

MATTER CONSIDERED: A majority of the Board has determined by recorded vote that the business of the Board required that the following item be discussed on this date and that no earlier announcement was possible:

Consideration of reverse Freedom of Information Act request and associated pending litigation, *Pacific Southwest Airlines, Inc.*, v. *National Transportation Safety Board*, U.S. District Court for the District of Columbia.

CONTACT PERSON FOR MORE INFORMATION:

Sharon Flemming, 202-472-6022.

[S-2337-78 Filed 11-16-78; 3:30 pm]

[7905-01-M]

8

RAILROAD RETIREMENT BOARD.

TIME AND DATE: 9:30 a.m., November 28, 1978.

PLACE: Board's meeting room on the 8th floor of its headquarters building at 844 Rush Street, Chicago, Ill. 60611.

STATUS: Part of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portion open to the public:

(1) Special achievement awards, possible increase of award amounts which may be authorized by the Chief Executive Officer without Board approval.
(2) Occupational disability standards.

Portions closed to the public:

(3) Appeal from referee's denial of disability annuity application, Lois S. Baker.

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(4) Appeal from referee's denial of application for "period of disability", Ben W. Casey.
(5) Appeal from referee's denial of application for disabled widow's insurance annuity, Anita J. Gilley.
(6) Appeal from referee's denial of application for spouse's annuity, Mildred R. Gustafson.
(7) Appeal from referee's denial of application for disability annuity application, Anthony Ziotkowski.
(8) Appeal from referee's denial of application for widow's insurance annuity, Mary C. Kennedy.
(9) Appeal from referee's denial of disability annuity application, Clyde A. Harris.
(10) Appeal from referee's denial of disabled child's insurance annuity, Nannie Houston.
(11) Appeal of James B. Flewellen under the Railroad Unemployment Insurance Act.

CONTACT PERSON FOR MORE INFORMATION:

R. F. Butler, Secretary of the Board, COM No. 312-751-4920, FTS No. 387-4920.

[S-2332-78 Filed 11-16-78; 10:33 am]

[7910-01-M]

9

RENEGOTIATION BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 52603, November 13, 1978.

PREVIOUSLY ANNOUNCED DATE AND TIME OF MEETING: Monday, December 4, 1978; 2 p.m.

CHANGE IN MEETING: Date changed to: Monday, November 27, 1978; 2:30 p.m.

CONTACT PERSON FOR MORE INFORMATION:

Kelvin H. Dickinson, Assistant General Counsel-Secretary, 2000 M Street NW., Washington, D.C. 20446, 202-254-8277.

Dated November 16, 1978.

GOODWIN CHASE,
Chairman.

[S-2338-78 Filed 11-16-78; 3:30 pm]

[7910-01-M]

10

RENEGOTIATION BOARD.

DATE AND TIME: Monday, November 27, 1978; 9 a.m.

PLACE: Conference Room, 4th floor, 2000 M Street NW., Washington, D.C. 20446.

STATUS: Closed to public observation.

MATTERS TO BE CONSIDERED: U.S. Electronic Publications, Inc., fiscal years ended May 27, 1969, December 31, 1969, 1970, 1971, 1972, and 1973.

CONTACT PERSON FOR MORE INFORMATION:

Kelvin H. Dickinson, Assistant General Counsel-Secretary, 2000 M Street NW., Washington, D.C. 20446, 202-254-8277.

Dated: November 16, 1978.

GOODWIN CHASE,
Chairman.

[S-2339-78 Filed 11-16-78; 3:30 pm]

[7910-01-M]

11

RENEGOTIATION BOARD.

DATE AND TIME: Monday, November 27, 1978; 9:30 a.m.

PLACE: Conference Room, 4th floor, 2000 M Street NW., Washington, D.C. 20446.

STATUS: Closed to public observation.

MATTERS TO BE CONSIDERED: IBM Corp., fiscal years ended December 31, 1969, and December 31, 1970.

CONTACT PERSON FOR MORE INFORMATION:

Kelvin H. Dickinson, Assistant General Counsel-Secretary, 2000 M Street N.W., Washington, D.C. 20446, 202-254-8277.

Dated November 15, 1978.

GOODMAN CHASE,
Chairman.

[S-2340-78 Filed 11-16-78; 3:30 pm]

[7910-01-M]

12

RENEGOTIATION BOARD.

DATE AND TIME: Tuesday, November 28, 1978; 10 a.m.

PLACE: Conference Room, 4th floor, 2000 M Street NW., Washington, D.C. 20446.

STATUS: Matters 1 through 6 are open to public observation. Matters 7 through 10 are closed to public observation. Matters 11 through 12 are not applicable for status.

MATTERS TO BE CONSIDERED:

1. Approval of minutes of meeting held November 14, 1978, and other Board meetings, if any.
2. Recommended clearance: Clark Equipment Co., fiscal year ended December 31, 1970.
3. Exemption recommendations—Application for commercial exemption (No. 3010):
Midland-Ross Corp., fiscal year ended September 30, 1976.
Sperry Rand Corp., fiscal year ended September 30, 1976.
Tektronix, Inc., fiscal year ended September 30, 1976.
4. Report on partial year filings.
5. Recommended determination of excessive profits:
A. Kaiser Industries Corp., fiscal year ended December 31, 1972.
B. Henry J. Kaiser Co., fiscal year ended December 31, 1972.
C. Kaiser Engineers, Inc., fiscal year ended December 31, 1972.
D. Kaiser Industries Corp., consolidated with: Kaiser Aerospace & Electronics Corp., Henry J. Kaiser Co., Kaiser Engineers, Inc., Hallanger Engineers, Inc., fiscal year ended December 31, 1973.
6. Recommended determination of excessive profits: U.S. Electronic Publications, Inc., fiscal years ended May 27, 1969, December 31, 1969, 1970, 1971, 1972, and 1973.
7. Court of Claims case: *CCI Corporation v. United States*, Court of Claims No. 4-74.
8. Recommended finding of excessive profits: IBM Corp., fiscal years ended December 31, 1969, and December 31, 1970.
9. Recommended finding of excessive profits: Howard P. Foley Co., fiscal year ended March 31, 1969.
10. Recommended finding of excessive profits: Kaiser Aerospace & Electronics Corp., fiscal year ended December 31, 1972.
11. Approval of agenda for meeting to be held December 12, 1978.
12. Approval of agenda for other meetings, if any.

CONTACT PERSON FOR MORE INFORMATION:

Kelvin H. Dickinson, Assistant General Counsel-Secretary, 2000 M Street NW., Washington, D.C. 20446, 202-254-8277.

Dated: November 15, 1978.

GOODWIN CHASE,
Chairman.

[S-2341-78 Filed 11-16-78; 3:30 pm]

[8010-01-M]

13

SECURITIES AND EXCHANGE COMMISSION.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of November 20, 1978, in Room 825, 500 North Capitol Street, Washington, D.C.

Closed meetings will be held on Tuesday, November 21 at 10 a.m. and on Wednesday, November 22, 1978, immediately following the open meeting scheduled for 10 a.m. An open meeting will be held on Wednesday, November 22, 1978 at 10 a.m.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meetings may be considered pursuant to one more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A), and (10) and 17 CFR 200.402(a) (8), (9)(i), and (10).

Chairman Williams and Commissioners Loomis, Evans, and Karmel determined to hold the aforesaid meetings in closed session.

The subject matter of the closed meeting scheduled for Tuesday, November 21, 1978, at 10 a.m., will be:

Access to investigative files by Federal, State or self-regulatory authorities.
Chapter X.
Formal orders of investigation.
Freedom of Information Act appeal.
Institution of administrative proceedings of an enforcement nature.
Other litigation matters.
Regulatory matter regarding financial institutions.
Settlement of administrative proceedings of an enforcement nature.
Settlement of injunctive action.
Subpoena enforcement action.

The subject matter of the closed meeting scheduled for Wednesday, November 22, 1978, immediately following the open meeting scheduled for 10 a.m., will be:

Personnel security matter.

The subject matter of the open meeting scheduled for Wednesday, November 22, 1978, at 10 a.m., will be:

1. Review, by the Commission, pursuant to section 11A of the Securities Exchange Act of 1934, of a dispute between the Options Price Reporting Authority and Bunker Ramo Corp. and GTE Information Systems, Inc., two vendors of securities information. For further information, please contact Nancy H. Wojas at 202-755-8965.
2. Consideration of whether to publish for comment proposed amendments to Regulation S-X [17 CFR Part 210] concerning (1) the presentation in financial statements of the amounts applicable to preferred stocks subject to mandatory redemption requirements, preferred stocks which are not redeemable or are redeemable solely at the option of the issuer, and common stocks, and (2) certain disclosure requirements for preferred stocks subject to mandatory redemption requirements. For further information, please contact Edmund Coulson at 202-472-3782.
3. Consideration of whether to adopt proposed Rule 13d-1(c), which would implement section 13(g) of the Securities Exchange Act of 1934, and certain technical amendments to Regulation 13D. For further information, please contact John A. Granda at 202-755-1750.
4. Consideration of whether to adopt amendments to the management remuneration disclosure requirements of Regulation S-K, item 4 as proposed in Securities Act Release No. 5950 (July 28, 1978). For further information, please contact Steven J. Paggioli at 202-376-8090.
5. Consideration of an application by Colonial Gas Energy System ("Colonial"), a registered holding company, and its two public utility subsidiaries, seeking authorization for the issue and sale of up to $5,500,000 cumulative convertible preferred stock by Colonial and an exemption from competitive bidding. Authorization is also being sought for the issuance and sale of common stock to Colonial by Lowell Gas Co. and Cape Cod Gas Co., its public utility subsidiaries, for an aggregate purchase price of approximately $3,100,000. For further information, please contact Mary Ann Oliver at 202-523-5651.
6. Consideration of whether the Commission should authorize its Division of Investment Management to transmit to the Small Business Administration the Commission's report under section 308(g)(2)(H)-(J) of the Small Business Investment Act of 1958. For further information, please contact Elizabeth T. Tsai at 202-755-0210.

FOR FURTHER INFORMATION, PLEASE CONTACT:

Beverly C. Rubman at 202-755-1103.

NOVEMBER 16, 1978.

[S-2342-78 Filed 11-16-78; 3:30 pm]

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federal register

MONDAY, NOVEMBER 20, 1978
PART II



DEPARTMENT OF ENERGY

Economic Regulatory Commission

SPECIAL SET-ASIDE PROCEDURES FOR MIDDLE DISTILLATES

Proposed Rulemaking; Public Hearing

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[6450-01-M]

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[10 CFR Part 211]

[Docket No. ERA-R-78-20]

SPECIAL SET-ASIDE PROCEDURES FOR MIDDLE DISTILLATES

Proposed Rulemaking; Public Hearing

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) proposes to amend the Mandatory Petroleum Allocation Regulations (10 CFR Part 211) to reinstate, by the adoption of a special rule No. 6, set-aside procedures for middle distillates to be administered by the State energy offices and DOE regional offices for the period from the date of issuance of the final rule adopted in this proceeding through March 31, 1979. The proposal would permit wholesale purchaser-consumers and end-users who have made unsuccessful efforts to obtain supplies for an emergency or hardship to acquire that volume required to meet their certified requirements.

DATES: Comments by December 20, 1978; requests to speak by November 27, 1978, 4:30 p.m.; hearing date: December 7, 1978, 9:30 a.m.

ADDRESS: Comments, requests to speak, copies of oral statements to: Department of Energy, Economic Regulatory Administration, Office of Public Hearing Management, Docket No. ERA-R-78-20, Room 2313, 2000 M Street NW., Washington, D.C. 20461; Hearing location: Room 2105, 1000 M Street NW., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Robert C. Gillette (Hearing Procedures), Economic Regulatory Administration, Room 2222A, 2000 M Street NW., Washington, D.C. 20461, 202-254-5201.

William L. Webb (Office of Public Information), Economic Regulatory Administration, Room B110, 2000 M Street NW., Washington, D.C. 20461, 202-634-2170.

William E. Caldwell (Regulations and Emergency Planning), Economic Regulatory Administration, Room 2304, 2000 M Street NW., Washington, D.C. 20461, 202-254-8034.

Jack O. Kendall (Office of General Counsel), Room 5146B, 1200 Pennsylvania Avenue NW., Washington, D.C. 20461, 202-566-9565.

SUPPLEMENTARY INFORMATION:

I. BACKGROUND

II. STATE SET-ASIDE PROPOSAL

III. HEARING AND COMMENT PROCEDURES

IV. OTHER MATTERS

I. BACKGROUND

On June 15, 1976, the Federal Energy Administration (FEA) issued and submitted to the Congress two separate amendments which provided for the exemption of middle distallates from allocation and price controls. These amendments became effective July 1, 1976.

Despite decontrol, however, in the winter of 1976-77 the FEA established a State-administered set-aside program to insure that no marketer would lose its supply source without adequate time to arrange a new supplier during the transitional period following removal of controls. (Special Rule No. 3, 41 FR 33881, August 11, 1976.) Under this program, state offices were enabled to make assignments to marketers which could demonstrate an inability to obtain adequate supplies of middle distillates after reasonable efforts in this regard and directly to consumers who could meet the same hardship criteria that had been in effect for the state set-aside program prior to the exemption of middle distillates.

On November 14, 1977 (42 FR 59488, November 18, 1977), the Economic Regulatory Adminstration (ERA) of the Department of Energy (DOE) adopted Special Rule No. 5, reinstating special set-aside procedures for middle distillates for the winter of 1977-78. The special set-aside procedures were designed primarily to permit ultimate consumers of middle distillates who had made unsuccessful efforts to obtain supplies for an emergency or hadrdship to acquire that volume necessary to meet their certified requirements.

II. SPECIAL SET-ASIDE PROPOSAL

While the middle distillate set-aside procedures in effect during the past two heating seasons were utilized in only a few instances, it is our belief that such procedures are an important means of insuring adequate supplies of middle distillates to consumers to meet unforeseen emergency conditions or hardship situations. Accordingly, the ERA proposes to reinstate a set-aside program by adopting a new special rule No. 6 for subpart A of 10 CFR Part 211.

The special procedures proposed hereby are essentially the same as those provided by special rule No. 5 in effect last winter. Special rule No. 6 would provide that, notwithstanding the exemption of middle distillates form controls, a special set-aside program for middle distillates would be in effect from the date of issuance of any final rule adopted in this proceeding through March 31, 1979, so as to permit assignments to marketers and consumers by State energy offices or, if a State energy office declines administration of the procedures, by the appropriate DOE regional office.

Within 20 days after the effective date of this special rule, each supplier would designate for each state within which the supplier operates as a prime supplier a representative who would act on behalf of the prime supplier with regard to these special procedures. The set-aside would constitute 4 percent of a prime suppler's estimated portion of its total supply of middle distillates for the particular month to be sold into the distribution system of the state for consumption therein. The set-aside requirement for a particular month would not be carried over to the following month if not used, and might be released totally or partially at any time during the month by order of the state energy office (or the DOE Regional Office where appropriate). Inasmuch as the set-aside for the 1977-1978 winter was used sparingly, you are specifically requested to comment as to whether four percent of a prime supplier's supplies is too great a percentage to be set aside and whether a smaller portion—for example, 2 percent—may be more appropriate.

Set-aside volumes would be available for assignments to wholesale purchaser-consumers and end-users who have made unsuccessful efforts to obtain supplies to meet an emergency or hardship. Such assignments would be limited to that volume required to satisfy certified requirements and conditioned upon the demonstrations of hardship. Assignments would also be made to wholesale purchaser-resellers who are unable to obtain a sufficient volume of product to meet the emergency or hardship needs of those wholesale purchaser-consumers and end-users with whom the wholesale purchaser-reseller had a supplier/purchaser relationship on December 1, 1978.

An application for assignment of set-aside volumes would be made to the appropriate state energy office which would approve or disapprove the application. Since an assignment would only be made in response to emergency situations, an applicant would not be required to make its application in writing. Each applicant would be required, however, to submit a written certification as to the validity of the emergency or hardship situation to the state energy office within 5 days of its verbal or written application.

If the State energy office were to approve an application, it would assign a

prime supplier to furnish the applicant an amount from the set-aside. The State energy office would issue to both the applicant and the representative of the prime supplier a document authorizing such assignment. This document would entitle the applicant to receive the assigned volume from any convenient local distributor of the prime supplier from which the set-aside assignment had been made. Such document would expire 10 days after issuance unless it had been presented to the prime supplier or a deisgnated local distributor of the prime supplier.

Each month the State energy office would submit to the appropriate DOE Regional Office copies of all authorizing documents issued during the previous month and a tabulation of the usage of the middle distillate set-aside during the previous month.

In reimposing special set-aside procedures for middle distallates, we would be taking action under section 12(f) of the Emergency Petroleum Allocation Act of 1973, as amended (EPAA, Pub. L. 93-159), which permits the President to prescribe such a regulation upon a determination by him that such regulation is necessary to and consistent with the attainment of the objectives specified in section 4(b)(1) of the EPAA. Our preliminary determination is that adoption of a set-aside program for the 1978-79 winter would be necesssary to and consistent with the attainment of these objectives. In particular, we believe that such a regulation would promote public health, safety and welfare (including maintenance of residential heating for individual homes, apartments and similar occupied dwelling units) and the equitable distribution of refined petroleum products among all regions and areas of the United States, and sectors of the petroleum industry, and among all users.

For these reasons we have also determined that this is a significant proposal subject to the requirements of the DOE's interim management directive issued on April 25, 1978 (43 FR 18634, May 1, 1978), establishing procedures for the development and analysis of significant regulations. The directive requires that notices of proposed significant regulations provide at least a 60-day public comment period, except that a shorter comment period may be approved by the Secretary, Deputy Secretary, or Under Secretary of Energy under extraordinary circumstances. Inasmuch as the use of middle distillates for heating purposes has already begun in some areas of the country, the Deputy Secretary has approved the establishment of a 30-day period for public comment on this proposal. In this connection, we are also proposing to make any final rule adopted in this proceeding effective on its date of issuance.

III. HEARING AND COMMENT PROCEDURES

A public hearing on the matters considered in this proposal will begin at 9:30 a.m. on December 7, 1978, and will be continued, if necessary, to December 8, 1978, in Room 2105, 2000 M Street NW., Washington, D.C. 20461. Any person who has an interest in this proceeding, or who is a representative of a group or class of persons that has an interest in this proceeding, may make a written request for an opportunity to make an oral presentation. Your request should be directed to Public Hearing Management, Docket No. ERA-R-78-20, Room 2313, 2000 M Street NW., Washington, D.C. 20461, and must be received before 4:30 p.m. on November 27, 1978. You may hand-deliver your request between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Label your request both on the document and on the envelope "Special Set-Aside Procedures for Middle Distillates."

In your request, you should briefly describe your interest; if appropriate, state why you are a proper representative of a group or class of persons having such interest; and give a concise summary of the proposed oral presentation and a phone number where we may contact you through November 30, 1978. If you are selected to be heard, we will notify you before 4:30 p.m., local time, November 30, 1978. You must submit 100 copies of your statement to Public Hearing Management, Docket No. ERA-R-78-20, Room 2313, 2000 M Street NW., Washington, D.C. 20461, before 4:30 p.m. on December 7, 1978.

We reserve the right to select the persons to be heard at the public hearing, to schedule their respective presentations and to establish the procedures governing the conduct of the hearing. We may limit the length of each presentation, based on the number of persons requesting to be heard.

We will designate a DOE official to preside at the hearing. This will not be a judicial or evidentiary-type hearing. Questions may be asked only by those conducting the hearing, and there will be no cross-examination of persons presenting statements. At the conclusion of all initial oral statements, each person who had made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. Rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

You may submit questions to be asked of any person making a statement at the hearing to Public Hearing Management, Docket No. ERA-R-78-20, Room 2313, 2000 M Street NW., Washington, D.C. 20461, before 4:30 p.m. on December 4. If you wish to ask a question at the hearing, you may submit it in writing to the presiding officer. We will determine whether the question is relevant and whether the time limitations permit it to be presented for answer.

The presiding officer will announce any further procedural rules needed for the proper conduct of the hearing.

We will have a transcript of the hearing made, and we will retain the entire record of the hearing, including the transcript, and make it available for inspection at the Office of Public Information, Economic Regulatory Administration, Room B-110, 2000 M Street NW., Washington, D.C. between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. You may purchase a copy of the transcript from the reporter.

We also invite you to participate in this rulemaking proceeding by submitting data, views or arguments with respect to the proposal set forth in this notice to Public Hearing Management, Docket No. ERA-R-78-20, Room 2313, 2000 M Street NW., Washington, D.C. 20461. You should identify your comments on the outside envelope and on each document with the docket number and the designation "Special Set-Aside Procedures for Middle Distillates." You should submit fifteen copies. We will consider all comments received by December 20, 1978, and all relevant information before taking further action on this matter.

Any information or data you submit pursuant to the above procedures and which you consider to be confidential must be so identified and submitted in one copy only. We reserve the right to determine the confidential status of the information or data and to treat it according to our determination.

IV. OTHER MATTERS

As required by section 7(a) of the Federal Energy Administration Act of 1974, Pub. L. 93-275, a copy of this notice has been submitted to the Administrator of the Environmental Protection Agency for his comments concerning the impact of this proposal on the quality of the environment. The Administrator had no comments on this proposal.

We have determined that a regulatory analysis pursuant to the President's Executive Order No. 12044 (43 FR 12661, March 24, 1978), which requires analysis of proposals that would have a major economic impact, is not required for this proposed rulemaking on the ground that it will not have a major economic impact.

Pursuant to the requirements of Section 404(a) of the DOE Act, we have referred this proposed rule, con-

currently with the issuance hereof, to the Federal Energy Regulatory Commission for a determination in its discretion whether the proposed rule would significantly affect any function within the Commission's jurisdiction.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, Pub. L. 94-332, Pub. L. 94-385, Pub. L. 95-70, and Pub. L. 95-91; Energy Policy and Conservation Act, Pub. L. 94-163, as amended, Pub. L. 94-385, and Pub. L. 95-70; Energy Conservation and Production Act, Pub. L. 94-385, as amended, Pub. L. 95-70, Pub. L. 95-91; Department of Energy Organization Act, Pub. L. 95-91; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, part 211 of chapter II, title 10 of the Code of Federal Regulations, is proposed to be amended as set forth below.

Issued in Washington, D.C., November 14, 1978.

HAZEL ROLLINS,
Deputy Administrator,
Economic
Regulatory Administration.

The appendix to subpart A of part 211 is amended by adding special rule No. 6 to read as follows:

SPECIAL RULE NO. 6

SPECIAL SET-ASIDE PROCEDURES FOR MIDDLE DISTILLATES

1. *Scope.* This special rule provide for a set-aside program for middle distillates for the period (from the date of publication of this Special Rule) through March 31, 1979, as provided below, notwithstanding the exemption of middle distillates from the mandatory petroleum allocation and price regulations effective July 1, 1976.

2. *Provision for middle distillate set-aside.* Notwithstanding the provisions of paragraphs (b) and (c) of § 210.35 of part 210 of this chapter and of subparagraphs (b) (5) and (6) of § 211.1 of this part, a set-aside is hereby established for the period (from the date of publication of this special rule) through March 31, 1979, for designated middle distillates for assignment by State offices in accordance with the provisions of this special rule.

For purposes of this special rule the term middle distillates includes the following, as defined in § 212.31 of part 212 of this chapter: No. 1 heating oil, No. 1-D diesel fuel, No. 2 heating oil, No. 2-D diesel fuel and kerosene.

3. *Set-aside volume.* A prime supplier shall inform each appropriate State office monthly of the estimated volume of middle distillates to be sold into a State for consumption within that State. The set-aside volume available in a State for a particular month shall be the sum of the amounts calculated by multiplying four (4) percent by each prime supplier's estimated portion of its total supply for that month which will be sold into that State's distribution system for consumption within the State. The set-aside for a particular month cannot be accumulated from prior months or deferred to later months; it shall be made available from stocks of prime suppliers whether directly or through their wholesale purchaser-resellers.

4. *State representative.* Each supplier shall designate a representative for each State in which the supplier is a prime supplier to act for and on behalf of the prime supplier with respect to set-aside petitions and assignments from the set-aside to be supplied by that prime supplier. Each prime supplier for a State shall designate its representative for that State and shall notify in writing the appropriate State and DOE regional offices of such designation within twenty (20) days after the effective date of this special rule. The State office shall to the maximum extent possible consult with a prime supplier's representative prior to issuing any authorizing document affecting set-aside volumes to be provided by the prime supplier.

5. *Eligible recipients of set-aside volumes.* The set-aside provided for by this special rule shall be utilized by the State offices in issuing authorizations to applicants for designated middle distillates to be supplied by a prime supplier to meet hardship and emergency requirements of wholesale purchaser-consumers and end-users. To facilitate relief of the hardship and emergency requirements of wholesale purchaser-consumers and end-users, the State office may also direct that a wholesale purchaser-reseller be supplied from the set-aside to enable the wholesale purchaser-reseller to supply the emergency and hardship needs of wholesale purchaser-consumers and end-users with whom the wholesale purchaser-reseller had a supplier/purchaser relationship on December 1, 1978.

6. *Term of assignments.* Assignments to eligible end-users and wholesale purchaser-consumers under section 5 of this special rule by a State office shall be made to meet the emergency or hardship conditions being experienced during that period. Assignments to wholesale purchaser-resellers shall be only for the period necessary to preclude hardship and provide emergency requirements to that wholesale purchaser-reseller's wholesale purchaser-consumers and end-users. No assignments under this special rule shall relate to any period subsequent to March 31, 1979.

7. *Application for assignment.* All applications for assignment under this special rule shall be made to the State office having jurisdiction over the State in which the applicant conducts its business operations, in accordance with the procedures set forth in §§ 205.211-218 of subpart Q of part 205 of this chapter with respect to the State set-aside, except as otherwise provided in this special rule. Within five (5) days of its application for assignment of middle distillates under these special procedures, an applicant shall submit to the State office a written certification that such application was for a valid hardship or emergency situation.

8. *Transfer of functions to DOE regional office.* Any State may elect irrevocably at any time to transfer administration of the middle distillate set-aside established by this special rule from its State office to the DOE regional office which has jurisdiction over said State, and will inform the DOE regional office in writing of such election. In the event of such an election by a particular State, all applications by applicants conducting business within that State shall be made to the appropriate DOE regional office. With respect to applications made to a DOE regional office under this section all references to a State office in this special rule and subpart Q of Part 205 of this chapter shall be deemed to refer to the appropriate DOE regional office.

9. *Approval of application.* If a State office approves an application for assignment, it shall assign a prime supplier an amount from the set-aside to the applicant necessary to meet the expressed emergency hardship condition. To determine an appropriate prime supplier, the State office may coordinate with the State representatives of prime suppliers.

10. *Authorizing document.* The State office shall issue to an applicant granted an assignment a document authorizing such assignment. A copy of the authorizing document (or a summary) shall also be provided by the State office to the designated State representative of the prime supplier assigned to the applicant. An authorizing document not presented to either the prime supplier or a designated local distributor of the prime supplier within ten (10) days of issuance shall expire after that ten-day period. The State office shall by the 20th day of each month submit to the appropriate DOE regional office copies of all authorizing documents issued during the previous month and a tabulation of the usage of the middle distillate set-aside during the previous month.

11. *Supplier's responsibilities.* When presented with an authorizing document, suppliers shall provide the assigned amount of middle distillates to an applicant. The authorizing document shall entitle the applicant to receive product from any convenient local distributor of the prime supplier from which the set-aside assignment has been made. Wholesale purchaser-resellers of prime suppliers shall, as nonprime suppliers, honor such authorizing documents upon presentation and shall not delay deliveries required by the authorizing documents while confirming such deliveries with the prime supplier. Any nonprime supplier which provides middle distillates pursuant to an authorizing document shall in turn receive from its prime supplier an equivalent volume of the product. The requirements of paragraph (b) of § 210.62 of part 210 of this chapter continue to apply to suppliers to whom an authorizing document is presented pursuant to this special rule to prohibit any form of discrimination (including price discrimination) which has the effect of circumventing, frustrating or impairing the objectives, purposes and intent of this special rule.

12. *Prime suppliers.* All prime suppliers shall supply designated middle distillates from their set-aside volume each month, as directed by the State offices, not to exceed the total set-aside volume for such middle distillates for that month for the State concerned.

13. *Release of set-aside.* At any time during the month, a State office may order the release of part or all of a prime supplier's set-aside volume through the prime supplier's normal distribution system in the State.

14. *Orders issued by State offices.* Authorizing documents and other orders issued pursuant to this special rule shall be in writing and effective immediately upon presentation to the prime supplier's designated State representative. Authorizing documents shall represent a call on the prime supplier's set-aside volumes for the month of issuance irrespective of the fact that delivery cannot be made until the following month. Any order issued by a State office pursuant to this special rule may be appealed to the DOE regional office that has jurisdiction over the State involved, in accordance with the procedures set forth in subpart H of part 205 of this chapter. Any appeal from such an order shall be filed within ten (10) days of service of the order from which the appeal is taken. If a State office fails to take action on an application within ten (10) days of filing, the applicant may treat the application as having been denied in all respects and may appeal therefrom as provided in this section.

[FR Doc. 78-32550 Filed 11-15-78; 3:11 pm]

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MONDAY, NOVEMBER 20, 1978
PART III



DEPARTMENT OF TRANSPORTATION

Coast Guard

ENFORCEMENT; CIVIL AND CRIMINAL PENALTY PROCEEDINGS

V 4 3 / 2 2 4 N O 2 0 7 8 UMI

[4910-14-M]

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 78-82]

PART 1—GENERAL PROVISIONS

Enforcement; Civil and Criminal Penalty Proceedings

AGENCY: Coast Guard, DOT.

ACTION: Interim final rule.

SUMMARY: These amendments describe the Coast Guard practices and procedures for determining whether to assess a civil penalty in the case of a reported violation of a law enforced by the Coast Guard. Increases in the number of civil penalty cases being processed by the Coast Guard and additions to the statutory authority for imposing civil penalties made a review of existing procedures desirable. The procedures set forth in this regulation will improve the penalty process used by the Coast Guard.

DATES: Effective date: February 20, 1979.

Comments should be received on or before 1 Sept. 1979.

ADDRESSES: Comments should be submitted to Commandant (G-CMC/81), (CGD 78-82), U.S. Coast Guard, Washington, D.C. 20590. Comments will be available for examination at the Marine Safety Council (G-CMC/81), Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590, 202-426-1444.

FOR FURTHER INFORMATION CONTACT:

Lieutenant Commander Steven J. Delaney, U.S. Coast Guard (G-LMI/81), Room 8109, Department of Transportation, Nassif Building, Washington, D.C. 20590, 202-426-1527.

SUPPLEMENTARY INFORMATION: Since these amendments are matters relating to rules of agency procedure and practice, they are exempt from the notice of proposed rulemaking requirements in 5 U.S.C. 553(b)(A). However, the Coast Guard is interested in obtaining the benefit of public comment on these rules. Therefore, they are promulgated as an interim final rule. The Coast Guard intends to evaluate its experience under these rules during the first 6 months they are in effect. The public is invited to submit comments during this period. Since this regulation concerns procedures only, no sector of the public will be required to make any investment which would be affected by subsequent changes. As a result, any changes which appear to be desirable after the evaluation period may be implemented at a later date with no disadvantage to the public.

DRAFTING INFORMATION: The principal persons involved in the drafting of this rule are: Lt. Comdr. Steven J. Delaney, Project Manager, and Mr. A. F. Bridgman, Jr., Project Counsel, Office of Chief Counsel.

Discussion of Regulation

Due to an increased congressional emphasis on civil penalties as a form of sanction, the Coast Guard in recent years has seen the number of its administrative penalty cases expand to more than 20,000 per year. Certain of the laws specifying administratively assessed sanctions, such as the Federal Water Pollution Control Act Amendments of 1972 and the Federal Boat Safety Act of 1971, cut across a broad range of society and apply to many citizens who have little experience in dealing with the government and administrative processes. Therefore, regulations which clearly describe agency procedures are necessary in the interest of informing parties in penalty proceedings of the applicable procedures and rights. In addition, experience gained in implementing many of these administrative penalty systems has demonstrated that detailed penalty regulations, which are uniform to the maximum extent possible, are necessary to eliminate confusion and promote the efficiency of agency employees. To the extent that agency employees and the members of the public who are involved in the administrative penalty process understand the procedures which apply, the rights of the party being charged with an infraction will be better safeguarded.

In developing these penalty procedures, consideration was given to a number of factors, including: the need for a simple procedure which is understandable and in which a citizen can afford to participate; the desire to provide the alleged violator with procedural rights which are consistent with the sanction being considered; the fact that penalties are normally only pecuniary in nature; and, the need of the agency to be able to administer a case load numbering in the tens of thousands. At the outset, it must be noted that the statutory civil penalty provisions administered by the Coast Guard do not require determinations to be made on the record and, therefore, the hearing procedures specified in sections 554, 556, and 557 of Title 5, United States Code are not applicable. In addition, many of the civil penalty statutes administered by the Coast Guard do not provide authority for the issuance of subpenas or other process in the assessment proceedings. However, it is intended that, to the extent possible, the rights associated with the concept of due process and a fair and impartial hearing will be accorded to all persons charged with infractions for which a civil penalty may be assessed.

The procedures established in this regulation provide that before the assessment of a civil penalty, a person is entitled to: notice of the initiation of the action; notice of the alleged violation; notice of the applicable laws and regulations; notice of the procedures to be followed; notice of the maximum penalty; the right to examine evidence in the case file; the right to be represented by counsel; an opportunity to be heard and to present evidence at a hearing, or to submit written material in lieu of a hearing; and, the right to appeal any assessment to the Commandant of the Coast Guard. These rights are provided to protect the interests of the alleged violator and of the public. However, the hearing may still be conducted in an informal atmosphere with the maximum degree of flexibility consistent with the need to have an orderly framework and a record of what was done during the administrative process.

Evaluation

This proposal has been reviewed under the Department of Transportation's "Policies and Procedures for Simplification, Analysis, and Review of Regulations" (43 FR 9582, March 8, 1978). A draft evaluation of the proposal has been prepared, and has been included in the public docket. It may be examined at or copies may be obtained from, the Marine Safety Council at the above address.

In consideration of the foregoing, Part 1, Subpart 1.07 (except for the Appendix), is hereby revised to read as follows:

Subpart 1.07—Enforcement; Civil and Criminal Penalty Proceedings

Sec.

1.07-1 Purpose.
1.07-5 Definitions.
1.07-10 Reporting and investigation.
1.07-15 Hearing officer.
1.07-20 Initiation of action.
1.07-25 Preliminary matters.
1.07-30 Disclosure of evidence.
1.07-35 Request for confidential treatment.
1.07-40 Counsel.
1.07-45 Location of hearings.
1.07-50 Witnesses.
1.07-55 Hearing procedures.
1.07-60 Records.
1.07-65 Hearing officer's decisions.
1.07-70 Right to appeal.
1.07-75 Action on appeals.
1.07-80 Reopening of hearings.
1.07-85 Collection of civil penalties.
1.07-90 Criminal penalties.
1.07-95 Civil and criminal penalties.

AUTHORITY: Sec. 3, 60 Stat. 238, and sec. 633, 63 Stat. 545, sec. 2, 63 Stat. 496, as amended; 5 U.S.C. 552, 14 U.S.C. 2, 633.

Subpart 1.07—Enforcement; Civil and Criminal Penalty Proceedings

§ 1.07-1 Purpose.

This part describes procedures for enforcement and administration of all statutory penalty provisions that the Coast Guard is authorized to enforce.

§ 1.07-5 Definitions.

(a) The term "District Commander," when used in this subpart, means the District Commander or a member of his staff.

(b) The term "Hearing Officer" means a Coast Guard officer or employee who has been delegated the authority to assess civil penalties.

(c) The term "party" means the person alleged to have violated a statute or regulation to which a civil penalty applies and includes an individual or public or private corporation, partnership or other association, or a governmental entity.

§ 1.07-10 Reporting and investigation.

(a) Any person may report an apparent violation of any law, regulation, or order that is enforced by the Coast Guard to any Coast Guard facility. When a report of an apparent violation has been received, or when an apparent violation has been detected by any Coast Guard personnel, the matter is investigated or evaluated by Coast Guard personnel.

(b) Reports of any investigation conducted by the Coast Guard or received from any other agency which indicate that a violation may have occurred are forwarded to the District Commander of the District in which the violation is believed to have occurred. The District Commander reviews the reports to determine if there is sufficient evidence to establish a *prima facie* case. If there is insufficient evidence, the case is either returned for further investigation or closed if further action is unwarranted. The case is closed in situations in which the investigation has established that a violation did not occur, the violator is unknown, or there is little likelihood of discovering additional relevant facts. If it is determined that a *prima facie* case does exist, a case file is prepared and forwarded to the Hearing Officer, with a recommended action. A record of any prior violations by the same person or entity, is forwarded with the case file.

§ 1.07-15 Hearing officer.

(a) Each District Commander delegates to one or more Coast Guard officers or employees on his staff the authority to act as Hearing Officer. The Hearing Officer has no other responsibility, direct or supervisory, for the investigation of cases referred to him for the assessment of civil penalties.

(b) The Hearing Officer decides each case on the basis of the evidence before him, and must have no prior connection with the case. The Hearing Officer is solely responsible for the decision in each case referred to him.

(c) The Hearing Officer is authorized to administer oaths and issue subpenas necessary to the conduct of a hearing, to the extent provided by law.

§ 1.07-20 Initiation of action.

(a) When a case is received for action, the Hearing Officer makes a preliminary examination of the material submitted. If, on the basis of the preliminary examination, the Hearing Officer determines that there is insufficient evidence to proceed, or that there is any other reason which would make penalty action inappropriate, the Hearing Officer returns the case to the District Commander with a written statement of the reason. The District Commander may close the case or cause a further investigation of the alleged violation to be made with a view toward resubmittal of the case to the Hearing Officer.

(b) If on the basis of the preliminary examination of the case file, the Hearing Officer determines that a violation appears to have been committed, the Hearing Officer notifies the party in writing of:

(1) The alleged violation and the applicable law or regulations;

(2) The amount of the maximum penalty that may be assessed for each violation;

(3) The general nature of the procedure for assessing and collecting the penalty;

(4) The amount of penalty that appears to be appropriate, based on the material then available to the Hearing Officer;

(5) The right to examine all materials in the case file and have a copy of all written documents provided upon request; and,

(6) The fact that the party may demand a hearing prior to any actual assessment of a penalty.

(c) If at any time it appears that the addition of another party to the proceedings is necessary or desirable, the Hearing Officer provides the additional party with notice as described above.

§ 1.07-25 Preliminary matters.

(a) Within 30 days after receipt of notice of the initiation of the action, as described above, the party, or counsel for the party, may request a hearing, Provide any written evidence and arguments in lieu of a hearing, or pay the amount specified in the notice as being appropriate. A hearing must be requested in writing; the request must specify the issues which are in dispute. Failure to specify a nonjurisdictional issue will preclude its consideration.

(b) The right to a hearing is waived if the party does not submit the request to the Hearing Officer within 30 days after receiving notice of the alleged violation. At the discretion of the Hearing Officer, a hearing may be granted if the party submits a late request.

(c) The Hearing Officer must promptly schedule all hearings which are requested. The Hearing Officer shall grant any delays or continuances which may be necessary or desirable in the interest of fairly resolving the case.

(d) A party who has requested a hearing may amend the specification of the issues in dispute at any time up to 10 days before the scheduled date of the hearing. Issues raised later than 10 days before the scheduled hearing may be presented only at the discretion of the Hearing Officer.

§ 1.07-30 Disclosure of evidence.

The alleged violator may, upon request, receive a free copy of all the written evidence in the case file, except material that would disclose or lead to the disclosure of the identity of a confidential informant. Other evidence or material, such as blueprints, sound or video tapes, oil samples, and photographs may be examined in the Hearing Officer's offices. The Hearing Officer may provide for examination or testing of evidence at other locations if there are adequate safeguards to prevent loss or tampering.

§ 1.07-35 Request for confidential treatment.

(a) In addition to information treated as confidential under § 1.07-30, a request for confidential treatment of a document or portion thereof may be made by the person supplying the information on the basis that the information is:

(1) Confidential financial information, trade secrets, or other material exempt from disclosure by the Freedom of Information Act (5 U.S.C. 552);

(2) Required to be held in confidence by 18 U.S.C. 1905; or

(3) Otherwise exempt by law from disclosure.

(b) The person desiring confidential treatment must submit the request to the Hearing Officer in writing and state the reasons justifying nondisclosure. Failure to make a timely request may result in a document being considered as nonconfidential and subject to release.

(c) Confidential material is not considered by the Hearing Officer in reaching a decision unless—

(1) It has been furnished by a party, or

(2) It has been furnished pursuant to a subpena.

§ 1.07-40 Counsel.

A party has the right to be represented at all stages of the proceeding by counsel. After receiving notification that a party is represented by counsel, the Hearing Officer directs all further communications to that counsel.

§ 1.07-45 Location of hearings.

(a) The hearing is normally held at the office of the Hearing Officer.

(b) The party may request that a case be transferred to another Hearing Officer or that the hearing be held at a location other than the office of the Hearing Officer. The request must be in writing and state the reasons why the requested action is necessary or desirable. Action on the request is at the discretion of the Hearing Officer.

§ 1.07-50 Witnesses.

A party may present the testimony of any witness either through a personal appearance or through a written statement. The party may request the assistance of the Hearing Officer in obtaining the personal appearance of a witness. The request must be in writing and state the reasons why a written statement would be inadequate, the issue or issues to which the testimony would be relevant, and the substance of the expected testimony. If the Hearing Officer determines that the personal appearance of the witness may materially aid in the decision on the case, the Hearing Officer seeks to obtain the witness' appearance. Because many statutes prescribing civil penalties do not provide subpena power, there may be cases where a witness cannot be required to attend. In such a case, the Hearing Officer may move the hearing to the witness' location, accept a written statement, or accept a stipulation in lieu of testimony. If none of these procedures is practical, the Hearing Officer shall proceed on the basis of the evidence before him.

§ 1.07-55 Hearing procedures.

(a) The Hearing Officer must conduct a fair and impartial proceeding in which the party is given a full opportunity to be heard. At the outset of the hearing, the Hearing Officer insures that the party is aware of the nature of the proceeding and of the alleged violation, and of the provisions of the law or regulation allegedly violated.

(b) The material in the case file pertinent to the issues to be determined by the Hearing Officer is presented. The party has the right to examine, and to respond to or rebut, this material. The party may offer any facts, statements, explanations, documents, sworn or unsworn testimony, or other exculpatory items which bear on appropriate issues, or which may be relevant to the size of an appropriate penalty. The Hearing Officer may require the authentication of any written exhibit or statement.

(c) At the close of the party's presentation of evidence, the Hearing Officer may allow the introduction of rebuttal evidence. The Hearing Officer may allow the party to respond to any such evidence submitted.

(d) In receiving evidence, the Hearing Officer is not bound by strict rules of evidence. In evaluating the evidence presented, the Hearing Officer must give due consideration to the reliability and relevance of each item of evidence.

(e) The Hearing Officer may take notice of matters which are subject to a high degree of indisputability and are commonly known in the community or are ascertainable from readily available sources of known accuracy. Prior to taking notice of a matter, the Hearing Officer gives the party an opportunity to show why notice should not be taken. In any case in which notice is taken, the Hearing Officer places a written statement of the matters as to which notice was taken in the record, with the basis for such notice, including a statement that the party consented to notice being taken or a summary of the party's objections.

(f) After the evidence in the case has been presented, the party may present argument on the issues in the case. The party may also request an opportunity to submit a written statement for consideration by the Hearing Officer and for further review. The Hearing Officer shall allow a reasonable time for submission of the statement and shall specify the date by which it must be received. If the statement is not received within the time prescribed, or within the limits of any extension of time granted by the Hearing Officer, the Hearing Officer renders his decision in the case.

§ 1.07-60 Records.

(a) A verbatim transcript will not normally be prepared. The Hearing Officer prepares notes on the material and points raised by the party, in sufficient detail to permit a full and fair review and resolution of the case, should it be appealed.

(b) A party may, at its own expense, cause a verbatim transcript to be made. If a verbatim transcript is made, the party shall submit two copies to the Hearing Officer not later than the time of filing an administrative appeal. The Hearing Officer includes them in the record.

§ 1.07-65 Hearing officer's decisions.

(a) The Hearing Officer issues a written decision. Any decision to assess a penalty is based upon substantial evidence in the record. If the Hearing Officer finds that there is not substantial evidence in the record establishing the alleged violation or some other violation of which the party had full and fair notice, the Hearing Officer shall dismiss the case and remand it to the District Commander. A dismissal is without prejudice to the District Commander's right to refile the case and have it reheard if additional evidence is obtained. A dismissal following a rehearing is final and with prejudice.

(b) If the Hearing Officer assesses a penalty, the Hearing Officer's decision contains a statement advising the party of the right to an administrative appeal. The party is advised that failure to submit an appeal within the prescribed time will bar its consideration and that failure to appeal on the basis of a particular issue will constitute a waiver of that issue in any subsequent proceeding.

§ 1.07-70 Right to appeal.

(a) Any appeal from the decision of the Hearing Officer must be submitted by a party within 30 days from the date of receipt of the decision. The appeal and any supporting brief must be submitted to the Hearing Officer. The only issues which will be considered on appeal are those issues specified in the appeal which were properly raised before the Hearing Officer and jurisdictional questions.

(b) The failure to file an appeal within the prescribed time limit results in the action of the Hearing Officer becoming the final agency action in the case.

§ 1.07-75 Action on appeals.

(a) Upon receipt, the Hearing Officer provides a copy of the appeal and any supporting brief to the District Commander. Any comments which the District Commander desires to submit must be received by the Hearing Officer within 20 days. The Hearing Officer includes the District Commander's comments in the record and furnishes a copy to the party. Upon receiving the District Commander's comments, or not later than 20 days after receipt of the appeal if no comments are submitted by the District Commander, the Hearing Officer forwards all materials in the case to the Commandant.

(b) The Commandant issues a written decision in each case and furnishes copies to the party, the District Commander, and the Hearing Officer. The Commandant may affirm, reverse, or modify the decision, or remand the case for new or additional proceedings. In the absence of a remand, the decision of the Commandant on appeal shall be final. In addition to the actions which may be taken by the Commandant on appeal, the Commandant may also remit, mitigate or suspend the assessment in whole or in part. Upon the taking of remission, mitigation, or suspension action, the Commandant will inform the party of the action and any conditions placed on the action.

§ 1.07-80 Reopening of hearings.

(a) At any time prior to final agency action in a civil penalty case, a party may petition to reopen the hearing on the basis of newly discovered evidence.

(b) Petitions to reopen must be in writing describing the newly found evidence and must state why the evidence would probably produce a different result favorable to the petitioner; whether the evidence was known to the petitioner at the time of the hearing and, if not, why the newly found evidence could not have been discovered in the exercise of due diligence. The party must submit the petition to the Hearing Officer and provide a copy to the District Commander.

(c) The District Commander may file comments in opposition to the petition. If comments are filed, a copy is provided the party.

(d) A petition to reopen is considered by the Hearing Officer unless an appeal has been filed, in which case the petition is considered by the Commandant.

(e) The decision on the petition is decided on the basis of the record, the petition, and the comments in opposition, if any. The petition is granted only when newly found evidence is described which has a direct and material bearing on the issues and when a valid explanation is provided as to why the evidence was not and could not have been, in the exercise of due diligence, produced at the hearing. The decision is rendered in writing.

(f) Following a denial of a petition to reopen, the party is given 30 days to file an appeal if one has not already been filed, or to amend an appeal which has already been filed.

§ 1.07-85 Collection of civil penalties.

(a) Authority for the collection of civil penalties is hereby delegated to the Commander of each Coast Guard District.

(b) Payment of a civil penalty may be made by check or postal money order payable to the U.S. Coast Guard.

(c) Within 30 days after the Commandant's decision on appeal, or within 30 days after the Hearing Officer's decision in a case in which no appeal has been filed, the party must submit payment of any assessed penalty to the District Commander. Failure to make timely payment will result in the institution of appropriate action under the Federal Claims Collection Act and the regulations issued thereunder.

(d) When a penalty of not more than $200 has been assessed under the Federal Boat Safety Act of 1971, the matter may be referred for collection of the penalty directly to the Federal Magistrate of the jurisdiction wherein the person liable may be found, for the institution of collection procedures under supervision of the district court, if the court has issued an order delegating such authority under section 636(b) of Title 28, United States Code.

§ 1.07-90 Criminal penalties.

(a) Prosecution in the Federal courts for violations of those laws or regulations enforced by the Coast Guard which provide, upon conviction, for punishment by fine or imprisonment is a matter finally determined by the Department of Justice. This final determination consists of deciding whether and under what conditions to prosecute or to abandon prosecution.

(b) Except in those cases where the approval of the Commandant is required, the District Commander is authorized to refer the case to the U.S. attorney. The Commandant's approval is required in the following cases where evidence of a criminal offense is disclosed:

(1) Marine casualties or accidents resulting in death.

(2) Marine Boards (46 CFR Part 4).

(3) Violations of port security regulations (33 CFR Parts 6, 121 to 126 inclusive).

(c) The District Commander will identify the laws or regulations which were violated and make specific recommendations concerning the proceedings to be instituted by the U.S. attorney in every case.

§ 1.07-95 Civil and criminal penalties.

(a) If a violation of law or regulation carries both a civil and a criminal penalty, the District Commander is authorized to determine whether to institute civil penalty proceedings or to refer the case to the U.S. attorney for prosecution in accordance with § 1.07-90.

(b) When the U.S. Attorney declines to institute criminal proceedings, the District Commander decides whether to initiate civil penalty proceedings or to close the case.

(Authority: Sec. 3, 60 Stat. 238, and sec. 633, 63 Stat. 545, sec. 2, 63 Stat. 496, as amended; 5 U.S.C. 552, 14 U.S.C. 2, 663.)

NOTE.—The Coast Guard has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended, and OMB Circular A-107.

Dated: November 13, 1978.

J. B. HAYES,
Admiral, U.S. Coast Guard
Commandant.

[FR Doc. 78-32612 Filed 11-17-78; 8:45 am]

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The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR notice 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
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CSA	CSC		CSA	CSC
	LABOR			LABOR
	HEW/FDA			HEW/FDA

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

NOTE: As of August 14, 1978, Community Services Administration (CSA) documents are being assigned to the Monday/Thursday schedule.

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[3195-01-M]

Title 3—The President

Executive Order 12099 **November 17, 1978**

Levels IV and V of the Executive Schedule

By the authority vested in me as President of the United States of America by Section 5317 of Title 5 of the United States Code, and in order to place the position of Director of Policy Review, Department of Defense, in level IV of the Executive Schedule, Executive Order No. 12076 of August 18, 1978, is amended by deleting "Director of Policy Review, Department of Defense." from Section 1-102(e) and inserting "(r) Director of Policy Review, Department of Defense." in alphabetical order in Section 1-101 thereof.

Jimmy Carter

THE WHITE HOUSE,
November 17, 1978.

[FR Doc. 78-32797 Filed 11-17-78; 4:22 pm]

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[3195-01-M]

Executive Order 12100 — **November 17, 1978**

President's Commission on Pension Policy

By the authority vested in me as President by the Constitution of the United States of America, it is hereby ordered as follows:

1-101. In order to ratify and reflect the actual effective date of the functioning of the activities of the Commission, Section 1-403 of Executive Order No. 12071 is amended to read "This Order shall be effective on September 21, 1978.".

1-102. In order to ratify and reflect that the Chairman may appoint necessary staff, Section 1-304 of Executive Order No. 12071 is amended to read as follows:

"1-304. The Chairman is authorized to appoint and fix the compensation of a staff, including not more than one position at the GS-18 level, as may be necessary to enable it to carry out its functions. The Chairman may obtain services in accordance with the provisions of Section 3109 of Title 5 of the United States Code, to the extent funds are available therefor.".

Jimmy Carter

THE WHITE HOUSE,
November 17, 1978.

[FR Doc. 78-32798 Filed 11-17-78; 4:23 pm]

NO 21 78 UMI

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[3195-01-M]

Executive Order 12101 • November 17, 1978

Privileges, Immunities and Liability Insurance for Diplomatic Missions and Personnel

By the authority vested in me as President of the United States of America by the Diplomatic Relations Act (Public Law 95-393, 92 Stat. 808; 22 U.S.C. 254a *et seq.*) and Section 301 of Title 3 of the United States Code, in order to implement the liability insurance and other requirements relating to diplomatic personnel, I hereby designate and empower the Secretary of State to perform, without the approval, ratification, or other action of the President, the functions vested or to be vested in the President by Sections 4 and 6 of the Diplomatic Relations Act (92 Stat. 809; 22 U.S.C. 254c and 254c).

Jimmy Carter

THE WHITE HOUSE,
November 17, 1978.

[FR Doc. 78-32799 Filed 11-17-78; 4:24 pm]

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[3195-01-M]

Executive Order 12102 **November 17, 1978**

Trade Committees

By the authority vested in me as President of the United States of America by Section 242 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1872), and Section 411 of the Trade Act of 1974 (19 U.S.C. 2441), in order to adjust the membership of the Trade Policy Committee and the membership of the East-West Foreign Trade Board, it is hereby ordered as follows:

1-101. Executive Order No. 11846, as amended, is further amended as it relates to the membership of the Trade Policy Committee by deleting the following paragraphs in Section 3(a):

"(10) The Assistant to the President for Economic Affairs.

"(11) The Executive Director of the Council on International Economic Policy.";

and substituting therefor:

"(10) The Chairman of the Council of Economic Advisers.

"(11) The Director of the Office of Management and Budget.".

1-102. Executive Order No. 11846, as amended, is further amended as it relates to the membership of the East-West Foreign Trade Board by deleting the following paragraph in Section 7(a):

"(8) The Executive Director of the Council on International Economic Policy.";

and substituting therefor:

"(8) The Chairman of the Council of Economic Advisers.";

and by also deleting:

"(10) The Assistant to the President for Economic Affairs.".

Jimmy Carter

THE WHITE HOUSE,
November 17, 1978.

[FR Doc. 78-32800 Filed 11-17-78; 4:25 pm]

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rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

[3410-30-M]

Title 7—Agriculture

Chapter II—Food and Nutrition Services, Department of Agriculture

[Amdt. No. 138]

PART 271—PARTICIPATION OF STATE AGENCIES AND ELIGIBLE HOUSEHOLDS

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

Food Stamp Program; Maximum Monthly Allowable Income Standards, Basis of Coupon Issuance, and Standard Deduction: 48 States and District of Columbia

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This amendment: (1) Adds appendix A to § 273.10 of the Food Stamp Program Regulations issued pursuant to the Food Stamp Act of 1977. This appendix provides the basis of coupon issuance for the 48 States and the District of Columbia. Semiannual adjustments in the coupon allotments, to reflect food price changes published by the Bureau of Labor Statistics, are required by the Food Stamp Acts of 1964 and 1977. Appendix A provides two tables as some households will be certified under the income definition and benefit provisions of the regulations issued pursuant to the Food Stamp Act of 1964 and other households will be certified under the new eligibility and benefit determination rules promulgated under the Food Stamp Act of 1977; and (2) revises the standard deduction for the 48 States and the District of Columbia appearing in § 273.9(d)(1) of the Food Stamp Program Regulations promulgated under the Food Stamp Act of 1977.

EFFECTIVE DATE: January 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Nancy Snyder, Deputy Administrator for Family Nutrition Programs, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-8982.

SUPPLEMENTARY INFORMATION: On October 17, 1978, the Department published final rulemaking to implement major aspects of the Food Stamp Act of 1977, including the issuance of allotments at no cost and the eligibility criteria. The implementation schedule for the transition to the new allotment and net income calculations is: (1) All States must implement the elimination of the purchase requirement (EPR) effective for all households no later than the January 1, 1979, issuance; (2) States must begin implementing the new eligibility and benefit determination rules no later than March 1, 1979; (3) States may implement EPR earlier than January 1, 1979, provided they begin to convert to the new eligibility and benefit determination rules no later than 3 months from the date they implement EPR; and (4) effective on the first day that the new eligibility and benefit determination rules are applied, those rules must apply to all new applicants and to each household which is recertified. Households certified prior to the first day of the 120-day maxiumum conversion period, but after the effective date for EPR, shall receive the bonus amount provided under the Food Stamp Act of 1964 until recertified or until a desk review is conducted.

Because there will be two methods for computing food stamp eligibility and benefits in effect during the 6-month period beginning January 1, 1979, this appendix appears in two parts. The first part revises the July 1, 1978, maximum allowable income standards and basis of coupon issuance for the 48 States and the District of Columbia which appear as Appendix A to part 271 of the Food Stamp Program Regulations promulgated under the Food Stamp Act of 1964 as amended. Table I indicates the *bonus allotments* households certified under the income definition and benefit provisions of the Food Stamp Act of 1964 will receive at no cost until their eligibility is redetermined under the new program rules. The second part of this appendix contains table II which indicates the monthly coupon allotments households shall receive in the 48 States and the District of Columbia as calculated using the new eligibility and benefit determination rules promulgated under the Food Stamp Act of 1977.

The Food Stamp Acts of 1964 and 1977 require semiannual adjustments in the coupon allotments to reflect food price changes published by the Bureau of Labor Statistics. The Consumer Price Index (CPI) which is used in the 48 States and the District of Columbia to make these adjustments in the coupon allotments is the CPI for Urban Wage Earners and Clerical Workers.

1. Appendix A to Part 271 of the Food Stamp Program Regulations promulgated under the Food Stamp Act of 1964 is revised to read as follows:

Appendix A—Table I—48 States and District of Columbia

Section 7(a) of the Food Stamp Act of 1964, as amended, requires that the value of the coupon allotment be adjusted semiannually by the nearest dollar increment that is a multiple of two to reflect changes in the prices of food published by the Bureau of Labor Statistics. Under this provision, an adjustment based on the cost of the Thrifty Food Plan in September 1978, has been made in the coupon allotments for all households.

The 1973 amendments to the Food Stamp Act of 1964 specified that the first semiannual adjustment be made in January 1974 to reflect changes in food prices through August 1973. Similar procedures have been used for subsequent semiannual adjustments; i.e., the July adjustment based on the cost of the food plan in the preceding February and the January adjustment based on the cost of the food plan in the preceding August. Effective with the July 1978 Basis of Coupon Issuance Tables, the cost of the Thrifty Food Plan was based on more current data—the cost of the plan for March. Likewise, the income standards and coupon allotments to become effective on January 1, 1979, are based on the cost of the Thrifty Food Plan in September 1978.

Households in which all members are included in the federally aided public assistance grant, general assistance grant, or supplemental security income benefit shall be determined to be eligible to participate in the program while receiving such grants without regard to the income and resources of the household members.

The maximum allowable income standards for determining eligibility of all other applicant households, including those in which some members are recipients of federally aided public assistance, general assistance, or supplemental security income benefit, in any State (other than Alaska, Hawaii, Puerto Rico, Guam, or the Virgin Islands) or in the District of Columbia shall be as follows:

Household size:	Maximum Allowable Monthly Income Standards—48 States and D.C.
1	[1]279
2	367
3	507
4	640
5	760
6	913
7	1,007
8	1,153
Each additional member	+147

[1]1978 USDA poverty guideline.

"Income" as the term is used in this table is as defined in § 271.3(c) of the Food Stamp Program Regulations in effect until implementation of the provisions of § 273.9 of the Food Stamp Program Regulations promulgated under the Food Stamp Act of 1977.

Pursuant to sections 7 (a) and (b) of the Food Stamp Act of 1964, as amended (7 U.S.C. 2016, Pub. L. 91-671), the face value of the monthly coupon allotment which State agencies are authorized to issue to any household certified as eligible to participate in the Program in the 48 States and the District of Columbia shall be:

[3410-30-C]

January 1, 1979 - Basis of Coupon Issuance - 1964 Act
48 States and District of Columbia

TABLE I

Monthly Net Income	Bonus by Household Size							
	One Person	Two Persons	Three Persons	Four Persons	Five Persons	Six Persons	Seven Persons	Eight Persons
0 - 19.99	58.00	106.00	152.00	192.00	228.00	274.00	302.00	346.00
20 - 29.99	57.00	105.00	152.00	192.00	228.00	274.00	302.00	346.00
30 - 39.99	54.00	102.00	148.00	188.00	223.00	269.00	297.00	341.00
40 - 49.99	52.00	99.00	145.00	185.00	220.00	266.00	294.00	338.00
50 - 59.99	50.00	96.00	142.00	182.00	217.00	263.00	290.00	334.00
60 - 69.99	48.00	94.00	139.00	179.00	214.00	260.00	287.00	330.00
70 - 79.99	46.00	91.00	136.00	176.00	211.00	257.00	284.00	327.00
80 - 89.99	44.00	88.00	133.00	173.00	208.00	253.00	281.00	324.00
90 - 99.99	42.00	85.00	131.00	170.00	205.00	250.00	277.00	320.00
100 - 109.99	40.00	83.00	128.00	167.00	202.00	247.00	274.00	317.00
110 - 119.99	37.00	80.00	125.00	164.00	199.00	243.00	270.00	313.00
120 - 129.99	34.00	77.00	122.00	161.00	195.00	240.00	267.00	310.00
130 - 139.99	31.00	74.00	119.00	158.00	192.00	237.00	264.00	307.00
140 - 149.99	28.00	71.00	116.00	155.00	189.00	234.00	261.00	304.00
150 - 169.99	25.00	68.00	112.00	151.00	186.00	231.00	258.00	301.00
170 - 189.99	19.00	62.00	106.00	145.00	180.00	225.00	252.00	295.00
190 - 209.99	13.00	56.00	100.00	139.00	174.00	219.00	246.00	289.00
210 - 229.99	10.00	50.00	94.00	133.00	168.00	213.00	240.00	283.00
230 - 249.99	10.00	44.00	88.00	127.00	162.00	207.00	234.00	277.00
250 - 269.99	10.00	38.00	82.00	121.00	156.00	201.00	228.00	271.00
270 - 289.99	10.00	32.00	76.00	115.00	150.00	195.00	222.00	265.00
290 - 309.99		26.00	70.00	109.00	144.00	189.00	216.00	259.00
310 - 329.99		20.00	64.00	103.00	138.00	183.00	210.00	253.00
330 - 359.99		20.00	58.00	97.00	132.00	177.00	204.00	247.00
360 - 389.99		20.00	49.00	88.00	123.00	168.00	195.00	238.00

January 1, 1979 - Basis of Coupon Issuance - 1964 Act
48 States and District of Columbia

TABLE I

Monthly Net Income	Bonus by Household Size						
	One Person	Two Persons	Three Persons	Four Persons	Five Persons	Six Persons	Seven Persons	Eight Persons
390 - 419.99			40.00	79.00	114.00	159.00	186.00	229.00
420 - 449.99			31.00	70.00	105.00	150.00	177.00	220.00
450 - 479.99			22.00	61.00	96.00	141.00	168.00	211.00
480 - 509.99			18.00	52.00	87.00	132.00	159.00	202.00
510 - 539.99				43.00	78.00	123.00	150.00	193.00
540 - 569.99				34.00	69.00	114.00	141.00	184.00
570 - 599.99				25.00	60.00	105.00	132.00	175.00
600 - 629.99				24.00	51.00	96.00	123.00	166.00
630 - 659.99				24.00	42.00	87.00	114.00	157.00
660 - 689.99					33.00	78.00	105.00	148.00
690 - 719.99					28.00	69.00	96.00	139.00
720 - 749.99					28.00	60.00	87.00	130.00
750 - 779.99					28.00	51.00	78.00	121.00
780 - 809.99						42.00	69.00	112.00
810 - 839.99						33.00	60.00	103.00
840 - 869.99						32.00	51.00	94.00
870 - 899.99						32.00	42.00	85.00
900 - 929.99						32.00	36.00	76.00
930 - 959.99							36.00	67.00
960 - 989.99							36.00	58.00
990 - 1,019.99							36.00	49.00
1,020 - 1,049.99								40.00
1,050 - 1,079.99								40.00
1,080 - 1,109.99								40.00
1,110 - 1,139.99								40.00
1,140 - and up								

FOR ISSUANCE TO HOUSEHOLDS OF MORE THAN EIGHT PERSONS USE THE FOLLOWING FORMULA

Because the Department recognizes the complexity of the methodology involved in preparing tables for households with more than 8 persons, extended tables for households with up to 20 persons will soon be provided to the State agencies.

A. *Value of the total allotment.* For each person in excess of eight, add $44 to the monthly coupon allotment of $346, which is the maximum bonus for eight-person households.

B. *Monthly net income.* For households of more than eight persons, it will be necessary to add on to each of the last monthly net income increments to reflect the maximum allowable income that is applicable to that size household. To do this, add $30 to 1,139.99 and $30 to 1,140 to obtain 1,169.99 and 1,170 and continue this addition process until you reach the income increment which contains the new maximum allowable net income figure applicable to that size household.

C. *Bonus allotments.* To determine the bonus allotments to be issued to households of more than eight persons, refer to the July 1978 basis of coupon issuance tables. It will be necessary to:

1. Compute the maximum monthly benefit reduction (in the July tables, this is the maximum purchase requirement) for households of more than eight persons. The maximum monthly benefit reduction for a household of nine is $346. Add $40 for each person over nine to obtain the maximum benefit reduction for that size household.

2. Refer to the July 1978 basis of coupon issuance tables for 9 through 20 person households. The maximum monthly benefit reduction obtained in the previous step for the appropriate size household should be placed at the bottom of the monthly purchase requirement column on the July tables for that size household. This is the new maximum monthly benefit reduction applicable to households whose net income is the maximum allowable for their particular household size.

3. Find the place near the bottom of each column of the July tables for households in excess of eight where the increase in purchase requirements from one $30 income bracket to the next is less than $9. (Normally, the benefit reduction goes up $9 for every $30 in income.) From that point until the bottom of the column for each household size, replace the purchase requirements in the July tables with the following computation: For each new $30 income bracket, add $9 to the monthly benefit reduction. However, when the benefit reduction reaches the maximum benefit reduction for that household size (as computed in step No. 1), use the maximum benefit reduction instead.

4. Determine the bonus allotments to be issued to households of more than eight persons, by subtracting the benefit reductions obtained for each household size and income increment from the total food stamp allotment.

2. Appendix A is added to § 273.10 of the Food Stamp Program Regulations promulgated under the Food Stamp Act of 1977 to read as follows:

APPENDIX A—TABLE II—48 STATES AND DISTRICT OF COLUMBIA

Section 3(o) of the Food Stamp Act of 1977 requires that the value of the Thrifty Food Plan be adjusted semiannually to the nearest dollar increment to reflect changes in its cost for the 6 months ending the preceding September 30 and March 31, respectively. Under this provision an adjustment based on the cost of the Thrifty Food Plan in September has been made in the coupon allotments for all households.

The maximum allowable income standards for determining eligibility of all households, *including* those in which all members are included in the federally aided public assistance grant, general assistance grant, or supplemental security income benefit, in the 48 States and the District of Columbia appear in Appendix A to § 273.9. However, to assure clarity and prevent misunderstandings and errors, these standards are also reflected below:

Household size:	Maximum Allowable Monthly Income Standards[1] 48 States and D.C.
1	$277
2	365
3	454
4	542
5	630
6	719
7	807
8	895
Each additional member	+89

[1]Office of Management and Budget (OMB) Nonfarm Income Poverty Guideline.

"Income" as the term is used in the notice is as defined in § 273.9(b) of the Food Stamp Program Regulations promulgated under the Food Stamp Act of 1977.

Pursuant to section 8(a) of the Food Stamp Act of 1977 (7 U.S.C. 2017, Title XIII of Pub. L. 95-113), the value of the allotment which State agencies are authorized to issue to any household certified as eligible to participate in the Food Stamp Program in the 48 States and the District of Columbia shall be:

[3410-30-C]

January 1, 1979 - Basis of Issuance - 1977 Act
48 States and District of Columbia

TABLE II

Monthly Net Income	Coupon Allotments by Household Size							
	One Person	Two Persons	Three Persons	Four Persons	Five Persons	Six Persons	Seven Persons	Eight Persons
0 - 3	57	105	150	191	227	272	301	344
4 - 6	56	104	149	190	226	271	300	343
7 - 9	55	103	148	189	225	270	299	342
10 - 13	54	102	147	188	224	269	298	341
14 - 16	53	101	146	187	223	268	297	340
17 - 19	52	100	145	186	222	267	296	339
20 - 23	51	99	144	185	221	266	295	338
24 - 26	50	98	143	184	220	265	294	337
27 - 29	49	97	142	183	219	264	293	336
30 - 33	48	96	141	182	218	263	292	335
34 - 36	47	95	140	181	217	262	291	334
37 - 39	46	94	139	180	216	261	290	333
40 - 43	45	93	138	179	215	260	289	332
44 - 46	44	92	137	178	214	259	288	331
47 - 49	43	91	136	177	213	258	287	330
50 - 53	42	90	135	176	212	257	286	329
54 - 56	41	89	134	175	211	256	285	328
57 - 59	40	88	133	174	210	255	284	327
60 - 63	39	87	132	173	209	254	283	326
64 - 66	38	86	131	172	208	253	282	325
67 - 69	37	85	130	171	207	252	281	324
70 - 73	36	84	129	170	206	251	280	323
74 - 76	35	83	128	169	205	250	279	322
77 - 79	34	82	127	168	204	249	278	321
80 - 83	33	81	126	167	203	248	277	320

January 1, 1979 - Basis of Issuance - 1977 Act
48 States and District of Columbia

TABLE II

Monthly Net Income	Coupon Allotments by Household Size							
	One Person	Two Persons	Three Persons	Four Persons	Five Persons	Six Persons	Seven Persons	Eight Persons
84 - 86	32	80	125	166	202	247	276	319
87 - 89	31	79	124	165	201	246	275	318
90 - 93	30	78	123	164	200	245	274	317
94 - 96	29	77	122	163	199	244	273	316
97 - 99	28	76	121	162	198	243	272	315
100 - 103	27	75	120	161	197	242	271	314
104 - 106	26	74	119	160	196	241	270	313
107 - 109	25	73	118	159	195	240	269	312
110 - 113	24	72	117	158	194	239	268	311
114 - 116	23	71	116	157	193	238	267	310
117 - 119	22	70	115	156	192	237	266	309
120 - 123	21	69	114	155	191	236	265	308
124 - 126	20	68	113	154	190	235	264	307
127 - 129	19	67	112	153	189	234	263	306
130 - 133	18	66	111	152	188	233	262	305
134 - 136	17	65	110	151	187	232	261	304
137 - 139	16	64	109	150	186	231	260	303
140 - 143	15	63	108	149	185	230	259	302
144 - 146	14	62	107	148	184	229	258	301
147 - 149	13	61	106	147	183	228	257	300
150 - 153	12	60	105	146	182	227	256	299
154 - 156	11	59	104	145	181	226	255	298
157 - 159	10	58	103	144	180	225	254	297
160 - 163	10	57	102	143	179	224	253	296
164 - 166	10	56	101	142	178	223	252	295

January 1, 1979 - Basis of Issuance - 1977 Act
48 States and District of Columbia

TABLE II

Monthly Net Income	Coupon Allotments by Household Size							
	One Person	Two Persons	Three Persons	Four Persons	Five Persons	Six Persons	Seven Persons	Eight Persons
167 - 169	10	55	100	141	177	222	251	294
170 - 173	10	54	99	140	176	221	250	293
174 - 176	10	53	98	139	175	220	249	292
177 - 179	10	52	97	138	174	219	248	291
180 - 183	10	51	96	137	173	218	247	290
184 - 186	10	50	95	136	172	217	246	289
187 - 189	10	49	94	135	171	216	245	288
190 - 193	10	48	93	134	170	215	244	287
194 - 196	10	47	92	133	169	214	243	286
197 - 199	10	46	91	132	168	213	242	285
200 - 203	10	45	90	131	167	212	241	284
204 - 206	10	44	89	130	166	211	240	283
207 - 209	10	43	88	129	165	210	239	282
210 - 213	10	42	87	128	164	209	238	281
214 - 216	10	41	86	127	163	208	237	280
217 - 219	10	40	85	126	162	207	236	279
220 - 223	10	39	84	125	161	206	235	278
224 - 226	10	38	83	124	160	205	234	277
227 - 229	10	37	82	123	159	204	233	276
230 - 233	10	36	81	122	158	203	232	275
234 - 236	10	35	80	121	157	202	231	274
237 - 239	10	34	79	120	156	201	230	273
240 - 243	10	33	78	119	155	200	229	272
244 - 246	10	32	77	118	154	199	228	271
247 - 249	10	31	76	117	153	198	227	270

January 1, 1979 - Basis of Issuance - 1977 Act
48 States and District of Columbia

TABLE II

Monthly Net Income	Coupon Allotments by Household Size							
	One Person	Two Persons	Three Persons	Four Persons	Five Persons	Six Persons	Seven Persons	Eight Persons
250 - 253	10	30	75	116	152	197	226	269
254 - 256	10	29	74	115	151	196	225	268
257 - 259	10	28	73	114	150	195	224	267
260 - 263	10	27	72	113	149	194	223	266
264 - 266	10	26	71	112	148	193	222	265
267 - 269	10	25	70	111	147	192	221	264
270 - 273	10	24	69	110	146	191	220	263
274 - 276	10	23	68	109	145	190	219	262
277 - 279	10	22	67	108	144	189	218	261
280 - 283		21	66	107	143	188	217	260
284 - 286		20	65	106	142	187	216	259
287 - 289		19	64	105	141	186	215	258
290 - 293		18	63	104	140	185	214	257
294 - 296		17	62	103	139	184	213	256
297 - 299		16	61	102	138	183	212	255
300 - 303		15	60	101	137	182	211	254
304 - 306		14	59	100	136	181	210	253
307 - 309		13	58	99	135	180	209	252
310 - 313		12	57	98	134	179	208	251
314 - 316		11	56	97	133	178	207	250
317 - 319		10	55	96	132	177	206	249
320 - 323		10	54	95	131	176	205	248
324 - 326		10	53	94	130	175	204	247
327 - 329		10	52	93	129	174	203	246
330 - 333		10	51	92	128	173	202	245

RULES AND REGULATIONS

FEDERAL REGISTER, VOL. 43, NO. 225—TUESDAY, NOVEMBER 21, 1978

January 1, 1979 - Basis of Issuance - 1977 Act
48 States and District of Columbia

TABLE II

Monthly Net Income	Coupon Allotments by Household Size							
	One Person	Two Persons	Three Persons	Four Persons	Five Persons	Six Persons	Seven Persons	Eight Persons
334 - 336		10	50	91	127	172	201	244
337 - 339		10	49	90	126	171	200	243
340 - 343		10	48	89	125	170	199	242
344 - 346		10	47	88	124	169	198	241
347 - 349		10	46	87	123	168	197	240
350 - 353		10	45	86	122	167	196	239
354 - 356		10	44	85	121	166	195	238
357 - 359		10	43	84	120	165	194	237
360 - 363		10	42	83	119	164	193	236
364 - 366		10	41	82	118	163	192	235
367 - 369			40	81	117	162	191	234
370 - 373			39	80	116	161	190	233
374 - 376			38	79	115	160	189	232
377 - 379			37	78	114	159	188	231
380 - 383			36	77	113	158	187	230
384 - 386			35	76	112	157	186	229
387 - 389			34	75	111	156	185	228
390 - 393			33	74	110	155	184	227
394 - 396			32	73	109	154	183	226
397 - 399			31	72	108	153	182	225
400 - 403			30	71	107	152	181	224
404 - 406			29	70	106	151	180	223
407 - 409			28	69	105	150	179	222
410 - 413			27	68	104	149	178	221
414 - 416			26	67	103	148	177	220

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48 States and District of Columbia

TABLE II

Monthly Net Income	Coupon Allotments by Household Size							
	One Person	Two Persons	Three Persons	Four Persons	Five Persons	Six Persons	Seven Persons	Eight Persons
417 - 419			25	66	102	147	176	219
420 - 423			24	65	101	146	175	218
424 - 426			23	64	100	145	174	217
427 - 429			22	63	99	144	173	216
430 - 433			21	62	98	143	172	215
434 - 436			20	61	97	142	171	214
437 - 439			19	60	96	141	170	213
440 - 443			18	59	95	140	169	212
444 - 446			17	58	94	139	168	211
447 - 449			16	57	93	138	167	210
450 - 453			15	56	92	137	166	209
454 - 456			14	55	91	136	165	208
457 - 459				54	90	135	164	207
460 - 463				53	89	134	163	206
464 - 466				52	88	133	162	205
467 - 469				51	87	132	161	204
470 - 473				50	86	131	160	203
474 - 476				49	85	130	159	202
477 - 479				48	84	129	158	201
480 - 483				47	83	128	157	200
484 - 486				46	82	127	156	199
487 - 489				45	81	126	155	198
490 - 493				44	80	125	154	197
494 - 496				43	79	124	153	196
497 - 499				42	78	123	152	195

January 1, 1979 - Basis of Issuance - 1977 Act
48 States and District of Columbia

TABLE II

Monthly Net Income	Coupon Allotments by Household Size							
	One Person	Two Persons	Three Persons	Four Persons	Five Persons	Six Persons	Seven Persons	Eight Persons
500 - 503				41	77	122	151	194
504 - 506				40	76	121	150	193
507 - 509				39	75	120	149	192
510 - 513				38	74	119	148	191
514 - 516				37	73	118	147	190
517 - 519				36	72	117	146	189
520 - 523				35	71	116	145	188
524 - 526				34	70	115	144	187
527 - 529				33	69	114	143	186
530 - 533				32	68	113	142	185
534 - 536				31	67	112	141	184
537 - 539				30	66	111	140	183
540 - 543				29	65	110	139	182
544 - 546					64	109	138	181
547 - 549					63	108	137	180
550 - 553					62	107	136	179
554 - 556					61	106	135	178
557 - 559					60	105	134	177
560 - 563					59	104	133	176
564 - 566					58	103	132	175
567 - 569					57	102	131	174
570 - 573					56	101	130	173
574 - 576					55	100	129	172
577 - 579					54	99	128	171
580 - 583					53	98	127	170

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48 States and District of Columbia

TABLE II

Monthly Net Income	Coupon Allotments by Household Size							
	One Person	Two Persons	Three Persons	Four Persons	Five Persons	Six Persons	Seven Persons	Eight Persons
584 - 586					52	97	126	169
587 - 589					51	96	125	168
590 - 593					50	95	124	167
594 - 596					49	94	123	166
597 - 599					48	93	122	165
600 - 603					47	92	121	164
604 - 606					46	91	120	163
607 - 609					45	90	119	162
610 - 613					44	89	118	161
614 - 616					43	88	117	160
617 - 619					42	87	116	159
620 - 623					41	86	115	158
624 - 626					40	85	114	157
627 - 629					39	84	113	156
630 - 633					38	83	112	155
634 - 636						82	111	154
637 - 639						81	110	153
640 - 643						80	109	152
644 - 646						79	108	151
647 - 649						78	107	150
650 - 653						77	106	149
654 - 656						76	105	148
657 - 659						75	104	147
660 - 663						74	103	146
664 - 666						73	102	145

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48 States and District of Columbia

TABLE II

Monthly Net Income	Coupon Allotments by Household Size							
	One Person	Two Persons	Three Persons	Four Persons	Five Persons	Six Persons	Seven Persons	Eight Persons
667 - 669						72	101	144
670 - 673						71	100	143
674 - 676						70	99	142
677 - 679						69	98	141
680 - 683						68	97	140
684 - 686						67	96	139
687 - 689						66	95	138
690 - 693						65	94	137
694 - 696						64	93	136
697 - 699						63	92	135
700 - 703						62	91	134
704 - 706						61	90	133
707 - 709						60	89	132
710 - 713						59	88	131
714 - 716						58	87	130
717 - 719						57	86	129
720 - 723							85	128
724 - 726							84	127
727 - 729							83	126
730 - 733							82	125
734 - 736							81	124
737 - 739							80	123
740 - 743							79	122
744 - 746							78	121
747 - 749							77	120

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48 States and District of Columbia

TABLE II

Monthly Net Income	Coupon Allotments by Household Size							
	One Person	Two Persons	Three Persons	Four Persons	Five Persons	Six Persons	Seven Persons	Eight Persons
750 - 753							76	119
754 - 756							75	118
757 - 759							74	117
760 - 763							73	116
764 - 766							72	115
767 - 769							71	114
770 - 773							70	113
774 - 776							69	112
777 - 779							68	111
780 - 783							67	110
784 - 786							66	109
787 - 789							65	108
790 - 793							64	107
794 - 796							63	106
797 - 799							62	105
800 - 803							61	104
804 - 806							60	103
807 - 809							59	102
810 - 813								101
814 - 816								100
817 - 819								99
820 - 823								98
824 - 826								97
827 - 829								96
830 - 833								95

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TABLE II

January 1, 1979 - Basis of Issuance - 1977 Act
48 States and District of Columbia

Monthly Net Income	Coupon Allotments by Household Size							
	One Person	Two Persons	Three Persons	Four Persons	Five Persons	Six Persons	Seven Persons	Eight Persons
834 - 836								94
837 - 839								93
840 - 843								92
844 - 846								91
847 - 849								90
850 - 853								89
854 - 856								88
857 - 859								87
860 - 863								86
864 - 866								85
867 - 869								84
870 - 873								83
874 - 876								82
877 - 879								81
880 - 883								80
884 - 886								79
887 - 889								78
890 - 893								77
894 - 896								76

FOR ISSUANCE TO HOUSEHOLDS OF MORE THAN EIGHT PERSONS USE THE FOLLOWING FORMULA:

A. *Value of the Thrifty Food Plan.* For each person in excess of eight, add $43 to the monthly Thrifty Food Plan for an eight-person household.

B. *Benefit determination without the tables.* To determine the benefit households shall receive:

1. Multiply the household's net monthly income by 30 percent and round by dropping all cents.

2. Subtract the result obtained in step 1 from the Thrifty Food Plan for that size household.

C. *Benefit determination with the tables.* For households of more than eight persons, it will be necessary to add on to the last monthly net income groupings to reach the maximum allowable income that is applicable to that size household. To do this, note that the monthly net income groupings follow a $3 bracket, $3 bracket, $4 bracket pattern that does not vary. Add below the 894-896 income grouping a new grouping for 897-899 (a $3 bracket) and another new income grouping for 900-903 (a $4 bracket). Then, follow the $3 bracket, $3 bracket, $4 bracket pattern continuously until the maximum monthly net income applicable to that size household is reached.

SEMIANNUAL ADJUSTMENT OF STANDARD DEDUCTION—48 STATES AND DISTRICT OF COLUMBIA

Section 5(e) of the Food Stamp Act of 1977 provides that a standard deduction shall be used in computing household income. Such standard deduction shall be adjusted every July 1 and January 1 to the nearest $5 for the 6 months ending the preceding March 31 and September 30, respectively, to reflect changes in the Consumer Price Index (CPI) for items other than food. In accordance with this law, the Department has determined that effective January 1, 1979, the standard deduction for the 48 States and the District of Columbia will be $65.

3. Accordingly, § 273.9(d)(1) of the Food Stamp Program Regulations promulgated under the Food Stamp Act of 1977 is revised by changing $60 to $65 in the first sentence as follows:

§ 273.9 Income and deductions.

* * * * *

(d) * * *

(1) *Standard deduction.* A standard deduction of $65 per household per month for the 48 contiguous States and the District of Columbia * * *

* * * * *

NOTE.—The Food and Nutrition Service has determined that this document contains a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A-107 and certifies that an Economic Impact Statement has been prepared.

In view of the need for placing this notice into effect January 1, 1979, and the lead-time needed by State agencies for implementation, it is hereby determined that it is impracticable and contrary to the public interest to give notice of proposed rulemaking with respect to this notice.

(Catalog of Federal Domestic Assistance, No. 10.551, Food Stamps.)

Dated: November 16, 1978.

CAROL TUCKER FOREMAN,
Assistant Secretary.

[FR Doc. 78-32697 Filed 11-20-78; 8:45 am]

[3410-30-M]

PART 282—DEMONSTRATION, RESEARCH, AND EVALUATION PROJECTS

Food Stamp Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule is a republication of the final rules governing the Department's authority for conducting demonstration, research, and evaluation projects, which were originally published September 1, 1978. Minor technical changes are herein being made to these rules for the purposes of clarity and the citing of certain pertinent governmental circulars.

EFFECTIVE DATE: Part 282 took effect on September 1, 1978, these changes take effect on November 21, 1978.

FOR FURTHER INFORMATION CONTACT:

Nancy Snyder, Deputy Administrator, Family Nutrition Programs, Food and Nutrition Service, USDA, Washington, D.C. 20250, 202-447-8982.

SUPPLEMENTARY INFORMATION: On September 1, 1978, the Department published final rules governing demonstration, research, and evaluation projects to be conducted under the authority established in section 17 of the Food Stamp Act of 1977. Subsequent to publication, it was determined that it would be expedient to establish the applicability of certain governmental circulars in the general regulations rather than citing their usage for each specific project undertaken by the Department. Further, it was determined by the Department that certain provisions required clarification to avoid any ambiguity in the mind of the reader. Accordingly, the following changes have been made.

§ 282.2 *Project initiation.* This paragraph has been modified to clarify that the Secretary will seek grant proposals, as appropriate, through publication of a notice of intent in the FEDERAL REGISTER. Contract proposals will be sought in accordance with the Federal procurement regulations.

§ 282.3 *Eligibility.* An additional sentence has been added to cite the applicability of Office of Management and Budget (OMB) Circular A-102 and Federal Management Circular (FMC) 74-4 to grants made under this authority.

§ 282.4 *Approval of proposals.* A new (a), Presubmission proposal review, has been added to establish the use of OMB Circular A-102 application procedures and to reflect the need for State review of project suggestions and proposals when they have a significant impact on normal ongoing program activities.

The Department has determined that notice and comment rulemaking is unnecessary due to the technical nature of these changes.

PART 282—DEMONSTRATION, RESEARCH, AND EVALUATION PROJECTS

Sec.
282.1 Legislative authority.
282.2 Project initiation.
282.3 Eligibility.
282.4 Approval of proposals.
282.5 Preoperational rulemaking procedures for demonstration projects.
282.6 Federal financial participation.

AUTHORITY: 91 Stat. 958 (7 U.S.C. 2011-2027).

§ 282.1 Legislative authority.

(a) *Demonstration projects.* Demonstration projects are those authorized by section 17(b)(1) of the Act which states in part: The Secretary is authorized to conduct on a trial basis, in one or more areas of the United States, pilot or experimental projects (hereafter called demonstration projects) designed to test program changes that might increase the efficiency of the food stamp program and improve the delivery of food stamp benefits to eligible households. The Secretary is further authorized to waive all or part of the requirements of the Act and implementing regulations to the degree necessary to conduct such projects, except that no project may be undertaken which would lower or further restrict the established income and resource standards or benefit levels.

(b) *Research projects.* Research projects are these authorized by section 17(a) of the Act which states: The Secretary may, by way of making con-

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tracts with or grants to public or private organizations or agencies, undertake research that will help improve the administration and effectiveness of the food stamp program in delivering nutrition related benefits.

(c) *Evaluation projects.* Evaluation projects are those authorized by section 17(c) of the Act which states in part: The Secretary shall develop and implement measures for evaluating, on an annual or more frequent basis, the effectiveness of the food stamp program in achieving its stated objectives.

§ 282.2 Project initiation.

The Secretary shall determine those areas of program operations which require demonstration, research, or evaluation efforts. In making these determinations, the Secretary shall consider suggestions submitted by State and local agencies and other interested parties. The Secretary shall, as appropriate, seek grant proposals, through publication of a notice of intent in the FEDERAL REGISTER, or contract proposals, in accordance with the procedures prescribed in the Federal procurement regulations. (41 CFR, Ch. 1.)

§ 282.3 Eligibility.

States or public or other nonprofit agencies or organizations or individuals are eligible for grants. Grants shall be subject to the appropriate provisions established in the Office of Management and Budget (OMB) Circular A-102, Uniform Administrative Requirements for Grants-In-Aid to State and Local Governments and Federal Management Circular (FMC) 74-4, Cost Principles Applicable to Grants and Contracts With State and Local Governments. States or public or private agencies or organizations or individuals are eligible for contracts.

§ 282.4 Approval of proposals.

(a) *Presubmission proposal review.* All suggestions for project operations and formal proposals for such operations shall be subject to the application procedures contained in OMB Circular A-102. If projects will have a significant impact on normal ongoing program activities, such suggestions or proposals shall be reviewed in accordance with the procedures established in OMB Circular A-95, Evaluation, Review and Coordination of Federal and Federally Assisted Programs and Projects.

(b) *Federal procedures.* (1) Proposals for demonstration, research, or evaluation projects shall be reviewed by a panel consisting of appropriate FNS and departmental representatives.

(2) Representatives from other Departments and agencies may be invited to participate in proposal review where proposed projects could affect their programs.

(3) Proposals shall be ranked based on the criteria established in paragraph (c) of this section.

(c) *Approval criteria.* (1) Proposals shall be reviewed for responsiveness to the specific requirements contained in the notice of intent or request for proposal.

(2) In addition, proposals will be evaluated according to the following general criteria:

(i) The conceptual development and clarity of measurable objectives.

(ii) Probable effectiveness of the proposal to achieve the project objectives based on:

(A) A complete description of the purpose, hypotheses, demonstration, research or evaluation design, and plans for implementation;

(B) The adequacy of the work plan, indicating tasks, scheduling, and methodology; and

(C) A technical evaluation plan consistent with the objectives stated.

(iii) The capability of the applicant to conduct the project based on:

(A) A description of the qualifications of staff;

(B) Availability of necessary facilities, staff, and other resources;

(C) Administrative and supervisory capacity; and

(D) Knowledge of or previous experience in conducting demonstration, research, or evaluation projects.

(iv) The projected cost of the project.

(v) For demonstration projects, potential benefits in relation to projected costs and potential nationwide application.

(vi) The relationship of the proposal to other similar demonstration, research, or evaluation efforts.

§ 282.5 Preoperational rulemaking procedures for demonstration projects.

Prior to the initiation of a demonstration project, FNS shall publish proposed regulations in the FEDERAL REGISTER if the proposal will likely have significant impact on the public. The regulations shall set forth the specific operational procedures for the demonstration project and the provisions of the Act and regulations which shall be waived. All public comments received shall be considered and final regulations published prior to actual project operation.

§ 282.6 Federal financial participation.

(a) *Level of funding.*

(1) *Grant awards.* FNS shall pay all costs up to the level established in the grant award. When a demonstration project involves an area of ongoing State agency administrative responsibility, as established in § 271.4(a), FNS may pay up to 100 percent only of those administrative costs which exceed those usual and customary to program operations.

(2) *Contracts.* FNS shall pay all costs as established in the terms and conditions of the contract.

(3) *Additional funding.* The awarding of any funding for additional costs incurred when necessary to the successful completion of a project shall be subject to existing Federal grant and contracting procedures.

(b) *Limitations.* Federal financial participation shall be available to demonstration, research, and evaluation projects only for:

(1) Those activities and projects awarded by FNS. Funds shall not be transferred from one project to another;

(2) Those costs specified in the grant or contract up to the amount approved in the grant or contract; and

(3) Costs incurred during the project, as established in the grant or contract. Time extensions of the project may be granted where sufficient justification has been submitted to and approved by FNS.

NOTE.—The Food and Nutrition Service has determined that this document does not contain a major proposal requiring preparation of an economic impact statement under Executive Order 11821 and OMB Circular A-107.

Dated: November 14, 1978.

CAROL TUCKER FOREMAN,
Assistant Secretary.

[FR Doc. 78-32618 Filed 11-20-78; 8:45 am]

[3410-05-M]

CHAPTER VII—AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE (AGRICULTURAL ADJUSTMENT), DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

PART 722—COTTON

Subpart—1979 Crop of Extra Long Staple Cotton; Acreage Allotments and Marketing Quotas

AGENCY: Agricultural Stabilization and Conservation Service, Department of Agriculture.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to establish State reserves, allocate State reserves to counties and establish county allotments for the 1979 crop of extra long staple cotton (referred to as "ELS" cotton). The need for this rule is to satisfy the statutory requirements of the Agricultural Adjustment Act of 1938, as amended.

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EFFECTIVE DATE: November 20, 1978.

ADDRESS: Production Adjustment Division, ASCS, USDA, 3630 South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT:

Charles V. Cunningham (ASCS), 202-447-7873.

SUPPLEMENTARY INFORMATION: A notice that the Secretary of Agriculture was preparing to establish 1979 State and county ELS cotton allotments was published in the FEDERAL REGISTER on August 8, 1978 (43 FR 35053), in accordance with 5 U.S.C. 553. No comments or recommendations were received concerning these determinations.

Determinations with respect to 1979 State reserves and allocation of State reserves to counties were made initially by the respective State committees and are hereby approved and made effective by the Administrator, ASCS, pursuant to delegated authority (35 FR 19798, 36 FR 6907, 37 FR 624, 3845, 22008, 40 FR 18815, and 43 FR 51434).

In order that farmers may be informed of 1979 farm allotments as soon as possible so that they may make plans accordingly, it is essential that these provisions be made effective as soon as possible. Accordingly, it is hereby found and determined that compliance with the 30-day effective date requirement of 5 U.S.C. 553 is impracticable and contrary to the public interest. Therefore, this amendment to 7 CFR 722.562 shall become effective upon the filing of this document with the Director, Office of the Federal Register, with respect to the 1979 crop of ELS cotton. The material previously appearing in this section as "Subpart—1978 Crop of Extra Long Staple Cotton; Acreage Allotments and Marketing Quotas" remains in full force and effect as to the crop to which it was applicable.

Accordingly, 7 CFR 722.562 is amended to read as follows:

FINAL RULE

§ 722.562 State reserves and county allotments for the 1979 crop of extra long staple cotton.

(a) *State reserves.* The State reserves for each State shall be established and allocated among uses for the 1979 crop of extra long staple cotton pursuant to § 722.508. It is hereby determined that no State reserve is required for abnormal conditions, inequities and hardships, or small farms. A reserve of 8.6 acres for trend adjustments was held in Arizona.

The amount of the State reserve held in each State and the amount of allotment in the State productivity pool resulting from productivity adjustments under § 722.529 (c) and (d) is available for inspection at each State ASCS office.

(b) *County allotments.* County allotments are established for the 1979 crop of extra long staple cotton in accordance with § 722.509. The amount of the State allotment apportioned to counties is available for inspection at the respective State and county ASCS offices.

(Secs. 344, 347, 375, 63 Stat. 670, as amended, 675, as amended, 52 Stat. 66, as amended (7 U.S.C. 1344, 1347, 1375).)

NOTE.—The Agricultural Stabilization and Conservation Service has determined that this document does contain a major proposal requiring preparation of an Impact Analysis Statement. The Impact Analysis Statement is available from Charles V. Cunningham, ASCS, 202-447-7873.

Signed at Washington, D.C. on November 15, 1978.

RAY FITZGERALD,
Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 78-32598 Filed 11-20-78; 8:45 am]

[3410-02-M]

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Subpart—Rules and Regulations

SPECIAL PURPOSE SHIPMENTS

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amendment to final rule.

SUMMARY: This amendment established lower grade requirements applicable to the handling of "organically produced" fresh Florida citrus fruits. Requirements applicable to the handling of such citrus recognize cultural practices employed in the production of such fruit and the outlets to which such fruit is shipped.

EFFECTIVE DATE: November 16, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: *Findings.* (1) Pursuant to the marketing agreement and order No. 905, both as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the recommendations of the committee established under the marketing agreement and order, and upon other available information, it is found that amendment of subpart — rules and regulations (§§ 905.120-905.148), as hereinafter set forth, is in accordance with the provisions of the order and will tend to effectuate the declared policy of the act.

Section 905.146 specifies, in part, that as a condition to the shipment of "organically produced" citrus fruit (fruit that the shipper certifies has been produced on trees on which only compost, nonacidulated fertilizer such as rock phosphate, dolomite or ground limestone were used and to which no chemical insecticide or fungicide had been applied), such fruit must, in addition to procedures and safeguards specified in that section, meet applicable quality requirements recommended by the committee and approved by the Secretary. Currently, citrus fruit regulated under this marketing order which is shipped from the production area must grade at least U.S. No. 1 (except seedless grapefruit must grade at least U.S. Improved No. 2). However, the different cultural practices used to produce "organically grown" citrus fruit result in fruit that generally will not meet these grade requirements. Therefore, this action established appropriate grade requirements for such fruit in recognition of the quality of fruit produced under the cultural practices employed and the specific demand in outlets to which such fruit is shipped.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this action is based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the amendment at an open meeting, and the amendment relieves restrictions on special purpose shipments of Florida oranges, grapefruit, tangerines, and tangelos. It is necessary to effectuate the declared purposes of the act to make these provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

Therefore, in § 905.146 (43 FR 9455) paragraph (a) and the sentence immediately preceding paragraph (a) are

deleted and the following is inserted in lieu thereof:

§ 905.146 Special purpose shipments.

* * * * *

Citrus meeting all other applicable requirements may be handled without regard to grade regulations issued under § 905.52 under the following conditions:

(a) Such fruit meets requirements of the U.S. No. 2 Russet grade and those requirements of the U.S. No. 1 grade relating to shape (form) as such requirements are set forth in the revised U.S. Standards for grades of Florida Oranges and Tangelos (7 CFR 2851.1140-2851.1180), the revised U.S. Standards for Florida Tangerines (7 CFR 2851.1810-2851.1835), or the revised U.S. Standards for Grades of Florida Grapefruit (7 CFR 2851.750-2851.784). Such fruit meets applicable minimum size requirements in effect for domestic shipments of citrus fruits.

* * * * *

(Secs. 1-19, 48 Stat. 31, as amended; (7 U.S.C. 601-674).)

Dated: November 16, 1978.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 78-32641 Filed 11-20-78; 8:45 am]

[3410-05-M]

CHAPTER XIV—COMMODITY CREDIT CORPORATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

PART 1464—TOBACCO

Subpart A—Tobacco Loan Program

1978 CROP GRADE LOAN RATES—BURLEY TOBACCO

AGENCY: Commodity Credit Corporation, U.S. Department of Agriculture.

ACTION: Final rule.

SUMMARY: This rule establishes the schedule of grade loan rates which will apply to 1978 crop burley tobacco. The rule is needed to provide the statutory level of support for 1978-crop burley tobacco. Eligible burley tobacco may be delivered for price support at the specified rates.

EFFECTIVE DATE: November 21, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert P. Hieronymus, 202-447-6695.

SUPPLEMENTARY INFORMATION: On September 19, 1978, notice was published in the FEDERAL REGISTER (43 FR 41991) inviting written comments, not later than November 3, 1978, on a proposed schedule of grade loan rates for providing price support for 1978-crop burley tobacco at the statutory level.

Section 106 of the Agricultural Act of 1949, as amended, prescribes a formula for computing, in cents per pound, the level of price support for each crop of tobacco for which marketing quotas are in effect or have not been disapproved by producers. Application of this formula requires that the 1978 crop of burley tobacco be supported at the level of 124.7 cents per pound. Price support will be provided through loans to producer associations which will receive eligible tobacco from the producers and make price support advances to the producers for the tobacco received. The price support advances will be based on the grade loan rates, which average the required level of support when weighted by estimated grade percentages, in accordance with section 403 of the Act. The price support advances will be the amounts determined by multiplying the pounds of each grade received by the respective grade loan rate less 1 cent per pound which the producers' associations are authorized to deduct and to apply against overhead costs.

DISCUSSION OF COMMENTS

No comments were received with respect to the schedule of loan rates proposed and, it has been decided to adopt the schedule as proposed.

FINAL RULE

Accordingly, 7 CFR Part 1464 is amended by revising § 1464.21 to read as set forth below, effective for the 1978 crop of burley tobacco. The material previously appearing under § 1464.21 remains applicable to the crop to which it refers.

(Secs. 4, 5, 62 Stat. 1070, as amended (15 U.S.C. 714b, 714c), secs. 101, 106, 401, 403, 63 Stat. 1051, as amended (7 U.S.C. 1441, 1445, 1421, 1423).)

NOTE.—CCC has determined that this document does not contain a significant proposal having major economic consequences for the general economy requiring preparation of a regulatory analysis under Executive Order 12044.

Based on an assessment of the environmental impacts of the proposed action, it has also been determined that an environmental impact statement need not be prepared since the proposals will have no significant effect on the quality of the human environment.

Signed at Washington, D.C., on November 15, 1978.

RAY FITZGERALD,
Executive Vice President, Commodity Credit Corporation.

§ 1461.21 1978 Crop Burley Tobacco, type 31, loan schedule.[1]

[1] The loan rates listed are applicable to burley tobacco which is tied in hands or packed in bales and which is eligible tobacco as defined by the regulations. Only the original producer is eligible to receive advances. Tobacco graded "U" (unsound), "W" (wet), "No-G" (no grade), or scrap will not be accepted. Cooperatives are authorized to deduct $1 per hundred pounds to apply against overhead costs.

[3510-05-C]

[Dollars per hundred pound, farm sales weight]

Grade	Loan Rate	Grade	Loan Rate	Grade	Loan Rate
B1F	139	B3GR	113	C1F	139
B2F	137	B4GR	111	C2F	137
B3F	135	B5GR	108	C3F	135
B4F	132			C4F	132
B5F	128	T3F	131	C5F	128
		T4F	125		
B1FR	138	T5F	118	C3K	124
B2FR	136			C4K	120
B3FR	134	T3FR	128	C5K	114
B4FR	131	T4FR	124		
B5FR	127	T5FR	115	C3M	130
				C4M	128
B1R	135	T3R	122	C5M	119
B2R	133	T4R	119		
B3R	131	T5R	113	C3V	126
B4R	128			C4V	123
B5R	122	T4D	110	C5V	117
		T5D	106		
B4D	115			C4G	113
B5D	110	T4K	109	C5G	106
		T5K	105		
B3K	125			X1L	138
B4K	123	T4VF	118	X2L	136
B5K	117	T5VF	111	X3L	134
				X4L	129
B3M	129	T4VR	111	X5L	124
B4M	123	T5VR	107		
B5M	113			X1F	138
		T4GF	106	X2F	136
B3VF	130	T5GF	102	X3F	134
B4VF	124			X4F	129
B5VF	121	T4GR	104	X5F	123
		T5GR	99		
B3VR	125			X4M	124
B4VR	120	C1L	139	X5M	112
B5VR	116	C2L	137		
		C3L	135	X4G	111
B3GF	118	C4L	132	X5G	103
B4GF	116	C5L	128		
B5GF	112				
M1F	116	M3FR	112	N1F	100
M2F	115	M4FR	110		
M3F	114	M5FR	106	N1R	98
M4F	112			N2R	92
M5F	110	N1L	104		
		N2L	97	N1G	91
				N2G	83

[FR Doc. 78-32645 Filed 11-16-78; 1:56 pm]

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[7535-01-M]

Title 12—Banks and Banking

CHAPTER VII—NATIONAL CREDIT UNION ADMINISTRATION

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

Final Rule—Share Accounts and Share Certificate Accounts

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: This rule authorizes Federal credit unions to issue nonnegotiable certificates with minimum deposits of $10,000 and maturities of 26 weeks at a maximum rate of return equal to one-quarter of one percent above the discount rate on the most recently issued 26-week United States Treasury Bills (auction average).

EFFECTIVE DATE: November 20, 1978.

ADDRESS: National Credit Union Administration, 2025 M Street NW., Washington, D.C., 20456.

FOR FURTHER INFORMATION CONTACT:

J. Leonard Skiles, Deputy General Counsel, Office of the General Counsel, at the above address. Telephone: 202-632-4870.

SUPPLEMENTARY INFORMATION: To enable Federal credit unions to adjust their operations during credit contractions involving rising short-term rates, the National Credit Union Administration (NCUA) is further amending its regulations governing share certificate accounts. Effective July 7, 1978, the NCUA amended § 701.35 to permit Federal credit unions to offer: (1) Special share certificates for IRA and Keogh accounts at a maximum dividend rate of 8 percent and (2) share certificates with principal amounts of $100,000 or more at dividend rates determined by money market conditions.

The NCUA has determined that an additional category of share certificate account is necessary in order to increase returns for members by authorizing dividend rates paid on share certificates that are competitive with interest rates available in the market on instruments possessing similar characteristics. This new share certificate category would enable Federal credit unions to pay dividends on nonnegotiable deposits of $10,000 or more with required maturities of 26 weeks, at a maximum rate of return equal to one-quarter of one percent above the discount rate on the most recently issued 26-week United States Treasury bills (auction average). United States Treasury bills maturing in 26 weeks are auctioned weekly by the Treasury Department, normally on Monday, and are issued 3 business days later, normally on Thursday. Beginning on such issuance date, Federal credit unions may pay the above-described rate on such certificates and may continue to pay that rate for new certificates until new 26-week United States Treasury bills are issued, at which time the rate paid on such bills (plus one-quarter of one percent) becomes the ceiling rate for this category of account. The 26-week United States Treasury bill rate is published widely in many newspapers throughout the country.

Once established, the maximum rate of return Federal credit unions may specify or contract for may not be increased during the 26 weeks the certificates remain outstanding. If such certificates are renewed, automatically or otherwise, the maximum rate that may be paid may not exceed one-quarter of one percent above the 26-week Treasury bill rate (discount basis) in effect at the time of renewal. This type of certificate account must be issued in nonnegotiable form with a maturity of 26 weeks; a maturity in excess of, or less than, 26 weeks is not permitted. The general limitations governing share certificate accounts apply.

Federal credit unions will be permitted to base payment calculations on the average auction rate paid (discount basis). Rounding off may be done only by rounding down. For example, if the auction average rate is 6.4638 percent on a discount basis, it may be rounded down to 6.463 percent, 6.46 percent, or 6.4 percent. The one-quarter of one percent additional amount will be added to such figure. The higher rates may be paid only on new deposits; rates on existing certificate accounts may not be increased prior to the maturity of such accounts. Public unit accounts may be invested in the new 26-week certificate account.

In utilizing this new share certificate account, Federal credit unions are urged to consider the needs of borrowers as well as savers and to consider the earnings limitations imposed by the 1 percent per month loan rate ceiling.

The NCUA's decision to provide greater flexibility for Federal credit unions offering share certificates was taken after consultation with the Board of Governors of the Federal Reserve System, the Department of Treasury, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Federal Home Loan Bank Board. In order to facilitate the achievement of the above stated objectives as rapidly as possible, the NCUA finds that application of the notice and public participation provisions of 5 U.S.C. Section 553 would be contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Accordingly, 12 CFR 701.35(g) is amended as set forth below.

(Sec. 120, 73 Stat. 635 (12 U.S.C. 1766) and Sec. 209, 84 Stat. 1104 (12 U.S.C. 1789.).

LAWRENCE CONNELL,
Administrator.

NOVEMBER 15, 1978.

(1) Subsection (g) is amended by deleting the word "or" at the end of paragraph (3); deleting the period at the end of paragraph (4) and, in lieu thereof, inserting "; or", and adding a new paragraph to read as follows:

§ 701.35 Share accounts and share certificate accounts.

* * * * *

(g) * * *

(5) one-quarter of one percent above the rate established (auction average on a discount basis) for 26 week United States Treasury bills issued on or immediately prior to the date of the purchase of any share certificate of $10,000 or more having a fixed or minimum term or qualifying period of 26 weeks. Rounding off such rate may be done only by rounding down.

* * * * *

[FR Doc. 78-32629 Filed 11-20-78; 8:45 am]

[6351-01-M]

Title 17—Commodity and Securities Exchanges

CHAPTER I—COMMODITY FUTURES TRADING COMMISSION

PART 32—REGULATION OF COMMODITY OPTION TRANSACTIONS

Reissuance of and Amendments to Commodity Option Regulations

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commission has reissued and has adopted certain amendments to its commodity option regulations. The purpose of the Commission's action is to implement the provisions of the Futures Trading Act of 1978 which direct the Commission to issue regulations governing the offer and sale of options on physical commodities (so-called "dealer options"). The Commission's action does not affect the statutory and administrative general prohibition against the offer and sale of commodity options to the public. The Commission's action will become effective in 30 days; however, the Commission is soliciting comment on the amendments to its commodity option regulations it has adopted, particularly the registration requirement being imposed on commodity option grantors.

EFFECTIVE DATE: December 21, 1978, except that the amendment to § 32.12(d) shall be effective immediately.

FOR FURTHER INFORMATION CONTACT:

Mark N. Rae, Esq., Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, telephone 202-254-7295.

SUPPLEMENTARY INFORMATION: On November 24, 1976, the Commission published interim commodity option regulations governing the offer and sale of options involving all commodities other than those specifically enumerated in section 2(a) of the Commodity Exchange Act prior to enactment of the Commodity Futures Trading Commission Act of 1974.[1] On April 12, 1978, the Commission adopted rule 32.11 as an amendment to its commodity option regulations.[2] Rule 32.11 generally suspended the offer and sale of commodity options to the public on and after June 1, 1978. The rule did not, however, prohibit the offer and sale of commodity options to commercial interests for use in connection with their businesses (so-called "trade options") in accordance with rule 32.4(a), 17 CFR 32.4(a) (1977).

Thereafter, on May 26, 1978, the Commission adopted rule 32.12, which exempted the offer and sale of options on physical commodities—dealer options—from the general suspension created by rule 32.11, if the grantor of the option and the futures commission merchant offering the option each met specified conditions. See 43 FR 23704 et seq. (June 1, 1978). Rule 32.12 was adopted by the Commission in anticipation of possible Congressional action allowing the offer and sale of dealer options by certain persons to continue notwithstanding any general prohibition that Congress might impose or that otherwise might be in effect.[3]

On October 1, 1978, the Futures Trading Act of 1978, Pub. L. 95-405, 92 Stat. 865 et seq. (September 30, 1978), became effective. Among other things, section 3 of that Act amends section 4c of the Commodity Exhange Act ("the Act") so as to prohibit any commodity option transactions involving any commodity that first became subject to regulation under the Act in 1974, thereby codifying the Commission's suspension of option sales. Certain trade option transactions are, however, exempted from the congressional prohibition. In addition, section 4c(d)(2) of the Act directs the Commission to issue regulations permitting grantors and futures commission merchants to grant and offer dealer options if they comply with statutorily specified conditions and with such additional uniform and reasonable conditions as the Commission may prescribe.

In accordance with these provisions, the Commission has determined to reissue its commodity option regulations with certain amendments. The Commission believes that its existing regulations generally are in accord with the new provisions of section 4c of the Act and that the reasons for its adoption of these regulations continue to be valid. The Commission recognizes, however, that it is necessary to amend its rules to some extent to conform the regulations to requirements of the new legislation. Set forth below is a brief discussion of the amendments the Commission has adopted for this purpose.

1. Section 4c(c) of the Act, among other things, exempts from the general congressional prohibition on commodity option transactions certain trade option transactions effected in accordance with Commission regulations, "in which the purchaser is a producer, processor, commercial user of, or a merchant handling the commodity involved in the transaction, or the products or byproducts thereof." The trade option exemption contained in section 4c(c) is not as broad as that contained in Commission rule 32.4(a). Under rule 32.4(a), option transactions are exempt from the effect of the suspension imposed by rule 32.11 where the offeror has a "reasonable basis to believe" that the offeree is a commercial enterprise and that the offeree enters the transaction solely for purposes relating to its business as such. Section 4c(c), however, exempts only those transactions in which the "purchaser is" a commercial enterprise. Rule 32.4(a) has been amended accordingly, but the Commission has retained the provision that the offeror have a reasonable basis to believe that the purchaser enters the transaction for business purposes.

Thus, rule 32.4(a) will provide that the provisions of part 32 generally:

> shall not apply to a commodity option transaction in which the purchaser is a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of the commodity option transaction, or the products or byproducts thereof, and in which the person offering the commodity option has a reasonable basis to believe that such producer, processor, commercial user or merchant purchases the commodity option solely for purposes related to its business as such * * *.

The purpose of rule 32.4(a) as initially adopted was to exempt from the requirements of the Commission's option regulations the acquisition of a commodity option for a nonspeculative purpose by a commercial enterprise engaged in transactions in physical commodities. See 42 FR 51815 (November 24, 1976). In order to qualify to grant dealer options under rule 32.12, a person must be in the business of buying, selling, producing, or otherwise using the commodity on which its options are granted, it must be a bona fide commercial enterprise.

A person that qualifies as a rule 32.12 grantor is, therefore, in the Commission's view, a commercial interest to whom an option may be offered and sold under rule 32.4(a), both as originally adopted and as presently amended. There is, however, a question whether a rule 32.12 grantor that purchases an option from a third party to cover its obligations as grantor of an option which has been sold to the public has purchased the option "solely for purposes related to its business" as a producer, processor, commercial user or merchant handling the commodity within the meaning of rule 32.4(a). The underlying rationale of rule 32.4(a) is that commercial enterprises engaged in the commodity busi-

[1] See 41 FR 51814 et seq. See also 17 CFR Part 32 (1977), as amended 42 FR 61831 (Dec. 6, 1977). Sec. 4c(a)(B) of the Commodity Exchange Act, 7 U.S.C. 6c(a)(B) (1976), prohibits option transactions involving those commodities specifically enumerated in sec. 2a. Those commodities are: Wheat; cotton; rice; corn; oats; barley; rye; flaxseed; grain sorghums; mill feeds; butter; eggs; onions; Solanum tuberosum (Irish potatoes); wool; wool tops; fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil and all other fats and oils); cottonseed meal; cottonseed; peanuts; soybeans; soybean meal; livestock products; and frozen concentrated orange juice.

[2] See 43 FR 16153 et seq. (Apr. 17, 1978).

[3] Rule 32.12 requires that an option grantor and the persons offering or selling the grantor's options to the public make such reports to the Commission as the Commission may by rule, regulation, or order require. On Aug. 24, 1978, the Commission published for comment a proposal to establish the form and content of reports to be submitted by grantors of dealer options and persons offering or selling such options to the public. See 43 FR 37715 et seq. The Commission has adopted these proposals in a modified form as amendments to rules 32.12 (a)(6) and (b)(1), and as new rules 32.12 (f), (g), (h), and (i). See 43 FR 52467 et seq. (Nov. 13, 1978).

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ness do not require the protection of the Commission's option regulations if they decide to acquire commodity options for business purposes, such as inventory management.

The Commission understands that these commercial enterprises might also sell options for such business purposes.[4] The Commission has therefore amended rule 32.4(a) expressly to provide that a rule 32.12 grantor of dealer options may acquire options under the trade option exemption for the purpose of covering the grantor's open option positions. Of course, a grantor who chooses to cover its obligations under open option positions through the purchase of options or in some other manner will not be relieved of its obligations under section 4c(d)(2)(A) of the Act to segregate amounts accruing as profits to option customers. See discussion under item 3 below.

Protection of option customers has been the paramount concern of the Commission in the development of its option policy and regulations. To that end rule 32.12 requires grantors to have a net worth of $5,000,000 and to segregate the profits that accrue on the options that they grant. In addition, rule 32.12 grantors are jointly and severally liable with the persons through which their options are sold for any damages sustained by an option customer as a result of any unlawful act or omission, or any breach of contract, by the person that sold the option to the customer, or any agent or employee of that person.[5]

Allowing a rule 32.12 grantor to purchase options from third parties to cover its obligations to the public should provide additional protection for option customers. The purchase of an option by a grantor which, in effect, covers an option the grantor has granted should reduce the risk to which the grantor is exposed [6] and, in so doing, enhance the grantor's financial stability.

The question has also arisen whether a producer, processor, commercial user, or merchant handling a physical commodity may grant an option on that commodity through the facilities of a foreign exchange for purposes solely related to its business as such.

The Commission is not purporting to regulate the business affairs of commercial enterprises within the United States, but only to regulate the offer and sale of options in this country. Nor does the Commission interpret the general prohibition on option transactions imposed by section 4c(c) of the Act to prevent commercial enterprises from granting options through foreign boards of trade. Accordingly, in the Commission's view, the grant of an option through a foreign board of trade by a domestic commercial enterprise would not contravene the purpose of the general prohibition on option transactions imposed by section 4c(c) of the Act or rule 32.11 so long as it is not part of a scheme to offer, sell, or resell the option to a member of the public in the United States.

2. Section 4c(d)(2) of the Act directs the Commission to issue regulations allowing grantors and futures commission merchants to grant and offer dealer options subject to certain conditions. Section 4c(d)(2)(A) requires that a grantor be a person domiciled in the United States who:

> (i) Is in the business of buying, selling, producing, or otherwise using the underlying commodity;
>
> (ii) At all times has a net worth of at least $5,000,000 certified annually by an independent public accountant using generally accepted accounting principles; (and)
>
> (iii) Notifies the Commission and every futures commission merchant offering the grantor's option if the grantor knows or has reason to believe that the grantor's net worth has fallen below $5,000,000 * * *.

Commission rule 32.12(a) requires, among other things, that a dealer option grantor be a person who, on May 1, 1978, was both in the business of granting options on a physical commodity and in the business of buying, selling, producing, or otherwise utilizing that commodity.[7] Section 4c(d)(2)(A)(i) of the Act, however, requires only that the grantor be a person who is in the business of buying, selling, producing, or otherwise using the commodity underlying the option. The May 1, 1978, limitation contained in rule 32.12(a) is, therefore, being deleted.

As indicated above, the requirement in section 4c(d)(2)(A) and in rule 32.12(a) that a grantor be in the business of buying, selling, producing, or otherwise using the commodity on which the option is granted reflects both a congressional and a Commission judgment that grantors must be bona fide commercial enterprises utilizing the commodity—as opposed to persons who, for example, merely acquire or own a few kilos of gold and engage in isolated transactions in the physical commodity as a justification for granting options. The Commission will, therefore, consider an individual or firm that is not a bona fide commercial enterprise utilizing the underlying commodity to be in violation of the provisions of the prohibition imposed by section 4c(c) of the Act if it nonetheless grants options under the guise of rule 32.12. See also the discussion under item 8 below.

As stated above, sections 4c(d)(2)(A)(ii) and (iii) of the Act require that a dealer option grantor have a net worth of at least $5,000,000; that the grantor's net worth be certified annually by an independent public accountant; and that the grantor notify both the Commission and the futures commission merchants through which its options are sold whenever the grantor knows or has reason to believe that its net worth has fallen below the $5,000,000 minimum. As a result of these amendments the Commission recently reduced the $10,000,000 net worth requirement in rule 32.12(a)(1) to $5,000,000. See 43 FR 47492 et seq. (October 16, 1978). The Commission is now amending rule 32.12(a)(1) to incorporate the other specific requirements of sections 4c(d)(2)(A)(ii) and (iii). The amended rule also requires the grantor to provide a copy of the accountant's certification to the Commission no later than 90 days after the close of the fiscal year of the grantor. The conditions imposed by Congress that a grantor have net a worth of at least $5,000,000 and that it notify the Commission whenever it knows or has "reason to believe" that its net worth has fallen below that amount must at all times be met in order for a person to grant options lawfully. Thus, grantors have a continuing duty of inquiry to ascertain that their net worth meets the statutory minimum. The Commission therefore interprets "reason to believe" in section 4c(d)(2)(A)(iii) to include the standard of "should have known" in the exercise of prudent business practices.

3. Section 4c(d)(2)(A) also directs the Commission to issue regulations requiring dealer options grantors to:

> (iv) Segregat[e] daily, exclusively for the benefit of purchasers, money, exempted securities (within the meaning of sec. 3(a)(12) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(12)), commercial paper, bankers' acceptances, commercial bills, or unencumbered warehouse receipts, equal to an amount by which the value of each transaction exceeds the amount received or to be received by the grantor for such transaction;
>
> (v) Provid[e] an identification number for each transaction; and
>
> (vi) Provid[e] confirmation of all orders for such transactions executed, including the execution price and a transaction identification number * * *.

The language of these provisions is virtually identical to that of rules 32.12(a)(3-5). The only differences are that rule 32.12(a)(3) uses the term "option customers" rather than word "purchasers" used in section 4c(d)(2)(A)(iv) and that rule 32.12(a)(5) employs the terms "striking price and premium" instead of the term "execution price" used in section 4c(d)(2)(A)(vi). The Commission does not interpret the words of section 4c(d)(2)(A) to include different persons or elements of a transaction than those used in the Commission's rules. Accordingly, the Commission has determined that no changes are necessary in rule 32.12(a)(3-5) in order to reflect the terms "purchasers" and "execution price."

In requiring grantors to segregate amounts representing option customer accrued profits, Congress has endeavored to assure that option customers will be in a position to receive the benefits of their bargain. In order to effectuate fully this congressional purpose, the Commission is amending rule 32.12(a)(3) to provide that grantors should segregate accrued profits in the same manner as futures commission merchants are presently required to segregate the purchase price paid by the option customer under rule 32.6. Thus, for example, grantors will be required to segregate in the United States as the property of option customers amounts representing profits and may not commingle the segregated property with the property of any other person except other option customers.

4. Section 4c(d)(2)(B) of the Act directs the Commission to impose certain requirements on futures commission merchants that offer and sell dealer options. Subsection (i) of that section requires that a futures commission merchant that sells dealer options have evidence that the grantor of those options is in compliance with all of the requirements of section 4c(d)(2)(A), i.e., that the grantor (1) is domiciled in the United States; (2) is a bona fide commercial enterprise; (3) has a net worth of at least $5,000,000; (4) segregates customer profits; (5) provides a transaction identification number for each transaction; and (6) provides confirmation of all transactions.[8] The Commission is, therefore, adding rule 32.12(a)(9)(ii) to require that persons through which dealer options are sold have evidence in the form of an affidavit executed by the grantor or a partner or officer of the grantor that the grantor is in compliance with each of these requirements and specifies the facts evidencing such compliance.

5. Commission rule 32.6(a), 17 CFR § 32.6(a) (1977), requires, in part, that a person treat and deal with all money, securities, or property received from an option customer as payment of the purchase price in connection with a commodity option transaction as belonging to that customer until the expiration of the term of the option or, if the customer exercises the option, until all rights of the customer under the option have been fulfilled. This language is virtually identical to that of section 4c(d)(2)(B)(ii) of the Act. Rule 32.6(a), however, also provides that up to a maximum of 10 percent of the money, securities, or property received from an option customer need not be treated and dealt with as belonging to that customer. Section 4c(d)(2)(B)(ii) does not contain such a provision. The 10-percent provision of rule 32.6(a) is, therefore, being deleted. Thus, from and after December 1, 1978, 100 percent of the purchase price received from customers must be segregated as belonging to customers.

As discussed above, section 4c(d)(2)(A) of the Act and rule 32.12(a)(3) require the grantor to segregate accrued profits for the benefit of options customers. To implement fully the congressional purpose underlying these provisions, the Commission is amending rule 32.6 to provide that the segregation obligations imposed on futures commission merchants also apply to any funds or other property remitted by the grantor to the futures commission merchant for payment to option customers as a result of the option transaction.

6. Section 4c(d)(2)(B)(iii) of the Act, as amended, requires that futures commission merchants that offer and sell dealer options record "each transaction in its customer's name by the transaction identification number provided by the grantor." While Rule 32.12(a)(6)(ii) requires that futures commission merchants furnish their customers with confirmation statements which include the transaction identification number provided by the grantor, it does not specifically require a futures commission merchant to keep a record which matches customer names with grantor identification numbers. A requirement of this nature is now being added as rule 32.12(a)(9)(i).

7. Section 4c(d)(2)(B)(iv) of the Act, as amended, requires that a futures commission merchant provide

> a disclosure statement to its customers under regulations of the Commission, that discloses, among other things, all costs, including any markups or commissions involved in such transaction * * *.

Under existing rule 32.5(a) futures commission merchants are already required to deliver to option customers a summary disclosure statement containing, among other things, a listing of the elements comprising the purchase price to be charged, including the premium, markups on the premium and other charges, as well as the method by which the premium is established. The summary disclosure statement must also contain a description of any and all costs (including commissions however characterized) in addition to the striking price that the customer may incur upon exercise of the option. The summary disclosure statement need not contain particularized price data of all costs which the customer may incur in the transaction, but to the extent such information is known prior to the entry into a particular transaction, rule 32.5(c) requires the futures commission merchant to inform the option customer of this price information. In addition, rule 32.5(d) requires the futures commission merchant to furnish to the customer not more than 24 hours after the execution of a transaction, a written confirmation statement which sets forth, among other things, (1) the actual amount of the purchase price including a separate listing of the premium, of markups on the premium, and of costs, fees, and other charges, and (2) the striking price.

The Commission believes that these provisions of its existing rules are consistent with the requirements of new section 4c(d)(2)(B)(iv) of the act. In order to implement fully the Congressional purpose of this section, howev-

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[4] See reauthorization of the Commodity Futures Trading Commission: Hearings before the Subcommittee on Agricultural Research and General Legislation of the Senate Committee on Agriculture, Nutrition, and Forestry, 95th Cong., 2d Sess. pt. II, at 106, 425 (1978).

[5] The Commission requests comment on whether the joint and several liability provisions should be retained or be modified in any respect.

[6] The only risk to which a grantor would be exposed where it has purchased an option whose terms coincided generally with those of an option it has granted would be that the person from which it has purchased the option would not perform. A rule 32.12 grantor should, however, be in a position to evaluate the reliability and integrity of the person from which it buys an option, and would have every incentive to do so.

[7] The House version of the bill that became the Futures Trading Act of 1978 contained provisions similar to these requirements of rule 32.12(a). See H.R. 10285, 95th Cong., 2d Sess. § (2) (1978); H.R. Rept. No. 1181, 95th Cong., 2d Sess. 25-26 (1978). These provisions were not, however, adopted by the Conference Committee or enacted into law. As explained by Representative Thomas Foley, Chairman of the House Agriculture Committee and Co-Chairman of the Conference Committee: The House bill permitted so-called dealer options pursuant to regulations issued under expedited proceedings but the provision applied only to those who were dealing in options on May 1, 1978. The conferees were concerned that the House provision was too restrictive and would allow only two or three firms to exercise a monopoly on this business. 124 Cong. Rec. H. 11219 (daily ed. Sept. 29, 1978). See also 124 Cong. Rec. S. 16530 (daily ed. Sept. 28, 1978) (remarks of Sen. Huddleston).

[8] Sec. 4c(d)(2) also authorizes, but does not require, the Commission to permit persons not domiciled in the United States to grant options under such additional terms and conditions as the Commission may adopt to provide customers protections that are substantially equivalent to those applicable to grantors domiciled in the United States. The Commission does not intend to exercise this authority casually. Accordingly, the Commission is interested in receiving comments on the type of terms and conditions that might be imposed on nondomestic grantors to insure adequate customer safeguards.

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er, the Commission is amending rule 32.5 in two respects. First, in addition to disclosing the method by which the premium is established in the summary disclosure statement, disclosures shall also be made of the method by which all other costs, fees, and charges comprising the purchase price are to be calculated. For example, if the futures commission merchant is to charge a transaction fee or similar charge based on a percentage of the premium, this fact and the percentage must be disclosed. Second, to the extent any particular cost to be incurred by the option customer is not known precisely prior to the entry into the option transaction, the futures commission merchant must inform the option customer of this fact, identify the costs involved and provide a bona fide estimate of what the costs are expected to be.[9]

8. Prior to the enactment of the Futures Trading Act of 1978, the only persons that could lawfully grant options on a physical commodity offered or sold to the public were those who, on May 1, 1978, were in the business of granting options on a physical commodity and in the business of buying, selling, producing, or otherwise utilizing that commodity. See rule 32.12(a), 43 FR 23704 et seq. (June 1, 1978). However, as stated above, as a result of the new legislation, the Commission has amended rule 32.12 to delete the May 1, 1978, limitation. Thus, any person that is in the business of buying, selling, producing, or otherwise using a commodity may grant options on that commodity if—but only if—the person complies with the requirements set forth in section 4c(d) of the Act and the regulations adopted by the Commission to implement that section. Included among these statutory requirements, Congress has directed that grantors must comply with "any additional uniform and reasonable terms and conditions the Commission may prescribe, including registration with the Commission." Section 4c(d)(2)(C). Thus, while Congress has provided that persons who were not in the business of granting options on May 1, 1978, should generally be able to grant options under the Act, as amended, Congress also wanted to insure that no person will be permitted to grant options to the public if the person may be found unfit to be registered with the Commission. Accordingly, the Commission has adopted rule 32.12(a)(10), imposing a registration requirement for commodity option grantors consistent with other registration requirements contained in the Act. The Commission believes that this registration requirement will benefit the public in that it will allow the Commission to determine whether or not an applicant is fit to assume the position of sensitive public trust that being an option grantor entails.[10]

As stated above, in order to grant options on a physical commodity the Act requires that a person be in the business of buying, selling, producing or otherwise using the commodity on which the option is written. Accordingly, the Commission is requiring that, as part of the registration process, applicants for registration as commodity options grantors provide the Commission with information which will enable the Commission to determine if the applicant is a bona fide commerical enterprise with respect to the commodity underlying the option. Each applicant must submit the following information with respect to each commodity upon which it intends to grant options: (1) The type and number of commercial enterprises with which it has engaged in business during the preceding 12 months (or such shorter period as the applicant may have been in business), (2) the type and size (by quantity of commodity) of transactions with such enterprises during the preceding 12 months (or such shorter period), (3) the amount of production, inventories, and cash market sales or purchases for the most recently concluded fiscal quarter and at least the three preceding fiscal quarters (or such shorter period), and (4) any additional information evidencing the fact that the applicant is a bona fide commercial enterprise with respect to each such commodity.

Under new rule 32.12(a)(10), no person will be allowed to grant or issue options on a physical commodity unless registered with the Commission as a commodity options grantor. In passing upon applications for registration, the Commission will apply the specific statutory requirements set forth in section 4(c)(d) of the Act and also the same standards of fitness for registration that Congress has made applicable to other commodity professionals as set forth in sections 4n and 8a of the Act, as amended. The Commission may therefore deny registration, for example, if the applicant does not establish that the applicant is a bona fide commerical enterprise, or has at least $5,000,000 net worth or if one or more of the bases for denial of registration set forth in sections 4n or 8a exist, including the bases set forth in the Commission's published interpretation of the "good cause" standard contained in section 8a.[11]

Prospective grantors will be required to file applications for registration with the Commission on Commission form 7-R,[12] the form presently used by applicants for registration as futures commission merchants, commodity pool operators and commodity trading advisors, together with a filing fee of $200 and a signed statement that the applicant is applying for registration as a commodity options grantor and containing the information relating to its commercial activities referred to above. Among other things, form 7-R requires an applicant for registration to provide the Commission with information concerning (1) its form of organization, i.e., sole proprietorship, partnership or corporation; (2) certain types of adverse actions which may have been taken or are pending against it; and (3) the names and duties of its principal personnel. In addition, the principal personnel of an applicant registration as a commodity option grantor will be required to file Commission form 8-R.[13] This form requests information concerning an individual's background, including information regarding certain types of adverse actions that may have been taken against the individual.

Applicants for registration with the Commission as commodity options grantors that are registered with the Commission in another capacity, and the principal personnel thereof, need not execute and file 7-R and 8-R forms with their applications to the extent they have current 7-R and 8-R forms on file with the Commission. Prospective grantors must, however, indicate the capacity in which they are registered with the Commission in the statement required by rule 32.12(a)(10)(i). Of course, by virtue of rule 1.19, 17 CFR 1.19 (1977), futures commission merchants may not lawfully grant options and therefore may not be registered as commodity option grantors. Prospective grantors need not defer filing applications for registration until the effective date of rule 32.12(a)(10.)

Consistent with section 8a(2) of the Act, rule 32.12(a)(10) provides that pending final Commission action on an application for registration as a commodity options grantor, registration shall not be granted. However, section 4c(d)(1) of the Act, as amended, permits persons domiciled in the United States who, on May 1, 1978, were in the business of granting options on a physical commodity and in the business of buying, selling, producing, or

[9] Of course, all known costs are required to be disclosed either in the summary disclosure statement or prior to the entry into the transaction.

[10] The Commission's regulations already require that dealer options may not be sold to the public except through registered futures commission merchants and associated persons. See rules 32.3 (a) and (b), 17 CFR 32.3 (a) and (b) (1977).

[11] 40 FR 28125 (June 30, 1975). The Commission expects to publish a revised interpretation of this standard in the near future.

[12] See 42 FR 23988 et seq. (May 11, 1977).

[13] Ibid.

otherwise using that commodity, to continue to grant options on that commodity in accordance with the Commission regulations in effect on August 17, 1978, until 30 days after the effective date of the regulations issued by the Commission under section 4c(d)(2).[14] Thus, these grantors may continue to grant options until January 22, 1979; i.e., 30 days after the effective date of the regulations which the Commission has now issued.

Section 4c(d)(1) also provides that if one of these grantors files an application for registration with the Commission within 30 days after the effective date of these regulations, that grantor may continue to grant options pending final Commission action on its application. As a result, persons presently granting options in accordance with rule 32.12 that file applications for registration before January 22, 1979, will be entitled to continue to grant or issue options in accordance with the provisions of section 4c(d)(1) until the Commission makes a final determination on their applications; those who do not make timely application must, of course, cease granting options until they are registered.

Section 4c(d) of the Act also provides that:

> The Commission may terminate the right of any person to grant, offer, or sell options under this subsection only after a hearing, including a finding that the continuation of such right is contrary to the public interest: *Provided*, That pending the completion of such termination proceedings, the Commission may suspend the right to grant, offer, or sell options of any person whose activities in the Commission's judgment present a substantial risk to the public interest.

The Commission is adding rule 32.12(a)(11) to implement this provision. In doing so, the Commission has interpreted the public interest standard in light of the relevant purposes and provisions of the Act. Accordingly, the Commission has expressly recognized and provided that the public interest standard of this provision includes considerations of whether any substantial economic purpose is served by the options granted, offered or sold and whether there exists any of the bases upon which the Commission may deny, suspend, or revoke the registration of a commodity professional under the Act. The economic purpose criterion is consistent with the public interest standard contained in section 5(g) of the Act applicable to futures contracts and with the Commission's previously announced policy with respect to commodity options. See, e.g., 42 FR 18248 (April 5, 1977), 42 FR 55545 (October 17, 1977), and 43 FR 16155-56 (April 17, 1978).

9. Rule 32.12(c) presently provides in pertinent part that the Commission may for good cause shown waive any of the requirements of paragraphs (a) and (b) of rule 32.12. As more fully discussed above, however, sections 4c(d)(1) and (2) (A) and (B) of the Act impose specific statutory requirements on grantors and futures commission merchants. The Commission may not, of course, waive any of these requirements. Rule 32.12(c) is, therefore, being amended accordingly.

10. The Commission's action implementing the requirements of section 4c(d)(2) of the Act will render paragraph (d) of rule 32.12 obsolete. Paragraph (d) has provided that the exemption for dealer options contained in rule 32.12 would expire 60 days after the effective date of any amendment to section 4c(b) of the Act. Since section 4c(b) was amended effective October 1, 1978, rule 32.12(d) will expire by its terms on November 30, 1978. To prevent a regulatory gap from occurring, the Commission is repealing rule 32.12(d) effective immediately.

11. The Commission has also determined to amend the statutory authority citations applicable to part 32 in order to reflect the enactment of the Futures Trading Act of 1978.

12. Section 4c(d)(2) of the Act directs the Commission to issue regulations governing the offer and sale of dealer options. Those portions of its existing regulations that the Commission has determined to reissue for this purpose were originally adopted in compliance with the notice and public procedures provided for in 5 U.S.C. 553 (1976). For this reason, the Commission finds that further compliance with these procedures is unnecessary. With respect to the amendments to its regulations that the Commission is now adopting to implement section 4c(d)(2), the Commission finds that compliance with the preadoption notice and public procedures of 5 U.S.C. 553 is in part unnecessary and in any event contrary to the public interest.

Section 4c(d)(2) expressly requires the Commission to issue regulations conforming to certain specific statutory requirements; since the Act gives the Commission little discretion, if any, over these matters, public comment on these requirements is unnecessary. Certain of the amendments the Commission is now adopting effectuate this express congressional mandate. The Commission recognizes, however, that in adopting certain other amendments, such as the registration requirement imposed on commodity options grantors, the Commission is endeavoring to implement the purposes—as well as the specific requirements—of section 4c(d)(2). While the Commission might have deferred adoption of amendments implementing the specific statutory requirements until it had an opportunity to receive comment on the other amendments, the Commission believes that to have done so would have been contrary to the public interest.

In enacting section 4c(d)(2) Congress wanted to insure not only that dealer options would be sold under adequate customer safeguards, but also that firms in addition to those that were in business on May 1, 1978, would be permitted to enter the field as soon as practicable. Entry into the field by additional firms is not possible under the Act, however, until regulations have been promulgated for that purpose. In view of these considerations, as well as the Commission's obligation under section 15 of the Act, 7 U.S.C. 19 (1976), to endeavor to take the least anticompetitive means of achieving the Act's purposes, the Commission has determined to issue these regulations without delay. If a registration requirement should not be imposed on grantors concurrently with the balance of the regulations, however, the public will be exposed to unwarranted risks since firms that might not be fit to assume the position of sensitive public trust that granting options entails might thereby gain access to the field. For this reason it would be contrary to the public interest to delay the effective date of the registration requirement beyond the date that the balance of the regulations become effective.

In any event the reissuance and amendment of the Commission regulations will not become effective until December 21, 1978, and the Commission will consider any comments on its action it may receive prior to that date in order to determine whether the Commission should modify these regulations in any respect. To be considered comments should be sent to the Commission at its Washington address, 2033 K Street NW., Washington D.C. 20581, attention: Secretariat.

In its adoption of the options regulations presently in effect, the Commission, consistent with its obligations under section 15 of the Act, 7 U.S.C. 19 (1976), has taken into account the public interest to be protected by the antitrust laws and has endeavored to take the least anticompetitive means of achieving the objectives, policies, and purposes of the Act. See, e.g., 41 FR 51809 (November 24, 1976); 43 FR 16156 (April 17, 1978). The Commission has also done so in determining to continue these regulations in effect at

[14] Section 4c(d)(1) does not, however, exempt the futures commission merchants through which these grantors sell their options from the effect of the Commission's regulations during this 30-day period. Thus, futures commission merchants must be in full compliance with the regulations from and after the December 21, 1978 effective date.

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this time and to adopt these amendments and has also considered the congressional judgment reflected in the Futures Trading Act of 1978 that options may be offered and sold only under terms and conditions that are designed to insure adequate customer safeguards.

In consideration of the foregoing, the Commission pursuant to the authority contained in sections 2(a)(1), 4c and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6c and 12a (1976), as amended by Pub. L. 95-405, 92 Stat. 865 et seq. (September 30, 1978), hereby amends part 32 of chapter I of title 17 of the Code of Federal Regulations as follows:

1. By continuing in effect the following sections of Part 32:

Sec.
32.1 Definitions (17 CFR 32.1 (1977)).
32.2 Prohibited transactions (17 CFR 32.2 (1976)).
32.3 Unlawful commodity option transactions (17 CFR 32.3 (1977), as amended 42 FR 61831 (December 6, 1977)).
32.4 Exemptions (17 CFR 32.4 (1977)) (except paragraph (a)).
32.5 Disclosure (17 CFR 32.5 (1977)) (except paragraphs (a)(1)(ii) and (c)).
32.6 Segregation (17 CFR 32.6 (1977)) (except paragraph (a)).
32.7 Books and record keeping (17 CFR 32.7 (1977)).
32.8 Unlawful representations (17 CFR 32.8 (1977)).
32.9 Fraud in connection with commodity option transactions (17 CFR 32.9 (1977)).
32.10 Option transactions entered into prior to the effective date of this part (17 CFR 32.10 (1977)).
32.11 Suspension of commodity option transactions (43 FR 16153 et seq. (April 17, 1978));
32.12 Exemption from suspension of commodity option transactions (43 FR 23704 et seq. (June 1, 1978), as amended by 43 FR 52467 et seq. (November 13, 1978)) (except paragraphs (a)(1), (a)(3), (c) and (d));[15]

2. By amending § 32.4(a) to read as follows:

§ 32.4 Exemptions.

(a) Except for the provisions of §§ 32.2, 32.8 and 32.9, which shall in any event apply to all commodity option transactions, the provisions of this part shall not apply to a commodity option transaction in which the purchaser is a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of the commodity option transaction, or the products or byproducts thereof, and in which the person offering the commodity option has a reasonable basis to believe that such producer, processor, commercial user or merchant purchases the commodity option solely for purposes related to its business as such or for the purpose of meeting its obligations to option customers under outstanding options it has granted in accordance with the provisions of section 32.12.

. . . . . .

3. By amending paragraphs (a)(1)(ii) and (c) of § 32.5 as follows:

§ 32.5 Disclosure.

(a) * * *
(1) * * *
(ii) A listing of the elements comprising the purchase price to be charged, including the premium, markups on the premium, costs, fees and other charges, as well as the method by which the premium and such costs, fees and other charges are established;

. . . . . .

(c) * * * to the extent any of the foregoing amounts are not known, such person shall inform the option customer or prospective option customer of that fact, identify which amounts are not known, and provide a bona fide estimate of what the amounts are expected to be.

. . . . . .

4. By amending § 32.6(a) to read as follows:

§ 32.6 Segregation.

(a) Any person which accepts money, securities, or property from an option customer as payment of the purchase price in connection with a commodity option transaction or which accepts money, securities, or property payable to an option customer as a result of a commodity option transaction shall treat and deal with such money, securities, and property as belonging to such option customer until expiration of the term of the option, or, if the option customer exercises the option, until all rights of the option customer under the commodity option or as a result of such exercise have been fulfilled. Such money, securities, and property (1) shall be separately accounted for and segregated as belonging to such option customer, (2) shall be kept in the United States, and (3) shall not be commingled with the money, securities, or property of any other person, including the money, securities, or property received by a futures commission merchant to margin, guarantee or secure the trades or contracts of commodity customers (as defined in § 1.3(k) of this chapter) or with the money accruing to such commodity customers as the result of such trades or contracts: *Provided, however,* That the money, securities, or property treated as belonging to an option customer may for convenience be commingled with the money, securities, or property treated as belonging to any other option customer and deposited in the same account or accounts with any bank or trust company in the United States. Such money, securities, and property, when so deposited with any bank or trust company, shall be deposited under an account name which will clearly show that it contains money, securities, or property, segregated as required by this part. Each person depositing such money, securities, or property shall obtain and retain in its files for the period provided in § 1.31 of this chapter an acknowledgment from such bank or trust company that it was informed that the money, securities, and property therein are being treated as belonging to option customers and are being held in accordance with the provisions of this part. Such bank or trust company shall allow inspection of such accounts at any reasonable time by representatives of the Commission.

. . . . . .

5. By amending paragraphs (a)(1), (a)(3) and (c), adding paragraphs (a)(9), (a)(10) and (a)(11) and revoking paragraph (d) of § 32.12, but reserving paragraph (d) for future use, as follows:

§ 32.12 Exemption from suspension of commodity option transactions.

(a) The provisions of § 32.11 shall not apply to the solicitation or acceptance of orders for, or the acceptance of money, securities, or property in connection with, the purchase or sale of any commodity option on a physical commodity granted by a person domiciled in the United States who is in the business of buying, selling, producing, or otherwise using that commodity if all of the following conditions are met at the time of the solicitation or acceptance:

(1) The grantor at all times has a net worth of at least $5,000,000 certified annually by an independent public accountant using generally accepted accounting principles, provides a copy of such certification to the Commission no later than 90 days after the close of the fiscal year of the grantor, and notifies in writing the Commission and every futures commission merchant offering and selling the grantor's options whenever the grantor knows or has reason to believe that the grantor's new worth has fallen below $5,000,000;

. . . . . .

(3) * * * and the grantor shall treat and deal with and shall segregate the foregoing property in the same manner and subject to the same conditions as set forth in § 32.6 of this chapter with respect to the treatment and segregation of the purchase price paid by option customers;

. . . . . .

(9) Each person who is offering and selling the option to an option customer (i) records each transaction in its customer's name by the transaction identification number provided by the grantor and (ii) has evidence in the form of an affidavit executed upon actual knowledge by the proprietor of a sole proprietorship grantor, a general partner of a partnership grantor, or the chief executive officer or chief financial officer of a corporate grantor, that the grantor of the options that it sells is in compliance with paragraphs (a), (a)(1), (a)(3), (a)(4), and (a)(5) of this section and specifies the facts evidencing such compliance.

(10)(i) The grantor is registered with the Commission as a commodity options grantor: *Provided,* That any person domiciled in the United States who on May 1, 1978, was in the business of granting an option on a physical commodity and was in the business of selling, producing, or otherwise utilizing that commodity and who files an application for registration under this paragraph on or prior to December 31, 1978, may continue to grant or issue options in accordance with this § 32.12 pending a final determination by the Commission on the application. Applications for registration as a commodity options grantor shall be filed with the Commission on form 7-R together with a statement executed by the applicant (A) that the applicant is seeking registration as a commodity options grantor under this section and (B) containing the following information with respect to each commodity upon which the applicant intends to grant options: (*1*) The type and number of commercial enterprises with which the applicant has engaged in business during the preceding 12 months (or such shorter period as the applicant may have been in business); (*2*) the type and size (by quantity of commodity) of transactions with such enterprises during the preceding 12 months (or such shorter period); (*3*) the amount of production, inventories, and cash market sales or purchases of the applicant for the most recently concluded fiscal quarter and at least the three preceding fiscal quarters (or such shorter period); and (*4*) any additional information evidencing the fact that the applicant is a bona fide commercial enterprise with respect to each such commodity. A form 7-R need not be executed and filed by an applicant that is registered with the Commission and has an up-to-date form 7-R on file with the Commission, but such an applicant must state the capacity in which it is registered with the Commission in the statement accompanying the application required by this paragraph. The application for registration shall also be accompanied by a form 8-R executed and filed by each sole proprietor and by each natural person who is a general partner, officer, director, or branch office manager of the applicant, or performs similar functions, or is any other controlling person of the applicant; except that an accompanying form 8-R need not be filed by any individual who (i) is registered as a floor broker or an associated person or has applied for registration as a floor broker or an associated person and such application has not been withdrawn or denied or who is affiliated with any registrant, (ii) has an up-to-date form 8-R on file with the Commission and (iii) is identified on the form 7-R or statement filed by the grantor under this paragraph. Any natural person (other than a floor broker or associated person) who subsequently becomes a general partner, officer, director, or branch officer manager of the registrant, or performs similar functions, or becomes any other controlling person of the registrant, shall promptly execute and file a form 8-R. Each form 8-R shall be filed in accordance with the instructions contained therein. Individuals who were previously required to submit biographical information on form 94 or who have filed a form 8-R as required by this section shall file a current form 8-R, upon request by the Commission.

(ii) Each application for registration, or renewal thereof, as a commodity options grantor shall be accompanied by a fee of $200. Fees shall be remitted by money order, bank draft, or check, payable to the Commodity Futures Trading Commission. All registrations under this section shall expire on the 30th day of June of each year, and shall be renewed upon application therefore subject to the same requirements as in the case of an original application. Each person registered under this section shall comply with the provisions of §§ 1.14(a)(4) and (c) of this chapter.

(iii) The Commission may refuse to register any person seeking registration under this section if it is found, after opportunity for hearing, that the applicant has not established that the applicant meets the requirements of section 4(c)(d) of the Act or of paragraph (a)(1) of this section or that the applicant is unfit to engage in business because of the existence of any of the reasons upon which the Commission is authorized to refuse registration under sections 4n or 8a of the Act: *Provided,* That pending final determination of the applicant's fitness for registration, registration shall not be granted: *And provided further,* That the applicant may appeal from a refusal of registration in the manner provided in section 6(b) of the Act.

(11) Notwithstanding the foregoing provisions of this section, the Commission may terminate the right of any person to grant, offer, or sell options under this section only after a hearing, including a finding that the continuation of such right is contrary to the public interest: *Provided,* That pending the completion of such termination proceedings, the Commission may suspend the right to grant, offer, or sell options of any person whose activities in the Commission's judgment present a substantial risk to the public interest. In determining whether to terminate or suspend the right of any person to grant, offer, or sell options, the Commission will consider, among other public interest factors, whether any substantial economic purpose is served by the options granted, offered, or sold, whether any cause exists under sections 4n or 8a of the Act which would warrant refusal, suspension or revocation of registration with the Commission and whether the person is in violation of any provision of the Act or the Commission's regulations thereunder, including the regulations contained in this part.

. . . . . .

(c) Upon written application the Commission may for good cause shown in any particular case waive the requirements of any provision of paragraph (a) or (b) of this section other than those requirements expressly imposed by sections 4c(d)(1) and (2) (A) and (B) of the Act, subject to such other terms and conditions as the Commission may find appropriate in the public interest and for the protection of option customers.

. . . . . .

(d) [Reserved].

. . . . . .

6. By amending the authority citations applicable to part 32 as follows:

AUTHORITY: Secs. 2(a)(1), 4c and 8a, Commodity Exchange Act (7 U.S.C. 2, 6c and 12a (1976), as amended by Pub. L. 95-405, 92 Stat. 865, 867-869).

The foregoing action shall become effective on December 21, 1978, except that the foregoing repeal of rule 32.12(d) shall be effective immediately.

[15] Amendments to paragraphs (a)(6) and (b)(1) of rule 32.12 and new rules 32.12(f), (g), (h) and (i) were recently adopted. See 43 FR 52467 et seq. (November 13, 1978), and note 2, supra.

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Issued in Washington, D.C., on November 15, 1978, by the Commission.

WILLIAM T. BAGLEY,
Chairman, Commodity Futures Trading Commission.

[FR Doc. 78-32644 Filed 11-20-78; 8:45 am]

[8010-01-M]

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release No. SAB-26]

PART 211—INTERPRETATIVE RELEASES RELATING TO ACCOUNTING MATTERS

Subpart B—Staff Accounting Bulletins

STAFF ACCOUNTING BULLETIN No. 26

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: The interpretations in this Staff Accounting Bulletin express the staff's views concerning three accounting and disclosure matters relating to bank holding companies. The first matter presents the staff's suggestion for items to be included in a capsule updating of a summary of operations. The second matter is concerned with disclosure believed appropriate in connection with reporting of dividends which can be paid by bank subsidiaries. The third matter discusses the use of tax equivalent adjusted amounts in financial statements and management's discussion of the results of operations.

DATE: November 13, 1978.

FOR FURTHER INFORMATION CONTACT:

Lawrence J. Bloch, Office of the Chief Accountant, Securities and Exchange Commission, Washington, D.C. 20549, 202-472-3782.

SUPPLEMENTARY INFORMATION: The statements in Staff Accounting Bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval; they represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

SHIRLEY E. HOLLIS,
Assistant Secretary.

NOVEMBER 13, 1978.

STAFF ACCOUNTING BULLETIN No. 26

The following interpretations express the staff's view regarding certain accounting and disclosure matters relating to bank holding companies.

TOPIC 1: FINANCIAL STATEMENTS

* * * * *

J. Summary of operations—capsule updating.

Facts: Registrants may be required to update the summary of operations or statement of income presented in lieu of a summary in 1933 Act registration statements with condensed (or capsule) information through the end of the latest month-end or quarter.

Question: What specific items are appropriate for presenting capsule information for a bank holding company?

Interpretive Response: Capsule income information for a bank holding company should included at least the following items:

Interest income; Net interest income; Provision for loan losses and Income before income taxes and securities gains (losses).

Income before securities gains (losses); Net income and Earnings per share.

* * * * *

TOPIC 4: EQUITY ACCOUNTS

* * * * *

I. Limitation on payment of dividends by subsidiary banks to parent holding company.

Facts: The principal source of income and funds for a bank holding company is dividends paid by subsidiary banks. Bank regulatory agencies limit the amount of dividends which a bank can pay without obtaining approval from the agencies.

Question: What disclosure is the staff requesting from bank holding companies?

Interpretive Response: The staff is requesting that bank holding companies disclose in a note to the financial statements the dollar amount of dividends which can be paid to the parent company by bank subsidiaries without obtaining prior approval from a bank regulatory agency.

* * * * *

TOPIC 10: MISCELLANEOUS DISCLOSURE

* * * * *

K. Tax equivalent adjustment in financial statements of bank holding companies.

Facts: Bank subsidiaries of bank holding companies frequently hold substantial amounts of state and municipal bonds, interest income from which is exempt from Federal income taxes. Because of the tax exemption the stated yield on these securities is lower than the yield on securities with similar risk and maturity characteristics whose interest is subject to Federal tax. In order to make the interest income and resultant yields on tax exempt obligations comparable to those on taxable investments and loans, a "tax equivalent adjustment" is often added to interest income when presented in analytical tables or charts. When the data presented also includes income taxes, a corresponding amount is added to income tax expense so that there is no effect on net income. Adjustment may also be made for the tax equivalent effect of exemption from state and local income taxes.

Question 1: Is the concept of the tax equivalent adjustment appropriate for inclusion in financial statements and related notes?

Interpretive Response: No. The tax equivalent adjustment represents a credit to interest income which is not actually earned and realized and a corresponding charge to taxes (or other expense) which will never be paid, consequently it should not be reflected on the income statement or in notes to financial statements included in a report or registration statement filed with the Commission. Financial statements and related notes in an annual report to stockholders which include a tax equivalent adjustment are not considered appropriate for incorporation by reference in a 1933 Act or 1934 Act filing. The staff will request amendment of filings containing income statements and notes which have tax equivalent adjustments or which incorporate by reference statements and notes in a stockholders' report which contain such adjustments.

In connection with the adoption of article 9 of regulation S-X (17 CFR 210.9-01 to 210.9-05) which is concerned with requirements for financial statements of bank holding companies and banks, it was stated that "The tax equivalency adjustment is not in accordance with generally accepted accounting principles but reflects theoretical income never actually realized by a company." The AICPA Industry Audit Guide, "Audits of Banks," (1968) states that "The purpose of the income statement is to disclose factually the period's transactions as they occurred; it should not be used to present results which might have been realized if conditions had been different from those which actually existed."

Question 2: May a tax equivalent adjustment be reflected in a summary of operations included in a report or registration statement filed with the Commission?

Interpretive Response: No. The staff does not believe that such an adjustment is appropriate for inclusion in a summary of operations included in filings with the Commission for the reasons stated in the response to Question 1.

Question 3: May amounts representing tax equivalent adjustments be included in the body of a statement of income or summary of earnings provided they are designated as not being included in the totals and balances on the statement?

Interpretive Response: No. The tabular format of a statement or summary develops information in an orderly manner which becomes confusing when additional numbers not an integral part of the statement are inserted into it.

Question 4: If the summary of operations in an annual report to stockholders includes income on tax exempt securities adjusted to a tax equivalent basis, could the statement be incorporated by reference in a 1933 Act or 1934 Act filing?

Interpretive Response: No. An adjusted summary of operations in an annual report to stockholders would not be considered appropriate for incorporation by the reference in a 1933 Act or 1934 Act filing. The registrant would be requested to amend the filing to include a summary of operations based on generally accepted accounting principles, and to add a headnote stating that the summary in the anhual report to stockholders was not acceptable for incorporation by reference because it did not comply with generally accepted accounting principles.

Question 5: May information adjusted to a tax equivalent basis be included in management's discussion and analysis of the summary of operations (or statement of income)?

Interpretive Response: The purpose of management's discussion and analysis is to enable investors to appraise the extent that earnings have been affected by changes in business activity and accounting principles or methods. Material changes in items or revenue or expense should be analyzed and explained in textual discussion and statistical tables. It may be appropriate to use amounts or to present yields on a tax equivalent basis. If this is done the tax equivalent amounts should be clearly identified and related to the corresponding unadjusted amount on the financial statement. Yields computed on a tax equivalent basis should be identified. If appropriate, the discussion should include a comment on material changes in investment securities positions that affect tax exempt interest income. For example, there might be a comment on a change from investments in tax exempt securities to nontax exempt securities because of the availability of net operating losses to offset taxable income of current and future periods, or a comment on a change in the quality level of the tax exempt investments resulting in increased interest income and risk and a corresponding increase in the tax equivalent adjustment.

Because of differences among registrants in making the tax equivalency computation, a brief note should describe the extent of recognition of exemption from Federal, State and local taxes and the combined marginal or incremental rate used. Where net operating losses exist, the note should indicate the nature of the tax equivalency adjustment made.

[FR Doc. 78-32628 Filed 11-20-78; 8:45 am]

[8010-01-M]

[Release No. 33-5995]

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

Resales of Securities

AGENCY: Securities and Exhange Commission.

ACTION: Final rule and form amendments.

SUMMARY: The Commission is amending rule 144, which provides a safe harbor for the resale of securities, and two forms relating to it. The amendments are technical in nature and are designed primarily to conform the rule and the forms in their entirety to certain recent changes which relaxed the limitations on the amount of securities that can be sold under the rule and the manner in which such securities may be sold.

EFFECTIVE DATE: November 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Peter J. Romeo, Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 20549, 202-755-1240.

SUPPLEMENTARY INFORMATION: The Commission today announced the adoption of amendments to rule 144 (17 CFR 230.144), form 144 (17 CFR 239.144), and form S-8 (17 CFR 239-16b) under the Securities Act of 1933 ("1933 Act") (15 U.S.C. 77a et seq.). The purpose and nature of the amendments are discussed in detail in the following sections of this release.

BACKGROUND

Rule 144 provides a safe harbor for the resale of "restricted securities" [1] and securities held by affiliates [2] of an issuer. The rule sets forth standards which, if met, permit persons who hold such securities to sell them publicly without the need for registration and without being deemed underwriters [3] under the 1933 Act.

In release No. 33-5979 (September 19, 1978) (43 FR 43709) the Commission announced the adoption of certain significant amendments to Rule 144. The amendments directly affected the volume limitation and manner of sale requirements of the rule. Although other provisions of rule 144, form 144, and form S-8 were indirectly affected by the changes, these other provisions, through oversight, were not amended at the time. To correct this oversight, and in order to implement the recent changes to the fullest degree possible, the Commission has determined to adopt the amendments descibed herein.

SUMMARY OF THE AMENDMENTS

Four types of revisions have been made to the items referred to above. These are summarized in the paragraphs which follow.

1. REFERENCES TO 6-MONTH PERIODS CHANGED

As previously noted, the amendments announced in release No. 33-5979 in part involved the volume limitation provisions of rule 144. Formerly, the rule permitted a person to sell the amounts specified in the rule during periods of 6 months. The amendments reduced this 6-month period measuring sales to 3 months.

In making the above revision, the Commission amended paragraphs (e)(1) and (e)(2) of rule 144, which deal directly with the volume limitation requirements. However, other parts of the rule which contain references to 6-month measuring periods, including subparagraphs (ii) through (vi) of paragraph (e)(3), note (ii)(c) to paragraph (g)(3), and paragraph (h), were not so amended. The references to 6-month measuring periods in those other provisions have now been changed to 3 months so that the rule will now be consistent in all respects on this point. Similar changes have been made, where appropriate, in form 144 and in general instruction E to form S-8.

2. VOLUME LIMITATION FOR UNLISTED SECURITIES CLARIFIED

In amending the volume limitation provisions of rule 144 in release No. 33-5979, the Commission stated in the explanatory section of the release that, among other things, it was "eliminating the disparity that formerly existed in rule 144 between the volume standards for listed securities and those for unlisted securities." This statement reflected the fact that under the revised rule trading volume reported through NASDAQ [4] for an unlisted security could be considered in determining the maximum amount of such securities that could be sold. Formerly, trading volume could be considered only if one were selling securities listed on a national securities exchange.

Notwithstanding the above statement, the Commission's staff has received a number of inquiries as to whether NASDAQ trading volume may be taken into account in connection with sales of unlisted securities under the rule. Apparently, these in-

[1] The term "restricted securities" includes securities acquired in nonpublic offerings, such as those under sec. 4(2) of the 1933 Act, as well as securities acquired in offerings made in reliance upon rule 240 (17 CFR 230.240) under the Act.

[2] An "affiliate" of an entity is defined in rule 405 (17 CFR 230.405) under the 1933 Act as "a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the (entity)."

[3] The term "underwriter" is broadly defined in sec. 2(11) of the 1933 Act and includes persons who acquire securities "with a view to * * * distribution."

[4] NASDAQ is the name of the automated quotation service of the NASD, Inc.

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quiries have been prompted by the fact that paragraph (e)(1) of the rule states that in determining the maximum amount of securities that may be sold under the rule, one may consider the average weekly volume of trading reported "on all national securities exchanges *and* reported through (NASDAQ)" (emphasis added). As pointed out by the persons making the inquiries, the use of the conjunction "and" suggests that NASDAQ trading volume is relevant only to sales of listed securities.

In order to dispel any further confusion in regard to the above matter, the Commission has amended paragraph (e)(1) to state that one may consider the average weekly volume of trading "reported on all national securities exchanges *and/or* reported through (NASDAQ) (emphasis added). The use of the dual connective "and/or" will make it clear that for purposes of determining the volume limitation under rule 144, both exchange volume and NASDAQ volume may be considered for listed securities, while NASDAQ volume may be considered for unlisted securities.

3. REQUIREMENT TO FILE AMENDED FORM 144 ELIMINATED

Paragraph (h) of rule 144 until now has required the filing of a notice on form 144 of a proposed sale of securities under the rule if the amount of securities to be sold during any 6-month period exceeded 500 shares or the aggregate sale price was in excess of $10,000. In addition, the paragraph has required that if all of the securities for which a notice was filed were not sold within 90 days after the filing of the notice, an amended notice must be filed concurrently with the commencement of any further sales of the securities.

In view of the fact that the measuring period for determining the volume limitation for sales under the rule has been reduced from 6 months to 3 months, it now appears that the requirement for filing an amended notice after the 90-day period mentioned above has elapsed is superfluous. That is, 90 days is comparable to the new 3-month measuring period, and since a new notice would have to be filed in any event for further sales after a 3-month period, no useful purpose would be served by requiring an amended notice after 90 days. Accordingly, the Commission has deleted from paragraph (h) the sentence which required the filing of an amended form 144 in the circumstances mentioned above.

4. STATEMENTS CONCERNING EXPANDED METHOD OF SELLING INSERTED

The amendments to rule 144 announced in release No. 33-5979 now permit sales of securities under the rule to be made directly to a market maker in lieu of selling such securities through a broker. Formerly, the rule required that all sales of securities under it be made in brokers' transactions. In order to implement this change fully, the Commission has inserted in paragraph (h) of the rule, as well as form 144, statements which indicate that the notice on form 144 shall be transmitted for filing concurrently with either the placing with a broker of an order to execute a sale under the rule or the execution directly with a market maker of such a sale. In addition, the form has been revised to require, in connection with sales to a market maker, the name of any such entity.

TEXT OF THE AMENDMENTS

I. 17 CFR is amended by revising § 230.144(e) (1), (2), and (3), (e)(3)(ii)–(vi), (g)(3) note (ii) (c), and (h) to read as follows:

§ 230.144 Persons deemed not to be engaged in a distribution and therefore not underwriters.

* * * * * * *

(e) *Limitation on amount of securities sold.* Except as hereinafter provided, the amount of securities which may be sold in reliance upon this rule shall be determined as follows:

(1) *Sales by affiliates.* If restricted or other securities are sold for the account of an affiliate of the issuer, the amount of securities sold, together with all sales of restricted and other securities of the same class for the account of such person within the preceding three months, shall not exceed the greater of: (i) 1 percent of the shares or other units of the class outstanding as shown by the most recent report or statement published by the issuer, or (ii) the average weekly volume of trading in such securities reported on all national securities exchanges and/or reported through the automated quotation system of a registered securities association during the 4 calendar weeks preceding the filing of the notice required by paragraph (h) of this section, or, if no such notice is required, the date of receipt of the order to execute the transaction by the broker or the date of execution of the transaction directly with a market maker, or (iii) the average weekly volume of trading in such securities reported through the consolidated transaction reporting system contemplated by rule 17a-15 under the Securities Exchange Act of 1934 during the 4-week period specified in subdivision (ii) of this subparagraph.

(2) *Sales by persons other than affiliates.* The amount of restricted securities sold for the account of any person other than an affiliate of the issuer, together with all other sales of restricted securities of the same class for the account of such person within the preceding 3 months, shall not exceed the amount specified in paragraph (e)(1)(i), (1)(ii), or (1)(iii) of this section, whichever is applicable.

(3) *Determination of amount.* For the purpose of determining the amount of securities specified in paragraphs (e) (1) and (2) of this section, the following provisions shall apply:

* * * * * * *

(ii) The amount of securities sold for the account of a pledgee thereof, or for the account of a purchaser of the pledged securities, during any period of 3 months within 2 years after a default in the obligation secured by the pledge, and the amount of securities sold during the same 3-month period for the account of the pledgor shall not exceed, in the aggregate, the amount specified in subparagraph (1) or (2) of this paragraph, whichever is applicable.

(iii) The amount of securities sold for the account of a donee thereof during any period of 3 months within 2 years after the donation, and the amount of securities sold during the same 3-month period for the account of the donor, shall not exceed, in the aggregate, the amount specified in subparagraph (1) or (2) of this paragraph, whichever is applicable;

(iv) Where securities were acquired by a trust from the settlor of the trust, the amount of such securities sold for the account of the trust during any period of 3 months within 2 years after the acquisition of the securities by the trust, and the amount of securities sold during the same 3-month period for the account of the settlor, shall not exceed, in the aggregate, the amount specified in subparagraph (1) or (2) of this paragraph, whichever is applicable;

(v) The amount of securities sold for the account of the estate of a deceased person, or for the account of a beneficiary of such estate, during any period of 3 months and the amount of securities sold during the same period for the account of the deceased person prior to his death shall not exceed, in the aggregate, the amount specified in subparagraph (1) or (2) of this paragraph, whichever is applicable: *Provided,* That no limitation on amount shall apply if the estate or beneficiary thereof is not an affiliate of the issuer;

(vi) When two or more affiliates or other persons agree to act in concert for the purpose of selling securities of an issuer, all securities of the same class sold for the account of all such persons during any period of 3 months shall be aggregated for the purpose of

determining the limitation on the amount of securities sold;

* * * * * *

(g) *Brokers' transactions.* * * *

NOTES.—(i) * * *

(ii) The reasonable inquiry required by paragraph (g) (3) of this section should include, but not necessarily be limited to, inquiry as to the following matters:

* * * * * *

(c) The amount of securities of the same class sold during the past 3 months by all persons whose sales are required to be taken into consideration pursuant to paragraph (e) of this section;

* * * * * *

(h) *Notice of proposed sale.* If the amount of securities to be sold in reliance upon the rule during any period of 3 months exceeds 500 shares or other units or has an aggregate sale price in excess of $10,000, three copies of a notice on form 144 shall be filed with the Commission at its principal office in Washington, D.C.; and if such securities are admitted to trading on any national securities exchange, one copy of such notice shall also be transmitted to the principal exchange on which such securities are so admitted. The form 144 shall be signed by the person for whose account the securities are to be sold and shall be transmitted for filing concurrently with either the placing with a broker of an order to execute a sale of securities in reliance upon this rule or the execution directly with a market maker of such a sale. Neither the filing of such notice nor the failure of the Commission to comment thereon shall be deemed to preclude the Commission from taking any action it deems necessary or appropriate with respect to the sale of the securities referred to in such notice.

* * * * * *

II. 17 CFR 239.144 (a) and (b) is amended to read as follows:

§ 239.144 Form 144, for notice of proposed sale of securities pursuant to § 230.144 of this chapter.

(a) Except as indicated in paragraph (b) of this section, this form shall be filed in triplicate with the Commission at its principal office in Washington, D.C., by each person who intends to sell securities in reliance upon § 230.144 of this chapter and shall be transmitted for filing concurrently with either the placing with a broker of an order to execute a sale of securities or the execution directly with a market maker of a sale of securities.

(b) This form need not be filed if the amount of securities to be sold during any period of 3 months does not exceed 500 shares or other units and the aggregate sale price thereof does not exceed $10,000.

* * * * * *

III. Form 144 under the Securities Act of 1933 is amended to read as follows:

[8010-01-C]

U S SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 144

SEC USE ONLY

NOTICE OF PROPOSED SALE OF SECURITIES
Pursuant to Rule 144 under the Securities Act of 1933

ATTENTION: Transmit for filing 3 copies of this form concurrently with either placing an order with a broker to execute a sale or executing a sale directly with a market maker

(a) NAME OF ISSUER | (b) IRS IDENT. NO. | (c) S.E.C. FILE NO.

(d) ADDRESS OF ISSUER STREET CITY STATE ZIP CODE | TELEPHONE NO. AREA CODE NUMBER

(e) NAME OF PERSON FOR WHOSE ACCOUNT THE SECURITIES ARE TO BE SOLD | (f) SOCIAL SECURITY NO. OR IRS IDENT. NO. | (g) RELATIONSHIP TO ISSUER | (h) ADDRESS STREET CITY STATE ZIP CODE

INSTRUCTION: The person filing this notice should contact the issuer to obtain the I.R.S. Identification Number and the S.E.C. File Number.

(a) Title of the Class of Securities To Be Sold	(b) Name and Address of Each Broker Through Whom the Securities are to be Offered or Each Market Maker who is Acquiring the Securities	SEC USE ONLY Broker-Dealer File Number	(c) Number of Shares or Other Units To Be Sold (See instr. 3(c))	(d) Aggregate Market Value (See instr. 3(d))	(e) Number of Shares or Other Units Outstanding (See instr. 3(e))	(f) Approximate Date of Sale (See instr. 3(f))	(g) Name of Each Securities Exchange (See instr. 3(g))

INSTRUCTIONS: 1. (a) Name of issuer
(b) Issuer's I.R.S. Identification Number
(c) Issuer's S.E.C. file number, if any
(d) Issuer's address, including zip code
(e) Issuer's telephone number, including area code

2. (a) Name of person for whose account the securities are to be sold
(b) Such person's Social Security or I.R.S. identification number
(c) Such person's relationship to the issuer (e.g., officer, director, 10% stockholder, or member of immediate family of any of the foregoing)
(d) Such person's address, including zip code

3. (a) Title of the class of securities to be sold
(b) Name and address of each broker through whom the securities are intended to be sold
(c) Number of shares or other units to be sold (if debt securities, give the aggregate face amount)
(d) Aggregate market value of the securities to be sold as of a specified date within 10 days prior to the filing of this notice
(e) Number of shares or other units of the class outstanding, or if debt securities the face amount thereof outstanding, as shown by the most recent report or statement published by the issuer
(f) Approximate date on which the securities are to be sold
(g) Name of each securities exchange, if any, on which the securities are intended to be sold

TABLE I - SECURITIES TO BE SOLD

Furnish the following information with respect to the acquisition of the securities to be sold and with respect to the payment of all or any part of the purchase price or other consideration therefor:

Title of the Class	Date You Acquired	Nature of Acquisition Transaction	Name of Person from Whom Acquired (If gift, also give date donor acquired)	Amount of Securities Acquired	Date of Payment	Nature of Payment

INSTRUCTIONS: 1. If the securities were purchased and full payment therefor was not made in cash at the time of purchase, explain in the table or in a note thereto the nature of the consideration given. If the consideration consisted of any note or other obligation, or if payment was made in installments describe the arrangement and state when the note or other obligation was discharged in full or the last installment paid.

2. If within two years after the acquisition of the securities the person for whose account they are to be sold had any short position, put or other option to dispose of securities referred to in paragraph (3)(i) of Rule 144, furnish full information with respect thereto.

TABLE II - SECURITIES SOLD DURING THE PAST 3 MONTHS

Furnish the following information as to all securities of the issuer sold during the past 3 months by the person for whose account the securities are to be sold.

Name and Address of Seller	Title of Securities Sold	Date of Sale	Amount of Securities Sold	Gross Proceeds

REMARKS:

INSTRUCTIONS.
See the definition of "person" in paragraph (a) of Rule 144. Information is to be given not only as to the person for whose account the securities are to be sold but also as to all other persons included in that definition. In addition, information shall be given as to sales by all persons whose sales are required by paragraph (e) of Rule 144 to be aggregated with sales for the account of the person filing this notice.

ATTENTION:
The Person for whose account the securities to which this notice relates are to be sold hereby represents by signing this notice that he does not know any material adverse information in regard to the current and prospective operations of the Issuer of the securities to be sold which has not been publicly disclosed.

DATE OF NOTICE (SIGNATURE)

The notice shall be signed by the person for whose account the securities are to be sold. At least one copy of the notice shall be manually signed. Any copies not manually signed shall bear typed or printed signatures.

ATTENTION: Intentional misstatements or omission of facts constitute Federal Criminal Violations (See 18 U.S.C. 1001).

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(Secs. 2(11), 4(1), 4(4), 19(a), 48 Stat. 74, 77, 85; secs. 201, 203, 209, 210, 48 Stat. 904, 906, 908; secs. 1-4, 6, 68 Stat. 683, 684; sec. 12, 78 Stat. 580 (15 U.S.C. 77b(11), 77d(1), 77d(4), 77s(a)).)

IV. General instruction E to form S-8 is revised to read as follows:

§ 239.16b Form S-8, for registration under the Securities Act of 1933 of securities to be offered to employees pursuant to certain plans.

* * * * *

E. *Unavailability of the form S-8 prospectus for reoffers or resales.* The form S-8 prospectus will not be available for reoffers or resales of securities acquired pursuant to this registration statement by affiliates of the issuer, as defined in rule 405 under the Act. However, such affiliates may reoffer or resell such securities pursuant to a separate prospectus, filed with the registration statement on this form S-8, prepared in the following manner:

(1) Such prospectus may be prepared in accordance with the requirements of form S-16 if:

(a) The issuer, at the time of filing such prospectus, satisfies the conditions set forth in the rule as to the use of form S-7; or

(b) The amount of securities proposed to be reoffered or resold pursuant to the prospectus, by each person affiliated with the issuer, and any other person with whom he is acting in concert for the purpose of selling securities of the issuer, does not exceed, during any 3-month period, the amount specified in rule 144(e), calculated as of the date of filing such prospectus.

(2) Such prospectus shall be prepared in accordance with the requirements of form S-1 under the Act, if subparagraph (1), above, does not permit the use of a prospectus on form S-16.

* * * * *

(Secs. 6, 10, 19(a), 48 Stat. 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908, sec. 8, 68 Stat. 685; sec. 1, 79 Stat. 1051; sec. 308(a)(2), 90 Stat. 57 (15 U.S.C. 77f, 77j, 77s(a)).)

STATUTORY BASIS

The amendments to rule 144 and form 144 have been adopted by the Commission pursuant to the Securities Act of 1933, particularly sections 2(11), 4(1), 4(4), and 19(a) thereof. The amendments to form S-8 have also been adopted pursuant to the 1933 Act, particularly sections 6, 10, and 19(a) thereof.

Because all of the amendments adopted today generally are of a technical nature and do not impose any new substantive requirements, the Commission finds that prior notice and public comment under the Administrative Procedure Act (5 U.S.C. 553) are not necessary.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

NOVEMBER 8, 1978.

[FR Doc. 78-32627 Filed 10-20-78; 8:45 am]

[4810-22-M]

Title 19—Customs Duties

CHAPTER I—UNITED STATES CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

[T.D. 78-451]

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

Special Tonnage Tax and Light Money; Libya

AGENCY: United States Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This rule adds Libya to the list of nations whose vessels are exempted from the payment of higher tonnage duties than are applicable to vessels of the United States and from the payment of light money. Satisfactory evidence has been obtained by the Department of State that no discriminating duties of tonnage or impost are imposed in Libyan ports upon vessels belonging to citizens of the United States or on their cargo.

EFFECTIVE DATE: The exemption became effective for Libya on September 1, 1969.

FOR FURTHER INFORMATION CONTACT:

Patrick J. Casey, Carriers, Drawback and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, 202-566-5706.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Generally, the United States imposes regular and special tonnage taxes, and a duty of a specified amount per ton, known as "light money," on all foreign vessels which enter U.S. ports (46 U.S.C. 121, 128). However, vessels of a foreign nation may be exempted from the payment of special tonnage taxes and light money upon presentation of proof satisfactory to the President that no discriminatory duties of tonnage or imposts are imposed by that foreign nation on U.S. vessels or their cargo (46 U.S.C. 141). The President has delegated the authority to grant this exemption to the Secretary of the Treasury. Section 4.22 of the Customs Regulations (19 CFR 4.22) lists those nations whose vessels have been exempted from the payment of any higher tonnage duties than are applicable to vessels of the United States and from the payment of light money.

On October 6, 1977, the Department of State advised that satisfactory evidence has been obtained from the Government of Libya that no discriminating duties of tonnage or impost are imposed or levied in ports of that country upon vessels wholly belonging to citizens of the United States, or upon the produce, manufactures, or merchandise imported into that country in those vessels.

In its communication, the Department of State advised no discriminating duties of tonnage or impost were imposed or levied upon vessels wholly belonging to citizens of the United States, or upon the produce, manufactures, or merchandise, imported into Libyan ports from September 1, 1969. The date of September 1, 1969, is based upon statements by the Government of Libya, established on September 1, 1969, that it has never imposed discriminatory duties of tonnage or impost on U.S. vessels.

DECLARATION

Therefore, by virtue of the authority vested in the President by section 4228 of the Revised Statutes, as amended (46 U.S.C. 141), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951, as amended by Executive Order No. 10882, July 18, 1960 (3 CFR, 1959-1963 Comp., Ch. II), and pursuant to the authorization provided by Treasury Department order No. 190, Rev. 15 (43 FR 11884), I declare that the foreign discriminating duties of tonnage and impost within the United States are suspended and discontinued, in respect to vessels of Libya, and the produce, manufactures, or merchandise imported into the United States in such vessels from Libya, or from any other foreign country.

This suspension and discontinuance shall take effect from September 1, 1969, in respect to vessels of Libya, and shall continue for so long as the reciprocal exemptions of vessels wholly belonging to citizens of the United States and their cargoes shall be continued and no longer.

AMENDMENT TO THE REGULATIONS

In accordance with this declaration, § 4.22 of the Customs Regulations (19 CFR 4.22) is amended by adding "Libya" in the appropriate alphabetical sequence in the list of nations whose vessels are exempted from the payment of any higher tonnage duties than are applicable to vessels of the United States and from the payment of light money.

(R.S. 251, as amended, 4219, as amended, 4225, as amended, 4228, as amended, sec. 3, 23 Stat. 119, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624, 46 U.S.C. 3, 121, 128, 141).)

Because this amendment merely implements a statutory requirement, notice and public procedure thereon are found to be unnecessary and good cause exists for dispensing with the delayed effective date provisions of 5 U.S.C. 553.

DRAFTING INFORMATION

The principal author of this document was Todd J. Schneider, Regulations and Legal Publications Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices of the Customs Service and the Department of State participated in developing the document, both on matters of substance and style.

Dated: November 7, 1978.

RICHARD J. DAVIS,
Assistant Secretary of the Treasury.

[FR Doc. 78-32675 Filed 11-20-78; 8:45 am]

[1505-01-M]

Title 20—Employee's Benefits

CHAPTER III—SOCIAL SECURITY ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

[Reg. No. 16]

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Deeming of Income

Correction

In FR Doc. 78-25007 appearing at page 39564 in the issue of Wednesday, September 6, 1978, in the third column, on page 39569, paragraph (d)(1) which reads: "(d) *Income not included.* (1) For purposes of this section, the term income does not include:" should be moved below *Example 2.*

[4110-03-M]

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER A—GENERAL

[Docket No. 77C-0208]

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

Ferric Ferrocyanide (Iron Blue)

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document permanently lists ferric ferrocyanide (iron blue) for use in externally applied drugs and cosmetics, including drugs and cosmetics intended for use in the area of the eye. This action, taken in response to two citizen petitions, will also remove ferric ferrocyanide (iron blue) from the provisional listing.

DATES: Effective December 22, 1978; objections by December 21, 1978.

FOR FURTHER INFORMATION CONTACT:

Gerard L. McCowin, Bureau of Foods (HFF-334), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of August 15, 1978 (43 FR 36061), the Food and Drug Administration (FDA) restored ferric ferrocyanide (iron blue) to the provisional list of color additives for use in externally applied drugs and cosmetics, including those intended for use in the area of the eye. The closing date for ferric ferrocyanide was established as November 30, 1978, contingent upon submission by September 14, 1978, of analytical data supporting necessary specifications for the color additive. Published elsewhere in this issue of the FEDERAL REGISTER is a notice extending the closing date to December 31, 1978.

The necessary data was submitted in a timely fashion by two manufacturers. The Commissioner has evaluated this information along with information contained in the petitions and concludes that ferric ferrocyanide is safe, under the conditions set forth below, for use in coloring externally applied drugs and cosmetics, including those intended for use in the area of the eye, and that certification is not necessary for the protection of the public health.

The potential environmental effects of this action have been carefully considered, and FDA has concluded that the action will not signficantly affect the quality of the human environment. This action is one of a type for which the agency has determined under 21 CFR 25.1(f)(6) that the preparation of an environmental impact statement is not required, except in rare and unusual circumstances. Accordingly, under 21 CFR 25.1(g), the preparation of an environmental impact analysis report for this action is not required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 706 (b), (c), and (d), 74 Stat. 399-403 as amended (21 U.S.C. 376 (b), (c), and (d))) and the transitional provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86-618, section 203, 74 Stat. 404-407 (21 U.S.C. 376 note)) and under authority delegated to the Commissioner (21 CFR 5.1), Parts 73 and 81 are amended as follows:

1. Part 73 is amended by adding new §§ 73.1299 and 73.2299 to read as follows:

§ 73.1299 Ferric ferrocyanide.

(a) *Identity.* (1) The color additive ferric ferrocyanide is a ferric hexacyanoferrate pigment characterized by the structual formula $Fe_4[Fe(CN)_6]_3.XH_2O$, which may contain small amounts of ferric sodium ferrocyanide and ferric potassium ferrocyanide.

(2) Color additive mixtures for drug use made with ferric ferrocyanide may contain only those diluents listed in this subpart as safe and suitable for use in color additive mixtures for coloring drugs.

(b) *Specifications.* Ferric ferrocyanide shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by good manufacturing practice:

Water soluble cyanide, not more than 10 parts per million.
Lead (as Pb), not more than 20 parts per million.
Arsenic (as As), not more than 3 parts per million.
Nickel (as Ni), not more than 200 parts per million.
Cobalt (as Co), not more than 200 parts per million.
Mercury (as Hg), not more than 1 part per million.
Oxalic acid, not more than 0.1 percent.

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Water soluble matter, not more than 3 percent.
Volatile matter, not more than 10 percent.
Total iron (as Fe corrected for volatile matter), not less than 37 percent and not more than 45 percent.

(c) *Uses and restrictions.* Ferric ferrocyanide may be safely used in amounts consistent with good manufacturing practice to color externally applied drugs including those intended for use in the area of the eye.

(d) *Labeling requirements.* The label of the color additive and of any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of § 70.25 of this chapter.

(e) *Exemption from certification.* Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from certification requirements of section 706(c) of the act.

§ 73.2299 **Ferric ferrocyanide.**

(a) *Identity and specifications.* The color additive ferric ferrocyanide shall conform in identity and specifications to the requirements of § 73.1299(a)(1) and (b).

(b) *Uses and restrictions.* Ferric ferrocyanide is safe for use in coloring externally applied cosmetics, including cosmetics applied to the area of the eye, in amounts consistent with good manufacturing practice.

(c) *Labeling.* The color additive and any mixture prepared therefrom intended solely or in part for coloring purposes shall bear, in addition to any information required by law, labeling in accordance with § 70.25 of this chapter.

(d) *Exemption from certification.* Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from certification under section 706(c) of the act.

2. Part 81 is amended:

§ 81.1 [Amended]

a. In § 81.1 *Provisional lists of color additives* by deleting from the table in paragraph (g) the entry for "Ferric ferrocyanide (iron blue)."

b. In § 81.27 by revising the introductory text of paragraph (c), and by revising paragraph (c)(2) to read as follows:

§ 81.27 **Conditions of provisional listing of additives.**

* * * * *

(c) The closing date for D & C Red No. 6, D & C Red No. 7, and D & C Red No. 30 is postponed until October 31, 1978, while chemistry data and analytical methods to establish specifications are developed and evaluated and subject to compliance with the requirements of this paragraph.

* * * * *

(2) The required chemistry data and analytical methods shall be submitted to the Division of Food and Color Additives, Food and Drug Administration, 200 C Street SW., Washington, D.C. 20204, by July 31, 1978, for D & C Red No. 6, D & C Red No. 7, and D & C Red No. 30.

* * * * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before December 21, 1978, file written objections with the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857. Objections should show how the person filing them will be adversely affected by the order, specify with particularity the provisions of the order thought to be objectionable, and state the grounds for each objection. Objections are to be filed in accordance with the requirements of § 71.30 (21 CFR 71.30). If a hearing is requested, the objections must state the issues for the hearing, be supported by grounds factually and legally sufficient to justify the relief sought, and include a detailed description and analysis of the factual information intended to be presented in support of each objection in the event that a hearing is held. Four copies of all documents should be filed. Each document should be identified with the Hearing clerk docket number found in brackets in the heading of this document. Objections may be seen in the Hearing Clerk's office between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. December 22, 1978, except as to any provisions that may be stayed by the filing of proper objections. Notice of the filing objections or lack thereof will be announced by publication in the FEDERAL REGISTER.

(Sec. 706(b), (c), and (d)); 74 Stat. 399-403 as amended (21 U.S.C. 376(b), (c), and (d)); sec. 203, 74 Stat. 404-407 (21 U.S.C. 376 note).)

Dated: November 13, 1978.

JOSEPH P. HILE,
Associate Commissioner for Regulatory Affairs.

[FR Doc. 78-32502 Filed 11-20-78; 8:45 am]

[4110-03-M]

[Docket No. 77C-0208]

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

Ferric Ferrocyanide (Iron Blue)

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Commissioner of Food and Drugs on his own initiative is postponing the closing date for provisional listing of ferric ferrocyanide (iron blue) until December 31, 1978, to allow time for publication and comment on a regulation to provide for the safe use of ferric ferrocyanide in externally applied drugs and cosmetics, including those intended for use in the area of the eye.

EFFECTIVE DATE: November 21, 1978.

FOR FURTHER INFORMATION CONTACT:

Gerad L. McCowin, Bureau of Foods (HFF-334), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: An order published in the FEDERAL REGISTER of August 15, 1978 (43 FR 36061) reinstated ferric ferrocyanide (iron blue) to the provisional list of color additives until November 30, 1978, to provide an opportunity for data to be submitted and reviewed so that specifications could be established for permanent listing of ferric ferrocyanide for use in externally applied drugs and cosmetics, including those intended for use in the area of the eye.

The required data have been submitted and are adequate to establish specification for "permanent" listing of ferric ferrocyanide. Published elsewhere in this issue of the FEDERAL REGISTER is a rule permanently listing ferric ferrocyanide (iron blue) for use in externally applied drugs and cosmetics, including those used in the area of the eye. The provisional listing of ferric ferrocyanide (iron blue) will be terminated when that separate rule becomes effective on December 22, 1978.

Postponement of the closing date until December 31, 1978, is necessary to provide a brief period within which to publish the final order to list ferric ferrocyanide permanently, and to allow a suitable comment period before the regulation becomes effective. Because of the shortness of time until the November 30, 1978, closing date, the Commissioner concludes that notice and public procedure on this regulation are impractical and contrary to the public interest and that good cause exists for issuing this postponement as a final rule. This postponement will permit uninterrupted use of the color additive until the final order listing the additive permanently becomes effective.

Therefore, under the Color Additive Amendments of 1960 to the Federal Food, Drug, and Cosmetic Act (sec. 203 (a)(2) and (d)(1), Title II, Pub. L. 86-618, 74 Stat. 404-405 (21 U.S.C. 376 note)) and under authority delegated to the Commissioner (21 CFR 5.1), part 81 of the color additive regulations is amended as follows:

§ 81.1 [Amended]

1. In § 81.1 *Provisional lists of color additives,* paragraph (g) is amended by changing the closing date for ferric ferrocyanide (iron blue) to Dec. 31, 1978.

2. In § 81.27 by revising the introductory text of paragraph (c) to read as follows:

§ 81.27 **Conditions of provisional listing of additives.**

* * * * *

(c) The closing date for D & C Red No. 6, D & C Red No. 7, and D & C Red No. 30 is postponed until October 31, 1978, and for ferric ferrocyanide (iron blue) until December 31, 1978, while chemistry data and analytical methods to establish specifications are developed and evaluated, and subject to compliance with the requirements of this paragraph.

* * * * *

Notice and public procedure and delayed effective date are not prerequisites to the promulgation of this rule because section 203(a)(2) of Pub. L. 86-618 provides for this issuance.

Effective date. This regulation is effective November 21, 1978.

(Sec. 203 (a)(2) and (d)(1), Title II, Pub. L. 86-618, 74 Stat. 404-405 (21 U.S.C. 376 note).)

Dated: November 13, 1978.

JOSEPH P. HILE,
Associate Commissioner for Regulatory Affairs.

[FR Doc. 78-32501 Filed 11-20-78; 8:45 am]

[4110-03-M]

SUBCHAPTER B—FOOD FOR HUMAN CONSUMPTION

[Docket No. 78N-0344]

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

Trifluoromethane Sulfonic Acid

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document amends the regulations for direct food additives to provide for the use of trifluoromethane sulfonic acid in the manufacture of "cocoa butter substitute from palm oil." This action is based on a petition filed by Procter & Gamble Co.

DATES: Effective November 21, 1978; objections by December 21, 1978.

ADDRESS: Written objections to the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

Corbin I. Miles, Bureau of Foods (HFF-335), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-472-4750.

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of March 8, 1977 (42 FR 13062), the agency announced that a generally recognized as safe (GRAS) petition (GRASP-7G0081) had been filed by the Procter & Gamble Co., 6071 Center Hill Road, Cincinnati, Ohio 45224, requesting affirmation that cocoa butter prepared from other vegetable oils is GRAS for use in human food. Trifluoromethane sulfonic acid is used as a catalyst in the manufacture of cocoa butter prepared from other vegetable oils. The final regulation, § 184.1259 (21 CFR 184.1259) affirming the GRAS status of "cocoa butter substitute from palm oil" is published elsewhere in this issue of the FEDERAL REGISTER.

The Commissioner of Food and Drugs has evaluated the data in the petition and other relevant materials and concludes that part 173 should be amended as set forth below.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 348(c)(1))) and under authority delegated to the Commissioner (21 CFR 5.1), Part 173 is amended by adding new § 173.395 to read as follows:

§ 173.395 **Trifluoromethane sulfonic acid.**

Trifluoromethane sulfonic acid has the empirical formula CF_3SO_3H (CAS Reg. No. 1493-13-6). The catalyst (Trifluoromethane sulfonic acid) may safely be used in the production of cocoa butter substitute from palm oil (1-palmitoyl-2-oleoyl-3-stearin) (see § 184.1259 of this chapter) in accordance with the following conditions:

(a) The catalyst meets the following specifications:

Appearance, Clear liquid.
Color, Colorless to amber.
Neutralization equivalent, 147-151.
Water, 1 percent maximum.
Fluoride ion, 0.03 percent maximum.
Heavy metals (as Pb), 30 parts per million maximum.
Arsenic (as As), 3 parts per million maximum.

(b) It is used at levels not to exceed 0.2 percent of the reaction mixture to catalyze the directed esterification.

(c) The esterification reaction is quenched with steam and water and the catalyst is removed with the aqueous phase. Final traces of catalyst are removed by washing batches of the product three times with an aqueous solution of 0.5 percent sodium bicarbonate.

(d) No residual catalyst may remain in the product at a detection limit of 0.2 part per million fluoride as determined by 25.046 AOAC method, the "Official Methods of Analysis of the Association of Official Analytical Chemists," 12th Ed., 1976,[1] which is incorporated by reference.

Any person who will be adversely affected by the foregoing regulation may at any time on or before December 21, 1978 submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the

[1]Copies may be obtained from: Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, D.C. 20044.

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right to a hearing on the objection. Four copies of all documents shall be submitted and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this regulation. Received objections may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective November 21, 1978.

(Sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 348(c)(1)).)

NOTE: Incorporation by reference was approved on March 11, 1976, by the Director of the Office of the Federal Register and is on file at the Federal Register library.

Dated: November 9, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 78-32503 Filed 11-20-78; 8:45 am]

[4110-03-M]

[Docket No. 76G-0488]

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

Cocoa Butter Substitute From Palm Oil

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is affirming that cocoa butter substitute from palm oil is generally recognized as safe (GRAS) for human use in nonstandardized confectionary products. This action, based on a petition requesting such affirmation, lists the ingredient in the regulations as a direct food substance affirmed as GRAS. This document also establishes "cocoa butter substitute from palm oil" as the common or usual name for the ingredient and provides for a 60-day comment period on the name.

DATES: Effective November 21, 1978; objections by December 21, 1978; and comments on the common or usual name provisions by January 22, 1979.

FOR FURTHER INFORMATION CONTACT:

Corbin I. Miles, Bureau of Foods (HFF-335), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-472-4750.

SUPPLEMENTARY INFORMATION: In accordance with the procedures described in § 170.35 (21 CFR 170.35), Procter & Gamble Co., 6071 Center Hill Road, Cincinnati, Ohio 45224, submitted a petition (GRASP-7G0081) requesting affirmation that "cocoa butter prepared from other vegetable oils" is generally recognized as safe (GRAS) for use in human food. A notice of filing of the petition was published in the FEDERAL REGISTER of March 8, 1977 (42 FR 13062), and interested persons were given an opportunity to review the petition and submit comments to the Hearing Clerk, Food and Drug Administration. As stated in that notice, the name designated for filing ("cocoa butter prepared from other vegetable oils") was for descriptive purposes only and was not intended to establish a common or usual name for the ingredient. A common or usual name of "cocoa butter substitute from palm oil" is established by this regulation; 60 days are provided for additional comment on the name.

In response to the notice, four comments were received from firms associated with the chocolate industry. All of the comments concerned the name of the ingredient used in the notice. A summary of these comments and the conclusions of the Commissioner of Food and Drugs are discussed below.

COMMON OR USUAL NAME

1. One respondent requested that an opportunity for specific comment on the common or usual name for the ingredient be provided independent of action on the petition.

The notice of filing contained the statement that "the common or usual name for this ingredient, if any, will be established at the time that a final GRAS or food additive regulation is promulgated." This statement was intended to provide notice of the agency's intent to adopt a common or usual name and to solicit public comment and suggestions on the name. This regulation establishes the name "cocoa butter substitute from palm oil" for the GRAS substance. An additional 60 days are being provided, however, for comment on the name. At the end of the comment period, a notice will be published addressing those comments received in response to the common or usual name provision of this regulation. If appropriate, the notice will modify the common or usual name.

2. One comment described the name used in the notice of filing as inappropriate and misleading to consumers because it was the name of a naturally occurring product. The comment suggested the names "synthetic cocoa butter," "cocoa butter substitute," and "cocoa butter replacement." Another comment suggested that the petitioner's product be described as "synthetic cocoa butter," "imitation cocoa butter," or "artificial cocoa butter."

The Commissioner acknowledges that the name used in the notice of filing might be confusing to some consumers. Again, however, the notice stated that the name was for descriptive purposes only and did not establish a common or usual name for the ingredient. The name "cocoa butter substitute from palm oil" has been chosen in preference to those suggested by the comment because the common or usual name should identify the source of the oil and affirmatively describe the ingredient. The names suggested by the comments all describe what the ingredient is not. The name established by this regulation includes the source of the starting oil.

3. The petitioner suggested using a descriptive name such as "hydrogenated vegetable oil—made from palm oil" as a temporary measure. The petitioner also recommended establishing a common or usual name that will be descriptive of this specific class of food ingredients. This course of action, the petitioner contends, would provide the proper opportunity for consumer and industry participation in setting the name.

The Commissioner has considered the name "hydrogenated vegetable oil made from palm oil." This name suggests that the ingredient is simply vegetable oil that has been hydrogenated, which is clearly not the case. This name does, however, identify the source of the starting material. The ingredient 1-palmitoyl-2-oleoyl-3-stearin is a triglyceride produced by directed esterification of fully saturated 1,3 diglycerides (derived from palm oil) with the anhydride of food grade oleic acid in the presence of the catalyst (trifluoromethane sulfonic acid).

Although the ingredient is a mixture of triglycerides, the chemically accurate name is 1-palmitoyl-2-oleoyl-3-stearin, which is the predominant triglyceride in the ingredient. Precedents for the use of a specific chemical name for such mixtures are found in the food additive regulations. Sections 172.844 and 172.846 (21 CFR 172.844 and 172.846), which provide for the use of stearoyl lactylate, are examples.

The Commissioner recognizes, however, that use of the above chemical name may not be informative to the consumer. Although 1-palmitoyl-2-oleoyl-3-stearin is a chemically accurate name, it is not a name that is likely to be understood or recalled by consumers generally. In the opinion of the Commissioner, the interest of consumers is better served by an accurate and comprehensible name than by a long and technical chemical name. The name "cocoa butter substitute from palm oil" has the advantage of both identifying the basic nature of the ingredient and identifying the source of the starting material. The chemical name is, however, used in the regulation as the most precise way to identify the ingredient insofar as food processors and ingredient manufacturers are concerned. The Commissioner invites further comments on the name stated in the regulation.

SAFETY OF THE INGREDIENT

No comments were received concerning the safety of the substance. The petitioner has presented information to show that "cocoa butter substitute from palm oil" as described in GRASP-7G0081 is similar to natural cocoa butter. Cocoa butter is a natural extractive of cacao (*Theobroma cacao* L.). Cacao is listed in § 182.20 (21 CFR 182.20) as GRAS for essential oils, oleoresins (solvent-free), and natural extractives (including distillates). Natural cocoa butter has been used for many years in chocolate confections and is considered GRAS by qualified experts knowledgeable about the safety of food ingredients. Cocoa butter is incorporated into these products as a component of chocolate liquor or as a separate ingredient. Lauric fats such as coconut and palm kernel oil, as well as palm, soybean, and cottonseed oils have been used as starting raw materials for the added fat in the making of candies and confectioner's coatings. The desirable eating quality of chocolate coatings is believed to depend primarily on the fact that cocoa butter consists predominantly of the specific triglyceride molecule, 1-palmitoyl-2-oleoyl-3-stearin. The triglycerides described in the petition are comparable to natural cocoa butter.

The predominant constituents of "cocoa butter substitute from palm oil" are glycerol and palmitic, oleic, and stearic acids. These components occur naturally as components of glycerides, lipids, lipoproteins, and membranes of both plants and animals. The synthesis and metabolism of these substances are well documented in some biochemistry textbooks such as: *Principles of Biochemistry*, 4th Ed., pp. 57-70 and 470-505 (1968) by White, Handler, and Smith and *Biochemistry*, pp. 189-198 and 513-524 (1970) by Lehninger.

"Cocoa butter substitute from palm oil" is a mixture of position-specific triglycerides whose major component is 1-palmitoyl-2-oleoyl-3-stearin. The triglycerides are produced by directed esterification of fully saturated 1,3-diglycerides (derived from palm oil) with the anhydride of food grade oleic acid. The presence of the catalyst (trifluoromethane sulfonic acid) is required. These triglycerides contain the same fatty acids and the same glycerol components as those found in the broad range of edible fats and oils considered GRAS. The ingredient has a similar chemical composition to natural cocoa butter, i.e., 26 percent palmitic acid in natural cocoa butter compared to 20 percent in the ingredient; 35 percent oleic acid compared to 32 percent in the ingredient; 3 percent linoleic acid compared to 2 percent in the ingredient; while stearic acid is 34 percent compared to 44 percent in the ingredient. In an article entitled "On the Configuration of Cocoa Butter," *Journal of the American Oil Chemist's Society*, Vol. 34, 1957, E. S. Lutton shows that the predominant triglyceride in natural cocoa butter is 1-palmitoyl-2-oleoyl-3-stearin. Other information demonstrating that the ingredient is similar to natural cocoa butter includes a discussion in "Bailey's Industrial Oil and Fat Products," 3d Ed., p. 181. The ingredient has the same or similar melting point, solids profile, and palatability as natural cocoa butter.

Unpublished safety data submitted in support of the petition include a short term (28-day) feeding study in which rats were fed 1-palmitoyl-2-oleoyl-3-stearin at a level of 15 percent in the diet and a metabolic study with rats fed C^{14} labeled oleic derivatives. A published 21-month chronic feeding and a 2-year carcinogenic study with rats fed preformed oleic derivatives in used frying fats were also submitted (*Journal of Nutrition*, Vol, 93, p. 337, by G. A. Nolan et al.). Oleic derivatives are byproducts formed during the manufacture of the triglyceride and appear as contaminants in the isolated ingredient. They are also normally found in used frying fats and oils from both vegetable and animal sources. No adverse effects attributable to the test material were observed in any of the above studies. These studies support the premise that the present levels of oleic derivatives in the ingredient will not pose a significant risk to the public health.

The use of the catalyst trifluoromethane sulfonic acid in the production of cocoa butter substitute from palm oil is provided for by the food additive regulation § 173.395 (21 CFR 173.395) published elsewhere in this issue of the FEDERAL REGISTER.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 202(s), 409, 701(a), 52 Stat. 1055, 72, Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner (21 CFR 5.1), part 184 is amended by adding new § 184.1259 to read as follows:

§ 184.1259 Cocoa butter substitute from palm oil.

(a) Cocoa butter substitute from palm oil (1-palmitoyl-2-oleoyl-3-stearin) is a triglyceride. It is manufactured by directed esterification of fully saturated 1,3-diglycerides (derived from palm oil) with the anhydride of food grade oleic acid in the presence of the catalyst trifluoromethane sulfonic acid (§ 173.395 of this chapter).

(b) The ingredient meets the following specifications:

(1) Over 90 percent triglycerides, not more than 7 percent diglycerides, not more than 1 percent monoglycerides, and not more than 1 percent free fatty acids.

(2) Total glycerides—98 percent minimum.

(3) Heavy metals (as lead), 10 parts per million maximum (see p. 562 "Food Chemicals Codex," 2d Ed., 1972).[1]

(4) Color—clear, bright, and free from suspended matter.

(5) Odor and taste—free from foreign and rancid odor and taste.

(6) Residual catalyst ("Official Methods of Analysis of the Association of Analytical Chemists," [2] 12 Ed., 25.046—method of determination of residual fluorine; limit of detection 0.2 part per million F; multiply fluoride result by 2.63 to convert to residual catalyst)—not detectable at a detection limit of 0.5 part per million. The ingredient shall be washed three times in batches with 0.5 percent sodium bicarbonate to remove catalyst residuals in accordance with good manufacturing practice.

(7) Residual methanol—5 parts per million maximum.

(c) The ingredient is used in the following nonstandardized food categories: Confections and frostings as defined in § 170.3(n)(9) of this chapter; in nonstandardized coatings of soft candy as defined in § 170.3(n)(38) of this chapter; and in nonstandardized sweet sauces and toppings as defined in § 170.3(n)(43) of this chapter.

(d) The ingredient is used in food in accordance with § 184.1(b)(1) at levels not to exceed good manufacturing practice.

Interested persons may, on or before January 22, 1979, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, written comments regarding the name established by this regulation. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Re-

[1] Copies may be obtained from: National Academy of Sciences, 2101 Constitution Avenue NW, Washington, D.C. 20037.

[2] Copies may be obtained from: Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, D.C. 20044.

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ceived comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday. A notice will be published at the end of the comment period to address the comments received in response to the common or usual name provision of this regulation. If appropriate, the notice will modify the common or usual name.

Any person who will be adversely affected by the foregoing regulation may at any time on or before December 21, 1978, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Four copies of all documents shall be submitted and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this regulation. Received objections may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective November 21, 1978.

(Secs. 201(s), 409, 701(a), 52 Stat. 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348, 371(a)).)

Dated: November 9, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Regulatory Affairs.

NOTE.—Incorporation by reference approved by the Director of the Office of the Federal Register on July 10, 1973 and August 11, 1976, and is on file in the Office of the Federal Register library.

[FR Doc. 78-32504 Filed 11-20-78; 8:45 am]

[4110-03-M]

SUBCHAPTER 3—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Bambermycins

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The regulations are amended to reflect approval of a supplemental new animal drug application (NADA) filed by American Hoechst Corp. providing for a waiver of certain requirements for manufacture of certain complete chicken and swine feeds.

EFFECTIVE DATE: November 21, 1978.

FOR FURTHER INFORMATION CONTACT:

Lonnie W. Luther, Bureau of Veterinary Medicine (HFV-149), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4317.

SUPPLEMENTARY INFORMATION: American Hoechst Corp., Route 202-206 North, Somerville, N.J. 08876, filed a supplemental NADA (44-759V) providing for a waiver of the ministerial requirements of section 512(m) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(m)) for manufacture of a complete broiler feed containing 1 to 2 grams of bambermycins per ton and complete grower-finisher swine feed containing 2 grams of bambermycins per ton. The complete feeds are for increased rate of weight gain and improved feed efficiency.

Bambermycins, as the sole drug, meet the uniform criteria set forth in the 1971 Bureau of Veterinary Medicine memoranda for administrative waiver of the requirements of section 512(m) of the act. The pertinent provisions of the memoranda indicate that the waiver is appropriate if:

(1) The use of the product in the finished feed as recommended by labeling does not have an impact on tissue residues, i.e., an impact on an existing withdrawal period or tolerance level.

(2) The product is not a known carcinogen or is not classed with a family of known carcinogens.

(3) Appropriate documentation covering animal safety is on file. This will not require additional generation of data since this documentation is part of the NADA.

(4) The margin of safety to the animal and safety to the consumer is such that the product label does not have to contain a statement such as "use as the sole source of * * *."

(5) Data are on file to demonstrate that the product is efficacious over the approved range. These data should generally satisfy current standards for the demonstration of efficacy.

(6) Except under special circumstances, the product has been used at least 3 years in the target species without significant complaints related to or associated with it. Applications of this criterion require a review of the available drug experience reports.

The 1971 memoranda make explicit that because waiver of the requirements of section 512(m) of the act is permitted only for specific efficacy claims or at specific levels of the drugs, there should be other distinct products with corresponding labeling to cover those premixes that can be made into finished feeds with various concentrations of drugs.

The foregoing criteria established in the 1971 memoranda constitute an interim agency policy which is under review. In waiving the ministerial requirements of section 512(m) of the act, the agency has not waived the current good manufacturing practice regulations (21 CFR Part 225) for feed mills mixing such feeds.

Approval of this supplemental application does not constitute reaffirmation of the underlying safety and efficacy data for use of bambermycins in complete feeds for broiler chickens and growing-finishing swine.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.83), § 558.95 is amended by adding paragraph (d) to read as follows:

§ 558.95 Bambermycins.

* * * * *

(d) *Special considerations.* Complete broiler feeds and swine feeds containing bambermycins as the sole drug, processed from premixes containing 2.0 grams or 0.4 gram of bambermycins per pound and conforming to the requirements of paragraph (e)(1) and (e)(2) of this section, are not required to comply with the provisions of section 512(m) of the act.

* * * * *

Effective date: November 21, 1978.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)).)

Dated: November 13, 1978.

LESTER M. CRAWFORD,
Director, Bureau of Veterinary Medicine.

[FR Doc. 78-32495 Filed 11-20-78; 8:45 am]

[4510-43-M]

Title 30—Mineral Resources

CHAPTER I—MINE SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR

SUBCHAPTER O—COAL MINE HEALTH AND SAFETY

PART 75—MANDATORY SAFETY STANDARDS — UNDERGROUND COAL MINES

Use of Filter-Type and Self-Contained Self-Rescuers in Underground Coal Mines

AGENCY: Mine Safety and Health Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This final rule revises existing rules on self-rescue devices in underground coal mines. The revisions require, after a 2-year phase-in period, replacement of the present filter-type self-rescuers, which do not generate oxygen, with self-contained self-rescuers, which generate oxygen. This regulation also sets forth alternative methods of using and providing access to self-contained self-rescuers and imposes training, inspection, testing, maintenance, and recordkeeping requirements. These rules will increase a miner's chance of surviving a mine emergency in which irrespirable air is present.

EFFECTIVE DATE: December 21, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Herschel H. Potter, Chief, Division of Safety, Coal Mine Safety and Health, Mine Safety and Health Administration (MSHA), Room 813, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Va. 22203, 703-235-1284.

SUPPLEMENTARY INFORMATION:

I. SUMMARY OF FINAL RULE

Each operator must, within 2 years of the effective date of this rule, make available to miners and visitors authorized by the operator to be in the mine an approved, 1 hour, self-contained self-rescue device. The operator may meet this requirement by providing an approved, 1 hour, self contained self-rescuer; an approved self-contained self-rescuer of not less than 10 minutes combined with an approved 1 hour canister (10/60); any other approved self-contained self-rescuer that provides at least 1 hour's protection; or in exceptional circumstances, a filter-type self-rescuer combined with an approved self-contained self-rescuer. the rule also requires the operator to train miners in use of the self-contained self-rescuer.

With three exceptions, the 60-minute self-contained self-rescuers must be worn or carried: (1) If doing so is hazardous, the user may put the device in a readily accessible place no more than 25 feet away; (2) if the user works in or around equipment, he or she may place the device in a readily accessible place on the equipment; and (3) the mine operator may apply to the District Manager for approval of placement distance greater than 25 feet from the miner, provided that the operator equips the miner with a filter-type self-rescuer to enable him or her to get to the self-contained self-rescuer.

With the 10/60 system, the 10-minute unit must generally be worn or carried, and the 60-minute canister must be available in accordance with a plan apprved by the district manager.

The regulations also require the operator to provide for proper inspection, testing, maintenance, repair, and recordkeeping.

II. RULEMAKING PROCEDURE

The proposed rule appeared in the FEDERAL REGISTER of November 16, 1977, at pages 59300-59302. Interested persons were given until January 3, 1978, to submit comments. As a result of requests, a public hearing was held on June 1, 1978. Following the hearing, the record was held open for additional comments until July 15, 1978.

This rule was proposed by the Secretary of the Interior under section 101 of the Federal Coal Mine Health and Safety Act of 1969, Pub. L. 91-173 (Coal Act). The responsibilities of the Secretary of the Interior under section 101 of the Coal Act were transferred to the Secretary of Labor on March 9, 1978, by the Federal Mine Safety and Health Amendments Act of 1977, Pub. L. 95-164 (Amendments Act). Rulemaking begun by the Department of the Interior under the Coal Act was authorized to be continued by the Department of Labor by section 301 of the Amendments Act.

III. DISCUSSION OF THE FINAL RULE

A. BACKGROUND DISCUSSION OF AVAILABLE SELF-RESCUE DEVICES

1. *Filter-type self-rescuer limitations.* The limited capability of the filter-type self-rescuer presently in use in underground coal mines has long been recognized. The main limitations of such self-rescuers are described below.

Limited protection in oxygen-deficient air. Filter-type devices are able only to convert carbon monoxide (CO) resulting from a mine fire or explosion into carbon dioxide (CO_2). The user of the device must rely upon the oxygen (O_2) in the air. If the mine air contains less than 10 percent O_2, dizziness, shortness of breath, quickened pulse, and deeper and more rapid respiration occur even when a miner is at rest. During heavy exertion, which can be expected to occur in emergency escape, a 15 percent (or less) O_2 level may lead to loss of consciousness. Thus, even though the self-rescuer may protect the wearer against CO, the lack of O_2 reduces a miner's chance of survival.

Limited protection against CO_2. Inhalation of CO_2 occurs with a filter-type self-rescuer in three ways: If present in the mine air, the CO_2 passes through the self-rescuer and is inhaled by the wearer; CO in the mine air is inhaled as CO_2, because the chemical catalyst (hopcalite) used in the filter-type self-rescuer converts the CO in the mine air to CO_2; and rebreathing of exhaled air takes place when there is trapped gas in the self-rescuer. Levels of CO_2 typically produced in a mine fire can cause severe problems in emergency escape situations. The combination of low O_2 and high CO_2 can kill a miner even while he uses the filter-type self-rescuer.

High inhalation temperatures. Catalytic oxidation of CO to CO_2, which occurs in the filter-type self-rescuer, produces a large amount of heat. As the rate of catalytic oxidation increases in the filter-type self-rescuer, the breathing air temperature produced by the device increases. Therefore, the more a miner exerts himself or the more CO is in the air, the higher the temperature of breathing air goes. Data derived from British research show that, at the CO levels that may be present after a fire or explosion, the breathing air produced by the filter-type self-rescuer could be hot enough to burn the mouth and throat. In an atmosphere that is 1 percent CO, breathing air temperature with the filter-type self-rescuer is 125°-130° F, which can be breathed without pain. At a 2-percent concentration of CO, however, the breathing temperature is approximately 200° F, slightly below the boiling point of water. Such a temperature causes severe pain, and a miner may be tempted to remove the self-rescuer for a few moments of relief. If he does so, death will be almost instantaneous. At a concentration of CO greater than 1½ percent, one or two breaths of contaminated air could kill a miner.

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The problem of high inhalation temperatures is an important limitation on the effectiveness of the filter-type self-rescuer. Mine fires have produced concentrations of CO that make the filter-type self-rescuer too painful to use. In the Sunshine Mine disaster, for example, a 4-percent concentration of CO was present 2 days after the fire. Evidence obtained in investigation of that disaster indicates that the filter-type self-rescuer was spit out, causing death, because the breathing air temperature was unbearably high.

Protection against other toxic gases. The filter-type self-rescuer is specifically designed to prevent only CO from being inhaled. It is not designed to protect against inhalation of other toxic gases.

2. *Self-contained (oxygen-generating) self-rescuers.* To be used in underground mining, a self-contained self-rescue device must meet restrictive size and weight requirements. The Bureau of Mines has sponsored development of such a device—a closed-circuit breathing apparatus using the chemical potassium superoxide (KO_2) to produce O_2. The closed-circuit system keeps exhaled air within the apparatus, thus conserving the available O_2 for reuse.

A closed-circuit system requires that the CO_2 produced by the body be removed by the apparatus or else the CO_2 will quickly affect respiration. KO_2 not only produces O_2, but also reacts with, and thus eliminates, CO_2. Moisture from the wearer's breath reacts with KO_2 to produce potassium hydroxide (KOH) and O_2. The KOH then reacts with the user's exhaled CO_2 to produce potassium carbonate (K_2CO_3) and water, or potassium bicarbonate ($KHCO_3$). Thus, O_2 is generated and CO_2 is absorbed in this same chemical bed.

Of special significance is the fact that KO_2 is demand responsive. That is, when a wearer needs more oxygen as a result of running or other emergency exertion, the KO_2 will supply it. This occurs because the wearer will breathe more often with increased exertion and thus produce more moisture, which in turn reacts with the KO_2 to produce O_2. When the wearer is walking or inactive, his breathing rate slows down, less moisture reaches the KO_2, and less O_2 is produced. Since generation of O_2 depends upon the miner's work rate, O_2 is not wasted when it is not needed.

3. *Description of approved oxygen-generating devices.* Two types of KO_2 self-rescuers have been developed which have received approval for use underground by MSHA and the National Institute for Occupational Safety and Health (NIOSH). These are: (1) A long duration KO_2 unit which is approved for 60 minutes; and (2) a short duration (10 minute) complete unit which can be coupled with a special long duration (60 minute) KO_2 canister. The special 60-minute KO_2 canister cannot be used without the 10-minute unit.

All of the approved KO_2 devices operate on the same principle. A miner exhales air into a breathing tube, then through a chemical bed, which removes CO_2 and adds O_2, and finally into breathing bags. On inhalation, the wearer breathes clean air directly from the breathing bags or after it has passed through the KO_2 bed again. Check valves automatically direct the flow and separate inhaled and exhaled gases. The inhaled temperature is cooled by conduction cooling through the breathing bags or by heat exchangers in the apparatus. An automatic pressure release valve is provided on all units, because the units slightly overproduce O_2. These valves are one-way valves designed to prevent toxic gases from entering the bag.

Since KO_2 does not provide O_2 instantly, it is supplied immediately by a chlorate ($NaC10_3$) candle in all units. The candle is triggered automatically.

The 10-minute and 60-minute service lives are defined for hard work situations. In cases where a miner must sit quietly while awaiting transportation, the KO_2 units will last, at a conservative estimate, four to five times the rated service life. In other words, a 60-minute unit will last at least 4 hours, and a 10-minute unit will last at least 40 minutes. The combined 10/60 system will thus last at least four hours and 40 minutes for a miner who is sitting quietly.

B. DISCUSSION OF MAJOR ISSUES

Issues raised by written comments or testimony on the proposed rule are listed below, along with MSHA's response to each issue.

1. Whether the self-contained self-rescuers, as they have been developed to this point, are reliable and safe to use and store in underground mines.

The self-contained self-rescuers that have, to date, received MSHA-NIOSH approval have passed hundreds of tests. The manufacturers conducted product development and final design tests; MSHA-NIOSH approval tests were conducted, as required by 30 CFR Part 11, Subpart H; and the Bureau of Mines conducted an extensive testing program that included component tests, machine tests and tests on people. Quality control plans required by MSHA-NIOSH approval spell out many more tests that will be made continually during all future production: MSHA-NIOSH approval requires that manufacturers periodically remove units from production and test them for compliance with subpart H. In addition, MSHA and NIOSH have a quality control program in which they buy units and test them against the requirements of subpart H.

Written statements and oral testimony have been received objecting to the self-contained self-rescuers because of shortcomings asserted to exist in another KO_2 device, the Chemox breathing apparatus. The Chemox unit is a relatively large, 1 hour, self-contained breathing device approved as a mine rescue apparatus.

The Chemox differs from the self-contained self-rescuer in many significant ways. The Chemox is designed for entry into contaminated air, unlike the self-contained self-rescuer, which is designed for escape only. The Chemox has a face mask, detachable breathing tube, detachable KO_2 canister, chlorate candle for starting that is not in an explosion-proof housing, manually operated lanyard for starting the chlorate candle, and manually operated pressure release valve for discharging excess oxygen. The self-contained self-rescuer has eliminated these characteristics. Objections asserted against the Chemox do not apply to the self-contained self-rescuer because of these design differences. The objections are discussed in detail in the paragraphs that follow.

Many comments were directed at the Chemox facepiece. Objections that smoke fills it, oxygen leaks from it, it clouds up, and it collapses do not apply to the self-contained self-rescuer, which has a mouthpiece and noseclip, rather than a facepiece. This mouthpiece and noseclip combination is similar to that used without difficulty in the filter-type self-rescuer.

Similarly, comments about the Chemox's premature failure do not apply to the self-contained self-rescuer because of design differences between the two kinds of devices. In every instance investigated by MSHA, the problem of premature failure of a Chemox machine was found to be caused by: (1) Improperly tightened hose, (2) improperly tightened canister, (3) failure to seal the facepiece properly, and (4) inadvertent release of too much air through the pressure release valve. These causes cannot occur with the self-contained self-rescuer because: (1) The hose is permanently attached to the self-contained self-rescuer by the manufacturer and cannot loosen, as can the Chemox hose, which has a connection that the user must keep tight; (2) in the 60-minute system, the canister is permanently attached to the self-contained self-rescuer by the manufacturer and cannot be improperly attached, as can the Chemox canister, which is screwed in place by the miner; in the 10/60 system, the canister is attached by the miner, but attachment is made by a latch assembly that eliminates the potential error found in the Chemox of not securing the canister tightly enough; (3) the seal in the self-rescuer is kept with a mouth-piece and cannot be interfered with by facial hair, as can the seal in Chemox, which is kept with a facepiece; and (4) the self-rescuer has an automatic pressure release valve and is, therefore, not susceptible to inadvertent release of O_2, as is the Chemox, which has a manual pressure release valve.

Since the Chemox, which starts with a sodium chlorate candle, is approved for starting only in respirable air, several commenters questioned the safety of starting a self-contained self-rescuer in a potentially explosive mixture of methane. Because of the different purposes of the Chemox and the self-rescuer, there has been a design change in the candle for the self-rescuer. The Chemox apparatus is approved for entry into contaminated atmospheres. The apparatus must be started and the candle ignited in fresh air before entry. But the KO_2 self-rescuer is approved for escape and must be capable of safe starting in a contaminated atmosphere. Consequently, because of this basic difference in use, the KO_2 self-rescuer candle was modified by housing the igniter inside an enclosure to permit safe starting even in explosive atmospheres. The enclosure meets Underwriter Laboratories specifications for explosion-proof housings.

Several comments were made regarding the lanyard breaking on the Chemox canister when the chlorate candle was activated. The lanyard can break on the Chemox canister if it is not pulled out at the correct angle. The lanyard cannot break with the self-contained self-rescuer, because it is designed so that pulling the mouthpiece toward the wearer automatically pulls out the pin that starts the chlorate candle. In addition, the lanyard in the self-contained self-rescuer is strong enough to prevent accidental breaking. The lanyard in the self-contained self-rescuer has a 100-pound pull strength and is much stronger than the Chemox lanyard, which has a 30-pound pull strength.

In addition to comments objecting to features of the Chemox, several other comments were received questioning the safety or reliability of the self-contained self-rescuer. Some commenters questioned whether the self-contained self-rescuer could be stored safely. They wanted to know whether the device presents an explosion hazard if ruptured by a roof fall or other accident. Results of ballistic and crushing tests indicate that likelihood of explosion after roof fall or other accidents is very remote. To reduce even further the possibility of hazard, MSHA has added a provision requiring operators who store self-contained self-rescuers underground to get the place of storage approved by the district manager.

Commenters also questioned the reliability of self-contained self-rescuers if started underground at low temperatures. Potassium superoxide self-rescuers have been demonstrated to start reliably at temperatures as low as 10° F. If the operator stores self-contained self-rescuers underground, MSHA will require that they be stored where termperatures are above 10° F.

It should be pointed out that underground storage of self-contained self-rescuers is unlikely. This results from the requirement of the regulation that each miner have immediately available at least 60 minutes of O_2. If a trip between the surface and working section takes more than 10 minutes, the 60-minute self-rescuer or canister would have to be carried by the miner in and out of the mine each day. Since few mines have trips between the surface and working section of less than 10 minutes, underground storage will be an exceptional practice. Full 60-minute protection is necessary for miners on man trips, because disasters have occurred in which miners have been trapped in and died from contaminated air while traveling to, and from the surface.

Several people questioned whether the device starts reliably. Laboratory experiments have shown firing reliability greater than 99.999 percent. In order to get a device approved, manufacturers are required to take every precaution to maintain this reliability in the mine. If the candle should not activate, starting by exhalation is readily accomplished in no more than three to five breaths.

Commenters wanted to know if the temperature of the KO_2 canister or KO_2-generated oxygen gets high enough to burn the wearer. The temperature of the KO_2 canister does not get uncomfortably high, because it is insulated and cannot be touched by the wearer. The breathing temperature is in exactly the same range (85°-115° F) as present mine rescue apparatus and is considerably less than that reached by the filter-type self-rescuer when CO is present in any quantity above about one-half percent.

Another question raised was whether CO_2 levels get too high for self-contained self-rescuers to be safe. The self-contained self-rescue device has a scrubbing system that keeps the CO_2 content of the breathed air at less than 1½ percent. This level meets MSHA-NIOSH approval requirements and is safe to the user.

Some commenters questioned whether the mouthpiece could be held in the mouth of a miner who is missing teeth. The mouthpiece is similar to that used without difficulty in the filter-type self-rescuer and is designed so that it will stay in the mouth of a miner who is missing teeth.

In summary, NIOSH and MSHA have concluded that the self-contained self-rescuer is reliable and safe to use and store in underground mines: it employs a well established technology, has been extensively tested before approval, eliminates possibilities of failure found in the Chemox system, and presents no problem of safety or reliability if procedures required by these regulations are followed.

2. Whether there are viable options, in addition to those contained in the proposed rule, for making self-contained self-rescuers available for use by miners and whether promulgation of this rule should be delayed until an advisory committee reports on reliability of proposed self-contained self-rescuers and availability of alternatives.

Comment and testimony raised the issue of whether viable alternative devices to those currently approved exist, and testimony at the hearing raised the closely related issue of whether an advisory committee should be formed to evaluate approved devices and consider alternatives. MSHA has carefully considered these suggestions, but has concluded that viable options to approved devices do not now exist and the safety of the Nation's miners will be best protected by promulgation of this regulation without the delay that would be created by referral to an advisory committee.

Commenters referred to three alternatives to the approved KO_2 devices: an air pack system, a compressed oxygen system, and a different chemically generated oxygen system. MSHA has considered each of these and has concluded that they do not now provide alternatives to the approved self-contained self-rescuers.

An "air pack", or container of oxygen, nitrogen, and all other components of the air we breathe, is not a feasible alternative to the proposed, chemically generated oxygen system. No air pack exists that meets reasonable size and weight requirements. An air pack capable of supplying 1 hour of protection would have a cylinder 35" long, 7" in diameter, and 38 pounds in weight. The size of the cylinder could be reduced to about 22", if it were charged to 4,500 p.s.i. This compares unfavorably with the approved, 60-minute self-contained self-rescuer, which is approximately 10½"×7¾"×3⅜" and weighs 8½ pounds.

Some commenters suggested consideration of a compressed oxygen system. One manufacturer is seeking approval of such a system, but further development is needed for the system to have size, weight, and maintenance characteristics feasible for use in

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mines. Such development appears likely, but the compressed oxygen system is not now an alternative to the approved self-contained self-rescuers.

A third alternative MSHA was asked to consider is creation of a better chemically generated oxygen system. The Bureau of Mines is funding research of a calcium superoxide ($Ca(O_2)_2$) system, which may reduce the size of the self-contained self-rescuer by 20 percent. That system is many years from development. Pure ($Ca(O_2)_2$) has not yet been produced. The Bureau of Mines reports that, although work continues on this problem, a breakthrough is not in sight. The Bureau of Mines estimates that, after pure ($Ca(O_2)_2$) is produced, 5 or 10 more years will be needed before it can be used in a commercially available self-rescuer.

Although no viable alternatives now exist to the approved self-contained self-rescuers, this regulation does not prevent use of improved devices. If technological advances make other systems feasible, they can be used within the format established by this part.

Witnesses who suggested that an advisory committee be formed emphasized that they believed further investigation is necessary because of difficulties experienced with the Chemox system. As explained above in discussion of issue 1, the self-contained self-rescuer is different from the Chemox. Characteristics of the Chemox that may combine with misuse of the device to stop oxygen supply have been designed out of the self-contained self-rescuer. Reliability of the approved self-contained self-rescue devices has been demonstrated in accordance with 30 CFR Part 11.

Based upon extensive testing, data, and information received from the public, and MSHA's planned field tests during the next 2 years, MSHA does not believe that the benefits from appointment of an advisory committee outweigh the cost, in terms of the safety and lives of miners, that would be inevitable if promulgation of these rules were to be delayed pending the deliberations and recommendations of an advisory committee. Therefore, no advisory committee will be apppointed.

However, during the 2-year phase-in period, MSHA will conduct a program to examine how these regulations will affect miners. The program will involve use of self-contained self-rescuers by MSHA personnel and miners at selected mines of varying seam heights, chosen by MSHA in cooperation with industry and employee representatives.

3. Whether an economic impact statement should have been prepared under Executive Orders 11821 and 11949. (Note also Executive Order 12044.)

Executive Order 12044, published at 43 FR 12661, requires that regulations with major economic consequences by accompanied be a regulatory analysis, which states in detail the problem addressed by the regulation, alternative solutions, costs of these alternatives, and reasons for choosing one alternative over others.

Executive Order 12044 is implemented by Department of Labor Proposed Policies and Procedures for Improving Regulations, published at 43 FR 22917, which sets out four criteria as guidelines for when a regulatory analysis should be performed. As explained below, this regulation is well within the criteria limits of the guidelines and, therefore, no regulatory analysis is required.

The first criterion for publication of a regulatory analysis is increased cost of $100 million or more in any 1 year for the national economy. The only major cost imposed by this regulation on the national economy is the cost to the coal mining industry. This cost, as discussed below, is well under $100 million.

The second criterion is a $50 million or larger increase in costs or total revenues in any one year for a specific segment of the economy. The segment of the economy most significantly affected by this regulation is the coal mining industry. After consideration of material submitted by the industry and its representative organizations, MSHA has concluded that the cost to industry is estimated to be below $37.4 million in any one year. This figure is based upon a cost per unit of $375 and a population of 141,760 underground miners. For this calculation, MSHA has assumed that operators will purchase a self-contained self-rescuer for each of the industry's 141,760 underground miners. This is not required by the regulation, however, and the actual number of units purchased will probably be significantly less than the number used for this calculation. Expenses of testing, training, buying extra units for inventory, and continued partial use of filter-type self-rescuers were also considered in estimating the total cost. Deductions were made for amounts operators would have spent for the filter-type self-rescuer now in use. The total cost was then apportioned over the 2-year phase-in period. Because of the attrition rate of filter-type self-rescuers and MSHA's estimate of industry response, 30 percent of the total cost has been allocated to the first year and 70 percent to the second. MSHA's tabulation of cost to the industry is part of the rulemaking record.

The third criterion for preparation of a regulatory analysis is direct dislocation of 10,000 or more jobs. This regulation is expected to cause no job dislocation.

The fourth criterion is a substantial limitation on competition, marketing, or market information or an increase in market concentration. This regulation is not expected to have any of these effects.

4. Whether the term "person" in §§ 75.1714 (a) and (b) and 75.1714-1(a) should be changed in order to exclude Government agency inspectors and visitors from requirements of those paragraphs.

As proposed, §§ 75.1714 (a) and (b) and 75.1714-1(a) would have required a mine operator to provide self-rescuers to each "person" who goes underground and to instruct and train the person on use and location of self-rescuers. It is the intent of the regulation to require an operator to provide self-rescuers and training only to persons employed by him or authorized by him to be in the mine. The language of the final rule has been changed to make clear that the operator is not required to supply self-rescuers to Government agency inspectors or give them training.

5. Whether the words "and train" in § 75.1714(b) should be deleted on the grounds that training of miners is covered under section 115 of the Act and will be the subject of other regulations and that other persons, such as visitors to the mine, are not subject to the training requirements.

Although training of miners in use of self-rescuers is covered under section 115 of the Act, as implemented by 30 CFR Part 48, reference to training of miners is retained in this part 75, so that it communicates to the public the entire scope of the self-rescuer requirement. Language has been added to § 75.1714(b) to make clear that training of miners is covered by 30 CFR Part 48.

Part 48 covers training of miners; it does not require training of visitors. MSHA regards instruction of visitors in use of self-contained self-rescuers as essential to safety and, therefore, has retained this requirement in part 75.

6. Whether the regulations should permit self-contained self-rescue devices with a greater capacity than 10 minutes to be used in conjunction with a 1-hour device, if such devices are developed and approved.

Four paragraphs in the proposed regulation have been changed to make clear that an approved device of greater capacity (service life) than 10 minutes may be used with a 1-hour device. The change is found at §§ 75.1714-1(a)(3)(ii), 75.1714-1(b)(2), 75.1714-2(g), and 75.1714-2(g)(1).

7. Whether the requirement in § 75.1714-2(c) that the self-rescuer be located no more than 25 feet from the person is unreasonable under some circumstances and should be revised.

Because of the size and weight of the self-contained self-rescuer (approximately 10½"×7¾"×3⅜" and 8½ pounds), some miners may find that wearing it creates a hazard as they perform their jobs. Miners who work on machines—such as continuous miner operators and their helpers, roof bolter operators and their helpers, shuttle car operators, and other workers on mobile equipment—will be able to place their self-contained self-rescuer on the machines. For other miners, placement of self-contained self-rescuers will vary with where they are working and what jobs they are performing. Comments were received that the 25-foot placement requirement was too inflexible to be practical in all mining situations. After consideration of this comment, MSHA has concluded that the regulation should allow for circumstances in which it is not practical to place self-contained self-rescuers within 25 feet of miners. Accordingly, the proposed rule has been changed to permit operators to get approval by the District Manager for placement of self-contained self-rescuers more than 25 feet from miners. The District Managers may not approve such placement unless miners are equipped with a filter-type self-rescuer to enable them to get to the self-contained self-rescuer. In deciding whether or not to approve placement of self-contained self-rescuers more than 25 feet from miners, the District Manager considers factors affecting miners' safety, including, among other factors, the height of the coal seam in affected sections, proposed locations of self-contained self-rescuers, and location of escapeways.

Over the 2-year phase-in period of this regulation, MSHA, miners, and operators will gain experience in placement of self-contained self-rescuers. MSHA will be able to use this experience to determine if the general, 25-foot location requirement is practical. MSHA's present evaluation, however, is that this requirement is generally workable, and exceptions should be handled on a mine-by-mine basis.

8. Whether the term "hazardous to the person" in § 75.1714-2(c) should be clarified.

The concept of "hazardous to the person" was contained in the self-rescuer regulations superseded by this final rule (30 CFR 75.1714-2(b) (1977)). In almost 7 years' use of this concept, MSHA has had no problem of enforcement or compliance. Therefore, MSHA has concluded that clarification is not needed at this time. If problems of interpretation arise, however, under this new rule, MSHA will reexamine the need for clarification.

9. Whether the term "available at all times" in § 75.1714-2(g)(2) (75.1714-2(e)(2) of the proposed regulation) should be clarified with respect to the 10/60 system.

Section 75.1714-2(g)(2) requires that a 1-hour, self-contained, self-rescue device be "available at all times to all persons when underground in accordance with a plan * * * approved by the District Manager." MSHA believes that the meaning of "available at all times" with respect to the 10/60 system is reasonably clear from the nature of that system and from the quoted language of § 75.1714-2(g)(2). To comply with the paragraph, the operator would have to store the 60-minute canister less than 10 minutes travel distance from the miner, in accordance with an approved plan for the mine: Because MSHA believes that the meaning of "available at all times" with respect to the 10/60 system is reasonably apparent, further clarifying language has not been added.

10. Whether MSHA should set forth specific requirements for use of a 10-minute self-contained self-rescuer in conjunction with a 1-hour self-contained self-rescuer, which would be applicable to all underground coal mines, in lieu of individual operator plans submitted for approval by the District Manager in § 75.1714-2(g)(2) (75.1714-2(e)(2) of the proposed regulation).

Because of the variety of conditions found in coal mines, including different mining heights that affect the speed at which a miner can travel, it is not practical to specify requirements for the use of the 10/60 system applicable to all underground coal mines. Therefore, the provision for approval on a mine-by-mine basis has not been changed.

11. Whether the applicability of the eye protection requirement contained in proposed § 75.1714-2(f) should be clarified.

Eye protection is required in order for a self-contained self-rescuer to be approved, and a pair of goggles will be packaged in each case. It is, therefore, unnecessary to have a provision requiring eye protection in this regulation, and the provision has been deleted.

12. Whether there should be a requirement that each self-contained self-rescuer have a visual indicator to determine the integrity of the seal.

It is clearly desirable that the miner be provided with an easy way to determine the integrity of the seal. There is some evidence that existing visual indicators may present problems of malfunction or false indications of leakage. Arguments for and against visual indicators and other means of determining integrity of the seal have not demonstrated the superiority of any one method. Therefore, MSHA has decided not to require use of visual indicators, but requires manufacturers to submit a method for reliably determining seal integrity.

13. Whether the proposed requirement in § 75.1714-3(b) that a specially trained person perform the inspections should be revised to require each miner to be trained to perform such inspections.

As written § 75.1714-3(b) allows an operator to designate the miner who uses the self-rescuer as the person who inspects it, because the miner is required by § 75.1714(b) to be trained in the use, care, and maintenance of self-rescuers. Therefore no change has been made to § 75.1714-3(b).

14. Whether the 90-day testing cycle required for filter-type self-rescuers by proposed § 75.1714-3(c) should be revised to permit less frequent testing.

Prior to this regulation, operators were not required to inspect filter-type self-rescuers. MSHA's proposal for quarterly inspection was based upon research conducted by the Republic of Germany. The German Government undertook a program of weighing filter-type self-rescuers monthly. After approximately 6 years of monthly weighing, enough data were accumulated to support the conclusion that weighing of the filter-type self-rescuer every 3 months, combined with daily visual inpection by miners, assures that the device is in working condition. MSHA has concluded that the German determination is sound and has retained the 90-day weighing cycle in the final rule.

15. Whether § 75.1714-3(d) should be revised to clarify that manufacturers will be required to submit testing instructions to MSHA for approval and that operators must test the devices in accordance with the manufacturer's approved instructions.

The proposed regulations would have required that approved self-contained self-rescuers be tested and maintained in accordance with instructions approved by MSHA. Commenters suggested that manufacturers submit testing instructions to MSHA for approval, and operators test in accordance with manufacturer's approved instructions. These comments describe the arrangement set forth in the proposed regulation: manufacturers give their recommended testing and maintenance procedures to MSHA for approval, and operators test in accordance with the approved instructions. Therefore no revision has been made.

16. Whether the requirement of § 75.1714-3(e) that test results be recorded in a book should be deleted.

It is necessary that operators record test results so that MSHA can check compliance with the testing require-

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ment. Therefore this paragraph has not been deleted.

VIII. DRAFTING INFORMATION

The principal persons responsible for drafting this rule are Joseph O. Cook, Assistant Administrator, Coal Mine Safety and Health, MSHA; Herschel H. Potter, Chief, Division of Safety, Coal Mine Safety and Health, MSHA; and Edward P. Clair and Judith N. Macaluso, Office of the Solicitor, Department of Labor.

Dated: November 16, 1978.

ROBERT B. LAGATHER,
Assistant Secretary for Mine Safety and Health.

The regulations on self-rescue devices, 30 CFR 75.1714—75.1714-2, are revised and a new § 75.1714-3 is added as set forth below:

§ 75.1714 Availability of approved self-rescue devices; instruction in use and location.

(a) Each operator shall make available to each miner employed by the operator who goes underground and to visitors authorized to enter the mine by the operator a self-rescue device or devices approved by the Secretary which is adequate to protect such person for one hour or longer.

(b) Before any miner employed by the operator or visitor authorized by the operator shall instruct and train such person in the use and location of the self-rescue device or devices made available at the mine. Instruction and training of miners shall include instruction in use, care, and maintenance of the device in accordance with provisions set forth in 30 CFR Part 48.

§ 75.1714-1 Approved self-rescue devices.

The requirements of § 75.1714 shall be met by making available to each person referred to in that section a self-rescue device or devices as follows:

(a) Until [2 years from effective date] a self-rescue device or devices which have been approved under:

(1) Bureau of Mines Schedule 14F, Gas Masks, April 23, 1955, as amended (Part 13, 30 CFR, 1972 ed.); or

(2) Subpart I of part 11 of this chapter; or

(3) Subpart H of part 11 of this chapter, as follows:

(i) A 1-hour self-contained self-rescue device; or

(ii) A self-contained self-rescue device of not less than 10 minutes and a 1-hour canister; or

(iii) Any other self-contained breathing apparatus approved under subpart H of part 11 of this chapter which provides protection for a period of 1 hour or longer and which is approved for use by MSHA for the purpose of a self-rescue device or devices when used and maintained as prescribed by MSHA.

(b) After [2 years from effective date] a self-rescue device or devices which have been approved under subpart H of part 11 of this chapter, as follows:

(1) A 1-hour self-contained self-rescue device; or

(2) A self-contained self-rescue device of not less than 10 minutes and a 1-hour canister; or

(3) Any other self-contained breathing apparatus approved under subpart H of part 11 of this chapter which provides protection for a period of 1 hour or longer and which is approved for use by MSHA for the purpose of a self-rescue device or devices when used and maintained as prescribed by MSHA.

§ 75.1714-2 Self-rescue devices; use and location requirements.

(a) Self-rescue devices shall be used and located as prescribed in paragraphs (b) through (f) of this section.

(b) Except as provided in paragraphs (c), (d), (e), or (f) of this section, self-rescue devices shall be worn or carried at all times by each person when underground.

(c) Where the wearing or carrying of the self-rescue device is hazardous to the person, it shall be placed in a readily accessible location no greater than 25 feet from such person.

(d) Where a person works on or around equipment, the self-rescue device may be placed in a readily accessible location on such equipment.

(e) A mine operator may apply to the District Manager under 30 CFR 75.1101-23 for permission to place the self-contained self-rescue device more than 25 feet away.

(1) The District Manager shall consider the following factors in deciding whether to permit an operator to place a self-contained self-rescue device more than 25 feet from a miner:

(i) Distance from affected sections to surface,

(ii) Pitch of seam in affected sections,

(iii) Height of coal seam in affected sections,

(iv) Location of escapeways,

(v) Proposed location of self-contained self-rescuers,

(vi) Type of work performed by affected miners,

(vii) Degree of risk to which affected miners are exposed,

(viii) Potential for breaking into oxygen deficient atmospheres,

(ix) Type of risk to which affected miners are exposed,

(x) Accident history of mine, and

(xi) Other matters bearing upon the safety of miners.

(2) Such application shall not be approved by the District Manager unless it provides that all miners whose self-contained self-rescuer is more than 25 feet away shall have, in accordance with paragraphs (b), (c), and (d) of this section, at all times while underground, a self-rescue device approved under subpart I of part 11 of this chapter or Bureau of Mines Schedule 14F, Gas Masks, April 23, 1955, as amended (Part 13, 30 CFR, 1972 ed.) sufficient to enable each miner to get to a self-contained self-rescuer.

(3) An operator may not obtain permission under paragraph (e) of this section to place self-contained self-rescuers more than 25 feet away from miners on mantrips into and out of the mine.

(f) If a self-contained self-rescue device is not carried out of the mine at the end of a miner's shift, the place of storage must be approved by the District Manager, a sign with the word "SELF-RESCUER" or "SELF-RESCUERS" shall be conspicuously posted at each storage place, and direction signs shall be posted leading to each storage place.

(g) Where devices of not less than 10 minutes and 1 hour are made available in accordance with § 75.1714-1(a)(3)(ii) or § 75.1714-1(b)(2), such devices shall be used and located as follows:

(1) Except as provided in paragraphs (c) and (d) of this section, the device of not less than 10 minutes shall be worn or carried at all times by each person when underground, and

(2) The 1-hour canister shall be available at all times to all persons when underground in accordance with a plan submitted by the operator of the mine and approved by the District Manager. When the 1-hour canister is placed in a cache or caches, a sign with the word "SELF-RESCUERS" shall be conspicuously posted at each cache, and direction signs shall be posted leading to each cache.

§ 75.1714-3 Self-rescue devices; inspection, testing, maintenance, repair, and recordkeeping.

(a) Each operator shall provide for proper inspection, testing, maintenance, and repair of self-rescue devices by a person trained to perform such functions.

(b) After each time a self-rescue device is worn or carried by a person, the device shall be inspected for damage and for the integrity of its seal by a person trained to perform this function. Self-rescue devices with broken seals or which are damaged so that the device will not function properly shall be removed from service.

(c) All self-rescue devices approved under subpart I of part 11 of this chapter or Bureau of Mines Schedule 14F, April 23, 1955, as amended (Part 13, 30 CFR, 1972 ed.) except devices using vacuum containers as the only method of sealing, shall be tested at intervals not exceeding 90 days by weighing each device on a scale or balance accurate to within ± 1 gram. A device that weighs more than 10 grams over its original weight shall be removed from service.

(d) All self-contained self-rescue devices approved under subpart H of part 11 of this chapter shall be tested in accordance with instructions approved by MSHA. Any device which does not meet the specified test requirements shall be removed from service.

(e) Results of the tests required by paragraphs (c) and (d) of this section shall be recorded for each self-rescue device in a book which shall be made available to an authorized representative of the Secretary.

(f) Self-rescue devices removed from service shall be repaired for return to service only by a person trained to perform such work and only in accordance with the manufacturer's instructions.

(Sec. 101, Pub. L. 91-173 as amended by Pub. L. 95-164, 83 Stat. 745 as amended by 91 Stat. 1291 (30 U.S.C. 811).)

[FR Doc. 78-32685 Filed 11-20-78; 8:45 am]

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[1410-03-M]

Title 37—Patents, Trademarks, and Copyrights

[Docket RM77-2]

PART 201—GENERAL PROVISIONS

Compulsory License for Cable Systems

AGENCY: Library of Congress, Copyright Office.

ACTION: Extension of time to request opportunity to cross-examine.

SUMMARY: This notice is issued to advise the public that the Copyright Office of the Library of Congress is extending the time during which requests may be made to cross-examine witnesses at a hearing to be held on the compulsory license for making and distributing phonorecords ("mechanical license").

DATES: The hearing will be held on November 28 and (if necessary) 29, 1978, commencing at 9:30 a.m. on November 28, 1978, in room 910, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, Va.

Requests to cross-examine must be submitted to the General Counsel of the Copyright Office no later than November 24, 1978. A list of witnesses who will be subject to cross-examination is available through the General Counsel of the Copyright Office, at the address and phone number given below.

ADDRESSES: Requests to cross-examine should be directed: (1) If by telephone, to: Jon Baumgarten, General Counsel, U.S. Copyright Office, 703-557-8731; (2) if by hand, to: Office of the General Counsel, U.S. Copyright Office, Library of Congress, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Room 519, Arlington, Va.; or (3) if by mail, to: Office of the General Counsel, U.S. Copyright Office, Library of Congress, Caller No. 2999, Arlington, Va. 22202.

Requests to cross-examine shall name the initial witness or witnesses to be cross-examined.

FOR FURTHER INFORMATION CONTACT:

Jon Baumgarten, General Counsel, U.S. Copyright Office, Library of Congress, Washington, D.C. 20559, 703-557-8731.

SUPPLEMENTARY INFORMATION: Section 115 of 17 U.S.C. provides that "[w]hen phonorecords of a nondramatic musical work have been distributed to the public in the United States under authority of the copyright owner, any other person may, by complying with the provisions of this section, obtain a compulsory license to make and distribute phonorecords of the work" for certain purposes.

A compulsory license permits the use of a copyrighted work without the consent of the copyright owner if certain conditions are met and royalties paid.

Paragraphs (b) and (c) of section 115 direct the Copyright Office to issue regulations governing the content and filing of certain notices and statements of account under this section.

On April 26, 1977, in accordance with an Advance Notice of Proposed Rulemaking (42 FR 16837), we held a public hearing to elicit information relevant to the formulation of regulations under this section. After considering the testimony given at the hearing and in supplemental statements, on December 29, 1977 (42 FR 64889) we issued interim regulations. We then considered public comments received in response to the interim regulations and, on September 28, 1978 (43 FR 44511), we: (1) Adopted amendments to the interim regulations; and (2) announced a public hearing, to be held on November 28 and 29, 1978, to take testimony on the interim regulations as amended. Members of the public desiring to testify at the hearing ("initial witnesses") were given until October 20, 1978, to submit requests to do so; persons desiring to cross-examine initial witnesses were given until November 9, 1978 to request opportunity to cross-examine.

Requests to present testimony were timely received from the Recording Industry Association of America, the National Music Publishers' Association, and the Harry Fox Agency. Requests to cross-examine were also timely received from these parties.

After expiration of the November 9, 1978, deadline the Copyright Office received an additional request to cross-examine. Although the request was not timely made, we believe it should be allowed in order to develop a full record of public comment on the interim regulations and permit us to close this proceeding on that basis. However, we do not believe it would be appropriate to grant the request without extending the same opportunity to other members of the public. Accordingly, by this notice we are extending the time to request cross-examination to November 24, 1978, and are permitting telephone requests.

The full text of the interim regulations, as amended, is set forth in our September 28, 1978, notice (43 FR 44511). Special rules governing the conduct of the hearing, including the conduct of cross-examination, are also set forth in that notice.

Dated: November 17, 1978.

BARBARA RINGER,
Register of Copyrights.

Approved: ————

WILLIAM J. WELSH,
The Acting Librarian of Congress.

[FR Doc. 78-32774 Filed 11-20-78; 8:45 am]

[1505-01-M]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

[FRL 1004-7]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

West Virginia State Implementation Plan; Revision

Correction

In FR Doc. 78-31604, appearing at page 52239 in the issue of Thursday, November 9, 1978, on page 52239 in the first column the EFFECTIVE DATE should be corrected to read "November 9, 1978" instead of "January 9, 1978."

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[6560-01-M]

[FRL 975-2]

PART 55—ENERGY RELATED AUTHORITY

Delayed Compliance Order for the Florida Power Corp.—Crystal River Plant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby issues a delayed compliance order[1] (DCO) to the Florida Power Corp. The DCO requires the company to bring air emissions from its Crystal River plant unit No. 2 boiler located near Red Level, Fla., into compliance with certain regulations contained in the federally approved Florida State Implementation Plan (SIP) by September 30, 1980. Florida Power Corp.'s compliance with the DCO will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violation of the SIP regulations covered by the DCO.

EFFECTIVE DATE: November 21, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Wayne Aronson, Air Enforcement Branch, Enforcement Division, EPA, Region IV, 345 Courtland Street NE., Atlanta, Ga. 30308, telephone number 404-881-4253.

SUPPLEMENTARY INFORMATION: On June 20, 1978, the Regional Administrator of EPA's Region IV Office published in the FEDERAL REGISTER (43 FR 26456), a notice setting out the provisions of a proposed delayed compliance order (DCO) for Florida Power Corp.'s (FPC)—Crystal River plant. The notice asked for public comments and provided an opportunity for a public hearing on the proposed DCO. The only comment received noted that subsection (d)(1) of section 113 of the Clean Air Act, as amended, 42 U.S.C. 7413(d)(1) was improperly cited. The proper citation is subsection 113(d)(5) of section 113 of the Clean Air Act, as amended, 42 U.S.C. 7413(d)(5). Subsection (d)(5) applies to sources such as the Crystal River unit 2 boiler which are effectively required to burn coal pursuant to the provisions of section 2(a) of the Energy Supply and Environmental Coordination Act of 1974. This change is incorporated into the final delayed compliance order. No requests for a public hearing were received in response to the proposal notice.

[1] The compliance order is filed as a part of the original document.

Therefore, a delayed compliance order effective this date is issued to Florida Power Corp. by the Administrator of EPA pursuant to the authority of section 113(d) of the Clean Air act (the act), 42 U.S.C. 7413(d). The DCO places Florida Power Corp. on a schedule to bring Crystal River plant unit No. 2 boiler located near Red Level, Fla., into compliance by September 30, 1980, with §§ 17-2.04(6)(e)2a and 17-2.04(6)(e)2b of the Air Pollution Rules of the State of Florida, a part of the federally approved Florida State Implementation Plan. This DCO requires FPC to install additional air pollution control equipment at its Crystal River plant for unit No. 2, according to the schedule set forth below, and to meet certain interim emission limitations, and monitoring and reporting requirements of air pollutant emissions data. Compliance with the terms of the DCO preclude any further enforcement by EPA under section 113 of the Act, and any citizen suits under section 304 of the Act, against FPC for violations of the Florida State Implementation Plan provisions covered by the DCO.

Enforcement may be initiated, however, for violations of any provision of the DCO. If the Administrator determines that FPC violates any requirement contained in the DCO, one or more of the actions required by section 113(d)(9) of the Act will be initiated. Publication of the notice of final rulemaking constitutes final Agency action for the purposes of judicial review under section 307(b) of the Act.

The provisions of 40 CFR Part 55 under the authority of section 119 of the Act, as in effect prior to the amendments of August 1977, are being revised to reflect this statutory change. Any extensions to be granted under the new authority of 113(d)(5) will be promulgated in part 55. Because of the shorter time period necessary for promulgation of a delayed compliance order as compared to the time necessary for revision of the regulations under 40 CFR Part 55, this DCO for Florida Power Corp. is promulgated under Part 55 prior to the publication of the revised regulations.

One major change that the Clean Air Act Amendments of 1977 have had on the implementation of the Energy Supply and Enviromental Coordination Act is that written concurrence of the Governor of the appropriate State must be obtained on any date EPA proposes to certify to the Department of Energy as the earliest date a prohibited source can convert to coal in compliance with the applicable air pollution requirements. This concurrence was requested of the Honorable Reubin O'D. Askew, Governor of the State of Florida, and was received on July 13, 1978.

EPA has determined that the DCO shall be effective upon publication of this notice because of the need to immediately place FPC on a schedule for compliance with the Florida State implementation plan.

(42 U.S.C. 7413(d).)

Dated: October 31, 1978.

DOUGLAS M. COSTLE,
Administrator.

In consideration of the foregoing, part 55 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

By adding subpart K, consisting at this time of § 55.230, to read as follows:

Subpart K—Florida

§ 55.230 Federal delayed compliance orders issued under section 113(d)(5) of the Act.

The Administrator hereby issues a delayed compliance order (DCO) to the Florida Power Corp. (FPC), Crystal River Plant Unit No. 2 boiler located near Red Level, Fla., upon the following conditions:

(a) *Submittal of reports.* FPC shall submit all source performance test results, reports and other items required by this order to the Director, Enforcement Division, U.S. Environmental Protection Agency, 345 Courtland Street, Atlanta, Ga. 30308 (hereinafter referred to as the "Director"), with copies to the Secretary, Florida Department of Environmental Regulation, 2600 Blair Stone Road, Twin Towers Office Building, Tallahassee, Fla. 32301 (hereinafter referred to as the "Secretary").

(b) *Milestone certification.* FPC shall submit, no later than ten (10) days after the deadline for completing each milestone required by section (k), certification to the Director and Secretary whether such milestone has been met.

(c) *Notice of tests.* FPC shall provide the Director and Secretary with twenty (20) days notice prior to the conducting of any performance tests as required by the DCO in order to afford an opportunity to evaluate the test procedure and to have an observer present at such testing.

(d) *Malfunctions.* The FPC shall perform operation and maintenance practices on all sources as necessary to prevent breakdowns or malfunctions and to reduce emissions in excess of regulations to the maximum extent practicable. When emissions due to sudden and unforeseen malfunction of the affected facility are or may be in excess of the maximum allowable as set forth in this DCO, for greater than four (4) hours, the owner or operator shall notify this office and the appropriate State or local air pollution control agency by telephone or telegram

as promptly as possible, and in no event later than twelve (12) hours following the start of the malfunction, and shall cause written notice to be sent to the Director and the Secretary, no later than the end of the next working day following the start of such malfunction. Such notices shall specify the name of the affected facility, its location, the address and telephone number of the person responsible for the affected facility, the nature and cause of the malfunction, the date and time when such malfunction was first observed, the expected duration, and an estimate of the physical and chemical composition, rate, and concentration of the emission. FPC shall remedy the malfunction or breakdown as soon as possible thereafter and shall take reasonable steps to reduce emissions in excess of the interim emission limits during the malfunction or breakdown. The Regional Administrator shall have the authority during a breakdown or malfunction to require FPC to take specific steps to reduce emissions, including process equipment modifications and/or reductions, or termination if necessary. Within ten (10) days after the termination of a breakdown or malfunction requiring the above notification, the owner or operator shall submit:

(1) The time the excess emission began and ended;

(2) The time of the beginning and end of the breakdown or malfunction which is asserted to be the cause of the excess emission;

(3) An estimate of the physical and chemical composition, rate, and concentration of emissions which occurred, and where continuous monitoring is required or is in effect (including visible emission detector), the strip charts with plots of emissions monitored versus time, including a summary of the monitoring instruments' written record expressed in units of the applicable standard;

(4) An explanation and, where appropriate, an engineering analysis of the cause of the malfunction or breakdown;

(5) A description of those operating and/or maintenance procedures and practices in use prior to and during the occurrence, which were designed to prevent or minimize the extent and duration of the malfunction or breakdown;

(6) Any other steps taken to minimize the extent or duration of the malfunction or breakdown;

(7) An analysis of what steps will be taken to prevent or minimize similar occurrences in the future; and

(8) Such additional information as the Regional Administrator may require.

This provision does not exempt the FPC from enforcement action as specified in section (j), if the interim emission limits are exceeded at any time.

(e) *Progress reports.* FPC shall submit, no later than fifteen (15) days after the end of each quarter, commencing with the April 1, 1978 to June 30, 1978 quarter, a progress report for the emission point specified in this DCO. These reports shall contain specific information on the progress toward each milestone in section (k). If any delay is anticipated in meeting said milestone, FPC shall immediately notify the Director in writing of the anticipated delay and reasons therefor. Notification to EPA of any anticipated delay shall not excuse the delay.

(f) *Interim limits.* FPC shall comply with the following interim limits prior to achieving compliance with § 17-2.04(6)(e) of the Air Pollution of the State of Florida.

(1) Daily particulate emissions (pounds per day) from Crystal River Unit 2 shall not exceed those emissions calculated on the basis of 0.10 pound per million Btu heat input at a full load of 450 megawatts (MW). At no time shall the particulate emission rate exceed 0.15 pound per million Btu heat input, maximum 2-hour average.

(2) FPC shall establish no later than July 1, 1979, and annually thereafter, an integrated curve with particulate emission rates at different loads (i.e., particulate emissions (lbs/hr.) vs. load (MW)). The points on the curve shall be obtained by stack testing Crystal River Unit 2 at loads of 200, 250, 300, 350, 400, and 450 megawatts in accordance with EPA reference Method 5 as specified in 40 CFR Part 60. These measured emission rates at the various loads shall be used by FPC to estimate the daily particulate emissions. FPC shall record the megawatt load hourly and use the curve to determine the hourly particulate emissions.

(i) FPC shall submit, no later than fifteen (15) days after the end of each quarter, commencing with the July 1, 1978 to September 30, 1978 quarter, the calculated daily emission values along with the applicable curve and the hourly megawatt loads for that quarter.

(ii) The curve to be used until July 1, 1979, shall contain as a minimum the values below:

[*Particulate emissions (lbs/hr.)*]	
Megawatts:	
250	236.5
350	341.6
400	389.8
450	647.6

(iii) FPC may submit, at any time, revised curves containing particulate emission rates at the above megawatt loads. Any submitted revised curves are subject to EPA review and approval. The company will be required to utilize the existing curve until any revised curves are approved.

(3) FPC as part of the control strategy shall operate, calibrate and maintain an instrument to continuously monitor and record visible emissions from Crystal River Unit 2. Visible emissions from Crystal River Unit 2 shall be limited to: (1) 30-percent opacity determined by the hourly average recorded by the continuous opacity monitor, and (2) 35-percent opacity determined in accordance with EPA reference method 9 averaged over a 6-minute period. The continuous opacity monitor strip charts shall be maintained by the company and be subject to EPA review when requested.

(4) If, at any time during the effective period of this DCO, the applicable interim particulate or visible emission limits are exceeded, FPC shall immediately take all actions necessary to minimize or abate such excess emissions and to prevent the recurrence of such excess emissions; FPC shall notify the Director and Secretary of the occurrence as soon as possible, but no later than 48 hours after the start of the occurrence; and FPC shall, within 10 days after the termination of each occurrence, submit to the Director and Secretary a written report regarding the occurrence, which shall address the cause(s) of the occurrence and all efforts FPC has taken to date concerning it.

(5) In the event the continuous monitoring equipment required under Administrative Order Docket No. AO 76-131(a) malfunctions or otherwise fails to operate in accordance with the requirements established in the October 6, 1975, FEDERAL REGISTER beginning on page 46254, as revised in the January 31, 1977, FEDERAL REGISTER beginning on page 5936, and any subsequent amendments thereto, FPC shall immediately take all actions necessary to correct the malfunction, or to repair or replace the Monitor, if necessary; FPC shall notify the Director and Secretary as soon as possible, but no later than forty-eight (48) hours after the start of such occurrence, and FPC shall, within 10 days after the termination of such occurrence, submit a written report to the Director and the Secretary regarding such occurrence, which report shall specify the cause of the occurrence and the actions taken by FPC to correct the occurrence and to prevent its recurrence in the future.

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(6) Compliance with interim particulate emission limits shall be demonstrated periodically as required by the Director or the Secretary.

(g) *Compliance responsibility.* Nothing herein shall affect the responsibility of the source to comply with all applicable Federal, State, or local regulations.

(h) *Noncompliance responsibility.* FPC is hereby notified that failure to achieve final compliance by September 30, 1980, and maintain compliance thereafter, shall result in one or more of the actions identified in paragraph (j)(1) of this section. In addition, noncompliance beyond September 30, 1980, will subject FPC to an administratively assessed noncompliance penalty pursuant to the requirements of section 120 of the Act and any rules and regulations promulgated pursuant thereto, unless FPC is exempted by section 120(a)(2) (B) or (C) of the Act. In the event of noncompliance after September 30, 1980, FPC will be formally notified of its noncompliance pursuant to section 120(b)(3) of the Act.

(i) This Delayed Compliance Order shall be terminated in accordance with section 113(d)(8) of the Act if the Administrator determines on the record, after notice and hearing, that an inability to comply with Florida Chapter 17-2.04(6) no longer exists.

(j) Violation of any requirement of this Delayed Compliance Order shall result in one or more of the following actions:

(1) Enforcement of such requirement through the commencement of a civil action for injunctive relief and the assessment of civil penalties pursuant to section 113(b) of the Act, or a criminal prosecution pursuant to section 113(c) of the Act, or both;

(2) Revocation of this Delayed Compliance Order, after notice and opportunity for a public hearing, and subsequent enforcement of Chapter 17-2.04(6) in accordance with sections 113 (b) and/or (c) of the Act.

(k) Florida Power Corp. shall complete the following acts with respect to control of particulate emissions for its Crystal River Unit 2, located near Red Level, Fla., on or before the dates specified:

(1) Completed—Submit to the Director of the Enforcement Division a final control plan that describes the steps which will be taken to achieve compliance with the applicable regulations.

(2) August 30, 1978—Negotiate and sign all necessary contracts for particulate emission control systems or issue orders for the purchase of component parts to accomplish emission control.

(3) November 30, 1978—Initiate onsite construction or installation of particulate emission control equipment.

(4) July 30, 1980—Complete on-site construction or installation of particulate emission control equipment.

(5) September 30, 1980—Complete shakedown operations and performance tests on the emission control equipment; also, achieve compliance with the Florida Air Pollution Rules, Chapter 17-2 and certify such compliance to the Director of the Enforcement Division.

[FR Doc. 78-31884 Filed 11-20-78; 8:45 am]

[4110-12-M]

Title 41—Public Contracts, Property Management

CHAPTER 3—DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 3-1—GENERAL

PART 3-3—PROCUREMENT BY NEGOTIATION

AGENCY: Department of Health, Education, and Welfare.

ACTION: Final rule.

SUMMARY: The Office of the Secretary, Department of Health, Education, and Welfare is amending the departmental procurement regulations to delete portions pertaining to the consideration of late proposals and alternate procedures for consideration of late proposals. Those portions being deleted reiterate, verbatim, what is stated in corresponding sections of the Federal Procurement Regulations and are unnecessary. The effective date of this amendment coincides with the effective date of Federal Procurement Regulations Amendment 193 (43 FR 31331, July 21, 1978), which revises solicitation provisions concerning the consideration for award of late bids and proposals submitted by registered or certified mail.

In addition, the section of the regulations concerning contracts with minority business firms is being deleted because it is outdated.

EFFECTIVE DATE: This amendment is effective December 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Ed Lanham, Division of Procurement Policy and Regulations Development, Office of Grants and Procurement, 202-245-6347.

SUPPLEMENTARY INFORMATION: It is the general policy of the Department to allow time for interested parties to participate in the rulemaking process. However, since the amendments are administrative in nature, the public rulemaking process is deemed unnecessary in this instance. The provisions of this amendment are issued under 5 U.S.C. 301; 40 U.S.C. 486(c).

NOTE.—The Department of Health, Education, and Welfare has determined that this document does not contain a major proposal requiring preparation of an inflation impact statement under Executive Order 11821 and OMB Circular A-107.

Therefore, 41 CFR chapter 3 is amended as set forth below.

Dated: November 9, 1978.

MATTHIAS-LASKER,
Acting Deputy Assistant Secretary for Grants and Procurement.

§ 3-1.752 [Deleted]

1. Delete § 3-1.752, Contracts with minority business firms, in its entirety.

§ 3-3.802-1 [Deleted]

2. Delete § 3-3.802-1, Consideration of late proposals, in its entirety.

3. Delete § 3-3.802-2, Alternate procedures for consideration of late proposals, in its entirety and substitute the following:

§ 3-3.802-2 Alternate procedures for consideration of late proposals.

(a) The head of the procuring activity shall make the determination set forth in § 1-3.802-2.

(b)-(e) [Reserved]

(f) Generally, contracting officers, assisted by audit or pricing personnel, will be able to make a determination of the significance of any reduction in cost or price to the Government offered by a late proposal. In order to determine if a late proposal offers a significant technical advantage to the Government, the contracting officer will first obtain a written statement from the individual responsible for the technical evaluation of proposals. The statement must clearly demonstrate that it is advantageous to the Government to consider the late proposal. It must also state what the proposal's significant advantages are and why they are important to the Government. This statement must be approved at a level equal to that of Division Director of the Program Office. The contracting officer will make the determination whether or not to consider the late proposal based on the data set forth in the statement from the individual responsible for the technical evaluation of proposals.

(g) Determination of the competitive range shall be made in accordance with § 3-3.5107. Debriefings of unsuccessful offerors shall be made in accordance with § 3-3.103-50.

[FR Doc. 78-32698 Filed 11-20-78; 8:45 am]

NO 21 78

[4910-62-M]

Title 49—Transportation

SUBTITLE A—OFFICE OF THE SECRETARY OF TRANSPORTATION

[OST Docket No. 16, Amdt. 99-13]

PART 99—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Statements of Employment and Financial Interests

AGENCY: Department of Transportation.

ACTION: Final rule.

SUMMARY: The purpose of this document is to amend the Department of Transportation's regulations governing employee conflicts of interest to reflect the changes made by the establishment of the Research and Special Programs Administration (RSPA) in the Department of Transportation. The definition of the term "Department" is accordingly revised and amendments are made to Appendix C, List of Employees Required to Submit Statement of Employment and Financial Interest.

EFFECTIVE DATE: November 21, 1978.

FOR FURTHER INFORMATION CONTACT:

Roberta D. Gabel, Attorney-Advisor, Office of the General Counsel, Department of Transportation, Washington, D.C. 20590, 202-426-4710.

SUPPLEMENTARY INFORMATION: The persons principally responsible for drafting this document are: William J. Driscoll, Chief Counsel, RSPA, and Roberta D. Gabel, Office of the General Counsel.

On February 9, 1978, the Secretary of Transportation published a revision to 49 CFR Part 1, Organization and Delegation of Powers and Duties, reflecting the establishment of the Research and Special Programs Directorate within the Department of Transportation (43 FR 5516). On April 27, 1978, the Research and Special Programs Directorate was designated the Research and Special Programs Administration. The establishment of the RSPA consolidated certain functions formerly assigned in the Office of the Secretary and in the Materials Transportation Bureau. This amendment to part 99 therefore revises the definition of "Department" to substitute RSPA for the Materials Transportation Bureau and revises the listing of positions in the Department of Transportation, the incumbents of which are required to submit statements of employment and financial interests.

Since this amendment relates to Departmental management and personnel, notice and public procedure thereon are unnecessary, and it may be made effective in fewer than 30 days after publication in the FEDERAL REGISTER.

In consideration of the foregoing:

Title 49, CFR, Part 99 is amended as follows:

(1) In § 99.735-3, the definition of "Department" is revised to read as follows:

* * * * *

"Department" means the Department of Transportation, including the Office of the Secretary, nonappropriated fund activities, and the following operating administrations:

(a) The U.S. Coast Guard;

(b) The Federal Aviation Administration;

(c) The Federal Highway Administration;

(d) The Federal Railroad Administration;

(e) The National Highway Traffic Safety Administration;

(f) The Urban Mass Transportation Administration;

(g) The St. Lawrence Seaway Development Corporation; and

(h) The Research and Special Programs Administration.

* * * * *

(2) In appendix C, section I, "Office of the Secretary of Transportation," under the heading "Office of the Assistant Secretary for Administration", delete the entries for "Director, Office of Emergency Transportation" and "Deputy Director, Office of Emergency Transportation". Delete the captions and positions listed under "Office of the Assistant Secretary for Systems Development and Technology;" "Transportation Systems Center;" and Materials Transportation Bureau.

(3) In appendix C, add a new section IX to read as follows:

IX. RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION

Administrator
Deputy Administrator
Executive Officer
Executive Secretary
Special Assistant

OFFICE OF THE CHIEF COUNSEL

Chief Counsel

OFFICE OF POLICY, PLANS, AND ADMINISTRATION

Director
Chief, Administration Division
Chief, Resources Management Division
Chief, Policy and Plans Division
Chief, Procurement Branch
Contract Specialist, GS-13 and above

TRANSPORTATION SYSTEMS CENTER

Director
Deputy Director
Executive Assistant
Equal Opportunity Officer
Chief Counsel
Patent Advisor
Chief, Office of Plans and Programs
Chief, Office of Advanced Systems
Director, Office of Systems Research and Analysis
Chief, National Transportation Research Division
Chief, Transportation Information Division
Chief, Urban and Regional Research Division
Director, Office of Energy and Environment
Chief, Energy Programs Division
Chief, Environmental and Test Programs Divison
Director, Office of Air and Marine Systems
Chief, Systems Development Division
Chief, Systems Technology Division
Director, Office of Ground Systems
Deputy Director, Office of Ground Systems
Chief, Urban Systems Division
Chief, Intercity Systems Division
Chief, Vehicles and Engineering Division
Director, Office of Administration
Chief, Budget Office
Chief, Management Systems Division
Chief, Procurement and Supply Division
Chief, Procurement Analysis Branch
Chief, Contracts Branch
Chief, Purchases Branch
Contract Specialist, GS-13 and above
Contract Price Analyst, GS-13 and above
Chief, Computer Services Division

TRANSPORTATION PROGRAMS BUREAU

Director
Director, Office of Transportation Security
Deputy Director, Office of Transportation Security
Director, Office of Systems Engineering
Chief, Navigation and Communications Division
Chief, Advanced Technology Division
Director, Office of Emergency Transportation
Deputy Director, Office of Emergency Transportation
Director, Office of Facilitation
Deputy Director, Office of Facilitation
Director, Office of University Research
Deputy Director, Office of University Research
Director, Transportation Safety Institute

MATERIALS TRANSPORTATION BUREAU

Director
Associate Director for Operations and Enforcement
Chief, Operations Division
Chief, Hazardous Materials Enforcement Division
Chief, Pipeline Safety Enforcement Division
Chief, MTB Eastern Region Office
Chief, MTB Southern Region Office
Chief, MTB Central Region Office
Chief, MTB Southwest Region Office
Chief, MTB Western Region Office
Associate Director for Hazardous Materials Regulation
Chief, Standards Division
Chief, Technical Division
Associate Director for Pipeline Safety Regulation
Chief, Standards Division
Chief, Technical Division
Assistant Director for Program Support
Chief, Program Development Division

Chief, R&D Management Division
Chief, Information Services Division
Associate Director for Alaska Pipeline
Chief, Specification Control Division
Chief, Engineering Design Review Division

(Sec. 9(e), Department of Transportation Act (49 U.S.C. 1657(e)).)

Issued in Washington, D.C., on November 9, 1978.

BROCK ADAMS,
Secretary of Transportation.

[FR Doc. 78-32554 Filed 11-20-78; 8:45 am]

[3510-22-M]

Title 50—Wildlife and Fisheries

CHAPTER VI—FISHERY CONSERVATION AND MANAGEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 652—SURF CLAM AND OCEAN QUAHOG FISHERIES

Adjustment to Quota

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Clarification of surf clam quota adjustment.

SUMMARY: This notice confirms that the actual surplus of surf clams carried over to the fourth quarter (October 1 through December 31, 1978) is 37,834 bushels. Thus, the adjusted quota for surf clams for the fourth quarter is 387,834 bushels.

EFFECTIVE DATE: November 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. William G. Gordon, Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Gloucester, Mass. 01930, telephone 617-281-3600.

SUPPLEMENTARY INFORMATION: The Assistant Administrator for Fisheries determined, on the information then available, that the surf clam quota for the third quarter of 1978 (July 1 through September 30) would not be harvested before the end of that quarter. Consequently, as provided by 50 CFR § 652.6(a)(1), a projected surplus of 50,000 bushels was added to the surf clam quota of 350,000 bushels for the fourth quarter (October 1 through December 31). Pursuant to § 652.6(a)(2), the Assistant Administrator published in the FEDERAL REGISTER (42 FR 46033) the adjusted surf clam quota of 400,000 bushels for the fourth quarter. That notice appeared on October 5, 1978. As a result of data received and analyzed after that date, the projected surplus was revised downward to a real surplus of 37,834 bushels. A new adjusted surf clam quota of 387,834 bushels for the fourth quarter was published in the FEDERAL REGISTER (43 FR 50442) on October 30, 1978.

Therefore, to avoid confusion regarding the quantity of surf clams which may be harvested during the fourth quarter of 1978, this notice hereby confirms that the effective adjusted surf clam quota for the fourth quarter is 387,834 bushels.

Signed in Washington, D.C. on this 16th day of November 1978.

(16 U.S.C. 1801 et seq.)

WINFRED H. MEIBOHM,
Acting Executive Director,
National Marine Fisheries Service.

[FR Doc. 78-32647 Filed 11-20-78; 8:45 am]

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

[3410-30-M]

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

[7 CFR Part 273]

[Amdt. No. 137]

FOOD STAMP ACT OF 1977

Proposed Procedures for Implementing Work Registration Voluntary Quit Provision

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rulemaking sets forth procedures for implementing the work registration voluntary quit provision mandated by the Food Stamp Act of 1977.

DATES: Comments should be received by December 21, 1978.

ADDRESS: Comments should be submitted to: Nancy Snyder, Deputy Administrator for Family Nutrition Programs, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT:

Susan McAndrew, Food Stamp Regulation Task Force, Food and Nutrition Service, Washington, D.C. 20250, 202-447-4002.

SUPPLEMENTARY INFORMATION:

INTRODUCTION

The Act requires that no household shall be eligible for program participation if it includes a "• • • head of household [who] voluntarily quits any job without good cause, unless the household was certified under this Act immediately prior to such unemployment: Provided, That the period of ineligibility shall be 60 days from the time of the voluntary quit".

Under the Food Stamp Act of 1964, as amended, and regulations issued pursuant to it, work registrants must continue suitable employment to which they have been referred in accord with the work registration requirement, or else face disqualification from the food stamp program. However, as the House Committee report [1] observed, there has been "no prohibition • • • against the head of the household • • • quitting work and thereby rendering the entire (formerly ineligible) household eligible for food stamps." The Food Stamp Act of 1977 addresses this situation, through the new voluntary quit provision.

For purposes of the voluntary quit provision, the May 2, 1978 proposed rules redefined "head of household" as that household member responsible for acquiring the greatest amount of earned income within the previous 60 days. However, as pointed out in comments received on the May 2 proposal, that definition would in some cases require a minor to be the household head and could cause the household head to change frequently. This could cause administrative difficulties for State agencies. Since that definition was proposed solely for the purposes of implementing the voluntary quit provision, the proposed definition was modified. According to the final rules published October 17, 1978, States may devise their own method of designating the head of household for administrative purposes. For purposes of the voluntary quit provision, these proposed regulations substitute the term "primary wage earner" for "head of household" and define the primary wage earner as that adult household member, or child not under the parental control of another household member, who was acquiring the greatest amount of earned financial support for the household at the time of the quit.

The Act requires that the period of disqualification be 60 days from the date of the quit. However, commenters, in responding to the May 2, 1978 proposed regulations providing a 60 day disqualification period for failure to comply with work registration requirements, recommended that the 60 days be converted to 2 months and that the regulations specify when the 2 month disqualification should begin. The Department agrees that because program eligibility is based on monthly periods, the 2 month period is more workable. Therefore, the 60 days disqualification has been converted to 2 months. The regulations propose that the 2 months begin with the month of the quit. Therefore, if a primary wage earner quits employment in the month of June, the household would be ineligible to participate in the food stamp program for the months of June and July.

The regulations propose that the State agency shall determine at the point the household applies for food stamp benefits if any currently unemployed household member who is reqired to register for full time employment has quit his/her most recent job within the last 60 days. For purposes of voluntary quit we have defined unemployed household members as those household members employed less than 20 hours per week. Those jobs that involve employment for 20 hours a week or more will be considered in determining when the voluntary quit provision is applicable.

With respect to "good cause" criteria, the House Report recommends good cause be defined "• • • presumably be reference to the unemployment insurance standards employed by the States • • •. However, the definition of good cause varies from State to State to such an extent that employing those standards in each State would not result in a uniform application of this food stamp eligibility rule. The Department did, though, review a Department of Labor summary of Unemployment Insurance laws on good cause and compiled the good cause criteria proposed in these regulations based on that review and good cause provisions already in use in the current food stamp program. Additionally, these regulations propose that quitting a job that does not meet the suitability criterial specified in § 273.7(i) also be considered good cause. Finally, as stated in the House Report, since the intent of the voluntary quit provision was aimed at "work drop-out" and not those who move from one area to another to maintain employment, it is proposed that good cause also include leaving a job to follow types of employment that require the household to move from area to area such as migrant labor or construction work.

The proposed regulations require that verification be requested if the State has reason to question the claim of good cause. In those circumstances in which there is no source that can provide objective verification, the household should not be denied access to the program if all other eligibility criteria are met.

Comments received pursuant to this rulemaking shall be available for public inspection and copying at Food and Nutrition Service office room 606, 500 12th Street SW., Washington, D.C. 20250.

[1] *House Report* 95-464, June 24, 1977.

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IMPLEMENTATION

The Department prefers that the work registration voluntary quit provision be implemented on or about the same day as the eligibility criteria published in the FEDERAL REGISTER on October 17, 1978. Since the final date for beginning implementation of those rules has been set as no later than March 1, 1979, the Department shortened the comment period for these proposed rules to 30 days to accelerate the implementation of the voluntary quit provision. Nonetheless, State agencies will have 60 days from the date of final publication to implement this provision. However, the Department encourages State agencies that can do so to implement the voluntary quit provision along with the October 17, 1978 rulemaking.

Therefore, the Department proposes that a new paragraph (c) be added to § 273.7 to read as follows:

§ 273.7 **Work registration requirements.**

* * * * *

(c) *Voluntary quit.* No applicant household whose primary wage earner voluntarily quit his/her most recent job without good cause shall be eligible for participation in the program as specified below. (1) *Application Processing.* (i) When a household files an application, the State agency shall determine if any currently unemployed (i.e., employed less than 20 hours per week) household member who is required to register for full time work has quit his/her most recent job (i.e., employment involving 20 hours or more per week) without good cause within the last 60 days.

(ii) If so, the State agency shall also determine if that member is the household's primary wage earner. For purposes of this section, the primary wage earner shall be that adult household member or child not under the parental control of another household member who was acquiring the greatest amount of earned financial support for the household at the time of the quit.

(iii) Upon such a determination, the household's application for participation shall be denied for a period of 2 months beginning with the month of the quit. The households shall be advised of the reason for the denial and of its right to reapply at the end of the disqualification period.

(2) *Exemptions from voluntary quit provisions.* The following persons are exempt from voluntary quit provisions:

(i) Primary wage earners in households certified for the program at the time of the quit.

(ii) Persons exempt from the full time work registration provisions as stipulated in § 273.7(b).

(3) *Good cause.* Good cause for leaving employment includes the good cause provisions found in § 273.7(g), and resigning from a job that does not meet the suitability criterial specified in § 273.7(i). Good cause for leaving employment shall also include:

(i) Discrimination by an employer based in age, race, sex, color, handicap, religious beliefs, national origin or political beliefs;

(ii) Work demands or conditions that render continued employment unreasonable, such as working without being paid on schedule;

(iii) Acceptance by the primary wage earner or the spouse of the primary wage earner of employment, or training or education preparatory to employment, in another area which requires the household to move and therefore requires the primary wage earner to leave employment;

(iv) Resignations which are recognized by the employer as retirement;

(v) Employment which becomes unsuitable by not meeting the criteria specified in § 273.7(i) after the acceptance of such employment; and

(vi) Leaving a job to follow types of employment that require the household to move from one area to another, such as migrant labor or construction work.

(4) *Verification.* (i) To the extent that the information given by the household is questionable, as defined in § 273.2(f)(2), State agencies shall request verification of the household's statements. While the household has primary responsibility for providing verification, State agencies may obtain information on circumstances surrounding the quit from other sources, such as the previous employer, employee associations, union representatives and grievance committees or organizations, when the household is unable to obtain such verification.

(ii) If the household and State agency are unable to obtain requested verification from these or other sources because the cause for the quit resulted from circumstances that cannot be verified for good reason, such as a resignation from employment due to discrimination practices or unreasonable demands by an employer, the household will not be denied access to the program.

* * * * *

NOTE.—The Food and Nutrition Service has determined that this document does not warrant the preparation of an economic impact statement under Executive Order 11821 and OMB Circular A-107.

(Catalog of Federal Domestic Assistance Programs No. 10.551, Food Stamps.)

Dated: November 16, 1978.

CAROL TUCKER FOREMAN,
Assistant Secretary.

[FR Doc. 78-32696 Filed 11-20-78; 8:45 am]

Agricultural Marketing Service

[7 CFR Part 906]

ORANGES AND GRAPEFRUIT GROWN IN TEXAS

Proposed Extension of Grade and Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This notice proposes to continue through November 4, 1979, the current minimum grade and size requirements for shipments of fresh oranges and grapefruit grown in Texas. These requirements are designed to provide for orderly marketing in the interest of producers and consumers.

DATES: Written comments must be received on or before December 5, 1978. Proposed effective dates: December 12, 1978, through November 4, 1979.

ADDRESS: Send two copies of comments to the Hearing Clerk, U.S. Department of Agriculture, Room 1077 South Building, Washington, D.C. 20250, where they will be made available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: Orange and grapefruit regulation 30 (§ 906.361; 43 FR 50866) sets forth the current grade and size requirements on the handling of Texas oranges and grapefruit through December 11, 1978. This proposed amendment would continue these requirements for the period December 12, 1978, through November 4, 1979, as recommended by the Texas Valley Citrus Committee, established under the marketing agreement, as amended, and order No. 906, as amended (7 CFR Part 906). This marketing agreement and order regulates the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, and is effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

The 1978-79 season Texas orange crop is estimated at 6,600,000 boxes (85 pounds net weight), compared with 6,100,000 produced in 1977-78, and 6,900,000 in 1976-77. The crop is of excellent quality, and fruit sizes are comparable to those in the past two seasons. The 1978-79 season Texas grapefruit crop is estimated at 11,500,000 boxes (80 pounds net weight), compared with 11,900,000 produced in 1977-78, and 12,400,000 in 1976-77. The crop is of excellent quality, and fruit sizes are much larger than those of the past two seasons. Growing conditions have been favorable and soil moisture is adequate. Hence, considering the available supply and the reported quality and size of the fruit ample quantities of both oranges and grapefruit meeting these proposed grade and size requirements will be available to meet the demand for these fruits.

The committee estimates that 50 percent of the Texas orange crop, and 60 percent of the Texas grapefruit crop will meet the proposed grade and size requirements, and will be sold fresh in the regulated domestic market. Grapefruit and oranges failing to meet these proposed requirements, could be sold, if suitable, in unregulated channels, such as the fresh export market, the processed products market, or the local unregulated market within the production area. Fresh shipments of Texas oranges and grapefruit meet considerable competition in major markets from citrus produced in other areas of the country. Only a relatively small portion of this Nation's citrus supplies—about 3 percent of the oranges and 16 percent of the grapefruit—are produced in Texas.

The proposed minimum grade and size requirements reflect the committee's appraisal of the need for regulating Texas oranges and grapefruit by grade and size during the period December 12, 1978, through November 4, 1979, based on the available supply and current and prospective market demand conditions. The committee reports that the proposed requirements are necessary to prevent the shipment of Texas oranges and grapefruit of lower grades and sizes than those hereinafter specified; that they are designed to provide ample supplies of acceptable quality oranges and grapefruit in the interest of producers and consumers, and to enable Texas orange and grapefruit producers to compete more effectively in the market, thereby improving their returns, pursuant to the declared policy of the act. It reports shipments of lower grades and of smaller sizes than those proposed, provide low returns to producers when sold in the fresh domestic market, because they lack consumer acceptance, and often returns for such fruit are inadequate to cover the washing, sorting, grading and packing costs associated with preparing fruit for sale in the fresh market.

The proposal is that § 906.361 Orange and Grapefruit Regulation 30 (43 FR 50866) be amended to read as follows:

§ 906.361 **Orange and Grapefruit Regulation 30.**

(a) During the period December 12, 1978, through November 4, 1979, no handler shall handle any variety of oranges or grapefruit grown in the production area unless:

(1) Such oranges grade U.S. Fancy, U.S. No. 1, U.S. No. 1 Bright, U.S. No. 1 Bronze, U.S. Combination (with not less than 60 percent, by count, of the oranges in any lot thereof grading at least U.S. No. 1), or U.S. No. 2;

(2) Such oranges are at least pack size 288, as such size is specified in § 2851.691(c) of the U.S. Standards for Oranges (Texas and States other than Florida, California, and Arizona), except that the minimum diameter limit for pack size 288 oranges in any lot shall be 2⁹⁄₁₆ inches;

(3) Such grapefruit grade U.S. Fancy, U.S No. 1, U.S. No. 1 Bright, U.S. No. 1 Bronze, or U.S. No. 2;

(4) Such grapefruit are at least pack size 96, as such size is specified in § 2851.630(c) of the U.S. Standards for Grapefruit (Texas and States other than Florida, California, and Arizona), except that the minimum diameter limit for pack size 96 grapefruit in any lot shall be 3⁹⁄₁₆ inches: *Provided,* That any handler may handle grapefruit smaller than pack size 96, provided such grapefruit grade at least U.S. No. 1 and they are at least pack size 112, as such size is specified in the aforesaid U.S. Standards for Grapefruit, except that the minimum diameter limit for pack size 112 grapefruit in any lot shall be 3⁵⁄₁₆ inches;

(5) An appropriate inspection certificate has been issued for such fruit within 48 hours prior to the time of shipment; and

(6) The fruit meets all the applicable container and pack requirements effective under this marketing agreement and order.

(b) Terms used in this section shall have the same meaning as in the marketing order, and terms relating to grade and diameter shall have the same meaning as in the U.S. standards for oranges (Texas and States other than Florida, California, and Arizona) (7 CFR 2851.680-2851.714), or in the U.S. standards for grapefruit (Texas and States other than Florida, California, and Arizona) (7 CFR 2851.620-2851.653).

Dated: November 16, 1978.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 78-32642 Filed 11-20-78; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

[10 CFR Parts 40, 50, 70, 75, and 150]

SAFEGUARDS ON NUCLEAR MATERIAL—IMPLEMENTATION OF U.S./IAEA AGREEMENT

Availability of Supplemental Documents and Extension of Comment Period

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of availability of supplemental documents and an extension for comments on proposed regulations (43 FR 22365) to implement U.S./IAEA Agreement.

SUMMARY: The Nuclear Regulatory Commission has placed in its Public Document room at 1717 H Street NW., Washington, D.C., documents which are supplemental to, and were referenced in the FEDERAL REGISTER of May 25, 1978, "Safeguards on Nuclear Material—Implementation of U.S./IAEA Agreement." In consideration of these supplemental documents, the NRC is extending the comment period for the notice.

DATE: Comment period for 43 FR 22365 is extended and now expires December 21, 1978.

ADDRESSES: (1) Written comments for the FEDERAL REGISTER (43 FR 22365), dated May 25, 1978, should be submitted to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention Docketing and Service Branch; (2) the documents contained in this notice can be obtained at $0.08 per page copy from the Commission's Public Document Room at 1717 H Street NW., Washington, D.C. 20555.

FOR FURTHER INFORMATION CONTACT:

Mr. James R. Wolf, Office of Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Phone 301-492-8694; or Mr. Paul K. Morrow, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Phone 301-427-4004.

SUPPLEMENTARY INFORMATION: On May 25, 1978, the Nuclear Regulatory Commission published for public comment in the FEDERAL REGISTER (43 FR 22365) proposed amendments to implement the agreement between the United States and the International Atomic Energy Agency for the application of safeguards in the United States of America. These proposed implementing regulations identified provisions requiring licensees: (1) To submit information concerning their installation for the use of IAEA; (2) to estab-

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lish, maintain, and follow prescribed material accounting and control procedures; (3) to provide specific reports; and (4) to permit inspections by IAEA representatives. The proposed amendments were published for comment so that the issuance of final regulations could be accomplished promptly once the Senate gives its consent.

The May 25, 1978, proposed amendments made reference to certain supplemental documents which are now available and have been placed in the Commission's Public Document Room at 1717 H Street NW., Washington, D.C. These documents are:

1. Subsidiary Arrangements to the Agreement Between the Government of the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America (87 pages);
2. Transitional Subsidiary Arrangements to the Protocol to the Agreement Between the Government of the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America (66 pages);
3. The United States List of Installations Eligible for IAEA Safeguards Under the US/IAEA Safeguards Agreement, Rev. 1, January 1978 (50 pages);
4. Draft—Form DOE/NRC-741, "Nuclear Material Transaction Report" with instructions (96 pages); and
5. Draft—Form DOE/NRC-742C, "Physical Inventory Listing" with instructions (7 pages).

In consideration of the supplemental documents now available in the Commission's Public Document Room, the NRC is extending the comment period for the FEDERAL REGISTER notice (43 FR 22365), dated May 25, 1978, "Safeguards on Nuclear Material—Implementation of U.S./IAEA Agreement."

The additional comment period will expire December 21, 1978.

Dated at Washington, D.C., this 14th day of November 1978.

For the Nuclear Regulatory Commission.

JOHN C. HOYLE,
Acting Secretary of the Commission.

[FR Doc. 78-32581 Filed 11-20-78; 8:45 am]

[6450-01-M]

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[10 CFR Part 212]

[Docket No. ERA-R-77-5]

"TRANSFER" OR "PLANT GATE" PRICING OF NATURAL GAS LIQUIDS BY GAS PROCESSORS AND REFINERS

Change in Date and Location Regarding Public Hearing Concerning Rulemaking Petitions

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Change in Date and Location of Public Hearing Concerning Rulemaking Petitions.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of a change in the date and the location of the public hearing to receive comments upon certain matters concerning "transfer" or "plant gate" pricing of natural gas liquids under subpart K of the Mandatory Petroleum Price Regulations. The hearing date and location, originally scheduled in a notice issued October 30, 1978 (43 FR 50842, October 31, 1978) for December 7, 1978, at 2000 M Street NW., Washington, D.C., is now scheduled to be held on December 11, 1978, at Room 3000A, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461. All other dates and locations set forth in the October 30 notice remain unchanged.

DATES: Hearing dates: Washington, D.C. Hearing: December 11, 1978, 9:30 a.m., and continued if necessary at 9:30 a.m. at the same location of the next day or days.

ADDRESSES: Requests to speak to: Public Hearing Management, Docket No. ERA-R-77-5, Department of Energy, Room 2313, 2000 M Street NW., Washington, D.C. 20461. Washington, D.C. Hearing: 1200 Pennsylvania Avenue NW., Room 3000A, Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Robert C. Gillette (Comment Procedures), Economic Regulatory Administration, 2000 M Street NW., Room 2214B, Washington, D.C. 20461, 202-254-5201.

Rue Dann (Media Relations), Department of Energy, 2000 M Street NW., Room 6308E, Washington, D.C. 20461, 202-634-2170.

Nancy E. Williams (Office of Regulations and Emergency Planning), Economic Regulatory Administration, 2000 M Street NW., Washington, D.C. 20461, 202-632-8494.

Cliff G. Russell or Kristina Clark, (Office of General Counsel), Department of Energy, 12th and Pennsylvania Avenue NW., Room 5138, Washington, D.C. 20461, 202-566-9567.

Issued in Washington, D.C., November 15, 1978.

DOUGLAS G. ROBINSON,
Assistant Administrator, Economic Regulatory Administration.

[FR Doc. 78-32672 Filed 11-20-78; 8:45 am]

[8010-01-M]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 240]

[Release No. 34-15317; File No. S7-761]

FILING AND DISCLOSURE REQUIREMENTS RELATING TO BENEFICIAL OWNERSHIP

Proposed Amendments to Schedules

AGENCY: Securities and Exchange Commission.

ACTION: Proposed amendments to schedules.

SUMMARY: The Commission is proposing for comment amendments to the schedules relating to the disclosure requirements applicable to certain beneficial owners of certain classes of equity securities. The purpose of the amendments is to enable the Commission to satisfy its obligation under section 13(g) of the Securities Exchange Act of 1934 "• • • to tabulate and promptly make available the information contained in any report filed pursuant to this subsection • • •." The Commission also describes and invites comment on its proposed methods for collating beneficial ownership information, through computer and other systems, to satisfy its above-mentioned section 13(g) obligation, and on its proposal to amend the beneficial ownership schedules to request the Social Security or IRS identification number of "reporting persons."

DATE: Comments must be received on or before December 18, 1978.

ADDRESS: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comment letters should refer to file No. S7-761. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT:

William H. Carter, Office of Disclosure Policy and Proceedings, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, 202-376-8090.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced proposed amendments to schedule 13D (17 CFR 240.13d-101), schedule 13G (17 CFR 240.13d-102), and schedule 14D-1 (17 CFR 240.14d-100) relating to disclosure by certain persons whose beneficial ownership of equity securities described in section 13(d)(1) of the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78a et seq., as amended by Pub. L. 94-29 (June 4, 1975), and Pub. L. 95-213 (December 19, 1977)) exceeds 5 percent. The amendments are being proposed for comment to assist in the development of a comprehensive system to tabulate and make publicly available the information contained in the schedules disclosing the beneficial ownership of certain public companies. The amendments consist basically of expanded cover pages for the three schedules on which persons filing the schedules will abstract certain data from within the schedules in order to facilitate the entering of such data into the Commission's computer system. The tabular information required on these amended cover pages would not be deemed to be "filed" for the purpose of section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act.

I. BACKGROUND

The Williams Act Amendments to the Exchange Act were designed: (1) To provide adequate disclosure and other protection to stockholders in connection with takeover attempts, such as tender offers and corporate repurchases; and (2) to provide adequate disclosure to stockholders in connection with any substantial acquisition of securities within a relatively short period of time. Section 13(d) of the Exchange Act, added by the Williams Act Amendments, requires any person who acquires beneficial ownership of more than 5 percent of a class of certain equity securities to file a statement with the Commission reporting that acquisition and certain other information related to such person's ownership of those securities. Section 13(d)(3) also requires disclosure from certain "groups" of persons who beneficially own 5 percent of a class of equity securities and act together for the purpose of acquiring, holding, or disposing of the securities. Section 13(d) is not, however, an ownership reporting provision of general application. Its legislative history reveals it was intended to provide information to the public and the affected issuer about rapid accumulations of its equity securities in the hands of persons who would then have the potential to change or influence control of issuer.[1]

Because section 13(d) attempts to deal with the more limited concern of rapid shifts in control, acquisitions unrelated to that purpose were exempted therefrom. Thus, persons who acquire not more than 2 percent of a class of securities within a 12-month period are exempted by section 13(d)(6)(B) from disclosing their ownership. Also, section 13(d) is keyed to making an "acquisition" of the requisite amount of securities. Thus persons who acquired their ownership prior to the enactment of the 5 percent threshold on December 22, 1970 (Pub. L. 91-567) are not subject to section 13(d). There is also an exemption under section 13(d)(6)(A) from reporting acquisitions of securities acquired in a stock-for-stock exchange which is registered under the Securities Act of 1933 (15 U.S.C. 77a et seq.).

In June 1975 Congress enacted section 12(m) of the Exchange Act which directed the Commission to conduct a study and investigation of the practice of recording the ownership of securities in other than the name of the beneficial owner—"street"[2] and "nominee"[3] names—to determine whether the practice is consistent, inter alia, with the purpose of section 13(d). In its final report to Congress on December 3, 1976, the Commission concluded that the practice limits the amount of information readily available to the public regarding beneficial owners of substantial amounts of an issuer's securities. In particular, the Commission noted the gaps in section 13(d) discussed above, which permit certain persons whose ownership exceeds 5 percent to avoid reporting such ownership. The Commission recommended that a comprehensive system for disclosure of ownership interests be established and requested legislation to require ownership reports from those persons owning more than 5 percent of an issuer's securities who were not then required to report under the Exchange Act.

The Commission's recommendation was implemented by the enactment of section 13(g) of the Exchange Act on December 19, 1977.[4] Section 13(g)(1) requires any person who is directly or indirectly the beneficial owner of more than 5 percent of a class of equity securities specified in section 13(d)(1) of the Exchange Act to send to the issuer and file with the Commission a statement which sets forth, in such form and at such time as the Commission may, by rule, prescribe: Such person's identity, residence, citizenship, the number and description of the shares in which such person has an interest and the nature of such interest.

The legislative history is clear that section 13(g) was intended to "supplement the current statutory scheme by providing legislative authority for certain additional disclosure requirements that in some cases could not be imposed administratively".[5] The principal effect of section 13(g), therefore, is to provide the authority necessary to close the gaps previously described in the disclosure requirements under section 13(d).[6]

Finally, and most relevant as to the proposals set forth today, the legislative history of section 13(g) also stresses "the need to integrate and consolidate, wherever possible, the various reporting requirements of the Securities Exchange Act into a comprehensive system for gathering and disseminating information about ownership intersts in public [sic] held companies".[7] Thus, section 13(g)(5) directs the Commission to take such steps as it deems necessary or appropriate in the public interest: To achieve centralized reporting of information regarding ownership; to avoid unnecessarily duplicative reporting by and minimize the compliance burden on persons required to report; and to tabulate and promptly make available the information contained in any report filed thereunder in a manner which will, in the view of the Commission, maximize the usefulness of the information.

In addition to the tabulation systems described in this release, existing disclosure requirements under item 5 of schedule 14A and item 13 of form 10-K impose an obligation on registrants to disclose certain persons' beneficial ownership of securities, including the ownership of persons beneficially owning more than 5 percent of certain classes of the registrant's equity securities. Copies of re-

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[1] S. Rep. No. 550, 90th Cong., 1st Sess. 7 (1967); H.R. Rep. No. 1711, 90th Cong. 2d Sess. 8 (1968) and Hearings on S. 510 Before the Subcommittee on Securities of the Senate Committee on Banking and Currency, 90th Cong., 1st Sess. (1967).

[2] Street name registration, a specialized type of nominee registration, refers to the practice of a broker registering in its name, or in the name of its nominee, securities left with it by customers or held by it for its own account.

[3] Nominee name registration refers to arrangements used by institutional investors and financial intermediaries for the registration of securities held by them for their own account or for the account of their customers who are the beneficial owners of the securities.

[4] Section 13(g) was added to the Exchange Act by the Domestic and Foreign Investment Disclosure Act of 1977 (the "Act") (title II of Pub. L. 95-213). The Act also amended sec. 13(d)(1) and sec. 13(h) to the Exchange Act.

[5] S. Rep. No. 114, 95th Cong. 1st Sess. 13 (1977).

[6] Id.

[7] S. Rep. No. 114, 95th Cong. 1st Sess. 14 (1977).

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ports on schedules 13D, 13G and 14D-1 are required to be sent to registrants in part to provide them with information with which to make disclosures in annual reports and proxy statements. The computer system described herein may afford registrants a means of confirming that they have received all such reports on schedules 13D, 13G and 14D-1.

II. Synopsis of Proposed Amendments to Schedules

A. General

In order to effectuate the congressional purpose underlying section 13(g), as described above, the Commission is proposing, inter alia, that the existing "cover pages" for schedule 13D, schedule 13G, and schedule 14D-1* be replaced by expanded cover pages and that a set of instructions for the cover pages be added. As can be seen from the proposed amendments, the new cover pages, with the exception of the disclosure of social security or IRS identification numbers, do not require any additional disclosure but merely require information presently in the schedules to be abstracted on the cover page to facilitate its insertion into a computer system. Consideration is also being given to having blank copies of the cover pages available from the Commission's publication unit for the convenience of reporting persons. As noted above, the new cover pages would also request (on a voluntary basis) the social security or IRS identification number of each "reporting person."

The proposed methods for the tabulation and public dissemination of all such data are discussed later in this release. The public availability of this additional data will, of course, only supplement the original schedules 13D, 13G, and 14D-1, which will continue to be available to the public as soon as filed.

B. Proposed Amendment to Schedule 13D

The proposed amended cover page for schedule 13D and the instructions thereto appear immediately below. It is contemplated that this cover page would entirely replace the existing one, to be followed by "Instructions for Cover Page" and "Special Instructions for Schedule 13D." For purposes of clarity, the existing caption title "Instructions" would be changed to "General Instructions."

*The cover page to schedule 14D-1 is being amended along with the cover pages of schedules 13D and 13G since schedule 14D-1 in certain specified circumstances, may be used to satisfy the reporting requirements of sec. 13(d).

TEXT OF AMENDED SCHEDULE

§ 240.13D-101 Schedule 13D—Information to be included in statement filed pursuant to § 240.13d-1(a) and amendments thereto filed pursuant to § 240.13d-2(a)

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 13D

Under the Securities Exchange Act of 1934

(Amendment No.——)*

Name of issuer ——————————

Title of class of securities ——————————

CUSIP No.——————————

Name, address and telephone number of person authorized to receive notices and communications ——————————

Date of event which requires filing of this statement ——————————

If the filing person has previously filed a statement on schedule 13G to report the acquisition which is the subject of this schedule 13D, and is filing this schedule because of rule 13d-1(b) (3) or (4), check the following box ☐.

Check the following box if a fee is being paid with this statement ☐. (A fee is not required only if the reporting person: (1) has a previous statement on file reporting beneficial ownership of more than 5 percent of the class of securities described in item 1; and (2) has filed no amendment subsequent thereto reporting beneficial ownership of less than 5 percent of such class. See rule 13d-7.)

Names & S.S. or I.R.S. Identification Nos. of Reporting Persons (1)	Check the Appropriate Box if a Member of a Group (See Instructions) (2) (a)	(b)	SEC Use Only (3)	Source of Funds (4)	Check if Disclosure of Legal Proceedings is Required Pursuant to Items 2(d) or 2(e) (5)	Citizenship or Place of Organization (6)	Number of Shares Beneficially Owned by Each Reporting Person With: Sole Voting Power (7)	Shared Voting Power (8)	Sole Dispositive Power (9)	Shared Dispositive Power (10)	Aggregate Amount Beneficially Owned by Each Reporting Person (11)	Check If the Aggregate Amount in Column (11) Excludes Certain Shares (See Instructions) (12)	Percent of Class (13)	Type of Reporting Person (14)

*The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

NOTE: Six copies of this statement, including all exhibits, shoud be filed with the Commission. See rule 13d-1(a) for other parties to whom copies are to be sent.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of sec. 18 of the Securities Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act.

Instructions for Cover Page

(1) *Names and social security numbers of reporting persons.* Furnish the full legal name of each person for whom the report is filed—i.e., each person required to sign the schedule itself—including each member of a group. Do not include the name of a person required to be identified in the report but who is not a reporting person. Reporting persons are also requested to furnish their social security or IRS identification numbers, although disclosure of such numbers is voluntary, not mandatory (see "Special Instructions For Complying with Schedule 13-D" below).

(2) If any of the shares beneficially owned by a reporting person are held as a member of a group and such membership is expressly affirmed, please check column 2(a). If the membership in a group is disclaimed or the reporting person describes a relationship with other persons but does not affirm the existence of a group, please check column 2(b) (unless a joint filing pursuant to rule 13d-1(c)(1)).

(3) The third column is for SEC internal use; please leave blank.

(4) Classify the source of funds or other consideration used or to be used in making the purchases as required to be disclosed pursuant to item 3 of schedule 13D and insert the appropriate symbol (or symbols if more than one is necessary) in column (4):

Category of source	Symbol
Subject company (company whose securities are being acquired).	SC
Bank	BK
Affiliate (of reporting person)	AF
Working capital (of reporting person)	WC
Personal funds (of reporting person)	PF
Other	OO

(5) If disclosure of legal procedings or actions is required pursuant to either items 2(d) or 2(e) of schedule 13D, column 5 should be checked.

(6) *Citizenship or place of organization.* Furnish citizenship if the named reporting person is a natural person. Otherwise, furnish place of organization. (See item 2 of schedule 13D.)

(7)-(11) and (13) *Aggregate amount beneficially owned by each reporting person, etc.* Columns (7) through (11), inclusive, and (13) are to be completed in accordance with the provisions of item 5 of schedule 13D. All percentages are to be rounded off to nearest 10th (one place after decimal point).

(12) Check if the aggregate amount reported as beneficially owned in column (11) does not include shares which the reporting person discloses in the report but as to which beneficial ownership is disclaimed pursuant to rule 13d-4 (17 CFR 240.13d-4) under the Securities Exchange Act of 1934.

(14) *Type of reporting person.* Please classify each "reporting person" according to the following breakdown and place the appropriate symbol (or symbols, i.e., if more than one is applicable, insert all applicable symbols) on the form:

Category	Symbol
Broker dealer	BD
Bank	BK
Insurance company	IC
Investment company	IV
Investment adviser	IA
Employee benefit plan, pension fund, or endowment fund.	EP
Parent holding company	HC
Corporation	CO
Partnership	PN
Individual	IN
Other	OO

NOTE.—Attach additional pages if needed.

Special Instructions For Complying with Schedule 13D

Under sections 13(d) and 23 of the Securities Exchange Act of 1934 and the rules and regulations thereunder, the Commission is authorized to solicit the information required to be supplied by this schedule by certain security holders of certain issuers.

Disclosure of the information specified in this schedule is mandatory, except for social security or IRS identification numbers, disclosure of which is voluntary. The information will be used for the primary purpose of determining and disclosing the holdings of certain beneficial owners of certain equity securities. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

Because of the public nature of the information, the Commission can utilize it for a variety of purposes, including referral to other governmental authorities or securities self-regulatory organizations for investigatory purposes or in connection with litigation involving the Federal securities laws or other civil, criminal, or regulatory statements or provisions. Social security or IRS identification numbers, if furnished, will assist the Commission in identifying security holders and, therefore, in promptly processing statements of beneficial ownership of securities.

Failure to disclose the information requested by this schedule, except for social security or IRS identification numbers, may result in civil or criminal action against the persons involved for violation of the Federal securities laws and rules promulgated thereunder.

C. Proposed Amendment to Schedule 13G

The proposed amended cover page for schedule 13G and the instructions thereto appear immediately below. It is contemplated that this cover page would entirely replace the existing one, to be followed by "Instructions for Cover Page" and "Special Instructions For Complying with Schedule 13G." For purposes of clarity the existing caption titled "Instructions" would be changed to "General Instructions."

TEXT OF AMENDED SCHEDULE

§ 240.13d-102 Schedule 13G—Information to be included in statements filed pursuant to § 240.13d-1(b) and amendments thereto filed pursuant to § 240.13d-2(b).

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 13G

Under the Securities Exchange Act of 1934

(Amendment No. ——)*

Name of issuer——————————

Title of class of securities ——————————

CUSIP No.——————————

Check the following box if a fee is being paid with this statement: ☐. (A fee is not required only if the filing person: (1) has a previous statement on file reporting beneficial ownership of more than 5 percent of the class of securities described in item 1; and (2) has filed no amendment subsequent thereto reporting beneficial ownership of less than 5 percent of such class.) (See rule 13d-7.)

Names & S.S. or I.R.S. Identification Nos. of Reporting Persons (1)	Check the Appropriate Box if a Member of a Group (See Instructions) (2) (a)	(b)	SEC Use Only (3)	Citizenship or Place of Organization (4)	Number of Shares Beneficially Owned By Each Reporting Person With: Sole Voting Power (5)	Shared Voting Power (6)	Sole Dispositive Power (7)	Shared Dispositive Power (8)	Aggregate Amount Beneficially Owned by Each Reporting Person (9)	Check if the Aggregate Amount in Column (9) Excludes Certain Shares (See Instructions) (10)	Percent of Class (11)	Type of Reporting Person (12)

*The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter the desclosures provided in a prior cover page.

The information required in the remainder of this cover page shall not be deemed to be "filed" for the purpose of sec. 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act.

INSTRUCTIONS FOR COVER PAGE

(1) *Names and social security numbers of reporting persons.* Furnish the full legal name of each person for whom the report is filled—i.e., each person required to sign the schedule itself—including each member of a group. Do not include the name of a person required to be identified in the report but who is not a reporting person. Reporting persons are also requested to furnish their social security or IRS identification numbers, although disclosure of such numbers is voluntary, not mandatory (see "Special Instructions For Complying with Schedule 13G", below).

(2) If any of the shares beneficially owned by a reporting person are held as a member of a group and such membership is expressly affirmed, please check column 2(a). If the membership in a group is disclaimed or the reporting person describes a relationship with other persons but does not affirm the existence of a group, please check column 2(b) (unless a joint filing pursuant to Rule 13d-1(e)(1)).

(3) The third column is for SEC internal use; please leave blank.

(4) *Citizenship or place of organization.* Furnish citizenship if the named reporting person is a natural person. Otherwise, furnish place of organization.

(5)–(9) and (11) *Aggregate amount beneficially owned by each reporting person, etc.* Columns (5) through (9) inclusive, and (11) are to be completed in accordance with the provisions of item 4 of schedule 13G. All percentages are to be rounded off to be nearest 10th (one place after decimal point).

(10) Check if the aggregate amount reported as beneficially owned in column (9) does not include shares as to which beneficial ownership is disclaimed pursuant to rule 13d-4 [17 CFR 240.13d-4] under the Securities Exchange Act of 1934.

(12) *Type of reporting person.* Please classify each "reporting person" according to the following breakdown (see item 3 of schedule 13G) and place the appropriate symbol on the form:

Category	*Symbol*
Broker dealer	BD
Bank	BK
Insurance company	IC
Investment company	IV
Investment adviser	IA
Employee benefit plan, pension fund, or endowment fund.	EP
Parent holding company	HC

NOTE: Attach additional pages if needed.

SPECIAL INSTRUCTIONS FOR COMPLYING WITH SCHEDULE 13G

Under sections 13(d), 13(g), and 23 of the Securities Exchange Act of 1934 and the rules and regulations thereunder, the Commission is authorized to solicit the information required to be supplied by this schedule by certain security holders of certain issuers.

Disclosure of the information specified in this schedule is mandatory, except for social security or IRS identification numbers, disclosure of which is voluntary. The information will be used for the primary purpose of determining and disclosing the holdings of certain beneficial owners of certain equity securities. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

Because of the public nature of the information, the Commission can utilize it for a variety of purposes, including referral to other governmental authorities or securities self-regulatory organizations for investigatory purposes or in connection with litigation involving the Federal securities laws or other civil, criminal or regulatory statutes or provisions. Social security or IRS identification numbers, if furnished, will assist the Commission in identifying security holders and, therefore, in promptly processing statements of beneficial ownership of securities.

Failure to disclose the information requested by this schedule, except for social security or IRS identification numbers, may result in civil or criminal action against the persons involved for violation of the Federal securities laws and rules promulgated thereunder.

D. PROPOSED AMENDMENT TO SCHEDULE 14D-1

The proposed amended cover page for schedule 14D-1 and the instructions thereto appear immediately below. As with schedules 13D and 13G, it is contemplated that this cover page would entirely replace the existing one, to be followed by "Instructions for Cover Page." and "Special Instructions For Complying with Schedule 14D-1." For purposes of clarity, the existing caption titled "Instructions" would be changed to "Filing Instruction and Fees."

TEXT OF AMENDED SCHEDULE

§ 240.14d-100 Schedule 14D-1—Information to be included in statements filed pursuant to § 240.14d-1(a) and amendments thereto filed pursuant to § 240.14d-1(b).

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14D-1

Tender Offer Statement Pursuant to Section 14(d)(1) of the Securities Exchange Act of 1934

(Amendment No. ——)*

Name of subject company [Issuer] ————————

Bidder ————————

Title of class of securities ————————

CUSIP No. of class of securities————————

Name, address, and telephone numbers of person authorized to receive notices and communication on behalf of bidder————

NOTE.—The remainder of this cover page is only to be completed if this schedule 14D-1 (or amendment thereto) is being filed, inter alia, to satisfy the reporting requirements of section 13(d) of the Securities Exchange Act of 1934. See general instructions D, E, and F to schedule 14D-1.

Name & S.S. or I.R.S. Identification Nos. of Reporting Persons (1)	Check the Appropriate Box if a Member of a Group (See Instructions) (2)		SEC Use Only (3)	Sources of Funds (4)	Check If Disclosure of Legal Proceedings Is Required Pursuant to Item 2(e) or 2(f) (5)	Citizenship or Place of Organization (6)	Aggregate Amount Beneficially Owned by Each Reporting Person (7)	Check If the Aggregate Amount in Column (7) Excludes Certain Shares (See Instructions) (8)	Percent of Class (9)	Type of Reporting Person (10)
	(a)	(b)								

*The remainder of this cover page shall be filed out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter the disclosures provided in a prior cover page.

The information required in the remainder of this cover page shall not be deemed to be "filed" for the purpose of sec. 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act.

INSTRUCTIONS FOR COVER PAGE

(1) *Names and social security numbers of reporting persons.* Furnish the full legal name of each person for whom the report is filed—i.e., each person required to sign the schedule itself—including each member of a group. Do not include the name of a person required to be identified in the report but who is not a reporting person. Reporting persons are also requested to furnish their social security or IRS identification numbers, although disclosure of such numbers is voluntary, not mandatory (see "Special Instructions For Complying with Schedule 14D-1", below).

(2) If any of the shares beneficially owned by a reporting person are held as a member of a group and such membership is expressly affirmed, please check column 2(a). If the membership in a group is disclaimed or the reporting person describes a relationship with other persons but does not affirm the existence of a group, please check column 2(b) (unless a joint filing pursuant to rule 13d-1(e)(1)).

(3) The third column is for DEC internal use, please leave blank.

(4) *Source of funds.* Classify the source of funds or other consideration to be used in making purchases as required to the disclosed pursuant to item 4 of the schedule and insert the appropriate symbol (or symbols if more than one is necessary) in column (4):

Category of source	*Symbol*
Subject company (company whose securities are being acquired).	SC
Bank	BK
Affiliate (of reporting person)	AF
Working capital (of reporting person)	WC
Personal funds (of reporting person)	PF
Other	OO

(5) If disclosure of legal proceedings or actions is required pursuant to either items 2(e) or 2(f) of schedule 14D-1, column 5 should be checked.

(6) *Citizenship of place of organization.* Furnish citizenship if the named reporting person is a natural person. Otherwise, furnish the place of organization. (See item 2 of schedule 14D-1.)

(7) and (9) *Aggregate amount beneficially owned by each reporting person, etc.* Columns (7) and (9) are to be completed in accordance with the Instructions to item 6 of schedule 14D-1. All percentages are to be rounded off to nearest 10th (one place after decimal point).

(8) Check if the aggregate amount reported as beneficially owned in column (7) does not include shares as to which beneficial ownership is disclaimed.

(10) *Type of reporting person.* Please classify each "reporting person" according to the following breakdown and place the appropriate symbol (or symbols, i.e., if more than one is applicable, insert all applicable symbols) on the form:

Category	*Symbol*
Broker dealer	BD
Bank	BK
Insurance company	IC
Investment company	IV
Investment adviser	IA
Employee benefit plan, pension fund, or endowment fund.	EP
Parent holding company	HC
Group member	GM
Corporation	CO
Partnership	PN
Individial	IN
Other	OO

NOTE.—Attaach additional pages if needed.

SPECIAL INSTRUCTIONS FOR COMPLYING WITH SCHEDULE 14D-1

Under sections 14(d) and 23 of the Securities Exchange Act of 1934 and the rules and regulations thereunder, the Commission is authorized to solicit the information required to be supplied by this schedule by certain security holders of certain issuers.

Disclosure of the information specified in this schedule is mandatory, except for social security of IRS identification numbers, disclosure of which is voluntary. The information will be used for the primary purpose of determining and disclosing the holdings of certain beneficial owners of certain equity securities. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of th public.

Because of the public nature of the information, the Commission can utilize it for a variety of purposes, including referral to other governmental authorities or securities self-regulatory organizations for investigatory purposes or in connection with litigation involving the Federal securities laws or other civil, criminal or regulatory statues or provisions. Social security or IRS identification numbers, if furnished, will assist the Commission in identifying security holders and, therefore, in promptly processing statements of beneficial ownership of securities.

Failure to disclose the information requested by this schedule, except for social security or IRS identification numbers, may result in civil or criminal action against the persons involved for violation of the Federal securities laws and rules promulgated thereunder.

III. DESCRIPTION OF PROPOSED TABULATIONS OF BENEFICIAL OWNERSHIP DATA TO BE PUBLICLY AVAILABLE UPON IMPLEMENTATION OF THE REPORTING SYSTEM UTILIZING THE PROPOSED EXPANDED COVER PAGES

The Commission presently proposes to make available at its public reference room two basic tabulations of beneficial ownership data, both to be updated on a quarterly basis. The data on which these two tabulations will be based will be taken from Schedules 13D, 13G and 14D-1. However, no data will be included in these tabulation systems from filings pursuant to sections 13(f) or 16 of the Exchange Act. One tabulation would be classified by issuer. For each issuer there would be shown a list of the beneficial owners who hold over five percent of the issuer's equity securities described in Section 13(d)(1) (subject to whatever exemptions from reporting that exist at the time), the class or classes of securities owned by each such person, the amount and percentage owned, the citizenship or place of organization of such person, and whether or not any shares are held by a group and, if so, what group. The following is an example of the tabulation presently contemplated.

SEC Control No.	Name & S.S. or I.R.S. Identification No. of Reporting Person	Group No. if a Member of a Group	Column Checked if Group Membership is Disclaimed or Otherwise not Affirmed	Citizenship or Place of Organization	Source of Funds	Disclosure of Legal Proceedings Required Pursuant to Items 2(d) or 2(e) of Schedule 13D or Items 2(e) or 2(f) of Schedule 13D-1 (Yes or No)	Title of Class of Securities Beneficially Owned	Number of Shares Beneficially Owned With				Aggregate Amount Beneficially Owned	Column Checked if Aggregate Amount Beneficially Owned Does Not Include Certain Shares to Which a Beneficial Ownership is Disclaimed	Percent of Class	Form Number and Date Filed
								Sole Voting Power	Shared Voting Power	Sole Dispositive Power	Shared Dispositive Power				

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The second tabulation would be classified by reporting persons rather than issuers, i.e., for each reporting person it would give a list of the companies in which such person had a reportable beneficial interest, as well as other data similar to that presented in the first-mentioned tabulation. The following is an example of the second tabulation presently contemplated.

Reporting person ——————————
Citizenship or place of organization ——————
Type of reporting person ——————————
Social security or IRS identification number

suer	CUSIP No.	Title of Class of Securities Beneficially Owned	Group No. If a Member of a Group	Column Checked If Group Membership Is Disclaimed or Otherwise Not Affirmed	Number of Shares Beneficially Owned With				Aggregate Amount Owned Beneficially	Column Checked If Aggregate Amount Beneficially Owned Does Not Include Certain Shares as to Which Beneficial Ownership Is Disclaimed	Percent of Class	Form No. and Date Filed	Source of Funds	Disclosure of Legal Proceedings Required Pursuant to Item 2(d) or Item 2(e) of Schedule 13D or Item 2(e) or 2(f) of Schedule 14D-1 (Yes or No)
					Sole Voting Power	Shared Voting Power	Sole Dispositive Power	Shared Dispositive Power						

Comments are invited on the above two proposed tabulations as well as on any other data susceptible to computer tabulation that commentators believe might be of general public interest.

The Commission is also considering, and requests comments on, the possibility of making special compilations of data available, at cost, to interested parties upon request.

Finally, the Commission foresees that the compiled data will be of benefit to its own division of enforcement, other Government agencies, and to the U.S. Congress. One example of information retrieval for which the system might be used would be a tabulation of the citizenship of all reporting beneficial owners of U.S. bank holding companies.

OTHER MATTERS

In light of section 23(a)(2) of the Exchange Act, the Commission specifically invites comments as to any competitive impact of any changes in the disclosure requirements.

All interested persons are invited to submit their written views and comments on the foregoing areas.

(Secs. 13(d), 13(g), 14(d), 23, 48 Stat. 894, 895, 901; sec. 8, 49 Stat. 1379; sec. 203(a), 49 Stat. 704; sec. 10, 78 Stat. 88a; secs. 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3-5, 84 Stat. 1497; sec. 18, 89 Stat. 155; secs. 202, 203, 91 Stat. 1494, 1498, 1499 (15 U.S.C. 78m(d), 78m(g), 78n(d), 78w).)

STATUTORY AUTHORITY

The foregoing proposed action is taken pursuant to the authority set forth in sections 13(d), 13(g), 14(d), and 23 of the Exchange Act.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

NOVEMBER 9, 1978.

[FR Doc. 78-32518 Filed 11-20-78; 8:45 am]

[8410-01-M]

WATER RESOURCES COUNCIL

[18 CFR Parts 703 and 707]

NONDISCRIMINATION ON BASIS OF HANDICAP IN ANY PROGRAM RECEIVING FEDERAL FINANCIAL ASSISTANCE

AGENCY: U.S. Water Resources Council.

ACTION: Proposed Regulations.

SUMMARY: The purpose of this part is to implement the provisions of section 504 of the Rehabilitation Act of 1973, 87 Stat. 394 and 45 CFR Part 85 pursuant thereto, which is designed to eliminate discrimination on the basis of handicap in any Water Resources Council program receiving Federal Financial assistance.

DATES: Comments and suggestions for consideration in preparation of the Handicap Regulations should be received on or before December 1, 1978.

ADDRESS: U.S. Water Resources Council; 2120 L Street NW., Washington, D.C. 20037.

FOR FURTHER INFORMATION CONTACT:

Leo M. Eisel, Director, U.S. Water Resources Council, 2120 L Street NW., Washington, D.C. 20037, 202-254-6303.

DATED: November 16, 1978.

LEO M. EISEL,
Director.

1. It is proposed to add a new Part 707 to 18 CFR to read as set forth below:

PART 707—NONDISCRIMINATION WITH RESPECT TO THE HANDICAPPED IN FEDERALLY ASSISTED PROGRAMS OR ACTIVITIES—EFFECTUATION OF SECTION 504 OF THE REHABILITATION ACT OF 1973

Sec.
707.1 Purpose.
707.2 Applicability.
707.3 Definitions.
707.4 Standards for determining who are handicapped persons.
707.5 Discrimination prohibited.
707.6 Assurances required.
707.7 Compliance procedures.
707.8 Recipient responsibilities in achieving compliance.

AUTHORITY: Sec. 504 of the Rehabilitation Act of 1978.

§ 707.1 Purpose.

The purpose of this part is to implement the provisions of section 504 of the Rehabilitation Act of 1973, 87 Stat. 394 and 45 CFR Part 85 pursuant thereto, which is designed to eliminate discrimination on the basis of handicap in any Water Resources Council program receiving Federal Financial assistance.

§ 707.2 Applicability.

This part applies to each recipient of Federal financial assistance and any program or activity for which Federal financial assistance is authorized under a law administered by the Water Resources Council, including any program or activity assisted under the statutes listed in Appendix A of this part. The fact that certain financial assistance is not listed in Appendix A shall not mean, if section 504 of the Act is otherwise applicable, that such financial assistance is not covered. Other financial assistance under statutes now in force or hereinafter enacted may be added to this list by notice published in the FEDERAL REGISTER. This part applies to any Water Resources Council Federal financial assistance extended under any such program or activity after the date of this part pursuant to an application to receive any Federal financial assistance from the Water Resources Council whether approved before or after such date. This part does not apply to any Federal financial assistance by way of insurance or guarantee contracts.

§ 707.3 Definitions.

(a) "Recipient" means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity or any person to whch Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(b) "Federal Financial assistance" means any grant, loan, contract (other than a procurement contract or a contract of insurance or guarantee) or any other arrangement by which the Water Resources Council provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal presonnel; or

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(c) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(d) "Responsible agency official" means the Director of the Water Resources Council or his designee.

(e) "Section 504" means section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 29 U.S.C. 794.

§ 707.4 Standards for determining who are handicapped persons

(a) Handicapped person.

(1) *"Handicapped person"* means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

(2) As used in paragraph (a)(1) of this section, the phrase:

(i) "Physical or mental impairment" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; disgestive; genitourinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(ii) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(iii) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(iv) "Is regarded as having an impairment" means has a physical or mental impairment that does not substantially limit major life activities but is treated by a recipient as constituting such a limitation; has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or has none of the impairments defined in paragraph (a)(2)(i) of this section but is treated by a recipient as having such an impairment.

(b) Qualified handicapped persons.

"Qualified handicapped person" means (1) with respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question and (2) with respect to services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

§ 707.5 Discrimination prohibited.

(a) *General prohibitions against discrimination.* (1) No qualified handicapped person, shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any Water Resources Council program or activity that receives or benefits from Federal financial assistance.

(2) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(3) A recipient may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissible separate or different programs or activities.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect

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of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(5) A recipient may not, in determining the site or location of a facility, make selections (i) that have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from Federal financial assistance or (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(6) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statue or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute of Executive order to a different class of handicapped persons is not prohibited by this part.

(7) Recipients shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

(8) Recipients shall take appropriate steps to insure that communications with their applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.

(b) *Prohibitions against employment discrimination.* (1) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any Water Resources Council program or activity that receives or benefits from Federal financial assistance.

(2) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which insures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants of employees in any way that adversely affects their opportunities or status because of handicap.

(3) The prohibition against discrimination in employment applies to the following activities:

(i) Recruitment, advertising, and the processing of applications for employment;

(ii) Hiring, upgarding, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(iii) Rates of pay or any other form of compensation and changes in compensation;

(iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seriority lists;

(v) Leaves of absence, sick leave, or any other leave;

(vi) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(vii) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(viii) Employer sponsored activities, including social or recreational programs; and

(ix) Any other term, condition, or privilege of employment.

(4) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this paragraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

(5) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(6) A recipient may not use employment tests or criteria that discriminate against handicapped persons and shall insure that employment tests are adapted for use by persons who have handicaps that impair sensory, manual, or speaking skills.

(7) A recipient may not conduct a preemployment medical examination or make a preemployment inquiry as to whether an applicant is a handicapped person or as to the nature or severity of a handicap except under the circumstances described in 45 CFR 84.14.

(c) *Prohibition against Program accessibility discrimination*—(1) *General requirement concerning program accessibility.* No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity that receives or benefits from Federal financial assistance.

(2) *Existing facilities*—(i) *Program accessibility.* A recipient shall, through the elimination of physical obstacles or through other methods, operate each program or activity to which this part applies so that the program or activity, when viewed in it entirety, is readily accesssible to handicapped persons. This paragraph shall not necessarily be interpreted to require a recipient to make each of its exiting facilities accessible to and usable by handicapped persons.

(ii) *Methods.* Provided that programs and activities are offered in the most integrated setting appropriate, a recipient may comply with the requirement of paragraph (c)(2)(i) of this section through such means as alteration of existing facilities and construction of new facilities in conformance with the requirements of paragraph (c)(3)(i) and (ii) of this section, or any other nonstructural methods which result in making its program or activity accessible to handicapped persons.

(iii) *Time period.* A recipient shall comply with requirement of (c)(2)(i) of this section within 60 days of the effective date of this part except that where structural changes in facilities are necessary, such changes shall be made within 3 years of the effective date of this part, but in any event as expeditiously as possible.

(iv) *Transition plan.* In the event that structural changes to facilities are necessary to meet the requirement of paragraph (c)(2)(i) of this section, a recipient shall develop, within 6 months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall, at a minimum identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to handicapped persons, describe in detail the methods that will be used to make the facilities accessible, specify the schedule for taking the steps necessary to achieve full program accessibility and, if the time period of the transition plan is longer than 1 year, identify steps that will be taken during each year of the transition period, indicate the person responsible for implementation of the plan, and provide an opportunity for the involvement of interested persons, including handicapped persons, in the activities delineated herein.

(3) *New Construction*—(i) *Design and construction.* Each facility of part of a facility designed or constructed by, on behalf of, or for the use of a recipient after the effective date of this part shall be designed or constructed in such manner that the facility or part of the facility is readily accessible to and usable by handicapped persons.

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(ii) *Alteration.* Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner which affects or could affect the usability of the facility or part of the facility shall be altered in such manner that the altered portion of the facility is readily accessible to and usable by handicapped persons.

(iii) *American National Standards Institute accessiblity standards.* To meet the requirements of paragraphs (c)(3)(i) an (ii) of this section, a recipient in the design, construction, and alteration of its facilities may use as a guideline the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," published by the American National Standards Institute, Inc., (ANSI).

§ 707.6 Assurances required.

(a) Every applicant for Federal financial assistance to carry out a program to which this part applies shall as a condition to the application's approval and the extension of any Federal financial assistance pursuant to the application provide an assurance that the program will be conducted in compliance with the requirements imposed by or pursuant to this part. Such an assurance shall obligate the recipient for a period during which Federal financial assistance is extended pursuant to the application. In the case of Federal financial assistance extended to provide personal property, the assurance shall obligate the recipient for the period during which it retains ownership or possession of the property.

(b) Planning grant to the States. Each designated State agency must submit the assurance specified in § 703.5 (q) of this chapter. (Section 703.5(q) is a proposed amendment to complement this part—see attachment.)

(c) River Basin Commissions. Each river basin commission is required to submit, along with its annual budget request written assurance of its continuing compliance with § 707.5 of this chapter.

§ 707.7 Compliance procedure.

The procedural provisions applicable to Title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in § 705.6-11 of 18 CFR.

§ 707.8 Recipient responsibilities in achieving compliance.

(a) Recipients shall extend notice of the rights under section 504 to their employees, to applicants for employment, and any other beneficiaries of their program.

(b) Recipients shall periodically, as determined by the responsible agency official, conduct a self-evaluation of their compliance with section 504 and this part. Such an evaluation shall enumerate (1) efforts to achieve compliance since the preceding self-evaluation, (2) current status of compliance including current recipient action on any compliants and (3) recipient action to be taken in the future to remedy continuing past or current noncompliance. Self-evaluations shall be prepared with the assistance of interested persons, including handicapped persons.

(c) Recipients shall otherwise consult with interested handicapped persons or organizations representing handicapped persons in achieving compliance with section 504 or with this part.

(d) Recipients may designate an employee to coordinate their compliance and self-evaluation efforts.

§ 703.5 [Amended]

2. A new paragraph (q) is added to § 703.5 to read as follows:

* * * * * *

(q) *Handicapped Assurance.* Provide assurance that planning will be conducted in compliance with the provisions of Part 707 of the rules and regulations.

3. Appendix A would be added to Part 707 to reads as follows:

Appendix A—Federal Financial Assistance of the Water Resources Council to Which This Part 707 Applies

1. Comprehensive Planning Grants to States, Section 301, Water Resources Planning Act of 1965, 42 U.S.C. 1962(c).

[FR Doc. 78-32648 Filed 11-20-78; 8:45 am]

[4830-01-M]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

[EE-30-78]

INCOME TAX

Collectively Bargained Plans and Multiple Employer Plans; Public Hearing on Proposed Regulation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to qualified retirement plans which are collectively bargained or maintained by multiple employers.

DATE: The public hearing will be held on January 18, 1979, beginning at 10 a.m. Outlines of oral comments must be delivered or mailed by January 2, 1979.

ADDRESS: The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, D.C. The outlines should be submitted to the Commissioner of Internal Revenue, attention: CC:LR:T (EE-30-78), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

George Bradley or Charles Hayden of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, 202-566-3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 413 of the Internal Revenue Code of 1954. The proposed regulations appeared in the FEDERAL REGISTER for Tuesday, August 29, 1978, at page 38602 (43 FR 38602).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and also desire to present oral comments at the hearings on the proposed regulations should submit an outline of the comment to be presented at the hearing and the time they wish to devote to each subject by January 2, 1979. Each speaker will be limited to 10 minutes for an oral presentation exclusive of time consumed by questions from the panel for the Government and answers to these questions.

Because of controlled access restriction, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the proposed Treasury Directive appearing in the FEDERAL REGISTER for Wednesday, May 24, 1978.

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By direction of the Commissioner of Internal Revenue.

GEORGE H. JELLY,
Director, Employee Plans and Exempt Organizations Division.

[FR Doc. 78-32707 Filed 11-20-78; 8:45 am]

[4810-31-M]

Bureau of Alcohol, Tobacco and Firearms

[27 CFR Parts 4, 5, and 7]

[Notice No. 313]

ADVERTISING REGULATIONS UNDER THE FEDERAL ALCOHOL ADMINISTRATION ACT

Advance Notice of Proposed Rulemaking

AGENCY: Bureau of Alcohol, Tobacco and Firearms.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is issuing this advance notice to obtain imput from industry members and the public on: (1) Contemplate revisions to current regulations in 27 CFR Part 4, Subpart G (Advertising of Wine); Part 5, Subpart H (Advertising of Distilled Spirits); part 7, Subpart F (Advertising of Malt Beverages); and (2) the incorporation, as necessary, of prior ATF decisions on advertising matters in the form of rulings and industry circulars into regulations. The Bureau will use this information to develop regulations implementing subsection 5(f) of the Federal Alcohol Administration Act (FAA Act).

Although this notice's major concern is with updating and revising the sections of regulations dealing with the advertising of wine, distilled spirits, and malt beverages, the specific regulations dealing with the labelling requirements for wine, distilled spirits, and malt beverages which correspond to the advertising requirements would likewise be changed if revisions are implemented in the advertising subparts.

DATE: Comments must be received on or before January 22, 1979.

ADDRESS: Comments must be submitted to the Director, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, D.C. 20044. (Attention: Chief, Regulation and Procedures Division.)

FOR FURTHER INFORMATION CONTACT:

Thomas B. Bussey, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226, 202-566-7626.

SUPPLEMENTARY INFORMATION: Due to the subjective nature of advertising practices in general and the specific difficulty in providing hard and fast rules for advertising regulations relating to alcoholic beverages, ATF has decided to invite early participation in the rulemaking process by industry members and the public. This participation will assist ATF in developing advertising regulations which do not unfairly restrict industry, yet provide suitable protection to the consumer against possible false and misleading advertising. While specific questions are raised in this notice, the goal of ATF in initiating this process is, consistent with statutory requirements, to focus its attention on false and/or misleading advertising and eliminating detailed regulatory requirements to the extent possible. Any comments on this general approach are, of course, welcome.

BACKGROUND

Requirements of law. The major objectives of subsection 5(f) of the FAA Act (27 U.S.C. 205) are twofold: Firstly, to require certain mandatory information relating to the product advertised; and secondly, to prohibit advertising practices which are false or misleading. Specifically, within certain jurisdictional limits, these objectives as stated in subsection 5(f) of the FAA Act are as follows:

> (f) Advertising: To publish or disseminate or cause to be published or disseminated by radio broadcast, or in any newspaper, periodical, or other publication or by any sign or outdoor advertisement or any other printed or graphic matter, any advertisement of distilled spirits, wine, or malt beverages, if such advertisement is in, or is calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail, unless such advertisement is in conformity with such regulations, to be prescribed by the (Secretary of the Treasury), (1) as will prevent deception of the consumer with respect to the products advertised and as will prohibit, irrespective of falsity, such statements relating to age, manufacturing processes, analyses, guaranties, and scientific or irrelevant matters as the (Secretary of the Treasury) finds to be likely to mislead the consumer, (2) as will provide the consumer with adequate information as to the identity and quality of the products advertised, the alcoholic content thereof (except the statements of, or statements likely to be considered as statements of, alcoholic content of malt beverages and wines are prohibited), and the person responsible for the advertisement; (3) as will require an accurate statement, in the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, informing the consumer of the percentage of neutral spirits so used and of the name of the commodity from which such meutral spirits have been distilled, or in case of neutral spirits or of gin produced by a process of continuous distillation, the name of the commodity from which distilled; (4) as will prohibit statements that are disparaging of a competitor's products or are false, misleading, obscene, or indecent; (5) as will prevent statements inconsistent with any statement on the labeling of the products advertised. This subsection shall not apply to outdoor advertising in place on June 18, 1935, but shall apply upon replacement, restoration, or renovation of any such advertising. The prohibitions of this subsection and regulations thereunder shall not apply to the publisher of any newspaper, periodical, or other publication, or radio broadcaster, unless such publisher or radio broadcaster is engaged in business as a distiller, brewer, rectifier, or other producer, or as an importer or wholesaler, of distilled spirits, wine, or malt beverages, or as a bottler, or warehouseman and bottler, of distilled spirits, directly or indirectly or through an affiliate.

Present regulations. Subsection 5(f) of the FAA Act requires that any advertisement of distilled spirits, wine, or malt beverages be in conformity with the prescribed regulations. The regulations relating to the advertisement of these products (under 27 CFR Part 4, Subpart G; Part 5, Subpart H; and Part 7, Subpart F) were originally adopted in the mid-1930's, and have remained basically unchanged since that time. These regulations specify exactly what mandatory information is required in any advertising statement relating to a wine, distilled spirit, or malt beverage product; and, in very broad terms, the regulations stipulate what is prohibited from being included in advertising statements, e.g., obscene or indecent representation.

ATF and its predecessor agencies have utilized rulings and industry circulars for updating interpretations of these broad prohibitive regulations. Conformity with these regulations has been maintained by agency review of advertisement material, both prior to release (submitted by industry) and after release in the media.

New or revised regulations needed. ATF is considering revising existing regulations and issuing new regulations for the following reasons:

(1) The advertising provisions of parts 4, 5, and 7 are based on hearings held in the mid-1930's. Some of the provisions may be out of date due to advancement in advertising techniques and practices and due to changes in consumer education and awareness.

(2) Some sections in parts 4, 5, and 7 are too broad and undefined for consistent application in the advertising trade; for example, the unqualified prohibition of using any statement, design, or representation which is obscene or indecent. In addition, does the interpretation now utilized by ATF to prohibit all "disparaging advertising" need a new analysis for both constitutional and consumer protection reasons, particularly in connection with the increased use of comparative advertising?

(3) There is a need to take a new look at advertising practices due to the evolution and refinement of advertising techniques over the past 40 years. For example, the question of whether advertisements are directed toward certain population groups (i.e., youth) needs to be examined in the context of ATF's statutory mandate.

(4) Users should be provided with a single source of information, hence numerous rulings and industry circulars on advertising need to be incorporated into the regulations.

(5) Unnecessary regulations should be eliminated.

Specific questions. To assist ATF in identifying and implementing the best course of action, written comments and supporting data are specifically requested, but not limited to, the following topics:

A. Revisions of 27 CFR Part 4, Subpart G—

ADVERTISING OF WINE

1. *Mandatory statements.* The note contained in § 4.63 states that, in the case of signs, billboards, and displays, the mandatory information should be "conspicuous and readily legible from the distance at which the advertisement is intended to be and is customarily viewed."

(a) What is the distance at which the advertisement is intended to be and is customarily viewed? Is this distance definable or measurable? In what detail should this question be regulated? Should a more general standard such as "clearly and conspicuously" be used instead?

(b) Should whatever action is taken with respect to this issue also be included in parts 5 and 7 for distilled spirits and malt beverages?

B. Revision of 27 CFR Part 5, Subpart H—

ADVERTISING OF DISTILLED SPIRITS

1. Section 5.65(a)(8) prohibits the use of the word "pure" in any advertisement unless it is part of a bona fide name of a permittee or retailer. This restriction is all encompassing. For example, the statement, "Made from pure spring water", is prohibited because of the use of the word "pure". Section 5.65(a)(9) similarly prohibits the use of the word "double distilled", "triple distilled", or any similar words.

(a) Should the restriction on the use of either adjective be continued when the representation is truthful? what should be the regulatory definition of the term "pure"?

(b) What would be the impact from allowing the use of these terms?

C. Revisions relating to all three subparts.

1. How should the prohibition against any statement, design, device, or representation which is obscene or indecent be handled?

(a) Should these terms be more comprehensively defined in the regulations so as to give greater guidelines to industry? Would such regulations inevitably encounter constitutional problems?

(b) Is it possible to issue concise definitions in the regulations for the terms obscene and indecent?

(c) Is advertising based on sex appeal within the scope of the standard set forth in the statute, that is, obscene or indecent?

2. What are the boundaries of "curative and therapeutic" phrases in advertising? For example, ATF currently interprets a statement such as, "Relax with a (product's name)", as implying that the product casues relaxation and is therefore prohibited. To amend the statement to read, "Relax and have a (product's name)", is now acceptable.

(a) Are such phrases as "relaxing", "refreshing", and "thirst-quenching" interpreted by consumers to be a therapeutic or curative claim when referenced directly to a product? In what detail should any regulations in this area be? What types of representations should be prohibited?

3. Should the use of "current and active athletes" in alcoholic beverages advertising be prohibited. ATF's current position is that the use of active athletes in this form of advertising implies a connection between the ability and prowess of the athlete and his use of the product. Therefore, it is prohibited. Such a prohibition is not clearly stated in the regulations.

(a) Is there a need for clarification and incorporation in the regulations?

(b) What specific suggestions on language would you make?

4. Is further clarification needed regarding comparative advertising practices as they relate to the disparaging and misleading concepts in the regulations? Should all nonfalse or nonmisleading advertising be allowed?

(a) Does Revenue ruling 54-341, 1954-2 C.B. 592 (Internal Revenue), satisfactorily cover all aspects of the agency's policy on comparative "taste tests"? Should this ruling be revoked even in cases of comparative advertising that are disparaging?

(b) Are there any examples of exceptions to this ruling which would be acceptable and therefore not prohibited? For example, would an independent test that truthfully reports test results and contains no implied or direct disparagement of a competitor's products be acceptable?

(c) How should the term disparaging as used in the statute be defined?

5. Can a clear line be drawn between permissible "advertising puffery" and "misleading and/or false advertising" statements? How?

Should an attempt be made to provide a regulatory definition of these two practices in order to set better guidelines of self-regulation by industry? What relationship, if any, should the concept of disparagement have to permissible "advertising puffery"?

6. Due to increased refinement in advertising practices and forms of advertising material, is there a need for an all-inclusive regulatory definition of "advertising" which covers such forms of advertising as the "news release"? Can such a definition be fashioned which both makes clear its broad coverage and does not at the same time create loopholes for new advertising techniques?

7. Are there other current advertising practices which should be covered in new regulations as to their allowance or prohibition?

DISCLOSURE OF COMMENTS

Written comments or suggestions may be inspected by any person at the ATF Reading Room, Office of Public Affairs, Room 4408, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C., during normal business hours.

After consideration of all comments and suggestions, ATF may issue a notice of proposed rulemaking. The proposals discussed in this advance notice may be modified due to the comments and suggestions received.

DRAFTING INFORMATION

The principal author of this document is Thomas B. Busey of the Bureau of Alcohol, Tobacco and Firearms. However, other personnel of the Bureau and of the Treasury Department have participated in the preparation of this document, both in matters of substance and style.

AUTHORITY

This advance notice of proposed rulemaking is issued under the authority contained in section 5 of the Federal Alcohol Administration Act, 49 Stat. 981, as amended (27 U.S.C. 205).

Signed: October 20, 1978.

STEPHEN E. HIGGINS,
Acting Director.

Approved: October 24, 1978.

RICHARD J. DAVIS,
Assistant Secretary of the Treasury.

[FR Doc. 78-32614 Filed 11-20-78; 8:45 am]

[7550-01-M]

NATIONAL MEDIATION BOARD

[29 CFR Part 1206]

REPRESENTATION DISPUTES

Advance Notice of Proposed Rulemaking

AGENCY: National Mediation Board.

ACTION: Advance notice of proposed rulemaking.

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SUMMARY: The proposed text would amend 29 CFR 1206.2(b) to delete the provision that application for the investigation of representation disputes among unrepresented employees must be supported by authorizations from a specified percentage of the craft or class.

The requirement for furnishing employee authorizations in NMB representation cases, generally referred to as a showing of interest, was intended by the Board to conserve governmental resources. However, the significant extent of controversy and lack of cooperation regarding this provision with respect to unrepresented employees has eroded its desired benefits to the point that disproportionate staff resources are required to perform unproductive administrative activities concerning the authorizations and the showing of interest rather than the merits of the case. Related to this proposal, the Board recently proposed that 29 CFR 1206.4 be amended to make the time limits on NMB representation applications be applicable to employees who are unrepresented for purposes of collective bargaining (43 FR 49015).

It is intended that the proposed revisions to 29 CFR 1206.2(b) in conjunction with the proposals to amend 29 CFR 1206.4 will contribute to the more effective use of Agency resources.

DATES: Consideration will be given to all written comments received on or before January 22, 1979.

ADDRESS: Written comments should be addressed to Mr. Rowland K. Quinn, Jr., Executive Secretary, National Mediation Board, Washington, D.C. 20572.

FOR FURTHER INFORMATION CONTACT:

Rowland K. Quinn, Jr., Executive Secretary, National Mediation Board, Washington, D.C. 20572.

SUPPLEMENTARY INFORMATION: These proposed regulations are issued pursuant to the authority of 44 Stat. 577, as amended; 45 U.S.C. 151, et seq.

By direction of the National Mediation Board.

Dated: November 16, 1978.

ROWLAND K. QUINN, Jr.,
Executive Secretary.

It is proposed that 29 CFR 1206.2 be amended to read as follows:

§ 1206.2 Percentage of valid authorizations required to determine existence of a representation dispute.

(a) Where the employees involved in a representation dispute are represented by an individual or labor organization, either local or national in scope, and are covered by a valid existing contract between such representative and the carrier, a showing of proved authorizations (checked and verified as to date, signature, and employment status) from at least a majority of the craft or class must be made before the National Mediation Board will authorize an election or otherwise determine the representation desires of the employees under the provisions of section 2, Ninth, of the Railway Labor Act.

(b) Where the employees involved in a representation dispute are not represented for purposes of collective bargaining, an application for the services of the Board or any request for intervention thereto need not be supported by authorizations or any other showing of interest in order for the Board to determine the representation desires of the employees under the provisions of section 2, Ninth, of the Railway Labor Act.

[FR Doc. 78-32643 Filed 11-20-78; 8:45 am]

[4510-29-M]

DEPARTMENT OF LABOR

Office of Pension and Welfare Benefit Programs

[29 CFR Part 2520]

RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

Plan Description Requirements, Proposed Rulemaking

AGENCY: Department of Labor.

ACTION: Proposed regulations.

SUMMARY: This document proposes the revision of final regulations. The proposals are intended to eliminate the requirement that employee benefit plans file a plan description form EBS-1 with the Department of Labor. If adopted, the revision will affect all plans subject to this reporting requirement.

DATE: Comments concerning the proposed revision are due on or before January 5, 1979. If adopted, the revised regulations will be effective on the date of adoption.

ADDRESSES: Interested persons are invited to submit written data, views, or arguments concerning any part or all of the proposed regulations contained in this document to proposed elimination of form EBS-1, Room C-4526, Office of Regulatory Standards and Exceptions, Pension and Welfare Benefits Programs, U.S. Department of Labor, Washington, D.C. 20216. All written submissions will be open to public inspection at the Public Documents Room, Pension and Welfare Benefit Programs, Department of Labor, Room N-4677, 200 Constitution Avenue NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT:

Miriam Freund, Pension and Welfare Benefit Programs, U.S. Department of Labor, Washington, D.C. 20216, 202-523-7901. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Under section 104(a)(1)(B) of the Employee Retirement Income Security Act of 1974 (the Act), a plan administrator of an employee benefit plan shall file a plan description with the Secretary of Labor within 120 days after such plan becomes subject to part 1 of title I of the Act and an updated plan description no more frequently than once every 5 years. On April 23, 1976, the Department adopted §§ 2520.102-1 and 2520.104a-2, which provide that the statutory requirement to file a plan description shall be satisfied by filing a completed form EBS-1. This form, which is composed of computer readable "check-off" boxes, provides the Department with information relating to the identity and structure of the plan and the effect of various plan provisions on a participant's right to receive benefits.

Under sections 104(a)(1)(C) and 104(b)(1) of the Act, a plan administrator generally must furnish a summary plan description (SPD) to participants within the later of 90 days after an employee becomes a participant in a plan or 120 days after the plan becomes subject to part 1 of title I, and must file a copy of the SPD with the Department no later than the date when it is furnished to plan participants. In addition, the administrator is required to furnish an updated SPD to plan participants every 5 years, except if no amendments have been made to the plan during the 5-year period. In any event, an SPD must be furnished to plan participants every 10th year after the plan becomes subject to part 1. On July 19, 1977, the Department published final regulations with respect to the requirement to furnish the initial SPD.[1] The information required to be included in the SPD is essentially the same information required by the EBS-1—a description of the plan provisions and the effect of these provisions on the payment of benefits to plan participants. The SPD, however, provides this information in a narrative format and must be written in a manner calculated to be understood by the average plan participant.

The effect of the plan description and SPD regulations is to require a plan administrator to file two reports with the Department which contain basically the same information. It appears to the Department that this duplicative reporting of information may impose an unnecessary economic and administrative burden on employee benefit plans without commensurate benefits to plan participants and beneficiaries, or to the Department. Accordingly, the Department has decided to propose the elimination of one of these reports—the form EBS-1.

[1] No regulations have been issued with respect to the statutory requirements to provide an updated SPD or an updated plan description.

The Department believes that the SPD is more useful to plan participants and beneficiaries than the form EBS-1. The SPD is furnished directly to plan participants as well as filed with the Department, while the form EBS-1 is filed with the Department where it is available for public inspection. In addition, the SPD generally contains an easily understandable summary of plan provisions while the EBS-1 is composed of check-off boxes. The primary advantage of the EBS-1 is that it is designed for computer reading, thereby facilitating the analysis of information provided to the Department. In those cases, however, where the Department determines that statistical information is needed, alternative sources of data are available.

If the proposal to eliminate the EBS-1 is adopted, there is no reason for requiring plan administrators to file an updated EBS-1. Because it will be necessary, at a later time, for the Department to propose and adopt regulations relating to the filing of an updated SPD, the Department contemplates that compliance with such regulations would be deemed to satisfy the statutory requirement to file an updated plan description.

For the reasons discussed above, the Department is proposing to revise §§ 2520.102-1 and 2520.104a-2 to permit a plan to satisfy the reporting requirement of section 104(a)(1)(B) of the Act—the plan description filing requirement—by filing an SPD which meets the requirements of the Act and the regulations governing the form, content, and distribution of the SPD. Paragraph (c) of § 2520.104a-2, which contains a cross-reference to special rules for plans subject to deferred initial reporting requirements, remains unchanged and is republished for convenience.

The revised regulations set forth below are proposed pursuant to the autority in sections 101, 102, 104, 109, 110, and 505 of the Act; Pub. L. 93-406, 88 Stat. 840-852, 894 (29 U.S.C. 1021, 1022, 1024, 1029-1030, 1135).

Accordingly, it is proposed that chapter XXV of title 29 of the Code of Federal Regulations be amended so that §§ 2520.102-1 and 2520.104a-2 read as follows:

§ 2520.102-1 Plan description.

The plan description required by section 102 of the Act shall consist of a summary plan description as described in section 102(b) of the Act and §§ 2520.102-2 and 2520.102-3 thereunder.

§ 2520.104a-2 Plan description reporting requirements.

(a) *General obligation to file.* Under section 104(a)(1)(B) of the Act, the administrator of an employee benefit plan subject to the provisions of part 1 of title I of the Act shall file a plan description with the Secretary within 120 days after the plan becomes subject to part 1.

(b) *Fulfilling the filing obligation.* The administrator of an employee benefit plan shall satisfy the requirements of section 104(a)(1)(B) of the Act and this section by filing with the Secretary a summary plan description in accordance with § 2520.104a-3.

(c) *Special rules for plans subject to deferred initial reporting requirements.* See §§ 2520.104-3, 2520.104-5, and 2520.104-6.

Signed at Washington D.C., this 14th day of November 1978.

IAN D. LANOFF,
Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration.

[FR Doc. 78-Filed 32491 11-20-78; 8:45 am]

[3710-92-M]

DEPARTMENT OF DEFENSE

Engineers Corps

[33 CFR Part 209]

PROVISIONAL ACCESS ROUTES (PARs) IN THE NORTH ATLANTIC OCEAN

Public Hearing

AGENCY: U.S. Coast Guard and U.S. Army Corps of Engineers.

ACTION: Notice of public hearing.

SUMMARY: Proposed regulation 33 CFR 209.131 to establish PARs in the North Atlantic Ocean was published in the FEDERAL REGISTER on 30 June 1978 (43 FR 28523). The proposal would establish PARs for the approaches to New York Harbor and Delaware Bay, to provide unobstructed passage for vessels through mineral lease areas on the North and Mid-Atlantic Outer Continental Shelf. The intended effect is to insure navigational safety through areas of offshore oil and gas exploration and exploitation, while not unduly restricting oil and gas exploration and production. Several requests were made for the Corps of Engineers to conduct a public hearing on this proposal. Several alternatives were also received in response to the 30 June 1978 proposal. On 17 October 1978 the Port and Tanker Safety Act of 1978 (Pub. L. 95-474) was passed giving the U.S. Coast Guard certain responsibilities in this matter. Accordingly a joint public hearing on PARs and the alternatives will be held as described below.

DATE: The meeting will commence at 12 noon on Wednesday, December 13, 1978, and will adjourn at approximately 3:30 p.m. on that date. The public is invited to attend.

ADDRESS: The meeting will take place at the New York Chamber of Commerce and Industry, Great Hall, 65 Liberty Street, New York, N.Y. 10005.

FOR FURTHER INFORMATION CONTACT:

Mr. Gerard Savage, North Atlantic Division, Corps of Engineers, 90 Church Street, New York, N.Y. 10007, 212-264-7536.

Dated: November 14, 1978.

V. L. RATHBURN,
Colonel, Corps of Engineers, Executive Director of Civil Works.

[FR Doc. 78-32646 Filed 11-20-78; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 1009-4]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Proposed Revision to the New Jersey State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This notice invites public comment on proposed revisions to the New Jersey State Implementation Plan. The revisions affect regulations of the U.S. Environmental Protection Agency (EPA) and the State of New Jersey concerning the control of organic compounds during the filling and refilling of gasoline into delivery vessels and the filling of stationary gasoline storage tanks by delivery vessels. The purpose of this action is to clarify the intent of recent EPA rulemaking actions by simplifying the existing regulations. No substantive changes in the existing regulations are proposed.

DATES: Comments must be received on or before December 21, 1978.

ADDRESS: All comments should be addressed to: Eckardt C. Beck, Region-

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al Administrator, U.S. Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, N.Y. 10007.

FOR FURTHER INFORMATION CONTACT:

William S. Baker, Chief, Air Programs Branch, U.S. Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, N.Y. 10007, 212-264-2517.

SUPPLEMENTARY INFORMATION:

Disapproval of Part of State Regulation

On July 7, 1976 (41 FR 27833), the Environmental Protection Agency (EPA) took approval/disapproval action on a proposed revision to the New Jersey State Implementation Plan (SIP). The revision involved the incorporation into the SIP of a newly adopted State regulation entitled "Control and Prohibition of Air Pollution by Volatile Organic Substances," New Jersey Administrative Code, Title 7, Chapter 27, Section 16.1 et. seq. In this action EPA found that for the New Jersey portions of the New Jersey, New York, Connecticut, and Metropolitan Philadelphia Air Quality Control Regions (AQCRs), § 16.3 of the State regulation was not as stringent as the provisions of related EPA regulations and therefore should not be approved. The related EPA regulation is codified in 40 CFR 52.1595 and concerns the collection of vapors and gases displaced during the filling of gasoline delivery vessels.

Since the State regulation, in part, was not a satisfactory replacement for the EPA regulations, the EPA regulation was modified to apply only to gasoline loading, but was not revoked. However, the July 7, 1976 FEDERAL REGISTER rulemaking inadvertently did not contain the disapproval of N.J.A.C. 7:27-16.3 as it applies to gasoline leading for the two AQCRs. Today's action proposes to correct this oversight through an amendment to 40 CFR 52.1582, "Control strategy and regulations: Photochemical oxidants (hydrocarbons) and carbon monoxide, New Jersey portions of the New Jersey, New York, Connecticut, and Metropolitan Philadelphia Interstate Regions." This amendment will serve to state that N.J.A.C. 7:27-16.3 as it applies to gasoline loading for the two AQCRs is disapproved.

In response to provisions of the 1977 Clean Air Act Amendments, the State is considering revision to its regulation, "Control and Prohibition of Air Pollution by Volatile Organic Substances". The State intends to modify the regulation this year and EPA would expect to approve or disapprove such proposed SIP revision by July 1979. Thus, the action proposed in this notice might be superseded by another action in July 1979.

Recodification of Regulations Pertaining to Gasoline Vapor Control

In an attempt to resolve ambiguities and to simplify existing gasoline vapor recovery regulations pertaining to the State of New Jersey, the following recodification is proposed. Because the regulatory scheme to control evaporative emissions of organic vapors from gasoline loading and unloading is designed to create an integrated system that prevents loss of the collected vapors and gases at all points in the gasoline distribution chain, it was felt that a single regulation should be devised to cover the entire vapor control scheme. Thus, EPA is proposing to combine the provisions of §§ 52.1595 and 52.1598 into one new § 52.1595, thus revoking § 52.1598. This consolidation should make the "closed loop" mechanism that controls vapors from their creation until their disposal or recovery more understandable to the regulated parties.

This proposed recodification is mostly in the form of a reorganization and clarification of existing regulations. As such, no public hearing should be necessary before actual recodification. However, public comments are welcomed during the public comment period.

The consolidated proposed regulation, although considerably shorter than the existing regulations, contains all of the substantive provisions of the regulations it would replace. It attempts to utilize consistent terminology to cover both loading and unloading of gasoline, and it attempts to cover all intermediate transfers of collected gasoline vapors before they are eventually disposed of or recovered. An analysis of the proposed changes made in the regulations follows.

This proposal also revokes § 52.1597, as that section contains only schedules of compliance dates which have already passed; thus the immediate compliance requirements of the other vapor regulations would supersede this regulation anyway.

Gasoline Definition

The proposed definition for "gasoline" has been modified and somewhat narrowed. The current definition in § 52.1598 includes any petroleum distillate having a Reid vapor pressure of 4 pounds or greater. There are many petroleum distillates with a Reid vapor pressure greater than 4 pounds which are not used for fueling internal combustion engines and which were never intended to come under the scope of this regulation. Therefore, the phrase "as a fuel for internal combustion engines" has been added, to dispel any questions as to the compunds being considered. Paragraph (e) of the current § 52.1595 (gasoline loading) talks of "a Reid vapor pressure of 4.0 psia or greater under acutal loading conditions." This was quite misleading and probably contradictory, since Reid vapor pressure is normally measured at 100° F, while psia is measured at standard conditions (70° F); thus, references to both psia and actual loading conditions have been dropped.

Therefore, all reference to gasoline vapor pressure will be as Reid vapor pressure in units of pounds per square inch (PSI).

Loading-Unloading

The two existing vapor recovery regulations, §§ 52.1595 and 52.1598, apply to gasoline loading and gasoline unloading respectively. This division of operations has been maintanied in the new consolidated regulation, with paragraph (c) labelled "gasoline loading" and paragraph (d) labelled "gasoline unloading". In addition, separate paragraphs covering "gasoline delivery vessels" and "gasoline storage" have been created.

The new regulation is designed to clear up previous confusion as to when in the vapor recovery scheme vapors will normally be collected only, and when they will be collected and processed as well. This often depends on whether the truck delivering the gasoline is loaded at a bulk plant which receives product by tank truck, or at a terminal which receives product by pipeline or barge. Consequently, "gasoline terminals" and "bulk gasoline plants" are defined in the proposed regulation so as to differentiate their functions and their methods of receiving gasoline. Since there is no place at a gasoline terminal to "balance back" incoming vapors, EPA policy has been to require terminals to install vapor recovery or disposal units which process the collected gasoline vapors, usually by converting them back to liquid product, or by incinerating them. However, bulk plants have not been required to install these costly units. This is because these plants can balance back their collected vapors into the tank trucks or trailers that deliver gasoline to them, so that these delivery vessels can in turn direct the vapors to a vapor recovery or disposal unit when they reload at a gasoline terminal. The existing regulations do not make it clear that vapors, once collected, can be held at an interim point (bulk plant) before they are directed to an ultimate recovery or disposal system. The proposed regulation defines "vapor collection systems" and "vapor recovery-disposal systems" in order to delineate the difference between equipment that merely collects vapor and equipment that processes vapor. The regulation provides that a vapor collection system may be utilized at a bulk plant, as long as all vapors collected in this system are directed to a vapor recovery-disposal system. At most bulk plants, the cost of installation of vapor recovery-disposal system would be prohibitive, and the proposed regulation makes it clear that this expense is not required. EPA is still considering whether small bulk plants with a throughput of less than 4,000 gallons of gasoline per day should be subject to vapor recovery regulations. Any future promulgations which specially affect these smallest of bulk plants can be added under paragraph (c)(2), which covers gasoline loading at bulk plants.

Under the current regulations, it is unclear who has the burden of insuring that vapors created during a transfer finally end up in a vapor recovery or disposal system, but the most reasonable interpretation should be that the burden falls on the party performing the transfer. This is often unreasonable, because the party that transfers the product (for instance a small trucker) will only be able to insure that the vapors are collected and transferred back to the place where he loads gasoline, which may have vapor collection, but not recovery or disposal equipment. Therefore, the person who controls this collection equipment should be responsible for directing the vapors back to the trucks that will then take them to a recovery or disposal unit. The proposed regulation reflects this policy.

The proposed regulation makes it clear that only non-marine loading and unloading is covered because vapor recovery systems for barges and other marine vessels have not yet been satisfactorily developed.

Gasoline Storage

The existing § 52.1598 (c) requires that gasoline transfers be made utilizing vapor control equipment. However, it makes no requirement that gasoline storage containers be equipped for vapor control; thus all violations under this paragraph must charge improper transfer. Obviously, if a tank utilized for gasoline storage is not properly equipped, a proper transfer cannot be made, and it has been EPA policy to assume that any nonexempt, nonequipped tank containing gasoline was filled in violation of the regulation.

The proposed regulation contains a section entitled "Gasoline Storage" which states that no person shall store gasoline in a nonexempt storage container unless the container is equipped for vapor collection. This should make it clear that no proof of a violative delivery is needed for the finding to be made that the owner or operator of a nonexempt, nonequipped stationary storage tank containing gasoline is in violation of the regulation.

The 90 Percent Standard

The existing regulations have several references to a 90 percent recovery efficiency standard. However, confusion has arisen regarding the way that standard is to be applied where there are multiple transfers of collected vapors before the vapors are processed. The proposed regulation clarifies this point by stating that each interim transfer shall collect no less than 90 percent of the discharged or already-collected vapors, while the final transfer into a vapor recovery-disposal system shall direct all collected vapors to the recovery or disposal unit. Although the new language will allow the overall vapor recovery efficiency to decrease slightly when vapor is transferred several times before it is processed, the proposed regulation seems more realistic than the current one, while preserving the 90 percent standard as it relates to each transfer.

Delivery Vessels

The proposed section on delivery vessels is designed to make it clear that all non-marine vesseis carrying gasoline or gasoline vapors must be vapor-tight. The only direct requirement in the existing regulations is that "vapor-laden delivery vessels" must be vapor-tight. However, the current § 52.1595 requires that all displaced vapors and air be vented only to a vapor collection system during gasoline loading. This indirectly requires vapor-tightness since the venting of all displaced vapors and gases is not possible without a vapor-tight truck. The current regulations contain no language relating vapor-tightness of trucks carrying only gasoline, with no vapors, and this has been corrected by the proposed regulation. EPA is currently devising truck testing procedures to determine compliance with vapor-tightness regulations. Until such time as these procedures are decided upon, any visibly detectable leak will be considered to be a violation.

Paragraph (e)(2) in the proposed regulation requires that delivery vessels be equipped so as to be compatible with the vapor control equipment at all facilities which the delivery vessel utilizes or services during gasoline loading or unloading operations. This provision should assure that operators of delivery vessels cannot legitimately claim that they failed to hook up to a vapor recovery system because they did not have the correct adapter to connect their lines to another party's system.

Persons Involved in Gasoline Transfer

The current prohibition in § 52.1598(c) against delivering gasoline to non-exempt storage tanks without utilizing a vapor recovery system states that "No person shall transfer gasoline from any delivery vessel into any stationary storage container * * *" The regulation is unclear as to what parties are liable if an illegal transfer is made. The intent of EPA has been to hold liable not only the delivery man who actually performs the transfer, but also others who allow or cause the transfer to take place. This could include, for instance, a service station owner who continues to order deliveries although he has never installed vapor collection equipment, or a delivery company or oil company which arranges to supply a facility without taking steps to insure compliance with the regulation. The new regulation clarifies the language to "No person shall transfer gasoline nor cause or allow gasoline to be transferred from any delivery vessel * * *," so as to make it clear that the liability for an illegal transfer extends beyond the person actually performing the transfer to other who also have some degree of control over that transfer or who should be monitoring the transfer.

550 Gallon Farm Tanks

The current regulations attempt to exempt all 550 gallon capacity storage tanks used exclusively for the fueling of implements of husbandry (farm tanks). 550 gallon is a standard size for farm tanks. However, inadvertently, the existing regulations exclude only farm tanks smaller than 550 gallons. The new regulation has been clarified to exempt tanks which are 550 gallons or smaller.

Other Changes

All compliance dates and compliance schedules in the current § 52.1598 have been removed, because all listed dates have now passed. The provisions of subparagraph (c)(2) of § 52.1598 have been deleted, because the requirements set out there relating to system retrofit are covered elsewhere in the new regulations, and those involving compatibility with § 52.1599 systems (Stage II vapor recovery) have been substantially altered by recent amendments to the Clean Air Act. Paragraph (h) in the current § 52.1598 has been deleted because it was deemed to impose no requirements not covered elsewhere in the regulations.

In consideration of the foregoing, it is proposed to amend 40 CFR Chapter I Part 52 (Approval and Promulgation of Implementation Plans) Subpart FF (New Jersey), as follows:

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1. Section 52.1582 is amended by adding new paragraph (c) as follows:

§ 52.1582 Control strategy and regulations: Photochemical oxidants (hydrocarbons) and carbon monoxide, New Jersey portions of the New Jersey-New York-Connecticut and Metropolitan Philadelphia Interstate Regions.

* * * * *

(c) Subchapter 16 of the New Jersey Administrative Code, entitled "Control and Prohibition of Air Pollution by Volatile Organic Substances," N.J.A.C. 7:27-16.1 et seq., is approved for the entire State of New Jersey, with the following provisions:

(1) Section 7:27-16.3, entitled "Transfer Operations" is disapproved as it relates to the transfer of gasoline in the New Jersey portions of the New Jersey-New York-Connecticut and Metropolitan Philadelphia Air Quality Control Regions. Section 52.1595, relating to gasoline loading, unloading and transfer is applicable in the two above-cited regions.

(2) Section 7:27-16.3, entitled "Transfer Operations" is approved as it relates to the transfer of gasoline in the New Jersey Interstate AQCR and the New Jersey portion of the Northeast Pennsylvania AQCR, and is approved as it relates to the transfer of non-gasoline volatile organics in the entire State of New Jersey.

2. § 52.1595 is revised as follows:

§ 52.1595 Gasoline loading, unloading and transfer.

(a) Definitions:

(1) "Gasoline" means any petroleum distillate used as a fuel for internal combustion engines and having a Reid vapor pressure of 4.0 pounds per square inch or greater.

(2) "Vapor collection system" means a system which will collect no less than 90 percent by weight of vapors and gases of organic compounds discharged during any gasoline leading or unloading operation so as to reduce their emissions to the atmosphere.

(3) "Vapor recovery-disposal system" means a system of processing vapors and gases of organic compounds discharged during gasoline loading or unloading operations. This system shall consist of one of the following:

(i) A refrigeration-condensation system, adsorption-absorption system, or the equivalent that processes all vapors and gases and ultimately converts no less than 90 percent by weight of the processed vapors and gases back to liquid product, or

(ii) A vapor handling system that directs all vapors and gases to a fuel gas system, which will dispose of no less than 90 percent by weight of the processed vapors and gases, or

(iii) Other equipment of an efficiency equal to or greater than subparagraphs (3) (i) and (ii) of this paragraph, if approved by the Administrator.

(4) "Gasoline terminal" means a facility for the storage and dispensing of gasoline where incoming gasoline loads are received by pipeline, marine tanker of barge, and where outgoing gasoline loads are transferred by tank trucks, trailers, railroad cars, or other non-marine mobile vessels.

(5) "Bulk gasoline plant" means a facility for the storage and dispensing of gasoline that employs tank trucks, trailers, railroad cars, or other mobile non-marine vessels for both incoming and outgoing gasoline transfer operations.

(b) This section is applicable in the New Jersey portions of the New Jersey-New York-Connecticut and Metropolitan Philadelphia Air Quality Control Regions.

(c) *Gasoline loading.* (1) No person shall load gasoline into any truck, trailer, railroad tank car or other mobile non-marine vessel from any gasoline terminal unless the gasoline terminal is equipped with a vapor recovery-disposal system, and unless all displaced vapors and gases of organic compounds discharged during the loading operation are vented only to the vapor recovery-disposal system. Measures shall be taken to prevent liquid drainage before the loading device is disconnected.

(2) No person shall load gasoline into any tank truck, trailer, railroad tank car or other mobile non-marine vessel from any bulk gasoline plant unless the bulk gasoline plant is equipped with a vapor collection system, and unless no less than 90 percent by weight of vapors and gases of organic compounds discharged during the loading operation are vented to this vapor collection system. Measures shall be taken to prevent liquid drainage before the loading device is disconnected.

(i) All vapors and gases collected in the vapor collection system shall be directed to a vapor recovery-disposal system.

(ii) All intermediate transfers necessary to direct the vapors and gases in a vapor collection system to a vapor recovery-disposal system shall be accomplished so as to prevent the release of at least 90 percent by weight of these vapors and gases to the atmosphere during each transfer.

(d) *Gasoline unloading:* No person shall transfer gasoline nor cause or allow gasoline to be transferred from any delivery vessel into any stationary storage container with a capacity greater than 250 gallons unless such container is equipped with a submerged fill pipe and unless the displaced vapors and gases from the storage container are collected and directed to a vapor collection system or a vapor recovery-disposal system. The collection procedure from the stationary storage container shall prevent the release to the atmosphere of no less than 90 percent by weight of organic compounds in said vapors and gases displaced from the stationary container location. The provisions of this paragraph shall not apply to deliveries made to and storage in the exempted storage containers in paragraph (g) of this section.

(1) The collection of displaced vapors and gases shall be accomplished utilizing the following equipment:

(i) A vapor-tight return line from the storage container to the delivery vessel, and

(ii) A system that will ensure that no gasoline can be transferred into the container unless the vapor return line is connected.

(2) If a vapor collection system is used:

(i) All vapors and gases collected in the vapor collection system shall be directed to a vapor recovery-disposal system.

(ii) All intermediate transfers necessary to direct the vapors and gases in a vapor collection system to a vapor recovery-disposal system shall be accomplished so as to prevent the release of no less than 90 percent by weight of these vapors and gases to the atmosphere during each transfer.

(e) *Gasoline storage;* No person shall store gasoline in any stationary storage container with a capacity greater than 250 gallons unless such container is equipped with a submerged fill pipe and equipment which will permit no less than 90 percent by weight of organic compounds in the vapors and gases displaced during any gasoline transfer to be collected and directed to a vapor collection system or a vapor recovery-disposal system. The provisions of this paragraph shall not apply to deliveries made to and storage in the exempted storage containers in paragraph (g) of this section.

(f) *Gasoline delivery vessels:* Any tank truck, trailer, railroad tank car or other non-marine delivery vessel used to transport gasoline or gasoline vapors and gases shall be subject to the following conditions.

(1) The delivery vessel shall be equipped so as to permit it to receive vapors and gases directed to it during any gasoline unloading operations, at facilities subject to this regulation, and to permit it to direct collected vapors and gases to a vapor collection or vapor recovery-disposal system during any loading operation.

(2) The delivery vessel shall be equipped so as to be compatible with

the vapor control equipment at all non-exempt facilities utilized or serviced by the delivery vessel during gasoline loading or unloading operations.

(3) The delivery vessel must be so designed and maintained as to be vapor-tight at all times except for pressure relief under emergency conditions.

(4) The vapor-laden delivery vessel may be refilled only at facilities equipped with a vapor collection system and/or vapor recovery-disposal system, and such system shall be utilized during any refilling operation.

(g) *Exempted storage containers:* Gasoline deliveries made to and storage in the following are classified as exempt:

(1) Stationary containers having a capacity of 550 gallons or less which are used exclusively for the fueling of implements of husbandry.

(2) Any container installed prior to November 13, 1973 and having a capacity less than 2000 gallons.

(3) Storage tanks equipped with floating roofs or their equivalent.

NOTE.—All compliance dates and compliance schedules that previously appeared in § 52.1597 and § 52.1598 have been removed since all listed dates have passed.

§ 52.1597 [Reserved]

3. Section 52.1597 is revoked and reserved.

§ 52.1598 [Reserved]

4. Section 52.1598 is revoked and reserved.

(Secs. 110, 301, Clean Air Act, as amended (42 U.S.C. 7410, 7601).)

ECKHARDT BECK,
Regional Administrator,
Environmental Protection Agency.

[FR Doc. 78-32607 Filed 11-20-78; 8:45 am]

[6560-01-M]

[40 CFR Part 65]

[Docket No. VII-78-DCO-15; FRL 1610-8]

STATE AND FEDERAL ADMINISTRATIVE ORDERS PERMITTING A DELAY IN COMPLIANCE WITH STATE IMPLEMENTATION PLAN REQUIREMENTS

Proposed Approval of an Administrative Order Issued By Nebraska Department of Environmental Control to Nebraska Asphalt Paving Co., Valley, Nebr.

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rule.

SUMMARY: EPA proposed to approve an administrative order issued by the Nebraska Department of Environmental Control to Nebraska Asphalt Paving Co. The order requires the company to bring air emissions from its portable asphalt plant in Valley, Nebr. into compliance with certain regulations contained in the federally approved Nebraska State implementation plan (SIP) by June 15, 1979. Because the order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by EPA before it becomes effective as a delayed compliance order under Clean Air Act (the Act). If approved by EPA, the order will constitute an addition to the SIP. In addition, a source in compliance with an approved order may not be sued under the Federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the order. The purpose of this notice is to invite public comment on EPA's proposed approval of the order as a delayed compliance order.

DATE: Written comments must be received on or before December 21, 1978.

ADDRESS: Comments should be submitted to Director, Enforcement Division, EPA, region VII, 1735 Baltimore, Kansas City, Mo. 64108. The State order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT:

Peter J. Culver or Henry F. Rompage, EPA, region VII, 1735 Baltimore, Kansas City, Mo. 64108, or telephone 816-374-2576.

SUPPLEMENTARY INFORMATION: Nebraska Asphalt Paving Co. operates a portable asphalt plant in Valley, Nebr. The order under consideration addresses emissions from the facility, which is subject to Nebraska Air Pollution Control Rules and Regulations, rule 5, Particule emission limitations, and rule 13, Visible emission. The regulation limits the emission of particulates, and is part of the federally approved Nebraska State implementation plan. The order requires final compliance with the regulation by June 15, 1979, through replacement of the scrubber control system with a fabric filter system.

Because this order has been issued to major source of particulate emissions and permits a delay in compliance with the applicable regionals, it must be approved by EPA before it becomes effective as a delayed compliance order under section 113(d) of the Clean Air Act (the Act). EPA may approve the order if it satisfies the appropriate requirements of this subsection.

If the order is approved by EPA, source compliance with its terms would preclude Federal enforcement action under section 113 of the Act against the source for violations of the regulation covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provision of the Act (section 305) would be similarly precluded. If approved, the order would also constitute an addition to the Nebraska SIP. All interested persons are invited to submit written comments to the proposed order. Written comments received by the date specified above will be considered in determining whether EPA may approve the order. After the public comment period, the Administrator of the EPA will publish in the FEDERAL REGISTER the Agency's final action on the order of 40 CFR Part 65.

(42 U.S.C. 7413, 7601).

Dated: November 9, 1978.

KATHLEEN Q. CAMIN,
Regional Administrator,
Region VII.

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL CONTROL

NEBRASKA ASPHALT PAVING CO.

ADMINISTRATIVE COMPLAINT AND ORDER

In the matter of Nebraska Asphalt Paving Co., a Nebraska Corporation, Respondent, Case No. 493 Administrative complaint and order.

I. At all times alleged herein, the Respondent, Nebraska Asphalt Paving Co., was and is a Nebraska corporation engaged in the operation of a portable asphalt plant at Valley, Douglas County, Nebr., whose registered agent for service of process was and is Malcolm D. Young, 1500 City National Bank, Omaha, Nebr. 68102, and the Department of Environmental Control was and is the agency of the State of Nebraska charged with the duty, pursuant to section 81-1504(1). RRS 1943, of exercising exclusive general jurisdiction of the administration and enforcement of the provisions of sections 81-1501 through 81-1533, RRS 1943, and all rules regulations and orders duly promulgated thereunder.

II. Dan T. Drain, Director of the Department of Environmental Control, acting within the scope of his authority pursuant to section 81-1507(1), RRS 1943, enters the following order on October 18, 1978:

"From the information gathered by field inspectors of the Department of Environmental Control, the Director finds that Respondent is replacing its scrubber control system with fabric filter system in order to achieve a greater degree of emission reduction and to insure compliance with Rules 5 and 13 of the Nebraska Air Pollution Control Rules and Regulations pertaining to particulate emission limitations for existing sources and visible emissions, respectively.

"After a thorough investigation of all relevant facts including the seriousness of the aforesaid violation and any good faith efforts to comply, it has been determined that the source cannot immediately comply and that compliance in accordance with the schedule hereinafter set forth is reasonable and expeditious, and the Director being fully advised in the premises.

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"*Therefore, it is ordered,* That Respondent complete the following acts with respect to its portable asphalt plant at Valley, Nebr., on or before the dates specified:

"1. Purchase emission control equipment by February 28, 1979;

"2. Initiate on-site construction or installation of emission control equipment by April 15, 1979;

"3. Complete on-site construction or installation of emission control equipment by May 15, 1979;

"4. Achieve final compliance with rules 5 and 13 of Nebraska Air Pollution Control rules and regulations by June 15, 1979;

"5. Submit progress reports to the Department of Environmental Control for the above items within five (5) days after said dates;

"6. No interim requirements including monitoring and reporting, pursuant to section 113(d)(1)(C) of the Clean Air Act (42 U.S.C. 7413(d)(1)(C)), shall be required during the period of this order as no such requirements were determined to be reasonable and practicable for the reason that Respondent's plant is seasonal in nature and shall be closed from November 1, 1978, until such time as the emission control equipment is installed and operational or May 15, 1979, whichever is earlier.

"Notice of this order has been published in a newspaper of general circulation in the area of Valley, Nebr., at least thirty (30) days prior to the issuance of this order, and an affidavit of said publication is attached hereto and incorporated herein; and notice is hereby given, pursuant to section 113(d)(1)(E) of the Clean Air Act (42 U.S.C. 7413) that since Respondent's operation is a major source, failure to comply by July 1, 1979, shall be cause for the Administrator of the U.S. Environmental Protection Agency (EPA) (or its designee) to assess and collect a noncompliance penalty from Respondent under section 120 of the Clean Air Act (42 U.S.C. 7420)."

[SEAL]

DAN T. DRAIN,
Director, Nebraska Department of Environmental Control.

[FR Doc. 78-32605 Filed 11-20-78; 8:45 am]

[6560-01-M]

[40 CFR Part 65]

[FRL 1011-1; Docket No. 9-77-40]

STATE AND FEDERAL ADMINISTRATIVE ORDERS PERMITTING A DELAY IN COMPLIANCE WITH STATE IMPLEMENTATION PLAN REQUIREMENTS

Proposed Delayed Compliance Order for Headquarters, 43d Combat Support Group, Andersen Air Force Base, Guam

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to issue an administrative order to Headquarters, 43d Combat Support Group, Andersen Air Force Base. The order requires the Air Force base to bring air emissions from its sandblasting facility in Guam into compliance with certain regulations contained in the federally approved Guam Implementation Plan. Because the Air Force Base is unable to comply with these regulations at this time, the proposed order would establish an expeditious schedule requiring final compliance by June 15, 1979. Source compliance with the order would preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violation of the Guam Implementation Plan regulations covered by the order. The purpose of this notice is to invite public comment and to offer an opportunity to request a public hearing on EPA's proposed issuance of the order.

DATES: Written comments must be received on or before December 21, 1978, and requests for a public hearing must be received on or before December 6, 1978. All requests for a public hearing should be accompanied by a statement of why the hearing would be beneficial and a text or summary of any proposed testimony to be offered at the hearing. If there is significant public interest in a hearing it will be held after 30 days prior notice of the date, time, and place of the hearing has been given in this publication.

ADDRESS: Comments and requests for a public hearing should be submitted to Director, Enforcement Division, EPA, Region IX, 215 Fremont Street, San Francisco, Calif. 94105. Material supporting the order and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT:

William M. Thurston, Chief, Case Development Section, Air and Hazardous Materials Branch, Enforcement Division, EPA, Region IX, 215 Fremont Street, San Francisco, Calif. 94105, telephone 415-556-6150.

SUPPLEMENTARY INFORMATION: Headquarters, 43d Combat Support Group, Andersen Air Force Base operates a sandblasting facility in Guam. The proposed order addresses emissions from this sandblasting facility, which are subject to chapters 8 and 10 of the Guam Air Pollution Control Standards and Regulations. These regulations limit the emissions of particulate matter and are part of the federally approved Guam Implementation Plan. The order requires final compliance with the regulations by June 15, 1979, and the source has consented to its terms.

The proposed order satisfies the applicable requirements of section 113(d) of the Clean Air Act (the Act). If the order is issued, source compliance with its terms would preclude further EPA enforcement action under section 113 of the Act against the source for violations of the regulation covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provisions of the Act (sec. 304) would be similarly precluded.

Comments received by the date specified above will be considered in determining whether EPA should issue the order. Testimony given at any public hearing concerning the order will also be considered. After the public comment period and any public hearing the Administrator of EPA will publish in the FEDERAL REGISTER the Agency's final action on the order in 40 CFR Part 65.

(42 U.S.C. 7413, 7601.)

Dated: November 9, 1978

SHEILA M. PRINDIVILLE,
Acting Regional Administrator, Environmental Protection Agency, Region IX.

In consideration of the foregoing, it is proposed to amend 40 CFR chapter I, as follows:

PART 65—DELAYED COMPLIANCE ORDERS

BY adding an entry to the table in § 65.560, *Federal delayed compliance orders issued under section 113(d) (1), (3), and (4) of the Act,* to reflect approval of the following orders:

ENVIRONMENTAL PROTECTION AGENCY

REGION IX

HEADQUARTERS, 43D COMBAT SUPPORT GROUP (SAC)

ORDER

In the matter of Headquarters, 43d Combat Support Group (SAC), Andersen Air Force Base, Guam, proceeding under section 113(d) Clean Air Act, as amended, Docket No. 9-77-40.

This order is issued pursuant to section 113(d) of the Clean Air Act, as amended, 42 U.S.C. 7401 et seq. "the Act." This order contains a schedule for compliance, interim requirements and monitoring and reporting requirements. Public notice, opportunity for a public hearing, and 30 days notice to the Territory of Guam have been provided pursuant to section 113(d)(1) of the Act.

FINDINGS

On January 19, 1978, the U.S. Environmental Protection Agency (EPA) issued a notice of violation, pursuant to section 113(a)(1) of the Act to Headquarters, 43d Combat Support Group (SAC), Andersen Air Force Base upon a finding that the Andersen Air Force Base sandblasting facility is in violation of Chapters 8 and 10 of the Guam Air Pollution Control Standards and Regulations, a part of the applicable Guam Implementation Plan as defined in section 110(d) of the Act. This finding was based upon a Consent Agreement drawn up by the U.S. Environmental Protection Agency and signed by David N. Gooch, Commanding Officer, Headquarters, 43d Combat Support Group, on September 9, 1977. The Consent Agreement states that Headquarters, 43d Combat Support Group, Andersen Air Force Base, operates a sandblasting facility which is in violation of Chapters 8 and 10 the Guam Air Pollution Control Standards and Regulations.

Said violation has extended beyond the 30th day after issuance of the January 19, 1978, notice of violation. This finding is based upon a letter dated July 28, 1978, from Andersen Air Force Base which indicates that the wet sandblasting equipment necessary for compliance with the regulations has not yet been installed. Andersen Air Force Base is presently unable to comply with Chapters 8 and 10 of the Guam Air Pollution Control Standards and Regulations.

ORDER

After a thorough investigation of all relevant facts, including public comment, it is determined that the schedule for compliance set forth in this order is expeditious as practicable, and that the terms of this order comply with section 113(d) of the Act. Therefore, it Hereby ordered:

I. That Headquarters, 43d Combat Support Group, Andersen Air Force Base will comply with the Guam Implementation Plan regulations in accordance with the following schedule on or before the dates specified therein.

A. November 1, 1978—Evaluate results of the test sandblasting facility and begin design of the permanent installation.

B. January 1, 1979—Issue purchase orders for emission control equipment.

C. March 1, 1979—Initiate on-site construction or installation of emission control equipment.

D. May 15, 1979—Complete on-site construction or installation of emission control equipment.

E. June 15, 1979—Cease all dry sandblasting operations and achieve compliance with Chapters 8 and 10 of the Guam Air Pollution Control Standards and Regulations.

II. That Headquarters, 43d Combat Support Group, Andersen Air Force Base, shall comply with the following reasonable interim requirements which are determined to be the best practicable interim system of emission reduction (taking into account the requirement for which compliance is ordered in section I, above), and are necessary to avoid an imminent and substantial endangerment to the heath of persons and to assure compliance with Chapters 8 and 10 of the Guam Air Pollution Control Standards and Regulations insofar as Andersen Air Force Base is able to comply during the period this order is in effect.

1. Post warning signs and mark a "clear area" around the sandblasting facility.

2. Issue and require the use of respirators by all personnel who must work within this "clear area."

III. That Andersen Air Force Base is not relieved by this order from compliance with any requirements imposed by the applicable implementation plan, EPA, and/or the courts pursuant to section 303 during any period of imminent and substantial endangerment to the health of persons.

IV. That Andersen Air Force Base shall comply with the following monitoring and reporting requirements on or before the dates specified below:

A. Monitoring requirements—

1. That Andersen Air Force Base shall keep a record of the operating hours of the sandblasting facility.

2. That these records shall be submitted to EPA quarterly until the dry sandblasting facility ceases operation. Reports are due December 15, 1978, March 15, 1979, and June 15, 1979.

B. Reporting requirements—

1. No later than 5 days after any date for achievement of an incremental step or final compliance, specified in this order, Andersen Air Force Base shall notify EPA in writing of its compliance, or noncompliance and reasons therefore, with the requirement. If delay is anticipated in meeting any requirement of this order, Andersen Air Force Base shall immediately notify EPA in writing of the anticipated delay and reasons therefore. Notification to EPA of any anticipated delay does not excuse the delay.

2. All submittals and notifications to EPA pursuant to this order shall be made to the Director, Enforcement Division, EPA, Region IX, 215 Fremont Street, San Francisco. Calif. 94105.

V. Nothing herein shall affect the responsibility of Andersen Air Force Base to comply with State, local or other Federal regulations.

VI. Andersen Air Force Base is hereby notified that your failure to achieve final compliance by July 1, 1979, may result in a requirement to pay a noncompliance penalty under section 120. In the event of such failure, Andersen Air Force Base will be formally notified, pursuant to section 120(b)(3) and any regulations promulgated thereunder, of its noncompliance.

VII. This order shall be terminated in accordance with section 113(d)(8) of the Act if the Administrator determines on the record, after notice and hearing, that an inability to comply with Chapters 8 and 10 of the Guam Air Pollution Control Standards and Regulations no longer exists.

VIII. Violation of any requirement of this order shall result in one or more of the following actions:

A. Enforcement of such requirement pursuant to sections 113 (a), (b), or (c) of the Act, including possible judicial action for an injunction and/or penalties and in appropriate cases, criminal prosection.

B. Revocation of this order, after notice and opportunity for a public hearing, and subsequent enforcement of Chapters 8 and 10 of the Guam Air Pollution Control Standards and Regulations in accordance with preceding paragraph.

C. If such violation occurs on or after July 1, 1979, notice of noncompliance and subsequent action pursuant to section 120 of the Act.

IX. This order is effective November 21, 1978.

CONSENT PROVISION

Headquarters, 43d Combat Support Group, Andersen Air Force Base, acknowledges that its sandblasting facility in Guam is in violation of Chapters 8 and 10 of the Guam Air Pollution Control Standards and Regulations. Furthermore, Headquarters, 43d Combat Support Group, Andersen Air Force Base, has reviewed this order, believes it to be a reasonable means to attain compliance with Chapters 8 and 10 of the Guam Air Pollution Control Standards and Regulations and consents to the terms of the order.

Dated: September 27, 1978.

COL. JAMES W. LEE,
Commander, Headquarters, 43d Combat Support Group, Andersen Air Force Base.

[FR Doc. 78-32606 Filed 11-20-78; 8:45 am]

[6560-01-M]

[40 CFR Part 65]

[FRL 1009-1; Docket No. VII-78-DCO-12]

STATE AND FEDERAL ADMINISTRATIVE ORDERS PERMITTING A DELAY IN COMPLIANCE WITH STATE IMPLEMENTATION PLAN REQUIREMENTS

Proposed Delayed Compliance Order for Iowa State Board of Regents University of Northern Iowa, Cedar Falls, Plant No. 1, Boiler No. 1

AGENCY: Environmental Proctection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to issue an administrative order to the Iowa State Board of Regents. The order requires the University of Northern Iowa to bring air emissions from its Boiler No. 1, Plant No. 1 in Cedar Falls into compliance with certain regulations contained in the federally approved Iowa State Implementation Plan (SIP). Because the Board is unable to comply with these regulations at this time, the proposed order would establish an expeditious schedule requiring final compliance by June 18, 1979. Source compliance with the Order would preclude suits under the Federal enforcement and citizen suit provision of the Clean Air Act for violation of the SIP regulations covered by the order. The purpose of this notice is to invite public comment and to offer an opportunity to request a public hearing of EPA's proposed issuance of the order.

DATES: Written comments must be received on or before December 21, 1978, and requests for a public hearing must be received on or before December 6, 1978. All requests for a public hearing should be accompanied by a statement of why the hearing would be beneficial and a test or summary of any proposed testimony to be offered at the hearing. If there is significant benefit in holding a hearing, it will be held after 21 days prior notice of the date, time, and place of the hearing has been given in this publication.

ADDRESSES: Comments and requests for a public hearing should be submitted to Director, Enforcement Division, EPA, Region VII, 1735 Baltimore, Kansas City, Mo. 64108. Material supporting the order and public comments received in response to this notice may be inspected and copied

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(for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT:

Peter J. Culver or Henry F. Rompage, EPA, Region VII, 1735 Baltimore, Kansas City, Mo. 64108, 816-374-2576.

SUPPLEMENTARY INFORMATION: Iowa State Board of Regents operates a power plant at University of Northern Iowa, Cedar Falls. The proposed order addresses emissions from Boiler No. 1, Plant No. 1, at this facility, which is subject to subrule 400—4.3(2)b Iowa Administrative Code, Combustion for indirect hearing. The regulation limits the emissions of particulates, and is part of the federally approved Iowa State Implementation Plan. The order requires final compliance with the regulation by June 18, 1979, and the source has consented to its terms.

The proposed order satisfies the applicable requirements of section 113(d) of the Clean Air Act (the Act). If the order is issued, source compliance with its terms would preclude further EPA enforcement action under section 113 of the Act against the source for violations of the regulation covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provisions of the Act (section 304) sould be similarly precluded.

Comments received by the date specified above will be considered in determining whether EPA should issue the order. Testimony given at any public hearing concerning the order will also be considered. After the public comment period and any public hearing. the Administrator of EPA will publish in the FEDERAL REGISTER the Agency's final action on the order in 40 CFR Part 65.

(42 U.S.C. 7413, 7601.)

Dated: November 7, 1978.

EARL J. STEPHENSON,
Acting Regional Administrator, Region VII.

In consideration of the foregoing, it is proposed to amend 40 CFR Chapter I, as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. By amending the table in § 65.200, Federal delayed compliance orders issued under section 113(d)(1), (3), and (4) of the Act to reflect approval of the following order:

ENVIRONMENTAL PROTECTION AGENCY

[Docket No. VII-78-DCO-12]

IOWA STATE BOARD OF REGENTS

In the matter of Iowa State Board of Regents, University of Northern Iowa, Plant No. 1, Boiler No. 1, Cedar Falls, Iowa, Docket No. VII-78-DCO-12.

This order is issued this date pursuant to section 113(d) of the Clean Air Act, as amended, 42 U.S.C. 7401 et seq. (the Act). This order contains a schedule for compliance, and monitoring and reporting requirements. Public notice and opportunity for a public hearing and 30 days notice to the State of Iowa have been provided pursuant to section 113(d)(1) of the Act.

FINDINGS

On August 2, 1978, Boiler No. 1, Plant No. 1 was tested and found to be in violation of subrule 400-4.3(d)b Iowa Administrative Code, combustion for indirect heating, a part of the applicable Iowa Implementation Plan as defined in section 110(d) of the Act. The Iowa State Board of Regents has acknowledged by signed Waiver that the University of Northern Iowa power plant Boiler No. 1, is in violation of Iowa Regulation 4.3(2)b above.

ORDER

After a through investigation of all relevant facts including public comment, it is determined that the schedule for compliance set forth in this order is expeditious as practicable, and that the terms of this Order comply with section 113(d) of the Act. *Therefore, it is hereby ordered:*

I. That the State Board of Regents will comply with the Iowa Implementation Plan regulations in accordance with the following schedule on or before the dates specified therein.

A. University of Northern Iowa, Boiler No. 1, Plant No. 1

1. January 2, 1979—Award contract for emission control installation or construction.

2. April 1, 1979—Initiate on-site installation or construction of emission control equipment.

3. May 21, 1979—Complete on-site installation or construction of emission control equipment.

4. May 28, 1979—Conduct stack test on Plant No. 1.

5. June 18, 1979—Achieve and demonstrate final compliance with subrule 400-4.3(2)b I.A.C.

II. That no interim requirements, as described in section 113(d)(7) of the Act, are reasonable and practicable.

III. That the State Board of Regents is not relieved by this Order from compliance with any requirements imposed by the applicable State implementation plan, EPA, and/or the courts pursuant to section 303 during any period of imminent and substantial endangerment to the health of persons.

IV. That the State Board of Regents shall comply with the following reporting requirements on or before the dates specified below:

Reporting requirements

1. No later than 5 days after any date for achievement of an incremental step or final compliance, specified in this Order, the State Board of Regents shall notify EPA in writing of its compliance, or noncompliance and reasons therefor, with the requirement. If delay is anticipated in meeting any requirement of this order, the State Board of Regents shall immediately notify EPA in writing of the anticipated delay and reasons therefor. Notification to EPA of any anticipated delay does not excuse the delay.

2. All submittals and notifications to EPA pursuant to this Order shall be made to Director, Enforcement Division, EPA, 1735 Baltimore, Kansas City, Mo. 64108, 816-374-2576.

V. Nothing herein shall affect the responsibility of the State Board of Regents to comply with State or local regulations.

VI. The State Board of Regents is hereby notified that failure to achieve final compliance by July 1, 1979 (or other applicable date specified in accordance with section 120(a)(2)(B) of the Act), will result in a requirement to pay a noncompliance penalty under section 120. In the event of such failure, the State Board of Regents will be formally notified, pursuant to section 120(b)(3) and any regulations promulgated thereunder, of its noncompliance.

VII. This Order shall be terminated in accordance with section 113(d)(8) of the Act if the Administrator (or his delegatee, as appropriate) determines on the record, after notice and hearing, that an inability to comply with regulation 4.3(2)b above no longer exists.

VIII. Violation of any requirement of the Order shall result in one or more of the following actions:

A. Enforcement of such requirement pursuant to sections 113 (a), (b), or (c) of the Act, including possible judicial action for an injunction and/or penalties and in appropriate cases, criminal prosecution.

B. Revocation of this Order, after notice and opportunity for a public hearing, and subsequent enforcement of regulation 4.3(2)b above in accordance with the preceding paragraph.

C. If such violation occurs on or after July 1, 1979, notice of noncompliance and subsequent action pursuant to section 120 of the Act.

IX. This order is effective immediately.

Date:_____

_____,
Administrator,

U.S. Environmental Protection Agency.

WAIVER OF RIGHTS TO CHALLENGE ORDER

Iowa State Board of Regents, by the duly authorized undersigned, acknowledges the University of Northern Iowa Boiler No. 1, Plant No. 1 is in violation of subrule 400-43(2)b I.A.C., consents to this Order and herby waives any and all rights under any provision of law to challenge the Order.

Date:_____

_____,
Iowa State Board of Regents.

[FR Doc. 78-32608 Filed 11-20-78; 8:45 am]

[6560-01-M]

[40 CFR Part 65]

[FRL 1009-2]

STATE AND FEDERAL ADMINISTRATIVE ORDERS PERMITTING A DELAY IN COMPLIANCE WITH STATE IMPLEMENTATION PLAN REQUIREMENTS

Proposed Approval of an Administrative Order Issued by Ohio Environmental Protection Agency to Corning Glass Works

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: U.S. EPA proposes to approve an administrative order issued by the Ohio Environmental Protection Agency to Corning Glass Works. The Order required the company to bring air emissions from its two borosilicate glass melting furnaces in Greenville, Ohio, into compliance with certain regulations contained in the federally approved Ohio State Implementation plan (SIP) by July 1, 1979. Because the Order has been issued to a major Source and permits a delay in compliance with provisions of the SIP, it must be approved by U.S. EPA before it becomes effective as a Delayed Compliance Order under the Clean Air Act (the Act). If approved by U.S. EPA, the Order will constitute an addition to the SIP. In addition, a source in compliance with an approved Order may not be sued under the Federal enforcement or citizen provisions of the Act for violations of the SIP regulations covered by the Order. The purpose of this notice is to invite public comment on U.S. EPA's proposed approval of the Order as a Delayed Compliance Order.

DATES: Written comments must be received on or before December 21, 1978.

ADDRESSES: Comments should be submitted to Director, Enforcement Division, U.S. EPA Region V, 230 South Dearborn Street, Chicago, Ill. 60604. The State Order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT:

Cynthia Colantoni, Enforcement Division, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Ill. 60604, 312-353-2082.

SUPPLEMENTARY INFORMATION: Corning Glass Works operates a glass manufacturing plant at Greenville, Ohio. The Order under consideration addresses emissions from two borosilicate glass melting furnaces at the facility, which are subject to OAC 3745-17-07(A)(1). The regulation limits the amount of visible emissions and is part of the federally approved Ohio State Implementation Plan. The Order requires final compliance with the regulation by July 1, 1979 through the implementation of the following control program:

1. Corning Glass Works will undertake a zonal optimization program which will have as its overall goal, the reduction of grain loading as well as the reduction of total air contaminants.

2. Corning Glass Works may adjust the air flow volume through each tank up to the level agreed on by Corning and the Regional Air Pollution Control Agency.

3. Corning Glass Works may modify existing stacks associated with the furnaces to the extent that the modification is agreed on by both Corning and the Regional Air Pollution Control Agency.

4. Corning Glass Works will make certain modificationsin tank 142.

Because this Order has been issued to a major Source of visible emissions and permits a delay in compliance with the applicable regulation, it must be approved by U.S. EPA before it becomes effective as a Delayed Compliance Order under Section 113(d) of the Clean Air Act. U.S. EPA may approve the Order only if it satisfies the appropriate requirements of this subsection.

If the Order is approved by U.S. EPA, Source compliance with its terms would preclude Federal enforcement action under Section 113 of the Act against the Source for violations of the regulation covered by the Order during the period the Order is in effect. Enforcement against the Source under the citizen suit provision of the Act (Section 304) would be similarly precluded. If approved, the Order would ais oconstitute an addition to the Ohio SIP.

All interested persons are invited to submit written comments on the proposed Order. Written comments received by the date specified above will be considered in determining whether U.S. EPA may approve the Order. After the Public comment period, the Administrator of U.S. EPA will publish in the FEDERAL REGISTER the Agency's final action on the Order in 40 CFR Part 65.

(42 U.S.C. 7413, 7601)

Dated: November 7, 1978.

JOHN MCGUIRE,
Regional Administrator, Region V.

[FR Doc. 78-32609 Filed 11-20-78; 8:45 am]

[6560-01-M]

[40 CFR Part 65]

[FRL 1008-7]

STATE AND FEDERAL ADMINISTRATIVE ORDERS PERMITTING A DELAY IN COMPLIANCE WITH STATE IMPLEMENTATION PLAN REQUIREMENTS

Proposed Approval of an Administrative Order Issued by Air Pollution Control Board of Vigo County to Indian Gas & Chemical Corp.

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve an administrative order issued by the Air Pollution Control Board of Vigo County to Indiana Gas & Chemical Corp. The order requires the company to bring air emissions for its coke plant in Terre Haute, Ind., into compliance with certain regulations contained in the federally approved Indiana State Implementation Plan (SIP) by July 1, 1979. Because the order has been issued to a major source and permits a delay in compliance with provisions of SIP, it must be approved by EPA before it becomes effective as a delayed compliance order under the Clean Air Act (the Act). If approved by EPA, the order will constitute an addition to the SIP. In addition, a source in compliance with an approved order may not be sued under the Federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the Order. The purpose of this notice is to invite public comment on EPA's proposed approval of the order as a delayed compliance order.

DATE: Written comments must be received on or before December 21, 1978.

ADDRESS: Comments should be submitted to Director, Enforcement Division, EPA, Region V, 230 South Dearborn Street, Chicago, Ill. 60604. The State order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT:

Cynthia Colantoni, Enforcement Division, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Ill. 60604.

SUPPLEMENTARY INFORMATION: Indiana Gas & Chemical Corp. operates a coke plant at Terre Haute, Ind. The order under consideration addresses emissions from batteries 1 and 2 of coke plant at the facility, which are subject to Vigo County Regulation 405. The regulation limits the emissions of particulate emissions and is part ot the federally approved Indiana State Implementation Plan. The order requires final compliance with the regulation by July 1, 1979, through installation of pushing emission control device. The Indiana Gas & Chemical Corp. has consented to the terms of the order and has committed itself to final compliance by installing a push-

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ing emission control device by July 1, 1979. In the interim, the company will employ operational techniques and maintenance which will reduce the possibility of green pushes.

Because this order has been issued to a major source of particulate emissions and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a delayed compliance order under section 113(d) of the Clean Air Act (the Act). EPA may approve the order only if it satisfies the appropriate requirments of ths subsection.

If the order is approved by EPA, source compliance with its terms would preclude Federal enforcement action under section 113 of the Act against the source for violations of the regulation covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provision of the Act (sec. 304) would be similarly precluded. If approved, the order would also constitute an addition to the Indiana SIP.

All interested persons are invited to submit written comments on the proposed order. Written comments received by the date specified above will be considered in determining whether EPA may approve the order. After the public comment period, the Administrator of EPA will publish in the FEDERAL REGISTER the Agency's final action on the order in 40 CFR Part 65.

(42 U.S.C. 7413, 7601)

Dated: November 8, 1978.

JOHN MCGUIRE,
Regional Administrator.

[FR Doc. 78-32611 Filed 11-20-78; 8:45 am]

[6560-01-M]

[40 CFR Part 65]

[FRL 1008-8]

STATE AND FEDERAL ADMINISTRATIVE ORDERS PERMITTING A DELAY IN COMPLIANCE WITH STATE IMPLEMENTATION PLAN REQUIREMENTS

Proposed Delayed Compliance Order for Ohio Valley Electric Co., Kyger Creek Generating Station

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rule.

SUMMARY: EPA proposes to issue an Administrative Order to Ohio Valley Electric Co.

The Order requires the Company to bring Units 1-5 at Gallipolis, Ohio (the source) into compliance with AP-3-07 and AP-3-11, part of the federally approved Ohio State Implementation Plan (SIP). Because the Company is unable to comply with these regulations at this time, the proposed Order would establish an expeditious schedule requiring final compliance by April 15, 1980. Source compliance with the Order would preclude suits under the Federal enforcement and citizen suit provision of the Clean Air Act for violation of the SIP regulations covered by the Order.

The purpose of this notice is to invite public comment and to offer an opportunity to request a public hearing on EPA's proposed issuance of the Order.

DATES: Written comments must be received on or before December 21, 1978, and requests for a public hearing must be received on or before December 6, 1978.

All requests for a public hearing should be accompanied by a statement of why the hearing would be beneficial and a text or summary of any proposed testimony to be offered at the hearing. If there is significant public interest in a hearing, it will be held after 21 days prior notice of the date, time, and place of the hearing has been given in this publication.

ADDRESSES: Comments and requests for a public hearing should be submitted to Director, Enforcement Division, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Ill. 60604. Material supporting the Order and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT:

Arthur E. Smith, Jr., Attorney, Enforcement Division, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Ill. 60604, at 312-353-2082.

SUPPLEMENTARY INFORMATION: Ohio Valley Electric Co. owns the Kyger Creek Generating Station at Gallipolis, Ohio. The proposed Order addresses emissions from Units 1-5 at this facility, which are subject to Regulations AP-3-07 and AP-3-11 of the Ohio Implementation Plan. The regulations limit the emissions of particulate matter and are part of the federally approved Ohio State Implementation Plan. The Order requires final compliance with the regulations by April 15, 1980, and the source has consented to its terms. As of the date of this publication, the source has already satisfied the first three increments in this Order.

The proposed Order satisfies the applicable requirements of section 113(d) of the Clean Air Act (the Act). If the Order is issued, source compliance with its terms would preclude further EPA enforcement action under section 113 of the Act against the source for violations of the regulations covered by the Order during the period the Order is in effect. Enforcement against the source under the citizen suit provisions of the Act (section 304) would be similarly precluded.

Comments received by the date specified above will be considered in determining whether EPA should issue the Order. Testimony given at any public hearing concerning the Order will also be considered. After the public comment period and any public hearing, the Administrator of EPA will publish in the FEDERAL REGISTER the Agency's final action on the Order in 40 CFR Part 65.

Dated: October 27, 1978.

JOL MCGUIRE,
Regional Administrator,
Region V.

In consideration of the foregoing, it is proposed to amend 40 CFR Chapter I, as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. By amending the table in § 65.400, Federal delayed compliance Orders issued under section 113(d) (1), (3), and (4) of the Act, to reflect approval of the following order:

U.S. ENVIRONMENTAL PROTECTION AGENCY

[Order No. EPA-5-78-A]

OHIO VALLEY ELECTRIC CORP.

ORDER

In the matter of Ohio Valley Electric corp., Kyger Creek Plant, proceeding Under section 13(d) Clean Air Act, as amended, Order No. EPA—5-78-A.

The following Order is issued today under sections 113(a), 113(d) and 114 of the Clean Air Act, 42 U.S.C. section 7401 et seq., ("the Act"). The Order contains a compliance schedule with increments of progress interim emission reduction requirements, and emission monitoring and reporting conditions. Final compliance is required as expeditiously as practicable, but no later than April 15, 1980. Public notice opportunity for a public hearing and notice to the State of Ohio have been provided under section 113(d)(1) of the Act.

On March 23, 1977, James O. McDonald, Director, Enforcement Division, Region V, U.S. Environmental Protection Agency ("U.S. EPA"), under authority duly delegated to him by the Administrator of U.S. EPA, issued a Notice of Violation to Ohio Valley Electric Corporation ("the Company") stating that the Company's generating Units 1-5 at the Kyger Creek Plant, located in the vicinity of Gallipolis, Ohio, was found to be in violation of the applicable Ohio implementation Plan, as defined in section 110(d) of the Act. The Notice cited the Company's Units 1-5 for violation of Ohio regulations AP-3-07 and AP-3-11. A copy of that Notice was sent to the State of Ohio Environmental Protection Agency.

Under section 113(a)(4) of the Act, opportunity to confer with the Administrator's delegates was duly given to the Company. On May 11, 1977, a conference was held in Chicago, Ill., to discuss the March 23, 1977, Notice of Violation. Subsequent meetings were held in Chicago to discuss a compliance schedule for the Installation of new control equipment on Units 1-5 at the Kyger Creek Plant.

U.S. EPA has determined that these violations have continued beyond the 30th day after the date of the Enforcement Director's notification and that the Company is unable to comply with the applicable implementation plan at this time.

After a review of information submitted at the conference, a thorough investigation of all relevant facts, and considering public comments, U.S. EPA has determined that the following schedule requires compliance as expeditiously as practicable, and that the terms of this Order comply with section 113(d) of the Act.

Therefore, it is hereby ordered, and agreed that:

1. The Company shall achieve compliance with Ohio regulations AP-3-07 and AP-3-11 at Units 1-5 at the Kyger Creek Plant in accordance with the following schedule:

Increment and Date
Submit final control plans and specifications to U.S. EPA.—Achieved.
Award contract(s) for control equipment.—Achieved.
Begin on-site construction.—Achieved.
Complete erection of precipitator hoppers and shells for first unit.—January 1, 1979.
Achieve compliance with Ohio regulations AP-3-07 and AP-3-11.—April 15, 1980.

II. Compliance test results and certification of compliance shall be submitted to U.S. EPA 1 month after completion of construction and tie-in of control equipment. The Company shall notify the U.S. EPA and Ohio EPA at least 10 days before any compliance test is conducted.

III. Nothing contained in this Order shall affect the responsibility of the Company to comply with other Federal, State or local regulations.

IV. No later than 15 days after any date for achievement of an incremental step for final compliance specified in this Order, the Company shall notify U.S. EPA in writing of its compliance, or noncompliance and reasons for any noncompliance, with the requirement. If delay is anticipated in meeting any requirement of this Order, the Company shall immediately notify U.S. EPA in writing of the anticipated delay, reasons for the delay, and the estimated length of the delay.

The Company shall submit quarterly reports to U.S. EPA detailing the current status in meeting each increment of progress in this Order. In addition, photographs shall be submitted along with these reports, showing progress made since the previous quarter. U.S. EPA personnel shall be admitted to the facility at any reasonable time for the purpose of viewing such progress.

V. In issuing this Order, the Administrator does not waive any rights or remedies under the Clean Air Act.

VI. Under section 113(d)(7) of the Act, during the period of this Order, until completion of the program set out in paragraph I herein, the Company shall use the best practicable system of emission reduction so as to maximize the reliability and efficiency of the existing controls on Units 1-5, minimize particulate matter emissions, avoid any imminent and substantial endangerment to the public health, and comply with the requirement of the applicable implementation plan to the extent it is able to do so.

The Company shall submit written operating and maintenance procedures for the existing controls on Units 1-5 to U.S. EPA for approval within 1 month from the effective date of this Order. These procedures shall provide for maximizing reliability and efficiency, malfunction reporting, record keeping, and corporate reviewing. Failure to submit or comply with the procedures will constitute a violation of this Order.

VII. A continuous monitoring system for all stacks shall be installed, calibrated, maintained and operated in accordance with the procedures set forth in Appendix B of 40 CFR Part 60, no later than April 15, 1980. Monitor data shall be retained by the Company for at least 2 years. In accordance with Section 114 of the Act, on quarterly basis, the Company shall report all 6-minute data average from the monitor (reduced as specified in 40 CFR 60.13(b)) in excess of 20 percent.

VIII. The Company is notified that failure to achieve final compliance as required by the Clean Air Act may result in a requirement to pay a noncompliance penalty. In that event, the Company will be formally notified under section 120(b)(3) and any regulations promulgated under that Section.

IX. The Company hereby waives it right to file a petition for review of this Order under section 307(b)(1) of the Act.

X. All submissions and notifications to U.S. EPA, under this Order, shall be made to the Air Compliance section, Enforcement Division, U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Ill. 60604, 312-353-2090. A copy of all submissions and notifications shall be made to the Ohio EPA, Southeast District, 2195 Front Street, Logan, Ohio 43138.

XI. This Order is effective upon its issuance.

Date:———————

———————
Administrator.

Ohio valley Electric Corp. has reviewed this Order, consents to the terms and conditions of this Order, and believes it to be a reasonable means by which Units 1-5 at the Kyger Creek Plant can achieve final compliance with Ohio regulations AP-3-07 and AP-3-11.

Date:———————

———————
Ohio Valley Electric Corp.

[FR Doc. 78-32610 Filed 11-20-78; 8:45 am]

[6712-01-M]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[BC Docket No. 78-309]

NETWORK REPRESENTATION OF TV STATIONS IN NATIONAL SPOT SALES

Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Extension of time for filing comments and reply comments in rulemaking proceeding.

SUMMARY: This action, taken at the request of the petitioner whose petition led to the rulemaking proceeding, extends from November 20 to November 30, 1978, the time for comments in BC Docket 78-309, in which the FCC will consider changes in § 73.658(i) of its rules, which bars TV stations from using as their national sales representative an organization owned by or associated with the network with which the station is affiliated. The time for reply comments is extended to December 22, 1978.

DATES: Initial comments must be received on or before November 30, 1978, and reply comments on or before December 22, 1978.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

John H. Bass, Jr., Office of Network Study (Broadcast Bureau), Area 202-632-6339.

[43 FR 45895]

ORDER EXTENDING TIME FOR FILING COMMENTS AND REPLY COMMENTS

Adopted: November 13, 1978. Released: November 15, 1978.

In matter of amendment of § 73.658(i) of the Commission's Rules, concerning Network Representation of TV Stations in National Spot Sales. Request of Spanish International Network (SIN) for waiver of § 73.658(i).

1. By Memorandum Opinion and Order and Notice of Proposed Rulemaking released September 29, 1978 (FCC 78—682), the Commission requested that comments be submitted in the above-referenced matter on or before November 20, 1978, and reply comments by December 11, 1978.

2. In a "Motion for Extension of Time" filed October 19, Spanish International Network, the petitioning party, asks that the time for filing be extended to and including November 30 for comments and December 22 for reply comments. It is stated that the additional time is needed to permit the preparation of complete and meaningful comments of maximum value to the Commission.

3. It appears that under the circumstances the requested extension is warranted. Accordingly, *It is ordered,* That the time for filing comments in this proceeding *is extended* to and including November 30, 1978 and the time for reply comments *is extended* to and including December 22, 1978.

This action is taken pursuant to delegated authority contained in § 0.281 of the Commission's Rules.

WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc. 78-32708 Filed 11-20-78; 8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

[6110-01-M]

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

COMMITTEE ON COMPLIANCE AND ENFORCEMENT PROCEEDINGS

Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Committee on Compliance and Enforcement Proceedings of the Administrative Conference of the United States, to held at 10 a.m., Thursday, December 14, 1978, in Hearing Room B, Interstate Commerce Commission, 12th and Constitution Avenue NW., Washington, D.C.

The committee will meet to discuss Prof. Roy Schotland's study of disclosure as a regulatory technique and Prof. Stanley Anderson's study of inspectors general in Federal agencies

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify this office at least 2 days in advance. Members of the public may be permitted to present oral statements, if deemed appropriate by the Committee Chairman. Members of the public may also file a written statement with the Committee before, during, or after the meeting.

For further information concerning this meeting contact Sarah G. Flanagan, 202-254-7065. Minutes of the meeting will be available on request.

RICHARD K. BERG,
Executive secretary.

NOVEMBER 13, 1978.

[FR Doc. 78-32625 Filed 11-20-78; 8:45 am]

[6110-01-M]

Committee on Agency Decisional Processes

Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Committee on Agency Decisional Processes of the Administrative Conference of the United States, to be held at 10 a.m., Thursday, December 14, 1978, in the office of Ginsburg, Feldman and Bress, 1700 Pennsylvania Avenue NW., Suite 300, Washington, D.C.

The Committee will meet to discuss its draft recommendation based on Professor Michael Baram's study of the use of cost-benefit analysis in Federal regulation.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify this office at least 2 days in advance. The Committee Chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting; any member of the public may file a written statement with the Committee before, during or after the meeting.

For further information concerning this meeting contact David M. Pritzker, 202-254-7065. Minutes of the meeting will be available on request.

RICHARD K. BERG,
Executive Secretary.

NOVEMBER 15, 1978.

[FR Doc. 78-32636 Filed 11-20-78; 8:45 am]

[3410-05-M]

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

1979 FEED GRAIN PROGRAM

Determinations Regarding Proclamation of 1979 Crop National Program Acreages, Set-Aside and Diversion Levels, Recommended Reduction, and Target Levels for Corn, Grain Sorghum, and Barley; Loan and Purchase Rates for All Feed Grains and Soybeans; and Final Determination on Barley and Oats in the Program

AGENCY: Agricultural Stablization and Conservation Services, USDA.

ACTION: Notice of determination of the 1979 crop national program acreages and set-aside levels of corn, grain sorghum, and barley.

SUMMARY: This notice is for the purpose of proclaiming a national program acreage and set-aside level for the 1979 crops of corn, grain sorghum, and barley in accordance with applicable sections of the Agricultural Act of 1949, as amended by the Food and Agricultural Act of 1977 and the Act of May 15, 1978 (referred to as the "Act"). Provisions of the 1949 Act, as amended, require that a determination of the national program acreages and set-aside requirements be made by the Secretary not later than November 15 prior to the year in which the crop is harvested. This determination establishes a national program acreage and set-aside requirement for the 1979 crops of corn, grain sorghum, and barley.

EFFECTIVE DATE: November 15, 1978.

ADDRESS: Production Adjustment Division, ASCS-USDA, 3630 South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT:

Orville I. Overboe (ASCS), 202-447-7987.

SUPPLEMENTARY INFORMATION: The need for this notice is to satisfy the statutory requirements as provided for in section 105A (d) and (f) of the Agricultural Act of 1949, as amended by the Food and Agricultural Act of 1977 and the Act of May 15, 1978 (referred to as the "Act"). It is essential that these decisions be made effective as soon as possible since the proclamation of the national program acreages and set-aside levels are required by statute to be made not later than November 15, 1978.

A notice that the Secretary was preparing to make determinations with respect to these provisions was published in the FEDERAL REGISTER on August 25, 1978, 43 FR 38013, in accordance with the provisions of 5 U.S.C. 533, and Executive Order 12044. Comments were received from over 3,100 producers and groups. The breakdown of comments received was 2,887 from producers, 62 congressional, 3 from State governments, 7 from National organizations, 115 from ASC State and county committees, and 48 from private institutions and organizations. The majority of the comments generally concerned six issues: (1) An early announcement of the 1979 feed grain program, (2) a set-aside program effective enough to substantially reduce production and have a price impact, (3) the establishment of credit for 1978 set-aside and diversion acres, (4) a land diversion, (5) the inclusion of barley and oats in the feed grain program, and (6) the loan and target price levels. Virtually all comments expressed a need for a set-aside or diversion program. Levels recommended ranged from a level of 5 percent to a level high enough to obtain a market price of 100 percent of parity. Most comments suggested that a set-aside level of around 20 percent be established for the 1979 program. Comments which were received concerning land diversion on a bid basis almost unanimously opposed such a system. Only 6 comments were received favoring the bid system while 595 expressed opposition. There were 835 responses indicating that 1978 set-aside haying and grazing and diversion acreage be credited as harvested acreage for 1979 program purposes and for application of the voluntary reduction in 1979. Comments were received from 403 individuals indicating that an early announcement of the 1979 feed grain program was necessary for most producers to make needed fall plans and operations in order to comply with the program. The inclusion of barley and oats in the 1979 feed grain program was a major issue, especially in the northern plain States, and was mentioned in 1,234 responses. These 1,234 responses reflected the following: (1) Include both barley and oats (498), (2) include barely only (769), (3) include oats only (50), and (4) do not include either crop (81). The issue of loan rates and target levels received 1,211 comments. Loan rates comments suggested the following: (1) Leave at present level, (2) should be raised, (3) eliminate price support loans, (4) should be set at or near parity, and (5) should be escalated by cost of production rates. Loan rates most commonly suggested for corn were $2.25 to $2.50 per bushel, sorghum $2-$2.25; barley around $2; oats $1.25. For soybeans, suggested rates were $4.50 to $7.88 per bushel (100 percent of parity).

Target level comments suggested were: (1) Leave at present level, (2) to be escalated by cost of production, and (3) set at 85 to 100 percent of parity. All comments received were duly considered by the Secretary in making the following determinations.

FINAL DETERMINATIONS

1. NATIONAL PROGRAM ACREAGE FOR THE 1979 CROPS OF CORN, GRAIN SORGHUM, AND BARLEY

It is hereby proclaimed that the national program acreages for the 1979 crop of corn shall be 63.7 million acres; grain sorghum 13.2 million acres and barley 6.5 million acres. The national program acreages were based on the following data:

	Corn	Grain sorghum	Barley
	Million bushels		
(1) Estimated domestic use for 1979-80	4,640	520	350
(2) Plus estimated exports for 1979-80	1,950	230	45
(3) Minus estimated imports for 1979-80	—1		—10
(4) Minus adjustment to decrease stocks to desired level [1]	—350	—9	—72
	Bushel per acre		
(5) Divided by estimated national weighted average farm program yield	98	56	48
	Million acres		
(6) Equals 1979 national program acreage	63.7	13.2	6.5

[1] The Food and Agriculture Act of 1977 provides that the Secretary may adjust the national program acreage to accomplish a desired increase or decrease in carryover stocks. The U.S. feed grain stock objective is set at 5.7 pct of world feed grain consumption, an amount judged to be the U.S. "fair" share of world feed grain stocks. Using this formula, the U.S. feed grain stock objective is approximately 40 million metric tons as of Sept. 30, 1979.

The Secretary may revise the national program acreage as proclaimed for the purpose of determining the allocation factor if he determines it is necessary based upon the latest information. The national allocation factors will be determined prior to December 1979 for barley and April 1980 for corn and grain sorghum.

2. SET-ASIDE AND DIVERSION LEVELS FOR 1979—CROPS OF CORN, GRAIN SORGHUM, AND BARLEY

It is hereby determined and proclaimed that a set-aside of cropland equal to 10 percent of the corn and grain sorghum and 20 percent of the barley acreage planted for harvest in 1979 will be in effect. In addition, a 10-percent-diversion program will be in effect for corn and grain sorghum. The set-aside and diversion program is designed to meet the desired stock objective for feed grains. A diversion payment rate of 10 cents per bushel times the farm program payment yield times the 1979 planted acreage divided by the diverted acreage will determine the corn and grain sorghum payment per acre diverted.

3. RECOMMENDED REDUCTION FROM 1978 PLANTING FOR 1979 CROPS OF CORN, GRAIN SORGHUM, AND BARLEY

It is hereby determined and proclaimed that producers who participate in the set-aide program and reduce their 1979 corn and grain sorghum acreage by 10 percent and barley acreage by 30 percent from their 1978 respective acreage of these crops considered planted for harvest shall be guaranteed target price protection on the normal production from their entire planted acreage.

In applying the recommended reduction for 1979, the 1978 corn, grain sorghum, and barley acreage considered planted for harvest shall be: The 1978 corn, grain sorghum, and barley acreage planted for harvest plus the larger of:

(a) The total set-aside and diverted acreage, or

(b) The acreage reduced from the previous year but not to exceed the recommended 1978 voluntary reduction.

4. 1979 ESTABLISHED "TARGET" PRICE

It is hereby determined that the 1979 established "target" price for corn shall be $2.20 per hushel. As required by law, the established "target" price for corn shall be the 1978 target price ($2.10 per hushel), adjusted to reflect any change in the average cost of production over a 2-year moving average period. This computation establishes the 1979 target level at an estimated $2.07 per bushel. However, the Secretary does have authority, whenever a set-aside is in effect, to increase the established "target" price by an amount he determines appropriate to compensate producers for participation in such set-aside. This authority is being implemented for the 1979 feed grain program to set the target price levels for corn, grain sorghum, and barley.

The Secretary is also required by statute to make available to producers, as applicable, payments for the 1979 crops of grain sorghum, and, if designated by the Secretary, oats and barley. The payment rate for grain sorghum and, if designated by the Secretary, oats and barley, shall be such rate as the Secretary determines fair and reasonable in relation to the rate at which payments are made available for corn.

It is hereby determined that the 1979 established "target" price shall be $2.30 and $2.40 per bushel for grain sorghum and barley, respectively.

V 4 3 1 2 2 5

S. 1979 LOAN AND PURCHASE LEVEL

It is hereby determined that the 1979 crop corn loan and purchase level shall be $2 per bushel, the same as for the 1978 crop. It is further determined that the Secretary shall make available to producers loans and purchases for the 1979 crops of barley, oats, and rye at such level as the Secretary determines is fair and reasonable in relation to the level that loans and purchases are made available for corn, taking into consideration the feeding value of such commodity in relation to corn and other factors, and on each crop of grain sorghum at such level as the Secretary determines is fair and reasonable in relation to the level that loans and purchases are made available for corn, taking into consideration the feeding value and average transportation costs to market grain sorghum in relation to corn.

It is hereby determined that the 1979 crop grain sorghum, barley, oats, and rye loan and purchase levels per bushel shall be $1.90, $1.63, $1.03, and $1.70 respectively, the same as for the 1978 crop. The loan and purchase level for the 1979 crop soybeans shall be $4.50 per bushel as it was for the 1978 crop. It has been determined that these loan and purchase levels are appropriate, taking into consideration competitive world prices of feed grains and soybeans and the feeding value of feed grains and protein supplements in relation to wheat, and that it will maintain the competitive relationship of feed grains and soybeans to other grains in domestic and export markets.

6. INCLUSION OF BARLEY AND OATS IN THE FEED GRAIN PROGRAM

It is hereby determined that 1979 crop barley will be included in the feed grain program and, therefore, will be eligible for deficiency payments, disaster payments and the loan program. It is also determined that 1979 crop oats will not be included in the feed grain program but will be eligible for the loan program.

NOTE.—It has been determined that this document does contain a major proposal requiring preparation of an impact analysis statement. The impact analysis statement will be available from Orville I. Overboe (ASCS), 202-447-7987.

NOTE.—The ASCS, to meet the requirements of the National Environmental Policy Act (Pub. L. 91-190, 42 U.S.C. 4321, et seq.), has determined that the impact on the human environment is not significantly different from the impact discussed on an environmental impact statement on file for the 1977 program, and therefore, no additional statement is necessary.

Signed at Washington, D.C., on November 15, 1978.

CAROL TUCKER FOREMAN,
Acting Secretary.

[FR Doc. 78-32592 Filed 11-15-78; 5:26 pm]

[3410-02-M]

Agricultural Marketing Service

SALE OF MORTGAGED LIVESTOCK

Public Hearing

Notice is hereby given that the Department of Agriculture will hold a public hearing on December 11, 1978, to provide an opportunity for livestock producers, market agencies, packers, lending agencies, and other interested persons to present data, views, and comments as to methods by which sellers of livestock or their agents may furnish to livestock marketing agencies and dealers, and packers, information concerning the existence of any lien or security interest in or against such livestock, and as to related problems.

BACKGROUND

A livestock market agency is required to furnish selling services without discrimination and it must move the livestock consigned to it without delay if it is to prevent excessive shrinkage, and otherwise furnish reasonable stockyard services. These requirements generally preclude the market agency from making an extensive check to determine whether the livestock it accepts for sale has been mortgaged. Under the Packers and Stockyards Act, 1921, as amended, it is not deemed that a market agency has engaged in an unfair practice if it unknowingly accepts and sells mortgaged livestock. This does not mean, however, that the market agency has been absolved of all liability to the holders of mortgages. Similar liability may exist with respect to mortgage holders when packers and dealers purchase mortgaged livestock. Market agency, packer, and dealer officials contend that it is virtually impossible for them to adequately check lien records to determine if livestock is mortgaged.

The Packers and Stockyards Act was recently amended by Pub. L. 95-409, enacted October 2, 1978. Section 2 of Pub. L. 95-409 states: "The Secretary shall appoint an interagency task force within the Department of Agriculture for the purpose of analyzing and recommending methods by which any livestock sellers, or their agents, may furnish to livestock marketing agencies, dealers, or packers, who purchase livestock or provide marketing services, information concerning the existence of any lien or security interest in or against such livestock. The Secretary shall submit a report of the findings and conclusions of such task force, including legislative recommendations, to the Committe on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives no later than February 1, 1979."

On October 23, 1978, the Secretary by Memorandum No. 1961, established the task force. Mr. Charles B. Jennings, Deputy Administrator, Packers and Stockyards, Agricultural Marketing Service, was appointed as Chairman of the task force.

HEARING PROCEDURE

The public hearing to be held before the task force will be conducted from 9:30 a.m. to 4 p.m. on December 11, 1978, in room 2096 South Building, U.S. Department of Agriculture, 14th and Independence, Washington, D.C. The hearing will be informal in nature and will be conducted by the Chairman of the task force.

Interested persons are invited to attend the hearing and to participate by making oral or written statements containing their data, views, and comments. Any person who wishes to be heard will be afforded an opportunity to be heard.

OTHER WRITTEN COMMENTS INVITED

Persons not participating in the hearing or who wish to submit written statements in addition to oral statements are invited to submit written data, views, and comments on the issues to be covered at the hearing. They should be submitted to Charles B. Jennings, Deputy Administrator, Packers and Stockyards, AMS, U.S. Department of Agriculture, 14th and Independence, Washington, D.C. 20250, on or before December 31, 1978. It is urged that interested persons submit their views, data, and comments as soon as possible in order that the Task Force may have as much information as possible as soon as possible for consideration in connection with its work. Anyone submitting statements early may file supplemental statements on December 31, 1978, or at any time prior thereto.

The transcript of the hearing, together with all the written submissions, will be available for public inspection during normal business hours at the office of the Deputy Administrator, Packers and Stockyards, AMS, Room 3039, South Building, USDA, Washington, D.C.

N 0 2 1 7 8 UMI

Done at Washington, D.C., November 15, 1978.

CHAS. B. JENNINGS,
Deputy Administrator, Packers and Stockyards, AMS.

[FR Doc. 78-32624 Filed 11-20-78; 8:45 am]

[3410-11-M]

Forest Service

GILA NATIONAL FOREST GRAZING ADVISORY BOARD

Meeting

The Gila National Forest Grazing Advisory Board will meet at 10 a.m., December 19, 1978, in large Conference Room, Federal Building, 2610 North Silver Street, Silver City, N. Mex.

The agenda for this meeting is:

1. Election of Officers.
2. Development of Bylaws.
3. Responsibilities of the Advisory Board.
4. Other items of general interest.

The meeting will be open to the public.

Dated: November 14, 1978.

ROBERT M. WILLIAMSON,
Forest Supervisor.

[FR Doc. 78-32626 Filed 11-20-78; 8:45 am]

[3410-22-M]

Science and Education Administration

ANIMAL HEALTH AND DISEASE RESEARCH

Notice To Establish Eligibility for Funding

The Science and Education Administration, U.S. Department of Agriculture, announces that it intends to establish a list of institutions eligible for funding under the provisions of sections 1429-1439 of Pub. L. 95-113 (7 U.S.C. 3191-3201) relating to Animal Health and Disease Research.

Section 1433 of Pub. L. 95-113 authorizes funds to be distributed among the States on a formula basis for the support of animal health and disease research programs conducted by eligible institutions in the States. Section 1434 authorizes funds to be allocated to eligible institutions on a discretionary basis to support research on specific national or regional animal health or disease problems. For fiscal year 1979 five million dollars will be distributed under section 1433. No funds will be distributed under section 1434.

Any college or university having an accredited college of veterinary medicine or a department of veterinary science or animal pathology, or a similar unit conducting animal health and disease research in a State agricultural experiment station is eligible for funding, provided the institution has a demonstrable capacity for conducting animal health and disease research.

The capacity to conduct animal health and disease research will be determined on the basis of the following criteria:

1. One or more faculty of professorial rank currently conducting food animal health and disease research.

2. Ongoing programs in livestock, poultry, or other food animal health and disease research. Such programs should involve studies on infectious, noninfectious, parasitic, and chemical factors that reduce the efficiency of production or endanger the suitability for human food of livestock, poultry, and other food animals or their products.

Institutions desiring to establish eligibility under section 1433 for fiscal year 1979 must submit a statement of eligibility to the Director of Science and Education, U.S. Department of Agriculture, Washington, D.C. on or before December 21, 1978. Statements must include evidence of the institution's capacity to perform animal health and disease research. Such evidence such address the above criteria and include, where available, a summary of each research project which was conducted by the institution on animal health and disease problems of food animals in fiscal year 1977. The summaries should include the following information:

1. Project title.
2. Research objectives.
3. Research approach.
4. Total expenditures on the project.
5. Full-time equivalents of professional rank staff devoted to the project.

Questions regarding this program should be directed to:

Dr. Earl J. Splitter, Group Leader, Animal Sciences, SEA/CR, U.S. Department of Agriculture, Washington, D.C. 20250, 202-44-75007.

Dated: November 16, 1978.

RALPH J. MCCRACKEN,
Acting Director, Science and Education.

[FR Doc. 78-32694 Filed 11-20-78; 8:45 am]

[6320-01-M]

CIVIL AERONAUTICS BOARD

[Docket No. 33465]

CONTINENTAL-WESTERN MERGER CASE

Hearing

A hearing in this proceeding will be held on December 12, 1978, at 9:30 a.m. (e.s.t.) in room 1003, Hearing Room C, 1875 Connecticut Avenue NW., Washington, D.C.

The hearing will consider the joint merger application of Continental Airlines and Western Air Lines. That application, along with various other documents that deal with the issues in this proceeding, may be found in docket 33465, on file in the docket section of the Civil Aeronautics Board.

Dated at Washington, D.C., November 15, 1978.

STEPHEN J. GROSS,
Administrative Law Judge.

[FR Doc. 78-32683 Filed 11-20-78; 8:45 am]

[3510-07-M]

DEPARTMENT OF COMMERCE

Bureau of the Census

CENSUS ADVISORY COMMITTEE ON THE SPANISH ORIGIN POPULATION FOR THE 1980 CENSUS

Public Meeting

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976), notice is hereby given that the Census Advisory Committee on the Spanish Origin Population for the 1980 Census will convene on December 8, 1978, at 9:15 a.m. The Committee will meet in Room 2424, Federal Building 3, at the Bureau of the Census in Suitland, Md.

The Committee is composed of 21 members appointed by the Secretary of Commerce. It was established in February 1975 to advise the Director, Bureau of the Census, on such 1980 census planning elements as improving the accuracy of the population count, developing definitions for classification of the Spanish-origin population, recommending subject content and tabulations of especial use to the Spanish-origin population, and expanding the dissemination of census results among present and potential users of census data in the Spanish-origin population.

The agenda for the meeting, which is scheduled to adjourn at 4:30 p.m., is: (1) Introductory remarks by the Director of the Census Bureau, (2) Spanish-origin item on questionnaire (results of national test and preliminary results of lower Manhattan dress rehearsal), (3) Community Services Program, (4) current status of 1980 census planning, (5) Committee discussion, and (6) Committee recommendations and plans for future meeting.

The meeting will be open to the public and a brief period will be set aside for public comment and questions. Extensive questions or statements must be submitted in writing to the Committee Control Officer at least 3 days prior to the meeting.

Persons wishing further information concerning this meeting or who wish

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to submit written statements may contact Clifton S. Jordan, Deputy Chief, Demographic Census Staff, Bureau of the Census, Room 3779, Federal Building 3, Suitland, Md. (Mailing address: Washington, D.C. 20233), telephone 301-763-5169.

Dated: November 15, 1978.

MANUEL D. PLOTKIN,
Director,
Bureau of the Census.

[FR Doc. 78-32640 Filed 11-20-78; 8:45 am]

[3510-25-M]

Foreign-Trade Zones Board

[Docket No. 8-78]

COUNTY OF SUFFOLK, N.Y.

Withdrawal of Foreign-Trade Zone Application

Notice is hereby given that the County of Suffolk, N.Y., has requested to withdraw its application for a foreign-trade zone in the town of Southampton, adjacent to the Suffolk County Airport. The application was filed with the Foreign-Trade Zones Board on June 2, 1978, and a public hearing was held for the Board in Riverhead, N.Y., on June 29, 1978. As a result of the public comments received on the proposal, the county is considering another location.

The request has been accepted by the Board's executive secretary and the proposal is closed.

Dated: November 16, 1978.

JOHN J. DAPONTE,
Executive Secretary,
Foreign-Trade Zones Board.

[FR Doc. 78-32671 Filed 11-20-78; 8:45 am]

[3510-22-M]

National Oceanic and Atmospheric Administration

ISSUANCE OF PERMIT TO IMPORT MARINE MAMMALS AND ENDANGERED SPECIES

On September 21, 1978, notice was published in the FEDERAL REGISTER (43 FR 42776), that an application had been filed with the National Marine Fisheries Service by Dr. William W. Dawson, professor of ophthalmology, Department of Ophthalmology, J. Hillis Miller Health Center, Box J-284, University of Florida, Gainesville, Fla., 32610, for a permit to import specimen materials from the Windward Islands for the purpose of scientific research.

Notice is hereby given that on November 14, 1978, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the National Marine Fisheries Service issued a permit to Dr. William W. Dawson, for the above taking subject to certain conditions set forth therein.

Issuance of this permit, as required by the Endangered Species Act of 1973, is based on a finding that such permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of the Permit; and (3) will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973.

This permit was also issued in accordance with, and is subject to, Parts 220 and 222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits (39 FR 41367, November 27, 1974).

The permit is available for review in the following offices: Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.; and Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, Duval Building, St. Petersburg, Fla. 33702.

Dated: November 14, 1978.

WINFRED H. MEIBOHM,
Associate Director, National
Marine Fisheries Service.

[FR Doc. 78-32650 Filed 11-20-78; 8:45 am]

[3510-22-M]

ISSUANCE OF PERMIT TO TAKE MARINE MAMMALS

On October 4, 1978, notice was published in the FEDERAL REGISTER (43 FR 45912), that an application had been filed with the National Marine Fisheries Service by Dolfirodam B.V., Bebouw de Hoofdpoort, Blaak 101, 3011 GB Rotterdam, Netherlands, for a public display permit to take two (2) Atlantic bottlenose dolphins (*Tursiops truncatus*) for public display.

Notice is hereby given that on November 9, 1978, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), that National Marine Fisheries Service issued a public display permit for the above taking to Dolfirodam B.V., subject to certain conditions set forth therein. The permit is available for review in the following offices: Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.; and Regional Director, National Marine Fisheries Service, Southeast Region, Duval Building, 9450 Koger Boulevard, St. Petersburg, Fla. 33702.

Dated: November 9, 1978.

WINFRED H. MEIBOHM,
Associate Director, National
Marine Fisheries Service

[FR Doc. 78-32649 Filed 11-20-78; 8:45 am]

[3510-22-M]

PACIFIC FISHERY MANAGEMENT COUNCIL'S GROUNDFISH ADVISORY SUBPANEL AND PLAN DEVELOPMENT TEAM

Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

ACTION: Notice of public meeting.

SUMMARY: The Groundfish Advisory Subpanel and Plan Development Team of the Pacific Fishery Management Council established under section 302(a) of the Fishery Conservation and Management Act (Pub. L. 94-265) will meet to discuss the second draft of the Groundfish Fishery Management Plan.

DATES: The meeting will convene on Tuesday, December 5, 1978, at 1 p.m. and on Wednesday, December 6, 1978, at 8 a.m. adjourning at approximately 5 p.m. on both days.

ADDRESS: The meeting will take place at the Portland Hilton Hotel located at 921 Southwest 6th Avenue, Portland, Oreg.

FOR FURTHER INFORMATION CONTACT:

Mr. Lorry M. Nakatsu, Executive Director, Pacific Fishery Management Council, 526 Southwest Mill Street, Second Floor, Portland, Oreg. 97201, telephone 503-221-6352.

Dated: November 16, 1978.

WINFRED H. MEIBOHM,
Associate Director, National
Marine Fisheries Service.

[FR Doc. 78-32673 Filed 11-20-78; 8:45 am]

[3510-22-M]

WESTERN PACIFIC REGIONAL FISHERY MANAGEMENT COUNCIL

Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Regional Fishery Management Council, established by section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), will hold its 14th regular meeting, to discuss the status of fishery management planning for the precious coral, spiny lobster, billfish, bottomfish, and seamount groundfish fisheries, and other Council business.

DATES: The meeting will convene on Thursday, December 7, 1978, at 9 a.m. and adjourn on Friday, December 8, 1978, at approximately 5 p.m. The meeting is open to the public.

ADDRESS: The meeting will take place in the Senate Conference Room 6, 2d Floor, Hawaii State Capitol Building, Honolulu, Hawaii.

FOR FURTHER INFORMATION CONTACT:

Wilvan G. Van Campen, Executive Director, Western Pacific Fishery Management Council, Room 1608, 1164 Bishop Street, Honolulu, Hawaii 96813, telephone 808-523-1368.

SUPPLEMENTARY INFORMATION: For information on seating arrangements, changes to the agenda, and/or written comments, contact the Executive Directive.

Dated: November 16, 1978.

WINFRED H. MEIBOHM,
Associate Director, National
Marine Fisheries Service.

[FR Doc. 78-32674 Filed 11-20-78; 8:45 am]

[3510-25-M]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

CERTAIN COTTON TEXTILE PRODUCTS FROM INDIA

Amending Import Restraint Levels

NOVEMBER 17, 1978.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Establishing specific ceilings for, and applying flexibility and carryforward to, certain cotton apparel products in categories 336, 338/339/340, 341, and 347/348 under the terms of an amendment to the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of December 30, 1977, as previously amended, between the Governments of the United States and India.

(A detailed description of the categories in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on January 4, 1978 (43 FR 884), as amended on January 25, 1978 (43 FR 3421), March 3, 1978 (43 FR 8828), June 22, 1978 (43 FR 26773), and September 5, 1978 (43 FR 39408)).

SUMMARY: The Governments of the United States and India exchanged letters dated November 13, 1978, further amending the bilateral agreement to establish specific ceilings for cotton textile apparel products in categories 336, 338/339/340, 341, and 347/348 during the agreement year which began on January 1, 1978. The amendment also establishes designated percentages for growth, flexibility, carryover, and carryforward applicable to these categories. The effect has been to increase the levels of restraint for categories 336, 341, and 347/348 and reduce the level for category 338/339/340.

EFFECTIVE DATE: November 22, 1978.

FOR FURTHER INFORMATION CONTACT:

Donald R. Foote, International Trade Specialist, Office of Textiles, U.S. Department of Commerce, Washington, D.C. 20230, 202-377-5423.

SUPPLEMENTARY INFORMATION: On June 5, 1978, there was published in the FEDERAL REGISTER (43 FR 24351) a letter dated May 31, 1978, from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, establishing levels of restraint for certain cotton textile products in categories 336, 338/339/340, 341, and 347/348, produced or manufactured in India and exported to the United States during the 12-month period which began on January 1, 1978. In the letter published below the Commissioner of Customs is directed by the Chairman of the Committee for the Implementation of Textile Agreements, in accordance with the provisions of the bilateral agreement, as further amended, to increase the 12-month levels of restraint previously established for categories 336, 341, and 347/348, and reduce the level for category 338/339/340 to the designated amounts for the 12-month period which began on January 1, 1978 and extends through December 31, 1978. The levels include the application of flexibility and carryforward.

ROBERT E. SHEPHERD,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Domestic Business Development.

NOVEMBER 17, 1978.

COMMISSIONER OF CUSTOMS,
Department of the Treasury
Washington, D.C.

DEAR MR. COMMISSIONER: This directive amends, but does not cancel, the directive issued to you on May 31, 1978, by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton textile products, produced or manufactured in India.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 30, 1977, as amended, between the Governments of the United States and India; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to amend, effective on November 22, 1978, the 12-month levels of restraint established in the directive of May 31, 1978, for categories 336, 338/339/340, 341, and 347/348 to the following:

Category	Amended 12-mo level of restraint[1]
336	190,054 doz.
338/339/340	896,066 doz.
341	2,193,208 doz.
347/348	118,886 doz.

[1] The levels of restraint have not been adjusted to reflect any imports after Dec. 31, 1977.

The action taken with respect to the Government of India and with respect to imports of cotton textile products from India have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

ROBERT E. SHEPHERD,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Domestic Business Development.

FEDERAL ENERGY REGULATORY COMMISSION

[6740-02-M]

[Docket No. RP76-15]

ALGONQUIN GAS TRANSMISSION CO.

Filing Amended Cost of Service Report Under Purchased Feedstock Adjustment Clause Provisions of Rate Schedule SNG-1

NOVEMBER 7, 1978.

Take notice that on October 26, 1978, Algonquin Gas Transmission Co. (Algonquin) filed with the Commission an amended cost of service report for the 12 months ended September 30, 1978, under Algonquin's purchased feedstock adjustment clause contained in rate schedule SNG-1.

Algonquin states that the amendment substitutes actual data for the estimated figures for the months of August and September contained in its September 15, 1978, cost of service report.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 15, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

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Any person wishing to become a party must file a petition to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32657 Filed 11-20-78; 8:45 am]

[6740-02-M]

[Docket Nos. EL78-40, EL78-42, and ER79-22]

GEORGIA POWER CO.

Order Accepting Joint Motion To Defer Commission Action and Amending Effective Date

NOVEMBER 9, 1978.

On August 30, 1978, Municipal Electric Authority of Georgia (MEAG) tendered for filing a complaint and motion for summary disposition and rejection of illegal practice and order directing immediate refund (complaint) against the Georgia Power Co. (GPC).[1] On September 11, 1978, Oglethorpe Electric Membership Corp. (OEMC) tendered for filing a virtually identical complaint.[2] Notice of MEAG's filing was issued on September 19, 1978, with all protests or petitions to intervene due on or before October 16, 1978, and of OEMC's filing on September 28, 1978, with all protests or petitions to intervene due on or before October 25, 1978. The city of Dalton, Ga. (Dalton) filed a petition to intervene in both proceedings.[3]

MEAG, OEMC, and Dalton are partial requirements customers of GPC. On December 30, 1977, GPC submitted a proposed rate change.[4] In its February 28, 1978, order, the Commission accepted GPC's filing and suspended the rates for 4 months. The rates became effective as of July 1, 1978, subject to refund. On August 25, 1978, MEAG and OEMC received actual bills for the July 1978 billing period in which variable operation and maintenance (variable O. & M.) expenses were included in the energy charge for partial requirements service; MEAG and OEMC state that they paid this bill under protest. The customers contend that this inclusion of variable O. & M. expenses within the energy charge fails to comport with GPC's filed rate, constituting a per se violation of the filed rate doctrine and the Federal Power Act.[5] MEAG and OEMC request that the Commission summarily reject this billing practice and order GPC to refund, with interest, all revenues recovered as a result of this change.

On October 10, 1978, GPC filed an answer to MEAG's complaint.[6] In its response, GPC states that, under its previous rates, the company recovered its variable O. & M. expenses under that rates' demand charge but, in designing the tariff currently in effect, GPC proposed to collect only fixed O. & M. expenses under demand charge and to collect variable O. & M. expenses through its energy charge. GPC maintains that an analysis of the company's filing makes clear this intention and that its energy billing practice does not violate its filed rate.

Accompanying this response, GPC tendered for filing a revision to its December 30, 1977, filing.[7] The proposed revision would add a definition of energy cost which encompasses "all variable costs associated with the generation of electric energy, including fuel costs and variable operation and maintenance costs." GPC requests waiver of the Commission's filing requirements to the extent they are not already satisfied and notice requirements to permit the revision to become effective as of July 1, 1978.[8]

On November 6, 1978, GPC, MEAG, OEMC, and Dalton filed a joint motion to defer Commission action in docket No. ER79-22. Simultaneously, GPC filed an amendment to its pleading of October 10, 1978, in docket Nos. EL78-40 and ER79-22.

The joint motion states that GPC, MEAG, OEMC, and Dalton are engaged in serious settlement negotiations with respect to the proposed rate increase which, if successful, would dispose of all contested issues in docket Nos. ER78-166, EL78-40, EL78-42, and ER79-22. Furthermore, the motion indicates that Commission action on the variable O. & M. issue before a settlement is realized "would almost certainly destroy the settlement." The parties request that "the Commission issue an order in this docket on or before November 9, taking no affirmative action but preserving the status quo until November 22, 1978, or until a settlement agreement is filed in this docket whichever first occurs."

In addition to voicing those concerns set forth in the motion, the amendment filed by GPC states that "to remove any notion that the Commission may be compelled to act on * * * (the October 10, 1978) filing within 30 days to preserve its prerogative under section 205(e) of the Federal Power Act, the company hereby amends its October 10, 1978, filing to request an indeterminate effective date for Third Revised Sheet No. 11, rather than a July 1, 1978, effective date." Further, the amendment states that in the event a settlement is not reached, it is the intent of the parties that the Commission will take the same action on November 22, 1978, as it would have taken on or before November 9, 1978.

In the interest of encouraging the settlement of the issues in this case, we shall grant the parties' motion and GPC's submittal of October 10, 1978, shall be amended. We shall defer the assignment of an effective date[9] in docket No. ER79-22 per Section 35.3 of our rules and regulations until such time as (1) the parties notify the Commission that they are incapable of reaching a settlement and will proceed to hearing, currently set for November 28, 1978, (2) the Commission takes final action on a proposed settlement agreement, or (3) GPC gives notice to the Commission of a specific requested effective date, whichever occurs first. At such time the Commission may, if it so chooses, exercise its full statutory authority, including those powers provided under section 205(e) of the Federal Power Act.

The Commission orders:

(A) The joint motion to defer Commission action is hereby granted.

(B) Georgia Power Co.'s submittal of October 10, 1978, in docket No. ER79-22 is hereby amended. The assignment of an effective date shall be deferred until the parties notify the Commission that they are incapable of reaching a settlement and will proceed to hearing or the Commission takes final action on a proposed settlement agreement in docket Nos. ER78-166, ER79-22, EL78-40, and EL78-42, whichever occurs first.

(C) Waiver of section 35.3 of the Commission's regulations is hereby granted.

(D) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32658 Filed 11-20-78; 8:45 am]

[1] Docket No. EL78-40.

[2] Docket No. EL78-42.

[3] Dalton's petition to intervene was filed on September 29, 1978, in docket No. EL78-40 and on October 2, 1978, in docket No. EL78-42. In support of its petition, Dalton claims it has a direct and substantial interest which will be affected by any action taken and will not be represented adequately by any other party. In addition, October 11, 1978, OEMC filed a petition to intervene in docket No. EL78-40 and on October 24, 1978, MEAG filed a petition to intervene in docket No. EL78-42. On October 16, 1978, OEMC filed a motion to consolidate for decision. On October 17, 1978, GPC filed an answer to this motion, supporting consolidation of docket Nos. EL78-40 and EL78-42.

[4] Docket No. ER78-166.

[5] The complaints state that the provisions of GPC's energy charge in the currently effective rate is virtually identical to those contained in the superseded rate's energy charge which was designed to recover actually incurred full costs only. Furthermore, GPC applied the previous energy charge for approximately 23 months without attempting to include any variable O. & M. expenses in it.

[6] GPC has not filed an answer to OEMC's complaint.

[7] This submittal was assigned docket No. ER79-22.

[8] On October 25, 1978, MEAG submitted a reply to GPC's answer. On October 20, 1978, Dalton filed a petition to intervene in docket No. ER79-22; on October 27, 1978, OEMC filed a petition to intervene and motion to reject; and on October 30, 1978, MEAG filed a petition to intervene and motion to reject and, in the alternative, complaint, protest, and request for a suspension of rate schedule and hearing.

[9] See order issued May 30, 1978, in docket No. ER78-304, in which the Commission deferred the assignment of an effective date for rates proposed by Boston Edison Co.

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[6740-02-M]

[Docket No. RI78-86]

KAMLOK, INC.

Amended Petition for Special Relief

NOVEMBER 13, 1978.

Take notice that on October 23, 1978, Kamlok, Inc. (Kamlok), P.O. Box 40262, Houston, Tex. 77740, filed an amended petition for special relief in docket No. RI78-86. On August 16, 1978, Kamlok filed its original petition for special relief pursuant to section 2.76 of the Commission's general policy and interpretations and also filed an application for a small producer certificate of public convenience and necessity pursuant to section 157.40 of the Commission's regulations.

In its original petition, which was noticed September 26, 1978 (43 FR 45457), Kamlok sought a rate of 223.62¢ per Mcf at 14.73 psia for the sale of gas from its Adams and Haggerty No. 2 and No. 6 wells located in Big Hill field, Jefferson County, Tex. The amended petition requests authorization to charge a reduced rate of 119.89¢ per Mcf at 14.65 psia for the first year of operation of the above wells and 176.09¢ per Mcf at 14.65 psia for the second year. The amended petition covers all working interest owners.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before November 22, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32660 Filed 11-20-78; 8:45 am]

[6740-02-M]

[Docket No. RI78-59]

GIBSON DRILLING CO.

Amended Petition for Special Relief

NOVEMBER 13, 1978.

Take notice that on May 1, 1978, Gibson Drilling Co. (Petitioner), P.O. Drawer 1540, Kilgore, Tex. filed a petition for special relief in docket No. RI78-59 pursuant to section 2.76 of the Commission's general policy and interpretations (18 CFR § 2.76) for the sale of natural gas from W. M. Tate 699.36Ac. Gas unit, Penn-Griffith (Pettit) field, Rusk County, Tex. to Natural Gas Pipe Line Co. of America.

Take further notice that on October 12, 1978, Petitioner filed an amendment to his petition in order to request authorization to charge $1.3205 per Mcf rather than $1.75 per Mcf as first requested. Petitioner now asserts that the necessary expenditures for remedial work, two stage compression and pumping equipment warrant the requested rate of $1.3205 per Mcf.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before November 22, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determine the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc 78-32659 Filed 11-20-78; 8:45 am]

[6740-02-M]

LANDS WITHDRAWN IN PROJECT NOS. 1925 AND 1988—CALIFORNIA

Order Partially Vacating Land Withdrawal

Dated: November 14, 1978.

Application has been filed by the Forest Service, U.S. Department of Agriculture, for the vacation of the land withdrawal for project No. 1925 insofar as it pertains to the following described lands, thereby requiring Federal Energy Regulatory Commission [1] consideration under section 24 of the Federal Power Act:

MOUNT DIABLO MERIDIAN, CALIFORNIA

T. 10 S., R. 27 E.,
Sec. 36, NE¼SW¼, S½SW¼.
(Approximately 120 acres.)

Vacation of the withdrawal will enable enlargement of the Wishon Village Resort, a commercial recreation development operating under a Forest Service special use permit.

The lands lie near Wishon Reservoir on the North Fork Kings River, and are withdrawn pursuant to the filing on February 2, 1945, by the Fresno Irrigation District, of an application for preliminary permit for project No. 1925. Notice of the withdrawal for project No. 1925 was given to the General Land Office (now Bureau of Land Management) by Federal Power Commission letter dated March 1, 1945.

The applicant for project No. 1925 contemplated use of the lands in connection with the Wishon site; however, the application for project No. 1925 was denied insofar as it pertained to North Fork Kings River developments, by Federal Power Commission opinion No. 183, issued November 10, 1949 (8 FPC 348).

The Wishon site was subsequently developed by the Pacific Gas & Electric Co. as part of licensed project No. 1988 (Kings River Project). Approximately 2.44 acres within the S½SW¼ of sec. 36 are withdrawn for project No. 1988 pursuant to the filing on May 17, 1972, of an application for approval of revised exhibits for the project, as shown on revised map exhibit K-4 (FPC No. 1988-60) approved by FPC order issued April 23, 1975. These lands are occupied by access roads, and water supply facilities for the lake tender's cabin. The withdrawal for project No. 1925 is being retained as to said 2.44 acres because a formal notice of land withdrawal has not been issued for this part of project No. 1988.

There are no known plans for further use of the lands for hydroelectric development. The lands are not in-

[1] Authority to act on this matter is delegated to the Director, Office of Electric Power Regulation, under section 3.5(g) of the Commission's regulations, 18 CFR 3.5(g) (as amended Aug. 14, 1978).

cluded in the Pacific Gas & Electric Co.'s Helms Creek Pumped Storage Project (licensed project No. 2735 now under construction) which will utilize Wishon Reservoir as the lower pool.

The Geological Survey has recommended that the withdrawal for project No. 1925 be revoked insofar as it pertains to the subject lands.

It is ordered that: 1. The land withdrawal for project No. 1925 is hereby vacated insofar as it pertains to the NE¼SW¼ of sec. 36, T. 10 S., R. 27 E., M.D.M., and that part of the S½SW¼ of sec. 36, T. 10 S., R. 27 E., M.D.M., lying outside the boundary of project No. 1988 as shown on revised map exhibit K-4 (FPC No. 1988-60) (approximately 117.56 acres).

2. The application is denied insofar as it pertains to the aforesaid lands occupied by project No. 1988 (approximately 2.44 acres).

WILLIAM W. LINDSAY,
Director, Office of Electric Power Regulation.

[FR Doc. 78-32666 Filed 11-20-78; 8:45 am]

[6740-02-M]

[Project No. 2862]

LINCOLN ELECTRIC COOPERATIVE INC.

Application for a Preliminary Permit

NOVEMBER 13, 1978.

Public notice is hereby given that Lincoln Electric Cooperative, Inc. ("Applicant") filed an application on August 2, 1978 under the Federal Power Act (16 U.S.C. sections 791(a)-825(r) for a preliminary permit for its Barstow Project, FERC project No. 2862. The Bartow Project would be located in Ferry and Stevens Counties, Wash., on the Kettle River. Correspondence regarding this application should be sent to Mr. Boyd Ressel, Manager, Lincoln Electric Cooperative, Inc., P.O. Box 289, Davenport, Wash. 99122.

The proposed project would consist of a concrete gated spillway dam approximately 100 feet high and 400 feet long, impounding a reservoir of negligible storage with its surface elevation at 1,384 feet. The powerhouse, containing two 7,500 kW generating units, would be constructed as an integral part of the dam. The power would be used by the Applicant to serve its present and future users. Applicant states that the power is necessary to provide service to its customers, as it has received a notice of insufficiency and possible curtailment from the Bonneville Power Administration effective by 1983.

A preliminary permit does not authorize any construction. A permit, if issued, gives the permittee during the period of the permit the right of priority of application for license while the permittee undertakes the necessary studies and examinations to determine the engineering and economic feasibility of the proposed project, the market for the power, and all other necessary information for inclusion in an application for a license. In this instance, Applicant seeks a 36-month permit.

Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's rules of practice and procedure, 18 CFR § 1.8 or § 1.10 (1977). In determining the appropriate action to take, the Commission will consider all protests filed, but a person who merely files a protest does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's rules. Any protest or petition to intervene must be filed on or before January 22, 1979. The Commission's address is: 825 North Capitol Street NE., Washington, D.C. 20426.

The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary

[FR Doc. 78-32661 Filed 11-20-78; 8:45 am]

[6740-02-M]

[Docket No. RP79-2]

MICHIGAN WISCONSIN PIPE LINE CO.

Tariff Filing

NOVEMBER 13, 1978.

Take notice that on October 2, 1978, Michigan Wisconsin Pipe Line Co tendered for filing First Revised Sheet No. 667 under Rate Schedule X-64 to its F.P.C. Gas Tariff, First Revised Volume No. 2 to be effective November 1, 1978.

Michigan Wisconsin states that this filing is made to reflect the redetermination of the monthly charge in accordance with a service agreement between Michigan Wisconsin and High Island Offshore System dated August 4, 1977, and authorized by Commission order issued July 6, 1978 at docket No. CP78-134.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 27, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32662 Filed 11-20-78; 8:45 am]

[6740-02-M]

[Docket No. ER78-44]

NEW ENGLAND POWER CO.

Intent to Act

NOVEMBER 13, 1978.

On September 19, 1978, the New England Power Co. ("NEPCO") tendered for filing an unexecuted power contract between NEPCO and the town of Hudson, Mass. ("Hudson"). On October 12, 1978, Hudson filed a protest and petition to reject NEPCO's compliance filing.

Pursuant to § 1.12(e) of the Commission's rules of practice and procedure, the Hudson motion would be deemed denied on November 11, 1978, unless the Commission acts before that time. In order to allow sufficient time for due consideration of the merits of the parties' motions, the Commission has determined that § 1.12(e) of the rules should be tolled and notice given of the Commission's intention to act on these motions. Notice is hereby given that the Commission will act on the issues raised by these pleadings, and that the Commisson by the issuance of this notice is tolling the operation of § 1.12(e) of its rules.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32663 Filed 11-20-78; 8:45 am]

[6740-02-M]

[Docket No. RP78-36]

SOUTHERN NATURAL GAS CO.

Settlement Conference

NOVEMBER 13, 1978.

Take notice that on November 17, 1978, at 10 a.m. an informal conference of all interested persons will be convened with a view toward resolving remaining issues in this proceeding including depreciation, working capital, rate design, cost allocation and rate zone issues. The conference will be held at a meeting room of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C.

Customers and other interested persons will be permitted to attend, but if such persons have not previously been permitted to intervene by order of the Commission, attendance will not be deemed to authorize intervention as a party in this proceeding.

All parties will be expected to come fully prepared to discuss the merits of the remaining issues arising in this proceeding and to make commitments with respect to such issues and any offers of settlement or stipulations discussed at the conference.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32664 Filed 11-20-78; 8:45 am]

[6740-02-M]

STATE REGULATORS ON IMPLEMENTATION OF THE NGPA

Public Conference

AGENCY: Federal Energy Regulatory Commission.

ACTION: Public conference for State regulators on implementation of the NGPA.

SUMMARY: Conference is open to the public but participation is limited to FERC and State officials.

DATE: November 28, 1978.

TIME: 9:30 a.m. to 4:30 p.m.

LOCATION: U.S. Department of Energy, Forrestal Building, Room 6E-086, 1000 Independence Avenue SW., Washington.

FOR FURTHER INFORMATION CONTACT:

Joyce Morrison, Federal Energy Regulatory Commission, Office of Public Information, 202-275-4006.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32667 Filed 11-20-78; 8:45 am]

[6740-02-M]

[Docket No. RA79-3]

TEXACO INC.

Extension of Time

NOVEMBER 13, 1978.

On October 31, 1978, Texaco Inc. filed a telegram requesting an extension of time to file a petition for review of the decision and order issued by the Department of Energy's Office of Hearings and Appeals on October 4, 1978 (Case Numbers DEE-1384-1388). Texaco states that the additional time is needed due to reorganization and consolidation in Houston of Texaco's total marketing operations during the month of October.

Upon consideration, notice is hereby given that Texaco is granted an extension of time to and including December 4, 1978, for the filing of its petition for review of the DOE decision.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-32665 Filed 11-20-78; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[OPP-50392; FRL 1010—7]

ABBOTT LABORATORIES ET AL.

Issuance of Experimental Use Permits

The Environmental Protection Agency (EPA) has issued experimental use permits to the following applicants. Such permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

No. 275-EUP-9. Abbott Laboratories, North Chicago, Ill. 60064. This experimental use permit allows the use of the remaining supply of approximately 3,000 pounds of 5-chloro-3-methyl-4-nitro-1H-pyrazole as a plant regulator on oranges; this use was authorized in a previous experimental use permit. The program is authorized only in the States of Arizona, California, Florida, and Texas. The experimental use permit is effective from October 5, 1978, to October 5, 1979. A temporary tolerance for residues of the active ingredient in or on oranges has been established. (PM-25, Room: E-359, telephone: 202-755-2196.)

No. 8399-EUP-3. Great Western Sugar Co., Longmont, Colo. 80501. This experimental use permit allows the use of 42 pounds of the growth regulator propylene on 20,000 tons of harvested sugar beet roots to evaluate sucrose loss from sugar beet storage piles. The program is authorized only in the States of Colorado, Kansas, Montana, Nebraska, and Wyoming. The experimental use permit is effective from October 20, 1978, to October 20, 1979. A temporary exemption from tolerance for residues of the active ingredient in or on sugar beets has been established. (PM-25, Room: E-301, telephone: 202-755-2196.)

No. 432-EUP-35. Penick Corp., Orange, N.J. 07050. This experimental use permit allows the use of 6 pounds of the insecticide permethrin in 135 indoor domestic dwellings to evaluate control of German cockroaches. The program is authorized only in the States of Indiana, New York, and North Carolina. The experimental use permit is effective from October 20, 1978, to October 20, 1979. (PM-17, Room E-229, telephone: 202-426-9425.)

Interested parties wishing to review the experimental use permits are referred to the designated Product Manager (PM), Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street SW., Washington, D.C. 20460. The descriptive paragraph for each permit contains a telephone number and room number for information purposes. It is suggested that interested persons call before visiting the EPA Headquarters Office, so that the appropriate permit may be made conveniently available for review purposes. The files will be available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday.

(Sec. 5 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; (7 U.S.C. 136(a) et seq.).)

Dated: November 14, 1978.

DOUGLAS D. CAMPT,
Acting Director, Registration Division.

[FR Doc. 78-32603 Filed 11-20-78; 8:45 am]

[6560-01-M]

[OPP-30000/28A; FRL 1010—6]

PESTICIDE PROGRAMS: REBUTTABLE PRESUMPTION AGAINST REGISTRATION AND CONTINUED REGISTRATION OF CERTAIN PESTICIDE PRODUCTS CONTAINING COAL TAR, CREOSOTE, AND COAL TAR NEUTRAL OILS

Extension of Period for Submission of Rebuttal Evidence and Comments

On September 30, 1978, the Environmental Protection Agency (EPA) issued a notice of presumption against registration and continued registration of pesticide products containing the ingredients coal tar, creosote, and coal tar neutral oils. This notice was published in the FEDERAL REGISTER on October 18, 1978 (43 FR 48154). The regulations governing rebuttable presumptions provide that the applicant or registrant of such pesticide products shall have forty-five (45) days from the date such notice is sent to submit evidence in rebuttal of the presumption. However, for good cause shown, an additional sixty (60) days may be granted in which such evidence may be submitted (40 CFR 162.11(a)(1)(i)).

A request for an additional 60 days in which to present evidence to the Agency has been received from a law firm representing many of the registrants who were affected by the notice of presumption. These registrants have specified a need for additional time to collect, review, collate, and assemble necessary data and other information in order adequately to rebut and respond to this notice.

The Agency agrees that additional time would be beneficial for the submission of complete and accurate responses to this notice of presumption. Because certified copies of the rebuttable presumption against registration were not available to be mailed to registrants and applicants until October

30, 1978, EPA further decided that the extension of the comment period will reflect that mailing date, rather than the publication date of the FEDERAL REGISTER notice. Therefore, because good cause has been shown for an extension of time by those wishing to respond to the notice of presumption, all registrants, applicants for registration, and other interested persons shall have until February 12, 1979, to submit rebuttable evidence and other comments or information. Such evidence, comments, or other information relevant to the presumption against registration and continued registration should be submitted to the Federal Register Section, Program Support Division (TS-757), Office of Pesticide Programs, Environmental Protection Agency, Room 401, East Tower, 401 M Street SW., Washington, D.C. 20460. Copies of the comments should be submitted to facilitate the efforts of the Agency and of others interested in inspecting them. All comments should bear the identifying notation "OPP-30000/28A." Comments and information received on or before February 12, 1979, shall be considered before it is determined whether a notice shall be issued in accordance with 40 CFR 162.11(a)(5)(ii) and 7 U.S.C. 136(a)(c)(6) or 7 U.S.C. 136(d)(6)(1). Comments received after February 12, 1979, shall be considered only to the extent feasible consistent with the time limits imposed by 40 CFR 162.11(a)(5)(ii). All written comments filed pursuant to this notice will be available for public inspection in the office of the Federal Register Section at the above address from 8:30 a.m. to 4 p.m. on normal business days. The file supporting the Agency's presumption against this pesticide is available for public inspection in the office of the Special Pesticide Review Division, Room 447, East Tower, during the same period.

Dated: November 13, 1978.

JAMES M. CONLON,
Acting Deputy Assistant Administrator
for Pesticide Programs.

[FR Doc. 78-32599 Filed 11-20-78; 8:45 am]

[6560-01-M]

[OPP-30000/30A; FRL 1010—4]

PESTICIDE PROGRAMS: REBUTTABLE PRESUMPTION AGAINST REGISTRATION AND CONTINUED REGISTRATION OF CERTAIN PESTICIDE PRODUCTS CONTAINING PENTACHLOROPHENOL

Extension of Period for Submission of Rebuttal Evidence and Comments

On September 30, 1978, the Environmental Protection Agency (EPA) issued a notice of presumption against registration and continued registration of pesticide products containing the ingredient pentachlorophenol. This notice was published in the FEDERAL REGISTER on October 18, 1978 (43 FR 48443). The regulations governing rebuttable presumptions provide that the applicant or registrant of such pesticide products shall have forty-five (45) days from the date such notice is sent to submit evidence in rebuttal of the presumption. However, for good cause shown, and additional sixty (60) days may be granted in which such evidence may be submitted (40 CFR 162.11(a)(1)(i).

A request for an additional 60 days in which to present evidence to the Agency has been received from a law firm representing many of the registrants who were affected by the notice of presumption. These registrants have specified a need for additional time to collect, review, collate, and assemble necessary data and other information in order adequately to rebut and respond to this notice.

The Agency agrees that additional time would be beneficial for the submission of complete and accurate responses to this notice of presumption. Because certified copies of the rebuttable presumption against registration were not available to be mailed to registrants and applicants until October 30, 1978, EPA further decided that the extension of the comment period will reflect that mailing date, rather than the publication date of the FEDERAL REGISTER notice. Therefore, because good cause has been shown for an extension of time by those wishing to respond to the notice of presumption, all registrants, applicants for registration, and other interested persons shall have until February 12, 1979, to submit rebuttal evidence and other comments or information. Such evidence, comments, or other information relevant to the presumption against registration and continued registration should be submitted to the Federal Register Section, Program Support Division (TS-757), Office of Pesticide Programs, Environmental Protection Agency, Room 401, East Tower, 401 M Street SW., Washington, D.C. 20460. Copies of the comments should be submitted to facilitate the efforts of the Agency and of others interested in inspecting them. All comments should bear the identifying notation "OPP-30000/30A." Comments and information received on or before February 12, 1979 shall be considered before it is determined whether a notice shall be issued in accordance with 40 CFR 162.11(a)(5)(ii) and 7 U.S.C. 136(a)(c)(6) or 7 U.S.C. 136(d)(b)(1). Comments received after February 12, 1979, shall be considered only to the extent feasible consistent with the time limits imposed by 40 CFR 162.11(a)(5)(ii). All written comments filed pursuant to this notice will be available for public inspection in the office of the Federal Register Section at the above address from 8:30 a.m. to 4 p.m. on normal business days. The file supporting the Agency's presumption against this pesticide is available for public inspection in the office of the Special Pesticide Review Division, Room 447, East Tower, during the same time period.

Dated: November 13, 1978.

JAMES M. CONLON,
Acting Deputy Assistant Administrator
for Pesticide Programs.

[FR Doc. 78-32601 Filed 11-20-78; 8:45 am]

[6560-01-M]

[OPP-30000/29A; FRL 1010—5]

PESTICIDE PROGRAMS: REBUTTABLE PRESUMPTION AGAINST REGISTRATION AND CONTINUED REGISTRATION OF PESTICIDE PRODUCTS CONTAINING INORGANIC ARSENIC

Extension of Period for Submission of Rebuttal Evidence and Comments

On September 30, 1978, the Environmental Protection Agency (EPA) issued a notice of presumption against registration and continued registration of pesticide products containing the ingredient inorganic arsenic. This notice was published in the FEDERAL REGISTER on October 18, 1978 (43 FR 48267). The regulations governing rebuttable presumptions provide that the applicant or registrant of such pesticide products shall have forty-five (45) days from the date such notice is sent to submit evidence in rebuttal of the presumption. However, for good cause, an additional sixty (60) days may be granted in which such evidence may be submitted (40 CFR 162.11(a)(1)(i)).

A request for an additional 60 days in which to present evidence to the Agency has been received from a law firm representing many of the registrants who were affected by the notice of presumption. The requester has specified a need for additional time to collect and analyze data and other information in order to adequately rebut and respond to the notice.

The Agency agrees that additional time would be beneficial for the submission of complete and accurate responses to the notice of presumption. Because certified copies of the RPAR's were not available to be mailed to registrants and applicants until October 30, 1978, it has further been decided that the extension of the comment period will reflect that mailing date, rather than the publication date of the FEDERAL REGISTER notice. Therefore, because good cause has been shown, all registrants, applicants for registration, and other interested persons shall have until February 12, 1979, to submit rebuttal evidence and other comments or information. Such evidence, comments or other information relevant to the presumption against registration and continued registration should be submitted to the Federal Register Section, Program Support Division (TS-757), Office of Pesticide Programs, EPA, Room 401, East Tower, 401 M Street SW., Washington D.C. 20460. All comments should bear the identifying notation "OPP-30000/29A." Comments and information received on or before February 12, 1979, shall be considered before it is determined whether a notice shall be issued in accordance with 40 CFR 162.11(a)(5)(ii) and 7 U.S.C. 136(a)(c)(6) or 7 U.S.C. 136(d)(b)(1). Comments received after February 12, 1979, shall be considered only to the extent feasible consistent with the time limits imposed by 40 CFR 162.11(a)(5)(ii). All written comments filed pursuant to this notice will be available for public inspection in the Office of Federal Register Section at the above address from 8:30 a.m. to 4 p.m. Monday through Friday. The file supporting the Agency's presumption against this pesticide is available for public inspection in the Special Pesticide Review Division, Room 447, East Tower, EPA, during the same hours.

Dated: November 13, 1978.

JAMES M. CONLON,
Acting Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 78-32600 Filed 11-20-78; 8:45 am]

[6560-01-M]

[OPP-50393; FRL 1008—6]

ZOECON INDUSTRIES

Issuance of an Experimental Use Permit

The Environmental Protection Agency (EPA) has issued an experimental use permit to the following applicant. Such a permit is in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

No. 2724-EUP-14. Zoecon Industries, Dallas, Tex. 75234. This experimental use permit allows the use of 0.4 pound of the insecticide N-(mercaptomethyl) phthalimide S-(O,O-dimethyl phosphorodithioate) on 400 hogs to evaluate control of hog lice. The program is authorized only in the States of Arkansas, Indiana, Iowa, Kansas, Kentucky, Mississippi, Texas, and Virginia. The experimental use permit is effective from November 1, 1978 to November 1, 1979. A permanent tolerance for residues of the active ingredient in or on the fat, meat, and meat byproducts of hogs has been established (40 CFR 180.261). (PM-15, Room: E-229, telephone: 202-426-9425).

Interested parties wishing to review the experimental use permit are referred to the designated Product Manager (PM), Registration Division (TA-767), Office of Pesticide Programs, EPA, 401 M Street SW., Washington, D.C. 20460. The descriptive paragraph for the permit contains a telephone number and room number for information purposes. It is suggested that interested persons call before visiting the EPA Headquarters Office, so that the appropriate permit may be made conveniently available for review purposes. The files will be available for inspection from 8:30 a.m. to 4 p.m. Monday through Friday.

(Sec. 5, Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; (7 U.S.C. 136(a) et seq.).)

Dated: November 13, 1978.

HERBERT S. HARRISON,
Acting Director,
Registration Division.

[FR Doc. 78-32602 Filed 11-20-78; 8:45 am]

[6705-01-M]

FARM CREDIT ADMINISTRATION

IMPROVING GOVERNMENT REGULATIONS

Final Report

NOVEMBER 16, 1978.

AGENCY: Farm Credit Administration.

ACTION: Final report.

SUMMARY: This report describes the procedure which the Farm Credit Administration has developed for the adoption and review of its regulations as a result of Executive Order 12044. Executive Order 12044 prescribes policies and procedures for improving existing and future governmental regulations. The procedures described in this report are intended to assure that, among other things, the regulations issued by the Farm Credit Administration are needed, are written in understandable language, are effective, and are not unduly burdensome.

EFFECTIVE DATE: October 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Lee R. Brobst, Acting Deputy Governor, Office of Administration, Farm Credit Administration, 490 L'Enfant Plaza SW., Washington, D.C. 20578, 202-755-8927.

SUPPLEMENTARY INFORMATION: On May 22, 1978, the Farm Credit Administration published a draft report (43 FR 21904) which described a revised procedure for adopting and reviewing regulations then under consideration. The report reflected proposed changes in the agency's then existing procedure for adopting regulations as a result of Executive Order 12044 which deals with policies and procedure for improving existing and future regulations issued by governmental agencies. The Executive order establishes the policy that regulations should be as simple and clear as possible; should achieve legislative goals effectively and efficiently; and should not impose unnecessary burdens on the economy, on individuals, on public or private organizations, or on State and local governments. It provides for a reform of the development process for regulations. It requires (1) a semiannual agenda of regulations to be published in the FEDERAL REGISTER; (2) the agency head to be furnished a work plan; (3) an opportunity for public participation in the development of regulations; and (4) the agency head to make certain determinations before approving all significant regulations. The order also provides for a regulatory analysis in accordance with certain specified criteria and procedures and a periodic review of existing regulations.

DISCUSSION OF COMMENTS

Six comments were received on the draft report. All were favorable. Only one made a suggestion concerning the substance of the report. That comment suggested that some of the criteria for determining whether a proposed regulation is to be considered significant are too broad. The criteria questioned involve regulations which (1) directly or indirectly affect competition, (2) impact upon other governmental programs or activities, or (3) involve the issuance and redemption of Farm Credit banks' securities. A regulation affecting any of these areas can have a substantial impact upon various individuals and businesses. The Farm Credit Administration believes that the persons who may be affected by regulations in these areas are in the best position to evaluate their possible effect and should be given the fullest opportunity to participate in their development and review. Therefore, no change in the criteria for determining significant regulations has been made.

DESCRIPTION OF REGULATIONS

The regulations of the Farm Credit Administration may be divided into three groups:

Group 1 concerns the organization and management of the agency and is exempted form Executive Order 12044 by section 6(b)(3). Public comment on group 1 regulations is not required by the Adminstrative Procedure Act (5 U.S.C. 553(a)(2)) or sought prior to final adoption.

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Group 2 governs the banks and associations of the Farm Credit System. Comments from the Farm Credit banks are ordinarily sought prior to publication of suggested changes in these regulations as a proposed rule. In addition, public comment is obtained on proposed rules prior to their consideration for final adoption.

Group 3 concerns the release of information pursuant to the Freedom of Information Act and the Privacy Act. The procedure for adoption of regulations in this group is the same as that for group 2, except that proposed rules are not ordinarily submitted to the Farm Credit banks for comment prior to their publication for public comment. Comments from these institutions are not specifically requested because they are not subject to the Acts as is the Farm Credit Administration.

FINAL REPORT

The Farm Credit Administration is an independent agency in the Executive branch of the Government. Its function is to regulate, examime, and supervise the institutions of the Farm Credit System. The institution of the Farm Credit System are the 12 Federal land banks, 12 Federal intermediate credit banks, 13 banks for cooperatives, 514 Federal land bank associations, and 427 production credit associations. These banks and associations are member-owned, federally chartered lending institutions which operate under the Farm Credit Act of 1971. They provide financing and closely related services to American farmers and ranchers and their cooperatives.

The Farm Credit Administration is comprised of the Federal Farm Credit Board, the Governor of the Farm Credit Administration, and such other personnel as is necessary to carry out its statutory responsibilities. There are 13 members of the Federal Farm Credit Board; 12 are appointed by the President with the advice and consent of the Senate for staggered 6 year terms; one member is appointed by, and serves at the pleasure of, the Secretary of Agriculture. The Board is the general policy making body of the agency and approves rules and regulations for the implementation of the Farm Credit Act of 1971. The Governor is appointed by, and serves at the pleasure of, the Board and, as the chief executive officer of the agency, executes all regulations promulgated by the agency.

PROCEDURE FOR ADOPTING REGULATIONS

The regulations issued by the Farm Credit Administration may be divided into three groups.

Group 1 is published in 12 CFR parts 600 and 601. These regulations concern the organization and management of the agency and are exempt from Executive Order 12044 by section 6(b)(3). Public comment on them is not required under the Administrative Procedure Act, 5 U.S.C. 553(a)(2), or sought prior to their final adoption.

Group 2 is published in 12 CFR parts 611 through 619. These regulations govern the banks and associations of the Farm Credit System. They were issued primarily pursuant to the Farm Credit Act of 1971, 12 U.S.C. 2001 et seq. Under ordinary circumstances, suggested substantive changes to these regulations are presented to the Federal Farm Credit Board for its initial consideration. If the Board agrees that the proposed changes merit further consideration, the Farm Credit banks are requested to comment upon the proposals. Summaries of the comments received from the banks and a staff recommendation are presented to the Board, and with its concurrence, a proposed rule reflection the changes is published in the FEDERAL REGISTER for public comment. It is also forwarded directly to the Farm Credit banks. Not less than 30 days is allowed for comment from the public and the banks. For proposed rules which are considered to be significant, the comment period is 60 days. Summaries of the comments received as a consequence of this publication and a staff recommendation are presented to the Federal Board. If the Board approves the proposed regulation, with such changes as it deems advisable, the regulation is adopted and published as a final rule in the FEDERAL REGISTER.

The Governor may issue a proposed or a final rule reflecting a change required by a law other than the Farm Credit Act of 1971 without prior approval of the Board if time limitations imposed by such law make Board consideration impractical. In such cases, the action of the Governor is promptly reported to and ratified by the Board.

The Federal Board (or the Governor in appropriate cases) will address each of the points set out in section 2(d) of Executive Order 12044 prior to approving as a final rule any significant regulation. The material prepared by the staff for consideration of the Board or the Governor with respect to the proposal will contain sufficient information as to allow the Board or the Governor to determine that:

1. The proposed regulation is needed;
2. The direct or indirect effects of the regulation have been adequately considered;
3. Alternative approaches have been considered and the least burdensome of the acceptable alternatives chosen;
4. Comments received have been considered and an adequate response prepared;
5. The regulation is written in clear language so as to be readily understandable to those who must comply with it;
6. An estimate has been made of the new reporting burdens or recordkeeping requirements necessary for compliance with the regulation;
7. The name, address, and telephone number of a knowledgeable agency official is to be included in the public notice of the regulation; and
8. A plan for evaluating the regulation after its issuance has been developed.

Technical amendments to these regulations are ordinarily adopted without publishing the proposal for public comment. In such cases, the published notices of the amendments will state that the amendments are technical and not intended to alter the meaning of the regulation.

Changes in these regulations which are necessitated by an emergency or a statute of judicial decision containing short-term deadlines are exempted from Executive Order 12044 by section 6(b)(6). Therefore, changes may be made under these circumstances without following the procedure outlined above. Whenever the procedure is not followed, the Farm Credit Administration will publish a statement of the reason why it is impractical of contrary to the public interest for the agency to do so. This statement will include the name of the official in the agency responsible for this determination.

Group 3 is published in 13 CFR Parts 602 and 603. These regulations involve the release of information pursuant to the Freedom of Information Act and the Privacy Act. The procedure for making revisions in these regulations is the same as that described for group 2 above except that the proposed changes are not ordinarily submitted to the Farm Credit banks for comment prior to their publication in the FEDERAL REGISTER as a proposed rule.

SIGNIFICANT REGULATIONS

A proposed regulation is considered significant if it:

1. Authorizes Farm Credit institutions to engage in a new program or activity;
2. Imposes additional requirements having a substantial effect upon Farm Credit institutions and their activities;
3. Directly or indirectly affects competition;
4. Impacts upon other governmental programs or activities; or
5. Involves the issuance or redemption of bonds and other obligations of Farm Credit institutions.

The notice of proposed regulation will include a statement as to whether the regulation is considered significant under the above criteria.

REGULATORY ANALYSIS

A regulatory analysis will be made for each change in the regulations. The Federal Board and the Governor will consider the analysis in acting upon the proposed changes. The analysis will include the following:

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1. A discussion of the issue necessitating the development of the proposed regulation;
2. A description of the alternatives considered;
3. A recommendation as to which alternative should be pursued and the reasons therefor; and
4. A discussion of the advantages and disadvantages of the recommended approach.

Pursuant to section 3 of Executive Order 12044, for any proposed regulation covered by the order which may result in (a) an annual effect on the economy of $100 million or more, or (b) a major increase in cost or prices for individual industries, levels of government, or geographic regions, the regulatory analysis will also include an analysis of the economic consequences of each alternative considered by the agency and a detailed explanation of the reasons for choosing one alternative over the other. Such an additional analysis will also be made for any other proposed regulation when requested by the Governor or the Board. In these circumstances, the agency will include in its notice of the proposed rule an explanation of the regulatory approach selected and a short description of the alternatives considered. A statement as to how the public may obtain a copy of the draft regulatory analysis will be included in the notice. A final regulatory analysis will also be prepared and available to the public upon publication of the final regulation.

REVIEW OF REGULATIONS

The Farm Credit Administration will periodically review its existing regulations to determine whether they are achieving their purpose and the policy goals of the Executive order. The review will follow the same procedural steps outlined for the development of new regulations. In selecting regulations to be reviewed, the following criteria will be use:

(a) The continued need for the regulation;
(b) The type and number of complaints or suggestions received;
(c) The burdens imposed on those directly or indirectly affected by the regulation;
(d) The need to simplify or clarify language;
(e) The need to eliminate overlapping and duplicative regulations;
(f) The length of time since the regulation has been evaluated; and
(g) Any changes in economic conditions or other factors in the area affected by the regulation.

SEMIANNUAL AGENDA

Beginning with fiscal year 1979, the Farm Credit Administration will establish semiannually an agenda of singificant regulations which it has under development or review. Such agenda will be approved by the Governor and published in the FEDERAL REGISTER. Each agenda will describe the regulations under consideration, the need and legal basis for the action being proposed, and the status of the regulations previously listed on the agency agenda. The name and telephone number of a knowledgeable official will be listed for each item on the agenda, and if possible, a statement of whether a regulatory analysis of the type described in the Executive order will be prepared with respect to the item. On the first Monday in October, the Farm Credit Administration will publish in the FEDERAL REGISTER the dates on which the agency's agenda for the coming fiscal year will be published.

In accordance with the President's memorandum of March 23, 1978, to the heads of executive departments and agencies, the Farm Credit Administration will develop a specific plan for consultation with State and local governments in the development of any regulation included in its agenda upon receipt of notification that a national organization representing general purpose State and local governments believes that the regulations would have major intergovernmental significance. Such consultation will be carried out in accordance with the Federal Advisory Committee Act.

The agenda of significant regulations which the Farm Credit Administration will have under development and review during the period of November 1, 1978, through March 28, 1979, appears in the FEDERAL REGISTER for October 31, 1978, 43 FR 50735, and includes the current status of regulations which the Farm Credit Administration selected for its initial review.

DONALD E. WILKINSON,
Governor.

[FR Doc. 78-32639 Filed 11-20-78; 8:45 am]

[6712-01-M]

FEDERAL COMMUNICATIONS COMMISSION

SGB BROADCASTING, INC.

FM Broadcast Application Ready and Available for Processing

Adopted: November 15, 1978.

Released: November 16, 1978.

By the Chief, Broadcast Facilities Division.

Cut-off Date: January 15, 1979.

Notice is hereby given that the FM broadcast application listed below will be considered as ready and available for processing on January 16, 1979. Since the listed application is timely filed and mutually exclusive with the earlier-filed and cut-off application of KOOS Radio, Inc. (File No. BPH-10, 735), no other applications which involve conflict with these applications may be filed. Rather, the purpose of this Notice is to establish a date by which the parties to the forthcoming comparative hearing may compute the deadlines for filing amendments as a matter of right under § 1.522(a)(2) of the Rules and pleadings to specify issues pursuant to § 1.584.

BPH-10, 916 (new), Coos Bay, Oreg., SGB Broadcasting, Inc., Req: 105.5 MHz, No. 288; 3.0 kW; 18 feet.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-32706 Filed 11-20-78; 8:45 am]

[4110-03-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. 78N-0305]

GRAS AND PRIOR-SANCTIONED HUMAN FOOD INGREDIENTS AND FLAVOR SUBSTANCES

Availability of Information

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This document announces the public availability of new data and information compiled during the Food and Drug Administration's (FDA) review of generally recognized as safe (GRAS) and prior-sanctioned human food ingredients and flavor substances.

FOR FURTHER INFORMATION CONTACT:

Corbin I. Miles, Bureau of Foods (HFF-335), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street, SW., Washington, D.C. 20204, 202-472-4750.

SUPPLEMENTARY INFORMATION: The Commissioner of Food and Drugs announced in notices published in the FEDERAL REGISTER of July 26, 1973 (38 FR 20054), April 17, 1974 (39 FR 13796), September 23, 1974 (39 FR 34218), August 29, 1975 (40 FR 39916), January 22, 1976 (41 FR 3331), June 14, 1977 (42 FR 30431), and March 28, 1978 (43 FR 12947) the availability of data and information compiled during the safety review of GRAS and prior-sanctioned food ingredients. The availability of the data and information was announced to provide maximum public opportunity to present additional data, information, and views on the substances while they are being reviewed by the Select Committee on GRAS Substances (the Select Commit-

tee) of the Life Sciences Research Office, Federation of American Societies for Experimental Biology, and to serve as a basis for public comment on proposed FDA action on the ingredients.

This notice announces the public availability of, and purchasing information for, additional data and information obtained by FDA in conducting its safety review of GRAS and prior-sanctioned food ingredients. These data and information consist of 2 scientific literature reviews, 7 scientific literature review updates, 31 mutagenic screening tests, and 18 reports of the Select Committee on the evaluation of the health aspects of various food ingredients.

The Commissioner recognizes that data and information of GRAS and prior-sanctioned food ingredients are of broad public interest. Accordingly, this information is available for public disclosure as outlined below.

The following scientific literature reviews, scientific literature review updates, reports of mutagenic screening tests, and reports of the Select Committee are available for purchase in paper copy and microfiche from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Va. 22161, telephone 703-557-4650. The price code for microfiche is A01; the current price for microfiche is $3.

[4110-03-C]

SCIENTIFIC LITERATURE REVIEWS OF GRAS SUBSTANCES

Ingredient	Order no.	Papercopy price code	Papercopy price*
Carbon	PB 280-129/AS	A03	$4.50
Char-smoke flavor	PB 280-130/AS	A04	5.25

* Price subject to change.

SCIENTIFIC LITERATURE REVIEW UPDATES OF GRAS SUBSTANCES

Ingredient	Order no.	Papercopy price code	Papercopy price*
Copper salts	PB275-749/AS	A03	$4.50
Gases	PB 275-750/AS	A03	4.50
Lecithin	PB 275-751/AS	A02	4.00
Niacin and niacinamide	PB 275-752/AS	A02	4.00
Riboflavin and riboflavin 5'-phosphate	PB 275-753/AS	A02	4.00
Vitamin A, vitamin A acetate, and vitamin A palmitate	PB 275-754/AS	A03	4.50
Vitamin B_{12}	PB 275-755/AS	A02	4.00

* Price subject to change.

MUTAGENIC SCREENING TESTS (DOMINANT LETHAL TEST)

Ingredient	Order no.	Papercopy price code	Papercopy price*
Ammoniated glycerrhizin	PB 279-650/AS	A04	$5.25
Butylated hydroxytoluene	PB 278-026/AS	A06	6.50

* Price subject to change.

MUTAGENIC SCREENING TESTS (TIER I)

Ingredient	Order no.	Papercopy price code	Papercopy price*
Aluminum potassium sulfate	PB 278-461/AS	A03	$4.50
Ammonium bicarbonate	PB 278-462/AS	A03	4.50
Ammonium hydroxide	PB 278-463/AS	A03	4.50
Calcium acetate monohydrate	PB 278-464/AS	A03	4.50
Calcium ascorbate	PB 279-261/AS	A04	5.25
Calcium carbonate	PB 278-465/AS	A03	4.50
Calcium glycerophosphate	PB 278-466/AS	A04	5.25
Calcium pantothenate	PB 278-467/AS	A04	5.25
Calcium stearate	PB 279-260/AS	A03	4.50
trans-Carotene	PB 278-468/AS	A04	5.25

MUTAGENIC SCREENING TESTS (TIER 1)

Ingredient	Order no.	Papercopy price code	Papercopy price*
Cholic acid	PB 278-469/AS	A04	5.25
Choline bitartrate	PB 278-470/AS	A03	4.50
Cuprous iodide (technical)	PB 279-263/AS	A04	5.25
Dextran	PB 281-779/AS	A03	4.50
Guaiac resin	PB 278-471/AS	A04	5.25
Gum tragacanth	PB 279-259/AS	A03	4.50
Monoglyceride, diacetyl tartaric acid ester	PB 280-111/AS	A03	4.50
Niacin (nicotinic acid)	PB 278-472/AS	A03	4.50
Niacinamide	PB 278-473/AS	A03	4.50
Potassium bicarbonate	PB 278-474/AS	A03	4.50
Potassium sulfate	PB 278-475/AS	A03	4.50
Pyridoxine hydrochloride	PB 278-476/AS	A03	4.50
Riboflavin	PB 278-477/AS	A03	4.50
Riboflavin-5'-phosphate, sodium	PB 278-478/AS	A03	4.50
Sodium ascorbate	PB 279-262/AS	A04	5.25
Sodium D-pantothenate	PB 279-264/AS	A03	4.50
Thiamine HCl	PB 279-266/AS	A04	5.25
Vitamin A acetate	PB 278-479/AS	A03	4.50
Zinc stearate	PB 279-265/AS	A04	5.25

* Price subject to change.

REPORTS OF THE SELECT COMMITTEE

Substances evaluated	Order no.	Papercopy price code	Papercopy price*
Acetic acid, sodium acetate, sodium diacetate	PB 274-670/AS	A02	$4.00
Bentonite and clay (kaolin)	PB 276-416/AS	A02	4.00
Biotin	PB 281-421/AS	A02	4.00
Caffeine	PB 283-441/AS	A05	6.00
Cellulose and certain cellulose derivatives	PB 274-667/AS	A03	4.50
Citric acid, sodium citrate, potassium citrate, calcium citrate, ammonium citrate triethyl citrate, isopropyl citrate, and stearyl citrate	PB 280-954/AS	A03	4.50
Coconut oil, peanut oil, oleic acid, and linoleic acid	PB 274-475/AS	A02	4.00
Corn silk	PB 278-158/AS	A02	4.00
Gum guaiac	PB 274-474/AS	A02	4.00
Hypophosphites	PB 274-476/AS	A02	4.00
Lactic acid and calcium lactate	PB 283-713/AS	A03	4.50
Monomeric and polymeric ethyl acrylate and methyl acrylate	PB 276-415/AS	A02	4.00

Substances evaluated	Order no.	Papercopy price code	Papercopy Price*
Papain	PB 274-174/AS	A02	4.00
Pectin and pectinates	PB 274-477/AS	A02	4.00
Pyridoxine and pyridoxine hydrochloride	PB 275-340/AS	A03	4.50
Rennet	PB 274-668/AS	A02	4.00
Sodium oleate and sodium palmitate	PB 276-414/AS	A02	4.00
Tannic acid	PB 274-669/AS	A03	4.50

* Price subject to change.

In addition, the Commissioner announces the availability of 4 scientific literature reviews of 10 flavor ingredients. The flavor ingredients included in each scientific literature review are listed below. The scientific literature reviews contain information concerning biological, physical, and chemical properties, pharmacology, toxicology, metabolism, natural occurrence, usage, bibliography, and data directory. The following scientific literature reviews on flavor ingredients are available in paper copy or microfiche for purchase from NTIS at the address noted above. The price code for microfiche is A01 and the current price is $3.00.

SCIENTIFIC LITERATURE REVIEWS OF FLAVORS

Substances evaluated	Order no.	Papercopy price code	Papercopy Price*
Aliphatic Thiol Esters: Methyl thiobutyrate Ethyl thioacetate Propyl thioacetate Allyl thiopropionate	PB 265-530/AS	A03	$4.50
Aliphatic Primary Alcohols, Aldehydes, Esters, and Acids (Supplement 3): 5-Methylhexanoic acid 4-Methyloctanoic acid	PB 278-377/AS	A02	4.00
Alicyclic Compounds of Carbon, Hydrogen, and Oxygen (Supplement 2): Cyclohexanecarboxylic acid Methyl cyclohexanecarboxylate Ethyl cyclohexanecarboxylate	PB 278-384/AS	A02	4.00
Substituted Pyrazines (Supplement 1): 2-Methyl-3,5 or 6-ethoxypyrazine	PB 278-376/AS	A02	4.00

* Price subject to change.

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A single copy of all of the data and information given above is available for review in the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, between 9 a.m. and 4 p.m., Monday through Friday. Additonal information relating to the review of GRAS substances, prior-sanctioned substances, or flavor ingredients will be announced and placed on display at the office of the hearing clerk, at the above address, as it becomes available.

Dated: November 14, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 78-32494 Filed 11-20-78; 8:45 am]

[4110-03-M]

[Docket No. 78N-0017; DESI 9414]

STEROID COMBINATION DRUG FOR ORAL USE

Withdrawal of Approval of New Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice withdraws approval of the new drug application (NDA 14-768) for Stero-Darvon with A.S.A. Tablets, containing paramethasone acetate, propoxyphene hydrochloride, and aspirin because substantial evidence of the product's effectiveness is lacking. The product, which has been used for the relief of arthritic and rheumatic disorders, is no longer marketed.

EFFECTIVE DATE: December 1, 1978.

ADDRESS: Request for the opinion of the applicability of this notice to a specific product should be identified with the reference number DESI 9414 and directed to the Division of Drug Labeling Compliance (HFD-310), Bureau of Drugs, Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

Ronald L. Wilson, Bureau of Drugs (HFD-32), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice of opportunity for hearing (DESI 9414, docket No. FDC-D-528 (now docket No. 78N-0017)) published in the FEDERAL REGISTER of November 28, 1972 (37 FR 25184), the Commissioner of Food and Drugs proposed to issue an order withdrawing approval of certain steroid-analgesic combination drug products. Among them was Stero-Darvon with A.S.A. Tablets containing paramethasone acetate, propoxyphene hydrochloride, an aspirin (NDA 14-768). The basis of the proposed order was that the drugs lack substantial evidence of effectiveness for their labeled indications. In response to the notice, Eli Lilly & Co. requested a hearing for Stero-Darvon with A.S.A. Tablets but later withdrew the request, stating that marketing of the product had been discontinued. Approval of the following new drug application is now being withdrawn.

NDA 14-768; Stero-Darvon with A.S.A. containing paramethasone acetate, propoxyphene hydrochloride, and aspirin; Eli Lilly & Co., P.O. Box 618, Indianapolis, Ind. 46206.

Approval of the other new drug applications included in the November 28, 1972, notice was later withdrawn, except for Ataraxoid Tablets (NDA 10-636), which will be the subject of a future FEDERAL REGISTER notice.

Any drug product that is identical, related, or similar to Stero-Darvon with A.S.A. Tablets and is not the subject of an approved new drug application is covered by the new drug application reviewed (NDA 14-768) and is subject to this notice (21 CFR 310.6) Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Drug Labeling Compliance (address given above).

The Director of the Bureau of Drugs, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat, 1052-1053, as amended (21 U.S.C. 355)), and under authority delegated to him (21 CFR 5.82), finds that, on the basis of new information before him with respect to the drug product, evaluated together with the evidence available to him when the application was approved, there is a lack of substantial evidence that the drug product will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling.

Therefore, pursuant to the foregoing finding, approval of new drug application 14-768, and all amendments and supplements applying thereto, is withdrawn effective December 1, 1978.

Shipment in interstate commerce of the above product or of any identical, related, or similar product that is not the subject of an approved new drug application will then be unlawful. Marketing of Ataraxiod Tablets (NDA 10-636) may continue pending the resolution of its effectiveness classification.

Dated: November 3, 1978.

J. RICHARD CROUT,
Director, Bureau of Drugs.

[FR Doc. 78-32617 Filed 11-20-78; 8:45 am]

[4110-08-M]

National Institutes of Health

REPORT ON BIOASSAY OF ENDRIN FOR POSSIBLE CARCINOGENICITY

Availability

Endrin (CAS 72-20-8) has been tested for cancer-causing activity with rats and mice in the Bioassay Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary. A bioassay of technical-grade endrin for possible carcinogenicity was conducted by administering the test chemical in feed to Osborne-Mendel rats and B6C3F1 mice. Applications of the chemical include use as an insecticide.

It is concluded that under the conditions of this bioassay, endrin was not carcinogenic for Osborne-Mendel rats or for B6C3F1 mice.

Single copies of the report are available from the office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Md. 20014.

(Catalog of Federal Domestic Assistance Program No. 13.393, Cancer Cause and Prevention Research.)

Dated: November 9, 1978.

DONALD S. FREDRICKSON,
Director, National Institutes of Health.

[FR Doc. 78-32402 Filed 11-20-78; 8:45 am]

[4110-08-M]

REPORT ON BIOASSAY OF LITHOCHOLIC ACID FOR POSSIBLE CARCINOGENICITY

Availability

Lithocholic acid (CAS 434-13-9) has been tested for cancer-causing activity with rats and mice in the Bioassay Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary. A bioassay for the possible carcinogenicity of lithocholic acid was conducted using Fischer 344 rats and B6C3F1 mice. The chemical is a naturally occurring bile acid. Lithocholic acid was adminstered by gavage, at either of two dosages, to groups of 50 male and 50 female animals of each species, except for 49 low dose female rats.

Under the conditions of this bioassay, lithocholic acid was not carcinogenic when adminstered by gavage to Fischer 344 rats or B6C3F1 mice.

Single copies of the report are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Md. 20014.

(Catalog of Federal Domestic Assistance Program No. 13.393, Cancer Cause and Prevention Research.)

Dated: November 9, 1978.

DONALD S. FREDRICKSON,
Director, National Institutes of Health.

[FR Doc. 78-32405 Filed 11-20-78; 8:45 am]

[4110-08-M]

REPORT ON BIOASSAY OF TITANIUM DIOXIDE FOR POSSIBLE CARCINOGENICITY

Availability

Titanium dioxide (CAS 1309-63-3) has been tested for cancer-causing activity with rats and mice in the Bioassay Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary. A bioassay of titanium dioxide for possible carcinogenicity was conducted by administering the test chemical in feed to Fischer 344 rats and B6C3F1 mice. Applications of the chemical include use as a pigment in foods, cosmetics, drugs, paint, paper, plastics, and other materials.

It is concluded that under the conditions of this bioassay, titanium dioxide was not carcinogenic by the oral route for Fischer 344 rats or B6C3F1 mice.

Single copies of the report are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Md. 20014.

(Catalog of Federal Domestic Assistance Program No. 13.393, Cancer Cause and Prevention Research.)

Dated: November 9, 1978.

DONALD S. FREDRICKSON,
Director, National Institutes of Health.

[FR Doc. 78-32403 Filed 11-20-78; 8:45 am]

[4110-08-M]

REPORT ON BIOASSAY OF TRIMETHYLTHIOUREA FOR POSSIBLE CARCINOGENICITY

Availability

Trimethylthiourea (CAS 2489-77-2) has been tested for cancer-causing activity with rats and mice in the Bioassay Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report in available to the public.

Summary. A biossay for the possible carcinogenicity of trimethylthiourea was conducted using Fischer 344 rats and B6C3F1 mice. A mixture containing 80 percent trimethylthiourea and 15 percent dimethylthiourea was administered in the feed, at either of two concentrations, to groups of 50 male and 50 female animals of each species.

Under the conditions of this bioassay, dietary administration of trimethylthiourea was carcinogenic in female Fischer 344 rats, inducing follicular-cell carcinomas of the thyroid. There was not sufficient evidence for the carcinogenicity of the compound in male Fischer 344 rats or in B6C3F1 mice of either sex.

Single copies of the report are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Md. 20014.

(Catalog of Federal Domestic Assistance Program No 13.393, Cancer Cause and Prevention Research.)

Dated: November 9, 1978.

DONALD S. FREDRICKSON,
Director, National Institutes of Health.

[FR Doc. 78-32404 Filed 11-20-78; 8:45 am]

[4110-24-M]

Office of Education

FUND FOR THE IMPROVEMENT OF POSTSECONDARY EDUCATION

Closing Date for Receipt of Applications for Continuation Awards for Fiscal Year 1979

Applications are invited for noncompeting continuation grants under the Comprehensive Program of the Fund for the Improvement of Postsecondary Education.

Authority for this program is contained in section 404 of the General Education Provisions Act (20 U.S.C. 1221d).

This program issues awards to institutions of postsecondary education and other public and private educational institutions and agencies.

The purpose of the awards is to improve postsecondary education.

Closing Date for Transmittal of Applications: Applications for awards must be mailed (postmarked) or hand delivered by March 1, 1979.

If the application is late, the Office of the Assistant Secretary for Education may lack sufficient time to review it with other noncompeting continuation applications and may decline to accept it.

Applications Delivered by Mail: An application delivered by mail must be addressed to the Comprehensive Program, Fund for the Improvement of Postsecondary Education. Office of the Assistant Secretary for Education, DHEW, Attention: 13.925D, 400 Maryland Avenue SW., Room 3123, Washington, D.C. 20202. Applicants are encouraged to use registered or at least first class mail.

Applications Delivered by Hand: An application that is hand delivered must be taken to the Comprehensive Program, Fund for the Improvement of Postsecondary Education, Office of the Assistant Secretary for Education, DHEW, Attention: 13.925D, 400 Maryland Avenue SW., Room 3123, Washington, D.C. 20202.

The Office of the Assistant Secretary will accept hand delivered applications between 8 a.m. and 4 p.m. (Washington, D.C., time) daily, except Saturdays, Sundays, and Federal holidays.

Program Information: Information is contained in the publication "Program Information and Application Procedures" which may be obtained from the Fund for the Improvement of Postsecondary Education, Attention: 13.925D, 400 Maryland Avenue SW., Room 3123, Washington, D.C. 20202.

Available Funds: Approximately $6,000,000 is expected to be available for continuing grant awards in fiscal year 1979.

It is estimated that these funds could support approximately 95 continuing grants.

The anticipated award for continuing grants will be between $5,000 and $200,000 for a 12-month period. In past years grants have averaged $70,000 for a 12-month period.

These estimates do not bind the Assistant Secretary for Education except as may be required by the applicable stature and regulations.

Application Forms: Application forms and program information packages are expected to be ready for mailing by January 1, 1979. They will be sent directly to current grantees in a noncompeting renewal status. Institutions and persons not on the list can obtain the material from the Fund for the Improvement of Postsecondary Education, Office of the Assistant Secretary for Education, DHEW, Attention: 13.925D, 400 Maryland Avenue SW., Room 3123, Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages.

Applicable Regulations: The regulations governing awards made by the Fund for the improvement of Postsec-

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ondary Education are set forth in 45 CFR Part 1501. Awards are also subject to the provisions set forth in 45 CFR Parts 100 and 100a, except that awards are not subject to the provisions of 45 CFR 100a.26(b) relating to criteria for awards.

Further Information: For further information contact the Fund for the Improvement of Postsecondary Education, Office of the Assistant Secretary for Education, DHEW, Attention: 13.925D, 400 Maryland Avenue SW., Room 3123, WAshington, D.C. 20202, telephone: 202-245-8091.

(Catalog of Federal Domestic Assistance No. 13.925, Fund for the Improvement of Postsecondary Education.)

Dated: November 15, 1978.

MARY F. BERRY,
Assistant Secretary for Education.

[FR Doc. 78-32633 Filed 11-20-78; 8:45 am]

[4110-24-M]

FUND FOR THE IMPROVEMENT OF POSTSECONDARY EDUCATION

Closing Dates for Receipt of Preapplications and Applications for New Awards for Fiscal Year 1979

Preapplications and applications are invited for new grants under the Comprehensive Program of the Fund for the Improvement of Postsecondary Education.

Authority for this program is contained in section 404 of the General Education Provisions Act (20 U.S.C. 1221d).

This program issues awards to institutions of postsecondary education and other public and private educational institutions and agencies.

The purpose of the awards is to improve postsecondary education.

Closing Date for Transmittal of Preapplications and Applications: Preapplications for awards must be mailed (postmarked) or hand delivered by January 9, 1979. Applications must be mailed (postmarked) or hand delivered by March 20, 1979. Applications are submitted only by those applicants whose preapplications are approved.

Preapplications and Applications Delivered by Mail: A preapplication or application sent by mail must be addressed to the Comprehensive Program, Fund for the Improvement of Postsecondary Education, Office of the Assistant Secretary for Education, DHEW, Attention: 13.925A, 400 Maryland Avenue SW., Room 3123, Washington, D.C. 20202. Proof of mailing must consist of a legible U.S. Postal Service dated postmark or legible mail receipt with the date of mailing stamped by the U.S. Postal Service. Private metered postmarks or mail receipts will not be accepted without a legible date stamped by the U.S. Postal Service. (NOTE: The U.S. Postal Service does not uniformly provide a dated postmark. Applicants should check with their local post office before relying on this method.) Each late applicant will be notified that its proposal will not be considered in the current competition. Applicants are encouraged to use registered or at least first-class mail.

Preapplications and Applications Delivered by Hand: A preapplication or application that is hand delivered must be taken to the Comprehensive Program, Fund for the Improvement of Postsecondary Education, Office of the Assistant Secretary for Education, DHEW, Attention: 13.925A, 400 Maryland Avenue, SW., Room 3123, Washington, D.C. 20202.

The Office of the Assistant Secretary will accept hand delivered preapplications and applications between 8 a.m. and 4 p.m. (Washington, D.C., time) daily, except Saturdays, Sundays, and Federal holidays.

Preapplications and applications that are hand delivered will not be accepted after 4 p.m. on the closing date.

Program Information: This competition solicits proposals for projects that will further one or more of the objectives of the Fund for the Improvement of Postsecondary Education. The objectives of the Fund are set out at 45 CFR 1501.8. Preapplications are required and will be evaluated in accordance with the criteria set out at 45 CFR 1501.7. Only applicants whose preapplications have been approved will be asked to submit applications. The Fund's objectives, evaluation criteria, and application procedures are described in the publication "Program Information and Application Procedures," which may be obtained from the Fund for the Improvement of Postsecondary Education, 400 Maryland Avenue SW., Room 3123, Washington, D.C. 20202.

At this time, the Assistant Secretary for Education is considering setting aside approximately $750,000 out of the total $7,000,000 available for new awards this year in order to fund proposals that would further two specific objectives of the Fund. In the event that the Assistant Secretary decides to solicit proposals that advance specific objectives, the public will be notified in a separate notice of closing date.

Available Funds: Approximately $7,000,000 is expected to be available for new grant awards in fiscal year 1979.

It is estimated that these funds could support approximately 85 new grants.

The anticipated award for new grants will be between $5,000 and $200,000 for a 12-month period. Applicants may request approval of a multiyear work plan of up to 3 years in duration.

However, as discussed in "Program Information" above, approximately $750,000 of this projected $7,000,000 may be set aside to fund proposals that advance two specific objectives of the fund. In the event that this is done, it is estimated that the funds set aside could support approximately 30 new grants. Of these, approximately 15 new grants would be funded to advance each objective.

These estimates do not bind the Assistant Secretary for Education except as may be required by applicable statute and regulations.

Preapplication and Application Forms: Preapplication and application forms and program information packages are expected to be ready for mailing by November 15, 1979. They will be sent directly to everyone on the mailing list for the Fund for the Improvement of Postsecondary Education. Institutions and persons not on the list can obtain the material from the Fund for the Improvement of Postsecondary Education, Office of the Assistant Secretary for Education, DHEW, Attention: 13.925A, 400 Maryland Avenue SW., Room 3123, Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages.

Applicable Regulations: The regulations governing awards made by the Fund for the Improvement of Postsecondary Education are set forth in 45 CFR Part 1501. Awards are also subject to the provisions set forth in 45 CFR Parts 100 and 100a, except that awards are not subject to the provisions of 45 CFR 100a. 26(b) relating to criteria for awards.

Further Information: For further information contact the Fund for the Improvement of Postsecondary Education, Office of the Assistant Secretary for Education, DHEW, Attention: 13.925A, 400 Maryland Avenue SW., Room 3123, Washington,. D.C. 20202.,telephone: 202-245-8091.

(Catalog of Federal Domestic Assistance No. 13.925, Fund for the Improvement of Postsecondary Education)

Dated: November 15, 1978.

MARY F. BERRY,
Assistant Secretary for Education.

[FR Doc. 78-32634 Filed 11-20-78; 8:45 am]

[4110-02-M]

NATIONAL ADVISORY COUNCIL ON VOCATIONAL EDUCATION

Task Force Meeting

AGENCY: National Advisory Council on Vocational Education.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Task Force on the Administration and Operation of the Bureau of Occupational and Adult Education of the U.S. Office of Education. It also describes the functions of the Council. Notice of these meetings is required under the Federal Advisory Committee Act, (5 U.S.C. app. I, sec. 10(a)(2)). This document is intended to notify the general public of its opportunity to attend.

DATE: December 14-15, 1978.

ADDRESS: Ramada, The O'Hare Inn, Mannheim and Higgins Roads, Des Plaines, Ill. 60018, the board of directors room: December 14, 1978, from 7 to 10 p.m. and December 15, 1978, from 8 a.m. to noon.

The National Advisory Council on Vocational Education is established under section 104 of the Vocational Education Amendments of 1968, Pub. L. 90-576. The Council is directed to:

(A) Advise the Commissioner concerning the administration of, preparation of general regulations for, and operation of, vocational education programs supported with assistance under this title;

(B) Review the administration and operation of vocational education programs under this title, including the effectiveness of such programs in meeting the purposes for which they are established and operated, make recommendations with respect thereto, and make annual reports of its findings and recommendations (including recommendations for changes in the provisions of this title) to the Secretary for transmittal to the Congress; and

(C) Conduct independent evaluations of programs carried out under this title and publish and distribute the results thereof.

On December 14 and 15, 1978, the Task Force on the Administration and Operation of the Bureau of Occupational and Adult Education, U.S. Office of Education will meet as described. The agenda will consist entirely of the analysis of findings and construction of the final report of the task force, to be presented to the Council at its January 1979, meeting.

Notes shall be kept of the task force decisions, and shall be available 14 days after the meeting to the public through Dr. Ralph Bregman, Office of the National Advisory Council on Vocational Education, located at 425 13th Street NW., Suite 412, Washington, D.C. 20004. For further information call Dr. Bregman at 202-376-8873.

Signed at Washington, D.C., on November 15, 1978.

RAYMOND C. PARROTT,
Executive Director, National Advisory Council on Vocational Education.

[FR Doc. 78-32669 Filed 11-20-78; 8:45 am]

[4110-02-M]

WOMEN'S EDUCATIONAL EQUITY ACT PROGRAM

Draft Proposed Regulations; Availability

AGENCY: Office of Education, HEW.

ACTION: Notice of Availability of Partial Draft Proposed Regulations.

SUMMARY: Notice is hereby given that a partial draft of the proposed regulations to implement the program authorized by Part C of Title IX of the Elementary and Secondary Education Act as added by the Education Amendments of 1978 (Pub. L. 95-561) is now available to the public. Part C authorizes a discretionary program of grants and contracts to provide educational equity for women and to provide financial assistance to enable educational agencies and institutions to meet the requirements of Title IX of the Education Amendments of 1972. The partial draft proposed regulations now available have not been adopted as official views of either the U.S. Office of Education or the Department of Health, Education, and Welfare, and have no legal effect.

The Women's Educational Equity Act (WEEA) program is currently governed by final regulations published in the FEDERAL REGISTER on June 28, 1977, at 42 FR 33006. These regulations implement the current Women's Educational Equity Act of 1974 (section 408 of the Education Amendments of 1974, Pub. L. 93-380). The competition for grants under this program in fiscal year 1979 (deadline November 17, 1978) is not affected in any way by the proposed regulations which are being developed for the reauthorized law. The Women's Program Staff is sharing its partial draft (as of November 15) with the National Advisory Council on Women's Educational Programs (NACWEP) so that the Council can discuss the partial draft at its meeting on November 30. NACWEP has statutory responsibilities to make recommendations about the implementation of the WEEA. The Office of Education is informing the public that it is sharing these materials with the Council.

Copies of these partial draft proposed regulations may be obtained by writing to: Dr. Mary Jane Smalley, Women's Program Staff, Room 2147, U.S. Office of Education, 400 Maryland Avenue SW., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT:

Dr. Mary Jane Smalley, telephone 202-245-2181.

(Catalog of Federal Domestic Assistance No. 13.565, Women's Educational Equity Act.)

Dated: November 16, 1978.

ERNEST L. BOYER,
U.S. Commissioner of Education.

[FR Doc. 78-32635 Filed 11-20-78; 8:45 am]

[4110-02-M]

COMMUNITY EDUCATION ADVISORY COUNCIL

Meeting

AGENCY: Office of Education, HEW, Community Education Advisory Council.

ACTION: This notice sets forth the schedule and proposed agenda of the forthcoming meeting of the planning committee of the Community Education Advisory Council. It also describes the functions of the Council from which this planning committee is formed. Notice of these meetings is required under section 10(a)(2) of the Federal Advisory Committee Act, Pub. L. 92-634. This document is intended to notify the general public of their opportunity to attend.

DATES: Meeting: December 6, 1978.

ADDRESS: Opryland Hotel, 2800 Opryland Drive, Nashville, Tenn. 37214.

FOR FURTHER INFORMATION CONTACT:

Margaret Beavan, Office of Education, Department of Health, Education, and Welfare, Room 5622, Regional Office Building 3, 7th and D Street SW., Washington, D.C. 20202, telephone: 202-245-0691.

SUPPLEMENTARY INFORMATION: The Community Education Advisory Council is authorized under Pub. L. 93-380. The Council is established to advise the Commissioner of Education on policy matters relating to the interest of community schools.

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All sessions of this meeting will be open to the public. The meeting will begin at 10 a.m. and end at 4:30 p.m., and will be held in the Memphis A Conference Room.

The Community Education Advisory Council was invited to meet in conjunction with the National Community Education Associate which will be holding its annual convention in Nashville on December 6, 7, and 8, 1978. The planning committee of the Community Education Advisory Council will meet to discuss future plans concerning areas of linkages, State strategies, and regulations. The planning committee meeting would afford the Council an opportunity to solidify next steps concerning its interest in establishing linkages among national organizations.

The proposed agenda includes:

(1) Discussion of issues relevant to new community education legislation and regulations;

(2) Continuation of linkage efforts; and,

(3) Discussion of other administrative matters and related business.

Furthermore, it is the intent of the committee that its members be available to lead and attend discussions or seminars regularly scheduled as a part of the convention. This will give members a better perspective on the current issues and concerns of community education practitioners.

Records shall be kept of all planning committee proceedings and shall be available for public inspection in room 5622, ROB-3, 7th and D Streets SW, Washington, D.C. 20202.

Signed at Washington, D.C., on November 17, 1978.

JULIE ENGLUND,
Director,
Community Education Program.

[FR Doc. 78-32714 Filed 11-20-78; 8:45 am]

[4110-02-M]

NATIONAL ADVISORY COUNCIL ON THE EDUCATION OF DISADVANTAGED CHILDREN

Meeting

Notice is hereby given, pursuant to Pub. L. 92-463, that the next meeting of the National Advisory Council on the Education of Disadvantaged Children will be held on Friday, December 8 and on Saturday, December 9, 1978. The meeting will be held on Friday from 9 a.m. until 5 p.m., and on Saturday from 9 a.m. until 12 noon. The 2-day meeting will be held at 425 Thirteenth Street NW., Suite 1012, Washington, D.C. 20004.

The National Advisory Council on the Education of Disadvantaged Children is established under 148 of the Elementary and Secondary Act (20 U.S.C. 2411) to advise the President and the Congress on the effectiveness of compensatory education to improve the educational attainment of disadvantaged children.

The Council is holding the meeting in order to review and adopt their 1979 Annual and Special Reports, and to plan for future Council activities.

The entire meeting will be open to the public. Because of limited space, all persons wishing to attend should call for reservations by December 4, 1978, area code 202-724-0114 and speak with Mrs. Lisa Haywood.

Records shall be kept of all Council proceedings and shall be available for public inspection at the Office of the National Advisory Council on the Education of Disadvantaged Children located at 425-13th Street NW., Suite 1012, Washington, D.C. 20004.

Signed at Washington, D.C., on November 17, 1978.

ROBERTA LOVENHEIM,
Executive Director.

[FR Doc. 78-32802 Filed 11-20-78; 8:45 am]

[4310-84-M]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[8500 (933)]

ALASKA NATURAL GAS TRANSPORTATION SYSTEM—WILDERNESS INVENTORY: OREGON

Public Comment Period

NOVEMBER 13, 1978.

Pursuant to Pub. L. 94-579, notice is hereby given that the Bureau of Land Management has completed the first phase of a wilderness inventory of public lands located in Oregon along the proposed route of a natural gas pipeline.

The proposed pipeline would be part of the Alaska Natural Gas Transportation System, a transcontinental system to deliver natural gas from the north slope of Alaska to the 48 adjacent States. The lands inventoried in Oregon are located along the proposed route of a line which would cross the Canadian-United States boundary in Idaho, extend across eastern Washington and central Oregon, and terminate at Antioch, Contra Costa County, Calif. The proposed pipeline would parallel an existing natural gas pipeline for almost its entire length in Idaho, Washington, Oregon, and California.

This notice concerns the wilderness inventory of public lands located along the proposed route in Oregon. The proposed route does not cross Bureau of Land Management administered public lands in Washington. Bureau of Land Management State Directors in Idaho and California are responsible for conducting the inventory in those States.

All public lands administered by the Bureau of Land Management will be inventoried to identify those with wilderness characteristics. The inventory is being conducted now along the proposed pipeline route because of the high priority given energy-related projects.

In Oregon, the proposed route crosses several tracts of public lands administered by the Bureau of Land Management. Two of the tracts, or inventory units, contain more than 5,000 acres of contiguous, roadless public land. Inventory unit OR-5-1 is located along the John Day River, about 17 miles west of Condon, in Sherman and Gilliam Counties. Inventory unit OR-5-2 is located 2 miles east of Redmond in Deschutes and Crook Counties.

The preliminary finding of the inventroy are that inventory unit OR-5-1 has wilderness characteristics and should be designated a wilderness study area, and that, inventory unit OR-5-2 and the tracts containing less than 5,000 acres do not have wilderness characteristics and should not be designated wilderness study areas.

Public comments on these proposed findings are being sought during a 60-day public preview period beginning on the date of publication of this notice. A final decision on the designation of wilderness study areas will be made after the public review period. Persons who wish to submit comments or obtain additional information should write District Manager Paul Arrasmith, Prineville District Office, BLM, P.O. Box 550, Prineville, Oreg. 97754.

BLM personnel will be available to provide additional information on the inventory at informal open houses to be held at the following times and locations:

December 19, 1978, 1 p.m. and 7 p.m., Oregon State Office, BLM, 729 Northeast Oregon Street, Room 15, Portland, Oreg.

December 20, 1978, 1 p.m. and 7 p.m., District Office, BLM, 185 East Fourth Street, Prineville, Oreg.

E. J. PETERSEN,
Associate State Director.

[FR Doc. 78-32621 Filed 11-20-78; 8:45 am]

[4310-03-M]

Heritage Conservation and recreation Service

NATIONAL REGISTER OF HISTORIC PLACES

Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the Heritage Conservation and Recreation Service before November 10, 1978. Pursuant to § 60.13(a) of 36 CFR Part 60, published in final form on January 9, 1976, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the Keeper of the National Register, Office of Archeology and Historic Preservation, U.S. Department of the Interior, Washington, D.C. 20240. Written comments or a request of additional time to prepare comments should be submitted by December 1, 1978.

WILLIAM J. MURTAGH,
Keeper of the National Register.

ALABAMA

Lauderdale County

Florence, *Rosenbaum, Stanley and Mildred, House,* 117 Riverview Dr.

FLORIDA

Duval County

Jacksonville, *Klutho, Henry John, House,* 28-30 W. 9th St.

St. Johns County

St. Augustine, *Markland,* 102 King St.

GEORGIA

Fulton County

Atlanta, *Witham, Stuart, House,* 2922 Andrews Dr., NW.

Richmond County

Augusta, *Old Richmond County Courthouse,* 432 Telfair St.

ILLINOIS

Cook County

Lyons, *Hofmann Tower,* 3910 Barry Point Rd.

Crawford County

Palestine vicinity, *Riverton Site,* NE of Palestine.
Palestine vicinity, *Swan Island Site,* SE of Palestine.
Robinson vicinity, *Stoner Site,* NE of Robinson.

DeKalb County

Sycamore, *Brower, Adolphus W., House,* 705 DeKalb Ave.
Sycamore, *Marsh, William W., House,* 740 W. State St.

Fulton County

Lewistown vicinity, *Sheets Site,* W of Lewistown.

Peoria County

Peoria, *Rock Island Depot and Freight House,* 32 Liberty St.

Washington County

Okawville, *Original Springs Hotel and Bathhouse,* 301 E. Walnut St.

Will County

Channahon vicinity, *Briscoe Mounds,* off U.S. 6.

INDIANA

Vanderburgh County

Evansville, *Louisville and Nashville Railroad Station,* 300 Fulton Ave.

IOWA

Scott County

Davenport, *Davenport Village,* roughly bounded by Mississippi River, Spring, Judson, and 13th Sts., Kirkwood Blvd. and Jersey Ridge Rd.

KENTUCKY

Jefferson County

Louisville, *White Mills Distillery Company: Warehouse D,* 18th and Howard Sts.

Lincoln County

Stanford vicinity, *Baughman, John, House,* S of Stanford on KY 1247.
Stanford vicinity, *Pence, Adam, House,* S of Stanford on KY 1247.
Stanford vicinity, *Walnut Meadows,* SE of Stanford on U.S. 150.

Muhlenberg County

Greenville, *Muhlenberg County Courthouse,* Courthouse Sq.

MAINE

Androscoggin County

Lewiston, *Bradford House,* 54-56 Pine St.
Lewiston, *Holland-Drew House,* 377 Main St.

Cumberland County

Portland, *St. Lawrence Church,* 76 Congress St.
Portland, *St. Paul's Church and Rectory,* 279 Congress St.

Kennebec County

Windsor, *Barton Homestead,* Barton Rd.

Penobscot County

Bangor, *Williams, Gen. John, House,* 62 High St.
Springfield, *Springfield Congregational Church,* ME 6.

Washington County

Cherryfield, *Patten Building,* Main St.

York County

Kittery, *Dennett Garrison,* 100 Dennett Rd.
North Waterboro vicinity, *Elder Grey Meetinghouse,* N of North Waterboro.

MARYLAND

Anne Arundel County

Linthicum Heights vicinity, *Benson-Hammond House,* S of Linthicum Heights at Hammond's Ferry Rd. and Poplar Ave.

Baltimore (independent city)

Baltimore, *Leadenhall Street Baptist Church,* 1021-1023 Leadenhall St.

Charles County

Port Tobacco vicinity, *Ellerslie,* W of Port Tobacco on MD 6.

Dorchester County

Taylor's Island, *Grace Episcopal Church Complex,* Hooper Neck Rd.

Frederick County

Frederick vicinity, *Edgewood,* N of Frederick off Poole Jones Rd.
Jefferson vicinity, *Lewis Mill,* NW of Jefferson on Poffenberger Rd.
Walkersville vicinity, *Crum Road Bridge,* E of Walkersville on Crum Rd. over Israel's Creek.
Walkersville vicinity, *Woodsborough and Frederick Turnpike Company Tollhouse,* 1 mi. S of Walkersville off MD 194.

Queen Anne's County

Centreville, *Captain's Houses,* Corsica St.

St. Mary's County

Mechanicsville vicinity, *Queen Tree Cottage,* E of Mechanicsville on Queen Tree Rd.

Talbot County

Oxford vicinity, *Combsbury,* SE of Oxford.
St. Michaels vicinity, *Perry's Cabin,* N of St. Michaels on MD 33.

Washington County

Eakles Mills vicinity, *Snively Farm,* N of Eakles Mills on Mt. Briar Rd.
Sanmar, *Manheim,* San Mar Rd.

MICHIGAN

Genesee County

Flint, *Civic Park Historic District,* roughly bounded by Welch and Brownwell Blvds., Trumbull Ave., Dartmouth and Dupont Sts.

MISSISSIPPI

Adams County

Natchez, *First Presbyterian Church of Natchez,* 117 S. Pearl St.
Natchez, *Glenburnie,* 551 John R. Junkin Dr.
Natchez, *Mercer House,* 118 S. Wall St.
Natchez, *Myrtle Bank,* 408 N. Pearl St.
Natchez vicinity, *Edgewood,* N of Natchez on MS 554.
Natchez vicinity, *Magnolia Hill,* SE of Natchez.

Chickasaw County

Houston, *Houston Carnegie Library,* Madison and Huddleston Sts.

Jefferson County

Church Hill, *Oak Grove,* MS 553.

Monroe County

Aberdeen, *Monroe County Courthouse,* Courthouse Sq.

NEW YORK

Nassau County

Wind and Tide Mills of Long Island, various locations on Long Island.
Oyster Bay vicinity, *Planting Fields Arboretum,* W of Oyster Bay on Planting Fields Rd.

Westchester County

Chappaqua, *Greeley, Horace, Related Sites,* off NY 117.

NORTH DAKOTA

Mountrail County

Stanley, *Mountrail County Courthouse,* N. Main St.

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OKLAHOMA

Choctaw County

Hugo vicinity, *Goodland Mission*, 2 mi. SW of Hugo.

Comanche County

Medicine Park, *Medicine Park Hotel*, near Medicine Creek.

McCurtain County

Valliant vicinity, *Clear Creek Water Mill*, SW of Valliant.

Oklahoma County

Oklahoma City, *Calvary Baptist Church*, 2nd and Walnut Sts.
Oklahoma City, *Edgemere Park Historic District*, Edgemere Park and its environs.
Oklahoma City, *Mid-Continent Life Building*, 1400 Classen Dr.

Tulsa County

Broken Arrow, *Haskell State School of Agriculture*, 808 E. College St.
Tulsa, *Hooper Brothers Coffee Company Building*, 731-733 E. Admiral Blvd.
Tulsa, *Philtower*, 427 S. Boston Ave.
Tulsa, *Tracy Park Historic District*, roughly bounded by 11th Pl., Peoria Ave. and the inner loop.
Tulsa, *Tulsa Convention Hall*, 105 W. Brady.

RHODE ISLAND

Kent County

Coventry, *Interlaken Mill Bridge*, Spans Pawtuxet River.

TEXAS

Gonzales County

Gonzales, *Gonzales College*, 820 St. Louis St.

Hamilton County

Hamilton, *Hamilton County Courthouse*, Public Sq.

Hood County

Granbury, *Wright-Henderson-Duncan House*, 703 Spring St.

Maverick County

Eagle Pass, *Maverick County Courthouse*, Public Sq.

Mills County

Goldthwaite, *Mills County Jail*, Fisher and 5th Sts.

[FR Doc. 78-32329 Filed 11-20-78; 8:45 am]

[4310-03-M]

STUDY OF BARRIER ISLANDS ALONG THE ATLANTIC AND GULF COASTS OF THE UNITED STATES

Intent To Prepare an Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Heritage Conservation and Recreation Service, Department of the Interior, will prepare an environmental impact statement on the barrier island protective plan prepared pursuant to a directive from the President to the Secretary of the Interior.

The draft environmental statement will be based on data, findings, and conclusions developed during the past 15 months by an interagency work group. It is anticipated that the draft environmental statement will take 4 to 6 weeks to prepare. A 45-day review period will be scheduled.

Comments on the notice of intent should be sent to the Director, Heritage Conservation and Recreation Service, Department of the Interior, Washington, D.C. 20240, on or before December 6, 1978.

Dated: November 15, 1978.

LARRY E. MEIEROTTO,
Deputy Assistant Secretary of the Interior.

[FR Doc. 78-32622 Filed 11-20-78; 8:45 am]

[7020-02-M]

INTERNATIONAL TRADE COMMISSION

[AA1921-189]

CERTAIN STEEL WIRE NAILS FROM CANADA

Investigation and Hearing

Having received advice from the Department of the Treasury on November 1, 1978, that certain steel wire nails from Canada, except those produced by Tree Island Steel Co., Ltd., and the Steel Co. of Canada, Ltd., are being, or are likely to be, sold at less than fair value, the U.S. International Trade Commission, on November 15, 1978, instituted investigation No. AA1921-189 under section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States. For the purposes of its determination concerning sales at less than fair value, the Treasury Department defined "certain steel wire nails" as steel wire brads, nails, spikes, staples, and tacks of one-piece construction which are 1 inch or more in length and 0.065 inch or more in diameter, as provided for in TSUS item 646.26.

HEARING: A public hearing is connection with the investigation will be held in Washington, D.C., beginning at 10 a.m., e.s.t., on Thursday, December 14, 1978, in the Hearing Room, U.S. International Trade Commission Building, 701 E Street NW. All persons shall have the right to appear by counsel or in person, to present evidence, and to be heard. Requests to appear at the public hearing, or to intervene under the provisions of section 201(d) of the Antidumping Act, 1921, shall be filed with the Secretary of the Commission, in writing, not later than noon, Friday, December 8, 1978.

There will be a prehearing conference in connection with this investigation which will be held in Washington, D.C. at 10 a.m., e.s.t., on Tuesday, December 12, 1978, in Room 117, U.S. International Trade Commission Building, 701 E Street NW.

Issued: November 16, 1978.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc. 78-32709 Filed 11-20-78; 8:45 am]

[4510-43-M]

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-78-49-M]

AMERICAN GILSONITE CO.

Petition for Modification of Application of Mandatory Safety Standard

The American Gilsonite Co., Bonanza, Utah 84008, has filed a petition to modify application of 30 CFR 57.19-3 (hoists) to its Eureka No. 30 Mine in Unitah County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of the petition is as follows:

(1) The petitioner requests permission to use a Vulcan Ironworks multiple V-belt driven man hoist (company I.D. No. H-10).

(2) The hoist complies with standards 57.19-1, 57.19-4, 57.19-7, and 57.19-9.

The petitioner has no record of any broken belts nor of any injury resulting from the belt drive of the hoist.

(4) Multiple V-belt driven hoists offer added safety to the hoist operator due to greatly reduced noise levels when compared to gear driven hoists.

(5) For these reasons the petitioner requests relief from the standard.

REQUEST FOR COMMENTS

Persons interested in this petition may furnish written comments on or before December 21, 1978.

Comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Va. 22203. Copies of the petition are available for inspection at that address.

Dated: November 8, 1978.

ROBERT B. LAGATHER,
Assistant Secretary for Mine Safety and Health.

[FR Doc. 78-32686 Filed 11-20-78; 8:45 am]

[4510-43-M]

[Docket No. M-78-104-C]

CONSOLIDATION COAL CO.

Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Co., Cadiz, Ohio 43907, has filed a petition to modify application of 30 CFR 75.1100-2 (fire protection) to its Oak Park No. 07 Mine in Cadiz, Ohio. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of the petition is as follows:

(1) Freezing problems during winter months affect the waterlines of the mine's slope fire suppression system.

(2) As an alternative to the standard, the petitioner proposes to install an automatic dry-pipe fire suppression system whose construction is detailed in the petition.

REQUEST FOR COMMENTS

Persons interested in this petition may furnish written comments on or before December 21, 1978. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Va. 22203. Copies of the petition are available for inspection at that address.

Dated: November 8, 1978.

ROBERT B. LAGATHER,
Assistant Secretary for Mine Safety and Health.

[FR Doc. 78-32687 Filed 11-20-78; 8:45 am]

[4510-43-M]

[Docket No. M-78-43-M]

DEMAR BOREN

Petition for Modification of Application of Mandatory Safety Standard

Demar Boren, Bonanza, Utah 84008, has filed a petition to modify application of 30 CFR 57.19-3 (hoists) to its Wagonhound No. 12 Mine of Boren Mines in Unitah County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of the peition is as follows:

(1) The petitioner requests permission to use a Hendrie and Bolthoff multiple V-belt driven man hoist (company I.D. No. H-11).

(2) The hoist complies with standards 57.19-1, 57.19-4, 57.19-7 and 57.19-9.

(3) The petitioner has no record of any broken belts nor of any injury resulting from the belt drive of the hoist.

(4) Multiple V-belt driven hoist offer added safety to the hoist operator due to greatly reduced noise levels when compared to gear driven hoists.

(5) For these reasons the petitioner requests relief from the standard.

REQUEST FOR COMMENTS

Persons interested in this petition may furnish written comments on or before December 21, 1978. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Va. 22203. Copies of the petition are available for inspection at that address.

Dated: November 15, 1978.

ROBERT B. LAGATHER,
Assistant Secretary for Mine Safety and Health.

[FR Doc. 78-32668 Filed 11-20-78; 8:45 am]

[4510-43-M]

[Docket No. M-78-57-M]

DEMAR BOREN

Petition for Modification of Application of Mandatory Safety Standard

Demar Boren, Bonanza, Utah 84008, has filed a petition to modify application of 30 CFR 57.19-3 (hoists) to its Bonanza No. 42 Mine of Boren Mines in Unitah County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of the petition is as follows:

(1) The petitioner requests permission to use a Joshua Hendy Ironworks multiple V-belt driven man hoist (company I.D. No. H-49).

(2) The hoist complies with standards 57.19-1, 57.19-4, 57.19-7, and 57.19-9.

The petitioner has no record of any broken belts nor of any injury resulting from the belt drive of the hoist.

(4) Multiple V-belt driven hoists offer added safety to the hoist operator due to greatly reduced noise levels when compared to gear driven hoists.

(5) For these reasons the petitioner requests relief from the standard.

REQUEST FOR COMMENTS

Persons interested in this petition may furnish written comments on or before December 21, 1978.

Comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Va. 22203. Copies of the petition are available for inspection at that address.

Dated: November 15, 1978.

ROBERT B. LAGATHER,
Assistant Secretary for Mine Safety and Health.

[FR Doc. 78-32689 Filed 11-20-78; 8:45 am]

[4510-43-M]

[Docket No. M-78-59-M]

PICKANDS MATHER & CO.

Petition for Modification of Application of Mandatory Safety Standard

Pickands Mather and Co., 811 Sellwood Building, Duluth, Minn. 55802, has filed a petition to modify application of 30 CFR 55.12-14 (power cables) to its Erie Mining Co. Mine in Hoyt Lakes, Minn. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of the petition is as follows:

(1) The petition pertains to power cables connected to electric shovels at the petitioner's mine.

(2) The power cables used at the mine connect to a ground fault protection system designed to protect persons handling the cables.

(3) Workers check the integrity of the complete ground-fault system when equipment moves occur, which is frequently.

(4) After each cable repair, workers verify the quality of the high voltage insulation and the continuity of the ground wires and conductor sheaths of the cable.

(5) Workers check the ohmic value of ground wires from the switch house to the equipment each time they reconnect a cable to equipment.

(6) The petitioner states that the ground fault-protection system constitutes alternative "suitable protection" as provided for in the standard for the protection of workers handling power cables.

REQUEST FOR COMMENTS

Persons interested in this petition may furnish written comments on before December 21, 1978. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Va. 22203. Copies of the petition are available for inspection at that address.

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Dated: November 15, 1978.

ROBERT B. LAGATHER,
Assistant Secretary for Mine Safety and Health.

[FR Doc. 78-32690 Filed 11-20-78; 8:45 am]

[4510-26-M]

Occupational Safety and Health Administration

[V-78-71]

UNITED STATES STEEL CORP.

Notice of Hearing on Application for Variance

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of Hearing on Application for Variance.

SUMMARY: This notice announces a hearing on the application for variance submitted by United States Steel Corp. The variance requested is from 29 CFR 1910.1029(g)(2)(ii) concerning respirator selection for coke oven emissions.

DATE: The hearing will be held at 9:30 a.m. on February 6, 7, and 8, 1979.

ADDRESS: The location of the hearing will be the Federal Building, Room 2102, 1000 Liberty Avenue, Pittsburgh, Pa. 15222.

FOR FURTHER INFORMATION CONTACT:

Mr. James J. Concannon, Director, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., Room N-3668, Washington, D.C. 20210, telephone: 202-523-7121.

NOTICE OF HEARING

Notice is hereby given pursuant to section 6(d) of the Occupational Safety and Health Act of 1970 (84 Stat. 1596; 29 U.S.C. 655) Secretary of Labor's Order No. 8-76 (41 FR 25059) and 29 CFR 1905.20, that a hearing will be held on the application of United States Steel Corp. (hereinafter referred to as "applicant"), 600 Grant Street, Pittsburgh, Pa. 15230 for a variance from the standard prescribed in 29 CFR 1910.1029(g)(2)(ii) which requires that after January 20, 1978, whenever respirators are required for coke oven emission concentrations not exceeding 1500 $\mu g/M^3$, the employees shall have an option of wearing a particulate filter respirator or a powered air purifying respirator. The applicant seeks a variance from § 1910.1029(g)(2)(ii) to permit the applicant to provide only particulate filter respirators to its affected employees, rather than giving them an option of wearing powered air purifying respirators in areas of concentrations not exceeding 1500 $\mu g/M^3$.

The facilities affected by this request are:

Clairton Works, 400 State Street, Clairton, Pa. 15025.

Fairless Works, Fairless Hills, Pa. 19030.

Lorain Works, 1807 East 28th Street, Lorain, Ohio 44055.

Fairfield Works, P.O. Box 599, Fairfield, Ala. 30564.

Gary Works, 100 North Broadway, Gary, Ind. 46401.

Duluth Works, Morgan Park, Duluth, Minn. 55808.

Geneva Works, Geneva, Utah 84601.

A notice of the application for variance was published in the FEDERAL REGISTER on Tuesday, August 1, 1978 (43 FR 33834), which included a summary of the application and an invitation to interested persons to submit written data, views, and arguments concerning the application by August 31, 1978. The applicant's request for an interim order was also denied at this time, and reasons for the denial were published in the FEDERAL REGISTER document. In response to this notice, comments were received from: United Steelworkers of America and John L. S. Hickey, certified industrial hygienist.

By letter dated August 24, 1978, the applicant requested a hearing on its variance application. Interested persons, including affected employers and employees, may file a request to present views and evidence and to participate in the hearing no later than January 12, 1978. The requests to participate in the hearing must be filed with both:

James J. Concannon, Director, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., Room N-3668, Washington, D.C. 20210; and

H. Stephan Gordon, Chief Administrative Law Judge, U.S. Department of Labor, Suite 700, Vanguard Building, 1111 20th Street NW., Washington, D.C. 20036.

Such requests shall contain a statement of the position to be taken and a concise summary of the evidence to be adduced in support of that position.

The hearing will be convened on Tuesday, February 6, 1979, at 9:30 a.m. in room 2102, Federal Building, 1000 Liberty Avenue, Pittsburgh, Pa. 15222 at which time the applicant and any interested person who has filed a request to appear in accordance with the above requirements, may submit written or oral data, views or arguments and call witnesses, subject to the regulations on hearing contained in 29 CFR 1905.20 et seq., the Occupational Safety and Health Act, the Administrative Procedure Act, pertinent provisions of the Federal rules of civil procedure, and rulings of the administrative law judge.

The issues of fact and law shall include, although shall not necessarily be limited to, whether the applicant has demonstrated by a preponderance of evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used will provide places of employment which are as safe and healthful as those which would prevail if the standard were complied with.

I hereby designate as hearing examiner to conduct this hearing an administrative law judge to be appointed by the Chief Administrative Law Judge of the United States Department of Labor.

It shall be a condition of this grant of a request for a hearing that the applicant shall give notice thereof to affected employees by the same means used to inform them of the application for a variance and shall certify to the Assistant Secretary by January 6, 1979, that such notice has been given.

Signed at Washington, D.C., this 1st day of November 1978.

EULA BINGHAM,
Assistant Secretary of Labor.

[FR Doc. 78-32691 Filed 11-20-78; 8:45 am]

[4510-29-M]

Office of Pension and Welfare Benefit Programs

ADVISORY COUNCIL ON EMPLOYEE WELFARE AND PENSION BENEFIT PLANS

Meeting

Pursuant to section 512 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1141) a meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 9:30 a.m., on Tuesday, December 12, 1978, in the Ambassador Room, Shoreham Americana, Connecticut Avenue at Calvert Street NW., Washington, D.C.

The purpose of the meeting is to install new members, to discuss the items listed below and to invite public comment on any aspect of the administration of the pension reform law.

1. Administration of oath of office to new members.
2. Department of Labor progress report.
3. Reconstitution of advisory council work groups.
4. Statements for the public.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA, by submitting 30 copies on or before December 11, 1978, to the Administrator, Pension and Welfare Benefit Programs, U.S. Department of Labor, Room S-4522, 200 Constitution Avenue NW., Washington, D.C. 20216.

Persons desiring to attend should notify Edward F. Lysczek, Executive Secretary of the Advisory Council, in care of the above address or by calling area code 202-523-8753.

Signed at Washington, D.C., this 14th day of November 1978.

IAN D. LANOFF,
Administrator of Pension and Welfare Benefit Programs.

[FR Doc. 78-32548 Filed 11-20-78; 8:45 am]

[7510-01-M]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (78-61)]

NASA ADVISORY COUNCIL (NAC)

AERONAUTICS ADVISORY COMMITTEE

Meeting

The Informal Ad Hoc Advisory Subcommittee on NASA avionics and controls plan will meet on December 6-7-8, 1978, in the Management Conference Center, Building 8, Goddard Space Flight Center, Greenbelt, Md. The meeting will be open to the public up to the seating capacity of the room (about 25 persons including subcommittee members and participants).

The subcommittee was established to review the NASA avionics and control program assessment and proposed plan for future research and technology programs. The Chairperson is Mr. Duane T. McRuer, and there are 10 members of the subcommittee.

For further information contact Dr. Herman A. Rediess, Executive Secretary of the informal ad hoc subcommittee on NASA avionics and controls plan, Code RTE-3, NASA Headquarters, Washington, D.C. 20546, 202-755-2414.

AGENDA

December 6, 1978

8 a.m. to 5 p.m.—Presentation and discussion of the NASA avionics and control plan and planning activities.

December 7, 1978

8:30 a.m. to 5 p.m.—Discussion of the proposed plan and related R. & D. activities.

December 8, 1978

8:30 a.m. to 2:30 p.m.—Subcommittee deliberation and recommendations.

ARNOLD W. FRUTKIN,
Associate Administrator for External Relations.

NOVEMBER 14, 1978.

[FR Doc. 78-32630 Filed 11-20-78; 8:45 am]

[7510-01-M]

[Notice (78-62)]

NASA ADVISORY COUNCIL (NAC) SPACE AND TERRESTRIAL APPLICATIONS ADVISORY COMMITTEE (STAAC)

Meeting

The ad hoc Informal Advisory Subcommittee on Agriculture, Land Cover, and Hydrology of the NAC-STAAC will meet on December 6, 1978 from 8:30 a.m. to 4:30 p.m. and on December 7, 1978, from 8:30 a.m. to 3 p.m. at NASA Headquarters, Room 226A, Federal Office Building 10B, 600 Independence Avenue SW., Washington, D.C. 20546. Members of the public will be admitted to the meeting on both days at the times noted above on a first-come, first-served basis and will be required to sign a visitors' register. The seating capacity of the meeting room is for about 35 persons.

This subcommittee, chaired by Dr. Robert M. Ragan, is comprised of 10 members of the NAC-STAAC. The functions of this subcommittee are to review and assess NASA's on-going and planned research programs in agriculture, land cover and hydrology as well as NASA's accomplishments in these fields.

The approved agenda for the meeting is as follows:

DECEMBER 6, 1978

Time and Topic

8:30 a.m.—Chairperson's remarks.
9 a.m.—NASA Response to subcommittee; and recommendations on the agricultural research program.
10:30 a.m.—NASA water resources/hydrology research program: Issues; research status; and 5-year plan.
1:30 p.m.—Discussion.
2:30 p.m.—Integrated soil moisture research planning status.
3:30 p.m.—Discussion.
4:30 p.m.—Adjourn.

DECEMBER 7, 1978

8:30 a.m.—National Research Council Space Applications Board (NRC-SAB) Inland Water Resources Panel Report Update.
9:30 a.m.—Discussion and recommendations.
12:30 p.m.—Land resources plan.
1:30 p.m.—Discussion.
2:30 p.m.—Conclusions and recommendations.
3 p.m.—Adjourn.

For further information regarding the meeting, please contact Louis B. C. Fong, Executive Secretary of the Sub-committee, Washington, D.C., 202-755-8601.

ARNOLD W. FRUTKIN,
Associate Administrator for External Relations.

NOVEMBER 15, 1978.

[FR Doc. 78-32631 Filed 11-20-78; 8:45 am]

[7510-01-M]

[Notice (78-63)]

NASA ADVISORY COUNCIL (NAC) SPACE AND TERRESTRIAL APPLICATIONS ADVISORY COMMITTEE (STAAC)

Meeting

The Informal Executive Subcommittee of the NAC-STAAC will meet on December 8, 1978 at NASA Headquarters, room 226A, Federal Office Building 10B, 600 Independence Avenue SW., Washington, D.C. 20546. Members of the public will be admitted to the meeting at 8:30 a.m. on a first-come, first-served basis and will be required to sign a visitors' register. The seating capacity of the meeting room is for 35 persons.

This subcommittee, chaired by Dr. John W. Firor, is comprised of the chairpersons of the ad hoc Informal Subcommittees of the NAC-STAAC.

The approved agenda for the meeting is as follows:

DECEMBER 8, 1978

Time and Topic

8:30 a.m.—Chairperson's Remarks and Report on the Meeting of the NASA Advisory Council.

Report by the ad hoc Informal Advisory Subcommittee Chairpersons on the Findings, Conclusions and Recommendations of Their Respective Subcommittees

9 a.m.—Agriculture, Land Cover and Hydrology.
9:30 a.m.—Satellite Communications Applications.
10 a.m.—Materials Processing in Space.
10:30 a.m.—Geodynamics and Geology.
11 a.m.—Technology Transfer.
11:30 a.m.—Weather, Climate and Oceans.
1:30 p.m.—Program Balance, Issues and Other Business.
3 p.m.—Adjourn.

For further information regarding the meeting, please contact Louis B. C. Fong, Executive Secretary of the NAC/STAAC Ad Hoc Informal Advisory Subcommittees, Washington, D.C. at 202-755-8601.

ARNOLD W. FRUTKIN,
Associate Administrator for External Relations.

NOVEMBER 14, 1978.

[FR Doc. 78-32632 Filed 11-20-78; 8:45 am]

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[7555-01-M]

NATIONAL SCIENCE FOUNDATION

ADVISORY COMMITTEE FOR INTERNATIONAL PROGRAMS

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

ADVISORY COMMITTEE FOR INTERNATIONAL PROGRAMS

Date and time: December 11, 1978—9 a.m. to 5 p.m.

Place: Room 540, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550.

Type of meeting: Open.

Contact person: Dr. Bodo Bartocha, Director, Division of International Programs, Room 1214, National Science Foundation, Washington, D.C. 20550, telephone: 202-632-5798.

Persons interested in attending the meeting should inform Dr. Bartocha before 5 p.m. on December 6, 1978.

Summary minutes: May be obtained from the Committee Management Coordinator, Room 248, Division of Financial and Administrative Management, National Science Foundation, Washington, D.C. 20550.

Purpose of Committee: To provide advice, recommendations, and oversight concerning support for activities related to international scientific and technical cooperation.

Agenda:

December 11, 1978—Morning Session

Overview of Policy for NSF International Science Programs; Ongoing Activities of the Division of International Programs.

December 11, 1978—Afternoon Session

Selected Program Initiatives and Reviews—Lesser Developed Countries, People's Republic of China Project; National Academy of Sciences Projects; Western Europe Interests; and General Discussion.

M. REBECCA WINKLER,
Committee Management Coordinator.

NOVEMBER 16, 1978.

[FR Doc. 78-32655 Filed 11-20-78; 8:45 am]

[7555-01-M]

ADVISORY COMMITTEE FOR MINORITY PROGRAMS IN SCIENCE EDUCATION

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

ADVISORY COMMITTEE FOR MINORITY PROGRAMS IN SCIENCE EDUCATION

Date and time: December 11, 1978—9 a.m. to 5 p.m.; December 12, 1978—9 a.m. to 12:30 p.m.

Place: Room 651, 5225 Wisconsin Avenue NW., Washington, D.C.

Type of meeting: Open.

Contact person: Mrs. Frances Watts, Staff Assistant, Science Education Directorate, National Science Foundation, Room W-600, Washington, D.C. 20550, telephone: 202-282-7930.

Summary minutes: May be obtained from the Committee Management Coordinator, Division of Financial and Administrative Management, National Science Foundation, Room 248, Washington, D.C. 20550.

Purpose of Committee: To assist in the evaluation and assessment of activities in the ethnic minority-focused Foundation programs.

Agenda: Oversight and evaluation of resource centers in Science and Engineering. Annual report topic.

M. REBECCA WINKLER,
Committee Management Coordinator.

NOVEMBER 16, 1978.

[FR Doc. 78-32654 Filed 11-20-78; 8:45 am]

[7555-01-M]

ADVISORY COMMITTEE FOR PHYSICS

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

ADVISORY COMMITTEE FOR PHYSICS

Date and time: December 7-8, 1978—9 a.m. to 5 p.m.; December 9, 1978—9 a.m. to 4 p.m.

Place: Room 338, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550.

Type of meeting: Open.

Contact person: Dr. Laura P. Bautz, Senior Staff Associate, Division of Physics, National Science Foundation, Washington, D.C., telephone: 202-632-4175.

Summary of minutes: May be obtained from the Committee Management Coordinator, Division of Financial and Administrative Management, Room 248, National Science Foundation, Washington, D.C. 20550.

Purpose of Committee: To provide advice and recommendations concerning support for research in physics.

Agenda: December 7, 1978, 9 a.m. to 5 p.m. Review of the NSF support of Nuclear Science in a national perspective: Presentations describing NSF and DOE support programs in nuclear and intermediate energy physics; statements from the Nuclear Science Advisory Committee and from the American Physical Society Division of Nuclear Physics; report of the Subcommittee for Review of Nuclear Science.

December 8, 1978, 9 A.M. to P.M.: Follow-up to previous recommendations from the Advisory Committee for Physics; fiscal year 1979 budget and long range plan discussions; continuation of review of NSF support of Nuclear Science.

December 9, 1978, 9 A.M. to 4 P.M.: Continuation of topics from 2 previous days.

M. REBECCA WINKLER,
Committee Management Coordinator.

NOVEMBER 16, 1978.

[FR. Doc. 78-32652 Filed 11-20-78; 8:45 am]

[7555-01-M]

SUBCOMMITTEE FOR APPLIED PHYSICAL, MATHEMATICAL, AND BIOLOGICAL SCIENCES AND ENGINEERING OF THE ADVISORY COMMITTEE FOR APPLIED SCIENCE AND RESEARCH APPLICATIONS POLICY

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

SUBCOMMITTEE FOR APPLIED PHYSICAL, MATHEMATICAL, AND BIOLOGICAL SCIENCES AND ENGINEERING OF THE ADVISORY COMMITTEE FOR APPLIED SCIENCE AND RESEARCH APPLICATIONS POLICY

Date and time: December 7 and 8, 1978—9 a.m. to 5 p.m. each day.

Place: Room 642, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. L. Vaughn Blankenship, Director, Division of Applied Research, Room 1126, National Science Foundation, Washington, D.C. 20550, telephone: 202-634-6260.

Purpose of Subcommittee: To provide advice and recommendations concerning support for applied research in the physical, mathematical, and biological sciences and engineering.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Acting Director, NSF, on February 18, 1977.

M. REBECCA WINKLER,
Committee Management Coordinator.

NOVEMBER 16, 1978.

[FR Doc. 78-32853 Filed 11-20-78; 8:45 am]

[7555-01-M]

SUBCOMMITTEE FOR COMPUTER SCIENCE OF THE ADVISORY COMMITTEE FOR MATHEMATICAL AND COMPUTER SCIENCES

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting: Subcommittee for Computer Science of the Advisory Committee for Mathematical and Computer Sciences.

Date and time: December 7 and 8, 1978—9 a.m. each day.

Place: Room 540, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550.

Type of meeting: Part Open—December 7—Closed—9 a.m. to 5 p.m.; December 8—Open—9 a.m. to 5 p.m.

Contact person: Mr. Kent K. Curtis, Head, Computer Science Section, Room 339, National Science Foundation, Washington, D.C. 20550. Telephone: 202-632-7346. Anyone planning to attend this meeting should notify Mr. Curtis no later than December 1, 1978.

Summary minutes: May be obtained from the Committee Management Coordinator, Division of Financial and Administrative Management, Room 248, National Science Foundation, Washington, D.C. 20550.

Purpose of Subcommittee: To provide advice and recommendations concerning support for research in Computer Science.

Agenda:

Thursday, December 7, 1978—9 A.M. to 5 P.M.—Closed

Review and comparison of declined proposals (and supporting documentation) with successful awards under the Software Systems Science Program, including review of peer review materials and other privileged material. Preparation of a report based upon the above review.

Friday, December 8, 1978—9 A.M. to 5 P.M.—Open.

9 a.m.—Discussion of Report on Software Systems Science Program.

10 a.m.—Briefing by Dr. John R. Pasta, DD/MCS.

11 a.m.—Briefing by Mr. Kent Curtis, Head, CSS/MCS.

12 noon—Lunch.

1 p.m.—Discussion of Computer Science Institutes, Dr. Aravind Joshi, University of Pennsylvania.

3 p.m.—Adjourn.

Reason for closing: The Subcommittee wil be reviewing grants and declination jackets which contain the names of applicant institutions and principal investigators and privileged information contained in declined proposals. This session will also include a review of the peer review documentation pertaining to applicants. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Director, NSF, pursuant to provisions of section 10(d) of Pub. L. 92-463.

M. REBECCA WINKLER,
Committee Management Coordinator.

NOVEMBER 16, 1978.

[FR Doc. 78-32651 Filed 11-20-78; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS SUBCOMMITTEE ON ADVANCED REACTORS

Meeting

The agenda for the December 6, 1978, meeting of the ACRS Subcommittee on Advanced Reactors (rescheduled from November 1, 1978) has been changed to start the meeting at 1:30 p.m. (instead of 8:30 a.m.). In addition, the meeting will be held in room 1167 (instead of 1046), at 1717 H Street NW., Washington, D.C. 20555.

All other matters pertaining to this meeting remain the same as announced on October 17, 1978 (43 FR 47802), and October 31, 1978 (43 FR 50763).

Dated: November 15, 1978.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc. 78-32586 Filed 11-20-78; 8:45 am]

[7590-01-M]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS SUBCOMMITTEE ON REGULATORY ACTIVITIES

Meeting

The ACRS Subcommittee on Regulatory Activities will hold an open meeting on December 6, 1978, in Room 1046, 1717 H Street NW., Washington, D.C. 20555. Notice of this meeting was published in the FEDERAL REGISTER on October 20, 1978 (43 FR 49080).

In accordance with the procedures outlined in the FEDERAL REGISTER on October 4, 1978 (43 FR 45926), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the designated Federal employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows:

WEDNESDAY, DECEMBER 6, 1978

THE MEETING WILL COMMENCE AT 8:45 A.M.

The subcommittee will hear presentations from the NRC staff and will hold discussions with this group pertinent to the following:

(1) Draft Regulatory Guide 1.XXX, Draft 1, "Qualification of Quality Assurance Program Audit Personnel for Nuclear Power Plants."

(2) Draft Regulatory Guide 1.XXX, Draft 1, "Safety Related Permanent Dewatering Systems."

(3) Draft Regulatory Guide 1.8, Draft 1, Revision 2, "Personnel Selection and Training."

(4) Draft Regulatory Guide 1.XXX, "Atmospheric Dispersion Models for Potential Accident Consequence Assessments at Nuclear Power Plants."

(5) Regulatory Guide 1.104, Revision 1, "Single-Failure-Proof Overhead Crane Handling Systems for Nuclear Power Plants."

Other matters which may be of a predecisional nature relevant to reactor operation or licensing activities may be discussed following this session.

Persons wishing to submit written statements regarding regulatory guide 1.104, revision 1, may do so by providing a readily reproducible copy to the subcommittee at the beginning of the meeting. However, to insure that adequate time is available for full consideration of these comments at the meeting, it is desirable to send a readily reproducible copy of the comments as far in advance of the meeting as practicable to Mr. Gary R. Quittschreiber (ACRS), the designated Federal employee for the meeting, in care of ACRS, Nuclear Regulatory Commission, Washington, D.C. 20555, or telecopy them to the designated Federal employee (202-634-3319), as far in advance of the meeting as practicable. Such comments shall be based upon documents on file and available for public inspection at the NRC Public Document Room, 1717 H Street NW., Washington, D.C. 20555.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chariman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the designated Federal employee for this meeting, Mr. Gary R. Quittschreiber, telephone 202-634-3267, between 8:15 a.m. and 5 p.m., e.s.t.

NO 21 78 UMI

Dated: November 15, 1978.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc. 78-32566 Filed 11-20-78; 8:45 am]

[7590-01-M]

[Docket Nos. 50-237, 50-249, 50-254 and 50-265]

COMMONWEALTH EDISON CO. AND IOWA ILLINOIS GAS & ELECTRIC CO.

Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued an amendment each to Facility Operating License Nos. DPR-19, DPR-25, DPR-29 and DPR-30, issued to Commonwealth Edison Co. (and, in the matter of License Nos. DPR-29 and DPR-30, the Iowa-Illinois Gas & Electric Co.), which revised Technical Specifications for operation of each of the Dresden and Quad Cities Nuclear Power Stations (collectively referred to as the facilities). The Dresden Station consists of Unit Nos. 1, 2, and 3 and is located in Grundy County, Ill. However, the actions noticed herein relate to Dresden Station Units 2 and 3. The Quad Cities Station consists of Unit Nos. 1 and 2 and is located in Rock Island County, Ill. These amendments are effective as of their dates of issuance.

The amendments revise Technical Specifications to provide operating temperature and pressure limits in accordance with Appendix G, 10 CFR Part 50.

The applications for the amendments comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR Section 51.5(d)(4), an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the amendments.

For further details with respect to this action, see (1) the applications for amendments dated September 10, 1974 and May 17, 1976, as supplemented March 21, 1977 and March 13, 1978, (2) Amendment Nos. 39 and 37 to License Nos. DPR-19, and DPR-25, (3) Amendment Nos. 48 and 47 to License Nos. DPR-29 and DPR-30, and (4) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and for those items relating to Dresden Unit Nos. 2 and 3 at the Morris Public Library, 604 Liberty Street, Morris, Ill. 60450 and for those items relating to Quad Cities Units Nos. 1 and 2 at the Moline Public Library, 504 17th Street, Moline, Ill. 60625. A single copy of items (2), (3), and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md. this 13th day of November 1978.

For the Nuclear Regulatory Commission.

THOMAS A. IPPOLITO,
Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc. 78-32678 Filed 11-20-78; 8:45 am]

[7590-01-M]

[Docket Nos. STN 50-556, STN 50-557]

PUBLIC SERVICE CO. OF OKLAHOMA, ASSOCIATED ELECTRIC COOPERATIVE, INC., AND WESTERN FARMERS ELECTRIC COOPERATIVE, INC. (BLACK FOX STATION, UNITS 1 AND 2)

Order Resuming Evidentiary Hearing on Health and Safety Issues

Please Take Notice And It Is Hereby Ordered that the evidentiary hearing on health and safety issues will resume at 9:30 a.m. on December 5, 1978 and, on week days, will continue through December 15, 1978.[1] The location of the hearing is as follows:

Courtroom No. 3, U.S. Courthouse, 333 West Fourth Street, Tulsa, Okla.

Further, beginning at 9:30 a.m. on December 13, 1978, the Board will hear oral argument upon General Electric Co.'s Motion To Quash Intervenors' Subpena filed on October 30, 1978. General Electric shall have 30 minutes for its presentation and 10 minutes for rebuttal; Applicants and Staff shall have 20 minutes each for their presentation and the Intervenors shall have 30 minutes.

Members of the public are invited to attend this evidentiary hearing.

[1] Accordingly, we herewith grant Applicants' Motion To Establish Hearing Schedule and Order of Issues filed on October 30, 1978.

Dated at Bethesda, Md. this 15th day of November 1978.

It is so ordered.

For the Atomic Safety and Licensing Board.

SHELDON J. WOLFE,
Chairman.

[FR Doc. 78-32679 Filed 11-20-78; 8:45 am]

[7590-01-M]

[Docket No. 50-572]

WESTINGHOUSE ELECTRIC CORP.

Reference Safety Analysis Report (RESAR-414 Nuclear Steam Supply System Standard Design); Issuance of a Safety Evaluation Report and Preliminary Design Approval

Notice is hereby given that the Staff of the Nuclear Regulatory Commission (the NRC Staff), has issued a Safety Evaluation Report (SER) dated November 1978, and a Preliminary Design Approval No. PDA-13 dated November 14, 1978, for the nuclear steam supply system portion of a nuclear power plant as described in the Westinghouse Electric Corp. Reference Safety Analysis Report (RESAR-414). RESAR-414 was reviewed by the NRC Staff pursuant to Appendix 0 to 10 CFR Part 50.

RESAR-414 contains preliminary safety-related design information for the nuclear steam supply system portion of a pressurized water reactor nuclear power plant which includes the reactor coolant system, emergency core cooling system, reactor control systems, integrated reactor protection and engineered safety features actuation system, chemical and volume control system, boron recycle system, residual heat removal system, fuel handling equipment, and related systems and features. The RESAR-414 reference system is designed to operate at a core thermal power level of 4,100 megawatts but, in accordance with Regulatory Guide 1.49, "Power Levels of Nuclear Power Plants," the application for the Preliminary Design Approval was based on a core thermal power level of 3,800 megawatts.

The SER documents the results of the Staff's review and evaluation of RESAR-414, including Amendments 1 through 19 thereto. The SER addresses the comments of the Advisory Committee on Reactor Safeguards (ACRS) as reflected in its report to the Commission, dated August 10, 1978. A copy of the ACRS report is included as Appendix E to the SER.

PDA-13 provides NRC Staff approval of the preliminary nuclear steam supply system design described in RESAR-414, including Amendments 1 through 19 and described and evaluated in sections 1 through 19 of the SER.

By the issuance of PDA-13, the NRC Staff has determined that the design is acceptable for referencing in utility applications for construction permits. RESAR-414 and the RESAR-414 reference system design, subject to the conditions of PDA-13, shall be utilized by and relied upon by the NRC Staff and the ACRS in their review of facility license applications for construction permits incorporating the RESAR-414 nuclear steam supply system preliminary standard design by reference, unless significant new information which substantially affects the determinations in PDA-13, or other good cause is present.

Issuance of PDA-13 and the Staff's Safety Evaluation Report does not constitute a commitment to issue a permit or license, or in any way affect the authority of the Commission, Atomic Safety and Licensing Appeal Board, Atomic Safety and Licensing Boards and other presiding officers in any proceeding under Subpart G of 10 CFR Part 2. This action only approves the preliminary design of a nuclear steam supply system for use for reference purposes in applications for permits to construct a nuclear power plant. It does not authorize the construction or operation of any nuclear power plant or any other facility. The environmental impacts associated with any facility proposed to be constructed utilizing the approved reference system design will be considered in accordance with the Commission's regulations in 10 CFR Part 51.

PDA-13 is effective as of its date of issuance and shall expire on November 14, 1983, unless superseded earlier by issuance of an appropriate Final Design Approval for the RESAR-414 nuclear steam supply system standard design. The expiration of PDA-13 on November 14, 1983, shall not affect use of PDA-13 for reference in any construction permit application docketed prior to such date.

A copy of (1) the Preliminary Design Approval No. PDA-13 dated November 14, 1978; (2) the report of the Advisory Committee on Reactor Safeguards dated August 10, 1978; (3) the NRC Staff's Safety Evaluation Report (NUREG-0491), dated November 1978; (4) the Westinghouse Electric Corp. Reference Safety Analysis Report, and Amendments 1 through 19 thereto; and (5) WASH-1341, the Commission's "Programmatic Information for the Licensing of Standardized Nuclear Power Plants," dated August 1974, (which also includes the Standardization Policy issued on March 5, 1973), as further augumented by NUREG-0427, "Review of the Commission Program for Standardization of Nuclear Power Plants and Recommendations to Improve Standardization Concepts" and the Commission Policy Statement on August 22, 1978, are available for public inspection at the Commission's Public Document Room at 1717 H Street NW., Washington, D.C. 20555. A copy of PDA-13 may be obtained upon request. The request should be addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Project Management. Copies of the Safety Evaluation Report (Document No. NUREG-0491) or of NUREG-0427 may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Va. 22161.

Dated at Bethesda, Md., this 14th day of November 1978.

For the nuclear Regulatory Commission.

STEVEN A. VARGA,
Chief, Light Water Reactors Branch No. 4, Division of Project Management.

[FR Doc. 78-32680 Filed 11-20-78; 8:45 am]

[7590-01-M]

REGULATORY GUIDE

Issuance and Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 5.58, "Considerations for Establishing Traceability of Special Nuclear Material Accounting Measurements," presents conditions and procedural approaches acceptable to the NRC staff for establishing and maintaining traceability of special nuclear material control and accounting measurements. Traceability is the ability to relate individual measurement results to national standards or nationally accepted measurement systems through an unbroken chain of comparisons.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Public comments on Regulatory Guide 5.58 will, however, be particularly useful in evaluating the need for an early revision if received by January 19, 1979.

Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of the latest revision of issue guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a).)

Dated at Rockville, Md. this 13th day of November 1978.

For the Nuclear Regulatory Commission.

ROBERT B. MINOGUE,
Director, Office of Standards Development.

[FR Doc. 78-32681 Filed 11-20-78; 8:45 am]

[3170-01-M]

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

SCIENCE, TECHNOLOGY AND DEVELOPMENT ADVISORY COMMITTEE

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the Office of Science and Technology Policy announces the following meeting:

Name: Science, Technology and Development Advisory Committee.
Date: December 11 and 12, 1978.
Time: 9 a.m. to 5 p.m.
Place: Room 2010, New Executive Office Building, 726 Jackson Place NW., Washington, D.C.
Type of meeting: Part open: Closed (Monday, December 11, 9 a.m. to 5 p.m.); Open (Tuesday, December 12, 9 a.m. to 5 p.m.).
Contact person: Mr. William J. Montgomery, Executive Officer, Office of Science and Technology Policy, 17th and Pennsylvania Avenue NW., Washington, D.C. 20500, telephone 202-395-4692. Anyone who plans to attend the open part of the meeting should contact Mr. Montgomery by December 6, 1978.
Summary minutes (open portion): May be obtained from Mr. William J. Montgomery at the address listed above.
Purpose of advisory committee: In March 1978, the President decided to create a Foundation for International Technological Cooperation in the reorganized foreign

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aid structure. To develop detailed plans for the Foundation, a Planning Office has been established reporting to Governor Gilligan. Chairman of the Development Coordination Committee. OSTP has been instrumental in developing the concept of the Foundation and the Planning Office; the Advisory Committee being established will advise the Director of OSTP on the concept and early planning of the Foundation, as well as on related policy issues and programs of the U.S. Government.

Tentative agenda: Open portion—Discussion of planning alternatives for the Foundation for International Technological Cooperation; Closed portion—Discussion of Interagency documents which treat possible program and budget initiatives involving Executive Branch decisions.

Reason for closing: The committee will review and discuss interagency documents which bear on possible program and budget initiatives involving agencies in the executive branch.

Authority for closing: The Director of OSTP determined on November 14, 1978, that the portion of the meeting dealing with interagency budgetary discussions is within the exemption provided in 5 U.S.C., 522b. (9)(B) and should therefore be closed to the public.

WILLIAM J. MONTGOMERY,
Executive Officer.

[FR Doc. 78-32816 Filed 11-20-78; 9:37 am]

[8010-01-M]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-15321; File No. SR-MSRB-78-14]

MUNICIPAL SECURITIES RULEMAKING BOARD

Self-Regulatory Organizations; Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 14 U.S.C.78s(b)(1), notice is hereby given that on November 2, 1978 the abovementioned self-regulatory organization filed with the Securities and Exchange Commission the proposed rule changes as follows:

STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGES

The Municipal Securities Rulemaking Board (the "Board") is filing a proposed amendment (hereafter referred to as the "proposed rule change") to Board rule G-12(b) which establishes uniform settlement dates for municipal securities transactions. The text of the proposed rule change is as follows: Rule G-12. Uniform Practice.[1]

(a) No change.

(b) Settlement dates.

(i) No change.

(ii) Settlement dates. Settlement dates shall be as follows:

(A) and (B) No change.

(C) for "when, as and if issued" transactions, a date agreed upon by both parties, which date shall not be earlier than the fifth business day following the date the confirmation indicating the final settlement date is sent, or, with respect to transactions between the manager and members of a syndicate or account formed to purchase securities from an issuer, a date not earlier than the sixth business day following the date the confirmation indicating the final settlement date is sent; provided, however, that if the issuer gives notice of pending delivery within less than six business days before delivery, the settlement date for transactions [between the manager and members of the syndicate or account] with respect to such issue of securities may be accelerated [as determined by the manager, and, in such event, all other "when, as and if issued" transactions with respect to such issue of securities may, but need not, be accelerated by each seller by not more than the number of days of acceleration by the syndicate manager; and]

(1) for transactions between the manager and members of the syndicate or account, as determined by the manager,

(2) for transactions between members of the syndicate or account, as determined by each seller, but by not more than the number of days of acceleration by the syndicate manager, and

(3) for all other transactions, as may be determined by agreement between the parties to such transactions; and

(D) No change.

(iii) No change.

(c) through (l) No change.

STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule change is as follows:

PURPOSE OF PROPOSED RULE CHANGES

Rule G-12 provides at present that the settlement date for "when, as and if issued" transactions is the date agreed upon by both parties, which may not be earlier than the fifth business day following the date the final confirmation is sent or, with respect to transactions between the manager and members of a syndicate, a date not earlier than the sixth business day following the date the final confirmation is sent. The rule provides, however, that if an issuer gives notice of pending delivery within less than six business days before delivery, the settlement date for transactions between the manager and members of the syndicate may be accelerated as determined by the manager and, in such event, all other "when, as and if issued" transactions may, but need not, be accelerated by each seller by not more than the number of days of acceleration by the syndicate manager. Accordingly, under rule G-12 as presently in effect, a syndicate member may accelerate delivery of new issue securities to nonmember dealers in the event of early delivery by an issuer.

The proposed rule change would modify subparagraph G-12(b)(ii)(C) to permit syndicate members to accelerate the settlement date for "when, as and if issued" transactions with nonmember dealers only if the nonmember dealers agree to accelerated delivery. Syndicate managers would still be permitted to accelerate the settlement date for transactions with other members of the syndicate, if an issuer gives notice of pending delivery less than six business days before delivery.

The Board has adopted the proposed rule change because it believes that it is inequitable to require municipal securities dealers which are not members of a syndicate to accept accelerated delivery of securities, unless they consent to do so. In contrast to members of a syndicate, nonmember dealers do not have the opportunity to negotiate with the issuer with respect to the timing of delivery. Further, syndicate members are directly compensated for undertaking the risk of underwriting new issue municipal securities, which risk includes the possible expense associated with carrying securities that cannot be timely resold or delivered. Since nonmember dealers are not so compensated, the Board believes that such dealers should not be compelled to bear underwriting expenses. The burden on a nonmember dealer resulting from accelerated delivery is particularly onerous in the case where the nonmember dealer must accept accelerated delivery from a syndicate member, but cannot accelerate redelivery of the securities to its customer.

BASIS UNDER THE ACT FOR PROPOSED RULE CHANGES

The Board has adopted the proposed rule changes pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, as amended (the "Act"), which authorizes and directs the Board to adopt rules which are

designed * * * to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in * * * clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest * * *.

COMMENTS RECEIVED FROM MEMBERS, PARTICIPANTS OR OTHERS ON PROPOSED RULE CHANGES

The Board's adoption of the proposed rule change was prompted by its consideration of a letter submitted on the subject by Magnus & Co. The Board has not solicited or received other comments with respect to the proposed rule change.

BURDEN ON COMPETITION

The Board is of the view that the proposed rule change would not impose any burden on competition among brokers, dealers or municipal securities dealers not necessary or appropriate in furtherance of the purposes of the Act. To the extent that the proposed rule change would treat differently members of a syndicate and nonmember dealers, the Board believes that such different treatment is justified for the reasons set forth above.

Within 35 days of the December 26, 1978, publication of this notice in the FEDERAL REGISTER, or within such longer period (i) as the Commission may designate up to 90 days of such date (February 20, 1978) if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule changes, or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before December 12, 1978.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

SHIRLEY E. HOLLIS,
Assistant Secretary.

NOVEMBER 13, 1978.

[FR Doc. 78-32615 Filed 11-20-78; 8:45 am]

[8010-01-M]

[Release No. 34-15318; File No. SR-MSRB-78-13]

MUNICIPAL SECURITIES RULEMAKING BOARD

Self-Regulatory Organizations; Proposed Rule Changes

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 1, 1978, the abovementioned self-regulatory organization filed with the Securities and Exchange Commission proposed rule changes as follows:

STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGES

The Municipal Securities Rulemaking Board (the "Board") has filed with the Securities and Exchange Commission (the "Commission") proposed amendments to section (h) of Board rule G-12 on uniform practice (the "proposed rule changes"). The text of the proposed rule changes is as follows:

Rule G-12. Uniform Practice.[1]

(a) Through (g). No change.

(h) Close-out.

(i) No change.

(ii) Closeout by seller. If a seller makes good delivery according to the terms of the transaction and the requirements of this rule and the purchaser rejects delivery, the seller may close out the transaction in accordance with the following procedures:

(A) Notice of closeout. If the seller elects to close out a transaction in accordance with this paragraph (ii), the seller shall, *at any time* not later than the close of business on the *fifth business day following receipt by the seller of notice of the rejection* [date of delivery], notify the purchaser by telephone of the seller's intention to close out the transaction and immediately thereafter send, return receipt requested, a written notice of close-out to the purchaser. Such notice shall be accompanied by a copy of the purchaser's confirmation of the transaction to be closed out or other written evidence of the contract between the parties. The notice shall state that unless the transaction is completed by a specified date and time, which shall not be earlier than the close of the business day following the date the telephonic notice is given, the transaction may be closed out in accordance with this section.

(B) Execution of closeout. Not earlier than the close of the business day following the date telephonic notice of closeout is given to the purchaser, the seller may sell out the transaction at the current market for the account and liability of the purchaser.

(C) In the event the transaction is completed by the date and time specified in the notice of close-out, the seller shall be entitled, upon written demand made to the purchaser, to recover from the purchaser all actual and necessary expenses incurred by the seller by reason of the purchaser's rejection of delivery.

(iii) through (v). No change.

(i) through (*l*). No change.

STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule changes is as follows:

PURPOSE OF PROPOSED RULE CHANGES

Under paragraph (h)(ii) of rule G-12, as presently in effect, a selling municipal securities broker or municipal securities dealer wishing to inititate closeout procedures in the event of improper rejection of a delivery of securities must give notice of its intent to close out the transaction not later than the close of business on the date of delivery. The proposed rule changes would expand the availability of the seller's closeout by permitting the seller to give notice of closeout at any time not later than the close of business on the fifth business day following receipt by the seller of the notice of rejection. The Board believes that this additional period of time is appropriate because in many instances sellers may not be aware of an improper rejection of securities until after the time period for notice has expired. For example, a seller may not be aware of an improper rejection in time to avail itself of the closeout procedures under the rule if the securities are shipped to a purchaser located in another city or they are delivered by a clearing agent on behalf of the seller.

The proposed rule changes would also amend rule G-12 to provide that in the event a transaction for which the seller has issued a closeout notice is completed, rather than being closed out, the seller may recover from the purchaser the actual and necessary expenses incurred by reason of the purchaser's rejection. For example, if a purchaser rejects good delivery of securities, the seller may incur expense in carrying securities unitil they are accepted by the purchaser. The Board believes that it is equitable to provide specifically for reimbursement to the seller of actual and necessary expenses in these circumstances, since such expenses are attributable solely to the purchaser's improper rejection.

BASIS UNDER THE ACT FOR PROPOSED RULE CHANGES

The Board has adopted the proposed rule changes pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, as amended (the

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[1] *Italics* indicate additions; [brackets] indicate deletions.

[1] Italics indicate new language; [brackets] indicate deletions.

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"Act"), which authorizes and directs the Board to adopt rules which are designed * * * to foster cooperation and coordination with persons engaged in * * * clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest * * *.

COMMENTS RECEIVED FROM MEMBERS, PARTICIPANTS OR OTHERS ON PROPOSED RULE CHANGES

The Board circulated the proposed rule changes for public comment in an exposure draft, dated August 18, 1978. One letter of comment was received from Advest Inc. In its letter Advest Inc. expressed its support for the proposed amendments.

BURDEN ON COMPETITION

The Board does not believe that the proposed rule changes will impose any burden on competition.

Within 35 days of the November 21, 1978 publication of this notice in the FEDERAL REGISTER, on within such longer period (i) as the Commission may designate up to 90 days of such date (February 20,1978) if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule changes, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 100 L Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before December 12, 1978.

For the Commission by the Division of Market Regulations, pursuant to delegated authority.

SHIRLEY E. HOLLIS,
Assistant Secretary.

NOVEMBER 9, 1978.

[FR Doc. 78-32616 Filed 11-20-78; 8:45 am]

[8025-01-M]

SMALL BUSINESS ADMINISTRATION

[Application No. 04/04-5150]

JETS VENTURE CAPITAL CORP.

Application for a License To Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*) has been filed by Jets Venture Capital Corp. (applicant) with the Small Business Administration pursuant to 13 C.F.R. 107.102 (1978).

The officers and directors are as follows:

Larry D. Barnette, president, treasurer, and chairman of the board of directors, 1870 Challen Avenue, Jacksonville, Fla, 32205.

Thomas F. Gibbs, vice president, secretary and director, 6618 Hyde Grove Avenue Jacksonville, Fla. 32210.

Kathleen C. Barnette, director, 1870 Challen Avenue, Jacksonville, Fla. 32205.

The applicant will maintain its principal place of business at 2721 Park Street, Jacksonville, Fla, 32205. It will begin operations with $520,000 of private capital derived from the sale of 100 shares of common stock, 50 shares to Larry D. Barnette and 50 shares to Allied Management Corp. Larry D. Barnette owns 98 percent of Allied Management Corp.

The applicant will conduct its operations principally in North Florida and South Georgia.

As a small business investment company under section 301(d) of the Act, the applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended, from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the applicant include the general business reputation and character of the proposed owners and management and the probability of successful operation of the applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA rules and regulations.

Notice is hereby given that any person may, not later than December 6, 1978, submit to SBA written comments on the proposed applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Jacksonville, Fla.

(Catalog of Federal Domestic Assistance Program No. 59.011 Small Business Investment Companies.)

Dated: November 15, 1978.

PETER F. MCNEISH
Deputy Associate Administrator for Investment.

[FR. Doc. 78-32684 Filed 11-20-78; 8:45 am]

[4710-07-M]

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice CM-8/132]

STUDY GROUP 2 OF THE U.S. ORGANIZATION FOR THE INTERNATIONAL TELEGRAPH AND TELEPHONE CONSULTATIVE COMMITTEE (CCITT)

Meeting

The Department of State announces that Study Group 2 of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on December 7, 1978, at 1 p.m. in Room 712, National Telecommunications and Information Administration, 1800 G Street NW., Washington, D.C.

Study Group 2 is responsible for considering U.S. Government and industry views, and preparing contributions as appropriate, for meetings of these international CCITT Study Groups examining non-regulatory aspects of telegraph operations.

The purpose of the meeting on december 7 will be to discuss the proposed recommendation entitled "Criteria for the Evaluation of Two Dimensional Coding Techniques for Use in Digital Facsimile Terminals" which has been placed on the agenda for the next meeting of international CCITT Study Group XIV.

Members of the general public may attend the meeting and join in the discussion subject to instructions of the Chairman. Admittance of public members will be limited to the seating available.

Requests for further information should be directed to Mr. Richard H. Howarth, State Department, Washington, D.C. 20520, telephone 202-632-1007.

Dated: November 16, 1978.

RICHARD H. HOWARTH,
Chairman,
U.S. CCITT National Committee.

[FR Doc. 78-32705 Filed 11-20-78; 8:45 am]

[4910-61-M]

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

ADVISORY BOARD

Meeting

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given that the meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation scheduled for December 1, 1978, has been rescheduled. Notice of the meeting appeared in the FEDERAL REGISTER on October 12, 1978 (vol. 43, No. 198) at page 47041. The meeting will now be held at 10 a.m., December 8, 1978, in the Seaway offices of the Seaway Corporation, 800 Independence Avenue SW., Washington, D.C. The agenda for this meeting is as follows: Opening Remarks; Approval of Minutes; Administrator's Report; Review of Programs and Operations; and Closing Remarks.

Attendence is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the hearing. Persons wishing to attend and persons wishing to present oral statements should notify, not later than December 6, 1978, and information may be obtained from Robert D. Kraft, Deputy General Counsel, Saint Lawrence Seaway Development Corporation, 800 Independence Avenue SW., Washington, D.C. 20591, 202-426-3474.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued in Washington, D.C., on November 15, 1978.

D. W. OBERLIN,
Administrator.

[FR Doc. 78-32656 Filed 11-20-78 8:45 am]

[4810-25-M]

DEPARTMENT OF THE TREASURY

Office of the Secretary

CERTAIN CARBON STEEL PLATE FROM VARIOUS COUNTRIES

Partial Termination of Antidumping Investigation

AGENCY: U.S. Treasury Department.

ACTION: Partial Termination of Antidumping Investigation.

SUMMARY: This notice is to advise the public that the antidumping investigation concerning carbon steel plate from various countries is being terminated with respect to sales by Empresa Nacional Siderurgica, S.A. of Spain. The termination with respect to this company is based upon a determination that, with the exception of two shipments described in the body of this notice, all exports of carbon steel plate to the United States by this company during the period April 30 to October 31, 1978, have been proved to be at or above applicable trigger prices.

EFFECTIVE DATE: November 21, 1978.

FOR FURTHER INFORMATION CONTACT:

Donald W. Eiss, U.S. Treasury Department, Office of Tariff Affairs, 15th Street and Pennsylvania Avenue NW., Washington, D.C. 20220, 202-566-8256.

SUPPLEMENTARY INFORMATION: On October 25, 1978, a notice was published in the FEDERAL REGISTER advising the public that based upon information collected under the Department's Trigger Price Mechanism (TPM) the Treasury was self-initiating an antidumping investigation concerning carbon steel plate from various countries (43 FR 49875). The initiation was based upon a determination that imports of carbon steel plate sold by certain companies were entering the United States at prices below applicable trigger prices and that such sales are, or are likely to be, at less than fair value within the meaning of the Antidumping Act of 1921, as amended (19 U.S.C. 160 et seq.).

In the case of imports from Empresa Nacional Siderurgica, S.A. (Empresa), the Department decided to initiate based upon certain below trigger price sales of carbon steel plate. Other entries of carbon steel plate appeared to be at or above the applicable trigger prices. However, inadequate documentation and delayed or incomplete responses by the importer of record to Customs Service inquiries made it impossible to verify that all shipments were in fact at or above the applicable trigger prices.

After the proceedings were formally initiated, Empresa alleged that none of its sales to the United States since the TPM went into effect were below applicable trigger prices. A thorough investigation by the Treasury of all sales by this company of carbon steel plate from April 30 to October 31 revealed that, with the exception of two shipments representing a small portion of Empresa's total shipments, this allegation was correct. The two shipments which entered below applicable trigger prices were identified as such by Customs because, in one case, the shipment entered within hours of the expiration of the Department's grace period for the contracts with fixed price terms, and, in the other the shipment was exported within hours of the change from second quarter to third quarter trigger prices.

Accordingly, I hereby conclude that based upon a thorough examination of all imports of carbon steel plate by Empresa between April 30 and October 31, 1978, and a determination that virtually all such sales have been at or above applicable trigger prices, it is appropriate to terminate the Department's self-initiated antidumping investigation of sales of carbon steel plate by Empresa.

In the future, information relevant to monitoring under the trigger price mechanism which could have been provided upon entry or upon initial inquiry by Customs will not be considered once an antidumping investigation is formally initiated.

The investigation of sales by the other two companies named in the Department's notice of October 25, 1978 (43 FR 49875) is unaffected by this action.

ROBERT H. MUNDHEIM,
General Counsel.

NOVEMBER 16, 1978.

[FR Doc. 78-32637 Filed 11-20-78; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

[AB 7 (SDM)]

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD CO.

Amended System Diagram Map

Notice is hereby given that pursuant to the requirements contained in title 49 of the Code of Federal Regulations, § 1121.23, that the Chicago, Milwaukee, St. Paul and Pacific Railroad Co., has filed with the Commission its amended color-coded system diagram map in docket No. AB 7 (SDM). The maps reproduced here in black and white are reasonable reproductions of that amended system diagram map and the Commission on October 26, 1978, received a certificate of publication as required by said regulation which is considered the effective date on which the amended system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each State in which the railroad operates and the Public Service Commission or similar agency and the State designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the office of the Commission, Section of Dockets, by requesting docket No. AB 7 (SDM).

H. G. HOMME, Jr.,
Secretary.

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[7035-01-C]

LEGEND

RED	• • • • •	CATEGORY 1 ANTICIPATED SUBJECT OF ABANDONMENT APPLICATION WITHIN 3 YEARS. 49 CFR SEC. 1121.20 (b) (1)
GREEN	• • • • •	CATEGORY 2 POTENTIALLY SUBJECT TO ABANDONMENT. 49 CFR SEC. 1121.20 (b) (2)
YELLOW	x x x x x	CATEGORY 3 APPLICATION PRESENTLY PENDING BEFORE COMMISSION. 49 CFR SEC. 1121.20 (b) (3)
BROWN	:	CATEGORY 4 OPERATED UNDER SUBSIDY 49 USC SEC 1a (6) (a) 49 CFR SEC. 1121.20 (b) (4)
BLACK	———	CATEGORY 5 OTHER LINES OWNED AND OPERATED, DIRECTLY OR INDIRECTLY 49 CFR SEC. 1121.20 (b) (5)
BLACK	- - - - -	TRACKAGE RIGHTS CONTEMPLATED
BLACK	———	STATE BOUNDARY LINES
BLACK	— — —	COUNTY BOUNDARY LINES
BLACK		S M S A BOUNDARY LINES
BLACK		INTERNATIONAL BOUNDARY LINES
	(24)	REFERS TO LINE DESCRIPTION
	. △	ANY CITY WITH A POPULATION OF 5,000 OR MORE WITHIN 5 MILES OF A RAIL LINE.

SEPTEMBER 30, 1978

0 25 50 75 100

SCALE IN MILES

STANDARD METROPOLITAN STATISTICAL AREAS

(A)	SEATTLE-EVERETT	(R)	DUBUQUE
(B)	TACOMA	(S)	CEDAR RAPIDS
(C)	YAKIMA	(T)	DES MOINES
(D)	RICHLAND-KENNWICK	(U)	DAVENPORT-ROCK ISLAND
(E)	SPOKANE	(V)	GREEN BAY
(F)	PORTLAND	(W)	APPLETON
(G)	GREAT FALLS	(X)	MADISON
(H)	BILLINGS	(Y)	MILWAUKEE
(I)	FARGO	(Z)	RACINE
(J)	SIOUX FALLS	(AA)	KENOSHA
(K)	SIOUX CITY	(BB)	ROCKFORD
(L)	OMAHA	(CC)	CHICAGO
(M)	KANSAS CITY	(DD)	KANKAKEE
(N)	DULUTH-SUPERIOR	(EE)	GARY-HAMMOND
(O)	MINNEAPOLIS-ST PAUL	(FF)	TERRE HAUTE
(P)	EAU CLAIRE	(GG)	BLOOMINGTON
(Q)	LA CROSSE	(HH)	LOUISVILLE

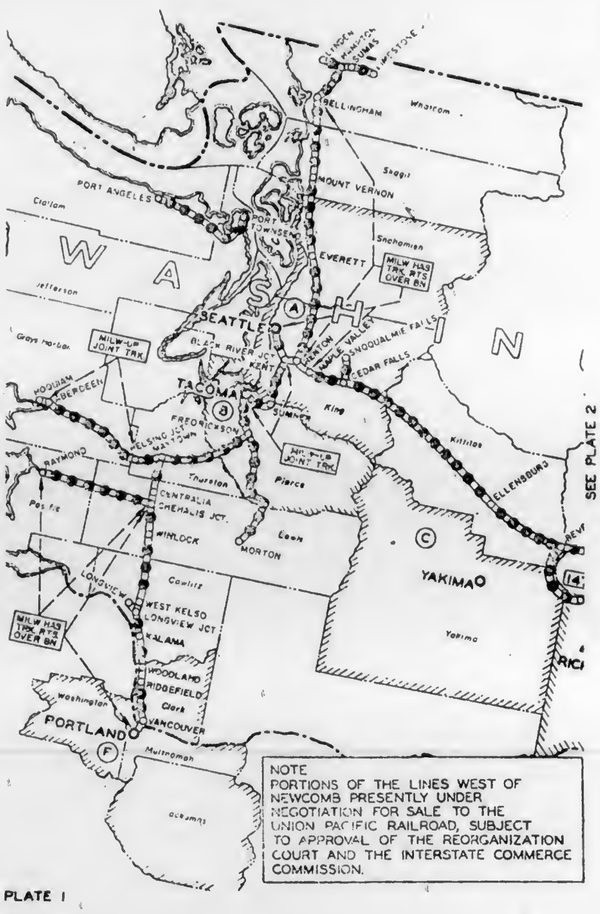


PLATE 1

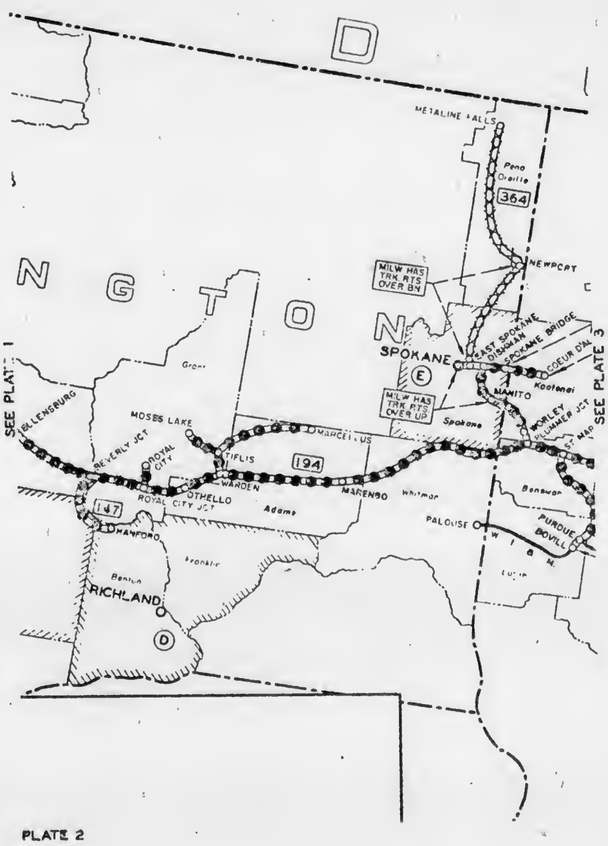


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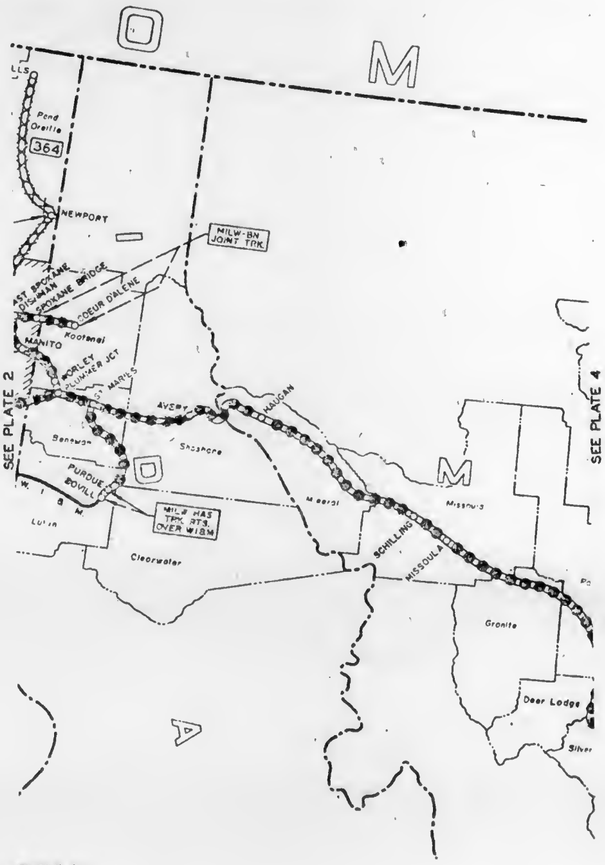
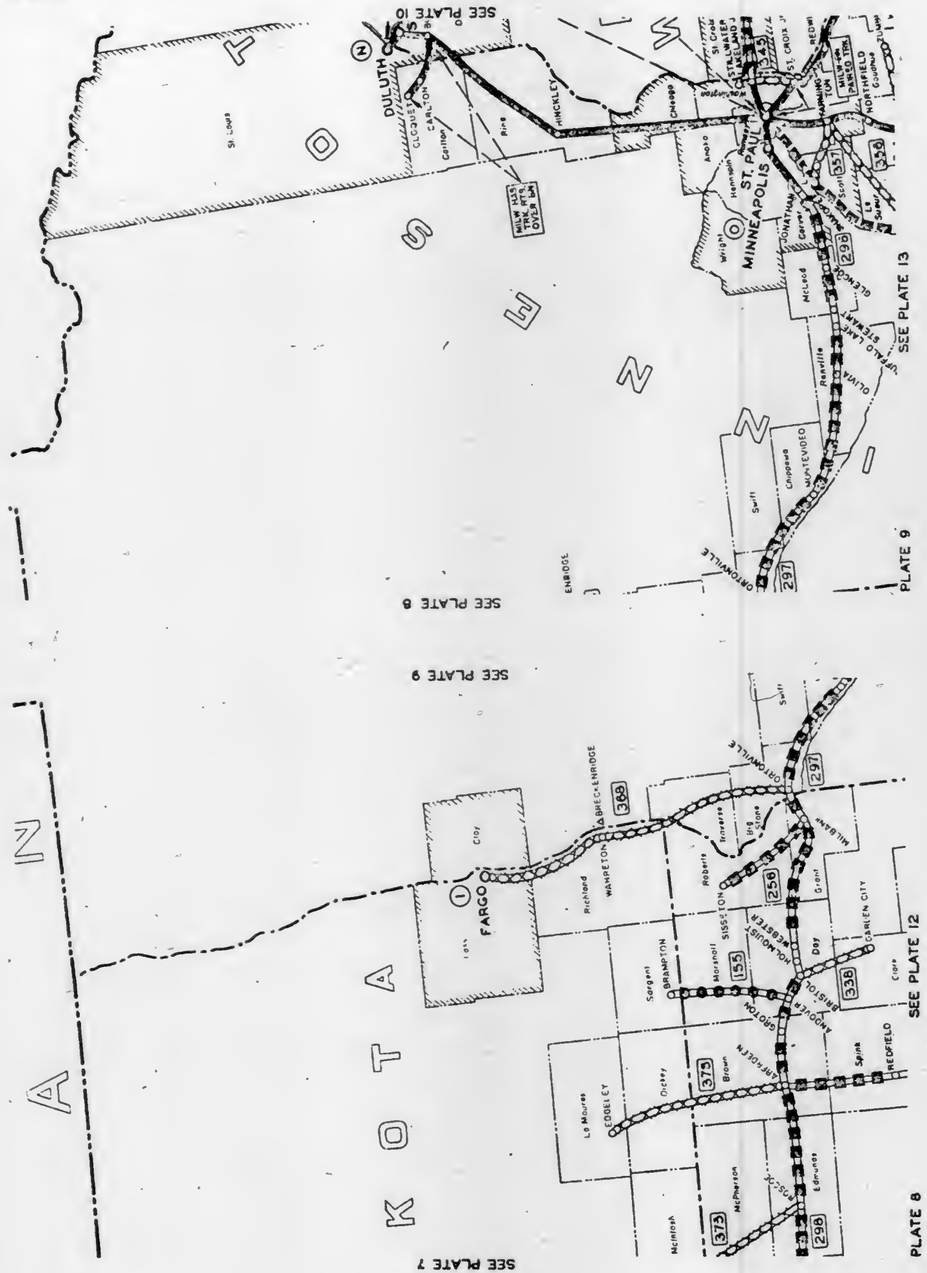


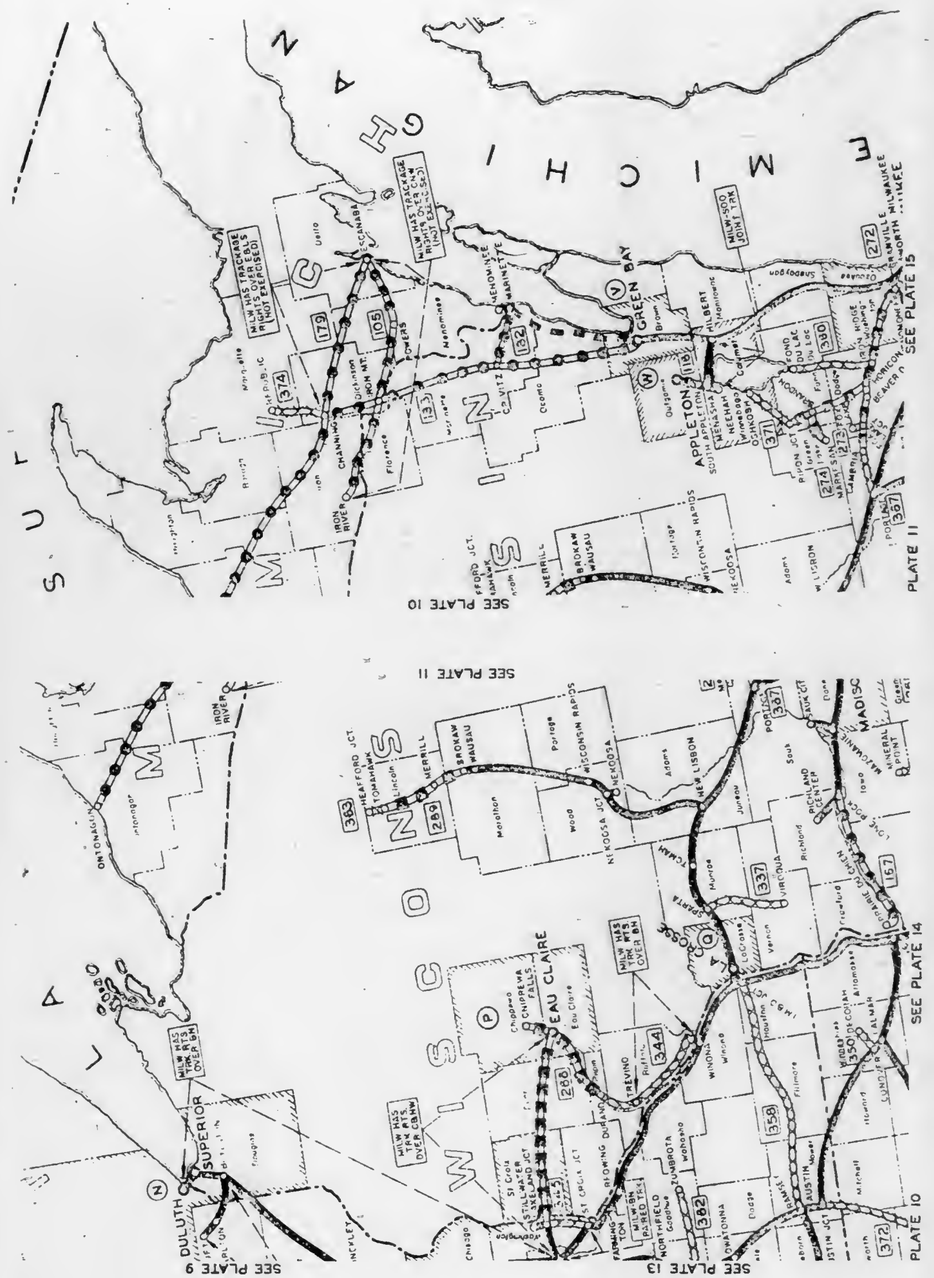
PLATE 3

V 4 3 \ 2 2 5

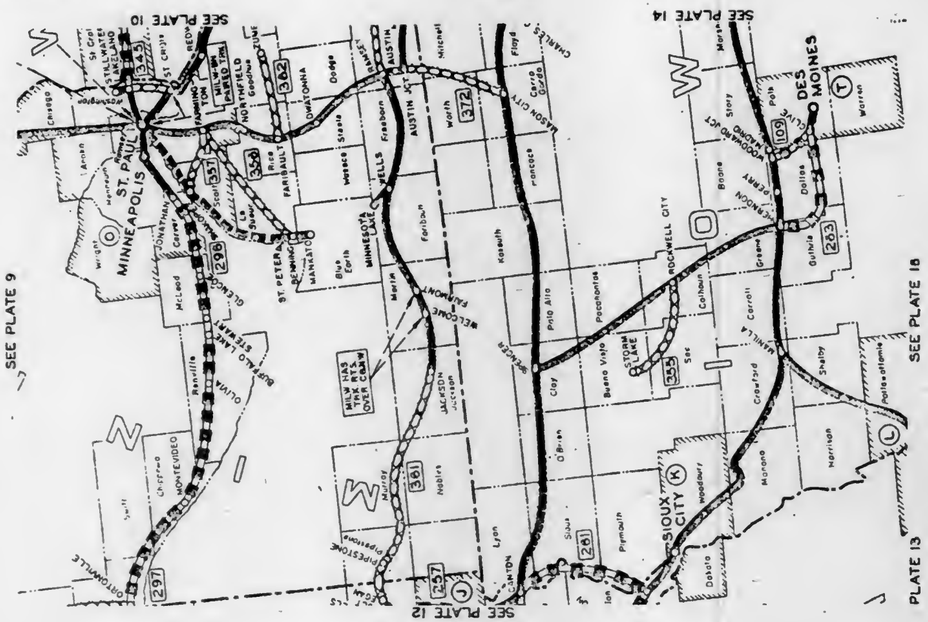
SEE PLATE 8
MILES CITY
Rosebud
Treasure
Yellowstone
Golden Valley
Stillwater
Carbon
Big Horn
Custer
Powder River
Prairie
Fallon
Wibaux
Dawson
Richland
Roosevelt
Sheridan
McCone
Valley
Garfield
Petroleum
Fergus
Judith Basin
Meagher
Wheatland
Sweet Grass
Park
Gallatin
Broadwater
Jefferson
Madison
Powell
Deer Lodge
Silver Bow
Beaverhead
Ruby Valley
Lewis and Clark
Cascade
Teton
Pondera
Glacier
Toole
Liberty
Hill
Blaine
Phillips
Chouteau
Judith Gap
Harlowton
Roundup
Lavina
Ryegate
Billings
Bridger
Huntley
Worden
Laurel
Columbus
Absarokee
Big Timber
Reed Point
Livingston
Clyde Park
Bozeman
Manhattan
Three Forks
Whitehall
Ennis
Virginia City
Sheridan
Twin Bridges
Dillon
Wisdom
Wise River
Jackson
Polaris
Lima
Monida
Armstead
Dell
Grant
Lakeview
Red Rock
Monida Jct.
Spring Creek Jct.
Moore
Judith Gap
Hobson
Utica
Stanford
Geyser
Fort Benton
Loma
Big Sandy
Chinook
Havre
Harlem
Zurich
Dodson
Malta
Glasgow
Nashua
Opheim
Scobey
Whitetail
Plentywood
Culbertson
Froid
Bainville
Medicine Lake
Westby
Circle
Brockton
Poplar
Wolf Point
Culbertson
Fairview
Sidney
Lambert
Richey
Terry
Fallon
Baker
Plevna
Ismay
Miles City
Forsyth
Colstrip
Hysham
Broadus
Ekalaka
Alzada
Camp Crook
Buffalo
Lemmon
Hettinger
Scranton
Reeder
Gascoyne
New England
Bowman
Slope
Adams
Regent
Haynes
Mott
Grant
Lemmon
Carson
Sioux
Emmons
McIntosh
McPherson
Edmunds
Faulk
Potter
Dewey
Corson
Zeibach
Perkins
Meade
Harding
Butte
Lawrence
Pennington
Jones
Lyman
Stanley
Haakon
Jackson
Mellette
Todd
Tripp
Gregory
Bennett
Shannon
Fall River
Washabaugh
Jackson
Custer
Oglala Lakota
Bennett
Mellette
Todd
Tripp
Gregory
Lyman
Jones
Stanley
Haakon
Jackson
Pennington
Custer
Fall River
Washabaugh

V 4 3 1 2 2 5





N 0 2 1 7 8 (DM)



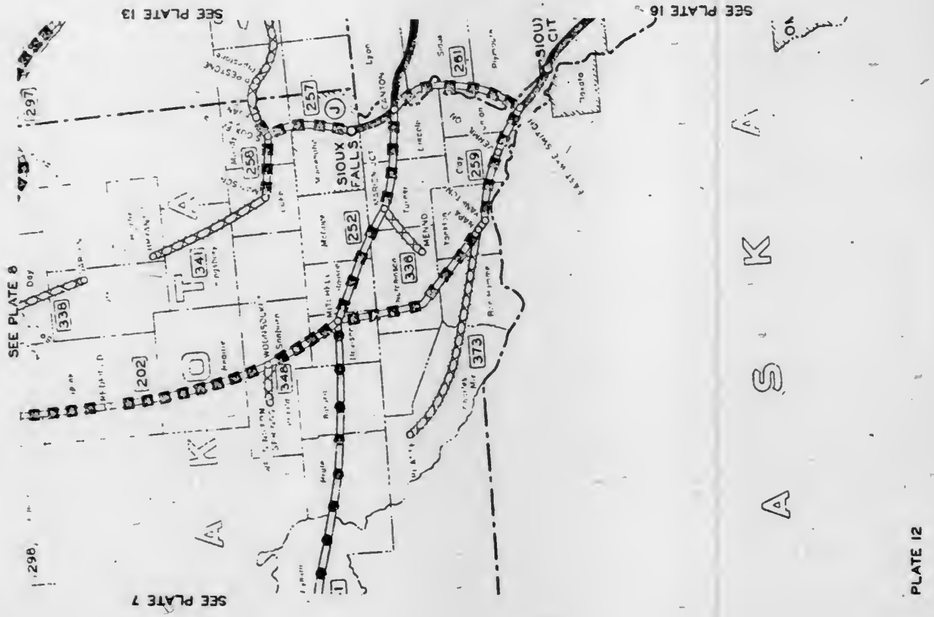


PLATE 12

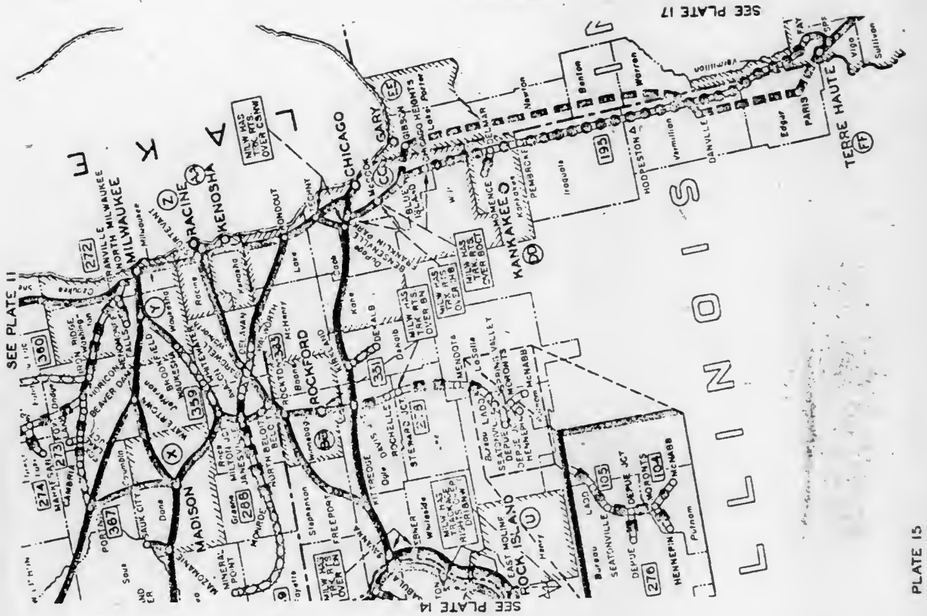


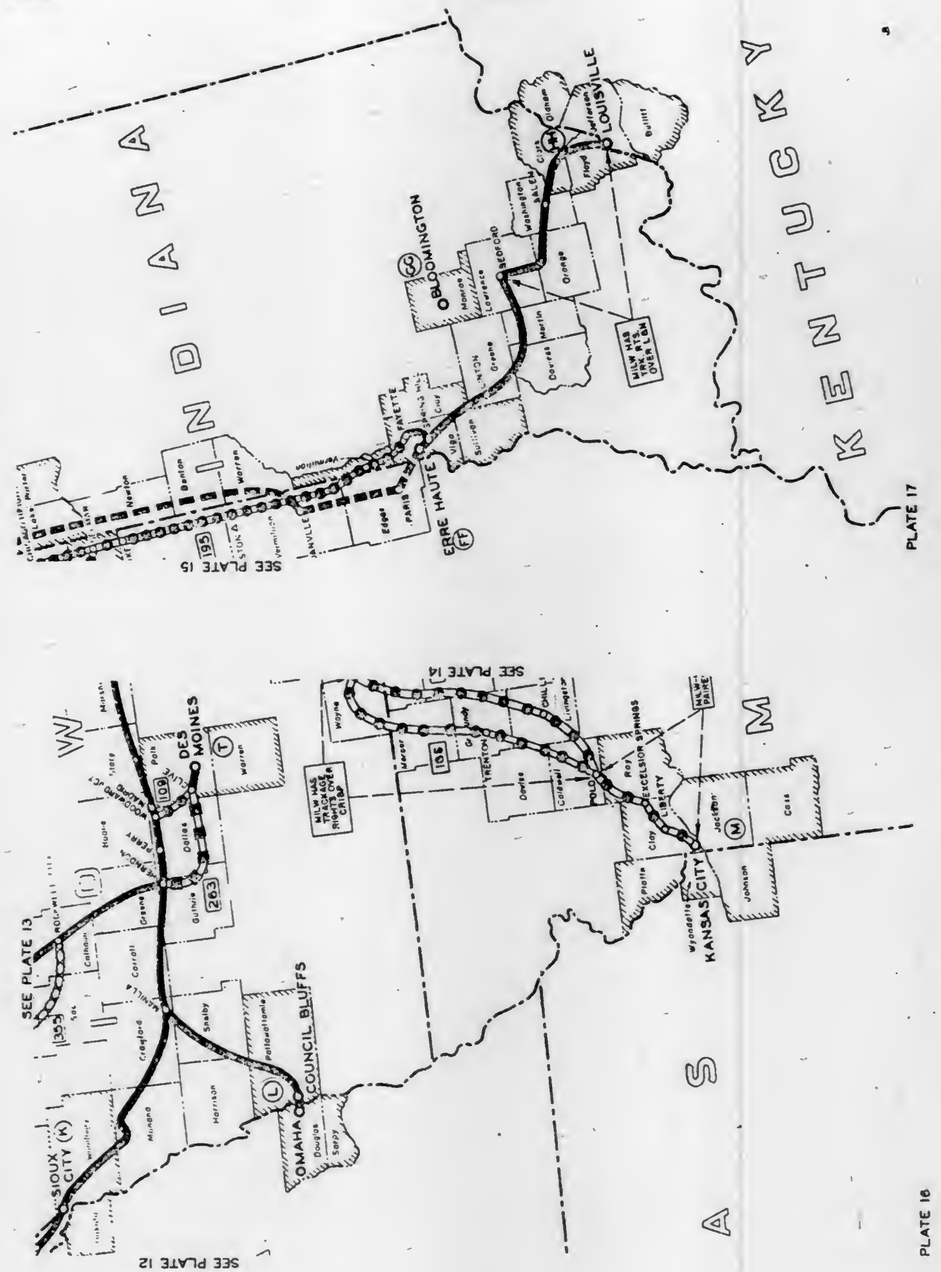
PLATE 15



PLATE 14

V 43 N 225 NOV 21 78 IJMI

V 43 / 225



CHICAGO, MILWAUKEE, St.PAUL and PACIFIC RAILROAD COMPANY

Description of Lines

to Accompany

System Diagram Map

Dated September 30, 1978

THE MILWAUKEE ROAD

NO 21 78 UMI

V 43 / 225

[7035-01-M]

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD CO.

CATEGORY 1

Lines or portions of lines which the carrier anticipates will be the subject of abandonment or dicontinuance application to be filed within three (3) years.

THE MILWAUKEE ROAD

Illinois

Map Code [104]

(a) Moronts to McNabb (11.0 mile segment of trackage rights of the Illinois-Iowa division, 14th subdivision, and related trackage).
(b) Located wholly in the State of Illinois.
(c) Located in Putnam County.
(d) Milepost 91.7 (Moronts) to milepost 95.6 (Granville); and milepost 0.0 (Granville) to milepost 7.1 (McNabb).
(e) No agency stations on this segment.
(f) Operation authorized by trackage rights over ConRail.

Illinois

Map Code [105]

(a) Ladd to Seatonville (2.3 mile segment of the Illinois-Iowa Division, 14th subdivision, and related trackage).
(b) Located wholly in the State of Illinois.
(c) Located in Bureau County.
(d) Milepost 81.9 to 84.2 (MILW).
(e) No agency stations on this segment.
(f) Contemplates coordination with Chicago North Western Transportation Co. (CNWT), and Burlington Northern, Inc. (BN).

Michigan/Wisconsin

Map Code [106]

(a) Iron River to Esconaba (90.1 mile segment of operating rights over the Chicago & North Western Transportation Co. (C. & N.W.T.), and related trackage).
(b) Located in the States of Michigan and Wisconsin.
(c) Located in Iron, Dickinson, Menominee, and Delta Counties in Michigan and Florence County, Wis.
(d) CNWT milepost 67.7 (Iron River) to 0.0 (milepost 92.1 at Power) and milepost 92.1 (Power) to milepost 114.5 (Escanaba).
(e) No agency stations on this segment.

Iowa

Map Code [109]

(a) Clive to Woodward Junction. (22.0 mile segment of the Illinois-Iowa division, 27th subdivision, and related trackage).
(b) Located wholly in the State of Iowa.
(c) Located in Dallas and Polk Counties.
(d) Milepost 0.0 to 22.0.
(e) Agency station Clive (milepost 7.5) not included. Agency station Grimes (milepost 6.5) included—dualized with Adel (milepost 22.4) not included.

Wisconsin

Map Code [116]

(a) South Appleton to Appleton (1.7 mile segment of the Wisconsin division, 8th subdivision, and related trackage).
((b) Located wholly in the State of Wisconsin.
(c) Located in Winnebago and Outagamie Counties.
(d) Milepost 188.5 to 190.2.
(e) Agency station Menasha (milepost post 185.5) serves this segment, but not included.

Washington

Map Code [147]

(a) Beverly Junction to Hanford (20.8 mile segment of the Washington division, 18th subdivision, and related trackage).
(b) Located wholly in the State of Washington).
(c) Located in Kittitas, Yakima and Benton Counties.
(d) Milepost 0.0 to 20.8.
(e) No agency stations on this segment.

Montana

Map Code [149]

(a) Fairfield to Agawam (31.3 mile segment of the Montana division, 14th subdivison, and related trackage).
(b) Located wholly in the State of Montana.
(c) Located in Teton County.
(d) Milwaukee Road milepost 234.3 to Milwaukee milepost 244.4. Joint Milwaukee-Burlington Northern, Inc. milepost 244.4 to MILW-BN milepost 251.2 Milwaukee Road milepost 251.2 to milepost 265.6.
((e) Agency station Fairfield (milepost 234.0) not included. Agency station Choteau (milepost 252.0) included.

South Dakota

Map Code [151]

(a) Mitchell to Rapid City (286.0 mile segment of the Minnesota-Dakota division, 41st and 42d subdivisions, and related trackage).
(b) Located wholly in the State of South Dakota.
(c) Located in Davison, Aurora, Brule, Lyman, Jones, Jackson and Pennington Counties.
(d) Milepost 374.5 to 660.5.
(e) Agency station Mitchell (Mainline milepost 373.9) not included. Agency stations Parker (milepost 323.2). Chamberlain (milepost 440.5). Kennebec (milepost 471.1). Murdo (milepost 516.3). Rapid City (milepost 660.2). Presho (milepost 481.0). Now dualized with Kennebec, are all included.

North Dakota/South Dakota

Map Code [155]

(a) Andover, S. Dak. to Brampton, N. Dak. (42.8 mile segment of the Minnesota-Dakota division, 28th subdivision, and related trackage).
(b) Located in the States of North and South Dakota. (38.6 miles in South Dakota, and 4.2 miles in North Dakota).
(c) Located in Sargent County, N. Dak., and in Day and Marshall Counties, S. Dak.
(d) Milepost 0.0 to 42.8.
(e) Agency station Britton (milepost 28.2) included.

Wisconsin

Map Code [167]

(a) Lone Rock to Prairie du Chien (54.0 mile segment of the Wisconsin division, 22d subdivision, and related trackage).
(b) Located wholly in the State of Wisconsin.
(c) Located in Richland, Iowa, Grant and Crawford Counties.
(d) Milepost 182.3 to 236.3.

(e) Agency station Prairie du Chien (milepost 255.9), and agency station Boscobel (milepost 208.9) dualized with Muscoda (milepost 194.7) included.

Michigan

Map Code [179]

(a) Channing to Escanaba (approximately 66-mile segment of operating rights over the Escanaba and Lake Superior Railroad, and related trackage).
(b) Located wholly in the State of Michigan.
(c) Located in Dickinson, Menominee and Delta Counties.
(d) None.
(e) No agency stations on this segment.

Wisconsin

Map Code [182]

(a) Crivitz to Marinette (16.8 mile segment of the Wisconsin division, ninth subdivision, and related trackage).
(b) Located wholly in the State of Wisconsin.
(c) Located in Marinette County.
(d) Milepost 249.7 to 266.5.
(e) Agency station Crivitz (mainline milepost 248.3) and Agency station Marinette (milepost 270.4) not included.
(f) Contemplates coordination with Chicago North Western Transportation Co. (CNWT).

Michigan

Map Code [183]

(a) Green Bay to Ontonagon (208.0 mile segment of the Wisconsin Division, sixth and seventh subdivisions, and related trackage).
(b) Located wholly in the States of Wisconsin and Michigan.
(c) Located in the Wisconsin Counties of Brown, Oconto and Marinette and the Michigan counties of Dickinson, Iron, Barage, Houghton and Onotonagon.
(d) Milepost 200.0 to 408.0.
(e) Agency stations Crivitz, Wis. (milepost 248.1), Iron Mountain, Wis. (milepost 291.2), Channing, Mich. (milepost 315.3) and Ontonagon, Mich. (milepost 407.7) and joint agency station Pembine, Wis. (milepost 277.4) included. Agency station Green Bay (milepost 197.2) not included.

Iowa and Missouri

Map Code [185]

(a) Muscatine, Ia. to Kansas City, Mo. (282.2 mile segment of the Illinois-Iowa division, 19th and 20th subdivisions and related trackage).
(b) Located in the States of Iowa and Missouri.
(c) Located in Iowa Counties of Muscatine, Louisa, Washington, Keokuk, Jefferson, Wapello, Monroe, Appanoose and Wayne. Located in Missouri Counties of Putnam, Sullivan, Grundy, Livingston, Caldwell, Ray and Clay.

	Miles
(d) Milwaukee (milepost 28.6 to 304.8)	276.2
Kansas City Southern (milepost 304.8 to 305.5)	0.7
Kansas City Terminal (milepost 305.5 to 310.8)	5.3
Total	282.2

(e) Agency stations Ottumwa, La. (milepost 109.0) Chillicothe, Mo. (milepost 228.6) Chula, Mo. (milepost 219) dualized with Chillicothe, Mo. and joint agency station Kansas City, Mo. are included.

Iowa and Missouri

Map Code [186]

(a) Muscatine, Iowa to Polo, Mo. Ottumwa, Iowa to Eldon, Iowa (248.9 mile segment of trackage rights Muscatine, Iowa to Polo, Mo. and 11.9 mile segment of trackage rights Ottumwa, La. to Eldon, La. Total of 260.8 miles trackage rights on Rock Island Railroad.
(b) Located in the States of Iowa and Missouri.
(c) Located in Iowa Counties of Muscatine, Louisa, Washington, Jefferson, Wapello, Davis, Appanoose and Wayne. Located in Missouri Counties of Mercer, Grundy, Davis, Livingston and Coldwell.
(d) Rock Island milepost 211.6 to milepost 460.5 and Rock Island milepost 63.9 to milepost 75.8. Total 260.8 miles trackage rights.
(3) No Milwaukee agencies on this segment.
(f) Operation authorized by trackage rights over the Rock Island Railroad.

Iowa

Map Code [187]

(a) Green Island to Dove Louisa to Tama Delmar to Maquoketa (73.4 mile segment of the Illinois-Iowa division, 16th subdivision and related trackage. 50.1 mile segment of the Illinois-Iowa division, 16th and 17th subdivisions, and related trackage. 6.5 mile segment of the Illinois-Iowa division, 23d subdivision and related trackage) total of 130 miles.
(b) Location wholly in the State of Iowa.
(c) Located in Jackson, Clinton, Jones, Linn, Benton and Tama Counties.

	Miles
(d) Milepost 152.5 to milepost 225.9	73.4
Milepost 230.7 to milepost 280.8	50.1
Milepost 26.7 to milepost 33.2	6.5
Total	130.0

(e) Agency station Cedar Rapids not included. Agency station Tama (milepost 280.5) not included.

Montana/Idaho/Washington/Oregon

Map Code [194]

(a) Newcomb to Black River Junction; Seattle to Tacoma; Tacoma Junction to Portland; Longview Junction to Longview; Frederickson to Morton; Maytown to Hoquiam; Chehalis Junction to Raymond; Renton to Limestone Junction; Hampton to Lynden; Port Townsend to Port Angeles; Cedar Falls to Snoqualmie Falls; Royal City Junction to Royal City; Warden to Moses Lake; Tiflis to Marcellus; Plummer Junction to Spokane; Dishman to Coeur D'Alene; and St. Maries to Bovill (1,037.4 miles of Milwaukee Road owned trackage, 288.8 miles of trackage rights and 96.5 miles of jointly owned trackage of Montana division, 5th, 6th, and 7th subdivisions and Washington division, 1st, 2d, 3d, 4th, 5th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 16th, 17th, 19th, 20th, 21st, 22d, 23d, and 24th subdivisions and related trackage).
(b) Located in the States of Montana, Idaho, Washington, and Oregon.
(c) Located in Silver Bow, Deer Lodge, Powell, Granite, Missoula and Mineral Counties, Mont.; Shoshone, Benewan, Kootenal and Latan Counties, Idaho; Whitman, Spokane, Adams, Grant, Kittitas, King, Pierce, Thurston, Grays Harbor, Lewis, Pacific, Cowlitz, Clark, Snohomish, Skagit, Whatcom, Clallam and Jefferson Counties, Wash.; and Multnomah County, Oreg.
(d) Mileposts 1515.0 (Newcomb) to 2154.2 (Maple Valley), trackage rights—Burlington Northern, Inc. Milwaukee mileposts 2154.2 (Maple Valley, to 2166.0 (Black River Junction). Milwaukee Road—Union Pacific joint track, Milwaukee mileposts 2175.9 (Seattle) to 2166.9 (Black River Junction) and 2166.0 (Black River Junction) to 2194.0 (Tacoma), trackage rights—Burlington Northern, Inc. Milwaukee mileposts 2174.4 (Seattle) to 2166.0 (Black River Junction), Milwaukee mileposts 2174.4 (Seattle) to 2175.9 (Seattle) mileposts 0.0 (Tacoma Junction) to 11.2 (Frederickson) on Tacoma to Morton line, 0.0 (Frederickson on Frederickson to Hoquiam line) to 37.0 (Maytown), 0.0 (Maytown on the Maytown to Raymond line), to 18.9 (Chehalis Junction), trackage rights—Burlington Northern, Inc. Milwaukee mileposts 0.0 (Chehalis Junction on Che-

NOV 21 1978 UMI

halis Junction to Portland line) to 86.9 (Portland), trackage rights—Portland Terminal Railroad Milwaukee milepost 86.9 to 88.1, trackage rights—Joint Southern Pacific & Union Pacific trackage Milwaukee milepost 88.1 to 88.3, trackage rights—Southern Pacific Milwaukee mileposts 88.3 to 92.3; Milwaukee Road—Burlington Northern, Inc.—. Oregon, Washington Railroad & Navigation Co., joint trackage from Milwaukee mileposts 0.0 (Longview Junction) to 3.3 (Longview). Mileposts 11.2 (Frederickson) to 67.3 (Morton). Mileposts 37.0 (Maytown) to 48.2 (Helsing Junction), Joint Milwaukee Road—Oregon, Washington Railroad & Navigation Co. from Milwaukee milepost 48.2 (Helsing Junction) to 90.3 (Aberdeen), trackage rights—Burlington Northern, Inc. from Milwaukee mileposts 90.3 (Aberdeen) to 95.3 (Hoquiam). Trackage rights—Burlington Northern, Inc. from BN mileposts 0.0 (Chehalis Junction) to 53.0 (Raymond). Trackage rights—Burlington Northern, Inc. from BN mileposts 2.0 (Renton) to 24.1 (24.7 at Woodinville), 24.7 (Woodinville) to 38.6 (1776.0 at Snohomish), 1776.0 (Snohomish) to 1787.9 (38.0 at Marysville), 38.0 (Marysville) to 96.2 (Milwaukee Road milepost 0.0 at Bellingham), 0.0 (Bellingham) to 32.9 (Limestone Junction). Mileposts 0.0 (Hampton) to 5.3 (Lynden). Mileposts 0.0 (Port Angeles) to 50.8 (Port Townsend). Mileposts 0.0 (Cedar Falls) to 11.2 (Snoqualmie Falls). Mileposts 0.0 (Royal City Junction) to 5.2 (Royal City). Mileposts 0.0 (Warden) to 8.2 (0.0 at Tiflis), 0.0 (Tiflis) to 20.0 (Moses Lake). Mileposts 8.2 (Tiflis) to 47.2 (Marcellus). 1836.0 (Plummer) to 1856.0 (Oregon, Washington Railroad and Navigation Co. milepost 143.7 at Manito), trackage rights—Oregon, Washington Railroad & Navigation Co. from O.W.R.R. & N. mileposts 143.7 (Manito) to 163.5 (Spokane). Milwaukee Road milepost 0.0 (Dishman) to 12.2 (Spokane Bridge), Joint Milwaukee Road—Burlington Northern, Inc. from Milwaukee Road milepost 12.2 (Spokane Bridge) to 16.5 (Burlington Northern milepost 22.8 at McGuries), Joint Milwaukee Road—Burlington Northern, Inc. from BN milepost 22.8 (McGuires) to 31.7 (Couer D'Alene), trackage rights—Burlington Northern, Inc. from BN milepost 31.7 to 32.5 (Couer D'Alene). Milwaukee Road mileposts 0.0 (St. Maries) to 51.8 (Bovill). (See summary on page 20).

(e) Agency stations Butte, Mont. (1521.0), Deer Lodge, Mont. (1561.5), Missoula, Mont. (1641.2), Haugan, Mont. (1734.9), Avery, Idaho (1772.8), St. Maries, Idaho (1818.0), Plummer, (1926.9), Othello, Wash. (1987.3), Cedar Falls, Wash. (2137.1), Renton, Wash. (2164.2), Seattle, Wash. Idaho (1836.9), Marengo, Wash. (2175.9), Kent, Wash. (2172.5), Sumner, Wash. (2184.6), Tacoma, Wash. (2194.0), Chehalis, Wash. (17.8), Winlock, Wash. (13.0), Longview, Wash. (3.3), Kalama, Wash. (49.0), Woodland, Wash. (58.2), Ridgefield, Wash. (64.0), Vancouver, Wash. (77.8), Portland, Oreg. (86.9), Morton, Wash. (64.2), Aberdeen, Wash. (90.2), Raymond, Wash. (BN 53.0), Everett, Wash. (BN 1782.5), Bellingham, Wash. (0.8), Sumas, Wash. (24.6), Lynden, Wash. (5.3), Port Angeles, Wash. (50.8), Worley, Idaho (1842.6), Dishman, Wash. (0.0), Spokane, Wash. (O.W.R.R. & N. 163.5), Couer D'Alene, Idaho (BN 32.5), and Bovill, Idaho (51.7) included.

(f) Contemplates purchase of segments by the Union Pacific Railroad.

Milwaukee Road Owned

	Miles
Newcomb to Maple Valley	639.2
Seattle	1.5
Tacoma junction to Frederickson	11.2
Frederickson to Maytown	37.0
Maytown to Chehalis junction	18.9
Frederickson to Morton	56.1
Maytown to Helsing junction	11.2
Bellingham to Limestone junction	32.9
Hampton to Lynden	5.3
Port Angeles to Port Townsend	58.0
Cedar Falls to Snoqualmie Falls	11.2
Royal City junction to Royal City	5.2
Warden to Moses Lake	28.2
Tiflis to Marcellus	39.0
Plummer to Manito	20.0
Dishman to Spokane Bridge	12.2
St. Maries to Bovill	
Total	1,038.9

Trackage Rights

	Miles
Maple Valley to Black River junction-BN	11.8
Black River junction to Seattle-BN	8.4
Chehalis junction to Portland-BN	86.9
Portland—Portland Terminal RR	1.2
Portland—Joint UP and SP trackage	.2
Portland to Brooklyn Yard-SP	4.0
Aberdeen to Hoquiam-BN	5.0
Chehalis junction to Raymond-BN	53.0
Renton to Bellingham-BN	106.1
Manito to Spokane-O.W.R.R. & N	19.8
Couer D'Alene-BN	
Total	297.2

Joint Trackage

	Miles
Seattle to Tacoma—joint MILW-UP trackage	37.9
Longview junction to Longview—joint MILW-BN-O.W.R.R. & N	3.3
Helsing junction to Aberdeen—joint MILW-O.W.R.R. & N	42.1
Spokane Bridge to Couer D'Alene—joint MILW-BN	59.3
Total	1,432.6

Illinois/Indiana

Map Code [195]

(a) Chicago Heights to Fayette Delmar to Momence (142.5 mile segment of Illinois-Iowa division, fifth and sixth subdivisions, and related trackage).

(b) Located in the States of Illinois and Indiana.

(c) Located in Cook, Will, Kankakee, Iroquois, Vermillion and Edgar Counties, Ill. and Vermillion and Vigo Counties, Ind.

(d) Milepost 31.8 (Chicago Heights) to milepost 171.2 (Fayette) and milepost 52.9 (Delmar) to milepost 56.0 (Momence).

(e) Agency stations Webster, Ill. (milestone 80.8) and Humrick, Ill. (milepost 142.0) and limited agency station Delmar, Ill. (53.0) included. Agency station Chicago Heights (milepost 30.4) not included.

(f) Contemplates coordination with ConRail.

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD CO.

CATEGORY 2

Lines or portions of lines potentially subject to abandonment.



North Dakota/Montana

Map Code [201]

(a) Marmarth to Miles City (123.1 mile segment of the Minnesota-Dakota division, 44th subdivision, and related trackage).

(b) Located in the States of North Dakota and Montana.

(c) Located in Slope and Bowman Counties of North Dakota and Fallon, Custer, and Prairie Counties in Montana.

(d) Milepost 996.9 (Marmarth) to milepost 1,120.0 (Miles City).

(e) Agency stations: Baker, Mont. (milepost 1,015.6), limited agency Plevna (milepost 1,028.1), Terry, Mont. (milepost 1,080.6), and Miles City, Mont. (milepost 1,118.8) included. Agency station Marmarth, N. Dak. (milepost 995.1) not included.

South Dakota

Map Code [202]

(a) Mitchell to Aberdeen (126.8 mile segment of the Minnesota-Dakota division, 33d subdivision, and related trackage).

(b) Located wholly in the State of South Dakota.

(c) Located in Davison, Sanborn, Jerauld, Beadle, Spink, and Brown Counties.

(d) Milepost 650.6 (Mitchell) to milepost 777.4 (Aberdeen).

(e) Agency station Redfield (milepost 737.8) included. Agency stations Mitchell (mainline milepost 373.9) and Aberdeen (mainline milepost 707.0) not included.

South Dakota/North Dakota

Map Code [203]

(a) McLaughlin to New England (134.4 mile segment of the Minnesota-Dakota division, 49th subdivision, and related trackage).

(b) Located in the States of South Dakota and North Dakota.

(c) Located in Corson County, S. Dak. and Sioux, Grant, and Hettinger Counties, N. Dak.

(d) Milepost 0.0 (McLaughlin) to milepost 134.4 (New England).

(e) Agency station New England, N. Dak. (milepost 133.9 included. Agency station McLaughlin, S. Dak. (mainline milepost 835.4) not included.

South Dakota

Map Code [252]

(a) Canton to Mitchell (78.1 mile segment of the Minnesota-Dakota division, 38th subdivision, and related trackage).

(b) Located wholly in the State of South Dakota.

(c) Located in Lincoln, Turner, Hutchinson, McCook, Hanson, and Davison Counties.

(d) Milepost 295.4 to 373.5.

(e) Agency station at Mitchell (milepost 373.9) and Parker (milepost 323.2) included. Agency station Canton (milepost 294.7) not included.

South Dakota

Map Code [256]

(a) Milbank to Sisseton (38.0 mile segment of the Minnesota-Dakota division, 26th subdivision, and related trackage).

(b) Located wholly in the State of South Dakota.

(c) Located in Grant and Roberts Counties.

(d) Milepost 0.0 to 38.0.

(e) Agency station Milbank (mainline milepost 611.2) not included.

South Dakota

Map Code [257]

(a) Sioux Falls to Sioux Falls junction (29.7 mile segment of the Minnesota-Dakota division, 37th subdivision, and related trackage).

(b) Located wholly in the State of South Dakota.

(c) Located in Minnehaha and Moody Counties.

(d) Milepost 73.3 to 103.0.

(e) Agency station Sioux Falls (milepost 70.0) not included. Agency station Dell Rapids (milepost 90.2) included.

South Dakota

Map Code [258]

(a) Egan to Madison (26.0 mile segment of the Minnesota-Dakota division, 19th subdivision, and related trackage).

(b) Located wholly in the State of South Dakota.

(c) Located in Moody and Lake Counties.

(d) Milepost 308.0 to 334.0.

(e) Agency stations Egan (milepost 308.3) and Madison (milepost 333.4) included.

South Dakota

Map Code [259]

(a) East Wye Switch to Mitchell (116.5 mile segment of the Minnesota-Dakota division, 35th subdivision, and related trackage).

(b) Located wholly in the State of South Dakota.

(c) Located in Union, Clay, Yankton, BonHomme, Hutchinson, and Davison Counties.

(d) Milepost 533.5 to 650.0.

(e) Agency stations Vermillion (milepost 548.3), Yankton (milepost 575.1), and Parkston (milepost 627.9) included. Agency station Mitchell (mainline milepost 373.9) not included.

Iowa/South Dakota

Map Code [261]

(a) East Wye Switch to Canton (49.9 mile segment of the Minnesota-Dakota division, 37th subdivision, and related trackage).

(b) Located in Iowa (34.6 miles), and in South Dakota (15.3 miles).

(c) Located in Union and Lincoln Counties, South Dakota; and in Lyon, Plymouth and Sioux Counties, Iowa.

(d) Milepost 0.0 to 49.9.

(e) Agency station Canton (milepost 49.8) not included.

Iowa

Map Code [263]

(a) Herndon to Clive (46.6 mile segment of the Illinois-Iowa division, 25th subdivision, and related trackage).

(b) Located wholly in the State of Iowa.

(c) Located in Polk, Dallas and Guthrie Counties.

(d) Milepost 7.5 to 54.1.

(e) Agency station Clive (milepost 7.6) not included. Agency stations Adel (milepost 22.4) and Redfield (milepost 32.0) included.

Wisconsin/Minnesota

Map Code [266]

(a) Durand to Chippewa Falls, Lakeland to Eau Claire (114.0 mile segment of the Minnesota-Dakota division, fifth subdivision, and related trackage).

(b) Located in the States of Minnesota and Wisconsin.

(c) Located in Washington County, Minn. and in Pepin, Dunn, Eau Claire, Chippewa and St. Croix Counties, Wis.

	Miles
(d) Milwaukee milepost 18.0 (Durand) to Milwaukee milepost 50.0 (Eau Claire)	32.5
Eau Claire to Chippewa Falls (operated by Soo Line)	11.6
Milwaukee—Soo Line joint ownership	
CNW milepost 18.4 (Lakeland Junction) to CNW Milepost 88.3 (Eau Claire)	69.9
(Milwaukee trackage rights)	114.0

(e) Agency station Eau Claire (milepost 48.6) included.

Wisconsin

Map Code [268]

(a) Janesville to Monroe (34.0 mile segment of the Wisconsin Division, 25th subdivision, and related trackage).

(b) Located wholly in the State of Wisconsin.

(c) Located in Rock and Green Counties.

(d) Milepost 10.0 to 44.0.

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(e) Agency station Janesville (mainline milepost 99.0) not included Agency station Monroe (milepost 43.4) included.

Wisconsin

Map Code [272]

(a) North Milwaukee to Horicon Granville to Menominee Falls Horicon to Ripon. (79.9 mile segment of the Wisconsin division, 12th subdivision and 17th subdivision, and related trackage).

(b) Located wholly in the State of Wisconsin.

(c) Located in Milwaukee, Waukesha, Washington, Dodge, and Fond du Lac Counties.

(d) Mile Post 93.7 (North Milwaukee) to milepost 139.0 (Horicon) milepost 100.5 (Granville) to milepost 104.3 (Menomiee Falls); and milepost 139.0 (Horicon) to milepost 169.8 (Ripon).

	Miles
North Milwaukee to Horicon	45.3
Granville to Menominee Falls	3.8
Horicon to Ripon	30.8
	79.9

(e) Agency stations of: Granville (milepost 100.2) Slinger (milepost 117.2) Horicon (milepost 139.1) Waupun (milepost 153.7) Brandon (milepost 161.0) dualized with Markesan; and agency station Ripon (milepost 168.9) are included.

Wisconsin

Map Code [273]

(a) Cambria to Horicon (26.7 mile segment of the Wisconsin Division, 15th subdivision, and related trackage).

(b) Located wholly in the State of Wisconsin.

(c) Located in Dodge and Columbia Counties.

(d) Milepost 139.0 to 165.7.

(e) No agency stations on this segment.

Wisconsin

Map Code [274]

(a) Brandon to Markesan (11.6 mile segment of the Wisconsin Division, 16th subdivision, and related trackage).

(b) Located wholly in the State of Wisconsin.

(c) Located in Fond du Lac and Green Lake Counties.

(d) Milepost 161.0 to 172.6.

(e) Agency station Markesan (milepost 172.6) included. Agency station Fairwater (milepost 165.5), dualized with Markesan, included.

Iowa

Map Code [275]

(a) Davenport to Eldridge (11.4 mile segment of the Illinois-Iowa Division, 22d subdivision, and related trackage).

(b) Located wholly in the State of Iowa.

(c) Located in Scott County.

(d) Milepost 0.1 to 11.5.

(e) No agency stations on this segment.

Illinois

Map Code [276]

(a) Davis Junction to Moronts (66.0 miles segment of the Illinois division, 14th subdivision, and related trackage).

(b) Located wholly in the State of Illinois.

(c) Located in Ogle, Lee, LaSalle, Bureau, and Putnam Counties.

(d) Milepost locations as follows:

	Miles
BN milepost 11.7 to BN milepost 0.3 (BN MP 86.3)	11.4
BN milepost 86.3 to BN milepost 77.8 (MILW MP 46.8)	8.5
MILW milepost 46.8 to MILW milepost 81.9	35.1
MILW milepost 81.9 to MILW milepost 84.2	2.3
MILW milepost 84.2 (C/R MP 191.8) to MILW MP 91.7 C/R MP 184.3)	7.5
DePue to DePue Junction (secondary track)	1.2
	66.0

NOTE.—C/R—ConRail. Trackage rights on BN and ConRail.

(e) Agency stations—Rochelle (MILW mainline milepost 69.4) Mendota (MILW mainline milepost 83.3) included Agency station Davis Junction (MILW mainline milepost 80.1) not included.

Wisconsin

Map Code [289]

(a) Brokaw to Tomahawk (35.9 mile segment of the Wisconsin division, 19th subdivision, and related trackage).

(b) Located wholly in the State of Wisconsin.

(c) Located in Marathon and Lincoln Counties.

(d) Milepost 97.5 to 133.4.

(e) Agency station Merrill included. Agency station Brokaw not included.

Montana

Map Code [290]

(a) Miles City to Harlowton (216.2 mile segment of the Montana Division, third subdivision, and related trackage).

(b) Located wholly in the State of Montana.

(c) Located in Custer, Rosebud, Musselshell, Golden Valley, and Wheatland Counties.

(d) Milepost 1120.0 (Miles City) to milepost 1336.2 (Harlowton).

(e) Agency stations of Forsyth, Mont. (milepost 1163.8), Melstone, Mont. (milepost 1230.9), Roundup, Mont. (milepost 1265.4), Ryegate, Mont. (milepost 1306.0), and Harlowton, Mont. (milepost 1335.5) included. Agency station Miles City, Mont. (milepost 1118.8) not included.

Montana

Map Code [291]

(a) Harlowton to Newcomb (178.8 mile segment of the Montana division, fourth and fifth subdivision and related trackage).

(b) Located wholly in the State of Montana.

(c) Located in Wheatland, Meagher, Gallatin, Broadwater, Madison, Jefferson, and Silver Bow Counties.

(d) Milepost 1336.2 (Harlowton) to milepost 1515.0 (Newcomb).

(e) Agency stations of Martinsdale, Mont. (milepost 1359.7), Ringling, Mont. (milepost 1392.5), and Three Forks, Mont. (milepost 1449.8) included. Agency station Harlowton, Mont. (milepost 1335.5) not included.

Montana

Map Code [292]

(a) Harlowton to Fairfield, Lewistown to Heath (233.3 mile segment of the Montana division, 10th, 11th, 13th, and 14th, subdivision and related trackage).

(b) Located wholly in the State of Montana.

(c) Located in Wheatland, Judith Basin, Fergus, Choteau, Cascade, and Teton Counties.

(d) Milwaukee Road mileposts 0.0 (Harlowton) to 202.4, joint Milwaukee Road-Burlington Northern, Inc. mileposts 3.9 to 12.0 and 0.0 to 5.9 and Milwaukee milepost 216.8 to 234.3 (Fairfield); and Milwaukee Road mileposts 0.0 (Lewiston) to 10.5 (Heath)

	Miles
Harlowton to Fairfield	233.9
Lewiston to Heath	10.5
	244.4

(e) Agency stations: More (milepost 43.4), Lewiston (milepost 61.0), Denton (milepost 95.2), Geraldine (milepost 136.3), Highwood (milepost 168.0), Great Falls (milepost 198.0), and Fairfield (milepost 234.2) dualized with Choteau included. Agency station Harlowton (mainline milepost 1335.5) not included.

Montana

Map Code [293]

(a) Miles City to Bozeman, Judith Gap to Mossmain (396.2 mile segment of trackage rights over the Burlington Northern, Inc. (BN), and related trackage).

(b) Located wholly in the State of Montana.

(c) Located in Custer, Rosebud, Treasure, Yellowstone, Stillwater, Sweet Grass, Park, Gallatin, Wheatland, and Golden Valley Counties.

(d) BN milepost 77.3 (Miles City) to 225.5 (milepost 0.0 in Billings), milepost 0.0 (Billings) to milepost 140.5 (Bozeman). Milepost 103.5 (Judith Gap) to milepost 0.0 (Mossmain).

(e) Agency station Billings (BN milepost 225.5) included.

Minnesota

Map Code [296]

(a) Jonathan to Montevideo (113.1 mile segment of the Minnesota-Dakota division, second subdivision and related trackage).

(b) Located wholly in the State of Minnesota.

(c) Located in Carver, McLeod, Renville, and Chippewa Counties.

(d) Milepost 442.7 (Jonathan) to milepost 555.8 (Montevideo).

(e) Agency stations Glencoe (471.9), Olivia (513.8), and Montevideo (554.4) included.

Minnesota/South Dakota

Map Code [297]

(a) Montevideo to Aberdeen (155.1 mile segment of the Minnesota-Dakota division, third subdivision, and related trackage).

(b) Located in the States of Minnesota and South Dakota.

(c) Located in Chippewa, Swift, and Big Stone Counties of Minnesota and Grant, Roberts, Day, and Brown Counties of South Dakota.

(d) Milepost 555.8 (Montevideo) to milepost 710.9 (Aberdeen).

(e) Agency stations: Ortonville (600.0), Milbank (611.1), Webster (657.2) dualized with Bristol (668.5) and limited service at Holmquist (663.6), Groton (687.9) and Aberdeen (707.0) included. Agency station Montevideo (554.4) not included.

South Dakota

Map Code [298]

(a) Aberdeen to Mobridge (95.3 mile segment of the Minnesota-Dakota division, fourth subdivision, and related trackage).

(b) Located wholly in the State of South Dakota.

(c) Located in Brown, Edmunds and Walworth Counties.

(d) Milepost 710.9 (Aberdeen) to milepost 806.2 (Mobridge).

(e) Agency stations: Roscoe (748.6) and Mobridge (805.0) included. Agency station Aberdeen (707.0) not included.

South Dakota/North Dakota

Map Code [299]

(a) Mobridge to Marmarth (190.7 mile segment of the Minnesota-Dakota division, 43d subdivision, and related trackage).

(b) Located in the States of South Dakota and North Dakota.

(c) Located in Walworth, Corson and Perkins Counties of South Dakota and Sioux, Adams, Bowman and Slope Counties of North Dakota.

(d) Milpost 806.2 (Mobridge) to milepost 996.9 (Marmarth).

(e) Agency stations: McLaughlin, S. Dak. (milepost 835.4), Lemmon, S. Dak. (milepost 903.8), Hettinger, N. Dak. (milepost 927.5), Gascoyne, N. Dak. (milepost 951.1) dualized with Reeder, N. Dak. (milepost 944.6), Bowman, N. Dak. (milepost 967.4) dualized with Scranton, N. Dak. (milepost 955.0) and Marmarth, N. Dak. (milepost 995.1) included. Agency station Mobridge, S. Dak. (milepost 805.0) not included.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD CO.

CATEGORY 3

Lines or portions of lines for which an abandonment or discontinuance application is currently pending before the Interstate Commerce Commission.

South Dakota

Map Code [336]

(a) Marion Jct. to Menno (21.5 mile segment of the Minnesota-Dakota division, 39th subdivision, and related trackage).

(b) Located wholly in the State of South Dakota.

(c) Located in Turner and Hutchinson Counties.

(d) Milepost 0.3 to 21.8.

(e) No agency stations on this segment.

Wisconsin

Map Code [337]

(a) Sparta to Viroqua (34.7 mile segment of the Wisconsin division, 11th subdivision, and related trackage).

(b) Located wholly in the State of Wisconsin.

(c) Located in Monroe and Vernon Counties.

(d) Milepost 0.0 to 34.7.

(e) Agency station Viroqua (milepost 34.7) included.

Agency station Sparta (milepost 0.0) is not included.

South Dakota

Map Code [338]

(a) Garden City to Bristol (28.8 mile segment of the Minnesota-Dakota division, 27th subdivision, and related trackage).

(b) Located wholly withing the State of South Dakota.

(c) Located in Clark and Day Counties.

(d) Milepost 73.9 to 102.7.

(e) Agency station Bristol (mainline milepost 668.5) not included.

South Dakota

[Map Code [339]

(a) Trail City to Faith (106.5 mile segment of the Minnesota-Dakota division, 48th subdivision, and related trackage).

(b) Located wholly in the State of South Dakota.

(c) Located in Dewey, Corson, Ziebach, and Meade Counties.

(d) Milepost 0.0 to 106.5.

(e) No agency stations on this segment.

South Dakota

Map Code [341]

(a) Madison to Bryant (47.3 mile segment of the Minnesota-Dakota division, 21st subdivision, and related trackage).

(b) Located wholly in the State of South Dakota.

(c) Located in Lake, Kingsbury and Hamlin Counties.

(d) Milepost 0.6 to 47.9.

(e) Agency station Madison (milepost 0.0) not included.

Iowa

Map Code [343]

(a) Paralta to Hopkinton (33.5 mile segment of the Illinois-Iowa division,

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24th subdivision, and related trackage).
(b) Located wholly in the State of Iowa.
(c) Located in Linn, Jones, and Delaware Counties.
(d) Milepost 0.0 to 33.5.
(e) Agency station Monticello (milepost 24.2) included.

Wisconsin/Minnesota

Map Code [344]

(a) Winona, Minn. to Durand, Wis. (51.1 miles of trackage rights and line segment of the Minnesota-Dakota division, fifth subdivision, and related trackage).
(b) Located in the States of Minnesota and Wisconsin. 1.0 mile in Minnesota, and 50.1 miles in Wisconsin.
(c) Located in Pepin and Buffalo Counties of Wis.; and in Winona County, Minn.
(d) Milepost 325.0 to milepost 362.0 (Burlington Northern, Inc. trackage rights) and milepost 3.9 to 18.0 Milwaukee Road.
(e) Agency stations Winona (mainline milepost 308.4) and Durand (milepost 19.1) not included.
(f) Contemplates coordination with Chicago North Western Transportation Co. (CNWT) for operation St. Paul to Eau Claire.

Minnesota

Map Code [345]

(a) St. Croix Junction to Bayport (22.5 mile segment of the Minnesota-Dakota division, sixth subdivision, and related trackage).
(b) Located wholly in the State of Minnesota.
(c) Located in Washington County.
(d) Milepost 0.0 to 22.5.
(e) Agency station Bayport (milepost 21.7) not included.
(f) Contemplates coordination with Chicago North Western Transportation Co. (CNWT) for operation St. Paul to Bayport.

South Dakota

Map Code [348]

(a) Woonsocket to Wessington Springs (15.2 mile segment of the Minnesota-Dakota division, 34th subdivision, and related trackage).
(b) Located wholly in the State of South Dakota.
(c) Located in Sanborn and Jerould Counties.
(d) Milepost 393.8 to 409.0.
(e) Agency station Woonsocket (milepost 393.5) not included.

Wisconsin

Map Code [349]

(a) Monroe to Mineral Point (46.7 mile segment of the Wisconsin division, 25th subdivision, and related trackage).
(b) Located wholly within the State of Wisconsin.
(c) Located in Greene, LaFayette, and Iowa Counties.
(d) Milepost 44.0 to 90.7.
(e) Agency station Monroe (milepost 43.2) not included.

Iowa

Map Code [350]

(a) Conover to Decorah (10.0 mile segment of the Minnesota-Dakota division, 15th subdivision, and related trackage).
(b) Located wholly in the State of Iowa.
(c) Located in Winneshiek County,
(d) Milepost 0.0 to 10.0.
(e) Agency station Decorah (milepost 10.0) not included—dualized with Cresco (mainline milepost 19.4).

Illinois

Map Code [351]

(a) Kirkland to DeKalb (14.5 mile segment of the Illinois-Iowa division, 11th subdivision, and related trackage).
(b) Located wholly in the State of Illinois.
(c) Located in DeKalb County.
(d) Milepost 20.5 to 35.0.
(e) Agency station DeKalb (milepost 34) included—dualized with Kirkland (mainline milepost 67.4) not included.

Iowa

Map Code [354]

(a) Amana to Rutledge (65.2 mile segment of the Illinois-Iowa Division, 21st subdivision, and related trackage).
(b) Located wholly in the State of Iowa.
(c) Located in Keokuk, Iowa, and Wapello Counties.
(d) Milepost 65.2 to 0.0.
(e) Agency station Sigourney (milepost 24.3) included. Agency station Amana (milepost 67.0) not included.

Iowa

Map Code [355]

(a) Rockwell City to Storm Lake (38.8 mile segment of the Illinois-Iowa division, 28th subdivision, and related trackage).
(b) Located wholly in the State of Iowa.
(c) Located in Sac, Buena Vista, and Calhoun Counties.
(d) Milepost 0.0 to 38.8.
(e) Agency station Rockwell City (milepost 0.0) not included. Agency station Storm Lake (milepost 38.5) included.

Minnesota

Map Code [356]

(a) Farmington to Benning (54.9 mile segment of the Minnesota-Dakota division, ninth subdivision, and related trackage).
(b) Located wholly in the State of Minnesota.
(c) Located in Dakota, Scott, Rice, LeSueur, and Blue Earth Counties.
(d) Milepost 1.2 to 56.1.
(e) Agency station LeCenter (milepost 36.0) dualized with Montgomery (milepost 27.6) included. Agency station Farmington (Milepost 0.0) not included.
(f) Contemplates coordination with Chicago North Western Transportation Co. (CNWT) for operation St. Paul to Mankato.

Minnesota

Map Code [357]

(a) Farmington to Shakopee (23.5 mile segment of the Minnesota-Dakota division, 11th subdivision, and related trackage).
(b) Located wholly in the State of Minnesota.
(c) Located in Carver, Scott, and Dakota Counties.
(d) Milepost 0.5 to 24.0.
(e) Agency station Shakopee (milepost 24.7) and Farmington (milepost 0.0) not included. Agency station Prior Lake (milepost 16.1) and Lakeville (milepost 5.1) are dualized with Farmington, and included.
(f) Contemplates coordination with the Chicago North Western Transportation Co. (CHWT) for operation St. Paul to Shakopee.

Minnesota

Map Code [358]

(a) I.M. & D. Junction to Ramsey (100.0 mile segment of the Minnesota-Dakota division, 14th subdivision, and related trackage).
(b) Located wholly in the State of Minnesota.
(c) Located in Houston, Fillmore, and Mower Counties.
(d) Milepost 2.9 to 102.9.
(e) Agency station Spring Valley (Milepost 73.5) included. Agency station Grand Meadow (milepost 83.0) dualized with Spring Valley included.

Wisconsin

Map Code [359]

(a) Milton Junction to Waukesha (41.0 mile segment of the Wisconsin division, 26th subdivision, and related trackage).
(b) Located wholly in the State of Wisconsin.
(c) Located in Waukesha, Rock, Jefferson, and Walwroth Counties.

(d) Milepost 20.5 to 61.5.
(e) Agency station Waukesha (milepost 23.0) not included.
(f) Line between milepost 23.0 (near Waukesha) and milepost 48.86 (near Whitewater) subject to pending application for abandonment in docket AB-7 (Sub No. 20).

Wisconsin

Map Code [360]

(a) Iron Ridge to Fond du Lac (28.8 mile segment of the Wisconsin division, 14th subdivision, and related trackage).
(b) Located wholly in the State of Wisconsin.
(c) Located in Dodge and Fond du Lac Counties.
(d) Milepost 133.0 to 161.8.
(e) Agency station Mayville (milepost 140.0) and Fond du Lac (milepost 161.0) included.

Minnesota/South Dakota

Map Code [361]

(a) Jackson, Minn. to Egan, S. Dak. (98.0 mile segment of the Minnesota-Dakota division, 19th subdivision, and related trackage).
(b) Located in the States of Minnesota and South Dakota. 86.0 miles in Minnesota, and 12.0 miles in South Dakota.
(c) Located in Minnesota Counties of: Nobles, Jackson, Murray, and Pipestone. Located in Moody County, S. Dak.
(d) Milepost 210.0 to 308.0.
(e) Agency station Jackson (milepost 309.3) included. Agency station Pipestone (milepost 288.6) is on-call from Egan, and included.

Minnesota

Map Code [362]

(a) Faribault to Zumbrota (35.0 mile segment of the Minnesota-Dakota division, 10th subdivision, and related trackage).
(b) Located wholly in the State of Minnesota.
(c) Located in Rice and Goodhue Counties.
(d) Milepost 53.7 to 88.7.
(e) No agency stations on this segment. Agency station Faribault (milepost 89.0) not included.

Wisconsin

Map Code [363]

(a) Tomahawk to Heafford Junction. (5.7 mile segment of the Wisconsin division, 19th subdivision, and related trackage).
(b) Located wholly in the State of Wisconsin.
(c) Located in Lincoln County.
(d) Milepost 133.4 to 139.1.
(e) Agency station Heafford Junction (Milepost 138.6) included.

Washington

Map Code [364]

(a) East Spokane to Metaline Falls (108.6 mile segment (47.5 miles of trackage rights, and 61.1 miles of MILW trackage) of the Washington division, 22d subdivision, and related trackage).
(b) Located wholly in the State of Washington.
(c) Located in Spokane and Pend Oreille Counties.
(d) Burlington Northern, Inc. East Spokane (mileport 1479.5 to Newport (milepost 1,432.0)—(47.5 miles of trackage rights) Milwaukee Road Newport (milepost 43.6 to Metaline Falls (milepost 104.7)—(61.1 miles)).
(e) No agency stations on this segment.

Wisconsin

Map Code]365]

(a) Walworth to Avalon (13.5 mile segment of the Illinois-Iowa division, third subdivision, and related trackage).
(b) Located wholly in the State of Wisconsin.
(c) Located in Rock and Walworth Counties.
(d) Milepost 75.2 to 88.7.
(e) Agency station Walworth (milepost 73.5) not included.

Montana

Map Code [366]

(a) Ringling to Dorsey (3.49 mile segment of the Montana division (leased, operated and maintained by the White Sulphur Springs and Yellowstone Park Railway)).
(b) Located wholly in the State of Montana.
(c) Located in Meagher County.
(d) Engineering Stations 520+30.5 to 335+96.4.
(e) No agency stations on this segment.

Wisconsin

Map Code [367]

(a) Cambria to Portage Junction. (16.7 mile segment of the Wisconsin division, 15th subdivision, and related trackage).
(b) Located wholly in the State of Wisconsin.
(c) located in Columbia County.
(d) Milepost 182.4 to 165.7.
(e) Agency station Portage (mainline milepost 178.2) not included.

Minnesota/North Dakota/South Dakota

Map Code [368]

(a) Ortonville, Minn. to Fargo, N. Dak. (117.0 mile segment of the Minnesota-Dakota Division, 25th sub-division, and related trackage).
(b) located in the States of Minnesota, North Dakota, and South Dakota (46.2 miles in Minnesota, 69.5 miles in North Dakota, and 1.3 miles in South Dakota).
(c) located in Big Stone and Traverse Counties of Minn.; Richland and Cass Counties of N. Dak.; and Roberts County of S. Dak.
(d) Milepost 0.0 to 117.0.
(e) Agency station of Ortonville (mainline milepost 600.0) not included. Agency station Wahpeton (milepost 70.9) included. Agency station Fargo (milepost 116.1) included.

Montana

Map Code [369]

(a) Winifred Junction to Winifred (43.4 mile segment of the Montana division, 12th subdivision, and related trackage).
(b) Located wholly in the State of Montana.
(c) Located in Fergus County.
(d) milepost 0.0 to 43.4.
(e) No agency stations on this segment.

South Dakota

Map Code [370]

(a) Moreau Junction to Isabel (56.5 mile segment of the Minnesota-Dakota division, 47th subdivision, and related trackage).
(b) Located wholly in the State of South Dakota.
(c) Located in Corson and Dewey Counties.
(d) Milepost 0.0 to 56.5.
(e) No agency stations on this segment.

Wisconsin

Map Code [371]

(a) Ripon Junction to Oshkosh (19.0 mile segment of the Wisconsin division, 12th subdivision, and related trackage).
(b) Located wholly in the State of Wisconsin.
(c) Located in Fond du Lac and Winnebago Counties.
(d) Milepost 169.3 to 188.3.
(e) Agency station Ripon (milepost 169.5) not included. Agency station Oshkosh (milepost 188.0) included.

Minnesota/Iowa

Map Code [372]

(a) Austin Junction to Mason City (39.5 mile segment of the Minnesota-

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Dakota division, 13th subdivision, and related trackage).

(b) Located in the States of: Minnesota—11.3 miles; Iowa—28.2 miles.

(c) Located in Mower County, Minn.; and in Cerro Gordo, Worth, and Mitchell Counties, Iowa.

(d) Milepost 0.0 to 39.5.

(e) Agency station Mason City (mainline milepost 116.7) not included. Agency station Austin (mainline milepost 69.5) not included.

South Dakota

Map Code [373]

(a) Napa to Platte (82.9 mile segment of the Minnesota-Dakota division, 36th subdivision, and related trackage).

(b) Located wholly in the State of South Dakota.

(c) Located in Yankton, Bon Homme, and Charles Mix Counties.

(d) Milepost 0.0 to 82.9.

(e) No agency stations on this segment.

Michigan

Map Code [374]

(a) Channing to Republic (23.1 mile segment of the Wisconsin division, 10th subdivision, and related trackage).

(b) Located wholly in the State of Michigan.

(c) Located in Dickinson and Marquette Counties.

(d) Milepost 315.3 to 338.4.

(e) Agency station Channing (milepost 315.9) not included.

North Dakota/South Dakota

Map Code [375]

(a) Roscoe, S. Dak. to Linton, N. Dak. (75.6 mile segment of the Minnesota-Dakota division, 31st subdivision, and related trackage).

(b) Located in the States of North Dakota and South Dakota. (34.9 miles in North Dakota—40.7 miles in South Dakota).

(c) Located in North Dakota Counties of: McIntosh and Emmons. Located in South Dakota Counties of: Edmunds, McPherson, and Campbell.

(d) Milepost 0.0 to 75.6.

(e) Agency station at Roscoe (milepost 0.0) not included.

North Dakota/South Dakota

Map Code [376]

(a) Aberdeen, S. Dak. to Edgeley, N. Dak. (63.3 mile segment of the Minnesota-Dakota division, 29th subdivision, and related trackage).

(b) Located on the States of North Dakota and South Dakota (31.8 miles in South Dakota, and 31.5 miles in North Dakota).

(c) Located in Brown County of S. Dak., and in Dickey and La Moure Counties, in N. Dak.

(d) Milepost 0.0 to 63.3.

(e) Agency station of Aberdeen, S. Dak. (milepost 0.0) not included.

[FR Doc. 78-32573 Filed 11-20-78; 8:45 am]

[7035-01-M]

[Notice No. 215]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

NOVEMBER 9, 1978.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protests must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

MC 1759 (Sub-37TA), filed October 6, 1978. Applicant: FROELICH TRANSPORTATION, INC., Federal Road, Danbury, CT 06810. Representative: Thomas W. Murrett, 342 North Main Street, West Hartford, CT 06117. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes transporting: *Meat and meat products* (except commodities in bulk), from New York, NY, to all points in RI, for 180 days. Supporting shipper(s): B. Rosen & Sons, Inc., 2284 12th Avenue, New York, NY 10027, Hansel & Gretal Brand, 79-36 Cooper Avenue, Glendale, NY 11227; Ferris Stahlmeyer, 1560 Boone Avenue, Bronx, NY 10455, Strassburger, Inc., 2328 12th Avenue, New York, NY 10027, Eastern Transatlantic, 540 Madison Avenue, New York, NY 10022, and Berliner & Marx, 555 West Street, New York, NY 10014. Send protests to: J. D. Perry, Jr., Interstate Commerce Commission, 135 High Street, Room 324, Hartford, CT 06103.

MC 11220 (Sub-159TA), filed October 4, 1978. Applicant: GORDONS TRANSPORTS, INC., P.O. Box 59, 185 West McLemore Avenue, Memphis, TN 38101. Representative: James J. Emigh, P.O. Box 59, Memphis, TN 38101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes transporting: *General commodities* (except classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), between Birmingham, AL, and points within 15 miles thereof, on the one hand, and, on the other, Albertville, Alexander City, Boaz, Centre, Fairfax, Fort Payne, Guntersville, Oneonta, Opelika, Phoenix City, Scottsboro, Sylacauga, Talladega, Tuskegee, and Wetumpka, AL, and points within their respective commercial zones. Restriction: The operations authorized herein are restricted against service to or from Columbus, GA, and points in GA, within its commercial zone, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Applicant intends to tack this authority with the authority it presently holds and to interline with other carriers. Supporting shipper(s): There are approximately (38) statements of support attached to this application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies thereof which may be examined at the field office named below. Send protests to: Floyd A. Johnson, District Supervisor, Interstate Commerce Commission, Suite 2006, 100 North Main Building, 100 North Main Street, Memphis, TN 38103.

MC 26396 (Sub-205TA), filed October 5, 1978. Applicant: POPELKA TRUCKING CO., d.b.a. THE WAGGONERS, P.O. Box 990, Livingston, MT 59047. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting:

Brick, from ports of entry on the international boundary line between the United States and Canada located in MT and ND, to points in the State of ID, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: D. D. Paterson, IXL Industries, P.O. Box 70, Medicine Hat, AB, Canada. Send protests to: Paul J. Labane, District Supervisor, Interstate Commerce Commission, 2602 First Avenue North, Billings, MT 59101.

MC 48948 (Sub-10TA), filed October 2, 1978. Applicant: THE HOCKING CARTAGE CO., Rural Route No. 2, P.O. Box 373, Logan, OH 43138. Representative: James M. Burtch, Jr., 100 East Broad Street, Columbus, OH 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Commodities, clay sewer pipe, drain tile, flue liners, and wall coping*, from Hocking County, OH, to points in NY west of Interstate Hwy 81 and that part of MD west of the Susquehanna River including DC, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: The Logan Clay Products, Co., 201 East Bowen Street, P.O. Box 698, Logan, OH 43138. Send protests to: Frank L. Calvary, District Supervisor, Interstate Commerce Commission, 220 Federal Building and U.S. Courthouse, 85 Marconi Boulevard, Columbus, OH 43215.

MC 51146 (Sub-648TA), filed October 5, 1978. Applicant: SCHNEIDER TRANSPORT, INC., 2661 South Broadway, P.O. Box 2298, Green Bay, WI 54306. Representative: John R. Patterson, 2480 East Commercial Boulevard, Fort Lauderdale, FL 33308. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Plastic containers and lids;* and (2) *buoyant plastic sporting goods articles* moving in mixed loads with plastic containers, from the facilities of Airlite Plastics Co. at or near Omaha, NE, to IA, MI, MN, TX, and WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Airlite Plastics Co., 13724 Industrial Road, Omaha, NE 68137 (Margaret R. Arendt). Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 63417 (Sub-176TA), filed October 5, 1978. Applicant: BLUE RIDGE TRANSFER CO., INC., P.O. Box 13447, Roanoke, VA 24034. Representative: William E. Bain (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Containers, iron or steel*, from Canton, MS, to Dallas and Tarrant Counties, TX, and Houston, TX, and its commerical zone, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Inland Steel Container Co., 4300 West 130th Street, Chicago, IL 60658. Send protests to: Paul D. Collins, 10-502 Federal Building, 400 North Eighth Street, Richmond, VA 23240.

MC 78400 (Sub-66TA), filed October 5, 1978. Applicant: BEAUFORT TRANSFER CO., P.O. Box 151, Gerald, MO 63037. Representative: Ernest A. Brooks II, 1301 Ambassador Building, St. Louis, MO 63101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Steel articles*, from Owensville, MO, to points in AL, AR, CO, GA, IL, IA, KS, MS, NM, OK, TN, WI, and TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: T.S.E. Manufacturing, Inc., 10944 Gravois Industrial Court, St. Louis, MO 63128. Send protests to: P. E. Binder, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 1465, 210 North 12th Street, St. Louis, MO 63101.

MC 87511 (Sub-23TA), filed October 5, 1978. Applicant: SAIA MOTOR FREIGHT LINE, INC., P.O. Box 10157, Station One Houma, LA 70360. Representative: John A Crawford, 1700 Deposit Guaranty Plaza, P.O. Box 22567, Jackson, MS 39205. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities which because of size or weight require the use of special equipment): Between Shreveport, LA, and Houston, TX: From Shreveport over Interstate Hwy 20 to its junction with U.S. Hwy 79, then over U.S. Hwy 79 to its junction with U.S. Hwy 59 at or near Carthage, TX, then over U.S. Hwy 59 to Houston and return over the same route, serving points in the commercial zones of Shreveport, LA, and Houston, TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): There are approximately (42) statements of support attached to this application which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: Connie A. Guillroy, Interstate Commerce Commission, Bureau of Operations, T-9038 U.S. Postal Service Building, 701 Loyola Avenue, New Orleans, LA 70113.

MC 95540 (Sub-1048TA), filed October 5, 1978. Applicant: WATKINS MOTOR LINES, INC., 1144 West Griffin Road, P.O. Box 1636, Lakeland, FL 33802. Representative: Benjay W. Fincher, 1144 West Griffin Road P.O. Box 1636, Lakeland, FL 33802. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts, and articles distributed by meatpackinghouses*, as described in sections A and C of appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766 (except hides and commodities in bulk), from the facilities utilized by John Morrell & Co., located at or near St. Paul, MN to points in FL, for 180 days. There is no environmental impact involved in this application. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: John Morrell & Co., 208 South LaSalle Street, Chicago, IL 60604. Send protests to: Donna M. Jones, Transportation Assistant, Interstate Commerce Commission, Monterey Building, Suite 101, 8410 Northwest 53d Terrace, Miami. FL 33166.

MC 102567 (Sub-214TA), filed October 5, 1978. Applicant: McMAIR TRANSPORT, INC., P.O. Drawer 5357, 4295 Meadow Lane, Bossier City, LA 71111. Representative: Joe. C. Day, 2040 North Loop West, Suite 208, Houston, TX 77018. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sodium salt solutions* (in bulk, in tank vehicles), from Natchez, MS, to point in Louisiana, Ashley, and Jefferson Counties, AR, and Cass County, TX, for 180 days. Supporting shipper(s): The Merichem Co., 1914 Haden Road, Houston, TX 77015. Send protests to: Connie A. Guillory, Interstate Commerce Commission, Bureau of Operations, T-9038, U.S. Postal Service Building, 701 Loyola Avenue, New Orleans, LA 70113.

MC 110328 (Sub-13TA), filed October 5, 1978. Applicant: ROY A. LEIPHART TRUCKING, INC., 1298 Toronita Street, York, PA 17402. Representative: Charles E. Creager, 1329 Pennsylvania Avenue, P.O. Box 1417, Hagerstown, MD 21740. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Automotive carpets, cushioning and/or lining*, from the facilities of C. H. Masland & Sons Co., at or near Carlisle, PA, to the facilities of Ford Motor Co., at or near

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Mahwah, NJ, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): C. H. Masland & Sons, Co., 50 Spring Road, Carlisle, PA 17103. Send protests to: Charles F. Myers, District Supervisor, Interstate Commerce Commission, P.O. Box 869, Federal Square Station, Harrisburg, PA 17108.

MC 113651 (Sub-292TA), filed October 5, 1978. Applicant: INDIANA REFRIGERATOR LINES, INC., P.O. Box 552, Riggin Road, Muncie, IN 47305. Representative: Glen L. Gissing, P.O. Box 552, Riggin Road, Muncie, IN 47305. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned and preserved foodstuffs*, from the facilities of Heinz U.S.A., division of H. J. Heinz Co., at or near Pittsburgh, PA, to points in KS, MN, MO, NE, and WI, for 180 days. Supporting shipper(s): Heinz U.S.A., division of H. J. Heinz Co., P.O. Box 57, Pittsburgh, PA 15230. Send protests to: J. H. Gray, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 343 West Wayne Street, Suite 113, Fort Wayne, IN 46802.

MC 113751 (Sub-26TA), filed October 5, 1978. Applicant: HAROLD F. DUSHEK, INC., 10th and Columbia Street, Waupaca, WI 54981. Representative: James A. Spiegel, 6425 Odana Road, Madison, WI 53719 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen vegetables*, from the facilities of the Larsen Co., located at Green Bay, WI, to points in IL, IN, KY, MI, and OH, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): The Larsen Co., 520 North Broadway, Green Bay, WI 54303. Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 115651 (Sub-50TA), filed October 5, 1978. Applicant: KANEY TRANSPORTATION, INC., 7222 Cunningham Road, Rockford, IL 61102. Representative: R. D. Higgins (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid fertilizer solutions* (in bulk, in tank trucks), from the facilities of Texas Sulphur Products Co., at or near Ottawa, IL, to points in IL, IN, IA, KY, MI, MO, MN, NE, ND, OH, PA, SD, and WI, for 180 days. Supporting shipper(s): Edward A. Krysl, Sales Manager, Texas Sulphur Products Co., 209 Plaza Inn, 116 West Sixth Street, Borger, TX 79007. Send protests to: Lois Stahl, Transportation Assistant, Interstate Commerce Commission, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 116763 (Sub-441TA), filed October 5, 1978. Applicant: CARL SUBLER TRUCKING, INC., North West Street, Versailles, OH 45380. Representative: Gary J. Jira (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except commodities in bulk, from the facilities of Shenandoah Apple Co-operative, Inc., at or near Winchester, VA, to points in FL, restricted to the transportation of traffic originating at the named origin and destined to the named destination territory, for 180 days. Supporting shipper(s): Shenandoah Apple Cooperative, Inc., Robert Taylor, Distribution Manager, P.O. Box 435, Winchester, VA 22601. Send protests to: Paul J. Lowry, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 5514-B, Federal Building, 550 Main Street, Cincinnati, OH 45202.

MC 117730 (Sub-26TA), filed October 5, 1978. Applicant: KOUBENEC MOTOR SERVICE, INC., Route 47, Huntley, IL 60142. Representative: Stephen H. Loeb, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods* (except commodities in bulk), from the facilities of Continental Freezers of Illinois, Inc., at Chicago, IL, to points in IN, OH, MI, and KY, for 180 days. Supporting shipper(s): Roger H. Shay, Traffic Manager, Continental Freezers of Illinois, 4220 South Kildare Boulevard, Chicago, IL 60632. Send protests to: Lois Stahl, Transportation Assistant, Interstate Commerce Commission, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 117786 (Sub-34TA), filed October 5, 1978. Applicant: RILEY WHITTLE, INC., P.O. Box 19038, Phoenix, AZ 85009. Representative: A. Michael Bernstein, 1441 East Thomas Road, Phoenix, AZ 85014. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned seafood and pet food*, from San Diego, CA, to points in AZ, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Ralston Purina Co., Checkerboard Square, St. Louis, MO 63188. Send protests to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, Room 2020, Federal Building, 230 North First Avenue, Phoenix, AZ 85025.

MC 118959 (Sub-181TA), filed October 5, 1978. Applicant: JERRY LIPPS, INC., 130 South Frederick Street, Cape Girardeau, MO 63701. Representative: Edward G. Bazelon, 39 South LaSalle Street, Chicago, IL 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic containers*, from Kent County, MI, to AL, AR, CO, KS, KY, LA, MS, MO, NE, OK, TN, TX, and WV, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): The Continental Group, Inc., 633 Third Avenue, New York, NY 10017. Send protests to: P. E. Binder, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 1465, 210 North 12th Street, St. Louis, MO 63101.

MC 118959 (Sub-182TA), filed October 5, 1978. Applicant: JERRY LIPPS, INC., 130 South Frederick Street, Cape Girardeau, MO 63701. Representative: Robert M. Pearce, P.O. Box 1899, Bowling Green, KY 42101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products, cellulose products, textile softener and material, supplies, and equipment* used in the manufacture and distribution thereof, between Green Bay WI, on the one hand, and, on the other, points in ND, SD, NE, KS, OK, TX, and points east thereof, and CA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Procter & Gamble Paper products Co., P.O. Box 599, Cincinnati, OH 45201. Send protests to: P. E. Binder, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 1465, 210 North 12th Street, St. Louis, MO 63101.

MC 119493 (Sub-232TA), filed October 5, 1978. Applicant: MONKEM CO., INC., P.O. Box 1196, Joplin, MO 64801. Representative: Tom Boone (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by wholesale, retail, and chain grocery and food business houses, between Clinton and Davenport, IA, on the one hand, and, points in IN, MI, and OH, on the other hand, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Ralston Purina Co., St. Louis, MO 63188. Send protests to: John V. Barry, District Supervisor, Room 600, 911 Walnut Street, Kansas City, MO 64106.

MC 119493 (Sub-233TA), filed October 5, 1978. Applicant: MONKEM CO., INC., P.O. Box 1196, Joplin, MO 64801. Representative: Thomas D. Boone (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Charcoal briquettes*, from Pachuta, MS, to points in the States of AL, GA, SC, NC, TN, and LA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Husky Industries, Inc., Atlanta, GA 30346. Send protests to : John V. Barry, District Supervisor, Room 600, 911 Walnut Street, Kansas City, MO 64106.

MC 119493 (Sub-234TA), filed October 5, 1978. Applicant: MONKEM CO., INC., P.O. Box 1196, Joplin, MO 64801. Representative: Thomas D. Boone, P.O. Box 1196, Joplin, MO 64801. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Paper and paper products* (except in bulk), from the facilities of International Paper Co., at or near Pittsburg, KS, to points in the 48 continental United States, and the District of Columbia; and (2) *Equipment, materials and supplies* used in the manufacture or distribution of paper and paper products (except commodities in bulk), from points in the 48 continental United States, and the District of Columbia, to the facilities of International Paper Co., at or near Pittsburg, KS, for 180 days. Applicant has also filed ar underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): International Paper Co., New York, NY 10017. Send protests to: John V. Barry, District Supervisor, Room 600, 911 Walnut Street, Kansas City, MO 64106.

MC 119988 (Sub-162TA), filed October 5, 1978. Applicant: GREAT WESTERN TRUCKING CO., INC., P.O. Box 1384, Lufkin, TX 75901. Representative: Hugh T. Matthews, 2340 Fidelity Union Tower, Dallas, TX 75201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Commercial refrigeration units and parts thereof, and materials, equipment and supplies* used in the manufacture and distribution thereof, between Waxahachie, TX, on the one hand, and, on the other, points in CA, OR and WA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Tyler Refrigeration Corp., P.O. Box 597, Waxahachie, TX 75165. Send protests to: John F. Mensing, District Supervisor, 8610 Federal Building, 515 Rusk Avenue, Houston, TX 77002.

MC 123329 (Sub-40TA), filed October 5, 1978. Applicant: H. M. TRIMBLE & SONS, LTD., P.O. Box 3500, Calgary, AB, Canada. Representative: Ray F. Kolby, 314 Montana Building, Great Falls, MT 59401. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Palm oil soap stock mix (inedible tallow)* (in bulk, in tank vehicles), from ports of entry on the United States-Canada boundary line located at or near Sumas, WA, to the facilities of Meenderinck Molasses located in Whatcom County, WA, restricted to shipments in foreign commerce, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Meenderinck Molasses, 2217 Hampton Road, Everson, WA 98247. Send protests to: Paul J. Labane, District Supervisor, Interstate Commerce Commission, 2602 First Avenue North, Billings, MT 59101.

MC 123407 (Sub-503TA), filed October 5, 1978. Applicant: SAWYER TRANSPORT, INC., South Haven Square, U.S. Highway 6, Valparaiso, IN 46383. Representative: H. E. Miller, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass and glass glazing units*, from the facilities of Guardian Industries at or near Carleton, MI, to Chicago, IL, and to points in NC and SC, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Donald A. Nichols, Traffic Manager, Guardian Industries, 14600 Romine Road, Carleton, MI. Send protests to: Lois Stahl, Transportation Assistant, Interstate Commerce Commission, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 123476 (Sub-38TA), filed October 5, 1978. Applicant: CURTIS TRANSPORT, INC., No. 23 Grandview Industrial Court, Arnold, MO 63010. Representative: David G. Dimit (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes. transporting: *Plastic articles and polystyrene products* (except in bulk, in tank vehicle), from the facilities of U.C. Industries, Tallmage, OH, to points in and east of the States of ND, SD, NE, KS, OK and TX, for 180 days. Supporting shipper: United States Gypsum Co., 101 South Wacker Drive, Chicago, IL 60606. Send protests to: P. E. Binder, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 1465, 210 North 12th Street, St. Louis, MO 63101.

MC 124078 (Sub-887TA), filed October 5, 1978. Applicant: SCHWERMAN TRUCKING CO., 611 South 28 Street, Milwaukee, WI 53215. Representative: James R. Carroll (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes. transporting: *Mineral filler*, from Anderson, TN, to points in AL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Pres Evans Co., Inc., Box 495X, Route 2, Guntersville, AL 35976. Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 124078 (Sub-888TA), filed October 5, 1978. Applicant: SCHWERMAN TRUCKING CO., 611 South 28 Street, Milwaukee, WI 53215. Representative: James R. Carroll (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes. transporting: *Fly ash* (in bulk) from points in TN, to the Yellow Creek Nuclear Plant, near Iuka, MS, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Tennessee Valley Authority, 633 Chestnut Street, Chattanooga, TN 37401. Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 124692 (Sub-245TA), filed October 5, 1978. Applicant: SAMMONS TRUCKING, P.O. Box 4347, Missoula, MT 59801. Representative: James B. Hovland, P.O. Box 1680, Fargo, ND 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes. transporting: *Lumber*, from Newcastle, WY, to points in IL, IN, KY, MI and WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Gary Mallams, Sales Manager, Cambria Forrest Industries, Inc., P.O. Box 490, Newcastle, WY 82701. Send protests to: Paul J. Labane, District Supervisor, Interstate Commerce Commission, 2602 First Avenue North, Billings, MT 59101.

MC 125777 (Sub-232TA), filed October 5, 1978. Applicant: JACK GRAY TRANSPORT, INC., 4600 East 15th Avenue, Gary, IN 46403. Representative: Duane O'Donnell (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dead burned magnesite*, (in dump vehicles), from New Kensington, PA and Tarentum PA, to (Jackson County), OH, for 180 days. Applicant has also filed an underlying ETA seek-

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ing up to 90 days of operating authority. Supporting shipper(s): Donald M. Rice, Executive Vice President, Davis Refractories, Inc., 225 South Front Street, Oak Hill, OH 45656. Send protests to: Lois Stahl, Transportation Assistant, Interstate Commerce Commission, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 127312 (Sub-1TA), filed October 5, 1978. Applicant: CANNON INTERSTATE CARRIERS CORP., 902 Columbus Avenue, New York, NY 10025. Representative: Harold L. Reckson, 33-28 Halsey Road, Fair Lawn, NJ 07410. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Synthetic yarn*, from the facilities of Unifi, Inc., near Yadkinville, NC, to New York, NY, and its commercial zone, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Unifi, Inc., P.O. Box 698, Yadkinville, NC 27055. Send protests to: Maria B. Kejss Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, NY 10007.

MC 133655 (Sub-125TA), filed October 5, 1978. Applicant: TRANS-NATIONAL TRUCK, INC., P.O. Box 31300, Amarillo, TX 79120. Representative: Warren L. Troupe, 2480 East Commercial Boulevard, Fort Lauderdale, FL 33308. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, (except in bulk), from the facilities of Commercial Distribution Center, Inc., at or near Kansas City, MO, to Austin, Harlingen, Lubbock, and Corpus Christi, TX, for 180 days. Supporting shipper(s): Commercial Distribution Center, Inc., P.O. Box 477, Independence, MO 64051. Send protests to: Haskell E. Ballard, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box F-13206 Federal Building, Amarillo, TX 79101.

MC 134484 (Sub-21TA), filed October 5, 1978. Applicant: EDWARDS BROS., INC. P.O. Box 1684, Idaho Falls, ID 83401. Representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fresh meats*, from the plantsite of Columbia Foods, Inc., a subsidiary of Iowa Beef Processors, at or near Boise, ID, to Wallula, WA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Columbia Foods, Inc., a subsidiary of Iowa Beef Processors, Inc., Dakota City, NE 68731. Send Protests to: Barney L. Hardin, District Supervisor, Interstate Commerce Commission, 1471 Shoreline Drive, Boise, ID 83706.

MC 135237 (Sub-4TA), filed October 4, 1978. Applicant: EAST PENN TRUCKING CO., R.F.D. No. 1, Lehighton, PA 18235. Representative: Herbert R. Nurick, P.O. Box 1166, Harrisburg, PA 17108. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Zinc concentrate*, (in bulk, in dump vehicles), from Camden, NJ, to Palmerton, PA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority, Supporting shipper(s): New Jersey Zinc Division of Western Industries, Inc., 2200 First American Center, Nashville, TN 37238. Send protests to: Paul J. Kenworthy, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 314 U.S. Post Office Building, Scranton, PA 18503.

MC 135542 (Sub-9TA), filed October 5, 1978. Applicant: TIMOTHY D. SHAW, R.F.D. No. 1, Sweet Valley, PA 18621. Representative: Edward G. Villalon, 1032 Pennsylvania Building, Pennsylvania Avenue and 13th Street NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cushions, pillows, and inserts*, from Wilkes-Barre, PA, to Elizabeth, NJ, Atlanta, GA; Dallas, TX; Kansas City, KS; and Columbus, OH, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Decorator Pillow, Inc., 38 Courtright Street, Wilkes-Barre, PA 18702. Send protests to: Paul J. Kenworthy, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 314 U.S. Post Office Building, Scranton, PA 18503.

MC 135732 (Sub-34TA), filed October 4, 1978. Applicant: AUBREY FREIGHT LINES, INC., P.O. Box 503, 625 Grove Street, Elizabeth, NJ 07207. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paints, varnishes, stains, and waxes, materials, equipment and supplies* used in the manufacture and sale thereof, (except commodities in bulk), in temperature controlled vehicles, between the facilities of Minwax Corp., Flora, IL, on the one hand, and, on the other, points in the States of ME, NH, VT, CT, RI, NJ, NY, PA, DE, MD, VA and DC, restricted to shipments originating and destined to the above facilities, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Minwax Corp., 72 Oak Street, Clifton, NJ 07214. Send protests to: Robert E. Johnston, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 9 Clinton Street, Room 618, Newark, NJ 07102.

MC 136605 (Sub-72TA), filed October 5, 1978. Applicant: DAVIS BROS. DISTRIBUTORS, INC., P.O. Box 8058, Missoula, MT 59807. Representative Joe Gerbase, 404 North 31st Billings, MT 59101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber*, from WA, OR and CA, to points in ND, SD, NE, KS, IA, WI, MN, IL and MO, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): There are approximately (7) statements of support attached to this application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies thereof which may be examined at the Field office named below. Send protests to: Paul J. Labane, District Supervisor, Interstate Commerce Commission, 2602 First Avenue North, Billings, MT 59101.

MC 138469 (Sub-84TA), filed October 5, 1978. Applicant: DONCO CARRIERS, INC., P.O. Box 75354, Oklahoma City OK 73107. Representative: Jack H. Blanshan, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper, paper articles and polyethylene articles*, from the facilities of International Paper Co. at Jackson, TN, to points in CA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: International Paper Co., 222 East 42nd Street, New York, NY 10017. Send protests to: Connie Stanley, Transportation Assistant, Room 240, Old Post Office & Court House Building, 215 NW. 3rd, Oklahoma City OK 73102.

MC 138960 (Sub-5TA), filed October 4, 1978. Applicant: ROKO EXPRESS, INC., P.O. Box 168, 2545 Parsons Avenue, Columbus, OH 43216. Representative: H. Barney Firestone, 10 South LaSalle Street, Chicago, IL 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Table sauces*, (2) *salt and* (3) *food curing, preserving and seasoning compounds*, (except commodities in bulk), from Evansville, IN, Henderson and Owensboro, KY, to points in AL, AR, GA, IL, KS, LA, MS, MO, NC, OK, SC, TN, and TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Ragu Foods, 33 Benedict Place, Greenwich, CT 06830. Send protests to: Frank L. Calvary, District Supervisor, Interstate Commerce Commission, 220 Federal Building and U.S. Courthouse, 85 Marconi Boulevard, Columbus, OH 43215.

MC 139276 (Sub-4TA), filed October 5, 1978. Applicant: ALOHA FREIGHTWAYS, INC., 1069 Bryn Mawr Avenue, Bensenville, IL 60106. Representative: Grace Kasallis (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Steel sheets or coils, coated or uncoated*, from the facilities of Pre-Finish Metals, Inc., at Elk Grove Village, IL, to Kalamazoo, MI, under a continuing contract or contracts, with Pre-Finish Metals, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Dale Youssi, Vice-President, Pre-Finish Metals, Inc., 2300 E. Pratt Boulevard, Elk Grove, Village, IL 60007. Send protests to: Lois Stahl, Transportation Assistant, Interstate Commerce Commission, 219 S. Dearborn Street, Room 1386, Chicago, IL 60604.

MC 140033 (Sub-72TA), filed October 5, 1978. Applicant: COX REFRIGERATED EXPRESS, INC., 10606 Goodnight Lane, Dallas, TX 75245. Representative: E. Larry Wells, Winkle and Wells, Suite 1125 Exchange Park, P.O. Box 45538, Dallas, TX 75245. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sulphur*, (in bags), (except commodities in bulk), from the facilities of International Chemicals, Inc., at or near Mt. Pleasant, TX, to points in KY, IA, IN, OH, SC, CO, and UT, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: International Chemicals, Inc., Route 3, Box 270, Mount Pleasant, TX 75455. Send protests to: Opal M. Jones, Transportation Assistant, Interstate Commerce Commission, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

MC 140118 (Sub-10TA), filed October 4, 1978. Applicant: S. T. L. TRANSPORT, INC., P.O. Box 9776, 1000 Jefferson Road, Rochester, NY 14623. Representative: S. Michael Richards, Raymond A. Richards, P.O. Box 225, Wesster, NY 14580. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes transporting: (1) *Empty glass containers*, from Bridgeton, NJ, Clarion, PA; Huntington and Fairmont, WV; and Blockport, NY, to points in CT, MA, NY, and PA; and (2) *Plastic pails*, from Watertown, MA, to points in NJ and NY, under a continuing contract or contracts, with Empire State Bottle Co., of Syracuse, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Empire State Bottle Co., of Syracuse, Inc., 4100 Milton Avenue, Syracuse, NY 13219. Send protests to: Interstate Commerce Commission, U.S. Courthouse and Federal Building, 100 S. Clinton Street, Room 1259, Syracuse, NY 13260.

MC 140134 (Sub-8TA), filed October 5, 1978. Applicant: CALDARULO TRADING CO., 2840 South Ashland Avenue, Chicago, IL 60608. Representative: William H. Towle, 180 N. LaSalle Street, Chicago, IL 60601. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes transporting: *Candy confectionary and dessert preparations* (except in bulk), from Chicago, IL, to Pittsburgh, Hershey, and Philadelphia, PA; Baltimore, MD; Washington, DC; Buffalo, Syracuse, and New York City, NY; Richmond, Roanoke, Salem, and Falmouth, VA; Albuquerque, NM; Phoenix, AZ; Los Angeles, Chula Vista, Oakland, and San Francisco, CA, and Salt Lake City, UT, under a continuing contract or contracts, with Leaf Confectionary, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Dan G. Duchak, Distribution Manager, Leaf Confectionary, Inc., 1155 N. Cicero, Chicago, IL 60651. Send protests to: Lois Stahl, Transportation Assistant, Interstate Commerce Commission, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 140943 (Sub-6TA), filed October 5, 1978. Applicant: CHEYENNE ROAD TRANSPORT, LTD., P.O. Box 968, Cochrane, AB, Canada. Representative: Grant J. Merritt, 4444 IDS Center, Minneapolis, MN 55402. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes transporting: *Soybean meal*, from IA (except Sergeant Bluff and Sioux City), Dawson and Red Wing, MN, to the ports of entry on the United States-Canada international boundary line at Portal, ND, Sweetgrass, MT; Eastport, ID, and Sumas and Oroville, WA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Richard A. Fischer, The Pillsbury Co., 608 2d Avenue South, Minneapolis, MN 55402. Send protests to: Paul J. Labane, District Supervisor, Interstate Commerce Commission, 2602 First Avenue North, Billings, MT 59101.

MC 141084 (Sub-12TA), filed October 4, 1978. Applicant: NATIONAL FREIGHT LINES, INC., 13032 Arroyo Avenue, P.O. Box 1031, San Fernando, CA 91341. Representative: Bill D. Gardner, 13023 Arroyo, P.O. Box 1031, San Fernando, CA 91341. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes transporting: *Railway car parts and accessories*, from Chicago, IL, Portage, IN; St. Louis, MO; Buffalo, DePew, Lackawanna and Watertown, NY; Columbus, OH; Wilmerding, to Portland, OR, under a continuing contract or contracts, with FMC Corp., for 180 days. Supporting shipper: FMC Corp., 4700 Northwest Front Avenue, Portland, OR. 97208. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, 300 North Los Angeles Street, Room 1321, Los Angeles, CA 90012.

MC 143032 (Sub-8TA), filed October 4, 1978. Applicant: THOMAS J. WALCZYNSKI, d.b.a. WALCO TRANSPORT, 607 North 27th Avenue West, Duluth, MN 55806. Representative: James B. Hovland, P.O. Box 1680, 414 Gate City Building, Fargo, ND 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Steel grinding balls*, from the facilities of North Star Steel Co., located at Duluth, MN, to the Groveland mine site at or near Randville, MI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: North Star Steel Co., 800 Garfield Avenue, Duluth, MN 55806. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building, U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 143812 (Sub-4TA), filed October 4, 1978. Applicant: MARTIN E. VAN DIEST, d.b.a. VAN DIEST CO., 8087 Victoria Avenue, Riverside, CA 92504. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Grapejuice* (in bulk), from Prosser, WA, to the ports of entry on the international boundary line between the United States and Canada located in ID, WA and MT, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Milne Fruit Products, Inc., 804 Bennet Avenue, P.O. Box 111, Prosser, WA 99350. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, 300 North Los Angeles Street, Room 1321, Los Angeles, CA 90012.

MC 144326 (Sub-4TA), filed October 4, 1978. Applicant: RICHARDSON TRUCKING, INC., 603 8th Street, Greeley, CO 80631. Representative:

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Fred Cantonwine (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Inedible meat and meat by-products* used as or in the manufacture of animal feed and feed ingredients (except commodities in bulk, in tank vehicles), from the facilities of Inedible Meat Products at Greeley, CO, from facilities of Norfolk Rendering at Norfolk, NE; from facilities of Herford By-Products, Inc., at Herford, TX, to Kankakee and Rockford, IL; Lafayette, IN; Davenport, IA; Lawrence and Topeka, KS; Pascagoula, MS; Nebraska City, NE; Marion, OH; Newburg, OR; and Bloomsburg and Pennsauken, PA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Pet Foods, 2068 Lapham Drive, Modesto, CA. Send protests to: Roger L. Buchanan, District Supervisor, Interstate Commerce Commission, 721 19th Street, 492 U.S. Customs House, Denver, CO 80202.

MC 144435 (Sub-2TA), filed October 5, 1978. Applicant: J & L REFRIGERATED SERVICE, INC., 312 Willow Way, Lee's Summit, MO 64063. Representative: Leland Shurin, 1900 Power & Light Building, Kansas City, MO 64105. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat by-products, and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the Report and Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides, skins, and pieces therefrom and commodities in bulk), from Kansas City, KS, to points in Missouri on and north of U.S. Interstate Hwy 44; on and west of MO Hwy 19, and on and south of U.S. Hwy 36, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: There are approximately (5) statements of support attached to this application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies thereof which may be examined at the field office named below. Send protests to: John V. Barry, District Supervisor, Room 600, 911 Walnut Street, Kansas City, MO 64106.

MC 145348 (Sub-1TA), filed October 5, 1978. Applicant: CHARLES REBEDEW, d.b.a. REBEDEW TRUCKING, 561 Monmouth Street, Fond du Lac, WI 54935. Representative: Ronald E. Laitsch, 113 N. 3rd Street, Watertown, WI 53094. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Components of buildings and canopies*, restricted to shipments in shipper-owned trailers, from Waupun, WI, to points in MN, IL, IN, MN, MD, and OH, under a continuing contract or contracts, with King Manufacturing Corp., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: King Manufacturing Corp., 1100 S. Watertown, Waupun, WI 53963. Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 145383 (Sub-1TA), filed October 5, 1978. Applicant: JAMES RENALDO AND GAY ROSE RENALDO, d.b.a. KAI MOTOR FREIGHT, I-295 and Harmond Road, Gibbstown, NJ 08027. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Cleaning, washing and polishing scaps and compounds, varnishes, rust preventatives, oils, and greases* (except in bulk), and on return, *materials, equipment, and supplies* used in the manufacture, sale and distribution thereof (except in bulk), from Avenel, NJ, to points in AR, FL, GA, NC, SC, and TN, under a continuing contract or contracts, with Economics Laboratory, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Economics Laboratory, Inc., 255 Blair Road, Avenel, NJ 07001. Send protests to: John P. Lynn, Transportation Specialist, Interstate Commerce Commission, 428 East State Street, Room 204, Trenton, NJ 08608.

MC 145384 (Sub-10TA), filed October 4, 1978. Applicant: ROSE-WAY, INC., 1914 E. Euclid, Des Moines, IA 50313. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Reinforced fiberglass plastic panels*, from the facilities of Ornyte Fiberglass Co., at or near Santa Monica, CA, to points in AZ, IA, IL, IN, LA, MO, OH, TX, and WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Ornyte Fiberglass Co., 711 Olympic Boulevard, Santa Monica, CA 90406. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 145402 (Sub-1TA) filed October 4, 1978. Applicant: LAKE LINE EXPRESS, INC., P.O. Box 556, Wausau, WI 54401. Representative: Richard A. Westley, 4506 Regent Street, Suite 100, Madison, WI 53705. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Appleton, WI, and Grand Rapids, MI, serving the intermediate point of Kalamazoo, MI, and serving points in the respective commercial zones of said named points: (1) From Appleton over U.S. Hwy 41 to junction U.S. Hwy 45 at or near Milwaukee, WI, then over U.S. Hwy 45 to junction Interstate Hwy 894, then over Interstate Hwy 894 to junction Interstate Hwy 94, then over Interstate Hwy 94 to junction U.S. Hwy 131, then over U.S. Hwy 131 to Grand Rapids, and return over the same route; (2) from junction Insterstate Hwy 94 and Insterstate Hwy 294 near Deerfield, IL, then over Insterstate Hwy 294 to junction Insterstate Hwy 94 at or near South Holland, IL, and return over the same route, as an alternate route for operating convenience only and serving no intermediate points; (3) from junction Insterstate Hwy 90 and Insterstate Hwy 94 in Chicago, IL, then over Insterstate Hwy 90 to junction Insterstate Hwy 94 east of Gary, IN, and return over the same route, as an alternate route for operating convenience only and serving no intermediate points; (4) from junction Insterstate Hwy 94 and Insterstate Hwy 196, then over Insterstate Hwy 196 to Grand Rapids, MI, and return over the same route, as an alternate route for operating convenience only and serving no intermediate points for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Applicant seeks permission to interline at Appleton, WI, and Grand Rapids and Kalamazoo, MI. Supporting shipper: There are approximately (93) statements of support attached to this application which may be examined at the Interstate Commerce Commission in Washington, DC or copies thereof which may be examined at the field office named below. Send Protest to: Ronald Morken, District Supervisor, Interstate Commerce Commission, 212 East Washington Avenue, Room 317, Madison, WI 53703.

MC 145414 (Sub-1TA) filed October 4, 1978. Applicant: KAR-D CO., INC., 2107 2nd Avenue, Greeley, CO 80631. Representative: James B. Hovland, 414 Gate City Building, P.O. Box 1680, Fargo, ND 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, (1) from facilities of Olympia Brewing Co., at or near St. Paul, MN, to Denver and Greeley, CO; and (2) from facilities of Pearl Brewing Co. at or near San Antonio, TX, to Denver and Greeley, CO; and (3) from facilities fo Falstaff Brewing Co. at or near Omaha, NE, to Greeley, CO, for 180 days. applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: (1) Colorado Delivery-Division of Best Brands, 4900 Moline, Dever, CO 80239. (2) Gold Seal Distributing, Inc., 2123 2nd Avenue, Greeley, CO 80631. Send protests to: Roger L. Buchanan, District Supervisor, Interstate Commerce Commission, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 145466 (Sub-1TA), filed October 4, 1978. Applicant: BERYL WILLITS, 1145 33rd Avenue, Greeley, CO 80631. Representative: Richardson S. Mandelson, Jones Meiklejohn, Kehl & Lyons, 1660 Lincoln Street, 1600 Lincoln Center Building, Denver, CO 80624. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Hides and pelts*, from Denver, Pueblo, Greeley and Sterling, CO, to points in CA; Houston and San Antonio, TX; and to points on the international boundary line between the United States and Canada at or near Champlain, NY, under a continuing contract or contracts, with Chilewich Corp. for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Chilewich Corp., 5400 Brighton Boulevard, Denver, CO 80216. Send protests to: Roger L. Buchanan, District Supervisor, Interstate Commerce Commission, 492 U.S. Customshouse, 721 19th Street, Denver, CO 80202.

MC 145485 (Sub-1TA), filed October 4, 1978. Applicant: DAVIS CARTAGE CO., P.O. Box 96, Corunna, MI 48817. Representative: William B. Elmer, 21635 East Nine Mile Road, St. Clair Shores, MI 48080. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dried sugar beet pulp* (in bulk, in dump vehicles), from the facilities of Michigan Sugar Co. at or near Caro, Carrollton, Croswell and Sebewaing, MI, to Essexcille and Port Huron, MI, restricted to traffic having a subsequent movement by water to points outside the continental U.S., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Michigan Sugar Co., 300 Plaza North, P.O. Box 960, Saginaw, MI 48606. Send protests to: C. R. Flemming, District Supervisor, Interstate Commerce Commission, 225 Federal Building, Lansing, MI 48933.

MC 145501 (Sub-1TA), filed October 5, 1978. Applicant: WASHUM ENTERPRISES, INC., P.O. Box 4849 Kofa Station, Yuma, AZ 85364. Representative: A. Michael Bernstein, 1441 East Thomas Road, Phoenix, AZ 85014. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper plates and paper scraps*, from the facilities of Arical Paper Products Co. in Yuma, AZ, to points in Los Angeles, Orange and Riverside Counties, CA, and on return, *pulpboard*, from Los Angeles County, CA, to the facilities of Arical Paper Products Co. in Yuma, AZ, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Arical Paper Products Co., P.O. Box 4207, Yuma, AZ 85364. Send protests to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, Room 2020, Federal Building, 230 North First Avenue, Phoenix, AZ 85025.

MC 145530TA, filed October 6, 1978. Applicant: HARVEY COFFELT, d.b.a. HARVEY COFFELT TRUCKING, Route 3, Erin, TN 37061. Representative: Harvey Coffelt, Route 3, Erin, TN 37061. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cross ties* and *lumber*, from Erin and Bruceton, TN to Paducah, KY, Chattanooga, TN, and Carbondale, IL, for 180 days. Supporting shipper: Largent Tie & Lumber Co., Erin, TN. Send protests to: Joe Tate, District Supervisor, Bureau of Operations, ICC, Suite A-422, U.S. Courthouse, 801 Broadway, Nashville, TN 37203.

MC 145543TA, filed October 5, 1978. Applicant: GOLDEN STATE COURIERS, 1387 Lowrie, South San Francisco, CA 94080. Representative: Lee H. Harter, 2822 Van Ness Avenue, San Francisco, CA 94109. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between facilities in South San Francisco, on the one hand, and on the other, points north to and including Mendocino County, east to and including Sacramento and Tuolumne Counties, south to and including Fresno and San Luis Obispo County and all included counties, from terminal to those borders restricted to traffic having a prior or subsequent out of state movement by air, for 180 days. Supporting shipper: Federal Express Corp., 110 East Grand Avenue, South San Francisco, CA 94080. Send protests to: Michael M. Butler, District Supervisor, 211 Main, Suite 500, San Francisco, CA 94105.

MC 145566TA, filed October 2, 1978. Applicant: B & K ENTERPRISES, 7950 South 27th Street, Oak Creek, WI 53154. Representative: Terry W. Kultgen, 5605 Brookhaven Drive, Racine, WI 53406. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Heavy and specialized commodities or articles requiring special equipment or special handling* outside the scope of the certificates of general commodities, motor common carriers, for 180 days. Supporting shipper: Oven Systems, Inc., 3000 South 160th Street, New Berlin, WI 53151. Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

PASSENGER CARRIER

MC 2060 (Sub-13TA), filed October 5, 1978. Applicant: PINE HILL-KINGSTON BUS CORP., 18 Pine Grove Avenue, P.O. Box 1758, Kingston, NY 12401. Representative: E. E. Ownby, 18 Pine Grove Avenue, Kingston, NY 12401. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Passengers and their baggage, and express and newspapers* in the same vehicle with passengers, between Kingston, NY, and New York, NY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: There are approximately 10 statements of support attached to this application which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: Robert A. Radler, District Supervisor, P.O. Box 1167, Albany, NY 12201.

By the Commission.

H. G. HOMME, JR.,
Acting Secretary.

[FR Doc. 78-32701 Filed 11-20-78; 8:45 am]

[7035-01-M]

[Notice No. 216]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

NOVEMBER 9, 1978.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application

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may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIER OF PROPERTY

MC 33641 (Sub-135TA), filed October 10, 1978. Applicant: IML FREIGHT INC., P.O. Box 30277, South 3270 West Street, Salt Lake City, UT 84125. Representative: Michael S. Rubin, 256 Montgomery Street, San Francisco, CA 94140. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, except those requiring special equipment, serving, the off-route points of Dayton and Carson City, NV, in connection with carrier's existing regular route service between Reno, NV, and McGill, NV, applicant intends to tack the authority here applied for to serve as off-route points in connection with existing Sub-No. 105 authority, applicant intends to interline with other carriers at all points at which applicant presently interlines traffic on existing regular and irregular route system, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: There are approximately 37 statements of support attached to this application which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies of which may be examined at the field office named below. Send protests to: Lyle D. Helfer, DS, ICC, 5301 Federal Building, Salt Lake City, UT 84130.

MC 51146 (Sub-650TA), filed October 10, 1978. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: John R. Patterson, 2480 E. Commercial Boulevard, Fort Lauderdale, FL 33308. Authority sought to operate as a *common carrier*, by motor vehicle over irregular routes, transporting: *Such commodities as are dealt in or used by manufacturers and distributors of containers;* and *materials and supplies* used in the manufacture, distribution or sale thereof (except commodities in bulk) between the facilities of the Beverage Bottle Division of Hoover Universal at or near Columbus, OH, on the one hand, and, on the other, points in AL, IL, IN, KY, MI, PA, TN, and WV, for 180 days. Supporting shipper: Beverage Bottle Division of Hoover Universal Corp., Route 2, Tri Port Road, Georgetown, KY 40324 (Thomas E. Gould). Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 E. Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 51146 (Sub-651TA), filed October 10, 1978. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: John R. Patterson, 2480 East Commercial Boulevard, Fort Lauderdale, FL 33308. Authority sought to operate as a *common carrier*, by motor vehicle over irregular routes, transporting: *Canned and preserved foodstuffs* from the facilities of Heinz U.S.A., Div. of H. J. Heinz Co., at or near Pittsburgh, PA, to points in MN and WI, for 180 days. Supporting shipper: Heinz U.S.A., Division of H. J. Heinz Co., P.O. Box 57, Pittsburgh, PA 15230 (William L. Reeder): Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 59680 (Sub-219TA), filed October 10, 1978. Applicant: STRICKLAND TRANSPORTATION CO., INC., 11353 Reed Hartman Highway, Cincinnati, OH 45241. Representative: Edward G. Bazelon, 39 South LaSalle Street, Chicago, IL 60603 and Milton H. Bortz (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle over irregular routes, transporting: *General commodities* (except household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, articles of unusual value and Classes A and B explosives), (A) between Baton Rouge, LA and its commercial zone, and Monroe, LA and its commercial zone, serving no intermediate points, from Baton Rouge over U.S. Hwy 61 to Natchez, MS, thence over U.S. Hwy 84 to Ferriday, LA, thence over U.S. Hwy 65 to Clayton, LA, thence over LA Hwy 15 to Monroe, and return over the same route, and (B) between Baton Rouge, LA, and its commercial zone, and Junction U.S. Hwys 71 and 190, serving no intermediate points and serving the junction of U.S. Hwys 71 and 190 for purposes of joinder only, from Baton Rouge over U.S. Hwy 190 59 Junction U.S. Hwy 71, and return over the same route, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. The purpose of this application is to avoid a gateway. Applicant is authorized to operate as a *common carrier* in AR, CT, DE, IL, IN, KY, LA, MD, MA, MI, MS, NJ, NY, OH, OK, PA, RI, TN, TX, VA, WI, and DC. Supporting shippers: The application is supported by 124 Certificates of Support which may be inspected at the office of the District Supervisor set forth below. Send protests to: Paul J. Lowry, District Supervisor, Interstate Commerce Commission, 5514-B Federal Building, 550 Main Street, Cincinnati, OH 45202.

MC 100449 (Sub-96TA), filed October 10, 1978. Applicant: MALLINGER TRUCK LINE, INC., Rural Route 4, Fort Dodge, IA 50501. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, except in bulk, from the facilities of Commercial Distribution Center at Independence, MO, to points in OK and TX, for 180 days. Supporting shipper: Commercial Distribution Center, Inc., 16500 East Truman Road, Independence, MO 64051. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 100449 (Sub-97TA), filed October 10, 1978. Applicant: MALLINGER TRUCK LINE, INC., Rural Route 4, Fort Dodge, IA 50501. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products, and articles distributed by meat packinghouses*, as described in sections A, B, and C of appendix I, Description Motor Carrier Certificates, 61 MCC 209 and 766, except hides and commodities in bulk, from the facilities utilized by John Morrell & Co. at or near Sioux Falls, SD and Estherville, IA, to points in TX and OK, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: John Morrell & Co., 208 South LaSalle Street, Chicago, IL 60604. Send protests to : Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 110988 (Sub-373TA), filed October 10, 1978. Applicant: SCHNEIDER TANK LINES, INC., 4321 W. College Avenue, Appleton, WI 54911. Representative: John R. Patterson, 2480 East Commercial Boulevard, Fort Lauderdale, FL 33308. Authority sought to operate as a *common carrier*, over irregular routes, transporting: *Pulpmill liquid*, from Mosinee, WI, to Jacksonville, FL, and Brunswick, GA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days operating authority. Supporting shipper: Mosinee Paper Corp., Mosinee, WI 54455 (John H. Scott). Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 112801 (Sub-212TA), filed October 10, 1978. Applicant: TRANSPORT SERVICE CO., 2 Salt Creek Lane, Hinsdale, IL 60521. Representative: Gene Smith (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Spent muriatic acid* (in bulk, in tank vehicles), from Hennepin (Putnam County), IL, to Calvert City, KY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Jones & Laughlin Steel Corp., 1600 West Carson Street, Pittsburgh, PA 15263. Send protests to: Lois M. Stahl, Transportation Assistant, Interstate Commerce Commission, 219 South Dearborn Street, Room 1386, Chicago, IL.

MC 113362 (Sub-337TA), filed October 10, 1978. Applicant: ELLSWORTH FREIGHT LINES, INC., 310 East Broadway, Eagle Grove, IA 50533. Representative: Milton D. Adams, P.O. Box 429, Austin, MN 55912. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned and preserved foodstuffs*, from the facilities of Heinz U.S.A., Division, of H. J. Heinz Co., at or near Pittsburgh, PA, to points in CO, KS, MN, MO, NE, and WI, for 180 days. Supporting shipper: Heinz U.S.A., Division of H. J. Heinz Co., P.O. Box 57, Pittsburgh, PA 15230. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 114211 (Sub-381TA), filed October 10, 1978. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, 210 Beck Street, Waterloo, IA 50704. Representative: Kurt E. Vragel, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Heating and cooling machinery and equipment, attachments, parts and accessories* (except commodities in bulk), from Omaha, NE, to points in the United States (including AK, but excluding HI); and (2) *equipment, materials and supplies*, used in the manufacture and distribution of the commodities named in (1) above (except commodities in bulk), from points in the United States (including AK, but excluding HI), to Omaha, NE, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: American Road Equipment Co., 4201 North 26th Street, Omaha, NE 68111. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 114274 (Sub-51TA), filed October 10, 1978. Applicant: VITALIS TRUCK LINES, INC., P.O. Box 1703, 137 Northeast 48th Place Street, Des Moines, IA 50306. Representative: William H. Towle, 180 North LaSalle Street, Chicago, IL 60601. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned and preserved foodstuffs*, from the facilities of Heinz U.S.A., Division of H. J. Heinz Co. at or near Pittsburgh, PA, to points in KS, MO, NE, and IA, except Iowa City and Muscatine, restricted to traffic originating at the named origin and destined to the named destination States, for 180 days. Supporting shipper: Heinz U.S.A., Division of H. J. Heinz Co., P.O. Box 57, Pittsburgh, PA 15230. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 116077 (Sub-399TA), filed October 10, 1978. Applicant: DSI TRANSPORTS, INC., 4550 One Post Oak Place, Suite 300, Houston, TX 77027. Representative: J. C. Browder (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid silicate of soda* (in bulk, in tank vehicles), from Dallas, TX, to AL, AR, FL, GA, ID, IL, IA, KS, KT, LA, MI, MN, MO, MT, NB, NV, NM, ND, OH, OK, SC, SD, TN, UT, VA, WI, and WY, for 180 days. Supporting shipper: Diamond Shamrock Corp., P.O. Box 500, Deer Park, TX 77536. Send protests to: John F. Mensing, District Supervisor, 8610 Federal Building, 515 Rusk Avenue, Houston, TX 77002.

MC 116602 (Sub-6TA), filed October 10, 1978. Applicant: JAMES F. HERLIHY TRUCKING CO., INC., 20 Emma Street, Binghamton, NY 31905. Representative: Russell S. Bernhard, 1625 K Street, NW., Washington, DC 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, having a prior or subsequent movement by air, between Binghamton, NY, its commercial zone, and the Broome County Airport, NY, on the one hand, and, on the other, Stewart Field Airport, Orange County, NY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Emery Air Freight Corp., 100 Emann Drive, Camillus, NY 13031. Send protests to: Interstate Commerce Commission, U.S. Courthouse and Federal Building, 100 South Clinton Street, Room 1259, Syracuse, NY 13260.

MC 117068 (Sub-103TA), filed October 10, 1978. Applicant: MIDWEST SPECIALIZED TRANSPORTATION, INC., North Highway 63, P.O. Box 4618, Rochester, MN 55901. Representative: Allen I. Loenig, P.O. Box 6418, Rochester, MN 55901. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from facilities of Joseph T. Ryerson & Sons, Inc., Chicago, IL, to Plymouth, MN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Joseph T. Ryerson & Sons, Inc., 16th and Rockwell Streets, Box 8000-A, Chicago, IL 60680. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building, and U.S. Courthouse, 110 South Fourth Street, Minneapolis, MN 55401.

MC 117686 (Sub-222TA), filed October 10, 1978. Applicant: HIRSCHBACH MOTOR LINES, INC., P.O. Box 417, Sioux City, IA 51102. Representative: George L. Hirschbach, P.O. Box 417, Sioux City, IA 51102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Suspended meat*, from Gonzales, LA, to IA, IL, KS, MN, MO, NE, and WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Joseph J. Besselman, President, Riverland Food Corp., P.O. Box 68, Gonzales, LA 70737. Send protests to:

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Carroll Russell, District Superviser, Interstate Commerce Commission, Suite 620, Union Pacific Plaza, 110 North 14th Street, Omaha, NE 68102.

MC 118457 (Sub-17TA), filed October 10, 1978. Applicant: ROBBINS DISTRIBUTING CO., INC., 11104 West Becher Street, West Allis, WI 53227. Representative: David V. Purcell, 111 East Wisconsin Avenue, Milwaukee, WI 53202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tanning chemicals, compounds, extracts, oils, materials and supplies* (except commodities in bulk) in temperature controlled vehicles, from Salem, Saugus, and Somerville, MA, Wyandotte, MI, Carlstadt, Newark, and Union, NJ, Buffalo, NY, Coudersport, Philadelphia, and Seiple, PA, and Natrium, WV, to the facilities of Gebhardt-Vogel Tanning Co. at Milwaukee, WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Gebhardt-Vogel Tanning Co., 1228 West Bruce Street, Milwaukee, WI 53204. Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 118989 (Sub-206TA), filed October 10, 1978. Applicant: CONTAINER TRANSIT, INC., 5223 South Ninth Street, Milwaukee, WI 53221. Representative: Rolland K. Draves (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Steel cans and steel can ends*, from Valparaiso, IN, to Haskell, OK, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Coca-Cola Co., P.O. Box 2079, Houston, TX 77001. Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 119789 (Sub-521TA), filed October 10, 1978. Applicant: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 226188, Dallas, TX 75266. Representative: Lewis Coffey (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Lumber, plywood, particle board, insulation board, gypsum wallboard, posts, piling, and charcoal briquetts;* (2) *materials equipment and supplies*, used in the manufacture, processing, and distribution of the commodities in (1) above; (1) from the plantsites and/or warehouse facilities of Weyerhaeuser Co. in AR and OK to points in TX; (2) from points in TX to the origins named in (1) above, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Weyerhaeuser Co., P.O. Box 1060, Hot Springs, AR 71901. Send protests to: Opal M. Jones, Transportation Assistant, Interstate Commerce Commission, 110 Commerce Street, Room 13C12, Dallas, TX 75242.

MC 120761 (Sub-46TA), filed October 10, 1978. Applicant: NEWMAN BROS. TRUCKING CO., 6559 Midway Road, P.O. Box 18726, Fort Worth, TX 76118. Representative: Clint Oldham, 1108 Continental Life Building, Fort Worth, TX 76102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Roofing materials*, from the facilities of Johns-Manville Corp. located at or near Marrero, IA, to points in Chambers, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Newton, Orange, Polk, San Antonio, Trinity, Tyler, Walker, and Brazoria Counties, TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Johns-Manville Corp., Ken-Caryl Ranch, Denver, CO 80217. Send protests to: Martha A. Powell, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, Room 9A27, Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

MC 123885 (Sub-29TA), filed October 10, 1978. Applicant: C & R TRANSFER CO., P.O. Box 1010, Rapid City, SD 57709. Representative: James W. Olson, P.O. Box 1552, Rapid City, SD 57709. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Truss rafters*, for mobile homes and modular units, from Sioux Falls, SD, to Fort Collins, CO, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Component Manufacturing, Inc., 1105 North Cliff, Sioux Falls, SD 57101. Send protests to: J. L. Hammond, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 455, Federal Building, Pierre, SD 57501.

MC 125254 (Sub-50TA), Filed October 10, 1978. Applicant: MORGAN TRUCKING CO., P.O. Box 714, 1201 East Fifth Street, Muscatine, IA 52761 Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned and preserved foodstuffs*, from the facilities of Heinz U.S.A. Division of H. J. Heinz Co., at or near Pittsburgh, PA, to points in KS, MN, MO, NE, ND, SD, WI, and points in IA (except Iowa City and Muscatine), for 180 days. Supporting shipper: Heinz U.S.A., Division of H. J. Heinz Co., P.O. Box 57, Pittsburgh, PA 15230. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 127064 (Sub-8TA), Filed October 10, 1978. Applicant: E. J. PETER TRUCKING, INC., Route 2, Box 21, Athens, WI 54411. Representative: Robert S. Lee, 1000 First National Bank Building, Minneapolis, MN 55402. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Feed and feed ingredients, grain, soybean, and seed products and byproducts* (except commodities in bulk, in tank vehicles), from the plantsite and storage facilities of Archer Daniels Midland Co. in Red Wing, MN, to points in CO, KS, NE, MO, SD, ND, IA, WI, and IL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Archer Daniels Midland Co., P.O. Box 1470, Decatur, IL 62525. Send protests to: Ronald A. Morken, District Supervisor, Interstate Commerce Commission, 212 East Washington Avenue, Room 317, Madison, WI 53703.

MC 127579 (Sub-13TA), Filed October 11, 1978. Applicant: HAULMARK TRANSFER, INC., 1100 North Macon Street, Baltimore, MD 21205. Representative: Glenn M. Heagerty (same as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wrapping paper, woodpulp board, woodpulp, and scrap paper*, from the facilities of Chesapeake Corp. of VA at West Point, VA, to points in NJ and DE, and points in MD and PA on and east of Interstate Hwy 81 and Washington, DC, for 180 days. Supporting shipper: The Chesapeake Corp. of VA, Box 311, West Point, VA 23181. Send protests to: William L. Hughes, District Supervisor, Interstate Commerce Commission, 1025 Federal Building, Baltimore, MD 21201.

MC 133485 (Sub-24TA), Filed October 10, 1978. Applicant: INTERNATIONAL DETECTIVE SERVICES, INC., 1828 Westminster Street, Providence, RI 02909. Representative: Morris J. Levin, 1050 17th Street, NW., Washington, DC 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cobalt metal*, moving in armored vehicles, between New York, NY, and Minerva, OH, for

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180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Phillip Brothers, 1221 Avenue of the Americas, New York, NY 10020. Sent protests to: Gerald H. Curry, District Supervisor, 24 Weybosset Street, Room 102, Providence, RI 02903

MC 133582 (Sub-29TA), filed October 10, 1978. Applicant: HOLIDAY EXPRESS CORP., P.O. Box 115, Estherville, IA 51334. Representative: Edward A. O'Donnell, 1004 29th Street, Sioux City, IA 51104. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat by-products, and articles distributed by meat packinghouses*, as described in section A and C of Appendix I to the *Report in Descriptions in Motor Carrier Certificates* 61, MCC 209 and 766 (except hides and commodities in bulk), from the facilities utilized by John Morrell & Co., at Estherville, and Sioux City, IA, and Worthington, MN, to points in CA, for 180 days. Supporting shipper: John Morrell & Co., 208 South LaSalle Street, Chicago, IL 60604. Send protests to: Herbert W. Allen, District Superviser, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309

MC 134387 (Sub-57TA), filed October 10, 1978. Applicant: BLACKBURN TRUCK LINES, INC., 4998 Branyon Avenue, South Gate, CA 90280. Representative: Patricia M. Schnegg, 1800 United California Bank Building, 707 Wilshire Boulevard, Los Angeles, CA 90017. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic bottles, containers, fitments, and closures*, from the facilities of the Continental Group, Inc., located in Milpitas, CA, to Phoenix, AZ; Seattle, Chehalis, Everett, Wenatchee, Bellevue, and Yakima, WA, for 180 days. Supporting shipper: Continental Group, Inc., 633 Third Avenue, 28th Floor, New York, NY 10017. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321, Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

MC 134477 (Sub-277TA), filed October 10, 1978. Applicant: SCHANNO TRANSPORTATION, INC., 5 West Mendota Road, West St. Paul, MN 55118. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Candy* (except in bulk), from the facilities of Pearson Candy Co. at St. Paul, MN, to Atlanta, GA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Pearson Candy Co., 2140 West Seventh Street, St. Paul, MN 55116. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building and U.S. Court House, 110 South Fourth Street, Minneapolis, MN 55401.

MC 134645 (Sub-26TA), filed October 10, 1978. Applicant: LIVESTOCK SERVICE, INC., 1420 Second Avenue, P.O. Box 944, St. Cloud, MN 56301. Representative: Anthony E. Young, 29 South LaSalle Street, Suite 350, Chicago, IL 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products, and articles*, distributed by meat packinghouses as described in sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766 (except hides and commodities in bulk), from the plantsites and storage facilities of John Morrell & Co., located at or near St. Paul, MN, to points in AL, FL, GA, MS, NC, SC, and TN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: John Morrell & Co., 208 South LaSalle Street, Chicago, IL 60604. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building and U.S. Courthouse, 110 South Fourth Street, Minneapolis, MN 55401.

MC 136818 (Sub-44TA), filed October 10, 1978. Applicant: SWIFT TRANSPORTATION CO., INC., 335 West Elwood Road, P.O. Box 3902, Phoenix, AZ 85030. Representative: Donald Fernaays, 4040 East McDowell, Phoenix, AZ 85088. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Malt beverages and related advertising materials;* (2) *empty used beverage containers for recycling and materials and supplies*, used by breweries, from Jefferson County, CO, on the one hand and points in AZ and ID on the other, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Adolph Coors Co., Golden, CO 80401. Send protests to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, Room 2020, Federal Building, 230 North First Avenue, Phoenix, AZ 85025.

MC 138256 (Sub-12TA), filed October 10, 1978. Applicant: INTERIOR TRANSPORT, INC., P.O. Box 3347, 2141 Waterworks Way, Spokane, WA 99220. Representative: George H. Hart 1100 IBM Building, Seattle, WA 98174. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Steel and stainless steel tanks and tanks for nuclear facilities*, from the facilities of Welk Brothers Metal Products, Inc., Spokane, WA, to points in OR, ID, MT, NV, WY, CA, and AZ; (2) *materials used in the manufacture of commodities described in (1) above*, from points in Geneva, UT, Portland, OR, Seattle, WA, Cleveland, OH, Chicago, IL, Amarillo, TX, Kansas City, KS, and Los Angeles, CA, to facilities of Welk Brothers Metal Products, Inc., Spokane, WA, under a continuing contract, or contract, with Welk Brothers Metal Products, Inc., for 180 days. Supporting shipper: Welk Brothers Metal Products, Inc., South 2504 Hayford Road, Spokane, WA 99219. Send protests to: Hugh H. Chaffee, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 858 Federal Building, 915 Second Avenue, Seattle, WA 98179.

MC 138274 (Sub-6TA), filed October 10, 1978. Applicant: CONALCO CONTRACT CARRIER, INC., Conalco Drive, Jackson, TN 38301. Representative: Robert L. Baker, 618 United American Bank Building, Nashville, TN 37219. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Corn products and materials, equipment and supplies used in the manufacture and distribution of corn products* (except commodities in bulk, in tank vehicles), between Hammond, IN on the one hand, and, on the other, points in KY, MO, NJ, OH, PA, AND TN, under a continuing contract, or contracts, with American Maize Products Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: American Maize Products Co., 113th Street at Indianapolis Boulevard, Hammond, IN 46326. Send protests to: Floyd A. Johson, District Supervisor, Interstate Commerce Commission, 100 North Main Street, Suite 2006, 100 North Main Building, Memphis, TN 38103.

MC 140829 (Sub-146TA), filed October 10, 1978. Applicant: CARGO CONTRACT CARRIER CORP., P.O. Box 206, U.S. Hwy 20, Sioux City, IA 51102. Representative: Willian J. Hanlon, 55 Madison Avenue, Morristown, NJ 07960. Authority sought to operate as a *common carrier*, by motor vehicle,over irregular routes, transporting: *Meat, meat products, and meat by-products* as described in section A of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 MCC 209 and 766 (except commodities in bulk); from the facilities of Illini Beef Packers, Inc., at or near Joslin, IL and Davenport, IA, to

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points in the States of CT, MA, NJ, and NY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Illini Beef Packers, Inc., P.O. Box 245, Geneseo, IL 61254. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 10 North 14th Street, Omaha, NE 68102.

MC 141273 (Sub-4TA), filed October 10, 1978. Applicant: CARL NEESAM, 228 West Chestnut Street, Pardeeville, WI 53954. Representative: Richard A. Westley, 4506 Regent Street, Suite 100, Madison, WI 53705. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Feed and feed ingredients, grain, soybean, and seed products and byproducts*, except commodities in bulk, in tank vehicles, from the facilities of Archer Daniels Midland Co., at or near Red Wing, MN, to points in CO, KS, NE, MO, SD, ND, IA, WI, and IL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Archer Daniels Midland Co., P.O. Box 1470, Decatur, IL 62525. Send protests to: Ronald Morken, DS, ICC, 212 East Washington Avenue, Room 317, Madison, WI 53703.

MC 142168 (Sub-2TA), filed October 10, 1978. Applicant: CARL HARMON, d.b.a. CARL'S BUTTON & STITCH, Route 613, Box 424, Payne, OH 45880. Representative: Michael M. Briley, 300 Madison Avenue, 12th Florida, Toledo, OH 43604. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) manufactured and/or distributed by Stanadyne, Inc., (a) from its facilities located at Garrett, IN to city of Industry, CA; Seattle, WA; and Amarillo, Dallas, Houston, and San Antonio, TX; (b) between its facilities located at Hartford and Windsor, CT, on the one hand, and, on the other, its facilities located at Garrett, IN; Jacksonville, Sanford, and Washington, NC; and Elyria, OH; (c) between its facilities located at Garrett, IN, on the one hand, and, on the other, its facilites located at Chicago, IL (and its commerical zone); Jacksonville and Washington, NC; and Elyria, OH; (d) between its facilities located at Sanford, NC, on the one hand, and, on the other, its facilities located at Garrett, IN and Elyria, OH; (e) between its facilities located at Sanford, NC, on the one hand, and, on the other East Moline, IL; (f) between its facilities located at Jacksonville, NC, on the one hand, and, on the other, Lansing, MI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Stanadyne, Inc., 301 North Taylor Road, Garrett, IN 48738. Send protests to: Interstate Commerce Commission, Bureau of Operations, 313 Federal Office Building, 234 Summit Street, Toledo, OH 43604.

MC 142559 (Sub-61TA), filed October 10, 1978. Applicant: BROOKS TRANSPORTATION, INC., 3830 Kelley Avenue, Cleveland, OH 44114. Representative: John P. McMahon, 100 East Broad Street, Columbus, OH 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs and equipment, materials and supplies utilized by the manufacturers and distributors of foodstuffs* (except commodities in bulk), between Lowell, MA and Detroit, MI, on the one hand, and, on the other, points in and east of MN, IA, MO, AR, and TX, for 180 days. Supporting shipper(s): Prince Macaroni, Inc., Prince Avenue, Lowell, MA 01040. Send protests to: Mary Wehner, DS, ICC, 731 Federal Building, 1240 East Ninth Street, Cleveland, OH 44199.

MC 143267 (Sub-36TA), filed October 10, 1978. Applicant: CARLTON ENTERPRISES, INC., 4588 State Route 82, Mantua, OH 44255. Representative: Peter A. Greene, 900 17th Street NW., Washington, DC 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic drain channels and gratings used in connection therewith*, from the facilities of ACO Drain, Incorporated at or near Chardon, OH, to points in the United States in and east of MN, IA, MO, KS, OK, and TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: ACO Drain Inc., 29525 Chagrin Blvd., Suite 214, Cleveland, OH 44122. Send protests to: Mary Wehner, DS, ICC, 731 Federal Bldg., 1240 East Ninth St.; Cleveland, OH 44199.

MC 143570 (Sub-5TA), filed October 10, 1978. Applicant: D & G TRUCKING, INC., East 4420 Overland, Meridian, ID 83642. Representative: David E. Wishney, P.O. Box 837, Boise, ID 83701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Moulding*, from the facilities of Woodgrain/Dame Lumber and Moulding Co., at or near Fruitland, ID, to points in AZ, CO, MO, OK and TX, applicant does not intend to tack or interline authority, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Woodgrain/Dame Lumber and Moulding Co., P.O. Box 369, Fruitland, ID 83619. Send protests to: Barney L. Hardin, DS, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83706.

MC 143775 (Sub-23TA), filed October 10, 1978. Applicant: PAUL YATES, INC., 6601 West Orangewood, Glendale, AZ 85301. Representative: Charles E. Creager, 1329 Pennsylvania Ave., P.O. Box 1417, Hagerstown, MD 21740. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except classes A and B explosives, household goods, commodities in bulk, and commodities requiring the use of special equipment), from the plantsite, distribution, and shipping facilities of The Charter Oaks Shippers Cooperative Association, Inc., at or near Berlin, CT, and Chicago, IL, to all points in the United States except ME, NH, VT, NY, MA, RI, NJ, CT, PA, DE, MD, VA, WV, and DC, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: The Charter Oaks Shippers Cooperative Assn. Inc., One Parkland Dr., Darien, CT. Send protests to: Andrew V. Baylor, DS, Interstate Commerce Commission, Room 2020 Federal Bldg, 230 N. First Ave., Phoenix, AZ 85025.

MC 143775 (Sub-24TA), filed October 10, 1978. Applicant: PAUL YATES, INC., 6601 West Orangewood, Glendale, AZ 85301. Representative: Edward N. Button, 1329 Pennsylvania Ave., P.O. Box 1417, Hagerstown, MD 21740. Authority sought to operate as a *common carrier*, by motor vehicle over irregular routes, transporting: *Health and beauty products and equipment*, from Gadsden, AL, and its commercial zone, to La Mirada, CA, Dallas, TX, Stamford, CT, and Chicago, IL, and their respective commercial zones, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Clairol, Inc., One Blachley Rd, Stamford, CT 06902. Send protests to: Andrews V. Baylor, DS, ICC, Room 2020 Federal Bldg., 230 N. First Ave., Phoenix, AZ 85025.

MC 144293 (Sub-6TA), filed October 10, 1978. Applicant: GEORGE MCFARLAND, SR. P.O. Box 21 Oakland, MN 56076. Representative: John P. Rhodes, P.O. Box 5000, Waterloo, LA 50704. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes transporting: *Foodstuffs* (except hides and commodities in bulk), from the facilities of George A. Hormel & Co., at Bloit, WI, to all points in MI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: George A. Hormel & Co., P.O. Box 800, Austin, MN 55912. Send protests to: Delores A. Poe, Trans. Assistant, ICC, Bureau of Operations, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 14506 (Sub-1TA), filed October 10, 1978. Applicant: MIDWEST EXPRESS, INC., 380 East Fourth Street, Dubuque, IA 52001. Representative: Richard A. Westley, 4506 Regent Street, Suite 100, Madison, WI 53705. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, in the transportation of: (1) *Frozen donuts* from the facilities of Prestige Donuts, Inc., located at or near Cincinnati, OH, to the port of entry on the international boundary line between the United States and Canada located at or near Detroit, MI; (2) *frozen TV dinners, frozen pot pies, frozen 2 lb entrees, and boil-in-the-bag frozen meat*, from the facilities of Blue Star Foods located at or near Omaha, NE, to the port of entry on the international boundary line between the United States and Canada located at or near Detroit, MI, or Niagara Falls, NY; and (3) *bacon sliced*, from the facilities of Sugar Creek Packing Co., located at or near Dayton and Washington Court House, OH (two plants), to port of entry on the international boundary line between the United States and Canada located at or near Blaine, WA, Detroit, MI, Buffalo, NY, or Niagara Falls, NY, all in vehicles equipped with mechanical refrigeration, and all restricted to traffic having a subsequent direct movement to points in Canada for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: World Wide Sales, Inc., P.O. Box 127, 710 Eastern Avenue, Plymouth, WI 53073. Send protests to: Herbert W. Allen, District Supervisor, Interstate Commerce Commissiion, 518 Federal Building, 210 Walnut Street, Des Moines, IA 50309.

MC 145477 (Sub-1TA), filed October 10, 1978. Applicant: MID-CITIES DELIVERY, INC., 324 Michigan, St. Joseph, MO 64501. Representative: Tom B. Kretsinger, 20 East Franklin, Liberty, MO 64068. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes transporting: *General commodities* (usual exceptions), between points in the Kansas City Commercial Zone, Faucett, MO, and points in the St. Joseph, MO, Commercial Zone, over irregular routes for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): There are approximately 34 statements of support attached to this application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies of which may be examined at the field office named below. Send protests to: Vernon V. Coble, DS, ICC, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

MC 145481 (Sub-1TA), filed October 10, 1978. Applicant: COYOTE TRUCK LINE, INC., P.O. Box 756, Thomasville, NC 27360. Representative: David R. Parker, 717 17th Street, Suite 2600, Denver, CO 80202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Fasteners;* (2) *Materials, supplies and equipment utilized in the manufacture, distribution and use of the commodities in (1) above*, from the facilities of Russell, Burdsall, and Ward Corp. in Los Angeles, CA, to the facilities of Russell, Burdsall, and Ward Corp. in West Chicago, IL; Ontario, OH; and Dallas, TX, for 180 days. Restrictions: (a) Restricted in (2) above against the transportation of commodities in bulk in tank vehicles. (b) Restricted against the transportation of commodities which require special equipment. (c) Restricted to shipments originating at and destined to the facilities of Russell, Burdsall, and Ward Corp. Send protests to: Mr. Terrell Price, District Supervisor, Interstate Commerce Commission, Room CC-516 Mart Office Building, 800 Briar Creek Road, Charlotte, NC 28205.

MC 145504 (Sub-1TA), filed October 10, 1978. Applicant: DELGADO BROTHERS TRUCKING, INC., 5150 West 12th Avenue, Apartment 305, Hialeah, FL 33012. Representative: John P. Bond, 2766 Douglas Road P.O. Box 340370, Coral Gables, FL 33134. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Sugar*, refined, in bags, all shipments having a subsequent movement by water from plant site of Florida Crystal Refiners at or near Moore Haven, FL, to the Port of Miami, Miami, FL, under a continuing contract, or contracts, with Industrial Raw Materials, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Industrial Raw Materials, Inc., P.O. Box 10127, Caparra Heights, P.R. 00922. Send protests to: Donna M. Jones, Transportation Assistant, Interstate Commerce Commission, Monterey Building, Suite 101, 8410 Northwest 53d Terrace, Miami, FL 33166.

MC 145541 (Sub-1TA), filed October 10, 1978. Applicant: SUNWAY CORP., 15 Fifth Avenue, Thomasville, NC 27360. Representative: Stephen L. Ervin, P.O. Box 22, Trinity, NC 27370. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture, furniture parts, and materials* used in the manufacturing of new furniture, from Appomattox County, VA; Caldwell, Catawba, Davidson, Forsyth, Guilford, and McDowell Counties, NC, to points in AZ, CA, and TX and return for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Henredon Furniture, Inc. (Marimont Division), P.O. Box 70, Morganton, NC 28665; Thomasville Furniture Industries, Inc., P.O. Box 339, Thomasville, ME 27360; Henredon Furniture, Inc., P.O. Box 70, Morganton, NC 28665. Send protests to: Terrell Price, DS, 800 Briar Creek Road Room CC516, Mart Office Building, Charlotte, NC 28205.

MC 145557TA filed October 10, 1978. Applicant: LIBERTY TRANSPORT, INC., 4614 South 40th Street, St. Joseph, MO 64503. Representative: Tom B. Kretsinger, 20 East Franklin, Liberty, MO 64068. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Malt beverages in containers, advertising materials and supplies connected therewith*, from the facilities of the Adolf Coors Co. located at or near Golden, CO, to Atchinson, Holt, Nodaway, Worth Gentry, Andrew, DeKalb, Buchanan, Clinton, Caldwell, Daviess, and Harrison Counties, MO; (2) *empty malt beverages containers, damaged and returned malt beverage products and supplies connected therewith*, from Atchinson, Holt, Nodaway, Worth, Gentry, Andrew, DeKalb, Buchanan, Clinton, Caldwell, Daviess, and Harrison Counties, MO, to the facilities of the Adolf Coors Co. located at or near Golden, CO, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Sector Distributing Co., Inc., 4629 Easton Road, St. Joseph, MO 64503. Send protests to: Vernon V. Coble, DS, ICC, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-32702 Filed 11-20-78; 8:45 am]

[7035-01-M]

[Notice No. 220]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

NOVEMBER 16, 1978.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the

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provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

WATER CARRIER APPLICATION

W-1117 (Sub-1TA). Applicant: Missouri River Passenger Excursions, Inc., P.O. Box 14181, west Omaha Station, Omaha, NE 68124. Representative: Timothy C. Mason (same as above). By decision entered November 2, 1978, the Motor Carrier Board granted Missouri River Passenger Excursions, Inc., 180-day temporary authority to engage in the business of transportation in Interstate or Foreign Commerce, as a *common carrier* by water in the transportation of passengers between Sioux City, IA and St. Joseph, MO on the Missouri River. Any interested person may file a petition for reconsideration within 20 days of the date of this publication.

By the Commission.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 78-32700 Filed 11-20-78; 8:45 am]

[7035-01-M]

[Notice No. 744]

ASSIGNMENT OF HEARINGS

NOVEMBER 16, 1978.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 106644 (Sub-253F), Superior trucking Co., now being assigned for hearing on February 20, 1979, (1 day), at Chicago, IL in a hearing room to be later designated.

MC 106497 (Sub-154F), Parkhill Truck Co., now being assigned for hearing on February 21, 1979, (3 days), at Chicago, IL in a hearing room to be later designated.

MC 135235 (Sub-6F), Loma Cartage, Inc., now being assigned for hearing on February 26, 1979, (5 days), at Chicago, IL in a hearing room to be later designated.

MC F 13593, Nebraska Transport, Co., Inc.—Control—, G & H. Truck Line, Inc., now being assigned for hearing on February 6, 1979, (9 days), at Scottsbluff, NE in a hearing room to be later designated.

MC 111545 (Sub-250F), Home Transportation Co., Inc., now being assigned for hearing on February 6, 1979, (9 days), at the Holiday Inn Tampa Central, 111 West Fortune Street, Tampa, FL.

MC 115331 (Sub-457F), Truck Transport, Inc., now assigned January 15, 1979, at Chicago, IL, is canceled and reassigned to February 20, 1979, (4 days), at the offices of the Interstate Commerce Commission, Washington, DC.

MC 116254 (Sub-108M1), Chem-Haulers, Inc., now assigned January 15, 1979, at Washington, DC, and continued to February 12, 1979, at Nashville, TN, and continued to April 2, 1979, at Washington, DC, are canceled and the application is dismissed.

MC 114273 (Sub-362F), CRST, Inc., now assigned January 9, 1979, (2 days), at Chicago, IL, will be held in Room 3855A, 230 South Dearborn Street.

MC 8472 (Sub-5F), South End Cartage, Inc., now be assigned for hearing on January 11, 1979, (2 days), at Chicago, IL, Room 3855A, 230 South Dearborn Street.

MC 142706 (Sub-2F), Early Bird Transfer, Inc., now be assigned for hearing on January 15, 1979, at Chicago, IL, Room 3855A, 230 South Dearborn Street.

MC 2890 (Sub-54F), American Buslines, Inc., now assigned for hearing on January 15, 1979, at El Centro, CA and will be held in the Holiday Inn.

MC 144581, Harvey Hayes, an individual doing business as Hayes Trailer Transport, now assigned for hearing on January 10, 1979 at Los Angeles County Courthouse and will be held in Los Angeles, CA.

MC 125433 (Sub-144F), F-B Truck Line Co., now assigned for hearing on January 9, 1979, at Los Angeles, CA and will be held in Los Angeles County Courthouse.

MC 71043 (Sub-10F), Laporte Transit Co., Inc., now assigned for hearing on January 9, 1979, at Chicago, IL and will be held in Room 1319.

MC 113908 (Sub-421), Erickson Transport Corp., now assigned for hearing on December 4, 1978, at Chicago, IL and will be held in St. Francis Hotel.

MC 144533, Frank Pagliughi, an individual, d.b.a. General Transfer Co., now assigned for hearing on December 14, 1978, at U.S. District Court and will be held in Philadelphia, PA.

MC 140024 (Sub-110/f), J. B. Montgomery, Inc., now assigned for hearing on December 13, 1978, at Philadelphia, PA and will be held in U.S. District Court.

MC 140024 (Sub-106F), J. B. Montgomery, now assigned for hearing on December 11, 1978, at Philadelphia, PA and will be held in U.S. District Court.

MC 140024 (Sub-112F), J. B. Montgomery, now assigned for hearing on December 11, 1978, at Philadelphia, PA and will be held in U.S. District Court.

MC 115826 (Sub-300F), W. J. Digby, Inc., now assigned for hearing on December 7, 1978, at Denver, CO, and will be held in Division 2, Court of Appeals.

MC 144140 (Sub-6F), Southern Freightways, Inc., now assigned for hearing on December 6, 1978, at Orlando, FL and will be held in Howard Johnson's Executive Center.

MC 94201 (Sub-161F), Bowman Transportation, Inc., now assigned for hearing on December 6, 1978, at Jackson MS and will be held in Grand Jury Room, U.S. Post Office and Courthouse Building.

MC 143296 (Sub-2F), Peach State Bus Lines, Inc., now assigned for hearing on December 6, 1978, at Atlanta, GA and will be held in Room 305.

MC 56679 (Sub-87), Brown Transport Corp., Alternate Regular Route Authority of General Commodities now assigned for hearing on December 4, 1978, at Atlanta, GA and will be held in Room 202, North Annex.

MC 65920 (Sub-5F), Bishop Motor Express, Inc., now assigned for hearing on December 4, 1978, at Lansing, MI and will be held in room 203, Federal Building.

MC 133659 (Sub-3), Livingston Storage And Transfer Co., Inc., now assigned for hearing on November 29, 1978, at Atlanta GA and will be held in Room 556, Federal Building.

MC 134017 (Sub-7F), R. M. Henderson, d.b.a. H & M Motor Lines, now assigned for hearing on November 28, 1978, at Atlanta GA and will be held in Room 556, Federal Building.

MC 144541F, Baldwin Leasing Co., Inc., now assigned for hearing on December 6, 1978, at Mobile, AL and will be held in Room 440, Federal Building.

MC 56679 (Sub-92), Brown Transport Corp., & MC 56679 (Sub-93), Brown Transport Corp., now assigned for continued hearing on December 18, 1978 (1 day) at Atlanta, GA and will be held in Room 305, 1252 West Peachtree St. N.W.

MC 114632 (Sub-161F), Apple Lines, Inc., now assigned December 11, 1978 for prehearing conference at Washington, DC at

the Offices of the Interstate Commerce Commission.

MC 124083 (Sub-58F), Skinner Motor Express, Inc., now assigned December 4, 1978 at Washington DC for pre-hearing conference is canceled transferred to Modified Procedure.

MC 114273 (Sub-325), Crst, Inc., now assigned January 11, 1979 at Chicago, IL is canceled and application dismissed.

MC 144011, Hall Systems, Inc. now assigned for continued hearing January 15, 1979 at Birmingham, AL (5 days) in a hearing room to be later designated.

MC 105813 (Sub-241F), Belford Trucking Co., Inc., now assigned for hearing on December 6, 1978, at Atlanta, GA and will be held in Room 202, North Annex.

MC 118859 (Sub-11F), Bullock Trucking Co., Inc., now assigned for hearing on December 7, 1978, at Atlanta, GA and will be held in Room 202, North Annex.

MCF 13500, Burlington Northern, Inc.—Control—Frisco Transportation Co., and (FD 28583 Sub No. 1 and 2), now assigned for hearing on January 3, 1979, at Chicago, IL and will be held in Room 1319, E. M. Dirksen Building.

MC 8457 (Sub-6F), Milwaukie Transfer & Fuel Co., now assigned January 10, 1979 (3 days) at Portland, OR in a hearing room to be later designated.

MC-C 10143, O.N.C. Freight Systems, Inc-V-Herbert D. Needel, d.b.a. Tucson Package Delivery now assigned January 5, 1979 (1 day) at Phoenix, AZ in a hearing room to be later designated.

MC 124692 (Sub-204F), Sammon Trucking., now assigned January 15, 1979 (5 days) at Salem, OR in a hearing room to be later designated.

MC 138635 (Sub-50F), Carolina Western Express, Inc., now assigned December 14, 1978 at Los Angeles, CA, is canceled and application dismissed.

MC 263 (Sub-226F), Garrett Freightlines, Inc., now assigned December 12, 1978 for pre-hearing conference at Washington, DC at the offices of the Interstate Commerce Commission.

MC 109173 (Sub-4F), Delta Bus Lines, Inc., now assigned for hearing on January 15, 1979, at Lansing, MI is canceled and application dismissed.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 78-32699 Filed 11-20-78; 8:45 am]

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sunshine act meetings

This section of the FEDERAL REGISTER contoins notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409), 5 U.S.C. 552b(e)(3).

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[6320-01-M]

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[M-178, Amdt. 3; Nov. 16, 1978]

CIVIL AERONAUTICS BOARD.

Notice of deletion of items to the November 16, 1978, meeting.

TIME AND DATE: 9:30 a.m., November 16, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

2. Delegation of Authority to the Director, Bureau of Pricing and Domestic Aviation, to act on complaints challenging the reasonableness of fares within the "no-suspend" zones established by PS-80 (Memo 7847-J, BPDA, OGC).

25. Docket 31977, Application of International Developers, Inc. (Japan) d.b.a. Toyo World Enterprises of California, Inc., for indirect foreign air carrier permit (Memo 8097-A, BIA, OGC).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: Item 2 was deleted from the November 16, 1978, meeting because the staff wishes to make technical adjustments to the delegation to reflect the new Act and is awaiting completion of another item. Accordingly, the following Members have voted that item 2 be deleted from the November 16, 1978, agenda and that no earlier announcement of this deletion was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Gloria Schaffer

Item 25 was deleted because this item relates to international matters, the Board wanted to consider whether to hold a closed or open meeting regarding it prior to discussion of item. Accordingly, the following Members have voted that agency business requires the deletion of item 25 from the November 16, 1978, agenda and that no earlier announcement of this deletion was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-2352-78 Filed 11-17-78; 3:55 pm]

[6712-01-M]

2

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Tuesday, November 21, 1978.

PLACE: Room 856, 1919 M Street NW., Washington, DC.

STATUS: Special open Commission meeting.

MATTERS TO BE CONSIDERED:

Agenda, Item No., and subject

Common Carrier—1—Reconsideration petitions of Commission's action rejecting A.T. & T.'s April 29, 1977, WATS filing.

Common Carrier—2—Inquiry designated to consider whether Inward and Outward Wide Area Tele-communications Services (WATS) are "like communications service" to Message Tele-communications Service (MTS) within the meaning of section 202(a) of the Act.

Common Carrier—3—Petitions to enlarge and delete issues in Docket No. 20690 which is an inquiry into the addition of 1.544 Mbp's speed to A.T. & T.'s Dataphone Digital Service.

Common Carrier—4—Application of Communications Satellite Corporation (COMSAT), A.T. & T., ITT World Communications, Inc., RCA Global Communications, Inc., and Western Union International, Inc., for authority to construct 14/11 GHz communication satellite earth station facilities in the vicinity of Etam and Lenox, W. Va. and a terrestrial interconnecting link via Laurel Mountain for operation with Commission Satellite Systems.

Common Carrier—5—Application by A.T. & T. for authority to construct a domestic satellite earth station at the Goddard Space Flight Center, Greenbelt, Md. (File No. 652-DSE-P-77).

Common Carrier—6—Western Union International, Inc., application to lease and operate 14/56 Kilobit circuits in the Westar and Intelsat satellite systems and construct a domestic satellite Earth station at each Andover, Maine and Etam, W. Va., et al. and Communications Satellite Corp. application to construct and operate an 11 meter antenna associated facilities at each Andover, Maine, and Etam, W. Va., and to use said facilities in conjunction with the Westar domestic satellites et al.

This meeting may be continued the following workday to allow the Commission to complete appropraite action.

Additional information concerning this meeting may be obtained from the FCC Information Office, telephone 202-632-7260.

Issued: November 15, 1978.

[S-2346-78 Filed 11-17-78; 11:00 am]

[6715-01-M]

3

FEDERAL ELECTION COMMISSION.

"FEDERAL REGISTER" NO. FR-S-2287.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, November 16, 1978, at 10 a.m.

CHANGE IN MEETING: The Commission determined by a vote of 6-0 to consider a draft response to AOR 1978-92 and to discuss AOR 1978-90 pursuant to its authority under 11 CFR 3.5(d)(1).

Pursuant to 11 CFR 112.3(b), the Commission determined by a vote of 6-0 to shorten the comment period on AOR 1978-90 and AOR 1978-92 to November 21, 1978, close of business.

PERSON TO CONTACT FOR INFORMATION:

Mr. David Fiske, Press Officer, telephone, 202-523-4065.

MARJORIE W. EMMONS,
Secretary to the Commission.

[S-2345-78 Filed 11-17-78; 11:00 am]

[6750-01-M]

4

FEDERAL TRADE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: FR 43, November 13, 1978, page No. 52602.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9 a.m., Wednesday, November 15, 1978.

CHANGES IN THE AGENDA: The Federal Trade Commission has deleted an item from the agenda of its previously announced open meeting of November 15, 1978. Because this was the only item scheduled, the meeting has been canceled and rescheduled for an open meeting on Tuesday, November 21, 1978, 1:30 p.m.

[S-2350-78 Filed 11-17-78; 2:08 pm]

[6750-01-M]

5

FEDERAL TRADE COMMISSION.

TIME AND DATE: 2 p. m. Tuesday, November 21, 1978.

PLACE: Room 432, Federal Trade Commission Building, Sixth Street and Pennsylvania Avenue NW. Washington, D.C. 20580.

STATUS: Open.

MATTERS TO BE CONSIDERED: Consideration of proposed trade regulation rule governing labeling and advertising of home insulation.

CONTACT PERSON FOR MORE INFORMATION:

Ira J. Furman, Office of Public Information, 202-523-3830; Recorded message 202-523-3806.

[S-2351-78 Filed 11-17-78; 2:08 pm]

[7600-01-M]

6

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 1 p.m., November 30, 1978.

PLACE: Room 1101, 1825 K Street NW., Washington, D.C.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE INFORMATION:

Ms. Patricia Bausell, 202-634-4015.

Date: November 15, 1978.

[S-2348-78 Filed 11-17-78; 11:34 am]

[7751-01-M]

7

POSTAL RATE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 53123, November 15, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:30 a.m., Tuesday, November 21, 1978.

CHANGES IN THE MEETING: Following the previously announced "open" meeting at 10:30 a.m., the Commission will have a "closed" meeting to discuss the draft Opinion and Recommended Decision in Dockets No. MC76-5 and MC77-2. The meeting is closed pursuant to 5 U.S.C. 552b(c)(10).

CONTACT PERSON FOR MORE INFORMATION:

Ned Callan, Information Officer, Postal Rate Commission, Room 500, 2000 L Street NW., Washington, D.C. 20268, telephone 202-254-5614.

[S-2347-78 Filed 11-17-78; 11:00 am]

[8010-01-M]

8

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 52359, November 9, 1978.

STATUS: Closed meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Tuesday, November 7, 1978.

CHANGES IN THE MEETING: Additional items to be considered.

The following additional items will be considered at the closed meeting to be held on Wednesday, November 15, 1978, immediately following the 10 a.m. open meeting:

Disclosure matter bearing enforcement implications.
Regulatory matter bearing enforcement implications.
Settlement of injunctive action.

Chairman Williams and Commissioners Loomis, Evans, and Karmel determined that Commission business required the above change and that no earlier notice thereof was possible.

NOVEMBER 15, 1978.

[S-2349-78 Filed 11-17-78; 2:08 pm]

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BOOK 2:
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BOOK 2 OF 2 BOOKS

TUESDAY, NOVEMBER 21, 1978
PART II



DEPARTMENT OF LABOR

Occupational Safety and Health Administration

■

OCCUPATIONAL EXPOSURE TO LEAD

Attachments to the Preamble for the Final Standard

V 4 3 / 2 2 5 NO 21 78 UMI

[4510-26-M]

Title 29—Labor

CHAPTER XVII—OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Occupational Exposure to Lead

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Final standard for occupational exposure to lead.

SUMMARY: This document contains part VI of the Statement of Reasons (Preamble) accompanying the final OSHA standard for occupational exposure to lead. The regulation and parts I through V of the Statement of Reasons were published in the FEDERAL REGISTER on November 14, 1978.

DATES: The effective date of the standard is February 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Gail Brinkerhoff, OSHA Office of Compliance Programs, U.S. Department of Labor, Room N-3112, Washington, D.C. 20210. Telephone: 202-523-8034. For additional copies of this document, contact OSHA Office of Publications, U.S. Department of Labor, Room N-3423, Washington, D.C. 20210. Telephone: 202-523-8677.

SUPPLEMENTARY INFORMATION:

VI. ATTACHMENTS TO PREAMBLE

ATTACHMENT A—HEALTH EFFECTS

The basis for this revised lead standard is evidence of the toxic effects of lead on the heme. renal, neurological, and reproductive systems at relatively low levels of exposure to lead. This section provides an in-depth analysis of the health effects evidence and is divided into the following sections:

1. *Summary and General Considerations.* A discussion of the symptomatology associated with lead intoxication.

2. *Heme Biosynthesis Inhibition.* A discussion of the effects low levels of lead exposure have on the biosynthesis of heme.

3. *The Neurological System.* A discussion of the effects of lead exposure on the peripheral and central nervous system.

4. *Renal System.* Effects of lead exposure on the kidneys with regard to lead as an etiologic agent in urinary disease and hypertension.

5. *Reproductive System.* The effects of lead exposure on the course of pregnancy with particular reference to the fetus.

6. *Mortality Studies.* A discussion of the mortality experience resulting from lead exposure.

7. *Air/Blood Relationship.* A discussion of the intrinsic relationship between air lead levels and blood lead levels.

1. *Summary and General Considerations.* In the preamble to the proposed lead standard OSHA described the overt manifestations of lead poisoning.

> The primary sources of lead absorption in workers are the inhalation and ingestion of industrial lead. Deposition and retention of absorbed lead in body tissues is variable, but it is found in the brain, liver, kidney, aorta, muscles and bones. Absorbed lead is transported to these tissues via the blood system and some portion is removed from the body primarily through the alimentary tract and urinary system.
>
> Lead intoxication, in its severest forms, can cause permanent damage to the body or cause death. Observed clinical effects include damage to the central nervous system, including the brain, i.e., acute and chronic encephalopathy, damage to the peripheral nervous system, damage to the kidneys and damage to the blood forming process which may lead to anemia. Symptoms which may vary in severity include colic, i.e., abdominal pain; loss of appetite; constipation; excessive tiredness and weakness; nervous irritability and fine tremors. Encephalopathy is the most severe acute clinical form of lead intoxication. It may arise precipitously with the onset of intractable seizures, followed by coma, cardiorespiratory arrest and death. In peripheral neuropathy, the distinguishing clinical feature of lead intoxication is a predominance of motor impairment, with minimal or no sensory abnormalities. There is a tendency for the extensor muscles of the hands and feet to be affected. Lead intoxication has also resulted in kidney damage with few, if any symptoms appearing until permanent damage has occurred. In addition, the use of chelating agents, such as Ca-EDTA, to remove lead from the body increases the risk of kidney damage or failure. (Ex 2, p. 45935)

The overt symptoms outlined above have been described in a number of reviews (Ex. 95; Final Environmental Impact Statement: Inorganic Lead; U.S. Department of Labor, Occupational Safety and Health Administration, (FEIS) April, 1978, Ref. 92: Air Quality Criteria For Lead, Environmental Protection Agency, later cited as EPA Criteria Document: Ex. 1), and will be discussed in more detail in the respective sections. The primary issue which the Health Effects section must address is at which blood lead levels do clinical symptoms and effects caused by lead occur. The proposal raised the issue as follows:

> A number of studies have sought to relate clinical symptoms and effects caused by lead exposure on workers' blood lead levels. There is little disagreement that the risk of clear-cut clinical symptoms related to exposure increases as blood lead levels rise above 80 μg/100 g. In addition, a number of studies have observed symptoms and effects caused by exposure to lead at blood lead levels below 80 μg/100 g. While 80 μg/100 g is a useful lower range for observed clear-cut clinical symptoms, we do not regard it as a sharp delineation above which clear-cut symptoms occur in all workers and below which clear-cut symptoms do not occur. Further workers with blood lead levels above 80 μg/100 g without clear-cut symptoms may have milder symptoms caused by lead exposure. It should be noted that in evaluating studies which seek to relate blood lead levels to symptoms of lead exposure, it is rarely possible in clinical situations to determine the amount of lead absorbed before the onset of symptoms of lead intoxication.
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> In summary, it is OSHA's judgment that the probability of clinical symptoms of lead intoxication appearing is increased as blood lead levels rise above 80 μg/100 g. There are also data, however, to suggest that such symptoms may occur at blood lead levels under 80 μg/100 g, although perhaps not under 50 μg/100 g. (Ex. 2, p. 45935.)

In addition, the proposal stressed the importance of considering "subclinical effects" which appear earlier and at significantly lower blood lead levels than seen in cases of severe intoxication. These effects include heme synthesis impairment as manifested by enzyme inhibition, and neurological disease of both the central and peripheral nervous systems indicated by CNS symptoms, behavioral changes and electrophysiologic abnormalities. Lead is a well documented occupational hazard whose effects range from changes in biochemical and pysiological parameters to chronic disease, permanent impairment and death. The record indicates that these effects occur at exposure levels heretofore considered safe for workers, and this same record documents the more modern research which provides the basis for the ultimate conclusions upon which the standard is based. The following sections will evaluate the adverse effects of lead in detail.

2. *Heme Biosynthesis Inhibition.* The effects of lead on the hematopoietic system have been extensively studied. There is little debate that the inhibition of various enzyme systems occurs at PbB levels of 40 μg/100 ml and below. There is no controversy concerning the fact that at this level the buildup of two heme synthesis substrates, aminolevulenic acid (ALA) and protoporphyrin becomes significant. There is, however, controversy concerning what these effects mean. OSHA has evaluated the record and concluded that these effects must be viewed as early steps in a continuous disease process which eventually results in lead poisoning. Such effects are of themselves indicative of physiological disruptions of subcellular processes. Therefore, disruption of such processes over a working lifetime must be viewed as material impairment of health.

Anemia is an established sequelae of lead poisoning, and one of the later steps on the continuum of blood related disease effects described above. Symptoms of anemia are known to occur at PbB levels greater than 80 μg/100 ml, however, the occurrence of anemia at PbB levels below this level was debated. OSHA has concluded that such symptoms may occur at PbB levels as low as 50 μg/100 ml.

Finally, in evaluating the effects of lead, it must be realized that lead does not disrupt heme synthesis exclusively in the hematopoietic system. Lead also disrupts the process of heme synthesis in the mitochondria of every other body cell, including the kidney and nervous tissues. Heme synthesis disruption measurable at PbB levels of 40 μg/100 ml is, therefore, an indirect measure of the disruptive effects of lead in other tissues.

The proposal outlined biohemical and physiological changes which are detectable at blood lead levels lower than those normally associated with clinical symptoms. These changes have been shown to occur in tissues throughout the body, and are the manifestation of lead-induced damage at the subcellular level.

Our understanding of the physiological action of lead in many of these tissues is lacking, as most of the information about lead's effect on heme synthesis is derived from studies on the hematopoietic system. Although the effects of lead on the hematopoietic system may not be the most serious occupationally, this area has been studied in detail for the following reasons:

(1) The biochemical pathway for the synthesis of heme is well understood; and

(2) Clinically, blood samples are relatively easy to obtain compared to brain, kidney or other tissue samples. (Tr. 461)

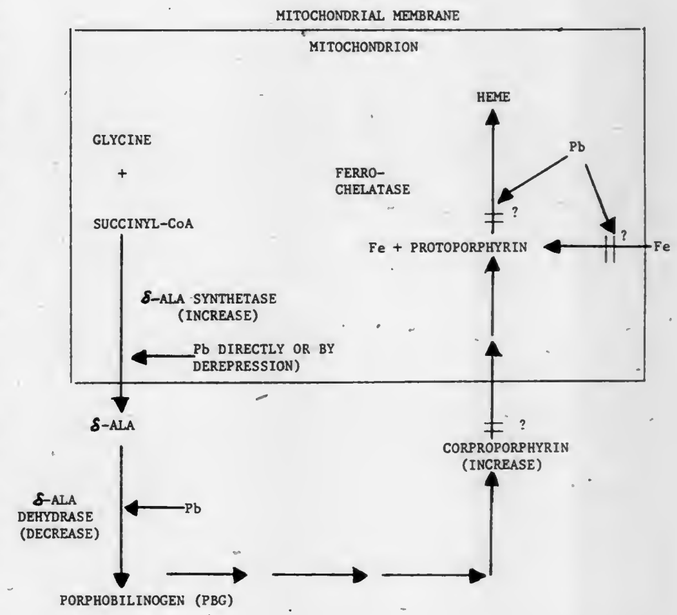
The foundation of our current understanding of the biochemical effects of lead on the hematopoietic system is a knowledge of the processes of red blood cell formation and a specific knowledge of the biochemical pathways of heme synthesis. Heme, a constituent of hemoglobin, is also an integral part of another group of important complex proteins, the cytochromes. These are the proteins of cellular oxygen transport which are located in the mitochondria of all cells. Inhibition of heme synthesis would therefore, not only be expected to affect the production of hemoglobin, but also have an effect on the production of cytochrome proteins. (Tr. 429).

The biosynthesis of heme is a multistep process. Several of the steps of the pathway, including the final step, occur in the mitochondria. In order to appreciate these signs of lead poisoning, a detailed understanding of the biosynthesis of heme and its biological functions is required. The first step in the sequence of reactions leading to the synthesis of protoporphyrin, the immediate precursor of heme, is catalyzed by the enzyme, aminolevulinate synthetase. In this reaction, glycine and succinyl Coenzyme A are converted into 5-aminolevulinic acid (ALA), which is subsequently converted into the ringed structure known as porphobilinogen by a second enzyme, 5-aminolevulinic acid dehydrase (ALA-D).

Porphobilinogen, in a series of reactions (one of which is governed by the enzyme coproginase) is eventually converted into protoporphyrin. In a final step, the enzyme ferrochelatase catalyzes the insertion of iron from ferritin into the protoporphyrin ring to form heme.

At least two of these steps are considered to be directly inhibited by lead. These steps are; (1) The transformation of ALA into porphobilinogen, catalyzed by ALA-D, and (2) The insertion of iron into protoporphyrin, catalyzed by ferrochelatase. Other steps in the process of heme synthesis are also affected by lead, such as A-ALA synthetase and coproginase. However, these effects may only result from feedback depression, rather than from a direct effect of lead. (See figure 1) (Tr. 433-34; EPA Criteria Document, p. 11-10)

FIGURE 1.



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It is the third step in the pathway of heme synthesis which converts 5-aminolevulinic acid (ALA) into prophobilinogen. The enzyme mediating this reaction is δ-aminolevulinic acid dehydrase, (ALA-D); its activity is inhibited by lead. The effects of this inhibition can be observed and measured in two ways: (1) The activity of the enzyme ALA-D in the erythrocytes can be measured directly using a method developed by Bonsignore (Ex. 32(20), Ref. (1) in 1965, or (2) when the activity of ALA-D is inhibited, its substrate, ALA, builds up in the serum and spills out into the urine, (ALA-U). ALA-U is, therefore, a reliable measurement of the effect of altered ALA-D activity.

The final step in the heme synthesis pathway is the insertion of iron into protoporphyrin mediated by the enzyme ferrochelatase. This reaction occurs in the mitochondria. There are two possible mechanisms by which lead is considered to interfere with the transport of iron into the mitochondria. First, iron transport across the mitochondrial membrane may be inhibited by lead. The decrease in the availability of iron in the mitochondria necessarily limits the synthesis of heme. Second, lead may also directly interfere with the functioning of the enzyme ferrochelatase, thus preventing the insertion of iron into protoporphyrin, causing protoporphyrin to accumulate in the erythrocyte.

a. *Measurements of Heme Synthesis Inhibition.* (1) *ALA-D.* It has been suggested that the measurement of ALA-D activity, using the technique of Bonsignore may be a reliable method for the evaluation of exposure to lead (Ex. 32(20)), since at that time a clear pattern of the ALA-D response had been developed.

ALA-D activity is extremely sensitive to lead. The evidence suggests that the no-effect level, if there is any such level at all, is extremely low. Zielhuis suggests that it is 10 μg/100 ml, a blood lead level below the value that is average for the U.S. population. (Ex. 6 (179).)

Hernberg et al. (Ex. 6 (20)), demonstrated that the logarithm of ALA-D activity is negatively correlated with PbB levels over a range from 5 to 95 μg/100 ml. His data suggest a direct inhibition of ALA-D by lead, exhibiting no threshold effect. These results have been confirmed by several investigators. (Ex. 6 (118); Ex. 5 (22); Ex. 24 (Alessio).) Other studies have also suggested an exponential negative relationship between ALA-D and PbB. (Ex. 32 (20); (Ex. 23 (64).)

Tola (Ex. 5 (18)), has studied the response of previously unexposed workers to lead. A drop in ALA-D activity levels was observed after a few days of exposure. After 2 months, a new steady-State level of ALA-D was reached. From his data, Tola confirms the dose-effect relationship suggested in the preceding studies.

The relationship between dose (PbB) and effect (ALA-D) is well defined. Since individual variability is small (EPA Criteria Document, p. 11-99), and inter-laboratory measurements of ALA-D are comparable, more so than PbB's, (Ex. 294 (E), Ref. Berlin et al.) these factors do not obscure the relationship.

However, even though the relationship is a well defined one, there is some variability between individuals in the effect that will be observed for any given dose. Using Hernberg's data, Zielhuis has calculated dose-response curves for the 40 percent and 70 percent inhibition level of ALA-D. The data indicate that at a PbB of 40 μg/100 ml more than 20 percent of the population would have a 70 percent inhibition of ALA-D; virtually all of the population would have 40 percent inhibition of the enzyme. At a PbB of 50 μg/100 ml, 70 percent of the population would have a 70 percent inhibition of ALA-D. (Ex. 294 (E).)

The inhibition of ALA-D limits the transformation of ALA into prophobilinogen. ALA levels will build up in the serum, and eventually spill out into the urine, (ALA-U). There is little data on serum ALA because of the difficulty in measuring this parameter. Data on ALA-U, however, is available. ALA-U has been shown to significantly increase at PbB levels above 40 μg/100 ml. (Ex. 5 (9); Ex. 24 (Popovic); Ex. 5 (5).)

Several studies have indicated that a correlation exists between PbB and the logarithm of the level of ALA-U (Ex. 23 (Selander and Cramer); Ex. 24 (Alessio)). Chisholm (Ex. 99 (3)), has shown a similar exponential relationship in children. These observations parallel the reported exponential curve of ALA-D inhibition.

ALA-D is inhibited at PbB levels of 20 μg/100 ml and lower, but this enzymes' substrate, ALA, does not increase in the urine at PbB levels below 40 μg/100 ml. The discrepancy between the blood lead level at which increased ALA-U and decreased ALA-D activity can be detected is partially explained by two factors: (1) There is a larger variability in ALA-U measurements than in ALA-D; and (2) the definition of the normal range of ALA-U is based on controls with average blood lead values up to 40 μg/100 ml. These factors seem insufficient to explain such a large difference. It has been suggested that the different values may in fact indicate a reserve capacity of ALA-D activity. It is only after this enzyme reserve is used up that substrate would begin to accumulate. (EPA Criteria Document, p. 11-11; Tr. 454). Such a reserve capacity is also suggested by Zielhuis' finding that blood hemoglobin levels are not affected at a 30 percent inhibition of ALA-D (Ex. 24 (15), Ref. Zeilhus, 1974).

(2) *Protoporphyrin.* The accumulation of protoporphyrin in the erythrocytes of humans with lead intoxication has been known since 1933. (Ex. 105 (B) Ref. Van Der Bergh and Grotepass). However, until 1972 the technical difficulties associated with measurement of protoporphyrin limited its use as an indication of lead damage. The development in 1972 (Ex. 105 (G), Ref. Piomelli) of simpler and more accurate techniques of testing for free erythrocyte-protoporphyrin (FEP) has made this measurement clinically feasible. In 1974 Lamola and Yamane (Ex. 105 (B) reported that erythrocytic protoporphyrin is not actually "free" but rather chelated with zinc to form zinc protoporphyrin (ZPP). Fluorometric determination of ZPP is another technique which is now in use. (Ex. 105 (E).)

The accumulation of ZPP in erythrocytes in a chronically lead burdened individual is generally presumed to be due to the inhibition of the enzyme ferrochelatase which inserts iron into the protoporphyrin ring to yield heme. (Ex. 105 (C1); Ex. 105 (D); Tr. 434; EPA Criteria Document, p. 11-11). It has also been suggested that lead may have an effect on this step by interfering with the transport of iron across mitochondrial membranes. (EPA Criteria Document, p. 11-11 Tr. 434). By either mechanism, the result is the same; ZPP accumulates in formed erythrocytes of bone marrow and is carried by the circulating blood cells throughout their 120-day lifespan. (Ex. 105 (A); Ex. 105 (C1).) Due to its inhibited incorporation into heme, excess iron can also be detected in the serum. (Ex. 294 (E).)

The pattern of the protoporphyrin response varies with sex and age. Stulk (Ex. 23 (Stulk)) observed a difference between the protoporphyrin responses of adult volunteers who were given lead acetate. These results have also been confirmed in an epidemiological study. (Ex. 23 (Roels, et al.).) For both groups, an exponential correlation was found between PbB and protoporphyrin (Ex. 23 (Roels, et al.)), similarly found for adults in other studies. (Ex. 24 (Alessio).) A similar exponential response, but at lower PbB levels, has been found in children (Tr. 443; EPA Criteria Document, Ch. 11, Ref. 147; Ch. 11, Ref. 148; op. cit., Ch. 11, Ref. 149).

The concentration of ZPP in the erythrocytes starts to increase at PbB levels of about 20 to 35 μg/100 ml in children, 20 to 35 μg/100 ml in adult women and about 30 to 40 μg/100 ml in adult men (Ex. 23 (Stuik); Ex. 294 (E); Ex. 105 (E); Ex. 24 (Popovic); Tr. 454).

Zielhuis has calculated dose-response curves using Roel's data for adults. At a PbB level of 30 μg/100 ml, 60 percent of the women and 10 percent of the men had FEP levels above "normal" (80 μg/100 ml), while at PbB levels of 40 μg/100 ml, 100 percent of the women and 30 percent of the men were above normal. (Ex. 294 (E).) Piemelli studied 2,000 children and found that at PbB levels of 35 μg/100 ml, more than half had significantly elevated protoporphyrin levels. (Tr. 440.) The duration of exposure has also been positively correlated with protoporphyrin levels by Tomokuni et al. (Ex. 6 (161).)

Elevated protoporphyrin levels persist in the circulating erythrocyte long after the cessation of lead exposure, thus the correlation of protoporphyrin to PbB cannot always be expected to be as close as that of ALA-U to PbB. However, during periods of steady exposure to lead, protoporphyrin levels correlate closely to PbB (r=.91). (Ex. 5 (15), Ref. 17.) Variation in protoporphyrin level due to an iron deficiency, as well as normal variations in PbB level measurements, would also obscure the relationship.

When evaluating the correlation of PbB and protoporphyrin levels, it should be noted that the former is a measure of a dose, while the latter is the measure of an effect. Measurements of an effect, such as ALA-U or ZPP, are expected to be somewhat variable due to the inherent biological differences between individuals. PbB is a measurement which has been available and studied for many years. It is for this reason that we evaluate newly developed biochemical measurements, such as ZPP, in terms of their relationship to PbB. (Tr. 446.) Work by Chisholm (Ex. 99 (B)) and Sassa (Ex. 5 (15) Ref. 17) has indicated that FEP is a better measure of soft tissue lead level than is PbB. The Center for Disease Control has concluded that FEP is a better index of potential toxicity from the body's lead burden and that it provides a better estimate of soft tissue lead. In situations where a child has a low PbB level and a higher than expected metabolic effect (i.e., ZPP level) for that PbB level, the child is considered to be at greater clinical risk. (Tr. 447; Ex. 5 (15).) Children with PbB levels greater than 30 μg/100 g, FEP levels greater than 100 μg and who show symptoms compatible with lead poisoning "should be considered as having poisoning and recognized as candidates for urgent inpatient medical management". (Ex. 5 (15).) Thus a child with a blood lead level as low as 30 to 40 μg/100 ml could be considered to have lead poisoning if the measure of metabolic effect was sufficiently elevated. As was previously discussed, children show effects, such as protoporphyrin elevation, at a somewhat lower level than do adults. Nevertheless, it is important to note that a general pattern is presented; a given blood lead dose may very well have a different metabolic effect on different individuals. A sensitive person may suffer extensive metabolic disturbance at levels well below that of the average person.

The increasing disruption of heme synthesis as measured by increased protoporphyrin has been studied in relation to the occurrence of clinical symptoms of lead poisoning. In children the statistical likelihood of clinical symptoms and permanent damage increases arithmetically with FEP levels greater than 60 μg (Ex. (15)). Fishbein has studied the relationship of ZPP to other symptoms and metabolic effects. Correlation coefficients between ZPP and other laboratory parameters such as hemoglobin, BUN and creatinine, were found to be better than those between the same parameters and PbB. This pattern was specifically found in a population of workers with PbB levels below 80 and no history of chelation therapy (Ex. 105 (E)). An increase in ZPP was found to be positively correlated with various symptoms, such as loss of appetite, weight loss, muscle and joint pain. The prevalence of lead colic increased markedly with elevated ZPP levels. This correlation between ZPP level and clinical symptoms suggests a causative relationship between these biochemical effects and clinical symptoms.

The inhibition of ALA-D and iron incorporation are the most well-studied effects of lead on heme synthesis, although the following effects have also been documented. An increased excretion of coproporphyrin in the urine (CPU) by lead workers and children with lead poisoning is known to occur. (Ex. 5 (5); FEIA EPA Criteria Document, p. 11-13), and CPU measurements are used as an indicator of lead poisoning. It is not known, however, whether this effect results from specific enzyme inhibition or from upstream accumulation of substrate secondary to inhibition of iron incorporation, or both. Alternatively, it has been suggested that lead may directly effect the transport of coproporphyrin across the mitochondrial membrane thereby causing this excess coproporphyrin to be excreted in the urine. (EPA Criteria Document, p. 11-13.) Increases in CPU become measurable at PbB levels of 40 μg/100 ml. (Ex. 96.) Another lead-induced effect on home synthesis has also been observed; ALA—synthetase activity is increased during lead exposure. It is theorized that this effect may be a result of derepression of negative feedback controls. (EPA Criteria Document, Ch. 11, Ref. 171.)

b. *Health implications of heme synthesis inhibition.* The effects of lead on heme synthesis are not disputed. The pattern of ALA-D inhibition, ALA-U excretion and protoporphyrin buildup are well established. However, there has been considerable debate about the meaning of these biochemical and physiological changes.

The proposed lead standard originally suggested that "the point at which subclinical changes become sufficiently serious to represent a threat to health is not clearly defined." (Ex. 2, p. 47735.) Subsequent testimony has demonstrated that there are two fundamentally different understandings of the meaning of heme synthesis inhibition.

Some experts have suggested that the changes in biochemical and physiological parameters are manifestations of homeostatic adjustments to lead. It is implied by these arguments that the body has the capacity to handle a certain degree of lead exposure. Only when the lead dose is large enough to overcome these reserve capacities does the impairment of health occur. Such impairment is referred to as the "clinical" effect of lead. Williams (Tr. 1886) has stated that these biochemical changes are "• • • one of the many thousands of homeostatic mechanisms of the body whereby the effect of an alteration in the external environment is fully compensated by a biological response." Malcolm has stated that "I would submit that so far we have no clear evidence that the suppression of enzyme activities in the blood formation causes any departure from the normal well being unless it causes a fall in the hemoglobin level.

The best way of assuring that this does not happen is to carry out periodic hemoglobin estimations. Changes in enzyme system, in my view, may best be described as biochemical effects of lead and not as subclinical poisoning." (Tr. 2106-2107.)

Finally the Lead Industries Association (LIA) has asserted that, "neither increased ALA nor inhibited ALA-D, nor increased ZPP nor inhibited ferrochelatase is per se harmful. These changes by themselves do not indicate interference with heme production. In fact, the opposite may be true, since there are a number of feedback mechanisms in the biosynthesis of heme which allow the body to compensate for these changes." (Ex. 335, p. 22.)

Other experts have a fundamentally different understanding of the implications of the early biochemical and physiological changes caused by lead. This group rejects the idea that these changes are manifestations of "homeostatic mechanisms", rather, they consider these as the first cellular changes that eventually lead to traditional lead poisoning.

These health effects are considered to be important because they are a measurement of disruption of fundamental cellular processes. This disruption is considered to eventually result in anemia, and also may be related to the development of clinical effects in other tissues.

Piomelli (Tr. 471) discussed the point at which the health effects of lead are considered to occur. He stated that, "I believe personally that the most important issue is to assess objective health effects. And objective health effects like for instance those in heme synthesis which are not at all related to the feeling of the individuals in the case of poisoning. Of course everything in life as I am sure you are familiar happens in a continuous curve and therefore it is a continuous progression and that the earliest indication of poisoning in my opinion is this metabolic effect." (Tr. 471.) He further stated that:

"I would consider that if somebody has any evidence of impairment of heme synthesis caused by lead, this is evidence that lead is interfering with their body function." (Tr. 472.) Teitelbaum has described these metabolic changes as the "obvious laboratory evidence of excessive lead absorption." (Ex. 56, p. 11.) He has described individuals with excessive lead absorption as

> those who have no disease, but who have lead effect demonstrated by metabolic abnormalities which are the stalking horses of future lead intoxication. This group of patients is not lead poisoned in the traditional sense. No physician could, on a clinical basis alone, make the diagnosis of lead intoxication in them. Without sophisticated laboratory studies these individuals would not be recognized as poisoned because they have no obvious clinical findings. However, they have obvious laboratory evidence of excessive lead absorption. (Ex. 56, p. 11.)

OSHA agrees with Piomelli and Teitelbaum and believes that to explain away the subclinical effects of lead exposure as manifestations of the body's reserve capacity seems to be overly simplistic. The complex pattern of lead's effect on heme synthesis does not seem to fit into such a model. The evidence indicates that a worker with a pattern of substrate build-up may eventually suffer overt lead intoxication. Enyzme inhibition is observed at very low PbB levels. For example, it has been established that ALA-D begins to be inhibited at blood lead levels as low as 10 μg/100 ml. Increasing enzyme inhibition leads to the accumulation of substrates which can then be directly measured in the urine and blood. Increased excretion of the substrate ALA-U becomes manifest at PbB levels as low as 40 μg/100 ml for adult men, and increased protoporphyrin is excreted at PbB levels of 25-35 μg/100 ml in adult women and 30 to 40 μg/m 100 ml in adult men. As blood lead levels continue to increase, the enzyme inhibition and resulting substrate accumulation becomes more pronounced.

It is generally accepted that this pattern of increasing inhibition and physicological disruption eventually leads to the clinical symptoms of lead poisoning. Correlations between various clinical symptoms, such as anemia, and physiological changes, such as ALA-D and ZPP, have been found. (Ex. 81 (C); Ex. 105 (E)) Piomelli has discussed these effects stating:

"What is the clinical significance of the effects of lead on heme synthesis? These effects occur in the blood as well as in all other tissues. The inhibition of heme synthesis in the blood forming marrow ultimately leads to anemia which is one of the known symptoms of severe lead intoxication. However, this is not, in my opinion, the most significant clinical effect of heme synthesis, because we know in pediatrics as well as in occupational medicine a severe clinical neurological toxicity may occur much before anemia develops. A much more important fact is that the alteration of the mechanism of heme synthesis reflects the general toxicity of lead in the entire body." (Tr. 458).

It is important to note that for each clinical step in the development of lead-induced disease, there is a degree of variation between individuals as to when a symptom becomes manifest. Each observable symptom is the result of several complex biochemical alterations which are involved in this multistage disease. Individual variation results in a broadening of the range of PbB levels at which various clinical symptoms will develop. In this context, the ability to observe and control biochemical changes is important in order to prevent the progression to overt lead poisoning. Teitelbaum has discussed the problem of individuals who have lead related effects, ("i.e., metabolic abnormalities but no clinical disease") stating, "They show evidence of interference with normal red blood cell manufacture, and interference with normal nerve conduction times and other enzyme systems, which are intimately involved with the maintenance of the human homeostasis. If these abnormalities are ignored in a planned attempt to wait for overt disease, surely no preventive medicine is being practiced!" (Ex. 56, p. 11)

OSHA believes that this standard must be based on the most thorough understanding of the disease process possible. It is the belief of the Agency that the preponderance of evidence indicates that there is a continuum of lead effects, starting at the level of enzyme inhibition, progressing to measurable heme synthesis disruption, and eventually resulting in the established clinical symptoms of lead poisoning. These initial effects must be considered as the early stages of a disease process, not as simply the manifestations of homeostatic mechanisms. The build-up of substrates such as ALA and protoporphyrin is a measurable manifestation of lead's effect on heme synthesis at PbB levels as low as 30 to 40 μg/100 ml. This impairment of fundamental and vital subcellular processes can be demonstrated in a substantial portion of the lead-exposed population. The synthesis of heme is vital not only for the transport of oxygen in the blood via hemoglobin, but also to the functioning of the mitochondria in all cells. OSHA considers that the existence of such a measurable metabolic change in this vital subcellular system over a working lifetime must be considered to be a material impairment of health. The definition of health is necessarily broader than the simple absence of clinical symptoms. Current medical science has given us an understanding of the early stages of the lead disease process, and this knowledge must be applied. Given our current understanding of the continuous nature of lead disease, the promulgation of a standard based exclusively on the prevention of immediate clinical symptoms would be a dereliction of the Agency's duty to provide "the highest health and safety protection for the mployee". When continued exposure will eventualy result in serious disease symptoms, prudent policy requires that the early stages in the disease process be avoided.

c. *The Hematopoietic System.* In addition to the effect of lead on the synthesis of the heme radical itself, hemoglobin production may also be impaired by lead due to an inhibition in the synthesis of the protein portion of the molecule. Kassenar, et al. (EPA Criteria Document, Ch. 11, Ref. 174) and Wada, et al. (EPA Criteria Document, Ch. 11, Ref. 170) have shown that lead impairs hemoglobin synthesis in vitro in human reticulocytes at concentrations corresponding to PbB levels of 20 μg/100 ml.

Studies have revealed that accumulation of non-heme iron in developing erythrocytes in the form of ferruginous micelles which are responsible for the ringed sideroblasts characteristic of lead poisoning and dense aggregations of ferritin in damaged mitochondria. (Ex. 95, pp. 101-103) These accumulations of altered cytoplasmic and nuclear remnants (RNA and altered microsomal and mitochondrial fragments), result in the basophilic stippling of red blood cells. Basophilic stippling is an inconsistent feature of gross lead poisoning. However, microscopic examination of aspirated bone marrow usually reveals stippled sideroblasts in classic lead poisoning. Basophilic stippling has been observed in individuals with PbB levels below 70 μg/100 ml. (Ex. 6(37)).

In addition to affecting hemoglobin synthesis, lead also affects the life span of the circulating erythrocytes. In chronic lead poisoning the shortened life span is moderately severe, although it is much less than that experienced in most hemolytic anemias. According to several studies, survival time is not shortened by more than 60 days. Several investigators (Ex. 24 (Nordberg), Chap. 6, Ref. Rubino; op. cit., Ref. Sroczynski; Ex. 95. Ref. 249) have demonstrated a slight shortening of the life span of erythrocytes (100 days) in lead workers.

The mechanism by which lead shortens the erythrocyte life span is not known. (Ex. 5(5), Ref. 220; Ex. 5(5), Ref. 567; Ex. 5(5), Ref. 240). It has been shown that the osmotic resistance of the erythrocytes of patients with lead poisoning is increased. (Ex. 5(5), Ref. 220; Ex 5(5), Ref. 567; Ex. 5(5), Ref. 240). Increased mechanical fragility has also been reported. However, studies dealing with these phenomena are equivocal. (Ex. 5(5), Ref. 242; Ex. 5(5), Ref. 567).

It is known that lead interferes with a number of membrane functions (Ex. 5(5), Ref. 436). Lead is known to inhibit the activity in Na/K ATPase, an enzyme whose function may be related to the membrane cation pump. Lead has been shown to inhibit this enzyme both in vitro and in vivo. (Ex. 5(23), Ref. 4) Secchi et al. observed a significant negative correlation between PbB levels and the Na/K ATPase activity of erythrocyte membranes. (Ex. 5(23)). Using Secchi's data, Zielhuis has calculated a dose-response relationship. The coefficient of correlation between PbB and Na/K ATPase was low, however, sensitivity and specificity were poor. The study indicates that at rather low PbB levels (30 μg/100 ml) about 50 percent of subjects had moderate inhibition of Na/K ATPase (Ex. 294 (E)).

Roels has (Ex. 294 (E), Ref. Roels et al., 1975), established a negative correlation between PbB and reduced glutathione (GSH), a tri-peptide associated with red blood cell integrity. Zielhuis calculated the dose-response curve using Roels' data. Sensitivity and specificity to PbB levels were rather poor. A slight reduction in GSH was first observable at a PbB level of 30 μg/100 ml. (Ex. 294(E)).

It is not known whether these changes in osmolality, ATP-ase activity or glutathione, are the cause of the shortening of erythrocyte life span but the evidence is suggestive that one or all of these changes may be involved.

A consequence of all these lead-related effects on hematopolesis is that the production of erythrocytes increases. This is manifested by reticulocytosis which is an increase in the number of large, immature red blood cells. The degree of reduced cell lifespan correlates closely with the reticulocyte count. (Ex. 5(5), p. 110).

Given the dual nature of the mechanism of lead-poisoning anemia, the correlation between decreasing heme synthesis and increasing PbB level is to be expected, but would be obscured by the influence of other anemia inducing effects. Gibson (Ex. 6(59)) found a positive correlation between ALA-U and hemoglobin level (r=.57), and between urinary coproporphyrin and hemoglobin level (r=.54). Fischbein (Ex. 105 (D)) found that ZPP levels and hemoglobin levels were correlated. This evidence, in addition to that previously discussed, documents the shortening of erythrocyte lifespans, and presents a picture of the complex manner in which lead attacks the body on multiple biochemical fronts.

d. *Lead Induced Anemia.* Anemia is the medical term used to describe a condition marked by significant decreases in hemoglobin (Hb) concentration and in the number of circulating red blood cells. Exposure to lead is known to result in anemic disease of varying severity. Lead—induced anemia is mildly hypochromic and microcytic and in some cases, ringed sideroblasts have been observed and the reticulocyte count slightly increased. Basophilic stippling may be prominent, but is not always observed. Erythroid hyperplasia is observed in the bone marrow.

The mechanism of action of lead-induced anemia appears to be a combination of (1) decreased erythrocyte production due to the interference of lead with hemoglobin synthesis and, (2) a shortened erythrocyte lifespan due to damage by lead on the erythrocyte itself. (EPA Criteria Document, p. 11-7; Ex. 284(A); Weintrobe et al., *Clinical Hematology*).

While there is no disagreement that anemia is an established symptom of lead poisoning, there is disagreement as to the PbB level above which decreases in hemoglobin and hematocrit are observed. The proposal originally discussed these changes.

> Cooper and Tabershaw observed increases in the proportion of workers with abnormally low hemoglobin concentrations at blood lead levels in the 70-99 μg/100 g range compared to workers with lower blood lead levels. Evidence of anemia was most prevalent in workers with blood lead levels above 100 μg/100 g. Observations by Tola. et al. of decreases in hemoglobin and hematocrit levels among workers entering occupational lead exposure for the first time in their lives at blood lead levels in the 40-60 range are also consistent with interferences in the hemoglobin pathway which may occur at blood lead levels of 40 μg/100 g with above. Additional instances of measurable decreases in hemoglobin levels among new lead employees are also available. While these workers may return to preemployment hemoglobin levels at a later date, these changes may still represent decreases in man's physiologic reserve caused by lead. (Ex. 2, p. 45937)

There are several factors which have confused the debate about the occurrence of anemia at PbB levels below 80 μg/100 ml. The first problem is variation in the definition of anemia. The clinical definition of this disease, based on levels of Hb and hematocrit, varies between experts. For adult males, Nelson (Ex. 5(19)) used a hemoglobin level (Hb) below 12.5g/100g to define anemia, Bell (Ex. 81(c)) used a cut-off point of 13g/100g, Fischbein et al., used 14g/100 g, while Wolfe defined anemia as hemoglobin less than 13 gm/100gm and hematocrit less than 41 percent. Others have based their evaluations of the occurrence of anemia on the measurable lowering of the Hb level over a period of time. (Ex. 5(37); Ex. 5(18); Tr. 1945, Tr. 1608). Definitions based on measurements over time are ideal since they depend upon a change in the level of Hb with increasing or continued lead exposure. When studies are done at a single point in time, it is necessary to set a hemoglobin level below which anemia occurs. Such a level is arbitrary, as it is impractical to draw a line in a continuous disease process.

A second factor which confuses the debate about the PbB level at which anemia occurs is the difference be-

tween the way that the various studies were designed. The use of particular cutoff points to define anemia and groupings of data by PbB levels make their results difficult to compare.

For example, Sakurai (Ex. 5(9)) studied 218 workers with lead exposure of less than 65 μg/100 ml. No decrease in Hb was found in workers with PbB levels of less than 50 μg/100 ml. Upon review of Sakurai's data, Cooper and Tabershaw (Ex. 6(37)) observed increases in the proportion of workers with abnormally low Hb levels and PbB levels of 70 μg/100 ml. In their analysis, they placed workers in groups according to PbB levels; 40, 40 to 69, 70 to 90, and 100+μg/100 mls.

Hemoglobin concentrations ranged from 10.9 to 18.0 g/100 ml. The mean was 14.9±072 ml. There was no significant correlation with age. There was a significant negative correlation with blood lead level (r=−0.220. p less than .01). Thus of the 56 employees (18.7 percent of those examined) with hemoglobin concentrations below 14 gm/100g, 28 were in the 114 employees with blood levels of 70 μg/100g or higher (i.e., 25.4 percent compared with 27 in the 183 with blood leads below 70 μg/100g (i.e., 14.7 percent).

Although when lead levels were below 100 μg/100g the mean hemoglobin concentrations were similar for all groups, the proportion with abnormally low levels was greater in both the 70 to 99 and the 100+μg groups. (Ex. 6(37), p. 523)

BLOOD LEAD CONCENTRATIONS (μg/100g)

	Less than 40	40–69	70–99	100+
Mean hemoglobin (gm %)	15.3	15.0	15.2	13.6
No. in this range	30.0	153.0	104.0	12
No. below 14 gm	6.0	36.0	31.0	13
Percent below 14 gm	16.7	19.0	23.0	52.0

It is important to note that the pattern of decreasing Hb vs. increasing PbB does not necessarily start at a PbB level of 70 μg/100 ml. The slight elevation in the proportion of individuals with lowered hemoglobin in the 40 to 69 μg/100 ml group is of particular interest if we accept Sakurai's conclusion that anemia is not detected at PbB's below 50 μg/100 ml. The grouping of data chosen by Cooper and Tabershaw is one which would tend to obscure an effect within the 50 to 70 μg/100 ml range, by diluting it with the unaffected 40 to 50 μg/100 ml group. It is also important to note that while the Cooper-Tabershaw data does indicate an increase in the proportion of individuals with lowered hemoglobin in the 50 to 99 μg/100 ml range, no decrease in the mean Hb was observed in the lower PbB groups may be a reflection of the individual susceptibility to lead-induced anemia.

Wolfe (Ex. 146(A)) reported an elevated incidence of anemia in adult males with PbB levels of 41 to 60 μg/100 ml. Lilis et al. (Ex. 24(14), Table 11) found 38 percent (8 of 21) of workers with PbBs of 40 to 60 μg/100 ml had Hb levels less than 13 gm. These studies confirm the previously discussed findings of lowered Hb in adult males in the PbB range of 40 to 60 μg/100 ml.

Studies of PbB levels and hemoglobin levels in children reflect similar patterns at relatively lower PbB levels than adults. Puschel observed a negative correlation between PbB and Hb in 40 children whose PbB levels ranged from 30 to 120 μg/100 ml. (Ex. 294(E), Ref. Puschel 1972). Others have found similar relationships in children. (EPA Criteria Document, Ch. 11, Ref. 100; Ex. 294(E), Ref. Betts et al. 1973: EPA Criteria Document, Ch. 11, Ref. 102) Studies involving hemoglobin levels in this group are affected by the high incidence of iron deficiency anemia. Nevertheless, these results do parallel those observed in adults. The occurrence of these effects at lower PbB levels in children than adults is to be expected.

In a study that evaluated the effect of lead exposure over time, Tola (Ex. 5(18)) studied 33 workers shortly after they became occupationally exposed to lead. After 100 days, the average blood lead was 50 μg/100 ml and the average Hb level had dropped from 14.4 gm to 13.4 gm. This data is particularly important as it demonstrates the decrease in Hb with increasing exposure to lead; it is not simply a correlation of PbB and Hb at one point in time. This data supports the opinion that lead-induced anemia is clinically apparent at PbB's as low as 50 μg/100 ml. It has been suggested that PbB levels in the cross sectional studies may have been higher at an earlier point in time. Tola's study design eliminates this criticism, while also confirming the results of the cross sectional studies.

e. *Special sub-groups at risk.* Given that exposure to lead may result in a wide range of health effects, from metabolic changes to the clinical signs of lead poisoning, it is to be expected that genetic variations between individuals would influence their response to lead. Some individuals may respond to a lower lead level than others. There are also various factors which have an effect on the hematopoietic system, which introduced together with lead may produce a synergistic effect, and thereby place certain individuals at greater risk. Piomelli discussed several genetic factors which might make a subgroup more vulnerable to lead, stating:

Genetic factors influence the variation in effects observed when several individuals are exposed to the same agent. We are largely ignorant of how these influence absorption of lead. However, a provocative study by Drs. McIntire and Engle has recently shown a significantly greater amount of lead in the blood of individuals defective in the enzyme glucose-6-phosphate-dehydrogenase, despite equal exposure to lead, in this case due to the proximity to lead emitting sources. This observation may appear superficially esoteric and irrelevant. However, it must be noted that this is the most common genetic metabolic defect, and that throughout the world more than 300,000,000 human beings are carriers of it; in this country, at least 2 to 3 million such carriers exist. This observation is at present too limited to warrant direct measures; however, it indicates the possibility that certain individuals may be congenitally more sensitive to the effects of lead. (Ex. 57, p. 20)

I also do not believe that it is necessary to have any special precautions for other individuals, like individuals who are carriers of the thalassemia trait, Mediterranean anemia, because I do not believe that at the present state of our knowledge there is any evidence that these individuals have a greater effect. (Tr. 463)

By contrast, along the same line, it is well established that in individuals with sickle-cell anemia the frequency as well as the severity of lead intoxication is greater than in the general population. These individuals may develop a peripheral neuropathy at much lower levels of lead. Sickle cell anemia is a very rare genetic disorder, which occurs in this country at a frequency of once every 8,000 births. Individuals with this anemia are usally aware of their disorder; however, it must be the responsibility of the employer to examine prospective employees and not to expose to lead individuals with sickle cell anemia. (Ex. 57, p. 21)

With reference to sickle cell trait as compared to sickle cell disease, Zielhuis has suggested that individuals with the trait "may be more affected than normal individuals by lead". (Ex. 294(E))

Okawa and Cromer of NIOSH (Ex. 234 (9)), did not find evidence of an interaction between the effects of lead and sickle cell trait. In a letter to the National Lead Industries they asserted that:

The question of whether lead exposure might have a more deleterious effect on individuals with sickle cell trait is an interesting one. Although this question cannot be unreservedly answered at this time, there are a number of facts which indicate that individuals with sickle cell trait are no more susceptible to the effects of lead than are individuals without the trait. These facts can be summarized as follows:

(1) The primary mechanism by which the hemoglobin molecule is affected differs in lead toxicity and in sickle cell trait. The effect of lead exposure does not enhance the fragility of the red blood cells, which is the major mechanism of anemia in sickle cell disease.

(2) Review of the medical literature on this subject gives no indication that lead produces greater deleterious effects in individuals with sickle cell trait than in those without the trait. However, this observation is by inference since no studies were noted which addressed themselves to this particular issue.

OSHA agrees with these conclusions and for the purpose of this standard finds no evidence that workers with sickle cell trait constitute a susceptible group. OSHA concludes that there is no evidence to indicate workers with sickle cell are at greater risk from lead exposure than those with it.

Other nongenetic factors may also put various individuals at greater risk. Zielhuis, writing for the Amsterdam Conference, has stated that other environmental factors such as nutrition, chemical exposure, or use of drugs and alcohol might also result in a more extreme lead effect. (Ex. 262)

As mentioned previously, children are known to have anemic lead effects at lower PbB levels than adults. This effect may be related to the fact that iron deficiency anemia is more common in children. Women generally have lower Hb levels than men; the normal range of values for adult males is 14–18g/100 ml, while for adult females it is 12–16g/100 ml. This fact is attributed to the monthiy iron loss in normal adult women. It is not clear, however, what this means in relation to lead's effect on women. With the exception of Roel's work showing that there is a greater elevation of FEP at a given PbB level in women than in men, and Zielhuis' review, (Ex. 24) there is very little work comparing lead's effect on adults of each sex.

To reiterate, anemia has long been known to be one of the clinical signs of lead poisoning. The occurrence of anemia above PbB levels of 80 μg/100 ml was presented in the proposal and was generally accepted. The proposal also mentioned data by Tola that were suggestive of anemia at PbB levels of 40 to 60 μg/100 ml. Following the proposal, there was considerable discussion concerning the occurrence of anemia below a PbB level of 80 μg/100 ml. Williams, Cole, and Malcolm testified that anemia was not found below a PbB of 80 μg/100 ml, while Epstein, Wolfe, and Hammond suggested that anemia is found below this level. (Tr. 1885; Tr. 3029; Tr. 2106; Tr. 1060; Tr. 4122; Tr. 229)

OSHA has concluded that the signs of anemia are best understood when they are placed in the context of a continuous disease process; the signs range from minor physiological changes to more extreme clinical symptoms. This understanding of lead disease was discussed at length in the preceding pages. This agency has found that lead-induced anemia may be the result of an adverse effect on heme synthesis, and/or erythrocyte lifespan. Therefore, it follows that there is considerable room for individual variability in the PbB level at which anemia presents itself. In addition, the measurement of hemoglobin levels is a continuous variable resulting in a wide range of values. These factors must be considered when evaluating the PbB level at which lowered hematocrit and Hb become significant in a population. The data of Sakurai, Cooper, and Tabershaw, Wolfe, and Selikoff et al., indicated that a measurable lowering of hematocrit occurs in adult populations in association with PbB levels in the range of 50 to 70 μg/100 ml. The longitudinal study done by Tola showing lowering of the Hb levels at a PbB level of 50 μg/100 ml provides very strong evidence that these effects occur at lower PbB levels than was previously accepted.

The incidence of anemia in the population must be understood not only in terms of a quantifiable lowering of the mean Hb level of a group, but also in terms of the effect that this lowered Hb has on particularly sensitive individuals. Certain subgroups, such as those with the sickle cell trait are relatively large, and the effects which they might suffer must be considered in the promulgation of this standard.

Based on the evidence of small but significant changes in Hb levels in the range of 50 to 70 μg/100 ml, and on a specific understanding that the effects of a substance on the more sensitive worker, as well as the typical worker must be considered, OSHA has concluded that there is sufficient evidence to demonstrate significantly lowered hemoglobin levels in populations with blood lead levels as low as 50 μg/100 ml.

The decrease in Hb levels in the lower PbB range is not so extreme that it would normally be considered cause for medical intervention. For an adult male, a lower Hb of 13g/100 ml is significantly, but not dangerously low, at least for the short term. However, when we consider the effects of lead exposure over a working lifetime, we must recognize that an individual with a PbB level of 50 μg/100 ml or above would have significantly lowered Hb levels throughout his/her working life. We have no data to indicate the long term health effect which may be caused from such a prolonged dearth of Hb. We do know, however, that this would result in a lifetime change in the oxygen carrying capacity of the blood, in the blood viscosity, and the cardiac work load. In the absence of specific epidemiological data, the Agency must use prudence and common sense in making a judgment concerning these possible lifetime effects.

OSHA, therefore, has concluded that the long term lowering of hemoglobin levels which is expected to occur within a population at PbB levels of 50 to 70 μg/100 mi, must be considered a significant health impairment, and is unacceptable. An exposure level must be set which assures that PbB levels for most employees will be below that range.

f. *Effects on Mitochrondrial Function.* As was previously discussed, the heme radical is not only a constituent of the hemoglobin molecule, but also a constituent of mitochondrial respiratory proteins called cytochromes. The effect of lead on heme systhesis must be evaluated not only in terms of anemia, but also with reference to the effects associated with the disruption of mitochondrial functions in all body tissues. The research on the mitochrondrial effects caused by inhibited heme systhesis is limited, but the implication of such disruptions are profound and must be evaluated. Piomelli directly addressed this question as follows:

What is the clinical significance of the effects of lead on heme synthesis? These effects occur in the blood as well as in all other tissues. The heme synthesis in the blood forming marrow ultimately leads to anemia which is one of the known symptoms of severe lead intoxication.

However, this is not, in my opinion, the most significant clinical effect of heme synthesis, because we know in pediatrics as well as in occupational medicine a severe clinical neurological toxicity may occur much before anemia develops.

A much more important fact is that the alteration of the mechanism of heme synthesis reflects the general toxicity of lead in the entire body." (Tr. 458)

There is evidence of heme synthesis inhibition and mitochondrial disruption in other tissues of the body. Secchi et al (Ex. 5(22)), found a direct correlation (r=.67) between the levels of ALA-D inhibition in the red blood cells and in the liver. The PbB levels were in the range that used to be considered "safe", i.e. 16 to 56 μg/100 mls.

In his testimony, Piomelli used a study on the livers of rats who had been exposed to lead concentrations of 35 to 40 μg/100 ml. Lead granules were observed in the mitochondria by electron microscopy. (Tr. 459, Ref. Walton, 1973) He also testified that he was able to detect a disruption in the mitochondria of renal cells of a lead worker. Under the electron microscope, the mitochondria were found to be "bizarre and very broken." (Tr. 459; Ex. 32(30))

Millar et al. found parallel decreases in ALA-D activity in rat brain and blood tissues. The decreases in brain ALA-D activity, however, were only observed at a PbB level of 30 μg/100 ml or above. (Ex. 23(68), Ref. Millar). While this study was not statistically significant it is indicative of the effect.

Thus, the inhibition of heme synthesis as manifested by ALA-D inhibition and the disruption of mitochondrial function, as shown by electron microscopy, have been demonstrated in several body tissues.

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This demonstration of subcellular effects of lead in two tissues that are known to be among the main target tissues of lead poisoning, the kidney and the brain, suggests that this lead-induced heme synthesis inhibition may be a part of the physiological mechanism by which these tissues are affected. Piomelli has specifically suggested that mitochondrial disruption resulting in altered cellular respiration may be a mechanism that explains some of the other medical effects of lead. He addresses the relationship between mitochondrial function and neurological effects:

> The important adverse effect which lead exerts on every single cell is the decrease in synthesis of heme and its interference with mitochondrial function as ultimately, by these two mechanisms, lead inhibits the ability of each individual cell to respirate.
>
> Different tissues are more or less sensitive to lack of oxygen. For instance, it is very well known that the brain and nervous system are the most sensitive to lack of oxygen, so much so that total loss of brain function may occur in an individual who has no respiration for as little as two to three minutes. This is a very well known effect on the entire organ, but it also occurs at the level of indiviual cells. The effects of lead on heme synthesis do not occur exclusively in the blood but they are seen in the entire body. Let me give you probably an even more dramatic comparison. For instance, when an individual is poisoned with cyanide, instant death may occur. This happens because cyanide attaches to the iron in the heme and makes it incapable of transporting oxygen. The death of the individual exposed to cyanide is not due to the effects on the blood but it is due to the effects of cyanide on the cytochromes in individual cells. Like cyanide lead is a general poison to the entire human body and it does not just affect the blood. (Ex. 57 p. 6)
>
> Decreased respiration, in particular, may be deleterious to certain cells, particularly the neurons, the nervous system cells. As I have mentioned before, the central nervous system is particularly sensitive to lack of respiration; it is not therefore surprising that neurological and intellectual dysfunction should occur with lead intoxication. (Ex. 57, p. 19)
>
> The work of Fischbein et al. provides reinforcing evidence for this theory. The level of ZPP, a measure of heme synthesis inhibition, was related to the occurrence of various lead related signs and symptoms. Central nervous system symptoms such as fatigue, nervousness, sleeplessness or somnolence, memory deficits and slowing of thoughts were studied.
>
> The prevalence of central nervous system symptoms increased markedly with elevated zinc protoporphyrin levels, from 40 percent among those with ZPP levels less than 100 μg/dl to 71 percent of those with ZPP levels in excess of 100 μg/dl. It was also found that peripheral neuropathy was not associated at all with ZPP levels below 100 μg/dl.
>
> Other symptoms considered were loss of appetite and weight loss, and muscle and joint pain. These two groups of symptoms followed the same pattern as the one described with regard to central nervous system symptoms. The relative prevalence of these three groups of symptoms was in accordance with what has been found in large groups of workers with significant excessive lead exposure. The highest prevalence is that of CNS symptoms, followed by muscle and joint pain and then by loss of appetite and weight loss.
>
> Although there is currently no complete explanation of the mechanisms involved in the development of these groups of symptoms, the observations reported here of the correlation between zinc protoporphyrin levels and the prevalence of such symptoms is of considerable theoretical and practical interest. (Ex. 105(D), p. 4)

The relationship of ZPP and the occurrence of lead colic was also studied.

> Considering the relationship between colic and zinc protoporphyrin levels, it is of interest to notice that history of lead colic was not given by workers with ZPP levels in the normal range (less than 100 μg/ml). The prevalence of lead colic increased markedly with elevated zinc protoporphyrin levels. (Ex. 105(D))

While an exact relationship is not set between ZPP level and PbB level, the correlation of Fischbein et al would associate the ZPP level of 100 μg/ml discussed above with a PbB level of about 50 μg/100 ml. Thus, the early appearance of these signs and symptoms would be loosely associated with a PbB range at least as low as 50 μg/100 ml. A pattern of biochemical and physiological inhibition resulting in some early clinical lowered hemoglobin levels in the PbB range of 50 to 80 μg/100 ml is paralleled by the manifestation at this PbB level of other clinical effects which may be related to heme synthesis disruption. Others have studied the relationship between PbB level and the occurrence of various symptoms. Beritic (Ex. 6(9)), found lead colic occurring in patients whose PbB levels were in the range of 40 to 80 μg/100 ml. Sakurai (Ex. 5-9) did not find an increase in symptoms in workers whose PbB levels were below 50 μg/100 ml.

The evidence relating the effects of lead on heme synthesis and mitochondrial function to the occurrence of clinical symptoms throughout the body is far from complete. However, due to the serious implication of this theory, it must be carefully evaluated. Evidence of changes in ALA-D levels or of mitochondrial changes associated with lead exposure has been found in both animals and humans in several different tissues. That lead causes the disruption of heme synthesis in renal, neural and liver tissue is well established. Lead is known to effect heme synthesis in these tissues in a manner which parallels that demonstrated in blood forming cells. The data of Fischbein et al., have demonstrated that an increased ZPP level is correlated with the appearance of a variety of lead symptoms and signs in other tissues. In this way, ZPP levels may be an indirect measure of the effects of lead on other systems, such as CNS.

Piomelli gave an excellent summary of the importance of lead's effect on heme synthesis, stating:

> It is my understanding that regulations have the purpose of preventing material impairment of health.
>
> Alterations in heme synthesis do not produce subjective evidence of impairment of health, unless they reach the extreme depression in severe lead intoxication, when marked anemia occurs and the individual feels weak. However, it is not any longer possible to restrict the concept of health to the individual's subjective lack of feeling adverse effects. This is because we know that individuals may get adjusted to suboptimal health, if changes occur slowly enough and also because we now have the ability to detect functional impairments by appropriate tests, much before the individual can perceive any adverse effect. In fact, it is the responsibility of preventive medicine to detect those alterations which may precede frank symptomatology, and to prevent its occurrence. The alterations in heme synthesis caused by lead fulfill, in my opinion, the criteria for material adverse effects on health and can be used to forecast further damage. The depression of heme synthesis in all cells of the body is an effect of far reaching proportion and it is the key to the multiple clinical effects of lead toxicity, which become obvious as the exposure continues. (Ex. 57, p. 21.)

This does not in any way suggest that the effect of lead on heme is the only mechanism of lead disease, but it does suggest that it is at least one of the more important ones. An appreciation of the wide range of lead's effect from subcellular changes to overt clinical symptoms, is relevant not only to the occurrence of anemia, but also to the expected pattern of lead induced neurological and renal disease.

In conclusion, OSHA believes that there is evidence demonstrating the impairment of heme synthesis and mitochondrial disruption in tissues throughout the body, and that these effects are the early stages of lead disease in these various tissues. The disruption of heme synthesis measured at low PbB levels is not only a measure of an early hematopoietic effect, it is also a measure which indicates early disease in other tissues. The Agency believes that such a pervasive physiological disruption must be considered as a material impairment of health and must be prevented.

3. *Nervous system.* Neurological and behavioral effects have long been recognized as severe consequences of exposure to lead. In the preamble to the proposed standard OSHA described some of these effects which range from acute and chronic encephalopathy, behavioral effects, severe damage to the peripheral nervous system (peripheral neuropathy), tremors, nervous irritability and early nervous system damage as measured by changes in motor nerve conduction velocities. In its proposal, OSHA stated that there was little disagreement that risk of clear-cut clinical symptoms related to exposure increases as blood lead levels rise above 80 μg/100 g. The agency noted that there were a number of studies which have observed symptoms and effects caused by exposure to lead below 80 μg/100 g. A primary issue which the proposal and this final standard addresses is what levels of lead exposure are necessary to produce specific deleterious neurological effects and whether these effects represent material impairment as defined by the OSH Act. A related and critical issue is whether these effects are reversible and if so what weight should they be given in assessing their health consequences.

In addressing these issues in the proposal OSHA expressed concern with reports of early damage to the nervous system because of limited regenerative capacity in the nervous system. For this reason significant attention was given to the work of Seppalainen who had observed early stages of peripheral neuropathy in lead workers whose blood lead levels never exceeded 70 μg/100 g based upon slowing of the maximal motor conduction velocities of the median and ulnar nerves, and particularly the slowing of conduction velocity of the slower fibers of the ulnar nerve. In particular the preamble stated:

> The results of these studies show effects that were similar to, although milder than the nerve conduction changes seen in an earlier study of workers with clinical symptoms of lead intoxication. While some of the test subjects in the earlier study had a prior history of overt lead intoxication, this was not true in the later study.
>
> The fact that workers whose blood lead levels never exceeded 70 μg/100 g exhibit damage to the nervous system which is similar to, although milder than, that found in workers with a history of clinical symptoms and with higher blood lead levels, suggests that these milder effects are also significant. These data raise questions as to whether nervous system damage caused by increased lead absorption in the subclinical range is reversible and whether there is a continuum of damage of the nervous system in workers with blood lead levels below, as well as above, 70 μg/100 g. Based upon these data, Seppalainen concluded, "* * * that no damage to the nervous system should be accepted and that, therefore, present concepts of safe and unsafe blood lead levels must be reconsidered. (Ex. 2, p. 45935-36.)

There is extensive evidence in the rulemaking record which addresses neurobehavioral effects and peripheral neuropathy in lead-exposed workers at blood lead levels below 80 μg/100 g. There has been considerable debate regarding whether these effects do indeed exist and what is their significance. During the hearings industry representatives raised questions regarding primarily the adequacy of the methodology of some of the research on neurological disease and secondly questioned whether these effects constituted material impairment. Based upon the evidence in the record OSHA has concluded:

1. Since neurological disease must be recognized as a continuum of disease, it is axiomatic that the irreversible stage is preceded at the opposite end of the disease progression by an early, relatively mild, stage of disease. These early developmental stages of neurological disease are pathological states and OSHA finds persuasive the arguments for adopting a lead regulation which protects workers from these consequences of lead exposure. OSHA believes that the neurobehaviorial effects and the slowing of motor nerve conduction velocities (MNCV) do follow a dose-effect relationship and constitute material impairment. OSHA is convinced by the evidence in the record that those many workers who demonstrate slowing of MNCV and neurobehavioral effects may grow progressively worse from neurological disease and therefore must be identified and protected.

2. Both central and peripheral nervous system effects to be described in lead exposed workers appear to occur at blood lead levels as low as 40 μg/100 g. Therefore, OSHA believes the final standard should to the degree feasible maintain blood lead levels at or below 40 μg/100 g.

3. The methodology employed in the studies cited has received critical scrutiny by the scientific community and other interested parties. Many of the studies relied upon have been published in peer review journals which require critical scientific scrutiny before being accepted for publication. The volume and quality of the studies in the literature support the conclusions of the Agency.

a. *Encephalopathy.* Encephalopathy is the most serious form of lead poisoning. It may occur precipitously with epileptic-like seizures, followed by coma, and finally cardiorespiratory failure. In fatal cases, death ordinarily occurs within 48 hours of the first seizure, unless there is a life-support system available. At other times, it may be a more prolonged, fulminant form of encephalopathy in which the individual's state of consciousness vacillates between lucidity and stupor for about a week, and then during the final 48 hours, coma develops which eventually progresses to convulsions and death, (Ex. 95, p. 87)

Even in the absence of death or prolonged unconsciousness, it is now widely accepted that irreversible neural damage typically occurs as one of the sequelae of non-fatal lead encephalopathy episodes. Such permanent neural damage is reflected by signs of continuing CNS impairment ranging from subtle neurobehavioral deficits to severe mental retardation or continuing mental incompetence. What is not yet universally agreed upon, however, are the lead levels sufficient to produce lead encephalopathy and its sequelae.

Terminal lead encephalopathies have given pathologists an opportunity to examine autopsy material from the brain and spinal cord. Through these examinations it has been found that there is a generalized edema of the white matter in both the cerebrum and cerebellum. It is also quite common to observe swelling of the oligodendroghia and accumulations of PAS-positive globules in the perivascular glial cells. (Tr. 106.) At other times, there will be a diffuse atrophy of the gray matter associated with nerves containing fibrillary tangles, which may, in fact, be a reaction that is more directly attributable to the loss of oxygen. This may be due to alterations in the endothelial layers of the capillaries which, in turn, congest the area and shut off the blood supply. In fact, some neurologists consider lead encephalopathy to be a form of vasculopathy. (Final Environmental Impact Statement: Inorganic Lead; U.S. Department of Labor, Occupational Safety and Health Administration, April 1978 (FEIS), Ch. 11, Ref. 92 (later cited as EPA Criteria Document); *Ibid.*, Ch. 11, Ref. 198; Ex. 95, Ref. Cantarow, p. 117). In certain cases of encephalopathy, the center for muscular coordination—the cerebellum—is severely damaged and this could help to explain some of the unusual symptoms experience by the victims. These symptoms have been described innumerable times and begin with the victim's loss of memory, prolonged headaches, hyperirritability, visual disturbances, lack of muscular coordination, and hallucinations. With continued exposure, these symptoms may escalate into convulsions and coma. (EPA Criteria Document, Ch. 11, pp. 11-15; Ex. 95, p. 86; Ex. 95, Ref. Cantarow, p. 121). More permanent health effects resulting from severe encephalopathy may include impaired motor coordination, altered sensory perception, decreased learning ability, and shortened attention spans. In children, the effects are more drastic and include such diseases as severe mental retardation, speech defects, blindness, and cerebral palsy (Ex. 95, p. 97; EPA Criteria Document, Ch. 11, pp. 11-16).

Severe cases of encephalopathy are today so unique that they are typically utilized to characterize patients who have absorbed large amounts of lead in an extremely short period of time. Encephalopathy is usually noted in children with a markedly higher inci-

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dence of severe symptoms and deaths occurring in them than in adults. The onset of the disease may be so rapid that the normal clinical manifestations, observed in milder forms of encephalopathy, may also be bypassed.

In general, where blood lead levels have been measured in adults with encephalopathy they ordinarily fall in the 80 μg and above range. However, in children, they have been found below this level. (Ex. 23(45); EPA Criteria Document, Ch. 11, Ref. 231; Ex. 95, pp. 88-98; EPA Criteria Document, Ch. 11, Ref. 208; Ex. 32(15); EPA Criteria Document, Ch. 11, Ref. 435). Such a varibility of blood lead levels, eliciting the same response, should not be surprising since it may simply be an indication of the differences in sensitivity of the child versus the adult. It could also be due to the lack of monitoring data available on PbB levels of adults suffering from encephalopathy. It is important to note that the neuropathologic findings as reported are essentially the same for adults and children. It has only been recently and through extensive study that the recognition of effects at lower levels in childen has been documented. OSHA is very concerned that the lack of evidence in adults may in fact be due to a lack of investigation rather than absence of disease. This may be true of all forms of disease, severe or mild, acute or chronic.

b. *Mild Encephalopathy.*

Historically the division between "severe" and "mild" forms of encephalopathy is mainly of diagnostic signficance for physicians in terms of survival and severity. Patients who are diagnosed as "severe" are usually suffering with epileptic-like seizures or coma—or some combination of both—and have been for more than 24 hours. By the same criteria, patients who are diagnosed as "mild" may still suffer with seizures and coma, but only briefly and without a serious impairment of consciousness. (Ex. 95, p. 87) Correspondingly, there is even a milder form of pathological damage which has been observed in studies of cerebrospinal fluid (CSF). For instance, the examination of CSF from patients suffering with mild encephalopathy, has been associated with a form of meningeal irritation. Since the presence of these cells is normally associated with an inflammation resulting from some source of irritation, it has been suggested that lead has caused the reaction in the meningeal coverings of the brain and spinal cord. (Ex. 95, Ref. Cantarow, p. 165) Coupled with the increased number of lymphocytes, some investigators have found an increase in the CSF pressure, as well as an increase in the lead content of the spinal fluid. (Ex. 23(10); Ex. 95, Ref. Cantarow, p. 136)

Symptomatic of mild encephalopathy are spells of dizziness, shortened attention span, insomnia, and verbal obstruction. Furthermore, patients may complain of forgetfulness and experience changes in their personality. (Tr. 146) Other clinical manifestations are also less severe, anemia and colic are not necessarily present.

In cases of mild encephalopathy the neurological symptoms have been found to remain. For instance, there may be cognitive impairment and profound behavioral changes in the individual which continue. (Ex. 95, p. 87)

c. *Behavioral changes.* One of the major issues addressed at the hearings was whether lower levels of lead exposure (30-80 μg/100 ml) effected neurobehavioral changes in apparently asymptomatic lead workers. That is, in the absence of clinical signs of lead encephalopathy, are there behavioral changes occurring which are manifestations of early neurological disease.

The effects of lead on worker behavior and performance was one of the main issues addressed at the hearings. While the record consists mainly of studies on behavior and reductions in performance levels usually coupled with a rather elaborate series of subjective symptoms, efforts to correlate neurological observations with other biological parameters, or with blood lead levels have been difficult. Earlier work on behavioral effects has been reviewed in detail and will not be repeated here. (Ex. 95, p. 157; EPA Criteria Document, Ch. 11, pp. 11-14; Ex. 262)

There is a growing body of evidence that exposure to lead at exposure levels which produce blood lead levels of 30-80 μg/100 ml in children effect neurological damage especially in the central nervous system. This evidence was the basis upon which the Center for Disease Control issued an updated statement on exposure of lead in children entitled "Increased Lead Absorption and Lead Poisoning in Young Children" in 1975. The document states:

> Lead has even more serious and largely irreversible effects on the central nervous system. It is manifested by severe acute encephalopathy at one extreme and relatively mild neurological disability and possibly hyperactivity at a lower level of exposure. (Ex. 32(15))

Based on this finding and others CDC recommended that the blood lead of children be less than 30 μg/100 ml and indicated that a child with a blood lead between 30-49 μg/100 ml would be considered to have a "minimally elevated" blood lead level requiring reductions of lead intake from all sources. While observations in children cannot be directly extrapolated quantitatively to adult workers because children may be more susceptible to lead, the qualitative similarity of mild nervous system damage in children at blood lead levels below those associated with overt toxicity in adults is worthy of note. In this context, the U.S. Public Health Service concluded for children that, "• • • the statistical likelihood of clinical symptoms and permanent damage increase at least arithmetically with confirmed blood lead levels above 30 μg/100 g. • • •" (Ex. 5(15), p. 3)

Zielhuis as early as 1972 recommended an individual limit of 35 μg/100 ml and a group average of 20 μg/100 ml for children. (Tr. 1078-79) While it is beyond the scope of this section to discuss the evidence relating to the significance of neurobehavioral effects at low lead exposure in children, suffice it to say that the evidence indicates neurological damage as manifested by behavioral deficits does occur in children exposed to lead levels below that set in this standard.

A number of studies suggest that permanent damage to the nervous system may have occurred in children only moderately exposed and in whom no overt symptoms of toxicity had appeared. These effects include behavioral problems such as hyperactivity, difficulty in task performance, deficiency in IQ and nerve conduction deficits. EPA has thoroughly reviewed the neurobehavioral effects in children exposed to low or moderate lead levels. (EPA Criteria Document) EPA concluded that "blood lead levels of 50-60 μg/100 ml are likely sufficient to cause significant neurobehavioral impairments for at least some apparently asymptomatic children". (EPA Criteria Document, Ch. 11, p. 11-20) OSHA agrees with this conclusion of EPA and will discuss the data in the section on reproductive effects. It is important to note that as recently as 10 years ago a blood lead level of 55-60 μg/100 g as compared to less than 30 μg/100 g was considered normal for children. Given the drop in acceptable levels for children as our understanding of the effects at low levels has increased, OSHA believes that a similar situation may be true for adults.

d. *Studies.* The record in these proceedings contain a number of investigations which demonstrate neurobehavioral effects in lead exposed workers whose blood lead levels ranged above and well below 80 μg/100 g. OSHA believes they should be reviewed here since their findings are both significant and in some cases controversial. At this point the blood lead level at which a claim of "no effect" can be made is unknown. In contrast to the hematopoietic system the neurobehavioral data is still incomplete with respect to establishing a threshold level.

In a paper entitled "Effect of Lead on the Central and Peripheral Nervous System" prepared for the Amsterdam Conference (Second International Workshop on Occupational Lead Exposure, Reevaluation of Permissible Limits on Lead) in 1976, Seppalainen, Hanninen, and Hernberg reported on an investigation by Hanninen and Parland who studied 41 lead workers, most of whom had PbB levels in excess of 70 μg/100 ml. Blood lead data was available for 38 subjects and ranged from 60 to 150 μg/100 ml. These authors were able to demonstrate strong indications of CNS dysfunction in six of nine workers with blood lead levels below 70 μg/100 g. (Ex. 24(19)) Seppalainen describes the results of this study at the Amsterdam Conference.

> The mean age of the workers was 32.5 years (range: 18-58 years). Healthy unexposed subjects of the same educational level and age range formed a control group (N=50), and two groups with CS_2 exposure (50+50), one of which comprised cases of poisoning, and the other "healthy" exposed workers, were used as additional reference groups. All subjects were examined with a large behavioral test battery including tests measuring intelligence, speed of performances, psychomotor functions and features of emotional reactions.
>
> Compared with the control group (n=50), the lead workers were significantly inferior in two tests of intelligence and in several tasks demanding speed or control of psychomotor functions. In the personality test they showed less emotional reactivity but nevertheless more loss of rational control of behavior. Compared with CS_2 groups, the indications of CNS dysfunction were quantitatively milder than in the group with CS_2 poisoning but more severe than in the group with CS_2 exposure but without poisoning. Qualitatively, the lead syndrome differed from the effects of CS_2 by relatively more accentuated intellectual defects and disturbances of psychomotor control whereas the retardation of performance speed was less advanced. When a discriminant analysis was made between the four groups two of the three discriminant functions were relevant with respect to the differences between the lead group and the other ones. The first function discriminated the groups according to the severity of the CNS dysfunction, and the second function yielded an optimal separation between the lead group and the group with CS_2 poisoning. When each subject was classified to the group he was most likely to belong to according to his discriminant function values, 59 percent of the lead workers were classified into their proper group, 22 percent into the group with CS_2 poisoning, 12 percent into the "healthy" CS_2 exposed group, and 7 percent into the control group. When the sum of the probabilities for belonging to either one of the groups with most behavioral impairment (lead group and CS_2 poisoning group) was used as a measure of CNS dysfunction, there was no correlation between the dysfunction and the PbB levels. Six of the nine subjects with a PbB below 70 μg/100 ml had strong indications of CNS dysfunction. Although the causal connection between lead exposure and behavioral impairment could not be confirmed with certainty in these cases, this result was taken as a warning against considering PbB levels below 70 μg/100 ml as completely harmless. (Ex. 24(19), p. 7-8)

The study serves as an early indication that behavioral effects may be occurring at reduced blood lead levels.

Crockford and Mitran (Ex. 234 (21)) studied the ability of lead workers with slowed nerve conduction velocity to perform a number of psychomotor tasks as compared to a control group. The study was designed to determine if the performance of the lead exposed workers would be inferior to that of the control group. The population was the same as that reported by Lee and coworkers (See section on peripheral neuropathy). This study was limited to the employees who had demonstrated reduced motor nerve conduction velocities in an earlier study by Lee and coworkers. The authors sought to determine the significance of the MNCV reductions by studying the effects on the performance of specific tasks selected to demonstrate particular injury caused by lead absorption. Sixty-seven exposed workers and seventy-nine unexposed persons were tested in July-August 1976 as compared to ninty-four exposed and ninty-four controls studied by Lee over a 6-month period in 1975 and 1976. A battery of psychomotor tests including addition tests, maximum grip strength, reaction times to a visual stimulus and a small electrical stimulus, speed of tapping with a stylus, one hole test and a questionnaire, as administered to exposed workers and control. (Ex. 234 (21), p. 3)

The authors stated that "the results obtained do not indicate that a slowed nerve conduction velocity of the magnitude reported in these lead workers is associated with any decrement in performance. Nerve conduction velocity changes are therefore at the moment of doubtful value in determing exposure limits for lead. The changes in NCV are more likely to originate from training or homostatic mechanisms and are unlikely to indicate damage to the nerves." (Ex. 234 (21), p. 9)

OSHA believes this study is difficult to interpret and contains significant methodological weaknesses which make its findings questionable. First, there was a significant time lag between nerve conduction velocity measurements and psychometric testing. While the lag time might not invalidate the results the fact that the blood lead levels changed from a mean of 60 μg/100 ml in the NCV studies to 51μg/100 ml in this study raises serious question about the results. As stated above, the number of exposed workers (67) in the study by Crockford differed from those of Lee (94). This represents a decline of 27 subjects or 28 percent. Given the difference in experimental conditions it is doubtful that it is valid to compare results and conclude no correlation exists between slowed NCV and performance scores. Seppalainen for example has suggested the authors were at "a no-effect level at 51 μg/100 ml." (Ex. 319) Given the PbB levels and difference in number of subjects it is impossible to determine if the PbB levels were lower because fewer high exposed workers were involved or whether the PbB levels had actually dropped. In other cases these differences render the authors' conclusion meaningless.

The authors do not analyze the results of their clinical findings which appear to indicate significant differences between subject and control groups in terms of subjective symptoms. It is unclear why these authors ignore the clinical findings in these populations. There are significant differences between the exposed population and controls in the following areas: change in temper, sleep difficulty, headache, vertigo, numbness in arms and legs, blurred vision, any sight defect, and abdominal pain. The authors do state:

> The exposed workers appear to show a preponderence of subjective complaints. The complaints however could be due to differences in the physical environment of the two groups and interpretation must wait on an investigation of this aspect of the respective working areas. (Ex. 234 (21), p. 8)

In OSHA's view these findings deserve further review especially given subsequent data developed by Fischbein et al. and reported in this section. For example, 13.4 percent of the exposed workers had constant numbness in arms and legs compared to 1.3 percent of the controls and 12 percent of exposed workers had occasional numbness compared to 6.3 percent. Since these are presumably the same workers with MNCV reduction careful followup is indicated.

OSHA must conclude from its analysis of the data that the results of this study are at best inconclusive. The authors' conclusions discussed above cannot be considered valid and the research must be viewed at this stage as a progress report which requires further study and evaluation. It is especially important to further evaluate the subjective symptoms to determine if they are related to lead exposure.

OSHA discussed the work of Repko et al. in the preamble to the proposed lead standard.

The data of Seppalainen agree reasonably well with those of Repko, Morgan, and Nicholson who studied behavioral measures of task performance among workers exposed to lead in storage battery manufacturing companies. While intellectual functions were unaffected by increases in body burden of lead, hand, sensory (hearing), neuromuscular or psychomotor (tremor, eye-hand coordination, muscular strength, and endurance and psychological (hostility, aggres-

sion, and general dysphoria) functions were all influenced by the body burden of lead. The strongest relationships between exposure and effects were found with tests of neuromuscular and psychomotor functions and major changes on the preferred side of the body were observed at blood levels between 70 and 79 μg/100 g. (Ex. 2, p, 45936)

At the public hearings Repko presented a reevaluation of his earlier work. Discussion was limited to the altered functional capacity observed in hand-eye coordination, tremor, strength, auditory acuity, and psychological well-being (mood or affect). He limited his discussion to those specific tests of functioning because "the analyses revealed that the clinical indicators bore no statistically reliable relationship to the types of behavioral functioning assessed through the use of the multiple task performance battery, the test of visual acuity and the digit span test." (Ex. 52, p. 6) Repko acknowledged that while certain measures of performance obtained from the lead-exposed employees suggested significant decreases in functional capacity with increases in PbB or decreases in ALAD there was no evidence which demonstrated differences when compared to the control group. Repko concluded that the failure to demonstrate differences was based on motivational differences between subjects and controls.

However, Repko stated a means to reevaluate the data:

> Recognizing that the utilization of the control data in this research has severe limitations where motivation is a factor influencing performance, or where differences in test behavior are suggested, or where antecedent noise exposure may affect hearing levels, the correlative changes in functional capacity exhibited by the lead-exposed workers must be regarded as more conclusive since the changes are related to biomedical indicators of exposure and effect. The tests involving visual acuity and auditory acuity are not motivationally dependent tests, whereas all other tests utilized in the study require some optimum efficiency in performance, especially in the absence of individual baseline data. (Ex. 52, p. 9)

Based on this finding, Repko disregarded the control data and carried out additional anayisis of the data utilizing a univariate analysis of variance of the difference between workers with PbB 69 μg/100 ml or below to those with PbB 70 μg/100 ml or above. Analysis of the data led to the conclusion that the original conclusions were indeed correct and that these analyses demonstrate unequivocally that functional capacity is decreased in workers whose ALAD activity is approximately 90 percent inhibited or in workers exhibiting a PbB of 70 μg/100 ml or greater. "Thus measures of exposure, PbB, and of effect, ALAD, clearly delineate a cause and effect relationship between occupational lead exposure and decreased functional capacity." (Ex. 52, p. 10)

Serious methodological questions with these studies were raised during cross-examination by Dr. Lynam especially with respect to the lack of control booths for audiometric testing, the equipment failures during testing, lack of a history of past noise exposures, control group difficulties and problems of overlap between PbB groups and ALAD groups, since they were divided by different criteria. While not discussing these criticisms in detail OSHA has concluded that the concerns have merit and do raise questions with respect to the conclusions in this study. Although indications of behavioral effects do exist in this study OSHA cannot conclude that the data alone conclusively support a finding of behavioral effects at PbBs equal to or greater than 70 μg/100 ml.

More recently Repko et al. reported the results of a study in which 53 behavioral measures of sensory and motor function, 6 measures of nerve conduction velocity, 5 indices of inorganic lead absorption, a clinical electromyogram, a clinical neurological examination and demographic data were obtained from 85 workers from a storage battery industry and 55 controls who worked in a light manufacturing industry. The study groups were statistically identical in terms of age, height, and weight, although there was a slight difference in educational level. The mean blood lead level of the lead exposed workers was 46 μg/100 ml and the value was 18 μg/100 ml for the control group. There was nothing to indicate that stratification of the subjects was a factor that might invalidate any interpretation of the results and based upon the results of a psychological and social assessment the authors argue that the two groups represented a homogeneous population. The worker population had PbB which had been consistently below 80 μg/100 ml and were asymptomatic upon examination.

Repko reported that "Differences between the two groups were evident in the NCV and behavioral measures. The lead-exposed workers showed a statistically significant lower conduction velocity in the magnitude of 5 to 9m/sec for the MCV of the median, ulnar, posterior tibial, and deep peroneal nerves. Also, the sensory conduction velocity (SCV) of the ulnar nerve was significantly slower for the lead workers; no differences in the conduction velocity of slower fibers (CVSF) of the ulnar nerve were noted. The results of the behavioral measures showed that deficits in visual reaction time, under response control of the ulnar nerve, as well as deficits in auditory functioning, in terms of both pure-tone thresholds and tone-decay, were all adversely affected by low-level absorption. No differences were noted in the strength, eye-hand coordination, or other psychological/social measures." (Ex. 422; Abstract)

A review of this study indicates that the methodological problems which plagued some of the principal authors' earlier work appear to have been resolved and were not apparent here.

Repko concluded: "It is clear from the present study data that the pure-tone thresholds of exposed workers are consistently higher for both the right and left ears at the frequencies tested. Of these differences in pure-tone threshold, 35 percent were statistically significant. These data are further enhanced by the results from the tone-decay test which demonstrate that at threshold and at 5dB above the threshold, the lead workers exhibited a greater amount of decay than nonlead workers. Normal functioning of the auditory system should not produce tone decay. The observed hearing loss is most probably sensorineural, although a central hearing loss cannot be eliminated completely. Sensorineural hearing loss may be attributed to various factors, including drug toxicity.

The second important behavioral finding relates to the visual reaction time test. Reaction times of lead intoxicated workers have been compared to those of non-exposed workers by various Soviet and Eastern European Scientists. Increased reaction times have been reported in leaded workers in response to spoken words or other auditory stimuli to visual stimuli, and to electrical stimuli. The results showing increased reaction times are consistent with findings noted in the literature. The particular motor response involved in the visual reaction time test requires control by the ulnar nerve. The ulnar nerve is the primary motor nerve responsible for lateral movement of the fifth finger. It is also quite interesting that a significant negative relationship was obtained between increases in reaction time and decreases in the maximal motor conduction velocity of the ulnar nerve.

Such findings are impressive, they provide important support to the notion that data derived from behavioral toxicology methods should be utilized in establishing the health status of groups of individuals regularly exposed to lead. The extent of which the neurobehavioral dysfunctions noted in this study and in other epidemiologic studies contribute to increased accidents must be investigated further. From the limited information gained in this study involving accidents, it can be said that the lead workers in the sample group did show significantly more accidents than the workers in the control group. It is clear, in summary, that lead exposure, even at PbB levels substantially below 80 μg/100 ml, may result in various interrelated neurobehavioral dysfunctions; the consequences of such dysfunctions are to detrimentally affect the performance of tasks or jobs involving motor responses." (NIOSH Technical Report, January 1978, Contract No. 210-75-0054; Ex. 422 (A), p. 63)

OSHA has reviewed this work and believes that the results are especially noteworthy with respect to the visual reaction time test insofar as behavioral effects and slowing of the maximal motor conduction velocity of the ulnar nerve are significantly related. In particular as Repko states: "The ulnar nerve is the primary motor nerve responsible for lateral movement of the fifth finger". (Ex. 422 (A), p. 63) This direct relationship has not previously been reported in the U.S. and bears further investigation. The authors appear to have carefully designed these studies. The slowing of MNCV of the peripheral nerves are in agreement with work to be discussed later in this section. Given the growing body of evidence available to OSHA the Agency has concluded that reduced MNCV in these cases are a result of early peripheral neuropathy and as Repko and others have demonstrated these changes occur at PbB levels well below 80 μg/100 g.

During the hearings Lilis and Fischbein et al. testified on their extensive studies on lead disease among workers in secondary lead smelters. They reported the results of two studies, the first in two secondary lead smelters in Indianapolis, Ind. (Ex. 23(39)) and the second in Vernon, Calif. (Ex. 118(c)) In the first study 158 lead smelter workers were examined of which 113 worked in one plant and 45 in another. In addition, 24 workers without significant lead exposure from two other local plants were examined. The study protocol included a careful review of each individual's experience and history, a broad spectrum of laboratory tests, nerve conduction velocity measurements, reaction times, chest X-rays, and chromosome studies. With respect to CNS symptoms, the authors reported that tiredness, fatigue, nervousness, sleeplessness or somnolence, and anxiety existed in a large percentage of subjects and in addition reported finding other symptoms such as slowing of thought, memory deficits, errors in simple calculations and difficulty in symbol manipulations. A second group of symptoms with high prevalence (38 of 151) was loss of appetite and weight loss. Even for those with less than 1 year of exposure the prevalence was significant.

The third group of symptoms were muscle and joint pain and/or soreness. These symptoms were reported by 70 (46 percent) of 151 active workers. The prevalence of these symptoms increased with duration of exposure. In all three cases the prevalence of central nervous system symptoms correlated with elevated zinc protoporphyrin levels, which is a measure of the effect of lead on heme synthesis (see heme section). Also, the prevalence of symptoms was higher in those workers with elevated blood lead levels. The authors considered it noteworthy that each of the three symptoms followed a similar pattern, that is the prevalence of symptoms showed a marked increase after more than 1 year of exposure which indicates that it takes less than a year to develop these clinical symptoms of lead poisoning under the conditions of lead exposure.

Peripheral neuropathy manifested by weakness of extensor muscles of wrists and/or fingers was discovered in 19 workers. Six of the workers with extensor weakness had had more than 10 years of lead exposure whereas thirteen had had less than 10 years exposure. The blood lead level exceeded 60 μg/100 ml in 14 cases and in 7, the PbB was greater than 80 μg/100 ml. There was no instance of ZPP levels being less than 100 in those cases demonstrating peripheral neuropathy. Nerve conduction velocities (NCV) were measured on the radial nerve of the active extremity and the authors reported 16 out of the 19 workers with symptoms of peripheral neuropathy had decreased NCV's. The mean NCV for the 19 workers was 55.3/sec as compared to 60.1 m/sec for the control group.

In addition, nerve conduction velocity was measured on the radial nerve of the most active extremity and on the left peroneal nerve in 134 lead workers. 61 workers (46 percent) had reduced radial nerve conduction velocities, that is, an RNCV less than 55 m/sec. The prevalence of reduced radial nerve conduction velocities was 25 percent in the control population. While this value of 25 percent appears somewhat high for a control population it is not inconsistent when one considers that this control population was also subject to lead exposure. The authors considered these workers' lead exposure to be insignificant (soldering of food cans) but the fact remains that 10 workers (42 percent) had PbBs of 40-59 μg/100 ml. Seppalainen has found reduced nerve conduction velocities in two or more nerves in workers whose PbB was in this range (13 percent, 50-59; 7 percent, 40-49); 39 of the 61 workers with reduced nerve conduction velocities had a history of high PbB in the past but significant decreases in NCVS was found to occur in young workers as well suggesting early onset of neurological damage. (Ex. 5(13))

The authors conclude this study with the following summary: "A clinical survey of 158 workers employed in two secondary lead smelters in Indianapolis, Indiana (February 2-4, 1976) revealed a high prevalence of lead disease, with symptoms and abnormalities reflecting a wide range of lead induced changes, including central nervous system and gastrointestinal symptoms, muscle and joint pain, history of lead colic, repeated findings of elevated blood lead and low hemoglobin values. Elevated blood lead and zinc protoporphyrin levels at the time of the examination were common. Reduced nerve conduction velocity values were found in a significant proportion of examined workers.

These abnormalities occurred even after short (one year or less) periods of lead exposure. The concurrent finding of elevated blood lead and zinc protoporphyrin levels after similar durations of exposure confirmed the relatively rapid build-up of toxic lead levels. As expected, however, longer lead exposure was associated with greater prevalence of disease, and more severe abnormalities.

Zinc protoporphyrin levels showed better correlation with symptoms and other clinical or laboratory abnormalities than did blood lead levels, indicating that zinc protoporphyrin provides a more accurate index of biological response to lead exposure. Since ZPP is a measure of effect as distinct from a measure of absorption this result is not surprising. It is further indication that there is a relationship between health effects in one system influencing effects in another. The ZPP level in blood at a particular time reflects the lead levels at the site of erythropoiesis averaged over the preceding four months. The blood lead level has an equilibrium time of no more than a few days and reflects recent lead absorption.

It should be noted that the current study was limited in scope, with examination of only 158 smelter workers. Nevertheless, the findings call attention to central nervous system effects, peripheral neuropathy and renal damage as potential results of undue lead exposure." (Ex. 23(39), p. 98-100)

In a followup evaluation Lilis et al. described their findings in a subgroup of the previously described total population who had PbB of less than 80 μg/100 ml at the time of examination and who had never been notified that their blood lead level had been excessive and who had never received chelation. Central nervous system symptoms were found in 56 percent of the lead exposed workers. Once again the prevalence of symptoms correlated with ZPP. The prevalence of loss of appetite and weight was 15 percent as compared to 12 percent for controls, and the prevalence of muscle and joint pain and/or soreness was 39 percent. This subgroup of 48 with PbB levels not exceeding 80 μg/100 g had 26(54 percent) with a duration of lead exposure of less than one year and 18(38 percent) had been exposed for 1 to 3 years. The prevalence of CNS effects is striking given the brief exposures of these subjects. This must be assumed to demonstrate again early neurological damage at relatively low blood lead levels.

Nerve conduction velocity measurements indicated slowing in radial nerve of 20 percent of the lead exposed workers whereas the prevalence in the control group was 25 percent (5 of 20). This result is difficult to assess for two reasons: first the PbB of the controls were slightly elevated (42 percent between 40 and 59 μg/100 ml) and the control group had a much higher mean age (41.1 years versus 28.7 years in the lead-exposed workers). (Ex. 23(14))

Based on these findings OSHA concludes that these studies clearly demonstrate central nervous system symptoms in workers whose blood lead levels are below 80 μg/100 ml and represents definitive work in the study of the relationship between low level ex-

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posure to lead and behavioral manifestations to date. OSHA is in general agreement with the author's conclusions:

In this study of lead-exposed workers whose blood lead levels were lower than 80 μg/100 ml and who had had no history of higher blood lead levels in the past, adverse health effects such as significant increase in ZPP levels, anemia, central nervous system symptoms, and muscle or joint pain were found with increased prevalence. This may be related, in some degree, to the rate of buildup of the lead body burden, a factor that has hitherto received little attention. Further, the data indicate that a blood lead level of 80 μg/100 ml is an inappropriate biological guide to control of occupational lead disease and is unsatisfactory if the main goal of medical surveillance, i.e., prevention of lead poisoning is to be achieved. It is clear that adverse health effects of lead occur below 80 μg/100 ml. It is also evident that the data here presented indicate that blood lead levels should not be allowed to exceed 60 μg/100 ml and that monitoring of lead-exposed workers should include ZPP determinations, which give a more sensitive estimate of biologically active lead than simple blood lead examinations, as they show a good correlation with clinical abnormalities. (Ex. 23(14), p. 265)

Dr. Lilis reported the results of the second study of a secondary lead smelter in Vernon, Calif. during the hearings. (Ex. 118(c)) This study was similar to that carried out in the two Indianapolis smelters.

After completion of the Vernon, Calif. clinical field survey of secondary lead smelter workers, a comparison of the findings in this group with those previously reported from the Indianapolis study was undertaken.

It was consistently found that symptoms related to lead toxicity were less prevalent in the Vernon group than in Indianapolis reflecting thebetter control of lead in the former case.

CNS symptoms were found in 64 percent of the Indianapolis workers and in 60 percent of the Vernon lead exposed workers, while in the control group they were present in only 20 percent of individuals.

Muscle and joint pain and/or soreness were also frequent symptoms of lead toxicity. They were reported by 46 percent of the Indianapolis workers as compared to 31 percent in the Vernon group; in the control (not lead exposed) group, only 11 percent had such symptoms.

Loss of appetite and weight loss are the third group of symptoms associated with lead toxicity, and such complaints were reported by 25 percent of the Indianapolis group as compared with 22 percent of the Vernon lead exposed workers, and only 11 percent of the control workers; 40 secondary lead smelter workers in Indianapolis (25 percent of those examined) had had one or more episodes of lead colic and 21 (19 percent) of the Vernon group gave a similar history. This did not occur among controls; 93 of the 158 lead smelter workers in Indianapolis (59 percent) had been notified of high blood lead levels in the past and 50 (32 percent) had had high blood lead levels on several occasions. For the Vernon lead smelter workers, the overall figures were similar: 56 percent had had high blood lead levels, but there had been less workers with repeated high blood leads. (21 percent).

When blood lead levels were found to be high, chelation therapy had been frequently used in the Indianapolis workers; 47 workers in plant 1 and 24 in plant 2 had been given such treatment and 45 (27 percent) had had repeated courses of therapy. In many cases, chelation therapy had been given without removing the worker from his usual lead exposures. Change in job assignment to areas of lesser lead exposure had been used much less frequently.

The situation in Vernon is different in this respect. Only 21 (19 percent) of those examined had had chelation therapy and only 6 (5.5 percent) had been given repeated courses of treatment. The practice had been to remove workers with high blood lead levels from areas with excessive lead exposure. Chelation therapy was not administered while lead exposure continued, but in most cases only after hospital admission.

Blood levels, at the time of the examination, were found to exceed 60 μg/100 ml in 21 percent of the Vernon group; only in one case was the level higher than 80 μg/100 ml.

This was much less than the proportion of workers who had been notified in the past of elevated blood lead (56 percent). In contrast to the findings in Vernon were those on the Indianapolis workers; 77 percent had had blood lead levels of 60 μg/100 ml or higher and in 29 percent the levels had exceeded 80 μg/100 ml.

Zinc protoporphyrin was also found to have a strikingly different distribution in the Vernon group, when compared to the Indianapolis group. While the proportion of workers with ZPP in the accepted range (less than 100 μg/100 ml) was more than 3 times higher in Vernon than in Indianapolis, the proportion of those with high levels, in excess of 200 μg/100 ml, was 30 percent in Vernon and 71 percent in Indianapolis reflecting the higher exposures in the latter case with the concomitant higher resulting effects.

Peripheral neuropathy, manifested by weakness of extensor muscles of the wrists and/or fingers in the most active extremity, was found in 23 (21 percent) of the Vernon workers. This finding was related to duration of lead exposure; 13 percent of workers with less than 10 years in the smelter were affected, while the proportion doubled in those with lead exposure of 10 to 20 years and was threefold in those with more than 20 years in the plant. The same relationship had been found in the Indianapolis group, and apparently indicates a dose effect relationship.

The results of the examination of 111 secondary lead smelter workers in Vernon indicate that excessive lead absorption and adverse lead effects were present in a smaller proportion of those examined that had been previously found in a similar group in Indianapolis.

In addition to the clinical evaluations to determine CNS symptoms, Dr. Jose Valciukas, also of Mount Sinai, carried out a battery of behavioral tests on 90 secondary lead smelter workers and 25 nonexposed steelworkers. These behavioral tests included the Block Design test (BD), the Digit-Symbol test (DS), the Embedded Figures test (EF); the Santa Ana Dexterity Test of the dominant hand (DH) and both hands (BH). Subjects were examined at random and examiners did not know whether the subjects were lead exposed workers or controls. In three tests there were significant differences, block design, digit symbol and embedded figures, and which were not related to differences in age or education between subject and control. Dr. Valciukas testified during the hearings on his findings and concluded the following:

(1) Three of the five performance tests (BD, DS, and EF) show according to Student's t-test a statistically significant dependence on ZPP with P ranging from .003 to .02. These tests have been successfully use in the assessment of brain dysfunction. The dexterity tests scores (DH and BH) are not significantly correlated with ZPP levels.

(2) For the BD, DS, and EF tests, scores are correlated with ZPP at P values at least a factor of 10 lower than those for blood levels. This can be understood in terms of the ZPP level representing a 4-month averaging of the lead burden for exposed individuals, as discussed above. It is consistent with the finding that several other lead-related symptoms in a lead-exposed population are better correlated with ZPP levels than with blood lead level.

(3) An observable correlation of the scores with ZPP persisted to fairly low ZPP concentrations (for instance, for EF P .1 for a subgroup having (ZPP) 170 μg/dl). The slopes of the fitted experimental curves suggest that the initial decreases in performance test scores were approximately 16, 7, and 5 percent per 100 μg of ZPP deciliter for the BD, DS, and EF tests, respectively; however, our sample size does not permit establishing statistical significance in this range.

(4) Although the correlation between scores and ZPP levels is statistically significant, the fitted curves have low accountability; that is, the scatter of scores due to individual variability greatly exceeds the effect that ZPP levels have on scores for the population studied here. It is then impossible to draw conclusions about an individual's ZPP level or lead intoxication from his test scores alone.

This study is based on a group of workers whose blood lead and ZPP levels indicate that a portion of this population meet the clinical definition of lead intoxication. Erythrocyte porphyrin levels for the general (not occupationally exposed) population have been reported (9) to be in the range 20 to 60 μg of ZPP per deciliter. If the correlations are significant at such low ZPP levels, some degree of CNS dysfunction may occur not only in some lead-exposed workers but also in children living in lead-contaminated environments or in other groups with environmental exposures to lead (in water, food, or air). (Science *201*, 467 (1978).)

During cross examination Dr. Cole questioned whether job stratification may influence the results of behavioral testing (Tr. 2735) and suggested a less adept person might gravitate towards dirtier, less desirable jobs. In both Drs. Valciukas' and Lilis' professional opinions, job stratification was not an issue and given that Dr. Cole did not specify in more detail his concern, especially with respect to any particular test, OSHA has accepted the findings of the neuropsychologist as being valid.

An article entitled "Psychological Performance of Subjects with Low Exposure to Lead" by Haenninen et al., published October 1978 in the Journal of Occupational Medicine provides confirmatory evidence to the behavioral studies already discussed. OSHA believes this paper to be of fundamental significance in that the behavioral studies were carried out on subjects whose blood levels had never exceeded 70 μg/100 ml (mean blood lead level was 32± 11 mg (100 ml). The following tables demonstrate the results of the study:

TABLE 1.—*Performance of the Exposed and Reference Groups, Raw Scores*

Variable	Exposed group (N=49) Mean		SD	Control group (N=24) Mean		SD
Similarities	17.7	+	3.3	19.4	+	2.3
Picture completion (PC)	13.7	±	3.2	14.7	+	3.9
Block design (BD)	34.7	±	9.0	35.5	+	7.7
Digit span (DSp)	9.9	±	1.2	10.3	±	1.3
Logical memory (LogM)	10.6	±	3.4	12.1	±	4.2
Visual reproduction (Vis R)	9.9	±	2.5	10.2	±	2.7
Bourdon Wiersma, speed (BW sp)	33.6	+	6.8	32.9	+	6.5
Bourdon Wiersma, errors (BW err)	22.4	+	29.7	15.8	+	12.3
Benton, time (Ben time)	149	+	55	153	+	56
Benton, errors (Ben err)	2.76	+	2.12	1.91	+	2.15
Santa Ana, preferred hand (SA right)	45.6	+	6.1	46.3	+	7.1
Santa Ana, left hand (SA left)	42.1	+	5.5	41.5	+	6.8
Santa Ana, coordination (SA co)	30.1	+	5.2	27.4	+	6.2
Simple reaction time, preferred hand [1] (SRT right)	1,462	+	262	1,448	+	313
Simple reaction time, left hand [1] (SRT left)	1,385	+	261	1,310	+	251
Choice reaction time (CHRT)	1,711	+	298	1,739	+	226

[1] Cumulative time for 50 reactions in microseconds.

The authors conclude as follows:

In a study of the effects of low lead exposure on psychological performance, 49 exposed workers and 24 controls were given a psychological test battery. All the lead workers had been under regular monitoring during their entire exposure time, and only workers whose maximal blood lead concentration had never exceeded 70 μg/100 ml were included in the study. At the time of the examination, the mean blood lead level of the exposed group was 32+11 μg/100 ml. Comparisons were made both between exposed and nonexposed workers and within the exposed group. In the latter case, the maximal, the average and the actual blood lead concentrations were used as measures of uptake. The most important finding was a significant relationship between impaired psychological performance and lead uptake within the exposed group. The performances that were most affected by lead depended on visual intelligence and visual-motor functions. Age and neuroticism did not explain these relationships. The impairment of psychological performance correlated better with the average than with the maximal or actual blood lead concentration. Considering that no single blood lead concentration had ever exceeded 70 μg/100 ml, these findings indicate that the threshold for impaired performance lies below that level.

Although the impairment of performance found in these workers was mild, the results nevertheless demonstrate that some higher nervous functions are affected by rather low lead exposure. Slight peripheral nervous damage, evident as reductions in conduction velocities, also occurred in the same workers; this impairment also showed a relationship with lead uptake.[32] To what extent such early signs of peripheral and central nervous dysfunction can be regarded as significant enough to warrant reevaluation of the concept of "safe" exposure level remains a matter of judgment. However, a group of experts who met in Amsterdam in 1976 agreed, partly as a result of our preliminary findings on peripheral and CNS effects, that PbB levels should not exceed 60 μg/100 ml and that it was desirable to reduce individual exposure even below this level in order to protect the nervous system.[33]

The extensive research carried out at secondary smelters and reported by Lilis, Fischbein et al. was uncontroverted during the public hearings. Given the soundness of methodology and number of parameters evaluated the studies are without question some of the most significant investigations described during this rulemaking. The evidence of CNS symptoms in lead exposed workers at levels above and below 80 μg/100 ml is particularly striking. The data does not allow the development of a clear dose-response relationship with blood lead levels and therefore there is no clearly delineated no effect level with reference to blood lead levels. There is clear evidence for effects well below 80 μg/100 ml. The finding of significant correlations with ZPP demonstrates the advantage of this biochemical parameter as a biological indicator of long-term lead effects. These authors suggest that ZPP levels correlate better with symptoms of chronic lead toxicity than blood lead levels. The data presented in these studies appears to confirm this point of view. OSHA believes this research documents the existence of central nervous system disorders in lead exposed workers whose PbB levels were below 80 μg/100 ml. Dr. Lilis testified on this point during the public hearings:

Mr. KUCHENBECKER. Based on your experience in these studies as well as your prior background, I wonder if you would agree with the conclusion reached in Amsterdam about a blood lead level above which no lead worker should exceed. Do you think that 60 is acceptable, or is there another level?

Dr. LILIS. I understand your question. I would say that above 60 one may expect florid lead poisoning, full blown lead poisoning, so nobody should ever be allowed to reach a blood lead level exceeding 60. On the other hand, evidence has been accumulating that even at lower levels than 60, adverse effects are to be found, especially in regard to the hematopoietic system as shown by the zinc protoporphyrin tests which, as you well know, and I think everybody present here knows, now in men would increase at levels around 40–45, or between 40 and 50 anyway. In women, at even lower levels. Since zinc protoporphyrin reflects an adverse effect, and not only that, since zinc protoporphyrin, by our studies and some other studies, was shown to correlate very well with both symptoms and signs of lead poisoning, that indicates that even at lower levels when zinc protoporhyrin starts to go up, there is an adverse effect.

By the same token, I think, effects on the peripheral nervous system have to be considered and they have been shown to occur according to Seppalainen's work—we have no personal experience at such low levels, but I am going to come back to this point—that at levels around 50 micrograms per 100

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cc's, you may expect changes in nerve conduction velocity.

Now I am going to come back to the point which I want to make, that we have not had an opportunity to examine any group of workers in which blood lead levels did not exceed 60 micrograms, so we cannot really attest to such findings as Seppalainen's, but we can say that we have seen zinc protoporphyrin to be a very good indicator for biological effects of lead and since zinc protoporphyrin starts going up at around levels of 40 or 45, that means that at those levels you already find something go wrong in the body. (Tr. 2700-02)

And later in her cross examination (SIC) by Dr. Lloyd she reinforced these views:

Dr. LLOYD. They said, "It was agreed that for male workers, individual blood leads should not exceed 60 micrograms per 100 milliliters, in the light of present knowledge available to the group. It is, however, desirable to reduce individual exposure below this level, taking into account the effect on the hematopoietic system at concentrations above 45 to 50 micrograms and on nerve conduction velocity at concentrations between 50 and 60 micrograms. Do you concur with that statement?

Dr. LILIS. Perfectly. (Tr. 2719-20)

OSHA agrees with these conclusions of Dr. Lilis that in order to prevent CNS effects in lead exposed workers PbB levels must be kept at or below 40 μg/100 ml.

(c) *Severe (chronic) neuropathy.* Lead workers with severe peripheral neuropathy are distinguished by extensive pathological changes in the motor nerves. Such pathological changes may include degenerative lesions of the anterior horn cells (motor neurons) of the spinal cord, with concurrent vascular congestion and hemorrhaging of the surrounding capillaries (Ex. 24(19), pp. 13, Ref. Campbell). This degenerative process may also produce fat globules, chromatolysis, and cell vacuolation in the motor neurons. It is also not unusual to see extensive demyelination and sclerosis of the posterior and lateral columns of the spinal cord, as well as thickening of the meningeal covers of the cord.

Projecting from the spinal cord are bundles of nerve fibers that are also damaged as a result of lead poisoning. These nerve fibers show some very specific effects, such as swelling of the axis cylinders, segmental demyelination, and Wallerian degeneration which eventually results in fiber atrophy. Moving away from the spinal cord and into the extensor muscles of the arms and legs, it is also quite common to see the associated pathological changes in these muscles. (Ex. 95, Ref. Cantarow, pp. 65; Ex. 24, (19); Tr. 109; Ex. 95. pp. 89.)

Related to the pathological alterations may be a progressive loss of strength in the extensor muscles to the point of total paralysis. Because such extensor paralysis does consistently appear in the muscles controlling the hands and feet, it has become synonymous with lead poisoning. (Ex. 95, Ref. Cantarow, pp. 126) (Ex. 6, (58).) One of the more typical examples of this phenomenon is radial palsy which as its name implies, results from damage to the radial nerve. It is more commonly referred to as "wrist drop" because the loss of extensor muscle contraction permits unopposed contraction of the flexor muscles, and finally the hand bends or "drops" at the wrist. Workers suffering with radial palsy may experience unilateral or bilateral paralysis, that may result in irreversible atrophy of the etensor muscles. (Ex. 95, Ref. Cantarow, pp. 126.)

If lead exposure continues, and the lead poisoning is not treated or exposure reduced, weakness may eventually extend throughout the arm or leg. Prior to the development of paralysis, workers have been known to complain of hypersensitivity over the affected area, sensations of heaviness in the limbs and finally painful cramping in the muscles (Ex. 95, Ref. Cantarow, pp. 127). Exaggerated tendon reflexes, accompanied by prolonged muscle tremors, may also precede the paralysis and may be caused by the weakening of the muscles or by progressive degeneration in the nerves.

Recent advances in experimental neuropathology have made posssible classification of peripheral neuropathies based on histopathological reactions of the peripheral nerve. However, in spite of extensive studies it is as yet unresolved whether lead induced neuropathy is primarily due to a metabolic derangement of Schwann cells (demyelinating neuropathy), of neurons (cytons and/or axons) or combinations of both.

Axonal atrophy, and segmental demyelination, and changes in the axonal membrane are suggested as pathological lesions. Published findings speak in favor of segmental demyelination but axonal degeneration of myelinated fibers have been reported in guinea pigs, rabbits and cats exposed to lead. It is also possible that the two types of fiber degeneration may occur simultaneously. Demyelination may reduce considerably the nerve conduction velocity, i.e. the propagation speed of nervous impulses while in axonal degeneration the axonal conduction velocity may remain within normal limits or only slow down slightly. It is important to note that histological changes of segmental demyelination has been found in the same nerves that show marked reduction of conduction velocity.

According to Kehoe, severe lead poisoning usually does not occur at PbBs below 80 μg. However, he indicates that under conditions of prolonged and gradual absorption, it is difficult to pinpoint the exact blood lead level at which clinical symptoms appear (Ex. 294 (B)). Other investigators have indicated that peripheral neurological symptoms may appear at PbBs below 80 μg. For example, motor neuron disease has been found in lead workers at blood lead levels of 50 μg/100 g. (Ex. 24 (19), pp. 13, Ref. Campbell).

Reversibility of the patho neurological effect produced by lead has been a topic of considerable debate among neurologists. The majority of investigators agree that the phenomenon of reversibility (in nerve tissue) is directly correlated with the specific nerve components involved. For example, neuron cell bodies, once destroyed, are not replaced by other neuron cell bodies. Axonal damage, however, may be replaced by new growth from the cell.

Recovery from the effects of chronic lead poisoning may be feasible in some cases, if the worker is removed from the source of exposure and therapy is initiated immediately. There are instances, however, when complete recovery is impossible and the pathology is fixed. Even if the worker is removed from the source and therapy initiated, the worker may still experience impairment (Ex. 95 Ref. Cantarow pp. 135) In a recent paper describing his research Dr. R. Baloh a neurologist at UCLA questioned the reversibility of nervous system damage;

Although there are isolated reports of significant improvement in lead induced motor neuron disease and peripheral neuropathy after treatment with chelation therapy, most studies have not been encouraging, and in the case of motor neuron disease, death has occurred despite adequate chelation therapy.

All of this data reinforces a disturbing clinical impression that nervous system damage from increased lead absorption is only partially reversible, if at all, with chelation therapy and/or removal from further exposure. This is not particularly surprising, however, since experience with other heavy metal intoxication has been similar. Nervous system damage from arsenic and mercury responds minimally to chelation therapy. Apparently, irreversible changes occur once the heavy metal is bound by nervous tissue. Although further study is clearly needed, the major point I would like to make this morning is that there is strong evidence to suggest the only reliable way to treat nervous system damage from increased lead absorption is to prevent its occurence in the first place. (Ex. 27(7)pp. 55.)

OSHA agrees with these concerns regarding irreversibility of neurological disease expressed by Dr. Baloh and therefore must establish a standard which will prevent the development of nervous system pathology at its earliest stages.

(d) *Early Peripheral Neuropathy.* OSHA relied heavily on the work of Seppalainen when discussing early damage to the peripheral nervous system in its proposal. Prior to the proposal and hearings, Dr. Seppalainen had published two papers describing her use of neurophysiological methods, especially nerve conduction velocity studies and electromyography to study the effects of lead. These papers formed the basis for her conclusion that she had observed subclinical neuropathy in lead workers. This work was discussed at great length prior to and during the hearings and for clarity will be reviewed here. (Ex. 2(12)(13).)

Nerve conduction velocity can be measured in motor and sensory fibers by stimulating the nerve with short electrical impulses and by recording the resultant electrical activity in the muscle or low amplitude electrical pulses in sensory nerves elicited by the stimulus. In her testimony at the hearings Dr. Seppalainen stated:

Slowing of the nerve conduction velocity is a sign of neuropathy. Neuropathy causes also changes in electromyography, namely (1) the number of acting motor unit potentials is reduced (if the neuronal connection to muscle fibers is disrupted or impaired, the muscle fibers cannot work) (2) the duration of the motor unit potentials is prolonged, and (3) spontaneous pathological activity in the form of fibrillations, positive monophasic potentials and fasciculations may be found in the muscles. (Ex. 51, pp. 4)

Seppalainen's work was stimulated by earlier studies which utilized electrophysiological techniques to study nerve damage in lead exposed workers. Sessa et al. showed reduction of the maximal motor conduction velocity (MCV) of the ulnar nerve in patients with lead poisoning but without clinical neurological symptoms (Ex. 5(12), Ref. 1, p. 667-68; Ex. 24 (19), pp. 15, Ref. Behse; Ex. 24 (19), pp. 15, Ref. Vasilescu; Ex. 24 (19) pp. 14, Ref. Feldman; Ex. 24 (19), pp. 15, Ref. Girard; Ex. 24 (19) pp. 15, Ref. Guardriglia; Ex. 51 (B)) also demonstrated slowing of NCV's from exposure to lead. Catton et al. (Ex. 5(12), Ref. 2) presented evidence for a minimal defect of peripheral nerve function in a group of lead accumulator workers without clinical evidence of neurological lesions Of the 19 men examined 13 had blood levels above 80 μg/100 ml and seven had hemoglobin levels below 12 g/100 ml. In these workers, maximal motor conduction velocity was normal but the ratio of the amplitude of the muscle action potential following stimulation of the lateral popliteal nerve at the knee and at the ankle was in some instances smaller than that in control subjects. Catton et al suggested the most likely explanation for this finding is that conduction was slowed in some nerve fibers causing dispersal of the muscle action potential.

Based on this earlier work that demonstrated that the MCV remains normal as long as a portion of the fastest fibers are intact, Seppalainen determined that more sensitive methods were required to detect early or partial damage to peripheral nerves. It was this conclusion which led to the two papers discussed in the proposal and reviewed here.

In the first study 39 male lead workers were studied for peripheral nerve system damage using electrophysiological techniques. A diagnosis of lead poisoning had been made in 31 cases but were without signs of neurological impairment and 8 men had excessive or increased absorption of lead but were without symptoms at time of examination. Previously, 15 men who suffered from lead poisoning in the study and 5 of the symptom-free men had suffered from clinical lead poisoning. The authors reported a standard electromyogram demonstrated fibrillations and/or diminished number of motor units in 24 workers. The lead workers had significantly lower mean maximum conduction velocities of the ulnar and median nerve as compared to an age matched control group. The mean conduction velocity of the slower fibers of the ulnar nerve was 39.0±8.0 whereas the control population was 46.6±3.7 (p is less than 0.001). Based on this result, the authors conclude that measurement of the slower fibers (CVSF) of the ulnar nerve proved to be a very sensitive indicator of lead damage, and a combination of this variable and the distal latency of the median nerve discriminated lead workers from controls better than other combinations. Lastly, they conclude the findings are consistent with slight peripheral neuropathy and further that lead also affects certain portions of the fibers in the proximal part of the nerve as well as in the distal part of the nerve. None of the subjects had paresis at the time of the study, but paresthesiae, myalgia, or muscular fatigue were complaints of some workers.

The second Seppalainen study differed from the first in that the 26 workers (18 males and 8 females) selected for the second study were said to have PbB levels which never exceeded 70 μg/100 ml nor had suffered from clinical lead poisoning whereas in the earlier studies discussed, the subjects blood lead usually exceeded 70 μg/100 ml and symptoms of lead poisoning were prevalent. The authors reported the exposed group which was comprised of 26 workers (18 men and 8 women) from a storage battery factory had a mean exposure time of 4.6 (SD 4.7, median 3.7 years, range 13 months to 17 years). The concentration of PbBs had ranged mostly between 35 μg/100 ml and 60 μg/100 ml and occasionally between 20 μg/100 ml and 70 μg/100 ml.

The results of the conduction velocity measurements from the exposed workers and controls are presented in Table 2. The results indicated the MCV's of the arm nerves (median and ulnar nerves were slower among the exposed workers. There was a slight difference in the MCV's of the nerves in the lower limbs. However, the differences were small and little significance should be given to these small changes. The SCV's in the forearm did not differ. There were marked differences in the CVSF of the ulnar nerve, which is consistent with the earlier study. The CVSF of the ulnar nerve (distribution and mean) among these lead exposed workers were situated between those of the normal controls and those of subjects with lead poisoning from the earlier study. Seppalainen concluded that this finding indicates an exposure-response relationship at the group level between lead exposure and nerve propagation speed.

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Table 2 — Nerve Conduction Velocities (msec) of Lead-Exposure and Control Subjects

	Exposed			Controls				
	N	Mean	SD	N	Mean	SD	t	P
MCV* of median nerve	26	54.5	5.2	26	58.5	3.8	3.19	<.005
SCV† of median nerve	25	59.5	5.3	8	56.3	4.1	1.83	>.05
MCV* of ulnar nerve	26	55.0	4.8	26	59.1	3.1	2.75	<.01
CVSF‡ of ulnar nerve	26	42.0	5.0	22	47.1	4.4	3.73	<.001
SCV† of ulnar nerve	25	58.2	4.7	23	60.0	4.5	1.42	>.05
MCV* of deep peroneal nerve	25	50.6	4.4	26	52.0	4.0	1.20	>.05
MCV* of posterior tibial nerve	26	43.3	3.0	19	44.6	3.2	1.32	>.05

*MCV, maximal conduction velocity.
†SCV, sensory conduction velocity.
‡CVSF, conduction velocity of slower fibers.

In both of the above studies needle electromyographic examinations were also performed, in the first case to all 39 subjects, and in the second to 11 exposed workers with abnormal or borderline nerve conduction velocities. Neurogenic EMG abnormalities were frequent in the case of lead poisioning; EMG was abnormal in 24 subjects, and denervation activity (fibrillations) was found in 15 cases. Among lead exposed workers with PbBs not exceeding 70 μg/100 ml, EMG was abnormal in 9 cases out of 11 studied, and in 5 cases fibrillations were found. The authors stated:

"That the neurotoxic effect of lead can also be found in the muscles, which have undergone slight neurogenic degeneration. (Ex. 5(12).)

As previsously stated the findings in this study were qualitatively similar to the previous study but in a quantitative sense they were milder. It is significant that this study indicating changes in maximal motor conduction velocities and electromyographical abnormalities occurred in subjects whose PbB levels had never been above 70 μg/100 ml. When discussing their results Seppalainen concluded:

Of course, in terms of health, the importance of slight subclinical neuropathy can be questioned, too, and we did not find any evidence that the well-being of these workers was influenced by the neuropathy, apart from a few complaints of numbness of the arms. Thus, the term poisoning, in its orthodox sense, cannot be applied to these disorders. But neuropathy, no matter how slight, must be regarded as a more serious effect than the quite reversible alterations in heme synthesis, because the nervous system has a poor regenerative capacity, and the acceptability of such a response must be judged from that point of view. Since the entire question belongs to the diffuse "gray area" between health and disease, it is more than probable that opinions will diverge. We think, however, that no damage to the nervous system should be accepted, and that, therefore, present concepts of safe and unsafe PbB levels must be reconsidered. (Ex. 5(12), p. 183.)

During the hearings Dr. Seppalainen described continuing research on the exposure-response relationship between lead exposure and neurological impairment. She reported the results of an examination of 64 workers with occupational lead exposure ranging from 2 to 20 years. A preliminary report of this research had been given at the second International Workshop on Occupational Lead Exposure, Reevaluation of Permissible Limits. These subjects' blood lead levels had been monitored on a regular basis and had never exceeded 70 μg/100 ml. Nerve conduction velocities of this group were compared to those of 22 controls and to 18 workers whose PbB levels had exceeded 70 μg/100 ml.

Results in this study were similar to those previously described. The conduction velocities in the leg nerves were unchanged save for a small change in the posterior tibial nerve in those whose PbBs exceeded 50 μg/100 ml. As previously described there was a reduction in conduction velocities in arm nerves and a statistically significant linear relationship appeared to exist between the PbB and nerve conduction velocities of the sensory conduction velocities of the sensory conduction velocity (SCV) of the median nerve in the forearm section as well as in the distal section (dsCV), motor distal latency of the median nerve and CVSF of the ulnar nerve. In these groups abnormalities were defined as equal to values below normal mean minus two standard deviations. Abnormalities in two or more nerves appeared more frequently in the higher PbB groups. (See table 3.)

TABLE 3

Number of persons studied	Blood lead μg/100 ml.	Number of exposed persons with abnormality	Percent
22	Less than 20	0	—
15	40 to 49	1	7
23	50 to 59	3	13
15	60 to 69	4	27

The report of the Second International Workshop on Permissible Levels for Occupational Exposure to Inorganic Lead drew the following conclusion on this work of Dr. Seppalainen:

It is not known whether the maximum blood lead concentration or the integrated average concentration is the determining factor in the development of changes in nerve conduction velocity. However, the Group concluded from the data presented by Seppalainen et al. and the data reported in the literature that changes in nerve conduction velocity occur in some lead workers at blood levels exceeding 50 μg/100 ml. It was thought that no conclusion could be drawn from the one case in the blood lead range 40–49 μg/100 ml.

It is not possible to decide what any given measured small deficit means in terms of specific nervous damage. However, it is generally recognized that a clear deficit in the nerve conduction velocity of more than one nerve is an early stage in the development of clinically manifest neuropathy. There is no evidence that these changes progress. Reversibility should be studied. Although slight changes may be measured in persons experiencing no symptoms, it was the concensus of the Group that such changes should be regarded as a (Critical effect is a defined point in the relationship between dose and effect in the individual, namely the point at which an adverse effect occurs in cellular function of the critical organ). (Ex. 262, pp. 6–7.)

Seppalainen reported at the hearing that the number of controls had been increased and the lead exposure data had been rechecked. In this most recent study the authors carried out statistical calculations which compared the results of workers with occupational lead exposure from 2 to 8 years to those of controls. They only accepted workers whose PbBs had been determined from the onset of exposure; 1–2 times per year up to 1970 and from then 4–6 times yearly thereafter. As in the previous studies statistically significant reduction in several nerve conduction velocities were noted (p less than 0.01) at PbBs 50–59 and 60–69 μg/100 ml.

The nerves with reduced NCV's included the motor distal, latency, SCV, dSCV of the median nerve, and the CVSF of the ulnar nerve. The latter was slowed at PbB levels below 50 μg/100 ml. Again, dose-response relationship was operative in this recent work.

During the hearings there was considerable critical testimony of Seppalainen's research which focused on two general issues: The first, criticism as articulated by LIA was:

Even if Seppalainen's findings were accurate and reliable—it is clear that the slight reduction in nerve conduction velocities which she found does not constitute "material impairment of health" and does not affect the functional ability of lead workers who have blood-lead levels below 80 μg/100 ml. (Ex. 335, p. 25.)

Second, there was criticism of her methodology; questions were raised regarding the reliability and accuracy of her results. We shall address the latter criticisms first. (Ex. 3 (72); Ex. 335). It should be pointed out at the outset that Seppalainen's research has been in the literature for a number of years. The published work has been subjected to peer review, for several years without any major reported challenge. Multiple investigators, some already cited have confirmed her work. One point regarding her work needs to be stressed. That is, unlikely many cross sectional studies in the record in which the only PbB levels determined were done at the time other parameters were measured, Seppalainen utilized data over a period of years to insure that PbB levels were always below 70 μg/100 ml. The reliability of her PbB determinations was excellent. This type of study should serve as a model for other investigators.

This research has also been quoted widely and discussed in great detail and apparently accepted as valid at scientific meetings, e.g. The Second International Workshop on Permissible Levels for Occupational Exposure to Lead. In OSHA's view this research is widely accepted in the scientific community and has indeed been the stimulus for subsequent studies in the use of electrophysiological techniques to investigate early neurological/damage.

The following criticisms were raised by LIA. (Ex. 335, p. 28):

(1) The control group and the lead-exposed group were observed under different circumstances and tested at different times. The control subjects were not specifically chosen as controls and were tested over the period between 1970 and 1973, whereas all of the lead-exposed subjects were tested only in 1973. Different rooms were used for the studies. As a consequence of these differences, it is difficult if not impossible to compare meaningfully the test results from the two groups." (Ex. 335, p. 28.)

There is no inherent reason why controls and subjects need be tested at the same time since the real issue is whether the conditions such as temperature were standardized and controlled. If the conditions are standardized then this point is moot. Seppalainen did testify at the hearings that subjects and controls were in fact intermixed in the work reported in Amsterdam and there were no inconsistencies between this study and others.

LIA also criticized:

(2) Although the study suggests that the lead-exposed subjects were biologically monitored during the "entire period" of their exposure to lead, 6 of the 28 subjects—or more than one out of every 5 workers—had been occupationally exposed to lead prior to the time the monitoring began. It is therefore entirely possible that some or all of these workers had previously had higher blood-lead levels, and that the slight neurological changes observed actually occurred and were caused when blood-leads were higher, not at the lower levels which existed at the time of the monitoring. (Ex. 335, p. 29.)

This point was addressed by Seppalainen in her original paper in 1975 as follows:

Only six of the subjects studied had a working history of more than 5 years; they were included despite defective monitoring data, only because there was sufficient reason (i.e., no change in working methods and the working environment), to presume that exposure had not been higher in the past than during the period of frequent monitoring. (Ex. 5 (12), p. 180.)

In addition, there is no evidence in subsequent work that there were inconsistencies in the subject population and therefore any evidence that the research was flawed.

A third criticism of Seppalainen's methodology by LIA was:

(3) There is a serious question as to whether skin temperatures were adequately monitored throughout the testing period and were maintained at the correct level. (Ex. 335, p. 29.)

Seppalainen discussed the issue of temperature in great detail during the public hearings, especially in response to questions from Dr. Jerome Cole, Lead Industries Association. In her prepared testimony Seppalainen stated:

According to my large clinical experience nerve conduction velocities begin to slow down significantly, when the skin temperature at the stimulation point is lower that 30° C. In my previous studies I have not published detailed information on skin temperatures, which, however, always have been measured. In the last study all the skin temperature measurements were taken into statistical analysis and no difference could be found between any exposed group and the control group. (Ex. 51, p. 9.)

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Dr. Cole pursued this issue during cross examination when he pointed out the significance of temperature changes on nerve conduction velocities. Seppalainen agreed that nerve conduction velocities are very much affected by differences in temperature and proceeded to describe her method for determining temperatures:

Dr. SEPPALAINEN. The way I regularly do it and which I have used in all of my studies concerning lead—concerning the peripheral nervous system and lead is such that I start with nerve conduction velocity measurements, motor and sensory nerve conduction velocity measurements of the arms where the nerves are stimulated at the elbow level and at the wrist level. This procedure, when I am performing this thing, it lasts about 7 to 10 minutes and the final step in this measurement is the measurement of skin temperature at the proximal stimulation point at the elbow level which is used with an appliance which is called Sekunda Thermometer, made by Testoterm, I think it is of German make and also at the same time I record the temperature on the tip of the third finger. I do not think that there are major changes during these seven or ten minutes on the skin temperature. I just can hold, I mean, the probe all of the time on the nerve. (Tr. 134-36.)

The discussion of temperature control will not be repeated since it is apparent that Dr. Seppalainen has rigorously controlled for temperature. OSHA has therefore concluded that the methodology employed by her was not only adequate but was designed with care and precision.

More recent studies on the relationship between occupational lead exposure and peripheral nerve conduction velocities have confirmed Seppalainen's work. For example, Araki and Honma (Ex. 51 (B)) studied 36 male workers who had been exposed to lead occupationally from 3 months to 46 years and whose PbB ranged from 29 to 73 μg/100 ml. There was a statistically significant relationship between the maximal motor nerve conduction velocities, mixed nerve conduction velocities of the median nerve of the forearm and with the MCV of the posterior tibial nerve and PbB of 29 to 73 μg/100 ml when compared to an age matched control group. The authors in this study concluded that the nerve conduction velocities were affected primarily in the forearm, and "the diminished MCV of the median nerve in the forearm may be a manifestation of motor peripheral neuropathy due to lead absorption." (Ex. 51 (B), p. 231.)

Lee and co-workers conducted electrophysiological studies on 94 workers whose average blood lead at the time of testing was 60 ± 15 μg/100 ml. The authors used a 1-tailed, paired t-test in comparing conduction veolicities of the lead workers and age-matched controls. The results indicated that all maximum motor nerve conduction velocities of lead workers were significantly decreased but maximum sensory nerve conduction velocities were not affected. Both fast and slow fibers were affected. In contrast to the previously described studies these authors did not demonstrate a significant correlation between biochemical parameters such as PbB, ALAD, FEP, Hb, PBU, ALA, and CP and reduced nerve conduction velocities. The data as analyzed by multiple regression analysis did indicate that length of exposure was significantly correlated (p less than 0.05) with ulnar nerve conduction velocity. Length of exposure did not correlate with other conduction velocities. No explanation for the differences was advanced. It is important to note that conduction velocities were significantly decreased in men whose exposure had been less than 2 years (1.5 years average) and whose mean blood (lead) at time of testing was 58 ± 16 μg/100 ml.

Professor Lee's work has been criticized by Dr. John C. Steiner who is assistant Professor of Neurology at the University of Cincinnati College of Medicine. (Ex. 234 (21)). Dr. Steiner states in his testimony:

Lee stated that "all maximum motor conduction velocities measured were significantly decreased in lead workers." This appears to be a misstatement, and perhaps he meant that the mean value of the motor conduction velocities for all nerves examined were abnormal, but on the basis of his data, it is not possible for me to conclude that one could differentiate individually affected persons, and that therefore all persons would have abnormal conduction velocities. While it is not stated whether temperature was controlled, his values for the 94 normal persons' ulnar nerves was considerably less than those reported by Payan (22) who did control for temperature: Lee—55.6 ± 4.3 M/sec, Payan, 69 ± 5.5M/sec.

The percent mean conduction velocity difference in Lee's controls vs. lead workers in ulnar, median and peroneal nerves was 4, 2.5 and 3.1 percent, respectively, while the radial nerve conduction velocity was reduced by 12% in workers and controls. Again, in the peroneal nerve, the ratio of amplitude to the action potential of extensor digitorum brevis muscle when stimulated at the knee vs. at the ankle was reported as being significantly different in workers. The large standard deviation and known effect of chronic pressure of the shoe across that muscle, plus assumed difference in temperature would invalidate the significance of the finding. (Ex. 234(21), Ref. Steiner, p. 9.)

These issues were not addressed during the hearings. OSHA believes the questions raised do not invalidate Professor Lee's conclusions that there was a significant relationship between lead exposure and reduced motor conduction velocities. In fact, industry has accepted these findings as being accurate (Ex. 234(21)). There is little if any doubt that a real effect was measured and that it was directly relatable to the subjects' exposure to lead.

In addition to the research already described there have been a number of recent studies which relate peripheral neuropathy to the reduction of nerve conduction velocities. (Ex. 97; Arch. Phys. Med. Rehabil. *56*, 312 (1975); Nervenartz, *46*, 674 (1975))

Landigran and coworkers (EPA Criteria Document, Ch. 11, Ref. 231) carried out an extensive epidemiologic, hematologic and neurologic study on children who lived near a lead smelter. Neurologic examinations were undertaken on a cohort of 5- to 9-year-old children who were selected from the study and geologic control areas. As many children with blood lead levels (greater than or equal to) 40 μg/100 ml were selected as could be matched with controls. Pair members were matched in terms of age, sex, and socioeconomic stratum. A total of 123 pairs were selected. Peripheral nerve conduction velocities were measured in blind fashion on the right peroneal nerve of each child and the results indicated a statistically significant negative correlation between peroneal nerve conduction velocity and blood lead level.

($r = -0.38$, $t = 2.12$, p is less than 0.02 by 1-tailed t test.) The authors concluded that while the data do not allow for clear statements of threshold effect, the "findings are consistent with a growing body of data which indicates that various subtle neurologic and psychologic abnormalities may develop in children with increased lead absorption."

In a letter to the editor of the Journal of Pediatrics, September 1977, Gartside and Panke critiqued the findings of Landrigan et al. While acknowledging that the matched pair approach is a powerful technique, these authors argued that matching should be carried out utilizing all the concomitant variables which were significantly associated with the variable of interest. In this study only four of the concomitant variables were used in creating the matched pairs. The authors suggest that those left unused could account for the differences observed. Gartside and Panke examined several subsets of the original matched pairs and found that the correlations between blood lead and nerve conduction velocities was less significant. This reevaluation of the data, however, suffers from a classic biostatistical problem which, simply stated, is that by reducing the overall number of the population studied, any likelihood of establishing a statistically significant result is also concomitantly reduced. The question of utilization of all concomitant variables, while not being invalid, must be perceived as being highly speculative, and without further research OSHA believes that the conclusions of the Landrigan study are

valid, especially when considered in light of other data in the literature.

NIOSH has conducted a major health hazard evaluation of the effects of lead exposure on workers employed at the Bunker Hill Co. lead smelter and zinc plant (Ex. 300). One aspect of that study included an evaluation of neurological and psychological measures. The neurologic and psychological tests consisted of measures of the following:

(1) Maximum motor nerve conduction velocity (NCV) of the ulnar nerve;

(2) Maximum motor NCV of the peroneal nerve;

(3) Eye-hand coordination;

(4) Choice reaction time; and

(5) Subjective feelings, as measured by the multiple adjective affect checklist (MAACL).

The following observations can be made from the data collected:

(1) Ulnar conduction velocities are lower in smelter employees.

(2) Peroneal nerve conduction velocities are lower in smelter employees.

(3) Choice reaction time (RC mean) is increased by approximately 10 percent for male smelter employees and by the same amount for production females.

(4) Eye-hand coordination did not differ for smelter employees, with the exception that clerical females exhibited superior performance on this particular test.

(5) No pattern of hostility, depression, or anxiety is evident in either male or female smelter groups.

Results from multiple regression analyses indicate that the lower nerve conduction velocity for lead males and zinc males are inversely correlated to age and to ZPP, the latter is consistent with the earlier described work of the Mount Sinai group, (Ex. 23 (39)). With the exception of age, no other independent variable achieved statistical significance for lower NCV in production females if ZPP was used in lieu of blood lead as an independent variable. However, if blood lead, not ZPP, was used in the regression analysis, it was found that peroneal NCV was significantly correlated ($r^2 = .29$, p is less than .01) with age (p is less than .01) as well as blood lead ($p = .08$). No pattern was evident regarding an association between RC mean and any independent variable other than age.

Nerve conduction velocities are consistently lower in smelter employees than controls but the decreases are small, and achieved statistical significance only for the peroneal nerve in female smelter workers and male zinc smelter workers. The latter result, however, is inconsistent with lead absorption indices (ZPP, blood lead) which indicate lower ZPP and blood lead values for male zinc smelter workers than for male lead smelter workers. Production females show a 3.2 m/sec decrement in peroneal NCV compared to female controls. This 3.2 m/sec difference is the largest decrement in NCV found in the study; however, the ZPP and blood lead values are only half of comparable values for male lead smelter workers. It cannot be explained whether this inconsistency means that: (1) Females are more susceptible to lead than males, or (2) ZPP and blood lead may be poor indices of nervous system effects, or (3) the results are an anomaly. NCV means (ulnar and peroneal) show a consistently greater decrement for females than males. However, indices of lead absorption for females were only about half of comparable values for males.

Mean choice reaction times seemed to be consistently lengthened by about 10 percent in both male and female smelter workers. However, "dose-effect" relations are not evident, since lead males do not differ from zinc males, whose mean blood lead was lower by about 43 percent.

Performance on the test of eye-hand coordination did not reveal any association of impaired performance with lead exposure. The only significant result that was found showed clerical females to be more proficient in eye-hand coordination than any other group. This result could easily be due to selection processes inherent in hiring clerical/secretarial employees, or enhancement of eye-hand coordination skills through typing or other similar job-related duties.

The psychological data (depression, anxiety, hostility) showed no major differences between smelter workers and control groups. However, if published norms are used as a basis for comparison, the following results are obtained:

(1) Production females are more depressed than normal ($t = 2.18$, d.f. = 143, p is less than .01).

(2) Lead males and zinc males are more depressed than normal ($t = 2.58$, d.f. = 262, p is less than .01; $t = 2.48$, d.f. = 292, p. 05, respectively).

(3) Lead males, zinc males, and spirit lake males are more hostile than normal ($t = 3.43$ d.f. = 262, p is less than .001; $t = 2.41$, d.f. = 292, p is less than .01; $t = 2.44$, d.f. = 184, p is less than .05).

Multiple regression analyses showed that subject's age was a factor consistently correlated with neurologic, psychometric, or psychological data. ZPP levels were also correlated with peroneal NCV in lead males and zinc males, but not for production females. In general, it was found that ZPP was a better variable for inclusion in regression analyses than was blood lead level. This has been found to be true in other studies described in this section.

The final study of lead neuropathy to be discussed in this section is a recent paper by Feldman and coworkers entitled "Lead Neuropathy in Adults and Children", Archives of Neurology *34*, 481 (1977). In one aspect of this study Feldman examined six adults, all of whom displayed clinical symptoms of nervous system disease. Their blood lead concentrations were 58, 80, 87, 160, 180, and 233 μg/100 gm and their right peroneal motor nerve conduction velocities were 41, 40, 49, 44, 38, and 37 m/sec respectively. These adults had all worked in environments with high lead exposure for extended periods of time and therefore had increased body burdens of lead. These adults manifested a wide variety of neurologic symptoms and signs such as encephalopathy, myelopathy, and peripheral neuropathy.

The authors suggest that MNCV determinations as an additional screening exposure to lead would be efficacious in clinical practice because it provides data on probable accumulative effects of exposure to lead.

A blood lead level may reflect current exposure, but tells little about past exposure or about total body lead burden. Circulating levels of lead in whole blood have no relation to the concentration of lead in the nervous system. Postprovocation excretion of lead is a better reflection of past exposure and total body burden than the blood lead but provides little information about the possible accumulation of lead or its toxic effects in the central and peripheral nervous systems. (Arch. of Neurol 34: 483)

In a second study described in this paper, Feldman et al. reported on 19 lead exposed steelworkers who were involved in the dismantling of an elevated train track network in Boston—13 workers were burners and 6 were nonburners who were also exposed to lead but to a lesser degree. The 19 workers were studied for whole blood lead, hematocrit, hemoglobin, protoporphyrin and calculated FEP concentrations as well as motor nerve conduction velocity of the peroneal nerve. Both groups of workers wore respiratory protection. The nonburners had been exposed from 4 to 10 months whereas the burner workers had as little as 1 month exposure before symptoms became evident. The burner workers had a mean MNCV of 43.2 and the six nonburners was 49.0 as compared to the control mean of 54.09m/sec ± 5.96. This study demonstrates again the relationship between neuropathy and motor conduction velocities, and indicates slowing of MNCV at blood leads well below 80 μg/100 ml.

In the third section of this paper the authors developed the following hypothesis:

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If the observation of slowed MNCV in cases of symptomatic lead intoxication and in subclinical cases of lead neuropathy have validity as a possible factor for measuring increased absorption of lead, then by measuring MNCV it should be possible to identify those affected from a group of individuals at risk. (Arch. of Neurol. 34: 485)

Children were selected for study from a public housing project in a city in Massachusetts where there was evidence of lead in window and door casements and on the outside walls, and 26 parents volunteered to have their children tested. Children with peroneal MNCV below 47.63 m/sec (1 SD below the control mean) were considered suspect of having an increased lead body burden. These children were admitted to a hospital for edetate disodium calcium provocation, and 10 of 26 had MNCV's—one or more SD below the control mean. (See table 4.)

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Table 4. — Blood and Urine Lead Levels and the Results of Edetate Disodium Calcium Provocation

Patient	Motor Nerve Conduction Velocity, M/sec	Screening Blood Lead Level, ug 100 gm	Before Edetate Disodium Calcium Therapy, ug/Liter	24-Hour Urine Lead Excretion Level After Edetate Disodium Calcium Therapy (50 mg/kg) ug/Liter	u mole of Lead/u mole of Edetate Disodium Calcium
4	43.5	23	10	260	0.094
6	45.0	14	20	180	0.152
7	38.5	23	10	700	0.422
15	38.5	17	20	50	0.076
20	31.0	41	10	683	0.566
21	38.0	33	16	1,036	0.957
22	40.5	83	14	695	0.297
25	44.5	41	--	Not chelated	-----
17	40.0	22	--	Not chelated	-----
10	47.5	29	--	Not chelated	-----

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V 4 3 1 2 2 5

The mean urine concentration of 514.9 μg/liter/24 hr for the seven chelated patients is more than triple the mean control level of 165 μg/liter 24 hr for unexposed children. The difference between the two means is highly significant (t=4.38, p is less than .001). The 24-hour collections before and during edetate disodium calcium provocation show a remarkable outpouring of lead in four cases: subjects 7 (700 μg/liter), 20 (683 μg/liter), 21 (1,036 μg/liter), and 22 (695 μg/liter). The authors conclude:

Although the size of the sample is small, it can be observed that of the seven children initially selected, on the basis of slowed MNCV at a level of at least 1 SD, as being suspect of increased body lead burden, a possible relationship exists between the MNCV slowing and the quantity of lead excreted in the urine after edetate disodium calcium provocation. The four children with provoked urine excretion of greater than 600 mg of lead all had MNCVs of less than 2 SDs below the control mean; in the remaining three children the results of provocative chelation were less striking. Yet, two of them showed lead concentrations in urine exceeding the mean for control subjects.

The individual differences in MNCV values among the at-risk groups and control subjects may be small, but, as more data are gathered, it becomes clear that subclinical neuropathy, measured by nerve conduction velocity, is a concomitant of increased lead absorption in children. (Arch. Neur. *34*, 486–87, (1977))

These three studies illustrate motor nerve conduction velocity reductions in three distinct lead exposed populations, demonstrate effects at low levels of lead exposure and further indicate the effects on children as well as adults.

Based on the studies described in detail and others only referenced, OSHA has concluded there is extensive evidence in the record that there is statistically significant reduction of certain nerve conduction velocities in both male and female lead workers whose blood lead levels are 50 μg/100 ml or greater. OSHA also concludes that the slowing of MNCV follows a dose-response relationship although the issue of whether the pathological findings bear any relation to past PbB levels is as yet unresolved. The record evidence is insufficient to determine whether slowing occurs in the 40 to 50 μg/100 ml range. It is OSHA's view that the research cited has withstood the challenges to the methodology employed, in particular to the questions of temperature control, control groups, blood lead determinations, instrument use, and testing protocols. While Seppalainen's work is the most extensive to date, numerous other investigators already mentioned have shown NCV reduction in lead exposed workers and others.

The principal issue raised with respect to the reduction of NCV velocities was whether this effect constituted "material impairment" of health, (Ex. 335). That is, is there a continuum of disease associated with exposure to lead so that it is axiomatic that the chronic irreversible stage is preceded at the opposite end of the disease progression by a relatively mild, apparently reversible stage of disease which is characterized by the MNCV reductions described herein. Based upon the voluminous evidence in the record concerning MNCV reduction OSHA believes that these reductions do constitute material impairment and do represent early indicators of a neurological disease process.

This earliest stage is characterized by varying subjective and/or objective symptoms that may not at first unduly alarm the worker or present a physician with clear-cut diagnosis. Nevertheless, this early developmental stage of neurological disease is a pathological state, and OSHA finds persuasive the arguments for adopting a lead regulation which protects workers from the early consequences of lead exposure. Evidence in the record convinces OSHA that it is necessary to protect the many thousands of workers who exhibit reduced nerve conduction velocities. Witnesses on behalf of industry testified that these changes in MNCV were not cause for concern (Tr. 1885, 1903, 2108, 3040, 6577). However, industry testimony failed to disprove the significance of these acute effects as manifestations of neurological disease which, with continued exposure, progresses inevitably to the chronic neurological diseases associated with lead exposure. OSHA believes that motor conduction velocity decrements reflect nerve damage and are significant health effects in themselves and should be prevented since prevention is the only reliable treatment for the irreversible changes which occur once lead is bound by the nervous tissue.

OSHA believes that the scientific evidence indicates that reduced motor nerve conduction velocities are manifestations of peripheral neuropathy classified clinico-pathologically as a demyelinating neuropathy, although there is also evidence for axonal atrophy and changes in the axonal membrane. The predominant type of myelinated fiber pathology is segmental demyelination. In general the morphologic normality of the neuron in the presence of widespread segmental demyelination speaks in favor of a generalized damage of Schwann cells than of neuronal damage. It is therefore consistent that histological changes of segmental demyelination are found in the nerves that showed marked reduction in conduction velocity.

There is evidence that a lead worker may in some cases revert to a normal state of health if exposure to lead is discontinued although OSHA believes complete recovery is unlikely, if not impossible, and therefore OSHA is convinced by the evidence in the record that those many workers who will grow progressively worse must be identified and protected.

In reaching this conclusion OSHA has relied on the work of Seppalainen, whose technique has been described by Dr. Macolm of Chloride Incorporated as "immaculate." (Tr. 2123). Seppalainen describes her view of neuropathies as follows:

Thus, the main importance lies in the implications for the prevention policy at the place of work, as well as for the setting of safety norms. It is commonly thought that PbB levels in excess of 70 μg or even 80 μg/100 ml are obligatory for the development of poisoning. Biochemical changes that do occur at lower lead levels, i.e., depression of erythrocyte ALA dehydratase and a slight increase in urinary coproporphyrin and ALA, are often said to be of no clinical importance. Of course, in terms of health, the importance of slight subclinical neuropathy can be questioned, too, and we did not find any evidence that the well-being of these workers was influenced by the neuropathy, apart from a few complaints of numbness of the arms. Thus, the term poisoning, in its orthodox sense, cannot be applied to these disorders. But neuropathy, no matter how slight, must be regarded as a more serious effect than the quite reversible alterations in heme synthesis, because the nervous system has a poor regenerative capacity, and the acceptability of such a response must be judged from that point of view. Since the entire question belongs to the diffuse "gray area" between health and disease, it is more than probable that opinion will diverge. We think, however, that no damage to the nervous system should be accepted, and that, therefore, present concepts of safe and unsafe PbB levels must be reconsidered. (Ex. 5(12), p. 183)

During the hearings Seppalainen concluded:

The slowing of nerve conduction velocities shows an effect of occupational lead exposure upon peripheral nerves. Although this slowing was slight in degree, it should be considered a harmful effect. In previous studies on neurotoxicity of lead, we have demonstrated abnormalities also in muscles in subjects with a slight slowing of nerve conduction velocities. Electromyography in many of them showed changes of denervation type. Furthermore, nervous tissue is slow and at times imcomplete in regeneration, if damage in it is advanced.

As in the case of exposure to a neurotoxic chemical (carbon disulfide) the slowing of the nerve conduction velocity precedes clinical palsy, I consider that such slowing should be regarded as an early sign of beginning clinical neuropathy. The same phenomenon is a possibility which has to be kept in mind when dealing with human exposure to lead. When a worker with lead exposure shows abnormally slow nerve conduction velocities in two nerves, better hygienic measures are advisable to decrease his individual exposure in order to prevent more profound damage. Normal hemoglobin in these cases is no proof that the nervous system is safe, since the pathological signs in the hematopoietic system appear at significantly higher PbB levels than nervous system signs. (Ex. 51, p. 7)

Dr. Kenneth Bridbord of NIOSH divided response to environmental exposure into five categories: normal, physiologic change of uncertain significance, pathophysiologic change, morbidity (fairly severe disease), mortality. (Tr. 1795–1801). He places nerve conduction velocity impairment in the "pathophysiologic change" category which can be described as:

. . . a change that is very closely associated with disease but may not, in and of itself, be called disease." I think the earliest sign that I would consider adverse, would be the decreased nerve conduction velocites in which case, in adults we begin to see this as blood lead levels rise about 50. One reason why I think that is clearly a pathophysiologic response or should be categorized as such, is that the ability of the nerous system to repair itself is fairly limited. That's not to say that there couldn't be any reversibility in some of these indicators but clearly there is very limited capacity to repair damage once such damage has occurred.

I think another point on the nerve conduction velocities is we're still measuring a fairly simple function and that to perform complex functions requires some integration of a number of circuits, maybe an electrical analogue might be a good example and that has to involve a certain amount of feedback and any decrease that one might find in a simple straight path I would think would tend to be accentuated to some degree as you get into more complex task and integration of many switching points, etc.

But I would clearly put the nerve conduction velocity in the pathophysiologic change. I think, in terms of dose response relationships in adults, I'm not sure we have a great deal of evidence to find where the pathophysiologic change clearly becomes, a morbidity change. Again, it's probably a continuum. It's probably that triangle break is going to vary from individual to individual in terms of when the pathophysiologic change begins to be considered morbidity.

Certainly, once someone has had wrist drop, unequivocally that's morbidity and that's a very distinct disease entity. In the case of damage to the nervous system, it is quite well established that at fairly high levels of exposure, that can be the cause of death even in adults. (Tr. 1795–1801)

The record of this proceeding contains numerous examples of clinical symptoms behavioral changes and reductions in nerve conduction velocity at blood lead levels as low as 40 μg/100 g and OSHA believes a standard should be established to prevent these changes from occurring in lead exposed workers. The standard must not be based only on prevention of foot or wrist drop, but rather on prevention of early neurological disease as manifested by behavioral and MNCV changes. It should be recalled that the Second International Conference on the Reevaluation of Permissible Exposure Limit for lead described reduction of MNCV as a "critical effect". (Ex. 262) OSHA believes that the characterization of MNCV reductions as "pathophysiologic changes" or as a "critical effect" are accurate representations of a disease process which is likely to be irreversible and which must be considered to represent material impairment even at these early stages.

OSHA agrees with Dr. Seppalainen in her conclusion on protective blood lead levels:

Mr. Becker. "Could you suggest a level under which a nerve conduction test would not be required?

Dr. Seppalainen. If I want to be safe, I would say 50 micrograms per 100 milliliter in blood." (Tr. 147)

However, in order to establish a reasonable margin of safety and to prevent other early neurological effects OSHA believes that blood lead levels should be maintained at or below 40 μg/100 g for lead exposed workers throughout their working lifetime.

4. *Renal System.* a. *Introduction.* Occupational lead nephropathy has until recently not been recognized as an industrial hazard in the United States. The NIOSH criteria document, "Criteria for a Recommended Standard: Occupational Exposure to Inorganic Lead", 1972, stated: "In the United States, there have been few reports of renal disease in lead workers, although the PHS survey discovered an increased incidence of albuminuria in affected workers". (Ex. 1, p. III-9) In the preamble to the proposed lead standard OSHA addressed the issue of the lack of information on renal disease in lead workers:

The relative absence of renal disease seen among workers in recent years has at times been interpreted as evidence that renal damage is not likely to occur among workers at current levels of exposure. Two recent observations, however, suggest that this may not be so. Vitale, et. al., observed evidence of lead nephropathy based upon renal functions and biopsy studies in three workers with blood lead levels below 80 μg/100 g. Cramer, et. al., observed effects of exposure to lead upon the kidneys after four or more years' exposure, including a decreased ability of proximal tubular cells in the kidneys to form inclusion bodies and a decrease in the ability of the kidneys to excrete lead accompanied by a moderate degreed of fibrosis. These changes were not characterized by any gross impairment of renal function. The authors considered it doubtful, however, that these changes were completely reversible. A critical question raised by this study is whether these changes could increase the risk of lead nephropathy with frank renal failure as has been observed in some instances. (Ex. 2, p. 45937)

In recent years evidence has accumulated indicating lead nephropathy is a significant problem to lead exposed workers. It is apparent from the record in these proceedings that lead nephropathy caused by prolonged exposure to lead is a consequence of crucial importance. Whereas the effect of lead on the hematopoietic, reproductive, and the nervous systems have been widely studied in recent years the record indicates that kidney disease associated with chronic lead exposure, while of equal significance, has been inadequately investigated.

Unlike the hematopoietic system, the means available to diagnose the early onset of renal disease is far more limited thereby making prevention more difficult but essential. Routine clinical tests will not indicate the presence of kidney dysfunction until lead nephropathy is advanced. Blood tests, such as the blood urea nitrogen (BUN) and serum creatinine (S-Creat) are increased only when two-thirds of kidney function is lost. In early lead nephropathy urinalysis is normal and therefore early renal disease is not routinely detected under clinical examination. Blood lead determinations have been found to be of limited value in diagnosing renal disease because they are primarily a measure of absorption when sampled close to the time of exposure. Blood lead levels are themselves not a measure of body burden of lead or the cause of symptoms or signs after lead exposure has ceased. Due to this insensitivity the lead standard cannot be based on the ability to detect organ damage through symptoms. When symptoms of renal failure are present "it is too late to prevent or correct the disease. Progression to death or dialysis is likely." (Tr. 1732) Given these conclusions, this agency must approach the prevention of kidney disease while recognizing the limits of certain biological parameters. Therefore, OSHA believes that any standard established for lead must provide some margin of safety. The Agency agrees with Dr. Richard Weeden, a nephrologist who testified for OSHA during the hearings, that "40 μg/100 ml (in blood) is the upper acceptable limit." (Tr. 1771).

b. *Renal Disease.* The fundamental unit of the kidney is the nephron. A nephron is made up of a glomerulus and a tubule. The blood is filtered in the glomerulus and this plasma filtrate enters the tubule where it is modified and eventually leaves the body as urine.

The arteriole supplying the glomerulus of a nephron also surrounds and supplies the tubular portion of that nephron. This vascular arrangement enables the proximal convoluted tubular cells to remove needed body substances (H_2O, glucose, salts, nutrients, etc.) from the urine and return them to circulation, as well as to assist the glomerulus in the removal of toxic substances (lead) from the blood for urinary excretion.

Whether excessive exposure to lead results in a form of chromic nephro-

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pathy has long been debated. A sequence of histological changes extending from the occurence of lead-induced intranuclear inclusion bodies to diffuse interstitial fibrosis and renal failure has been described in animal studies by Goyer. (Ex. 6(38), Ref. Goyer (1971a)). It was concluded that there was dose response relationship between lead exposure and chronic nephropathy.

The study of humans with prolonged lead exposure suggests that there may be two or three stages in the reponse of the human kidney to chronic lead exposure. In an early phase, lasting less than 1 year, the proximal renal tubular cells form nuclear inclusion bodies similar to those found in animals who are experimentally lead poisoned. These inclusion bodies have been seen so frequently in cases of lead intoxication, that they have become one of the diagnostic criteria of lead poisoning. In fact, the lead within the inclusion bodies is 60 to 100 times more concentrated than in the entire kidney. Although it is an likely pathological reaction, it has been suggested that the inclusion body serves as an adaptive or protective mechanism during the transcellular transport of lead by the tubule cells. This mechanism has the effect of maintaining a relatively low cytoplasmic concentration of lead, and thereby, reducing its toxic effects on sensitive cellular functions, particularly mitochondria.

It is also not unusual during this early stage for workers to experience hyperaminoaciduria, i.e., the excessive excretion of various amino acids due to the loss of the absorptive ability of the proximal tubular cells (Ex. 23 (Weeden), Ref. Goyer). It is also well established that simply removing the worker from exposure will allow him to recover, although some workers continue to experience hyperaminoaciduria that eventually requires chelation therapy. Renal biopsies taken from those workers who are removed from exposure illustrate some interesting changes. While most of the abnormal cells in the glomeruli, arterioles, and tubules disappear and are eventually replaced by normal cells, intranuclear inclusions may still be seen. Although no definitive explanations have been given for their continued appearance, there is speculation that these intranuclear inclusions could be early indicators of the existence of a body lead burden (Ex. 23 (Weeden), Ref. Goyer). During this phase there is also a relatively high urinary output of lead but no impairment of renal function. The ultra-structural changes are probably reversible. In a second phase, after 4 or more years of exposure, the proximal tubular cells apparently have decreased their ability to form nuclear inclusion bodies and the kidneys excrete less lead and morphologically have a moderate degree of interstitial fibrosis. This phase is not characterized by any gross impairment of renal function but is doubtful whether the morphological changes are completely reversible. (Ex. 5(30))

If the lead exposure is prolonged and not alleviated, there is a progressive pathological change which eventually results in the third and final stages of frank nephropathy. Human and animal renal biopsy speciments demonstrate extensive interstitial fibrosis, sclerotic glomeruli, as well as dilated, atrophied proximal tubules. (Ex. 23(67), Ref. Goyer; Ex. 23(67); Ex. 95; Tr. 1732) At the same time, the worker may also experience hyperuricemia, blood pressure increases, with or without associated hypertensive disease, gout, or uremia, which signal the possibility of total kidney failure. (Tr. 1729; Ex. 23(67); Ex. 95) With reference to hypertension some investigations have found that arterial hypertension which is accompanied by chronic renal failure may actually precede the observed increase in blood pressure by a few years. In fact, when the biopsy evidence is evaluated in conjunction with intrarenal vasoconstriction, lead-induced hypertension becomes even more suspect. Likewise, the observed renal dysfunctions also may be associated with the vasoconstriction of renal blood vessels, which is, in the final analysis, part of the overall diagnostic picture of generalized vasoconstriction indicative of lead poisoning. (Ex. 118 (E)). Less controversial, is the occurence of saturine gout which may be the direct result of prolonged exposure to lead. That exposure affects the ability of the renal tubulcs to excrete uric acid into the urine, thereby accumulating in the blood to form a number of undesirable salts. Those salts are deposited in joint spaces and, hence, the worker suffers with the arthritis called gout. (Ex. 95, pp. 114–115).

Reversibility of the pathological damage and the restoration of the functional capacity of the kidney is reduced as lead exposure continues. Ultimately, the worker becomes uremic and it is increasingly more difficult to maintain the vital signs. In fact, at this point, the worker can only be kept alive through hemodialysis, the use of the artificial kidney. (TR. 1729)

c. *Kidney Function Tests.* Kidney function is clinically usually measured by the glomerular fileration rate (GFR), the level of blood urea nitrogen (BUN), and/or the serum creatinine (S-Creat) value.

The GFR is a measure of how much plasma is filtered by the kidney each minute. A reduction in GFR represents a reduction in the number of functioning nephrons which make up the kidney. Under normal circumstances, the material will pass through the kidneys at a rate of 130 ± 15 ml/1.73m² body surface area. (Tr. 1729) Wedeen has defined renal disease by a glomular filtration rate of less than 90 ml/min. and said there is abnormal kidney function when the GFR is less than 100 ml/min.

Elevated BUN and S-Creat values are indicative of dysfunctioning nephrons, since the two biochemical compounds normally would be removed by glomerular filtration and tubular excretions (in the case of creatinine). It should be pointed out that clinical tests of BUN and S-Creatinine are gross indicators of renal disease as they do not become elevated until over two-thirds of the kidney function is gone. (Tr. 1727) Wedeen compared this loss of kidney function to the loss which would be incurred by actually cutting away two-thirds of the kidneys. (Tr. 1776) Moreover, in uncomplicated lead nephropathy, the urinalysis is usually normal. In order to detect early renal failure, elaborate laboratory procedures, such as GFR and biopsy, are necessary.

Normal BUN values range from 10–20 mg/100 ml and normal s-creatinine values are 1.2–1.4 mg/100 ml (different investigators describe normal as being from 1.2–1.8 mg/100 ml).

d. *Studies.* Three significant studies were described during the public hearings. However, in addition to the studies described in the proposal there are present within the Record several additional studies that clearly indicate the prevalence of renal disease among workers. For example, Lilis et al. in a study of 102 lead-poisoned patients discovered signs of impaired renal function in a significant number of cases. While impairment of urea clearance appeared to be the earliest sign of renal dysfunction, creatinine clearance also deteriorated with increasing exposure. Finally, high creatininameia and persistent urea retention, which usually was accompanied by high blood pressure, developed in those workers who were chronically poisoned. Lilis et al. concluded that the functional impairment resulted from a marked vasoconstriction of the renal blood vessels (perhaps indicating the generalized vasconstriction of lead poisoning), and was probably transitory in the early stages. Prolonged exposure, however, may lead to progressive and irreversible renal damage with the subsequent development of organic lesions. These investigators noted that such clinical effects ordinarily indicated severe lead nephropathy. Undercompensated and decompensated renal failure was also found in 18 patients, most of whom had been exposed to lead for more than 10 years, and many

with a history of lead colic attacks. Arterial hypertension accompanied chronic renal failure in 13 of the cases, however functional renal impairment usually preceded the development of hypertension by several years. (Ex 118E)

In the series of 102 cases of lead poisoning studies by Lilis et al., where 18 cases of clinically verified chronic nephropathy were found, the mean blood lead level was approximately 80 μ/dl, with a range of 42 to 141 μg/dl for the whole series. (Ex 118 E.)

Another study by Lilis et al. noted the appearance of chronic lead nephropathy after a protracted evolution of lead poisoning without the presence of lead colic attacks. In this study of 14 patients with occupational lead poisoning, these investigators found a reduction in renal plasma flow. They did not, however, find evidence of generalized vasoconstriction, which emphasized a considerable and specific reaction to lead solely by the renal blood vessels. Furthermore, this reduction of renal plasma flow was even found in patients with less than 5 years of lead exposure. An additional finding of significantly lowered creatinine clearance values, only in cases with more than 5 years of exposure, indicated the progressive nature of the deterioration of the renal function. Six of 14 patients were investigated during CaEDTA treatment, and the results showed that administration of the chelating agent did definitely improve the renal plasma flow. This difference in response to treatment was dependent on the duration of exposure since those with shorter exposures to lead showed the greatest improvement to chelation therapy. (Ex. 118F).

Additional studies by other investigators also appear in the Record and provide evidence of renal disease in lead workers. (Ex. 95; Ex. 95, Ref. 84; Ex. 6(104); Ex. 27(7); Ex. 97; Ex. 284A; Ex. 6(99); Ex. 24(15); Ex. 6(33))

The results of three major studies were reported during the hearings. In the first Lilis, Fischbein et al. reported the results of a clinical field study from two secondary lead smelters during the rulemaking hearing. They examined 158 secondary lead smelter workers; 24 control workers without significant lead exposure were also studied. The experimental protocol has been partially described in the neurological section of this preamble and will not be repeated here. Suffice it to say that a careful review of each individual's occupational experience was undertaken and a broad spectrum of laboratory tests were performed, including BUN and S-Creatinine.

BUN levels were elevated (greater than 21 mg/100 ml) in 29 (18 percent) of the lead exposed workers, and there was a strong correlation with duration of exposure. A similar correlation was seen with S-creatinine. (Table 1.)

TABLE 1.—*BUN and Creatinine Levels and Duration of Lead Exposure in Secondary Smelter Workers*

Duration of lead exposure	Number examined	BUN levels			
		>21 mg/100 ml		>25 mg/100 ml	
		Number	*Percent*	*Number*	*Percent*
Less than 10 yr	137	18	13	6	4
More than 10 yr	20	11	55	4	25
Total	157	29	18	10	6

Duration of lead exposure	Number examined	Creatinine levels			
		>1.2 mg/100 ml		>1.4 mg/100 ml	
		Number	*Percent*	*Number*	*Percent*
Less than 10 yr	137	19	14	6	4
More than 10 yr	20	9	45	7	35
Total	157	28	16	13	8

A total of ten workers had (BUNs) greater than 25mg. Workers exposed for less than 10 years had experienced elevated blood lead levels at some time in the past. As a rule, more than one-third of the group had also experienced lead colic, and only a small number had been given chelation therapy. (Ex. 23 (Lilis, Fischbein))

In general, blood lead levels in the Mt. Sinai group were distributed as follows:

1. Twenty-nine percent were over 80 μg;
2. Forty-eight percent were over 60 μg;
3. Twenty-two percent were over 40 μg; and
4. One percent was less than 40 μg/100 ml.

In those workers with less than 1 year of exposure, blood lead levels were found, in varying degrees, to range from less than 40 to 80 μg/100 ml. Conversely, those workers with over 3 years of exposure showed blood lead levels in the 80 μg range, and workers with more than 10 years exposure were even higher.

Because of the rapid build-up of blood leads in some workers, as well as the widespread practice of chelation therapy, blood leads could not be significantly correlated with length of exposure. Blood leads could, however, be correlated with ZPP determinations, which in turn showed a strong relationship to the length of exposure.

Furthermore, ZPP elevations also showed some correlations to BUN and S-Creatinine increases. This is significant given that ZPP is a measure of effect rather than absorption. Therefore, an indirect relationship does exist between blood lead levels and increased renal disease. What is more important, though, is the strong relationship between length of exposure and renal disease. *At less than ten years of exposure, 24 workers have lost approximately 66 percent of their renal function—as evidenced by the dramatic increases in BUNs—and, concurrently, elevations in S-Creatinines.*

The authors reported that 26 workers were hypertensive (systolic greater than 150mm Hg and/or diastolic greater than 95mm Hg). The percentage of hypertensives increased with duration of exposure. In the group of 26 hypertensives there were 12 workers with slight or moderatley elevated BUN and 10 with elevated creatinine. The authors concluded:

> The concurrent finding of elevated blood lead and zinc protoporphyrin levels after similar durations of exposure confirmed the relatively rapid build-up of toxic lead levels. As expected, however, longer lead exposure was associated with greater prevalence of disease, and more severe abnormalities. In some cases, evidence of kidney damage (elevated BUN and creatinine levels), hypertension and clinical signs of peripheral neuropathy were found. (Ex. 23 (Lilis, Fischbein), pp. 98–99)

A subgroup in the study was defined as all workers who were found at the time of examination to have (1) blood lead levels of less than 80 μg/100 ml (2) who had never been notified in the past that their blood lead level had

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been excessive and, (3) who had never received chelation therapy. BUN levels in this proup of 48 workers were found to be in the normal range, defined as not exceeding 20 mg/100 ml, with 2 (4 percent) exceptions (23 and 25 mg/100 ml. There was no correlation of BUN levels and blood lead values in this range (r=0.019). Nevertheless, when the relationship of BUN and ZPP levels was analyzed, it was found that with increasing ZPP levels the Bun values tended to be more elevated, with a statistically significant correlation factor of 0.20. For the entire group of lead smelter workers, the prevalence of an elevated BUN was found to be 18 percent, and there was a correlation with duration of exposure (r=0.37). Most individuals with elevated BUN had registered high blood lead levels in the past, many had experienced lead colic, sometimes repeatedly, more than two-thirds had undergone chelation therapy.

Since only 4 percent of the workers had elevated BUN in the subgroup described above (blood lead levels of less than 80 μg/100 ml and no history of high blood lead levels in the past), and since the majority of them had had very short duration of exposure, it was not surprising that their BUN was, for the majority of cases, in the normal range.

In the subgroup six cases (13 percent) the creatinine value exceeded 1.2 mg/100 ml, but in only one case (2 percent) was creatinine in excess of 1.4 mg/100 ml found. Among the six cases there was a weak correlation between blood lead levels and creatinine levels; blood creatinine. A level of 1.3 was found in only one worker with a blood lead level of less than 59 gm/100 ml, had while in five workers with blood lead levels of 60 to 79 gm/100 ml creatinine levels over 1.2 mg/100 ml.

Since elevation of BUN and S-creatinine occurs only when about two-thirds of kidney function is lost , these results must be taken very seriously. That is, there were two cases of BUN elevation and six cases of creatinine levels over 1.2 mg/100 ml in men whose blood leads were below 80 μg/100 ml.

The authors concluded:

When the relationship of creatinine and ZPP levels was analyzed, it was found to be similar to that described for BUN, with a possibly stronger correlation (r=.28).

These observations concerning a possible correlation of BUN and creatinine levels with ZPP concentrations in this group of workers with blood lead levels of less than 80 μg/100 ml and no history of elevated blood lead levels in the past are of interest and suggest the need for further investigations along these lines, to help delineate the course of renal disease associated with lead exposure. (Ex. 24 (Lilis et al.), p. 9)

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Evidence has been reported concerning the development of nephrophathy with long-confirmed lead absorption.

The results of this survey suggest that metabolically active lead may have an earlier impact on renal function than heretofore believed. While in the majority of cases BUN and creatinine were in the normal range, there was nevertheless a correlation between ZPP levels and both BUN and creatinine. The mechanism through which the nephrotoxic effect occurs is not yet clear; one possibility is vasoconstriction affecting the afferent renal arterioles predominantly. (Ex. 24 (Lilis et al.), p. 15)

The second major study which demonstrated lead nephropathy in workers was carried out by NIOSH. NIOSH reported the results of a Health Hazard Evaluation at Eagle Picher Industries, Inc. in November 1975. They determined that symptoms consistent with lead intoxication as well as signs of anemia, peripheral neuropathy and kidney disease were present in workers exposed to lead. A discussion of that report and a supplemental medical study follow.

Eagle Picher Industries' Joplin, Mo., plant produces lead oxide, lead peroxide, lead sulfate, lead silicate and blue lead. Medical evaluations of 53 production workers at this plant revealed blood lead levels ranging from 39 to 135 μg/100 ml, with 44 (83 percent) greater than or equal to 60 μg/100 ml and 19 (36 percent) greater than or equal to 80 μg/100 ml (Ex. 38C). Comparable levels of erythrocyte protoporphyrin were noted. Blood urea nitrogen (BUN) levels were elevated in 17 workers. (Table 2)

TABLE 2.—*Workers With Elevated BUN Levels*

Worker numbers	BUN		Creatine	Years employed	Number of courses of EDTA
	March	May			
1	—	44	—	—	8
2	—	30	—	—	0
3	28	30	1.1	23	1
4	30	28	1.2	23	4
5	26	24	1.3	7	2
6	21	27	.9	16	9
7	23	27	1.0	13	0
8	21	23	1.2	25	0
9	—	26	—	—	0
10	25	—	1.3	20	0
11	23	—	1.0	20	0
12	21	18	1.0	21	0
13	23	18	1.0	7	0
14	23	17	1.2	29	1
15	17	26	.9	4.5	1
16	20	23	1.4	31	13
17	18	24	1.2	20	4

Given these findings NIOSH made the following statements with respect to those men with elevated BUN:

Findings consistent with those noted in lead intoxication were noted in the exposed workers examined. These included symptoms of lead toxicity, anemia, peripheral neuropathy and renal disease.

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The results of additional studies are needed to determine if significant kidney disease exists in these workers and if it is related to occupational lead exposure or to EDTA therapy. These studies are currently in process. (Ex. 38C, p. 6)

Based upon the BUN results in this earlier study NIOSH conducted a followup medical evaluation to determine the extent of renal functional impairment in these workers and the role of occupational lead exposure in the etiology of this disease. The 19 workers (including 2 borderline cases) were referred to a board certified nephrologist for outpatient diagnostic studies.

Following complete history and physical examination, blood and urine tests were performed on specimens from each worker. In evaluating renal concentrating ability, the osmolality of a urine sample collected after a 12-hour water fast was determined. Creatinine and lead clearances were determined using 1-hour timed urine collections and simultaneously collected blood samples. Blood lead levels were determined. Blood chemistry tests (including creatinine, BUN, and uric acid) were performed.

Five of the 19 workers tested had elevated BUN levels (greater than 22 mg/100 ml) and one had an elevated serum creatinine concentration (greater than 1.5 mg/100 ml). However, 8 (42 percent) had decreased creatinine clearance (less than 91 ml/min/1.73 sq m BSA). Impaired urine concentrating ability (i.e., inability to concentrate the urine above 800 mosm/liter after an overnight water fast) was found in 8 of 15 workers tested.

Lead clearance tended to decrease with the increasing duration of exposure to lead. This inability to clear lead was independent of the age of the worker: analysis of data for 45 to 55 year-old men shows the same negative relationship between duration of exposure and clearance rate. (Table 3)

TABLE 3.—*Results of Renal Function Test, Missouri, 1976*

Subject	Age	Duration of lead exposure (years)	Blood lead level (μg/100 ml)	Creatinine clearance (ml/min/1.73. sq. m BSA)	Fasting urine osmolality (mosm/liter)	Lead clearance rate* (ml/min)
1	56	7	154	85	.....	0.07
2	43	20	66	142	.....	.82
3	37	20	35	82	871	1.46
4	47	23	71	72	588	.10
5	45	8	87	128	1,020	.61
6	53	23	61	91	1,025	.97
7	52	26	61	115	650	.70
8	38	20	123	109	608	.94
9	60	25	75	75	278	.30
10	42	21	66	96	1,180	.38
11	47	7	48	108	820	1.09
12	53	29	96	89	708	.10
13	35	13	56	109	966	1.13
14	62	16	105	97	912	1.01
15	52	25	78	73	286	.25
16	53	20	92	108	912	.04
17	51	7	80	85	704	2.04
18	52	31	55	43	652	.80
19	29	4.5	58	112	1,114	.92
Normal range			60	91	800–1,300	

Given these results, NIOSH concluded:

"These studies clearly demonstrate a significantly increased prevalence of mildly to moderately severe kidney disease in employees at the Eagle Picher plant in Joplin, Missouri. Although further studies are needed to clarify the cause of these disorders, lead nephropathy is a likely etiology for several reasons. These workers have been heavily exposed to lead for prolonged periods (5-30 years) and manifest other toxic sequelae of lead exposure including anemia, recurrent colic and joint symptoms. Both renal glomerular and tubular dysfunction were noted in these men, a pattern previously noted in other studies of lead nephropathy. A positive relationship exists between the degree of renal dysfunction (impaired lead clearance) and duration of exposure to lead; and effect which is independent of age. In view of these findings, other etiologies of renal disease seem unlikely but must be ruled out with further testing.

This study illustrates the insensitivity of blood urea nitrogen and serum creatinine determinations and routine urinalysis in detecting renal disease. This finding has been well-documented in the medical literature. More sensitive measures should be used in screening for lead nephropathy in exposed populations; such tests could include measurement of lead clearance, creatinine clearance, and urine concentrating ability as were done in the current report. All testing was performed over several hours in a doctor's office and could be adapted to in-plant screening. (Ex. 79, p. 3)

OSHA considered the results of these clinical investigations to be of extreme importance for three reasons. First, the data indicates that the workers had damage to the tubules of the kidney which negatively affected the kidney's ability to concentrate urine and to excrete lead. Since lead excretion decreases with kidney damage, the use of urinary lead levels to monitor workers is impossible and in fact potentially dangerous. If kidneys were impaired and as a result urinary lead appeared normal, damage might go undetected and expose the worker to further insult.

Second, 7 of 53 people (13 percent) had renal impairment. (Tr. 1348). Third, these results further indicate the insensitivity of BUN, S-Creat, and routine urinalysis in detecting early renal disease.

Dr. Richard P. Wedeen, a board-certified specialist in internal medicine and nephrology, testified on the role of lead in the development of nephropathy in the United States during the rulemaking hearings:

To the best of my knowledge, we have identified the only well documented cases of occupational lead nephropathy in the U.S. We have used sophisticated physiological techniques called "clearances" requiring from 4 to 12 hours of the patients' time and many more hours of laboratory analyses to measure kidney function. In selected cases, we have performed renal biopsies in order to confirm the diagnosis of lead nephropathy and to exclude other possible causes of kidney disease.

We have identified 19 cases of nephropathy among 51 lead workers whose kidney function was examined. Thirteen of the nineteen men worked in a lead smelting plant, three worked as lead burners, two cleaned up spent bullets in pistol firing ranges, and one prepared solder creams from molten lead. All of these workers lived and worked in northern New Jersey and had been occupationally exposed to lead for from 3 to 34 years. All had been removed from exposure to lead for at least a few weeks at the time we examined them. (Tr. 1735-36)

Wedeen testified that this method was used for two reasons:

First, physical signs and symptoms of renal failure ordinarily are not seen until more than three-fourths of kidney function is lost.

The clinical tests of renal function normally available in any physician's office are too inaccurate or insensitive to detect moderate decreases reliably in GFR. The blood-urea-nitrogen and serum creatinine levels are only increased when more than about two-thirds of kidney function is lost. Moreover, in uncomplicated lead nephropathy, the urinalysis is usually entirely normal. So, in order to detect early renal failure, elaborate laboratory procedures are necessary.

What about advanced renal failure? This is, of course, what we are interested in preventing. The great difficulty with end-stage renal disease due to lead is that there is no way of proving the cause of the disease once it has progressed to the point at which dislysis is required to sustain life. The techniques we have used are essential to detect kidney damage up to 60 percent loss of function. Between 60 and 85 percent loss of function can be detected by routine laboratory procedures. More than 85 percent loss of function results in symptoms of kidney failure called uremia. However, when the disease has progressed to this point, it is extremely difficult to establish the cause, and reversibility is unlikely. (Tr. 1737-38)

In these 19 workers, 4 had a blood lead level above 60 μg/100 ml, and one had a blood lead greater than 80 μg/100 ml at the time of examination. Most of these men had been removed from lead exposure for some period of time. Based upon this evidence, Wedeen and coworkers concluded that blood lead levels were an inadequate measure of lead absorption for purposes of predicting renal disease(s) in workers no longer exposed to lead. (Tr. 1738)

Nineteen of the fifty-one workers whose kidney function was examined had reduced GFR's and in 10 men there was renal biopsy evidence of tubular damage consistent with lead nephropathy. Wedeen eliminated from consideration those who had other possible causes of renal dysfunction such as age over 55 (4) or hypertension (2). This left 13 of the 19 cases. They then eliminated those referred because of medical symptoms, leaving nine (13 percent) medically unselected lead workers who had lead nephro-

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pathy. This is the same incidence of renal impairment as that seen in the Eagle Pitcher study.

The blood lead levels of these workers disgnosed as having lead nephropathy were, with one exception, below 80 μg/100 ml and with four exceptions, below 60 μg/100 ml. Blood lead levels may have been elevated at some time in the past and there was some evidence of this from records obtained. These authors point out that PbB is "of little value to the physician seeking to determine the body burden of lead or the cause of symptoms or signs after lead exposure has ceased." (Tr. 1444) Dr. Wedeen's conclusions are given here in their entirety since OSHA believes they most accurately describe the issues associated with prevention of mortality and morbidity from lead produced nephropathy.

I would now like to address myself to the question of why occupational lead nephropathy has not previously been detected in the United States. I think occupational lead nephropathy has been overlooked because:

1. When lead nephropathy becomes symptomatic, the patient leaves his job and is lost to follow-up.

2. When lead nephropathy is advanced, hypertension develops and is considered the cause of renal failure.

3. Routine clinical tests will not indicate the presence of kidney disease until lead nephropathy is advanced. Blood tests such as the blood-urea-nitrogen and serum creatinine are increased only when two-thirds of kidney function is lost. The urinanalysis which is routinely used to screen for kidney disease is normal in early lead nephropathy. Thus, moderate renal disease is not routinely detected in the physicial's office.

4. Perhaps of most importance in preventing diagnosis of lead nephropathy has been the reliance on blood lead concentrations to make the diagnosis of lead poisoning. The astute physician who sees lead workers with renal disease will naturally consider the possibility of lead nephropathy. He will then go to his reference books to look for the criteria for diagnosing lead poisoning. When he finds that the textbooks and Federal guidelines agree that when the blood lead is under 80 μg percent there is no lead poisoning, he discards that diagnosis. Exactly the same error occurs when he looks at urine ALA or urine lead concentration in workers whose illness has taken them away from lead exposure. He has excluded the diagnosis of occupational lead nephropathy and is usually compelled to make the diagnosis of pyelonephritis or hypertension. Even the most competent physician has no way of knowing that his criteria are inappropriate, since they come from the most authoritative sources. The physician has extreme difficulty in diagnosing lead nephropathy as long as the criteria for diagnosis are misleading.

I have reported today 19 lead workers who have lost 30 to 50 percent of their kidney function. Since they showed no symptons and had no routine laboratory evidence of kidney disease, it may be asked why this kidney function loss should be viewed as material damage. Lead nephropathy is important because the worker has lost the functional reserve, the safety, provided by two normal kidneys. If one kidney becomes damaged, the normal person has another to rely upon. The lead worker with 50 percent loss of kidney function has no such security. Future loss of kidney function will normally occur with increasing age, and may be accelerated by hypertension or infection. The usual life processes will bring the lead worker to the point of uremia, while the normal individual still has considerable renal functional reserve. Loss of a kidney is therefore more serious than loss of an arm, for example. Loss of an arm leads to obvious limitations in activity. Loss of a kidney or an equivalent loss of kidney function means the lead worker's ability to survive the biologic events of life is severely reduced. By the time lead nephropathy can be detected by usual clinical procedures, enormous and irreparable damage has been sustained. The lead standard must be directed towards limiting exposure so that occupational lead nephropathy does not occur. (Tr. 1747-1750.)

Dr. Wedeen concluded that a *minimum* of 10 percent of American lead workers have occupational lead nephropathy.

It can therefore be anticipated that at least 10 percent of the American lead workers have occupational lead nephropathy. This is assuming of course that the exposure in other lead workers is comparable to what exists in New Jersey. This is in fact a minimal estimate. We have excluded from renal function studies 19 workers with gout, hypertension, or kidney stones, although each of these conditions is a well known complication of lead poisoning.

We also eliminated from detailed study six lead workers with other medical conditions possibly associated with renal failure. Thus 25 additional men of the 141 workers screened for excessive body lead burdens may have had renal disease, but it would have been impossible to exclude causes other than lead.

Renal function was therefore not studied in these 25 workers. The statement that 10 percent of unselected lead workers have occupational lead nephropathy therefore represents a minimal estimate of the incidence of this disease assuming only that industrial health precautions in the northern New Jersey plants in which our patients work are typical of the United States.

NIOSH estimates that about one million American workers are exposed to lead. According to this estimate, there may be 100 thousand cases of preventable renal disease due to occupational exposure to lead in this country.

It might be worth contemplating the national cost in dollars if hemodialysis had to be provided to this group of lead workers, compared to the cost of supporting definitive research and prevention. If only 10 percent of these hundred thousand workers with occupational lead nephropathy came to chronic hemodialysis, the cost to Medicare would be about $200 million dollars per year. (Tr. 1740-1742.)

OSHA concurs with the findings of these three studies described and believes that kidney disease associated with lead exposure is far more prevalent than previously recognized. In addition to this general conclusion OSHA also recognizes the difficulty in early detection of the disease given the insensitivity of routine screening tests, the inapplicability of the GFR for routine purposes and the limitations of blood lead determinations. Therefore it is incumbent on the Agency to set a standard which in general reduces the exposure to the worker in order to prevent development of the disease as well as establishes a reasonable margin of safety. These points were clearly articulated by Dr. Bridbord of NIOSH during his cross examination in the hearings. In discussing the insensitivity of these tests Mr. Becker, USWA, questioned Dr. Bridbord about the need for some margin of safety in protecting workers from renal dysfunction.

Mr. BECKER. Dr. Bridbord, you stated the other day a personal feeling that perhaps a level of somewhat lower than 60 would be more appropriate to protect lead workers • • • what do you feel the risk is of renal dysfunction at blood lead levels, at continued exposure of blood lead levels of say 60 micrograms and 80 micrograms.

Dr. BRIDBORD. I think that would be really hard to put into quantitative terms. I think it's more of a question of what I feel would protect against that kind of effect.

In other words, I would view those effects as extremely severe. Some individuals, physicians included, might debate the true health significance for example, of increase in zinc protoporphyrin or increased ALA in the urine etc. I think there can be very little question of the severity of the effect involved with damage to the kidneys which is one of the most vital organs in the entire body.

So I think it's not so much that I have data or that anyone has data which would say precisely here is the actual quantitative risk. • • • I think that the important point from the data we see that at least there appears to be a legitimate question and a legitimate suggestion that such effects certainly occur below 80 blood lead and may well occur below 60 and that the point is if blood lead maximum in my personal opinion, of 60 just does not provide a margin of safety to assure that people are being protected against an extremely severe effect. • • •

Dr. BECKER. Dr. Epstein said yesterday that he felt a standard should apply a margin of safety of 10 times. That he felt, and I don't know what background or scientific basis he was relating to. If I take it then from your comments that certainly the standard of 60 would not provided a 10 fold margin of safety against renal disease.

Dr. BRIDBORD. Certainly not. A 10 fold margin of safety I'm not even sure a standard of 40 would give you a 10 fold margin of safety but there would at least be a certain rationale in terms of protecting against the earliest changes that we feel might be significant in the case of lead but that would be the mechanism that would provide that increased margin of safety but it certainly would not be a 10 fold margin of safety. (Tr. 1839-40)

It is important to note that in the Eagle Pitcher study by NIOSH (Ex. 38(6)) there were a number of workers who had blood lead levels which were

below 80 μg/100 ml, and these men were currently exposed to lead. There was no indication of major changes in the plant over a number of years. In noting these facts Dr. Bridbord questioned Dr. Wedeen on the issue of chronicity of exposure.

Dr. Bridbord. Well, looking at a group of workers, currently employed, having a bloodlead level on that worker and having some information, that to the best of our knowledge there were no major changes in that particular plant during the past number of years. Would that not be a somewhat better index of what the blood lead levels might have been in the past. Considering too, that these workers are currently employed.

Dr. Wedeen. Sure I think that the blood level measured close to the time of exposure is probably more reflective. I worry very much, that this may occur after a few months of exposure and the blood lead level may remain the same for the next 20 years, despite the fact that the individual is continually accumulating lead in the body.

Dr. Bridbord. Would you think that the chronicity of lead exposure, apart from precisely whether the blood lead was above or below 80 or above or below 60 for example, might be an important factor in determining the eventual development of renal disease in lead workers.

Dr. Wedeen. Yes, That is just what I meant, that the accumulative effects and the cumulative body burden may be very different from the blood lead level at any moment in time.

In other words, one could certainly imagine that a blood lead level of 80, for 2 years, may be very similar to a blood lead level of 40, for 4 years. I don't have that data, but something like that may well exist in terms of the danger of the different levels of exposure.

Dr. Bridbord. Alright. Paricularly, in view of that, and given the requirements of the Occupational Safety and Health Act, that sets standards which protect during the working lifetime, would you have some reservations about a blood lead maximum standard, even at 60.

Dr. WEDEEN. I certainly would. And I think I just expressed the basis for it. You will note that in my recording of these patients, very very few of them had blood lead levels over 60. I just feel that while the blood lead level is maybe better than nothing, it may be very practical. It probably doesn't do the job we are trying to do and certainly not from the physicans point of view, who has seen the individual patient, who may or may not be a current exposure at the level that got his disease. (Tr. 1765-1766)

Based on the studies presented and the subsequent comments by Bridbord and Wedeen OSHA agrees with Dr. Wedeen's assessment of the level required to prevent lead nephropathy. "40 μg/100 ml is the upper acceptable limit." (Tr. 1771) Caution must be used in interpreting Dr. Wedeen's statement since he has previously stated blood lead levels are inadequate measures of possible lead nephropathy. OSHA interprets Dr. Wedeen's statement to mean that in order to prevent the development of renal failure over a working lifetime an absorption which results in PbB levels of 40 μg/100 ml is required as an upper limit.

In estimating that there may be 100,000 cases of preventable renal disease due to occupational exposure to lead in this country, Wedeen failed to mention mortality from hypertension or related disease, focusing instead on renal disease. OSHA recognizes that it is difficult to separate one from the other. As Wedeen testified:

"Occupational lead nephropathy is that renal disease is associated with a number of complications and these complications may also cause renal disease. In paricular I would like to mention hypertension, a very important problem, well recognized in this country.

High blood pressure can cause renal disease, but renal disease often causes high blood pressure. This means that in the presence of high blood pressure it can be very difficult to prove what caused the disease. (Tr. 1731)

OSHA's interpretation of the Cooper-Gaffery study reinforces this concern. The agency concludes there is good evidence in smelter populations that mortality due to CNS vascular disease and hypertensive cardiovascular-renal disease is excessive in smelter workers and probably has a work related etiology. OSHA believes there is the possibility of excess mortality from hypertensive vascular disease in the battery manufacturing population as well. The Mt. Sinai group also noted in increased prevalance of hypertension in their study population as well.

It is apparent that further investigations are required in this area although OSHA acknowledges that there are other contributing causes to hypertension which are confounding. The reverse problem is also true however. Physicans may exclude a diagnosis of occupational lead nephropathy because of the lack of clinical indicators. This compels the physician to make a diagonsis of essential hypertension unrelated to lead. OSHA believes that hypertension and renal disease associated with lead exposure has been underestimated and thereby has been the number of workers afflicted with renal disease in the U.S.

During the hearings Dr. Charles Hine, Medical Director of ASARCO, criticized Dr. Wedeen's study in some detail. His testimony and Dr. Wedeen's response is summarized as follows:

Hine:

The kidney, like other organs of the body, has a considerable reserve. At any particular time, only about half of the approximately one million nephron units are functioning. Therefore, the normal kidney can function entirely satifactorily with less than 60 percent of its units working. For example, the removal of one kidney as is done in kidney transplants, with a resulting reduction of 50 percent of pre-surgical function, does not impair the renal function of the donor. (Ex. 218A, p. 4)

Wedeen:

Dr. Hine implies that loss of 50 percent of renal function is not a loss of renal function. This is patently absurd. The decision to accept 50 percent loss of kidney function (as in a living transplant donor) should properly be left to the individual potential donor. (Ex. 257, p. 1)

Hine:

In his publication in the American Journal of Medicine (1975) and throughout his presentation to this group, Dr. Wedeen has referred to occupational lead nephropathy, describing his observations on some 69 lead workers. I believe that this is an incorrect term for the following reasons: Nephropathy, by definition, is a disease of the kidney. None of the men he examined had symptoms of kidney disease, although four were reported to have symptoms and signs of lead poisoning. (Ex. 218A, p. 4)

In other words, Dr. Wedeen is not telling us about kidney disease, he is simply documenting a decrease in kidney function as measured by one test. This decrease in function may be temporary and reversible or permanent and irreversible. (Ex. 218A, p. 5)

Wedeen:

As for the term "nephropathy," this simply means "disease of the kidney". In lay as well as medical circles, loss of function is commonly considered disease. Moreover, many diseases are relatively asymptomatic, particularly in their early phases, e.g., hypertension, diabetes, etc.

It should further be pointed out that lead nephropathy was not determined by "one test" (p. 5). In each case, the significance of the reduction in GFR was supported by comparable reductions in effective renal plasma flow (CPAH). In nine patients, the diagnosis of lead nephropathy was confirmed and other possible etiologies further excluded by renal biopsy.

At the time of my presentation at the OSHA hearings, I reported that one lead worker had shown definite improvement, and three showed no deterioration in kidney function following prolonged chelation therapy. Newly acquired follow-up data on eight treated patients show that all have had a progressive improvement in kidney function. The increase in GFR in response to EDTA therapy both confirms the etiology and indicates the importance of detecting lead nephropathy before it has reached the endstage. (Ex. 257, p. 1)

Hine:

Dr. Wedeen refers to "abnormal EDTA mobilization tests". What is an abnormal EDTA test? Anyone who receives EDTA in sufficient quantities will excrete an increased quantity of lead beyond that which he normally excretes. In my opinion, any quantity of lead greater than 500 μg/l suggest a past exposure to lead greater than that of the general population. An "excessive burden" then is a matter of clinical judgement and experience. (Ex. 218A, p. 8)

Wedeen:

What is an abnormal EDTA mobilization test (p. 8). This was defined in our own control group and the literature in the 1975

American Journal of Medicine paper as less than 650 μg Pb/day. Greater than 1000 μg Pb/day during the EDTA lead-mobilization test was considered abnormal, i.e., suspect, in our OSHA testimony.

The value of the EDTA lead-mobilization test was well documented in my OSHA presentation and need not be reiterated here.

Dr. Hine's statements concerning EDTA therapy (pp. 9-10) are not supported by our findings. (Ex. 257, p. 2)

Hine:

The response of the kidney to the adverse effects of injurious substances is limited and a number of different etiological factors will produce the same type of chemical, biochemical and physiological manifestations of disease. Dr. Wedeen described some observations in his patients which are pertinent to his conclusions, regarding the extent of change due to lead per se, the validity of the diagnosis of nephropathy and the overall significance of his findings. These are:

(i) Specific lead-induced intranuclear inclusion bodies reported by others were not observed by him in biopsy of the kidneys in his group.

(ii) Glomerular changes, arteriolar damage and loss of proximal tubular brush borders were absent in all but the most severe case.

(iii) Clearance data did not reflect defects of tubular transport, of sodium, water, phosphate, or urate.

(iv) In contrast to others who have observed that lead poisoning actually enhances PAH excretion, a tubular defect in excretion, was observed in his patient.

(v) Aminoaciduria of a low degree has been reported as a functional manifestation of increased lead absorption. On the contrary, in the one patient on whom amino acid excretion was measured, only 50% of the maximum quantity of amino acids appeared in the urine. (Ex. 218A, p. 9)

Wedeen:

Dr. Hine makes six final points he believes raise questions about the diagnosis of lead nephropathy. I will respond to each of these briefly.

Page 9, No. 7 (i): Re "intranuclear inclusions." The disappearance of intranuclear inclusions in lead nephropathy has been noted by Cramer, Goyer, *et al.* in adults (Brit J Indust Med 31:113, 1974), and by Goyer in experimental animals (Lab Invest 32:149, 1975).

ibid (ii): Histologic changes in proximal tubules consistent with lead nephropathy were present in all ten biopsied kidneys.

ibid (iii): The absence of *multiple* renal defects detectable by clearance methodology undoubtedly reflects only the limitations of this physiologic technique.

ibid (iv): The PAH transport defect may be a transient phenomenon peculiar to acute lead poisoning.

ibid (v): Aminoaciduria has been demonstrated only in large groups of lead exposed individuals compared to unleaded subjects. These findings have no bearing on an individual case. Aminoaciduria is *not* a criterion for diagnosis for lead nephropathy in adults, although it is rather consistently found in children.

ibid (vi): Normal renal concentrating ability is characteristic of early lead nephropathy and helps distinguish this disease from other renal disease. (Ex. 257, pp. 2-3)

Hine:

We were surprised to see no data on creatinine clearance, since this commonly utilized procedure lends itself to less exacting control of the patient and is more adaptable to the screening of large numbers of persons. (Ex. 218A, pp. 5-6)

Wedeen:

Creatinine clearances were not reported because they showed no correlation with the more accurate measure of GFR used. The well known error of creatinine clearance measurements even under "metabolic ward" conditions is increased under the outpatient field conditions used in this study. (Ex. 257, pp. 1-2)

Hine:

On page 8 of his presentation, Dr. Wedeen refers to measurement of GFR in 41 unselected lead workers. In 28 workers who had normal EDTA tests, apparently no measurement was made. Unfortunately, other negative controls were also not studied at the same time with the same technique. Comparable data on the GFR of persons with similar characteristics but with different occupations is thus not known. Such measurements assume a special significance when comprehensive studies of this type are being carried out in a group suspected of having a problem. The importance of negative control data cannot be emphasized too strongly. (Ex. 218A, p. 8)

Wedeen:

The importance of negative control data cannot be emphasized too strongly (p. 6). By current standards, it would be clearly unethical to obtain clearance data in subjects in whom no disease was suspected. It is therefore appropriate and necessary to use "normal" data taken from the literature. In eight patients we now have better than "negative control data." These patients served as their own controls, and each showed improvement in kidney function following specific therapy.

Because of the obvious limitations in obtaining physiologic data in humans, diagnosis by exclusion necessarily remains the mainstay of clinical medicine. In six patients diagnosis was established by exclusion, in eight by specific therapeutic response, and in seven, other possible causes of decreased renal function were recognized. (Ex. 257, p. 2)

Hine:

Dr. Wedeen's reference to the estimated numbers of lead workers who may be in need of hemodialysis—10,000 or his estimated 100,000 with "lead nephropathy" seems incongruous in terms of:

(i) The improvement in lead hygiene which has occurred throughout the country in the last 20 years.

(ii) The few cases of documented lead nephropathy which are known to occur.

(iii) The suggestion that a modest decrease in GFR is going to result in any significant number of cases of persons with end-stage kidney disease. (Ex. 218A, pp. 10-11)

Weeden:

My comments on the national impact of occupational lead nephropathy were indeed speculative. However, my estimate of at least a 10 percent incidence of the disease were made after excluding symptomatic lead workers from consideration. Other American workers may therefore have lead exposure comparable to that in New Jersey despite "the improvement in lead hygiene which has occurred throughout the country in the last 20 years (p. 11).

Dr. Hine's interpretation of the other medical literature on this subject is also highly questionable, in my view. As long as lead exposure is evaluated only by blood lead levels and lead nephropathy is recognized by inappropriate diagnostic criteria, the impact of this disease on lead workers will remain obscure. (Ex. 257, p. 3)

These arguments in essence stand on their own in OSHA's view and little comment is required. In evaluating these remarks OSHA has given significant weight to Dr. Wedeen's background and expertise in the field of kidney disease. OSHA believes that Dr. Wedeen has more than adequately responded to the issues raised by Dr. Hine and the agency accepts the testimony of Dr. Wedeen as being an accurate representation of the state of occupationally related kidney disease from exposure to lead.

In conclusion, OSHA believes that Dr. Wedeen and coworkers have presented important data that demonstrate that lead exposure is related to kidney disease in long term exposures. This work, coupled with the studies described earlier in this section, elucidates the presence of lead induced renal disease. These investigations raise the specter of a high prevalence of a lead induced renal disease previously thought to be rare in occupational settings in the U.S. While accepting the uncertainties associated with the few modern studies available, OSHA believes that a standard which maintains PbB levels at 40 μg/100g is both prudent and reasonable, and would provide a reasonable margin of safety against the development of chronic renal disease.

5. *Reproductive System.* a. *Introduction.* During the hearings, extensive testimony was presented concerning the effect lead exposure has on the reproductive process prior to conception, at conception, during pregnancy, on the fetus and newborn child, and on the children of lead exposed workers. The evidence indicates that lead has a profound, adverse effect on the course of reproduction. Lead exposure affects the reproductive system of both males and females, by causing genetic, gametotoxic, intrauterine, and extrauterine effects. In lay terms, this means that lead can: (1) Adversely affect the chromosomes; (2) damage the sperm or egg cells prior to conception; (3) affect the developing embryo during pregnancy; or (4) affect the developing baby of an exposed mother who is breast feeding.

Ms. Andrea Hricko prepared a flowsheet for the hearings which describes the chronology of potential adverse effects:

FIGURE 1.

CHRONOLOGY OF POTENTIAL ADVERSE EFFECTS OF JOB EXPOSURES ON REPRODUCTION OR ON THE ABILITY TO HAVE NORMAL, HEALTHY CHILDREN

PRIOR TO CONCEPTION	AT CONCEPTION	DURING PREGNANCY	ON THE NEWBORN	ON THE CHILD
Menstrual disorder - women Interference with sexual functions - men Lowered fertility - men and women Genetic damage in male and female germ cells, can be passed on to children and result in disease or birth defects. Can also cause miscarriage or stillbirth.	Difficulties in conceiving a child (for example, by interference with sperm's ability to fertilize the egg)	Miscarriage, stillbirth, cancer, disease, or birth defects--as a result of substances crossing the mother's placenta and reaching the developing fetus	Toxic effects on development of baby as a result of chemicals transmitted to child in mother's breast milk	Toxic effects on development of child from exposure to substances inadvertently brought home on parents' workclothes

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Evidence has existed for over a century that lead has profound reproductive effects:

> During the late nineteenth and early twentieth centuries, women in the pottery and white lead industries felt lead was an abortifacient. Over 100 years ago, they knew that women in lead work were more likely to be sterile; that if they became pregnant they were more likely to miscarry; that if the pregnancy went to term it was more likely to end in stillbirth; and that if the child was born living, that death was more likely to come in the first year of life. (Ex. 233; p. 1)

This older work, coupled with more recent data on adverse reproductive effects, caused OSHA to address the issue of increased susceptibility of women of childbearing age in its proposed lead standard.

Recent studies of the toxicological effects of exposure to lead indicate certain groups of adult workers may have greater susceptibility to lead intoxication than the general worker population. One such group is female employees of childbearing age. It is known that lead absorbed into the bloodstream of pregnant women crosses the placental barrier and enters the blood of the fetus. This is of great concern because excessive exposure to lead during pregnancy has caused neurological damage in children. As noted in the Academy's report, the risk to the fetus from intrauterine exposure to high levels of lead in the mother's blood is maximal in the first trimester of pregnancy when the condition of pregnancy may not be known with certainty. It has also been established that the umbilical blood lead concentration in the fetus is similar to that found in the mother's blood. This raises the serious possibility that the blood lead level in the mother might harm the fetus, without producing any clinical symptoms of lead exposure in the mother.

The extensive data on lead intoxication in children indicate that for several reasons, including their rapid growth, children may be susceptible to lead intoxication at lower blood lead levels than adults. The U.S. Public Health Service considered this and other factors when it recommended, in March 1975, that blood lead levels in children be kept below 30 μg/100 g. (Ex. 2, p. 45935).

There was evidence presented at the hearings that exposure to lead is associated with adverse reproductive effects, and that females per se are not more susceptible than males, as was maintained in the proposed standard. The principal issues addressed were:

(1) Whether low blood-lead levels were associated with adverse effects on male fertility.

(2) Whether genetic damage in male and female germ cells occurs from exposure to lead and whether the results can cause failure of implantation, miscarriage, stillbirth, or be passed on to children and result in disease or birth defects.

(3) Whether OSHA should establish a standard which protects the fetus from the harmful effects of lead, and if so, what blood lead levels are required to protect the fetus.

There was extensive discussion on the issue of equal employment for women in the lead industry. The lead industry argued that OSHA is not obligated to set a health standard which would insure equal employment for all persons; that is, OSHA is not obligated to protect the fetus. This issue will be addressed in the permissible exposure limit section following a review of the health effects here.

Following an evaluation of the record, OSHA has concluded that the agency must set a standard which, to the degree feasible, protects the fetus as well as working adults. This conclusion is based on the knowledge that lead crosses the placental membrane and can adversely affect the fetus. Given the health effects data, in order to protect the fetus, the blood lead level of the parent should be kept below 30 μg/100 g. In addition, OSHA has concluded that the fetus is not most vulnerable during the first trimester, rather, the growing fetus is vulnerable whatever its stage of development.

OSHA also concludes that the record provides evidence which is indicative of adverse effects on males prior to conception. In particular, OSHA believes that Lancranjan has demonstrated an adverse effect on spermatogenesis—including teratospermia, asthenospermia and hypospermia—in workers exposed to lead at low blood lead levels. These same workers demonstrated difficulties in erection and ejaculation, a reduction of orgasm, as well as decrease in libido. OSHA agrees with Lancranjan's conclusion that:

> It is our impression that the endocrine system is one of the more sensitive structures to the noxious agents of places of work. Among the components of the endocrine system, the male gonad is one of the glands most sensitive to the noxious environment. (Ex. 23 (Lancranjan), p. 396)

This final standard must be set to protect men from the effects of lead on fertility, as well as to protect the fetus and women from lead-induced effects.

Both human and animal studies suggest that mutagenic effects occur from exposure to lead. There is evidence of chromosome aberrations in both humans and animals exposed to lead. While these chromosomal abnormalities do not have a clearly defined biological significance, they may be related to reproductive failure.

Data from both human and animal studies indicate that lead exerts genetic, gametotoxic, embryotoxic, and teratogenic effects that impact on the pre- and postnatal survival of the fetus and newborn, respectively. In addition, the viability and development of the fetus may also be markedly affected by the transplacental passage of lead, and the newborn may be affected by lead in the mother's milk. In summary, OSHA believes that the record in this rulemaking demonstrates adverse reproductive effects in males and females, and adverse development effects in the fetus and newborn at blood lead levels at least as low as 30 to 40 μg/100 g, and perhaps below 30 μg/100 g. OSHA concludes, therefore, that it would be prudent to keep blood lead levels of the fetus below 30 μg/100 g.

The remainder of this section will review the record evidence of the effects of lead on reproduction and development. OSHA will follow the outline described by Hricko which establishes a "chronology of potential adverse effects of job exposures on reproduction or on the ability to have normal healthy children." (Ex. 27(11), p. C-4.) That is, we shall address the chronology as follows: (1) prior to and at conception (2) during pregnancy, and (3) fetal and neonatal effects.

b. *Reproductive Effects.* (1) *Prior to and at Conception.* (a) *Females.* In women, the first point at which the effect of lead on the reproductive system is expressed is in the ovarian cycle. Cantarow et al. presented an extensive review of the literature up to 1944. (Ex. 24 (Zielhuis, Wibowo), Ref. Cantarow et al.) This review article contained many references to the older literature and in particular summarized the effects of lead on female gonads and the uterus as follows:

> Disturbances of menstruation occur commonly in women with lead poisoning, including irregularity of the menses, amenorrhoea, dysmenorrhoea and menorrhagia. There may be transitory periods of sterility with the occurrence of normal pregnancy after withdrawal from exposure; this important fact has been demonstrated in man and in experimental animals indicating that lead injures the germ cells which are formed during the period of gestation. (Ex. 24 Zielhuis, Wibowo), Ref. Cantarow et al.)

Modern studies on animals and humans have also demonstrated adverse effects on the ovarian cycle. A well designed study by Vermande—Van Eck and Meigs demonstrates the gametotoxic effect of lead in rhesus monkeys. (Ex. 95, Ref. 564) Eleven monkeys were injected with lead until clinical signs of lead intoxication had been present for several months. Laparotomy was performed and the right ovary removed. Lead injections were discontinued and the animals were allowed to recover. Three animals were chelated, and 8 months later the left ovary and uterus were removed. Menstruation stopped in all monkeys during lead administration, and the sex skin lost its color by the end of the 6th month. The monkeys gradually recovered and menstrual periods resumed 5 months after the injections ceased. The sexual skin color redeveloped in 1 to 4 months. The ovaries appeared macroscopically normal following recovery.

The most important change in ovarian function was a depression of estrogen effect. There was almost no indication of gonadal function after 8 months of lead exposure. Microscopically, while the ovaries showed damage to the primary oocytes, there was inhibition of follicle development. Only a few follicles were found growing in the ovaries and these degenerated in the early secondary stages before maturity was reached. Therefore, ovulations failed to occur. It is important to note that the animals recovered after lead exposure ceased. The same effect has been shown in humans. This is logical since the reproductive cycles of both species are very similar, i.e.—a 28-day menstrual cycle, similar processes of oogenesis, ovulation, and menstruation. (Tr. 631-32)

Hilderbrand et al. studied lead effects on the reproduction of male and female rats. (Ex. 27(13), Ref. Hilderbrand et al.) Although all the experimental animals received the same amounts of lead (either 5 or 100 micrograms of lead acetate for 30 days), the females developed higher blood lead levels than males fed the same dose: 30 μg/dl for females and 19 μg/dl for males at the 5 μg dose; 53 μg/dl for females and 30 μg/dl for males at the 100 μg dose. Both sexes, however, showed adverse reproductive effects at both dose levels. At both the 5 and 100 μg doses, female rats developed irregular estrus cycles; follicular ovarian cysts developed when blood leads reached 50 μg/dl. At the lower dose, impotence and prostatic hyperplasia were noted in the males; testicular damage and inhibition of spermatogenesis occurred when blood lead levels reached 50 μg/dl.

Both Maisin et al. (Ex. 24 (Zielhuis, Wibowo), Ref. Maisin) and Jacquet (EPA Criteria Document, Ch. 11, Ref. 380) noted decreases in the numbers of pregnancies for female mice fed varying amounts of lead (0.1 percent to 0.5 percent) for 16-18 days after the day of vaginal plug. Moreover, the numbers of embryos dying after implantation increased.

Panova reported a study on the luteal disorders detected in female workers exposed to lead. The study of 140 female printshop workers, exposed for 1-12 months to less than 7 μg Pb/m³, reported a 13 percent increase in menstrual cycle disorders when compared to 100 textile worker controls. Such disorders were particularly noted in the 20-25 years of age bracket. Unfortunately, the study also reported unexpectedly high ALA-U levels, which makes its quantitative validity difficult to assess. While it is difficult to predict the exact level of lead at which luteal disorders began to manifest themselves, the data indicates that the menstrual disorders occur far below those levels at which lead intoxication is readily detectable. The author concluded that chronic exposure to low air lead levels is related to a disturbed funcional state of the ovaries, and that a dose-response relationship exists. (EPA Criteria Document, Ch. 11, Ref. 354)

(b) *Males.* Reports on the effects of lead on male reproductive function are found in the early literature as well. Cantarow reported the observation of disturbances in male potency as a result of exposure to lead. (Ex. 24 (Zielhuis, Wibowo), Ref. Cantarow) These findings included testicular atrophy and reduced sperm motility. In addition to the Hilderbrand study previously cited, other animal studies have focused on lead effects on paternal reproductive functions. For example, the data from studies of rabbits, guinea pigs, and rats indicates that paternally transmitted effects from lead can occur, including reductions in litter size, in weights of offspring, and in survival rate.

The paternal effects of lead were first confirmed by Cole and Bachuber. (Ex. 23 (Lancranjan et al.), Ref. 25) Litters sired by lead-poisoned rabbits were found to be smaller than those sired by controls. Weller (Ex. 23 (Lancranjan et al.), Ref. 26) also found reductions in the birth weights and survival rates of newborn guinea pigs sired by lead-toxic males.

Varma et al. (Ex. 6(168)) placed each of 14 male mice, which had been fed a solution of lead subacetate for 4 weeks (a total mean intake of 1.65 g), with 3 virgin nonleaded female mice for 1 week. The rate of pregnancy was 52.7 percent in controls compared to 27.6 percent in the lead-treated group, indicating a decrease in male fertility. The mutagenicity index (number of early fetal deaths/total implants) was 10.4 for the lead/exposed mice compared to 2.9 for the untreated controls.

In the study by Maisin et al. (Ex. 24 (Zielhuis, Wibowo), Ref. Maisin), the percentage of abnormal spermatozoa increased with greater exposure. Ultrastructural changes were present.

Stofen (Ex. 233, Ref. 24) reviewed several studies conducted in Russian laboratories. Injecting 2 μg/kg doses of lead six times within a 10-day period, Egorova et al. found damaged testes and spermatozoa. Morphological changes in the testes of rats receiving 2 mg lead/kg were reported by Golubova et al. (EPA Criteria document, Ch. 11, Ref. 369); no such changes were found in rats receiving 0.2 mg/kg.

In 1976, Mt. Sinai conducted a survey in order to evaluate the reproductive history of workers, and questionnaires were administered by physicians to employees of two lead smelters in Indianapolis, Ind. Of the 153 workers questioned, 131 were married, and 102 of them had 304 children. It was found that 81 percent of those children had been born prior to the workers' initial employment in the lead smelter. Many workers had sought medical assistance for general tiredness and decreased libido, while 10 complained of difficulties in having children. A 22 percent increase in abnormal pregnancies was discovered after 62 of the workers' wives were administered the questionnaire, apparently due to husbands forgetting to include their wives' miscarriages.

Using these data, the perinatal mortality rate was found to be 13.3/100 conceptions (33/247) before beginning lead work, and increased to 19.1/100 conceptions (11/57), an increase of about 50 percent, after initial occupational lead exposure (Ex. 233).

The most important study indicating paternal reproductive effects presented during the hearings was a study by Dr. Ioana Lancranjan who demonstrated altered spermatogenesis with teratospermia (malformed sperm), asthenospermia (decreased motility) and hypospermia (decreased number of sperm) in male battery workers. The lowest blood lead level (mean) at which adverse effects were seen was 41 ±12 μg/100 ml. The result of altered spermatogenesis would be expected to lead to substantial decreases in these workers' fertility, and Dr. Lancranjan hypothesized that there may be teratogenic effects associated with teratospermia (Tr. 577).

Dr. Lancranjan, a neuroendocrinologist, reported initially in the Archives of Environmental Health (1975) (Ex. 23 (Lancranjan et al.)) and later at the OSHA hearings on Occupational Exposure to Lead, on her study in which she had examined 150 lead-exposed workers in a storage battery plant to determine the possible effect of lead exposure on male procreative abilities.

The workers were grouped on the basis of their complaints and on the basis of clinical and toxicological test results. In the first group the workers were further divided, based on the 1968 Amsterdam Meeting criteria, into subgroups: lead-poisoned workers (74.50 ±25 μg/100 ml mean blood lead level), lead workers with moderately increased absorption (52.80 ±21 μg/100 ml mean blood lead level), and lead workers with slightly increased absorption (41 ±12 μg/100 ml mean blood lead level). The second group (6 years mean occupational exposure) consisted of technicians and office workers with physiologic absorption of lead working in a polluted environment (23 ±14 μg/100 ml mean blood

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lead level). A control group of 25 men without occupational exposure was also included.

Lancranjan found a significant increase in teratospermia, hypospermia and asthenospermia. Teratospermia was significantly increased among lead-poisoned workmen (blood lead mean 74.5 μg/100 ml and workmen with moderately increased absorption (blood lead mean 52.8 μg/100 ml (Table 1) Hypospermia and asthenospermia were increased not only in both preceding groups, but also those with only slightly increased absorption (blood lead mean 41 μg/100 ml.

Using a fertility criteria based on motility greater than 40 percent, sperm number greater than 20 million, and normal forms greater than 70 percent, the authors concluded that 50 percent of the lead poisoned subjects (blood lead concentration 74 ±26 μg/100 ml were infertile and 76 percent were hypofertile. (Ex. 23 (Lancranjan et al.), p. 399):

Ms. MILLER. I would like to tie together two ideas which I see from your presentation. One, I believe at, 75 percent were hypofertile? Had some decreased fertility?

Dr. LANCRANJAN. Yes.

Ms. MILLER. And 50 percent were infertile?

Dr. LANCRANJAN. Yes.

Ms. MILLER. What do you mean by infertile?

Dr. LANCRANJAN. That means that their chance to have, at that time, a child, was very reduced. That means around zero.

Ms. MILLER. All right. These are the kinds of people who might have to seek help to ever be able to conceive?

TABLE 1.

	N	PbB ug/100ml	N (Semen Analysis)	Alterations in Spermato-genesis	Astheno-spermia	Hypo-spermia	Terato-spermia
(a) Lead-poisoned workmen	23	74.5±26	16	15(93%)	8(50%)*	8(50%)*	14(86%)*
(b) Moderate increase lead absorption	42	52.8±21	29	22(68%)	15(51%)*	13(44%)*	17(58%)*
(c) Slight increase lead absorption	35	41±12	19	12(63%)	8(42%)**	8(42%)**	6(31%)
Physiological lead absorption in a polluted environment	50	23±14	25	7(28%)	6(24%)	7(28%)	4(16%)
Controls	50		50		6(12%)	5(10%)	7(14%)

* p<.001 from 12) Lancranjan et al.
** p<.01

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Dr. Lancranjan. Yes. (Tr. 585)

The data suggests a dose-response relationship for altered spermatogenesis and teratospermia. The abnormal spermatozoa included binucleated, bicephalic, amorphous, and tapered forms. Reversibility of the lead-induced infertility was observed 3 months following removal of the male workers from exposure.

Lancranjan discovered no significant lead influence on the Leydig cell secretion of testosterone in the workers. The long-term exposure to increased lead levels was found to have produced a direct toxic effect on the germinal epithelium of the seminiferous tubules of the testes, and not an indirect effect through interference with the hypothalamopituitary system. Early in the report, Lancranjan noted that, in the endocrine system, the male testes are the most sensitive glands to a noxious environment. She further emphasized that past industrial practices disregarded this fact, by providing protection from lead exposure only to the female of childbearing age and not the male.

The study by Lancranjan, although unique in its purpose—to study adverse neuroendocrinological alterations produced by lead on male workers—engendered much criticism during the lead hearings. Most of the criticism was based on a review of Lancranjan's study by Dr. R. L. Zielhuis, professor of medicine at the University of Amsterdam:

In 1975 Lancranjan et al. published a study on the reproductive ability of lead exposed male workers. They compared three groups of workers (I average PbB 745 ppb, II 528 ppb, III 410 ppb) with a control group (PbB 230 ppb). The data suggested a dose response relationship for pathological erection, whereas decreased libido, pathological ejaculation and decreased orgasm was more prevalent in the lead workers; the data also suggested a dose response relationship for disturbed spermatogenesis and for teratospermia. However, the study as reported leaves many questions to be asked and comments to be made, e.g. no good matching of controls, overlapping of groups in regard to PbB and ALAU levels, PbB-levels may have been underestimated or ALAU overestimated, individual data not presented. This report may be regarded as indicative, but not as conclusive. (Ex. 24 (Zielhuis, Wibowo), p. 10)

The Lead Industries Association has also criticized the methodolgy of this work by Lancranjan. Dr. Lancranjan has responded to the critiques as follows:

Concerning the annex No. 11 of professor Zielhuis's review I have the following comments to make:

(a) We reported the mean values and their standard deviation (not a standard error!) of all toxicological data.

(b) I agree that as far as PbB is concerned, it is an overlapping between moderate absorption and slight absorption, but division of lead exposed subjects into IV categories was performed according to all toxicologic parameters.

(c) Subjects used and controls for measuring the fertile capacity had similar range of age and mean age.

(d) It was quite difficult to provide individual data of all 150 investigated lead-exposed subjects for a normal publication. Moreover, details concerning the exposure, as well as individual data, required by the Coronel Laboratory (after my departure from Romania) are considered as state secrets and will not be available. (Ex. 58, p. 6).

I write to confirm once again:

1. In my opinion the grouped data I have presented on blood lead levels allows us to fairly conclude that a dose-response relationship exists when we consider teratospermia. The other parameters measured may not show as strong a relationship but are certainly significantly altered over the controls.

2. The relatively high SD (standard deviation) in Pb blood levels represent expected biological variations that would present a scatter on a dose/response curve as calculated to the best fit. This is almost always the case in establishing a dose-response relationship, particularly in epidemiological studies.

3. The findings of lead in blood as against other biological parameters (ALA—urine, Pb urine, coproporhyrin/urine) in the subjects exposed in my study are factual, confirmed by reliable techniques. The absence of matching of the relative interrelations between different biological values is not unusual. The Amsterdam indicators of 68 on much interrelations were revised in their further conference of September 1976. (Ex. 318)

A second criticism by the LIA concerned Lancranjan's choice of the control groups:

Lancranjan's control subjects were mainly office workers and students—that is, people with sedentary occupations—whereas her lead-exposed group consisted largely of persons engaged in heavy manual labor. This difference may have influenced the results of her study. (Ex. 335, p. 33)

OSHA agrees that if this were a study dealing with physical exercise, and not lead exposure, the "defect" might be pertinent, particularly in reference to sexual dynamics. Fatigue may act, under certain circumstances, as a deterrent to sexual stimulus. However, what is pertinent, is the fact that Lancranjan's lead-exposed group was comprised of "50 technicians and office workers of this (storage battery) plant who worked in annex workrooms in a lead-polluted environment • • •." (Ex 23 (Lancranjan et al.), p. 396). Obviously, these individuals did not suffer from physical duress, but they did exhibit changes in spermatogenesis.

LIA, also argued that,

Although the most reliable method of determining the purported effects of lead on the fertility of workers would be to investigate the number and health of the children they had had, Lancranjan was not able to obtain that information. (Ex. 335, p. 33)

Lancranjan stated:

Dr. LANCRANJAN. I am sorry, again. This implies some political aspects, because I have to recognize that the standard of life is very low in Romania and many workers are happy not to conceive. It was not possible to publish such a declaration and to send such a letter from my country, but hoping that you are not relying on, you know, it is quite a danger for my family being now in Romania to declare such things, but you must imagine that in my country both partners are working and the law obliges each family to have at least four children and they haven't the possibility, the material possibility, to take care of so many children and they are happy not to have children. I am sorry to say all this (Tr. 606-07).

Further, the LIA stated:

Lancranjan was unable to determine whether her volunteers did in fact abstain from any sexual activity during the three-day period preceding the testing. Had some of the test subjects not abstained, this would have materially affected the data with respect to the number and motility of the sperm studied. (Ex. 355, p. 32).

Ms. Miller of the USWA questioned Dr. Lancranjan on this issue during the hearings:

Let us assume for a moment that they did not abstain. How might that have influenced your results?

Dr. LANCRANJAN. It was possible to obtain the decreased number of spermatozoa in their production, but not an influence on their morphology. That means teratospermia is teratospermia.

Ms. MILLER. So fertility might be affected in terms of having a decreased number of sperm?

Dr. LANCRANJAN. Of course. And when they came with their products, we again inquired if they followed the recommendation and I think that their standard of understanding was enough high to cooperate with us. It was not their interest because they didn't obtain anything from—They were not interested to give us.

Ms. MILLER. In addition, your results on teratospermia, here you saw the best correlation between the blood leads, you perhaps, would not have been influenced at all, is that correct?

Dr. LANCRANJAN. That is correct. (Tr. 588-89.)

After careful consideration of all the criticism offered concerning the Lancranjan study, OSHA agrees with the conclusions that she set forth:

Results showed a significant increase of spermatic alterations, asthenospermia, decreased motility, hypospermia, decreased number, and teratospermia, malformed sperm. Even in workers with moderate lead absorption, significant differences in asthenospermia and hypospermia were observed. The most frequent and significant alteration revealed by the semen analysis was teratospermia. (Tr. 1161)

To finally evaluate this findings in ths study, OSHA has carefully studied the research design, the experience and qualifications of the principal author, the history and dearth of this type of research, the context in which the work was carried out and the data

themselves. Dr. Lancranjan has been in the field of endocrinology for 10 years, during which time she has primarily focused her attention on studying the reproductive effects of various occupational exposures. During this time, she has studied the effect of carbon disulfide and organic solvents, particularly benzene, as well as lead. She is unquestionably qualified in this field. Second, OSHA believes this to be pioneering research of great significance. Investigations on human subjects have only recently attempted to determine the effect of lead on the male reproductive system. Studies in this area were faced with two major obstacles:

(1) Obtaining accurate information from a subject's memory concerning a very private subject—sexual performance; and

(2) Designing a study which is clearly interpretable or justifiably extrapolatable to the total organismal event.

This research on male reproductive effects, given its innovative character and profound implications, was bound to raise serious questions. OSHA believes reasonable issues have been raised and addressed by Dr. Lancranjan. It would be impossible without further research to eliminate all questions associated with the study. This would be true for any new work such as that described by Dr. Lancranjan. However, based on the evidence in this rulemaking record, OSHA recognizes that there are other studies, both human and animal, which have already been described that demonstrate lead's adverse effect on male fertility. That is, Lancranjan's study is not an isolated case. Therefore the agency has concluded that altered spermatogenesis, teratospermia, hypospermia, and asthenospermia did occur in lead exposed workers at blood lead levels heretofore unseen. It appears that alterations in sperm may have occurred in workers whose blood leads were as low as 30 to 40 μg/100 g. OSHA is in general agreement with Dr. Lancranjan when she states:

Ms. MILLER. You indicate that you feel OSHA's standard is a step in the right direction to protect workers?

Dr. LANCRANJAN. That is right. It is a step.

Ms. MILLER. At the same time you say that the mean the blood levels of 40 micrograms per 100 grams is obviously required to reduce the effects of the type that you saw in these males?

Dr. LANCRANJAN. When I wrote this draft, I was—I was concerned that it was not easy in Amsterdam to impose a lower level and for that reason, I thought that would be a step to be reached, but based on my data, I would have the courage now to recommend even a lower one, because in cases with 41 plus or minus 12, my programs, the lead in blood at 100 milliliters, I already found disturbances of spermatogenesis. To be sure it is possible to be sure in biology, I would recommend a lower level as a safety limit.

Ms. MILLER. What might such a level be?

Dr. LANCRANJAN. You see 23 plus or minus 14 in my table were subjects without significant disturbances of spermatogenesis. So a level between 40 and 20, let us say 30.

Ms. MILLER. 30 micrograms?

Dr. LANCRANJAN. Yes; 30 micrograms per 100 milliliters.

Ms. MILLER. That should be an outside limit, but you feel no one should exceed that level to preclude——

Dr. LANCRANJAN. To avoid an effect on male fertility. (Tr. 586-87.)

(C) *Genetic Effects.* There is evidence in the record that genetic damage from exposure to lead occurs in male and female germ cells. The result of this genetic damage may be (1) the death of the fetus by spontaneous abortion, miscarriage, or stillbirth, or (2) a birth defect or disease in a live born child.

As early as 1914, Oliver studied pregnancy outcome among the wives of males employed as house painters, many of whom suffered from lead colic. Of 467 deliveries, 23 percent (107/467) were stillborn as compared to a stillbirth rate of 8 percent in the entire town. (Ex. 23 (Lancranjan et al.), Ref. 21.)

Lewin also reviewed the reproductive histories of "healthy" women who were married to lead workers. Out of 32 pregnancies, there were 34.4 percent miscarriages and 3.1 percent stillbirths. Of those children live born, 40 percent died within the first year of life, and only 2 survived to adulthood (Ex. 27 (13), p. 6).

It is not clear from the older literature whether the fetal loss which was observed in the wives of workers was due to a mutational event in a sperm cell prior to conception, or due to the teratogenic effect of lead in the developing conceptus following exposure of the pregnant wife to lead-covered work clothes worn home by her husband. Similar results have been found in animal studies where there was no possibility for contamination, which suggests that the genetic damage is caused by lead. The paternal effect of lead on perinatal mortality was first demonstrated by Cole and Bachuber (Ex. 23 (Lancranjan et al.), Ref. 25). Two strains of rabbits were fed lead acetate and then mated with nonexposed females. The authors reported lower birth weights in the pregnancies from lead-exposed males, and higher mortality within the first 4 days after birth. These results were corroborated in guinea pigs.

The effects of lead on reproduction and growth of second generation rats was also investigated. Dalldorf and Williams (Ex. 23 (Lancranjan et al.), Ref. 23) reported that while the growth in the first generation was normal, there was stunted growth in the second generation. In addition there was a significant increase in mortality in the second generation as well as incidents of male and female sterility.

Stowe and Goyer (Ex. 27 (13), Ref. Stowe and Goyer) found a reduced birth rate, survival rate and litter size (i.e., number) in a study of first generation lead toxic male rats.

Nonetheless, these early reports in the literature prompted investigators to further study the mutagenic effect of lead as a possible cause of the increased rate of abortion and stillbirths which was observed (Ex. 233, Ref. 40; (Ex. 27 (13), Ref. DeKnudt et al.; (Ex. 27 (13), Ref. Forni et al.). Dr. Lancranjan has suggested that these genetically impaired cells result in pregnancy failings, but may well be transmitted in the form of gene mutations to the offspring (Tr. 577-578). Although studies have not been specifically undertaken to demonstrate the subcellular effects that lead accumulation might cause in germinal cells (Tr. 668), the studies conducted by Schwanitz, DeKnudt, and Forni on lymphocytes demonstrates that lead does induce human chromosomal changes in somatic cells.

The study by Schwanitz et al. (Ex. 233, Ref. 40) reported a highly significant increase in the rate of lymphocytic chromosome aberrations in eight factory workers exposed to lead oxide who had shown no symptoms of lead poisoning. These workers had a mean blood lead concentration of 74.4 μg/100 ml (range 62-89) and increased ALA-U excretion. The percentage of abnormal metaphases in the cultured cells was 18.75 percent in the exposed group, as compared to 5.13 percent in the 15 healthy controls. The increase was highly significant for chromatid and isochromatid gaps, for isochromatid breaks and for atypical chromosomes. No correlation was found between the blood lead level and the number of chromosomally abnormal cells. Lehnert, in Germany, found an increase in gap-break chromosomal changes in lead workers having a blood lead in the range of 62-89 μg/100 ml (Ex. 233, Ref. 43). He found a positive correlation between increased urinary ALA and the percent of abnormal mitoses seen.

A more extensive cytogenetic study was conducted by Forni and Secchi on workers with an occupational history of lead exposure, who had exhibited various degrees of symptoms (Ex. 6 (53)). Chromosome studies were carried out on 65 male workers occupationally exposed to lead and 65 unexposed controls, matched for age. The workers were divided into three groups: group I, 15 workers with preclinical intoxication; group II, 37 workers with clinical signs or symptoms of lead poisoning; group III, 13 workers with past lead poisoning, who had not

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been exposed to lead for 18 months. Evaluation showed statistically significant increased rates of chromatid and unstable chromosomal changes both in group I and group II, when compared to the controls. The differences were not significant for group III.

A prospective study on 11 subjects before and during initial exposure to moderate concentrations of lead fumes in a storage battery plant was carried out on the same group (Ex. 23 (Forni et al.)). The rate of abnormal metaphases was approximately doubled after 1 month of work, remained in this range up to 7 months, and then tended to decrease somewhat. The ALA-D activity of the red blood cells was reduced to almost 50 percent of the initial value after 1 month, and decreased further in subsequent months. Pb-U and CPP increased sharply after 1 month, while ALA-U increased moderately. The authors concluded that the biochemical and cytogenetic data suggested that an adjustment mechanism may intervene after some months of lead exposure.

While many studies demonstrate that lead can cause chromosomal abnormalities, a study by Sperling (Ex. 72, appendix 3 (8)) found no increased chromatid or chromosamal aberrations in the lymphocytes of 5 workers exposed to lead oxide fumes compared to 10 controls. The blood lead level of the exposed group ranged from 50 to 100 μg/100 ml. O'Riordan and Evans (Ex. 27(13), Ref. O'Riordan and Evans) studied 62 shipbreaking yard workers, 35 of which were engaged as burners, directly exposed to lead oxide fumes. The authors concluded that there was only a small increase in the frequencies of chromatid breaks and in the number of cells with abnormal chromosomes in the lead fume-exposed group compared to the controls. However, blood lead concentrations in the range of 80–120 μg/100 ml were found in some of the controls. In other words, the fact that the controls were also exposed to lead is very likely the cause of the negative results. If one compares the rate of abnormal cells to blood lead level, a small steady increase in abnormalities is seen with rising blood lead level.

OSHA has reviewed these cytogenetic studies, and has determined that the preponderance of scientific evidence indicates that workers exposed to lead show an increased incidence of chromosomal abnormalities.

While these chromosomal abnormalities, particularly chromatid changes, may not have a clearly defined biological significance, the Agency has decided that such results must be seriously considered. Forni emphasized this point:

> Increased rates of chromosomal abnormalities are present in cultured lymphocytes not only of workers with clinical lead poisoning but also of subjects with preclinical lead intoxication with no clinical symptoms of signs of disease. Therefore, we can suppose that such alterations might be present in large populations of workers exposed to lead Ex. 6(53), p. 479).

However, since plumbism is not evident these chromosomal changes may go undetected. She stressed:

> On the other hand, it seems that the increased rate of chromosomal abnormalities in comparison to controls of the same age tend to reduce in a number of months or years when the worker leaves the dangerous occupation as suggested by the data obtained in other groups of subjects with past poisoning (Ex. 6(53), p. 479).

Drs. Lancranjan, Hunt, Hricko, and others have suggested that these observed cytogenetic effects result in pregnancy failings and may also be transmitted to the fetus as genetic defects. This is important as research has shown that upon cytogenetic examination, 50 percent of human spontaneous abortions have chromosomal abnormalities, as do 10 percent of all stillbirths.

(2) *During Pregnancy.* During the hearings, an abundance of information was supplied on the many cases of spontaneous abortions, miscarriages, stillbirths, early infant deaths, and premature births resulting from occupational exposure to lead (Ex. 24 (Zielhuis and Wibowo); Ex. 233; Ex. 95, Ref. 482; Ex. 27(13); Tr. 644–647; Ex. 60a.ii).

There are many reports in the early literature of fetal loss in women exposed to lead which were discussed by Rom (Ex. 233). Tardieu reported in 1905 that 608 out of 1,000 pregnancies in lead workers ended in abortion. Legge, who summarized the reports of 11 English factory inspectors, reported that of 212 pregnancies in 77 females working with lead, only 81 living children were produced; there were 21 stillbirths, 90 miscarriages, and of 101 children born, 40 died in their first year. Fifteen women had never become pregnant. Sir Thomas Oliver noted that females premaritally exposed to lead had twice as many miscarriages and stillbirths as female mill workers of similar ages, and that females exposed after marriage had a threefold increase. Nogaki studied the pregnancy outcome of 104 Japanese women, and discovered that there was a preexposure miscarriage rate of 45/1,000, which rose to a rate of 84/1,000 pregnancies following occupational lead exposure. The miscarriage rate for 75 comparable employees who were not exposed to lead was 59/1,000 pregnancies. The maternal blood leads were high, ranging from .110 to .317 mg percent. Pindborg found that of the 25 pregnancies he studied in women who had ingested lead oxide as an abortifacient, and had mild to moderately severe lead poisoning, 60 percent aborted in the first trimester. Rennert, Chyzzer, and Oliver all reported convulsions and macrocephaly in the offspring of women employed by a cottage industry using lead glazes, demonstrating the profound effect of lead on the development of the fetal nervous system. Lane (Ex. 95, Ref. 328) studied female lead workers exposed to air leads of 75 $\mu g/m^3$ to determine the effect of such levels on pregnancy. Out of 15 pregnancies, there were 7 times the expected number of stillbirths (3/15). Since the sample size was small, statistical significance cannot be demonstrated. However, it is important to note that all the women had been removed from lead work as soon as pregnancy was disclosed. Teitlebaum suggests that a sufficient period of time was not allowed to reduce lead body burdens, therefore causing fetal wastage.

> Fahim et al., compared lead values and the course of 249 pregnancies in Columbia, Mo., with 253 occurring in the center of America's lead belt at Rolla, Mo. At Columbia, greater than 96 percent delivered normally at term, 3 percent were preterm (defined as a neonate born before 37 weeks of gestation and weighing less than 2,500 grams), and less than 1 percent had premature rupture of the membrane. At Rolla, only 70 percent were term, 17 percent had premature membrane rupture (defined as spontaneous rupture of the membrane before the onset of labor and when labor does not begin within 12 hours), and 13 percent were preterm. The striking blood-lead findings from the Rolla lead belt area were a doubling of maternal blood lead in the premature membrane rupture and preterm groups, and a fourfold increase of fetal blood lead in these groups. Fahim has also noted an increase in molar pregnancies (which result from a blighted ovum) in the Rolla region. He also states that women in the lead belt have increased menstrual disturbances—amenorrhea, dysmenorrhea, irregularity of menstrual cycles, and menorrhagia (Ex. 233, p. 3).

Zielhuis and Wibowo (Ex. 24 (Zielhuis and Wibowo)) criticized this study primarily because 70 percent of the women placed in the "mean mining region" group had blood lead levels comparable to 96 percent of those placed in the "no lead mining region" group. While OSHA acknowledges that the two groups were not as distinct as their group titles of "near mining" and "no lead mining" implied, the fact remains that the women with higher blood lead levels demonstrated the effects described.

This early literature clearly notes cases of sterility and abortions resulting from female lead exposure. The mechanism by which lead interacts with the female reproductive system to cause these conditions, however, is imperfectly understood. The early literature suggests that such cases probably are caused by germ cell alterations.

Dr. Vilma Hunt has examined the literature documenting reductions in fertility and increased rates of abortions and stillbirths and has probed to determine what biological effects, if any, lead exerts on the cellular and subcellular level. Hunt presented testimony which indicated that impaired germ cells, paternal or maternal in origin, would cause pregnancy failings, as well as be transmitted in the form of gene mutations to the offspring (Tr. 577–578).

While the precise mechanism(s) by which lead effects spontaneous abortion, miscarriage, and stillbirth in women is unclear, there is no debate that such effects occur. Further research is required to determine whether genetic, teratogenic, fetotoxic or, embryotoxic mechanisms are active. Any, or all may be responsible for adverse effects in the fetus. OSHA believes that, whatever the mechanism, a standard must be promulgated which prevents these effects of lead from occuring.

There is conclusive evidence that lead crosses the placenta of pregnant women and enters the fetal tissues; lead levels in the mother's blood are comparable to concentrations of lead in the umbilical cord blood at birth. (Ex. 24 (Zielhuis, Wibowo); *Ibid.*, Ref. Fahim; *Ibid.*, Ref. Haas; *Ibid.*, Ref. Baglan; Ex. 95, Ref. 32; Ex. 60a.ii; Ex. 233; Ex. 335). Correlation coefficients between lead in the umbilical cord and maternal blood lead levels have been reported as high as 0.84 (Ex. 95(32)). Transplacental passage of lead becomes detectable at 12–14 weeks of gestation.

The lead, in this way, may directly impair fetal survival and development. Fetal tissues have the ability to store lead. For example, a study on lead transfer published by Barltrop in *Mineral Metabolism in Pediatrics* in 1969 (Ex. 95, Ref. 32), demonstrated that maternal mean blood lead values of 15.2 μg/100 ml (8–22 μg/100 ml) correspond to fetal mean blood lead values of 11.2 μg/100 ml (4–24 μg/100 ml). By analyzing tissue from 34 fetal specimens of 10 to 40 weeks gestation, Barltrop further established that "the distribution of lead between the (fetal) tissues was found to be similar in concentrations to that in later life."

Because the fetal specimens of 10 to 12 weeks maturity were so small, chemical analysis of all tissues was somewhat limited. Consequently, Barltrop concentrated on those fetuses reaching term (or longer). From an in-depth evaluation of the tissues from a 40-week-old fetus, he found that most of the total body lead was concentrated in the fetal skeleton. The next highest lead concentrations were located in the fetal liver, heart, kidneys, and brain, in decreasing order. The relatively high concentrations of lead contained in both blood and brain are a reflection of their mass in comparison to that of the entire fetus. An organ such as the brain, which has "a relatively low affinity for lead but large relative mass," may become a significant contributor to the total body burden. It is therefore established that lead does cross the placental barrier, and is capable of being stored in fetal tissue.

When discussing the effects of lead on the fetus, one of the major issues to be addressed is whether the "fetus is most susceptible to lead toxicity during the stage of most active growth, suggesting that the early pregnancy is most endangered and that the fetus is possibly more sensitive than the young child" (Ex. 59, p. 6).

Dr. Vilma Hunt reviewed the data which served as a basis for this view that the initial trimester represented the most lead sensitive fetal period. She stated her conclusions as follows:

> "The evidence for first trimester loss is primarily from studies of acute severe lead poisoning in women using lead salts as an abortifacient or severe industrial poisoning cases. The cases came to attention because of the death of the mother, because of her severe poisoning. Abortions certainly occur under such conditions as the anecdotal reports attest. Teratogenic effects, per se, have not been observed in surviving fetuses and live borns who have experienced lead intoxication in utero throughout gestation including the first trimester. I would say that the weight of evidence points to toxic effects on maternal physiology as the prime cause for embryo loss in the first trimester, under conditions of high blood lead levels in the pregnant women, over 100 μg/100 ml. Bell proposed that excessive lead first injures the chorionic epithelium of the uterus and thus, indirectly injures the fetus leading to its expulsion. Hardy and Hamilton stated that expulsion of the fetus follows with, or without, a direct stimulating effect of lead on the uterine musculature. It is appropriate to note the considerable capacity for contraction and relaxation of the uterine musculature which is maintained throughout a woman's reproductive life (Masters and Johnson).
>
> "A review of placental physiology shows that the nutrition of the early fetus is primarily due to trophoblastic digestion and absorption of nutrients from the endometrial decidua, diminishing in importance by the 12th week of gestation, by which time nutrients are then obtained from diffusion through the placental membrane.
>
> "In the early months of development placental permeability is relatively slight for two reasons: First, the total surface area of the placental membrane is still small at that time, and second, the thickness of the membrane is great. However, as the placenta becomes older, the permeability increases progressively until the last month or so of pregnancy, when it begins to decrease again.
>
> The placenta also has considerable storage capacity, and during the first few months of pregnancy, it grows tremendously in size while the fetus remains relatively small. Calcium along with other substrates is stored in the placenta to be used in the later months of pregnancy for growth by the fetus. It could be expected that lead would be similarly stored.
>
> It is my opinion then, that the first trimester has not been shown to be the period of highest vulnerability for the fetus because:
>
> 1. The nutrition of the fetus for the first 10 to 12 weeks is primarily dependent on nutrients from the endometrial decidua and not directly from the blood nutrients passing through the placenta.
>
> 2. Specific human teratogenic effects have not been reported as a result of lead exposure. Deformities such as macrocephaly are likely to result from lead exposure throughout the gestation period of cell differentiation.
>
> 3. Probable susceptibility of uterine musculature to lead (above 100 μg/100 ml blood) could result in expulsive contractions (Ex. 59, p. 6–7).

On the other hand, Dr. Hunt would not exclude the potential for lead-induced effects on the initial trimester of pregnancy. She maintains that the presence of lead in fetal tissue does not necessarily indicate that the observed effects occurred during the second and third trimester; they may, in fact, be the result of earlier accumulations of lead in the first trimester of pregnancy (Tr. 634). She supported the testimony presented by Dr. Hricko (Ex. 60A) and agreed that lead does not pass from mother to fetus via the placenta until the 10th–12th week of gestation. This does not mean, however, that the fetus is not directly affected by lead which is absorbed during the first trimester of pregnancy. As the placenta is maturing, and the placental barrier is thinning, it is storing calcium necessary for later fetal skeletal production (Tr. 634). Concomitant with the first evidence of fetal skeletal calcification, lead is observed present in the fetus. Like calcium, lead may be stored in the placenta during the early stages of pregnancy to be released when the placenta becomes functional (Tr. 634).

Furthermore, Barltrop's study (Ex. 95, Ref. 32) verifies that the first trimester is not the greatest period of fetal susceptibility to lead, since lead did not become detectable in fetal tissues until sometime between 12–14 weeks. Thereafter, lead concentrations increase in these tissues until term.

Evidence presented at the hearing demonstrates that stillbirths, along with children who die shortly after birth, have significantly higher lead levels than normal neonates (EPA Criteria Document, Ch. 11, Ref. 359). This supports the position reiterated by Hunt and Hricko, that the accumulation of lead found in the fetus may have occurred in the earlier stages of

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pregnancy and not necessarily only in the second and third trimester.

While Dr. Hunt maintains that specific teratogenic effects cannot be demonstrated to occur due to lead exposure during the period of cell differentiation in the first trimester, deformities are probably the result of exposure throughout the gestation period. OSHA agrees with the conclusions of Dr. Hunt and believes that the growing fetus is vulnerable whatever its stage of development.

d. *Fetal and neonatal effects.* Lead exposure has clearly been shown to have a serious effect on fertility and fetal survival. In addition, there have been extensive investigations on the effects of lead exposure on surviving offspring of lead workers.

Since studies concerned with the effect of lead on the fetus are scanty, witnesses discussed studies of children exposed to lead, and extrapolated their results to the developing fetus, as well as the newborn.

(1) *Heme synthesis inhibition.* Children are similar to adults, insofar as the earliest demonstrated effect of lead involves its ability to inhibit heme production. The implications of this inhibition are potentially profound, since the ultimate result is the reduction of the body's ability to efficiently produce the energy required for normal activity and maintenance. Lead, by interfering with heme synthesis, impairs the normal respiratory process. Transport of oxygen to the lungs requires muscle contraction. Heme proteins, myoglobin and the cytochromes are utilized in this step. The transport of oxygen from the lungs to all body tissues is facilitated in the hemoglobin of the red blood cells whose production is also limited by lead exposure. Far more significant is lead's potentially damaging effect on the individual cellular respiratory apparatus. Each cell in the body uses the cytochromes, as well as oxygen, in an electron transport process required for energy utilization.

In the past, indicators of lead-stimulated impairment have been based on the hematopoietic system. The indicators include alterations in: (1) the activity of the erythropoietic enzyme ALAD, and (2) the level of ZPP in the red blood cells, ALA in serum, and ALA and CPP in urine.

Inhibition of ALAD activity represents the earliest evidence of an adverse effect of environmental lead exposure. This occurs in both children (Ex. 95, Ref. 391) and adults (Ex. 6 (70)) at blood lead levels as low as 10-20 μg/100 ml. At such low levels of lead exposure the biological significance of this inhibition is unclear, since there is no accumulation of precursors or products. At slightly higher lead levels, between 30-50 μg/dl, the activity of ALAD is reduced to below 50 percent, causing a significant buildup of the precursor ALA in the urine (Ex. 95, Ref. 391; Ex. 96). Similar findings are seen in adults (Ex. 96). Nearly complete inhibition of the enzyme occurs around 50 μg/dl in children (Ex. 95, Ref. 391) and 70 μg/100 ml in adults (Ex. 6(70)).

Increased erythrocyte protoporphyrins also occur at blood lead levels above about 20 μg/100 ml (Ex. 32(15)). The Center for Disease Control (CDC) considers blood lead levels of 30 μg/100 ml in children, accompanied by increased erythrocyte protoporphyrins, to be indicative of lead poisoning (Ex. 32 (15)). Studies demonstrate a correlation between ALAD activity in human mothers and fetuses. Most recently, an inhibition of erythrocyte ALAD activity related to lead in both the pregnant woman and the fetus has been observed. Since ALAD is inhibited in both mother and fetus exposed to lead, fetal lead exposure should be no higher than a level associated with significant impairment to the ALAD system in the mother. Such impairment occurs as blood lead levels rise above 30 μg/100 ml.

Piomelli observed an exponential rise in ZPP with arithmetic blood lead level increases between 5 and 90 μg/100 ml in children (EPA Criteria Document, Ch. 11, Ref. 147). Others have confirmed this correlation (Ex. 6 (79), Ref. 23; EPA Criteria Document, Ch. 11, Ref. 153; EPA Criteria Document, Ch. 11, Ref. 156). Furthermore, the slope of the curve of ZPP versus blood lead was found to be steeper in children than adult males (Ex. 6 (79), Ref. 23), and comparable to that in adult females (EPA Criteria Document, Ch. 11, Ref. 159; Ex. 23 (Roels)). Chisholm (Ex. 99B) suggested that in children, ZPP represented a better indication of overexposure to lead than blood lead levels. This may be true only in children with a relatively constant blood lead level (EPA Criteria Document, Ch. 11, Ref. 150), and without iron deficiency. (EPA Criteria Document, Ch. 11, Ref. 164).

Since a rise in ZPP represents the first indication of lead impairment, the threshold blood lead level at which this occurs is crucial. A study by Roels on 143 schoolchildren with blood leads ranging from 5-40 μg/100 ml indicated a threshold effect at blood lead levels between 15-20 μg/100 ml blood lead. (EPA Criteria Document, Ch. 11, Ref. 159) Using probit analysis and segmental curve fitting on 1816 data points from children 2-12 years of age, Piomelli assessed the threshold for no rise in ZPP at 15.5 μg/100 ml blood lead. (EPA Criteria Document, Ch. 11, Ref. 169).

Even if ferrochelatase, has a reserve capacity similar to ALAD, the early accumulation of precursor implies that such safeguards are overpowered by lead at blood lead levels above 15-20 μg/100 ml. Furthermore, since the effect of lead on iron insertion is not limited to the blood-producing system, but extending to all cells, impairment relevant to human health occurs at blood lead levels above 15-20 μg/100 ml blood lead.

Anemia may result from impaired heme synthesis, as well as hemolysis. The blood lead threshold for childhood anemia is 40 μg/100 ml (Ex. 32 (67)), whereas such effects are noted in adults above 50 μg/100 ml (Ex. 5 (18)). Bradley et al. (EPA Criteria Document, Ch. 11, Ref. 209) reported that 39 percent of children with blood lead levels less than 40 μg/100 ml had hemoglobin values of 10 g or less. In comparison, Betts et al. (EPA Criteria Document, Ch. 11, Ref. 101) reported anemia in 36 percent of children with blood lead values between 37-60 μg/dl, and in 14 percent of children with blood lead concentrations less than 37 μg/dl. Signs of anemia include pallor, sallow complexion, and symptoms include fatigue and malaise. In young children unable to express themselves, anemia may be overlooked. (Ex. 5 (5).)

(2) *Neurological effects.* Lead is capable of damaging both the central and peripheral nervous system. Children, which in this context includes the newborn and the fetus, are most clearly the population at extreme risk. In children the central nervous system may be severely damaged resulting in frank encephalopathy, coma, convulsion and death, while anemia, and peripheral neuropathy are readily observable lead-related phenomena.

Less specific symptoms of childhood lead poisoning, antecedents of severe problems, may also go unreported. Irritability, restlessness, apathy, abdominal pain, headaches, vomiting, constipation, hallucinations, developmental delays and regression may be misinterpreted as indications of other childhood illnesses.

Psychological and other functional impairment in asymptomatic children may also be misinterpreted or overlooked. Therefore, recognition of these problems often occurs in retrospect after clear cases of encephalopathy or anemia have set in. Once acute encephalopathy has occurred, there is a high probability of permanent irreversible damage to the nervous system.

Early damage to the nervous system in children exposed to lead has been documented in numerous studies. These studies indicate that damage may have occurred in children only moderately exposed and in whom no demonstrated morbidity had been

shown to exist. These adverse effects associated with lead exposure include behavioral problems, difficulty in task performance, deficiency in IQ, and motor nerve conduction defects. Behavioral problems such as hyperactivity have been seen in children whose blood lead levels were 25 to 55 μg/100 ml. In general, neurologic effects, including both peripheral neuropathies and signs of CNS damage, are first encountered in children as blood lead levels reach 50 μg/100 ml and very rapidly intensify in severity as a function of increasing blood lead elevations. Neurologic damage at low blood lead levels in children formed the basis for CDC's recommendation that blood lead levels in children be maintained below 30 μg/100 ml (Ex. 32(15)). The Committee on Toxicology of the National Academy of Sciences concurred with this recommendation and also recommended that given the variation among individuals, the mean blood lead concentration for groups should not exceed 20 μg/100 ml (Ex. 86M, p. 9) OSHA believes the fetus is certainly no less susceptible than child to neurological damage from exposure to lead, and therefore should be similarly protected. In fact, there is evidence which suggests that long term neurobehavioral deficits may also be induced by exposures of human fetuses to lead in utero, as indicated by the apparent higher incidence of postnatal mental retardation among children born to mothers experiencing lead exposure before and during pregnancy.

A study by Beattie in 1975 (Ex. 6(6)) suggests that childhood mental retardation may be caused by maternal ingestion during pregnancy of tap water containing lead. An analysis of the lead content of tap water in homes occupied during the three trimesters of pregnancy and during the first year of life of 77 mentally retarded children (IQ less than 70) aged 2-7, and of 77 nonretarded matched controls, demonstrated the water lead content to be significantly higher in the retarded group. The probability of retardation was significantly higher when the water exceeded 80 μg/100 ml (The World Health Organization's acceptable lead level in tap water is 10 μg/100 ml). The blood leads of the retarded group were significantly greater (25±12 μg/100 ml) than matched pediatric patients (17.8±5 μg/100 ml). Of 64 matched pairs, no normal children came from homes with water lead levels greater than 30 μg/100 ml, while 11 mentally retarded children came from homes with such levels. The authors conclude that women exposed to a highly leaded water supply had an increased likelihood of producing a defective child, by a 1.7 factor.

In 1977 Moore (EPA Criteria Document, Ch. 11, Ref. 242) determined the blood lead levels of Beattie's original test subjects at 2 weeks after birth, and found the mean leads to be significantly different in the 41 retarded and 36 normal subjects (25±8.9 vs. 20.9±3, p. 05). Blood leads over 30 μg/100 ml at birth were observed in one third of the mentally retarded children, compared to 12.5 percent of the controls. Furthermore, for eleven mentally retarded children associated with high water lead, there was a highly significant relationship between neonatal blood lead and domestic lead concentration from the maternal home during pregnancy. These two studies suggest that lead exposure to the fetus, through maternal ingestion of leaded tap water, may cause disturbances in brain organization that result in mental retardation. Insufficient information exists to estimate the ingested lead level that might cause these future defects.

The effects of lead on the neurological system of children has been extensively reviewed (EPA Criteria Document, ch. 11, Ref. 92; Ex. 24 (Zielhuis, Wibowo); Ex. 86M), and OSHA believes there is littel value repeating those reviews in this final standard. In OSHA's view, there is conclusive evidence that lead passes through the placental membrane, and that there is an increased elimination of lead through breast milk. Zielhuis, in his review of reproductive effects, stated:

> Increased elemination of lead through breast milk in combination with previous intrauterine exposure is a reason for concern in regard to the health of the infant. (Ex. 24 (Zielhuis, Wibowo), p. 14.)

OSHA further finds there is conclusive evidence that exposure of the fetus and infant to lead induces neurological damage manifested by behavioral disorders, motor nerve conduction velocity decrements, deficiency in IQ, subjective CNS symptoms difficulty in task performance and mental retardation. These effects occur at blood lead levels below 30 μg/100 ml; but generally are manifest at 50 μg/100 ml. The following brief review discusses a few of the studies which demonstrate nervous system damage in children and presumably the fetus and newborn.

De la Burde (EPA Criteria Document, Ch. 11, Ref. 223) studied the latency of lead-related neurobehavioral symptoms in asymptomatic children. Seventy children, age 4, who had a history of plaster and paint eating between 1 and 3 years of age and blood lead levels above 30 μg (mean=59 μg/100 ml) were studied. The authors found significant differences in psychological tests performed at 4 years of age between the lead exposed children and controls. They observed dysfunctions of the CNS, fine motor dysfunction impaired concept formation and altered behavioral profile.

In a followup study on the same 67 children at age 7 and 8, de la Burde (Ex. 6 (25)) showed similar findings. Still observed were differences in behavior, visual motor and fine motor coordination and global IQ. The de la Burde results can be interpreted as demonstrating neurobehavioral deficits at blood lead levels of 40 to 70 μg/100 ml. Similar conclusions were also warranted on the basis of the results of a study by Perino and Ernhart. (EPA Criteria Document, Ch. 11, Ref. 225.) Hyperactivity was found to be associated with exposure to lead. (EPA Criteia Document, Ch. 11, Ref. 236.) Baloh (Ex. 6(4)) and Roberts et al. (Science 168:1120-1123, 1974) also found increased hyperactivity in "asymptomatic" children with chronic increased lead absorption.

Three studies were conducted on children living near a smelter in El Paso, Tex. As described by Carnow (Ex. 27 (7), p. 159), a large number of children were found with elevated blood lead values. Basophilic stippling, anemia, hyperexcitability, and fatigue were noted as well. The children were then hospitalized and chelated. In a followup study of 10 of the children, Carnow et al. ((ibid.) reported significant numbers of abnormal EEG's and learning deficit. One year following treatment, Landrigan (Ex. 6 (99)) conducted a series of studies on the same population. His cohort consisted of 45 currently asymptomatic children ages 3-15, and 78 ethnically and socioeconomically matched controls. Mean blood lead concentrations of 48 μg/dl (range 10-68) and 27 μg/dl range less than 40) were recorded for the respective groups. He also found abnormalities in the test group. Demonstrated were nonverbal cognitive and perceptual motor skill decreases, as well as low grade motor neuropathy in children with blood lead levels of 40-60 μg/100 ml. Full scale IQ, verbal IQ, behavioral and hyperactivity ratings failed to display any differences in the two groups.

Landsdown (Ex. 6 (99), Ref. Landsdown) also investigated the relationship between blood lead, general intelligence, reading ability, and behavioral disorders in school age children living near lead polluting facilities. Distances from the facility were related to blood lead levels, but there was no relationship between blood level and any measurable mental functioning. However, less than 19 percent studied had blood leads over 40 μg/dl.

Another followup study on the same group (Ex. 6 (99), Ref. McNeil and Ptasnik) failed to demonstrate neurological and psychological abnormalities.

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The evidence describing adverse effects from lead exposure to the fetus and newborn was uncontroverted during the hearings. There was, in fact, virtually no debate on the issue of whether the fetus and newborn are at risk from exposure to lead. LIA addressed the fetus in their posthearing brief as follows:

> The evidence submitted at the hearings, however, established that females themselves are not more susceptible than males. (See e.g., Needleman, 1116-17; Stellman, 1154-55; NOW 2478) (see also NIOSH 1321, 1802). The more serious but quite different question raised by "female employees of childbearing age" is the problem of potential health hazards to the fetus.
>
> The problem of protecting unborn children of female lead workers arises as a consequence of a confluence of several factors:
>
> (1) Lead in the mother's bloodstream crosses the placental membrane and can affect the unborn child.
>
> (2) Although the medical data and studies are not entirely consistent, it is possible—as the notice suggests—that "the statistical likelihood of clinical symptoms and permanent damage" to the fetus may increase once the blood lead level of the mother reaches 30 or 40 μg/100 g. (Exhibit 2, at 45936) (see also Lundquist 4509.) (Ex. 335, p. 38.)

The United Steel workers, in their posthearing brief, quote Hricko:

> • • • lead exposure can potentially affect one's ability to have normal healthy children in a variety of ways • • • prior to conception • • • there may be menstrual disorders, interference of sexual function, lower fertility, possible genetic damage (there) may be problems with sperm prior to conception which could result in miscarriage or stillbirth. At conception, there could be difficulties in conceiving a child, problems with implantation. During pregnancy there could be miscarriage or stillbirth as a result of substances crossing the placenta and reaching the developing fetus.
>
> On the newborn baby, there could be toxic effects as a result of chemicals transmitted to the child in the mother's breast milk.
>
> Or on the growing child there can be toxic effects of lead. When lead is inadvertently brought home on parent's work clothes. (Hricko, Tr. 677-8.) (Ex. 345, p. 38.)

What was not clear prior to the hearing, was precisely the blood lead level in the mother or father which would protect against lead-induced effects. Rom, for example, has suggested that there may be no threshold at which adverse effects would not occur in the course of development of the new fetus. (Ex. 233.)

Scientific theory openly admits the difficulties involved in the extrapolation of these data to precise standards, such as the relative hemoconcentration of the newborn, the relative hemodilution of the pregnant woman and the unproven possibility of mobilization of lead from the skeleton during pregnancy. Nonetheless, the body of evidence resulting from the hearings has convinced OSHA that blood lead levels must be kept below the 30 μg/100 ml range to adequately protect the developing fetus. (Tr. 6470, 71; 1770; 1958; 1151; 4509; Tr. 675; 587; Tr. 647.) OSHA is mindful of the statement of the Center for Disease Control which considers blood lead levels of 30 μg/100 ml to be elevated in children. (Ex. 32 (15).) OSHA will consider the blood lead level of a pregnant woman to be elevated if it exceeds 30 μg/100 ml.

With respect to the effect of lead on the male reproductive system, OSHA agrees with Dr. Hricko that there has been "appallingly little research on this problem (the precise blood lead levels at which reproductive damage occurs) by either U.S. industry or the Government in the last 30-40 years". (Tr. 675,) However, studies have been described which indicate that lead can cause decreased fertility, sperm abnormalities, impotence, and difficulties in erection in males and in animals. Several studies have demonstrated chromosomal changes in workers exposed to lead. Based on these studies, OSHA concludes that males exhibit lead-induced reproductive effects at 30 μg/100 ml and above. OSHA considers the effects on male fertility to be a matter of serious concern, and agrees with the conclusion of Infante and Wagoner that:

> In light of these findings, we must now transfer male employees from high exposure areas, or require proof of their inability to reproduce as has previously been the public health approach for females. (Ex. 27 (13), p. 10.)

Historically in many developed countries, "occupational exposure of adult females to lead is forbidden by law." (Ex. 24 (Zielhuis, Wibowo), p. 1.) This restriction has been based on reports of adverse effects on reproduction. There is, in fact, evidence in this rulemaking record that some firms in the United States have barred women from employment involving lead. (Tr. 6471; 678-79.) The evidence of mutagenic effect in both men and women, and of reduced fertility in males demonstrate that both men and women must be considered at risk from exposure to lead. Given the relative number of male and female employees in lead operations, this conclusion is even more valid.

> While only an estimated 500 babies per year are born to women lead workers, the number born to wives of male lead workers is several thousand (Tr. 631.)
>
> Working men are generally fertile and potential procreators throughout their working years—in 1980, 62.5 million men, versus 22 million women of childbearing age. (Tr. 631.)

OSHA concludes that there is no basis in the record for preferential hiring of men over women in the lead industry, nor will this final standard create a basis for exclusion from work of any person, male or female, who is capable of procreating.

In summary:

1. The evidence in this rulemaking record demonstrates conclusively that lead has severe effects on the reproductive capability of males and females.
2. Lead exerts genetic, gametotoxic, intrauterine, and extrauterine effects.
3. The fetus and newborn are sensitive to lead; the fetus is exposed to lead through transplacental passage from the mother, while the newborn is exposed to lead in the breast milk.
4. Maintenance of maternal blood lead level below 30 μg/100 ml is required to adequately protect the fetus.
5. Blood lead levels should be maintained below 30 μg/100 ml in both male and female workers who wish to plan pregnancies.
6. Altered spermatogenesis, teratospermia, asthenospermia, and hypospermia are evident in workers exposed to lead. Blood lead levels of these workers were apparently as low as 30-40 μg/100 ml.

6. *Mortality experience of lead workers.* The proposed lead standard discussed in some detail the mortality study by Cooper and Gaffey of lead smelter and battery plant workers in which there was a suggestion that prolonged exposure to lead may increase the risk of contracting a number of chronic diseases, such as nephritis and other hypertensive diseases.

> Apart from the effects of lead on enzyme systems and the possible appearance of mild clinical symptoms at blood lead levels in the range of 40-80 μg/100 g, there is concern that continued low level exposure to lead may increase the risk of developing chronic disease as well as contribute to the shortening of life. In a recent mortality study by Cooper and Gaffey of lead smelter and battery plant workers, evidence was produced suggesting that prolonged exposure to lead may increase the risk of contracting a number of chronic diseases, such as nephritis and other hypertensive diseases. Additionally, the standard mortality ratios (SMR's) observed by Cooper and Gaffey for all causes of death in the smelter and battery workers were 107 and 99, respectively. These SMR's were only slightly different from an SMR of 100 which represents that of the general population.
>
> The authors did not consider this small deviation of the workers' SMR's from that of the general population to be of any medical significance. It should be noted, however, that results of mortality studies are frequently subject to differing interpretations among scientists. In this regard, several important factors in evaluating the mortality experience of workers compared to the general population deserve mention. For example, it is generally concluded that when the mortality rate of the study population does not exceed that of the general population, no excess deaths rates were found in the study population. However, since the worker population tends to be healthier than the general population, the expected death rates for workers should be lower than the expected death rates for the general population. Thus, SMR's for workers should be lower than 100 and perhaps should be in the range of 80 to 90. If this is so, the SMR's found by Cooper and Gaffey in lead workers are more significant. In any case, OSHA desires that the issue of appropriate SMR's for the working population, which involves evaluation of other toxic substances as well as lead, be addressed in comments submitted on this proposal.
>
> Another critical factor in evaluating this mortality study is whether enough individuals were followed for an adequate period of time following onset of their exposure to lead to allow for the development of chronic diseases. Thus, the status (living or dead) of workers followed was ascertained at the end of 1970. Since nearly 1,400 of the 2,352 smelter workers started work in 1950 or later and nearly 1,700 of the 4,680 battery workers began work in 1950 or later, insufficient time may have passed following onset of exposure to permit the development of chronic diseases in a high proportion of those studied. As a result, although the latency period is unknown, these results may be somewhat diluted by the composition of the workers who were studied.
>
> Of all the suggestive positive results from the Cooper and Gaffey study, the findings of a nearly two-to-threefold excess in nephritis among workers exposed to lead appears to be reasonably well supported by data from previous studies. For example, a number of earlier studies have observed an increase in nephritis in workers exposed to lead. In these observations, the possible interactive effects between lead and other renal toxic agents, such as cadmium, cannot be ruled out. (Ex. 2, p. 45937.)

The record contains rather limited discussion of this study and no new data was developed during the hearings. LIA did criticize the statement:

> There is concern that continued low level exposure to lead may increase the risk of developing chronic disease as well as contribute to the shortening of life. (Ex. 2, p. 45936.)
>
> The Association believes that this concern is without foundation and is refuted by the very Cooper and Gaffey study on which OSHA relied in raising the issue. (Ex. 335, p. 42.)

Based on the extensive evidence in this rulemaking record, OSHA believes there is little if any doubt of the accuracy of the statement in the proposal, but those issues are discussed elsewhere in this preamble and in this subsection OSHA will attempt to amplify the discussion on Cooper and Gaffey presented in the proposal.

Most of the data on mortality in the record relates to the mortality study of lead workers carried out by Cooper, Tabershaw, and Gaffey presented as a Followup Report to the International Lead and Zinc Research Organization by Tabershaw Cooper Associates and published subsequently by Cooper and Gaffey. (Ex. 5 (28).) The comments provided in the hearing largely do not illuminate the report by Tabershaw, Cooper, and Gaffey. OSHA will focus its attention on the report itself.

This study suffers from a number of shortcomings, most of which are recognized and addressed by the authors. These are:

(1) Although 10 battery plants are studied, one provides 60 percent of the battery population under study and 93 percent of the battery plant deaths. It is unfortunate that this plant alone was not evaluated in this report as the detailed information available through the company may have provided a good deal more, such as exposure levels, race distribution, et cetera.

(2) The battery plant workers are subdivided into those who were first employed before 1946 and those employed after 1946, and those employed less than and greater than 10 years. Ninety-four percent of the deaths occurred in workers employed first before 1946 and 84 percent of the deaths occurred in workers employed greater than 10 years. As a result, the evaluation of cause of specific mortality by these subdivisions is really not interpretable, since the numbers in the after 1946 employment group and less than 10 years employment group are too small to be usefully interpreted.

(3) The inability to identify race in the cohort except from death certificates is another important problem. Race specific rates cannot be calculated, and much hypothesizing had to take the place of specific calculations. Even hypothesizing is limited since 20-30 percent of the population has not even a current estimate of racial distribution.

(4) It is unclear why the authors did not analyze proportionate mortality ratios by race since this information was available on death certificates.

(5) An attempt was made to subdivide the population into exposure categories of high, medium, and low, based on estimates of industrial hygienists familiar with smelter and battery plant operations. Since 10 plants make up the battery total, and 6 plants make up the smelter total, the possible variations between these plants make some reinterpretation of job classification by exposure level next to impossible. This is true especially since no attempt is made to categorize, even crudely, a range of exposure defining the three levels. Furthermore, there is no indication of the potential variability between the plants, either currently or in the past. All data is presented only as average data for battery or smelter operations. It is more than likely that there is large variation between plants due to different processes, procedures, or control operations. Furthermore, review of the biological values shows that smelter workers' average levels decrease over time, while battery workers' average levels increase over time. Thus, subdividing the population into exposure categories is unlikely to be productive.

With these criticisms in mind, the study still deserves attention. A major point, however, regards how to look at such a study. The shortcomings in the study presented by the author and by OSHA in large part will tend to bias against the finding of work-related excess causing specific mortality. It is of interest, therefore, to look at what excesses are noted, and to make some estimate of their significance.

The information on mortality analysis is reasonably summarized for the malignancies. One is suspicious, in reviewing the results, that there might be some excess of respiratory or digestive cancer related to work in smelters or in battery plants, but the authors are reasonably cautious in drawing any conclusions. Much more data different from the available studies will be necessary before any more can be said.

Deaths from hypertensive disease and renal disease, however, are a different question. The authors, particularly in their final report to ILZRO, discuss, in reasonable detail, the evidence for exposure related excess renal disease and selected hypertensive disease in this population.

Reviewing first the evidence regarding smelter workers, "Vascular Lesions Affecting the CNS" appear to be elevated in total, and distributed according to duration: those employed before 1946, SMR=118 and those employed after 1946, SMR=76; those employed less than 10 years, SME=92; and those employed greater than 10 years, SMR=108. The fact that these SMR's do not also distribute according to estimated dose levels is of little concern given the problems with those estimates. As the authors point out, this excess is consistent with previous reports in the literature, specifically those by Dingwall-Fordyce and Lane in 1963 (Ex. 6 (40)), and Lane in 1964 (Ex. 5 (1)). In examining "Hypertensive Heart Disease," there is somewhat larger excess in smelter workers which is more strikingly distributed by employment history: those employed before 1946, SMR=161, and those employed after 1946, SMR=32; those employed less than 10 years, SMR=41, and those employed greater than 10 years, SMR=144. Impressive overall elevations are seen in the smelter workers for deaths due to "Other Hypertensive Disease" and deaths due to "Chronic and Unspecified Nephritis, Renal Sclerosis" (SMR=369 and 250, respectively) when these are distributed by date of first employment and duration of employment, both distribute in a direction that is consistent

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with an association with work in smelters (see table 1).

TABLE 1

	First employment		Years employed	
	Before 1946	After 1946	>10	<10
Other Hypertensive...	475	238	314	400
Chronic and Unspecified and Nephritis, Renal Sclerosis	358	143	195	284

When the authors attempt to adjust results for possible racial differences, their efforts suggest that race alone does not account for the differences reported. In sum, then, there is good evidence in the smelter populations that mortality due to CNS vascular disease and hypertensive cardiovascular-renal disease is excessive in smelter workers and probably has a work-related etiology. A reasonable hypothesis is that this is related to lead exposure. However, as the authors point out, there are other exposures in smelting environments, and these would have to be excluded before final acceptance of such a hypothesis is possible.

Reviewing these same cause-of-death categories for battery workers reveals somewhat different results. There is no suspicious excess of "Vascular Disease Related to CNS" (SMR=76), or "Hypertensive Heart Disease" (SMR=90). Battery workers, however, do show excess SMR's for "Other Hypertensive Disease" (SMR=207) and "Chronic and Unspecified Nephritis, Renal Sclerosis" (SMR=163). OSHA has chosen not to discuss the results distributed by date of first employment or length of employment because of the grossly uneven distribution of deaths in these subgroupings which were commented on earlier.

The authors appear to suggest that even though there is some evidence for excess mortality for "Other Hypertensive Disease" and "Chronic and Unspecified Nephritis, Renal Sclerosis," that this is not compelling in the face of the absence of clear evidence that excess risk is present for "Vascular Diseases of the CNS" and "Hypertensive Heart Disease." They cite several historical studies (five of the six unlikely to have been controlled for cigarette smoking history) in support of the lack of an association of hypertension in general with lead exposure. On the other hand, they do report literature supporting specific association of lead poisoning with chronic renal damage. The impression is that they believe that there is an association in their study population between exposure to lead and excess mortality from chronic renal disease, but that they think this reflects exposures much higher than the current permissible exposure limit.

The only evidence that is possible inconsistent is the absence of a general excess of disease associated with hypertension. There are, however, too many contributing causes to hypertension other than possible lead exposure to be surprised at the absence of a lead exposure associated risk in other hypertension categories. The most reasonable summary of this data is provided by the authors in the Final Report.

> Despite the uncertainties of diagnosis inherent in death certificates, the excess deaths in our studies from "Other Hypertensive Diseases" and "Chronic Nephritis or Other Renal Sclerosis" collectively support the view that lead may be associated with cronic renal disease. (Ex. 5 (28), p. 107.)

The authors go on to suggest that since this population had high lead exposure in the past, that evidence of chronic renal disease or hypertension associated with lead exposure cannot be used to support the permissible exposure limit below the existing one. This argument is based on the fact that the population under study did not consistently have exposures under the current exposure limit. OSHA reiterates, however, that mortality studies are notoriously insensitive measures of risk.

The overall impression of this study is that excess mortality from chronic renal disease and possibly excess hypertensive vascular disease are seen in the study populations. There appears to be an increased risk, in workers exposed to lead, of suffering from compromised renal function and hypertension disease as a result of their work exposures. It is unlikely that any mortality study will identify a level below which such risks do not occur unless both better measures of long term levels of exposure to lead and information about other causes of hypertension can be made available.

7. *Air to blood relationship.* The proposed lead standard reduced the permissible exposure limit from 200 $\mu g/m^3$ to an 8-hour time-weighted average concentration, based on a 40-hour workweek, of 100 micrograms of lead per cubic meter of air (100 $\mu g/m^3$). The Lead Industries Association (LIA) recommended that OSHA adopt a biological enforcement limit instead of using a specific air-lead number for all industries and operations. One of the key questions raised in justifying a biological standard was the purported lack of a relationship between air levels and blood lead measurements. The purpose of this section is to address the air lead level and blood lead level relationship in detail.

Based upon the evidence in the record, OSHA has concluded that a relationship between air lead levels and population-average blood lead levels unquestionably exists. OSHA is confident that a permissible exposure limit based upon measurement of air lead levels will accomplish the intended goal of protecting workers' health. In addition, OSHA has determined that the Center for Policy Alternatives' application of the Bernard Model accurately predicts the effects on blood leads over time produced by changes in air lead levels. OSHA believes that both the basic construction of the Bernard Model of physiological lead transport and the application of the Bernard Model for prediction of blood lead levels represents an accomplishment heretofore unseen in attempts to establish air level to blood level relationships. Insofar as this model takes into account particle size and job tenure it has avoided the weaknesses of earlier studies. The model does, however, incorporate the findings of the earlier studies and is therefore the best synthesis of theory and actual research to date.

No participants in the hearings argued that total reliance be placed upon air sampling or biological monitoring to the exclusion of the other and OSHA will require use of both measures to maximize protection of the lead worker population in general and the individual worker in particular. However, in the enforcement context OSHA will place primary reliance on air lead level measurements to determine compliance with the permissible exposure limit. Further discussion of the permissible exposure limit is found in that section.

The proposed lead standard established the following goals with respect to worker protection:

> Our present judgement is that in order to provide the appropriate margin of safety, as well as to provide significant protection against the effects, clinical or subclinical, and the mild symptoms which may occur at blood lead levels below 80 $\mu g/100$ g, it is necessary to set an airborne level which will limit blood lead levels to 60 $\mu g/100$ g. A maximum blood lead level of 60 $\mu g/100$ g corresponds to a mean blood level of about 40 $\mu g/100$ g, since a mean level of 40 $\mu g/100$ g will result in a range in workers of approximately 20 $\mu g/100$ g at the lower limits to 60 $\mu g/100$ g at the upper limits. Having determined the maximum blood lead level which the protection of employees and prudence permits, and the corresponding mean blood lead level, it is necessary to correlate these levels to the extent possible with air lead levels in order to establish the permissible exposure limit. (Ex. 2, p. 45938.)

In order to establish the correlation between air lead levels and the corresponding blood lead levels OSHA relied on the work of Williams et al. which was the most comprehensive reported study of its kind at that time. (Ex. 5(32)) OSHA, in this final standard, has evaluated the findings of a

series of subsequent studies which became available during the rulemaking process.

a. *Practical and theoretical difficulties in the use of blood lead-air lead correlation.* Almost all of the studies, whether based on observation of general or occupational populations, attempt to relate measurements of blood lead values to observed air lead values by means of linear regression techniques. Note that this does not mean that only linear relationships were developed. The least squared technique was also applied to transformation of the variables, such as the logarithms of blood lead and air lead, in a few studies. There are a number of practical and theoretical difficulties in the design and execution of experiments of this type which should be considered before attempting to discuss and compare the results of the various studies in question.

1. *Properties of linear regression models.* The linear regression technique makes use of complicated mathematical algorithms to determine the best linear "fit" between a number of observations and two or more quantities (such as individual blood lead and air lead values). The result is an equation, which relates the values of the dependent variable to that of the independent variable (simple regression) or variables (multiple regression). If x is the independent variable and y the dependent variable, a regression problem, as we shall consider it, is a problem in which, for a fixed value of x, y has some particular distribution of values. In other words, we are dealing with a series of populations, a different population of y values for each value of x. We say we are studying the regression of y on x.

Our analysis becomes simpler and our results more explicit if we make certain assumptions about the nature of the distribution of y (for fixed x). One assumption generally made is for any x, the distribution of y is normal. Most of the studies discussed below develop simple regression equations which relate blood lead value to air lead level. A few fit the observed blood lead levels to quadratic equations or use the logarithm of one or more of the variables to obtain a better fit to the data, but the principle is essentially the same. In either case an equation is derived in the following form:

$$\text{Blood lead} = F(\text{air lead}) + e \quad (1).$$

where e is an error term. In most cases, a simple linear relationship was fit to the data:

$$\text{Blood lead} = a + b(\text{air lead}) + e \quad (2).$$

where a and b are constants that minimize the sum of the squared deviations from the calculated straight line relationship. It can be shown that, under a number of conditions relating to simple distribution and measurement error, that the constants a and b will accurately estimate the true relationship between the independent and dependent variable. That is, under ideal conditions, the slope, coefficient b, will truly represent the effect of the independent variable on the dependent variable, all other conditions being held constant.

A common error made by many users of regression analysis is to confuse the observed regression coefficients, which describe the numerical properties of a data set, with constants describing the causal relationships between the variables. It is rarely true (outside of the physical sciences) that the causal relationships in a system are well enough defined so that their properties can be adequately defined by a small number of variables. This is especially true in the case of most of the studies reviewed here on air lead-blood lead relationships. The bulk of the data in the record makes it clear that the relationships between blood lead and air lead in occupational populations is not independent of factors such as job tenure and particle size distribution. It is one thing to say that a linear relationship was observed between the blood lead levels and air lead exposure at a given level of statistical significance, for a given sample of workers. It is another thing entirely to use the observed relationship to predict the effect of lowering air lead exposure on even that same sample of workers let alone to generalize to other samples. Generally, it is best to conservative when using cross-sectional data, obtained at a given point in time, to predict effects over time. Rarely will all other factors be held constant. OSHA has reviewed numerous studies including those describing a model which attempt to take such confounding variables as job tenure and particle size into account.

In order to generalize the results of a given study or to predict the nature of the causal relationships at work it is very helpful if one or more of the following types of information is available:

Other studies on similar populations, perferably using different methodologies, so that some degree of confirmation can be obtained.

Some idea as to the kinds of biases and inaccuracies inherent in the studies themselves, so that disagreement between studies can be at least partially resolved.

A plausible physical explanation of the observed relationship, based on other lines of investigation (in this case, for instance, laboratory studies of lead metabolism and transport).

The first two lines of inquiry will now be examined as they apply to the studies of the relationship between blood lead and air lead, while most of the detailed discussion of the physiological bases for predicted responses to particulate lead will be reserved for the following subsection of the Bernard model.

The vast majority of the studies of blood lead-air lead correlations fit linear relationships to the observed data, as in equation (2). It is most probable that while this mathematical relationship may be the best linear fit to the observed data for a given sample of workers, with their specific tenure and exposure backgrounds, it is not an accurate description of the true relationship between exposure and blood lead. Such an equation, used in this fashion, would implicitly assume that there is some kind of mechanism by which particulate lead exposure of any size distribution is quickly and linearly transformed in workers of any job tenure or exposure history into a given blood lead level. This is almost certainly not the case. Blood lead levels are known to depend not only on total current lead exposure but also on previous body burden (related to exposure history, job tenure), the size distribution of the particulates, and individual variability in response to lead exposure. Setting aside temporarily the exact nature of the dependencies of blood lead levels on the various factors, we can write the following equation which is likely to be a more accurate representation of the blood lead-air lead relationship:

$$\text{Blood Lead} = F(\text{Job Tenure, exposure history, particulate size, individual variability}) + e \quad (3)$$

If this expression more adequately reflects the true picture of blood lead-air correlation than equation (2), attempting to fit the data to equation (2) will have the following effects: First, it will systematically bias the values of the a and b, that is, it will make a and b inaccurate representations of the true relationship of blood lead to air lead. By ignoring the effects of job tenure and particulate size distribution, the resulting coefficients, a and b, and the observed relationship between air and blood leads will be only an approximation of the observed effects of air lead, particle size distribution and tenure as they are distributed among the particular population studied. Thus, even two methodologically perfect studies performed on populations with different job tenure, exposed to different particle size distributions would not agree as to the observed effect of the relationship between blood lead and air lead.

Another important effect of this specification error would be to affect the statistical significance of the coefficients a and b. Thus, not only might the observed coefficients be different,

but even for a more or less correct coefficient, its statistical significance could be affected such that no relationship might be detected with a reasonable level of confidence. Finally, the mis-specification could affect the distribution of the error term, e, in equation (2).

In the studies to be reviewed, clearly the most serious source of specification error comes from a failure to include the effect of previous lead body burden in determining current blood lead levels. As will be discussed in a later section, there is much experimental evidence to suggest that during continuous exposure to lead, the lead levels in various organs of the body increase slowly over time, and that blood lead levels probably never reach equilibrium. Thus, if we attempt to predict the blood lead levels for a sample of workmen with different tenures, studies which did not include a term for job tenure would overpredict blood leads given a certain exposure for workers with short employment history, and underpredict blood leads for workers with long job tenure. Regression lines, calculated from mixed-tenure population would then have lower slopes and larger intercepts at 0 exposure than would actually be observed if job tenure were taken into account.

Similarly, none of the studies included simultaneous analysis of the effects of particle size distribution. If, as is likely, most workers exposed to high lead particulate levels are exposed mainly to large particles which are not absorbed very efficiently in the lungs, while workers exposed to relatively low particulate levels are exposed to larger proportions of small particles which are absorbed quite efficiently, another source of bias is introduced, which would also tend to result in underestimation of the slope coefficient in the dependence of blood lead on exposures.

There is little doubt that this kind of specification error affects the accuracy of the prediction of air lead levels required to produce given blood lead levels. Several of the studies, if used to calculate these values, would indicate that even at an average exposure level of 0 $\mu g/m^3$ lead, an average blood lead level of greater then 40 $\mu g/100cc$ would be observed (Ex. 234(22)). Such a finding is clearly at odds with numerous observations of blood lead levels in populations without occupational lead exposures. It is clear that the true "b" intercept is certainly under 25 $\mu g/100g$ and is very probably under 20 $\mu g/100g$ for most areas. Studies which predict behaviors of this kind cannot be used to make accurate predictions of the incremental benefits of exposure reduction at low exposure levels. In those studies where these sources of bias seem smaller the results do not differ very much with predictions based upon a model to be discussed below. This should not be surprising, since the better studies presumably do give a fairly accurate picture of the effects of particulate exposure and size and job tenure as they are distributed across the particular populations studied. These differences in particle size distribution and job tenures between factories and industries is probably one reason why many of the studies generate apparent relationships between blood lead and air lead that disagree. The application of the Bernard model developed during hearings on Medical Removal Protection and discussed below is simply an attempt to generalize the results of these studies, and, thus, to generate a better approximation of the true blood lead-air lead relationship. (Note that the model generates an infinite number of blood lead relationships, corresponding to all possible job tenures. This set of relationships can also be expressed in one equation, similar to a multiple regression result, which includes a term for job tenure.)

Blood lead=a+[b(f(exposure, particle size))]xf(tenure)+e. Hopefully in this manner much of the specification error can be avoided.

It is well known that errors in measuring either the dependent or independent variable can adversely affect regression results. Generally, errors in measuring the dependent variable (i.e., blood lead level) only affect the statistical significance of the slope coefficient, but do not bias it. By contrast, errors in measurement of the independent variable will result in biasing the slope coefficient toward zero. (In general, for a normally distributed measurement error, V, in the dependent variable, the predicted slope coefficient, will differ from the true coefficient, in the following manner:

$$\hat{\beta} = \frac{\beta}{1+\sigma_v^2/\mathrm{var}(x)},$$

σ_v^2 = the variance of the measurement error

var(x) = the observed variance in the independent variable

if all the other assumptions required to make the least squares method unbiased and efficient are fulfilled.)

In most of the studies of blood lead-air lead relationship, the mean of many different air lead measurements was taken, thus minimizing the contribution of measurement error to the total variance of the dependent variable. Only in the case of the Delco-Remy study, where single measurements of air lead measurements air lead and blood lead levels were paired, would the inaccuracies in air lead measurement likely have been a sizable problem (Ex. 285). Of course, to the extent that any of the studies were conducted over short periods of time during which particulate levels were not typical of the average values, measurement error would be a problem.

Another type of measurement error, distinct from the classical "errors in variables," results if the present average lead levels are not typical of past exposure, or if there is some trend in exposure over time. This is so because previous body burden is an important factor in determining present blood lead levels. There is considerable evidence in the record that air lead levels have fallen significantly in the lead industry within recent years. If one were to study a population that previously had been exposed to high lead levels and were at present being exposed to lower levels, the resulting relationship would be biased upward since some of the workers would have elevated blood leads due to previously acquired body burdens.

To summarize, it is probable that a number of sources of error may significantly affect the accuracy of any incremental benefit prediction conducted using any one study of air lead-blood lead correlations. The major sources of error are:

The unjustified causal interpretation of coefficients of simple regression results based on observational data relating to specific populations at one point in time. This causal interpretation is unjustified because of specification errors inherent in the design of these studies. Important variables such as job tenure are omitted from consideration.

The omission of considerations of job tenure distributions and particle size also suggest that none of these results individually is appropriate to use in predicting the effect of air lead reduction throughout the entire industry. (This does not mean that it is not possible to derive a generally applicable model, however.)

Most of these studies include no explicit theoretical justification for the use of any particular fit to the data, whether linear or nonlinear.

Errors in the measurement of air lead levels would, on average, further bias the results of these analyses.

These studies are helpful, however, in obtaining a general idea of the apparent effect of particulate lead exposure on blood lead levels in existing occupational situations. They represent a necessary point of departure from which a more complete general model can be developed.

2. *Studies of air lead-blood lead correlation.* There are in the record a number of reviews summarizing the findings of epidemiological and clinical studies of the relationships between exposure to particulate lead and observed blood lead levels. The majority of these studies deal with nonoccupational exposures to lead particulate, usually at much lower levels than could be expected to be encountered during occupational exposure, and are thus of limited value in determining the response of blood lead levels to the relatively high particulate levels encountered in the workplace (Ex. 86E). These studies are useful, however, in providing a baseline set of normal blood lead levels against which occupational levels can be compared. Many also indicate urban-rural differences in blood levels.

One general population study (the Azar study) was discussed by Dr. Paul Hammond at the lead hearings (Ex. 54), with regard to its usefulness in predicting blood lead levels in the industrial situation. The Azar study was based on data gathered on the blood lead levels and air lead exposures for 150 subjects in California, none of whom had any history of occupational exposure. The subjects had been exposed to average airborne-lead concentrations of 0.2-9 $\mu g/m^3$. Air lead levels were measured three times each. The resulting data was fit to a logarithmic relationship, which indicated that as air lead exposures increased, the corresponding increase in blood levels became smaller for a given increment of air level. Hammond criticized the study as follows:

> The limitations of the study so far as its utility for assessing the contribution of air lead to PbB in industrial exposure were threefold. First, the air was general ambient air, not industrial air. These are probably quite different as to aerodynamic characteristics and as to chemical composition. Second, the upper limit of air lead concentration was only 9 $\mu g/m^3$. Third, the variability of contributions of lead from sources other than air was so great that the confidence limits for the regression line were broad. This last limitation is inherent in any cross-sectional study. (Ex. 54; p. 5.)

He did conclude, however, that "• • • the Azar regression equation is quite consistent with the limited experimental data available concerning industrial exposure." (Ex. 54, appendix A.) To support this, he showed that blood level predictions made using the AZAR regression agreed well with the findings of several other studies, most notably the Williams study.

In light of more recent studies conducted in occupational settings it is no longer likely that such a claim could be supported by the bulk of the evidence in the record. Most of the other studies to be reviewed here disagree strongly with the AZAR finding that blood lead levels would practically level out (with blood lead levels in the low 40's) at increasing air lead levels above 100 $\mu g/m^3$. The extrapolation of the relationship based on observation at blood lead levels between 0.2 and 9 $\mu g/m^3$ to levels as high as 300 $\mu g/m^3$ could not be expected to give accurate results. It is likely that Hammond's other criticisms also apply.

There have been only a very limited number of clinical studies concerning the relationship between particulate lead exposure and blood lead levels. Probably the best of these, and the most relevant to the occupational situation, were performed by Kehoe, in the 1940's and 1950's. (Ex. 5 (33)).

In the first study, two subjects were exposed to airborne lead particulate in an environmentally controlled experimental chamber for about 8 hours per day, 5 days per week for 88 and 92 weeks, respectively. The lead particulate was produced by burning tetraethyl lead in the flame of a propane-fueled bunsen burner. The first subject was exposed to an average particulate concentration of 75 $\mu g/m^3$, and the other to a particulate concentration of 150 $\mu g/m^3$. In both cases, the blood levels of the subjects appeared to rise rather rapidly after the initiation of the exposure and then stabilize at new levels, and fall slowly after the end of the exposure period. These studies will be discussed in more detail later in this section but are mentioned here because these two subjects provide data points for a number of blood lead-air correlation studies.

Recently, a number of studies have been performed in the workplace, of workers' responses to particulate lead exposure, the results of which are summarized in table 1. The best known of these studies was performed by Williams et al. (Ex. 5 (32)), who observed 39 workers in a battery factory. Particulate exposure was measured, using personal samplers, for 10 consecutive work days; blood samples were taken daily during the second work week. It was assumed in analysis that within the occupational range, the relationship between blood lead and air lead levels was linear.

The use of this study for rulemaking has been attacked on several grounds, which center around Williams' inclusion in his experiment sample a number of very lightly exposed workers, who have very low blood levels. The Lead Industry Association claims that if this group of workers is omitted, then the observed slope of the blood lead—air lead relationship is much smaller, which is true. Globe Union has developed a log—log relationship which they claim fits all of the data much better than Williams regressions. (Ex. 466). Williams himself reported that he detected a large systematic error in all lead measurement just after the study was published (Ex. 234(8)). All of these critics caution against the use of this regression alone to predict the effect of imposing blood lead standards.

Despite the possible shortcomings in this study, the general feature of the results obtained do not disagree widely from those of the other studies to be discussed. Even if this result is fortuitous, the general care with which this study was executed seems to justify including it in developing a general model of blood lead-air lead response. For example, even if the controls are removed the regression equation is Y=46.07+.12X which is not inconsistent with other studies. Note however, the magnitude of the Y intercept. This is consistent with OSHA's examination of error sources, i.e., Y intercept biased high.

In 1976, Buncher *et al.* (Ex. 285) analyzed a large body of data on particulate air lead and blood lead levels gathered by Delco-Remy as part of its monitoring and medical removal program in their Muncie, Ind. plant. Particulate levels were measured using stationary and personal samplers. Using paired single observations of blood lead and air lead measurements, a simple linear regression model was developed. While a positive and statistically significant correlation between blood lead and air lead was observed, the dependence was much weaker than observed by Williams for a similar population of workers. It is unfortunate that this study used only single paired air lead and blood lead measurements, taken as much as 30 days apart, to calculate the relationship between blood lead and air lead. It is likely that the measurement error (in air lead levels) in this study, which resulted in one of the smallest slope coefficients relating blood lead to air lead of any study in the record, were sizable. This would result in the slope coefficient being biased toward 0.

Even if the actual measurement error were small, measuring blood leads and air leads at points this far removed in time would produce inaccuracies produced by real fluctuations in both blood and air lead levels. At best, this study thus measures a fairly

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close approximation between current blood lead levels and recent exposure. Another analysis of the Delco-Remy data has been carried out by NIOSH (Ex. 86D), which contains some exploratory data analysis dealing with blood lead-exposure and blood-lead tenure relationships. It is unfortunate that further analyses were not performed on this data, since it is probably the largest, most complete body of information on a working population exposed to lead particulate that is available anywhere, covering observations on about 700 employees of varying employment tenures, at varying exposure levels, for 3 consecutive years.

Globe Union, Inc. has also conducted research on blood lead-air lead correlations among its employees. (Ex. 235) The blood lead levels of 15 workers were observed over a 6-month period, during which frequent blood lead determinations were performed and personal exposures were monitored with back-pack samplers. Again, a linear dependence of blood level on particulate exposure was fit to the data. The relationship was similar to that observed by Williams *et al.*, with a somewhat smaller slope.

King *et al.*, (Ex. 335, p. 63-68), have studied blood lead-air lead relationships in workers at three battery and pigment plants in Britain. Their study is unusual among the studies in the record in that it is one of the few which explicitly incorporates considerations of particle size and solubility differences, an important factor in determining blood lead levels. Unfortunately, they did not analyze the simultaneous effect of particle size and total particulate lead on blood lead, so that their observed blood lead-air lead correlation suffers from the same inherent specification errors common to all the occupational studies.

The effect of not including job tenure in the analysis is particularly apparent in this study, in which the majority of the relationships derived indicate that workers with no occupational exposure would have blood lead levels greater than 40 $\mu g/100cc$. This is clearly at odds with observations on unexposed populations. King himself has indicated that virtually all the subjects of the study had been employed at least 2 years. (Ex. 234 (22)). This implies that virtually all of the subjects had developed an appreciable body burden of lead prior to the initiation of the study. This would result in the biasing of the intercept at zero exposure upwards, just as has been observed.

In addition, King's studies include large number of workers exposed to particulate lead levels much greater than 200 $\mu g/m^3$. This could produce two effects. First, it is possible that only particularly hearty workers with weak response to lead exposure could tolerate such exposures for long. The experimental sample could be biased toward workers with lower than average sensitivity to lead exposure. King specifically denies this, but it seems that it would be rather difficult to determine whether or not sensitive workers had been selected out or not.

Another problem with the King study, including as it does large numbers of subjects exposed to very high levels of lead particulate, is that it might not be a very good predictor of blood lead levels in the region of interest, 0 to 200 $\mu g/m^3$. This is so because particle size characteristics or physiological responses might change at extremely high exposures.

Two studies of air lead-blood lead relationships in the primary smelting industry were performed by ASARCO. The "El Paso Study" dealt with workers at one plant in Texas. It was an extremely well-controlled study in which total particulate levels were measured for each subject for 10 consecutive working days with backpack samplers, and three blood samples were taken during the second week of the study for each worker. Again, a large, statistically significant linear relationship was observed to exist between total particulate lead exposure and blood lead levels.

The final study often quoted in the record was performed by Sakurai (Ex. 5(9)) in an automobile parts factory in Japan. It is difficult to draw any conclusions about the form of the blood lead—air lead relationship, since the primary thrust of the article was directed at other measures of biological response, and, in fact, only one data point relating air lead levels to blood lead levels was given. Workers in one department who had been exposed to an average particulate lead level of 59.7 $\mu g/m^3$ had an average blood lead level of 51.8 $\mu g/100$ g.

TABLE 1.—SUGGESTED AIR-LEAD BLOOD LEAD RELATIONSHIPS

Linear Relationships

Blood Lead = a(Air Lead) + b

Source of Relationship	b	a	Nonlinear
King:			
Smelting (3)	52	0.053	
Battery (1)	45	.032	
Pigments (2a).	30	.07	
Pigments (quadratic fit.)			Blood lead = 26 + 0.12 (Air lead) + 0.000096 (Air lead)^2.
Globe-Union	39.7	.1229	
ASARCO (El Paso).	32	.185	
Williams	30.1	.201	
Delco-Remy (Buncher).	37.45	.0628	

TABLE 1.—SUGGESTED AIR-LEAD BLOOD LEAD RELATIONSHIPS—Continued

Linear Relationships

Blood Lead = a(Air Lead) + b

Source of Relationship	b	a	Nonlinear
Azar/Hammond			Log (blood lead) = 1.3771 + 0.153 log [40 (Air) + 1281/168.
Job Tenure (years):			
0.95	25.80	.1521	
3.4	28.30	.2062	
9.0	29.80	.2404	
16.0	30.64	.2604	
28.5	131.46	.2778	

The results of these studies provide data necessary for the development of a comprehensive model of blood lead response to occupational particulate exposure. These studies in and of themselves do not comprise such a model. They do not measure the dynamic response of blood lead over time to a particular exposure level. All that they do is provide a "snap shot" of how past and present exposures have combined to produce given distributions of blood lead levels in more or less typical working populations at one point in time. Even if they were all executed perfectly in the absence of any measurement error, we would not expect them to agree perfectly, owing to differences in tenure distribution in the various populations studied, possible differences in particle size, and other factors including average physical work demands (and hence, total respiration). The potential individual variability arising from this last factor is very large; the respiratory intake of a standard 70 kg man varies from 3.6 m^3 during 8 hours of rest to 9.6 m^3 during 8 hours of light work or normal nonoccupational activity. Even larger amounts of air are taken in during heavy work. Six subjects performing heavy work (600-800 kgm-min.) on a bicycle ergometer had total ventilation averaging five times their resting rates. The differences between average total respiration in the various working populations studied for air lead-blood lead correlations are undocumented.

Earlier in this section, possible sources of bias in studies of this kind were examined, that could either produce results that would not adequately reflect the character of the raw data, or would produce results that differ from the true response of blood lead to air lead. It is probable that the unusually low slope in the Delco-Remy study can be at least partially attributed to measurement errors in the air lead values. King's results seem at least in part due to his studying a sample of workers all of which had been employed long enough prior to

the study to have developed significant body burdens of lead, which probably biased the calculated intercept values upward and the calculated slope parameters downward. King's sample also included many workers at very high (300-900 $\mu g/m^3$) air lead exposures.

The remaining studies agree reasonably well, considering the difference in location, methodology, and difference between industries. The results and predictions of all of these studies were used in adapting the Bernard model for use in predicting the response of blood lead levels to occupational particulate exposures. The Bernard model therefore represents the most accurate model to date.

b. *Physiological Models of Blood Lead Response.* In order to accurately predict the effects on blood lead levels over time produced by changes in air lead levels, it is necessary to construct a model that takes into account as many of the important factors as possible which affect blood lead levels. The adaptation of the physiological model originally developed by S. R. Bernard by the Center for Policy Alternatives (Ex. 439), is an attempt to combine experimentally observed properties of mammalian lead transport and metabolism, including consideration of the dynamics of blood lead transport and metabolism, and consideration of the dynamics of blood lead response to long term exposure, with observed physical properties of airborne particulates encountered in the workplace, in order to produce as complete and accurate a picture of the response of blood lead levels to particulate lead exposure as is possible with current information.

The CPA study also included specific consideration of individual variability in response to air lead, which is necessary in predicting the responses of large populations of workers to changes in air lead exposures. One of the guides used in constructing the model was the series of air lead—blood lead relationships observed in specific working populations, subject to the reservations previously discussed concerning the inherent limitations of such studies. The CPA report was an attempt to develop a generally applicable set of relationships which accurately described the response of blood lead levels to air lead levels for a working population with a known job tenure distribution, exposed to a physically defined particulate exposure.

(1) *The Bernard Model.* The Bernard model is an example of one of the most common types of pharmacokinetic models used to describe the transport and metabolism of drugs or foreign substances in the body. It is a multi-compartment mammilary model. Such models postulate that the substance in question first appears in the blood, and then is transported or diffused into a number of different compartments from the blood, corresponding to the different organ systems in the body. Transfer is assumed to occur only between the blood and the organ compartments, not between organ compartments. The rate of transfer into and out of the blood stream from the various compartments depends upon a number of factors, such as whether or not that particular organ specifically takes up or metabolizes the substance in question. In general, especially in the case of substances which are not metabolized, the rate of transfer between compartments is linearly related to the concentration of the substances in the compartments. This is consistent with the basic physical principals of chemical kinetics that would govern the transfer of a substance across an inert membrane in the absence of any other driving force. The relatively few exceptions to the linear transfer principle tend to occur only in cases where an organ specifically sequesters or metabolizes the substance in question.

In the course of the rulemaking process, representatives of the lead industry introduced a number of studies which they claim demonstrate nonlinear response to lead exposure in animals. These studies were subsequently extensively reviewed by Dr. Dale Hattis in his letter to Richard Gross of January 13, 1978 (Ex. 458A). He concluded that none of these studies supported the position that the lead transfer rates in humans were appreciably nonlinear at air lead and blood lead level ranges relevant to standard setting.

In designing a model and calculating the rate of transfer between compartments, the experimenter has many guidelines as to how to proceed. First he/she can simply follow total body excretion to ascertain the number of compartments that are individually taking up and excreting lead after an initial dose. The more exponential terms required to fit the data, the more compartments. Second, the investigator can actually follow the rate of uptake and release of the substance from the various tissues by autopsy or biopsy, and measure the rate of release. This latter approach is impossible, of course, in the study of human subjects. After observing the rates of release of the substance in question from the whole body and/or tissues, the investigator is left with a series of exponential retention equations which relate amount of lead left in each compartment after a given time to initial dose. Using well-developed mathematical techniques, this set of equations can be solved subject to the constraint that all of the ingested substance is accounted for, to yield the rate constants for transfer between compartments.

There seem to be two important considerations which could affect the accuracy of the Bernard model in predicting the behaviors of lead pools in the bodies of workers exposed to lead. Bernard's estimate of the turnover rate of lead in bone is based on measurements made in the skull, where turnover of unmetabolized trace elements is known to be slower than in most other bones of the body. This could result in the underestimation by the Bernard model of blood leads for a given exposure, and underestimation of the time required for recovery below a given level. This problem is probably offset by the observations that after long periods of exposure, lead deposited in skeletal bone tends to become *irreversibly* bound. Any permanent sequestration would cause the Bernard model to overpredict blood lead levels for a given exposure/job tenure combination, especially for long-tenured workers, and an overestimation of the amount of time required for blood leads to drop after exposure. What the overall effect of these two considerations would have on predictions of the model is difficult to say, other than that they would tend to offset each other.

In any event, it is better to make explicit analytical assumptions, based on experimental observations, as the Bernard model does, than to make the implicit assumptions about particulate size and lead transport and metabolism, that are made in simply fitting a simple straight line to blood lead-air lead correlation. The Bernard model as applied to the occupational situation by the CPA report also predicts a linear relationship for a given tenure.

As was discussed above, studies of blood lead-air lead correlations that fit straight lines of blood lead-total particulate exposure implicitly assume tenure to be unimportant in determining blood lead levels, but also assume that all lead particulate exposure, no matter what its size distribution, is absorbed and metabolized with the same efficiency. This is clearly not the case. In the first place, the proportion of particles which are deposited in the respiratory tract, rather than exhaled, varies considerably with particle size. Further, different size particles are deposited in different areas of the lung upon inhalation. In general, most particles less than 1 micron in diameter are deposited in the alveoli, whereas particles between 1 and 10 microns in diameter usually end up in the bronchi, and larger particles end up in the upper respiratory tract. The location of deposition is of some importance, since particles in the alveoli are not

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likely to be swept from the lung by the vigorous ciliar activity in the bronchi. On the other hand, particles deposited in the bronchi and naso-pharynx generally are swept into the alimentary tract. Thus, there are two distinct modes of absorption: by dissolution in the alveoli and by absorption through the digestive tract. Two studies, one of them Kehoe's, suggest that small particles are deposited and absorbed with an efficiency of about 37 percent. On the other hand, absorption of dietary lead tends to be much less efficient, on the order of 6 to 10 percent. (Ex. 95).

One of the major uncertainties concerning the use of the Bernard model in predicting costs of medical removal protection is "Assumption C", an attempt to incorporate these aspects of lead absorption into the cost calculating methodology. Assumption C states that all of the first 12.5 $\mu g/m^3$ of particulate encountered by a worker will be small, and thus absorbed with an efficiency of 37 percent, and the rest will be large, and absorbed with an efficiency of 8 percent.

Assumption C has two parts: the first states that, in general, at low particulate exposure levels, most of the lead is present in small particles, and that as the total lead particulate level increases, the increase is made up primarily of larger lead particles. The second part of assumption C is that particle absorption efficiencies differ with particle size as described above.

The latter portion of assumption C is consistent with the bulk of the data in the literature. The theoretical basis for the first portion of assumption C is quite straightforward, as stated in the CPA report:

> Basically, we expect that there will be some tendency for workers with greater total air lead exposures to be located physically closer to sources of lead emission into the workplace atmosphere than their fellow workers with smaller air lead exposures. Because the larger lead particulates will tend to settle out from the atmosphere faster than smaller particulates, workers which are farther from a given lead particulate emission source will tend to be exposed to relatively less large particulates than workers which are closer to that emission source. If the distant workers also tend to be those with smaller total lead particulate exposures, then there will in general be a tendency for workers with smaller total lead exposures to be exposed to greater proportions of small-size particulates. Of course, in real workplaces where there are multiple lead particulate sources which may be expected to give rise to emissions of different particle size distributions we do not expect that there will be a perfect correlation between total lead exposure level and proportion of "large" lead particulate exposure. (Ex. 439B)

There is some data in the record to support the general features of particulate exposure postulated by assumption C. It has been shown that, for one population of mill workers, there is a strong inverse correlation between total exposure and small particulate exposure (see Addenda to CPA report, Ex. 439B). Further, data from the AMAX Buick smelter (Ex. 247) show that for six locations, whose average total particulate exposure is about 1,000 $\mu g/m^3$, the average amount of particulate of diameter less than 1.1 micron is only 21 μg, with only two locations (Dross refinery) having small particulate levels greater than 12.5 μg. It thus appears that, at least in the smelting industry, the vast majority of particulate above 12.5 $\mu g/m^3$ is large.

A single study of the particle-size distribution in the battery and pigment industries is in the record. (Ex. 234 (22)). This data is somewhat difficult to interpret, since the sampling size ranges do not correspond easily to alveolar-bronchial deposition. It does, however, appear that in the factories in question which had relatively high average particulate levels, only a very small amount of the particles were less than 1.0 micron in diameter (or measured as such by the methodology used). In the first factory, which has an average total particulate level of 360.6 $\mu g/m^3$, only 5.6 percent, or 20.2 $\mu g/m^3$, measured as being smaller than 0.7 μg. Extrapolation through the cutoff points of the next sampling plate, which had an upper size cutoff of 5 microns, suggests that in total, only about 21.6 $\mu g/m^3$ of the total particulate was smaller than 1 micron. Results obtained in a similar fashion for the other two factories studied indicate that in one of them, which had a total particulate level of 294.2 $\mu g/m^3$, about 18 $\mu g/m^3$ was smaller than 1 micron, and the other, which had a total particulate level of 121.3 $\mu g/m^3$, only 12.5 $\mu g/m^3$ consisted of particles smaller than 1.0 micron. It is difficult to draw any firm conclusions from these data, but it does tend to indicate that 12.5 $\mu g/m^3$ is a reasonable estimate of the maximum amount of small particulate occurring in occupationally relevant particulate exposures.

Assumption C has been criticized in that it is simply a convenient set of arbitrary assumptions, designed to make the Bernard model fit observed patterns of blood lead-air lead correlation. (Ex. 466). In OSHA's opinion, the reasonableness of both the theoretical and observational bases of assumption C are quite convincing. The fact that assumption C agrees fairly well with most air lead-blood lead correlations, but agrees exactly with none should not be disturbing since these studies do present a reasonably good representation of the effects of particulate level, job tenure, and particle size distribution as averaged over the particular working population studied.

The marginal benefit calculations conducted using the Bernard model and assumption C (See PEL Section.) argue fairly well with those conducted using all of the previously observed blood lead-air level correlations except those with very low slopes. These low slopes are probably the result of specification errors in the blood-air correlation model produced by the presence of many long-termed workers in the sample.

A final criticism which has been made of the application of the Benard model to predict occupational blood lead levels is that the model predictions do not correspond to the classic clinical obsevations of Kehoe on the blood lead level response to controlled exposures to lead particulates. (Ex. 5(33)). The major discrepancies were:

> One of the subjects exposed to particulate lead (F.C.) exhibited blood levels that rose and then began to decline during exposure to 150 $\mu g/m^3$ particulate exposure, while the model would predict that his blood level would rise continuously.
>
> The other subject (M.O.B.) exhibited blood lead levels that reached an equilibrium level quite rapidly after exposure to particulate lead was begun, in contrast to the model prediction of ever increasing blood lead levels.
>
> The blood lead levels for both subjects exposed to particulate lead rose less rapidly than the model would predict.
>
> Subject F.C. exhibited increasing urinary lead levels while his blood lead level was decreasing, contrary to model predictions.

Before examining these objections, a brief review of the experimental conditions of the Kehoe study would be in order.

Both subjects were exposed to particulate lead consisting of very fine particles of lead oxide, with a mean diameter of 0.05 micron, produced by the combustion of tetraethyl lead in a small propane burner. Subjects were exposed to lead 8 hours/day, 5 days/week, for periods up to 92 weeks, in a small, cubic experimental chamber 10 feet on a side. The dietary intake of lead was monitored closely, and precautions were taken so that none of the particulate lead in the chamber was ingested, rather than inhaled. The experimental subjects were given strict hygiene instructions and the experimental chamber, especially designed to avoid dust buildup, was cleaned each day prior to the exposure period.

Several of these features of the experimental design make this study a poor simulation of the occupational situation. The size of the lead particulate, which had no particles larger than 0.17 micron, was much smaller than the particulate exposures generally encountered in industry. The bulk of most particulate exposures is larger

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than 1 micron in diameter, which means that while most industrial exposure will probably be deposited in the bronchi or naso-pharynx and be absorbed in the alimentary tract with about an 8 percent efficiency. All of the rather high levels of particulate exposure in the Kehoe studies would be absorbed with an efficiency of about 37 percent after deposition in the alveoli. Also, by confining the subjects into the very small experimental chamber and supplying them with only light bookkeeping or laboratory tasks to perform, it is likely that the experimental subjects were not nearly as active as the typical lead worker. Thus, they probably required less oxygen, and hence breathed much less lead particulate, than they would have in an industrial situation. And finally, of course, the laboratory cleanliness of the experimental chamber is hardly typical of the workplace.

These considerations not only make these experiments poor predictors of the response of blood lead to particulate exposure in the occupational context, but they also make the experiments themselves difficult to model accurately.

It must be assumed, that since the particulate is all less than 0.17 micron in diameter, that it will all be absorbed with an efficiency of 37 percent. If one then simply runs the models, assuming the experimental subjects breathe 9.6 m^3 air per day, then the model predictions for at least one subject approaches the observed result.

In regard to the specific claim that the blood levels of subject F.C. begin to fall during the exposure period, it can be said that it is difficult to tell, although that may be the case. Similarly, it is difficult due to large fluctuations in the blood lead levels to decide whether the blood lead levels of subject M.O.B. really reach an equilibrium value or do not actually continue to rise somewhat slowly as the model would predict. That the model would not predict rising urinary lead levels while blood levels were decreasing is true. It thus seems that the model does only moderately well in predicting the results of Kehoe's experiments on airborne lead exposure.

The model does do quite well, however, in predicting the response of blood lead to dietary intake of lead as studied by Kehoe. In these experiments, one subject each was given 0.2, 1, or 2 mg lead/day orally in solution, for periods of up to 4 years. To run this simulation, it was assumed that each subject was given the indicated amount of lead, in addition to normal dietary lead, every day, and that it was absorbed with an efficiency of 8 percent. All subjects were assumed to start at a blood lead level of 23 $\mu g/100$ g, with corresponding pool levels.

The model predictions parallel the observed data quite well for the two subjects who were given the larger daily doses of lead (E.B. and M.R.), but not so well for the subject (S.W.) who was given the lowest dose. It should be noted that due to large fluctuations in his blood lead prior to exposure, it was difficult to decide what value of blood lead to start the simulation with. At any starting value between 23 and 35, the model would predict that this small an oral dose of lead would produce a more or less stable blood lead level (in reality, actually slowly increasing or decreasing) for the duration of the experiment. It should also be noted that Kehoe could detect no significant difference between the blood lead levels of this subject during the control period and during the period exposure.

To summarize: The Bernard model seems to do reasonably well in simulating the data on three out of five of the experimental subjects studied by Kehoe. The data on another subject is somewhat equivocal. Only for one subject (F.C.), exposed to a relatively high particulate level, does the model fail to accurately predict the general features of the response of blood lead levels to lead exposure. Since there are numerous possible sources of variation in individual responses to lead exposures, failure of the model to predict well for one subject out of five is acceptable.

c. *Variability of individual blood lead levels.* This section will attempt to identify and analyze some factors which contribute to the observed variability in blood lead levels. This is necessary because, in order to predict the number of workers that would be expected to be above 60 $\mu g/100$ g a number of probabilistic assumptions about the variability of individual blood lead levels must be made. Original assumptions made have been the subject of some criticism.

One assumption made by CPA was that all of the variability in blood lead levels in a population of workers who had similar job tenures and exposure histories would be due to individual variations in physiological response to particulate exposure. A second assumption, supported by the Delco-Remy and Williams data is that the average standard deviation for a population of workers produced by this individual variability is ± 9.5 $\mu g/100$ g blood. It was implicitly assumed that blood lead variations are normally distributed about the average value for a given tenure-exposure population:

$$(\text{Blood Level})_i = \text{average blood lead} + e_i \quad (1)$$

The blood lead level for the worker is equal to the average blood lead level for that tenure-exposure combination plus a normally distributed error term with an expected value of 0 and standard deviation of 9.5 $\mu g/100$ g.

Originally the 9.5 figure was adopted as a conservatively high figure, based on summary statistics from the studies of American and British battery workers cited previously. A number of criticisms have been leveled at the use of these probabilistic assumptions (Ex. 451B). It has been claimed, first, that not all variations in observed blood lead levels is due to individual variations in physiological response, but rather there is also a large contribution from errors inherent in measuring blood lead levels. Second, it has been claimed that the observed blood lead distribution tends to be log normal, rather than normal, which would result in a higher proportion of a given population having high blood lead levels than in the normally distributed case. A third criticism is that, even if the observed distribution of blood leads is normal, the observed standard deviation of blood lead levels is greater than 9.5, owing to the abovementioned measurement errors and contribution due to short term, rather than long term, fluctuations in individual responses to lead exposure. Claims have been made that a figure as high as 15.5 $\mu g/100$ g would be a more accurate estimation for the standard deviation in blood lead levels.

In order to study more fully the basis for these criticisms, a few brief analyses of some of the data on the record were performed. Attempts were made, using data from several sources representative of typical industrial populations, to decide whether or not blood lead measurements for populations with similar exposure-tenure histories were normally distributed, and if so, how large the variation was likely to be. Analyses were also performed to decide how much of the variability in blood lead levels could be attributed to long term variability in individual response to lead exposure, how much could be attributed to real short term variability in blood lead levels and how much could be attributed to errors in the measurement of blood lead levels.

If long term variation in individuals' susceptibility are not the only source of variability in blood lead levels, then, e_i in equation 1 in reality becomes the sum of two or more kinds of variations:

$$e_i = e_1 + e_2 \quad (2)$$

In this case, e_1 is the error due to long term variation in individual response to lead exposure, and e_2 is the error term due to other sources, such as short term fluctuations in individual levels (weekly, cyclic, etc.) and measurement error.

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Using raw data from the Delco-Remy biological monitoring program, attempts were made to answer the following questions: Is either e_1 or e_2 not normally distributed? (In particular, is either e_1 or e_2 log-normally distributed?) If either e_1 or e_2 is log-normally distributed, then it is unlikely that e_t is normally distributed. Second, what are the magnitudes of e_1 and e_2? We know from basic statistics that, if e_1 and e_2 are independent of each other, then: Variance=(Deviations from mean value).[2] The standard deviation is the square root of the variance.

$$Var(e_t) = Var(e_1) + Var(e_2) \quad (3)$$

Thus, we can estimate the standard deviation of e_t, the observed variation in blood lead levels, from the variances of e_1 and e_2.

An attempt to estimate e_1, the error due to long term variations between individuals in response to lead exposure, and to decide whether these variations are distributed normally or not about the mean value was made in the following manner:

From the summary statistics in exhibit 86D, departments at the Delco-Remy plant were divided, according to the mean blood lead values for all of the male employees, into groups of departments with average blood lead levels that were equal (group 1=departments with average blood level between 40–41.9; group 2=departments with average blood lead levels between 42.0–43.9; etc.). It was assumed that departments with similar average blood lead levels consisted of workers with similar exposure-tenure histories. To the extent that this is not true, values calculated for e_1 will be overestimated. Since the values for each department are the mean of the yearly average blood values for the workers in the department, they contain little variation that could be attributed to short term variation or measurement error. Since the values are also assumed to come from populations with similar exposure-tenure histories, all of the variations observed can be attributed to long term individual variations in response to lead exposure, that is, to be equal to e_1 in equation 4. The observed standard deviation for each of these groups of departments is given in the third column of table 2. The average observed standard deviation for e_1 in all the departments is 5.46 μg/100 g.

In order to determine whether the blood lead levels for the individuals in the various departments were normally distributed, the distribution of the individual blood lead levels for each department within the five groups were pooled, and subjected to a X^2 goodness-of-fit test with the appropriate number of degrees of freedom. The results are also given in table 2.

TABLE 2.—*Long-term variability of blood leads for departments with similar average blood lead levels*

Departmental average blood leads	N (workers)	Average std. dev.	X^2[1]* (for normality)	Prob. (H_o=false)
40–41.9	307	5.48	9.85 (7)	~0.60
42–43.9	212	6.67	6.07 (8)	~0.5
44–45.9	315	5.21	7.06 (7)	~0.5
46–47.9	249	4.87	14.46 (6)	~0.95
48–51.3	135	4.91	1.76 (6)	~0.05
		=5.46		

*Figures in parentheses—number of degrees of freedom.

Only in the case of one group (average blood lead=46–47.9) does the goodness-of-fit test suggest that the observed long term variability is not normally distributed. In all of the other cases, with this sample size, the goodness-of-fit test cannot distinguish any of the distributions from normal.

In order to estimate e_2, the variations due to measurement error and short-term individual fluctuations, 27 workers whose yearly average blood lead level did not change more than 2 μg/100 g for the period of observation (1974–75) were selected. Since their yearly average blood lead levels did not change from year to year, it was assumed that the contribution to the total variation from long-term variability was zero. Thus, all of the observed variation must have been due to short-term variability in blood lead levels and measurement error.

For each of these workers, all of whom had had their blood lead measured at least four times in each year, mean blood leads and standard deviation were calculated. There were 300 observations in all. The average standard deviation for a single worker, whose blood lead level was stable in the long run (e_t=0), was 7.32 μg/100 g (variance=53.6). The X^2 value (10 d.f.), for this distribution, tested against a normal distribution with σ=7.32, is 6.52; the hypothesis that the distribution is normal cannot be discarded at any more than a 30 percent level of confidence. The same distribution, tested against the log-normal distribution generated from the same data (σ^2=0.004812), gave a X^2 value (9 d.f.) of 13.19; the hypothesis that the distribution is log normal can be discarded at a level just under 90 percent. This sample more closely resembles a normal distribution than a log normal distribution. The distribution is skewed somewhat to the right, however. But still, in as much as these techniques can determine, the upper outliers are explained at least as well by the normal distribution as by the log normal (judging by overall contribution by X^2).

As far as this limited analysis is concerned however, there seems to be only slight justification for claiming that either the long-term variation in blood lead level (e_1) or short-term variations (e_2), including measurement errors, are not normally distributed, at least for this set of data.

[1] the observed variations in individual blood lead containing both short-term, individual fluctuations and long-term differences in physiological response, as well as measurement error can now be calculated:

$$Var(e_t) = Var(e_1) + Var(e_2) = 29.8 + 53.6 = 83.4 \quad (4)$$

The standard deviation of e_t is thus 9.14 μg/100 g. This is just slightly less than the value used in the CPA analysis, and suggests that the latter is an appropriate value to use for cost calculations, Also, there are other instances in the record where a similar short-term variability in blood lead measurements was obtained. In the ASARCO El Paso lead study, (Ex. 4(5)), three blood lead measurements were taken on 42 workers (two on another) in 1 week. The average variance for a single worker was 79.3. Using this value of calculate e_t (e_t=5.45), we get an observed standard deviation of 10.4 μg/100 g for individual blood lead determination.

In one study of the accuracy and precision of blood lead determination, 15 laboratories were given five portions of a single blood sample to measure the repeatability of the blood lead measurements. The average standard deviation for a single laboratory was 3.7 μg/100 g. Two laboratories did extremely poorly, with standard deviations of 10.0 and 15.5 μg/100 g. All the rest had standard deviations less than 3.5. The standard deviation for the 13 best laboratories ranged from 1.4 to 3.4, with an average standard deviation of 2.3 μg/100 g lead. No single analytic technique seemed to consistently do better than any other. (Roettgers, PbB Reference Control Program, West Allis Memorial Hospital, March 21, 1975.)

These results suggest that, in most cases, measurement errors do not contribute a large amount to the observed variability. This suggests that the observed number of blood lead values greater than 60 depends to a large extent on the nature and magnitude of true short-term fluctuations in blood lead level which appear not only in the Kehoe study, but in the Delco-Remy data as well, are real variations, not primarily due to measurement errors. This means that even if an individual worker has a long-term average blood lead level less than 60 μg/100 g, he may spend a significant fraction of the time above this level due to real short-term variations in his blood lead level.

In trying to make a final decision about what a reasonable estimate of variablity of blood lead levels would be, the answer would depend upon several factors. A lower bound estimate would involve using an e_1 (σ=5.46), since it probably is a reasonable estimate of the observed long-term variability of individual blood lead levels. If one wished to include considerations of short-term variation, then $e_t = e_1 + e_2$ (σ=9.1–10.4) would be a good estimate, assuming reasonably low measurement errors. If one were to include conservatively high estimates of measurement error, then an upper bound estimate for the standard deviation of observed blood lead variability of σ=15.0 would be in order.

d. *Air Lead-Blood Lead Relationship.* In criticism of the CPA model and of the standard in general, the issue of the interpretation and usefulness of studies of blood lead-air lead relationships has frequently arisen. Some critics have claimed that no meaningful correlation exists between blood lead and air lead levels, or that the relationships are so weak that few health benefits would be attained by reducing exposures below 200 μg/m³. Others claim that there is so much variability between individuals and between studies that attempts to predict blood lead levels on the basis of exposure are useless. Much of this criticism is based on fundamental misunderstandings about the nature and meaning of regression analyses and the uses to which they can be put.

One of the Lead Industries Association contentions is that observed correlations between blood lead and air lead are too weak and variable to justify the imposition of standards for air lead levels. They cite the King and Delco-Remy studies to claim:

Air lead exposure is useless in predicting individual blood lead levels.

The data on blood lead-air lead correlation is so weak that they do not constitute an adequate basis for estimation of health benefits produced by decrease in exposure.

Even if the best studies are to be believed (they claim the King and Delco-Remy studies to be superior), they indicate that the incremental benefit of imposing an air standard below 200 μg/m³ would be minimal (Ex. 335).

The question may be asked do blood lead-air correlations exist? The answer is clearly yes. Despite the list of witnesses to the contrary quoted by the LIA, these are a long list of observational studies in the record which indicate that highly statistically significant correlations can almost always be found between airborne lead exposure and blood lead, where care is taken to measure accurately enough, and the appropriate data analytic methods are used. Many of these correlations appear to be small in magnitude, but there are at least two good reasons why this should be so. Most studies of blood lead-air lead correlation do not take into account differences in job tenure between workers. The inclusion of long-tenured workers with higher body burdens of lead, but low current exposure, biases the observed regression slope coefficient toward zero. Similarly, the presence of newly-hired workers with heavy current exposure but no previous body burden would also bias the slope of the air lead-blood lead dependence downward. That this effect is important is borne out by the results of several of the studies (including the King study) which indicate that even in the absence of any occupational exposure, the average worker could be expected to have a blood lead level well above 40 μg/100 cc. Another factor which would make blood lead-air lead correlations weaker than they actually are is error in measurement of air lead levels. Errors in measurement of the values of the independent variable will almost invariably result in a decrease in an observed slope of a regression line. It was shown that, owing to the known large errors in air lead measurements, this magnitude of this effect could well be significant. It is interesting to notice that the Delco-Remy study (Ex. 285), which had one of the lowest slope coefficients of almost any study, was based on single air lead measurements for each individual worker. All of the other occupational studies made use of at least 10 measurements/individual to minimize the errors in measurement of the air lead value. It is likely that the results of the Delco-Remy study were significantly affected by measurement error.

It is true that any one of these studies individually provides a poor basis for predicting individual blood levels. They certainly do better, however, in forming statistical predictions about average blood lead values and about the frequency of occurrence of blood lead levels far from the mean.

Can the air lead-blood lead correlations in the record be used to provide adequate predictions about health benefits from airborne exposure reduction?

In the strictest sense, no they cannot. The air lead-blood lead studies in the record provide measurements of the observed relationship between blood lead and air lead levels in specific populations at one point in time. They do not take into account variation in job tenure and previous body burden, and they do not furnish adequate approximations of the response of blood lead to air lead exposure over time. They do reflect a fair approximation of the effects of distribution in the various industries and firms, and thus provide rough estimates of the effect of changes in air lead levels and blood lead levels for that particular population, subject to the inherent limitations discussed above.

Owing to differences in job tenure distribution, measurement errors, and other factors, it would not be expected that any two studies would agree exactly. Owing to the specification and measurement errors, it could also not be expected that one of the studies would provide an accurate picture of the true effect of air lead exposure on blood lead, even for any particular job tenure, except fortuitously.

Thus, arguments about which study of blood lead-air lead correlation most accurately predict the magnitude of health benefits which would accrue from the imposition of a given standard are not very meaningful.

In summary, one could not expect to make accurate calculations of the effect on blood lead of reducing air lead exposure on the basis of any single short term cross-sectional study. To the extent that the individual studies agree, they help confirm the finding that a more or less linear relationship seems to exist between blood lead levels and current air lead exposure in the lead industry. To the extent that they disagree, they indicate the need for a more comprehensive model of blood lead response to airborne particulate lead exposure over time which the Bernard model accomplishes.

No cross-sectional study of air lead-blood lead relationships is likely to be an accurate predictor of blood lead response to airborne particulate lead exposure. A "snap shot" observation, taken of the blood lead levels and current exposures of a number of workers does not measure, except indirectly, the effects of lead exposure on blood lead levels over time. Cross-sectional

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studies will always include large numbers of workers whose blood lead levels are determined primarily, not by present exposure, but by lead body burdens accumulated over their entire job history.

This inclusion of long-tenured workers in studies of this kind will result in predictions of unreasonably high blood levels at low exposure, and produce unreasonably low estimates of the slope of the dependence of blood lead on air lead.

Most of the relationships generated by the King study predict that the average blood lead levels observed in individuals with no occupational exposure to lead would be greater than 40 $\mu g/100$ cc. These unreasonably high values suggest that the results of King's studies have been affected by the inclusion of many workers with high initial body burdens. In addition, King's studies include large numbers of workers exposed to particulate lead levels much greater than 200 $\mu g/m^3$. This would produce two effects. First, it is possible that only particularly hearty workers with weak response to lead exposure could tolerate such exposures for long. The experimental sample could be biased toward workers with lower than average sensitivity to lead exposure. King specifically denies this, but it seems that it would be rather difficult to determine whether or not sensitive workers had been selected out or not. Another problem in King's study, including as it does large numbers of subjects exposed to very high blood levels of lead particulate, might not be a very good predictor of blood lead levels in the region of interest, 0 to 200 $\mu g/m^3$. This is so because particle size characteristics or physiological responses might change at extremely high exposures. Also, for two of the factories King studied, the results of the analysis depend rather heavily on relatively few outlying points.

In addition, there are methodological problems that might well result in studies of current air lead-blood lead correlations producing results that were not even accurate representations of the existing blood lead-air lead distributions. The most obvious of these is measurement error. If the average error in measurement of the independent variable in a regression is significant, compared to the actual variation in the data, the result will be that the observed slope coefficient will be biased toward zero, as long as the error is not correlated from observation to observation. As was previously discussed all of the studies of blood lead-air lead relationships in the record, except the Delco-Remy study, took this into account, and measured air lead levels many times and averaged the results to minimize measurement error. The Delco-Remy study conducted by Buncher, was constrained by the data available to pair single observations of blood lead and air lead for the analysis. It is highly probable that the pure measurement errors included in this will be that the very small slope observed in this analysis is due at least in part to errors in air lead measurement.

In summary, no study that relates cross-sectional data on present air lead and blood lead levels without taking tenure specifically into account is likely to be an accurate predictor of the effect of particulate exposure on blood lead. Specification errors (the exclusion of tenure) and measurement errors in air lead levels are both likely to bias the observed slope coefficients downward, and produce unrealistically high predictions of blood lead levels at low exposure. There is no one simple relationship between air lead and blood lead. There are, in reality, a set of them, one for each tenure and work load combination. If one were forced to choose one particular blood lead-air lead study to predict changes in blood lead levels after a change in exposure levels, there is no good reason why one should choose either the King study or the Delco-Remy study over any other, and a number of reasons why one might not choose them.

There were several criticisms of the design of the Bernard model itself, as distinct from the CPA adaptation of it. Most centered on one of two areas: The use of animal studies in developing a model for human lead metabolism, or the accuracy of the assumptions of linear transfer rates between compartments. LIA argues that "The Bernard model was based on limited data from a single experiment on baboons, each of which had received but one injection of radioactive lead." Thus its application to the prediction of blood lead levels in humans was unjustified. (Ex. 453 (19).)

The Bernard model was based on data from a number of experiments on baboons, humans, dogs, and rodents, not from "a single experiment on baboons." OSHA is confident that the quality of data obtained from the animal studies, particularly the baboon study is scientifically sound and that the general design of the Bernard model is without serious weakness.

The second major criticism of the Bernard model was that it postulated transfer rates between compartments ("linear transfer rates"). There seemed to be a good deal of confusion about what "linear transfer rate" meant. A few critics felt that it meant that blood lead was linearly related to exposure, which is one result of the model, given a constant tenure, but not necessarily dependent on linear transfer rates. Dr. Cole, the representative of the Lead Industries Association, cited seven studies to this effect. (Ex. 446.) Dr. Hattis of the CPA has responded in his letter of January 13, 1978 (Ex. 458A), to these studies, indicating why he believes that none of these studies provides convincing evidence that the assumption that the physiological response to lead exposure in animals is nonlinear over appropriate ranges of lead exposure.

The Lead Industries Association also claims that the CPA use of the Bernard model is inappropriate, since the amount of lead (0.419 mg.) in the R1 pool, supposedly corresponding to blood lead, is not large enough to produce a blood lead of 19 $\mu g/100$ g in an individual with a normal blood volume of 5 liters. (The concentration would be 7.9 $\mu g/100$ g instead.)

This approach misunderstands that the definition of the compartments as used in the Bernard model applies to kinetically defined pools of lead, not lead located in any one particular physical location or organ. In this case it is possible that there are two pools of lead which correspond more or less to that level circulating in the bloodstream at any one time. For instance, if the contents of the other rapidly-exchanging pool, are added to the contents of R1, the resulting total would produce a concentration of approximately 22 $\mu g/100$ g lead in 5 liters of blood. This would be consistent with a situation in which not all of the lead in the blood exchanged rapidly.

In fact, lead is known to be concentrated primarily in the red blood cells rather than in the plasma, and may well be too strongly bound to exchange quickly. Also, contrary to the LIA claims (Ex. 453), the validity of the Bernard model does not rely on a dietary content of 440 μg lead/day. It was assumed that the total intake of lead from all sources, including airborne lead as well, was 35.2 μg/day. This 35.2 μg of lead actually absorbed into the body to produce the equilibrium pool levels in equivalent to a dietary exposure of about 150 μg/day plus an airborne intake equivalent to 16 hours light activity and 8 hours rest at an ambient air lead level of about 2.5 $\mu g/m^3$ (a reasonable urban exposure).

"Assumption C" was used to describe the intake of lead that could be expected to result from different total particulate exposures. Assumption C states that, on the average, occupational particulate exposures totaling less than 12.5 $\mu g/m^3$ are composed primarily of small particles, less than 1 micron in diameter which are deposited mainly in the alveoli and absorbed with an efficiency of 37 percent. For exposures greater than 12.5 $\mu g/m^3$, the first 12.5 $\mu g/m^3$ is assumed to be made up of small particles and the remainder composed primarily of particles larger than one micron, which are absorbed in the alimentary tract after being carried from the bronchi and nasopharynx by ciliar action.

Most of these criticisms argued that the intake-exposure assumptions incorporated into assumption C were not valid (Ex. 466). Generally, it was maintained that since the majority of particulate exposures were "respirable", that assumption C could not be correct. Very little quantitative data was used to support this position. Dr. Hattis has already demonstrated that at least in one smelting plant, the amount of small particulate is inversely correlated with total particulate levels. Also, in the three factories in the King study (a battery plant, a pigments plant, and a smelter) with total average particulate lead levels of 120–360 $\mu g/m^3$ the average amount of particulate smaller than 1 micron was about 18 $\mu g/m^3$. A similar picture was found from a number of sampling locations in one AMAX smelting plant.

Marjorie Lundquist also states (Ex. 466, p. 5) that only 20 percent of the lead particulate generated by the Globe Union pasting operation is less than 2 microns in diameter. This implies that at most 10 percent is smaller than the 1 micron size above which little alveolar deposition occurs. The physical justification for this part of assumption C has been discussed.

Basically, we expect that there will be some tendency for workers with greater total air lead exposures to be located physically closer to sources of lead emission into the workplace atmosphere than their fellow workers with smaller air lead exposures. Because the larger lead particulates will tend to settle out from the atmosphere faster than smaller particulates, workers which are farther from a given lead particulate emission source will tend to be esposed to relatively less large particulates than workers which are closer to that emission source. If the distant workers also tend to be those with smaller total lead particulate exposures, then there will in general be a tendency for workers with smaller total lead exposures to be exposed to greater proportions of small-sized particulates. Of course, in real workplaces where there are multiple lead particulate sources which may be expected to give rise to emissions of different particle size distributions, we do not expect that there will be a perfect correlation between total lead exposure level and proportion of "large" lead particulate exposure.

OSHA concludes that most occupational particulate exposures include at most 15-20$\mu g/m^3$ material small enough to be absorbed at high efficiency, and that assumption C is reasonable.

Lundquist also argues that assumption C is a rather arbitrary set of assumptions which were used only because they had to be used to make the model fit the observed data. The theoretical and observational bases for the various parts of assumption C have been discussed at length and OSHA believes they are all reasonable.

OSHA has no doubt that Lundquist has developed equations that fit the Williams' data (even with the plastic workers included) and her own data better than the model and assumption C. But since neither of those studies included specific treatments of job tenures or particle size distribution, which the model does, those findings by no means invalidate the applicability of the model to the occupational situation.

Predictions of the health benefits vary, depending upon the nature and magnitude of the variability that can be expected to occur, in a population of workers around the predicted average blood lead level. The original CPA report's treatment of this variability has been extensively criticized.

St. Joe Lead maintained that blood lead levels are not normally distributed but log-normally distributed (Ex. 451B). Analyses of the Delco-Remy data seemed to indicate that, at least for these data, such was not the case, and that bood lead levels were more or less normally distributed about the mean. The long term variation about the mean between workers for all of the samples tested except one could not be distinguished from a normal distribution by a X^2 goodness-of-fit test, with any level of certainty. It is possible that distribution of blood lead levels in samples of workers with widely varying tenure and exposure histories might well be best described by a log-normal distribution of exposure levels; it would not imply that workers with similar tenure-exposure histories would have blood lead levels that were log-normally distributed.

St. Joe additionally claims that if short term individual variation in blood lead levels and measurement errors, as well as long term individual variability, are taken into account, the total variability of blood lead levels is greater than the CPA model estimates(σ 15 rather than 9.5 $\mu g/100$ g). In a brief analysis of the Delco-Remy data it found that while measurement error and short term variability do contribute to the observed variability, the total observed variability still was similar in magnitude to that used in the original CPA report as an upper bound estimate. As stated above, the long term variability in blood lead levels between individual standard deviations of about 5.46 $\mu g/100$ g, while the short term variability for the average worker had a standard deviation of about 7.3 $\mu g/100$ g, with measurement errors usually accounting for only a small portion of the short term variability.

Basically, OSHA agrees that there are many other sources of variability other than long term differences between individual response to lead exposure that account for large portions of the observed variability in blood lead levels. Aside from short and long term variation in air lead exposure, a number of other factors are at work. Among them are:

Individual differences in size, body composition (relative sizes of potential lead storage pools).

Individual differences in lead absorption (e.g., from short term fluctuations and long term differences in dietary habits, gastrointestinal function).

Individual differences in lead excretion (e.g., from short term fluctuations and long term differences in water and salt elimination, kidney function).

Individual differences in work demands producing differences in the volume of air breathed.

Differences in work habits (e.g., hygiene, smoking) affecting the relative levels of inhalation and noninhalation routes of lead exposure.

Miscellaneous environmental conditions affecting physiological processes (heat, humidity, other chemical and physical stressors).

Variation in the workweek (overtime, etc.).

The CPA adaptation of the Bernard model does not specifically take these forms of variation into account. It is likely, however, that the measure of variability used in the analysis (σ=9.5 g/100 g), coming as it does from observational data, contains contributions from all of those factors. The CPA model probably still presents an accurate picture of long term average response to air lead exposure.

ATTACHMENT B. PERMISSIBLE EXPOSURE LIMIT (PEL)

The final standard establishes a permissible exposure limit (PEL) of 50 $\mu g/m^3$ averaged over an 8-hour period. The decision to establish this PEL was based on consideration of the health effects associated with exposure to lead, feasibility issues and the correlation of airborne concentrations of lead with blood lead levels which have been associated with adverse effects and symptoms of lead exposure. In the proposed lead standard OSHA stated:

Establishing the permissible exposure limit requires first a determination of the blood lead levels associated with adverse effects and symptoms of lead exposure and then correlating these blood lead levels with airborne concentrations of lead. In setting a permissible exposure level, consideration must also be given to providing an adequate margin of safety. Thus, while it is clear that we cannot permit employees to be exposed to levels of toxic substances which are known to be harmful, prudence dictates that we consider setting maximum exposure

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levels which provide a certain margin of safety below the known harmful levels. (Ex. 2, p. 45938.)

The issue of whether the PEL for lead should be lower than the proposed 100 $\mu g/m^3$ level was originally raised in the preamble to the proposed standard (Ex. 2, p. 45934). It is addressed as a "major" issue and incorporates the subissues of: (1) whether 100 $\mu g/m^3$ incorporates an appropriate margin of safety; (2) whether subclinical effects should be considered in establishing the PEL (implying that if that question is answered in the affirmative then the PEL would clearly be lower than 100 $\mu g/m^3$; i.e., as low as air lead levels corresponding to 30–40 μg Pb/100 g of blood); and (3) whether the PEL should be low enough to protect "susceptible groups," such as pregnant women.

These issues were reiterated in the public notice of hearing (Ex. 21, pp. 809–10) along with discussion of new studies on the effects of lead on male and female reproductive functions. The notice also referred to comments received from several groups claiming that 100 $\mu g/m^3$ was not protective of these reproductive functions. A reading of the cited comments and studies indicate that adequate protection could require an air level as low as 20–50 $\mu g/m^3$.

These issues were thoroughly debated by all parties to the rulemaking in oral testimony and written comments. This in itself should show that the public had actual notice of OSHA's intention to consider alternative PEL's, possibly as low as 20 $\mu g/m^3$, upon resolution of the subissues indicated above.

At the time the proposal was issued OSHA stated:

> Our present judgment is that in order to provide the appropriate margin of safety, as well as to provide significant protection against the effects, clinical or subclinical, and the mild symptoms which may occur at blood lead levels below 80 $\mu g/100$ g, it is necessary to set an airborne level which will limit blood lead levels to 60 $\mu g/100$ g. A maximum blood lead level of 60 $\mu g/100$ g corresponds to a mean blood lead level of about 40 $\mu g/100$ g. (Ex. 2, p. 45938.)

Based upon the extensive evidence of adverse health effects associated with exposure to lead in the record OSHA has determined that in order to provide on appropriate margin of safety as well as provide maximum protection against the effects of lead exposure the blood lead level of lead workers must be kept below 40 $\mu g/100$ g. For purposes of definition blood lead levels up to 40 $\mu g/100$ g will be considered "normal" although the record indicates the prevalance of health effects below 40 $\mu g/100$ g. This is particularly true for reproductive effects of both male and females who want to plan pregnancies. Blood lead levels above 40 are unacceptably elevated. In establishing 40 $\mu g/100$ g as the maximum blood lead level which the protection of employees and prudence permits OSHA is mindful the requirement of the Act that "no employee will suffer material impairment of health or functional capacity for the period of his working life." OSHA has concluded that maintenance of blood lead levels below 40 $\mu g/100$ g by engineering and work practice control of airborne lead will provide protection of workers throughout their working lifetimes. There is substantial evidence in the record which indicates that the blood lead level of both men and women who wish to plan pregnancies should be maintained at less than 30 $\mu g/100$ g during this period, and this evidence forms the basis for the action level of 30 $\mu g/m^3$ established in this final standard and for other provisions which will be discussed below in the medical surveillance, medical removal protection, and education and training sections.

OSHA recognizes that a PEL of 50 $\mu g/m^3$ will not achieve the goal of maintaining the blood lead levels in occupationally exposed workers below 40 $\mu g/100$ g. Based on the calculations using the CPA application of the Bernard model (SD 9.5 $\mu g/100$ g) OSHA predicts that at equilibrium, 0.5 percent of workers blood leads will exceed 60 mg/100 g, 5.5 percent will have PbB between 50–60 $\mu g/100$ g; 23.3 percent will be between 40–50 $\mu g/100$ g; and overall 29.3 percent of lead exposed workers will have PbB above 40 $\mu g/100$ g at any one time when compliance with 50 $\mu g/m^3$ PEL is achieved. This blood lead level distribution represents a marked improvement over the current levels in the industry and forms the basis for the calculation of incremental benefits obtained from the reduction of the PEL described later in this section.

In establishing 40 $\mu g/100$ g as a maximum desirable blood lead level, OSHA is conscious of the fact that the Act mandates that OSHA set a standard which meets the test of feasibility. OSHA has determined that 50 $\mu g/m^3$ represents the lowest level for which there exists record evidence on feasibility for primary and secondary smelting, SLI battery manufacturing, pigment manufacturing, and brass/bronze foundries. OSHA has concluded that the 50 $\mu g/m^3$ exposure limit is the level which properly balances the need to minimize deleterious health effects and meets the test of feasibility. Compliance with this level will provide a dramatic reduction in the number of workers whose blood lead levels are greater than 40 $\mu g/100$ g and will virtually eliminate all blood lead levels above 60 $\mu g/100$ g.

During the hearings there was testimony which argued for establishing a reasonable margin of safety (Tr. 1066–68, 1073, 1073–74, Ex. 335, p. 79). For example, Dr. Epstein testified that the AFL–CIO proposal of 40 $\mu g/m^3$ provided no more than a twofold margin of safety against clinical manifestations of lead toxicity. OSHA recognizes a more conservative PEL than 50 $\mu g/m^3$ would provide a greater margin of safety and reduce the extent of certain physiological changes whose significance is currently unknown. However, the constraint of the record on feasibility has limited the agency's ability to establish a margin of safety beyond that anticipated by the PEL of 50 $\mu g/m^3$.

A PEL of 50 $\mu g/m^3$ is achievable almost entirely through engineering and work practice controls, the preferable control strategy. The exposure limit is based upon what can be achieved by the affected industries taken as a whole using available technology or technology looming on the near horizon. OSHA has determined that the industries which will face the greatest difficulties in implementation of engineering controls will be primary and secondary smelters, pigment manufacturing, brass and bronze foundries and SLI battery manufacturers, and for this reason the PEL will be phased in with extended periods of time allotted for compliance (see methods of compliance) in these industries. The issue of feasibility is addressed in attachment D and will not be discussed here. Suffice it to say that OSHA has determined that the standard is feasible and that the PEL of 50 $\mu g/m^3$ represents the intersection between maximization of health benefits and feasibility.

The permissible exposure limit is based to a large part on the evidence of adverse health effects from exposure to lead previously described in the health effects section. OSHA has followed the logic of the proposal where first a determination of the blood lead levels associated with adverse effects and symptoms is made followed by correlation of these PbB levels with airborne concentrations of lead. The health effects section will be divided into three parts.

A. Clinical versus subclinical effects. A discussion of whether early health effects resulting from exposure to lead at low levels should be considered in establishing the PEL.

B. Health effects and the PEL. A discussion of the conclusions derived from evidence presented in the health effects section.

C. Clinical effects below 80 $\mu g/100$ g. A discussion of whether clinical effect occur at blood lead levels below 80 $\mu g/100$ g.

The remaining sections in the PEL which follow health effects are benefits of the PEL and alternatives to the PEL.

1. *Health effects.*

a. *Clinical versus subclinical effects.* In deciding upon the PEL it was necessary for OSHA to address this major issue raised in the proposal, namely:

> Whether subclinical effects of exposure should be considered in establishing a standard for occupational exposure to any substance, in this case lead. (Ex. 2, p. 45934.)

The proposal approached the latter issue as follows:

> Despite decades of research, the complex relationship between chemical exposures and human responses is still imperfectly understood. Incapacitating illness and death represent one extreme of a spectrum of responses, but other serious biological effects include physiological or metabolic changes that may be precursors or sentinels of disease. Boundaries between these categories overlap due to the variation of individual susceptibilities and exposures in the working population.
>
> It is customary to term "clinical" those biological changes that are known to directly indicate disease. Those changes of subtler significance which may not be symptoms of presently known or detectable disease are called subclinical. For example, as pointed out below, when lead in the blood exceeds 40 $\mu g/100$ g, will begin to excrete increased quantities of ALA into the urine, reflecting an enzyme inhibition caused by lead. If the amounts of ALA to reach a certain level in the urine, it could cause anemia and otherwise adversely affect the human body. However, it is not known with certainty at what level this enzyme inhibition becomes clinically important. What we do know is that such excretion is not physiologically desirable.
>
> As we point out below, the proposal is designed to provide a permissible exposure limit for the working population that should protect against known clinical effects of lead exposure. In addition, subclinical effects in workers would be substantially reduced. In any event, the question of both clinical and subclinical effects should be fully discussed in comments submitted, as well as at the hearing, if one is held, and might necessitate a different permissible exposure limit in the final standard than that proposed. (Ex. 2, p. 45935.)

It should be remembered that the proposed lead standard was drafted approximately 3 years ago when the data on the early stages of lead-induced disease was less well understood. Today OSHA believes that the original terms "clinical" and "subclinical" represent vast oversimplifications of a disease process and for this reason has avoided their use in this final standard. The use of the terms creates a false dichotomy which is neither accurate nor useful in describing adverse health consequences from exposure to lead. OSHA contends subclinical effects are in reality early stages in a continuum of disease. It is axiomatic that the chronic, irreversible stage is preceded at the opposite end of the disease by an early, relatively mild apparently reversible stage of disease. This earliest stage is characterized by varying subjective and/or objective symptoms that may not at first unduly alarm the victim or present a physician with clear-cut diagnosis. Nevertheless, this early developmental stage of disease is a pathological state and is potentially irreversible in some cases even at early stages. OSHA finds persuasive the arguments for adopting a lead regulation which protects workers from the early consequences of lead exposure. OSHA has concluded that reduction in motor nerve conduction velocities, elevation of enzyme inhibition products from heme impairment, decrease in hemoglobin levels, CNS symptoms, neurobehavioral effects, and reduced kidney function represent manifestations of a disease process and are, in themselves, important health effects which may be characterized as material impairment of health. (See health effects for an in depth discussion of effects.) Any standard for lead must prevent the onset of these changes since this will have the ultimate effect of preventing the development of more severe manifestations of disease later in life.

OSHA must promulgate a standard which prevents occupational disease resulting from both acute and prolonged or chronic exposure to lead in order to guard against the onset, progression, and severity of chronic degenerative diseases of aging workers. The degree of protection to be provided must extend over the full span of working life and must cover the more susceptible, as well as the more robust, members of the exposed group. Since the objective must be to limit exposures over an extended period of time to prevent future trouble, as well as immediate illness, the mere absence of illness or lack of clinical signs will not constitute sufficient evidence of adequate health protection. There should be no implications of immediate ill health in case the PEL is exceeded. The usual medical signs for disturbance, are wholly inadequate to provide employee protection. Simply to prevent overt manifestations of disease is not sufficient to prevent material impairment of health for the period of a working life since many of the disorders associated with lead are either irreversible (neurological disease and reproductive effects) or are only manifested when severe damage has occurred (kidney). Rather the PEL must seek to prevent the earliest indications or onset of disease and to the degree feasible establish a safety margin to allow for the remaining years of exposure.

Fortunately, the record indicates that there are now available many methods for detection and measurement of the degree of impairment caused by lead as expressed in terms of a variety of biochemical, physiological, and psychological disturbances. Some of these tests function at relatively gross levels which are immediately below morbidity. For example BUN S-creatinine, and hemoglobin serve as inadequate measures of ill health, whereas others reveal earlier changes that are highly sensitive, e.g. ALAD inhibition. OSHA recognizes that an uncritical assumption which interprets any demonstrated biological response as evidence of ill health or impending loss of health is fraught with uncertainty and borders on oversimplification of the disease process. For example, OSHA has not established a PEL which will prevent enzyme inhibition although it would be reasonable to do so in order to maximize the margin of safety. Rather the PEL is designed to prevent the effects of enzyme inhibition especially given the exponential changes which occurs above 40 $\mu g/100$ g. For example the National Academy of Sciences concluded:

> Arithmetic increases in blood lead content above approximately 40 $\mu g/100$ g of whole blood are correlated with a continuing exponential decrease in ALAD activity in hemolysates of peripheral blood, an exponential increase in urinary ALA excretion, and an exponential increase in "chelatable" lead. When all the available data are considered together, they are consistent with the hypothesis that the inhibition of ALAD activity in vivo in intact man becomes physiologically significant as blood lead content rises above approximately 40 $\mu g/100$ g of whole blood and that the partial inhibition observed is reflected by an increasing rate of excretion of its substrate (ALS) in urine. (Ex. 95, p. 171.)

To reiterate the policy stated above, prevention of disease implies protection at early, presumably reversible stages of disease as well as prevention of overt signs of illness. The need to approach lead on this basis was recognized by the National Academy of Sciences as early as 1972:

> Biochemical changes occur at blood lead concentrations well below those defining industrial toxicity and are perhaps the correlates of insidious changes. For example, interference with heme biosynthesis is the earliest evidence detected as the blood lead content rises above 40 $\mu g/100$ g of blood. Lane was pointed out that only the lead worker undergoing some toxic episode comes to medical attention. The worker who has become slowly and insidiously poisoned, who is "below par" but without acute manifestations, appears to be well, because he presents no overt health problems. However, he may be subject later to chronic nephritis and cerebral hemorrhage. As Hardy points out, "nonspecificity of sign and symptom, delayed diagnosable damage because of the body's incredible margin of safety, and more than one insult acting like lead or with lead require sophisticated attention to

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the potential effect of low doses of lead-in much the same manner as low levels of ionizing radiation have been studied since the use of atomic energy for military purposes in 1945."

If the notion of "insidious poisoning" is valid, one might expect that workers exposed to lead concentrations below those which produce overt symptoms of toxicity would also undergo behavioral changes similar to the sensory, motor, and other alterations characteristic of frank lead poisoning, but to a lesser degree. However, no investigations of this have been reported. Nonetheless, a responsible company physician in sufficient contact with his workers is in a position to evaluate the early behavioral changes resulting from low-level poisoning. Given a familiarity with the base-line behavior of a worker, the physician can be alerted by the frequency of changes in some symptom categories that are otherwise difficult to interpret—irritability, lassitude, constipation, headaches, insomnia, abdominal cramps, and other diffuse complaints—as well as any increase in accident rates.

The symtoms of lead poisoning are, initially at least, rather vague; irritability and other mood changes predominate in the early stages, frank psychosis and encephalopathy later. The long biologic half-life results in so slow a buildup of toxic levels in the body that no connection may seem evident between the beginning of exposure to a chronically noxious environment and the development and progression of the symptoms of lead poisoning. (Ex. 95, p. 158-59.)

In 1972 there had been no investigations which had reported the behavioral changes described above in workers exposed to low levels of lead. The record in these proceedings demonstrates in numerous studies that the insidious poisoning does indeed occur in workers at low levels of exposure, and in order to prevent further development and progression of these signs and symptoms of lead poisoning, a conservative PEL must be established.

Dr. Bridbord of NIOSH developed an overview of the effects of lead which OSHA believes is an accurate representation of the disease process associated with exposure to lead and will repeat it in its entirety:

MR. KUCHENBECKER. We've heard words like abnormal, damage, disease or subclinical disease, toxic poisoning, and even, as in the last discussion, we're talking about people dying with lead poisoning.

My concern is that, as a physician, could you give me your own feelings as to when you feel that we have sufficient dysfunction of those organ systems to be concerned in the sense of this is dysfunction, it's disease, it's illness, it's something that we have to control in the work environment, for the three systems, neurological, hemotological, and renal.

DR. BRIDBORD. I think I'd like to present a conceptual framework first and then go back to each of the organ systems and give you some of my opinions as to how the various changes fit in. If one could envision a triangle for a moment and then draw horizontal lines within that triangle, draw one, two, three, four, so that we have five spaces. Have the triangle's lower base be parallel to the bottom of the paper, the first space there developed, the largest length on the bottom let's call normal. The next box, somewhat smaller, let's call physiological change of uncertain significance. The next line let's call pathophysiological change. In other words, something that we think is a change that is very closely associated with disease but may not, in and of itself, be called disease. The next box let's call morbidity which would represent fairly severe disease and finally, the tip of the triangle or the tip of the iceberg so to speak, would be mortality.

Now, within this, one point that I would like to emphasize is that there is no really sharp distinction. You are probably dealing with a continuum of a spectrum of response that one can find. One way to look at this triangle concept is that a group of people exposed to a harmful agent might express a spectrum of response. In other words, those most susceptible individuals might actually die. Those people still susceptible but not the most susceptible, might suffer severe disease. Conversely, there will be a broader number of people who may not be effected to the best of our knowledge.

I think in this particular triangle scheme, it would be important to keep a sharp line drawn between the concept of physiological change of uncertain significance and pathophysiological change. While there may not really be a clear cut distinction, conceptually there is. Because that's where we begin to see changes that are somewhat indicative of a precursor of possible real important health effect.

Let's take the hematologic system, blood forming elements. The change in ALAD activity might fall either into the normal or the physiologic change of uncertain significance. I personally would put it in the physiologic change of uncertain significance. Increase in zinc protoporphyrin or free erythrocyte protoporphyrin before it begins to increase exponentially indicating a backup in the metabolite in the body that quite likely is significant even though we may not fully understand, I would still put it in the physiologic change of uncertain significance.

Once the ZPP or the FEP begin to increase exponentially or the ALA in the urine begins to increase exponentially, at blood lead levels of about 40, although you could find some studies which suggest, particularly the ZPP and FEP might really start to go up somewhat under 40. I begin to view that as a pathophysiologic change. We may not completely undestand what it means yet but that it's not strictly speaking, normal and that's an indicator of a pathologic process or a disease process.

Morbidity in this case, I would define as anemia let's also call pathophysiologic changes going up toward the morbidity category as a decreased hemoglobin even though that decreased hemoglobin still might not put that person clearly in an abnormal clinical state but we still have some evidence that hemoglobin is going down. Once the hemoglobin actually was reduced below the normal limits of clinical acceptability, I would say that that would represent morbidity or some clear cut disease process.

I have already indicated that I felt that blood leads of about 40 begin to move into the pathophysiologic range. I think that there's fairly clear-cut evidence that as blood leads get to 60 and maybe a little below that, we begin to get into the range of morbidity. I think the range of morbidity in terms of blood lead levels and hemoglobin response is probably a pretty great range because, as I said, I don't think you could really move into the mortality category with the hemoglobin that clearly, just because of anemia.

I think the earliest sign that I would consider adverse, would be the decreased nerve conduction velocities in which case, in adults we begin to see this as blood lead levels rise about 50. One reason why I think that is clearly a pathophysiologic response or should be categorized as such, is that the ability of the nervous system to repair itself is fairly limited. That's not to say that there couldn't be any reversibility in some of these indicators but clearly there is very limited capacity to repair damage once such damage has occurred.

I think another point on the nerve conduction velocities is we're still measuring a fairly simple function and that to perform complex functions requires some integation of a number of circuits, maybe an electrical analogue might be a good example and that has to involve a certain amount of feedback and any decrease that one might find in a simple straight path I would think would tend to be accentuated to some degree as you get into more complex task and integration of many switching points, etc.

But I would clearly put the nerve conduction velocity in the pathophysiologic change. I think, in terms of dose response relationships in adults, I'm not sure we have a great deal of evidence to find where the pathophysiologic change clearly becomes a morbidity change. Again, it's probably a continuum. It's probably that triangle break is going to vary from individual to individual in terms of when the pathophysiologic change begins to be considered morbidity.

Certainly, once someone has had wrist drop, unequivocally that's morbidity and that's a very distinct disease entity. In the case of damage to the nervous system, it is quite well established that at fairly high levels of exposure, that can be the cause of death even in adults.

As far as the kidneys go, we've already heard evidence today and spoke somewhat yesterday of the fact that our clinical indicators of disease, early damage to the kidney, are not very good. At least the routine indicators that we have. As far as I'm concerned, when we have elevated B.U.N.'s, particularly when accompanied by an additional test of abnormal renal function, I would call that morbidity. Fairly severe disease. Damage of at least two-thirds of the kidney. I'm not sure that the data available allow on the precisely defined, exactly what blood level it does or doesn't occur. I think the chronicity of exposure is probably as important as a specific blood level.

My personal opinion, and I think I stated this yesterday, is that a blood lead level of 60 and a chronic exposure basis I don't believe provide a margin of safety to protect against this severe disease. I personally would say a blood lead level of 40 would be more appropriate. (Tr. 1796-1802.)

During his testimony Dr. Teitelbaum echoed many of Dr. Bridbord's conclusions:

Physicians have had little difficulty identifying advanced lead intoxication in any of these societies. The problem always has been how to recognize early lead intoxication at a time when lead disease was still reversible. If any single question is common to all physicians who have observed and treated lead intoxication throughout history, it has been how to prevent the occurrence of lead intoxication and how could one recognize it early enough to prevent death or permanent injury when it occurred.

On this basis, it is a national disgrace that in 1977, when the tools for recognition of early lead intoxication or asymptomatic lead effect exists, and when the engineering controls for the prevention of lead intoxication exist, that we should still be in a quandry as whether it is, possible to prevent lead poisoning, to make an early diagnosis of lead effect of lead poisoning and to treat those persons who have suffered lead intoxication.

In an era in which routine monitoring of esoteric industrial toxins in parts per billion is a daily reality, and at a time when the prevention of exceptionally rare industrial disease is commonplace, it is unacceptable that lead poisoning, a well-recognized, well-described, entirely preventable disease continues to affect American workers.

I believe that all of the activities necessary to erradicate this industial disease can be accomplished on a cost-effective basis.

Our present technologic sophistication permits us to recognize two categories of patients who have abnormal lead absorption. One group has overt lead intoxication, lead poisoning. These patients have absorbed so much lead that a clinical diagnosis of lead intoxication can be made on the basis of history and physical examination alone. The patient's illness requires laboratory confirmation, not toxic diagnosis.

Such patients have long since passed the point at which preventive medicine is an issue. The remaining issue in their cases is one of therapeutic intervention for lead poisoning. Certainly, we cannot tolerate the promulgation of abnormally high lead accumulation that a patient had to develop overt lead intoxication that would be obvious to any physician on a clinical basis before any action was taken to protect the worker. Rather, we must focus our attention on prevention of lead poisoning. The standard must focus on the more important group of individuals with excessive lead absorption, those who have no disease, but have lead effect demonstrated by metabolic abnormalities which are the stalking horses of future lead intoxication.

This group of patients is not lead poisoned in the traditional sense. No physician could, on the clinical basis alone, make the diagnosis of lead intoxication in them. Without sophisticated laboratory studies, these individuals would not be recognized as poisoned because they have no obvious clinical findings. However, they have obvious laboratory evidence of excessive lead absorption. They show evidence of interference with normal red blood cell manufacture and interference with normal nerve conduction time, and interference with other enzyme systems which are intimately involved with the maintenance of human homeostasis. If these abnormalities are ignored in a planned attempt to wait for overt disease, surely no preventive medicine is being practiced. These individuals with lead effect, but no lead disease by the classic definition of lead intoxication, are the group of workers who the standard must identify if the more obvious disease is prevented. On the basis of all present knowledge, these workers still have reversible findings; they are not yet seriously intoxicated and there is every reason to hope for their complete recovery.

The proposed standard falls short of the absolute prevention of lead effects, even in the context of our present imperfect knowledge of the disease. To achieve this end, no lead exposure would be permitted. However, as a realistic concession to human frailty, it permits exposures of 100 micrograms per meter cubed, an air level at which levels of body lead and metabolic markers of lead absorption are effected in some workers to a degree which is not subtle. In fact, as you will see from a series of cases which I will shortly present, it is possible for an individual to have quite severe lead poisoning, far beyond asymptomatic lead effect with the levels of blood and urine lead or urinary delta ALA which would be required by the proposed standard in order to activate monitoring and medical surveillance. (Tr. 374-378.)

These comments on blood lead distribution are consistent with the recommended guidelines for PbB based on health criteria of the Second International Workshop on Permissible Levels for Occupational Exposure to Inorganic Lead, 1976.

It was agreed that for male workers individual blood leads should not exceed 60 μg/100 ml in the light of present knowledge available to this group. It is, however, desirable to reduce individual exposure below this level, taking into account the effects on the hematopoietic system at concentrations above 45 to 50 μg/100 ml and on nerve conduction velocity at concentrations between 50 and 60 μg/100 ml. (Ex. 262.)

The health effects section of this final standard described the adverse effects associated with lead exposure. It is apparent from the record that material impairment to various organ systems occurs at lower blood lead levels than were previously thought to be harmful. The vast majority of the physicians who testified supported the view that blood lead levels should be maintained at or below 40 μg/100 g in order to protect against the onset of early manifestations of disease previously described as subclinical effects.

Testimony by Teitelbaum and Bridbord have already been cited. Similar testimony was presented by other physicians at the hearings. Dr. Lilis (Tr. 2700-01), Dr. Needleman (Tr. 1085-86; 1106-07); Dr. Epstein (Tr. 1051-52, 1058-65, 1067-68), 1072, 1073-74, 1104-05); Dr. Lancranjan (Tr. 1771), Dr. Wolfe (Tr. 4140), and Dr. Piomelli (Tr. 467). In addition to testimony by numerous scientists and physicians OSHA has given significant weight to the submissions of noted scientific bodies such as the National Academy of Sciences (Ex. 95, Ex. 86M) and other Government agencies, EPA (FEIS (92)) and the Center for Disease Control (Ex. 2, (15)).

The subject of subclinical effects was indeed discussed at great length during the rulemaking hearings and was the source of some controversy. The lead industries' arguments were summarized in the Post-hearing brief of the LIA:

Much, if not most, of the record pertaining to the medical issues raised by the proposed standard relates to the problem of trying to determine "the point at which subclinical changes become sufficiently serious to represent a threat to health • • •." (Exhibit 2, at 45935.) "Subclinical" effects involve biochemical and physiological parameters which occur at blood lead levels lower than those usually associated with overt "clinical effects." Ibid. As Hammond explained when testifying for OSHA, "subclinical" or "subcritical" is the usual terminology • • • for an effect that does not appear to have an effect on health, per se. (Hammond 300-01.)

Before considering the significance of the various biophysical changes which are said to occur at different blood-lead concentrations, two preliminary observations are in order.

First, "subclinical effects" almost by definition are outside the scope of the Secretary's authority, since he is permitted to set standards only with respect to "material impairment of health or functional capacity." 29 U.S.C. § 655(b)(5). He is not authorized, as Senator Dominick pointed out, "to eliminate all risks to safety and health." And, as Dr. Williams explained, "if 'clinical' directly indicates disease, 'subclinical' can only mean 'does not directly indicate disease', and circumlocution should not have it otherwise." (Ex. 3 (65); Ex. 234 (8).)

Second, it is important to remember that although exposure to lead may cause biological changes, not every biological change which occurs in response to an external stimulus is harmful. Most of those who believe that the biological action level proposed by OSHA is too high proceed on the assumption that virtually any detectable change is automatically deleterious to health and is therefore intolerable (e.g., Piomelli 466-67; Seppalainen 118; Lilis 2701). That assumption is incorrect. Our bodies respond to innumerable stimuli— temperature, Light, physical substances, exertion, and a myraid of others. The fact that a biological change has occurred does not necessarily signal physical injury or even the threat of injury. This is true despite the fact that the biological change is characterized as a "subclinical effect," for as Dr. Bridbord of NIOSH noted, no one "has all of the answers to at what point (subclinical changes) • • • become significant." (Bridbord 1454.) The question, therefore, is not whether subclinical effects result from lead exposure, but rather whether those effects have health implications which justify a particular exposure standard. As indicated by the analyses below, LIA submits that they do not. (Ex. 3353, p. 20-22.)

The Lead Industries Association has argued that workers will not suffer material impairment of health if blood leads are below 80 μg/100 g. In setting forth their arguments they quote from Senator Dominick during the original debate of the OSHA Act in the Senate in October 1970 in order to set a legal and statutory background that OSHA must consider in determining the final standard. In setting standards regulating toxic materials or harmful agents, the Secretary is under

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the stricture to adequately assure "to the extent feasible and on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity" 29 U.S.C. 3665 (6)(5). As first proposed, the statute would have read "no employee will suffer any impairment." (Emphasis in original.) During the debate on the bill in the Senate in October 1970, Senator Dominick proposed amendment No. 1054 to effectuate the substitution of the word "material" in lieu of "any" in the original draft. In explaining the reason for the modification, he stated that:

> This requirement is inherently confusing and unrealistic. It could be read to require the Secretary to ban all occupations in which there remains *some* risk of injury, impaired health, or life expectancy. In the case of all occupations, it will be impossible to eliminate all risks to safety and health. Thus, the present criteria could, if literally applied, close every business in this nation. *Ibid.* (Emphasis in original.)

When the amendment reached the floor, Senator Dominick elaborated on his concerns and the need for the amendment.

> No job can be rendered perfectly safe, and no employee can be made perfectly secure from injury. Hence, it is impossible to fashion criteria which would assure these unattainable goals • • •. It is unrealistic to attempt, as this section apparently does, to establish a utopia free from any hazards. Absolute safety is an impossibility and it will only create confusion in the administration of this act for the Congress to set clearly unattainable goals • • •. The difficulty of the language I am dealing with here and that I am trying to delete is the requirement, that the Secretary, in establishing standards, must assure that there will not be any risk at all. Legislative History, at 480-81.

The statute, which in its original form would have required the Secretary to establish standards to assure that there would not be any impairment at all, whether or not that impairment was due to the employee's negligence or conditions within the employer's control, was deemed to be an unenforceable requirement.

The statute in its final state does not seek to require standards that regulate risks beyond the employer's control such as employee negligence or outside conditions. Rather, the statute's purpose in relation to toxic or physical agents as established by Senator Dominick was to assure the provision of "such steps as are feasible and practical to provide an atmosphere within which a person's health and safety would not be affected." (Legislative History, at 502.) Senator Williams emphasized that that type of protection was due all employees, including those who might have continuous exposure to the hazard for the full period of their working life. (Legislative History, at 503.) Senator Dominick's comments in the legislative history fully support this reasoning.

> • • • The Secretary has got to use his best efforts to promulgate the best available standards • • • so that we can get at something which might not be toxic now if he works in it a short time but if he works in it the rest of his life might be very dangerous; and we want to make sure that such things are taken into consideration in establishing the standard. (Legislative History, at 503.)

Support for OSHA's requirement that a worker be protected from long term health effects from exposure to toxic substances throughout his working life is also found elsewhere in the legislative history. Senator Williams, in discussing the need for standards dealing with warning labels for toxic materials, stated that workers are often unaware of their exposure to harmful agents or toxic materials. In some cases, consequences of overexposure may be severe and immediate, in other cases, effects may be delayed or latent. Williams affirmed that "In all these situations (whether the consequences of overexposure be immediate or latent) it is important that the worker be adequately protected against excessive exposure • • •" (Legislative History, at 415.) Senator Williams intended that protection be provided to workers both before and after experiencing the overt effects of overexposure.

Further support can be gained from language of the Act which incorporates congressional findings and the general purposes of the Act. Section 2(h)(7) affirms that it is part of the congressional policy to provide medical criteria which will assure that "no employee will suffer *diminished* health • • • as a result of his work experience." (Emphasis added.) Section 2(b)(6) grants the Secretary the authority to explore ways to discover latent disease acknowledging that the problems of occupational health standards are often quite different from those involved in occupational safety. Both these sections indicate congressional recognition of the need to protect the worker during all stages of the development of an occupational disease.

The Secretary has been vested with authority to establish standards which protect the employee from material impairment. In the promulgation of any standard, however, the Secretary may neither exceed that authority nor may he base the standard on arbitrary assumptions. In promulgating the lead standard, the Agency has acted within the scope of his authority.

In order to carry out the congressional mandate that no employee suffer material impairment, the standard accords a margin of safety. The legislative history also justifies promulgation of a standard to prevent against the long-term effects of lead. Senator Williams explained that the statute requires the Secretary to protect both those employees who show severe and immediate effects and those in whom the effects may be delayed or latent. (Legislative History at 481.) By promulgating the present standard, the Secretary has assured that both groups will be afforded protection.

The PEL OSHA has established to effectuate the protection of workers mandated by the statute was chosen after careful consideration of the best available evidence in the record and the latest scientific data available in the lead field as required by the statute. (29 U.S.C. § 655(b)(5).) A full analysis of that evidence is given elsewhere in the preamble demonstrating that long-term blood lead levels in excess of 40 μg/100 g must be avoided. OSHA therefore disagrees with the arguments set forth by LIA in which they claim it was not congressional intent to include "subclinical" effects in the development of standards.

b. *Health effects and the PEL.* The record demonstrates that lead has profoundly adverse effects on the health of workers in the lead industry. Inhalation, the most important source of lead intake, and ingestion results in damage to the nervous, urinary, and reproductive systems and inhibits synthesis of the molecule, heme, which is responsible for oxygen transport in living systems.

The signs and symptoms of severe lead intoxiction which occur at blood lead levels of 80 μg/100 g and above are well documented. The symptoms of severe lead intoxication are known from studies carried out many years ago and include loss of appetite, metallic taste in the mouth, constipation, nausea, pallor, excessive tiredness, weakness, insomnia, headache, nervous irritability, muscle and joint pains, fine tremors, numbness, dizziness, hyperactivity, and colic.

Damage to the central nervous system in general and the brain (encephalopathy) in particular is the most severe clincial form of lead intoxication. The most severe often fatal form of encephalopathy may be preceded by vomiting, apathy progressing to drowsiness and stupor, poor memory, restlessness, irritability, tremor, and convulsions. It may arise precipitously with the onset of intractable seizures, followed by coma, cardiorespiratroy arrest and death. There is a tendency toward the occurrence of weakness of extensor muscle groups; i.e. motor impairment. This weakness may progress to palsy, often observed as a characteristic "wrist drop" of "foot drop" and is a manifestion of a disease to the peripheral nervous system (peripheral neuropathy). Lead intoxication also results in kidney damage with few, if any, symptoms appearing until extensive and most likely permanent kidney damage has occurred. NIOSH testified that:

> Of considerable concern are the effects resulting from long-term lead exposure. there is evidence that prolonged exposure can increase the risk of nephritis, mental deficiency, premature aging, and high blood pressure. (Ex. 84, p. 6.)

Exposure to lead results in decreased libido, impotence, and sterility in men and decreased fertility, abnormal menstrual and ovarian cycles in women. The course of pregnancy is adversely affected by exposure to lead. There is conclusive evidence for miscarriage and stillbirth in women who were exposed to lead or whose husbands were exposed. Children born of parents either of whom were exposed to lead are more likely to have birth defects, mental retardation, behavibral disorders, or die during the first year.

During the past 10 years there have been many new observations and research on the health effects of lead at levels heretofore thought to be inconsequential. The main research topics which have been addressed are early biochemical changes in the synthesis of the respiratory pigment heme; and early effects on the nervous system including behavioral and peripheral nerve effects. Studies on the involvement of lead in kidney disease and effects on reproductive capacity of male and female workers, and effects on the fetus have also been conducted as have studies on and the relation between exposure to lead in air and resulting blood lead concentration.

The disease process associated with lead exposure can be subdivided according to Bridbord (Tr. 1976-02) into five stages: Normal, physiological change of uncertain significance, pathophysiological change, overt symptons (morbidity), and mortality. Within this process there is no sharp distinction, but rather there is a continuum of effects. Boundaries between categorics overlap due to the variation of individual susceptibilities and exposures in the working population. OSHA believes that the standard adopted must prevent pathophysiologic changes from exposure to lead. Pathophysiologic changes indicate the occurence of important health effects. The basis for this decision is twofold—first, pathophysiologic changes are early stages in the disease process which would grow worse with continued exposure and which may include early effects which even at early stages may be irreversible, and therefore represent material impairment themselves. Second, prevention of pathophysiologic changes will prevent the onset of the more serious, irreversible and debilitating manifestations of disease.

The evidence in this record demonstrates that prevention of adverse health effects from exposure to lead throughout a working lifetime requires that blood lead levels be maintained at or below 40 μg/100 g. Feasibility constraints prevent OSHA from establishing a standard which would eliminate all physiological changes, reproductive effects or mild signs and symptoms but the agency believes the vast majority of workers will be protected by it. The remainder to this summary will address the health effects evidence in each system: heme synthesis inhibition, and damage to the nervous, urinary, and reproductive systems.

(1) *Heme synthesis inhibition.* Heme is a complex molecule which has two functions in the body. First, heme is a constituent of hemoglobin, the protein present in red blood cells. A primary function of hemoglobin is to transport oxygen to the tissues. Interference with the formation of heme, if sufficient, results in decreased hemoglobin and ultimately anemia. Anemia is characterized by weakness, pallor and fatigability as a result of decreased oxygen carrying capacity in the blood.

Heme is also a constituent of another group of extremely important proteins, the cytochromes, which are present in every cell of the body. The function of heme in the cytochromes is to allow the cell to utilize oxygen. Heme may therefore be described as the "respiratory pigment" for the entire body. Interference with heme formation leads to interference in the respiration of every cell in the body. This is the most important effect of heme synthesis impairment. Piomelli has suggested that heme impairment in the cells would lead to a condition in each cell similar to that which would occur if the lungs of an individual did not function well. The central nervous system is particularly sensitive to the lack of oxygen and neurological damage could conceivably occur prior to anemia as a result of heme synthesis impairment in the brain. For example, Piomelli testified that: "It is very well known that the human being cannot stop breathing for more than 2 or 3 minutes without developing irreversible brain damage." (Tr. 460.) This effect would be expected to occur from impaired respiration resulting from impaired heme synthesis. In other words, heme synthesis impairment could potentially affect every cell through reduced respiration.

The effects of lead exposure on heme synthesis have been studied extensively by the scientific community. Nevertheless, there is considerable debate over certain issues concerning the health effects of lead on this system. The Agency found three major issues particularly important in evaluating the health effects of lead in reference to heme synthesis.

(1) What is the meaning of the enzyme inhibition and physiological changes known to occur in this system at low lead levels, and should these effects be considered as per se impairment of health in the establishment of a permissible level of worker exposure to lead. (2) At what PbB level does a lowering of hemoglobin leading to anemia begin to occur? (3) To what extent are lead effects on heme synthesis in the blood forming system indicative of changes in heme synthesis in other tissues?

The earliest demonstrated effect of lead involves its ability to inhibit the formation of heme. Scientific evidence has established that lead inhibits at least two enzymes of the heme synthesis pathway at very low PbB levels. Inhibition of delta aminolevulinic acid dehydrogenase (ALAD), an enzyme responsible for the synthesis of a precursor to heme, is observed at PbB levels below 20 μg/100 g. At a PbB level of 40 μg/100 g more than 20 percent of the population would have 70 percent inhibition of ALA-D. In the human body when an enzyme system is inhibited two effects are often seen: First, the molecule upon which the enzyme would act accumulates because it cannot undergo chemical reaction to produce the desired product and second, the desired product therefore decreases. Significant urinary excretion of the products of ALAD inhibition, such as delta aminolevulinic acid (ALA), occurs at this PbB level; 11 percent of adult males are excreting more than 10 mg/l.

The buildup of another product of impairment indicating inhibition of another enzyme ferrochelatase also occurs at low PbB levels. At a PbB level of 50 μg/100 g a larger proportion of the population would suffer these effects and the effects would be more extreme. At a PbB level of 50 μg/100 g, 70 percent of the population would have 70 percent inhibition of ALA-D, 37 percent would have ALA-U values larger than 10 mg/l and 80 percent of men and 100 percent of women would have increased free erythrocyte protoporphyrin (FEP), which is the product at inhibition of ferrochelatase. (Ex. 294 E). Industry representatives augued that these effects are the manifestation of the body attempting to maintain a stable internal environment to lead. OSHA believes that it is inappropriate and simplistic to describe these changes as biochemical adjustments. The depression of heme synthesis in all cells of the body is an effect of potentially far reaching proportion and prevention of enzyme effects is the key to prevention of more

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serious clinical effects of lead toxicity, which become more obvious as the exposure continues. These measurable effects are a direct result of lead exposure and are considered by the agency to indicate the occurrence of disruptions of a fundamental and vital subcellular process, heme synthesis. These processes are not only essential to the process of hemoglobin synthesis, they are also vital to the function of all cells since heme is ubiquitous in the human.

OSHA believes the preponderance of the evidence indicates a progression of health effects of lead exposure starting with inhibition of enzymes, continuing through effects indicating measurable disruption of subcellular processes, such as the buildup of the products of impaired heme synthesis and eventually developing into the overt symptoms of lead poisoning as manifested in disorders in the nervous, renal, and blood forming systems. Biological variability among individuals will alter the PbB level at which a particular person will move through each stage in this disease continuum. Therefore, at each higher PbB level a greater proportion of the population will manifest each given effect. Given this understanding of the progressive stages of lead effects, OSHA has concluded that enzyme effects indicative of the disruption of heme synthesis are early stages of a disease process which eventually results in the clinical symptoms of lead poisoning. OSHA agrees with Piomelli who concluded "It is the responsibility of preventive medicine to detect those alternations (in heme synthesis) which may proceed frank symptomatology and to prevent the occurrence of these symptoms" (Tr. 456).

OSHA believes that health is not limited to the narrow definition of "absence of clinical symptoms." The early steps of the progression to disease cannot be considered as an attempt by the body to merely adjust and stabilize the internal environment to exposure to lead: they are early indications of significant physiological disruption. Whether or not the effects have proceeded to the later stages of clinical disease, disruption of these processes over a working lifetime must be considered as material impairment of health. As was previously discussed, at a PbB level of 40 μg/100 g and above, a significant proportion of the population would manifest extensive inhibition of ALA-D, elevations of ALA-U and of protoporphyrin levels. The agency believes that PbB levels should ideally be kept below 40 μg/100 g to minimize these effects.

Anemia is one of the established symptoms of lead poisoning. The symptoms of anemia are weakness, tiredness, pallor, waxy sallow complexion, headache, irritability, and other symptoms characteristic of the increased load on the cardiac system. The clinical symptoms of anemia due to lead are often indistinguishable from those of chronic anemias with a variety of other causes. Anemia due to lead is often seen in association with acute abdominal colic. The occurrence of anemia, as a result of lead exposure, is known to occur above PbB levels of 80 μg/100 g. The occurrence of this symptom at PbB levels below 80 was debated during the hearings.

OSHA believes that the debate concerning the occurrence of this symptom can only be comprehended within the context of an understanding of the full disease process which eventually results in anemia. The evidence concerning the mechanisms of this disease process indicates that the effect of lead on the hematopoietic system is subtle and complex. In evaluating the disease mechanisms of anemia, it was found that lead is an insidious poison which attacks, not one, but many of the physiological processes within the cell.

Because anemia is the result of a complex of different lead effects, there is considerable room for individual variability in the PbB level at which anemia will occur. Hemoglobin level is a continuous variable which may cause individuals to have a problem to a greater or lesser degree at any particular blood lead level. Anemia should be viewed as a late step in a complicated progression of lead effects.

Since anemia is a consequence of lowered hemoglobin (the protein in red cells responsible for respiration) OSHA has carefully analyzed those studies which reported reduced hemoglobin. Studies have associated PbB levels as low as 50 μg/100 g with lowered hemoglobin (Hb) levels (Ex. 6(37); 146-A; 5-9). In particular, Tola's study, which showed a lowering of Hb over time during lead exposure of 50 μg/100 g, is considered by OSHA as an example of lead affecting Hb levels at this low PbB range. In addition studies by the Mt. Sinai group (Ex. 24 (10), and Wolfe (Ex. 146(A)) also demonstrated anemia in lead exposed workers.

Based on evidence that indicates decreases in Hb levels with bloods leads above 50 μg/100 g, OSHA has concluded that a lowering of Hb level to a measurable degree will occur at PbB levels as low as 50 μg/100 g. The degree to which Hb is lowered at this PbB range may occur undetected since symptoms may be mild and are not likely to be so large as to require treatment for anemia. However, these changes must not be evaluated only as short-term effects alone but rather as changes that would occur over prolonged times. This implies that with reduced hemoglobin in an asymptomatic or mildly symptomatic individual there is a lifetime alteration in the oxygen carrying capacity of the blood, in the blood viscosity and in particular, the cardiac work load, which is distinct from the frank symptoms of anemia but far more insidious and which may be deleterious to the worker over the long term. Lastly, the data cited does support the view that lead induced anemia is clinically apparent at PbB's as low as 50 μg/100 g.

> In evaluating the effects of lead on heme synthesis, Piomelli suggested that hematapoetic effects such as anemia are not the most significant clinical effect of heme synthesis disruption • • • a much more important fact is that the alteration of the mechanism of heme synthesis reflects the general toxicity of lead in the entire body. (Tr. 458.)

Evidence indicates that there is disruption of heme synthesis in other tissues of the body besides blood, and that this disruption results in alteration of the oxygen transport into the cells of the body. Enzyme (ALA-D) inhibition due to lead exposure had been found in the liver at PbB levels below 40 μg/100 g (Ex. 5(22)). Electron microscope studies have revealed mitochondrial changes. The mitochondria is that portion of the cell responsible for extracting nutrients and oxygen and in turn providing the energy needed elsewhere in the cell for performing cellular functions, associated with lead exposure such as lead granules in rat liver mitochondria (Tr. 459, ref. Walton in Nature 243, 1973) and broken distorted mitochondria in the renal cells of a lead-exposed workers. (Cramer et al Brit. J. Ind. Med. 1974). Some of these studies related changes in heme synthesis in the blood forming to changes in other tissues. Secchi (Ex. 5(22)) found a direct correlation of levels of ALA-D inhibition in the blood and in the liver. Millar found parallel decreases in ALA-D activity in the blood and in the brain at PbB levels above 30. (Ex. 23(68), ref. Millar.) This evidence supports Piomelli's suggestions that changes in heme synthesis in the blood forming (hematopoietic) system reflect changes that occur in other tissues. The work of Fishcbein et al. related levels of products of enzyme inhibition, a measure of heme synthesis disruption in the hematopoietic system, to various signs and symptoms of lead exposure including central nervous system symptoms, muscle and joint pain, weight loss, and lead colic at blood lead levels well below 80 μg/100 ml (mean PbB was approximately 60 μg/100 g) (Ex. 105D). Fishcbein also noted anemia in 37 percent of these same workers.

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While the evidence relating lead effects of heme synthesis to symptoms throughout the body is not complete, the evidence is extensive enough and the issue is important enough to warrant very serious consideration with reference to the establishment of the standard. OSHA believes this evidence demonstrates that one early stage of lead disease in various tissues is the disruption of heme synthesis and that these effects in other lead-sensitive tissues parallel the measurable effects of heme synthesis disruption in the hematopoietic system and occur at comparably low PbB levels (below 40 μg/100 g). The heme effect is clearly not the only mechanism by which lead exerts its toxicolgical effect but it is one mechanism which we have substantial understanding of, can measure, and therefore must utilize in an effort to prevent the more severe symptoms in the individual.

In reference to the hematopoietic system, OSHA believes that the effects of lead are a complex progression from various biochemical changes through to the onset of clinical symptoms. At increasingly higher PbB levels an increasing proportion of the population will suffer more extreme effects. At a PbB level of 40 μg/100 g and above, a sizable proportion of the population would show measurable effects of the disruption of heme synthesis. A comparable degree of disruption of heme synthesis impairment would most likely occur in other cells in the body.

Piomelli gave an excellent summary of the importance of lead effects on heme synthesis stating:

> It is my understanding that regulations have the purpose of preventing material impairment of health. Alterations in heme synthesis do not produce subjective evidence of impairment of health, unless they reach the extreme depression in severe lead intoxication, when marked anemia occurs and the individual feels weak. However, it is not any longer possible to restrict the concept of health to the individuals subjective lack of feeling adverse effects. This is because we know that individuals may get adjusted to suboptimal health, if changes occur slowly enough and also because we now have the ability to detect functional impairments by appropriate tests, much before the individual can perceive any adverse effect. In fact, it is the responsibility of preventive medicine to detect those alterations which may precede frank symptomatology, and to prevent its occurrence. The alterations in heme synthesis caused by lead fulfill, in my opinion, the criteria for material adverse effects on health and can be used to forecast further damage. The depression of heme synthesis in all cells of the body is an effect of far-reaching proportion and it is the key to the multiple clinical effects of lead toxicity, which become obvious as the exposure continues. (Ex. 57, p. 21.)

This does not in any way suggest that the lead effect on heme is the only mechanism of lead disease, but it does suggest that this effect is at least one of the important mechanisms in lead disease. An understanding of this spectrum of effects from subcellular to clinical symptoms is relevant not only to the occurrence of anemia but will also be the expected pattern in lead induced neurological and renal disease.

OSHA believes that there is evidence demonstrating the impairment of heme synthesis and mitochondrial disruption in tissues throughout the body, and that these effects are the early stages of lead disease in these various tissues. The disruption of heme synthesis measured at low PbB levels is not only a measure of an early hematopoietic effect, it is also a measure which indicates early disease in other tissues. The Agency believes that such a pervasive physiological disruption must be considered as a material impairment of health and must be prevented. PbB levels greater than 40 μg/100 g should, therefore, be prevented to the extent feasible.

(2) *Neurological effects.* There is extensive evidence accumulated in both adults and children which indicates that toxic effects of lead have both central and peripheral nervous system manifestations. The effects of lead on the nervous system range from acute intoxication coma, cardiorespiratory arrest and fatal brain damage to mild symptoms, subtle behavioral and electrophysiologic changes associated with lower level exposures. Although the severe effects of lead have been known for some time, only in the last several years has evidence accumulated which demonstrates neurologic damage at low blood lead levels. All of this data reinforces a disturbing clinical impression that nervous system damage from increased lead absorption occurs early in a workers tenure, at low blood lead levels and is only partially reversible if at all. It is now understood that the location and degree of neurological damage depends on dose and duration of exposure.

The record in this rulemaking demonstrated that damage occurs in both the central and peripheral nervous systems at blood lead levels lower than prviously recognized. In particular, Lillis et al. (Ex. 24, (10)) has demonstrated central nervous system symptoms (tiredness, fatique, nervousness, sleeplessness or somnolence, or anxiety) in 56 percent of workers with blood lead levels below 80 μg/100 ml. The mean blood lead level was approximately 60 μg/100 ml. This same study reported symptoms of muscle and joint pain and/or soreness in 39 percent of the workers. It is extremely important to note that many of these subjects had been exposed less than a year. They also were able to demonstrate behavioral changes which were correlated with enzyme inhibition products from heme synthesis. Given this data, the authors cautioned that blood lead levels should not be allowed to exceed 60 μg/100 ml and should be maintained around 40 μg/100 g. Lillis testified that above 60 μg/100 g "one may expect florid lead poisoning, full blown lead poisoning." (Tr. 2700.) She proceeded to state: "Since ZPP starts to go up at around levels of 40 or 45, that means that at those levels you already find something going wrong in the body." (Tr. 2702.) Repko has carried out behavioral tests and demonstrated adverse effects in visual reaction time, as well as deficits in hearing among workers having a mean blood lead level of 46 μg/100 g. Valciukas et al. and Haenninen et. al. have also demonstrated impaired psychological performance among workers with low exposure to lead. Haenninen's work is particularly significant insofar as no single blood lead concentration had ever exceeded 70 μg/100 ml.

Based on the rulemaking record, OSHA has concluded that the earliest stages of lead-induced central nervous system disease first manifest themselves in the form of behavioral disorders and CNS symptoms. These disorders have been documented in numerous sound scientific studies and these behavioral disorders have been confirmed in workers whose blood lead levels are below 80 μg/100 g. Given the severity and potential nonreversibility of central nervous system disease, OSHA must pursue a conservative course of action. OSHA concludes that a blood lead level of 40 μg/100 g must be considered to be a threshold level for behavioral changes and mild CNS symptoms in adults, and to protect against long-term neurological effects, blood levels should never exceed 60 μg/100 g.

Some of the most extensive evidence in the rulemaking record is the data presented which confirms the existence of the early stages of lead induced damage to the peripheral nervous system in workers exposed to lead levels below 70 μg/100 g. Damage to the peripheral nervous system is named peripheral neuropathy and the distinguishing feature of it is the predominance of motor involvement as opposed to sensory damage. Three forms are noted. In the first, patients may complain of very severe pain and tenderness in the trunk muscles, as well as pain in the muscles of the extremity. As the pain and tenderness subside, weakness may emerge, with very slow recovery over the ensuing several months. In the second, more common form of peripheral neuropahthy due to lead poisoning, the neuropathy is described as painless, peripheral weakness occurring either after termination of excessive exposure or after long, moderately in-

creased exposure. This suggests that neuropathy of sufficient severity may cause irreversible impairment of peripheral nerve function.

The third form is seen in subjects with no obvious clinical signs of lead poisoning and is manifested by a slowing of motor nerve conduction velocity. The latter effects represent the earliest sign of neurological disease of the peripheral nerves. OSHA believes prevention of this stage is necessary to prevent further development of the disease and its associated forms which are likely to be irreversible.

The work of Catton, Oh, Landigran, Feldman, Behse, Mostafa et al., Gerald et al., Guadriglic et al., Araki, W. R. Lee, Repko, Lilis, Fischbein et al., and Seppalainen all demonstrate statistically significant loss of motor nerve conduction velocity in lead-exposed workers. Seppalainen was able to determine a dose-response relationship for the slowing of NCV compared with blood lead levels. It is apparent that slowing occurs in workers whose PbB levels are 50 μg/100 g and above but, whether there are effects as low as 40 μg/100 g is, as yet, undetermined. The 38 lead experts who participated in the Second International Workshop on Permissible Exposure Levels for Occupational Exposure to Inorganic Lead also reached this conclusion in their final report:

> It is not known whether the maximum blood lead concentration or the integrated average concentration is the determining factor in the development of changes in nerve conduction velocity. However, the Group concluded from the data presented by Seppalainen et al. and the data reported in the literature that changes in nerve conduction velocity occur in some lead workers at blood levels exceeding 50 μg/100 ml. It was thought that no conclusion could be drawn from the one case in the blood lead range 40–49 μg/100 ml.
>
> It is not possible to decide what any given measured small deficit means in terms of specific nervous damage. However, it is generally recognized that a clear deficit in the nerve conduction velocity of more than one nerve is an early stage in the development of clinically manifest neuropathy. There is no evidence that these changes progress. Reversibility should be studied. Although slight changes may be measured in persons experiencing no symptoms, it was the consensus of the group that such changes should be regarded as a critical effect. (Ex. 262, p. 64) (Critical effect is a defined point in the relationship between dose and effect in the individual, namely the point at which an adverse effect occurs in cellular function of the critical organ.)

These conclusions by recognized experts in the field were based largely on the work of Seppalainen and her coworkers. This work has been described by an industry spokesman, Dr. Malcolm, as being "immaculate." (Tr. 2073) Based on the extensive evidence in the record from Seppalainen and others, OSHA has concluded that exposure to lead at low levels causes peripheral neuropathy at exposure levels previously thought to be of relatively little consequence. Seppalainen has stated:

> Of course, in terms of health, the importance of slight subclinical neuropathy can be questioned, too, and we did not find any evidence that the well-being of these workers was influenced by the neuropathy, apart from a few complaints of numbness of the arms. Thus, the term poisoning, in its orthodox sense, cannot be applied to these disorders. But neuropathy, no matter how slight, must be regarded as a more serious effect than the quite reversible alterations in heme synthesis, because the nervous system has a poor regenerative capacity, and the acceptability of such a response must be judged from that point of view. Since the entire question belongs to the diffuse "gray area" between health and disease, it is more than probable that opinions will diverge. We think, however, that no damage to the nervous system should be accepted, and that, therefore, present concepts of safe and unsafe PbB levels must be reconsidered. (Ex. 5 (12), p. 183.)

Recovery from the effects of chronic lead poisoning may be feasible in some cases, if the worker is removed from the source of exposure and therapy is initiated immediately. There are instances, however, when complete recovery is impossible and the pathology is fixed. Even if the worker is removed from the source and therapy initiated, the worker may still experience impairment. In a recent paper describing his results Dr. R. Baloh, a neurologist at UCLA, questioned the reversibility of nervous system damage:

> Although there are isolated reports of significant improvement in lead induced motor neuron disease and peripheral neuropathy after treatment with chelation therapy, most studies have not been encouraging, and in the case of motor neuron disease, death has occurred despite adequate chelation therapy.
>
> All of this data reinforces a disturbing clinical impression that nervous system damage from increased lead absorption is only partially reversible, if at all, with chelation therapy and/or removal from further exposure. This is not particularly surprising, however, since experience with other heavy metal intoxication has been similar. Nervous system damage from arsenic and mercury responds minimally to chelation therapy. Apparently, irreversible changes occur once the heavy metal is bound by nervous tissue. Although further study is clearly needed, the major point I would like to make this morning is that there is strong evidence to suggest the only reliable way to treat nervous system damage from increased lead absorption is to prevent its occurrence in the first place. (Ex. 27 (7), p. 55.)

OSHA agrees with these concerns regarding irreversibility of neurological disease expressed by Dr. Baloh and therefore must establish a standard which will prevent the development of nervous system pathology at its earliest stages.

In order to prevent peripheral neuropathy as evidenced by slowing in NCV's, Seppalainen testified that "to be safe, I would say 50 μg/100 g blood" is the necessary level. (Tr. 147.) Dr. Seppalainen further recommended that studies be performed to determine "the safety at the level of 50 μg/100 ml." (Tr. 153.) OSHA agrees that the current evidence demonstrates that nerve conduction velocity reduction occurs at PbB levels of 50 μg/100 g and above. Therefore, a necessary goal of a standard for occupational lead exposure must be to assure that blood lead levels are maintained below 50 μg/100 g in order to provide an adequate margin of safety.

(3) *Renal System.* One of the most important contributions to the understanding of adverse health effects associated with exposure to inorganic lead was the elucidation of evidence on kidney disease during the hearings. It is apparent that kidney disease from exposure to lead is far more prevalent than previously believed. In the past, the number of lead workers with kidney disease in the United States was thought to be negligible, but the record indicates that a substantial number of workers may be afflicted with this disease. Wedeen, a nephrologist (kidney specialist) who testified at the hearings for OSHA stated that a minimal estimate of the incidence of this disease (nephropathy) would be 10 percent of lead workers. "According to this estimate, there may be 100,000 cases of preventable renal disease in this country." • • • If only 10 percent of these hundred thousand workers with occupational nephropathy came to chronic hemodialysis (kidney machines) the cost to medicare alone would be about $200 million per year. (Tr. 1741-42.)

The hazard here is compounded by the fact that, unlike the hematopoietic system, routine screening is ineffective in early diagnosis. Renal disease may be detected through routine screening only after about two-thirds of kidney function is lost or upon manifestation of symptoms of renal failure are present. By the time lead nephropathy can be detected by usual clinical procedures, irreparable damage has most likely been sustained. When symptoms of renal failure are present, it is simply too late to correct or prevent the disease and "progression to death or dialysis is likely." (Tr. 1732.) The research of Wedeen and his coworkers, the health hazard evaluation by NIOSH at Eagle Picher Industries, Inc., and the research in secondary smelters by Lilis, Fishbein et al. demonstrated that lead exposure is a key etiologic agent in the development of kidney disease among occupationally exposed workers. Clearly, too little attention has been given to lead-induced renal disease in recent years, and while OSHA recognizes that further research is required to understand fully the disease mechanism, it is also necessary to protect the thousands of workers who are potentially in danger of developing renal disease. The record indicates that blood lead is an inadequate indicator of renal disease development. Dr. Bridbord questioned Dr. Wedeen on the issue of chronicity of exposure and blood lead levels.

> Dr. Bridbord. Well, looking at a group of workers, currently employed, having a blood lead level on that worker and having some information, that to the best of our knowledge there were no major changes in that particular plant during the past number of years. Would that not be a somewhat better index of what the blood lead levels might have been in the past. Considering too, that these workers are currently employed.
>
> Dr. Wedeen. Sure I think that the blood level measured close to the time of exposure is probably more reflective. I worry very much, that this may occur after a few months of exposure and the blood lead level may remain the same for the next 20 years, despite the fact that the individual is continually accumulating lead in the body.
>
> Dr. Bridbord. Would you think that the chronicity of lead exposure, apart from precisely whether the blood lead was above or below 80 or above or below 60 for example, might be an important factor in determining the eventual development of renal disease in lead workers?
>
> Dr. Wedeen. Yes. That is just what I meant, that the accumulative effects and the cumulative body burden may be very different from the blood lead level at any moment in time.
>
> In other words, one could certainly imagine that a blood lead level of 80, for 2 years, may be very similar to a blood lead level of 40, for 4 years. I don't have that data, but something like that may well exist in terms of the danger of the different levels of exposure.
>
> Dr. Bridbord. Alright.
>
> Particularly, in view of that, and given the requirements of the Occupational Safety and Health Act, that sets standards which protect during the working lifetime, would you have some reservations about a blood lead maximum standard, even at 60?
>
> Dr. Wedeen. I certainly would. And I think I just expressed the basis for it. You will note that in my recording of these patients, very very few of them had blood lead levels over 60. I just feel that while the blood lead level is maybe better than nothing, it may be very practical. It probably doesn't do the job we are trying to do and certainly not from the physician's point of view, who has seen the individual patient, who may or may not be a current exposure at the level that got his disease (Tr. 1765-1766.)

The lead standard must therefore be directed towards limiting exposure so that occupational lead nephropathy is prevented. The Agency agrees with the views of Wedeen:

> I have reported today 19 lead workers who have lost 30 to 50 percent of their kidney function. Since they showed no symptoms and had no routine laboratory evidence of kidney disease, it may be asked why this kidney function loss should be viewed as material damage. Lead nephropathy is important because the worker has lost the functional reserve, the safety, provided by two normal kidneys. If one kidney becomes damaged, the normal person has another to rely upon. The lead worker with 50 percent loss of kidney function has no such security. Future loss of kidney function will normally occur with increasing age, and may be accelerated by hypertension or infection. The usual life processes will bring the lead worker to the point of uremia, while the normal individual still has considerable renal functional reserve. Loss of a kidney is therefore more serious than loss of an arm, for example. Loss of an arm leads to obvious limitations in activity. Loss of a kidney or an equivalent loss of kidney function means the lead worker's ability to survive the biologic events of life is severely reduced. By the time lead nephropathy can be detected by usual clinical procedures, enormous and irreparable damage has been sustained. The lead standard must be directed towards limiting exposure so that occupational lead nephropathy does not occur. (Tr. 1747-1750.)

And OSHA agrees with Dr. Richard Wedeen, that "40 μg/100 ml is the upper acceptable limit" (Tr. 1771) and with Dr. Bridbord who stated "I personally think that a blood lead of 60 is too high to give me assurances that we are really going to protect against these effects." (kidney) (Tr. 1375). That is, while PbB levels are an inadequate measure of occupational exposure (though most agree the best available single measurement) they nonetheless provide a basis for determining body burden when measured over an extended period of time. OSHA believes that maintenance of PbB levels at or below 40 μg/100 ml will reduce the overall dose to the worker, decrease the body burden of lead and prevent sufficient buildup of lead in the kidney to effect renal damage.

(4) *Reproductive effects.* Exposure to lead has profoundly adverse effects on the course of reproduction in both males and females. In male workers exposed to lead there is evidence of decreased sexual drive, degeneration of the testes, impotence, decreased ability to produce healthy sperm, and sterility. During the hearings there was considerable discussion of the evidence submitted by Lancranjan et al. which demonstrated that the reproductive ability of men occupationally exposed to lead is interfered with. Lancranjan reported a significant increase in malformed sperm (teratospermia) among lead-poisoned workmen (blood lead mean 74.5 μg/100 ml) and workmen with moderately increased absorption (blood lead mean 52.8 μg/100 ml). Decreased number of sperm (hypospermia) and decreased motility (athenospermia) were observed not only in the preceding groups but also in those with only slightly increased absorption (blood lead mean 41 μg/100 ml). The authors concluded that these alterations were produced by a direct toxic effect on the male gonads, and that a dose-response relationship exists with respect to teratospermia. The other parameters measured do not show as strong a relationship but are significantly altered over controls. This work is consistent with other earlier literature quoted by Lancranjan.

> Epidemiologic studies have pointed out previously both the reduction of number of offsprings in families of workers occupationally exposed to lead and increase of the miscarriage rate in women whose husbands were exposed to lead. Experimental investigations have also shown both a reduction in the number of offspring of laboratory animals and reduced birthweight and survival of progenies of animals fed with diets containing lead. (Ex. 23 (38), p. 400.)

The Lancranjan study is strongly indicative of adverse effects on male reproductive ability at low lead levels, and there is conclusive evidence for a dose-response relationship with respect to teratospermia in these lead exposed workers. In OSHA's view teratospermia represents material impairment of health to the male. OSHA believes that this evidence and other studies support the conclusion that lead exerts markedly adverse effects on the reproductive ability of males.

Germ cells can be affected by lead which causes genetic damage in the egg or sperm cells before conception and which can be passed on to the developing fetus. The record indicates that genetic damage from lead occurs prior to conception in either father or mother. The result of genetic damage could be failure to implant, miscarriage, stillbirth or birth defects.

The record indicates that exposure of women to lead is associated with ovarian cycles, premature birth, menstrual disorders, abnormal sterility, spontaneous miscarriage, and stillbirths. Infants of mothers with lead poisoning have suffered from lowered birth weights, slower growth, and nervous system disorders and death was more likely in the first year of life.

There is conclusive evidence in the record that lead passes the placental barrier. Multiple studies have established that the fetus is exposed to lead because of the passage of lead through the placental membrane. This evidence was uncontroverted during the hearings. The lead levels in the mother's blood are comparable to concentrations of lead in the umbilical cord blood at birth. Transplacental passage becomes detectable at 12-14 weeks of gestation and increases from that point until birth.

Numerous parties to the hearings raised the issue of whether the fetus is the most sensitive organism requiring protection from exposure to lead.

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Bridbord, for example, argued that the immaturity of the blood brain barrier in the newborn raises additional concern about the presence of lead in fetal tissues.

The proposed lead standard raised the possibility that "the risk to the fetus from intrauterine exposure to high levels of lead in the mother's blood is maximal in the first trimester of pregnancy when the condition of pregnancy may not be known with certainty" (Ex. 2, p. 45936; Ex. 95.) OSHA agrees with Dr. Vilma Hunt who testified that "the first trimester has not been shown to be the period of highest vulnerability for the fetus." (Ex. 59.) OSHA has concluded that the fetus is at risk from exposure to lead throughout the gestation period, and therefore protection must be afforded throughout pregnancy.

There is little direct data on damage to the fetus from exposure to lead but there are extensive studies which demonstrate neurobehavioral effect in children. OSHA believes that the fetus would be at least as susceptible to neurological damage and heme inhibition as would older children and therefore data on children is relevant to the fetus.

Exposure to lead would be expected to adversely effect heme biosynthesis and the nervous system earliest and most profoundly in the fetus and newborn. Early enzyme inhibition in the heme forming system has been well documented, and the central nervous system has its most significant growth during gestation and the first two years following birth.

Lead is capable of damaging both the central and peripheral nervous system. At high exposures to lead (80 μg/100 ml and above) the central nervous system of children may be severely damaged resulting in coma, cardiorespiratory arrest and death. Symptoms of acute encephalopathy similar to those in adults have been reported in infants and young children with a markedly higher incidence of severe symptoms and deaths occurring in them than in adults. In children once acute encephalopathy occurs there is a high probability of permanent, irreversible damage to the CNS.

There is data which demonstrates that permanent damage to the CNS has occurred in children exposed at low lead levels and in whom no overt symptoms were in evidence. Children whose blood leads levels were 50 μg/100 ml and above have demonstrated mild CNS symptoms including behavioral difficulties. Behavioral disturbances in children such as hyperactivity have been associated with blood lead levels between 25 and 55 μg/100 ml. Animal studies have confirmed these findings. Beattie demonstrated an increased probability of mental retardation in children exposed to lead via maternal ingestion of lead in water. Elevated blood lead levels were found in the retarded children compared to the control group. There appeared to be as significant relationship between blood lead concentration and mental retardation. Mean blood lead for the retarded children was 25.5 μg/100 ml. Water lead concentrations in the maternal home during pregnancy also correlated with the blood leads from the mentally retarded children.

Motor nerve conduction velocity (NCV) decrements indicating early peripheral neuropathy have been reported in children. Early studies showed NCV decrements in children whose blood lead levels were 40 μg/100 g and above.

While a critical review of the literature leads to the conclusion that blood lead levels of 50 to 60 μg/100 ml are likely sufficient to cause significant neurobehavioral impairments, there is evidence for effects such as hyperactivity as low as 25 μg/100 g. Given the available data, OSHA concludes that in order to protect the fetus from the effects of lead on the nervous system, maternal blood lead levels should be kept below 30 μg/100 g. In general, 30 μg/100 g appears to be reasonably protective insofar as it will minimize enzyme inhibition (ALAD and FEP) in the heme biosynthetic pathway and should minimize neurological damage. OSHA agrees with the Center for Disease Control (Ex. 2 (15)) and the National Academy of Sciences (Ex. 86M) that the blood lead level in children should be maintained below 30 μg/100 g. Levels above 30 μg/100 g should be considered elevated.

As previously stated there is conclusive evidence that lead passes the placental barrier thereby causing the fetus to be exposed to lead at comparable levels to the mother. Given this in utero lead exposure the fetus is therefore subject to the adverse effects of lead. It is significant to note that an analysis of human fetal tissue demonstrated the highest concentrations of lead in the bone, kidney, liver, brain, blood, and heart. The distribution of lead within the fetus raises the serious prospect that the fetus is susceptible to lead's adverse effects throughout gestation.

There is limited data on the effects of lead on the fetus but there is more extensive information on the susceptibility of infants and children to neurological damage from lead. OSHA believes that the fetus must be considered at risk to neurological damage from lead. Given the severity of neurological disease and the evidence indicating effects at low lead levels this conclusion raised particularly difficult issues when establishing this final standard. OSHA recognizes that a PbB level is not a measure of body burden, that the fetus would only be exposed during the period of gestation, and given the independent hematopoietic system of the fetus that maternal-cord blood leads may not be an accurate reflection of blood lead level in the fetus. However, even if these considerations may suggest a lessening of risk to the fetus, OSHA believes that blood lead levels of pregnant women should be maintained below 30 μg/100 ml in order to protect the fetus.

In general, OSHA believes that the evidence overwhelmingly indicates that the blood lead levels of both male and female workers who wish to plan pregnancies should be maintained below 30 μg/100 in order to prevent adverse effects from lead on the workers' reproductive abilities. To do this would minimize the risk of genetic damage, menstrual disorders, interference with sexual function, lowered fertility, difficulties in conception, damage to the fetus during pregnancy, spontaneous miscarriage, stillbirth, toxic effects on the newborn and problems with the health development of the newborn or developing child. OSHA cannot guarantee that 30 μg/100 g is a "no effect" level but it would provide marked protection to the fetus and therefore to the reproductive capacity of the worker.

During the hearings there was considerable testimony on reproductive effects in relation to the PEL and equal employment considerations. The basic issue had been raised by OSHA in the proposed lead standard:

> Recent studies of the toxicological effects of exposure to lead indicate certain groups of adult workers may have greater susceptibility to lead intoxication than the general worker population. One such group is female employees of childbearing age. It is known that lead absorbed into the bloodstream of pregnant women crosses the placental barrier and enters the blood of the fetus. This is of great concern because excessive exposure to lead during pregnancy has caused neurological damage in children. As noted in the Academy's report, the risk to the fetus from intrauterine exposure to high levels of lead in the mother's blood is maximal in the first trimester of pregnancy when the condition of pregnancy may not be known with certainty. It has also been established that the umbilical similar to that found in the mother's blood. This raises the serious possibility that the blood lead level in the mother might harm the fetus without producing any clinical symptoms of lead exposure in the mother.
>
> The extensive data on lead intoxication in children indicate that for several reasons, including their rapid growth, children may be susceptible to lead intoxication at lower blood lead levels than adults. The U.S. Public Health Service considered this and other factors when it recommended, in March 1975, that blood lead levels in children be kept below 30 μg/100 g. (Ex. 2, P45936.)

No topics were covered in greater depth or from more vantage points than the subject of women in the lead industry. More than a dozen witnesses testified to this issue; many others offered their views in response to questions; over 400 pages of the transcript of these proceedings were devoted to this issue. Participants in the hearings argued that, given the data demonstrating adverse effects on male reproductive abilities and potential genetic effects in males and females, fertile men were equally at risk as women of childbearing age. Therefore, the standard should be designed to fully protect all exposed workers, male and female.

Dr. Stellman testified as follows:

> In summary it can be stated that there is no scientific justification for placing all women of childbearing age in the category of a susceptible subgroup of the working population. There is sufficient data available to show that a significant proportion of the population is at risk for the effects of exposure to lead, and hence can also be deemed susceptible. Further, if the intent of the OSHA standard is to protect workers from hazards to reproduction there is still no justification for treating women separately from man. (Ex. 72.)

This view was supported by other witnesses (Ex. 92; Ex. 343, 59, 60A). Dr. Hunt, for example, stated:

> There is no evidence to allow a conclusion that women of childbearing age themselves are more susceptible to the adverse effects of lead. The susceptible population is made up firstly of the fetus in utero, actually present in the work environment and secondly the offspring of male and female workers with blood lead levels high enough to alter their genetic integrity. (Ex. 59, p. 26.)

OSHA believes that the record supports the conclusions of Drs. Stellman and Hunt that women of childbearing age exposed to lead are not more susceptible to adverse effects on their reproductive capacities than are male workers. There can be no doubt that the reproductive capability of both males and females is adversely effected by lead.

The susceptibility of the fetus, however, raises the issue of whether OSHA should seek to protect the fetus. OSHA has concluded that damage to a fetus due to parental exposure to lead represents material impairment of the reproductive capacity of the parent involved. Further, OSHA believes that it has the public health responsibility to insure to the degree feasible that a fetus or newborn does not suffer ill effects or diminution of health from parental exposure to lead.

OSHA recognizes that the PEL of 50 μg/m³ alone will not maintain all worker PbB levels below 30 μg/100 g. The mean blood lead level of workers uniformly exposed to 50 μg/m³ will be approximately 35 μg/100 g, and the population blood lead distribution is predicted to be: less than or equal to 30 μg/100 g, 30 percent; 30–40 μg/100 g, 40 percent; greater than or equal to 40, 30 percent. When full compliance is achieved with the 50 μg/m³ PEL through engineering and work practice controls, however, there will be other factors which will have the effect of lowering these percentages. For example, the predicted distribution does not take into account implementation of the Environmental Protection Agency's standard of 1.5 μg/m³ for lead in air in the general environment. Achievement of this level will tend to lower blood lead levels in the entire population thereby having the effect of reducing the baseline PbB levels of workers. Normal job turnover, a factor which will further reduce blood lead levels, is not considered in the foregoing percentages. There are also numerous industries affected by the standard whose exposure levels are intermediate or low and who will be able to lower their exposure levels well below the PEL with a minimum of effort. Finally, the percentage distribution cited assumes uniform compliance with 50 μg/m³. When compliance is achieved in a particular plant, however, there will no doubt be many areas throughout the industrial operation where the air lead levels will be substantially below the PEL—therefore further reducing the blood lead levels of the aggregate work force. However; even taking these mitigating factors into account, there will often be a substantial percentage of workers whose blood lead levels exceed 30 μg/100 g. In recognition of the inability of the PEL alone to protect the reproductive capacity of all workers at all times, the standard includes a variety of additional protective elements designed to minimize reproductive risks. Use of these procedures by concerned employers and by informed workers will provide an acceptable margin of safety for the reproductive capacity of both male and female lead exposed workers. First, the standard establishes an action level of 30 μg/m³ to trigger environmental and biological monitoring programs, as well as other medical surveillance procedures. The action level has been set at a point commensurate with the beginning of potential risks to reproductive capacity. Initiation of education and training is also tied to the action level so that workers will be fully informed of the nature of reproductive hazards presented by lead, and how the standard addresses these hazards. Workers have the ability to plan and control when they will parent a child. They can be expected to act responsibly when informed of the reproductive hazards presented by lead, and of the special precautionary measures established by the standard. Environmental monitoring, biological monitoring, and medical records are available to employees, and can be utilized when planning for a family.

The medical surveillance program under the standard provides workers the opportunity, upon request, of obtaining a medical examination or consultation concerning the effects of current or past exposure to lead on the employee's ability to procreate a healthy child. The employee may also obtain a second medical opinion by a physician of his or her choice, at no cost to the employee. As a part of the medical removal protection program, the multiple physician review mechanism may require an employer to implement any necessary special precautionary measures for an employee. For example, the employee might be temporarily provided with a powered air purifying respirator even though the employee would otherwise use no form of respirator. If the employee were currently using a respirator, he or she could, upon request, obtain such a respirator even without the recommendation of a physician. The physician review mechanism is empowered to protect the worker's reproductive capacity by whatever measures are appropriate under the circumstances. Temporary removal of a male or female worker (whether or not pregnant) from substantial lead exposure is one alternative. And, as part of the medical removal protection program, the employee would suffer no loss of earnings, seniority or other employment rights and benefits due to the need to be temporarily removed from lead exposure, or otherwise limited pursant to the standard. The medical surveillance program also offers employees the opportunity to obtain, upon request, either a male fertility test, or a pregnancy test.

The foregoing special precautionary measures incorporate the flexibility needed to address the varied circumstances of individual workers. Adverse health effects both to male and female reproductive capacity can be minimized by the use of these procedures, and, consequentially, an acceptable level of health protection is provided to all workers.

During the hearings there was considerable discussion on whether women of child-bearing age should be excluded from work in the lead industry in order to protect the fetus. Ms. Hricko testified that women of childbearing age had been excluded from employment because "the response of industry has been to 'protect' women workers from lead's reproductive hazards by refusing to hire them or by forcing them to prove that they can no longer bear children" (Ex. 60(a)). There was also testimony which dem-

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onstrates that women have and do work in production areas of battery manufacturing (Tr. 1245, 4057, 4506, 4855, 5529, 5898).

While not directly suggesting that all women of childbearing age be excluded from employment in the lead industry the LIA argued that the issue of the fetus should be settled on a case-by-case basis rather than setting a standard which would be protective of the fetus.

The association, in other words, believes that it is preferable to deal with this very difficult and complicated problem on a case-by-case basis, rather than by setting a standard which, although enormously expensive, would not achieve the desired objective. (Ex. 335, p. 40.)

Dr. Cole elaborated on this issue in his testimony:

Women, quite rightly, want equal employment opportunity • • • (but) there are many jobs in the lead industry where blood-lead levels simply cannot be kept at levels known to be safe for the fetus.

From a health protection standpoint, there is no feasible solution to this dilemma. However, if it is decided that the commitment to equal employment opportunity overrides the health considerations, then there should be a program which would insure that the female knows the risks, that the employer is protected from liability, and that information is obtained which would help us better to understand the degree of risk.

This program would include fully advising the prospective female employee of the risk to the fetus inherent in the job she wishes, and the carrying out of a full-scale joint Government-industry-labor research program, both retrospective and prospective, of the reproductive consequences of occupational exposure to lead.

As I mentioned earlier, this was proposed to NIOSH (by ILZRO) with the commitment of industry funds in 1975, with no response. It is clear to us, from our conversations that we have had with labor unions, NIOSH, OSHA, and company officials that no one has a truly satisfactory answer to this problem.

We can demand, demonstrate, and agitate all we wish but is will not change the basic facts. And if OSHA decides that it must set a standard so low that it is known to be fully protective of the fetus, then we all must bear in mind that there will be very few jobs, indeed, in the lead industry for either men or women. (Cole 3069-70.)

The lead industry properly acknowledged the risk to the fetus from maternal exposure to lead but did not believe a standard could or should be promulgated which would protect the fetus. The LIA disregards, however, the role that the standard's special protective measures can play in protecting reproductive capacity consistent with continued employment of all people. The impact of the typical industry approach would ultimately lead to the exclusion of women of childbearing age from the workplace.

OSHA disagrees with the LIA conclusions and believes that the final standard can protect reproductive capacity of the parent, which in turn will protect the fetus. The agency has endeavored to set a comprehensive standard which will maximize protection to the male and female worker, to the fetus and to the offspring of workers. OSHA recognizes that not all risk can be entirely eliminated given the constraints of feasibility, but the final standard does effectively minimize reproductive risks. With this in mind, OSHA asserts that an employer who fully complies with this standard has no rational basis for the exclusion of women of childbearing age from the workplace.

c. *Clinical effects below 80 μg 100 g.* A general discussion of the most severe forms of lead intoxication was given in the preceding sections. Given them overt manifestations of lead intoxication the proposed lead standard proceeded to question at what exposure levels do these symptoms appear:

A number of studies have sought to relate clinical symptoms and effects caused by lead exposure on workers' blood lead levels. There is little disagreement that the risk of clear-cut clinical symptoms related to exposure increases as blood lead levels rise above 80 μg/100 g. In addition, a number of studies have observed symptoms and effects caused by exposure to lead at blood lead levels below 80 μg/100 g. While 80 μg/100 g is a useful lower range for observed clear-cut clinical symptoms, we do not regard it as a sharp delineation above which clear-cut symptoms occur in all workers and below which clear-cut symptoms do not occur. Further workers with blood lead levels above 80 μg/100 g without clear-cut symptoms may have milder symptoms caused by lead exposure. It should be noted that in evaluating studies which seek to relate blood lead levels to symptoms of lead exposure, it is rarely possible in clinical situations to determine the amount of lead absorbed before the onset of symptoms of lead intoxication. In summary, it is OSHA's judgment that the probability of clinical symptoms of lead intoxication appearing is increased as blood lead levels rise above 80 μg/100 g. There are also data, however, to suggest that such symptoms may occur at blood lead levels under 80 μg/100 g, although perhaps not under 50 μg/100 g.

Throughout the rulemaking period industry representatives have steadfastly maintained that there exists no persuasive evidence to indicate that clinical lead intoxication occurs below blood lead concentration of 80 μg/100 g. (Ex. 335, p. 13.) In support of this contention LIA cites Dr. Robert Kehoe's recent publication.

Dr. Robert Kehoe, perhaps the most highly respected authority on lead intoxication in the world, concluded in an article published only last year (1976):

It appears that no case of poisoning occurs until the concentration of lead in the blood reaches *at least* 80 μg/100 ml, and most cases of poisoning occur at a level well above this (100-300 μg/100 ml). (Exhibit 294B.) (Emphasis added.)

This is consistent with the view Kehoe expressed 15 years earlier in his Harben Lectures, when he explained that no case of even the mildest type of poisoning has been induced by the absorption of inorganic compounds of lead at blood-lead concentrations below 80 μg/100 g. (Exhibit 5(33).)

This article published only last year by Dr. Kehoe contains only one reference later than 1970 and this is Goyer, R. A. (1971) Lead and the Kidney, Curr. Topics Path. (*in press*). (Emphasis added.) It is apparent that this paper by Kehoe was originally written in 1970 or 1971 and only recently published. It addresses data developed prior to 1971, and does not discuss the more recent, important work in this field.

Dr. Kehoe has maintained that no lead poisoning occurs below 80 μg/100 g. For example LIA quotes Kehoe in their early brief: (Ex. 3(72), p. 19.)

Experience and the accumulation of voluminous data have spoken for themselves, in proclaiming that cases of lead poisoning occur only when certain limits of concentration of lead in the urine or blood (or both) have been exceeded. *The critical concentration of lead in the blood of child or adult, below which • • • no case of even the mildest type of poisoning has been induced by the absorption of inorganic compounds of lead, is approximately 0.08 mg. (80 micrograms) per 100 grams of whole blood.* (Emphasis added.)

This statement is not accurate with respect to either children or adults, but it is especially troublesome with respect to children. The Center for Disease Control in their statement of March 1975 (Ex. 32(15)) define undue or increased lead absorption as occurring at PbB levels of 30-79 μg/100 g. The committee on Toxicology, National Academy of Sciences agreed with CDC and further stated:

In order to allow for variation among individuals, the mean blood lead concentrations for groups should not exceed 20 μg/dl. (Ex. 86M.)

In addition, this is consistent with the evidence compiled by the Environmental Protection Agency (EPA) which led that agency to establish a national ambient air quality standard of 1.5 μg/m³ designed to address the problem of lead in the urban environment. The EPA standard was based on the following considerations:

In establishing the final standard, EPA determined that of the general population, young children (age 1-5 years) are the most sensitive to lead exposure. In 1970, there were 20 million children in the U.S. under 5 years old, of whom 12 million lived in urban areas and 5 million lived in center cities where lead exposure is the highest. The standard is based on preventing children in

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the U.S. from exceeding a blood level of 30 micrograms lead per deciliter of blood. Blood lead levels above 30 micrograms are associated with an impairment in cell function which EPA regards as adverse to the health of chronically exposed children. There are a number of other adverse health effects associated with blood lead levels above 30 micrograms in children as well as in the general population, including the possibility that nervous system damage may occur in children even without overt symptoms of lead poisoning. (EPA Press Statement, September 29, 1978.)

The basis for the EPA conclusions is found in their Criteria Document, "Air Quality Criteria for Lead" (FEIS Ref. 92).

There are numerous studies showing effects on children and adults below 80 μg/100 g. Statements which are clearly at odds with current data raise serious questions about Dr. Kehoe's overall view of this field as it affects both children and adults. What a person thought to be true in 1960 may not stand up to critical scrutiny today especially given recent advances in the early recognition and detection of disease. Dr. Needleman of Harvard University offered another view during his testimony which OSHA believes is a far more accurate representation of reality:

Knowledge of the toxic effects of lead is almost as old as knowledge of its utility. It is recorded frequently through history and just as frequently ignored. No one quarrels with the evidence that the sequelae of lead doses sufficient to produce clinical cymptomos are found in many organ systems of the body are enduring and often catastrophic. Whether lesser internal doses are important health consequences is a topic of extensive and frequently redundant debate.

Opinion on this question tends to divide in relation to the nature of the individual or institution's sponsorship. Pediatricians and public health specialists are concerned that lesser levels of lead are hazardous while industry and its spokesmen maintain that evidence for low dose effects is faulty and far from persuasive.

I am one of those who believe that a substantial body of evidence is accumulating that the threshold for significant health effect depends on the avidity, sensitivity and sophistication with which we pursue it and that the lowering of acceptable body burdens in children and adults is scientifically and economically sound.

I should like to present some data to support those assertions.

1. Studies of—quote—"subclinical" lead poisoning in children. In 1943, Randolph Byers of my institution followed 20 children who had recovered from lead poisoning, 10 of whom had no evidence on encephalopathy. He found that 10 of the 20 were failing in school, had significant problems in perceptual motor function or were severely behavior disordered. Byers asked then, some 34 years ago, how many children with cognitive or behavioral disorder in the school system were in fact unidentified cases of lead intoxication. That is the burden of my research of the children.

With the passage of time, the defined acceptable blood level for a child under 6 has moved from 60—when I began my training in pediatrics not too long ago—to 50 to 40 micrograms per deciliter. The CDC now begins to talk about 20 as the threshold for undue lead exposure. And Professor Zielhuis at the Amsterdam meeting in 1972 recommended an individual limit of 35 micrograms per deciliter and a group average of 20 micrograms per deciliter for children.

A number of studies of intellectual, perceptual and behavioral consequences of low level lead exposure in children have produced mixed results. Some have found impairment and some have not. Many, if not most of the studies are flawed in that insensitive outcome measures or inadequate measures of internal dose were used.

The import of these studies and others is that if one looks carefully for lead effects in children, you are likely to find them at lower levels of exposure than were formerly held. (Tr. 1077-79.)

There are important differences during the time that the blood brain barrier is being laid down, in that certain enzymes are being induced, but I think that the point that I was trying to generate in that argument, was that in my pediatric experience, when I started training in pediatrics, we said that children with blood leads over 80 were at high risk for the lead poisoning, and now we have been talking about children of 30, 45, or 40, and I think the same argument, serving out of sharp and clinical and experimental evidence, would apply to the worker that is, that if you look more carefully for evidence of impairment, you are going to find it.

The fact that an adult worker will spill aminolevulinic acid in his urine, at a blood lead of 40, to me says, that that is a clinical effect of significance. (Tr. 1106-07.)

During the rulemaking proceeding ASARCO submitted a study by Dr. Hine et al. entitled "Assessment of Health of Employees with Different Body Burdens of Lead." (Ex. 142G.) The authors apparently studied 652 employees with 5 or more years of service at six ASARCO locations. An extensive battery of tests were carried out which included blood pressure, measure of weight changes, hematology, blood chemistry, including kidney and liver function tests, urinalysis. The authors stated their conclusions as follows:

The results of this study demonstrated that there were no significant differences in the health of workers with blood lead concentrations between 60 and 80 μg/dl and those whose blood lead concentrations were more than 60 μg/dl. Even though the population studies has been substantially exposed above the newly proposed TLV of 0.10 mg/m³, there have been only a few cases of clinical problems related to the lead exposure, and few, in the opinion of the attending physician, have required chelation therapy for the reduction of the body burden of lead.

Based on these findings, it is our opinion that the current blood lead standard of 80 μg/dl can be kept, unless more new data will support the OSHA proposal. Also, the OSHA recommendation of monthly medical examinations appears to be too rigid. Our data indicate that it is possible to maintain a high degree of employee health with much less frequent examinations, with the frequency increased only if the blood lead concentration is found to be elevated beyond 80 μg/dl. We believe that implementation of this proposal of OSHA would not add any further dimension to the less rigorous protection program employed by ASARCO. (Journal of Occ. Med., 20, pp. 610-17; September 1978.)

Unfortunately the study suffers from problems of design which OSHA finds invalidates the authors conclusions. First, there is no well defined study population. In fact, in one table the results are given in terms of the number of determinations carried out rather than the number of subjects examined and the maximum number of determinations is 387. It is unclear how to compare 652 workers with 387 determinations. For example, out of 652 workers 387 determinations of BUN were made and there were 319 S-creat, but there were only 229 determination of the ratio of BUN to S-creat. The disparity between these numbers is not explained nor do we know whether these determinations were carried out on 100, 200, 387 workers or how many. In other words the study suffers from a serious lack of information, which could bias any conclusion. In addition there appears to have been some bias introduced in the original selection of the study group. During the study itself it is not clear how the subjects are counted. It appears some may be counted once and others several times.

The authors do not indicate whether there was uniformity in the manner in which medical examinations were given at each plant and it appears there was no company policy for general medical examinations. This could have introduced variability into the study. More significantly the laboratory analyses were done in six separate laboratories. Given the quality control problems which have been described in this record this would indicate additional variability may have been added. There are other biostatistical problems relating to the authors use of test of significance, e.g. the choice of two tailed tests and use of probability levels. There are other problems with this work especially with respect to population definition but it suffices to say this was not a well controlled epidemiologic study utilizing a precise methodology. Rather it represents a compilation of data without any well defined study objectives. The data provides no basis for the authors conclusions and accordingly OSHA believes it should be given little if any weight in these proceedings.

Industry representatives during the hearings frequently quoted Dr. Kehoe's conclusions in a totally uncritical fashion thereby raising doubts about the credibility of the argument,

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for example the response of Dr. Michael Williams for the Lead Industries Association (Tr. 1899-1890):

Mr. KUCHENBECKER. On the bottom of page 1 when you talk about scanty published data and then you go on to discuss Dr. Robert Kehoe and Ronald Lane. I assume that these gentlemen were publishing studies and doing research in the 1930s, 1940s, 1950s, 1060s, is that the general range?

Dr. WILLIAMS. They certainly published studies and did research. There was very little data on air leads. Ronald Lane published an opinion. In those days the great men in the field felt able to publish their personal experiences and personal opinions, and these were usually accepted for want of anything better perhaps. But now that we have gone technical and scientific and have to back up every opinion with data and very often I am afraid the data that you collect in the study is much less valuable than the data of a lifetime experience in the field.

In later questioning, Dr. Williams again indicated his dependence on Kehoe's opinions even if they were not supported by data:

Mr. SAMUELS. Let's go to page 2 doctor. You mentioned the Kehoe data and you said, "the men remained in good health." Is it not true that Dr. Kehoe's data does not show that every man who he examined was in good health? When he drew his line for 80 μg were there not values below that line?

Dr. WILLIAMS. I am not clear about which paper you are referring to.

Mr. SAMUELS. In any of his papers where he deals with populations are all of the values showing effects above 80 μg of blood lead?

Dr. WILLIAMS. I have never read a paper of his which produced data. I am saying that this was his stated opinion.

Mr. SAMUELS. So you have never read a paper of his that produced data. You are just going by his opinion? Is that what you are saying? You have never looked at the original papers of Dr. Kehoe?

Dr. WILLIAMS. Yes, I read the lead papers in the 1930s and the Harvard lectures, but he did not give data on every case he examined. (Tr. 1930.)

The assumption of no severe morbidity below 80 μg/100 g could and may have had tragic consequences, especially given the tenacity with which this view is maintained. Cases of overt lead intoxication may have been ignored, thereby contributing to the development of even more severe chronic disease. For example, industry medical spokesmen stated that symptoms frequently associated with lead exposure would not necessarily be associated with lead unless the blood level was sufficiently high. This is noted in questioning of Dr. Williams (Tr. 1945):

Dr. BRIDBORD. If someone indicated that they did not feel well, how would you go about ruling out lead?

Dr. WILLIAMS. I would ask to see him afterwards for a full history and examination. I would undertake measurements of his lead absorption at the time. If he had a low blood lead, I would think it not likely to be due to lead.

Again in questioning regarding one of his publications in 1966, in which anemias in workers were not attributed to lead because the measurement of lead in blood was not sufficiently high, Dr. Williams responded that anemia was not considered to be lead poisoning in those days (Tr. 1976).

The same reasoning was expressed by Dr. Dennis Malcolm of Chloride, Inc., who indicated that his decision in such a case would be influenced by the blood lead level. (Tr. 2141.)

In the extreme situation, this may have very serious consequences. Dr. Wedeen, for example, told of the experience of one New Jersey worker:

One of these had repeatedly been hospitalized and even subjected to gallbladder surgery because of abdominal pain which, of course, in retrospect was probably lead colic.

Lead poisoning was excluded as the cause of abdominal pain because blood leads fell within the 1972 NIOSH criteria guidelines. After a few weeks at home or in the hospital, his blood lead was always under 60 micrograms percent, and the diagnosis of lead poisoning was therefore missed for 2 years.

Indeed, it at first appeared that the gallbladder surgery had cured his abdominal pain because lead colic, like abnormal blood lead levels, often disappears within weeks once lead exposure is stopped. (Tr. 1745.)

This assumption of no overt symptoms in a person or population until a blood lead of 80 μg/100 g suffers from reasonably serious methodological problems in the view of this agency. First, it would appear to ignore individual variation. Second, it oversimplifies current understanding of dose-response relationships and is contradictory to modern clinical medicine's concept of disease progression, insofar as early and milder signs are perceived to be part of a disease process which ultimately progresses to chronic, irreversible disease and even death.

The evidence in the record repeatedly indicates clinical symptoms due to lead absorption does occur in workers whose blood lead levels are less than 80 μg/100 g. Industry representatives argued studies showing effects below 80 μg/100 g do not address the issue of whether the workers may have had higher blood lead at an earlier point in time. That is, the blood lead level measured at the time of the observation may not be representative of previous exposures. LIA quotes Kehoe on this issue:

Under conditions of prolonged and gradual absorption of lead the time of onset (of symptoms) is • • • uncertain. The symptoms • • • of lead poisoning often persist after the blood concentration has declined well below 80 μg/100 ml so that, if the threshold value at the onset is to be known, the concentration must be determined close to the onset of illness. (Ex. 204B.)

This methodological criticism of numerous studies was frequently raised and OSHA has discussed it in another context when addressing studies on air-to-blood relationships. This problem is by no means limited to lead, since it is an inherent problem in cross-sectional studies. Generally one must be rather conservative about using cross-sectional data, obtained at a given point in time, to predict effects over time. Given the importance of the history of lead exposure in determining the significance of blood lead level and body burden, OSHA believes well-controlled longitudinal studies are more accurate representations of reality. This point is clearly brought out in the classic text on epidemiology by Drs. MacMahon and Pugh, where they state the following in defining the two terms:

Cross-sectional and longitudinal studies. Epidemiologic studies can also be characterized by whether the ascertainment of cause and effect relate to two different points in time or to a single point. In a longitudinal study the observations relate to two different points in time—even if both items of information are collected simultaneously. Most cohort and case-control studies are longitudinal in nature. In a cross-sectional study, on the other hand, measurements of cause and effect are made at the same point in time. Although the cross-sectional study is easier and more economical than the longitudinal, it is limited to studies of causes that are permanent, or reasonably permanent, characteristics of the individual, so that his status with respect to the cause measured at the time he has the disease has a high probability of reflecting his status at the time the disease was induced. MacMahon and Pugh, Epidemiology, Principles and Methods. Little, Brown and Company, 1970.

Despite these recognized methodological weaknesses, OSHA is obligated under the act to utilize all available scientific and medical information, especially when reasonable inferences may be drawn which in concert with other studies enable the agency to make decisions which will protect workers from occupational disease. OSHA declines to, in effect, penalize workers who may or may not have had higher levels of exposure in the past, by assuming that all morbidity was associated with former excessive exposure. That view is potentially self-serving and contradictory to other information available from other studies. OSHA has no intention of blindly accepting cross-sectional studies since spurious results are of no benefit to any party in a rulemaking process. Especially in this standard, issues of body burden, blood levels, air-lead

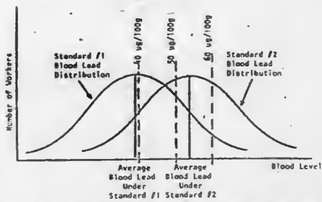
levels, and efficiency of other biological indicators have a crucial role. OSHA has weighed each study to determine its accuracy, precision soundness of methodology and has ultimately developed the PEL on the basis of all the research presented, although only a portion has been discussed in detail. In evaluating the research, OSHA has given substantial weight to published work because of peer review and to scientific testimony which must withstand the rigors of cross-examination. OSHA recognizes that blood lead level measurements are not necessarily accurate representations of past exposure, but with this in mind the agency does assert that there is conclusive evidence for "clinical effects" below 80 μg/100 g. There is in fact evidence of signs and symptoms (morbidity) at levels as low as 40 μg/100 g. That evidence is discussed in detail in the health effects section.

2. *Benefits.* The dramatic reduction in blood lead levels over 40 μg/100 g, as shown below, is a measure of the incremental benefit derived from the PEL of 50 μg/m³. OSHA has concluded that based on the health effects data in the record blood lead levels should be maintained below 40 μg/100 g to the extent feasible. Ideally, it would be desirable to express the health benefits of the lead standard in terms of decreases in the incidence and severity of the various adverse health effects of lead exposure (e.g., neurological damage, kidney damage, etc.). However, the available data does not allow meaningful quantitative estimation of the degree of prevention of the different forms of health damage likely to be achieved by lowering worker air exposures and blood lead levels by various amounts for various periods of time. The record evidence allows estimates to be made of the blood lead levels likely to result from compliance with alternative air standards. Absent better health effects data, judgment of the relative health benefits achievable with different lead standards can be based on the expected reduction in the number of workers with dangerously high blood lead levels.

The results will be expressed in terms of the number of workers expected to fall into particular blood lead level ranges over 40 μg/100 g at any one time after the establishment of the long-term equilibrium and, before consideration of the effects of the lead standard's medical removal provisions. OSHA believes that this is the single most convenient proxy for benefits for use in facilitating comparisons of different assumed compliance levels. However, there are a number of inherent limitations in this approach which need to be clearly appreciated.

First, it should be understood that a change in air lead exposure leads to a shift in the entire distribution of the blood lead levels in the population:

FIGURE 1.



Although the incremental benefits of standard No. 1 over standard No. 2 may be expressed in terms of the decrease in the number of workers (area under the curve) falling in each of the blood lead level ranges, the "benefits" of the standard are not really limited to workers who move across the lines drawn at 40, 50, and 60 μg/100 g. All of the workers are expected to have lower blood lead levels to some degree (and therefore possibly some lower level of health risk) under the lower exposure standard. It should be noted that measuring benefits by comparing differences in mean blood lead levels will markedly underestimate the benefits to a population of workers.

The public hearings included widespread discussion of the significance of small changes in blood lead levels as a result of rather large changes in air leads. (Tr. 266-67, 3114-15, Ex. 285, p. 13-14, 3064-65, 1923). For example, using the Bernard model, the difference between the average blood lead levels at 50 μg/m³ and 100 μg/m³ is approximately 5.6 μg/100 g. Seen in this context the benefits appear rather small. However, when viewed in the context of the shift in the blood lead distribution for all workers, the benefits are clearly more dramatic.

Second, it should be stressed that the measurement of benefits we have chosen represents a continuous "flow," not a "stock." As time passes and workers move into and out of employment in lead-exposed industries, the differences between compliance with different standard exposure levels continuously generate differences in the population of newly exposed workers. If two standards differ by 1,000 in the number of workers expected to be over 60 μg/100 g at any one time, over a period of 10 years, the difference is clearly 10,000 person-years at the higher blood lead level, spread out over a number of workers which depends on the labor turnover in the industries concerned, the frequency with which workers change jobs (and hence exposures) within the industry and other factors.

Third, the results only reflect the situation after longrun equilibrium of blood lead levels to the post-compliance distribution of lead exposure in the working population. Because blood lead levels of current workers to some degree may reflect the workers' entire previous career history of lead exposures, full "equilibrium" of the distribution of worker blood levels may not be achieved for many years after compliance with air-exposure requirements. Because the dynamics of changing blood levels in response to changing air levels are complex, the "flow" of benefits (reduction in number of workers in various blood level ranges) at various times prior to equilibrium may be either greater or less than the "equilibrium" values.

The primary analysis of the expected benefits of alternative compliance levels is based on the model of air lead/blood lead/job tenure relationships and other associated assumptions given by Ashford et al., in testimony for the Medical Removal Hearings (Ex. 439A). Before addressing the incremental benefits of the PEL discussion a review of the air-blood relationships is in order.

a. *Relationships between air lead levels and population-average blood lead levels.* The section on the air-to-blood level relationship discussed the difficulties with existing epidemiological studies of air lead/blood lead relationship. One point from that discussion merits emphasis here: Because available studies in working populations have only assessed the relationships between blood lead levels and air lead levels over relatively brief time periods (weeks or months) compared with the actual duration of exposure in working populations, and because existing physiological models of lead transport in the body suggest that exposures over many years contribute significantly to current blood levels, it can be expected that the results of current epidemiological studies are systematically biased in two ways:

- The slope of regression lines relating blood lead to air lead is smaller than it would be if exposure duration were properly lengthened to include workers' entire job tenure; and
- The intercept (intersection of the regression line with the zero-occupational-exposure axis) is unrealistically high because the long term buildup of lead in slow-exchanging pools creates an elevated "floor" of blood lead level which is unaffected by current exposure.

The primary implication of the first bias for the long term incremental effects of different lead standards is that the epidemiological studies will predict a more modest reduction in average blood lead levels than is likely to be the case at long term equilibrium. The effect of the second bias is complicated by the uncertainty in variability in blood lead levels about the mean, but suffice it to say here that it may sometimes be an upward bias by moving a larger percentage of

the worker population to higher blood lead levels.

The following table lists many of the relationships derived from different studies in the record. For comparison, the lower part of the table shows the relationships predicted by the Bernard model and Assumption C for exposures over 12.5 μg/m³. The "Results" section will utilize the Barnard model for calculation of incremental benefits OSHA has determined it represents the best model developed to date because it does not suffer from the flaws discussed here and in the air to blood section. (See table 1.)

TABLE 1.—*Best Point Estimates of Ultimate Equilibrium Benefits of Reducing Air Lead Exposures*

(Blood level standard Deviation=9.5 μg/100 g)

Long-term average air lead exposure	Total number of workers	60 μg/100 g	50-60 μg/100 g	40-50 μg/100 g	Total 40 μg/100 g
Current Compliance Level					
> 100 μg/m³	41,622	27,852	8,508	4,166	40,326
50-100 μg/m³	55,885	5,125	14,379	19,732	39,243
	97,507	32,777	22,887	23,898	79,569
Compliance With 200 μg/m³					
> 100 μg/m³	41,622	9,340	13,569	11,958	34,867
50-100 μg/m³	55,885	5,125	14,379	19,732	39,243
	97,507	14,465	27,948	31,690	74,110
Compliance With 100 μg/m³					
> 50 μg/m³	97,507	2,562	14,041	32,870	49,475
Compliance With 50 μg/m³					
< 50 μg/m³	97,507	498	5,373	22,729	28,599
Incremental Benefits					
b over a		18,312	−(5,061)	−(7,792)	5,459
c over a		30,215	8,846	−(8,972)	30,094
d over a		32,279	17,514	1,169	50,970
c over b		11,903	13,907	−(1,180)	24,635
d over b		13,967	22,575	8,961	45,511
d over c		2,064	8,668	10,141	20,876

Even if the all-industry average relationship of population-average blood lead levels to air lead level and job tenure were known with precision, there would still be many reasons why individual workers exposed at standard compliance levels would have different blood lead levels. Some of the differences arise from intrinsic biological and other differences between workers:

- Individual differences in size, body composition (relative sizes of potential lead storage pools).
- Individual differences in lead absorption (e.g., from short term fluctuations and long term differences in dietary habits, gastrointestinal function).
- Individual differences in lead excretion (e.g., from short term fluctuations and long term differences in water and salt elimination, kidney function).
- Individual differences in nonoccupational lead exposures.

Other differences arise from aspects of workers' jobs and job environment that are not controlled (or not completely controlled) by the provisions of the lead standard:

- Differences in work demands producing differences in the volume of air breathed (the potential variability arising from this factor is very large; the respiratory intake of a standard 70 kg. man varies from 3.6³ during 8 hours of rest to 9.6 m³ during 8 hours of light work or normal nonoccupational activity. Even larger amounts of air are taken in during heavy work. Six subjects performing heavy work (600-800 kgm-min.) on a bicycle ergometer had total ventilation averaging five times their resting rates.).
- Differences in work habits (e.g., hygiene, smoking) affecting the relative levels of inhalation and non-inhalation routes of lead exposure.
- Miscellaneous environmental conditions affecting physiological processes (heat, humidity, other chemical and physical stressors).
- Variation in the work week (overtime, etc.).
- Short-term (days or weeks) variation of total air levels.

Some of these factors produce mainly short term variability in blood lead levels (differences between worker blood level response which tend to persist for only days or weeks); other factors produce consistent systematic differences between worker blood level response over long periods, and some factors may produce both long and short-term variability. A spurious source of apparent additional short-term variation is measurement error in blood lead level determinations.

given that there will be both true short-term and true long-term variability in the blood levels which will result from air lead levels in compliance with the lead standard, we are faced with a difficult choice in the computation of incremental benefits. Should the calculation of the number of workers in various blood lead level ranges at any one time include only those whose true long-term average blood level is in a particular range, or should the calculation include workers in the range at any one time who may be only briefly elevated from their long term average levels below the lower boundary of the range?

The resolution of this issue depends on one's view of the biological significance of short periods of elevated blood lead. With the exception of measurement error, it is conceivable that all of variation (both short and long term) is of biological significance. That is, it is possible that elevated levels of lead begin to produce biological effects whenever blood lead exceeds a certain level. If that is the case, then a proper calculation of incremental benefits of controlling lead exposure should include all workers who are prevented from incurring true blood lead levels over 40, 50, or 60 μg/100 g, even if in many cases it could be expected that individual workers would only be over the indicated blood level for short periods. On the other hand, if biological damage depends only on long-term average blood lead level, the calculation will be a more accurate proxy for biological benefits if only long-term variation in blood levels is considered.

This question is clearly on the frontiers of current scientific understanding. OSHA has therefore undertaken alternative calculations based on a wide range of potential variation in blood lead level about predicted population means. On the basis of data in the record from the Delco-Remy study, we have computed a minimum estimate of long-term (over 1 year) individual variation in blood lead level (standard deviation=5.5 μg/100 g). The estimate is likely to be an underestimate of true long-term variability because a study conducted within a single plant over a limited period of time is unlikely to include as large a diversity in the many factors producing long-term variability (see listing above) as would prevail in a random sample of all lead-using industries. As a high estimate of total variability, we have chosen to use the highest value found suggested in the record (standard deviation=15 μg/100 g), even though this value contains an allowance for measurement error, which, as previously mentioned, carries no biological significance. OSHA has chosen to base our midrange estimate calculations on the blood level variability assumption used in the original CPA report (standard deviation=9.5 μg/100 g). This estimate was originally developed as an upper bound on the long-term variability of blood lead levels, but if short-term variability is considered as well, it represents a best guess.

Although calculations were made for standard deviations of 5.5, 9./5, and 15 μg/100 g OSHA will only reproduce the values 9.5 μg/100 g since this value represents the best guess in terms of both long- and short-term variability.

b. *Results.* D.B. Associates has presented rough estimates of exposure covering many industries. OSHA bases its assessments of the incremental benefits of the air lead standard on this data and other record evidence. These estimates indicate that overall, approximately 41,622 workers are currently exposed to time-weighted-average air lead levels of over 100 μg/m³ and an additional 55,885 workers are exposed to air lead levels between 50 and 100 μg/m³.

The results presented in this section are obtained by multiplying the appropriate exposure estimates by the alternative estimates of the percentages of each population expected to have blood levels in the various blood levels ranges at any one time after the establishment of long-term equilibrium.

Figure 2 summarizes our best point estimates of the ultimate effects of achieving various air lead compliance levels (a-d). The left side of the figure shows the results of parallel computation of the number of workers in various blood lead level ranges. The right side of the figure shows the incremental benefits (reduction of the number of workers in each blood level range) of the "b_i", "c" and "d" compliance levels compared to the baseline defined by the "a" compliance level. (See figure 2.)

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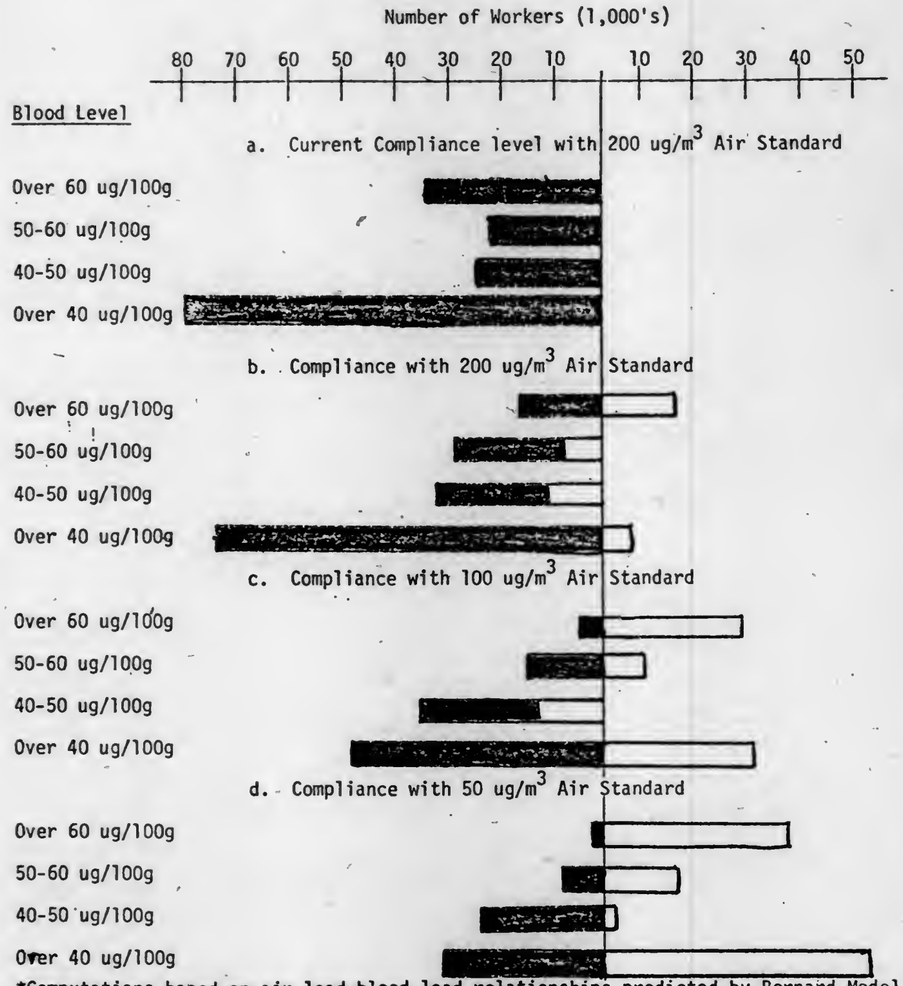
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FIGURE 2.

BEST POINT ESTIMATES OF ULTIMATE EQUILIBRIUM BENEFITS OF REDUCING AIR LEAD EXPOSURES UNDER DIFFERENT BLOOD LEAD VARIABILITY ASSUMPTIONS*
Blood Level Standard Deviation = 9/5 ug/100g

"Residual Health Hazard" (Number Remaining in Each Blood Level Range at Any One Time After Equilibrium)

"Benefits of Regulation" (Number Prevented from Being in Indicated Blood Level Range at Any One Time, Compared to the "0" Compliance Level)



*Computations based on air lead-blood lead relationships predicted by Bernard Model and Assumption C and DBA's best point estimates of exposure.

It can be seen from figure 2 that assuming compliance with the present standard (the "a" compliance level), large numbers of workers could be expected to have potentially hazardous blood levels. At any one time, we anticipate that about 41,622 workers would have blood lead levels over 60 μg/100 g, and about 79,569 would have blood levels over 40 μg/100 g, in the absence of other remedial measures. Achievement of the "b" compliance level would reduce the number of workers over 60 μg/100 g, but would leave the number of workers in the 50-60 μg/100 g and 40-50 μg/100 g range substantially unchanged. Achievement of the "c" compliance level would be expected to make reduction to about 2,500 in the number of workers over 60 μg/100 g, and would be expected to produce some reduction in the numbers of workers in the 50-60 μg/100 g blood lead level range to 14,000. The "d" compliance level would reduce the total number of workers over 40 μg/100 g to slightly under 28,599, as compared over 79,569 for the "a" scenario. The incremental benefit of "d" over "a" in terms of workers over 40 μg/100 g would be 50,970 and for workers over 60 μg/m³ the benefit would be 32,270. These are clearly substantial reductions in the number of workers with excessive blood lead levels and would represent marked benefits to lead exposed workers.

A recent decision of the U.S. Court of Appeals for the Fifth Circuit vacated and remanded OSHA's benzene standard. (*American Petroleum Institute* v. *OSHA*, October 5, 1978.) The Court construed the language in section 3(8) of the act to require OSHA, when promulgating standard, to quantify the extent of the expected benefits and to determine whether the benefits bear a reasonable relationship to the costs the standard would impose on employers. OSHA does not accede to the Court's interpretation of the act but has nonetheless determined that the costs imposed by this lead standard (see attachment D of this preamble for cost and economic impact data) are clearly justified in view of the substantial increase in worker protection this standard would afford. OSHA has quantified the expected health benefits as described above. On the basis of the evidence in the rulemaking record OSHA has concluded that its evaluation of the relationship between the costs and benefits meets the test enunciated by the Fifth Circuit.

3. *Alternatives to the permissible exposure limit.*

a. *The LIA proposal.*

The most comprehensive alternative proposal submitted in the rulemaking record was the Lead Industries Association proposal:

The health of workers can be best and most promptly protected by promulgating a standard which emphasizes the proper importance of biological indices and medical surveillance and which establishes a simple, effective and inexpensive enforcement procedure directly utilizing those indices. Employers covered by the standard should be required to conduct regular environmental monitoring and should adopt and submit to OSHA written compliance programs designed to reduce air-lead levels, to the extent feasible, by engineering controls; however, a specific air-lead level number should not be adopted for enforcement purposes, since such a compliance mechanism (even if based on the proposed permissible limit of 100 μg/m³) will not accomplish the objectives of protecting workers' health. (Ex. 335, p. A-1.)

The specific requirements in the LIA proposal are not entirely dissimilar from requirements in this final standard. However, there are certain significant differences which necessitate further discussion to explain OSHA's rationale. The major differences are:

a. The permissible exposure limit established by OSHA is 50 μg/m³ and primary compliance with the standard will be based on environmental monitoring by OSHA's industrial hygienists rather than relying on biological indices for enforcement.

b. OSHA has determined that the blood-lead level of employees should be maintained at or below 40 μg/100 g. The OSHA action level is an air lead level of 30 μg/m³. The LIA proposal sets 80 μg/100 g as the appropriate exposure limit for compliance purposes with a blood lead action level of 60 μg/100 g.

c. OSHA will continue to place primary reliance on engineering and work practice controls for compliance with the standard whereas LIA included the following factor to be considered in complying with the standard.

> The predicted and relative effectiveness of such (engineering) controls and *of other protective devices* (emphasis added) in protecting workers against material impairment of health and functional capacity. (emphasis added)

There are other differences but these represent the most significant issues to be addressed. Before addressing these issues in detail the following represents a summary of the reasons for OSHA's decision to adopt a PEL based upon air lead determination. In summary, OSHA has decided to place primary a reliance on a PEL which is based on environmental monitoring of air lead levels rather than relying on biological indices for the following reasons.

1. Evaluation of the industrial environment by proven industrial hygiene techniques is a direct measure of the sources of lead exposure, adequacy of control technology, progress in implementation of engineering controls, and in general represents a continual check on lead exposure. Since OSHA believes that control of an air contaminant should be accomplished at the source, environmental monitoring then is a direct measure of the control of lead exposure. Biological monitoring is designed to ascertain problems in individual workers and is an indirect and inadequate measure of the control of lead. In this regard environmental monitoring is better suited to serve as a basis for enforcement.

2. Biological monitoring for compliance purposes is not feasible since there is no discrete value which would serve as the basis for citation. OSHA believes that based on consideration of health effects a PEL of 80, 70, or 60 μg/100 g would be excessive and would not protect workers health adequately. It would be infeasible to require controls to maintain blood lead levels at the desired 40 μg/100 g and below. Rather when all controls have been implemented 30 percent of all workers PbB will range from 40 to 60 μg/100 g. Given this distribution of blood lead levels at compliance in a worker population there is no discrete value which would serve as a biological PEL. That is, OSHA believes a PbB above 60 μg/100 g is excessive but a PbB level in an individual worker between 40 to 50 μg/100 g may be the result of excessive exposure or it may represent the individual variation within a well controlled environment. Air lead determinations would differentiate between the two situations.

3. A biological standard is not only infeasible it would provide inadequate protection of workers. Excessive exposure to lead would not immediately cause excessive blood lead levels. In fact, some workers' blood leads might not rise to excessive levels for years, although their body burden would be increasing. Workers should not be expected to wait for protection until their blood leads become excessive. Air monitoring pinpoints overexposures immediately. This technique is preferable, therefore, for compliance purposes.

4. Worker Groups uniformly and vehemently oppose biological monitoring for compliance purposes. OSHA views this opposition seriously since workers would be the subjects of a compliance program based upon biological monitoring and their participation in such an invasive process would be crucial.

5. Industry's arguments that biological monitoring is preferred due to lack of an air lead-blood lead relationship are unsubtantiated. OSHA believes there is no doubt that an air to blood relationship exists and is best described in the CPA application of the Bernard model.

6. Although both biological and air monitoring are subject to errors OSHA believes that the uncertainties

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associated with either measurement is not a sufficient basis for choosing one technique over the other. OSHA recognizes there are errors associated with air sampling but nonetheless believes that evaluation of the plant environment is best and most directly accomplished through a comprehensive industrial hygiene survey as compared to biological sampling.

7. The record indicates that there are currently a significant number of industries who carry out biological monitoring. Given the current distribution of high blood lead levels throughout industry and the admitted lack of compliance with the current air lead standard, OSHA has concluded there is little or no basis for accepting the asserted success of future biological monitoring.

8. OSHA is concerned that a biological standard could impact negatively on workers with high blood leads and extended job tenure. Employers might terminate employment of these individuals to avoid citations for overexposure to lead. In addition, an employer could attempt to circumvent the standard by using respirators rather than implementing engineering controls. The use of respirators is not a satisfactory method for compliance. However, indiscriminate use of respirators would be a confounding factor in ascertaining successful compliance with the standard.

Based on these considerations OSHA will rely on a PEL which utilizes determination of air lead levels to ascertain compliance. The rest of this section will discuss OSHA's decision in detail.

a. *Environmental versus biological monitoring.* The record of these proceedings indicates virtual unanimity of the view that both biological and environmental monitoring should be required in the final standard. Grover Wrenn testified on this issue at the outset of the hearings.

> To protect employees against the myriad of health effects of lead exposure, it appears necessary to establish a comprehensive air and biological monitoring program. (Tr. 32.)

Mr. Knowlton Caplan, engineering consultant and witness for AMAX, made a similar statement:

> The thing that doesn't appeal to me is this either/or (either air leads or blood leads), we either have to do it this way or that way. Why don't we use both tools for what they are best for is my feeling. (Tr. 5739.)

Dr. Jerome Cole, testifying on behalf of the Lead Industries Association, stated, "First regarding monitoring, as I have already noted, both OSHA and LIA agree that the new standard should require all employers covered by the Act to conduct both biological monitoring and environmental monitoring." (Tr. 2997.) Similar testimony was presented by most other witnesses, including those appearing on behalf of Government agencies (NIOSH 1330-31), industry (AMAX 1703; Cominco 2226-28; Cole 3167-68; Caplan 3866; Globe Union 4312; General Battery 4551) and labor (Teamsters 2203-04; McBride 2961-62, 2973; Woodcock 5040).

The fundamental difference of opinion was on which technique, biological or environmental, would OSHA rely to determine compliance with the standard. That is, would OSHA establish an air level standard which would be enforced by environmental monitoring, or a blood level limit which would be enforced by biological monitoring.

There has been such intense controversy over this issue that prior to discussing the basis of OSHA's decision a basic framework of the role of monitoring in general needs to be addressed. This final standard requires that engineering controls and work practices be used to control employee exposure to inorganic lead. The final standard allows joint use of engineering and work practice controls. Respiratory protection may be used only during the time period necessary to install engineering controls, where engineering controls may be inappropriate such as during some maintenance operations, or in those cases when both engineering controls and work practices do not succeed in reducing exposures below the permissible exposure limit.

This compliance strategy has been OSHA's policy consistently and has been followed in prior standards. This policy is based upon the view that the most effective means of controlling employee exposure is to contain emissions of toxic substances at their source through the use of mechanical means combined with work practices.

This policy is consistent with the traditional principles for controlling the occupational environment. These principles are based on the proven conclusion that reduction of exposure to toxic substances is maximized when controlled by the techniques of substitution, isolation, and ventilation. Not all of these basic control principles are applicable to every form of hazard, but all occupational hazards can be controlled by the use of at least one of the principles. It is in this context that OSHA views the discussion of air level versus blood level as the primary compliance mechanism.

Given that compliance with the standard is to be achieved through the use of control technology, it is incumbent on OSHA to specify its view of the role of biological and environmental monitoring as carried out by the employer. The purpose of environmental monitoring is threefold. First, it enables the employer to determine if he is in compliance with the PEL and, if not, to determine the sources of emission which will enable him to achieve compliance through implementation of engineering controls. Second, monitoring during implementation demonstrates progress being achieved, and third, it enables the employer to determine on a continuing basis the adequacy of the controls.

In general, biological monitoring in the context of a medical surveillance program is not designed to be the method for controlling the occupational environment as a whole. It is intended to focus on the health status of the individual worker rather than an employee population and is therefore intended to act on individual problems associated with exposure to lead. While the PEL is intended to protect the entire working population, there will always be some individual variation which needs to be followed through a medical surveillance program. For example, in the short term a particular worker may develop a higher blood lead than predicted by the standard because of nonoccupational exposure, differences in work habits, and other individual differences. While the number of persons with such blood lead differences is small and represents short-term problems, they must nonetheless be addressed and corrected to avoid their becoming chronic, long-term problems.

Implementation of engineering controls represents the long-term solution to occupational lead exposure in the workplace for all employees and medical surveillance/biological monitoring represents short-term solutions to acute problems of individual employees. Biological monitoring in OSHA's view is not a technique that is useful as the primary means of determining compliance with a standard. Biological monitoring is not a measure of the control of lead exposure, rather it only provides information on the results of exposure and is therefore after the fact. The only satisfactory means of determining compliance with the standard is through the use of environmental sampling which directly measures adequacy of control technology. The basic problem with the LIA proposal is that biological monitoring is not feasible as a primary means of determining compliance with a standard which requires implementation of engineering controls.

Due to individual variation both in the short and long term the blood lead level in an individual worker would not necessarily be indicative of the environmental controls in a particular plant. Based upon analysis of the adverse effects associated with exposure to lead, OSHA believes PbB levels should be kept below 40/μg/100 g. However, the likelihood of achieving this level through engineering controls is limited by feasibility constraints. OSHA does believe that controls can be implemented which will lower the PbB levels of more than 70 percent of all lead exposed workers to below 40/μg/100 g. In fact, many industries will be able to achieve an even higher percentage of workers below 40/μg/100 g.

Based upon the CPA application of the Bernard Model, OSHA has calculated that when compliance with the PEL is achieved, 0.5 percent of lead exposed employees will have a PbB greater than 60μg/100 g, 5 percent will be between 50 and 60μg/1m^3 and 23.3 percent will be between 40 and 50/μg/100 g for a total of 29.3 percent. The mean PbB for the entire population will be approximately 35 μg/100 g. Assuming compliance with 100μg/m^3 the percentages would be: greater than 60, 2.6; 50-60, 14.4; and 40-50, 33.7 for a total of 50.7 percent. OSHA will require that blood leads be kept below 60μg/100 g or the worker will be removed from that job to one in which the air lead level is below 30μg/m^3 (see MRP section). When full compliance with 50μg/m^3 is achieved, the number of employees whose PbB is above 60μg/100 g will be virtually eliminated. However, there will be a sizable number of workers above 40 at 50μg/m^3 (29.3 percent) and there would be at 100μg/m^3 (50.7 percent). In other words, at any air lead level there will be a distribution of PbB levels within a given worker population, not a discrete PbB level. Although OSHA would prefer to keep all PbB levels below 40μg/100 g the agency is limited by feasibility constraints; however, OSHA has concluded that full use of control technology would yield the distribution cited between 40 and 60μg/100 g. Therefore there is no discrete blood lead level which could serve as the PEL for an entire working population.

Given the distribution of PbB levels at compliance due to individual variation, it would be almost impossible to obtain information as to the plant environment in general and the adequacy of controls in particular based on individual PbB levels obtained by a compliance officer. The evaluation would be aided by monitoring results obtained by the company but even then the usefulness of the results would be questionable. This would be particularly true in smaller plants, for as the number of employees diminishes, the statistical base is narrowed, thus reducing the meaningfulness of the monitoring results. On the other hand, a comprehensive industrial hygiene survey performed by a competent, professional OSHA industrial hygienist will more accurately ascertain the levels of compliance and the sources of exposure.

The population distribution of blood lead levels at any one time reflects not only present lead exposure but also exposure which has been experienced over the entire period of the work population's history. The period from the effective date of the standard until the population reaches its ultimate exposure equilibrium is defined as the short run time frame. The period after the population reaches its ultimate exposure equilibrium is defined as the long run time frame. OSHA predicts that eventually 0.5 percent of the lead exposed employees will have a PbB level greater than 60 μg/100 g.

Ultimately, all workers whose PbB levels rise above 60 μg/100 g will be removed under the medical removal protection provisions of this standard. At no time should any worker have a PbB greater than 60 μg/100 g. PbB levels will range from very low numbers to the fifties, and therefore the concept of biological monitoring for compliance purposes is meaningless, since the preferred value of 40 μg/100 g cannot be achieved because of feasibility constraints and because OSHA expects that even with the optimum controls 30 percent of all workers will have PbB between 40 and 60 μg/100 g. There is no precise PbB which reflect implementation of controls. The percentage of workers whose PbB levels are between 40 and 60 μg/100 g will vary depending upon the air lead level, but OSHA finds it is not feasible to use variation in population distributions as the mechanism for determining compliance through biological monitoring at individual firms. OSHA will therefore rely on an air lead level permissible exposure limit as the primary means of determining compliance with the standard.

Biological monitoring is also not a feasible method for determining compliance because it does not take job tenure into consideration, that is, it assumes an equilibrium situation. For example a new population of workers who have had no prior exposure to lead who begin work in an environment where there is exposure to lead will not be at equilibrium. Their blood leads will rise until equilibrium is reached. However, prior to equilibrium their blood leads would have been lower and high exposure conditions would not have been identified if the OSHA compliance officer had relied on biological monitoring. For example, if a worker with no prior exposure had a lead intake of 0.2112 mg/day (184 μg/m^3) his blood lead level (using assumption C—Bernard model) would rise as follows: 6 months—49 μg/100 g; 1 year—55 μg/100 g; 2 years—60 μg/100 g; and 4 years—68μg/100 g. If OSHA had established 60 μg/100 g as a compliance level (assuming no MRP removal) this particular worker would not exceed it for 2 years although his exposure would have been excessive from his first day of employment. Biological monitoring for compliance would be ineffective in this example whereas an industrial hygienist could have pinpointed the problem on the first day of this worker's employment.

In general, blood leads do not reflect the body burden of lead. Blood leads are rather a measure of absorption. Blood leads do not provide a good measurement of body burden. Under questioning by Dr. Bridbord, Dr. Hammond agreed:

> It is true that the longer a person is exposed, the more lead is stored in the body for any given blood lead.

In other words, he said:

> A given blood lead level, maintained for 6 months, will give you a considerable lesser body burden than the same blood lead maintained 6 years or 20 years. (Tr. 292.)

Citing the work of Dr. Chisholm, Dr. Bridbord added:

> The blood lead would underestimate the amount of lead in the body, particularly at high blood lead levels (Tr. 292).

A paper entitled "A More Rationale Basis for Air Sampling Programs" by S. A. Roach in the American Industrial Hygiene Association Journal (January-February 1966) acknowledges the need to know body burdens of substances that are retained in the body in order to know more about the effect on the individual. While one might ordinarily think that a biological determination would provide a better clue as to body burden, this paper states otherwise:

> Although the body burden by itself is not necessarily an adequate indication of whether a worker is affected by a contaminant, it is better than air concentration. This *does not mean* that the analysis of body excretions or blood is preferable to air analysis. Even with those few substances where biological samples can be useful indictors of absorption of a contaminent, it is arguable that *an intelligent appraisal of accurate air sampling results might be a better guide to body burden.* (Emphasis added.)

Biological monitoring in the above example would have detected the worker's overexposure, after 2 years that is, 2 years after the fact. OSHA believes this is morally, practically, and scientifically indefensible. A worker should not be required to wait until the blood lead level becomes excessive before action is taken. This point was stressed during the hearings by numerous participants, Lloyd (Tr. 4700-4703), Wolfe, "Biological monitoring provides evidence of injury already done to the worker" (Tr. 4168), First (Tr. 2312) and Stewart:

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I would not put my primary emphasis on biological monitoring because of the simple reason that that is after the fact (Tr. 2608).

If by air monitoring we can determine that we have a fault within the system, we may very well be able to correct the system long before there is a response by the body (Tr. 2610).

OSHA should not adopt a compliance strategy which might cause a worker's loss of employment. In the example cited above it is entirely possible that this worker might be laid off and a new, unexposed worker hired as the former worker's blood lead exceeded 60 μg/100 g in an effort by the employer to avoid a citation and to enable him to avoid engineering controls. None of this would be possible through the use of an air standard. In OSHA's view biological monitoring for compliance purposes is more easily used to circumvent the requirements of the standard. OSHA is not suggesting that a majority of employers would follow such a course but even if these problems arose in a very few cases they could be avoided by use of an air lead standard. OSHA should not adopt a compliance mechanism which might be circumvented, if only by a very few employers, when there is a better alternative available. Thus, OSHA reaffirms its decision to use air lead monitoring as the basis for compliance given the infeasibility of and the moral and practical weaknesses of a biological standard.

When considering the issue of an air lead standard versus a biological lead standard, OSHA has given consideration to the testimony of the participating unions since a high percentage of employee participation would be necessary for the success of such a invasive procedure as biological monitoring. Union representatives adamantly opposed the use of biological monitoring for compliance purposes. Dr. Lloyd testified as follows for the United Steelworkers of America (USWA):

The United Steelworkers of America takes the position that the only reasonable approach to the control of lead exposures is at the source, and the only measure of success in that regard is the extent to which environmental exposures are decreased. To suggest that the control of the lead hazard in a working environment should be assessed by measuring the intake of this poison by the worker is inconsistent with good industrial hygiene practices and is an invasion of the worker's person which should not be considered, except as an only choice approach (Ex. 154A).

Ms. Claudia Miller, representing the USWA, testified similarly:

I know of no one who would seriously argue that exclusive reliance should be placed on either air sampling data or blood lead measurements. Both have their usefulness and both should be employed.

Just as important, both have significant limitations and, therefore, disadvantages. Rather than tiresomely arguing the relative merits of each, the participants at these hearings should try to arrive at some agreement as to exactly what it is that each of these measures tells us and what limitations each has.

Then, based upon this knowledge, employ that information from both air and biological measurements to trigger actions appropriate to each.

The most important reason why we expect OSHA to adopt an air level as its primary standard is that the very idea of workers forever having needles stuck in their arms in order to determine whether the company is complying with an OSHA standard sickens us.

It has been argued that blood leads should be the primary compliance tool because any air lead standard would merely be based on a poor correlation with blood leads. If the company had taken an air sample on a worker for every time they stuck a needle in his arm, we might have more data on which to base an air standard. (Tr. 4715-16.)

These views were supported by testimony from the AFL-CIO (Ex. 149), United Auto Workers (UAW) (Tr. 5040, 5291, 5298-9), the Oil, Chemical and Atomic Workers (OCAW) (Tr. 1032-3), including Drs. Epstein (Tr. 1052-4) and Johnson (Tr. 1094) who testified for OCAW, and the International Brotherhood of Teamsters (Tr. 2055-6, 2090-1). Dr. Epstein testified:

As the OSHA standard proposes, permissible exposure must be primarily based on environmental monitoring. Biological monitoring, including blood lead determinations and the sensitive and practical indices of toxic responses such as the zinc protoporphyrin test is a useful ancillary for the determination of biological responses to occupational exposures. The role for biological monitoring reflects the fact that current environmental monitoring doesn't discriminate between the effects of chemical composition and particle size on lead availability. Environmental monitoring also doesn't reflect possible incremental exposures from ingestion in the workplace. On the other hand, blood lead levels reflect only relatively recent exposures and take appreciable time to equilibrate following such exposure. Even for this purpose, the validity and sensitivity of blood lead determinations has been recently challenged. Blood lead levels also reflect incremental nonexposure—nonoccupational exposures.

Additionally, serious questions have been recently raised as to the reliability of blood lead measurements in the absence of careful and meticulous quality control procedures.

The poor performance of commercial laboratories with regard to blood lead testing is now a matter of record. Contrastingly, the recently developed ZPP test is highly sensitive, provides immediate results, and can be performed by relatively unskilled personnel and furthermore is highly economic and practical.

Finally, blood lead levels underestimate exposure and lead body burdens at higher exposure levels particularly above 50 micrograms per cubic meter, at which level the air blood relationship curve begins to flatten out. Furthermore, as demonstrated in children, the total body burden of lead increases exponentially with arithmetic increases in blood lead levels, particularly above approximately 40 micrograms per 100 grams as stated by Chisholm in his 1976 publication, and this figure of 40 micrograms per 100 grams corresponds to an air lead level of about 50 micrograms per cubic meter. Thus, a fourfold increase in blood lead was associated with a tenfold or greater increase in chelatable lead. In other words, blood lead is a very very inaccurate and insensitive indication of body lead determinations—of body burden determinations.

Mr. George Becker of USWA in his testimony quoted from a decision by the U.S. Court of Appeals, Eighth Circuit, opinion which rejected an appeal by ASARCO and which discussed the issue of biological versus air monitoring. (Ex. 168.) We quote from the opinion:

The Petitioner's second major contention is that it has instituted many protective measures that prevent the likelihood of serious physical harm. We agree with the Administrative Law Judge that Petitioner's program has not reduced the likelihood of serious physical harm.

Most important in the Petitioner's view is a reliance on a biological monitoring program, which involves the testing of each employee's blood and urine to determine the concentration of lead. Dr. Nelson, the Petitioner's Director of Environmental Sciences, stated that this testing is "a far more effective way of securing the safety of employees." Dr. Kehoe prefers biological monitoring, since air measurement "is not a standard which we regard as crucial in relation to the individual." For as yet unexplained reasons, differing individuals can be exposed to higher amounts of lead without becoming ill. The candid Dr. Kehoe, however, had this exchange with the Administrative Law Judge:

(Administrative Law Judge): "Which procedure, Doctor, in your opinion would most greatly detect a change in the lead environment of a workplace, biological sampling or air sampling?"

(Dr. Kehoe): "Either one. I don't know that there is too much to choose from in this. But what I, as a physician am concerned with is John Doe."

Although a carefully conducted biological monitoring system might prevent the likelihood of lead poisoning harm to employees, we think it was more than reasonable for the Secretary to rely on the effective and efficient air sampling method. In addition, the disadvantages of the biological sampling system are demonstrated in this case. About 10 percent of employees tested from 1970-71 were found to have unsafe levels of lead concentration in their blood and urine, yet generally these employees were not tested frequently enough, according to petitioner's expert testimony, to ascertain whether they should be changed to another working area in the plant. In fact, the plant manager had no direct involvement with the monitoring plan. The plant's physician did not "follow up" with what happened to individual employees who had high concentrations of lead in their blood and urine. Further, disruption of employees' working habits and the plant operation would result from transferring employees to new positions within the plant where exposure would be lessened. Most significantly, the record does not indicate that any employee was transferred due to high levels of lead concentration discovered by biological monitoring. The biological monitoring did not eliminate or even reduce the hazard; it merely disclosed it. Although testing of the blood and urine is the most important test for each individual, the use of air sampling tests is the most efficient and practical way for the Secretary to check for a hazard likely to cause death or serious physical harm to workers as a group. We think it also the most efficient manner for the employer to check the existence of a hazard. We do not intend to minimize the importance of the biological monitoring program; obviously, medical examinations of the individual are the most signficant manner of assuring safety of the individual worker, provided that remedial steps are taken at the first indication of a hazardous concentration of lead accumulating in the blood and urine of a worker. The evidence showed that each human responds differently to exposure to lead. Yet we think that the safety of the workers and the practicality of detecting unsafe levels of airborne lead concentrations are best served by the air sampling method. Workers should not be subjected to hazardous concentrations of airborne lead; biological monitoring should complement an industrial hygiene program for clean or at least safe air, but is not a substitute for a healthful working environment.

LIA responded to this contention in their post-hearing comments (Ex. 335):

The petitioner in that case, when charged with exposing its employees to hazardous airborne concentrations of lead, argued that air sampling was inferior to the company's periodic biological testing program. Both the Court and the administrative law judge disagree with this argument, but they did so primarily because the particular health program under challenge had "not reduced the likelihood of serious physical harm." 501 F. 2d at 514. As the Court observed, • • • the plant manager had no direct involvement with the monitoring plan. The plant's physician did not "follow up" with what happened to individual employees who had high concentrations of lead in their blood and urine. • • • Most significantly, the record does not indicate that any employee was transferred due to high levels of lead concentration discovered by biological monitoring. Id. at 514-15.

By comparison, the biological monitoring programs contained in both the Proposed Standard and in the Association's alternate proposal would rectify these shortcomings, since both would ensure that the appropriate "follow up" did occur and that the hazard to the employee was not only detected but also prevented and eliminated.

OSHA rejects this argument by LIA since it is speculative and contrary to existing evidence and experience. OSHA (and presumably in this case the Eighth Circuit) must base its decision not on what is asserted to be possible in the future but rather on the history of the industry's effort to achieve compliance. The evidence demonstrates a poor record of compliance which LIA itself acknowledges.

Since few of the major segments of the lead industry appear to be in compliance with the existing standard of 200 μg/m³, • • • (Ex. 335)

Given the fact that the act has been in effect for 7 years this record of compliance raises serious doubts about the contention that OSHA should rely on the asserted success of a future biological monitoring program.

Mr. Leonard Woodcock, then President of the UAW, testified during the hearings and stated the position of his union:

One. The standard should rely primarily on airborne lead measurements to enforce lead exposure control. The UAW supports the proposed standard requirements that both environmental and biological measurements should be made to evaluate exposure in lead operations but that environmental exposure should be the basis for enforcement. The standard should not be enforced by blood lead criterion. The practice of using the worker as a monitoring device means not only polluting the work environment up to a limit, it means polluting the worker's themselves.

Lead should be treated as other occupational health hazards with adverse health effects to exposure. I directly relate it to the chemicals concentration in the air. In the case of lead, the blood lead measurement has been a useful tool in evaluation. However, the environmental index must not be discarded because in this case, a biological index is useful. (Tr. 5040)

Even if OSHA agreed with the LIA proposal for reliance on biological monitoring, OSHA would hesitate to force this technique on employees who so vehemently rejected its proposal during the hearings, especially given the invasive nature of the technique. OSHA finds impractical a compliance technique which workers consider an invasion of privacy especially when another method exists which OSHA has concluded is a superior measure of a plant environment's condition.

There is no guarantee that lead exposed employees will participate willingly in biological monitoring for compliance purposes. Many workers could consider this an invasion of privacy on religious, philosophical, or other grounds and refuse to participate. There are numerous objections to putting the burden on the worker. NIOSH addressed this in testimony:

In other words, you are testing to find out whether a company is in compliance, and putting the burden of that test on the worker. I might add that that test is not without risk.

I think it goes against industrial hygiene practice, been established over many many years.

Dr. Bridbord. I think it would also present difficulties in the case where a given worker for religious or other reasons might not want to have a blood sample taken, then that whole system begins to break down, where at least in the air monitoring side, you have an opportunity to monitor frequently and catch problems as they might arise there.

Mr. Wagner. It also brings up the issue of requiring the worker to take a blood test for OSHA's purposes. Suppose the person refuses to take the blood test? I think it would be pretty flimsy ground to build a compliance program around the voluntary action of the workers to submit themselves to blood tests. (Tr. 1454-5.)

In addition to these objections, biological monitoring for compliance purposes could lead to intimidation and coercion. A worker could refuse a PbB test by OSHA for fear of his job, especially those workers of long tenure, or for fear of the impact on a marginal firm. There are protective legal mechanisms available to employees in these circumstances but OSHA is hesitant to adopt a strategy which may be opposed by the very persons it is designed to protect and who are crucial to its implementation. Under the Act the burden for a safe and heathful workplace is on the employer, not the employee. OSHA believes a strategy designed to determine adequacy of engineering controls is more in keeping with the purposes of the Act.

LIA argues that "Employee resistance (to biological monitoring) is almost nonexistent, apparently for the obvious reason that the workers know that the best way to stay healthy is to have regular check-ups." (Tr. 3081-82; 6464-651 exhibit 248 at 4.) OSHA believes this statement is entirely without medical foundation and believes that the best way "to stay healthy" is to have exposure to airborne lead minimized. The statement implies an after-the-fact approach which is especially dangerous when one considers the health effects associated with exposure to lead. A "check-up" is an inadequate means of ascertaining a disease process since often the disease is either silent until end stages are reached or only detected by very sophisticated techniques, e.g., behavioral testing and MNCV for neurological disease, GFR for urinary disease, or sperm evaluation. As OSHA has repeatedly stated, the object of this standard cannot be to prevent the most onerous aspects of disease, rather, it is the intent of the agency to prevent diseases from lead at the earliest point feasible. Reduced exposure through implementation of engineering controls form the only satisfactory means of control. Biological monitoring and physical exams are most useful in detecting particular acute problems, not in preventing chronic disease. While PbB levels are important in a properly managed biological monitoring program they are largely remedial and must be understood as such.

In addition, the Lead Industries Association argued that there were other reasons why a biological rather than an environmental standard should be used for enforcement purposes:

(1) OSHA's proposal rests on the assumption that particular blood-lead levels can be correlated with and predicted from particu-

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lar air-lead concentrations. The evidence presented at the hearing establishes conclusively that this assumption is incorrect and that continued use of a single air-lead number for enforcement purposes will not accomplish the intended goal of protecting the individual worker's health.

This point has been addressed in the section on air to blood relationships and will not be addressed here. The fundamental problem appears to be LIA's misunderstanding of the value of the cross sectional studies in the record, the need to address populations rather than seek an individual air to blood correlation and the need to consider confounding variables of job tenure, particle size and others rather than assuming there is not an air to blood relationship.

A brief discussion of the existing studies on the air to blood correlation is relevant here. As summarizations of available data on different populations, the existing studies are reasonably valid. It is one thing to say, however, that a linear relationship was observed between the blood lead levels and air lead exposure at a given level of statistical significance, for a given sample of workers, and another thing entirely to use the observed relationship to predict the effect of lowering air lead exposure on even that same sample of workers, let alone to generalize to other samples. Generally, one must be rather conservative about using cross sectional data, obtained at a given point in time, to predict effects over time. Rarely can it be predicted for certain, that in this kind of situation, all other factors will be held constant.

Recognizing these limitations by no means should be taken to imply that the data are useless or that no reliable relationship exists between long-term air lead exposures and blood lead levels. To the extent that the likely systematic errors in the short-term cross sectional studies are understood (e.g., underprediction of blood lead-air lead slope coefficient and overprediction of the intercept at zero occupational exposure), the observed regressions can be used to bound estimates of the true long-term relationships of blood lead to occupational air lead exposure. To the extent that the sources of uncontrolled variation within and between studies are understood, estimates of the likely effects of such factors can be explicitly incorporated into a more comprehensive description of the general system.

Because of the difficulties and deficiences in observational studies of air lead-blood lead relationships, it is useful to supplement the empirical air lead-blood lead correlations with relationships derived from physiological models of lead transport in the body. It is concluded that the weight of the evidence demonstrates that the CPA application of the Bernard model is likely to be an accurate tool for assessing the blood lead level response to alternative air lead exposure.

OSHA has concluded that not only is there a definite air to blood relationship but that relationship is most closely approximated by application of the Bernard model with its inclusion of job tenure and particle size.

LIA's second argument was stated:

> Air sampling is subject to enormous errors, does not measure total exposure and absorption, and cannot reliably be used to indicate specific sources of emissions. Although environmental monitoring serves an important function in helping to evaluate the effectiveness of and need for engineering controls, it is neither the most effective nor the most direct indicator of employee risk. Biological monitoring, by comparison, both identifies and makes it possible to prevent overexposure from all sources, whether occupational or nonoccupational; it detects potential hazards which may exist even when air-lead levels are extremely low; it provides an enforcement mechanism which would significantly reduce OSHA's administrative burdens and would allow OSHA to enforce the standard more easily.

During the hearings there was considerable testimony which addressed problems associated with measurement of both air and blood leads. OSHA agrees that there are problems associated with any measurement which could affect both the accuracy and the precision of the determination, but does not believe that the drawbacks in both should be the basis for choosing one technique over the other. Since all parties agreed that both techniques were useful and should be employed, it should be obvious that both will be used but in different contexts. As stated earlier in this section environmental and biological monitoring are used for different reasons to achieve different ends and must be viewed in that context. While there are obvious errors associated with an industrial hygiene survey (environmental monitoring) it is the only means available to evaluate a plant environment. The industrial hygiene survey will determine the sources of emission and efficacy of existing controls, the progress made during implementation of new controls, and finally the success of full implementation. From then on environmental monitoring will locate problems as they arise. In order to completely evaluate the control technology in particular and the plant environment in general a comprehensive industrial hygiene survey must be carried out.

Biological monitoring will not accomplish this task. Since OSHA places implementation of engineering controls as the highest priority in the control of toxic substances, it must choose environmental monitoring as its method of determining compliance with the standard to assure a direct relationship between the knowledge required (engineering controls) and the measurement (environmental monitoring-industrial hygiene). Use of a PbB level as a measure to determine compliance would be indirect and would not be useful since there will be significant variation in blood lead levels for any particular individual.

OSHA has reviewed the Summary Report on Proficiency Testing of blood lead for 1976, and has found the results disturbing. The agency agrees with NIOSH that:

> Perhaps the most frequently employed measure of lead absorption into the body is the quantity of lead in the blood. Most clinical measures of lead toxicity have been related to blood lead measurements. One of the greatest difficulties with the measurement of blood leads is the high level of skill required in analytical techniques and the great care demanded to avoid the risk of sample contamination by lead or of lead loss. The proficiency record of laboratories in blood lead determinations has at times been less than adequate as shown by a recently completed Center for Disease Control (CDC) study of commercial clinical laboratories. It was disturbing to find that only one-third of all commercial laboratories in this study performed acceptably * * *. A copy of the commercial laboratory proficiency testing study is being submitted for the hearing record. The poor record of commercial laboratories on blood lead testing is but one of the reasons why NIOSH opposes setting an occupational led standard based solely upon blood lead levels. (Ex. 84, pp. 7.)

In addition other witnesses expressed concern with laboratory accuracy. (Tr. 1647, 1675, Ex. 335, page 5, Ex. 452, p. 52, 61, Tr. 7587-92.) These concerns have led OSHA to address this issue in the biological monitoring section of medical surveillance, and the agency assumes the additional requirements will suffice to improve the record of laboratories. Until such time as the evidences of accuracy demonstrates otherwise, OSHA cannot base its PEL on a biological indicator.

OSHA recognizes that a professional, thorough industrial hygiene survey is required to adequately evaluate the plant environment. It has therefore developed sophisticated training for its compliance officers in the evaluation of a plant environment and requires each compliance officer to carry out extensive observation of the workplace (chapter 1, Industrial Hygiene Field Operations Manual). This is the proper method required to address shortcomings in environmental sampling rather than adopting a method which is not adequate to provide the information necessary to determine compliance.

Biological monitoring will enable the employer who has come into compliance with the PEL, housekeeping and personal hygiene requirements of the

standard to identify workers with improper work practices since these workers may develop elevated PbB levels from ingestion. This is precisely the value of biological monitoring especially when all the provisions of the standard are complied with including the training and education aspects. OSHA recognizes the need to avoid lead exposure from eating and smoking in exposed areas, the biting of fingernails, carelessness in handling lead materials or from other inadequate work practices although there is debate on the significance of this means of absorption. (Tr. 352, 3104, 3260, 6475.) The agency will not attempt to address this debate in detail since OSHA believes that debate is moot. Control of airborne lead with good housekeeping, change of clothes, showers, and proper hygiene in general, along with education and training of workers, should for all practical purposes virtually eliminate this method of entry.

The importance of control of airborne lead cannot be underestimated since the potential for ingestion of lead arises from airborne lead having settled onto surfaces. One could argue that essentially all lead exposure arises from airborne lead except where the worker comes in direct contact with it at his work station. Nonetheless, for the few workers who will still have a problem, biological monitoring is especially suited for detection of elevated PbB levels. These points are also relevant to the individual whose PbB level is elevated from off-the-job activities and nonoccupational exposure.

There is a practical problem associated with compliance by biological monitoring which further renders it questionable as a compliance strategy. LIA argues that OSHA would not need to conduct biological monitoring but could rely on employer's monitoring records to determine compliance. Unfortunately, OSHA cannot rely on the good faith efforts of employers in all cases and unions would be unlikely to accept this as a basis for citations. (Ex. 343; p. 61.) This would then require OSHA to conduct biological monitoring to ascertain compliance with the standard. The problem is clearly surmountable but it would create a hardship for an agency with no trained medical personnel.

During the hearings there was support for an air lead standard from numerous witnesses. (Tr. 655, 2312, 2804, 2972-73, 4127, 5738-9, 5980-2.) NIOSH wholly supported establishing a PEL based upon air lead levels:

> Mr. Beliczky. Mr. Baier, in the absence of a standard on worker exposure levels and sole reliance on blood lead determination, do you feel that such an approach would encourage industry to initiate, on a voluntary basis, engineered controls to reduce exposure and thereby decrease absorption?
>
> Mr. Baier. It is difficult to say. Certainly some companies probably would, but I don't know where they would start, just based on a blood lead. I mean, if that was the sole source of information, as we pointed out before, it simply tells that you have been overexposed. You don't know the source of exposure. I don't know what the incentive would be.
>
> Mr. Beliczky. Does anyone else care to respond to that?
>
> Dr. Bridbord. Yeah, my personal feeling would be that that would tend to be a disincentive toward the development of engineering controls and it would tend to try to put reliance more on personal protective devices and other administrative controls to keep a lid on the blood leads which we feel you know, are not as assured and not as good as having control of lead at the source. I think it would decrease the emphasis on the engineering controls. I am sure that responsible companies would still develop good engineering controls, but I think in a general way. It would be a disincentive.
>
> Mr. Beliczky. Do you feel that a promulgated standard, based solely on blood lead levels, would encourage the indiscriminate use of respirators?
>
> Dr. Bridbord. I think that it has that potential. Yes sir. (TR. 1457-8.)

OSHA considers the point of Mr. Beliczky and Dr. Bridbord extremely important; that is, how a biological standard would be enforced. Given the definition of feasible controls in the LIA proposal and the history of lack of compliance by the industry, a particular firm might choose to keep PbB levels low through use of respirators rather than through implementation of controls. OSHA doubts the efficiency of such an approach given the shortcomings of respirators but such an approach would nonetheless be confounding to an effective enforcement program based on biological monitoring. The LIA proposal appears to suggest that some forms of personal protective equipment may be part of "feasible" controls when they suggest as a guideline "the availability and relative effectiveness of other means of protecting the workers." (Ex. 335.)

OSHA is in complete agreement with Dr. M. Furst who has concluded:

> In my opinion, biological tests for lead absorption should be employed only for the differential diagnosis of illness and not as a means of routine evaluation of an engineering control program. This is because biological manifestations of poor lead-in-air control occur late in time, cannot be correlated with specific events of malfunctioning devices, and are difficult to interpret as a result of the great variability of human response to lead inhalation, its metabolism, and its ultimate elimination or storage. By contrast, personal sampling gives an immediate and very specific assessment of the efficacy of control practices and, when combined with skillfully placed area samplers, can differentiate between personnel and material failures. This makes it possible to take prompt remedial measures and to prevent the occurrence of high concentrations of lead in blood or urine.

Reliance on routine air sampling represents an important input to a conscientious lead control program, because personal samples measure worker exposure directly and precisely and give a quantitative result sufficiently close in time to the events that took place when the samples were obtained to, first, avoid continuing an overexposure (as would be the case where one is using biological monitoring that requires weeks of overexposure before readings reach a level that alerts management to the existence of trouble spots) and, second, identify the offending operations of malfunctioning controls, be they of a human or a material nature.

Personal sampling equipment has improved enormously in reliability and accuracy over the past 6 years and has currently reached such a level of perfection as to generate great confidence in its use on the part of industrial hygienists. The currently recommended practice of selecting the most highly exposed workers for sampling helps to assure that maximum airborne lead levels are being monitored and the NIOSH-recommended statistical interpretation of sampling results provides an important quality control standard for conducting such surveys.

I have laid special stress on: (a) The use of engineering controls in preference to reliance on respirators and personnel rotation and (b) on air sampling in preference to biological monitoring because I believe they are feasible controls of airborne concentrations. Of equal importance is an informed, well trained, and responsible work force because total reliance on machinery, alone, will prove to be inadequate. This, too, reflects well established industrial hygiene experience in every industry. I believe a failure to recognize this important interrelationship between good work practices and good control engineering accounts for the astonishingly high estimates that have been submitted as to the cost of compliance with a 100 $\mu g/m^3$ air standard (Ex. 270, p. 21-23).

For the reasons cited above, OSHA will place primary reliance on its PEL of 50 $\mu g/m^3$ as determined by environmental monitoring.

b. *100 $\mu g/m^3$—The Proposal.* In its proposal OSHA stated its intent as follows:

> Our present judgment is that in order to provide the appropriate margin of safety, as well as to provide significant protection against the effects, clinical or subclinical, and the mild symptoms which may occur at blood lead level below 80 $\mu g/100$ g, it is necessary to set an airborne level which will limit blood lead level to 60 $\mu g/100$ g. A maximum blood lead level of 60 $\mu g/100$ g corresponds to a mean blood lead level of about 40 $\mu g/100$ g, will result in a range in workers of approximately 20 $\mu g/100$ g at the lower limits to 60 $\mu g/100$ g at the upper limits. Having determined the maximum blood lead level which the protection of employees and prudence permits, and the corresponding mean blood lead level, it is necessary to correlate these levels to the extent possible with air lead levels in order to establish the permissible exposure limit.
>
> As noted, the proposal would establish a permissible exposure limit for airborne concentrations of lead at 100 $\mu g/m^3$ as determined on an 8-hour time-weighted average based on a 40-hour workweek. It would not

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establish as a requirement of the standard maximum employee blood lead levels with which the employer would have to comply, because of the many individual variables involved over which the employer has little direct control, such as poor personal hygiene of employees and off-the-job exposures. However, the correlation between blood lead levels and air lead levels have been used in arriving at the proposed air lead exposure limit because the data indicate that if air lead levels of 100 $\mu g/m^3$ are maintained, the maximum upper blood lead levels of workers should remain below 60 $\mu g/100$ g. (Ex. 2, p. 45936.)

These conclusions were based essentially on two studies, one by Williams and the other by Sakurai et al. OSHA based the proposed PEL on these works even though the proposal noted certain limitations to each study:

Although these data are the best available evidence, they do not precisely define the air lead level within the 50–150 $\mu g/m^3$ range which corresponds to a mean blood lead level of 40 $\mu g/100$ g and an upper blood lead level of 60 $\mu g/100$ g. In these circumstances, we believe it is appropriate to propose for the permissible exposure limit the air lead concentration that falls in the middle of this range, that is, 100 $\mu g/m^3$ as the air lead level which is likely to maintain the upper range of workers' blood lead levels below 60 $\mu g/100$ g. (Ex. 2, pp. 45938–39.)

OSHA has discussed the air to blood relationships in the record in that section and will not repeat those arguments but rather will use the conclusions from the section as it relates to incremental benefits.

Based upon a thorough evaluation of the record OSHA has reached the following conclusions which form the basis for lowering the PEL from 100 $\mu g/m^3$ to 50 $\mu g/m^3$.

1. The health effects data indicate that to the extent feasible blood lead levels should be kept at or below 40 $\mu g/100$ g. This contrasts with the proposal which set 40 $\mu g/100$ g as a mean with 60 $\mu g/100$ g as a maximum. OSHA recognizes that the lack of feasibility data in the record inhibit complete achievement of the goal of 40 $\mu g/100$ g as a maximum but nevertheless it forms an important foundation for OSHA's decision to reduce the PEL to 50 $\mu g/m^3$. In its final standard OSHA has classified blood lead levels as follows:

40–49 $\mu g/100$ g—minimally elevated.
50–59 $\mu g/100$ g—elevated.
>60 $\mu g/100$ g—unacceptable.

2. The Bernard model predicts a mean blood level at 50 $\mu g/m^3$ of 34.6 $\mu g/100$ g assuming compliance with the standard. Similarly, compliance with 100 $\mu g/m^3$ yields a mean of 40.2 $\mu g/100$ g. The distribution of blood lead levels when compliance with 50 $\mu g/m^3$ is achieved may be compared to the distribution at 100 $\mu g/m^3$.

Blood lead level	Percent, workers	
	50 $\mu g/m^3$	100 $\mu g/m^3$
>60 $\mu g/100$ g	0.5	2.6
50 to 60 $\mu g/100$ g	5.5	14.4
40 to 50 $\mu g/100$ g	23.3	33.7
>40 $\mu g/100$ g (total)	29.3	50.7

It is apparent that there is a substantial reduction in the number of workers whose blood lead levels exceed 40 $\mu g/100$ g and whose PbB levels are in the 50–60 $\mu g/100$ g range when the air lead level is reduced from 100 $\mu g/m^3$ to 50 $\mu g/m^3$.

3. The incremental benefits of a 50 $\mu g/m^3$, 100 $\mu g/m^3$ and 200 $\mu g/m^3$ were described in the Benefits Section. We shall discuss the results, first assuming rigorous compliance and second assuming minimal compliance. Both situations would be found to exist in the workplace such that the results in terms of benefits would be mixed, but for these purposes OSHA will address them separately.

For workers whose PbB levels were initially greater than 60 $\mu g/100$ g there will be a substantial reduction from 32,777 to 498 with compliance at 50 $\mu g/m^3$. For 100 $\mu g/m^3$ the benefits are also substantial, 32,777 to 2,562 with the incremental benefit for 50 over 100 being 2,064. There are 22,887 workers whose PbB are between 50 and 60 $\mu g/100$ g. Compliance with 50 $\mu g/m^3$ would reduce that number by 17,514 whereas at 100 $\mu g/m^3$ the number would be 8,846 with an incremental benefit of 8,668 for 50 versus 100 $\mu g/m^3$. Between 40 and 50 $\mu g/100$ g there are 23,898 and compliance with 50 and 100 $\mu g/m^3$ result in a decrease at 50 $\mu g/m^3$ of 10,141 and an increase at 100 $\mu g/m^3$ of 8,972 with a benefit of 50 versus 100 $\mu g/m^3$ of 10,141. Lastly, there are 79,569 workers whose PbB levels are above 40 $\mu g/100$ g. Compliance with 50 $\mu g/m^3$ and 100 $\mu g/m^3$ respectively would reduce the numbers to 28,599 and 49,475 with an incremental benefit of 20,876 for 50 $\mu g/m^3$ versus 100 $\mu g/m^3$.

Summary 50 $\mu g/m^3$ versus 100 $\mu g/m^3$.

INCREMENTAL BENEFIT (BY NUMBER OF WORKERS)

> 60 ug/100g	50-60 ug/100g	40-50 ug/100g	≥ 40 ug/100g
2,064	8,668	10,141	20,876

It is apparent from the calculations that the incremental benefits of 50 $\mu g/m^3$ over 100 $\mu g/m^3$ are substantial. Approximately 20,000 workers will have their PbB levels reduced below 40 $\mu g/100$ g and there are substantial benefits in all ranges.

In summary, OSHA finds 50 $\mu g/m^3$ more closely reflects the goals outlined in the proposal of a maximum of 60 $\mu g/100$ g and a mean of 40 $\mu g/100$ g blood lead, and within the limits of feasibility provides substantial incremental benefits toward achieving a maximum of 40 $\mu g/100$ g lead in blood. In light of those conclusions, OSHA has adopted a PEL of 50 $\mu g/m^3$ in its final standard.

c. *The LIA Second Alternative—200 $\mu g/m^3$.* The LIA has proposed that if OSHA decides to retain a single air lead exposure limit as opposed to a standard with primary reliance on biological monitoring, the limit should not be lower than 200 $\mu g/m^3$. They justify this level with the following reasons:

(1) Until OSHA knows whether the health of lead workers can be protected through compliance with the existing air-lead standard, there is no reason to modify that standard.

(2) Reducing air-lead levels from 200 $\mu g/m^3$ to 100 $\mu g/m^3$ would accomplish very little (if any) reduction even in average blood-lead levels, despite the enormous expense and despite the fact that the individual worker would still not be adequately protected.

(3) The proposed environmental exposure limit is economically and, in many instances, technically infeasible and, notwithstanding the minimal health gains, would materially alter and disrupt the competitive market structure which now exists in the major sectors of the lead industry. (Ex. 335.)

The first argument set forth by LIA is perplexing insofar as it argues for inactivity on OSHA's part pending compliance with an OSHA standard already in effect for 7 years. This argument appears to place the burden on OSHA to insure compliance with the standard when the Act clearly places the responsibility to provide safe and healthful working conditions on the employer. If OSHA were to adopt this view no standard could be promulgated pending either compliance with the current standard, clearly a disincentive for industry, and completion of prospective research studies, which could take up to 40 years given the need to study chronic disease development which is associated with a lifetime of work exposed to lead. This proposal places an undue burden on affected employees and is without merit considering the Act's requirement that standard be set "on the basis of the best available evidence." The proposed lead standard and this final standard are based on a careful, thorough evaluation of all information contained in the scientific literature and the rulemaking record. OSHA believes its conclusions are based on solid scientific evidence already in existence and finds no basis for a delay, particulary in light of the severity of the disease processes described herein and the large numbers of workers who continue to be unprotected.

The second point of the LIA argument has been addressed in the Air to Blood Relationship and Benefits sections and need not be repeated. The benefits of compliance with 50 $\mu g/m^3$ versus the current level of compliance with 200 $\mu g/m^3$ are substantial. The number of workers whose PbB levels are greater than 60 $\mu g/100$ g would be reduced from 32,777 to 498 and the number of workers whose PbB levels would be reduced below 40 $\mu g/100$ g is 50,970. To summarize the benefits:

INCREMENTAL BENEFITS

≥ 60 ug/100g	50-60 ug/100g	40-50 ug/100g	≥ 40 ug/100g
32,277	17,514	1,139	50,970

Even assuming OSHA delayed promulgation of its standard until compliance with 200 $\mu g/m^3$ was achieved the benefits would be substantial. Compliance with 200 $\mu g/m^3$ would yield the following blood lead distribution (in percent):

	200 $\mu g/m^3$	50 $\mu g/m^3$
50 $\mu g/100$ g	22.4	0.5
50–60 $\mu g/100$ g	32.6	5.5
40–50 $\mu g/100$ g	28.7	23.3
40 $\mu g/100$ g (total)	83.8	29.3

INCREMENTAL BENEFITS OF 200 $\mu G/M^3$ VS. 50 $\mu G/M^3$

Blood lead	≥ 60 ug/100g	50-60 ug/100g	40-50 ug/100g	≥ 40 ug/100g
Number of Workers Removed	13,957	22,575	3,961	45,511

It is important to note that the correct method of determining benefits is to compare a shift in the entire distribution of blood lead levels in the entire population. Comparison of the differences in average blood lead levels is irrelevant to an accurate understanding of the impact of the standard.

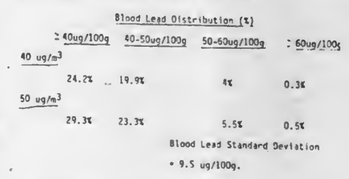
The section on feasibility addresses the issues of feasibility set forth in (3) here and will not be repeated. It is sufficient to say that OSHA has found the standard feasible both technologically and economically. For the reasons set forth OSHA concludes that there are substantial benefits to be achieved from promulgation of a 50 $\mu g/m^3$ standard and that the arguments set forth under this are alternative not compelling.

d. *40 $\mu g/m^3$.* The United Steelworkers of America stated their proposed alternative as follows:

Having concluded that the "safe" level of PbB in blood should be 30 $\mu g/100$ g or less but allowing for a range up to 50 $\mu g/100$ g with appropriate biological monitoring, a Permissible Exposure Level of lead in air must be chosen, consistent with the observed relationship between these two variables for the PbB range of 30-50 $\mu g/100$ g. Referring again to the table, it is seen that the midpoint of this range, 40 $\mu g/100$ g PbB, would be predicted by air lead levels somewhere between 40 and 60 $\mu g/m^3$.

The limited information available to guide us in choosing the "safe" air level leads us to exclude consideration of the values above 40 $\mu g/m^3$. First, the General Motors data reviewed by NIOSH indicates that almost 20 percent of workers exposed to air lead concentrations of less than 40 $\mu g/m^3$ will have PbB levels greater than 50 $\mu g/100$ g (Ex. 86D). Second, considering the range of values expected around mean PbB levels in this range, the upper limit would be greater than 50 $\mu g/100$ g (Ex. 96). Third, as suggested by Epstein, some allowance should be made for a margin of safety (Ex. 68). For these reasons, the United Steelworkers of America recommend that the Permissible Exposure Level be set as the Time Weighted Average of 40 $\mu g/m^3$ of air for a 40-hour work week. It is felt, based on the evidence at hand that enforcement of this level will assure that the blood lead levels for the great majority of workers exposed to lead will be maintained at a level less than or equal to 50 $\mu g/100$ g (Ex. 343 p.78–9).

OSHA has calculated the equilibrium distribution of blood lead levels assuming rigorous compliance with 40 $\mu g/m^3$ and have compared these results to a similar calculation for 50 $\mu g/m^3$. The results are as follows:



OSHA has detemined that the incremental benefit of 40 $\mu g/m^3$ versus 50 $\mu g/m^3$ is negligible. While OSHA agrees with the goal that blood lead levels should be kept below 50 $\mu g/100$ g where possible and in fact preferably below 40 $\mu g/100$ g the air lead level required to assure that all employees achieve latter value are clearly impractical in the foreseeable future. Based on these considerations OSHA believes

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the considerations which form the final standard are valid and will be sustained.

C. MEDICAL REMOVAL PROTECTION

As an aid to the readers of this Attachment concerning Medical Removal Protection, the following is a brief Table of Contents:

1. Temporary Removal of Workers at Risk of Sustaining Material Impairment.
2. Medical Removal Protection Benefits.
a. Introduction.
b. Medical Removal Protection as a Means of Effectuating the Medical Surveillance Sections of the Lead Standard.
—Roles played by medical surveillance in the standard.
—Summary of the need for MRP.
—Worker fears of adverse economic consequences from participation in medical surveillance programs.
—Existing industry practices concerning economic protection for workers temporarily removed due to occupational health problems.
—Impact of the final lead standard on disincentives to participation.
—Importance of meaningful worker participation in the standard's medical surveillance program.
—Experience under the Black Lung medical surveillance and transfer program.
—The scope of the need for MRP.
c. Medical Removal Protection Benefits as a Means of Allocating the Costs of Temporary Medical Removals.
d. Alternatives to Medical Removal Protection Considered by OSHA.
—Mandating that workers participate in medical surveillance.
—Mandating that temporary medical removals occur only at the election of individual workers at risk of material impairment.
—Permitting the use of respiratory protection in lieu of temporary medical removals.
e. Feasibility.
—Overview of the phasing-in of MRP.
—Impossibility of immediate implementation of the ultimate MRP program.
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—70 μg blood lead level removal trigger 1 year after the effective date of the standard.
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a. Temporary Medical Removal and Return Criteria.
—Elevated blood lead levels.
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e. Employer Flexibility as to Removal and Return Pending a Final Medical Determination.
f. Definition of Medical Removal Protection Benefits.
g. Duration of Medical Removal Protection Benefits.
h. Employees Whose Blood Lead Levels Do Not Adequately Decline Within 18 Months of Removal.
i. Follow-up Medical Surveillance During the Period of Employee Removal or Limitation.
j. Medical Removal Protection and Worker's Compensation Claims.
k. Other Credits.
l. Voluntary Removal or Restriction of an Employee.
m. Miscellaneous Matters.
—Personal hygiene and work practice rules.
—MRP and employee conditions "not the fault" of the employer.
—Worker abuse of MRP.

1. *Temporary Removal of Workers at Risk of Sustaining Material Impairment.*

The final standard requires that an employer temporarily remove from lead exposure in excess of 30 μg PbA/m³ TWA any worker determined to be at increased risk of sustaining material impairment to health or functional capacity by continued exposure to inorganic lead. A determination that a worker is at increased risk of sustaining material impairment would derive either from the worker's latest blood lead level measurement or from an examining physician's medical opinion. Followup medical surveillance must be made available during the period of a worker's removal from his or her job. And, return of the worker to his or her original job is required once the worker's blood lead level has declined to an acceptable level; or alternatively, once the examining physician's written opinion so permits.

The sole reason for requiring the temporary removal of a worker at risk is to prevent material impairment to that worker's health or functional capacity. Temporary removal of a worker, therefore, is a preventive, protective mechanism. OSHA views this temporary removal mechanism as both an essential and indispensable element of the overall lead standard. The Permissible Exposure Limit (PEL) section of the preamble explains that the PEL of 50 μg PbA/m³ TWA (along with other provisions of the standard) is designed to protect the vast majority of workers from adverse health effects due to inorganic lead exposure. As noted, the PEL of 50 μg includes only a very small margin of safety. Due to this small margin of safety and the wide variability of worker response to lead, some small percentage of the work force, much less than 6 percent, will probably not be protected even by total compliance with both the PEL and other provisions of the standard (e.g., engineering controls, work practices, housekeeping, hygiene facilities, etc). Temporary removal is the only means of assuring adequate protection to this small minority of workers.

As explained in the Feasibility section of the preamble, some segments of the lead industry cannot be expected to achieve total compliance with the PEL through engineering and work practice controls for several years. During this period of time primary reliance will have to be placed on personal respiratory protective equipment as a means of preventing health impairment. Respiratory protection has serious drawbacks, however, and it is to be expected that some workers will not receive adequate protection from respiratory protection alone. Temporary removal where necessary is a means of assuring additional protection to these workers.

The preceding paragraphs explain the two main protective, preventive functions that temporary removal of workers at risk of sustaining material impairment should serve. Temporary removal should protect the small minority of exposed workers which we anticipate will not be afforded adequate protection by total compliance with the inorganic lead standard. Temporary removal should also protect those workers who receive insufficient protection from personal protective equipment. OSHA views these two protective, preventive functions as crucial to the overall success of the inorganic lead standard. And OSHA can think of no alternative protective mechanism, nor has any participant in the lead proceeding suggested an alternative mechanism, which would equally serve these protective functions. Due to the lack of alternatives and the major functions served by temporary medical removal, OSHA views this protective mechanism as an indispensible provision of the inorganic lead standard.

It must be stressed, however, that OSHA does not view temporary removal as and alternative means for employers to control employee lead exposure, but rather as a last-ditch, fall-back mechanism to protect individual workers in circumstances where other protective mechanisms have not sufficed. The standard places primary reliance on engineering and work practice controls, on environmental monitoring, on hygiene facilities and practices, and on education and training as means of protecting worker health. These measures should prove inadequate in only the most unusual of circumstances. Where primary reliance must be placed on respirators, employers should be able to protect most workers by persistent dedication to maintaining all elements of an effective respiratory protection program. OSHA also anticipates that the majority of affected employers will voluntarily comply with all provisions of the inorganic lead standard such that temporary removal of most workers is unnecessary. In spite of the above, OSHA is convinced that a significant number of workers in the coming years will need the benefits of a temporary medical removal, and the final lead standard includes a mandatory temporary removal provision for this reason.

The record evidence developed in the lead proceeding demonstrates that temporary removal of workers at substantial risk of sustaining material impairment is a protective mechanism recognized by and acceptable to both management and labor. Many lead firms have existing medical surveillance programs incorporating the temporary removal of any worker whose medical condition meets specific criteria. (Ex. 157, p. 10; Ex. 158, p. 68; Ex. 389, p. 14; Ex. 401B, p. 15; Ex. 404B(D-1), p. 4; Ex. 404B(D-2), p. 17; ex. 404B(D-4), p. 70; Ex. 404B(D-5), p. 48; Ex. 404B(D-6), p. 34; Ex. 423, p. 23; Ex. 424, p. 12; Ex. 425, p. 6; Ex. 427, p. 58; Ex. 430D(17), p. 37; Ex. 430D(23), p. 12; Ex. 430D(26) (section 8.) The 1975 proposed inorganic lead standard contained provisions which essentially prohibited an employer from keeping any employee at existing exposure to lead if such exposure posed an increased risk of material impairment to health. (40 FR 45934 (1975) (to be codified in 29 CFR §§ 1910.1025(K)(2)(ii)(B)(2) and 1910.1025(K)(4)(ii).) Temporary removal was not mandated, but obviously was contemplated as one employer option. The comments and testimony which followed the 1975 proposal raised no substantial opposition to the propriety of temporary removal as a protective mechanism. (*See*, Ex. 3; Ex. 4; Ex. 28.) In September 1977, OSHA through the FEDERAL REGISTER explicitly stated its intention to mandate temporary removal of workers at risk (42 FR 46547 (1977)). Subsequently, both industry and labor representatives readily endorsed the proposition that temporary removal is an appropriate means of protecting workers found to be at risk of sustaining material impairment to health. (*See*, Ex. 354 responses to 42 FR supra, Question 6: "Should employees be permitted to remain on their job despite the risk of material impairment of their health?")

2. *Medical Removal Protection Benefits.*

a. *Introduction.*

The final standard requires that an employer maintain the earnings, seniority, and other rights and benefits of any worker temporarily removed from current lead exposure due to the risk of sustaining material impairment if such exposure continues. OSHA terms this provision of economic benefits "medical removal protection (MRP) benefits," although the phrase "rate retention" has often been used in a generic sense to signify the same form of economic protection. This component of the overall MRP program has been a controversial issue throughout the lead proceeding, and the inorganic lead standard is the first OSHA health standard to incorporate such a broad provision. (See, however, limited MRP provisions in OSHA's asbestos and cotton dust standards. (Asbestos, 29 CFR section 1910.1001(d)(2)(iv)(c) (1977), *Industrial Union Depart, AFL-CIO* v. *Hodgson*, 499 F.2d 467, 485 (1974); Cotton Dust, 43 Fed. Reg. 27350 (1978) to be codified in 29 CFR section 1910.1043(f)(2)(v).) For both of these reasons, the following sections of this attachment discuss at great length the reasons for OSHA having adopted MRP, and the alternatives the agency considered. Attention is then focused on each aspect of the MRP program, and the agency's decisionmaking is explained in depth. OSHA has included this lengthy descriptive process in response to the specifics of industry opposition to MRP that were voiced throughout the lead proceeding. OSHA hopes that employers after reading the agency's explanations will view MRP for what it is—a regulatory device adopted specifically to advance worker health, and a mechanism whose costs are a reasonable and necessary price of doing business.

The final inorganic lead standard contains a MRP provision for two reasons. First, OSHA views MRP as the most effective device for maximizing meaningful worker participation in the medical surveillance program provided by the standard. Second, since temporary medical removal is fundamentally a protective, control mechanism, OSHA has determined that the costs of this control mechanism should be borne by employers. MRP is meant to place such costs of worker protection directly on the industry rather than on the shoulders of individual workers unfortunate enough to be at risk of material impairment to health due to occupational exposure to lead. OSHA views each of these two reasons as independent and compelling reasons for the adoption of MRP provisions.

b. *Medical removal protection as a means of effectuating the medical surveillance sections of the lead standard.*

Roles played by medical surveillance in the standard.—As just noted, OSHA views MRP as the most effective device for maximizing meaningful worker participation in medical surveillance provided by the final standard. Before discussing the need to maximize meaningful participation, it is appropriate to emphasize the crucial roles that medical surveillance will play in protecting the health of workers exposed to lead. Section 6(b)(7) of the Act specifies numerous elements that, where appropriate, must be included in an OSHA occupational health standard. These elements include the requirement of cautionary labels, the prescription of protective equipment and control procedures, the provision of environmental monitoring, and the specification of medical examinations and other biological tests. These elements along with the rest of the OSH Act demonstrate OSHA's mandate to promulgate comprehensive health standards which assure, to the extent feasible, that no worker suffers diminished health, functional capacity, or life expectancy as a result of work experience. Medical surveillance is just one aspect of the act's integrated approach to worker protection, but it is clear that a preventive occupational health program cannot succeed unless all elements accomplish their intended purpose.

Medical surveillance is a crucial component of this occupational health standard since it is the only method of determining whether or not individual workers have been afforded adequate protection. Reliance is placed on primary control measures, such as engineering controls, to minimize worker exposure to lead, but only medical surveillance can determine the effectiveness of these measures in protecting specific workers. The detection of unexpected or undesired health effects can prompt the correction of inoperative or ineffective control measures. Timely and meaningful medical surveillance can detect the early, reversible stages of occupational lead disease so that treatment can be performed to preclude permanent health impairment. Even where a lead-related occupational disease is not reversible, medical surveillance still may serve to identify workers who merit special protection so that additional exposure does not worsen or quicken the development of disease. In all situations, medical surveillance also serves the important function of informing individual workers of their personal health status. Where a lead-related disease has been or is being contracted, the worker has a right to know of this as soon as possible so that he or she can make personal decisions about health care and employment matters.

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Summary of the need for MRP.—It is clear that the medical surveillance provisions of the inorganic lead standard should serve numerous critically important functions. These functions will be served and the purposes of the Act furthered, however, only to the extent that workers freely and confidently participate in offered medical surveillance. Participation in medical surveillance offered under the lead standard will sometimes prompt the temporary medical removal of workers at risk. Absent some countervailing requirement, the medical removal of a worker could easily take the form of a job transfer to a lower paying job, a temporary layoff, or possibly even a permanent termination. Each of these consequences of an OSHA-mandated medical removal would have a dramatic economic impact on the affected worker. Without MRP, many workers exposed to inorganic lead would face a painful dilemma. A worker could fully participate in the medical surveillance offered by the standard and risk losing his or her livelihood, or resist participating in a meaningful fashion and thereby lose the many benefits that medical surveillance can provide. OSHA is convinced by the evidence presented during the lead proceeding that, absent MRP, many workers will either refuse or resist meaningful participation in medical surveillance offered by the final standard. The economic disincentives to participation are severe, and must be removed if the medical surveillance provisions of the lead standard are to substantially advance the goals of the Act. MRP was included in the final lead standard so as to eliminate economic disincentives to participation.

Much of the evidence in the lead proceeding documents the extent to which worker participation is adversely affected by the fear that adverse employment consequences will result from participation in medical surveillance programs. This problem was emphasized by the testimony of many workers and worker representatives. The problem was seen as widespread throughout industry, and as having already seriously affected participation in medical surveillance programs under at least several OSHA health standards. Evidence concerning the issue of worker fear impeding participation, however, was not confined simply to testimony from worker representatives. A wide variety of experts verified the existence of this problem, as did several industry representatives. The evidence suggests that economic disincentives to worker participation are currently a problem in the lead industry. OSHA is convinced that the temporary medical removal section of the final lead standard, as well as other sections of the standard, would greatly increase the likelihood of worker resistance to participation in the absence of MRP. Lastly, in deciding to provide MRP in the final standard, OSHA was significantly influenced by experience gathered under the black lung medical surveillance and transfer program of the Federal Coal Mine Health and Safety Act of 1969. Experience under this program reveals the extent to which economic disincentives adversely affect participation even in medical surveillance programs where job transfer and limited economic protection are guaranteed.

Worker fears of adverse economic consequences from participation in medical surveillance programs. Extensive testimony by workers and worker representatives focused on the fear of adverse consequences from medical surveillance. Emphasis was placed on the fact that most Americans work for one simple reason—to provide for oneself and one's family. Anything that jeopardizes the ability to feed, house, and clothe a family is to be avoided at all costs, even if the price is health impairment. Testimony at the November 1977 hearings on MRP by Mr. Anthony Mazzocchi, vice president of the Oil, Chemical and Atomic Workers Union (Tr. 8050), is illustrative of the worker and union testimony on this matter. On November 9, 1977, the following exchange took place:

> Q: To what extent do you think the workers that you represent worry about the possibility of adverse economic consequences if they contract an occupational illness or disease or for one reason or another can't work in their particular job for health reasons?
>
> Mr. MAZZOCCHI: It is foremost in their minds. The job situation today, of course, is a very perilous situation. There are 10 million people unemployed. Job security is foremost in mind to the people we represent. It probably is foremost in the minds of most workers. Their experience demonstrates adequately that if they suffer abnormality on the job, they are removed. That is a fear. In fact, we thought the Act would eliminate this fear. Instead, the debate over the question of wage retention is essentially, if it is not successful, is the self destruct mechanism of this Act. Workers will resist taking physical examinations and will continue to play roulette with their lives because they have no viable option. It is discussed probably more than any other subject because it is real. It is not an abstraction to a worker. The imperative of feeding one's family that very evening cannot be denied, as opposed to being completely incapacitated or dying of a disease somewhere down the line. (Tr. 8059-8060.)

Mr. Lloyd McBride, president of the United Steelworkers of America (Ex. 355BB) testified on March 30, 1977, in the following fashion:

> • • • (O)ur concern is that unless there is earnings protection, that the desire of a responsible family head to provide food and shelter and clothing for their loved ones would cause them to continue to work with this bad condition, and continue to absorb increased lead to a level that ultimately would be fatal; that the drive—the reason the worker is in the workplace in the first place is to provide for the necessities for oneself and the family. In most of these cases, a family is involved. And the sacrifice the parent will make to insure food for the family, food for the youngsters, decent clothing if possible, decent housing, there is no limit to what a person will do in order to provide those things, including the willingness to risk one's health. That is our concern. That the human equation will cause a person to avoid taking the medical examination if one of the results is likelihood of removal from being gainfully employed; or having their income substantially reduced. That would pose a threat to the safe and proper administration of the standard. That is our basic reason for asking for rate retention and urging it. It is kind of a human equation, perhaps, but I think it is one that most of us would identify with. If we were confronted as the bread winner of a family, of tolerating a health hazard, perhaps, in order to continue to provide for our families, most of us, absent from some other way to do it, and the high unemployment economy, there is very little other opportunity for the person in the lead plant to go out and get other employment—faced with that combination of circumstances, I think most of us would put up with the contined health hazard. That is why we are asking for maintenance of earnings. (Tr. 2980-2981.)

Numerous workers from a variety of industries have testified as to their personal knowledge and experiences concerning (1) adverse economic consequences due to health impairments, (2) worker fear of such consequences flowing from participation in medical surveillance, and (3) worker refusal or reluctance to participate in available medical surveillance due to this reason. Such testimony has been received by lead industry workers (Tr. 2965, 2980, 2983(20)-2983(21), 4755, 4768, 4797-4799, 4800-4801, 4810-4812, 4814, 4823-4824, 4827, 4833, 4842, 4847-4848, 5008, 5047, 5520-5521, 5523, 5539, 5585-5586, 5599, 5669, 5678, 5866, 5878, 6026, 6033, 6099, 6120-6123, 6125-6126, 6134, 6136-6137, 6162-6163, 6165, 6260, 7604, 7606, 7621-7622, 7635, 7709-7710, 7883, 7907-7908, 7934-7936, 7941-7942, 8057-8060, 8071, 8075, 8213-8216; Ex. 431; Ex. 452, pp. 9-13), by workers employed in coke oven batteries (Ex. 374, pp. 125, 128-133, 140-141, 143-145; Ex. 390B, pp. 145, 225-227, 240-243; Ex. 390C, pp. 2687-2688, 2713, 2959-2961, 3015-3016, 3099-3100, 3230-3231, 3380-3381), by workers exposed to cotton dust (Ex. 379A, pp. 12-15, 32-33, 1301-1303, 1305, 3023, 3029; Ex. 429, pp. 1-2), and by workers exposed to benzene. (Tr. 8046-8047; Ex. 373, pp. 1253-1254, 1260-1263, 1265.) The scope and severity of this problem has been stressed in great detail by representatives of the following major labor organizations: AFL-CIO (Ex. 372, pp. 6-11; Ex. 450B, pp. 5-6), United Steelworkers of America (Tr. 2964-2967, 2979-2981, 2983(7)-2983(8), 2983(20)-2983(21), 5008, 7179-7180, 7184-7186, 7219-7220; Ex. 165, p. 2; Ex. 374, pp. 126-133; Ex. 378, pp. 2-3; Ex. 390A, pp. 84, 105-106, 143; Ex. 452, pp. 1, 6-7, 9, 11-13, 34), United Automobile, Aerospace Agricultural Implement Workers of America (Tr. 5046-5047, 8242, 8264-8265; Ex. 171, pp. 12-14; Ex. 349, p. 2), International Brotherhood of Teamsters, Chauffeurs, Warehousemen Helpers of America (Tr. 8075-8079, 8092-8093; Ex. 401A pp. 1-2), Amalgamated Clothing Textile Workers Union (Tr. 7262-7263; Ex. 379A, pp. 12-15, 32-33, 1301-1303, 1305, 3023, 3029), United Paperworkers International Union (Tr. 7603-7607, 7610, 7622), Oil, Chemical Atomic Workers International Union (Tr. 8059-8060, 8064, 8068-8069; Ex. 400A, pp. 3-5), United Electrical, Radio, and Machine Workers of America (Ex. 354D, pp. 2, 5), United Rubber, Cork, Linoleum Plastic Workers of America (Tr. 4264; Ex. 281, pp. 3-5, 9-10, app. A), International Chemical Workers Union (Ex. 410A, pp. 2-3), and the United Mine Workers of America (Tr. 8427-8428, 8434-8437, 8440-8441, 8449-8450; Ex. 408, pp. 3-5, 9-10, App. A). Testimony included specific examples of how worker fear has affected participation in medical surveillance programs provided by OSHA standards. OSHA's vinyl chloride standard contains a mandatory medical removal provision without the presence of an MRP benefits component. (29 CFR section 1910.1017(K)(5)(1977).) Witnesses testified that there was widespread concern among vinyl chloride workers about potential adverse employment consequences of participation in offered medical surveillance, and that the level of participation had been adversely affected. (Tr. 7983, 8055, 8064-8065; Ex. 393, p. 3; Ex. 400A, p. 4.) One local union representing workers exposed to vinyl chloride was even considering urging its members not to participate in medical surveillance provided pursuant to the standard. (Tr. 8055.) Another local union representing workers exposed to benzene has repeatedly advised its members not to take medical examinations offered pursuant to OSHA's emergency temporary standard for benzene, with the result being that most workers declined to participate. (Tr. 8054.) Evidence in the record also points toward worker nonparticipation in medical surveillance offered pursuant to OSHA's asbestos standard. (Tr. 7315-7316; Ex. 3(98), p. 12; Ex. 354M, p. 1.)

The lead record contains compelling evidence from many other sources which document the necessity for MRP. Dr. James Merchant, Director of NIOSH's Division of Respiratory Disease Studies (Ex. 382B), testified both in OSHA's cotton dust proceeding, and lead proceeding, as to worker fear of adverse employment consequences due to participation in medical surveillance programs. His testimony concerning medical surveillance (See, Tr. 7353-7354) included the following:

> I think in order for employees to accept these programs, it has been our experience that they must have a very clear understanding in regard to the confidentiality of the data; that this be data that is available only to the physician and is not data that is entered into their personnel file, or possibly could affect their employment. Now, I am not saying that this happens, or that it doesn't happen. All I am saying is that this is a common fear that workers have, whether they are textile workers, whether they are coal miners, whether they are steel workers; we run into it all of the time, in our programs and our epidemiological studies. Workers must continually be reassured that the data, the medical information that is collected on them, is confidential; and we go to great lengths in our surveys to explain the provisions of the Privacy Act, and assure the workers that this information will not be compromised. Despite that, we have very often a proportion of the workers who are reluctant to participate, because in their view they are not confident that this information will be kept confidential • • •. (Ex. 379A(3), pp. 1301-1302.) Now, in regard to textile workers, I think my experiences are very largely from seeing lots of patients clinically in chest clinics and talking to textile workers, and getting their perceptions of their worries about losing their job or being laid off or things like that. And I would hasten to say that this is their perception. And I think it is a very real perception, and I think it will have a very real bearing on the success or failure of any surveillance program • • •. This is based upon my impressions of talking and examining several textile workers; but I think that is—you know, it is my opinion—that this is an area which is a problem, and I think it is certainly not common, or it is not to be found only in the textile industry, but it is common in other industries. So I think it is a general phenomenon. (Ex. 379A(3), pp. 1305-1306.)

Dr. John Finklea, then Director of NIOSH, noted that OSHA health standards have not heretofore contained MRP. He stated that "Consequently unprotected workers may hesitate to seek desirable medical follow-up because their current employment may be jeopardized or future job opportunities limited." (Ex. 379B, p. 11.) Dr. Finklea also advised that:

> Medical surveillance programs should be structured in a way to encourage worker participation. Workers should not have to fear that abnormal medical findings may lead to the loss of employment or other adverse employment effects. (Ex. 422, p. 1.)

NIOSH summarized its position as to MRP as one of agreement that such a provision is both necessary and appropriate. (Ex. 422, p. 2)

NIOSH statements concerning worker fear of the consequences of medical surveillance were amplified by the testimony during the lead proceeding of Dr. Daniel T. Teitlebaum, a physician with extensive experience in lead toxicology. (Ex. 56 (C.V.).) Dr. Titlebaum is also Director of Poisonlab, a licensed industrial consulting toxicology laboratory, (Tr. 370-72) and he described some of his experience with lead workers as follows:

> A. • • • In studies which we have done, there have been workers who have refused to participate in studies because of fear of losing their jobs. • • • I, as an independent laboratory and as a private physician, I have conducted studies on behalf of patients, on behalf of the State Compensation Funds, on behalf of private insurance companies, and the behalf of the company, on behalf of the union, on behalf of OSHA. Where we have entered into the situation as an independent with no axe to grind on anybody who is involved. It doesn't matter. There are some people who simply feel if the number is on the paper and it is elevated, that they are going to lose their jobs.
>
> Q. And you have had this concern expressed to you firsthand?
>
> A. Absolutely. (Tr. 422-423.)

OSHA also attaches importance to the experience voiced by the two State occupational safety and health agencies which submitted formal comments to the September, 1977 MRP FEDERAL REGISTER Notice. The California Occupational Safety and Health Administration agreed that MRP was necessary and appropriate (Tr. 464A), and stated that:

> Medical surveillance programs are essential to the development of early warning systems regarding exposure to toxic substances. If employee earnings, seniority, and other job rights are not protected, when medical examinations demonstrate a need for transfer or removal, it is our tragic experience that many workers choose not to participate in such programs. The risk of long-run health hazards is psychologically discounted when the employee is faced with the short-run spectre of being unable to support his or her family. Thus in Lathrop, California, some workers were aware of their possible infertility for almost a year before seeking medical assistance, due to their fear of job and income loss resulting from medical examination results. As a direct consequence, it is almost certain that more workers were over-exposed to DBCP. (Tr. 464B.)

OSHA's Kentucky counterpart stated that:

> A refusal of employees to participate in a medical surveillance program because of fear of loss or removal from their jobs has been a problem associated with a number of substances such as the carcinogens, asbestos, etc. (Ex. 354M, p. 1.)

OSHA attaches similar significance to evidence presented by several industry representatives—evidence which verifies the necessity for inclusion of a MRP provision in the final lead standard. First of all, industry spokesmen verified that the problem of workers refusing to participate in medical sur-

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veillance programs had arisen under both OSHA's asbestos and vinyl chloride standards. (Tr. 7315-7316, 7565-7567; Ex. 3(98), p. 12.) Numerous industry representatives denied that a problem existed in general (Tr. 7456-7457, 7468-7469, 7520-7521, 7759-7760, 7861-7862; Ex. 354H, p. 1; Ex. 354L, p. 1; Ex. 354(O), p. 5; Ex. 354U, p. 2; Ex. 354Y, p. 1; Ex. 354FF, p. 1; Ex. 354HH, p. 2; Ex. 385, pp. 7-8, Ex. 394A, p. 2; Ex. 396A, p. 2) but several business spokespersons freely acknowledged that worker participation in medical surveillance is influenced by perceptions concerning adverse employment consequences. NL Industries, for example, a major resource manufacturer operating in over 30 States, and the largest recycler of lead in the country (Ex. 3(118), pp. 1-2), stated that its experience was that workers at risk often decline to participate in medical surveillance programs. (Ex. 3(118), p. 11.) The National Association of Manufacturers agreed that the absence of MRP in OSHA standards is in fact an obstacle to worker participation in medical surveillance programs. (Ex. 354(O), p. 5.) A representative of the Occupational Safety and Health Group of Organization Resources Counselors, Inc., a consulting firm to some 50 medium to large corporations (Ex. 385, p. 2), when asked about worker fear of adverse economic consequences, responded that "I am sure it must be a concern of some employees," but he did not know the extent of such worker concern in the lead industry. (Tr. 7521-7522.) Finally, ESB, Inc., a corporation operating some 21 battery and lead related plants in this country (Ex. 354U, p. 1), provides earnings protection as part of its overall medical surveillance program. (Id., p. 2.) Though voicing opposition to OSHA's MRP proposal, ESB described its own medical removal protection program as follows:

> While removal protection is not required, ESB recognizes that it can affect workers' attitudes towards their jobs and the medical surveillance system and, where appropriate, ESB has adopted rate protection programs as an appropriate means of facilitating the success of our total program. (Id.)

OSHA's reasoning for including MRP in the final lead standard parallels the experience of this large battery manufacturer.

Existing industry practices concerning economic protection for workers temporarily removed due to occupational health problems.

OSHA believes the foregoing evidence compels two conclusions. First, absent MRP, many workers covered by the inorganic lead standard will fear that participation in offered medical surveillance will lead to adverse employment consequences. And second, this fear will manifest itself in substantial resistance to meaningful participation in medical surveillance programs. As noted, the lead record documents the existence of significant worker fear of adverse economic consequences. The lead record also amply documents the fact that such fear is often fully justified in light of existing industry practices. Workers who must be temporarily removed from their jobs due to the risk of sustaining material impairment frequently face wage loss or even discharge.

In 1976 the U.S. Bureau of Labor Statistics published a detailed study of occupational safety and health provisions in major American collective bargaining agreements. (Ex. 365.) This study examines some 1,724 major agreements covering 7.9 million workers—approximately half of the total work force under union contract in the industries examined. (Id., pp. 1-2.) The study reveals that most contracts lack clauses dealing with occupational illnesses or diseases, although provisions addressing "disabilities" or "injuries" might encompass occupational health problems. (Id., p. 33.) Most contracts contain some form of compensation for occupationally disabled workers, but most often this compensation only lasts for one day. (Id., p. 42.) Some contracts contain "red circle," or "rate retention," provisions maintaining the former rate of pay of a worker transferred to a lower paying job due to occupational safety or health reasons. (Id., p. 43.) Some 5 percent of the 1724 contracts contain such provisions, covering 3 percent of the 7.9 million workers. (Id., p. 55 (Table 22).) A larger percentage of the 1,724 contracts, 41 percent, contain some benefit provision such as liberal vacation or holiday payments, or supplements to workers' compensation benefits, that would not be available to workers having no health impairment. (Id.) The lead record contains numerous such red circle and workers' compensation supplement provisions. (Ex. 157, p. 10; Ex. 158, p. 68; Ex. 261, p. 21; Ex. 368, p. 83; Ex. 369, pp. 56-57; Ex. 379A, Memorandum; Ex. 389, p. 14; Ex. 400B, passim; Ex. 401B, p. 15; Ex. 404B(D-1), p. 4; Ex. 404B(D-2), p. 17; Ex. 404B(D-5), p. 48; Ex. 404B(D-6), p. 34; Ex. 415B, p. 76; Ex. 415C, p. 23; Ex. 423, p. 23; Ex. 424, p. 12; Ex. 425, p. 6; Ex. 426, Art. 19C; Ex. 427, p. 45; Ex. 430C-2; Ex. 430C-3; Ex. 430D(1), p. 33; Ex. 430D(4a), p. 18; Ex. 430D(4b), Section 62; Ex. 430D(7), p. 10; Ex. 430D(13), p. 17; Ex. 430D(16), Section 5; Ex. 430D(17), p. 37; Ex. 430D(23), p. 12; Ex. 430D(25), p. 14; Ex. 430D(26), p. 96; Ex. 430D(27), Section 4; Ex. 430D(28), Art. 12(d); see also, citations to workers' compensation supplement provisions at "MRP and workers' compensation claims" discussion, infra.)

The Bureau of Labor Statistics study, however, shows that the general rule throughout industry is that union workers temporarily removed from their jobs so as to protect their health cannot expect to have their livelihood maintained during the period of removal. (See, Tr. 7522-7523) Nonunion workers presumably have no greater economic protection in this respect than union members. Consequently, absent MRP, many workers in the approximately 45 industries affected by the lead standard can expect to sustain economic loss if removed pursuant to the temporary medical removal provision of the final standard.

Red circle rate provisions, or rate retention clauses, appear to be common throughout two of the prime sectors of the lead industry (primary lead smelting and battery manufacturing), but the economic protection afforded by these provisions is often very limited in duration. Primary lead smelter collective bargaining agreements generally limit rate retention to less than 4 months duration (See, Ex. 389, p. 14), while rate retention where utilized in the battery industry is generally limited to a 90-day maximum. (See, e.g., Ex. 379A, p. 4: Ex. 401B, p. 15) Workers still on removal status when these periods expire face a substantial reduction in earnings. Experience shows that workers with the greatest exposure to lead get removed with the greatest frequency (Tr. 2172-2173), and transfer is often from some of the highest paying positions to some of the lowest paying positions. (Ex. 354U, p. 2; Ex. 391, p. 2) Collective bargaining agreements reveal that, absent earnings protection, a worker in a primary lead smelter under such circumstances could easily incur a 21.1 percent pay reduction ($218 on a monthly basis) by being transferred. (Ex. 430D(7), p. 18) A worker in a battery manufacturing plant could easily incur a 25 percent pay reduction ($346 on a monthly basis) by being transferred from a high paying to a low paying position. (Ex. 404B(D-4), pp. 119-120) A much greater pay loss would occur if a worker were to be sent home instead of being transferred, since apparently none of the industry collective bargaining provisions maintain earnings in this event. (Ex. 7740-7741)

Although a limited form of MRP is provided by many primary lead smelters and battery manufacturing plants, there exist countervailing industry practices which in essence guarantee that some workers sustain economic loss by participating in medical surveillance. In some instances, explicit corporate policy promises a discharge to any worker unfortunate enough to absorb harmful quantities of lead. The Lead Industries Association has proposed that "as a general rule a worker should not be discharged because he has an elevated blood lead" (Ex. 28(7); Ex. 354AA, pp. 2-3), but such a policy is not uniformly applied within the prime sectors of the lead industry. For example, one of the primary lead smelters adopted a new policy in 1975 concerning the effects of participation in medical surveillance. (Tr. 4720, 4877, 5017-5018; Ex. 170) The policy, which was posted at the plant and distributed to all employees (Ex. 170), included the following elements:

> Any employee whose blood lead level is found to be above 80 micrograms will be presumed to have been in habitual violation of these policy requirements (concerning respirators) . . . (Ex. 170, p. 2)
>
> • • • (A)n employee showing a blood lead level of 80 or above will be given a Written Warning notice and advised that his blood lead level must be returned to a level below 80 within the next 90 days. The employee's blood lead level will be checked each thirty (30) days and he will be advised of the results. If at the end of the ninety (90) day period the employee has failed to return his blood level to less than 80, excepting extraordinary mitigating circumstances, he shall be discharged. (Id., p. 3)

When faced with such an explicit policy, many workers would understandably decline to freely and meaningfully participate in offered medical surveillance.

At the time this policy was adopted, working conditions within this large primary lead smelter virtually assured high blood lead levels elevations. Late in 1975, NIOSH studied this smelter in great detail. (Ex. 300) Over two thousand full shift personal air samples were collected—many of which grossly exceeded the existing 200 μg PbA/m^3 lead in air standard. (Id., section I.B.—Industrial Hygiene Surveys, Tables 2-7) Many of these measurements exceeded the current OSHA standard by a factor of 10 to 200 times. (Id., Tables 2-7) NIOSH noted that "The existing ventilation systems should be evaluated for effectiveness—many systems are poorly designed and/or maintained. (Id., section V—General Recommendations) NIOSH discovered that even some air lead levels in plant lunch rooms exceeded 200 μg PbA/m^3. (Id., section V—Recommendations—Lunchrooms, Table 30)

In view of these factors, it is OSHA's judgment that it was a virtual certainty that persistent blood lead levels close to or in excess of 80 μg PbB/100g were to be encountered. At this primary lead smelter, the possibility of losing one's job as a consequence of participation in medical surveillance was genuine. This formal corporate discharge policy was apparently rescinded soon after its adoption. (Tr. 4720, 4877, 5017-5018) The mere consideration of such a corporate policy, however, undoubtedly increases worker apprehension about the risks inherent in participation in medical surveillance programs.

The lead record further reveals that the preceding discharge policy is not an isolated occurrence. The Battery Council International (BCI), the major trade association representing battery manufacturers (Ex. 137, p. 1), recommends that workers either be discharged or permanently transferred (with no maintenance of earnings) whenever their blood lead levels repeatedly exceed 80 μg PbB/100 g. (Ex. 397A, pp. 4, 6-7) The BCI stated that it is "generally accepted" within industry that a third incident of elevated blood lead levels merits such action. (Id., p. 7) The BCI also recommends similar action with regards to "workers who are more than ordinarily susceptible to lead absorption or to the effects of lead." (Id., p. 4) To the extent that the BCI's statements reflect prevalent industry attitudes and policies, it is clear that lead battery workers have justification for concern about participation in medical surveillance. Only through participation can a worker be classified as "more than ordinarily susceptible" or detected as having a highly elevated blood lead level on several occasions. And, highly elevated blood lead levels are a virtual certainty in many plants due to the widespread failure to reduce air lead levels below the existing 200 μg PbA/m^3 OSHA standard. (Tr. 782-783, 1284, 3250; Ex. 3(5), p. 1; Ex. 3(26), p. 2; Ex. 3(44), p. 4; Ex. 3(56), p. 2; Ex. 3(76), p. 2; Ex. 3(89), p. 2; Ex. 3(93); Ex. 3(103), pp. 9-10, 85-86, 88, 90, 92; Ex. 3(106), pp. 2-5, App. 1-4; Ex. 3(110), p. 1; Ex. 3(111), pp. 14-16; Ex. 3(127), p. 1; Ex. 4(6), p. 1; Ex. 80, p. 2; Ex. 84, pp. 10-11; Ex. 101A; Ex. 104, p. 27a; Ex. 123, p. 5; Ex. 125, p. 26; Ex. 128C; Ex. 335, pp. 6, 101-103)

The lead record reveals that at least several battery manufacturers implement the recommendations of the BCI. At one plant, workers are permanently laid off and barred from any lead job upon the second occurrence of an elevated blood lead level (with seniority determining whether or not individual workers are able to secure non-lead jobs in the plant). (Tr. 7709-7710; Ex. 427, pp. 58-59) At another battery plant, the second occurrence of an elevated blood lead level results in a permanent transfer, without earnings protection, to a lower exposure job. (Tr. 8453-8454) A third battery manufacturer, in a vague letter to plant employees, stated that even legitimate reoccurring medical absences were "inconsistent with holding a job", and thus would count against a worker's personnel record. (Tr. 5254; Ex. 179A) Presumably this applies to workers showing repeated occurrences of lead intoxication or poisoning.

Impact of the final lead standard on disincentives to participation.—OSHA believes the foregoing evidence demonstrates that, absent MRP, many workers exposed to inorganic lead will decline to meaningfully participate or actively resist participation in medical surveillance offered under the final standard. The economic disincentives to participation are real and substantial; worker fears of adverse economic consequences due to participation are widespread and justified in light of industry practices. OSHA views MRP, therefore, as an essential element of the medical surveillance program offered by the final lead standard. MRP is even more indispensable in light of aspects of the final standard which would heighten disincentives to participation in the absence of MRP.

First of all, the final standard mandates the temporary medical removal of workers at substantial risk of sustaining material impairment. The prior lead standard contained no such requirement. Although many lead companies have some form of temporary medical transfer policy, such policies do not appear to be universally applied throughout the various lead industries. (Ex. 26, pp. 5-38, 5-81, 5-99; Ex. 65B, pp. 20, 33, 35, 38) For many lead workers, the mandatory temporary medical removal provision of the final standard will for the first time pose a major threat of economic loss due to removal—a threat heightened by the setting of explicit blood lead level removal criteria. Absent MRP, the temporary medical removal provision even creates a substantial disincentive to participation in medical surveillance where one may not have previously existed.

Secondly, the blood lead level removal criteria of the final standard are much more stringent than criteria currently used by industry. While most lead firms do not transfer a worker until his or her blood lead level exceeds 80 μg/100g (Tr. 1274, 1666, 7695-7696, 7894, 7908-7910, 8284, 8326-8327; Ex. 26, pp. 5-11; Ex. 404B, p. 68; Ex. 453, p. 15), the final standard when fully implemented will require removal when a worker's blood lead level over time exceeds 50 μg/100g. The standard's removal criteria are set at a preventive level so that workers are removed prior to the onset of clinical lead poisoning. The much higher industry 80 μg figure, however, represents a point where many workers begin to experience clinical signs of lead poisoning. (See Tr. 7161.) Lead industry representatives have opposed the establishment of lower blood lead level removal criteria. (See, e.g., Ex. 335.) In light of this opposition, one would expect may lead firms to decline to voluntarily maintain the earnings of workers (having "acceptable" blood

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lead levels from an industry viewpoint) who are temporarily removed pursuant to the OSHA standard. In the absence of MRP in the final standard, therefore, it is to be expected that the temporary medical removal provision will result in many more removals without economic protection to the removed workers than is currently the case in the lead industry. Without MRP this increase in economic disincentives to participation would substantially increase the present reluctance of workers to seek the benefits of medical surveillance programs.

Absent MRP, a similar increase in economic disincentives to participation will result from the ultimate transfer requirements of the final standard. Two years after the effective date of the standard, a worker being temporarily removed from current lead exposure (due to an elevated blood lead level) may only be transferred to a position having an air lead level exposure below 30 μg PbA/m^3 TWA. This transfer requirement is necessary to assure a steady decline in the worker's blood lead level (See, infra, discussion of temporary medical removal from work at or above the action level), but represents a requirement far more stringent than practiced within industry today. Lead industry removal programs typically have the goal of only reducing a worker's blood lead level from 80 μg PbB/100g to about 60 μg PbB/100g (Tr. 1274, 5637, 8284-8285, 8326-8330; Ex. 179, pp. 3-4; Ex. 354U, pp. 2-3), and apparently there has been little difficulty in finding alternative positions which would permit a decline to 60 μg PbB/100g. Although OSHA is confident that a diligent company can provide substantial numbers of transfer opportunities which will satisfy the 30 μg PbA/m^3 TWA requirement, this will not always be possible. In some instances no transfer positions will be available—particularly if the company has failed to come into compliance with the central provisions of the lead standard. In these instances a worker will likely have to be sent home until a transfer opportunity arises. As noted earlier, few if any lead firms currently maintain a worker's earnings in such a situation. Thus, absent MRP, the temporary removal provisions of the final standard will sometimes create one of the most forceful economic disincentives to participation—a layoff.

Finally, the duration of temporary medical removals resulting from the final standard will also increase economic disincentives to participation, particularly during the first several years of the standard's effect. As noted earlier, industry rate retention programs where in effect generally limit compensation to a 3 to 4 month maximum. (Ex. 158, p. 68; Ex. 354U, pp. 2-3; Ex. 401B, p. 15; Ex. 404B(D-1), p. 4; Ex. 404B(D-5), p. 48; Ex. 404B(D-6), p. 34; Ex. 424, p. 12; Ex. 425, p. 6; Ex. 430D(4a), p. 18) Medical removals mandated under the final standard, however, will often substantially exceed four months in duration (See detailed discussion, infra, concerning duration of MRP benefits). It is not possible to precisely estimate an average period of removal. But, the likelihood of lengthy removals is reflected by the observation of one large battery manufacturer that it generally takes considerably longer for worker blood lead levels to decline from 60 μg PbB/100g to 40 μg PbB/100g than to decline from 80 μg PbB/100g to 60 μg PbB/100g. (Ex. 354U, p. 5) Absent MRP, the effect of extended periods of removal will often be substantial economic loss to removed workers. This would most likely be a problem during the first several years of the new standard during which time medical removals would often be of long term workers having substantial body burdens of lead (see detailed discussion, infra, concerning the phasing-in of MRP.) In any event, absent MRP, the duration of medical removals to be anticipated once the final standard is issued will undoubtedly increase economic disincentives to meaningful worker participation in medical surveillance programs.

Importance of meaningful worker participation in the standard's medical surveillance program.—Having discussed MRP as a necessity to effectuate meaningful participation in offered medical surveillance, it is appropriate to emphasize the importance of meaningful participation. The medical surveillance program provided by the final standard consists of three central elements: (1) periodic blood lead level biological monitoring, (2) periodic medical examinations, and (3) the opportunity for a medical examination upon the request of a worker. The success of each of these three elements depends not only on the fact of worker participation, but more importantly on the quality of participation. Workers must feel free to seek medical attention when they feel ill; they must fully cooperate with examining physicians to facilitate accurate medical diagnoses; and also refrain from efforts to conceal their health status. In the absence of these qualities of participation, the medical surveillance program provided by the final standard cannot serve to eliminate occupational lead diseases.

The success of periodic blood lead level biological monitoring depends not only on workers permitting blood samples to be extracted, but also on workers refraining from efforts to alter their blood lead levels. Chelating agents, despite their potentially harmful aspects, effect a rapid, short term reduction in blood lead levels. (Tr. 217, 234) These drugs pose a means whereby workers can manipulate biological monitoring results and thereby avoid adverse employment consequences. The lead record contains evidence that some workers have apparently illicitly secured prescription chelating agents in Mexico precisely to conceal their true blood lead levels. (Tr. 4076) Similarly, workers have also apparently diluted urine samples so as to yield low urine lead level measurements. (Ex. 3(109), Medical Study, pp. 16, 23) Any such deliberate attempts to pervert biological monitoring tests are lamentable, and should be discouraged. Such actions by workers, however, reveal a desperate effort to avoid economic loss no matter what the consequences to one's health. OSHA anticipates that, absent MRP, worker misuse of chelating agents could develop into a major problem in situations where workers would be unable to evade participation in blood lead level monitoring. The use of chelating agents would not only directly endanger worker health but would destroy the value of blood level biological monitoring.

Another problem is raised by workers failing to fully cooperate with examining physicians in the course of periodic medical examinations. Blood lead level biological monitoring is of great importance in the final standard, but equal significance must be attached to periodic medical examinations. There is a wide worker variability of response to lead, and our understanding of low lead exposure health effects is by no means complete. The 50 μg PbA/m^3 TWA PEL incorporates only a very modest margin of safety. Some adverse health effects from lead exposure do not readily correlate to blood lead level. For all of these reasons, OSHA is convinced that blood lead level biological monitoring by itself cannot afford workers adequate protection from material impairment to health. Effective periodic medical examinations permit the flexibility and informed judgment that only a physician in a one-on-one situation can provide.

The success of medical examinations in achieving accurate medical diagnoses, however, depends substantially on the degree of voluntary worker cooperation with the examining physician. Many early symptoms of lead poisoning—Such as tiredness, sensorymotor uncoordination, fine tremors, fatigue, nervousness, sleeplessness or sleepiness, memory difficulties, anxiety, irritability, loss of appetitie, constipation, malaise, weakness, headache, and muscle and joint pains (Ex. 101A; Ex. 119A, p. 2) are highly subjective in nature. If a worker denies or masks these symptoms where they occur, a proper diagnosis is made extremely difficult if not impossible.

Worker reluctance to divulge pertinent information to a physician can preclude the taking of an adequate medical history—a crucial element of a competent medical examination. Mr. Melvin A. Glasser, Director of the Social Security Department of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (Tr. 8213), and a member of the governing council of the Institute of Medicine of the National Academy of Sciences (Tr. 8229), stressed the value of a medical history in the following terms:

> With regard to general or non-occupational health care, a most important preventive medical procedure is a careful medical history-very simply, the patient telling his or her physician about health practices, medical conditions and symptoms before there are obvious outward signs of disease. It is estimated that 80 percent of pathological conditions can be detected simply with proper administration and analysis of a medical history, even by a non-physician. Administration of such a history as part of a continuing integrated health care program is generally agreed to be worth far more in the prevention of disease than the extremely expensive battery of laboratory tests given under the rubric of annual physical examinations. (Tr. 8214-8215; Ex. 404a, p. 2)

Dr. Daniel T. Teitlebaum, Assistant clinical Professor of Preventive Medicine and Comprehensive Health Care at the University of Colorado Medical Center, and Director of the Poisoning Treatment Center at St. Anthony Hospital in Denver, Colorado, (Ex. 56, p. 1) attaches similar importance to an effective medical history:

> In my own practice, I can state that when I have completed history taking, I have a very strong feeling as to whether or not I will find the physicial or laboratory findings consistent with lead poisoning in a vast majority of cases. It is exceptionally unusual to make the diagnosis of lead poisoning only on the basis of a physical examination or laboratory results without the characteristic history. If I were to choose between the physical and the history examination as a screening test for lead, I would definitely place my reliance on the history, which would probably detect lead poisoning some months before overt signs can be noted. (Id., p. 44)

Mr. Glasser and Dr. Teitlebaum's testimony parallels that of Dr. James Merchant, Director of NIOSH's Division of Respiratory Disease Studies (Tr. 7359-7361), and is also supported by several studies contained in the general medical literature. (Tr. 8229-8230; Ex. 404B, pp.1-2)

If workers fear adverse economic consequences from participation in medical examinations, then an adequate medical history is unlikely. This is particularly true in view of the general medical phenomenon of patient denial of symptoms. As noted by Mr. Glasser (and echoed by Dr. Merchant (Tr. 7359-7361)):

> Experts agree that even when the true doctor-patient relationship exists, there are barriers to the patient revealing symptoms. Barriers are much higher if the doctor-patient relationship doesn't exist and workers don't have such with the company doctor. If the result of diagnosis of lead intoxication is loss of income, or even loss of employment, then the barrier will be even greater. (Tr. 8215; Ex. 404A, p. 2)

MRP is expressly designed to minimize these barriers to open and effective communication between examining physician and inorganic lead worker during periodic medical examinations.

The value of the third central element of the final standard's medical surveillance program—the opportunity for a medical examination upon the request of a worker—is also critically dependent upon voluntary, meaningful participation by affected workers. Few workers can be expected to initiate a medical examination if fear of adverse employment consequences is widespread. And, the opportunity for a medical examination upon the request of a worker is a crucial element of the standard's medical surveillance program for all of the same reasons that periodic medical examinations are provided. Periodic examinations need only be generally provided on an annual basis, thus there is an appreciable opportunity for adverse health effects to arise in between scheduled examinations. The quicker such effects receive medical attention, the less likely the worker is to sustain permanent health impairment. MRP is designed to minimize the probability that substantial numbers of lead workers will continue to tolerate ill health rather than take advantage of immediately available medical examinations.

Experience under the Black Lung medical surveillance and transfer program.—In deciding to provide MRP in the final standard, OSHA was significantly influenced by experience gained under the Black Lung Medical Surveillance and Transfer Program of the Federal Coal Mine Health and Safety Act of 1969 (the "Coal Act"). (See generally, Federal Coal Mine Health and Safety Act, Pub. L. 91-173, 83 Stat. 792 (1969) as amended by Black Lung Benefit Act, Pub. L. 92-303, 86 Stat. 155 (1972) and Federal Coal Mine Health and Safety Amendments Act, Pub. L. 95-164, 91 Stat. 1290 (1977)) Experience under this program demonstrates that economic disincentives do adversely affect worker participation in medical surveillance programs, even where job transfer and limited economic protection are guaranteed.

The Black Lung Medical Surveillance and Transfer Program is mandated by section 203 of the 1969 Coal Act, and is jointly administered by NIOSH and the Department of Labor's Mine Health and Safety Administration. (30 U.S.C. 951(b) (Supp. 1978)) Under the program, working underground coal miners are offered an opportunity every several years to have a chest X-ray taken to ascertain any evidence of the development of coal mine workers' pneumoconiosis ("Black Lung"), a chronic, irreversible lung disease. (42 CFR 37.3 (1977)) The X-rays are performed by facilities completely independent of coal mine operators. (42 CFR 37.42 (1977)) These facilities must meet stringent quality control and confidentiality requirements established by NIOSH. (30 CFR 90.20 (1977); 42 CFR 37.42 (1977)) The X-rays are performed without cost to participating coal-miners (42 CFR 37.3 (1977)), and the X-ray films are analyzed only by medical experts who have successfully completed a training and certification program established by NIOSH. (42 CFR 37.51 (1977)) Since 1969, there have been two rounds of offered X-ray examinations—the first round occurring between August, 1970 and December, 1971, and the second round occurring between July, 1973 and March, 1975. (Tr. 7345; Ex. 411A, p. 8) Miners whose X-rays revealed evidence of the development of Black Lung were notified of this fact, as well as notified of their transfer rights under the program. (30 CFR 90.10 (1977))

Miners with evidence of Black Lung receive a form letter they can use to elect to transfer to a position having a low respirable coal dust level. (30 CFR 90.20 (1977)) Upon notification of a "letter carrier's" election to transfer to a low dust position, a coal mine operator must either transfer the miner or guarantee that the miner's current position satisfies the applicable low dust level requirements. (30 CFR 90.31, 90.32; 42 CFR 37.7 (1977)) The previous regular rate of pay is retained by any miner transferred to a low dust position. (30 CFR 90.34 (1977)) Due to the irreversible character of Black Lung disease, transfers are essentially of permanent duration. (Tr. 7386)

More than 8 years have passed since Congress established this medical surveillance and transfer program. Statistics have been collected from which one can gauge the success of this program in (1) identifying miners who are contracting Black Lung disease, and (2) thereafter relocating them in low dust areas so as to minimize progression of the disease. The statistics reveal that over 150,000 miners have been X-rayed at least once, and over 1,200 miners showing evidence of the development of Black Lung have exercised the right to be transferred to low dust positions. (Tr. 7416-7417, 7429)

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The same statistics supplemented by the experience of those intimately involved with the program, however, reveal that worker fear of adverse economic consequences due to participation has undermined the overall success of the program.

First, only approximately 60 percent of the eligible working coal miners participated in the first two rounds of offered X-rays. (Tr. 7362-7363) This modest level of participation is striking in view of the seriousness and historically high incidence of Black Lung disease ((1969) U.S. Code Cong. and Ad. News 2503, 2506), and the fact that medical transfers under the program are voluntary on the part of coal miners. (Tr. 7344, 7348, 7389, 8411) The moderate level of participation may have partially resulted from lack of understanding of the program by affected coal miners (Tr. 7364, 7412-7413, 8415), or from the possibility that some operators failed to provide X-rays as required by the law (Tr. 7364, 7368), or from the apparently inconvenient circumstances under which the X-rays were sometimes provided. (Tr. 8429-8430) The relative contribution of these factors to the lack of participation is unknown. Both NIOSH and United Mine Workers of America (UMWA) witnesses agreed, however, that fear by miners of adverse employment consequences also adversely affected participation. (Tr. 7391, 7432, 8436-8437; Ex. 390a, p. 143; Ex. 408, App. A, p. 2; Ex. 408, App. E, p. 211) NIOSH witnesses stated that assuring the confidentiality of X-ray results was a major issue in the development of the overall program, and that the stringent confidentiality regulations adopted were expressly designed to overcome fear by miners that test results could be used against them. (Tr. 7347, 7353-7354, 8412-8417; Ex. 408, App. E, p. 211)

The adequacy of the program's confidentiality requirements was a source of great controversy during the first round of X-rays, with the UMWA apparently cautioning its members about the risks of participation (Tr. 7368-7369, 8413-8414; Ex. 408, App. A, pp. 3, 8) even in the face of an explicit threat of possible prosecution by the U.S. Government. (Ex. 408, App. A, p. 7) Undoubtedly, this conflict adversely affected the level of participation in the first round of X-rays. Witnesses testified that this dispute was largely resolved prior to the bulk of the second round of X-rays. (Tr. 8426-8427) Dr. Lorin Kerr, director of the UMWA Department of Occupational Health (Tr. 8410), however, stated that even though the union fully supported the second round of X-rays, there was great difficulty in convincing coal miners that confidentiality problems had been satisfactorily resolved. (Tr. 8427) Dr. Kerr also explained the lack of participation in the second round of X-rays as substantially resulting from the fear that negative X-ray results would be used against miners filing claims for Black Lung disability benefits (Tr. 8413, 8434-8435; Ex. 408, App. E, p. 210)—benefits which at that time were being processed at a very slow pace. ((1972) U.S. Code Cong. and Ad. News 2307, 2329-2330)

On the basis of the evidence presented in the lead proceeding, OSHA is incapable of definitively explaining why some 40 percent of working coal miners declined to participate in the first two rounds of chest X-rays. OSHA is convinced, however, that much of this lack of participation was due to fears that X-ray results might adversely affect miners' employment or future disability benefits. Fear of adverse economic consequences has also apparently significantly affected the decisionmaking of miners eligible to transfer to low dust positions.

Statistics reveal that as a result of the first two rounds of X-rays, over 5,800 miners have been notified that they are acquiring Black Lung disease and thus have the option of transferring to low dust positions. (Tr. 8421; Ex. 383A, p. 2) Only some 20 percent of these miners, however, have chosen to exercise their transfer rights. (Tr. 7349, 7429) Again, the reasons for this dramatic lack of participation are not fully understood, but several possibilities have been suggested. Some miners faced with the realization that they are acquiring Black Lung might leave the industry (Tr. 7374, 7429), while others perceive no need to transfer jobs since they currently suffer no apparent symptoms of Black Lung. (Tr. 7412) Some miners might choose not to exercise their transfer rights due to the undesirability of the transfer positions (Tr. 7420-7422, 7431, 8421, 8437), while still others might see no need to transfer since they feel they are currently working at a low dust level job. (Tr. 7409, 7430, 8437) The United Mine Workers of America collective bargaining agreement also has a provision whereby miners eligible to transfer can directly bid on low exposure jobs without notifying the Government. (Ex. 368, p. 74)

Although the role of the previous factors is unclear, all witnesses agreed that concern by miners over adverse economic consequences contributes to the low level of participation. First, there is the fear that employer knowledge about the development of Black Lung disease will be used to discriminate against miners. (Tr. 7391, 7430, 8412-8413; Ex. 408, App. E, p. 210) Miners apparently do not worry as much about forms of immediate discrimination (Tr. 8437-8438) as about future job consequences. Individual coal mines do not operate indefinitely, thus many miners change employers during their working years. Prior to the recent amendments to the Coal Act, the Black Lung transfer program offered no protection whatsoever to miners experiencing hiring discrimination (Tr. 7391, 7430; Ex. 408, App. E, p. 210), thus miners apparently feared they would be unable to get jobs in the future if they revealed their health status by coming forward to transfer to a low dust job. (Tr. 7391-7392; Ex. 408, supra)

The second major economic reason for miners choosing not to exercise their rights results from the limited form of rate retention offered to those who transfer. Section 203(b)(3) of the Coal Act has been interpreted to mean that miners who elect to transfer retain their previous hourly rate of pay, but receive no subsequent wage increases until the rate of pay of the new job catches up to the rate of pay of the old job. (30 CFR 90.34 (1977); *Jesse Higgins* v. *Marshall*, No. 77-1829, U.S. App. D.C. (July 25, 1978); 1978 Employee. Safety and Health Guide (CCH) Paragraph 22,908) Transfer is often from a high-paying to a low-paying position. (Tr. 8439-8440) Five or six years are likely to pass before the rate of pay of the low-pay job catches up to the former rate of the high-pay job. (Tr. 8440-8441; Ex. 368, p. 137) The resulting effect on a miner who transfers is that his or her rate of pay is frozen for some 5 or 6 years, while everyone else's rate of pay climbs perhaps 4 percent each year. (Tr. 7426-7427; Ex. 368, p. 137) Since transfers are permanent, this loss of 5 or 6 years of pay increases is never reversed. The adverse impact to a miner over several years would be thousands of dollars lost that would have been received if no decision to transfer had been made. Witnesses in the lead proceeding agreed that this economic disincentive was a deterrent to participation (Tr. 8441), was a source of repeated complaints by coal miners (Tr. 7426-7427, 7432, 8421), and perhaps was even the foremost reason why miners choose not to elect to transfer to a less dusty position. (Tr. 8436-8437; Ex. 390A, p. 143; Ex. 408, App. E. p. 210)

OSHA believes that the experience gained under this Black Lung Medical Surveillance and Transfer program highlights the need for MRP in the final lead standard. The Black Lung program is a comprehensive program embodying numerous concepts which OSHA has incorporated into the lead standard. Despite this, participation in the Black Lung program has been adversely affected by economic disincentives and fear on the part of miners of adverse employment consequences.

These factors have partially if not substantially accounted for 40 percent of miners declining to take X-rays, and 80 percent of eligible miners declining to formally transfer to low dust positions. These figures convince OSHA that success of the lead standard's medical surveillance program depends on the agency squarely confronting the need to include MRP so as to maximize meaningful worker participation. Although there are numerous differences between the lead industry, and the coal mining industry, lead workers presumably care no less about their job security and earnings than do coal miners. The Black Lung program, as does previously discussed evidence in the lead proceeding, demonstrates that genuine job security and earnings concerns can dramatically undermine efforts to protect worker health. OSHA has adopted MRP specifically to minimize the adverse impact of these factors on the level and quality of worker participation in the medical surveillance program provided by the final lead standard.

The scope of the need for MRP.—Before discussing other aspects of MRP, it is appropriate to note that OSHA does not view worker resistance or reluctance to meaningfully participate in medical surveillance as a universal problem affecting the actions of every lead worker in every lead plant. The foregoing paragraphs discussing evidence from many different sources do, however, reflect OSHA's judgment that significant worker reluctance or resistance would seriously diminish the overall success of the lead standard in the absence of MRP. Numerous industry representatives stated that they had experienced no noticeable reluctance of their employees to participate in medical surveillance programs, and thus they questioned the necessity for MRP. Most industry participants in the lead proceeding offered no comments as to whether or not they had experienced worker reluctance to participate in their medical surveillance programs. While some industry comments are irreconcilable with OSHA's view of the evidence on this issue, numerous industry statements are fully consistent with the agency's reasoning.

OSHA is confident that at least some firms through vigorous industrial hygiene programs have already virtually eliminated harmful exposure of their employees to inorganic lead. As a result, no workers get sick or are known to have ever contracted lead-related diseases. Temporary removals due to excessive blood lead levels do not occur, and no worker has ever experienced job loss or wage loss due to occupational health considerations. In this setting there should be little cause for concern by workers about participation in medical surveillance, thus it is understandable that some employers see no need for MRP. OSHA is also confident that some firms, although harmful exposure to lead is an ever-present problem, nonetheless provide comprehensive forms of economic protection for workers temporarily removed due to excessive lead exposures. Such economic protection, differing little from MRP in this standard, serves to remove any economic disincentive to participation that workers might otherwise have felt. Again, it is quite understandable that these employers see no need for MRP since their own employees exhibit no reluctance to participate.

Finally, OSHA is confident that some workers place their personal health above all other considerations and thus fully participate in medical surveillance programs irrespective of the possible economic consequences to themselves or their families. Also, some workers most likely freely participate because they have heretofore been totally unaware of the harmful effects of lead, and thus never considered the possibility that they could be adversely affected by occupational lead exposure.

The foregoing considerations all lend some support to industry comments to the effect that worker reluctance to participate in medical surveillance has not yet been a problem in some plants. OSHA, however, has adopted MRP on the basis of compelling evidence contained throughout the entire lead record and on the problems present throughout the industry. The many preceding paragraphs explain in great detail the agency's reasoning. OSHA realizes that conditions in some plants may present little need for MRP. Those plants are likely to experience no impact from MRP's existence either because there will be no need for temporary medical removals to occur, or because the company's existing economic protection policies differ little from MRP. OSHA also submits that the possibility that some workers would fully participate without MRP in no way detracts from the pressing need to provide MRP for the many workers who would otherwise resist meaningful participation in medical surveillance programs. OSHA is determined to protect all inorganic lead workers so far as is feasible, and feels the conclusion is inescapable that MRP is essential to maximize meaningful worker participation in the medical surveillance program provided by the final standard.

c. *Medical removal protection benefits as a means of allocating the costs of temporary medical removals.*

OSHA's second reason for including MRP benefits in the final lead standard is tied to the nature of MRP's temporary medical removal provisions. Temporary medical removal is fundamentally a protective, control mechanism, thus OSHA has determined that the costs of this control mechanism should be borne by employers in the first instance.

Temporary medical removal is a last-ditch, fall-back mechanism to protect individual workers in circumstances where other protective mechanisms have not sufficed. It is a protective mechanism recognized by and acceptable to both management and labor. There are costs, however, associated with temporary medical removals, both to employers and to temporarily removed employees. When a worker is temporarily removed from a job, the employer loses the sevices of someone trained and experienced in that particular job. The employer might easily incur dislocation costs involved in locating and training a temporary replacement, and might also experience reduced productivity due to the replacement's inexperience. A worker who is temporarily removed might easily lose substantial earnings or other rights and benefits by virtue of the removal. All of these costs are a direct result of the use of temporary medical removals as a means of protecting worker health.

OSHA has determined that the foregoing costs should be borne by employers in the first instance. Since employers automatically will absorb any temporary dislocation or reduced productivity costs associated with temporary medical removals, OSHA's determination primarily involves the lost wages or other costs removed workers might bear in the absence of MRP. MRP is meant to place those costs of worker protection directly on the industry at large rather than on the shoulders of individual workers unfortunate enough to be at risk of material impairment to health due to occupational exposure to lead. The costs of protecting worker health are appropriate costs of doing business, thus employers should properly bear the economic impact of temporary medical removals. The Occupational Safety and Health Act ("the Act"), as does all other recent environmental legislation, recognized that the costs which consumers pay for goods should reflect all costs of production, including costs associated with preventing adverse public health impacts such as air and water pollution, or occupational disease. Under the act, employers have the primary obligation to provide a safe and healthful work experience, thus should incur the costs necessary to satisfy this obligation.

One beneficial side effect of MRP will be its role as an economic incentive for employers to comply with the inorganic lead standard. In recent

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years, increasing attention has been focused on the desirability of administrative regulations incorporating economic incentives to compliance. (See, H. Owen and C. Schultze, "Setting National Priorities, The Next Ten Years," 464-477 (1976); C. Schultze, "The Public Use of the Private Interest," Harper's, May, 1977, at 43-62; F. Anderson, A. Kneese, P. Reed, R. Stevenson, and S. Taylor, "Environmental Improvement Through Economic Incentives" (1978).) In other words, an agency should structure its regulations such that regulated parties comply out of simple economic self-interest. MRP was not adopted specifically to serve this purpose, but OSHA feels that MRP will strengthen the protection afforded by the overall inorganic lead standard due to MRP's inevitable impact on compliance.

The phasing-in of the ultimately desirable MRP biological removal triggers is structured such that employers making diligent good faith efforts to comply with the total standard should incur minor MRP costs. Employers who make serious attempts to comply with the standard will experience only small numbers of temporary medical removals—removals which likely can be absorbed by available transfer alternatives. Quite a different result will be experienced by employers who make only cursory attempts to comply with the central provisions of the standard. A simple rule will prevail—the greater the degree of noncompliance, the greater the number of temporary medical removals and associated MRP costs. MRP, in and of itself, will thus serve as an economic stimulus for employers to protect worker health voluntarily by complying with the standard rather than waiting for OSHA to compel compliance. MRP will also reward employers who through innovation and creativity devise new ways of protecting worker health not explicitly contemplated by the formal standard.

OSHA anticipates that MRP will hasten the pace by which employers comply with the new lead standard. Absent MRP, compliance with the new standard could follow the slow pace with which employers have complied with the earlier 1971 200 μg PbA/m^3 TWA standard. As noted earlier, the record of the lead proceeding reveals that many, many employers still have not come into full compliance with this 7-year-old standard. MRP should preclude such a similar history for the new lead standard.

d. *Alternatives to Medical Removal Protection Considered by OSHA*

Before deciding to include MRP in the final standard, OSHA considered and rejected three possible alternatives. First, OSHA could have mandated that all workers participate in medical surveillance offered under the standard. Second, OSHA could have mandated that temporary medical removals occur only at the election of individual workers. And third, OSHA could have permitted the use of respiratory protection in lieu of temporary medical removals. The agency decided against the adoption of any of these possibilities for the following reasons.

Mandating that workers participate in medical surveillance.—This alternative to MRP would require employers to compel all employees to participate in offered physical examinations and biological monitoring. To meet this obligation, employers would have to discipline and ultimately discharge any worker who refused to submit to medical surveillance. Under this theory, compulsion would be used to override any reluctance a worker might have concerning participation. Since participation would apparently be assured, there would seem to be no need to include MRP as a means of effectuating participation. This theory has been implicitly advocated as an alternative to MRP. (Ex. 385, p. 10.)

OSHA rejected this alternative for several reasons. First, mandating worker participation would not affect the issue of appropriately allocating the costs of temporary medical removals. Temporary medical removal is fundamentally a protective, control mechanism, and OSHA has determined that the costs of this control mechanism should properly be borne by employers. This judgment is unrelated to whether or not workers voluntarily participate in medical surveillance, thus OSHA would include MRP in the final standard even if total worker participation were somehow assured without MRP.

Second, OSHA is convinced that mandating worker participation in the absence of MRP cannot serve to assure voluntary and meaningful worker participation—upon which success of the standard's medical surveillance program depends. Mere participation is not an end in and of itself. The quality of participation is crucial due to the special nature of lead poisoning. Mandatory participation should succeed in forcing workers to permit blood samples to be taken. No degree of compulsion, however, can prevent workers from obtaining and misusing chelating agents so as to yield apparently low-blood-lead level results. Mandatory participation should succeed in forcing workers to stand before physicians for physical examinations. Again, no degree of compulsion can force workers to reveal subtle, subjective symptoms of lead poisoning which a physician needs to know as part of an adequate medical history.

As described earlier in great detail, OSHA is convinced that MRP is essential to maximize not just participation, but meaningful participation. Absent MRP, many workers will fear the possible adverse economic consequences of participation, therefore they will resist or refuse to participate in a meaningful fashion. Mandatory participation cannot and will not change this fact so long as the economic consequences of participation continue to be of concern.

An example affecting some lead workers is instructive. We know that lead exposure can damage male sperm cells, possibly causing birth defects, stillbirths, miscarriages, and sterility. (See, Health Effects Attachment) Male lead workers planning to father a child should consider consulting an examining physician in the course of the next periodic physical examination offered under the standard, or even request an immediate physical examination to verify the absence of damage to his reproductive system. If such an examination reveals that the worker's reproductive system has been damaged, the worker may have to be removed from current exposure for 2 or 3 months so that new, undamaged sperm can be produced. (Tr. 567-568, 583.) With MRP, male workers have nothing to fear from a 2 or 3 month removal—and the standard's medical surveillance program should thereby serve to prevent stillbirths, miscarriages, and birth defects among the potential children fathered by male lead workers. Without MRP, many workers will fear that if they come forward and chance to have impaired reproductive ability, they will be discharged, laid off for several months, or transferred temporarily or permanently with a large cut in pay. In light of these fears, many male workers would keep quiet about their plans to father children and take the chance that their reproductive capacity was not seriously damaged. Mandating worker participation in medical surveillance without MRP will have no effect on this situation, because once again workers will keep quiet about their parenting plans.

A third factor relevant to mandating worker participation in medical surveillance is the proper role of Government in this sensitive area. Attempting to compel workers to subject themselves to detailed medical examinations presents the possibility of clashes with legitimate privacy and religious concerns. Health in general is an intensely personal matter, and this is particularly true with respect to lead medical surveillance due to the adverse effects of lead on male and female reproduction. Absent some compelling justification, OSHA is extremely hesitant to mandate detailed inquiries into the most private aspects of the lives of American workers. Governmental coercion in this context would often prove counterproductive to the goal of achieving meaningful worker participation in medical surveillance. Finally, personal privacy and religious concerns arise irrespective of the provision of MRP benefits to removed workers. Thus, mandatory worker participation with MRP is no more satisfactory an alternative than mandatory worker participation without MRP.

The lead record reveals that many employers either currently mandate that their employees participate in medical surveillance programs, or advocate mandatory participation as their management philosophy. (Tr. 7799, 8461; Ex. 3(52), p. 1; Ex. 3(118), p. 11; Ex. 354E, p. 3; Ex. 354F, pp. 1, 3; Ex. 354H, p. 3; Ex. 354I, p. 2; Ex. 354L, p. 1; Ex. 354(O), p. 4; Ex. 354P, p. 3; Ex. 354Q. p. 3; Ex. 354U, p. 4; Ex. 354V, p. 3; Ex. 354W, p. 1; Ex. 354Y, p. 6; Ex. 354Z, p. 1; Ex. 354DD, p. 4; Ex. 354HH, p. 3; Ex. 354II, p. 3; Ex. 375, p. 5; Ex. 394D, p. 3; Ex. 396A, p. 5; Ex. 397A, p. 7; Ex. 402, p. 11; Ex. 447, pp. 2-3; Ex. 456, p. 9; Ex. 457, pp. 23, 40; Ex. 463, p. 2). Some worker representatives voice similar feelings on this issue. (Tr. 7622-7623; Ex. 410A, pp. 2, 5; See also, Tr. 7199; Ex. 452, p. 79) Without passing judgment on these practices and approaches, OSHA has decided against the agency mandating worker participation as part of the lead standard. The agency may well have adequate legal authority to adopt a mandatory participation requirement but has chosen not to do so on factual and policy grounds. An effective medical surveillance program cannot exist without workers having faith and confidence in the confidentiality, concern, and competence of company medical personnel. A close doctor-patient relationship is needed, especially where such intensely personal and private issues as health and reproduction are matters of concern. Such a position of trust and confidence can only be earned—it cannot possibly be created by governmental coercion. Rather than try to force worker cooperation, OSHA urges that employers and employees work together to evolve a successful medical surveillance program which encourages and achieves meaningful worker participation. Under the most unusual of circumstances, such as those presented by commercial diving operations (29 CFR 1910.411), OSHA would consider mandating worker participation in medical surveillance. OSHA, however, sees no compelling reason for the agency to mandate participation in the context of the lead standard, either in lieu of or in combination with the provision of MRP benefits.

Mandating that temporary medical removals occur only at the election of individual workers at risk of material impairment.—A second alternative to MRP considered by OSHA was to mandate that temporary medical removals occur only at the election of individual workers at risk of material impairment. This approach would preclude the removal of a worker clearly at risk of health impairment unless the worker consented to the removal. Since the worker would control the immediate consequences of participation in medical surveillance, all reluctance to participate should disappear, thereby removing the need for MRP. This alternative, however, would merely inform workers of their current medical status without providing affirmative protection to those who need it. Absent MRP, far too often workers who should be removed from further lead exposure would choose not to be. Employers would even be prevented from utilizing removal in situations where it was imperative. These results are inconsistent with the preventive purpose of the Act, and thwart the level of health protection which temporary medical removals can provide. Earlier in this Attachment, OSHA explained in detail the functions which temporary medical removals serve, and the necessity for OSHA mandating temporary medical removals in the final lead standard. These considerations dictate that OSHA reject any alternative to MRP which reduces the effectiveness of temporary medical removal as a protective mechanism.

Permitting the use of respiratory protection in lieu of temporary medical removals.—A third alternative to MRP considered by OSHA was to permit the use of respiratory protection in lieu of temporary medical removal. Under this view, some form of specialized respiratory protection would come into force once a worker's blood lead level or other medical factor indicated that the worker was at increased risk of material impairment to health. For example, a respirator might be required where none was worn before, or a new respirator having a higher protection factor might be substituted for the form of respirator previously worn. This new respirator regimen would then be relied upon to prevent further harmful exposure, and allow the worker's blood lead level (or other biological index) to gradually return to an acceptable condition. Due to the use of respirators, no physical removal of the worker from lead exposure would be required, therefore no MRP benefits need be provided.

OSHA has rejected this respirator alternative to MRP due to the inherent limitations of respiratory protection. The blood lead level triggers set for the removal of a worker are such that any further substantial exposure of lead presents unacceptable risks to the worker's health. The need to temporarily remove a worker under these circumstances is essentially a matter of medical necessity. Relying on a respirator to protect a worker from exposure beyond such a point is simply too risky in light of the numerous inadequacies of respiratory protection—inadequacies described in detail elsewhere in the preamble. OSHA's decision to reject this use of respirators is supported both by the National Association of Manufacturers (Ex. 354(O), p. 3) and by the East Penn Manufacturing Co., a manufacturer of storage batteries. (EX. 354II, p. 2.)

To conclude that respirators are not an acceptable alternative to MRP is by no means to eliminate a role for them. Respiratory protection, along with engineering and work practice controls, hygiene practices, etc., is one means of seeking to assure in advance that no worker need ever be removed. The need to temporarily remove a worker due to medical reasons will infrequently arise without advance warning. For example, in most cases, a worker's blood lead level will have been increasing over many months before the blood lead level removal trigger is exceeded. By closely following a worker's biological condition, an employer can take individual precautionary measures as dictated by the application of sound industrial hygiene principles. Respiratory protection may very well be dictated under the circumstances. If respiratory protection does prove to be totally effective in practice, then there will be no need to temporarily remove the worker. As a result, although OSHA rejects respiratory protection as an alternative to MRP, experience should demonstrate that respirators play a constructive role in preventing temporary medical removals from occurring.

e. *Feasibility.*

Overview of the phasing-in of medical removal protection.—Two competing goals shaped OSHA's adoption of a 4-year phasing-in process for MRP. OSHA sought to quickly require the application of the ultimate MRP removal and return criteria so as to maximize the level of health protection which MRP will afford. At the same time, however, OSHA sought to gradually implement MRP so that employers would have a reasonable opportunity to reduce their employees' blood lead levels before particular blood lead level removal triggers came into effect.

This 4-year process incorporates the following elements: (1) upon the effective date of the standard, the temporary medical removal of employees

having blood lead levels at or above 80 μg/100 g of whole blood; (2) 1 year after the effective date of the standard, the temporary medical removal of those having blood lead levels at or above 70 μg; (3) 2 years after the effective date of the standard, and thereafter, the temporary medical removal of those having blood lead levels at or above 60 μg; (4) 4 years after the effective date of the standard, and thereafter, the temporary medical removal of those having 6-month average blood lead levels at or above 50 μg; and (5) upon the effective date of the standard, and thereafter, the temporary medical removal of employees found by physician determinations to be at risk of sustaining material impairment to health. The effect of this 4-year phasing-in process is that employers who comply with the new lead standard should face minimal economic impact from MRP's existence.

MRP as structured in the final standard is a feasible regulatory device. The imposition of ultimate blood lead level removal criteria in phases will permit firms to gradually reduce current blood lead levels and thus avoid most temporary medical removals. Disruption of plant production operations should be minimal since few removals will occur. The gradual phasing-in schedule will enable employees to structure their production operations so that transfer opportunities are provided to all removed workers. Four years will allow collective bargaining agreements to be altered if necessary so that all removals can be smoothly accommodated. Since full implementation of feasible engineering controls throughout the lead industry will impose substantial costs on several industry segments and since MRP as a control mechanism is of secondary importance to primary control measures such as engineering controls, OSHA has chosen to phase-in MRP slowly. Firms will therefore be able to avoid the possibility of MRP costs interfering with the rapid elimination of harmful lead exposure. As a result, firms that comply with the new standard should be able to avoid virtually all MRP costs. OSHA recognizes that the 4 years provided for the full implementation of MRP necessarily includes some short-term compromising of optimal worker protection. The agency is convinced, however, that this drawback is outweighed by the assurance the MRP can be implemented in an orderly fashion without significant disruption to any segment of the total lead industry.

Impossibility of immediate implementation of the ultimate MRP program.—The weight of the evidence in the lead record demonstrates that immediate imposition of the entire ultimate MRP program is not feasible. Put simply, existing worker blood lead levels are so high that major segments of the lead industry would have to immediately remove at least 25 percent to 40 percent of their production work force from lead exposure. Sufficient transfer opportunities would not exist thus extensive layoffs would result with accompanying MRP costs. Though OSHA has not made detailed cost calculations, we are convinced that major segments of the lead industry would be significantly impacted by these layoffs. Most firms have low worker blood lead levels and would not be so heavily impacted; other firms could shoulder such large costs and survive. However, OSHA is persuaded that several industry segments could not reasonably be expected to comply with an immediate imposition of the overall MRP program.

The lead record contains considerable blood lead level distribution data which bear out the preceding statements. Tables C-1. C-2, C-3, and C-4 summarize the record evidence on blood lead level distributions found within the battery industry, the primary lead smelting industry, the secondary lead smelting industry, and in other lead plants. Tables C-1, C-2, and C-3 suggest that over 30 percent of battery workers, 25 percent of primary lead smelting workers, and over 40 percent of secondary lead smelting workers, respectively, have blood lead levels at or above 60 μg/100 g of whole blood. Table C-4 indicates that blood lead level distributions in other particular lead industry plants are comparable. Individual plant blood lead level distributions vary dramatically within these four tables, but OSHA believes that the aggregate data presents a representative overview of existing worker blood lead levels.

[4510-26 C]

TABLE C-1

OBSERVED BLOOD LEAD DISTRIBUTIONS IN THE BATTERY INDUSTRY

FIRM	Percent of Workers in Given Blood Lead (ug/100g) Range <40	40-49	50-59	60-69	70-79	>80	Total Number of Workers	Exhibit Number
Health Research Group	31.9	← 50.5 →		← 16.2 →		1.4	210	146 A
Delco-Remy	38.6	46.6	13.2	1.5	0	0	765	29(12)
Chloride	1.5	9.1	31.8	33.3	15.2	10.6	66	100A
UAW	16.0	26.0	18.1	18.1	12.0	10.1	393	404B
	10.1	18.0	19.0	20.3	15.2	17.1	316	"
	7.0	←	67.0	→	16.0	9.0	1083	"
NIOSH Study	33.3	37.6	22.4	6.1	.6	0	330	334
Estee	10.6	21.7	30.7	25.3	10.4	1.1	74	315A, B
Bell City	5.6	22.2	11.1	27.8	22.2	11.1	18	312
Battery Systems	64.4	22.2	8.9	4.4	0	0	45	297 C1-C10
General Battery	15.9	19.0	24.6	22.2	13.4	4.7	126	297 C1-C10, 152
Gould	7.5	32.5	27.5	25.0	5.0	2.5	40	297 C1-C10
Teledyne	19.3	25.0	20.7	23.6	8.6	2.9	70	297 C1-C10
Trojan	30.8	31.9	23.3	10.9	2.3	0.6	68	297 C1-C10
Plates	13.4	21.6	37.1	23.7	3.1	2.1	24	297 C1-C10
Prestolite	--	--	--	33.3 →			?	297 C1-C10
C and D Battery	61.8	← 32.7 →		← 5.3 →		0.2	1020	354Q
Globe-Union				3.3	0.8	0	?	235
Voltmaster	15.6	34.5	31.3	18.6	0	0	32	293
Total N	743	1040	761	570	338	228	3680	
Total Percent	20.2	28.3	20.6	15.5	9.2	6.2	100.0	
D.B. Associates Study Percent	←		69.2	14.7	9.0	7.0	N=12800	

TABLE C-2

DISTRIBUTION OF BLOOD LEAD LEVELS IN THE PRIMARY SMELTING INDUSTRY

FIRM/PLANT	Percent of Workers in Given Blood Lead (ug/100g) Range <40	40-49	50-59	60-69	70-79	>80	Total Number of Workers	Exhibit Number
ASARCO								3(106)
East Helena	18.6	←40.5→		←38.7→		2.2	274	"
Omaha	16.3	←48.5→		←33.2→		2	295	"
Glover	27.8	←55.0→		←13.2→		4	151	"
Whiting	38.4	←52.0→		←9.6→		0	125	"
El Paso	43.3	←45.2→		←11.3→		0.1	876	"
St. Joe								
Herculaneum (76)	13.9	19.0	23.4	25.9	13.1	4.6	563	3(103)
" (77)	22.8	18.6	23.4	19.9	13.2	2.1	607	407(B)
J.W. Lorio	0	25.0	29.2	33.3	12.5	0	24	122(A)
Bunker Hill	25.6	16.7	25.2	18.7	7.3	6.5	262	299
(NIOSH)								
Total N	(852)		(1415)		(835)	(75)	(3177)	
Total Percent	26.8	←44.5→		←26.3→		2.4	100.0	
D.B. Associates Study Percent	19.0	21.0	25.0	20.0	11.0	4.0	N=3055	

TABLE C-3

DISTRIBUTION OF BLOOD LEAD LEVELS IN THE SECONDARY SMELTING INDUSTRY

SOURCE	Percent of Workers in Given Blood Lead (ug/100g) Range <40	40-49	50-59	60-69	70-79	>80	Total Number of Workers	Exhibit Number
California	17.1	←61.6→		←20.2→		1.1	99	86C
4 Smelters	17.9	←15.4→		←33.3→		33.3	78	86B
	15.4	←15.4→		←43.6→		25.6	39	"
	3.4	←17.2→		←6.8→		72.4	29	"
	7.9	←15.8→		←44.7→		31.6	38	"
Indianapolis	1.3	←21.8→		←48.1→		28.8	156	23 (Lillis)
ASARCO								3 (106)
Perth Amboy	75.7	←24.3→		←0→		0	115	"
Newark	47.4	←36.1→		←15.8→		0.8	133	"
Keystone	51.4	21.6	27.0	0	0	0	37	430G-1
Total N	(212)		(218)		(178)	(116)	(724)	
Total Percent	29.3	←30.1→		←24.6→		16.0	100	
Lead Industry Association Study	←38		24		19	19	N=?	354(AA)

TABLE C-4

BLOOD LEAD DISTRIBUTIONS IN OTHER LEAD INDUSTRIES

INDUSTRY/SOURCE	Percent of Workers in Given Blood Lead (ug/100g) Range						Total Number of Workers	Exhibit Number
	<40	40-49	50-59	60-69	70-79	≥80		
Pigments								
D.B. Associates	1.9	←15.1→		←47.2→		35.8	53	26
King	26.4	14.7	44.1	11.8	2.9	0	34	234(22)
Zinc Smelting								
St. Joe Josephtown	76.7	16.7	5.3	1.3	0	0	150	3 (103)
Steel								
Bethlehem	58.8	17.6	11.8	5.9	5.9	0	17	44, 237
Printing								
R.M. Banknote	91.3	8.7	0	0	0	0	23	38B
Lead Products								
NL Industries	←78.2→			←18.0→		3.8	2501	394C
NL-Hoyt Plant	10.7	0	17.9	14.2	25.0	32.8	28	23(NIOSH)
Soldering								
Western Electric	100.0	0	0	0	0	0	37	3(79)
Lead Chemicals								
Eagle Pitcher (NIOSH)	5.9	5.9	17.6	5.9	23.5	41.2	17	113
Eagle Pitcher (Data)	←15.4→			←48.1→		36.5	52	38(C)

The tables paint a bleak picture of existing worker blood lead levels, but the situation can and should rapidly improve upon the implementation of the protective measures required by the final standard. A significant contributing factor to existing high blood lead levels has been widespread noncompliance with the 7-year-old 200 μg/m³ air lead standard. Noncomplying employers can quickly eliminate this contribution to their employee blood lead level distributions. Current industry blood lead level distributions are also a function of numerous other factors, all of which will be impacted by the new standard. The final standard sets a permissible exposure limit of 50 μg/m³ TWA. Although engineering controls to meet this level may require years to implement, respiratory protection to a 50 μg/m³ level is immediately required. Worker blood lead levels should quickly begin to fall as carefully designed and managed respiratory protection programs are implemented. The lead record indicates that poor industrial hygiene practices such as poor housekeeping, sloppy work practices, inadequate hygiene facilities, superficial respiratory protection, etc. have been common throughout the lead industry in the past. (Tr. 1257, 2173-74, 2181-83, 2196-98, 2530-36, 2577-93, 2614-16, 2983-21 to 24, 3635, 4720-21, 4761, 4762, 4786, 4789, 4793-96, 4834-46, 4840, 4878-79, 4991-97, 5003-04, 5038, 5241-46, 5279-87, 5295, 5311-12, 5506-09, 5516, 5518, 5530, 5559, 5561, 5562, 5565-71, 5580-82, 5592, 5636-37, 5835-37, 5857, 5863, 6026, 6026, 6038-39, 6040-41, 6107, 6139, 6154, 6156, 6207, 6209-10, 6258, 6284, 6287, 6289-90, 6292, 6297, 6317, 6329, 6876-78, 6881, 7616-17; Ex. 3(111), pp. 14-16) The final standard addresses all of these matters by establishing protective requirements which employers can promptly and feasibly implement.

The intangible factors of employer and worker knowledge and perception will also be influenced by the final standard, and these two factors may well have the largest influence on the expeditious reduction of existing blood lead levels. The lead record contains numerous assertions by employer representatives to the effect that a blood lead level of 80 μg/100 g of whole blood is an absolutely safe level, with no possible harmful effects ever occurring at lower blood lead levels. (Ex. 3(4), p. 2; Ex. 3(65), pp. 2, 4-5, 11; Ex. 3(72), pp. 17-20; Ex. 3(74), p. 2; Ex. 3(96), p. 1; Ex. 3(106), Comments, p. 1; Ex. 28(16), p. 1; Ex. 93, pp. 1, 5, App.) Undoubtedly, many firms have believed such assertions to be true, and thus have seen little need for corrective measures to respond to worker blood lead levels below 80 μg. The health effects sections of the preamble, however, demonstrate that an 80 μg blood lead level is not a safe level. Assertions that 80 μg is a safe level may once have been fully justified in light of the then existing state of medical knowledge, but must now be discarded. As employer knowledge and appreciation of the health implications of long term blood lead levels in excess of 40 μg/100 g of whole blood increases, worker blood lead levels will rapidly decline since employers will manage their operations so as to treat lead with the care it deserves.

Changed worker understanding and perception should have a similar effect. In many instances workers have never been told that blood lead levels below 80 μg are a matter of concern; certainly few employers have provided such information. As a result, many workers have probably been totally unconcerned about their personal blood lead levels. The final standard, particularly given the education and training provisions, will spark new worker interest in eliminating all contributing factors to elevated blood lead levels. Better personal hygiene habits, work practices, housekeeping and equipment maintenance procedures should result simply from new worker appreciation that these matters are vitally important to health.

Immediate 80 μg blood lead level removal trigger.—The preceding discussion demonstrates that existing worker blood lead levels should begin to quickly decline upon compliance with the new standard's requirements. MRP blood lead level removal triggers are slowly implemented consistent with modest goals for the decline of worker blood lead levels. An 80 μg/100 g of whole blood removal trigger is imposed immediately upon the effective date of the standard, and continues for one year thereafter. This 80 μg figure is essentially a 1 year continuation of the status quo since many of the firms in the most heavily impacted segments of the lead industry already remove workers whose blood lead levels exceed 80 μg, and provide economic protection to those removed.

The economic impact of the 80 μg removal trigger during the first year of the lead standard will be minimal. Tables C-1 through C-3 indicate that 6, 3, and 16 percent of exposed workers in the battery industry, primary lead smelting, and secondary lead smelting industries, respectively, may require removal. Many of these workers are probably already on removal status due to existing employer policies. The standard permits workers removed with blood lead levels in excess of 80 μg to be transferred to positions having an air lead level (without regard to the use of respirators) below 100 μg/m³. Abundant transfer opportunities already exist to accommodate these removals. (See, Ex. 26, pp. 3.4, 5.44; Ex. 334, Tables 8, 9; Ex. 404B, Att. B; Ex. 407B, Ex. C; Ex. 430G-1, Tables 3, 4.) Greater transfer opportunities will arise as the new standard is implemented.

The costs to employers of transferring small percentages of their work force will be insignificant. As part of the lead proceeding, the Center for Policy Alternatives estimated the first year direct cost of an 80 μg removal trigger (ignoring costs already regularly absorbed by existing industry transfer programs) to be as follows: (Ex. 439A, table 7.1).

Industry	Direct costs assuming transfers occur
Battery Manufacturing	$500,555
Primary Lead Smelting	44,209
Secondary Lead Smelting	300,018
Inorganic Pigments Manufacturing	359,100

The Center for Policy Alternatives termed these costs "so low on an absolute scale that it is ulikely that the 80/60 (first year 80 μg) regulation will have a significant impact on any of the industries which have been examined in this report." (Ex. 439A, p. 7-3.) No industry representative disagreed with this conclusion nor do we. And, to the extent that any costs exist, it is important to emphasize that these costs are largely a function of noncompliance with the prior 200 μg/m³ standard.

70 μg blood lead level removal trigger 1 year after the effective date of the standard.—One year after the effective date of the standard, a 70 μg blood lead level removal trigger comes into force. To avoid any economic impact from this requirement, employers need only accomplish minor declines in the blood lead levels of some of their employees. Those workers having blood lead levels between 70 μg and 79 μg need decline no more than 10 μg in 12 months—less than 1 microgram per month. As explained earlier, major blood lead level declines are to be anticipated soon after the effective date of the standard provided employers comply with the new standard. Due to this, OSHA is convinced that few workers should have to be removed once the 70 μg removal trigger comes into force. Since few removals should occur and numerous transfer opportunities will exist, the economic impact of this trigger should be insignificant.

The reasonableness of the conclusion that few workers should have blood lead levels in excess of 70 μg 1 year after the effective date of the standard is borne out by the dynamic air lead/blood lead modeling of MIT's Center for Policy Alternatives. First, it

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is clear that those workers initially removed with blood lead levels in excess of 80 μg should all have declined to below 60 μg before the end of the first year of the standard, thus will be unaffected by the 70 μg removal trigger. The Center for Policy Alternatives modeled the consequences of exposing workers having blood lead levels between 70 μg and 79 μg (average 75 μg blood lead level) to 50 μg/m³ of lead for 1 year after the effective date of the standard. (Ex. 439B, addendum to p. 4-29.) This scenario parallels the minimum that should occur in reality. The following average blood lead levels (depending on job tenure) resulted after 1 year of 50 μg/m³ air lead exposure: (Ex. 439B, Table Ad. 2).

JOB TENURE (yrs)	0-1	1-5	5-10	10-20	Over 20
AVERAGE PbB	41.3	49.9	54.4	56.7	58.6

Assuming a normal distribution about each of these averages with a standard deviation of 9.5 μg, one can apply standard statistical tables to achieve the percentage of each job tenure group which would equal or exceed 70 μg 1 year after the effective date of the standard:

JOB TENURE (yrs)	0-1	1-5	5-10	10-20	OVER 20
PERCENTAGE OVER 70 ug	0.2%	1.7%	5.1%	7.5%	11.5%

Finally, one can form a weighted average for a total population by multiplying each job tenure by its relative proportion of the typical manufacturing industry work force. (Job tenure distribution for all manufacturing industries in 1973: 0-1 yr. (19.6 percent); 1-5 yr. (28.4 percent); 5-10 yr. (18.9 percent); 10-20 yr. (17.6 percent); greater than 20 yrs. (15.5 percent), from "Job Tenure of Workers—1973", Special Labor Force Report No. 172, BLS Monthly Labor Rev. (Dec. 1974); See also, Ex. 439A, p. 3-18.) A weighted average slightly less than 5 percent results. This 5-percent figure means the following: Of 100 workers with blood lead levels between 70 μg and 79 μg at the effective date of the standard, less than 5 workers should continue to exceed 70 μg 1 year later. Tables C-1 to C-3 indicate that workers with blood lead levels between 70 μg and 79 μg probably comprise less than 20 percent of each segment of the lead industry. As a result, 1 year after the effective date of the standard less than 1 percent of the existing work force should exceed 70 μg.

60 μg blood lead level removal trigger 2 years after the effective date of the standard.—Two years after the effective date of the standard, a 60 μg blood lead level removal trigger comes into force. To avoid any economic impact from this requirement, employers can take advantage of 24 months given to improve working conditions so that current worker blood lead levels between 60 μg and 80 μg will decline to below 60 μg. Two years is an adequate period of time to accomplish this goal. Tables C-1 to C-3 indicate that numerous individual companies in the highest impacted segments of the lead industry already have effected such declines. Two years are thus provided for all employers to achieve results comparable to what some employers have today.

The Center for Policy Alternatives modeling demonstrates the reasonableness of the conclusion that few workers should exceed 60 μg 2 years after the effective date of the standard. Workers originally having blood lead levels at or above 80 μg should have declined to below 60 μg within the first year of the standard's effect. Workers originally having blood lead levels between 70 μg and 79 μg should have declined within the first year of the standard such that 95 percent are below 70 μg. As noted earlier, the average blood lead level of each job tenure subgroup should have declined to below 60 μg. As a result, workers originally having blood lead levels between 70 μg and 79 μg should decline during the second year of the standard even more so than workers originally having blood lead levels between 60 μg and 69 μg (average 65 μg) declined during the first year of the standard. The Center for Policy Alternatives modeled the consequences of exposing workers having blood lead levels between 60 μg and 69 μg (average 65 μg blood lead level) to 50 μg/m³ of lead for 1 year after the effective date of the standard. The following average blood lead levels (depending on job tenure), and percentages over 60 μg (using statistical tables as before), resulted from this simulation: (Ex. 439B, table Ad. 2)

JOB TENURE (yrs)	0-1	1-5	5-10	10-20	OVER 20
AVERAGE PbB	41.3	47.2	50.7	52.6	54.2
PERCENTAGE OVER 60 ug	2.4%	8.9%	16.4%	21.8%	27.1%

The weighted average for a total worker population (using job tenure distribution as before) would be 14 percent. The foregoing suggests that of all workers originally having blood lead levels between 70 μg and 79 μg at the start of the standard, much less than 14 percent would exceed 60 μg 2 years later. Since workers now between 70 μg and 79 μg comprise less than 20 percent of the existing work force in each of the most heavily impacted industry segments, after 2 years of the standard much less than 3 percent of the existing work force of even those segments would be expected to exceed 60 μg.

The preceding "much less than 3 percent" figure would only be affected slightly by workers originally having blood lead levels between 60 μg and 69 μg. The previous paragraph's calculations indicated that less than 14 percent of these workers would exceed 60 μg after 1 year. One would expect most of these workers still above 60 μg to be very close to having a 60 μg blood lead level. One extra year should be sufficient for these few workers to decline one or two additional micrograms so that only extremely rare individuals would still exceed 60 μg.

Six-month 50 μg average blood lead level removal trigger 4 years after the effective date of the standard. The standard provides that the 6-month 50-μg average blood lead level removal trigger comes into force 4 years after the effective date of the standard. In essence, this gives employers 2 additional years after the 60-μg removal trigger comes into force to shift the blood lead levels of employees still between 50 μg and 60 μg down below 50 μg. Two years were provided instead of some shorter period since the rate of worker blood lead level declines between 60 μg and 50 μg will likely be somewhat slower than the rate of declines between 70 μg and 60 μg. In total, however, a full 4 years is provided for all segments of the lead industry to achieve worker blood lead level distributions which numerous employers in the most heavily impacted segments are close to achieving already.

Impact of ultimate blood lead level removal criteria. The preceding paragraphs explain that MRP costs should be insignificant during the first 4 years of MRP's existence. MRP costs in subsequent years should decline even further. Air lead exposures will drop with implementation of new engineering controls, and with increasing

employer experience in comprehensively controlling occupational lead exposure from all sources. Long term lead workers will gradually retire from the industry so that plant blood lead level distributions become less and less a function of previous lead exposure in excess of 50 μg/m³. All of these factors will result in fewer and fewer removals due to elevated blood lead levels. Employers will be able to guarantee the availability of transfer opportunities to most removed workers so that the costs of a layoff with MRP benefits need rarely be incurred.

The Center for Policy Alternatives dynamic air lead/blood lead modeling included long run projections of what percentages of a work force would exceed 50 μg and 60 μg if all workers were exposed to air lead levels comparable to compliance with the 50 μg/m³ PEL (supra, att. A(6).) This modeling suggests that 5.5 percent of a population would have blood lead levels between 50 μg and 60 μg, while 0.5 percent would have blood lead levels in excess of 60 μg. Thus an employer in total compliance with the final standard should never have more than 6 percent of the work force subject to removal at any time. In reality, much smaller percentages will be involved for two simple reasons. First, air lead levels within lead plants necessarily vary from department to department. When all departments are below 50 μg/m³, many departments will be significantly below this figure. Many workers will have an exposure to lead far less than 50 μg/m³, and overall plant blood lead level distributions will reflect this fact. Second, employers will likely want to avoid temporary medical removals where possible, therefore they will closely follow each employee's blood lead level. Special attention will be paid to workers whose blood lead levels are approaching the removal triggers. Engineering or work practice controls might be strengthened, respiratory protection might be invoked where appropriate, or other industrial hygiene measures might be applied so as to reduce a worker's effective exposure to lead. With experience, employers will have both the ability and opportunity to preclude most temporary medical removals; consequently the economic impact of MRP should be trivial.

Immediate removal due to physician determinations. No phasing-in period is provided for temporary medical removals initiated by physician determinations; this MRP trigger comes into effect immediately. OSHA is convinced that this trigger for temporary medical removal will not impose substantial economic burdens on any of the segments of the lead industry because few workers should have to be removed due to a physician determination. Some fraction of the lead industry work force is currently at risk of material impairment due not only to elevated blood lead levels, but to the development of specific lead-related diseases or health impairments. The medical surveillance provisions of the standard, however, will serve to prompt the temporary medical removal of only some of these workers, since developing lead-related diseases such as nephropathy and peripheral neuropathy will often prove impossible or extremely difficult to detect. Essentially, OSHA anticipates that few workers will be removed during the first few years after the effective date of the standard due to a physician determination. And, as working conditions in the lead industry improve, even fewer such removals should occur.

TABLE C-5

Industry	Number of production employees	Number of lead-exposed employees	Average annual straight time earnings and benefits	Average annual hours worked	Annual cash flow (1977 dollars)
Primary lead smelting	2,500	2,216	$14,978	1,960	$116,226,000
Secondary lead smelting	3,338	3,166	13,820	2,024	146,527,000
Battery manufacturing	17,800	16,727	13,269	1,938	338,416,000
Inorganic pigments manufacturing	2,945	2,000	15,605	2,036	101,058,000

Quantification of potential MRP costs. MRP costs both in the short term and the long term should be small since employers will have the opportunity and ability to prevent most removals. It is reasonable to project that beginning in the second year following the effective date of the standard and continuing thereafter, no more than 2 percent of the lead exposed work force should be on removal status at any one time. The annual direct costs to the most heavily impacted segments of the lead industry of a 2-percent removal rate can be quantified using data contained in the Center for Policy Alternatives economic study. This study tabulated the number of production employees (Ex. 439A, p. 6-3), the number of lead exposed employees (Ex. 439A, p. 6-3), the average annual straight time earnings and benefits (Ex. 439A, p. 6-7), the average employee hours worked (Ex. 439A, p. 6-16), and the annual industry cash flow in 1977 dollars (Ex. 439A, pp. 7-6, 8-14) for several major segments of the lead industry. This data is contained in table C-5. The direct annual costs (before taxes) that four of these industries would incur if 2 percent of their work force were continuously removed can be computed from table C-5 in conjunction with the Center for Policy Alternatives' estimate that the transfer of a worker will cost an employer approximately $0.96 per hour: (Ex. 439A, p. 6-19.)

Direct annual costs if 2 percent of work force is continuously on transfer status

Industry	Total cost	Cost per exposed employee	Cost per production employee	Percentage of annual cash flow (percent)
Primary lead smelting	$84,672.00	$38.21	$33.87	0.072
Secondary lead smelting	124,354.58	39.28	37.28	.085
Battery manufacturing	623,260.80	37.26	35.01	.184
Inorganic pigments manufacturing	78,182.40	39.09	26.55	.077

Similar calculations can be performed of the direct annual costs (before taxes) if half of the removals of 2 percent of the work force took the form of layoffs with the remainder being transfers:

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Direct annual costs if 1 percent of work force is continuously laid off, and 1 percent is continuously on transfer status

Industry	Total cost	Cost per Exposed employee	Cost per production employee	Percentage of annual cash flow (percent)
Primary lead smelting	$374,847.60	$169.16	$149.94	0.32
Secondary lead smelting	500,271.28	158.01	149.96	.34
Battery manufacturing	2,531,534.10	151.34	142.22	.75
Inorganic pigments manufacturing	351,191.20	175.60	119.25	.35

The foregoing data demonstrates that MRP should present only modest expenses to the lead industry; expenses which are minor in comparison to the expenditures which must be made to adequately reduce existing lead exposures. The per employee costs of MRP will be small, as will the percentage demand on the industry's cash flow resources. In addition, the actual industry costs of MRP will be halved by the Federal corporate income tax rate of 48 percent. The resulting overall costs of MRP will be small, and will be outweighed by the health benefits afforded by the MRP program.

Economic impact of MRP on less heavily impacted segments of the lead industry. The phasing-in periods for MRP are applied equally across all segments of the lead industry. The phasing-in of MRP has been designed so that even the segments of the lead industry most heavily impacted by the new lead standard—battery manufacturing, primary and secondary lead smelting, and pigment manufacturing—should not be appreciably disrupted by MRP. An immediate consequence is that the remainder of the overall lead industry should experience trivial MRP costs over time. These industries have substantially lower air lead levels with resultant lower blood lead level distributions. Few workers will be subject to blood lead level removal triggers in either the short or long term, thus causing little MRP expense to these firms. All employers are given a fair and reasonable opportunity to avoid practically all MRP costs by complying with the new lead standard.

MRP is a new program which incorporates preventive health concepts not present in the prior 200 $\mu g/m^3$ standard. The new standard will hopefully foster a higher level of concern for worker health by the overall lead industry. In this spirit, MRP is phased-in consistent with anticipated worker blood lead level declines so that MRP costs cannot be viewed as a penalty for past occupational health practices. All segments of the lead industry are thus provided the same periods of time to accomplish blood lead level declines, regardless of the percentages of an industry's work force in the higher blood lead level ranges. Though OSHA certainly encourages companies to implement the ultimate MRP blood lead level removal triggers immediately if possible, we have chosen not to make this a legal requirement.

Economic impact on small manufacturers. Several participants in the lead proceeding argued that MRP will have a far greater economic impact on smaller lead firms (Tr. 7460-61; Ex. 354(0), p. 4; Ex. 385, pp. 11-12; Ex. 397A, p. 5.) We would agree that in some instances companies such as small battery manufacturers might have less flexibility in creating transfer opportunities for removed workers than would larger firms. This does not, however, necessarily imply higher MRP costs for the small firm. In many respects the management of a small firm is in much closer contact with production operations and workers than comparable management in a large firm. A small firm thus has great opportunities to correct factors which might cause the elevated blood lead level of a particular worker. OSHA does not agree that small companies by virtue of their size are incapable of protecting worker health. And, the level of health protection an employer provides, not size, is the prime determinant of any firm's MRP costs.

The ability of small firms to accommodate MRP can best be seen in terms of the blood lead level distributions currently accomplished by the most diligent small firms. Dynalite Corp., a small battery company having about 20 employees, uses no respiratory protection but nonetheless maintains such low lead exposure that only an odd blood lead level slightly exceeds 60 μg. (Tr. 1240-41, 1245.) Keystone Resources, Inc., a secondary lead smelter employing 37 people at one of its plants, reports having no workers with blood lead levels in excess of 60 μg. (Ex. 430G(1).) These small firms will likely experience no MRP costs for at least 4 years, and other small firms which comply with the new lead standard can achieve the same result. Consequently, we reject suggestions that MRP will necessarily have a greater economic impact on small employers than on large employers.

3. *Summary and Explanation of the Medical Removal Protection Sections of the Standard.*

a. *Temporary medical removal and return criteria.* The standard establishes explicit removal and return criteria for the temporary medical removal of workers at risk of sustaining material impairment to health due to continued exposure to lead. Removal and return criteria apply to elevated blood lead levels and medical opinions.

Elevated blood lead levels. The standard establishes two ultimate blood lead level removal criteria which are phased-in over a multiple year period. Ultimately, temporary removal is required for any worker having a blood lead level at or above 60 $\mu g/100$ g of whole blood, and for any worker having an average blood lead level at or above 50 $\mu g/100$ g of whole blood over at least the past 6 months. These criteria are phased-in over a period of 4 years, with an immediate 80 $\mu g/100$ g of whole blood lead level removal criteria. A 70 $\mu g/100$ g of whole blood removal criteria becomes effective 1 year after the effective date of the standard. The 60 $\mu g/100$ g of whole blood removal "trigger comes into force 2 years after the effective date of the standard, with the 6 month 50 $\mu g/100$ g of whole blood average removal trigger coming into force 2 years later. The decisionmaking involved in this lengthy phasein period is explained in the prior section of this attachment concerning the feasibility of MRP.

The ultimate blood lead level removal triggers are a function of the risks to health presented by elevated blood lead levels. The preamble's discussion of the numerous adverse effects of lead on the human body demonstrates that long-term blood lead levels in excess of 40 μg must be avoided. Blood lead levels in excess of 40 μg are a matter of concern, but long-term blood leads in excess of 40 μg are the main focus of concern. Convincing evidence demonstrates that long-term blood lead levels of approximately 40-60 μg yield serious health impairments in some workers. Such impairments are slowly acquired, although it is impossible to precisely quantify the minimum duration of elevated blood lead levels needed for the onset of material impairments in occupationally exposed workers. It is clear, however, that this minimum duration is in terms of months as opposed to days and weeks. OSHA does not feel that a short-term blood lead level elevation above 40 μg, in and of itself, merits the temporary medical removal of a worker. But, since many workers will spend much of their working years in lead exposed occupations, OSHA has determined that temporary medical removals are essential in situations where long-term blood lead levels are likely to significantly exceed 40 $\mu g/100$ g of whole blood.

The standard mandates that a worker immediately be removed from exposure to lead whenever a followup measurement indicates a blood lead level at or above 60 $\mu g/100$ g of whole blood. Although a blood lead level of 60 μg may not automatically be dangerous, such a level has serious implications. Blood lead levels slowly rise in response to moderate increases in lead intake. In general, several months would be needed for a worker's blood lead level to rise from 40 μg to 60 μg, unless the worker was exposed to lead levels grossly in excess of the standard's requirements. Also, blood lead levels are often likely to decline at a rate even slower than they previously increased. As a rough example, if it took a worker 2 months to rise from 40 μg to 60 μg, then it might take 3 or 4 months after removal for the worker's blood lead to return to 40 μg. Also, there is considerable individual variability in the rate of excretion of absorbed lead. Some workers will take many months to decline from 60 μg to 40 μg even though the higher blood lead level was quickly acquired.

The crucial result of a blood lead level of 60 μg is the high probability that it will represent numerous months of a blood lead level in excess of 40 μg during the overall period of absorption and excretion. Due to this, the agency has concluded that removal must be automatic whenever a worker's blood lead level equals or exceeds 60 $\mu g/100$ g of whole blood. Postponing mandatory removal until some higher blood lead level is reached merely invites the occurrence of material impairment. Each worker's health must be protected over an entire lifespan, and the goal of minimizing the duration of any and all blood lead level elevations in excess of 40 μg must be paramount. Removal is thus automatic at or above a blood lead level of 60 $\mu g/100$ g of whole blood.

As previously explained, prevention of material impairment to worker health and functional capacity dictates that long-term blood lead levels be maintained at or below 40 $\mu g/100$ g of whole blood, with elevations above 40 μg to be minimized. Removal is essential for workers whose blood leads are slowly but steadily increasing above 40 μg, and for workers whose blood lead levels are stabilizing appreciably above 40 μg. To respond to these and similar possibilities, the standard ultimately provides for the temporary removal of any worker having an average blood lead level of 50 $\mu g/100$ g of whole blood over the last three measurements, or the last 6 months, whichever is longer. If the average of these measurements equals or exceeds 50 μg, then there is the serious danger that the worker's long-term average blood lead level will significantly exceed 40 μg, and material impairment result. In light of such a 6-month average, removal is essential to protect worker health, unless the most recent blood sampling test indicates a blood lead level at or below 40 μg. Such a measurement would strongly suggest that whatever caused the worker's several most recent elevated blood lead levels no longer was in operation.

In setting the blood lead level removal criteria, OSHA has sought to minimize the effect of blood lead level measurement variability. Blood lead level measurements under the standard need only have an accuracy of plus or minus 15 percent (to a confidence level of 95 percent). Due to this factor, blood lead level removal triggers are set on the basis of more than one measurement. The standard provides that the 60 $\mu g/100$ g of whole blood removal criteria (and the phase-in 80 μg and 70 μg triggers) only comes into force when an initial blood sampling test, and a second follow-up blood sampling test conducted within 2 weeks after receipt of the results of the first test, both indicate that the removal trigger has been reached. Similarly, the standard provides that the 6-month 50 $\mu g/100$ g of whole blood average removal criteria only comes into force when the average of at least three measurements equals or exceeds 50 μg. By relying on multiple measurements before mandating the temporary removal of a worker, the standard greatly reduces the statistical probability that a worker's apparent blood lead level is largely a function of measurement error.

OSHA considered including in the standard a 40 $\mu g/100$ g of whole blood 6-month average removal trigger. At first glance, this would appear to be dictated by OSHA's goal to maintain long term blood lead levels at or below 40 μg. The practical operation of such a removal trigger, however, militates in favor of a higher figure for removal. For example, three blood lead level measurements of 46 μg, 34 μg, and 41 μg taken over 6-months would average over 40 $\mu g/100$ g of whole blood, but would indicate little about the likelihood of a worker's blood lead level continuing to average over 40 μg. Any or all three of the measurements could have been in error by plus or minus six micrograms and still be considered accurate in light of the inherent variability of blood lead measurement. As a result, a three measurement, 6-month-average blood lead level figure of 40 μg contains an appreciable margin of error, and may not be significant in terms of a worker's long term blood lead level. Removing a worker on the basis of such an average would often be overprotective and premature. Postponing removal until a worker's blood lead level averages 50 μg over 6 months virtually eliminates any possibility that the worker's true blood lead level is somewhat less than 40 μg. Waiting until an average of 50 μg is reached also guarantees that a blood lead level trend in excess of 40 μg has been established. For these reasons, the standard mandates removal based off of a 6-month 50 μg average removal trigger as opposed to some lower figure.

The standard provides that the return of a worker removed due to an elevated blood lead level is also governed by the worker's blood lead level. During the years that the ultimate removal criteria are being phased in, the return criteria have been set to assure that a worker's blood lead level has substantially declined during the period of removal. A worker removed due to a blood lead level at or above 80 μg must be returned when his or her blood lead level is at or below 60 $\mu g/100$ g of whole blood; if removed due to a level at or above 70 μg, return shall follow when a level of 50 $\mu g/100$ g of whole blood is achieved. Once the ultimate removal criteria have been phased in, return depends on a worker's blood lead level declining to 40 $\mu g/100$ g of whole blood. Any higher return criteria that 40 μg would be inconsistent with the goal of maintaining long term blood lead levels below 40 $\mu g/100$ g of whole blood. A lower return criteria than 40 μg could easily be justified to provide a margin of safety in case a worker's blood lead level began to climb anew. OSHA, however, does not presume that a worker's blood lead level will automatically begin to climb again once the worker is returned to his or her former job. Conditions may well have changed such that the reasons for the worker's elevated blood lead level no longer exist. If conditions have not changed, then the worker will likely soon be removed again due to an elevated blood lead level.

The standard permits return only when two consecutive blood lead level measurements indicate a blood lead level at or below 40 μg. The two-measurement restriction was chosen so as to demonstrate that the worker's blood lead level had stabilized at or below 40 μg, and to reduce the effect of possible measurement variability. Relying on one measurement at or below 40 μg runs the risk that the worker's true blood lead level is appreciably in excess of 40 μg. Relying on more than two measurements separated by time further reduces this risk, but adds the new risk of keeping a worker on removal status longer than is medically justified. The agency has attempted to balance the need to avoid premature return against the need to avoid unjustified burdens due to unnecessarily long periods of re-

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moval. The two-measurement restriction was chosen with these interests in mind.

In structuring the standard's provisions requiring the temporary medical removal and return of workers with elevated blood lead levels, OSHA has closely examined existing industry practices. The lead record reveals that many of the employers in the primary sectors of the lead industry already include temporary medical removals due to elevated blood lead levels as part of their medical surveillance programs. (Ex. 26, p. 5-11.) Many firms remove workers having blood lead levels in excess of 80 μg/100 g of whole blood (Ex. 453, p. 15), while some companies have blood lead level removal criteria of 75 μg (Tr. 7846-47, 8458; Ex. 354(HH), p. 8) and 60 μg (Tr. 6202, 7629, 7706-07, 7901). One large paint manufacturer endorsed a blood lead level removal trigger of 40 μg. (Ex. 3(97), p. 2.) Although companies differ as to when they remove a worker due to an elevated blood lead level, it is clear that the concept of temporary medical removal and return due to elevated blood lead levels is a protective mechanism both known by and acceptable to management as well as labor. (See e.g., Ex. 354(AA), p. 12; Ex. 452, pp. 52-56; Ex. 453, pp 12-15.) Due to this, OSHA is confident that employers can quickly and easily implement the mechanics of temporary medical removals and returns.

The 1975 proposed lead standard contained a requirement that workers having a followup blood lead level at or above 60 μg/100 g of whole blood be provided within a week with a detailed medical examination to determine whether the employee was experiencing symptoms of lead intoxication. (40 FR 45934 (1975), to be codified in 29 CFR Section 1910.1025(K)(2)(ii)(B)(*1*).) A similar exam was required every other month until the employee's blood lead level declined below 60 μg/100 g of whole blood. (40 FR 45934 (1975), to be codified in 29 CFR section 1910.1025(K)(3)(ii)(c).) The final lead standard drops these requirements because OSHA no longer feels that they are necessary. Workers with elevated blood lead levels may or may not be experiencing symptoms of lead intoxication. Those who believe they are may immediately obtain a complete medical examination pursuant to the standard. To automatically provide repeated detailed medical examinations on the basis of an elevated blood lead level alone serves no substantial purpose. The blood lead level removal criteria were established due to their longrun implications for worker health, not due to an expectation that any particular blood lead level correlates with specific immediate symptoms of lead poisoning. The removal criteria are preventive-oriented in the hope that few workers will actually develop lead-related disease before removal occurs.

Final medical determinations. The standard mandates that an employee be removed whenever a final medical determination results in a medical finding, opinion, or recommendation that the employee has a detected medical condition which places the employee at increased risk of material impairment to health from exposure to lead. This removal criteria is tied to the medical surveillance provisions of the standard which require that such a medical judgment be made a part of written medical opinions. The term "final medical determination" refers to the outcome of the multiple physician review mechanism, or alternate physician mechanism, used pursuant to the medical surveillance provisions of the standard. These provisions also provide that written medical opinions contain any recommended limitation upon the employee's exposure to lead or use of respirators. Accordingly, the temporary medical removal and return portion of MRP mandates that an employer implement and act in accordance with these limitations so as to protect worker health. The requirement that an employer follow such recommendations was included as a part of the MRP portion of the standard since some limitations on an employee's exposure to lead will result in an employer having to provide MRP benefits.

Removal based on medical determinations was included in MRP as a necessary complement to removal based on elevated blood lead levels. Most temporary medical removals under the standard will occur due to elevated blood lead levels, but exceptions will arise. During the multiple year phasing-in of MRP, some workers will continue to have highly elevated blood lead levels and some of these workers will experience recognized symptoms of lead poisoning. Employees experiencing lead poisoning in any of its many forms deserve a temporary medical removal despite the fact that their blood lead levels do not yet require a removal. Even after MRP has been fully phased-in, situations may arise where, for example, lead poisoning occurs in a worker having a blood lead level below the removal criteria, or a worker acquires a temporary nonwork related medical condition which is aggravated by lead exposure. Temporary medical removal of these workers will also be necessary.

In addition, temporary medical removal may in particular cases be needed for some workers desiring to parent a child in the near future. Some males may need a temporary removal so that their sperm can regain sufficient viability for fertilization; some women may need a temporary removal to slightly lower their blood lead levels so that prior lead exposure will not harm the fetus. Some participants in the lead proceeding urged that OSHA provide voluntary transfers at the request of any male or female worker desiring to parent a child in the near future. (Tr. 691-92, 1170-71, 4139-40, 8224; Ex. 148, pp. 15-16; Ex. 452, p. 60.) Instead of providing an automatic transfer opportunity, OSHA has determined that questions concerning reproduction can best be addressed first by primary control measures protective of reproductive capability (*see* attachment B), and second, by the flexibility and informed medical judgment which will result from the medical surveillance and MRP provisions of the standard. Where medically indicated, temporary removal of workers intending to parent can be provided pursuant to a medical determination. Temporary removal is only one of several alternatives, however. For example, a physician might first recommend that a particular employee be provided with a powered air purifying respirator to use several hours each day, even though the worker would otherwise have no opportunity under the standard to obtain this form of respirator. If this respirator usage proved inadequate, the physician could later recommend complete removal of the worker from lead exposure.

The preceding use of special protective measures or temporary medical removals for those intending to parent equally applies to pregnant employees. The preamble's discussion of lead's effects on the reproductive system indicates that in many cases it would be unacceptable for a pregnant employee having an elevated blood lead level to continue to experience substantial lead exposure during the pregnancy. If the employee's blood lead level were only slightly elevated, and the employee's normal lead exposure were low or moderate, then removal of the employee might not be essential—perhaps the provision of a powered air purifying respirator would afford adequate protection to both the mother and the fetus. In other cases, physical removal of the employee from all significant lead exposure might be imperative due to such factors as (1) the employee's blood lead level, (2) the extent of the employee's prior exposure to lead, (3) the nature of the employee's present exposure to lead, or (4) the lack of other protective alternatives. As with other medical conditions, the nature of special protective measures which should be provided to pregnant employees will depend on the circumstances of each case. Temporary medical removal with MRP benefits is certainly one option, however.

The preceding situations illustrate why OSHA has included removal based on medical determinations as part of the overall MRP regulation. Both worker and industry participants in the lead proceeding endorsed the concept of removal from lead exposure based on medical determinations (Tr. 7249-51; Ex. 354(AA), p. 13; Ex. 452, pp. 63-64; Ex. 453, p. 31), and the lead record reveals no controversy concerning the 1975 proposed standard's requirement that "In no case shall an employee be placed at increased risk of material impairment of health from such (existing) exposure" to lead. (40 FR 45934 (1975), to be codified in 29 CFR Section 1910.1025(k)(4)(iii).) The final standard does not explicitly define the term "material impairment to health" since no comprehensive definition is possible. OSHA relies on informed medical judgment due to the innumerable contexts in which a particular lead exposure may be unusually hazardous to a particular worker. OSHA's approach parallels that of ESB, Inc., a large battery manufacturer (Ex. 354(U), p. 1), who submitted the following comment:

> • • • (B)lood lead levels are the primary criterion for removal under ESB's present medical surveillance program. That program also provides, as any effective program must provide, for removal from lead exposure of individuals who develop diseases which may make them more susceptible to the effects of lead exposure. For instance, if a person develops a medical condition such as anemia from a bleeding ulcer or iron deficiency, the person should be removed from lead exposure even though his blood lead level may be below that which is known to cause anemia. It is neither possible nor advisable to attempt to identify all possible medical criteria and itemize them in a regulation or surveillance program description. The better approach is to acknowledge that such situations may arise and to place the determination as to whether an individual should be removed from his job in the judgment of a knowledgeable physician. (Ex. 354(U), p. 4.)

OSHA is confident that the physician determination mechanism provided by the final standard will result in an application of the term "material impairment to health" such that lead workers do not suffer diminished health, functional capacity, or life expectancy as a result of their work experience.

During the period of time that a worker is removed due to a medical determination, appropriate followup medical examinations are provided by the standard. When a final medical determination results in a medical opinion that the employee no longer has a detected medical condition which places the employee at increased risk of material impairment to health from exposure to lead, then the employer is required to return the worker to his or her former job status. Similarly, the employer must remove any other limitation placed on an employee when a final medical determination indicates that the limitation is no longer necessary.

As noted earlier, the MRP provisions require employers to implement medical opinions resulting from the standard's medical surveillance program. In so doing, however, the standard neither legitimizes nor authorizes the categorical exclusion of any class of people from lead-exposed jobs. The lead record demonstrates that numerous employers systematically exclude women of childbearing capacity from lead-exposed jobs. (Tr. 678-81, 1629-30, 1673-74, 4731-32, 4997, 5245, 5905, 7797-99; Ex. 3(71), p. 10; Ex. 3(105), pp. 6-7; Ex. 3(114), p. 3; Ex. 28(26), pp. 4-6; Ex. 29(30), p. 1; Ex. 86(D), pp. 2, 6; Ex. 164.) The PEL section of the preamble discusses why such exclusionary practices are not justified in the context of the new lead standard. Continuation of these exclusionary practices after the effective date of the standard will raise possible questions of compliance with the OSH Act, Title VII of the Civil Rights Act of 1964, and Executive Order 11246 concerning the equal employment opportunity practices of Federal contractors. This attachment is not the appropriate forum for the discussion and resolution of these issues, but explicit reference to the matter is appropriate. MRP is intended to provide special health protection to those employees who temporarily need it, and is not intended to insulate employers from the consequences of blanket exclusions of certain classes of workers.

b. *Removal from work at or above the action level.* In most cases where a worker is removed due to an elevated blood lead level or a medical determination, the standard provides that removal be from work having an exposure to lead at or above the action level. The standard, however, permits somewhat higher air lead exposure to workers removed due to elevated blood lead levels during the first 2 years of the phasing-in of the ultimate blood lead level removal criteria. (See discussion of feasibility of MRP.) Work having an exposure to lead at or above the action level refers to the worker's daily 8-hour time weighted average (TWA) exposure to lead. As in all cases where the term "action level" is used, exposure is to be computed without regard to the use of respirators. OSHA's choice of this job placement limitation for most removals was based on two objectives: First, to assure that a worker not be removed to work having lead exposure high enough to further increase risks to health; and second, to assure that a worker be removed to work having lead exposure low enough to enable the gradual excretion of excess lead so as to permit return of the worker to his or her former job.

Prohibiting placement of a removed worker in work at or above the action level is consistent with OSHA's choice of the standard's specific action level. The 30 μg/m³ PbA TWA action level represents a point at which an employer's operations might begin to pose risks to some exposed employees. Medical surveillance of employees (along with other protective measures) begins at that point due to an expectation that adverse health effects from lead exposure might be found. We do not believe adverse health effects are to be expected in workers consistently exposed to lead at levels below the action level, and at such low exposure neither periodic medical surveillance nor other protective measures must be provided. Having carefully chosen the 30 μg action level on the basis of health considerations, we feel confident in concluding that the vast majority of workers at risk of material impairment to health would not face heightened risks if removed from exposure at or above the action level. Removal to any higher exposure would be unacceptable since lead exposure above the action level poses some health risk even to workers not already at risk of material impairment to health. Workers removed as a matter of medical necessity merit the protection that exposure below the action level provides, and thus the standard incorporates this limitation.

Removal to work below the action level is also essential to enable the gradual excretion of excess lead so as to permit the eventual return of the worker to his or her former job. In most cases of removal, one not only desires to prevent further risks to worker health, but more importantly desires to undo whatever damage has already been done to the worker's health. Chelation will rarely if ever be an appropriate means of treatment, thus reliance must be placed on the body's ability to gradually excrete previously absorbed lead. A rapid excretion rate is desirable since the worker is already at substantial risk of sustaining material impairment to health. The rate at which a worker naturally excretes absorbed lead would clearly be slowed, if not halted, by continued substantial exposure to lead. Since lead exposure below the action level should not yield unacceptable blood lead levels in the first instance, such low exposure will permit a worker's body to naturally excrete previously absorbed lead.

Elimination of all occupational exposure would maximize the rate of excretion, but would in practice mean that most removed workers would have to

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be laid off as opposed to being transferred to a low exposure position. By choosing the action level, OSHA has sought a compromise between the conflicting goals of (1) assuring the rapid excretion of previously absorbed lead, and (2) enabling employers to transfer removed workers to lower exposure positions rather than lay them off. The dynamic air lead to blood lead modeling of MIT's Center for Policy Alternatives indicates that transfers to positions just below the action level would roughly double the period of removal as compared to laying off removed workers. (Ex. 439A, p. 4(13).) OSHA feels this probable result is not too great a price to pay in order to enable employers to transfer removed workers rather than lay them off.

OSHA recognizes that situations may arise where removal to lead exposure just below the action level is inadequate to protect worker health. These situations can and should be dealt with on an individual basis in the course of a thorough medical examination conducted pursuant to the standard. OSHA encourages physicians, where appropriate in individual cases, to recommend limitations on a worker's exposure to lead which are even more stringent than those mandated by the standard. An employer must implement such recommended limitations pursuant to the requirements of the standard. The standard implies no unnecessary restriction on a physician's ability to recommend individual actions more protective than the standard's requirements, but simply embodies the judgment that at a minimum, all removed workers must be removed from work having an exposure to lead at or above the action level.

c. *Return of an employee to his or her former job status.* The standard provides that once a period of removal or limitation has ended, an employee must be returned to his or her former job status. Former job status refers to the position the worker would likely be occupying if he or she had never been removed. In most instances, an employer must return a worker to the same job held just before removal occurred, but this will not always be so. The MRP program seeks to assure that a worker's rights and benefits are not damaged due to the need to temporarily remove the worker from lead exposure in order to protect his or her health. MRP in no way seeks to give a worker job security beyond that held in the absence of temporary medical removal. The standard explicitly states that the requirement that an employer return an employee to his or her former job status is not intended to expand upon or restrict any rights an employee has or would have had, absent temporary medical removal, to a specific job classification or position under the terms of a collective bargaining agreement. If, but for a temporary medical removal, a worker would now be working at the same position held just before removal, then the employer must return the worker to that job. Otherwise, the employer may return the worker consistent with whatever job assignment discretion the employer would have had if no removal had occurred.

d. *The implementation of temporary medical removals.* It is OSHA's intention that employers implement each temporary medical removal in a manner consistent with existing collective bargaining agreements. MRP is meant to override existing contractual obligations only to the extent that specific contract provisions directly conflict with the terms of MRP. MRP has been structured to guarantee the maximum employer flexibility in effectuating MRP while minimizing the possibility of conflicts with existing collective bargaining agreements or other relationships. The standard does not specify what an emloyer must do with a removed worker; practically any action is permisssible so long as the worker is not exposed to lead at or above the action lead. In most cases OSHA expects that a removed worker will be transferred to a low lead exposure position during the period of removal. As urged by the LIA, OSHA intends that a transfer be to work the employee is capable of performing located in the same geographical area as the employee's normal job. (Ex. 354(AA), pp. 19-20) Alternatively, the worker might work shorter hours at his or her normal job such that the daily time weighted average exposure is below the action level. The worker might even be temporarily laid off or arrangements might be made for the removed worker to temporarily work at a nonlead related facility (this being a form of transfer). OSHA's intention is that the choice between these or other alternatives be a prerogative of the employer unless this flexibility is altered by some countervailing obligation. A removed worker is provided no automatic right to veto an emloyer choice which meets the standard, but similarly, the standard provides an employer no right to override existing contractual commitments to either removed employees or to other employees.

The mechanics of each removal is a matter for the employer, the removed employee, and his or her collective bargaining representative if any, to work out in the context of the preceding principles. Some employers and unions may decide to modify their contractual agreements to specify how each removal will be accomplished. The 4-year period during which the overall MRP program is phased in will provide ample opportunity for companies and unions to negotiate as to the implementation of MRP. Most collective bargaining agreements are of short-term duration—typically 2 or 3 years. Of 33 collective bargaining agreements in the lead record with identifiable durations, 3 have a 1-year term (Ex. 381(C); Ex. 300B (Texaco); Ex. 426), 8 have a 2-year term (Ex. 381(H); Ex. 400B (Amoco); Ex. 400B (Atlantic Richfield); Ex. 400B (Mobil); Ex. 415(C); Ex. 430(D) (Gould); Ex. 430(D)(6); Ex. 430(D)(14)), and 22 have a 3-year term (Ex. 157; Ex. 158; Ex. 261; Ex. 368; Ex. 369; Ex. 381(I); Ex. 388; Ex. 389; Ex. 400B (GATX); Ex. 400B (Kawecki); Ex. 401(B); Ex. 404B(D)(1); Ex. 404B(D)(4); Ex. 404B(D)(5); Ex. 423; Ex. 424; Ex. 425; Ex. 427; Ex. 415(A); Ex. 415(B); Ex. 430(D)(1); Ex. 430(D)(28)). If negotiations are deemed necessary, OSHA is confident that employers and affected unions can resolve the situation so that temporary medical removals will be implemented in an efficient and mutually agreed upon fashion. The collective bargaining process is well suited to accomplish this object. (See, e.g., *United Steelworkers of America* v. *Warrior and Gulf Navigation Co.*, 363 U.S. 574, 578-81 (1959).)

During the course of the lead proceeding, several industry representatives argued that MRP posed substantial conflicts with collective bargaining agreements. Statements were made that MRP could clash with established job bidding and transfer rights (Tr. 7462, 7471-73, 7511-12; Ex. 354(F), p. 2; Ex. 354(W), p. 2; Ex. 354(Y), p. 3; Ex. 385, pp. 15, 18, 21-22; Ex. 391, p. 4; Ex. 402, p. 9; Ex. 453, pp. 36-41; Ex. 457, pp. 29-30), and several industry spokesmen expressed skepticism that collective bargaining would be able to resolve difficulties presented by MRP. (Tr. 7534, 7789-90; contra, Tr. 8222, 8234-35). The Lead Industries Association argued that "earnings protection matters are among the most complicated and difficult issues to resolve at the negotiating table" (Ex. 453, p. 38), although the specific transcript references cited to support this proposition are not on point. (The failure of two parties to agree on an issue does not support any logical inference that the issue is necessarily complicated or difficult to resolve.) Union representatives, however, consistently expressed optimism that MRP would not significantly disrupt industrial relations. Tr. 7201-02, 7272; Ex. 452, pp. 31-38.)

Due to the controversy on this matter, OSHA carefully considered the evidence in the record and concludes that MRP will not unduly interfere with established employer-employee relations. Admittedly, there may be situations where collective bargaining agreements have to be altered

to smoothly accommodate MRP. But, OSHA has seen no evidence which would support claims that conflicts will likely not be easily resolved. The weight of the evidence directly contradicts such claims.

First, it is difficult to overstate the extent to which many OSHA and other Federal regulatory actions infringe upon traditional subjects of collective bargaining. Minimum wage guarantees (29 U.S.C. sections 201-219 (1976)), equal employment opportunity regulations (5 U.S.C. sections 5108, 5314-5316 (1976); 42 U.S.C. sections 2000e, 2000e-1 to 2000e-6, 2000e-8 to 2000e-9, 2000e-13 to 2000e-17 (1976)), pension reform legislation (29 U.S.C. sections 441, 1001-1003, 1021-1031, 1051-1061, 1081-1086, 1101-1114, 1131-1144, 1201-1204, 1221-1222, 1231-1232, 1241-1242, 1301-1309, 1321-1323, 1341-1348, 1361-1368, 1381 (1976)), and Fair Labor Standards Act provisions (29 U.S.C. sections 201-219 (1976)), all directly conflict with and restrict collective bargaining freedom to negotiate wages and other terms and conditions of employment.

The collective bargaining problems posed by MRP, to the extent any problems exist, are trivial in comparison to the complex problems which are resolved in the course of effectuating remedial EEO affirmative action plans, (Lussier, "Academic Collective Bargaining: Panacea or Palliative for Women and Minorities," 27 Lab. L.J. 565 (1976); Wood, "Equal Employment Opportunities and Seniority: Rights in Conflict," 26 Lab. L.J. 345 (1975)) and the new Pension Reform Law. (Jett, "Employer Contingent Liabilities Under Union Pension Plans: ERISA Fact or Fiction," 27 Lab. L.J. 361 (1976).)

Actions taken pursuant to the Occupational Safety and Health Act directly conflict with collective bargaining matters. Occupational safety and health issues have been recognized topics of collective bargaining for decades. (*In re: Clinton Foods, Inc. and Local 514, International Chemical Workers Union*, 112 NLRB 239 (1955), *Fibreboard Paper Products Corp.* v. *NLRB*, 379 U.S. 203, 221-222 (1964) (Stewart, J., concurring), *In re: Gulf Power Co. and Local Unions 1055 and 624, International Brotherhood of Electrical Workers*, 156 NLRB 622, 625 n. 1 (1966)). The detailed 1976 U.S. Department of Labor Bureau of Labor Statistics study of safety and health provisions in major collective bargaining agreements highlights thousands of collective bargaining clauses which address issues affected by OSHA standards, such as hygiene facilities, personal protective equipment, plant inspection and compliance responsibilities, medical surveillance provisions, and hazard pay. (Ex. 365.) There are innumerable opportunities for an OSHA standard to legitimately require a specific protective mechanism which would be contrary to an established collective bargaining agreement. To OSHA's knowledge these conflicts have been satisfactorily resolved in the past, and there is no evidence suggesting that the implementation of MRP will proceed any differently.

OSHA is convinced that MRP presents no major conflict with collective bargaining in view of the long-term use of MRP-type programs by industry itself. Industry claims that MRP conflicts with specific collective bargaining clauses typically point to job bidding and assignment practices as the areas of greatest conflict. Industry arguments that collective bargaining cannot resolve these matters lack credibility since many lead firms already have temporary medical removals as part of their medical surveillance programs. OSHA has in large part adopted MRP because of the demonstrated value of temporary medical removal as a protective mechanism. There is no evidence in the lead record that existing industry medical removal programs have proved difficult to structure or administer. (Tr. 8231, 8234-35; Ex. 452, p. 37; cf., industry recommendations that the creation of an MRP program can and should be left to collective bargaining, Tr. 7756; Ex. 354(F), p. 1; Ex. 354(P), pp. 1-2; Ex. 354(DD), pp. 1-2; Ex. 354(EE), p. 3; Ex. 354(GG), pp. 1-2; Ex. 354(HH), p. 8; Ex. 391, p. 1; Ex. 397(A), p. 1; Ex. 465.)

More importantly, worker transfer programs with economic protection have had long-term use throughout industry in a variety of contexts. Mr. Roger Sonnemann, vice president of corporate administration and employee relations for Amax, Inc., (Ex. 391, p. 1) discussed the history of transfer programs having economic protection as follows:

> It is more often called protection of rate, and has been the subject for negotiation in our company, in our industry and other industries dating back before the National Labor Relations Act, and in some cases, before there were unions in the industry. Rate protection has been applied, not only for reasons of health but for other reasons such as job re-evaluation, crew reductions, partial closings, temporary transfers for special assignments, and many other reasons. (Ex. 391, p. 3.)

Organization Resources Counselors, Inc., one of the industry representatives expressing the greatest skepticism about the ability of collective bargaining to accommodate MRP, (Tr. 7534) stated the following concerning transfer programs:

> There are in fact many possible reasons for transfer from a job. These include employee request, equipment breakdown, reduction in force, job combinations, changes of methods or equipment, or other changes inherent in the dynamics of the normal workplace. Industry as a whole has already accumulated many years of experience with job removal necessitated by medically related causes, both occupational and nonoccupational. The large bulk of these situations are already covered in varying degrees by existing laws, collective bargaining agreements, or employer policies and established practices. (Ex. 385, p. 14-15.)

Representatives from both the United Steelworkers of America and the United Automobile Workers testified that rate retention provisions resulting from some form of transfer were to be found in practically every major collective bargaining agreement they administered. (Tr. 7666-69, 7676-77, 8231.) Having considered all of the above, OSHA is certain that the collective bargaining process can effectuate temporary medical removals which occur as a result of the MRP provisions of the standard.

MRP benefits must be provided to removed workers who are temporarily laid off as well as those transferred to an available position. The LIA has properly raised the question of whether a laid off worker is obligated to look for work elsewhere so as to reduce the employer's MRP costs. (Ex. 354(AA), pp. 22-23.) The standard does not expressly address this issue, but OSHA intends that a rule of reason apply in individual cases. No explicit worker obligation to seek alternative work is established for several reasons. First, few removed workers are likely to secure new employment due to the indefinite duration of their removal. Removal could continue for a month, a year, or even stop the next day if the employer creates a transfer alternative and calls the removed worker back to work. Removed workers therefore will be particularly undesirable job applicants due to the impossibility of committing themselves to continued employment with a new employer.

A second reason against requiring all laid off workers to seek alternative employment is the likelihood that suitable jobs for removed workers would also involve substantial lead exposure. OSHA does not intend that laid off workers be compelled to accept alternative employment greatly different from work normally performed or employment located in a different geographical area. Thus, a laid off skilled electrician or heavy equipment mechanic could not be forced to accept indefinite employment as a trench worker or dishwasher. Alternative comparable employment for laid off workers would necessarily often involve lead exposure similar to that which necessitated removal. For example, workers such as lead burners or battery plate pasters would have job skills peculiar to lead-related industries, and thus would likely not find al-

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ternative employment unrelated to substantial lead exposure. No prospective lead-related employer would hire a worker already on removal status due to the adverse effects of prior lead exposure, thus few if any suitable jobs will be available for laid off workers having specialized lead-related job skills.

The standard does not mandate that laid off workers on removal status actively seek alternative employment, but other reasonable requirements may be fully consistent with MRP. Employers are in the best position to communicate with neighboring employers and make arrangements whereby employer B would offer temporary comparable employment (without lead exposure) to employees of employer A who are temporarily removed from lead exposure. A wide variety of employer relationships are imaginable which would secure alternative employment for removed workers. It is MRP's intent that laid off workers accept offered comparable alternative employment. Laid off workers not offered alternative employment will in some instances be clearly eligible for unemployment compensation. It would be consistent with MRP for an employer to require a laid off employee in this circumstance to apply for unemployment compensation, and satisfy any applicable requirements for this form of payment.

As explained earlier, it is OSHA's intention that employers effectuate temporary medical removals in a manner consistent with collective bargaining agreements. In some instances an employer might succumb to the temptation to violate a collective bargaining agreement so as to ease compliance with MRP. For example, an employer might fire worker A without required just cause in order to make a transfer position available for removed worker B. If worker B is in fact transferred with MRP benefits, then the lead standard has been complied with. OSHA does not intend to become involved with the enforcement of collective bargaining agreements, thus workers and worker representatives will have to rely on applicable dispute resolution mechanisms, such as grievance and arbitration procedures, to redress situations where employers violate collective bargaining agreements to comply with MRP.

e. *Employer flexibility as to removal and return pending a final medical determination.* OSHA expects that in some instances a conflict will arise between an initial physician and a second physician as to the removal or return of a particular worker. The standard requires an employer to implement and act in accordance with findings, opinions, or recommendations resulting from a final medical determination. The issue arises, however, as to what the employer can or should do pending the outcome of the multiple physician or other medical determination mechanism. Rather than permit uncertainty in this area, the standard provides that an employer may remove an employee from exposure to lead, or place limitations upon an employee, in accordance with the medical findings, opinions, or recommendations of any of the physicians who have examined the employee. The standard gives the employer equal flexibility with respect to the return of the employee or the removal of limitations placed upon an employee, with two exceptions.

The first exception applies to situations where an employee was removed from exposure to lead or otherwise limited due to a final medical determination which differed from the opinion of the examining physician chosen by the employer. In such cases there was a justified controversy as to whether the worker should have been removed or limited. It is reasonable to presume there may be legitimate controversy as to the propriety of returning the worker or removing limitations placed upon the worker. Under these circumstances, delaying the return of a worker or the removal of limitations until after a final medical determination has been reached on these issues is appropriate. The final standard incorporates this requirement.

The second exception applies to situations where an employee has been on removal status for the preceding 18 months due to an elevated blood lead level. As explained later in this attachment, a final medical determination is then obtained which will decide whether to continue removal, permit return, or even decide that return of the employee to former job status can never occur. Only a very small number of long-term lead workers should ever reach the position where this form of final medical determination becomes necessary. The medical determination to be reached in this situation, however, presents unique circumstances and will be of extreme importance to the future health protection of these workers. The standard therefore maintains the status quo—i.e., continued removal—until the full physician determination mechanism has had an opportunity to form a final medical determination concerning one of these workers.

f. *Definition of medical removal protection benefits.* The standard requires an employer to provide MRP benefits to a worker on each occasion that a worker is removed from exposure to lead or otherwise limited. This requirement is defined as meaning that the employer must maintain the earnings, seniority, and other employment rights and benefits of a worker as though the worker had not been removed or otherwise limited. In most cases this will simply mean that an employer must maintain the rate of pay of a worker transferred to a low lead exposure job. The standard, however, uses the all-encompassing phrase "earnings, seniority, and other employment rights and benefits" to assure that a removed worker suffers neither economic loss nor loss of employment opportunities due to the removal. The United Steelworkers of America urged that the standard include a detailed definition of the term "earnings," listing all the possible forms of direct and indirect compensation which an employer might have normally given a worker in the absence of a removal. (Ex. 452, p. 44.) OSHA rejected the adoption of such a detailed definition because it would likely be confusing to some employers in light of the many contexts in which the standard will apply. To comply with the standard, an employer need only maintain the removed worker as though no removal had occurred. In situations where the earnings of a removed worker had been in part based on a piece work rate of pay, the standard necessarily obligates the employer to make a good faith estimation of the worker's likely earnings but for the removal, and maintain those earnings during the period of removal.

The standard's broad economic protection for removed workers results from the reasons for MRP's adoption. MRP is an integrated preventive health program combining temporary medical removals with economic protection for removed workers. MRP is essential to effectuate meaningful worker participation in the standard's medical surveillance program and MRP is also an appropriate means of allocating the control costs of temporary medical removals. From these considerations flow the standard's minimization of economic loss to removed workers. Similarly, MRP benefits are provided to workers limited in a manner short of removal. For example, an examining physician might recommend that an employee should be limited to a 6-hour workday, or a 4-day workweek to prevent material impairment to health. These limitations would not literally constitute a removal of the worker from his or her normal job. but would have economic consequences identical to a transfer (removal) with a major cut in pay. Many medically imposed limitations on a worker will have no economic consequences; but those that do merit the provision of MRP benefits for the same reasons applicable to removals.

The standard explicitly requires that an employer maintain the seniority of a removed worker. The reference to seniority is somewhat redundant since the phrase "earnings and other employment rights and benefits" would be adequate to encompass all possible seniority interests. OSHA decided to expressly include a reference to seniority in the standard since there was controversy during the lead proceeding as to whether OSHA should include seniority as a part of MRP. Several industry representatives testified that the area of seniority was extremely complex with seniority interests arising in innumerable contexts. Concern was expressed that OSHA would inevitably become overwhelmed by disputes arising out of any attempt to maintain a removed worker's seniority. (Tr. 7756-57, 7770-73, 7785, 7787; Ex. 354(AA), p. 26; Ex. 354(GG), pp. 3-7; Ex. 385, p. 17; Ex. 453, pp. 41-43.) Claims that MRP and seniority cannot mix are another form of the general argument that MRP will pose irreconcilable conflicts with collective bargaining agreements. As discussed earlier in this attachment, this general argument is not persuasive, particularly in light of the many existing transfer programs which have meshed quite well with seniority interests.

The standard includes seniority as part of MRP benefits due to the importance of seniority to a removed worker. The evidence in the lead record indicates that many if not all economic benefits that workers receive could arise only as a function of a worker's seniority. (Tr. 7770-73; Ex. 416(D), p. 1.) Accordingly, if seniority rights are not preserved during the period a worker is removed, then major economic benefits or opportunities could be lost. Mr. John Tomayko, assistant to the president of the United Steelworkers of America, (Tr. 7649) and for 25 years director of the union's pension and insurance departments (Tr. 7664), also testified as to the importance of seniority to workers:

> • • • (O)ut of seniority rights generally flows the man's right to employment, generally it dovetails with his right to a lot of other benefits, generally his continuous services deeply involved. His seniority rights, his vacation rights, his level of insurance rights, his—many instances his level for pension rights. (Tr. 7671.)
>
> I think that is probably one of the most important things that is safeguarded by the fact that there is a union. First comes the money and second comes the right to the job. I am not sure which comes first. They want two things, they want preservation of their right to a job, and they want preservation of decent money. Maybe they go hand in hand down the road together, because that too determines a man's rate of pay, his seniority rights. (Tr. 7671-72.)

MRP cannot be an effective program in the absence of protecting seniority interests, and the standard's inclusion of seniority reflects this fact.

OSHA is convinced that MRP and seniority interests can be smoothly integrated by affected employers, workers and collective bargaining representatives. Some supplementary language in new collective bargaining contracts may prove desirable, but major revisions should be unnecessary. Hearing participants agreed that at any given moment an employee is working, both the company and the worker know what the worker's seniority rights are. (Tr. 7529-30, 7670-71.) Mr. Tomayko verified that due to their importance seniority rights are clearly spelled out in collective bargaining agreements. (Tr. 7669-71.) Since the standard provides that a removed worker's seniority rights must be maintained as though the worker had not been removed, there should be little difficulty in computing a removed worker's rights. If disputes arise, they will often be resolved without intervention by OSHA. Safety and health matters are enforceable obligations and subject to the dispute resolution mechanisms under many collective bargaining agreements. (Ex. 365, pp. 3, 12-13, 15-17, 49, 52-53), including many of the agreements contained in the lead record. (Ex. 157, pp. 43-44; Ex. 158, p. 66; Ex. 261, p. 28; Ex. 368, pp. 6-7; Ex. 369, p. 88; Ex. 381(C), Art. XII; Ex. 381(D), Art. XXII; Ex. 388, p. 129; Ex. 389, pp. 46-47; Ex. 400(B), pp. 54-55; Ex. 401(B), p. 29; Ex. 404(B)(D)(1), p. 63; Ex. 404(B)(D)(2), p. 15; Ex. 404(B)(D)(4), pp. 68, 70; Ex. 404(B)(D)(5), pp. 49, 68; Ex. 415(C), p. 23; Ex. 423, pp. 33-34; Ex. 424, p. 31; Ex. 425, p. 5; Ex. 426, p. 32; Ex. 430(D)(2), pp. 7, 30-31; Ex. 430(D)(6), pp. 21-22; Ex. 430(D)(7), p. 12; Ex. 430(D)(17), p. 17; Ex. 430(D)(23), p. 48; Ex. 430(D)(25), p. 21; Ex. 430(D)(26), p. 48; Ex. 430(D)(28), Art. XII (p.), Art. XIII.) As a result, employers and removed workers will likely resolve questions involving seniority through established grievance procedures. If OSHA intervention is necessary in particular situations, we are confident that the agency can competently deal with these questions. In the course of processing section 11(c) discrimination complaints under the Act, OSHA already investigates and operates in the context of the full range of industrial relations questions. Also, as part of the Department of Labor, OSHA has immediate access to a broad range of experts in seniority and all other facets of collective bargaining. For all of the preceding reasons, the inclusion of seniority in the definition of MRP benefits should not unduly complicate either the implementation or the enforcement of MRP.

The standard requires that MRP benefits be provided to a removed worker irrespective of what happens to the worker after he or she is removed. By necessary implication, this rejects suggestions by the lead industry that the provision of MRP benefits should be contingent upon an employer's ability to locate an available transfer position. (Ex. 354(AA), pp. 20-21.) Arguments in favor of this available position precondition are founded primarily on feasibility considerations. One conclusion of the discussion of MRP's feasibility is that in most instances, employers should be able to locate available positions to which they can transfer removed workers since the number of temporary removals will be small. As a result, an available position precondition is not necessary in order to render MRP feasible as an economic matter.

OSHA's rejection of an available position precondition is not primarily based on economic considerations, but rather on several other factors including the adverse practical effect such a provision would have. MRP is essential as a means of effectuating medical surveillance, but it cannot possibly serve this purpose if the provision of MRP benefits is uncertain. MRP is directed toward worker reluctance to meaningfully participate in medical surveillance due to fear of economic loss. This fear will be little affected by a mere possibility that MRP benefits might be provided. After the first instance a worker was removed and no available position found, MRP would have no impact upon subsequent workers' willingness to take advantage of medical surveillance.

In addition to the above, the inclusion of an available position precondition would end MRP's role as an economic incentive for employers to fully comply with the new lead standard. As discussed earlier in this attachment, employers who make serious attempts to comply with the standard will experience only small numbers of temporary medical removals—removals which likely can be absorbed by available transfer alternatives. Those who make only half-hearted attempts to comply will discover that the greater the degree of noncompliance, the greater the worker blood lead levels thus the greater the number of temporary medical removals with associated MRP costs. The absence of an available position precondition serves as an economic stimulus for employers to protect worker health. With an available position precondition, MRP would in fact operate as an economic incentive against an employer reducing worker exposure to lead. MRP costs would grow only to the point that an employer exhausted available transfer positions. Furthermore, an employer could eliminate the possibility of ever having to pay any MRP costs by guar-

anteeing that all positions had an air lead exposure at or above the 30 μg action level. Some lead firms would achieve this result simply by waiting for OSHA to compel the implementation of engineering controls.

g. *Duration of medical removal protection benefits.* The standard requires that up to eighteen (18) months of medical removal protection benefits be provided to a worker on each occasion that he or she is removed from exposure to lead or otherwise limited pursuant to the standard. In the vast majority of removals, a much smaller period of MRP benefits will be needed due to a shorter period of removal. The prime determinant in the choice of the 18 month maximum was OSHA's best estimate of the rate at which workers will naturally excrete lead once removed from significant exposure. As noted by industry representatives, establishing such a figure is a difficult endeavor (Ex. 354(E), pp. 2-3; Ex. 354(P), pp. 2—3), particularly in light of the limited research performed on this subject. The evidence in the lead record, however, indicates that except for a few instances 18 months is a reasonable maximum.

The lead record contains considerable evidence concerning the dynamics of blood lead level declines from in excess of 80 μg/100 g to 60 μg/100 g. Evidence from a variety of sources indicates that most workers transferred to low exposure jobs could accomplish such declines in 3 to 5 months. (Ex. 354(U), pp. 2-3; Ex. 354(AA), pp. 28-29; Ex. 354(DD), pp. 3-4; Ex. 354(HH), p. 10; Ex. 397(A), pp. 6-7; Ex. 453, pp. 52-53.) As noted by at least one large battery manufacturer, however, the periods of removal are likely to be considerably longer when workers are removed at blood lead levels in excess of 60 μg/100 g and returned at blood lead levels below 40 μ/100 g. (Ex. 354(U), p. 5.) Removal at 60 μg/100 g with return at 40 μg is one of the standard's most sensitive ultimate temporary medical removal criteria. Estimating a typical period of removal under these circumstances is difficult since there is no history of industry experience to use as a guide. Our understanding of the dynamics between air lead levels and blood lead levels suggests that crucial determinants include the length and severity of a worker's prior lead exposure. (See discussion in attachment A concerning air lead to blood lead relationship.)

Several research efforts in the lead record shed light on the issue of how long it will take for the blood lead levels of removed workers to decline from 60 μg/100 g to 40 μg/100 g. One Canadian study authored by Dr. Clement Richer looked at the blood lead levels of lead factory workers before and after a 4-month strike. (Ex. 371.) No data was reported concerning the typical exposure levels before the strike, but blood lead level results (in μg/100 ml) can be tabulated as follows: (Ex. 371, tables 1 and 2).

	Mean PbB before strike	Mean PbB after 4 mo.	Average PbB decline per month (μg/100 ml)
Years exposed to lead:			
More than 20 (N=17)	68.4	55.8	3.2
Less than 20 (N=21)	67.5	47.1	5.1
PbB before strike:			
Less than 60 (N=10)	48.4	37.4	2.8
Between 60 and 80 (N=19)	70.6	55.6	3.8
Over 80 (N=9)	88.2	60.3	7.0

These results indicate that the rate of decline of blood lead level after removal is slower among long-term lead workers. Also, the lower the blood lead level at the start of removal, the smaller the rate of decline during removal. To make some conservative extrapolations from these data, OSHA assumes that the blood lead level of long-term lead workers upon complete removal from lead exposure would decline on the average at a rate of approximately 3 μg/100 g per month. Some 7 months would thus be needed for blood lead levels to decline from over 60 μg to below 40 μg, with absolutely no intervening occupational lead exposure. Since this is an average figure, some variability of response would be expected with some workers requiring more than 7 months, others requiring less. The spread of this variability is unclear since the Canadian study did not report individual blood lead level data.

In extrapolating from the Richer study, it is important to note that the lead workers there were on strike, thus not occupationally exposed to lead during the 4 months of the study. Most of the workers removed pursuant to the lead standard will be transferred to positions having extremely low air lead levels, but nonetheless having some continued exposure to lead. This continued exposure will lengthen the period of removal since the workers' bodies will continue to absorb some lead which will offset apparent declines. The air lead/blood lead dynamics modeling of MIT's Center for Policy Alternatives suggests that transferring workers to positions just below the action level would roughly double the duration of removal as compared to permitting no occupational exposure during the period of removal. OSHA believes this doubling factor to be a reasonable calculation. Applied to the results of the Richer study, it would suggest that long-term lead workers would require 14 months to decline from 60 μg/100 g to 40 μg/100 g, plus or minus appreciable periods of time due to individual worker variability of excretion of lead.

The center for policy alternatives work modeled the dynamics of worker blood lead level declines from 60 μg/100 g to 40 μg/100 g after removal, and the results of that modeling is consistent with the results of the Richer study. Some of these MIT projections can be tabulated as follows: (Ex. 439A, p. 4-13.)

Number of years of lead time required to decline from 60 μg/100 g to 40μg/100 g exposure prior to removal	Transfer to low exposure position		Layoff with no occupational exposure	
	Months of removal*	Average PbB decline/month	Months of removal*	Average PbB decline/month
0.95	0.7	28.6	0.5	40.0
3.4	3.3	6.1	1.4	14.3
9.0	7.7	2.6	3.5	5.7
16.0	11.0	1.8	5.4	3.7
28.5	14.2	1.4	7.2	2.8

*Assuming 30 days/month.

As with the Richer data, the MIT projections indicate that 14 months of removal in the form of transfer would be typical for long-term lead workers, with even greater periods of time expected for workers having more than 28.5 years of prior lead exposure.

OSHA believes that the Richer study and the MIT center for policy alternatives work provide an adequate basis for the 18 months maximum duration of MRP benefits. Very few workers should require longer than 18 months to decline to acceptable blood lead levels, and 18 months is not in excess of what some long-term lead workers may require. Special procedures have been established for the very few workers who might exceed 18 months of removal without achieving acceptable blood lead level declines.

h. *Employees whose blood lead levels do not adequately decline within 18 months of removal.* The standard establishes special procedures to apply in those rare situations where an employee's blood lead level has not adequately declined during 18 months of removal. A medical examination must be made available to obtain a medical determination as to whether or not the worker may be returned to his or her former job status. The standard also requires that in situations where the worker may not yet be returned to his or her former job status, the employer shall continue to provide medical removal protection benefits until either the worker is returned to former job status, or a final medical determination is made that the employee is incapable of ever safely returning to his or her former job status. In situations where the worker is returned to his or her former job status despite what would otherwise be an unacceptable blood lead level, later questions concerning removing the worker again are to be decided by a final medical determination, with no automatic removal occuring due to an elevated blood lead level.

The above procedures were established due to the likelihood that a very small percentage of long-term lead workers will not be able to adequately excrete the immense quantities of lead accumulated in their bodies. As suggested by Dr. Paul Hammond, some workers may have accumulated such large body burdens of lead that their blood lead level will never again reach safe levels. (Tr. 310-12.) The possibility of this happening is reflected in the results of a 1976 Swedish study authorized by Ahlgren, et al., which looked at the blood lead levels of five retired workers, all of whom had had years of lead exposure in a metal industry. (Ex. 99(D).) The mean blood lead level of each worker during his last 5 years of employment was reported, along with a blood lead level value obtained some 0.5 to 4 years after retirement. The data can be presented as follows (PbB in μg/100 g): (Ex. 99(D), p. 83.)

Subject	Age	Years of prior lead exposure	PbB prior to retirement	PbB after period of retirement	Years on retirement when PbB measured	Average PbB decline/year
ON	66	17	68	43	2	12.5
JB	71	23	65	41	4	6.0
MB	64	22	73	32	4	10.3
AS	67	27	63	51	1	12.0
IL	67	22	68	42	0.5	52.0

The first four retirees excreted lead at a rate much slower than the average rates of decline reflected in either the Richer study or the work done by the Center for Policy Alternatives. If an American lead worker with the characteristics of subject JB were transferred to a low lead exposure job due to a blood lead level of 60 μg/100 g, he or she might well require over 7 years of removal to decline to below 40 μg/100 g. If, however, the same American lead worker excreted lead comparably to subject IL, a transfer of perhaps 9 months would be sufficient to permit return of the worker to his or her former job status.

The preceding data illustrates that some long-term lead workers will excrete lead at an extremely slow rate, while other workers with comparable prior exposures will rapidly excrete lead upon removal. OSHA is convinced that there is no possibility of determining in advance how any particular worker will respond to a removal. At some point, however, it should become clear to what extent the blood lead level of a removed worker is likely to soon decline to acceptable levels. OSHA believes that at this point a medical determination should be made as to the propriety of continuing the worker's removal. With this in mind, the standard provides a medical examination for workers whose blood lead levels have not adequately declined within 18 months of removal.

The standard is not intended to preclude all final medical determinations formed prior to the end of 18 months of removal which decide that a particular worker's condition will never permit a return to a lead-exposed job. Determinations of this nature might arise with respect to permanent, irreversible neurological impairment, and kidney disease. The standard does, however, embody the judgment that such medical determinations cannot be quickly made with respect to blood lead level declines. Little is firmly known about the complicated dynamics of individual worker lead excretion. It would be premature to attempt to quickly assess the nature of a specific long-term worker's future blood lead level declines. The standard requires 18 months of removal before this medical determination is attempted so that the nature of a specific worker's excretion of lead has been documented and thus can be evaluated without concern for such confounding factors as recent substantial lead exposure.

Workers whose blood lead levels will not decline to acceptable levels present unique circumstances. Informed medical judgment can much better respond to these circumstances than an inflexible regulation. In some of these cases, continued removal of a worker will serve no major purpose since the damage done to the worker's body is beyond the point of correction. The worker may yet have no lead-related disease, but his or her fixed body burden of lead continuously presents a risk of material impairment to health no matter how the worker is treated. Return of the worker to his or her former job status may not present further risks to the worker's health so long as the worker's blood lead level remains fairly constant. Furthermore, the worker may be close to retirement age and may wish to spend the remaining months on the job working at his or her former job.

The standard provides that if a final medical determination returns a worker to his or her former job status despite what would otherwise be an unacceptable blood lead level, then any subsequent questions concerning removing the worker again are to be decided solely by a final medical determination.

Automatic temporary medical removal due to an elevated blood lead level is no longer afforded due to the special circumstances presented by such a worker. The flexibility of a final medical determination can afford far better protection to the worker. In this context, physicians participating in the formation of a final medical determination contemplating the return of such a worker are urged to: (1) Recommend appropriate followup medical surveillance subsequent to return, and

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(2) recommend explicit protective measures in response to the possibility that the worker's blood lead level begins to climb subsequent to return.

In other situations where a worker's blood lead level has not declined to an acceptable level within 18 months, it may nonetheless be steadily declining toward this point. In this circumstance, several additional months of removal may be all that is needed to achieve an acceptable blood lead level. In rare situations, a worker's blood lead level: (1) May not have declined appreciably during 18 months of removal, and (2) may still be at such a high level as to preclude considering returning the worker to prior exposure. In extremely rare situations it may even be possible to conclude that the worker will never be able to safely return to prior lead exposure.

All of the preceding situations can best be evaluated and resolved by a final medical determination obtained pursuant to the standard. The physician determination mechanism will enable the return of a worker to his or her former job status, or the continuance of the period of removal. If the period of removal is prolonged for some period, either pursuant to a final medical determination, or pending the formation of a medical determination, then MRP benefits must continue to be provided by an employer for the same reasons that they were provided originally. If, however, a final medical determination is made that the worker is incapable of ever safely returning to his or her former job status, then the provision of MRP benefits may cease. At that point, a worker would have to turn to the State workers' compensation system for possible relief, since continued removal would no longer constitute a temporary medical removal under this lead standard. In some circumstances a worker might be eligible for a permanent partial or permanent total disability workers' compensation award, but this is solely a matter for State law. In this regard, no aspect of MRP intends to define, supersede, enlarge upon, or affect in any manner any State workers' compensation law.

l. *Followup medical surveillance during the period of employee removal or limitation.* The standard provides that during the period of time that an employee is removed from exposure to lead or otherwise limited, the employer may condition the provision of MRP benefits upon the employee's participation in reasonable followup medical surveillance. MRP is a comprehensive program combining temporary medical removal with economic protection only for so long as removal is needed to protect worker health. The program's operation depends upon followup medical surveillance after removal to determine when a worker may be safely returned to his or her former job status. Consequently, the standard conditions the provision of MRP benefits after removal upon a worker's willingness to participate in procedures necessary for MRP's smooth operation. The standard does not mandate worker participation in followup medical surveillance, but rather permits the denial of economic protection to those unwilling to help MRP work as intended.

The Lead Industries Association and other industry representatives urged that MRP benefits be denied to any worker who refused any biological monitoring or medical examination offered during the 12 months prior to removal. (Ex. 453, pp. 43–47; see, also, Tr. 7541–43; Ex. 457(A), p. 15.) This condition was urged as essential to enable employers to detect conditions in advance which threatened a worker's health, and to correct these conditions before removal became necessary. (Ex. 354(AA), p. 31; Ex. 453, pp. 44–45.) OSHA decided against the inclusion of such a 12-month disqualification clause for several reasons.

First, such a clause would be counterproductive and punitive in nature. A variety of situations could arise where a worker for understandable reasons refused to participate in a particular blood sampling test or medical examination. A worker may not as yet have received adequate information and training on the hazards of lead, thus fails to appreciate the need for participation. A bona fide dispute may have arisen at a plant concerning the accuracy of a company's blood lead level monitoring, or the objectivity of a company-retained physician. The company might even be under an OSHA citation on any of these matters. Workers might understandably decline to participate until the dispute is resolved. Finally, a worker may have over the years demonstrated an ability to maintain his blood lead level exactly at 40 μg/100 g, and thus participates in blood lead level monitoring every 3 or 4 months rather than every other month as the standard makes possible. In any of the above situations, it would be highly punitive to bar a worker from any participation in MRP in the distant future because of understandable past actions. Such a punitive bar to MRP eligibility would likely have the counterproductive effect of reducing worker willingness to participate in medical surveillance in situations where a worker once declined to participate in a particular test or exam. When participation was most needed to protect a worker's health, the worker would often resist participation since removal without economic protection was assured.

Second, the 12-month disqualification clause suggested by the LIA differs little from a requirement mandating worker participation in medical surveillance. As explained in detail earlier in this attachment, OSHA rejected a mandatory participation provision in the MRP program. Maximum meaningful worker participation can better be assured through cooperation and education than through coercion. We reject the LIA 12-month disqualification clause on this basis even though we expect that many employers will nonetheless continue to mandate worker participation in medical surveillance as has been the practice in the past.

The LIA argues that its suggested precondition is needed for an employer to know a worker's condition so as to be able to take affirmative action to reverse circumstances carrying a worker toward removal. This employer concern is a legitimate one, and the ultimate MRP blood lead level removal criteria were designed with this in mind. Once MRP has been fully phased in, the most sensitive removal criteria will require removal when the average of the last three blood sampling tests (or the average of any tests conducted over the previous 6 months, whichever is longer) indicates a blood lead level at or above 50 μg/100 g of whole blood. Removal will be predicated upon at least three blood sampling tests conducted over a minimum of 6 months. The first two tests will tell an employer what is happening with a worker's blood lead level, and the employer will have several months to reverse any apparent increase before removal could be required by a third test. Consequently, the structure and operation of this ultimate blood lead level removal criteria meets the objective of LIA's suggested precondition without being punitive, coercive, or counterproductive in nature.

j. *Medical removal protection and workers' compensation claims.* The standard contains provisions addressing those situations where a removed worker is eligible for and is awarded workers' compensation payments for earnings lost during the period of removal. Before explaining these provisions, it is appropriate to respond to industry arguments that MRP somehow supersedes, replaces, or enlarges upon workers' compensation law. (Ex. 354(V), pp. 3–8; Ex 354(AA), pp. 4, 6; Ex. 354(EE), p. 3; Ex. 402, p. 6; Ex. 453, pp. 2, 5, 10.)

Arguments that MRP and workers' compensation are essentially one and the same flow from the observation that both programs potentially involve the payment of lost wages to workers. This is the only similarity, for MRP and workers' compensation were formed for different reasons and serve

different ends. Workers' compensation law was established as an alternative to workers pursuing common law remedies for job-related injuries and diseases. In exchange for relatively rapid and equitable payments, workers no longer needed to prove employer negligence as the cause for job-related injuries and diseases. (Ex. 357, pp. 32, 34; Ex. 358, pp. 11, 13, 17.) Workers' compensation law as designed and implemented was and is compensatory in nature. Workers' compensation payments are activated only after a worker has been injured or has contracted a disease. Workers' compensation law is not structured as a preventive health mechanism. And, as recognized by a representative of Organization Resources Counselors, Inc., a major industrial consulting firm, workers' compensation has not proved preventative in practice. (Tr. 7524.)

MRP, in stark contrast to workers' compensation law, is solely a preventive health program. MRP is activated before a worker contracts a permanent lead-related disease. Temporary medical removals enable workers to either reverse effects of lead exposure before any form of disease is acquired, or check the beginnings of lead disease before irreversible conditions arise. Economic benefits to removed workers maximize the likelihood of removal being used where needed, and are an appropriate means of allocating the costs inherent in the use of temporary medical removal as a protective mechanism. Payments to removed workers are not intended to be and do not operate as compensation for injury sustained, but rather are associated with and essential to the overall operation of MRP as a preventive health program. Furthermore, MRP is in no manner intended to define, supersede, enlarge upon, or affect in any manner any State workers' compensation or other law concerning lead-related diseases.

Due to the differences between MRP and workers' compensation law, most lead workers temporarily removed under the standard could have no possible eligibility for workers' compensation payments. Workers' compensation law typically requires a showing of some concrete medical disability or impairment involving symptoms of disease. (Tr. 7119–22, 7167.)

In the vast majority of States, removal due merely to an elevated blood lead level without the presence of symptoms of lead poisoning would yield no workers' compensation benefits. (Tr. 7122–23.) The MRP blood lead level removal triggers have been designed to remove most workers before clinical signs of lead poisoning appear.

In some situations, however, workers will be removed as a preventive health matter who also happen to have specific clinical symptoms of lead poisoning, particularly in removals involving long term lead workers. In these cases there may be some eligibility for temporary partial disability workers' compensation payments for lost wages. (Ex. 376A, pp. 5, 7.) The lead standard contains provisions to deal with these situations. If a removed worker files a claim for workers' compensation payments for a lead-related disability, and an award is made to the worker for earnings lost during the period of removal, then the employer's MRP benefits obligation shall be reduced by that amount. The employer is requred to continue to provide MRP benefits pending disposition of any filed workers' compensation claim, subject to a credit or payback once an award is finally made. An employer receives no credit, however, for any workers' compensation payments made for other than earnings lost during the period of removal.

The foregoing provisions were designed to parallel widespread existing industry practices whereby monetary supplements are made pending and subsequent to the disposition of workers' compensation claims. The National Commission on State Workmens' Compensation Law conducted a detailed study of employer supplements to workers' compensation. ("Employer Supplementation of State-Required Workmen's Compensation," National Commission on State Workmen's Compensation Laws, Supplemental Studies for the National Commission on State Workmen's Compensation Laws (1972) (hereinafter cited as "Supplemental Study").) The lead record contains 19 such provisions appearing in collective bargaining agreements. (Ex. 158, p. 68; Ex. 368, pp. 44–45; Ex. 369, p. 4; Ex. 400(B), p. 56; Ex. 401(B), p. 39; Ex. 404(B)(D)(2), p. 17; Ex. 404(B)(D)(5), p. 47; Ex. 404(B)(D)(6), p. 30; Ex. 404(B)(D)(7), p. 36; Ex. 404(B)(D(8), pp. 18-20; Ex. 404(B)(D)(9), p. 250; Ex. 415(A), pp. 21–22; Ex. 415(B), p. 73; Ex. 426, pp. 47–78; Ex. 430(D)(4)(b), Art. XX, Sec. 99; Ex. 430(D)(14), amendment to Art. XXI, adding new sec. 4; Ex. 430(D)(16), Art. XIII, sec. 1; Ex. 430(D)(17), p. 45; Ex. 430(D)(25), Art. XX; see, also, Tr. 2211, 7662–63, 7835–37, 8220, 8235–37; Ex. 354(DD), p. 2; Ex. 365, pp. 33, 42–45, 62; Ex. 379(A)(5).) Both the Commission's study and the collective bargaining provisions in the lead record indicate that employers: (1) Maintain the wages of workers pending disposition of workers' compensation claims, (2) receive credits or paybacks once awards are made, and (3) supplement workers' compensation awards up to (maintain) 100 percent of a worker's lost earnings. (In particular, see Supplemental Studies, p. 293 (table III-A1).) There is no evidence in the lead record, in the National Commission study, in treatises or articles on workers' compensation law (2A. Larson, The Law of Workmen's Compensation, § 57.41 (1978)) or in the relevant case law. (See generally: *Mercury Aviation Co.* v. *Industrial Accident Commission*, 186 Cal. 375, 199 p. 508 (1921), *Tulsa Rolling Mills Co.* v. *Krejci*, 149 Okla. 103, 299 p. 225 (1935), *Tulley* v. *American Radiator and Standard Sanitary Corp.*, 183 N.Y.S. 2d 688 (1959), *Gonzales* v. *Coastal Wire Warehouse, Inc.*, 328 So. 2d 923 (La. App. 1976)) that any problems have ever arisen with respect to such employer practices. If MRP were structured such that the provision of MRP benefits was made totally without regard to worker compensation eligibility, then in some cases MRP could preclude workers' compensation awards. (Tr. 7139–41.) The standard, however, avoids this result by explicitly providing an employer credit for workers' compensation payments made.

In structuring the standard's provisions relating to workers' compensation law, OSHA rejected conditioning the provision of MRP benefits upon a removed worker filing and processing a claim for workers' compensation. Such a requirement would serve no useful purpose and would burden State workers' compensation administrations with frivolous claims since, as explained earlier, most workers removed under the lead standard will have no eligibility for workers' compensation payments. In situations where removed workers could receive workers' compensation payments, we expect that claims will be filed even though the lead standard does not require claims to be filed. Such workers would be experiencing clinical symptoms of lead poisoning, and would likely be under a physician's care to treat these symptoms. Neither MRP nor the lead standard require an employer to pay for treatment-related expenses of removed workers who have clinical lead poisoning. Workers' compensation laws universally provide for the reimbursement of such expenses (Ex. 358, pp. 145–149) thus workers will want to file and process workers' compensation claims to recover these expenses. Workers who believe that they are eligible for workers' compensation awards should promptly file for these payments irrespective of MRP due to the existence of State statutes of limitations.

k. *Other credits.* As explained above, an employer's obligation to provide MRP benefits is reduced to the extent that workers' compensation payments are made for earnings lost during the period of removal. An employer should not have to provide MRP benefits which duplicate compensation which a

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removed worker is actually receiving from other sources for earnings lost during the period of removal. Accordingly, the standard explicitly provides that the employer's obligation to provide MRP benefits to a removed worker shall be reduced to the extent to which the worker receives compensation for earnings lost during the period of removal either from a publicly or employer-funded compensation program or from employment with another employer made possible by virtue of a worker's removal. Thus, an employer would receive no credit for the earnings received by a removed worker from a job already held prior to removal—e.g., evening or weekend part-time work. Examples of publicly or employer-funded compensation programs that might provide payments include unemployment compensation or sickness and accident benefits.

1. *Voluntary removal or restriction of an employee.* The standard provides that where an employer, although not required to do so, removes an employee from exposure to lead or otherwise places limitations on an employee due to the effects of lead exposure on an employee's medical condition, the employer shall provide MRP benefits to the employee. The purpose of this requirement is to preclude employers from evading the MRP program by voluntarily removing workers shortly before the standard would mandate removal. For example, absent some countervailing requirement, an employer could lay off or transfer a worker having a blood lead level of 58 μg/100 g without providing any economic protection. It is likely that some employers would do this in the expectation of avoiding removal with MRP benefits when the worker's blood lead level reached 60 μg/100 g. Even the Lead Industries Association openly predicts that employers will remove workers from exposure before blood lead levels reach the standard's removal trigger. (Ex. 453, p. 59.) If employers can evade MRP with such ease, then MRP will play no role in effectuating meaningful worker participation in medical surveillance. Without the protection of a comprehensive MRP program, the level of worker protection afforded by the standard will be reduced. MRP benefits must be provided so as to close this loophole.

In requiring that employers provide MRP benefits to workers voluntarily removed or limited, OSHA does not intend to unnecessarily reduce an employer's flexibility in removing or limiting workers due to occupational exposure to lead. Voluntary removals may occur, but they must be accompanied by MRP benefits. Few such removals should occur, since there is no evidence in the record that any lead company in this country utilizes removal criteria more protective than those established by this final standard. Some situations might arise, however, where a particular employer genuinely acts in a uniform and nondiscriminatory manner which is more conservative than the standard would require. Regardless of an employer's intent, MRP benefits must be provided, since any avoidance of MRP would seriously undermine the standard's medical surveillance program.

m. *Miscellaneous matters.* The remaining paragraphs of this attachment concern three additional issues raised by industry participants in the lead proceeding. The relationship of MRP to these three matters is discussed as follows.

Personal hygiene and work practice rules. The LIA argued that MRP should contain an explicit provision voiding an employer's obligation to provide MRP benefits in the event the employer is somehow prevented from establishing and enforcing reasonable personal hygiene and work practice rules. (Ex. 354(AA), pp. 32-35.) The Battery Council International (BCI) urged that MRP be denied to workers who violated established work rules. (Ex. 397(A), pp. 3-4.) The MRP provisions do not include either of these suggestions since they are neither necessary nor appropriate.

It is undisputed that employee personal hygiene and work practices are crucial to preventing harmful absorption of lead and the final standard contains numerous provisions specifically addressing these problems. OSHA fully expects that employers will establish reasonable personal hygiene and work practice rules and then enforce them in a fair and nondiscriminatory fashion. OSHA is in full agreement with the following statement by the LIA:

> In order to encourage workers to develop good hygiene habits and work practices, the employer should have the authority to promulgate reasonable rules and regulations concerning hygiene and work practices. Moreover, if an employer is or should be aware that an employee is disobeying such rules and that his poor hygiene or work practices, if unchecked, might eventually endanger the employee's health, the employer should have the authority to warn and then discipline the employee. (Ex. 354(AA), pp. 32-33.)

The United Steelworkers of America concurs:

> Obviously, the way of handling poor, personal hygiene practices is through education, the furnishing of clean, adequate hygiene facilities, and only as a last resort, disciplinary action. (Ex. 452, p. 82.)

The lead record reveals that employers have the ability both to establish and enforce these types of rules. (Tr. 1045-46, 7195-96, 7306-09, 7713, 7767-68; Ex. 365, pp. 16-17.) In view of this power, employers should be fully capable of assuring that employees understand and follow these rules. Permitting employers to deny MRP benefits to employees who have at some time in the past violated a work rule adds nothing to an employer's power, but carries the potential for abuse. The LIA recognized this fact when it stated:

> If, on the other hand, the employer does not take any disciplinary or corrective action at the time the violation of rules is discovered, he should not later be able to disclaim responsibility for paying rate retention after it becomes necessary to remove the worker from overexposure. (Ex. 354(AA), p. 33.)

As a consequence, the final standard does not permit an employer to deny MRP benefits to an employee on the ground that the employee violated a hygiene or work practice rule.

In addition, OSHA sees no need to condition MRP upon an employer's ability to establish and enforce these rules. LIA's sole support for arguing that employers might somehow be incapable of establishing and enforcing these rules is an arbitration decision voiding an employer's unilateral creation of a new smoking rule. (Ex. 354(AA), pp. 34-35.) The rule was voided, however, not because the employer was incapable of establishing reasonable rules, but because the employer had failed to negotiate the issue with the union as previously agreed. (Ex. 405.) OSHA does not view an employer's voluntary agreement to negotiate as to these rules as being in any way a reasonable basis for permitting an employer to deny MRP benefits to removed workers. This is especially true since personal hygiene and work practice rules have the best chances of complete success where they are created by a process of consultation and cooperation between an employer and its employees.

MRP and employee conditions "Not the Fault" of the employer. The LIA and other employers argue that MRP benefits should not be provided where the need to temporarily remove a worker arises from causes other than occupational exposure to lead. (Ex. 354(Z), p. 1; Ex. 354(AA), pp. 15-16, 29-30; Ex. 453, pp. 49-50; Ex. 457(A), pp. 19-20.) Under this approach, MRP would be denied to workers having special susceptibilities to lead, and to workers having sources of nonoccupational exposure to lead, and to workers who contract a temporary non-work-related medical condition which is substantially aggravated by occupational exposure. The LIA offers no suggestions, however, as to how these situations could be administratively isolated from cases where occupational exposure to lead was the prime basis for the removal of a worker. This issue

was likely avoided since, as NIOSH has reported, the determination of whether a specific medical condition is of occupational origin is an extremely complex matter. (Ex. 376(C).) The issue is posed, though, as whether an employer should be "held responsible" for employee conditions not the fault of the employer. (Ex. 354(AA), p. 30; Ex. 453, p. 49.)

MRP applies irrespective of the combination of factors underlying the need to temporarily remove a worker since MRP is solely a preventive health mechanism. MRP in no fashion "penalizes" an employer, or "holds an employer responsible" for anything; MRP simply provides health protection to a worker who temporarily needs it. OSHA recognizes that there are potential sources of nonoccupational exposure to lead. (Ex. 376(C).) There is little evidence in the lead record, however, to indicate that these sources are of a magnitude comparable to the substantial occupational exposure faced by many lead industry workers. (Tr. 3104-06.) OSHA recognizes that some people may develop permanent medical conditions which absolutely preclude any lead exposure. These individuals will be handled not through MRP but through preemployment medical examinations and through disability pensions. OSHA also recognizes that some workers may at a point during their working careers develop a temporary medical condition which is substantially aggravated by continued exposure to lead. These workers, as well as those who, for example, have a medical condition in part caused by nonoccupational exposure to lead, merit the protection that MRP affords. MRP responds to the likely adverse effects of continued occupational exposure to lead, thus the underlying causes prompting the removal of a worker should not affect the worker's eligibility to participate in the MRP program.

Although the LIA believes that employer fault should somehow affect the MRP program, both the LIA and the BCI agree that an employer has the responsibility to protect a worker from harmful occupational exposure to lead even where the effects of non-work-related exposures are what make continued occupational exposure to lead so harmful. (Tr. 3221-22, 3226-27; Ex. 137, p. 15; Ex. 335, pp. 84-85; see also, Ex. 335, p. 81.) As stated by the LIA:

> A second objection which has been raised • • • is that it would somehow be unfair to penalize the employer when the worker's elevated blood lead level may have been caused in part by factors (such as off-the-job exposure) over which the employer has little control (Ex. 335, p. 84). • • • We start from the proposition that no employer should allow an employee to work in a lead-exposed area—no matter how safe that area may be for others—if the employer has reason to believe that such exposure would materially endanger the employee's health. Whether an employee has a preemployment condition (such as anemia) or later develops high blood-lead levels through poor hygiene or outside activities, he should not be subjected to exposures which, although not harmful to others, are not safe for him. (Ex. 335, pp. 84-85).

If the exposure in the work room, when added to the baseline exposure from other sources, endangers a worker's health, this is very much a matter for concern and action by OSHA. (Ex. 335, p. 85).

Several participants in the lead proceeding made various suggestions that MRP should include a "safe zone qualification" whereby MRP would not apply if, for example, an employee had not been exposed to lead above the permissible exposure limit for the past 6 months. (Ex. 354(W), p. 1; Ex. 354(AA), pp. 30, 35; Ex. 453, pp. 50-51.) MRP omits this form of qualification since its purported justifications parallel arguments advanced in favor of denying MRP due to hygiene and work practice violations, or due to factors not the fault of the employer. In addition, the 50 μg PEL is not claimed to be a safe level for all workers. Finally, the 30 $\mu g/m^3$ action level is in a sense a safe zone qualification, since the standard does not apply to employers who keep exposure below 30 $\mu g/m^3$.

Worker abuse of MRP. Several employers raised the spectre of workers abusing the MRP program. (Tr. 7462, 7476-77; Ex. 354(D). p. 3; Ex. 354(U) p. 2; Ex. 354(AA) pp. 3, 20, 23; Ex. 402, pp. 8-9; Ex. 453, p. 53; Ex. 447, p. 3.) The MRP provisions, and the explanatory information contained in this attachment, have been carefully prepared in view of all expressed employer fears concerning potential abuse of MRP. Only the most reckless and determined employee should be able to take advantage of MRP. To abuse MRP, an employee would have to deliberately ingest lead (deliberate inhalation should be prevented by employer control of air lead levels, respirator usage, and work practices). Once employers have educated all employees of the many and varied toxic properties of lead, deliberate worker ingestion of lead will likely be contemplated by only the most demented of individuals. Too much ingestion could cause encephalopathy and rapid death. (Ex. 1, p. III—5.) Repeated ingestion of lesser quantities of lead could render a worker impotent, sterile, or quite ill in a variety of ways. Continued ingestion of lead might place a worker on a kidney dialysis machine in later years. The foregoing health risks should not be taken lightly by any worker considering abusing MRP by eating lead. And, with this in mind, OSHA is confident that deliberate worker ingestion of lead should prove no more a problem in the future than it has been in the past. (Tr. 7720, 7476-77, 7825-27.)

ATTACHMENT D—FEASIBILITY

1. *Introduction.* In setting standards for toxic substances, the Secretary is required to give due regard to the question of feasibility. Section 6(b)(5) of the Act mandates that the Secretary shall set the standard which most adequately assures employees' safety and health "to the extent feasible, on the basis of the best available evidence." Additionally, in the development of occupational safety and health standards, "considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws."

Accordingly, OSHA analyzes the feasibility of proposed standards. In addition, OSHA assesses the economic impact of its standard in order to satisfy a series of Executive orders requiring economic impact analysis of major government regulations. (E.O. 11821, 11949, 12044) OSHA makes such analyses available to affected parties for comment and subsequent hearing prior to issuance of final rules, and invites the submission of other information on the economic impact and feasibility of proposed standards. In developing a standard for exposure to lead, OSHA has evaluated both the economic impact and the feasibility of the standard on the basis of the entire rulemaking record, including the information developed by its own studies of the proposal and submissions by the public. On the basis of the best available evidence, therefore, OSHA has determined, as explained in detail below, that the permanent standard is feasible and will not have an undue impact on the national economy.

To aid in its assessment of technological and economic factors, in early 1976, OSHA contracted with John Short and Associates, Inc. of Salt Lake City, Utah, to identify the industries in which employees were exposed to lead, to investigate the technological feasibility of compliance with the proposed PEL of 100 $\mu g/m^3$, and to estimate compliance costs and impacts for all affected industries. After review of the Short report, OSHA determined that the report had some serious methodological deficiencies and that additional data collection as well as more indepth analysis of the major impacted industries was necessary (See Ex. 65A). D. B. Associates, Inc. ("DBA") was hired to perform this task. DBA subcontracted the economic impact analysis to A. V. Adams Associates, Inc., and the final report from DBA ("DBA report," Ex. 26 with addenda and errata, Ex. 65B and 65C) is

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the official, economic impact statement (EIS) for the Department of Labor on the lead standard. The Short report was released to the public on January 4, 1977, and has been entered into the record as exhibit 22. Since it was not considered to be reliable in its assessment of costs of compliance, it was therefore designated as a preliminary EIS.

The DBA report uses various sources. It extracted most of the reliable information from the Short report and augmented it with its own research. It used a draft of the Lead Industries Association (LIA) study conducted by Charles River Associates ("CRA") ("Economic Impact of Proposed OSHA Lead Standards," 4 volumes, March, 1977, Ex. 127) for economic data in the smelting and storage battery industries and information gathered from published material and industry sources. Additionally, for the battery industry analysis, it relied to a great extent on a July 1976 study by Industrial Health Engineering Associates, Inc. (IHE) performed for the Battery Council International ("Engineering Cost and Feasibility Study — Proposed OSHA Lead Standard," Ex. 29 (29A)). For the secondary smelting analysis, it relied on a draft of an IHE study performed for LIA ("Final Report: Engineering Cost and Feasibility Study, Proposed OSHA Lead Standard, Secondary Smelters," Ex. 138D) and an unpublished study from 1975 by CRA. For the primary smelting industry, it also relied on an IHE study performed for Amax Lead Company's Missouri smelter (Ex. 3 (108)). In addition to the DBA report, OSHA contracted with the Center for Policy Alternatives (CPA) at the Massachusetts Institute of Technology to have a cost and economic analysis performed to assess the impacts of medical removal protection (MRP) (Ex. 439A, with addendum, Ex. 439B, and errata, Ex. 439C). CPA delivered its report in November, 1977, and additional hearings were held on it. (See attachment C for discussion of feasibility of MRP.) This report, along with the DBA and CRA reports, provide the basis of OSHA's economic analysis of costs and impacts associated with implementation of the lead standard. In addition to these, several cost studies (e.g., Ex. 123C; Ex. 231) submitted to the record were considered along with all relevant comments and testimony.

2. *Guidelines for determining feasibility.* The OSH Act has been characterized by the courts as technology-forcing legislation (*Society of Plastics Industries, Inc.* v. *OSHA*, 509 F.2d 1301, 1309 (2d Cir. 1975) (vinyl chloride standard); *AFL-CIO* v. *Brennan*, 530 F. 2d 109, 121 (3d Cir. 1975) (mechanical power press standard)), and in the case of lead, substantial changes in technology may be required to achieve the necessary degree of worker protection. Section 6(b)(5) of the Act cites "feasibility" as a limitation on what OSHA can require of employers under the standard, but there has been limited judicial guidance on how feasibility determinations should be made by OSHA. This section is provided to set forth OSHA's view of its obligations under the OSH Act and to establish a framework around which feasibility determinations for the lead standard have been made. It attempts to bring together the relevant case law and agency policy which articulate important issues which should be addressed in determining the feasibility of a standard.

Feasibility determinations cannot be discussed in isolation from a unit of reference. In assessing whether this standard is feasible, OSHA has asked: Feasible, with regard to whom? Must it be feasible for every firm to comply? For all stages of production? For different manufacturing techniques? For old and new firms? For small and large plants? For the industry as a whole?

The OSH Act and its legislative history do not address this problem, but guidance can be found in decisions of appellate courts which have reviewed prior OSHA standards. OSHA has recognized that different industries, groups within an industry, and individual firms have different technological problems and differing capabilities to make the technological changes needed to protect workers. (*Industrial Union Department* v. *Hodgson*, 499 F. 2d 467, 479-81 (D.C. Cir. 1974) (Asbestos standard); *American Iron & Steel Institute* v. *OSHA*, 577 F. 2d 825, 833, 836 (3d Cir. 1978) (coke oven emissions standard); *AFL-CIO*, 530 F. 2d at 120). These differences are not necessarily determinative in assessing a standard's feasibility. The court in the asbestos case indicated that the standard does not have to be feasible for every firm in order to be upheld. It did imply that a standard which would lead to the demise of an industry is not feasible. The court did not directly address the issue of whether a standard would be upheld as feasible if it caused the demise of certain subgroups within an industry (e.g., old firms, small plants, certain manufacturing techniques). However, the decision implies that the standard could be considered feasible if the demise of the subgroup did not adversely affect the competitive structure of the industry. Even if the demise of the subgroups does adversely affect the competitive structure, it is not clear from the case that this fact alone would make the standard infeasible.

Thus, it appears that the appropriate unit of reference for determining the feasibility of an OSHA standard is not necessarily individual firms or small groups of firms. On the contrary, OSHA standards may be upheld as feasible even if they lead to the demise of some firms or industrial subgroups so long as the industry as a whole is able to comply with the standard. How much of the industry must be able to comply in order for the standard to be upheld is still an open question.

Because of the strong mandate which the OSH Act imposes for the protection of workers, OSHA standards must often attempt to "force" the development of "new" technology for protective purposes. The exact parameters of this authority are difficult to chart; however, there various sources to draw upon for guidance. At a minimum, it is clear that OSHA is not limited to mandating the adoption of technology which is "fully developed." (*SPI* v. *OSHA*, 509 F. 2d at 1309.) This means that OSHA can go further than simply requiring the diffusion of an already fully commercialized technology to firms that were not using it. Rather, standards may in effect require "improvements in existing technology" or "the development of new technology." (*SPI* v. *OSHA*, 509 F. 2d at 1309.) Thus, requirements for changes of a more-than-incremental nature and changes in fairly early stages of development are apparently feasible within the meaning of the Act.

Furthermore, the courts have realized that in determining the feasibility of change, OSHA can look to the stage of development of new technologies and is permitted to make reasoned judgments, i.e., predictions, about their future utility. (*1*) Thus, OSHA has looked to both "existing capabilities and imminent advances in their art." (*2*) Similarly, a finding that a technical advance is feasible can be made on the basis of evidence that a technology is in the "experimental" stage. (*3*)

Although from these cases OSHA derives substantial leeway as to the amount of new technology it can mandate, there appears to be a constraint upon its authority to determine how the development may take place. Specifically, in the coke oven case, OSHA's requirement that R. & D. be undertaken when, after implementation of the required controls, compliance was not achieved, was invalidated. (*AISI* v. *OSHA*, 577 F. 2d at 838.) The rationale for the court's action appears to be that the requirement was too speculative and open-ended. The case does not, however, stand for the proposition that OSHA cannot de facto require R. & D. because of the stringency of a promulgated standard. On the contrary, if the need for R. & D. arises in order to comply (which, of course, is not always the case, especially when already-developed technology can be purchased), it may of course be performed. It is not the need for R. & D. to which the 3d Circuit was objecting in the coke oven decision but rather, simply, the unavoidable "affirmative duty" to perform it.

While OSHA's authority to insist, via its standard-setting, upon significant technological change is clear, the cases do not offer much guidance as to the frame of reference for determining "newness." In the intra-industry context it is clear that mandatory diffusion of the latest techniques is appropriate. This interpretation, offered in the no-hands-in-dies case, relies upon the act's legislative history, which expresses the intent of Congress to bring lagging firms up to the standards of the more progressive members. (*4*) Going further, the vinyl chloride and coke oven cases both recognize the necessity and feasibility of requiring technology which surpasses that currently in use in even the leading firms. (*5*)

Because the degree of newness involved in any such change is likely to be different for different industries or different firms within the same industry, the cases permit standards to take such factors into account. For example, the no-hands-in-dies case recognized that "different applications" have different technological capabilities, (*ALF-CIO* v. *Brennan*, 530 F.2d at 120) and the coke oven case considered the problem of old firms versus new firms and retrofit versus new technology.

It is unrealistic to discuss the feasibility of a technological change apart from the time period within which the change is to occur. A change which may be infeasible in the short run, either because the costs are prohibitive or because the technology is not fully developed or both, may become feasible over a longer period of time.

Where the technology is fully developed and ready for commercial application at the time the standard is being developed, immediate compliance may not be feasible because of cost factors. The relationship between time and cost of compliance was recognized implicitly by the court in the *IUD* case when it upheld OSHA's two-fiber standard for asbestos. (*IUD* v. *Hodgson*, 499 F.2d at 479.) The standard authorized a 4-year delay in compliance with the requirement because OSHA was concerned with the economic impact of immediate compliance on the asbestos industries. The court upheld OSHA's decision to promulgate prospective standards when the agency considered immediate compliance to be infeasible.

Where the technology needed to protect workers is not fully developed and ready for commercial application, time is needed in order to permit its development and implementation. The greater the degree of change needed and the earlier its stage of development, the more time will be needed to make the change.

The relationship between these two elements—time and stage of development—was indirectly addressed by OSHA and the courts in regard to the no-hands-in-dies standard. OSHA revoked the standard for a number of reasons, among which was its technological infeasibility. Absent OSHA's revocation, the standard would have required immediate compliance. OSHA determined that the technology needed to comply was "not universally possible in the near future." With such a short timetable for compliance, the technology would clearly need to be in a late stage of development to be feasible. The court implicitly recognized the relationship between time and stage of development in stating that OSHA's determination of infeasibility must consider "existing technological capabilities and imminent advances the art." Neither OSHA nor the court addressed the issue of whether modifying the standard to require compliance at a much later date would be feasible.

Determining a time period for compliance and the feasibility of the industry's compliance within the time frame are particularly difficult problems when the technology needed is in an early stage of development and requires major changes in the industry's production processes. A longer time period will increase the likelihood that the needed technology will be developed. It will also permit a greater variety of technological responses, including those which reduce costs. At the same time, the longer the time horizon for compliance and the less developed the technology needed, the more difficult it will be to predict the specific compliance technologies that may arise and their attendant costs.

While determining the feasibility of short-term compliance with a fully developed technology will rely heavily on considerations of costs, more factors are relevant in the determination of feasibility for long term compliance where the technology is not fully developed. Factors which may appropriately enter into the determination include:

(1) *The general innovativeness of the industry* (more innovative industries may be more capable of developing larger changes in earlier stages of development than less innovative industries, other things being equal);

(2) *The financial and technical resources available to the industry* (industries with both substantial technical expertise and financial resources may be more capable of developing the needed technology and in a shorter time period than industries without these resources);

(3) *The degree of change needed and its stage of development* (the greater the change needed and the earlier its stages of development, the more time will be needed for compliance);

(4) *Certainty of product market* (increasing demand and the absence of close substitutes would allow significant price rises or other economic adjustments needed for conversion);

(5) *Size and complexity of plant or process requiring alteration* (large-scale industrial processes may rquire more innovative and expensive modification); and

(6) *The experience of recent technological change in similar industries* (the ability of smilar industries to develop successfully similar new technology is some indication of the standard's feasibility for the industry in question).

In developing the lead standard, OSHA has incorporated an implementation schedule based, in part, on its best judgment of the time periods sufficient for "improvements in existing technology" or the "development of new technology." OSHA has also taken into account the degree of technological change which will be required in order to meet the standard as well as the distribution of its impacts. These considerations, which relate closely to technology, are all relevant to determine feasibility. An additional element in this determination is cost.

The Act does not address the issue of economic considerations, and the legislative history is "at best cloudy." (*AFL-CIO* v. *Brennan*, 530 F. 2d at 122.) Case law, however, indicates that economic considerations can be taken into account in determining feasibility. In the asbestos case, the D.C. Circuit Court of Appeals noted that the "thrust" of the legislative history "seem(s) to be that practical considerations can temper protective requirements." (*IUD* v. *Hodgson*, 499 F. 2d at 477-78.) This reasoning has been followed by the third circuit in the "no-hands-in-dies" and coke oven emissions standards. Therefore, the economic cost of a standard appears to be one among many "practical" factors which OSHA may consider in its determination of feasibility—and one which does not have to be accorded greater importance than technological factors or administrability.

OSHA recognizes the need to assess economic impact, especially for standards where compliance costs can be large. In factoring economic considerations into the decisionmaking process, various approaches to the problem can be used. To date, the courts have not imposed any particular methodology on OSHA. On the contrary, the asbestos case, which offers the most thorough analysis of the OSHA decisionmaking process, has indicated that it is a process "inherently legislative"

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in nature and dependent to a greater extent on "policy judgments" than on "purely factual analysis." (*IUD* v. *Hodgson*, 499 F. 2d at 475.)

OSHA has and will continue to make these difficult policy judgments with a view toward fulfilling the objectives of the Act and with the recognition that "there can be no question that the OSHA Act represents a decision to require safeguards for the health of employees even if such measures substantially increase production costs." (*IUD* v. *Hodgson*, 499 F. 2d at 477.)

Although OSHA can impose substantial costs on employers, it is not yet clear exactly what degree of costs can be imposed within the meaning of feasibility. The *IUD* case offers the most guidance. It maintains that a standard is still feasible even if it is "financially burdensome," "affects profit margins adversely," or results in the "demise" of individual employers. (*IUD* v. *Hodgson*, 499 F. 2d 478.) More specifically, the coke oven standard was held to be feasible even though it was projected to increase competition from foreign producers, decrease industry earnings per share by about 13 percent, require approximately 10 million man-hours of work, and was estimated to cost up to $1.28 billion. (*AISI* v. *OSHA*, 577 F. 2d at 836.) In the case of vinyl chloride, the standard was upheld as feasible even when industry projected that the costs of VCM would rise from 7.41¢/lb. to 12.71¢/lb. (*SPI* v. *OSHA*, 509 F. 2d at 1309.)

Although there are several examples of feasible standards, there has been only one instance in which a standard was considered infeasible. This case, the no-hands-in-dies standard, does not offer an especially good example for determining the outer bound of feasibility because of the peculiar circumstances surrounding it. (*6*) Therefore, guidance as to the limits of economic feasibility derives mostly from dicta in this and other cases. In the coke oven case, for example, the court suggested that a standard which "imperils the existence" of the industry might be infeasible. Similarly, the third circuit spoke of "massive economic dislocation" as a measure for an "unreasonable" standard. (*AFL–CIO* v. *Brennan*, 530 F. 2d at 123.)

Clearly, in a determination as complex as that concerning economic feasibility, there are many different kinds of factors which OSHA takes into account. The cases have not been silent on this issue; however, it is important to realize that what they have said has been offered always as guidance and not as a directive. Consistently since the asbestos case, the courts have recognized the wide discretion which Congress gave to OSHA to make policy judgments, and they have generally been deferential toward both the agency's factual determinations and its decision process. (*7*) Nevertheless, there are several elements which the courts have suggested that OSHA may consider:

(1) The issue of intra-industry competition. In the asbestos case, the court recognized that if only a few employers could comply quickly, a delay in the standard might be appropriate in order to avoid increased concentration in that industry. Moreover, a significant adverse effect on a subgroup within the industry may be considered in determining feasibility. In Congress' opinion, however, the intra-industry competitive problems were seen to be severe without regulation, because recalcitrant employers were able to profit from their lack of concern for health and safety. (S. Rep. at 5180, supra, n. 3) Therefore, regulation may in some cases actually improve the competitive health of the industry.

(2) The issue of inter-industry competition. The asbestos case recognized that a standard which renders an industry less able to compete with substitute products is less feasible (other things being equal) than one which does not. Moreover, in discussing the issue of industry-specific standards, the court recognized that differing standards which give one industry a competitive advantage over the other might be grounds for a challenge to the standard, if the industries were in direct competition. Similar standards or different standards for noncompeting sectors would not raise this possibility.

(3) The issue of foreign competition. The asbestos case recognized that foreign competition may be a consideration in determining the feasibility of a standard. Nevertheless, in spite of evidence from industry representatives that U.S. goods would be unable to compete with imports, the standard was upheld. A similar claim was made in the coke oven case by the steel industry. Although the court noted this claim, the standard was again found to be feasible.

It should be emphasized that even though standards may result in adverse impacts in any of the above regards, they do not necessarily become infeasible. On the contrary, the case holdings indicate otherwise, as does the court's qualification of its discussion of these factors in the asbestos case:

> These tentative examples are not meant to illustrate concrete instances of economic infeasibility but rather to suggest the complex elements that may be relevant to such a determination. (*IUD* v. *Hodgson*, 499 F. 2d at 478.)

Another economic issue which has been discussed in the case law concerns the feasibility of promulgated standards as applied to individual firms. Although the issue is one of legitimate concern, it is clearly not dispositive in assessing the feasibility of standards. On the contrary, the appropriate unit of reference in assessing feasibility in standard-setting is not the individual firm. Therefore, while the cases recognize the general intent of the act "not to put employers out of business," equal recognition is given to the reality that standards can put individual firms out of business. The *AFL–CIO* case suggests that there are businesses "so marginally efficient or productive as to be unable to follow standards otherwise universally feasible." (530 F. 2d at 123.) It even suggests that they are "industrial activities involving hazards so great and of such little social utility that the Secretary would be justified in concluding that their total prohibition is proper if there is no technologically feasible method of eliminating the operational hazard." (530 F. 2d at 121.)

This language clearly suggests that groups of firms or product lines might legitimately be forced out of business in certain circumstances. Moreover, both the *AFL–CIO* and *AISI* cases recognize that there are mechanisms to mitigate hardship for individual firms in circumstances involving a strict, but feasible standard. (530 F. 2d at 124; 577 F. 2d at 835.) These include variances, (*8*) abatement modifications, and the ability to challenge the application of a standard in citation contests.

A final issue to consider on the subject of economic feasibility derives primarily from a series of enforcement decisions involving the noise standard (e.g., *Secretary of Labor* v. *Continental Can; Turner Co.* v. *Secretary of Labor*, 561 F. 2d 821 (7th Cir. 1977).) These cases have held that a determination of whether engineering controls are a feasible compliance option involves a balancing of costs and benefits. Although these cases look to the standard-setting cases for guidance as to the meaning of the word "feasible" when it is used in a standard, the gloss they have put on the definition of feasibility has never been approved in the standard-setting context. On the contrary, *Arkansas-Best Freight Co.* v. *OSHRC*, 529 F. 2d 649, 654 (8th Cir. 1976) specifically rejected the notion of a cost-benefit approach. Therefore, *Turner* and *Continental Can* run counter to established precedent in the standard-setting cases and their rationale is not considered applicable.

3. *General principles.* OSHA has determined that compliance with the standard generally may be achieved by the application of existing methods of exposure control, although in some cases this will require imaginative and rigorous application of these methods. In a few instances, technological development may be necessary. In this section OSHA has presented the basic principles on which its conclusions regarding feasibility for each industry are based.

Dr. Melvin First, an experienced industrial hygiene engineer and professor of environmental health engineering at the Harvard School of Public Health, explained the basic principles of controlling lead exposure. (Ex. 270.)

He stated that workers could be separated from contact with lead dust or fume by erecting physical barriers between the worker and the contaminant or by the use of exhaust ventilation that creates air currents to sweep airborne dust and fumes away from the breathing zone of workers and draws them out of the workroom. His testimony documents the specific application of these two principles to the lead industries (Ex. 270, pp. 29-32):

"Every operation that can be mechanized and automated is capable of being enclosed by tight physical barriers and placed under slight negative pressure to prevent outleakage of dust or fume laden air to the workroom. Material conveying by mechanical or pneumatic means is easily adaptable to ventilated enclosure as a substitute for hand shoveling, movement by front-end loader, or by open conveyors of many types. Mechanical movement of solids by screw, belt, apron, drag flight, vibrating, or bucket conveyors is a well established technology. Methods of enclosure and exhaust ventilation are well documented and easy to apply. The principal areas of concern are the transfer points and these must be carefully exhaust ventilated to counter a tendency for these areas to become pressurized by the rapid flow of material and to leak outward through cracks or access ports in the housings. When enclosures are tightly constructed, exhaust air requirements will be modest and entrainment of lead dust by the exhaust air, negligible. Pneumatic conveying of granular materials and powders is accomplished through leaktight systems. The critical control point is where the material comes to rest, as in a storage silo. At that point, the conveying air must be discharged through a suitable air cleaning device. Industrial cloth filters are customarily used for this purpose. For liquids and molten metal, pumping through pipelines is an excellent and safe enclosed material transfer means.

In all these cases, the worker is physically separated from the lead-containing materials. Other means of isolating workers from lead-containing materials by physical barriers are to place them inside air-conditioned work booths from which they can perform their tasks by remotely controlled mechanisms. Bucket loading of conveyors from storage pits, overhead cranes, and bulk loading stations lend themselves to this method of placing workers inside a protective atmosphere enclosure. This system is widely used in the iron and steel industry.

When workers cannot be separated from lead exposure by physical barriers, they can be protected by the use of exhaust ventilation applied through hoods of suitable construction and properly located to provide the required protection factors. The principles of exhaust ventilation for the protection of industrial workers are well established and widely applied. They are based on the creation of a controlled air velocity to draw clean air past a worker, through the contaminated zone, and then to sweep the contamination out of the workroom and into an air cleaning device to capture all the entrained material before release of the ventilation air to the environment. In all cases, it is intended that the worker will be able to work in the clean air zone, upstream of the controlled airflow, and that the design velocity will be maintained at such a level that lead dust or lead fumes will be unable to travel upstream even when propelled by convective air currents generated by hot processes, by moving machinery, or by air jets generated by the manufacturing processes.

In spite of well designed and operated protective systems, some small amount of lead products is bound to escape to the workroom and to settle on all horizontal surfaces. If allowed to accumulate, settled dust becomes air suspended through virbration, traffic, and by other means, and makes a major contribution to the lead-in-air concentration. Therefore, continuous and scrupulous cleanliness is a rigid requirement for all lead industries. In my opinion, lead industries must make adequate provisions for thorough plant cleaning, on a weekly basis, to include overhead machinery, bins, ducts, rafters, and cranes as well as floors, walls, and machines. Stairs, ladders, platforms, and catwalks should be permanently installed to make all such overhead structures easily and totally accessible for vacuum cleaning. Horizontal pipe runs, in which dust settling may occur, should be equipped with end caps that can be removed easily for pipe cleaning during the weekly maintenance period and securely replaced at the conclusion.

Other lead controls of importance include: (1) Use of enclosed hoppers for material storage in place of open storage piles, to eliminate ground contamination and wind erosion.

(2) Use of enclosed conveying from storage silos to automatic weigh hoppers for batching as a substitute for the use of front-end loaders for this purpose.

(3) Paving all surfaces subject to contamination from vehicles as an aid in prompt and thorough cleaning by washing and/or vacuum cleaning.

(4) Designing all shop ventilation systems to place all workers in a clean airflow that is upstream of all lead producing operations.

(5) Pressurizing with fresh, clean air all nonproduction areas (offices, labs, change rooms, eating places) so that lead-contaminated air cannot enter these spaces from the production shops.

(6) Using central station vacuum cleaning systems with multiple service ports and discharging the contaminated air to the main exhaust stack through efficient filter systems to prevent atmospheric contamination and reentry of dust laden exhaust to the work areas.

Dr. First's testimony, echoed by many engineers and industrial hygienists during the rulemaking (e.g. Schneider, Tr. 2057-2100; Stewart, Tr. 2577-2619), leads to the conclusion that rigorous and innovative application of basic engineering and industrial hygiene techniques will, in almost all cases, enable employers to comply with the standard. "When one correctly applies principles of engineering control, an operation or a machine is totally controlled. That is to say, when an operation or a machine is properly enclosed, it no longer discharges lead dust to the workroom atmosphere; when an operation or a machine is properly exhaust ventilated it no longer is capable of discharging lead dust or fumes into the workroom; when a process has been automated, no worker is in the vicinity to be exposed to lead emissions. Therefore, as a practical matter, machines and processes are 'controlled' or they are 'not controlled'; there are no way-stations on the road to process control. You either do it or you don't." (Ex. 270, pp. 23-24.) Schneider added:

> My contention is that with proper engineering control coupled with good maintenance and good work practices, proper design of process to minimize emissions, and education of workers and good hygiene that we can today achieve levels in the atmosphere of less than 50 micrograms per cubic meter of air. (Tr. 2065-66.)

Dr. First further testified from an engineering point of view "the time required for a conscientious employer to comply can vary from 9-12 months for the design, construction, and installation of relatively simple and conventional systems, such as exhaust ventilation hoods and associated dust systems, enclosed automatic conveyors, and central vacuum cleaning systems, to approximately 4 to 5 years for the construction of entirely new modern plant that incorporates innovative, mechanized, and automated production and material handling systems and processes." (Tr. 2309.) DBA's estimates of time frames were similar. David J. Burton of DBA stated that as a general matter the implementation of simple controls could take as little as "several months" while a very complex system could take as much as 40

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months. (Tr. 1025.) Dr. First (Tr. 2310, 2328, 2382) and Knowlton Caplan of IHE (Tr. 3931-33) also noted time limitations on obtaining equipment parts, and adequate engineering assistance. These factors are incorporated into the implementation schedule provided in the standard rather than make many firms apply for a temporary variance.

OSHA believes the implementation schedule is reasonable in this regard and does not universally require 5-10 years as suggested by LIA. (Ex. 335, p. 131.) As a general matter, Dr. First's observation of other industries' experience is relevant. He noted that drastic reductions in exposure to coal dust, vinyl chloride monomer, and asbestos fibers were achieved very rapidly where the effort was made. (Ex. 270, pp. 18-19.) OSHA has no reason to believe the results in the lead industry will be otherwise.

Compliance with the permissible exposure limit for a few industries employing a small proportion of the total workers covered by this standard will require reliance upon technological change. The following is a discussion of how OSHA views such change and the role it plays in the compliance scheme of this standard.

A basic proposition which must be emphasized is that technological change is a very complex phenomenon. There is no sure, simple method for producing it. The process of technological change does not occur as the result of any prescribed sequence of events. Nor does it always arise from research and development, even though R. & D. may be an important stimulant. Rather, innovation is the result of a complex interconnection among various factors, including basic research, new technical ideas (invention), and the recognition of market opportunities, among others. Similarly, it is important to realize that because the process of change varies greatly from industry to industry, it is generally more appropriate to consider specific context in an industry than in the aggregate. A last basic proposition is that there are many different kinds of technological change and various parameters to describe it.

One important parameter considered in this standard is the degree of change. Often major changes are referred to as radical innovations, whereas more modest changes are termed incremental. Another way of categorizing degrees of change involves consideration of whether the change takes place along either a newly or a previously important dimension. For example, the development of a new smelting process based on hydrometallurgy (a new functional dimension) is likely to entail a greater degree of change than improvements in the existing pyrometallurgical process. However, radical change is often more costly or difficult to elicit than incremental change. On the other hand, radical changes may offer the opportunity for a wide variety of ancillary improvements, thereby decreasing their long-term cost. They may also be more protective of workers. Thus, the degree of change is one necessary element to be considered in assessing the feasibility of the change sought.

Another parameter concerns the stage of development of the technology that the standard requires. Virtually all new technologies must go through some development process. This need not be a formalized effort, nor need it proceed in any prescribed sequence. As mentioned above, innovation is no longer generally viewed in terms of a sequential model, but rather one in which various demands and resources interact in a complex and interconnected way. Nevertheless, the standard distinguishes between changes in early and late stages of development. For example, a new process like hydrometallurgy, which is still in the development stage, will generally need more time (and more resources) to be implemented than one for which there is already a working prototype or pilot plant. Conversely, a technology like the Bergsoe process of secondary smelting which has already been implemented, is likely to require only a modest period of further development and a small amount of resources.

In some cases, new technologies may simply be adopted with no need for a development effort. Thus, it is common to distinguish innovation (the first new use) from diffusion (its subsequent adoption). The former case would represent the generation of new technology and the latter, transfer. Although diffusion is usually equated with simple adoption, as the new technology is diffused further and further from its source, it will require significant adaptation in order to be applied successfully in the new context. The Hawley Trav-L Vent, a mobile exhaust device developed for foundries, is currently being adapted for use in primary smelters with some success. Thus, the stage of development of technology for compliance purposes is a determinant of the time within which compliance can be achieved, the effort needed to promote widespread adoption, and the resources involved in making the change.

Another parameter considered by OSHA relates to different types of change. One distinction can be made between "add-on" technologies versus product or process redesign. The former refers to responses (often incremental in nature rather than radical) which do not alter the basic design characteristics of the technology. Such changes may be quick and effective, but they are not always the best long-term solutions. Knowlton Caplan of IHE testified that "the cost of hygiene provisions (engineering controls) in a new plant, designed with the hygiene standard in mind is typically one-third to one-half that of attempting to achieve comparable results in an existing plant not so designed." (Ex. 29(29A), p. 2.)

Another distinction can be drawn between product and process change. OSHA is primarily concerned with improving the health consequences of industrial processes. Sometimes, however, the industrial response to OSHA regulation may be to develop a substitute product. This method of control may be the most efficient solution for some firms in the pigment manufacturing industry.

A last element considered by OSHA is the historical pattern of change within an industry. As mentioned above, some technologies may be undergoing a phase of product improvement whereas others may stress process change and cost minimization. These patterns are a function of the inherent characteristics of the technology and the extent to which its development responds to market needs. As such, the future pattern of change is to some extent predictable. In many instances, the industry response to OSHA standards will bear a strong resemblance to the pattern of technological development absent such standards. Therefore, OSHA has examined the technological characteristics of the industries affected by this standard so as to assess both the technological constraints and potentialities of the industry in question.

In sum, OSHA has attempted to be sensitive to the complexities and various aspects of the process of technological change in its attempt to incorporate new technology into its compliance scheme for this standard. This has facilitated prediction of the kinds of technology likely to arise in response to the standard and the time period within which they can be expected, thus allowing OSHA to know, in general terms, what is feasible. It has also suggested different options as alternatives in designing the standard so as to achieve compliance strategies optimal in terms of protective capability and compliance cost.

In establishing the requirements of this standard and evaluating whether compliance is feasible, OSHA has identified affected industries and investigated the available technology in those industries. It has attempted to estimate the length of time necessary to implement the technology required, taking into account firms' need to plan, construct, test, and refine their

efforts, as well as the economic factors involved. The result is that OSHA has incorporated into its compliance scheme an implementation schedule based on OSHA's judgment of the time each industry, as a whole, will need to effect the technological changes necessary for compliance. Interim milestones are required for those industries where ultimate compliance will take several years and where significant protection can be accomplished in a shorter period. The time limits also take economic factors into account in that they are expected to enable firms in the industry to implement these changes without serious economic repercussions to the industry as a whole.

In the five industries where significant technological change will be required to comply with the PEL (primary and secondary smelting, pigment manufacture, nonferrous foundries and battery manufacture), cost estimates cannot be ascertained with accuracy because of the numerous compliance options possible within the extended compliance schedules. The economic considerations factored into the time limits for these industries to achieve the PEL involve an assessment of reasonable "planning horizons"; i.e., the time for firms to develop longrun solutions (from add-on technology to total recapitalization) that offer the industry maximum flexibility or for new firms to enter the industry.

The implementation schedule represents a merging of both economic and technological factors used to evaluate feasibility. Firms can choose from an array of technical solutions over a time frame sufficient for longrun economic optimization. Since all firms in each industry face the identical PEL and time constraints, the process of the internalization of the cost of compliance acts on the decisionmaking process of the firm and the industry in the same manner as any other market signal. Depending on how firms judge a number of longrun factors including product demand, amount of investment sunk in the existing physical plant and managerial expertise, and alternative rates of return available on the necessary capital, some firms may choose to exit the market and invest in alternative ventures. Of course, other firms with different longrun expectations may choose to enter the market.

The implementation schedule is incorporated into the "methods of compliance" paragraph of the standard, and the basis for the time limit for each industry is explained in industry-by-industry analysis below.

4. *Industry analyses and technological conclusions.* On the basis of all the evidence accumulated during the rule-making proceeding, OSHA has determined that:

(1) Compliance with the engineering control implementation schedule in paragraph (e)(1) of the standard, with minimal reliance on supplemental protective equipment, is feasible; and

(2) By the dates specified in the standard, compliance with the PEL, by the use of engineering controls, work practices, and respiratory protection is feasible.

These conclusions are based on the best available evidence of what each affected industry, taken as a whole, can achieve with presently available production and control technology and imminent advances in the art. These conclusions are necessarily industrywide generalizations, and since some involve projected compliance activities, rely in part on policy judgments. OSHA recognizes that compliance problems may exist at individual plants or work areas, but concludes that these problems can be better dealt with through enforcement activities where solutions can be worked out by affected parties.

The following is a detailed discussion of the technological factors in the major industries affected by the standard.

a. *Primary Smelting And Refining.* (1) *Introduction.*—The primary lead industry ranks fifth (after iron, aluminum, copper, and zinc) in tonnage of metals produced in this country. Four companies—ASARCO, St. Joe Minerals, Amax and Bunker Hill—own the seven facilities that smelt and refine primary lead. Western smelters date from the early part of this century; smelters for the Missouri lead belt were built during the 1960's. An estimated 3,055 employees in the primary smelting sector are exposed to lead. (Ex. 26, p. 5-3).

Primary smelting involves three basic steps—sintering, smelting, and refining. In sintering, a concentrate of galena ore (PbS) is mixed with fluxes and roasted to drive off sulfur dioxide. This operation produces "sinter," a mixture of lead, lead oxide, and slag, which is smelted by a blast furnace at temperatures above 2000° F. The blast furnace reduces the constituents of the charge (coke, fluxes, and recycled slag sinter) into molten lead and slag. Fifteen ton ladies on overhead bridge cranes transport the molten lead to open drossing kettles about 14 feet in diameter. These kettles rest in firebrick settings that keep the lead at the temperatures needed (700° to 1200° F.) for drossing. During drossing, the molten lead from the blast furnace is stirred, and the impurities (dross) are skimmed. The impurities in lead ores vary. Colorado ore, unlike Missouri ore, has a high copper content. The lead is further refined through a softening process that removes antimony and other metals.

Because pyrometallurgy (the extraction of metal from ores by heat) requires extreme heat at variable temperatures, control of emissions in primary smelting has been difficult. For example, material that splashes or drips during transfer of molten lead collects and freezes at the rim and pouring lip of the ladle. These thick, lumpy accretions can interfere with a tight fit between hood and vessels. Ore with significant amounts of copper produces copper matte, which corrodes iron, steel, and most steel alloys.

Thus, the corrosive property of the molten metal has prompted the use of open vessels and crude mechanical methods. The nature and scale of primary smelting have made the application of standard engineering techniques difficult. While the problems are difficult, the hearing record indicates that, with new techniques and methods, they are surmountable.

(2) *Summary.* After reviewing the record, OSHA has concluded that in all operations except perhaps maintenance work and where process upsets occur, the 100 $\mu g/m^3$ level is feasible within the 3 year time period in the implementation schedule through retrofitting and some modification of existing processes. This conclusion is not in agreement with the conclusions of DBA and lead industry representatives. (Ex. 335, pp. 122-123) After reviewing all the exhibits and testimony, OSHA is convinced that the reason for this disagreement is not so much a matter of differing professional judgment in what could be achieved, but in the interpretation of the term "feasibility." Industry representatives' and DBA's claims of infeasibility of the 100 $\mu g/m^3$ level (and even the present 200 $\mu g/m^3$ standard) are, in part, based on the view that for an exposure level to be feasible it must be attainable immediately at all work stations at all times. (Tr. 3971-72; 796, 797) This interpretation was rejected in *SPI* v. *OSHA* where the Second Circuit affirmed an exposure level for vinyl chloride which OSHA claimed would be attainable in several years for most job classifications most of the time. The Third Circuit also rejected a similar claim of the steel industry that the coke ovens emissions standards was infeasible because the Fairfield steel mill, used by OSHA as an example of the feasibility of the 150 $\mu g/m^3$ PEL, did not meet the level at all job classifications at all times. DBA and industry representatives also limited their considerations to retrofit technology only and did not generally consider technological change unless it had been proved successful and could be implemented immediately. (Tr. 5793;

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Tr. 796-97; Tr. 872-73; Ex. 26, pp. 4-5, 4-8; Ex. 29 (29A)) Long-run technological solutions were not considered, even those which may be more cost-effective. This creates an a priori limitation on the gamut of possible approaches to compliance. For ecample, the IHE report for the Amax smelter did not consider changes in process as a means for controlling emissions. It observed that materials in the sinter plant are difficult to handle, but did not explore the possibility of flash agglomeration or pelletizing of the dust. It stressed the difficulties of pumping bullion without analyzing the use of ceramics, of rare elements to produce steel alloys resistant to corrosion, of leaching the corrosive components prior to smelting, or of gravitational flow through enclosed chutes to transfer bullion.

As stated above, OSHA's view, supported by judicial opinion, is that "feasibility" in a rulemaking context is not that narrow. In addition, OSHA's experience with other standards leads us to be more optimistic than industry representatives about the success and speed of technological change.

Judgment about the feasibility of a 50 $\mu g/m^3$ standard differed sharply. On the one hand, the steelworkers asserted that "with the possible exception of some maintenance tasks, there exists today the engineering knowledge necessary to control work exposure to inorganic lead compounds at or below 40 $\mu g/m^3$." (Ex. 343, p. 143.) On the other hand, Michael Varner, Corporate Manager for ASARCO's Department of Environmental Sciences, maintained that a "50 $\mu g/m^3$ standard would be an unachievable standard in any smelter or smelter to be built. * * * Looking at the scale of these operations, it is out of the question to achieve 50 $\mu g/m^3$." (Tr. ——).

OSHA has concluded that compliance with the PEL may require up to 10 years for this industry. Primary smelting is not generally regarded as innovative. Dr. First characterizes the history of technological change in this industry as conservative and having "a strong bent to make changes very slowly and in small steps." (Ex. 270, p. 17.) Other limitations on the rate of change are the size and complexity of the hot metal operations in these plants. The difficulty of controlling exposure levels is detailed in the discussion of specific operations below.

Further, the degree of technological change necessary to achieve 50 $\mu g/m^3$ may require development and implementation of innovative technology, possibly including alternatives to pyrometallurgy. OSHA believes that the 10 years provided in the implementation schedule represent maximum flexibility for compliance by an industry which may need to rebuild in part or in whole to achieve a healthful workplace.

Hydrometallurgical production methods are likely to be commercially viable within the 10-year limit, however, less comprehensive forms of process redesign and/or adaptation of developmental projects discussed in the section on specific operations may prove to be sufficient. (Tr. 1463.)

The long-term economic conditions facing the primary smelting industry are detailed in another section. However, it should be noted that the extended compliance time will permit firms in this industry to choose the most cost-effective methods for achieving the PEL and thus lower the cost burden. (Tr. 883.)

Witnesses at the hearing were optimistic about the development of new processes for primary smelting. Knowlton Caplan, president of IHE, while skeptical about the current technological feasibility of a 100 $\mu g/m^3$ standard, expressed faith in the future development of "more effective and less costly engineering systems." (Tr. 5723.)

Frank Block, research director at the Reno Metallurgy Research Center for the Bureau of Mines, described one such potential development, a hydrometallurgical method for recovering lead from galena concentrate. (Ex. 128; Tr. 3386-34-17.) This process does not involve any sintering or smelting and may require no refining. It leaches galena concentrate in a hot solution of ferric chloride to produce lead chloride, which, in turn, is electrolyzed to produce metallic lead. The new process generates no sulfur dioxide. It would be more economical than current techniques and could operate at smaller capacity. It could also be used with Missouri or Western concentrates.

To date, this research has been conducted in the laboratory on a small scale. Block expects the process to virtually eliminate exposure to lead since the operation is closed and wet, although further investigation is needed. This project is in its early stages of development, but industry seems to be very interested in its progress. It has been successfully operated on a laboratory scale, although there are some potential problems that may need to be solved. The Bureau expects to run a larger scale laboratory experiment for a year or 18 months to enable it to build a pilot plant. The pilot plant could be built and operated for 3-4 years, at which time there should be enough experience with the pilot plant to have developed a commercially viable design.

(3) *Specific Operations.* (a) *Concentrate Handling and Storage.*—Concentrates brought from the concentrate plant to the smelter are sampled to determine their composition. They are stored in large bins until mixed and pelletized. Typically, conveyor belts carry the pelletized mixture to the sintering machine. Exposures exceed 200 $\mu g/m^3$ at many plants. (Ex. 26, pp. 5-3, 5-10.) The hearing record suggests that the PEL can be achieved for this operation because it can be completely enclosed. Caplan, for example, found no problem for the Buick smelter to comply fully with the 100 $\mu g/m^3$ standard. (Ex. 3 (108).) Edwin S. Godsey, Chief Fume and Dust Recovery Engineer for ASARCO, referred to a totally enclosed ore handling system being designed for the El Paso plant. (Tr. 6513.)

Effective controls include covers, hoods, and exhaust for all belts and transfer points as well as covers and exhaust for bins. Special handling of flue dust and other fines, perhaps in air conveying systems or by wetting in a pugmill, will also be required. (Ex. 26, pp. 5-9.)

(b) *Sintering.* Because a sintering machine is a traveling grate furnace that transfers, breaks, and sizes materials in order to drive off sulfur in the form of sulfur dioxide, sintering typically produces a considerable amount of dust. Indeed, one plant reported levels as high as 14,000 $\mu g/m^3$. (Ex. 26, pp. 5-10.) While the record contains conflicting evidence, OSHA has concluded that a TWA or 100 $\mu g/m^3$ is technologically feasible in the sintering operation. Caplan stated under questioning that "with enough hard work and money and good luck" sintering could "usually" be controlled to 100 $\mu g/m^3$ or less. He stated that, except in upsets, 100 $\mu g/m^3$ can be attained for the sinter machine operator who spends most of his time in the control room and in the areas where feeding the charge into the sinter machine occurs. "Marginal" compliance can be achieved on the return sinter circuit. (Tr. 5757.)

Appropriate controls include enclosure and ventilation of belts and systems for handling material; enclosure and exhaust on the updraft section of the sintering machine and an exhausted tunnel enclosure on each side of the machine. Machines for breaking and sorting sinter will also require enclosure and exhaust. All operator stations will need HVAC (high volume) filters. (Ex. 26, pp. 5-9.) Dr. Thomas Smith, who conducted the study of secondary smelters for DBA, testified that "a great deal can be done to control emissions from sintering," although, to his knowledge, the processes under development had not yet been installed. He presumed that using the maximum amount of control would produce lead in-air levels below 100 $\mu g/m^3$. (Tr. 800.) Controlling airborne lead concentrations in sintering to 100 $\mu g/m^3$ may thus require process modification as well as retrofitting in some operations. One possibility is secondary enclosure of the sintering machine. (Tr. 5806.) In other plants a combination of engineering controls, work practices, and occasional respiratory protection along with careful maintenance and housekeeping will prove adequate.

The record does not contain specific evidence about the techniques necessary to achieve a 50 $\mu g/m^3$ standard, but because of the small number of employees who monitor this essentially automated operation, the use of administrative controls and air conditioned control rooms or enclosures might prove adequate to meet the 50 $\mu g/m^3$ PEL on a time-weighted basis. Respirators may be occasionally necessary to supplement other controls. It is important to note that adoption of hydrometallurgical processes such as that described by Block would eliminate the sintering operation and thus the exposures associated with it.

(c) *Blast Furnace.* The blast furnace is the primary reduction unit in the smelter. High employee exposures occur during its operation, especially when the tuyeres, the passages through which air is blown or injected into the furnace, must be cleared of solidified slag or lead. Workers punch out the tuyere hole with iron bars or pnuematic hammers. (Ex. 3 (103).) At present, workers engaged in this task wear respirators.

Exposures at existing facilities range from 140 $\mu g/m^3$ to 24 $\mu g/m^3$. (Ex, 26, pp. 5-10; Tr. 6509; Tr. 6462). The hearing record suggests that achieving an 8-hour TWA of 100 $\mu g/m^3$ will be difficult, but possible, through overhauling. Such overhauling could require as much as 5 years. New plants can be designed and built to meet a 100 $\mu g/m^3$ level.

Burton testified for DBA that control of blast furnaces is a "very difficult process." He did not believe that sufficient engineering controls have been developed to control blast furnaces "at all times." (Tr. 813.) Other witnesses stated that only a 200 $\mu g/m^3$ level could be obtained in existing plants. Caplan judged that even if "all the developmental projects" at Amax's Buick Smelter, such as higher power velocity at the furnace end of the tuyeres, were ultimately successful, results would probably be on the order of 200 $\mu g/m^3$, not 100 $\mu g/m^3$. (Ex. 3 (108), p. 9.) Varner noted that after extensive addition and revision of ventilation control on lead bullion and slag pots at its three smelters, ASARCO could at times achieve a 200 $\mu g/m^3$, but not a 100 $\mu g/m^3$ level of exposure. (Tr. 6452.)

OSHA is confident, however, that conventional techniques not generally in use could further control emissions from blast furnaces: They include: (1) Adequate top side exhaust hoods; (2) adequate local exhaust systems over tapping ports; (3) successful application of the "travel vent"; (4) adequate slag granulator and launder exhaust; (5) redesign of the tuyere punching operation; (6) covers, enclosures and local exhaust ventilation at the conveyor belt transfers, loading chutes, and hoppers at the top of the blast furnace; (7) filtered HVAC provided for operator stations, offices, crane cabs and heavy equipment operator cabs; (8) dilution ventilation; (9) fresh air supply to work stations (air-supplied islands or standby pulpits); and (10) the implementation of a successful housekeeping program coupled with employee training and cooperation. However, in some existing plants, attaining an 8-hour TWA of either 100 $\mu g/m^3$ or 50 $\mu g/m^3$ may require employee rotation and perhaps occasional respiratory protection.

(d) *Drossing plant.* Drossing is a form of refining. Dross, which is a crust of semi-solid caked, lumpy material 6 inches or more thick, is removed from the top of the molten lead in the drossing kettle and transported to the dross furnace by a large scoop handled on an overhead crane without local exhaust ventilation. The dross reverbatory furnace is itself a major source of contamination. Exposure levels range from 150 $\mu g/m^3$ to 2,000 $\mu g/m^3$. (Ex. 26, p. 5-10.) OSHA expects that in these operations, which are extremely difficult to control, compliance with either a 50 or 100 level could require the use of respirators until experimental processes prove practical as anticipated in the implementation schedule.

Despite consideration of several experimental techniques, IHE had "little hope bringing lead in air concentrations to the 100 $\mu g/m^3$ level." (Tr. 5698.) Caplan envisioned the adaption of the Hawley Trav-L-Vent system, a patented technique used on a smaller scale in the brass foundry industry to control emissions during removal of dross. Caplan described the Trav-L-Vent as a "wind box that moves along a straight rectangular duct, picking up and laying down a strip of conveyor belting which forms the top side of the duct, by means of a set of rollers." (Tr. 5698.) He theorized that a double set of vents, one on the bridge of the crane and one along the rack, would allow the two-dimensional motion of an exhaust hood. A flexible duct would permit tilting of the ladle. A second similar system could be installed for skimming the dross and charging the dross furnace. Caplan cautioned that the application of the Trav-L-Vent to an operation this size would be experimental and that its adoption would require an additional bridge crane.

Other experimental techniques were also discussed. Caplan speculated about the possibility of drossing at a higher temperature in order to produce a more granular and powdery dross that could be removed by a Berzellius® machine (a vacuum drossing machine). (Tr. 5712.) Leach electrolysis would, of course, also eliminate exposures. Other controls include conventional hoods for the lead and matte top holes of the dross reverbatory furnace, side draft hoods for the lead runner, and partial enclosure and exhaust of the matte granulator.

(e) *Refinery.* Refining removes antimony and other elements and produces a product of lower hardness and strength. Many of the problems in controlling drossing also figure in refining. In particular, no proven method exists for controlling the movement of materials by ladle. In its report on the Bunker Hill smelter at Kellogg, Idaho, NIOSH observed that, "it may be difficult to control fumes emanating from the kettles because of the nature of the process." (Ex. 300.) Exposures range from 100 $\mu g/m^3$, to 900 $\mu g/m^3$ (Ex. 26, 5-10). One plant has, however, submitted data which indicated airborne lead levels of 50-100 $\mu g/m^3$. (Ex. 26, p. 5-10.) It thus appears that a level of 50 $\mu g/m^3$ could eventually be met in all refineries with conventional technology.

In some plants, dross created on refining bins is skimmed by crane and dumped into a pile to be picked up by payloader for recycling through the sinter plant. Obviously, this type of practice must be eliminated because dust from such an operation contaminates the refinery, casting area, and drossing plant. (Tr. 5695.) Some plants currently dump dross skimmed from refinery pots into ventilated bins that are unloaded underneath a ventilated enclosure. Such a procedure controls the dumping but not the skimming operations. According to IHE, air lead measures at the area have remained above 200 $\mu g/m^3$. (Ex. 196, p. 9.)

AMAX plans to install a Berzelius® machine to skim the caustic dross during refining and pneumatically convey it to a fabric filter. A quench chamber will minimize the possibility of fires in the filter. Collected dust from the filter hoppers would be discharged in a fume slurry system. Although previous experiments with the Berzelius ® machine at the drossing pots have not met with success, Caplan found many indications that it could be made to work in the refining process. (Ex. 3(108); Ex. 196, p. 10; Tr. 5696.) If so, the machine offers an approach that could also be implemented in other plants.

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Caplan also suggested that the use of the same controls for refinery operations as for drossing plants. These controls include the Hawley Trav-L-Vent, ventilated enclosures for dross handling, etc. Other controls advocated during the hearing were: (1) Ventilated bins and ventilated enclosures for the dumping and handling of dross; (2) mechanized drossing machines; (3) fresh air supply islands or operator enclosures (stand by pulpits); (4) smooth floors made of concrete or steel; (5) vacuum systems for housekeeping purposes; (6) dilution ventilation; (7) piped-lead systems; (8) separate ventilated enclosures for ladle cooling; and (9) sand-seal systems to achieve a seal for kettle covers. Many of these controls are presently in the experimental stage. Although not yet successfully implemented in a primary smelter, they can be expected to lower employee exposures considerably.

(f) *Crane and heavy equipment.* Past experience shows that sufficient air-conditioning equipment can control the cabs of cranes, payloaders, front-end loaders, dump trucks, paving sweepers, road-cleaning machines, and other equipment to any level of exposure. Caplan, for example, said that although more efficient filters require more power and more frequent changing, "it is perfectly possible to get air that virtually has no contamination in terms of particulate matter." He further stated that it would be difficult but feasible to retrofit the cabs of vehicles that handle lead-bearing materials. (Tr. 5731-32.) Varner, however, testified that ASARCO had found that air-conditioners and filters continually plug up and that in some operations the thermal convective forces carry the contaminated material right past the crane cabs. (Tr. 6707.) Retrofitting cabs is complicated and may require custom-built equipment, but OSHA has determined that control of this operation to either 100 $\mu g/m^3$ or 50 $\mu g/m^3$ is feasible.

(g) *Baghouse, flue dust handling.* Flue dust is a major source of contamination. As Svend Bergsoe explained, the flue dust is, in all smelting companies, "the evil, the root of the evil • • • it is all over the smelter, it is under the writing desk, it is on the floor, in the air, it is everywhere." (Tr. 5161-62.) It is clear that without effective control of this dust, control efforts in other areas of the smelter will be severely hampered. OSHA has concluded that there are feasible methods to reduce exposure levels in this operation below the PEL, but that conventional methods, even a closed automated system will not be totally effective. Handling of flue dust by open equipment, such as front-end loaders, exposes employees in the area to high concentrations of dust. Periodic exposures between 50 $\mu g/m^3$ to 2,000 $\mu g/m^3$ have been reported. (Ex. 26, pp. 5-10.) Typically, control of flue dust is achieved by total enclosure in collector bins, screw conveyors, pub mills, pelletizers, etc. To insure the integrity of the enclosed system, adequate maintenance and houskeeping are needed. For thorough housekeeping, floors under collection devices should be concrete or steel.

Bergsoe's flash furnace, which agglomerates flue dust into chunks of lead oxide, might be applicable in a primary smelter as an alternative to conventional controls. Bergsoe stated that where paper filters are used, primary smelters can agglomerate its flue dust using his flash furnace (Tr. 5173.) This technique has thus far been used to control flue dust only in secondary smelters. (See discussion below.) Thus, it is not known for certain whether the dust in a primary smelter has the properties necessary for the low temperatures in the flash furnace. (Tr. 5162-67.)

(h) *Maintenance operations.* Many maintenance operations do not readily lend themselves to engineering controls. Portable blowers, however, might be used. Burton expected maintenance operations to be considered "on a case-by-case basis depending on the location, the type of exposure, the length of exposure, and so on." (Tr. 815.) OSHA expects that compliance will require respiratory protection.

b. *Secondary smelting and refining.* (1) *Introduction.*—Secondary smelters produce much of the lead used in the United States. The industry, however, is poorly defined. The estimated number of plants, for example, has ranged from 40 to 140. (Ex. 138D, p. 1.) Secondary smelters recycle lead from discarded batteries and other waste materials. This recycling involves two phases: Smelting of the old material to recover crude lead and, in some operations, refining of the crude lead to produce pure lead and alloys for reuse.

Secondary lead smelting plants take scrap lead material from many sources, but the majority (61 percent) comes from scrapped lead-acid batteries. Lead cable covers, linotype, and recovered fume and drosses are other major sources. Some scrap is reprocessed to remove lead from other materials. Battery plates and terminals, for example, are mechanically separated, and lead-copper cables are heated to melt off the lead. Materials containing lead oxide may be processed through a blast furnace to reduce the proportion of oxide to lead metal. Lead from the blast furnance and scrap containing lead metal may be melted in refining kettles and treated by drossing to remove copper and other impurities.

Following the drossing, the lead may be "softened" by removing antimony that has been previously added to give the lead hardness and strength. This removal is done by air oxidation in a reverberatory furnace or by oxidative slagging with sodium dioxide or sodium nitrate fluxes. Once the lead has been refined to a desired composition, it is cast into various shapes or fabricated into wires, pipes, sheets, or solders. (Ex. 26, pp. 5-29.)

Approximately 4,400 workers in the industry are exposed to lead. (Ex. 26, pp. 2-13.) Exposure levels vary among different operations, with the highest occuring in blast furnace areas. DBA analyzed OSHA compliance data and found that prior to August 1976, 83 of 171 air lead samples exceeded 200 $\mu g/m^3$. Data after this date showed 102 of 129 air lead levels above 100 $\mu g/m^3$ and 87 of 129 above 200 $\mu g/m^3$. (Ex. 26, pp. 2-17, 2-18.)

(2) *Summary.* The rulemaking record contains uncontroverted evidence that exposures in secondary smelting operations can be controlled below the 100 $\mu g/m^3$ interim level. Based upon its study of seven representative smelters, Dr. Thomas Smith testified for DBA that compliance by secondary smelters with a standard of 100 was technologically feasible. (Tr. 798.) Because of the proven ability of American industry to engineer away work hazards when required to do so, the Steelworkers also viewed the 100 $\mu g/m^3$ standard as "technologically feasible" (Ex. 343; Tr. 2308, 2313-14.) One company, Keystone Resources, which operates four secondary smelters across the country commented that "our controls are such that we feel we could also meet the action level (50 $\mu g/m^3$) specifications." (Ex. 3(39).) Before the implementation of engineering controls, average air lead at Keystone Resources was 1,036 $\mu g/m^3$. The controls reduced the average to 126 $\mu g/m^3$. (Ex. 452, p. A-137.) The results of a recent OSHA inspection at another secondary smelter indicate that it is presently in compliance with the 100 $\mu g/m^3$ level. (Ex. 26, p. 5-38, Tr. 956.)

Attaining these levels, however, may in a few instances require extensive modifications of current processes. IHE, in a study for the Lead Industries Association, analyzed one plant in detail and concluded that conventional engineering techniques alone could not control battery breaking or scrap and slag handling to 100 $\mu g/m^3$ airborne lead. (Ex. 138D, p. 8) DBA doubted that manual battery breaking, slag and scrap handling, and some maintenance operations could be controlled without process redesign. (Ex. 26, p. 5-29.)

The rulemaking record describes new approaches that may be necessary

to comply with the PEL. Michael Varner, corporate manager for ASARCO's department of environmental sciences, and Melvin First, a professor of environmental health engineering at Harvard, discussed the possibility of innovations in drossing, such as continuous vacuum drossing. (Tr. 2387-80; Tr. 6530-31) Svend Bergsoe, president of Paul Bergsoe and Son of Glostrup, Denmark, described in detail his new technique for smelting scrap lead products. (Tr. 5142-5204.) His process eliminates one of the hardest to control processes, battery breaking, by using a new type of furnace that not only digests the entire battery, but also uses the battery cases to supply 50-80 percent of the fuel required to run the furnace. (Tr. 5194.) In addition a flash furnace agglomerates the flue dust, and the process is entirely enclosed.

At the Bergsoe plant in Glostrup, Denmark, a special machine first punctures batteries to remove the acid. The drained, unbroken batteries are then mixed with coke, iron oxide, limestone scrap, return slag, and agglomerated flue dust to form the charge for a specially designed shaft furnace. Over 95 percent of the lead and antimony in the charge is tapped as crude metal, which is then refined to produce a 99.97 percent pure lead and an antimony concentrate. An afterburner treats exit gases to complete combustion. A flash furnace, which is fed directly from the bag house filters, agglomerates dust into a solid form that is easy and safe to handle. The agglomerated product is recycled to the shaft furnace, thus increasing the efficiency of production while reducing in half the amount of flue dust generated. The Bergsoe furnace is also supplied with a new kind of filter, an ITC filter, which has no moving parts and catches dust on the outside of the bags instead of the inside. (Ex. 173; Ex. 174; Tr. 5142-5204.)

With this new approach, Bergsoe's smelting operations have "run at an ambient air standard well below 100 $\mu g/m^3$." (Ex. 173, p. 10) The new process, however, applies only to smelting. Bergsoe predicts levels below 100 $\mu g/m^3$ in refining operations even in an old plant and notes that a refinery in England has kept exposure levels below 100 $\mu g/m^3$. (Tr. 5183, 5187.)

With the possible exceptions of installing afterburner and agglomeration systems on existing furnaces (Tr. 5177, 5192), the Bergsoe process would require construction of an entirely new smelting plant, estimated to cost $2.5 million for a 20,000 ton per year production, and would take 2 years for construction (Tr. 5192). This cost includes the scrap handling facility (Tr. 5199), furnace, afterburner, baghouse, refinery and even canteen and washing facilities. (Tr. 5190.) General Battery Co. argued that Bergsoe's process was not compatible with production needs of American secondary smelters which generally need to produce 50 percent hard lead and 50 percent soft lead; however, Bergsoe confidently stated that his company could build a plant with 20,000 tons per year hard lead production and 20,000 tons per year soft lead production, each guaranteed to meet a 100 $\mu g/m^3$ standard. Bergsoe has built plants in many countries and is currently negotiating with American companies. (Tr. 5195-96.)

In addition to engineering controls, witnesses at the hearing stressed the importance of a central vacuum system for meeting low exposure levels. DBA stated that a vacuum system is essential. (Ex. 26, p. 5-34.) Caplan also found such a system to be necessary. (Ex. 138D.) First testified that only a vacuum cleaning system would be "practical or consistent" with the "low levels • • • being discussed." (Tr. 2379.) In contrast, Bergsoe found that the best solution was to keep the floor wet all the time. (Tr. 5176.)

First suggested that plant modifications could improve housekeeping. (Tr. 2376.) For effective vacuuming, Caplan recommended floor surfaces that are smooth and durable, such as steel plates in the kettle area. Currently, floors in many areas of secondary smelters are made of dirt or rough, broken concrete. Caplan recommended paving for any storage area not covered with smooth materials. (Tr. 5762.)

Additionally, Mackey testified that front-end loaders could be totally enclosed and pressurized so that the operators are not exposed to any dust or fumes in the building. (Tr. 5155.)

(3) *Specific operations.* (a) *Battery breaking.*—The source for 61 percent of the lead in secondary smelter is scrap automobile batteries. (Ex. 26, p. 5-29.) Battery tops are removed; the plates and residues piled, and the top crushed to extract the posts. The DBA study observed no hoods over saws or guillotines and no ventilation around piles. (Ex. 26, p. 5-31.) Side terminal batteries and large industrial batteries were broken manually without controls. The record indicates that with the exception of manual battery breaking, all breaking operations can be controlled below 100 $\mu g/m^3$ through conventional methods. Moreover, adoption of the Bergsoe process would eliminate altogether the problem of battery breaking.

In order to control battery breaking to 100 $\mu g/m^3$, IHE proposed exhaust ventilation for the battery saw enclosure, the dumping station, and the hydraulic guillotine knife. It also recommended a local exhaust system for manual breaking. (Ex. 138D, p. 2.) First described a design for a completely enclosed, ventilated, and remote-controlled system to separate lead from scrap batteries. (Tr. 2337.) Although First's system never became operational, its design is consistent with low exposure levels.

The alternate approach of the Bergsoe process feeds the whole battery directly into a smelting furnace (Tr. 5158-61), thus entirely eliminating batter breaking and its attendant exposures. The Bergsoe process, however, requires a particular mix of scrap battery materials (Ex. 174; Tr. 5174), preferably a large percentage of polypropylene cases (Tr. 5166). No analysis has been made of the mix of materials found in the U.S., but one secondary smelting firm claimed it was not appropriate for Bergsoe's furnace. (Ex. ——, p. —.) However, Bergsoe stated that, "the whole battery production will switch over to poly batteries in 1 or 2 or 3 years time." (Tr. 5160.) OSHA believes this is correct in view of the negotiations between U.S. smelters and Bergsoe to bring his furnaces into the United States. Absent successful mechanization of this process, administrative controls and occasional respiratory protection appears necessary for compliance with the 50 $\mu g/m^3$ standard for this operation.

(b) *Scrap handling.* The DBA study found that plants piled scrap materials in open areas, some of which were paved and periodically swept. (Ex. 26, p. 5-31.) There is little other control at present. Conventional techniques for handling scrap could significantly reduce exposures. Such methods include isolating the process in a separate building with enclosed and ventilated storage areas, installing a ventilated conveyor system, and paving work areas. (Ex. 26, p. 31; Ex. 138D, p. 3.) Nonetheless, both DBA and IHE concluded that such methods would at best achieve the 100 $\mu g/m^3$ level marginally. (Ex. 26; Ex. 138D.)

As with battery breaking, First's design or Bergsoe's process might reduce or eliminate this problem, but administrative controls may be the most efficient means of achieving the PEL.

(c) *Blast furnace.* Plants currently hood the stay of the blast furnace, charge the furnace by skip hoist, and hood the lead tap. Workers, who generally are required to wear respirators in this area, manually load the skip hoist with lead, coke, and limestone charge materials. DBA observed the highest levels of lead in this area, 500-10,000 $\mu g/m^3$. (Ex. 26, p. 5-31.) Despite such currently high levels, the record indicates that lead exposure in this operation can be kept below 100 $\mu g/m^3$, if adjacent sources of emission are eliminated (Ex. 26, p. 5-32).

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For the one plant studied, IHE suggested the application of such conventional techniques as "local exhaust ventilation on slag and lead tapping areas, with makeup air sweeping past the operator; a separate conveyor for charging lead materials; a two-stage charging system; an isolated, ventilated area for relining furnace crucibles; an isolated, ventilated area for slag handling; and provisions for airline or self-contained breathing apparatus." (Ex. 138D, p. 3-4.) These controls would be suitable for other plants as well. Mackey described hoods for the ladles on a "ball-bearing, swivel arrangement" so that the operator can pull it away from the furnace once the slag is tapped. He said there are "no fumes in the building." (Tr. 5149.) Hot metal is tapped into a sump area so that there are no fumes coming into the building during the tapping stage." (Tr. 5150.)

Based on the record, OSHA believe that methods currently available when combined with the use of standby pulpits or fresh air islands (Ex. 3(108)) and administrative controls should be able to reduce exposures to 50 $\mu g/m^3$ in many existing plants. Supplemental use of respiratory controls may be necessary for some tasks, although the Bergsoe process again offers an alternative that would significantly lower the exposures associated with handling charge materials, especially exposures from recycled flue dust. (Ex. 173.)

(d) *Reverberatory furnaces.* Some plants now use reverberatory furnaces to remove antimony from lead bullion. In the plants it studied, DBA found that all charge and tapping points have hoods. Its study suggested upgrading the hood and isolating the operation. (Ex. 26, p. 5-32.)

The rulemaking record contains no other information on reverberatory furnaces. Because such furnaces emit contaminants along their entire external refractory surface, they will be difficult to control. Efficient control will probably require near total enclosure. (Ex. 26, p. 5-33.) Worker exposure at isolated reverberatory furnaces, with administrative controls, probably could be controlled to a TWA of 50 $\mu g/m^3$.

(e) *Slag handling.* Plans typically handle slag with a manual or payload operation in an open area. Slag is tapped into conical molds and, when it solidifies, is broken up to recover any matte. (Ex. 26, p. 5—32; Ex. 138D, p. 4.) IHE's limited testing found unspecified low levels of lead (Ex. 138D), which if representative, could be adequately controlled to 100 $\mu g/m^3$ by ventilation (Ex. 26). IHE, however, believed these data were an insufficient basis for any conclusion (Ex. 138D).

The record contains no specific recommendations. It is reasonable to conclude that ventilation and good materials handling practices would reduce air lead levels to 100 $\mu g/m^3$ or 50 $\mu g/m^3$.

(f) *Refinery operations.* Refining takes place when metals are melted and treated in hemispherical pots to remove impurities in the form of a dross. The difficulty of controlling lead exposures in refining operations varies with the size of the operation. Those requiring overhead cranes are especially difficult to control (Tr. 5695). Portable ventilation that does not prevent access to molten lead during drossing is required. DBA found that plants currently use hoods only during drossing. (Ex. 26, p. 5-32.)

Despite the technical problems in controlling refineries, IHE concluded that conventional technology could meet a 100 $\mu g/m^3$ limit. (Ex. 138D, p. 5.) Such technology includes upgrading ventilation and providing hoods during charging and meltdown (Ex. 26, p. 5-32). Separating the refinery from the blast furnace by a wall is also important. (Ex. 138D.) Bergsoe testified that separation of the refinery from the smelter is essential for good pollution control. (Tr. 5164.) The bullion is cooled in molds and is taken in ingot form to the refinery thus eliminating the dust and fume problem in transporting bullion. (Tr. 5150.) DBA also suggested that ventilation systems will need to be upgraded and hoods provided during charging and melting to meet the interim level. Careful hooding of drossing kettles, combined with strict housekeeping and isolation from other sources of contamination within a smelter, would be essential to meet the PEL.

(g) *Casting and fabrication.* Airborne lead can be generated when lead is cast into ingots or fabricated into plates, sheets, wires, etc. DBA found that little control is currently provided for either operation. (Ex. 26, p. 5-32; Ex. 138D. p. 5.) According to both DBA and IHE hooding these areas and using local exhaust would be feasible. (Ex. 26, p. 5-32; Ex. 138D, p. 5.) In particular, IHE recommended portable hoods suitable for mobile equipment (Ex. 138D, p. 5). OSHA has concluded that attaining a 50 $\mu g/m^3$ level should not be difficult and will require isolation, local ventilation, and careful housekeeping.

(h) *Baghouse and flue dust handling.* Baghouses capture the lead fumes and dust generated by furnace operations. Some plants use automatic systems that feed baghouse dust into the blast furnace. Other plants manually return the dust, a system that involves high exposure and creates severe housekeeping problems. (Ex. 26, p. 5-33.)

DBA and IHE agreed that automated systems can meet a 100 $\mu g/m^3$ standard (Ex. 26, Ex. 138D). Edwin Godsey, chief fume and dust recovery engineer at ASARCO, Inc., described a screw conveying system being designed for the baghouse at his company's El Paso plant (Tr. 6522). Pneumatic conveyors could also be used. (Ex. 138D.) Such modifications in the process should control these operations to the 50 $\mu g/m^3$ level. Furthermore the flash agglomeration of dust in the Bergsoe process would not only facilitate safe handling of dust but also improve utilization of the dust, thus increasing efficiency. (Ex. 174.)

(i) *Maintenance operations.* Regular maintenance is, of course, essential to compliance with any standard. (Tr. 2388, 2340.) However, workers who maintain and repair dust control systems and production equipment are inevitably exposed to high levels of dust. At this time, no engineering controls are known that provide complete protection for maintenance activities, although some can reduce exposures significantly. Witnesses assumed reliance on personal protective equipment would be necessary, and did not discuss the use of portable ventilation, which could provide some measure of protection. In addition, respirators and rotation of workers will be "indispensable for a few maintenance procedures." (Ex. 270, p. 20.) In maintenance operations, OSHA expects the use of respirators to be necessary in most cases for compliance with either a 50 or 100 $\mu g/m^3$ standard.

(j) *Other operations.* Some secondary smelters manufacture lead oxide. Controls for this process are discussed below in the section on the battery industry.

A few smelters use sintering to agglomerate dusts. The sintering machine is a source of high lead exposure. Although existing sintering facilities have some hooding and fume control, this equipment would need upgrading to meet a 100 or 50 $\mu g/m^3$ standard. (Ex. 26, p. 5-33.)

OSHA has concluded that the technology exists today to allow the secondary smelting industry to comply with the PEL. New technological developments will make the task easier and less expensive. Because of the extensive modification needed to bring secondary smelters into compliance with the PEL, the compliance schedule allows 5 years, with 3 years for the interim level of 100 $\mu g/m^3$. The 5-year period is based on the testimony of First, IHE, and DBA where estimates for time to implement engineering controls were presented. In addition, conversion to new smelting processes could take place within 5 years. Bergsoe testified that construction of a

plant using his process would take about 2 years.

c. *Battery manufacturing.* (1) *Introduction.*—The battery industry is the largest single user of lead in the United States. The industry produces both SLI (starting-lighting-ignition) batteries and industrial batteries, although the latter accounts for only 7 percent of the industry's production; 138 firms operate 200 plants, which vary tremendously in size and capacity. On one hand, the 7 largest firms operate nearly 70 plants and account for over 90 percent of the batteries sold. On the other, 95 battery plants employ fewer than 20 people. Of the 16,000 persons employed by the industry, approximately 12,800, or 77 percent are exposed to lead. (Ex. 26, p. 5-42.)

Manufacture of batteries begins with production of lead oxide, either by the Barton process, which oxidizes lead in the molten state, or more often, by the ball mill process, in which frictional heat generated by tumbling lead pigs or balls produces lead oxide. Lead oxide powder is mixed into a paste and pressed onto grids cast from lead. The pasted plates are cured, stacked by hand or machine, and connected with molten lead ("burned") into groups that form the individual cells of a battery.

All these processes, especially loading and unloading at each step, generate contamination. The racks that carry the pasted plates from one operation to another are additional sources of lead dust. Dust forms as well during reclamation of rejected grids, parts, and pasted plates, and during removal of plate groups from defective batteries.

(2) *Summary.* The record indicates that in the battery industry available methods can control employee air levels of lead below 50 $\mu g/m^3$, as an 8-hour TWA, for all major processes. Indeed, more than 40 percent of employees exposed to lead in this industry may already have TWA exposures of less than 50 $\mu g/m^3$. (Ex. 26, p. 5-45.)

The steelworkers commented that "there is no real dispute in the testimony of the technological ability of battery plants to meet the proposed 100 $\mu g/m^3$ standard." (Ex. 343, p. 152-53.) Edward Baier, Deputy Director of NIOSH, pointed to the General Motors battery plant in Muncie, Ind., as an example of the success which can be achieved in controlling lead exposure in an older plant. "The majority of departments tested • • • had average air lead exposures during 1976 below 100 micrograms per cubic meter based upon personal monitors. (Tr. 1317.) The UAW asserted that "any operation in a battery plant can be controlled once provided with adequate enclosures, exhaust ventilation, or process redesign." (Tr. 5274.) In his study of 17 plants, Thomas concluded that "the general use of respirators should not be needed in a well-designed and managed lead storage battery plant. (Ex. 101A.) Similarly, Caplan, testifying on a detailed study of 12 plants IHE did for the Battery Council International ("BCI"), concluded that "technically, if all the things that we recommend were done and well done, it is our opinion that we would be able to control to 100." (Tr. 3856.) The recommended controls, presently lacking in many plants, include:

(1) Handling oxide in bulk by pneumatic conveyors instead of barrels or screw conveying systems.

(2) Mixing paste in a vertical array with leakproof connections as well as local exhaust hooding and control of ventilation flow;

(3) Mechanizing and enclosing wet and dry reclaim facilities;

(4) Hosing down the racks and pallets after each cycle; and

(5) Cleaning the floor with a central vacuum system. (Ex. 29(29A). p. ii.)

It is OSHA's judgment that these systems proposed by IHE, when combined with good work practices and administrative controls will be effective to control exposure below the PEL, primarily because they provide total control of the process and minimize the opportunity for fugitive emissions. As Dr. First stated, "The application of good control methods almost always results in air concentrations far lower than the standard for which they were designed". (Ex. 270, p. 19.)

IHE's specifications are designed primarily for larger operations. They assume that production is continuous and that operators remain at each work operation for a full shift, assumptions that do not hold for small plants. Thus, the engineering controls designed by IHE will be effective but may not be appropriate for small plants. The record suggests that less complex controls may be feasible and effective for small plants. Good housekeeping appears especially important. Both Meier Schneider, an experienced industrial hygiene consultant, and Albert Stewart, an industrial hygienist who formerly conducted lead inspections for OSHA, testified that control costs might be held down by approaching problems on a case by case basis and by emphasizing the use of good housekeeping and techniques for handling materials along with imaginative engineering to minimize the need for ventilation. (Tr. 2057-2077.) Dr. Mirer, the UAW's industrial hygienist, noted that of 30 plants surveyed by the UAW, the one with the lowest lead exposures had only nine workers. (Tr. 1007.)

Testimony from operators of small battery plants also stressed good housekeeping and work practices. For example, Don Hull, president of Dynolite Corp., a plant that employs fewer than 20 people, testified that he gives priority to housekeeping and personal hygiene. (Tr. 1246; see also Tr. 3561.) When OSHA took a series of readings in his plant at the stations for grid casting, stacking, element assembly, battery assembly, and battery filling, only one reading at one location, element stacking, exceeded 100 $\mu g/m^3$, and it was just slightly over, 110 $\mu g/m^3$. (Tr. 1247-48.)

Some operations with high exposures are done only intermittently in small plants. Small battery plants, for example, may paste plates only once or twice a week. (Tr. 3465; Tr. 1259.) To meet the PEL as an 8-hour time weighted average, such plants may not need the same controls as a plant that pastes plates all day every day. In fact, alteration of production schedules or employee rotation may be effective. Employees in small plants do not work exclusively at one station. As Stuart Manix of Lancaster Battery Co. explained, "most people try to do a little bit of everything." (Tr. 3465.) Thus, rotation of employees to positions with higher exposures for less than 8 hours per shift may also reduce 8-hour TWA averages. That is, four employees could each work 2 hours pasting plates.

New approaches may also offer small plants an alternative to IHE's engineering controls. Two firms, APSEE, Inc., and Kermatrol, Inc., testified that they could provide the technology for compliance at sharply reduced costs. APSEE, which stands for air purification through the stimulated emission of electrons, uses negative ionization to control exposures. When suspended dust particles are negatively charged by secondary electrons sent out by the system, they are attracted to the earth and held by the charge. (Ex. 316, Tr. 1177-94.) If this secondary ionization process proves as effective for lead as it has for other dusts, it would be far less expensive than traditional engineering controls, especially for smaller plants. The device has already been used in foundries, glass manufacturing plants, and other places with lead problems. Several battery manufacturers expressed interest in the system during the hearing. (Tr. 1188-1191.)

Kenneth Kerman, president of Kermatrol, testified that his particulate filtration equipment could "guarantee attainment of a TLV of 50 micrograms, and even better, depending on the circumstances." (Tr. 5217.) Its equipment consists of a layer of proprietary material added to a HEPA (high efficiency particulate air) filter.

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(Tr. 5205-5240; Ex. 176, 177.) This system permits cleaning and reuse of HEPA filters, which provide absolute filtration dust collection. Kermatrol recommends the combination of this filtration with the negative pressure enclosure of a "gloveless glove box" and return of filtered air. Kerman stated that air returned at a speed of 50 to 70 feet per minute would not annoy an operator. (Tr. 5214.) Although not all operations can be done inside a box and not all materials are appropriate for the filter, these limitations do not appear to present problems for lead dust in battery plants. Indeed, the finer the material the more efficient is the filter. (Ex. 176.) Over 200 Kermatrol units have been installed, including one in a battery plant. (Ex. 177.) The construction of new plants with highly automated, enclosed manufacturing processes should enable the battery industry to comply with the 50 $\mu g/m^3$ lead-in-air standard for every operation.

The witnesses at the hearing underscored the importance of housekeeping and maintenance to supplement engineering controls. As Meier Schneider, an industrial hygiene consultant to the Teamsters, explained, "if engineering controls are not maintained, they break down, and the air concentrations in the workplace rise." (Tr. 2060-61.) The UAW observed that "lack of maintenance ventilation and process equipment, and poor cleanup of the toxic residue in the plant have been cited as major causes of preventable lead exposure." (Tr. 5053.) A 1941 U.S. Public Health Service study of the storage battery industry noted that "any control method will lose its effectiveness if not properly maintained." (Ex. 6 (45); see also Ex. 29 (29A); Tr. 3870; Tr. 2380; Ex. 101A, and Tr. 2325-26.) Rigorous maintenance and scrupulous housekeeping will be crucial for achieving and sustaining the 50 $\mu g/m^3$ standard.

(3) *Specific operations.* (a) *Oxide manufacturing.*—At present, exposure levels in this operation, which involves 2 percent of employees, are generally above 200 $\mu g/m^3$. (Ex. 26.) For plants that manufacture ball mill oxide, available controls can reduce concentrations of lead in air below 50 $\mu g/m^3$. In the 1941 public health service study, conventional ventilation control, isolation from other work areas, and vacuum collection of spilled oxide attained concentrations of air lead ranging between 60 and 100 $\mu g/m^3$. (Ex. 6 (45).) IHE recommended not only isolating the process, but also establishing dust control at the mill trunnion, the classifier, the oversize return, wherever material is handled, any drossing, and at all storage hoppers. He also urged pneumatic conveyance of material and passing the exhausted air through a fabric filter. (Tr. 3699.)

Thomas's study, which included seven plants with fewer than 50 employees, found that "plants which manufactured lead oxide used totally enclosed systems and employee exposures were minimal." (Ex. 101A.) Testimony presented at the hearing by the UAW suggests that new equipment could be designed and manufactured to meet a 50 $\mu g/m^3$ standard. (Ex. 180, p. 16.)

(b) *Oxide receiving and handling.* Battery plants that do not manufacture their own oxide receive the oxide in drums or tank trucks. Handling this oxide usually exposes employees to levels of lead in excess of 100 $\mu g/m^3$ and often in excess of 200 $\mu g/m^3$. (Ex. 26, p. 5-47.) The record suggests that pneumatic conveying systems can maintain airborne lead concentrations as low as 50 $\mu g/m^3$, if combined with rigorous preventive maintenance, isolation from other sources of contamination, and structural modifications that permit careful housekeeping.

Most plants now use barrel or complex screw conveying systems. Controlling barrel dumping of oxide to 50 $\mu g/m^3$ would require enclosing the entire process, a modification which would involve a large volume of air and increased operator time. (Tr. 3700, Ex. 29 (29A), p. 12-13.) The UAW, however, wondered why any but small plants that move oxide infrequently would use a barrel system. (Tr. 5280, Ex. 180, p. 7.)

Screw conveying systems can leak oxide from many sources, such as transfer points from shaft to trough or between conveyors. (Ex. 29 (29A), p. 12-13.) Control by such conventional techniques as improved seals would be both expensive and unreliable. (Ex. 29 (29A), p. 12-13.) Because of the difficulty in controlling leaks from screw conveying systems, the hearing record suggests the adoption of totally enclosed systems. The UAW prefers a "totally enclosed system where oxide is moved by force of air or by an auger." (Tr. 5279, Ex. 180, p. 6.) Caplan also recommended pneumatic conveying as the "best all-round solution." (Ex. 29 (29A).) According to the UAW, larger operations should, in fact, find enclosed systems more efficient than barrel handling. (Tr. 5380.)

(c) *Paste mixing.* Lead exposure in paste mixing usually exceeds 100 $\mu g/m^3$. (Ex. 26, p. 5-42.) The plants surveyed by IHE met the 200 $\mu g/m^3$ standard only marginally, and he called control of this area one of the "most troublesome." (Ex. 29 (29A), p. 13.) Small plants that use drums to dump paste into mixers could be controlled to 100 $\mu g/m^3$, according to IHE, by installing extensive hooding and facilities for cleaning the drums. (Ex. 29 (29A), p. 13.) Testimony by battery manufacturers suggested that enclosed, automatic oxide mixers would also reduce exposures. (Tr. 2888; 3705.)

To achieve a level of 100 $\mu g/m^3$ in larger plants, IHE endorsed a new design, "a vertical array with the oxide weigh hopper at the top, mixer at an intermediate level, and the paste machine at the bottom." This arrangement would also incorporate special dust control and would involve new equipment as well as additional work space in some cases. (Ex. 29 (29A), p. 15.)

The record suggests that, under certain conditions, approaches for meeting a level of 100 $\mu g/m^3$ will also achieve a level of 50 $\mu g/m^3$. In addition to isolation, preventive maintenance, and modifications to permit assiduous housekeeping, conditions needed to attain a level of 50 $\mu g/m^3$ include denying the operator access to the paste to test consistency.

(d) *Pasting.* Employee exposures in pasting operations generally exceed 100 $\mu g/m^3$. (Ex. 26, p. 5-47.) To reduce this level, the hearing record emphasized the need for effective washdown in both small and large plants. (Ex. 29 (29A), p. 16; Ex. 101A.) IHE determined that to maintain levels of 100 $\mu g/m^3$ pasting departments in average-sized plants would require not only local ventilation at the feed, take-off end, and rack of the pasting machine, but also enclosure of the pasting area with net air flow toward the center of the pasting line from both ends. (Ex. 29 (29A), p. 16.)

Attempts to attain a level of 50 $\mu g/m^3$ might also entail isolation of pasting from other sources of contamination and modification of structures to expedite housekeeping. Data collected by Thomas indicated that pasting operations in small battery plants can be controlled to meet the 50 $\mu g/m^3$ standard. (Ex. 101A.) Thomas recommended that the pasteline feed area be built on an open grid floor over flowing water or that the floor be kept permanently wet. (Ex. 101A.)

(e) *Plate curing and handling.* Experiments conducted by IHE demonstrated that washing the racks used to transport pasted plates at the end of each cycle will control this source of air lead to 100 $\mu g/m^3$, if floors and other works surfaces are kept clean. IHE deemed vacuum cleaning of floors to be necessary once per shift. (Ex. 29 (29A), p. 35.)

In addition, measures were advanced to control dust from moving and handling of pasted plates below 100 $\mu g/m^3$. These proposals included separating pallets used to transport grids from those used to transport plates; storing and transporting plates, elements, and

oxide-containing scrap in sealed containers; and attaching exhaust systems to tubs for storing and transporting plates. (Ex. 180, p. 9; Tr. 5284.) In addition to enclosing plate curing operations, modifications in the plant's physical structure may be necessary to permit the requisite housekeeping. Indeed, complete automation and enclosure of plate handling from pasting to assembly may prove the most practical means of reducing levels of lead in air to 50 $\mu g/m^3$.

(f) *Grid and parts casting.* Current exposures in this operation usually fall below 200 $\mu g/m^3$ and often below 100 $\mu g/m^3$. (Tr. 5977.) The hearing record contains evidence that casting operations can currently meet the 50 $\mu g/m^3$ standard. The UAW testified that "a 50 $\mu g/m^3$ exposure limit is immediately accessible in casting operations." (Tr. 5286.) Levels reported by the U.S. Public Health Service 35 years ago and by Thomas more recently further support this conclusion. (Ex. 101A; Ex. 6(45).) IHE also observed air concentrations to be generally below 100 $\mu g/m^3$ in those casting areas that were areas supplied with ventilation and exhaust hoods and isolated from other sources. IHE recommended exhaust hoods for the dross bucket and the dross skimmer as well as a hood through which the dross skimmer can be moved from the melting pot to the dross bucket. (Ex. 29(29A), p. 27.) Thomas noted that many hoods were not properly maintained (Ex. 101A.) Careful regulation of melting and pouring temperatures is also important to prevent excessive fuming from molten lead. (Ex. 29(29A), Ex. 26; Ex. 101A; Tr. 5286.)

(g) *Plate breaking and finishing.* According to the hearing record, control of this process will require exhaust ventilation both for the operation itself and for the racks and pallets used to move the plates. (Ex. 101A; Ex. 6(45); Ex. 180.) Strict housekeeping, including vacuum cleaning of racks, was also urged. (Ex. 180; Ex. 6(45).) These controls are expected to attain a level of 100 $\mu g/m^3$, and should also permit attaining a level of 50 $\mu g/m^3$. (Tr. 5977.)

(h) *Plate stacking.* Employees who stack plates are exposed to levels usually above 100 $\mu g/m^3$. With inadequate controls or work practices, exposures may go much higher. Incentive pay practices that encourage speedy handling increase contamination by discouraging good work practices and strict attention to housekeeping. Existing work tables with downdraft ventilation have not captured contaminants completely. Information in the hearing record nonetheless indicates that a lead-in-air level of 100 $\mu g/m^3$ is feasible for hand stacking operations with well-designed ventilation, strict housekeeping, and careful work practices. (Ex. 26; Ex. 101A, Ex. 29(29A), p. 27; Tr. 2587.) One small manufacturer has attained levels between 50-100 $\mu g/m^3$ for this operation. (Tr. 5977.)

To attain a level of 100 $\mu g/m^3$ in hand stacking operations, IHE recommended a rack hood, scrap barrel, and downdraft tables with larger work surfaces and enough exhaust to create a capture velocity of 250 feet per minute at the top of the stack. (Ex. 29(29A), p. 27.) Thomas preferred a downdraft ventilation greater than 400 linear feet per minute and additional ventilation drawing air away from the operator. (Ex. 101A.) Attaining a level of 50 $\mu g/m^3$ in hand stacking operations may await innovations in both technology and incentive work practices. Until such changes occur, administrative controls with some reliance on respirators may be necessary.

Machine stacking operations can be modified to conform to a level of 50 $\mu g/m^3$. IHE recommends stacking machines designed with more complete enclosures and with heavy duty doors that ensure easy access for operation and maintenance as well as downdraft tables, moveable hoods, and a hooded scraps barrel. (Ex. 29(29A), p. 28; Tr. 3710-11.) Stacking machines may not be appropriate for small operations because they are not designed to handle all the odd sizes that small plants often produce. Also, stacking machines generate additional plate scrap. (Ex. 127, p. 3-43.) Based on such information in the hearing record, OSHA expects that meeting the PEL of 50 $\mu g/m^3$ will require the use of administrative controls and respirators until stacking machines that permit almost total enclosure are designed, but that it should be possible within the time given in the implementation schedule.

(i) *Burning.* Burning operations vary greatly from plant to plant, and it is difficult to predict appropriate engineering controls from the record. Some burning operations do not require local exhaust ventilation to stay below the current standard of 200 $\mu g/m^3$ (Ex. 180; Tr. 5285; Tr. 5317), but average exposures surpass 100 $\mu g/m^3$. (Ex. 26, p. 5-49.) In those plants where burning is conducted apart from plate stacking or handling, the installation of local ventilation can reduce exposure below 100 $\mu g/m^3$. (Ex. 101A.) Such data suggests that separate burning operations may be controlled to 50 $\mu g/m^3$ with isolation, preventive maintenance, control of air velocities, and modifications that allow meticulous housekeeping. (Ex. 101A, Tr. 3711-12.)

Stations that both stack and burn plates present particular difficulties. Because dropping groups of plates into a burning container or battery case creates a moment of intense air displacement, IHE characerized controlling this operation below even 200 $\mu g/m^3$ as a "continual battle" (Tr. 3711-12). IHE concluded that only an elaborate automatic valving system can control the problem without impeding the burning. (Tr. 3211.) IHE also recommended "more and better ventilation." (Tr. 3712.) The PHS study suggested that better housekeeping and more vacuum cleaning would improve stack and burn operations. (Ex. 6(45).)

Use of a COS stacker, a machine that accepts stacked plates from a stacking machine and automatically groups and burns the plates, can reduce the unit cost of control for larger plants. (Ex. 29 (29A), p. 28.) Like stacking machines, however, COS stackers may not be appropriate for small plants. (Ex. 127, Ex. 3-43.) The record demonstrates that traditional engineering techniques supplemented by strict attention to housekeeping and maintenance can control the operation of a COS stacker to 50 $\mu g/m^3$.

(j) *Assembly operations.* The record indicates that most assembly operations can attain a level of 100 $\mu g/m^3$. In supporting such a conclusion, the PHS study suggested that exposure of some assembly employees is a result of their proximity to other, more dusty operations. (Ex. 6(45)). Thus, in some assembly operations a 50 $\mu g/m^3$ level may be readily attainable when dusty operations are isolated, housekeeping meticulous, and maintenance rigorous.

(k) *Reclaiming.* The UAW observed that "salvage and reclaim operations are often the worst exposure and last controlled operation in a battery plant." (Ex. 180; Tr. 5285.) Nonetheless, the hearing record indicates that both wet and dry reclaiming systems can attain exposure levels of 100 $\mu g/m^3$ through engineering controls or process modifications. For large plants with wet reclaiming, IHE foresees an automated, hopper-loaded, wet tumbling system from which the reclaimed paste would be pumped to the mixer for reuse. (Ex. 29(29A), p. 34.) Because such recycling requires additional equipment for handling, IHE believed it would be uneconomical for small plants. For smaller plants, IHE envisioned an enclosed system in which the plates remain in scrap barrels during washing. (Ex. 29(29A), p. 34.)

Dry reclaiming produces large quantities of dross and requires careful control. (Tr. 5319) Caplan detailed one possible arrangement for attaining a level of 100 $\mu g/m^3$ in dry reclaiming operations: "The melt pot would be totally enclosed and scrap fed to it by a skip hoist. The skip hoist would be operated from outside the enclosure while the doors to the enclosure are closed. The empty barrels will be

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highly contaminated, both inside and outside, and must be thoroughly washed before returning to the production areas. Consequently, there must be a barrel-washing station adjacent to the dry reclaim areas. To eliminate dusting while drossing, the drossing operation must be conducted from outside the enclosure with the drossing ladle kept within the enclosure. The dross pot enclosure, pig-casting station and barrel-washing station require adequate ventilation. The exhausted air would pass through a scrubber before being released to atmosphere. The exhaust air cannot be used for recirculation. Water consumption at the barrel-washing station would be approximately 0.2 gallons per battery." (Ex. 29(29A), p. 34.)

(1) *Other operations.* Secondary operations in battery manufacturing include forming cases, testing, warehousing, and shipping. IHE suggestes that if the preceding processes are well-controlled, exposures in secondary operations would be below 100 $\mu g/m^3$. (Ex. 29(29A), p. 37.) OSHA has concluded that a level of 50 $\mu g/m^3$ can be achieved in secondary operations if contamination from other areas does not occur and if workroom structures and surfaces are designed to permit careful housekeeping.

OSHA has concluded that conventional engineering controls and work practices are available to the battery manufacturing industry to meet the PEL. The compliance schedule of 2 years for the 100 $\mu g/m^3$ interim level and 5 years for the PEL is based on a combination of the relatively extensive equipment or process modifications larger battery plants must make to comply with the standard and the economic constraints on small manufacturers.

d. *Brass and bronze foundries.* (1) *Introduction.*—The lead content of copper based alloys, i.e., brass and bronze, may amount to as much as 20 percent by weight of the metal core. (Tr. 2786.) The lead content of copper based ingots averages 5 percent. (Ex. 26, pp. 5-73.) Over 1,620 foundries cast brass and bronze at least occasionally; in approximately 770 foundries brass and bronze are the primary raw materials. Most of these foundries are small, 75 percent employing fewer than 50 people. Although small, most of these foundries make a diverse range of products of varying price, size, and composition. (Ex. 26, pp. 5-73.) An estimated 26,000 employees are exposed.

Exposure to airborne lead results from insufficient control of fumes from the smelting or pouring of alloys. In copper-base alloy foundries, approximately 15 percent of the particulate matter in furnace stack gases from the melting of red and yellow brass is lead oxide, and up to 56 percent of the particulate matter has been shown to be lead oxide when the alloy has a high lead content. Any workers in the vicinity of the melting or pouring operation as well as employees working to operate or maintain baghouse dust collectors may be subject to inhalation of these lead containing fumes. Sources of airborne lead may also include areas where castings are cut or finished and areas where scrap is received or stored. Levels of exposure are highly variable and depend on the amount of general and local ventilation, the lead content of the alloy, the type of furnace, and the quality of housekeeping procedures. (Ex. 26, pp. 5-73, 5-75.)

(2) *Summary.* The hearing record indicates that brass and bronze foundries can achieve an exposure level of 100 $\mu g/m^3$ with 1 year. DBA concluded that feasible engineering controls are available to meet this level. (Ex. 26, p. 5-73, Tr. 800.) DBA found that most plants do not at present have enough control in effect. Significant improvements are necessary for compliance with the proposed standard. For example, half the plants currently do not use baghouses and the majority do not provide heated make-up air. Gary Mosher, representing the American Foundrymens Society, explained that "exhaust systems have been devised and designed that will close capture • • • fumes right at the ladle and the furnace." He further testified that such methods are effective in bringing exposure below 200 $\mu g/m^3$, but did not express an opinion as to whether such techniques are effective in bringing exposure below 100 $\mu g/m^3$. (Tr. 2801.)

OSHA, however, has concluded that conventional technology in the industry has been shown effective for lowering exposures from melting and pouring to 100 $\mu g/m^3$. Refinement and development of these technological changes should permit, over time, compliance with the PEL. Examples of these controls include: (1) The adoption of electrical induction furnaces with local exhaust ventilation installed during the initial furnace installation; (2) covered ladles; (3) segregated melts; (4) use of the Hawley Trav-L-Vent; and (5) increased use of dilution ventilation and directional ventilation during pouring. Compliance will, of course, also require comprehensive housekeeping, maintenance, employee training, work practices, and personal hygiene.

(3) *Specific Operations.* (a) *Molding.*—Because most foundries are small operations, construction or cleaning of molds is often done in the same area as the pouring. Molders can be exposed to airborne lead from the furnace or pouring operations. Good control of furnaces and pouring operations thus lowers exposures during molding. (Ex. 26, p. 5-75.)

(b) *Melting.* In foundry operations, solid metal is placed in an electrical induction or gas-fired furnace. The furnace melts the solid metal and raises the temperature to that proper for pouring (1,800-2000° F). As the metal is being melted, fumes containing lead are released. When the molten metal is ready for pouring, dross is skimmed off the surface of the molten metal. Skimming increases the amount of fumes released. Without proper controls, lead exposure in this area may be high. (Ex. 26. p. 5-75.)

A combination of local exhaust and general room ventilation appears necessary to reduce airborne lead to acceptable levels. These ventilation systems have been demonstrated to be feasible for controlling lead levels below the proposed permissible level. Electric furnaces are a further aid in reducing exposures to lead because they emit fewer fumes than the older gas-fired units. (Ex. 26, pp. 5-76, 5-80.)

(c) *Pouring.* Pouring can be performed at several stages and is normally done in the transfer of molten metal from the furnace to the ladle and from the ladle to the mold. Lead fumes are released during the pouring operation.

A combination of local and general ventilation is necessary to control employee exposures to below 100 μ/m^3. In foundry operations, a mobile ventilation system that attaches directly over the pouring ladle or crucible is useful for removing the bulk of fumes from pouring operations. Before the alloy is poured, dross is skimmed from the surface of the melting pot. This dross should be deposited in a barrel with a mobile ventilation system used to capture fumes. Fixed position hoods are possible in foundries using automatic pouring of standard sized molds. Fumes captured should be vented to a baghouse, and tempered makeup air should be provided.

(d) *Other operations.* Local exhaust systems that attach directly to grinding wheels or other finishing machinery are available. Grindings and scraps should be stored in closed containers. In both of these operations as well as at the baghouse, use of respirators may sometimes be necessary.

The compliance schedule for this industry is based on both technological and economic factors. Since lead levels are not too high in foundries, and since relatively simple and conventional controls are required to comply with the interim level 1 year is given to implement the necessary controls. Since further refinement of these controls will probably be necessary to attain

the PEL, 5 years is provided. This period includes economic considerations. (See the discussion in the economic section of this document.)

e. *Pigment manufacturing.* (1) *Introduction.*—Of the 114 plants that manufacture pigments in the United States, approximately 25 produce pigments containing lead. Pigment products include red lead (or, litharge), lead sulfates, lead carbonates, lead silicates, lead oxides, and lead chromates. Inorganic pigments are a prime component in surface coatings and important components in other products such as linoleum, rubber, and plastics, inks, ceramics, and paper coatings. Litharge is used principally in the manufacture of products other than paint (i.e., ceramic glazes, batteries, glasses, and vitreous enamels). (Ex. 26, p. 5-92.) The number of production employees in lead pigment manufacturing is estimated to be 2,000. DBA's survey of several plants indicated that 90 percent of the workers were exposed to levels of lead above 100 $\mu g/m^3$. (Ex. 26, p. 5-93.)

The manufacture of pigments involves a number of different processes. Only pulverizing and grinding processes for reducing the particle size are common to all members in the class. Inorganic pigment manufacture is a combination of chemical-physical processes involving both wet and dry reactions, including precipitation, filtering, washing, fusing, calcining, etc. The processes may be carried out as a batch system, as continuous production, or as a combination of the two.

Pig lead is often the basic raw material in inorganic lead pigment. Litharge and other lead forms, however, are sometimes used. Because litharge is a powder, it presents the potential for lead exposures at every transfer point. Filtering, drying, grinding, sizing, grading, blending, and bagging are all considered to be areas of potential exposure to lead. Cross contamination between operations also occurs.

(2) *Summary.* Most pigment plants are old. All but five plants visited by DBA were at least 50 years old. One plant was said to be 129 years old. (Ex. 26, p. 5-95.) Because of the age of the facilities, retrofitting may not achieve levels below 100 $\mu g/m^3$, although such methods have reduced air-lead levels to 200 $\mu g/m^3$. However, redesign of the process, including "total enclosure of certain steps and/or automation" is expected to be able to reduce levels to a 100 $\mu g/m^3$ level. (Ex. 26, p. 5-98.) The same conclusion applies to the 50 $\mu g/m^3$ PEL. As Dr. First explained, "every operation that can be mechanized and automated is capable of being enclosed by tight physical barriers and placed under slight negative pressure to prevent outleakage of dust or fume-laden air to the workroom" (Ex. 270, pp. 29-30). While such technology may require time and money to install, it is available and adaptable to the pigment industry.

The National Institute for Occupational Safety and Health has recently recommended that OSHA require employers to reduce exposures of hexavalent chromium to 1 $\mu g/m^3$. A number to dry color manufacturers produce lead chromate pigments. If a hexavalent chromium standard were adopted, it would also play an important role in controlling lead exposures.

Finally, using substitutes for lead pigments, such as organic pigments, would eliminate exposures. While substitutes may not exhibit all the properties of lead, such as resistance to corrosion and weathering, they would nonetheless be adequate in many cases. Such substitution would also reduce or eliminate exposures in all the industries that involve lead pigment-wallpaper manufacturing, glove manufacturing, pottery manufacturing, ink manufacturing, paint manufacturing, shipbuilding, and automobile manufacturing.

f. *Shipbuilding.* (1) *Introduction.*—The shipbuilding industry includes repair as well as construction of ships. The size of the shipyards and the type of vessel being repaired or built vary widely. Exposure to lead can occur during lead burning, painting, welding, and sandblasting. The number of workers exposed to lead during burning is estimated at 1,374, during sandblasting at 264, welding 16,120, and painting 4,495. However, employees often work at a variety of assignments; their work may expose them to lead only 1 or 2 days a week. (Ex. 26, pp. 5-110 and 5-111.)

Exposures during welding can originate in the base metal being welded, the coatings used on the electrodes, and the coatings on the base metal. The studies reviewed by DBA indicate that welders may be exposed to concentrations of lead well in excess of 100 $\mu g/m^3$. One 1968 study reported mean lead concentrations of 40 $\mu g/m^3$ in shipyard welding. DBA estimates that the exposures of 81 percent of welders would fall above 100 $\mu g/m^3$. Especially high exposures result from work in confined spaces and on galvanized metals coated with zinc silicates. (Ex. 26, pp. 5-113, 5-114.)

Lead burning occurs only in the construction of nuclear ships, when lead is welded to the hull in order to shield the ship's reactor. DBA estimated that 40 percent of these workers have exposures above 100 $\mu g/m^3$. (Ex. 26, p. 5-111.) Sandblasting is used to remove all coating material, including those containing lead, before painting the hull of a vessel. Although few data are available, exposure levels of sandblasters are believed to exceed the PEL. (Ex. 26, p. 5-117.) Painters, in contrast, are assumed to fall into the low exposure category. When painting is not done in a ventilated spray booth, however, most painters now wear respirators. (Ex. 26, p. 5-117.) Lead-based paint is being replaced: Some shipyards use no lead-based paint. (Ex. 22, p. 321.) The following table 1 summarizes exposures:

TABLE 1.—*Estimated Employee Exposure to Lead in Shipyards by Occupation*

[(Ex. 26, p. 5-118) (corrected)]

	Total	High exposure	Medium	Low
Welders	16,120	3,000		13,120
Painters	4,495			4,495
Sandblasters	264	264		
Leadworkers	1,374	622	622	130
Total	22,253	3,886	622	17,745

(2) *Summary.* The hearing record indicates that attaining exposures of 100 $\mu g/m^3$ is generally feasible in the shipbuilding industry. The Shipbuilders Council as well as General Dynamics and Ingall Shipbuilding, division of Litton Industries described the proposed standard as "technologically possible." (Ex. 230, p. 2; Ex. 28(30), p. 3; Ex. 3(58), p. 2.) DBA concluded that the shipbuilding industry has achieved the state-of-the-art in engineering controls. (Ex. 26, p. 2-9.) Stan Phillips, testifying for DBA, stated that "engineering controls are feasible for many lead burning and lead foundry operations in the shipbuilding industry." He further explained that there would be limited occasion, such as lead burning in confined spaces, where respirators may be needed." (Tr. 800-801.) Periodic use of respirators may also be necessary for compliance with the 50 $\mu g/m^3$ standard.

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Shipbuilding is not a process that uses a production line or stations to which engineering controls can be attached. As ship construction proceeds, the work environment changes. Compliance in such an operation calls for local exhaust ventilation, using portable, flexible equipment, and absolute filters. Some confined spaces, however, may not have room for portable ventilation ducts. (Ex. 26 p. 5–119.)

Large shipyards have installed such controls. Complying with the standard may be more difficult for some small companies, especially during work on hulls painted with lead-based paints. If the proper welding practice of removing an area 3" wider than the weld is strictly followed, exposure above the PEL is less likely. (Ex. 26, p. 5–119.) Also, replacement of lead-based paint will reduce exposures in welding and repairing. (Ex. 22, p. 323.)

g. *Automobile manufacturing.* (1) *Introduction.*—The Motor Vehicle Manufacturing Association characterizes control of the lead in the working environment as "one of the most significant hygiene problems faced by the manufacturers of motor vehicles for over 40 years." (Ex. 3(2), p. 6.) The primary manufacturers of automobiles and light-duty trucks—General Motors, Ford, Chrysler, American Motors, and International Harvester—use lead primarily in the form of solder for a number of operations in the manufacture of automobiles. The amount of solder, which is approximately 95 percent lead and 5 percent tin, is estimated to range from 2 to 30 pounds per vehicle. (Ex. 26, p. 5–133.)

Solder is widely used in the body shop, for both structural applications and sheet metal work. Typically, solder is used to attach hinge pillars, center pillars, and upper back seams. Soldered body surfaces are smoothed with grinding wheels and polished. (Ex. 26, p. 5–133.) At the solder booths, airborne levels of lead may be very high. (Tr. 5249.) Lead exposures occur in these operations and in all subsequent operations until the body is painted.

Spraying of lead based primers and paint can itself be a source of exposure. In some companies, employees are exposed to lead during dipping of wire and heat treating of metals. Minor exposures may occur in engine facilities, body engineering stamping, and brake manufacturing. (Ex. 26, p. 5–133.)

(2) *Summary.* Industry in general has not yet found engineering methods alone practical for controlling airborne lead produced by the use of power tools on solder.(9) To control exposures, the industry has developed exhaust-ventilation booths in which grinders must also wear air fed helmets known as hoods. The industry has thus combined engineering controls with elaborate personal protection equipment. The Motor Vehicle Manufacturers Association asserted that "the technical state-of-the-art regarding engineering and administrative controls have (sic) been reached." (Ex. 28(36).) Refinements of the process, of course, are still possible. Two companies have reported some success with high velocity/low volume tool ventilation systems. (Ex. 26, p. 5–135.)

Spokesmen for the UAW suggested that not all feasible engineering controls have been installed. Dr. Mirer, for example, testified, "the essential engineering design feature of the grinding booth is that it is a negative pressure enclosure that seeks to contain the airborne lead, but the design specifications do not include measures to reduce the airborne lead by such measures as a downdraft or a specified capture velocity downwards." (Tr. 5252.) Frank Nix, health and safety representative of UAW Local No. 10, stated that in his plant, particles are thrown out of both ends of the booth and, because the bodies do not go through a water wash after grinding, subsequent workers on the assembly line are exposed to lead. He also expressed concern about lack of a grinding booth for repair work. (Tr. 5242–47.)

Based on the record, OSHA has concluded that until changes in design or material take place, the combination of engineering controls and airline hoods now in use appears necessary to insure that grinding complies with either a 100 or 50 $\mu g/m^3$ standard. Improvements in engineering controls, however, are expected to reduce levels significantly since this industry has historically displayed great ability to make technological change when necessary. An alternative to engineering controls would lower exposures by decreasing the amount of solder. Mirer stated that "ultimately, the only solution is engineering the solder out of the car body by redesign of the body or finding a substitute material for filling out the seam." (Tr. 5249.) Industry has already reduced solder in automobiles by substituting plastics and epoxees. One new line of cars has eliminated the use of solder in production. (Ex. 26, p. 5–133.)

Substitutes for lead-based paints would reduce exposures in spray painting. Industry, however, asserted that the qualities of lead-based paint, such as its resistance to corrosion, make substitution infeasible. (Ex. 28(6), p. 3.) In these cases, engineering controls are available. According to Mirer, "such exposures should be controlled by efficient local exhaust ventilation in downdraft or backdraft paint spray booth, without resorting to the use of respirators" (Ex. 180). The Short study suggested spacing of employees within the booth. (Ex. 22, p. 229.) For sanding of surfaces after painting, Mirer recommended ventilation and high-velocity/low volume exhaust systems or wet grinding and cleaning methods. (Ex. 180, p. 20.) Automated spray booths are available but, according to J. I. Case, a manufacturer of industrial and consumer products, such automated booths are not suitable when a variety of conditions must be met. (Ex. 28B, p. 4.) Peter Schultz, testifying for J. I. Case, also stated that manual touchups are needed after automatic spraying (Tr. 1209).

Unlike Mirer, the Short report concluded that at least in some cases exposures may exceed 100 $\mu g/m^3$ even in a adequately designed, operated, and maintained booth. (Ex. 22, pp. 228–29.) OSHA has concluded that attaining the PEL, with engineering and work practice controls is feasible but that a limited number of specific operations may require reliance on supplemental respiratory protection.

h. *Electronics.* Exposure to lead in this industry occurs primarily during soldering. Based on the data submitted by two large companies in the industry, Zenith and Motorola, OSHA has determined that compliance with the standard is feasible. Zenith reported extremely low levels, 2.1 to 8.0 $\mu g/m^3$ respirable lead-in-air for eight of its solderers. (Ex. 3(75).) Motorola also reported very low levels, 10–12 $\mu g/m^3$. (Ex. 3(66).) These levels are a result of local exhaust ventilation already in place, and thus it appears feasible to maintain air lead concentrations for the 500,000 exposed employees well below 50 $\mu g/m^3$. Additional ventilation may be necessary at stations where solder is cut and trimmed. Motorola reports levels at these sites of 67 $\mu g/m^3$ and 73 $\mu g/m^3$, slightly above 50 $\mu g/m^3$. (Ex. 3(66).)

i. *Solder Manufacturing* (1.) *Introduction.*—There are 100 companies operating 120 plants that manufacture solder. Thirty of the larger companies manufacture 90 percent of the solder. Solder is sold in the form of ingots, rods, bars, anodes, solid wire, cored wire, foil, sheet and paste. Among its many uses, solder is essential for the manufacture of electronic devices. No substitutes for solder are known. (Ex. 65B, p. 40–42.)

Refined lead is used to make lead-tin and other solders. The ratio of lead to tin, bismuth, antimony and other metals varies. In the making of solder, metals are melted down at low temperature and blended in extablished ratios. Handling of lead is minimal, but employees do handle new lead ingots before they are melted. In the melting and blending of lead, the temperature is kept at 600–850° F, where few fumes are formed, because lead oxide, which ruins the solder product is formed at temperature over 1,000° F. The dross formed, however, does present a possible hazard. Finished solder is cast into blocks, ingots, rods or bars, sheets and foil, and extruded into solder wire and sheets. (Ex. 22, p. 294.)

Approximately 3,500 people in this industry are potentially exposed to lead. (Ex. 22, p. 295.) Exposure levels in some areas exceed the PEL. Recent OSHA inspections at two solder plants reported levels above 200 $\mu g/m^3$ in spooling operations, furnace areas, and kettle areas. (Ex. 65B, p. 42.) One company reported that even with excellent ventilation, lead levels in the casting area reached 200 $\mu g/m^3$. (Ex. 22, p. 294.)

Powder blowing of molten solder is acknowledged to be the most hazardous operation in solder manufacturing. Powder is blown from a molten reservoir by feeding a steady stream of molten solder through an air nozzle. By the time the metallic droplets solidify, they settle into the bottom of the equipment where they are sized down to 400 mesh and finer. (Ex. 65B, pp. 40–41.) Other areas where exposure occurs are the spooling and wire drawing operations, where air-lead levels range from 100 to 300 $\mu g/m^3$. (Ex. 22, p. 294.)

The extrusion of solder into wire and other shapes is usually done by hydraulically pressing the solder slug through a dye into its final shape or further reducing its diameter by drawing it through dyes normally submerged in a lubricated liquid. This cooling liquid, which is also called a drawing solution, contains fine particles of solder that may cling to the wire as it leaves its drawing machine at high speeds. These particles may then become airborne during spooling and handling. (Ex. 65B, p. 41.)

(2.) *Summary.* Most employers protect employees from lead exposure by ventilation. Hoods, exhaust fans, vents, air ducts, and baghouses are usually present. (Ex. 22, p. 294.) Most of the eight companies contacted by Short did not anticipate problems in complying with a level of 100 $\mu g/m^3$. (Ex. 22, pp. 297–298.)

Additional ventilation may be necessary in some areas for compliance with the PEL. In a few areas that are difficult to ventilate, such as spooling, other protective measures may be necessary. Slowing the spool rate is one possible method for controlling lead levels in the spool and wire drawing area, although this method would decrease the production rate. Other administrative controls may also be possible. (Ex. 22, pp. 295.) OSHA has determined that compliance with the standard as a whole is feasible for the industry within the year allowed in the compliance schedule.

j. *Gray Iron Foundries.* (1.) *Introduction.*—An estimated 80 percent of all durable goods contain gray iron casting. The automobile industry, the largest single consumer of gray iron castings, uses about 25 percent of all cast iron products. (Ex. 65B, p. 24.) The raw materials for casting gray iron are iron scraps, a relatively small amount of pig iron, and small quantities of coke, sand, clay, iron alloys, and nonferrous metals. More than half the scrap used as raw material is obsolete scrap or waste materials. DBA suggests that most of the lead, which is an undesirable constituent, enters the process through particular types of obsolete scrap, such as bearings or other parts of automobile engines, pipe fittings, lead-based paints, soldered seams in steel cans, and some types of railroad bearings. (Ex. 65B, p. 25.) The ratio of scrap to pig iron has increased in recent years because of the growing use of electric furnaces, which can be fed exclusively on scrap. (Ex. 65B, p. 24.)

In March, 1977, 1201 foundries reported that they cast gray iron as their primary metal. About half of these foundries employ fewer than 80 people; about 20 more than 1,000. (Ex. 65B, p. 24.) Most gray iron foundries, especially the small ones, pick over their scap before melting, although in large automated foundries heavy machinery may handle the scrap. Also, employees break any lead or other resaleable metals out of the iron scrap, a procedure that significantly reduces the amount of lead entering the furnace.

Because lead is extremely insoluble in iron and will not combine with it during melting, any lead that does enter the furnace may combine with air to form lead oxide. DBA reported that analyses of flue dusts from three iron foundries showed lead contents of 6.3 percent, 6.6 percent, and 17 percent. Other foundries reported at most a trace of lead in their flue dusts. (Ex. 65B, p. 28.) If large slugs of lead scrap are loaded into the furnace, the dense lead may immediately fall to the bottom and become superheated, although in the absence of air, no lead oxides would form. Such deposits are recognized as a problem and avoided. (Ex. 65B p. 24.)

Lead exposures do not occur in all gray iron foundries. DBA concluded that the likelihood of exposures depends on the amount of lead in the raw materials, the care with which scrap is picked over before melting, the type of furnace in use, the location of the furnace inside, or possibly outside, the foundry, and the type of pollution control equipment in use. Furthermore, lead exposures are most likely to occur in the 40-200 plants that cast products such as counterweights, manhole covers and frames, door jams, machinery bases, bath tub cores, and other products in which weight is important. These products are likely to be composed of a lower grade of scrap, which might contain lead.

Also, the 536 foundries that use electric induction furnaces are more likely to produce lead exposures than those using cupola furnaces. Cupola furnaces are often located outside. Gases from a cupola furnace rise directly into the control equipment. Only employees close to charging, tapping, and pouring stations could be exposed. In contrast, coreless electric induction furnaces require close capture hooding to avoid the continuous escape of fumes. However, no significant levels of exposure have been documented at any existing plants. (Ex. 65B, pp. 25, 27), suggesting that lead exposure in gray iron foundries presents minimal control problems.

(2) *Summary.* For those iron foundries where lead is discovered to be a problem, DBA recommended the following procedures: (1) Purchasing where possible a grade of scrap certified not to contain lead; (2) examining and separating scrap more completely; (3) installing control equipment, such as close-capture hoods at electric furnaces. (Ex. 65B, p. 27.) Given the absence of current problems with exposure to lead, OSHA has concluded that compliance with the 50 $\mu g/m^3$ standard is feasible in the gray iron foundry industry within 1 year.

(k) *Ink Manufacturing.* (1) *Introduction.*—Approximately 100 of the 479 plants that manufacture inks use lead pigments; 1,000 to 1,300 employees are potentially exposed to lead. In addition, 50 "captive" ink producers (companies that produce ink for their own use) handle pigments containing lead. Many of these producers, however, are included in other sectors, as, for example, wall covering.

In ink manufacturing, the principal lead pigments are lead chromate, molybdate orange, and phloxine red. DBA estimated the 1976 consumption of these pigments in the captive and noncaptive sectors to be 20 million pounds of lead chromate, 8 million pounds of molybdate orange, and over 2 million pounds of phloxine red. (Ex. 65B, p. 37.)

Exposure is largely confined to operations involving dispersion of pigments in solvents or oils. Once the pigment is formulated into inks, the potential for exposure to lead decreases. Based on figures submitted by the National Association of Printing Ink Manufacturers, Inc. (NAPIM), DBA developed the

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following characterization of exposures: (Ex. 65, p. 38).

Number of exposed employees	TWA exposure to lead-in air μg/m³
320 to 416	200
480 to 624	100–199
200 to 260	50–99

(2) *Summary.* Local exhaust ventilation and increased housekeeping will probably be necessary in most plants where dry pigments are still handled. In addition, disposal of pigment containers (bags, etc.) will require close attention. OSHA does not anticipate that there will be exposure to lead in excess of the the PEL associated with the handling of pigment concentrates, pastes, inks, etc., which are not in dry form; reducing the use of dry pigments will also reduce exposure. Some of the major ink manufacturers, for example, are formulating base inks at central locations and shipping the base inks to satellite formulation plants. (Ex. 65, p. 38.)

1. *Paint Manufacturing* (1) *Introduction.*—Lead chromates are essential pigments in yellow, orange, and red coatings for exterior industrial, and maintenance use. In 1973, 23 million pounds of lead chromate were used in paint used for yellow traffic markings alone. Metallic scraps of lead, which are added to oil based paints to speed drying and create a durable film, are another important use of lead compounds. In 1973, the paint manufacturing industry used over 3 million pounds of lead dryers. (Ex. 65B, p. 35.) It is estimated that 9,000 employees are exposed to lead. (Ex. 22, p. 222.)

Paint ingredients are mixed in vessels of various types, with capacities ranging from 10 to several thousand gallons. Exposures occur primarily during the preweighing of additives and the transferring of lead pigments into the mixer. Exposures during paint mixing, however, are limited to a brief period during the operating shift. In these two operations, approximately 5,400 employees could be exposed to lead bearing pigments. Exposure levels reported to DBA ranged from 0 to 1,000 μg/m³. (Ex. 65B, p. 35.)

(2) *Summary.* DBA attributed the wide disparity in reported exposure levels to the design and condition of the exhaust ventilation systems. (Ex. 65B, p. 35.) Thus, compliance with the standard appears feasible with well designed and maintained systems. In smaller plants, administrative controls may also be important. While the methods of production in small plants are similar to large plants, the frequency of use is not. Some operations may wait 6 to 9 months between batches of lead bearing chemicals. DBA reported that lead paint mixing occurs approximately 15 to 30 minutes, once or twice per month for one small operation. (Ex. 65B, p. 35.) With use of engineering controls, work practices, administrative controls, and good housekeeping, OSHA has concluded that compliance with the standard is technologically feasible in paint manufacturing within the 1 year permitted for compliance.

m. *Wallpaper Manufacturing.* (1) *Introduction.*—In the manufacture of wall covering, exposure to inorganic lead occurs primarily during the handling and use of dry pigments. Some manufacturers still receive pigments in powder form and disperse them into oils and solvents. The weighing and measuring of the pigments, adding the pigment, and disposal of pigment bags can produce significant exposure to lead. Once the pigments are contained in pastes or inks, the problem of lead exposure is reduced. (Ex. 65B, p. 33.)

The Wallcovering Manufacturing Association (WMA), which has 18 members (75–80 percent of the industry), reported to DBA that dry pigments are handled and dispersed in approximately 20 plants and that approximately 400 persons are exposed. In addition, as many as 1,000 persons may handle pigment concentrates or ink containing lead. Such products, however, do not pose a major exposure problem. DBA was unable to obtain data on air monitoring. (Ex. 65B, p. 33.)

(2) *Summary.* Firms that use dry pigments supply exhaust ventilation and require employees to wear respirators. DBA reported that local exhaust ventilation and increased housekeeping will probably be necessary in most plants where dry pigments are still handled. In addition, disposal of pigment containers (bags, etc.) will require close attention. DBA did not anticipate that engineering controls will be necessary to control exposures to lead associated with handling pigment concentrates (paste), inks, etc. Several firms reported that they no longer handle dry pigments. (Ex. 65B, p. 33.) Thus, OSHA believes that through engineering controls or a reduction of the operation, use of dry pigment in the wallcovering industry can be controlled to 50 μg/m³.

n. *Wire Patenting.* (1) *Introduction.*—Wire patenting is the quenching of ferrous wire in order to achieve certain desired properties, primarily high tensile strength. The wire is fed through a pot of molten lead. Lead flakes from the coiling operation or from the handling and storage of processed coils accumulate on surfaces. (Ex. 65B, p. 72.)

Approximately 100 plants patent wires. Two large companies with seven plants reported that 25 to 40 percent of their employees are exposed to lead. Based on these percentages, DBA estimated that 2,000 employees in the industry are exposed to lead. Little information is available on exposure. One source reported that lead-in-air concentrations average between 100 and 200 μg/m³, although exposures may sometimes exceed the present standard. (Ex. 65B, p.22.)

(2) *Summary.* Because the process temperature of the quenching pot is just above the melting point of lead, the fumes emit only low levels of lead. In addition, the molten lead is covered with a floating layer of coke, charcoal, or a similar material to reduce fugitive emissions. Exhaust hoods are placed over these pots to capture lead fumes.

To meet the 50 μg/m³ limit, very efficient ventilation systems along with necessary housekeeping programs, will be required to control lead fumes and dust. From the limited information available, DBA concluded that many plants will need some additional ventilation and housekeeping efforts. Two companies reported current compliance with the 100 μg/m³ level. (Ex. 65B, p. 22). Thus, the 100 μg/m³ level clearly appears feasible.

The Stelmor process, which uses air as the quenching medium, eliminates the molten lead process. Approximately 25 steel works are now using the Stelmor process, and it appears to be replacing lead wire patenting. (Ex. 65B, p. 22.) Through either this new technology or through aggessive implementation of engineering controls, the 50 μg/m³ standard is considered to be feasible.

o. *Can Manufacture.* (1) *Introduction.*—Approximately 80 percent of steel cans have soldered side seams, and some larger cans also have soldered bottom seams. The solder used is 50–90 percent lead. Special machines, operating in a production line, perform the operation and solder several hundred cans an hour. The cans are first preheated. Next, either the seam is dipped in a solder bath at approximately 650° F or a roller lays solder in the seam. A rapidly rotating cloth-covered spindle then wipes off the excess. If the cans are dipped, a flux is layered on the top of the solder both to facilitate bonding and control lead emissions. In some operations, the cans are allowed to cool after the solder is applied, then reheated for wiping. Excess solder wiped off the cans is recycled into the bath.

Each production line is attended by an operator who monitors the solder level of the bath, recycles the excess solder from the can wiper, and monitors the operation of the remainder of the can line. The total number of workers exposed to lead in can manufacturing is estimated at 1,200–2,000.

Little exposure data are available, but two of the companies surveyed by DBA had data showing personal exposure levels to be generally between 0.002–0.4 μg/m³ TWA, where ventilation controls were operating satisfactorily and there were no process upsets. (Ex. 65B, p. 19.)

(2) *Summary.* All four of the individual companies contacted by DBA and the Can Manufacturer's Institute indicated that, throughout the industry, solder baths are generally hooded and that most solder wipers are hooded or in the process of being hooded. The temperature of the solder bath is closely controlled with frequent monitoring to insure good quality control on the soldered can seams. Solder bath lead emissions are most likely to occur when the bath is being charged, but such emissions are usually captured by the ventilation systems.

Reheating the soldered cans with an open flame to prepare them for wiping may also be a source of lead emissions. The magnitude of this problem is uncertain. One company noted that lead dust emissions from the can wiper can present a problem through direct worker exposure and to housekeeping. At least one company uses area vacuuming to control lead dust. Maintenance activities on the soldering and can wiping areas of the can line can also be sources of worker exposure. None of the companies use respirators to control exposures.

Given the low levels of exposure, OSHA has concluded that it is clearly feasible to meet the 50 μg/m³ standard. Present engineering controls have proven themselves both adequate and feasible and should not have to be supplemented by respiratory protection.

p. *Printing.* (1) *Introduction.*—The printing industry, which includes newspapers, periodicals, magazines, books, and commerical printing, is the third largest industry in the United States. The primary use of lead in the industry occurs in hot metal typesetting. Lead constitutes 60–80 percent of the type metal and gives the metal its low melting point. Hot metal typesetting includes linotype, monotype, and stereotype processes. All involve the same basic steps: Type is cast from the molten lead alloy (500–560° F) and remelted after printing. (Ex. 22, p. 193.)

Melting pots, where the highest exposures occur, are hooded and located in a separate room which is well ventilated. Moreover, no worker spends 8 hours in the melting area. TWA exposures appear low. Of the 175,000 workers potentially exposed at the time of the Short study, most were exposed to levels below 50 μg/m³. Short estimated that 20 percent, or 35,000 employees were exposed to levels of lead between 50 μg/m³ and 100 μg/m³. (Ex. 22, p. 196.)

The introduction of cold type (photosetting) and offset processes are rapidly reducing the number of employees exposed to lead. Most newspapers have converted to cold type processes. The American Newspaper Publishers Association/Research Institute (ANPA) reports that only 134 newspapers now print with letter-press stereotypes. The population of daily newspaper employees exposed to lead has shrunk to approximately 10,850. (Ex. 65B, p. 20.)

ANPA also indicated that recent break-throughs have speeded conversion and that by 1980 very few papers would still be printed using hot metal processes. These break-throughs may be applicable to a lesser extent in other segments of the printing industry. (Ex. 65B, p. 20.) A small percentage of the industry, however, will continue to use lead type, which because it leaves a clear impression on the paper, will be chosen for small orders, finer printing and specialty type faces. (Ex. 22, p. 195.)

(2) *Summary.* One method of compliance, converting from hot type processes, is already taking place in large segments of the industry. Exposure data collected by ANPA indicate that employee exposures to lead in-air have substantially decreased in recent years and that minimal modification of existing engineering controls would be necessary to bring most establishments into total compliance with the proposed standard. Complying with the 50 μg/m³ standard is thus feasible for the printing industry.

q. *Pottery and Related Products.* (1) *Introduction.*—The pottery industry consists of a number of large companies and hundreds of small operations. The exact number is not known. A typical large plant employs 150–300 people. Small operations may have as few as a single employee. (Ex. 22, p. 211.)

Employee exposures occur as a result of the handling, application and use of lead-based glazes. The glaze is made up of finely divided powder called lead frit, which is nonsoluble lead silicate, lead boro or bi-silicate. The frit is mixed with water and sprayed on the base structure (plates, cups, etc.) The spraying is typically done in an enclosed area. The piece is then placed on a "setter" which is introduced to a kiln for firing. (Ex. 22, p. 211.)

The exposed population includes production workers engaged in the following industries: Earthenware food utensils, vitreous china food utensils, vitreous plumbing fixtures, and porcelain-electrical. The total population of potentially exposed employees is estimated to be between 500 and 5,700. (Ex. 65B, p. 47.) Exposures greater than 100 μg/m³ could occur in handling and mixing of frit as well as spraying operations. (Ex. 22, p. 211.)

(2) *Summary.* Hooded spray areas have been installed at many plants. Compliance with the PEL will require increased housekeeping and maintenance. In addition, local exhaust ventilation will be required at frit handling stations, at mixing operations, and at spraying operations. (Ex. 22, pp. 221-212.) OSHA has concluded that with improved controls, housekeeping, and maintenance, compliance with the standard is feasible.

r. *Other Industries.* The preceding industries were examined in DBA's followup study for high priority industries. (Ex. 65B.) Most of the other industries in which employees are exposed to lead were assessed for technological feasibility in the Short report (Ex. 22.) Because these industries generally have very low lead exposure, any compliance activities will require very simple engineering controls. Short's conclusions regarding these industries' ability to comply with the 100 μg/m³ level are equally applicable to the 50 μg/m³ PEL.

5. *Industry Analyses and Economic Conclusions.*—(a) *Introduction.* The economic impact assessment for this standard has been made by OSHA after careful evaluation of all relevant evidence in the rulemaking record. OSHA's conclusion on this aspect of the rulemaking is that compliance by employers with the standard, under the conditions and implementation schedules contained in it, is feasible. Compliance will not cause "massive economic dislocation" to the affected industries and will not place undue inflationary pressure on the national economy. This section begins with a general discussion of problems associated with data collection and cost estimation techniques used in the principal economic studies in the record. Cost and impact analyses of DBA and CRA are compared, and differences are reconciled to the extent possible using other record evidence. Conclusions on economic impact are then presented on an industry-by-industry basis, followed by a discussion of aggregate impacts on the U.S. economy.

In making this assessment, OSHA has considered it appropriate to isolate those costs which are attributable solely to compliance with the requirements of the new, permanent standard for lead. Where employers are currently engaging in activities which the new standard mandates and are voluntarily incurring the costs associated with them (for example, biological monitoring is common throughout the lead industries) no additional costs to em-

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ployers are counted. Employers also have many obligations under general and specific existing OSHA standards (e.g., permissible exposure limit for lead of 200 $\mu g/m^3$ (29 CFR s1910.1000), protective clothing (29 CFR s1910.132), and hygiene facilities (29 CFR s1910.141)), and some have additional obligations, primarily airborne monitoring and medical surveillance, under existing abatement agreements. These have been omitted to the extent possible. There are often related costs attributable to other OSHA standards (arsenic, sulfur dioxide) or to standards under other Federal or State laws, primarily air and water pollution control. Here also, this economic assessment attempts to include only those costs fairly attributable to the incremental difference between existing obligations and new obligations the standard will impose.

Isolating these costs and impacts to avoid double counting does not mean that OSHA has ignored the economic costs to affected industries from other sources. Costs from other sources, including other OSHA standards, have been considered in the same manner as any other known costs facing an industry. As such, they become part of the economics of the industry from which the likely impact of the lead standard is measured.

The DBA report and the CRA report provide much of the information used in OSHA's economic analysis. The DBA report covered a total of 17 industries and examined five industries in depth—primary smelting, secondary smelting, battery manufacture, brass and bronze foundries, and lead pigment manufacturing. These were believed to be the ones which would be most substantially affected by the proposed standard. These industries include all producers of lead and users that account for 60 percent of lead consumption in the United States (Ex. 26, p. 1-1). The criteria used to select these industries were the number of employees exposed to lead, the levels of exposure, initial estimates of compliance costs, initial estimates of value-added as a result of compliance costs, and availability of information. shipbuilding and automobile manufacturing were examined, but without full economic impact analysis. Ten additional industries were examined in less detail.

Cost of compliance were first developed for each of the five major industries, and the impacts associated with those costs were analyzed with respect to the impact on consumers, business, and government; the effect on market structure and competition; the effect on supplies of important materials, products, and services; and the effect on employment and productivity.

Cost estimates were expressed in terms of capital expenditures, annually recurring costs, total annualized costs, and additional labor and energy requirements. Capital expenditures in most cases represented the cost of engineering controls to comply with the PEL, and annually recurring costs were an aggregate of costs associated with environmental monitoring, medical surveillance, training, recordkeeping, operation and maintenance of capital equipment, housekeeping, and other requirements of the standard where recurring or continuing obligations exist. Annual costs associated with capital assets, such as depreciation and interest, were figured to arrive at a total annualized cost for each industry. (*10*)

Evaluation of the data collection process, the study methodology, and certain assumptions and generalizations employed in the DBA report has led OSHA to conclude that the actual costs and impacts attributable to the proposed standard will probably be far lower than the report estimates. A factor in this conclusion is the significant degree of "double counting" in the cost estimates used by DBA. This double counting took several forms. The one most frequently mentioned in the hearing and in the studies and comments submitted for the record is the potential overlap of expenditures for compliance with Federal or State air and water quality standards and OSHA regulations. For example, the Environmental Protection Agency has published an economic impact statement in conjunction with its impending National Ambient Air Quality Standard for lead and its cost estimates are based on dust and fume collection systems within the plant. While an effort was made by DBA to identify and eliminate costs associated with compliance with other regulations (Tr. 719, 880), this was not always completely successful (Tr. 783). Since much of the cost data were submitted by industry sources as aggregates without detailed specification, verification of the exclusion of air and water pollution control costs was not possible. David J. Burton of DBA testified that he could not vouch for every single cost estimate received from companies and that only in those cost estimates he himself developed or verified were there attempts to eliminate overlaps. (Tr. 880) But as Burton admitted, "there obviously has to be some overlap in installing OSHA controls with air pollution controls as well because particular standards, particularly the emission standards and the proposed new lead emission standards, are going to be more stringent, and, of course, most plants are not just allowed to remove the contaminated air now from the plant and put it outside as it was in years past." (Tr. 880-881). It is also likely that some of the engineering control costs submitted by primary smelters for the lead EIS are counted twice because they are for equipment which is also instrumental in controlling arsenic, sulfur dioxide, and other air contaminants (Tr. 6412-14) and would have to be expended notwithstanding the lead standard.

Another form of double counting included in the cost estimates provided in the DBA report involves the inability to distinguish engineering control costs attributable to compliance with the proposed standard from those connected with compliance with the existing standard of 200 $\mu g/m^3$ The costs of compliance with the proposed standard can theoretically be calculated for any of three increments: From an assumed base of no controls, from the existing level of control (some firms are not now in full compliance with the existing 200 $\mu g/m^3$ standard (Tr. 794, 782-83, 6407)), or from an assumed base of full compliance with the current standard. Burton stated that:

> Ideally, the costs of complying with the new requirements of the standard should be isolated from the requirements already promulgated, but not presently being complied with. For the industries studied, all of the cost estimates associated with compliance, except engineering costs, are estimates of the incremental costs of compliance. Unfortunately, it is not possible to accurately establish the incremental costs associated with engineering controls. The main reasons for this shortcoming are as follows:
>
> (1) The State-of-the-Art of the effectiveness of engineering controls is not developed to the degree necessary to make such judgments. It is thought that the same basic approaches may be used to control exposures to either 200 or 100 $\mu g/m^3$.
>
> (2) Engineering controls are often built to standard specifications which are not designed to provide a specific control efficiency, but rather the optimum control possible for the particular system.
>
> (3) Exposure levels characterizations of the workplace are not sufficiently complete to provide data necessary (a) to establish complete contributory emissions, or (b) to establish accurately the levels of reduction necessary to meet a 200 $\mu g/m^3$ level and a 100 $\mu g/m^3$ level.
>
> (4) The conditions of exposure, and hence the needs for control, vary widely from operation to operation, plant to plant, day to day, hour to hour, and even from employee to employee at the same operation. (Ex. 26, p. 4-10-4-11.)

OSHA's view is that Burton's initial statement is correct; that is, for those employers currently not in compliance, the costs attributable to compliance with existing legal requirements should not be counted as part of the costs attributable to compliance with proposed, future obligations. (See also letter of Dr. Corn, then the Assistant Secretary, to George Becker, expressing the same position, Ex. 64; Tr. 4627-28.) If a new standard were not promulgated at all, the former costs would be incurred nonetheless. For this reason, OSHA considers capital costs for engineering controls in the DBA report to be considerably overestimated insofar as DBA was unable to differentiate the various incremental costs.

A third form of double counting that may occur when costing controls is inclusion of the costs of process equipment with control equipment. It is particularly difficult to separate these costs when control strategies involve the modification or replacement of existing production equipment, but if the new process configuration increases productivity, to that extent its cost should not be charged to control.

In addition to the double counting of data, the reliability of the data itself is often questionable. This results not from any shortcomings of the contractor in collecting the data, but from deficiencies inherent in the process itself. Given the time and resource limitations in a study of this kind, most of the information must of necessity derive from the industries being regulated with minimal opportunity for the contractor to independently verify what controls would be required and what costs and impacts would be incurred. It is obvious that industry sources would tend to be "generous" when asked to supply cost estimates for studies whose economic conclusions would affect the ultimate severity of a regulation that could adversely affect profits. In the analysis of the primary smelting industry, engineering control cost estimates were provided by the companies to the contractor for six of seven facilities. Only one of these cost estimates was verified by DBA. (Ex. 26, p. 5-12). In the secondary smelting industry, all data from the seven plants studied were company estimates (Ex. 65C, addendum to table 5.15); in the battery segment, the primary data come from the CRA study (which depended in the IHE study) and from 12 plants that transmitted information to DBA (Ex. 26, p. 5-43).

Verification of company estimates was also impossible in many case because estimates, such as those from the 12 battery plants submitted to DBA, were given anonymously (Ex. 26, p. 5-50), or detailed information needed to verify the overrall estimate was not supplied. This was primarily because of the companies' desire to keep the information confidential for competitive reasons or because companies believed disclosure would result in compliance activities (Tr. 748; Ex. 65A, p. 4; Ex. 26, pp. 5-99, 5-109).

Further overestimation of cost results from CRA's and DBA's generalization of firms' tax treatment of OSHA-related expenditures. If accelerated depreciation can be used, (*11*) tax savings will occur which will, in part, offset the cost of controls. Another tax benefit that was not considered, one which will lower costs by creating tax savings, is the investment tax credit. (Tr. 1026-27; 4629)

For the five major industries studied, the DBA report contained three categories of estimated costs—low, best, and high—in order to account for errors and to bound the magnitude of costs. In the primary smelter industry where estimates for each plant were obtained, the "best" estimate for the industry is the aggregate of estimates for each plant (Tr. 826-828). The "low" estimate was based on the lowest per employee and per ton of production cost found in the industry multiplied by the total number of employees and tons of production; likewise, the "high" estimate was based in the highest per employee and per ton of production cost. In the other four industries, the same methods were used to obtain high and low estimates, but since estimates were not obtained for each plant, the best estimate was calculated by using the geometric mean of the costs per employee and per ton for each plant in the sample. (See, e.g., Ex. 26, p. 5-40).

The high and low estimates are not considered to be especially meaningful in estimating actual costs, particularly in the primary smelting industry where the best estimate is the total of individual estimates for each plant in the industry. (Tr. 829) In the pigment industry, the disparity between high and low is so great as to render the figures meaningless as a measure of the cost of meeting the proposed standard. (*12*) Because of double counting, DBA's "best" estimate is considered by OSHA to be the highest actual cost that compliance with the proposed standard would yield.

The CRA report, submitted by counsel for LIA, assesses the economic impact of the proposed standard on the primary smelting, secondary smelting, and storage battery industries. When different methods of calculation and presentation are accounted for, the DBA and CRA cost estimates are essentially the same. (*13*) This is due to the fact that the cost data comprising their estimates originated from the same sources. CRA obtained company estimates from each of the seven plants in the primary smelter segment as did DBA (DBA independently estimated one plant's costs). CRA calculated costs in the secondary smelter industry by extrapolating from eight plant estimates, seven of which were identical to the seven DBA had used (Compare Ex. 127, Exec. Summ., p. 25, table 5 with Ex. 26, p. 5-30, table 5.15). And in the storage battery segment, the cost data are based on the same IHE study of 12 plants used by DBA. (Ex. 127, Exec. Summ., pp. 31-32).

It is apparent from the fact that each industry's cost totals are similar in both the DBA and CRA reports that CRA engaged in the same forms of "double counting" as DBA in its data collection. In fact, CRA stated that "costs of compliance are the incremental costs of improving air-lead concentrations from current levels to 100 $\mu g/m^3$ * * *" (Ex. 127, p. 2-38) Mr. Wise of CRA explained that incremental cost determinations were irrelevant because "we were not involved in doing a cost/benefit type of analysis comparing marginal cost to marginal benefit. Our focus was on what the impact on industry structure would be in trying to attempt to comply with the proposed standard." (Tr. 3343-44) Additionally, in summarizing market impacts on primary producers, CRA's conclusions are based not only on the $13.2 million resulting from the standard, but on "other regulatory expenditures presently anticipated in the industry." (Ex. 127, p. 2-35).

The cost calculations in the two studies vary for several reasons even though the same basic cost data were used. In the secondary smelting industry, CRA extrapolated from its sample to the whole industry by using cost per unit of capacity while DBA used cost per unit of production and per employee. In the battery industry, an assumption that companies would mechanize certain manual operations was made by CRA not used by DBA. This resulted in a 12 percent greater estimate in the DBA report for total industry capital costs based on the same original data. (Ex. 127, Exec. Summ., p. 32.) In the primary smelting sector, DBA's figures are higher due to the addition of an inflation factor of about 7-8 percent. In one case, the inflation factor was added twice, which accounts for the 18-percent difference in capital costs for Amax Lead Co. (*14*)

With respect to annual costs, CRA's total annualized costs (Ex. 127, Exec. Summ., p. 2, table 1) substantially exceed DBA's costs (Ex. 65B, p. 12 (errata for table 1-1, Ex. 26, p. 1-5)) in the secondary smelter and battery segments because they are expressed as before-tax costs. (*15*) For example, if figures for the secondary smelting industry are examined and allowance for the different method of determining total industry costs as mentioned above are made, the annual recurring costs are virtually the same—$16.7 million for CRA versus $15.8 million for DBA. It is only when CRA annualizes the capital costs and adds them to the annual recurring costs to obtain total annualized costs that the CRA and DBA totals differ so markedly. The

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reason is that when DBA presented total annualized costs it adjusted for the corporate tax rate of 48 percent. It is the inclusion of the tax saving attributable to deductions for annual expenses that accounts for the difference in industry estimates. Working backwards, if CRA's total annualized cost of $26.2 million in the secondary smelter industry were decreased by the tax savings, the total would be $13.6 million, substantially in line with DBA's estimate of $14.8 million.

There are however, three inexplicable deviations in the cost estimate used by the two studies. One occurs in the annual recurring cost estimates for the primary smelting industry. DBA's estimate for the seven plants is $12.5 million, and this figure does not include the annual charge to capital (interest and depreciation) that CRA's $13.2 million estimate does. If the annual charge to capital is subtracted from the total annualized costs, CRA's estimates for the same expenses are $5.836 million for the long term and $8.259 million for the short term, both significantly less than DBA's. Since, in almost all cases, the estimates came from the companies there appears to be no reason for the gross disparity between estimates. (*16*) Comparing the cost breakdowns in each report (Ex. 26, tables 5.8-5.14 with Ex. 127, tables 2-15 and 2-16), it is obvious that the information supplied or verified to each researcher was significantly different.

The other deviations occur in the capital cost estimate for the Bunker Hill and St. Joe smelters. For the Bunker Hill smelter, DBA's estimate of $18.4 million for engineering controls exceeds CRA's estimate by $9.2 million. Dr. Burrows of CRA, when questioned about the difference, explained that Bunker Hill supplied him with two engineering reports, one done by an outside consulting firm, the other done internally. CRA used the internal report with the lower estimate, which they felt was more appropriate because its methodology was similar to a study done for the Amax smelter by IHE (Tr. 3371). DBA obviously used the estimate from the external study. Burrows testified that Bunker Hill was not certain which estimate was correct. Although in their written comment to the record (Ex. 3(71), p. 4.) Bunker Hill claimed that an independent consultant estimated engineering control costs to be $17 million (DBA's $18.4 million figure apparently was an adjustment due to inflation), OSHA agrees with CRA's judgment that the $9.2 million estimate is more appropriate.

For the St. Joe smelter, DBA did its own estimate ($6.9 million in 1976 dollars) while CRA accepted the company's estimate of $10.6 million. The accuracy of each cannot be verified since CRA submitted no breakdown of costs. This is further complicated by a comment submitted by St. Joe which said that a respectable engineering firm estimated the cost for engineering controls of the Herculaneum smelter to be $15 million. (Ex. 28(10), p. 4.) The Steelworkers, however, claimed that St. Joe informed its stockholders that the $15 million was for both EPA and OSHA standards. (Ex. 343, p. 174.)

Using the cost estimates they derived, DBA and CRA assessed the economic impacts on each industry studied. The following discussion will proceed industry-by-industry, setting forth the conclusions of each report and OSHA's conclusions. It should be noted that the economic impact analyses are based on a 100 $\mu g/m^3$ level for which OSHA has determined the cost estimates to be substantially overstated and often based on insufficient or unverifiable financial information. (*17*) OSHA believes however that the best available evidence has been pursued and collected.

OSHA did not undertake a formal analysis of cost of compliance with the 50 $\mu g/m^3$ PEL as it did for the proposed 100 $\mu g/m^3$ level. As a result of the rulemaking proceeding, OSHA determined that the proposed level did not provide the adequate worker protection mandated by the act and that a 50 $\mu g/m^3$ PEL would be required. OSHA has concluded that the record contained adequate cost information for most industries. In addition, review of the record revealed that compliance with levels below 100 $\mu g/m^3$ might, in several industries, require extensive technological development for which long periods of implementation time would be required thus precluding meaningful quantification of cost. However, the record was sufficient to predict that compliance within the times given would not result in undue economic hardship on those industries. This qualitative impact analysis is based on the record evidence concerning the financial and technical resources available to the various industries, the certainty of product and factor (production inputs) markets, and the availability of more cost-effective alternative methods of compliance.

b. *Primary lead smelting and refining.* (1) *Costs of compliance.*—The following table compares the cost estimates for the primary lead sector made by DBA and CRA to meet the 100 $\mu g/m^3$ interim level. (Table 2.)

Table 2

	CAPITAL COSTS ($MM)		RECURRING ANNUAL COSTS ($MM)		ANNUAL CHARGE TO CAPITAL		PRE-TAX TOTAL ANNUALIZED COST		AFTER-TAX TOTAL ANNUALIZED COSTS	
	DBA	CRA	DBA	CRA	DBA	CRA	DBA	CRA	DBA	CRA
Bunker Hill	18.400	9.236	2.649	1.233	N.C.	1.439	N.C.	2.672	N.C.	1.389
St. Joe	7.500	10.627	2.211	1.414	N.C.	1.656	N.C.	3.071	N.C.	1.597
Amax	9.540	8.144	1.814	1.365	N.C.	1.269	N.C.	2.634	N.C.	1.370
ASARCO (Total)	20.830	19.247	5.833	1.823	N.C.	2.999	N.C.	4.822	N.C.	2.508
(ASARCO/Omaha)	(4.500)	(4.153)	(1.209)	(0.425)	(N.C.)	(0.647)	(N.C.)	(1.072)	(N.C.)	(0.517)
(ASARCO/East Helena)	(5.900)	(5.499)	(1.444)	(0.491)	(N.C.)	(0.857)	(N.C.)	(1.348)	(N.C.)	(0.701)
(ASARCO/El Paso)	(5.250)	(5.483)	(2.060)	(0.498)	(N.C.)	(0.752)	(N.C.)	(1.250)	(N.C.)	(0.650)
(ASARCO/Glover)	(5.180)	(4.767)	(1.120)	(0.373)	(N.C.)	(0.743)	(N.C.)	(1.116)	(N.C.)	(0.580)
TOTAL	56.270	47.254	12.507	5.836	12.373	7.363	24.88	13.199	12.94	6.864

Source: Ex. 26, Tables 1.1, 5.8-5.14; Ex. 127, Tables 2-15 through 2-19
N.C. = Not calculable from data provided

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Given the earlier discussion about the unreliability of cost estimates, OSHA has determined that the upper limit for capital expenditure to meet the 100 $\mu g/m^3$ interim level is in the vicinity of CRA's estimate of $47.2 million (in 1976 dollars) with the better estimate, taking double counting into account, as much as one-third lower, or $32 million.

There is really no accurate way to determine the extent of double counting. It appeared that as much as 30 percent of the cost attributed to compliance at ASARCO's El Paso and East Helena smelters was, in fact, for compliance with air quality (EPA type) regulations (Tr. 4635-38, 4653-54, 4041-43), and one-third of the total $6.9 million estimate for engineering controls at St. Joe's was for baghouse expansion and renovation, a project that is essentially directed toward control of external air pollution and that will provide increased product recovery. (Ex. 65C; Tr. 2071.) Double counting of costs also occurred in DBA's use of ASARCO's estimates for six plants (Ex. 3 (106), App. 7; Tr. 6507) because ASARCO did not eliminate costs to reduce levels to 200 $\mu g/m^3$. Finally, there were instances of double counting of control costs with production costs. Kenneth Nelson, an ASARCO vice president, testified that costs will be offset by increased production at the El Paso smelter (Tr. 4654). Given the above, reducing the total capital cost estimate for the 100 $\mu g/m^3$ interim level by one-third for all forms of double counting is reasonable.

Total annualized cost estimates are likewise overestimated since a major component is the annual charge to capital. Since the capital costs are estimated to be lower, so then should the total annualized costs. Likewise, a decreased estimate in capital costs should yield a decreased estimate in annual recurring costs, primarily in the area of operating and maintenance of engineering controls. Operating and maintenance cost are substantial—as much as 10 percent of the capital costs and 70 percent of annual recurring costs (e.g., Ex. 127, table 2-16, where total annualized costs minus annual charge to capital equal $5.836 million, and annual operating costs equal $4.050 million or about 70 percent).

Since OSHA's revised estimate for capital costs is between $32 million and $47 million, the operating costs, reduced proportionally, should be between $2.713 million and $4.050 million. Adding the revised estimated annual cost of capital (between $4.986 million and $7.363 million)(*18*) and other annually recurring costs ($4.228),(*19*) the revised estimate for pretax, total annualized cost at the 100 $\mu g/m^3$ level for the primary sector is estimated by OSHA to be between $11.927 million and $15.641 million.

After-tax cost, figured on the corporate rate of 48 percent, should then be between $6.202 million and $8.133 million. The use of accelerated depreciation on capital property and applicable tax credits would further reduce the industry's annual costs.

The result is that the total annualized cost to the industry for the 100 $\mu g/m^3$ level, based on its total 1975 production,(*20*) would be approximately 0.4 cent to 0.6 cent per pound. On a per employee basis,(*21*) it is $2,030 to $2,662.

Compliance costs for the PEL for this sector cannot be estimated because of the multiple, potential compliance strategies available to firms within the 10-year implementation schedule. The economic implications of a 10-year planning horizon are however, assessed in the impact section below.

b. *Factors affecting the impact of compliance cost on primary smelters and refineries.* The impact on the primary production sector of the lead industry will depend: (1) On the structural characteristics of the industry and its market; (2) on the ability of firms to shift costs forward into price, or backward onto the factors of production; (3) on the distribution of cost among firms in the industry; and (4) on the financial strength of the affected firms.

(1) The primary production sector consists of four firms which operate seven plants, four of them belonging to ASARCO. St. Joe, Amax, and Bunker Hill do both smelting and refining at their plants. Of the four ASARCO plants, only Glover (Missouri) has smelting and refining capacity. East Helena (Montana) and El Paso (Texas) are smelters only; Omaha (Nebraska) is a refinery. St. Joe and Amax are located in the Missouri new lead belt, Bunker Hill operates in Idaho with non-Missouri lead, and ASARCO is in both segments of the industry. The non-Missouri and foreign ores have a lower lead content and contain higher percentages of zinc, copper, silver, and other minerals. They can be processed only in plants designed to handle concentrates of this sort and therefore they go to El Paso, East Helena, or Bunker Hill for smelting and do not go to Glover, St. Joe, or Amax. St. Joe operates the largest smelter-refinery and supplies almost all its ores from its own mines. (Ex. 127, p. 2-27.) The others rely partly on custom smelting performed for other suppliers, although Amax's Buick mine produces more than the smelter/refinery capacity (Ex. 127, pp. 2-27 through 2-28). Bunker Hill owns several mines which supply about 20 percent of its capacity; the remaining capacity is custom smelted from western ores.

ASARCO is the most diversified firm in the industry and is both horizontally and vertically integrated. It owns several mines which, along with the zinc, copper, and secondary lead smelters it owns, provide 20 percent of the material entering its two western smelters. These in turn feed the Omaha refinery. The other 80 percent is custom smelted, while Glover's production is almost entirely on a custom basis from Missouri mines (Ex. 127, p. 2-29).

The market in which the primary lead firms sell their product is supplied from two other important sources as well.(*22*) Secondary smelters supply 45 percent of the market (Ex. 26, p. 6-9; Ex. 127, p. —), and imports account for 5-9 percent (Ex. 26, p. 6-7, 6-9). The primary sector demonstrates an oligopolistic supply pattern (Ex. 26, p. 6-7), characterized by price leadership (Ex. 26, p. 6-10) and restricted entry of new firms (Ex. 26, pp. 6-7, 6-10; Ex. 127). The total market is much more competitive, however, due to the presence of the competitive secondary and foreign suppliers whose products are almost completely undifferentiated from the primary producers.(*23*) The market structure is such that it sharply limits the market power of the primary producers in the long run. Foreign supplies, especially, may increase substantially in the long run if domestic prices exceed the world price, as measured by the London Metal Exchange (LME) price, by some margin currently estimated to be 2-3 cents, the estimated cost of transportation and tariffs. (Ex. 26, p. 6-7; Ex. 127, Exec. Summ., p. 17.)

The supply of ores and ore concentrates is also diverse. Some domestic mines are owned by smelters, some are under long term contracts, and others are independent. Supplies also come from a number of foreign sources and some domestic ore goes to foreign buyers. Western lead mines have been declining in recent years and many of those remaining are marginal. Missouri mines are significantly more profitable. (Ex. 127, pp. 2-1 through 2-19.)

(2) The ability of the firms to shift costs either forward or backward depends on the elasticities of supply and demand in the pertinent markets. The demand for lead is derived from the demand for the products in which it is used. The most important of these is storage batteries, which accounts for approximately 48 percent of lead consumption in the United States. The demand for batteries is relatively inelastic, being largely a function of the number of automobiles in use. Since there are presently no substitutes for lead in the production of batteries, the demand for lead in this use tends also to be relatively inelastic.

The next most important use for lead is in gasoline, but this market is declining as unleaded gasoline is increasingly used. The long run significance of this use for lead is therefore steadily declining.

There is a very large variety of other uses for lead, none of which accounts for more than approximately 6 percent of total consumption. Analysis of the elasticity of the total demand for lead on the basis of a study of the markets for lead products is thus not feasible. CRA and DBA relied therefore, on statistical studies of historical data to estimate the elasticity of demand for lead.

"There seems to be little question but that in the very short run the elasticity of demand for lead is quite close to zero." This is a conclusion shared by DBA and CRA (Ex. 26, p. 6-20). As to periods greater than a year, there is conflicting evidence on the price elasticity of lead demand. CRA cited its studies over a 10-year period that indicated that this demand was relatively inelastic (Ex. 127, p. 2-50). It then reported a study by J. M. Heineke that estimated the demand for lead to be extremely elastic in the long run. The CRA study apparently accepted Heineke's estimate as being correct and so, in turn, did DBA, although the reasoning behind this acceptance is not clear. The CRA report states that previous CRA estimates were based on annual data, while Heineke's work used monthly data. No explanation was offered of why monthly data would provide more accurate and substantially different estimates of long run elasticity.

Under questioning, Dr. Burrows of CRA repudiated Heineke's work (Tr. 3378). He did point out that previous CRA studies had been aimed at determining short run elasticity for lead demand and that those studies had not taken into account the effects of price increases on market growth and new uses. Nevertheless, he seemed to say that, in his opinion, the demand for lead was relatively inelastic.

OSHA has independently assessed the validity of Heineke's work because the determination of the long-term elasticity of demand is crucial to the economic analysis of the primary lead industry. OSHA has concluded that Heineke's study is not valid and that CRA's initial observation that long-term demand for lead in the United States is relatively price inelastic is correct.

Heineke's study is a mathematical multivariate analysis relating the quantity of the lead ingots consumed to the average monthly price on the New York Metal Market, national income as measured by the Index of Industrial Production—Manufacturing, and a "disturbance term" which is a "stationary stochastic term with zero expectations." The data used cover the period 1948-1965. Since the disturbance term is essentially random, his formulation purports to explain consumption of lead ingots in the United States on the basis of changes in national income and domestic price. Time lags are explained by the contracting procedures common to the industry (causing several month's lag) and technological substitution away from lead (explaining long run elasticity). He assumes, therefore, that changes in domestic consumption not explained by changes in the level of industrial activity are explained largely by price changes. Such an assumption would be essentially correct if the market demand was essentially the result of business and consumer decisions in a reasonably competitive and free market. However, it ignores several other influences at work in the market during the period (1948-1965):.

a. The Federal Government maintained a national security stockpile of lead, purchasing or selling lead in the market at various times on the basis of policy decisions not determined by considerations of the economics of materials substitution in industrial production relative to the price of lead.

b. There are two market prices of significance to U.S. consumption, the New York Metal Market price (used by Heineke) and the LME price, which is the price of imported lead.

c. Quotas were in force in some of the years covered, limiting imports and contributing to shortage of lead in some years, thus limiting consumption.

d. Consumption changed in some years in anticipation of price changes rather than being lagged after price changes.

e. The price of substitute materials, notably plastics, declined independently of the price or supply of lead, causing some users to substitute other materials for lead.

These other market forces are not randomly distributed and do not average out. They could account for a significant portion of the price elasticity of demand as measured by Heineke. Furthermore, they are not present in the same way in the present market and there is no reason to expect that they will affect the future as they did in the period 1948-1965. CRA's earlier studies of the lead market cited by DBA (Ex. 26, p. 6-5, n.1), appear to be much more complete and of greater validity. They indicate that total U.S. demand for lead is relatively inelastic. OSHA has concluded that the demand for lead is inelastic with respect to any reasonable range of prices in the short run and relatively price inelastic in the long run.

The CRA study explains the rather steady realtionship between the LME and U.S. price in terms of a very high long run elasticity of supply. They argue that this is largely attributable to the ability of foreign producers to increase their supplies in the U.S. market whenever the U.S. price rises considerably more than 2-3 cents above the LME price. In the long run, it was asserted, this would prevent domestic producers from raising prices to recoup the costs of compliance with the lead standard. Several factors could operate to minimize the possibility of foreign imports, especially in response to a small increase in the differential.

World demand has been increasing steadily. In the 10-year period between 1965 and 1974 world consumption of refined lead increased by a third from 3,182,200 to 4,350,300 metric tons annually. (Ex. 127, Table 1-1.) In part this reflects the growth of the automobile as a primary means of transportation in the developed countries. Also significant is the increasing demand for lead for other industrial uses as demonstrated by the rapid growth of the market in Africa (66 percent) and Asia (25 percent) since 1968. (Ex. 127, p. 1-2), CRA asserts that lead has been produced on a constant or declining cost basis and assumes such will be the case in the future. In order to make this argument, they constructed a graphic representation of U.S. and LME lead prices over time. (Ex. 127, Exec. Summ., p. 18.) They deflated all prices by the Wholesale Price Index for all commodities (1967=100). After this adjustment for inflation, the long-term movement of these prices appears to tend toward a rather consistent price range. CRA does not offer an econometric analysis of this price behavior. They conclude that it is explained by long run production at constant costs. (Ex. 127 Exec. Summ., p. 17.)

Like the Heineke study, this analysis fails to account for the extra-market forces which shift supply (as well as demand) curves over time. CRA assumes that discovery of new deposits is functionally related to changes in the price of lead. It would appear that such discoveries have played a major role in lowering cost of production, but there is no evidence that the new mines were brought on-line in response to rising prices. Absent the shifts in supply which result from new discoveries, there is every reason to believe that the normal case in which production is subject to increasing costs does prevail in the primary lead industry. In discussing the problems of the non-Missouri mines, CRA states,

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"Rising costs and lower yields are responsible for much of this decline. Many of the mines which date back to early years of this century have been forced to seek ore at much deeper levels with corresponding increases in costs." (Ex. 127, p. 1-29.) It is reasonable to assume that this condition of increasing costs applies to all mines in the long run and that only the discovery of new sources will lower production costs. Such discoveries, like the new Missouri lead belt, are unpredictable.

CRA argues that the constant cost case is likely to continue in the future because newer mines are likely to open in countries with lower labor costs. (Ex. 127, p. 1-20.) In fact, a principal reason some decline in production costs is associated with new discoveries is the fact that they may be mined by more capital intensive measures. The new Missouri lead belt produces 80 percent of U.S. lead ore with 30 percent of U.S. lead miners. (Ex. 127, p. 2-13.)

OSHA has concluded that lead is produced under conditions of increasing costs. The increase in foreign production in response to changes in world demand will raise the international costs of production. The impact of the cost increase will depend on the magnitude and direction of extra-market forces.

If smelter costs abroad are raised because other governments follow United States environmental and occupational health regulations, then world prices will rise even more sharply and the competitive position of the U.S. lead industry will improve. Increased costs due to the upgrading of foreign health and environmental standards are likely. Dr. Michael Williams, a British occupational physician, stated that "the United States has pioneered the use of sensible industrial standards, and (has) great influence on the practice in other countries." (Ex. 234(6), p. 93.) CRA does not foresee the same "types" of costs being incurred by foreign producers but agrees that to the extent foreign producers of refined lead incur costs from upgraded standards the price of their product would similarly have to be increased. (Tr. 3287.)

The U.S. may elect to protect the domestic market from competition with foreign lead that is produced with an unfair advantage due to lack of concern for public and occupational health. Under this condition the domestic industry would be able to pass all such costs through in the form of price increases without cutting output.

There is also a possibility of a cartel artificially raising world prices thereby allowing U.S. prices to rise to maintain the 2-3 cent differential. Several industry observers maintain that this is presently occuring, but CRA, acknowledging that it might have been a factor in the 1975 period of high prices, discounts the success of a cartel in permanently supporting prices above competitive levels. (Ex. 127, pp. 2-66 to 2-69.)

When costs are passed back to the mines in the form of reduced prices offered for lead ores and concentrates, the question of the elasticity of these supplies becomes important. The limits on such a backward shift were described by CRA as two-fold. First, some mines were of such marginal profitability that even small backward shifts would doom those operations to closure. CRA assessed profitability of these mines using metal prices far below today's market. (*24*) (Ex. 127, p. 2C-3.) Since prices for lead have risen dramatically since the CRA study, none of these mines could now be considered marginal.

It should also be noted that increasing smelter charges to meet environmental costs have precedent within the nonferrous industry. The ASARCO custom copper smelter at Tacoma, Washington, uses such a method to cover some compliance costs associated with air quality standards. (*25*)

The second obstacle noted by CRA was that foreign smelters might be able to bid the ores away from domestic firms. For such a case to hold true (even if transportation cost remain within the 1-2 cents per pound range), it must be assumed that relative costs (excluding incremental OSHA costs) remain constant between foreign and domestic smelters—an unlikely assumption given the potential increased costs for foreign suppliers discussed earlier. Further, CRA assumes that the differential in bids sufficient to produce a shift to foreign smelters is equal to the transportation costs. They attribute no price to the additional risk involved in dependence on foreign smelters. It would seem that U.S. mines would pay some premium to maintain the greater economic stability inherent in a domestic smelting industry.

(3) For the reasons mentioned earlier, only limited data are available on the financial condition of individual firms and plants. For primary smelters, the data relevant to an assessment of the impact of compliance costs were available only for St. Joe and Bunker Hill. General company data are presented in the record for Amax and ASARCO, but not for the lead smelting and refining operations within the company totals.

From the data available, it appears that St. Joe Minerals Co. is the financially strongest of the four primary smelting companies. Its average annual rate of return (earnings before taxes) on total assets over the past 10 years was calculated by DBA to be at least 1½ times that of the second strongest, Gulf Resources and Chemical. ASARCO and Amax were third and fourth, respectively, in this category. (Ex. 26, p. 6-13.) St. Joe's Minerals Corp. also has the lowest debt to equity ratio of the four companies, a measure of the company's ability to finance capital expenditures. In 1975, St. Joe's was 0.540 (Ex. 26, p. 6-12), while ASARCO's was 0.740, Amax's 0.818, and Gulf Resource's 1.342. (Ex. 127, table 2-14.) It should be noted however that Gulf Resources' ratio has steadily decreased by one-half since 1971 while ASARCO's and St. Joe's have more than doubled in the same period. A trend for Amax was not determinable:

CRA presented pretax income data for the Bunker Hill Co. and estimated that 50 percent was attributable to the lead operation. The company's income has varied substantially from year to year since 1970, but the average (in 1976 dollars) is $10.664 million for total profits and about $5.332 million for lead operations. (Ex. 127, table 2-24.) In 1976, Bunker Hill's profits were $6.1 million, 12 percent less than the previous year. (Ex. 343, p. 173.) Income data was also presented by CRA for St. Joe's Herculaneum smelter, but only for 1973 and 1974. (Ex. 127, table 2-25.) Net pretax income in 1973 was $5.357 million and $7.170 million in 1974.

(2) *Impact on the industry.* The characteristics of the primary lead smelting and refining firms and their markets, discussed above, provide the basis for the impact analyses shown in the record. DBA's analysis assumed essentially that the costs of compliance with the 100 $\mu g/m^3$ standard must be borne by the primary smelter companies and estimated the impact these costs would have on each firm's financial position. CRA assumed some partial shifting of costs, primarily backward to the mining companies supplying the primary lead smelters. The primary emphasis of the CRA study was on the changes that might occur in the market and industry structure. OSHA's conclusions are as follows:

(1) *The primary smelting companies will probably be able to raise the price of refined lead as much as 1 cent per pound in order to pass compliance costs to consumers of its product. This increase will be sufficient to cover the incremental costs of meeting the 100 $\mu g/m^3$ interim level.* DBA and CRA concluded that it would not be possible for firms to increase the price of lead. CRA attributes this to the high elasticity of foreign supply (Ex. 127, pp. 2-51 to 2-56), and DBA concludes that high elasticity of the demand for lead will have the same effect (Ex. 26, p. 6-25). CRA's and DBA's conclusion is somewhat doubtful for several reasons. First, given OSHA's revision of estimated costs to the industry, the necessary price increase would be smaller than predicted by CRA and DBA. Second, the demand for lead in the long run, as well as in the short run, will most likely be price inelastic, and finally, the foreign supply of refined lead will probably be relatively inelastic in the short run, the significant period in which domestic producers could recapture a substantial portion of compliance costs. As to the long run, several factors can and may operate to make the foreign response to changes in U.S. price indeterminate. Given the revised, total annualized cost estimates for the primary sector of between $11.927 million (best estimate) and $15.641 million (high estimate), it appears that the price of lead need only be increased by 0.8 cent to 1.1 cents per pound to cover the cost of achieving the interim level. (*26*) This is based on industry production figures of 1975. (*27*)

The demand for lead will probably be substantially price inelastic in the long run. CRA's studies over the past 10 years, Dr. Burrows repudiation of Heineke's work, and OSHA's evaluation of Heineke's conclusions support this. Therefore, demand factors should not play a significant role in the industry's pricing decisions. With respect to supply, the factors affecting the long-run behavior of firms are numerous.

The increasing cost of producing lead (absent new discoveries) may impact on foreign producers sufficiently in the short run to reduce the incentive to shift production to the U.S. market. Foreign governments may follow the U.S. lead and compel similar environmental and occupational health constraints on their industry. Trade barriers or trade agreements limiting foreign imports may be adopted. (*28*)

These factors affecting supply are highly speculative and no firm conclusions can be drawn other than that foreign supply is probably price inelastic in the short run, thereby allowing a short-run price increase, and possibly inelastic in the long run if one or more of several possible factors materialize.

At least one major producer, Amax, is confident that the industry will be able to pass costs forward. They stated that the costs of the standard "would certainly add to the price of our final product which in turn will have to be passed on to the consumer." (Ex. 3(67), p. 5.)

(2) *Compliance costs can, in part, be shifted backward to suppliers of ore.* CRA concluded that costs could be shifted, in part, backward onto suppliers through a reduction in the price paid for ores and concentrates (Ex. 127, Exec. Summ., pp. 8-10). This would be an accounting transaction to St. Joe, which is supplied by mines owned by the same company. DBA did not evaluate backward shifting of costs. The extent to which this could be accomplished minimizes the cost impact on the primary producers. OSHA has concluded that the limits on the backward shifting of costs are not as severe as indicated in the CRA analysis. The increasing price of lead has improved the marginal conditions attributed to several mines by CRA. Further, the incentive to ship abroad depends on foreign costs maintaining their present relationship to U.S. costs excluding OSHA impacts, a questionable assumption. Finally, OSHA believes that the differential can rise somewhat above the cost of transporting the ore to foreign smelters because of the obvious advantages of adequate U.S. smelting and refining capacity to the domestic mines.

(3) *The industry has the ability to pass costs forward or backward sufficient not only to recover the cost of the 100 $\mu g/m^3$ interim level, but to assure that any likely cost associated with the PEL will not jeopardize long-run profitability.* In the assessment of market power, OSHA disagrees with the conclusion in the CRA report. The difference is most apparent in the analyses of the non-Missouri operations of ASARCO. (Ex. 127, pp. 2-79 through 2-84.) CRA calculates the annual compliance cost of the proposed standard to these operations at $3.7 million or approximately 1 cent per pound of refined lead. They are aware that ASARCO had announced its intention to spend $55.2 million at El Paso and $32.2 million at East Helena to control air quality problems associated with lead productions. These capital costs, when annualized, produce an additional 6.2 cents per pound expense to the company, almost one-third of the market price of lead used in the analysis. The CRA cost passback analysis limits ASARCO's recovery from the mines to a maximum of 2 cents per pound. Their elasticity analyses preclude any long-run price increase. They conclude that the incremental OSHA costs seriously jeopardize continuing operation of the ASARCO western smelters and refinery since the air quality controls would seem to cost ASARCO 4 cents per pound of profit. They attribute ASARCO's willingness to continue in business to the externalities of custom smelters which extract "metals such as silver, cadmium, bismuth and selenium as well as the slag processing which improves the flexibility of the ASARCO system." (Ex. 127, p. 2-84.) CRA makes no attempt to document this claim. It is obvious that ASARCO was willing to risk an enormous sum of money. Either they anticipated an ability to recover that long-run expense in terms of price increases or cost passbacks or some combination of both.

OSHA concludes that the segment of the primary industry claimed to be in the most financial trouble, the western custom smelters, have sufficient market power to survive enormous increases in costs. The money scheduled to be spent on air quality problems may alleviate some occupational lead problems as well. More important, it is the most impressive possible statement of the perception of the long-run viability of the industry by the largest producer. (*29*)

The 10-year period set forth in the methods of compliance section is based primarily on technological factors. This time should be sufficient for any firm to completely rebuild an existing smelter (Ex. 3(103), p. 5) or to construct new capacity.

This extended compliance period also assures economic viability of the PEL. Production efficiencies may arise from new processes, such as hydrometallurgy, sufficient to offset EPA and OSHA cost. Retrofit technology may be refined that will effect control greater than now envisioned for existing equipment and thus lower long-run costs of compliance. DBA stated that "we can expect to see new, innovative and cost-effective compliance methods being introduced as a result of enforcement of the standard." (Ex. 26, p. 2-16.)

The 10-year compliance time constitutes a planning horizon sufficient to allow all firms maximum flexibility in capital planning. OSHA believes the long-run outlook for the industry is favorable and there exists some combination of engineering controls and work practices, including administrative controls, which will permit all four firms to remain in the market. Because the economic and environmental conditions of the western smelters vary widely from those in Missouri and among themselves, OSHA has established a time frame designed to maximize the technological and economic options for the industry. This compliance period is sufficient to allow each firm the opportunity to assess the likely state of the market and to raise the capital necessary for conversions required by air and water quality standards, other OSHA standards, and the 50 $\mu g/m^3$ lead standard. OSHA has concluded that this flexibility is necessary for achieving the most cost effective solution for the industry consistent with necessary worker protection.

(4) *If primary smelting firms were forced to absorb all the costs of compliance in the short run, they would nevertheless remain profitable and com-*

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petitive. To the extent that increased costs can not be passed back to suppliers or forward to consumers, the primary lead producers must absorb them internally, i.e., pay for them out of profits. From the record evidence as a whole, it appears that each of the affected firms can shift or absorb compliance costs of the interim level and remain profitable and competitive. Of all the primary producers, only Bunker Hill's profitability is in question and the cost impact should be such that OSHA costs alone would not threaten the company's economic viability.

One method for assessing this is to attempt to predict the impact on a firm vis-a-vis certain numerical indices of the firms' financial condition. The problems with this approach are in choosing the most important and relevant indices and in obtaining information that is not ordinarily available.

DBA evaluated the impact on each firm by estimating the impact on the rate of annual return on total assets and on the price of a share of common stock. (Ex. 26, pp. 6–11 through 6–16.) CRA compared profit and debt to equity ratios (Ex. 127, p. 2–33 through 2–35; 2–70 through 2–86) while other parties suggested looking at net profits (Ex. 343, pp. 170–174.) Each of these indices has validity when used to compare the relative strength of firms, but if looked at absolutely can be misleading.

DBA's conclusions are misleading because its calculations are based upon cost estimates that are significantly overstated. For example, the cost estimates it used for the Bunker Hill smelter show the impact on Gulf Resources to be a reduction in the rate of return on total assets from 13.34 percent to 6.28 percent. (Ex. 26, p. 6–13.) This, however, is based on compliance costs at least double those which OSHA has determined to be reasonable. Similarly, the percentage decrements for the other firms, St. Joe (1.56 percent), ASARCO (1 percent), and Amax (0.3 percent) would be even smaller if adjustments were made using the revised cost estimates. The same is true in the percentage decrements predicted for the firm's common shares. The result is that DBA's conclusion that Bunker Hill would have to shoulder an inordinate compliance burden compared to the other firms is weakened. Gulf Resources' return on assets will decrease more than the other firms', but it will still have a rate higher than ASARCO and Amax.

DBA was not able to obtain disaggregated financial information on the Bunker Hill Co. or on their or other companies' lead operations, so its analysis was of necessity based on the parent company's financial condition. Its conclusions, then, give a measure of relative financial impact on each of the parent firms in the primary sector, but are not useful in determining the effect on the industry in terms of competitive structure. Other than stating that the firms' profitability would be reduced, DBA was not able to determine whether any primary producer would curtail its lead operation. (Ex. 26, p. 6–26.)

The Steelworkers asserted that each of the four firms could pay for all the capital improvements estimated by CRA out of 1976 profits alone. (Ex. 343, p. 172.) Their calculations showed that compliance costs as a percentage of 1976 profits were as follows:

Company	Capital costs (percent)	Annual costs (percent)
ASARCO	45.6	11.3
Amax	5.4	1.7
St. Joe	15.4	4.5
Gulf Resources	54.3	15.9

From the firms submitting data on their lead operations alone, St. Joe's return on sales was claimed by the Steelworkers to be 34.1 percent, indicating exceptional profitability. Bunker Hill's decline in profitability in 1976 to $6.1 million was attributed to a decrease in lead production 20 percent below capacity to meet state environmental standards and a "continuing softness in the zinc and by-products markets." (Ex. 343, p. 173.) The Steelworkers noted that the company expected its air pollution problems to have been abated by mid 1977, enabling them to return to near capacity production.

CRA evaluated each firm's profitability and their ability to shift costs back to suppliers of ore. They concluded that Bunker Hill, with the heaviest costs of compliance and little chance to shift cost back to suppliers, might prove uneconomical for Gulf Resources to continue to operate. This analysis is somewhat misleading because it fails to isolate effects attributable only to the cost of the proposed OSHA lead standard and bases its conclusions on the combined OSHA/EPA-type costs equivalent to 1.54 cents per pound of refined lead produced.(*30*)

Initially, production at Bunker Hill is expected to increase (Ex. 343, p. 173), thereby lowering the cost per pound, but more important, the cost attributable to the OSHA standard is less than 1 cent per pound (0.95 cent by CRA's calculations). This is only 0.23 cent in excess of the 0.72 cent per pound that CRA estimates Bunker Hill can pass back to the mines under the best conditions. (Ex. 127, p. 2–73.) Under the worst conditions, the differences would be 0.8 cent. (Ex. 127, p. 2–74.) This means that OSHA compliance costs at 90 percent of operating capacity (126,000 short tons) will be between $579,000 and $2.016 million annually.

Looking then at profitability, CRA concluded that if Bunker Hill was forced to absorb between $2.3 to $3.9 million, the consequences would be "severe." However, as pointed out above, Bunker Hill's 1975 profit was $6.2 million. Its average profit between 1970 and 1975 was $10.664 million overall and about $5.332 million from lead operations. Absorbing costs of $0.579 to $2.016 million will cut into profits, but those costs are only 5 percent to 19 percent of the firm's average profits. This mitigates CRA's conclusion; in fact, CRA states that if Bunker Hill had only to absorb a cost of $1.54 million (the EPA-type costs) Bunker Hill's profitability would not be jeopardized. (Ex. 127, p. 2–76.)

CRA found that St. Joe could not shift its compliance costs and would have to absorb $3.07 million of added annual costs (pre-tax), although it could continue to operate profitably. Similarly, Amac was expected to continue to operate, although absorbing approximately $1.25 million of annual cost (pre-tax), since it would be able to shift only a part of its compliance costs.

The impact on ASARCO, according to CRA's analysis, would be mixed. Its non-Missouri plants would be able to shift only a part of their compliance costs. However, if Bunker Hill were to close, ASARCO would be the only remaining processor of non-Missouri ores and this would enable it to shift a larger share of its compliance costs. It would still have to absorb substantial costs, however, at these plants. The Glover plant, on the other hand, would have the lowest compliance cost of all primary smelters and would be able to shift all its costs. This plant could even increase its profit if the Bunker Hill plant closed and Glover expanded its production.

(5) If compliance costs reduced the profitability of Bunker Hill to a point where Gulf Resources decided to close its lead operations, the competitive structure of the primary sector would be largely unaffected. DBA stated it this way (Ex. 26, p. 6–26):

> If one or more producers of primary refined lead should be forced to shut down lead refining operations, concentration in primary refined lead production could increase substantially. Such an event would no doubt facilitate cooperative behavior among the surviving primary lead producers. However, this probably would not affect significantly the nature of competition in refined lead.
>
> The degree of concentration in primary refined lead production is already potentially high enough to achieve a joint monopolistic result as a consequence of the mutually recognized interdependence of the four large producers. This could occur without the necessity of resorting to overtly collusive conduct.

That this result is not presently attained is due to forces being exerted from outside the primary lead segment of the market, viz., from secondary lead, refined lead imports, and the threat of entry. These forces would still be operating no matter what the degree of concentration in primary refined lead. Thus the competitive situation probably would not be significantly affected even if the imposition of the proposed occupational lead exposure standard leads to a reduction of the number of firms engaged in primary lead production.

(c) *Secondary lead producers.* (1) *Costs of Compliance.*—DBA's and CRA's estimate for compliance costs (in millions of dollars) for the 100 μg/m³ level in this industry are roughly similar as indicated below:

	DBA	CRA
Total capital costs	51.1	60.6
Recurring annual costs	15.8	16.8
Annual charge to capital	12.7	9.4
Total pre-tax annualized costs	28.5	26.2
Total after-tax annualized costs	14.8	13.8

As discussed earlier, the differences between the two reports' capital cost estimates, since they are based on almost the same sample, are due to the method of extrapolating costs from the sample to the entire industry. DBA's method, based on cost per unit of production, rather than unit of capacity as CRA did, and per employee gives a more realistic estimate because actual production costs are more relevant to the assessment of economic impact than costs based upon capacity which are potential production costs. The difference in total annualized costs is due to the difference in the annual charge to capital.

Actual costs attributable to the proposed standard will be somewhat lower both because of the double counting inherent in the data collection process and the favorable tax benefits available to the industry. The nature of double counting in cost estimates for this industry is the failure to separate costs of compliance with the present standard from costs of compliance with the new standard. Most secondary smelters are not now in compliance with the present standard (e.g., Ex. 26, p. 5–36) and would incur substantial costs to achieve compliance. While this incremental cost was not assessed, a rough estimate can be made by looking at a recent cost estimate for a secondary smelter to comply with the 200 μg/m³ standard. In 1976, IHE estimated the cost for a secondary smelter producing 10,000 tons per year to comply with the 200 μg/m³ standard.(*31*) Capital costs were given as $324,200 and annual operating and maintenance costs were $21,650. This estimate is equivalent to $32.40 per ton of production and almost 50 percent of the costs per ton estimated by CRA and DBA for seven typical plants to comply with the 100 μg/m³ standard. These costs to reach 200 μg/m³ may or may not be typical of the secondary smelting industry. However, with the IHE three plant study in the battery industry (Ex. 138C) and similar double counting in the primary smelter industry, OSHA has concluded that DBA's estimate should be reduced by at least one-third. The resulting best estimates if all costs are reduced proportionally in the secondary smelting industry will be (in millions of dollars):

	Best estimate	High estimate
Total capital costs	34.1	51.1
Recurring annual costs	≈10.4	15.8
Annual charge to capital	8.4	12.7
Total pre-tax annualized costs	18.9	28.5
Total after-tax annualized costs	9.8	14.8

The total annualized cost is thus equivalent to 1.3 cents per pound of production in 1975.(*33*)

The cost of attaining the PEL of 50 μg/m³ cannot be precisely ascertained because the industry faces several options for longrun compliance. However, an upper limit (the cost of completely rebuilding the industry with the latest available technology) is determinate. To completely rebuild with the Bergsoe process would cost approximately $90.6 million excluding land costs.(*34*) Bergsoe estimated that the system produces sufficient profit for complete capital recovery in a 2–3 year period. (Tr 5192.) Control costs are more than offset by production efficiencies discussed in detail below. While such costs cannot be precisely separated from production costs, it is clear that they should be well below the costs needed to retrofit most existing equipment to the PEL.

(2) *Impact on secondary smelters.* Secondary lead producers are quite highly competitive. There are many firms, some of which are subsidiaries of primary producers (e.g. ASARCO) and some related to battery producers (e.g. General Battery). Although concentration has been increasing (Ex. 26, pp. 6–6, 6–7), production within the industry is still not highly concentrated, primarily as a result of low entry barriers. Sources of scrap can be easily acquired and initial capital requirements are low. (Ex. 127, p. 1–29.) As a result, secondary producers have little control over prices, even in the short run, essentially following the market. (Ex. 26, p. 6–10.) They will be able to shift compliance costs forward onto product prices only if primary producers raise prices, and it appears that under certain conditions primary producers may be able to do so. OSHA has determined that the DBA impact assessment is faulty in two respects. First, DBA did not consider the possibility that primary smelters might be able to pass through 1¢ per pound of the compliance costs and secondary smelters would benefit accordingly. More importantly, DBA did not analyze the ability of secondary firms to pass cost back to scrap dealers. CRA anticipates that the average compliance cost will be passed back and thus only firms whose costs exceed the average would have to absorb any compliance cost even absent a price rise. CRA concludes that some high cost, marginal firms may cease operations. CRA did not predict serious adverse impact to the industry. (Ex. 127, Exec. Summ., p. 77.)

DBA estimated the impact on two firms, ASARCO and NL Industries, for which it had specific financial data. The analysis indicated that ASARCO's rate of return on total assets would decline by 1.53 percent as a result of absorbing compliance costs at its secondary plants. NL Industries would experience a decline of 8.02 percent in its rate of return from 12.7 to 11.7 percent (Ex. 26, p. 6–16.) Financial information was not available from other firms in the industry to enable OSHA to assess the profitability of firms and the cost impact on their continued existence. DBA reported that "all of the participating companies indicated that they would not retrofit some existing equipment but would close some operations because they could not cover the costs, and/or would increase production at some of their least affected facilities." (Ex. 26, p. 5–38.) DBA also expected no major changes in the structure of the industry.

Largely for technical reasons discussed earlier, OSHA has concluded that retrofit engineering controls may require up to three years for installation and, accordingly, allows that much time for the industry to achieve the 100 μg/m³ interim level. For the less efficient producers, particularly those energy savings from the Bergsoe process. Those smelters generate over 50 percent of their energy from the burning of the battery cases. Coupled with energy savings from current battery breaking and case disposal, this process is much more energy efficient than current techniques, even without the additional ventilation energy that retrofit would require.

d. *Battery manufacturing.* (1) *Costs of compliance.*—Cost estimates for compliance in this industry with the interim level of 100 μg/m³ were presented by DBA and CRA. Capital cost estimates, attributable entirely to engineering controls, were $345 and $307.7 million respectively. (Ex. 65B, p. 12; Ex. 127, Exec. Summ., p. 2.)

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Total annualized after-tax costs were $42.2 and $37.5 million.

The sole source of the capital cost estimates in both cases was a study prepared by IHE for the Battery Council International. (Ex. 29 (29A).) The engineering controls selected by IHE for each process and production level in battery plants were accepted without modification by CRA. DBA, in addition to obtaining cost estimates from 12 unidentified plants, incorporated the CRA data in its cost analysis for OSHA, thereby implicitly incorporating the control specifications of IHE. Almost all of the battery manufacturers that provided testimony at the hearings also relied on the IHE study in defining company control costs.

OSHA has evaluated the IHE study and has determined that the study's cost estimates show a substantial amount of double counting and that its use by CRA, DBA, and individual manufacturers resulted in grossly exaggerated industry costs.

IHE surveyed 12 battery plants that it claims were a representative sample of the industry. The plants surveyed ranged in size from 40 to 519 employees and produced from 330 to 12,000 batteries per day. (Ex. 29 (29A), pp. 3–4). For these 12 plants, a very detailed analysis was provided of the processes and equipment in use and the engineering and work practice controls judged by IHE to be most cost-effective to control them to or below the proposed permissible exposure limit of 100 $\mu g/m^3$. Industry experts, industry consultants, and OSHA's contractor each agree with the IHE conclusion that the specified controls are technologically feasible and may reasonably be expected to reduce lead-in-air levels below the 100 $\mu g/m^3$ level.

From this, costs were estimated for each operation, with variable costs within the same operation to allow for different production capacities and manufacturing methods. These costs were used by CRA to obtain compliance estimates for its 83 plant samples and by individual manufacturers who presented cost information.

The cost estimates used by IHE do not differentiate costs for compliance with the present standard, do not account for equipment or ventilatory capacity in place, improperly allocate the costs of production equipment to control costs, and improperly include costs for external air and water pollution control.

For battery plants not in compliance with the present 200 $\mu g/m^3$ standard, a substantial amount of the cost should be attributable to meeting the present standard. An indication of the magnitude of this form of double counting is found in a three plant study done by IHE for counsel of LIA. (Ex. 138C) This study, which estimates the cost of compliance for three of the 12 plants in the BCI sample, shows that the costs for achieving the incremental change from noncompliance to compliance with the current standard can be as high as 30 percent of the total cost of compliance with the 100 $\mu g/m^3$ level. For manufacturers not presently in compliance with the 200 $\mu g/m^3$ standard, costs may be overestimated by about 30 percent. (Tr. 3340.)

IHE's estimates also implicitly assumed that operations in the plant where air levels exceeded 100 $\mu g/m^3$ (even if they were minimally above) would be totally uncontrolled and that entire, new ventilations systems would be required. In other words, if 10,000 cfm were required to ventilate an oxide mill, the cost of ventilation would be figured on the basis of 10,000 cfm, even if the plant presently had 6,000 cfm on the mill. OSHA recognizes that increasing the ventilation is not simply a matter of "adding on" cfm's, but in many cases existing dust control systems can be salvaged, adopted, enlarged, or used in various ways. Despite denials (Tr. 3902), IHE completely discounted this possibility (Ex. 349, pp. 5-11) whereas an "engineer designing a control system for a plant would attempt to minimize the cost of the project by maximizing reuse of existing equipment." (Ex. 349, p. 6) The testimony of a small battery manufacturer, Laher Battery Co., illustrates this principle. 16,000 additional cfm's were added to its plant for $30,000; using IHE's figures ($8/cfm), the same capacity would have cost $128.000.

IHE's approach also did not rely on accurate air sampling data when costing all those operations that were over 100 $\mu g/m^3$. Operations where employee airborne lead levels were slightly in excess of 100 $\mu g/m^3$ were treated the same as levels 10 or more times 100 $\mu g/m^3$. (Tr. 3901.) It is clear, and IHE itself suggests, that work practices and housekeeping can reduce air lead levels about 20 percent (Tr. 3934). It is inappropriate to use entire new systems, as IHE recommends, when simple and inexpensive solutions are available. (35)

IHE's recommended changes also include new production equipment. For example, in large plants, the cost for oxide mixing and pasting machines is estimated at $1.848 million. Of IHE's 12 sample plants, four fit into this category. The average capital cost of compliance for them is $3.593 million. Thus, IHE's cost for production, not control equipment, in just one of 14 operations, is over 50 percent of the total cost. In addition, no value was allowed for production equipment replaced by the new equipment. Costs for external air and water pollution control systems were also improperly added into IHE's cost calculations. Cost for a water treatment system is estimated as high as 250,000 ($35,000/year operating cost), while dust control systems are estimated at $8.00 per cfm which includes the entire fabric filter collection system to avoid external air pollution.

Two other factors affect cost estimates for this industry—the use of the IHE report to estimate costs for the approximately 100 small battery manufacturers combined with a revision OSHA has made from the proposed standard which would permit work practices, including administrative controls, to be used on an equal priority with engineering controls.

Although IHE asserts that its sample was selected to be representative of the industry, not one of the 12 plants studied was from the group with less than 20 employees, of which there are 95 firms in the industry, and only two were from the next larger size class. It may be that the processes, equipment and production pattern of all small firms are sufficiently similar so that the two smallest plants in the IHE sample are fully representative of this segment of the industry, but testimony from small battery manufacturers casts doubt on this conclusion. In small plants, each production process is not continuous and operators do not remain at each work station for a whole shift. In addition, the minimum production rates for which size differences are recognized are relatively large, e.g., 1140 batteries per day for mixing and pasting. It is not clear that different specifications could not be devised for operations under 500-600 batteries/day.

New, and substantially less expensive, engineering control techniques may also reduce costs, especially in small plants. As mentioned earlier, the APSEE system could prove effective and Kermatrol, Inc., has guaranteed its system will be effective to reduce levels to below 50 $\mu g/m^3$. (Tr. 5217; 5208, 5220–21.)

IHE's cost estimates overestimate true costs because they focused completely on engineering controls. Dr. First testified that industry's failure to recognize the important interrelationship between good work practices and good control engineering "accounts for the astonishingly high cost estimates * * * Far lower costs for equipment additions and modifications will arise if appropriate attention is given to training employees in effective work practices and supervision." (Tr. 2313-2314.) The final standard has elevated work practices from a less preferred to an equally preferred method with engineering controls and hence has given the employer the opportunity to significantly minimize

costs by permitting the employer to place primary reliance on a low-cost, noncapital method where appropriate.

This principle is also true if the employer can effectively utilize administrative controls to reduce employees' TWA exposure. To the extent that they can, reliance on capital intensive improvements will be minimized. This will be especially helpful to the small battery manufacturer.

For these reasons, OSHA has concluded that the incremental cost of compliance will be at least one-third lower for the industry as a whole. OSHA's estimate for compliance with the interim level of 100 $\mu g/m^3$ is thus between $205.1 million and $230 million for capital costs and $25.0 million and $28.1 million for after-tax total annualized costs. These figures are probably also inflated because they include costs for all firms including the small business segment of the industry for which the expanded compliance alternatives permitted by the standard will allow for low-cost solutions involving much less capital investment.

Cost estimates for compliance with the PEL over a 5-year period are difficult to make. Essentially the same technological changes will be necessary to reach the PEL as to reach the interim level, and costs may not be significantly more. In fact, proper implementation of changes necessary to reach the interim level will likely comply with the PEL. But operating with antiquated equipment which would be expensive and difficult to retrofit, the Bergsoe process may be a more cost-effective longrun solution. Given the operating efficiencies Bergsoe claims for his existing smelters, the entire industry may eventually convert for competitive reasons. Bergsoe estimates a 2-year period will be necessary to construct a 20,000 ton smelting and refining facility. OSHA has determined that 5 years is an appropriate compliance time for meeting the PEL.

No significant change in prices is projected for secondary lead products, except to the extent primary producers can raise their price allowing secondary producers to follow. Labor requirements were estimated by DBA to increase by three resulting in a decrease in average productivity of 2.9 percent (Ex. 26, p. 6-33). It should be noted that the Bergsoe process is much more labor efficient than current smelting and refining techniques. Bergsoe testified that only three production workers are required in the smelting and another three for the refinery per shift. (Tr. 5201.) Thus, conversion to that process would result in a huge increase in productivity.

Increased energy usage was estimated by DBA to range between 16,520 and 156,000 MWH/year with the best estimate being an increase of 45,120 MWH/year. (Ex. 26, p. 5-40.) This would have no significant impact on energy supplies or demand. This estimate does not include calculation of the potential if further refinement of similar controls is necessary, OSHA expects knowledge to be obtained during the 2 year period which should limit any additional costs. On the other hand, if problems are found in the initial period, greater costs could result.

(2) *Economic Impact.* The cost estimates provided by IHE to DBA and CRA are the basis of their impact analyses. Since OSHA considers them greatly exaggerated, alternative cost estimates have been calculated from the record and have been used to establish a more rational assessment of projected impact.

OSHA's conclusion is that the battery industry will be largely unaffected in terms of production, capacity, and competition and that the price of batteries will increase by less than CRA's estimate of $1.75 per battery at retail as a result of a pass-through of increased production costs and associated mark-ups. The demand for batteries is derived from the demand for automobiles. Since there are no close substitutes and foreign competition is not significant, the long-run demand is relatively price inelastic. (Ex. 127, p. 3-12 through 3-14; Ex. 26, p. 6-37.) This allows price-setters to pass through to consumers all increased costs of production.

The battery industry is essentially an oligopolistic industry with a fringe of small independent producers who compete in regional or specialty markets (Ex. 26, p. 6-37). It is comprised of 138 companies who operate a total of 200 plants, but the five largest companies, who operate 55 plants having 78 percent of the total industry capacity, dominate the market. (Ex. 26, pp. 6-33, 6-37.) The seven largest companies operate 70 plants and sell 90 percent of all the batteries sold. (Ex. 26, p. 5-42 (36).) It is also an industry that has been in the process of consolidation for many years. In the past 20 years the number of firms in the industry has steadily decreased from over 300 in 1954 (Ex. 127, p. 3-4) to just 138 in 1972 (Ex. 26, p. 6-33).

The questionable assumptions underlying the IHE report lead to the conclusions drawn by DBA and CRA that approximately 100 small battery manufacturers would exit the industry as a result of the proposed standard. (Ex. 127, p. 3-53; Ex. 26, p. 6-24.) OSHA does not believe that the approximately 100 small plants will have to assume the magnitude of cost used by DBA and CRA because of the overestimation of costs by IHE, because the lead quantity in small plants is lower (Ex. 349, pp. 16-18), and because of several available low cost compliance alternatives, discussed earlier, which are uniquely suited to small plants. In addition, some small manufacturers might take advantage of economies of scale by increasing production, e.g., expanding a one-shift operation to a two-or-three-shift operation.

Some of these small firms will probably exit the market irrespective of the OSHA standard. There has been a trend in recent years of very small firms (95 firms have less than 20 employees and a total of 2 percent of the market) leaving the industry because of unprofitability. These firms have discovered shrinking markets for their products, and an inability to compete with larger companies because size is related to production efficiency. Most of the new plants in the industry have been quite large. (Ex. 127, pp. 3-6.) These factors are expected to continue to put severe stress on the small battery manufacturer without respect to additional costs due to OSHA regulations, and the consolidation trend is expected to continue.

OSHA has concluded that even if the questionable DBA and CRA prediction that approximately 100 small manufacturers would exit the market were true, the standard is nonetheless feasible for the battery industry.

Closure of 100 small businesses would have a minimal impact on the competitive structure of the industry. Thirty firms operating 100 plants will remain, and the capacity of the seven largest firms, now 90 percent of industry capacity, will increase a few percent. Competition from the smaller firms has little or no effect on the price of batteries, which is set by the major producers, except in those "interstices of the market which the major producers do not choose to capture." (Ex. 349, p. 19; Ex. 26, p. 6-42; Ex. 127, pp. 3-7 through 3-9.) The small producers may set prices in small local markets where they supply retailers directly and take, in price, the equivalent of distributor markups or where special services (picking up old batteries, fast delivery, etc.) to the retailer allow price increases. (Ex. 127, p. 3-8.)

Battery prices will increase as a result of the pass through of compliance cost. The industry price setters, the five major producers, will have compliance costs of about $0.74 per battery, with an industry average of $1.11. (Ex. 127, p. 3-35.) CRA has estimated that a cost pass-through of $0.74 will result in a retail price increase, due to markups in the distribution chain, of about $1.75 per battery. (Ex. 127, Exec. Summ., p. 37.) This will allow small producers who enter the distribution chain at advanced stages

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to pass through costs of about $1.04 per battery (Ex. 127, Exec. Summ., p. 37), except where they are not in competition with the major firms.

Closing of 100 plants employing 10 persons each would mean the loss of approximately 1,000 jobs. Compliance activities require additional man-hours, however, and it is estimated that the net gain in employment, if production remains at the prestandard level, would be approximately 2,000 employees. Productivity, therefore, would decrease by just over 9 percent. The impact on wages would be small (Ex. 26, p. 6-43 and 6-44).

(3) *Compliance Schedule.* OSHA's evaluation of the technology available to the battery industry indicates that compliance with the PEL may be achieved by the same types of technological changes required to achieve the interim level of 100 $\mu g/m^3$, although further refinement, additions, and modifications may also be necessary. The compliance schedule requiring engineering controls and work practices to be used to reach 100 $\mu g/m^3$ in 2 years and the PEL in 5 years is based on the time it should take to implement the relatively conventional control methods required. Large manufacturers should have little problem meeting the costs involved, especially since they will be able to pass on all of the increased costs of production to consumers. For smaller manufacturers, OSHA has concluded that simple and inexpensive approaches can be effective in many situations, thereby drastically decreasing their inordinately excessive estimates of compliance cost. Where capital acquisition problems are encountered in meeting the implementation schedule, the flexibility in the compliance scheme for the standard should, under certain conditions, enable employers to spread compliance costs over 5 years.

e. *Brass and bronze foundries.* (1) *Costs of compliance.* Based on a survey of five foundries and two ingot producers, DBA provided estimates of capital and annual costs for compliance with the proposed standard. Costs per plant varied widely. When extrapolated to the industry as a whole on the basis of costs per ton of output and costs per employee exposed, the best estimated for capital cost was $161 million, with $41.2 million for annual recurring costs. Total annualized costs after taxes was estimated to be $42.2 million. (Ex. 65B, p. 12.) This is equivalent to approximately $1,600 per employee or 25-40 percent less than the comparable cost in the primary smelting industry.

(2) *Economic impact.* DBA projected the following economic impacts as a result of compliance with the proposed lead standard. DBA expects an increase in the average industry price of 8.7 percent, or $0.16 per pound of casting. (Ex. 26, p. 6-60.) This is approximately double the price increase necessary to cover compliance cost and incorporates an assumption regarding the ability of the industry to maintain historic profit rates. Some shifts will occur in the price differences among product types and these will favor larger foundries that have lower-than-average compliance costs. (Ex. 26, pp. 6-60 to 6-62.)

DBA's assume the long run price elasticity of demand to be fairly high due to the availability of substitute products. If this is true, total industry output will fall, some firms with high compliance costs will leave the industry, and competition will be minimally reduced. (Ex. 26, p. 6-62.)

Compliance activities will require a significant increase in employment. DBA's best estimate is 2.7 million man-hours per year, equal to 1,954 persons. This may be partially offset by employment decreases due to lower industry output. (Ex. 26, p. 6-64.) DBA's best estimate of the average labor productivity decline in 9.9 percent. (Ex. 26, p. 6-67.) This assumes no increase in output from an industry operating well under full capacity.

It should be noted that an industry trade association, the American Foundrymen's Society, which represents over 1,800 foundries, testified but did not claim that the proposed standard would cause economic hardship for the industry. (Tr. 2785-2824.)

(3) *Compliance dates.* DBA concluded that the nonferrous foundry industry is capable of attaining 100 $\mu g/m^3$ through relatively simple engineering controls. This conclusion was not disputed, and OSHA has determined that 1 year should be sufficient to implement these controls. A more extensive and refined use of these same controls should be able to achieve compliance with the PEL. Since a sizable segment of the industry does not presently employ satisfactory control methods, OSHA has estimated that 5 years will be required to allow sufficient refinement of control techniques. Given the extended compliance time, the industry will have an opportunity to recover from recent depressed conditions. Individual firms will have a longer time horizon over which to stretch compliance costs. Under these conditions, the implementation of the PEL should not cause undue economic disruption for the industry.

f. *Inorganic Pigments.*

(1) *Costs of Compliance.* DBA extrapolated industry costs from a very limited data base. Capital costs range from $4,451,000 to $109,540,000, depending upon the method of estimation. Similarly, annual cost estimates ranged from $347,000 to $14,800,000 (Ex. 26, p. 5-102). The high estimates are based on an extrapolation of the costs of new facilities, equipment, and processes (Ex. 26, p. 5-104). As such, they represent the upward bound of the cost of compliance with the PEL, as it is an equivalent of rebuilding the entire industry with health goals in mind. As the Short report (Ex. 22) contains the best available information for this industry in the record, despite its shortcomings, OSHA has used it to obtain an estimate of costs to comply with the interim level. According to Short, the upper level of cost will be $21.1 million and $6.4 million for capital and annual recurring costs, respectively. This is consistent with the geometric mean of the costs from the three pigment plants giving data to DBA. Those figures are $17.6 million in capital costs and $2.9 million in annual recurring costs. Thus, OSHA's best estimate for the range of costs for the 100 $\mu g/m^3$ level is $17.6-$21.1 million in capital costs and $2.9-$5.0 million in after-tax, total annualized costs.

(2) *Economic Impact.* DBA concluded that the prices of lead pigments would probably rise by 16.6 to 21.6 percent and that the output of the small, very competitive firms would fall by similar percentages if they tried to maintain their profit margins. Large firms would be largely unaffected. DBA concluded their analysis with this statement: "Given the regional orientation of plants, the concentration of economic market power, the existence of bilateral monopoly relationships, and the presence of a competitive fringe of buyers and sellers, our best judgment leads us to conclude that most, if not all, of the compliance costs will be passed on to the users of lead pigments and that the degree of competition in the industry will decline slightly as merginal firms are forced to leave the industry." (Ex. 26, p. 6-77.) OSHA's cost revisions in this industry mitigate these conclusions. Using the revised estimates, price increases necessary to maintain profit margins will only be 1.7 percent to 3.7 percent.

The industry faces several choices in attempting to comply with the PEL for lead and other potential OSHA standards particularly for hexavalent chromium. DBA assumed that all firms would attempt to comply with the 100 $\mu g/m^3$ level by retrofitting engineering controls. That report did point out the other options of product substitution (for lead chromates) and process redesign. The high estimate ($109 million) may be taken as a proxy for the cost of the latter. OSHA has no estimate of the likelihood of successful substitution of organic ingredients for lead in pigment manufacture.

Because the industry is old (4 of the 5 plants visited by DBA were in excess of 50 years old), retrofitting engineering controls may not be the most cost-effective solution. Even retrofitting will involve enclosure and automation of some processes. OSHA has therefore concluded that the industry should have 5 years to comply with the PEL by use of engineering controls and work practices. This time is deemed adequate for the selection of the most effective compliance strategy by the individual firms and implementation of that strategy. It should be noted that even using the $109 million estimate, DBA predicted the exit of only the most marginal producers. OSHA has further determined that it is generally feasible for firms to comply with the 100 $\mu g/m^3$ milestone in 3 years.

g. *Can Manufacture.* The DBA report estimates costs for the can manufacturing industry as a whole as $157,600 annually for the approximately 1,200-2,000 exposed workers. (Ex. 65B, p. 20.(37) A one-time cost of $30,000 for an initial determination is also given. No capital costs are expected since engineering controls are presently in place and when operating properly are successful in keeping employee exposure very low. If initial determinations yield airborne lead levels below the action level, and there is reason to believe they will,(38) the industry should have minimal annual costs. These costs would be attributable only to housekeeping and training, and by DBA's estimates should be about $260,000 per year or $130/worker per year.

The can manufacturing industry is a $5 billion industry (Ex. 3(81)), and no adverse economic impacts have been suggested.

h. *Printing.* DBA's followup on its original report showed that several segments of the industry which use lead, including the largest, newspaper printing, are rapidly moving away from lead alloy hot metal printing processes. (Ex. 65B, p. 21) By 1980 very few newspapers are expected to have employees exposed to lead, and with recent technological developments facilitating conversion to cold printing processes, other segments are expected to follow suit. The Short report estimated that in 5 to 10 years all but 5-7½ percent of the industry will have converted to the cold process, meaning that only 8,750-13,125 employees will be exposed to lead. (Ex. 22, pp. 194, 201)

Engineering controls are generally in place and because the temperatures involved in melting operations are low, exposure levels are "well below" 50 $\mu g/m^3$ as an 8-hour TWA throughout the industry (Ex. 22, p. 194). According to the Printing Industry of Illinois, air levels in sawing operations would never even approach 50 $\mu g/m^3$ (Ex. 3(25)) and would probably be in the range of 0.2 to 1.7 $\mu g/m^3$ (Ex. 3(60)). Thus, there appear to be no capital costs involved with compliance, and with adjustments for the decrease in exposed employees, the first year cost for 109,000 employees would be approximately $20,000,000 or $183 per employee. (Ex. 65B, p. 21) As the number of exposed employees decreases to the eventual range of 8,750-13,125, the total annual costs for the industry will decrease proportionally.

There are many small firms in this industry and the ones that continue to use lead are expected to be the small firms. (Ex. 22, p. 195) However, given the minimal per employee compliance costs, no adverse economic effects are anticipated.

i. *Paint Manufacturing.* The Short report estimated capital coss for 1,000 companies of varying sizes to be between $9 million and $26.8 million. Annual costs were estimated at between $6.8 million and $13.1 million. DBA confirmed the upper bound on the basis of cost data from the Sherwin-Williams Co., the only paint manufacturing firm supplying cost data directly to the record. However, DBA's conclusion is misleading because the cost data included cost of compliance with the chromate standard (Ex. 65B, p. 36) and attributed costs primarily to medical exams, air monitoring, and recordkeeping. (Ex. 3(97), p. 3) Hence, OSHA has concluded that the Short reports cost estimates are highly inflated and that the industry should not experience economic difficulty in complying with the standard.

j. *Ink Manufacturing.* Estimated costs for compliance in this industry are derived by extrapolation from the costs of an "average plant" in the industry as determined by a trade association of ink manufacturers, the National Association of Printing Ink Manufacturers, Inc. (NAPIM). NAPIM submitted the information to DBA without disaggregating the figures or explaining the study methodology.

The estimated costs are $4.6 million for capital costs and $1.25 million for annual recurring costs. (Ex. 65B, p. 39) If these figures are accurate, the annual recurring costs per exposed employee are between $962 and $1,250. Neither Short nor DBA reported predictions of economic hardship from the industry. OSHA concludes that compliance with the standard will not cause economic difficulty for the industry.

k. *Shipbuilding.* DBA estimated the costs for this industry on a per employee basis for the 22,253 workers exposed to lead. Capital expenditures totaled $126,537 or $5.69 per employee and annual expenses totaled $22.256 million or $1,000.12 per employee.(39) Additional labor requirements were estimated to be 1,369.5 man-years, and energy consumption 606,000 kWh.

The impact of these costs are difficult to evaluate in view of the unavailability of basic economic data. The Shipbuilders Council of America, in a brief comment, stated their opinion that the benefits would not justify the costs of the proposed standard, but made no claim of economic hardship and supplied no data for evaluating cost impacts.

An important factor to consider is the availability of a construction-differential subsidy from the Maritime Administration of the Department of Commerce to offset foreign competition. The ceiling on this subsidy is statutorily set at 35 percent, but according to The Shipbuilders Council of America, "ability to maintain a 35-percent level is now in jeopardy." (Ex. 26, p. 5-110)

Another factor is that a good portion of shipbuilding and repairing contracts are with the U.S. Government. Cost increases would be reflected in those contracts. (Ex. 3(58))

l. *Other Industries.* The DBA report performed full economic impact analyses for five industries. Costs of compliance for shipbuilding and automobile manufacturing were developed in a substantial manner. Less detailed cost estimates were developed for the can manufacturing, printing, paint manufacturing, and ink manufacturing industries. Some of the latter are merely adjustments to or confirmation of costs estimates presented in the preliminary Short study.

The Short methodology for determining and extrapolating costs to all affected industries was based on determining the number of employees in five different exposure categories for each industry (e.g., the high category had 40 percent of the employees between 50 and 100 $\mu g/m^3$ and 60 percent over 100 $\mu g/m^3$, while the low category had 70 percent below 50 $\mu g/m^3$, 20 percent between 50 and 100 $\mu g/m^3$, and 10 percent greater than 100 $\mu g/m^3$), assigning capital and annual costs on a per employee basis for each category, and multiplying the per employee cost by the number of exposed employees in each category. (Ex. 22, pp. 115-126) The per employee costs were orginally criticized during review of a draft of the report because they were based on too few data points, and further data was gathered in selected industries by DBA.

DBA's report presents empirical cost data for 10 industries, three in the high and very high exposure categories, three in the medium category,

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two in the low category, and two in the very low category. When the average from each category is compared to the Short costs for each category, the relative validity of the Short estimates are enhanced.(40)

Since the per employee estimates in the Short report offer the best available information to extrapolate costs to the 27 industries DBA did not study, OSHA has used it to project costs to those industries. OSHA believes these costs, although developed for achieving a 100 $\mu g/m^3$ PEL, are generally appropriate costs for achieving either a 100 or 50 $\mu g/m^3$ PEL. Capital costs are for engineering controls, and in these industries exposure levels are generally low, necessitating simple and inexpensive enclosure or ventilation systems. Fugitive emissions are expected to be negligible once control devices are installed, so controls which are effective to achieve 100 $\mu g/m^3$ should result in exposures well below the PEL. Annual costs are also expected to be similar. In addition, Short provided "best" and "high" estimates for these industries. OSHA has conservatively chosen the "high" estimate for these calculations.

The 27 industries for which cost estimates have been developed in this way employ 630,335 potentially exposed workers. Capital costs for compliance total $118.4 million, and annual costs total $84.5 million. On a per employee basis, this is equivalent to $188 and $134, respectively. None of these industries presented evidence or made claims that economic hardship would result from the proposed standard.

In addition, there are many other industries in which lead exposure may occur; e.g., pipe galvanizing, brick and tile manufacturing, tanning, and bookbinding. In most cases, exposure is negligible and/or infrequent. For most of these industries, information is not available to assess the possible impacts of the standard. It is believed however that the standard will minimally affect these industries. (Ex. 22)

For all the industries covered in this section, the record does not provide explicit estimates of time required for compliance, but because exposure levels are generally low (often below the PEL) and because operations are often small scale, work practices and administrative controls could be used with some success. Only the simplest of conventional engineering controls should be required, and one year should provide adequate time to have them in place and operating.

13. *Aggregate Impacts.* DBA estimated the aggregate price and employment effects of the proposed standard. As would be expected given the size of the national economy, the anticipated changes in price and employment indices were minimal. Nationally, unemployment would be expected to decline by .08 percent (a net gain of 5,200 jobs) (Ex. 26, p. 6-81) and consumer prices would be expected to rise by .02 percent as a result of the expenditures flowing from the DBA best—estimates of compliance costs for the 100 $\mu g/m^3$ proposal. (Ex. 26, p. 6-85.) The OSHA revisions of the DBA cost estimates would reduce these impacts even further.

Since the cost of attaining the PEL was not estimated for all industries, quantification of its aggregate impact is not possible. It is reasonable to treat the price and employment effects in the DBA study as first approximations of the magnitude of the impact of the 50 $\mu g/m^3$ standard. It is clear that even if the price effects approximation incorporates understatements of the real cost of meeting the PEL, there could be no discernable inflationary impact on the U.S. economy attributable to the standard.

Likewise, the national employment and productivity effects would be inconsequential. The only significant national impact suggested in the DBA study was the possibility of labor shortages among professionals in specialized health fields. OSHA believes that such shortages would be temporary in nature and concludes that no permanent disruption of labor markets will result from the standard.

FOOTNOTES

(1) In *SPI* v. *OSHA*, the court quoted with approval the language from OSHA's preamble that "it is not possible to predict the degree of improvement to be obtained from engineering changes until such changes are actually implemented." 509 F.2d at 1309. In *Atlantic and Gulf Stevedores, Inc* v. *OSHRC*, the Third Circuit likewise recognized that the feasibility or infeasibility of a standard may not become apparent until the employer in good faith attempts to comply (534 F.2d 541 (1976)).

(2) *AFL-CIO* v. *Brennan*, 530 F.2d at 122. The language cited referred to the Secretary's determination on the issue of feasibility, which the court upheld, and said that such a determination "necessarily implie(d)" consideration of both existing capabilities and imminent advances.

(3) *AISI* v. *OSHA*, 577 F.2d at 835. Specifically, evidence had been introduced that retrofit devices readily adaptable to old batteries were in the experimental stage, and the court appeared to find this evidence persuasive. It is not clear whether the determination of the feasibility of the standard was based on this evidence concerning old batteries or whether the holding was based on the fact that there was substantial evidence that new batteries could comply and, therefore, the standard was feasible for the coke oven industry.

(4) S. Rep. No. 91-1282, 91st. Cong. 2d Sess., U.S. Congressional and Administrative News (1970) p. 5180. This section specifically recognizes that without regulation, firms which provide safe and healthful workplaces suffer a competitive disadvantage until the recalcitrant employers change their practices.

(5) In *SPI* v. *OSHA*, 509 F.2d at 1309 the court recognized that reactor cleaning practices in many firms (a substantial source of exposure) could be improved to conform to the most advanced practice. Even this, however, would not insure compliance and therefore new technology was necessary in both the leading and secondary firms. In *AISI* v. *OSHA*, 577 F.2d at 832-33, great reliance was placed by the court on the fact that two batteries had been able to make great strides toward meeting the standard, although even they had not achieved compliance.

(6) The no-hands-in-dies standard was a consensus standard, apparently intended from its inception as a desirable guideline rather than as a requirement which all firms could meet. It was adopted by OSHA without a full consideration of its feasibility. The primary grounds for OSHA's later finding of infeasibility was that the technology was not "universally possible in the near future." Therefore, the costs were judged to be "prohibitive."

(7) "Regardless of the manner in which the task of judicial review is articulated, policy choices of this type are not subject to verification or refutation by reference to the record as are some factual questions." Consequently, the Court's approach must necessarily be different no matter how the standards of review are labeled (*IUD* v. *Hodgson*, 499 F.2d at 475).

(8) Temporary variances, it is clear from the legislative history, cannot be granted in order to mitigate economic hardship. (Conf. Rep. Pub. L. 91-596, U.S. Code Cong. and Admin. News, 91st Cong. 2d Sess. p. 5231). However, temporary variances which enable firms to delay compliance for the time needed to obtain abatement supplies or permanent variance which employers may obtain if they demonstrate alternative equally protective means of compliance with a standard may have, as a side effect, the mitigation of economic hardship for certain firms.

(9) DBA reported that one company has had good success with traditional forms of engineering controls without use of respirators. This company, however, does not use lap soldering, the kind of soldering which is found on most automobiles and which requires considerable solder to be ground (Ex. 26, p. 5-135).

(10) These terms are used throughout to express costs of compliance. Terms used in other reports or studies have been adjusted to avoid ambiguity.

(11) An important legislative development that was not included in the report but that might provide additional economic relief for companies faced with capital expenditures due to OSHA regulation is the introduction of two tax bills, H.R. 10692 and H.R. 11078, in the House of Representatives. These bills would provide for 1 and 2 year amortization of plant or other property required by regulations under the OSHA Act.

(12) Excluding the one plant whose cost estimates are based on new facilities, equipment, and processes, a best estimate might be calculated from the three plants submitting data. Using the geometric mean and extrapolating to the entire industry, the best estimate for capital costs would be $17.6 million and for annual costs $2.9 million. This of course assumes the per employee cost of these three plants is representative for the 25 in the industry.

(13) There are a few exceptions in the primary smelting industry. See industry summaries below.

(14) Capital costs for Amax were estimated in a report by IHE (Ex. 3 (108), p. 4) as $8.144 million, the number used by CRA. IHE added approximately 10 percent for "escalation"; DBA added an additional 8 percent to arrive at its estimate of $9.540 million.

(15) Dr. Burrows of CRA stated that the after-tax costs are the "real" costs to a firm, although they are not the basis for making decisions of whether to stay in business (Tr. 3368-69).

(16) CRA's $13.2 million estimate is for long-term costs. For the short-term (3 years), CRA estimated costs to be $15.6 million per year. This, however, does not explain the disparity.

(17) Certain financial information (cost of capital, tax structure) is necessary to make valid predictions of any company's economic behavior (Tr. 4644, 4646). In most cases, companies do not voluntarily make information public, and for those publicly owned companies that have some public disclosure obligation, the requirements are minimal and don't yield the type of information needed for these types of economic analyses. For example, large companies were under no obligation to publish information on a plant by plant or industry by industry basis (Tr. 4630). Many of the parties to this rulemaking are divisions or subsidiaries of larger companies (ESB is a division of International Nickel of Canada, General Battery is a division of Northwest Industries, Delco-Remy is a division of General Motors, Bunker Hill is a subsidiary of Gulf Resources & Chemical Co.), and, as such, no breakdowns of their financial data can be extracted from the parent firms' annual reports and other SEC filings.

(18) This was figured in the same manner as CRA. (See Ex. 127, Table 2-17, n. 1.)

(19) There was no way to reconcile the diverse estimates for annual costs attributable to medical surveillance, air monitoring, hygiene, housekeeping, and administrative costs in the two reports. The average of CRA's long run costs and DBA's single estimate is used. It is recognized that the short-run costs will be higher, but that is offset by the higher DBA estimate which does not take long-run costs into account. (See Ex. 127, Table 2-16; Ex. 26, Tables 5.8-5.14.) DBA's total for seven plants is $6.669 million; CRA's total is 1.786.

(20) 723,879 short tons (Ex. 127, Table 2-11).

(21) 3,055 exposed employees (Ex. 26, Table 5.1).

(22) In addition to the two sources discussed below, the U.S. Government maintains a stockpile from which it sells periodically (Ex. 127, Exec. Summ., p. 16).

(23) Secondary producers can and do produce refined or "soft" lead, but because much of the reclaimed scrap lead contains alloys such as antimony and because antimonial or "hard" lead is required for the convential battery, many do not further refine the lead to produce "soft" lead.) Ex. 26, p. 6-5) However, the recent trend toward maintenance-free batteries, which do not use hard lead, has caused a downward shift in demand for hard lead, and antimony prices have dropped. (Sizemore, "Lead Recyclers Face Market Shift," American Metal Market, Batteries Section, April 26, 1977, pp. 12, 22).

(24) The price of lead used in the CRA analysis was 21 cents per pound compared with current price of 37 cents to 39 cents per pound. (Wall Street Journal (October 20, 1978, p. 38).

(25) OSHA Arsenic Record.

(26) While the 0.8 cent to 1.1 cents represents full cost recovery, the industry would have to absorb between 0.4 cent and 0.6 cent in after-tax costs if passthrough were not possible.

(27) Primary production of refined lead in the U.S. has increased since 1971 from 678,655 short tons to 767,323 short tons in 1974. In 1975, production was 723,879 short tons, a decline CRA attributes to a slack demand that year (Ex. 127, p. 2-24, Table 2-11).

(28) Australia, a significant exporter of refined lead to the United States, was virtually excluded from the U.S. market in 1974 due to "dumping" charges since withdrawn (Ex. 127, p. 1-30).

(29) Since ASARCO announced these commitments, the price of lead has approximately doubled.

(30) CRA's combination of all State and Federal water and air pollution control costs with OSHA costs obscures the attempt by OSHA to analyze only the impact of OSHA-related costs. OSHA recognizes that firms have all types of additional, non-OSHA costs of production which affect their financial viability, the aggregate of which may render them unprofitable. However, to attribute a firm's ultimate decision to cease operations to one component which, by itself, would not cause the same result is misleading.

(31) The IHE study is appended as Exhibit A to a Stipulation and Settlement to Obtain An Order, dated January 5, 1977, in *Usery* v. *Gopher Smelting & Refining*.

(32) Derived from Ex. 127, Exec. Summ., Table 5. Adjustments were made to determine costs on the basis of per unit of production, not capacity.

(33) 724,340 short tons (Ex. 26, p. 5-40).

(34) This calculation is based on 725,000 tons capacity rebuild at $2.5 million per 20,000 tons ($125 per ton) (Tr. 5192).

(35) In addition, IHE's estimates are for new equipment when, in reality, small firms often purchase used equipment to save money (Tr. 3300; 3890).

(36) The seven largest producers are ESB Co. (a division of International Nickel of Canada) General Battery Co. (a division of Northwest Industries); Delco Remy (a division of General Motors); Gould, Inc.; Globe Union; Chloride, Inc., and Prestolite.

(37) There is apparently an error in multiplication in the DBA report. The estimate should total $496,000.

(38) There is little exposure data in this industry, but two companies reported exposures among lead-exposed employees to be between .002 $\mu g/m^3$ (Ex. 65B, p. 19) and .4 $\mu g/m^3$.

(39) Capital costs are expectionally low in this industry because engineering controls to control exposure consist primarily of portable local exhaust ventilation units costing about $650.

(40) The Short report's per employee costs are as follows (Ex. 22, pp. 125-126):

Category	Capital costs	Annual cost
Very high	$10,600/$7,875	$3,210/$2,785
High	7,100/5,250	2,650/2,295
Medium	3,500/2,625	1,565/1,375
Low	1,200/875	815/725
Very low	250/0	380/360

NOTE.—Costs for each category are presented respectively as costs for large or indeterminate scale operations and small operations. Large scale operations tend to be costlier than small scale operations. (Ex. 22, p. 16.)

DBA's average cost figures for each category are as follows. Operation size was not given.

Category	Capital costs	Annual costs
Very high	$17,042	$3,116
High		
Medium	3,763	1,247
Low	128	696
Very low	99	132

NOTE.—Average for very high and high is derived from primary and secondary smelters and battery manufacturers; medium from brass and bronze foundries, paint manufacturing, and ink manufacturing; low from automobile manufacturing and shipbuilding; very low from printing and can manufacturing.

This document was prepared under the direction of Eula Bingham, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C., this 8th day of November, 1978.

EULA BINGHAM,
Assistant Secretary of Labor.

[FR Doc. 78-31912; Filed 11-13-78; 8:45 am]

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TUESDAY, NOVEMBER 21, 1978
PART III

THE NATIONAL ARCHIVES OF THE UNITED STATES 1934

DEPARTMENT OF ENERGY

Office of Energy Conservation and Solar Applications

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ENERGY PERFORMANCE STANDARDS FOR NEW BUILDINGS

Advanced Notice of Proposed Rulemaking and Notice of Public Meetings

[6450-01-C]

DEPARTMENT OF ENERGY

[10 CFR Part 435]

ENERGY PERFORMANCE STANDARDS FOR NEW BUILDINGS

Advance Notice of Proposed Rulemaking and Notice of Public Meetings

AGENCY: Department of Energy.

ACTION: Advance Notice of Proposed Rulemaking and Notice of Public Meetings.

SUMMARY: In August 1979, the Department of Energy expects to promulgate a final rule for building energy performance standards for new construction. A notice of proposed rulemaking is scheduled for publication in the Federal Register in February 1979. The purpose of this Advance Notice of Proposed Rulemaking is to make available to the public the form of the standards as presently envisioned by the Department, as well as support information available at the time of publication, and to invite the public's review and comments on the standards. Public meetings will be held for discussion and comments before the proposed standards are published.

DATES: Written comments in response to this notice to be filed by 4:30 p.m., December 15, 1978. Where appropriate, late comments to this notice will be considered by DOE prior to the issuance of the final rule. Requests to speak at the public meetings to be received by 4:30 p.m., local time, November 24, 1978. Speakers to be notified by 4:30 p.m., local time, November 28, 1978.

Meetings to be held on the following dates and times:

December 1, 1978, 9:00 a.m, Washington, D. C.;

December 6, 1978, 9:00 a.m., Chicago, Illinois; and

December 7, 1978, 9:00 a.m., San Francisco, California.

ADDRESSES: Comments on the document to:
U. S. Department of Energy
Office of Public Hearings Management, Room 2313
Box WC
2000 M Street, N. W.
Washington, D. C. 20461

Requests to speak at the Washington, D. C. meeting:
U. S. Department of Energy
Office of Public Hearings Management, Room 2313
Box WC
2000 M Street, N. W.
Washington, D. C. 20461

Requests to speak at the Chicago, Illinois, meeting:
U. S. Department of Energy
ATTN: Charles Swank
175 W. Jackson Boulevard
Chicago, Illinois 60604

Requests to speak at the San Francisco, California, meeting:
U. S. Department of Energy
ATTN: Robert Laffel
111 Pine Street, 3rd Floor
San Francisco, California 94111

Meeting locations:

GSA Auditorium, 18th & F Streets, N.W.; Washington, D.C.; Ramada Inn, Mannheim & Higgins Roads, Des Plaines, Chicago, Illinois; and San Franciscan Hotel, 18th & Market Streets, San Francisco, California.

FOR FURTHER INFORMATION CONTACT:

Robert C. Gillette (Hearing Procedures)
U.S. Department of Energy
Office of Public Hearings Management
Room 2313
2000 M Street, N.W.
Washington, D.C. 20461
(202) 254-5201

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APPENDIX I - PRELIMINARY STANDARDS FORMAT.

APPENDIX II - STATISTICAL ANALYSES PROGRAM.

I. INTRODUCTION.

I.A Planned Regulatory Action.

In February 1979, the Department of Energy (DOE), working jointly with the Department of Housing and Urban Development (HUD), plans to publish in the Federal Register proposed energy performance standards (the Standards) for new building construction. The Standards, planned to be issued in final form in August 1979 and to become effective no later than February 1980, are being developed in response to and in accordance with the Energy Conservation Standards for New Buildings Act of 1976, 90 Stat. 1144-1150, 42 U.S.C. 6831-6840, and Section 304 of the Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 965 et seq., 42 U.S.C. 7101 et seq. (see Section II.A. Legislative Background).

As legislated, the Standards will be performance type standards; i.e., they will include the goal(s) to be achieved and the applicable requirements, criteria and evaluation techniques. They will not include or prescribe the methods, processes or materials to be used to achieve the goal(s) delineated. Also, the Standards will be for new construction only, will be aimed at the design stage of the construction process, and will apply to buildings rather than their component parts.

As used in this Advance Notice of Proposed Rulemaking (ANPR), a building is defined as any structure to be constructed which includes provisions for a heating or cooling system or both, or for a hot water system.

I.B ANPR Purpose and Scope.

The primary purpose of this ANPR is to solicit from the public written questions, comments and suggestions on the Standards, prior to their proposal by DOE, scheduled for February 1979.

In order for the public to have sufficient information upon which to comment, this ANPR has been structured to include extensive discussions on as many Standards-related issues as possible. Ensuing sections accordingly deal with the legislative background to the Standards; the methodologies and status of the development program; issues related to the development program; a preliminary format for the Standards; discussions on the evolution of that format; and information on supporting documentation, comments received to date, the procedure for commenting on the program, and the process for public participation in the program.

There are two appendicies important to this presentation. The first is the Preliminary Standards Format previously mentioned. The second is a detailed description of the statistical analysis program which formed the primary basis for the preliminary estimations of the design energy budget levels.

Not included in this ANPR are discussions of those issues related solely to the application of the Standards by the State and local governments. This function is within the responsibility of HUD and is subject to separate regulatory action.

II. BACKGROUND OF THE STANDARDS. Cont'd

II.A Legislative Background.

The Standards are being developed and implemented pursuant to the Energy Conservation Standards for New Buildings Act of 1976 (90 Stat. 1144-1150, 42 U.S.C. 6831-6840), enacted as Title III of the Energy Conservation and Production Act (ECPA), Pub. L. 94-385 (90 Stat. 1125 et seq., 42 U.S.C. 6801 et seq.). The stated purposes of Title III are:

(1) To redirect Federal policies and practices to assure that reasonable energy conservation features will be incorporated into new commercial and residential buildings receiving Federal financial assistance;

(2) To provide for the development and implementation of performance standards for new residential and commercial buildings, standards which are designed to achieve the maximum practicable improvements in energy efficiency and increases in the use of nondepletable sources of energy; and

(3) To encourage States and local governments to adopt and enforce such standards through their existing building codes and other construction control mechanisms, or to apply them through a special approval process.

In order to achieve these stated goals, Title III includes specific technical and administrative provisions.

Section 305 of ECPA requires that, to be in compliance with the Standards,

(1) a State must certify that the local governments have adopted and are implementing building codes or other construction control mechanisms which meet or exceed the requirements of the Standards; or

(2) a State must certify that it has adopted and is implementing, on a statewide basis or with respect to such area, a building code or other laws or regulations which provide for the effective application of the Standards; or

(3) a building design must be approved directly, through an approval process aimed at determining whether the proposed building design would be in compliance with the Standards.

However, the Secretary of HUD may determine that a building will not be subject to the Standards if a State has requested such a determination for an area within the State in which the construction of new buildings is not of a magnitude to warrant the cost of implementing the Standards. The Secretary of HUD may reject, disapprove, or require the withdrawal of any such certification after notice to such State and an opportunity for a hearing.

For Federal buildings, Section 306 of ECPA provides, "The head of each Federal agency responsible for the construction of any Federal building shall adopt such procedures as may be necessary to assure that any such construction meets or exceeds the applicable final performance standards promulgated pursuant to this title."

II.B Scope and Application of the Standards.

As previously discussed, the Standards are applicable to new commercial and residential buildings, which mean structures having designs that include provisions for a heating or cooling system or both, or for a hot water system. This means that a structure whose design does not have such provisions would not be subject to compliance with the Standards. Such structures might include unconditioned parking garages, for instance. Also, energy use areas not enclosed by a structure would not be required to be in compliance with the Standards. An example would be an open-air parking lot with lighting facilities.

The Standards are for buildings rather than their component parts and are applicable to the design stage of the construction process. As performance type standards, the Standards have four elements: the design energy conservation goals to be achieved, the requirements, the criteria and the evaluation techniques. The design energy conservation goals are expressed as design energy budgets, which are the energy consumption levels which the designs must not exceed. The requirements and criteria are the parameters upon which the design energy budgets are based. The evaluation techniques are the methods to be used to determine if a building design meets the requirements of the Standards.

The Standards are not prescriptive. This means that they do not include the processes, methods or materials to be incorporated into a building design in order for the design to satisfy the Standards. The Standards do not prescribe or prohibit any particular building design or any particular building components.

The Standards also will not include just one design energy conservation goal. Instead, they will include separate goals for different building classifications in different climatic zones.

III. STANDARDS DEVELOPMENT PROGRAM: SUMMARY.

The fundamental precept of the development program defined for the Standards was that the design energy budgets be technologically achievable, environmentally and economically acceptable, achieve the desired conservation of nonrenewable energy while encouraging the use of renewable resources, and reflect the source-energy and sociological "cost" of utilizing given fuels in the various regions.

The technological factors are defined and evaluated in the statistical analyses described in detail in APPENDIX II. The economic and environmental considerations are the subject of the economic and environmental studies, and the source-energy and sociological factors are the bases of the supplemental programs described in Section III.B.

DOE wishes to emphasize that the program described herein is but one of many approaches which could be followed in order to achieve acceptable design energy budgets. Other approaches are intimated throughout this document, and specific discussions are included in Section IV.A.

III.A Analytical Programs.

A driving force behind the developmental program was the objective that the Standards should be technologically achievable and environmentally and economically acceptable, while achieving the energy conservation desired and encouraging the use of renewable resources.

The statistical analyses were intended to deal with the technological aspects, and the environmental and economic studies with those considerations. A third study area, a regulatory analysis, was added in response to Executive Order 12044.

III.A.1 Statistical Analyses.

The basic approach of the statistical analyses was first to determine the design energy consumptions being achieved by recently constructed buildings and then to introduce technological improvements to those building designs and evaluate the resulting energy consumption levels. Supporting studies involved defining climatic regions, in response to ECPA requirements, and developing a set of building classifications.

The statistical analyses have been a joint effort of DOE and HUD. HUD contracted with the American Institute of Architects Research Corporation (AIA/RC) to collect and evaluate the data needed. In order to ensure that the work was technically comprehensive, AIA/RC subcontracted with experts in the design and construction fields. The subcontractors included: the National Association of Home Builders Research Foundation (NAHB/RF), The Ehrenkrantz Group, Brown Associates, Inc., Syska and Hennessy, Inc., Heery and Heery, and T. R. Arnold and Associates, Inc.

Also, in order to ensure that all technical concerns were addressed in the development activity to the extent feasible, AIA/RC established a Technical Advisory Group, consisting of individual architects and engineers who are members of the American Consulting Engineers Council; the American Institute of Architects (AIA); the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE); the Illuminating Engineering Society of North America; and the National Society of Professional Engineers/Professional Engineers in Private Practice.

Other Federal agencies, including the General Services Administration, were also consulted, as was the National Institute of Building Sciences (NIBS). The National Bureau of Standards (NBS) has participated in background research for the Standards and is being consulted on the proposed rule.

A two-phased program was established for the statistical analyses. Briefly, the first phase involved classifying buildings by type and location, obtaining data on and calculating the design energy consumptions of recently constructed buildings, and defining the climatic zones for all building classifications (except mobile homes, for which design temperature zones were used). This phase has been completed and the final report is available (see Section VI).

The second phase, which is in progress, involves several concurrent efforts:

(1) the technical redesign of representative buildings, within specified redesign limitations;

(2) the simulation of specific buildings, based on existing energy standards ASHRAE 90-75R, the HUD Minimum Property Standards (HUD/MPS) and the NAHB Thermal Performance Guidelines (NAHB/TPG), and the calculation of the design energy consumptions reflected in the simulated designs;

(3) the development and application of a parametric model to statistically project the design energy consumption distribution of the total nonresidential new construction universe; and

(4) the reevaluation of data and analysis anomalies, building classifications, and other factors to determine additional

studies or changes required for greater accuracy in the analyses.

The analytical model for both Phases I and II was chosen early in Phase I, after an exhaustive study of several alternative methods. The public domain programs examined at that time were found to be in the developmental stage and had not been used extensively on actual buildings.

ANCESS, a proprietary computer program, was chosen at that point because the short form of the program met the cost, time and data limitations of Phase I and the long form had the capabilities of performing the full hour-by-hour analyses anticipated for Phase II.

In the comparative analyses at the end of Phase II, the two public domain programs, DOE-1 and CERL-BLAST, were found still to be in the development stage, and NBLSD, another public domain program, was found to be incapable of analyzing plant energy usage, meaning its output was energy load only.

A detailed discussion of the statistical analyses program and its current status is contained in APPENDIX II of this document.

III.A.2 Impact Analyses.

III.A.2.a Environmental and Economic Analyses.

Extensive environmental and economic analyses are being conducted with respect to the Standards. An Environmental Impact Statement is being prepared, pursuant to the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 et seq., and a separate economic analysis will also be prepared, expanding on the economic considerations pertinent to the Standards. Both documents will be included in the docket (see Section VI), their availability will be announced in the Federal Register, and public hearings will be held between the publication of the draft and final documents, scheduled for January and July 1979, respectively.

The analyses being prepared use 1980 as the base year and evaluate incremental changes for 1985, 1990, 2000 and 2020. Also, both are based on an assumption that the methods utilized in the technical redesigns of Phase II are the best available for predicting future trends and practice; i.e., that the technical redesigns are a viable indication of how building designs will look after the Standards become effective.

(1) Environmental Analyses.

The environmental analyses focus on: (1) onsite impacts, such as comfort, health and safety of the building occupants, as well as construction personnel; and (2) offsite impacts, such as occupational hazards, land use, and air and water quality.

A range of alternatives are being evaluated in the environmental analyses. These alternatives include: (1) no action, or the repeal of the legislated mandate for the Standards; (2) design energy budgets set at three different levels, the first as chosen for the Standards, the second less stringent, and the third more stringent; (3) component performance standards, instead of building performance standards; (4) the Standards with tax incentives; (5) prescriptive standards; (6) education and dissemination of information instead of the promulgation of standards; (7) different methods to encourage the use of renewable energy resources; and (8) energy pricing to effect energy conservation.

(2) Economic Analyses.

The economic analyses focus on: (1) the consumer's viewpoint, with respect to building costs, financing, habitability, and overall building desirability; (2) the construction industry's viewpoint, with regard to changes in training, the process of designing and building, and labor requirements; and (3) the code jurisdiction's viewpoint, relative to training and staffing requirements, financing, and potential conflicts with existing codes.

The studies are comprised of five major areas: (1) building economics and energy use, including considerations of life-cycle costs, both building oriented and nationally oriented; (2) energy impacts, including shifts in fuel mixes, net energy savings, and source energy requirements; (3) construction industry economics, including changes in output and effects on competition; (4) national economics, including effects on employment, the balance of trade, investments and national income; and (5) cost benefit analyses, combining the other four areas and assessing the sensitivity of the overall analysis to key parameters.

The last major study area, the cost-benefit analysis which ties the other four study areas together, is considered a cornerstone of design energy budget selection, assuming that the present developmental program continues to be followed by DOE.

The studies are being closely coordinated with a fundamental life-cycle-costing research program being conducted by Oak Ridge National Laboratories (ORNL) and NBS. This program uses a prototypical house constructed at both ORNL and NBS, and computer simulations developed for the program. Approximately 20 improvements to the thermal integrity of the shell have been or are being systematically evaluated from a cost/benefit point of view. Coincidental research is also being conducted with respect to residential furnaces, air conditioners, heat pumps, and hot water systems, and the possible methodologies for integrating energy efficiency strategies for these subsystems into the shell design.

III.A.2.b Regulatory Analysis.

A Regulatory Analysis is being prepared. A summary of the draft Regulatory Analysis will be published with the proposed Standards, and a summary of the final Regulatory Analysis will be published with the final Standards.

The Regulatory Analysis will analyze and evaluate the effects of setting the design energy budgets at different levels, using the same levels being considered in the economic and environmental studies. The analysis will describe those effects with respect to: (1) the existing regulated environment, and (2) the economic environment.

The latter will be provided by and abstracted from the economic analyses described in Section III.A.2.a.

The existing regulated environment is now being studied. On a Federal level, this includes: (1) the HUD Minimum Property Standards for Multifamily Dwellings, HUD Handbook 4910, Revision Number 5, April 1977; (2) the HUD Minimum Property Standards for One and Two Family Dwellings; (3) the Proposed Increases in Thermal Insulation Requirements for the HUD Minimum Property Standards for One and Two Family Dwellings, Federal Register, Vol. 43, No. 79, Monday, April 24, 1978; (4) the HUD

Mobile Home Construction and Safety Standards, Federal Register, Vol. 40, No. 244, Thursday, December 18, 1975; and (5) the Farmers Home Administration (FmHA) Construction Standards, Exhibit D to Farmers Home Instruction No. 424.1, CFR Part 1804, Subpart A, also known as the "Thermal Performance Standards."

The FmHA document is of particular note because it in part uses a performance concept. The document covers all aspects of residential buildings: walls, roof, glazing, infiltration controls, heating equipment, orientation on the site, etc. Also, three ways are allowed to certify compliance of a design with the standard: component U-value, overall U-value, and total structure performance. The latter is in essence a performance standard with test methods provided.

Public housing, publicly assisted housing and Federally insured housing are generally governed by the dual requirements of the HUD Minimum Property Standards and applicable State building codes. Also, for these construction sectors, technical requirements from the State organization responsible for the construction may be applied, depending on local policies.

For Federal construction, the controls range from the performance guideline of the General Services Administration's Energy Conservation Design Guidelines for New Office Buildings, to prescriptive requirements of other Federal agencies.

Outside the Federal regulatory sphere, there are three nationwide model building codes which are being included in the study: (1) the Basic Energy Conservation Code/1978, Building Officials and Code Administrators International, Inc., Chicago, Illinois; (2) the Standard Building Code (Revised), 1977-1978, Southern Building Code Congress International, Inc., Birmingham, Alabama; and (3) the Uniform Building Code, 1977 Supplement Appendix Chapter 53, Energy Conservation, International Conference of Building Officials, Whittier, California.

Finally, two building industry standards are under consideration: (1) ASHRAE Proposed 90-75R, Energy Conservation in New Building Design, the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., February 1, 1978; and (2) the NAHB Thermal Performance Guidelines for One and Two Family Dwellings, National Association of Home Builders Publication Number 560.02, 1977.

ASHRAE 90-75R provides the foundation for the energy requirements of most existing building codes, while the NAHB Thermal Performance Guidelines are utilized by a large segment of the residential construction sector. Preliminary studies by DOE are aimed at comparing the energy conservation levels achieved by these two standards versus the projected energy conservation levels which may be achieved by different levels of the design energy budgets.

Also, once the design energy budget levels are selected and the process is fully developed, the details of that process will be included in the Regulatory Analysis, to complete the document.

III.A.2.c Energy Conservation and Renewable Resources Utilization.

The dual objective of the energy performance standards for new buildings is to achieve the maximum practicable improvements in energy efficiency, as well as increases in the use of nondepletable resources. The levels set for the design energy budgets will be selected to produce these two desired results.

(1) Energy Conservation.

The economic and environmental studies are focusing in part on the predicted savings in nonrenewable resources resulting from different levels of the design energy budgets. The results of these studies will provide information for the selection of the proposed and final design energy budgets. There are several ways possible to achieve energy conservation and each is being considered in the studies and analyses:

(a) Minimizing the use of nonrenewable resources.

(b) Minimizing the life-cycle costs involved.

(c) Allocating nonrenewable resources efficiently.

(d) Reducing nonrenewable energy imports.

(e) Establishing design energy budgets based on the marginal costs of nonrenewable resources.

(f) Increasing the use of renewable resources.

Note that it may be possible to conserve nonrenewable resources without increasing the use of renewable resources. However, it is the intent of the legislation to do both.

(2) Renewable Resources Utilization.

The increased use of renewable energy may be accomplished by simply setting the design energy budgets at levels which will be difficult to achieve, technically or economically, by employing only energy conservation techniques. This is not as severe as it may first appear. Passive techniques such as natural ventilation, site orientation, natural daylighting, and others can effect substantive relief in the total building design requirements for energy utilization. This was proved fairly effectively in the technical redesign program of Phase II, which limited the renewable energy techniques available to the designers to only passive techniques, in order to minimize first-cost increases resulting from the energy-oriented redesigns. The exercise also demonstrated that energy could be saved with these relatively cost-effective design procedures.

It may also be possible to encourage the use of renewable resources by including a credit in the design energy consumption evaluation calculations. One method of doing so might involve resource utilization factors (RUF's), defined and discussed in Section III.B. Briefly, these factors are intended to account for the energy losses involved in delivering nonrenewable resources to a building site. If RUF's are set equal to or less than zero for renewable resources, this might encourage their increased usage. Or, it may be plausible to completely exclude from compliance those buildings whose designs attribute a certain percentage of their energy requirements to the use of renewable energy sources. Both of these possibilities are currently being studied.

There is one caution which should be stated: it is entirely possible that a building design may comply with the Standards, but the building itself will be energy inefficient. This could occur if the building design relies heavily on renewable energy use and therefore receives substantial credit for or is entirely excused from compliance with the Stancards: that same building design could also reflect little or no insulation in its exterior shell. This is a recognized possibility, and it is an issue for which comments are particularly welcome.

It should also be noted that the Standards must be consistent with the Status Report on Solar Domestic Policy Review, Public Review Copy, August 25, 1978, and any subsequent issuances.

III.B Supplementary Studies: RUF's and RIF's.

As explained in the beginning of Section III, it was felt that the design energy budgets should be source-energy related and should reflect sociological considerations involved in the use of given fuels in various locations. To account for these concerns, resource utilization factors and resource impact factors are being investigated.

III.B.1 Resource Utilization Factors (RUF's).

Resource utilization factors (RUF's) are intended to account for the energy required to convert and transport raw energy from its source to the building line. For example, it takes three Btu's of energy at an electric generating plant to deliver one Btu of electricity to a building line; gas and oil, on the other hand, enter a building with only slightly less of a Btu content then they had when extracted from the ground.

Theoretically, RUF's can be computed for individual sites, but the practical application of this theory is, in reality, quite complex. Although the study is still in progress, DOE felt it would be desirable to reflect RUF adjustments for this ANPR. Therefore, national average RUF's were developed, again for the purposes of this ANPR only. The process involved using the equations in Chapter 12 of ASHRAE 90-75R and incorporating data from the following sources: American Gas Association, National Oil Fuel Institute, Council on Environmental Quality and DOE.

The RUF's thus calculated were:

Fuel	RUF
Oil	1.16
Gas	1.11
Electricity	3.04

These values were then used to develop regional combined RUF's, based on the fuel mixes of the original buildings in the Phase I data. The process is described in Section V.

The studies being conducted in this area concern not only how RUF's should be developed, but also whether or not they should be developed, especially with respect to their use in the energy performance standards for new buildings. Other ongoing studies relate to setting RUF's equal to or less than zero for renewable resources, in order to encourage their utilization in new building designs.

Finally, alternative methodologies for dealing with the energy required for fuel conversion and delivery are being studied. One such possibility involves utilizing marginal costs.

III.B.2 Resource Impact Factors (RIF's).

Where RUF's account for the technological (i.e., energy technology) costs of delivering fuel from the source to a building site, resource impact factors (RIF's) are intended to deal with the social costs of that delivery. The RIF concept is still embryonic; the studies are at present focusing on literature searches and preliminary numerical quantifications.

Health and enviromental considerations are being scrutinized, as well as the effects of government taxation and subsidies. The process is being carried out for each individual step in the energy conversion and delivery process. Here again, marginal costs are being explored as a possible alternative to the development of RIF's.

III.C Design Energy Budgets Selection.

Under the current developmental program, the design energy budgets will be selected after a review of all the data, analyses and results of the statistical analyses, and the three major impact analyses (e.g., economic, environmental and regulatory).

It is anticipated that individual design energy budgets will be selected for different classifications of buildings and for different geographic (e.g., climatic) regions. It is also anticipated that these design energy budgets will, in some manner, reflect source-energy considerations, as well as the sociological factors associated with the use of specific energy sources in given locations. At present, the RUF and RIF concepts are being seriously considered as a means of introducing these nondesign considerations.

DOE will maintain a record of the criteria used and the selection process developed. These data will be used to revise the Standards in the future.

III.D Evaluation Techniques.

An important element of a performance standard is the test methodology by which compliance with the standard is to be measured. In recognition of this fact, DOE has been and is currently sponsoring a number of research and development efforts aimed at producing meaningful evaluation techniques for building designs to determine if those designs are in compliance with the energy performance standards for new buildings.

III.D.1 DOE-1.

In 1976, the Energy Research and Development Administration (now part of DOE) initiated a program in conjunction with the State of California to develop a computer program for large-building energy analysis. Now called DOE-1 (formerly, CAL-ERDA), the program is in the public domain and is commercially available through a number of computer service networks.

The work on DOE-1 is continuing. It is being improved to expand its ability to model different aspects of design energy consumption. One specific effort, being conducted for the Lawrence Berkeley Laboratory, is to simplify the input requirements to the program and enhance its ability to model passive energy usage. Also, workshops relative to the program are being planned for design professionals. These workshops are currently anticipated for fiscal years 1979 and 1980.

III.D.2 Techniques Survey.

NBS is working with DOE on a survey of existing computer programs and manual techniques for analyzing design energy consumption. The result will be a comprehensive catalog of such methods, along with a description of their specific analytic approaches, where such information is available. Also, ASHRAE is beginning a complementary effort by developing a standard for documenting such computer programs.

III.D.3 ASHRAE Bibliography.

DOE is currently negotiating with ASHRAE to update its "Bibliography on Available Computer Programs in the General Area of Heating, Refrigerating, Air-Conditioning and Ventilating," ASHRAE, 1975.

III.D.4 Comparison Study.

Finally, a comparison is being conducted of four programs: AXCESS, DOE-1, CERL-BLAST and the ASHRAE Energy Calculation Committee Simplified Method. The objective of this preliminary study is to determine if the numbers produced by AXCESS for Phases I and II were reasonable relative to other calculation techniques using identical input wherever possible.

Four buildings were selected from the 168 buildings used in the technical redesign. The building types were: mercantile, office, hospital, warehouse.

The results of this study will determine the need for follow-on work which may include the expansion to more building types. The study began in August of 1978 and is scheduled for completion by mid-November 1978.

III.E Updating Procedures Analysis.

The Standards will be reviewed on a periodic basis, and updated and improved as deemed necessary. As currently envisioned, the updating process will take into account: energy performance; national goals and objectives, including balance of payments and imports of oil; energy and construction technologies, including renewable resources such as active and passive solar; environmental factors; estimated design vs. actual operational building energy consumption; consumer education and understanding of building energy related issues; micro- and macro-economic benefits costs and the state of the art in the building community. DOE believes that, with improvements and advances in the factors indicated, more stringent design energy budgets will not only be possible, but advisable.

In support and anticipation of this updating activity, DOE will continue developing and improving the data base on hand, as well as the research into life-cycle costing, micro- and macro-economics and pertinent environmental issues.

The updating cycle should be sufficiently frequent to effect the needed or desired conservation of nonrenewable energy resources; yet sufficiently infrequent as to not place an undue burden on those affected by the Standards. The first evaluation and update is therefore anticipated not to occur until 1982.

IV. ISSUES RELATED TO DEVELOPMENT PROGRAM.

IV.A Alternative Approaches to Development Program.

There are a number of approaches which could be followed in developing the energy performance standards for new buildings.

One alternative might be to use a purely statistical approach; i.e., to statistically analyze the designs of actual buildings and then select design energy budget levels which are more efficient than the average of those real buildings but still within the capacity of designers and constructors to design and build with minimal changes in existing techniques. A drawback to this approach is demonstrated by the discussions in Section V; i.e., this was the only approach available for this ANPR, and the resulting decisions were judgmental and subjective.

A second alternative might be to follow a purely economics oriented approach. This approach might build on life-cycle costing of buildings, with the design energy budgets set at a point where the higher mortgage payments and property taxes resulting from the theoretically more expensive first-costs are approximately offset by the lower utility bills. A problem with this approach is that mortgage rates are continually fluctuating, and life-cycle costing of buildings can be a complex procedure, sometimes depending on uncontrollable and unpredictable circumstances.

A more complex concept would be to use national life-cycle costing. This would require correcting for the unequal tax treatment of homeowners vs. corporations, and the effects of energy price regulations that do not provide consumers with adequate incentives to invest in conservation.

A third alternative would be to combine the statistical and economic concepts. This is the approach which DOE currently anticipates following, and it is described in Section III. Briefly, the approach involves developing a statistical data base centered around the design energy consumptions of actual buildings; incorporating considerations of economic costs and benefits, environmental factors and regulatory interactions; and evolving design energy budgets which reflect the appropriate levels of energy conservation within the confines of technology, economics and the environment.

There are also alternatives within alternatives, as might be expected with programs such as this. For example, the introduction of the source-energy related concept (i.e., the RUF's) with respect to the design energy budgets produces a number of possibilities.

One involves utilizing national average RUF's and developing regional average RUF's, using the actual fuel mixes demonstrated by real buildings. This was the approach used by DOE for the purposes of this ANPR. One drawback is that this approach inherently assumes that the fuel mixes demonstrated by those buildings will continue to be the fuel mixes demonstrated by future buildings. Also, at the time the data were collected, there may have been a fuel-related abnormality, such as a moratorium on the use of gas, in a given region. This would bias the regional RUF's developed on the basis of those actual fuel mixes.

To get around these two problems, a second approach might be to develop RUF's using the national averages, as was done for this document, but base the calculations on typical fuel choices instead of real ones; e.g., all-electric buildings, buildings with gas for air and water heating and electricity for air-conditioning, etc. The RUF's would automatically be regionalized by the fact that different fuel choices are typical for different regions of the country. For instance, in some areas, all-electric homes are predominant; in other areas, they are in the minority. Also, typical fuel choices imply prototypical building designs, and separate designs would be needed for each of the different building classifications.

Some of the problems inherent in this second alternative are: (1) the requirement to develop prototypical buildings and the problems surrounding such development; (2) the questionable statistical validity of selecting prototypical designs from available survey data; (3) the reality of being able to develop typical fuel mixes for complex buildings such as offices, hotels and hospitals; and (4) the adjoining problem of the builder being able to match his precise fuel mix with any of those selected for the Standards.

There is a third approach which would avoid the fuel mix problem altogether. It involves selecting a single fuel as the most critical to the nation (e.g., oil) and developing the Standards around the conservation of that fuel. The Standards would automatically conserve other fuels to the same extent. Even a single fuel mix could be used, such as oil heating and electric air conditioning. This particular combination is almost universally available, even in rural areas. One problem with this approach is that deciding on the most critical fuel could prove difficult if not impossible, especially considering that different fuels may be critical in different parts of the country, and that the fuel which is most critical may change in time.

As previously stated, these are only a few of the permutations and combinations available to DOE for the development and selection of design energy budgets for the energy performance standards for new buildings. Comments, questions or suggestions from the public, on these and any other alternative approaches, are invited.

IV.B Analytical Programs Issues.

IV.B.1 Statistical Analyses.

IV.B.1.a Phase I and Phase II Building Design Data.

There are a number of issues involving the data base and subsequent statistical evaluations.

First, when the data base was being compiled, the volume of potential information available made it impossible, within the time frame available for the statistical analyses, to include the entire new building population. Emphasis was therefore placed on those structures or building types which would represent the predominant construction volume over the next decade. The analyses are continuing and those building types that initially were not included are being examined. The issues directly related to this discussion are:

- Can the functions of those building types included in the data base be used to represent similar functions in building types not included in the original data base?
- Is it reasonable to assume that the design energy consumptions of multifunctional buildings can be dealt with

as simple additive composites of the design energy consumptions of the individual functions, or are there other effects which should be considered? (See the discussion on multiuse buildings in APPENDIX I.)

- If the construction of a building type, such as a coliseum, is of such small volume as to not contribute significantly to energy conservation, is it cost effective to require specific provisions for such building types?

Second, a few anomalies, which are currently being investigated, were discovered in the data base.

- Warehouses showed an unusually high level of design energy consumption, greater than professional judgment could immediately justify.
- Elementary schools apparently represented greater design energy consumption than secondary schools, which in turn were greater than colleges or universities.
- Multifamily low-rise residential structures appeared to behave in some ways like commercial high-rise structures and in other ways like single-family attached residential structures.

Next, the parametric data base was in a preliminary form when it was used for the design energy budget selection process for the preliminary format in APPENDIX I; it was in the process of being refined for greater statistical accuracy and representativeness. In addition, the original data base had not included energy considerations for domestic hot water. This energy factor is now being incorporated into the analyses.

The statistical analyses program is described in detail in APPENDIX II to this document. DOE is interested in responses to the procedures employed, and suggestions on improvements or alternatives to that procedure, not only for the initial promulgation of the Standards but also for subsequent revisions.

IV.B.1.b Climatic Zones.

At present, DOE does not foresee any problems with using the design temperature zones for mobile homes, which were taken from the HUD Mobile Home Construction and Safety Standards.

The climatic zones for all other building classifications, however, are being reexamined. The ones developed in the statistical analyses program are based only on temperature and are defined around the concepts of heating degree-days and cooling degree-days. The distributions for these two factors were obtained from the National Oceanographic and Atmospheric Administration, based on Test Reference Year (TRY) information for 37 Standard Metropolitan Statistical Areas (SMSA's).

The problems inherent in this procedure are: (1) the TRY's are considered only "typical," and weather variations away from these years can be substantial and different from one year to the next; (2) the weather for one SMSA may not be indicative of the weather in a neighboring SMSA in the same region; and (3) the use of temperature only as a single criterion for evaluating weather does not allow consideration for sun, wind and humidity effects on the weather.

In addition, only seven zones were defined in Phase I, and the spread of heating degree-days and cooling degree-days from zone to zone was different. This could present some discrepancies, not only between zones but also within zones where the spread is greater than it is in other. It is conceivable that more zones may be advisable, and that some method may be needed to base the definitions on more than just temperature.

IV.B.1.c Building Classifications.

As discussed in Section V, the building classification definitions are being reexamined. For instance, the buildings included in the "assembly" classification represent a great variation in design characteristics. Movie theater buildings and church buildings may be too dissimilar to permit their inclusion in the same building classification.

The supporting documentation also pinpointed overlaps in the "schools" classifications: middle schools, high schools, junior high schools, elementary schools and secondary schools were all originally considered, and individual schools in each varied with respect to the grades they included. The preliminary format lists only two school classifications, elementary and secondary, but the classifications which will ultimately be used in the proposed or final Standards are still in question.

It is also questionable whether enclosed shopping malls should be treated as very large stores, or large department stores should be in the same category as small "one-room" operations.

Similarly, differentiating between a hospital and a clinic, or a fast food restaurant and a full menu one, is not always clear cut.

It may also be necessary to reexamine the methodology used fo developing the classifications. They are ultimately based on definitions used in existing building codes. The intent was to employ terminology already familiar to builders and code officials. It is possible that a new system is needed for the Standards, one that deals with the energy related characteristics of a building, rather than its intended use. If so, how would builders and code officials reconcile their designs and their codes with these different definitions?

IV.B.1.d Process Energy.

In a number of building classifications, "process energy" plays an important role. Process energy is the energy required for the building's intended function; i.e., a restaurant uses energy for cooking and refrigeration, an industrial facility for manufacturing, etc.

DOE feels that the energy used for these purposes should not be considered in an energy efficiency evaluation of a building. Logically, then, process energy should also not be included in a similar evaluation of a building design.

This may not be easily practicable. Where is the line drawn between process energy requirements and nonprocess functions (space conditioning, domestic hot water heating, lights, etc.)? For example, is it possible to separate the hot water heating attributable to the process in a restaurant (dishwashers, for instance) and that attributable to the domestic uses? The problem is equally difficult in industrial buildings.

In addition, many facilities (both restaurants and industrial buildings) now follow the practice of using waste heat from process operations to heat their buildings or their water supplies, or even as input to still other processes. How can this be accounted for? For that matter, how can this be encouraged, since it does result in reduced nonrenewable energy usage?

Finally, can a precise definition of process energy be developed, one that would delineate its boundaries and would minimize or eliminate the problem of determining if an energy use is process oriented?

IV.B.2 Impact Analyses Issues.

IV.B.2.a Environmental and Economic Analyses.

The environmental and economic analyses are proceeding on the assumption that the technical redesigns of the Phase II program could be accepted as indicative of the trends that building designs would follow once the Standards are implemented.

Issues concerning or affecting the economic and environmental study programs are:

1. What data should be gathered and analyzed? How should these procedures be done?
2. What is the relationship between capital and operating cost as a function of heating fuel type, building systems, climate and fuel prices?
3. What are the sensitivities of fuel prices, interest rates, construction costs, and insurance costs?
4. What are the levels and types of energy conservation goals? (see discussion in Section III.A.2(1))
5. Should other determinants be included, such as operating profiles, uncertainty of interest rates, future fuel price predictions, and technological developments?
6. What, if any, is the relationship between regional variation in energy consumption and building costs or energy prices?

In summary, DOE is soliciting comments on the scope of the environmental study.

IV.B.2.b Energy Conservation and Renewable Resources Utilization.

Many of the issues with respect to these two topic areas are already touched upon in the discussions in Sections III.A.2.c, IV.A, and APPENDIX I. Such issues include:

1. How can energy conservation be achieved through the Standards? What level of conservation should be considered the goal of these first Standards?
2. How can the use of renewable resources be encouraged through the Standards? Again, what level of utilization should be considered desirable for these first Standards?

3. Are RUF's and RIF's a valid means of affecting energy utilization; i.e., will setting the RUF's and/or RIF's equal to or less than zero for renewable resources encourage the use of such resources?
4. What types of energy should be included in the definition of renewable resources? The State of California does not include wood, where other discussions on the topic do.
5. Should all renewable resources be treated equally?
6. How should hydroelectric power be treated?
7. How should the passive use of renewable resources be included in the evaluation techniques, knowing that most existing computer and hand calculation methods do not take these considerations into account?
8. What assumptions should be made regarding the relationship between design and actual building energy consumption? Should this relationship affect the level of the design energy budgets? If so, how?

Comments on these and related issues are invited.

IV.C Supplementary Studies: RUF's and RIF's.

The fundamental issues related to RUF's and RIF's are as follows:

1. Are RUF's and RIF's valid concepts? If so, how should they be derived? Can they be derived? Should they be regional? Who should derive them?
2. Should RUF's and/or RIF's be used in the Standards? If so, how?
3. Should RUF's and/or RIF's be set equal to or less than zero for renewable energy sources?
4. Should the RUF's or RIF's for hydroelectric power be lower than those for electricity generated by plants using gas or oil as their primary fuel? The same question applies to nuclear energy, except that the RIF's may be higher because of the current costs of designing, developing and constructing nuclear power stations.
5. Are national RUF's sufficiently valid (assuming RUF's themselves are valid) for use in the Standards if regional RUF's cannot be calculated before the proposed or final Standard are promulgated?
6. What fuels should be assigned RUF's or RIF's? Is a resource such as wood considered a renewable resource eligible for a RUF or RIF of zero or less? (The State of California says "no".)
7. Are Btu's a good measure of the value to society of consuming an energy resource?

8. Should RUF's be based on new energy supplies or on the existing mix? If a new mix should be used, how can this be done? What mix should be used? What year should be the base year for the data?

9. Is marginal costing of fuels a viable alternative approach to accounting for conversion and delivery losses, as well as sociological factors?

IV.D Design Energy Budgets Selection.

IV.D.1 The Preliminary Ranges.

APPENDIX I of this document contains preliminary design energy budgets for a number of building classifications. As explained in Section V, these design energy budgets are based on the statistical analyses only, with no input from the economic studies, environmental impact analyses, or the regulatory analysis program, none of which had progressed sufficiently to contribute to the decision process.

It must be emphasized that: (a) this selection process should not be viewed as the only one which will be considered for the proposed and final design energy budgets; and (b) the entire selection exercise was done at this time solely for the purpose of providing the public with an idea of the concepts which may be included in the Standards. The preliminary design energy budgets displayed should be viewed only as indications of the relative ranges of values which might be possible.

There are a number of factors which support this position: (1) The original baseline data contained several anomalies, which are currently being investigated; (2) the energy for domestic hot water was not included in the baseline data; (3) the parametric model used as the baseline for the selection was in the process of being refined in order to provide statistically more accurate information; (4) both the building classifications and the climatic zones were being examined for possible further refinement; (5) the preliminary design energy budgets were limited to consideration of only the 20% to 50% range of the parametric baseline and the 80% level of the technical redesign; and (6) neither the economic nor the environmental analyses had progressed sufficiently to contribute to the selection decisions.

DOE is aware that the full ranges of design energy consumption for the original, parametric and redesign data bases must remain in consideration, because of the possible influences of the economic benefit/cost studies. Conceivably, it might prove financially costly to set the design energy budgets below the 50% level of the baseline, although

early indications predict that considerable energy savings can be effected with little or no increase in first costs. In addition, life-cycle cost evaluations could strongly favor more stringent design energy budgets, and such considerations could include both individual structures and the national economy.

IV.D.2 The Parametric Model.

The concept of using the parametric model as the baseline for the selection process is also in question. This model, as explained in APPENDIX II, took the 1661 nonresidential buildings of the Phase I data base and used them as a basis to project a design energy consumption distribution for the total new construction universe for these building classifications. Statistically, this appears to be an acceptable technique. DOE is interested in the public's reaction.

IV.D.3 Climate and Design Energy Consumption Ranges.

It should be noted that the 20% to 50% baseline ranges shown in the matrices in Section V.B.4.a(1) were selected from that part of each climatic zone which presented the worst-case weather conditions with which the designer had to deal. This was the area of each climatic zone which had the highest combination of heating degree-days and cooling degree-days. The implication of this decision was that the 20% or 30% levels shown in Section V.B.4.a(1) in some cases exceeded the design energy consumption levels of the average (50%) of the original survey of existing designs presented in the Phase I reports.

IV.D.4 The Single-Family Residences Methodology.

DOE is also interested in comments on the issue of the development of design energy budgets for single-family residential construction. Section V and APPENDIX I detail the preliminary procedure selected for this document.

The reasoning used was based on the nature of the construction sector concerned with residential buildings, a sector in which design teams with extensive technical expertise do not typically exist on individual projects. Because of this, the methodology proposed for commercial buildings was thought to be inappropriate and complex for single-family residential structures.

DOE went back to the prototype design effort, which used the HUD Minimum Property Standards for One and Two Family Dwellings (HUD/MPS) and the NAHB Thermal Performance Guidelines for One and Two Family Dwellings (NAHB/TPG), and examined these two guidelines and their relationship to the baseline data. The examination revealed that the NAHB/TPG apparently accounted for economic and fuel considerations that the HUD/MPS did not.

DOE then undertook to determine if a method could be devised which would utilize the NAHB/TPG as a basis for computing design energy budgets for single-family residential structures, a method which would produce acceptable energy conservation levels and would take into account source energy, social factors and other factors similar to those considered for commercial structures. The result of this investigation was the floating design energy budget methodology presented in APPENDIX I. With this

system, the builder in essence develops his own design energy budget by going to the NAHB/TPG, referring to the appropriate index, performing the necessary calculations, and then referring to the methodology in the preliminary format and converting to MBtu/sq. ft./yr.

By way of explanation, the NAHB/TPG is built around an index which: (1) expresses climatic severity in heating degree-days and cooling hours, indicating how much energy is theoretically expected to be used for heating and cooling; and (2) considers both the value of improved thermal integrity, expressed in energy savings, and the incremental costs of that increased integrity. In other words, the NAHB/TPG balances the costs of improvements against the value of the expected energy savings resulting from increased levels of insulation and glazing; i.e., a cost effectiveness procedure.

The NAHB/TPG user obtains a value from the index, refers to a graph on insulation, reads the levels of insulation that the shell components (walls, floors, ceilings) of his structure should have for his particular geographic location and fuel prices, and then refers to the information on windows and repeats the process. Thus, the amount of insulation and the type of windows installed depend on:

- local existing energy costs and expected increases in those costs (recommended by the NAHB/TPG to be obtained from the local utility);
- local climatic conditions, expressed in heating degree-days and cooling hours;
- local construction costs (incurred by the user); and
- assumptions about the appropriate discount rate and the payback period, assumed to be seven years.

Once the user has obtained the pertinent information regarding his structure in his geographic location, he then consults the preliminary format and performs the conversion to MBtu/sq. ft./yr. (described in APPENDIX I), and arrives at the design energy budget to which his structure must conform. He is then essentially "free" to redesign the structure, as long as a reevaluation of that design results in a design energy consumption that is not greater than the design energy budget he himself calculated.

It should be noted that the NAHB/TPG methodology is considered an algorithm, one that can be changed, depending on the results of the economic and environmental analyses, and on public comments regarding the procedure and several important facts and issues.

First, the NAHB/TPG addresses the thermal integrity of only the building shell components. It does not deal with the building as a system and it does not consider components other than those of the shell. This means that: (a) buildings could be designed in accordance with the NAHB/TPG and still use more energy than current buildings, such as a structure with a north-facing wall consisting entirely of glass; (b) energy savings due to the use of more efficient equipment, renewable resources, lower hot water temperatures, energy-conscious siting of the structure, color and other design options are not allowed for; (c) some passive solar designs may not be acceptable under the NAHB/TPG; and (d) increasing thermal resistance does not always result in energy conservation, as exemplified by the fact that increasing floor insulation in some southern locations increases, not decreases, energy use.

In addition, if energy prices are low and construction costs are high, or the climate is mild, the NAHB/TPG may not result in any energy savings.

Preliminary analyses indicate that, at the national level, the NAHB/TPG would only result in homes as energy efficient as the revised HUD/MPS. Preliminary analyses also indicate that the NAHB/TPG generally results in only a negligible change in current practice for walls, from R11 to R13; whereas, ceiling R factors go from R19 to R26, and floors from no insulation to R13. Finally, window materials and designs do not appear to change, but glass almost universally changes to double glazing.

Other issues related to the NAHB/TPG are as follows:

(1) What prices should be used in calculating the required building thermal integrity: average local prices, costs of new local energy supplies, or average costs of new national energy supplies?

(2) What is the appropriate discount rate?

(3) Is the use of the seven-year payback period effective, or would the life of the building or the mortgage be more appropriate (30 to 50 years)?

(4) How adequately do energy prices measure the value of energy use to the United States?

IV.D.5 Multifamily Low-Rise Residential Structures

The next area of specific concern to DOE involves the anomalies presented by multifamily low-rise residential structures. It is difficult to determine whether these buildings should be treated similar to single-family attached residential structures or high-rise structures (with only four floors or less). The anomaly occurs, evidentally, because some buildings are completely enclosed (thus resembling high-rise structures with only four floors), while others have open entrances and stairwells, (thus resembling single-family attached residences). It should also be noted that these structures were included in the residential group for the data collection and analyses of Phase I, but were then included in the commercial group for the technical redesigns of Phase II. Comments on this issue are invited.

IV.D.6 Design vs. Actual Building Energy Consumption.

DOE is also interested in comments relative to the relationship between estimated design energy consumption and actual energy consumption once the building is constructed and occupied. Estimates of projected energy use based on a building's design are considered to be good indicators of actual energy consumption; however, they may prove inaccurate. Several factors, beyond the designer's control, could contribute to this discrepancy: actual construction vs. design intentions; actual hours of operation, as compared to assumed operating profile; actual efficiency of operation vs. assumed efficiency; actual weather conditions compared to the historical conditions assumed for the design analysis; and the limitations of modeling techniques.

DOE feels that energy conserving features in the design should increase the potential for energy conservation during actual operation. In addition, carefully considered and designed control systems should enable a building to operate more efficiently and with less energy.

DOE will conduct a study of the effective relationship between design and actual energy consumption. In the meantime, DOE would appreciate comments on: the methodology for the study; the building types, operating characteristics and geographical locations that might be included; and the issue of assessing the economic and environmental impacts involved when the relationship between design and actual energy consumption is not definitive.

IV.D.7 Alternative Assumptions.

The last issue concerns the concept that the design energy budgets be based on actual buildings and on separate fuels. Alternative approaches are possible, and a number of them are discussed in Section IV.A.

IV.D.8 Conclusion.

The preceding discussions cover those issues of which DOE is aware with respect to the preliminary design energy budgets. DOE is seeking the public's comments, input and suggestions, not only with respect to the issues described, but also with respect to any other issues which the public feels are germane to this area of concern.

IV.E Evaluation Techniques Analyses.

A recent edition of the "Energy User News" (Vol. 3, No. 32, August 7, 1978) contained an article on energy-use simulators for buildings. The article explained many of the difficulties encountered by DOE in attempting to choose a model for calculating the design energy consumptions of the Phase I buildings. Many programs are still in development, while others are untested. Some only respond to one type of fuel, others include preset values for equipment capacities, and most vary with respect to one another in the area of building zone definitions and temperature change measurement techniques.

In addition, some programs are proprietary and others are in the public domain.

DOE is interested in comments and suggestions relative to these and other issues, as follows.

Should specific test methods be included in the Standards, or should the methodology recommended be more general? If specific, what test methods should be included? If general, how broad should they be?

What level of accuracy should be required of any method recommended? As a follow-on, how accurate should the method be with respect to actual energy consumption demonstrated by the building?

If a proprietary method is included, to what extent can that method's properties and operation be described without violating the laws regarding proprietary information?

What criteria should be used to define an acceptable evaluation technique? Should the Federal Government develop those criteria, or should this be done by professional architectural/engineering groups?

Finally, could the need for specific test methods in the Standards be satisfied by referring to "any recognized calculation procedure?" How would the "recognition" of a technique be determined or defined?

IV.F Updating Procedures Analysis.

As stated in Sections II.A, III.E and APPENDIX I, the Standards are to be reviewed and updated. The issues related to this action are delineated as follows:

1. How often should the review and update be initiated?
2. On what bases should the update decision be made, after the results of the review are known?
3. What supporting programs, if any, should be conducted with each update? Should the same programs be used for all updates, or should the review process include an analysis of supporting programs required?
4. How much lead time should be allowed for the review, prior to a possible update?
5. What precisely should be reviewed? The design energy performance of current practice? The actual energy conservation resulting from enforcement of the Standards? Changes in technology which might make more stringent Standards plausible, even though the existing Standards are adequate with respect to energy conservation?
6. Should technical assistance be provided to States to assist in the updates?

In short, the issues related to updates are essentially the same as those related to the initial development and promulgation of the Standards. The public's comments are invited.

V. THE PRELIMINARY STANDARDS: DISCUSSION

V.A General Comments.

APPENDIX I of this document contains a Preliminary Standards Format. This format was developed for and included in this ANPR for the purpose of providing the public with substantive information on DOE's current thinking regarding the possible elements and structure of the Standards to be promulgated in 1979. The format is based on only one of several possible approaches which could be used in developing the Standards (see Section IV.A).

The following discussions are intended to explain the format, where explanation is considered necessary, so that the public can more effectively evaluate and comment on its contents.

There are several comments which bear emphasizing and repeating. First, the Standards will not include the background data and supporting information related to their development. These will be reserved for the Environmental Impact Statement, Economic Impact Statement, Regulatory Analysis, Phase I and II reports, and other supporting documents, as described in Section VI. These documents will be included in an official public docket and will be made available to the public (see Section VI).

Second, because this is an Advance Notice of Proposed Rulemaking, the format included should be considered only preliminary. For example, there are preliminary design energy budgets displayed in some of the matrices for certain building classifications. As explained in Section IV, these numbers are only indications of the possible ranges that are under investigation; they are not to be taken as the proposed values. They are based only on the statistical analyses, were selected from a consideration of only a limited portion of the parametric baseline (the 20% to 50% range) and the 80% level of the technical redesign, and are judgmental and subjective. In addition, the environmental and economic studies have not been completed, and the results of these two studies alone could and are expected to contribute to the selection of the proposed and final design energy budgets.

It should also be noted that the methodology used in the developmental program is not considered the only one acceptable. Section IV.C includes discussions on the problems encountered with that methodology, as well as possible alternatives for the proposed and final Standards.

V.B. Specific Comments.

V.B.1 Definitions.

The definitions included in the preliminary format are, for the most part, self-explanatory. However, it should be noted that the term "nonresidential building" does not appear. The term "commercial building" is used and includes no residential structures. (In the data collection and analyses of Phase I, multifamily high-rise residential structures were included in the nonresidential buildings group; in the technical redesigns of Phase II, both multifamily high-rise and multifamily low-rise residential structures were included in the nonresidential group.)

V.B.2 Building Classifications.

The building classifications displayed in the preliminary format are not precisely the same as those indicated in the Phase I data collection effort. They are more refined. The refining and redefinition process is still going on.

The bases for this ongoing effort are: (1) known anomalies resulting from the variety of buildings being included in a single classification, as in the assembly buildings and colleges or universities categories; (2) emerging implications that size may affect the design energy consumption in certain building classifications, such as mobile homes and possibly single-family structures; (3) overlapping classifications, such as grade overlaps in elementary vs. secondary schools, hospitals vs. clinics, fast food restaurants vs. full menu restaurants; and (4) difficulties of the present classification system to deal with certain types of buildings, such as enclosed shopping malls.

It should be recognized that, if the building classifications are amended or repartitioned, the data base associated with the current classifications will also require repartitioning.

V.B.3 Climatic Zones and Design Temperature Zones.

As discussed in Section III, there are two zone configurations used in the preliminary format. The first, depicted in Figure 1, is applicable to all building classifications except mobile homes. The second, shown in Figure 2, is applicable only to mobile homes. This second zone system was utilized for mobile homes because those structures could conceivably be built anywhere in the country for use anywhere else in the country. The specific zone system was chosen because it is used by HUD in its Mobile Home Construction and Safety Standards.

The method of defining the climatic zones is also in question, a the heating degree-days and cooling degree-days breakdown for each zo which differs from zone to zone. Also, the use of heating degree-days cooling degree-days as the basis for measurement is not the only met available, and other methods, or a modification of the existing one, co produce different climatic zones.

A redefinition of the climatic zones would also necessit repartitioning the data base.

V.B.4 Design Energy Budgets.

The overall concept for the preliminary Standards format was select design energy consumption levels which could be technologic achievable, would be acceptable economically and environmentally, would accomplish a desirable level of conservation of nonrenewable ene and increase the use of renewable resources. Once these levels w selected, they would be viewed as the "unadjusted design energy budge i.e., the design energy budgets at the building line. Then, in order to m the design energy budgets source-energy related, each of these unadju design energy budgets would be multiplied by a RUF and a RIF (discusse Section III.B). The result would theoretically be a source-based de energy budget based in part on the design energy consumptions b achieved in buildings, in part on the economic and environmental fac pertinent to both energy and construction, and in part on the source-en and sociological considerations involved in supplying that energy.

Again, this entire approach is but one of many which could be used to develop the design energy budgets. Other approaches are discussed in Section IV.A.

The three steps followed were:

(a) Selection of the preliminary unadjusted design energy budgets.

(b) Selection of the RUF's and RIF's.

(c) Calculation of the preliminary design energy budgets.

V.B.4.a Selection of the Preliminary Unadjusted Design Energy Budgets.

In general, this process dealt with commercial and multifamily residential buildings first, then with single-family residential structures and finally with mobile homes. Within each of these groups, the procedure was first to examine the data available, then develop guidelines for the selection process, and finally reexamine the data using those guidelines and select the preliminary unadjusted design energy budgets. It should be noted that the only data available for this ANPR were from the statistical analyses, which were in themselves still preliminary. Because of this and because of the absence of economic and environmental information, the guidelines were necessarily judgmental and subjective. Therefore, the selections were considered to be only estimations, and should not be taken as the proposed or final design energy budgets to be promulgated in 1979.

(1) Nonresidential buildings.

After examining the statistical data available on all of the buildings included in this category, the following guidelines were decided upon:

1. Begin with small office buildings, since considerable information was already available on them, the spread of the 20% to 50% range of the baseline (see No.'s 4 and 5) was small, and the analysis appeared straightforward.
2. Use the same strategy in evaluating all commercial and multifamily residential building classifications, but deal with each classification individually.
3. Accept and use the seven climatic zones developed in Phase I.
4. Accept the parametric model of Phase II as a valid representation of the total new construction universe for commercial buildings for the time period involved. (See Section III.A and APPENDIX II for a discussion of the parametric model.)
5. Use the parametric model as the baseline in the preliminary design energy budget selection process.
6. Use the worst-case conditions in each zone as the design energy consumption levels of the parametric baseline, in order not to penalize building designs having to consider those conditions.
7. Consider only the 20% to 50% range of this baseline, because: (a) anything below the 20% level might mean an undue burden on the construction industry; and (b) it was felt that the unadjusted design energy budget should reflect a level that was at least as good as (i.e., as low as) the average (50%) design energy consumption level for the designs of buildings already being constructed.

8. Select the level of the preliminary unadjusted design energy budget by:
   a. Examining the spread between the upper end (i.e., the 50% level) and the lower end (i.e., the 20% level) of the baseline;
   b. Examining the 80% level of the technical redesigns (described in Section III.A and APPENDIX II) with respect to the baseline 20% to 50% range; and
   c. Examining the ASHRAE 90-75R and the HUD/MPS simulations, if applicable, with respect to the 20% to 50% range of the baseline.

The decision to start with small office buildings was based partly on the awareness that several years ago the General Services Administration (GSA) had established a design energy level for new Federal office buildings and that there was considerable information available on this program. When the statistical data on small office buildings were reexamined after the guidelines were developed, it was revealed that, for most climatic zones, the 30% level of the baseline closely approximated the level set by GSA. This set the stage for examining the 30% level of the baseline for other building classifications in the commercial and multifamily residential group.

The parametric model was used as the baseline, rather than the original data base of Phase I, because the parametric model was developed specifically to represent the total construction universe for new commercial buildings; whereas, the Phase I data represented only the actual buildings included in the sample.

Finally, the technical redesign was thought to represent what building designs could be made to do from an energy conservation standpoint. Therefore, a comparison of what the building designs actually did to what they could do was thought to be appropriate as a guide for this preliminary selection process. However, it should be noted that, at the time of the selection exercise, only the 80% level of the technical redesign was available and therefore only this level was included in the guidelines. The entire range of the technical redesign will be considered in any future design energy budget selection efforts.

The following paragraphs and matrices, presented in alphabetical order, provide the preliminary selection decisions and the data points considered. Note that the matrices also show the lowest levels of the technical redesigns. This information is included to provide the public with a better picture of the ranges of values which are being considered for the proposed and final Standards.

(a) Assembly Buildings: Although data were available, this classification was not evaluated at this time because it was decided that the variations in operating profiles and design energy consumptions of the many different types of buildings included in this classification required further examination for possible repartitioning.

DESIGN ENERGY CONSUMPTION (MBTU/SQ. FT./YR)	CLIMATIC ZONE						
	1	2	3	4	5	6	7
20% BASELINE	101	73	61	50	28	45	50
30% BASELINE	115	87	76	64	43	55	64
50% BASELINE	138	111	99	87	66	83	87
80% TECHNICAL REDESIGN	94	76	68	59	45	57	59
LOWEST TECHNICAL REDESIGN	44	32	36	53	*	16	*

* = Not available.

At the time of selection of the reference figures in APPENDIX I, §435.8(b)(1), the only information available was the 20% to 50% levels of the parametric baseline and the 80% level of the technical redesign. Also shown in the previous matrix is the maximum performance level of the technical redesign. The proposed and final design energy budgets will consider the full range shown and will be based on both the statistical and impact analyses, as described in Section III. Note that the baseline data and technical redesign data shown above are not strictly comparable. The baseline data have been adjusted to reflect the most severe climate conditions in each climatic zone; the technical redesign data have not. (See Section IV.D.3.)

(b) Clinics: The 80% level of the technical redesign was chosen as the preliminary unadjusted design energy budget. The level chosen is higher than the 30% level of the baseline, indicating that there may be less room for improvement in this classification than in some others. This is supported by the tight clustering of the 20% to 50% range of the baseline.

DESIGN ENERGY CONSUMPTION (MBTU/SQ. FT./YR)	CLIMATIC ZONE						
	1	2	3	4	5	6	7
20% BASELINE	89	73	65	58	46	50	58
30% BASELINE	97	80	73	65	53	57	65
50% BASELINE	109	93	85	68	66	70	78
80% TECHNICAL REDESIGN	98	83	76	70	59	63	70
LOWEST TECHNICAL REDESIGN	30	56	37	48	19	*	*

* = Not available.

At the time of selection of the reference figures in APPENDIX I, § 435.8(b)(2), the only information available was the 20% to 50% levels of the parametric baseline and the 80% level of the technical redesign. Also shown in the previous matrix is the maximum performance level of the technical redesign. The proposed and final design energy budgets will consider the full range shown and will be based on both the statistical and impact analyses, as described in Section III. Note that the baseline data and technical redesign data shown above are not strictly comparable. The baseline data have been adjusted to reflect the most severe climate conditions in each climatit zone; the technical redesign data have not. (See Section IV.D.3.)

(c) Colleges or universities: The 30% level of the baseline was selected as the preliminary unadjusted design energy budget. This level would encourage lower life-cycle costs and reduce the tax dollar loads for publicly supported colleges and universities. Again, the cluster of the 20% to 50% range of the baseline is relatively tight, indicating that the 30% level would not be difficult to attain. Also, 30% of the new buildings constructed in this category should already be designed to this level.

DESIGN ENERGY CONSUMPTION (MBTU/SQ. FT./YR)	CLIMATIC ZONE						
	1	2	3	4	5	6	7
20% BASELINE	55	52	54	55	51	74	55
30% BASELINE	64	62	63	65	60	79	65
50% BASELINE	80	78	79	80	76	99	80
80% TECHNICAL REDESIGN	59	58	59	59	56	73	59
LOWEST TECHNICAL REDESIGN	NOT AVAILABLE						

At the time of selection of the reference figures in APPENDIX I, §435.8(b)(3), the only information available was the 20% to 50% levels of the parametric baseline and the 80% level of the technical redesign. Also shown in the previous matrix is the maximum performance level of the technical redesign. The proposed and final design energy budgets will consider the full range shown and will be based on both the statistical and impact analyses, as described in Section III. Note that the baseline data and technical redesign data shown above are not strictly comparable. The baseline data have been adjusted to reflect the most severe climate conditions in each climatic zone; the technical redesign data have not. (See Section IV.D.3.)

(d) Hospitals: The 30% level of the baseline was selected as the preliminary unadjusted design energy budget. There appears to be considerable room for improvement in the designs for this building category, as indicated by both the wide spread in the baseline 20% to 50% range and the position of the 80% level of the technical redesigns relative to the baseline. In all but one zone, the latter falls below the 20% level of the baseline.

DESIGN ENERGY CONSUMPTION (MBTU/SQ. FT./YR)	CLIMATIC ZONE						
	1	2	3	4	5	6	7
20% BASELINE	109	120	131	142	142	207	142
30% BASELINE	138	150	160	171	171	225	171
50% BASELINE	186	197	208	219	219	284	219
80% TECHNICAL REDESIGN	111	117	124	130	130	169	130
LOWEST TECHNICAL REDESIGN	*	*	85	53	*	72	*

* - Not available.

At the time of selection of the reference figures in APPENDIX I, §435.8(b)(4), the only information available was the 20% to 50% levels of the parametric baseline and the 80% level of the technical redesign. Also shown in the previous matrix is the maximum performance level of the technical redesign. The proposed and final design energy budgets will consider the full range shown and will be based on both the statistical and impact analyses, as described in Section III. Note that the baseline data and technical redesign data shown above are not strictly comparable. The baseline data have been adjusted to reflect the most severe climate conditions in each climatic zone; the technical redesign data have not. (See Section IV.D.3.)

(e) Hotels or motels: The 80% level of the technical redesign was selected as the preliminary unadjusted design energy budget. Based on the tight clustering of the 20% to 50% range of the baseline, and on the fact that the 80% level of the technical redesign is in all cases higher than the 30% level of the baseline, there appears to be less room for improvement in the designs for this building category than in some others.

DESIGN ENERGY CONSUMPTION (MBTU/SQ. FT./YR)	CLIMATIC ZONE						
	1	2	3	4	5	6	7
20% BASELINE	82	71	66	62	53	60	62
30% BASELINE	94	83	79	74	63	72	7-
50% BASELINE	115	104	99	94	85	93	9-
80% TECHNICAL REDESIGN	96	87	83	79	71	78	79
LOWEST TECHNICAL REDESIGN	*	49	42	*	*	35	*

* - Not available.

At the time of selection of the reference figures in APPENDIX I, § 435.8(b)(5), the only information available was the 20% to 50% levels of the parametric baseline and the 80% level of the technical redesign. Also shown in the previous matrix is the maximum performance level of the technical redesign. The proposed and final design energy budgets will consider the full range shown and will be based on both the statistical and impact analyses, as described in Section III. Note that the baseline data and technical redesign data shown above are not strictly comparable. The baseline data have been adjusted to reflect the most severe climate conditions in each climatic zone; the technical redesign data have not. (See Section IV.D.3.)

(f) Industrial Buildings: This classification was not evaluated at this time because of the complex interrelationship between process and nonprocess energy and because insufficient data had been obtained to formulate design energy consumption distributions or conduct any of the redesign programs.

(SPACE RESERVED)

DESIGN ENERGY CONSUMPTION	CLIMATIC ZONE						
	1	2	3	4	5	6	7
20% BASELINE							
30% BASELINE							
50% BASELINE							
80% TECHNICAL REDESIGN							
LOWEST TECHNICAL REDESIGN							

At the time of selection of the reference figures in APPENDIX I, § 435.8(b)(6), the only information available was the 20% to 50% levels of the parametric baseline and the 80% level of the technical redesign. Also shown in the previous matrix is the maximum performance level of the technical redesign. The proposed and final design energy budgets will consider the full range shown and will be based on both the statistical and impact analyses, as described in Section III. Note that the baseline data and technical redesign data shown above are not strictly comparable. The baseline data have been adjusted to reflect the most severe climate conditions in each climatic zone; the technical redesign data have not. (See Section IV.D.3.)

(g) Mercantile Buildings: The 30% level of the baseline was selected as the preliminary unadjusted design energy budget. This should encourage desirable energy conservation without being as restrictive as the 80% level of the technical redesigns, which fell below the 20% level of the baseline. Also, 30% of the new buildings constructed in this category should already be designed to this level.

DESIGN ENERGY CONSUMPTION (MBTU/SQ. FT./YR)	CLIMATIC ZONE						
	1	2	3	4	5	6	7
20% BASELINE	87	75	71	67	58	68	67
30% BASELINE	96	85	81	76	67	78	76
50% BASELINE	112	101	97	92	83	94	92
80% TECHNICAL REDESIGN	78	70	67	64	56	65	64
LOWEST TECHNICAL REDESIGN	*	50	39	33	*	38	*

* - Not available.

At the time of selection of the reference figures in APPENDIX I, § 435.8(b)(7), the only information available was the 20% to 50% levels of the parametric baseline and the 80% level of the technical redesign. Also shown in the previous matrix is the maximum performance level of the technical redesign. The proposed and final design energy budgets will consider the full range shown and will be based on both the statistical and impact analyses, as described in Section III. Note that the baseline data and technical redesign data shown above are not strictly comparable. The baseline data have been adjusted to reflect the most severe climate conditions in each climatic zone; the technical redesign data have not. (See Section IV.D.3.)

(h) Multifamily High-Rise Residential Buildings: The 80% level of the technical redesign was chosen as the preliminary unadjusted design energy budget. The reasons were the same as those expressed for hotels.

DESIGN ENERGY CONSUMPTION (MBTU/SQ. FT./YR)	CLIMATIC ZONE						
	1	2	3	4	5	6	7
20% BASELINE	40	36	35	33	30	35	33
30% BASELINE	48	44	43	41	38	43	41
50% BASELINE	62	58	56	55	51	56	55
80% TECHNICAL REDESIGN	56	52	50	49	46	50	49
LOWEST TECHNICAL REDESIGN	34	*	*	17	*	*	*

* - Not available.

At the time of selection of the reference figures in APPENDIX I, § 435.8(b)(9), the only information available was the 20% to 50% levels of the parametric baseline and the 80% level of the technical redesign. Also shown in the previous matrix is the maximum performance level of the technical redesign. The proposed and final design energy budgets will consider the full range shown and will be based on both the statistical and impact analyses, as described in Section III. Note that the baseline data and technical redesign data shown above are not strictly comparable. The baseline data have been adjusted to reflect the most severe climate conditions in each climatic zone; the technical redesign data have not. (See Section IV.D.3.)

(i) Multifamily Low-Rise Residential Structures: Preliminary design energy budgets were not selected for this classification at this time because the data and analyses require further study. These structures were included in the residential sector for the Phase I effort, but in the nonresidential redesign programs in the Phase II effort. This caused inconsistencies in the comparisons between the baseline data and the redesign data. Also, the baseline data revealed that these structures behaved like high-rise structures in some ways and like single-family attached residential structures in other ways. Therefore, the base data are not included in this ANPR, pending further study.

(SPACE RESERVED)

DESIGN ENERGY CONSUMPTION	CLIMATIC ZONE						
	1	2	3	4	5	6	7
20% BASELINE							
30% BASELINE							
50% BASELINE							
80% TECHNICAL REDESIGN							
LOWEST TECHNICAL REDESIGN							

At the time of selection of the reference figures in APPENDIX I, § 435.8(b)(10), the only information available was the 20% to 50% levels of the parametric baseline and the 80% level of the technical redesign. Also shown in the previous matrix is the maximum performance level of the technical redesign. The proposed and final design energy budgets will consider the full range shown and will be based on both the statistical and impact analyses, as described in Section III. Note that the baseline data and technical redesign data shown above are not strictly comparable. The baseline data have been adjusted to reflect the most severe climate conditions in each climatic zone; the technical redesign data have not. (See Section IV.D.3.)

(j) Nursing Homes: The 30% level of the baseline was chosen as the preliminary unadjusted design energy budget. The reasoning was the same as that expressed for hospitals.

DESIGN ENERGY CONSUMPTION (MBTU/SQ. FT./YR)	CLIMATIC ZONE						
	1	2	3	4	5	6	7
20% BASELINE	104	85	80	74	58	85	74
30% BASELINE	120	102	96	90	74	102	90
50% BASELINE	148	130	120	118	102	130	118
80% TECHNICAL REDESIGN	90	79	73	71	62	79	71
LOWEST TECHNICAL REDESIGN	21	43	41	34	24	52	*

* - Not available.

At the time of selection of the reference figures in APPENDIX I, § 435.8(b)(11), the only information available was the 20% to 50% levels of the parametric baseline and the 80% level of the technical redesign. Also shown in the previous matrix is the maximum performance level of the technical redesign. The proposed and final design energy budgets will consider the full range shown and will be based on both the statistical and impact analyses, as described in Section III. Note that the baseline data and technical redesign data shown above are not strictly comparable. The baseline data have been adjusted to reflect the most severe climate conditions in each climatic zone; the technical redesign data have not. (See Section IV.D.3.)

(k) Offices/Large (greater than 50,000 sq. ft.): The 30% level of the baseline was chosen as the preliminary unadjusted design energy budget. This level is relatively close to, though higher than, the level set and used by GSA for new Federal office buildings. The level chosen takes into consideration the fact that current technology reflects higher design energy usage for large office buildings than for small ones. Here, too, the 20% to 50% range of the baseline is very tight, implying that the same argument applies as for small office buildings. Finally, 30% of the new buildings constructed in this classification should already be designed to this design energy consumption level.

DESIGN ENERGY CONSUMPTION (MBTU/SQ. FT./YR)	CLIMATIC ZONE						
	1	2	3	4	5	6	7
20% BASELINE	55	53	53	53	51	57	53
30% BASELINE	60	58	58	58	56	62	58
50% BASELINE	68	66	66	66	64	70	66
80% TECHNICAL REDESIGN	49	48	48	48	46	51	48
LOWEST TECHNICAL REDESIGN	29	38	26	31	*	42	*

* - Not available.

At the time of selection of the reference figures in APPENDIX I, § 435.8(b)(12), the only information available was the 20% to 50% levels of the parametric baseline and the 80% level of the technical redesign. Also shown in the previous matrix is the maximum performance level of the technical redesign. The proposed and final design energy budgets will consider the full range shown and will be based on both the statistical and impact analyses, as described in Section III. Note that the baseline data and technical redesign data shown above are not strictly comparable. The baseline data have been adjusted to reflect the most severe climate conditions in each climatic zone; the technical redesign data have not. (See Section IV.D.3.)

(l) Offices/Small (less than or equal to 50,000 sq. ft.): The 30% level of the baseline was chosen as the preliminary unadjusted design energy budget. In all zones, this level closely approximates the level established and used by GSA for new Federal office buildings. Also, 30% of the new buildings constructed in this classification should already be designed to this level. Finally, the spread of the 20% to 50% range of the baseline is relatively small, implying that it should not be difficult for more building designs to be brought to this 30% level.

DESIGN ENERGY CONSUMPTION (MBTU/SQ. FT./YR)	CLIMATIC ZONE						
	1	2	3	4	5	6	7
20% BASELINE	50	49	49	47	47	54	47
30% BASELINE	56	55	55	53	53	60	55
50% BASELINE	66	64	64	62	62	70	64
80% TECHNICAL REDESIGN	49	47	47	46	46	52	47
LOWEST TECHNICAL REDESIGN	29	45	20	*	*	39	*

* - Not available.

At the time of selection of the reference figures in APPENDIX I, § 435.8(b)(13), the only information available was the 20% to 50% levels of the parametric baseline and the 80% level of the technical redesign. Also shown in the previous matrix is the maximum performance level of the technical redesign. The proposed and final design energy budgets will consider the full range shown and will be based on both the statistical and impact analyses, as described in Section III. Note that the baseline data and technical redesign data shown above are not strictly comparable. The baseline data have been adjusted to reflect the most severe climate conditions in each climatic zone; the technical redesign data have not. (See Section IV.D.3.)

(m) Restaurants/Fast Food: Although data were available, this classification was not evaluated at this time because further analyses were needed on the high ratio of design process energy to overall design energy consumption, as well as the complex interrelationships between the two.

DESIGN ENERGY CONSUMPTION (MBTU/SQ. FT./YR)	CLIMATIC ZONE						
	1	2	3	4	5	6	7
20% BASELINE	218	173	156	133	101	116	133
30% BASELINE	243	199	179	159	126	141	159
50% BASELINE	285	241	221	201	168	183	201
80% TECHNICAL REDESIGN	204	173	158	144	120	131	144
LOWEST TECHNICAL REDESIGN	*	64	81	78	59	120	*

* - Not available.

At the time of selection of the reference figures in APPENDIX I, § 435.8(b)(14), the only information available was the 20% to 50% levels of the parametric baseline and the 80% level of the technical redesign. Also shown in the previous matrix is the maximum performance level of the technical redesign. The proposed and final design energy budgets will consider the full range shown and will be based on both the statistical and impact analyses, as described in Section III. Note that the baseline data and technical redesign data shown above are not strictly comparable. The baseline data have been adjusted to reflect the most severe climate conditions in each climatic zone; the technical redesign data have not. (See Section IV.D.3.)

(n) Restaurants/Full Menu/Other: Again, although data were available, this classification was not evaluated at this time because further analyses were needed on the high ratio of design process energy to overall design energy consumption, as well as the complex interrelationships between the two.

DESIGN ENERGY CONSUMPTION (MBTU/SQ. FT./YR)	CLIMATIC ZONE						
	1	2	3	4	5	6	7
20% BASELINE	106	99	98	97	90	109	97
30% BASELINE	112	114	113	112	105	124	112
50% BASELINE	145	130	137	136	129	148	136
80% TECHNICAL REDESIGN	124	112	118	117	111	127	117
LOWEST TECHNICAL REDESIGN	81	42	64	74	*	*	*

* - Not available.

At the time of selection of the reference figures i APPENDIX I, § 435.8(b)(15), the only information available wa the 20% to 50% levels of the parametric baseline and the 80% level o the technical redesign. Also shown in the previous matrix is th maximum performance level of the technical redesign. The propose and final design energy budgets will consider the full range show and will be based on both the statistical and impact analyses, a described in Section III. Note that the baseline data and technica redesign data shown above are not strictly comparable. The baselin data have been adjusted to reflect the most severe climate conditio in each climatic zone; the technical redesign data have not. (Se Section IV.D.3.)

(o) Schools/Elementary: The 30% level of the baseline was selected as the preliminary unadjusted design energy budget. The reasoning was the same as that indicated for colleges or universities.

(NOTE: Additional studies are being conducted to determine why elementary schools have apparently higher design energy consumptions than secondary schools, which in turn are apparently higher than colleges or universities.)

DESIGN ENERGY CONSUMPTION (MBTU/SQ. FT./YR)	CLIMATIC ZONE						
	1	2	3	4	5	6	7
20% BASELINE	91	72	63	54	41	39	5-
30% BASELINE	97	79	70	61	48	46	61
50% BASELINE	109	90	81	72	59	57	72
80% TECHNICAL REDESIGN	72	59	53	48	39	38	48
LOWEST TECHNICAL REDESIGN	49	32	34	18	14	31	22

At the time of selection of the reference figures in APPENDIX I, § 435.8(b)(16), the only information available was the 20% to 50% levels of the parametric baseline and the 80% level of the technical redesign. Also shown in the previous matrix is the maximum performance level of the technical redesign. The proposed and final design energy budgets will consider the full range shown and will be based on both the statistical and impact analyses, as described in Section III. Note that the baseline data and technical redesign data shown above are not strictly comparable. The baseline data have been adjusted to reflect the most severe climate conditions in each climatic zone; the technical redesign data have not. (See Section IV.D.3.)

(p) Schools/Secondary: The 30% level of the baseline was selected as the preliminary unadjusted design energy budget. The reasoning was the same as that indicated for elementary schools and colleges or universities.

DESIGN ENERGY CONSUMPTION (MBTU/SQ. FT./YR)	CLIMATIC ZONE						
	1	2	3	4	5	6	7
20% BASELINE	80	62	53	44	31	32	44
30% BASELINE	84	66	57	48	36	36	48
50% BASELINE	92	73	65	56	43	43	56
80% TECHNICAL REDESIGN	68	54	48	42	32	32	42
LOWEST TECHNICAL REDESIGN	35	47	35	*	*	30	38

* - Not available.

At the time of selection of the reference figures in APPENDIX I, § 435.8(b)(17), the only information available was the 20% to 50% levels of the parametric baseline and the 80% level of the technical redesign. Also shown in the previous matrix is the maximum performance level of the technical redesign. The proposed and final design energy budgets will consider the full range shown and will be based on both the statistical and impact analyses, as described in Section III. Note that the baseline data and technical redesign data shown above are not strictly comparable. The baseline data have been adjusted to reflect the most severe climate conditions in each climatic zone; the technical redesign data have not. (See Section IV.D.3.)

(q) Warehouses: Although data were available, this classification was not evaluated at this time because of unexplained high design energy consumptions requiring further investigation.

DESIGN ENERGY CONSUMPTION (MBTU/SQ. FT./YR)	CLIMATIC ZONE						
	1	2	3	4	5	6	7
20% BASELINE	84	61	51	41	25	28	41
30% BASELINE	92	70	59	49	33	36	49
50% BASELINE	105	83	72	62	46	49	62
80% TECHNICAL REDESIGN	79	62	54	46	34	37	46
LOWEST TECHNICAL REDESIGN	21	20	28	23	9	20	*

* - Not available.

At the time of selection of the reference figures in APPENDIX I, §435.8(b)(20), the only information available was the 20% to 50% levels of the parametric baseline and the 80% level of the technical redesign. Also shown in the previous matrix is the maximum performance level of the technical redesign. The proposed and final design energy budgets will consider the full range shown and will be based on both the statistical and impact analyses, as described in Section III. Note that the baseline data and technical redesign data shown above are not strictly comparable. The baseline data have been adjusted to reflect the most severe climate conditions in each climatic zone; the technical redesign data have not. (See Section IV.D.3.)

(2) Single-Family Residential Structures.

Following the same pattern of reasoning that was used for commercial and multifamily residential structures, guidelines were developed for single-family detached and attached residential structures. These guidelines were as follows:

1. Use the seven climatic zones developed in Phase I.
2. Use the NAHB/TPG, as they appear to account for fuel, size and economic factors that the HUD/MPS apparently do not.
3. Base the preliminary design energy budgets on a method developed around the NHB/TPG.

The initial review of the data base, along with the professional knowledge of the program team regarding residential construction practices, led to the belief that an approach such as that suggested for the commercial sector might be inappropriate for the residential sector. As explained in Section IV.D, the program team attempted to develop, at least on a preliminary basis, a methodology which would be more appropriate. Since the HUD/MPS and the NAHB/TPG had been used in the Phase II prototype design programs for single-family residential structures, these two guidelines were reviewed to determine if a technique could be developed around one, or perhaps both, of them.

This review resulted in the conclusion that, since the NAHB/TPG accounted for the apparent effects of size, fuel and economic factors that the HUD/MPS apparently did not, the NAHB/TPG would form a better base for the preliminary design energy budget selection. In effect, the NAHB/TPG eliminated the need for RUF's and possibly even RIF's because of the way in which the guidelines are constructed (see Section IV.D for more complete discussion).

Therefore, a methodology was developed for utilizing the NAHB/TPG to arrive at a site-specific design energy budget, in effect a floating budget developed by the builder. The process is detailed in Section IV.D and in Appendix I. The matrices included in this discussion delineate the data available during the preliminary design energy budget selection exercise.

AVERAGE DESIGN ENERGY CONSUMPTION FOR SINGLE-FAMILY ATTACHED RESIDENTIAL STRUCTURES

(MBTU/SQ. FT./YR)

DESIGN GUIDE	ZONE	1			2			3			4	
	FUEL	GAS	OIL	ELEC.	GAS	OIL	ELEC.	GAS	OIL	ELEC.	GAS	OIL
AS BUILT		76	97	27	62	60	23	59	55	25	45	N/A
NAHB/TPG		61	69	17	58	36	17	60	43	17	47	N/A
HUD/MPS		52	74	18	46	41	17	45	43	17	45	N/A

*N/A - Fuel not reported used in that climatic zone.

DESIGN GUIDE	ZONE	5			6			7		
	FUEL	GAS	OIL	ELEC.	GAS	OIL	ELEC.	GAS	OIL	ELEC.
AS BUILT		28	N/A	N/A	34	N/A	21	42	N/A	27
NAHB/TPG		27	N/A	N/A	36	N/A	20	46	N/A	18
HUD/MPS		27	N/A	N/A	36	N/A	18	45	N/A	20

AVERAGE DESIGN ENERGY CONSUMPTION FOR SINGLE-FAMILY DETACHED RESIDENTIAL STRUCTURES

(MBTU/SQ. FT./YR)

DESIGN GUIDE	ZONE	1			2			3			4		
	FUEL	GAS	OIL	ELEC.	GAS	OIL	ELEC.	GAS	OIL	ELEC.	GAS	OIL	ELE
AS BUILT		106	109	48	92	90	41	93	99	38	74	64	35
NAHB/TPG		110	72	32	106	62	28	100	74	31	81	55	29
HUD/MPS		88	91	39	79	71	33	78	76	29	72	65	31

*N/A - Fuel not reported used in that climatic zone.

DESIGN GUIDE	ZONE	5			6			7		
	FUEL	GAS	OIL	ELEC.	GAS	OIL	ELEC.	GAS	OIL	ELEC.
AS BUILT		46	N/A	33	50	40	32	71	N/A	41
NAHB/TPG		50	N/A	21	55	43	29	79	N/A	29
HUD/MPS		47	N/A	15	51	39	29	71	N/A	33

(3) Mobile Homes.

The guidelines developed for mobile homes were:

1. Use the three design temperature zones in the HUD Mobile Home Construction and Safety Standards.
2. Accept the use of four nominal sizes to display the design energy budgets.
3. Accept the necessity of displaying the design energy budgets by fuel type.

(NOTE: The electricity category includes electric heat pumps, electric furnaces, and electric baseboard heat.)

4. Acknowledge that the industry is already designing to a standard; i.e., the HUD standards.
5. Use the design energy consumption levels of the two redesigns, MTFD-I and MTFD-II (see Section III.A. and APPENDIX II), as guidelines.

These guidelines were in part influenced by the existing standards, the HUD Mobile Home Construction and Safety Standards, to which all mobile homes are already being constructed. Therefore, it was decided to utilize some of the concepts of these standards; i.e., the design temperature zones and the use of size and fuel type. Then, in a manner similar to that used for commercial structures, the current practice was compared to the technical redesigns. However, unlike the program for commercial structures, there were two technical redesigns for mobile homes, the second more extensive than the first and resulting in greater energy savings.

The discussions that ensued revolved around the economic effects of the two redesigns. However, those discussions were curtailed because sufficient details were not available regarding the contents of each technical redesign. Therefore, the decision was made not to select preliminary design energy budgets until more substantive decisions could be made regarding the relative economic impacts of the two redesigns.

The matrix presented shows the various data points that were available during the discussions.

AVERAGE DESIGN ENERGY CONSUMPTION FOR MOBILE HOMES
(MBTU/SQ. FT./YR)

NOMINAL SIZE (FT.)	ZONE	1			2			3		
	FUEL	GAS	OIL	ELEC.	GAS	OIL	ELEC.	GAS	OIL	ELEC
12 x 60	MTFD I	105	113	63	112	120	62	144	156	71
	MTFD II	59	63	33	87	94	47	123	133	61
14 x 70	MTFD I	95	103	56	101	109	55	131	142	65
	MTFD II	52	56	29	78	84	41	111	120	55
24 x 60	MTFD I	82	89	49	82	88	45	106	115	53
	MTFD II	43	47	25	64	69	34	90	97	44
28 x 70	MTFD I	70	76	42	72	78	39	94	102	47
	MTFD II	39	42	22	58	63	31	82	87	41

V.B.4.b Selection of the RUF's and RIF's.

As explained in the beginning of Section V.B, DOE felt that the preliminary design energy budgets should be source-energy related and reflect sociological considerations, and that the use of RUF's and RIF's was one way of incorporating the necessary adjustments. The information available on RIF's, however, was insufficient to permit their inclusion in this document; therefore, for the purposes of this document only, RIF's are assumed to be constant and equal to one.

The RUF analyses, on the other hand, had progressed sufficiently to permit the calculation of national average RUF's based on three fuels: gas, oil and electricity.

Fuel	National Average RUF
Gas	1.11
Oil	1.16
Electricity	3.04

National average RUF's may not be as meaningful as regional RUF's might be to regional (i.e., climatic zone) unadjusted design energy budgets, but they do allow some adjustment to be made toward demonstrating source-energy related design energy budgets. Also, the approach developed for incorporating RUF's into the preliminary design energy budgets is but one of many; Section IV.A discusses some of the other possibilities.

Because the unadjusted design energy budgets were expressed in terms of climatic zone but not in terms of fuels, it was decided to derive RUF's expressed by climatic zone and not by fuel. These RUF's were called "combined RUF's" because of the way they were developed and they were based on the national average RUF's calculated as explained in Section III.A.2.

First, DOE returned to the original data base of Phase I, where the actual building designs were available, already separated by building classification and climatic zone. For each actual building in each classification and climatic zone, estimates were made of the amounts and kinds of each fuel attributable to heating, cooling, fans and lights. For example, in a large office building located in climatic zone 1, the design energy consumption might have broken down as 12,000 Btu/sq. ft./yr of gas for heating, 4,000 Btu/sq. ft./yr of gas for cooling, 1,000 Btu/sq. ft./yr of electricity for fans and 11,000 Btu/sq. ft./yr of electricity for lights.

Then, in each climatic zone, the values for each fuel for all the buildings in a single classification were added together. In the example, the total for all the large office buildings in climatic zone 1 might have been: 31,980 Btu/sq. ft./yr of gas for heating; 10,940 Btu/sq. ft./yr of gas for cooling, 9,920 Btu/sq. ft./yr of electricity for fans, and 29,150 Btu/sq. ft./yr of electricity for lights.

Then, each total for each fuel was multiplied by the national average RUF for that fuel.

The resulting calculations, using the example, are as follows:

National Average RUF for Fuel Indicated	x	Design Energy Consumption (MBtu/sq. ft./yr)	=	Source-Energy Related Design Energy Consumption (MBtu/sq. ft./yr)
1.11 (gas)		31.98		35.50
1.11 (gas)		10.94		12.14
3.04 (electricity)		9.92		30.16
3.04 (electricity)		29.15		88.82
TOTALS		81.99		166.52

The final step was to divide the total source-energy related design energy consumption (column 3) by the total design energy consumption (column 2), and the result was termed the "combined RUF." For the example shown, the combined RUF would be 2.04.

This technique is based on real buildings and on the fuel mixes they represent, and it also uses calculated quantities based on nationally known figures; i.e., the national average RUF's. However, the entire process inherently assumes that the fuel mixes demonstrated by the original buildings will continue to be the fuel mixes used in the future, and this may not be valid. Additional discussion concerning the RUF concept, the related issues and the combined RUF, are contained in Sections III.B, IV.A and IV.C.

The matrix included in this discussion shows the combined RUF's developed for the various building classifications in the individual climatic zones, using the approach described.

COMBINED RUF'S

BUILDING CLASSIFICATIONS	CLIMATIC ZONES						
	1	2	3	4	5	6	7
CLINICS	2.4	2.4	2.6	2.7	2.8	3.0	2.8
COLLEGES OR UNIVERSITIES	2.1	2.0	2.6	2.5	2.5	2.5	2.2
HOSPITALS	2.5	2.5	2.4	2.1	2.3	2.3	2.4
HOTELS OR MOTELS	2.5	2.5	2.8	2.4	2.6	2.9	2.9
MERCANTILE BUILDINGS	2.6	2.5	2.8	2.8	3.0	3.0	3.0
MULTIFAMILY HIGH-RISE RESIDENTIAL BLDGS	2.0	2.1	2.2	2.8	2.6	3.0	3.0
NURSING HOMES	2.5	2.5	2.8	2.4	2.6	2.9	2.9
OFFICES/LARGE	2.6	2.5	2.7	2.8	2.7	3.0	2.8
OFFICES/SMALL	2.6	2.5	2.7	2.8	2.7	3.0	2.8
SCHOOLS/ELEMENTARY	2.1	2.5	2.6	2.6	2.7	2.9	2.5
SCHOOLS/SECONDARY	1.9	2.2	2.2	2.7	2.7	2.6	2.6

(NOTE: Combined RUF's are not shown for five commercial building classifications and four residential building classifications because preliminary design energy budgets were not selected for them. The classifications referred to are: assembly buildings, industrial buildings, mobile homes, multifamily low-rise residential buildings, fast-food restaurants, full menu restaurants, and single-family attached and detached residential structures.)

V.B.4.c Calculation of the Preliminary Design Energy Budgets.

The third and final step in the overall process described in Section V.B was to calculate the preliminary design energy budgets, using the results of the first two steps. This procedure was relatively straightforward, consisting of multiplying the unadjusted design energy budget for a given building classification and climatic zone by the combined RUF for that same building classification and climatic zone. The results are displayed in the matrices included in APPENDIX I.

VI. SUPPORTING DOCUMENTATION.

VI.A The Docket.

An extensive docket is being compiled. This docket will be available in the DOE Freedom of Information Reading Room, and certain items may be obtained through other Federal Government sources, as explained in Section VI.B.

The basic information to be included in the docket is as follows:

1. All public contact or participation, including verbal and written correspondence, minutes of meetings, transcripts, etc.
2. A digest of all comments received.
3. Relevant Congressional comments.
4. Background documents, including:
   a. Building codes of the major code-promulgating bodies.
   b. Existing or proposed Federal controls, guidelines, and standards to be affected by or to co-regulate with the Standards.
   c. Existing or proposed building energy efficiency guidelines or standards developed by consumer or professional trade groups.
   d. State building energy efficiency guidelines or standards, proposed or promulgated.
   e. The contractual agreements related to the Standards development program.

   f. All technical reports on or contributing to the development of the Standards, including reports from subcontractors or consultants to other subcontractors or consultants working on the development program.
   g. Existing methodologies for assessing the design energy performance resulting from existing codes.
5. Legislative history of Title III of ECPA.
6. Any other technical/administrative support documents affecting the development of the Standards, and a digest of these documents.
7. A projected schedule of public meetings or participation in the development program.
8. A schedule for contact with senior liaison officials of other Federal agencies or associated entities.

Of necessity, the docket will be continually expanded as the program progresses. Public comments and response to this ANPR, to the proposed Standards, and even to the final Standards, will become a part of the first item in the list. In addition, as more studies are conducted and/or completed, the reports and supporting information relative to those studies will be included. Finally, as the Standards are updated, the docket will be continued to include all of the supporting documentation relative to those updates.

VI.B Obtaining Docket Material.

The following Phase I reports may now be obtained through the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia, 22151:

1. PHASE ONE/BASE DATA for the development of ENERGY PERFORMANCE STANDARDS FOR NEW BUILDINGS, FINAL REPORT, January 12, 1978, HUD-0000-189 ($6.50) (includes the EXECUTIVE SUMMARY).
2. PHASE ONE/BASE DATA for the development of ENERGY PERFORMANCE STANDARDS FOR NEW BUILDINGS, TASK REPORT, Climatic Classification, January 30, 1978, HUD-0000-190 ($4.50).
3. PHASE ONE/BASE DATA for the development of ENERGY PERFORMANCE STANDARDS FOR NEW BUILDINGS, TASK REPORT, Data Collection, January 12, 1978, HUD-0000-191 ($4.50).
4. PHASE ONE/BASE DATA for the development of ENERGY PERFORMANCE STANDARDS FOR NEW BUILDINGS, TASK REPORT, Residential Data Collection and Analysis, January 12, 1978, HUD-0000-192 ($6.50).
5. PHASE ONE/BASE DATA for the development of ENERGY PERFORMANCE STANDARDS FOR NEW BUILDINGS, TASK REPORT, Data Analysis, January 30, 1978, HUD-0000-193 ($9.25).
6. PHASE ONE/BASE DATA for the development of ENERGY PERFORMANCE STANDARDS FOR NEW BUILDINGS, TASK REPORT, Building Classification, January 12, 1978, HUD-0000-194 ($7.25).

7. PHASE ONE/BASE DATA for the development of ENERGY PERFORMANCE STANDARDS FOR NEW BUILDINGS, TASK REPORT, Sample Design, January 12, 1978, HUD-0000-195 ($6.50).

Also, the NAHB Thermal Performance Guidelines for One and Two Family Dwellings may be obtained by addressing orders to the Publications Department, National Association of Home Builders, 15th and M Streets, N. W., Washington, D. C. 20005 ($3.00).

As the remaining items in the docket become formally available, information on the method of obtaining such material will be provided to the public.

VII. COMMENTS RECEIVED TO DATE.

A number of requests were received for information on various aspects of the program, including: the status of the program, procedures for adopting the Standards, the impact of the Standards on small buildings such as log homes, data on energy performance baselines, the Phase I reports, etc.

Several offers were also received to provide information to the program, including one to provide building characteristics, energy use dynamics and other industry data for the development of a model code, and another offering to provide data on actual energy consumption on buildings already constructed. On group representing the hotel/model industry met with DOE and discussed the ranges of actual energy consumption in buildings in this classification. The group also emphasized the fact that most hotels are complex organisms and that a single classification may prove unwieldy. Another group representing the restaurant industry met with DOE to discuss the group's desire to measure actual energy consumption of different types of restaurants in different geographical areas. This is a special concern of DOE, because of the problems with process energy considerations in the two restaurant building classifications.

One individual provided a document to HUD on the problems associated with prescriptive standards, and simultaneously urged that cost-effectiveness be included as one test for the Standards.

The American Gas Association expressed concern over the possibility of the Standards only measuring energy at the building line, rather than taking into account source energy considerations. Included in

the argument was the statement that electricity wastes most of its energy before the building line, where gas and oil are more inefficient within the perimeter of the building structure.

An official of the State of Arizona submitted commentary on that State's attempts to develop criteria and methodologies for drawing rational energy use budgets or energy performance standards for new buildings. And a Massachusetts official submitted information on the energy conservation code standards and administration provisions in Amherst and in the State of Massachusetts.

Another individual expressed an interest in the hours of operation related to the Btu's consumed and in the items of energy consumption included in those figures.

Finally, information was requested on the utilization of the Model Code in the Standards.

DOE is pleased with the awareness of the program demonstrated by the public and "affected groups." DOE also feels that the issues, comments and suggestions indicated have been addressed in this ANPR.

VIII. COMMENT PROCEDURES.

Interested persons are invited to participate in the public meetings by submitting, to the address indicated, data, views or arguments with respect to the subjects set forth in this notice.

Comments should be identified on the outside of the envelope, and on documents submitted to DOE, with the designation, "Building Energy Performance Standards." Fifteen copies should be submitted.

Any information or data considered to be confidential by the person furnishing it must be so identified and one copy submitted in writing. DOE reserves the right to determine the confidential status of the information or data and to treat it according to that determination.

IX. ORAL PRESENTATION; CONDUCT OF MEETINGS.

Any person who has an interest in this proceeding, or who is a representative of a group of persons having an interest, may make a written request for an opportunity to make an oral presentation. Such requests should be labeled both on the document and on the envelope, "Building Energy Performance Standards," and should be sent to the address indicated for the appropriate meeting at the beginning of this notice, by the time specified.

The person making the request should briefly describe the interest concerned, if appropriate, state why he or she is a proper representative of the group that has an interest, and give a phone number where he or she may be contacted.

DOE reserves the right to select the persons to be heard at these meetings, to schedule the respective presentations, and to establish the procedures governing the conduct of the meetings. The length of each presentation may be limited, due to the number of persons requesting to be heard. If time permits, the official conducting the meeting may, at his or her discretion, accept additional comments or questions from those attending the meeting.

A DOE official will be designated to preside at the meeting. These will not be judicial or evidentiary-type hearings. Questions may be asked only by those conducting the meetings, except during those periods when comments are requested from the floor. Any further procedural rules needed for the proper conduct of the meetings will be announced by the presiding officer.

Transcripts of the meetings will be made, and the entire record of the meetings, including the transcript but excluding any material deemed by DOE to be confidential as set forth in Section VIII, will be retained by DOE and made available for inspection at the Freedom of Information Office in the Forrestal Building, Independence Avenue and L'Enfant Plaza, S. W., Washington, D. C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the transcribing reporter.

Issued in Washington, D. C., on November 16, 1978.

Omi Walden
Assistant Secretary
Conservation and Solar Applications

APPENDIX I

PRELIMINARY STANDARDS FORMAT

Subchapter D, Chapter II of Title 10, Code of Federal Regulations is amended by establishing Part 435 as follows:

PART 435 - ENERGY PERFORMANCE STANDARDS FOR NEW BUILDINGS

Sec.

435.1 Purpose and scope.
435.2 Definitions.
435.3 Use of energy performance standards for new buildings.
435.4 Compliance.
435.5 Elements of an energy performance standard.
435.6 Building classifications.
435.7 Climatic zones and design temperature zones.
435.8 Design energy budgets.
435.9 Evaluation technique.

AUTHORITY: Energy Conservation Standards for New Buildings Act of 1976, enacted as Title III of the Energy Conservation and Production Act, Pub. L. 94-385, 90 Stat. 1144-1150, 42 U.S.C. 6831-6840; Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 965 et seq., 42 U.S.C. 7101 et seq.; E.O. 12009, 42 F.R. 4626F; E.O. 12044, 43 F.R. 12660.

435.1 Purpose and Scope.

This part establishes energy performance standards for new residential and commercial buildings, standards which are intended to achieve the maximum practicable improvements in energy efficiency and increases in the use of nondepletable sources of energy. This part also establishes evaluation techniques to determine whether or not a building design is in compliance with the energy performance standards for new buildings.

435.2 Definitions.

For the purposes of this part,

(a) "Adjusted design energy consumption" means the calculated design energy consumption of a building design, multiplied by the applicable RUF and RIF.

(b) "ASHRAE" means the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc.

(c) "British thermal unit" means the amount of heat required to raise the temperature of 1 lb. of water by 1° F at or near 39.2° F.

(d) "Btu" means British thermal unit.

(e) "Btu/sq. ft./yr" means Btu per gross square foot per year.

(f) "Building" means any structure to be constructed which includes provision for a heating or cooling system or both, or for a hot water system.

(g) "Building code" means (1) a legal instrument which is in effect in a State or unit of general purpose local government,

the provisions of which must be adhered to if a building is to be considered in conformance with the law and suitable for occupancy and use, or (2) a law, regulation or other construction control mechanism which provides for the application of the energy performance standards for new buildings.

(h) "Building design" means the architectural plans and specifications for a new building.

(i) "Building standard" means a standard which applies to a building rather than its component parts.

(j) "Climatic zone" means an area across the country which reflects similar climatic conditions as established by heating and cooling degree-days.

(k) "Commercial building" means any building other than a residential building, including any building developed for industrial or public purposes.

(l) "Cooling degree-day" is similar to heating degree-day, except that it relates to the requirement for space cooling.

(m) "Design energy budget" means the maximum allowable adjusted design energy consumption for a building design, expressed as Btu/sq. ft./yr.

(n) "Design energy consumption" means the calculated energy consumption for a building design, expressed as Btu/sq. ft./yr, not multiplied by the applicable RUF and RIF, excluding process energy requirements.

(o) "Design temperature zone" means an area across the country reflecting similar conditions appropriate to the construction of mobile homes.

(p) "DOE" means the U. S. Department of Energy.

(q) "Federal agency" means any department, egency, corporation, or other entity or instrumentality of the executive branch of the Federal Government, including the United States Postal Service, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation.

(r) "Federal building" means any building to be constructed by, or for the use of, any Federal agency which is not legally subject to State or local building codes or similar requirements.

(s) "Heating degree-day" means the space heating requirement for a given day, which varies directly with the difference between 65° F and the average of the extreme temperatures occurring on that day, expressed in Fahrenheit degrees. By definition, the number of heating degree-days associated with that day is equal to this numerical difference in temperature.

(t) "MBtu" means thousands of British thermal units.

(u) "MBtu/sq. ft./yr" means MBtu per gross square foot per year.

(v) "NAHB" means the National Association of Home Builders.

(w) "NAHB Thermal Performance Guidelines" means the NAHB Thermal Performance Guidelines for One and Two Family Dwellings, 1977, NAHB Publication Number 560.02.

(x) "New building" means any building for which the design has not been approved for construction by the appropriate State or local government authority as of 12:01 a.m. on the date that these energy performance standards for new buildings become effective.

(y) "Process energy" means that energy which is required to do work or produce a product, including the energy to operate appliances, business equipment and production machinery.

(z) "Residential building" means any structure which is constructed and developed for residential occupancy.

(aa) "Resource impact factor" means a multiplier applied to fuel and energy resources required by a building project, to permit a quantitative evaluation of the effect on those resources resulting from the selection of on-site fuel and energy forms, giving consideration to fuel availability, as well as to social, economic, environmental and national interest issues.

(bb) "Resource utilization factor" means a multiplier applied to the quantity of fuel or energy delivered to a building site, which provides a quantitative estimate of the energy resources consumed in providing that fuel or energy, accounting for the burden of processing, refining, transporting, converting and delivering fuel or energy from the point of extraction to the building site.

(cc) "RIF" means resource impact factor.

(dd) "RUF" means resource utilization factor.

(ee) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(ff) "Unit of general purpose local government" means any city, county, town, municipality, or other political subdivision of a State, or any combination thereof, which has a building code or similar authority over a particular geographic area.

435.3 Use of energy performance standards for new buildings.

(a) The Secretary of the Department of Housing and Urban Development will:

(1) use the provisions of this part in a determination of the accuracy of a certification of a State that:

(i) a unit of general purpose local government has adopted and is implementing a building code which meets or exceeds the requirements of the energy performance standards, for new buildings; or,

(ii) the State has adopted and is implementing a building code which provides for the effective application of the energy performance standards to new buildings; and

(2) require that the energy performance standards for new buildings shall be used by a State or unit of general purpose local government in a determination of whether the building design of a new building is in compliance with applicable performance standards.

(b) The head of each Federal agency responsible for the construction of any new Federal building will adopt such procedures as may be necessary to assure that the designs for any such construction meet or exceed the energy performance standards for new buildings.

§ 435.4 Compliance.

The building design of a new building shall comply with the energy performance standard for its building classification if the adjusted design energy consumption, calculated in accordance with §435.9 (a) and (b) does not exceed the design energy budget determined in accordance with §435.8.

§ 435.5 Elements of an energy performance standard.

(a) An energy performance standard consists of:

(1) a design energy budget, as provided in §435.8; and,

(2) the evaluation techniques prescribed in §435.9(b), which shall be used to estimate the adjusted design energy consumption.

(b) A design energy budget shall be identified for the building design of a new building in relation to:

(1) the building classification of the design, as established by §435.6; and,

(2) the climatic or design temperature zone for geographic location of the new building, as established by §435.7.

(c) The design energy budget for a building design which is limited to a single building classification, in accordance with § 435.6, shall be the design energy budget for that building classification, as provided in §435.8, for the appropriate climatic or design temperature zone, identifed by geographic location in accordance with §435.7.

(d) The design energy budget of a building design which is not limited to a single building classification, in accordance with § 435.6, shall be the sum of the design energy budgets for all applicable building classifications, as provided in §435.8, for the appropriate climatic or design temperature zone, identified by geographic location in accordance with §435.7, calculated by using the following equation:

$$\frac{(DEB_a)(A_a) + (DEB_b)(A_b) + \ldots + (DEB_n)(A_n)}{(A_a) + (A_b) + \ldots + (A_n)} = DEB_B$$

where, DEB_a = design energy budget for single-use classification "a"

A_a = area, in square feet, for single-use classification "a"

DEB_B = design energy budget for entire building design

(NOTE: The above is applicable to this Preliminary Standards Format only and is subject to change in accordance with the methodology utilized for the proposed and final Standards.)

435.6 Building classifications.

To calculate the design energy consumption or identify the design energy budget for a building design, the following definitions of building classifications shall be used:

PROPOSED RULES

(a) "Assembly building" means a structure or space used primarily for the gathering of 50 or more persons for civic, political, religious, social, recreational or entertainment purposes.

(b) "Clinic" means a structure or space used for out-patient treatment where the ill or injured receive medical, surgical or psychiatric diagnosis and treatment.

(c) "College or university" means a structure or space used for educational purposes for post-secondary school studies, requiring for admission a high-school diploma or its equivalent.

(d) "Hospital" means a structure or space for in-patient treatment where the ill or injured receive medical, surgical or psychiatric diagnosis and treatment.

(e) "Hotel or motel" means a structure or space used for short-term lodging, for which housekeeping services are provided, and provisions for meals, recreation, exhibitions and entertainment are sometimes available.

(f) "Industrial building" means a structure or space used for fabricating, assembling, manufacturing or processing products or materials, or for generating, storing or transmitting energy.

(g) "Mercantile building" means a structure or space used to provide or sell personal services, or to display and sell goods to the public.

(h) "Mobile home" means a prefinished, prefabricated dwelling unit that is delivered to the site on its own chassis and wheels.

(i) "Multifamily high-rise residential building" means a structure over four stories in height, comprised of a group of single or multilevel residences, structurally connected both horizontally and vertically.

(j) "Multifamily low-rise residential building" means a structure no more than four stories in height, comprised of a group of single or multilevel residences, structurally connected both horizontally and vertically.

(k) "Nursing home" means a structure or space other than a hospital, used for in-house nursing or health-related care, usually on a long-term basis.

(l) "Office building/large" means a structure or space other than a mercantile building, greater than 50,000 sq. ft. in area, used for the transaction of business or the rendering of professional services.

(m) "Office building/small" means a structure or space other than a mercantile building, less than or equal to 50,000 sq. ft. in area, used for the transaction of business or the rendering of professional services.

(n) "Restaurant/fast food" means a structure or space used for the preparation and sale of food on a limited-menu, self-service basis.

(o) "Restaurant/full menu/other" means a structure or space used for the preparation and sale of food and drink on a full menu basis, usually with table service but including cafeteria-style service.

(p) "School/elementary" means a structure or space used for academic instruction and/or care, typically for the first six grades.

(q) "School/secondary" means a structure or space used for academic or vocational instruction above the elementary school level, usually resulting in the award of a high-school diploma.

PROPOSED RULES

(r) "Single-family attached residential building" means a structure or space containing a dwelling unit which is structurally connected horizontally to at least one other such unit.

(s) "Single-family detached residential building" means a structure or space containing a dwelling unit which is not structurally connected to any other structure.

(t) "Warehouse" means a structure or space which is temperature controlled and is used for the storage of goods, merchandise, raw materials, manufactured products, or vehicles.

435.7 Climatic zones and design temperature zones.

(a) The zone system depicted in Figure 1 establishes climatic zones for all building classifications except mobile homes.

(b) The zone system depicted in Figure 2 establishes design temperature zones for mobile homes.

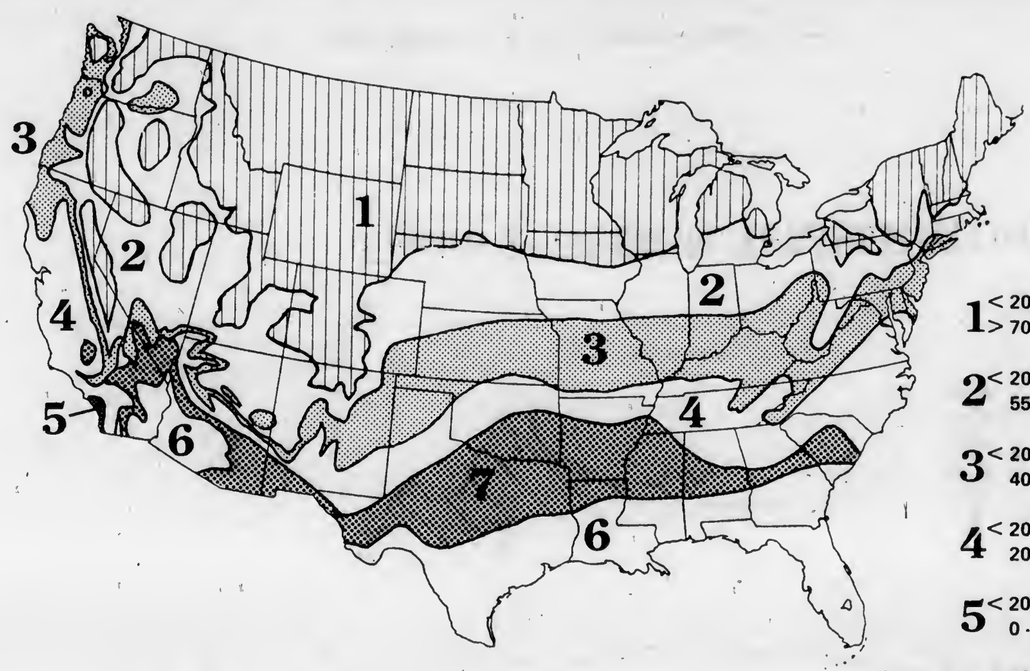


Figure 1: CLIMATIC ZONES

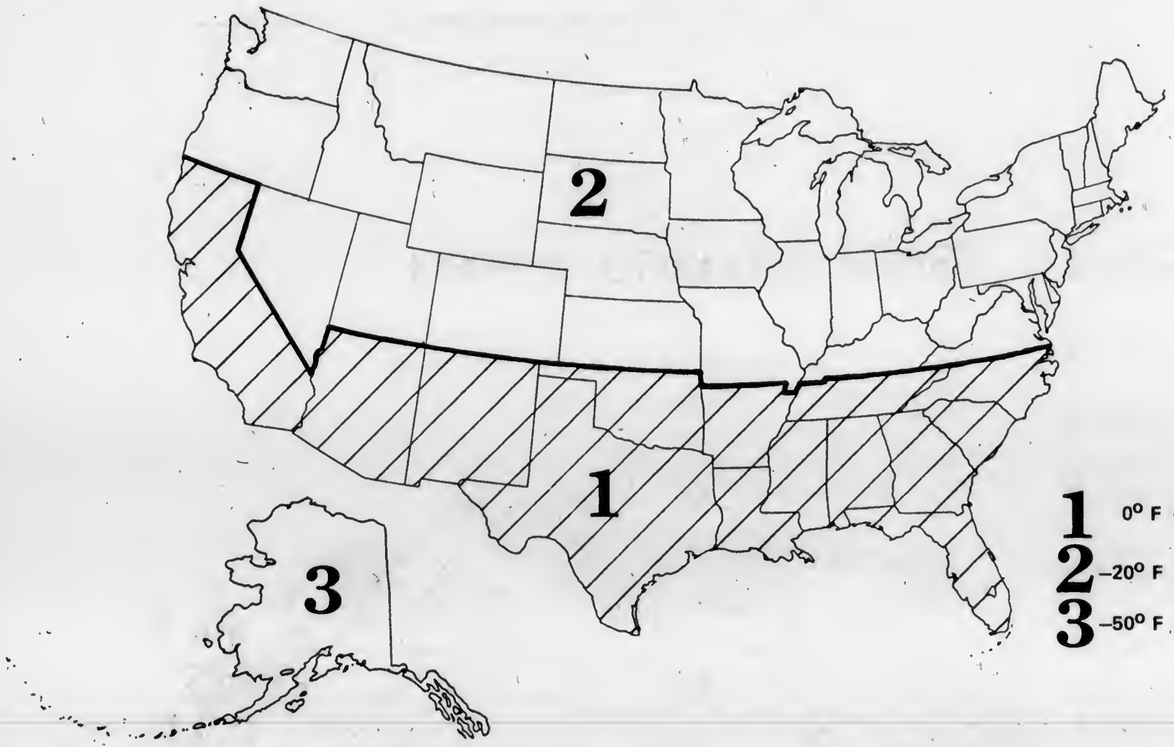


Figure 2: DESIGN TEMPERATURE ZONES

435.8 Design energy budgets.

(a) Design energy budgets are displayed in a matrix for each building classification as provided in § 435.6. The design energy budgets for each building classification are displayed by climatic zone as provided in §435.7.

(b) The following design energy budgets shall be used.

(NOTE: The design energy budgets displayed in this Preliminary Standards Format, including the methodology described in §435.8(b)(18), were developed based on only one of several possible approaches and are not to be considered the proposed or final design energy budgets to be promulgated in 1979.)

(1) Building classification: assembly.

(A) Design energy budget matrix. (SPACE RESERVED)

CLIMATIC ZONE	1	2	3	4	5	6	7
DESIGN ENERGY BUDGET							

(The above figures were based only on the statistical analyses of existing buildings, as described in Section III and APPENDIX II. The proposed and final Standards will be based on an analysis of a much broader range of possible design energy budgets. See Section V.B.4.a(1)(a) and paragraph D of this section.)

(B) The following operating profile is assumed for the design energy budgets for this building classification in all climate zones:

1. Indoor design temperatures:
   - Winter occupied ____
   - Winter unoccupied ____
   - Summer occupied ____
   - Summer unoccupied ____
2. Occupancy density (sq. ft./person) ____
3. Annual occupancy (weeks/yr) ____
4. Daily occupancy (percentage of peak load) See (C)

(C) ASSEMBLY BUILDINGS

DAILY OCCUPANCY PROFILE (SPACE RESERVED)

TIME	WEEKDAYS	SATURDAY	SUNDAY
Midnight			
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
Noon			
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
Midnight			

(D) Commentary. (Not applicable at this time.)

(2) Building classification: clinics.

(A) Design energy budget matrix.

CLIMATIC ZONE	1.	2	3	4	5	6	7
DESIGN ENERGY BUDGET (MBTU/SQ. FT./YR)	235.2	199.2	197.6	189.0	165.2	189.0	196.0

(The above figures were based only on the statistical analyses of existing buildings, as described in Section III and APPENDIX II. The proposed and final Standards will be based on an analysis of a much broader range of possible design energy budgets. See Section V.B.4.a(1)(b) and paragraph D of this section.)

(B) The following operating profile is assumed for the design energy budgets for this building classification in all climate zones:

1. Indoor design temperatures:
   - Winter occupied: 68° F
   - Winter unoccupied: 60° F
   - Summer occupied: 78° F
   - Summer unoccupied: Equipment off
2. Occupancy density (sq. ft./person): 50
3. Annual occupancy (weeks/yr): 52
4. Daily occupancy (percentage of peak load): See (C)

(C) CLINICS

DAILY OCCUPANCY PROFILE

TIME	WEEKDAYS	SATURDAY	SUNDAY
Midnight	0	0	0
1			
2			
3			
4			
5			
6			
7	10	10	
8	50	30	5
9	80	40	
10			
11			
Noon			
1			
2			
3			
4			0
5	50	10	
6	30		
7		0	
8	20		
9			
10	0		
11			
Midnight			

(D) Commentary.

The source-energy levels shown in paragraph A for the seven climatic zones were derived from the Phase II technical redesign data, as described in Section V.B.4.a(1)(b), and the combined RUF's, derived from the Phase I data, as described in Section V.B.4.b. These data are displayed in the following matrix.

The source-energy level for each zone was derived by multiplying the selected Phase II technical redesign level by the combined RUF.

CLIMATIC ZONE	1	2	3	4	5	6	7
PHASE II TECHNICAL REDESIGN BUILDING LINE DESIGN ENERGY CONSUMPTION (MBTU/SQ. FT./YR)	98	83	76	70	59	63	70
COMBINED RUF	2.4	2.4	2.6	2.7	2.8	3.0	2.8

(3) Building classification: colleges or universities.

(A) Design energy budget matrix.

CLIMATIC ZONE	1	2	3	4	5	6	7
DESIGN ENERGY BUDGET (MBTU/SQ. FT./YR)	134.4	124.0	163.8	162.5	150.0	197.5	143.0

(The above figures were based only on the statistical analyses of existing buildings, as described in Section III and APPENDIX II. The proposed and final Standards will be based on an analysis of a much broader range of possible design energy budgets. See Section V.B.4.a(1)(c) and paragraph D of this section.)

(B) The following operating profile is assumed for the design energy budgets for this building classification in all climate zones:

1. Indoor design temperatures:
   - Winter occupied: 68° F
   - Winter unoccupied: 60° F
   - Summer occupied: 78° F
   - Summer unoccupied: Equipment off
2. Occupancy density (sq. ft./person): 150
3. Annual occupancy (weeks/yr): 35
4. Daily occupancy (percentage of peak load): See (C)

(C) COLLEGES OR UNIVERSITIES
DAILY OCCUPANCY PROFILE

TIME	WEEKDAYS	SATURDAY	SUNDAY
Midnight	0	0	0
1			
2			
3			
4			
5			
6			
7			
8			
9	100		
10			
11			
Noon			
1			
2			
3			
4			
5			
6			
7	0		
8			
9			
10			
11			
Midnight			

(D) Commentary.

The source-energy levels shown in paragraph A for the seven climatic zones were derived from the Phase II parametric data, as described in Section V.B.4.a(1)(c), and the combined RUF's, derived from the Phase I data, as described in Section V.B.4.b. These data are displayed in the following matrix.

The source-energy level for each zone was derived by multiplying the selected Phase II parametric baseline level by the combined RUF.

CLIMATIC ZONE	1	2	3	4	5	6	7
PHASE II PARAMETRIC BASELINE BUILDING LINE DESIGN ENERGY CONSUMPTION (MBTU/SQ. FT./YR)	64	62	63	65	60	79	65
COMBINED RUF	2.1	2.0	2.6	2.5	2.5	2.5	2.2

(4) Building classification: hospitals.

(A) Design energy budget matrix.

CLIMATIC ZONE	1	2	3	4	5	6	7
DESIGN ENERGY BUDGET (MBTU/SQ. FT./YR)	345.0	375.0	384.0	359.1	393.3	517.5	419.4

(The above figures were based only on the statistical analyses of existing buildings, as described in Section III and APPENDIX II. The proposed and final Standards will be based on an analysis of a much broader range of possible design energy budgets. See Section V.B.4.a(1)(d) and paragraph D of this section.)

(B) The following operating profile is assumed for the design energy budgets for this building classification in all climate zones:

1. Indoor design temperatures:
   - Winter occupied: 72° F
   - Winter unoccupied: N/A
   - Summer occupied: 75° F
   - Summer unoccupied: N/A
2. Occupancy density (sq. ft./person): 100
3. Annual occupancy (weeks/yr): 52
4. Daily occupancy (percentage of peak load): See (C)

(C) HOSPITALS

DAILY OCCUPANCY PROFILE

TIME	WEEKDAYS	SATURDAY	SUNDAY
Midnight	50	50	50
1			
2			
3			
4			
5			
6		60	60
7	70		
8	80	70	70
9			
10			
11			
Noon			
1			
2		90	90
3			
4			
5		70	70
6			
7		80	
8			
9	60	50	50
10	50		
11			
Midnight			

(D) Commentary.

The source-energy levels shown in paragraph A for the seven climatic zones were derived from the Phase II parametric data, as described in Section V.B.4.a(1)(d), and the combined RUF's, derived from the Phase I data, as described in Section V.B.4.b. These data are displayed in the following matrix.

The source-energy level for each zone was derived by multiplying the selected Phase II parametric baseline level by the combined RUF.

CLIMATIC ZONE	1	2	3	4	5	6	7
PHASE II PARAMETRIC BASELINE BUILDING LINE DESIGN ENERGY CONSUMPTION (MBTU/SQ. FT./YR)	138	150	160	171	171	225	171
COMBINED RUF	2.5	2.5	2.4	2.1	2.3	2.3	2.4

(5) Building classification: hotels or motels.

(A) Design energy budget matrix.

CLIMATIC ZONE	1	2	3	4	5	6	7
DESIGN ENERGY BUDGET (MBTU/SQ. FT./YR)	240.0	217.5	232.4	189.6	184.6	226.2	229.1

(The above figures were based only on the statistical analyses of existing buildings, as described in Section III and APPENDIX II. The proposed and final Standards will be based on an analysis of a much broader range of possible design energy budgets. See Section V.B.4.a(1)(e) and paragraph D of this section.)

(B) The following operating profile is assumed for the design energy budgets for this building classification in all climate zones:

1. Indoor design temperatures:
   - Winter occupied: 68° F
   - Winter unoccupied: 60° F
   - Summer occupied: 78° F
   - Summer unoccupied: Equipment off
2. Occupancy density (sq. ft./person): 300
3. Annual occupancy (weeks/yr): 52
4. Daily occupancy (percentage of peak load): See (C)

(C) HOTELS OR MOTELS

DAILY OCCUPANCY PROFILE

TIME	WEEKDAYS	SATURDAY	SUNDAY
Midnight	90	90	70
1			
2			
3			
4			
5			
6	70	70	
7	40	50	
8			50
9	20	30	
10			
11			30
Noon			
1			20
2			
3	30		
4	50		30
5		50	40
6		60	
7	70		60
8			
9	80	70	80
10	90		
11			
Midnight			70

(D) Commentary.

The source-energy levels shown in paragraph A for the seven climatic zones were derived from the Phase II technical redesign data, as described in Section V.B.4.a(1)(e), and the combined RUF's, derived from the Phase I data, as described in Section V.B.4.b. These data are displayed in the following matrix.

The source-energy level for each zone was derived by multiplying the selected Phase II technical redesign level by the combined RUF.

CLIMATIC ZONE	1	2	3	4	5	6	7
PHASE II TECHNICAL REDESIGN BUILDING LINE DESIGN ENERGY CONSUMPTION (MBTU/SQ. FT./YR)	96	87	83	79	71	78	79
COMBINED RUF	2.5	2.5	2.8	2.4	2.6	2.9	2.9

(6) Building classification: industrial buildings.

(A) Design energy budget matrix. (SPACE RESERVED)

CLIMATIC ZONE	1	2	3	4	5	6	7
DESIGN ENERGY BUDGET							

(The above figures were based only on the statistical analyses of existing buildings, as described in Section III and APPENDIX II. The proposed and final Standards will be based on an analysis of a much broader range of possible design energy budgets. See Section V.B.4.a(1)(f) and paragraph D of this section.)

(B) The following operating profile is assumed for the design energy budgets for this building classification in all climate zones:

1. Indoor design temperatures:
   - Winter occupied ____
   - Winter unoccupied ____
   - Summer occupied ____
   - Summer unoccupied ____
2. Occupancy density (sq. ft./person) ____
3. Annual occupancy (weeks/yr) ____
4. Daily occupancy (percentage of peak load) See (C)

(C) INDUSTRIAL BUILDINGS
DAILY OCCUPANCY PROFILE (SPACE RESERVED)

TIME	WEEKDAYS	SATURDAY	SUNDAY
Midnight			
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
Noon			
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
Midnight			

(D) Commentary. (Not applicable at this time.)

(7) Building classification: mercantile buildings.

(A) Design energy budget matrix.

CLIMATIC ZONE	1	2	3	4	5	6	7
DESIGN ENERGY BUDGET (MBTU/SQ. FT./YR)	249.6	212.5	226.8	212.8	201.0	234.0	228.6

(The above figures were based only on the statistical analyses of existing buildings, as described in Section III and APPENDIX II. The proposed and final Standards will be based on an analysis of a much broader range of possible design energy budgets. See Section V.B.4.a(1)(g) and paragraph D of this section.)

(B) The following operating profile is assumed for the design energy budgets for this building classification in all climate zones:

1. Indoor design temperatures:
   - Winter occupied 68° F
   - Winter unoccupied 60° F
   - Summer occupied 78° F
   - Summer unoccupied Equipment off
2. Occupancy density (sq. ft./person) 50
3. Annual occupancy (weeks/yr) 52
4. Daily occupancy (percentage of peak load) See (C)

(C) MERCANTILE BUILDINGS

DAILY OCCUPANCY PROFILE

TIME	WEEKDAYS	SATURDAY	SUNDAY
Midnight	0	0	0
1			
2			
3			
4			
5			
6			
7	10	10	
8	20	20	
9	50	50	10
10		60	20
11	70	80	
Noon			40
1			
2			
3	80		
4	70		
5	50	60	20
6		20	10
7	30		0
8			
9	0	10	
10		0	
11			
Midnight			

(D) Commentary.

The source-energy levels shown in paragraph A for the seven climatic zones were derived from the Phase II parametric data, as described in Section V.B.4.a(1)(g), and the combined RUF's, derived from the Phase I data, as described in Section V.B.4.b. These data are displayed in the following matrix.

The source-energy level for each zone was derived by multiplying the selected Phase II parametric baseline level by the combined RUF.

CLIMATIC ZONE	1	2	3	4	5	6	7
PHASE II PARAMETRIC BASELINE BUILDING LINE DESIGN ENERGY CONSUMPTION (MBTU/SQ. FT./YR)	96	85	81	76	67	78	76
COMBINED RUF	2.6	2.5	2.8	3.0	3.0	3.0	3.0

PROPOSED RULES

(8) Building classification: mobile homes.

(A) Design energy budget matrix. (SPACE RESERVED)

DESIGN ENERGY BUDGET	ZONE	FUEL	SIZE (FT) 12 x 60	14 x 70	24 x 60	28 x 70
	1	GAS				
		OIL				
		ELEC.				
	2	GAS				
		OIL				
		ELEC.				
	3	GAS				
		OIL				
		ELEC.				

(B) The following operating profile is assumed for the design energy budgets for this building classification in all climate zones:

(SPACE RESERVED)

(C) (SPACE RESERVED)

(D) Commentary. (Not applicable at this time.)

(9) Building classification: multifamily high-rise residential buildings.

(A) Design energy budget matrix.

CLIMATIC ZONE	1	2	3	4	5	6	7
DESIGN ENERGY BUDGET (MBTU/SQ. FT./YR)	112.0	109.2	110.0	137.2	119.6	150.0	147.1

(The above figures were based only on the statistical analyses of existing buildings, as described in Section III and APPENDIX II. The proposed and final Standards will be based on an analysis of a much broader range of possible design energy budgets. See Section V.B.4.a(1)(h) and paragraph D of this section.)

(B) The following operating profile is assumed for the design energy budgets for this building classification in all climate zones:

1. Indoor design temperatures:
   - Winter occupied: 68° F
   - Winter unoccupied: 60° F
   - Summer occupied: 78° F
   - Summer unoccupied: Equipment off
2. Occupancy density (sq. ft./person): 300
3. Annual occupancy (weeks/yr): 52
4. Daily occupancy (percentage of peak load): See (C)

PROPOSED RULES

(C) MULTIFAMILY HIGH-RISE RESIDENTIAL BUILDINGS

DAILY OCCUPANCY PROFILE

TIME	WEEKDAYS	SATURDAY	SUNDAY
Midnight	95	95	95
1			
2			
3			
4			
5			
6			
7	80		90
8		80	
9	65		80
10		70	70
11			
Noon			
1			
2			
3			
4	80		80
5		80	
6	85	95	
7			95
8			
9	95		
10			
11			
Midnight			

(D) Commentary.

The source-energy levels shown in paragraph A for the seven climatic zones were derived from the Phase II technical redesign data, as described in Section V.B.4.a(1)(h), and the combined RUF's, derived from the Phase I data, as described in Section V.B.4.b. These data are displayed in the following matrix.

The source-energy level for each zone was derived by multiplying the selected Phase II technical redesign level by the combined RUF.

CLIMATIC ZONE	1	2	3	4	5	6	7
PHASE II TECHNICAL REDESIGN BUILDING LINE DESIGN ENERGY CONSUMPTION (MBTU/SQ. FT./YR)	56	52	50	49	46	50	49
COMBINED RUF	2.0	2.1	2.2	2.8	2.6	3.0	3.0

PROPOSED RULES

(10) Building classification: multifamily low-rise residential buildings.

(A) Design energy budget matrix. (SPACE RESERVED)

CLIMATIC ZONE	1	2	3	4	5	6	7
DESIGN ENERGY BUDGET							

(The above figures were based only on the statistical analyses of existing buildings, as described in Section III and APPENDIX II. The proposed and final Standards will be based on an analysis of a much broader range of possible design energy budgets. See Section V.B.4.a(1)(i) and paragraph D of this section.)

(B) The following operating profile is assumed for the design energy budgets for this building classification in all climate zones:

1. Indoor design temperatures:
   - Winter occupied ____
   - Winter unoccupied ____
   - Summer occupied ____
   - Summer unoccupied ____
2. Occupancy density (sq. ft./person) ____
3. Annual occupancy (weeks/yr) ____
4. Daily occupancy (percentage of peak load) See (C)

(C) MULTIFAMILY LOW-RISE RESIDENTIAL BUILDINGS

DAILY OCCUPANCY PROFILE (SPACE RESERVED)

TIME	WEEKDAYS	SATURDAY	SUNDAY
Midnight			
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
Noon			
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
Midnight			

(D) Commentary. (Not applicable at this time.)

PROPOSED RULES

(11) Building classification: nursing homes.

(A) Design energy budget matrix.

CLIMATIC ZONE	1	2	3	4	5	6	7
DESIGN ENERGY BUDGET (MBTU/SQ. FT./YR)	300.0	255.0	268.8	216.0	192.4	295.8	261.0

(The above figures were based only on the statistical analyses of existing buildings, as described in Section III and APPENDIX II. The proposed and final Standards will be based on an analysis of a much broader range of possible design energy budgets. See Section V.B.4.a(1)(j) and paragraph D of this section.)

(B) The following operating profile is assumed for the design energy budgets for this building classification in all climate zones:

1. Indoor design temperatures:
   - Winter occupied: 72° F
   - Winter unoccupied: N/A
   - Summer occupied: 75° F
   - Summer unoccupied: N/A
2. Occupancy density (sq. ft./person): 300
3. Annual occupancy (weeks/yr): 52
4. Daily occupancy (percentage of peak load): See (C)

(C) NURSING HOMES

DAILY OCCUPANCY PROFILE

TIME	WEEKDAYS		SATURDAY		SUNDAY	
Midnight	90		80		80	
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
Noon						
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
Midnight						

(D) Commentary.

The source-energy levels shown in paragraph A for the seven climatic zones were derived from the Phase II parametric data, as described in Section V.B.4.a(1)(j), and the combined RUF's, derived from the Phase I data, as described in Section V.B.4.b. These data are displayed in the following matrix.

The source-energy level for each zone was derived by multiplying the selected Phase II parametric baseline level by the combined RUF.

CLIMATIC ZONE	1	2	3	4	5	6	7
PHASE II PARAMETRIC BASELINE BUILDING LINE DESIGN ENERGY CONSUMPTION (MBTU/SQ. FT./YR)	120	102	96	90	74	102	90
COMBINED RUF	2.5	2.5	2.8	2.4	2.6	2.9	2.9

(12) Building classification: offices/large (greater than 50,000 sq. ft.)

(A) Design energy budget matrix.

CLIMATIC ZONE	1	2	3	4	5	6	7
DESIGN ENERGY BUDGET (MBTU/SQ. FT./YR)	156.0	145.0	156.6	162.4	151.2	186.0	162.4

(The above figures were based only on the statistical analyses of existing buildings, as described in Section III and APPENDIX II. The proposed and final Standards will be based on an analysis of a much broader range of possible design energy budgets. See Section V.B.4.a(1)(k) and paragraph D of this section.)

(B) The following operating profile is assumed for the design energy budgets for this building classification in all climate zones:

1. Indoor design temperatures:
   - Winter occupied: 68° F
   - Winter unoccupied: 60° F
   - Summer occupied: 78° F
   - Summer unoccupied: Equipment off
2. Occupancy density (sq. ft./person): 100
3. Annual occupancy (weeks/yr): 52
4. Daily occupancy (percentage of peak load): See (C)

(C) OFFICES/LARGE
DAILY OCCUPANCY PROFILE

TIME	WEEKDAYS	SATURDAY	SUNDAY
Midnight	0	0	0
1			
2			
3			
4			
5			
6	10	10	5
7	20		
8	95	30	
9			
10			
11			
Noon	50	10	
1	95		
2			
3			
4			
5	30	5	
6	10		0
7		0	
8			
9			
10	5		
11			
Midnight	0		

(D) Commentary.

The source-energy levels shown in paragraph A for the seven climatic zones were derived from the Phase II parametric data, as described in Section V.B.4.a(1)(k), and the combined RUF's, derived from the Phase I data, as described in Section V.B.4.b. These data are displayed in the following matrix.

The source-energy level for each zone was derived by multiplying the selected Phase II parametric baseline level by the combined RUF.

CLIMATIC ZONE	1	2	3	4	5	6	7
PHASE II PARAMETRIC BASELINE BUILDING LINE DESIGN ENERGY CONSUMPTION (MBTU/SQ. FT./YR)	60	58	58	58	56	62	58
COMBINED RUF	2.6	2.5	2.7	2.8	2.7	3.0	2.8

(13) Building classification: offices/small (less than or equal to 50,000 sq. ft.)

(A) Design energy budget matrix.

CLIMATIC ZONE	1	2	3	4	5	6	7
DESIGN ENERGY BUDGET (MBTU/SQ. FT./YR)	145.6	137.5	148.5	148.4	143.1	180.0	134.0

(The above figures were based only on the statistical analyses of existing buildings, as described in Section III and APPENDIX II. The proposed and final Standards will be based on an analysis of a much broader range of possible design energy budgets. See Section V.B.4.a(1)(1) and paragraph D of this section.)

(B) The following operating profile is assumed for the design energy budgets for this building classification in all climate zones:

1. Indoor design temperatures:
   - Winter occupied: 68° F
   - Winter unoccupied: 60° F
   - Summer occupied: 78° F
   - Summer unoccupied: Equipment off
2. Occupancy density (sq. ft./person): 100
3. Annual occupancy (weeks/yr): 52
4. Daily occupancy (percentage of peak load): See (C)

(C) OFFICES/SMALL
DAILY OCCUPANCY PROFILE

TIME	WEEKDAYS	SATURDAY	SUNDAY
Midnight	0	0	0
1			
2			
3			
4			
5			
6	10	10	5
7	20		
8	95	30	
9			
10			
11			
Noon	50	10	
1	95		
2			
3			
4			
5	30	5	
6	10		0
7		0	
8			
9			
10	5		
11			
Midnight	0		

(D) Commentary.

The source-energy levels shown in paragraph A for the seven climatic zones were derived from the Phase II parametric data, as described in Section V.B.4.a(1)(1), and the combined RUF's, derived from the Phase I data, as described in Section V.B.4.b. These data are displayed in the following matrix.

The source-energy level for each zone was derived by multiplying the selected Phase II parametric baseline level by the combined RUF.

CLIMATIC ZONE	1	2	3	4	5	6	7
PHASE II PARAMETRIC BASELINE BUILDING LINE DESIGN ENERGY CONSUMPTION (MBTU/SQ. FT./YR)	56	55	55	53	53	60	55
COMBINED RUF	2.6	2.5	2.7	2.8	2.7	3.0	2.8

(14) Building classification: restaurants/fast food.

(A) Design energy budget matrix. (SPACE RESERVED)

CLIMATIC ZONE	1	2	3	4	5	6	7
DESIGN ENERGY BUDGET (MBTU/SQ. FT./YR)							

(The above figures were based only on the statistical analyses of existing buildings, as described in Section III and APPENDIX II. The proposed and final Standards will be based on an analysis of a much broader range of possible design energy budgets. See Section V.B.4.a(1)(m) and paragraph D of this section.)

(B) The following operating profile is assumed for the design energy budgets for this building classification in all climate zones:

1. Indoor design temperatures:
   - Winter occupied ____
   - Winter unoccupied ____
   - Summer occupied ____
   - Summer unoccupied ____
2. Occupancy density (sq. ft./person) ____
3. Annual occupancy (weeks/yr) ____
4. Daily occupancy (percentage of peak load) See (C)

PROPOSED RULES

(C) RESTAURANTS/FAST FOOD DAILY OCCUPANCY PROFILE (SPACE RESERVED)

TIME	WEEKDAYS	SATURDAY	SUNDAY
Midnight			
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
Noon			
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
Midnight			

(D) Commentary. (Not applicable at this time.)

(15) Building classification: restaurants/ full menu/other

(A) Design energy budget matrix. (SPACE RESERVED)

CLIMATIC ZONE	1	2	3	4	5	6	7
DESIGN ENERGY BUDGET (MBTU/SQ. FT./YR)							

(The above figures were based only on the statistical analyses of existing buildings, as described in Section III and APPENDIX II. The proposed and final Standards will be based on an analysis of a much broader range of possible design energy budgets. See Section V.B.4.a(1)(n) and paragraph D of this section.)

(B) The following operating profile is assumed for the design energy budgets for this building classification in all climate zones:

1. Indoor design temperatures:
   - Winter occupied ____
   - Winter unoccupied ____
   - Summer occupied ____
   - Summer unoccupied ____
2. Occupancy density (sq. ft./person) ____
3. Annual occupancy (weeks/yr) ____
4. Daily occupancy (percentage of peak load) See (C)

PROPOSED RULES

(C) RESTAURANTS/FULL-MENU/OTHER

DAILY OCCUPANCY PROFILE (SPACE RESERVED)

TIME	WEEKDAYS	SATURDAY	SUNDAY
Midnight			
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
Noon			
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
Midnight			

(D) Commentary. (Not applicable at this time.)

(16) Building classification: schools/elementary.

(A) Design energy budget matrix.

CLIMATIC ZONE	1	2	3	4	5	6	7
DESIGN ENERGY BUDGET (MBTU/SQ. FT./YR)	203.7	197.5	182.0	158.6	129.6	133.4	152.5

(The above figures were based only on the statistical analyses of existing buildings, as described in Section III and APPENDIX II. The proposed and final Standards will be based on an analysis of a much broader range of possible design energy budgets. See Section V.B.4.a(1)(o) and paragraph D of this section.)

(B) The following operating profile is assumed for the design energy budgets for this building classification in all climate zones:

1. Indoor design temperatures:
   - Winter occupied: 68° F
   - Winter unoccupied: 60° F
   - Summer occupied: 78° F
   - Summer unoccupied: Equipment off
2. Occupancy density (sq. ft./person): 100
3. Annual occupancy (weeks/yr): 42
4. Daily occupancy (percentage of peak load): See (C)

(C) SCHOOLS/ELEMENTARY

DAILY OCCUPANCY PROFILE

TIME	WEEKDAYS	SATURDAY	SUNDAY
Midnight	0	0	0
1			
2			
3			
4			
5			
6			
7	5		
8	50		
9	80		
10			
11			
Noon			
1			
2	75		
3	30		
4	5		
5	0		
6			
7			
8			
9			
10			
11			
Midnight			

(D) Commentary.

The source-energy levels shown in paragraph A for the seven climatic zones were derived from the Phase II parametric data, as described in Section V.B.4.a(1)(o), and the combined RUF's, derived from the Phase I data, as described in Section V.B.4.b. These data are displayed in the following matrix.

The source-energy level for each zone was derived by multiplying the selected Phase II parametric baseline level by the combined RUF.

CLIMATIC ZONE	1	2	3	4	5	6	7
PHASE II PARAMETRIC BASELINE BUILDING LINE DESIGN ENERGY CONSUMPTION (MBTU/SQ. FT./YR)	97	79	70	61	48	46	61
COMBINED RUF	2.1	2.5	2.6	2.6	2.7	2.9	2.5

(17) Building classification: schools/secondary.

(A) Design energy budget matrix.

CLIMATIC ZONE	1	2	3	4	5	6	7
DESIGN ENERGY BUDGET (MBTU/SQ. FT./YR)	159.6	145.2	125.4	129.6	97.2	93.6	124.2

(The above figures were based only on the statistical analyses of existing buildings, as described in Section III and APPENDIX II. The proposed and final Standards will be based on an analysis of a much broader range of possible design energy budgets. See Section V.B.4.a(1)(p) and paragraph D of this section.)

(B) The following operating profile is assumed for the design energy budgets for this building classification in all climate zones:

1. Indoor design temperatures:
   - Winter occupied: 68° F
   - Winter unoccupied: 60° F
   - Summer occupied: 78° F
   - Summer unoccupied: Equipment off
2. Occupancy density (sq. ft./person): 150
3. Annual occupancy (weeks/yr): 42
4. Daily occupancy (percentage of peak load): See (C)

(C) SCHOOLS/SECONDARY

DAILY OCCUPANCY PROFILE

TIME	WEEKDAYS	SATURDAY	SUNDAY
Midnight	2	2	2
1			
2			
3			
4			
5			
6			
7	5		
8	75	10	
9	90		
10			
11	80		
Noon			
1		2	
2			
3	45		
4	15		
5	5		
6	15		
7	20		
8			
9	10		
10	2		
11			
Midnight			

(D) Commentary.

The source-energy levels shown in paragraph A for the seven climatic zones were derived from the Phase II parametric data, as described in Section V.B.4.a(1)(p), and the combined RUF's, derived from the Phase I data, as described in Section V.B.4.b. These data are displayed in the following matrix.

The source-energy level for each zone was derived by multiplying the selected Phase II parametric baseline level by the combined RUF.

CLIMATIC ZONE	1	2	3	4	5	6	7
PHASE II PARAMETRIC BASELINE BUILDING LINE DESIGN ENERGY CONSUMPTION (MBTU/SQ. FT./YR)	84	66	57	48	36	36	48
COMBINED RUF	1.9	2.2	2.2	2.7	2.7	2.6	2.6

(18) Building classification: single-family attached residential structures.

(See note after §435.8(b).)

For single-family attached residential structures, the design energy budget shall be a floating value and shall be determined for each building design in accordance with the following procedure:

(A) Step 1: Determine the envelope construction and equipment sizes from the NAHB Thermal Performance Guidelines, incorporated by reference in this section.

(B) Step 2: For the heating system, determine the estimated design energy using the ASHRAE modified degree-day method described in the ASHRAE 1976 SYSTEMS HANDBOOK and Product Directory, Chapter 43, incorporated by reference in this section.

(C) Step 3: For the cooling system, determine the estimated design energy using the ASHRAE equivalent full-load hours method described in the ASHRAE 1976 SYSTEMS HANDBOOK and Product Directory, Chapter 43.

(D) Step 4: Convert the estimated heating design energy to the heating design energy budget in accordance with the following equation:

$$HDEB = \frac{E \times RUF}{A}$$

where, HDEB= heating design energy budget, Btu/sq. ft./yr

E = estimated design energy from ASHRAE 1976 SYSTEMS HANDBOOK and Product Directory

RUF = resource utilization factor for the fuel source used for heating in the climatic zone involved, determined in accordance with §435.9

A = area of building, sq. ft.

(E) Step 5: Convert the estimated cooling design energy to the cooling design energy budget in accordance with the following equation:

$$CDEB = \frac{T \times K \times EFLH \times 3413 \frac{Btu}{kWh} \times RUF}{A}$$

where, CDEB= cooling design energy budget, Btu/sq. ft./yr

T = installed tons of cooling system

K = conversion factor of kW/ton, from Table 4 in Equivalent Full-Load Hours method from ASHRAE 1976 SYSTEMS HANDBOOK and Product Directory, Chapter 43

EFLH= equivalent full-load hours, from Table 5 in Equivalent Full-Load Hours method from ASHRAE 1976 SYSTEMS HANDBOOK and Product Directory, Chapter 43

RUF = resource utilization factor for the fuel source used for cooling in the climatic zone involved, determined in accordance with §435.9

A = area of building, sq. ft.

(F) Step 6: Sum the HDEB and CDEB of Steps 4 and 5 to arrive at the design energy budget for the building.

(19) Building classification: single-family detached residential structures.

(See note after §435.8(b).)

For single-family detached residential structures, the design energy budget shall be a floating value and shall be determined for each building design in accordance with the procedures described in § 435.8(b)(18).

(G) Step 7: Reevaluate the building design to determine allowable design changes which will not exceed the design energy budget established in Step 6, and revise the design, if desired, within the limits established in Step 6 and the first part of Step 7.

(20) Building classification: warehouses.

(A) Design energy budget matrix. (SPACE RESERVED)

CLIMATIC ZONE	1	2	3	4	5	6	7
DESIGN ENERGY BUDGET							

(The above figures were based only on the statistical analyses of existing buildings, as described in Section III and APPENDIX II. The proposed and final Standards will be based on an analysis of a much broader range of possible design energy budgets. See Section V.B.4.a(1)( ) and paragraph D of this section.)

(B) The following operating profile is assumed for the design energy budgets for this building classification in all climate zones:

1. Indoor design temperatures:
   - Winter occupied ____
   - Winter unoccupied ____
   - Summer occupied ____
   - Summer unoccupied ____
2. Occupancy density (sq. ft./person) ____
3. Annual occupancy (weeks/yr) ____
4. Daily occupancy (percentage of peak load) See (C)

(C) WAREHOUSES
DAILY OCCUPANCY PROFILE (SPACE RESERVED)

TIME	WEEKDAYS	SATURDAY	SUNDAY
Midnight			
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
Noon			
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
Midnight			

(D) Commentary. (Not applicable at this time.)

435.9 Evaluation technique.

(NOTE: This presentation is based on only one of a number of possible methods for incorporating RUF's and RIF's. It is not to be viewed as the only one which will be considered for the proposed or final Standards to be promulgated in 1979. DOE reserves the option to include more than one evaluation technique, if deemed appropriate.)

(a) The adjusted design energy consumption for a building design shall be calculated as follows:

(1) Step 1: Calculate the design energy consumption for each fuel type (gas, oil, electricity) using any one of the techniques described in the "Bibliography on Available Computer Programs in the General Area of Heating, Refrigerating, Air-Conditioning and Ventilating," ASHRAE, 1975, incorporated by reference in this section. Fuel usage attributable to process energy requirements shall be excluded from such calculations.

(2) Step 2: First, derive the RIF for each fuel type in each climatic zone by...

(SPACE RESERVED)

(The RIF for renewable resources shall be equal to zero.)

Then, multiply the design energy consumption for each fuel type calculated in Step 1 by the corresponding RIF for each fuel type.

(3) Step 3: First, determine the RUF for each fuel type in each climatic zone by...

(SPACE RESERVED)

(The RUF for renewable resources shall be equal to zero.)

Then, multiply the RIF-adjusted design energy consumption for each fuel type calculated in Step 2 by the RUF for each fuel type in each climatic zone, to arrive at the adjusted design energy consumption by fuel type.

(4) Step 4: Sum the adjusted design energy consumptions for each fuel type in a given climatic zone to arrive at the adjusted design energy consumption for the building design in that climate zone, in accordance with the following:

$$ADEC_B = (DEC_1 \times RIF_1 \times RUF_1)_{zone\ x} + (DEC_2 \times RIF_2 \times RUF_2)_{zone\ x} + (DEC_3 \times RIF_3 \times RUF_3)_{zone\ x}$$

where, $ADEC_B$ = adjusted design energy consumption for the building design

$zone\ x$ = the climatic zone in which the building is planned for construction

DEC_1 = design energy consumption for fuel type 1 in zone x

RIF_1 = resource impact factor for fuel type 1 in zone x

RUF_1 = resource utilization factor for fuel type 1 in zone x

(b) The adjusted design energy consumption for the building design, calculated in paragraph (a) of this section, shall then be compared to the design energy budget for the building classification, obtained in accordance with §435.8. The building design shall be in compliance with these Standards if the adjusted design energy consumption for the building design does not exceed the design energy budget for the building classification.

APPENDIX II.

STATISTICAL ANALYSES PROGRAM.

A-II.A Phase I.

The objective of Phase I, which began in early 1977, was to establish a design baseline. Buildings designed after the 1973 oil embargo were used because it was felt that these structures would reflect discernable energy-conscious designs, as well as current design/construction technology.

Because the design energy consumption of a building is a function of the climatic conditions to which the building is exposed, and its physical characteristics and intended use, the first step of Phase I was to develop a building classification system and to identify climatic zones and the required design data. In the next step, a building sample was identified and the required design data on these buildings collected. Finally, the design energy consumptions of the sample buildings were calculated, using computer modeling techniques.

A-II.A.1 Building Classifications.

For data collection purposes, buildings were first divided into two major groups: nonresidential buildings (including schools, hospitals, offices, restaurants, stores, other commercial buildings and multifamily high-rise residential structures), and residential buildings (including single-family detached and attached structures, multifamily low-rise buildings and mobile homes). NOTE: Multifamily high-rise residential buildings were included in the nonresidential group because of their physical similarity to commercial high-rise buildings.

Two building classification schemes were then developed. The first was a General Classification System, which was derived from descriptions in existing building codes. The second, a Classification System for Data Collection, was derived from the first system but was limited to those specific building classifications for which data would be collected; i.e., building classifications which would contribute significantly to the volume of new construction and would demonstrate measurable energy needs for space heating and cooling.

The general building classifications thus developed for data collection purposes were: offices, elementary schools, secondary schools, colleges/universities, hospitals, clinics, public assembly buildings, restaurants, mercantile buildings, storage/warehouses, residential nonhousekeeping facilities, multifamily high-rise residential structures, single-family detached residential buildings, single-family attached residential buildings, multifamily low-rise residential buildings and mobile homes.

A-II.A.2 Climatic Classification.

In order to determine the method for classifying climatic conditions so that the building sample would adequately represent these variations, as specified in the enabling legislation, the climatic variables affecting energy consumption were first isolated and then a classification procedure based on heating and cooling degree-days was developed.

(A heating degree-day relates to the space heating requirement on a given day. This requirement is assumed to vary directly with the difference between 65° F and the average of the extreme temperatures occurring on that day, in Fahrenheit degrees. By definition, the number of heating degree-days associated with a given day is equal to this numerical difference in Fahrenheit temperature. For example, if the mean outdoor temperature on a day is 60° F, then the number of heating degree-days associated with that day is 65 - 60, or 5. A similar definition applies to cooling degree-days, also based on 65° F as the controlling temperature level.)

Through this classification method, seven climatic zones were defined (see Figure 1, APPENDIX I). Alaska is included in zone 1, and Hawaii in zone 5.

Finally, since mobile homes may be used anywhere, regardless of where they are constructed, a different zone system was used for such structures, a system identical to the one published in the HUD Mobile Home Standards. These three design temperature zones are depicted in Figure 2, APPENDIX I.

A-II.A.3 Nonresidential Buildings Data Collection and Analysis.

A-II.A.3.a Building Population Identification.

As indicated, in Section A-II.A, the nonresidential building population targeted for the survey was restricted to those designed after the 1973 oil embargo. The survey population was further refined to include only those buildings for which construction actually began as early as 1975 and 1976, because it was believed that the most complete data base would be available on these buildings.

A-II.A.3.b Survey Sample Selection.

Probability sampling techniques were used to select the survey sample. First, 37 Standard Metropolitan Statistical Areas (SMSA's) were selected as the survey sites. The SMSA's chosen were cities or areas with populations in excess of 250,000; they were also representative of the seven climatic zones. Then, within each of the SMSA's, a number of buildings, representing each building classification, was identified.

The buildings were identified, along with their designers/constructors, through Dodge Construction Reports for the time period defined. (These reports are published by the McGraw-Hill Publishing Company and detail ongoing construction in the various regions of the country.) Finally, a random sample of buildings, representing each classification in each SMSA, was selected. This random sample comprised approximately 3,200 buildings, from a total of 12,834 buildings identified as being designed after 1973 and for which construction began in 1975-1976.

A-II.A.3.c Data Requirements Identification.

The broad categories of design data identified for collection included: general information such as floor area, volume, and number of stories; building envelope and site-related orientation data; designed use and building functions; heating, ventilating and air-conditioning systems data; domestic hot water and lighting systems data; and the incorporation of renewable energy usage considerations.

A-II.A.3.d Data Collection.

A survey form, based on 100 to 125 data items per building, was designed. The content of this survey form was derived by condensing the larger data set needed. This was done by: (a) assuming standard values for certain design variables for each building classification; (b) utilizing simplified computer modeling techniques for the buildings; and (c) taking into consideration the ease with which the building designers/ constructors would be able to derive the data.

The survey forms were sent to the designers/constructors of the selected buildings, and each building was assigned to a regional field team trained to monitor and assist in the completion of the survey forms. As each form was completed by the designers/constructors, it was checked for completeness by the field team and then returned for final checking. Most of the forms required further contact with those involved in their completion, to verify the data or obtain additional information.

Of the 3,223 data collection forms mailed out, 1,869 were returned. Of these, 1,661, or 55%, of the forms were sufficiently complete to allow processing. Statistical studies have verified the representativeness of the data from the forms thus processed.

The control required to produce valid estimates from the building sample largely determined the organization of the data collection and related management activities. Since voluntary response to the survey, with no accounting for nonresponse, might have distorted the findings or produced insufficient returns for a representative data base, control procedures were instituted to insure adequate survey responses for the selected buildings and to account for all buildings selected for the sample. Special techniques were developed for managing and internally controlling the data forms through the various stages of collection and processing. These techniques included:

a test simulation of the data collection process; training of the field teams responsible for assisting the firms in completing the forms; regional management and control of the field teams; use of local professional support for the data collection; and telephone follow-ups to obtain additional data, clarify the data supplied, or compare the data received to similar information from nonrespondents.

A-II.A.3.e Data Processing and Analysis.

The major data processing objective was to estimate the annual design energy consumption for each of the sample buildings, tabulate the results and generate a matrix showing annual design energy consumption for each building classification and climatic zone. "Btu's per gross square foot per year" (Btu/sq. ft./yr) was selected as the consistent unit for expressing the annual design energy consumption. A subsequent analysis of other possible units, such as volume and surface/volume ratios, supported the validity of using this unit for nonresidential buildings.

Procedures for processing the data were developed to: check the data forms manually and by computer; enter the data form responses in the computerized data base; incorporate weather data and the assumed standardized variables specific to each building classification; store the output of the resulting simulations; maintain and update the data base; and monitor the progress of each sample building through the analysis process.

For the analysis itself, a short form of the AXCESS energy analysis computer program was utilized. This program was chosen because it satisfied the technical evaluation criteria and resource constraints of the project; i.e., it would produce reasonable estimates of the design energy consumptions of the selected buildings, and would accept data readily available and practical to collect from building designers/constructors. The AXCESS program, which is a proprietary program not in the public domain, was originally developed by the Edison Electric Institute and was intended for use by architects and engineers to evaluate building design alternatives.

The reports generated included summary graphs and matrices of the annual design energy consumptions for each building classification in each climatic zone. These graphs, etc., were constructed by calculating the number of buildings in the sample versus the range of annual design energy consumption for each building classification in each zone. It should be noted that the design energy consumptions were calculated individually for each building classification in each climatic zone.

A-II.A.4 Residential Buildings Data Collection and Analysis.

A-II.A.4.a Building Population Identification.

Similar to the nonresidential buildings analysis, only residential buildings constructed in the last half of 1975 and the first half of 1976 were included in the building population to be sampled. (NOTE: As previously stated, multifamily high-rise residential structures were included in the nonresidential group for data collection and analysis purposes, because of their physical similarity to commercial high-rise structures.)

A-II.A.4.b Survey Sample Selection.

For single-family detached, single-family attached and multifamily low-rise residential structures, an existing NAHB/RF survey was used. The survey sample was selected by contacting the residential construction members of the NAHB. Initially, postcards were sent to these members,

requesting information on the numbers and types of applicable residential buildings constructed between July 1, 1975, and June 30, 1976. Ten-thousand postcards were returned and were sorted according to building classification. These became the total sample for the indicated residential buildings.

For mobile homes, the survey sample was developed by compiling a mailing list of all mobile home manufacturers listed in the 1976 Redbook of Housing Manufacturers and the Directory/Census of Manufactured Housing. The mobile homes represented by the 675 manufacturers thus identified became the total sample for these structures.

A-II.A.4.c Data Requirements Identification.

The design data required for residential buildings included: structural configuration; envelope description, including walls, windows, doors, floors, roof, etc.; and heating, ventilating and air-conditioning systems.

A-II.A.4.d Data Collection.

For single-family detached and attached and multifamily low-rise residential buildings, detailed questionnaires were sent to the 10,000 builders who responded to the initial postcards. A total of 4,700 questionnaires were returned. Of these 4,300 were usable, representing 112,942 single-family detached, 12,660 single-family attached and 44,960 multifamily low-rise residential units. The representativeness of this sample was tested and verified by: (a) sorting the questionnaires by climatic zone; (b) contacting nonrespondents to compare the characteristics of their buildings with those of the buildings for which data were received; and (c) statistically analyzing the possible bias introduced by restricting the survey sample to NAHB members. The analysis determined that no discernible bias existed, considering the number of new residential buildings designed and constructed in the time period involved.

For mobile homes, the 675 manufacturers identified in the survey selection process were sent detailed questionnaires. The 289 that were completed and returned represented 48% of the existing plants involved in mobile home construction. Again, representativeness of the sample was tested and verified by contacting the nonrespondents to compare their mobile home designs to those of the mobile homes for which data were received.

A-II.A.4.e Data Processing and Analysis.

Design energy consumption was calculated for residential structures using a manual method based on the ASHRAE "Modified Degree Day Method," outlined in Chapter 43 of the ASHRAE 1976 SYSTEMS HANDBOOK and Product Directory. The process was computerized to reduce the processing time required for the large number of buildings in the sample. Again, Btu/sq. ft./yr was used as the consistent unit for expressing the design energy consumption.

Heat loss and heat gain were calculated for each exposure (north, south, east, west) of each residence, using heat loss and heat gain multipliers developed for various construction materials. Heating and cooling utilization factors were developed based on seasonal heating and cooling system efficiencies. The heat loss and heat gain, multiplied by the

appropriate utilization factors, yielded the estimated energy required to heat and cool the residences for one year; i.e., the annual design energy consumption.

In a manner similar to that for nonresidential buildings, summary graphs and matrices were constructed for each residential building classification, depicting annual design energy consumption by climatic zone.

A-II.B Phase II.

Essentially, two "redesign" programs were conducted as part of Phase II:

(1) technical redesigns

(2) building simulations

The first redesign program was applied to all building classifications; the second, to all except mobile homes.

A-II.B.1 Technical Redesign.

The Phase I analyses provided an initial baseline of design energy conservation in new buildings. The purpose of the technical redesign in Phase II was to determine the maximum level of energy conservation which could be incorporated into the designs of new buildings, given certain design limitations. These design instructions are explained in the following subsections, first for nonresidential buildings, then for single-family detached and single-family attached residential structures, and finally for mobile homes.

(NOTE: For the technical redesign, both multifamily high-rise and multifamily low-rise residential buildings were included in the nonresidential buildings redesign program.)

A-II.B.1.a Nonresidential Buildings.

For the technical redesign for nonresidential buildings, 168 representative buildings were selected from the Phase I sample, using a process intended to include all of the applicable building classifications and climatic zones. The original design teams for those buildings were contracted to redesign their own buildings for maximum design energy conservation, based on their professional judgment. The instructions they received for the redesign were as follows:

1. Program: Use the original client program for the building. If the building was originally intended as a 500-bed hospital and specified a director's office with a river view, the redesigned building must also conform to these requirements. However, it is acceptable to distinguish between fixed and flexible requirements and to consider changes accordingly. For example, the square-footage of the building may be adjusted or partitions and floor plans changed, where such changes will not disrupt functional needs or the original program requirement. Documentation should show the scheduled hours of operation and justify any changes in the original schedule on the basis of resulting energy savings.
2. Dollar Budget: Observe the original dollar budget guidelines, at least in general. Use discretion in designing an energy conserving building that stays within a reasonable dollar budget, given its client's functional requirements. A speculative office building, for example, must be redesigned

as such, with the cost constraints that implies. A luxury building demanding exotic lobby treatments must still conform to client expectations. Preliminary studies indicate that, in many cases, the designs reflecting minimum energy consumption will cost no more than the original designs. However, where the cost of the redesign is estimated to be higher, modifying the original dollar budget may be considered, as professional judgment dictates. Documentation need not include precise cost calculations, but should include the approximate change in cost between the redesign and the original design, in terms of both percentages and actual dollar values.

3. Codes: Consider modifications to existing building codes, according to professional judgment and discretion, where those codes severely limit reasonable design energy consumption reductions. Many states have "health and safety equivalents" as supplements to their building codes; such criteria should be used where energy consumption is at issue. Where code changes are utilized, the changes should be documented and justified in terms of minimizing design energy consumption. In all other cases, observe the existing codes in the redesigns, as in the original designs.

4. Location:

   a. Site: Use the original site; however, consider changing the location or orientation of the building on the site, if such changes would reduce the design energy consumption. Observe the real constraints of the site, existing adjacent sites, and area infrastructure and development.

   b. Landscaping: Consider changes in surfaces, topography, planting and other controllable variables in relation to wind, sun, water and other potential energy factors. Do not assume unrealistic situations, such as 100-year-old-trees, where they do not exist.

5. Form:

   a. Configuration: Consider changing the configuration of the original building, provided the change is an appropriate solution for the building and its location.

   b. Circulation: Consider changing interior and exterior circulation patterns, provided the changes are appropriate to the building's location, functions, and health and safety requirements.

   c. Envelope: Consider changes in materials, openings, fenestration, insulation, color, surfaces, shade and wind controls, and other features.

6. Metabolism:

   a. Illumination: Consider changes in lighting, such as types, placement or number of lamps and fixtures, where they exceed functional requirements.

   b. Climatic Control Systems: Consider changing and/or optimizing thermal and climatic systems, reduce loads to the maximum degree possible, and size the equipment to effect minimum design energy consumption.

   c. Electrical and Control Systems: Consider installing and/or modifying control systems to minimize the design energy consumption; consider alternatives according to building design and functional requirements.

7. Solar and Wind Systems: Do not include recognizable, installed solar and wind systems, such as wind generators and active solar systems and equipment, unless used in the original building design. However, the passive utilization of renewable energy sources may be considered in order to reduce electrical and fossil-fuel loads. Examples include natural daylighting, natural ventilation, passive solar heat gain, and thermal mass storage and reradiation.

8. Raw-Source Energy: Do not include raw-source energy considerations (e.g., gas from well, to utility, to building, etc.). However, the redesign should conform to the concepts of appropriate technology, and the energy systems chosen should be appropriate to their task and to the supply and economics of the alternative fuels in the building's location. For example, lighting systems rely on electricity, but other energy sources may be appropriate for other building loads.

9. Documentation: Document the design decisions and trade-offs so that the concepts and processes, as well as the results, of the redesign may be properly recorded and analyzed. Justify decisions to modify program codes, costs or other constraints and explain such changes in sufficient detail for their impacts to be evaluated. Record the original conditions, the changes, the reasons for the changes and their estimated impacts, both positive and negative.

10. Data: Provide sufficient data on the building redesigns for a computer analysis using the long form of the AXCESS program.

A-II.B.1.b Single-Family Detached and Single-Family Attached Residential Buildings.

Designers and builders recognized for their experience in energy-conscious designs, were contracted to design prototype single-family detached and attached residential structures, based on: (a) specific building size/type/climatic zone combinations derived from the median characteristics of the buildings in the Phase I sample, and (b) defined cost limitations. The design sizes/types in each climatic zone were determined by construction volume and by variations in design energy consumption, as demonstrated in the Phase I data for single-family detached and attached residential buildings. Also, specific cities in each climatic zone were selected for the assumed building locations, to ensure geographic representation.

Each building was designed for each of the four alternative entrance orientations: north, south, east and west. Specific design rules provided to the designers and builders were as follows:

1. Human Comfort: Provide currently acceptable levels of human comfort within reasonable ranges of variation.

2. Life/Safety: Satisfy reasonable requirements for life/safety.

3. Feasibility: Satisfy "buildability" requirements; i.e.,

reasonably available materials, construction techniques and skills.

4. Codes: Consider deviating from existing codes, as professional judgment dictates, when those codes limit the incorporation of reasonable energy conserving design features. Carefully document the code changes and justify the deviations in terms of minimizing design energy consumption. In all other cases, observe existing codes as in any building design.

5. Site: Within the specified site size, climatic zone and topology, consider changes in surface, planting and other controllable elements. When such elements are introduced, include their cost in the building cost estimates. Do not consider unrealistic situations, such as 100-year-old trees or non-indigenous vegetation.

6. Mechanical-Electrical Systems: Design climate control systems for all reasonably available system types compatible with the building design.

a. Lighting: Examine lighting requirements with respect to task requirements. Consider various lighting types and quantities, as well as natural daylighting.

b. Control Systems: Consider control systems for mechanical-electrical systems, where such control systems would contribute to minimizing the design energy consumption.

c. Energy Loads: Consider energy loads such as major household appliances in the prototype design, even though estimates of design energy consumption will only include requirements for space conditioning and domestic hot water.

7. User Participation: Consider user participation in the operation of energy conserving features of the building.

8. Solar and Wind Systems: Do not include recognizable, installed solar and wind systems, such as wind generators and active solar systems and equipment, in the designs. However, passive techniques, such as natural daylighting, natural ventilation, passive solar heat gain or thermal mass storage and reradiation, may be considered.

9. Floor Area: Include in the floor area only the gross area of conditioned space, including finished basement areas. Do not include unfinished basement areas, garages and other unconditioned spaces.

10. Documentation: Include in the documentation on the design: (a) a general commentary on the process by which the energy related design decisions were made, and the assumptions, parameters and conflicts involved; (b) a quantitative analysis of options considered; (c) all code deviations, along with appropriate justifications; (d) a summary cost statement covering estimated building construction costs and, if appropriate, a comparison of first costs with anticipated energy cost savings over time; (e) a detailed estimate of annual design energy consumption for the completed design, with estimates for heating, cooling, lighting, hot water and appliances, and the calculation method clearly identified.

A-II.B.1.c Mobile Homes.

A prototype design program similar to the one used for single-family residential buildings was employed for the mobile home classification. It was determined that all mobile homes were already meeting the requirements of the current Federal standards published by

HUD. It was then possible to reduce the 21 different size models found in the Phase I survey to four nominal models for the prototype design program: 12' x 60', 14' x 70', 24' x 60', and 28' x 70'. One mobile home manufacturer was contracted to do the prototype designs, and the designs were reviewed by a Technical Advisory Group composed of other mobile home designers and manufacturers.

Floor plans and complete structural specifications were drawn up for each of the four units, energy-saving elements were incrementally added by computer simulation to each component, and a complete energy analysis was prepared. This process became the first maximum technically feasible redesign (MTFD-I) and included such elements as: added insulation, structural modifications, component modifications, etc.

For MTFD-I, five conditions had to be satisfied:

(1) that the changes require no alteration in the owner's lifestyle;

(2) that the unit be suitable for mass production and use readily available materials and foreseeable design strategies;

(3) that the unit meet reasonable requirements for life/safety;

(4) that the unit be transportable over present highways within existing regulations; and

(5) that the size of the unit satisfy prevailing mobile home park space limitations.

In summary, MTFD-I represented designs over which the manufacturer had total control under present marketing and regulatory conditions.

In developing the MTFD-I designs, it was discovered that, if the orientation of the unit on the site could be predicted and specific landscaping and other features could be dictated, additional substantive energy savings could be realized. Therefore, MTFD-II was developed, incorporating these concepts and additional structural/component modifications which may have been unusable given the conditions specified for MTFD-I.

Again, an energy analysis was conducted, and MTFD-I and MTFD-II became the mobile home technical redesigns for Phase II.

A-II.B.2 Building Design Simulations.

Building designs included in the technical redesign were also simulated. The data was modified to comply with minimum requirements of existing energy standards; i.e., ASHRAE 90-75R, the NAHB Thermal Performance Guidelines (NAHB/TPG) and the HUD Minimum Property Standards (HUD/MPS). Specifically, all of the nonresidential building designs in the technical redesign sample were simulated according to ASHRAE 90-75R; and residential building designs were simulated according to the NAHB/TPG and the HUD/MPS. Since mobile homes were already being designed to Federal standards, they were not included in this particular program.

Standard-based simulations were done on a component basis, using the maximum allowable energy consumption for each component. A subcommittee of the Technical Advisory Group, including ASHRAE representatives, reviewed these simulations to ensure that the standards were fairly and accurately represented and that the latest version of each standard was used.

A-II.B.3 Comparison Study of Design Energy Analysis Programs.

A comparison study of various design energy analysis programs, including those used during the course of Phases I and II, is being conducted. AXCESS, DOE-1 (formerly, CAL-ERDA) and CERL BLAST, the last two of which are in the public domain, and a manual method being developed by ASHRAE Technical Committee 4.7, are all being compared to determine the range of calculated design energy consumptions which are possible, given four reasonably sophisticated calculating procedures. Preliminary results of this comparison study are expected to be available at the time of publication of this ANPR.

A-II.B.4 Parametric Modeling.

The Phase I and Phase II data and analyses provide estimates of the design energy consumption distribution for nonresidential and multifamily high-rise residential buildings for three conditions: as designed, technically redesigned, and standard-based simulated. However, these estimates are valid only for the building designs included in the sample, not for the total population of buildings which the sample represents. To estimate the design energy consumption distribution for the entire universe of new nonresidential and multifamily high-rise residential buildings, it was necessary to develop a parametric model using statistical regression analysis techniques.

The model used the 1661 Phase I nonresidential buildings (including multifamily high-rise residential buildings) as the foundation for the projections to the total new construction universe for these building classifications. The projections for each building classification were presented for each 500 degree-day increment of heating and cooling degree-days. This resulted in design energy consumption levels for the best-case weather conditions through the worst-case weather conditions in each climatic zone. (The levels reflected for the worst-case in each climatic zone were subsequently used as the baseline for the preliminary design energy budget selection programs.)

The parametric model and resulting data were statistically evaluated in an independent effort to determine the validity of this program. The results of that evaluation confirmed the representativeness of the model data with respect to the total new construction universe for nonresidential and multifamily high-rise residential buildings designed after 1973 and constructed on or before 1976.

A-II.B.5 Reevaluation Studies.

In the course of Phase II, several reevaluation studies have been or are being conducted.

The first involves investigating anomalies in the data and analyses. The objective is to explain the anomalies and either: accept the anomalies as valid; discard them as insignificant; or reject them as invalid and collect additional data and/or conduct new analyses, as required.

The second reevaluation study involves examining the building classifications on the basis of design energy consumption, assumed operating profiles, similarities in intended use, etc. The objective of this study is to derive a system which will most accurately differentiate between the various elements, providing a clear distinction between the design energy budgets for each classification.

A third study involves examining the concept of expressing the design energy budgets by fuel type, as well as building classification and climatic zone.

Finally, a study is being conducted to correlate the square-footage represented by the buildings in the samples to the total estimated square-footage for all new construction for the respective time periods involved.

The preliminary results of these and other such programs can be seen in the preliminary Standards portion of this ANPR. For instance: (a) preliminary design energy budgets for several building classifications are not included because data/analysis anomalies require further investigation; (b) the tentative building classifications included are more detailed than those used in Phase I; and (c) the system tentatively considered for determining the design energy budgets for residential buildings includes fuel type factors.

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